

ONTARIO  
SUPERIOR COURT OF JUSTICE

HD/dl

B E T W E E N:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GRAVES, a.k.a. PHILIP GREAVES, GITTENS CLYDE TURNEY, R. G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE. LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY. FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED c.o.b. as LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY, PRICewaterhouseCOOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD. AND COMMONWEALTH CONSTRUCTION, INC.

Defendants

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This is the Continued Cross-Examination of K. WILLIAM  
McKENZIE, on his affidavits sworn on the 2nd day of  
October, 2009, the 26th day of November, 2009, the 7th day  
of January, 2010, and the 23rd day of April, 2010, taken at  
the offices of VICTORY VERBATIM REPORTING SERVICES, Suite  
900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario,  
on the 5th day of May, 2010.

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APPEARANCES:

GERALD L.R. RANKING	-- for the Defendant,
EMMELINE MORSE	PricewaterhouseCoopers
	East Caribbean Firm
DAVID I. BRISTOW, Q.C.	-- for the Defendants,
	Philip Vernon Nicholls
	and Cottle, Catford &
	Co.
MAANIT T. ZEMEL	-- for the Defendants,
	Eric Iain, Stewart
	Deane and Estate of
	Colin Deane

A P P E A R A N C E S (CONT'D):

LORNE S. SILVER

-- for the Defendants,  
Richard Ivan Cox,  
Gerard Cox, Alan Cox,  
Gittens Clyde Turney,  
R.G. Mandeville & Co.,  
Keble Worrell Ltd.,  
Lionel Nurse, The Right  
Honourable Owen Seymour  
Arthur M.P., Mark  
Cummins, Kingsland  
Estates Limited,  
Classic Investments  
Limited, The Barbados  
Agricultural Credit  
Trust (more properly,  
Barbados Agricultural  
Credit Trust Limited),  
the Attorney General of  
Barbados, the Country  
of Barbados, The  
Honourable Elneth  
Kentish, Malcolm Deane,  
Eric Ashby Bentham  
Deane, Errie Deane,  
Owen Basil Keith Deane,  
Keith Deane, Leonard  
Nurse, Estate of Vivian  
Gordon Lee Deane, David  
Thompson, Owen Gordon  
Finlay Deane, Life of  
Barbados Holdings and  
Life of Barbados  
Limited

IAN S. EPSTEIN

-- for the Defendant,  
Jessica Ann Duncan

LEAH ANDERSON VOJDANI  
JEFFREY W. KRAMER

-- for the Defendant, K.  
William McKenzie

INDEX OF PROCEEDINGS

	PAGE NUMBER
K. WILLIAM MCKENZIE, resumed	
Continued Cross-Examination by MR. SILVER	920 - 1107
Continued Cross-Examination by MR. RANKING	1107 - 1182
Continued Cross-Examination by MS. ZEMEL	1182 - 1210
Index of Exhibits	1211
Index of Undertakings	1212
Index of Refusals	1213
Certificate	1214

1 K. WILLIAM MCKENZIE, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. SILVER :

3 MR. KRAMER: Just confirming that I  
4 brought to the examination room this  
5 morning the contents of the box that was in  
6 Mr. McKenzie's garage to which he referred  
7 in, I think, paragraph 14 or something of  
8 his...let me just confirm. He refers to a  
9 box in his garage in his affidavit April  
10 23. The contents of that box is now here.  
11 One thing has been pulled out of that box  
12 that Mr. Epstein is content we produce,  
13 which is a file marked Mike Dribin. It  
14 only has one document in it. You can look  
15 at it and you can examine on it in due  
16 course and presumably mark it as an exhibit  
17 if you like. The rest of the contents are  
18 awaiting Mr. Epstein's consent before any  
19 of it is produced. The other things that  
20 Mr. McKenzie was asked to bring this  
21 morning, being his own copy of the  
22 transcripts and the...I was about to say,  
23 the other two things that you had asked Mr.  
24 McKenzie to bring this morning, being his  
25 copy of the transcript of his own

1 cross-examination, which he marked up, he  
2 does not have here today. You can ask him  
3 about it, but he tells me he did not make  
4 it home last night and was unable to  
5 arrange for it to be delivered. The second  
6 thing you asked him to bring this morning  
7 was a file which he says he has containing  
8 partnership matter communications. That is  
9 also not here for the same reason.

10 3281. MR. SILVER: Thank you.

11

12 BY MR. SILVER:

13 3282. Q. So, Mr. McKenzie, where was this  
14 box, this plastic box, that you delivered to Mr.  
15 Kramer, in your garage?

16 A. I think I said that the firm  
17 dispatched Mr. Lemieux, I'm going to say 25 boxes  
18 while I was away in Florida, to be delivered and  
19 there is one of them.

20 3283. Q. I'm going to say this again before  
21 we start. I'm going to try to ask specific  
22 questions that elicit specific answers. We're  
23 running out of time. We did this all day yesterday  
24 where you seem to want to put your thinking process  
25 on the record or make speeches on the record. I

1           asked you whether you found the box in the garage  
2           and you told me about Mark Lemieux and 25 boxes and  
3           you didn't...where did you find the box that you  
4           delivered to Mr. Kramer?

5                     A.       In the garage.

6       3284.           Q.       And according to you, that's the  
7           only physical hard copy documentation that you have  
8           of any kind that relates to the subject matter of  
9           the dispute, namely, your Allard file and your  
10          Nelson Barbados file and all the things we've been  
11          reviewing. That's the only thing you have, in hard  
12          copy, is what's in that box that you delivered to  
13          Mr. Kramer, right? Or is there more?

14                    A.       To the best of my recollection, when  
15          that box was delivered, that finalized what I did or  
16          didn't have.

17       3285.           Q.       And the box that you found in your  
18          garage that you delivered to Mr. Kramer, is that the  
19          same one box of documents that you referred to in  
20          paragraph 7 of your April 23rd affidavit?

21                    A.       That's accurate, yes.

22       3286.           Q.       And that was at your house yesterday  
23          when we started in the morning?

24                    MR. KRAMER:       No, as I had mentioned to  
25          you, he delivered it to me several days

1                   ago. I catalogued it yesterday morning and  
2                   gave you guys a listing of it. Today is  
3                   Wednesday? I think I got it on Friday.

4

5           BY MR. SILVER:

6           3287.           Q.       And yesterday I thought you said you  
7                   had people that you could get...whether you went  
8                   back home or not last night, you had people who  
9                   could get the transcripts and the other file down  
10                  here. What happened to your people?

11                   A.       That's not my recollection.

12           3288.           Q.       Of what you said?

13                   A.       Of what I said.

14                   MR. KRAMER:        I think he said he would  
15                   attempt.

16

17           BY MR. SILVER:

18           3289.           Q.       You made an attempt and you failed?  
19                   Or did you not even make an attempt because you  
20                   didn't go home last night?

21                   A.       I couldn't make it home last night  
22                   because when I got out of here at 6:30, I was in a  
23                   traffic jam and couldn't see straight, decided not  
24                   to go and be back here by 9:00. It was my decision  
25                   not to attempt to brave it.



1           3290.           MR. SILVER:       We got one document, Mike  
2                           Dribin, this is one of the files in the  
3                           boxes and there's only one document in the  
4                           file. Mr. Epstein, are you reviewing the  
5                           rest of it? When are you going to review  
6                           the rest of it?

7           MR. EPSTEIN:       It was delivered this  
8                           morning, when I get a chance to do it. As  
9                           soon as we can.

10          3291.           MR. SILVER:       Okay, we'll I'm going to  
11                           leave the Mike Dribin document out and I  
12                           will come back to it.

13

14          BY MR. SILVER:

15          3292.           Q.       I would like pick up where we left  
16                           off yesterday. We were looking at accounts rendered  
17                           to Peter Allard and paid for by Peter Allard  
18                           directly or indirectly to his company.

19                           MR. KRAMER:       Is that Exhibit K?

20          3293.           MR. SILVER:       That's Exhibit K.

21

22          BY MR. SILVER:

23          3294.           Q.       And we had just completed reviewing  
24                           the February 19th account, 2007. So, I would like  
25                           to move to the March 23rd account and firstly

1 confirm that all of these docket entries postdate  
2 the issuance of the statement of claim in Ontario,  
3 both the first one and then the second one in the  
4 name of Nelson Barbados Group Ltd. I think it was  
5 February 7th, but...so, each of these entries are  
6 accurate dockets charged to and paid for by Allard  
7 after issuance of the statement of claim, right?

8 A. Correct.

9 3295. Q. Then I would like to look at some of  
10 the entries again and see if you can help me to  
11 understand what you were doing. You'll agree with  
12 me that in this very time period, you and your  
13 assistant, Sunny Ware, were working on retainer  
14 agreements with Florida lawyers.

15 A. That's what it says. Show me,  
16 sorry.

17 3296. Q. February 16, Sunny Ware, review of  
18 numerous emails and retainer agreements with Florida  
19 lawyers, right?

20 A. I don't recall.

21 MR. KRAMER: The entry says that.

22

23 BY MR. SILVER:

24 3297. Q. And you believe it to be accurate?

25 A. Sunny Ware, that seems to be

1 accurate, what she docketed.

2 3298. Q. Right. Including conferring with  
3 you.

4 A. Okay.

5 3299. Q. Why were you or she corresponding  
6 with Trevor Carmichael?

7 A. I don't recall.

8 3300. Q. Do you know who he is?

9 A. He's a lawyer and so is Ms. Chacko,  
10 in Barbados.

11 3301. Q. And were they retained by you or Mr.  
12 Allard?

13 A. I don't recall.

14 3302. Q. Do you recall any interaction with  
15 Mr. Carmichael in respect of Kingsland?

16 A. No.

17 3303. Q. Sir, you had an interaction, you  
18 agree with that?

19 MR. KRAMER: Well, it looks like Ms.  
20 Ware had interaction.

21

22 BY MR. SILVER:

23 3304. Q. And there are other entries...

24 A. I had interaction with Mr.  
25 Carmichael.

1 3305. Q. About Kingsland?

2 A. I can't recall.

3 3306. Q. Well, you wouldn't have docketed to  
4 Mr. Allard in the Kingsland Estate action file if it  
5 wasn't about Kingsland, right?

6 A. I don't recall.

7 3307. Q. And then on the 17th, your docket  
8 entry is "Researching alternate service arrangements  
9 for writ", that's the Ontario action, right?

10 A. I don't recall.

11 3308. Q. Well, what else could it be? What  
12 other writ were you trying to serve at that time,  
13 sir? Let me put it to you this way. I'm suggesting  
14 to you that it was the Ontario action. Can you  
15 contradict or deny that?

16 A. No.

17 3309. Q. Then on the 18th, you're researching  
18 jurisdiction and foreign service. That, I suggest  
19 to you, is Ontario action-related as well.

20 A. I don't recall, but I won't  
21 disagree.

22 3310. Q. So, you were aware of a potential  
23 issue with respect to the jurisdiction of the  
24 Ontario action before receipt of any motion records  
25 from any of the defendants, right?

1                   A.       I don't recall that entry, but there  
2 was, whenever you search something in a foreign  
3 country, there is a concern about that.

4       3311.           Q.       You reasonably expected there to be  
5 a jurisdiction fight on the Ontario action, right?

6                   A.       I don't recall expecting a fight,  
7 but you have to do certain things to serve things  
8 out of the country.

9       3312.           Q.       You don't have to research  
10 jurisdiction to serve something out of the country.

11                   A.       I disagree.

12       3313.           Q.       So, you were researching  
13 jurisdiction in respect of service issues?

14                   A.       I was talking generally. My  
15 experience is you always should look it up.

16       3314.           Q.       I'm talking specifically about your  
17 entry on February 18, "researching on jurisdiction".  
18 And I'm suggesting to you, sir, that you knew before  
19 any defendant served a motion record, that it was  
20 likely that jurisdiction would be an issue. Any  
21 good lawyer would know that.

22                   A.       It's always possible, that's what  
23 I'm saying.

24       3315.           Q.       So, you knew that. You were in tune  
25 to that from the beginning.

1                   A.       Always a consideration in a foreign  
2                   case.

3       3316.           Q.       And it was a specific consideration  
4                   in this foreign case.

5                   A.       I'm sure it was.

6       3317.           Q.       And then on February 21, again, on  
7                   the same file to the same client, in respect of the  
8                   same subject matter, on February 21, you have calls  
9                   with Alair, that's Alair Shepherd?

10                  A.       Yes.

11       3318.           Q.       The Knoxes' lawyer in Barbados?

12                  A.       He is. Was.

13       3319.           Q.       At the time he was.

14                  A.       I should be speaking in the tense of  
15                  February 21st.

16       3320.           Q.       He certainly was on February 21st,  
17                  2007. Is he not now?

18                  A.       I'm not up to date on those things.

19       3321.           Q.       You don't know? Do you have any  
20                  reason to believe that he has been disengaged?

21                  A.       No.

22       3322.           Q.       And Jane is Jane Goddard?

23                  A.       Could be.

24       3323.           Q.       Well, it is, isn't it?

25                  A.       I usually put JG, so it might be

1 another Jane.

2 3324. Q. What other Jane do you know about  
3 that you would be billing Mr. Allard on in respect  
4 of the Kingsland Estate matter?

5 A. I don't recall.

6 3325. Q. It's Jane Goddard, right? It  
7 shouldn't be so hard for you to admit that.

8 A. Wasn't there another Jane that we  
9 sent bills to?

10 3326. Q. Yes.

11 A. Okay.

12 3327. Q. So, you think it was her?

13 A. More likely. I'm just saying JG  
14 was...most of the dockets I've seen have said JG.

15 3328. Q. But Alair was AS most of the time  
16 too. Anyways, I got it. Who is Curtis?

17 A. Process server in Barbados.

18 3329. Q. So, that must have been in respect  
19 of service of the Ontario action on defendants in  
20 Barbados.

21 A. That's what it was related to.

22 3330. Q. And Marnie is one of Allard's  
23 assistants or secretaries. And then you have this  
24 entry, "Redraft revocable trust." What does that  
25 relate to?

1                   A.       I don't recall. The only revocable  
2 trust that I'm aware of is one that I read or you  
3 read to me in Miami. And there might be one in  
4 Barbados. So, two thoughts there. I'm not sure.

5       3331.           Q.       You're not sure which revocable  
6 trust you redrafted on February 21st, 2007?

7                   A.       Yes, I don't recall.

8       3332.           Q.       Sir, what date is the revocable  
9 trust, the Miami one?

10                  A.       I don't know. I don't recall.

11       3333.           Q.       March 5th, 2007. I suggest to you  
12 that there's not a scintilla of doubt that on the  
13 21st of February, 2007, you were redrafting the  
14 revocable trust that was signed in Miami on March  
15 5th, 2007, right?

16                  A.       I have a scintilla of doubt because  
17 I'm not a Florida lawyer. I'm not sure, and I don't  
18 recall, but I do have a scintilla of doubt that I  
19 would be drafting a trust for Miami or even Ontario  
20 because...

21       3334.           Q.       Sir, you were orchestrating the show  
22 down there. You had retained Dribin, you were  
23 telling Dribin what you wanted, what your plan was.  
24 It included a trust, and he was making sure that the  
25 person who was giving him the instructions approved



1 the wording of the trust that he was preparing, so  
2 you got a copy and made some markups, reviewed and  
3 revised. Isn't that what happened?

4 A. I don't agree.

5 3335. Q. And then of course, after your work  
6 on the revocable trust, you send an email to and  
7 from JG, clearly that's Jane Goddard.

8 A. Yes.

9 3336. Q. And to the Miami lawyers, presumably  
10 that's Dribin?

11 A. Could be.

12 3337. Q. Right. And of course, there's  
13 blogging throughout February, various entries. I  
14 don't need to take you to them, you agree that  
15 whatever you were doing in respect of blogging, you  
16 carried on that activity through February of 2007.

17 A. Regularly, yes.

18 3338. Q. And beyond that?

19 A. Whatever is in there is consistent  
20 with...

21 3339. Q. When we were in court with Justice  
22 Shaughnessy and talking about blogs, you were  
23 continuing an activity that you had started a couple  
24 of years earlier of blogging, as you define it,  
25 right?

1                   A.       Absolutely.  And putting evidence in  
2                   front of the Judge as well from those outrageous  
3                   blogs.

4                   MR. RANKING:        Do you not recall telling  
5                   Justice Shaughnessy that you had nothing to  
6                   do with blogging, Mr. McKenzie?

7                   THE DEPONENT:       I think today I would  
8                   like you to take your turn.  I was very  
9                   confused yesterday, and any questions that  
10                  were launched by you when I was listening  
11                  to Mr. Silver just confused me.  So, I hope  
12                  you can...you were very good yesterday, you  
13                  said you had only two or three questions  
14                  when Mr. Silver was finished.  So, I can't  
15                  do this.

16                  3340.       MR. SILVER:        But he's not asking two or  
17                  three questions, he's got to go back on all  
18                  the ground that I've covered.

19                  THE DEPONENT:       Well, you see, there you  
20                  go, you're talking and then you're  
21                  talking...

22                  MR. RANKING:        Was there something you  
23                  misunderstood with respect to the question  
24                  that I just put to you, Mr. McKenzie?

25                  THE DEPONENT:        I'm sorry, I'm going to

1 have to say I will not respond to this type  
2 of tag-team cross-examination. It's too  
3 confusing for me. And as we just saw, Mr.  
4 Silver talks, I talk, you talk on top of  
5 me, I lose track of what's going on. I'm  
6 being cross-examined, I want to get my  
7 answers accurate, straight. So, let's do  
8 it in the normal fashion to make my life  
9 easier, please.

10 MR. RANKING: Just so you know, your  
11 counsel had agreed that this is a practical  
12 way of proceeding so that I didn't have to  
13 go and redo the entire cross-examination of  
14 Mr. McKenzie. That's how we proceeded  
15 yesterday.

16 THE DEPONENT: I know, and I went home  
17 last night, thinking I have a lot of  
18 respect for my counsel, but he doesn't  
19 understand how confused I get when two  
20 people are firing at me at the same time.  
21 So, I'm just asking you, please, not to do  
22 it.

23 MR. KRAMER: Well, I guess you could  
24 always ask Mr. Silver to pursue the issue  
25 that you wanted to raise, Mr. Ranking, if

1                   that's a sensible way to deal with Mr.  
2                   McKenzie's concern.

3                   MR. RANKING:       Thank you, Mr. Kramer.

4

5                   BY MR. SILVER:

6                   3341.               Q.       Can you answer, please, the question  
7                   that Mr. Ranking put to you, which was, do you not  
8                   recall telling Justice Shaughnessy with your robe on  
9                   and your tabs that you had nothing to do with  
10                  blogging of any kind?

11                  A.       I don't have that recollection.

12                  3342.               Q.       You did tell that to Justice  
13                  Shaughnessy. What's your explanation for how that  
14                  statement is so contradicted by your dockets?

15                  A.       My recollection, and I'll have to  
16                  check the transcript, is that your side of the table  
17                  were calling me dishonest and not letting me, as  
18                  counsel, have access, promising I wouldn't show my  
19                  clients some video recordings, because I, this is  
20                  the innuendo of your doings, were putting things on  
21                  the internet, which I deny, all of those threats and  
22                  stuff like that. And I'm saying, if that's the  
23                  context, sure, I would put my foot down. What you  
24                  did was unfair and unreasonable, both of you, and in  
25                  retrospect I will deal with it. But get me the

1 transcript where you think I said that and I'll  
2 review it...

3 MR. KRAMER: Is there a transcript of  
4 these proceedings? There wouldn't be a  
5 transcript of the proceeding.

6 THE DEPONENT: There's lots of  
7 transcripts of proceedings.

8

9 BY MR. SILVER:

10 3343. Q. Where do you have those kept?

11 A. Well, I am going to be going to the  
12 office to find out all the things that have been not  
13 shown to me or not known to me or withheld because  
14 there were transcripts...

15 3344. Q. Well, where are these? Just explain  
16 to me again with Lemieux and 25 boxes. I mean, does  
17 he have 24 boxes and one of them you gave to Mr.  
18 Kramer? Where are these boxes of stuff that Lemieux  
19 got involved in?

20 A. I think you're confusing what I  
21 said.

22 3345. Q. I think so.

23 A. Excuse me. I'll repeat that while I  
24 was in Florida, Mr. Lemieux left the firm...

25 3346. Q. Late '09?

1                   A.       Yes. I had gone to Florida and the  
2                   firm and him loaded up around, and estimating, 25  
3                   boxes of whatever...

4       3347.           Q.       Well...

5                   A.       Just let me finish.

6       3348.           Q.       But I need to understand. Does  
7                   "whatever" include Nelson Barbados and Peter Allard  
8                   files?

9                   A.       Well, can I finish? And then I can  
10                  answer your question. Mr. Lemieux had them in the  
11                  back of his van because the firm wanted me to have  
12                  them, for some reason. I mean, files they were  
13                  giving back to me that I thought I had gotten rid  
14                  of. And he carried them around until I returned and  
15                  he came to my house and it all went into my garage,  
16                  just stuck in a corner, while I decided what was  
17                  there. Now, the one box that is now on the floor  
18                  here was in that pile somewhere.

19       3349.           Q.       So, you have another 24 boxes in  
20                  your garage, roughly?

21                  A.       Yes, but they're not...they're other  
22                  files which...other files and other imminent motions  
23                  and things like that that I had to deal with over  
24                  the last few months.

25       3350.           Q.       Well, where is the rest of the

1 Nelson Barbados file?

2 A. It's at the law firm where it has  
3 always been.

4 3351. Q. They just can't find it there?

5 A. Are you telling me that?

6 MR. KRAMER: I haven't heard that, Mr.  
7 Silver. I thought that's what Ms. Duncan  
8 went through when she dug out all of the  
9 stuff that's in her affidavit.

10 3352. MR. SILVER: I thought that was from  
11 electronic records, but I would be pleased  
12 to find out that all of the hard copy  
13 records are at...and I think we'll see the  
14 result of that in the answers to  
15 undertakings. Because if that's true  
16 then...

17 MR. KRAMER: Maybe Mr. Epstein can  
18 clarify this.

19 3353. MR. SILVER: ...undertakings will be  
20 answered.

21 MR. KRAMER: I thought there was 20  
22 boxes or something at the firm.

23 MR. EPSTEIN: Not 20 boxes. They're all  
24 boxes at the firm which we've mentioned in  
25 the previous examinations...additional

1 boxes here that we've just been provided  
2 with today, which, my understanding was  
3 that the only hard copies of documents that  
4 Mr. McKenzie had were in these boxes.

5 MR. KRAMER: Yes, that's Mr. McKenzie's  
6 evidence, but I think the confusion...if I  
7 could just clarify what the issue is. As  
8 far as I know, and maybe Mr. Epstein can  
9 tell us, there are many other boxes of hard  
10 copy material on this file, Nelson  
11 Barbados, at the firm.

12 3354. MR. SILVER: Nelson Barbados and the  
13 Allard file, 543?

14 MR. EPSTEIN: Jessica Duncan mentioned  
15 that there were a number of additional  
16 boxes. Yes, I think they're probably on  
17 both files.

18 3355. MR. SILVER: Great. So, the  
19 undertakings, of course, aren't limited to  
20 electronic files. They're hard copy or  
21 electronic.

22 MR. EPSTEIN: The undertaking she  
23 gave...yes, she's giving a look at both.

24 3356. MR. SILVER: For records?

25 MR. KRAMER: For records.



1 3357. MR. SILVER: Well, that's more  
2 encouraging than I thought in terms of  
3 getting to see the stuff that was  
4 undertaken to be provided.  
5

6 BY MR. SILVER:

7 3358. Q. The retainer agreements with Broad  
8 and Cassel, for example, there would have been hard  
9 copies of them in the file or even a draft?

10 A. My recollection is I don't do files,  
11 as I've said to you. Everything that went through  
12 around that law firm is in boxes still at the law  
13 firm. I didn't take any. Mr. Lemieux delivered one  
14 box...

15 3359. Q. Can you answer my question? Did you  
16 receive a hard copy or print off the computer of the  
17 retainer agreements with Broad and Cassel?

18 A. I apologize. When I said everything  
19 is there, I don't know what's there, and I told my  
20 counsel this morning I think I had better go have a  
21 look because I don't even know what's there. I  
22 haven't seen that file since...well, a long time.

23 3360. Q. Well, I don't think you should go to  
24 look without it being through the lawyers.

25 MR. KRAMER: That is the arrangement.

1 Mr. Epstein and I have already spoken about  
2 Mr. McKenzie attending at the firm.  
3 They've asked that somebody be present when  
4 he reviews the files, and that's what's  
5 going to happen, someone from the firm.  
6 Someone under Mr. Epstein's direction.

7 MR. EPSTEIN: Mr. McKenzie did make a  
8 request to come and review the files, and  
9 we of course told him that...

10 3361. MR. SILVER: Can I come and review the  
11 files under Ms. Duncan's supervision?

12 MR. EPSTEIN: I will consider that...

13 MR. RANKING: That request is made by me  
14 as well.

15 3362. MR. SILVER: I'm making it right now.  
16 Can you consider it and let us know?

17 MR. EPSTEIN: Let's finish this  
18 examination and we'll deal with it...I'm  
19 not giving any undertakings on Mr.  
20 McKenzie's examination. What I will tell  
21 you is that Mr. McKenzie made a request to  
22 review all of the files so that he could  
23 have all of the records and be able to  
24 respond to whatever questions are put to  
25 him. And we've told him that those files

1 will all be made available to him as we  
2 said two, three weeks ago. And he can come  
3 and review them so long as somebody was  
4 present.

5 3363. MR. SILVER: And he hasn't done that  
6 before today?

7 MR. EPSTEIN: There has been no requests  
8 to date. We indicated the only condition  
9 that we put on that was that somebody be  
10 present when he came. But we've not  
11 received a formal request to...

12

13 BY MR. SILVER:

14 3364. Q. Why didn't you go and see this stuff  
15 before you were examined? If a request was made and  
16 agreed to two weeks ago, why did you wait and not go  
17 look at the files before you were cross-examined?

18 A. I don't recall when the request was  
19 made.

20 3365. Q. Well, you're not doubting Mr.  
21 Epstein? He said it was two weeks ago.

22 A. I don't recall when the request was  
23 made. I do know that arrangements had to be made.  
24 I was told, anyway, that somebody from the office  
25 has to be there and somebody from Mr. Epstein's

1 office and maybe somebody from my lawyer's office.  
2 And all I can remember is a blur of  
3 cross-examinations and trying to brief Mr. Kramer  
4 getting in the way or not having enough time to do  
5 it. I'm hoping to do it within the next few weeks  
6 when things settle down here.

7 3366. MR. SILVER: Mr. Epstein, I appreciate  
8 that you don't want to nor are you required  
9 to respond to the request on the record.  
10 I'm going to make it on the record, though,  
11 and just note that it's outstanding and  
12 that I wait to hear back from you. And the  
13 request is that counsel for the defendants  
14 attend at Crawford, McLean office to review  
15 under supervision, or otherwise, under  
16 supervision is fine by me, boxes of files  
17 relating to BMC 543 and BMC 568 or  
18 otherwise relevant to the subject matter of  
19 this dispute. I note that solicitor/client  
20 privilege has been waived and there's, in  
21 my view, no reason, especially because  
22 you're making it available to Mr. McKenzie,  
23 why we shouldn't get to see the same boxes.  
24 So, I'll leave that with you, Mr. Epstein  
25 and wait to hear from you.

1 MR. RANKING: And just for the record, I  
2 too make that request.

3 3367. MR. SILVER: Well, I stated as counsel  
4 for the defendants. It's not just me, and  
5 we can work it out amongst us as to who  
6 goes and make it manageable for everybody.

7 MR. EPSTEIN: Let me ask you this  
8 question, since you're putting it all on  
9 the record, to facilitate matters, Mr.  
10 Silver, you've asked for...I think there  
11 are many undertakings, dozens, maybe a  
12 hundred undertakings have been given, most  
13 of which are actually to go through files  
14 and review them. Are you prepared to have  
15 someone go through them and then afterwards  
16 advise us which undertakings you still  
17 require to be done, because it's an  
18 enormous undertaking on behalf of Jessica  
19 Duncan who happens to have a practice of  
20 her own and two trials coming up...

21 3368. MR. SILVER: I think that makes sense.  
22 We can kill two birds with...

23 MR. EPSTEIN: ...perhaps we can work out  
24 some arrangement.

25 3369. MR. SILVER: Well, that makes sense. It

1                   might be best if Ms. Duncan was there and  
2                   then we can do it together and check off  
3                   the undertakings that get answered by  
4                   retrieval of documents.

5                   MR. EPSTEIN:        To the extent you can,  
6                   because, as I indicated, she's a litigation  
7                   lawyer herself and she's got upcoming  
8                   trials, but why don't we talk off the  
9                   record and perhaps we can work out an  
10                  arrangement.

11       3370.           MR. SILVER:        Thank you.

12

13       BY MR. SILVER:

14       3371.           Q.       Mr. McKenzie, I'm going to ask you a  
15                   very specific question and I would like you to  
16                   answer responsively. Do you agree that you told  
17                   Justice Shaughnessy that you had nothing to do with  
18                   blogging?

19                   A.       I have no recollection of making  
20                   that statement.

21       3372.           Q.       But you don't deny that you might  
22                   have made that statement.

23                   A.       Let's get the transcript.

24       3373.           Q.       Well...let's carry on. In looking  
25                   at this March 23rd account, on February 27th, you

1 travelled to Florida, right? And you were working  
2 on conspiracy issues for Canadian and US action.  
3 What does that mean?

4 A. I don't recall.

5 3374. Q. What's clear is that conspiracy  
6 issues in the Canadian action were still being  
7 developed after the statement of claim was issued  
8 and conspiracy was already pled, right?

9 A. Conspiracy was already pled, agreed,  
10 in the Canadian action.

11 3375. Q. And then the next day you have Miami  
12 meetings with lawyers re litigation and trusts. Who  
13 did you meet with in Miami on the 28th re  
14 litigation?

15 A. I don't recall. I recall a number  
16 of names of lawyers which you saw yesterday. It  
17 could be them or others.

18 3376. Q. And that was in contemplation of  
19 launching a conspiracy type claim in Florida? That  
20 was part of the plan at that time?

21 A. My recollection is that, from  
22 something that I saw yesterday, that the threats got  
23 so bad, there was thought of launching an action by  
24 Kathy Davis herself. That's my best recollection,  
25 and I think that was the subject of consideration

1 around that time.

2 3377. Q. That's what you were meeting with  
3 Miami lawyers about re litigation?

4 A. That's the best of my recollection  
5 at that time.

6 3378. Q. That's the best of your  
7 recollection, under oath, it was related to threats,  
8 right, Mr. McKenzie? What are you writing down?

9 A. I just keep notes as we go, what  
10 topics we're covering, so if you come back to them,  
11 then I have to refresh my memory.

12 3379. Q. Why don't you answer my question  
13 first?

14 A. I'm sorry, I did, I thought.

15 3380. Q. Under oath, you're saying that on  
16 February 28, '07 you were meeting with Florida  
17 lawyers about a potential claim by Kathy Davis  
18 relating to threats that were posted on the  
19 internet, is that your evidence?

20 A. That's the best of my recollection.

21 3381. Q. What threats were posted on the  
22 internet before February 28, 2007?

23 A. I'll just adopt what I told Mr.  
24 Roman that...it's already been discussed, but his  
25 firm was posting stuff on Keltruth and the



1 expectation of the understanding was ultimately  
2 somebody related, or his client, Iain Deane was  
3 doing the same thing.

4 3382. Q. And you knew that before February  
5 28, 2007? You would have had to to be discussing  
6 with the Miami lawyers.

7 A. I don't recall the chronology, but  
8 there were things that I didn't know...they met with  
9 lawyers without...I didn't know...

10 3383. Q. Sir, I'm going to suggest to you  
11 that on February 28 you were meeting with Miami  
12 litigators not to have anything to do at all with  
13 threats, but you had been appointed to research out  
14 some Florida lawyers. You had previously  
15 interviewed some, and you entered into a retainer  
16 with John Kelly and paid invoices. We saw that  
17 already, and what John Kelly was doing was not with  
18 respect to threats, but with respect to a US  
19 conspiracy type action of the nature that you were  
20 working on the day before, February 27, "Work on  
21 conspiracy issues for Canadian and US action."  
22 Isn't that right?

23 A. I disagree.

24 3384. Q. John Kelly's retainer letter and  
25 John Kelly's opinion letter that was paid for by Mr.

1 Allard would provide the answer, wouldn't it? It  
2 should show exactly what he was asked to consider,  
3 right?

4 A. It will say what it says.

5 3385. Q. And you would expect there to be a  
6 hard copy of the opinion letter and the retainer  
7 letter in the files?

8 A. I have no recollection of...it's a  
9 big file. I have no recollection of what's in  
10 there. If it's there, it's there.

11 3386. Q. And then you travel back on the 1st  
12 to Toronto, recap of weekend: "Memos to concerned  
13 people." You don't remember who you sent memos to?

14 A. I don't recall.

15 3387. Q. Or who the concerned people are?

16 A. I don't recall.

17 3388. Q. But in the normal situation, there  
18 would be a copy of that memo somewhere, either in  
19 the files or in the database?

20 A. I don't recall. It makes sense,  
21 it's possible...anything...

22 3389. Q. Anything is possible?

23 A. That's what I'm saying, anything is  
24 possible.

25 3390. Q. March 2nd...

1 MR. EPSTEIN: Off the record for a  
2 second.

3

4 --- DISCUSSION OFF THE RECORD

5

6 MR. KRAMER: Mr. Epstein has pulled out  
7 of the box that was in Mr. McKenzie's  
8 garage, the file folder called "John  
9 Kelly". We have no objection to producing  
10 it. You can flip through it. Apparently,  
11 there's no retainer agreement in there, but  
12 there's lots of other junk.

13 3391. MR. SILVER: Thank you. Can we go off  
14 the record and have a quick look at this?

15

16 --- DISCUSSION OFF THE RECORD

17

18 MR. EPSTEIN: I want to go on the record  
19 because a request was made to me on the  
20 record, so I want to respond on the record.  
21 I had a cursory glance at the contents of  
22 the...there are actually two boxes here  
23 that were provided to me this morning,  
24 which, in my initial glance, appear to  
25 relate to the matters in issue in this

1 lawsuit. I'm advised by Mr. McKenzie's  
2 counsel that some of these documents may  
3 relate to Allard and files that are  
4 unrelated to this litigation, in which  
5 case, of course, they would be privileged  
6 and obviously we're not in position to know  
7 exactly what the scope of his retainers  
8 were or what matters of scope Mr. McKenzie  
9 was working on for Allard. So, as far as  
10 we're concerned, we have no objection to  
11 production of any of these documents,  
12 subject to Mr. Kramer's views, to the  
13 extent that they relate to matters  
14 pertaining to this litigation. And I  
15 gather we discussed off the record that Mr.  
16 McKenzie is going to go to Mr. Kramer's  
17 office and is going to review the boxes and  
18 determine which of the matters contained in  
19 those boxes relate to Allard files  
20 unrelated to this litigation and those will  
21 be pulled out, and subject to, again, Mr.  
22 Kramer's determination, the balance of the  
23 documents will be made available to the  
24 defendants. We have no objection to any  
25 relevant documents related to the

1 litigation being produced to the other  
2 side.

3 3392. MR. SILVER: Okay. And in addition to  
4 that, in our off the record discussions, we  
5 discussed our other request, which was to  
6 see the boxes of documentation at the law  
7 firm. You're not responding to that now?

8 MR. EPSTEIN: Not now. You and I would  
9 have a discussion perhaps off the record to  
10 see if we can work something out.

11 3393. MR. SILVER: Because as Mr. Kramer  
12 suggested off the record, if that happens,  
13 we can combine...and you guys can do what  
14 you just said you would do in respect of  
15 the one box of documents, to the extent  
16 that we travel up to Orillia, we could look  
17 at that box of documents at the same time  
18 as we see the firm's files.

19 MR. EPSTEIN: Well, why don't we have an  
20 off the record discussion about that.

21 3394. MR. SILVER: And then, just so we don't  
22 lose sight of it, we have been provided  
23 with two files out of that box already.  
24 One called "Mike Dribin" and in it is a  
25 single sheet of paper with handwriting on

1           it that says, "Dribin retainer", and it's a  
2           wire payment services document dated  
3           January 22nd, 2009. And I would like to  
4           mark the file folder with the document in  
5           it as the next exhibit.

6  
7           ---    EXHIBIT NO. 15:   Wire Payment Services Document  
8                                    titled "Mike Dribin", in file folder  
9                                    containing Dribin Retainer, dated  
10                                  January 22, 2009

11  
12          3395.           MR. SILVER:        And secondly, we've been  
13                                    provided with a file folder that says "John  
14                                    Kelly", and in it, there's an envelope.  
15                                    And then, there seems to be a series of  
16                                    accounts from Mr. Kelly and confirmation of  
17                                    payments of Mr. Kelly's accounts by  
18                                    Crawford McKenzie. And there are also in  
19                                    here accounts of Alair Shepherd and  
20                                    confirmation of payment of those accounts  
21                                    by the Crawford McKenzie firm. So, without  
22                                    identifying each of the separate documents,  
23                                    I'm going to mark the file folder as  
24                                    Exhibit 16.

25

1 --- EXHIBIT NO. 16: File Folder John Kelly

2  
3 3396. MR. SILVER: And I would ask that Mr.  
4 Epstein...what I'm proposing is that we  
5 give these file folders back to you and  
6 that your office arrange to make  
7 photocopies of the content...

8 MR. EPSTEIN: Those file folders are  
9 going back into the box of Mr. McKenzie and  
10 they're going back to Mr. Kramer's office.  
11 And Mr. McKenzie is showing up to Mr.  
12 Kramer's office next week to review those,  
13 so...

14 MR. KRAMER: If you want me to make the  
15 copies in the meantime, that's fine. I'll  
16 send them over to you.

U/T

17 MR. EPSTEIN: But they're going back to  
18 Mr. Kramer.

19 3397. MR. SILVER: But these aren't subject to  
20 the same review, they've been reviewed  
21 already. That's why they were produced.

22 MR. EPSTEIN: But they're going back  
23 into the box. They should be kept in the  
24 same place that they came from, which is  
25 the box of...

1 3398. MR. SILVER: All right, that's fine.  
2 I'll give them to Mr. Kramer and Mr.  
3 Kramer, your office can make photocopies of  
4 both files.

5 MR. KRAMER: Yes, all right, and we'll  
6 circulate them after the end of the day  
7 today, maybe tomorrow.

U/T

8 3399. MR. SILVER: Beautiful.

9  
10 BY MR. SILVER:

11 3400. Q. And just because we stopped here,  
12 and I thank Mr. Epstein for that, because I was  
13 questioning you in respect of John Kelly. It seems  
14 that the first account that we have from him in here  
15 is dated October 7, 2008, where there is an amount  
16 of some \$2,557 being charged, and there's a previous  
17 balance and then it shows payments of previous  
18 invoices. So, it's clear that this file folder  
19 doesn't include all invoices from the Kelly firm.  
20 There were invoices before the first one in here.

21 A. I don't recall what was billed when.

22 3401. Q. But on the first account they're  
23 showing payments made in a previous balance, it must  
24 mean...

25 A. It's logical...



1 3402. Q. It's not logical, it has to be...

2 A. I don't recall accounting stuff,  
3 and...

4 3403. Q. And it's with respect to various  
5 matters. Are these various matters that were being  
6 pursued on behalf of Mr. Allard? I'm looking for  
7 example at the October 7, 2008 account, which is, I  
8 think the first one in this file folder.

9 A. I'm sorry, you were saying, what is  
10 it about? Is that what you are asking?

11 3404. Q. I'm asking whether all of the  
12 matters that are in that invoice, do they all relate  
13 to Mr. Allard, firstly. And then secondly, do they  
14 all relate to Kingsland and Mr. Allard?

15 A. I don't recall.

16 3405. Q. They all relate to Mr. Allard,  
17 though?

18 A. Well, I said earlier my  
19 recollection, at least in part, Mr. Kelly and I  
20 discussed criminal, quasi-criminal investigations  
21 against people who made threats against people in  
22 Florida. And there may be more...I am just  
23 saying...

24 3406. Q. Well, there is more because these  
25 accounts don't speak to that at all. Draft of

1 complaint, in August 1st you got correspondence to  
2 and from you re preparation of a draft of a  
3 complaint. What complaint was he drafting?

4 A. I don't recall.

5 3407. Q. Did he draft the complaint that  
6 ultimately Dribin issued that's at Exhibit B to your  
7 April 23rd affidavit? Or is this a different  
8 complaint that he was working on?

9 A. I don't recall but it's unlikely...I  
10 think Mr. Dribin is a trust lawyer who drafts trust  
11 complaints. I don't think Mr. Kelly is. But that's  
12 a generic statement, I don't recall.

13 3408. Q. I haven't looked at these, but  
14 "draft complaint with tort claims."

15 A. That's more...Mr. Kelly I think was  
16 more that kind of a litigator.

17 3409. Q. So, in '08 you were meeting and  
18 discussing with Mr. Kelly some other complaint or  
19 tort claim that was going to be launched, or if it  
20 was to be launched, it would have been a Miami  
21 proceeding.

22 A. The report, RICO, as per the  
23 discussion, and I think that's either a federal or a  
24 state law and they have different levels of courts  
25 there.

1       3410.           Q.       And then I see in here, I just want  
2                   to confirm this, that, for example, in one of the  
3                   bundles in here, there's an email from Sunny Ware to  
4                   you, dated November 17th, 2008. "See attached  
5                   invoice from Alair for August '08 to November 17th.  
6                   I'm not sure if all of this is on the C&W action or  
7                   KEL or a mix of both". What's the C&W action, Cable  
8                   & Wireless?

9                   A.       I believe I stated yesterday that,  
10                   after Justice Shaughnessy had turned...

11       3411.           Q.       Stop. What is the C&W matter? Is  
12                   that Cable & Wireless? It's a specific question.  
13                   It doesn't require an explanation or a speech or  
14                   Justice Shaughnessy. What is the C&W action?

15                   A.       That would be Cable & Wireless  
16                   Barbados, a claim brought I believe in Barbados.

17       3412.           Q.       After Justice Shaughnessy said you  
18                   have to go do it in Barbados, right?

19                   A.       That's more or less what he said,  
20                   but he turned down our request to do with commission  
21                   there.

22       3413.           Q.       It says,  
23                   "...It would be easier if Peterco could pay  
24                   him directly..."

25                   "Him" there is Alair Shepherd?

1 A. Yes.

2 3414. Q. Okay,

3 "...But if it relates to C&W, I seem to  
4 recall you wanting it all to go through our  
5 office to preserve privilege..."

6 Is that your view?

7 A. It makes sense that there would be a  
8 privilege...I'm just speculating, because I don't  
9 remember, but there would be privilege attached  
10 to...Justice Shaughnessy told us that it was a good  
11 idea to do it.

12 3415. Q. The answer is yes?

13 A. Well, I don't know. I don't have a  
14 recollection, but I'm just trying to fill in the  
15 blanks for you.

16 3416. Q. KEL in this email is not Keltruth  
17 blog, that's Kingsland Estates Limited, right, in  
18 capitals?

19 A. KEL...Mr. Shepherd would be dealing  
20 with Kingsland Estate Limited matters.

21 3417. Q. And Shepherd, it seems that somebody  
22 in his office named Roslyn Best, she sent an email  
23 to Sunny Ware attaching Alair's account. And she's  
24 got an In Chambers in Barbados address.

25 A. I know there's a lady named Roslyn.

1 3418. Q. Is she related to Donald Best?

2 A. I have no idea, but I doubt it.

3 3419. Q. And then Mr. Shepherd's account is  
4 attached, "Meeting with John Knox, reviewing  
5 affidavits", it seems to be in respect of the Ontario  
6 proceeding, because you'll recall that you filed the  
7 big affidavit of John Knox in October of 2008. So,  
8 was Shepherd working on that affidavit as well?

9 A. A lot of people went over it to  
10 make sure it was accurate.

11 3420. Q. And in any event, what's clear from  
12 this is that Peter Allard was paying Alair  
13 Shepherd's legal accounts.

14 A. I'm sorry, I'm just hung up on  
15 November '08, John Knox filed an affidavit?

16 3421. Q. I think so.

17 A. He filed affidavits, I can agree on  
18 that, I don't know about dates. Anyway, sorry, I  
19 missed your question.

20 3422. Q. And it wouldn't be out of the  
21 ordinary if Alair Shepherd was...helped working on  
22 the...

23 A. No, no, I'm just saying I didn't  
24 want to...

25 3423. Q. My next question is, is it right

1           that, as this seems to reflect unequivocally, that  
2           the bills that Alair Shepherd was rendering in  
3           respect of his representation of Marjorie Knox, it  
4           says "Service for Marjorie Knox" were being paid by  
5           Mr. Allard through your law office?

6                     A.       Let me have a look.  I don't recall,  
7           but that makes sense.  I mean, somebody would have  
8           to go right back through the whole accounting  
9           trail...

10       3424.            Q.       No, we only have to look at what I  
11           showed you, which you're now flipping to other  
12           pages, to see that one bill that came in, Roslyn  
13           Best sent it to Sunny Ware, Sunny Ware sends it to  
14           you to make sure that it gets handled the right way,  
15           and ultimately, the account gets paid by Allard.

16                     A.       Well, as I say, I don't have a  
17           recollection of any accounting things, but that is  
18           as likely as not.

19       3425.            Q.       And similarly there is a memo in  
20           here, January 6, 2009 from Sunny to you saying,  
21           "Monies come in from Peterco, we're going to pay  
22           Kathy Davis for web hosting."  And I think this was  
23           established earlier that web hosting was charges  
24           incurred by Kathy Davis in respect of the Keltruth  
25           blog were paid for by Allard through your office,

1 right?

2 A. I don't remember what my evidence  
3 was previously, and I don't recall, but that makes  
4 sense. Excuse me, one second, I'm going through  
5 this and I apologize that I missed it, but there is  
6 a memo in here which has nothing to do with this  
7 file. It doesn't really matter, but I should just  
8 tell you that. I don't know how it got in here.

9 3426. Q. Well, do you want to remove it after  
10 Mr. Kramer looks at it?

11 A. I will just note that Don McDonald  
12 and CSI...

13 MR. KRAMER: If it's something that's  
14 potentially prejudicial to anybody...if it  
15 isn't, just leave it there. If you're  
16 concerned about it, pull it out.

17 THE DEPONENT: Well, I'm not worried  
18 about it. I'm just saying, just so you  
19 know, this is a separate file, separate  
20 everything.

21 MR. KRAMER: So, something that may have  
22 been misfiled?

23 THE DEPONENT: Well, it definitely  
24 misfiled, yes. November 24, 2008, 1:56  
25 a.m. Guess I was up late that night.

1 BY MR. SILVER:

2 3427. Q. Can we move on?

3 A. I'm sorry to go off on that tangent.

4 I am just looking through...sorry. Did I answer  
5 your last question?

6 3428. Q. Yes.

7 A. Then let's move on.

8 3429. MR. SILVER: So, Mr. Kramer, I'm going  
9 to give Exhibit 15 and 16 to you.

10 MR. KRAMER: Thank you.

11 3430. MR. SILVER: This yellow Post-It note  
12 was on it and then the orange one, we've  
13 just identified that last document.

14

15 BY MR. SILVER:

16 3431. Q. Okay, again, we're in the March 23rd  
17 account at Exhibit K. And you'll see on February 28  
18 while you're meeting with the lawyers re litigation  
19 and trusts...I asked you about your meeting with the  
20 lawyers re litigation, you gave your answer.

21 Clearly, the Miami meetings with lawyers re trusts  
22 was a meeting that you had with Mike Dribin about  
23 the revocable trust that was signed on March 5th,  
24 2007 some week later?

25 A. I don't recall.



1           3432.           Q.       Well, does it help you sir to flip  
2                           the page to March 5th? I'm going to have a lot to  
3                           say to Justice Shaughnessy about your memory, but on  
4                           March 5th, if you look at the entry, it says,  
5                                       "...Meet with MK and family, MD, review  
6                                       trust documents..."  
7                           And we know from Exhibit B to your  
8                           affidavit...you're making a note of that one, Mr.  
9                           McKenzie?

10                          A.       Yes, I make notes as I go along.

11           3433.           Q.       We know from Exhibit B of your  
12                           affidavit of April 23rd which has a copy of the  
13                           trust agreement in it that it was signed on March  
14                           5th. Do you accept that?

15                          A.       Okay.

16           3434.           Q.       Do you accept that?

17                          A.       Well, if you say so. I don't  
18                           remember the date.

19           3435.           Q.       Well, look at the document. You'll  
20                           see it, it's in your affidavit. Are you not  
21                           familiar with this document?

22                          A.       March 5th, I see it.

23           3436.           Q.       Exhibit B. So, you were there and  
24                           met with the family and Marjorie Knox and Mike  
25                           Dribin and reviewed the trust document on the day

1           that it was signed, right?

2                   A.       I don't recall, but it makes sense.

3       3437.           Q.       Well, you don't recall, look at your  
4       docket. Is your docket wrong?

5                   A.       I'm trying to put my head into Mike  
6       Dribin's office, and it just doesn't come. And yes,  
7       my memory isn't perfect, and I'm saying...

8       3438.           Q.       Can you ever remember being in Mike  
9       Dribin's office?

10                  A.       Many times, yes.

11       3439.           Q.       So, you don't deny that on the very  
12       day that the trust was signed, you were there when  
13       it was signed?

14                  A.       I was not in the meeting where it  
15       was signed is my recollection. I have a  
16       recollection from all of this that I was...

17       3440.           Q.       Around?

18                  A.       ...around, yes.

19       3441.           Q.       In the office?

20                  A.       Well, it's one of those giant  
21       offices. That's my best recollection. I'm just  
22       thinking of the room they have there. There has  
23       been many meetings.

24       3442.           Q.       They have a boardroom that overlooks  
25       and you see right to Miami beach.

1                   A.       We've both been there, sure, it's  
2                   gorgeous. But yes.

3       3443.           Q.       You were there on March 5th, 2007 on  
4                   the day that Marjorie Knox signed the trust.

5                   A.       Well, I'm saying I don't recall, but  
6                   yes, I was around there on the day that she signed  
7                   the trust.

8       3444.           Q.       So, on February 28th when you were  
9                   in Miami and you were meeting with lawyers re  
10                  trusts, that's what you were talking about. You  
11                  were meeting with Dribin, you were talking about  
12                  this trust and you were in the office when it was  
13                  signed a week later, right?

14                  A.       Makes sense.

15       3445.           Q.       And then, there's an entry for Sunny  
16                  Ware, on the same day. It says,  
17                  "...Review email, scan signed trust  
18                  agreement and email to KWM and PA..."  
19                  Do you know what that is about?

20                  A.       I don't recall.

21       3446.           Q.       Let me try to refresh your memory.  
22                  You know that there was also a Barbados trust where  
23                  Madge Knox made Goddard and John Knox the trustees?

24                  A.       I think I said earlier that my  
25                  recollection is that more than one trust was

1 floating around.

2 3447. Q. Well, not floating around, there was  
3 a prior trust before the March '07 trust. And we  
4 have Barbados created trust in favour of Goddard and  
5 John Knox, right?

6 A. I don't recall exactly, but again,  
7 it sort of makes sense.

8 3448. Q. And so Sunny Ware was sending that  
9 to you while you were in Miami and to Peter Allard  
10 on the 28th of February because you needed to make  
11 sure that the new trust superseded the old trust,  
12 makes sense?

13 A. I can't agree with that, I don't  
14 have a recollection of that.

15 3449. Q. You don't have any basis to deny it,  
16 do you?

17 A. I have no basis to deny it, admit  
18 it, because my memory was that I don't recall.

19 3450. Q. March 2nd, calls with MD, that's  
20 Mike Dribin?

21 A. Probably. I mean, yes, MD  
22 throughout looks like Mike Dribin.

23 3451. Q. Okay,  
24 "...JK review documents from Trevor  
25 Carmichael..."

1           So, was he working on the trust?

2                   A.       I don't recall.

3       3452.           Q.       And "refined wording for trust."

4           You would agree with me that that's refining the  
5           wording in this document that I'm holding open  
6           that's part of Exhibit B to your affidavit?

7                   A.       I don't recall.

8       3453.           Q.       You don't deny it?

9                   A.       No.

10      3454.           Q.       March 3rd, the next day, you're

11           blogging again, speaking with Donald Best, and  
12           considering trust issues. "Emails to JG, PA,  
13           litigation counsel." And then on March 4th you  
14           travel back to Miami, review trust documentation.  
15           And then I suggest to you you were there when this  
16           trust document was signed on March 5th. I know you  
17           don't remember specifically, but all that makes  
18           sense, doesn't it?

19                   A.       I don't agree that I was there when  
20           the trust document was signed.

21      3455.           Q.       You were in Florida, you were in the  
22           same state, right?

23                   A.       To the best of my recollection, I  
24           was...

25      3456.           Q.       In the office?

1                   A.       ...around, yes, that would be fair.

2       3457.           Q.       You don't recall very much about  
3                   anything, but you seem to recall that you were in  
4                   the office, but not in the room when it was signed?

5                   A.       At Starbucks, I think, across the  
6                   street.

7       3458.           Q.       Why would you leave when the  
8                   document was being signed? Was that conscious? You  
9                   didn't want to be there when it was signed?

10                  A.       No, no, my expectation, and I'm just  
11                  saying from my own experience, is that a lawyer,  
12                  Mike Dribin, is giving advice to his client, for his  
13                  client. I wouldn't want to be there.

14       3459.           Q.       Well, who is his client?

15                  A.       The trustee.

16       3460.           Q.       I thought all of his bills were paid  
17                  by Allard. Isn't Allard his client?

18                  A.       My understanding is, and it does  
19                  refresh my memory, Mr. Allard loaned the money to  
20                  people and expects it back. That's why he has that  
21                  UCC charge.

22       3461.           Q.       So, everything that he loaned, he  
23                  loaned through your law firm?

24                  A.       I don't think that's accurate.

25       3462.           Q.       In respect of loans to pay Broad and

1 Cassel, he did that through your law firm?

2 A. I agree with some, but there's the  
3 document I saw said a lot of money...

4 3463. Q. And in any event, all of the work  
5 that you were doing, whether you were in Starbucks  
6 or in the office or in the vicinity, all this travel  
7 back and forth and reviewing the trust documentation  
8 and working on it, you were paid for your work by  
9 Allard.

10 A. When I'm running like that, you're  
11 darn right I get paid.

12 3464. Q. By your client, Allard?

13 A. By Mr. Allard.

14 3465. Q. Your client, Mr. Allard?

15 A. He was my client, yes.

16 3466. Q. And then two days later, of course  
17 you're researching and consulting lawyers re  
18 jurisdiction and personal liability of trustee. I  
19 take it that that's all related to the trust and  
20 speaking to Dribin about whether we've created  
21 jurisdiction by this trust, right?

22 A. I don't recall exactly what it was  
23 all about.

24 3467. Q. And personal liability of trustee,  
25 you were talking to Mr. Dribin about, "You know,

1 we've now created this trust. Will Florida have  
2 jurisdiction and have we created any exposure for  
3 Kathy Davis?" That's what was being considered on  
4 March 7th, right?

5 A. I don't recall.

6 3468. Q. It sounds fair, right?

7 A. Well, I might bicker with you a  
8 little bit about the "we" part. He's the lawyer for  
9 Marjorie and Kathy, not me.

10 3469. Q. And he's talking to you about  
11 jurisdiction in Florida in respect of this trust and  
12 potential personal liability of Kathy Davis, the  
13 trustee?

14 A. I don't recall.

15 3470. Q. You don't deny?

16 A. I don't deny.

17 3471. Q. Jupiter is where you have your  
18 house, in Florida?

19 A. In Florida.

20 3472. Q. So, on March 11, if you could look  
21 at your dockets, you blog a bit in the morning, I  
22 guess, and then you travel from Jupiter to Miami and  
23 prepare for meetings the next day with lawyers,  
24 again, in Miami re trusts. And you deal with some  
25 emails from JG and JK. Do you see all that?



1 A. Yes, I do.

2 3473. Q. Which lawyers were you meeting with  
3 on March 12?

4 A. I don't recall.

5 3474. Q. Because it says, "briefing re  
6 trust", may I suggest to you that you were now  
7 meeting with the litigation lawyers, trying to find  
8 out what they could do as litigators with the trust  
9 that had been signed a week earlier? It's possible?

10 A. Anything is possible. I don't  
11 recall.

12 3475. Q. And then on March 17, page 6, you  
13 have a call with Nathan and emails Allard and SH.  
14 Who is SH, do you know?

15 A. Likely Stuart Heaslet, he has  
16 been...

17 MR. KRAMER: What date is that?

18 3476. MR. SILVER: That's March 7, 2007.

19

20 BY MR. SILVER:

21 3477. Q. And then you do a memo for interview  
22 with CJ, that's Chief Justice?

23 A. Likely.

24 3478. Q. Because what happened was you issued  
25 the claim...in the original Ontario claim, you

1 didn't sue the Chief Justice the first time around,  
2 right?

3 A. I never sued the Chief Justice. I  
4 sued Sir David Simmons.

5 3479. Q. Who happened to be the Chief?

6 A. Unfortunately.

7 3480. Q. But my point is you didn't sue him  
8 when the claim was initially issued.

9 A. Excuse me, when I said  
10 unfortunately, I didn't mean...good for him for  
11 being a Chief Justice, but it was unfortunate that  
12 that I had to add someone who had become the Chief  
13 Justice. That was very difficult.

14 3481. Q. Right. Sir, you didn't sue Sir  
15 David Simmons in the first, when the claim was  
16 issued. He got added as a party by the housekeeping  
17 motion or amendment motion of August 10, 2007,  
18 right?

19 A. I can't recall. I mean, the August  
20 motion had a lot of pieces to it, so I can't  
21 recall, but if you have the document, we could look  
22 at it together.

23 MR. RANKING: I can confirm that that's  
24 correct, if it helps Mr. McKenzie.

25 3482. MR. SILVER: Does anybody have an

1 amendment style of cause, we'll see David  
2 Simmons' name underlined.

3 MS. ZEMEL: Yes, I can find it.  
4

5 BY MR. SILVER:

6 3483. Q. Do you really need to see that, Sir  
7 David Simmons' name underlined?

8 A. Every time I say something on the  
9 record, the next day I find a document that reminds  
10 me that I should have said I don't recall  
11 because...my whole transcript is like that. I do  
12 have trouble remembering stuff. You know what, I  
13 think you're wrong, because wasn't it Mr. Schabas  
14 bringing a motion on behalf of the Chief Justice on  
15 August 10th. He had already been named.

16 3484. Q. No, but there had been other  
17 clients...

18 MR. RANKING: In fact, I stand  
19 corrected. I believe, having now, Ms.  
20 Zemel gave me a copy, I think it was Peter  
21 Simmons that was added.

22 THE DEPONENT: So, memories are  
23 unreliable all around.

24 MR. RANKING: No, you're right.

25 THE DEPONENT: That's why it's good to

1 look at the documents.

2

3 BY MR. SILVER:

4 3485. Q. But in any event...

5 A. Just let me finish that. From the  
6 first day I testified, I regret every time I said  
7 something for sure, because I then remembered  
8 something later. And I'm saying everything has been  
9 to the best of my recollection since the first day I  
10 testified, for obvious reasons that just happened to  
11 you guys.

12 3486. Q. We'll argue that in front of the  
13 judge. Your counsel may take the position that  
14 that's a reasonable excuse for further inaccuracies,  
15 and we'll take the position that that's just a  
16 witness trying to protect themselves and indicative  
17 of other things. So, we'll argue that.

18 Okay, moving forward to the April 20th  
19 account. March 28th, you're drafting a Miami claim,  
20 getting a memo from Kelly? Well, let's just go back  
21 for a second to the other account, the March 17th.  
22 So, it seems as though you had named the Chief  
23 Justice, David Simmons, in the initial claim and  
24 then you went and met with him?

25 A. Yes.

1           3487.           Q.       And was that before he had counsel  
2                           or after he had counsel? Must have been before,  
3                           because you wouldn't have met with him.

4                           A.       Whatever I did, I didn't breach  
5                           any...I mean, I cleared...

6           3488.           Q.       Sorry, you cleared? Go ahead.

7                           A.       I'm just saying I'm aware of  
8                           conflicts, obviously. If he had a lawyer, I would  
9                           have cleared it with him, but I don't recall whether  
10                          he had a lawyer or not, but I know we met.

11          3489.           Q.       Who met?

12                          A.       Well, at this point, and I put this  
13                          on the record, and Mr. Ranking picked up on it, I  
14                          noticed, that was a confidential meeting. I gave my  
15                          word to that gentleman and he gave his word to me  
16                          that everything that was said and done during that  
17                          meeting would not be discussed without our mutual  
18                          consent, and I'm going to stop right there.

19          3490.           Q.       So, you're not going to answer any  
20                          questions about what went on in the meeting?

21                          A.       That would not be appropriate. He  
22                          has not waived the confidentiality, and I respect  
23                          that.

/R

24          3491.           Q.       Was it a friendly meeting?

25                          A.       I think that would be breach of the

1 confidentiality agreement we talked about. /R

2 3492. Q. Were there threats made in the  
3 meeting?

4 A. Same answer. /R

5 3493. Q. Did you arrive in shorts and a  
6 T-shirt? Do you remember what you were wearing to  
7 the meeting?

8 A. I'm not the best dresser. I dressed  
9 above my usual dress...

10 3494. Q. They weren't ripped shorts?

11 A. You know what, I even, I think, had  
12 my shirt ironed and my grey flannels ironed and  
13 shined my shoes because I do respect the Chief  
14 Justice...

15 3495. Q. Did you call him David when you  
16 first walked into his office, said, "Hi David"?

17 A. As a matter of fact, he had his  
18 robes on and I think...he's the Chief Justice, I'm  
19 well aware of that.

20 3496. Q. Do you understand that when you  
21 left, he didn't think that you treated him and  
22 addressed him in a matter commensurate with a  
23 meeting with the Chief Justice?

24 A. That would breach the confidence,  
25 wouldn't it? If he slipped that out somewhere...I'm

1 flabbergasted that he would...I'm going to stop  
2 right there. I don't want to talk about that.

3 3497. Q. Did you understand after the meeting  
4 that he thought you showed him a lack of respect?

5 A. I won't answer that. /R

6 3498. Q. Okay, moving to the April 20th  
7 account and the March 28th item. Can I conclude  
8 from that that you were assisting John Kelly in the  
9 drafting of a Miami claim in March 28th, 2007?

10 A. I don't recall.

11 3499. Q. But from your docket entry, you  
12 agree with me that that appears to be the case?

13 A. I don't recall.

14 3500. Q. You're not in a position to deny or  
15 contradict what I've suggested to you?

16 A. Correct.

17 3501. Q. March 30th, the next page, you spend  
18 time, three and a half hours, reviewing exhibits re  
19 Canadian action and developing the conspiracy  
20 argument. This is now almost two months after it  
21 was issued, right?

22 A. More or less two months.

23 3502. Q. Yes, more or less, just a little bit  
24 less. But that's what you were doing on the 30th,  
25 right?

1                   A.     I don't recall what I was doing on  
2                   the 30th.

3     3503.           Q.     I know, from your docket.

4                   A.     I understand. It is reasonable that  
5                   I was...that's what I do for a living, review  
6                   evidence.

7     3504.           Q.     And create arguments?

8                   A.     I should say did.

9     3505.           Q.     And develop arguments after a claim  
10                   is already pled? That's what you do for a living?

11                   A.     You know how lawsuits go, right up  
12                   to the court of appeal you're developing arguments.

13     3506.           Q.     Yes. It is the facts that are  
14                   usually in place before the pleading.

15                   A.     I could prove this case today.

16     3507.           Q.     I'm sure you can. In that regard,  
17                   you're still practising law today, right?

18                   A.     Yes, much to my chagrin.

19     3508.           Q.     What name do you practice under now?

20                   A.     Well, I'm still a lawyer and I am a  
21                   lawyer. So, I practice as me in the very few things  
22                   that I'm unfortunately stuck with.

23     3509.           Q.     Well, you mentioned off the record  
24                   about a huge case that has got you preoccupied in  
25                   time for the next week.



1                   A.       I'm hoping to get another lawyer  
2 retained, I have an expertise in the subject matter  
3 and I would love to offload it to somebody else.

4       3510.           Q.       Where are you practising, out of  
5 your house?

6                   A.       Yes. From my head, probably.

7       3511.           Q.       Well, when your head is working, is  
8 it usually in your house or do you take it to an  
9 office? You haven't opened up a new office, have  
10 you?

11                   A.       I can guarantee you no, and my head  
12 is not always working. And I wish it wasn't working  
13 on law, believe me, but this is a situation where  
14 it's an old client who has 40 employees, a long-  
15 standing business, and the bank has taken a shot...

16       3512.           Q.       And you're acting for him.

17                   A.       Well, I got to go and...

18       3513.           Q.       You're billing him?

19                   A.       Well, I'm going to get paid,  
20 but...it is litigation. I'll tell you, I would like  
21 to be a hundred miles away from it.

22       3514.           Q.       Do you use your computer for the  
23 current work that you're doing?

24                   A.       Yes.

25       3515.           Q.       And that's all off of a laptop?

1 A. I have a laptop.

2 3516. Q. That's all you have, is what you  
3 told me. Did you have a desktop, too, at home?

4 A. Everything I do is on my laptop.

5 3517. Q. Do you have a desktop at home?

6 A. Yes, I have a desktop but it's not  
7 for anything like that. It's for my movie career,  
8 which I'll never get going, the way things are.

9 3518. Q. What's the memory capacity of your  
10 laptop?

11 MR. KRAMER: Well, tell me, Mr. Silver,  
12 how any of this connects with anything in  
13 this proceeding?

14 3519. MR. SILVER: Well, I have a suspicion  
15 that I'm testing that he's got electronic  
16 records relating to Nelson Barbados and  
17 Peter Allard.

18 MR. KRAMER: Well, ask him directly  
19 otherwise you're just fishing.

20 3520. MR. SILVER: But if I ask him direct,  
21 he's going to tell me no, I've asked it  
22 already.

23 MR. KRAMER: Well, that's the way it  
24 works. If you ask a direct question, you  
25 get a direct answer, but if you're going

1 around, skirting around...

2 3521. MR. SILVER: But this is  
3 cross-examination.

4 MR. KRAMER: I know, but you're not  
5 cross-examining, you're asking him fishing  
6 questions that have nothing to do with the  
7 lawsuit.

8 3522. MR. SILVER: All right, I'll cut to the  
9 chase.

10 MR. KRAMER: The memory capacity of his  
11 laptop is not a relevant question. /R

12 3523. MR. SILVER: Will you make Mr.  
13 McKenzie's computer available for forensic  
14 analysis subject to coming to a protocol  
15 that protects the confidentiality of other  
16 clients?

17 MR. KRAMER: No. /R

18 3524. MR. SILVER: Why not?

19 MR. KRAMER: Because you haven't  
20 demonstrated, it seems to me, anything  
21 close to what you would have to, to be able  
22 to get that sort of disclosure.

23 3525. MR. SILVER: Well, let me ask him what  
24 the size of...how am I supposed to do that?

25 MR. KRAMER: Well, you can ask him

1 questions that might show that a forensic  
2 examination of his laptop is proper, but  
3 the size of the memory just doesn't seem to  
4 me to be the question you would need to  
5 ask. So, the answer is no. I mean, if you  
6 could show me that there is good reason for  
7 that sort of exposure, maybe I would agree.  
8 I doubt it, but maybe.

9 3526. MR. SILVER: I doubt it too. I don't  
10 think I'll try, I'll just argue the motion.

11 BY MR. SILVER:

12 3527. Q. Do you store information on memory  
13 sticks? I just remember the 4,000 documents from  
14 John Knox and the whole kerfuffle we had with  
15 respect to a memory stick on his examination. Is  
16 that the usual way that you store information, is on  
17 memory sticks?

18 A. I use memory sticks to store  
19 information.

20 3528. Q. And did you store information with  
21 respect to the Peter Allard and/or Nelson Barbados  
22 files on memory sticks?

23 MR. KRAMER: Do you mean at any time  
24 throughout the currency of the litigation?  
25 I'm sure. Well, there was the issue that

1                   you mentioned, which we all know...

2       3529.           MR. SILVER:       Well, that was one that we  
3                   never really got to the bottom, but it was  
4                   documentation that Knox provided.

5                   MR. KRAMER:       I read about it.

6       3530.           MR. SILVER:       It's not clear whether it  
7                   was Knox's memory stick or McKenzie's  
8                   memory stick.

9

10       BY MR. SILVER:

11       3531.           Q.       So, where are all those memory  
12                   sticks that you had stored information on in respect  
13                   of the Allard and Nelson Barbados matters?

14                   A.       I'm not sure, but the reason I'm  
15                   saying that is they certainly crash all the time  
16                   and, I throw them in the garbage, so...

17       3532.           Q.       Is that what you're saying, that  
18                   every one of them that you had that had information  
19                   on it crashed at one point and you threw it in the  
20                   garbage, is that your evidence?

21                   A.       I'm going back to when I last dealt  
22                   with this file, last August, and thinking there may  
23                   be one or two that I used, but they would have been  
24                   recycled, if you know what I mean. Like, emptied  
25                   and other stuff put on them.

1 3533. Q. So, during the currency of the file,  
2 you had information relating to the file stored on  
3 memory sticks, yes?

4 A. Yes.

5 3534. Q. And today, you don't have any memory  
6 stick that has any information relating to this  
7 file, right?

8 A. No. I'm just saying...a  
9 scouring...anyway, not to my recollection, I mean, I  
10 think it's all gone.

11 3535. Q. And if that changes, of course  
12 you'll make those memory sticks available to Mr.  
13 Kramer and he'll let us know?

14 A. I think the scouring thing yesterday  
15 that I came across something, I would certainly give  
16 it to my lawyer.

17 MR. KRAMER: Can I suggest this? If you  
18 look for your memory sticks and if any of  
19 them have any information on them relating  
20 to Nelson Barbados or Kingsland, you should  
21 disclose it...you should give it to me to  
22 look to see what it is and perhaps we'll  
23 disclose it.

24 3536. MR. SILVER: So, we'll take an  
25 undertaking to search for memory sticks and

1 deliver any that have any Peter

2 Allard/Nelson Barbados/KEL information.

3 MR. KRAMER: I think KEL has to be the  
4 first name in that list, doesn't it? If  
5 it's Peter Allard but it's not KEL?

6 3537. MR. SILVER: Sure. KEL/Peter  
7 Allard/Nelson Barbados to Jeff Kramer.

8 MR. KRAMER: Can you do that, can you  
9 look if you have any such memory sticks and  
10 look at them and see what's on them?

11 THE DEPONENT: Sorry, I lost you there.

12 MR. KRAMER: In other words, a  
13 proposal...

14 THE DEPONENT: To go and look and see if  
15 something...

16 3538. MR. SILVER: That has any semblance of  
17 relevance to all these issues that we've  
18 been talking about, and provide them to Mr.  
19 Kramer.

20 MR. KRAMER: It's the same thing, you  
21 were going to look for hard copies, now  
22 you're going to add to that memory sticks.

23 3539. MR. SILVER: Right.

24 MR. KRAMER: If you believe that there  
25 may be some memory sticks, and it sounds

1 like you believe maybe...

2 THE DEPONENT: I think I...

3 MR. RANKING: Mr. Kramer, if I might ask  
4 a question directly of you. If I could ask  
5 you just with respect to this, this is a  
6 question that I would have asked, but it's  
7 appropriate now, having regard to the line  
8 of inquiry. If you could look to the  
9 August 25, '06 docket entry.

10 MR. KRAMER: Hold on a second, let me  
11 find it. This is on the September 25, '06  
12 account, "calls with Allard", that one?

13 MR. RANKING: That's correct. If we  
14 could ask that the undertaking be expanded  
15 for not just memory sticks, but CDs,  
16 because you'll see in that entry, there are  
17 calls with Alair Shepherd, emails from John  
18 Knox, Jane Goddard, AS, Alair Shepherd.  
19 Just for the record, it goes on to say,  
20 "...Download documents to be burned to CD  
21 for BM..."

22 So, I would like to, as a supplement to Mr.  
23 Silver's questions, know whether there were  
24 other CDs containing documents or emails of  
25 any sort relating to the matters that are



1 the subject matter of this action.

2 MR. KRAMER: Do you have any CDs or DVDs  
3 relating to the subject matter of this  
4 proceeding?

5 THE DEPONENT: All of this kind of thing  
6 would be in the file. I'm just saying, I  
7 would like to go back to the firm and look  
8 through...

9 MR. KRAMER: Well, what's in the  
10 firm...there are other undertakings in  
11 relation to deal with that. We're talking  
12 about what is in your personal possession.  
13 Do you believe that you have any CDs or  
14 DVDs, perhaps the one mentioned in this  
15 docket entry otherwise?

16 THE DEPONENT: I don't believe I do, but  
17 that's what I said I was scouring...

18 3540. MR. SILVER: I thought you said  
19 yesterday that there might be a CD in the  
20 box.

21 MR. KRAMER: But he was talking about  
22 the...

23 3541. MR. SILVER: The box that you got?

24 MR. KRAMER: No, no. To be fair to Mr.  
25 McKenzie, I believe he said there might be

1 some storage thing, like a CD, which has  
2 firm material, I don't think he was talking  
3 about, that was created in the currency of  
4 the lawsuit. But if there are any CDs or  
5 DVDs, I think it's appropriate that we  
6 simply add it to the undertaking that we've  
7 given with the memory stick. If there is  
8 nothing, there's nothing to produce. If he  
9 finds...if those things do exist and  
10 they're not in the firm files, because  
11 that's already covered, then please...

12 3542. MR. SILVER: Give it to Mr. Kramer and  
13 he'll let us know what you're going to do.

14 MR. RANKING: And I'll write to Mr.  
15 Kramer just in that regard to review the  
16 balance of this account. There are  
17 references to downloads.

18 MR. KRAMER: So, it sounds like there  
19 were CDs at one time.

20 THE DEPONENT: Well, I know what my  
21 practice is. I'm going to go look and see  
22 if any of them are hung over, hanging  
23 around in a pile somewhere. I think that's  
24 what we're trying to do.

25 MR. KRAMER: What we're talking about

1 are things in your personal possession,  
2 your garage and your house, somewhere else.  
3 If it's in the firm's boxes, they'll be  
4 disclosed anyways.

5 THE DEPONENT: I understand. So, I'm  
6 going to go look for these kind of things  
7 and see if perchance I missed something.

8 MR. KRAMER: Fine. No problem.

U/T

9

10 BY MR. SILVER:

11 3543. Q. So, I just want to cover off what we  
12 can conclude if your search reveals that there are  
13 no memory sticks and/or CDs that are still  
14 available, okay? You want to look at something  
15 before...

16 A. No, I was just going back to remind  
17 myself. What was the entry?

18 MR. KRAMER: It was in August of '06.

19

20 BY MR. SILVER:

21 3544. Q. But as Mr. Ranking said, if you look  
22 through the accounts, there's a lot of downloads.

23 MR. RANKING: Yes, if you just read the  
24 account, there's numerous entries that  
25 indicate downloading of documents.

1 THE DEPONENT: No, I understand that,  
2 and that was my practice. The firm would  
3 put stuff on a memory stick or John Knox  
4 would.

5

6 BY MR. SILVER:

7 3545. Q. And so if none of those memory  
8 sticks or CDs exist...firstly, you said that you had  
9 some memory sticks in August of 2009 when you were  
10 last dealing with them.

11 A. I had memory sticks, yes, I did.

12 3546. Q. So, if those don't exist anymore,  
13 it's one of two things. They crashed and you lost  
14 the data, which I find hard to believe, but I  
15 shouldn't be saying that.

16 A. They crash quite often, believe me.

17 3547. Q. And you just lose all the data?

18 A. Yes. Make backups. I mean, do two  
19 at once. Take my word for it.

20 3548. Q. And/or you overwrote them?

21 A. They would have been annihilated.

22 3549. Q. So, after August of 2009, knowing  
23 that a claim for cost was going to be made against  
24 you, memory sticks that you had were either crashed  
25 or were overwritten with new data?

1 MR. KRAMER: You're asking that  
2 question? He hasn't said when this may  
3 have happened.

4 3550. MR. SILVER: Well, it had to happen  
5 after August 2009. He had them in August  
6 2009.

7 MR. KRAMER: Did you establish that? I  
8 think I missed that.

9

10 BY MR. SILVER:

11 3551. Q. Just answer my question. If the  
12 result of your search is that there are no memory  
13 sticks or CDs...and you had some memory sticks in  
14 August of 2009, you've said that, right?

15 A. Yes.

16 3552. Q. So, after August, assuming they no  
17 longer exist, after August 2009, one of two things  
18 happened to these memory sticks. They crashed and  
19 you lost the data and you threw out the memory stick  
20 or you overwrote data onto the memory stick?

21 A. That's correct, that would be the  
22 two options.

23 3553. Q. Right, only two options.

24 MR. KRAMER: Or they still exist.

25 THE DEPONENT: Yes.

1 3554. MR. SILVER: Well, that would be the  
2 best.

3

4 BY MR. SILVER:

5 3555. Q. That took place after you had  
6 noticed that a claim for cost was going to be made  
7 against you and your firm. You knew that back in  
8 April when we argued the motion. Mr. Ranking came,  
9 his client had been discontinued and he put right on  
10 the record at the outset that he was going to step  
11 away from the jurisdiction motion, but he would  
12 return when cost submissions were made, including  
13 with a cost claim against you and your firm. You  
14 knew that in April of '09?

15 A. Well, he said he was, but you had  
16 said certain other things and never followed through  
17 with them. So, I waited until I got served. As you  
18 will recall, there were lots of letters saying,  
19 "What are the details? Come on, guys."

20 3556. Q. So, you waited until you got served  
21 before you overwrote the CDs, the memory sticks?

22 A. I wait until I get served before I  
23 actually believe it will be a claim for costs.

24 3557. Q. But you had notice that that was  
25 coming as early as April of '09 or earlier.

1 A. What's your question?

2 3558. Q. You were present in April of '09  
3 when Mr. Ranking came to court...

4 A. I was.

5 3559. Q. Thank you. Let's look at the April  
6 20th account.

7 MR. KRAMER: April 20, '07, right?

8 3560. MR. SILVER: Right, and we've dealt also  
9 with the trust statements on these and  
10 payments to Dribin.

11

12 BY MR. SILVER:

13 3561. Q. Let's move forward to the May 24th  
14 account. There are pages missing from the May 24th  
15 account. And I can't remember if I got an  
16 undertaking...did you get an undertaking from  
17 Jessica? There's 13 pages missing. If you see,  
18 mine goes from page 1 and then the next page is 14.

19 MR. KRAMER: Yes, mine does as well.

20 3562. MR. SILVER: So, Mr. Epstein, I can't  
21 remember if we asked for this, but can you  
22 make a note to see if there's a complete  
23 copy of the May 24, 2007 account in BMC  
24 543?

25 MS. MORSE: I confirm from my notes that

1                   that undertaking was previously given.

2       3563.           MR. SILVER:       Sorry, thanks.

3

4       BY MR. SILVER:

5       3564.           Q.       And then if we look at the trust  
6                   statement in this file, page 17 of the account which  
7                   is there, in the US fund trust account, you're  
8                   paying the Kelly law firm in respect of this  
9                   activity, this Miami litigation activity, right?

10                   A.       May 24th bill?

11       3565.           Q.       No, May 24th trust account entry.

12                   A.       Correct.

13       3566.           Q.       So, would you agree with me that  
14                   Kelly's client was Allard? I think Kelly's client,  
15                   actually, when you look at his account, was an  
16                   agency client, namely you, and your client was  
17                   Allard?

18                   A.       Right. That's the likely scenario.

19       3567.           Q.       And Allard was paying the bills?

20                   A.       Again, subject to going right back  
21                   to the trust, that makes sense to me.

22       3568.           Q.       Well, we're not going to do that.  
23                   Next, the June 22 account. And this brings us into  
24                   June of 2007 and there's obviously almost daily  
25                   emails or discussions with Goddard and Knox and



1 Peter Allard and Nathan, do you see that?

2 A. Yes.

3 3569. Q. Blogging, you're as active as ever  
4 in June of 2007 with respect to blogging? You're  
5 working with the lawyers in Miami on the Miami  
6 action? For example, June 2nd, "Review re Miami  
7 action."

8 A. I'm agreeing that that's what the  
9 docket said. I have no specific recollection of  
10 each detail of each day's work.

11 3570. Q. And then we've looked at this, on  
12 the third page, June 8th, "Review financial  
13 arrangement documents re MK." I suggest to you that  
14 that was in part in relation to the Exhibit C  
15 documents that we looked at and the new agreements  
16 that were being prepared between Best and Allard.

17 A. I don't recall.

18 3571. Q. But you can't deny that.

19 A. Correct.

20 3572. Q. Sir, do you continue to work with  
21 the Miami lawyers, for example, in respect of this  
22 complaint for declaratory relief, are you still in  
23 communication with the Miami lawyers?

24 A. I am still in communication with  
25 Miami lawyers.

1 3573. Q. With the Miami lawyers, with Dribin  
2 and Raymond?

3 A. Yes.

4 3574. Q. Have they reported to you in writing  
5 since January 1st, 2010?

6 A. I get copies of things just like you  
7 do. We were talking about something yesterday that  
8 I haven't seen until last night that you got from  
9 the Miami lawyer. So, I'm saying we're probably in  
10 the same boat, just, I get stuff...I'm an observer.

11 3575. Q. And those would be records that  
12 wouldn't be tied up with the law firm, those are all  
13 post your leaving the law firm. So, you would have  
14 those records.

15 A. I may have some. I just read them  
16 and move on.

17 3576. Q. Okay. Will you produce them,  
18 please?

19 MR. KRAMER: Well, why would that be  
20 relevant to this?

21 3577. MR. SILVER: Because we are suing Mr.  
22 McKenzie because he seems to be the kingpin  
23 and the hub of the wheel around which sham  
24 litigation in Ontario was brought...

25 MR. KRAMER: It was brought.

1 3578. MR. SILVER: ...at the same time as, or  
2 as part of an overall plan that included  
3 activity in Miami and I think it would be  
4 relevant to show the judge all of that.  
5 Secondly...

6 MR. KRAMER: Yes, but this is now long  
7 post-dating the events for which you're  
8 seeking costs.

9 3579. MR. SILVER: It doesn't matter. I mean,  
10 he could have something occur today that  
11 would highlight why he should pay costs  
12 from yesterday.

13 MR. KRAMER: I'm not so sure about that.

14 3580. MR. SILVER: And secondly, Mr. Kramer,  
15 paragraph 41 of Mr. McKenzie's affidavit of  
16 April 23rd...

17 MR. KRAMER: Hold on. Let's just take a  
18 quick look at that. Yes.

19 3581. MR. SILVER: ...talks about the very  
20 complaint in Miami that I want to see the  
21 correspondence between lawyers on to be  
22 able to show the judge that his wording in  
23 paragraph 41 is a complete  
24 misrepresentation of his involvement in the  
25 application in Miami that he attaches as an

1 exhibit to his affidavit. And I think I'll  
2 be able to do that if I get production of a  
3 copy of all communications to and from  
4 Dribin and Raymond, and I am going to get  
5 post-January 1, 2010, so that I don't fall  
6 into any problems with the firm's records,  
7 his records. And I'll say, relating in any  
8 way to the trust, the application, the  
9 complaint for declaratory relief or other  
10 issues that form the subject matter of the  
11 dispute.

12 MR. KRAMER: I think that's far broader  
13 than what you're entitled to. I take your  
14 point about paragraph 41. If you want to  
15 ask him a question about the notification  
16 he got about this, that's a proper  
17 question.

18 3582. MR. SILVER: Well, what part of the  
19 request do you agree to? Or is it none of  
20 it?

21 MR. KRAMER: No, not none of it. I  
22 think you're entitled to cross-examine him  
23 on what he swore in his affidavit, which is  
24 that he said,  
25 "...I had some notification by word of

1 mouth and just recently was given a copy of  
2 this claim..."

3 If you want to ask him a question about  
4 that and you want to ask for documents  
5 relating to that, I couldn't object to it.  
6 But what you asked for...

7 3583. MR. SILVER: So, you agree to produce a  
8 copy of all communications to and from  
9 Dribin/Raymond relating to...and I'll take  
10 it post-January, but if he's got it before  
11 January 2010, I'll take that too, relating  
12 in any way to the trust and to the  
13 complaint for declaratory relief?

14 MR. KRAMER: No. I take your point to  
15 be...he swore in his affidavit that he had  
16 some notification of the trust and he  
17 recently got a copy of the claim. If you  
18 want to get copies of documents relating to  
19 that statement, it seems to me that he  
20 would have to produce that.

21 3584. MR. SILVER: I'm just trying to  
22 establish what you're undertaking to  
23 provide and what you will treat as a  
24 refusal. So, will you produce a copy of  
25 all communication to and from Dribin and

1 Raymond relating to the complaint for  
2 declaratory relief?

3 MR. KRAMER: No. Let me make it clear  
4 why. It seems to me that there is a  
5 difference between things that happened  
6 before or after the proceeding for which  
7 you're claiming costs. You rightly pointed  
8 out to me that there is a comment in the  
9 affidavit that is post those events, and  
10 the thing that's post those events... /R

11 3585. MR. SILVER: Mr. Kramer, you're not  
12 incorporating into it a day of  
13 cross-examination which shows that this  
14 originates back in 2007 and he retained  
15 these lawyers.

16 MR. KRAMER: And you've examined him on  
17 that at length.

18 3586. MR. SILVER: I know, but it makes the  
19 correspondence relevant beyond just testing  
20 some ridiculous language in paragraph 41 of  
21 his affidavit. So, if I've got to take  
22 refusals, I'll take refusals.

23 MR. RANKING: Can I also say to Mr.  
24 Kramer that the other point that I wish to  
25 make is that the records that Mr. Silver

1 has asked for are directly germane to what  
2 we will be submitting to Justice  
3 Shaughnessy as an ongoing course of conduct  
4 and further evidence as to Mr. McKenzie's  
5 quarterbacking sham litigation of which the  
6 Nelson Barbados action in Ontario is but  
7 one proceeding. It is continuing and  
8 indeed...

9 MR. KRAMER: If it is continuing, it  
10 sure isn't causing your clients any more  
11 prejudice in this lawsuit because the  
12 lawsuit is over. It's maybe causing you  
13 prejudice in some other way, and presumably  
14 you've got remedies about that.

15 MR. RANKING: Mr. Kramer, it's evidence  
16 that is relevant to Justice Shaughnessy...

17 3587. MR. SILVER: To decide whether or not to  
18 impose costs against Mr. McKenzie  
19 personally.

20 MR. KRAMER: Well, I'm not convinced of  
21 it. I don't see how things that McKenzie  
22 may or may not have done subsequent...I  
23 take your point that it might highlight or  
24 elucidate some other thing that he's done,  
25 which you've examined on at length. I

1 don't see how you get...it cannot be that  
2 something McKenzie did after April 2009  
3 caused your client to run up any costs for  
4 which it's claiming indemnity for.

5 MR. RANKING: But wait, that is a  
6 watertight compartment, which is unfair.  
7 What we are saying is that the post-April  
8 '09 events prove what he did before.

9 3588. MR. SILVER: Right.

10 MR. KRAMER: Well, I'll think about that  
11 further. For now, that's a refusal. /R

12 3589. MR. SILVER: And just to be clear, the  
13 refusal that I've got is to produce a copy  
14 of any and all communications to and from  
15 Dribin and Raymond relating to the trust,  
16 the complaint for declaratory relief, or  
17 any other issue that is part of the subject  
18 matter of the cost disputes?

19 MR. KRAMER: Right.

20 3590. MR. SILVER: And secondly, I would like  
21 an undertaking to inquire of Dribin and  
22 Raymond and ask them to make the same  
23 productions.

24 MR. KRAMER: Well, we've already talked  
25 about generally Mr. McKenzie's willingness



1 to make inquiries of them and we're not  
2 prepared to do that. /R

3 3591. MR. SILVER: So, that's a double  
4 refusal.

5 MR. KRAMER: Well, it's a second  
6 refusal, how about that? I don't know if  
7 you can doubly refuse.

8 3592. MR. SILVER: Okay. I just want to make  
9 sure that the request is on the record.

10 THE DEPONENT: May I make an awkward  
11 stop?

12

13 --- A BRIEF RECESS

14

15 K. WILLIAM MCKENZIE, resumed

16 CONTINUED CROSS-EXAMINATION BY MR. SILVER :

17 3593. Q. You're ready, Mr. McKenzie?

18 A. Yes.

19 3594. Q. I'm looking still in Exhibit K, and  
20 I'm now in June of 2007 and I'm looking at page 6,  
21 the trust account.

22 A. Yes.

23 3595. Q. And in particular, the US funds.

24 A. Yes.

25 3596. Q. May 24th, your firm received

1           \$6,080.15 from Allard and it was put into trust?

2                   A.       I don't recall, but it's likely.

3       3597.           Q.       Well, that's what this reflects.

4                   A.       I've made my comments before. So,  
5       same comment with this. If it's what it says...I'm  
6       presuming it's from Allard, but I haven't tracked it  
7       all the way back to the foreign bank that it came  
8       from.

9       3598.           Q.       Well, who else could it come from if  
10       it's going into the Allard account? Why is there  
11       any reservation on this after all this time, Mr.  
12       McKenzie?

13                   A.       I'm just saying, I have not tracked  
14       it back to the originating bank.

15       3599.           Q.       Why not? Why haven't you done that?

16                   A.       I thought you were doing that. But  
17       yes, it's likely that it's Allard's money.

18       3600.           Q.       Thank you. It shouldn't be so  
19       difficult after a day and a half...

20                   A.       Well, except when you get up and  
21       say, "Your answer was false" to Justice Shaughnessy  
22       because I found something tracked back three layers  
23       that I have no idea about. So, I have to be  
24       careful. If you promise not to do that, I will be  
25       less circumspect and that's what you did yesterday.

1           3601.           Q.       I don't know what you're talking  
2                            about nor do I care to find out. On May 28th of the  
3                            money that you got from Mr. Allard, you paid \$1,000  
4                            to Jane Goddard. And it says to pay account of L.  
5                            St. Hill for services rendered.

6                            A.       Okay, I don't recall, but yes, there  
7                            was a gentleman by the name of Leonard St. Hill.

8           3602.           Q.       And you were giving money to Jane  
9                            Goddard to pay his account?

10                           A.       Correct.

11           3603.           Q.       What was he doing? Evaluation  
12                            related work?

13                           A.       He's, if I recall, an elderly  
14                            gentleman who is a planner and evaluator of land.  
15                            He used to be head planner or something for Barbados  
16                            and knows his way around. He values and also does  
17                            research for you and tracks stuff for you. I don't  
18                            know exactly what he was doing there, but that's  
19                            generally what he was doing.

20           3604.           Q.       If you turn to Exhibit L of Ms.  
21                            Duncan's affidavit, this is an email from you to her  
22                            and Dennie Flynn, right?

23                           A.       That's what it says. I don't recall  
24                            the email.

25           3605.           Q.       But you accept that you sent this

1 email to Dennie Flynn and Sunny Ware?

2 A. I won't deny it. If it's important,  
3 we'll have to go track it. But it looks like it.

4 3606. Q. And you say,  
5 "...There is some money going to Jane  
6 Goddard to join the US \$1,000 cash I handed  
7 her..."

8 So, the \$1,000 US cash, is that the disbursement out  
9 of the trust account of May 28th? This is a week  
10 later.

11 A. It seems to be. I mean, it makes  
12 sense, yes.

13 3607. Q. And then you say,  
14 "...This is money advanced to her as part  
15 of the deal between Nelson Barbados and her  
16 mother, that they will cooperate..."

17 And we have heard before that there was a  
18 cooperation agreement and you wouldn't answer  
19 questions on it last time because of privileges and  
20 other excuses, if I could put it that way...other  
21 explanations as to why you couldn't disclose the  
22 details. So, tell me about this cooperation  
23 agreement. Firstly, is it in writing?

24 A. I don't recall.

25 3608. Q. You don't recall if it was in

1 writing? What were the terms of it that you recall?

2 A. I don't recall.

3 3609. Q. Who were the parties to it?

4 A. Well, according to this, and it  
5 makes sense, there was Nelson Barbados who were  
6 parties and that would have been Marjorie Knox.

7 3610. Q. If it were to be confirmed in  
8 writing, the cooperation agreement, would you agree  
9 with me that you would have been the guy to prepare  
10 the cooperation agreement?

11 A. Negotiated it would be fair. If  
12 there were and if I had and if I remembered, that  
13 would make sense, because I was acting for Nelson  
14 Barbados.

15 3611. Q. Do you recall negotiating the  
16 cooperation agreement?

17 A. No.

18 3612. Q. You don't recall whether you  
19 negotiated a cooperation agreement or not?

20 A. I don't recall. Didn't we go over  
21 this in the first transcript?

22 3613. Q. No, we didn't. Even if we did, I'm  
23 asking you the questions again.

24 A. All right, well, go ahead, ask the  
25 questions.

1 3614. Q. What date was the agreement?

2 A. I don't recall.

3 3615. Q. What time period was the cooperation  
4 agreement entered into?

5 A. I don't recall.

6 3616. Q. What was the essence of the  
7 agreement?

8 A. I don't recall.

9 3617. Q. Did it relate to the Ontario action?

10 A. I don't recall.

11 3618. Q. What do you recall about it,  
12 nothing?

13 A. There was some type of cooperation  
14 arrangement.

15 3619. Q. In essence, what were the terms of  
16 that?

17 A. I don't recall. I recall that you  
18 asked me similar questions in the last transcript.

19 3620. Q. And I told you, sir, that the last  
20 time, you used excuses of privilege and  
21 confidentiality and you wouldn't answer our  
22 questions. So, now that they're all cleared, the  
23 excuse is you have a memory problem, have I got that  
24 right?

25 A. Well, I'm not going to argue with

1           you, but I'm saying I don't recall.

2       3621.           Q.       Did the cooperation agreement extend  
3           to the Ontario action?

4                    A.       I don't recall.

5       3622.           Q.       Did the cooperation agreement extend  
6           to the Miami plan as you describe it in your  
7           dockets?

8                    A.       I don't recall.

9       3623.           Q.       I'm going to suggest to you that for  
10          tactical and strategic purposes, you included  
11          Marjorie Knox as a defendant in Ontario, having  
12          previously entered into a cooperation agreement such  
13          that she would do whatever it was that you and  
14          Allard required her to do in that action, right?

15                   A.       I don't recall.

16       3624.           Q.       And I'm also going to suggest to you  
17          that that cooperation agreement, there was  
18          consideration for the cooperation agreement, namely  
19          payments were being made to the Knox family to  
20          ensure that they continued to cooperate, isn't that  
21          right?

22                   A.       I don't recall.

23       3625.           Q.       Do you recall that the cooperation  
24          agreement included a provision that the Knoxes would  
25          be paid for their cooperation?

1 A. I don't recall.

2 3626. Q. Well, sir, read the line I read to  
3 you again in your June 9 email. This is money  
4 advanced to her as part of the deal between Nelson  
5 Barbados and her mother that they will cooperate.  
6 So, is there any doubt in your mind that one of the  
7 terms of this cooperation agreement is that they  
8 would be paid for the cooperation? That's what that  
9 says.

10 A. You can read it the way you wish.

11 3627. Q. How do you read it?

12 A. Well, my recollection...I'm just  
13 adding two and two to say...

14 3628. Q. That's a reasonable interpretation.

15 A. No, I'm just saying a reasonable  
16 interpretation to me, and I'm only interpreting it  
17 because I don't recall, is that they needed money to  
18 hire Mr. St. Hill to do some...whatever he did and  
19 it was advanced to them.

20 3629. Q. This says, "as part of the deal".

21 A. Well, it's equally likely that he  
22 was doing work for something else for them. I'm  
23 just saying I don't recall and I don't want to argue  
24 with you. So, I can't accept your assumption as  
25 being accurate.



1           3630.           Q.       The next paragraph in this email  
2                            makes it clear that you're setting it up as an  
3                            expense of Nelson Barbados so that if you win the  
4                            action down the road, it will be a taxable  
5                            disbursement and treated accordingly, right?

6                            A.       Yes, that's what it says.

7           3631.           Q.       And in fact, it wasn't Nelson  
8                            Barbados paying for the cooperation, it was Allard,  
9                            right?

10                          A.       That's reasonable, but I don't  
11                          recall.

12           3632.           Q.       Then if you turn the page, Peter  
13                            Allard writes back to that email to you and says,  
14                            "Did you mean RB?" Who is RB? You see, his email  
15                            is below and then Allard responds to it, and then  
16                            McKenzie responds to Allard.

17                          MR. KRAMER:       Strangely, there's no time  
18                          or anything on Allard's response.

19           3633.           MR. SILVER:       Well, this is produced  
20                          by...

21                          MR. RANKING:       Well, it's interesting  
22                          because, just on Mr. Kramer's point, there  
23                          doesn't seem to be one on Mr. McKenzie's  
24                          either.

25                          MR. KRAMER:       Well, McKenzie's says June

1 9th, 7:02 a.m.

2 3634. MR. SILVER: No, no, because it's  
3 picking up a trail.

4 MR. RANKING: The trail doesn't seem to  
5 have any dates. It's only the most recent  
6 text.

7 THE DEPONENT: I don't know. I have no  
8 recollection of RB.

9 MR. KRAMER: Is there some RB in this  
10 story that I haven't...

11 3635. MR. RANKING: It's probably another  
12 pseudonym.

13 THE DEPONENT: Leonard St. Hill, excuse  
14 me, I just had a recollection, I think from  
15 last time. Leonard St. Hill prepared an  
16 evaluation, I believe, and we can check  
17 that I produced to Mr. Ranking as an answer  
18 to an undertaking...that rings a bell, but  
19 that might help you. And I don't recall it  
20 very well, but I seem to have had a flash  
21 of my memory there.

22 3636. MR. SILVER: That's very helpful, thank  
23 you.

24

25 BY MR. SILVER:

1 3637. Q. Let's look, further in, Exhibit L,  
2 there's an email that starts on Monday, the top is  
3 Monday, July 9th. It's actually starting at the  
4 bottom. You email Sunny Ware at 5:46 in the  
5 morning, do you see that?

6 MR. KRAMER: Actually, no.

7 3638. MR. RANKING: A few pages in.

8 MR. KRAMER: So, that's where we should  
9 start, on the one that's got the  
10 attachment?

11 3639. MR. SILVER: No, on the bottom it says  
12 "page 1, July 9, 5:46 a.m. email"?

13 MR. KRAMER: I got it, yes.

14

15 BY MR. SILVER:

16 3640. Q. And you're asking Sunny Ware on the  
17 morning of July 9th,

18 "...How much US cash can we get for me to  
19 take to Jane?..."

20 "Jane" is obviously Jane Goddard?

21 A. Right.

22 3641. Q. Okay,

23 "...I think we have given her \$7,000 and  
24 therefore another \$8,000 is needed. So,  
25 can you see what you can do this AM to

1 round some up. Sorry, did not dawn on me  
2 this morning that I better take some with  
3 me..."

4 So, am I right that you were going to Barbados that  
5 day and you wanted to get cash to take down and give  
6 to Jane Goddard?

7 A. I don't recall, but I did take cash  
8 to give to Jane Goddard.

9 3642. Q. You took cash and gave it to Jane  
10 Goddard.

11 A. Well, that's reasonable to...here I  
12 say...

13 3643. Q. Why were you giving her money in  
14 cash?

15 A. I just saw something in there. You  
16 have to pay US cash to get things done. It's the  
17 culture.

18 3644. Q. What did you see in there that  
19 highlighted that for you?

20 A. When I was having the same...yes,  
21 the previous email where an email says paying cash  
22 is often the only way to get things done.

23 MR. KRAMER: That's June 11, at 1:24  
24 p.m.

25 THE DEPONENT: I'm just saying. I don't

1 recall these emails, but I do know that US  
2 dollars, cash paid to people,  
3 facilitates...is a cultural...  
4

5 BY MR. SILVER:

6 3645. Q. See, what I take from it is you  
7 enter into a cooperation agreement on behalf of your  
8 client, you don't document it, and you pay cash  
9 because you're hope is nobody will ever find out  
10 about this cooperation agreement and payments being  
11 made to a defendant to cooperate with a plaintiff in  
12 an action.

13 A. I can say quite clearly...it's never  
14 been mine understanding that these people were paid  
15 to do things, as opposed to being given money to  
16 allow them to do things.

17 3646. Q. So, then why wouldn't you just  
18 retain Lenny St. Hill?

19 A. Meet him sometime and see...

20 3647. Q. Why wouldn't Alair Shepherd retain  
21 Lenny St. Hill? Why did you have to give money,  
22 cash, to Jane Goddard to retain Lenny St. Hill?

23 A. I met Mr. St. Hill and thought  
24 somebody else should probably deal with him.

25 3648. Q. So, that's why you took cash, loaded

1 your pockets before flying down to Barbados with  
2 \$8,000 of cash because you met Lenny St. Hill and  
3 thought somebody else should deal with him?

4 A. No, it was because I did not have  
5 the patience to deal with him. He's a very  
6 wonderful gentleman. Jane and John seemed to get  
7 along with him, they took the job and...

8 3649. Q. But why cash?

9 A. Well, that's...

10 3650. Q. Lenny saying no, wouldn't render an  
11 invoice and take a cheque?

12 A. Perhaps, you are better to ask...I  
13 don't want to speak, but you could ask Mr. St. Hill.  
14 I can tell you that my experience...

15 3651. Q. I'm asking you, sir, why you, on the  
16 morning that you were flying down to Barbados,  
17 thought you had to take \$8,000 in cash to deliver to  
18 Jane Goddard. Only you can answer that question.

19 A. Well, I think I did. In my  
20 experience, the only time that I can remember  
21 dealing with cash, and it's a very uncomfortable  
22 situation, believe me, was a process server, this  
23 guy, Alleyne...it wasn't going to get done unless I  
24 handed him the right amount of money up front. But  
25 it got done and I hope...I'm pretty sure I got an

1 invoice, because I do like to make sure that I'm  
2 covered for these things.

3 3652. Q. You got an invoice from who? Jane  
4 Goddard invoiced on the cooperation agreement?

5 MR. KRAMER: No, he said the processor.

6 THE DEPONENT: No, the process server.

7

8 BY MR. SILVER:

9 3653. Q. Jane Goddard wasn't sending invoices  
10 on her cooperation agreement, was she?

11 A. No, I would think, to the best of my  
12 recollection, it's more likely that Leonard St. Hill  
13 gave an invoice back, sooner or later, to document  
14 it. I have a vague recollection that he did render  
15 an account, so it may be in the file. But he wanted  
16 to be paid cash up front. That's the culture, US  
17 cash up front. That's all I can tell you.

18 3654. Q. And Leonard St. Hill did work that  
19 cost \$15,000 or \$16,000...how much in total was Jane  
20 Goddard or the Knox family paid on this cooperation  
21 agreement?

22 A. I've never done the math, I don't  
23 know.

24 3655. Q. Well, estimate it for us.

25 A. I can't.

1 3656. Q. More than \$100,000?

2 A. If any cash went out, it's accounted  
3 for by my accounting department. And I sure hope  
4 that there are receipts but...

5 3657. Q. You don't have any records?

6 A. I don't like walking around with  
7 other people's cash, believe me, but you have got to  
8 do...

9 3658. Q. You didn't seem to have a problem  
10 with the money delivered to Jane Goddard.

11 A. Well, it was uncomfortable, that's  
12 why I'm saying, "oops".

13 3659. Q. I'm saying "oops" too. So, is your  
14 best guess that the amount that was paid for this  
15 cooperation agreement was greater or less than the  
16 \$100,000?

17 A. To Mr. St. Hill you mean?

18 3660. Q. No, with respect to the cooperation  
19 agreement that you have admitted was entered into  
20 with the Knox family.

21 A. Well, I have no recollection, I've  
22 never done the math, and I can't guess, even come  
23 close to guessing. It's there, I'm sure.

24 3661. Q. Is the cooperation agreement still  
25 in place?



1 MR. RANKING: When you say it's there,  
2 Mr. McKenzie, how is it that we're going to  
3 be able to track it if all the payments are  
4 in cash?

5 THE DEPONENT: One at a time, please.

6 MR. KRAMER: You heard the question.  
7 Why don't you just...

8 THE DEPONENT: How are you going to be  
9 able to track it?

10 MR. RANKING: Yes.

11 THE DEPONENT: Well, I'm sure you asked  
12 for undertakings from the law firm to give  
13 you all the accounts and you'll go through  
14 them patiently...

15 MR. RANKING: We have all the accounts.

16 3662. MR. SILVER: They're not in the  
17 accounts, and I'm about to get into the  
18 next email, which happens to be Hushmail  
19 email, which I have some questions about.  
20 Lawyerbil@hushmail.com.

21 MR. KRAMER: Where are we now?

22 3663. MR. SILVER: The next page of tab 11.

23 MR. KRAMER: The one that says  
24 "lawyerbil" with one L at the top?

25 3664. MR. SILVER: Yes.

1 MR. KRAMER: Okay, we've got that. This  
2 is the July 15, '07, re Jane's money.  
3 Okay.

4  
5 BY MR. SILVER:

6 3665. Q. But Sunny Ware sends you an email on  
7 July 12. She says,  
8 "...I didn't get at this until late this  
9 afternoon, so I don't know if everything  
10 got checked out that I should. But I  
11 haven't been able to come up with any clue  
12 about the \$3,987.50 that Jane says was  
13 deposited to her account on June 13th..."

14 MR. KRAMER: I'm sorry, I can't find  
15 this. Is it on the first page?

16 MR. RANKING: The middle of the page.  
17 Right here, the highlighted part.

18 MR. KRAMER: Okay, I got it.

19  
20 BY MR. SILVER:

21 3666. Q. So, Sunny Ware can't find any record  
22 of \$3,987 and she was in charge of all of these  
23 records, how the heck are we going to find them?

24 A. Well, the accountants were in  
25 charge, it looks like...accountants all over the

1 place, bookkeepers, trying to keep track of  
2 everything. That's why I have no hair. I'm tearing  
3 it out.

4 MR. RANKING: We'll have to get Donald  
5 Best on the case.

6 THE DEPONENT: The resources that he  
7 would have available would be a good bet  
8 for you. By the way, Donald Best has acted  
9 for a lot of your firms over the years,  
10 doing this kind of work, similar work.

11

12 BY MR. SILVER:

13 3667. Q. Can we get back to this?

14 A. Yes.

15 3668. Q. It says,

16 "...Initially, of course, I thought it was  
17 Dennie had wired her..."

18 That Dennie is Allard's assistant, right?

19 A. I don't know.

20 3669. Q. It says,

21 "...However, I've got emails from me to  
22 Dennie June 14, so if you haven't already  
23 sent it, don't. So, Barbados \$4,000, less  
24 wiring charges, would probably be about the  
25 net amount that Jane says was wired to her,

1 but I can't figure it out. Short of my  
2 going back to Dennie and asking if she in  
3 fact wired X dollars to Jane, I don't know  
4 how we can determine how Jane got that. If  
5 it didn't come from Dennie, where did it  
6 come from..."

7 So, we got an email that establishes that Jane got  
8 \$3,987.50 and Sunny Ware can't figure out where it  
9 came from, right? That's how you read what I just  
10 read?

11 A. Situation normal: All fouled up  
12 among accountants. I say that with my tongue in my  
13 cheek, they...

14 3670. Q. And then you say,  
15 "...Forget that money that Jane got..."  
16 So, you're telling Sunny, "Don't worry about the  
17 \$3,987.50, forget that money."

18 "...I have it in my notes and will work it  
19 out with her and speak to Peter about  
20 it..."

21 So, stopping there for a second. This agreement  
22 wasn't between Nelson Barbados and the Knoxes, it  
23 was between Peter Allard and the Knoxes, right?

24 A. I have no recollection of the  
25 nuances of the agreement.

1           3671.           Q.       Well, why would you tell Sunny Ware  
2                           to forget about the money and you'll work it out and  
3                           speak to Peter about it, if it wasn't Peter who was  
4                           the party to the deal.

5                           A.       Well, there were occasions when me,  
6                           being frustrated completely by accounting, Sunny  
7                           would also throw up her hands and then it was...let  
8                           people sort it out and I never heard back. I mean,  
9                           I'm just saying...I don't remember this exactly, but  
10                          as I said, it wasn't unusual in this multisided  
11                          transaction to have things have to balance in some  
12                          way.

13           3672.           Q.       Sorry, I should have started on the  
14                           next page, because all of this starts with an email  
15                           from you. And this \$3,987 was showing up on your  
16                           bank statement. Is that your personal bank  
17                           statement?

18                                   "...I received my bank statement yesterday  
19                                   and there's a wire transfer credit of  
20                                   \$3,987, dated 13 June, shown on it. Please  
21                                   confirm..."

22                           So, there was money wire transferred from your  
23                           personal account to Jane Goddard, right?

24                           A.       Credited.

25           3673.           Q.       That's the right way to read that?

1           You were looking at your own bank statements and  
2           there was a wire transfer.

3                        A.       Into it.  Credit of Barbados  
4           dollars.

5       3674.            Q.       So, money was wire transferred in  
6           Barbados dollars into your personal bank account,  
7           right?

8                        A.       I don't have any recollection.

9       3675.            Q.       Can you produce your personal bank  
10          statements for the period...well, from when the  
11          claim was issued, February of '07 to April of '09.

12                      A.       Just to be clear, I'm wondering if  
13          that is Jane saying she got a credit.

14                      MR. KRAMER:        Anyway, the answer is he's  
15          not going to produce his personal bank  
16          statements.    /R

17                      THE DEPONENT:        It's all these  
18          ampersand...

19  
20       BY MR. SILVER:

21       3676.            Q.       You're right.  It says, "Lawyerbil  
22          wrote"...I see, and in fairness, you're right.  So,  
23          it wasn't necessary to refuse so quickly.  But  
24          you're right, it says,

25                      "...Lawyerbil@hushmail wrote 'Jane says I

1 received this money into my bank, and  
2 please confirm. Once this is an order, it  
3 is to be added to the figure I gave you as  
4 funds still available'..."

5 And then I guess, this is now you talking,  
6 "...I also gave her \$1,000 and you gave her  
7 \$6,000, so that means she has received  
8 \$9,000. Accordingly, I did not give her  
9 the \$8,000, which has now been placed in  
10 the safe in Seaview..."

11 That's Mr. Allard's house?

12 A. His...

13 3677. Q. Mansion.

14 A. ...place in Barbados is called  
15 Seaview.

16 3678. Q. His house. Right, so, you got this  
17 \$8,000 in cash, you travelled down to Barbados with  
18 cash in your pocket, and you ended up depositing it  
19 into a safe at Mr. Allard's house?

20 A. That would be the first thing I  
21 would do when I arrived there, before I went for a  
22 walk or something, you can imagine.

23 3679. Q. Okay,  
24 "...Once we get the story organized on  
25 this, we will want to let Dennie know. One

1                   has to..."

2                   Well, Mr. McKenzie, what I take from this is that  
3                   there was a cooperation agreement that required and  
4                   resulted in payments being made from Allard using  
5                   Allard's money through you to the Knox family and  
6                   you can't deny any of that, because you've got no  
7                   recollection?

8                   A.       My best recollection is that there  
9                   was a cooperation agreement. It involved, somehow,  
10                  Allard, Nelson Barbados, Jane. That's the best of  
11                  my recollection.

12       3680.       Q.       Why are you using a  
13                  Hushmail...Hushmail is, as I understand it, an email  
14                  service that leaves no trace or track of the email,  
15                  unless it's printed.

16                  A.       I'm not going to agree with you, but  
17                  I think it's a private...in those days, because as I  
18                  talked about, communication with Barbados started to  
19                  become problematic in terms of suspicion that people  
20                  were watching things and Hushmail, all I can say, is  
21                  a private encrypted tunnel.

22       3681.       Q.       And how often did you use that?  
23                  Often I would imagine.

24                  A.       I mean, I would access it if I was  
25                  in Barbados or Sunny would send me something in



1 Barbados, because we didn't want...

2 3682. Q. Or you were communicating to someone  
3 in Barbados?

4 A. Unlikely. I mean, you communicate  
5 face to face in Barbados.

6 3683. Q. Do you still have a Hushmail account  
7 now?

8 A. No, I don't imagine I do.

9 3684. Q. What period of time did you have a  
10 Hushmail account?

11 A. I used it for Barbados.

12 3685. Q. Sir, can you answer my question?  
13 What period of time did you have a Hushmail account?

14 A. When did I stop going there? The  
15 last time I was there was our examinations.

16 MR. RANKING: October 2008?

17 THE DEPONENT: After that, Hushmail  
18 would be not necessary.

19

20 BY MR. SILVER:

21 3686. Q. Did you sign up for a Hushmail  
22 account?

23 A. Yes.

24 3687. Q. What date did you sign up for the  
25 Hushmail account?

1 A. I have no recollection.

2 3688. Q. Can you please check your records  
3 and advise?

4 MR. KRAMER: Would you have a record  
5 that would tell you? I'm sure this is done  
6 online. It wouldn't be done on hard copy.

7 3689. MR. SILVER: You can check with  
8 Hushmail.

9 THE DEPONENT: I can use my best  
10 efforts. It's probably long gone, but  
11 anyway.

12 3690. MR. SILVER: You can check with  
13 Hushmail.

14 MR. KRAMER: Well, let's get it  
15 straight. Do you have any records in your  
16 possession that would indicate when you  
17 signed up with Hushmail?

18 THE DEPONENT: Only things like this, in  
19 other words, printouts of using it. So,  
20 I'm saying, the file of this kind of thing  
21 would be there, and that would be my  
22 best...

23 MR. KRAMER: You mean, you can go  
24 through the firm file and you see any hard  
25 copy printouts from Hushmail, it will tell

1                   you the earliest date there's a printout...

2           3691.           MR. SILVER:        Mr. Kramer, he can just  
3                   contact Hushmail and ask what date he  
4                   opened the account and whether it's still  
5                   open, and if it's not still open, the date  
6                   that he closed it.

7                   MR. KRAMER:        Is that possible?

8                   THE DEPONENT:      I don't think so.

9                   MR. KRAMER:        Well, he's going to use his  
10                   best efforts to figure out when he opened  
11                   up the Hushmail account.

U/T

12                   THE DEPONENT:      I will do whatever I can.  
13                   I would have to go probably through the  
14                   firm file to find stuff like this.

15  
16           BY MR. SILVER:

17           3692.           Q.        Why can't you call, reach out to  
18                   Hushmail, and ask them? Why do you say that's not  
19                   possible?

20                   A.        I said I would use my best efforts.

21           3693.           Q.        I know, and then you added on that  
22                   you're going to look through files to find the  
23                   earliest...

24                   A.        The only thing I'm going to do is  
25                   send an email to Hushmail and see if they answer.

1           That's my answer, if that's what you want? I was  
2           going to do more than that, Mr. Silver.

3           3694.           Q.       Sir, will you contact Hushmail and  
4           get them to tell you when you opened and closed the  
5           Hushmail account?

6                        A.       I'm going to use my best efforts  
7           to...

8           3695.           Q.       Will you do what I just asked?

9                        A.       No, I'm going to use my best efforts  
10           to find out the brackets of when I started and  
11           finished.

12           3696.           Q.       Mr. Kramer, any time you want to  
13           assist me, which would, I think, assist your client,  
14           you can jump in.

15                        MR. KRAMER:       Well, I don't know what  
16           assistance I can be on this.

17

18           BY MR. SILVER:

19           3697.           Q.       And when you're reviewing your  
20           files, obviously it will include any and all  
21           Hushmail emails that you sent or received relating  
22           to KEL, Allard or Nelson Barbados?

23                        MR. KRAMER:       I'm not sure I'm following  
24           what you're asking here. You mean his  
25           general undertaking to scour his records?



1                   that he has no further records related to  
2                   these matters. They were all either at the  
3                   firm or what he did was in those boxes,  
4                   which are now in my office or under my  
5                   custody. He says he's going to look again  
6                   to see if he may have overlooked something,  
7                   but I don't think there's any expectation  
8                   that he has anything. But if he has any  
9                   records that should be frankly in the file,  
10                  because they relate to this matter, we'll  
11                  produce it.

12                  MR. RANKING:        May I also ask a question?

13                  3701.               MR. SILVER:        Sure.

14                  MR. RANKING:        Can you also please search  
15                  your laptop, Mr. McKenzie? You've  
16                  indicated that you have a laptop. Can you  
17                  search your laptop with respect to  
18                  Hushmails that you may have on that device?

19                  MR. KRAMER:        Do you have your Hushmail  
20                  records on your laptop?

21                  THE DEPONENT:      It's a website that you  
22                  go to, so, no.

23

24                  BY MR. SILVER:

25                  3702.               Q.        No, it's an email account from which

1           you send and receive emails.

2                   A.       No, it's not.  Again, to the best of  
3           my knowledge and recollection, I'll check, which is  
4           you go to a website and you are in their website and  
5           you interact with...it's kind of like Skype...

6    3703.           Q.       So, will you undertake to ask  
7           Hushmail, because it sounds like it's all on their  
8           server, to provide you with a copy of any and all  
9           Hushmail emails sent or received relating to the  
10          subject matter of this dispute?

11                   A.       Best efforts.

12    3704.           MR. SILVER:       Well, Mr. Kramer, can you  
13           confirm the undertaking that Mr. McKenzie  
14           will ask Hushmail to provide to him a copy  
15           of any and all emails sent or received by  
16           or to Mr. McKenzie's Hushmail account?

17                   MR. KRAMER:       Well, he says he's going to  
18           use his best efforts to get those from  
19           Hushmail and that's what he's undertaken to  
20           do.

U/T

21    3705.           MR. SILVER:       Good, thank you.  Sounds  
22           like we'll get to see them.

23                   MR. RANKING:       Don't count on it.

24    3706.           MR. SILVER:       You wouldn't draw the same  
25           conclusion?

1 MR. KRAMER: I'm not drawing anything  
2 from it.

3 MR. RANKING: I said don't count on it.

4 MR. KRAMER: Well, one would presume  
5 that it's sort of a secure, encrypted, hush  
6 hush thing that just doesn't give...

7 3707. MR. SILVER: No, but they would to the  
8 account holder. That is the point.

9 MR. KRAMER: Maybe they wouldn't even do  
10 that, I have no idea. Personally, I don't  
11 have a hushmail account.

12

13 BY MR. SILVER:

14 3708. Q. Let's move to the next document.

15 The next document in Exhibit L is the August 22  
16 email, from Mr. McKenzie to Sunny Ware.

17 A. Yes.

18 3709. Q. And it says,

19 "...Alair's ticket in hotel should be  
20 charged to NB. John, Jane, Marjorie  
21 tickets, BGI-MIA should be charged to  
22 NB..."

23 I take it that what you're telling Sunny Ware is  
24 Allard will pay for all those charges, but you want  
25 them shown in the Nelson Barbados file as opposed to



1 the Allard file, right?

2 A. Again, I don't recall the email, but  
3 it's a pocket. In other words...

4 3710. Q. Sir, I asked a specific question.

5 A. Okay, I don't recall.

6 3711. Q. So, you can't deny or contradict  
7 what I put to you?

8 A. I don't recall.

9 3712. Q. I know, so you can't deny or  
10 contradict what I put to you because you don't have  
11 a recollection, right?

12 A. I can't add or subtract, deny or  
13 admit, anything when I don't recall. If  
14 something...

15 3713. Q. Then the next page Kathy Davis  
16 writes to you and Sunny Ware. It really starts on  
17 the next page. She writes to you, this is in  
18 February of 2009 now. And she writes to you from a  
19 dadeschools.net email. Actually, she writes to  
20 Dribin, she copies herself at a Bellsouth.net email  
21 address, and she copies you, right?

22 A. I don't recall. The email says what  
23 it says, I don't recall the email.

24 3714. Q. It says,

25 "...Hello Mike, I've been asked to report

1 on the status of the following. Please let  
2 me know. Letter to Cable & Wireless  
3 demanding all IP addresses, letter to  
4 Minister of Lands and Housings in Barbados  
5 demanding all correspondence on  
6 expropriated properties, letter to  
7 attorney, Gittens Clyde Turney, [my  
8 client], and new Kingsland boss, Richard  
9 Cox, I'm not sure what will be included..."

10 So, why was Mike Dribin preparing these letters?

11 A. I don't recall.

12 3715. Q. I suggest to you that Mike Dribin  
13 was preparing these letters because from as early as  
14 2007 the Ontario action and the Miami plan were all  
15 part of the same strategy and Dribin was involved in  
16 it throughout as we see by the retainer of him in  
17 '07, isn't that right?

18 A. I don't think so, but I don't  
19 recall.

20 3716. Q. Well, what do you recall? Now is  
21 your opportunity to explain it.

22 A. I do recall that Cable & Wireless in  
23 Barbados were constantly being asked to cough up the  
24 identity of the people that were threatening  
25 Keltruth and Kathy. I don't know who took charge of

1           that, so that's my recollection.

2       3717.           Q.       It looks like Dribin was.

3           A.       Well, I'm saying I don't recall who  
4       was taking charge of that.

5       3718.           Q.       You don't deny that you got this  
6       email?

7           A.       Minister of Lands. I'm presuming  
8       that...I'm presuming that has to do with, in  
9       Barbados...well, I can make the same conclusions as  
10      you can, somebody looking to value things, but I  
11      don't really recall. Well, you know who Turney and  
12      Mr. Cox are.

13      3719.           Q.       Well, that answer is entirely  
14      unhelpful. But let's look at the rest of the  
15      emails. Dribin writes back and says,  
16                   "...We never discussed two and three. As  
17                   to one, I thought your letter the other day  
18                   was good, but I'll put together a draft..."  
19      So, he's going to write a letter to Cable &  
20      Wireless. Of course he copies you...no, he doesn't  
21      copy you with the response.

22                   MR. KRAMER:       Sorry, where is that  
23                   response?

24      3720.           MR. SILVER:       Starts at the bottom of  
25                   page 1.

1                   MR. KRAMER:       I see. I got you.

2

3           BY MR. SILVER:

4   3721.           Q.       Anyways, you don't recall any of  
5                   this, do you? So, we'll just go and argue what we  
6                   see on the page.

7                   A.       You can argue whatever you want, I  
8                   don't recall these emails.

9   3722.           Q.       Right. And then turning back to the  
10                   accounts at tab K. I'll go through them  
11                   individually if I need to, but will you agree with  
12                   me that while not exclusively, but in the time  
13                   period after...we've covered the accounts up until  
14                   the July 23rd account, 2007, but in the accounts  
15                   after that, from here until the end of the book,  
16                   there continued to be entries directly related to  
17                   the Ontario action, right?

18                   A.       I haven't read them.

19   3723.           Q.       Well, do you want me to take me to  
20                   them?

21                   A.       Grab a couple and then we can...so,  
22                   what's the timeframe?

23   3724.           Q.       This is July 2007, security issues  
24                   pop up and there seem to be a lot of calls and  
25                   issues about..you've got in August 1, 2007, "re

1 Veco".

2 A. Can I just stop you for a minute?

3 What is the time period of your question.

4 3725. Q. Post June 21, 2007, which is the  
5 first docket entry on the July 23rd account. There  
6 continued to be entries docketed to the Allard file,  
7 billed to Allard and paid for by Allard, that relate  
8 to the Ontario action.

9 A. I think that's fair, that account  
10 has some entries in it like that.

11 3726. Q. Right. And it also has a lot of  
12 entries about blogging. Whatever you were doing up  
13 until June 21st continued after June 21st?

14 A. I would agree that these dockets  
15 have lots of mention of blogging in them.

16 3727. Q. And that's blogging in respect of  
17 the Kingsland Estate matter?

18 A. Well, you heard my evidence. Mr.  
19 Roman. It's what it was.

20 3728. Q. There are hundreds of emails to and  
21 from John Knox and Jane Goddard that continues in  
22 the period through the end of '07?

23 A. That's what the dockets say.

24 3729. Q. Continued communications with  
25 Nathan, right?

1                   A.       Again, I'm getting fuzzy on the time  
2                   period, but there's certainly docket in this  
3                   exhibit K.

4       3730.           Q.       Jane Goddard also had a Hushmail  
5                   account, didn't she?

6                   A.       I don't recall.

7       3731.           Q.       Well, if you look at the August 30th  
8                   entry on the September 24th account?

9                   MR. KRAMER:       What year?

10      3732.           MR. SILVER:       In '07. "Review of  
11                   Hushmail from JG, and KWM response".

12                   MR. KRAMER:       August 30th?

13      3733.           MR. SILVER:       Yes. Right at the bottom  
14                   of the page, the first page of the account,  
15                   September 24th, '07 account.

16                   MR. KRAMER:       Yes, we've got it. Do you  
17                   see that?

18                   THE DEPONENT:     Yes. I don't recall.

19                   MR. KRAMER:       Can we take a break?

20

21      ---    A BRIEF RECESS

22

23      K. WILLIAM MCKENZIE, resumed

24      CONTINUED CROSS-EXAMINATION BY MR. SILVER :

25      3734.           Q.       I want to stick with the 543

1 account, but now I've got to move to the ledgers.  
2 So, that's Exhibit A to Jessica Duncan's affidavit.  
3 If you go to the very last pages of Exhibit K, Jeff,  
4 before you put it away, the very last pages of  
5 Exhibit K is a trust statement that was included  
6 with your account of February 19, 2007.

7 MR. KRAMER: Do you want him to look at  
8 that or keep it open?

9  
10 BY MR. SILVER:  
11 3735. Q. Well, to the best of your knowledge,  
12 this trust statement that was attached to your  
13 February 2007 account was accurate? You wouldn't  
14 have sent it to Allard if you didn't think it was  
15 accurate?

16 MR. KRAMER: This is the big fat one,  
17 right?

18 3736. MR. SILVER: Yes. It seems to be a  
19 summary where it goes back to the very  
20 beginning, the first receipt of monies in  
21 October of '05 and then seems to track  
22 through most of the payments. And we've  
23 looked at a lot of these payments.

24  
25 BY MR. SILVER:

1 3737. Q. Anyways, the point is you thought  
2 this was accurate when you signed the account and  
3 sent it to Allard?

4 A. Well, I had no reason to believe my  
5 accounting department didn't know what they were  
6 doing.

7 3738. Q. You wouldn't have sent it if you had  
8 thought that?

9 A. If you rely on people, and I did,  
10 then I signed it.

11 3739. Q. If you move forward, there were  
12 further trust activities after 2007, and that's  
13 where we got to go to the ledger.

14 MR. KRAMER: So, we're in A?

15 3740. MR. SILVER: In A.

16 MR. KRAMER: Where at A?

17 3741. MR. SILVER: Well, the last account that  
18 we've been provided...

19 MR. KRAMER: The last trust entry seems  
20 to be January 29, '07.

21

22 BY MR. SILVER:

23 3742. Q. So, I'm not going through it all,  
24 but there's a lot of docket entries to this file  
25 after January, February of '07. and they're



1 reflected in the ledger. To the best of your  
2 knowledge, the accurately the docketts that you  
3 entered?

4 A. Well, I didn't enter, but to the  
5 best of my knowledge, they're as accurate as docketts  
6 are.

7 3743. Q. And the time spent?

8 A. Same thing.

9 3744. Q. And the trust activity, so where we  
10 see trust activity reflected in these last pages of  
11 this ledger, you accept that it is accurate?

12 A. My accountants know what they're  
13 doing. That's what I accept, yes.

14 3745. Q. So, there's payments to Wanphen  
15 Panna out of this account. You accept that that  
16 happened? This is, again, the Allard file, right?

17 A. As I've said, it's reasonable,  
18 having seen everything that I've seen in the last  
19 week, that that's accurate.

20 3746. Q. Payments to the Kelly Law Firm, for  
21 example, July 2008?

22 A. Same answer.

23 3747. Q. And monies coming in from Allard,  
24 all the money that came in on this file came from  
25 Allard directly or indirectly?

1                   A.       I defer to accountants, but what's  
2                   on there is what I was led to believe was accurate,  
3                   and that's why I gather it made it's way into these  
4                   trust accounts.

5       3748.           Q.       And then there's an entry on January  
6                   15, 2009 that I would like you to turn to. The page  
7                   number on my copy, it's probably page 113.

8                   A.       Okay.

9       3749.           Q.       On the 15th of January, 2009,  
10                   Peterco sends in \$50,000, less the wire transfer fee  
11                   of \$10, this is ledger entry 611454.

12                   A.       I see it.

13       3750.           Q.       He sends it \$50,000 for Miami  
14                   counsel re Florida action. And you immediately, or  
15                   at least within seven days, send a \$50,000 bank wire  
16                   transfer to Broad and Cassel by way of retainer.

17                   A.       That's what the account says.

18       3751.           Q.       That's what happened.

19                   A.       Well, I have no reason to disagree.  
20                   It's likely it's exactly right, but I don't have a  
21                   recollection of the transaction.

22       3752.           Q.       And that \$50,000 retainer was sent  
23                   to Broad and Cassel before they issued the complaint  
24                   for declaratory relief that you made Exhibit B to  
25                   your affidavit, right?

1 A. It predates...

2 3753. Q. That was issued on February 25th,  
3 2010, right?

4 MR. KRAMER: Long predates.

5

6 BY MR. SILVER:

7 3754. Q. So, I'm suggesting to you that that  
8 \$50,000 was sent down to Broad and Cassel in  
9 contemplation of the complaint for declaratory  
10 relief.

11 A. I can't recall exactly what it was  
12 for. You'll have to ask them, I guess. Well, it  
13 was sent to them by instructions to do work.

14 3755. Q. Who is Broad and Cassel's client?  
15 Is that another agency file where you're the client?

16 A. I'm not saying this is wrong, but  
17 this is a trick question. I thought we saw some  
18 bills somewhere that said who the client was and I  
19 can't recall what they said.

20 3756. Q. I don't think so. I think we saw  
21 Kelly Law Firm bills rendered to you and you agreed  
22 that you were the client on behalf of Allard. And  
23 that's why I used the word "similarly" in my  
24 question. Was that the same arrangement with Broad  
25 and Cassel?

1                   A.       I have no recollection except I  
2                   believe that Kathy Davis has retained Broad and  
3                   Cassel.

4       3757.           Q.       But you wouldn't be paying bills  
5                   rendered to Kathy Davis. We've seen through the  
6                   history that they've sent invoices, we've got  
7                   undertakings to find them...they've sent invoices  
8                   and you paid them. Wouldn't you have been the  
9                   client on those on an agency basis?

10                   A.       No. We were a clearing house for  
11                   payments that came in for Mr. Allard to send to...on  
12                   a number of projects that we were working on. I'm  
13                   probably not using the right words, but...an  
14                   intermediary, perhaps. I am probably not using the  
15                   right word.

16       3758.           Q.       Mr. Kramer, you gave a refusal to  
17                   produce any and all communications between Dribin  
18                   and Raymond relating to the trust and the complaint  
19                   and without detracting from the request...

20                   MR. KRAMER:       No, the refusal was  
21                   post...you wanted it post-January 1, I  
22                   think. Wasn't that the refusal? Whatever  
23                   is in the file is in the file. He's  
24                   already told you that he's going to put in  
25                   the file whatever ought to be in the file

1 that he has. So, I think the refusal only  
2 relates to the period is subsequent to it.

3 3759. MR. SILVER: Whatever it was, it was.  
4 Here is my next question. Will you inquire  
5 of Broad and Cassel and have them produce  
6 all invoices that they've rendered since  
7 February 2007 to date relating in any way  
8 to Kingsland Estates?

9 MR. KRAMER: No. If any of those  
10 invoices are in the file, you'll get them  
11 and if not...

12 3760. MR. SILVER: Why wouldn't you inquire of  
13 Broad and Cassel to ask them to produce  
14 them. At least we'll see who their client  
15 is.

16 MR. KRAMER: Well, I think he's answered  
17 who their client is.

18 3761. MR. SILVER: Well, I know, but I want to  
19 test that. I don't accept that it's Kathy  
20 Davis. I think it's McKenzie. How am I to  
21 test that? If the accounts aren't anywhere  
22 else, and the only place they have them is  
23 Broad and Cassel, I have to ask you to make  
24 a request of Broad and Cassel. They'll  
25 have them for sure.

1 MR. KRAMER: Do you have any accounts?

2 Did you receive any accounts?

3 3762. MR. SILVER: Yes, in one of the trust  
4 statements, we reviewed it yesterday.

5 MR. KRAMER: Then it should be in the  
6 boxes.

7 3763. MR. SILVER: Well, it should be, but...

8 MR. KRAMER: Right, so, let's see if  
9 they are there.

10 3764. MR. SILVER: Well, I still want the  
11 undertaking that I asked for.

12 MR. KRAMER: No, we're not going to be  
13 giving that undertaking. /R

14 3765. MR. SILVER: And then I note that the  
15 wire transfer that I was just talking  
16 about, the \$50,000, is actually a document  
17 within Exhibit 15 that confirms that wire  
18 transfer, where Crawford McKenzie McLean is  
19 sending Broad and Cassel Iota trust  
20 account, \$50,000 on January 22, 2009.

21 THE DEPONENT: Sounds right.

22

23 BY MR. SILVER:

24 3766. Q. Do you want to see that?

25 A. Well, I'll take your word, the date

1 on it, because it's on...

2 3767. Q. Do you want to see it?

3 A. No, no. As soon as you said the  
4 date...it sounded like December 15th.

5 3768. Q. Whose handwriting is on that? Is  
6 that yours, "Dribin retainer"?

7 A. No.

8 3769. Q. Do you know whose it is?

9 A. No.

10 3770. Q. Okay. Then, we're on this page of  
11 the trust ledger, the ledger for 543, and there's a  
12 summary at the bottom that, I take it, is just the  
13 computer adding up numbers, right?

14 A. Sorry, what are you pointing to?

15 3771. Q. Page 113...

16 MR. KRAMER: Two sets of columns at the  
17 bottom?

18 3772. MR. SILVER: Yes.

19 MR. KRAMER: You want to know if this is  
20 just the computer adding up numbers?

21 3773. MR. SILVER: Yes.

22 MR. KRAMER: Can you answer that?

23

24 BY MR. SILVER:

25 3774. Q. That would be reasonable?

1                   A.       It looks like it. I mean, PCLaw  
2                   does whatever it does. I mean, it totals stuff for  
3                   you. Hopefully they get it right.

4       3775.           Q.       And it shows there were receipts  
5                   into the trust account for this file of  
6                   \$1,673,409.87, right?

7                   A.       Yes, I see the number. That's the  
8                   number.

9       3776.           Q.       And because there's nothing in the  
10                   trust account as of April 23, 2009, this also shows  
11                   that \$17,037.53 went to pay taxes, right?

12                   A.       Yes. That looks likely.

13       3777.           Q.       And \$627,766.34 went to pay  
14                   disbursements, right?

15                   A.       That's what it says, yes.

16       3778.           Q.       And \$1,028,606 went to you and your  
17                   law firm to pay fees.

18                   MR. KRAMER:       Well, it says fees, are you  
19                   sure it all went...if an account is paid to  
20                   some other lawyer, does it come up as...

21       3779.           MR. SILVER:       No, I think that's a  
22                   disbursement.

23                   MR. RANKING:       That would be a  
24                   disbursement.

25                   MR. KRAMER:       That would be disbursement?



1 THE DEPONENT: Yes, I won't argue, I  
2 don't have knowledge of how it all works.  
3

4 BY MR. SILVER:

5 3780. Q. It would appear that over a million  
6 dollars came into the trust account and went out to  
7 pay accounts rendered by Crawford McKenzie.

8 A. That's likely.

9 3781. Q. And because this includes the  
10 beginning of '09, principally all of that money,  
11 that \$1,028,000 would have gone into the revenue of  
12 the firm's paid expenses and ultimately any excess  
13 distributed amongst the partners in accordance with  
14 their partnership interests.

15 A. I think that's right.

16 3782. Q. And I just want to quickly look at  
17 Exhibit B, which is the ledger for...and this one is  
18 a little bit mixed up for the other account, 568.  
19 But this is what you call your Nelson Barbados  
20 account, right?

21 A. Yes.

22 3783. Q. And it appears as though at a  
23 certain period of time there are docket entries but  
24 no fees being charged. Why is that?

25 A. Sorry, can you show me?

1 3784. Q. Well, the first page is an example.  
2 Lawyer 18...that's why you don't see your name  
3 anymore. But there's charges for all different  
4 lawyers in your law firm, but with zero time  
5 charges. Why is that? Did you stop billing the  
6 client?

7 A. I don't know how this works. It  
8 looks like when you make an entry, it either  
9 calculates or doesn't calculate.

10 MR. KRAMER: Well, if you look on the  
11 actual docket entry, it shows the hours  
12 times zero dollars, whereas other ones show  
13 times an hourly rate.

14 THE DEPONENT: I see.

15

16 BY MR. SILVER:

17 3785. Q. And then a number would appear in  
18 the fees column.

19 MR. KRAMER: Do you know the date that  
20 it stopped, that it stopped being a number  
21 in the fees column. Maybe that will help  
22 the witness.

23 THE DEPONENT: There was a time when  
24 they changed accountants and she revamped  
25 stuff. Maybe that's what happened.

1 MR. KRAMER: It looks like April '09 if  
2 I have got this right. If you look at  
3 page...

4 MS. ZEMEL: It's much before that, it  
5 goes back...because you have to look at the  
6 other file 568. There's a bit of a  
7 confusion as to how these documents are  
8 organized in this particular exhibit. So  
9 if you go further on...

10 3786. MR. SILVER: Well, let's just look at  
11 the accounts, for a second, this is in  
12 Exhibit I. And if you can, Jeff, find an  
13 account dated November 25, 2008.

14 MR. KRAMER: Okay, we got the November  
15 25th, 2008.

16

17 BY MR. SILVER:

18 3787. Q. So, you'll see that it's in the  
19 normal way that we've seen them. There's a time  
20 charge and there's a rate.

21 MR. KRAMER: I see, and if you go to the  
22 next account, it comes up...

23

24 BY MR. SILVER:

25 3788. Q. And then if you go to the next

1 account, which is for February 23, 2009, firstly,  
2 there's writing at the top, it says, "Transferred,  
3 February 23, '09". Is that Sunny Ware's  
4 handwriting?

5 A. It could be.

6 3789. Q. It looks the same as the Dribin  
7 retainer on Exhibit 14.

8 A. Ladies all seem to have the same  
9 handwriting of the same age group.

10 3790. Q. I wouldn't say that.

11 A. No, I'm just saying, there was  
12 another lady...

13 3791. Q. I don't care about another lady's  
14 handwriting. But you'll see that on this account,  
15 you're showing the amount of time spent with zero  
16 rate and zero dollars, which is consistent, exactly,  
17 with what I was showing you in the ledger. Why was  
18 it that you stopped charging your client?

19 3792. Q. Of course, this is after you went,  
20 "I'm going to pay a fixed amount for overhead with  
21 my law firm." You weren't sharing in profit  
22 anymore.

23 A. Well, we didn't stop charging the  
24 client.

25 3793. Q. You didn't?

1 A. Well, I'm looking at the last page.

2 3794. Q. Yes, let's look at that.

3 A. There's a bill there.

4 MR. KRAMER: Yes, it's got a fee.

5

6 BY MR. SILVER:

7 3795. Q. Let's just look at that for a  
8 second, please. Do you have that page? It says,  
9 final account, it looks like you were rendering a  
10 final account to Nelson Barbados. And there were  
11 233.55 hours of time spent, for which the time  
12 charge was \$9,760, right? Do you see that? And all  
13 of that got allocated to you. In other words,  
14 everybody else worked for...without charging their  
15 time and you worked 12.4 hours, which you charged  
16 your client \$787.10 per hour. That's what this is  
17 showing, isn't it?

18 A. Well, it looks convoluted to me.  
19 Well, the important thing is that the client got  
20 charged and paid whatever the number.

21 MR. RANKING: But you're taking full  
22 credit for the fee.

23

24 BY MR. SILVER:

25 3796. Q. And you're taking the full credit

1 for the fee?

2 MR. KRAMER: Isn't that consistent with  
3 him no longer being a partner and they have  
4 a different deal?

5 3797. MR. SILVER: Well, I'm asking...

6 THE DEPONENT: Well, you got me because  
7 they resolved it all somehow. In other  
8 words, there was a new accountant, and  
9 Jessica and they imposed their will on the  
10 system and it all seemed to work out. I'm  
11 not sure how...

12

13 BY MR. SILVER:

14 3798. Q. It all worked out, but I don't  
15 understand it and you can't explain it?

16 A. Well, I worry about...the total at  
17 the bottom of the page is going to the client.  
18 Whether it looks like it's reasonable, I'll adjust  
19 that, any time that's necessary. The rest of it...

20 3799. Q. Who did this account get paid to?

21 A. Who?

22 3800. Q. Was this paid to Crawford McKenzie  
23 law firm or to you now? You were out of there and  
24 you were on a fixed overhead basis.

25 A. Okay, so the payment gets made to

1 Crawford McKenzie, right?

2 3801. Q. Attached to that account is a trust  
3 statement. Before you sent it out to the client,  
4 you believe this is a summary trust statement?

5 A. Isn't that the same one...

6 3802. Q. No, this is now the one for the  
7 other file.

8 A. Same answers would apply.

9 3803. Q. You believed it to be accurate when  
10 you sent it out to your client.

11 A. Put in front of me, I rely on my  
12 people and believe it to be as it should be.

13 3804. Q. Do you agree that, for example, July  
14 4th, 2007, it says, "Received from Nelson Barbados  
15 Group Ltd. \$44,376", that money actually came from  
16 Allard?

17 A. Let me just go through this.

18 3805. Q. What do you want to go through?

19 A. Well, I tracked one.

20 3806. Q. Well, let's track the one that I'm  
21 doing.

22 A. It might be the same one. Go ahead.  
23 I just thought that in my affidavit I tracked one to  
24 see...

25 3807. Q. Do you agree with me, sir, that all

1 of the money came from Allard and you say that it  
2 was on a loan basis to Nelson Barbados, but the  
3 actual wire transfer money came from Allard?

4 MR. KRAMER: I think you already asked  
5 that question. I think you previously got  
6 him to admit that it came from either  
7 Allard or Peterco.

8 3808. MR. SILVER: Yes, but not Nelson  
9 Barbados.

10 MR. KRAMER: I think you already asked  
11 that question.

12 THE DEPONENT: I have no specific  
13 recollection of what you asked me. It came  
14 from where it came from. That's why we're  
15 getting the bank documents and wire  
16 transfers...

17 3809. MR. SILVER: Well, let's just add it to  
18 that, Ian, the quote for the banking  
19 records.

20 MR. EPSTEIN: I'll have to review and  
21 make inquiries for the wire transfer  
22 documents.

23 THE DEPONENT: Is this costing a lot of  
24 money?

25 3810. MR. SILVER: That's what he's trying to



1 find out.

2 MR. EPSTEIN: That's what we're trying  
3 to find out.

4 THE DEPONENT: Well, I'm just saying the  
5 money came from one or all of those three  
6 parties.

7 MR. EPSTEIN: I'm just wondering in  
8 light of the admissions that have been  
9 made...I mean, we'll obviously provide that  
10 if you want it, but in light of the  
11 admissions that have been made and the  
12 evidence given by Jessica, where she  
13 indicated that the money came from Allard  
14 to the best of her knowledge...

15 3811. MR. SILVER: I know, but you just heard  
16 it from Mr. McKenzie who said he can't  
17 confirm that until you have the wire.  
18 Maybe it should be Mr. McKenzie's expense.

19

20 BY MR. SILVER:

21 3812. Q. Anyway, the \$250,000 that came in to  
22 pay the cost awards from the directions motion came  
23 from Mr. Allard?

24 A. I don't recall, but I believe they  
25 did. It's more than likely that it did.

1 3813. Q. I'm suggesting to you that it did  
2 and you can't deny that.

3 A. I cannot deny it.

4 3814. Q. Exhibit G, the NIS invoices. You  
5 reviewed those when they came in?

6 A. I can't say.

7 3815. Q. You can't say you did?

8 A. I don't recall reviewing them or  
9 not.

10 3816. Q. Did NIS ever have a physical  
11 location at 3044 Bloor Street West, or is that a  
12 sham address?

13 A. I have no knowledge or recollection.

14 3817. Q. Did you ever visit Mr. Best at his  
15 office at 3044 Bloor Street West?

16 A. I don't know where that is. Is that  
17 somewhere in Markham?

18 3818. Q. Same answer? You mean to say no,  
19 you never went there?

20 A. I'm trying to see if my memory  
21 works, but I'm saying not to my recollection.

22 3819. Q. He is sending these invoices to you,  
23 for example, the April 14, 2007. He sends an  
24 invoice to you for \$10,000 Canadian plus, "special  
25 research and investigation, Miami project." What

1 was the Miami project?

2 A. I think I pretty well covered it, to  
3 the best of my recollection, with Mr. Roman, so I'll  
4 try to summarize it. There were a lot of things  
5 done at my request in terms of...let me get what I  
6 wrote down the other day. I don't want to  
7 contradict myself. But, research, review,  
8 questions, discussions, security...

9 3820. Q. Sir, stop. My question was what was  
10 the Miami project? When Mr. Best put that in an  
11 invoice to you, he addressed it to you. I have to  
12 assume that he thought that you would know what he  
13 was talking about, right? So, what was the Miami  
14 project?

15 A. I don't recall specifically what he  
16 was doing on April 14.

17 3821. Q. I didn't ask you that. I asked you  
18 what was the Miami project?

19 A. A myriad of tasks.

20 3822. Q. In Miami?

21 A. Relating to Miami.

22 3823. Q. That included a potential conspiracy  
23 action, RICO action, a trust, a complaint for  
24 declaratory relief, all of that he was researching  
25 for you, is that right?

1                   A.       And then some. Wait just a second,  
2                   I'm not going to adopt your list because I didn't  
3                   hear it or didn't get it all, because I was looking  
4                   at this Sanky...

5       3824.           Q.       Yes, who is Sanky?

6                   A.       Again, somebody that...I recall...

7       3825.           Q.       Who is Sanky?

8                   A.       That makes me vaguely recall that  
9                   one of the things that they were doing was finding  
10                  US or some of the defendants presence in North  
11                  America.

12       3826.           Q.       So, the anticipated defendants in a  
13                  Miami action, their presence in North America?

14                  A.       And/or...we've got the Canadian guys  
15                  who said they've never been to North America or were  
16                  in North America. David Shorey comes to mind,  
17                  because they found his piece of property. That's  
18                  why I'm saying it rings a bell.

19       3827.           Q.       So, the Miami project included, to  
20                  some degree, the Ontario action.

21                  A.       Well, a lot of the research was  
22                  about finding out stuff that we could hopefully use  
23                  as evidence.

24       3828.           Q.       The things going on in Miami as  
25                  reflected in this invoice and others were all part

1 of an overall plan that included Ontario, an overall  
2 strategy?

3 A. I wouldn't agree with that.

4 3829. Q. You wouldn't? You just admitted  
5 that.

6 A. Well, it's the overall strategy  
7 part.

8 3830. Q. Okay, the overall plan.

9 A. Well, I'm just saying, they were  
10 doing a lot of jobs related to the Ontario action.  
11 They were doing a lot of jobs related to protecting  
12 Keltruth from all the attacks. We went through all  
13 that...

14 3831. Q. And they were doing a lot of jobs in  
15 respect of potential litigation in Miami.

16 A. I am not as sure about that. I  
17 don't recall that that was the big focus of it.

18 3832. Q. And Sanky's bills were included in  
19 NIS' bills that were paid for by Allard. So, in  
20 effect, Allard also paid for Sanky, right?

21 A. Yes. That's more likely than not.

22 3833. Q. And then there's a July 23rd bill  
23 from NIS for \$16,000.

24 A. Yes.

25 3834. Q. Was part of Mr. Best's mandate to

1           shred information that he was acquiring? Because  
2           there's entries in his time and charge talking about  
3           "sort and scan shredding, David Shorey." So, was  
4           that part of his work, to shred stuff that he was  
5           looking at?

6                        A.       What's the date of that entry?

7   3835.                Q.       May 28, 2007. Or does that mean  
8           that he was looking through garbage?

9                        MR. RANKING:        He was looking through  
10           garbage. Look at the first page.

11   3836.               MR. SILVER:        He was looking through  
12           garbage. He went to find David Shorey's  
13           garbage and he was sorting and scanning the  
14           garbage.

15                       MR. RANKING:        That's right.

16   3837.               MR. SILVER:        Yes, it says "garbage sort  
17           and scanning".

18

19   BY MR. SILVER:

20   3838.               Q.       Is that what they were doing down  
21           there?

22                       A.       I don't recall.

23   3839.               Q.       It would appear.

24                       A.       It says what it says.

25   3840.               Q.       And they were also researching

1 Lynne-Marie Simmons, July 14, Clyde Gittens Turney,  
2 David Anthony Cathcart Simmons, Leonard Nurse,  
3 Lionel Nurse, Mia Mottley, and Richard Ivan Cox,  
4 Beverly Arthur. Lynne-Marie Simmons is the Chief  
5 Justice's daughter, right?

6 A. I'm not sure.

7 3841. Q. You're not sure of that? Please,  
8 Mr. McKenzie. Come on. If I know that Lynne-Marie  
9 Simmons is David Simmons' daughter, you know that.  
10 You've been involved in Barbados...I've been there  
11 once in my life, you've been there hundreds of  
12 times. You know that Lynne-Marie Simmons is David's  
13 daughter, right?

14 A. I wouldn't swear to that. I mean,  
15 I'm just going...to my recollection.

16 3842. Q. Why was your man researching the  
17 Chief Justice's daughter?

18 A. Well, as I said, the mandate was to  
19 find North American presence for defendants...

20 3843. Q. She wasn't a defendant.

21 A. Well, maybe she was going to be, I  
22 don't know.

23 3844. Q. Did you hear that? He said, "Maybe  
24 she was going to be."

25 A. Well, I'm just saying maybe the

1 research excluded her.

2 3845. Q. You were doing this research because  
3 you were trying to find connections to North America  
4 for jurisdiction purposes, and if you found them,  
5 then you could name them as a defendant, right?  
6 That's what you were doing.

7 A. Well, it had to be in connection  
8 with the case on top of it.

9 3846. Q. Well, you would find that after you  
10 found the connection to the jurisdiction, isn't that  
11 right, Mr. McKenzie? That's what was going on here.

12 A. I don't agree with what I think you  
13 just said, and I don't have a recollection exactly  
14 what this research was all about, but...

15 3847. Q. And he never delivered a report with  
16 the results of his research?

17 A. I keep saying I have an avalanche of  
18 information. Hopefully I got it filtered down and  
19 they don't tell me stuff I don't need to know. That  
20 would be how I would...

21 3848. Q. Why would he be researching Beverly  
22 Arthur, Owen Arthur's, my client's wife, who was the  
23 Prime Minister of Barbados at the time? Looking for  
24 connections to North America?

25 A. Well, also, maybe they are



1 witnesses. I mean, would they interview them? I  
2 don't know, but...

3 3849. Q. You're just making it up.

4 MS. ZEMEL: I'm sorry, I don't mean to  
5 interrupt, but if I could just have one  
6 question to ask just to follow up with  
7 that, if you don't mind, Mr. Kramer?

8 MR. KRAMER: It's okay with me.

9 MS. ZEMEL: Is it possible that he was  
10 researching it to find information which  
11 could be placed on the blogs about these  
12 individuals to embarrass them or...

13 MR. KRAMER: Well, I think the witness  
14 is pretty...he doesn't know what they were  
15 being researched for.

16 MS. ZEMEL: Well, he didn't answer this  
17 question.

18 MR. KRAMER: Do you know if they were  
19 being researched for blogs?

20 MS. ZEMEL: No, if that's the purpose,  
21 for information to be supplied to the  
22 blogs.

23 THE DEPONENT: I would say not on my  
24 watch. In other words, whatever they were  
25 doing, they were doing, but I wouldn't

1 be...

2 MS. ZEMEL: That wasn't the purpose?

3 THE DEPONENT: That wasn't my mandate.

4 MS. ZEMEL: Was it their mandate?

5 THE DEPONENT: I don't know what they  
6 were doing out there.

7

8 BY MR. SILVER:

9 3850. Q. Sunny Ware had a Hushmail account as  
10 well. Did she ever go to Barbados?

11 A. My recollection is that she did.

12 MR. KRAMER: Do you want us to look at a  
13 document?

14

15 BY MR. SILVER:

16 3851. Q. Well, there is a document at Exhibit  
17 G. It's an email to Sunny Ware and  
18 lawyerbil@hushmail.com. That was your Hushmail  
19 address, right?

20 MR. KRAMER: I don't see it in Exhibit

21 G.

22 3852. MR. SILVER: No, there is, it's in G.  
23 It's about eight pages from the end. I  
24 would like the same inquiries to be made of  
25 Hushmail to provide a copy of any and all

1 emails sent or received by Sunny Ware.

2 MR. KRAMER: Assuming that Hushmail  
3 would respond to Mr. McKenzie, which I  
4 don't know if they would, they certainly  
5 wouldn't respond to a request for somebody  
6 else's email.

7 3853. MR. SILVER: No, you're probably right.  
8 I guess we can deal with that a different  
9 way.

10

11 BY MR. SILVER:

12 3854. Q. Did Mr. Best through NIS work on the  
13 Keltruth blog? Let me ask you differently. If you  
14 could look at your November 19 account.

15 A. This is tab G?

16 3855. Q. Tab G.

17 A. Got it.

18 3856. Q. And if you look at the time and  
19 charge docket, the next page. The way Mr. Best or  
20 Nathan works is he opens a docket and then records  
21 what he did and then he closes the docket and  
22 there's a time charge. So, it seems as though on  
23 October 18, 2007...can you look at this, please,  
24 sir?

25 A. Yes. I'm waiting for you to finish.

1 I'm having a back spasm and I'm doing my best to  
2 hang in here and not take a pain pill which will  
3 wipe me out for the afternoon.

4 3857. Q. October 18, at 9:30, he started  
5 working re Keltruth blog, correct?

6 A. Okay, that's the entry.

7 3858. Q. That's what he did. And 37 minutes  
8 into that work on Keltruth blog, he called you for  
9 18 minutes.

10 MR. KRAMER: Well, I'm not sure that's  
11 how you read this.

12 THE DEPONENT: Well, fair enough.

13

14 BY MR. SILVER:

15 3859. Q. Well, it is. He started at 9:30 and  
16 at 10:07 he called Bill McKenzie.

17 MR. KRAMER: Well, the way I read this  
18 is that at 9:30 he writes, "Commence work  
19 on Keltruth blog". We don't know how long  
20 he spends on that. But at 10:07 he calls  
21 McKenzie. How do we know that...

22 3860. MR. SILVER: Because he charges the  
23 whole 2.1 hours. If you look at the next  
24 entry, he shuts the docket at 11:34 and  
25 charges 2.1, which is 9:30 until 11:35.

1 MR. KRAMER: Actually...maybe.

2

3 BY MR. SILVER:

4 3861. Q. So, it looks like he worked for 2.1  
5 hours on the Keltruth blog and in that time period  
6 he had a 18 minute phone call with you.

7 A. That's what it looks like.

8 3862. Q. And that's what happened.

9 A. I don't recall, but we talked, yes.

10 3863. Q. And was he writing the content for  
11 the Keltruth blog that he wanted to review with you?

12 A. To the best my recollection, his job  
13 was what I talked about the other day, was  
14 protecting it and setting it up from all the trouble  
15 that it was having.

16 3864. Q. What was Kleiman doing, Dave  
17 Kleiman?

18 A. Ditto. He's another computer guy.

19 3865. Q. He wasn't writing blog entries?

20 A. Not to my recollection.

21 3866. Q. But he might have been, right?

22 A. He could have been.

23 3867. Q. And to the extent that he was, he  
24 was working with Best in that regard from time to  
25 time and Allard was paying Best for that work?

1                   A.       Well, they were all interacting and  
2                   that's what I can tell you.

3       3868.           Q.       And Allard was paying for it?

4                   A.       It was billed on the NIS, and we've  
5                   already gone through all of that, which is the money  
6                   came in from wherever it came in from.

7       3869.           Q.       So, Best and Kleiman were working on  
8                   a number of things within the Keltruth blog,  
9                   including writing content, and Allard was paying for  
10                   it through your office, right?

11                   A.       You just said writing content?

12       3870.           Q.       Yes.

13                   A.       Well, you see, you're sneaking that  
14                   little line in there...

15       3871.           Q.       Well, no, that was the prior  
16                   question that you admitted to that.

17                   A.       No. Well, if you think that I  
18                   admitted that I know that they were writing content  
19                   for anything, I didn't. And if I said it on the  
20                   transcript, there you go, and I'm sorry, I'm in  
21                   serious discomfort. I'm saying these guys were  
22                   paid, David Kleiman especially, is a super-techie  
23                   and knew all the ways to crucify or destroy a  
24                   website.

25       3872.           Q.       Exhibit H. On August 13, do you see

1 August 13, Peterco Holdings sends to Heaslet and  
2 Sunny Ware a revised transcription of this Heaslet  
3 Simmons transcript?

4 MR. KRAMER: This is 5:43 p.m.?

5 3873. MR. SILVER: That's what the email says,  
6 Monday August 13.

7

8 BY MR. SILVER:

9 3874. Q. So what happened was was Heaslet  
10 taped a conversation with Peter Simmons from  
11 Allard's condo, and before it was sent to you,  
12 Allard had it and sent you something called a  
13 revised transcription on August 13, right?

14 A. That's too complicated for me. On  
15 August 13 I got something, it looks like, from this  
16 lady Barbara Dortsch from Peterco. I do recall  
17 transcripts...

18 3875. Q. But you got a revised transcript.

19 A. How do I know?

20 3876. Q. Because it says it in the subject  
21 line.

22 A. There you go.

23 3877. Q. So, you agree that they sent you a  
24 revised...what were the revisions?

25 A. It says what it says, they sent me a

1 transcript.

2 3878. Q. What were the revisions?

3 A. I always wondered why you guys  
4 didn't cross-examine Stuart Heaslet.

5 MR. KRAMER: Do you have any way that  
6 you could find out? Did you get the  
7 original unrevised one?

8 THE DEPONENT: Well, that's what I'm  
9 saying, unless there's an unrevised one,  
10 and then we can go through the chaos of  
11 trying to compare them. I'm not trying to  
12 be facetious, but I don't know, Mr. Silver.

13

14 BY MR. SILVER:

15 3879. Q. Then there's another email of August  
16 13 from you to Sunny Ware, 6:24 a.m.

17 MR. KRAMER: Is it after the transcript?

18 3880. MR. SILVER: Yes.

19

20 BY MR. SILVER:

21 3881. Q. Sunny Ware sends you some email

22 about the issues, and you send back,

23 "...Yes, presently I am not going to go  
24 back and do have a security firm looking at  
25 this. In a way it is a blessing because



1           how is a judge ever going to order us to go  
2           to Barbados? I was hired to do a job and  
3           it appears these foolish people have helped  
4           in ways they still don't understand..."

5           Can you explain that paragraph to me?

6           A.       I don't recall the email, but I'll  
7           tell you my reaction. I learned that Peter Simmons,  
8           who is a very powerful person in Barbados, he has  
9           called Stewart and said, "You tell McKenzie he  
10          better watch his back if he comes here and we're  
11          going to have John Knox fired from his job." My  
12          reaction was two-fold: Are they out of their minds  
13          and why are they threatening the lawyer, et cetera.  
14          I mean, Stewart and I were both dumbfounded. How  
15          the heck am I supposed to go down there and have a  
16          lawsuit. I mean, it still staggers me, by the way.  
17          Not to mention the incredible...

18       3882.       Q.       Sir, can you answer my question.

19                   A.       Well, I am answering it...

20       3883.       Q.       No, you're not. Your email says,  
21                   "...I was hired to do a job and it appears  
22                   these foolish people have helped in ways  
23                   they still don't understand..."

24                   A.       Why do you kill the messenger, shoot  
25                   the messenger?

1 3884. Q. Let me tell you what I think it  
2 means and see if you agree. "I was hired to do a  
3 job", means, "I was hired to move the fight out of  
4 Barbados and get it into other jurisdictions like  
5 Ontario or Miami". And then, "It appears these  
6 foolish people have helped in ways they still don't  
7 understand", means that in light of your  
8 interpretation of the Peter Simmons comments, those  
9 comments helped you move the file from Barbados to  
10 another jurisdiction, because the sentence before it  
11 says,

"...In a way it is a blessing because how  
is a judge ever going to order us to go to  
Barbados..."

15 Isn't that what this paragraph means, Mr. McKenzie?

16 A. I lost you somewhere in there, but I  
17 disagree. That is certainly, that whole thesis, and  
18 we argued it extensively, something that came to  
19 mind as a lawyer after my shock and Stuart's  
20 shock...the whole thing was macabre, unbelievably...

21 3885. Q. Sir, you're not answering my  
22 question.

23 A. You're right, I'm not answering your  
24 question. I'm saying that I can't believe it even  
25 to this day that they would shoot the messenger.

1 3886. Q. Sir, can you please answer my  
2 question?

3 A. Then ask it succinctly, don't give  
4 me a long...

5 3887. Q. "I was hired to do a job", do you  
6 see those words?

7 A. Yes.

8 3888. Q. What does that mean?

9 A. Well, I was trying to help them with  
10 the nature sanctuary and Peter Simmons was on the  
11 board. I was helping set up a medical clinic...

12 3889. Q. Are you serious? Let me start  
13 again. Let me go back a sentence and read it. It  
14 says,

15 "...In a way, it is a blessing, because how  
16 is a judge ever going to order us to go to  
17 Barbados? I was hired to do a job and it  
18 appears these foolish people have helped in  
19 ways they still don't understand..."

20 In the context of those two sentences, what does "I  
21 was hired to do a job" mean?

22 A. I started then you interrupted me.

23 3890. Q. I know because it can't be in  
24 respect of the sanctuary. The sanctuary...that's  
25 your evidence...

1                   A.       There was a meeting earlier with the  
2                   Chief Justice and Stuart, which was equally weird.  
3                   But anyway, I'm just saying...

4       3891.           Q.       You were just saying what, "I was  
5                   hired to do a job" means in this paragraph. So, I  
6                   won't interrupt. I'll listen for your answer now,  
7                   but I want it in the context of both sentences. So,  
8                   go ahead.

9                   A.       I'm only giving you my reaction now,  
10                  because I don't even recall this email. I'm saying  
11                  I'm giving you my reaction now. I'm down there,  
12                  helping solve problems and involved in a lawsuit,  
13                  and they phone up and say, "Don't come back or  
14                  you're going to"...whatever. It's unbelievable to  
15                  me.

16       3892.           Q.       Sir, can you answer my question?  
17                   What job were you hired to do as you're referring to  
18                   in these two sentences? I suggest to you the job  
19                   that you were hired to do was to move the fight out  
20                   of Barbados?

21                  A.       That was one of the things that I  
22                  was doing.

23       3893.           Q.       You were hired to do.

24                  A.       Hired to start a lawsuit in Canada.

25       3894.           Q.       To move the fight from Barbados to

1 another jurisdiction. That was your mandate, right?

2 A. To start an action in Canada to deal  
3 with the Kingsland Estate Limited mess, was one of  
4 the things that I was doing. And the other things,  
5 and I'm saying unbelievable.

6 3895. Q. That's your entire answer?

7 A. I can go on, but I think the point  
8 has been made over and over in court.

9 3896. Q. Okay, I'm going to be another ten  
10 minutes, so I'm going to take that time and then run  
11 out of here. And what I want to do is just go  
12 through your April 23rd affidavit a bit, starting at  
13 paragraph 6. We've dealt with some of this. And  
14 maybe this is for Maanit to ask.

15 A. Sorry, paragraph 6 you said?

16 3897. Q. Yes. At paragraph 6 you're talking  
17 about moving the law firm claim against Miller  
18 Thomson to Mr. Kramer. I just want to understand  
19 the paragraph.

20 MR. KRAMER: I can help you there. The  
21 costs issue relating to that motion is  
22 still outstanding. There seems to be  
23 agreement between the firm and Mr. McKenzie  
24 that I should argue the costs on the June  
25 7th... although I still don't have the

1 file. But that's what that's referring to.

2

3 BY MR. SILVER:

4 3898. Q. Paragraph 8, the "we" that you  
5 referred to is you and Crawford McKenzie McLean  
6 Anderson & Duncan.

7 A. Correct.

8 3899. Q. Paragraph 9 speaks to the motion to  
9 get off the record. Why didn't you return that  
10 before Justice Shaughnessy?

11 A. I didn't do it.

12 3900. Q. Well, you instructed Duncan to do  
13 it. So, you're blaming Duncan for that? Duncan  
14 should have realized that there was an order that  
15 said all motions go before Shaughnessy?

16 A. I can say that there were...being  
17 careful here about privilege, Mr. Dewart...as a  
18 result of conversations with Mr. Dewart, I signed an  
19 affidavit in his office and took it to my office.  
20 And as a result of conversations with Mr. Dewart, a  
21 motion was brought.

22 3901. Q. So, Dewart advised you not to return  
23 it before Shaughnessy?

24 A. I don't want to breach privilege.  
25 But after I did the affidavit...



1 explanation for why that happened, other  
2 than by disclosing legal advise that you  
3 got from Mr. Dewart?

4 THE DEPONENT: I actually don't have a  
5 recollection of participating after I swore  
6 the affidavit and delivered to my office.

7 MR. KRAMER: Did you ask Ms. Duncan  
8 about this? She's the one who brought the  
9 motion.

10 MR. RANKING: I did.

11 MR. KRAMER: Did she tell you why or  
12 help you out?

13 3903. MR. SILVER: I think she said she did it  
14 on the instructions of McKenzie.

15 MR. KRAMER: But did she say that  
16 McKenzie told her to go speak to  
17 Shaughnessy?

18 MR. RANKING: My recollection was that  
19 she did not turn her mind to it. And I  
20 think that her answer was that she did not  
21 know that Justice Shaughnessy was seized of  
22 all the interlocutory motions. So, I think  
23 that, in fairness to Ms. Duncan, I think  
24 her evidence was that she just brought the  
25 motion in the ordinary course.



1 MR. KRAMER: So, then it's presumably  
2 nothing to do with Mr. Dewart.

3 3904. MR. SILVER: Well, I know. That's why  
4 I'm asking questions, requestioning and  
5 getting confirmation whether it had  
6 something to do with it or not. We keep  
7 getting different stories.

8

9 BY MR. SILVER:

10 3905. Q. Mr. McKenzie, I'm going to ask  
11 again, do you know why the motion wasn't brought  
12 before Justice Shaughnessy?

13 A. I have no knowledge.

14 3906. Q. Paragraph 41 of your  
15 affidavit...sorry, I didn't hear your last answer.

16 3907. Q. You know, I don't have a  
17 recollection of knowing that.

18 MR. KRAMER: Ms. Anderson tells me that  
19 her notes say that Ms. Duncan said that she  
20 didn't discuss with Mr. McKenzie whether to  
21 bring it to Justice Shaughnessy or not.

22 3908. MR. SILVER: She just did that on her  
23 own to another judge, not realizing...

24 MR. KRAMER: No, you indicated that...

25 3909. MR. SILVER: I thought that. I

1 accept...

2 MR. KRAMER: No, I appreciate that, but  
3 you said that you thought that Duncan said  
4 she didn't bring it to Shaughnessy on  
5 McKenzie's...

6 3910. MR. SILVER: No, what I thought I said  
7 was, and what I meant to say was, that  
8 Duncan was just doing a job, bringing a  
9 motion to get off the record, and she did  
10 that on instructions from McKenzie.

11 MR. KRAMER: Well, apparently she also  
12 said, according to Ms. Anderson's notes,  
13 that she never spoke with McKenzie about  
14 whether...

15 3911. MR. SILVER: Go to one or the other.

16 MR. KRAMER: Yes.

17

18 BY MR. SILVER:

19 3912. Q. Okay. I would like to move to  
20 paragraph 41 of your affidavit. And again, we've  
21 covered a lot of this. This is the complaint for  
22 declaratory relief. But Mr. McKenzie, given the  
23 cross-examination that we've conducted over the last  
24 day and a half and the refreshing of your memory,  
25 will you agree with me now that you were directly

1 involved in the steps that led up to the filing of  
2 this complaint for declaratory...and by that I mean,  
3 you located Dribin, the money to retain him came  
4 through your trust account, you were involved with  
5 the drafting of the revocable trust, you were  
6 present in the office or in vicinity on the day that  
7 it was signed, and you were involved in sending him  
8 \$50,000 more at the beginning of '09. And I  
9 suggest, although we don't have dockets for it, you  
10 were involved in reviewing this complaint for  
11 accuracy. You signed off on it before it was  
12 finalized. Isn't all that true?

13 A. I disagree.

14 3913. Q. What do you disagree with?

15 A. Well, I was trying to keep up with  
16 your points there. I got to about number three and  
17 thought, "You're okay so far", and then the rest  
18 fell apart on me.

19 3914. Q. So, you agree that you found Dribin?

20 A. I located...we went through that.

21 3915. Q. You agree with that?

22 A. Well, we located a number of people  
23 and Kathy Davis chose one. I don't recall, but I'm  
24 saying that's more likely than...otherwise, I wasn't  
25 directing anything.

1       3916.           Q.       And the retainer agreement was  
2                   settled through your office with Broad and Cassel?

3                   A.       I don't recall.

4       3917.           Q.       You don't deny?

5                   A.       I don't recall the retainer  
6                   agreement or that I settled it.

7       3918.           Q.       The initial retainer flowed through  
8                   your office from Mr. Allard?

9                   A.       Is that the \$50,000 you're talking  
10                   about?

11       3919.           Q.       No, the \$50,000 was in February of  
12                   '09. I'm going back to January '07.

13                   A.       I don't recall exactly, but funds  
14                   flowed to Mr. Dribin's office.

15       3920.           Q.       Invoices were rendered by Dribin  
16                   that were paid through your office?

17                   A.       I think that's right, yes.

18       3921.           Q.       You had involvement in the wording  
19                   of the revocable trust?

20                   A.       I don't recall exactly.

21       3922.           Q.       Well, we looked at your docket.  
22                   You don't recall looking at your docket, and you  
23                   confirming that that's what it was?

24                   A.       No.

25       3923.           Q.       No? You don't recall that anymore?

1                   A.       I don't recall, in other words, the  
2                   way you're putting it.

3       3924.           Q.       You were there on March 5, 2007 when  
4                   the document was signed?

5                   A.       I think we went through this  
6                   already.

7       3925.           Q.       I know. I'm trying to get to the  
8                   point where...you say you agreed with me for three  
9                   points and I'm trying to figure out when you stopped  
10                  agreeing with me. You agree with that?

11                  A.       I understand. I'm saying...if you  
12                  had said "You were peripherally involved in it all",  
13                  I would have said yes. That's the best of my  
14                  recollection. You seem to be saying I'm the centre  
15                  of the universe and the quarterback. I have to draw  
16                  a line somewhere around there.

17       3926.           Q.       I didn't say that, I said you were  
18                  involved in finalizing the wording of the revocable  
19                  trust. That's neutral.

20                  A.       No, I'm just saying...we've been  
21                  through this.

22       3927.           Q.       You were there on March 5th when it  
23                  got signed.

24                  A.       I already gave evidence on that.

25       3928.           Q.       And you were in communication with

1 Dribin from March '07 through to...to date?

2 A. I have been in communication with  
3 Mr. Dribin regularly since I first met him.

4 3929. Q. Including to date?

5 A. Recently, yes.

6 3930. Q. And I suggest to you that he sent  
7 this complaint for declaratory relief, maybe he  
8 drafted it, but you reviewed it before it was  
9 finalized?

10 A. Well, it's reasonable to expect that  
11 I reviewed it or took a look at it.

12 3931. Q. You did though, whether it's  
13 reasonable to expect or not, you did.

14 A. I don't recall exactly, but it's  
15 reasonable...

16 3932. Q. This is in the last couple of  
17 months.

18 A. I understand.

19 3933. Q. So, we can presume on that basis  
20 that you did review it and approve it before it was  
21 finalized?

22 A. I say it's reasonable to say that I  
23 reviewed it.

24 3934. Q. And there were proceedings in Miami  
25 in the last couple of weeks; you've been informed

1 about those proceedings?

2 A. Yes.

3 3935. Q. By Dribin and/or Raymond?

4 A. Yes.

5 3936. Q. You're getting emails from them with  
6 information?

7 A. I get copies of court documents...

8 3937. Q. What email address do you now use to  
9 receive a copy of communication from Dribin or  
10 Raymond?

11 A. Lawyerbil.

12 3938. Q. Lawyerbil@rogers.com?

13 A. Right.

14 MR. RANKING: Lawyerbil@rogers.ca?

15 THE DEPONENT: Whatever.

16 MR. RANKING: Well, what is it?

17 THE DEPONENT: Does it matter?

18 MR. RANKING: Well, to be fair, Mr.

19 Silver's questions was quite specific and

20 Mr. McKenzie's answer is quite specific,

21 and I think it's wrong. I don't think it's

22 lawyerbil@rogers.com, I think it's

23 lawyerbil@rogers.ca. If I'm mistaken, then

24 I sincerely apologize.

25 THE DEPONENT: I'm betting it's .com,

1 but I could be wrong.

2 MR. RANKING: Well, if I am wrong, I  
3 stand corrected and I apologize. You are  
4 correct, I stand corrected.

5 3939. MR. SILVER: Just excuse me for one  
6 second.

7

8 --- DISCUSSION OFF THE RECORD

9

10 BY MR. SILVER:

11 3940. Q. Dealing with paragraph 41 of your  
12 affidavit.

13 A. Okay, we got it.

14 3941. Q. The first sentence,  
15 "...My understanding from Mr. Best at all  
16 times was that my firm accounts were paid  
17 from and on account of Nelson Barbados..."

18 I guess now that we've conducted two days of  
19 cross-examination, what that really means to say is  
20 the money came from Allard and notionally loaned to  
21 Nelson Barbados, and therefore paid from or on the  
22 account of Nelson Barbados?

23 A. That sounds about right, yes.

24 3942. Q. And you didn't get that  
25 understanding from Best, you got that understanding



1 from Allard and/or Best.

2 A. That sounds about right.

3 3943. Q. And then it says,

4 "...I was vaguely aware that the ultimate  
5 responsibility for the payment was that of  
6 Kingsland..."

7 What does "vaguely aware" mean? You helped draft  
8 the complaint by the time you swore this affidavit.  
9 Nothing vague about it.

10 A. You want to ask me that?

11 3944. Q. Yes, I did.

12 A. That was code for saying that's what  
13 you told me.

14 3945. Q. I told you that the ultimate  
15 responsibility for the payment of my accounts lay  
16 with my client?

17 A. You were going to settle up with  
18 everybody any take care of it.

19 3946. Q. And that was because I told you that  
20 the ultimate responsibility for the payment was...I  
21 just can't help believe the nonsense that comes out  
22 of your mouth. I mean, in a confidential settlement  
23 discussion where we're talking about...well, you  
24 know what, I can't even grace it.

25 A. Well, it wasn't, Mr. Silver, that's

1 the point.

2 3947. Q. So,  
3 "...I was vaguely aware that the  
4 responsibility for the payment was that of  
5 Kingsland Estates Limited via an  
6 indemnification in favour of Marjorie Knox  
7 which the company had issued..."

8 You say that you were vaguely aware of all of that  
9 because it was information that you got from me?

10 A. You gave me the first part. I  
11 didn't catch on until I learned about the  
12 indemnification agreement, why you had said that.

13 3948. Q. That is so false, but gets into  
14 without-prejudice settlement discussions.

15 A. Well, we don't agree on that, that's  
16 for sure.

17 3949. Q. Yes, we don't. In any event, the  
18 "vaguely aware" and the indemnification, am I right  
19 that the indemnification in favour of Marjorie Knox  
20 is contained at clause 4 of this attachment to the  
21 complaint, in Exhibit B to the complaint? Have I  
22 got that right? That's the indemnification that  
23 you're talking about, clause 4 of Exhibit B?

24 MR. KRAMER: "As the residue of the  
25 consideration", is that where we are?

1 BY MR. SILVER:

2 3950. Q. Yes, that's the clause, the  
3 complaint for a declaratory relief is predicated  
4 upon in respect of the indemnification.

5 A. That's consistent with my  
6 understanding. There may be more, because neither  
7 of us know Miami law, but there's an indemnification  
8 in there that they're relying on which led to an  
9 order in the court down there, which you were  
10 talking about yesterday.

11 3951. Q. I get it. I totally understand  
12 what's going on now. You think that the Miami court  
13 is going to interpret this indemnification  
14 provision?

15 A. There's an order. You can interpret  
16 it, I can interpret it, but a Miami lawyer will  
17 probably interpret it best.

18 3952. Q. And the complaint for declaratory  
19 relief also seeks relief in respect of production of  
20 financial records.

21 A. Well, it says what it says. I'm not  
22 a Miami...

23 3953. Q. Are you aware, sir, that in every  
24 year since 2005 when this deal closed, Marjorie Knox  
25 received a notice of annual general meeting of

1           shareholders with financial statements attached, at  
2           which annual general meeting the financial  
3           statements in question were approved?

4                    A.       Are we really going to do this  
5           discovery here?

6    3954.            Q.       No, I'm going to get an answer to  
7           that question.

8                    A.       I think there's a serious  
9           disagreement from people that there were ever proper  
10          audited statements, that the auditor even exists,  
11          because the name can't be found. I mean, I could go  
12          on. But this is not me giving evidence. And you  
13          asked me, and I would prefer...

14   3955.            Q.       No, I just want you to answer my  
15          question.

16                    A.       Well, I am.

17                    MR. KRAMER:        You're asking if he knows  
18           if this all happened?

19

20   BY MR. SILVER:

21   3956.            Q.       Yes, are you aware that for every  
22          year since the deal closed in 2005...

23                    MR. KRAMER:        2005?

24   3957.            MR. SILVER:        Yes, they tied it up in  
25          seven years.

1 MR. KRAMER: Okay.

2 3958. MR. SILVER: That was before we got  
3 involved.

4

5 BY MR. SILVER:

6 3959. Q. The privy council rendered its  
7 decision in July and the deal that was under attack  
8 for seven or eight years in December of 2005.

9 A. Okay.

10 3960. Q. And so, for every year after  
11 December of 2005, are you aware that Marjorie Ilma  
12 Knox received a notice of annual general meetings?  
13 Are you aware of that?

14 A. I wasn't at any of these things,  
15 so...

16 3961. Q. I didn't ask that.

17 A. I'm just saying. I mean, I want to  
18 be quite clear here. I know that I was not at a  
19 meeting. I know...

20 3962. Q. I didn't ask if you were. Sir,  
21 please, answer my question. Did I ask if you were  
22 at a meeting?

23 A. No, you said am I aware...

24 3963. Q. Are you aware, did Marjorie Knox  
25 tell you, or anyone else, that for each year after

1 December 2005 that she received from Kingsland a  
2 notice of annual general meeting?

3 A. So, now you changed the question to  
4 say did Marjorie Knox tell me this?

5 3964. Q. No, I started with were you aware,  
6 whether it's from her or any other source.

7 A. Well, I don't have a recollection of  
8 the accuracy of what you're saying. I'm too far  
9 away from it.

10 3965. Q. So, you don't know whether in every  
11 year since 2005 she received a notice of AGM?

12 A. I'm just saying...

13 3966. Q. No, you're not aware of that?

14 A. Wait, you just changed the word.  
15 Let's not fool around here. I have not seen, I  
16 haven't been at these meetings, and I have no  
17 recollection of things. I've been told a lot of  
18 things, as you have, Mr. Silver, and we discussed  
19 these off the record, I suppose. But I'm saying  
20 there are varying views between your side and this  
21 is not to say...

22 3967. Q. I'm not debating that with you. I'm  
23 sure there are and there always will be. All I'm  
24 asking you is if you are aware that for every year  
25 since 2005 Marjorie Ilma Knox received a notice of

1 AGM re Kingsland?

2 A. My awareness is...

3 3968. Q. You're either aware of it or you're  
4 not.

5 A. My awareness, such as it is, which  
6 is vague, is the opposite, yes.

7 3969. Q. Are you aware, sir, and I take it I  
8 know the answer to this, that attached to each of  
9 those notices for the annual general meeting was an  
10 audited financial statement for KEL? Are you aware  
11 of that?

12 A. Well, since I gave you the answer on  
13 the first one...

14 MR. KRAMER: The answer is the same.

15

16 BY MR. SILVER:

17 3970. Q. Are you aware that, except for '09,  
18 but for '06, '07 and '08 Marjorie Knox sent a proxy  
19 to the AGM?

20 MR. KRAMER: Sent in a signed proxy  
21 form?

22 3971. MR. SILVER: Well, I think that the  
23 person shows up with the signed proxy form.

24 MR. KRAMER: So, the person is the  
25 proxy. Are you aware of that?

1 BY MR. SILVER:

2 3972. Q. And that a combination of Joey Ward  
3 and Alair Shepherd and I think John Knox attended  
4 the AGMs as Marjorie Knox's proxy?

5 A. I have no direct knowledge of that.

6 MR. KRAMER: I'm struggling to deal with  
7 the relevance of this line of questioning,  
8 Mr. Silver.

9 THE DEPONENT: He's cross-examining for  
10 the Miami case, is what he's doing. So,  
11 it's irrelevant.

12 MR. KRAMER: It may or may not, but how  
13 does this tie in with the claim against Mr.  
14 McKenzie for costs?

15 3973. MR. SILVER: Mr. Kramer, it ties in in  
16 that...and I don't want to make speeches  
17 and I'm out of time, but it ties in in that  
18 the complaint for declaratory relief is  
19 seen by my clients or some of my clients as  
20 nothing more but part of a plan that Mr.  
21 McKenzie developed and carried out for a  
22 period of four or five years, starting from  
23 the summer of 2005 and is no less a sham  
24 than the Ontario action. And I hope to  
25 convince Justice Shaughnessy that the



1 limits of this man's conduct in respect of  
2 this case, from beginning to the last  
3 paragraph of the last affidavit that he's  
4 filed, warrant the most significant award  
5 of cost against him personally and his law  
6 firm for the entire period.

7 MR. KRAMER: I get all of that. I was  
8 just asking how any of that connects with  
9 whether or not he knows that there were  
10 financial statements...

11 3974. MR. SILVER: If he knows that the  
12 financial information that Marjorie Knox as  
13 a shareholder is entitled to and she acted  
14 on it by sending proxies to the meeting,  
15 and that's all she's entitled to as a  
16 shareholder, then he knows that this is as  
17 big a sham as the Ontario action.

18 MR. KRAMER: Okay. I sort of see a  
19 vague connection. But anyways, he says he  
20 doesn't know.

21 3975. MR. SILVER: Right. So, will you then  
22 make inquiries please of Marjorie Ilma  
23 Knox, John Knox, Jane Goddard and Kathy  
24 Davis and have them advise us whether  
25 they're aware of three things, that

1 Marjorie...

2 MR. KRAMER: I can stop you now and say  
3 no, because following your previous  
4 explanation, it would only be Mr.  
5 McKenzie's knowledge of it that might be  
6 relevant, and he's already said he doesn't  
7 have knowledge. So, even if you're...

8 3976. MR. SILVER: Let me at least get the  
9 request on, you can refuse it.

10 MR. KRAMER: Sure.

11 3977. MR. SILVER: I would like you to inquire  
12 of those four people and advise whether  
13 they know that Marjorie Ilma Knox received  
14 the notice of AGM for each of the years,  
15 that appended to the AGM notice was the  
16 audited financial statements for KEL, and  
17 that proxies attended at the AGM on  
18 Marjorie Knox's behalf on all occasions  
19 except for the last year, and whether they  
20 so advised Mr. McKenzie.

21 MR. KRAMER: Well, he's already told you  
22 that they didn't so advise him, because he  
23 doesn't know it. And as for their  
24 knowledge of any of those things, it would  
25 be all irrelevant to the claim against Mr.

1 McKenzie.

2 3978. MR. SILVER: Well, I don't agree that  
3 because he says it I have to accept his  
4 answer. This is a cross-examination. I  
5 don't believe him, let's say, or I'm  
6 testing his answer.

7 MR. KRAMER: Fair enough, but I don't  
8 think included in that cross-examination  
9 requires us to go ask any person who you  
10 dream up to find out...

11 3979. MR. SILVER: I haven't dreamt up anybody  
12 but the four Knoxes that he's been in  
13 regular contact with for five years.  
14 Marjorie Ilma Knox, John Knox, Jane  
15 Goddard, and Kathy Davis.

16 MR. KRAMER: Well, you have ways you can  
17 get that information. I say he's not  
18 obliged to get it for you.

19 3980. MR. SILVER: Okay, so you refused.

20 MR. KRAMER: Yes. /R

21 3981. MR. SILVER: Thank you. Subject to the  
22 undertakings, those are my questions.

23

24 CONTINUED CROSS-EXAMINATION BY MR. RANKING :

25 3982. Q. You know that you continue to be

1 under oath?

2 A. Yes, sir.

3 3983. Q. I passed across to your counsel an  
4 email that I sent to him by letter dated April 29  
5 concerning your cross-examination, and you suggested  
6 in answers to Mr. Silver's questions that my letter  
7 had not been specific with respect to the request  
8 which I made of you to bring your transcript or the  
9 transcript of your cross-examination held February  
10 3rd and 8th. I ask you to turn up my letter dated  
11 April 29, which I've passed across, and read the  
12 second paragraph, where I state and ask Mr. Kramer  
13 to ask your client,

14 "...To bring with him all relevant  
15 documents concerning his withdrawal from  
16 the Crawford McKenzie firm, the box of  
17 documents (containing several motion  
18 records and some accounting records)  
19 referred to in paragraph 7 of the  
20 affidavit..."

21 And then I emphasized,

22 "...Mr. McKenzie's copy of the transcript  
23 of his cross-examination held February 3  
24 and 8, 2010, and the list of corrections he  
25 began to prepare which is referred to in

1 paragraph 14 of his affidavit..."

2 I take it that I read that correctly, Mr. McKenzie?

3 A. I wasn't following every word, but  
4 it sounds like you got it right.

5 3984. Q. And I take it there's no issue that  
6 this letter was sent and received by Mr. Kramer?

7 MR. KRAMER: No issue.

8 3985. MR. RANKING: If we could mark it as the  
9 next exhibit. And Exhibit 17 is not only  
10 my letter but as well a notice of  
11 examination.

12

13 --- EXHIBIT NO. 17: Letter from Mr. Ranking to Mr.  
14 Kramer, along with a notice of  
15 examination, dated April 29, 2010

16

17 BY MR. RANKING:

18 3986. Q. And I take it that you would agree,  
19 sir, if you look at the notice of examination, that  
20 it requires you to bring with you the documents that  
21 are referred to in my letter, correct?

22 A. Okay.

23 3987. Q. And I take it as well that even  
24 before I sent my letter, that you had received a  
25 similar email from Ms. Zemel, or your counsel had,

1           dated April 29, and sent at 11:44 a.m., correct?

2           A.       No issue about receiving this.

3   3988.       MR. RANKING:       All right, and we'll mark  
4           that email from Ms. Zemel to Mr. Kramer  
5           sent at 11:44 as Exhibit 18.

6  
7   ---   EXHIBIT NO. 18:   Email from Ms. Zemel to Mr. Kramer,  
8                           dated April 29, 2010, sent at 11:44  
9                           a.m.

10  
11   BY MR. RANKING:

12   3989.       Q.       And I take it, sir, without  
13           breaching any privilege of the communication between  
14           your counsel and yourself, that you were aware of  
15           the request that you bring with you your transcript  
16           and the list of inaccuracies that you refer to in  
17           paragraph 13 of your affidavit?

18           A.       Yes, I'm aware that you wanted to  
19           see them.

20   3990.       Q.       Yes. And indeed, sir, that letter  
21           and Ms. Zemel's email were sent on Thursday of last  
22           week and you were cross-examined starting on Monday  
23           of this week, and a further request was made of you  
24           to bring those documents and we still don't have  
25           them, correct?

1 MR. KRAMER: Well, you have the box.

2 THE DEPONENT: You have the box.

3

4 BY MR. RANKING:

5 3991. Q. I'm talking about the transcript and  
6 notes.

7 A. You don't have my copy of the  
8 transcript, correct.

9 MR. KRAMER: Some of the things you  
10 requested may or may not exist, but Mr.  
11 McKenzie certainly gave evidence that he  
12 has a file with...

13 3992. MR. RANKING: No, I'm only concerned  
14 about his copy of the transcript.

15 THE DEPONENT: Well, it's not here and I  
16 tried to explain this morning the problem I  
17 had...

18

19 BY MR. RANKING:

20 3993. Q. What I don't understand, Mr.  
21 McKenzie, and this goes to submissions which I've  
22 made to Justice Shaughnessy before concerning your  
23 candour...and I want to give you an opportunity to  
24 answer this and to be fair to you. I made a  
25 specific request through your counsel that you bring

1           these documents and I would like to give you an  
2           opportunity to explain why you didn't do so. And  
3           when I'm talking about "these documents", I'm  
4           talking about your copy of the transcript of your  
5           cross-examination, and the list that you say you  
6           began to prepare of the alleged inaccuracies.

7                   MR. KRAMER:        I don't think he has ever  
8                                        confirmed that there is a list. I think  
9                                        his evidence was that the list just might  
10                                       be just notes on the transcript.

11  
12       BY MR. RANKING:

13       3994.           Q.        But leaving that aside, and I'll  
14                        come back to that in a moment, why is it, sir, that  
15                        you didn't bring at least the transcript?

16                       A.        Well, I confessed to an avalanche of  
17                        emails that I read quickly, that I in my mind  
18                        thought that Mr. Kramer has the transcript and he'll  
19                        bring it. And then when it became quite clear to me  
20                        that you wanted actually the one that I had in my  
21                        possession, I used my best efforts to get it here  
22                        and it ain't here yet.

23       3995.           Q.        And in fact, you never spoke to  
24                        anyone at your office yesterday to get it to you  
25                        here today, did you, sir?



1 A. I don't have an office.

2 3996. Q. You didn't speak to your wife to get  
3 it here today?

4 A. I spoke to my wife about the  
5 silliness of me trying to drive all the way home and  
6 get it and drive all the way back. And she said,  
7 "It's not worth killing yourself over something that  
8 you can do tomorrow."

9 3997. Q. There's no reason that your wife  
10 couldn't have put it in courier and got it to us,  
11 sir?

12 A. I don't know if you could do that  
13 from Orillia, from my house, and get it here this  
14 morning.

15 3998. Q. Do you have anything else to add to  
16 your answer?

17 A. Well, the other thing is, I'm saying  
18 I still have to have it gone over. I believe the  
19 whole thing is privileged. I have to get my counsel  
20 to look at it. So, it might not be here anyway,  
21 but...

22 MR. KRAMER: Well, certainly the notes  
23 that you were making in connection with the  
24 discussion with Mr. Dewart, the privilege  
25 would be waived. Maybe other notes that

1                   you made at other times or later.

2                   THE DEPONENT:       Well, I defer to you.

3                   Anyways, I'm just saying I think it's going  
4                   to have to be copied.

5

6                   BY MR. RANKING:

7                   3999.               Q.       I'm less concerned at this point  
8                   with respect to what it says than I am with respect  
9                   to its nondisclosure, Mr. McKenzie. Now, let's just  
10                  turn to the other point that your counsel raised.

11                  You say, and I'm going to quote here, in paragraph  
12                  14,

13                               "...I began to prepare a list of  
14                               corrections..."

15                  Do you see that?

16                               A.       Yes.

17                  4000.               Q.       I take it that it's reasonable for  
18                  me to assume from that that you were talking about  
19                  an actual list that you began to prepare.

20                               A.       Yes.

21                  4001.               Q.       Now, have you produced that list to  
22                  Mr. Kramer?

23                               A.       Well, I'll say that I think my  
24                  recollection is it may have been provided to Mr.  
25                  Dewart, in a box at Mr. Dewart's that has to be gone

1 through, and secondly, it's equally likely that it's  
2 scribbled in the transcript.

3 4002. Q. I'm not asking whether it's typed or  
4 scribbled. So, you prepared a list, and do you have  
5 it in your possession?

6 A. I said I began to prepare a list.

7 4003. Q. That's fine. But there is a hard  
8 copy list? I'm not saying it's comprehensive, but  
9 there is a list that you began to prepare, is that  
10 fair?

11 A. That's what I said.

12 4004. Q. Yes. So, can you tell me, sir,  
13 today under oath, where is that list?

14 A. Well, I'm going to check and see if  
15 it is incorporated on the transcript. And somebody  
16 has to check in the box...

17 4005. Q. Well, you said you began to prepare  
18 a list. You didn't say you wrote notes on the  
19 transcript. You told me just two seconds ago that  
20 you began to prepare a list. I want to know, sir,  
21 where is the list?

22 A. Well, let's expand...

23 4006. Q. I don't need to expand anything. I  
24 need an answer to my question. Where is the list  
25 today, sir?

1                   A.       It could be in the transcript, in  
2                   other words circling things, or it could be in the  
3                   file.

4       4007.           Q.       No, I'm stopping you there. You  
5                   didn't say, in answer to my question, you began to  
6                   circle things. In answer to my question, based on  
7                   what you said in paragraph 14, you said that you  
8                   began to prepare a list. Now, my question is a very  
9                   simple one. Where is the list today?

10                   A.       My best recollection is the list is  
11                   scribblings or a notation within the transcript, but  
12                   I'm going to have to double check that.

13       4008.           Q.       What do you mean it's scribbling  
14                   within the transcript?

15                   A.       Give me a piece of paper and maybe I  
16                   can demonstrate.

17       4009.           Q.       I'm not going to start marking other  
18                   things in the exhibit. Can you explain it, because  
19                   this examination is being transcribed?

20                   A.       I pick up a pen when I have a  
21                   document in my hand, and then I might circle it and  
22                   go "?" beside something. That would be my version  
23                   of what a list looks like, or I might have gone,  
24                   "What the heck is this?" or, "Better talk to the  
25                   lawyer"...

1 4010. Q. Do we need to go to Dictionary.com  
2 and look at a definition of a "list"? Is that what  
3 you're going to force me to do with my submissions  
4 to Justice Shaughnessy on this cross-examination,  
5 Mr. McKenzie? You understand what a list is. A  
6 list is not making marginal notations. Marginal  
7 notations or a question mark are marginal notations.  
8 Look, I get frustrated with your answers because  
9 they're not straight and you're not being straight  
10 up with me. And I'm putting that on the record  
11 right now. You said there was list.

12 A. I said I began to prepare a list.

13 4011. Q. Right, and I'm asking where the  
14 list...

15 A. Stop for a minute. Let's go over  
16 the whole context since you're being pedantic...

17 4012. Q. No, I'm not being pedantic.

18 A. Just hear my answer, which is I  
19 began to prepare a list. As I recall, and let's  
20 look at Exhibit A, when I get the stuff, I said to  
21 Mr. Dewart, I will be able to complete the review  
22 and I can add it to the corrections and  
23 clarifications. So, I began to prepare a list which  
24 could be as simple as writing something down, and  
25 stopped, full tilt. So, I'm saying a list could

1 be...I mean, since we're being pedantic. This is an  
2 unfortunate conversation, but I'm saying, here, I'll  
3 start a list. It's semantics. I'll get you what I  
4 got, how about that?

5 4013. Q. Well, no, that's not responsive to  
6 my question. This has to do with candour and  
7 honesty, Mr. McKenzie. You told me that you began  
8 to prepare a list. Now, where do you say that list  
9 is located?

10 A. I have a good idea. Do you want to  
11 print out the dictionary meaning of "list"?

12 4014. Q. I'll give it to your counsel. I'll  
13 give it to your counsel afterwards.

14 A. No, do it now.

15 4015. Q. I don't have a computer here.

16 A. Wait a minute, you're taking me to  
17 task, and I think this conversation is silly.  
18 You're taking me to task on what the meaning of the  
19 word "list" is and I have a feeling it's way broader  
20 than you're suggesting, but I'm going to stop right  
21 there. I'm not going to answer any more questions  
22 about this.

23 4016. Q. You're not? That's convenient,  
24 isn't it, Mr. McKenzie? That's very convenient.  
25 Now, I'm going to ask the questions and you can

1 provide the answers, and if you don't want to  
2 provide the answers, then we'll deal with that in  
3 front of Justice Shaughnessy. Where do you say you  
4 prepared this list? Where do you say it is, today,  
5 under oath?

6 A. I don't recall specifically where it  
7 is.

8 4017. Q. Do you say, sir, that it is on a  
9 separate piece of paper, or do you now say that it  
10 is embedded in the transcript?

11 A. I don't recall.

12 4018. Q. You're going home today, sir?

13 A. Doubtful.

14 4019. Q. Will you make arrangements to  
15 courier your copy of the transcript to your counsel,  
16 Mr. Kramer, today?

17 A. No.

/R

18 4020. Q. Why not?

19 A. I don't think it's feasible.

20 4021. Q. All right. When do you think it's  
21 going to become feasible for you to do what I asked  
22 you to do by letter dated April 29, addressed to  
23 your counsel?

24 A. Given the million tasks I have, I  
25 would say it will take, to be reasonable, a week.

1 4022. Q. I just want it to be clear that I'm  
2 making a request now, through your counsel, that you  
3 obtain and provide to him your copy of the February  
4 3rd and February 8th transcript of your  
5 cross-examination as soon as possible, ideally by  
6 tomorrow.

7 A. I will use my best efforts to get it  
8 to my counsel by the end of next week. U/T

9 4023. Q. And I want the original provided to  
10 Mr. Kramer, do you understand that?

11 A. I do.

12 4024. Q. And I want to countenance you not to  
13 make any changes to the transcript as it currently  
14 exists, do you understand?

15 A. I won't.

16 4025. Q. And I would like your counsel in  
17 turn to review it and to disclose to me the  
18 transcript, however Mr. Kramer may feel required to  
19 redact any entries that he may come to the view may  
20 be privileged, if any.

21 MR. KRAMER: I'm hoping not to redact it  
22 at all, but my problem is going to be if  
23 Mr. McKenzie says, and I think he's already  
24 said, that he made...whatever notations  
25 that he may have made on it at the time



1                   that he was dealing with Mr. Dewart and  
2                   then if he made subsequent ones, is it  
3                   possible to distinguish which is which?

4                   THE DEPONENT:       It's been a running  
5                   exercise.

6                   MR. KRAMER:       I'm going to look at it and  
7                   we'll see. My hope is to give it to you  
8                   unredacted. But it may be unredacted, but  
9                   saying to you we can't tell which ones he  
10                  made at what time.

11                 4026.           MR. RANKING:       Thank you.

12

13                 BY MR. RANKING:

14                 4027.           Q.       Now, let's just deal with that,  
15                   because I heard that evidence. That's not  
16                   consistent, I suggest, with that you swore under  
17                   oath. You say, sir, in paragraph 13, when you  
18                   later,

19                                 "...Received and reviewed the  
20                                 transcript..."

21                   Do you see that, sir?

22                   A.       I do.

23                 4028.           Q.       I take it that statement was true  
24                   when it was made?

25                   A.       Yes.

1 4029. Q. It remains true today?

2 A. Yes.

3 4030. Q. It doesn't talk about successive  
4 reviews of the transcript. When did you review this  
5 transcript?

6 A. I don't recall exactly.

7 MR. KRAMER: Presumably the date of the  
8 email would be of some help. It looks like  
9 on the 19th of February he was already  
10 reviewing it. So, it would have been by  
11 that date.

12 THE DEPONENT: That's fair.

13

14 BY MR. RANKING:

15 4031. Q. Did you review the entire  
16 transcript?

17 A. I have.

18 4032. Q. Did you review the entire transcript  
19 when you first received it?

20 A. Doubtful.

21 4033. Q. When do you say, upon your review of  
22 the transcript, did you first notice an inaccuracy?

23 A. Within an hour of starting to read  
24 it, perhaps.

25 4034. Q. What page would that be?

1 A. I don't recall.

2 4035. Q. Give me an approximation.

3 A. I don't recall.

4 4036. Q. Do you recall what the inaccuracy  
5 was?

6 A. No.

7 4037. Q. Did it give you concern, sir?

8 A. It did.

9 4038. Q. Do you recall actually making a  
10 notation on the transcript?

11 A. Yes. I don't recall, but that's  
12 what I would have done. I usually do it with pen in  
13 hand, with paper in hand.

14 4039. Q. Now, you're indicating a transcript  
15 and a piece of paper as well as the transcript?

16 A. Yes. Stacey Ball would have printed  
17 it out when she got it and I would have got it  
18 sooner or later from her and start reading it catch  
19 as catch can, because it's a long document.

20 4040. Q. So, do I understand that you had the  
21 transcript and you marked up the transcript? Is  
22 that what your evidence is, sir?

23 A. Yes, I had paper transcript hand in  
24 hand.

25 4041. Q. Did you also have a list in addition

1 to the transcript?

2 A. Didn't we already go through that?

3 I'm saying...

4 4042. Q. I only go back to it, sir, because  
5 when you gesticulate, you said you had the  
6 transcript here, indicating one page, namely your  
7 left hand, and you indicated with your right another  
8 piece of paper.

9 A. No, no. I'll demonstrate. I've  
10 probably doing this since I started law school. In  
11 other words, write over here, write over here,  
12 whatever.

13 4043. Q. So, what the witness is  
14 demonstrating is circling a portion of the  
15 transcript and making a notation on the opposite  
16 page.

17 A. Possibly.

18 4044. Q. Do you recall whether you were  
19 reviewing a page-saver version of the transcript,  
20 where there's four pages to a page, or were you  
21 actually looking at an official transcript that  
22 would be filed in court?

23 A. I don't know what a page-saver is.

24 MR. KRAMER: There are transcripts that  
25 have four pages per single 8 and a half by

1 11 piece of paper.

2 THE DEPONENT: No, no, I see what you  
3 mean. I don't like those.

4

5 BY MR. RANKING:

6 4045. Q. And you found your first inaccuracy  
7 within the hour and you tell me that it caused you  
8 some concern, correct?

9 A. It did.

10 4046. Q. And it caused you sufficient concern  
11 that you say you raised the matter with Mr. Dewart.

12 A. I raised the matter with Mr. Dewart,  
13 yes, I did.

14 4047. Q. And I think you told me, sir, that  
15 you didn't complete reviewing the transcript when  
16 you first got it. You put it down?

17 A. Yes.

18 4048. Q. How long did it take you before you  
19 finished reviewing the transcript of the February  
20 3rd and the 8th?

21 A. I can't recall.

22 4049. Q. Do you recall how many inaccuracies  
23 you first noted before you put the transcript down  
24 the first time you were reviewing it?

25 A. I don't recall.

1 4050. Q. Do you recall how many inaccuracies  
2 you say you found in the transcript?

3 A. I don't recall.

4 4051. Q. Do you recall whether there were  
5 more than five or less than five?

6 A. Well, first time versus up to today  
7 is my problem. But I'm just saying, at the  
8 beginning, I probably found a handful in first  
9 reading, because I only got through a certain number  
10 of pages. You know how it goes...

11 4052. Q. What's a handful, sir?

12 A. Let's call it five.

13 4053. Q. And would that have been the  
14 transcript from February 3rd?

15 A. I honestly don't know which one I  
16 read first.

17 4054. Q. Can you tell me what any of those  
18 inaccuracies were? You don't recall?

19 A. I have a vague recollection about  
20 something about emails being...it didn't come out  
21 right or something like that.

22 4055. Q. Well, what was it about the emails  
23 that didn't come out right?

24 A. I can't recall, I'm just saying...

25 4056. Q. How long was it before you completed

1           your review of the transcripts of the 3rd and 8th of  
2           February?

3                   A.       I don't really recall how long it  
4           took me to go through it.

5           4057.           Q.       How many inaccuracies do you say  
6           that you determined existed through the entire two  
7           days of cross-examination?

8                   A.       I can't recall.

9           4058.           Q.       How long after you determined the  
10          inaccuracies did you raise this matter with Mr.  
11          Dewart?

12                   A.       The first inaccuracy or...I really  
13          can't recall whether I contacted him right away  
14          after one, like a spelling mistake or something, or  
15          whether I hit something that was...and contacted  
16          him.

17          4059.           Q.       Did you send anything to Mr. Dewart  
18          setting forth your concern with respect to these  
19          inaccuracies?

20                   MR. KRAMER:     Sorry, did he send some  
21          other document other than the email?

22

23          BY MR. RANKING:

24          4060.           Q.       Yes.

25                   A.       Well, I don't recall.

1       4061.           Q.       Because I would like to take you to  
2                    an exhibit. Is the email that you sent to Mr.  
3                    Dewart, the email at the bottom of the first page of  
4                    Exhibit A.

5                    MR. KRAMER:       Well, it's to Stacey Ball,  
6                    copied to Sean Dewart.

7       4062.           MR. RANKING:       I stand corrected, that's  
8                    right.

9

10       BY MR. RANKING:

11       4063.           Q.       Is this the email that you say  
12                    expressed your concerns as to inaccuracies, Mr.  
13                    McKenzie? I see you're reading the email.

14                    A.       Well, it does...there is something  
15                    which came to my mind. You guys were talking about  
16                    a compendium, and you were equating documents and  
17                    everything, and I was going, "I don't think I've  
18                    ever seen it." And you guys were talking about it,  
19                    so I'm going, "Can I have a look at it?" as an  
20                    example, before the transcript is in the can, so to  
21                    speak or validated. I'm just saying these are  
22                    examples. To my recollection this is when I did it  
23                    February 19, email...I usually get up in the  
24                    morning, I might have written email the day before.  
25                    I often sleep on emails.



1           4064.           Q.       You go on in paragraph 13 to say  
2                           that you remembered certain things that you had not  
3                           recalled correctly.  What items were those, Mr.  
4                           McKenzie?

5                           A.       Well, I don't recall.

6           4065.           Q.       You don't recall what it is you are  
7                           now telling us under oath was additional information  
8                           that came to your attention after the  
9                           cross-examination?

10                          A.       Well, I tried to make it clear that  
11                          there's a sequence of time periods in all of this.  
12                          Because information came to my knowledge, and  
13                          privilege is lifted and affidavits arrived.  I'm  
14                          still not caught up.  There's a whole box of  
15                          documents yet to go through.  But as an example, you  
16                          will say something and you will say, "No", and then  
17                          it will come to you in a shower.  It might have been  
18                          an email, so you want to go check, but I can't,  
19                          because I don't have the file, I'm not allowed to  
20                          see it...normally I would call my office, if I had  
21                          one, and say, "Just before I validate this  
22                          transcript, Stacey, could you see if there was an  
23                          email because I just had a glimmer that there might  
24                          be."  That's how my memory works.  You try to be as  
25                          accurate as you can...

1 4066. Q. Mr. McKenzie, you swore under oath  
2 that you determined there to be inaccuracies.

3 A. Yes.

4 4067. Q. Number one, and that you determined  
5 that there were other items that you had not  
6 recalled correctly. So, two distinct areas where  
7 there would be errors, correct?

8 A. All of the above.

9 4068. Q. Right. What I would like you to  
10 tell me today is can you give me any details on  
11 either of A, the inaccuracies, or B, the items which  
12 you had not recalled correctly.

13 A. I can't recall right now. That's  
14 why I will have to get the transcript and give it to  
15 you. It's like when you were so sure of the .ca  
16 instead of .com, and you looked it up, and you were  
17 right or wrong. That's how I operate too.

18 4069. Q. The only difference is I didn't  
19 swear an affidavit, and I'm not coming here to be  
20 cross-examined upon what you say were inaccuracies  
21 and items that you didn't recall correctly.

22 A. Well, you wanted me to explain and I  
23 was just using an example.

24 4070. Q. What I want you to do, rather than  
25 explain it, I would rather you give me the details

1           that you say you determined were inaccurate or for  
2           which your memory was failing.

3                   A.       Yes.  We're going to give you the  
4           transcript once it's been reviewed by my counsel and  
5           I think that will answer if you can read my writing.

6   4071.           Q.       But you can't help me today?

7                   A.       We should do it the transcript way,  
8           rather than me trying to recall stuff and then  
9           reading the transcript and realizing that I forgot  
10          something and start over again.  My memory and a  
11          billion documents...

12   4072.           Q.       I think we don't need an  
13          overstatement.  There may be a number of documents  
14          here.  I think a billion is an overstatement.

15                   A.       Anyway...

16   4073.           Q.       4,000 on a memory stick, not  
17          identified, I understand.  In any event, Mr.  
18          McKenzie, you cannot provide any further particulars  
19          today?

20                   A.       That's correct.

21   4074.           Q.       Now, you also, I take it, identified  
22          those inaccuracies and areas for which your recall  
23          was not accurate before you reviewed the  
24          undertakings, correct?

25                   A.       Let me refresh my memory.

1       4075.           Q.       The undertakings were delivered on  
2                    the Friday before the 22nd of February.

3                    A.       How would that relate to the 19th?  
4                    Maybe the same day?

5       4076.           Q.       I believe it is the same day.

6                    A.       The undertakings were really Stacey  
7                    did her usual good job and went through the  
8                    transcript and found them all, because that's what  
9                    she does way better than I do and wrote that chart,  
10                   there's a chart some place.

11      4077.           Q.       Yes.

12                   A.       She identifies the undertakings and  
13                   then between her and I, we go find documents, we go  
14                   find as best we can the answers.

15      4078.           Q.       And you never saw fit to identify  
16                   any of the inaccuracies or deal with that in the  
17                   answers to undertakings or matters taken under  
18                   advisement?

19                   A.       Well, based upon legal advice...it's  
20                   a different topic. The undertakings had to be  
21                   answered by a certain date. And we did that to the  
22                   best of our ability. And the rest of it went on  
23                   hold here.

24      4079.           Q.       You go on...just changing topics,  
25                   earlier on in paragraph 9 of your affidavit, you

1 deal with the motion to remove your former firm as  
2 solicitor of record. And you sign an affidavit in  
3 support of that motion, correct?

4 A. I did.

5 4080. Q. And you're aware that the order is  
6 dated September 15, 2009 by Justice Eberhard?

7 A. I'm not going to argue...okay.

8 4081. Q. And it requires service upon Nelson  
9 Barbados' post office box in Kingston, Ontario,  
10 correct?

11 MR. KRAMER: This is mine.

12 4082. MR. RANKING: Yes.

13 THE DEPONENT: It says the plaintiff may  
14 be served with documents, yes.

15

16 BY MR. RANKING:

17 4083. Q. And I take it that address was set  
18 forth in your affidavit, sir, in support of the  
19 motion?

20 A. I would have to take the affidavit,  
21 but it makes sense.

22 4084. Q. And I take it you obtained that  
23 address from Mr. Best?

24 A. You asked me these exact same  
25 questions, so let's go look at tab 13 to make sure I

1 don't shoot myself in the foot by relying on my  
2 memory, as I have been doing sometimes.

3 MR. KRAMER: We don't have that  
4 affidavit. You could have gotten it from  
5 the court file, but it's not in the record?

6 4085. MR. RANKING: I think in fairness, Mr.  
7 Kramer, I did ask for it from Mr. Dewart,  
8 but I think I may have it in my file. I'm  
9 not sure it's in the compendium.

10 MR. KRAMER: But the question is, in the  
11 affidavit, which is actually not identified  
12 but presumably Mr. McKenzie says is his, he  
13 would have given the address, and you want  
14 to know if that's on information or belief  
15 from Best?

16

17 BY MR. RANKING:

18 4086. Q. Right.

19 A. Well, I would have to check the  
20 affidavit to refresh my memory and if you want...I  
21 thought I had sort of an index, because I thought  
22 you might bring up some things that I recall in the  
23 last transcript I gave you.

24 4087. Q. What transcript are you referring  
25 to?

1                   A.       The ones that we were just talking  
2                   about. I recall that you asked me these questions.

3                   4088.            Q.       I don't need you to look through  
4                   your handwritten notes. I'm just asking you a  
5                   question. I take it, sir, that you obtained the  
6                   information that was set forth in your affidavit as  
7                   to the address for service for Mr. Best.

8                   A.       Well, I'm going to say that I don't  
9                   want to get into a situation where I am called  
10                  giving a false answer, because I know it's in the  
11                  affidavit and it's not here. I think you asked me  
12                  this question already, but it makes sense that he  
13                  gave me the address. But I don't want to get into  
14                  what I did with Mr. Silver, it's false, and I'm  
15                  going...for crying out loud, guys.

16                  MR. KRAMER:       Actually, it's almost the  
17                  identical question, I'm looking at page 65.  
18                  You ask Mr. McKenzie,  
19                  "...I take it he provided you or someone  
20                  within your firm with the address on  
21                  Princess Street for the purpose of bringing  
22                  you to get the order removing your firm as  
23                  solicitor of record for Nelson Barbados..."  
24                  Guess what he says?  
25                  "...Can you show me the order?"

1       4089.           MR. RANKING:       And now I have shown him  
2                           the order.

3                           MR. KRAMER:       Well, actually you asked  
4                           him,  
5                           "...Did you discuss the address in Kingston  
6                           with Best or not?..."

7                           Answer:  
8                           "...Did I? No..."

9                           THE DEPONENT:     There you go.

10

11       BY MR. RANKING:

12       4090.           Q.       So, where in fact did you get the  
13                           address from, Mr. McKenzie?

14                           A.       Well, that's why you better give me  
15                           the affidavit, because that could be one where I  
16                           went, "What the heck?"

17       4091.           Q.       The reason I'm going back here is,  
18                           you may laugh at this, but I find this to be pretty  
19                           serious. Your firm was a solicitor of record for a  
20                           case that was brought for \$500 million US. What we  
21                           then find is prevarication and delay. When we  
22                           finally get an order removing your firm as counsel  
23                           of record, we're in fact given a post office box in  
24                           Kingston. And when I finally get an order ordering  
25                           the UPS box, the post office box to disclose the



1 post office boxes, that post office box was open two  
2 weeks prior to that order being taken out. Did you  
3 have a discussion with Mr. Best that in fact that  
4 post office box had only been opened up for the  
5 purposes of that order, removing your firm as  
6 solicitors of record?

7 A. Well, to start with your first  
8 statement, I don't think this is funny at all.

9 4092. Q. Good.

10 A. Okay, then let's stop right there.

11 4093. Q. You were the one smiling, sir, not  
12 me. So, let's just get on with the question.

13 A. You know what, I'm grimacing, not  
14 anything you're doing...

15 4094. Q. Did you have any discussion...

16 A. Excuse me, I'm just saying now, I'm  
17 going to go read the transcript.

18 4095. Q. I'm going to ask my question. I'm  
19 not asking you to read the transcript. Did you have  
20 any discussion with Mr. Best concerning using the  
21 post office box for the order of removing your firm  
22 as solicitors of record?

23 A. My recollection hasn't improved.

24 4096. Q. So, you can't recall?

25 A. I cannot recall, but I will say to



1 BY MR. RANKING:

2 4101. Q. Now, there are various entries with  
3 respect to your meeting with Alair Shepherd and  
4 attending in court in Barbados, commencing in or  
5 about November '05 and proceeding through to '06. I  
6 take it you agree with that?

7 A. Meeting with Alair Shepherd, I did  
8 meet with him.

9 4102. Q. Mr. Shepherd was acting for the Knox  
10 family in the Barbados litigation, correct?

11 A. I don't know that the whole family  
12 was involved, but...

13 4103. Q. He was acting for Marjorie Knox?

14 A. Yes, he acted for Marjorie Knox.

15 4104. Q. And he acted for John Knox?

16 A. I'm not quite sure of all the  
17 details.

18 4105. Q. Certainly he acted for Marjorie Knox  
19 in the Barbados litigation, correct?

20 A. Yes, I saw him argue something in  
21 court on behalf of Marjorie Knox.

22 4106. Q. And I take it that you will agree,  
23 sir, that you were assisting him with respect to the  
24 Barbados litigation, correct?

25 A. Observing?

1 4107. Q. First of all, in November 7 of '05,  
2 you were in fact inquiring of the Law Society of  
3 Upper Canada with respect to actually being able to  
4 appear in the Barbados courts, correct?

5 A. As counsel?

6 4108. Q. Correct.

7 A. Yes.

8 4109. Q. And throughout November and December  
9 of 2005, you were in constant communication with Mr.  
10 Shepherd's office concerning the derivative action  
11 that was to be brought in Barbados, correct?

12 A. I'll admit that I was involved with  
13 Mr. Shepherd...sorry, what dates was that?

14 4110. Q. In November of 2005.

15 A. Okay, show me that.

16 4111. Q. And if I can take you to November  
17 22, 2005, the top of page 5, you were in fact  
18 reviewing documents from Mr. Knox and Mr. Shepherd  
19 and drafting the claim, do you see that?

20 A. That's what it says, yes.

21 4112. Q. And I'm going to suggest to you,  
22 sir, that that was a derivative action that was  
23 ultimately commenced under suit number 2141 in 2006.

24 A. I don't recall.

25 4113. Q. And in connection with that lawsuit,

1           you were also assisting with respect to research,  
2           isn't that fair?

3                   A.       Do you want to know if I was doing  
4           research, legal research?

5    4114.           Q.       You were assisting Alair Shepherd  
6           with respect to research.

7                   A.       I think I supplied him with some  
8           opinions from time to time.

9    4115.           Q.       Right.  And that particular action,  
10          sir, was an action which included the  
11          PricewaterhouseCoopers firm, correct?

12                   A.       Well, you'll have to show me the  
13          documents.

14    4116.           Q.       Well, I don't have them here, but I  
15          can tell you I'm reading from my factum and if you  
16          want to go back and look at it, I'll refer you to  
17          paragraph 30(b), which is actually a quotation from  
18          Justice Shaughnessy's reasons that speak of the  
19          action that was commenced against, among others,  
20          PricewaterhouseCoopers East Caribbean firm.

21                   A.       I'll defer to the pleadings because  
22          I don't think that firm exists.

23    4117.           Q.       We'll go to that if and when I need  
24          to, but I can assure you, sir, that I'm not doing  
25          this for free.  So, if they don't exist, they seem

1 to be making money out of thin air and paying legal  
2 fees.

3 A. Well, I was under the impression you  
4 were acting for the insurer, but I may be wrong.

5 4118. Q. Well, you may well be wrong. Let me  
6 take you to August 15, 2006, because it seems that  
7 it assists taking you to documents to refresh your  
8 recollection.

9 MR. KRAMER: August 15?

10 4119. MR. RANKING: 2006, is a docket entry  
11 which is attached to an account dated  
12 August 23, 2006.

13 MR. KRAMER: Calls with Alair, research,  
14 emails to and from?

15 4120. MR. RANKING: Yes.

16

17 BY MR. RANKING:

18 4121. Q. Do you see that, sir? That's your  
19 entry, "Calls with Alair, research, emails to and  
20 from Jane Goddard and JK."

21 A. That's the entry in my name, yes.

22 4122. Q. Right. And then if you go down to  
23 August 16, your entry is "Call with PA", which is  
24 Peter Allard, "and APS". Do you see that? Who is  
25 APS?

1                   A.       I don't recall, but it's likely Mr.  
2       Shepherd.

3       4123.           Q.       "Re court proceedings today." Do  
4       you see that?

5                   A.       I see it.

6       4124.           Q.       And I take it, sir, that what you  
7       were doing was you were assisting with those court  
8       proceedings.

9                   A.       Observing would be a better...I  
10       mean, when I went to court, I was a spectator.

11       4125.           Q.       Well, I think you're going to be  
12       more than that. Can I ask you to turn to the next  
13       account under August 27, 2006?

14                   A.       The next one I have is September 25,  
15       '06.

16       4126.           Q.       Right, it's within that account.

17                   A.       Sorry, the entry of August 27?

18       4127.           Q.       Yes.

19                   A.       Okay.

20       4128.           Q.       Do you see, "Redrafting AW  
21       affidavit". Who is AW?

22                   A.       I don't recall, but it might be Alex  
23       Wright who is mentioned in the paragraph previously.  
24       It could be.

25       4129.           Q.       And I take it, sir...who is Alex

1 Wright?

2 A. I don't recall.

3 4130. Q. But in any event, I take it that he  
4 filed an affidavit in the Barbados proceedings?

5 A. Have you got it here? I don't  
6 recall off the top of my head.

7 4131. Q. I take it that that's a reasonable  
8 inference. You don't have any reason to believe he  
9 didn't do that?

10 A. I don't recall.

11 4132. Q. And you redrafted that affidavit  
12 after considering the submissions by Alair Shepherd,  
13 correct?

14 A. That's what it says. I don't  
15 recall.

16 4133. Q. And in fact, it goes on to say that  
17 you were redrafting, reviewing and updating the  
18 submissions of Mr. Alair Shepherd, correct?

19 A. Sorry, it says "and update  
20 submissions"...anyway, I don't recall. It doesn't  
21 say Alair Shepherd or...

22 4134. Q. No, but you're not going to suggest  
23 to me that that sentence isn't modified by the  
24 preceding sentence. When you're considering the  
25 submissions by Alair Shepherd, isn't it fair for me



1 to assume, sir, the next line, when you go on to say  
2 "redrafting, reviewing and updating submissions"  
3 that those are the submissions of Mr. Shepherd?

4 A. I don't recall.

5 4135. Q. Isn't it fair for me to make that  
6 assumption, sir? These are your dockets. You tell  
7 me whether it's fair for me to make that assumption  
8 based on how you prepare your dockets?

9 A. I don't recall.

10 4136. Q. Is it fair for me to make that  
11 assumption, sir? I didn't ask if you recalled or  
12 not?

13 A. Is it fair for you to make an  
14 assumption?

15 4137. Q. To make the assumption I did based  
16 on how you make your docket entries.

17 A. I'm sorry to laugh, I'm just saying  
18 it's an interesting choice of words. You can make  
19 whatever assumption you want, but since I can't  
20 recall, I can't support or deny it, can I?

21 4138. Q. I'm asking you how you do your  
22 dockets and whether it is fair for me to assume that  
23 a second sentence in a document is going to be  
24 qualified by the first sentence. That is what I'm  
25 asking. It's a yes or no answer.

1                   A.       I stated no.  Sometimes I've seen  
2                   dockets in here that have five jobs in there, five  
3                   words, and on completely separate files.

4       4139.           Q.       Let's look at this docket.  All  
5                   right.  I'm going to quote for the record,  
6                   "...Redrafting AW affidavit after  
7                   considering submissions by AS.  Redrafting,  
8                   review, and update submissions..."

9                   Is it fair for me to assume that you were  
10                  redrafting, reviewing and updating the submissions  
11                  of Alair Shepherd?

12                  A.       I don't recall, so I think it's  
13                  probably not fair for you to rely on my evidence to  
14                  make assumptions.

15       4140.           Q.       That is not responsive to the  
16                  question, but I will move on.  If you look at August  
17                  29, sir, I take it that you will agree that on that  
18                  day you were researching matters for Alair Shepherd  
19                  in connection with the Barbados lawsuit, correct?

20                  A.       Sorry, what date are we on?

21       4141.           Q.       August 29, 2006.

22                  A.       That's what it says.

23       4142.           Q.       And you have no reason that that's  
24                  accurate?

25                  A.       That I did research for Alair?

1 4143. Q. Yes.

2 A. I can say that I have a recollection  
3 that I did do research on occasion for Mr. Shepherd,  
4 so it's reasonable to assume that I did it on that  
5 day.

6 4144. Q. And that was with respect to the  
7 matters that he was pursuing in the Barbados courts,  
8 correct?

9 A. Sometimes, yes.

10 4145. Q. And you wouldn't be doing legal  
11 research for other matters, would you?

12 A. I sometimes gave him case law and  
13 research with respect to cases that had nothing to  
14 do with any of the things we're talking about, yes.

15 4146. Q. What subject matter would that be?

16 A. Whatever came up.

17 4147. Q. Dealing with Kingsland Estates?

18 A. No, no, I'm just saying he has a  
19 busy litigation practice, and we would talk  
20 sometimes and he would say...and I would say, "You  
21 know there's a case on that. Give me 20 minutes."  
22 And, "Excuse me for a second". "Quid pro quo, you  
23 give me one." So, I'm saying that's a possibility.  
24 More likely docketed it was to do with Kingsland  
25 matters, so that's fair too.

1           4148.           Q.       And I take it that we know that Mr.  
2           Allard was paying Mr. Shepherd through your firm?

3           A.       We were paying bills of Mr. Shepherd  
4           and getting the money from the way we've been  
5           talking about it for three days.

6           4149.           Q.       Right, from Mr. Allard.

7           A.       Well, generally speaking, that's  
8           correct.

9           4150.           Q.       And just again, to put the extent of  
10          your involvement into context, every account I look  
11          at shows you helping Mr. Alair Shepherd. Isn't that  
12          fair, sir?

13          A.       I discussed things with him and gave  
14          him research...

15          4151.           Q.       You did more than research though.

16          A.       And watched him in court.

17          4152.           Q.       You did more than that. Let's me  
18          take you to the next account, the account of October  
19          20, 2006. And I want it to be clear, I've offered  
20          you an opportunity to answer these questions and you  
21          don't answer them in a forthright manner until I put  
22          the docket entry to you, sir. So, I'm going to put  
23          another one to you. Take a look at September 26th.  
24          This is your docket, is it not, sir, and I quote,

25                   "...Review three new affidavits and emails

1 from AS, JK..."

2 Do you see that?

3 A. I do.

4 4153. Q. I take it those are emails from  
5 Alair Shepherd and John Knox, correct?

6 A. As is Alair Shepherd and JK, John  
7 Knox, you're right.

8 4154. Q. And you were renewing three new  
9 affidavits in the context of the Barbados  
10 litigation, correct?

11 A. It's likely that's what they were.

12 4155. Q. And after you reviewed those  
13 materials in Toronto, sir, if I take you to the next  
14 docket entry, on the 27th you then flew to Barbados  
15 and you prepared a memo for Mr. Alair Shepherd,  
16 correct?

17 A. Fair.

18 4156. Q. And on the following day, sir, on  
19 the 28th, if you turn the page, you then prepared  
20 and attended in court with him, correct, sir? And  
21 the matter is adjourned on the 28th. But I take it  
22 you were in court with Mr. Shepherd that day?

23 A. I don't recall, but as I said, I  
24 often went and observed him arguing these cases,  
25 yes.

1 4157. Q. And then if you go the 29th, you  
2 then attended with him again the following day,  
3 isn't that correct?

4 A. Same answer.

5 4158. Q. And again, sir, if we turn to the  
6 11th of October, yet again you're preparing and  
7 attending court in Barbados, correct?

8 A. Same answer.

9 4159. Q. And all the various matters that  
10 form the subject matter of that claim also formed  
11 the subject matter of the claim that was stayed by  
12 Justice Shaughnessy, correct?

13 A. No. I don't recall it that way.

14 4160. Q. Well, Justice Shaughnessy's reasons  
15 make it pretty apparent that he takes issue with  
16 that evidence which you've just given. We're  
17 talking about derivative action concerning Kingsland  
18 Estates. Isn't that accurate, sir? That was the  
19 derivative action in Barbados.

20 A. I don't recall that this statement  
21 of claim in Canada was a derivative action, but I  
22 could be wrong. I would like to check it before  
23 I...

24 4161. Q. It wasn't a derivative action, but  
25 it was an action concerning all of the issues

1 governing...

2 A. I don't think the parties were the  
3 same either, were they?

4 4162. Q. No, but the underlying issues were,  
5 the substratum of the lawsuit was. You were quite  
6 careful to assert a distinct cause of action, but  
7 the underlying factual matrix upon which that cause  
8 of action was based was identical to the causes of  
9 action that were asserted in Barbados, for which you  
10 were conducting researching, and having accounts  
11 sent to you and having them paid, and attending in  
12 court with Mr. Shepherd?

13 A. I don't agree with that summary.  
14 Not the way that I recall it.

15 4163. Q. If I can take you back, sir, to the  
16 account dated January 20, 2006. The reference at  
17 January 5, 2006 is a call from PA, who I take it to  
18 be Peter Allard, to discuss RC. Who is RC? Is that  
19 Richard Cox? Do you know of any other RC?

20 A. I don't recall.

21 4164. Q. And it goes on, "And Graeme Hall  
22 angle". What was the Graeme Hall angle?

23 A. I don't recall what we were talking  
24 about. We've gone through what Graeme Hall is.

25 4165. Q. Was this to do with the allegation

1 with respect to Mr. Heaslet being terminated?

2 A. I think you're missing  
3 circumstances, unless I'm missing something.

4 4166. Q. Well, you tell me what the Graeme  
5 Hall angle was.

6 A. I don't recall. I've already said  
7 Graeme Hall was...

8 4167. Q. How is Graeme Hall involved in the  
9 litigation?

10 A. It wasn't. Well, except for the  
11 meeting that was reported to me where Chief Justice  
12 David Simmons rounded up Heaslet and said, "You're  
13 not going to get the national park", something like  
14 that, "if you don't drop the lawsuit or if you fight  
15 with us."

16 4168. Q. If I can take you to the account  
17 dated October 20, 2006. The entry at October 1,  
18 2006 is "research re accounting standards". Do you  
19 see that?

20 A. I see it.

21 4169. Q. That was work that you did, sir?

22 A. I don't recall, but I do recall that  
23 I was interested in accounting standards over that  
24 period of time.

25 4170. Q. And the reason for that was because



1 of your interest in asserting a claim against  
2 PricewaterhouseCoopers, correct?

3 A. Yes, accounting standards certainly  
4 are, or a breach of accounting standards are a cause  
5 of action against an auditor, that's for sure.

6 4171. Q. Well, I'm not sure I follow that at  
7 all, but in any event, you were looking at  
8 accounting standards because of your interest in  
9 asserting a cause of action against  
10 PricewaterhouseCoopers.

11 A. Well, they're related.

12 4172. Q. Right. I take it in your entry on  
13 October 6...it says, "Review letter re audit". What  
14 did that refer to, sir?

15 A. I don't recall.

16 4173. Q. And I take it that was with respect  
17 to the audit by PricewaterhouseCoopers of Kingsland?

18 A. I said I don't recall.

19 4174. Q. You wouldn't have been looking at  
20 any other audits, would you, in the context of the  
21 subject matter of this action?

22 A. Well, it says that I'm looking at a  
23 letter re an audit. So, I'm saying I don't recall  
24 what that entry means.

25 4175. Q. What I'm asking wasn't about that

1 entry. Are you aware of any other accounting firm  
2 providing an audit opinion with respect to any  
3 company that is the subject matter to this action,  
4 other than Kingsland?

5 A. Sorry, I lost you.

6 4176. Q. Well, just help me. If I'm  
7 misguided, sir, in any of these entries with respect  
8 to accounting standards and auditing standards and  
9 reviewing audit letters doesn't have to do with  
10 PricewaterhouseCoopers, tell me that.

11 A. Whatever firm we were looking at, in  
12 other words, these variations on the name  
13 PricewaterhouseCoopers...you're familiar with all  
14 that from the cross-examination and the fact that we  
15 can't find some of them. We were looking at, over  
16 time, auditing standards, accounting standards as  
17 they applied to various countries. And I could go  
18 on, but I think we're saying the same thing, aren't  
19 we.

20 4177. Q. I think we are, and you were looking  
21 at that in order to try to formulate a claim against  
22 PricewaterhouseCoopers?

23 A. Well, I did research and there was a  
24 substantial claim against...to be proven, I should  
25 say, against PricewaterhouseCoopers.

1 4178. Q. And I take it your concern was with  
2 respect to the audit work that  
3 PricewaterhouseCoopers had performed for Kingsland.

4 A. Well, that's one of the things that  
5 I was focusing on. I mean, Kingsland itself was the  
6 company that was the target or whatever you call it,  
7 audit subject.

8 4179. Q. So, what you were doing in these  
9 dockets and the work that you were performing, was  
10 that you were looking at auditing standards in order  
11 to try to put a case together and cause of action  
12 against PricewaterhouseCoopers.

13 A. Put a case together may be the wrong  
14 thing. I mean, I could go all afternoon, but I'm  
15 just saying, first thing you do when you look at an  
16 audit, you have to decide...there's various auditing  
17 standards in the world, so you don't know what  
18 standards have been applied, and as you know, that  
19 makes different looking sets of statements. And in  
20 that period of '06, as I said before, litigation was  
21 the least desirable way of making money for  
22 everybody. There's a lot of discussion going on,  
23 but I'm still not quite clear what the standards,  
24 which audit standards are used in Barbados.

25 4180. Q. When you were looking and doing this

1 research on auditing standards, did you have any  
2 factual basis to complain with respect to the work  
3 that PwC had conducted concerning the audit of  
4 Kingsland?

5 A. Well, here you go with almost  
6 defying the order you insisted on getting...

7 4181. Q. Would you just answer the question,  
8 sir?

9 A. Excuse me, I'm going to object, but  
10 I'll tell you why...

11 4182. Q. Did you have any factual basis to  
12 take issue with the auditing work that  
13 PricewaterhouseCoopers had conducted for Kingsland?

14 A. I had evidence and, say today, I  
15 could prove the case in my opinion against whoever  
16 your party is, because that's part of the problem...

17 4183. Q. That's not part of anybody's  
18 problem.

19 A. Well, they don't seem to exist.

20 MR. KRAMER: Well, he says he has  
21 evidence.

22

23 BY MR. RANKING:

24 4184. Q. What's the evidence you have?

25 A. I'm not going to go there.

1           4185.           Q.       Well, I'm asking you to go there.  
2                            You say you have evidence. I'm entitled to know  
3                            what it is.

4                            A.       There's an order that says you can't  
5                            ask me that, and you got it.

6           4186.           Q.       No, we're past that, sir.

7                            MR. KRAMER:        But can you just generally  
8                            describe for him what the evidence was?

9                            THE DEPONENT:       I would have to, again,  
10                           get the file out and go through it all.

11

12           BY MR. RANKING:

13           4187.           Q.       Let me take you to October 17, 2006.

14                            A.       Yes.

15           4188.           Q.       That's your entry. It's,

16                            "...Calls looking for PwC critic..."

17                            Do you see that?

18                            A.       I see it.

19           4189.           Q.       What I'm going to suggest to you  
20                            that entry relates to is you are looking for someone  
21                            who will criticize an audit prepared by PwC, isn't  
22                            that fair?

23                            A.       I was looking for experts and  
24                            various accounting standards that could assist in  
25                            analysing, criticizing, up, down, whatever experts

1 do, yes.

2 4190. Q. Right, in order to put a case  
3 together against PricewaterhouseCoopers? I can take  
4 you to the next one, "Searching for audit expert",  
5 October 18.

6 A. Listen, my job is to assess evidence  
7 and give opinions to people as to whether there is  
8 evidence to substantially prove a case or not. I  
9 think that's what my function is. So, that's what I  
10 was doing in this period. I don't remember that one  
11 entry.

12 4191. Q. You were looking for experts that  
13 could criticize PwC, isn't that fair, sir?

14 A. Yes, take a critical look at the  
15 audit, the standards that were applied, whatever  
16 quality things that auditors do, definitely.

17 4192. Q. You continue that on October 19,  
18 correct, sir?

19 A. I don't remember the exact days, but  
20 it was a job, part of the function that I had to  
21 undertake in order to give opinions.

22 4193. Q. And this work that you were doing to  
23 try to find a critic for PwC, was that in connection  
24 with the Barbados litigation or the Ontario  
25 litigation?

1                   A.       I don't think it was that focused at  
2                   the time.

3       4194.           Q.       Did you ever find an expert?

4                   A.       I got opinions that satisfied me  
5                   that I could prove cases. I don't know if we got to  
6                   the point of actually getting written reports or  
7                   that kind of thing.

8       4195.           Q.       Who gave you that opinion?

9                   A.       I don't really recall, but more than  
10                   one opinion.

11       4196.           Q.       Will you produce those opinions?

12                   A.       No.

/R

13       4197.           Q.       We've also established that work was  
14                   done by NIS. You'll recall that being Mr. Best's  
15                   company?

16                   MR. KRAMER:       That's Exhibit G is it?

17

18       BY MR. RANKING:

19       4198.           Q.       And I don't think I ever got an  
20                   answer to the actual work that Mr. Best was doing.  
21                   Can you help me with respect to the actual work that  
22                   Mr. Best was doing?

23                   MR. KRAMER:       Well, there was a lot of  
24                   detail in the documents, not so much in the  
25                   accounts, but in the backup. Is that a

1 good starting place?

2 4199. MR. RANKING: Well, I would just like  
3 Mr. McKenzie to tell me generally speaking  
4 what was he doing.

5 THE DEPONENT: You're the third person  
6 to ask me that in the last three days.

7

8 BY MR. RANKING:

9 4200. Q. Maybe I'll get an answer.

10 A. I'll ignore the sarcasm and try to  
11 review what I think I said the first day. Carter  
12 conflict was part of the evidence against your  
13 client, you know all about that. It's in the  
14 transcript, by the way. NIS or Nathan did all sorts  
15 of research projects to protect websites...

16 4201. Q. You're reading from some notes, sir?

17 A. Well, my notes from the first day  
18 when Mr. Roman asked me this, and I think I expanded  
19 on it with Mr. Silver. I just didn't want to get  
20 into one of these things where I don't remember what  
21 I said. Go ahead. I'm just saying he did a lot of  
22 different jobs.

23 4202. Q. And I take it for which he rendered  
24 these invoices that are marked as Exhibit G,  
25 correct?



1 A. Correct.

2 4203. Q. And I take it that you don't take  
3 issue with the docket entries of Mr. Best as  
4 attached to these invoices?

5 A. I wouldn't take issue with  
6 what...no, it's what they are.

7 4204. Q. Right. I'm just going to take you  
8 to the document...I'll just do this, because Mr.  
9 Silver had taken you to the same documents, so we'll  
10 try to shorten this in terms of a compendium. We'll  
11 put one document there. Mr. Silver had taken you to  
12 the account dated November 19, 2007. If I can just  
13 open up the docket entry, being the second page to  
14 that invoice on the first page of the docket.

15 MR. KRAMER: Okay, we got it. You  
16 wanted the backup documents. Okay, we're  
17 there.

18

19 BY MR. RANKING:

20 4205. Q. So, if I look at that, I look at  
21 page 1 of the backup docket starting October 18,  
22 2007 at 9:30. When I see an entry called BMC, 18  
23 minutes at 10:07, I take it that BMC is Bill  
24 McKenzie, correct?

25 A. Yes.

1 4206. Q. And I take it that Mr. Best would  
2 call you on your cellphone?

3 A. I think, again, I don't want to...to  
4 the best of my recollection, we communicated by  
5 Skype as a way of a phone...

6 4207. Q. But even on Skype you're talking  
7 back and forth, right?

8 A. Yes. A "call" would be a  
9 communications where we're actually voice with each  
10 other, is that a fair way to do it?

11 4208. Q. Right. And so if we just look at  
12 this page, I see 11 telephone calls...

13 A. On one day?

14 4209. Q. No, between October 18 and October  
15 22nd, correct?

16 A. So, it's one a day...

17 4210. Q. Well, no it's more than one a day.  
18 That's only a four day period and it's 11 calls.  
19 Even my rudimentary mathematics, for which I make no  
20 apologies because I went into law, indicates that  
21 there was more than one a day.

22 A. All right.

23 4211. Q. And if we look at other accounts,  
24 likewise there are numerous calls that you had with  
25 Mr. Best and that Mr. Best has with you?

1 A. That's correct.

2 4212. Q. And I raise that with you, sir,  
3 because when I cross-examined you on the 3rd and 8th  
4 of February, I asked you how you communicated with  
5 Mr. Best and you said that you never spoke with him.  
6 Do you remember that?

7 A. What?

8 4213. Q. You said you never called him.

9 MR. KRAMER: Do you have a reference for  
10 that?

11 THE DEPONENT: No, I'm not going to  
12 quibble with you. My recollection, today,  
13 looking at the whole thing, whatever  
14 correction I make to the transcript by  
15 saying the wrong thing we talked often. I  
16 mean, it was on a bunch of projects. Once  
17 a day sounds about right. And we met...

18  
19 BY MR. RANKING:

20 4214. Q. So, your evidence today is that you  
21 spoke with Mr. Best often, in your evidence,  
22 approximately once a day?

23 A. Well, I'm saying, maybe I'll refresh  
24 my memory even more when I read every document in  
25 the box, but I'm saying we communicated often.

1 4215. Q. And I take it that that occurred...

2 A. I can't believe I said I never spoke  
3 with him. I'll correct that answer right now.

4 4216. Q. That would have been inaccurate?

5 A. Well, I'm just going to take that  
6 under advisement.

7 4217. Q. Because we know that he is referred  
8 to constantly in the dockets as Nathan, correct?

9 A. Nathan in the context of this file,  
10 BMC 543, which is sort of the code name for what  
11 investigative work he was doing.

12 4218. Q. And is the investigative work he was  
13 doing reflected through the invoices of NIS?

14 A. Correct.

15 4219. Q. But whenever I see the code name  
16 "Nathan", I take it that I can put Donald Best's  
17 name in for Nathan?

18 A. Yes, in the context of the work that  
19 he was doing.

20 4220. Q. And when you indicated that you  
21 spoke to Mr. Best regularly, on average once a day,  
22 that's in the period throughout the currency of the  
23 Nelson Barbados litigation?

24 A. Well, it is what it is, but the  
25 investigative role under this file...we communicated

1 often enough to keep things going.

2 4221. Q. And I don't think I need to ask this  
3 question, but I take it that you'll agree with me  
4 that when it came to giving instructions with  
5 respect to the action in Nelson Barbados, the  
6 instructions were coming from Peter Allard, not from  
7 Donald Best?

8 A. No, and that's where I'm trying to  
9 sort of draw a line here, which is...the action,  
10 which goes in fits and starts, was, in my mind, a  
11 separate function where I would communicate with Mr.  
12 Best and Peter Allard and sort of be in a communal  
13 decision making process.

14 4222. Q. But the decision making process on  
15 the Nelson Barbados action that was stayed Justice  
16 Shaughnessy, you may have discussed matters with Mr.  
17 Best as a courtesy, but the individual who was  
18 paying the piper was Peter Allard and that was the  
19 individual who was giving you instructions.

20 A. No, that's not accurate. This talk  
21 about separate but equal...I didn't do anything that  
22 both of them didn't agree with obviously. The  
23 plaintiff has to be in sync.

24 4223. Q. Accepting that evidence, the reason  
25 for that was because of the documents having been

1 marked as Exhibit C with respect to the interest  
2 that both Mr. Best and Mr. Allard had in the outcome  
3 of the litigation, isn't that fair?

4 A. Well, as I said, they both were  
5 interested in it, except for a few fights and  
6 disagreements, which I had to smooth over. There  
7 was a consensus as to the steps that were taken in  
8 the action, as opposed to the investigation.

9 4224. Q. And I take it that is as a  
10 consequence of the agreements that have been marked  
11 as Exhibits C1 through C6, correct? Those are the  
12 documents upon which Mr. Silver examined.

13 A. They were mutually interested even  
14 before we actually decided to pull the trigger on  
15 the litigation, they were mutually interested in  
16 making some money and getting this done. I mean,  
17 that was genesis, perhaps, of the thing.

18 4225. Q. I take it that Mr. Best didn't pay  
19 any of the accounts of Crawford McKenzie?

20 A. Again...

21 MR. KRAMER: I think that's been  
22 examined on quite at length.

23 THE DEPONENT: I don't have a  
24 recollection, but...

25 4226. MR. RANKING: Fair enough. It was



1 4230. Q. What is her middle name?

2 A. Don't tell I said this, but I'm not  
3 sure. Elizabeth, maybe.

4 4231. Q. What services...I'm just looking,  
5 and I'm happy to have you turn it up. I'm looking  
6 at an entry on July 14, 2006.

7 MR. KRAMER: Do you need to look at it?

8 THE DEPONENT: No, but I'll tell you the  
9 two things from my recollection. She had  
10 nothing to do with Kingston whatsoever.  
11 She was a do-gooder more. She was doing  
12 the Graeme Hall side of things and also  
13 they were trying to do a concert, or set up  
14 a concert in Barbados to raise money and  
15 promote awareness of Graeme Hall or  
16 turtles. I'm just saying, that's what she  
17 was doing generically. I can't remember  
18 exactly.

19

20 BY MR. RANKING:

21 4232. Q. So, your evidence under oath is that  
22 she was not providing services in relation to the  
23 subject matter of the litigation?

24 A. I'm just saying, I have no  
25 recollection and I cannot believe that she went near



1           this litigation.

2                   MS. ZEMEL:        I don't mean to interrupt,  
3                   but it's almost 4:15. I just want to know  
4                   how long you're going to be.

5    4233.           MR. RANKING:        I'm almost wrapping up. I  
6                   got a few more little things.

7

8    BY MR. RANKING:

9    4234.           Q.        If I can ask you to turn to page 110  
10                   of tab A, there's an entry on October 9, 2008.

11                   MR. KRAMER:        The pages are sort of cut  
12                   off. What was the date again?

13    4235.           MR. RANKING:        I think it's actually 8th  
14                   of October.

15                   MR. KRAMER:        The 8th of October, what  
16                   year?

17    4236.           MR. RANKING:        '08. Page 110.

18                   MR. KRAMER:        I'm into October '08, I  
19                   don't see page 110. What date in October?

20    4237.           MR. RANKING:        Well, I don't know. It's  
21                   the top, it's up here. I'm happy to hand  
22                   mine across.

23                   MR. KRAMER:        Just read it to me.

24    4238.           MR. RANKING:        What it says is it says,  
25                   "K. William McKenzie matter" and I believe

1                   it's the 8th of October, 600969 "K. William  
2                   McKenzie, reimbursement of cash given to  
3                   Kathleen and Davis in Miami, a disbursement  
4                   of \$1,000".

5

6           BY MR. RANKING:

7           4239.           Q.       Do you have that?

8                           A.       I don't have it, but was this in A  
9                   or B?

10          4240.           Q.       I think it's in A.

11                           MR. KRAMER:        But go ahead.

12                           THE DEPONENT:       Go ahead.

13

14          BY MR. RANKING:

15          4241.           Q.       I just wanted to confirm. Mr.  
16                   Silver had taken you through the cash payments to  
17                   Ms. Goddard. I take it there were similar cash  
18                   payments to Kathleen Davis?

19                           A.       I don't have a recollection, but I  
20                   know I gave her some cash because she had paid for  
21                   something and was desperate to get her credit  
22                   card...I think I reached into my own...anyway,  
23                   doesn't matter. Her credit card was about to...and  
24                   interest payments she was unhappy about. That's my  
25                   recollection.

1 4242. Q. But that was a cash payment as well,  
2 correct?

3 A. I recall her being a bit, I'm not  
4 going to say "desperate", but it was...I may have  
5 gone to the bank and gotten the money out for her.  
6 Normally, it would be, "Send the bills", but it had  
7 gotten away from her.

8 4243. Q. And was Kathleen Davis part of the  
9 cooperation agreement as well?

10 A. You mean the cooperation with  
11 respect to...

12 4244. Q. The cooperation agreement upon which  
13 Mr. Silver was examining you no less than an hour  
14 ago.

15 A. Well, that's not what the \$1,000...I  
16 see. They all were. I mean, everybody was  
17 cooperating at different points in time. You have  
18 to be careful because I'm saying...I don't know what  
19 date that is. There were varying levels of  
20 cooperation.

21 4245. Q. Well, the date was October 2008.

22 A. No, I understand. I'm saying I  
23 think that was to pay for her blogging, Keltruth  
24 protection.

25 4246. Q. No, it wasn't actually. On the 9th,

1 the following day, you actually paid money for the  
2 web hosting.

3 A. Well, I'm just saying, you see  
4 that's why I should never guess without looking at  
5 it. But I still think that that thousand was the  
6 same thing, but she had to make a payment that day  
7 or the credit card...but you know what, I shouldn't  
8 even be doing this. That's the best of my  
9 recollection and I could be wrong.

10 4247. Q. Well, was the \$1,000 paid in  
11 furtherance of the cooperation agreement in securing  
12 Kathleen Davis' cooperation?

13 A. The \$1,000 was to pay for a  
14 disbursement.

15 4248. Q. No, I understand that that's how the  
16 funds were going to be used by her. I'm not asking  
17 how she was intending to use the funds. I was  
18 asking, when you were paying the money, were you  
19 paying the money in furtherance of the cooperation  
20 agreement or was this a loan which you expected to  
21 be repaid after she settled her credit card  
22 statement?

23 A. Let's call it a payment from Peter  
24 Allard to her that I was helpful on. That might be  
25 the best way to do it.

1 4249. Q. Were you ever repaid?

2 A. One way or the other...I mean, it's  
3 not a lot of money. I mean, she was desperate one  
4 day...

5 4250. Q. That's not my question.

6 A. I don't recall whether I was ever  
7 repaid.

8 4251. Q. All right. We also dealt in your  
9 last cross-examination with the Heaslet transcript,  
10 and I'm just going to take you to one document that  
11 Mr. Silver didn't take you to it. It's one of the  
12 last documents under Exhibit H.

13 MR. KRAMER: So, what's the date?

14 4252. MR. RANKING: August 12.

15 MR. KRAMER: Okay, August 12, '07, 7:47  
16 a.m.

17

18 BY MR. RANKING:

19 4253. Q. Right. You can read from the  
20 bottom, Mr. McKenzie. This is an email dated August  
21 11, and the subject is the Peter Simmons  
22 conversation.

23 A. Yes, I read it.

24 4254. Q. Mr. Heaslet is telling you on August  
25 11 that he'll be talking to Peter Simmons on Monday,

1 the 13th, to discuss his impending disassociation  
2 with Friends of Graeme Hall, correct? And in  
3 response to that, I take it you wrote to him by  
4 email dated August 12 at 7:47?

5 A. I don't recall the email, but it  
6 certainly looks like I did.

7 4255. Q. And in that email, isn't the first  
8 thing that you are suggesting to Mr. Heaslet that  
9 the call be tape recorded?

10 A. Well, I'm suggesting to him that he  
11 consider it seriously, yes.

12 4256. Q. And I take it that as a consequence  
13 of your email on August 12, that Mr. Heaslet did in  
14 fact tape record the telephone call on August 13,  
15 correct?

16 A. Sorry, you said as a result of my  
17 email?

18 4257. Q. Yes.

19 A. I can't say what his thinking was.

20 4258. Q. We know that the call was taped,  
21 correct?

22 A. We have a transcript of it.

23 4259. Q. And that was in accordance with what  
24 you would have wanted based on your email dated  
25 August 12, isn't that fair?

1                   A.       Well, as it says in there, now that  
2                   he's threatened me, threatened John Knox, and they  
3                   had already threatened Peter, now they're going to  
4                   threaten poor old Stuart. Where is this going to  
5                   stop? And I'm just saying that was a suggestion  
6                   that he certainly consider...

7       4260.           Q.       That wasn't my question. You wanted  
8                   the call to be taped, correct?

9                   A.       It's his decision.

10      4261.          Q.       Fair enough. My question was isn't  
11                   it in fact the case that you wanted the call to be  
12                   taped?

13                  A.       I don't recall.

14      4262.          Q.       I'm not asking if you recall. I'm  
15                   asking you today. You wanted the call to be taped,  
16                   isn't that fair, sir?

17                  A.       That puts a control into it. I can  
18                   only go what's there, which is, "You guys thought of  
19                   this?" "You decide, Stuart, because it's your  
20                   friend, not mine."

21      4263.          Q.       Wait. That's not a fair answer.  
22                   How can you possibly suggest to me, sir, under oath,  
23                   that you wrote an email August 12, saying, "Have you  
24                   thought of this?" when you knew on August 10 that  
25                   the first call had been taped. You knew that, sir.

1 A. I did?

2 4264. Q. Well, let's go back. I can't  
3 believe that we're having to do this, but let's go  
4 back and look at all of the other documents under  
5 Exhibit H. And we know from the earlier dockets  
6 that Ms. Ware obtained a copy of the August 10th  
7 revised transcript on August the 10th.

8 A. She did?

9 4265. Q. Yes.

10 A. Okay, so let's just go through that.  
11 I might have read through it. I didn't come to the  
12 same conclusion that you did.

13 4266. Q. Well, in fact, all of them may not,  
14 in fact, be here. But in any event...

15 A. Where is Sunny's email to me? Okay,  
16 we have August 8th, he says, "I got a call from  
17 Peter Simmons."

18 4267. Q. I'm going to stop you for a moment.  
19 This is not a complete compilation of all the  
20 emails.

21 MR. KRAMER: This is from Ms. Duncan.

22

23 BY MR. RANKING:

24 4268. Q. This is from Ms. Duncan, but I can  
25 tell you that you received from Mr. Heaslet an email



1 on August 10th that talked about the August 10th  
2 tape recording. Do you recall that?

3 A. Can you show it to me?

4 4269. Q. I don't have it here.

5 A. You know what, when I saw these in  
6 Ms. Duncan's affidavit, I didn't recall any of them  
7 at all. But anyway...

8 4270. Q. In any event, what I'm going to  
9 suggest to you, sir, and I don't want to be unfair  
10 to my fellow counsel, Ms. Zemel, because...here it  
11 is right here. I apologize, it is actually here; it  
12 is at the very last document to this exhibit. I'm  
13 taking you to the last document. On August 10th,  
14 Mr. Heaslet writes to you at 8:10 p.m. and he  
15 states, this is the last document,

16 "...Here are some clarifications to the  
17 transcript of my conversation with Peter  
18 Simmons this morning..."

19 And that's on Friday the 10th. And you recall the  
20 last time I examined you, you and I did not come to  
21 any agreement with respect to production of the  
22 unredacted copy, which we now see was copied to Mr.  
23 Allard. So, I'm going to suggest to you, sir, that  
24 you knew as of August the 10th that the first call  
25 had been made and you were imploring Mr. Heaslet in

1           your August 12th email to continue taping the next  
2           call so that you could use that transcript in this  
3           proceeding as evidence of the threats against you,  
4           isn't that fair, sir?

5                     A.       Well, we're in court in August 10,  
6           right?

7           4271.           Q.       I'm not asking you if you were in  
8           court, for goodness' sake, Mr. McKenzie.

9                     A.       I'm trying to get the date in my  
10          head. So, you're saying at 8:10 p.m. I got an  
11          email. Maybe it arrived, but I'll tell you  
12          something, I was drinking beer by then. So, I'm  
13          saying...I'm trying to establish here...the  
14          transcript the next morning I might have seen on the  
15          11th, possibly. I'm just saying, because my habits  
16          are...and I don't recall that, but it makes sense.

17          4272.           Q.       All right. So, let's accept your  
18          evidence that the following morning on the 11th you  
19          saw it...

20                     A.       Wait a minute, not the transcript.  
21          I'm saying it looks like I sent Sunny a copy of the  
22          one that had come in the night before. I go online  
23          at 10:00 in the morning and said, "Here, what do you  
24          think, Sunny?"

25          4273.           Q.       Where do you see this is being sent

1 to Sunny? This is your further email...

2 A. No, go inside, okay? In other  
3 words, I'm looking at...there's an email.

4 4274. Q. Fair enough. We know from your  
5 email on August 11 that you sent the August 10th  
6 email to Sunny Ware at 10:12 a.m., correct?

7 A. That looks like it. So, I said,  
8 "What do you think?" or something like that, "Take a  
9 look".

10 4275. Q. And then the following day, on the  
11 12th, I'm going to suggest to you, sir...

12 A. I get up the next morning and send  
13 an email saying, "Shouldn't you guys be taping  
14 these..."

15 4276. Q. These further conversations, isn't  
16 that fair?

17 A. There you go. That looks like what  
18 happened. So, that's the best...and I don't have a  
19 recollection of it, but I'm just saying I'm with you  
20 following through the stuff. But I thought you said  
21 I had received a transcript, and I don't see it  
22 there, but...you know what, I don't recall anyways.

23 4277. Q. The transcript that you received,  
24 sir, was the transcript that you forwarded to Sunny  
25 Ware on Saturday morning.

1                   A.       No, that doesn't look like what  
2                   happened. It looks like I sent her a copy of the  
3                   email that I received, read that morning.

4       4278.           Q.       Well, if I take you back, I'm not  
5                   going to do it because I don't have your dockets  
6                   here, but I will you take you to the dockets of  
7                   Sunny Ware on August 10, said that she was reviewing  
8                   the transcript of the call.

9                   A.       She was?

10      4279.          Q.       Yes.

11                  A.       I'm saying I don't agree with that  
12                  either, but I'm just saying...

13      4280.          Q.       Is Ms. Ware under your power or  
14                  control?

15                  A.       No.

16      4281.          Q.       Is she still employed with...

17                  A.       No, she's retired.

18      4282.          Q.       Okay, we'll examine her under Rule  
19                  39.03. In any event, what I do know, sir, and what  
20                  I think you agree with, is that you sent this email  
21                  on August 12th at 7:47 in which you were suggesting  
22                  that the call be taped, correct?

23                  A.       Didn't we already say...I don't  
24                  recall the emails, but it says, "Shouldn't the call  
25                  be taped?" so that's a reasonable assumption,

1           presuming everything else is correct.

2           4283.           Q.       And did you have any discussion with  
3           Mr. Heaslet about taping the calls either before or  
4           after that email?

5                        A.       I don't recall even...I see I got an  
6           email from him in the docket. I don't recall any of  
7           it.

8           4284.           Q.       If I can just ask you, changing  
9           topics entirely, to turn to paragraph 35.

10                       MR. KRAMER:       Of his affidavit?

11           4285.           MR. RANKING:       Yes.

12

13           BY MR. RANKING:

14           4286.           Q.       You deal with providing us a summary  
15           of the amounts billed and collected. And you refer  
16           to Exhibit I, but I'm not clear from looking at  
17           Exhibit I what you are referring to.

18                       MR. KRAMER:       I can probably help you.

19                       THE DEPONENT:       No, it's the same trust  
20           statement we've been looking at.

21                       MR. KRAMER:       In Exhibit I, buried in the  
22           middle of it, there's one big comprehensive  
23           trust statement kind of in the middle of  
24           Exhibit I and that's what he's referring  
25           to. It doesn't have a page number, but

1                   it's the trust statement that starts April  
2                   20, '07 and goes to February 23, '09.

3           4287.           MR. RANKING:       Perhaps we could do it  
4                   this way, if you could just identify that  
5                   for me after the examination and then I'll  
6                   let Ms. Zemel start.

7                   MR. KRAMER:        Sure.  It's about two  
8                   thirds of the way through Exhibit I and  
9                   it's the only one with those dates.

10          4288.           MR. RANKING:       And it starts with what  
11                   date?

12                   MR. KRAMER:        April 20, '07.

13                   MS. ZEMEL:         It's behind the February  
14                   23rd, 2009 account.

15          4289.           MR. RANKING:       Thank you.

16

17          BY MR. RANKING:

18          4290.           Q.       Lastly, when you customarily send  
19                   accounts to your clients, Mr. McKenzie, your  
20                   practice as a partner of the Crawford McKenzie firm,  
21                   I take it, was to include trust statements?

22                   MR. KRAMER:        I think he was asked that  
23                   and I think he said yes.

24                   THE DEPONENT:      I was asked that exact  
25                   question.

1 4291. MR. RANKING: And if he was, then I  
2 stand corrected. I don't want to re-go  
3 over all this. Thank you, those are my  
4 questions.

5

6 CONTINUED CROSS-EXAMINATION BY MS. ZEMEL :

7 4292. Q. Just for the record, it's now 4:30  
8 and I will try to finish by 5:00, but if I'm not,  
9 I'm asking Mr. McKenzie to stay. I know he needs to  
10 leave, but I must finish my cross-examination.

11 A. I cannot.

12 4293. Q. I'm not going to get into the  
13 argument. I'm just going to make that for the  
14 record.

15 MR. KRAMER: I'm going to say before we  
16 begin that Mr. McKenzie has been clear  
17 since Monday that he couldn't stay past  
18 5:00 on Wednesday. It's unfortunate that  
19 we're in this situation, but...

20 4294. MS. ZEMEL: I understand. I'll do my  
21 best.

22 MR. KRAMER: I'm sure we can finish.

23 4295. MS. ZEMEL: I will try.

24

25 BY MS. ZEMEL:

1 4296. Q. All right, Mr. McKenzie, can I just  
2 take you to your April affidavit.

3 MR. KRAMER: Okay, we got it right here.

4 BY MS. ZEMEL:

5 4297. Q. And I believe we're looking at  
6 paragraph 6 of that affidavit, where you state,  
7 "...Ms. Duncan was involved in the Nelson  
8 Barbados file with regard to work relating  
9 to the security issues in 2008. In  
10 addition, she handled the motion heard by  
11 senior regional Justice Brown on April 1,  
12 2009, and has remained in charge of that  
13 motion thereafter seeking costs, et cetera,  
14 et cetera..."

15 Is that accurate, to the best of your knowledge?

16 A. Yes.

17 4298. Q. Ms. Duncan gave evidence regarding  
18 the Justice Brown motion, except for actually  
19 arguing the case, you were the one who prepared all  
20 the materials, the factum, the arguments, et cetera.  
21 Is that correct?

22 MR. KRAMER: Is it correct that that's  
23 what she said or is that correct that  
24 that's what happened?

25



1 BY MS. ZEMEL:

2 4299. Q. Do you agree with that evidence that  
3 she gave? Is that, in your opinion, true?

4 A. My recollection she was the face,  
5 each time there was something to be done with the  
6 court, she did it. And the documents would have  
7 been prepared under both of our supervision, to the  
8 best of my recollection, by Stacey Ball, who  
9 can...because I think they were her affidavit, she  
10 can knock off an affidavit with the best of them and  
11 she works for the firm.

12 4300. Q. So, in other words, by "face" what  
13 do you mean? Is her evidence correct or not? Do  
14 you agree with her evidence?

15 A. Well, I don't know what her evidence  
16 was...

17 4301. Q. I just told you what it is.

18 A. Yes, I'm not going to...let's not do  
19 that, because I don't want to argue with you that  
20 your recollection may be different from what really  
21 happened. But what I want to say...

22 4302. Q. No, I'm not asking you what you want  
23 to say. I'm just asking you to answer me if you  
24 agree with that, I want to know if you're taking the  
25 same position. Because that position seems to be

1 different than the one you're taking in your  
2 affidavit at paragraph 6. I would like to know if  
3 in fact it's true that except for arguing the  
4 motion, Jessica Duncan had no involvement in the  
5 Justice Brown motions, because there were two  
6 motions, I'm going to say "motions".

7 A. I think the record will show, I  
8 haven't reviewed it, that she appeared a number of  
9 times and I wasn't with her. On April 1st, we both  
10 appeared. Now, that is my best recollection without  
11 going through all the dockets, which probably we  
12 don't have time to do right now.

13 4303. Q. I'm not going to take you through  
14 the dockets. I'm just asking you, did you prepare  
15 the materials that were presented before Justice  
16 Brown on the motions of April 1st?

17 A. I don't recall even what the  
18 materials were. I haven't seen the file lately.  
19 Stacey Ball, I'm sure, would have pulled them  
20 together as she does very well, because it was just  
21 a bunch of stuff. And both Jessica Duncan and I  
22 would have been aware of what she was doing.

23 4304. Q. Okay, that's fine. Jessica Duncan  
24 also testified that you had told her that you had no  
25 involvement with the blogs that were the subject

1 matter of the Brown motion. Do you agree with that?

2 MR. KRAMER: Do you mean did he tell  
3 that to Duncan?

4

5 BY MS. ZEMEL:

6 4305. Q. Yes, did he say that to Duncan.

7 A. Here we go, involvement...I don't  
8 know what her version of involvement is, but...

9 4306. Q. What did you tell her?

10 MR. KRAMER: She just wants to know did  
11 you tell Duncan that you had no  
12 involvement. That was the question.

13 THE DEPONENT: On the subject matter of  
14 the motion, what I was accused of, to the  
15 best of my recollection, because I don't  
16 have it here, I told her not guilty, would  
17 be the best of my recollection. I was  
18 being accused of something, focused, and  
19 I'm saying yes.

20

21 BY MS. ZEMEL:

22 4307. Q. Okay, I'm not asking you what you're  
23 accused of. Let me ask you this. As you mentioned,  
24 you were present on April 1st when Jessica Duncan  
25 argued the motion?

1 A. I was.

2 4308. Q. And you listened to her submissions?

3 A. All of the submissions.

4 4309. Q. And according to Jessica Duncan, her  
5 submissions were based on information that she  
6 obtained from you. Is that correct? Is that true?

7 A. Well, is there a transcript,  
8 because...

9 4310. Q. I'm not going to take you to a  
10 transcript, Mr. McKenzie. I'm just asking, did you  
11 tell her or give her the information that she needed  
12 in order to argue that motion?

13 MR. KRAMER: I'm a bit confused by your  
14 question. Wouldn't it be the evidence that  
15 was filed that would be the information she  
16 needed? You mean in addition to...

17  
18 BY MS. ZEMEL:

19 4311. Q. Yes. Well, let me ask you this...

20 MR. KRAMER: Hold on a second. Are you  
21 asking about the argument she made, did he  
22 give her the argument?

23 4312. MS. ZEMEL: Yes, I can tell you, and I  
24 can just paraphrase right now. The basis  
25 of her argument was there was no evidence

1 to connect Mr. McKenzie and/or the McKenzie  
2 law firm and/or the plaintiff to the blogs  
3 that were the subject matter of that  
4 motion. That was the paraphrase.

5 MR. KRAMER: But presumably she was  
6 saying that based on the evidence...she was  
7 saying to the judge, "There's no evidence  
8 in the record before you about Mr. McKenzie  
9 doing it". You're asking him if  
10 he...you're saying that she said to the  
11 judge there's no evidence beyond the  
12 record?

13 4313. MS. ZEMEL: I'm just telling you  
14 what...I'm not going to get into the  
15 wording. The transcript will show what it  
16 is.

17 MR. KRAMER: I'm just not clear what  
18 you're asking. That's why I'm asking for  
19 clarification.

20 4314. MS. ZEMEL: I'm just saying that Jessica  
21 Duncan appears to say that all the  
22 arguments she put forward before Justice  
23 Brown on April 1st were based on  
24 information that she obtained from Mr.  
25 McKenzie, whether in writing or in any

1 discussions that she had with him.

2

3 BY MS. ZEMEL:

4 4315. Q. Is that true? Did you tell her,  
5 "This is everything you need to know. Go argue"?  
6 This is basically what she testified, I'm  
7 paraphrasing, under oath. Do you disagree with  
8 that? I just want to know what your version of the  
9 events is?

10 A. You guys argued your case. She  
11 defended partly by saying there's no evidence, and  
12 the judge agreed and dismissed your motion.

13 4316. Q. Yes, I'm not asking you that, Mr.  
14 McKenzie. You haven't answered my question. I just  
15 want to give you an opportunity to respond to the  
16 evidence that...

17 MR. KRAMER: You know what, I'm going to  
18 object to the question. I don't know what  
19 it is that you're asking. I don't know  
20 what it is that you say she said. In any  
21 case, presumably, the argument she made was  
22 based on the case that was before the  
23 court, which was, I presume...whose  
24 affidavit was it?

25 4317. MS. ZEMEL: It doesn't matter. Mr.

1 Kramer, you weren't here. I just want to  
2 know...I'm just giving him an opportunity  
3 to respond to her evidence.

4 MR. KRAMER: Your question, to my ears,  
5 is incomprehensible. I don't know what  
6 you're asking.

7 4318. MS. ZEMEL: I'll try to explain it  
8 better. I asked Ms. Duncan what steps she  
9 took to investigate the allegations that  
10 were set forward in our motion record that  
11 was before Justice Brown. She said that  
12 the steps that she took were talking to Mr.  
13 McKenzie and Mr. McKenzie said all these  
14 allegations are not true...

15 MR. KRAMER: But wasn't there an  
16 affidavit filed about it?

17 4319. MS. ZEMEL: There's an affidavit, I  
18 believe...

19 MR. KRAMER: Isn't that what the judge  
20 relied on, the affidavit?

21 4320. MS. ZEMEL: Whatever the judge relied on  
22 doesn't matter. I'm asking this question.  
23 It has nothing to do with...

24 MR. KRAMER: Don't answer the question.  
25 The question doesn't make any sense.

1 4321. MS. ZEMEL: Okay, fine, don't answer the  
2 question. So, he's not going to respond to  
3 what she said, then?

4 MR. KRAMER: I'm happy to have him  
5 answer questions if you put a question that  
6 makes any sense. Look, there was a motion  
7 before the judge...

8 4322. MS. ZEMEL: I'm moving on...

9 MR. KRAMER: No, you're not going to  
10 move on. I'm going to make it clear the  
11 nature of my objection. There's a motion  
12 before the court, there's evidence filed,  
13 the judge made a decision. The judge, I'm  
14 sure, made a decision on the basis of the  
15 evidence that was before him. I don't know  
16 what you're asking this witness.

17 4323. MS. ZEMEL: Okay, I'm going to move on.  
18 I don't have time to explain it. I'm just  
19 going to move on.

20 MR. KRAMER: Okay.

21

22 BY MS. ZEMEL:

23 4324. Q. If I can take you to Exhibit A of  
24 Jessica Duncan's affidavit, please.

25 MR. KRAMER: Okay, we have Exhibit A.



1 BY MS. ZEMEL:

2 4325. Q. These are the docket entries from BMC 543.  
3 I'm just going to take you to a few of these  
4 docket entries. So, the first one I would like to refer  
5 Mr. McKenzie is on November 17, 2005, page 5 of that  
6 exhibit.

7 MR. KRAMER: November 17, 2005?

8 4326. MS. ZEMEL: Yes, docket entry 488765.

9 MR. KRAMER: We have it.

10

11 BY MS. ZEMEL:

12 4327. Q. Okay, so docket entry by Mr.  
13 McKenzie. It says,  
14 "...Review points of dispute, call client  
15 for update..."  
16 Who is "client" here? What do you mean by client?

17 A. I don't recall.

18 4328. Q. And with respect to another docket  
19 further down on December 14, 2005, again by Mr.  
20 McKenzie...

21 MR. KRAMER: Hold on, it's not the same  
22 page.

23 4329. MS. ZEMEL: No, it's page 10. Docket  
24 number 492193.

25

1 BY MS. ZEMEL:

2 4330. Q. It says,  
3 "...Call client to update re press release  
4 (delayed)..."

5 Do you know who that client is?

6 A. I don't recall.

7 MS. MORSE: What date was that?

8 4331. MS. ZEMEL: December 14, 2005.

9

10 BY MS. ZEMEL:

11 4332. Q. Okay, moving on to page 14.

12 MR. KRAMER: Some of the pages are cut  
13 off. I got 14.

14

15 BY MS. ZEMEL:

16 4333. Q. The bottom of 14, the last docket on  
17 February 8, 2006, says, from Mr. McKenzie,  
18 "...Emails from JK re Iain Deane email.  
19 Email to Brian Case, review documents in  
20 Deane v. Knox case..."

21 Do you have any recollection or can you tell me  
22 anything about these particular emails re Iain Deane  
23 and the Deane v. Knox case?

24 A. I don't recall.

25 4334. Q. You were aware that there was a case

1 pending before the Barbados court between my client,  
2 Mr. Deane, and Marjorie Ilma Knox during that  
3 period?

4 A. I have been made aware that there is  
5 a case. I'm not sure when I knew, so...it's  
6 reasonable to assume that I knew then, but I don't  
7 recall.

8 4335. Q. Is it possible that "review  
9 documents in Deane v. Knox case" is regarding that  
10 particular action?

11 A. As I said, I don't recall, but  
12 that's likely, as likely as not.

13 4336. Q. Thank you. Can you turn to page 18,  
14 March 21, 2006 entry? There's an entry number  
15 501677. It says,

16 "...Blogging, research re garbage laws and  
17 wire tap laws in Barbados..."

18 In comments, "Inconclusive". Why were you  
19 researching garbage laws and wire tap laws in  
20 Barbados?

21 A. I don't recall, but there must have  
22 been a reason.

23 4337. Q. There must have been a reason,  
24 that's true. Can we turn back to page 5 of Exhibit

25 A. On November 8, 2005, there's an entry by lawyer



1 4341. Q. So, that's why...you're in Barbados  
2 and you're concerned about someone reading your  
3 emails, is that what you're saying?

4 A. It became a concern, generally.

5 4342. Q. Well, with regard to all the  
6 undertakings to search the files, I would like to  
7 search for, particularly, a copy of that reporting  
8 letter or the email to KWM that I guess encrypts the  
9 report.

10 MR. KRAMER: Well, I don't think there's  
11 any undertakings by Mr. McKenzie to search  
12 the firm's files for that. I presume that  
13 was from Ms. Duncan's undertakings. He  
14 said he's going to look through his garage  
15 to see if there's anything other than  
16 what's in the firm's files, but I can't  
17 imagine that would be there.

18 4343. MS. ZEMEL: No, what I'm asking for is  
19 the specific undertaking when your firm,  
20 Mr. Kramer, reviews all the documents you  
21 get from Mr. McKenzie to search for that  
22 particular letter and to produce it.

23 MR. KRAMER: Hold on a second. I don't  
24 think we've given any such undertakings.

25 4344. MS. ZEMEL: I'm asking for it now.

1 MR. KRAMER: You want an undertaking for  
2 him to do what, to go through the firm's  
3 files?

4 4345. MS. ZEMEL: No, to go through the files  
5 that he has.

6 MR. KRAMER: You mean just the files  
7 that are in the box here?

8 4346. MS. ZEMEL: No, whatever he has.

9 MR. KRAMER: That's the files he has.

10 4347. MS. ZEMEL: He also has, or might have,  
11 other files. So, when he searches, because  
12 he's already given an undertaking to  
13 search, I would like an undertaking to  
14 search and produce that letter if he has  
15 it.

16 MR. KRAMER: Okay, just so we're clear.  
17 There are undertakings outstanding that  
18 he's going to scour his garage at home and  
19 see if there's anything he has that hasn't  
20 been produced. There may be nothing, there  
21 may be something. If he happens to see  
22 this when he's doing that, we're happy to  
23 produce it.

U/T

24 4348. MS. ZEMEL: Thank you very much, Mr.  
25 Kramer.

1 BY MS. ZEMEL:

2 4349. Q. And then if you move on, on November  
3 9, 2005, there is an entry by him, by Mr. McKenzie,  
4 it says,  
5 "...Meet with Canadian High Commissioner,  
6 review Raymond contract and drafting  
7 pleadings..."

8 Why were you meeting with the Canadian High  
9 Commissioner?

10 A. I don't recall.

11 4350. Q. Are we talking about the Canadian  
12 High Commissioner to Barbados?

13 A. Yes.

14 4351. Q. After that, "Review Raymond contract  
15 and drafting pleadings", do you recall what that  
16 refers to?

17 A. No.

18 4352. Q. So, you don't know what the Raymond  
19 contract and what pleadings you were drafting?

20 A. No.

21 4353. Q. Well, again, while searching for  
22 your records, if you find them, in particular the  
23 Raymond contract and drafting pleadings, I would  
24 like a copy of those.

25 MR. KRAMER: It seems inconceivable to

1 me that he would find those, but we've  
2 given an undertaking that any documents  
3 that he finds that relate to the Nelson  
4 Barbados file are going to be produced.

5 4354. MS. ZEMEL: I know.

6 MR. KRAMER: And I don't think there's  
7 going to be a lot of them, but whatever  
8 they are, they will be disclosed to  
9 everybody. And if that's in there, you'll  
10 have it.

11 4355. MS. ZEMEL: I can tell you, I'm just  
12 asking for those things.

13 MR. KRAMER: That's fine. But there's a  
14 general undertaking; you don't have to ask  
15 specifically. If you want to, you can go  
16 ahead. But if we get any further documents  
17 for this file, they're going to be  
18 disclosed.

19 4356. MS. ZEMEL: That's fine.

20  
21 BY MS. ZEMEL:

22 4357. Q. November 14, 2005, just further  
23 down, on the same page. It's November 11, 2005, I  
24 apologize.

25 MR. KRAMER: Got it.



1 BY MS. ZEMEL:

2 4358. Q. It says,  
3 "...Meet with Adrian Loveridge, strategize  
4 with PA resettlement..."

5 Who is Adrian Loveridge?

6 A. A tourist guy, best of my  
7 recollection.

8 4359. Q. A tourist guy, did you say?

9 A. Well, he's in the tourism industry.

10 4360. Q. Tourist guide?

11 A. I'm sorry, I said "guy", but  
12 involved in the tourism industry in Barbados.

13 4361. Q. Why were you meeting with him and  
14 charging Mr. Allard for it with respect to this  
15 particular matter?

16 A. I don't recall, but it was  
17 undoubtedly with respect to some of these other  
18 things we were doing.

19 4362. Q. And what is the other things that  
20 you were doing?

21 A. Well, we were working on the nature  
22 sanctuary, trying to turn it into a park, trying to  
23 oppose...somebody was going to poison it with  
24 chlorine. There was also a medical clinic and I  
25 can't remember the name of that.

1 4363. Q. Let me just ask you this. Did you  
2 meet with him because he had anything to do with the  
3 Kingsland Estates matter?

4 A. I don't recall, but it's extremely  
5 unlikely.

6 4364. Q. Did you meet with him because he  
7 happens to be someone who blogs or writes blogs  
8 about Barbados?

9 A. I don't recall. They have internet  
10 presence in the tourism industry.

11 4365. Q. That's not what I'm asking. Do you  
12 know Adrian Loveridge to write blogs respecting  
13 anything to do with this action?

14 A. You know what, I can't recall.

15 4366. Q. Do you know Adrian Loveridge to  
16 write blogs on the Barbados Free Press blog? Do you  
17 know that, whether he writes blogs on that  
18 particular blog?

19 A. I can't recall.

20 4367. Q. I'll take you to another entry. The  
21 entry is April 6, 2006.

22 MR. KRAMER: April 6, 2006. In the  
23 same...

24 4368. MS. ZEMEL: Same exhibit.

25 MR. KRAMER: Okay, I've got it.

1 BY MS. ZEMEL:

2 4369. Q. There's an entry, one entry, I  
3 believe page 6...

4 MR. KRAMER: Page 20, April 6.

5 4370. MS. ZEMEL: Page 20, April 6, I  
6 apologize.

7

8 BY MS. ZEMEL:

9 4371. Q. The entry says,  
10 "...Discussion with bloggers..."

11 What discussion were you having with bloggers?

12 A. I don't recall, but the same kind of  
13 thing Mr. Roman asked me about.

14 4372. Q. Who were the bloggers that you were  
15 having discussions with?

16 A. People that sent us the bills for  
17 doing all that kind of work.

18 4373. Q. The people that send you bills for  
19 doing what kind of work? I don't understand.

20 A. Well, there's all these entries  
21 about blogging, so I must have talked to somebody in  
22 that same sphere, to the best of my recollection,  
23 but I don't recall.

24 4374. Q. April 23, 2006. There's an entry,  
25 it says,

1                    "...Communicate with Nathan and BFP..."

2                    What does BFP stand for?

3                    MR. KRAMER:        I believe this exact  
4                    question was asked earlier.

5                    4375.                MS. ZEMEL:        No, it wasn't.

6                    MR. KRAMER:        I'm pretty sure it was. I  
7                    don't see it, though.

8                    THE DEPONENT:      Anyway, I don't recall.

9

10                   BY MS. ZEMEL:

11                   4376.                Q.                Is it possible that BFP stands for  
12                   Barbados Free Press?

13                   MR. KRAMER:        Yes, this exact issue was  
14                   discussed and asked.

15                   4377.                MS. ZEMEL:        Mr. Kramer...

16                   MR. KRAMER:        I'm telling you it was.  
17                   I've been here for three days. And he  
18                   already said there was a whole discussion  
19                   about it.

20                   4378.                MS. ZEMEL:        Mr. Kramer, I have to tell  
21                   you, I took very specific notes. If it's  
22                   true, I apologize, but just...

23                   MR. KRAMER:        Do you know if BFP is  
24                   Barbados Free Press?

25                   THE DEPONENT:      I can't recall.

1 BY MS. ZEMEL:

2 4379. Q. May 16, 2006.

3 MR. KRAMER: Is that page 24?

4 4380. MS. ZEMEL: No, that would be, I  
5 believe, page 25.

6

7 BY MS. ZEMEL:

8 4381. Q. Entry number 507767. It says,  
9 "...Travel to Barbados, call with JM re  
10 points for town hall meeting. Review new  
11 Deane affidavit and draft response..."

12 Which Deane affidavit are you reviewing?

13 A. I don't recall.

14 4382. Q. Do you know if that refers to Iain  
15 Deane, my client?

16 A. There's a lot of Deanes.

17 4383. Q. That's why I'm asking.

18 A. Yes, so I don't recall. It's a big  
19 family.

20 4384. Q. And again, May 28, 2006, there's an  
21 entry there. It says,

22 "...Many calls re BFP re politics websites  
23 and racism issues..."

24 Does that assist you to remember what BFP means?

25 A. No.

1 4385. Q. One more thing. August 27, 2007.  
2 There's an entry by Sunny Ware, so it's lawyer  
3 12...now, that might actually be in Exhibit B. You  
4 know what, let's just leave that for a minute,  
5 because it's going to take me a while to find. So,  
6 we'll move on. Who is Anthony Reyes, do you know?

7 A. I don't recall.

8 4386. Q. Well, let me take you to the entry  
9 on September 9, 2007. To be fair to you, I want to  
10 make sure it's in Exhibit A and not B.

11 MS. MORSE: It is in Exhibit A.

12

13 BY MS. ZEMEL:

14 4387. Q. Okay,  
15 "...Emails and calls to JG, JK, PA, Nathan,  
16 ARC, Anthony Reyes, Kathy and Ian Davis,  
17 review Kel. blog and emails..."

18 Does that help to assist you to maybe put in context  
19 who is Anthony Reyes?

20 A. No.

21 4388. Q. What does "ARC" stand for?

22 A. I don't recall.

23 4389. Q. That's fine. When you were being  
24 examined by Mr. Silver, you mentioned that in  
25 February of 2009, you and Marc Lemieux had returned

1 from England. Did your trip to England have  
2 anything to do with the Kingsland matter?

3 A. Zero.

4 MR. KRAMER: He was already asked that.

5

6 BY MS. ZEMEL:

7 4390. Q. So, you're aware my client resides  
8 in England, correct?

9 A. It had nothing to do with that, I  
10 guarantee it.

11 4391. Q. Okay, I just wanted to check that  
12 out. That's fine. I appreciate that, Mr. McKenzie.  
13 April 22, 2006, Exhibit A again.

14 MR. KRAMER: So, we're back to April '06  
15 again.

16 4392. MS. ZEMEL: Yes, April 22. And that's  
17 on page 21.

18 MR. KRAMER: Okay.

19

20 BY MS. ZEMEL:

21 4393. Q. There's a docket there that says,  
22 "...GHNS strategy memo and JM memo to Peter  
23 and to bloggers; blogging; Nathan and water  
24 issues..."

25 What's the "GHNS strategy memo and JM memo to Peter

1 and to bloggers", what does that refer to?

2 A. I don't recall exactly, but that  
3 looks all to do with the nature sanctuary, water was  
4 getting polluted, Graeme Hall Nature Sanctuary, and  
5 that's my daughter, JM.

6 4394. Q. JM is your daughter? You mean...

7 A. Jennifer McKenzie.

8 4395. Q. Jennifer McKenzie.

9 A. So, my best guess is that it has  
10 nothing to do with Kingsland.

11 4396. Q. All right. Who is Don Mitchell?

12 A. A judge from the Caribbean who I  
13 consulted with and retained and brought him up to  
14 Canada as an expert to discuss things with and  
15 review the video recordings or some of them for  
16 various opinions that he was assisting me with.

17 4397. Q. So, that was with respect to that  
18 whole motion regarding the video recordings, et  
19 cetera? I just want to be clear...I want to know  
20 who he is.

21 A. Yes. I have a sore point about  
22 Blakes, what they did in that one, but I won't  
23 mention it here.

24 4398. Q. So, there you go, Mr. McKenzie, it's  
25 5:00. I will finish up right now.



1                   A.       Can I put one statement by way of  
2 re-examination on the record and then I'm done?

3                   MR. KRAMER:        Sure.

4       4399.        MS. ZEMEL:        Is this a re-examination of  
5 myself or is it another...

6                   THE DEPONENT:       No, I've been here for  
7 three and a half days and nobody asked me  
8 about this.

9                   MR. KRAMER:        Okay, we'll pay this part  
10 of the transcript.

11       4400.       MS. ZEMEL:        No, that's not the...it's  
12 just that none of the other lawyers are  
13 here, I just want to put that on the  
14 record.

15                   THE DEPONENT:        I was asked about a  
16 conversation meeting with Richard Cox at a  
17 certain point. And Mr. Silver did give me  
18 a release from the confidentiality that he  
19 and counsel at the time, and I had  
20 forgotten to mention to him and I should  
21 put it on the record that Richard Cox asked  
22 me to call him shortly after that and I  
23 did. And Richard Cox said, "I would pay  
24 you \$1.4 million to buy out Peter Allard's  
25 interest", at which point I said, "What

1 about Marjorie Knox?" He said, "Well, I'll  
2 foreclose. She's going to get nothing.  
3 Doesn't she realize she's been whipped or  
4 beaten or destroyed?" something like that.  
5 I'm just saying, that was in the same  
6 period of time and it came to my  
7 recollection while I was being examined on  
8 it and it never went there. So, I'm just  
9 saying, that's my statement.

10 4401. MS. ZEMEL: Before you leave, and you  
11 make a statement, just to be fair to Mr.  
12 Silver who is not here, and you're making a  
13 reference to his client, I just want to be  
14 fair to him, that we make the statement  
15 clear. I'm assuming he would want to know  
16 when that took place.

17 THE DEPONENT: Yes.

18 MR. KRAMER: Well, presumably, it was  
19 the conversation that Mr. Silver put to  
20 him.

21 THE DEPONENT: I had a meeting. Mr.  
22 Silver asked me about the meeting, and we  
23 looked at the dockets and I think we got it  
24 right. And I left the meeting because Mr.  
25 Cox asked me to call him later so that we

1                   could talk one-on-one, instead of in front  
2                   of all the people. And that's a specific  
3                   recollection that I have of what Mr. Cox  
4                   told me. That's all. So, I just want to  
5                   complete the record, while I remember it.

6           4402.           MS. ZEMEL:       Okay. Thank you.

INDEX OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PAGE NUMBER
15	Wire Payment Services Document titled "Mike Dribin", in file folder containing Dribin Retainer, dated January 22, 2009	957
16	File Folder John Kelly	958
17	Letter from Mr. Ranking to Mr. Kramer, along with a notice of examination, dated April 29, 2010	1108
18	Email from Ms. Zemel to Mr. Kramer, dated April 29, 2010, sent at 11:44 a.m.	1109

INDEX OF UNDERTAKINGS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	958	3396
2	959	3398
3	994	3542
4	1034	3691
5	1038	3704
6	1119	4022
7	1137	4098
8	1198	4347

INDEX OF REFUSALS

REFERENCE NUMBER	PAGE NUMBER	QUESTION NUMBER
1	980	3490
2	981	3491
3	981	3492
4	982	3497
5	986	3522
6	986	3523
7	1005	3584
8	1007	3588
9	1008	3590
10	1029	3675
11	1053	3764
12	1106	3980
13	1118	4019
14	1158	4196
15	1191	4320

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