

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF WESTCHESTER - CIVIL TERM - MATRIMONIAL PART SMC

3 -----x

4 ALLAN KASSENOFF : INDEX NUMBER 58217/2019

5 PLAINTIFF :

6 versus : ATTORNEYS' FEES

7 CATHERINE KASSENOFF : HEARING

8 -----x

9
10 WESTCHESTER COUNTY COURTHOUSE
11 111 DR. MARTIN LUTHER KING, JR. BOULEVARD
12 COURTROOM 205
13 WHITE PLAINS, NEW YORK 10601

14 AUGUST 12, 2022

15 B E F O R E: THE HONORABLE SUSAN M. CAPECI
16 JUDGE OF THE COUNTY COURT

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

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SENIOR COURT REPORTER

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23 SENIOR COURT REPORTER

24 - - -

25 DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
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Proceedings

1 ATTORNEYS' FEES HEARING

2 THE COURT CLERK: This is the Superior Court
3 calendar convened in and for the County of Westchester,
4 today is Friday, Index Number 58217 of 2019.

5 Plaintiff, Allan Kassenoff against the
6 defendant, Catherine Kassenoff.

7 Appearances, please, beginning with counsel for
8 Mr. Kassenoff.

9 THE COURT: Okay.

10 I believe we were in the middle of questioning
11 by Mr. Frisch --

12 MR. SCHNEID: Yes.

13 THE COURT: -- of Ms. Most, correct?

14 MR. SCHNEID: Correct.

15 THE COURT: Okay.

16 Do you even know where you were, topic-wise?

17 MR. SCHNEID: Just give me one second, Judge.

18 I have my documents in front of me.

19 THE COURT: I don't know if you want to deal,
20 preliminarily, with the issue of the E-mails that were
21 not provided or redacted.

22 I'm not going to order them to be produced,
23 because I'm not sure I could have done that, to begin
24 with.

25 But the fact of the matter is Ms. Most did

Proceedings

1 offer to provide them.

2 And didn't she bring your attention to which
3 ones were not there, to begin with?

4 MR. FRISCH: Your Honor, I think that the
5 answer to your question is: I'm not asking Your Honor,
6 right now, to address that.

7 THE COURT: Okay.

8 MR. FRISCH: I'll address it during the course
9 of my examination.

10 And, by the way, just to confirm, it's okay to
11 be seated while I address The Court and speak to
12 Ms. Most.

13 THE COURT: Okay.

14 Go ahead.

15 MR. SCHNEID: Your Honor?

16 THE COURT: Yes.

17 MR. SCHNEID: You know, I understand that we're
18 having the hearing today.

19 I expect to be, at least, the whole day, over
20 her share is \$22,000.

21 If -- if we took 10% off, can we avoid spending
22 the day here for this?

23 THE COURT: If you want to speak to counsel.

24 I -- I -- you know, I don't think that's a bad
25 idea, but that's what I meant to say, I don't think

Proceedings

1 that's a bad idea.

2 MR. SCHNEID: We're going to spend the entire
3 day.

4 And, if they -- and we're fighting -- her share
5 is \$22,000 of what's at-issue.

6 So I'm happy to spend the day.

7 THE COURT: You want to take ten minutes,
8 counsel and speak?

9 MR. FRISCH: It can't hurt to speak to -- it
10 can't hurt to spend the ten minutes.

11 I don't think we're going to be here all day,
12 but that's just my prediction.

13 But I'm happy to talk to counsel.

14 THE COURT: Okay.

15 Why don't you take ten minutes, and I'll be
16 back in.

17 (An off-the-record discussion was held among
18 the three counsel.)

19 THE COURT: Ms. Most, you're under oath.

20 You can bring your water up here.

21 You're still under oath.

22 MS. MOST: Yep.

23 MR. SCHNEID: Your Honor, I -- I -- I
24 attempted, but I wasn't -- I didn't receive a
25 counteroffer.

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1 THE COURT: Okay.

2 Alright.

3 Well, I don't know that it's going to be all
4 day, either, but we'll see.

5 MR. SCHNEID: Thank you.

6 THE COURT: Ready?

7 Okay.

8 Go ahead, Mr. Frisch.

9 DEFENSE EVIDENCE

10 DIRECT EXAMINATION

11 (CONTINUED)

12 BY MR. FRISCH:

13 Q. Ms. Most, good morning.

14 I'm going to start, as I did, last time, when we
15 began the hearing, with some introductory questions, with an
16 eye toward making the examination today more expeditious.

17 And, also, as last time, I may ask you some
18 foundational questions, so that, when I get to the particular
19 E-mail or the particular issue, I've laid the groundwork, just
20 so you know where I'm headed, okay?

21 A. (No response.)

22 Q. Now, since we were last here, on June 16, 2022, the
23 first -- the first day of the hearing, have you reviewed any
24 documents, in preparation for today?

25 A. No.

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Most - Direct

1 Q. Have you reviewed the transcript of the first day,
2 June 16, 2022?

3 A. Yes.

4 That, I did review.

5 Q. Now, let me just go back and establish some of the
6 context for today's testimony.

7 You were appointed as attorney for the children, I
8 believe, in either February, 20-- was it February, 2019, or
9 June, 2019?

10 A. I don't have that document in front of me, but I
11 believe it was in June.

12 And it might have been '21?

13 I'd have to look at the document, to refresh my
14 recollection.

15 Q. It's in the record, and I think it's attached to one
16 of your applications, so it's not dispute.

17 I think it was --

18 A. It's attached to all of my applications.

19 Q. And the application which is the subject of this
20 hearing covers your work from October, 2020, to
21 September 2020, correct?

22 A. I want -- I would want to look at that document to
23 confirm.

24 (Pause.)

25

Most - Direct

1 BY MR. FRISCH:

2 Q. So, Ms. Most, I'm going to hand up, what is NYSCEF
3 Document Number 1752.

4 THE COURT: Let's have that marked as -- I've
5 forgotten.

6 Whose exhibit was the first one?

7 MR. FRISCH: I believe I had marked
8 Defense Exhibit 1.

9 THE COURT: Mark it as Exhibit 2 for
10 identification.

11 THE CERTIFIED COURT REPORTER: Defendant's,
12 Judge?

13 THE COURT: Yes, correct.
14 For identification.

15 MR. SCHNEID: Do you have a copy?

16 MR. FRISCH: I believe I do.

17 - - -

18 (A document was marked for identification as,
19 Defense Exhibit 2.)

20 - - -

21 THE COURT: If you can show it to Mr. Schneid
22 before the witness sees it.

23 (Pause.)

24 MR. FRISCH: Here's a copy for counsel.

25 THE COURT: Okay.

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1 MR. FRISCH: I happen to have another copy, if
2 The Court wants to see it, as well.

3 THE COURT: Thank you.

4 MR. FRISCH: Thank you, Officer.

5 - - -

6 (Handed to the witness.)

7 - - -

8 THE WITNESS: So, Your Honor, I think this is
9 already in evidence, as one of my exhibits.

10 THE COURT: Okay.

11 Alright.

12 THE WITNESS: Okay.

13 BY MR. FRISCH:

14 Q. So, Ms. Most, as with any document I show you, take
15 your time and look at whatever you need to.

16 However, I direct your attention to your
17 Paragraph 7, third paragraph?

18 A. Okay.

19 I'm there.

20 Q. And does that refresh your recollection, as to the
21 time period covered by the application for compensation, which
22 is the subject of today's hearing?

23 A. Yes.

24 Q. And, in fact, is it October 21, 2020, to
25 September 30, '21?

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1 A. September 30, '21.

2 Q. If I said a different date --

3 A. You know what?

4 I didn't hear what you said.

5 Q. That's quite alright.

6 I'll try and speak loudly.

7 A. Okay.

8 Q. Do we agree that the time period covered by the
9 application for compensation at issue today is
10 October 21, 2020, to September 30, 2020 -- October 21, 2020,
11 to September 30, '21?

12 A. Yes, we agree.

13 Q. Now, this is your third application, correct?

14 A. That is correct.

15 Q. As a result of your first application --

16 THE COURT: I'm sorry.

17 Can you just clarify: Third application for
18 the same time period?

19 MR. FRISCH: No.

20 THE COURT: Or third application in -- in
21 sequence?

22 MR. FRISCH: I stand corrected.

23 BY MR. FRISCH:

24 Q. This is your third application for compensation for
25 your work in this case, correct?

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Most - Direct

1 A. That is correct.

2 Q. And the earlier applications covered earlier time
3 periods, correct?

4 A. That is correct.

5 Q. The answer to this may be in this Defense Exhibit 2.

6 But do you recall that, as a result of your first
7 application, The Court approved payment to you of about
8 \$40,023.28?

9 MR. SCHNEID: Objection -- relevance of this.

10 That's outside the scope of this hearing.

11 It's only for this period of time.

12 We just established that.

13 THE COURT: Mr. Frisch, do you want to be
14 heard?

15 MR. FRISCH: I'm establishing the context of
16 this current application.

17 It's a matter of record.

18 It's in her application that is the basis for
19 today's hearing.

20 Again, this is a foundational question to
21 establish the context of this application.

22 It is not my current intention to go into any
23 of the subsidiary information, as part of that first
24 application.

25 THE COURT: Does it have relevance to this,

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1 though?

2 MR. FRISCH: It's -- I can go on, Your Honor.

3 It's on the record.

4 It's in her application.

5 THE COURT: Alright.

6 MR. FRISCH: Just establishing the context.

7 THE COURT: Alright.

8 Overruled.

9 Just -- you can answer that.

10 THE WITNESS: I -- I --

11 THE COURT: If you know.

12 THE WITNESS: I don't know.

13 THE COURT: Okay.

14 BY MR. PIROZZOLO:

15 Q. And, just for the purpose of the record, just to
16 cover, again, the landscape, as a result of your second
17 application, the amount approved by The Court was about
18 \$105,619.17?

19 THE COURT: If you know.

20 That's a question?

21 BY MR. FRISCH:

22 Q. If you know.

23 If you recall.

24 I realize --

25 A. I -- I -- I don't -- I don't know.

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1 And I don't recall.

2 THE COURT: Okay.

3 BY MR. FRISCH:

4 Q. That's fine.

5 A. And it's not -- it's not exactly in this Order.

6 Q. Okay.

7 In any event, am I correct that, by this third
8 application, the one that we are here -- about which we are
9 here -- today, you seek a total, for this period, of
10 \$113,331.80, correct?

11 A. Yes.

12 Q. Alright.

13 Now, if you would look at Defense 2, which is
14 NYSCEF 1752, Paragraph 11.

15 And I'll just read it into the record: Since the
16 commencement of this matter, I have spoken with and met with
17 my clients numerous times, corresponded with counsel and
18 The Court by telephone and letter, attended many, many court
19 conferences and attended the trial of the interim custody
20 matter, responded to many motions, communicated with the
21 children's therapists, reviewed and analyzed the
22 Forensic Custody Evaluation Report.

23 Have I accurately read aloud Paragraph 11 of this
24 application?

25 A. Yes, you have.

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1 Q. And did you draft that paragraph?

2 A. Yes.

3 Q. And, this document -- by the way, I note that, on
4 the copy of this document, 1752, filed on NYSCEF, it's not
5 signed by you.

6 A. Okay.

7 Q. Can you explain why it's not signed?

8 A. I can't.

9 I cannot.

10 Q. Did you intend to sign it before you filed it?

11 A. Yes, I did.

12 Q. Did you intend -- so, in any event, you affirmed or
13 verified the information that's in this document, correct?

14 A. Yes.

15 Q. Now, again, I want to cover something that we talked
16 a little bit about, in the first day, but I'll be -- I'll
17 be -- try and be quick about it.

18 How do you record your time, and will -- how did you
19 record your time for this matter?

20 MR. SCHNEID: Objection.

21 THE COURT: This matter, I'm not -- is it the
22 form of the question?

23 MR. SCHNEID: No.

24 It said, in the transcript, which I read, he
25 asked several questions, specifically this one, about

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1 how -- about how she reports her time and the process she
2 undertakes.

3 We already went through all of this.

4 THE COURT: So, then, asked and answered?

5 MR. SCHNEID: Asked and answered.

6 THE COURT: Overruled.

7 But I don't understand the context of the
8 question: In this matter.

9 Is it the time period or --

10 MR. FRISCH: I beg your pardon.

11 It was -- it was imprecisely phrased.

12 What I meant was: How did you record your
13 time, with regard to the application -- with regard to
14 the application that is 1752?

15 THE COURT: Okay.

16 Go ahead.

17 THE WITNESS: As I believe I've already
18 testified, I keep daily time slips that I enter my time
19 on.

20 BY MR. FRISCH:

21 Q. And, then, how did -- how do you prepare the
22 invoices from which you create the time slips?

23 A. My secretary puts the time that I record it into
24 Time Matters, which is the system that we use.

25 Q. And, then, how do you produce the invoices that you

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1 submit to the parties and to The Court?

2 A. So it's -- once the time is in, it's -- it's -- I
3 guess, it's an automatic electronic addition, and, then, I
4 review them before they go out.

5 THE COURT: So the application prepares the
6 invoice; it's not . . .

7 THE WITNESS: You know, I think that would
8 be -- my secretary inputs the time, and, then, at the
9 bottom, it gives you the total.

10 THE COURT: Okay.

11 THE WITNESS: It's not done by hand.

12 That, I'm sure of.

13 BY MR. FRISCH:

14 Q. So do you understand correctly that, essentially,
15 the invoices that you submit are based on a process, in the
16 first instance, conducted by your secretary, and, then, you
17 review it before submitting it?

18 MR. SCHNEID: Objection.

19 THE WITNESS: No.

20 MR. SCHNEID: Mischaracterizes.

21 That's not what her testimony was.

22 THE COURT: Overruled.

23 If she can answer it.

24 THE WITNESS: No, I very clearly said: I take
25 the first step.

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1 I record the time.

2 My secretary inputs my time into the system.

3 And, then, once a bill is generated, I review
4 it, each and every month.

5 BY MR. FRISCH:

6 Q. So your secretary generates the bill, correct?

7 A. Correct.

8 Q. And she generates it, based on the time slips about
9 which you just testified; is that correct?

10 A. That's correct.

11 Q. And, then, you did review it before you submit it;
12 is that correct?

13 A. That's correct.

14 Q. Before the first day of this hearing, you uploaded,
15 onto NYSCEF, to the Evidence Room, various documents, correct?

16 A. Yes.

17 Q. The documents include E-mails, correct?

18 A. Yes.

19 Q. How did you go about assembling the documents that
20 you uploaded to the Evidence Room?

21 A. I think I've already answered this.

22 Q. Would you mind asking it again -- answering it
23 again?

24 THE COURT: I'm not sure I understand the
25 question.

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1 Could you read the question back.

2 THE CERTIFIED COURT REPORTER: Yes.

3 - - -

4 (The Certified Court Reporter read the
5 following:)

6 QUESTION: "How did you go about assembling the
7 documents that you uploaded to the Evidence Room?"

8 - - -

9 THE COURT: I don't understand what
10 "assembling" means.

11 Physically, had you put them together?

12 MR. FRISCH: Exactly.

13 THE COURT: Well, or: How did you choose them;
14 or: How many you arrange them to be, physically?

15 MR. FRISCH: How did you -- how did Ms. Most
16 put them together?

17 THE COURT: Okay.

18 THE WITNESS: With a stapler.

19 BY MR. FRISCH:

20 Q. How did you identify the E-mail to upload to the
21 Evidence Room?

22 How did you do that process?

23 A. I went through the bill and looked at the E-mails or
24 other documents that were actually saved in the client file
25 that I -- and that those were the ones I produced.

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SENIOR COURT REPORTER

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1 And, the ones that weren't saved, I didn't have.

2 Q. When you say -- what do you mean by "client file"?

3 I don't recall that you testified about a client
4 file at the first hearing.

5 What's -- what do you mean by "client file"?

6 A. So, on my local computer, where I work daily, I -- I
7 have a Kassenoff file.

8 So, each client that I'm working on, if I think an
9 E-mail is important, I save the E-mail to that file.

10 I don't save every E-mail.

11 Some get deleted.

12 Some get deleted on purpose.

13 Just certain E-mails are saved, and those are the
14 ones that I produced.

15 Q. Do you do that -- when do you do that process -- let
16 me ask the question differently: You say that you
17 intentionally delete some E-mails --

18 A. Some.

19 Q. -- and others -- let me ask the -- let me finish the
20 question?

21 You say that you deliberately delete some E-mails,
22 and others get deleted.

23 Is that -- was that your testimony?

24 A. I -- I -- I cannot say that something is
25 inadvertently -- that it's never happened that something got

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1 deleted.

2 The E-mails that I think have any import I generally
3 save.

4 The ones that I don't think are important, I -- I
5 don't save.

6 I don't save every E-mail.

7 Q. When you say you don't save it, do you mean that you
8 delete it?

9 A. That's correct.

10 MR. SCHNEID: Objection.

11 Your Honor, this is beyond the scope of what
12 we're here for.

13 We're talking about the reasonableness of her
14 fees.

15 THE COURT: No, I don't think so.

16 That's overruled.

17 Go ahead.

18 You can answer.

19 THE WITNESS: I'm sorry.

20 MR. FRISCH: Could I ask the question to be
21 read, please.

22 THE COURT: Read the question.

23 - - -

24 (The Certified Court Reporter read the
25 following:)

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1 QUESTION: "When you say you don't save it, do
2 you mean that you delete it?"

3 - - -

4 THE WITNESS: Yes.

5 BY MR. FRISCH:

6 Q. What is the connection between the date of any
7 particular E-mail and your decision either to delete it or put
8 it into the client file?

9 MR. SCHNEID: Objection.

10 These are very broad questions, and she makes
11 the decision on individual items.

12 Can we have specific questions about specific
13 E-mails that she saved or deleted?

14 THE COURT: Would you read the question back,
15 please.

16 THE CERTIFIED COURT REPORTER: Yes.

17 - - -

18 (The Certified Court Reporter read the
19 following:)

20 QUESTION: "What is the connection between the
21 date of any particular E-mail and your decision either to
22 delete it or put it into the client file?"

23 - - -

24 MR. FRISCH: I'll withdraw the question.

25 THE COURT: Yes, I don't understand --

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1 MR. FRISCH: Make it more simple.

2 THE COURT: So I'll sustain the objection.

3 BY MR. FRISCH:

4 Q. Let me rephrase it.

5 THE COURT: Sustained.

6 BY MR. FRISCH:

7 Q. When do you do that deletion when you delete?

8 MR. SCHNEID: Objection.

9 We're talking about a year period.

10 She's had -- we have two boxes of E-mails we
11 have produced.

12 So we're talking about a handful of E-mails
13 that she could be directed to whatever E-mail you're
14 referring to.

15 Not an overly broad question.

16 THE COURT: How do we know we're talking about
17 a handful of E-mails?

18 I'm not sure I -- we've established that it's a
19 handful.

20 I think he's just asking: Is there -- does she
21 do it, for example, immediately upon reading it?

22 That's how I understand his question.

23 Does she do it later, upon review?

24 I think it's a general question.

25 I don't know that we've established how many

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1 E-mails we're talking about, so I don't know that we can
2 know that it's a handful.

3 MR. SCHNEID: Well, can we, at least, narrow
4 the scope, so we know what we're talking about?

5 Because I believe that, if you see the scope
6 and you see how many E-mails we produced that are already
7 in the evidence --

8 THE COURT: I just think it's a general
9 procedural question.

10 If it's different every time, she can say that,
11 and that'll probably be the end of the inquiry.

12 If she has a habit in her billing to delete
13 them immediately, some people don't want to clutter their
14 E-mail.

15 If they think it's immaterial, they just delete
16 it immediately.

17 I think -- is that what you're asking, counsel?

18 MR. FRISCH: Correct.

19 THE COURT: Okay.

20 I think it's just a general procedural
21 question.

22 THE WITNESS: So, generally, I -- when I read
23 the E-mail, if I'm not in my car, I immediately bill for
24 the time that I'm reading the E-mail.

25 And, if I think it's not important, either I

Most - Direct

1 move it -- well, if I think it's not important, I
2 probably delete it.

3 I don't keep it hanging in my -- in my box.

4 BY MR. SCHNEID:

5 Q. Does that apply to E-mails to which you respond?

6 A. Well, I never save responses.

7 So I -- I -- I do -- I do not save responses,
8 because responses would require that I send an E-mail and,
9 then, send it to myself, and I don't do that.

10 Q. When you say you do not save responses --

11 A. My responses.

12 Q. When you say that you do not save responses, do you
13 mean that you delete them?

14 A. No.

15 I don't do anything with them.

16 THE COURT: Well, they're saved, though, to the
17 extent that you conserve Sent mail?

18 A. Yes.

19 THE COURT: You don't affirmatively delete
20 them --

21 THE WITNESS: I --

22 THE COURT: -- you just don't delete them?

23 THE WITNESS: That's correct.

24 THE COURT: Okay.

25 THE WITNESS: And -- and -- but they're they do

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1 get deleted after a while.

2 They're not saved on the system forever.

3 BY MR. FRISCH:

4 Q. What do you -- what do you mean when you say: They
5 do get deleted after a while?

6 A. So, at some point, I have an IT guy.

7 He comes in and cleans up the computer.

8 And he deletes them, because they're there in the
9 many, many, many numbers.

10 I don't even know how many.

11 Q. With what frequency does your IT guy come in to do
12 that process?

13 MR. SCHNEID: Your Honor, we're going very far
14 to record keeping, which you said these weren't required
15 to be produced in the first instance.

16 So, now, we're talking about the record.

17 And I remind The Court she's not a party to
18 this litigation.

19 There is no affirmative obligation to maintain
20 records.

21 She does not believe that --

22 THE COURT: I don't think he's maintaining
23 that.

24 I think he's just trying -- I mean, this is
25 about the billing process.

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1 And that's what this hearing's about.

2 So go ahead.

3 Overruled.

4 MR. FRISCH: And, again, I apologize, but I
5 don't remember . . .

6 THE COURT: Could you read the question back.

7 MR. FRISCH: Thank you, Judge.

8 - - -

9 (The Certified Court Reporter read the
10 following:)

11 QUESTION: "With what frequency does your IT
12 guy come in to do that process?"

13 - - -

14 THE WITNESS: I have no idea.

15 BY MR. FRISCH:

16 Q. How many people work at most and Schneid?

17 MR. FRISCH: Is it Schneid?

18 I'm sorry.

19 MR. SCHNEID: It's Schneid.

20 It's Schneid.

21 MR. FRISCH: I'm sorry.

22 Thank you.

23 BY MR. FRISCH:

24 Q. How many lawyers work at -- how many lawyers work at
25 Most & Schneid?

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1 MR. SCHNEID: Again, Your Honor, it's beyond
2 the scope of her role.

3 She's the only lawyer at the firm that handles
4 this case, other than my fiancéé.

5 THE COURT: What's the relevance, Mr. Frisch?

6 MR. FRISCH: Your Honor, there is -- well, let
7 me just back up, for a second, and anticipate some other
8 objections.

9 Your Honor has broad discretion, as to what to
10 do at the end of this hearing on Ms. Most's application.

11 You can order that -- you can approve the full
12 payment.

13 You can approve none of it.

14 You can consider some of the things we'll go
15 into today as reducing the amount that has been
16 requested.

17 The problem here is that Ms. Most believed,
18 albeit incorrectly, that Your Honor ordered her to
19 produce E-mails.

20 And, so, on March 23, 2021, at Page 39, she
21 agreed to produce all E-mails that are not privileged;
22 that is, E-mails between her and her clients.

23 Now, from my reading the transcript, Your Honor
24 did not Order that.

25 Your Honor, I think, is right about that.

Most - Direct

1 But Ms. Most testified, at Page 25 of the
2 transcript of March 23, that she believed Your Honor had
3 ordered it.

4 As I go through the documents today and
5 question Ms. Most about them, there are some things that,
6 in my view, create an inference of deliberate deletion.

7 Other things that are, quote/unquote, missing,
8 with no explanation, as to why they are missing.

9 Now, at the end of the hearing, the
10 questioning, whatever submissions we may make, whatever
11 arguments Your Honor may permit, Your Honor will resolve
12 what inferences are fair and what inferences are not.

13 But Ms. Most is a witness in the witness stand.

14 I requested in writing and, then, before we
15 began, that we, perhaps, could do this by submissions,
16 but Ms. Most wanted to testify.

17 And her credibility and the credibility of what
18 she's done, in connection with this hearing and her
19 application, are very much in play.

20 I recognize that I can't go into every question
21 for the past three-and-a-half-years, or however long it's
22 been at this question.

23 I'll be on some kind of a leash, short or
24 otherwise, as to how far I can go.

25 But I think Your Honor will see, from my

Most - Direct

1 questioning, there's a problem here of some sort.

2 And we'll get to the applicable standard that
3 applies to this hearing, in a second.

4 But the questions that I'm asking, I believe,
5 properly and fairly lay the groundwork for my questions
6 that Ms. Most has put into play by believing that
7 Your Honor ordered it and by the manner in which she made
8 production.

9 THE COURT: Okay.

10 I guess we'll go back to the specific question
11 he objected to, which is: How many lawyers are in the
12 firm?

13 MR. FRISCH: I want to understand.

14 So Ms. Most just testified that there's an IT
15 guy that comes in and does some sort of periodic deletion
16 of things that are on the system.

17 I want to understand what the system is, who
18 supervises that?

19 Is there a server?

20 How many lawyers are in the firm?

21 THE COURT: Alright.

22 MR. FRISCH: Otherwise, Ms. Most can just say:
23 Well, there's a guy who does it. I don't know. If
24 it's -- if you don't have something you think you should
25 have . . .

Most - Direct

1 This IT guy who comes in at some unknown
2 frequency, at some unknown time, supervised by someone,
3 that's your guy.

4 I'm not going to call the IT guy.

5 I just want the answers to my questions.

6 MR. SCHNEID: Your Honor, the inner workings of
7 our firm, outside of her role in this, are not fair game
8 in this.

9 While --

10 THE COURT: The number of lawyers is the inner
11 works?

12 MR. SCHNEID: It's not that.

13 But, if you see --

14 THE COURT: Well, that's the question.

15 MR. SCHNEID: But it's -- if you see where
16 they're going, they're attacking her personally.

17 I'm sure you're aware of the number of messages
18 posted on the Internet, where Ms. Kassenoff directly
19 accuses Ms. Most --

20 THE COURT: I'm not aware, because I don't read
21 the Internet to look at that.

22 MR. SCHNEID: Well, there are.

23 She does it regularly.

24 She's posted some of the E-mails we produced.

25 She posted on the Internet.

Most - Direct

1 This is not -- they're using this as an
2 opportunity to attack her personally.

3 THE COURT: I don't sense that he's done
4 anything to attacker her personally.

5 MR. SCHNEID: Well, he may not, but they're
6 laying a foundation --

7 THE COURT: But this hearing is what this is
8 about.

9 MR. SCHNEID: But the amount of lawyers we have
10 is outside the scope of whether she actually billed her
11 time.

12 THE COURT: Counsel, I'm going to overrule
13 this.

14 We just spent five minutes on a question that
15 should have been easy for anybody to answer.

16 Overruled.

17 MR. FRISCH: May I have the question, the
18 pending question?

19 THE COURT: I'll tell you.

20 It's: How many lawyers work in her firm?

21 BY MR. FRISCH:

22 Q. How many lawyers --

23 MR. FRISCH: Thank you.

24 BY MR. FRISCH:

25 Q. How many lawyers work at Most & Schneid?

Most - Direct

1 A. Currently, four.

2 Q. For how long have there been four lawyers?

3 A. A month, or so?

4 Q. And, before -- I'm not going to take you back to
5 history, so Mr. Schneid doesn't have to object -- but how
6 long -- how many lawyers were there before the four lawyers?

7 A. Three lawyers.

8 Q. And how -- and for what period of time were there
9 three lawyers?

10 A. There were more prior to that.

11 Prior to COVID, there were more.

12 Q. So that would be the beginning part of 2020,
13 correct?

14 A. Prior to COVID.

15 Q. How many non-lawyer staff does the firm have?

16 A. Two.

17 Q. Is somebody -- has that -- has that been consistent
18 over the time, since the beginning of 2020, two non- -- two
19 non-lawyer --

20 A. Yes.

21 Q. -- members of the firm?

22 A. Yes.

23 Q. Who at the firm is in charge of IT?

24 A. (No response.)

25 Q. If anyone?

Most - Direct

1 If anyone?

2 Let me ask the question a different way: Is anyone
3 at the firm in charge of IT?

4 A. I believe my partner, Adam Schneid, is.

5 Q. So, as you sit here today, do you know whether the
6 IT guy comes into your office on a regularly-scheduled,
7 periodic basis?

8 A. The answer is: The IT guy checks our computer
9 probably daily or every other day, and it's virtual.

10 He only comes into the office when there is a
11 physical problem that has to be handled in the office.

12 He accesses all our -- our computers from his
13 office.

14 Q. Does he have discretion, as you know -- if you -- if
15 you know, and as you understand it, to delete things on your
16 computer or on your firm system, without first seeking
17 authorization?

18 MR. SCHNEID: Objection.

19 That's a very broad question.

20 There's a lot of different things that could
21 potentially be deleted.

22 THE COURT: Well, can you restrict it to client
23 E-mails?

24 MR. FRISCH: Yes.

25

Most - Direct

1 BY MR. FRISCH:

2 Q. With regard to your E-mails, with regard to a
3 particular matter on which you're working, does your IT guy
4 have discretion to delete without seeking prior authorization?

5 A. He would never delete from those E-mails that are
6 saved in the client E-mails.

7 He might delete the ones that are deleted E-mails,
8 when they get to be very high numbers.

9 Q. What's your basis for believing that he might so
10 delete E-mails, as you just testified?

11 A. He has told me, in the past, that he was going to be
12 deleting deleted E-mails.

13 Q. When did he last tell you that?

14 A. I don't recall.

15 Q. Has he told you that once or more than once?

16 A. More than once.

17 Q. How frequently has he told you that?

18 A. I don't recall.

19 Q. What's his name?

20 A. Doug -- it'll come to me in a minute.

21 (Pause.)

22 THE WITNESS: It's Doug -- it's Deb Systems,
23 D-E-B -- Brandt, B-R-A-N-D-T.

24 (Pause.)

25

Most - Direct

1 BY MR. FRISCH:

2 Q. So was it your testimony that, if you do not take
3 the affirmative act of moving a client-related E-mail into the
4 client file, it's subject to deletion?

5 A. No.

6 That is not what I said.

7 Q. Well, explain.

8 Tell me.

9 A. If I delete an E-mail and I actively delete an
10 E-mail which I don't think is necessary to be saved, that
11 might be -- that would be subject.

12 My client E-mails that I believe are important I
13 move into my client box.

14 Q. Now, as it relates to your application for
15 compensation that's the subject of this hearing, is it fair to
16 say that you might delete an E-mail for which you're billing?

17 A. Could be.

18 Yes.

19 Q. You say: Could be.

20 Has that happened, with regard to this third
21 application that we're here about today?

22 A. I -- I am sure there are E-mails that I have billed
23 for reading that I have not saved.

24 Q. When you say, "not saved," again, so we're clear,
25 you mean: Either you put them into the client file for saving

Most - Direct

1 or they're deleted?

2 A. Yes.

3 Q. Do I have that right?

4 A. That's correct.

5 Q. This process that we've been talking about, is that
6 the process that's going on since July 1, 2022?

7 A. Since that period of time is not in question today,
8 I'm not sure I have to answer that question.

9 Q. You're credibility -- I don't want to argue with
10 you.

11 Can you answer the question?

12 MR. SCHNEID: Objection.

13 This is outside the scope.

14 THE COURT: Alright.

15 Sustained.

16 BY MR. FRISCH:

17 Q. Was that process that you testified about in play
18 during the entirety of September, 2020 -- I'm sorry --
19 October, 2020 to September, 2021?

20 A. Yes.

21 Q. I want to direct you to, what I'll mark for
22 identification as, Defense 3.

23 If you can just bear with me.

24 (Pause.)

25 MR. FRISCH: And I think I have enough copies

Most - Direct

1 to distribute.

2 (Handed to the Court Officer.)

3 - - -

4 (Copies were distributed.)

5 - - -

6 (A June 15, 2022 letter was marked for
7 identification as, Defense Exhibit 3.)

8 - - -

9 (Handed to the witness.)

10 - - -

11 BY MR. FRISCH:

12 Q. Take your time, Ms. Most, if you will.

13 I won't rush you.

14 (Pause.)

15 BY MR. FRISCH:

16 Q. Is this a letter, Ms. Most, that you wrote?

17 A. Yes.

18 Q. And it's on NYSCEF a Document 2356; it's dated,
19 June 15, 2022, correct?

20 A. Correct.

21 Q. I want to direct your attention to the third
22 paragraph.

23 MR. SCHNEID: Objection.

24 It's not in evidence, and I object to it being
25 put into evidence.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 MR. FRISCH: Your Honor, it's part of the
2 record of the case.

3 MR. SCHNEID: It's not in evidence.

4 My -- Ms. Most is not a party here.

5 She might be a witness to this application, so
6 it's not a party admission.

7 Beyond that, this is not relevant to the
8 reasonableness of her fees of why we're here.

9 It's one specific issue, whether what she did
10 was accurately depicted in her billing and whether the
11 steps she took was reasonable.

12 We have two boxes of documents that are in
13 evidence that have 90-plus percent of every E-mail that's
14 not privileged that was produced.

15 THE COURT: Are you objecting to him
16 questioning about a letter she put on NYSCEF?

17 MR. SCHNEID: I'm objecting to the -- about a
18 letter, because what we're doing is: We're expanding the
19 scope beyond that which we're here.

20 And I understand from where Your Honor sits
21 that this is not a big deal.

22 But the same reason I objected before --

23 THE COURT: I didn't say it wasn't a big deal.

24 Please don't minimize that.

25 Don't put words in my mouth to minimize --

Most - Direct

1 MR. SCHNEID: I don't mean it from that
2 perspective.

3 You don't appreciate that, when we leave this
4 courtroom, things get posted about Ms. Most personally on
5 the Internet by Ms. Kassenoff.

6 And, while my goal here is to limit what's
7 happening here, because, what happens, the transcript,
8 everything else, is going to be fodder for her online
9 followers to damage her personally, and that is why I'm
10 objecting the way I am.

11 THE COURT: So what are you suggesting: I not
12 have the hearing, then, because she made postings on
13 Facebook?

14 MR. SCHNEID: I'm not suggesting that, but I'm
15 suggesting the hearing be limited to her actual bills and
16 the reasonableness of the bills.

17 THE COURT: Mr. Schneid, part of the problem
18 here is: Your partner agreed to turn over E-mails and,
19 then, didn't turn over them all.

20 And, then, didn't -- it's not like they -- I'm
21 turning them all over, but, let me tell you: 1 through
22 50, I couldn't find. They're deleted.

23 There's no mention of that.

24 I think this is -- this is fair territory for
25 him to question her.

Most - Direct

1 I said before: I probably would not have
2 ordered her to turn them over.

3 She volunteered to do it.

4 And, now, we're in this situation, so I don't
5 know what to make of that.

6 Now, there are E-mails that are not there.

7 I can see already, from reading the letter,
8 where there might be a question about that.

9 It's overruled.

10 Go ahead.

11 BY MR. FRISCH:

12 Q. Before I get to Defense Exhibit 3, Ms. Most, when
13 you produced these E-mails -- or, rather, uploaded them to the
14 Evidence Room on NYSCEF -- did you apply to Justice Capeci for
15 a Protective Order?

16 A. No, I did not.

17 I -- I -- I did not.

18 And you will note that I also turned over hundreds
19 of E-mails that were not billed for.

20 MR. FRISCH: Move to strike the last part of
21 the answer.

22 THE COURT: That's sustained.

23 MR. FRISCH: Now, just as a matter of protocol,
24 when I moved into -- when I showed Ms. Most, the first
25 day of the hearing, Defense Exhibit 1, I don't believe

Most - Direct

1 Your Honor required that I moved it into evidence,
2 because it's part of the record of the case.

3 So I don't think I need to move this into
4 evidence, but I will, if Your Honor wishes.

5 THE COURT: I don't think you need to, either.
6 it's --

7 MR. FRISCH: Okay.

8 THE COURT: -- it's part of the case.

9 MR. FRISCH: Fair enough.

10 BY MR. FRISCH:

11 Q. I want to direct your attention, Ms. Most, to,
12 again, the third paragraph.

13 I'm going to call your attention to one sentence.

14 I'll read it aloud.

15 It's the third paragraph, bottom of Page 1.

16 And I'm going to read the entirety of the paragraph,
17 of that paragraph, quote: I remind The Court that the issue
18 at hearing is the reasonableness of fees.

19 Any missing E-mails are of no moment.

20 The existence of the E-mails do not confirm the
21 reasonableness of fees.

22 The fees are measured by what was reasonable and
23 fair when rendered under the circumstances, closed quote.

24 Have I read that accurately?

25 A. Are you asking me?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 Q. I am.

2 A. Yes.

3 Q. The word, "measured," in what I just read, what
4 did -- what do you mean by "measured," in the context of this
5 sentence in this paragraph?

6 A. I think that -- that -- The Court's evaluation.

7 Q. Is it your -- is it your testimony -- withdrawn.

8 Is it your view that any inquiry into the
9 reasonableness of your fees is essentially arithmetic; that
10 is, multiply your billing by the time spent, your billing rate
11 by the time spent?

12 A. No.

13 It's whether or not the work was done.

14 Q. So, if the work was done, is it your testimony or
15 your view that it, then, is a matter of arithmetic,
16 multiplying the time spent for the work done, multiplied by
17 your billing rate?

18 A. So long as it is -- it is reasonable to have done
19 it.

20 So, in other words, I mean, that's the objection
21 of -- the objective of this hearing.

22 Is it reasonable to read an E-mail that's sent to
23 you?

24 Q. In anticipation of the hearing, have you done any
25 research into what a judge should consider in assessing the

Most - Direct

1 reasonableness of fees?

2 MR. SCHNEID: Objection -- calls for a legal
3 conclusion.

4 THE COURT: No.

5 He asked if she did any research.

6 It's a Yes-or-No question.

7 THE WITNESS: No.

8 BY MR. FRISCH:

9 Q. So, putting aside whether you did research, is it
10 your view that a court may consider; for example, whether the
11 attorney bills for work that is excessive, redundant, or
12 otherwise unnecessary?

13 MR. SCHNEID: Objection.

14 BY MR. FRISCH:

15 Q. Is that part of the inquiry, in your view?

16 MR. SCHNEID: Objection.

17 THE COURT: Overruled.

18 Overruled.

19 THE WITNESS: Can you just say that, again?

20 MR. FRISCH: May I have the question read back?

21 THE COURT: Yes.

22 - - -

23 (The following was read by the Court Reporter:)

24 QUESTION: "So, putting aside whether you did
25 research, is it your view that a court may consider; for

Most - Direct

1 example, whether the attorney bills for work that is
2 excessive, redundant, or otherwise unnecessary?

3 "Is that part of the inquiry, in your view?"

4 - - -

5 MR. SCHNEID: And note my objection,
6 Your Honor.

7 THE WITNESS: I would assume so.

8 (Pause.)

9 BY MR. FRISCH:

10 Q. Does your firm have a -- does your firm or you have
11 a written document retention policy?

12 A. A written document retention policy?

13 No.

14 THE COURT: Can you be specific?

15 Unless you know what he's talking about.

16 Exactly what you mean by "a written document
17 retention policy."

18 BY MR. FRISCH:

19 Q. Do you or your firm have a policy, with regard to
20 retaining documents?

21 MR. SCHNEID: Objection.

22 Could we have the scope of what we're talking
23 about.

24 THE COURT: Yes.

25 Could you be more specific, Mr. Frisch.

Most - Direct

1 Objection sustained.

2 MR. FRISCH: I'm asking: With regard to the
3 practice of the firm and Ms. Most's practice, whether she
4 has a written retention policy regarding client
5 documents.

6 THE COURT: These are documents sent by the
7 client; signed by the client; generated on behalf of the
8 client?

9 MR. FRISCH: All of that.

10 Client files, including things that are sent to
11 or received by -- sent to the client or received from the
12 client.

13 THE COURT: Okay.

14 Go ahead.

15 You can answer.

16 THE WITNESS: I do not.

17 BY MR. FRISCH:

18 Q. And, to your knowledge, just to cover all bases,
19 does the firm have one, independent of you?

20 A. No.

21 Q. Now, let's turn back, if we could, to
22 Defense Exhibit 3.

23 Do you still have that in front of you?

24 A. Yes, I do.

25 Q. At the end of the second paragraph, it reads, quote:

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 No text messages are ever saved by me, so any text message
2 billed for are not available, closed quote.

3 Do you see that?

4 A. Yes.

5 Q. From time to time --

6 A. Sorry.

7 I have a -- I have a -- sorry.

8 Q. That's okay.

9 Do you want some water?

10 THE COURT: Let's get her some water.

11 THE WITNESS: I have water.

12 I have water.

13 THE COURT: Alright.

14 BY MR. FRISCH:

15 Q. From time to time, during your representation of the
16 children in this case, did you communicate by text message
17 whether or not the texts were privileged?

18 A. I think there were a couple of text messages that I
19 read.

20 But I -- I do not save texts, so --

21 Q. And, when you say -- do you have an iPhone, or
22 Android, or, perhaps, something else?

23 A. I have an iPhone.

24 Q. When you say that you don't save text messages, do
25 you mean that you delete them?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 A. Yes.

2 Q. And how soon after sending or receiving a text do
3 you delete, as a matter of practice?

4 A. I -- I don't practice using texts, so I don't text
5 with my clients, at all.

6 And, if a client does text me, I ask them to please
7 send me an E-mail.

8 So --

9 THE COURT: But, if they do and you read it, do
10 you delete it, right then and there?

11 THE WITNESS: I -- yes --

12 THE COURT: Generally?

13 THE WITNESS: -- I delete it.

14 BY MR. FRISCH:

15 Q. There are text messages in this case for which you
16 are billing that are not privileged; that is, they are not
17 with one of your clients; is that correct?

18 A. I think there was -- I think I got a text from
19 Dr. Kuhl once.

20 The texts from my clients, I send to myself as an
21 E-mail.

22 If -- if I've gotten any, as a general rule, that's
23 what I might do for something that I needed to save.

24 I -- I -- I don't save texts.

25 Q. Well, you say you don't save texts, and I just want

1 to go back.

2 If you send someone a text, do you delete it as soon
3 as you send it?

4 A. Yes.

5 Q. And, so, if that person responds to your text, do
6 you have a way of recalling the thread, as to what they might
7 be responding to?

8 MR. SCHNEID: Objection.

9 We're talking about hypotheticals.

10 Can we be focused on the text messages that she
11 billed on this particular case?

12 THE COURT: He's asking about a procedural
13 question.

14 It's overruled.

15 THE WITNESS: So 99 percent of my texts are to
16 my children and my grandchildren.

17 I do not save those.

18 BY MR. FRISCH:

19 Q. And, when you say, "your children," you mean,
20 your -- your -- your real-life children --

21 A. My children.

22 Q. -- and grandchildren?

23 A. My children and my grandchildren.

24 Q. Meaning, not the -- not the clients?

25 A. Right.

Most - Direct

1 Q. Okay.

2 With regard to text messages that you use that you
3 send or receive as part of your representations, do you -- is
4 it your testimony that you delete those texts as soon as you
5 send it?

6 A. I -- I --

7 THE COURT: Generally.

8 THE WITNESS: Yes.

9 I don't keep texts.

10 I can't stand having a large text folder, so I
11 delete them.

12 BY MR. FRISCH:

13 Q. Have you ever, in regard to such a text, printed it
14 out before deleting it?

15 MR. SCHNEID: Objection.

16 This is beyond the scope.

17 THE COURT: In context of this case,

18 Mr. Frisch?

19 MR. FRISCH: I am, yes.

20 Correct.

21 THE WITNESS: No.

22 MR. FRISCH: I've forgotten the question.

23 THE WITNESS: You asked if I printed it out.

24 BY MR. FRISCH:

25 Q. You never printed them out, okay.

Most - Direct

1 A. No.

2 Q. So let me call your attention to Exhibit -- the
3 exhibit which corresponds to your May, 2021, invoice.

4 Oh, take it back.

5 Let me see if I have it.

6 MR. FRISCH: Your Honor, let me see if I can
7 get a copy of this for Ms. Most.

8 And, if I can't, I'll come back to it after the
9 break.

10 (Pause.)

11 BY MR. FRISCH:

12 Q. So let me show you -- I only have one copy of
13 this -- but it's in the Evidence Room.

14 I think we're Defense Exhibit 4.

15 And I believe this is your Exhibit 1-9, your
16 invoice, covering the period, May 24, 2021, to June 30, 2021.

17 Thank you.

18 I appreciate it.

19 - - -

20 (Handed to The Court.)

21 - - -

22 MR. SCHNEID: Could I see a copy before it goes
23 in.

24 (Handed to Attorney Schneid.)

25 THE COURT: Do you want to mark that as

Most - Direct

1 Exhibit 4?

2 THE CERTIFIED COURT REPORTER: Yes.

3 MR. SCHNEID: I'm sorry.

4 Could I see that again.

5 THE COURT: As soon as she's finished marking
6 it.

7 - - -

8 (Former Exhibit 1-9, an invoice, dated, May 24,
9 2021, to June 30, 2021, was marked for identification as,
10 Defense Exhibit 4.)

11 - - -

12 (Handed to Attorney Schneid.)

13 - - -

14 (Handed to the witness.)

15 - - -

16 THE WITNESS: Thank you.

17 BY MR. FRISCH:

18 Q. And I'm going to call your attention, Ms. Most, to
19 one particular entry.

20 So, if you want me to do that now, I will.

21 A. Sure.

22 Q. Okay.

23 So, if you go to the page which would have your work
24 done for June 1, 2021?

25 A. Are you -- is it the last page you're talking about?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 (Pause.)

2 THE WITNESS: Oh.

3 Wait a second.

4 BY MR. FRISCH:

5 Q. June 1, 2021.

6 June 1 --

7 A. I'm sorry.

8 Q. -- of the Year 2021.

9 A. Okay.

10 I'm sorry.

11 Q. Okay.

12 A. I -- I -- I wasn't thinking.

13 THE COURT: Please make sure that each one
14 stops speaking before the other one speaks.

15 But, just so I know, this exhibit an invoice?

16 THE WITNESS: Yes.

17 MR. FRISCH: Correct.

18 THE COURT: Okay.

19 Thank you.

20 THE WITNESS: Okay.

21 THE COURT: Go ahead.

22 BY MR. FRISCH:

23 Q. So, if you look at your invoice for June 1, 2021, I
24 believe, the fourth entry down says: CWM.

25 Those are your initials, correct?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 A. Yes.

2 Q. And, then, it says -- it says the word, "writing."

3 Is it fair to say writing is probably something in
4 the time program that you have to select as an option?

5 Is that fair?

6 A. Yes -- I -- yes.

7 Q. Because I notice there's telephone; read and review;
8 preparation --

9 A. Right.

10 Q. -- in and other of your entries.

11 So writing is -- is likely something -- is likely an
12 option the program provides for you, correct?

13 A. It must be.

14 Q. Okay.

15 But, under that, it says: Text message to Allan.

16 Do you see that?

17 A. Yes.

18 Q. And you've charged .10.

19 A. .1.

20 Q. .1.

21 Fair enough.

22 .1, which, given the \$400 hourly rate, equals \$40,
23 correct?

24 A. Correct.

25 Q. So this is an occasion when you texted a message to

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1 Allan Kassenoff, correct?

2 A. (No response.)

3 Q. Did you delete it right after you texted it?

4 A. I'm sure I did.

5 Q. Did he respond?

6 A. I have no idea.

7 I must have been responding to a text from him,
8 'cause I generally do not text.

9 Q. And, so, with regard to any text you may have
10 received from Mr. Kassenoff before you sent a text, that one's
11 gone, too, correct?

12 A. Yes.

13 THE COURT: I just have a question: The -- the
14 characterizations of the time, is that something that,
15 when your secretary inputs it, it recognizes the IT -- in
16 other words, there's certain categories, so that the
17 application knows how to bill it?

18 THE WITNESS: Okay.

19 So -- so I -- I write on my billing slip the
20 date --

21 THE COURT: Right.

22 THE WITNESS: -- and what I've done.

23 So, if it's read and respond to an E-mail --

24 THE COURT: Right.

25 THE WITNESS: -- or writing a letter would be

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1 writing, or --

2 THE COURT: But, those categories, are those
3 something you picked yourself, or is it something --

4 THE WITNESS: I -- I -- I generally write.

5 THE COURT: Okay.

6 So it's not something, like, at a menu --

7 THE WITNESS: No.

8 THE COURT: -- that you need to --

9 THE WITNESS: No.

10 THE COURT: -- the application?

11 THE WITNESS: No.

12 THE COURT: Okay.

13 I'm just curious.

14 Alright.

15 THE WITNESS: So, for example, you'll see:
16 Prep for conference.

17 That would be a P.

18 THE COURT: Okay.

19 THE WITNESS: Appearance, I put in as an A.

20 Or, if I'm having a conference, it would be a
21 C.

22 THE COURT: Okay.

23 I didn't know if it was something that the
24 certain categories that the application had to be one of
25 those things.

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1 THE WITNESS: Well, there are.

2 But I -- I -- I'm the one who picks that
3 category.

4 THE COURT: Okay.

5 Okay.

6 I got you.

7 BY MR. FRISCH:

8 Q. So this text message to Mr. Kassenoff is something
9 for which you billed, correct?

10 A. Yes.

11 Q. Did you ever send Mr. Kassenoff a text for which you
12 did not bill?

13 A. Not that I'm aware of.

14 Q. Did you ever receive a text message from
15 Mr. Kassenoff that you reviewed after which you did not bill?

16 MR. SCHNEID: Objection.

17 If she didn't bill for it, it's outside the
18 scope of what we're here for.

19 It's only about what she actually billed for --

20 THE COURT: Overruled.

21 MR. SCHNEID: -- and charged for.

22 THE WITNESS: I don't text, as a general rule.

23 So I'm -- I'm -- I'm going to say, honestly,

24 I -- I -- I -- I don't --

25 THE COURT: Do you know?

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1 I mean, I would be surprised if you did know.

2 I mean --

3 THE WITNESS: I -- I -- I don't know.

4 I don't -- I don't even check my texts daily.

5 So I'm not a texter.

6 So, if -- if -- if my children really want
7 something, they know they have to call me.

8 If they want to send me a picture of something,
9 they'll call me and say: I just texted you something.

10 I don't check my texts.

11 I'm not a texter.

12 BY MR. FRISCH:

13 Q. Have you ever communicated with Mr. Dimopoulos by
14 text?

15 A. I -- I can't say never, but I don't use that mode,
16 as a general rule.

17 Q. And, if there were any such texts, you would have
18 deleted them; is that your testimony?

19 A. I delete every single text.

20 The -- I have one text that I have in my system that
21 I've kept there, which are -- which is some of my
22 granddaughter's artwork.

23 That's the only text, because I don't know how to
24 move it somewhere.

25 And I didn't want to lose it.

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1 But every other text gets deleted within a
2 period of, you know, a day or two.

3 Q. Let me go back to question -- we can do this --
4 trying to figure out.

5 Maybe I shouldn't worry about Mr. Schneid's --
6 Mr. Schneid's objections.

7 But, in any event, at the first day of the hearing,
8 on Page 8, you agreed that one of the facts underlying your
9 various applications for compensation is that there has been,
10 in this case, a lot of litigation.

11 Do you remember that testimony?

12 A. Yes.

13 Q. And, as I, you know -- and, in fact, there's been a
14 lot of litigation in this case, during your participation in
15 the case, from June, 2019, until the present, correct?

16 A. That's correct.

17 Q. And there's been a lot of litigation arising from
18 this case in either form -- in other forms, correct?

19 A. I -- I don't understand what you mean.

20 Q. Well, are you aware that Ms. Kassenoff has filed
21 lawsuits against Mr. Kassenoff?

22 A. Those -- those things have come up.

23 I have no direct information about it, other than
24 what I've heard when I've been sitting in court or at a
25 virtual conference.

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1 I've had --

2 Q. My only question -- I'm not going to ask you
3 questions --

4 THE COURT: Let's just take a five-minute break
5 for the Reporter, okay?

6 Come back at five of.

7 You can step down.

8 - - -

9 (A short recess was taken.)

10 - - -

11 THE COURT: Alright.

12 Go ahead.

13 MR. FRISCH: Your Honor, I just want to put
14 something on the record as a marker, so I'm not -- so
15 there's no claim of waiver later on.

16 Some of the testimony that Ms. Most has
17 provided today is whether or not it's unexpected to me.

18 It raises issues that may or may not become
19 relevant as we go along.

20 It involves the practice of deleting things, in
21 general.

22 And, so, to the extent that Mr. Schneid and her
23 firm is the person who is in control of or played some
24 role in part of this process about which Ms. Most is
25 unfamiliar -- unfamiliar -- it's possible that he's a

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1 witness to things that are relevant at this hearing.

2 I'm sure that Mr. Schneid is -- can speak for
3 himself about what he deems to be his professional
4 responsibility, if he is a witness in a matter in which
5 he's participating.

6 And I'm not making any motion right now.

7 All I'm saying, right now, is that I recognize
8 the issue.

9 I need time to think about it.

10 I need to see how this hearing plays out.

11 But I don't want to be blamed, in retrospect,
12 for not raising the issue and waiving it when it first
13 dawned on me.

14 THE COURT: Okay.

15 Go ahead.

16 Next question.

17 MR. SCHNEID: I just want to be clear --

18 THE COURT: Go ahead.

19 MR. SCHNEID: -- the issue is that I might be
20 called as a witness?

21 That -- that's the scope of it, their issue,
22 or -- or that my firm deletes E-mails that we deem might
23 be irrelevant.

24 What is the issue that we're talking about
25 here?

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1 THE COURT: Well, I don't think he's formulated
2 an issue yet.

3 I think he's thinking -- when he thinks of one,
4 he's going to let us know?

5 Is that what you . . .

6 I mean, I think it may be the issue of whether
7 you should be representing her if you're a possible
8 witness.

9 But I don't know if that's relevant here.

10 But --

11 MR. SCHNEID: I think that's --

12 THE COURT: -- I'll let you be heard.

13 So, I mean, if and when it comes up, I'll let
14 you be heard.

15 MR. FRISCH: And the other thing, I think I was
16 somewhat flip earlier, when I said that I'm not going to
17 call the IT guy.

18 I have no current intention of calling the IT
19 guy.

20 But I need to make, obviously, a more reasoned
21 decision after time goes along.

22 Lest Mr. Schneid be concerned, I'm just being a
23 careful lawyer making a record.

24 I have made no plans with that -- in that --
25 regard.

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1 THE COURT: Well, let -- let me just be clear
2 for -- for my purposes here, though.

3 I mean, you may not consider a waiver, but you
4 certainly are not opposed to his continuing with
5 testimony today.

6 MR. FRISCH: I'm not opposed to continuing
7 testimony today.

8 THE COURT: Alright.

9 Fine.

10 That's all I need to know.

11 Alright.

12 Thank you.

13 Go ahead.

14 BY MR. FRISCH:

15 Q. So I want to pick up where we left off, Ms. Most,
16 before we took a break, and I'm not asking you whether you
17 know the details.

18 Do you know that Ms. Kassenoff has filed, at least,
19 one lawsuit against Mr. Kassenoff?

20 A. I -- I am aware, yes.

21 Q. Do you know that she has filed, at least, one
22 professional grievance against Mr. Kassenoff?

23 A. I -- I don't have direct knowledge, but I might have
24 heard about that.

25 Q. Do you know, are you aware, that she has filed, at

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1 least, one lawsuit against Mr. Dimopoulos?

2 A. I thought it was not the same one.

3 No, I don't have any direct knowledge, honestly.

4 Q. Whether she has brought a lawsuit against
5 Mr. Dimopoulos, one way or the other?

6 A. I have no direct knowledge, other than I've heard it
7 in this courtroom, this very courtroom.

8 Q. And do you know that she filed a grievance,
9 professional grievance, against Dr. Abrams, correct?

10 A. Yes, I'm aware.

11 Q. And you know that she filed a grievance against you,
12 correct?

13 A. Yes.

14 Three.

15 Q. Do you remember the time when the first one was
16 filed?

17 A. No, I do not.

18 Q. Now, are you -- are you familiar with a reported
19 decision of the Appellate Division in a case, called,
20 Voom, V-O-O-M, H. D Holdings versus Echo Star, 93 A.D.3d 33,
21 First Department, 2012?

22 Is that a case you're familiar with?

23 A. I -- I -- I have no direct familiarity with that.

24 If I used it as a quote, if that's what you're going
25 to ask me, I don't -- I don't know.

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1 But I have -- I have no knowledge of that one.

2 Q. And one other: Are you familiar with the reported
3 federal decision in a case in which the plaintiff's name is
4 Zubulake, Z-U-B-U-L-A-K-E, 220 F.R.D. 212, Southern District,
5 2003?

6 A. I -- I --

7 MR. SCHNEID: Objection -- relevance.

8 THE COURT: You can answer.

9 If she's not familiar with it, she's not
10 familiar with it.

11 THE WITNESS: Offhand, no.

12 BY MR. FRISCH:

13 Q. So, without regard to any particular reported
14 decision or reported opinion of any court, in your view, does
15 an attorney, licensed in New York State, have an obligation to
16 preserve electronic documents when she reasonably anticipates
17 litigation?

18 MR. SCHNEID: Objection.

19 And that sounds very much like a threat against
20 suing her personally is what I'm hearing.

21 But I object to that very broad question.

22 How is it relevant to this particular matter?

23 THE COURT: Would you read the question back,
24 please.

25 THE CERTIFIED COURT REPORTER: Yes, Judge.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

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1 (The Court Reporter read the following:)

2 QUESTION: "So, without regard to any
3 particular reported decision or reported opinion of any
4 court, in your view, does an attorney, licensed in
5 New York State, have an obligation to preserve electronic
6 documents when she reasonably anticipates litigation?

7 - - -

8 MR. SCHNEID: Your Honor, when we couple that
9 with the -- her suing her husband, her suing her
10 husband's lawyer, three grievances against her, the
11 grievance against several other people, and, then, this
12 question, it sounds like an implicit threat that she's
13 threatening litigation against her.

14 THE COURT: I don't see it as an implicit
15 threat.

16 I see it as a question.

17 That's overruled.

18 BY MR. FRISCH:

19 Q. Is it best to have it reread, Ms. -- Ms. Most?

20 A. No.

21 I -- I -- I --

22 MR. SCHNEID: Your Honor, may I, also, be
23 heard?

24 But how -- how is it relevant to this
25 particular issue here?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

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1 If that can be -- question can be -- directed
2 to whether -- because she is not a party to litigation
3 here.

4 And, so, if it -- I don't see the relevance to
5 this particular issue, what we're having a hearing before
6 Your Honor.

7 THE COURT: Well, this is about the
8 reasonableness of the fees.

9 And some of those things, communications, have
10 been turned over.

11 She's billing for something she doesn't have.
12 That doesn't make it unreasonable.

13 I'm not saying it does, but I think it's a fair
14 line of questioning.

15 MR. SCHNEID: But the question related to her
16 being party to litigation.

17 And she is not, here.

18 THE COURT: I'm sorry?

19 MR. SCHNEID: But the question, that these --
20 that the framing of the question, was about: When you
21 believe you're going to be sued, when you're a party to a
22 litigation.

23 She's not a party to these people's divorce.

24 She's just not.

25 So that question doesn't --

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1 THE COURT: But she's a party to this
2 litigation, right here.

3 MR. SCHNEID: Right here today.

4 THE COURT: Right.

5 And we're talking about the billing for which,
6 I guess, he's alleging there -- there should be some
7 communication, saved communication, in-between -- you
8 know, involved in this case.

9 It's overruled, counsel.

10 Do you need the question read back again?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 Thank you.

14 (The Court Reporter read the following:)

15 QUESTION: "So, without regard to any
16 particular reported decision or reported opinion of any
17 court, in your view, does an attorney, licensed in
18 New York State, have an obligation to preserve electronic
19 documents when she reasonably anticipates litigation?

20 - - -

21 THE WITNESS: I guess the issue would be: Did
22 I reasonably anticipate litigation on this case?

23 BY MR. FRISCH:

24 Q. My question --

25 A. The answer is: No.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

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1 Q. My question is whether you believe, whether it's
2 your view, that an attorney, licensed in New York, has an
3 obligation to preserve electronic documents when she
4 reasonably anticipates litigation?

5 A. I think I have an obligation to maintain client
6 files.

7 MR. SCHNEID: Objection.

8 THE WITNESS: I don't think I have to say --

9 THE COURT: You're objecting to your client's
10 answer?

11 THE WITNESS: No.

12 THE COURT: I'm not sure I understand.

13 THE WITNESS: Go ahead.

14 MR. SCHNEID: I am objecting to her answer.
15 It's not about -- he's not asking questions
16 about you or what you do.

17 THE COURT: Mr. Schneid.

18 MR. SCHNEID: I'm asking that that be . . .

19 THE COURT: Overruled.

20 Please.

21 Go ahead.

22 THE WITNESS: I don't think I have an
23 obligation to maintain every E-mail that comes into my
24 office.

25

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1 BY MR. FRISCH:

2 Q. Do you believe a lawyer has an obligation to
3 preserve -- let me ask you the question differently.

4 Under what circumstances does a lawyer have an
5 obligation to preserve documents when she reasonably
6 anticipates litigation?

7 THE COURT: Mr. Frisch, I'm going to ask you to
8 narrow this, because I don't know -- I mean, I don't know
9 that I would consider this in anticipation of litigation.

10 So, if you can make this more directly related
11 to your client, I think that's -- that's fairer here.

12 MR. FRISCH: Alright.

13 Well, let me do -- let me try it this way,
14 then.

15 BY MR. FRISCH:

16 Q. Do you recall when Ms. Kassenoff first -- first said
17 that she might file a grievance against you?

18 A. I think that she has claimed --

19 MR. SCHNEID: Objection.

20 That's not the scope of this hearing.

21 It's not about the grievance or anything about
22 any -- all -- any of those other matters he mentioned.

23 THE COURT: Well, I think -- are you trying to
24 narrow down the period of time, with respect to the
25 saving of the -- of the communication?

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1 MR. FRISCH: I am.

2 What I'm trying to do is show that, under all
3 the circumstances -- and I'll go through one document at
4 a time; that is, I'll go through certain documents --
5 that Ms. Most had a reason -- had a basis to believe that
6 she -- she had a basis to reasonably anticipate
7 litigation at various points during the course of both
8 the term covered by the application and otherwise.

9 And she has deleted documents.

10 She has made no effort to preserve documents,
11 notwithstanding what she should have understood is a
12 reasonable anticipation of litigation.

13 Now, Your Honor made --

14 THE COURT: Is your point -- I'm sorry.

15 MR. FRISCH: I'm sorry.

16 I beg your pardon.

17 THE COURT: Is your point that your question
18 was: This is in good faith?

19 (No response.)

20 THE COURT: The deletion?

21 MR. FRISCH: You know, she's going to testify
22 it's in good faith.

23 What I want to do is lay out various points
24 when Ms. Most should have reasonably anticipated
25 litigation.

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1 The standards in the case law, I put two cases
2 on the record and there are others.

3 And, yet, she continued, notwithstanding those
4 time points, to continue what she says is a testimony of
5 immediately deleting things.

6 MR. SCHNEID: Your Honor -- Your Honor, even if
7 a grievance is litigation, which they haven't made
8 that -- that logical leap, the law that talks about the
9 preserving of evidence has to do with that particular
10 matter.

11 We're not in those other matters.

12 And, so, she has a -- there is a question of
13 whether she had a -- duty to preserve for this matter,
14 not any other matter that could be asserted for any other
15 reason.

16 THE COURT: Okay.

17 So that's a determination for me to make
18 whether it's in anticipation of litigation.

19 These are general questions.

20 That doesn't mean that -- even if she said:
21 No, I don't think I need to save them; doesn't mean I've
22 concluded this is in anticipation of litigation or that
23 I've given any significance to the fact that she
24 didn't -- she didn't save them.

25 I'm going to allow the question.

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1 BY MR. FRISCH:

2 Q. By the way, you've heard the term -- you've heard
3 the term before, "reasonably anticipating litigation"?

4 You've heard that term, correct?

5 MR. SCHNEID: You're asking -- objection.

6 You're asking legal -- I know she's a lawyer,
7 but they're asking legal -- questions that call for legal
8 responses.

9 THE COURT: He's asking whether she's heard of
10 it.

11 Is that a legal response?

12 MR. SCHNEID: It's a legal term.

13 And the line of questioning they're asking her
14 are -- are more along the lines that you'd argue in a
15 Memo of Law and to a fact witness.

16 THE COURT: We're here -- she's here as an
17 attorney representing clients, in this case.

18 And this is a hearing to which she's entitled
19 about the reasonable fees.

20 But you want me to not -- pretend she's not an
21 attorney?

22 Overruled.

23 THE WITNESS: Yes, I've heard the term.

24 BY MR. FRISCH:

25 Q. And, when -- and that term, "reasonably anticipate

Most - Direct

1 litigation," that means the litigation is anticipated; it
2 hasn't begun yet, correct?

3 Is that your understanding?

4 A. Well, I -- I think --

5 MR. SCHNEID: Objection again.

6 THE COURT: Overruled.

7 THE WITNESS: Are you -- are you suggesting
8 that I should anticipate that Catherine Kassenoff will
9 sue me?

10 Is that what --

11 BY MR. FRISCH:

12 Q. Ms. Most -- Ms. Most, I'm conducting a
13 Direct Examination.

14 If I leave something out or there's an inference
15 that your counsel wants to address, he'll have an opportunity
16 to do so.

17 My question is whether or not the term, "reasonably
18 anticipating litigation," means: The litigation is
19 anticipated, but hasn't begun yet.

20 Is that your understanding?

21 A. I'm not sure.

22 Q. Do you recall when Mrs. Kassenoff first sought
23 disclosure of your communications with Mr. Kassenoff?

24 A. No.

25 Q. Let me show you what I will ask be marked as,

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1 Defense Exhibit 5.

2 MR. FRISCH: And I'm checking to see if I have
3 more than one copy of this.

4 I don't think I do.

5 So just bear with me and I'll . . .

6 (Attorney Frisch and the defendant conferred.)

7 (Pause.)

8 MR. FRISCH: Let me come back to that.

9 I -- I -- I don't have multiple copies of it,
10 so I don't want to make this logistical -- a
11 logistical -- problem.

12 BY MR. FRISCH:

13 Q. Let me show you what is --

14 MR. FRISCH: I'll leave that as
15 Defense Exhibit 5.

16 Perhaps, I can come back to it.

17 And mark as Defense Exhibit 6 Document 1173,
18 which is on NYSECF, Document 1173, which is a letter from
19 Marcia Kusnetz to Judge Quinn Koba, dated,
20 February 17, 2021.

21 I only have one copy of this, I apologize.

22 Let me show it to counsel, and The Court, and
23 Ms. Most.

24 (Handed to counsel.)

25 - - -

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1 (NYSECF Document 1173, a letter from
2 Marcia Kusnetz to Judge Quinn Koba, dated,
3 February 17, 2021, was marked for identification as,
4 Defense Exhibit 6.)

5 - - -

6 MR. SCHNEID: Your Honor, I know that you've
7 previously taken the position that anything in the record
8 can come into evidence, but I object to this coming in.

9 This is a letter -- it's a Discovery dispute --
10 between the plaintiff and the defendant.

11 It doesn't involve the AFC.

12 THE COURT: I don't know what it is.

13 I don't know what the --

14 MR. SCHNEID: So I object to it coming in
15 automatically, simply because it's been --

16 THE COURT: It's only been marked for
17 identification, counsel.

18 He hasn't moved it into evidence.

19 MR. SCHNEID: I just want to make sure they
20 have to move it in.

21 THE COURT: I don't know what it is yet.

22 Let her identify it.

23 MR. FRISCH: I apologize, Your Honor.

24 My -- my copy person, who is me, has some
25 difficulty making multiple copies of everything.

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1 THE COURT: Okay.

2 MR. FRISCH: For much of this, I have -- I have
3 copies of everything.

4 THE COURT: Alright.

5 Do you want to ask her to identify it?

6 And, then, you can give me an offer-of-proof.

7 MR. FRISCH: Sure.

8 BY MR. FRISCH:

9 Q. So is this -- Ms. Most, do you recognize this
10 document?

11 A. (No response.)

12 Q. Let me ask it differently.

13 Is this a letter from Ms. Kassenoff's counsel to
14 Justice Quinn Koba, dated, February 17, 2021?

15 A. To Referee Ratner.

16 Q. I beg your pardon.

17 It's addressed to Justice Quinn Koba, and, then,
18 it's attention: Maria Baratta;

19 Court Attorney Referee Irene Ratner.

20 I see that.

21 Do you see that?

22 A. I see that it says: Dear Court Attorney Ratner.

23 Q. Got it. And it's dated, February 17, 2021?

24 A. That's what it says.

25 Q. And that's a date that falls within the time period

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1 for which your compensation is at-issue in this hearing,
2 correct?

3 A. Correct.

4 Q. Okay.

5 This --

6 MR. FRISCH: So, Your Honor, can I ask Ms. Most
7 to hand the document to -- my apologies for only having
8 one copy -- to The Court?

9 THE COURT: Officer?

10 Could you just hand that to me.

11 (Handed to The Court.)

12 THE COURT: Okay.

13 MR. FRISCH: And, if Your Honor could just
14 focus your attention on numbered paragraph 1.

15 (Pause.)

16 THE COURT: Okay.

17 What is this?

18 You want an offer-of-proof, please, with
19 respect to this?

20 MR. FRISCH: Yes.

21 My offer-of-proof is, as follows: There are a
22 number of points in time, during the course of this
23 litigation, where Ms. Most should be on notice that
24 documents in her possession; specifically, communications
25 between her and Mr. Kassenoff; perhaps, Mr. Kassenoff's

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1 attorney, are at-issue and are being sought by Ms. --
2 Ms. -- Mrs. Kassenoff.

3 Now, whether or not any of those documents are
4 ultimately ordered to be disclosed is a decision for
5 The Court, not for Mrs. Kassenoff and not for Ms. Most.

6 Nonetheless, what she has described as her
7 practice in deleting documents, or not preserving them,
8 or, as she puts it, not saving them continue.

9 And that goes to the credibility of her
10 testimony.

11 It goes to the credibility of the invoices that
12 she submitted, in support of her application for which
13 we're here today.

14 Notwithstanding being on notice that these
15 things are an issue, essentially, she -- I don't know
16 what the verb is for spoliation, but the documents are
17 the subject of spoliation.

18 She's not preserving them.

19 If -- if -- if her testimony is to be believed,
20 she continues to delete texts, as soon as she sends or
21 receives them, deletes E-mails -- you know, if she
22 doesn't put them into the client file -- even though
23 she's on notice that they're being requested.

24 THE COURT: Well, I think the fact of the
25 matter is that you can ask her about that.

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1 I don't think the letter -- she didn't write
2 the letter.

3 I don't think the letter would be appropriate
4 in evidence, so . . .

5 BY MR. FRISCH:

6 Q. Are you aware, Ms. Most, that there was a time that
7 Mrs. Kassenoff, through counsel, sought communications between
8 you and Mr. Kassenoff or Mr. Kassenoff's lawyer?

9 A. And I was aware of The Court's response.

10 Q. I don't understand your answer.

11 A. The Court denied this request.

12 Q. What was the -- do you recall the period of time
13 between the time that Mrs. Kassenoff made that request through
14 counsel and the time that The Court denied the request?

15 A. I think that -- I think this was during a period
16 where we were having virtual conferences.

17 And I think, on this case, there were -- there were,
18 at least, fifty virtual conferences, something like that, a
19 number like that.

20 And I think this was addressed by both Judge Koba
21 and Ms. Ratner in a conference and was denied.

22 Q. Upon becoming aware of this request, did you change
23 your practice of saving and/or deleting E-mails?

24 A. I -- I don't think I made any changes into how I
25 handled my E-mails.

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1 Q. Do you recall that there was a time that
2 Ms. Kassenoff filed an Order to Show Cause on NYSCEF, NYSCEF,
3 to have you removed as attorney for the child, for -- for
4 Ali (phonetic)?

5 A. I think that was done, at least, three times.

6 Q. Do you remember when the first time was?

7 A. Yes.

8 And it was denied.

9 Q. My question was: Do you remember when the first
10 time was?

11 A. I can't give you the date, no.

12 Q. At any of the three times that you recall that
13 happening, did you change your practice of saving and deleting
14 E-mails?

15 A. Since I saved the overwhelming majority of my
16 E-mails, the answer is: No.

17 THE COURT: Mr. Frisch, can I ask you: Is this
18 relating to the E-mails that, subsequent to the -- the
19 initiation or commencement of this hearing that, Ms. Most
20 said were either not available, redacted, or deleted,
21 deleted, or couldn't find, or -- how many E-mails are we
22 talking about?

23 Obviously, if there's some that were deleted
24 that weren't billed for, no.

25 But what are we really talking about here?

Most - Direct

1 MR. FRISCH: There's a large number.

2 I don't have a specific number.

3 And I'm about to start getting into shortly in
4 certain specific E-mails.

5 But there's a very significant number of
6 E-mail.

7 THE COURT: Ballpark figure?

8 MR. SCHNEID: Two hours of time, something like
9 that, is what we're talking about.

10 MR. FRISCH: Two hours?

11 MR. SCHNEID: Two hours of billable time.

12 THE WITNESS: There were so few E-mails that
13 I --

14 THE COURT: Okay.

15 This is not a question.

16 MR. SCHNEID: Okay.

17 MR. FRISCH: I think --

18 (Attorney Frisch conferred with the defendant.)

19 MR. FRISCH: There's -- there's multiple of
20 them.

21 I don't have a precise number.

22 And I don't want to give a number without
23 looking at the documents.

24 I can provide an answer.

25 The problem is, as you'll come to see in a

Most - Direct

1 moment, is that there's multiple E-mails between -- that
2 are not privileged between -- Ms. Most and Mr. Kassenoff
3 or Ms. Most and Mr. Dimopoulos, that are either not
4 produced or redacted.

5 And . . .

6 THE COURT: Can we get to those?

7 Because I think you've established that -- your
8 belief that she should be saving them, and she was on
9 notice to save them.

10 I think we've kind of gotten that point now.

11 MR. FRISCH: Okay.

12 I'm -- I'm there.

13 BY MR. FRISCH:

14 Q. Okay.

15 Now, let me show you . . .

16 So, on your -- one of the --

17 MR. FRISCH: I only have one copy of this.

18 BY MR. FRISCH:

19 Q. Let me show you what I'll mark as Defense Exhibit 7,
20 I think we're up to?

21 THE COURT: Yes.

22 MR. FRISCH: I have multiple copies of this
23 one.

24 (Handed to counsel.)

25 - - -

Most - Direct

1 (An E-mail was marked for identification as,
2 Defense Exhibit 7.)

3 - - -

4 (Copies were distributed.)

5 BY MR. FRISCH:

6 Q. And, when you're ready, Ms. Most, just let me know.

7 A. I'm ready.

8 Q. Prior to today, do you recall the last time you saw
9 this E-mail?

10 A. It could have been when I was putting this together.

11 Q. Now, the fact that there's a handwritten number of
12 50 in the upper right, that's your handwriting, correct?

13 A. That's correct.

14 Q. And that corresponds to an indication on the invoice
15 covering this time period of an E-mail for which you billed;
16 is that correct?

17 A. That's correct.

18 Q. So, if you look at the second part of the chain,
19 which is, dated, January 18, 2021, at 10:32 a.m., it says:
20 Gus and Carol, do we have to agree to make-ups each and every
21 time Catherine has access to the girls? She causes more and
22 more damage. I can't imagine how much harm she will cause
23 seeing them back-to-back days, open paren, and three times in
24 a single week, closed paren.

25 And, then, the top E-mail, which is from

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 Mr. Dimopoulos to you and Mr. Kassenoff, it says: I think the
2 judge was clear that she has only two visits per week. I'm
3 sure Koba would allow a make-up, but we should ask for
4 guidance, first. Carol?

5 Did I read that correctly?

6 A. I think you read it correctly.

7 Q. You saved this E-mail, correct?

8 A. Yes.

9 Q. Did you respond to this E-mail?

10 A. I don't remember.

11 Q. So, if you look at -- if you look at -- I believe
12 it's your Exhibit 1-4, which is your invoice, dated,
13 February 4, 2021 --

14 MR. FRISCH: And I only have one copy, but I'll
15 hand it up.

16 It's on the -- it's uploaded to the
17 Evidence Room.

18 BY MR. FRISCH:

19 Q. And I direct your attention to January 18, 2021, the
20 same date as Defense Exhibit 7.

21 THE COURT: So you want this marked as
22 Exhibit 8?

23 MR. FRISCH: Please.

24 - - -

25 (Former Exhibit 1-4, an invoice, dated,

Most - Direct

1 February 4, 2021, was marked for identification as,
2 Defense Exhibit 8.)

3 - - -

4 (Shown to counsel.)

5 THE COURT OFFICER: Is it just Page 5 or the
6 whole thing?

7 THE COURT: I think you can do the whole thing.
8 Is this something that's in the --

9 MR. FRISCH: It's on the -- it's on the --

10 THE WITNESS: It's in evidence, Judge.

11 THE COURT: Okay.

12 Alright.

13 MR. SCHNEID: Your Honor, I just want to
14 confirm that all of Ms. Most's bills in the support are
15 all methods; is that correct?

16 THE COURT: Yes, I -- I mean, I asked that
17 before, and I never got an answer, so . . .

18 THE WITNESS: Yes.

19 Your Honor, the first day, we --

20 THE COURT: Yes.

21 I don't think I heard an answer.

22 But, if we did, then, they're in evidence;
23 we're all agreed?

24 MR. SCHNEID: Are we all agreed on that?

25 Yes.

Most - Direct

1 MR. FRISCH: Yes.

2 THE COURT: Okay.

3 I think just we may need to mark it for -- just
4 mark it, so we can know what we're talking about later.

5 THE CERTIFIED COURT REPORTER: For both ID a
6 evidence, Judge?

7 THE COURT: Yes.

8 - - -

9 (Defense Exhibit 8 was admitted into evidence.)

10 - - -

11 (Handed to the witness.)

12 - - -

13 BY MR. FRISCH:

14 Q. And, Ms. Most, I'm going to direct your attention to
15 the entry for January 18, 2021.

16 A. Okay.

17 Q. Are you there?

18 A. Yep.

19 Q. Okay.

20 So do you see, under January 18, 2021, the second
21 entry says: Read and respond to E-mail?

22 And, then, underneath that -- excuse me -- it says:
23 Respond to multiple E-mails from Gus and Allan.

24 Do you see that?

25 A. Right.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 Those two E-mails.

2 Q. Right.

3 Did you -- did you -- are those E-mails --
4 withdrawn.

5 Is your response to the multiple E-mails included
6 with the E-mails you produced?

7 A. No.

8 Q. So your testimony is that you did not retain your
9 response to the E-mails from Mr. Dimopoulos and Mr. Kassenoff,
10 but you retained their E-mails to you?

11 MR. SCHNEID: Objection.

12 She didn't actually say any of those things.

13 MR. FRISCH: Well, she'll correct me if I
14 have -- if I have it wrong.

15 THE COURT: Overruled.

16 THE WITNESS: So, Sent E mails, I -- I do not
17 put into the client box.

18 Those could be on the system.

19 But, when I prepared this, I -- I was just
20 proving that I read E-mails.

21 That was my intent, to show that I was
22 reasonable in reading an E-mail.

23 That was my goal.

24 I did not search out all my Sent E-mails.

25

Most - Direct

1 BY MR. FRISCH:

2 Q. So there could be Sent E-mails -- withdrawn.

3 So the E-mail noted on your invoice, responding to,
4 what I think, is Defense Exhibit 8, you could still have that?

5 A. I could.

6 Q. And, fair to say, you might have other E-mails, in
7 the relevant time period, that constitute your responsive --
8 your responses -- to E-mails that are noted in your invoices?

9 A. Well, Sent E-mails are saved on the system.

10 Q. So the answer to my question is: Yes?

11 A. Yes.

12 But my goal, in responding --

13 MR. FRISCH: Move to strike --

14 THE COURT: Sustained.

15 MR. FRISCH: -- the answer.

16 BY MR. FRISCH:

17 Q. By the way, turning back to -- as you sit here
18 today, do you recall whether, in your responsive E-mail, you
19 corrected Mr. Kassenoff, in using the word, "we," to respond
20 to you?

21 MR. SCHNEID: Objection.

22 THE COURT: Sustained.

23 MR. FRISCH: Your Honor, might I have an
24 offer-of-proof on that?

25 THE COURT: Yes, okay.

Most - Direct

1 I'll hear you.

2 MR. FRISCH: Part of The Court's inquiry on
3 determining the reasonableness of the fees is whether the
4 work done is, in the language of the case law, by the
5 cases, at the appropriate time, is excessive, redundant,
6 or otherwise unnecessary.

7 It seems to me -- and we'll see other examples
8 of this, as we go along -- if Ms. Most is providing
9 services and billing for services which she is doing not
10 just for the children, or for the children and
11 Mr. Kassenoff, or for Mr. Kassenoff, if she's advancing
12 his agenda or his interest, or she's acting as a part of
13 his team, the offer-of-proof is that she is not
14 providing -- she is not seeking compensation for fees
15 that are reasonable, because she's providing work and
16 billing for time that is, in the language of the case
17 law, excessive, unnecessary -- or, excessive, redundant,
18 or otherwise unnecessary.

19 THE COURT: Just read the question back,
20 please.

21 (The Court Reporter read the following:)

22 QUESTION: "And, fair to say, you might have
23 other E-mails, in the relevant time period, that
24 constitute your responsive -- your responses -- to
25 E-mails that are noted in your invoices?"

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 ANSWER: "Well, Sent E-mails are saved on the
2 system.

3 QUESTION: "So the answer to my question is:
4 Yes?

5 ANSWER: "Yes.

6 "But my goal, in responding --

7 MR. FRISCH: Move to strike --

8 THE COURT: Sustained.

9 MR. FRISCH: -- the answer.

10 QUESTION: "By the way, turning back to -- as
11 you sit here today, do you recall whether, in your
12 responsive E-mail, you corrected Mr. Kassenoff, in using
13 the word, "we," to respond to you?"

14 - - -

15 THE COURT: Okay.

16 It's that specific, that particular, question
17 I'm sustaining the objection to.

18 BY MR. FRISCH:

19 Q. Did you consider Mr. Kassenoff your client?

20 A. No.

21 Q. Are your communications with Mr. Kassenoff
22 privileged?

23 A. Probably not. I don't know.

24 But this "we" is written by Mr. Dimopoulos, not me.
25 And "we" refers to him and his client.

Most - Direct

1 Q. First of all, the first "we" -- let me ask the
2 question.

3 I'm not going to argue with you.

4 Let me ask the question.

5 The bottom -- the second -- E-mail in this chain is
6 written by Mr. Kassenoff, correct?

7 A. Yes.

8 Q. And he writes -- he addresses -- that E-mail to Gus
9 and Carol; do you see that?

10 A. That's -- he --

11 MR. SCHNEID: Objection.

12 BY MR. FRISCH:

13 Q. I'm asking the question if you see it.

14 MR. SCHNEID: Objection.

15 THE WITNESS: I see it.

16 BY MR. FRISCH:

17 Q. Do -- does Mr. Kassenoff --

18 MR. SCHNEID: Objection.

19 BY MR. FRISCH:

20 Q. -- write to you --

21 THE COURT: Mr. Frisch, let me hear the
22 objection, first.

23 MR. FRISCH: Okay.

24 THE COURT: Go ahead.

25 MR. SCHNEID: So the question is the resource

Most - Direct

1 of her billing.

2 She billed .1, on this day, for this E-mail.

3 Whether we, from two other people who aren't
4 here, refer to the lawyer and the client, the client and
5 his children, or anyone else is beyond the scope of
6 whether Ms. Most billed .1 for reviewing this E-mail.

7 THE COURT: No, I think that's not the point.

8 Now, I'm going to overrule the objection.

9 But, in fairness, she didn't write the E-mail.

10 But I think -- I understand what Mr. Frisch is
11 trying to suggest.

12 But go ahead.

13 You can answer the question.

14 Do you need it read back?

15 THE WITNESS: No.

16 I can't know what's in their minds when they're
17 writing something.

18 It's not me saying "we."

19 It's them.

20 It's he and his attorney.

21 I have never represented Mr. Kassenoff.

22 BY MR. FRISCH:

23 Q. You may have already answered this question,

24 Ms. Most.

25 I don't mean to answer that again if you have.

Most - Direct

1 But do recall what you said in response to this
2 E-mail?

3 A. I answered that.

4 MR. SCHNEID: Objection -- asked and answered.

5 BY MR. FRISCH:

6 Q. What can you --

7 THE COURT: Overruled.

8 BY MR. FRISCH:

9 Q. Can you answer it again?

10 A. I don't remember.

11 (ATTORNEY FRISCH AND THE DEFENDANT CONFERRED.)

12 BY MR. FRISCH:

13 Q. Now, if we can look at Exhibit 1- -- your
14 Exhibit 1-5, which is your invoice for February, 2021 -- and
15 I'm going to give you my copy.

16 And I'm going to look at a copy on the screen.

17 (PAUSE.)

18 MR. FRISCH: And I believe, to the extent this
19 is in the Evidence Room, we agreed that it's in evidence.

20 But, to the extent that I need to, I believe
21 we're up to Exhibit 9, Defense Exhibit 9 --

22 THE COURT: Yes.

23 MR. FRISCH: -- am I right?

24 (HANDED TO THE COURT OFFICER AND TO COUNSEL.)

25 - - -

Most - Direct

1 (Former Exhibit 1-5, an invoice for
2 February, 2021, was marked for identification as,
3 Defense Exhibit 9.)

4 - - -

5 (Defense Exhibit 9 was admitted into evidence.)

6 - - -

7 (Handed to the witness.)

8 - - -

9 THE WITNESS: Thank you.

10 I have it.

11 BY MR. FRISCH:

12 Q. And I'm going to direct your attention to the
13 entries, dated, February 1, 2021.

14 (Pause.)

15 BY MR. FRISCH:

16 Q. Okay?

17 Do you see that you billed for, what looks like,
18 seven-tenths of an hour?

19 Is that what .7 means --

20 A. Yes.

21 Q. -- seven-tenths of an hour?

22 A. On a six-minute schedule.

23 Q. Well, again, when you say six-minute schedule, do
24 you mean your billing protocol only permits you to bill in
25 increments, essentially, of six minutes; is that correct?

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

Most - Direct

1 A. That's how I bill.

2 I bill on increments of six minutes.

3 Q. And, so, even if something takes you, for example,
4 ten seconds, you're going to bill for six minutes, because
5 that's your protocol?

6 A. I bill for .1, that's correct.

7 Q. Okay.

8 Do we agree that the judge is not bound by -- by
9 that, she could -- she could reduce the amount you seek, or
10 she could approve the amount you seek; I suppose, in theory,
11 she could give you more.

12 But, in any event, what we're talking about is your
13 protocol, within your firm, is: Six minutes is your minimum?

14 A. Yes.

15 Q. So, on February 1, 2021, you billed seven-tenths for
16 a conference with Kuhl, Dr. Kuhl, correct?

17 A. Yes.

18 THE COURT: Do you want to spell the doctor's
19 name for the Reporter, please.

20 MR. FRISCH: I'm sorry.

21 K-U-H-L.

22 BY MR. FRISCH:

23 Q. And, by the way, is it "kule," as opposed to "cool";
24 do you know?

25 A. I -- I think she calls herself "cool."

Most - Direct

1 Q. Well, I --

2 A. I'm not sure.

3 Q. That would be lovely, if she --

4 THE COURT: I'm sure she means: C-O-O-L.

5 THE WITNESS: No, but I think that's how she
6 pronounces her name, Judge.

7 I'm not sure.

8 THE COURT: Okay.

9 BY MR. FRISCH:

10 Q. Alright.

11 So we'll call her "kule," just so we don't -- in any
12 event.

13 So, on February 1, 2021, there's two references to
14 Doctor -- to time that you put in, with regard to Dr. Kuhl,
15 correct?

16 A. Yes.

17 Q. There's seven-tenths of an hour for a conference
18 with Dr. Kuhl, correct?

19 A. Yes.

20 Q. And, then, there's a text message to Dr. Kuhl,
21 correct?

22 A. Yes.

23 Q. And, if I understand your testimony, that means that
24 you were likely responding to a text message sent to you by
25 Dr. Kuhl, correct?

Most - Direct

1 A. Yes, but --

2 Q. Which you would have automatically deleted as soon
3 as you sent it, correct?

4 MR. SCHNEID: Objection.

5 Can he wait until she finishes answering
6 before --

7 THE COURT: Mr. Frisch, let's -- before the
8 Reporter has a nervous breakdown, make sure that she
9 stops speaking before you speak.

10 Thank you.

11 BY MR. FRISCH:

12 Q. So there's -- essentially, there's two entries here,
13 with regard to communications with Dr. Kuhl, correct?

14 A. Yes.

15 Q. Alright.

16 Now, one of these, if you go to -- by the way, just
17 to put this in temporal context, I'm going to show you one of
18 your E-mails that you produced that's appended to this
19 invoice.

20 But just to lay the factual foundation, do you
21 recall that Dr. Kuhl prepared a report about Charlotte?

22 A. Yes.

23 Q. Do you recall when she did that?

24 A. No.

25 Q. Would it refresh your recollection -- do you dispute

Most - Direct

1 that she did that, issued the report, in late February, 2021?

2 A. I don't dispute anything.

3 I just don't remember --

4 Q. You don't know.

5 A. -- the exact date.

6 Q. Okay.

7 Fair enough.

8 (Pause.)

9 BY MR. FRISCH:

10 Q. Let me just show you what I'll mark for
11 identification as Defense Exhibit 10, for the sole purpose of
12 refreshing your recollection, as to the date of Dr. Kuhl's
13 report.

14 THE COURT: I'll tell you, why don't we not
15 mark this.

16 THE WITNESS: Honestly, I don't -- if you have
17 a date, I just don't remember.

18 MR. FRISCH: So will you --

19 THE COURT: Do you want to show it to
20 Mr. Schneid?

21 Maybe you can just stipulate.

22 MR. FRISCH: So will counsel stipulate that the
23 date of Dr. Kuhl's report is February 22, 2021?

24 MR. SCHNEID: Yes.

25 THE COURT: Okay.

1 BY MR. FRISCH:

2 Q. Do you recall when -- was Charlotte interviewed as
3 part of that -- as part of Dr. Kuhl's work, if you know or
4 recall?

5 MR. SCHNEID: Objection.

6 Your Honor, this is beyond the reasonableness
7 of fees.

8 MR. FRISCH: We're getting there.

9 THE COURT: There's not a lot of case law in
10 this area, so, I mean, I'm going to give them wide
11 discretion.

12 That doesn't mean that, you know, it's
13 persuasive to me, or not, but I'm going to give them
14 latitude here.

15 Go ahead.

16 BY MR. FRISCH:

17 Q. Do you recall that -- do you know or recall that
18 Dr. Kuhl spoke to Charlotte as part of the report that she
19 prepared?

20 A. I know that she did speak -- she did meet with her.

21 Q. And do you recall approximately when she did?

22 A. No.

23 Q. Let me show you what I marked for identification as
24 Exhibit -- Defense Exhibit --

25 THE COURT: 10.

Most - Direct

1 It's 10.

2 MR. FRISCH: 10.

3 Thank you.

4 THE COURT: 10, because we didn't do 10.

5 MR. FRISCH: Thank you.

6 BY MR. FRISCH:

7 Q. Which you -- is one of the E-mails you uploaded to
8 the Evidence Room.

9 MR. FRISCH: I have three copies.

10 Thank you, Officer.

11 (Copies were distributed.)

12 - - -

13 (A six-page document was marked for
14 identification as, Defense Exhibit 10.)

15 - - -

16 (Defense Exhibit 10 was admitted into
17 evidence.)

18 - - -

19 MR. FRISCH: Thank you.

20 - - -

21 (Handed to the witness.)

22 - - -

23 (Attorney Frisch and the defendant conferred.)

24 BY MR. FRISCH:

25 Q. Have you had a chance, Ms. Most?

Most - Direct

1 I don't -- again, I don't mean to rush you.

2 Tell me just -- tell me if you need more time, if
3 you do.

4 A. Well, what do you want me to look at?

5 Q. Well, I'd ask you to look at, at least, the first
6 two pages of this six-page document.

7 A. (The witness so complied.)

8 Okay.

9 I've read the first two pages.

10 BY MR. FRISCH:

11 Q. Alright.

12 By the way, there's a handwritten 21 in the
13 upper-right.

14 Do you see that?

15 A. Yes.

16 Q. That's your handwriting, correct?

17 A. Yes.

18 Q. This means this is a -- something for which you
19 billed, correct?

20 A. Yes.

21 Q. By the way, is this an E-mail that -- is the top
22 E-mail one that you sent to Mr. Kassenoff and Mr. Dimopoulos?

23 A. Yes.

24 Q. If I understood your testimony -- tell me if I
25 understand your testimony correctly -- that, if you send an

Most - Direct

1 E-mail, you typically don't -- you don't keep it?

2 Is that what you testified to earlier?

3 A. I don't put it into my client box, or whatever you
4 want to call it, on my computer.

5 Q. But you could still retain it?

6 A. Sent E-mails usually are still on the system.

7 Q. So earlier we talked about a Sent E-mail that you
8 did not find, in putting together E-mails for the hearing,
9 correct?

10 A. I didn't go looking for it.

11 Q. And this one?

12 Do you recall how you came to put this one in
13 your -- in your backup for the invoices?

14 A. I don't know.

15 I don't know.

16 Q. Okay.

17 So you produced this in redacted form, correct?

18 A. Yes.

19 Q. Do you recall billing for an E-mail to Mr. Kassenoff
20 in which you wrote, as follows: My E-mail to you was just an
21 FYI.

22 Also, you need to contact Dr. Kuhl to inquire about
23 what information she has.

24 As the custodial parent, you need to see it, and,
25 also, you need to give it to Dr. Adler.

Most - Direct

1 If she gives it to you, which I believe she must,
2 you can verify if it's truthful.

3 THE COURT: We're not talking about this
4 exhibit, then; are we?

5 MR. FRISCH: I am.

6 THE COURT: It's in here?

7 That you just read?

8 MR. FRISCH: It is.

9 It is.

10 BY MR. FRISCH:

11 Q. Do you recall writing that in an E-mail, Ms. Most?

12 A. No.

13 Q. Aren't those the words that you redacted at the top
14 of the page?

15 A. Well, if I redacted it, I don't know what it says.

16 Q. Do you recall why you redacted the E-mail that's at
17 the top of the page?

18 A. No.

19 Q. You would agree with me that your E-mail -- I think
20 you testified previously -- that your communications to
21 Mr. Kassenoff and Mr. Dimopoulos are not privileged, correct?

22 A. Probably not.

23 Q. And you -- you say: Probably not.

24 Could there be circumstances where your
25 communications with Mr. Kassenoff and Mr. Dimopoulos are

Most - Direct

1 privileged?

2 A. I think there might be circumstances if I have
3 information about my client in them.

4 Q. If you -- withdrawn.

5 Do you recall ever -- ever writing to Mr. Kassenoff
6 that he should contact Dr. Kuhl to inquire about information
7 that she has?

8 A. I don't recall that, no.

9 Q. Do you recall ever telling Mr. Kassenoff in writing
10 that, as the custodial parent, he has the right to such
11 information and that he should give such information to
12 Dr. Adler?

13 Do you recall ever so advising Mr. Kassenoff in
14 writing?

15 A. What information?

16 Q. Any information, ever?

17 A. Well, I think, as the custodial parent, he had an
18 obligation to give any important information to the therapist.

19 Q. Dr. Adler?

20 A. Dr. Adler.

21 Q. And would that include information in the possession
22 of Dr. Kuhl?

23 A. Well, if Dr. Kuhl had something -- let's put this
24 into the reference of what this was about.

25 There was an allegation that Charlotte was suicidal.

Most - Direct

1 As soon as we found out about that allegation,
2 Dr. Adler did a meeting with Charlotte and was not concerned.

3 She did not feel that Charlotte had any -- there was
4 anything suicidal about Charlotte.

5 After that occurred, the mother, Mrs. Kassenoff,
6 wrote to Dr. Adler that she had serious concerns.

7 And, so, Dr. Adler responded that -- that she should
8 be checked out by a psychiatrist.

9 Q. And The Court --

10 A. And, so --

11 Q. -- agreed, correct?

12 A. I'm sorry?

13 Q. And The Court agreed, correct?

14 A. Yes.

15 Q. And, as a result, Dr. Kuhl did an evaluation?

16 A. Yes.

17 Q. That was provided to The Court --

18 A. Yes.

19 Q. -- correct?

20 A. Yes.

21 Q. As you sit here today, do you recall any
22 communications that you had in writing with Mr. Kassenoff or
23 Mr. Dimopoulos about Dr. Kuhl's evaluation that was
24 privileged?

25 A. I don't recall.

Most - Direct

1 (Pause.)

2 BY MR. FRISCH:

3 Q. By the way, let me ask you this one other question
4 about this, which I think is Defense Exhibit 10.

5 If you look at the bottom of Page 1 and the top of
6 Page 2 -- take it look at that, please.

7 A. Okay.

8 Q. And I'm looking at your E-mail, which is dated,
9 February 4, 2021, at 1:43p.m.

10 (Pause.)

11 THE WITNESS: Okay.

12 BY MR. FRISCH:

13 Q. And, in that E-mail, this part of the E-mail chain,
14 are you forwarding to Mr. Kassenoff and Mr. Dimopoulos the
15 preceding E-mail in the chain, which is an E-mail from
16 Ms. Kassenoff, Mrs. Kassenoff, to you?

17 A. Yes.

18 Q. Without any verbiage?

19 You're just passing it on, correct?

20 A. Yes, because --

21 Q. I'm just asking if you passed it on.

22 A. I passed it on, because I wanted him to pay tuition.

23 (Pause.)

24 BY MR. FRISCH:

25 Q. Do you recall telling him that, in an E-mail, that

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1 you were forwarding it to him, because he wanted you to pay --
2 because you wanted him to pay tuition?

3 MR. SCHNEID: Objection.

4 This is --

5 THE WITNESS: No.

6 THE COURT: Overruled.

7 THE WITNESS: I forwarded him an E-mail.

8 I didn't have a direct conversation with him
9 about this.

10 I --

11 BY MR. FRISCH:

12 Q. Well, you had --

13 A. I probably spoke to Mr. Dimopoulos.

14 I -- I -- I don't even remember.

15 Q. But, that said, you don't remember, as you sit here
16 today, what you redacted in the top E-mail or why, correct?

17 A. No.

18 But I did forward him the E-mail that I got from
19 Catherine, saying that she was going to lose her spot,
20 basically, at FASNY, F-A-S-N-Y.

21 Q. Let me show you, what I will mark for identification
22 as, Defense Exhibit 11.

23 (Copies were distributed.)

24 BY MR. FRISCH:

25 Q. And, when you're ready, I'll ask you questions about

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1 it.

2 - - -

3 (A four-page document was marked for
4 identification as, Defense Exhibit 11.)

5 - - -

6 (Defense Exhibit 11 was admitted into
7 evidence.)

8 - - -

9 (Handed to the witness.)

10 - - -

11 THE WITNESS: I'm ready.

12 BY MR. FRISCH:

13 Q. This is a four-page document.

14 The top E-mail is from Mr. Kassenoff to you and
15 Mr. Dimopoulos, correct?

16 A. Yes.

17 Q. And the handwritten 26, in the upper-right, is,
18 again, your handwriting, correct?

19 A. Yes.

20 Q. And it means: This is an E-mail for which you
21 billed, correct?

22 A. Yes.

23 Q. And, on your invoice corresponding to this time
24 period, we will see a handwritten 26, sort of
25 cross-referencing this E-mail, correct?

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1 A. Correct.

2 Q. Do you recall writing -- do you recall receiving
3 from Mr. Kassenoff an E-mail in which he wrote to you: Please
4 see below.

5 Her delusions and instability are reaching the point
6 where she should not have any access to the children for their
7 safety.

8 Are we going to have to wait until she kidnaps one
9 of the girls, or hurts them, or kills them, God forbid, until
10 The Court does something?

11 Closed quote.

12 Do you recall ever receiving such an E-mail from
13 Mr. Kassenoff?

14 A. I could have.

15 I don't recall the exact words, but I know he was
16 concerned.

17 He had serious concerns about his wife and her
18 contact with the children.

19 Q. Specifically, the concern that he expressed to you
20 was the physical safety of the children, correct?

21 A. I don't recall the exact words of the E-mail.

22 Q. When you say, "the exact words of the E-mail," is it
23 your -- is it your testimony that he expressed that concern to
24 you in an E-mail?

25 A. No.

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1 I don't recall.

2 I know that he expressed that concern.

3 I'm not saying that it was in an E-mail.

4 He has expressed that concern many times.

5 Q. Is there any reason why any expression of that
6 concern by Mr. Kassenoff to you would be privileged?

7 A. I'm not sure.

8 Q. Do you recall why you redacted the top E-mail on
9 Defense Exhibit 11 from Mr. Kassenoff to you and
10 Mr. Dimopoulos?

11 A. I don't recall.

12 Q. And I may have asked you this before -- and, if I
13 did, I apologize, but indulge me again -- do you recall what
14 you redacted --

15 A. I do not.

16 Q. -- on top of this exhibit?

17 A. I do not.

18 Q. By the way, in February -- this is dated,
19 February, 2021, correct?

20 A. That's correct.

21 Q. Did you ever -- well, withdrawn.

22 (Attorney Frisch and the defendant conferred.)

23 BY MR. FRISCH:

24 Q. Let me show you what I marked for identification as
25 Defense Exhibit 12.

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1 MR. FRISCH: Damn, I thought I had more than
2 one copy of this.

3 MR. SCHNEID: Your Honor, could we have an
4 offer-of-proof of how -- the amount of time that they're
5 disputing.

6 Because, if it's, like, an hour -- because
7 we're up to .3, right now, and we're a couple hours into
8 this -- maybe we can just agree, if we're talking about
9 two hours of time.

10 THE COURT: Well, it's something you can
11 discuss over the lunch break, but I don't -- I don't -- I
12 don't know.

13 He didn't seem to know, Mr. Frisch, when I
14 inquired, the amount of time involved.

15 MR. FRISCH: I find -- I thought -- this is my
16 bad, for not making more copies of this, which I -- which
17 I copied this morning.

18 I only have one copy, so . . .

19 THE COURT: Do you want to show it to
20 Mr. Schneid, please.

21 MR. FRISCH: Forgive me.

22 But this -- I would ask that the Officer just
23 make sure everyone sees it.

24 (Handed to counsel.)

25 MR. FRISCH: Please mark that as 12.

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1 - - -

2 (A two-page document was marked for
3 identification as, Defense Exhibit 12.)

4 - - -

5 (Defense Exhibit 12 was admitted into
6 evidence.)

7 - - -

8 (Handed to the witness.)

9 THE WITNESS: Okay.

10 BY MR. FRISCH:

11 Q. Again, this -- the hand -- on this document, there's
12 a handwritten 33 on the top-right.

13 That's your handwriting, right?

14 A. Yes.

15 Q. And it corresponds to the number 33 handwritten on
16 the corresponding entry in your invoice, correct?

17 A. Yes.

18 Q. Meaning, you billed for this, correct?

19 A. Yes.

20 Q. Do you recall writing to Mr. Kassenoff, on
21 February 11, 2021 -- withdrawn.

22 Do you recall Mr. Kassenoff writing to you, on
23 February 11, 2021, as follows, quote: She is insane, but
24 let's keep pushing out the trial date further and further.

25 After all, how much damage could she do to the kids,

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1 closed quote.

2 Do you recall Mr. Kassenoff, in February, 2021, ever
3 writing you such an E-mail?

4 A. He could've.

5 I -- I don't recall exactly.

6 Q. Do you have a recollection, as to why you redacted
7 this E-mail?

8 A. I -- I redacted several of the E-mails that came
9 from Mr. Kassenoff, because they weren't coming from me, and
10 this is about the reasonableness of whether I read an E-mail,
11 not the content.

12 Q. How many E-mails that you provided and uploaded to
13 the Evidence Room did you redact?

14 A. I don't -- I can't give you a number, but there
15 weren't that many.

16 Q. Are there any other -- any redactions other in
17 communications between you and Mr. Kassenoff?

18 THE COURT: What, that were redacted, you mean?

19 MR. FRISCH: Correct.

20 THE COURT: Oh.

21 THE WITNESS: Are you talking about E-mails
22 from Mr. Kassenoff?

23 BY MR. FRISCH:

24 Q. Either way.

25 E-mail -- when I say, "redacted," I mean: Blacked

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1 out.

2 A. I don't think so.

3 Q. The only E-mails that you blacked out, in uploading
4 these documents to the Evidence Room, were communications
5 between you and Mr. Kassenoff, true?

6 A. Mr. Kassenoff to me.

7 Q. Well . . .

8 (Pause.)

9 THE COURT: Well, the one that's -- has the 21
10 mark, that's an E-mail from Ms. Most to Mr. Kassenoff and
11 Mr. Dimopoulos.

12 MR. FRISCH: Correct.

13 BY MR. FRISCH:

14 Q. So it's not just E-mails -- as the judge points out,
15 it's not just E-mails from Mr. Kassenoff to you.

16 It's, also, at least, one E-mail from you to
17 Mr. Kassenoff, that we saw moments ago --

18 A. It could have been.

19 Q. -- correct?

20 A. It could have been.

21 Q. And those are the -- and, again, those are the
22 only -- the only E-mails that are blacked out are
23 communications between you and Mr. Kassenoff?

24 A. Most probably.

25 Q. And, most probably, it's your testimony they're not

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1 privileged, correct?

2 A. It's -- I don't know.

3 I'd have to see what they say.

4 THE COURT: With respect to the one that was
5 from her, she said it's possible it may have contained
6 information about her client, as I recall the testimony.

7 BY MR. FRISCH:

8 Q. Now, the E-mail that we just looked at, a moment
9 ago, where Mr. Kassenoff -- withdrawn.

10 You testified, a moment ago, that Mr. Kassenoff
11 expressed concern to you about physical safety of the
12 children, correct?

13 A. Yes.

14 Q. And did you testify -- and, if you didn't, let me
15 ask you -- let me ask you the question a different -- a
16 different way.

17 Did that happen in about February of 2021?

18 A. It happened so many multiple times that I just could
19 not pin it -- point it to a time.

20 Q. And, when Mr. Kassenoff, on many multiple times,
21 expressed his concern to you about the physical safety of the
22 children, physical safety of the children, did you advise
23 The Court?

24 THE COURT: Alright, Mr. Frisch.

25 This I think is not relevant, so I'm going to

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1 ask you to move on.

2 MR. FRISCH: Well, if I can just make a marker.

3 At some point, I want to be heard on that, but
4 I can move on for now.

5 THE COURT: Okay.

6 MR. FRISCH: There's an explanation for why I'm
7 asking this question.

8 But I can revisit it, either -- down the line,
9 with Your Honor's permission.

10 THE COURT: Yes.

11 (Pause.)

12 BY MR. FRISCH:

13 Q. Let me show you what I ask be marked as,
14 Defense Exhibit . . .

15 THE COURT: 13.

16 MR. FRISCH: 13.

17 Thank you.

18 - - -

19 (An E-mail exchange was marked for
20 identification as, Defense Exhibit 13.)

21 - - -

22 (Defense Exhibit 13 was admitted into
23 evidence.)

24 - - -

25 (Handed to the witness.)

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1 - - -

2 THE WITNESS: Okay.

3 BY MR. FRISCH:

4 Q. Again, the 92, the handwritten 92, in the
5 upper-right, is your handwriting, correct?

6 A. Correct.

7 Q. This is an E-mail exchange for which you billed,
8 correct?

9 A. Yes.

10 Q. A moment ago, you testified -- correct me if I'm
11 wrong -- that you blacked out E-mails written to you from
12 Mr. Kassenoff, correct?

13 A. I -- I didn't black out whole E-mails.

14 THE COURT: Yes, I don't think she said that.

15 THE WITNESS: That's not what I said.

16 BY MR. FRISCH:

17 Q. Is it your -- did you testify that you just blacked
18 out just some E-mails written by Mr. Kassenoff to you?

19 A. I believe the question you were referring to were
20 the particular E-mails that you had that were blacked out.

21 Only to -- as to those.

22 I did not black out all of the E-mails from
23 Mr. Kassenoff.

24 Q. How did you decide which E-mails, written by
25 Mr. Kassenoff, to black out?

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1 A. I -- I produced the E-mails, because I believe
2 The Court was asking me to do that.

3 Obviously, mistaken, Your Honor.

4 The objective was to prove that I read an E-mail, so
5 that it was reasonable to bill for reading the E-mail.

6 I didn't believe that the content of the E-mail was
7 to be addressed at this hearing --

8 Q. My question to you is --

9 A. -- and --

10 Q. I'm sorry.

11 I'll let you finish.

12 A. Okay.

13 And, if I blacked something out, it was because I --
14 I didn't think it was appropriate.

15 Because this is not a fishing expedition.

16 MR. FRISCH: Move to strike this part of the
17 answer.

18 THE COURT: That is stricken.

19 BY MR. FRISCH:

20 Q. My question, Ms. Most, is very simple: How did you
21 decide which E-mails to black out and which E-mails not to
22 black out?

23 And I'm talking about E-mails that you received from
24 Mr. Kassenoff.

25 A. I blacked out things that I didn't think were

Most - Direct

1 necessary for this hearing.

2 THE COURT: I think she's answered it,
3 Mr. Frisch.

4 Let's move on.

5 BY MR. FRISCH:

6 Q. Alright.

7 Let me show you -- bear with me for one second.

8 (Attorney Frisch and the defendant conferred.)

9 MR. FRISCH: Your Honor, could I just have one
10 second?

11 I'm having a . . .

12 THE COURT: Alright.

13 MR. FRISCH: . . . paper problem.

14 (Pause.)

15 BY MR. FRISCH:

16 Q. Ms. Most, among the documents that you brought with
17 you today, do you happen to have a copy of your Exhibit 1-7,
18 which covers April of 2021?

19 A. Probably.

20 MR. SCHNEID: Ms. Most didn't bring anything
21 today.

22 MR. FRISCH: Do you have a copy of it?

23 MR. SCHNEID: I have documents here, with my
24 notes on them.

25 MR. FRISCH: So this one is on the

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1 Evidence Room.

2 Can we pull up; at least, on my computer, 1-7;
3 Ms. Kassenoff's computer, 1. -- 1-7.

4 THE COURT: Mine's not up in the Evidence Room.
5 Do you have a physical copy?

6 MR. FRISCH: I thought I did.
7 I probably do.

8 THE COURT: Give me -- give me the number?

9 MR. FRISCH: I think I do.

10 THE COURT: Give me the number?

11 MR. FRISCH: It's Exhibit 1 -- I believe it's
12 Exhibit 1-7, which corresponds to the invoice for April,
13 2021.

14 THE COURT: Alright.
15 Go ahead.

16 MR. SCHNEID: This is the invoice that's dated,
17 April, or that was for the month of April?

18 MR. FRISCH: Well, the invoice, Exhibit 1-7, as
19 noted by -- as identified by Ms. Most, is the entirety of
20 April, 2021.

21 (Pause.)

22 BY MR. FRISCH:

23 Q. So let me do it this way, just to --

24 MR. FRISCH: Maybe after the lunch break, I can
25 find my copy of Exhibit 1-7.

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1 Because I believe I have it.

2 (Pause.)

3 MR. FRISCH: Found it.

4 Are we up to 14?

5 THE DEFENDANT: Yes.

6 MR. FRISCH: Ask this be marked as,
7 Defense Exhibit 14.

8 And this is Ms. Most's Exhibit 1-7, her invoice
9 for -- dated, May 4, 2021, for April, 2021.

10 Thanks.

11 (Handed to counsel.)

12 - - -

13 (Former Exhibit 1-7, an invoice, dated,
14 May 4, 2021, for April, 2021, was marked for
15 identification as, Defense Exhibit 14.)

16 - - -

17 (Defense Exhibit 14 was admitted into
18 evidence.)

19 - - -

20 (Handed to the witness.)

21 - - -

22 THE WITNESS: Thank you.

23 I have it.

24 BY MR. FRISCH:

25 Q. So, if you look at the -- if you look -- if you

Most - Direct

1 would turn to the page and look at the entry for
2 April 13, 2021.

3 (Pause.)

4 BY MR. FRISCH:

5 Q. And, specifically, do you see that it says: The
6 entry corresponding to 55, handwritten 55?

7 A. Yes.

8 Q. And it says: Read and review. Review of E-mails
9 from Lisa Vara, V-A-R-A, Carlos Malave, M-A-L-A-V-E, and
10 Allan Kassenoff, times two.

11 Do you see that?

12 A. Yes.

13 Q. Okay.

14 So, now, let me show you the next exhibit, which is
15 15.

16 I'd ask you to take a look at that.

17 A. Wait.

18 I -- I --

19 THE COURT: What's 15?

20 THE WITNESS: Am I putting this down, or is it
21 something on this page?

22 MR. FRISCH: I'm going to come back to that,
23 after I show you this.

24 THE WITNESS: Oh, okay.

25 THE COURT: Did we mark it 15 yet, or do you

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1 need it marked now?

2 MR. FRISCH: This, I need marked, 15, yes.

3 Thank you.

4 THE COURT: Did we have a 14?

5 THE COURT CLERK: I have a 14.

6 THE COURT: Yes. I know.

7 THE WITNESS: Wait.

8 This is 13.

9 THE COURT: No, she's marking 15.

10 MR. SCHNEID: That's 14.

11 This is 15.

12 13 is the January --

13 THE WITNESS: You know what?

14 We marked this wrong.

15 This one says: 13.

16 It's 14.

17 (An off-the-record discussion was held.)

18 - - -

19 (A four-page document of an E-mail chain was
20 marked for identification as, Defense Exhibit 15.)

21 - - -

22 (Defense Exhibit 15 was admitted into
23 evidence.)

24 BY MR. FRISCH:

25 Q. Let me know when you're ready, Ms. Most.

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SENIOR COURT REPORTER

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1 A. I'm ready.

2 Q. This document, 15, has, in the upper-right corner,
3 the number, the handwritten number, 55, right?

4 A. Yes.

5 Q. And that's your handwriting?

6 A. Yes.

7 Q. And that -- this is a -- this Exhibit 15,
8 Defense Exhibit 15, is four pages?

9 A. (No response.)

10 Q. Of an E-mail chain?

11 Correct?

12 A. Yes.

13 Q. And you'll see that it includes an E-mail from
14 Ms. Vara, V-A-R-A, correct?

15 A. Yes.

16 Q. It includes an E-mail from Mr. Malave?

17 A. Yes.

18 Q. Correct?

19 THE COURT: M-A-L-A-V-E?

20 MR. FRISCH: Correct.

21 BY MR. FRISCH:

22 Q. So, if we go back to Exhibit 14 -- I apologize -- if
23 you go back to Exhibit 14 and look at your invoice
24 corresponding to Document 55?

25 A. Mm-hmm.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
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1 Q. It says: April 13, 2021, CWM, read and review;
2 quote: Review of E-mails from Lisa Vara, Carlos Malave, and
3 Allan Kassenoff, closed quote.

4 Do you see that?

5 A. Yes.

6 Q. So, within 55, we just saw E-mails from Mr. Malave
7 and Ms. Vara, correct?

8 A. Yes.

9 Q. Where's the E-mail from Mr. Kassenoff?

10 A. He's on the E-mail exchange.

11 THE COURT: He's copied up in the top of the --

12 THE WITNESS: Right.

13 THE COURT: -- E-mail.

14 THE WITNESS: There are two E-mails, the one
15 from Malave on the top and the one from Lisa Vara.

16 And Malave is on the bottom.

17 BY MR. FRISCH:

18 Q. And, so -- and the words you used in describing this
19 in your invoice was that these are E-mails from
20 Mr. Vara (sic), Mr. Malave, and Mr. Kassenoff, correct?

21 A. Yes, he -- he is on the E-mail exchange.

22 Q. He's on the E-mails?

23 A. Right.

24 Q. You agree, he's not -- they're not from him,
25 correct?

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1 A. That's correct.

2 There were two E-mails that I was referring to.

3 There are really three.

4 (Attorney Frisch conferred with the defendant.)

5 MR. FRISCH: Your Honor, could I take a quick
6 break to get my papers a little organized?

7 THE COURT: Well, we can break for the morning,
8 provided we think we can finish this by the end of today.

9 I'd rather not go into another --

10 MR. SCHNEID: Your Honor --

11 MR. FRISCH: Your Honor, I'm -- I'm sure we
12 can.

13 MR. SCHNEID: -- if we could come back at 2:30?

14 THE COURT: Okay.

15 We still think we can finish, if we come back
16 at 2:30?

17 MR. FRISCH: Yes.

18 THE COURT: Okay.

19 MR. SCHNEID: And there would be time for me to
20 also ask questions?

21 THE COURT: Yes.

22 I would assume so.

23 Well, listen, if we can't, we can't finish it,
24 but we'll break for this morning.

25 It's been a long day for the Reporter, too.

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1 See everybody at 2:30.

2 THE WITNESS: Your Honor, may I leave my boxes
3 and the carton here?

4 THE COURT: Yes.

5 Thank you.

6 THE WITNESS: Should I leave these here,
7 Your Honor?

8 THE COURT: Yes, that's fine.

9 - - -

10 (A luncheon recess was held.)

11 - - -

12 (The morning proceedings were concluded.)

13 - - -

14 AFTERNOON SESSION

15 THE COURT CLERK: Recalling on the matrimonial
16 calendar, under Index Number 58217/2019,
17 Allan Kassenoff versus Catherine Kassenoff.

18 For the record, all parties are present and
19 ready.

20 THE COURT: Okay.

21 My hope is that we can conclude this today.

22 And I understand, Mr. Frisch, where you're
23 coming from, in terms of your argument, if there's work
24 that was gratuitously done, perhaps, for the benefit of
25 Mr. Kassenoff, et cetera, it may not be reasonable might

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1 be one of your arguments.

2 But, still, at the end of the day, it is still
3 of the reasonableness of the fees.

4 I don't want to have too much in the weeds on
5 these E-mails.

6 Ms. Most, do you want to --

7 THE WITNESS: Yes.

8 THE COURT: -- take your place?

9 MS. MOST: Yes.

10 MR. SCHNEID: Your Honor?

11 THE COURT: Yes.

12 MR. SCHNEID: If I may, I apologize.

13 I had asked to come back at 2:30.

14 After I left the courtroom, apparently, at
15 12:28, I received an E-mail -- I didn't see it until
16 12:30-something -- canceling my 2:00 p.m. appearance and
17 adjourning it to next week before Judge Ondrovic, so I
18 apologize asking for a delay.

19 THE COURT: Oh, that's alright.

20 I thought you were going to tell me you
21 couldn't stay now.

22 MR. SCHNEID: No, no, no, no, no, no, no.

23 THE COURT: Good.

24 MR. SCHNEID: I just apologize for having to
25 ask for it and not needing it.

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1 THE COURT: That's okay.

2 Better than the other way around.

3 MR. FRISCH: Yes.

4 THE COURT: Okay.

5 Go ahead, Mr. Frisch.

6 DIRECT EXAMINATION

7 (CONTINUED)

8 BY MR. FRISCH:

9 Q. Ms. Most, good afternoon.

10 A. Good afternoon.

11 I want to show you a document I've marked for
12 identification -- I believe we're up to Defense 16 -- and this
13 is your invoice, which is on the evidence -- in the
14 Evidence Room, for January, 2021.

15 - - -

16 (A document was marked for identification as,
17 Defense Exhibit 16.)

18 - - -

19 (Defense Exhibit 16 was admitted into
20 evidence.)

21 - - -

22 (Handed to the witness.)

23 - - -

24 BY MR. FRISCH:

25 Q. So, Ms. Most, do you recognize this document as your

Most - Direct

1 invoice, covering the period, January, 2021?

2 A. Yes.

3 Q. By the way, just as a point of -- to lay had the
4 foundation or lay the landscape for some of my questions, do
5 you recall there was a time that Ali (phonetic) ran away from
6 school or left school to be with her mother?

7 A. Yes.

8 Q. Do you recall that that happened on January 27?

9 A. I don't recall the date it happened.

10 Q. What I was going to say, it was January 27, 2021.

11 But, even with that qualification, you don't
12 remember the exact date?

13 A. I don't remember the exact date.

14 THE COURT: Would it surprise you if that was
15 the date?

16 THE WITNESS: No.

17 THE COURT: Okay.

18 MR. FRISCH: Thank you, Judge.

19 BY MR. FRISCH:

20 Q. Now, if you look at, it would be, entries on this
21 exhibit for January 27, 2021, do you see the entry for -- it
22 goes onto a second page.

23 So it looks like, on January 27, 2021, there's,
24 approximately, maybe, twenty-five entries that you put in for
25 that day, twenty-five separate categories of work for which

Most - Direct

1 you billed, approximately?

2 A. I'd have to count them up.

3 Do you want me to count them?

4 Q. No.

5 Would you agree that it's more than twenty?

6 THE COURT: She might still have to count them
7 for that.

8 Well, you could with this.

9 She's counting.

10 (Pause.)

11 THE WITNESS: More than twenty.

12 BY MR. FRISCH:

13 Q. Okay.

14 So, as it regards your work in this matter, that was
15 a busy day, fair?

16 A. Yes.

17 Q. Now, do you see there's an E-mail, next to which you
18 put the number, 87, in your handwriting, an E-mail to
19 Ms. Kusnetz (phonetic)?

20 Do you see that?

21 A. Yes.

22 Q. And do you recall that -- that that E-mail is, in
23 fact, part of the backup that you provided and uploaded to the
24 Evidence Room?

25 A. I would assume that.

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1 Q. Okay.

2 Now, do you -- is it true, as best as you can
3 recall -- and the document is in the Evidence Room -- that the
4 next document, we didn't respond to E-mail from
5 Allan Kassenoff, 88, that's not here, correct?

6 THE WITNESS: I --

7 MR. SCHNEID: Objection.

8 What do you mean by "not here"?

9 THE COURT: Do you mean: The E-mail wasn't
10 included in the Evidence Room?

11 MR. FRISCH: Correct.

12 THE COURT: Okay.

13 Go ahead.

14 THE WITNESS: So, no, I don't know that.

15 I wouldn't have put a number next to it if I
16 didn't think I had the E-mail.

17 MR. SCHNEID: I have a hard copy of 88,
18 Your Honor, in our set.

19 THE COURT: Do you want to show it to
20 Mr. Frisch?

21 (Pause.)

22 BY MR. FRISCH:

23 Q. So -- so -- I -- I -- I believe what Mr. Schneid
24 is -- was about to show me -- and he'll correct me if I'm
25 wrong -- was Document 88, which is Mr. Kassenoff's E-mail to

Most - Direct

1 you and Mr. Dimopoulos.

2 But, turning back to the exhibit that I handed you,
3 it says: Respond to E-mail from Allan Kassenoff, 88.

4 Do you see that?

5 A. Yes.

6 Q. 88 is not part of the E-mails that were uploaded to
7 the Evidence Room; is that correct?

8 MR. SCHNEID: Objection.

9 I have 88 in my possession.

10 You didn't ask for it, because you also found,
11 what's been marked as, 88.

12 I'd like to show my client -- the witness the
13 document, but --

14 THE COURT: Is that the one you just gave him?

15 MR. SCHNEID: I didn't give it to him, because
16 he found it in his stack.

17 MR. FRISCH: I'm sorry.

18 Maybe I -- maybe I misspoke.

19 (Attorney Frisch and the defendant conferred.)

20 MR. FRISCH: So, forgive me, Your Honor.

21 I'm having some --

22 THE COURT: Numerical difficulties?

23 MR. FRISCH: I'm getting old, Judge.

24 After lunch, I need my nap.

25 I'm not going to take it now, just so you know.

Most - Direct

1 THE COURT: I appreciate that.

2 BY MR. FRISCH:

3 Q. You billed, on your invoice, for your response to
4 E-mail for Mr. Kassenoff, correct?

5 A. Yes.

6 Q. Am I correct that that response is not included in
7 what you uploaded to the Evidence Room?

8 THE COURT: Her response?

9 MR. FRISCH: Correct.

10 MR. SCHNEID: Can she be given a copy of the
11 document he's referencing?

12 THE COURT: Sure.

13 Can you show her that document.

14 MR. FRISCH: I'm going to show you 88, which --
15 if you just give me one second.

16 (Pause.)

17 (Handed to the Court Officer.)

18 MR. FRISCH: Thank you, Officer.

19 - - -

20 (A two-page document was marked for
21 identification as, Defense Exhibit 17.)

22 - - -

23 (Defense Exhibit 17 was admitted into
24 evidence.)

25 - - -

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1 (Handed to the witness.)

2 - - -

3 (Pause.)

4 THE WITNESS: So this might not be the right
5 E-mail, because this is, dated, the Twenty-eighth.

6 THE COURT: What do you mean: Not the right
7 E-mail?

8 You mean?

9 THE WITNESS: There must have been another
10 E-mail.

11 BY MR. FRISCH:

12 Q. Well, the E-mail, the document that you have in
13 front of you, which is 17, Exhibit 17, has your handwritten
14 88 --

15 A. Yes.

16 Q. -- in the upper right, correct?

17 A. Yes.

18 Q. And, then, if you look at the preceding exhibit that
19 I handed you, 88 corresponds to your response to E-mail from
20 Allan Kassenoff, January 27, 2021.

21 Do you see that?

22 A. So mine is a: Read and respond to E-mail.

23 Q. And that's dated, January 27, 2021, correct?

24 A. Yes.

25 And this E-mail is dated, January -- Thursday,

1 January 28.

2 Q. Right.

3 But the E-mail that's dated, January 28, has the 88
4 in the upper-right, correct?

5 A. I might have made a mistake.

6 Obviously, I identified the wrong E-mail.

7 Q. Well, did you respond to the document that you have
8 in your hand; which is, Number 17?

9 MR. SCHNEID: Objection.

10 THE COURT: I'm lost here.

11 BY MR. FRISCH:

12 Q. Is this the --

13 MR. FRISCH: I'm going to ask this question.

14 BY MR. FRISCH:

15 Q. Does the document, Defense 17, which is an E-mail
16 chain, does that include an E-mail from Mr. Kassenoff to you?

17 A. Yes.

18 Q. Did you respond to it?

19 A. I don't know.

20 Q. Did you produce -- do you -- do you recall -- did
21 you produce your response to it?

22 A. (No response.)

23 THE COURT: If you know; I mean --

24 THE WITNESS: I don't know.

25

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1 BY MR. FRISCH:

2 Q. You don't know or you don't recall, correct?

3 A. I don't know or I don't recall.

4 Q. If you go down to Exhibit 17, that is, again, your
5 invoice, you can put aside --

6 MR. SCHNEID: Objection.

7 17 is exhibit -- what she marked as, 88.

8 BY MR. FRISCH:

9 Q. If you put aside the --

10 THE COURT: I'm sorry.

11 Did you hear the objection, or are you trying
12 to clarify it?

13 MR. FRISCH: I'm trying to clarify it.

14 THE COURT: Okay.

15 BY MR. FRISCH:

16 Q. If you put aside the invoice and you go back --
17 withdrawn.

18 Withdrawn.

19 I really am tired.

20 If you -- if you put aside Number 88; that is --

21 A. Okay.

22 Q. -- the document that has your 88 in the upper-right,
23 go back to the invoice, okay?

24 A. Mm-hmm.

25 Q. Do you see the -- for January 27, 2021, do you see

Most - Direct

1 your handwritten number, ninety-nine zero?

2 A. Ninety-nine zero?

3 Q. And that's the very last entry under

4 January 27, 2021.

5 A. I -- I see a 90 and a 91, for the Twenty-eighth.

6 Q. And I'm directing -- thank you.

7 And I'm directing your attention to the one that
8 says ninety-nine zero?

9 A. Oh, I'm sorry.

10 I misheard what you said.

11 Q. And it says, to the left of your handwritten,
12 ninety-nine zero, it says: Respond to E-mail from Allan,
13 regarding violin.

14 Do you see that?

15 A. Yes.

16 Q. Is that response of yours included in what you
17 uploaded to the Evidence Room?

18 A. Probably not, because my goal was to identify that I
19 read an -- I read an E-mail.

20 And all of my Sent E-mails are not saved into my --
21 into my system in the same manner that I save the overwhelming
22 majority of my E-mails.

23 Q. Do you recall that, on the morning of
24 January 28, 1992, that there was a court conference before
25 Judge Koba?

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1 A. Yes.

2 Q. And do you recall that one of the things discussed
3 that morning was the issue of Ali (phonetic) leaving school to
4 go to her mother's place?

5 A. So I can tell you that there was a virtual
6 appearance, that day, because it's on the bill.

7 I -- I cannot recall exactly what occurred in that
8 virtual conference.

9 Q. So I want to show you something to refresh your
10 recollection.

11 MR. FRISCH: I believe we're up to 18?

12 MR. SCHNEID: Objection, Your Honor.

13 To refresh her recollection, as to what
14 happened at the conference, I think that's exceeding the
15 scope --

16 THE COURT: I'm not --

17 MR. SCHNEID: -- and she didn't --

18 THE COURT: -- sure what he's refreshing her
19 recollection to.

20 Does that have to do with Exhibit 18?

21 BY MR. FRISCH:

22 Q. Do you recall --

23 MR. FRISCH: Let me say it over, again.

24 BY MR. FRISCH:

25 Q. Do you recall, Ms. Most, that one of the topics, on

Most - Direct

1 January 28, 2021, at the conference with Justice Koba, was the
2 issue of Ali (phonetic) leaving school to go to her mother's
3 place?

4 A. I -- I can't tell you that I recall what happened in
5 that conference.

6 Q. I want to show you something and see if it refreshes
7 your recollection, as to what happened in that conference.

8 A. Is that relevant to the reasonableness of my bill?

9 Q. I believe it is.

10 I'm not here to argue with you.

11 Can I ask the questions?

12 And your counsel has shown that he's able to raise
13 objections, without being bashful about it.

14 MR. SCHNEID: I have the same objection,
15 Your Honor.

16 This seems like we're getting into weeds in the
17 substantive matter of what was raised at a conference.

18 THE COURT: Well, I mean, does this relate to
19 the billing, with respect to that conference?

20 MR. FRISCH: It relates to all of the issues.

21 It relates to the billing.

22 It relates to our argument about the standard
23 for reasonableness of fees, which includes whether
24 they're excessive, whether they're otherwise unnecessary.

25 It goes to what we will argue is the

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1 selectiveness with which Ms. Most has blacked out some
2 documents and either deleted or not provided others.

3 So I want to make this point, as part of that
4 presentation.

5 THE COURT: Alright.

6 Overruled.

7 It is 18?

8 BY MR. FRISCH:

9 Q. I'm going to show you 18 to refresh your
10 recollection.

11 THE COURT: To see if it refreshes her
12 recollection.

13 MR. FRISCH: Thank you.

14 BY MR. FRISCH:

15 Q. And I'll represent to you that the -- you can look
16 at whatever you want, Ms. Most.

17 These are my Post-Its that I put on it.

18 You may want to direct yourself to those pages.

19 MR. FRISCH: Thank you, Officer.

20 (Handed to counsel.)

21 BY MR. FRISCH:

22 Q. And my question is, once you look at it, whether it
23 refreshes your recollection, that one of the topics of
24 conversation at that conference was this issue of
25 Ali (phonetic) leaving school to go to her mother's place.

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1 MR. FRISCH: While she's marking that, if I can
2 ask The Court something off the record.

3 (An off-the-record discussion was held.)

4 - - -

5 (A January 28, 2021, transcript, held before
6 Justice Koba, was marked for identification as,
7 Defense Exhibit 18.)

8 - - -

9 (Defense Exhibit 18 was admitted into
10 evidence.)

11 - - -

12 MR. SCHNEID: This was not admitted.

13 THE COURT: Isn't this one of the ones that's
14 been uploaded?

15 MR. FRISCH: No.

16 This is what I'm showing Ms. Most to refresh
17 her recollection, as to the topic --

18 THE COURT: Well, what is it, so I don't --

19 MR. FRISCH: It's a transcript of the
20 conference before Justice Koba, on January 28, 2021.

21 THE COURT: Is this part of NYSCEF, or is this
22 part of -- one of the documents she provided to you?

23 MR. FRISCH: No, I believe it's on NYSCEF.

24 THE COURT: Well, let's do it for ID.

25 It hasn't been moved in yet.

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1 - - -

2 (Defense Exhibit 18 was remarked for
3 identification only.

4 - - -

5 THE COURT: The question for the witness is
6 whether this refreshes her recollection, as to the
7 subject of the conference?

8 MR. FRISCH: Yes.

9 THE COURT: Alright.

10 THE WITNESS: Yes.

11 BY MR. FRISCH:

12 Q. Now, if you turn back and if you look at the --
13 withdrawn.

14 If you do have Exhibit 13 in front of you,
15 Defense Exhibit 13.

16 (Pause.)

17 THE WITNESS: Yes.

18 BY MR. FRISCH:

19 Q. And that -- just to refresh, just for the record --
20 that's a three-page E-mail, which has your handwritten, 92, in
21 the upper-right, correct?

22 A. Yes.

23 Q. And I believe all of the components of this E-mail
24 chain are January -- are dated, January 28, 2021, in the
25 afternoon, correct?

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1 A. Yes.

2 Q. Okay.

3 If I can turn your attention to the last part --
4 actually, the first part of the E-mail chain, which is at the
5 bottom of Page 2.

6 Do you see that?

7 A. Yes.

8 Q. And you wrote, quote: I have spoken with
9 Dr. McGuffog, M-c-G-U-F-F-O-G.

10 Allan must let the school know she left school
11 yesterday.

12 She would speak to the judge.

13 The report will not be helpful if it is watered
14 down.

15 Do you see that?

16 A. Yes.

17 Q. And, then, the first part of the E-mail chain or the
18 top part, on the top of Page 1, is an E-mail, from Allan to
19 you, with a CC to Mr. Dimopoulos, correct?

20 A. Yes.

21 Q. And do you see that?

22 A. Yes.

23 Q. And he writes to you: Not yet.

24 I can send the following E-mail.

25 Please let me know.

Most - Direct

1 Tim, yesterday, Ali (phonetic) was dropped off
2 school and snuck off campus to cut school.

3 Can we discuss tomorrow during our call?

4 Speaking of which, what time works best for you?

5 Thanks, Allan.

6 Do you see that?

7 A. Yes.

8 Q. Could you go back --

9 MR. FRISCH: Thank you.

10 BY MR. FRISCH:

11 Q. Could you go back to Defense Exhibit 16, which is
12 the January invoice.

13 A. Yes.

14 Q. How many E-mails -- can you -- can you say, can you
15 approximate, how many E-mails for this invoice -- how many
16 E-mails sent, or received, and reviewed did you go for?

17 THE COURT: Would you repeat the question.

18 BY MR. FRISCH:

19 Q. On this invoice, in January, 2021, approximately how
20 many E-mails did you send or receive?

21 A. It says --

22 Q. For which you billed?

23 A. It says --

24 MR. SCHNEID: Objection -- form.

25 THE COURT: Overruled.

Most - Direct

1 If you understand the question.

2 THE WITNESS: It says: Review of four E-mails
3 from Gus and Allan.

4 BY MR. FRISCH:

5 Q. And I'm not asking you just with regard to that
6 date.

7 I'm asking you -- let me ask the question
8 differently to make it clearer.

9 From this invoice, in its entirety, are you able to
10 tell, looking at it, for how many E-mails you billed that were
11 either sent or received to you from anybody?

12 MR. SCHNEID: Objection.

13 THE WITNESS: I don't even understand the
14 question.

15 BY MR. FRISCH:

16 Q. How many E-mails did you bill for --

17 THE COURT: What's the objection?

18 BY MR. FRISCH:

19 Q. -- in January --

20 THE COURT: What's the objection?

21 MR. SCHNEID: I didn't understand the question,
22 either.

23 THE COURT: That one, I thought I did
24 understand.

25 Mr. Frisch, you're asking -- I don't have the

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1 invoice in front of me -- but, of the entire matters that
2 were billed for in that invoice, can you tell, from
3 looking at it, how many of those items reflect a bill for
4 an E-mail, a response or a receipt?

5 MR. FRISCH: That's my question, yes.

6 THE COURT: Okay.

7 If you can.

8 THE WITNESS: I'd have to count it up.

9 THE COURT: Is that how they're broken down,
10 though?

11 I mean --

12 THE WITNESS: Yes.

13 Every E-mail is individually billed, Judge.

14 THE COURT: But does it indicate that it's an
15 E-mail there?

16 THE WITNESS: Yes.

17 What it would say is: Read and review numerous
18 E-mails over a canceled Zoom.

19 That's billed for .1.

20 THE COURT: So is that fair to say, then, that
21 you can't tell the exact number of E-mails; that would be
22 since you refer to them in a group?

23 THE WITNESS: Yes.

24 Some of them are in a group.

25 THE COURT: Okay.

Most - Direct

1 Does that answer your question?

2 MR. FRISCH: Yes.

3 BY MR. FRISCH:

4 Q. If we go to the entry for January 11, 2021.

5 If you turn to that page, please.

6 A. Okay.

7 Q. And do you see that there's an entry for: Review of
8 E-mail from Gus Dimopoulos?

9 A. Yes.

10 Q. And it's indicated, with your handwriting, as:
11 Number 28?

12 A. Yes.

13 Q. Is that one uploaded to the Evidence Room?

14 MR. SCHNEID: Objection.

15 They have the documents.

16 If they're going to show it to her.

17 But, to ask her: Of the pages that were
18 uploaded, what was uploaded, without showing it to her,
19 that would not be fair.

20 THE COURT: Would it be helpful to see it, or
21 it might not be?

22 THE WITNESS: Judge, if I put a number by it, I
23 identified it in E-mail.

24 So I -- I -- I have to assume that it was
25 uploaded.

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

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1 THE COURT: Okay.

2 Can we cut to the chase?

3 Is it not uploaded?

4 Is that what your --

5 MR. FRISCH: It's not uploaded, at this point.

6 I can't show it to her.

7 I don't have it.

8 THE COURT: Okay.

9 BY MR. FRISCH:

10 Q. Alright.

11 (Attorney Frisch and the defendant conferred.)

12 BY MR. FRISCH:

13 Q. By the way, would you agree with -- withdrawn.

14 Do you agree that, in the entirety, the number of
15 E-mails for which you billed, whether sent or received, and
16 missing from what you uploaded to the Evidence Room, is, at
17 least, 100?

18 THE COURT: I don't understand that question.

19 THE WITNESS: No.

20 I would not agree.

21 THE COURT: Well, I guess she understood it.

22 I didn't really get it.

23 The entirety of this invoice?

24 BY MR. FRISCH:

25 Q. With regard to all of the invoices that you uploaded

Most - Direct

1 to the Evidence Room, how many E-mails are identified but not
2 produced?

3 THE COURT: Okay.

4 BY MR. FRISCH:

5 Q. Or, in your words, are missing?

6 A. Very few.

7 There was one period -- and I forget which month it
8 was -- where, like, there was a whole chunk of them that I
9 couldn't find anywhere in my system.

10 Other than that, I think the majority of them are
11 here, including the very hundreds that I added at the end of
12 each bill that I read, and reviewed, and did not bill.

13 THE COURT: But you don't -- sitting there, you
14 wouldn't have a --

15 THE WITNESS: I --

16 THE COURT: -- you wouldn't know how many there
17 are exactly?

18 THE WITNESS: I can tell you there're not
19 hundreds, Judge.

20 That, I can tell you.

21 MR. FRISCH: Well, I said: At least, 100.

22 I didn't say: Hundreds.

23 BY MR. FRISCH:

24 Q. Do you believe that the number of E- -- would you
25 agree that the number of E-mails identified on these invoices

Most - Direct

1 in the aggregate, but not provided in the backup, is
2 approximately 100?

3 A. I would not agree.

4 Q. Let me show you the invoice for the month of
5 May, 2021.

6 THE COURT: We're not going to go through the
7 hundred; are we?

8 I mean --

9 MR. FRISCH: Alright, we won't.

10 THE COURT: I mean, you can argue after, on
11 papers, what's there and what's not.

12 I don't know that we need testimony.

13 MR. FRISCH: This is going to be fairly -- I'm
14 not going to do that.

15 THE COURT: Okay.

16 MR. FRISCH: I'm just going to do a few and
17 move on to something else.

18 (Pause.)

19 MR. FRISCH: So I believe we're up to the 19?
20 Is that right?

21 Alright.

22 (Handed to counsel.)

23 THE COURT: Is this something that is part of
24 the E-mails --

25 MR. FRISCH: Yes.

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1 THE COURT: -- that are in evidence?

2 MR. FRISCH: This is the invoice of Ms. Most,
3 from May, 2021, that she uploaded to the Evidence Room.

4 THE COURT: Okay.

5 MR. FRISCH: This is the invoice itself.

6 THE COURT: So this would be 19 for ID; in
7 evidence.

8 MR. SCHNEID: May 1 to May 24.

9 THE COURT: Thank you.

10 - - -

11 (Ms. Most's May, 2021, uploaded invoice marked
12 for identification as, Defense Exhibit 19.)

13 - - -

14 (Defense Exhibit 19 was admitted into
15 evidence.)

16 - - -

17 (Handed to the witness.)

18 - - -

19 THE WITNESS: Thank you.

20 BY MR. FRISCH:

21 Q. Now, if you look at -- if you turn to the page that
22 has your -- your work, on May 4, 2021?

23 A. Mm-hmm.

24 Q. Do you see that there is a document, 18 -- your
25 handwritten number, 18 -- that says: Review of two E-mails

Most - Direct

1 from Allan, correct?

2 A. Yes.

3 Q. And, also, if you go to May 12, you'll see
4 Number 35, which is an E-mail from Mr. Dimopoulos, correct?

5 A. Yes.

6 Q. And these are E-mails that you received, not that
7 you sent, correct?

8 A. Yes.

9 Q. Now, you testified, a moment ago, that, in your
10 view, there were not that many E-mails that are missing from
11 what you uploaded into the Evidence Room, correct?

12 A. Correct.

13 Q. These two are not provided, correct?

14 A. I'd have to check.

15 Because, if you noticed, I did not -- the ones, the
16 next page, all of those E-mails were missing from my system.

17 Q. And, just so the record's clear, when you say
18 they're missing from your system, you didn't do anything to
19 try and find out where they were: You didn't call Mr. Brandt?

20 A. No.

21 Q. Or take any steps, or talk to Mr. Schneid, to get
22 his help to find them?

23 A. No.

24 Q. You just moved on?

25 A. They were not in my -- they were not in my Kassenoff

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1 box.

2 Q. By the way, Mr. Brandt, does he work in the New York
3 area?

4 MR. SCHNEID: Objection.

5 THE COURT: What's the relevance of that?

6 MR. FRISCH: Well, I'm going to -- one of the
7 things I want to consider -- and I'll talk about when I'm
8 done -- is determining whether -- whether we want to seek
9 to call Mr. Brandt.

10 We want to find out where he is.

11 THE COURT: Alright.

12 You can answer.

13 THE WITNESS: Yes.

14 BY MR. FRISCH:

15 Q. He is in the New York area?

16 A. Yes.

17 Q. Do you know where, in the New York area?
18 What town?

19 A. Somewhere on Long Island.

20 (Pause.)

21 (Attorney Frisch and the defendant conferred.)

22 BY MR. FRISCH:

23 Q. By the way, if we can just go back to May 4, for a
24 second.

25 A moment ago, I asked you about E-mails from

Most - Direct

1 May 4, 2021, that you received from Mr. Kassenoff, correct?

2 A. Yes.

3 Q. If you look at May 4, 2021, there are other E-mails
4 that you identified as reviewing and receiving, correct?

5 A. They -- they are mostly review and receive, for the
6 most part, yes.

7 Q. Understood.

8 But there's a reference to, for example, a review of
9 E-mail from Mrs. Kassenoff to Chava White?

10 Do you see that?

11 A. Yes.

12 Q. There's a review of E-mail from Catherine,
13 Mrs. Kassenoff, regarding forensic report?

14 A. Yes.

15 Q. There's -- at the very bottom, there's a review of
16 E-mail from Mrs. Kassenoff, correct?

17 A. The one that says: From Catherine?

18 Q. Correct.

19 A. Yes.

20 Q. In fact, there's two.

21 There's one that you identified as Number 15.

22 One you identified as Number 19.

23 And, then, there are two others?

24 A. Mm-hmm.

25 Q. I think a total of four from Catherine, correct?

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1 You used the word, "Catherine," in your -- in
2 your -- in quotes, correct?

3 A. I -- I -- I try to write, "Catherine Kassenoff," but
4 sometimes it's, "Catherine."

5 THE COURT: "Catherine" is Catherine Kassenoff?

6 THE WITNESS: Yes.

7 BY MR. FRISCH:

8 Q. Fair to say all of -- all of these E-mails from
9 Mrs. Kassenoff that you identified here are, in fact, uploaded
10 by you to the Evidence Room?

11 A. The ones on 5/5?

12 Q. The ones on 5/4, 2021?

13 MR. SCHNEID: Objection.

14 She's previously said she doesn't have -- if
15 you want to ask her the question, can you show it to her.

16 Because you're asking her something that's
17 missing out of, I don't know, 6,000 pages?

18 It's not fair to ask that type of question
19 without showing her the document.

20 MR. FRISCH: You have a point.

21 BY MR. FRISCH:

22 Q. Isn't it true, Mrs. -- Ms. Most, that the E-mail
23 that you reviewed from Mr. Kassenoff, on May 4, 2021, is not
24 uploaded to the Evidence Room, but all the others on that date
25 are?

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1 MR. SCHNEID: Your Honor, if he asks this
2 question, I ask that he show it, show it to her, so she
3 knows if she uploaded them all.

4 THE COURT: Do you have a list or whatever
5 you're referring to, so she knows?

6 MR. FRISCH: Well, she has a list.

7 She's looking at a list.

8 She has the invoice in front of her.

9 THE WITNESS: I -- I can answer that, Judge.

10 THE COURT: Okay.

11 THE WITNESS: So, if you look at 5/5, there are
12 one, two, three E-mails from Catherine that I have not
13 identified.

14 If you go to the -- and -- and more on the next
15 page.

16 BY MR. FRISCH:

17 Q. My -- that doesn't answer my question.

18 My question was regard to May 4, 2021.

19 A. I -- I don't -- I don't know where that E-mail is.

20 I did my best in getting the E-mails --

21 Q. You've answered my question.

22 A. -- that were on my system.

23 Q. Thank you.

24 Let me show you -- have marked -- as

25 Defense Exhibit 20?

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1 (Handed to counsel.)

2 - - -

3 (A document was marked for identification as,
4 Defense Exhibit 20.)

5 - - -

6 (Defense Exhibit 20 was admitted into
7 evidence.)

8 BY MR. FRISCH:

9 Q. If you would look at that, Ms. Most, and tell me
10 when you've had a chance to review it.

11 - - -

12 (Handed to the witness.)

13 - - -

14 THE WITNESS: I looked it over.

15 BY MR. FRISCH:

16 Q. So here's my question: You testified previously
17 that the smallest increment of time that you can put into your
18 billing program is .1, correct?

19 A. Correct.

20 Q. And, so, is it -- do you recall that, for these
21 three E-mails, you billed, in the aggregate, .3?

22 A. Most likely.

23 MR. SCHNEID: Objection.

24 MR. FRISCH: She's answered the question.

25

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1 BY MR. FRISCH:

2 Q. And point --

3 THE COURT: Wait.

4 MR. SCHNEID: I --

5 THE COURT: Go ahead.

6 MR. SCHNEID: Objection.

7 The billing records don't show .3.

8 If you want her to answer that question, show
9 her the billing record where there's only .1 charged.

10 THE COURT: Okay.

11 Well, she's on the witness stand.

12 She can -- she can --

13 MR. SCHNEID: Well, I objected before she had
14 an opportunity to answer.

15 THE COURT: Okay.

16 But I don't know which -- that's -- that's a
17 factual issue.

18 I don't know what's on the document.

19 MR. SCHNEID: I'm asking that she be shown the
20 document before she's asked what she billed on that day.

21 THE COURT: She didn't have the document?

22 MR. SCHNEID: She did not.

23 MR. FRISCH: She answered the question.

24 Let me rephrase the question.

25 MR. SCHNEID: You asked -- it was asked a

Most - Direct

1 question about a particular day, two year -- a
2 year-and-a-half ago, of how much she billed for a
3 particular E-mail.

4 THE COURT: Okay.

5 You want to rephrase the question?

6 BY MR. FRISCH:

7 Q. Ms. Most, I believe you just testified that, with
8 regard to these E-mails that you're looking at, you believe
9 you would have billed .1 for each of the three of them,
10 correct?

11 A. So the E-mails come in, basically one at a time.
12 And, as I read an E-mail, I bill them.

13 The fact that I printed them as one E-mail, on
14 one -- on one exhibit, it's more likely that, for each E-mail
15 that comes, I -- I do bill for my time, yes.

16 THE COURT: I don't think she said that for
17 every E-mail.

18 I think she said the minimum billing increment
19 is .1.

20 But maybe it took her three times that long to
21 read that E-mail.

22 Do you understand what I'm saying?

23 MR. FRISCH: Yes.

24 Here's my question, and I think Ms. Most has
25 answered it.

Most - Direct

1 BY MR. FRISCH:

2 Q. Each -- for each of these E-mails that you may have
3 received at different times, you believe that you billed .1
4 for each of them, correct?

5 A. That is correct.

6 Q. Essentially, a total of -- a total -- of eighteen
7 minutes, correct?

8 A. Could be.

9 Yes.

10 Q. Equaling \$120, correct?

11 A. As I said to you --

12 Q. I'm just asking you if it's correct.

13 A. Yes.

14 Each E-mail --

15 Q. And, so, my question is --

16 A. -- that comes in --

17 THE COURT: One at a time, please.

18 BY MR. FRISCH:

19 Q. And, so, my question is -- and I'm using this as an
20 example. I'm not going to go through every document.

21 I want the judge to, sort of, see a -- a -- a
22 concrete example of this.

23 While your billing program is set up in such a way
24 or -- well, withdrawn.

25 Pursuant to your billing program, you can only bill

Most - Direct

1 a minimum of .1, right?

2 For a minimum of \$40.

3 In fact, it could take you a matter of seconds to
4 review a particular E-mail, correct?

5 MR. SCHNEID: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: So every time I open an E-mail
8 and read it, I bill for the E-mail.

9 THE COURT: Can I just ask a question.

10 Is it your firm's policy, which I -- my
11 understanding it's many firm's policy, that, if it took
12 you ten seconds, fifteen seconds or up to .1 minute, your
13 billing increment is .1 minute.

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 MR. FRISCH: That's my point.

17 THE COURT: Thank you.

18 (Pause.)

19 MR. FRISCH: Give me one second, Judge.

20 (Pause.)

21 BY MR. FRISCH:

22 Q. You testified, this morning, that you believe that a
23 judge had denied Mrs. Kassenoff's request for communications
24 between you and Mr. Kassenoff.

25 Do you recall that testimony?

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SENIOR COURT REPORTER

Most - Direct

1 A. I testified -- I believe what I said was that the
2 judge denied Mrs. Kassenoff's application to have the E-mails.

3 And I think that had happened at a virtual
4 conference.

5 Q. Are you sure about that?

6 A. I'm fairly certain.

7 THE COURT: Well, I think that was her
8 testimony.

9 What, you're asking whether she's sure about --

10 MR. FRISCH: I'm just asking --

11 THE COURT: -- whether it happened or that was
12 her testimony?

13 Because I think that was her testimony.

14 Do you understand what I'm saying?

15 MR. FRISCH: I do.

16 THE COURT: Okay.

17 BY MR. FRISCH:

18 Q. And you stand by that testimony, correct?

19 THE COURT: You stand by the fact that she gave
20 that testimony?

21 BY MR. FRISCH:

22 Q. You stand by the fact that it was her recollection,
23 as to the judge denied that request?

24 A. Yes, it came from Miss Ratner, who spoke to
25 Judge Koba.

Most - Direct

1 And Judge Koba might have repeated it again, but it
2 initially came from Ms. Ratner.

3 (Pause.)

4 BY MR. FRISCH:

5 Q. After the period covered by your application for
6 compensation that is the subject of this hearing, did you ever
7 change your practice about which you testified, in saving and
8 deleting documents?

9 MR. SCHNEID: Asked and answered, and
10 relevance.

11 MR. FRISCH: Well, if she's asked and answered,
12 could she answer it again?

13 MR. SCHNEID: She -- you asked the question.

14 The judge sustained my application that it was
15 irrelevant, because it was outside the period.

16 MR. FRISCH: Then, it wasn't asked and
17 answered.

18 So let me --

19 MR. SCHNEID: You asked it.

20 MR. FRISCH: Let me . . .

21 MR. SCHNEID: The judge denied the question.

22 MR. FRISCH: So let me ask -- if I can make an
23 offer-of-proof?

24 THE COURT: Go ahead.

25 MR. FRISCH: -- if The Court is inclined to

Most - Direct

1 sustain the objection again.

2 There's a credibility issue here.

3 Ms. Most has taken the position that, at no
4 time, did she feel that she had any obligation to
5 preserve electronic documents, either because she
6 believed that there was no litigation reasonably
7 anticipated --

8 THE COURT: I don't think she said that,
9 Mr. Frisch.

10 THE WITNESS: Thank you.

11 THE COURT: I don't recall that testimony.

12 MR. FRISCH: Well, my question -- so -- my
13 question is very simple: Has she ever changed that
14 practice after the time covered by the invoices that are
15 the subject today?

16 THE COURT: Well, hadn't really answered that
17 question: Did -- did she -- the question: Did she, for
18 whatever reason, relative to this case, start saving all
19 communications, or did she come to a different
20 understanding about what -- whether she's required to?

21 MR. FRISCH: That's a better phraseology of my
22 question.

23 That's what I'm trying to get at.

24 THE COURT: I'll let you ask her if it changed
25 her, and it could be for any number of reasons.

Most - Direct

1 Did you ever change your policy, in terms of
2 saving all communication, relative to this matter?

3 Post this invoice, correct?

4 MR. FRISCH: Correct.

5 THE WITNESS: So, Your Honor, for the most
6 part, I save almost all my E-mails.

7 Things that have no substance with that, I
8 don't save.

9 THE COURT: So you're saying there's nothing's
10 changed about your practice?

11 THE WITNESS: Nothing's changed.

12 And I'm not saying that I have every E-mail.

13 Obviously, there's one --

14 THE COURT: Okay.

15 THE WITNESS: -- and many are missing.

16 But, for the most part, I save the overwhelming
17 majority of my E-mails.

18 THE COURT: But you did nothing consciously
19 different?

20 THE WITNESS: No.

21 THE COURT: From the time?

22 Okay.

23 THE WITNESS: No.

24 MR. FRISCH: One moment, Your Honor?

25 I'm nearing the conclusion.

Most - Direct

1 (Attorney Frisch and the defendant conferred.)

2 MR. FRISCH: So, Your Honor, I don't believe --
3 subject to the following, I don't believe -- I have more
4 questions today of Ms. Most.

5 I don't want to interrupt or delay the
6 proceeding.

7 I want to give some thought to whether I would
8 seek to call Mister -- seek to find and call Mr. Brandt.

9 I'm not telling Your Honor I'm going to do it.

10 I just want to think about it a bit, and I
11 don't want to adjourn.

12 I'm fine continuing, with the understanding
13 that I can raise that issue.

14 THE COURT: Yes.

15 I don't know.

16 You can raise the issue, we can discuss it, or
17 you can discuss it now.

18 But, at this point, there's probably no point
19 in doing that, unless you think you want to do that.

20 I'm not sure I'll permit you. I don't really
21 see the relevance.

22 MR. FRISCH: I just don't want to make a rash
23 decision, one way or the other.

24 Your Honor may permit it, if you're convinced,
25 or Your Honor may say, "No" --

Most - Cross

1 THE COURT: Okay.

2 MR. FRISCH: -- if you're not convinced.

3 But I just want to reserve that right to raise
4 it and give it some thought.

5 The second thing I wanted to ask The Court for
6 permission, which may be protocol, anyway -- anyhow -- is
7 to be able to, at the conclusion of the hearing, to
8 submit a post-hearing brief.

9 THE COURT: That would be fine.

10 But I'm going to let Mr. Schneid ask questions
11 of Ms. Most.

12 Go ahead.

13 MR. SCHNEID: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SCHNEID:

16 Q. Ms. Most, your billing practices in this matter, did
17 you bill for any time that you did not actually incur?

18 A. No.

19 Q. Was there time that you incurred on this matter for
20 which you did not bill?

21 A. Yes.

22 Q. And, in the case of E-mails, are there E-mails for
23 which you sent or received for which you did not bill?

24 A. Many.

25 Q. And did you provide any of these documents to

1 The Court?

2 A. Yes.

3 Q. And were those into evidence now?

4 A. Yes.

5 THE COURT: I'm sorry.

6 Just so I'm clear: You're asking: Did she
7 provide any E-mails for which she did not bill?

8 MR. SCHNEID: Did not bill.

9 THE COURT: Okay.

10 MR. SCHNEID: In the uploaded what's in
11 evidence, Your Honor, behind, there's a bill, followed by
12 the E-mails to support the bill, followed by E-mails for
13 that month, for which she did not bill.

14 THE COURT: Okay.

15 MR. SCHNEID: For every month.

16 THE COURT: Okay.

17 BY MR. SCHNEID:

18 Q. You were asked about the process of gathering
19 E-mails for which you uploaded in the virtual exhibit, the
20 virtual -- the VEC, V-E-C, Virtual Electronic Courtroom.

21 What methodology did you use to decide what to
22 upload?

23 A. So I went through each bill, and I was -- I -- I --
24 I identified the E-mails.

25 I went through my system.

Most - Cross

1 I numbered them.

2 And the E-mails that I had were identified, and I
3 printed them up.

4 Q. On instances where the bill identified a charge of
5 .1 and there is more than one E-mail correspondence, did you
6 provide every single E-mail correspondence or only, at least,
7 one, to justify the .1?

8 A. I -- I -- it depended.

9 There was some times they were -- they were -- there
10 were numerous, and, some times, it was just one.

11 Q. So you were asked a series of questions today, where
12 you have a charge of .1, and you were asked why you only
13 provided a single E-mail and not both the E-mail you received
14 and the E-mail that you responded to.

15 Did you believe that, on the single E-mail you
16 provided, it justified your charge of the .1?

17 A. Yes, because I was showing The Court that I spent
18 time, and I billed for my time.

19 Q. You were asked about a period of May that had a few
20 days where you couldn't find your E-mails?

21 A. Yes.

22 Q. How many E-mails are we talking about?

23 A. Well, it's a period between May 5 and -- and, maybe,
24 May 9 or the Tenth, even.

25 But they were just missing from my system.

Most - Cross

1 I couldn't find them in the Sents.

2 I couldn't find them anywhere.

3 Q. Outside of that few-day period in May, how many
4 E-mails for which you billed could you not find the E-mail to
5 correspond -- that -- that corresponded to your charge?

6 A. Very few.

7 Q. Can you give me an idea of scope, in terms of time
8 billed: Are we talking about tens of hours; hours; hundreds
9 of hours?

10 A. I -- I -- I --

11 MR. FRISCH: Objection to the form.

12 I trying to understand the question.

13 THE COURT: Can you read back the question.

14 THE CERTIFIED COURT REPORTER: Yes, Judge.

15 - - -

16 (The following was read by the Court Reporter:)

17 QUESTION: "Can you give me an idea of scope,
18 in terms of time billed: Are we talking about tens of
19 hours; hours; hundreds of hours?"

20 - - -

21 THE COURT: Rephrase the question.

22 MR. SCHNEID: Sure.

23 THE WITNESS: That was a question I actually
24 understood.

25 THE COURT: Okay.

Most - Cross

1 Well, he's going to make it even more
2 understandable, now.

3 BY MR. SCHNEID:

4 Q. You acknowledged that there are a certain amount of
5 E-mails for which you billed, and you did not provide
6 documentation; at least, one E-mail corresponds to a .1 charge
7 that you uploaded into evidence, correct?

8 A. Yes.

9 That's correct.

10 Q. For how -- if we were to look at them in the
11 totality, in terms of number of hours billed, roughly, how
12 many hours are we talking about of missing E-mails; like, what
13 did you charge the Kassenoffs for, for which you don't have
14 E-mails or are actually into evidence?

15 A. I mean, maybe, it could be a couple of hours.

16 But, honestly, it doesn't mean that -- if I don't
17 have the E-mail, it doesn't mean that I didn't read an E-mail.

18 Q. You were asked about the IT protocols for your firm.

19 Now, your E-mails, are you aware that your -- your
20 assigned E-mail address has a specified size limit upon which
21 your E-mail stops working when it has too many E-mails to be
22 saved?

23 MR. FRISCH: Objection -- form.

24 THE COURT: I'm sorry.

25 Read that back.

Most - Cross

1 MR. SCHNEID: I'll rephrase it, Your Honor.

2 THE COURT: Okay.

3 BY MR. SCHNEID:

4 Q. You use E-mail, right?

5 A. Yes.

6 Q. And E-mails hosted for the firm?

7 A. Yes.

8 THE COURT: E-mails, what, for the firm?

9 MR. SCHNEID: Posted.

10 THE COURT: Posted, okay.

11 BY MR. SCHNEID:

12 Q. And you said that your IT person, Mr. Brandt,
13 periodically purges some of your E-mails, right?

14 A. He purges the deleted E-mails.

15 Q. Deleted E-mails.

16 Now, why is it that -- do you know why he purges the
17 -- actually, I can lead, so I'm going to rephrase.

18 When your mailbox size of your E-mail exceeds or
19 gets near the limit, does Mr. Brandt, then, upon that
20 happening, use that to delete some of the deleted E-mails?

21 MR. FRISCH: Objection.

22 Objection to the question.

23 THE COURT: Why, because it's leading or?

24 MR. FRISCH: Foundation.

25 THE COURT: Well, I'm -- go ahead; I mean --

Most - Cross

1 Overruled.

2 Go ahead.

3 THE WITNESS: I believe that is why he does
4 delete them.

5 BY MR. SCHNEID:

6 Q. And, with respect to your Sent mailbox, you don't
7 pay much attention to that?

8 A. No.

9 Q. And you don't know whether Mr. Brandt also deletes
10 your older Sent E-mail.

11 A. I don't have any idea.

12 Q. And, so, when he frees up space on your E-mail by
13 deleting your E-mails, you don't know exactly which E-mails he
14 frees up?

15 A. I don't know.

16 But I will know he never goes into my box where I'm
17 saving things.

18 Q. So, when you say, "your box" --

19 THE COURT: One at a time.

20 MR. SCHNEID: Sorry.

21 BY MR. SCHNEID:

22 Q. He never deletes the E-mails that you saved in a
23 client folder?

24 A. That's correct.

25 Q. And you don't know -- now, in your "In" box, you --

1 each day, every other day, you -- empty it, right?

2 A. Yes.

3 Q. You don't sit with E-mails sitting in your "In" box?

4 A. No.

5 Q. Right?

6 So it's your practice to either move the E-mail to a
7 client file or to delete the E-mail if you deem it not
8 important?

9 A. That's correct.

10 Q. How do you decide whether to save or delete an
11 E-mail?

12 A. If -- if -- if it has no substance or no -- no
13 value, I might not save it.

14 Q. And you don't undertake the same process for your
15 Sent mail, correct?

16 A. No.

17 Q. And, so, if your Sent mailbox was to exceed its size
18 limits, you have no idea what Mr. Brandt does when that Sent
19 mail exceeds its applicable limit in size?

20 MR. FRISCH: Objection to form.

21 THE WITNESS: I have no idea.

22 MR. FRISCH: And foundation.

23 THE COURT: Overruled.

24 (Attorney Frisch and the defendant conferred.)

25

1 BY MR. SCHNEID:

2 Q. If you can look at Defendant's 7 that's before you .

3 MR. SCHNEID: I'm going to be quick,

4 Your Honor?

5 THE COURT: That's alright.

6 BY MR. SCHNEID:

7 Q. This is a January 18, 2021, E-mail?

8 THE COURT: Do you have them all there?

9 THE WITNESS: Everything's here. I just have
10 to . . .

11 BY MR. SCHNEID:

12 Q. And, then, you should also have the corresponding
13 E-mail, the corresponding invoice, for the month of January?

14 A. I have 7.

15 Q. And do you have the corresponding invoice, as well?

16 A. Is that -- yes.

17 I think I do.

18 Q. Tell me when you're there.

19 A. I have 7 in front of me.

20 Q. And you have --

21 MR. FRISCH: Can you repeat the date that
22 you're . . .

23 MR. SCHNEID: January 18, 2021.

24 BY MR. SCHNEID:

25 Q. And, now, this message from January 18, 2021, if we

Most - Cross

1 look back, it's actually several pages long, Defendant's 7?

2 A. Yes.

3 Q. And how much did you charge for Defendant's 7?

4 A. .1.

5 Q. And there's more than one E-mail correspondence
6 you're copied on?

7 A. Yes.

8 Q. But you only charged .1 for all of those E-mails?

9 A. Yes.

10 Q. If I can have you look at Defendant's 10, please.

11 And this is a February 4, 2021, E-mail and the
12 February invoices, please.

13 A. I have 10.

14 Q. And do you have a February invoice?

15 A. Yes.

16 Q. Now, Defendant's 10 is six pages long?

17 A. Yes.

18 Q. And you were copied on more than one E-mail in this
19 chain?

20 A. Yes.

21 Q. And how much did you bill for Defendant's 10?

22 And you identified this, as 21 --

23 A. Yes.

24 Q. -- in your handwriting?

25 A. .1.

1 Q. Defendant's 11.

2 Pull that out, please.

3 And this is a February 10, 2021, E-mail.

4 A. I have it.

5 Okay.

6 Q. Now, this E-mail, this is the only E-mail we spoke
7 about today for which you charged .2 for the E-mail chain; is
8 that correct?

9 A. I have to look.

10 Q. Well, this E-mail, Defendant's 11, you charged .2
11 for, right?

12 A. Yes.

13 Q. And this was the first page?

14 A. Yes.

15 Q. Single-spaced; full-page text?

16 A. Yes.

17 Q. Second full page of text?

18 A. Yes.

19 Q. And it's actually -- and, then, there's a third
20 page, as well, correct?

21 A. Yes.

22 Q. Did you spend, at least, six minutes reviewing this
23 E-mail chain?

24 A. Probably twelve minutes.

25 THE COURT: Your Math is better than his.

Most - Cross

1 MR. SCHNEID: Well, I said: At least, six.

2 THE COURT: Oh, okay.

3 Fair enough.

4 MR. SCHNEID: Because it could have been 7.

5 BY MR. SCHNEID:

6 Q. And, I'm sorry.

7 If we can go back to the January invoices you have
8 before you.

9 And if you could look at Defendant's 13, which is a
10 January 28, 2021, document.

11 A. Yes.

12 Q. And this indicates "92," in the top-right corner?

13 A. Yes.

14 Q. And, on this E-mail chain, how many E-mails were you
15 copied on?

16 A. Four.

17 Q. And how much did you charge for that?

18 A. .1.

19 (Pause.)

20 BY MR. SCHNEID:

21 Q. If I could turn you to the April invoice.

22 (Pause.)

23 THE WITNESS: Do you know what number that is?

24 BY MR. SCHNEID:

25 Q. Yes.

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SENIOR COURT REPORTER

1 A. Oh, I have it.

2 It's Exhibit 14.

3 Q. And, if I could also direct your attention to
4 Defendant's 15.

5 A. I actually had these in order before now.
6 They're just a mess.

7 15.

8 (Pause.)

9 MR. SCHNEID: Sorry.

10 I'm going in date order.

11 THE COURT: Okay.

12 MR. SCHNEID: Not exhibit order.

13 THE COURT: Okay.

14 MR. SCHNEID: Just so we don't have to go
15 back-and-forth as much.

16 THE WITNESS: 13.

17 16.

18 Can you tell me that exhibit number I'm looking
19 for.

20 BY MR. SCHNEID:

21 Q. Defendant's 15.

22 April 13, 2021 E-mail change -- exchange.

23 A. Oh, I'm sorry.

24 It's right here.

25 Q. It indicates "55," in the top-right corner, correct?

Most - Cross

1 A. Yes.

2 Q. And how much did you bill for that E-mail?

3 A. .1.

4 Q. And how many E-mails did you receive, that day?

5 A. Four.

6 Q. And, finally, if you could look at -- you were asked
7 questions about -- I'm sorry.

8 This is Number 20.

9 And, here, if you look at --

10 A. Number 20?

11 THE COURT: You're talking about the exhibit
12 number?

13 MR. SCHNEID: Exhibit Number 20.

14 BY MR. SCHNEID:

15 Q. Last time, you were asked about, I think, Exhibit --
16 it had, in your handwritten, 117, 118, and 119?

17 A. Oh, I'm sorry.

18 Yes.

19 Q. Now, you were asked why you billed separately for,
20 what you identified as, 117, 118, and 119.

21 Do you recall that?

22 A. They probably came in all separately.

23 And, as I read it, I bill for it.

24 And I just printed it out together.

25 Q. So, for the majority of the time that we have here

Most - Cross

1 that you billed for, most of these .1's include more than one
2 E-mail exchange; isn't that right?

3 A. Yes.

4 So -- but let me explain to you: On the 117 and
5 119, like, one E-mail came in at 6:21 p.m., and the next one
6 came in at 7:43.

7 So I don't always go back to my desk.

8 But I frequently go back to my desk, at night, to
9 review E-mails.

10 So, if I billed for one, at one time, and I went
11 back and I read another E-mail, I wouldn't bill for it again.

12 (Pause.)

13 BY MR. SCHNEID:

14 Q. Now, you were asked questions, on the first day of
15 testimony, about whether you need to review documents that
16 were uploaded to NYSCEF that did not directly relate to
17 custody.

18 Do you recall that?

19 A. Yes.

20 Q. And do you review everything that's uploaded to
21 NYSCEF?

22 A. So I -- I review everything that comes to me, and I
23 actually do review what comes to NYSCEF, because I need to
24 know if it's something that has something to do with the
25 children.

Most - Cross

1 So, even if it's -- well, even if it's a letter that
2 doesn't necessarily have them mentioned, there are things
3 involved in their lives that could be mentioned.

4 Q. And --

5 A. So, yes, I -- I review everything.

6 Q. Are you able to tell the contents of the E-mail or
7 the motion before you read it?

8 A. No.

9 Q. And, so, it's only through reading, reading it,
10 whatever's filed, that you're able to determine whether it
11 would apply to the children, or not?

12 A. Yes.

13 (ATTORNEY FRISCH CONFERRED WITH THE DEFENDANT.)

14 BY MR. SCHNEID:

15 Q. You were asked a question about the
16 Second Department: Administrative Handbook for Attorneys for
17 Children."

18 Do you recall that?

19 A. Yes.

20 Q. Now, are you aware, as to whether you're required to
21 identify the time of day that you -- you charge your client?

22 A. So that --

23 Q. As privately retained?

24 Let me back up.

25 You're a private-pay individual -- a private-pay

Most - Cross

1 attorney for the child here, right?

2 A. That's correct.

3 Q. For private-pay, are you required to identify the
4 time of day that each task is incurred?

5 A. No.

6 Q. And, so, the questions, you were asked if you were
7 aware of the Second Department Handbook.

8 To the extent they apply, those only would apply to
9 panel-pay; is that correct?

10 A. Yes.

11 But I -- I can also tell you that I did have a
12 discussion with the Second Department on this and --

13 Q. Okay.

14 A. -- the head of the Attorney for the Children's
15 Office.

16 And she said that it's not something they follow,
17 because there's no way --

18 MR. FRISCH: Objection to this part on multiple
19 grounds.

20 THE COURT: Yes.

21 MR. FRISCH: Hearsay --

22 THE COURT: I'll sustain the objection.

23 MR. FRISCH: -- its relevance; as well as far
24 afield.

25 THE WITNESS: Okay.

1 Okay.

2 BY MR. SCHNEID:

3 Q. And, in the beginning of the first day of
4 questioning, you were asked about .1 and whether that means
5 ten minutes or six minutes.

6 And we've clarified, now, that .1 is one-tenth of an
7 hour, which is a maximum of six minutes; is that correct?

8 A. That's correct.

9 Q. You were asked questions that suggest that you're
10 somehow aligned with the father in this case.

11 Who do you represent here?

12 A. I represent the three Kassenoff children.

13 Q. Now, as an AFC, when the children's position is --
14 do you have times where a children's -- a child's position
15 aligns with one parent, versus the other?

16 A. Yes.

17 Q. And is that such a case here?

18 A. Yes.

19 Q. Does that mean that you are aligned with the father,
20 in all regards?

21 A. No.

22 Q. Then, what is your position?

23 A. My position?

24 Q. What -- what is -- well, I'll rephrase that
25 question.

Most - Redirect

1 If you're not aligned with the father, whose
2 interests are you aligned with?

3 A. Oh.

4 MR. FRISCH: Objection.

5 I object to the question.

6 I object to the line of questioning.

7 I certainly object to the form of that
8 question.

9 MR. SCHNEID: Well, that was a thesis of their
10 seven hours.

11 THE COURT: I'll allow it.

12 I'm not sure you want to go here, but . . .

13 Go ahead.

14 THE WITNESS: I -- I represent my clients.

15 I am aligned with my clients.

16 BY MR. SCHNEID:

17 Q. Now, you were asked questions about redacting
18 E-mails that were exchanged with the father.

19 Why did you redact those E-mails?

20 A. Some of them were just inflammatory, and I didn't
21 think they needed to come into this.

22 MR. SCHNEID: Nothing further, Your Honor.

23 THE COURT: Mr. Frisch?

24

25

1 REDIRECT EXAMINATION

2 BY MR. FRISCH:

3 Q. How are those E-mails inflammatory?

4 A. They -- they probably --

5 THE COURT: You can describe it without saying
6 what you think was inflammatory.

7 THE WITNESS: They -- they were showing
8 Mr. Kassenoff's anger.

9 And it didn't -- it wasn't part of my billing.

10 BY MR. FRISCH:

11 Q. Did you bill for the E-mails that you blacked out?

12 A. Yes.

13 Q. So it was part of your billing?

14 A. It's -- it's -- I read an E-mail.

15 The content is not necessary -- I don't believe it's
16 necessary -- to a reasonableness hearing.

17 Q. You say that the E-mails were inflammatory.

18 To whom?

19 A. On both sides.

20 THE COURT: Mr. Schneid, an objection here?

21 MR. SCHNEID: Yes.

22 Objection.

23 THE COURT: I'm going to sustain the objection.

24 For all I know, it could have been toward
25 The Court, and I'm grateful that they were blacked out.

Most - Redirect

1 I'm not suggesting I know that or -- or think
2 that, but sometimes I -- I don't know that -- not
3 everything needs to be disclosed here.

4 So I'm going to sustain the objection.

5 BY MR. FRISCH:

6 Q. Of the E-mails Mr. Schneid, when he began his
7 examination, asked you some questions about E-mails that you
8 uploaded to the Evidence Room.

9 Do you recall those questions?

10 A. (Laughter.)

11 Q. Or the topic, at least?

12 A. Tell me what you're asking me. I'm not sure.

13 Q. I'm asking if you recall the questions on
14 examination that he asked you about E-mails uploaded to the
15 Evidence Room.

16 Do you recall that he questioned you on that topic?

17 A. I -- I'm not sure -- yes, he -- he questioned me on
18 that topic.

19 Q. Of the E-mails not uploaded to the
20 Video Evidence Room, about what percentage are to or from
21 Mr. Kassenoff or Mr. Dimopoulos?

22 A. I haven't -- I haven't -- first of all, I uploaded
23 everything I could find.

24 So --

25 Q. That wasn't my question.

Most - Recross

1 MR. FRISCH: Move to strike.

2 THE COURT: Stricken.

3 BY MR. SCHNEID:

4 Q. Ms. Most, my question to you: Of the E-mails not
5 uploaded to the Evidence Room, what percentage are to or from
6 Mr. Kassenoff or Mr. Dimopoulos?

7 A. I have no idea.

8 MR. FRISCH: I have nothing else, Judge.

9 Thank you.

10 THE COURT: Anything else?

11 MR. SCHNEID: Yes.

12 RE-CROSS-EXAMINATION

13 BY MR. SCHNEID:

14 Q. The E-mails that were -- where you blacked out a
15 portion of it, the E-mail below, was -- for each of the
16 examples we saw today, there was text that wasn't blacked out,
17 correct?

18 A. Yes.

19 Q. And, for each of those E-mails, you only billed .1?

20 A. Yes.

21 Q. Did you -- are there any E-mails for which you
22 didn't -- for which you did not withhold, on a basis of
23 privilege, for which you have failed to provide evidence of a
24 particular -- I'll rephrase that.

25 MR. FRISCH: I object to that question.

Most - Recross

1 MR. SCHNEID: I am rephrasing it, so . . .

2 THE COURT: Go ahead.

3 BY MR. SCHNEID:

4 Q. For the E-mails -- for the entries for E-mails which
5 you don't have, you did not bring in a copy here, into
6 evidence, which is not otherwise privileged, were you able to
7 find a document that substantiated it, or did you -- and did
8 you intentionally not provide it, or is it that you couldn't
9 find it?

10 A. I couldn't find it.

11 And, as -- as I make clear, there are hundreds of
12 E-mails that were not billed that I provided, as well.

13 MR. SCHNEID: Thank you.

14 MR. FRISCH: May I ask --

15 THE COURT: Yes.

16 MR. FRISCH: -- one more question?

17 (Pause.)

18 THE COURT: Did you fall asleep, Mr. Frisch?

19 MR. FRISCH: No.

20 THE COURT: Okay.

21 MR. FRISCH: This is -- this is the sound of my
22 brain working.

23 THE COURT: Okay.

24 MR. FRISCH: Fortunately, it works silently.

25

1 BY MR. FRISCH:

2 Q. From time to time, did you receive E-mails from
3 Mrs. Kassenoff that you considered to be inflammatory?

4 A. That wasn't the subject --

5 Q. That's my question.

6 My question --

7 MR. SCHNEID: Objection.

8 BY MR. FRISCH:

9 Q. -- to you was: From time to time --

10 THE COURT: Overruled.

11 THE WITNESS: Yes.

12 MR. FRISCH: I have nothing else.

13 Thank you.

14 THE COURT: Okay.

15 Anything else?

16 MR. SCHNEID: No, Your Honor.

17 THE COURT: Any other witnesses?

18 MR. FRISCH: Subject to what I said before, no.

19 THE COURT: Okay.

20 I think we need to put a time limit on when
21 you're going to decide whether you're going to call that
22 witness.

23 Are you going to be ordering the transcript?

24 It's just going to --

25 MR. FRISCH: Yes.

Proceedings

1 THE COURT: Okay.

2 Off the record, Diane.

3 (An off-the-record discussion was held.)

4 THE COURT: You can step down.

5 (The witness was excused.)

6 - - -

7 (An off-the-record discussion was held.)

8 MR. SCHNEID: Can we have this on the record,
9 Your Honor?

10 THE COURT: Okay.

11 Go ahead.

12 So the question is whether I would order them
13 to give you a courtesy copy at the expense of the
14 Reporter, basically, is what it is.

15 That's why I'm not going to do that.

16 Of course, you don't have to have the
17 transcript, either.

18 It's not a necessity.

19 If they elected -- if they're electing to
20 purchase it, you don't have to get it, either.

21 MR. SCHNEID: Well --

22 THE COURT: But I don't think it's fair to the
23 Reporter to make them give a free copy.

24 That's how they make their living.

25 MR. SCHNEID: Under the appointment, Ms. Most

Proceedings

1 is entitled to bill for disbursements.

2 So this would be a disbursement.

3 She could do it that way.

4 But we're not -- she's not a party -- she's not
5 a party to this litigation, where she should be paying
6 her own personal funds for this.

7 THE COURT: I don't know that I see it that
8 way.

9 If you have any authority, I'd be happy to look
10 at it.

11 I just -- you know, I -- I realize this doesn't
12 come up very often, and that's what I meant, was that
13 there's not a lot of case law.

14 But she is a party to this, and she stands to
15 benefit from the outcome here, depending on what the
16 decision is on the fees.

17 So she's not here in her capacity as a
18 representative of the children, per se, but, rather, in
19 collecting her legal fees.

20 If you have anything, I'd be happy to look at
21 it.

22 Just make sure Mr. Frisch is copied.

23 MR. SCHNEID: It's -- it's -- it's not that,
24 though, Your Honor.

25 This is an interim fee award, where Ms. Most is

Proceedings

1 appointed on this case.

2 She is entitled to reimbursement for anything
3 she expends, in furtherance of her representation, which
4 that would be included here.

5 As Your Honor correctly points out, you -- you
6 sit before -- in a Part, involving AFC's.

7 I assume, at least, weekly, you have an AFC,
8 before Your Honor.

9 And the fact that this is not a regular
10 occurrence does not mean that Ms. Most should have to pay
11 for this, any more than if our office -- if she -- had
12 sent out a FedEx, she would personally have to pay for
13 the FedEx.

14 Because it's all in furtherance in her capacity
15 as attorney for children.

16 And getting paid is -- every AFC that you
17 appoint in this matter or in other matter gets paid.

18 She does not have a vested interest personally
19 in this litigation.

20 She does so as being appointed for the benefit
21 of the children.

22 And, so, to say that she should personally pay
23 for the day's transcript --

24 THE COURT: The children aren't getting the fee
25 that she's asking her to pay.

Proceedings

1 MR. SCHNEID: That's true.

2 But every AFC gets paid.

3 No one does this.

4 This is not a pro bono appointment.

5 And, so, we're asking Ms. Most to pay half of
6 the day's or -- or the whole thing for whatever it is.

7 You're asking her to personally pay money.

8 She hasn't received payment in this case in
9 over two years.

10 THE COURT: Well, I think, the first two
11 Orders, I did not allow Ms. Kassenoff to argue on appeal.

12 So there's nothing stopping her from paying the
13 first ones that were not subject to this hearing.

14 MR. SCHNEID: Well, she hasn't paid those.

15 THE COURT: Well, I understand that.

16 But there's a remedy for that, too.

17 But, I mean, I don't think the remedy is to
18 order a courtesy transcript from the Reporter, because
19 you don't have to have a transcript.

20 He's, maybe, electing to pay for one.

21 But, as I said, if you have anything to support
22 that, I mean, the person that's getting shorted here is
23 the Reporter.

24 MR. SCHNEID: Okay.

25 Then, we view this as part of our

Proceedings

1 representation.

2 She'll bill it, and you'll address that at the
3 next -- I assume, there will be another one of these
4 hearings.

5 THE COURT: I hope it wouldn't be that.

6 But it sounds like it will be, if that's going
7 to be part of the billing.

8 Alright.

9 So you think three weeks for the transcript.

10 And, then, we'll do --

11 MR. SCHNEID: And, then, Your Honor, also, if I
12 could be heard.

13 THE COURT: Yes.

14 MR. SCHNEID: I'm asking that this hearing be
15 closed.

16 This is the second day.

17 They're asking to call my office's IT expert.

18 You had said, made very clear, that Ms. Most
19 wasn't required to provide any E-mails.

20 You didn't order her to do so.

21 THE COURT: He hasn't asked to do that, yet, so
22 I don't really want to -- I haven't granted it, either,
23 but I don't want to entertain an application that hasn't
24 been made.

25 MR. SCHNEID: Okay.

Proceedings

1 THE COURT: Okay?

2 I'll let you be heard, if it comes to that.

3 And I'm not sure I'll allow him to do that.

4 I'm not sure I see the relevance of that,

5 but --

6 MR. SCHNEID: Thank you, Your Honor.

7 THE COURT: September 30 enough time for the
8 written briefs?

9 MR. FRISCH: I think so, yes.

10 THE COURT: Okay.

11 And you'll know by this -- this time, Friday,
12 whether you're seeking to make an application; call
13 anybody else?

14 That's enough time?

15 MR. FRISCH: We'll do it by this Friday, yes.

16 THE COURT: Okay.

17 MS. MOST: Your Honor?

18 MR. FRISCH: If Your Honor can see clear to
19 give us a Friday; I mean, a week from today?

20 THE COURT: A week from today?

21 MR. FRISCH: Yes, that's fine.

22 THE COURT: Yes.

23 MS. MOST: Your Honor, if we're not going to
24 have the transcripts for three weeks, that's, like, the
25 first week in September?

Proceedings

1 MR. SCHNEID: No, it's not the first week.
2 It's further.

3 MS. MOST: It's further in.

4 And, then, I have holidays coming up, during
5 that period, that I'm --

6 THE COURT: So you need more than the
7 Thirtieth?

8 MS. MOST: I'm -- I'm -- I'm afraid.

9 THE COURT: Okay.

10 How about -- is October 7?

11 MR. SCHNEID: Your Honor, we just need two
12 weeks after receipt of the transcript.

13 THE COURT: Well, let's assume that Diane's
14 going to be able to get them in about three weeks.

15 I think October 7 would be a fair amount of
16 time to do it.

17 If she can't get them -- and you can contact
18 Ivy -- and I can give you more time.

19 MS. MOST: Okay.

20 Thank you, Judge.

21 MR. SCHNEID: Thank you, Your Honor.

22 THE COURT: Okay.

23 And I just want -- everyone knows, I think,
24 what the issues are here, so this is not going to be a
25 submission and a reply.

1 Everyone is just going to make their arguments
2 to The Court, okay?

3 Decision's reserved.

4 Thank you.

5 MR. SCHNEID: Thank you.

6 MR. FRISCH: Thank you, Your Honor.

7 MS. MOST: Thank you, Your Honor.

8 THE CERTIFIED COURT REPORTER: Mr. Frisch, you
9 wish to order the transcript?

10 MR. FRISCH: Yes.

11 THE CERTIFIED COURT REPORTER: Ms. Schneid,
12 you'll be requesting the transcript in this case?

13 MR. SCHNEID: I don't know. I have to ask
14 Ms. Most.

15 THE CERTIFIED COURT REPORTER: Ms. Most, you'll
16 be requesting the transcript in this case?

17 MS. MOST: Yes.

18 Can I do it verbally?

19 THE CERTIFIED COURT REPORTER: Yes.

20 MS. MOST: Okay.

21 - - -

22 (The proceedings were concluded.)

23 - - -

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I N D E X

<u>DEFENSE EVIDENCE</u>	<u>DIRECT (CONTD)</u>	<u>CROSS</u>	<u>RED</u>	<u>REC</u>
Carol A. Most, Esquire	6	168&191	187	189

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I N D E X
(CONTINUED)

E X H I B I T S

<u>DEFENSE EXHIBITS</u>	<u>IDENTIFICATION</u>	<u>EVIDENCE</u>
2 (A document)	8	
3 (A June 15, 2022 letter)	37	
4 (Former Exhibit 1-9, an invoice, dated, May 24, 2021, to June 30, 2021)	51	
6 (NYSECF Document 1173, a letter from Marcia Kusnetz to Judge Quinn Koba, dated, February 17, 2021)	75	
7 (An E-mail)	83	
8 (Former Exhibit 1-4, an invoice, dated, February 4, 2021)	85	86
9 (Former Exhibit 1-5, an invoice for February, 2021)	94	94
10 (A six-page document)	100	100
11 (A four-page document)	108	108
12 (A two-page document)	112	112
13 (An E-mail exchange)	116	116

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E X H I B I T S

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DEFENSE EXHIBITS

(CONTINUED)IDENTIFICATIONEVIDENCE

14	(Former Exhibit 1-7, an invoice dated, May 4, 2021, for April, 2021)	121	121
15	(A four-page document of an E-mail chain	123	123
16	(A document)	129	129
17	(A two-page document)	134	134
18	(A January 28, 2021, transcript, held before Justice Koba)	142	142
18	(REMARKED - FOR ID ONLY)	143	
19	(Ms. Most's May, 2021, uploaded invoice)	152	152
20	(A document)	158	158

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C E R T I F I C A T I O N

This transcript is certified to be a true and accurate transcription of the proceedings in the case of:
ALLAN KASSENOFF versus CATHERINE KASSENOFF, reported on Friday, August 12, 2022.

Diane M. Molas, RDR, CRI, CLR, CT LSR, NJ CCR,
and Notary Public
Senior Court Reporter
NCRA Registered Diplomate Reporter
NCRA Certified Reporting Instructor
NCRA Realtime Systems Administrator (Credentialed)
NJ Certification Number 30XI00228400
Certified LiveNote Reporter Number 091810-04

DIANE M. MOLAS, RDR, CRI, CLR, CT LSR, and NJ CCR
SENIOR COURT REPORTER

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