

CAUSE NO. 412,249-401

ESTATE OF) IN THE DISTRICT COURT
)
 NELVA E. BRUNSTING,) NUMBER FOUR (4) OF
)
 DECEASED) HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING,)
 et al.)
)
 vs.)
)
 ANITA KAY BRUNSTING,)
 et al.)

ORAL DEPOSITION

CANDACE KUNZ-FREED

MARCH 20, 2019

ORAL DEPOSITION OF CANDACE KUNZ-FREED, produced as a witness at the instance of the Defendant Anita K. Brunsting and duly sworn, was taken in the above-styled and numbered cause on March 20, 2019, from 9:21 a.m. to 5:01 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Harris County Civil Courthouse, 201 Caroline, 7th Floor, Houston, Harris County, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Candace Kunz-Freed

2	4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR PLAINTIFF CARL HENRY BRUNSTING:</p> <p>4 Ms. Bobbie G. Bayless</p> <p>5 BAYLESS & STOKES</p> <p>6 2931 Ferndale</p> <p>7 Houston, Texas 77098</p> <p>8 Telephone: 713.522.2224</p> <p>9 E-mail: bayless@baylessstokes.com</p> <p>10</p> <p>11 FOR DEFENDANT ANITA BRUNSTING:</p> <p>12 Mr. Stephen A. Mendel</p> <p>13 Mr. Timothy J. Jadloski</p> <p>14 THE MENDEL LAW FIRM, L.P.</p> <p>15 1155 Dairy Ashford, Suite 104</p> <p>16 Houston, Texas 77079</p> <p>17 Telephone: 281.759.3213</p> <p>18 E-mail: info@mendellawfirm.com</p> <p>19</p> <p>20 FOR DEFENDANT AMY BRUNSTING:</p> <p>21 Mr. Neal Spielman</p> <p>22 GRIFFIN & MATTHEWS</p> <p>23 1155 Dairy Ashford, Suite 300</p> <p>24 Houston, Texas 77079</p> <p>25 Telephone: 281.870.1124</p> <p>E-mail: nspielman@grifmatlaw.com</p> <p>FOR WITNESS CANDACE KUNZ-FREED:</p> <p>Mr. Cory S. Reed</p> <p>THOMPSON COE</p> <p>One Riverway, Suite 1400</p> <p>Houston, Texas 77056</p> <p>Telephone: 713.403.8210</p> <p>E-mail: creed@thompsoncoe.com</p>	<p>1 INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4 Examination by Mr. Mendel7</p> <p>5 Examination by Ms. Carole Brunsting106</p> <p>6 Examination by Ms. Candace Curtis120</p> <p>7 Examination by Ms. Bayless139</p> <p>8 Signature Page257</p> <p>9 Court Reporter's Certificate259</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 EXHIBIT DESCRIPTION PAGE</p> <p>13 Exhibit 1 1996 Brunsting Family Living 9</p> <p>14 Trust</p> <p>15 Exhibit 2 2005 Restatement of the 9</p> <p>16 Brunsting Family Living Trust</p> <p>17 Exhibit 3 2007 First Amendment to The 10</p> <p>18 Restatement to The Brunsting</p> <p>19 Family Living Trust</p> <p>20 Exhibit 4 2008 Appointment of Successor 10</p> <p>21 Trustees</p> <p>22 Exhibit 5 June 2010 Qualified Beneficiary 10</p> <p>23 Designation and Exercise of</p> <p>24 Testamentary Powers of</p> <p>25 Appointment Under Living Trust</p> <p>Agreement</p> <p>Exhibit 6 August 2010 Qualified 11</p> <p>Beneficiary Designation and</p> <p>Exercise of Testamentary Powers</p> <p>of Appointment Under Living</p> <p>Trust Agreement</p>
3	5
<p>1 APPEARANCES</p> <p>2</p> <p>3 PRO SE DEFENDANT:</p> <p>4 Ms. Candace Louise Curtis</p> <p>5 218 Lanadana Street</p> <p>6 American Canyon, California 94503</p> <p>7 E-mail: occurtis@sbcglobal.net</p> <p>8 PRO SE DEFENDANT:</p> <p>9 Ms. Carole Ann Brunsting</p> <p>10 5822 Jason Street</p> <p>11 Houston, Texas 77074</p> <p>12 E-mail: cbrunsting@sbcglobal.net</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBITS (cont.)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 7 2010 Appointment of Successor 11</p> <p>4 Trustees</p> <p>5 Exhibit 8 12/21/10 Resignation of 12</p> <p>6 Original Trustee and Acceptance</p> <p>7 by Successor Trustee</p> <p>8 Exhibit 9 2016 Report of Temporary 12</p> <p>9 Administrator Pending Contest</p> <p>10 (Lester Report)</p> <p>11 Exhibit 10 2016 Plaintiff's Original 13</p> <p>12 Petition, Complaint and</p> <p>13 Application for Ex-Parte</p> <p>14 Temporary Restraining Order,</p> <p>15 Asset Freeze, Temporary and</p> <p>16 Permanent Injunction (Federal</p> <p>17 Court)</p> <p>18 Exhibit 11 2016 Verified Complaint for 13</p> <p>19 Damages of Candace Curtis</p> <p>20 (Federal Court)</p> <p>21 Exhibit 12 2015 Plaintiff's Second Amended 13</p> <p>22 Petition (Candace Curtis)</p> <p>23 (Probate Court 4)</p> <p>24 Exhibit 13 2013 First Amended Petition for 14</p> <p>25 Declaratory Judgment, for an</p> <p>Accounting, for Damages, and</p> <p>for Imposition of a</p> <p>Constructive Trust (Carl</p> <p>Brunsting) (Probate Court 4)</p> <p>Exhibit 14 March 2015 First Supplement to 14</p> <p>Plaintiff's First Amended</p> <p>Petition (Carl Brunsting)</p> <p>(Probate Court 4)</p> <p>Exhibit 15 July 2015 Second Supplement to 14</p> <p>Plaintiff's First Amended</p> <p>Petition (Carl Brunsting)</p> <p>(Probate Court 4)</p>

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<p style="text-align: right;">6</p> <p>1 EXHIBITS (cont.)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 16 August 2015 Third Supplement to 15</p> <p>4 Plaintiff's First Amended</p> <p>5 Petition and Request for</p> <p>6 Injunctive Relief (Carl</p> <p>7 Brunsting) (Probate Court 4)</p> <p>8 Exhibit 17 Notes/History 143</p> <p>9 Exhibit 18 Notes/History 143</p> <p>10 Exhibit 19 PM Trust Review Meeting 7/30/10 238</p> <p>11 Exhibit 20 October 7, 2010 Notes 238</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 Q. Okay. Then the other thing that I think</p> <p>2 everyone sometimes forgets is -- please let me try and</p> <p>3 finish the question, I'll try and let you finish the</p> <p>4 answer, because it makes it challenging for her to write</p> <p>5 down what both people are saying if we're talking at the</p> <p>6 same time.</p> <p>7 A. Sure.</p> <p>8 Q. Okay. We put together a notebook that we put</p> <p>9 in front of you, and I want to run through those --</p> <p>10 we're going to be talking about one or more of those</p> <p>11 documents during the course of the day. I just want to</p> <p>12 run through those documents and get you to identify</p> <p>13 them. Bear with me a second.</p> <p>14 The first document is the 1996 Brunsting</p> <p>15 Family Living Trust. I brought today what we have a</p> <p>16 copy of in our file, and our copy is unsigned.</p> <p>17 Do you recognize this document?</p> <p>18 A. I do.</p> <p>19 Q. And I realize you don't have an opportunity to</p> <p>20 read it word for word or go through every page, but do</p> <p>21 you have any reason to believe that this may not be the</p> <p>22 1996 document that was, in fact, signed by Elmer and</p> <p>23 Nelva Brunsting?</p> <p>24 A. I have no reason to believe that it is not.</p> <p>25 Q. And I guess -- would some sort of a signed copy</p>
<p style="text-align: right;">7</p> <p>1 CANDACE KUNZ-FREED,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 QUESTIONS BY MR. MENDEL:</p> <p>5 Q. Ms. Kunz-Freed, my name is Steve Mendel. I</p> <p>6 represent Anita Brunsting in this matter. You had</p> <p>7 indicated earlier it would be okay to call you</p> <p>8 Ms. Freed.</p> <p>9 A. (Witness nods head affirmatively.)</p> <p>10 Q. So I appreciate that.</p> <p>11 Have you ever given a deposition before?</p> <p>12 A. No, I have not.</p> <p>13 Q. Okay. Have you ever testified on attorneys'</p> <p>14 fees by way as an expert?</p> <p>15 A. No.</p> <p>16 Q. I'm assuming you had an opportunity to visit</p> <p>17 with Mr. Reed and learn about the deposition process.</p> <p>18 A. Yes.</p> <p>19 Q. So one of the things we want to try and do for</p> <p>20 the court reporter is speak our answers because that's</p> <p>21 all she can do, is write it down.</p> <p>22 A. Correct.</p> <p>23 Q. And we want to try and avoid uh-huh and huh-uh</p> <p>24 because it's not really clear who's saying what.</p> <p>25 A. I understand.</p>	<p style="text-align: right;">9</p> <p>1 still be with Mr. Vacek, or do you know where a signed</p> <p>2 copy might be?</p> <p>3 A. There may be a scanned copy somewhere, but it</p> <p>4 was my understanding there was a restatement done. And</p> <p>5 typically when a document is restated in its entirety,</p> <p>6 then there may not be a hard copy anymore.</p> <p>7 Q. Okay. So what we have marked as tab 1, we're</p> <p>8 just going to refer to that as Exhibit 1. Okay?</p> <p>9 (Exhibit 1 marked.)</p> <p>10 Q. (By Mr. Mendel) Let's go to tab 2. That's the</p> <p>11 restated instrument of the Brunsting family trust back</p> <p>12 in 2005. This one is a signed copy.</p> <p>13 Do you recognize that document?</p> <p>14 A. I do.</p> <p>15 Q. Just based on your quick thumb-through, does</p> <p>16 that appear to be a true and correct copy of the 2005</p> <p>17 restatement?</p> <p>18 A. It does.</p> <p>19 Q. So we'll treat that as Exhibit No. 2.</p> <p>20 (Exhibit 2 marked.)</p> <p>21 Q. (By Mr. Mendel) And under tab No. 3, we're</p> <p>22 going to treat that as Exhibit No. 3, a 2007 First</p> <p>23 Amendment to The Restatement to The Brunsting Family</p> <p>24 Living Trust.</p> <p>25 Do you recognize that?</p>

Candace Kunz-Freed

10

1 **A. Yes.**
 2 Q. Does that appear to be a true and correct copy
 3 of Exhibit No. 3?
 4 **A. It does.**
 5 **(Exhibit 3 marked.)**
 6 Q. (By Mr. Mendel) And under tab No. 4, we're
 7 going to treat that as Exhibit No. 4. And that's a 2008
 8 Appointment of Successor Trustees.
 9 Do you recognize that document?
 10 **A. I do.**
 11 Q. And does that appear to be a true and correct
 12 copy of that instrument?
 13 **A. It does.**
 14 **(Exhibit 4 marked.)**
 15 Q. (By Mr. Mendel) And then under tab 5, which
 16 will be Exhibit 5, is what appears to be a June 2010
 17 Qualified Beneficiary Designation and Testamentary
 18 Powers of Appointment.
 19 Do you recognize that document?
 20 **A. I do.**
 21 Q. Does that appear to be a true and correct copy?
 22 **A. It does.**
 23 **(Exhibit 5 marked.)**
 24 Q. (By Mr. Mendel) And then under tab 6, which
 25 we're going to refer to as Exhibit 6, is a Qualified

11

1 Beneficiary Designation and Exercise of Testamentary
 2 Powers of Appointment Under Living Trust Agreement.
 3 Do you recognize that agreement?
 4 **A. I do.**
 5 Q. Does that appear to be a true and correct copy?
 6 **A. It does.**
 7 **(Exhibit 6 marked.)**
 8 Q. (By Mr. Mendel) I think it's just going to be
 9 easier -- I'm going to refer to that particular
 10 document, being Exhibit No. 6, as the QBD. So can we
 11 have the agreement that if we're talking about the QBD,
 12 we're talking about Exhibit No. 6?
 13 **A. And not the one that was qualified beneficiary**
 14 **designation before that?**
 15 Q. And not No. 5.
 16 **A. Okay. Yes.**
 17 Q. For the record, Exhibit 5 was executed in June
 18 of 2010 and Exhibit 6 was executed in August of 2010?
 19 **A. Correct.**
 20 Q. Under tab 7 we're going to have what's Exhibit
 21 No. 7, which was an instrument that was executed in
 22 December of 2010 where we have an Appointment of
 23 Successor Trustees?
 24 **A. Uh-huh.**
 25 **(Exhibit 7 marked.)**

12

1 Q. (By Mr. Mendel) Do you recognize that
 2 instrument, and does that appear to be a true and
 3 correct copy?
 4 **A. It does.**
 5 Q. And then under tab 8 we have another instrument
 6 that was executed in December of 2010, the Resignation
 7 of Original Trustee. And that will be Exhibit 8.
 8 **(Exhibit 8 marked.)**
 9 Q. (By Mr. Mendel) Do you recognize that exhibit,
 10 and does that appear to be a true and correct copy?
 11 **A. It does, along with the acceptance behind it.**
 12 Q. Okay. Under No. 9, which will be Exhibit 9, is
 13 the Report of Temporary Administrator that Mr. Lester
 14 put together back in 2016.
 15 Have you seen this document?
 16 **A. I think I did at some point. I believe I did**
 17 **through counsel.**
 18 **Actually, I don't know that I saw this**
 19 **entire report; but if it was filed of record, I did.**
 20 **(Exhibit 9 marked.)**
 21 Q. (By Mr. Mendel) All right. No. 10, we get
 22 into some pleadings. No. 10 is a February 2012 federal
 23 court complaint filed by Candace Curtis, something we
 24 pulled down from the court's website.
 25 Have you seen this particular document?

13

1 **A. I'm sure I have.**
 2 Q. We're going to call that Exhibit 10.
 3 **(Exhibit 10 marked.)**
 4 Q. (By Mr. Mendel) Under tab 11, which is going
 5 to be Exhibit 11, another document that we would have
 6 pulled from the court's website, is a 2016 federal court
 7 Complaint filed by Candace Curtis.
 8 Are you familiar with this instrument?
 9 **A. Yes, I am.**
 10 **(Exhibit 11 marked.)**
 11 Q. (By Mr. Mendel) No. 12, which we're going to
 12 refer to as Exhibit 12, this is an instrument that was
 13 filed by Candace Curtis in 2015 entitled Plaintiff's
 14 Second Amended Petition.
 15 Have you ever seen this instrument?
 16 Again, something we would have pulled from the court's
 17 website.
 18 **A. I'm sure I would have seen it at some point if**
 19 **it was on the website.**
 20 **(Exhibit 12 marked.)**
 21 Q. (By Mr. Mendel) No. 13, something that we
 22 would have also obtained from the court's website, which
 23 will be Exhibit 13, is something that was filed in 2013.
 24 It would be Carl Brunsting's First Amended Petition.
 25 This was filed in the probate court.

14	16
<p>1 Are you familiar with this instrument?</p> <p>2 A. Vaguely, yes.</p> <p>3 (Exhibit 13 marked.)</p> <p>4 Q. (By Mr. Mendel) Tab 14, which is Exhibit 14,</p> <p>5 another instrument filed by Mr. Brunsting, Carl</p> <p>6 Brunsting, in March of 2015. It would be his First</p> <p>7 Supplement to Plaintiff's First Amended Petition,</p> <p>8 something we would have obtained from the court's</p> <p>9 website.</p> <p>10 Are you familiar with this instrument?</p> <p>11 A. I have seen it before, yes.</p> <p>12 (Exhibit 14 marked.)</p> <p>13 Q. (By Mr. Mendel) Under tab 15, now Exhibit 15,</p> <p>14 is a July 2015 instrument filed by Carl Brunsting</p> <p>15 entitled Second Supplement to Plaintiff's First Amended</p> <p>16 Petition.</p> <p>17 Are you familiar with this instrument?</p> <p>18 A. Yes.</p> <p>19 (Exhibit 15 marked.)</p> <p>20 Q. (By Mr. Mendel) And then I've got under</p> <p>21 tab 16, which we'll refer to as Exhibit 16, an</p> <p>22 August 2015 instrument filed by Carl Brunsting, the</p> <p>23 Third Supplement to Plaintiff's First Amended Petition</p> <p>24 and Request for Injunctive Relief.</p> <p>25 Are you familiar with this instrument?</p>	<p>1 your practice is estate planning and estate</p> <p>2 administration. Would that be correct?</p> <p>3 A. That's correct.</p> <p>4 Q. So would you tell the jury a little bit about</p> <p>5 what is the nature of your practice in terms of estate</p> <p>6 and trust planning and in terms of estate and trust</p> <p>7 administration?</p> <p>8 A. Currently or nine years ago?</p> <p>9 Q. Well, currently. We'll go back and talk in a</p> <p>10 minute.</p> <p>11 A. So currently I continue to do estate planning.</p> <p>12 I do wills, trusts. I do estate administration, probate</p> <p>13 work.</p> <p>14 Q. Okay. And so when did you first start with the</p> <p>15 Vacek firm?</p> <p>16 A. I believe it was March of 2007.</p> <p>17 Q. I tell you what. Let's back up before that.</p> <p>18 Let's just take your education real quick, starting with</p> <p>19 your undergraduate degree and jumping up to law school.</p> <p>20 A. Sure.</p> <p>21 Q. Undergraduate background?</p> <p>22 A. BBA from Southwest Texas State University in</p> <p>23 marketing.</p> <p>24 Q. Okay.</p> <p>25 A. And then that was -- graduated from there in</p>
15	17
<p>1 A. I'm sorry. What was the date on the</p> <p>2 instrument?</p> <p>3 Q. August of 2015.</p> <p>4 A. Okay. Yes.</p> <p>5 (Exhibit 16 marked.)</p> <p>6 Q. (By Mr. Mendel) Have you reviewed any</p> <p>7 documents in preparation for your deposition?</p> <p>8 A. I did.</p> <p>9 Q. I'm sorry. You did?</p> <p>10 A. I did.</p> <p>11 Q. Would you give us a general understanding; or</p> <p>12 if you recall the specific instrument, would you tell us</p> <p>13 what it is you reviewed?</p> <p>14 A. I reviewed my notes, my attorney notes.</p> <p>15 Q. Did you review anything other than your</p> <p>16 attorney notes?</p> <p>17 A. No.</p> <p>18 Q. Okay. And the attorney notes that you're</p> <p>19 making reference to, would those be the documents that</p> <p>20 you recently turned over to your lawyer and that were</p> <p>21 released to the parties?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Is that a "yes"?</p> <p>24 A. Yes. I'm sorry. It is.</p> <p>25 Q. It's my understanding that the primary focus of</p>	<p>1 2000.</p> <p>2 Q. Okay.</p> <p>3 A. From 2000 to 2003, Saint Mary's law school in</p> <p>4 San Antonio. I graduated in 2003; I started practicing</p> <p>5 in November of 2003.</p> <p>6 Q. Okay. And then just briefly, who did you go --</p> <p>7 you indicated you started with the Vacek firm in --</p> <p>8 A. In '07.</p> <p>9 Q. -- March of 2007. So who did you go to work</p> <p>10 for in 2003?</p> <p>11 A. So I was an attorney for LMI and did</p> <p>12 business -- just business practice for him in</p> <p>13 San Marcos, Texas.</p> <p>14 Q. What is LMI?</p> <p>15 A. It was Love Lady Management.</p> <p>16 MS. BAYLESS: Can you speak up just a</p> <p>17 little bit?</p> <p>18 THE WITNESS: Love Lady Management.</p> <p>19 Q. (By Mr. Mendel) What did they do?</p> <p>20 A. He held various business practices, at one</p> <p>21 point was building a marina in Costa Rica.</p> <p>22 Q. And then when did you move to a new position</p> <p>23 after that?</p> <p>24 A. In 2007, when I went to work for the Vacek law</p> <p>25 firm.</p>

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<p>1 Q. And at the time that you started with the Vacek 2 law firm, were you an associate attorney? 3 A. Yes. 4 Q. Tell us a little bit about what you did, 5 starting in 2007 and coming forward. 6 A. Sure. I started out, 2007, in the area of 7 planning. I then moved over to the administration 8 department about a year into it and started running the 9 administration department a couple of years after that. 10 Q. Okay. 11 A. So it was just a natural progression. 12 Q. And when did you start your own firm? 13 A. In 2015, September 2015. 14 Q. And so from March of 2007 until you started 15 your own firm, you were employed continuously with the 16 Vacek firm? 17 A. That's correct. 18 Q. And then at some point in there, you became a 19 partner? 20 A. Never. 21 Q. Never? 22 A. I was never a partner at the law firm. 23 Q. It's my recollection it said Vacek & Freed. 24 A. Yes, it did. 25 Q. Okay.</p>	<p>1 A. No, I have not. 2 Q. Would it be fair to say, in light of your legal 3 training through law school and your legal training 4 working at the Vacek firm and even now in your own firm, 5 that in terms of assisting the judge or the jury, you 6 possess special skills with regard to estates and 7 trusts? 8 A. Sure. 9 MS. BAYLESS: Objection, form. 10 Q. (By Mr. Mendel) Would it be fair to say that 11 you have special knowledge in the area of estates and 12 trusts? 13 MS. BAYLESS: Objection, form. 14 A. I guess it would be. I mean, my area of 15 practice has been focused in that area. So I would say 16 yes. 17 Q. (By Mr. Mendel) So if you were meeting with a 18 new client, what would you indicate to them, some of the 19 skills that you bring to the client's issues and some of 20 the knowledge that you bring to the process of estate 21 and trust planning and probate and trust administration? 22 A. I'm sorry. Could you ask that again. 23 Q. Yeah. If you were meeting with a client and 24 they were asking about your background and experience, 25 what would you share with them about skills and</p>
19	21
<p>1 A. I was always an associate attorney, never a 2 partner. 3 Q. It's my understanding that in addition to being 4 a member of the State Bar of Texas, you're a member of 5 the American Bar Association? 6 A. I am. 7 Q. And you're affiliated with the real estate, 8 probate and trust departments of both organizations? 9 A. That is correct. 10 Q. And I understand you're affiliated with a group 11 called Disability and Elder Law? 12 A. I had been; yes, that's correct. 13 Q. What do they do? 14 A. DELA is more geared towards guardianship and 15 prevention of guardianship. 16 Q. You say you had been affiliated. So you're no 17 longer affiliated? 18 A. I have not been an attending member for the 19 last four years or five years. 20 Q. Okay. You indicated that you hadn't given a 21 deposition before; but let me just, I guess, get a 22 clarification for my own purposes. 23 A. Sure. 24 Q. Have you ever testified as an expert in court 25 about a will or a trust or an administration?</p>	<p>1 knowledge in the area of trust and estate planning and 2 trust and estate administration? 3 A. I suppose I would say that that's where my 4 practice is focused and that I don't dabble in other 5 areas of the law. So that's where my training has been 6 over the years. 7 Q. So to help a layperson understand, what does an 8 estate and trust attorney do? What would be some of the 9 things that they might seek your advice for? 10 A. Estate planning, to get their stuff where they 11 want it to go, to determine who's going to be in charge 12 of their stuff if they become incapacitated, who's going 13 to take care of them if they become incapacitated. 14 Estate tax planning if there are tax issues involved. I 15 mean, that's ... 16 Q. Fair enough. And then what would be some of 17 the things that you might share with them about -- if 18 they ask, well, what's a probate administration or 19 what's a trust administration, what would you share with 20 them generally, what that's about? 21 A. Probate is a will going to court and a judge 22 blessing the will, saying that, yes, this is, in fact, 23 the last will; and then the executor is appointed to 24 carry out those duties and assistance in making sure 25 that their fiduciary responsibilities are ...</p>

22

1 Q. And so what would a layperson need to
 2 understand as part of the probate process? So, you
 3 know, the will is written, it's admitted to probate,
 4 it's approved or admitted by the Court.
 5 What kind of happens next in terms of the
 6 process of, okay, probate's been opened; at some point
 7 it's going to end. What happens in between?
 8 **A. Again, what their responsibilities are as far**
 9 **as being an executor or a personal representative or, in**
 10 **the case of a trust, a trustee; an accounting being set**
 11 **up; taking control or possession of assets; making sure**
 12 **that they are preserved and getting them to the place**
 13 **they need to be; and the tax returns are filed.**
 14 Q. And what about evaluating liabilities and
 15 things like that?
 16 **A. Of course. I mean, that goes without saying.**
 17 Q. Okay. Would those be -- the steps that you've
 18 just described for a probate administration, would those
 19 be very similar for a trust administration?
 20 **A. Absolutely, yes.**
 21 Q. What's the focus of your continuing education
 22 programs in terms of keeping your license current?
 23 **A. So I continue to go to the Advanced Estate**
 24 **Planning each year that the Texas Bar puts on. I'm a**
 25 **member of the State Bar College.**

23

1 **So I've always exceeded the amount of CLE**
 2 **that I'm required to do. Maintaining wealth -- I'm a**
 3 **member of Wealth Council. So I attend Wealth Council**
 4 **meetings twice a year.**
 5 Q. As a result of the extra continuing education,
 6 don't you also hold a designation for State Bar of
 7 College -- or State Bar College?
 8 **A. Yes.**
 9 Q. So in addition to the extra continuing
 10 education programs that you just described, do you have
 11 any other special training in the area of estates and
 12 trusts or planning or estate and trust administration
 13 other than doing the work?
 14 **A. Special training, no. I mean, not other than**
 15 **just the practice.**
 16 Q. When you do work for clients -- so let's talk
 17 about the planning work versus the administration work.
 18 Back when you were working on the
 19 Brunsting matter, were y'all doing things on an hourly
 20 rate, a flat rate, some combination?
 21 **A. Typically estate planning issues were done on a**
 22 **flat rate.**
 23 Q. Okay.
 24 **A. And estate administration was done on an hourly**
 25 **rate. We reserve the right to go to an hourly rate if**

24

1 **for some reason the planning seemed to exceed what we**
 2 **thought.**
 3 Q. Okay.
 4 **A. But typically they were flat fee.**
 5 Q. So during the period that the Vacek firm was
 6 working on the Brunsting matter -- and I assume the
 7 rates probably increased over time to account for
 8 inflation and things like that.
 9 **A. Uh-huh.**
 10 Q. Do you have a general recollection of what the
 11 hourly rates were for you and for Mr. Vacek?
 12 **A. I do not recall what those were, but they did**
 13 **increase over time. I do recall that.**
 14 Q. Do you recall what they were at the time that
 15 you left?
 16 **A. 225 an hour. And I'm making a guess. I don't**
 17 **remember, honestly. That was a long time ago.**
 18 Q. Would that have been your rate or his rate or
 19 both rates?
 20 **A. Oh, his would have been higher, I'm sure.**
 21 Q. Okay. Any reasonable idea of what his rate
 22 might have been?
 23 **A. Typically he did estate planning versus**
 24 **administration. So his was -- I don't know what his**
 25 **hourly rate was because that wasn't -- he wasn't in that**

25

1 **area of the firm.**
 2 Q. So from your perspective, is there anything
 3 unreasonable about hourly rates between, say, 200 and
 4 \$400 an hour?
 5 **A. No.**
 6 Q. What would you consider to be a reasonable
 7 hourly rate for someone that might be doing a probate
 8 administration or even a trust administration?
 9 MR. REED: Objection, form.
 10 **A. An hourly rate?**
 11 Q. (By Mr. Mendel) Yes, ma'am.
 12 **A. I don't know what a reasonable -- I mean,**
 13 **that's ...**
 14 Q. Well, if a client asked for a recommendation
 15 from you of -- I have to pick someone to be my successor
 16 trustee when I'm not here anymore. I want them to be
 17 compensated -- what would the conversation be like in
 18 terms of recommendations that you might make to the
 19 client?
 20 MS. BAYLESS: Objection, form.
 21 **A. On the rate a trustee would charge or the**
 22 **attorney? I'm not sure of your question.**
 23 Q. (By Mr. Mendel) The trustee.
 24 **A. Okay. So I typically will tell trustees that**
 25 **it's a thankless job, that they -- if they take a fee,**

26

1 what's reasonable and customary for the job that they're
 2 doing, depending on what they're actually doing. I give
 3 them an idea of what a corporate trustee would charge,
 4 and I also tell them that they are held to a higher
 5 fiduciary standard if they take a fee.
 6 Q. And so what is your understanding of what is a
 7 reasonable corporate trustee fee in Harris County?
 8 A. Currently?
 9 Q. Yes, ma'am.
 10 A. My understanding is 1.2 to 1.3 percent for the
 11 first million, plus a minimum. And as the trust gets
 12 higher in value, the percentage is reduced typically.
 13 Q. And so, as an example, is there any reason to
 14 believe that a fee of 75 basis points for the next
 15 couple of million -- would that be reasonable or
 16 unreasonable?
 17 MR. REED: Objection, form.
 18 A. I don't understand 75 basis points. I'm sorry.
 19 Q. (By Mr. Mendel) .75 of 1 percent.
 20 A. Oh, sure. I think that would be -- I mean, it
 21 depends on what the corporate trustees are charging.
 22 They're all about the same.
 23 Q. Okay. Any material difference, from your
 24 perspective, for a trust administration currently, which
 25 you indicated might be 1.2 to 1.3 percent -- what is

27

1 your understanding of what those rates might be back
 2 when Anita and Amy Brunsting were performing or had been
 3 performing an administration in this case?
 4 A. I would think they were about the same. I
 5 mean, I'm sure they get adjusted for inflation, and
 6 different corporate trustees charge a minimum. I
 7 haven't looked at what they are now.
 8 Q. But from your perspective, no material
 9 difference?
 10 A. Over a ten-year period there probably is some
 11 difference, but ...
 12 Q. But going back to 2011, 2012, 2013 --
 13 A. That was about the going rate.
 14 Q. Okay.
 15 A. From what I recall.
 16 Q. On the administrations, whether they're probate
 17 or trusts, have you gotten involved on the litigation
 18 side of those kinds of cases?
 19 A. I do not.
 20 Q. Do you provide assistance -- I guess -- do you
 21 refer those kinds -- the litigation matters to someone
 22 else?
 23 A. I would.
 24 Q. But, yet, you continue to provide some sort of
 25 assistance to the client and/or the other attorney?

28

1 A. I would.
 2 Q. From your perspective, would you consider
 3 litigation to be very time-consuming?
 4 A. I would.
 5 Q. Would you consider discovery to be time-
 6 consuming?
 7 A. I would.
 8 Q. Would you consider situations like today,
 9 preparing and attending a deposition, to be time-
 10 consuming?
 11 A. Yes, I would.
 12 Q. Preparing and attending hearings?
 13 A. Yes, I would.
 14 Q. You believe it's reasonable for those who
 15 participate in that process to be compensated for their
 16 time for all of that. Would you agree with that?
 17 MR. REED: Object to form.
 18 A. I would agree.
 19 Q. (By Mr. Mendel) I want to talk a little bit
 20 about -- well, let me back up for a second.
 21 I want to talk about how the Vacek firm
 22 handles its client consultations with respect to estate
 23 planning and what are sort of the steps.
 24 So we know that Elmer and Nelva Brunsting
 25 had this 1996 trust. So if they want to get some sort

29

1 of an update -- it's been referred to as a
 2 restatement -- how does that process work? How do you
 3 get from your original trust to the restated trust?
 4 A. Are you asking me about the Brunstings
 5 specifically, or are you asking about any other client
 6 that --
 7 Q. I just want kind of a quick overview of just
 8 about any client, and then I want to focus in particular
 9 on the Brunstings.
 10 A. So Mr. Vacek had clients that already had
 11 trusts dating back to 1990, 1991. As the tax laws
 12 change over time, clients are offered three-year
 13 reviews, to come in.
 14 When they come in, we would talk to them
 15 about whether or not they needed any changes based on
 16 the changes in the tax law, whether there were any
 17 desired changes that they wanted to make. And at that
 18 time the client would decide whether or not they wanted
 19 to amend, restate or their trust was fine as is.
 20 Q. Okay. So when you sit down to restate the
 21 trust, what are sort of the common events -- or is there
 22 such a thing as common changes that a client might
 23 implement with regard to going from an original trust to
 24 a restated trust?
 25 MS. BAYLESS: Objection, form.

30

1 MR. REED: Objection, form.

2 **A. Tax law changes, familial changes. There would**

3 **also be changes in homestead laws, changes in HIPAA**

4 **laws, updates of medical powers of attorney, updates of**

5 **durable general powers of attorney.**

6 Q. (By Mr. Mendel) Okay. Do you have a

7 recollection of what Mr. and Mrs. Brunsting had -- why

8 they decided to do a restated trust?

9 **A. I do not. I was not involved with the**

10 **restatement, as it was before -- I believe it was before**

11 **I worked at the law firm.**

12 Q. That's '07?

13 **A. I started in '07.**

14 Q. Okay. All right.

15 So now let's move forward and talk about

16 the QBD. Apparently something got signed under --

17 Exhibit 5 is an instrument that was signed in June of

18 2010 related to the QBD.

19 What is your recollection of what brought

20 Nelva Brunsting to the office to make some changes?

21 **A. You have to forgive me because this was a long**

22 **time ago already, nine years ago or almost nine years**

23 **ago. But my recollection of this particular one, in the**

24 **trust document it stated that the trust or the trustee**

25 **could make gifts, and it was not an advance on their**

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1 trust share.

2 **But Ms. Brunsting had an occasion where**

3 **two of her children needed some funds, and she wanted to**

4 **make those gifts; but she did not -- she wanted to keep**

5 **it equal amongst her children. So that necessitated**

6 **amending the trust.**

7 Q. And those two children would be who?

8 **A. Carole Brunsting and Candy Curtis.**

9 Q. And your understanding of why Carole was

10 receiving gifts was what?

11 **A. I honestly --**

12 MR. REED: Form.

13 **A. -- don't recall what the purpose of that was.**

14 **I mean, that's between Mom and her children.**

15 Q. (By Mr. Mendel) Okay. Do you have a

16 recollection of the nature or the purpose of the gifts

17 with regard to Candy Curtis?

18 **A. I don't.**

19 Q. In or about July 2010, Carl Brunsting became

20 ill from -- which is my understanding in looking at

21 documents -- with encephalitis. And then it appears

22 that there may have been some discussions about amending

23 the QBD again?

24 **A. That's correct.**

25 Q. So what is your recollection of discussions

32

1 with Nelva Brunsting with regard to why she wanted to

2 amend again?

3 **A. Because Carl was listed as a co-trustee and**

4 **first on some documents, and she wasn't sure that he was**

5 **going to actually live.**

6 Q. I think Candy Curtis was also listed as either

7 a trustee or a successor trustee on some instruments,

8 and she was removed or not permitted to be a successor

9 trustee.

10 Do you have a recollection as to why that

11 change was made?

12 **A. She was listed as a co-trustee, I believe, with**

13 **Carl Brunsting. Typically I don't recommend -- if a**

14 **family member is outside the state of Texas, it makes it**

15 **more difficult logistically to operate and handle trust**

16 **administration or trust work.**

17 **Nelva and Mr. Brunsting, Elmer, always had**

18 **listed co-trustees throughout their documents. I**

19 **believe it was just a check and balance on their**

20 **children just to make sure that there was two of them.**

21 **Candy was removed at that time. And two**

22 **co-trustees were more local, one in Victoria and one in**

23 **New Braunfels, I believe.**

24 Q. Okay. When you're engaged in conversations

25 with clients in doing this kind of planning, what

33

1 attention do you give to the issue of testamentary

2 capacity?

3 **A. Well, I mean, I usually can spot if there's an**

4 **issue. If someone has not given me any indication that**

5 **there's an incapacity issue, then I really don't worry**

6 **about it.**

7 **I would look at what they're asking me to**

8 **do. Is it totally out of character? Is it a major**

9 **change?**

10 **I mean, you're asking me whether or not I**

11 **give thought to it. I do, but I don't assume that**

12 **they're incapacitated every time they walk into my**

13 **office.**

14 Q. And that's fine. I just wanted to get a

15 general sense of, in particular for the time frame of

16 June of 2010 to August of 2010, with regard to

17 Exhibits 5 and 6, which are QBD-related, that you at

18 least had a comfort level that Nelva Brunsting had the

19 capacity to sign these instruments.

20 **A. Yes, absolutely. I mean, nothing indicated to**

21 **me that she didn't.**

22 Q. And so when you say nothing indicated to you

23 that she didn't, is that based on your conversations and

24 your observation of her demeanor and information that's

25 provided to you by her?

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1 **A. That's correct. You know, does she drive**
 2 **herself there?**
 3 Q. Which is a great point.
 4 **A. Uh-huh.**
 5 Q. Did she drive herself there?
 6 **A. Yes, uh-huh.**
 7 MR. REED: Is that a "yes"?
 8 THE WITNESS: That's a "yes."
 9 Q. (By Mr. Mendel) And so for these meetings for
 10 Exhibit 5 and Exhibit 6, did any of the other children
 11 attend those meetings?
 12 **A. No, not that I recall.**
 13 Q. With regard to Exhibit 6, which is a longer
 14 instrument in terms of pages and more detail as compared
 15 to Exhibit 5, what sort of process -- I mean, the client
 16 would indicate to you what it is they wanted, and you
 17 would prepare the instrument?
 18 **A. That's correct.**
 19 Q. Okay. And then what sort of a discussion would
 20 you have with the client, and in particular Nelva
 21 Brunsting, to help her, at least at the time that she
 22 signed the instruments, to have an appreciation for what
 23 they say?
 24 **A. What would I say to the client to make sure she**
 25 **had an appreciation of what it said?**

35

1 Q. Yes, ma'am.
 2 **A. I would explain what the trust that they have**
 3 **says currently, what changes they're wanting to make,**
 4 **what changes are in the document, to follow their**
 5 **instructions on which they desire to make on the things**
 6 **that they wanted to change, and how that would work if**
 7 **they were to pass away right now, as signed.**
 8 Q. Okay. And with regard to Exhibit 5 and
 9 Exhibit 6, the -- is that the kind of conversation that
 10 you, in fact, would have had with Nelva Brunsting?
 11 **A. Oh, absolutely, yes.**
 12 Q. And would it be fair to say that after having
 13 that conversation with her, from your perspective, she
 14 had an appreciation for the essence of what that
 15 instrument was about?
 16 MS. BAYLESS: Objection, form.
 17 **A. Of course.**
 18 Q. (By Mr. Mendel) Would it be fair to say, from
 19 your perspective, that -- you've probably heard the
 20 phrase "the objects of her bounty."
 21 Did she understand who her family members
 22 were?
 23 **A. Definitely.**
 24 Q. Did she have a general understanding of the
 25 nature of her assets?

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1 **A. Yes.**
 2 Q. Did she have a general understanding of how she
 3 wanted those assets to be managed when she wasn't here?
 4 **A. Yes.**
 5 Q. When I say a general understanding of assets,
 6 I'm talking about liquid assets as well as the farm that
 7 was up in Iowa.
 8 **A. Sure, yes.**
 9 Q. Did you have discussions with her about those
 10 assets?
 11 **A. Yes.**
 12 Q. At any time in the June to August time frame,
 13 did she, from your perspective, exhibit -- act
 14 irrationally or exhibit some sort of irrational
 15 behavior?
 16 **A. June to August of what year?**
 17 Q. 2010.
 18 MR. REED: What was the question?
 19 MR. MENDEL: Did Nelva Brunsting ever show
 20 any sort of irrational behavior during that time period.
 21 MS. BAYLESS: Objection, form.
 22 **A. Not that I'm aware.**
 23 Q. (By Mr. Mendel) On the day that she signed
 24 these instruments, as you recall -- if I understood your
 25 testimony correctly a moment ago, none of the adult

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1 children came to any of these meetings.
 2 **A. You asked me about these two.**
 3 Q. Exhibits 5 and 6.
 4 **A. Yes. I do not recall any of her children**
 5 **coming. I believe she drove herself.**
 6 Q. Not only to the meetings, but she drove herself
 7 for the signing?
 8 **A. To sign them as well.**
 9 Q. And no children were present at those signings?
 10 **A. No, they were not.**
 11 Q. Okay. And in your interactions with
 12 Ms. Brunsting, I mean, I guess, what was sort of her --
 13 from her outward expression, did she seem relieved by
 14 getting these things done? Upset?
 15 What was your perception of how she felt
 16 about making these changes?
 17 MS. BAYLESS: Objection, form.
 18 **A. I believe that she was concerned about her son,**
 19 **Carl, and making sure that somebody would be able to**
 20 **handle things if something happened to her. And I**
 21 **believe those were eliminated by the signing of those --**
 22 **that concern was eliminated by the signing of the**
 23 **documents.**
 24 Q. (By Mr. Mendel) Okay.
 25 Now, you served as the notary on these

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1 instruments, at least on --
 2 **A. Yes, I did.**
 3 Q. -- Exhibit 6. There's been the suggestion --
 4 or based on everything that I've seen in the documents,
 5 there seems to be the suggestion that Exhibit 6 was
 6 forged.
 7 Given that you were the notary, would you
 8 have participated in any sort of a situation where that
 9 exhibit might be forged?
 10 **A. Absolutely not.**
 11 Q. Okay. And I don't see your name on Exhibit 5,
 12 but do you have any reason to believe that -- as far as
 13 you're concerned, is there any evidence whatsoever that
 14 Exhibit 5 was forged?
 15 **A. No.**
 16 Q. Any evidence whatsoever that you're aware of
 17 that Exhibit 6 was forged?
 18 **A. Absolutely not.**
 19 Q. Sometimes people will sign multiple originals
 20 like in duplicate or in triplicate. Did that occur
 21 here?
 22 **A. It was a common, usual, everyday practice at**
 23 **the law firm.**
 24 Q. Okay. And what do you see or what is the
 25 benefit to the client of multiple original executions?

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1 **A. The client always leaves with -- or would**
 2 **always leave with a binder that was original;**
 3 **blue-backed originals, which was another set, that was**
 4 **supposed to be stored in a fire safe or safe deposit**
 5 **box.**
 6 **And then for amendments only and medical**
 7 **documents, we would sign a third one; and the law firm**
 8 **kept those because sometimes both the originals and the**
 9 **ones that were kept at home would disappear. So we**
 10 **started keeping a third set.**
 11 Q. And that would have been your practice back in
 12 June and August of 2010 -- when I say "your practice,"
 13 the law firm's practice -- with regard to the Brunsting
 14 matter?
 15 **A. Yes. And it's still my practice today.**
 16 Q. So is it your experience that there can be
 17 slight variations of a signature from one original
 18 execution to the second set, to the third set?
 19 **A. Absolutely. My signature has slight**
 20 **variations.**
 21 Q. Does that make anything forged just because
 22 there's some slight differences?
 23 **A. Absolutely not.**
 24 Q. And in terms of testamentary capacity, any
 25 reason you felt -- in June or August of 2010, when

40

1 Exhibits 5 and 6 were signed, any reason whatsoever that
 2 you felt Nelva Brunsting lacked capacity?
 3 **A. Not that I recall.**
 4 Q. From your perspective, was there any indication
 5 that she was being coerced to sign these documents?
 6 **A. No.**
 7 Q. From your perspective, was there any indication
 8 that she was under duress in terms of signing Exhibits 5
 9 and 6?
 10 **A. No.**
 11 MS. BAYLESS: I'm sorry. I didn't hear.
 12 THE WITNESS: That was a "no."
 13 Q. (By Mr. Mendel) Was there any indication that
 14 Nelva Brunsting was fraudulently induced to sign
 15 Exhibits 5 and 6?
 16 **A. As a legal -- no, no. Nothing to indicate that**
 17 **to me.**
 18 Q. There's been the suggestion that maybe Nelva
 19 Brunsting was unduly influenced to sign these
 20 instruments. Given that one of the co-trustees lived in
 21 Victoria, which is about a hundred miles away, and
 22 another one lived in New Braunfels, which is about
 23 160 miles away, do you have any reason to believe that
 24 either Amy or Anita Brunsting endeavored to unduly
 25 influence their mother to sign the June and August 2010

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1 instruments which are marked as Exhibits 5 and 6?
 2 MS. BAYLESS: Objection, form.
 3 **A. I do not.**
 4 Q. (By Mr. Mendel) What facts would be important
 5 to you as to whether or not somebody might be exercising
 6 undue influence over a trustor or over a testator?
 7 **A. I'm sorry. Can you rephrase your question?**
 8 Q. I'm just wondering what facts you would
 9 consider that might be important to get a sense of or
 10 come to a decision that maybe somebody was exercising
 11 undue influence.
 12 So, as an example, it would seem to me,
 13 being close in proximity would be important; but if
 14 you're between 100 and 150 miles away and you don't even
 15 come to the meetings, how do you exercise undue
 16 influence in those situations?
 17 MS. BAYLESS: Objection, form.
 18 **A. I believe that would be very difficult.**
 19 Q. (By Mr. Mendel) Did Ms. Nelva Brunsting ever
 20 indicate to you that someone said she should not seek
 21 the advice of Vacek & Freed?
 22 **A. Did she ever indicate to me that she should not**
 23 **come to us?**
 24 Q. Uh-huh.
 25 **A. No.**

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1 Q. Did she ever indicate to you that someone was
 2 trying to influence her to go see some other law firm?
 3 **A. Not that I am aware.**
 4 Q. During the period June 2010 to August of 2010,
 5 did you feel like the process of putting together the
 6 QBDs, whether it's Exhibit 5 or Exhibit 6 -- did you
 7 feel like that whole process was being rushed?
 8 **A. I feel like there was a sense of urgency from**
 9 **Ms. Brunsting due to Carl's current situation; but other**
 10 **than that, no.**
 11 Q. Does the mere fact that there was a sense of
 12 urgency mean that the process of meeting, creating,
 13 explaining, executing -- did that process seem rushed?
 14 MS. BAYLESS: Objection, form.
 15 **A. Not that I recall.**
 16 Q. (By Mr. Mendel) A minute ago we were talking
 17 about whether or not Ms. Brunsting might have exhibited
 18 any irrational behavior, and you said no.
 19 From your perspective, during this process
 20 of explaining things to her, did she seem confused?
 21 **A. No.**
 22 Q. In particular, on the day and at the time that
 23 these instruments were signed, these instruments being
 24 Exhibits 5 and Exhibit 6, as I understand your
 25 testimony -- and correct me if I'm wrong -- she had

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1 capacity, no irrational behavior, no confusion at the
 2 time the instruments were signed?
 3 **A. That's correct.**
 4 Q. I have seen some commentators suggest that if
 5 there's undue influence, it usually is an indication
 6 that one beneficiary probably got more and another one
 7 got less as a result of the undue influence.
 8 Would that be a fair statement about the
 9 effects of undue influence on an estate plan?
 10 MS. BAYLESS: Objection, form.
 11 **A. I think it would be fair.**
 12 Q. (By Mr. Mendel) Given that Ms. Brunsting
 13 treated all of the children equally from a distribution
 14 standpoint, given that fact alone, do you see any way
 15 that she could be unduly influenced in the execution of
 16 that document?
 17 MR. REED: Objection, form.
 18 **A. I really don't know how to answer that. I**
 19 **mean, she didn't make a material change to the**
 20 **documents.**
 21 Q. (By Mr. Mendel) Well, that's my point. All of
 22 these children were in for 20 percent of the estate at
 23 the time of the restatement. All of these children were
 24 in for 20 percent of the estate at the time the
 25 Exhibit 6 August 2010 instrument was executed.

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1 So was anybody treated unfairly, from your
 2 perspective?
 3 **A. No.**
 4 Q. Who has the ultimate right to pick a trustee?
 5 **A. The settlor.**
 6 Q. Which would be Nelva Brunsting?
 7 **A. Uh-huh.**
 8 Q. And so is there anything unfair about removing
 9 Carl as a trustee?
 10 **A. No. I think it was prudent to do so.**
 11 Q. And given that Candace Curtis resided out of
 12 state and it's your recommendation that co-trustees or
 13 trustees be local, is there anything unfair about
 14 removing Candace Curtis as a trustee?
 15 **A. No.**
 16 Q. Would that fall under the category of prudent?
 17 **A. Yes.**
 18 Q. I want to talk a little bit about -- so at some
 19 point later in the year, later in the year being 2010,
 20 Nelva Brunsting elected to resign as a trustee, and
 21 that's where her daughters Amy and Anita stepped in.
 22 Do you recall that?
 23 **A. I do.**
 24 Q. And at that time, being back in or about
 25 December of 2010 and moving into 2011, did the Vacek

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1 firm provide assistance for Amy and Anita Brunsting?
 2 **A. We provided assistance to Mrs. Brunsting.**
 3 Q. Mrs. Brunsting being Nelva?
 4 **A. Yes.**
 5 Q. But wasn't some -- was any advice and counsel
 6 being provided to Amy and Anita Brunsting?
 7 **A. With Ms. Brunsting's permission, yes.**
 8 Q. And even though Mrs. Brunsting, Nelva
 9 Brunsting, was coming to the Vacek firm -- and it
 10 appears that you were probably the lead person to
 11 provide assistance and advice -- was Mr. Vacek involved
 12 in this case back starting in June of 2010 and moving
 13 forward?
 14 **A. I conferred with Mr. Vacek and Mrs. Vacek.**
 15 Q. Would it be fair to say that with Nelva
 16 Brunsting's permission, advice -- just so I'm clear,
 17 Nelva Brunsting granted permission to the Vacek firm to
 18 provide advice to Amy and Anita?
 19 **A. That's correct.**
 20 Q. And there's nothing wrong with attorneys
 21 providing advice to trustees?
 22 **A. No, there is nothing wrong with that.**
 23 Q. And is there anything wrong with the client
 24 relying on the advice of their counsel, no matter how
 25 much some of the other beneficiaries or parties might

46

1 object?

2 **A. No. I believe they should be able to rely on**

3 **counsel.**

4 Q. Is there anything wrong with Anita and Amy

5 Brunsting relying on the advice of the Vacek firm, no

6 matter how much some of the other beneficiaries might

7 object?

8 **A. No.**

9 MS. BAYLESS: Objection, form.

10 Q. (By Mr. Mendel) Are you aware that some of the

11 other beneficiaries do object to everything that was

12 going on?

13 **A. I am aware.**

14 Q. I want to talk a little bit about some of the

15 transfers that would have been made to one or more of

16 the beneficiaries. Okay?

17 And so during Nelva Brunsting's life, as a

18 creator, a trustor and as a beneficiary, what rights

19 does she get to decide who ultimately might get

20 something from her?

21 **A. It's the golden rule: The woman with the gold**

22 **makes the rules. I mean, she can decide whatever she**

23 **wants. It's her stuff.**

24 Q. So if she has five children and she elects to

25 make distributions to one or two people now and one or

47

1 two different people later, is there anything wrong with

2 that?

3 MS. BAYLESS: Objection, form.

4 **A. Are you asking me for my personal opinion or my**

5 **legal opinion, my recommendation?**

6 Q. (By Mr. Mendel) I'm interested in your legal

7 opinion.

8 Did anyone violate the trust instruments

9 because Nelva Brunsting wanted to make -- or wanted to

10 see assets transferred to one or more of her children?

11 **A. No, she did not.**

12 Q. And so if Anita or Amy made transfers

13 consistent with what Nelva Brunsting wanted, would that

14 be a breach of fiduciary duty?

15 **A. No.**

16 MS. BAYLESS: Objection, form.

17 Q. (By Mr. Mendel) You know what a breach of

18 fiduciary duty is.

19 **A. I do.**

20 Q. There's been the suggestion that some transfers

21 were made out of the decedent's trust, and maybe those

22 transfers should have been made out of the survivor's

23 trust. Are you aware of that?

24 **A. I am not.**

25 Q. Well, just assume with me that that allegation

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1 is being made.

2 **A. Okay.**

3 Q. If that's what -- if Nelva Brunsting wanted an

4 asset transfer, regardless of which trust it came from

5 and if the net result in terms of estate value would be

6 the same after the transfer, is that any sort of breach

7 of fiduciary duty?

8 MS. BAYLESS: Objection, form.

9 **A. It could be.**

10 Q. (By Mr. Mendel) In what way?

11 **A. A distribution from a decedent's trust or a**

12 **credit shelter, bypass trust is a distribution and not a**

13 **gift. Anything that comes out of the survivor's trust**

14 **is considered a gift unless it's otherwise noted, and a**

15 **gift tax return would have to be filed.**

16 Q. But the net value of the estate -- when you add

17 the decedent's trust and the survivor's trust, the total

18 net value of the estate hasn't changed, has it?

19 **A. I disagree with that also.**

20 Q. Share why.

21 **A. Because the decedent's trust had a basis when**

22 **it went in. So an asset that came out of the decedent's**

23 **trust may not have the same value as the survivor's**

24 **trust because of the basis that was set. So when a**

25 **beneficiary tries to sell the asset, there's a capital**

49

1 **gain or a loss, depending on when they buy or sell.**

2 Q. But that's a tax issue, is it not?

3 **A. It is.**

4 Q. Okay. So if on the date of the transfer the

5 total value of all of the assets would be hypothetically

6 a million dollars --

7 **A. Okay.**

8 Q. -- and you transferred \$10,000.

9 **A. Uh-huh.**

10 Q. At the end of that transaction, the net value

11 of the estate, regardless of the tax issues, is still

12 \$990,000, is it not?

13 MS. BAYLESS: Object to form.

14 **A. No.**

15 Q. (By Mr. Mendel) It's not?

16 **A. I disagree with the valuation. If you had to**

17 **sell an asset to create the cash, then you've created a**

18 **tax for the trust. So I guess where -- I get hung up on**

19 **the taxes because that's what I do.**

20 **If you're talking about there's cash in**

21 **both and you distribute and the beneficiaries are**

22 **exactly the same, then I would agree with you; yes, it's**

23 **the same.**

24 Q. Okay.

25 **A. But typically we're not dealing with the same**

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1 **exact assets.**

2 Q. Fair statement. So let's break it down. So if

3 what was transferred was cash, then the net value of the

4 estate is essentially unchanged?

5 MS. BAYLESS: Objection, form.

6 Q. (By Mr. Mendel) I mean, you take out -- so a

7 million dollars with a \$10,000 gift of cash --

8 **A. Uh-huh.**

9 Q. -- you would expect the net value of the estate

10 to be \$990,000?

11 **A. I would.**

12 Q. Okay. And let's assume that maybe the transfer

13 was intended to be some stock, not sell the stock but

14 just transfer 100 shares of, say, Exxon.

15 **A. Uh-huh.**

16 Q. Isn't the net value of the estate still the

17 same after the transfer?

18 MS. BAYLESS: Objection, form.

19 **A. No.**

20 Q. (By Mr. Mendel) You didn't sell the stock; you

21 just transferred the stock.

22 **A. But what was the value on the day you**

23 **transferred it?**

24 Q. Same hypothetical, million dollars. You

25 transferred 100 shares, and let's say that's worth

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1 \$10,000.

2 **A. Is the stock paying dividends?**

3 **I mean, do you see what I'm getting at**

4 **here?**

5 Q. No, I understand.

6 **A. Okay.**

7 Q. But that's a tax issue. The net value of the

8 estate the moment after the transfer is just the total

9 value of the estate less the gift. Nothing's really

10 changed, has it?

11 MS. BAYLESS: Objection, form.

12 **A. No, I guess not.**

13 Q. (By Mr. Mendel) Nelva Brunsting died, as I

14 understand it, on November 11th of 2011.

15 **A. That's correct.**

16 Q. And so at that point the trust would have moved

17 into, I guess, a post-death administration process. Is

18 that a fair statement?

19 **A. That's correct.**

20 Q. And would you describe for the jury in this

21 case what are some of the assets -- or what are some of

22 the steps or the process that you would follow in terms

23 of assisting Anita and Amy Brunsting with an

24 administration either of the restated trust or the QBDs?

25 MS. BAYLESS: Objection, form.

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1 **A. We would sign an engagement letter to assist --**

2 **what our duties are as a firm. Sit down and have a**

3 **meeting with the trustee or co-trustees or whoever is in**

4 **charge. Outline what their duties are, what they need**

5 **to do. Set up an accounting, valuation of assets.**

6 **Their duty to ensure that the assets are not squandered**

7 **or lost due to fluctuations in the market, if they need**

8 **to be moved to safer investments. Their duty to file a**

9 **tax return, to assess whether an estate tax return is**

10 **required to be filed and the steps to make distribution**

11 **once all the liabilities are paid.**

12 Q. (By Mr. Mendel) Does the impact of real

13 estate, I guess, add more time to that process?

14 **A. Sure. It's illiquid.**

15 Q. Okay. From your experience, what additional

16 steps are associated for the administration of the

17 estate when you're dealing with a farm up in Iowa?

18 **A. Well, one, you're dealing with out-of-state**

19 **laws. We had to do some -- we had to get an opinion**

20 **letter, as I recall, from an Iowa attorney as to whether**

21 **or not crops could be put in -- crop land could be put**

22 **into an irrevocable trust and still maintained whatever**

23 **exemptions it received under state law.**

24 Q. What was the outcome of that inquiry?

25 **A. Although the State of Iowa had an -- no crop**

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1 **land could be owned by an irrevocable trust. There were**

2 **several listed exceptions to that, and one of them was**

3 **the decedent's -- a credit shelter, bypass trust**

4 **qualified for that.**

5 Q. And so given that Ms. Brunsting, Nelva

6 Brunsting, died near the holiday period, and given all

7 the things that you've described in terms of, I guess,

8 identifying assets, valuing assets, is that something

9 that would take six or more months to complete?

10 **A. Oh, of course. Sure.**

11 Q. Okay. From your perspective, what would be a

12 reasonable time frame that you would expect to go by, at

13 least at a minimum, to determine the assets, value the

14 assets, look at liabilities, reach out to this lawyer in

15 Iowa, get these opinions, deal with this out-of-state

16 real estate?

17 MS. BAYLESS: Objection, form.

18 **A. At the very least, 15 months.**

19 Q. (By Mr. Mendel) 15 months?

20 MS. BAYLESS: I'm sorry. I didn't hear

21 your answer.

22 MR. MENDEL: She said 15 months.

23 THE WITNESS: 15 months.

24 Q. (By Mr. Mendel) And if during that process

25 someone files a lawsuit, what impact -- like in this

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1 particular case, Candy Curtis filed a lawsuit. What
 2 impact would a lawsuit like that have on a potential
 3 delay of the administration process?
 4 MS. BAYLESS: Objection, form.
 5 **A. It would be exponential.**
 6 Q. (By Mr. Mendel) When you say "exponential,"
 7 what do you mean by that?
 8 **A. Well, everything comes to a grinding halt when**
 9 **a lawsuit is filed.**
 10 Q. I don't know about you but I like to take a
 11 break about every hour and we're up on the hour.
 12 **A. I'm good with that.**
 13 Q. Why don't we take --
 14 **A. Stretch my legs. I keep shifting in my chair.**
 15 Q. Five to ten minutes tops, and we'll regroup?
 16 **A. Sure. Thank you.**
 17 **(Recess taken.)**
 18 Q. (By Mr. Mendel) Ms. Freed, I want to talk a
 19 little bit about some of the instruments that have been
 20 filed, in particular the pleadings and a motion for
 21 summary judgment that's been filed.
 22 I think I'd like to start with Exhibit
 23 No. 13, which is a pleading that was filed by Carl
 24 Brunsting. So I just want to go through and get your
 25 feedback on some things that are said in this particular

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1 instrument.
 2 I would call your attention to page 3 of
 3 Exhibit 13. And to the extent that some of my questions
 4 might be a little duplicative, I'm going to apologize in
 5 advance because, for example, we've touched on undue
 6 influence and we've touched on capacity; but they're
 7 specifically referenced in this pleading, so I want to
 8 kind of just march through what's here.
 9 At the bottom of that first paragraph, it
 10 talks about the "QBD was the result of undue influence,
 11 was done when Nelva lacked capacity and/or was created
 12 by deception so that Nelva did not understand or consent
 13 to the document."
 14 As someone who was very much involved in
 15 the creation of the QBD, is there any evidence -- and I
 16 want to break these down. Is there any evidence that
 17 there was undue influence regarding the creation and/or
 18 execution of Exhibit 5 or Exhibit 6?
 19 **A. No.**
 20 MS. BAYLESS: Objection, form.
 21 Q. (By Mr. Mendel) Is there any evidence that
 22 Nelva lacked capacity with regard to the execution of
 23 Exhibits 5 or 6?
 24 MS. BAYLESS: Objection, form.
 25 **A. No.**

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1 MR. MENDEL: What's your objection?
 2 MS. BAYLESS: Form.
 3 MR. MENDEL: Form. And the specific --
 4 MS. BAYLESS: You asked is there any
 5 evidence. You didn't ask her if she had any. You asked
 6 her if there's any evidence. I just think that's an
 7 improper question and answer.
 8 THE WITNESS: I have no evidence, if that
 9 helps.
 10 Q. (By Mr. Mendel) Okay. So when I'm asking is
 11 there any evidence, it's going to be based on what you
 12 know, what you saw, what you heard.
 13 **A. Yes.**
 14 Q. So do you have any evidence that the QBD was
 15 created by deception?
 16 **A. I do not.**
 17 Q. Do you have any evidence that Nelva did not
 18 understand or consent to the document that was created?
 19 **A. I do not.**
 20 Q. When I say "the document," I'm talking about
 21 Exhibits 5 and 6.
 22 **A. I understand.**
 23 MS. BAYLESS: Are you talking about both
 24 in the same question?
 25 MR. MENDEL: I'll break them down if you

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1 want.
 2 MS. BAYLESS: Well, it's your deposition.
 3 If you're going to talk about two documents in one
 4 question, I'm going to object.
 5 MR. MENDEL: I'll break them down.
 6 Q. (By Mr. Mendel) Let's go back. With regard to
 7 Exhibit 5, and then we'll talk about Exhibit 6, do you
 8 have any evidence that Exhibit 5 was the result of undue
 9 influence?
 10 **A. I do not.**
 11 Q. Do you have any evidence that Nelva Brunsting
 12 lacked capacity to execute Exhibit 5?
 13 **A. I do not.**
 14 Q. Do you have any evidence that Exhibit 5 was
 15 created by deception in that she did not understand what
 16 she was signing?
 17 **A. I do not.**
 18 Q. Do you have any evidence that Nelva Brunsting
 19 did not consent to the creation and/or execution of
 20 Exhibit 5?
 21 **A. I do not.**
 22 Q. With regard to Exhibit 6, which was the
 23 August 2010 QBD, do you have any evidence that that
 24 instrument, Exhibit 6, was the result of undue
 25 influence?

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1 **A. I do not.**
 2 Q. Do you have any evidence that Nelva Brunsting
 3 lacked capacity to execute Exhibit 6?
 4 **A. I do not.**
 5 Q. Do you have any evidence that Exhibit 6 was
 6 created by deception so that she did not understand what
 7 it was about?
 8 **A. I do not.**
 9 Q. Do you have any evidence that Exhibit 6 -- that
 10 Nelva Brunsting did not consent to the nature of
 11 Exhibit 6?
 12 **A. I do not.**
 13 Q. Moving down to the bottom of page 3 of
 14 Exhibit 13, there is a statement that plaintiff --
 15 MS. BAYLESS: I'm sorry. What page?
 16 MR. MENDEL: I'm on page 3.
 17 MS. BAYLESS: Okay.
 18 MR. MENDEL: Or still on page 3.
 19 MS. BAYLESS: Okay.
 20 Q. (By Mr. Mendel) "The plaintiff," which would
 21 be Carl Brunsting, "believes Anita convinced Nelva to
 22 resign from her trustee position and to appoint Anita as
 23 her replacement through improper means and for improper
 24 purposes."
 25 What is your recollection of what was

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1 going on in or about November/December of 2010 with
 2 regard to Nelva Brunsting's health?
 3 **A. I believe she was undergoing treatments, if the**
 4 **time frame I'm thinking of is correct. She had a spot**
 5 **on her liver maybe or on her lungs. I can't remember**
 6 **what it was. I don't recall. She was going through**
 7 **treatments for something and had pneumonia at some**
 8 **point, but I don't recall the time frame. I'm sorry.**
 9 Q. Were you in discussions with Anita Brunsting
 10 and/or other family members during the November/
 11 December 2010 time period with regard to Nelva
 12 Brunsting's health?
 13 **A. With regard to her health. I don't recall. I**
 14 **may have been, but I don't recall.**
 15 Q. Did you have conversations or rather
 16 communications, whether they were oral or written, with
 17 Anita Brunsting during the November/December 2010 time
 18 period?
 19 **A. I may have. I don't recall a specific**
 20 **conversation, but I may have.**
 21 Q. Do you have any evidence or are you aware of
 22 any evidence that Anita Brunsting convinced her mother
 23 to resign as the trustee?
 24 **A. I do not.**
 25 Q. Do you have any evidence or are you aware of

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1 any evidence that Anita Brunsting sought replacement
 2 through an improper means or an improper purpose?
 3 **A. No.**
 4 Q. Based on what you know as you sit here today,
 5 from your perspective, is there anything improper about
 6 Nelva Brunsting appointing Anita Brunsting to be the
 7 trustee?
 8 **A. No. It would have been my recommendation, most**
 9 **likely.**
 10 Q. Okay. Exhibit 13, page 4. There is this
 11 consistent reference, if you look through Exhibit 13,
 12 that the August QBD is tainted.
 13 From your perspective, was there anything
 14 wrong or improper about the creation of Exhibit 6, being
 15 the August 2010 QBD?
 16 **A. No.**
 17 Q. Anything about Exhibit 6 where it was
 18 improperly created or executed?
 19 **A. No.**
 20 MS. BAYLESS: Objection, form.
 21 Q. (By Mr. Mendel) At the bottom of page 4 for
 22 Exhibit 13, there's a sentence that talks about Candy,
 23 being Candy Curtis, and Carl, being Carl Brunsting, were
 24 the only Brunsting siblings whose right to be trustees
 25 of their own trusts after Nelva died were extinguished

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1 by the changes implemented in the tainted August QBD.
 2 I'm just paraphrasing.
 3 If I understood your testimony earlier,
 4 there's nothing wrong with removing someone as a
 5 trustee.
 6 **A. No.**
 7 Q. And so is there anything wrong -- given that it
 8 was Nelva's decision, anything wrong with Nelva
 9 Brunsting appointing Anita and Amy Brunsting to be
 10 co-trustees of Candy Curtis' personal asset trust?
 11 MS. BAYLESS: Objection, form.
 12 **A. No.**
 13 Q. (By Mr. Mendel) From your perspective and
 14 based on your involvement, is there anything wrong with
 15 Anita or Amy Brunsting being co-trustees of Carl
 16 Brunsting's personal asset trust?
 17 **A. No.**
 18 Q. Let's move to page 6, Exhibit 13.
 19 **A. (Witness complies.)**
 20 Q. Paragraph 10 on page 6 of Exhibit 13 talks
 21 about "At some point Anita and Amy implemented a plan to
 22 take over their parents' remaining assets and divide the
 23 spoils."
 24 Based on your dealings with Anita and Amy
 25 Brunsting, do you have any evidence to indicate that

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<p>1 there was some alleged plan to take over the assets and 2 divide the spoils? 3 A. I do not. 4 Q. Also in paragraph 10 there's an indication that 5 they, Anita and Amy Brunsting, became more aggressive in 6 controlling their mother's actions. 7 Based on your dealings with Nelva 8 Brunsting, certainly in the June to August 2010 time 9 period, did you see any indication or are you aware of 10 any evidence that would indicate that Anita Brunsting 11 was seeking to control her mother's actions? 12 A. No. 13 Q. Do you have -- for the same time period, do you 14 have any evidence or are you aware of any evidence that 15 would indicate that Amy Brunsting was trying to control 16 her mother's actions? 17 A. No. 18 Q. Exhibit 13, page 6, paragraph 11, there's this 19 statement in here that Anita and Amy carried out their 20 plan of replacing their mother's wishes with the help of 21 Nelva's own legal counsel. 22 Now, this paragraph doesn't identify who 23 Nelva's own legal counsel was; but on the assumption 24 that they're suggesting that you were assisting in 25 carrying out the plan, have you at any time assisted</p>	<p>1 Q. (By Mr. Mendel) From your perspective as a 2 lawyer? 3 A. No. 4 Q. Given the nature of the encephalitis and other 5 healthcare conditions, would you have made that 6 recommendation? 7 A. I would. 8 Q. Paragraph 11, still page 7, Exhibit 13. 9 There's a reference that Anita and Amy Brunsting 10 apparently determined which documents would be prepared. 11 Based on your dealings with Nelva 12 Brunsting in the June to August 2010 time period, did 13 Anita or Amy Brunsting have any input on what documents 14 were going to be prepared? 15 A. No. 16 Q. Paragraph 12, page 7, Exhibit 13, makes 17 reference to Nelva Brunsting's purported resignation as 18 trustee. 19 Exhibit No. 8 is the resignation of Nelva 20 Brunsting and includes the acceptance by Anita 21 Brunsting. Do you see that? 22 A. Uh-huh. 23 Q. Is there anything about Exhibit 8 that makes 24 that instrument ineffective? 25 A. No.</p>
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<p>1 Anita Brunsting with trying to circumvent or subvert the 2 intent of Elmer and Nelva Brunsting's testamentary 3 desires? 4 A. No. 5 Q. Have you at any time attempted to subvert Elmer 6 and Nelva Brunsting's testamentary desires in terms of 7 helping Amy Brunsting? 8 A. No. 9 Q. Also in paragraph 11, page 6 of Exhibit 13, 10 there's a reference that through bullying and deception, 11 the document was executed without regard to Nelva 12 Brunsting's capacity. 13 Do you have any evidence or are you aware 14 of any facts that would indicate there was bullying and 15 deception going on in the June to August 2010 time 16 period? 17 A. I do not. 18 Q. On page 7, at the top of page 7, Exhibit 13, it 19 talks about that Nelva Brunsting's safe deposit box, to 20 which Carl had access, was closed and a new one opened, 21 giving Anita Brunsting access. 22 Is there anything wrong with that 23 transaction? 24 MS. BAYLESS: Objection, form. 25 A. No.</p>	<p>1 MS. BAYLESS: Objection, form. 2 Q. (By Mr. Mendel) From your perspective, is 3 that -- would that exhibit be enforceable? 4 A. Yes. 5 Q. At the bottom of page 7, paragraph 13, 6 Exhibit 13, there's a statement in here about "more than 7 \$150,000 was transferred from accounts by Anita and 8 spent by Carole." 9 If Nelva Brunsting said it was okay to 10 transfer money over to Carole Brunsting, is there 11 anything wrong with Anita carrying out that wish? 12 MS. BAYLESS: Objection, form. 13 A. No. 14 Q. (By Mr. Mendel) Exhibit 13, page 8, 15 paragraph 14, there is a reference -- during the period 16 in which Nelva was alive, there's a reference that Anita 17 transferred shares of stock from Nelva's survivor's 18 trust in May, June -- twice -- three times in June. 19 Any transfers from the survivor's trust by 20 Anita to anyone, if that was with Nelva's knowledge and 21 consent, is there anything wrong with that? 22 A. No. 23 MS. BAYLESS: Objection, form. 24 Q. (By Mr. Mendel) Let's break it down. Still on 25 page 8, paragraph 14, Exhibit 13. If it was with Nelva</p>

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1 Brunsting's consent, would that May 9th transfer from
 2 Anita from the survivor's trust be permissible?
 3 MS. BAYLESS: Objection, form.
 4 **A. Yes.**
 5 Q. (By Mr. Mendel) With regard to the June 13th,
 6 2011 transfer from the survivor's trust, if that was
 7 with Nelva's knowledge and consent, would that be
 8 permissible?
 9 **A. Yes.**
 10 MS. BAYLESS: Objection, form.
 11 Q. (By Mr. Mendel) In either of those two cases,
 12 would it be a breach of fiduciary duty to make a
 13 transfer that was with the knowledge and consent of
 14 Nelva Brunsting?
 15 MS. BAYLESS: Objection, form.
 16 **A. I don't believe it would be, no.**
 17 Q. (By Mr. Mendel) On June 15th there's a
 18 complaint about Anita makes a transfer of shares from
 19 Nelva's survivor's trust to Candy Curtis.
 20 If that was done with Nelva Brunsting's
 21 knowledge and consent, would there be anything wrong
 22 with that?
 23 MS. BAYLESS: Objection, form.
 24 **A. No.**
 25 Q. (By Mr. Mendel) Would that be a breach of

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1 fiduciary duty?
 2 MS. BAYLESS: Objection, form.
 3 **A. No.**
 4 Q. (By Mr. Mendel) Further down in paragraph 14
 5 it makes reference that "no shares were transferred to
 6 Carl despite Anita's knowledge of Carl's serious health
 7 crisis and large medical expenses."
 8 If Nelva Brunsting doesn't want Carl to
 9 get any shares, is it okay for Anita to not make any
 10 transfer of shares?
 11 MS. BAYLESS: Objection, form.
 12 **A. Yes.**
 13 Q. (By Mr. Mendel) Then there's a complaint in
 14 the last part of paragraph 14, page 8 of Exhibit 13,
 15 that Carl's family was not even informed of the
 16 transfers until after the death.
 17 Was anyone obligated to tell Carl when
 18 anything happened inside of this trust?
 19 MS. BAYLESS: Objection, form.
 20 **A. Obligated or recommended?**
 21 Q. (By Mr. Mendel) Was there a duty to advise
 22 Carl and his family every time there was a stock
 23 transfer during the period in which Nelva Brunsting was
 24 alive?
 25 MS. BAYLESS: Objection, form.

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1 **A. No.**
 2 Q. (By Mr. Mendel) There were other references to
 3 other transfers during the period in which Nelva
 4 Brunsting was alive and with regard to the survivor's
 5 trust.
 6 So just to be clear, if Nelva Brunsting,
 7 with knowledge and consent, said it was okay to make a
 8 transfer out of the survivor's trust to either Anita,
 9 Amy, to Carole or even Candy, and exclude Carl, is there
 10 anything wrong with that?
 11 MS. BAYLESS: Objection, form.
 12 **A. No.**
 13 Q. (By Mr. Mendel) In paragraph 15, page 8,
 14 Exhibit 13, there's a reference about trust assets: "It
 15 is believed that trust assets were used to hire
 16 investigators to follow Carl's wife."
 17 Are you aware of anything regarding that
 18 allegation?
 19 **A. I have heard the allegation. I am not aware if
 20 that occurred or did not occur.**
 21 Q. And what is your understanding of the
 22 allegation?
 23 **A. That the allegation was made. But there are a
 24 lot of allegations that are made throughout these
 25 documents, so ...**

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1 Q. So other than someone said it or wrote it, you
 2 don't have any other information?
 3 **A. I do not.**
 4 Q. And other than someone saying or writing that
 5 there might have been a GPS tracking device, do you know
 6 anything else about the GPS tracking device that's
 7 referenced in that last sentence of paragraph 15,
 8 page 8, Exhibit 13?
 9 **A. I do not.**
 10 Q. On Exhibit 13, page 9, paragraph 17, there's
 11 this allegation that the remaining assets -- by the time
 12 of Nelva Brunsting's death, the remaining assets had
 13 already been plundered.
 14 Do you have any knowledge of any facts
 15 from any person that would suggest that assets had been
 16 plundered?
 17 **A. Other than what is alleged, no. I have no
 18 personal knowledge of any plundering of assets.**
 19 Q. Alleging it doesn't make it so?
 20 **A. That's correct.**
 21 Q. Also with Exhibit 13, page 9, paragraph 17,
 22 there's an allegation that "no effort was made to value,
 23 preserve inventory and properly divide personal
 24 property."
 25 If I understood your testimony correctly a

Candace Kunz-Freed

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1 little bit earlier, I understood you to say you could
2 expect to spend 15 months going through that process.
3 Would that be a fair statement?
4 MS. BAYLESS: Objection, form.
5 **A. Sure.**
6 Q. (By Mr. Mendel) And that if someone initiated
7 litigation in or about February of 2012 -- my
8 recollection was you said it would grind all of this to
9 a halt.
10 **A. It would.**
11 MS. BAYLESS: Objection, form.
12 Q. (By Mr. Mendel) So to the extent that someone
13 may have initiated litigation, and in particular
14 Candy Curtis initiating litigation, that impairs what
15 the co-trustees need or are trying to do, does that mean
16 that they, the co-trustees, breached some fiduciary
17 duty?
18 MS. BAYLESS: Objection, form.
19 **A. I'm not sure I know how to answer that.**
20 Q. (By Mr. Mendel) Hard to do your job when
21 people interfere?
22 **A. Well, I would agree with that, absolutely.**
23 MS. BAYLESS: Objection, form.
24 Q. (By Mr. Mendel) There's a reference to -- in
25 Exhibit 13, page 9, to the in terrorem clause, what some

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1 people call the no-contest clause. I'm going to come
2 back to that in a few minutes. So I don't want you to
3 think I'm skipping it.
4 On page 10 of Exhibit 13, paragraph 20,
5 there's this suggestion that Elmer purportedly signed
6 some documents.
7 Are you aware of any facts that would
8 suggest that Elmer Brunsting did not sign any of the
9 instruments that were prepared and/or being held by the
10 Vacek law firm?
11 **A. Okay. First, I'm not sure where you're at,
12 what you're looking at that states that.**
13 Q. I'm sorry. Are you on page 10?
14 **A. I am on page 10.**
15 Q. Page 10, paragraph 20, second line of
16 paragraph 20 talks about --
17 **A. Okay.**
18 Q. -- seeking declaratory relief construing
19 various documents signed or purportedly signed by Elmer
20 and Nelva Brunsting.
21 Do you see that?
22 **A. I do see that now. Thank you.**
23 Q. So we've already talked about the execution by
24 Nelva. From your perspective, based on your review of
25 the file and anything that you may have seen in the file

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1 or even discussed with Elmer Brunsting, are you aware of
2 any documents that Elmer Brunsting's signature was
3 forged?
4 **A. No.**
5 Q. On page 11, Exhibit 13, paragraph 26, does the
6 mere existence of a familial relationship create some
7 sort of a fiduciary obligation between siblings?
8 MS. BAYLESS: Objection, form.
9 **A. No.**
10 Q. (By Mr. Mendel) Let's go over to page 12,
11 Exhibit 13, still on paragraph 26. There's a series of
12 subparagraphs. Subparagraph A talks about "failing to
13 keep and provide clear, regular, accurate and complete
14 accountings of assets."
15 Is the dissemination of account statements
16 for Exxon stock and Chevron stock produced on a monthly
17 basis or if they are issued on quarterly basis -- would
18 you agree that the production of those statements is an
19 acceptable accounting practice?
20 MS. BAYLESS: Objection, form.
21 **A. Just those statements or as part of an overall?**
22 Q. (By Mr. Mendel) As part of an overall
23 disclosure of information regarding assets and
24 liabilities.
25 MS. BAYLESS: Objection, form.

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1 **A. I would agree that that's acceptable.**
2 Q. (By Mr. Mendel) And if the trustees or
3 co-trustees provided evidence of checks that were
4 written with regard to the accounts, would that be part
5 of an acceptable accounting process in the context of an
6 overall accounting?
7 **A. Yes.**
8 MS. BAYLESS: Objection, form.
9 Q. (By Mr. Mendel) And if the co-trustees
10 produced tax returns in addition to showing checks and
11 in addition to producing these statements of all of
12 these various stock accounts, would that be an
13 acceptable accounting process?
14 **A. Yes.**
15 MS. BAYLESS: Objection, form.
16 Q. (By Mr. Mendel) And with regard to
17 paragraph B, the production of tax returns and showing
18 some checks and producing brokerage statements or some
19 sort of stock statements over a period of several years,
20 if you knew that somebody was producing those kinds of
21 accounting records, would you say that the co-trustee is
22 resisting an accounting?
23 MS. BAYLESS: Objection, form.
24 **A. I would not.**
25 Q. (By Mr. Mendel) Approximately when did you

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<p>1 stop providing advice on the administration of the</p> <p>2 trust?</p> <p>3 A. I believe it was shortly after the lawsuit was</p> <p>4 filed and they were referred out to litigation counsel.</p> <p>5 Q. When you say "the lawsuit," are we talking</p> <p>6 about the initial lawsuit that was filed in February of</p> <p>7 2012 by Candace Curtis?</p> <p>8 A. I believe that's correct. I conferred with</p> <p>9 litigation counsel, but ...</p> <p>10 Q. Well, during the period that you were providing</p> <p>11 assistance or the Vacek firm was providing assistance,</p> <p>12 are you aware of any facts that would suggest that the</p> <p>13 co-trustees failed to preserve property?</p> <p>14 MS. BAYLESS: Objection, form.</p> <p>15 A. I am not personally aware, no.</p> <p>16 Q. (By Mr. Mendel) And are you aware of any facts</p> <p>17 that would suggest that the co-trustees failed to</p> <p>18 prevent alleged losses of property?</p> <p>19 A. I am not aware of that personally.</p> <p>20 Q. Are you aware of any losses of property?</p> <p>21 A. You mean other than right now?</p> <p>22 Q. Well, when you say "right now," what do you</p> <p>23 mean?</p> <p>24 A. Well, I'm -- no. I am not aware at that time</p> <p>25 that there was any losses.</p>	<p>1 conflicted with the trust and the beneficiaries that are</p> <p>2 the subject matter of this dispute?</p> <p>3 A. No.</p> <p>4 Q. And are you aware of any facts or evidence that</p> <p>5 would indicate that Anita, Amy and Carole Brunsting --</p> <p>6 well, I'll withdraw that. It's covered in the earlier</p> <p>7 question.</p> <p>8 Moving on to subparagraph H, still</p> <p>9 Exhibit 13, page 12. Are you aware of any facts or</p> <p>10 evidence that would indicate that Anita or Amy Brunsting</p> <p>11 failed to be loyal to the family?</p> <p>12 A. I don't know what "loyal to the family" means.</p> <p>13 Sorry.</p> <p>14 Q. Are you aware of any facts that would indicate</p> <p>15 that -- still on subparagraph H. Are you aware of any</p> <p>16 facts or evidence that would indicate that the</p> <p>17 co-trustees failed to take actions based upon the</p> <p>18 interest of Nelva Brunsting?</p> <p>19 A. No.</p> <p>20 Q. Failed to take actions upon the interest of</p> <p>21 Carl Brunsting?</p> <p>22 A. No.</p> <p>23 Q. Failed to take actions upon the interest of the</p> <p>24 trust?</p> <p>25 A. No.</p>
75	77
<p>1 Q. Paragraph E, are you aware of any facts or</p> <p>2 evidence that would indicate the co-trustees conveyed</p> <p>3 property in ways that were detrimental and in violation</p> <p>4 of their obligations?</p> <p>5 A. I am not personally aware of that, no.</p> <p>6 Q. Subparagraph F, are you aware of any facts or</p> <p>7 evidence that indicates that the co-trustees entered</p> <p>8 into transactions which were not in the best interests</p> <p>9 of persons and trusts to whom they owed fiduciary</p> <p>10 obligations?</p> <p>11 A. I personally am not aware, no.</p> <p>12 Q. Well, when you say you're personally not aware,</p> <p>13 are you aware of anyone else that would know anything?</p> <p>14 A. I'm not.</p> <p>15 Q. Subparagraph G, are you aware of any facts or</p> <p>16 evidence that would indicate that Anita, Amy and Carole</p> <p>17 Brunstings' interest conflicted with those of their</p> <p>18 parents?</p> <p>19 A. No.</p> <p>20 Q. Are you aware of any facts or evidence that</p> <p>21 would indicate that Anita, Amy and Carole's interests</p> <p>22 conflicted with those of their brother, Carl Brunsting?</p> <p>23 A. No.</p> <p>24 Q. Are you aware of any facts or evidence that</p> <p>25 would indicate that Anita, Amy and Carole's interests</p>	<p>1 Q. Subparagraph I, are you aware of any facts or</p> <p>2 evidence that would indicate that the co-trustees failed</p> <p>3 to deal impartially, fairly and equally with Nelva</p> <p>4 Brunsting?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any facts or evidence that</p> <p>7 would indicate that the co-trustees failed to deal</p> <p>8 impartially, fairly and equally with Carl Brunsting?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any facts or evidence that</p> <p>11 would indicate that the co-trustees failed to deal</p> <p>12 impartially, fairly and equally with the trust?</p> <p>13 A. No.</p> <p>14 Q. Subparagraph J, are you aware of any facts or</p> <p>15 evidence that would indicate that the co-trustees failed</p> <p>16 to prevent transfers of assets?</p> <p>17 A. No.</p> <p>18 Q. Failed to prevent gifts of assets?</p> <p>19 A. No.</p> <p>20 Q. Failed to remove assets?</p> <p>21 A. No.</p> <p>22 Q. Subparagraph K talks about failing to make</p> <p>23 appropriate and equal distributions.</p> <p>24 A. "Appropriate" is subjective.</p> <p>25 Q. Is equal required under the trust documents?</p>

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1 **A. It is not.**
 2 Q. So if it's not required to make an equal
 3 distribution, then one couldn't violate this allegation
 4 regarding equal distributions?
 5 **A. Well, I think the time frame you have to --**
 6 **once Ms. Brunsting died, then I think things were set in**
 7 **stone as to whether they were equal or not equal. But**
 8 **prior to her death, no.**
 9 Q. Are you aware of any facts or evidence -- I'm
 10 now down to subparagraph 11 -- I mean L, L.
 11 Are you aware of any facts or evidence
 12 that would indicate that the co-trustees failed to
 13 adequately inform the beneficiaries about assets?
 14 **A. I'm not.**
 15 Q. Are you aware of any facts or evidence that
 16 would indicate the co-trustees failed to adequately
 17 inform the beneficiaries about transactions?
 18 **A. I'm not.**
 19 Q. Are you aware of any facts or evidence that
 20 would indicate that the co-trustees failed to adequately
 21 inform the beneficiaries of their rights?
 22 **A. I am not.**
 23 Q. We'll go to Exhibit 13, page 13,
 24 subparagraph M. Are you aware of any facts or evidence
 25 that would indicate that the co-trustees misrepresented

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1 or allowed misrepresentations regarding assets?
 2 **A. I am not.**
 3 Q. Regarding transactions?
 4 **A. No.**
 5 Q. Regarding the beneficiaries' rights?
 6 **A. No.**
 7 Q. Subparagraph N, are you aware of any facts or
 8 evidence that would indicate that the co-trustees failed
 9 to prevent transactions that were allegedly detrimental
 10 to family members?
 11 **A. No.**
 12 Q. Are you aware of any facts or evidence that
 13 would indicate that the co-trustees failed to prevent
 14 transactions that were allegedly detrimental to the
 15 trust?
 16 **A. No.**
 17 Q. Subparagraph O, are you aware of any facts or
 18 evidence that would indicate that the co-trustees
 19 allowed the payment of inappropriate amounts from assets
 20 they purportedly held as fiduciaries?
 21 **A. I am not.**
 22 Q. Subparagraph P, are you aware of any facts or
 23 evidence that would indicate that the co-trustees failed
 24 to follow or otherwise enforce the terms of the trust
 25 instruments?

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1 **A. I am not personally aware, no. And I'm not**
 2 **aware of anybody else.**
 3 MS. BAYLESS: I'm sorry. I didn't hear
 4 the end.
 5 THE WITNESS: And I'm not aware of anybody
 6 else.
 7 Q. (By Mr. Mendel) So, you know, my questions
 8 with regard to paragraph 26 of Exhibit 13, going through
 9 these subparagraphs, talked about co-trustees, plural.
 10 **A. Uh-huh.**
 11 Q. But with regard to these subparts, did either
 12 co-trustee, not just jointly but individually, from your
 13 perspective, engage in misconduct?
 14 **A. Not that I am aware.**
 15 Q. Okay. So Exhibit 13, page 13, paragraph 29,
 16 Carl Brunsting claims that he owned, possessed or had
 17 the right of possession of certain personal property,
 18 including stock, accounts at financial institutions,
 19 contents of a safe deposit box, and saving bonds over
 20 which defendants wrongfully exercised dominion and
 21 control.
 22 Are you aware of any personal property
 23 that either co-trustee allegedly deprived him of?
 24 **A. Of Carl's property?**
 25 Q. Carl's personal property.

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1 **A. No.**
 2 Q. Are you aware of any stock that Carl owned that
 3 he was deprived of by either of the co-trustees?
 4 **A. I am not.**
 5 Q. Are you aware of any financial account or any
 6 accounts at financial institutions that either
 7 co-trustee deprived him of?
 8 **A. No.**
 9 Q. Are you aware of any contents of a safe deposit
 10 box that either co-trustee allegedly exercised wrongful
 11 dominion or control?
 12 **A. No.**
 13 Q. Are you aware of any exercise of wrongful
 14 dominion and control by either co-trustee over any
 15 assets?
 16 **A. Could you repeat the question? I'm sorry.**
 17 Q. Are you aware of any facts or evidence that
 18 would indicate that either co-trustee exercised wrongful
 19 dominion and control over any assets?
 20 **A. No.**
 21 Q. I'm still on Exhibit 13. We're now up to
 22 page 15, or that's where I want to go to next.
 23 On paragraph 34 are you aware of any facts
 24 or evidence that either co-trustee made material, false
 25 representations to Nelva Brunsting regarding action

82	<p>1 taken of Nelva Brunsting's assets?</p> <p>2 A. No.</p> <p>3 Q. Are you aware of any facts or evidence that</p> <p>4 either co-trustee allegedly misled Nelva Brunsting about</p> <p>5 the impact of the QBDs on the trust plan?</p> <p>6 A. I am not.</p> <p>7 Q. Are you aware of any facts or evidence that</p> <p>8 Nelva Brunsting relied on any representations, other</p> <p>9 than the advice and counsel of the Vacek & Freed firm,</p> <p>10 with regard to the estate and trust planning that was</p> <p>11 performed?</p> <p>12 A. Not that we -- the Vacek firm was not aware of.</p> <p>13 Q. Exhibit 13, page 15, paragraph 36, are you</p> <p>14 aware of any facts or evidence that would indicate that</p> <p>15 either co-trustee was engaged in some sort of a</p> <p>16 conspiracy against Carl Brunsting?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of any facts or evidence that</p> <p>19 would indicate that either Carole Brunsting or</p> <p>20 Candy Curtis were involved in some sort of a conspiracy</p> <p>21 against Carl Brunsting?</p> <p>22 A. No.</p> <p>23 Q. Still on Exhibit 13, page 16, paragraph 38.</p> <p>24 There's the allegation that -- are you aware of any</p> <p>25 facts or evidence that would indicate that either</p>	84	<p>1 A. Correct.</p> <p>2 MS. BAYLESS: Objection, form.</p> <p>3 Q. (By Mr. Mendel) And she understood -- she,</p> <p>4 Nelva Brunsting, understood what she was signing with</p> <p>5 regard to Exhibit 6, which was the August 2010 QBD?</p> <p>6 MS. BAYLESS: Objection, form.</p> <p>7 A. Agree.</p> <p>8 Q. (By Mr. Mendel) And did Nelva Brunsting</p> <p>9 understand what she, Nelva Brunsting, was signing with</p> <p>10 regard to her resignation as a trustee back in December</p> <p>11 of 2010?</p> <p>12 A. Yes.</p> <p>13 MS. BAYLESS: Objection, form.</p> <p>14 Q. (By Mr. Mendel) And did she understand the</p> <p>15 nature of how things would work with the appointment of</p> <p>16 successor trustees?</p> <p>17 A. Yes.</p> <p>18 MS. BAYLESS: Objection, form.</p> <p>19 Q. (By Mr. Mendel) I want to move over to</p> <p>20 Exhibit 15, which is Carl Brunsting's Second Supplement</p> <p>21 to Plaintiff's First Amended Petition, another</p> <p>22 allegation about a stock transfer from the survivor's</p> <p>23 trust during the period in which Nelva Brunsting was</p> <p>24 alive.</p> <p>25 If that transfer was made with Nelva</p>
83	<p>1 co-trustee took affirmative steps to deceive Nelva</p> <p>2 Brunsting about the trust estate?</p> <p>3 A. No, I'm not.</p> <p>4 Q. Are you aware of any facts or evidence that</p> <p>5 would indicate that either co-trustee deceived or</p> <p>6 attempted to deceive Carl Brunsting about the trust</p> <p>7 estate?</p> <p>8 A. No.</p> <p>9 Q. Also in paragraph 38 there is a reference</p> <p>10 that -- and I'm paraphrasing -- that Nelva Brunsting</p> <p>11 didn't understand what she was being asked to sign, why</p> <p>12 she was asked to sign it, what would happen if she</p> <p>13 signed it and the status of her assets.</p> <p>14 I want to break that down into a couple of</p> <p>15 categories.</p> <p>16 A. Okay.</p> <p>17 Q. In terms of the QBD -- and as I understood your</p> <p>18 testimony earlier -- and you tell me if I'm right or</p> <p>19 wrong, but did Nelva Brunsting understand what she was</p> <p>20 signing?</p> <p>21 A. Yes.</p> <p>22 MS. BAYLESS: Objection, form.</p> <p>23 Q. (By Mr. Mendel) And when I say "what she was</p> <p>24 signing," I'm talking about specifically Exhibit 5,</p> <p>25 which was one of the QBD instruments.</p>	85	<p>1 Brunsting's knowledge and consent, is there anything</p> <p>2 wrong with that transfer?</p> <p>3 MS. BAYLESS: Objection, form.</p> <p>4 A. No.</p> <p>5 Q. (By Mr. Mendel) I want to move on to</p> <p>6 Exhibit 16, which is Carl Brunsting's Third Supplement</p> <p>7 to Plaintiff's First Amended Petition and Request for</p> <p>8 Injunctive Relief.</p> <p>9 There's this allegation that the</p> <p>10 defendants, plural -- which would be Anita Brunsting,</p> <p>11 Amy Brunsting, Carole Brunsting and Candace Curtis --</p> <p>12 wiretapped their mother.</p> <p>13 Are you aware of any facts or evidence</p> <p>14 that would indicate that any of Carl's siblings</p> <p>15 wiretapped their mother?</p> <p>16 A. No.</p> <p>17 Q. Do you consider a message left or a recording</p> <p>18 on an answering device to be a wiretap?</p> <p>19 MS. BAYLESS: Objection, form.</p> <p>20 A. Like a home answering machine?</p> <p>21 Q. (By Mr. Mendel) Yes, ma'am.</p> <p>22 A. No.</p> <p>23 Q. In assuming that a tape on a home answering</p> <p>24 machine constitutes some sort of an intercept of a</p> <p>25 communication, if it was done with Nelva's equipment and</p>

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1 impliedly Nelva's knowledge and consent, anything wrong
 2 with that?
 3 MS. BAYLESS: Objection, form.
 4 **A. Well, it's subjective. I mean, I'm not really**
 5 **qualified to make that -- I see -- personally I see no**
 6 **problem with it, but ...**
 7 Q. (By Mr. Mendel) I want to talk about --
 8 MR. MENDEL: We hit the hour. I thought
 9 we'd keep going if everybody's up to that. Okay.
 10 Q. (By Mr. Mendel) Bear with me. I want to talk
 11 a little bit about Carl Brunsting's -- he's got a motion
 12 for summary judgment, and I want to go through and talk
 13 about some of the issues that are raised by that motion.
 14 One of the complaints, as I understand
 15 that motion, is that stock distributions made from the
 16 survivor's trust are improper because they were made at
 17 Nelva Brunsting's direction rather than for her benefit.
 18 MS. BAYLESS: Objection, form.
 19 Q. (By Mr. Mendel) Is there really a difference
 20 between implementing with her, Nelva Brunsting's
 21 knowledge and consent -- if she agrees that it should be
 22 distributed straight to someone, does it really matter?
 23 MS. BAYLESS: Objection, form.
 24 **A. Does what matter?**
 25 Q. (By Mr. Mendel) Well, is it fair to say that

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1 if Nelva Brunsting directs a transfer of an asset during
 2 her life out of her survivor's trust, isn't that in some
 3 way, shape or form for her benefit, as far as you know?
 4 MS. BAYLESS: Objection, form.
 5 **A. Well, I guess she could have the pleasure of**
 6 **making the gift, I guess. I mean, I guess you could do**
 7 **it that way.**
 8 Q. (By Mr. Mendel) Then another way to look at it
 9 would be possibly, well, in lieu of making the gift over
 10 to Nelva so that she could turn around and make the gift
 11 over to one of the children, doesn't it just make sense
 12 to make the gift straight to the end recipient?
 13 MS. BAYLESS: Objection, form.
 14 **A. Yes.**
 15 Q. (By Mr. Mendel) There's an allegation that
 16 stock distributions, if they're going to be made, should
 17 give some consideration to the beneficiary most in need
 18 of assistance. And in particular, Carl Brunsting is
 19 complaining that given his encephalitis -- and I'm
 20 paraphrasing my interpretation of what I think he's
 21 saying, but --
 22 MS. BAYLESS: Objection, form.
 23 Q. (By Mr. Mendel) -- given his encephalitis and
 24 his other health issues, he claims that the trustee is
 25 mandated to make distributions to those with needs

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1 greater than those of his mother or siblings.
 2 Would that be a true statement?
 3 MS. BAYLESS: Objection, form.
 4 **A. I am not aware of any words in the trust that**
 5 **state that.**
 6 Q. (By Mr. Mendel) In fact -- and you're welcome
 7 to look at the trust. But as I look through the trust,
 8 it appears that a predominant theme of the trust is that
 9 the trustee is to exercise discretion with regard to
 10 distributions. Would that be a fair statement?
 11 MS. BAYLESS: Object to form.
 12 **A. Trustee of what trust?**
 13 Q. (By Mr. Mendel) Any trust. QBD.
 14 **A. There are mandatory distributions required**
 15 **under the decedent's trust, and the spouse is required**
 16 **to receive the income. That's not discretionary.**
 17 Q. Well, with regard to the context of Carl
 18 Brunsting, is it mandated that the trustee must make
 19 distributions to Carl Brunsting?
 20 **A. No.**
 21 Q. As I understand the words of the trust, the
 22 trustee can make equal distributions. That's one
 23 outcome?
 24 **A. Correct.**
 25 Q. Unequal distributions?

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1 **A. Correct.**
 2 Q. No distributions?
 3 **A. Correct, except the decedent's trust.**
 4 Q. With regard to income to the surviving spouse?
 5 **A. That's correct.**
 6 Q. So given those facts about discretion to make
 7 equal distributions, unequal distributions, no
 8 distributions, set aside the issue of income to spouse,
 9 it would seem Carl Brunsting has no standing to
 10 challenge those provisions?
 11 MS. BAYLESS: Objection, form.
 12 **A. I would agree.**
 13 Q. (By Mr. Mendel) There's an allegation that no
 14 distributions from the decedent's trust should occur
 15 until there is an exhaustion of the survivor's trust.
 16 And we can look at the language. I think it's 9-2. It
 17 talks about the trustee.
 18 While it's preferred to exhaust the
 19 survivor's trust --
 20 **A. That's correct.**
 21 Q. -- I interpret that language, and you tell me
 22 if you disagree -- given that it's preferred, it's not
 23 mandatory?
 24 **A. That's correct.**
 25 Q. The motion for summary judgment also speaks to

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1 that the QBD is not a valid exercise of the powers of
 2 appointment.
 3 Would you agree or disagree with that?
 4 MS. BAYLESS: Objection, form.
 5 **A. I disagree.**
 6 Q. (By Mr. Mendel) Please share with us why you
 7 disagree.
 8 **A. Because the trust explicitly states that powers
 9 of appointment are granted to the surviving settlor and
 10 the initial settlor and that they should be in writing
 11 and in the form of a qualified beneficiary designation.**
 12 Q. And is that the process that you recommended to
 13 Nelva Brunsting?
 14 **A. Yes, because Elmer had already predeceased.**
 15 Q. And from your perspective, that was all
 16 properly followed?
 17 **A. Necessary and properly, yes, if you're going to
 18 make any beneficiary change.**
 19 Q. Now, there's the contention, as I understand
 20 it, under the restated trust, which is Exhibit 2 -- and
 21 if you look at 3-1 -- 3-1, Exhibit 2, section B, in that
 22 first paragraph it says, "When one of us dies, this
 23 trust shall not be subject to amendment except by a
 24 court of competent jurisdiction."
 25 **A. I agree.**

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1 Q. Then in the very next paragraph it talks about
 2 "each of us may provide for a different disposition of
 3 our share in the trust by using a qualified beneficiary
 4 designation, as we define that term in this agreement,
 5 and the qualified beneficiary designation will be
 6 considered an amendment to this trust as to that
 7 Founder's share or interest alone," which seems to imply
 8 the survivor?
 9 **A. Yes, because it says "our share in the trust."**
 10 Q. Okay. And so the fact that maybe one trust is
 11 no longer subject to amendment, does that preclude an
 12 amendment -- this sentence in section B, on 3-1, does
 13 that preclude Nelva Brunsting from putting together a
 14 qualified beneficiary designation?
 15 **A. No.**
 16 MS. BAYLESS: Objection, form.
 17 Q. (By Mr. Mendel) It's my understanding or from
 18 my reading of Carl Brunsting's pleadings and/or motion
 19 for summary judgment that there may be some sort of a
 20 contradiction in Article III, section B, and then the
 21 exercise of the power of appointment.
 22 Do you see a contradiction?
 23 **A. I don't.**
 24 MS. BAYLESS: Objection, form.
 25 Q. (By Mr. Mendel) And you don't see a

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1 contradiction because?
 2 **A. This is talking about the family trust. The
 3 disposition of each survivor's and decedent's trust and
 4 how those are administered and handled are within those
 5 sections; and the survivor's trust allows amendment to
 6 her share and a qualified beneficiary designation or
 7 limited or general power of appointment, however you
 8 want to call it, for each one.**
 9 Q. And so the QBD --
 10 **A. Uh-huh.**
 11 Q. -- in particular, Exhibit 6, executed in August
 12 of 2010, is a valid and enforceable agreement?
 13 **A. Yes.**
 14 Q. I want to talk about the -- well, let me ask
 15 you one other thing. I want to talk about the
 16 in terrorem, or the no contest, provision.
 17 **A. Of the trust or the QBD?**
 18 Q. Both.
 19 **A. Okay.**
 20 Q. You wrote the no-contest provisions for the
 21 restated trust, which is Exhibit 2, and the QBD that's
 22 in large part the subject of this dispute, being
 23 Exhibit 6, right?
 24 **A. Well, I personally did not write that because
 25 the restatement was done before I even got to the firm.**

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1 Q. I'm sorry. My apologies. The Vacek firm wrote
 2 these things?
 3 **A. Yes.**
 4 Q. And you put those provisions in there -- when
 5 those provisions were put in there, do you consider them
 6 to be valid and enforceable?
 7 MS. BAYLESS: Objection, form.
 8 **A. To the extent that they are allowable under the
 9 law, yes.**
 10 Q. (By Mr. Mendel) Okay. And your understanding
 11 of the enforceability of in terrorem, or no-contest,
 12 provisions, is what?
 13 **A. That they are a deterrent. And if somebody
 14 brings a claim in good faith and it's found to be in
 15 good faith, then it won't apply. But otherwise, it
 16 could be enforced if you bring a suit in bad faith.**
 17 Q. Okay. Let's talk about 11-2.
 18 **A. Of?**
 19 Q. Of Exhibit 2.
 20 MS. BAYLESS: Are you meaning page 11-2?
 21 MR. MENDEL: Yes.
 22 MS. BAYLESS: All right.
 23 Q. (By Mr. Mendel) So Exhibit 2, page 11-2.
 24 **A. Okay.**
 25 Q. At the very top it talks about instituting "a

94	<p>1 judicial proceeding to construe or contest this trust 2 instrument." Do you see that? 3 A. Uh-huh. 4 Q. Would you agree that a declaratory judgment is 5 an action to construe a trust instrument? 6 MS. BAYLESS: Objection, form. 7 A. Would I agree that it's the only way? 8 Q. (By Mr. Mendel) Well, we're going to go 9 through all of these. 10 A. Okay. 11 Q. But one way to be in conflict or to violate the 12 in terrorem clause is to initiate a proceeding to 13 construe or contest this trust instrument? 14 A. That's what it states, yes. 15 MS. BAYLESS: Objection, form. 16 Q. (By Mr. Mendel) And a second way, in addition 17 to initiating something that seeks the construction of 18 the trust instrument, is some sort of a claim in the 19 nature of reimbursement? 20 A. Yes. That's what it says. 21 Q. And a third way to be in violation of the 22 in terrorem, or no contest, provision, is to seek a 23 constructive or resulting trust? 24 A. Yes. That's what it states. 25 Q. And you would agree that if that occurred,</p>	96	<p>1 next paragraph, these directions, speaking to the 2 directions above, shall apply even if the judicial 3 proceeding is in good faith and with probable cause. 4 A. Yes. 5 Q. And so you would -- that wasn't added by 6 accident, right? 7 A. No. I'm sure it wasn't. 8 Q. Those words were put in there intentionally? 9 A. Correct. 10 Q. So it doesn't matter if someone brings 11 something in good faith. If it falls within these four 12 categories that we just spoke about, then they're in 13 violation, good faith or bad faith? 14 MS. BAYLESS: Objection, form. 15 A. Yes. I mean, according to what it says, yes. 16 Q. (By Mr. Mendel) Okay. And even some sort of 17 an interpretation or a challenge with regard to the 18 in terrorem, or no-contest, provision is a violation of 19 the in terrorem provision? 20 A. That's what it says, yes. 21 MS. BAYLESS: Objection, form. 22 Q. (By Mr. Mendel) And so just looking at the 23 restated trust -- 24 A. Exhibit 2. 25 Q. -- Exhibit 2 from 2005 -- I'm just going to run</p>
95	<p>1 those would be violations of the in terrorem clause? 2 MS. BAYLESS: Objection, form. 3 A. They would be in violation of what it says 4 here, yes. 5 Q. (By Mr. Mendel) And another way to violate the 6 in terrorem clause would be a proceeding that seeks to 7 enlarge a claimant's interest in the trust? 8 A. Yes. 9 Q. So one way to violate that would be if Nelva 10 properly authorized during her lifetime gifts from the 11 survivor's trust, that an effort to seek the return of 12 those assets so as to increase the trust estate and 13 increase somebody's 20 percent share would be in 14 violation of the in terrorem clause, would it not? 15 MS. BAYLESS: Objection, form. 16 A. I could see how you could construe it that way, 17 yes. 18 Q. (By Mr. Mendel) You wouldn't disagree? 19 MS. BAYLESS: Objection, form. 20 A. No. A claim is a claim. 21 Q. (By Mr. Mendel) Okay. And then the other 22 thing is that you spoke a moment ago about claims made 23 in good faith? 24 A. Correct. 25 Q. This trust, however, specifically says in the</p>	97	<p>1 through a series of -- we can go back and look at the 2 pleadings if necessary, if you think it's necessary. 3 But I'm just going to ask if some of these things that 4 have been alleged violate the -- 5 A. The language in the trust? 6 Q. The language in the trust. 7 A. Sorry. 8 Q. And let me ask you this, if you know. Based on 9 your practice or your understanding of the case law and 10 maybe the statutes, this language about even if brought 11 in good faith, that's an enforceable provision? 12 MS. BAYLESS: Objection, form. 13 A. That is not my understanding. 14 Q. (By Mr. Mendel) And why not? 15 A. Because this was done in 2005, and case law has 16 probably modified that over time. 17 Q. You say "probably modified," so you don't 18 really know? 19 A. Most likely. I do not know. 20 Q. Okay. So you're just surmising? 21 A. Yes. 22 Q. But if it turns out the case law indicates that 23 good faith can be written as provided here, if that's 24 still the law in some way, shape or form, then Carl 25 Brunsting may have violated the in terrorem clause?</p>

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1 **A. Sure.**
2 MS. BAYLESS: Objection.

3 **Q.** (By Mr. Mendel) Candy Curtis may have violated
4 the in terrorem clause?
5 MS. BAYLESS: Objection, form.

6 **A. Yes.**
7 **Q.** (By Mr. Mendel) And so working from the
8 restated trust that has these four topics and has the
9 specific language about even if brought in good faith
10 and with probable cause, Exhibit 13, 14, 15 and 16, if
11 Carl Brunsting brought some sort of a suit for
12 declaratory judgment or to construe the trust, that
13 would violate the in terrorem clause?
14 MS. BAYLESS: Objection, form.

15 **A. As it's stated here, yes.**
16 **Q.** (By Mr. Mendel) Allegations with regard to
17 breach of fiduciary duty and conversion, those would
18 violate the in terrorem clause?
19 **A. They would.**
20 MS. BAYLESS: Objection, form.

21 **Q.** (By Mr. Mendel) Allegations of negligence
22 would violate the in terrorem clause.
23 MS. BAYLESS: Objection, form.

24 **A. Yes.**
25 **Q.** (By Mr. Mendel) Allegations of tortious

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1 interference, which I think was struck down by the Texas
2 Supreme Court, would violate the in terrorem clause?
3 **A. Yes.**
4 MS. BAYLESS: Objection, form.

5 **Q.** (By Mr. Mendel) Seeking a constructive trust
6 would violate the in terrorem clause?
7 MS. BAYLESS: Objection, form.

8 **A. Yes.**
9 **Q.** (By Mr. Mendel) Allegations of civil
10 conspiracy would violate the in terrorem clause?
11 MS. BAYLESS: Objection, form.

12 **A. Yes.**
13 **Q.** (By Mr. Mendel) Allegations of fraudulent
14 concealment would violate the in terrorem clause?
15 MS. BAYLESS: Objection, form.

16 **A. Yes.**
17 **Q.** (By Mr. Mendel) Would allegations with regard
18 to the removal of -- or the liability of the
19 beneficiaries violate the in terrorem clause?
20 MS. BAYLESS: Objection, form.

21 **A. I'm sorry. The liability of the beneficiaries?**
22 **Q.** (By Mr. Mendel) Here, let me rephrase it.
23 Let's jump to allegations regarding
24 removal of trustee. Seeking the removal of trustees
25 would violate the in terrorem clause?

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1 MS. BAYLESS: Objection, form.

2 **A. Yeah, it could.**
3 **Q.** (By Mr. Mendel) Seeking a receivership over
4 the trust would violate the in terrorem clause?
5 MS. BAYLESS: Objection, form.

6 **A. Yes.**
7 **Q.** (By Mr. Mendel) Allegations regarding
8 self-dealing from the survivor's trust while Nelva
9 Brunsting was alive would violate the in terrorem
10 clause?
11 MS. BAYLESS: Objection, form.

12 **A. Yes.**
13 **Q.** (By Mr. Mendel) Allegations of a criminal
14 wiretap would violate the in terrorem clause?
15 MS. BAYLESS: Objection, form.

16 **A. I'm not sure what that has to do with the**
17 **trust, but ...**
18 **Q.** (By Mr. Mendel) Seeking injunctive relief,
19 would it violate the in terrorem clause?
20 MS. BAYLESS: Objection, form.

21 **A. Yes, as it's written here.**
22 **Q.** (By Mr. Mendel) With regard to Candy Curtis'
23 claims, I'm going to suggest to you certain claims that
24 I believe she's made; and I want to know if you believe
25 that those claims violate the in terrorem clause as

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1 written in Exhibit 2 on page 11-2 --
2 **A. Okay.**
3 **Q.** -- of the restated trust.
4 Allegations regarding breach of fiduciary
5 duty?
6 **A. Yes.**
7 **Q.** Allegations regarding extrinsic fraud?
8 **A. Yes.**
9 **Q.** Allegations regarding constructive fraud?
10 **A. Yes.**
11 **Q.** Allegations regarding intentional infliction of
12 emotional distress?
13 **A. Yes.**
14 **Q.** Allegations of money had and received?
15 **A. Yes.**
16 **Q.** Allegations of conversion?
17 **A. Uh-huh, yes.**
18 **Q.** She also alleges allegations of tortious
19 interference with inheritance rights. Assuming that was
20 even a valid claim, that would violate the in terrorem
21 clause?
22 **A. Yes.**
23 **Q.** Seeking modifications of QBD would be a
24 violation of the in terrorem clause?
25 **A. Yes.**

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1 Q. Allegations of unjust enrichment would be a
 2 violation of the in terrorem clause?
 3 **A. Yes.**
 4 Q. Allegations of conspiracy would be a violation
 5 of the in terrorem clause?
 6 **A. Yes.**
 7 Q. Any sort of request for a declaratory judgment
 8 related to the trust would be a violation of the
 9 in terrorem clause?
 10 **A. Yes.**
 11 Q. I want to talk about Exhibit 6, August 2016,
 12 QBD. Go up to like page 23. Okay.
 13 Now, this is a slightly different --
 14 **A. Yes.**
 15 Q. -- in terrorem clause?
 16 **A. Yes**
 17 Q. And there's no language, as I understand it,
 18 with regard to the QBD, that overrides or supersedes the
 19 in terrorem clause in the 2005 restated trust.
 20 Would you agree with that?
 21 MS. BAYLESS: I'm sorry. Ask your
 22 question again.
 23 Q. (By Mr. Mendel) Is there any language in the
 24 August 2010 QBD in terrorem provisions that overrides
 25 the in terrorem provisions that are expressed in the

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1 2005 Restated Trust?
 2 **A. Not that I'm aware of.**
 3 Q. I would bring to your attention on page 23 item
 4 No. 1, that an unsuccessful challenge to the appointment
 5 of a trustee or seeking to remove a trustee can be a
 6 violation of the QBD in terrorem clause?
 7 **A. Yes, it would.**
 8 Q. And under paragraph 2, as long as the trustee
 9 acts in good faith, any sort of a challenge to the good
 10 faith of a trustee can be a violation of the QBD
 11 in terrorem clause?
 12 **A. That's correct.**
 13 Q. And then in paragraph 3, there is an objection
 14 to any construction or interpretation of this trust
 15 agreement or any amendment that is adopted or proposed
 16 in good faith by the trustee would be a violation of the
 17 in terrorem clause?
 18 **A. Yes.**
 19 Q. And you would agree, would you not -- or if you
 20 disagree, tell me -- actions for declaratory judgment
 21 seeking construction or construing the trust could be a
 22 violation of paragraph 3?
 23 MS. BAYLESS: Objection, form.
 24 **A. It could be.**
 25 Q. (By Mr. Mendel) Jumping down to -- let's see.

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1 Paragraph 4, page 23 of Exhibit 6 talks about claims
 2 entitlement to or an interest in any asset alleged by
 3 the trustee to belong to the estate.
 4 Let me move to No. 7: "In any other
 5 manner contest this Trust or any amendment to it
 6 executed by the trustor."
 7 Based on your understanding of the
 8 pleadings, as put forth by Carl Brunsting, has he
 9 violated the in terrorem clause as set forth in the
 10 August 2010 QBD?
 11 **A. Yes.**
 12 MS. BAYLESS: Objection, form.
 13 Q. (By Mr. Mendel) Based on your understanding of
 14 the claims that have been alleged by Candy Curtis, has
 15 she violated the no contest, or the in terrorem,
 16 provisions in the August 2010 QBD?
 17 **A. Yes.**
 18 Q. And it's also your understanding, with regard
 19 to the trust, that fees and expenses incurred by lawyers
 20 in the defense of the trustees and defense of the
 21 trust -- there are provisions to provide for
 22 compensation to the lawyers. Is that true?
 23 MS. BAYLESS: Objection, form.
 24 **A. That is true.**
 25 MR. MENDEL: I'm going to pass the

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1 witness.
 2 MR. REED: My suggestion is we just take
 3 lunch.
 4 MR. MENDEL: Okay.
 5 MR. REED: Then whoever next can start up
 6 fresh.
 7 (Luncheon recess.)
 8 Q. (By Mr. Mendel) Ms. Freed, I wanted to get a
 9 clarification. On some of the questions that I asked, I
 10 think I phrased it in such a way as did Nelva Brunsting
 11 understand.
 12 So short of her actually stating to you,
 13 yes, I understand, what I ultimately intend is, based on
 14 your interaction and based on your dealings with her,
 15 did you believe that she understood the nature of the
 16 discussions that you were having?
 17 **A. Yes.**
 18 Q. That's all I've got.
 19 MR. MENDEL: Carole, she said it would be
 20 better if we switched. So do you want to come sit over
 21 here?
 22 MS. CAROLE BRUNSTING: And I apologize in
 23 advance because I'm pro se. If I tend to ramble, I'm
 24 trying to keep that -- I'll try not to, but I can't make
 25 any promises. I've never done this before.

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1 MS. BAYLESS: Speak up.
 2 EXAMINATION
 3 QUESTIONS BY MS. CAROLE BRUNSTING:
 4 Q. Just based on a couple of questions I had
 5 coming in here and then some of the things that we
 6 talked about this morning, there's just a couple of --
 7 just a few questions that I would like to ask.
 8 The checking account that was set up for
 9 my mother once she stopped writing checks off of the
 10 trust account, how did that come about?
 11 A. How did --
 12 Q. Who made that decision that it would be a good
 13 idea to set up that checking account for my mother so
 14 all the household expenses would go through that and she
 15 would no longer be writing checks out of the trust?
 16 A. As I recall, it was my recommendation that a
 17 checking account be set up so that your mom could still
 18 write checks to go get her hair done, to church, all
 19 those things that she normally does, to pay her medical
 20 bills because it was my understanding that you were the
 21 agent under medical power of attorney. So you would
 22 accompany her to the doctor and you were here in Houston
 23 and that needed to have something proper to do that.
 24 Q. And then why was it set up as a right of
 25 survivor account? Who made that decision?

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1 A. It should have been a convenience account, was
 2 the recommendation, with a payable-on-death to the
 3 trust.
 4 Q. Okay.
 5 A. That was the recommendation.
 6 Q. Somehow it was set up as a right of survivor
 7 account.
 8 A. In who?
 9 Q. When I closed it out at the bank and asked for
 10 the final check, she said, This is a right-of-survivor
 11 account. You don't have to give this money back.
 12 I mean, I did; but I had nothing to do
 13 with -- I just took my mother to the bank and we signed
 14 some paperwork and that was my entire involvement in all
 15 of this.
 16 A. I don't know how it ended up as a right-of-
 17 survivorship account.
 18 Q. I didn't have anything to do with setting the
 19 account up. That was all done, I'm assuming, by your
 20 firm.
 21 A. No.
 22 Q. I just drove my mother to the bank, and she
 23 signed -- actually I think they had to go out to the car
 24 because she wasn't in a condition to go in. The people
 25 at the bank knew her.

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1 A. Yeah. My firm, just for clarification, doesn't
 2 ever set up accounts. We just make recommendations to
 3 clients on what type of accounts they should set up, and
 4 then it's up to them to do it.
 5 Q. Well, maybe Anita set it up, then; because like
 6 I said, all we did was go to the bank, sign some things
 7 and that was it.
 8 Do you recall when you explained -- or
 9 reached out to me to explain how this account was being
 10 set up and my mother's involvement and how I was going
 11 to be involved with this account?
 12 A. I do not.
 13 Q. Okay. Because it was a conversation, I mean,
 14 where I was told about this account; but because I
 15 tended to never be involved with anything having to do
 16 with money with this family, I declined getting involved
 17 with it in the beginning. And I told my mother that I
 18 didn't think it was a very good idea.
 19 After a week or so, she called me -- and
 20 Anita called me as well -- and said, Everything's going
 21 to be fine. It's all -- there won't be any problems.
 22 And, yet, I'm being sued over this.
 23 So I just wanted to kind of clarify how
 24 the decision of -- where the recommendation came to set
 25 up this checking account.

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1 A. The recommendation, as I recall, was a
 2 convenience account in Nelva's name, with you as a
 3 convenience signer, with a payable-on-death to the
 4 trust. That is our usual recommendation.
 5 Q. Well -- and the balance of it did go back to
 6 the trust. I did not keep it.
 7 You mentioned -- I think we talked about
 8 once my mother passed away, that they had -- Amy and
 9 Anita had 15 months to settle the trust and the assets
 10 and things like that.
 11 A. No. I don't believe that's what I said. I
 12 said that's a reasonable time.
 13 Q. Oh, okay. Okay. But within the first --
 14 within a month of my mother passing away, they put the
 15 house on the market. I was wondering where that
 16 direction came from because I was trying to convey to
 17 both of them that we really needed to have a discussion
 18 amongst the five of us to figure out if maybe one of us
 19 wanted the house in lieu of something else because at
 20 that point no one was suing anybody.
 21 But that was a discussion that they
 22 refused to have. Because I work 2 miles from that
 23 house, and it would have been so convenient for me, had
 24 I given up maybe part of my trust in another area, to
 25 retain the house. But they just completely ignored me,

<p style="text-align: right;">110</p> <p>1 put the house on the market and sold it.</p> <p>2 So that direction wouldn't have come from</p> <p>3 you, then, to liquidate assets just as quickly as</p> <p>4 possible?</p> <p>5 A. I don't recall making any kind of</p> <p>6 recommendation as to liquidation of assets.</p> <p>7 Q. The other note I made was -- I wasn't involved</p> <p>8 with anything having to do with the trust. I never had</p> <p>9 any fiduciary responsibilities to the trust because I</p> <p>10 was never -- that wasn't my role. So I never got</p> <p>11 involved with the finances of what was in the trust and</p> <p>12 what was in the various accounts and things like that.</p> <p>13 But as we went into 2011 -- and I wasn't</p> <p>14 aware of the gifting, necessarily the gifting going on</p> <p>15 and things like that. But I remember Anita telling me</p> <p>16 that my mother's side was running out of money. So I</p> <p>17 had to reduce the salaries of the caregivers -- because</p> <p>18 my mother had 24-hour caregivers. Then I picked up the</p> <p>19 Sundays where I was working for free just to help reduce</p> <p>20 cost.</p> <p>21 I guess that was a concern, that I was --</p> <p>22 then when I found out about some of the gifting that</p> <p>23 took place, could she not have converted some of the</p> <p>24 stock into cash so that my mother could have continued</p> <p>25 to have more cash in the account, or she wasn't allowed</p>	<p style="text-align: right;">112</p> <p>1 mother knew her at the time, and she made a full</p> <p>2 recovery in six months.</p> <p>3 I knew that Anita was extremely concerned</p> <p>4 at that point about the trust and what was going to</p> <p>5 happen because my brother was sick and then my mother</p> <p>6 was sick. But the only thing I heard my mother talk</p> <p>7 about was the possibility of my mother maybe setting up</p> <p>8 a medical trust for my brother, and maybe she would be</p> <p>9 the trustee until my brother recovered.</p> <p>10 So then when I saw where Anita was</p> <p>11 starting to make a lot of phone calls and things like</p> <p>12 that -- I had lunch with my mother pretty much on a</p> <p>13 regular basis because I only worked a few miles down the</p> <p>14 road, and I went over there most every day for lunch.</p> <p>15 I just don't ever recall her having this</p> <p>16 sense of -- that my brother was going to -- that he was</p> <p>17 in any danger of passing away.</p> <p>18 And just knowing my mother, my mother</p> <p>19 hated paperwork or making more of it. So I just</p> <p>20 couldn't see where she would just jump into the trust</p> <p>21 and want to make so many changes. So I did have a</p> <p>22 concern.</p> <p>23 And because Anita was so concerned about</p> <p>24 things with Carl and his life, red flags kept going up</p> <p>25 for me. So that's why I guess I was seeing some of the</p>
<p style="text-align: right;">111</p> <p>1 to sell the stock at that time?</p> <p>2 A. There's no prohibition to selling stock, but I</p> <p>3 was not involved with those decisions --</p> <p>4 Q. Oh, okay.</p> <p>5 A. -- so I do not know. I can't speak to it.</p> <p>6 Q. Because early on I had a lot of concerns</p> <p>7 because when all of this happened -- my brother got sick</p> <p>8 and my mother got a cancer diagnosis almost the same</p> <p>9 week -- my mother was really focused on her -- the</p> <p>10 diagnosis of cancer.</p> <p>11 When Carl got ill, my mother went to go</p> <p>12 see him. We all went to go see him in the hospital, and</p> <p>13 it appeared that he was going to recover just fine.</p> <p>14 They thought it was a stroke at the time. Unfortunately</p> <p>15 it did turn into encephalitis. But I just don't ever</p> <p>16 recall my mother ever expressing concern that my brother</p> <p>17 was in any danger of passing away.</p> <p>18 I think there was maybe a 24-hour period</p> <p>19 where, because they didn't know what it was and things</p> <p>20 like that, we thought that he could be in danger.</p> <p>21 Because they hadn't diagnosed it at the time, so they</p> <p>22 didn't know what they were treating.</p> <p>23 But then once they made the diagnosis, my</p> <p>24 mother was really optimistic that he was going to be</p> <p>25 okay because my dad's cousin had encephalitis. My</p>	<p style="text-align: right;">113</p> <p>1 other side of things that were going on that you may not</p> <p>2 have known anything about.</p> <p>3 And my mother tended to be somebody that</p> <p>4 hated conflict, and so she a lot of times would just</p> <p>5 agree just to shut people up and try to go along with</p> <p>6 things.</p> <p>7 But when it came to the gift that I got,</p> <p>8 it was something my mother spoke to me about because at</p> <p>9 the time we were thinking that there was a possibility</p> <p>10 that my brother may come to live with me. So we thought</p> <p>11 we needed to make the house ready for a wheelchair,</p> <p>12 things like that. What my mother talked about was just</p> <p>13 give me enough cash to where I could just make that</p> <p>14 happen quickly if the need arose.</p> <p>15 Well, time went by and Anita called me and</p> <p>16 said that my mother was ready to make this gift. I was</p> <p>17 like okay.</p> <p>18 But I told her, I said, I need to make</p> <p>19 sure every I is dotted, every T is crossed because I</p> <p>20 never want anybody to think that I got this under some</p> <p>21 kind of suspicious circumstances. I knew that at the</p> <p>22 time Anita seemed to be shopping for answers between you</p> <p>23 and our cousin in Iowa to try and find out, is this</p> <p>24 okay, is this okay, is this okay?</p> <p>25 That's why I told her I need to know</p>

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1 a hundred percent for sure that what money I get, that
 2 there's something in writing where my mother has said, I
 3 am giving this to Carole for this intended purpose; and
 4 it's notarized and everything is fine. I said, I need
 5 to know that because I know how this family can be.
 6 She said, No, no, no, it's all taken care
 7 of. It's all fine, it's all fine.
 8 But our mother didn't have to say in
 9 writing that she was okay with these gifts?
 10 MR. REED: Objection, form.
 11 MR. SPIELMAN: Form.
 12 **A. There is no requirement in the trust that**
 13 **requires her to do that.**
 14 Q. (By Ms. Carole Brunsting) Because then what I
 15 found out also, that it came out of the decedent's
 16 trust -- I remember staying with my father because at
 17 the time, for some reason I remember that they would go
 18 to meetings with Vacek in Clear Lake City. I think that
 19 it was a different person, before you. I know that the
 20 person wasn't at the office where you were.
 21 My father was explaining to me that the
 22 way he set it up was the decedent's trust, no one could
 23 take that money unless my mother ran out of money,
 24 because should my mother marry again, he wanted to make
 25 sure that the farm was protected for his children and

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1 that you couldn't pull assets out of there. And I
 2 remember my father clearly explaining all that to me.
 3 So when I found out that, number one, this
 4 wasn't cash; but, number two, it was stock out of my
 5 father's side, and I questioned it, and like, No, no.
 6 That's fine, it's fine.
 7 The problem I was having with it --
 8 because I'm an accountant and I do a little bit -- is
 9 this stock generates dividends. So, number one, I
 10 thought it would be foolish to cash it. But, number
 11 two, I didn't want a tax hit. And, number three, at the
 12 time, enough time had passed, and it wasn't given to
 13 me -- I mean, the reason it was being given to me was no
 14 longer for its intended purpose. So I never felt right
 15 about accepting it because I no longer needed to modify
 16 my house.
 17 So I kind of just ended up with it, and I
 18 still have it all. I have never cashed it in, ever. I
 19 kept trying to give it back, but I was told, No, no.
 20 Just hang on to it, hang on to it.
 21 But now I don't know what's going to
 22 happen to it now that I have it, and I don't want to
 23 take some tax hit. I've tried to -- do I divide it five
 24 ways? I don't know what to do with it now because even
 25 though I've tried to give it back, I have never been

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1 successful; and I don't really know what to do.
 2 **A. Are you asking me a question?**
 3 MR. SPIELMAN: Objection, form.
 4 Q. (By Ms. Carole Brunsting) Well, I don't know.
 5 I've gotten five different answers.
 6 MR. REED: What I would say is I don't
 7 think she can give you any advice on that --
 8 MS. CAROLE BRUNSTING: Oh, okay.
 9 MR. REED: -- in this context. So I guess
 10 that would be the answer to what you're looking for.
 11 Q. (By Ms. Carole Brunsting) Well, anyway, but I
 12 guess it was the two conversations that I had regarding
 13 money with Anita of please do not get me involved with
 14 something that is going to get me in trouble with the
 15 rest of the family.
 16 Because I never asked, What is everybody
 17 else getting? I never asked that, because it was none
 18 of my business.
 19 But the two things I got involved with I'm
 20 being sued for. So that's where I kind of thought that
 21 there would be something in writing saying that this
 22 checking account that my mother set up would be -- this
 23 is how it came about or this was the intended purpose of
 24 this gift. And then when it didn't happen, I never
 25 spent it.

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1 I just don't know what to do with this.
 2 But also, too, it sounds like now there is nothing in
 3 writing or maybe it was never required that my mother --
 4 I thought she had to fill something out or agree to make
 5 a distribution like that because she was no longer the
 6 trustee. It was Anita that was. So I just assumed that
 7 my mother had to sign something and notarize it so I
 8 could show everybody that this is what she wanted. So I
 9 never had anything to back it up. So everybody decided
 10 that I was being bought off, and that's where it
 11 couldn't be further from the truth.
 12 MR. REED: Form.
 13 Q. (By Ms. Carole Brunsting) Okay.
 14 MR. SPIELMAN: Objection, form.
 15 MS. CAROLE BRUNSTING: I'm pro se, so this
 16 is what you get.
 17 MR. SPIELMAN: Move on.
 18 Q. (By Ms. Carole Brunsting) Oh, the other thing,
 19 too, that was kind of a bit of a red flag when some of
 20 these changes took place was, when my mother would talk
 21 about the trust, she would say, I don't care what --
 22 y'all can fight as much as you want, but Carl will
 23 always be trustee. He's the only boy. Your dad and I
 24 have agreed he will always be trustee. No matter what,
 25 he will always be trustee.

Candace Kunz-Freed

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1 So that was a bit of another red flag when
2 I asked my mother, I said, Why would you have removed
3 him?
4 She said, Oh, no, don't worry. It's a
5 temporary thing. This is just temporary.
6 So that's why I really got the impression
7 maybe she didn't understand exactly what happened
8 because it was her understanding that he was going to go
9 back on there at some point, and she expected him to
10 fully recover.
11 And also, I thought there was already a
12 safety net in place that even if Carl couldn't serve, it
13 would just go to the next person; and then there was
14 already something in place. I just honestly don't know
15 that my mother would have thought through that hard or
16 put that much thought into this document because, like I
17 said, she hated paperwork and hated all the --
18 I mean, she -- the trust was really more
19 my dad's thing; it wasn't really hers. So that was
20 another bit of a red flag, that my mother was adamant
21 about Carl always being the trustee. And she really
22 didn't seem to be that concerned about his health at the
23 time.
24 And also, too, I knew that there was a
25 question about Amy and Anita's own financial stability

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1 at the time. So that was the other red flag. I'm an
2 accountant, so this is what I do for a living. So
3 there's a lot of red flags for me here, and that was a
4 red flag for me as well.
5 There wasn't anything I could do about it
6 because I had no power to do anything about it. But
7 there were red flags that I was really concerned about,
8 how all of a sudden we had all these large changes
9 taking place. And from the conversations I was having
10 with my mother, none of this ever really, really sat
11 well with me. And as a result, now I'm part of two
12 lawsuits.
13 MR. SPIELMAN: Objection, form.
14 Q. (By Ms. Carole Brunsting) So that's it. I'm
15 done.
16 MR. REED: Can we take a 30-second break
17 real quick?
18 MR. SPIELMAN: Sure.
19 (Recess taken.)
20
21
22
23
24
25

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1 EXAMINATION
2 QUESTIONS BY MS. CANDACE CURTIS:
3 Q. Okay. So I just want to kind of go over the
4 history of the trust from the very beginning just real
5 quickly.
6 So in 1996 there was The Brunsting Family
7 Living Trust; and Anita was the first trustee, Carl the
8 second and Amy was third. The money was to be divided
9 five ways and given to the beneficiaries, not in trust.
10 And if those three ended up not being able to serve,
11 then Frost Bank would have taken over that position.
12 I know because he told me that the reason
13 he chose those three is because they were the youngest
14 and would probably be more likely to live longer than
15 the older kids.
16 So we had the 1996 trust. At some point
17 before 1999, Anita got divorced. And so my dad gave her
18 a hundred thousand dollars to pay her house off, and he
19 filed a lien against her house. I don't know what
20 happened to make him have to take the lien off; but he
21 went to Mr. Vacek and said that if there is a debt that
22 was forgiven by Anita Kay Riley -- if it was her debt
23 that was forgiven, it would come out of her share of the
24 trust.
25 So I have never seen the hundred thousand-

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1 dollar accounts receivable anywhere in the accounting.
2 We have my accounts receivable for \$20,000; and later on
3 when Anita borrowed shares of stock, we have that
4 accounts receivable.
5 But what happened to that hundred
6 thousand-dollar accounts receivable? Because it was a
7 trust asset which should have transferred within the
8 trust when the trust was restated.
9 MR. SPIELMAN: Form.
10 MR. REED: Let me just ask you, What time
11 period are you asking? I'm not familiar with it.
12 MS. CANDACE CURTIS: Okay. So it was in
13 1999 that he gave her the money to pay her house off and
14 filed the lien.
15 MR. REED: Uh-huh.
16 MS. CANDACE CURTIS: And then it was in --
17 MR. MENDEL: Was this in Victoria?
18 MS. CANDACE CURTIS: Yes, it was in
19 Victoria, Texas.
20 MR. REED: The reason I'm asking as you're
21 looking is we were only asked to produce documents from
22 a certain time period. So I'm just wondering if the
23 documents we produced --
24 MS. CANDACE CURTIS: You didn't produce
25 those two. You produced the amendment --

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1 MR. REED: Okay.
 2 MS. CANDACE CURTIS: -- to the trust.
 3 MR. REED: So you're asking why someone
 4 else hasn't produced documents?
 5 MS. CANDACE CURTIS: No. I'm asking --
 6 because this is an amendment to the trust that says if
 7 the loan was forgiven, that it would come out of her
 8 trust share, that became -- at that point when it was
 9 forgiven, that became an asset of the trust because it
 10 was due back from her.
 11 So we move along in time and we come to
 12 the 2005 restatement, and at that point they had to
 13 gather what all the assets were. And that just
 14 disappeared, and it was a valid accounts receivable of
 15 The Brunsting Family Living Trust.
 16 MR. REED: Yeah. And I appreciate that --
 17 MR. SPIELMAN: Form. I'm not sure what's
 18 happening with questions and not questions, but just a
 19 bunch of "objection, forms."
 20 MR. REED: I'm trying to understand what
 21 the question is. I think the period you're saying is --
 22 I think the answer is she's not going to be able to
 23 offer any testimony because she wasn't there until 2007.
 24 MS. CANDACE CURTIS: No, I understand
 25 that. But when she came there in 2007, there were

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1 several accountings prepared. The first one was when my
 2 dad passed away. So it should have been listed on the
 3 assets of the trust. And it was a Vacek product in
 4 1996. So I would think that would still be in the file,
 5 in the amendment, because these amendments and these
 6 trusts I got out of your production.
 7 MR. REED: I'm with you, following you.
 8 MS. BAYLESS: Wait just a second. Can I
 9 ask what amendment we're talking about?
 10 MS. CANDACE CURTIS: It's the first
 11 amendment to the 1996 Brunsting Family Living Trust.
 12 MS. BAYLESS: Does it have a number?
 13 MS. CANDACE CURTIS: V&F 000808.
 14 MR. MENDEL: Is there a date?
 15 MS. CANDACE CURTIS: April 30th, 1999.
 16 MS. BAYLESS: Can you give me the number
 17 one more time.
 18 MR. MENDEL: V&F 000808.
 19 MS. BAYLESS: Thank you.
 20 MR. REED: Okay. I don't know if we're
 21 following you. Go ahead.
 22 MR. MENDEL: April 30th, 1999 amendment.
 23 MS. CANDACE CURTIS: It's part of the
 24 estate plan.
 25 MR. REED: Okay.

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1 MR. SPIELMAN: I'm sorry. I know I'm just
 2 as bad as everybody else now.
 3 Are you referencing the amendment that was
 4 made to the original trust document --
 5 MS. CANDACE CURTIS: Yes.
 6 MR. SPIELMAN: -- prior to the execution
 7 of the restatement?
 8 MS. CANDACE CURTIS: Yes, I am.
 9 MR. SPIELMAN: Does everybody now
 10 understand better what we're talking about?
 11 THE WITNESS: Yes. Thank you.
 12 Q. (By Ms. Candace Curtis) Okay. So now we're
 13 coming to the restatement, and that was done in 2005.
 14 So my only question really is why that
 15 wasn't continued to be carried as an asset --
 16 MR. SPIELMAN: Objection, form.
 17 Q. (By Ms. Candace Curtis) -- but it's a little
 18 different.
 19 Okay. So now we're at the 2005
 20 restatement. And this was something that was supplied
 21 that is not part of the trust; but this is the plan,
 22 this is the estate plan. And I don't have the one that
 23 came in the Vacek & Freed -- I don't have the number,
 24 but it is in the Vacek & Freed production.
 25 MR. MENDEL: So for everyone, you're

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1 saying "this," which when you read this record, nobody
 2 knows what that means. So why don't we give them this
 3 number.
 4 MS. CANDACE CURTIS: Okay. That would be
 5 fine. I just don't know what the Vacek & Freed number
 6 is.
 7 MR. MENDEL: So Ms. Curtis is making
 8 reference to a document that's Bates-labeled Brunsting
 9 000535.
 10 Q. (By Ms. Candace Curtis) Okay. And so when
 11 you're looking at Article III of the 2005 restatement --
 12 which we've already gone over -- where section B says,
 13 "We May Amend Our Trust," it says it "may be amended by
 14 us in whole or in part in a writing signed by both of us
 15 for so long as we both shall live. Except as to a
 16 change of trust situs, when one of us dies, this trust
 17 shall not be subject to amendment except by a court of
 18 competent jurisdiction."
 19 The second paragraph says, "Each of us may
 20 provide for a different disposition of our share in the
 21 trust by using a qualified beneficiary designation, as
 22 we define that term in this agreement, and the qualified
 23 beneficiary designation will be considered an amendment
 24 to this trust as to that Founder's share or interest
 25 alone."

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1 Well, can you explain to me why this
 2 didn't have to be done before our father passed away?
 3 MR. REED: Objection, form.
 4 What didn't have to be done?
 5 MS. CANDACE CURTIS: The qualified
 6 beneficiary designation from June of 2010 and/or the
 7 qualified beneficiary designation of August 2010.
 8 MR. REED: Form.
 9 **A. So the reason why it didn't have to be done**
 10 **before your father died is because each person has the**
 11 **right to determine which, where, how, what form that**
 12 **disposition could take for their own or grant their**
 13 **spouse, even after they are deceased, a limited right to**
 14 **do that, which your parents did.**
 15 Q. (By Ms. Candace Curtis) There is the limited.
 16 **A. Yes.**
 17 Q. That's in Article IX.
 18 **A. Yes.**
 19 Q. That's the testamentary power, which doesn't
 20 occur until after someone dies.
 21 **A. Till after someone dies, correct.**
 22 Q. But you can't -- she could only amend it as to
 23 her share alone. Okay?
 24 **A. No. I disagree.**
 25 Q. Okay. That's fine. Because it's considered an

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1 amendment to that founder's share or interest alone. So
 2 how does that mean that she can do that for the
 3 decedent's trust?
 4 **A. Because she was granted a limited power of**
 5 **appointment over the decedent's trust assets. That is**
 6 **in Article X.**
 7 Q. Article X. Okay. Then that answers my
 8 questions. Even though this little flow chart says that
 9 she has complete control of all the assets and the right
 10 to give away assets in A, which is her revocable
 11 survivor's trust, she can't take anything more out of
 12 the decedent's trust and give it away.
 13 MR. SPIELMAN: Can you refer to it -- is
 14 this the flow chart?
 15 MS. CANDACE CURTIS: It's a spreadsheet.
 16 MR. REED: So at the very bottom. That's
 17 the one she was talking about earlier.
 18 MR. MENDEL: That's the one that ends in
 19 535.
 20 MR. SPIELMAN: Oh, this is the 535. Okay.
 21 MR. REED: Can I just see this real quick.
 22 MR. SPIELMAN: Sorry.
 23 MS. BAYLESS: Wait just a second. When
 24 you just referred to that document, you were referring
 25 to the one that is No. Brunsting 0000535, right?

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1 MS. CANDACE CURTIS: Yes.
 2 MS. BAYLESS: Okay.
 3 (Discussion off the record.)
 4 Q. (By Ms. Candace Curtis) Okay. So then the
 5 qualified beneficiary designation from June of 2010
 6 basically says any money that anybody gets from any
 7 trust comes out of their share. And that's what my
 8 mother did when I needed \$20,000 and when Carole needed
 9 \$20,000. She came to you, and you advised her what to
 10 do.
 11 So that QBD, even though I still don't
 12 think applies to the decedent's trust, is a valid
 13 document. So any money that anybody got after that date
 14 comes out of their inheritance. Would you agree?
 15 MR. SPIELMAN: Form.
 16 MR. REED: Form.
 17 Q. (By Ms. Candace Curtis) Correct?
 18 **A. If it was documented as such by your mother as**
 19 **a distribution rather than a gift, then, yes, that would**
 20 **be true.**
 21 Q. Okay. Do gifts have to be documented?
 22 MS. BAYLESS: Hang on just a second. Are
 23 we now talking about Exhibit 5?
 24 THE WITNESS: Yes.
 25 MR. MENDEL: 6.

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1 THE WITNESS: I believe she was referring
 2 to 5.
 3 MS. CANDACE CURTIS: Yes, the June
 4 qualified beneficiary --
 5 MS. BAYLESS: Exhibit 5. Okay.
 6 Q. (By Ms. Candace Curtis) And so she could also
 7 do it to the decedent's share?
 8 MR. REED: "She" being Nelva?
 9 MS. CANDACE CURTIS: Nelva.
 10 MR. REED: Form.
 11 **A. What's the question?**
 12 Q. (By Ms. Candace Curtis) That she could have
 13 done a qualified beneficiary designation to other than
 14 her share alone?
 15 **A. Yes.**
 16 Q. Okay. So then let's talk about accountings.
 17 According to these in terrorem clauses, no matter what
 18 happens, we can't argue with it.
 19 So when we've had to ask for accountings
 20 every single time, what is a beneficiary supposed to do
 21 to protect their beneficial interest?
 22 MR. REED: Objection, form.
 23 MR. SPIELMAN: Form.
 24 **A. Are you asking for legal advice? Or is it a**
 25 **rhetorical question? I'm not sure --**

Candace Kunz-Freed

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1 Q. (By Ms. Candace Curtis) You represented my
 2 mother --
 3 A. I did.
 4 Q. -- in her estate planning. Okay? And so you
 5 also represented my sister Anita when she took over as
 6 trustee for my mother.
 7 So was Anita required to account to my
 8 mother periodically, as the trust called for?
 9 A. Yes.
 10 MR. REED: Objection, form.
 11 Q. (By Ms. Candace Curtis) Did she?
 12 MR. REED: Objection, form.
 13 A. I have no idea whether she did or did not.
 14 Q. (By Ms. Candace Curtis) Okay. Were you
 15 advising her how to do her fiduciary duties as a trustee
 16 when she was your client at the same time as my mother
 17 was?
 18 MR. REED: Objection, form.
 19 A. If she requested advice, advice was given.
 20 Q. (By Ms. Candace Curtis) If my mother or Anita
 21 requested advice. Okay. So what advice was she
 22 requesting with all of these?
 23 A. I don't recall. I'm sorry. It's nine years
 24 ago.
 25 Q. Okay. Well, let's go in another direction,

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1 then. So we're back to the accounting, and someone said
 2 that she just totally drained the survivor's account. I
 3 forget what the terminology was.
 4 But we do have an accounting prepared by
 5 Vacek & Freed; and it's got the December 2010 values of
 6 the Edward Jones account for Nelva Brunsting, which was
 7 \$191,205.
 8 MS. BAYLESS: Excuse me, but is this
 9 numbered or something?
 10 MS. CANDACE CURTIS: This is also in the
 11 Vacek & Freed production, but that's not the copy that I
 12 have.
 13 MS. BAYLESS: Okay.
 14 Q. (By Ms. Candace Curtis) This other copy, the
 15 March 30th, 2012, is V&F 000201, where that Edward Jones
 16 account has \$1.05. So between December of 2010 and
 17 March 30th of 2012, the \$191,200 just flowed out of that
 18 account; and we do know where some of it is.
 19 Did Anita ask you how she was supposed to
 20 get her trustee compensation?
 21 MR. SPIELMAN: Objection, form.
 22 MR. REED: Form.
 23 A. I believe that -- I don't recall a specific
 24 conversation about it, but my usual response is what is
 25 reasonable and customary.

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1 Q. (By Ms. Candace Curtis) Okay. So would she
 2 have written herself a check from the trust account
 3 every month or however often she was to be paid trustee
 4 compensation?
 5 MR. SPIELMAN: Objection, form.
 6 MR. REED: Objection, form.
 7 A. I do not know that. That is not something I
 8 would be aware of or know.
 9 Q. (By Ms. Candace Curtis) Did you calculate what
 10 her trustee compensation would be?
 11 A. That is not something that I was hired to do.
 12 MS. BAYLESS: I'm sorry.
 13 Q. (By Ms. Candace Curtis) But you did it.
 14 MS. BAYLESS: Hang on. I didn't hear your
 15 answer.
 16 THE WITNESS: That was not something that
 17 I was hired to do, provide an accounting or write
 18 checks.
 19 Q. (By Ms. Candace Curtis) How did she determine
 20 that 2 percent of the trust assets were due for trustee
 21 compensation?
 22 MR. SPIELMAN: Objection, form.
 23 MR. REED: Form.
 24 A. I do not know.
 25 Q. (By Ms. Candace Curtis) Okay. Then we'll go

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1 back, I guess. So in August of 2010 there was a second
 2 QBD. Can someone have two of those?
 3 A. Yes.
 4 Q. Okay. And so Anita called on July 20th for
 5 Candace Freed, calling on behalf of Mom Nelva, and she
 6 wanted you to give her a call. This is V&F 001197.
 7 Candace returned call to Nelva's daughter
 8 Anita, asking how she was doing.
 9 She is feeling okay. "She has cancer on
 10 the liver, but it's the lungs that she has issues with.
 11 Worse over, her brother Carl has encephalitis and is in
 12 the hospital. Three weeks now. She is concerned for
 13 several reasons. Not sure what the outcome for the
 14 brother is going to be or if he will recover. This may
 15 be problematic in that they are not certain his wife
 16 will not take off with the money or actually use it for
 17 his care."
 18 "Comments from SIL" -- which I finally
 19 figured out is sister-in-law -- "(Carl's wife) to
 20 Nelva." This is coming from Anita -- "was that she
 21 wished she would go on and distribute Elmer's share of
 22 the trust since Carl had said he wanted her to have
 23 something; and then if Carl dies, then his daughter
 24 would get it all."
 25 "I suggested the following but that it

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1 needed to come from Nelva."
 2 So this is where the QBD and the
 3 certificates of trust and how Nelva can make unlimited
 4 gifts to Carl of doctors bills.
 5 So I can't find anywhere in here where it
 6 came from Nelva, and there is no entry between
 7 August 17th, 2010 and September 2nd of 2010, when she
 8 came in to sign the documents on August 25th.
 9 So why was that not in here when
 10 everything else is in your notes?
 11 MR. SPIELMAN: Objection, form.
 12 MR. REED: Objection, form.
 13 **A. I don't know.**
 14 Q. (By Ms. Candace Curtis) Okay. Then since
 15 we're not getting anywhere with this stuff ...
 16 MR. REED: Objection, sidebar.
 17 MS. CANDACE CURTIS: Pardon me?
 18 MR. REED: I objected to your sidebar.
 19 MS. CANDACE CURTIS: Okay. Excuse me.
 20 Q. (By Ms. Candace Curtis) So now, since I felt
 21 that my only course of remedy was to file suit after I
 22 had written the appropriate demand letters to my sisters
 23 to account and they hadn't, we have Bernard Matthews,
 24 who was a staff attorney with Vacek & Freed,
 25 representing -- who represented Amy and Anita when they

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1 took over as trustees. Now we have him representing Amy
 2 and Anita under a Green & Matthews letterhead.
 3 Now, is this a conflict?
 4 MR. SPIELMAN: Objection, form.
 5 MR. REED: Objection, form. I'm not going
 6 to allow her to answer that question.
 7 MS. CANDACE CURTIS: Okay.
 8 MR. SPIELMAN: What document was that?
 9 MS. CANDACE CURTIS: This is a law firm
 10 copy of something. I don't know. It's not labeled.
 11 MR. SPIELMAN: And you're reading from a
 12 letterhead that says what and Matthews?
 13 MS. CANDACE CURTIS: Green & Matthews.
 14 MR. REED: What's that bottom number,
 15 though?
 16 MS. CANDACE CURTIS: That's an exhibit
 17 that I had.
 18 MR. REED: It's an April 5th, 2012 letter.
 19 At the bottom it says P12146 through 12147. I'm not
 20 sure what that came from.
 21 MR. SPIELMAN: Which case?
 22 MR. REED: Yeah.
 23 MS. CANDACE CURTIS: "I represent Anita
 24 and Amy Brunsting in their capacity as successor
 25 trustees of The Brunsting Family Living Trust."

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1 So it is a letter that came to Carole,
 2 myself, and it went to Carl via Bobbie Bayless.
 3 MS. BAYLESS: I'm sorry. What was the
 4 question that you didn't allow her to answer?
 5 MR. REED: Whether it's a conflict for
 6 Mr. Matthews.
 7 MS. BAYLESS: Oh, okay.
 8 MR. SPIELMAN: Who, by the way, for the
 9 clarity of the record, has no connection to my law firm
 10 Griffin & Matthews even though that --
 11 MS. CANDACE CURTIS: It says Green.
 12 MR. SPIELMAN: Right. I just want to make
 13 sure that there's a distinction being made between the
 14 letter you're referring to, which is Green & Matthews,
 15 and my law firm, who are attorneys of record for Amy
 16 Brunsting, which is Griffin & Matthews.
 17 MS. CANDACE CURTIS: Okay.
 18 Q. (By Ms. Candace Curtis) So I guess you can't
 19 answer this question either. But how did Anita -- okay.
 20 Did you counsel Anita at all about her fiduciary duties
 21 as a trustee?
 22 **A. Of course.**
 23 Q. Okay. And did you talk about self-dealing?
 24 **A. I don't recall talking to her about that.**
 25 Q. Did you talk about commingling funds?

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1 **A. I believe that's in our engagement letter.**
 2 Q. Okay. So when Anita determined that she was
 3 due all of this money as trustee compensation, instead
 4 of writing a check to herself, which would have caused
 5 the accountant to have to send her a 1099 for trustee
 6 compensation, she just paid her personal credit card
 7 bills directly out of my mother's trust account.
 8 So that's why I was asking if you know if
 9 she ever provided an accounting to Mother, because I
 10 don't think Mother would have agreed to that. But we'll
 11 never know now. So when you're counseling somebody to
 12 be a trustee, you need to explain to them that that was
 13 commingling, plain and simple.
 14 Then she wrote checks to pay off her son's
 15 car, and she wrote checks to pay off her daughter's car.
 16 This is all out of the survivor's trust account.
 17 So I don't know if my mother knew about
 18 that or not.
 19 MR. SPIELMAN: Objection, form.
 20 MR. REED: There's no question.
 21 Q. (By Ms. Candace Curtis) So did she ever ask
 22 you if she could pay her credit card bills out of the
 23 survivor's trust account?
 24 **A. I do not recall -- sorry.**
 25 MR. SPIELMAN: Form.

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1 **A. I do not recall ever being asked that question.**
 2 Q. (By Ms. Candace Curtis) But she did ask you a
 3 lot of questions about gifting.
 4 MR. REED: Objection, form.
 5 Q. (By Ms. Candace Curtis) When my mother
 6 resigned as trustee, was she allowed to continue
 7 gifting?
 8 **A. "She"?**
 9 Q. My mother?
 10 **A. Yes.**
 11 Q. When she was no longer trustee, just a mere
 12 beneficiary?
 13 MR. SPIELMAN: Objection, form.
 14 MR. REED: Objection, form.
 15 Q. (By Ms. Candace Curtis) Okay. I guess I'm
 16 done.
 17 MR. REED: Who's next?
 18 MS. BAYLESS: Let's go off the record for
 19 a second.
 20 (Recess taken.)
 21
 22
 23
 24
 25

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1 EXAMINATION
 2 QUESTIONS BY MS. BAYLESS:
 3 Q. Ms. Freed, I'm Bobbie Bayless. I represent
 4 Carl Brunsting. Do you understand that?
 5 **A. I do.**
 6 Q. Okay. I want to ask a couple of questions that
 7 go back to earlier today.
 8 **A. Uh-huh.**
 9 Q. What law school did you attend? I couldn't
 10 hear that. You may have answered it.
 11 **A. St. Mary's.**
 12 Q. Okay. And you graduated when?
 13 **A. 2003.**
 14 Q. How was it that you ended up being employed at
 15 the Vacek firm? How did you meet them?
 16 **A. I applied for an associate position.**
 17 Q. Okay. And you said that you never were a
 18 partner there?
 19 **A. That's correct.**
 20 Q. So why was your name in the firm name?
 21 **A. It was just something that they did.**
 22 Q. Okay.
 23 **A. They changed names over the years. That was**
 24 **just the way they did it.**
 25 Q. Okay. Did they ask you to do that?

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1 **A. I'm sure they did.**
 2 Q. Okay. When you left the Vacek firm, what was
 3 the reason that you left?
 4 **A. I went on to -- on my own.**
 5 Q. Just --
 6 **A. Private practice.**
 7 Q. I mean, you just wanted to?
 8 **A. Sure, uh-huh.**
 9 Q. Did you leave on friendly terms?
 10 **A. Yeah.**
 11 Q. Do you still do any work with them, work on
 12 cases with them or anything?
 13 **A. With them, no, because they are not in business**
 14 **any longer.**
 15 Q. Oh, they're not?
 16 **A. No.**
 17 Q. When did that happen?
 18 **A. I don't know. I've been gone since 2015,**
 19 **so ...**
 20 Q. Okay.
 21 **A. I don't know when they officially shut their**
 22 **doors.**
 23 Q. When you left, did you know that they were
 24 getting ready to shut their doors?
 25 **A. Did not.**

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1 Q. Did they shut the doors --
 2 **A. That was four years after.**
 3 Q. I'm sorry?
 4 **A. It's been four years, so I ...**
 5 Q. Okay. So sometime after you left, they closed,
 6 but you don't know when?
 7 **A. I don't know when their official date was, no.**
 8 Q. Okay. Are you board-certified in estate
 9 planning and probate?
 10 **A. I am not.**
 11 Q. Have you ever taken that exam?
 12 **A. I have.**
 13 Q. When did you take that exam?
 14 **A. I don't recall. I think it may have been 2013**
 15 **maybe.**
 16 Q. Okay. And do you have plans to take it again?
 17 **A. Currently, no.**
 18 Q. So you only took it one time?
 19 **A. I sat for it one time; that's correct, yes.**
 20 Q. In connection with the documents that were
 21 done -- now, you weren't there when the restatement was
 22 done. You obviously weren't there when the first,
 23 original trust was done. So you didn't have anything to
 24 do with either of those documents?
 25 **A. Correct.**

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1 Q. In terms of -- there was an amendment done, I
 2 believe, in -- did you have any occasion to be involved
 3 in an amendment of the trust prior to what we're calling
 4 the QBDs?
 5 **A. Yes.**
 6 MR. SPIELMAN: Objection, form. Which
 7 trust?
 8 MS. BAYLESS: The restated trust.
 9 **A. Yes.**
 10 Q. (By Ms. Bayless) And do you recall what the
 11 nature of the amendment was that you did?
 12 **A. May I look at it?**
 13 Q. Sure, absolutely.
 14 MR. SPIELMAN: Exhibit 3 in the binder.
 15 **A. It appears it was to change successor trustees.**
 16 Q. (By Ms. Bayless) Okay. And that's Exhibit 3
 17 in the binder, right?
 18 **A. Yes, that's correct.**
 19 Q. So this would, I assume, have been your first
 20 involvement with this estate plan?
 21 **A. I was the notary. So that's most likely. It's**
 22 **not necessarily that I met with them. I just may have**
 23 **notarized the document.**
 24 Q. All right. One of the things that I'm going to
 25 want to go through with you some are your notes, what

143

1 are called Notes/History.
 2 **A. I don't have those.**
 3 Q. Let me get you a set.
 4 (Exhibits 17 and 18 marked.)
 5 Q. (By Ms. Bayless) All right. So we have marked
 6 as Exhibit 17 what is numbered at the bottom V&F 001176
 7 through 1197. Does that look right?
 8 **A. Those are the numbers on the bottom.**
 9 Q. I'm sorry?
 10 **A. Those are the numbers that appear at the**
 11 **bottom.**
 12 Q. Okay. And then we have marked as Exhibit 18 --
 13 let's just go ahead and identify that -- the document
 14 that was just produced yesterday -- part of the
 15 documents that were produced yesterday, that begin with
 16 the numbers V&F 002168 and go through 2183. Is that
 17 correct?
 18 **A. Yes, that's correct.**
 19 Q. So these are documents that your attorney
 20 produced, and they say at the top that they are
 21 Notes/History.
 22 Would you tell me exactly where these come
 23 from?
 24 **A. So at any given time when a client comes in or**
 25 **calls in, we jot down notes in the system so that the**

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1 **next time a client calls in or comes in, we know what**
 2 **was done the last time, who spoke with them and what**
 3 **needed to be done.**
 4 Q. When you say "the system," what particular
 5 software are you using?
 6 **A. It's called Act!**
 7 Q. A-c-t?
 8 **A. A-c-t.**
 9 Q. Is that like a lawyer management system, or
 10 what is that?
 11 **A. I would describe it as a database.**
 12 Q. Okay. And so the person making the entry --
 13 well, first of all, do you still use this system at your
 14 firm?
 15 **A. I do not.**
 16 Q. So you only used this at the Vacek firm?
 17 **A. This was specific to the law firm, yes.**
 18 Q. Did they use this system the entire time that
 19 you were there?
 20 **A. To the best of my knowledge, yes.**
 21 Q. So were you trained on how to use it?
 22 **A. Not -- I mean, yes, as you went along. There**
 23 **was no formal training, but yes.**
 24 Q. And were you given instructions as to what was
 25 to go into the notes or the history?

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1 **A. I'm sure at some point we were.**
 2 Q. Okay. Well, looking, if you would, at
 3 Exhibit 17 first, I think you have to -- I'm using it
 4 this way because this is the way it was numbered when it
 5 was provided. But to find the beginning of this
 6 document, you have to go to V&F 001183, I think.
 7 **A. Okay.**
 8 Q. So the entries on this page begin in 2003. So
 9 that's obviously before you were there.
 10 **A. Yes.**
 11 Q. Who maintained this database?
 12 MR. REED: Object to form.
 13 **A. I don't know what you're asking.**
 14 Q. (By Ms. Bayless) I'm not sure I do either.
 15 If you -- well, this says that this
 16 document, first of all, was created -- if you look at
 17 the very bottom, it says it was created March 22nd,
 18 2012.
 19 **A. Okay.**
 20 Q. Now, I assume that means when it was printed?
 21 **A. Probably. That would be my guess.**
 22 Q. Did everyone have access to the database at the
 23 office, everyone at the office?
 24 **A. Every employee, yes.**
 25 Q. And so it was networked on everyone's

146

1 computers?

2 **A. It was on a server, uh-huh.**

3 Q. So if you look at this page 1183 -- I'm going

4 to just refer to them by the last numbers if that's

5 okay. If you look at 1183 and you see the 2-1-2003

6 entry. Then there's not another entry until 2005.

7 Do you see that?

8 **A. Uh-huh.**

9 Q. And it says on January 12th, 2005, they came in

10 to sign a restatement.

11 So we're going to assume that that's the

12 restatement that is Exhibit 2.

13 **A. Okay.**

14 Q. Do you think that's in all likelihood the case?

15 **A. Probably.**

16 Q. Okay. Now, there aren't any entries in here

17 about what was going to be in that document, in that

18 restatement, Exhibit 2, right?

19 **A. I don't see any.**

20 Q. And, to your knowledge, did anybody ever go in

21 and take out entries after they were put in?

22 **A. I don't believe so. I don't know why they**

23 **would.**

24 Q. Anybody wouldn't have that authority, that you

25 know of, right?

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1 MR. REED: Objection, form.

2 **A. I don't know.**

3 Q. (By Ms. Bayless) Okay. So then there's not

4 another appointment until 2007, and then there are just

5 some entries about scheduling appointments.

6 Then on September 19th, 2007, there

7 appears to be an entry where Nelva called and talked

8 about Elmer's dementia.

9 So were you helping them at the time that

10 Elmer developed dementia? Do you recall?

11 MR. SPIELMAN: Form.

12 **A. Yes.**

13 Q. (By Ms. Bayless) And how did you first learn

14 about that?

15 **A. In meeting with Nelva.**

16 Q. And when you met with Nelva initially, did you

17 meet with her by yourself? Did you meet with her with

18 Mr. or Ms. Vacek, or do you recall how any of that

19 happened?

20 **A. I don't recall. I don't.**

21 Q. So at some point adjustments had to be made to

22 how the trust was being administered because of Elmer's

23 dementia, correct?

24 **A. I suppose that that was the case, yes.**

25 Q. So were you not involved in any of the

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1 administration of the trust at that point?

2 **A. Well, you'd have to define "administration."**

3 **Clients don't have me do their trusts when they're still**

4 **living. They administer their own trusts.**

5 Q. So you didn't do anything -- you didn't

6 transfer property into the trust for them?

7 **A. No.**

8 Q. Did you tell them how to do that?

9 **A. Well, I'm sure they were told how to do that**

10 **and did that on their own when they initially did the**

11 **trust.**

12 Q. But it wouldn't have involved you?

13 **A. No. That would have been years before I was**

14 **there.**

15 Q. Well, you said you were sure, but you're just

16 assuming that that's what happened?

17 MR. REED: Objection, form.

18 **A. If it's in the trust's name, somebody**

19 **transferred it into the name of the trust, their assets.**

20 Q. (By Ms. Bayless) Okay. So when you learned of

21 Elmer's dementia, it didn't change your relationship or

22 anything that you were involved in?

23 **A. No.**

24 Q. You heard Carole earlier say that her mother

25 wasn't a paperwork person. Was that your experience in

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1 dealing with her?

2 **A. Yes.**

3 Q. Okay. So there was an amendment that you at

4 least notarized; whether you prepared it or not, you

5 notarized it in 2007?

6 **A. Correct. I agree I notarized it. I don't know**

7 **if I prepared it.**

8 Q. And then what is the next thing that you recall

9 you did for these folks, for Nelva or Elmer?

10 **A. I don't recall. I'm sorry.**

11 Q. That's all right. I don't recall what I had

12 for breakfast a couple days ago.

13 But if you remembered anything or if you

14 did anything, you don't remember at this point?

15 **A. Correct.**

16 Q. Now, I notice over to the right on this

17 Notes/History that it has a name, typically, to the

18 right of an entry. And I assume that's who made the

19 entry?

20 **A. Typically, yes. But the system was limited.**

21 **So I'm going to point out that a lot of times you will**

22 **see my initials, CLF, at the end of a paragraph.**

23 Q. Okay.

24 **A. And that lets me know I actually put that in.**

25 **Because they had plenty of employees that came and went**

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1 over time. Due to the limitations on the system, you
 2 can only have so many names. So they would change
 3 somebody's name to mine, and then it would go back
 4 through the system and change it all the way back.
 5 So I learned to put my initials at the end
 6 of everything very quickly, because when they added a
 7 new name, it caused the names on the right to be
 8 changed. It was just a limitation on the database
 9 system.
 10 Q. You have completely lost me on that, though.
 11 A. Sorry. Sorry I'm confusing --
 12 Q. It's a fine explanation. I just don't really
 13 understand it.
 14 You said that if they put another name in,
 15 it would knock you off. Is that it basically?
 16 A. No. When they wanted to add me when I started
 17 working there --
 18 Q. Yes.
 19 A. -- the system only allowed six or seven names,
 20 as I recall, to be people who could be a record manager.
 21 And that means that people that already entered things,
 22 they had to be removed and I had to be added. And when
 23 that happened, whoever I was replaced with, if they had
 24 notes in there, it replaced me, my name, with the record
 25 manager even though I wasn't even at the firm yet.

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1 Q. Okay.
 2 A. So I learned very quickly to put my initials at
 3 the end of the paragraph so that I knew that it was
 4 actually something that I typed.
 5 Q. Okay.
 6 A. You can usually tell I typed something because
 7 I'm a horrible typist, and I would misspell things all
 8 the time.
 9 Q. So even if it says Candace Freed, it's better,
 10 sounds like, to look at the end of the paragraph to see
 11 your initials to know for sure that came from you?
 12 A. That's correct.
 13 Q. Now, would there have been entries that related
 14 to you that someone else might have had responsibility
 15 to put in?
 16 A. Oh, of course.
 17 Q. Who would have put entries in for you?
 18 A. Not for me. I put my own notes in.
 19 Q. Okay.
 20 A. But if somebody else had conversations with
 21 them, with any of the clients, or set up a meeting for
 22 me, on my behalf, their names would appear there.
 23 Q. Okay. They would be putting in an entry about
 24 what they did?
 25 A. Correct.

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1 Q. Was anybody ever authorized to put in an entry
 2 about what you did?
 3 A. Ever? I have no idea.
 4 Q. Okay.
 5 A. Typically it did not happen, but I can't say
 6 never.
 7 Q. Okay. So pretty much whoever performed the
 8 task put the entry in?
 9 A. Yes.
 10 Q. To your knowledge, this situation that you
 11 talked about where somebody gets added to the system and
 12 then it messes the names up and the history of the
 13 system, there isn't anything that affects these notes
 14 about this particular case, that you know of, like that,
 15 is there?
 16 A. I don't know because I didn't go through and
 17 match up the record manager with whether my initials
 18 were at the end or not.
 19 Q. Looking on page 1182 -- just because I'm still
 20 trying to understand this database, looking at the
 21 6-30-2018 entry?
 22 A. 6 what?
 23 Q. 6-30-2018, second entry up there. It says that
 24 Nelva called to schedule an appointments with CLF.
 25 I assume that's you?

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1 A. That's correct.
 2 Q. Once you started doing the work for them, were
 3 you the only person that really dealt with them?
 4 Attorney-wise, I mean.
 5 A. With Ms. Brunsting, probably because she did
 6 not like to be shifted around between attorneys. Over
 7 the years we had attorneys coming and going, and she was
 8 not a fan of that.
 9 Q. Okay.
 10 A. So once she met you, she wanted to stay. So I
 11 would say typically, yes, that would be true.
 12 Q. Okay. And it says after called to schedule
 13 appointment with you --
 14 A. Uh-huh.
 15 Q. -- what is "4 appointment"?
 16 A. A number 4 is a type of appointment so that I
 17 know what I'm coming into.
 18 Q. All right. And what type of appointment is
 19 that?
 20 A. A 4 would be a review appointment.
 21 Q. How would we know what the various options are?
 22 A. You wouldn't unless you worked there.
 23 Q. Okay.
 24 A. These were set before I even started working
 25 there, and that was the way they did things.

154

1 Q. Okay.

2 A. **Sorry.**

3 Q. So 4 was a review?

4 A. **Uh-huh.**

5 Q. "Set for T." I assume that's the day of the

6 week?

7 A. **I guess.**

8 Q. "7-1 at 3:30." Then it's got "EM."

9 A. **That's probably e-mailed to me, probably**

10 **e-mailing me, letting me know that I have an appointment**

11 **that day.**

12 Q. So e-mailed to you?

13 A. **Yeah.**

14 Q. So your initials there don't mean you put it

15 in.

16 A. **That's correct.**

17 Q. The e-mail was to you.

18 A. **I can see the SK because my assistant learned**

19 **very quickly also that she better put her initials at**

20 **the bottom. Because look at -- the record manager says**

21 **Tanya Lyrock; and I see SK, which is Summer Kennan,**

22 **which was my assistant. So that's why.**

23 Q. Okay. So this may be one of those instances

24 where the name got changed?

25 A. **Exactly.**

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1 Q. Who was Tanya Lyrock?

2 A. **A previous employee.**

3 Q. The name of your assistant was what?

4 A. **Her name was Summer Kennan; but she got married**

5 **in the interim, so it was Summer Peoples.**

6 Q. How do you spell the K?

7 A. **K-e-n-n-a-n.**

8 Q. Once she married, it changed to Peoples?

9 A. **And then you'll see SKP.**

10 Q. All right. Okay. So these entries around this

11 time period were relating to the fact that Elmer was no

12 longer really able to handle the financial affairs. Is

13 that fair?

14 A. **Which date?**

15 Q. Well, these dates in 2008 that we're looking at

16 on page 1182.

17 A. **It appears that way based off just what I'm**

18 **reading in here.**

19 Q. All right. In the very first line there, it

20 says, "Nelva, Elmer and one son came in for Nelva to

21 sign the new COT."

22 What does COT stand for?

23 A. **Certificate of trust.**

24 Q. All right. So if you go over to page 1181,

25 there is an entry at the very bottom. There are a

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1 couple entries, but the bottom entry that is dated

2 April 3rd, 2009 indicates that -- it says, "CLF received

3 message from the AS that Nelva had called."

4 Now, what is the AS?

5 A. **Answering service.**

6 Q. Okay. I'm going to have to get up on my

7 acronyms.

8 A. **Well, it depends on who typed it and what day.**

9 **Just saying.**

10 Q. Okay. And so this is informing you that Elmer

11 had passed away on April 1st, 2009.

12 A. **It appears to be true, yes.**

13 Q. You probably don't have an independent

14 recollection, but you don't have any reason to believe

15 that's not the date of his death, do you?

16 A. **I do not.**

17 Q. So this looks like, even though you refer to

18 yourself, you said, "CLF received message"; you're the

19 one typing this entry --

20 A. **Uh-huh.**

21 Q. -- because it has your initials on there?

22 A. **Right. I believe that's fair to say.**

23 Q. Okay. All right. So after -- well, first,

24 before Elmer died, do you recall ever having any

25 conversation with Anita about any of these trust issues?

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1 MR. SPIELMAN: Form.

2 A. **No, I do not.**

3 Q. (By Ms. Bayless) And before Elmer died, do you

4 remember having any conversations with Amy about any of

5 the trust issues?

6 MR. SPIELMAN: Form.

7 A. **I do not.**

8 Q. (By Ms. Bayless) After Elmer died, when was

9 the first conversation that you recall having with Anita

10 about trust issues?

11 MR. REED: Form.

12 A. **I would imagine it was around the time that**

13 **Carl fell ill.**

14 Q. (By Ms. Bayless) Okay. And is it your

15 recollection -- we'll go through some of these entries.

16 I'm not trying to force you --

17 A. **I understand. You're asking me to recall. I**

18 **can sit and read them to you.**

19 Q. Yeah, yeah. Is it your recollection that the

20 very first conversation you had with Anita about any of

21 this related to Carl's illness?

22 A. **Yes.**

23 Q. And when you had that first conversation with

24 Anita, was that how you learned that Carl had been ill,

25 or had you already learned that from Nelva?

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1 **A. I had known that already from Nelva.**
 2 Q. And what is your recollection of what Nelva
 3 said about Carl's illness?
 4 **A. My recollection was that he was very ill and**
 5 **she wasn't sure if he was going to make it. That's what**
 6 **I recall.**
 7 Q. Okay. And then do you know how -- I mean, did
 8 she ask you to do anything at that point?
 9 **A. Her concerns were he was listed on every single**
 10 **document; and she had her own health issues, and how do**
 11 **we resolve that if something happens to her --**
 12 Q. All right.
 13 **A. -- while Carl is sick.**
 14 Q. Okay. And had you known before that call that
 15 she was having health issues?
 16 **A. No.**
 17 Q. So you learned about both in the same
 18 conversation?
 19 **A. I learned about it when she came to visit me.**
 20 Q. And do you know how long it was after?
 21 **A. I don't recall. I'm sorry.**
 22 Q. Have you ever had a conversation with Drina,
 23 Carl's wife?
 24 **A. Not that I recall.**
 25 Q. Prior to the time that you had -- you had a

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1 conference call that we're going to talk about in some
 2 detail, I think October 25th, 2010. I know Carole was
 3 involved in that conference call, and I believe Candy
 4 was involved in that conference call.
 5 Prior to that conference call, had you had
 6 conversations with either one of them?
 7 **A. Either Candy or Carole?**
 8 Q. Right.
 9 **A. Not that I recall.**
 10 Q. Going back again to the notes and history, what
 11 was your practice in terms of what rose to the level of
 12 being put in the notes and history?
 13 **A. Put enough information in there so that if you**
 14 **had to pick it up two weeks later, a month later, a year**
 15 **later, you would know what you did and where you were on**
 16 **it and that somebody else could come pick it up behind**
 17 **you and be able to assess where you were, what you did**
 18 **and where to go with it.**
 19 Q. And basically any involvement that you had with
 20 a client or somebody related to that client, you put in?
 21 MR. SPIELMAN: Form.
 22 **A. Yes. Typically we'd write notes.**
 23 Q. (By Ms. Bayless) Did you typically do that
 24 right at the time the event occurred?
 25 **A. Yes.**

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1 Q. Okay. Let's go back to this Notes/History and
 2 looking at the page number that's 1179.
 3 So starting with the 1-20-2010 entries,
 4 you see that somebody has put in "Merlin Case" -- I
 5 don't know. Is that --
 6 **A. The receptionist.**
 7 Q. -- has put in a notation that Nelva called for
 8 an appointment, called for you and wants to make an
 9 appointment. Then she said she e-mailed this to you,
 10 and it says carbon copy -- who's the carbon copy to?
 11 Who is TS?
 12 **A. I don't recall unless that's time slips like**
 13 **our billing software.**
 14 Q. Okay.
 15 **A. Although I don't know why she would.**
 16 Q. Right.
 17 **A. I don't know what that is.**
 18 Q. Then it looks like that same day you called
 19 her; and she was needing to know some information about
 20 the family trust, right? Do you see that in the next
 21 entry above?
 22 **A. Uh-huh.**
 23 Q. So she was asking about the tax ID number for
 24 the family trust?
 25 **A. Uh-huh.**

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1 Q. And it says, "I told her for now to use her
 2 social."
 3 **A. Uh-huh.**
 4 Q. So there had been no tax ID number obtained for
 5 the family trust at that point?
 6 **A. No.**
 7 Q. What was your practice on when you would
 8 normally obtain a tax ID number for a trust?
 9 **A. Typically on the first death, when the**
 10 **decedent's trust was being funded, that would get a tax**
 11 **ID number. The survivor's trust --**
 12 Q. And until then --
 13 **A. -- would get the social.**
 14 Q. So everything just passed through to their tax
 15 return?
 16 **A. Uh-huh.**
 17 Q. Correct?
 18 **A. Right.**
 19 Q. Okay. It says in that same entry "sending her
 20 the AE."
 21 **A. Asset list.**
 22 Q. Okay.
 23 **A. It's assets of the estate.**
 24 Q. So whenever we see AE in here, that's what that
 25 means?

Candace Kunz-Freed

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1 **A. Uh-huh.**
 2 Q. Now, if you didn't help with setting up or
 3 transferring these assets to the trust, how is it that
 4 you would have the asset list?
 5 **A. I have to rely on the client to provide the**
 6 **statements. They are told that when someone dies, to**
 7 **bring in the statement for the month of death. I had a**
 8 **tax clerk that that's all she did, was data entry. She**
 9 **entered the account number, calculated the value on date**
 10 **of death; and that's what went into the AE.**
 11 Q. So this is going to be an AE that had been
 12 generated since Elmer died?
 13 **A. Correct.**
 14 Q. Based on information she had provided?
 15 **A. That's correct.**
 16 Q. So up until that point, up until she brought in
 17 the statements, you didn't know what assets the trust
 18 had?
 19 **A. That's correct.**
 20 Q. Were you ever involved in tax returns prior to
 21 Elmer's death?
 22 **A. Federal estate tax returns?**
 23 Q. No. Income tax returns.
 24 **A. For who?**
 25 Q. Elmer or Nelva.

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1 **A. No.**
 2 Q. So you just sent them off with the trust, but
 3 they kept reporting everything on their individual
 4 returns?
 5 **A. No. That's not correct.**
 6 Q. What's correct?
 7 **A. Are you asking if they reported it to me?**
 8 Q. No. I'm saying that's how they dealt with the
 9 IRS.
 10 MR. REED: Objection, form.
 11 **A. I don't know how they dealt with the IRS.**
 12 **Everybody files their own tax return. I assume that**
 13 **that's what they do, but ...**
 14 Q. (By Ms. Bayless) Okay. Do you recall having
 15 any discussions with Nelva or Elmer about how they were
 16 supposed to report income?
 17 **A. No.**
 18 Q. But as far as you're concerned, it didn't
 19 change once the trust was formed until somebody died?
 20 **A. That's correct.**
 21 Q. The next entry up, January 21st, 2010, refers
 22 to Rich -- I'm not sure the name is spelled right; but I
 23 think you're talking about Rich Ridders from Iowa.
 24 Right?
 25 **A. Yes, uh-huh.**

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1 Q. I think he was probably the person that had
 2 been doing the tax returns for Nelva. Do you know?
 3 **A. I believe, yes, that's what she indicated to**
 4 **me, that he prepared tax returns.**
 5 Q. And so this entry where he says -- he's called
 6 you apparently, called for you because he's working with
 7 Nelva and has 1099s to issue to -- is that IT or LT?
 8 **A. LT.**
 9 Q. What is LT? Is that living trust?
 10 **A. Living trust.**
 11 Q. The next entry is where you called him back on
 12 the 25th of January, 2010; and you indicated at that
 13 point that the trust had not been funded.
 14 So by that, are you meaning the survivor
 15 and the decedent's trust?
 16 **A. Most likely.**
 17 Q. And there was a formula established for what
 18 was supposed to go into each trust, right?
 19 **A. That's correct.**
 20 Q. Did you work out that formula? I mean, did you
 21 determine what was going to go into each trust?
 22 **A. The client does.**
 23 Q. And do you help them with the formula? Well, I
 24 don't mean to talk generally. In terms of Nelva, did
 25 you help her make that calculation?

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1 **A. Yes.**
 2 Q. So what part of that did you do?
 3 **A. What part of ...**
 4 Q. The process of funding the trust.
 5 **A. So once we had all of the assets information**
 6 **entered into our system, we determined, based on the**
 7 **language in the trust, how much was supposed to go in**
 8 **survivor's trust and decedent's trust; and we made that**
 9 **recommendation. This is the maximum amount that can go**
 10 **into decedent's trust without running afoul of the IRS**
 11 **rules. It could be underfunded, but it couldn't be**
 12 **overfunded.**
 13 **She had fractional pick and choose aside**
 14 **from his, Elmer's separate property, which had to go in**
 15 **the decedent's trust. She had fractional pick and**
 16 **choose of community property assets that could go into**
 17 **either/or.**
 18 Q. When you say "fractional pick and choose," you
 19 mean she could decide how she got to this allocation?
 20 **A. We had the number for her, but she could choose**
 21 **the assets that she wanted to make up that number.**
 22 Q. So long as it was not Elmer's separate
 23 property?
 24 **A. Correct.**
 25 Q. And so you made that calculation and then said,

166	168
<p>1 Here's your asset list. Decide what you want to go 2 where? 3 A. Correct. 4 Q. And once you did that, was there anybody else 5 involved helping Nelva at that point with this, that you 6 know of? 7 A. No. 8 Q. Other than maybe this Rich Ridders? I don't 9 know. Do you know what his involvement was? 10 A. Actually in 2010 I don't know if she was -- I 11 don't think anybody was helping her. 12 Q. Okay. 13 A. I know after -- yeah. I don't know. I don't 14 know if anybody was helping her. 15 Q. This is going to involve transfers of stock 16 with medallion guarantees and all about -- the works. 17 Once you said, Here's your asset list and 18 here's the number that you're supposed to get to, figure 19 it out however you want to get there, then did you help 20 her with the transfer instruments themselves? 21 A. Yes. 22 Q. And what was your involvement in that? 23 A. We filled out as much of the paperwork as we 24 could for her, based on what she indicated she wanted to 25 go in which trust, and put "sign here" stickies on them</p>	<p>1 Q. Did she return copies to you so that you knew 2 that was done, or that was left up to her? 3 A. That was left up to her. 4 Q. Do you recall -- and you can consult these 5 notes if you want to. Were there issues where she had 6 to get back with you and say she didn't really 7 understand -- 8 A. Yes. 9 Q. -- what she needed to do? 10 A. I don't recall if she didn't understand or she 11 didn't want to; but, yes, she did come back. 12 Q. So you had more than one encounter of getting 13 these transfers done? 14 A. Oh, yes. 15 Q. Okay. If you look on this page 1178, on 16 3-12-2010 there was a call from Anita regarding parents' 17 trust. Do you see that? 18 A. Uh-huh. 19 Q. And there's a life insurance policy in the -- I 20 assume LT is still living trust? 21 A. Uh-huh. Yes. Sorry. 22 Q. It says, "In fact, that is the only thing in 23 the trust. The kids have to sign a waiver each year, 24 waiving their right to any funds. Her sister wants to 25 take her share. Is this possible? Please call to</p>
167	169
<p>1 and said, Let's sit down and sign them. 2 Q. And how did you make a determination, backing 3 up for a minute, to the division of assets among the 4 decedent's trust and the survivor's trust? 5 What did you do to determine what was 6 separate property of Elmer's? 7 A. We had determined, well, where they lived, 8 community property estate. Presumption is everything's 9 community unless she advised otherwise or inception of 10 title. Iowa land was obvious. It came from Elmer's 11 side of the family, so it was separate property. 12 Q. And do you recall whether any of the stocks 13 were separate property? 14 A. I do not. 15 Q. Could have been. You just don't recall? 16 MR. SPIELMAN: Form. 17 A. Maybe they were; maybe they weren't. I don't 18 know. They were married for a long time. 19 Q. (By Ms. Bayless) Okay. So once these 20 documents were prepared to transfer stocks for sure, 21 which would have involved going to the bank and getting 22 the medallion guarantee, you didn't go with her to do 23 any of that. You just gave her the documents and left 24 that up to her? 25 A. That's correct.</p>	<p>1 discuss." 2 So this, again, is going to have been -- 3 is this your assistant who took this call? 4 A. It looks like it was the receptionist because 5 it says e-mailed, "EM to CLF." 6 Q. That's a different trust, right? 7 A. Yes. It's referring -- even though it says 8 "LT" it's an ILIT, irrevocable life insurance trust. 9 Q. Okay. 10 A. But the receptionist wouldn't know that. 11 Q. Yeah, sure. And maybe Anita didn't know that 12 either. But she might have called it the wrong trust. 13 Who knows. 14 A. Uh-huh. 15 Q. The point is she was talking about a separate 16 trust with life insurance. Do you know which sister she 17 was talking about that wanted to take her share? 18 A. I do. 19 Q. Which sister? 20 A. Candy. 21 Q. Okay. So ultimately you talked with her about 22 it, Anita about it? 23 A. Yes. Anita was the trustee of that trust. 24 Q. Okay. And what was done about that? Do you 25 recall?</p>

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1 **A. I don't recall.**
 2 Q. I could have missed it because I'm capable of
 3 missing something, but I don't think there's an entry in
 4 here about your conversation with her. Is there?
 5 **A. No. I see the next entry says I left -- or a**
 6 **message was left that I -- "CLF," that's me, "deferred**
 7 **this question to AEV," which was Al Vacek, which was my**
 8 **boss, "and that he will advise her of response."**
 9 Q. And why did you feel the need to do that?
 10 **A. I don't know. I don't know.**
 11 Q. Had you had any involvement with the life
 12 insurance trust?
 13 **A. Not that one in particular, no.**
 14 Q. How many trusts would you say you have
 15 prepared?
 16 MR. REED: Object to form.
 17 **A. I couldn't tell you.**
 18 Q. (By Ms. Bayless) Do you have any rough guess
 19 of how many of the types of trusts that the Brunsting
 20 had -- how many you prepared while you were at Vacek's
 21 firm?
 22 **A. I don't know.**
 23 Q. I'm assuming that you were working from his
 24 form. Is that right?
 25 **A. Are you asking me a question? You're making an**

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1 **assumption, and then you're asking me.**
 2 Q. Well, it's sort of a combination of both.
 3 While you were at his firm -- let me ask you this way:
 4 When you went to work at his firm, you used his trust
 5 form, right?
 6 **A. I guess, yes.**
 7 Q. You didn't --
 8 **A. I didn't make any forms myself.**
 9 Q. Okay. You hadn't developed a trust form of
 10 your own?
 11 **A. No, I have not.**
 12 Q. And while you were working there, you continued
 13 to use basically a form that was developed at that firm,
 14 right?
 15 **A. I mostly did trust administration and not trust**
 16 **estate planning, so ...**
 17 Q. Okay.
 18 **A. Once somebody either died -- usually is when I**
 19 **would get involved.**
 20 Q. Okay. So in terms of the form itself, the
 21 trust form itself, you didn't have that much involvement
 22 with the trust form itself?
 23 **A. Development-wise?**
 24 Q. Right.
 25 **A. No.**

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1 Q. Or modification-wise?
 2 **A. Well, sure. If someone was a long-term client**
 3 **and they came in for a modification and amendment, sure.**
 4 **I would certainly help amend.**
 5 Q. Okay. And that's kind of what you did in this
 6 case, is you helped them amend in 2010?
 7 MR. SPIELMAN: Form.
 8 Q. (By Ms. Bayless) In June and then in
 9 August 2010?
 10 MR. SPIELMAN: Form.
 11 Q. (By Ms. Bayless) I mean, you were involved in
 12 that?
 13 **A. In the qualified beneficiary designation?**
 14 Q. Right.
 15 **A. Yes.**
 16 Q. Okay. So that's an example of maybe you were
 17 helping her because you were administering --
 18 **A. His estate.**
 19 Q. -- his estate or his trust or whatever?
 20 **A. Uh-huh.**
 21 Q. But you were involved in that, and you didn't
 22 send that to Al Vacek?
 23 **A. No.**
 24 Q. So was there a criteria for what you did versus
 25 what Al Vacek did?

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1 **A. Al did estate planning. I was in charge of**
 2 **estate administration.**
 3 Q. So if somebody needed a new document ...
 4 **A. They would probably go to Mr. Vacek.**
 5 Q. But in this case that's not what happened?
 6 MR. SPIELMAN: Form.
 7 **A. In this case it was associated with the**
 8 **administration of the trust. So if you're talking about**
 9 **the qualified beneficiary designation, that is not**
 10 **something that Mr. Vacek would have done. It would be**
 11 **done after someone had died and, therefore, it would be**
 12 **under mine.**
 13 Q. (By Ms. Bayless) Okay. So you never had a
 14 situation that you know of where somebody wanted to do a
 15 qualified beneficiary designation while both spouses
 16 were still alive?
 17 **A. It would be unnecessary because they could**
 18 **easily amend the entire trust or parts of it because**
 19 **they're both alive.**
 20 Q. Okay. So what did Susan Vacek do?
 21 **A. Train me.**
 22 Q. So did she do administration, or did she do
 23 estate planning?
 24 **A. She did administration.**
 25 Q. So the planning was pretty much Al Vacek's

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1 bailiwick and the administration was Susan's? Is
 2 that --
 3 **A. That's correct.**
 4 Q. Okay. I didn't notice any entries in this
 5 document from Al Vacek.
 6 **A. Yes. That's true.**
 7 Q. So he wasn't prone to putting in notes?
 8 MR. SPIELMAN: Form.
 9 MR. REED: Objection, form.
 10 If you know.
 11 **A. I don't know what his ...**
 12 Q. (By Ms. Bayless) So we can't, from looking at
 13 this, know who he might have met with among this family
 14 group, right?
 15 **A. No.**
 16 Q. Okay. Looking at the entry on 1-25-10 --
 17 **A. What page is that?**
 18 Q. 1179. So looking at that entry, which is where
 19 you returned the call, now, this doesn't have your
 20 initials at the end.
 21 **A. I don't know. There's two entries for 1-25-10.**
 22 **Which one are you talking about?**
 23 Q. The second one.
 24 MR. SPIELMAN: Which one is the second
 25 one?

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1 MS. BAYLESS: The second one from the top.
 2 **A. 11:54 a.m.?**
 3 Q. (By Ms. Bayless) Yes, 11:54 a.m. Sorry.
 4 The one that has your name out to the
 5 right, do you think you put this entry in?
 6 **A. Yes.**
 7 Q. Even though it doesn't have your initials?
 8 **A. It looks like something I would type.**
 9 Q. Okay.
 10 **A. Although there's no misspellings, so I'm not**
 11 **sure.**
 12 Q. You say in here that "the land was Elmer's and,
 13 therefore, would likely be allocated to his decedent's
 14 trust but that all income is required to be pushed out
 15 to her."
 16 So explain what you -- I assume you
 17 explained this to Nelva?
 18 **A. Yes. That's a good assumption.**
 19 Q. Okay. Explain, as best you recall, what you
 20 would have told her about how that would work.
 21 MR. REED: Objection, form.
 22 **A. I typically will tell the client that the trust**
 23 **income is mandatory to them because it's a credit**
 24 **shelter, bypass trust; and in order to qualify for the**
 25 **marital deduction, that's why it pushes the income out.**

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1 **And they can have the principal for their**
 2 **health, education, maintenance and support, that it's**
 3 **easiest to put things on a sweep from the decedent's**
 4 **trust account into the survivor's trust so it's fluid**
 5 **and easy and they don't have to deal with paperwork.**
 6 **And that the trust would have to file a**
 7 **tax return, its own separate 1041, for the income,**
 8 **showing that it was passed over to the survivor's trust**
 9 **so that it pays the least amount of income tax.**
 10 Q. (By Ms. Bayless) Okay. At this point I'm
 11 assuming, since you haven't funded things, there's
 12 probably not even a separate decedent's trust account
 13 and survivor's trust account.
 14 MR. SPIELMAN: Form.
 15 **A. No. There typically would not be during**
 16 **administration.**
 17 Q. (By Ms. Bayless) Okay. So this idea that --
 18 and this is an IRS-mandated thing, right, that all this
 19 income has to go out to her to get the deduction?
 20 **A. Yes.**
 21 Q. Okay. So this is something -- did you give her
 22 the logistics of how to set that up?
 23 **A. Yes.**
 24 Q. So you told her she needed a separate account
 25 for each trust, and then she needed to pay all of the

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1 income from the decedent's trust to her own account?
 2 **A. Yes, that's correct.**
 3 Q. And it doesn't work to pay it to the survivor's
 4 account, right? It has to go to her?
 5 **A. No. The survivor's trust is her.**
 6 Q. Okay. So it was enough if she made all the
 7 payments from the decedent's trust into the survivor's
 8 trust account?
 9 **A. That's correct.**
 10 Q. Okay. These are, I would say, kind of
 11 intricate types of procedures to set up. Did you ever
 12 have any feeling that Nelva didn't understand what you
 13 were telling her?
 14 MR. SPIELMAN: Form.
 15 **A. At the time that it was given?**
 16 Q. (By Ms. Bayless) Yes.
 17 **A. No, I did not have that feeling that she did**
 18 **not understand.**
 19 Q. And from the interaction that you had with her
 20 after you sent her off with a set of instructions -- you
 21 said you'd talk to her some other time -- was it your
 22 view that she was accomplishing these things that you
 23 had set her off to accomplish?
 24 **A. Some but not all.**
 25 Q. Can you recall things that weren't getting

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1 done?

2 **A. There were some stock transfers that still**

3 **hadn't been done.**

4 Q. All right. Do you know why that was?

5 **A. No.**

6 Q. But the transfer documents themselves you had

7 prepared and just given them to her?

8 **A. Yes.**

9 Q. And she was going to send them to the transfer

10 agent, or was she going to bring them back to you to go

11 to the transfer agent?

12 **A. No. The client is responsible for getting**

13 **those to the transfer agent.**

14 Q. Okay. So once the papers go out of your door,

15 they're gone?

16 **A. (Witness nods head affirmatively.)**

17 Q. Did you notice a decline in Nelva's health

18 after Elmer died?

19 MR. SPIELMAN: Form.

20 **A. No.**

21 Q. (By Ms. Bayless) Or her activities?

22 **A. No.**

23 Q. Okay. So you didn't have any sense that there

24 might have been any issues with her mental capacity. Is

25 that right?

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1 MR. SPIELMAN: Form.

2 **A. No.**

3 Q. (By Ms. Bayless) Okay. Look on page 1178.

4 **A. (Witness complies.)**

5 Q. There's an entry on 2-24; and it says "CLF,"

6 which is you, "had 5/3 with Ms. Brunsting."

7 What does 5/3 mean?

8 **A. So a 5/3 is a type of meeting that after we've**

9 **allocated all of -- gotten the magic number that can**

10 **possibly go into decedent's trust and the client has**

11 **chosen which assets they want to go in the decedent's**

12 **trust and which the survivor's trust, then between the**

13 **5/2 and the 5/3 is when we prepare all the documents.**

14 **If the client requests our assistance with**

15 **it, we would contact brokers and get the forms and help**

16 **them fill them out so that they would be ready at 5/3**

17 **for them to sign in order to effectuate those transfers**

18 **and walk out with those documents to deliver.**

19 Q. And that's what you did in this case?

20 **A. Correct.**

21 Q. In talking about these transfers and the

22 interaction that you had with Nelva during that time

23 period, did she ever say anything to you about her

24 children?

25 MR. SPIELMAN: Form.

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1 **A. What interaction are you talking about? On**

2 **2-24?**

3 Q. (By Ms. Bayless) Well, any of these meetings

4 that you're having since Elmer died.

5 **A. Of course.**

6 Q. Tell me, if you can recall, what she expressed

7 to you about her children.

8 MR. SPIELMAN: Form.

9 Q. (By Ms. Bayless) Let's take it child by child.

10 **A. Okay.**

11 Q. Did she say anything to you about Carl?

12 MR. SPIELMAN: Form.

13 **A. Carl actually came into my office with her one**

14 **time.**

15 Q. (By Ms. Bayless) Okay.

16 **A. So I had already met Carl.**

17 Q. I'm sorry?

18 **A. I had already met Carl.**

19 Q. Okay. But in your conversations with her when

20 Carl wasn't there, did she comment one way or the other

21 about Carl?

22 **A. Not particularly.**

23 Q. Okay. How about Candy?

24 **A. Yes.**

25 Q. What did she say about Candy?

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1 **A. That she had gone to California and basically**

2 **married someone, and he left her high and dry. And**

3 **that's about all I knew.**

4 Q. Did she talk about concerns for her finances,

5 for Candy's finances?

6 **A. Of course.**

7 Q. And did she give you any indication of whether

8 she had been helping with Candy's finances?

9 **A. Ms. Brunsting indicated she helped multiple**

10 **children with their finances over time.**

11 Q. Okay. Candy being one of them?

12 **A. Sure.**

13 Q. Did she talk about any financial help to Carl?

14 **A. Not that I recall.**

15 Q. How about Carole?

16 **A. Probably, if I recall right -- this is so long**

17 **ago. I want to say maybe because Carole may have been**

18 **helping out when dad was kind of falling ill**

19 **dementia-wise, that Carole was very helpful during that**

20 **time, wanting to compensate her daughter for helping**

21 **her.**

22 Q. Okay.

23 **A. Instead of her being able to go out and get a**

24 **job, she was staying with Dad so that Ms. Brunsting**

25 **could go and still do her -- I believe it was**

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1 volunteering at the church. She liked to do that, and
 2 it gave her an option to get out of the house.
 3 Q. Okay.
 4 A. So I do recall that.
 5 Q. Okay. And how about Anita? Did she say
 6 anything about Anita's finances?
 7 A. No. I really didn't hear much about Carl,
 8 Anita or Amy, for that matter, yeah.
 9 Q. Okay.
 10 A. She was rather private unless it was relevant
 11 to what we were talking about at that moment.
 12 Q. Okay. And I assume that things that she might
 13 have said to you in a meeting or on a phone
 14 conversation, if they didn't relate to what you were
 15 doing, they don't show up in this.
 16 A. That's correct.
 17 Q. Yeah. Did you ever have any conversations
 18 about the Iowa farm and what the plans were for that
 19 after Elmer died?
 20 A. With Nelva?
 21 Q. Yes.
 22 A. I don't recall having any conversations about
 23 what would happen to it. It created income. So I don't
 24 recall any specific conversations about what would
 25 happen to it.

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1 Q. Do you recall any conversations about it with
 2 any of the children?
 3 A. At any given time?
 4 Q. Right.
 5 A. I believe there was discussion about what would
 6 happen with the farm after Nelva passed away.
 7 Q. And who did you discuss that with?
 8 A. I believe it was the co-trustees, Anita and
 9 Amy.
 10 Q. And do you remember why the conversation came
 11 up?
 12 A. Probably -- I don't recall exactly, but most
 13 likely because of the illiquidity of the asset itself
 14 and being that it was family property, what are the
 15 options with regard to how to divvy it up. Do we split
 16 it, do we sell it and split the proceeds? Do you have
 17 the option to buy -- to buy each other out in lieu of
 18 using other assets?
 19 There was an ILIT that created some cash
 20 that was initially set up to pay estate tax. Since
 21 there was none, maybe some of those funds could be used
 22 to buy each other out. I mean, just options with regard
 23 to that.
 24 Q. When you say ILIT, you're talking about a life
 25 insurance --

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1 A. Irrevocable life insurance trust with a
 2 second-to-die policy.
 3 Q. Did you sense that there was any disagreement
 4 between Anita and Amy about the farm in Iowa, what
 5 needed to be done with that; or were they just asking
 6 for options?
 7 MR. REED: Object to form.
 8 A. I didn't sense any disagreement.
 9 Q. (By Ms. Bayless) Did you at any time during
 10 your dealings with Amy and Anita sense any disagreement
 11 between them?
 12 MR. SPIELMAN: Form.
 13 A. No. They were told explicitly that if they
 14 disagreed, I could represent no one; and it's in the
 15 agreement they both signed.
 16 Q. (By Ms. Bayless) Okay. Look at page 1177.
 17 There's an entry at the very bottom. Now we're into
 18 April of 2010, and it says you discussed this with SSV.
 19 Is that Susan Vacek?
 20 A. Yes.
 21 Q. "There is not trust protector in this trust,
 22 although Mrs. B can have some flexibility with the way
 23 the kids get the trust assets and then add QBD with
 24 PATs."
 25 A. Uh-huh.

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1 Q. So there are a lot of acronyms in there.
 2 A. Sure.
 3 Q. Tell me what that entry basically is saying.
 4 A. So when Elmer and Ms. Brunsting did their
 5 restatement, it was before we had language regarding
 6 trust protectors.
 7 The concern for Carl and others were that
 8 if they should get in a lawsuit and they're in charge of
 9 their own trust, that the trust could not be secured for
 10 them so that they -- to protect it, asset protection.
 11 Q. Okay. Well, 4-1 of 2010 was before Carl was
 12 sick.
 13 A. Well, Carl, Amy --
 14 Q. Anybody?
 15 A. Any of the kids.
 16 Q. Okay. And so this had come up because Nelva
 17 had asked this question? Or why had this come up?
 18 A. I don't know. I'd have to look at the entries
 19 before that.
 20 Q. Okay. Well, let's actually go back to the page
 21 before 1178. Maybe this will help.
 22 Look at the entry on 3-24. It indicates
 23 that you talked to Nelva and advised her that Anita was
 24 calling, told her it was best for Candace not to take a
 25 distribution.

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1 So that's what you were saying before?

2 **A. That Candace, yes.**

3 Q. That does get confusing.

4 So this is the thing we talked about

5 earlier, that Anita had called saying that her sister

6 Candy wanted to take her distribution?

7 **A. Correct.**

8 Q. And I assume that this life insurance trust had

9 insurance for both Nelva and Elmer. Is that your

10 recollection?

11 **A. It was a second-to-die policy.**

12 Q. What does that mean?

13 **A. So that means you're insuring both lives, but**

14 **it doesn't actually pay out until the second one dies.**

15 Q. Okay. So at the time of Elmer's death, there

16 was no life insurance distribution going into the trust?

17 **A. Correct.**

18 Q. So what distribution was Candy seeking? Do you

19 know?

20 **A. So in order to pay the life insurance premiums,**

21 **Nelva had to gift to the trustee of that trust, and the**

22 **trustee would deposit those funds in the irrevocable**

23 **life insurance trust account.**

24 **There was a 30-day right to receive the**

25 **gift, their portion of the gift, the beneficiary. And**

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1 **after that 30 days had run and what we call a Crummey**

2 **letter was signed waiving the right to that, then the**

3 **proceeds were -- the gift was used to pay the premium on**

4 **the life insurance policy. If you don't pay the**

5 **premium, you lose it.**

6 Q. Okay. And so Candy was asking to be able to

7 get her part of the -- what was getting paid in to pay

8 the premium?

9 **A. Premium payment, yes.**

10 Q. Okay. And then in this entry you're basically

11 saying that you told her that that was not a good idea

12 and that she should just loan her money?

13 **A. Yes.**

14 Q. Tell me what your understanding is of the role

15 of a trust protector.

16 **A. A trust protector is there to pretty much do**

17 **exactly what you would think, and that is to lock down a**

18 **trust in the event that the beneficiary or trustee is**

19 **compelled to pay out due to a judicial requirement in a**

20 **litigation situation; to modify it for tax purposes**

21 **because it's now irrevocable, and the trustee is locked**

22 **into a tax situation that was not anticipated by the**

23 **grantors, the settlors before they died; to modify it in**

24 **the event that circumstances changed that weren't**

25 **anticipated by the grantors.**

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1 **I mean, there's a whole litany of reasons**

2 **why a trust protector would ...**

3 Q. And so who directs the trust protector in what

4 they're supposed to be doing?

5 MR. REED: Form.

6 **A. I don't know. They're a third party. So no**

7 **one really directs them.**

8 Q. (By Ms. Bayless) So they're not at the whim of

9 the settlor or the trustee?

10 **A. No.**

11 Q. They're a completely different beast?

12 **A. Completely autonomous.**

13 Q. You indicate on here that there is -- it says

14 "is not," but I assume you mean "is no trust protector."

15 **A. Uh-huh.**

16 Q. So were you contemplating at that point

17 implementing some type of a trust protector? Why is

18 that even coming up in your conversation?

19 **A. I would have to look at the trust as it was**

20 **repeated, but I believe at that time there was no trust**

21 **protector in there. So if someone is in charge of their**

22 **own trust share and gets sued, there's no one to lock it**

23 **down for them. They can be compelled to pay it out.**

24 **So when you see situations where people**

25 **are needing money or being sued or they're at risk for**

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1 **being sued or they may need supplemental needs at some**

2 **point, you want to have that person there to be able to**

3 **flip it into a supplemental needs trust or lock it down.**

4 Q. And so as far as you know at this point, the

5 only issue was whether Candy would take a distribution

6 from the life insurance trust, right?

7 MR. REED: Form.

8 **A. I guess. I don't know. I'd have to read the**

9 **previous notes going back.**

10 Q. (By Ms. Bayless) Okay. Well, let's take a --

11 MS. BAYLESS: Can we take a short break?

12 MR. MENDEL: Sure.

13 Q. (By Ms. Bayless) Would you mind doing that,

14 just look and see? Because, I mean, I may have missed

15 something, but I didn't see --

16 **A. Sure.**

17 MR. MENDEL: Ten minutes.

18 (Recess taken.)

19 Q. (By Ms. Bayless) All right.

20 (The record was read as requested.)

21 Q. (By Ms. Bayless) So have you had an

22 opportunity to look at whatever you needed to look at to

23 see what you could remember about this?

24 **A. I did, and I did not see anything in the notes**

25 **that indicated a reason why I would make that change.**

<p style="text-align: right;">190</p> <p>1 However, I did look at the trust agreement.</p> <p>2 Q. Okay.</p> <p>3 A. And that is what I believe would be -- the way</p> <p>4 that the trust was drafted when it was restated, it</p> <p>5 appears that it stays in trust for the beneficiaries.</p> <p>6 Q. Okay.</p> <p>7 A. But that's the reason why they had co-trustees,</p> <p>8 because without co-trustees over the trust, the</p> <p>9 beneficiary trust, there would be no asset protection in</p> <p>10 these trusts. So the beneficiary would have to ask the</p> <p>11 co-trustees in order to get a distribution.</p> <p>12 So what I was starting to see was people</p> <p>13 wanting money, and they were going to have to ask other</p> <p>14 siblings for the money. So a trust protector would add</p> <p>15 protection but allow them to be autonomous from each</p> <p>16 other and allow them to be invested differently rather</p> <p>17 than pooling their funds and having to rely on each</p> <p>18 other to get permission to make distributions.</p> <p>19 Q. Now, how would a trust protector do that?</p> <p>20 A. So a trust protector is fairly new in trust</p> <p>21 law. And the way you achieved asset protection before</p> <p>22 was you had co-trustees so that nobody could do anything</p> <p>23 without the consent of the other, which meant people had</p> <p>24 to agree; whereas, a trust protector being there would</p> <p>25 allow the beneficiary to be in charge of their own</p>	<p style="text-align: right;">192</p> <p>1 attorney; it doesn't have to be a corporate trustee.</p> <p>2 They just need to be some arbitrary third party that has</p> <p>3 no stake, no skin in the game.</p> <p>4 Q. All right. So looking at this on page 1177,</p> <p>5 this entry at the very bottom.</p> <p>6 A. Uh-huh.</p> <p>7 Q. You say there's not a trust protector in this</p> <p>8 trust, "although Mrs. B can have some flexibility with</p> <p>9 the way the kids get the trust assets and then add QBD</p> <p>10 with PATs." So what does that mean?</p> <p>11 A. So it means that she has the ability to do a</p> <p>12 qualified beneficiary designation and treat one child</p> <p>13 differently than the other if she feels the need is</p> <p>14 appropriate at any given time, based on that child's</p> <p>15 needs at that given time.</p> <p>16 Q. All right. And it says and then add -- so</p> <p>17 let's break it down. It says she can have some</p> <p>18 flexibility --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- with the way the kids get the trust assets.</p> <p>21 A. Right.</p> <p>22 Q. What is that talking about?</p> <p>23 A. Well, I don't recall exactly what my thoughts</p> <p>24 were at that moment. But by adding personal asset</p> <p>25 trusts for beneficiary, it creates autonomy for them so</p>
<p style="text-align: right;">191</p> <p>1 trust. But if there was a problem that arose, he or she</p> <p>2 or it was a mechanism to step in and lock down the trust</p> <p>3 so that it could be asset-protected for the beneficiary</p> <p>4 should a need arise later on down the road that was</p> <p>5 unanticipated.</p> <p>6 Q. Are we talking about this in connection with</p> <p>7 the restated trust?</p> <p>8 A. Yes.</p> <p>9 Q. That's what you were talking about on</p> <p>10 April 1st, in this entry on April 1st?</p> <p>11 A. Oh, I can't -- I don't recall why.</p> <p>12 Q. Okay.</p> <p>13 A. What that prompted me. But when you're looking</p> <p>14 at the agreement as a whole and you are making changes,</p> <p>15 it's just natural practice for me as an attorney to look</p> <p>16 at the documents as they are. Is there anything that</p> <p>17 you can do to tweak them to make them better or more</p> <p>18 efficient for what the client needs.</p> <p>19 Q. Okay. Are there people who serve in this role</p> <p>20 as trust protector kind of like you'd have a corporate</p> <p>21 trustee? Are there corporate trust protectors?</p> <p>22 A. Sure.</p> <p>23 Q. Who are some of these trust protectors?</p> <p>24 A. Well, it could be anyone that is a third party</p> <p>25 that would agree to do so. It doesn't have to be an</p>	<p style="text-align: right;">193</p> <p>1 that if one wants to invest in a llama farm and the</p> <p>2 other one doesn't, they're not married at the hip and</p> <p>3 they don't have to fight over how things are going to be</p> <p>4 invested or who's going to get a distribution and who's</p> <p>5 not. If they've all got their own little pot, then it's</p> <p>6 easy.</p> <p>7 Q. Okay.</p> <p>8 A. It's easy to account; it's easy to manage.</p> <p>9 Q. And is this something that you anticipated</p> <p>10 could be implemented before her death or at her death?</p> <p>11 A. It would only -- a qualified beneficiary</p> <p>12 designation only takes effect after someone is dead.</p> <p>13 Q. Okay. So this would be --</p> <p>14 A. Only after she's gone.</p> <p>15 Q. -- for her future?</p> <p>16 A. No. It was for the kids' future.</p> <p>17 Q. I mean in her future. She wouldn't be around</p> <p>18 to deal with it.</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Then the next entry is on the 20th. Do</p> <p>21 you recall whether you had a -- let me back up, ask you</p> <p>22 one question at a time.</p> <p>23 Do you recall whether Susan Vacek thought</p> <p>24 this was a good idea or what the outcome of your</p> <p>25 conversation with her was?</p>

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1 **A. I don't.**
2 Q. And it doesn't look like -- there's at least
3 not a recorded entry where you had a conversation with
4 Nelva about it, right?
5 **A. Not that I documented. That doesn't mean that**
6 **I didn't have the conversation with her. It's just I**
7 **didn't feel the need to be documented.**
8 **This was something -- the personal asset**
9 **trust and the trust protector was something that you**
10 **would see across the firm as people came in, that if**
11 **they had pooled trusts for their beneficiaries, it was**
12 **something that we discuss with everyone just to give**
13 **them the opportunity. If they wanted to make that**
14 **change, they could.**
15 Q. Okay. So it wasn't something that you were
16 moving forward and implementing at that point?
17 **A. No.**
18 Q. Or you would have probably put an entry in
19 about it?
20 **A. Correct.**
21 Q. Okay. Then if you go up to the 21st, the
22 bottom entry on the 21st, the one that's at 10:53?
23 **A. Uh-huh.**
24 Q. It says that "Nelva called again and spoke with
25 Connie." Is that the receptionist?

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1 **A. That would actually be my mother.**
2 Q. Your mother?
3 **A. Yes. My mother worked there for a short time,**
4 **filling in.**
5 Q. Okay. What did she do?
6 **A. Took phone calls.**
7 Q. Okay. And then it says that you took the call?
8 **A. Correct.**
9 Q. And that she's having a difficult time and was
10 having you go over each packet prepared for her re: the
11 funding?
12 **A. Right.**
13 Q. "She seemed a little out of sorts and said she
14 wished she had not even done all this."
15 **A. Yes.**
16 Q. So earlier you had talked about that you just
17 gave her the packets, and she went off and did
18 everything; but that's not really how that worked in
19 this case, is it?
20 **A. Correct.**
21 Q. And so you told her you'd help her, but you'd
22 have to charge her for that?
23 **A. That's correct.**
24 Q. And she basically said she needed help, right?
25 **A. Yes.**

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1 Q. Okay. So then if you go up to the 23rd, you
2 met with her on April 23rd; and she was having some
3 health issues by that time and needed help with the
4 funding, right?
5 **A. Correct.**
6 Q. So before you had indicated that you first
7 heard about her health issues when you heard about
8 Carl's health issues. But this seems to indicate you
9 knew about that earlier, right?
10 **A. Depends on what health issues are. Cancer I**
11 **did not hear about until closer to Carl's issues.**
12 Q. Okay. Do you know what kind of health issues
13 this is talking about?
14 **A. I do not.**
15 Q. All right. And then if you go up to May 4th,
16 the entry at 1:56 p.m. This is an entry actually from
17 Summer. So she was --
18 **A. That appears to be so, yes.**
19 Q. Was she a legal assistant?
20 **A. Yes.**
21 Q. And it says, "I noticed that the Chevron
22 Corporation funding package to be mailed to BNY Mellon
23 Services was altered (DT EIN)" -- I assume that means
24 decedent's trust employee identification number?
25 **A. Uh-huh.**

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1 Q. -- "was crossed out and Nelva's Social Security
2 number was written in."
3 And then you say you -- apparently she
4 asked you, and you said you didn't do that.
5 **A. Uh-huh.**
6 Q. Okay. So then when she calls Nelva, she says
7 in her entry here that she "called Nelva, and she said
8 that she only signed the papers and didn't change
9 anything. The girl at the bank that stamped the
10 medallion guarantee must have done that."
11 And that seems unlikely, doesn't it?
12 MR. REED: Form.
13 **A. No. Nothing surprises me actually.**
14 Q. (By Ms. Bayless) At a bank?
15 **A. At a bank.**
16 Q. How would they know her Social Security number?
17 MR. REED: Form.
18 **A. She would have had to tell them. But I could**
19 **see somebody telling her, Oh, you don't need that number**
20 **on here. You need to put your Social.**
21 Q. (By Ms. Bayless) Okay.
22 **A. I've had plenty of financial advisors try to be**
23 **tax people and lawyers.**
24 Q. Uh-huh.
25 **A. Happens a lot actually.**

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<p>1 Q. Okay. So she told her that she was going to</p> <p>2 change it back to the EIN number for the trust "by</p> <p>3 crossing through the handwritten Social Security number</p> <p>4 and writing in the DT EIN again." See that?</p> <p>5 A. Okay.</p> <p>6 Q. And then she tells her the papers may get</p> <p>7 bounced back for her to sign them again, that they'll</p> <p>8 see what Mellon did.</p> <p>9 A. Yes. Because you can't have white-out and you</p> <p>10 can't have anything -- changes like that. They get real</p> <p>11 sticky.</p> <p>12 Q. Do you know what happened with this?</p> <p>13 A. I would imagine that if it got bounced back,</p> <p>14 there would be another entry because we were pretty good</p> <p>15 about doing that.</p> <p>16 Q. So at this point, at least by late April of</p> <p>17 2010 -- and this is about a year after Elmer has died,</p> <p>18 right, because he died April 1st of 2009. Does that</p> <p>19 sound right?</p> <p>20 A. I'll have to take your word for it. I don't</p> <p>21 recall.</p> <p>22 Q. Well, sometime in 2009.</p> <p>23 MS. CAROLE BRUNSTING: That's right.</p> <p>24 MS. BAYLESS: April 1st? Okay.</p> <p>25 Q. (By Ms. Bayless) Okay. So at least by this</p>	<p>1 trust, right?</p> <p>2 A. Well, the opinion letter was based on whether</p> <p>3 or not an irrevocable trust could own cropland in Iowa.</p> <p>4 So, yes, that was okay.</p> <p>5 I can't speak to whether or not it got</p> <p>6 funded. I don't recall. A deed would have had to have</p> <p>7 been prepared to get it in there.</p> <p>8 Q. But you guys did the deeds --</p> <p>9 A. No.</p> <p>10 Q. -- or deed. You did not do the deed?</p> <p>11 A. We are not licensed to practice in Iowa. We</p> <p>12 couldn't do an Iowa deed.</p> <p>13 Q. Oh, okay. You had somebody in Iowa do the</p> <p>14 deeds?</p> <p>15 A. We most likely would have, yes.</p> <p>16 Q. I think U.S. Deeds or something I saw in here.</p> <p>17 A. Could be.</p> <p>18 Q. Okay. So looking at May 17th, it says, Darlene</p> <p>19 from the brokerage firm had called.</p> <p>20 This is an entry that you made. What</p> <p>21 brokerage firm are we talking about? Do you know?</p> <p>22 A. I don't recall, but I'm guessing it was Edward</p> <p>23 Jones because that's where Ms. Brunsting had a lot of</p> <p>24 her stuff.</p> <p>25 Q. Okay. So they called and asked some questions</p>
199	201
<p>1 time you had become pretty hands-on in transferring</p> <p>2 these -- helping her transfer these stocks into the two</p> <p>3 trusts, right?</p> <p>4 A. I and the staff, yes.</p> <p>5 Q. The Vacek firm?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And I'm assuming -- I think you said Susan</p> <p>8 Vacek did administration. Right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. But I'm assuming that if something came in from</p> <p>11 Nelva, it first went to you; and then if you wanted to</p> <p>12 bring Susan into the loop, you did.</p> <p>13 A. Of course.</p> <p>14 Q. So you were pretty much the first person that</p> <p>15 they went to, right?</p> <p>16 A. Yes. At Ms. Brunsting's request, yes.</p> <p>17 Q. Okay. Looking at the May 17th entry -- let me</p> <p>18 back up for just a second. On the Iowa property there</p> <p>19 was some kind of an issue about the transfer, about who</p> <p>20 could be an owner?</p> <p>21 A. Correct.</p> <p>22 Q. But you got that worked out?</p> <p>23 A. Yes. We got an opinion from Iowa counsel.</p> <p>24 Q. So there isn't any question in your mind that</p> <p>25 the Iowa farm is owned completely by Elmer's decedent's</p>	<p>1 about the setup for the decedent's trust?</p> <p>2 A. Correct.</p> <p>3 Q. It says "CLF" -- that's you?</p> <p>4 A. Me.</p> <p>5 Q. -- "answered her and reminded her that ST was</p> <p>6 the beneficiary of all the income and dividends."</p> <p>7 What is ST? Survivor's trust?</p> <p>8 A. Survivor's trust.</p> <p>9 Q. Okay. She said she would see if that would be</p> <p>10 able to -- if she would be able to be set up -- if that</p> <p>11 would be able to be set up. Okay.</p> <p>12 So what was the problem in that setup? Do</p> <p>13 you recall?</p> <p>14 A. Ms. Brunsting did not like paperwork. She did</p> <p>15 not want to deal with paperwork. So I requested Edward</p> <p>16 Jones set up sweep accounts either monthly or quarterly,</p> <p>17 that any dividends and income that were payable in the</p> <p>18 decedent's trust be swept into her survivor's trust</p> <p>19 account at Edward Jones so that the funds were moved</p> <p>20 over and she didn't have to worry about it at the end of</p> <p>21 the year, trying to reconcile and get it out of the</p> <p>22 decedent's trust, to ensure that the decedent's trust</p> <p>23 did not pay the higher income tax rate on that money.</p> <p>24 Q. And did that eventually get set up, do you</p> <p>25 think?</p>

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<p>1 A. Uh-huh.</p> <p>2 Q. So as far as you know, was that the case up</p> <p>3 through Nelva's death?</p> <p>4 A. It should have been. But once a client leaves</p> <p>5 my office, if they change things, that would not be</p> <p>6 anything that I would know about.</p> <p>7 Q. Okay. But the last you heard of it, that is</p> <p>8 how it was done?</p> <p>9 A. That's how it was supposed to be done, yes.</p> <p>10 Q. So any income that came into the decedent's</p> <p>11 trust was swept into the survivor's trust?</p> <p>12 A. That's what was requested, yes.</p> <p>13 Q. Okay. Looking at page 1176, on May 19th of</p> <p>14 2010, near the bottom. It's the 5:11 p.m. entry. It</p> <p>15 just says "Going to oncologist. They found spot on her</p> <p>16 liver. She said she would be out of pocket ... but that</p> <p>17 she agreed to having an opinion letter done by the</p> <p>18 attorney and to send her whatever she needs to sign."</p> <p>19 It doesn't have a name in there, but I</p> <p>20 assume you were talking directly with Nelva?</p> <p>21 A. Yes. That would be my assumption as well.</p> <p>22 Q. And she's talking to you about the opinion</p> <p>23 letter, meaning the attorney in Iowa?</p> <p>24 A. Correct.</p> <p>25 Q. So at least at this point you knew she was</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Okay. So do you know what this conversation</p> <p>3 was about? Do you have any recollection of that?</p> <p>4 A. Only from what I read. It says regarding the</p> <p>5 decedent's trust account.</p> <p>6 Q. Right.</p> <p>7 A. Dividends and interest and how they're to be</p> <p>8 deposited.</p> <p>9 Q. You think that's what it was?</p> <p>10 A. That's what it says. So it says, "Is she</p> <p>11 unable to take principal? Is she required to take</p> <p>12 dividends?"</p> <p>13 Q. Okay. We're looking at a different entry, I</p> <p>14 think.</p> <p>15 A. Well, it's the same day, just 4:01 p.m.</p> <p>16 Q. All right. So this, you think, was still part</p> <p>17 of the setup?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And based on what you said earlier, it was</p> <p>20 dividends and interest?</p> <p>21 A. Uh-huh.</p> <p>22 Q. All right.</p> <p>23 A. Ordinary interest and dividends.</p> <p>24 Q. Okay. Ordinary interest as opposed to what</p> <p>25 kind of interest?</p>
203	205
<p>1 having cancer issues, right?</p> <p>2 A. Yes. I mean, I assume by "oncologist," that</p> <p>3 that's what that meant.</p> <p>4 Q. Well, and "spot on her liver."</p> <p>5 Did she say why she was going to be out of</p> <p>6 pocket? Was that for medical treatment?</p> <p>7 A. I assume so. I don't recall.</p> <p>8 Q. On 5-27-2010 there is an entry, "Merlin Case."</p> <p>9 Who is Merlin Case?</p> <p>10 A. She's a receptionist.</p> <p>11 Q. It said, Nelva called to give us permission to</p> <p>12 speak with her broker, Doug Williams, who had called</p> <p>13 earlier and left a voice message with his number</p> <p>14 regarding her trust.</p> <p>15 A. Okay.</p> <p>16 Q. Apparently sent an e-mail to you and carbon</p> <p>17 copy, I guess, to your assistant, Summer Peoples?</p> <p>18 A. Correct.</p> <p>19 Q. Did you have occasion to speak with Doug</p> <p>20 Williams about his concerns about Ms. Brunsting's health</p> <p>21 or activity on her accounts?</p> <p>22 A. No.</p> <p>23 MR. SPIELMAN: Form.</p> <p>24 Q. (By Ms. Bayless) He never talked with you</p> <p>25 about that?</p>	<p>1 A. Or ordinary income. Sorry.</p> <p>2 Q. I thought maybe there was a new kind of</p> <p>3 interest I didn't know about.</p> <p>4 All right. Then on June 3rd there's an</p> <p>5 entry where Summer Peoples has called Nelva to schedule</p> <p>6 5/3 and then in parentheses it says F.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is that different than just a regular 5/3?</p> <p>9 A. It means it was the fifth time I had met with</p> <p>10 Ms. Brunsting regarding the funding.</p> <p>11 Q. Okay. So 5/3 in this instance -- I thought you</p> <p>12 said -- well, tell me again what 5/3 is.</p> <p>13 A. So 5/3 is the signing of all the funding</p> <p>14 documents, and they leave with them.</p> <p>15 Q. Okay.</p> <p>16 A. If they call me back and need another meeting,</p> <p>17 then it will show up as a 5/3B. I know I've already met</p> <p>18 with them, so I've got to go back and look at my notes.</p> <p>19 So we go C, D, E, F. We'll go all the way through the</p> <p>20 alphabet.</p> <p>21 Q. Okay.</p> <p>22 A. And that's the fifth time I met with her</p> <p>23 regarding funding.</p> <p>24 Q. So does that sound like a lot of times?</p> <p>25 A. It depends.</p>

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<p>1 MR. REED: Form.</p> <p>2 A. I mean, it depends on the client. It depends</p> <p>3 on their age; it depends on their health; it depends on</p> <p>4 the assets and the types. So I can't say it was or</p> <p>5 wasn't. It was what it was.</p> <p>6 Q. (By Ms. Bayless) Okay. So the meeting was set</p> <p>7 up for the 8th.</p> <p>8 A. Uh-huh.</p> <p>9 Q. And you have an entry that you did on the 8th</p> <p>10 that says you visited with Nelva today?</p> <p>11 A. Uh-huh.</p> <p>12 Q. "She has an appointment with her oncologist on</p> <p>13 Thursday, and she did indicate that she was not a</p> <p>14 candidate for chemo in that her lungs were not strong</p> <p>15 enough. Not sure what course of treatment she will</p> <p>16 have, and they will go over that on Thursday. She said</p> <p>17 that she was concerned about Candy, her daughter in</p> <p>18 California. Candy was adopted by them as a child. She</p> <p>19 went off to college in California and met a young man</p> <p>20 and married him. They both dropped out of college, and</p> <p>21 she has been there ever since. The man has now run out</p> <p>22 on her, and she has problems making ends meet. She</p> <p>23 would like to make an early distribution to Candy in the</p> <p>24 amount." And then it doesn't have an amount.</p> <p>25 A. I don't recall what that was.</p>	<p>1 recollection that she drove herself there that day?</p> <p>2 A. I do.</p> <p>3 Q. Did you guys talk about it?</p> <p>4 A. No.</p> <p>5 Q. Had you had any discussion at that point about</p> <p>6 her needing to not drive?</p> <p>7 A. No.</p> <p>8 Q. Do you know what her age was by this time?</p> <p>9 A. No.</p> <p>10 Q. Okay. There's another entry, on June 10th, of</p> <p>11 a conversation with Doug Williams at Edward Jones. This</p> <p>12 looks like he talked to Susan Vacek. It says he called</p> <p>13 for Susan Vacek.</p> <p>14 A. Uh-huh.</p> <p>15 Q. "Re question - left message." Is there any</p> <p>16 reason why he would be calling Susan about this?</p> <p>17 MR. REED: Object to form.</p> <p>18 A. I have no idea.</p> <p>19 Q. (By Ms. Bayless) All right. So you returned</p> <p>20 the call. Is that because Susan told you to return the</p> <p>21 call?</p> <p>22 A. I have no idea.</p> <p>23 Q. Okay. So you returned the call, and you're</p> <p>24 telling him that the income is mandatory in the</p> <p>25 decedent's trust?</p>
207	209
<p>1 Q. Okay.</p> <p>2 A. It looks like it drops off, too.</p> <p>3 Q. Yeah. Didn't finish that sentence. Okay.</p> <p>4 So she talks about at this time that she</p> <p>5 was having a hard time breathing. Did you notice by</p> <p>6 this -- now, this is before Carl is sick, right?</p> <p>7 MR. SPIELMAN: Objection, form.</p> <p>8 Q. (By Ms. Bayless) So by this time, had you</p> <p>9 noticed a deterioration in her health, or were you just</p> <p>10 hearing the story and you couldn't tell any difference?</p> <p>11 MR. REED: Form.</p> <p>12 A. Just hearing it, and she drove herself to the</p> <p>13 office that day. So she was by herself.</p> <p>14 Q. (By Ms. Bayless) Okay. And up until this</p> <p>15 point, there aren't any indications that anybody else</p> <p>16 had brought her to the office. But you wouldn't</p> <p>17 necessarily meet with somebody that brought her to the</p> <p>18 office, right?</p> <p>19 A. No. But our office is small enough that if</p> <p>20 somebody brought another person in, they were usually in</p> <p>21 our space, fishbowl of a reception area.</p> <p>22 Q. So you think it would have been noted in your</p> <p>23 notes?</p> <p>24 A. Not necessarily.</p> <p>25 Q. Okay. But you remember, you have independent</p>	<p>1 A. Uh-huh.</p> <p>2 Q. "(includes interest and dividends) and</p> <p>3 principal for HEMS." What's "HEMS"?</p> <p>4 A. Health, education, maintenance and support.</p> <p>5 Q. So that was the standard set forth in the</p> <p>6 trust, right --</p> <p>7 A. Correct.</p> <p>8 Q. -- for a distribution?</p> <p>9 Now, earlier you talked about that the</p> <p>10 trustee could make a distribution without taking it --</p> <p>11 at least this was my impression of your testimony --</p> <p>12 without taking into consideration the standard required</p> <p>13 by the trust.</p> <p>14 Is that what you meant to say?</p> <p>15 MR. REED: Form.</p> <p>16 A. If that's what was stated, then, no, that was</p> <p>17 not my intent.</p> <p>18 Q. (By Ms. Bayless) Okay. Tell me how the</p> <p>19 standard works in this health, education, maintenance,</p> <p>20 support. How is that supposed to work in a trust like</p> <p>21 the Brunsting trust?</p> <p>22 A. For which trust?</p> <p>23 Q. Well, let's start with the restated trust. How</p> <p>24 was it supposed to work?</p> <p>25 A. Well, there is no -- they can freely put things</p>

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1 **in and take things out because they're both living. So**
 2 **there is no standard.**
 3 Q. Then where would it come up in the Brunsting
 4 trust?
 5 **A. So in the decedent's trust it would be income**
 6 **mandatory to the spouse, principal for health, education**
 7 **maintenance and support.**
 8 **Survivor's trust, she can freely put**
 9 **things in, take things out. There is no standard.**
 10 Q. And the health, education, maintenance and
 11 support means basically her health, her education, her
 12 maintenance, her support, whatever she needs to support
 13 her household?
 14 **A. Uh-huh.**
 15 Q. And support, is that different from
 16 maintenance?
 17 **A. It could be.**
 18 Q. Okay.
 19 **A. Maintenance is getting your hair done.**
 20 **Maintenance is getting your nails done probably. Just**
 21 **depends on what the standard of living is that you're**
 22 **accustomed to.**
 23 Q. Okay. And so earlier when you testified, you
 24 were not meaning to say that that standard could just be
 25 ignored?

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1 MR. REED: Form.
 2 **A. In the decedent's trust?**
 3 Q. (By Ms. Bayless) Yes. Let's talk about the
 4 decedent's trust.
 5 **A. No, it could not.**
 6 Q. And once Nelva was no longer the trustee, the
 7 person who was responsible for seeing that that standard
 8 was applied was Anita?
 9 **A. Whoever the successor trustee is; yes, that's**
 10 **correct**
 11 Q. First, Anita -- well, I guess Anita was the
 12 only successor trustee until Nelva died. Right?
 13 **A. That is correct.**
 14 Q. Okay. So do you know -- I didn't see anything
 15 in here -- and, again, I could have missed it. But I
 16 didn't see anything in here that talked about when you
 17 were first contacted about drafting the 6-15-2010 QBD,
 18 which is, I believe, Exhibit 5.
 19 So can you tell from these notes?
 20 **A. No, I can't, other than I reviewed it after.**
 21 **So I can only surmise because I don't recall that when**
 22 **she came in on the 8th, we discussed it.**
 23 Q. Okay. On June 8th?
 24 **A. Uh-huh.**
 25 Q. And probably, I guess, because you're talking

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1 about Candy --
 2 **A. Correct.**
 3 Q. -- and her financial needs, and that's what
 4 that dealt with, that QBD?
 5 **A. That's most likely correct.**
 6 Q. So they're sort of tied in.
 7 But in terms of what was supposed to go in
 8 it or any of that, we don't have any notes here that
 9 related to that meeting?
 10 **A. And typically you wouldn't. I don't typically**
 11 **make notes of everything that I'm going to put into a**
 12 **document unless it's something that is specific that**
 13 **sticks out.**
 14 Q. Okay. I thought the purpose of the notes was
 15 so that if you came back a week later, a month later,
 16 you knew what you had last done or what you were
 17 supposed to --
 18 **A. Yeah. But there are other ways of doing that**
 19 **as well.**
 20 Q. Okay.
 21 **A. Jotting it down on a piece of paper as soon as**
 22 **I get out of a meeting and handing it to my assistant,**
 23 **saying, Draft this, is perfectly fine for me recalling.**
 24 Q. Okay. So you don't have any independent
 25 recollection that prior to June 8th, you were

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1 contemplating doing this --
 2 **A. Huh-uh.**
 3 Q. -- June 15th? Okay.
 4 Prior to the time that you had this
 5 meeting on June 8th with Nelva, did she understand -- do
 6 you believe, based on your conversation with her, that
 7 she understood what an advance was as opposed to just a
 8 gift?
 9 **A. Yes, I believe she did.**
 10 Q. So did she come in to you asking for that kind
 11 of a mechanism to be set up?
 12 **A. Yes.**
 13 Q. All right. So then there's a call from Nelva
 14 saying that she saw you last Tuesday -- this ties us
 15 back in to June 8th -- "and thinks that she's supposed
 16 to come in and sign some papers." Then it looks like
 17 Summer returned that call and said that the signing was
 18 to be tomorrow. Is that what TMRW is?
 19 **A. I guess.**
 20 Q. Okay. So at that point on June 8th -- I'm
 21 sorry, June 15th, when that was signed -- and there's no
 22 entry in here that she came in and signed it, but we
 23 know that she signed it on June 15th?
 24 **A. Yeah. My notary stamp is indication she did.**
 25 Q. So at that point there was no indication that

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1 there was going to be any other QBD, right?

2 **A. I don't recall.**

3 Q. Okay.

4 **A. It may have been discussed; it may not have. I**

5 **don't recall.**

6 Q. Well, it wasn't discussed until Carl got sick,

7 was it?

8 MR. REED: Object to form.

9 **A. I don't recall.**

10 Q. (By Ms. Bayless) So you think it might have

11 been before then?

12 MR. REED: Objection, form.

13 **A. Based on the entry that's in here, I think it**

14 **was already being discussed.**

15 Q. (By Ms. Bayless) Okay. The entry --

16 **A. Because the one that said the PATs in the trust**

17 **protector, and that didn't have anything to do, I guess,**

18 **with Carl, per se, just amending the trust to provide**

19 **flexibility for the beneficiaries down the road.**

20 Q. So it was already, in your mind, in the works?

21 **A. Yeah, probably so.**

22 Q. Had you talked about it with Nelva at that

23 point?

24 **A. Probably.**

25 Q. All right. Now, I'm sorry to have to do this

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1 to you, but the next page datewise, you have to go to

2 the very back, and it's page 1197. So it picks up at

3 the bottom with June 25th.

4 **A. Uh-huh.**

5 Q. And then on July 1st, at 12:07 there's an entry

6 from Summer that says "received Vacek & Freed copy of

7 signed receipt and distribution from Candace Louise

8 Curtis. Filed in file."

9 So this is going to be documentation

10 pursuant to the June 15th QBD?

11 **A. No.**

12 Q. Okay. What is this?

13 **A. I believe that would have been if Ms. Brunsting**

14 **made a \$20,000 or whatever it was payment, that my**

15 **recommendation always to clients is, if you're going to**

16 **be advancing a distribution as opposed to making a gift,**

17 **you have the kids sign off on it, agreeing that they**

18 **acknowledge that it's an advance of their share and not**

19 **just a gift.**

20 Q. Okay.

21 **A. So that everybody knows what's going on.**

22 Q. Okay. But isn't that what the June 15th QBD

23 was about?

24 **A. The QBD itself just says anyone who receives,**

25 **as long as it's documented as an advance by**

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1 **Ms. Brunsting, that that is how it will be treated.**

2 Q. Okay. So --

3 **A. This would have been specific to the actual**

4 **payment and how much.**

5 Q. Okay. And it's basically what you wanted --

6 how you wanted her to document it, so that it would

7 trigger the provisions of the June 15th QBD?

8 **A. That's correct.**

9 Q. Okay. And that was not the practice, that you

10 know of, before that, was it?

11 **A. For Ms. Brunsting?**

12 Q. Yes.

13 **A. I don't know what her practice was. I can only**

14 **recommend -- based on what she's given to me at that**

15 **time, that this is how I recommend you do it.**

16 Q. Okay. Now, was it your practice at the Vacek

17 firm to do a new fee agreement each time you did a task?

18 MR. REED: Objection, form.

19 **A. No.**

20 Q. (By Ms. Bayless) Okay. How did you -- because

21 I notice that there are some instances in which -- in

22 the documents that you produced where it talks about you

23 needed to get a fee agreement and a retainer for a

24 specific task.

25 So how did you determine whether it

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1 required a new fee agreement?

2 **A. It depended on the client. If they were a**

3 **long-term client that I knew I didn't have to worry**

4 **about chasing after payment, if they called me and asked**

5 **me to do a document, I did not do a new fee agreement.**

6 **They would just come in and sign it, and we'd give them**

7 **an invoice at that time.**

8 **If we were being engaged by a separate**

9 **trustee for a task, then we did a new engagement.**

10 Q. So is it your recollection that you did not do

11 a bunch of new fee agreements for Nelva for these tasks

12 that you were performing?

13 **A. It would not have been my normal practice to**

14 **have done that.**

15 Q. So you didn't do one for like when you started

16 helping her with the funding of the trust?

17 **A. We did one at administration, at the very**

18 **beginning; and that was the agreement based on the fact**

19 **that somebody had died, and we were going to assist**

20 **funding the subtrusts. A new agreement is always done**

21 **at that time.**

22 Q. Okay.

23 **A. After that, we would not have done another one**

24 **with Nelva.**

25 Q. So when she came in and said she needed help,

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<p>1 you just did it; you didn't do another --</p> <p>2 A. That's correct. The fee agreement we had in</p> <p>3 place was still effective.</p> <p>4 Q. And when you did one of these QBDs, did you do</p> <p>5 a new fee agreement for those?</p> <p>6 A. No.</p> <p>7 Q. Not with Nelva, anyway, you're saying?</p> <p>8 A. No.</p> <p>9 Q. Okay. Then when you began representing Anita</p> <p>10 as the successor trustee, you did a new fee agreement</p> <p>11 with her, right?</p> <p>12 A. Yes. I believe that's correct.</p> <p>13 Q. And at that point -- was it contemplated that</p> <p>14 there would be a co-trustee arrangement at any point?</p> <p>15 A. Yes.</p> <p>16 Q. What was contemplated about that?</p> <p>17 A. The trust said that Anita and Amy were</p> <p>18 co-trustees if Nelva resigned at that time.</p> <p>19 Q. All right. So initially Anita was the sole</p> <p>20 successor trustee?</p> <p>21 A. No.</p> <p>22 Q. Okay. She was a co-trustee?</p> <p>23 A. She was always a co-trustee.</p> <p>24 Q. Okay. So Nelva had been the sole trustee,</p> <p>25 right --</p>	<p>1 question. That's why I was asking the question.</p> <p>2 Q. (By Ms. Bayless) I'm not trying to trick you.</p> <p>3 It's easier to just show you the agreements.</p> <p>4 A. That's fine. I would prefer that.</p> <p>5 Q. Okay. Now, is it your testimony that -- I just</p> <p>6 want to be sure I heard you right about this -- that</p> <p>7 prior to this -- we're talking now about, say, the</p> <p>8 June 15th QBD time or early July.</p> <p>9 But before Carl was sick, before he</p> <p>10 contracted his encephalitis, you didn't have</p> <p>11 communications with Anita on any kind of a regular basis</p> <p>12 about the trusts?</p> <p>13 A. Not that I'm aware of, because most of my</p> <p>14 conversations are documented.</p> <p>15 Q. So the only thing you think that you had talked</p> <p>16 with her about by that time was the life insurance</p> <p>17 trust?</p> <p>18 A. The one in which she was the trustee, yes.</p> <p>19 Q. Did you have a separate fee agreement with her</p> <p>20 for that?</p> <p>21 A. I just needed permission from Ms. Brunsting to</p> <p>22 have conversation with her, that's all. So I didn't</p> <p>23 have a fee agreement with her.</p> <p>24 Q. So you didn't bill that trust?</p> <p>25 A. Probably not.</p>
219	221
<p>1 A. Yes.</p> <p>2 Q. -- until she resigned?</p> <p>3 A. Correct. That's my recollection.</p> <p>4 Q. And so you had a fee agreement with Amy as</p> <p>5 well, right?</p> <p>6 MR. SPIELMAN: Objection, form.</p> <p>7 A. It would have been as co-trustees.</p> <p>8 Q. (By Ms. Bayless) So you had one fee agreement</p> <p>9 with Anita and Amy?</p> <p>10 MR. REED: Form.</p> <p>11 MR. SPIELMAN: Objection, form.</p> <p>12 A. That should have been the -- yes.</p> <p>13 MR. SPIELMAN: When are you asking? I</p> <p>14 mean, in the production there is a fee agreement between</p> <p>15 the law firm and Anita for a period of time.</p> <p>16 MR. MENDEL: Right.</p> <p>17 MR. SPIELMAN: And then after Nelva's</p> <p>18 death there is a fee agreement between the firm and Amy</p> <p>19 and Anita as co-trustees.</p> <p>20 MR. MENDEL: Right.</p> <p>21 Q. (By Ms. Bayless) We'll just go over the fee</p> <p>22 agreements at some point.</p> <p>23 A. Okay.</p> <p>24 Q. I got sidetracked.</p> <p>25 MS. BAYLESS: But, yes, that was my</p>	<p>1 Q. And I guess Nelva gave you permission to talk</p> <p>2 with her?</p> <p>3 A. Yes.</p> <p>4 Q. Did you have to ask that permission every time</p> <p>5 you talked with her, or you --</p> <p>6 A. No. She had a power of attorney that allowed</p> <p>7 me to talk. But just as a matter of practice, we</p> <p>8 would -- like talking to the broker or whatever, unless</p> <p>9 I had it written down in my file that I had permission</p> <p>10 to talk to the CPA or from the client, we just made it a</p> <p>11 practice to call the client and ask.</p> <p>12 Q. And this power of attorney that Anita had had,</p> <p>13 had she ever used that for any purpose that you know of?</p> <p>14 A. I don't recall.</p> <p>15 Q. She hadn't talked with you about using it?</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. Okay. All right. So look on July 20th.</p> <p>18 A. What page?</p> <p>19 Q. I'm sorry. 1197. We're now working from the</p> <p>20 back forward.</p> <p>21 A. Okay.</p> <p>22 Q. So on July 20th at 11:58, it says that Anita</p> <p>23 called for you on behalf of her mother, Nelva, and wants</p> <p>24 you to give her a call. And then the entry above it</p> <p>25 is -- appears to be notes from your discussion -- you're</p>

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<p>1 calling her back, right?</p> <p>2 A. That does appear, yes.</p> <p>3 Q. So at this point we have reached the stage</p> <p>4 where Carl is ill. You didn't know that until you had</p> <p>5 this conversation with Anita. Is that right?</p> <p>6 MR. REED: Object to form.</p> <p>7 A. I don't recall.</p> <p>8 Q. (By Ms. Bayless) Okay. All right. So,</p> <p>9 anyway, it says you returned the call to Nelva's</p> <p>10 daughter Anita and asked how she was doing.</p> <p>11 "She" means Nelva?</p> <p>12 A. Of course, yes.</p> <p>13 Q. And she, apparently Anita, reported that "she</p> <p>14 is feeling okay. She has cancer on the liver, but it's</p> <p>15 the lungs that she has issues with that keep her</p> <p>16 treatment of the liver cancer from being able to handle</p> <p>17 the treatments."</p> <p>18 Do you recall Nelva coming into your</p> <p>19 office and having any breathing issues that you could</p> <p>20 observe?</p> <p>21 MR. REED: Form.</p> <p>22 A. At any time?</p> <p>23 Q. (By Ms. Bayless) Well, let's talk about up</p> <p>24 through this period.</p> <p>25 A. Because I don't recall what time frame it was.</p>	<p>1 Q. And then the other issues are that he was the</p> <p>2 first agent under the power of attorney and that he's on</p> <p>3 the medical power of attorney for Nelva and that he's a</p> <p>4 co-trustee with Anita.</p> <p>5 So just from hearing that information, did</p> <p>6 you respond, that you recall, to Anita?</p> <p>7 MR. REED: Objection, form.</p> <p>8 A. It says what my response was right here.</p> <p>9 Q. (By Ms. Bayless) Okay. Well, let's look at</p> <p>10 it. So skip -- well, first there's an interim paragraph</p> <p>11 that says -- I assume SIL is sister-in-law, "comments</p> <p>12 from" --</p> <p>13 A. Probably.</p> <p>14 Q. Because it says Carl's wife in parentheses.</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- to Nelva was that she wished she would go on</p> <p>17 and substitute.</p> <p>18 A. That's probably "distribute." It's my typing.</p> <p>19 Q. Okay. "Distribute Elmer's share of the trust</p> <p>20 since Carl had said he wanted her to have something; and</p> <p>21 if Carl dies, then his daughter would get it all."</p> <p>22 Now, this is what Anita told you that she</p> <p>23 is claiming that Nelva told her that Drina said, Carl's</p> <p>24 wife?</p> <p>25 A. I guess so.</p>
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<p>1 There was a time where I recall her having an oxygen</p> <p>2 tank.</p> <p>3 Q. Okay.</p> <p>4 A. But I don't remember what time frame that was.</p> <p>5 Q. Okay. And then she talks about -- it says</p> <p>6 "worse over." I'm not sure what that means, but "worse</p> <p>7 over, her brother Carl has encephalitis and is in the</p> <p>8 hospital. Three weeks now."</p> <p>9 And then she talks about concern. She</p> <p>10 says she is concerned for several reasons.</p> <p>11 Is "she" Nelva, or is "she" Anita?</p> <p>12 A. I don't recall. It's difficult to say based on</p> <p>13 how it's typed.</p> <p>14 Q. Okay. So first concern is what the outcome for</p> <p>15 the brother is going to be or if he will recover. And</p> <p>16 then she talks about that being a problem because</p> <p>17 they're not certain his wife will not take off with the</p> <p>18 money and actually use it for his -- or actually use it</p> <p>19 for his care.</p> <p>20 So what you're saying there -- I'm not</p> <p>21 sure from the way it's typed, but I assume what you're</p> <p>22 saying there is she expressed concern that they didn't</p> <p>23 want Carl's wife to have access -- it says "the money."</p> <p>24 Does that mean trust?</p> <p>25 A. I don't know.</p>	<p>1 Q. So none of this is coming to you directly from</p> <p>2 Nelva, first of all, right?</p> <p>3 A. Not in this conversation.</p> <p>4 Q. Okay. And none of it is coming to you from</p> <p>5 Carl's wife. You didn't hear from her, right?</p> <p>6 A. No.</p> <p>7 Q. Have you ever had any conversation with Drina?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Okay. So then your suggestion -- you said, "I</p> <p>10 suggested the following but that it" would be -- "but</p> <p>11 that it needed to come from Nelva."</p> <p>12 A. Okay. Sorry. Go ahead.</p> <p>13 Q. You probably know what I was going to ask you.</p> <p>14 A. That's okay.</p> <p>15 Q. So why did you feel the need to tell her that</p> <p>16 it needed to come from Nelva?</p> <p>17 A. Well, no. That Nelva had to make the changes.</p> <p>18 That no one else could effectively change anything other</p> <p>19 than Nelva.</p> <p>20 Q. And was Anita giving you the impression that</p> <p>21 she thought she could make the change?</p> <p>22 A. No. It's just this would be something that</p> <p>23 Nelva would have to do on her own.</p> <p>24 Q. Okay. Then it says, "I, appoint successor</p> <p>25 trustee, changing Carl out to another co-trustee with</p>

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<p>1 Anita."</p> <p>2 A. Yes.</p> <p>3 Q. Now, wasn't there already a mechanism in the</p> <p>4 trust if one of the co-trustees couldn't serve?</p> <p>5 A. Maybe. It depends on how it was worded. I</p> <p>6 don't recall.</p> <p>7 Q. Okay. And when you answered this question, you</p> <p>8 didn't go look at it first?</p> <p>9 A. No, no.</p> <p>10 Q. You were just pointing out that that's</p> <p>11 something that could be dealt with?</p> <p>12 A. Correct.</p> <p>13 Q. All right. And then, No. 2, you say, "PAT QBD</p> <p>14 so the co-trustee can flip Carl's trust into a</p> <p>15 supplemental needs trust, have the co-trustees have the</p> <p>16 right to name their own successor trustee of Carl's</p> <p>17 trust should he fully recover."</p> <p>18 A. Correct.</p> <p>19 Q. Explain that to me.</p> <p>20 A. So if it's not the way the trust is drafted but</p> <p>21 the way the QBD was done, a trust protector was added in</p> <p>22 that allows the trustee of that trust to flip it into a</p> <p>23 supplemental needs so that Carl can qualify for</p> <p>24 government benefits and not be required to spend down</p> <p>25 the trust. But if he makes a full recovery, the right</p>	<p>1 Q. Flip Carl's trust into a supplemental needs</p> <p>2 trust and have the co-trustees have the right to name</p> <p>3 their own successor.</p> <p>4 A. Carl didn't have a trust because Nelva is still</p> <p>5 alive.</p> <p>6 Q. Right.</p> <p>7 A. So I guess the answer to your question would</p> <p>8 be, no, Nelva couldn't do that because there was no</p> <p>9 trust for Carl.</p> <p>10 Q. There couldn't be one set up?</p> <p>11 A. Well, that is a totally different -- I mean, I</p> <p>12 suppose she could do one, but that was not the</p> <p>13 discussion.</p> <p>14 Q. Okay. And since Carl had these issues now,</p> <p>15 rather than when Nelva dies, wouldn't it make sense to</p> <p>16 be looking at some kind of a trust arrangement at the</p> <p>17 present, I mean on this date as opposed to what was</p> <p>18 going to happen when Nelva died?</p> <p>19 A. I'm sorry. For clarification purposes, are you</p> <p>20 asking me should Nelva have set up a trust for her son,</p> <p>21 who was sick?</p> <p>22 Q. I'm asking you if that was discussed.</p> <p>23 A. No.</p> <p>24 Q. And it was not discussed because Anita wasn't</p> <p>25 trying to go there, right?</p>
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<p>1 for them to name their own successor, they could turn</p> <p>2 around and name Carl as his own trustee again.</p> <p>3 Q. So when you say the co-trustee can flip Carl's</p> <p>4 trust into a supplemental needs trust, that is some kind</p> <p>5 of a change that would be provided -- you were</p> <p>6 suggesting to provide to -- when you say the</p> <p>7 co-trustee --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- you're meaning somebody who would serve with</p> <p>10 Anita? Are you talking about Anita?</p> <p>11 A. Or whoever was the co-trustee. It didn't</p> <p>12 matter who the co-trustee was.</p> <p>13 Q. At this point were you talking about something</p> <p>14 that would only take effect on Nelva's death?</p> <p>15 A. Correct.</p> <p>16 Q. So it couldn't be Nelva. It would have to be</p> <p>17 whoever was supposed to become the trustee after her</p> <p>18 death?</p> <p>19 A. I'm not sure I understand your question. What</p> <p>20 couldn't be Nelva?</p> <p>21 Q. One of the co-trustees or the trustee. At this</p> <p>22 point Nelva was the only trustee, right?</p> <p>23 A. That's correct.</p> <p>24 Q. So you're saying Nelva couldn't do this?</p> <p>25 A. Couldn't do what?</p>	<p>1 MR. REED: Objection, form.</p> <p>2 MR. SPIELMAN: Form.</p> <p>3 A. I have no idea where she was trying to go. It</p> <p>4 just was not discussed, or at least I didn't document it</p> <p>5 as such.</p> <p>6 Q. (By Ms. Bayless) Okay. So the issues that you</p> <p>7 were dealing with in your suggestions were issues that</p> <p>8 would happen sometime in the future?</p> <p>9 A. That's correct.</p> <p>10 Q. All right. And you just didn't talk about</p> <p>11 anything that could be done at the moment?</p> <p>12 A. That's correct, not that I recall.</p> <p>13 Q. Okay. Then in No. 3 you did say that "Nelva</p> <p>14 can make unlimited gifts to Carl of doctor bills paid</p> <p>15 directly to the provider doctor or hospital gift</p> <p>16 tax-free"?</p> <p>17 A. Correct.</p> <p>18 Q. So, in other words, as long as she paid the</p> <p>19 bills directly, there wouldn't be a gift tax</p> <p>20 implication?</p> <p>21 A. Correct.</p> <p>22 Q. And did Anita have a response to that</p> <p>23 suggestion that you recall?</p> <p>24 A. I don't recall.</p> <p>25 Q. This thing that you were suggesting, going back</p>

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1 to 2 again -- I'm sorry to hover over 2.
 2 **A. That's okay.**
 3 Q. The suggestion that if Carl got better, the
 4 co-trustees would have a right to name their own
 5 successor trustee so that they could give it back to
 6 Carl basically, that was going to be -- the arrangement
 7 you were suggesting, it would be dependent on them being
 8 willing to do that, right?
 9 **A. Well, I suppose that whoever -- the co-trustees**
 10 **would have to be willing to do that.**
 11 Q. Okay.
 12 **A. But there's also other mechanisms where he**
 13 **could get back in.**
 14 Q. Okay. All right.
 15 **A. That's just the path of least resistance.**
 16 Q. Okay. Do you recall whether Anita had a
 17 reaction to that?
 18 **A. I do not.**
 19 Q. Okay. Then the fourth one is just about
 20 updating the medical power of attorney to add Anita and
 21 take Carl off.
 22 Now, Carole lives in Houston, right?
 23 **A. Yes. I believe that's correct.**
 24 Q. So why would you be thinking about putting a
 25 medical power of attorney, giving that right to Anita

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1 when she lives in Victoria?
 2 **A. I have no reason, rationale. At that point I**
 3 **don't ...**
 4 Q. Okay. You weren't promoting that one way or
 5 the other?
 6 **A. Huh-uh.**
 7 Q. It's just you were --
 8 **A. It could be any of the kids.**
 9 Q. You were talking to Anita. All right.
 10 And you said, "I recommended these be done
 11 in a timely fashion since Ms. B is dealing with her own
 12 health issues."
 13 Now, how did you leave it with Anita in
 14 that conversation?
 15 **A. I don't recall.**
 16 Q. All right. So you had told her, though, that
 17 Nelva needed to make these changes?
 18 **A. Yeah. No one else stood in the shoes to be**
 19 **able to do that. So that was something that was**
 20 **obvious --**
 21 Q. Did you say --
 22 **A. -- to me, not her.**
 23 Q. Did you say, Go talk to Nelva? Or did you say,
 24 Have Nelva call me?
 25 **A. Well, I would not make any change without**

232

1 **Nelva.**
 2 Q. Okay. But you don't remember how that was left
 3 with Anita?
 4 **A. I do not.**
 5 Q. Look at page 1196.
 6 **A. Uh-huh.**
 7 Q. The entry at the very bottom is a July 28th,
 8 2010 entry.
 9 **A. Uh-huh.**
 10 Q. And it's Summer's entry; and it talks about
 11 Nelva having paid for a bill that she had already paid
 12 for, right? I mean, read that and see if I'm
 13 characterizing it properly.
 14 **A. That's what it looks like.**
 15 Q. Do you know whether that was unusual or whether
 16 that had happened before with Nelva?
 17 **A. No.**
 18 Q. Okay.
 19 **A. I wouldn't even have seen that unless she --**
 20 **well, she says she e-mailed me. So I probably saw it in**
 21 **an e-mail.**
 22 Q. Then if you notice, there is no other time
 23 entry until February 15th, 2011.
 24 MR. REED: Objection, form.
 25 Q. (By Ms. Bayless) Do you see that? I say time

233

1 entry. Notes/History entry.
 2 **A. Yeah. Notes and history. So it may have been**
 3 **in another section of that.**
 4 Q. What's the other section? Oh, you mean of the
 5 things that have been produced?
 6 **A. Yeah. I mean, I don't --**
 7 Q. Yeah, I can tell you there isn't. But feel
 8 free. Look at it and see if you can find anything that
 9 covers the time period between July 28, 2010 and
 10 February 28th, 2011.
 11 MR. REED: You're asking just strictly for
 12 whether there's any notes?
 13 MS. BAYLESS: Right, because these are out
 14 of order.
 15 MR. REED: Are you saying, though, there's
 16 no billing entries for that time period; or you're just
 17 saying notes?
 18 MS. BAYLESS: Right now --
 19 THE WITNESS: No, there is.
 20 MS. BAYLESS: -- I'm talking about notes.
 21 Q. (By Ms. Bayless) Okay. Did you find
 22 something?
 23 **A. Oh, wait. That's 2011. February, March,**
 24 **March, March. Here's 2-14-11. So that's between those**
 25 **two dates, 2-14-11.**

<p style="text-align: right;">234</p> <p>1 Q. All right. Let's say January 1st.</p> <p>2 A. Here's January 2011, January 6th, January 3rd,</p> <p>3 January 3rd. December, December, December of 2010.</p> <p>4 They're here. They're just in a different</p> <p>5 section.</p> <p>6 Q. Okay. What pages are you looking at?</p> <p>7 MR. REED: Exhibit 18.</p> <p>8 A. Exhibit 18, 002182. It's just the way they</p> <p>9 were printed because the system is not very friendly to</p> <p>10 printing.</p> <p>11 Q. (By Ms. Bayless) I'm sorry. 21 -- what was</p> <p>12 the number?</p> <p>13 A. 002182.</p> <p>14 MR. REED: Exhibit 18.</p> <p>15 Q. (By Ms. Bayless) 0021 -- there is no -- it's</p> <p>16 Exhibit 18, but what about the number of the page?</p> <p>17 A. 15 of 38, if that helps.</p> <p>18 Q. Oh, 15. You're not looking at the Bates</p> <p>19 number. I see.</p> <p>20 A. Well, the Bates number is 002182.</p> <p>21 Q. All right. So that picks up -- there's</p> <p>22 December. Okay. Looking at -- this is on Exhibit 18.</p> <p>23 These are the materials that were produced yesterday.</p> <p>24 In looking at 2183, does that seem to be</p> <p>25 where the gap -- where it fills in after July 28th,</p>	<p style="text-align: right;">236</p> <p>1 move over to the new one, everything got kind of ...</p> <p>2 Q. Formatted weird and all that?</p> <p>3 A. Yeah.</p> <p>4 Q. So between July 28, 2010, which was the entry</p> <p>5 about Nelva paying again for a bill she had already</p> <p>6 paid --</p> <p>7 A. Uh-huh.</p> <p>8 Q. -- the next entry is September 2nd, 2010,</p> <p>9 right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. So there is no entry about conversations that</p> <p>12 you might have had with Nelva about the August 25th,</p> <p>13 2010 QBD, right?</p> <p>14 A. I don't see any.</p> <p>15 Q. So we can't tell from looking at your notes --</p> <p>16 A. Well, you can't tell from looking at the Act!</p> <p>17 notes.</p> <p>18 Q. At these notes?</p> <p>19 A. Correct.</p> <p>20 Q. -- who you talked with after July 20th when you</p> <p>21 talked to Anita.</p> <p>22 A. I'm not sure why that is.</p> <p>23 Q. Okay.</p> <p>24 A. Between -- I don't know.</p> <p>25 Q. And you're sure that you pulled all of these,</p>
<p style="text-align: right;">235</p> <p>1 2010?</p> <p>2 A. Well, if you look up at the top on Exhibit 17,</p> <p>3 on page Bates No. 001196.</p> <p>4 Q. Okay.</p> <p>5 A. There's July 2010, July 29th, 2010,</p> <p>6 August 2010, August 2010, August 2010, September 2010.</p> <p>7 Q. Well, okay. July 2004, then July 2010 through</p> <p>8 August 2010, those are all field changes where it talks</p> <p>9 about some marital status change or something like that.</p> <p>10 That's not meeting notes, right?</p> <p>11 A. There's a September one at the top that says a</p> <p>12 call came in from Nelva --</p> <p>13 Q. Okay.</p> <p>14 A. -- regarding Carole, "who wants \$20,000</p> <p>15 donation against her heritage."</p> <p>16 Q. Okay. So other than the -- it does look like</p> <p>17 the September meeting relates to an interaction with the</p> <p>18 client. The others are just somehow correcting</p> <p>19 something in the database?</p> <p>20 A. Yeah. When we flip it over from one side to</p> <p>21 the other -- and we did -- there was one time where we</p> <p>22 had a change in the software.</p> <p>23 Q. Uh-huh.</p> <p>24 A. It was the same software, but we hadn't kept</p> <p>25 updating it. And so when we overhauled it and had to</p>	<p style="text-align: right;">237</p> <p>1 right?</p> <p>2 A. Well, this was done in 2012.</p> <p>3 Q. Right.</p> <p>4 A. And this was pulled by my assistant.</p> <p>5 Q. As far as you know, she pulled everything?</p> <p>6 A. Yeah.</p> <p>7 Q. You weren't telling her only pull these dates?</p> <p>8 A. No.</p> <p>9 Q. So that does seem unusual, doesn't it, that</p> <p>10 this --</p> <p>11 THE WITNESS: Do you have some? Yeah.</p> <p>12 A. That's why. Remember when I said we don't</p> <p>13 always make notes in here. If I have notes on paper,</p> <p>14 that's in the file.</p> <p>15 Q. (By Ms. Bayless) Okay.</p> <p>16 A. So it's either here or there.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MR. REED: Trust review meeting, which is</p> <p>19 V&F 687, dated July 30th.</p> <p>20 MS. BAYLESS: What was the number, again?</p> <p>21 MR. REED: 687.</p> <p>22 MS. BAYLESS: I think I have that here.</p> <p>23 Hang on.</p> <p>24 MR. REED: Can we go off the record while</p> <p>25 we're looking at that?</p>

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<p>1 MS. BAYLESS: Sure.</p> <p>2 (Recess taken.)</p> <p>3 (Exhibits 19 and 20 marked.)</p> <p>4 Q. (By Ms. Bayless) Okay. So as you indicated</p> <p>5 earlier, sometimes you made notes in a way other than on</p> <p>6 this Notes/History computer database, right?</p> <p>7 A. Uh-huh. That's correct.</p> <p>8 Q. So you're looking at what has been marked as</p> <p>9 Exhibit 19. First of all, what is that form?</p> <p>10 A. This is a form that I would use sitting in a</p> <p>11 meeting with Nelva.</p> <p>12 Q. Is it supposed to be -- it's sort of a</p> <p>13 check-off of what revisions or what the task is to be?</p> <p>14 A. Correct.</p> <p>15 Q. Was that a standard Vacek form?</p> <p>16 A. Yes.</p> <p>17 Q. When it says "PM trust review meeting," what</p> <p>18 does "PM" mean?</p> <p>19 A. Do I really have to tell you?</p> <p>20 Q. You really do. I think I've seen too many</p> <p>21 initials.</p> <p>22 A. It's postmortem.</p> <p>23 Q. Postmortem. Okay. All right.</p> <p>24 A. I didn't say I liked it. That's what it was</p> <p>25 when I got there.</p>	<p>1 A. No.</p> <p>2 Q. And there is no indication on the notes and</p> <p>3 history around this time period that there even was a</p> <p>4 meeting?</p> <p>5 A. No.</p> <p>6 Q. Or on this date that there even was a meeting.</p> <p>7 Now, when it says "signing date and</p> <p>8 time" --</p> <p>9 A. That's what was scheduled.</p> <p>10 Q. Okay. So the documents that you're talking</p> <p>11 about on this form were going to be signed --</p> <p>12 A. On that date.</p> <p>13 Q. -- on August 4th?</p> <p>14 A. Uh-huh.</p> <p>15 Q. That's not actually what happened, right?</p> <p>16 A. I don't know. I'd have to look at the</p> <p>17 documents to see when they were actually signed.</p> <p>18 Q. Is this referring, you believe, to Exhibit 6?</p> <p>19 A. Could be. I mean, it says "PAT QBD," and</p> <p>20 that's what Exhibit 6 is. So I would assume yes.</p> <p>21 Q. And it's after the June 15th, so there's not</p> <p>22 one in between, right?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. So it just didn't end up happening then.</p> <p>25 Do you know if there was some difficulty that made the</p>
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<p>1 Q. Okay. Postmortem.</p> <p>2 A. So somebody has died.</p> <p>3 Q. But at this point the only person who's died is</p> <p>4 Elmer?</p> <p>5 A. Elmer, uh-huh.</p> <p>6 Q. So how can you tell -- I see where it says the</p> <p>7 time of the meeting and the date of the meeting.</p> <p>8 There's no indication of how long the meeting has gone</p> <p>9 on, is there?</p> <p>10 A. No.</p> <p>11 Q. Can you tell from this who is in the meeting?</p> <p>12 A. I cannot.</p> <p>13 Q. So it's about Nelva; but it doesn't indicate</p> <p>14 that Nelva is the only person there, right?</p> <p>15 A. No.</p> <p>16 Q. And this was on July 30th. So you don't know</p> <p>17 from looking at this whether Nelva drove herself there,</p> <p>18 right?</p> <p>19 A. I do not recall.</p> <p>20 Q. So what was the purpose of this form?</p> <p>21 A. To assess where we were at and what documents</p> <p>22 were going to be prepared.</p> <p>23 Q. And do you know why -- there's nothing on here</p> <p>24 to indicate why this meeting was called, right, like who</p> <p>25 called it?</p>	<p>1 signing not happen on August 4th? Was there more</p> <p>2 revision of the documents than you expected, or do you</p> <p>3 know?</p> <p>4 MR. REED: Object to form.</p> <p>5 A. I do not know. There's nothing that indicates</p> <p>6 to me that any of that is true or not true.</p> <p>7 Q. (By Ms. Bayless) Okay. And there's nothing on</p> <p>8 the notes and history about anything until</p> <p>9 September 2nd, which is after it was already signed,</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. And, in fact, the entry on September 2nd is</p> <p>13 really an entry about Carole wanting what's called a</p> <p>14 \$20,000 donation against her heritage. I assume that's</p> <p>15 an advancement?</p> <p>16 MR. REED: Form.</p> <p>17 A. I guess so.</p> <p>18 Q. (By Ms. Bayless) So it really didn't have</p> <p>19 anything to do with the document?</p> <p>20 A. No.</p> <p>21 Q. Okay. Look at Exhibit 20, if you would.</p> <p>22 My real question -- we're about to get to</p> <p>23 this in the notes, in the notes and history. If you</p> <p>24 look at page 1195 of Exhibit 17 -- put 20 to the side --</p> <p>25 sorry. Okay.</p>

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1 **A. 11 what?**
2 **Q.** 1195.
3 **A. Uh-huh.**
4 **Q.** Actually I gave you the wrong page number.
5 It's 1194. Look at 1194.
6 You see that -- it looks to me like this
7 entire Exhibit 20 is in the Notes/History on page 1194
8 under this same date of October 7, 2010.
9 **A. Okay.**
10 **Q.** So do you have any idea why -- I mean, these
11 were both produced. Do you have any idea why Exhibit 20
12 is somehow independent of the notes and history but it's
13 also included in the notes and history?
14 **A. Yeah.**
15 **Q.** And why is that?
16 **A. Because this does not have spell-check.**
17 **Sometimes I type it into Word and throw it in there so**
18 **it will not have a bunch of typos.**
19 **Q.** Okay.
20 **A. That happens, or I'll throw in my actual**
21 **e-mail. If you look, sometimes you'll see some e-mails.**
22 **You can actually copy and paste an e-mail in there too.**
23 **Q.** Okay.
24 **A. And sometimes I'll do that rather than just**
25 **retyping it.**

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1 **Q.** Okay. So was there a reason why you wanted
2 Exhibit 20 to be spell-checked?
3 MR. REED: Objection, form.
4 **A. No. I mean, just -- it depends on where I**
5 **typed it. Depends on where I was when I had the**
6 **conversation and I documented it. Maybe I wasn't at the**
7 **office and have -- or BPN'd in. It could be a litany of**
8 **reasons.**
9 **Q.** (By Ms. Bayless) All right. So it is -- you
10 just pasted it into the notes?
11 **A. Of course, yes.**
12 **Q.** Okay. So going back to page 1195.
13 **A. Okay.**
14 **Q.** On September 2nd you drafted the distribution
15 letter for Carole's request, right? Well, Summer did.
16 **A. I'm sorry. Where are you?**
17 **Q.** I'm down at the bottom, September 2nd.
18 **A. Of?**
19 **Q.** 2010?
20 **A. What page?**
21 **Q.** 1195. So you dealt with Nelva's request about
22 Carole wanting an advance, right?
23 **A. Okay.**
24 **Q.** And then the next entry is Anita is calling --
25 this is on October 6th, 2010. Anita is calling. And it

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1 says "re questions about power of attorney" -- I'm
2 assuming POA is power of attorney?
3 **A. Uh-huh.**
4 **Q.** -- "and gifting." It says, "Mom gave bro" --
5 so I assume that's Carl -- "25,000 instead of paying
6 medical bills directly. She has questions about the POA
7 clause in the living trust. Please call."
8 Did I read that right?
9 **A. Down here?**
10 **Q.** Yes.
11 **A. Okay.**
12 **Q.** So here we have Anita calling to ask questions
13 about the power of attorney. Is she talking about a
14 power of attorney that she held, or do you know?
15 **A. I don't know.**
16 **Q.** And gifting. And she talked with Summer, but
17 it looks like you called her back, right, because if you
18 look at the next entry, you returned Anita's call.
19 **A. Uh-huh. That's correct.**
20 **Q.** Okay. Why don't you read it, and then we'll
21 talk about it.
22 **A. "Anita is concerned about her mom."**
23 **Q.** You can just read it to yourself.
24 **A. Sorry. Thank you.**
25 **Q.** That's all right. It's a long entry. So I

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1 just wanted you to familiarize yourself with it.
2 **A. Okay.**
3 **Q.** So this appears to be an entry in which
4 Anita -- you're recording a call that you made,
5 returning Anita's call; and she is concerned that her
6 mother has been sick and in the hospital with pneumonia.
7 **A. Okay.**
8 **Q.** And her compromised lungs and that her other --
9 she mentioned to her other sister that she's getting
10 stressed out over the pressure she's getting from the
11 wife, Carl's wife, that is in the hospital.
12 Do you know who the other sister was? Did
13 she tell you who --
14 **A. She may have. I don't recall.**
15 **Q.** Okay. So this wasn't even a conversation that
16 she had with Nelva. This was one she was relaying to
17 you that Nelva had had with another sister, right?
18 **A. I suppose so.**
19 **Q.** Isn't that how you read it? I'm not trying
20 to ...
21 **A. It's hard to tell.**
22 **Q.** And she was also concerned because her mother
23 had sent this check to Carl that had bounced, and she
24 hadn't made sure that money was in the account and that
25 her mother didn't even remember calling the broker to

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<p>1 tell him that she needed the money transfer. 2 Is that what she told you? 3 A. That's what it appears to say, yes. 4 Q. Okay. And your suggestion was that Nelva 5 should resign and Anita should take over, or you gave 6 her that as an option? 7 A. It says that I "suggested that if Mom is 8 willing to resign, that it's the best option for her to 9 accept the responsibility for now." 10 Q. Okay. And so the whole resignation discussion 11 was initiated from this conversation, right? 12 A. I don't recall. 13 Q. Well, Nelva hadn't contacted you and said, I 14 want to resign as trustee? 15 A. Not that I recall. 16 Q. Okay. And there aren't any entries in any of 17 the notes or the history or pieces of paper like 18 Exhibit 20 that you have that say that, right? 19 A. Not that I have seen. 20 Q. And did Anita respond to the suggestion that 21 her mother resign? 22 A. I don't recall. 23 Q. Was there any indication from Anita that the 24 resignation was a good idea before you raised it? 25 A. I don't recall.</p>	<p>1 whether Carole, who was in Houston, could be helpful? 2 A. I don't recall. The only thing I can -- I must 3 have had at least some conversation because I listed her 4 as -- or suggested or it was going to be done that 5 Carole was the first person on healthcare documents. 6 And that would be an obvious choice since she's local. 7 Q. You're looking at Exhibit 19? 8 A. Yes, that's correct. 9 Q. On the second page of that? Is that what 10 you're talking about? 11 A. Yes. 12 Q. And I think there had been some discussion 13 earlier about Carole had been helpful when Elmer was 14 ill. 15 A. That's correct. 16 Q. And Nelva appreciated that, right? 17 A. That's correct. 18 Q. So did Anita ever raise the issue about Carole 19 being involved in these discussions? 20 A. In these discussions about what? 21 Q. About what to do with this pressure that her 22 mother was feeling, where you were suggesting the 23 resignation. 24 A. I don't recall. I have no idea. 25 Q. Okay. So at some point in time it was decided</p>
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<p>1 Q. And then in this entry -- we're still talking 2 about this 10-6-2010 entry on page 1195 of Exhibit 17 -- 3 there's a paragraph that says that "the best option for 4 her to accept the responsibility" -- is for her to 5 accept the responsibility now "and that she can open an 6 account in Mom's name alone, with her as a cosigner, and 7 POD to the trust" -- what is POD? 8 A. Payable on death. 9 Q. -- "to the trust so that Mom could have the 10 freedom to write checks but that it will be monitored." 11 A. Correct. 12 Q. Is this ultimately the arrangement that was 13 being suggested? Is this ultimately what resulted in 14 the account that Carole was a signer on? 15 MR. REED: Object to form. 16 A. I have no idea. 17 Q. (By Ms. Bayless) Okay. 18 A. I can only make recommendations. 19 Q. And this -- but during this time, you know that 20 Anita was living in Victoria, right? 21 A. I believe that's correct, yes. 22 Q. Okay. Had you ever had any contact with 23 Carole, to speak of? 24 A. I don't recall. 25 Q. So did you ever raise any questions about</p>	<p>1 that a conference call was going to take place, right? 2 A. Yes. 3 Q. And tell me what you remember about how that 4 developed, if you would. 5 A. As I recall, the first thing was the bounced 6 check of \$25,000, which I did believe was out of 7 character for Ms. Brunsting. But people have bounced 8 checks before, so it's not anything that I would be 9 overly concerned about. 10 But I believe there were two -- or another 11 call from Ms. Brunsting asking me to take Carl off of 12 things. 13 And I said we had already done that. 14 We're good. It's covered. So that concerned me, that 15 she was asking me to make changes that we had already 16 made. 17 Q. Okay. Let's look at page 1194 of Exhibit 17. 18 I think this may be the notes of the conversation you're 19 talking about you had with Nelva. 20 A. Is this Exhibit 20? I mean, it's the same 21 exact thing, correct? 22 Q. Yeah. Actually it is, and you can probably 23 read it easier on Exhibit 20. 24 A. Yeah. 25 Q. So Exhibit 20 are the notes that you made about</p>

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<p>1 an October 7th, 2010 conversation with Nelva. 2 So she called you? 3 A. I don't know. 4 Q. Okay. 5 A. It says "Call to Nelva Brunsting by CLF," so 6 I'm assuming I called her. 7 Q. So maybe this was prompted by the conversation 8 you had with Anita, do you think? 9 MR. REED: Objection, form. 10 A. Most likely. 11 Q. (By Ms. Bayless) Okay. So you ask her if it 12 was okay to talk because she had a caregiver coming in 13 to help her? 14 A. Correct. 15 Q. So you wanted to make sure it was private? Is 16 that why? 17 A. Correct. 18 Q. And that's when she told you that the person 19 that was there was Carole? 20 A. Correct. 21 Q. And you told her that Anita had called, and she 22 confirmed that she had been in the hospital. She didn't 23 understand why Edward Jones didn't transfer the funds. 24 So she thought she had contacted them, I 25 guess.</p>	<p>1 A. Because I had just asked Ms. Brunsting if she 2 was -- if it was okay to talk. She said, yes, she was 3 private but that Carole was there. But I didn't realize 4 that there was someone else on the phone. 5 Q. Did you have an impression that Nelva realized 6 that Carole was on the phone? 7 A. I didn't have any impression either way. It 8 just surprised me. 9 Q. Okay. She didn't act surprised when Carole 10 started talking? 11 A. (Witness shakes head negatively.) 12 Q. Okay. So you discussed then with both Nelva 13 and Carole this Edward Jones issue and the bounced 14 check, right? 15 A. Yes. It appears that I did. 16 Q. So you continued to have the conversation. I 17 assume Nelva was fine with that? 18 A. Well, she would have had to tell me not to. 19 Q. Okay. And so this is the conversation where 20 she said Carl was sick and he needed to be taken off of 21 his appointments and her estate planning documents. 22 And you knew that that had already 23 occurred, right? 24 A. Correct. 25 Q. I assume -- when you corrected her and told her</p>
251	253
<p>1 A. I guess. 2 Q. Okay. Did you sense confusion on her part when 3 you talked with her? 4 MR. REED: Objection, form. 5 A. She sounded confused about why Edward Jones did 6 not transfer funds. 7 Q. (By Ms. Bayless) Okay. And have you ever had 8 a conversation that you know of with -- I've forgotten 9 his name now but the guy who was at Edward Jones that 10 was her accountant? 11 A. Doug. 12 Q. Doug, yeah. 13 A. I probably did at some point. 14 Q. About this bounced check, though? 15 A. Oh, no. That's not something I would get 16 involved with. 17 Q. Okay. All right. It says that abruptly -- 18 although I'm not sure I think much of your spell check. 19 A. Oh, did it -- 20 Q. It missed abruptly. Abruptly a voice came 21 through on the line, and that was Carole, right? 22 A. I didn't know it was Carole at first. But, 23 yes, then I realized who it was when she started 24 talking. 25 Q. Okay.</p>	<p>1 that that had already been done, did that seem to 2 confuse her? 3 A. No. She said, Oh, that's right. 4 Q. Okay. So that was more of something that she 5 just seemed to have forgotten? 6 A. Yes. 7 Q. Did you ever have occasion to speak with Nelva 8 where she didn't remember that Elmer had died? 9 A. No. 10 Q. I see in the notes that you talked to her about 11 if she wanted to resign, she could name somebody to 12 replace her. 13 A. Uh-huh. 14 Q. Prior to this conversation, had you ever had a 15 discussion with Nelva about her resigning as trustee? 16 A. I don't recall. 17 Q. So you might have? 18 A. Might have. 19 Q. Have you ever had a discussion with Nelva about 20 that before you had the conversation with Anita where 21 Anita was talking about she was pressured? 22 A. I might have. I don't recall when 23 specifically. 24 Q. Do you ever recall a time prior to this 25 conversation when Nelva asked you if she could resign?</p>

1 **A. I don't recall.**

2 Q. Then in this conversation -- and maybe it was
3 because Carole was on the phone --

4 MS. CAROLE BRUNSTING: Actually I dropped
5 off when I realized it was a confidential call.

6 MS. BAYLESS: All right.

7 **A. I wouldn't have known that unless I hear a
8 click.**

9 Q. (By Ms. Bayless) Okay. I'm not sure --

10 MS. CAROLE BRUNSTING: I just answered at
11 the same time as Mother did.

12 Q. (By Ms. Bayless) All right. But in this
13 conversation -- and maybe Carole wasn't on the phone any
14 longer. But for whatever reason, you suggested that
15 Carole could be on an account with her since she was
16 local?

17 **A. Correct.**

18 Q. Is that the first time that you recall the
19 issue of Carole being on a convenience account for her
20 came up?

21 **A. Could be.**

22 Q. Actually you do say down here that Carole
23 abruptly hung up the phone.

24 **A. Okay. Well, see, I didn't remember that.**

25 Q. Okay. Let's see. Let's read it together here.

1 **A. That's correct.**

2 Q. You were specifically referring to having a
3 family discussion about whether she should resign as
4 trustee?

5 **A. That's correct.**

6 Q. And you weren't suggesting that it was
7 anybody's decision but hers, right?

8 **A. That's correct.**

9 Q. You just wanted her to talk with everybody
10 about it?

11 **A. It's my recommendation that the family should
12 be involved in those situations.**

13 Q. All right.

14 MS. BAYLESS: I think we stop because I'm
15 going to get ready to talk about this phone
16 conversation.

17 MR. REED: Okay.

18 (Proceedings recessed at 5:01 p.m.)
19
20
21
22
23
24
25

1 It says -- you "suggested that Carole be on the account
2 with Mom since she's local. Carole stated that while
3 it's well and good that she thinks she should be the
4 co-power of attorney" -- and you explained that
5 "companies do not like co-powers of attorney because
6 they have to be able to rely on them for decisions to be
7 made; and if they do not agree, then nothing gets done."
8 Then it says Carole hung up the phone
9 abruptly.

10 **A. Okay.**

11 Q. So I guess you don't have a clue whether that
12 made her upset that you said she shouldn't be co-power
13 of attorney?

14 **A. I do not.**

15 Q. Okay. And so then you asked Nelva if
16 everything was okay, and she said, Yes, it was fine.

17 Was that because Carole had hung up the
18 phone, do you think?

19 MR. REED: Form.

20 **A. Yes, probably.**

21 Q. (By Ms. Bayless) And so then you just let her
22 know that -- oh, no. You told her to have a family
23 discussion about this --

24 **A. That's correct.**

25 Q. -- and then let you know?

1 CHANGES AND SIGNATURE
2 PAGE LINE CHANGE REASON

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Candace Kunz-Freed

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1 I, CANDACE KUNZ-FREED, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.
 4
 5 _____
 6 CANDACE KUNZ-FREED
 7
 8 THE STATE OF _____)
 9 COUNTY OF _____)
 10
 11 Before me, _____, on this day
 12 personally appeared CANDACE KUNZ-FREED, known to me or
 13 proved to me on the oath of _____ or through
 14 _____ (description of identity card
 15 or other document) to be the person whose name is
 16 subscribed to the foregoing instrument and acknowledged
 17 to me that he/she executed the same for the purpose and
 18 consideration therein expressed.
 19 Given under my hand and seal of office on this _____
 20 day of _____, _____.
 21
 22 _____
 23 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____
 25 My Commission Expires: _____

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1 following includes all parties of record and the amount
 2 of time used by each party at the time of the
 3 deposition:
 4 Stephen Mendel (2h39m)
 5 Attorney for Defendant Anita Brunsting
 6 Carole Brunsting (0h18m)
 7 Pro Se Defendant
 8 Candace Curtis (0h28m)
 9 Pro Se Defendant
 10 Bobbie Bayless (2h31m)
 11 Attorney for Plaintiff
 12
 13 That a copy of this certificate was served on all
 14 parties shown herein on _____ and filed
 15 with the Clerk.
 16 I further certify that I am neither counsel for,
 17 related to, nor employed by any of the parties in the
 18 action in which this proceeding was taken, and further
 19 that I am not financially or otherwise interested in the
 20 outcome of this action.
 21 Further certification requirements pursuant to
 22 Rule 203 of the Texas Code of Civil Procedure will be
 23 complied with after they have occurred.
 24 Certified to by me on this _____ day of
 25 _____, _____.

 Melinda Barre
 Texas CSR 2192
 Expiration: 12/31/21

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1 CAUSE NO. 412,249-401
 2 ESTATE OF _____) IN THE DISTRICT COURT
 3 NELVA E. BRUNSTING, _____)
 4 DECEASED _____) HARRIS COUNTY, TEXAS
 5
 6 _____
 7 CARL HENRY BRUNSTING, _____)
 8 et al. _____)
 9 vs. _____)
 10 ANITA KAY BRUNSTING, _____)
 11 et al. _____)
 12
 13 REPORTER'S CERTIFICATE
 14 ORAL DEPOSITION OF CANDACE KUNZ-FREED
 15 March 20, 2019
 16
 17 I, Melinda Barre, Certified Shorthand Reporter in
 18 and for the State of Texas, hereby certify to the
 19 following:
 20 That the witness, CANDACE KUNZ-FREED, was duly sworn
 21 and that the transcript of the deposition is a true
 22 record of the testimony given by the witness;
 23 That the deposition transcript was duly submitted on
 24 _____ to the witness or to the attorney for
 25 the witness for examination, signature, and return to me
 by _____.
 That pursuant to information given to the deposition
 officer at the time said testimony was taken, the

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1 FURTHER CERTIFICATION UNDER TRCP RULE 203
 2
 3 The original deposition was/was not returned to the
 4 deposition officer on _____.
 5 If returned, the attached Changes and Signature
 6 page(s) contain(s) any changes and the reasons therefor.
 7 If returned, the original deposition was delivered
 8 to Stephen Mendel, Custodial Attorney.
 9 \$_____ is the deposition officer's charges to the
 10 Defendant Anita Brunsting for preparing the original
 11 deposition and any copies of exhibits;
 12 The deposition was delivered in accordance with Rule
 13 203.3, and a copy of this certificate, served on all
 14 parties shown herein, was filed with the Clerk.
 15 Certified to by me on this _____ day of
 16 _____, _____.
 17
 18 _____
 19 Melinda Barre
 20 Texas CSR 2192
 21 Expiration: 12/31/21
 22
 23
 24
 25