

SUPREME COURT STATE OF NEW YORK
COUNTY OF WESTCHESTER

ALLAN KASSENOFF,
Plaintiff,

-against-

CATHERINE KASSENOFF,
Defendant.

INDEX NO. 58217/2019

Westchester Supreme Court
111 Dr. MLK Jr. Blvd.
White Plains, N.Y. 10601
February 24, 2020

B E F O R E:

HONORABLE NANCY QUINN KOBA
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S:

DIMOPOULOS BRUGGEMANN, P.C.
Attorneys for Plaintiff
BY: GUS DIMOPOULOS, ESQ.

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Attorneys for Defendant
BY: JILL SPIELBERG, ESQ.
ALYSON KURITZKY, ESQ.

CAROL MOST, ESQ.
Attorney for the Children

DONNA LOOMBA
SENIOR COURT REPORTER

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1 THE COURT: This is Kassenoff versus Kassenoff,
2 index number 58217/2019.

3 Counsel, please put your appearances on the record.

4 MR. DIMOPOULOS: Dimopoulos Bruggeman by Gus
5 Dimopoulos on behalf of plaintiff.

6 Good afternoon, your Honor. Thank you for having
7 us.

8 THE COURT: Good afternoon.

9 MS. MOST: Good afternoon, your Honor.

10 Carol Most, Law Firm of Most & Schneid, attorney
11 for the children.

12 MS. SPIELBERG: Jill Spielberg, Harold Salant
13 Strassfield & Spielberg, 81 Main Street, White Plains, New
14 York 10601 for the defendant.

15 Good afternoon, Judge.

16 MS. KURITSKY: Good afternoon, Judge. Alyson
17 Kuritzky for the defendant.

18 THE COURT: Okay. Everybody can have a seat. I
19 understand that you met with Referee Ratner and there are
20 some issues that you thought I might be helpful in
21 facilitating.

22 REFEREE RATNER: There are two stipulations. Where
23 is that stipulation?

24 MR. DIMOPOULOS: Your Honor, I think we have --
25 would you rather start with the good news, things we have

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1 agreed upon that we would love to put on the record.

2 THE COURT: Go right ahead. Let's, obviously, have
3 the good news first.

4 MR. DIMOPOULOS: Number one, we have a stipulation
5 that we are going to sign, but I prefer to also put it on
6 the record.

7 That is, within 24 hours of this stipulation, both
8 Lily Becker and Catherine Kassenoff shall transmit their
9 respective audio files of the February 16, 2020 audio
10 recording of the wife's telephone conversation with the
11 children.

12 Thereafter -- sorry, it should say "to Ms. Most".

13 MS. MOST: To Ms. Most.

14 MR. DIMOPOULOS: Thereafter, Ms. Most is authorized
15 to send both audio files and the February 16, 2020 police
16 report to Dr. Abrams. The husband's counsel shall be copied
17 on Lily Becker and Ms. Kassenoff's e-mails. That was number
18 one.

19 THE COURT: Before you go over that, what is this
20 all about?

21 REFEREE RATNER: This was about --

22 MR. DIMOPOULOS: There was an -- I will do it
23 objectively, your Honor. Mom had a phone call with the
24 children. Then one of the supervisors --

25 REFEREE RATNER: There is a court order that she

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1 can't tape record conversations.

2 MR. DIMOPOULOS: One of the supervisors, who is
3 also Ms. Kassenoff's cousin, recorded the conversation.
4 Based upon the contents of that conversation, and the
5 mother's alleged fear for the welfare of the children, she
6 called the Larchmont Police Department to do a welfare check
7 on the children during the husband's time, whereupon they
8 found the husband at home, with the children all asleep, and
9 nothing to be worried about.

10 MS. SPIELBERG: The cousin is the one who called
11 the police.

12 MR. DIMOPOULOS: The cousin was the one who called
13 the police.

14 We have agreed to provide the audio recording and
15 police report to Dr. Abrams. We believe it bears on the
16 issue of custody and parenting.

17 THE COURT: Well, apparently if there was a prior
18 order that says don't tape record the children's
19 conversation, that seems to be pretty clear not to do so.
20 Yes?

21 MS. SPIELBERG: Her cousin tape recorded it, Judge.

22 THE COURT: The cousin that is supervising the
23 child --

24 MS. SPIELBERG: No.

25 THE COURT: -- in the mother's presence?

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1 MS. SPIELBERG: No. The children were with the
2 father, Judge. The cousin was with the mother. The
3 children called the mother and the cousin taped recorded it
4 and called the police.

5 THE COURT: Was she in another room?

6 MS. SPIELBERG: They were together. They were
7 together. The kids were with their dad, and they called
8 mom.

9 THE COURT: I get it now. She is standing next to
10 her while she tape recorded the conversation. That's all I
11 needed to hear.

12 We don't tape record the children's conversations.
13 I don't care if I am standing next to you, or you.

14 MS. SPIELBERG: The husband needs the same
15 instruction. He recorded the --

16 THE COURT: Trust me, everybody will get that
17 instruction. Next.

18 MR. DIMOPOULOS: Two, the parties shall consent to
19 sell \$30,000 of securities from the E*Trade account selected
20 by the husband. They shall reserve estimated taxes and the
21 husband shall deposit in his account the net balance of
22 \$30,000 after taxes, which shall solely be used for
23 therapeutic services for JoJo and Charlie -- for clarity
24 that is Josephina and Charlotte -- in parenthesis, Dr.
25 Adler, their therapist, and a behaviorist for Ally. The

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1 husband shall provide a monthly accounting to the wife.

2 MS. SPIELBERG: We should probably add, therefore,
3 the husband shall be responsible to pay one hundred percent
4 of Dr. Adler and the behaviorist out of those finds.

5 THE COURT: Just before we get there, that does not
6 make sense to me. The taking out of \$30,000 and \$30,000
7 net.

8 MR. DIMOPOULOS: Your Honor, the \$30,000 net was
9 inserted after the fact.

10 MS. SPIELBERG: The net of the \$30,000, not the net
11 of the account.

12 THE COURT: That wording is not clear.

13 MR. DIMOPOULOS: Let me say it in my own words:
14 Immediately, the husband shall effectuate the sale of
15 \$30,000 worth of securities. He will speak to his
16 accountant, provide him with the information, and the
17 accountant should provide an estimate of the taxes due for
18 capital gains on the sale of the stock.

19 He will then reserve that sum of money in an
20 account and pay the taxes when they are due. From the net
21 balance of the sale of 30, he shall use it 100 percent for
22 therapeutic services for the children Charlie and JoJo and
23 the behaviorist for Ally.

24 MS. SPIELBERG: This should be for both parties'
25 shares of the payment for Dr. Adler.

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1 MR. DIMOPOULOS: This account is going to pay for
2 the totality of therapy and the behaviorist.

3 REFEREE RATNER: It is not going to last that long
4 at \$450 a session.

5 MS. MOST: Then we will come back.

6 THE COURT: So right now we are going to make sure
7 that the children's therapy is paid for 100 percent, and if
8 we need to go back, we will deal with that at a later date.

9 MR. DIMOPOULOS: There are two other things we have
10 an agreement on, your Honor, but we don't have the exact
11 wording, so I will put the bare bones. I am then going to
12 transmit to counsel a proposed order that we can deal with.

13 It is two things. We soon expect -- actually three
14 things, sorry -- we soon expect the completed evaluation
15 from Dr. Marc Abrams. We will then have to -- it will be
16 transmitted to the Court, at which point each attorney is
17 going to have to come in with our respective affirmations
18 agreeing to be bound by certain terms of confidentiality and
19 non-dissemination. That's for the attorneys.

20 THE COURT: Hold on one second.

21 You were not here when we ordered it. Do you
22 consent on the record that I can review the forensic
23 evaluation?

24 MS. SPIELBERG: Yes, Judge.

25 THE COURT: And you already consented,

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1 Mr. Dimopoulos.

2 MR. DIMOPOULOS: Thank you, your Honor.

3 When we get those forensic evaluations, we bring
4 them back to our offices, we call our clients, the clients
5 come in. The orders and affirmations generally say in vague
6 terms that the attorneys are to supervise their clients and
7 not allow them to take notes or make copies.

8 In this particular case, I would ask, and counsel
9 has consented, to provide a further level of assurances, and
10 this is reciprocal, for both parties.

11 One, that at all times that the litigants are
12 reading the forensic evaluation, neither party shall have
13 any type of device that can take photographs, make
14 recordings, or in another way transpose the terms of the
15 evaluation.

16 Number two, they should not have anything with them
17 in terms of paper, a pen, anything that can be used to take
18 notes, iPhone, iPad, or anything in today's day and age. It
19 should be just that person with the forensic report in front
20 of them.

21 And the third thing is that there shall be direct
22 supervision during the entire time each of the litigants are
23 reading the forensic evaluation. And when they are done
24 reading it, it gets taken away from them.

25 THE COURT: That's my understanding of what my

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1 order already says.

2 MR. DIMOPOULOS: Yes, your Honor. But I can assure
3 you from experience in this area of the law, litigants
4 sometimes don't always follow orders. So I want to make
5 sure that counsel understands our heightened level of
6 security.

7 THE COURT: I just want to be clear, that's an
8 order issued by me. And trust me when I tell you, if you
9 violate that order you will not be happy with the
10 consequences.

11 MS. SPIELBERG: Judge, it is my practice in all my
12 cases. I am happy to do it on consent. I always have my
13 client supervised and never let them have anything with
14 them.

15 THE COURT: Right. That's what the practice is,
16 and that's what the order says.

17 MR. DIMOPOULOS: Two and three, your Honor, is I
18 will be transmitting a protective order to counsel to deem
19 all documents that he has transmitted to his wife thus far
20 in this proceeding confidential. Should she choose to have
21 all her documents deemed confidential, I will make it
22 reciprocal. It is not a problem.

23 Just to be clear, the protective order I am going
24 to transmit is just about the most stringent protective
25 order that one can draft. That is non-dissemination other

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1 than to attorneys, consulting professionals, accountants,
2 experts, and for no other reasons. And that counsel has to
3 take adequate safeguards from transmitting those documents
4 to third parties.

5 If they have already been transmitted, then my
6 protective order is going to ask what has been transmitted,
7 when it has been transmitted, and that the parties not
8 forward it to any third party and not disseminate it to
9 anyone else.

10 I think that's a pretty standard protective order,
11 it is reciprocal to protect both of these people, who are
12 attorneys, from the dissemination of sensitive financial
13 information.

14 Within that order, or by separate order actually,
15 because Greenberg Traurig -- my client is a shareholder in
16 the law firm in the city. We are going to need to draft a
17 separate protective order deeming any documents that
18 Greenberg Traurig produces pursuant to the existing order
19 for a forensic evaluation expert, to value his shareholders
20 interest, if any, any documents transmitted by Greenberg
21 Traurig shall be kept strictly confidential.

22 THE COURT: Do you represent Greenberg Traurig?

23 MR. DIMOPOULOS: I do not.

24 THE COURT: I am pretty sure we had a discussion
25 about this, about the fact they had not complied with any

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1 prior discovery.

2 MR. DIMOPOULOS: So briefly on that your Honor, the
3 issue was my client was traveling and did not pay the
4 retainer. He has since paid the retainer. He, Mr. DeMarco,
5 the court appointed expert, sent document demands to
6 Greenberg Traurig.

7 THE COURT: But I remember back in February when
8 that motion was argued, that was an issue and I
9 understood --

10 MR. DIMOPOULOS: It is a bigger issue. Because the
11 other day, general counsel from Greenberg Traurig received
12 an e-mail from Mrs. Kassenoff directly, threatening her
13 husband, saying that he is using firm resources for personal
14 reasons, and that is unethical and she needs to be careful.

15 And I would like to, for the record, it says: I am
16 the divorcing spouse of a Greenberg Traurig shareholder. I
17 write to advise you that Mr. Kassenoff has been abundantly
18 using Greenberg Traurig resources for personal reasons. Not
19 only has he been using Greenberg Traurig e-mail to write
20 e-mails to nannies, to me, and to many others in his
21 personal life, see attached, he uses the Greenberg Traurig
22 telephone conference number to set up calls with brokers at
23 Houlihan Lawrence for purposes of selling our home in New
24 Rochelle. In fact, just now I got off the phone with him,
25 and two such brokers. When I expressed my discomfort with

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1 usage of a Greenberg Traurig phone line, especially as I am
2 Special Counsel For Ethics Risk and Compliance for Governor
3 Cuomo, he screamed at me and dismissed my concern as per the
4 attached recording -- and then there is a recording -- I do
5 not believe this conduct reflects well on Greenberg Traurig,
6 parenthesis, my former firm as well, closed parenthesis, and
7 I wanted to raise this to your attention. As is set forth
8 in the attached letter from a former nanny, Mr. Kassenoff
9 uses the power of his position to intimidate. I am very
10 uncomfortable with his usage of Greenberg Traurig's name in
11 this fashion, as I believe it influences people such as
12 brokers who owe a fiduciary obligation to me as well. Mr.
13 Kassenoff either does not seem to appreciate the appearance
14 of impropriety nor does he seem to care. Either way, I
15 believe his comfort needs to be adjusted. Finally, I have
16 reason to believe Mr. Kassenoff uses Greenberg Traurig
17 e-mail to correspond with his attorney in our divorce
18 matter, Mr. Dimopoulos. Should that be the case, then Mr.
19 Kassenoff has now also subjected Greenberg Traurig to
20 subpoenas for that correspondence which has likely lost
21 whatever privilege it may have had. Thanks for your prompt
22 attention. Should you require any -- call me at the below
23 number.

24 Greenberg Traurig's General Counsel walked this
25 e-mail down to my client's office. And I won't tell you

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1 what they said, but we need to make sure that no such
2 further communications are made. Counsel has consented to
3 an order which is going to be of the utmost level of
4 seriousness.

5 THE COURT: I don't understand what the purpose
6 would be in attempting to jeopardize the plaintiff's
7 employment when you are seeking money from the plaintiff in
8 the course of the litigation.

9 That being said, that's for Greenberg Traurig to
10 investigate. But I would caution everybody here that we
11 want to keep people employed so they can provide for the
12 family. And as a partner or a shareholder of that firm, I
13 have no idea what the privileges, obligations, and
14 availability of those resources are to a shareholder. But
15 that's for them to investigate.

16 I would assume, though, if anyone is making
17 accusations of people using resources in the firm in an
18 inappropriate manner, that there would be substantiation for
19 that. But that being said, if you want to interfere with
20 the husband's employment, that will certainly impact his
21 ability to provide maintenance and child support for your
22 children going forward.

23 MR. DIMOPOULOS: The other problem with it, your
24 Honor, is the correspondence --

25 MS. SPIELBERG: Judge --

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1 THE COURT: There is nothing to say about that.

2 MR. DIMOPOULOS: -- the correspondence that is
3 attached is so embarrassing, so highly personal.

4 THE COURT: I have already made my position known.
5 I concur, that was not --

6 MR. DIMOPOULOS: So I will be submitting, we have
7 agreed to an order that neither party shall contact the
8 other party's employer, colleagues at work, anyone
9 associated with their employment for any purposes
10 whatsoever, and --

11 MS. SPIELBERG: That's not what --

12 MR. DIMOPOULOS: -- and they shall not disparage,
13 embarrass, or seek to interfere with that party's
14 employment. Again, this is mutual. I know Ms. Spielberg
15 wants to have a caveat for which I will let her address
16 directly. But I jumped over two, which was that the second
17 protective order, to the extent --

18 MS. SPIELBERG: Can I address that issue before we
19 leave it?

20 MR. DIMOPOULOS: I swear this is it. The second
21 protective order is to protect against dissemination of any
22 documents that Greenberg Traurig disseminates. That's all I
23 have.

24 MS. SPIELBERG: Judge, with respect to the
25 restrictions, my issues, as to the restriction of my client

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1 contacting anybody within Greenberg Traurig, I agree that
2 she will not contact anybody with respect to the plaintiff
3 or the matrimonial, those issues.

4 My client did work there. She does still have
5 friends there. She knows people there. So to the extent
6 she wants to contact people she knows for unrelated reasons,
7 there is no reason she should be restricted from doing so.
8 That is the caveat.

9 And the second issue is that she does have business
10 with them. Hold on. I want to double check. I did say she
11 has no business with them, but she does. So I think it is
12 sufficient to say anything having to do with the plaintiff
13 or the matrimonial action. She has no reason to talk about
14 this to anybody that she is discussing work with or --

15 MR. DIMOPOULOS: Hold on. Does Greenberg Traurig
16 represent -- I need to know about this business. In what
17 capacity is her role, as working for Governor Cuomo, is this
18 business?

19 MS. SPIELBERG: She says it is privileged.

20 MR. DIMOPOULOS: The concept whether they represent
21 her or whether she represents them is privileged?

22 MS. SPIELBERG: They don't represent her.

23 MS. KASSENOFF: Not me personally. They represent
24 various entities within the state that I work with.

25 MR. DIMOPOULOS: So you mentioned in the e-mail

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1 your position with the state to a firm that employs my
2 client, you disparage him, and you don't think there is not
3 going to be any retribution for that?

4 THE COURT: As I understand it, it apparently is
5 that you wrote to a firm that you deal with in your capacity
6 as an employee of the state that represents the state; is
7 that correct?

8 MS. KASSENOFF: Sorry, your Honor. Say that again?

9 THE COURT: As I understand what you just said, you
10 are an employee of the state, and in that capacity you work
11 with Greenberg Traurig which is counsel for various entities
12 in the state.

13 MS. KASSENOFF: I have nothing currently pending
14 with Greenberg Traurig that I work on.

15 THE COURT: But you have known them through that
16 capacity?

17 MS. KASSENOFF: Over the course of time they have
18 represented, yes, various entities.

19 THE COURT: Okay. So I guess we can assume your
20 letter to them would get more credence than if I, off the
21 street, sent them a letter.

22 MS. KASSENOFF: Your Honor, the reason I simply
23 mentioned my title was not as a means of coercing, it was a
24 means of explaining why I thought there was impropriety in
25 using the Greenberg Traurig phone line for a personal

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1 reason. We were using this for a personal reason. My
2 husband was putting me in a position as a state employee of
3 using his law firm's conference line, which I thought was
4 inappropriate.

5 MR. DIMOPOULOS: Your Honor, then she should have
6 asked her husband is this a violation. What do you care --

7 THE COURT: You could have hung up and said I can't
8 talk to you on this phone, call me back on your personal
9 phone, seriously.

10 MS. SPIELBERG: She learned at the end of the
11 conversation.

12 THE COURT: Why? Did he say I'm on a Greenberg
13 Traurig line at the end of the conversation?

14 MS. SPIELBERG: She asked and he said yes.

15 THE COURT: So instead of starting with are you on
16 a Greenberg Traurig line, you waited until the entire
17 conversation was over and then you asked?

18 MS. KASSENOFF: Your Honor, we were on a call with
19 two other brokers. There was a conference call set up. I
20 did not realize until towards the end of it that this was
21 something he had set up through his firm.

22 THE COURT: Okay. Ms. Spielberg.

23 MS. SPIELBERG: The last issue, Judge, is related
24 to not being able to contact Greenberg Traurig. We want to
25 be sure that if there is communication on their server, that

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1 there be preservation of that communication.

2 I don't want to violate any protective order or the
3 Court's directive by sending a preservation notice to
4 Greenberg Traurig; however, it is a concern that these
5 communications be preserved in the event they need to be
6 accessed at some other date.

7 MR. DIMOPOULOS: Hold on. You want to preserve
8 communications between me and my client?

9 MS. SPIELBERG: Your client and whomever.

10 MR. DIMOPOULOS: You want to preserve
11 communications between my client, all of his clients,
12 Samsung?

13 MS. SPIELBERG: Anything related to the
14 matrimonial.

15 MR. DIMOPOULOS: Good luck with that, anything
16 related to the matrimonial.

17 Your Honor, this is out of control. Their
18 allegation, so let's get our heads around this, their
19 allegation is if he uses Greenberg Traurig's e-mail to
20 communicate with his attorney, it is no longer privileged
21 because Greenberg is a third-party.

22 MS. SPIELBERG: I am not saying that.

23 MR. DIMOPOULOS: You said that in your letter.

24 THE COURT: You do not represent Greenberg Traurig,
25 correct?

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1 MR. DIMOPOULOS: No, I do not.

2 THE COURT: If you have an issue with Greenberg
3 Traurig, you as an attorney -- your client is barred -- but
4 you as an attorney, if you feel that is appropriate, to
5 preserve whatever the alleged stuff is, you can do that.
6 That's separate.

7 You don't represent Greenberg Traurig.

8 MR. DIMOPOULOS: No, your Honor. Here is the
9 concept here. They just got a letter from her, I read it to
10 you. Now they are going to get a preservation notice. Do
11 you know what it costs a law firm -- for anyone who has ever
12 worked in a large law firm -- the cost of e-mail
13 preservation.

14 So now they are going to go out and spend \$34,000
15 getting forensic people in here to preserve all the e-mails,
16 then they have to sift through all the e-mails to determine
17 which ones have do with the matrimonial or not. He can kiss
18 his job good-bye.

19 THE COURT: First of all, he is a shareholder in a
20 corporation, it is not that easy.

21 Second of all, Greenberg Traurig can certainly
22 object to it.

23 Third of all, think very carefully about that.
24 Again, your client wants to have somebody employed and
25 paying the bills. I understand her position is I don't have

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1 to pay anything, but while she is simultaneously
2 jeopardizing the job of the person who she claims should
3 pay.

4 MS. SPIELBERG: Your point is well taken.

5 THE COURT: And that is one of the issues here,
6 that she won't pay 20 percent. So I suggest we work to keep
7 the job.

8 MS. SPIELBERG: Your point is well taken, Judge.
9 But I just wanted to put that issue on the record so that if
10 it is resurrected with respect to preservation, there is not
11 some response from counsel or otherwise that we discussed
12 this and nobody raised it then.

13 It is a discussion that I have been having with my
14 client. Certainly in the course of a matrimonial, a
15 litigant can be called upon to produce certain e-mails with
16 respect to various issues, not necessarily privileged
17 communication.

18 THE COURT: We have ten minutes.

19 MS. SPIELBERG: The reason I --

20 REFEREE RATNER: Mr. Dimopoulos had the issue about
21 the 80/20.

22 MR. DIMOPOULOS: Your Honor, in October, we had a
23 conference. Ms. Kassenoff was represented by Ms. Zeiderman.
24 And we agreed in front of Referee Ratner there would be an
25 80/20 --

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1 THE COURT: Is there an order for that?

2 MR. DIMOPOULOS: No. We walked out of here --

3 MS. SPIELBERG: I was retained ten days ago. I
4 ask, your Honor, to give me --

5 THE COURT: Hold on. I recall this discussion when
6 Ms. Zeiderman was here arguing the motion for attorneys
7 fees. We tried to get that, and she said they did not reach
8 an agreement for that.

9 MR. DIMOPOULOS: Correct.

10 THE COURT: So there is no agreement, so we are
11 clear on the record.

12 MR. DIMOPOULOS: There is no agreement.

13 THE COURT: Okay. Let's start with the new
14 attorneys. What is your client's position on 80/20?
15 Because she makes close to between 175- and 180,000 a year.

16 MS. SPIELBERG: The issue at this point --

17 THE COURT: And a child support obligation. Does
18 she say she owes something?

19 MS. SPIELBERG: No. Because he is the monied
20 spouse and they have 50/50. I don't think this would --

21 THE COURT: They have the children 50/50? Are they
22 nesting?

23 MS. SPIELBERG: Yes. But, Judge, the issue is --

24 THE COURT: Are you saying she would have no
25 responsibility for add-ons, anything like that?

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1 MS. SPIELBERG: I am not saying that, Judge. But
2 the issue as we stand here, unfortunately, I can only attest
3 to what my -- the way I run my cases financially. But my
4 client has spent a lot of her own money on counsel fees.

5 THE COURT: I understand that, because you are now
6 her fifth attorney.

7 MS. SPIELBERG: I understand, Judge. But I hope
8 those fees will be less on a going forward basis. That's
9 typically the way that I practice.

10 In any event, her money has been spent there. And
11 the hope is that things will even out eventually. There is
12 a pending motion for fees. Once that motion is decided to
13 the extent that my client is granted fees based upon the
14 presumption that the monied spouse, who makes four times
15 more than my client, would be ordered to give my client some
16 money for fees --

17 THE COURT: We are researching that and I will make
18 a decision. I understand the presumption in the statute.
19 What I don't know, and this is something that we have to
20 research, how does that apply when your client keeps
21 changing attorneys, and does somebody have to keep paying
22 for the new attorney.

23 MS. SPIELBERG: Only if there is, Judge, if there
24 is any allegation that her attorneys fees are more than
25 plaintiff by virtue of change of counsel. But, Judge, I

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1 have not -- that motion is pending based upon what happened
2 before.

3 THE COURT: I understand that. But, theoretically,
4 since you are the current attorney who --

5 MS. SPIELBERG: But I have not billed any money for
6 reviewing so far.

7 THE COURT: Not yet.

8 MS. SPIELBERG: We will see.

9 MR. DIMOPOULOS: Your Honor, I raise this --

10 MS. SPIELBERG: Judge, I need to address an issue.

11 THE COURT: We have literally --

12 MS. SPIELBERG: I understand, but Mr. Dimopoulos
13 has monopolized the time. I want to bring an issue to your
14 attention.

15 I know this issue was raised collaterally in the
16 course of a hearing before Judge Everett but I don't know if
17 it has been before your Honor just yet.

18 However, there were privileged communications
19 between my client and an attorney who is also a friend, but
20 with whom she discussed multiple issues and who assisted her
21 in the commission of CPS matters with respect to this
22 family.

23 They had text messages between them, a discussion
24 of the case, which my client believed and expected would be
25 privileged, communications with an attorney who was giving

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1 her legal advice.

2 THE COURT: Was she retained as counsel --

3 MS. SPIELBERG: She was not.

4 THE COURT: -- or a friend?

5 MS. SPIELBERG: She was not retained. But that is
6 not a requirement for privileged communication. As
7 everybody knows, if you come in for a consultation and you
8 never pay a dime, that is privileged communication.

9 THE COURT: That's not the same as talking to your
10 friend who happens to be a lawyer.

11 MS. SPIELBERG: That's not what this was. She
12 represented my client in connection with the CPS matter. I
13 have the affidavit. I have an affidavit from her that she
14 says, very detailed, what she did, what she advised her, in
15 what capacity, and that she believed that it would be
16 privileged communications.

17 Notwithstanding that, Judge, the husband got his
18 hands on these text messages because he had been permitted
19 to access her Apple ID for some other reason months before,
20 he went in and accessed her text messages on the computer
21 and used them in the court proceeding, gave them to the
22 forensic, and has continued to disseminate them on an
23 ongoing basis.

24 I'm asking the Court for permission to make a
25 motion for destruction of these text messages by the

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1 plaintiff and his attorney, and to prohibit the further
2 dissemination of these text messages, and for Dr. Abrams to
3 not consider them in connection with rendering his opinion.

4 THE COURT: Are these the text messages on the
5 family computer?

6 MR. DIMOPOULOS: Yes, Judge.

7 MS. SPIELBERG: Not on the family computer, Judge.

8 He accessed the Apple ID through the family
9 computer and was able to gain access, that is to say, any
10 computer that you can log in on with an Apple ID --

11 THE COURT: Were they filed or something, I don't
12 know how that works.

13 MR. DIMOPOULOS: Your Honor, I'm the only one who
14 knows the facts here.

15 MS. SPIELBERG: Just a second.

16 THE COURT: She is still talking.

17 You have got five minutes.

18 MS. SPIELBERG: Just because my client gives
19 permission to access her Apple ID in connection with some
20 unrelated issue does not mean you can then go use her
21 password to access her text messages, her private privileged
22 communications.

23 He is a lawyer, he should have known that and the
24 second he saw anything, he should have closed it, good-bye.

25 That being said, Mr. Dimopoulos is going to argue

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1 that because it was a family computer -- I believe this is a
2 legal issue, one that should be briefed for your Honor.

3 And the issue is they were disclosed to Dr. Abrams
4 and my client did not get notice of that for five days, and
5 her ability to take action at that time to preclude Dr.
6 Abrams from reading them until the Court could make a
7 decision was gone by days.

8 So at this time, we would have to ask Dr. Abrams
9 not to consider them in connection -- I don't know if you
10 can unring that bell, if he did, Judge, but to the extent
11 that you can, that would be what we are asking.

12 MR. DIMOPOULOS: Briefly your Honor, Ms. Kassenoff
13 wrote the following to her friend who is also --

14 MS. SPIELBERG: No, no, no.

15 THE COURT: Let's --

16 MR. DIMOPOULOS: Let me do this. This has nothing
17 to do with attorney client privilege. God, Ally is so dumb.

18 MS. SPIELBERG: Come on, Judge, this is --

19 MR. DIMOPOULOS: This is bearing on the issue of is
20 she a lawyer or is she a friend.

21 MS. SPIELBERG: This is prejudicial. I gave an
22 example.

23 THE COURT: I don't see how that leads to
24 privilege. This is clearly an issue that I can't decide by
25 you two arguing.

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1 So give them a briefing schedule on this issue.

2 REFEREE RATNER: Please submit a proposed Rule E.

3 MS. SPIELBERG: And Judge, I am going to ask that
4 neither party attach the text messages in the motion.

5 MR. DIMOPOULOS: How can she decide whether they
6 are privileged without in camera review?

7 THE COURT: I need to see them. You can attach
8 them under seal. Otherwise I don't see how I can make a
9 decision on the content of the motion, on the things that
10 would constitute attorney client privilege. Attorney client
11 privilege is very limited. Just because you talk to an
12 attorney, it does not mean there is attorney client
13 privilege.

14 MS. SPIELBERG: If you are seeking legal advice
15 from them.

16 THE COURT: Without being retained?

17 MS. SPIELBERG: Being retained is not --

18 THE COURT: Trust me, attorney client privilege
19 does not encompass every single thing you might say to an
20 attorney.

21 MS. SPIELBERG: I disagree with that.

22 THE COURT: That's why we need to have a motion.
23 And in order for me to assess this, I would have to see the
24 text messages. This is an e-filed case?

25 MR. DIMOPOULOS: Yes.

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1 THE COURT: Do them under seal or something if you
2 don't want the text messages up there, and submit it to me
3 and I will do it in camera. But I can't make a ruling on
4 something like this without seeing what the item is.

5 MR. DIMOPOULOS: Your Honor, that's fine. I just
6 ask, I wrote a three-page brief on this issue to Ms.
7 Zeiderman when she raised it four months ago. I researched
8 the law extensively.

9 THE COURT: You can update that quickly.

10 MR. DIMOPOULOS: It is going to be very fast for
11 me. And then the issue was dropped by Ms. Zeiderman when
12 she read the case law from the Court of Appeals.

13 THE COURT: But she has the right.

14 MR. DIMOPOULOS: She has the right. I get that.

15 In light of that, I want the opportunity to move
16 for counsel fees. I don't expect her to pay them, but some
17 type of credit later on. This is such an absolute wild
18 goose chase of an issue.

19 THE COURT: Well, I have to tell you I am giving
20 her permission because, quite frankly, as I am sitting here
21 I don't know if you are using a family computer to access
22 the cloud under somebody else's Apple ID --

23 MR. DIMOPOULOS: Who has given you the password.

24 THE COURT: For what purpose did she give the
25 password?

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1 MR. DIMOPOULOS: To help her repair --

2 MS. SPIELBERG: For iTunes.

3 MR. DIMOPOULOS: And iTunes is associated -- let's
4 not mislead those of us who are less technologically savvy
5 because I spoke to my 14-year-old --

6 THE COURT: I have to tell you, my daughter, I use
7 her ID to get --

8 MR. DIMOPOULOS: Judge, the second you put your
9 iTunes ID into a Mac computer, it pulls down your text
10 messages. That's just what happened.

11 MS. SPIELBERG: It does not automatically download.
12 You have to take an affirmative step to pull down the text
13 messages.

14 THE COURT: I didn't know that, but you can stop
15 arguing. We have got three minutes.

16 MR. DIMOPOULOS: I just want permission to move for
17 80/20 to get this resolved.

18 THE COURT: On the 80/20, what's the story?

19 MS. SPIELBERG: I am being completely honest with
20 you, Judge, I was retained ten days ago. This is one of
21 those cases where I am just trying to stay afloat.

22 If you want to give an extra week on the briefing
23 schedule so I can discuss it with my client, I will endeavor
24 to resolve the issue with Mr. Dimopoulos and am happy to
25 represent that I will do that.

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1 THE COURT: How old is this case? Is this case
2 over standards and goals?

3 REFEREE RATNER: It is way over. We are just
4 waiting for Dr. Abrams' report and then they are getting a
5 trial ready order.

6 MR. DIMOPOULOS: This case started in June, we have
7 not taken depositions yet.

8 THE COURT: So we are not going to have a long time
9 on this issue. It is a relatively quick briefing schedule
10 and we are moving forward.

11 MR. DIMOPOULOS: I need to raise one more issue
12 that I raised in the conference.

13 REFEREE RATNER: Submit the Rule E and I will
14 discuss the briefing schedule.

15 MR. DIMOPOULOS: At the time -- 30 seconds -- Ms.
16 Zeiderman submitted her motion for counsel fees, it was a
17 request for prospective counsel fees. She had been paid to
18 date up to that point.

19 The substance of the evidence in support of her
20 motion was her affirmation, her billing rate, and her
21 office's estimation of what this case was going to cost to
22 completion.

23 I believe the motion should be withdrawn without
24 prejudice because it has absolutely no factual or
25 evidentiary basis for a new attorney to piggy back on a

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1 counsel fee request when their request may be for one-third
2 of those fees.

3 I think the entire motion should be -- I don't
4 think re-done, it is the same case law but --

5 MS. SPIELBERG: I could give a supplemental
6 affirmation, Judge, and update the rates and expectations if
7 your Honor would like that, just to save time. To withdraw
8 it and start from the beginning seems like a waste of
9 judicial resources. But I am happy to give a supplemental
10 affirmation with respect to my information.

11 THE COURT: I don't want to start from zero on
12 these motions again, especially --

13 MR. DIMOPOULOS: Your Honor, I think that's wise.

14 THE COURT: I think that you can certainly do a
15 supplemental, because you are the ones in charge of strategy
16 now, so in terms of what you are going to do with this case
17 and what you think it will cost. But I'm not going to waste
18 time. That was the next motion on my court attorney's
19 schedule to begin reviewing. So get that together in like a
20 week.

21 MS. SPIELBERG: Yes, Judge. No problem.

22 THE COURT: Put it together. Do you want time to
23 reply?

24 MR. DIMOPOULOS: Just a week, your Honor.

25 THE COURT: You submit your supplemental in a week.

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1 And plaintiff will have one week to respond.

2 MS. MOST: March 2nd?

3 THE COURT: Do yours by 3/2. You do yours by 3/9.

4 Is that a weekday, yes.

5 MR. DIMOPOULOS: Should we pick a briefing
6 schedule, an expedited briefing schedule for everything else
7 while we are here?

8 THE COURT: Yes.

9 Ms. Kassenoff -- do you mind if she steps out while
10 we discuss the briefing schedule. The attorneys can stay.
11 I am just going to --

12 MS. KASSENOFF: No problem. Thank you, your Honor.

13 (Defendant exits.)

14 THE COURT: Thank you.

15 MR. DIMOPOULOS: Your Honor, super fast.

16 THE COURT: Let's just do one thing at a time.

17 On the attorney fee motion, defendant's counsel can
18 submit a supplemental affirmation, all the stuff she needs
19 for the fee application. Plaintiff will have one week to
20 respond, so 3/2 for the supplemental, and 3/9 for the
21 response.

22 Now on the other motion, it should not take that
23 long if you have already done the research. So how long do
24 you need to do the other -- we want to keep it kind of tight
25 here. Up to you.

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1 MS. SPIELBERG: Three weeks?

2 THE COURT: How many?

3 MS. SPIELBERG: Three weeks.

4 THE COURT: Well, I want the whole thing submitted

5 in three weeks. And I don't think there is that much

6 research to do.

7 MS. SPIELBERG: Which issue? The 80/20 or the
8 privilege?

9 THE COURT: Privilege.

10 REFEREE RATNER: So the motion is by the 9th.
11 Motion by 3/9, answer and counterclaim by 3/16.

12 THE COURT: He is doing a cross-motion?

13 REFEREE RATNER: The 80/20.

14 THE COURT: Maybe they can work that out.

15 REFEREE RATNER: Reply and answer by 3/23. And
16 Gus's reply, plaintiff's reply.

17 MR. DIMOPOULOS: Sorry, Referee, I missed that.
18 The initial motion is 3/9?

19 REFEREE RATNER: Motion by 3/9.

20 MR. DIMOPOULOS: Opposition to cross-motion?

21 REFEREE RATNER: 3/16. I mean cross-motion, it has
22 been a long day.

23 MR. DIMOPOULOS: Reply and op.

24 REFEREE RATNER: Reply and answer 3/23.

25 Defendant's and your reply re the cross-motion by 3/30. Now

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1 any idea re the forensic evaluation of Greenberg Traurig,
2 how is that going to be done?

3 MS. SPIELBERG: They have to produce the documents.

4 MR. DIMOPOULOS: I can tell you right now that
5 unless they get a -- there was originally a protective
6 order.

7 MS. SPIELBERG: I thought it was a draft.

8 MR. DIMOPOULOS: It was signed, that Mr. DeMarco
9 and the parties signed. They are going to want to look at
10 that and perhaps make an update to that before submitting.

11 I can have that to counsel and Mr. DeMarco by
12 Friday. And then we have to submit it to Greenberg Traurig
13 for their approval.

14 REFEREE RATNER: He is a shareholder. Can we get
15 something from the forensic, they don't have enough now
16 to --

17 THE COURT: They did not give him anything.

18 MR. DIMOPOULOS: Here is the thing, what I have
19 been saying and was explained on the phone was that under
20 the shareholder agreement that he has, the only thing he is
21 entitled to in the event he is terminated without cause is
22 the return, a redemption of his contribution. There is no
23 upside appreciation to his shareholder interest. Whatever,
24 he has paid. They will make a determination but --

25 THE COURT: Well, that will be simple then. It

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1 will just be the contract and the shareholder agreement.

2 MR. DIMOPOULOS: It is going to be the wildest
3 waste of money there ever was.

4 THE COURT: Did he turn that over already?

5 MR. DIMOPOULOS: He does not have a copy of -- he
6 has his unofficial contributions.

7 MS. SPIELBERG: This is the same issue, Holland &
8 Knight, the same stuff.

9 MR. DIMOPOULOS: There is a strong possibility that
10 Greenberg Traurig won't turn anything over.

11 THE COURT: I have no doubt, most of these firms
12 don't turn over anything.

13 MR. DIMOPOULOS: You are going to get an appearance
14 by one of their litigators, saying we would love to give it
15 to you, and kill you with kindness.

16 But I want to update that by Friday. I will make
17 note of that.

18 THE COURT: I don't know that if I issue a court
19 order or something, or just a subpoena, that they can just
20 say I'm not complying.

21 MR. DIMOPOULOS: They never say they are not
22 complying. You know how they operate. We will give it to
23 you, no not that one, this one.

24 MS. SPIELBERG: And then that is redacted.

25 Judge, the other issue, generally, is that

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1 supervision of my client is supposed to be contingent on a
2 treating therapist saying whether it has to be, and then the
3 therapist comes back, and Judge Everett had said wait to get
4 Dr. Abrams' report.

5 I just want the Court to be on notice that if Dr.
6 Abrams comes back with any opinion that supervision is not
7 necessary, I'm going to be asking to put this case before
8 your Honor to --

9 REFEREE RATNER: What I explained to Jill is that
10 Dr. Abrams does not decide if supervision is or is not in
11 place. You do.

12 MS. SPIELBERG: He will render an opinion.

13 REFEREE RATNER: He can say she should have custody
14 of the three children. That does not mean she is getting
15 it.

16 MS. SPIELBERG: I --

17 REFEREE RATNER: Judge, when Judge Silbermann was
18 head of matrimonial, she said she did not want any
19 recommendations.

20 MS. SPIELBERG: And that's why I am saying to the
21 Judge I want to be back before her.

22 REFEREE RATNER: They still do, but the decision is
23 yours, not --

24 THE COURT: I know.

25 MS. SPIELBERG: That's why I am saying I am going

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1 to likely ask your Honor to hear us on this issue once the
2 report is rendered to the extent the report says she needs
3 to be supervised for the rest of her life.

4 REFEREE RATNER: And based upon the report, the
5 Judge may say I'm not hearing it now, reserve it for trial.

6 MS. SPIELBERG: I don't think that was the
7 intention of the initial agreement that my client consented
8 to nine months ago, that she thought it would take months
9 and now has been almost a year.

10 So I will want to put the issue before the Judge
11 and hope that if Dr. Abrams was the one who was supposed to
12 be determining whether supervision was necessary to begin
13 with, depending on what the report says -- certainly if the
14 report does not give me cause to do that, I am not going to.

15 REFEREE RATNER: He may say unsupervised.

16 MS. SPIELBERG: He may.

17 MR. DIMOPOULOS: Your Honor, there has been an
18 inadvertent misstatement of fact. Again, counsel does not
19 have the record. The on-consent stipulation and order
20 signed June 10, 2019 did not say that.

21 What it said was that upon the wife's treatment and
22 a written recommendation from a therapist that supervision
23 should end, and the next step is on the husband's consent
24 after reviewing it, it could end. If he does not consent,
25 it goes to the Court for a motion.

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1 What happened was exactly 19 days after supervision
2 began, and exactly three visits with a doctor, the wife
3 filed a motion for suspension of therapeutic visitation.

4 Ms. Most called the doctor who rendered an opinion
5 that said she is not a danger to her children, and found out
6 that the person who she was going to for the sole purpose of
7 recommending that supervision should end was never even
8 advised there was supervision.

9 MS. MOST: And she further said that she could not
10 opine on that.

11 MR. DIMOPOULOS: She took the position that I
12 didn't even know there was supervision, why are you asking
13 me to render an opinion.

14 THE COURT: Here is the thing, we don't have the
15 report yet. So we are going to get the report, we are going
16 to read the report. And depending on what the report says,
17 I may or may not agree to have a motion. Okay.

18 MR. DIMOPOULOS: And the report --

19 THE COURT: I think the best thing for everybody is
20 to move this case along and bring it to resolution,
21 including the children and the finances, and move this
22 family forward.

23 MR. DIMOPOULOS: Can I ask a question. Do you guys
24 have the financial documents from Miller Zeiderman or do
25 they have a lien on it?

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1 MS. SPIELBERG: They have a lien.

2 MR. DIMOPOULOS: So I am happy I raised it.

3 Miller Zeiderman is asserting an attorney's
4 retaining lien on the file. Probably the only thing that is
5 not uploaded is their financial discovery.

6 What I would really love to do is get that
7 confidentiality order signed, get you all of the documents.
8 I will need Lisa Zeiderman's consent because I think I'm in
9 essence violating --

10 MS. SPIELBERG: I have not spoken to her directly
11 about this issue so it may be much ado about nothing.

12 MR. DIMOPOULOS: I am just bringing it to the
13 Court's attention because I realize Judge Koba remembers
14 things.

15 If Lisa consents to just the financial documents,
16 we can get these depositions done. Because --

17 MS. SPIELBERG: Is there a deposition -- I got
18 conflicting dates. Are there dates right now?

19 MR. DIMOPOULOS: There were dates on the calendar.
20 We went over those with your Honor. We put them in firm and
21 then I guess Lisa, sensing she was no longer going to be her
22 attorney, kicked the dates and took everything off the
23 calendar.

24 THE COURT: Hold on. Do you not have the file from
25 Miller Zeiderman?

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1 MS. SPIELBERG: We do not have the file.

2 THE COURT: Why are they not turning over the file?

3 MS. SPIELBERG: Well, they are owed money, Judge.

4 But I have not --

5 REFEREE RATNER: As of the time of that motion they
6 were seeking prospective fees.

7 MS. SPIELBERG: They are owed one month. She was
8 going to make a motion to be relieved.

9 THE COURT: That's not a basis for keeping the
10 file, okay.

11 MS. SPIELBERG: Let me reach out to Lisa before --

12 REFEREE RATNER: Could we get other dates?

13 MS. SPIELBERG: She sent me a couple of e-mails.

14 THE COURT: So pick dates.

15 MS. SPIELBERG: For what?

16 THE COURT: We have the whole thing with the
17 husband and the dates.

18 MR. DIMOPOULOS: He is travelling, yes.

19 THE COURT: This was supposed to be done in
20 February.

21 REFEREE RATNER: You are saying those dates -- you
22 did not observe those dates.

23 THE COURT: But she came in before that.

24 MS. SPIELBERG: Those were already off the calendar
25 was my understanding. I learned my lesson after taking a

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1 case with Gus on the eve of deposition.

2 THE COURT: On the motion argument date, I went
3 through this whole thing and picked the deposition dates and
4 they were in February when he came back from traveling, from
5 Texas, or mediation, or whatever he did.

6 REFEREE RATNER: Could we get dates for
7 depositions?

8 MR. DIMOPOULOS: Could I call my client?

9 THE COURT: You can call your client. We are going
10 to close up the record. What you can do is send Irene an
11 e-mail by tomorrow morning at 10:00 am.

12 REFEREE RATNER: The dates to be agreed upon.

13 THE COURT: Speak to your respective clients, check
14 the travel schedules, whatever, so we get it done. And it
15 is going to be done within the timeframe that Ms. Ratner is
16 putting down.

17 REFEREE RATNER: 2/25 by 1:00 p.m.

18 I want one e-mail, one e-mail by tomorrow with the
19 dates that you have agreed upon for depositions.

20 * * *
21 This is to certify that the foregoing transcript is
22 a true and accurate transcription of the original
23 stenographic record.

24



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Donna Loomba
Senior Court Reporter