

Hearing

Vol 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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20
21
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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 5, 2008

11:03 a.m.

CONFIDENTIAL

PROBATE HEARING VOL. II

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:
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Court Reporting Services

Campano & Associates
Court Reporting Services

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20 Also Present: JENNIFER HAGEL-SMITH
21 MAUREEN SMITH
22 GEORGE SMITH III

INDEX OF EXAMINATION OF BRETT RIVKIND

	<u>Page</u>	<u>Line</u>
1		
2		
3	276	18
4	371	7
5	450	13
6		
7		

INDEX OF EXAMINATION OF CURTIS MASE

	<u>Page</u>	<u>Line</u>
8		
9		
10	461	3
11	484	19
12	513	17
13	515	14
14		
15		

INDEX OF PETITIONER'S EXHIBITS

	<u>Page</u>	<u>Line</u>
16		
17		
18	381	4
19	386	9
20	387	10
21	390	24
22	402	2
23	441	12
24		

-continued-

INDEX OF PETITIONER'S EXHIBITS

	<u>Page</u>	<u>Line</u>
10. March 28, 2006, letter from Mr. Walker to Sean O'Malley	443	3
11. Document	443	18
12. Biography	461	7
13. Document re: Winn-Dixie Stores versus Doe	476	5
14. Document	478	2

INDEX OF OPPONENT'S EXHIBITS

	<u>Page</u>	<u>Line</u>
S. June 19, 2006, letter from Mr. Rivkind to Mr. Walker	315	3
T. June 19, 2006, letter	316	15
U. June 26, 2006, letter	323	8
V. June 28, 2006, letter	330	2
W. July 3, 2006, letter	333	2
X. E-mail dated Monday, July 3, 2006, 10:10 a.m. from Mr. Rivkind to Mr. Walker	338	8
Y. Letter dated July 5, 2006	339	8
Z. Letter dated July 12, 2006, from Mr. Rivkind to Mr. Walker	343	7
AA. E-mail dated Monday, August 7, 2006	349	10
BB. Fax	364	25

1 THE COURT: If you're all set? I
2 understand your witness is here and we're going to
3 go out of order.

4 MR. JONES: That's correct.

5 THE COURT: If you would like to call
6 your witness.

7 MR. JONES: I would like to call Brett
8 Rivkind to the stand.

9 Thereupon:

10 BRETT RIVKIND, being first duly sworn, was examined and
11 testified as follows:

12 THE COURT: Would you please give your
13 full name and address.

14 THE WITNESS: My name is Brett Rivkind,
15 R-i-v, like in Victor, k-i-n-d, as in David, and my
16 address is 66 West Flagler, Suite 600, Miami,
17 Florida 33130.

18 DIRECT EXAMINATION BY MR. JONES:

19 Q Mr. Rivkind, my name is Michael Jones. I
20 represent the Smiths.

21 Can you give us your educational background.

22 A Sure. I went to undergraduate at the
23 University of Miami, got a BA degree in business. I went
24 to law school at the University of Florida, graduated in
25 1983 with honors and elected to the Order of the Coif for

1 graduating in the top 5 percent of the past five years
2 graduating classes.

3 Q After you graduated from law school, did you
4 take the bar exam?

5 A I took the bar exam.

6 Q What bar are you admitted to?

7 A Admitted to the Florida bar and all the state
8 and appellate courts. I'm also admitted to the Supreme
9 Court of the United States, 5th Circuit Court of Appeals,
10 11th Circuit Court of Appeals, Southern District of
11 Florida, Middle District of Florida. Basically all the
12 courts in the state of Florida.

13 Q Can you give us a brief history of where you
14 worked.

15 A Yes. In law school I clerked at a large firm
16 called Fowler, White, Burnett, Hurley, Banick &
17 Strickroot. I clerked for a year there. It's a large
18 firm in Miami. When I graduated I started to work there.
19 They did various types of law. They had different
20 departments. I started working in their admiralty
21 department in 1983. I stayed there about four years
22 doing maritime, personal injury and wrongful death
23 defense work, actually representing the cruise lines.

24 After that I had an offer to go do plaintiffs
25 work in the same field, and decided, you know, to do

1 that, and I became a plaintiff's lawyer after about four
2 years, and that's what I've been doing ever since then,
3 as a plaintiff's admiralty personal injury and wrongful
4 death lawyer.

5 Q You've been in practice approximately 25
6 years?

7 A Since '83, yes.

8 Q Are you on any committees of any sort?

9 A Over my time I've been -- I've served on the
10 Board of Governors in the Florida Bar, the president of
11 the Admiralty Law Committee of the Florida Bar, president
12 of the Florida Trial Lawyers Admiralty Association that
13 we formed in Miami, and I'm on the Association of Trial
14 Lawyers Admiralty Committee also.

15 Q Do you ever lecture?

16 A I have frequently lectured on topics involving
17 maritime law to lawyers, and I also lectured to the
18 Judicial College in the state of Florida, which was
19 comprised of all of the judges in the state of Florida,
20 the circuit and county clerk level.

21 Q Are you also a certified mediator?

22 A I did become a certified mediator. I have not
23 kept it current because my practice has just been such
24 that it's too time consuming to do mediations any longer.
25 But I did undergo the mediation course and became

1 certified and kept it for some years, and then I just --
2 the practice -- it's too hard to do both.

3 Q Can you tell us a little bit about your
4 practice, case load.

5 A Yeah. I'd say that, you know, since doing
6 plaintiffs work, we've consistently, you know, maintained
7 a case -- first of all, I work in a small office, always
8 have. I've always had one or two partners. Currently I
9 have two partners; one who's semi-retired, he comes in
10 only a couple times a week, and then I have one full-time
11 partner and myself. I'd say currently we have a case
12 load of about 150 cases, active. All plaintiffs personal
13 injury, wrongful death against the cruise ship companies.
14 Occasionally there will be a non-cruise ship defendant
15 like a jet ski accident or cargo ship. But 99.9 percent
16 is maritime related. And that's been pretty consistent
17 throughout the years. We've had a full case load, and
18 it's always been pretty much what it is now.

19 Q Since you've been a plaintiffs lawyer, can you
20 tell us how many cases you've handled against the cruise
21 lines?

22 A Wow. You know, I've been -- it's been 20, you
23 know, years, you know. I'd say each year we've probably
24 turned over 75-plus cases a year, you know, actually
25 resolved and moved on to new cases, and consistently kept

1 the case load in the hundred-plus range.

2 Q How many -- can you give us an idea of the
3 percentage of those cases that have settled?

4 A It varies over the years. What will happen is
5 it all depends who the new adjusters are or -- the cruise
6 lines hire. Some want to come in and get a little
7 tougher. Then you'll have a number of trials. If you're
8 successful, then all of a sudden, for the next few years,
9 all the cases settle.

10 So you go -- and like we had, for example, we
11 had a lot of cases against Carnival Cruise Line where we
12 were getting successive, very large verdicts, so they
13 flew in lawyers from Philadelphia, hired an adjuster,
14 came in and said that's it, we're going to litigate
15 differently. They brought in out-of-state lawyers and
16 stuff. We continued with some successful verdicts. All
17 of a sudden, every case, 90 percent, 95 percent, started
18 to settle.

19 I'd say currently it's a very high percentage,
20 the cases that settle. They're expensive from the cruise
21 line's standpoint to litigate, and the cruise line has a
22 big incentive publicity-wise for these cases to settle.
23 So I have found that they are very eager, to the point
24 that they encourage us to try to settle with them
25 directly, because they really want to settle the cases.

1 And so I'd say 95-plus percent settle now.

2 Q Can you give us an idea of how many cases
3 you've actually tried to conclusion against the cruise
4 lines?

5 A Yeah. I'd say -- you know, don't forget
6 during my first four years we tried cases on the defense
7 side, representing the cruise line.

8 I'd say on the average, some years you'd have
9 six trials -- that would be a lot, because the trials are
10 very time consuming and a lot of work. I'd say two to
11 three a year, maybe more, give or take. It goes in
12 cycles, but a lot.

13 Q Let's focus on this case. How did you come to
14 represent the Smiths?

15 A It's interesting, because I got a call one
16 day, I think it was from Bree, or Bree called my partner,
17 and I believe that they had been referred to my office by
18 a pretty good law firm that recommended us very highly.

19 Q Can you tell us when this was?

20 A You know, without looking back, the exact date
21 would be hard to say.

22 Q George disappeared July 5, 2005.

23 A It wasn't that immediate in the time frame. I
24 know that, you know, the family was, you know, still in
25 seclusion and wasn't ready for anything. It was some

1 months after that.

2 Q The early fall of 2005?

3 A Probably.

4 Q Okay.

5 A And they talked to us -- in fact, there had
6 already been some publicity about the case, and other
7 lawyers on TV, and they had already interviewed some
8 lawyers. So I was kind of the last one in there on the
9 interview. But basically -- I don't have a major Web
10 site or anything like that, so they found me through
11 referral, reputation. We decided not to have a Web site
12 just because our case load is big enough and our
13 reputation is the way we get most of our cases. That's
14 how I got referred to them. Then my partner and I made a
15 trip to visit them and get interviewed by them.

16 Q And ultimately they hired you.

17 What was the first thing that you did once you
18 were retained?

19 A Well, I got, you know -- in the sense of --
20 the first thing would have been information gathering of
21 whatever they had. The Smith family had gathered
22 information and given it to me. Talked to them, tried to
23 find out what they wanted to accomplish with this case.

24 This was, you know, an extraordinary case. I
25 mean, this was already in the media, and it was just an

1 extraordinary case. So it was a big decision, you know,
2 and I think I told them that. I said who they hired,
3 whether it's me or whoever, it was a big decision. I
4 need to know what they wanted to accomplish and what was
5 ahead and what was involved. And I guess I started
6 gathering some information. I think I then contacted
7 Mr. Walker to tell him that I was representing them.

8 Q Was this case much more high profile than most
9 of the other maritime cases that you handled?

10 A Absolutely. I mean, this was -- this is a
11 landmark case, a case of the century, in the sense of,
12 you know, the attention it received, the facts of the
13 case. I mean, I don't think anybody's, you know, seen a
14 case of this magnitude before.

15 MR. JONES: Your Honor, I'd like to show
16 the witness Exhibit D.

17 THE COURT: Okay.

18 Q Now, Mr. Rivkind, can you tell us what that
19 letter was?

20 A Yeah. This was a letter that we sent to -- I
21 sent to the cruise line. You know, we had to give them
22 notice of the claims of the Smiths, and also we were
23 trying to get information from the cruise line at the
24 beginning, you know, voluntarily, by sending them
25 letters.

1 Q And had there been a request for information
2 to the cruise line prior to the sending of that letter?

3 A Yes.

4 Q Who had made that request, do you know?

5 A I had made one. It says "In my prior
6 correspondence, I'm waiting for further information we've
7 requested. Your company repeatedly makes comments that
8 they are trying to assist the Smith family, however they
9 have not received the information we requested."

10 So I previously requested it. They would
11 write back, you know, these form letters saying, you
12 know, we want to do everything we can to help the Smith
13 family. I said you can help us, just give us some
14 information. I was having a difficult time getting
15 information from them.

16 Q At this point had you made contact with James
17 Walker yet?

18 A Yes.

19 Q When did you first get in contact with
20 Mr. Walker regarding this case?

21 A Again, the date, I can't be certain. But
22 shortly after I was hired, to let him know. I know
23 Mr. Walker.

24 Q How do you know Mr. Walker? How did you know
25 him prior to this case?

1 A You know, I've known him for years. Admiralty
2 is a very specialized area of law. It's like a small
3 group of us. It's like, you know, if something happens,
4 everybody knows. It's like a little center -- I don't
5 want to use the word "gossip," but everybody knows
6 everybody in the admiralty field.

7 In fact, when I changed from defense to
8 plaintiff, I was like the first person who took that kind
9 of jump. People who I never even heard of called me
10 to -- you know, "Oh, my God."

11 So I knew him. I've known him for years,
12 cordially. I don't call it social friends or anything,
13 you know, just known him

14 Q What kind of cases does Mr. Walker generally
15 handle?

16 A To my knowledge, he focuses primarily on the
17 passenger cases, and he -- you know, from talking to him,
18 he had developed a niche really with sexual assault cases
19 on cruise ships. Seemed to be a niche he had found, and
20 specifically with Royal Caribbean Cruise Line for some
21 reason.

22 Q Sexual assault as opposed to wrongful death?

23 A Yeah, that was -- I mean, as far as I know,
24 from talking to him and from this little community that
25 we all kind of know each other.

1 Q Did he or does he have any sort of reputation
2 with respect to whether he tries a lot of cases or
3 settles a lot of cases?

4 A I think that, you know -- and Mr. Walker is a
5 fine lawyer, and at least before the ending, situation, I
6 guess we'll get into, I thought a little bit more highly
7 of him also on a personal level. But professionally,
8 he's a good lawyer. But I do believe, in our circle,
9 there is -- you know when admiralty cases go to trial,
10 and through my discussions with him he was definitely an
11 attorney that preferred -- and there's nothing wrong with
12 this -- to settle cases. And I think, with the adjusters
13 who I knew, because I have good relationships with most
14 of the adjusters, having been on their side at one point
15 in time, if his name would come up, it would be in the
16 context of they know he doesn't like to go to trial.
17 He's, you know, more -- not as aggressive, let's say, but
18 he's more of a settler. I'm not saying that's a bad
19 thing. I'm just saying that would be the reputation.

20 Q I believe you mentioned that he -- he's known
21 for having a lot of cases against Royal Caribbean. Is
22 that the case?

23 A Yes. That's what I've learned, yes, through
24 discussions with him and through, you know, again, talk.

25 Q Are you familiar with a gentleman named

1 Curtis Mase?

2 A I am.

3 Q Can you tell us how?

4 A Curtis, I've known for many years. Curtis
5 is -- Curtis and I may have been -- I'm trying to
6 think -- he passed through Fowler White at some point.
7 I'm not sure if he passed through when I was there. But
8 I've been very, you know, friendly with Curtis over the
9 years. He's a defense maritime lawyer. That's all he
10 does, is defense maritime work. He's pretty well-known.
11 He handles a lot, a lot of defense work. We have a lot
12 of cases against him.

13 Q Would you say -- is Royal Caribbean his main
14 client?

15 A I'd say it's a major client of his. He
16 represents all the cruise line companies. I think Royal
17 Caribbean considers him their main attorney, like if
18 there's -- like he just got involved in something that
19 wasn't just a single run of the mill case. If it
20 involves something on a larger scale, maybe an
21 investigation associated with an oil spill or some other
22 matter, they would go to his law firm. I think -- so
23 that's a major source of his business.

24 Q Let's go back to when you first got in touch
25 with Mr. Walker. Can you tell us, just generally, what

1 discussions you had with him with respect to this case
2 when you first talked to him about it.

3 A I'm going to tell you the gist of how I recall
4 the conversations. I don't think there was anything --
5 you know, I can't tell you verbatim or specifically other
6 than we spoke about, you know, how we were going to try
7 to work together on the case, what the issues were, what
8 the theories of liability were, and where we were
9 heading, you know. And then there was a general
10 discussion like that.

11 Q Did you discuss the fact that you would try to
12 work together on the case?

13 A Yeah. We always did that, yes.

14 Q The time frame would be, that we're talking
15 about, would be just after you were hired, correct?

16 A Yes. In fact, I mean, he was -- I was glad at
17 the beginning it was him, he was glad it was me, because
18 we knew each other. I knew him to be a nice guy. I
19 think I told the Smith family that from the beginning,
20 this, you know, this is a good guy, you know, I know him.

21 The concerns from the beginning was that I had
22 to represent the interests of the Smith family, and there
23 was always a concern -- they didn't want to be out of the
24 loop in anything that happened, and I thought it was a
25 good thing, because me knowing Jim, and the way we talk,

1 that I would be able to be there to make sure that their
2 interests were fully protected during these whole
3 proceedings, and that's the way we started out.

4 Q Did you, in the initial stages, did you
5 discuss the value of the case with him at all?

6 A He did more than I did, because, as I said, I
7 kind of came in a little late. By the time I came in,
8 television shows -- lawyers had been on TV, lawyers had
9 swarmed the Smith family and Jennifer, people had been
10 interviewed, and they knew a lot more than I did. I had
11 to get caught up. I was kind of called in, I hate to
12 say, last but not least. I was the last one called.

13 So he kind of filled me in more because he had
14 the idea about the case, the liability theories, and he
15 had mentioned what he thought a range of the case was.

16 Q Can you tell us what he said.

17 A My recollection is it was 3 to 5 or 3 to 6
18 million dollars, and that he had felt that that was
19 about, you know, the settlement value of the case.

20 Q Did he discuss the reasons why he thought the
21 value was that high?

22 A Yeah, a couple. One was -- you know, George
23 was very young. George was in his twenties, a Babson
24 graduate. And so he felt that, you know, with a good
25 economist, and the right economist for litigation

1 purposes -- you know, still within the realm of what you
2 have to follow, the standard principles, you can get an
3 economist probably to put up a very large number. And
4 then the publicity value, which I agreed with him,
5 because when I tell you that the cruise lines want to
6 settle cases, whether they're, quote, minor, or not that
7 big a threat to them, from a public relations media
8 standpoint they do. And this case, as I said, was
9 probably the highest profile case that the cruise line
10 was facing publicly, short of the period of time when the
11 cruise line was in the media -- the last time the cruise
12 lines were in the media -- I think there was three times.

13 One was when there was some oil spills and
14 they covered up the oil spills and they actually
15 falsified records and logbooks and lied to the
16 government, and there was actually -- they're actually
17 considered corporate felons because they have felony
18 convictions as a result of lying to the United States
19 Government, falsifying logs. So obviously that generated
20 really bad public relations.

21 Then the next stage was somebody wrote --
22 there was a reporter at *The New York Times*, I think his
23 name was France. He did a big article about all the
24 sexual assaults that were happening on the cruise ships,
25 which was kept very, very quiet for many, many years. If

1 you talk to ex-security officers on board the ships, or
2 passengers, the cruise line would typically go straight
3 to them, try to convince them to settle quietly, you
4 know, not report it to the authorities, send the
5 assailant back to a third world country on the next
6 airplane so they couldn't be interviewed. So that had
7 negative publicity.

8 So then they created this council, the
9 International Cruise Council, that actually testified in
10 Congress, which was just an organization of all the major
11 cruise ship companies, kind of a marketing effort, and
12 they tried to say we're going to come forward with this
13 thing called zero tolerance policy, where, you know, from
14 now on, no matter what, we have zero tolerance, we're
15 going to report everything. But it was all voluntary,
16 never required it to report any laws. They were in the
17 limelight in a negative way.

18 In addition to that, you know, they don't pay
19 any taxes and they fly foreign flag ships and they hire
20 foreign labor without any labor laws. So this is a
21 company that wants to remain out of the radar screen.
22 Not just this company, but the cruise lines. It's a
23 known fact. You find out that you got a company making
24 billions of dollars, not paying any taxes, hiring labor
25 from third world countries, working them seven days a

1 week, 14 hours a day, paying them 300 bucks a month, not
2 reporting sexual assaults that are happening on your
3 ships, meanwhile advertising to the public this is a
4 fun-loving cruise ship. They want to settle. Anything
5 that comes on to the radar screen, and this was a case
6 that I agreed, and Mr. Walker felt that way clearly, that
7 this case was a case they never ever wanted to see in the
8 courtroom.

9 Q So he was cognizant of the public relations
10 value of this case?

11 A Absolutely. That was his -- you know,
12 because -- which we'll discuss, I'm sure, there are
13 issues as to liability and other factors in this case
14 that we did discuss. But the focus was always on the
15 publicity value. And he, I would say as much as anybody,
16 would know that because, as I said, he had developed this
17 niche with these sexual assault cases. And those were
18 the ones mainly, before you had this publicity about the
19 disappearances, that were what the cruise line was trying
20 to sweep under the carpet. And I think that's a known
21 fact. And so he had received the benefit or the
22 advantage of that over the years by getting this niche
23 and -- actually, we had this discussion -- and his sexual
24 assault cases would settle. He would just have to say,
25 you know, hey, I'm going to go to court, I'm going to ask

1 you for this information, you're going to have publicity
2 about, you know, a passenger going on your ships getting
3 raped. Nobody knows about this, and he'd settle one
4 after the other after the other after the other, kind of
5 quietly.

6 Not many people really knew about Jim Walker.
7 But he had a successful practice doing that. There's
8 nothing wrong with that, but it just shows you the
9 publicity concerns of the cruise line. And I can tell
10 you that there's a big concern for that because I have,
11 in cases, obtained the manuals -- they have these safety
12 and environmental manual systems that they have to keep
13 in effect with all their procedures of almost every
14 different aspect of the cruise ship operation, and it's
15 required by an international law, and I've obtained
16 those. And what I found out was really interesting, is I
17 had a case, and the biggest section was media crisis, you
18 know, like how to handle a public relations media crisis.
19 And it's defined by any event that can have an adverse
20 effect on our ticket sales, our public image, and they
21 got chapters on what to do, a crisis management team to
22 meet, public relations people to hire, how to spin it in
23 the public eye. So that is an enormous concern of the
24 cruise line industry, is negative publicity.

25 Q Let's talk a little bit about your discussions

1 about the pros and cons from a legal standpoint.
2 Yesterday Mr. Walker spent a good deal of time focusing
3 on the concerns with the Athens Convention. Can you
4 address that?

5 A Yeah. We discussed the Athens Convention. In
6 fact, I have a couple cases here. I don't know if your
7 Honor wants them or not.

8 One is a recent case, a 2007 case, involving
9 Holland American Line.

10 Basically the Athens Convention, before you
11 get into other arguments about its applicability, is it
12 has to be tested in the ticket itself to see if it's
13 considered communicated to the passenger by the terms of
14 the ticket itself, because we're not a signatory to it.
15 So the only way it would be enforceable would be if it's
16 a term and condition of the passenger contract.

17 We had analyzed that in the Wallis case, which
18 was a 9th Circuit case. Basically they said unless you
19 spell it out in simple English, no passenger is going to
20 figure out what the Athens Convention is and what their
21 limitation is, so it's not applicable.

22 There's a recent case I brought with me, if
23 anyone's interested, 2007, where Holland American tried
24 to address the concern in the Wallis court and actually
25 put the amount in there. And the Court still said it's

1 not enough because, you know, people wouldn't know what
2 it is, it's still ambiguous. To me it just shows the
3 Court's inclination not to enforce this further
4 limitation on passenger rights that already exists, but
5 as far as the way this ticket existed back then, we had
6 concluded that under the Wallis analysis this ticket
7 wouldn't fly, and --

8 Q When you say "we," you mean you and
9 Mr. Walker?

10 A Yes.

11 And then there was other arguments, but, you
12 know, you have to go under a Carnival versus Shute
13 argument. You can say it's fundamentally unfair, you
14 know, whether there was intentional conduct. There was
15 other issues we were going to address if it got that far.

16 But it didn't seem that, at least from what he
17 was telling me, that the cruise line was responding in
18 any way by saying, hey, guys, the Athens Convention
19 applies. I would have thought you would receive a
20 letter, you know, especially who the defense lawyer in
21 this case was.

22 Q Mr. Peltz?

23 A Hey, guys, your case is worth very little
24 because the Athens Convention applies.

25 Q That never was in a letter from RCL?

1 A No. I never heard that from anybody. I never
2 heard Mr. Walker tell me that they raised it -- Royal
3 Caribbean raised it, nor did I ever see that in a letter.
4 It was a concern, I mean, in the sense that we knew there
5 was the Athens Convention, but it was addressed and the
6 conclusion was it wasn't going to be a stumbling block at
7 all.

8 Q You've testified that you settled hundreds of
9 cases against the cruise lines. Does the Athens
10 Convention come up as an issue in those settlements?

11 A No. I very rarely -- I mean, you can even go
12 to the case laws, and you're not going to find that many
13 cases on the Athens Convention.

14 Q You've settled a lot of cases in excess of the
15 statutory maximum --

16 A Absolutely.

17 Q -- recovery?

18 What other concerns did you and Mr. Walker
19 have from the standpoint of proving your case against the
20 cruise line?

21 A Well, we discussed the liability theories.
22 Obviously, you know, you got to establish liability.

23 Q Right.

24 A But I think, you know -- the liability theory
25 was discussed, but, again, you know, that was one of the

1 things I knew from the get-go, that he felt the publicity
2 value was going to -- that this company was never going
3 to want to see the inside of a courtroom.

4 Q What discussions did you have, though, about
5 how you would prove liability?

6 MR. BROWN: Your Honor, I just want to
7 object. I'm going to let Mr. Rivkind answer,
8 and -- because I know that Mr. Walker testified
9 yesterday, but I guess a lot of these questions
10 could have been asked of Mr. Walker when he was
11 here as far as what did he say, and they weren't
12 asked.

13 THE COURT: Um-hum.

14 MR. BROWN: None of these questions were
15 asked of Mr. Walker. Now they're being asked of
16 Mr. Rivkind. So he's asking him what did he say to
17 you.

18 THE COURT: Um-hum.

19 MR. BROWN: You know, he's not a party.
20 I know Mr. Walker also talked about Mr. Rivkind and
21 things that he said. But I'm just saying they had
22 ample opportunity to ask him all these questions.

23 THE COURT: Understood.

24 Go ahead.

25 A What was the question? What theories we

1 discussed about liability?

2 Q How were you going to handle the liability
3 issue?

4 A There was really -- first there was a focus --
5 there was different things to focus on. Mostly was the
6 security aspect and the alcohol aspect. Mr. Peltz, who's
7 a defense lawyer in the case, had a case in Florida in
8 which it involved a passenger who had drank too much and
9 fell down a set of stairs and suffered a head injury. He
10 tried to argue, you know, this Florida Dram Shop Act
11 applied, which absolved, you know, the establishment from
12 liability for that kind of situation, and the Court
13 rejected Peltz and said, no, maritime law recognizes that
14 you got to be a prudent ship owner. If you're going to
15 serve alcohol and profit from the alcohol, you've got to
16 exercise reasonable care. So you can't overserve people
17 to the point they become intoxicated, and then once they
18 do become intoxicated, then you have to exercise
19 reasonable care to protect them from any harm, including
20 them causing harm to another or to themselves.

21 And that was going to be our major focus. And
22 with that would be the presentation, which is clear, is
23 that the cruise line profits enormously, right behind the
24 casino, liquor sales. And they -- if you look at the
25 number of staff devoted to selling liquor versus, let's

1 say, security on the ship, it's disproportionate. And it
2 shows you where their focus is on. It's on the casinos
3 and then it's on liquor. And anybody who goes on a
4 cruise ship is encouraged to drink, and in fact the
5 compensation system for the workers, so that they pay
6 very little wages, is based on how much liquor they sell.

7 So you've got an environment that creates
8 people getting drunk or intoxicated. And with that,
9 accidents happen. People do foolish things, people get
10 in fights, people assault each other, people can fall
11 overboard. You got a moving floating ship on the high
12 seas, and free flow of alcohol, nobody caring, and nobody
13 wanting to disturb the fun environment that the cruise
14 lines promoted.

15 So we were going to present that, and that was
16 our theory, along with the inadequacy of the security.
17 We had learned that, you know, there had been complaints
18 of behavior by the group of, I guess, men, boys, sometime
19 they call them boys, but, you know, the men, the guys he
20 was with, last seen with, prior to what happened to
21 George as well as subsequent. There was theories about
22 whether they acted upon those complaints appropriately
23 before the incident, whether they had enough security
24 presence on board to discourage any type of foul play if
25 there was foul play.

1 Q Let me cut you off right there.

2 How many passengers are usually on -- or at
3 least on the Brilliance of the Seas?

4 A Couple thousand.

5 Q To your knowledge, how many security personnel
6 do they have on the ships?

7 A Visibly they may have a couple, you know.
8 Head security officer -- you know I testified to that in
9 Congress. When I was going through my background a
10 little bit, I was asked to testify in Congress as a
11 maritime expert and present these issues, because
12 Congress was interested in how much security they have on
13 board, or how little security.

14 Part of the problem is not only how many, but
15 the presence. They don't want to take away from, you
16 know, that fun-loving environment by having people walk
17 around with a police officer, looks to discourage. So it
18 appears that they have nobody, but they have a couple,
19 quote, security officers, whose training is questionable
20 as to what really qualifies them to be security officers,
21 but that's a different issue.

22 Then they hire sometimes some of the other
23 guys on the ship to be kind of like lookouts, but they're
24 not security people. They may be from different
25 departments. Hey, you're supposed to look and see if

1 anybody is causing trouble on board the ship.

2 So, you know, the security presence is
3 definitely a concern. I know that's being addressed in
4 Congressional hearings and stuff and recommendations to
5 make things safer on cruise ships.

6 That was the major areas; the intoxication
7 issue, the service of alcohol, the security. And then
8 there was the spoliation of the evidence, how they
9 handled the case afterwards. Although you don't have a
10 separate case just for spoliation of evidence, that was
11 going to be a major factor in any defenses of any kind of
12 things that they claimed we couldn't prove.

13 There was a big aspect of spoliation of
14 evidence here that does two things for you. It
15 establishes certain presumptions that help you in your
16 liability case, and it also causes some doubt on the
17 credibility of who you're fighting. When there's
18 testimony on the other side against you and they spoiled
19 evidence or destroyed evidence, their credibility is
20 shot. So that improves your liability situation.

21 So all this, you know, was discussed at some
22 point in time. Maybe not verbatim what I'm telling you,
23 but this is the analysis.

24 Q Since we're on this subject of negligence, did
25 you also discuss comparative negligence?

1 A Yes. Comparative negligence is definitely a
2 concern. It was a concern. Any time anybody's drinking,
3 there's going to be an argument of comparative
4 negligence. And the way the facts of this case had, you
5 know, come to light, there definitely was going to be an
6 issue of comparative negligence. How big an issue was
7 going to be balanced by how much you could -- you know,
8 as in any case, you want to shift the focus from the
9 conduct of your clients to the conduct of the defendant.
10 And the way that the shift was going to happen was, you
11 know, the common knowledge that everybody has of, you
12 know, the incentive to serve alcohol on board the ship,
13 who controls that, who profits from that, and the
14 spoliation of evidence part, to combat the -- the
15 balancing. Yes, somebody was going to have to balance at
16 some point in time a comparative negligence figure for
17 sure.

18 Q Isn't it fair to say from a public perception
19 standpoint the general public would assume most people on
20 a cruise ship would be drinking and may actually get
21 drunk?

22 A Absolutely. I think that was clear in
23 discussions with the media, with the public, with
24 everybody you come across. And everybody knows -- you
25 know, you're not driving a car, you're not getting behind

1 the wheel of a car where you're really causing any
2 concern to, you know, kill somebody by driving. You're
3 on a cruise ship. And not only that, you know, they were
4 on their honeymoon, so, you know, I mean, they've got a
5 bigger reason to drink and have fun, and then they're
6 caught up in being in this environment of being on a
7 cruise ship where the cruise line is profiting from
8 letting people drink and not stopping them and making
9 money. So the public perception would tend to lean the
10 focus towards that side, I'd say.

11 Q Can you tell us a little bit about the Death
12 On The High Seas Act and its applicability.

13 A Yeah. The Death On The High Seas Act, which
14 is a terrible statute, which should really be the focus
15 in Congress as to try to get that amended, limits
16 severely the rights of survivors in death cases for some
17 reason. I don't know. Most deaths will happen on the
18 high seas; cruise ships are mostly on the high seas.

19 The Death On The High Seas Act limits --
20 defines who the beneficiaries are, who can recover, and
21 then it defines the losses that they can recover. What
22 they took away under the Death On The High Seas Act are
23 nonpecuniary damages, you know, loss of society, mental
24 anguish, companionship, that kind of stuff, which is
25 really the large part of wrongful death cases and

1 probably one of the most important. But for some reason,
2 in maritime cases you don't get it currently. There's
3 movements to amend that act right now. I think there's a
4 bill trying to surface to amend it. It's been already
5 amended in plane crash cases. So in plane crash cases,
6 for some reason if you die in a plane crash on the high
7 seas you get these nonpecuniary damages, but if you die
8 on a cruise ship you don't. So the Death On The High
9 Seas Act, in my opinion, would apply in this case.

10 Q Basically you recover for pecuniary losses?

11 A Yes.

12 Q Generally, how is that pecuniary loss
13 established?

14 A Through economists, creativity. You're
15 dealing with a certain level of speculation, obviously,
16 so you want to get an economist who can give you, within
17 the realms of what legally is required and the legal
18 standards, the best he can do without being too
19 speculative, but realizing that what you're trying to
20 come up with is, you know, some individual who died, what
21 kind of support, what kind of services he would have
22 provided, and there's a lot of factors involved in that,
23 you know; education, background, you know, your family,
24 your likes, your dislikes, you know, how old you are.

25 So you would get an economist and you

1 calculate those losses as best you can and try to come up
2 with a dollar figure. And usually the plaintiffs have a
3 higher figure than a defense economist. They fight over
4 discount rates. Some use an offset method, don't
5 discount. Some use higher inflation rates. Some use
6 higher growth rates for the wages. You know, so it's not
7 an exact science.

8 Q Is there any percentages generally applied to
9 lost earnings?

10 A I don't think you just use a percentage. But
11 generally, you know, I think if you statistically look it
12 could be, you know, 75 percent or -- you know, there's
13 labor -- Bureau of Labor statistics that kind of look at,
14 you know, what the percentage of your earnings you devote
15 to personal consumption, what you have left over to
16 support your family or to give to your estate when you
17 die, and some economists use that. If -- as just an
18 easier way to do it. Some actually go through the
19 calculations and -- it depends if you have a high -- it
20 depends. Some economists like to calculate. If you have
21 a high wage earner or a potential high wage earner, which
22 I felt George was, you know, graduating Babson and at his
23 age, then you get an economist and you try to be as
24 creative within the boundaries of what you're allowed to
25 do and go from there.

1 Q Did you hire an economist in this case?

2 A We didn't get to that point, no. Because the
3 way it looked is, there was no -- at least I was never
4 informed that there was any serious settlement meetings,
5 negotiations, that were ongoing in which, hey, guys, we
6 need to get an economist together and see what we can do
7 to maximize the recovery for both Jennifer and see what
8 we can do for the Smith family, or generally for the
9 estate. That never happened. Our focus more was on
10 trying to get information, working within the bounds, you
11 know, the FBI watching us, and getting ready to file the
12 lawsuit, which, you know, was my impression was going to
13 happen, and then we were going to deal with the economics
14 of the case as the litigation progressed.

15 Q Do you know if Mr. Walker hired an economist?

16 A He never mentioned that he did. I was under
17 the impression he had not done so yet.

18 Q Are you aware now that he had, that he did?

19 A I think you told me he did, yes.

20 Q Did he ever ask you for any information,
21 financial information, regarding George or George's
22 parents?

23 A No.

24 Q Is it fair to say that in evaluating the value
25 of a case like this, that you, although DOHSA does apply,

1 you would look beyond DOHSA in terms of placing a value
2 on the case?

3 A Yeah. I think any settlement -- as a lawyer
4 representing the clients, I'm not going to -- you know,
5 DOHSA is the absolute limit. But in valuating a case,
6 I've got to take into the other considerations, including
7 the goals of the client, as well as, you know, the cruise
8 line. You know, what's the value that it's going to be
9 to the cruise line to get the case resolved. And I think
10 that's in any case, and I think, you know, Mr. Walker
11 would probably tell you that in sexual assault cases.
12 There's a bonus -- I hate to use the word "bonus" --

13 Q Premium?

14 A -- premium paid in any type of case like that.
15 I just settled two cases, and they're confidential
16 amounts and I don't want to be violating them, but they
17 both involved death cases. One, parents who lost their
18 sibling on a cruise ship. There was no spouse. And the
19 damages -- you know, they could tell you, hey, we'll see
20 you, you know, take a hike, if you -- believe it or not,
21 if you leave just a sibling, the damages would be
22 shocking to you sometimes, you know. But that's not what
23 these cases settle for. They settle, and again, I don't
24 want to violate the -- but if I tell you maybe more than
25 20 times, 30 times, 40, of what the DOHSA analysis would

1 be, you know, then you're getting in the ballpark.

2 Q Getting back to the chronology, so you -- you
3 started having discussions with Mr. Walker and you were
4 working together toward an -- in the case. What happened
5 as far as the progression after, let's say, when you got
6 into 2006?

7 A Although generally with the progression -- you
8 know, dates are going to kill me. Not that I think it's
9 real significant, the exact dates. But the progression
10 is basically that we were working together and staying in
11 communication for some period of time. I especially,
12 because my clients were very concerned that he was going
13 to go and settle the case without them knowing about it.
14 And I told him that repeatedly. He assured me that
15 wouldn't happen, and we had a good relationship. You
16 know, we shared information. He -- there came a time
17 when I think he started to go do some media after we did
18 it, where we would go on the media shows together and we
19 would discuss how we were going to handle situations with
20 the media for the interests of the case, because there
21 was, you know, tension from the beginning, you know,
22 between the two sides. So Jim and I were kind of in the
23 middle of that. It was difficult being a lawyer, you
24 know, and representing clients in that situation. It
25 really was. And we tried -- I tried to do my best, and I

1 think he was, too, and we were trying to balance that.
2 And so that was a lot of the discussions, you know, how
3 are we going to do this so that the cruise line, you
4 know, wouldn't manipulate us.

5 And so it progressed pretty well for some
6 period of time. We did some investigation together. You
7 know, when Dr. Lee got involved, and I forget the exact
8 date of that, you know, I boarded the ship with him.
9 From time to time I would find out something that he
10 hadn't told me, and I'd get upset and say, hey, why
11 didn't you tell me you were doing this or that, you know,
12 that -- I felt that I should have known every single step
13 that was taken in the case for a couple reasons. One is
14 he, I don't know if Bree did, but he considered Bree a
15 referral lawyer in the case, and he also knew that I
16 represented the Smith family, who were beneficiaries of
17 the estate for which he was the attorney for the personal
18 representative. And I said, you know, I -- you know,
19 maybe I won't have control or say in all the decisions,
20 but I want to know every single thing that's happening,
21 every step, so that I can tell my clients and I can do
22 the best I can to protect them, who really, you, Jim
23 Walker, have a duty to because they're beneficiaries of
24 the estate. And there was times he didn't tell me
25 everything, I'd get upset, we'd have some letters back

1 and forth. You know lawyers like to write letters,
2 including me. And that progressed.

3 Then I did the investigation with him with
4 Dr. Lee, and then kind of some time after that it went
5 down a little bit as far as communications.

6 Q Let's talk a little about Dr. Lee. Can you
7 tell us what he was hired for and what he did?

8 A Yeah. I guess, as you told me -- I'm
9 assuming, I have the family here -- all these are
10 strategies. If this case ever gets reopened and stuff --
11 I guess you all have agreements as to --

12 Q Confidentiality?

13 A Anybody coming back and saying I waived all my
14 attorney-client privileges and stuff, you know. I
15 understand that's been addressed and discussed.

16 Q Yes.

17 A I was a little concerned about that. Okay.
18 The question was -- about Dr. Lee?

19 Q Right.

20 A Dr. Lee's involvement was late, and I think I
21 originally met Dr. Lee at the hotel when he came in with
22 his staff. Dr. Lee likes to drink a lot of wine and tell
23 a lot of great stories. A very fascinating, fascinating
24 man. And we spent many hours having a couple glasses of
25 wine and hearing his war stories, which were very

1 interesting.

2 But I think it was very clear from the
3 beginning that he didn't expect to find anything at this
4 stage. You know, this place -- the carpet had been
5 removed in that cabin, which was one of the major things
6 that he really felt would have had some evidence. The
7 room had been sanitized, cleaned over. By the balcony
8 area where George fell, too, had been cleaned off,
9 arguably painted over; we never resolved that or not,
10 whether it was painted over or just cleaned.

11 So my impression was nice media, Dr. Lee, but
12 he didn't find anything of any significance. I was never
13 told he ever found anything of significance. And out of
14 his mouth I had heard that, you know, there wasn't
15 anything found. It was kind of -- he's a good media guy.
16 I remember his first question was, "Did you find
17 anything?" He said, "I find something but I can't tell
18 you," you know, and everybody chuckled, because there's
19 the media, okay, what did he find?

20 But a good choice. I mean, he's super
21 qualified. He's a great person to have on board and a
22 good choice. But as far as adding anything at that point
23 in time, I didn't -- you know, I personally felt it was,
24 at that point in time, money spent for media versus money
25 spent for really solving the case.

1 Q Did you feel that Dr. Lee would be able to
2 solve the case?

3 A No.

4 Q Now, in April of 2006, were you aware that a
5 mediation -- that a mediation had taken place between
6 Mr. Walker and representatives of the cruise line?

7 A I was never aware of any mediations that ever
8 took place in this case.

9 Q Mr. Walker never informed you?

10 A No. I mean, you could see by the letters him
11 and I wrote each other. If I knew about a mediation even
12 after the fact, he would have received my wrath for not
13 telling me. If he told me ahead of time, I would have
14 either been invited to attend or I would have been told I
15 couldn't attend and then he would have gotten letters
16 about that.

17 Q But in April of 2006, relations between the
18 two of you were still good, correct?

19 A Yes.

20 Q And you were still in communication?

21 A Yes.

22 Q And so you had no reason to believe that if
23 something like that took place you wouldn't have been
24 informed?

25 A No. To the contrary, he told me the only

1 settlement discussions that ever took place was in
2 passing with Bob Peltz, who's the defense lawyer, and
3 they weren't even settlement discussions. They were kind
4 of like seeming to tell him to take a hike.

5 Q I'm sorry. To tell who to take a hike?

6 A Telling Walker that Peltz just wasn't
7 interested. I was never told about any kind of
8 mediation. Again, I would have immediately requested
9 that I attend it, be informed about it, and if it took
10 place without me knowing about it, as the last settlement
11 negotiations did -- you can see how I reacted at that
12 point in time, I was very upset. I would have been very
13 upset at that time, too, not to have learned about it.
14 For a couple of reasons; the professional relationship,
15 his duties to the Smith family, and the fact that I
16 considered him a personal friend in a sense, you know.
17 It would have all been a culmination of -- at that point
18 in time our relationships would have been very strained,
19 if I had learned of a mediation that I wasn't told about.

20 Q After April of 2006, did there come a point in
21 time where you started to sense that there was a problem,
22 that there were communication problems with Mr. Walker
23 and his office?

24 A Yeah. There was a time -- you know, the
25 dates, I don't know. I think you have them in my

1 letters, where I kind of -- you know, as we got closer to
2 the one year and we knew we had to file suit -- along
3 this way there was times where we discussed should we
4 file a suit now, and I was always for filing the suit a
5 little earlier, because we would start -- you know, we
6 were getting -- we would go on television and say we're
7 looking forward to filing a suit because this is going to
8 be our only means to take some depositions and gather
9 some evidence, and then we didn't go ahead and file the
10 suit. You know, I was like getting a little concerned
11 about that. I didn't have control over the filing of the
12 lawsuit. You know, why are we saying we need to file
13 this lawsuit, it's a great vehicle to get information,
14 some of the commentators, the legal commentators who were
15 talking about the case were talking about the discovery
16 that you could get in a lawsuit being invaluable
17 information that we were going to get. So as the year
18 got closer, I got a little more concerned what was
19 happening, and I know the Smith family kept telling me,
20 you know, they thought that he was going to settle the
21 case without telling me. And, me, I said, "No, he won't
22 do that." But, yeah.

23 MR. JONES: Your Honor, I'd like to show
24 the witness Exhibit K, please.

25 THE COURT: Okay.

1 MR. JONES: I'd like to mark this.

2 MS. STROILI: S.

3 (Whereupon, the June 19, 2006, letter from
4 Mr. Rivkind to Mr. Walker was marked as Opponent's
5 Exhibit S.)

6 Q I show you Opponent's Exhibit S. This is a
7 letter dated June 19, 2006. Do you recognize this
8 letter?

9 A Yes. It's a letter I wrote to Mr. Walker.

10 Q Take a moment to look at it.

11 A (Perusing document.)

12 Yes.

13 Q Is this one of the first letters that you
14 wrote to Mr. Rivkind where you're expressing your
15 concern?

16 A Yeah. I wrote it to Mr. Walker.

17 Q I'm sorry, to Mr. Walker.

18 A Yeah. You can see I used the word AWOL,
19 because he went AWOL on me. He stopped returning -- you
20 know, I had his cell phone. We used to speak at night
21 after the television shows all the time. And then I
22 couldn't get a hold of him.

23 Q This letter is dated June 19. When did he
24 sort of go radio silent on you?

25 A I'd say it's over the prior weeks, you know.

1 Q Weeks?

2 A Yeah, that I was trying to get a hold of him
3 and start discussing things with him as the deadlines
4 were coming up. And I just -- I couldn't get him. You
5 know, cell phone messages, e-mail messages. It says
6 "I've left you messages." I know -- I think his office
7 called at some point after that.

8 But I -- this was, you know, getting very
9 close to the deadline and I wanted to discuss the filing
10 of the suit.

11 MR. JONES: I'd like to have this marked,
12 please.

13 MS. STROILI: June 19, '06, letter,
14 Exhibit T.

15 (Whereupon, the June 19, 2006, letter was
16 marked as Opponent's Exhibit T.)

17 Q Mr. Rivkind, I show you another letter which
18 is marked as Exhibit T. This letter is also dated
19 June 19, 2006. Do you recognize this letter?

20 A Yeah. It's a little embarrassing, these
21 letters. I knocked this Bob Peltz for writing five page
22 letters and then I write these long letters.

23 But, yes, I recognize it. It's my letter.

24 Q Can you briefly talk about this letter.

25 A Okay.

1 Q It looks like -- was this sent in response to
2 a letter that you received that day, same day, from
3 Mr. Walker?

4 A Yeah. As you can see, and this is what I --
5 you know, maybe Jim and I both have a little defense
6 lawyer background in us. I write longer letters than
7 some plaintiffs lawyers do.

8 I guess we were getting into a little bit of a
9 letter -- you know, he said/she said type of discussions,
10 and, you know, I felt that he wrote me a five-page letter
11 that I had to respond to. And I guess my letter here is
12 responding to those points.

13 If you want -- let me see -- I was still
14 waiting for a copy of the lawsuit that he told me he was
15 working on and he would deliver some time ago, so that I
16 could review it and discuss it with him. I never heard
17 from him after that. Again, he went AWOL. Then I put
18 some concerns in there because he was letting me know
19 about the Smiths' and Jennifer's situation, which we knew
20 was ongoing, but I guess it was how you interpreted that
21 relationship. Mine was kind of, we understand that, but
22 that we should still -- I should still be part of this,
23 still get the communications, still know what's going on,
24 and, you know, I have to clarify some of the things you
25 wrote in your letter, which I did.

1 Q Let me cut you off.

2 At this point you still haven't been told
3 about the settlement discussions, though, correct?

4 A No.

5 Q Let's focus on the first full paragraph on the
6 second page. Talks about a hundred thousand dollar
7 reward. Can you speak to that?

8 A If I recall, I think his point with the
9 hundred thousand dollar reward was to say -- was again
10 trying to compare the Smiths to Jennifer and what was
11 going on and who was doing what in response to my
12 continuing concerns that they weren't acting in the best
13 interests of the estate. And I think when he pointed out
14 the reward, although I thought it was -- it's a great
15 idea to have a reward, I mention that the -- you know,
16 that while it was never funded, the question was, was it
17 a reward -- again, what was the real motive behind the
18 reward? A, it came late, you know, it wasn't an
19 immediate thing that was set up after the disappearance.
20 B, it came right at the heels of the Congressional
21 hearings I had testified to in Washington. I just think
22 I had mentioned to him, hey, it's nice to have a reward,
23 but you came out with it just when the hearings and all
24 the media is in Washington and you put it out in the
25 *Washington Post*, and it was geared toward crew members.

1 I said, "Come on, Jim, how many crew members read the
2 *Washington Post*?" I didn't feel -- you know, if it was
3 going to be a reward that was really a reward -- you
4 know, I addressed that, and I said to him I felt that was
5 more media related.

6 Q In the second full paragraph, you already
7 talked a little bit about Dr. Lee, the second sentence
8 there, had Dr. Lee indicated that he didn't feel he would
9 really be able to contribute much?

10 A Yeah. I think he publicly stated that, too.
11 But he did tell us that when he was hired initially. And
12 I think that was just common sense that, you know, he's
13 good at what he does, but, you know, I mean, he got
14 involved very late in the game.

15 Q Now, on the last page of this letter, the
16 first full paragraph, which is really only one sentence,
17 if you'd look at that, please.

18 A (Perusing document.)

19 I'm sorry?

20 Q The last page, first full paragraph, which is
21 only one sentence. Says "We also were going to discuss
22 further efforts to approach the company with settlement
23 talks in accordance with our clients' wishes."

24 A Okay.

25 Q Now, did you feel that the Smiths at that

1 point would still be open to settling with the cruise
2 line?

3 A It's a difficult question to answer. You know
4 how many clients I've had who said they're never, ever,
5 ever going to settle their case and then the right
6 settlement offer comes and they settle.

7 This family, I knew -- money wasn't going to
8 settle the case, okay? That, I know. They had a strong
9 resolve, and that I knew. But, again, when I get back to
10 what's a good settlement, what's reasonable, the purposes
11 of the settlement -- and the purposes here from the
12 get-go was twofold. It wasn't really monetary, that was
13 kind of -- or supposed to be secondary. The getting the
14 information through the discovery process was the key.
15 You know, you have a spouse and you have parents trying
16 to find out what happened to their spouse and to their
17 son. As a lawyer, you have to accept a case like that
18 knowing that, you know, no money is going to make your
19 clients happy, and you got to focus on the other goal,
20 which is getting as much information as you can through
21 taking depositions, sworn testimony, et cetera.

22 So talking to Walker about discussing
23 settlements with the company had two purposes. One was,
24 don't forget I'm their ears. And there's this tension
25 and conflict going on. I think this gentleman's a friend

1 of mine personally, and professionally wouldn't do
2 anything behind my back. So I need to be there. So,
3 yes, you know, any time he -- you know, I always did say
4 to him, look -- you know, if he would say, "Your family
5 is never, ever, ever going to settle," I'd say, "Well,
6 you know what, let's get an offer first if we get one.
7 You can't say never, ever, ever. Let's see what it is."

8 And that would include, as you can see from
9 the agreement that was reached eventually, it's not just
10 the money settlement. The settlement they reached isn't.
11 It has to do with information. So let's discuss -- and
12 it says here, "in accordance with our clients' wishes."
13 I did know that he was more interested in settlement than
14 my clients. So was there a happy medium there, was the
15 point of that sentence. It specifically says, "in
16 accordance with our clients' wishes."

17 So, yes, as a lawyer to the Smiths -- and I
18 told them. They said to me a couple of times --

19 THE WITNESS: You all are sitting
20 there --

21 A -- they'd say, "You're not to talk to the
22 other lawyer, not Jim Walker, about the company or
23 anything regarding settlement." And I said, "Well, you
24 know, I have to in order to represent you, you know.
25 I'll never ever settle a case without communicating to

1 you an offer and you make the final decision, but I can't
2 be a lawyer if I can't gather the information,
3 communicate, and listen."

4 And then I told Walker that specifically. I
5 wanted to -- you know, that, yes, they had expressed --
6 you know, I think that was clear from the get-go, you
7 know, this wasn't about money, it wasn't going to settle.
8 But on the other hand, you know, never ever is a big --
9 never say never.

10 Q So you felt you could have made a contribution
11 in terms of the negotiations and settlement, particularly
12 with respect to the obtaining of information? Is that
13 fair to say?

14 A I think it's very fair to say. I would say
15 that Mr. Walker, although he's an experienced attorney
16 and a good attorney, would say, and he said it to me,
17 that he was happy that I was part of the case, you know,
18 with my background, my experience, that I -- you know,
19 without, I don't know, patting myself on the shoulder, I
20 think I bring a lot to the table. I also am known with
21 Mr. Peltz and with the cruise line as a more tough
22 negotiator, in my opinion, more of a litigator, than
23 Mr. Walker, not to take anything away from him. But I
24 have that reputation with that cruise line. I have a
25 good reputation with them. Not as good now since -- but

1 still, I think I would have added a lot. And I think the
2 cruise line would tell you that, and I think, you know, I
3 heard Mr. Mase -- ask Mr. Mase, he'd probably tell you
4 the same thing.

5 MR. JONES: I'd like to have this marked.

6 MS. STROILI: Exhibit U, June 26, '06,
7 letter.

8 (Whereupon, the June 26, 2006, letter was
9 marked as Opponent's Exhibit U.)

10 A I can add something, too, about bringing
11 something to the table and negotiations. The way the
12 settlement discussions, as I learned, played out with the
13 law firm of Aaron Podhurst and Steven Marks, I know both
14 of those gentlemen very well, and I would have brought
15 something to the table. Plus I think both of those
16 lawyers know me very well and respect me.

17 Q We'll get into that in a little while.

18 A Okay.

19 Q I'll show you Exhibit U. Would you take a
20 look at that.

21 A (Perusing document.)

22 Q Do you recognize that letter?

23 A Yes.

24 Q That's a June 26, 2006, letter from you to Jim
25 Walker, correct?

1 A Yes.

2 Q Now, obviously from the first sentence it
3 looks like the two of you finally did speak.

4 A We did. He came to my office.

5 Q What was discussed?

6 A He brought the lawsuit. We reviewed the
7 lawsuit.

8 Q The Complaint?

9 A The Complaint, yeah.

10 And what we were going to do, how we were
11 going to file it, how we were going to handle the media.
12 Then the discussions started to come about whether it was
13 going to be a joint filing of one lawsuit, which we had
14 discussed all along was the plan, and then towards the
15 end, that -- he changed that. He didn't want to file
16 jointly.

17 Q What did you think of the Complaint?

18 A The Complaint, I thought he did an excellent
19 job. He had -- you know, I think if you look at the
20 Complaint, you can see for yourself. He's got all the
21 allegations in there, and it's in line with what I told
22 you about our theories of liability.

23 Q What court was that Complaint going to be
24 filed with?

25 A The state court, 11th Judicial Circuit, state

1 court circuit.

2 Q State court in Florida?

3 A Yes.

4 Q Just to digress a little bit. You had talked
5 about Death On The High Seas Act. In state court in
6 Florida, can you get a jury trial in a DOHSA case?

7 A In my opinion, you can. I know that
8 Mr. Peltz, especially, and I just had this hearing with
9 him, will argue that you can't.

10 Give you just a little bit of background on
11 that. The Death On The High Seas Act, since there's
12 reference of it being an admiralty type of claim, the
13 federal courts have two sides. They have a law side and
14 then they have an admiralty side. In the federal courts,
15 if you bring a case in the admiralty side, it's
16 historically without a jury. If you can bring it on the
17 law side of the federal court -- if you have independent
18 jurisdiction, like diversity jurisdiction, then you can
19 bring it on the law side. There's a constitutional grant
20 of admiralty authority to the courts, federal courts, but
21 then there's this language that says at the end, saving
22 to suitors their remedies. Savings to suitors means that
23 it's called -- it's a savings clause which gives you the
24 ability to pursue jurisdiction elsewhere. It's not
25 exclusive, in other words. Like most people think in

1 admiralty, who aren't admiralty lawyers, you can only
2 have cases in federal court and you don't have juries.
3 I've had a case where experts have walked in and they see
4 a jury in federal court even, and they go, "I thought
5 this was an admiralty case." They don't know. You go,
6 yeah, there's diversity jurisdiction, so we didn't file
7 the suit on the admiralty side, we wanted a jury, we
8 filed it on the diversity.

9 Savings to suitors means also you can have the
10 ability to file your lawsuit in the state court with all
11 the rights that go with a state court case, including the
12 right to a jury trial.

13 There is some ambiguity, and I think
14 Mr. Peltz's argument -- you know, I didn't know that was
15 an issue. It was mentioned to me last night. I just had
16 this hearing with Mr. Peltz in another death case in
17 state court. But he reads and supplies case law, in my
18 opinion, that is incorrect. And under the savings to
19 suitors clause, and you file in state court a Death On
20 The High Seas Act, you have a jury trial.

21 Q But the point --

22 A And I can get you some cases if that's
23 important.

24 Q That Complaint, though, was drafted as it was,
25 and the purpose was to file it in the Florida state court

1 in order to attempt to get a jury, correct?

2 A Yes.

3 Q Would you please refer to the exhibit and look
4 at the second full paragraph on the first page. You do
5 compliment him on the Complaint. What's the purpose of
6 the next sentence?

7 A Which sentence?

8 Q "I would add the fact that Jennifer, as
9 personal representative, is acting on behalf of the
10 estate, also is asserting a claim on behalf of the
11 estate."

12 A Oh, okay. Just the way that I thought the
13 Complaint, I think, should have been -- he wouldn't allow
14 me to include any of their individual claims or let me
15 identify myself as their attorney in that lawsuit. And I
16 thought then when I read the Complaint the way it was
17 worded, I think he -- I'm going by memory, but I don't
18 think I liked the wording, and I reminded him that
19 Jennifer, as the personal representative, was bringing it
20 on their behalf, which was how you had to do the lawsuit.

21 Q Did there seem to be a focus on Jennifer's
22 interests in the first draft?

23 A I think that may have been the reason why I
24 wanted it worded differently, was -- yes. Because I
25 couldn't be part of that lawsuit, I just wanted it clear

1 that she, you know, as the personal representative, had
2 to represent their interests, too.

3 Q Now, the next paragraph, the last sentence of
4 that paragraph, can you discuss that sentence.

5 A The next paragraph?

6 Q "There seems to be some concern on your part
7 regarding filing together or filing separately."

8 A Concern on my part?

9 Q Right, the lawsuit.

10 A Yeah. In connection with my appellate
11 counsel, we were concerned that the defense could argue
12 that we were splitting causes of action, since the Smiths
13 were included in the wrongful death case. You know,
14 there's a general principle, when you file the lawsuit
15 you've got to assert all your claims in that lawsuit, you
16 can't split your causes of action. And my appellate
17 counsel was concerned about that, and I expressed those
18 concerns to Mr. Walker, saying why can't we just put it
19 in one lawsuit and then we'll move to sever these
20 individual claims for separate trials, so that we didn't
21 give Royal Caribbean that opportunity, if they chose to,
22 to raise that as an issue.

23 Q If you go to the second page, I guess that's
24 the first full paragraph at the top there, the last
25 sentence of that paragraph. Can you tell me -- the

1 sentence that starts with "In fact, you and I discussed."

2 A Right. When we had talked previously about
3 filing one lawsuit, there was -- how we were going to do
4 it, I think we discussed setting up a press conference.
5 And I guess in my letter -- you know, I'm going by what I
6 wrote here, I don't remember the specific conversation --
7 but he might have said that, you know, Jennifer wasn't
8 going to be part of the -- would not include Jennifer.
9 Okay, he must have told me that if I put that in the
10 letter.

11 Q That Jennifer wouldn't be part of any press
12 conference?

13 A Right.

14 Q Do you have any idea why?

15 A No.

16 Q Then finally, in the second to last paragraph
17 there, at this point were you concerned about the statute
18 of limitations?

19 A Definitely. I mean, there was -- getting very
20 close.

21 Q Do you know when the statute was going to run?

22 A July 5, I think. Yeah, July 5.

23 MR. JONES: I'd like to have that marked,
24 please.

25 MS. STROILI: Exhibit V, June 28, '06,

1 letter.

2 (Whereupon, the June 28, 2006, letter was
3 marked as Opponent's Exhibit V.)

4 Q Brett, I show you that letter. It's dated
5 June 28, '06. Do you recognize that letter?

6 A Another one of my long letters, yes.

7 Q I direct you to the first paragraph. Can you
8 explain what's going on there? Especially the first
9 sentence.

10 A Yeah. I guess Jim had told me that he wasn't
11 going to allow us to be included in the lawsuit, the
12 wrongful death case.

13 Q Did he tell you why?

14 A I'm sorry?

15 Q Did he say why?

16 A If I recall, he felt that it wasn't good for
17 the case or that -- he couldn't do it because he was the
18 attorney for the personal representative but not the
19 attorney for the Smith family. And the way I wanted to
20 do it was just identify it, on the lawsuit itself, who
21 was attorney for who. Everybody knew. But he just felt
22 he couldn't do it that way.

23 Q Okay. And then in the second sentence you
24 talked to him about the appellate counsel you referred
25 to?

1 A Yes, who he also knows. He's a very
2 well-known appellate counsel in Miami.

3 Q So by doing it separately, in effect, you're
4 weakening the case the Smiths would be bringing?

5 A I would say it's a very fair statement, to
6 separate and weaken the Smiths' case, as well as the
7 settlement that transpired afterwards.

8 Q The next sentence says "It is also
9 notwithstanding the fact in the past several months we
10 agreed to be filing jointly."

11 A Again, I'm reemphasizing that there had been
12 discussions and agreements, and I think, you know -- in
13 the media there was even statements that we were all
14 going to file jointly. So I think that was all of our
15 expectations up until this point.

16 Q Can you speak to the last sentence of that
17 paragraph, starts with "According to you."

18 A I guess it was one of my remarks back to him
19 that -- it probably focused around the conversations that
20 he was getting increasingly worried that he wasn't going
21 to be able to settle the case because, you know, he felt
22 there was going to be money that, you know, his client
23 was going to want to accept and that the Smith family
24 wouldn't go for it.

25 Q Based on the next sentence, looks like you

1 started to recognize or at least put into writing there's
2 a conflict of interest that's developed.

3 A Yeah. I started to feel, the way he had
4 written the letter, the way that things changed, that --
5 I mean, there was this conflict between the two families,
6 I mean, from the get-go. But as far as my feeling that
7 as a lawyer I was able to help the Smiths and watch out
8 for their interests, was getting to a point, when that
9 happened, that I felt a little betrayed and that I
10 couldn't do that anymore. So I guess I got a little
11 harsher with the conflict and pointed out that, hey, you
12 know, you're getting to the point here where, you know, I
13 understand you represent Jennifer, but you are the
14 attorney for the personal representative and, you know,
15 she can have her goals, that's fine, but, you know,
16 you're really -- have this fiduciary duty to my clients,
17 who I represent, and I don't know what to do here,
18 because now you're not allowing this one suit, which I
19 thought was the best interest of everybody, and then
20 these other things were happening. And so, I felt, yeah,
21 I kept reminding him, hey, to me there was a conflict
22 there.

23 MR. JONES: I'd like to have this marked,
24 please.

25 MS. STROILI: Exhibit W, letter dated

1 July 3, '06.

2 (Whereupon, the July 3, 2006, letter was
3 marked as Opponent's Exhibit W.)

4 Q Brett, you're looking at Exhibit W. It's a
5 July 3 --

6 A Yes.

7 Q -- 2006, letter.

8 A Yes.

9 Q Can you tell us what that letter is all about.

10 A Well, you know, when I heard about the
11 settlement after the fact, I obviously wanted the
12 agreement immediately, because not only did I want to
13 know what the settlement was because it included claims
14 of my clients, I wanted to know about the statute of
15 limitations. I kept requesting a copy of the agreement.
16 I was told it was going to be received very shortly. In
17 fact, I was told at one point in time it had been signed
18 already. But it never came.

19 Q Let me just back you up a little bit.

20 How did you find out about the settlement?

21 A It was either the press release or a letter
22 that came in sending a draft of the press release to the
23 other lawyer, Mr. Peltz.

24 Q Did you receive a phone call from Mr. Walker
25 prior to the -- did he inform you of the settlement?

1 A No.

2 Q Not by phone anyway?

3 A I think you can see by the letters, I was, to
4 say the least, not happy. No, he did not.

5 Q You did not find out about the settlement from
6 any other attorneys?

7 A No.

8 Q So this July 3 letter, then, is a letter to
9 Mr. Walker after you had found out about the fact that
10 they settled.

11 A Yes.

12 Q And you're asking for a copy of the
13 settlement.

14 A Yes.

15 Q At this point has Mr. Walker called you? It
16 says in the letter --

17 A I just want to be sure before I say it, but I
18 think I never talked to him again. I think that it got
19 into letters, and I was so upset at what he did, 'til
20 today, we've never talked. I haven't even run into him.
21 I'm across the street from the courthouse, you know,
22 and I'm in court all the time. I haven't run into him
23 since.

24 Q Mr. Rivkind, I'm showing you Exhibit N, as in
25 Nancy. This is a letter to you from Mr. Walker. Do you

1 recognize this letter? Take your time.

2 A (Perusing document.)

3 Okay, yes. This is a letter I received from
4 Mr. Walker.

5 Q And in that letter he notifies you of the
6 settlement; is that correct?

7 A Yes, that's true. Yes. Comprehensive
8 settlement.

9 Q And he sets out the terms?

10 A Sets out the general terms. He mentions a
11 comprehensive settlement, but this is a general outline
12 of it, yes.

13 Q Prior to receiving this letter, you had no
14 idea that he was involved in settlement negotiations?

15 A No idea.

16 Q And he had never informed you that he was
17 involved in settlement negotiations?

18 A He had not. In fact, I was still trying to
19 contact him to -- even after he refused to have us in the
20 same lawsuit, we still discussed the timing, you know,
21 whether we would have walked over together the day of
22 the -- to file it, or, you know, simultaneously. I mean,
23 that was what was going through my mind. I was waiting
24 to hear back.

25 Then of course the relationship at this point

1 in time was a little rockier because I couldn't
2 understand why he wouldn't file the single lawsuit.
3 Because, you know, I had waited to file the suit during
4 this period of time, because -- you know, I felt I'd been
5 misled. It all seems, if you put it together, may be
6 calculated; I don't know. But I didn't file our case
7 sooner because we were working together towards filing a
8 single lawsuit, even to the point that when he refused
9 the single lawsuit, which said, gee, Brett, what's going
10 on here, we were still going to walk over together with
11 the two lawsuits and file them together. And that's what
12 I knew. And then, bingo, I found out this happened.

13 Q I think you testified a minute or so ago that
14 you haven't spoken to him since this happened. So is it
15 fair to say that he has never called you since to explain
16 why you weren't included in the discussions?

17 A No. I may have sent him some e-mails asking
18 him and telling him that there's a time or that, you
19 know, hey, it's a small community, as I told you, and,
20 you know, I -- you know, most of these guys are my
21 friends and stuff, you know. A, you know, I don't think
22 it pays to have any enemies or, you know, amongst -- just
23 life in general. And I think I said to him more than
24 once or twice, in e-mails, offered to get together,
25 offered to listen, to have his explanation. And I still

1 was willing to do that 'til today, you know.

2 Q But you never got from him --

3 A Bury the hatchet, find out what was in his
4 mind, you know.

5 Q But you never did get from him an explanation
6 as to why he settled without consulting you?

7 A No.

8 Q You spoke about the single lawsuit and you
9 also talked about the fact that you were coming up on the
10 statute of limitations deadline. When did you in fact
11 file the lawsuit for Mr. and Mrs. Smith down in Florida?

12 A Maybe the day before.

13 Q Somewhere around July 3 or July 4?

14 A Yeah.

15 Q Presuming court was closed on the 4th.

16 A Right. Either the day before or the statute
17 date. But timely.

18 Q So you realized you basically had two to
19 three days to get that thing filed after you received the
20 June 29 letter from Mr. Walker?

21 A Yes.

22 Q Did you have some sort of Complaint prepared
23 in advance?

24 A Yes.

25 Q So it was ready to go?

1 A It was.

2 Q Okay.

3 A Pretty much. I mean, we --

4 Q You still had to tweak it?

5 A Yeah.

6 MR. JONES: I'd like to mark this.

7 MS. STROILI: Exhibit X.

8 (Whereupon, the e-mail dated Monday, July 3,
9 2006, 10:10 a.m. from Mr. Rivkind to Mr. Walker, was
10 marked as Opponent's Exhibit X.)

11 Q Mr. Rivkind, I show you an e-mail dated
12 Monday, July 3, 2006, 10:10 a.m. It's from you to -- I
13 assume that's Mr. Walker's e-mail?

14 A Yes.

15 Q And what was the purpose of that e-mail?

16 A I was continuing to try to get a copy of the
17 settlement agreement because he wrote me a letter and I
18 guess in the letter he had stated, you know, the Smiths
19 can challenge the settlement agreement, and basically --
20 and I didn't see how you can challenge an agreement until
21 you had it and saw what it was. And I was just
22 increasingly surprised it was a comprehensive agreement
23 as entered into according to the letter, and yet I didn't
24 see this comprehensive agreement. I was getting a little
25 suspicious that maybe by my letters, somebody said, hey,

1 guys, he's right. The way this thing went down, as a
2 fiduciary or whatever, you better go back to the drawing
3 board and -- before you give them a settlement agreement.
4 So I kept pressing for a copy of the settlement agreement
5 before they had a chance to do that.

6 MS. STROILI: July 5, '06, letter, this
7 is Exhibit Y.

8 (Whereupon, the letter dated July 5, 2006, was
9 marked as Opponent's Exhibit Y.)

10 Q Mr. Rivkind, I show you Exhibit Y, which is a
11 letter dated July 5, 2006, and it appears to be a letter
12 from your office, from you, to several individuals. Do
13 you recognize that letter?

14 A Yes.

15 Q You address this letter to Steven Marks of the
16 law firm of Podhurst Orseck, correct?

17 A Yes.

18 Q And also to Robert Peltz, who is the attorney
19 for Royal Caribbean, correct?

20 A Yes.

21 Q And also to Mr. Walker.

22 Can you tell us, how do you know Steven Marks?

23 A I've worked together with him. He's a
24 plaintiffs lawyer, actually. He's been around for a
25 long time. He's with the Podhurst law firm. Aaron

1 Podhurst is a very well-known lawyer in Miami. I know
2 Aaron Podhurst well. He's good friends with my father,
3 who was a judge. So I've known that firm for years.
4 I've worked on maritime cases together with them.

5 Q Do they do primarily maritime work?

6 A No. They do primarily aviation law.

7 Q Did Mr. Marks tell you about the settlement?

8 A No. He -- my recollection of my discussion is
9 I saw a letter that was sent back and forth after the
10 settlement and I saw Steve Marks' name on there, and I
11 was like, I know Steve, you know, where did he come from?
12 He's a plaintiffs lawyer. I thought maybe Mr. Walker had
13 hired him to be an expert or something. So I called him,
14 because I wanted -- I was trying to find out what was
15 going on. And he was very -- you know, he knows me.
16 He's "Brett" -- he had to be very cautious of what he
17 talked to me about.

18 Q Were you aware that he had been involved in
19 settling this case on behalf of the cruise line?

20 A I think he told me. I don't know if he told
21 me in my first phone conversation with him, but he -- I
22 eventually learned from him that the president of Royal
23 Caribbean knew Aaron Podhurst very well, and that the
24 firm had done some work for Royal Caribbean in
25 non-personal injury context, and that Aaron Podhurst was

1 asked to get involved in the settlement. I believe
2 that's what he told me. I don't recall if it was the
3 first phone conversation or if I had -- because I had
4 more than one phone conversation with him.

5 Q Did Mr. Marks ever express to you any surprise
6 at the fact that Mr. Walker hadn't told you about the
7 settlement?

8 A He did. You know, because -- we talked as
9 friends and fellow lawyers, and I -- you know, you could
10 see by my letters I was really upset at that time that I
11 didn't know this was happening and how it went down. And
12 I -- you know, I voiced that to him, you know. Him, too,
13 in a way, because they know me. But I guess everybody
14 had an interest in keeping me and the Smiths out of this.
15 So I was -- you know, I wasn't happy with him either, to
16 tell you the truth. But he had to do what his marching
17 orders were. And he told me that he was surprised, yes,
18 you know, that that's not the way that he would do
19 things.

20 Q Did the involvement of Mr. Marks and the
21 Podhurst firm signal anything to you regarding the
22 settlement or the cruise line's attitude towards the
23 settlement?

24 A I mean, any time the president calls the
25 Podhurst law firm to get them involved, they want to

1 settle. I mean, I think that sends a message that they
2 want to get this thing resolved.

3 Q That should also send a message to Mr. Walker;
4 is that correct?

5 A Yes. I mean, if somebody called and said to
6 me that somebody went above the defense lawyer in the
7 case and the president called this big-time aviation law
8 firm and wants to get together, then, yeah, you know you
9 got -- I guess the saying, you got them where you want to
10 have them.

11 Q Did that indicate to you that this case had
12 significant value?

13 A Significant concerns to this company, yes.
14 It's further evidence this was a landmark case to this
15 cruise line, absolutely.

16 Q If you'd look at the second sentence of this
17 letter, does that help to refresh your recollection
18 concerning how you found out about the settlement?

19 MR. BROWN: In Y?

20 MR. JONES: Yes.

21 A It appears what I'm writing is I learned
22 through the press release. But -- you know, I got to go
23 with what the letter says. I don't have an independent
24 recollection. But I think -- I don't know if Bree was on
25 TV that day or the press release came out -- I clearly

1 learned about it after the fact, whether it was
2 through -- I believe it was through the press release, if
3 I wrote that.

4 MR. JONES: I'd like to have that marked.

5 MS. STROILI: July 12, '06, letter,
6 Exhibit Z.

7 (Whereupon, the letter dated July 12, 2006,
8 from Mr. Rivkind to Mr. Walker, was marked as Opponent's
9 Exhibit Z.)

10 Q Mr. Rivkind, I'm showing you a letter dated
11 July 12, 2006, written by you to Mr. Walker. Do you
12 recognize that letter?

13 A You're killing me here.

14 Yes. It's another one of my lengthy letters
15 here, yes, July 12.

16 Q Just generally, is it fair to say this letter
17 pretty much summarizes or gives a good review of the
18 events that took place prior, leading up to and after the
19 settlement?

20 A Yes. This is a pretty detailed letter that --
21 yes, I think I -- it was to try to, if I recall -- let me
22 see if this is the letter --

23 Q Take your time.

24 A Yeah, where I tried to say, hey, you know, I'm
25 getting tired of writing five and six page letters, so I

1 think I concluded it by saying I suggest we avoid
2 five-page letters going back and forth. You said what
3 you needed to say, I said what I needed to say at this
4 point. So, yeah, it was my culmination of everything
5 that had happened, and I wanted it in writing, but I
6 wanted to stop the letter wars and stuff like that.

7 Q Let's just go through it briefly.

8 On the first page, in the second full
9 paragraph, can you read that first sentence.

10 A Regarding the issue of settlement?

11 Q Yes.

12 A "I specifically asked you many times,
13 including the week in which you reached your settlement,
14 agreement whether there had been any settlement
15 negotiations going on with the company."

16 Q The next sentence?

17 A "You specifically told me once Jennifer
18 received the e-mail from Adam Goldstein after she
19 appeared on the *Oprah Show* there had been no settlement
20 negotiations."

21 Q So that just confirmed you had not been
22 informed, right?

23 A Correct. And again, as I told you earlier,
24 the only thing he told me was Bob Peltz, in passing,
25 saying something to him, but he had never had any

1 negotiations.

2 Q If you go to the second page, the second full
3 paragraph, you go through some of the things that were --
4 the events that took place with Jennifer and George on
5 the ship. Then you mention the FBI there in the second
6 full paragraph.

7 A Yes. Do you want me to

8 Q If you can just expound on that. I think that
9 sort of led to some of the -- I think you were talking
10 about some of the issues that led to the break between
11 the families.

12 A I think what -- my purpose of the letter was
13 really -- you know, again, I think Mr. Walker and I were
14 kind of in the middle of what was going on, and it was
15 to -- without -- it's not really stating an opinion about
16 anything. I'm simply trying to say, listen, there's good
17 reasons here why, you know, if you look through the eyes
18 of the parents and this situation, why we're -- we have
19 these -- I think that's -- he must have written something
20 to me about the clients acting in a certain way. My
21 response was just to outline to him the reasons why they
22 felt the way they did. You know, that there were
23 circumstances that justified their feelings. I think
24 that was

25 Q Some of this other stuff, we have touched on.

1 On page 3, the sixth paragraph down, which is
2 one sentence, starts with "In fact, you needed to hire a
3 public relations campaign manager, Michael Paul, to deal
4 with Jennifer's public image issue." Do you know
5 anything about that? Can you tell us about that? I'm
6 sorry.

7 A Yeah. I mean, I don't think it was any secret
8 that Jennifer was taking a lot of attacks in the media.
9 I think she'd be the first to admit that, and Mr. Walker,
10 too. Michael Paul was hired to address that concern.
11 Her public image had definitely been hurt by comments,
12 publicity, all that was going out in the media. There's
13 no question about that. And I think, you know, Jennifer
14 would admit that probably, and Jim would, too. And
15 Michael Paul was there, because I talked to Michael Paul
16 on more than one occasion. And that's what he was trying
17 to do, was correct or make a better situation out of what
18 was existing at the time.

19 Q Are you aware of how much money was paid to
20 Mr. Paul for his services?

21 A There was a time, you know, I thought Jim
22 mentioned a figure of \$50,000 at some point in time, but
23 I don't know the exact number. I know there came a time
24 that he was unhappy with him, and that he made a comment
25 about how much money he spent with him but wasn't happy

1 with his services. But I don't know the exact amount.

2 Q On the fifth page of this letter, the second
3 paragraph -- there's actually no number on it. It's the
4 paragraph that starts "This brings me to the issue of the
5 prescription drugs."

6 A Yes.

7 Q Could you take a look at that paragraph and
8 talk about it.

9 MR. BROWN: I'm sorry. Where is it?

10 MR. JONES: I think it's page 5.

11 MR. BROWN: Long letters with no numbers.

12 A Okay.

13 Q Was there a discussion between you and
14 Mr. Walker regarding the issue of prescription drug use
15 by George, by young George?

16 A Yes.

17 Q Can you tell us the substance of those
18 discussions.

19 A Something was alluded to early on, not in
20 detail. At some point in time he was more open with me
21 about what exactly it was. I don't remember the exact
22 date, but he told me that George was on some prescription
23 drugs, I think Zoloft or something, and I asked to see
24 the records, you know. I told -- you know, I immediately
25 told the Smith family. They weren't aware, I don't

1 believe. And then we had to figure out a way to get it
2 from the doctor because -- who had the authority to get
3 the records from the doctor was an issue. And so I think
4 the doctor would be uncomfortable releasing the
5 information to anybody other than the personal
6 representative or the wife, so I think we -- I started
7 asking Jim to get them.

8 Q Did Mr. Walker seem to think that the
9 prescription drug issue was a major one in terms of the
10 comparative negligence?

11 A I don't know if I'd say major. It was
12 definitely an issue of concern.

13 Q But it looks like you address some of the
14 concerns in your letter there.

15 A Well, you know, I think it was twofold. I
16 mean -- I just want to make sure.

17 (Perusing document.)

18 Yeah. It's an issue on the issue of
19 comparative negligence. It's also an issue that would be
20 more sensitive to him, I guess, because of his client,
21 and I put that in the letter saying, you know, that --
22 and I don't know the facts because, you know, I wasn't
23 there, and it hadn't been discussed in detail what the
24 facts were. But I put in the letter, which I guess would
25 be a concern for any lawyer, was, if he was taking the

1 prescription drugs and his wife knew he was taking the
2 prescription drugs and drinking heavily, that that could
3 be, you know, a negative factor for Jennifer, that would
4 be -- you know, it would be negative.

5 Q There would also have to be proof that George
6 was taking the prescription drugs, right?

7 A That's correct.

8 MS. STROILI: Monday, August 7, '06,
9 e-mail, Opponent's AA.

10 (Whereupon, the e-mail dated Monday, August 7,
11 2006, was marked as Opponent's Exhibit AA.)

12 Q Mr. Rivkind, I show you Exhibit AA and ask you
13 if you recognize that.

14 A Yes. It's my continued efforts to try to get
15 the settlement agreement.

16 Q Now we're in August, correct?

17 A Yes.

18 Q August '06?

19 A Yes.

20 Q So a full month has passed?

21 A Yes.

22 Q You still are not in possession of the
23 settlement agreement; is that correct?

24 A That's correct.

25 Q Is there any reason -- has any reason been

1 given as to why you were not given the settlement
2 agreement in that time period?

3 A No. There was a point in time I received an
4 inconsistent statement. As you see, "Now that you have
5 the signed agreement" -- I was told there was a signed
6 agreement received back, and I still was delayed
7 receiving a copy. Then the explanation at some point, I
8 don't remember, changed to it hasn't been finalized yet.
9 That's what made me think somebody said, hmmm, that he's
10 right in these letters he's writing, we better do a
11 different agreement. Because I was specifically told
12 that the agreement had been returned, signed, and -- and
13 that's why that specifically says "Now that you have a
14 signed agreement." Sometime prior to that, you know, I
15 don't remember exactly when, he would have told me, and I
16 remember that, that the agreement's back signed.

17 Q You also mention there something about tips
18 and other information?

19 A Yes. They had -- Mr. Walker had set up that
20 hotline for tips, and the family had continuously asked
21 me to get all of the tips from him, and I was just -- and
22 I had asked him for that.

23 Q Did you ever get any of that information?

24
25

1 [REDACTED] but other than -- but he never gave me any of the
2 stuff he said he was going to give me.

3 As you'll see, there's several of my letters,
4 you know, basically saying, hey, every time I talk to
5 you, you're going to give me this, you're going to give
6 me that, and then I never get it. So that was an ongoing
7 problem with him.

8 Q Mr. Rivkind, I show you Opponent's Exhibit Q,
9 which is entitled Settlement Agreement. Would you take a
10 look at that.

11 MR. JONES: Your Honor, while Mr. Rivkind
12 is looking at that, I'm sort of at a point where we
13 can take a break if anybody would like to take a
14 short break or how you want to handle it. I'm not
15 done.

16 THE COURT: How much more time?

17 MR. JONES: I think I probably -- I'd say
18 between a half hour and an hour. I can try to get
19 it done in a half hour, but I can't guarantee.

20 THE COURT: I encourage you to get it
21 done as quickly as possible. Do you want to get
22 things done or take a break?

23 MR. BROWN: As far as we're concerned,
24 maybe a short break, but no lunch. The Court is
25 probably going to want to eat.

1 THE COURT: I can eat lunch in five
2 minutes.

3 MR. RICCIO: You expressed a concern to
4 get this done today. Realistically, I don't see
5 how that's conceivable.

6 MR. BROWN: We're not. I know it's not
7 going to happen.

8 MR. RICCIO: Why can't we take a
9 normal -- I don't mean an hour, but take a break.
10 What's the big rush? It's a serious matter about
11 serious issues.

12 MR. BROWN: One concern is I have a
13 client who obviously cares very deeply about this.
14 But she does have a job where she's not the boss.
15 Just as far as there is a concern --

16 MR. RICCIO: We pushed yesterday from
17 9:30 to 5:30. I'm sympathetic to that. We're
18 doing the best we can.

19 THE COURT: We did clear tomorrow a
20 little bit. I have one hearing at 1:30 in which
21 you all can take your lunch and I'll do that
22 hearing.

23 MR. RICCIO: Your Honor, I have a problem
24 with tomorrow. I understood this to be a Tuesday
25 and Wednesday proposition. So I didn't know

1 anything about Thursday.

2 THE COURT: That was only for the help of
3 all of you.

4 MR. JONES: Both sides are entitled to
5 their day in court.

6 MR. BROWN: My client could come on
7 Thursday.

8 Right?

9 MS. HAGEL-SMITH: Tomorrow morning.

10 MR. BROWN: You've got three attorneys
11 sitting here. Could Mr. Jones be here for the rest
12 of the testimony?

13 MR. JONES: Your Honor, I have things
14 scheduled, too. We had scheduled Tuesday and
15 Wednesday. We want to get it done, too. There's
16 an interest on both sides. If we're successful,
17 we've got a short period of time to do a lot of
18 work. But the fact of the matter is we scheduled
19 Tuesday and Wednesday. Just as you do, we have
20 practices, too. We're perfectly willing to come
21 back as early as possible. But Thursday is not
22 good.

23 MR. BROWN: Your Honor, I've got Mr. Mase
24 sitting at the Greenwich Hyatt.

25 MR. JONES: You can put him on this

1 afternoon if you'd like.

2 THE COURT: I have no problem with that.

3 MR. JONES: You said he's only testifying
4 as to one issue anyway.

5 MR. BROWN: I've got things to ask
6 Mr. Rivkind.

7 MR. JONES: I understand. We should be
8 able to finish with Mr. Rivkind and then you can
9 put Mr. Mase on and get him out of here.

10 THE COURT: How much time do you think
11 you're going to take, Attorney Brown, with
12 questions?

13 MR. BROWN: Depends on how long.
14 Probably not too long, about an hour.

15 THE COURT: You still have a half hour or
16 so.

17 MR. JONES: I definitely have some more
18 areas I have to get into.

19 THE COURT: How long --

20 MR. BROWN: I don't think Mr. Mase is
21 going to be that long.

22 THE COURT: Okay.

23 MR. BROWN: He's going to be pretty
24 short. I think all of about 20 minutes on my side.

25 MR. JONES: But we have no idea what he's

1 testifying to.

2 THE COURT: Do you want to finish up with
3 your witness?

4 MR. JONES: I'm just worried -- I
5 personally would like to take a five-minute break.

6 THE COURT: Sure.

7 MR. RICCIO: Can we take a little --
8 maybe 15 minutes so we can stretch our legs, get
9 some fresh air?

10 THE COURT: Sure. Let's take 15 minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: You're still under oath.

13 THE WITNESS: Yes, sir.

14 Q I think we left off, Mr. Rivkind, that I had
15 handed you Exhibit Q; is that correct?

16 THE COURT: It's right here.

17 MR. JONES: He's got a copy.

18 A Yes.

19 Q Do you recognize that document?

20 A Yes. It's a copy of the settlement agreement
21 that -- I believe it was your office that first sent it
22 to me. I don't recall exactly, but, yes, it's the
23 settlement agreement.

24 Q What's the date on that? It's on the fourth
25 page.

1 A July 11, I think.

2 Q 2006?

3 A Yes.

4 Q So the first time you actually saw the
5 settlement agreement that was actually entered into in
6 June or July of '06 was when my office sent it to you; is
7 that correct?

8 A My recollection, I think you all are the ones
9 who sent it to me, yes.

10 Q Now I ask you to look at Exhibit A.
11 Mr. Rivkind, I'm showing you Exhibit A.

12 A Yes.

13 Q Do you recognize that document?

14 A Yes. I think I actually just saw this one.
15 It's the second settlement agreement. I think you
16 recently showed me this.

17 Q What's that dated?

18 A December 19, 2006.

19 Q I think the first page says December 22.

20 A It does, but I think the notary is on the
21 19th.

22 Q Actually, it looks like the parties signed on
23 different dates. Jennifer signed on the 19th, then I
24 think on the next page you'll see that representatives of
25 the cruise line signed on the 20th and 22nd.

1 A Okay.

2 Q Now, I direct your attention to paragraph 4 on
3 page 3 of the agreement. I'd like you to read that
4 paragraph to yourself, and then we're going to go through
5 it. Please let me know when you've read it. Take your
6 time.

7 A (Perusing document.)

8 A Okay.

9 Q Can you go through that information and tell
10 us what parts of that information you think the cruise
11 line might have a valid claim as privileged or subject to
12 work product?

13 A Well, I think as far as what they would claim
14 and what I think would be the ultimate resolution are two
15 different things. Most of the stuff I'm looking at,
16 okay, ships logs, videotapes, security reports, guest
17 service logs, purser's logs, bridge logs, security logs,
18 radio logs, LockLink records, room service receipts --
19 most of the stuff I see in there to me doesn't impress me
20 as any type of confidential communications.

21 The only thing that I think starts to get to
22 arguably a privilege of some kind, may be work product of
23 some kind, would be when you start getting into
24 statements, and even then -- and reports -- there's -- I
25 mentioned earlier that the cruise lines all have to keep

1 these manuals in accordance with the IMO, the
2 International Maritime Organization, and there's a whole
3 section in there that's required on accident/incident
4 investigation and what kind of records they must do every
5 single time something happens. Not because it's in
6 anticipation of litigation; they are required by law.

7 Work-product privilege, it's been found not to
8 apply if the information is gathered for some purpose
9 other than solely for anticipation of litigation. You
10 can't just gather information every time and say, gee, we
11 expected a lawsuit. They're required under their own
12 manuals.

13 I think what you would need to do -- but I can
14 tell you based on my experience of obtaining these
15 manuals -- if you gathered and asked for them, give me
16 your sections on what you're required to do when there is
17 an incident like this, you will see that they must take
18 statements, they must prepare a report, they must prepare
19 what's called a corrective action report. In other
20 words, kind of like a lesson learned, you know, what did
21 we learn from this incident and how are we going to do
22 things different. Those are discoverable. That's not
23 work product. That is required by this international
24 rules and regulations and probably the flag countries of
25 their ships. Of course they all try to say, well, it's

1 work product because instead of having our guys take the
2 statements, we flew our lawyers there.

3 Q And that happened in this case, right?

4 A Yeah. And this happened here. And it happens
5 frequently in sexual assault cases. The lawyers meet the
6 ship and get on there before the authorities do.

7 Why is that significant in this case?

8 Because -- for a couple of reasons. One is even though
9 it was an attorney taking those statements, to me it was
10 pseudo investigators on behalf of the cruise line, which
11 would fall within the realm of what they were required to
12 prepare, and you would be entitled to that -- not easily,
13 you'd have to go into court and they would object -- but
14 I think legally you would be entitled to those
15 statements.

16 The other issue, too, is that these attorneys
17 of the cruise line company should not have been there in
18 the first place, and that was discussed in this case with
19 Mr. Walker, is that they basically interfered with an
20 investigation. They were actually talking to the
21 witnesses and taking statements before the authorities
22 were. And actually some witnesses came forward and said
23 they didn't even -- they complained about the manner in
24 which they were questioned by the cruise line attorneys.
25 In other words, that they were led into what to say and

1 the cruise line chose what to put into the statements and
2 what not to put into the statements.

3 And if you see here, the cruise line said, I'm
4 only going to give you the relevant stuff, and I'm not
5 going to give you any of the notes made by our attorneys.
6 So you don't know really everything that these witnesses
7 told these lawyers because these lawyers, who are hired
8 by the cruise line company, with those interests
9 involved, took these statements. And there had been
10 witness complaints that they led them and suggested what
11 they wanted to be in the statements and put only what
12 they wanted into them.

13 In fact, I think I wrote the defense lawyer in
14 this case and said that I thought that his firm should be
15 disqualified because they were going to be material
16 witnesses in the lawsuit, because I thought that they
17 would be entitled to be deposed and ask them exactly what
18 they talked to these people about, what they learned, and
19 they could claim any privilege they want. It wasn't
20 attorney-client. It was actually statements before the
21 authorities were there, and it was required to be taken
22 and it was an issue that was going to be alleged as part
23 of the spoliation of evidence, that they affected the
24 investigation by manipulating the statements.

25 And so -- and Jim and I talked about that.

1 And we thought that we were actually going to get to
2 depose these lawyers and ask them about their
3 investigation, and we would get their personal notes.

4 So -- and you have to work at work product.
5 And the cruise line's in a jam, too, because -- and I
6 think Jim had confirmed this, that in some of the sexual
7 assault cases he would be able to get these lawyers'
8 statements, the cruise line would turn them over
9 regardless of a settlement or not. Because why? Because
10 what I'm stating is that when something serious happens
11 on your cruise ship like a sexual assault or somebody
12 disappears, you're not, nor do you want to say, that the
13 only reason I took statements, because we were
14 anticipating a lawsuit. You want to say we took
15 statements because we have to investigate a serious thing
16 that happens on our cruise ship and this is the ordinary
17 course of our business, and we're trying to get the
18 information, we're trying to figure out what happened,
19 we're trying to prevent something from -- this from
20 happening again in the future.

21 Imagine if they take a deposition in front of
22 a jury or something, the only reason we talked to these
23 witnesses after somebody disappeared on our cruise ship
24 and there was suspected foul play, within a day or the
25 next port, is because we were preparing for the lawsuit

1 that was going to be filed against us. That's
2 ridiculous.

3 So I think those statements -- and that's why
4 I say I read this paragraph and the thing that struck me
5 is, you know, this is a good starting point of
6 information, but it is no substitute for depositions and
7 sworn testimony. And to me you would be able to get this
8 information through the litigation process.

9 If you want me to tell you another problem I
10 see with that --

11 Q Sure.

12 A -- is you also -- there's some discretion
13 here. They're going to give whatever statements they
14 think are relevant and they say they're going to do this.
15 You're dealing with the same cruise line that you, I
16 don't know, have just prepared a 20-page Complaint
17 accusing them of covering up the evidence in this case,
18 cleaning up the blood, spoiling evidence, manipulating
19 witnesses, and now you're relying on them. There's no
20 mechanism here. There's no judge to go to to resolve
21 these things; okay, this is work product, this isn't, you
22 didn't give me everything, this document suggests there's
23 other documents.

24 There's no -- you know, in litigation you have
25 an opportunity to go before the trial judge on motions to

1 compel, motions for sanctions if they don't comply with
2 the discovery request. So I didn't really think this was
3 as valuable as it was made out to be aspect of the
4 agreement.

5 Q Do you think it was reasonable to settle the
6 case prior to filing suit and obtaining some of the
7 discovery?

8 A I think under the circumstances, no. I think
9 that -- you know, if the goal, which it seemed to be an
10 admitted goal of both sides, to get information -- and in
11 fact you don't have a settlement with just a monetary
12 amount. You have a settlement which clearly reflects the
13 goal of getting information, that it fell woefully short
14 on the goal of getting information, this paragraph. And
15 so you needed -- there's no substitute to look somebody
16 in the eyes or, you know, take an oath and testify. If
17 you're a good lawyer you know what questions to ask and
18 follow up, and there's simply no substitute for that on
19 the getting the information aspect.

20 Q How do you characterize the settlement?

21 A I think it's a good one for the cruise line.
22 I think they're very happy. I think that's the way it
23 played out towards the end. Whether planned or not
24 planned; I'll leave that to whoever wants to decide what
25 happened. But the way it played out is, you know, the

1 cruise line got their major case out of the courts. They
2 knew that the individual claims of the Smith family were
3 difficult, to say the least. They're difficult claims.
4 They knew there was a chance we weren't going to survive
5 a motion to dismiss or a motion for summary judgment.
6 They knew they could avoid the discovery I'm talking
7 about, taking depositions, which would have been a lot of
8 people and a lot of explaining to do under oath.

9 And then when I see the press release that
10 comes out afterwards, getting back to what I said
11 earlier, that this is a cruise line already with an image
12 issue or media problem, who's concerned about that, this
13 is a win situation for them, because they also got a
14 press release now that all of a sudden says they're
15 cooperative, they're nice, they're giving all this money
16 out, they're starting charitable contributions, and
17 they're giving all this information. And if the Smith
18 family wanted to join, they could get the information,
19 too. But now they're not going to, they got their own
20 case, and now we're going to go fight them and make them
21 look like the bad people. So it's a good deal for the
22 cruise line.

23 MR. JONES: Mark this, please.

24 MS. STROILI: Fax, BB.

25 (Whereupon, the fax was marked as Opponent's

1 Exhibit BB.)

2 Q Mr. Rivkind, I'm showing you Exhibit BB. It
3 looks like there's a fax cover sheet from Mr. Walker's
4 office, and then there's a second page -- I'm sorry, the
5 fax cover sheet from Mr. Walker's office, looks like this
6 was faxed to Ben Finley or Pinley and Nancy Grace. Then
7 on the second page it says "Press Statement of Jennifer
8 Hagel-Smith." Could you review that just quickly to
9 yourself, please.

10 A (Perusing document.)

11 Yes.

12 Q Mr. Rivkind, have you seen this document
13 before?

14 A Yes.

15 Q Can you tell us what this is.

16 A It's the press release that I guess Jennifer
17 or Jim Walker -- they issued that after the settlement,
18 announced the settlement.

19 Q You just sort of paraphrased some language.
20 Do you see the actual quotes you were just referring to?
21 I believe they're on the second page.

22 A Yes.

23 Q Can you read the actual quote?

24 A "My discussions"?

25 Q Yes.

1 A "My discussions with Royal Caribbean have been
2 very open as well as extremely productive and
3 informative. This journey has always been a matter of
4 principle for me, and I know that George would be proud
5 of what has been accomplished thus far in good faith as
6 we continue to seek answers. I appreciate Royal
7 Caribbean's cooperation and sincerely" --

8 Q Sincerity?

9 A "-- "and sincerity and efforts moving forward,
10 which I believe will play a major role in helping all of
11 us find closure."

12 Q Okay. What do you think of this press
13 release?

14 A I was surprised, maybe shocked, for a couple
15 reasons. One is -- I mean, the press release, I should
16 point out, too, it was sent to the *Nancy Grace Show*.
17 Nancy wasn't very friendly to Jennifer, I have to admit.
18 And so -- I don't know if Bree was going to be on the
19 show that night or if that's when this was sent, that
20 they were actually playing it the night of the interview.
21 It might have been.

22 I was surprised they sent it to them, because
23 they really didn't want much to do with her. But what
24 was more surprising to me was that, you know -- I go back
25 to the Complaint. All you have to do is read the

1 Complaint and the serious allegations of a cruise line
2 company that engages in a pattern of -- I don't mean I'm
3 saying they engage in a pattern. I'm saying the
4 allegations in the Complaint. I don't want the cruise
5 line to come back and sue me here.

6 If you read the allegations in the Complaint
7 that the personal representative is filing and Mr. Walker
8 is preparing, it's stating in there, you know,
9 basically -- and this is consistent with what he's told
10 the media, had press conference about, his personal
11 experience in handling sexual assault cases, that this is
12 a cruise line that does everything they can to cover up
13 stuff, they spoiled evidence in this case, they hid what
14 happened, they're corporate felons, and add to that the
15 statement that had been filed in Congress that they had
16 treated Jennifer horrifically. To then come out with a
17 press release that says, you know, I appreciate Royal
18 Caribbean's cooperation, sincerity, and efforts --

19 MS. HAGEL-SMITH: Moving forward.

20 A -- moving forward, yes.

21 I know it's meaning to get the case finished,
22 and I can understand that statement in that context. But
23 what I understand is, is I saw this going back with the
24 defense lawyer in correspondence, asking, like here's
25 like the proposed press release we're going to send out.

1 And that bothered me because I felt that it was a
2 sellout, and this is why I said it was a good deal for
3 the cruise line. You can say this wasn't part of that
4 agreement and read the agreement and it doesn't say
5 anything about this press release. But, A, there's no
6 reason for that paragraph from the standpoint of the
7 plaintiff or the plaintiff's lawyer, other than it being
8 part of the deal. And, B, it helps the cruise line
9 tremendously with this image that they're so concerned
10 about, which now is going to be surfacing in the Smiths'
11 individual case, again making them look like the bad
12 people.

13 And, so, yeah, I was upset when I saw it and I
14 wrote -- I think I wrote about that, too, and said, you
15 know, how could you basically issue such a press release.
16 I mean, sometimes it's appropriate and -- you know, I
17 don't know if you got the idea, appropriate -- there's a
18 case, let's say you worked towards a settlement with the
19 company and they want to do a joint press release and you
20 want to -- and the cruise line says we acknowledge we did
21 something wrong and the other side says, you know, we're
22 glad we can resolve it, we want to move forward, and that
23 might be appropriate. But in this case, this high
24 profile case with all this publicity and all these
25 accusations, to give the cruise line this concession

1 here, to me had to be part of the deal, or I don't
2 understand why it was done.

3 Q I have two more quick points.

4 You mentioned a couple of times -- you
5 referred to Royal Caribbean as a corporate felon. Are
6 you just using a phrase or are they actual corporate
7 felons?

8 A Yeah. They have felony convictions which they
9 were fined a substantial amount of money. I think just
10 recently they went off of probation.

11 Q You testified earlier that Mr. Walker at some
12 point in the proceedings, probably early on, had placed a
13 range for the value of the settlement in this case as
14 between 3 and 6 million dollars. Do you think, as we sit
15 here today, do you think that's still a fair assessment?

16 A I think he was telling, you know, the truth.
17 He wasn't puffing or anything. I think, you know, taking
18 into consideration the publicity value of the case, I
19 think that's a fair assessment, you know. You know, I
20 don't think he just said it to the family in order to --
21 you know, "Sign up with me, I'm going to get you 3 to 6."
22 I think that, you know, he believed that, and that was a
23 reasonable belief.

24 MR. JONES: We're done, your Honor.

25 THE COURT: Okay.

1 Attorney Brown, whenever you're ready.

2 MR. BROWN: Your Honor, what do you want
3 to do about lunch?

4 THE COURT: Whatever you all feel
5 comfortable with.

6 MR. BROWN: If we're going to do it, we
7 should do it now.

8 THE COURT: You want to do a quick lunch
9 or do you want a full hour?

10 MR. BROWN: I prefer a half hour.

11 THE COURT: Half hour good enough?

12 THE WITNESS: Can I say anything?

13 MR. JONES: What's your schedule?

14 THE WITNESS: I don't know how long
15 you're going to take -- take as long as you want,
16 just be nice. I'm trying to figure out. I'd like
17 to get home today. I don't want to hold up
18 anybody's lunch plans, please.

19 THE COURT: Let's give it a quick half
20 hour.

21 MR. BROWN: I'm happy to take a shorter
22 lunch.

23 MR. RICCIO: Twenty minutes, your Honor?

24 THE COURT: Fine by me.

25 Let's make it 2:10.

1 (Whereupon, a recess was taken from 1:49 p.m.
2 until 2:13 p.m.)

3 THE COURT: All right.

4 Attorney Brown?

5 Mr. Rivkind, you're still under oath.

6 Attorney Brown, whenever you're ready.

7 CROSS-EXAMINATION BY MR. BROWN:

8 Q Attorney Rivkind, we're going to go through a
9 number of things from your direct, in no particular
10 order.

11 I believe your testimony earlier was that with
12 respect to the Athens Convention, that you weren't
13 familiar with any cases where that had applied in a case.
14 If I'm misstating you -- if I'm misstating what you said,
15 then tell me.

16 A Maybe. Let me just clarify what you're
17 saying. What I said is my cases that I handled, that I
18 hadn't had the Athens Convention asserted with any
19 success. There are cases -- there is case law out there
20 that the Athens is applied. Wallis said you had to have
21 certain factors for it to apply. But there are some
22 cases that have enforced the Athens Convention under
23 certain circumstances, case law. What I said is there's
24 not a whole bunch of cases out there involving the Athens
25 Convention.

1 Q But you never had any where the Athens
2 Convention applies?

3 A Right.

4 Q Clarifying what you said.

5 A Right.

6 Q But there are cases out there where the Athens
7 Convention has been applied in situations like this fact
8 pattern?

9 A Well, not with the ticket like this. You have
10 to go and look at the case law. I mean, it's an issue
11 whether it applies or doesn't apply, and there are some
12 cases that held it was reasonably communicated.

13 I don't know that we're disagreeing too much
14 here. What I'm saying is there's case law, and to me
15 what applies to this particular pattern is governed, you
16 know, the 2007 case, which I can give you if you want,
17 and the Wallis decision, and there are some contrary
18 opinions, but they really -- you know, not contrary in
19 the sense that I think they would apply to this
20 particular fact pattern and kick it, let's put it that
21 way.

22 Q But it could? But the Athens Convention could
23 apply to this case?

24 A I mean -- yeah. There's an argument that the
25 cruise line would make, yeah, that it applies. Then you

1 have to decide as a lawyer, just like they're going to
2 say certain things are work product, do you believe
3 you're going to prevail or not prevail. I'm pretty sure,
4 and I discussed that with Jim, that I thought we were
5 going to prevail, based on Wallis and the 2007 case I
6 brought with me.

7 Q Did you voice your concerns to Jim about the
8 Athens Convention at any time?

9 A I raised the issue with him, yes. You can see
10 in my letters. He had told me he had done research and
11 it wasn't a concern to him. You can see I said -- and he
12 said he was going to send me a memo, and I asked him --
13 but, yeah, it was definitely -- when you have a foreign
14 voyage you have the Athens Convention that arguably can
15 apply, and then you have to analyze your particular case
16 and your particular passenger ticket to see if it's going
17 to apply in your case. Some cruise lines changed their
18 tickets to be more specific and get around that language
19 in Wallis. Royal Caribbean didn't.

20 Q I mean, I just want to go back to your voicing
21 your concerns. Isn't it true that you called, I believe
22 it's Allan Kelley at Fowler White who you and -- both you
23 and Jim were familiar with -- about whether or not the
24 Athens Convention would apply?

25 A I didn't call Allan Kelley. I may have had a

1 discussion with Allan Kelley -- which I frequently do,
2 he's a good friend of mine, I used to work with him at
3 Fowler White -- when the issue was surfacing. And I
4 don't know if Allan Kelley asked me if I had researched
5 it or not -- it's no secret that the cruise line is going
6 to assert, you know, an Athens Convention defense. I
7 mean, just like they're going to assert a work product
8 defense and they're going to deny liability in the case.
9 I mean, that's no secret.

10 But, yeah, I had a discussion with Allan
11 Kelley, because Allan Kelley is a very good source of
12 research. He keeps this little black book, since I've
13 known him, you can say, "Allan, do you have a case on the
14 Athens Convention," and he'll say, "Hold on a second."
15 Next thing I know my fax machine -- kind of saves me
16 research. Luckily he does that for me. We don't want
17 the cruise line to know that. That's what happened.

18 But, yeah, I did have a discussion with him.

19 Q And communicated to Jim that you were
20 concerned that the Athens Convention might apply in this
21 case?

22 A No doubt that Jim and I talked about concerns
23 about liability, concerns about the Athens Convention;
24 all the things a good lawyer would talk about in
25 prosecuting a case like this:

1 Q Okay. The next thing is the Death On The High
2 Seas Act.

3 A Yes.

4 Q You talked about it a little bit in the
5 direct. Could you -- you talked a little bit about it.
6 You talked about what you couldn't get, like pain and
7 suffering. I believe -- can you get punitive damages?

8 A No.

9 Q Okay. And so grief, bereavement, all those
10 things, I think you said you can't get those?

11 A You cannot get those, yes.

12 Q Just to be clear, the Death On The High Seas
13 Act would apply in this case?

14 A My opinion, yes.

15 Q Could you go through what you do receive from
16 a Death On The High Seas Act.

17 A You get pecuniary losses, which would be
18 funeral expenses; you get loss of support and services.
19 There's some case law floating around, conflicting case
20 law, as to whether you get loss of -- the estate can
21 recover loss of -- I think it's called loss of
22 inheritance, which is like net accumulations. Other than
23 that, I think it's well settled.

24 There is case law that talks about loss of
25 inheritance, which is, you know, something the estate

1 would be able to figure out, and then what the estate
2 would have accumulated separate and apart from support.
3 But there is -- whether that's a separate item of damages
4 or not, that's a little bit in dispute.

5 Q How would loss of support be calculated?

6 A Well, obviously you'd have to calculate the
7 earnings of the decedent, what was he capable of earning
8 and what kind of support beneficiaries could reasonably
9 expect to receive from that, and take into consideration
10 that the decedent would have had to pay taxes, you know,
11 spend some money on some other things. Usually
12 economists can do that. Or there's statistics with the
13 Bureau of Labor that compile those kind of statistics.
14 But that basically would be the equation.

15 Q You said things that he would spend -- isn't
16 there a whole consumption issue that reduces that, the
17 earnings? Doesn't the consumption of the decedent get
18 factored --

19 A Yeah. I think that's what I meant. Like what
20 can he -- what kind of support would he provide. You
21 have to look into some consumption of what he was going
22 to use for himself and -- economists know how to do that.
23 But, basically, yeah, what's left over to support my
24 spouse if -- you know, what can my spouse expect as far
25 as lifestyles, what can the kids expect, if there's kids,

1 things like that.

2 Q Would that be further reduced by a present
3 valuation? Like would it be discounted to present value
4 when you're figuring out that loss of support number?

5 A Yes. Because you're getting all the money now
6 instead of over time, so they have to figure out what the
7 value of you having the money now instead of having to
8 wait for it.

9 Q Okay. Loss of services, what would that
10 really -- what does that consist of?

11 A Well, typically services include, you know,
12 work around the house a guy -- you mow the lawn, he --
13 you do different things that have a value to the
14 beneficiary, that you perform. How far services goes
15 is -- is interesting, because -- and I brought a case
16 here, too -- again, it goes to your economist, and who
17 the lawyer is, too, as to how creative you can argue
18 services.

19 There's this case that I was reading in which
20 you had parents, and the economist calculated, okay,
21 here's hourly rates or services at the -- you know, the
22 decedent would have given to his parents per hour.
23 Included in that case was a figure, when the parent
24 reached 65, of receiving financial advice, that they
25 argued that there was services that was going to be

1 performed for financial advice, and he put a higher
2 figure on that starting at 65. Now, the Court didn't
3 reject that as being compensable type of service. What
4 they said was it was too speculative in that particular
5 case.

6 So my thoughts, which I had shared with Jim,
7 is that, you know, if we did go the route and we went and
8 got an economist -- you know, I thought you had a pretty
9 decent argument. I'm a little at a disadvantage because
10 I never got the economist, but I had spoke to one, and
11 you would -- what you would have in this situation is
12 you've got George, who graduated from Babson and has some
13 business background, and you have a family business that
14 Mr. Smith wanted to keep and maintain for a long time.
15 And whether an economist can calculate some kind of value
16 for services had -- you know, let's say George went a
17 different route and Mr. Smith wanted to keep the
18 business, or stay in the business with him, and he'd have
19 a son who would be providing him valuable services to the
20 business. You know, you can't replace having a family
21 member as your adviser, and with his knowledge, and
22 Babson.

23 So the answer to your question is typically
24 it's mowing the lawn, cleaning the house, chores around
25 the house. But I do have a case here that I had

1 researched and found where I thought it was a good
2 argument, they hired the economist, where, hey, you know,
3 in reality, as parents get older, and you have a son that
4 graduates in business, smart guy, he's going to provide
5 some services, especially if you have a family-run
6 business like that. I felt that, you know, we would be
7 able to calculate a number. But that was never done.

8 Q But you said it would be a pretty creative
9 argument.

10 A Right. There's this case that I have, found
11 that in that particular case it was too speculative. I
12 think it's stronger in this case because of a business
13 background, a graduate of Babson, and the fact that this
14 was a family business that I know Mr. Smith didn't want,
15 you know, to have to try to sell or anything like that.
16 He wanted to keep it.

17 Q Let me understand. In the one case that you
18 have, there was a creative argument made about services
19 he would provide to someone like Mr. Smith, and even in
20 that one case the Court deemed it to be too speculative.
21 Am I being fair?

22 A Yes. And I'd be happy to leave the case here.
23 What struck me about the case was the Court didn't say --

24 Q I'd love it. Do you have it?

25 A Yes.

1 Q I'd love the case.

2 A The case doesn't say -- I thought I had it --
3 it might be in my briefcase.

4 Q Do you remember the name of it?

5 A Actually, take your time. Take a look in your
6 briefcase. Take your time.

7 A This case, I'll show you and then I'll give it
8 to you. This is a case at 207 Westlaw 2883784. It's the
9 Southern District of Florida. I was going through -- if
10 you notice, the economist testified as to services that
11 were being performed around the house; you know, we
12 talked about that. And then further testified that post
13 age services at 65 years old would include, quote,
14 professional advice, which raises the worth of those
15 services to whatever they calculated in this particular
16 case.

17 A And then if you look, it talks about DOHSA,
18 the pecuniary damages, which we talked about as being
19 limited to, and then it says -- the testimony as to
20 advice, services, and the cost of those services is
21 speculative.

22 Q Okay.

23 A It's a hurdle. I mean -- you know, but it
24 didn't say you can't recover those kind of expenses.

25 MR. BROWN: I'd like it to be marked as

1 an exhibit.

2 THE COURT: Why don't you mark that
3 number 4, Petitioner's Exhibit Number 4.

4 (Whereupon, the document re: case referred to
5 was marked as Petitioner's Exhibit 4.)

6 Q Thank you for explaining that.

7 With respect to loss of support, who -- you
8 know, as much as I think I'm a probate attorney, and I'm
9 not a maritime attorney, there was some testimony
10 yesterday about how, if you take a case like this to
11 judgment, that it doesn't just automatically go -- that
12 anything that's recovered doesn't automatically go into
13 the estate; actually, you have to look at who's getting
14 the recovery. Could you educate me on that?

15 A Yeah. I appreciate that, because I'm not --
16 don't know anything about being a probate lawyer.

17 Yeah. The statute itself, if you read the
18 Death On The High Seas Act, says here who can recover and
19 that the Court will allocate -- I don't know, without
20 reading it, the exact language -- but it's to the effect
21 it says what you're saying, that there will be an
22 allocation made to each of the beneficiaries for their
23 entitlement, yes.

24 Q When you say beneficiaries, I don't think it
25 says it in the act. Doesn't it say sort of like who's

1 dependent? Doesn't it talk about -- I'm just asking you
2 to tell me who recovers in a case like this. I mean, we
3 have a wife, two parents, and no children. What happens
4 in something like that?

5 A By the statute itself, the parents have a
6 right to bring the case and recover, as well as the
7 spouse in this case. Bree would not, as the sister.

8 Q Hold on. You said they have a right to bring
9 the case? My understanding is that the personal
10 representative -- we call it the administrator for
11 purposes of this matter up here, but the personal
12 representative is what you call it in Florida -- the
13 personal representative brings the case, but then the
14 money doesn't just get given to the personal
15 representative. It has to be brought through the
16 personal representative, but then when the judge
17 determines what's going to happen, some of it goes to the
18 spouse and some of it goes to anybody else who is going
19 to be dependent. Is that correct?

20 A That's correct. The estate would recover, in
21 the name of the estate, certain damages. Those would
22 include like funeral expenses. The estate would also
23 recover, you know, if the loss of inheritance flies, and
24 then Jennifer would be listed and would recover. And the
25 Smiths, to the extent they have support and services,

1 would be on there, yes. Then there would be an
2 allocation that way.

3 Q Would it be wrong to say that in a case like
4 this, that Jennifer could get 100 percent of any
5 recovery? I'm saying could. I'm not saying she will.
6 I'm saying could she get 100 percent?

7 A Depends on the ability of the economist to
8 calculate a figure for the Smith family on loss of
9 support and services. If the economist could not come up
10 with an argument, then that's possible. However, you
11 know, the --

12 Q That's all. Thanks a lot. That's fine.
13 I just want to clarify.

14 You're saying in this case, if the case were
15 taken all the way to the end, the argument for the Smiths
16 recovering something would be based on the speculative
17 argument that there would be services provided for them?
18 Am I saying that wrong?

19 A Well, when you use the word "speculative,"
20 I've said that in some cases a Court may determine it to
21 be purely speculative.

22 Q Okay.

23 A I'm saying in this case I think an economist
24 would be successful in not -- in being able to overcome
25 it being speculative. All aspects of somebody who's 20

1 years -- whether they're going to be married for the next
2 30, 40 years is speculative, too. I mean, what he was
3 going to do with his life is speculative to some degree.
4 And the law recognizes that. This is not mathematical
5 certainty. But if the economist says, look, they don't
6 have any loss of support or loss of services, and then,
7 yeah, they don't have any loss of support or services.

8 Q Loss of support, would the parents be -- would
9 they have the possibility of getting support?

10 A With the evidence, no, I don't believe that
11 there was any evidence he was supporting them in the
12 sense of making monetary contributions. You know, be
13 more the value, I think, what the economist was working
14 towards was the services in his business, the family-run
15 business.

16 Q Would it be correct to say that the vast
17 majority of any recovery would be based on the loss of
18 support?

19 A Yes.

20 Q Okay. Let's talk about the prescription
21 drugs.

22 A Okay.

23 Q How would that factor into this case?

24 A Depends. I never got complete information
25 about the prescription drugs: It factors in on the

1 argument of comparative negligence. And as I said
2 earlier, and I'm not saying this happened, but, you know,
3 people -- if in fact he was taking prescription drugs and
4 drinking, and if it's a jury, and I, as I said, I believe
5 it's a jury trial, a jury probably would, you know -- if
6 Jennifer's still the personal representative and they're
7 in the court, unfortunately they would think that, A, he
8 shouldn't have been drinking and taking prescription
9 drugs, and, B, she as the wife should not have allowed
10 him to do that if that was happening. I have no evidence
11 that he was taking the prescription drugs. I think I
12 heard he wasn't.

13 Q That's fine. I'm just asking --

14 A But it's something you have to deal with. I
15 read the records. They didn't seem, you know, overly
16 concerning, you know. There wasn't like suicidal
17 information in there or anything other than the
18 prescription, I think it was for Zoloft. But he
19 shouldn't drink when he's taking Zoloft, if he was taking
20 it.

21 Q If this case were brought, I mean, would Royal
22 Caribbean be able to, you know, find out about the
23 prescription drugs?

24 A Yes.

25 Q Do you think that they would try and use that

1 in, one, the lawsuit; and, two, the court of public
2 opinion against him?

3 A I think they would do anything to gain public
4 opinion for themselves and to hurt anybody who pursued
5 the case against them, yes.

6 Q Okay. I want to show you --

7 MR. BROWN: Can you please mark this.

8 MS. STROILI: Exhibit 5.

9 (Whereupon, the document re: Rule 1.442 from
10 Florida Rules of Civil Procedure was marked as
11 Petitioner's Exhibit 5.)

12 Q Could you identify what I've got here?

13 A Proposals for Settlement, yes.

14 Q I'm only saying, I think this is the Florida
15 Rule of Civil Procedure 1.442, on proposals for
16 settlement.

17 A Yes.

18 Q I'm just asking, do these ever get used, these
19 proposals, in cases like this?

20 A It's an interesting point, because the answer
21 is yes. But there's an issue out there as to whether
22 they are enforceable in a maritime case. And in fact, if
23 you ask Mr. Mase, I don't know if it's his office or most
24 of the defendants -- depends who files it. If we were to
25 file one against the cruise line, they would move to

1 strike it on the grounds that maritime law preempts state
2 law. And under federal maritime law, there is a
3 principle against awarding attorneys fees and there's an
4 argument that it doesn't apply in a maritime case. Is it
5 resolved, no.

6 Q We're going to go on to this other one, so
7 keep that one.

8 MR. BROWN: This also make an exhibit.

9 MS. STROILI: 6.

10 (Whereupon, the document re: Statute 768.79
11 was marked as Petitioner's Exhibit 6.)

12 Q Could you identify what this is?

13 A Yeah. The offer in judgment or proposals for
14 settlements, if you have litigation and you want to make
15 an offer to the other side to see if they accept it to
16 avoid the litigation, it's contained in a statute and
17 rule of procedure.

18 Q What statute is it?

19 A Florida Statute 768.79.

20 There was some discussions about whether it
21 was an impermissible infringement on the rule-making
22 authority of the courts, whether it's --

23 Q Hold on, hold on. I'm simply asking -- is the
24 gist of this statute that if an offer of judgment's made
25 and you don't collect -- if you don't collect that

1 judgment, that you could get surcharged for attorneys
2 fees and costs of the defendant?

3 A Yes. It's the same as the rule. They just
4 have it in both places because there's an issue if it can
5 only be a statute; if it's a rule of procedure or
6 substantive law which gets to the issue of whether it
7 applies to a maritime case or doesn't apply to a maritime
8 case. The defense lawyers routinely file motions to
9 strike our proposals for settlements, which we tend to
10 favor. When we know they won't settle, we file one, and
11 they move to strike it. And when I get back to my office
12 I'll send these guys memos written by the top defense
13 firms who handle maritime law saying that this statute
14 doesn't apply in a maritime case.

15 You know, do I agree with them? It's whether
16 you consider it substantive law, which whether you're in
17 state court or federal court, you have to apply federal
18 maritime law as to substantive law. If it's substantive,
19 you can't apply it, because it's a maritime case. You
20 have to have uniformity of all 52 [sic] states, because
21 it's federal law. If Florida has one of these and
22 Connecticut doesn't, depends where you sue whether this
23 applies or doesn't apply. They want uniformity in
24 admiralty, so they say it doesn't apply. There's an
25 argument both ways. It's kind of -- doesn't come up, you

1 know -- the context usually has been that I've had
2 defendants file motions against me saying it doesn't
3 apply.

4 Q What do you mean, it doesn't apply? Wouldn't
5 there be the argument that it does apply?

6 A No, it doesn't. If I file a proposal to them
7 saying I want to settle the case for, you know, \$50, and
8 if you don't accept it and I get \$75, I'm going to seek
9 my attorneys fees and costs against you. Then they
10 either accept my offer, let it elapse, and then there
11 will come a time when I file my motion to collect
12 attorneys fees and costs if I beat the percentage that's
13 in here, and they have responded by filing motions and
14 memos with citations of law that says that an offer of
15 judgment in a maritime case is not enforceable because it
16 violates the requirement that there be uniformity in
17 maritime law.

18 Q Couldn't they also -- doesn't this also state
19 that they could -- they could say we'll pay you
20 \$750,000 --

21 A Yes.

22 Q -- but if you don't get over \$750,000, then
23 you should be charged for their attorneys fees and costs
24 defending the case?

25 A The answer to that is, yeah. This is a

1 two-way street; either side can file one. You still have
2 the same legal discussion about whether it applies or
3 doesn't apply. You know --

4 Q So if in my hypothetical \$750,000 is offered,
5 you only get \$600,000, then Royal Caribbean could say
6 you've got to pay all of our attorneys fees and all of
7 our costs for defending this case, and that amount, that
8 \$600,000, would be reduced by their attorneys fees and
9 costs. Am I accurately stating what could happen in the
10 statute?

11 A Yeah. The statute's self-explanatory. They
12 have to -- they have to be in a certain form. I mean,
13 sometimes there's some technical arguments to the way
14 they worked it.

15 Q But it could be raised in a case like this.

16 A It could.

17 Q I'm not going to say it's a hundred percent.
18 I'm saying it could be raised.

19 A It could be raised in any case, yes. Unlikely
20 in a case like this.

21 MR. BROWN: I'd like this to be an
22 exhibit.

23 MS. STROILI: Exhibit 7.

24 (Whereupon, the Florida statute was marked as
25 Petitioner's Exhibit 7.)

1 Q Can you please identify for the Court what
2 this is.

3 A Yes. This is a Florida statute that imposes
4 sanctions against a party or -- if you file a claim
5 that's unfounded, like a frivolous claim statute.

6 Q Are you familiar with the statute?

7 A Very much so. My buddy, Mr. Peltz in Miami,
8 filed a 50-page motion against me after the settlement
9 was reached with Mr. Walker. Yes, so I am very familiar
10 with it.

11 Q But why? Is that motion -- is that related to
12 this proceeding?

13 A No.

14 Q Okay.

15 A What do you mean?

16 Q You just said your friend Mr. Peltz filed a
17 50-page motion for sanctions against you.

18 A Right.

19 Q Is that because you filed the lawsuit the
20 Smiths brought against Royal Caribbean?

21 A Yes.

22 Q Okay. And that case was -- could you tell me
23 what happened in that case?

24 A The case was dismissed and it's on appeal --

25 Q It was dismissed. What happened? I don't

1 think it was dismissed once. Could you tell the Court
2 what happened?

3 A Yes. When we had to file separately, which we
4 did, we drew -- and I think Jim will tell you if you ask
5 him -- you do a little prayer sometimes about who a case
6 falls within. Jim's little prayer was let's hope we
7 don't draw Judge Gordon, who is known to throw cases out
8 of court. Know him very well, but it's just a known
9 fact. And in fact, I told my secretary, "Don't come back
10 here after you file if you get the stamp and it's Judge
11 Gordon." Sure enough, it came back and it was Judge
12 Gordon.

13 So first go-around, there was -- he dismissed
14 it, said that we failed to state a cause of action for
15 intentional infliction of emotional distress, which
16 myself and Mr. Arnie Ginsberg, who is one of the most
17 prominent appellate lawyers in Florida, disagrees with.
18 We amended the Complaint, actually found an exact case,
19 that -- he said, does such and such a case exist where
20 any agency has been held liable for intentional
21 infliction of emotional distress for doing a botched
22 investigation or covering up, and I found one. But he
23 still dismissed the case. And Mr. Ginsberg, who wouldn't
24 take a case unless he felt it had merit, is handling the
25 appeal right now. So it's on appeal.

1 Q Wait a minute. Wait a minute.

2 It was dismissed. Did you amend the
3 Complaint?

4 A Yes. We filed an Amended Complaint, brought
5 in the new case.

6 Q What happened?

7 A Didn't help. Dismissed it.

8 Q Okay. Now that's on appeal?

9 A Yes. It is, yes.

10 Q And not only is it on appeal, but you have a
11 pending motion for sanctions against you personally?

12 A I do, yes.

13 Q Okay. Let's talk about something you talked
14 about. You said when you came into the case you were
15 sort of the last person involved, like you were the last
16 person in the whole matter. Would that be -- I forget
17 what you said.

18 A Bad use of words, because I don't know what
19 "last person" means. But I guess --

20 Q Kind of last lawyer in the matter?

21 A I shouldn't say last. There's only a couple,
22 I believe, who were ahead of me --

23 Q Let me ask. When were you engaged?

24 A I don't recall the exact date, to tell you the
25 truth.

1 Q Okay. When you were engaged, were the Smiths
2 and Jennifer -- I'm going to refer to her as Jennifer,
3 and George the Third and Maureen as the Smiths.

4 A Okay.

5 Q Were Jennifer and the Smiths getting along?

6 A No, not really, no. I think maybe better than
7 later, but as I recall, I don't

8 Q So from the moment you were involved, they
9 weren't getting along. I'm just trying to set it so I
10 know what -- so I'm accurate.

11 A I think that they weren't getting along --
12 depends how you define "getting along." But I think
13 there was maybe a little bit --

14 Q Were they talking to one another?

15 A I don't think so. I'm trying to go back,
16 because I know there was a time there was still some
17 communication channels going and I don't know if at the
18 time I was there -- but, yeah, generally I knew they were
19 getting separate attorneys and, you know, there was a
20 problem from the get-go, yes.

21 Q And at least, you're not sure, but they may
22 not even have been talking to each other at that point?

23 A I'm not sure.

24 Q Okay. From that point, from your initial
25 entrance into the case, to all of the stuff you testified

1 about settlement, did they ever talk to each other?

2 A Other than in passing, you mean? Like -- I
3 don't know if they --

4 Q Did the Smiths talk to Jennifer?

5 A I don't think so, because I know there was a
6 time that they asked me to talk to Jennifer, to interview
7 Jennifer, which I asked Jim to do, and they didn't permit
8 that. I wanted to --

9 Q I'm simply saying --

10 A So that makes me think that they didn't
11 because --

12 Q Okay.

13 A -- I know that they wanted me to ask Jennifer
14 questions. I asked Jim for that, and it didn't go
15 anywhere at that point, you know. Maybe at some point
16 down the road that changed. So I don't think --

17 Q Did Jennifer ever --

18 A -- they were communicating.

19 Q Did Jennifer ever try to contact you by
20 herself?

21 A I think there was one time that I spoke to
22 Jennifer, and -- I'm trying to think what the
23 circumstances were. Something had happened. I don't
24 know if it was a media show or something, some issue came
25 up. But, yeah, she did call me once, yes.

1 Q But you don't recall when it would have been
2 about?

3 A The date, you know, whatever she -- if she
4 said it, I'll take her word for it. I know she did call
5 me and I did talk to her, yes.

6 Q Okay. When you got engaged, had the Smiths
7 been in the media yet?

8 A No.

9 Q So all of their media dealings would have been
10 after you were in the picture as their attorney?

11 A Yes, I believe so, yes. Unless they say --
12 unless they remember something different. That's my
13 recollection.

14 Q While you were representing them, did they say
15 anything in the national media that would have -- that
16 could be considered inflammatory or derogatory towards
17 Jennifer?

18 A I probably have to answer that yes. I think
19 that -- as I said, you know, without -- as I said
20 earlier, in -- I think there was a lot of things that was
21 said in the media, by them, whatever was said, were what
22 I would classify as derogatory comments, yes.

23 Q Even before that whole June -- late June of
24 '06 period where the settlement was being reached and you
25 felt like you were being shut out. I'm talking about

1 prior to that, had they made some comments that were not
2 complimentary of Jennifer?

3 A I'd have to say -- you know, I don't remember
4 the exact comments. I do know there was a conscious
5 effort that Jim and I were trying to keep any -- either
6 side from saying anything. So I will tell you there was
7 a lot of biting the tongue, so to speak. Whether some
8 comments came out in a context that you would consider
9 derogatory, probably. But I can't give you the exact
10 chronology. Because I know for a long time I thought we
11 were very successful in keeping the -- this out of the
12 media.

13 Q I'm simply saying, were there things said by
14 your clients that would have been calling into question
15 the actions of Jennifer?

16 A I think so. Probably.

17 Q What is your analysis of how useful that would
18 be in a lawsuit?

19 A Well, obviously you want to keep that to a
20 minimum. It's not going to help your lawsuit at all.
21 Jennifer is the one that's going to be sitting in the
22 courtroom as the personal representative.

23 Q And the primary beneficiary of the estate.

24 A Yes.

25 Q The person who would get the vast majority of

1 any assets that would be recovered.

2 A That's correct.

3 So any negative public image that she has will
4 be a factor, obviously, that offsets -- or battles with
5 the cruise line's corporate felon, but, you know, how
6 much is hard to say. You know, does a jury write it off
7 to, you know, they're grieving parents, it's
8 understandable, what happened to them, see it through
9 their eyes, and if Jennifer, you know, makes a good
10 witness, if Jim works with her and she makes a good
11 witness, and she's -- has, you know, the image that
12 you're talking about, whether the Smith family said
13 anything bad or not --

14 Q Wait. If she has a good image as a wife and
15 someone who's dependent on support from her husband?

16 A Right. If she comes in -- what I'm saying is
17 a lot of the stuff that you're talking about gets
18 interpreted by a jury or people as, you know, this is an
19 awful situation, you know, and I think we all try to
20 understand that and see it through both eyes, through
21 Jennifer's eyes, through my clients' eyes. They lost
22 their son, there were some circumstances out there they
23 had questions about, and there was enough there that
24 justified any comments that were made. Now, whether
25 those comments would translate, that's a jury factor

1 that, yes, I would agree with you that the more
2 Jennifer's image gets tarnished, attacked, or whatever,
3 the more it hurts the case. Does that

4 Q Yeah.

5 A There's no question about it.

6 Q In a way, their bashing their daughter-in-law
7 on national TV is taking money directly out of their
8 pocket?

9 A Possibly.

10 Q Because the vast majority -- you're saying
11 "possibly" because the vast majority of anything that's
12 recovered is going to Jennifer.

13 A If it has the effect -- if their talking like
14 that has that effect -- don't forget, if they're part of
15 the lawsuit -- juries are smart.

16 Q They're going to see on *Nancy Grace* that the
17 Smiths have said all these nasty things about Jennifer
18 and then they're going to walk into court together and be
19 one happy family?

20 A No, they wouldn't be one happy family. But
21 don't forget, the jury is going to hear a trial. They're
22 going to hear Jennifer's side, you know, like Jennifer
23 testified on television and Jennifer's side, which
24 Jennifer doesn't necessarily agree with what the Smith
25 family is saying. So, you know, Jennifer can go into

1 court regardless -- you know, would it be better not to
2 do that? Absolutely. I mean, Jim and I knew that.

3 Q I mean, to just go back to what you said -- I
4 want to clarify it. You said the tarnishing of
5 Jennifer's reputation in public is some offset to any
6 positive public relations problem Royal Caribbean has.

7 A It benefits the cruise line to have the
8 ability to use that in their favor, absolutely. I mean,
9 you know, they'd much rather have -- you know, they'd be
10 more fearful if that wasn't there. But not enough to get
11 them to say, gee, that's going to win the case. Because
12 obviously if they felt that -- they're the ones who said,
13 look, I want to talk to you, Jennifer, in private and
14 reach an agreement with you. So obviously they didn't
15 feel that it was such a strong factor that it made the
16 case not worth settling. This was after the Smith family
17 or whatever things were going back and forth.

18 So I think that their lawyers are telling them
19 what I'm telling you, is that, yeah, a jury is going to
20 meet Jennifer and, you know, and with the right
21 presentation of the case, regardless of what the Smith
22 family did, she's going to do good in court. And the
23 cruise line recognized that, I'm sure, and it still
24 didn't take away from the negative publicity they would
25 have. Otherwise they would not have -- they would have

1 said, gee, great, let this continue. Let them file the
2 suit. Let the Smith family continue to have these
3 problems. We'll go into court, and we'll do the things
4 you're saying, you know, we'll file a proposal for
5 settlement, we'll --

6 Q It's fine you say all this stuff. I was
7 simply trying to clarify.

8 Their going into the media, be it newspaper,
9 TV, all the cable TV shows, had the effect of
10 tarnishing -- a fact that tarnishing Jennifer's
11 reputation, number one, just tarnishing it, and number 2
12 it was a negative factor to the case.

13 A Well, a --

14 MR. JONES: Your Honor, I think it's been
15 asked three times.

16 MR. BROWN: That's fine.

17 MR. JONES: I mean, you can make
18 statements all day long, but it's been asked three
19 times.

20 A Let me just clarify something. I'm not saying
21 that they -- your second part, yes, they made --

22 Q That's fine.

23 THE COURT: I think the question has been
24 answered adequately.

25 MR. BROWN: I'd like this to be

1 MS. STROILI: Exhibit 8.

2 (Whereupon, the newspaper article by *Greenwich*
3 *Citizen* was marked as Petitioner's Exhibit 8.)

4 A Yes.

5 Q Mr. Rivkind, could you identify what's in
6 front of you.

7 A It's a newspaper article by *Greenwich*
8 *Citizen* -- Joan Lounds? I don't know how you pronounce
9 her last name.

10 Q Yeah, okay.

11 On the first paragraph, I think -- does it
12 identify you as the family attorney of the Smiths?

13 A Yes.

14 Q It says -- I guess I should ask, do you
15 remember having this -- a conversation with anyone from
16 *The Greenwich Citizen*?

17 A Yeah, I do. I mean, I kind of know how this
18 all transpired. You want me to tell you?

19 Q Sure.

20 A I think there was an article that preceded
21 this in which Mr. Walker was quoted and trying again,
22 which I think is what's happened this whole route, was to
23 make my clients look like, you know, they were just, you
24 know, out of control or they were the bad guys. And I
25 forget the exact language, misplaced anger, how they

1 stated it. I wasn't quoted in that article that came
2 out. I think the Smiths called me, they were very upset
3 about that characterization.

4 This -- Joan -- I had a little issue with how
5 she wrote this thing, because what I had explained to her
6 was in no way that these expressed my sentiments or
7 personal opinions. I'm trying to be the lawyer in the
8 case. What I remember trying to get across to her was we
9 needed to get this seen through the eyes of my clients,
10 what they felt. Valid or not valid, this is the reasons
11 why they did what they did, that Mr. Walker was calling
12 them, you know -- I forget the exact quotation. But
13 something had upset them. I think he said misplaced
14 anger and they were out of control, because they were
15 saying things about Jennifer.

16 Q Would you go to the second paragraph.

17 A Yes.

18 Q On the third line of the second paragraph,
19 starts, "Added Rivkind." Could you read that from there
20 to the end of the paragraph.

21 MR. JONES: I'm sorry, Doug. Where are
22 we?

23 MR. BROWN: Sorry. Page 1, second
24 paragraph, third sentence, third line, starts
25 "Added Rivkind."

1 MR. JONES: Okay.

2 MR. BROWN: I'm asking him to read from
3 there to the end of the paragraph.

4 A "The Smith family has always had reason to
5 question Jennifer. She is the only one who showed signs
6 of animosity towards George that night. She kicked him,
7 according to eyewitnesses, although at one time she said
8 she didn't remember, then another time flatly denied it,
9 saying it was absurd. Later that night, Rivkind said,
10 she never could account for her whereabouts for an hour
11 more or less before being found passed out in the hallway
12 near Josh Askin's cabin."

13 Q Can you keep going, actually, in the next
14 paragraph.

15 A "She didn't seem to care that George wasn't in
16 the cabin when she was taken back there, nor when she
17 woke up two hours early for her massage."

18 Q Can you read all the way to the bottom of that
19 paragraph.

20 A (Reading) She reportedly arrived at 8:30.
21 Rivkind also questioned Hagel-Smith's denial of the
22 statement. She told the cruise line that George slept in
23 other cabins during their honeymoon cruise, which was the
24 reason she didn't get suspicious or worried when he
25 wasn't there. If he didn't, meaning that he didn't sleep

1 in other cabins, which she denies, then she should
2 have -- then should she have worried where he was.

3 Q Then the very -- keep going 'til the end of
4 that paragraph.

5 A "In the months following Smith's
6 disappearance, Hagel-Smith stayed at the Smiths' family
7 home but wouldn't discuss what she knew with them."

8 Q I know you're reading it, that last line, but
9 could you read the quotes?

10 A Okay. I'll start over.

11 "In the months following Smith's
12 disappearance, Hagel-Smith stayed at the Smiths' family
13 home but wouldn't discuss what she knew with them,
14 Rivkind maintained."

15 Q The next to last sentence on the next
16 paragraph.

17 A "She told them she didn't want to be deposed."

18 Q Given what you've said about how their -- the
19 Smiths' statements have not been beneficial -- were not a
20 beneficial factor for the case, and given your
21 statements -- let me ask you this. Are these statements
22 accurate?

23 MR. JONES: Can I interrupt for one
24 second?

25 THE COURT: Sure.

1 MR. JONES: What is the date of this
2 thing?

3 MR. BROWN: That's fine -- oh, sorry.
4 July 17, 2006.

5 MR. JONES: The case has already settled,
6 right?

7 MR. BROWN: July 17, 2006.

8 MR. JONES: The case has settled.

9 MR. BROWN: Yes.

10 MR. JONES: I'm not really sure where
11 we're going.

12 MR. BROWN: That's fine.

13 Q I'm asking you, are these statements accurate?

14 MR. JONES: Accurate in what way?

15 A Let me clarify --

16 MR. JONES: I have an objection to the
17 form of the question. I'm not really sure what
18 you're asking him. Are you asking did he say these
19 things?

20 MR. BROWN: Yeah.

21 A Yeah, I mean, that's what I was going to
22 preface. When you say they're accurate, this is the
23 information that was given --

24 Q I'm only asking you --

25 A I'm not saying --

1 THE COURT: One at a time.

2 Attorney Brown, repeat yourself, please.

3 A I don't remember word for word what I told
4 Joan. I did call her afterwards and say to her, "You
5 need to" -- and she agreed -- that "I never told you that
6 these were statements of, you know, Jennifer did this,
7 Jennifer did that. These were statements" -- or we
8 discussed why the Smith family had good reason to have
9 suspicions and have concerns with Jennifer. And, yes, I
10 can tell you about each of these and why they are
11 accurate and why they would cause concerns in the
12 parents, you know, if that's what you need.

13 Q Would it be fair to say that these statements
14 are things that the Smiths believed throughout your
15 representation?

16 A Well, some came out --

17 Q I mean --

18 A -- later.

19 Q I'm sorry. Let me tailor it.

20 Would it be fair to say these are statements
21 that the Smiths believed from the time you got engaged to
22 the time of the settlement?

23 A I think that's accurate.

24 Q Okay. If the Court ruled that the settlement,
25 this settlement that we're having this hearing about,

1 were not approved, can the estate bring a lawsuit --
2 could the estate still bring a lawsuit against Royal
3 Caribbean?

4 A Yes. I think that was part of the agreement,
5 that if it's not approved, the statute's been waived.

6 Q So that if the estate did bring a case, these
7 statements in this newspaper article could be used by
8 Royal Caribbean for its own purposes against the
9 plaintiffs.

10 A Yes.

11 Q Thank you. That's all I needed.

12 A Yeah, they would.

13 Q Mr. Rivkind, when you got hired by the Smiths,
14 did you sign an engagement letter? Did you send them an
15 engagement letter?

16 A Yeah. I'm sure they signed a retainer -- or
17 not a retainer -- yeah, an agreement, a contract.

18 Q Was it on a contingency basis or an hourly
19 basis?

20 A Contingency.

21 Q It would have been for your involvement in the
22 case against Royal Caribbean or just for their
23 independent claims against Royal Caribbean?

24 A For both, is my understanding.

25 Q Okay. And how would you get paid out of

1 representing them?

2 A Well, according to Jim, I mean, I guess, which
3 was something we discussed early on, if there was a
4 recovery under the wrongful death and there was going to
5 be split and according to this percentage of Connecticut
6 law, Jim had always said that I would get legal fees.
7 But I don't think we ever really discussed it.

8 Q I'm talking about your engagement letter with
9 the Smiths.

10 A Out of any recovery they receive.

11 Q What would you get?

12 A I'd get a percentage.

13 Q What was the percentage?

14 A A third.

15 Q A third? Okay.

16 If the Smiths don't recover anything, do you
17 get paid anything?

18 A No. No, I do not. If the settlement is
19 approved, though, I would probably state that since there
20 was an agreement, and it's already been accepted, that
21 the Smiths receive 25 percent, that I would -- the legal
22 fees should be taken off of the total recovery then and
23 go to Mr. Walker, and I would think that I would get the
24 attorneys fees attributable to the 25 percent that's
25 going to the Smith family. So if you're getting at

1 any -- you know -- so, I mean, I would think that would
2 be the way I would get paid, if -- at least that would be
3 my argument. I mean, if they get 25 percent of this
4 wrongful death recovery, and the legal fees don't go to
5 Mr. Walker, my clients' portion of that recovery.

6 Q You would get paid based on whatever they
7 would recover?

8 A Based -- not out of their net. But what I'm
9 saying is, if there was a gross amount -- if there's an
10 amount of legal fees based on the gross recovery --

11 Q You would get a pro rata attorneys fees for
12 whatever was attributable to them?

13 A You would take the amount they get and the
14 legal fees attributable for that amount of money, and,
15 you know, I would think I would be entitled to that.

16 Q Is this something you have in writing with
17 Mr. Walker?

18 A No. A lot of things I didn't have in writing
19 with Mr. Walker. But I think, A, I don't have it in
20 writing, but, B, I think legally I'd be entitled to that.

21 Q Okay. I'm simply asking. I'm simply asking
22 if it's in writing.

23 A No.

24 Q In our state we have this rule where you have
25 a real difficulty enforcing getting paid from a client

1 unless you have a written engagement letter. And I was
2 just asking --

3 A Okay.

4 Q -- in this case if you have -- does Florida
5 have a similar law?

6 A Well, I have to have a contract with my
7 clients, and I do.

8 Q What about with Mr. Walker? What about this
9 sort of understanding?

10 A No. To me, that would be different. I'll
11 give you an example. I've had it before, and quite
12 recently. At least in Florida, if there's a probate
13 proceeding, let's say in my case, the spouse of the
14 decedent remarried, and I represented the child of the
15 first marriage and the other lawyer represented the new
16 spouse, who was actually the personal representative. So
17 I had a situation where the personal representative had,
18 you know, brought the action, and then -- but in our
19 case, my -- I would be entitled to a fee because I
20 represent the beneficiary, this child. And it would be
21 unfair for the lawyer for the estate, if he's getting
22 money that's attributable to my client -- so legally,
23 whether I have a written agreement with the lawyer, I
24 would still, at least in Florida, in their case law, I'm
25 entitled to my fees. Not from the client, but from the

1 ultimate recovery that the lawyer representing the
2 personal representative made.

3 Q Okay.

4 A It's not something I want to go through and
5 have to fight about and all that stuff. It would be much
6 easier if it's just done, you know, professionally, and
7 you say -- and on hand shakes and things like that. But,
8 yes, if I had to -- legally, at least in Florida, I
9 wouldn't need the written agreement.

10 Q When you got engaged by the Smiths, were you
11 also engaged by Bree Smith?

12 A I think so. I might have been -- even
13 though -- but I'm not sure about that. Because -- I'm
14 not sure that she was going to be a party to the case or
15 not, so --

16 Q Now, Bree Smith --

17 A I'm not sure.

18 Q You're saying you're not sure?

19 A Yeah.

20 Q Do you know what Bree Smith does for a living?

21 A Well, when I met her she was taking care of
22 her son, but she's a lawyer.

23 Q Okay. I'm sorry.

24 She's a lawyer.

25 A Yes.

1 Q Did you have an arrangement with Bree Smith
2 that she was going to get a referral fee for whatever --
3 for referring the case to you?

4 A No, absolutely not. I know Jim Walker offered
5 her a referral fee.

6 Q Did you ever have any agreement with her?

7 A To give her a referral fee? No. Jim Walker
8 did.

9 Q Let's go to costs. What were your costs in
10 this -- in your representation of the Smiths?

11 A Nobody asked me to compile my costs.

12 Q Ballpark it.

13 A Travel, all those expenses, significant, but I
14 don't want to ballpark it. There was a lot of -- you
15 know, as I go back from the beginning, the major purpose,
16 besides money, was to try to get information and answers,
17 and we felt, you know, media exposure was very important
18 to doing that.

19 Q Mr. Walker has costs of 122,000 through the
20 period of -- well, he has 122,000. Are your costs close
21 to that number?

22 A No. He would have more significant -- or more
23 expenses for a reason; he was representing the personal
24 representative. But you got to look at what the expenses
25 were for. As far as I understood from him, talking to

1 him, it wasn't through an investigator to take statements
2 of witnesses that were known --

3 Q I'm only asking --

4 A I don't know what costs you're including. To
5 me there was some aspect of cost that -- and I'm glad you
6 brought it up, because I notice in the settlement
7 agreement, even though the Smiths are included and
8 mentioned, there was an agreement to give Mr. Walker back
9 all his expenses and nothing discussed about the Smiths.
10 I don't know how I feel about costs connected with media
11 appearances, hiring people for media appearances fits
12 into the equation of what's taxable or recoverable costs
13 normally in litigation. So when you tell me Mr. Walker
14 is calculating that as his costs, which I think -- for
15 example, if you go to trial, I don't think that's a
16 taxable cost, you hired a PR person to clean up your
17 image or paid \$50,000 to Mike Paul or whatever you paid
18 him --

19 Q Do you know that to be on the cost list or are
20 you just saying that?

21 A I don't know.

22 Q Okay.

23 A But I do know, at least from what I knew,
24 there was no economist, there was no investigator.
25 Dr. Lee was a significant part of the expense. And the

1 other stuff, I'd be happy to look at and comment on,
2 but --

3 Q I was only asking you about yours.

4 A I haven't calculated them for purposes --
5 because nobody's asked me to yet.

6 Q Did Mr. Walker ever ask you to sort of go in
7 on the costs?

8 A Not that I recall. I know that he -- he
9 proposed -- he proposed a situation where he would
10 consider, I think, a split of the case -- I'm trying to
11 go back, you know, memory, which -- if the family would
12 agree to it.

13 Q And then what happened?

14 A I think that there was --

15 Q "The family" being the Smiths?

16 A Yes.

17 I think there might have been -- I don't know
18 if he proposed anything like concrete, you know, other
19 than some suggestions that, you know, maybe he would be
20 willing to, you know, split the fees and all that.
21 But -- would go with the costs, too, I think.

22 Q What did you go back with? If the family
23 would go along with it?

24 A I don't think there was any real request for
25 that, other than I think the family did not want to do

1 that.

2 Q Okay. You talked about -- we're going to talk
3 now about the things that are agreed to be turned over in
4 the settlement agreement.

5 A Yes.

6 Q Maybe it would be helpful to -- I don't have
7 the exhibit, but -- Exhibit A, the settlement agreement.

8 I just wanted to talk about the things that
9 Royal Caribbean would turn over in paragraph 4.

10 A Okay.

11 Q I think, correct me if I'm wrong, but your
12 testimony was that you didn't think that highly of what
13 would be turned over. Royal Caribbean would certainly
14 argue about it, but you have been able to get most of, if
15 not all of, these things in your experiences.

16 A Yes.

17 Q But isn't it correct that there are lots of
18 cases where the work-product privileged documents have
19 not been turned over?

20 A True work product, yes. You know, a lot --

21 Q That's it. Thanks a lot. That's fine.

22 A A lot depends on the judge you draw.

23 MR. JONES: He asked about cases of

24 Mr. Rivkind.

25 MR. BROWN: Just cases. Is he familiar

1 with cases where the work-product privileged
2 documents were not turned over.

3 MR. JONES: It's pretty vague.

4 A I mean, it's obvious; it wouldn't be a
5 doctrine if it wasn't enforced sometimes.

6 Q Okay.

7 A I mean, yeah, it's obvious.

8 MR. JONES: Whether it applies --

9 THE COURT: One at a time.

10 MR. JONES: Sorry.

11 Q In your experience, have you ever had a case
12 where you haven't been able to get the work-product
13 privileged documents?

14 A Yes, but they would be more before the time of
15 this IMO and these developments that are the very strict
16 requirements now about investigating incidents, and more
17 favorable case law.

18 But, yeah, judges and, you know -- as I
19 said -- I don't mean to say this in a derogatory fashion,
20 the judge there -- I have a father who's a judge --
21 judges typically -- unfortunately they hear accident
22 report, oh, work product, photograph, work product. Not
23 realizing there's exceptions to the work product and
24 there's a showing that has to be made to make it work
25 product.

1 So it's the ability of the lawyer to educate
2 that judge. You get frustrated. You walk in, the judge
3 says, "What do you mean you want statements, photographs,
4 accident reports." They believe it's automatically work
5 product. However, I've been successful in saying,
6 "Judge, I know that's generally true. But you need to
7 look at the federal case laws and you need to look at
8 what the purpose of work product is and you need to know
9 how a cruise ship really operates. These are not work
10 product documents. And here is the reason why they are
11 not."

12 And, again, you're talking about showing the
13 reality of the situation. Hopefully you have a judge who
14 will follow the law. And in my opinion, legally, these
15 are not protected by the work product.

16 Q But if you got a judge like Judge Gordon, who
17 you were referring to earlier --

18 A Then the luck of the draw sometimes is bad.
19 You would deal with it as it happens.

20 Q It's definitely not a slam dunk that you're
21 getting the work-product privileged documents?

22 A It's never a slam dunk. Nothing's a slam
23 dunk.

24 Q Have you ever been involved in a case where a
25 cruise line in a settlement agreed to turn over these

1 documents?

2 A I don't think it was necessary -- it never was
3 addressed in this context of settlement, no.

4 Q Have you ever seen a provision like this in a
5 settlement agreement with a cruise line?

6 A No. And that's a reason that I -- I have the
7 opinion that this is a fluff provision, because of all
8 the things that were going on. And I can explain if you
9 want.

10 Q I'm simply asking you, isn't this an
11 extraordinary provision given your experience in cases
12 you've worked on?

13 A No, because -- I wouldn't say it's
14 extraordinary because I think that either you're going to
15 decide at the beginning I'm going to settle the case and
16 information's not my key, where some people have just
17 settled, and then there's those people, they're not going
18 to settle for anything whatsoever and they're going to go
19 try to get the information through the litigation
20 process.

21 So when you say is this extraordinary, no, I
22 don't think it's extraordinary by any means. I just
23 think it's clever, cleverness, in trying to sell a
24 settlement agreement that you know is going to hit the
25 press and be subject to scrutiny by the Court and things

1 like that, in the situation that was present. So
2 extraordinary, no. Clever, to some extent. Is it
3 opaque, is it, to me, that valuable? No.

4 I mean, you can read it. As I said earlier,
5 you know, they're going to give you relevant signed or
6 recorded statements that they took and decided what to
7 put in and what not to put in, and they're not going to
8 give you any of the notes or information the attorneys
9 themselves found out when they were on board the ship.
10 Instead of saying, okay, hi, we want to find out what
11 happened to George Smith, and we want you, his parents,
12 let's put this thing beside us, let's sit at a table,
13 let's have Carol Finkelhoff, Mr. Peltz here, and we'll
14 let you ask them what kind of notes did you take, what
15 isn't in these recorded statements. Let us have some
16 sworn testimony.

17 This isn't extraordinary at all. This is
18 complete fluff.

19 Q Have you ever had a settlement agreement where
20 the cruise line volunteered their attorneys to meet with
21 the plaintiffs?

22 A You haven't had a case like this.

23 Q I'm just asking if you had one.

24 A To voluntarily meet? I think that would be --
25 I didn't have the experience; but I know that Jim said

1 that he's had the experience where they've turned over
2 the lawyers' statements without a settlement, just right
3 from the get-go.

4 As I said, because they want to say, here, you
5 know, we're trying to help you, and it helps them to give
6 you the statements if they want to. If they have nothing
7 to hide, it kind of looks bad, look, I don't want to tell
8 Jennifer, I don't want to tell the Smith family what we
9 know. It doesn't look too good for them in a case like
10 this. So this is not extraordinary. This is, at the
11 very least -- this should have happened --

12 Q Maybe you're taking "extraordinary" --

13 A -- twelve months ago.

14 Q Is it unusual?

15 A Unusual?

16 Q You said you've never seen it.

17 A Well, because there's never been a reason to
18 have this that I know of. If this is put in there, this
19 is like taking the discovery request and saying we're
20 going to give you what we know you're going to get once
21 you file the suit. Maybe with the exception of an
22 argument about these statements, which we know their own
23 lawyers took and which we know the witnesses stated on TV
24 were manipulated.

25 So, you know, it's unusual? "Suspicious" to

1 me is a better word.

2 Q Okay. That's fair.

3 Your credentials are very, very good. You
4 said you specialize in going against the cruise lines.

5 A Yes.

6 Q If you were to guess, how many cases have you
7 been involved in? Like how many? A thousand?

8 A Maybe, over the years.

9 Q And in those cases, how many of those -- you
10 said, I think, before, you said most of them settle.

11 A That's true.

12 Q What would you say is a percentage?

13 A 90.

14 Q So if you've been in a thousand cases, let's
15 just assume, 900 would be settled.

16 A Yeah. The majority are settled, yes. The
17 vast majority.

18 Q After you settled, did the cruise lines turn
19 over all the stuff?

20 A Well --

21 Q I'm asking --

22 A What stuff are you talking about? Things --

23 Q Things from paragraph 4.

24 A A, out of those cases, I'm telling you, this
25 is an extraordinary case. You can count on a hand how

1 many cases you have of a disappearance of a person that's
2 gone through litigation. The answer is, without
3 violating confidentiality, I had more cooperation --

4 Q I'm simply asking you --

5 A -- in the other cases.

6 MR. JONES: Let him answer.

7 A I've had more cooperation at the beginning. I
8 mean, when you say have they turned this over, you're
9 talking about -- this is a -- December 2006 for something
10 that happened in July. So I don't know. You know, to
11 me, this is nothing. This is just -- it doesn't strike
12 me -- when I read it, I didn't say, wow, this is
13 something really unusual, you guys negotiated a great
14 deal, the cruise line did something that they never do.
15 I said, gee, it's obvious what they did this for.

16 You're trying to say it's an unusual, or it's
17 a great concession, it's something the cruise line
18 normally wouldn't do. Yeah, they normally probably
19 wouldn't do it because they never had a case like this or
20 an incentive to get this case shut down. This was going
21 to be the only way they were going to be able to spin it
22 in the public that was going to try to address back to
23 the beginning the two purposes of this case, which was,
24 one was obviously to get some money, but that should have
25 been a secondary purpose. But the real thing was to get

1 as much information so Jennifer could find out what
2 happened to her husband and the Smiths could find out
3 what happened to their son. That's what this provision
4 is for.

5 Q When -- you said you're suspicious about the
6 provision --

7 A Yes.

8 Q -- right? Because you represent -- did you
9 ever represent a cruise line?

10 A I have.

11 Q Do cruise lines ever act in good faith?

12 A Yeah, they -- yeah. I'm not going to
13 say

14 Q If the cruise line is acting in good faith,
15 would that change your viewpoint of the paragraph?

16 A I'll tell you what could change my viewpoint,
17 my whole point --

18 Q No, I'm not asking about --

19 THE COURT: One at a time.

20 A Let me address it. If you want me to say
21 whether they're acting in good faith and what the purpose
22 of this provision -- I can tell you based on experience
23 what the purpose of this provision is. If you want to
24 tell me whether they acted in guide faith or not, I
25 should have been invited to the discussions where I could

1 have heard what was going on in the room with the lawyers
2 that I know very well, with a company that knows me very
3 well, and with lawyers who know and respect me, and I
4 could have found out whether there was good faith
5 intended in this agreement or not. And you could have
6 done a lot more to resolve this, whether you think this
7 is good faith or not good faith.

8 I will tell you that the cruise lines don't
9 always act in bad faith, but you have a case where you've
10 alleged that the cruise line has acted in bad faith, that
11 they spoiled evidence, that they hid evidence, that they
12 destroyed evidence. So that -- you know, I would be wary
13 of this provision.

14 Q You said some interesting things. You said
15 this is an extraordinary case. This is something that's
16 had a lot of visibility. This settlement agreement,
17 paragraph 4, says things that you've never seen in a
18 settlement.

19 Would this be a case where the cruise line
20 would be more at risk if they don't act in good faith?

21 A More at risk if they don't act in good faith?
22 What do you mean?

23 Q You're saying there's a lot of visibility, lot
24 of visibility.

25 A Right.

1 Q They've entered into a settlement agreement.
2 Part of the settlement agreement is paragraph 4. It
3 lists all the things they're going to do. Would it be
4 bad publicity for them if they then don't do those
5 things?

6 A Yeah, it would. But my point is, is there --
7 the reason this is a good agreement for them is because
8 they should do this, and they should have done this -- at
9 the very least, this information in paragraph 4 should
10 have been voluntarily handed over to us when we sent our
11 letter requesting all this information.

12 So, yes, obviously this is part of their
13 improving their image and their media crisis handling
14 because they're going to turn over or agree to turn over
15 information that they should have turned over already,
16 and they may have turned it over already to, you know,
17 the FBI, I don't know. So they're not doing anything.

18 So when you say -- I'm not suggesting they
19 would back out of the deal after they signed it. In
20 fact, I think that what they're trying to do is get you
21 to sign it, you know, Jennifer, the personal rep, so they
22 can say, look, we got this settlement, we, you know, made
23 amends with Jennifer, and we're giving them all this
24 information, which they're really not, not because they
25 wanted you to sign on the dotted lines and they weren't

1 going to give you this information. So I don't really
2 understand, you know, what your question is.

3 Q You answered it. You said yes.

4 A Right. Of course they're going to -- you
5 know, they don't want any adverse publicity. But now
6 they limited what you can get. No sworn testimony,
7 nothing from the lawyers. So they'll be happy to give
8 you this stuff probably.

9 Q You keep saying that. But you did say earlier
10 that although you think they should have turned it over,
11 that there are plenty of cases out there where they did
12 not have to turn it over.

13 A I didn't say that. But -- I said there's --
14 you asked me as a general proposition are there cases
15 where the work product privilege has been upheld. I said
16 obviously or else there wouldn't be a work product
17 privilege.

18 There are not -- and has it happened to me in
19 some cases where I couldn't get an accident report or a
20 photograph when I felt that the judge really wasn't up on
21 the work product law, yes, occasionally. But, however, I
22 consider myself to be very versed in these issues and I
23 do a very good job with the judges, and I've been very
24 successful. And even in our Southern District of Florida
25 there's a case with Carnival Cruise Lines that

1 specifically discusses this, you know, that it's kind of
2 like very strong precedent, it's by a federal judge in
3 our jurisdiction, that says because the cruise lines has
4 to do this as a routine, what I was saying earlier, it's
5 not work product. It's routine that they're required to
6 do whether they anticipate a lawsuit or don't anticipate.

7 The mere possibility that there can be a
8 lawsuit doesn't make it work product. You have to have,
9 at the time you're preparing a document -- and if Royal
10 Caribbean wants to come in and say that they flew lawyers
11 there as the ship's leaving port, they were already
12 preparing their defense of their lawsuit, then that would
13 have helped this case tenfold in the court because no
14 jury would have liked to have heard that, and I can't
15 believe any decent defense lawyer would ever take that
16 position and want to put his client in those kind of eyes
17 with the jury, that they just lost, you know, their
18 husband and a son, and -- but we sent our lawyers there
19 simply because, you know, we were preparing for the
20 defense of this lawsuit so you can't get these
21 statements. I mean, imagine that publicity. I mean,
22 that's --

23 Q But they could do it.

24 A Of course. They can do a lot of things. They
25 can falsify records --

1 Q I'm simply asking if they can do it.

2 A Yes. But it would be a very, very bad tactic
3 to take.

4 Q You keep going back to the judge versus the
5 jury.

6 A Yes.

7 Q Isn't it arguable that this would only go
8 before a judge?

9 A I don't think so.

10 Q No chance? Zero chance?

11 A Legally, I think it's a hundred percent clear
12 that under the circumstances --

13 Q No, no. I said zero chance this would go
14 before a judge.

15 A Judge -- again, without saying anything
16 derogatory about judges -- you know, I get Judge Gordon.
17 I never know with Judge Gordon. Let's say it was Judge
18 Gordon, you know. Bob Peltz is, you know, is a good
19 lawyer. He makes arguments to me that I think are not
20 found in law. There's two of them. There's one he makes
21 in another context and he makes this one. Can a judge,
22 you know -- what does he read and how does he interpret
23 it, yeah, he's got an argument. Does it fly in the face
24 of the law that says that the constitutional will grant
25 them admiralty, the savings to suitors. Those remedies

1 available --

2 MR. JONES: Your Honor, this is starting
3 to be cumbersome, two or three times --

4 MR. BROWN: I'm in cross. This is the
5 first time I asked him about the judge.

6 MR. JONES: This is the second time --

7 MR. BROWN: I haven't asked him if it
8 could go before a judge.

9 Q I think your answer is it could.

10 A I'll shorten it. Under the savings to suitors
11 clause, they absolutely have a right to a jury trial.
12 Can a judge rule against me even when I believe I'm right
13 legally, that's what we have the appellate process for.

14 Q When you were interviewed, when you were first
15 interviewed to be engaged, was Jennifer there --

16 A No.

17 Q -- or just with the Smiths?

18 A Just with the Smiths.

19 Q Okay. Let's talk about economists. You had
20 talked earlier, I think, during the direct, that -- you
21 mentioned the word "creative"; you know, that, you know,
22 in a case such as this, or any case, I think, you would
23 get an economist to come in and, you know, be creative in
24 what they'd come up with.

25 A Advocacy. I don't know if "creative" is a

1 good word. But it's advocacy for your client. Some
2 economists are more conservative than others. Same on
3 discount rates, you know. You can get ten economists in
4 there and people say, hey, cost of inflation is 2
5 percent, the next one says it's 6 percent. You wonder,
6 you know, where they're coming from.

7 So, yeah, I mean, I would try to find an
8 economist that -- I mean, I talked to an economist,
9 but -- yes, he would have to -- you know, you'd have to
10 start looking into an argument like that case where you
11 try to get some services in through this business
12 relationship. Creative, advocacy.

13 Q Have you ever had a case where an economist
14 for the plaintiff and the economist for the defendant
15 agreed on the value?

16 A I don't think so. I think they always

17 Q Plaintiff is always higher, defendant is
18 always lower?

19 A Yeah.

20 Q You mentioned in your direct, and I think I've
21 got it and tell me if you think I'm right --

22 A Okay.

23 Q -- that Jim Walker had a duty to the Smith
24 family. Am I right?

25 A Yes.

1 Q Okay.

2 A In my opinion. I think he does, because he is
3 the lawyer for the personal representative, who's
4 bringing the action on behalf of the beneficiaries that
5 include the Smith family, and I believe that in that
6 context -- you know, again, I'm not a probate lawyer, but
7 I think that -- I think from a fiduciary standpoint, that
8 he owes them some sort of obligations. He owes me some
9 sort of obligations, I think, on a professional level.
10 If you're, you know, taking actions that affect your
11 case, and I think if you're going to treat Bree Smith as
12 a referral lawyer, which he has said more than once, and
13 you also have ethical and legal obligations to your
14 referring lawyer.

15 Q Well, you caveat that -- fine. That's fine.

16 Do you think that a person -- the personal
17 representative could be upholding their duty to the
18 beneficiaries without agreeing with what they want to
19 have happen?

20 A Yes, in the right --

21 Q That's it.

22 A In the right context. In the right context.

23 Q All right. That's fine.

24 A Not doing something without --

25 Q If we can go to Exhibit T.

1 THE COURT: While you're searching for
2 Exhibit T, how much time do you think, just out of
3 curiosity?

4 MR. BROWN: I'd say about a half hour to
5 45 minutes.

6 MR. RICCIO: Could we take a break?

7 THE COURT: Does anybody object to -- how
8 much time do you need?

9 MR. RICCIO: Ten-minute break?

10 THE COURT: Ten-minute break.

11 MR. BROWN: Fine.

12 THE COURT: Break for ten minutes.

13 (Whereupon, a recess was taken.)

14 THE COURT: I have Exhibit T out.

15 Q Mr. Rivkind, I just have a few more -- I
16 chopped down my questions and then Ms. Byrne's going to
17 have just a few at the end.

18 Exhibit T, if you could just identify -- if
19 it's okay, I'm just going to say, is that the letter from
20 you to Mr. Walker on June 19, 2006?

21 A Yes.

22 Q I think you testified that especially during
23 that period of time, things started to -- that there were
24 a flurry of letters between you and Mr. Walker.

25 A Yes. Things had deteriorated, yes.

1 Q If you would go to the bottom of the first
2 page, where I've got -- where it starts the sentence,
3 "The," on the fourth line. If you could read that.

4 A Sure.

5 "The negative publicity as well as negative
6 statements also in a sense suggested that Jennifer's
7 action may in some way have contributed to what occurred
8 to George. With all that said, it is not surprising that
9 the Smith family have had difficulty communicating with
10 Jennifer with open arms."

11 Q Is it plausible that somebody reading that
12 letter could take that to be threatening?

13 A No.

14 Q I specifically refer to the "contributed to
15 what occurred."

16 A No, not at all. I mean -- you know, I
17 shouldn't say what somebody would read into that. I
18 don't think so. I can tell you exactly what it was
19 written for. It was written in response to him saying
20 certain things about the Smith family. This wasn't
21 threatening saying that, you know, this is a conclusion
22 in any way. It's just saying that the statements that
23 were being made out in the media, not just necessarily
24 from the clients -- you want to say how it can be
25 interpreted, somebody -- the public perception could be

1 interpreted that way.

2 Q I'm saying -- let's go back --

3 A It's not threatening. What do you mean by
4 threatening? To who?

5 Q To Jennifer.

6 A No. It wasn't meant to be that at all. It
7 was just to explain why my clients didn't have open arms
8 for Jennifer. I had no reason to threaten Jennifer at
9 all. I mean, I tried to make that clear throughout. I'm
10 the attorney who's -- you know, I mean, I don't have a
11 reason to -- the letter wasn't written to threaten
12 anybody. I mean, it was -- as you can see, "the negative
13 publicity also," with that said in mind, "it's not
14 surprising the Smith family had difficulty communicating
15 with Jennifer with open arms." I think that the letter I
16 was responding to, he put in there that our clients were
17 hampering things and Jennifer wanted to speak with them
18 and -- you know, this case had a long history, you know.
19 I mean --

20 Q I do know. I do know. I'm only saying they
21 haven't spoken to each other since December of '05. The
22 Smiths have gone on national media stations and said
23 tarnishing things about Jennifer. You write in your
24 letter things that Jennifer did could have contributed to
25 George's disappearance.

1 Couldn't that be perceived as threatening,
2 even if you didn't mean it as such?

3 MR. JONES: He's asked that twice.

4 A No. I don't think so.

5 MR. BROWN: He hasn't answered --

6 MR. JONES: He has --

7 THE COURT: I think you've answered the
8 question.

9 A No, not at all. It's just as the statement
10 suggests. It's not threatening at all. I mean, if
11 somebody told me they interpret it as a threat, I would
12 respond immediately and say to them it wasn't a threat.
13 I apologize if you interpreted it that way. But it
14 wasn't intended as a threat, nor do I read that in any
15 way as a threat.

16 Q Okay.

17 A I know how to write a threat if I wanted to.

18 Q If this settlement doesn't get approved, and
19 Jennifer is not the personal representative, the personal
20 representative could still bring the suit. But could she
21 say I don't want you, you personal representative, to
22 bring the individual claim for me, in the new action?

23 A The -- I'm trying to understand your question.

24 Q I'm saying, can a personal representative --
25 I'm really asking. Can a personal representative bring

1 an action without bringing the claims of the other
2 people?

3 MR. JONES: I'm going to object. I think
4 he's asking Mr. Rivkind to opine on Connecticut
5 law. He's already testified he's not a Connecticut
6 probate attorney.

7 MR. BROWN: No, I'm simply asking about
8 maritime law. I really want to know in maritime
9 law. I'm saying, can a personal representative --
10 well, okay.

11 Q In this case, you had the discussions with
12 Mr. Walker about which claims were going to be brought
13 for both Jennifer and the Smiths. And you said that you
14 had a disagreement with Mr. Walker because Mr. Walker did
15 not want to bring their individual claims for intentional
16 infliction of emotional distress in the case.

17 A Correct.

18 Q Could he have brought the case for a personal
19 representative and can the -- can the heir who would be
20 the one to receive assets under the suit, would they be
21 able to say to the personal representative, I don't want
22 you to bring it for me?

23 MR. JONES: I don't understand the
24 question. I don't know if the witness

25 A I'm not sure I follow it. Are you saying can

1 she just decide I don't want to have any stake in the
2 wrongful death case?

3 Q That's right.

4 A Is that the question?

5 Q Yes. Individually, could she say that?

6 MR. JONES: Again, wouldn't that be a
7 question whether or not the case is brought up
8 here?

9 MR. BROWN: No. This is maritime law.
10 I'm simply asking --

11 A I don't think there's anything unique to
12 maritime law that addresses that question, is what I'm
13 confused about. You know -- generally, I mean -- I guess
14 if I don't want to file a lawsuit, I don't file a
15 lawsuit. There's nothing about a maritime law
16 specifically that I think answers that question. And I'm
17 not sure I understand the question.

18 Q Could you bring the case without -- okay.

19 Can the personal representative bring the case
20 for the spouse if the spouse doesn't want anything out
21 of -- if they don't want to participate?

22 A Well, I don't think there's anything maritime
23 that says that one way or the other. Now, whether
24 probate addresses that, if it affects --

25 THE COURT: You don't have to answer

1 about probate. Just answer with respect to
2 maritime, which you did.

3 A Yeah. I don't know. I guess, you know, you
4 could bring a case, not bring a case. If somebody
5 doesn't want to and tells you not to, I guess it could
6 still be brought without the person.

7 Q Exhibit V, if you could take a look at the
8 first full paragraph on Exhibit V.

9 MR. JONES: What is that?

10 MR. BROWN: Exhibit V, first full
11 paragraph.

12 MR. JONES: I'm just asking what it is.

13 A It's a June 28, 2000 [sic] letter from me to
14 Mr. Walker.

15 The first full paragraph that you have
16 bracketed here?

17 Q Yes. I'm just asking you to take a look at
18 it. Then I'll ask you a question.

19 A Yes.

20 Q I just highlighted that one. But in a lot of
21 these letters, you talk about a conflict between the two
22 sides.

23 A Yeah.

24 Q Isn't it true -- I mean, isn't it true that in
25 a lot of these letters it's a conflict on what should be

1 done with respect to the case? You mentioned conflict of
2 interest, and I'm saying wasn't there a disagreement as
3 to what should be done, a conflict between how the case
4 should be prosecuted?

5 A Can you distinguish or clarify that?

6 Q Well --

7 A I know what --

8 Q Weren't there disagreements about whether
9 claims should be brought inside the case or not, and how,
10 you know

11 A I think -- no. I'm not sure I know what you
12 mean. The plan was to file one lawsuit, and I think what
13 I'm saying here about a conflict is when the difference
14 is between just trying to get as much money versus trying
15 to get money plus answers.

16 Q But -- okay. Couldn't there be a good faith
17 disagreement between the parties on how to get money and
18 answers?

19 A There could be -- yeah, you could always have
20 a disagreement. The question is how you handle the
21 disagreements, how you resolve the disagreements, and how
22 you openly discuss those agreements in the context of,
23 again, which I'm not a probate lawyer, is when you have
24 personal representative, attorneys, and fiduciary
25 obligations. That's what I was getting it.

1 Q Okay. That's fine.

2 MR. BROWN: I'm done.

3 Ms. Byrne, you have a few.

4 CROSS-EXAMINATION BY MS. BYRNE:

5 Q A few hours ago, Mr. Rivkind, you had
6 mentioned that there was a tip line, and that tip
7 information was made available to Jennifer and to
8 Attorney Walker.

9 MS. BYRNE: I'd like this marked as an
10 exhibit.

11 MS. STROILI: This is Exhibit 9.

12 (Whereupon, the document was marked as
13 Petitioner's Exhibit 9.)

14 Q And you also mentioned earlier today that
15 Attorney Walker received information on the tip line,
16 that he really didn't provide you much of anything,
17 perhaps one tip. Nothing -- no documentation was ever
18 actually received by you from Mr. Walker.

19 I'd like for you to take a look at this letter
20 from Attorney Walker dated March 13 to Sean O'Malley.
21 This is an eight-page letter, and in the interest of time
22 I'll just read it quickly for the stenographer.

23 MR. RICCIO: It's an exhibit?

24 MS. BYRNE: Yes.

25 MR. RICCIO: Do we have to read it?

1 MS. BYRNE: I'm not going to read the
2 exhibit. I'm going to summarize in the interest of
3 time.

4 Q This is a letter from Attorney Walker to Sean
5 O'Malley, who's with the FBI. And it says "This will
6 confirm the conversation between our offices. We
7 received two telephone calls from an unidentified male
8 who stated we should investigate Gregory Rosenberg as
9 someone who may have been responsible."

10 I draw your attention to page 2 of that
11 letter, the carbon copy to you, sir.

12 A Yes.

13 Q And also to page 3 of the exhibit, where there
14 is some documentation with regard to the actual message
15 received, apparently on March 6, by Attorney Walker's
16 office. And I draw your attention as well to the last
17 page of the exhibit, which is the fax confirmation to
18 your office.

19 A Yes.

20 Q Do you remember that letter, by any chance?

21 A Yeah. I think that's what I said earlier.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Q All right. I have another one as well. This

1 is a March 28 letter from Attorney Walker.

2 MS. STROILI: This is Exhibit 10.

3 (Whereupon, the March 28, 2006, letter from
4 Mr. Walker to Sean O'Malley was marked as Petitioner's
5 Exhibit 10.)

6 Q This is a March 28 letter from Attorney Walker
7 to Sean O'Malley. This says, in a nutshell, "Enclosed
8 please find a listing of 800 telephone calls our office
9 received." And that is carbon-copied to you as well. Is
10 that correct?

11 A Yes. I see that, yes. It's a listing of just
12 numbers, yes.

13 Q Correct.

14 Then, sir, I have one other set of exchanges.

15 MS. BYRNE: I'd like this marked as an
16 exhibit.

17 MS. STROILI: Exhibit 11.

18 (Whereupon, the document was marked as
19 Petitioner's Exhibit 11.)

20 Q This one says on its top, James Walker from
21 Brett Rivkind, sent April 10 to James Walker. This is a
22 response from you to an e-mail that was sent by Attorney
23 Walker to you also on April 10.

24 By the way, is your e-mail address
25 seainjury@rivkindlaw.com?

1 A Yes.

2 Q And this is also, first of all, an e-mail from
3 Attorney Walker following up on his earlier information
4 about the tips that were received.

5 And then your response --

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] -- something else that had
10 transpired. And I wrote him that I would appreciate
11 learning of the developments promptly, you know, not so
12 far after the fact, I think was what my response was,
13 yes.

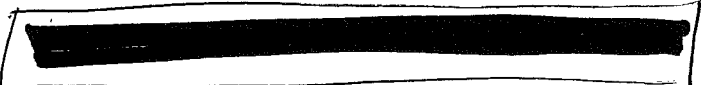
14 Q [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]


18 A Yes. He did tell me about that. And --








19 Q So your statement earlier today that you
20 really hadn't received any information from Attorney
21 Walker, perhaps one bit of information from Attorney
22 Walker, wasn't quite accurate?

23 MR. JONES: I'm going to object to that.

24 A I don't think I ever said I didn't receive any
25 information or one bit of information. I told you there

1 was a time my communications were pretty good with him
2 and he let me go on the ship and we did have discussions
3  At some point in time
4 after the fact he told me about the phone calls being
5 recorded.

6 I'm not saying Mr. Walker didn't tell me
7 anything. We were supposedly friends also. I'm just
8 saying to you, and you can see it in my letters and
9 e-mails, that he was telling me he was getting hundreds
10 of tips, and my clients -- he told me they were
11 insignificant, but my clients had asked me -- I took his
12 word, but my clients asked me to get the actual tips that
13 were coming in that he was telling me were hundreds so
14 that they could see them and satisfy themselves whether
15 they were significant or not. You can see from the
16 letters, he told me he was going to send them to me; he
17 never sent them. That's all. 

18 
19 
20 
21 
22 
23 
24 

25 If they're trying to impeach him -- I'm

1 not sure where we're going with this.

2 A Just to make it clear, I did get this, tips,
3 but there's letters saying -- because Mr. Walker was
4 telling me that this tip line was working great, they
5 were getting, you know, tons of calls, they were really
6 busy receiving them, and I was relaying that information
7 to my clients, and my clients said can I get it, and I
8 requested it. I think there's letters saying that.

9 Q Also earlier today you impressed the Court
10 with the information that you really learned about this
11 settlement agreement and the terms of the settlement
12 agreement quite late, possibly you had learned about it
13 through the *Nancy Grace Show*, possibly you had learned
14 about it through a press release that you might have
15 seen?

16 A Or a letter that was sent to my office. I
17 don't recall exactly.

18 Q All right. You thought, though -- earlier
19 today in your testimony, you thought that you had not
20 heard of the terms until July 3. You also indicated --

21 MR. JONES: I'm going to object to that,
22 your Honor. It's not correct. He testified he had
23 received a letter from Mr. Walker that was dated, I
24 think, on June 29 that informed him of the
25 settlement, and the terms of the settlement were

1 included in the letter.

2 I'm going to have to object to counsel
3 characterizing what the witness said. If she wants
4 to bring up his prior testimony so we can have an
5 accurate accounting of what he said and then
6 question him, we can do that. But I don't want to
7 have her paraphrasing or misquoting what he said,
8 which just happened, and then having to have him
9 respond to that, in an effort to make it look like
10 he wasn't being candid.

11 A I received that letter, I said in my direct.
12 The date of the letter is clear, whatever the date is on
13 that letter. It outlined generally the settlement, but
14 it referred to a comprehensive settlement agreement, and
15 I said I wanted the comprehensive settlement agreement
16 and didn't get it.

17 Q I think you also indicated that you were not
18 certain of the terms and also that there was a question
19 about the tolling of the statute of limitations. So I'm
20 going to ask you to take a look at Exhibit N, which is
21 that letter from June 29. And just, if you would,
22 quickly summarize number 1, number 2, and number 3 there.

23 A Okay. Number 1 has to do with the
24 information. It's not complete based on the agreement I
25 read.

1 Number 2 -- I mean, it's a general outline.

2 It's not by all means a comprehensive agreement that's
3 referred to in the cover of the letter. So --

4 Q I believe --

5 A -- it's a summary, I guess.

6 Q -- he indicates -- it says "The terms of the
7 proposed settlement are as follows."

8 And number 2 and number 3, if you don't mind
9 reviewing.

10 A Yeah. 2 is about the contribution to a
11 charitable foundation.

12 And 3 is the amount of money and costs and
13 they will not offer any separate settlement to Jennifer.

14 Q I believe also earlier today you indicated you
15 were concerned about the tolling of the statute of
16 limitations, and you were concerned that in that time
17 period leading up to July 4, July 5, you weren't sure if
18 there was a tolling. Could you take a look at page 2 of
19 that letter from Attorney Walker and just, if you would,
20 read the very first paragraph out loud.

21 A "Jennifer authorized and instructed me to
22 accept this offer in principle and to present the offer
23 to the Probate Court in Greenwich, Connecticut, for
24 consideration and approval. Your clients obviously have
25 an opportunity to inform the Probate Court whether they

1 approve the proposed offer. The deadline for filing the
2 wrongful death action against the cruise line will be
3 tolled pending the approval of the proposed settlement by
4 the Probate Court and the exhaustion of all potential
5 appeals and/or the expiration of all applicable appellate
6 periods."

7 Is that enough?

8 Q Sure. And the date of that letter again?

9 A June 29. But that's not a tolling agreement.

10 Q Excuse me?

11 A That isn't a tolling agreement.

12 Q No, it isn't the total agreement.

13 A Tolling, it's not a tolling agreement. You
14 asked me that I testified earlier that I was concerned
15 that I hadn't gotten a tolling agreement. That's not a
16 tolling agreement.

17 Q I don't think that we asked you about a
18 tolling agreement.

19 A Tolling, the statute of limitations, an
20 agreement about the waiver of the statute, that you said
21 to me were you concerned about the statute.

22 Q About the status.

23 A Statute of limitations --

24 Q Right.

25 A -- the status, and I said yes. And now you

1 had me read that. That doesn't take my concerns away.

2 First of all, in the terms of the proposed
3 settlement, one, two, three, four, whatever's there,
4 doesn't say anything about that. And, B, until I see an
5 agreement signed by the other side that says what he's
6 telling me in a letter, not even part of the terms of the
7 settlement agreement, yeah, I'm concerned. Very much.

8 MS. BYRNE: Thank you.

9 THE COURT: Anything further? Okay.

10 Redirect?

11 MR. JONES: Just a couple of quick
12 questions.

13 REDIRECT EXAMINATION BY MR. JONES:

14 Q That letter, Exhibit N, doesn't include the
15 actual terms of the settlement. It's not the settlement
16 agreement, correct?

17 A No. If you read the settlement agreement,
18 it's different.

19 Q You were asking for the actual tolling
20 agreement, which had not been provided to you, correct?

21 A Absolutely. I wanted to see it signed by the
22 other side, what the language was.

23 Q In fact, the actual settlement agreement was
24 signed on July 11, 2006, twelve days later, wasn't it?
25 This letter is dated June 29.

1 A Yes.

2 Q Mr. Rivkind, earlier they mentioned something
3 about sanctions in the lawsuit down in Florida.

4 A Can I say something, too? Why I had a little
5 concern, too, about not getting these agreements so
6 quickly and stuff, was, it was making a big deal about,
7 you know, getting information, and the time -- we had
8 waited as long you should wait to start the lawsuit, and
9 then I couldn't understand, if really the big deal was
10 getting all this information and that was such an
11 important part and such a great concession from the
12 cruise line, why there wasn't faster action. Why wasn't
13 this agreement produced? Why wasn't the motion to get it
14 approved started immediately? Why -- you know, I was
15 concerned about all that. And, again, part of the
16 suspicions of the way things went down towards the end.
17 I couldn't understand that.

18 Q Is it also possible that if things had been
19 expedited and you actually got the information in
20 paragraph 4, you might not have had to bring the lawsuits
21 on behalf of the Smiths?

22 A I'm not sure.

23 Q Okay.

24 A Yeah.

25 Q Getting back -- they brought up the issue of

1 the sanctions. You have not been sanctioned, correct?

2 A No, nor do I expect to be. I think it's a
3 tactic of the cruise line, and of Mr. Peltz, although,
4 again, somebody that I know very well for a long time,
5 but that's Bob Peltz, that's the cruise line. And he has
6 the right judge, and it's an intimidation tactic, you
7 know. First we're going to hire -- you know, if you look
8 at the history, they hired Lanny Davis, the cruise line,
9 big lawyer who used to represent Bill Clinton, to spin
10 the media, you know, again, to show how important media
11 is to the cruise line. They probably spent more than the
12 settlement with Lanny Davis.

13 But -- so that's one tactic. We'll get it to
14 go away in the media, and then we'll attack the family,
15 then we'll make friends; whatever they can do to make you
16 go away. Now they got Jennifer to go away, the wrongful
17 death. They have our case, you know. And I will say
18 that I don't think they think much of it. They've come
19 to me and said, you know, if I would dismiss the appeal,
20 they would drop the motion for sanctions, which I turned
21 down. So that may give you some indication of why they
22 really filed it.

23 Q If this case had been filed jointly, do you
24 think you would have been hit with those sanctions?

25 A I think the chances of that happening would

1 have been much less, would have been a much better
2 scenario for us.

3 Q If it had happened, then you and Mr. Walker
4 would have been hit with the motion for sanctions,
5 correct, because you would have filed jointly?

6 A Depends how we would have done it. I think we
7 could have done it where, you know, I take the brunt of
8 the allegations relating to the Smiths.

9 But I will say that if you look at the
10 allegations that are in my Complaint for intentional
11 infliction of emotional distress, they're not really much
12 different than the allegations that are in the wrongful
13 death case, you know, so

14 Q On cross-examination there was much made about
15 the rift between the Smiths and Jennifer. Even though
16 the clients weren't talking, you and Mr. Walker, at least
17 up until a certain point, were talking, correct?

18 A Yes. We were acting as go-betweeners.

19 Q With respect to -- I apologize. I don't know
20 what exhibit this is. It's the one that says "Smiths
21 wonder."

22 MS. BYRNE: *The Greenwich Citizen*
23 article?

24 Q It's Exhibit 8.

25 Mr. Rivkind, this article came out after the

1 settlement was agreed to, correct?

2 A Yes.

3 Q And the information that's contained in it,
4 was this information anything new in terms of the public?

5 A No. What it basically was, trying to
6 summarize to this reporter the information that had come
7 out, you know, over time and time again, and so it's
8 nothing -- you know, I mean -- none of this stuff is new,
9 all of this was brought out. I mean, the fight between
10 George and Jennifer, that was, you know, out there in the
11 media already. You know, that an eyewitness who said
12 that she kicked him was out there already. So none of
13 that's anything new. It's just kind of my way of
14 explaining, you know, this attack on the family, that
15 they're acting, you know, irrational in this situation.

16 Q And the fact it was being stated by the
17 Smiths, would there be that much more of a cumulative
18 effect? Would it really affect the value of the case
19 that much, that the Smiths had made some of these
20 comments, which had already obviously been well
21 chronicled?

22 A In my opinion, again, it was out there, and it
23 wasn't going to -- you know, the Smiths saying it, I
24 think would be discounted for, you know, the parents, and
25 understandable.

1 Q The Smiths were in fact out in the media at
2 that time pretty extensively, correct?

3 A Yes.

4 Q Would you attribute -- was the fact that the
5 Smiths had garnered so much attention in the media, did
6 that actually lead to the Congressional hearings? Were
7 their activities in the media a large part of what led to
8 those Congressional hearings?

9 A Absolutely. I think this case led to the
10 beginning of the Congressional hearings, led to the
11 formation of an organization of victims of incidents on
12 cruise ships, which I helped form. As I said, the
13 national attention to this case, you know, is remarkable,
14 to say the least.

15 Q When the Smiths first were out in the media,
16 they were attacking RCL, correct? They weren't attacking
17 Jennifer.

18 A As I said, there was a bite-your-tongue type
19 thing. They were, you know, very good about -- you know,
20 and they were instructed and that was followed where our
21 purpose was not -- we didn't go in the media to attack
22 Jennifer at all, I mean, you know. We went into the
23 media to get information out there and hopefully receive
24 information back. Mrs. Smith can tell you that. You
25 know, the media's funny, but they criticized the Smith

1 family for not being in the media. You know, something
2 happened to your son, you should be in the media.
3 Natalie Holloway's mom's out there all the time. You
4 need to keep attention going, you need to keep the FBI's
5 interest in the case, you need to keep it so it doesn't
6 get put on the back burner.

7 Q Did the fact that the Smiths got out into the
8 media, their activities in the media, did those
9 activities increase the value of this case, as far as
10 you're concerned?

11 A Yes.

12 Q With respect to your fees, is testifying here
13 today against your own interests?

14 A Probably. I guess, you know, if -- as I said,
15 I'm on a contingency. I'm not getting paid by the hour,
16 I haven't gotten paid. And if the settlement's approved,
17 I guess, you know, I think I have a basis of -- you know,
18 I should receive my legal fees. So, yeah, I guess you
19 can say that.

20 MR. JONES: We're done. I have nothing
21 further.

22 MR. BROWN: Nothing, your Honor.

23 THE COURT: I just had a quick question,
24 if you don't mind.

25 THE WITNESS: Sure.

1 THE COURT: This is only just for my
2 purposes, to understand all of this, and for DOHSA
3 purposes.

4 You had mentioned that your clients would
5 receive a payment based on services that their son
6 might provide for them. Did you talk to an
7 economist at all as far as how much that might be
8 worth?

9 THE WITNESS: You know, I talked
10 preliminarily to an economist. I didn't get any
11 formal report, and I discussed the situation with
12 him, and he -- if we went that way he wanted -- you
13 know, to get the economist is about a \$15,000 --
14 you know, economists are expensive. He wanted all
15 the tax returns, the business records. So we would
16 have gone that route, but I didn't get that far
17 with him to see if he had a viable, within the
18 standards of economic principles, to come up with a
19 significant figure or not.

20 THE COURT: And if the lawsuit had gone
21 the whole way, is that the only damages, for lack
22 of a better word, is that the only payments they
23 could have received, was for those lost services?
24 Obviously if there's a settlement, that's something
25 else. But if it went the whole way and the judge

1 renders judgment or a jury renders a decision,
2 that's what your clients would receive?

3 THE WITNESS: Yes. Arguably -- and
4 again, this -- and I'm not even entirely clear, to
5 tell you the truth. But there's an element of
6 damages in wrongful death in maritime, even under
7 Death On The High Seas Act, that's discussed in all
8 the treaties, the cases, about the estate, meaning
9 separate from Jennifer, separate from the Smiths,
10 on behalf of the estate recovers. We call it in
11 Florida net accumulations. They call it loss
12 inheritance. There's support for that. Whether
13 that gets eaten up in the support calculations or
14 duplicative or not, that's an economic battle.

15 But if the estate were to recover some
16 dollars for net accumulations or loss inheritance,
17 then I guess it would kick back to what the law,
18 the probate, is, as to who gets the estate money.

19 THE COURT: There might be a little bit
20 something there, but you haven't talked to anybody.

21 THE WITNESS: No, I have not.

22 THE COURT: Basically, your thoughts on
23 the 2 to 3 or 5 million dollar potential
24 settlement, what you were talking about there was
25 mainly that would be by putting the pressure on the

1 cruise line, bad publicity, with the hopes that
2 there will be some higher settlement, and that's
3 why you're disappointed with this one, is you
4 figured there might be a bigger settlement?

5 THE WITNESS: Well, the first -- partly
6 true. The other aspect is this settlement included
7 the purpose of getting information from the cruise
8 line. And I think that, you know, if you're going
9 to make that part of your settlement, which it
10 should have been, I think, for this kind of case,
11 absolutely, from both lawyers' standpoint, from
12 Mr. Walker's and mine, that to agree to the
13 settlement in the context of the way this
14 information was going to be given, if you're going
15 to negotiate the settlement and get the
16 information, it should have been a better agreement
17 as far as the information aspect also.

18 So I guess that's what, you know,
19 disappointing about the information is -- and then
20 you don't know, because the cruise line then has to
21 start producing people under oath. Now, you don't
22 know whether, as that progresses, if they're going
23 to -- there's two scenarios, they could fight more
24 or they can cave.

25 THE COURT: You had mentioned earlier,

1 and just for confirmation, that a lot of this, you
2 felt, that would have been gathered in litigation
3 would have been more credible, maybe more
4 substantive, I guess.

5 THE WITNESS: Yes.

6 THE COURT: I don't have anything
7 further.

8 Anything from anybody else? Okay.

9 (Whereupon, at this time Mr. Rivkind left the
10 hearing room.)

11 THE COURT: Does anybody need to take a
12 break? Do you want to stop, keep going?

13 MR. BROWN: Five minutes and then we'll
14 go to Mr. Mase.

15 (Whereupon, a recess was taken.)

16 THE COURT: You're calling a witness?

17 MR. BROWN: Calling a witness.

18 THE COURT: The witness you're calling?

19 MR. BROWN: Curtis Mase.

20 Thereupon,

21 CURTIS MASE, being first duly sworn, was examined and
22 testified as follows:

23 THE COURT: Would you please state your
24 full name and address.

25 THE WITNESS: My name is Curtis J. Mase.

1 My address is 5505 Arbor Lane in Coral Gables,
2 Florida.

3 DIRECT EXAMINATION BY MR. BROWN:

4 Q Mr. Mase, I'm going to ask the Court -- I'm
5 going to make this an exhibit.

6 MS. STROILI: 12.

7 (Whereupon, the biography was marked as
8 Petitioner's Exhibit 12.)

9 Q Mr. Mase, I guess for simplicity, I think I
10 can identify this as your biography; is that right?

11 A Yes.

12 Q Could you please tell the Court about your
13 background and credentials.

14 A Sure. I attended Florida State University,
15 graduated in 1982 with a BA in English and business.
16 Went to law school there, graduated in 1984 with honors.
17 I was sworn in as a member of the Florida bar in 1985.
18 Practiced in a couple of different firms. Founded my own
19 firm in 1997.

20 But beginning in 19- -- I think '88, '87, '88,
21 I began representing a variety of business interests in
22 maritime matters. I've pretty consistently represented
23 cruise lines and other businesses in maritime cases for
24 the past 20 years. I have tried hundreds of jury trials.
25 I'm Board certified with the Florida bar in civil trial,

1 I'm Board certified by the National Institute of Trial
2 Advocates In Civil Trial Law. And I continue to practice
3 in the area of civil litigation representing cruise
4 lines, pharmaceutical companies, representing other
5 businesses. These days more and more plaintiffs. That's
6 pretty much it.

7 Q Thank you very much.

8 A Sure.

9 Q And your experience as an attorney
10 representing cruise lines, could you -- have you ever
11 used the Athens Convention as a defense?

12 A I have used it on several occasions to limit
13 the damages that are recoverable. The Convention is --
14 it's an international treaty to which the United States
15 is not a signatory, but the vast majority of the cruise
16 ships sail under a foreign registry or flag, and the
17 countries to which I think pretty much every major cruise
18 line under the flag they sail are signatories. So long
19 as they sail from a foreign port or country that's a
20 signatory and is not a U.S. departing or returning
21 cruise, the Athens Convention will apply to limit the
22 damages that are recoverable by passengers who suffer
23 injuries.

24 There's a statute in the United States -- I
25 did this from memory -- I want to say maybe 46 USC 183, B

1 or C, that does not allow a carrier, a cruise line, to
2 put a limitation on the damages that are recoverable into
3 the passage ticket. But that does not apply, obviously,
4 on a foreign to foreign port journey. And on numerous
5 occasions, to answer your question, in foreign transits
6 we have raised the Athens Convention as a defense and
7 we've been able to limit the damages recoverable
8 typically to -- it's around 80,000 Special Drawing
9 Rights, or about 70-, \$75,000, depending on the
10 conversion on the date of the incident and so forth.

11 There's a provision that's under -- I guess
12 it's UK law, which allows for a slightly higher amount,
13 and I think that's somewhere around \$400,000. I'd have
14 to look again. But that requires that it had to have
15 been a UK carrier. That's, again, sort of a twist on it.

16 It's a lot like the Warsaw Convention, but it
17 is very commonly applied. I have in both Florida state
18 court and in local federal courts been able to limit the
19 damages very effectively with the Athens Convention, and
20 those have held up in appeal through both the Florida
21 state appellate system and the federal appellate system.

22 Q Could you please discuss with us what -- the
23 Death On The High Seas Act and whether it applies in this
24 case.

25 A DOHSA, as it's commonly referred to, Death On

1 The High Seas Act, it's a federal statute that limits the
2 damages recoverable when death of a passenger occurs past
3 a certain distance from U.S. shores. Obviously in this
4 case -- I don't remember if it's 3 or 12 miles. I know
5 off of Florida there's a wacky group of decisions that
6 actually make it the leading edge of our gulf stream that
7 have come into existence in Florida state courts. Here
8 you're clearly much further out of the United States than
9 would be required to apply DOHSA. It's been held, in
10 situations where deaths occur to American passengers who
11 bring suits in American court for damages where they
12 occur overseas in foreign -- off of foreign countries in
13 their nautical waters, DOHSA does apply to limit the
14 damages. The damages limitations are straightforward;
15 pecuniary damages lost, predeath pain and suffering is
16 expressly exempted. Pecuniary suffering is pretty much
17 what you would expect, the net accumulations to the
18 estate, the loss of the income of the decedent, that type
19 of thing. But specifically DOHSA doesn't allow the
20 predeath pain and suffering. And it does allow -- I
21 don't know if it specifically addresses, but there is a
22 narrow band of cases that allows for a loss of services
23 recovery component as well.

24 Q The loss -- what would loss of services be?

25 A Typically for the spouse. It's sort of an

1 amorphous kind of a concept. What it is, it's kind of
2 what's the value of what your spouse's services are to
3 you in the sense of, you know, changing a light bulb,
4 mowing the yard. Trying to value the types of things
5 that a spouse, service-wise, does within a relationship.
6 It's really a pretty modest number in the grand scheme of
7 things when you look at some of the DOHSA cases. It's
8 required by federal maritime law, a decision called
9 Culver out of the 11th Circuit, to be reduced back to
10 present value. I've seen it range typically anywhere
11 from a couple thousand dollars a year to maybe \$5,000 a
12 year. So you run that out and you reduce it back to
13 present day. Doesn't typically add a whole lot to a
14 claim, but it's something -- it's an element that people
15 are entitled to claim, and they do.

16 Q Would the loss of services be divvied up
17 between the spouse and, say, the parents?

18 A I've never seen that happen. I would think
19 that that might be governed in part by -- I've never seen
20 that. Even if it were, you couldn't double up. You
21 would have to take the number and apportion, so maybe the
22 spouse would get 80 percent and then the parents might
23 get 20, just to pick arbitrary numbers. But it's nothing
24 that I've ever seen happen.

25 Q How many cases do you think you've been

1 involved in?

2 A Oh, my God, I can't even tell you. Cruise
3 line cases, if I said a thousand I'm probably under, so I
4 don't know the answer to that.

5 Q You're saying in the thousand cases that
6 you've been in, there hasn't been any loss of services
7 allocated to the parents?

8 A Not that I can ever remember, no. I think
9 it's always been to a spouse. And in the wrongful death
10 cases that I'm just going through in my head, I don't
11 ever remember services being allocated to parents.
12 Services are always viewed as something that are to the
13 spouse because once they're married that's who gets the
14 benefit of the services. I've seen it for children, so
15 that you understand, but never to parents of an adult who
16 is married.

17 Q For loss of support, how does that get --
18 what's your experience as far as how that's defined and
19 who recovers?

20 A Spouse recovers in an adult married
21 individual, and the loss of support is -- it's
22 essentially a calculation where you take a look at what
23 the individual is earning, then you multiply that out
24 times his expected life expectancy, you bring the number
25 back to a present value number, once you have the gross

1 number. Let's say the gross number turned out to be a
2 million dollars. You would then have an economist bring
3 that back to a present value number, and that's required,
4 as I mentioned, by general maritime law under the Culver
5 opinion and 11th circuit, as well as other opinions and
6 other circuits. That's a very clear maritime precedent.
7 You then have to take out whatever percentage would be
8 personal consumption by the decedent. And what you're
9 left with is the loss of support which would be available
10 for the spouse or if there were surviving children.

11 Q Have you ever seen the loss of support go to
12 the parents?

13 A Not in a situation where you had a married
14 adult.

15 MR. BROWN: Ms. Stroili, you're going to
16 have to help me out. I've got two exhibits. And
17 I'm saying help me out as far as the number. I've
18 got Rule 1.442 from Florida Rules of Civil
19 Procedure.

20 MR. RICCIO: It's Exhibit 5.

21 MR. BROWN: Thanks.

22 And I think the very next one is statute
23 768.79.

24 MS. STROILI: 6.

25 Q To make it easy, I'm just going to give you

1 both.

2 A Okay.

3 Q Are you familiar with that rule and statute?

4 A Yes.

5 Q Have you ever -- have these -- is the rule and
6 statute -- are they the same thing?

7 A They work together in tandem. Essentially,
8 yes. They're accomplishing the same objective in the
9 sense that they create an offer of settlement, proposal
10 for settlement. A procedural vehicle for shifting the
11 burden of attorneys fees, if you made a reasonable offer
12 or proposal to settle to the plaintiff or defendant. So
13 the answer is they work together. They're supposed to be
14 the same. But the Civil Rules Committee in our
15 legislature seem to invariably have tweaks and
16 differences.

17 Q In the thousand cases that you've worked on,
18 have you ever used these or offered -- made offers of
19 settlement?

20 A Every day. Every day in my office, one of our
21 attorneys probably files a proposal for settlement, yes.

22 Q Have you successfully enforced this against
23 plaintiffs?

24 A Yes. And I've enforced it against passengers
25 who sued cruise lines. The one that comes most recently

1 to mind is a case called Blitz versus Renaissance Cruise
2 Line. It was the 4th District Court of Appeal. We have
3 five district courts in the state of Florida. It went up
4 on appeal a couple of different times. Ultimately the
5 poor plaintiff who lost and didn't take the offer, we
6 picked up his Mercedes to pay for the attorneys fees. I
7 know we've successfully enforced it in other cases.
8 That's just one whose name I can remember at the moment.
9 The answer is yes.

10 Q How many maritime cases are actually tried --
11 I guess I should say, in your experience of the at least
12 1,000 cases, how many get tried and how many get settled?

13 A You know, when I started, when I started
14 practicing, it seemed like the medical malpractice cases
15 and the maritime cases went to trial more than the other
16 civil cases. The malpractice cases, I think just the
17 nature of the issues, they were -- insurance companies
18 were a little more cowboy-ish, they were willing to take
19 their chances. The maritime cases, I think because
20 people saw the area of law as so unique and discrete,
21 that oftentimes if you had a practitioner, particularly
22 in a passenger case, who didn't know as much about
23 maritime law, might be more willing to try the case.

24 So in one year I personally tried 17 jury
25 trials. I was completely exhausted doing that. Each one

1 of those went at least four or five days, one went for
2 two weeks. So, you know, I would say today it's kind
3 of -- the industry has matured. People are more familiar
4 with it. The cruise lines put through these geographical
5 forum selection clauses, they've got them all down in
6 south Florida. So I think it's become more normal, if
7 you will, so if -- whatever the percentage is, and I
8 don't know it. If 95 percent of civil cases settle, the
9 cruise lines cases are the same today. It used to be
10 more. They're not -- it's not today.

11 Q Are there any -- are there risks of going to
12 trial?

13 A Yes.

14 Q Is that why 95 percent of them settle?

15 A Yes. I mean, I tried -- I saw Brett outside.
16 Really he and I hadn't seen much of each other in the
17 last six, eight months. I tried a very fun case against
18 Brett Rivkind back in May of last year. You may have
19 seen about it. It's the case where the passengers were
20 sailing to New York out of Miami and the ship got hit by
21 70-foot rogue wave. We spent close to a month trying
22 that case in federal court. Brett invested -- this is
23 not secret, this is public record -- over a quarter
24 million dollars in experts in that case. It's all in the
25 public transcripts, so I don't mind talking about it.

1 And he had two other law firms, one very, very fine
2 appellate support firm, Joel Perwin, was with him, and he
3 had a New Jersey firm. Brett got nothing. Not a penny.
4 I know, based upon what our fees were, the amount of time
5 that he had invested in that had to be a killer. So I
6 think there are a lot of risks going to trial. Brett
7 demanded a hundred million dollars out of the box, and
8 even going into trial his demands were very, very high.
9 He was convinced he would prevail.

10 Q How much did it cost?

11 A Our personal costs were about 170 or 180. I
12 remember Brett's were over 250 because I calculated as
13 his experts testified, and I used it as an argument,
14 frankly.

15 Q You're saying 150-, 160-, 180,000?

16 A Yeah. Brett's were 250,000. And the time.
17 To understand what the time is, Brett has said he had, in
18 just talking to him, over a million dollars worth of time
19 calculating his hours and so forth. Which would make
20 sense.

21 Yeah, there are a lot of risks going to trial.

22 Q I'm going to show you what is Exhibit A, which
23 is the settlement agreement in this case.

24 A Yes.

25 I have a marked copy. If you don't mind, I'm

1 going to grab that.

2 Q If you can go to paragraph 4.

3 A Okay.

4 Q There's been a lot of talk today about
5 paragraph 4. It talks about what information would be
6 turned over by the cruise line to Jennifer, as
7 administrator, and the parents, the Smiths, under certain
8 conditions.

9 A Right.

10 Q And I guess I'd ask you to review it for a
11 minute.

12 A I did review it this morning and I'm pretty
13 conversant in it, so I'm good with it.

14 Q My first question is: Is that -- are there
15 documents that would be turned over that would normally
16 be work-product privileged?

17 A Yes.

18 Q What are those?

19 A There are documents that are not work-product
20 privileged as well, so that we're clear.

21 Q Feel free to go through the whole thing.

22 A Relevant ship's logs are something that would
23 be requested in discovery typically and would be turned
24 over.

25 Videotapes are something that would be

1 requested in discovery and would be turned over.

2 Security reports are something that would be
3 typically argued to be work product, and in my
4 experience, 90, 95 percent of the time would be upheld as
5 being work product. It's going to depend on the exact
6 nature of that security report, too. That phrase is a
7 little bit broad.

8 Q What would the distinctions be?

9 A Incident reports, for example, I think are
10 never going to get turned over under any set of
11 circumstances.

12 Reports of specific investigatory actions in
13 the specific incidents are typically going to be
14 privileged as work product.

15 The phrase "security reports" could include
16 such things as the routine ones, when does the security
17 guy get there, when does he make his rounds, that kind of
18 thing. That kind of report would get turned over. So
19 just the words "security reports," I draw a distinction.
20 And I'd say that certain of those are not, certain are.

21 This is going to require carte blanche turnover, so --

22 Q Your opinion is based on all of these cases
23 that you've litigated and decisions rendered by judges?

24 A And arguing in Florida courts for almost 24
25 years now what the work product and attorney-client

1 privilege is.

2 Florida is not even remotely like federal
3 court. Federal court, the work-product privilege is, I'd
4 say, at best kind of like a net. It lets an awful lot
5 through. An investigation that's done under a federal
6 work product standard into an incident is probably going
7 to be discoverable. An incident report may very well be
8 discoverable. Under Florida law, incident reports are
9 absolutely positively sacrosanct from discovery. It is
10 just about impossible to get them. The Florida courts
11 have developed, over the past, I don't know, 15, 20
12 years, maybe longer, just this incredible resistance to
13 producing incident reports.

14 There's a great case, I can't quote it, it's
15 called Nakutis versus Winn-Dixie, and it says something
16 to the effect incident reports are not made out of some
17 morbid curiosity about how incidents occur. They're made
18 because history has taught us that there's a likelihood
19 that litigation will follow. We have to protect
20 businesses from being able to gather this information and
21 have reasonable certainty they can defend themselves. So
22 where the federal courts have drawn a very different
23 line -- and Rule 26 may even require you to disclose
24 things that would otherwise be privileged under Florida
25 law, Florida has gone the exact opposite way and said we

1 are going to make a very bright line test and not allow
2 this type of work product to be produced. Statements
3 that are taken, whether part of a direction of an
4 attorney or by an investigator or simply by an employee
5 implementing a company process for investigating
6 incidents, are protected by work product in Florida. Not
7 so typically in federal law.

8 So in that sense, reading paragraph 4 as a
9 whole, it's going to require turnover of things which,
10 under Florida law, would be absolutely protected.

11 Incident reports, statements -- there's a great case, in
12 fact it's my case, I'll take a little credit for it, it's
13 called Doe versus Carnival, and it involved an appeal as
14 to whether or not, when you turn incidents and statements
15 over to the FBI, whether a request to produce them sent
16 to the cruise line has to then be answered. We convinced
17 the appellate court, consistent with Florida law, just
18 because we turned them over to the FBI, we did not waive
19 the privilege. The argument, of course, wait a minute,
20 you turned them over to the third party.

21 And our appellate courts went no, no, no.
22 That's an obligation imposed by law. That obligation was
23 not pursuant to a subpoena, but rather it was because you
24 have to cooperate in a federal investigation.

25 So to go through the rest of this --

1 Q Hold on before you do. If you could --

2 MR. BROWN: I want to make this an
3 exhibit, your Honor. Winn-Dixie Stores versus Doe.

4 MS. STROILI: Exhibit 13.

5 (Whereupon, the document re: Winn-Dixie Stores
6 versus Doe was marked as Petitioner's Exhibit 13.)

7 Q Page 2, at the bottom, the part that's got a
8 mark next to it --

9 A Right.

10 Q -- I believe that's talking about that
11 Winn-Dixie versus Nakutis.

12 A Indeed it is.

13 Q Could you go over what the quote in the -- I
14 don't know where the quote is supposed to start.

15 A I have it.

16 The quote that I was talking about is
17 actually, out of Nakutis, is this. It says: It's hardly
18 arguable that an accident report of a slip and fall
19 incident in a grocery store prepared by the grocery store
20 employees or agents --

21 MR. JONES: Where are you reading from?

22 THE WITNESS: This is from a memo of law
23 that I'm told you all have seen on work product.

24 A This is just a quote. I'll give you the
25 document itself.

1 MR. RICCIO: That's fine. Let him read
2 it.

3 A "It's hardly arguable that an accident report
4 of a slip and fall incident in a grocery store prepared
5 by the grocery store employees or agents is not a
6 document prepared in anticipation of litigation. Those
7 reports are certainly not prepared because of some morbid
8 curiosity about how people fall at the market."

9 This quote is probably the single most cited
10 quote by the Florida appellate courts since this was
11 written in '86, going forward, for upholding and
12 expanding work product protection to incident reports,
13 statements, and investigatory materials, whether
14 generated because an attorney suggested it, a claims
15 person, or internal business practices to get the
16 information for purposes of understanding what happened
17 with the incident.

18 And the logic set out here that's been
19 expanded on through the years has just made Florida's
20 work-product privilege, I think, one of the toughest
21 around.

22 MR. BROWN: Is this brief sanitized?

23 THE WITNESS: It's okay.

24 MR. BROWN: I want to make this an
25 exhibit.

1 MS. STROILI: 14.

2 (Whereupon, the document was marked as
3 Petitioner's Exhibit 14.)

4 MR. BROWN: Obviously copies are going to
5 have to be made for all parties.

6 A What that is is simply a canned brief on
7 Florida law, work product, on privileges, on statements.
8 That represents the current state of Florida law on the
9 various things. That's what it is.

10 Q Keep going on paragraph 4, as to what would be
11 considered work-product privileged and what wouldn't.

12 A I think I mentioned security logs -- or
13 security reports, rather.

14 Guest services logs would typically be not
15 privileged, those would be produced.

16 Pursers logs would typically be produced.

17 Bridge logs would typically be produced.

18 Security logs, again, I think that's kind of
19 similar to security reports. You have to understand what
20 specifically -- and anything that related to
21 investigating an incident is going to be covered by the
22 work-product privilege. So I think there again you're
23 giving something up that's significant in that, depending
24 upon how you define it.

25 Radio logs are typically not privileged.

1 LockLink records are probably not work-product
2 privileged, but they are typically subject -- there's a
3 whole other line of cases that talks about protecting
4 people's private information and their privacy rights and
5 so forth. Florida actually recognizes sort of a -- it's
6 kind of a fuzzy privacy privilege. I think LockLink
7 records, people could certainly raise that privilege. I
8 know I would never turn them over without a court order.
9 I'd go in and I'd say people have a right to expect a
10 reasonable expectation of privacy about their LockLink
11 records.

12 Q You're saying like other people?

13 A Sure, exactly.

14 Q Like in this case, the people who would be
15 called the Russians?

16 A Correct. I think anyone other than, for
17 example, the Smiths, would have an expectation of
18 privacy, and a potential privilege as a result.

19 Room service receipts are obviously not
20 privileged.

21 Seapass records, the same issue with privacy.

22 Photographs which are taken after the incident
23 are going to be privileged. They're going to be treated
24 as work product.

25 Phone records, again, you have the privacy

1 issue.

2 Communication records with the Turkish police.
3 To the extent that included the turnover of privileged
4 documents of any kind, whether it be the ships' internal
5 reports, whether it be medical reports, whether it be
6 statements -- and oftentimes, quite frankly, the cruise
7 lines are very -- they give foreign authorities, and I
8 know Royal Caribbean does because I've dealt with it
9 myself, everything. I mean, the incident reports, the
10 statements, everything they have, because they want to
11 cooperate with the authorities as part of the process.
12 But that does not waive or in any way vitiate the
13 privilege for the same reason I just explained in the Doe
14 opinion.

15 Turkish police records, I don't have any real
16 knowledge about that. It would be the same thing if
17 there was something privileged in it from Royal
18 Caribbean.

19 Noise complaint records would probably not be
20 privileged.

21 Medical records are going to be -- I mean, of
22 the individual themselves, they have a medical privacy
23 privilege.

24 Communication with the Greek Coast Guard,
25 again, to the extent there's anything in there that's

1 turning over a privileged document, that privilege should
2 still remain.

3 Super Charge records, it's privacy only.

4 Documents found in Jennifer Hagel-Smith's and
5 the decedent's cabin, she might have a privacy right in
6 them. I don't think there would be an actual privilege
7 per se.

8 Reports to the Bahamian authorities, the same
9 thing.

10 Then spa records, that's not going to be
11 privileged.

12 Notices and letters to law enforcement
13 agencies and governments. That often does include,
14 because oftentimes you're going to attach statements,
15 incident reports. But that's still going to keep its
16 privilege character.

17 Then to me, probably the most significant in
18 the whole paragraph 4 is this "and relevant signed
19 recorded witness statements." That, I have to say, I
20 have never ever in my career seen any defendant include
21 an agreement to turn over their internal witness
22 statements as part of a settlement. And that would be
23 privileged under Florida law.

24 Q Is this an unusual paragraph to have?

25 A I've never seen anything like it. And it's

1 fascinating to me because -- it's obviously a component
2 of something negotiated, I'm sure, very aggressively, and
3 it really does give something that I've never seen, and
4 I've handled a number of death cases, disappearance
5 cases, sexual assault cases, and I've put this into the
6 same genre of those. We've talked about this in
7 negotiations. I've never given it up. I've never seen
8 anything like it.

9 The other idea here up at the top, that
10 representatives of RCL will meet with Jennifer
11 Hagel-Smith and her attorneys and answer all factual
12 questions concerning factual information obtained, I
13 can't imagine doing that either. That's very unique.

14 Again, the fact that this paragraph then
15 allows, down at the bottom, suit against other third
16 parties based upon this information, certainly that's a
17 right that you would have, but to be able to use this
18 information potentially to learn about that and then sue,
19 be able to use what would otherwise be privileged and
20 then potentially develop a lawsuit against third parties,
21 is, again, something I've never seen, ever. And I'll
22 add, and I think it gives value. I can't give you a
23 dollar, but I think it does give some value to the deal.

24 Q Is it likely that this was in there because
25 Royal Caribbean had a public relations problem?

1 MR. RICCIO: I object to that question,
2 unless he's got some basis for that knowledge.

3 MR. BROWN: Okay. Well, Mr. Rivkind was
4 allowed to talk about it at length.

5 A I would have to be honest with you, I think it
6 would be speculative for me, not having negotiated this,
7 to try to tell you why it's in there, and I don't want to
8 be speculative. I'll stick with the things that I know.

9 Q That's fine.

10 A I was going to offer one other comment on the
11 thing, not about that.

12 There's something kind of interesting to me,
13 just as a lawyer, which is that in the middle of this
14 thing they have a contractual provision that says that it
15 is specifically agreed and understood that the release of
16 the information specified above, to the extent it would
17 otherwise not be discoverable as protected by the
18 attorney client and/or work product doctrine, shall
19 maintain its privileged character and shall not be
20 released or disclosed to any third party not mentioned in
21 this paragraph 4.

22 What I find fascinating about that is the risk
23 which Royal Caribbean took. And I want to explain that
24 to you. Because you're talking about two parties
25 agreeing that they're going to share privileged

1 information. That makes perfect sense. Then you're
2 saying that you can use that privileged information to
3 develop a suit against third parties, and I understand
4 the logic of that. But then you try to contractually
5 protect the privilege despite voluntary disclosure to a
6 third party. I don't know the answer to the legal
7 question, but I would dare say there is tremendous risk
8 that a Court would say, that's very nice, but you just
9 waived the privilege in its entirety.

10 And the reason I share that is because it
11 seems to me that in looking at the uniqueness of this
12 clause and what was being done and the effort being made
13 to try to meet whatever need was being met, that Royal
14 Caribbean risked, and continues to risk to this day,
15 wholesale abdication of the protection of the privilege.

16 It's an opinion.

17 MR. BROWN: I'm done, your Honor.

18 THE COURT: Any cross?

19 CROSS-EXAMINATION BY MR. RICCIO:

20 Q I want to start by asking you a question,
21 Mr. Mase, that Mr. Brown did not ask you.

22 Is Royal Caribbean a client of your office?

23 A Yes, they are. So is Carnival, Norwegian,
24 Oceania, Teva Pharmaceuticals.

25 MR. BROWN: The reason I'd like to say I

1 didn't ask the question --

2 MR. RICCIO: This isn't argument.

3 A The answer to your question is yes, sir.

4 Q And the risk, just following up what you
5 answered with this risk of this wholesale abdication of
6 the privilege, you would agree with me, sir, that it
7 would not be -- Ms. Smith would not be able to run in
8 there and file another lawsuit after she saw these
9 documents and found something of interest?

10 A No, I would disagree with you. In fact, I
11 think the clause specifically says that she can file
12 another lawsuit, just not against Royal Caribbean.

13 Q That's the point. You're talking about the
14 great risk Royal Caribbean is undergoing. Certainly --
15 the risk certainly wouldn't come from Ms. Smith, would
16 it? Would it come from Ms. Smith?

17 A Yes. I think --

18 Q Let me ask you a question. It's late in the
19 day -- I don't have a lot of questions. I want to just
20 get this over with.

21 Ms. Smith would not be able to turn around and
22 file a lawsuit against Royal Caribbean for this incident
23 based on something she saw in those documents.

24 A Correct.

25 Q They've been released.

1 A Yes.

2 Q The Royal Caribbean would have been released?

3 A The answer to your question is yes. Royal
4 Caribbean cannot be re-sued by Ms. Smith or anyone else
5 since her release is on behalf of the estate in her
6 capacity as the representative.

7 Q So where is the big risk coming from?

8 A The big risk is this. Royal Caribbean has
9 right now documents which are work-product and
10 attorney-client protected. Royal Caribbean has, in an
11 effort to make this settlement and to make the
12 information available to Ms. Smith, has agreed to do so
13 in this clause. But you know as well as I do when you
14 voluntarily turn over to a third party work-product and
15 attorney-client privileged documents, historically and
16 traditionally you waive the privilege in so doing that.
17 I personally question whether legally a contractual
18 agreement that you will keep the privilege intact is
19 remotely binding upon a court of law.

20 And the problem here that I see -- not the
21 problem -- the risk is, in Royal Caribbean's effort to --
22 and I have no doubt Ms. Smith and her attorney's
23 insistence to turn over the information that they have,
24 to arrange for the orderly turnover, there's been an
25 effort to try to contractually keep the work product and

1 attorney-client privileges in place. But as a
2 practitioner doing civil litigation of all types for
3 almost 25 years, I seriously question whether a judge
4 would be duty-bound in any way to honor that, whether
5 case law says voluntarily turning over to the third party
6 waives the privilege. And I would suspect that you could
7 make a heck of a compelling argument, that's very
8 entertaining and very nice that you put this in here, but
9 too bad.

10 Q Let me kind of cut to the chase here.

11 Where is the risk coming from? Who's going to
12 bring the lawsuit? Where is the financial risk to Royal
13 Caribbean? Ms. Smith is done, her case is over. Where
14 is the risk going to come from?

15 A First of all, I don't think that it's a
16 financial risk to Royal Caribbean. Let me make that
17 clear. What I think it's a risk of is that the documents
18 that are otherwise protected and as to which they
19 contracted to keep them confidential except in this
20 limited sphere have lost their protection, arguably.
21 That's the risk.

22 Q There's no financial risk; we would agree.

23 A Not to Royal Caribbean.

24 Q If Ms. Smith goes out to publish them in *The*
25 *New York Times*, that's the risk you're talking about?

1 A That's a good point. Maybe there is some
2 financial risk, because I don't know what's in them. The
3 reality is maybe that does cause financial harm. If it
4 does cause financial harm because she goes out and
5 publishes them, I'm not sure there's a remedy.

6 Q There certainly is not going to be any
7 financial harm to Royal Caribbean from Ms. Smith because
8 her case is settled. Can we agree on that?

9 A We can agree that as to her case being settled
10 there's no additional financial risk as to the case
11 itself, yes.

12 Q Fair enough.

13 You handled, I think you said, a thousand and
14 probably understated it --

15 A I'm sure.

16 Q -- given the years of experience that you've
17 had.

18 You've utilized, you said, successfully, the
19 Athens Convention in a number of the occasions, numerous
20 cases?

21 A I have, yes.

22 Q If you're settling most of these cases, are
23 you telling us that most of the cases that are settled
24 are settled for numbers under the Athens Convention?

25 A Depends on the cases. Cases where the Athens

1 Convention applies, what we will do typically is we will
2 go -- depends on the experience of the practitioner. If
3 it's someone who practices in the area, we'll say to
4 them, hey, foreign to foreign, no U.S., got the
5 convention, let's talk. And we talk in terms of around
6 the numbers of the SDRs. So typically what we're talking
7 about there is, you know, anywhere between fifty and a
8 hundred thousand dollars, unless you got the UK factor in
9 it.

10 Other cases, where you may have an argument
11 about Athens -- I lost an Athens Convention argument that
12 I tried to make on a sailing from Boston to Nova Scotia,
13 then the ship left Nova Scotia, turned back around and
14 went back to Nova Scotia. I tried to argue that because
15 it had sailed on the leg from Nova Scotia out, someone
16 got injured, and they went back, it's foreign to foreign
17 signatories, et cetera. I lost because it originated out
18 of Boston. But when I had the discussions about it, I
19 didn't talk in terms of just the SDRs. I said, I may
20 lose so let's talk a little more.

21 It's factually driven, to answer your
22 question.

23 Q It's a part of the negotiations of the case.

24 A Of course. But it's a risk factor to
25 consider, is my point.

1 Q There are certainly cases which you've been
2 involved with that have settled for substantially in
3 excess of these Athens Convention limitations?

4 A Yes. But almost always the facts there made
5 me believe that my Athens Convention defense had a
6 weakness to it.

7 Q And in addition there would have been cases
8 that settled at or below the Athens Convention
9 limitations, correct?

10 A Correct, yes.

11 Q This isn't the -- the Athens Convention in a
12 case is not a magic bullet that automatically eliminates
13 liability in excess of the financial limitations by that
14 convention. Is that a fair statement?

15 A It's not a magic bullet, but it's a very, very
16 powerful limitation on the right set of facts, and these
17 facts fit.

18 Q In a case like this, where the case settles
19 for a sum that I -- I'm no math major -- in excess of
20 approximately 20 times the Athens Convention limitation,
21 would it be your view that the Athens Convention
22 limitation in this negotiation had a substantial effect?

23 A It was 20 times the lower limitation. As I
24 recall, this would fit the UK -- potentially fit, the UK.

25 Q Then that would make it, what, 6 times more?

1 A A couple, let's say, 2, maybe 3.

2 Q But if Athens applied it would be 20 times,
3 right?

4 A Yes. But to answer your question, the fact of
5 the matter is that lawsuits, as you well know, settle
6 based upon a whole variety of factors. The Athens is
7 one. The facts are another. This case, no doubt, the
8 ongoing publicity was another. A desire for closure.
9 The financials, you look at the -- what the potential --
10 if you look at what the financial pecuniary losses were
11 in this case, on the lower end you had, you know, a net
12 present value by RCL that was around 500,000, on the
13 higher end you have a number that's about one and a half
14 million. So the fact that this case happened to settle
15 near the midpoint of that, one could suggest that those
16 played a role as well. The Athens Convention could and
17 should play a role. The fact that there was publicity
18 could and should have played a role. Let's think about
19 that for a moment. I would say Athens ought to be
20 depressing the number down from our 1.5, right? I would
21 say the publicity that's ongoing might motivate Royal
22 Caribbean to bring the number up some. Lots of factors
23 go into the settlement.

24 Q You're aware of the argument, I'm sure, in the
25 Wallis case that this type of ticket, the Royal Caribbean

1 situation, that Athens Convention does not apply, I
2 assume?

3 A I am.

4 Q Okay. Let me ask you on this -- what we
5 call -- what do you call them, offers of settlement in
6 Florida?

7 A Proposals or offers, yes, sir.

8 Q Have you ever moved -- question number 1.
9 There's an issue about whether or not these offers or
10 proposals of settlement apply in maritime cases?

11 A There are,

12 Q That's, right now, I assume, in Florida, not a
13 finally decided issue?

14 A There's a distinction between -- yes, that is
15 correct.

16 Q That's up in the air at this point?

17 A Yes. That's a fair statement.

18 Q And in terms of in your role as a defense
19 lawyer, have you ever moved to strike any offers of
20 settlement that have been filed by plaintiffs?

21 A Absolutely.

22 Q That would be on the basis that?

23 A General maritime law didn't apply.

24 But I have also used them effectively as a
25 defense lawyer in general maritime law cases on both the

1 plaintiff and defendant and successfully enforced them.

2 Q You've been on both sides of that particular
3 issue.

4 A I absolutely have.

5 Q Like a good advocate.

6 A Absolutely.

7 Q That issue of the danger presented by an offer
8 of settlement in a case like this, that could go either
9 way, right?

10 A I think that's fair to say. But I think it's
11 also fair to say in the passenger cases historically
12 there's been a greater desire to enforce them for this
13 reason. You're not dealing with a crew member who's
14 entitled to the protection of the Court under what's
15 considered the wards of admiralty doctrine that
16 historically dates back to protecting seamen. And the
17 passengers have the ability to sue in state or federal
18 court. And in federal court there is no proposal for
19 settlement counterpart except for costs, as you may know.

20 By suing in state court, the logic our state
21 courts have applied in Florida has been you chose to come
22 to the Florida forum. Therefore this device, which our
23 legislature has put in place to eliminate congestion in
24 our courts by motivating, if you will, plaintiffs and
25 defendants to accept reasonable offers, should be

1 enforced because that benefits our court system, our
2 state court system, and you could have filed in federal
3 court. What I've seen historically is that the passenger
4 proposals tend to get upheld.

5 Q But you have, as an advocate, you have gone
6 into court and filed motions attacking the use of this
7 proposal for settlement term?

8 A Yes, sir.

9 Q Advocating it has no applicability under
10 Florida law?

11 A Absolutely.

12 Q How many times have you done that during the
13 course of your career?

14 A Oh, my God. I have no idea. I've argued both
15 sides of that, as you just said, so I can't tell you.

16 Q How many times have you been on that side, the
17 motion to strike?

18 A A lot. I've been on both sides a lot.

19 Q Your practice is -- I was a little confused on
20 this. Primarily your firm does defense work?

21 A It does. Over the past few years the
22 percentage has dropped. I would say today we're probably
23 50 percent cruise line. 17 lawyers and we do all kinds
24 of civil litigation.

25 Q Civil litigation against cruise lines?

1 A No, we don't do that. We defend cruise lines.

2 Q Your civil litigation is not against cruise
3 lines for wrongful death actions or personal injuries?

4 A That would be a conflict, that's correct.

5 Q A wanton conflict, would it not?

6 A Yes, sir.

7 Q Okay. So from the purposes of this
8 litigation, you're on the defense side, right, your
9 practice?

10 A I was asked to come up and offer testimony and
11 opinions on Florida law and on general maritime law and
12 my experience with cruise line cases generally to the
13 extent that that could aid the Court. I was certainly
14 asked by Royal Caribbean. I make no secret of that.

15 Q We're certainly going to get to that.
16 Wouldn't have you go back without talking about that.

17 A Sure.

18 Q You're a defense lawyer for various cruise
19 lines in Florida, right?

20 A I represent various cruise lines, yes.

21 Q That's the perspective you bring here this
22 afternoon to this Court, correct?

23 A That's one perspective. I'm also a trial
24 lawyer with 23 years of experience, so I think I bring
25 that perspective as well.

1 Q You talked a little bit about the risks -- in
2 response to Mr. Brown's questions -- the risks of going
3 to trial, and you identified some of them.

4 A Um-hum.

5 Q There's some benefits to going to trial,
6 aren't there? It's not all just down side, right? Or is
7 that different in Florida than it is in Connecticut?

8 A I'd say there's some benefits to going to
9 trial, too.

10 Q Sure. You mentioned that Brett Rivkind had
11 taken a hit in the particular case that you were talking
12 about.

13 A Only the most recent one.

14 Q Brett's a good lawyer?

15 A Brett is a good lawyer.

16 Q No question about that.

17 I understand he thinks you're a good lawyer.

18 A I would never say to the contrary.

19 Q He's won, I'm sure, during the course --
20 you've had some dealings with him as an adversary, I'm
21 sure?

22 A Quite a few times.

23 Q He's won some cases?

24 A Sure.

25 Q And he's lost some cases?

1 A Sure. As have I.

2 Q As have you, okay.

3 If you're in a position, generally speaking,
4 in litigation to get a reasonable settlement in a case,
5 something that's beneficial -- that you think as a
6 litigant that's beneficial, you're normally interested in
7 doing that, correct?

8 A Yes.

9 Let me back up for a second. You're asking me
10 to speak for litigants. I have to tell you, I've had
11 quite a few clients that I wished wanted to take a
12 reasonable settlement. They seem to have unreasonable
13 expectations. But, in general, your proposition makes
14 sense.

15 Q Sure, right? If you can do that -- I'm
16 talking about you as an advocate.

17 A I wish all clients would do that, yes.

18 Q Unfortunately they don't?

19 A They don't.

20 Q Unfortunately.

21 Let's talk a little bit about the work product
22 doctrine in paragraph 4, Exhibit A.

23 A Yes.

24 Q Preliminarily, the work product doctrine is a
25 document doctrine, isn't it?

1 A I think it began there. It has migrated into
2 other things. It's been applied to photographs, it's
3 been applied to other things. But, yes.

4 Q But it's primarily a document privilege,
5 correct?

6 A Yes.

7 Q And you mentioned here that there were a
8 number of documents that would not -- I don't want to go
9 through all this. It's late in the day.

10 But there's a number of documents here that
11 would not be privileged, correct --

12 A Yes.

13 Q -- that are listed in paragraph 4 of
14 Exhibit A?

15 A That is correct.

16 Q And the simple filing of a discovery request
17 would result in the production of those documents,
18 correct?

19 A Of the documents that I talked about, yes. I
20 mean, historically, just so that you know -- I'll tell
21 you this. The cruise lines, across the board, tend to be
22 pretty judicious in their turning over of the documents,
23 and they tend to, as many litigants do, jealously and
24 carefully protect anything they think might be
25 privileged.

1 Q Okay. But there's a number of things here
2 that you indicated under no circumstances would be --

3 A Absolutely.

4 Q -- privileged and they'd be subject to
5 discovery, correct?

6 A Yes, sir.

7 Q And there's a series of documents in here that
8 you think would be subject potentially to a privilege.

9 A Yes, sir.

10 Q Or portions of them. Again, depending on what
11 the circumstances were. And as you sit here today, you
12 haven't had a chance to look at the documents, right?

13 A That is correct. There are certain things I
14 can identify and tell you that are going to be privileged
15 no matter what. Statements and incident reports being
16 two.

17 Q Let's talk about those. Those are really the
18 key -- I think you said that's the most significant. All
19 right.

20 Let's assume now they claim that statements
21 they took from passenger X, okay, is a work product
22 doctrine and you're not entitled to. Let's assume some
23 crazy judge in Florida-- no offense -- says, you know,
24 they're right, okay? They're right, okay. Wouldn't I
25 still, as a litigant, if I was seeking the information,

1 wouldn't I be able to file a discovery request to your
2 client, RCL, and say to them, I want you to identify the
3 people that you interviewed, the passengers on that ship
4 that you interviewed, I want you to identify them.

5 Wouldn't I be able to do that?

6 A Yes.

7 Q And I'd get that information?

8 A Yes.

9 Q That's right in your case.

10 A Sure.

11 Q This case that I've been reading, Doe, that's
12 your case?

13 A Yes. The identity is not going to be
14 something that could be kept.

15 Q Exactly. I would be free as a litigant to
16 reach out to those people? If I felt it was appropriate,
17 I'd be able to sit them down and take their deposition,
18 right?

19 A Yes.

20 Q Right. And I could ask them -- I could ask
21 them if they had a copy of their own statement. If they
22 were given a copy, I could ask them to produce a copy of
23 that statement, couldn't I?

24 A Yes.

25 Q I could ask them what did you see as it

1 relates to this incident, correct?

2 A Sure.

3 Q And more importantly, I could ask them what
4 did you tell the investigators from Royal Caribbean,
5 right?

6 A That is correct.

7 Q There's no way that would be privileged,
8 right?

9 A That is correct.

10 Q Right. I'd get -- even though they're going
11 to withhold that statement from me, I can get the
12 functional equivalent of that information through normal
13 discovery --

14 A That's correct.

15 Q -- correct?

16 A What you can't get is you cannot get an answer
17 to all factual questions concerning the information.
18 What you can't get is the opinion work product that will
19 be embodied within the incident report. What you can't
20 get is for a representative of the cruise line to sit
21 down and connect the dots for you on what they interpret
22 the factual information to mean.

23 Q I don't need their interpretation, okay?

24 A I'm simply telling you what you can't get no
25 matter what.

1 Q As it relates to the Royal Caribbean employees
2 who had knowledge of this particular incident, I could
3 file a discovery request and obtain the names, the
4 employees or whatever, who had knowledge or information
5 regarding this particular tragic incident, couldn't I?

6 A Yes, sir.

7 Q I can sit them down in a deposition and I
8 could obtain that information from them, what they knew,
9 correct?

10 A Yes, sir.

11 Q The only limitation on me would be I couldn't
12 ask them about communications that they had with counsel
13 for Royal Caribbean, right?

14 A As to employees, that's correct.

15 Q You talked about this privacy privilege in
16 Florida. Again, I'm not familiar with Florida law. Is
17 that a statutory privilege?

18 A Seems -- no, it's not statutory. What it
19 is -- there's probably half a dozen opinions that have
20 come out in the last, I'd say, five years, which just
21 generally -- actually, I think one of the last opinions
22 is from our Supreme Court, and it actually seemed to
23 engraft kind of a provision of the Florida constitution
24 into this amorphous privacy privilege that they're
25 recognizing. It's over such things as --

1 Q Like what? What were they talking about in
2 that case?

3 A I think it's a phone records case, something
4 like that.

5 Q Has any Florida case held that LockLink
6 records of me as a passenger going in and out of my room
7 is entitled to privacy protection?

8 A No. And I think that you as a passenger,
9 you'd be entitled to get those through discovery, just so
10 we're clear.

11 Q I mean in terms of asking about, for instance,
12 the Russians, which Mr. Brown talked about, is there any
13 case in Florida that suggests that that is somehow
14 protected by a privacy privilege?

15 A I think there are half a dozen or so cases
16 which would allow an assertion of that privilege --

17 Q Sure.

18 A -- and I can't say which way that would go.

19 Q Right. This settlement agreement, Exhibit A,
20 which you talked about --

21 A Yes, sir.

22 Q -- it was a document that you said you've
23 never seen anything like, right?

24 A That is correct.

25 Q Okay.

1 A Paragraph 4 is what I've never seen anything
2 like, so we're clear.

3 Q As it relates to paragraph 4, doesn't it
4 depend, in terms of this production of materials, doesn't
5 it depend in large measure on the good faith of Royal
6 Caribbean in living up to these requirements?

7 A I think in any contract you have a -- don't
8 you -- I don't know if Connecticut recognizes -- Florida
9 recognizes the covenant of good faith and fair dealing.
10 I mean, parties to a contract have to be presumed to act
11 honorably and faithfully, and if they don't --

12 The answer to your question, to be direct, is
13 that in Florida covenant of good faith and fair dealing
14 is recognized as existing in contracts generally, and all
15 parties have to be presumed to be going to honor their
16 contractual obligations. So if they don't, they're in
17 breach of the contract. The answer to your question, I
18 suppose, is yes, in the same way everyone has to be.

19 Q Okay.

20 A Ms. Smith has obligations, too. We have to
21 assume she'll honor those obligations.

22 Q I'm sure she would.

23 I'm asking about Royal Caribbean. They'd have
24 to operate in good faith, right, in terms of complying
25 with this paragraph 4, right?

1 A Yes.

2 Q They would. And --

3 A Yes.

4 Q -- there really wouldn't be any effective
5 check on them to determine whether or not they have done
6 that?

7 A You know, that's an interesting question
8 because, you know, I think that if there were ever any
9 question about that, it would be pretty easy to file an
10 action in Florida court and ask a judge to issue subpoena
11 power as necessary, appoint some type of a guardian or an
12 ad litem, go in and inspect and ensure, produce records
13 for in camera inspection. So I don't agree at all. I
14 think the courts have the ability to enforce these. And
15 I can tell you Florida courts are unbelievable in the way
16 they enforce them. And under an opinion that's called
17 Moakley, it's about five years old, they now have the
18 power to sanction inherently bad faith behavior by a
19 party. So I think there's a powerful, powerful mechanism
20 in Florida to enforce this.

21 Q Those sanctions you're talking about, I assume
22 would be discovery disputes?

23 A No, sir. For bad faith actions by an attorney
24 in filing a case, in handling --

25 Q But in situations that involve post settlement

1 disclosure of documents?

2 A Absolutely. A party's bad faith is absolutely
3 inherently sanctionable under Moakley. Bad faith
4 behavior.

5 Q That would require a determination or an
6 evaluation made by counsel who's reviewing these records
7 that in fact there had been some bad faith on the part of
8 Royal Caribbean, right?

9 A I think your question a moment ago was
10 whether --

11 Q My question is right now --

12 THE COURT: One at a time.

13 Q My question --

14 A I don't mean to argue. Go ahead, ask me your
15 question.

16 Q My question is, the person, the counsel
17 reviewing those records or documents would have to make
18 an evaluation, hey, this doesn't seem right to me, right?
19 That there's something missing here, right?

20 A Sure. An interested party, someone would have
21 to decide that and ask, yes.

22 Q Exactly.

23 A I agree.

24 Q And in order to make that evaluation, they
25 would have to have certain documents turned over to them

1 that would raise their suspicions about whether or not
2 Royal Caribbean was not being forthcoming in its
3 production, correct?

4 A I think you'd have to have a good faith basis
5 to go to a Court.

6 Q My question -- I'm just trying to get an
7 answer to my question and get us out of here. Okay?

8 A Yes, sir.

9 Q There would have to be information contained
10 in the produced documents that would somehow raise the
11 suspicion of counsel that Royal Caribbean had not
12 produced all the documents that it should have.

13 A No, sir. I disagree with you.

14 Q They would just pull that out of the air? Go
15 to Royal Caribbean and say you didn't --

16 A Let me explain my answer.

17 Mr. Rivkind has been doing this as long as I
18 have. Let's just say that we're going to produce all the
19 things that are called for here. Let's just say it fills
20 five archive boxes and it's dropped off at his office.
21 All right? I would venture to say in the span of a day
22 or two, an experienced lawyer who understands how the
23 cruise line operates is going to be able to look and tell
24 whether or not there was proper production. Mr. Rivkind
25 is no different than Mr. Walker, who's also an excellent

1 lawyer, been doing this for many years. Mr. Walker sees
2 those same five archive boxes, he looks at it, he will be
3 able to tell immediately, did I get all the security
4 logs, because he knows from having gotten production of
5 hundreds of other cases of security logs what exists and
6 whether he's getting everything. He knows what these
7 various categories should include. So I would suggest to
8 you that your premise is wrong. An experienced lawyer
9 like Mr. Walker or Mr. Rivkind or myself could tell in a
10 very short period of time whether you had everything or
11 not. There's a very good mechanism in Florida for going
12 after someone playing with you.

13 Q You already said that.

14 Isn't there also going to be capable
15 experienced lawyers on the other side of the equation
16 from Royal Caribbean? Right?

17 A Sure.

18 Q Do you think that they're going to allow
19 documents to be produced that would raise suspicions that
20 they're withholding documents? Do you think that would
21 occur?

22 A I would hope that they would simply ethically
23 produce exactly what's required here. I would.

24 Q Who makes the determination about relevant --
25 there's a phrase in there, "relevant signed and recorded

1 witness statements." Pursuant to this agreement, who
2 makes the determination that it's relevant?

3 A Beats me. It's an ambiguous statement in the
4 contract. I would hope the parties would be able to come
5 up with a way of resolving that.

6 Q Right.

7 A If not, courts usually can.

8 Q And since Royal Caribbean's got the documents,
9 it's a logical conclusion that Royal Caribbean would be
10 the person making -- the entity making the determination
11 that the documents are relevant?

12 A No, because, again, we go right back to the
13 fact that Mr. Walker has an amazing amount of experience
14 and he's going to know what to ask for.

15 Q I'm talking about who's going to make the
16 determination these are relevant documents. Since
17 they're in the possession, custody, and control of Royal
18 Caribbean, certainly at least initially that
19 determination's going to be made by Royal Caribbean,
20 correct?

21 A Since this does not spell out how the
22 production occurs, I can't answer your question except to
23 say that I would expect a dialogue between both counsel,
24 Mr. Walker and Mr. Peltz, would result in the production.
25 And I would hope as part of that dialogue Mr. Walker

1 might identify any statements he perceives to be relevant
2 that either aren't produced in round one or that he wants
3 produced in round one.

4 Q That language isn't contained in there --

5 A No, sir. There's no mechanism --

6 Q So nobody would be able to march into court
7 and say, hey, we thought there was going to be a
8 dialogue, right?

9 A They can say we were supposed to get relevant
10 documents and here's why they're relevant. And in
11 Florida, just so you know, there's a case called Surf
12 Drugs v. Vermet, which defines what constitutes relevant
13 discoverable evidence, and the scope of what's relevant
14 is pretty doggone broad. So I think if I was going to
15 march into court and take that position -- Judge, I think
16 we should be able to have at minimum what we would be
17 entitled to discover otherwise as if the privilege didn't
18 exist.

19 Q That could lead to, under the terms of this
20 agreement, an extended and, I assume, expensive discovery
21 dispute about whether or not Royal Caribbean honored the
22 terms of paragraph 4, correct?

23 A If one assumes everyone's going to act in bad
24 faith and not honor their obligations, I suppose it
25 could.

1 Q You said your firm is 17 attorneys?

2 A We probably ought to get a real count. 16,
3 17, could be 18.

4 Q How many partners and associates?

5 A There are two other partners, and the balance
6 are associates. Probably one of counsel in there.

7 Q How long has your firm had a relationship with
8 Royal Caribbean?

9 A The firm came into existence in 1997. I began
10 representing Royal Caribbean in '93, probably.

11 Q So you've been representing them for
12 approximately 15 years?

13 A Yes, sir.

14 Q Is it your client or is there some other
15 partner in the firm whose client it is?

16 A I think it's fair to say it's a firm client.
17 Certain clients over time become firm clients.

18 Q I assume you benefit financially from Royal
19 Caribbean being a client of your law firm?

20 A As I do from most all of our clients, yes,
21 sir.

22 Q What percentage of your law firm revenue is
23 created by your work for Royal Caribbean?

24 A It's a guesstimate. Probably 10 percent.

25 Q That's been a pretty constant source of

1 revenue?

2 A It's actually been decreasing because the
3 number of crew and passenger cases have been decreasing.

4 Q What was it at one point?

5 A Higher. Could have been double that. I
6 don't -- I don't want to tell you a number and not be
7 accurate, so I'll say it could have been double that. I
8 don't think it would have been any higher than that.

9 Q When did that decreasing start?

10 A It's been dropping over the last 10 years or
11 so, I'd say. That's coincided with our doing work for
12 other clients, and the firm diversifying and growing,
13 frankly.

14 Q Royal Caribbean wants this agreement, this
15 settlement agreement, to go forward, to be approved?

16 A I think that's a fair statement.

17 Q And Royal Caribbean being, obviously, a client
18 of your law firm, correct?

19 A Yes, sir.

20 Q So basically you're here providing -- offering
21 expert testimony in support of a settlement that your
22 client is in favor of being approved by the Court?

23 A If you want to characterize, I think that's a
24 fair statement.

25 Q In terms of compensation for you, Mr. Mase, I

1 assume your time is valuable, who's paying you
2 compensation-wise?

3 A It's funny. We were talking about this
4 outside. I cannot give an honest and accurate answer to
5 that. I was called and asked by someone at Royal
6 Caribbean if I could make myself available to come up
7 here. I moved a mediation, I said, yes, I can. I was
8 asked, can you offer testimony on these areas, which are
9 the areas that I've talked about. I said, yes, I can.
10 We honestly never talked about who was going to pay me,
11 so I don't know the answer to the question. It's either
12 going to be Royal Caribbean or one of the folks on
13 Ms. Smith's side, I don't know.

14 MR. RICCIO: Thank you.

15 THE COURT: Any redirect?

16 MR. BROWN: Just a few, your Honor.

17 REDIRECT EXAMINATION BY MR. BROWN:

18 Q With respect to Death On the High Seas Act, do
19 cases go before judges or juries or both?

20 A I'm trying to remember if there's a jury trial
21 right in DOHSA. I think in state court they go before
22 juries, and I think in federal court they do not. I
23 could be wrong. There may not be a jury trial right to
24 DOHSA and -- I think both, is the answer to your
25 question.

1 I'm just trying to remember how that works. I
2 think if there's another claim, in addition to DOHSA,
3 that's with it, it can go to jury trial. I think both,
4 is the answer to your question.

5 Q Would it be fair to say that in your
6 representation of all the cruise lines that there's --
7 the clients tend to take a scorch-the-earth defensive
8 strategy?

9 A Yes. That's -- yes. It would be fair to say
10 that.

11 Q In this case, it's likely that depositions of
12 witnesses, which is being argued from the Smith side as
13 something that could be done, would involve traveling to
14 the following places: Greece, Texas, California,
15 Michigan, New York, Canada, Illinois, Louisiana, and
16 Nepal, Panama, South Africa, Costa Rica, Croatia,
17 Switzerland, Trinidad, Turkey, Romania, Jamaica, Brazil,
18 Philippines, Thailand, Norway, Germany, France, Chile,
19 and India.

20 Would it be fair to say that the defendant
21 would require the plaintiffs' attorney to go to these
22 places to depose the people who would be witnesses?

23 A In other words, if there are witnesses in all
24 those places, would it be fair to say it would be likely
25 that Royal Caribbean or a cruise line generally would try

1 to force those depositions take place in those places?

2 Q Yes.

3 A You bet. It, quite frankly, oftentimes is
4 part of the strategy, to drag people around, and I hate
5 to admit this, make it expensive to litigate the case,
6 because it's a disincentive -- or it's an incentive to
7 settle.

8 Q In your experience as an attorney for Royal
9 Caribbean and cruise lines, do you have experience when
10 your clients have acted in good faith?

11 A Of course.

12 MR. BROWN: That's it.

13 THE COURT: Anything?

14 REXCROSS-EXAMINATION BY MR. RICCIO:

15 Q The last question I have, your client Royal
16 Caribbean is a convicted corporate felon, correct?

17 A That is correct.

18 MR. RICCIO: Thank you.

19 THE COURT: Anything further from anyone?

20 Thank you very much.

21 (Whereupon, the proceedings were adjourned at 5:59 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

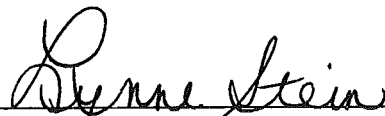
March 5, 2008

11:03 a.m.

PROBATE HEARING VOL. II

CERTIFICATION

I, Lynne Stein, Court Reporter and Notary Public for the State of Connecticut, do hereby certify that the foregoing 244 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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