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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 88

HON. SCOTT M. GORDON, JUDGE

JAMIE MCCOURT,

PETITIONER,

VS.

FRANK H. MCCOURT, JR.,

RESPONDENT.

NO. BD514309

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, SEPTEMBER 27, 2010

APPEARANCES:

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OFFICIAL COURT REPORTER

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APPEARANCES: (CONTINUED)

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1 THE COURT: YOU SUBMITTED -- THE PARTIES JOINTLY  
2 SUBMITTED TO THE COURT AND REQUESTED THE COURT TO READ A  
3 SUBSTANTIAL TRANSCRIPT AND VIDEO TESTIMONY BECAUSE THERE  
4 WAS CONCERN OVER THE ABILITY OF THE GENTLEMAN TO TESTIFY.  
5 I DID THAT WHEN YOU GAVE IT TO ME. SO IT'S IN EVIDENCE.  
6 AS YOU BOTH REQUESTED, IT'S BEEN CONSIDERED AND READ.

7 MS. COOK: TOTALLY FINE. I JUST WANTED TO CLARIFY.

8 THE COURT: THE OTHER, THOSE ARE TO COMPLETE  
9 HOUSEKEEPING ISSUES, JUST SO WE HAVE CLARITY OF RECORD, IF  
10 YOU CAN JUST -- WHENEVER IT'S CONVENIENT, MEET WITH  
11 MS. ARNOLD SO YOU KNOW EXACTLY -- CAN ID THE --

12 MR. WASSER: I'LL FIND THEM.

13 THE COURT: SO IN THE RECORD WE KNOW IT'S PAGE 27  
14 LINE -- WHATEVER IT IS.

15 AND WHEN WE'RE DONE, I'VE READ THE OTHER  
16 OFFERS OF PROOF, AND IF YOU DO WANT TO ARGUE -- I WILL  
17 MEET WITH COUNSEL AND WE CAN TALK ABOUT THIS.

18 AND WHENEVER YOU'RE READY, SIR.

19 MR. KUMP: THANK YOU, YOUR HONOR.

20

21 CROSS-EXAMINATION [RESUMED]

22 BY MR. KUMP:

23 Q GOOD AFTERNOON, MR. CAFFERATA.

24 A GOOD AFTERNOON.

25 Q AFTER YOUR TESTIMONY HERE LAST TUESDAY, DID  
26 YOU HAVE AN OPPORTUNITY TO SPEAK WITH MR. MCCOURT'S  
27 ATTORNEYS ABOUT ANYTHING OTHER THAN SCHEDULING MATTERS?

28 A NO.

1 Q NOW, IN FEBRUARY OF 2004, YOU DISCUSSED WITH  
2 LARRY SILVERSTEIN THE REQUIREMENTS FOR A TRANSMUTATION; IS  
3 THAT CORRECT?

4 A YES.

5 Q AND YOU TOLD MR. SILVERSTEIN, FIRST OF ALL,  
6 THAT A TRANSMUTATION AGREEMENT MUST BE IN WRITING;  
7 CORRECT?

8 A CORRECT.

9 Q AND YOU ALSO TOLD MR. SILVERSTEIN THAT IT IS  
10 YOUR PRACTICE TO USE THE WORD "TRANSMUTATION" IN  
11 TRANSMUTATION AGREEMENTS YOU DRAFT; CORRECT?

12 A CORRECT.

13 Q AND YOU TOLD MR. SILVERSTEIN THAT IT'S YOUR  
14 PRACTICE TO CITE THE CODE SECTION FROM THE FAMILY CODE IN  
15 TRANSMUTATION AGREEMENTS YOU DRAFT; CORRECT?

16 A CORRECT.

17 Q AND YOU FOLLOWED THOSE PRACTICES WHEN YOU  
18 DRAFTED THE TRANSMUTATION THAT IS AT ISSUE HERE; CORRECT?

19 A CORRECT.

20 Q NOW, WITH RESPECT TO WHEN THE AGREEMENT WAS  
21 GOING TO BE SIGNED, YOU GAVE SOME CONSIDERATION TO SIGNING  
22 IT BEFORE THE MCCOURTS BECAME RESIDENTS OF CALIFORNIA IN  
23 ORDER TO TRY TO MINIMIZE THE CLAIMS OF CREDITORS; CORRECT?

24 A CORRECT.

25 Q AND YOU DID SO BECAUSE YOU CONCLUDED THAT THE  
26 CLAIMS OF CREDITORS WOULD RELATE TO ALL OF THEIR PROPERTY  
27 BECOMING QUASI COMMUNITY PROPERTY, WHICH WOULD HAPPEN WHEN  
28 THEY BECAME RESIDENTS; CORRECT?

1           A       NO.

2           Q       COULD I ASK YOU TO LOOK AT YOUR DEPOSITION,  
3 PLEASE, VOLUME III, AT PAGE 623, STARTING AT LINE 24 AT  
4 THE BOTTOM OF PAGE 623.

5           A       I'M SORRY. I HAVE THE WRONG VOLUME.

6           Q       IT SHOULD BE UP THERE. VOLUME NO. III, PAGE  
7 623, AT LINE -- STARTING --

8           A       IT'S REALLY EASIER FOR ME TO READ THE PAPER  
9 ONE.

10          Q       I UNDERSTAND. STARTING AT LINE 24 AT THE  
11 BOTTOM OF THE PAGE.

12                 "QUESTION: HOW WOULD THE SIGNING OF AN AGREEMENT  
13 THAT WAS NOT YET EFFECTIVE PRIOR TO THE TIME THEY BECAME  
14 RESIDENTS OF THE STATE OF CALIFORNIA MINIMIZE ANY  
15 ARGUMENTS THAT CREDITORS RELATED TO THE DODGERS MIGHT HAVE  
16 TO CLAIM THE HOUSES?"

17                 AND THIS IS YOUR ANSWER ON 624 BEGINNING ON LINE  
18 4 THROUGH 12.

19                 "ANSWER: THE CLAIM OF THE CREDITORS WOULD RELATE  
20 TO THEIR PROPERTY, ALL OF THEIR PROPERTY BECOMING QUASI  
21 COMMUNITY PROPERTY, WHICH WOULD HAPPEN UPON THEM BECOMING  
22 RESIDENTS. AND SO IF THEY HAD SIGNED THE AGREEMENT IN  
23 ADVANCE AND, YOU KNOW, HAD THE TRANSMUTATION EFFECTIVE  
24 IMMEDIATELY, THEN THAT LEAVES THE LEAST EXPOSURE FOR THE  
25 CREDITORS TO CLAIM ANY RIGHTS RELATED TO ANY OF THIS  
26 POTENTIALLY HAVING BEEN QUASI COMMUNITY PROPERTY."

27                 AND THAT WAS THE TESTIMONY THAT YOU GAVE IN YOUR  
28 DEPOSITION ON MAY 4, 2010; CORRECT?

1           A        I MADE SOME CORRECTIONS TO THE TRANSCRIPT TO  
2 DEAL WITH THIS ISSUE.  AND I DON'T REMEMBER WHICH PLACES  
3 THEY GO WITH.  IF THEY WERE GIVEN TO ME, MAYBE I COULD  
4 RESOLVE THIS, BECAUSE I THINK SOMETIMES SOME OF MY  
5 QUESTIONS WERE A LITTLE -- OR MY ANSWERS WERE A LITTLE BIT  
6 AMBIGUOUS AS TO WHETHER I CONSIDERED ALL OF THEIR PROPERTY  
7 BECOMING QUASI COMMUNITY PROPERTY.  AND SO THE POINT OF  
8 THE CORRECTIONS WAS JUST TO MAKE SURE THAT EVERYBODY  
9 UNDERSTOOD THAT I HAD NOT CONCLUDED THAT ALL OF THEIR  
10 PROPERTY WAS BECOMING QUASI COMMUNITY PROPERTY.

11           MR. KUMP:  MOVE TO STRIKE AS NONRESPONSIVE.

12           THE COURT:  SUSTAINED.  GRANTED.

13           Q        BY MR. KUMP:  MR. CAFFERATA, YOU DID NOT  
14 CHANGE THIS DEPOSITION ANSWER, DID YOU?

15           A        I DON'T HAVE THE LIST IN FRONT OF ME, SO I  
16 DON'T KNOW IF I CHANGED THIS ONE.

17           MR. KUMP:  YOUR HONOR, EXCUSE ME.  MAY I GO TO THE  
18 FILE?

19           THE COURT:  OF COURSE.

20           Q        BY MR. KUMP:  THIS IS VOLUME III OF YOUR  
21 DEPOSITION, MR. CAFFERATA.  YOU SUBMITTED TWO ERRATA  
22 SHEETS FOR YOUR DEPOSITIONS, ONE FOR VOLUME I, WHICH WE  
23 HAVE ON THE SCREEN, AND A ERRATA SHEET FOR VOLUME II.  BUT  
24 YOU DID NOT SUBMIT AN ERRATA SHEET FOR VOLUME III AT ALL,  
25 YOU JUST SIMPLY SIGNED IT.  DO YOU RECALL THAT?

26           A        I DON'T SPECIFICALLY RECALL, BUT THAT'S  
27 POSSIBLE.

28           Q        MR. CAFFERATA, I JUST WANT TO GO BACK TO THE

1 QUESTION THAT I ASKED YOU, WHICH IS, IS THE TESTIMONY THAT  
2 I READ INTO THE RECORD FROM PAGE 623 TO 624, WAS THAT  
3 ACCURATE AND TRUTHFUL AT THE TIME THAT YOU GAVE THAT  
4 TESTIMONY ON MAY 4, 2010?

5 A YES.

6 Q NOW, DURING YOUR TESTIMONY ON TUESDAY OF LAST  
7 WEEK, YOU TESTIFIED THAT YOU BELIEVED THERE WAS A  
8 POSSIBILITY YOU HAD DISCUSSED A -- AN AGREEMENT OR THE  
9 POSSIBILITY OF AN AGREEMENT WITH MRS. MCCOURT DURING ONE  
10 OF YOUR TELEPHONE CALLS THAT YOU HAD WITH HER IN JANUARY  
11 OF 2004. DO YOU RECALL THAT TESTIMONY?

12 A YES.

13 Q AND I JUST WANT TO GO BACK AND CLARIFY. YOU  
14 TESTIFIED TO TWO CONVERSATIONS YOU HAD WITH MRS. MCCOURT.  
15 ONE WAS ON JANUARY 15; CORRECT?

16 A I BELIEVE WE TALKED ABOUT THREE  
17 CONVERSATIONS: ONE ON JANUARY 15, ONE ON JANUARY 16, AND  
18 THEN THE ONE AT DODGER STADIUM.

19 Q I AM TALKING ABOUT THE TELEPHONE  
20 CONVERSATIONS IN THE MONTH OF JANUARY.

21 A OH, OKAY.

22 Q YOU TESTIFIED TO ONE ON JANUARY 15 AND ONE ON  
23 JANUARY 16; CORRECT?

24 A CORRECT.

25 Q NOW, I JUST WANT TO CLARIFY. DURING THAT  
26 FIRST CALL ON JANUARY 15TH, YOU HAD NO DISCUSSION WITH HER  
27 ABOUT THE POSSIBILITY OF ANY TYPE OF AGREEMENT; CORRECT?

28 A ONLY TO THE --- I BELIEVE ONLY TO THE EXTENT

1 THAT I ASKED THEM IF THEY HAD AN AGREEMENT.

2 Q YOU ASKED THEM IF THEY HAD A PROPERTY  
3 AGREEMENT IN MASSACHUSETTS; CORRECT?

4 A CORRECT.

5 Q YOU DID NOT HAVE ANY DISCUSSION WITH  
6 MRS. MCCOURT ABOUT THE POSSIBILITY OF HAVING AN AGREEMENT  
7 IN CALIFORNIA?

8 A I DON'T BELIEVE SO.

9 Q OKAY. AND THEN YOU TESTIFIED -- FIRST OF  
10 ALL, WITH RESPECT TO THAT FIRST CALL, NOW, I BELIEVE YOU  
11 TESTIFIED YOU DON'T REMEMBER THE EXACT WORDS, BUT IN  
12 SUBSTANCE, ONE OF THE THINGS THAT MRS. MCCOURT TOLD YOU  
13 DURING THAT CALL WAS THAT THE HOUSES WERE HERS AND THE  
14 BUSINESSES WERE FRANK'S; CORRECT?

15 A WELL, WE KIND OF WENT AROUND A LITTLE BIT  
16 ABOUT THIS LAST TIME, WHERE I THINK I TRIED TO PEG THE  
17 WORDS THAT I DO REMEMBER WHERE SHE SAID, "WE DO THINGS  
18 DIFFERENTLY." I BELIEVE SHE SAID THAT IN THAT  
19 CONVERSATION, ALTHOUGH IT COULD HAVE BEEN IN THE ONE THE  
20 NEXT DAY.

21 Q IN THAT CONVERSATION, IS IT POSSIBLE THAT SHE  
22 SAID, "THE HOUSES ARE IN MY NAME, THE BUSINESSES ARE IN  
23 FRANK'S NAME"?

24 A IT'S POSSIBLE.

25 Q OKAY. AND YOU UNDERSTAND THE DISTINCTION  
26 BETWEEN SOMEONE HAVING TITLE IN AN ASSET VERSUS SOMEONE  
27 OWNING THE ASSET; CORRECT?

28 A YES.

1           Q       NOW, YOU TESTIFIED ON DIRECT THAT -- AND THIS  
2 IS AT PAGE 95 OF YOUR DIRECT EXAM LAST TUESDAY -- YOU  
3 TESTIFIED THAT MRS. MCCOURT, QUOTE, EXPLAINED THAT THEY  
4 WOULD BE BUYING A HOUSE HERE, COMMA, I BELIEVE SHE MAY  
5 HAVE INITIALLY SAID, I THINK THAT MAKES OUR PROPERTY  
6 COMMUNITY PROPERTY.

7                   DO YOU RECALL THAT TESTIMONY?

8           A       YES.

9           Q       AND DO YOU RECALL THAT WHEN I ASKED YOU AT  
10 YOUR DEPOSITION TO TELL ME EVERYTHING THAT MRS. MCCOURT  
11 HAD SAID DURING THIS FIRST TELEPHONE CALL YOU HAD WITH HER  
12 ON JANUARY 15TH, YOU DIDN'T SAY ANYTHING ABOUT HER  
13 MENTIONING THE POSSIBILITY OF THEIR PROPERTY BEING  
14 COMMUNITY PROPERTY. DO YOU RECALL THAT AT -- THAT YOU DID  
15 NOT MENTION THAT AT YOUR DEPOSITION?

16           A       I DON'T SPECIFICALLY RECALL THAT AT MY  
17 DEPOSITION, BUT IT'S POSSIBLE I DIDN'T MENTION IT.

18           Q       WELL, LET'S LOOK AT YOUR DEPOSITION. VOLUME  
19 I, STARTING AT PAGE 85. I'M ON PAGE 85 OF VOLUME I,  
20 STARTING AT LINE NUMBER 9.

21                   AND MY QUESTION TO YOU WAS, "WHAT I'D LIKE YOU TO  
22 DO IS TELL ME WHAT YOU CAN REMEMBER ABOUT THAT PHONE  
23 CONVERSATION AND THE ORDER IN WHICH IT WAS DONE. AND I  
24 WOULD LIKE YOU TO BE MOST PRECISE, IF YOU COULD, ABOUT THE  
25 WORDS THAT YOU USED AND THE WORDS THAT SHE USED DURING  
26 THAT PHONE CONVERSATION. IF YOU CAN'T, LET ME KNOW."

27                   AND THEN THERE'S SOME DISCUSSION BETWEEN YOUR  
28 ATTORNEY AND ME.

1           AND THEN OVER ON PAGE 86, AT LINE 2, I SAID TO  
2 YOU, "YOU MAY ANSWER."

3           AND THEN STARTING AT LINE 5, YOU ANSWERED, QUOTE,  
4 AND I DON'T REMEMBER THE -- YOU KNOW, REALLY THE BACK AND  
5 FORTH. WHAT I REMEMBER OF THE CONVERSATION, I THINK  
6 ESSENTIALLY, YOU KNOW, I WAS GETTING SOME INFORMATION FROM  
7 MRS. MCCOURT, YOU KNOW, WHERE THEY WERE MARRIED, WHERE  
8 THEY WERE RESIDENTS NOW, DID THEY HAVE A PROPERTY  
9 AGREEMENT? IN THAT FIRST CONVERSATION SHE TOLD ME THE  
10 BUSINESSES WERE FRANK'S, THE HOUSES WERE HERS. AND  
11 ESSENTIALLY, YOU KNOW, FROM THE CALL, YOU KNOW, WANTED TO  
12 FOLLOW UP WITH ME AFTER GIVING ME THAT INFORMATION. SO,  
13 QUOTE, WHEN WE GET TO CALIFORNIA, WHAT HAPPENS, QUESTION  
14 MARK? AND I DON'T THINK AT THAT POINT I GAVE HER ANY  
15 CONCLUSIONS.

16           THEN I ASKED YOU, "IS THAT THE BEST YOU CAN  
17 RECALL AT THE MOMENT ABOUT THAT TELEPHONE CONVERSATION?"

18           AND YOU ANSWERED, "THAT'S WHAT I REMEMBER RIGHT  
19 NOW."

20           AND THAT WAS YOUR TRUTHFUL AND ACCURATE TESTIMONY  
21 ON APRIL 22, 2010; CORRECT?

22           A       CORRECT.

23           Q       NOW, YOU ALSO TESTIFIED THAT, AFTER THE FIRST  
24 TELEPHONE CONVERSATION AND BEFORE THE SECOND CONVERSATION  
25 THE NEXT DAY, YOU DID SOME LEGAL RESEARCH; CORRECT?

26           A       CORRECT.

27           Q       AND IF YOU COULD LOOK AT THE BINDER, MY  
28 BINDER, WHICH IS THIS ONE THAT SAYS "REYNOLDS CAFFERATA

1 TRIAL EXHIBITS," WHICH IN FRONT OF YOU? AND I WOULD ASK  
2 YOU TO PLEASE TURN TO EXHIBIT 93, WHICH IS, I BELIEVE, THE  
3 LAST ONE IN THE BINDER.

4 A OKAY.

5 Q EXHIBIT 93, WHICH WE DISCUSSED BRIEFLY ON THE  
6 FIRST DAY OF YOUR TESTIMONY, IS THE TIME DETAIL FOR THE  
7 INVOICE THAT BINGHAM MCCUTCHEN SENT TO THE MCCOURTS FOR  
8 THE PERIOD OF JANUARY THROUGH MARCH OF 2004. AND DO YOU  
9 SEE ON THE DATE OF JANUARY 15, 2004, YOU HAVE A TIME  
10 ENTRY?

11 A YES.

12 Q AND COULD YOU READ THAT INTO THE RECORD  
13 PLEASE?

14 A "TELEPHONE CONFERENCE WITH J. MCCOURT RE  
15 PROPERTY PLANNING, RESEARCH RE TREATMENT OF PROPERTY  
16 ACQUIRED DURING MARRIAGE PRIOR TO CALIFORNIA RESIDENCE."

17 Q AND THAT IDENTIFIES THE RESEARCH THAT YOU DID  
18 AFTER YOUR FIRST CONVERSATION WITH MRS. MCCOURT AND PRIOR  
19 TO THE SECOND CALL YOU HAD WITH HER THE NEXT DAY?

20 A CORRECT.

21 Q AND IN DOING THAT RESEARCH, YOU WERE LOOKING  
22 AT HOW CALIFORNIA TREATS THE PROPERTY OF A NONRESIDENT WHO  
23 BECOMES A RESIDENT IN CALIFORNIA; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND AS A RESULT OF THAT RESEARCH, YOU  
26 CONCLUDED THAT IF THE SEQUENCE OF EVENTS WOULD HAVE  
27 RESULTED IN COMMUNITY PROPERTY UNDER CALIFORNIA LAW, THEN,  
28 WHEN THEY CAME TO CALIFORNIA, IT WOULD BE QUASI COMMUNITY

1 PROPERTY; CORRECT?

2 A CORRECT.

3 Q NOW, ON THE SECOND PHONE CALL, WHICH WAS ON  
4 THE NEXT DAY, JANUARY 16TH, 2004, THERE WAS NO DISCUSSION  
5 DURING THAT CALL, WAS THERE, ABOUT THE POSSIBILITY OF AN  
6 AGREEMENT IN CALIFORNIA WITH RESPECT TO THE MCCOURT'S  
7 PROPERTY?

8 A AS I'VE SAID BEFORE, I'M NOT SURE WHETHER IT  
9 CAME UP IN THAT CALL OR NOT. THE TIMES THAT I  
10 SPECIFICALLY REMEMBER DISCUSSING IT WAS AT DODGER STADIUM.  
11 AND IT MIGHT HAVE COME UP IN THAT CALL, BUT I DON'T HAVE A  
12 SPECIFIC RECOLLECTION OF THAT DISCUSSION.

13 Q COULD YOU LOOK AT VOLUME I OF YOUR  
14 DEPOSITION, PLEASE, AT PAGE 105, STARTING AT LINE NUMBER  
15 2. MY QUESTION TO YOU WAS, "AND AGAIN, I APOLOGIZE  
16 BECAUSE I THINK I ASKED YOU THIS BEFORE, BUT IS IT CORRECT  
17 THAT THERE WAS NO DISCUSSION, AGAIN DURING THIS SECOND  
18 CALL, ABOUT A MARITAL PROPERTY AGREEMENT IN THE EVENT THAT  
19 THEY MOVED TO CALIFORNIA?"

20 AND YOUR ANSWER WAS, "MY RECOLLECTION IS THAT WE  
21 DID NOT TALK ABOUT THAT IDEA IN THAT CALL."

22 AND THAT WAS ACCURATE AND TRUTHFUL TESTIMONY WHEN  
23 YOU GAVE IT; CORRECT?

24 A CORRECT.

25 Q SO THE ONLY DISCUSSION THAT YOU HAD WITH  
26 MRS. MCCOURT ABOUT A POSSIBLE AGREEMENT WAS THE 15-MINUTE  
27 CONVERSATION THAT YOU HAD AT DODGER STADIUM AT THE  
28 CELEBRATION ON FEBRUARY 13TH, 2004; CORRECT?

1           A       WELL, IT WAS A 15- TO 20-MINUTE CONVERSATION.  
2           THAT'S THE ONLY ONE I SPECIFICALLY REMEMBER TALKING  
3           SPECIFICALLY ABOUT THE AGREEMENT.

4           Q       AND AT THE TIME YOU WERE HAVING THESE  
5           CONVERSATIONS WITH MRS. MCCOURT, WERE YOU AWARE OF ANY  
6           DISCUSSION ABOUT THE POSSIBILITY OF THE MCCOURTS GETTING A  
7           DIVORCE OR THINKING ABOUT GETTING A DIVORCE?

8           A       NO, I WAS NOT.

9           Q       NOW, WHEN YOU WERE HAVING THESE CONVERSATIONS  
10          WITH MRS. MCCOURT, YOU UNDERSTOOD THAT SHE WAS RELYING  
11          UPON YOU FOR LEGAL ADVICE; CORRECT?

12          A       YES.

13          Q       AND YOU UNDERSTOOD THAT YOU OWED MRS. MCCOURT  
14          A DUTY OF LOYALTY AS HER ATTORNEY; CORRECT?

15          A       YES.

16          Q       AND YOU UNDERSTOOD THAT YOU HAD A DUTY TO  
17          PROTECT HER INTERESTS IN CONNECTION WITH ANY AGREEMENT  
18          THAT SHE MIGHT ENTER INTO; CORRECT?

19          A       CORRECT.

20          Q       AND YOU UNDERSTOOD THAT YOU HAD A DUTY TO  
21          ADVISE HER AS TO THE PROS AND CONS OF ANY AGREEMENT THAT  
22          SHE MIGHT BE CONSIDERING ENTERING INTO; CORRECT?

23          A       YES.

24          Q       NOW, AT THE TIME THAT YOU HAD THESE  
25          CONVERSATIONS WITH MRS. MCCOURT, DID YOU ASK WHETHER THIS  
26          ARRANGEMENT THAT THEY HAD WITH RESPECT TO THE HOUSES AND  
27          BUSINESSES WAS INTENDED TO BE BINDING IN THE EVENT THAT  
28          THERE WAS A DIVORCE WHEN THEY MOVED TO CALIFORNIA?

1           A        I DON'T RECALL ASKING HER THAT QUESTION.

2           Q        AND SO THE ANSWER IS NO?

3           A        THE ANSWER IS NO.

4           Q        DID YOU EVER TELL MRS. MCCOURT THAT, BY  
5 SIGNING THE MARITAL PROPERTY AGREEMENT, SHE WAS GIVING UP  
6 ANY INTEREST SHE MIGHT HAVE TO THE DODGERS IN THE EVENT OF  
7 A DIVORCE?

8           A        IN THOSE WORDS OR IN SUBSTANCE?

9           Q        CAN YOU ANSWER MY QUESTION AS PHRASED?

10          A        OKAY. IN SUBSTANCE, YES.

11          Q        DID YOU -- OKAY. DID YOU EVER TELL  
12 MRS. -- FIRST I WANT YOU TO ANSWER THIS QUESTION: DID YOU  
13 EVER TELL MRS. MCCOURT THAT BY SIGNING THE MARITAL  
14 PROPERTY AGREEMENT, SHE WAS GIVING UP ANY INTEREST THAT  
15 SHE MIGHT HAVE TO THE DODGERS IN THE EVENT OF A DIVORCE?

16          A        IN SUBSTANCE, YES.

17          Q        IN THOSE WORDS, DID YOU TELL HER THAT?

18          A        I DON'T KNOW THAT I USED THE WORD "DODGERS."

19          Q        DID YOU EVER TELL -- OKAY. IS IT YOUR BEST  
20 TESTIMONY OR BEST RECOLLECTION THAT YOU DID NOT USE THE  
21 WORD "DODGERS"?

22          A        THAT'S CORRECT.

23          Q        NOW, YOU TESTIFIED IN YOUR DIRECT  
24 EXAMINATION, AT PAGE 105, THAT MRS. MCCOURT DID NOT TELL  
25 YOU SHE WANTED TO PRESERVE, IN CALIFORNIA, HER RIGHT TO  
26 EQUITABLE DISTRIBUTION UPON DIVORCE. DO YOU RECALL THAT  
27 TESTIMONY THAT YOU GAVE?

28          A        YES.

1 Q DID YOU ASK HER WHETHER SHE WANTED TO  
2 PRESERVE, IN CALIFORNIA, HER RIGHT TO EQUITABLE  
3 DISTRIBUTION UPON DIVORCE?

4 A NO, I DID NOT.

5 Q AND DURING YOUR DIRECT, AT PAGE 106, YOU  
6 TESTIFIED THAT YOU NEVER TOLD MRS. MCCOURT THAT THIS  
7 AGREEMENT WOULD PRESERVE THE STATUS QUO THAT EXISTED IN  
8 MASSACHUSETTS. DO YOU RECALL THAT TESTIMONY IN YOUR  
9 DIRECT?

10 A YES, I DO.

11 Q DID YOU EVER TELL MRS. MCCOURT THAT THIS  
12 AGREEMENT WOULD CHANGE THE STATUS QUO THAT EXISTED IN  
13 MASSACHUSETTS?

14 A IN THOSE WORDS OR IN SUBSTANCE?

15 Q IN THOSE WORDS.

16 A NO.

17 Q AT THE TIME -- YOU ALSO TESTIFIED IN DIRECT,  
18 AT 105 AND 106, THAT MRS. MCCOURT DID NOT TELL YOU, IN  
19 WORDS OR IN SUBSTANCE, THAT SHE WANTED TO PRESERVE THE  
20 STATUS QUO WITH MASSACHUSETTS. DO YOU RECALL THAT?

21 A YES.

22 Q AND DID YOU ASK HER WHETHER OR NOT SHE WANTED  
23 TO PRESERVE THE STATUS QUO IN MASSACHUSETTS?

24 A NO, I DID NOT.

25 Q DID YOU ADVISE MRS. MCCOURT AT ANY TIME,  
26 WHETHER ORALLY OR IN WRITING, ABOUT HER RIGHTS UNDER  
27 MASSACHUSETTS LAW IN THE EVENT OF A DIVORCE?

28 A NO, I DID NOT.

1 Q AND IN ANY OF YOUR CONVERSATIONS WITH  
2 MRS. MCCOURT, DID YOU EVER TALK TO HER AT ALL ABOUT THE  
3 WAY THE DIVISION OF THEIR ASSETS WOULD BE HANDLED IF THEY  
4 STAYED IN MASSACHUSETTS?

5 A NO.

6 Q AND DURING THIS PERIOD OF TIME THAT YOU WERE  
7 HAVING THESE CONVERSATIONS WITH MRS. MCCOURT, DID YOU EVER  
8 DISCUSS MASSACHUSETTS LAW AT ALL WITH HER?

9 A NO.

10 Q AND IN PREPARING THE TRANSMUTATION AGREEMENT,  
11 DID IT MATTER TO YOU AT ALL WHAT THEIR RIGHTS WOULD HAVE  
12 BEEN IN THE EVENT OF A DIVORCE UNDER MASSACHUSETTS LAW?

13 A NO.

14 Q OKAY. NOW, WE SAW -- YOU WEREN'T HERE, BUT  
15 DURING THE TESTIMONY OF MR. SILVERSTEIN, WE SAW  
16 EXHIBIT 1456. IF WE COULD SEE THAT, PLEASE. 1456 IS AN  
17 E-MAIL FROM FEBRUARY 13TH, 2004, FROM YOU TO LAWRENCE  
18 SILVERSTEIN; CORRECT?

19 A CORRECT.

20 Q AND IN THAT -- IN THE SECOND LINE -- FIRST OF  
21 ALL, YOU SAID, "AAFTAB HAS A VERSION OF THE TITLE HOLDING  
22 TRUST WITH HIM NAMED AS TRUSTEE."

23 JUST TO CLARIFY, THE TITLE HOLDING TRUST DOCUMENT  
24 WAS A LEGAL DOCUMENT THAT YOU WERE HELPING PREPARE ON OR  
25 ABOUT FEBRUARY 13TH, 2004; CORRECT?

26 A CORRECT.

27 Q AND THAT WAS A LEGAL DOCUMENT THAT WAS  
28 UNRELATED TO THE TRANSMUTATION AGREEMENT; CORRECT?

1           A        BASICALLY, YES.

2           Q        AND IN YOUR E-MAIL TO MR. SILVERSTEIN IN THE  
3 SECOND LINE, YOU SAID, QUOTE, WE ARE WORKING ON AN  
4 AGREEMENT TO PRESERVE THEIR SEPARATE PROPERTY.

5                   DO YOU SEE THAT?

6           A        YES.

7           Q        OKAY. NOW, YOUR REFERENCE TO AN AGREEMENT TO  
8 PRESERVE SEPARATE PROPERTY WAS A REFERENCE TO THE  
9 TRANSMUTATION AGREEMENT THAT WAS IN THE PROCESS OF BEING  
10 DRAFTED AT THAT TIME; CORRECT?

11          A        CORRECT.

12          Q        AND ON FEBRUARY 13TH, WHEN YOU MET WITH  
13 MRS. MCCOURT, YOU DID NOT DESCRIBE THE AGREEMENT AS ONE TO  
14 PRESERVE THEIR SEPARATE PROPERTY, DID YOU?

15          A        I DON'T RECALL.

16          Q        I'D LIKE TO ASK YOU TO LOOK AT YOUR  
17 DEPOSITION, VOLUME III -- VOLUME III OF YOUR DEPOSITION AT  
18 PAGE 592. AND I'M GOING TO START AT LINE NO. 1 ON THAT  
19 PAGE. THIS IS MY QUESTION TO YOU:

20                   "AT THE TIME THAT YOU MET WITH MR. SILVERSTEIN  
21 AND MRS. MCCOURT AT DODGER STADIUM ON FEBRUARY 13TH, 2004,  
22 DID YOU, AT ANY TIME DURING THAT CONVERSATION, REFER TO  
23 THE AGREEMENT THAT WAS BEING DISCUSSED AS AN AGREEMENT TO  
24 PRESERVE THEIR SEPARATE PROPERTY?"

25                   AND YOUR ANSWER WAS, "MY RECOLLECTION OF THE WAY  
26 WE DESCRIBED IT WAS AS A TRANSMUTATION. I BELIEVE WE  
27 ALWAYS TALKED, YOU KNOW, AT THE STARTING POINT THAT, WHEN  
28 YOU COME HERE, IT BECOMES QUASI COMMUNITY PROPERTY, HER

1 NOT WANTING THAT RESULT, AND SO WE WOULD TRANSMUTE IT TO  
2 SEPARATE PROPERTY."

3 THEN MY QUESTION, "DO YOU HAVE ANY RECOLLECTION?

4 "QUESTION: CAN YOU RULE OUT CATEGORICALLY THAT  
5 YOU DIDN'T USE THE EXPRESSION, QUOTE, AGREEMENT TO  
6 PRESERVE SEPARATE PROPERTY AT SOME POINT IN THE  
7 CONVERSATION AT DODGER STADIUM?"

8 AND YOU ANSWERED, "I DON'T SEE MYSELF USING THAT  
9 PHRASE, UNQUOTE.

10 AND THAT WAS TRUTHFUL AND ACCURATE TESTIMONY WHEN  
11 YOU GAVE IT; CORRECT?

12 A YES.

13 Q OKAY. NOW, YOU TESTIFIED THAT AFTER THE  
14 LUNCHEON AT DODGER STADIUM ON FEBRUARY 13TH, YOU WENT BACK  
15 TO THE OFFICE; CORRECT?

16 A CORRECT.

17 Q AND YOU AND MR. CHAPMAN, WHO YOU IDENTIFIED  
18 AS AN ASSOCIATE AT BINGHAM MCCUTCHEN, WERE THE ONLY TWO  
19 PEOPLE WHO DID ANY DRAFTING ON THE TRANSMUTATION AGREEMENT  
20 FROM THE LOS ANGELES OFFICE OF BINGHAM MCCUTCHEN; CORRECT?

21 A CORRECT.

22 Q AND IN THE PROCESS OF PREPARING THAT  
23 TRANSMUTATION AGREEMENT, DID YOU CONSULT WITH ANY FAMILY  
24 LAW SPECIALISTS OUTSIDE OF THE FIRM?

25 A NO, I DID NOT.

26 Q DO YOU KNOW IF MR. CHAPMAN DID?

27 A I DON'T KNOW.

28 Q TO YOUR KNOWLEDGE, DID HE?

1           A       NO, I DON'T HAVE KNOWLEDGE THAT HE DID.

2           Q       DID YOU CONSULT WITH ANY OTHER FAMILY LAW  
3 SPECIALISTS WITHIN THE FIRM OF BINGHAM MCCUTCHEN AT THE  
4 TIME THAT YOU AND MR. CHAPMAN WERE PREPARING THE  
5 AGREEMENT?

6           A       NO, I DID NOT.

7           Q       BY THE WAY, WHAT WAS THE SIZE OF BINGHAM  
8 MCCUTCHEN APPROXIMATELY IN FEBRUARY 2004?

9           A       I BELIEVE THEY WERE AROUND 900 LAWYERS.

10          Q       OKAY. AND WHEN YOU GOT BACK TO THE OFFICE ON  
11 THAT AFTERNOON OF FEBRUARY 13TH, YOU ASKED MR. CHAPMAN TO  
12 PREPARE THE FIRST DRAFT OF THE TRANSMUTATION AGREEMENT;  
13 CORRECT?

14          A       I BELIEVE SO.

15          Q       AND YOU DON'T HAVE ANY RECOLLECTION, HOWEVER,  
16 AS TO WHAT DIRECTIONS YOU GAVE TO MR. CHAPMAN AT THAT  
17 TIME; CORRECT?

18          A       I DON'T THINK I HAVE A LOT OF SPECIFIC  
19 RECOLLECTION OF THAT, NO.

20          Q       WELL, DO YOU HAVE ANY -- DO YOU HAVE ANY  
21 RECOLLECTION OF THE DIRECTIONS YOU GAVE TO MR. CHAPMAN  
22 WHEN YOU RETURNED TO THE OFFICE THAT DAY?

23          A       YOU KNOW, I DON'T KNOW WHETHER IT'S  
24 RECOLLECTION OR JUST SORT OF INFERRING; BUT OBVIOUSLY, I  
25 TOLD HIM TO CREATE AN AGREEMENT WHERE WE WERE KEEPING  
26 THINGS SEPARATE.

27          Q       IF YOU'LL LOOK AT YOUR DEPOSITION PLEASE,  
28 VOLUME II, PAGE 319, STARTING AT LINE 16.

1           "QUESTION: YOU DON'T HAVE ANY RECOLLECTION OF  
2 WHAT YOU TOLD MR. CHAPMAN WHEN YOU GAVE HIM DIRECTIONS TO  
3 START DRAFTING?

4           "ANSWER: NO."

5           AND THAT WAS TRUTHFUL AND ACCURATE TESTIMONY WHEN  
6 YOU GAVE IT ON APRIL 23RD OF THIS YEAR; CORRECT?

7           A        YES, IT WAS.

8           Q        ALL RIGHT. NOW, THE OBJECTIVE OF THE  
9 TRANSMUTATION AGREEMENT WAS TO PROTECT THE HOMES FROM  
10 BUSINESS CREDITORS; CORRECT?

11          A        THAT WAS ONE OF THE OBJECTIVES.

12          Q        WELL, DO YOU RECALL ANY OTHER OBJECTIVE THAT  
13 WAS DISCUSSED?

14          A        TO CONTINUE THEIR ARRANGEMENT.

15          Q        DID YOU DISCUSS ANY OTHER OBJECTIVE WITH  
16 MRS. MCCOURT FOR A TRANSMUTATION AGREEMENT, OTHER THAN THE  
17 PROTECTION OF THE HOMES FROM BUSINESS CREDITORS?

18          A        AFTER SHE TOLD ME ABOUT THEIR ARRANGEMENT,  
19 I'M NOT SURE IF WE WENT BACK OVER THAT MORE. CERTAINLY,  
20 THE ONE WE TALKED ABOUT THE MOST WAS CREDITORS.

21          Q        DID MRS. MCCOURT GIVE YOU ANY OTHER REASON  
22 WHY SHE WAS CONSIDERING THE AGREEMENT YOU HAD TOLD HER  
23 ABOUT, OTHER THAN CREDITOR PROTECTION?

24          A        NOT THAT I RECALL.

25          Q        OKAY. NOW, IF YOU COULD LOOK AT IN THE  
26 BINDER, MY BINDER, WHICH IS EXHIBIT 25, EXHIBIT 25 HAS  
27 BEEN PREVIOUSLY IDENTIFIED AS A REDLINE AGREEMENT PREPARED  
28 ON FEBRUARY 13TH, 2004. AND IT WAS BASED ON, AS YOU SAID

1 DURING YOUR TESTIMONY, THE FIRST DRAFT OF THE  
2 TRANSMUTATION AGREEMENT WAS BASED UPON A PRENUP AGREEMENT;  
3 CORRECT?

4 A CORRECT.

5 Q AND THIS EXHIBIT 25 SHOWS THE UNDERLYING  
6 PRENUPTIAL AGREEMENT AND THEN THE CHANGES THAT WERE MADE  
7 TO THAT IN THE FIRST DRAFT OF THE TRANSMUTATION AGREEMENT;  
8 CORRECT?

9 A THAT'S MY UNDERSTANDING, YES.

10 Q AND MR. CHAPMAN DID THIS FIRST DRAFT;  
11 CORRECT?

12 A CORRECT.

13 Q AND YOU DON'T HAVE ANY RECOLLECTION OF  
14 DISCUSSING ANY OF THE EDITS WITH MR. CHAPMAN THAT HE MADE  
15 HERE; CORRECT?

16 A NO.

17 Q OKAY. NOW, THE LEGAL STANDARDS FOR PARTIES  
18 ENTERING INTO PRENUPTIAL AGREEMENTS ARE DIFFERENT THAN THE  
19 LEGAL STANDARDS FOR MARRIED COUPLES WHO ENTER INTO A  
20 TRANSMUTATION AGREEMENT; CORRECT?

21 A CORRECT.

22 Q MARRIED COUPLES, OF COURSE, HAVE FIDUCIARY  
23 DUTIES TO EACH OTHER; CORRECT?

24 A CORRECT.

25 Q PROSPECTIVE SPOUSES TYPICALLY DO NOT HAVE  
26 FIDUCIARY DUTIES; CORRECT?

27 A CORRECT.

28 Q AND DID YOU AND MR. SILVERSTEIN DISCUSS AT

1 ALL, AT ANY TIME, WHETHER OR NOT FIDUCIARY DUTIES WERE  
2 OWED BETWEEN SPOUSES UNDER CALIFORNIA LAW?

3 A I DON'T RECALL IF I SPECIFICALLY PHRASED IT  
4 THAT WAY TO HIM OR IF WE JUST SORT OF TALKED ABOUT THE  
5 MECHANICS THAT WOULD KIND OF FLOW FROM THAT.

6 Q ALL RIGHT. IF YOU COULD LOOK AT VOLUME I OF  
7 YOUR DEPOSITION, AT PAGE 186. STARTING AT PAGE 186, LINE  
8 23, I ASKED YOU THE FOLLOWING QUESTION:

9 "DID YOU AND MR. SILVERSTEIN DISCUSS AT ALL, AT  
10 ANY TIME, WHETHER OR NOT THERE WERE FIDUCIARY DUTIES THAT  
11 WERE OWED BETWEEN SPOUSES UNDER CALIFORNIA LAW?"

12 AND YOUR ANSWER WAS, "I DON'T REMEMBER."

13 THAT TESTIMONY WAS TRUTHFUL AND ACCURATE WHEN YOU  
14 GAVE IT ON APRIL 27; CORRECT?

15 A YES, IT WAS.

16 Q NOW, DID ANY OF THE TRANSMUTATION AGREEMENTS  
17 THAT YOU HAD PREPARED PRIOR TO THE ONE THAT YOU DID FOR  
18 THE MCCOURTS INVOLVE COUPLES WHO HAD LIVED OUTSIDE OF  
19 CALIFORNIA AND WERE MOVING INTO CALIFORNIA?

20 A I DON'T RECALL FOR SURE.

21 Q WITH RESPECT TO THE TRANSMUTATION AGREEMENT  
22 THAT YOU PREPARED FOR THE MCCOURTS -- EXCUSE ME --  
23 PREPARED PRIOR TO THE ONE YOU DID FOR THE MCCOURTS, DID  
24 ANY OF THEM INVOLVE INSTANCES IN WHICH PARTIES WANTED TO  
25 TRANSMUTE QUASI COMMUNITY PROPERTY INTO SEPARATE PROPERTY?

26 A I DON'T BELIEVE SO.

27 Q DO YOU RECALL ANY TRANSMUTATION AGREEMENTS  
28 THAT YOU HAD PREPARED BEFORE YOU DID THE WORK FOR THE

1 MCCOURTS WHERE AT LEAST ONE OF THE PURPOSES WAS FOR THE  
2 SPOUSES TO HAVE CREDITOR PROTECTION?

3 A I DON'T REMEMBER FOR SURE.

4 Q OKAY. IF YOU COULD LOOK AT YOUR DEPOSITION,  
5 VOLUME I, PAGE 154. ON PAGE 154, STARTING AT LINE 17, THE  
6 QUESTION I POSED TO YOU WAS:

7 "DO YOU RECALL ANY TRANSMUTATION AGREEMENT THAT  
8 YOU HAD PREPARED BEFORE YOU DID THE MCCOURTS' WHERE AT  
9 LEAST ONE OF THE PURPOSES WAS FOR THE SPOUSES TO GET  
10 CREDITOR PROTECTION?"

11 AND YOU ANSWERED, "NO."

12 AND THAT WAS TRUTHFUL AND ACCURATE TESTIMONY WHEN  
13 YOU GAVE IT, WASN'T IT?

14 A YES.

15 Q NOW, YOU TESTIFIED LAST TIME THAT YOU  
16 CONSIDERED YOURSELF TO BE AN EXPERT IN TRANSMUTATION  
17 AGREEMENTS UNDER CALIFORNIA LAW; CORRECT?

18 A CORRECT.

19 Q AT THE TIME THAT YOU WERE DEPOSED IN THIS  
20 CASE, HAD YOU EVER PREPARED ANY FINANCIAL DISCLOSURES FOR  
21 A POSTMARITAL AGREEMENT?

22 A I DON'T BELIEVE SO.

23 Q AND IN FEBRUARY OF 2004, IT WAS YOUR BELIEF  
24 THAT MR. AND MRS. MCCOURT DID NOT HAVE A DUTY TO EACH  
25 OTHER TO DISCLOSE IN THE AGREEMENT THE ASSETS IN WHICH  
26 THEY HAD AN INTEREST; CORRECT?

27 A THAT'S CORRECT.

28 Q AND YOU DRAFTED THE TRANSMUTATION AGREEMENT

1 TO REFLECT THAT BELIEF YOU HAD; CORRECT?

2 A I'M SORRY. GIVE ME THE QUESTION AGAIN.

3 Q YES. THE PREDICATE WAS, IT WAS YOUR BELIEF  
4 IN FEBRUARY 2004 THAT THERE WAS NO DUTY FOR MR. AND  
5 MRS. MCCOURT TO DISCLOSE TO EACH OTHER IN THIS AGREEMENT  
6 THE ASSETS IN WHICH THEY HAD INTEREST, AND YOU SAID THAT  
7 WAS YOUR BELIEF; CORRECT?

8 A RIGHT.

9 Q AND MY QUESTION WAS, WHEN YOU DRAFTED THE  
10 TRANSMUTATION AGREEMENT, YOU DID SO BASED AT LEAST IN PART  
11 UPON THAT BELIEF; CORRECT?

12 A CORRECT.

13 Q AND IN FEBRUARY OF 2004, IT WAS ALSO YOUR  
14 BELIEF THAT MR. AND MRS. MCCOURT DID NOT HAVE A DUTY TO  
15 EACH OTHER TO DISCLOSE IN THE AGREEMENT THE VALUE OF THE  
16 ASSETS IN WHICH THEY EACH HELD AN INTEREST; CORRECT?

17 A CORRECT.

18 Q AND THE TRANSMUTATION AGREEMENT THAT YOU  
19 HELPED PREPARE REFLECTS -- OR IS BASED, AT LEAST IN PART,  
20 ON THAT BELIEF AS WELL; CORRECT?

21 A CORRECT.

22 Q AND IT WAS ALSO YOUR BELIEF IN FEBRUARY OF  
23 2004 THAT MR. AND MRS. MCCOURT DID NOT HAVE A DUTY TO EACH  
24 OTHER TO DISCLOSE IN THE AGREEMENT THE CHARACTERIZATION,  
25 UNDER CALIFORNIA LAW, OF THE PROPERTY IN WHICH THEY HELD  
26 AN INTEREST; CORRECT?

27 A CORRECT.

28 Q AND AGAIN, YOU PREPARED THAT AGREEMENT, BASED

1 AT LEAST IN PART, UPON THAT BELIEF; CORRECT?

2 A CORRECT.

3 Q AND IT WAS ALSO YOUR BELIEF, IN FEBRUARY OF  
4 2004, THAT MR. AND MRS. MCCOURT DID NOT HAVE A DUTY, UNDER  
5 CALIFORNIA LAW, TO DISCLOSE TO EACH OTHER IN THE AGREEMENT  
6 THE OBLIGATIONS FOR WHICH THEY WERE LIABLE AT THE TIME OF  
7 THE AGREEMENT; CORRECT?

8 A CORRECT.

9 Q AND YOU AGAIN DRAFTED THE TRANSMUTATION BASED  
10 UPON THAT BELIEF AS WELL; CORRECT?

11 A CORRECT.

12 Q NOW, IF YOU COULD LOOK BACK AT EXHIBIT 25  
13 THAT WE WERE JUST LOOKING AT, WHICH WAS THE -- EXCUSE  
14 ME -- WHICH IS THE REDLINED. ON THE FIRST PAGE OF THAT,  
15 WE HAVE -- YOU SEE THE RECITALS ON PAGE 1?

16 A YES.

17 Q AND BY THE WAY, THIS IS PAGE NO. 1. IN THE  
18 LOWER RIGHT-HAND CORNER IS THE PAGE NUMBER.

19 NOW, PARAGRAPH 5, WHICH -- IN PARAGRAPH 6 AT THE  
20 BOTTOM OF THAT FIRST PAGE HAVE TWO RECITALS. AND DO YOU  
21 SEE RIGHT ABOUT IN THE MIDDLE OF EACH PARAGRAPH, IN BOLD  
22 LETTERS, IT SAYS, "ALTERNATE, IF NOT FULL, DISCLOSURE."  
23 DO YOU SEE THAT THERE?

24 A UH-HUH.

25 Q I THINK YOU HAVE TO ANSWER AUDIBLY?

26 A I'M SORRY. YES.

27 Q AND YOU UNDERSTOOD THE WAY THAT THIS FORM WAS  
28 SET UP, THIS FORM PRENUPTIAL AGREEMENT, IS THAT DRAFTER

1 COULD DECIDE EITHER TO HAVE FULL DISCLOSURE OR SOMETHING  
2 LESS THAN FULL DISCLOSURE; CORRECT?

3 A CORRECT.

4 Q AND MR. CHAPMAN CHOSE SOMETHING LESS THAN  
5 FULL DISCLOSURE?

6 A CORRECT.

7 Q AND -- BUT YOU DON'T RECALL ANY DISCUSSIONS  
8 WITH MR. CHAPMAN AS TO WHY HE CHOSE THAT; CORRECT?

9 A NO, I DON'T.

10 Q IF YOU COULD TURN TO SECTION 2 OF THIS  
11 AGREEMENT, WHICH IS ON PAGE 3, EXHIBIT 25, PAGE 3, THIS IS  
12 DISCLOSURE OF PROPERTY. AND AGAIN, IN PARAGRAPHS A AND B,  
13 AGAIN WE SEE THAT THE FORM HAS, IN CAPITAL LETTERS, IT  
14 SAYS, "PARTIAL DISCLOSURE." DO YOU SEE THAT ON EACH FORM?

15 A YES.

16 Q SO THE DRAFTER CAN CHOOSE EITHER TO HAVE THE  
17 HUSBAND AND WIFE MAKING A FULL DISCLOSURE OR A PARTIAL  
18 DISCLOSURE UNDER A OR B; CORRECT?

19 A CORRECT.

20 Q YOU AND MR. CHAPMAN CHOSE PARTIAL DISCLOSURE  
21 NOT FULL DISCLOSURE; CORRECT?

22 A THAT'S CORRECT.

23 Q AND THEN PARAGRAPHS C AND D INVOLVED  
24 INSTANCES IN WHICH THE HUSBAND DISCLOSES THE -- EXCUSE  
25 ME -- THE HUSBAND AND WIFE EACH DISCLOSE THE OBLIGATIONS  
26 FOR WHICH THEY ARE LIABLE, AND THOSE WERE DELETED IN THEIR  
27 ENTIRETY; CORRECT?

28 A CORRECT.

1 Q NOW, IN WHAT WAS THEN THE LAST PARAGRAPH OF  
2 SECTION 2, THE FIRST SENTENCE READS, "THE FOREGOING  
3 DISCLOSURES ARE FOR COURTESY ONLY AND ARE NOT AN  
4 INDUCEMENT FOR EITHER PARTY TO ENTER INTO THIS AGREEMENT."

5 DO YOU SEE THAT?

6 A YES.

7 Q AND YOUR UNDERSTANDING OF THAT LANGUAGE WAS  
8 THAT WHAT IT WAS ESSENTIALLY SAYING WAS THAT INFORMATION  
9 WHICH IS BEING PROVIDED HERE IS NOT PART OF THE  
10 CONSIDERATION THAT'S THE BASIS OF THE CONTRACT; CORRECT?

11 A CORRECT.

12 Q NOW, THIS WAS LANGUAGE THAT WAS TAKEN FROM A  
13 FORM PRENUPTIAL AGREEMENT; CORRECT?

14 A YES.

15 Q AND THIS LANGUAGE ABOUT THE DISCLOSURES BEING  
16 FOR COURTESY ONLY DOES NOT COMPLY WITH THE REQUIREMENTS OF  
17 FAMILY CODE SECTION 721(B), DOES IT?

18 A I AM NOT SURE.

19 Q AT THE BOTTOM OF THAT PARAGRAPH, THE LAST  
20 SENTENCE, YOU SEE THERE'S A CLAUSE THAT BEGINS, IT SAYS,  
21 "PURSUANT TO FAMILY CODE SECTION 1615(A)(2)(B)," AND THEN  
22 IT GOES ON FROM THERE. DO YOU SEE THAT?

23 A YES.

24 Q AND MR. CHAPMAN HAS STRUCK OUT, "PURSUANT TO  
25 FAMILY CODE SECTION 1615(A)(2)(B)." DO YOU RECOGNIZE WHAT  
26 THAT STATUTE GOVERNS?

27 A I BELIEVE THAT'S A REFERENCE TO THE STATUTE  
28 GOVERNING PRENUPTIAL AGREEMENTS.

1 Q OKAY. AND UNDER THE STATUTE GOVERNING  
2 PRENUPTIAL AGREEMENTS, THERE'S A SPECIFIC STATUTORY  
3 SECTION THAT AUTHORIZES THE WAIVER THAT IS CONTAINED IN  
4 THIS SENTENCE. SPECIFICALLY, THE WAIVER IS, IT SAYS  
5 HUSBAND AND WIFE, QUOTE, EACH WAIVE ANY RIGHT WHICH EITHER  
6 OF THEM MAY HAVE TO DISCLOSURE OF THE PROPERTY OR  
7 FINANCIAL OBLIGATIONS OF THE OTHER PARTY BEYOND THE  
8 DISCLOSURE PROVIDED IN THIS AGREEMENT, UNQUOTE.

9 AND THAT IS AUTHORIZED IN PRENUPS UNDER A  
10 SPECIFIC STATUTE; CORRECT?

11 A CORRECT.

12 Q THAT STATUTE DOES NOT APPLY TO THIS AGREEMENT  
13 THAT WE'RE LOOKING AT, DOES IT?

14 A NO, IT DOES NOT.

15 Q AND DID YOU KNOW, IN 2004, WHETHER FIDUCIARY  
16 DUTIES BETWEEN A HUSBAND AND WIFE COULD BE LIMITED OR  
17 WAIVED IN POSTNUPTIAL AGREEMENTS UNDER CALIFORNIA LAW?

18 A I DON'T BELIEVE THEY CAN BE WAIVED  
19 COMPLETELY, NO.

20 Q DID YOU KNOW IN -- DID YOU KNOW, IN 2004,  
21 WHETHER OR NOT FIDUCIARY DUTIES BETWEEN THE HUSBAND AND  
22 WIFE COULD BE LIMITED OR WAIVED IN A POSTNUPTIAL  
23 AGREEMENT?

24 A YES, I DID.

25 Q OKAY. IF YOU COULD LOOK AT VOLUME II OF YOUR  
26 DEPOSITION, ON PAGE 333. ON PAGE 333, MY QUESTION BEGINS  
27 AT LINE 3. AND I ASK YOU:

28 "DO YOU KNOW WHETHER FIDUCIARY DUTIES CAN BE

1 LIMITED OR WAIVED UNDER CALIFORNIA LAW IN POSTNUPTIAL  
2 AGREEMENTS?"

3 AND THEN THERE IS DISCUSSION FROM YOUR ATTORNEY.

4 AND THEN AT LINE NUMBER 15, IF YOU CAN GO DOWN TO  
5 LINE 15, YOUR ANSWER WAS, "I'M NOT SURE."

6 AND THAT ANSWER WAS TRUTHFUL AND ACCURATE AT THE  
7 TIME THAT YOU GAVE IT ON APRIL 23, 2010; CORRECT?

8 A CORRECT.

9 Q NOW, IN CONNECTION WITH THE -- PREPARING THE  
10 TRANSMUTATION AGREEMENT, DID YOU DO ANY RESEARCH INTO WHAT  
11 IS REQUIRED FOR AN EFFECTIVE WAIVER BETWEEN A HUSBAND AND  
12 WIFE UNDER CALIFORNIA LAW?

13 A NO.

14 Q DID MR. CHAPMAN DO ANY SUCH RESEARCH?

15 A NOT THAT I'M AWARE OF.

16 Q TO YOUR KNOWLEDGE, DID ANYBODY DO ANY  
17 RESEARCH IN THAT REGARD?

18 A NO.

19 Q NOW, AT THE TIME THAT YOU WERE HELPING  
20 PREPARE THE TRANSMUTATION AGREEMENT, DID YOU HAVE ANY  
21 DISCUSSION WITH MR. SILVERSTEIN ABOUT THE VALUE OF THE  
22 ASSETS OWNED BY THE MCCOURTS?

23 A I DON'T REMEMBER DISCUSSING THAT.

24 Q AND AT THE TIME, DID YOU KNOW WHAT  
25 MR. MCCOURT'S NET WORTH WAS?

26 A NO, I DID NOT.

27 Q DID ANYONE TELL YOU AT THE TIME THAT  
28 MR. MCCOURT HAD SIGNED A PERSONAL FINANCIAL STATEMENT

1 SHOWING A NET WORTH OF OVER \$350 MILLION AT THAT TIME?

2 A NO, THEY HAD NOT.

3 Q AND DID IT MATTER TO YOU AT ALL WHETHER THE  
4 VALUE OF THE ASSETS THAT WERE BEING TRANSMUTED WERE  
5 DISPROPORTIONATE IN FAVOR OF ONE SPOUSE OVER THE OTHER?

6 A NO.

7 Q DID IT MATTER TO YOU, AS MRS. MCCOURT'S  
8 LAWYER, WHETHER THE VALUE OF THE ASSETS WERE  
9 DISPROPORTIONATE?

10 A NO.

11 Q NOW, IN FEBRUARY OF 2004, HAD YOU EVER HEARD  
12 OF THE PRESUMPTION OF UNDUE INFLUENCE ARISING UNDER FAMILY  
13 CODE SECTION 721(B) IN THE CONTEXT OF TRANSFERS BETWEEN  
14 SPOUSES?

15 A NO.

16 Q AND DID YOU UNDERSTAND, IN FEBRUARY OF 2004,  
17 THAT IF THERE WAS A SIGNIFICANT DISPARITY IN THE VALUES  
18 BETWEEN THE ASSETS THAT THAT COULD GIVE RISE TO THE  
19 PRESUMPTION OF UNDUE INFLUENCE?

20 A THAT WAS NOT MY UNDERSTANDING.

21 Q WELL, DID ANYONE DO ANY RESEARCH AT THE TIME  
22 AS TO WHETHER OR NOT THE PRESUMPTION COULD ARISE IN THIS  
23 CASE?

24 A NOT THAT I KNOW OF.

25 Q DID YOU DISCUSS WITH LARRY SILVERSTEIN THE  
26 PRESUMPTION OF UNDUE INFLUENCE UNDER CALIFORNIA LAW?

27 A NOT THAT I REMEMBER.

28 Q DID YOU EVER DISCUSS THAT WITH MRS. MCCOURT?

1           A       NO.

2           Q       DID YOU EVER TAKE ANY STEPS TO DETERMINE  
3 WHETHER OR NOT MRS. MCCOURT WAS BEING UNFAIRLY  
4 DISADVANTAGED UNDER THE TRANSMUTATION AGREEMENT?

5           A       NO.

6           Q       NOW, IN -- IF WE COULD TURN OVER TO -- JUST  
7 FOR A MOMENT, IF YOU COULD TURN IN THE BOOK TO EXHIBIT 7,  
8 WHICH IS ACTUALLY ONE OF THE EXECUTED MARITAL PROPERTY  
9 AGREEMENTS. DO YOU HAVE THAT THERE? IT SHOULD BE THE  
10 FIRST TAB IN YOUR BOOK.

11          A       YES.

12          Q       IF YOU COULD SEE IN THE RECITALS, RECITAL  
13 NUMBER 3 AND RECITAL NUMBER 4, DO YOU SEE THOSE THERE?

14          A       YES, I SEE THEM.

15          Q       FOR EXAMPLE, RECITAL NUMBER 4 READS, "JAMIE  
16 HAS DISCLOSED TO FRANK THAT SHE HOLDS DIRECTLY, AND AS A  
17 BENEFICIARY OF TRUSTS, SUBSTANTIAL PROPERTY INTERESTS AND  
18 SIGNIFICANT INCOME FROM VARIOUS SOURCES, INCLUDING,  
19 WITHOUT LIMITATION, HER BUSINESS AND INVESTMENT  
20 INTERESTS."

21                 AND YOU SEE THAT, YES?

22          A       YES, I SEE THAT.

23          Q       NOW, AT THE TIME THAT YOU PREPARED THIS  
24 AGREEMENT, RECITALS 3 AND 4 DO NOT DESCRIBE THE  
25 CHARACTERIZATION OF THEIR ASSETS UNDER CALIFORNIA LAW;  
26 CORRECT?

27          A       THAT'S CORRECT.

28          Q       AND YOU DID NOT BELIEVE IT WAS NECESSARY TO

1 DO SO IN THE MARITAL PROPERTY AGREEMENT; CORRECT?

2 A THAT'S CORRECT.

3 Q AND ONE OF THE REASONS YOU THOUGHT IT WAS  
4 UNNECESSARY WAS BECAUSE YOU BELIEVED YOU HAD ALREADY GIVEN  
5 THAT INFORMATION TO MRS. MCCOURT; CORRECT?

6 A THE REASON I BELIEVED THAT WAS SO IS WE WERE  
7 BASICALLY LOOKING TO CREATE AN END POINT RATHER THAN A  
8 BEGINNING POINT.

9 Q WELL, MY QUESTION, THOUGH, IS, ONE OF THE  
10 REASONS WHY YOU DIDN'T THINK IT WAS NECESSARY TO MAKE THAT  
11 DISCLOSURE IS BECAUSE YOU BELIEVED JAMIE KNEW THE ANSWER  
12 TO THOSE QUESTIONS BECAUSE YOU HAD GIVEN HER THE ANSWER TO  
13 THAT QUESTION ALREADY; RIGHT?

14 A COULD YOU START -- I'M SORRY -- COULD YOU  
15 START THE SEQUENCE OF QUESTIONS FROM THE -- FROM WHERE YOU  
16 STARTED. I JUST WANT TO MAKE SURE I GET THIS RIGHT FOR  
17 YOU.

18 Q YES. MY QUESTION HAS TO DO WITH THE RECITALS  
19 IN PARAGRAPHS 3 AND 4. AND IT WAS YOUR BELIEF THAT THEY  
20 DID NOT NEED TO RECITE THE CHARACTER OF THE ASSETS UNDER  
21 CALIFORNIA LAW IN THE EVENT THAT THERE WAS NOT A PROPERTY  
22 AGREEMENT SIGNED WHEN THEY MOVED TO THE STATE; CORRECT?

23 A CORRECT.

24 Q AND MY QUESTION TO YOU WAS, ONE OF THE  
25 REASONS THAT YOU BELIEVED IT WAS NOT NECESSARY IS BECAUSE  
26 YOU BELIEVED THAT MRS. MCCOURT ALREADY KNEW THE ANSWER TO  
27 THAT QUESTION BECAUSE OF THE CONVERSATIONS THE TWO OF YOU  
28 HAD HAD?

1 A CORRECT.

2 Q NOW, AGAIN, LOOKING BACK AT EXHIBIT 7, AT THE  
3 BOTTOM OF THE FIRST PAGE, WE HAVE SECTION NO. 1, CALLED  
4 "ACQUIRING CALIFORNIA RESIDENCE." DO YOU SEE THAT THERE?

5 A YES.

6 Q THIS PROVIDES THAT THE AGREEMENT SHALL BECOME  
7 EFFECTIVE UPON EITHER OR BOTH OF JAMIE AND FRANK BECOMING  
8 RESIDENTS OF CALIFORNIA AND SUBJECT TO CALIFORNIA LAW WITH  
9 RESPECT TO THE DIVISION OF THEIR ASSETS FOR ANY REASON,  
10 WHICH IS DEFINED AS THE EFFECTIVE TIME; RIGHT?

11 A THAT'S WHAT IT SAYS, YES.

12 Q SO THERE ARE THOSE TWO CONDITIONS; CORRECT?

13 A WELL, I'M NOT SURE WHAT YOU MEAN BY CALLING  
14 THEM "TWO CONDITIONS."

15 Q LET ME REPHRASE IT SO IT'S CLEAR. YOU ADDED  
16 THE LANGUAGE TO PARAGRAPH 1, QUOTE, SUBJECT TO CALIFORNIA  
17 LAW, ET CETERA; CORRECT?

18 A YES, I DID.

19 Q AND ONE OF THE REASONS THAT YOU ADDED THAT IS  
20 BECAUSE YOU WEREN'T SURE WHEN THEY WERE GOING TO BE MOVING  
21 HERE, SO YOU THOUGHT IF YOU MADE IT AS SOON AS CALIFORNIA  
22 LAW APPLIES, THAT WOULD MAKE SENSE IN TERMS OF AN  
23 EFFECTIVE TIME; CORRECT?

24 A WE WERE TRYING TO GET THE EARLIEST POSSIBLE  
25 EFFECTIVE DATE, YES.

26 Q SO IF THEY NEVER MOVE HERE, IF THEY NEVER  
27 BECOME RESIDENTS, THERE'S NO TRANSMUTATION UNDER THIS  
28 AGREEMENT; CORRECT?

1           A        THAT'S CORRECT.

2           Q        NOW, YOU DIDN'T MAKE THE AGREEMENT EFFECTIVE  
3 UPON SIGNING; RIGHT?

4           A        NO, WE DID NOT.

5           Q        AND THE REASON YOU DIDN'T MAKE IT EFFECTIVE  
6 AT THE TIME OF SIGNING WAS BECAUSE IF THEY DIDN'T COME  
7 HERE, THEN THERE WOULDN'T BE ANY QUASI COMMUNITY PROPERTY  
8 ISSUES; CORRECT?

9           A        CORRECT.

10          Q        AND IF YOU COULD NOW TURN OVER TO -- BACK TO  
11 EXHIBIT 25, WHICH IS THE REDLINED THAT WE HAD BEEN LOOKING  
12 AT BEFORE. I'D LIKE YOU TO TURN TO PARAGRAPH 4C,  
13 PARAGRAPH 4C, WHICH IS ON PAGE 4. AND AGAIN, THIS IS THE  
14 REDLINED, SO, AS I UNDERSTAND IT -- CORRECT ME IF I'M  
15 WRONG -- BUT PARAGRAPH 4C WAS ADDED IN ITS ENTIRETY TO THE  
16 PRENUPTIAL FORM AGREEMENT THAT YOU WERE USING; CORRECT?

17          A        YES.

18          Q        OKAY. AND YOU DON'T HAVE ANY RECOLLECTION OF  
19 DISCUSSING PARAGRAPH 4C WITH MR. CHAPMAN, WHO DRAFTED IT;  
20 CORRECT?

21          A        NO, I DON'T.

22          Q        AND DO YOU RECALL LOOKING AT ANY CASES  
23 DEALING WITH TRANSMUTATION IN CONNECTION WITH PARAGRAPH 4?

24          A        NO, I DON'T.

25          Q        ALL RIGHT. NOW, PARAGRAPH 4C PROVIDES THAT  
26 THE CHARACTERIZATIONS OF THE PROPERTY IN EXHIBITS A AND B  
27 WAS INTENDED TO AND WOULD CONSTITUTE A TRANSMUTATION INTO  
28 THE SEPARATE PROPERTY THAT WOULD OTHERWISE BE QUASI

1 COMMUNITY PROPERTY ON THE EFFECTIVE TIME; CORRECT?

2 A THAT'S WHAT IT SAYS.

3 Q OKAY. AND SO THE STARTING POINT FOR 4C WAS  
4 PROPERTY THAT BECAME QUASI COMMUNITY PROPERTY, AND THEN IT  
5 WAS TRANSMUTED INTO SEPARATE PROPERTY?

6 A THAT'S CORRECT.

7 Q NOW, THIS PROPERTY THAT WOULD HAVE OTHERWISE  
8 BEEN COMMUNITY PROPERTY IF IT HAD BEEN ACQUIRED IN THE  
9 STATE OF CALIFORNIA, BECOME QUASI COMMUNITY -- OH, I SAID  
10 THAT RIGHT, I APOLOGIZE. EXCUSE ME. DOES PROPERTY THAT  
11 WOULD HAVE OTHERWISE BEEN COMMUNITY PROPERTY IF IT HAD  
12 BEEN ACQUIRED IN THE STATE OF CALIFORNIA BECOME QUASI  
13 COMMUNITY PROPERTY WHEN YOU MOVE INTO THE STATE?

14 A IT'S SUBJECT TO THAT POSSIBLE TREATMENT ONCE  
15 YOU COME INTO THE STATE.

16 Q IF YOU COULD LOOK AT VOLUME II OF YOUR  
17 DEPOSITION, PAGE 547, STARTING AT LINE 15. MY QUESTION TO  
18 YOU WAS:

19 "DOES PROPERTY THAT WOULD HAVE OTHERWISE BEEN  
20 COMMUNITY PROPERTY IF IT HAD BEEN ACQUIRED IN THE STATE OF  
21 CALIFORNIA BECOME QUASI COMMUNITY PROPERTY WHEN YOU MOVE  
22 INTO THE STATE?"

23 AND YOU ANSWERED: "FROM A STATE WHERE THEY  
24 DIDN'T HAVE" -- AND THEN SAID, "YES, I BELIEVE THAT'S THE  
25 CASE."

26 AND THAT WAS TRUTHFUL AND ACCURATE TESTIMONY ON  
27 APRIL 23RD WHEN YOU GAVE THAT; CORRECT?

28 A YES.

1 Q AND -- NOW, YOU HAD NEVER PREPARED A  
2 TRANSMUTATION AGREEMENT BEFORE THAT DID NOT BECOME  
3 EFFECTIVE UNTIL A LATER POINT IN TIME; CORRECT?

4 A I DON'T RECALL EVER HAVING DONE THAT, NO.

5 Q AND ALL THE AGREEMENTS THAT YOU HAD PREPARED  
6 UP TO THE ONE THAT YOU DID FOR THE MCCOURTS BECAME  
7 EFFECTIVE AT THE TIME OF SIGNING; CORRECT?

8 A I BELIEVE THAT'S THE CASE.

9 Q OKAY. NOW, IF YOU COULD LOOK AGAIN BACK AT  
10 EXHIBIT NO. 7, WHICH IS THE ONE OF THE VERSIONS OF THE  
11 SIGNED TRANSMUTATION AGREEMENT. AND IF YOU COULD TURN  
12 OVER TO PARAGRAPH 5A, WHICH IS ON PAGE 3 OF THE AGREEMENT.

13 DO YOU SEE PARAGRAPH 5A?

14 A YES.

15 Q AND THIS IS IN THE SECTION OF A MUTUAL WAIVER  
16 OF MARITAL RIGHTS IN SEPARATE PROPERTY. DO YOU SEE THAT?

17 A YES.

18 Q WITHOUT READING IT INTO THE RECORD, BECAUSE  
19 WE HAVE IT ON THE SCREEN, MY QUESTION IS: WITH RESPECT TO  
20 THE LANGUAGE THAT WAS HERE, AM I CORRECT THAT WHAT YOU  
21 WERE TRYING TO ACCOMPLISH HERE WAS NOT THE WAIVER OF QUASI  
22 COMMUNITY PROPERTY RIGHTS AS SUCH, BUT YOU WERE TRYING TO  
23 DEAL WITH THE FACT THAT, ABSENT AN AGREEMENT, THE PROPERTY  
24 WAS GOING TO BECOME QUASI COMMUNITY PROPERTY, AND  
25 MRS. MCCOURT DIDN'T WANT THAT TO HAPPEN, AND SO YOU WERE  
26 GOING TO CHANGE IT INTO SEPARATE PROPERTY?

27 A I PROBABLY DESCRIBED THIS PARAGRAPH THAT WAY.  
28 I WAS TRYING TO GET TO THE END RESULT WHICHEVER WAY, BY

1 WAY OF TRANSMUTATION OR BY WAY OF WAIVER. BUT I PROBABLY  
2 DESCRIBED IT AS TRANSMUTATION.

3 Q WELL, LET'S LOOK AT VOLUME III OF YOUR  
4 DEPOSITION, AT PAGE 662. ON PAGE 662 OF YOUR DEPOSITION,  
5 STARTING ON LINE 16, I WAS ASKING YOU ABOUT PARAGRAPH 5A.  
6 AND MY QUESTION WAS, "WHEN YOU SAY ONE OF THE THINGS WE  
7 WERE TRYING TO ACCOMPLISH -- ONE OF THE THINGS YOU WERE  
8 TRYING TO ACCOMPLISH WAS, AMONG OTHER THINGS, THE WAIVER  
9 OF QUASI COMMUNITY PROPERTY RIGHTS THAT EITHER OF THEM  
10 MIGHT HAVE?

11 "ANSWER: WELL, IT WASN'T SO MUCH THE WAIVER OF  
12 THOSE RIGHTS AS, ABSENT AN AGREEMENT, THE PROPERTY WAS  
13 GOING TO BECOME QUASI COMMUNITY PROPERTY. MRS. MCCOURT  
14 DIDN'T WANT THAT, SO WE WERE CHANGING IT TO SEPARATE  
15 PROPERTY."

16 AND THAT WAS TRUTHFUL AND ACCURATE WHEN YOU GAVE  
17 THIS TESTIMONY; CORRECT?

18 A CORRECT.

19 Q NOW, DURING YOUR DIRECT EXAMINATION, YOU ALSO  
20 TESTIFIED THAT YOU DISCUSSED WITH MRS. MCCOURT ISSUES  
21 RAISED BY THE PEREIRA AND VANCAMP CASES. DO YOU RECALL  
22 THAT?

23 A YES.

24 Q AND IN YOUR DEPOSITION, DO YOU RECALL THAT I  
25 ASKED YOU WHAT YOUR UNDERSTANDING WAS, IN 2004, AS TO WHAT  
26 THE PEREIRA CASE STOOD FOR? DO YOU RECALL WHAT YOU TOLD  
27 ME IN THE FIRST INSTANCE?

28 A YES.

1 Q WHAT DID YOU SAY?

2 A I BELIEVE, IN SUBSTANCE, THAT I TOLD YOU THAT  
3 I CAN NEVER KEEP THE TWO PROPOSITIONS STRAIGHT AS TO WHICH  
4 THEORY OF VALUING BUSINESS GOES WITH WHICH CASE, BUT  
5 ESSENTIALLY THEY'RE TWO DIFFERENT THEORIES FOR VALUING A  
6 POTENTIAL COMMUNITY INTEREST IN A BUSINESS THAT STARTED  
7 OUT AS SEPARATE PROPERTY.

8 Q NOW, IN YOUR TESTIMONY ON LAST TUESDAY, IF  
9 YOU RECALL, THERE WAS ACTUALLY A QUESTION THAT THE COURT  
10 POSED TO YOU DURING THE QUESTIONING ABOUT PEREIRA/VANCAMP.  
11 DO YOU RECALL THAT?

12 A YES.

13 Q AND ON PAGE 110 AND 111 OF THE DIRECT  
14 EXAMINATION, THE COURT ASKED YOU THE QUESTION, THIS IS AT  
15 LINE 26:

16 "QUESTION: DID YOU EVER -- DID YOU TALK ABOUT  
17 SPECIFICALLY WHAT THE VANCAMP/PEREIRA INTEREST WAS?"

18 AND YOUR RESPONSE WAS, "MEANING THE ISSUE OF  
19 SOMEBODY DEVOTING EFFORT TO THE BUSINESS AND THE COMMUNITY  
20 INTEREST ARISING?"

21 THE COURT SAID, "CORRECT."

22 AND YOU ANSWERED, "YES."

23 AND DO YOU RECALL THAT TESTIMONY THAT YOU GAVE  
24 LAST WEEK?

25 A YES.

26 Q NOW, DO YOU RECALL, AT YOUR DEPOSITION, WHEN  
27 I ASKED YOU ABOUT ANY CONVERSATIONS YOU HAD HAD WITH  
28 MRS. MCCOURT ABOUT PEREIRA AND VANCAMP, THAT YOU GAVE A

1 DIFFERENT ANSWER?

2           A           I BELIEVE I SAID THAT I DIDN'T USE THE CASE  
3 NAMES, BUT THAT I THOUGHT, IN SUBSTANCE, WE COVERED THE  
4 ISSUE.

5           Q           LET'S LOOK AT VOLUME III OF YOUR DEPOSITION,  
6 AT PAGE 654. AT PAGE 654, STARTING AT LINE 9, WHICH  
7 FOLLOWS A FEW PAGES WHERE WE WERE DISCUSSING THIS ISSUE --  
8 EXCUSE ME -- LINE 9 OF 654, MY QUESTION WAS:

9                   "MY QUESTION, AGAIN, IS, DID YOU SPECIFICALLY  
10 TALK TO HER ABOUT WHETHER OR NOT YOU USED THE WORDS VAN  
11 CAMP OR PEREIRA, THOSE RIGHTS THAT ARE CREATED UNDER THOSE  
12 CASES UNDER CALIFORNIA LAW?"

13                   AND YOU ANSWERED, "WELL, WE TALKED ABOUT" --

14                   AND THEN IF YOU GO DOWN TO LINE 23 ON THAT SAME  
15 PAGE, YOU SAID:

16                   "WE TALKED ABOUT ALL RIGHTS AND THAT IT WAS GOING  
17 TO BE SEPARATE."

18                   AND THEN ON THE NEXT PAGE, 655, STARTING AT LINE  
19 2, I SAID, "SO THE ANSWER TO MY QUESTION IS NO."

20                   AND YOU ANSWERED, "I THINK THE ANSWER TO YOUR  
21 QUESTION IS YES, BECAUSE THAT WOULD BE A RIGHT. AND WE  
22 SAID THAT IT'S GOING TO BE FRANK'S SEPARATE PROPERTY."

23                   AND THEN I SAID, "MY QUESTION IS DEALING WITH THE  
24 SPECIFIC RIGHT THAT IS KNOWN -- THAT IS CREATED BY THE  
25 PEREIRA AND VAN CAMP CASES. NOT ALL THE RIGHTS BUT THAT  
26 SPECIFIC RIGHT. AND MY QUESTION IS, DID YOU ORALLY  
27 DISCUSS THAT WITH HER WHAT THOSE RIGHTS MEANT UNDER  
28 CALIFORNIA LAW?"

1           "ANSWER: I DON'T RECALL IF WE WENT THROUGH A  
2 LITANY OF ALL THE WAYS THAT SHE MIGHT HAVE AN INTEREST IN  
3 THIS BECAUSE THE DIRECTION FROM HER WAS TO KEEP IT  
4 SEPARATE.

5           "QUESTION: I'M NOT ASKING ABOUT A LITANY; I'M  
6 ASKING ABOUT SPECIFICALLY PEREIRA AND VAN CAMP RIGHTS.  
7 THAT'S MY QUESTION."

8           AND YOUR ANSWER WAS: "AND I DON'T RECALL.

9           "QUESTION: YOU DON'T RECALL ONE WAY OR THE  
10 OTHER?

11          "ANSWER: CORRECT.

12          AND THAT WAS, AGAIN, TRUTHFUL AND ACCURATE  
13 TESTIMONY WHEN YOU GAVE IT; CORRECT?

14          A        YES.

15          Q        NOW, AT THE TIME THAT YOU AND MR. CHAPMAN  
16 WERE WORKING ON THE TRANSMUTATION AGREEMENT, DID THE TWO  
17 OF YOU EVER DISCUSS WHETHER OR NOT INDEPENDENT  
18 REPRESENTATION IS REQUIRED FOR EITHER SPOUSES?

19          A        I DON'T RECALL DISCUSSING THAT WITH  
20 MR. CHAPMAN.

21          Q        AND DURING THE 15-MINUTE CONVERSATION THAT  
22 YOU HAD WITH MRS. MCCOURT AT DODGER STADIUM ON  
23 FEBRUARY 13TH, THERE WAS NO DISCUSSION AT THAT TIME ABOUT  
24 THE NEED FOR INDEPENDENT AND SEPARATE COUNSEL; CORRECT?

25          A        COULD YOU CLARIFY -- I HAD A 40-MINUTE  
26 CONVERSATION, 40 MINUTES TO AN HOUR WITH HER AT DODGER  
27 STADIUM. WE SPENT 15 TO 20 MINUTES ON THE AGREEMENT. SO  
28 COULD YOU JUST CLARIFY FOR ME WHAT EXACTLY IT IS THAT

1 YOU'RE -- SO I DON'T KNOW -- WHEN YOU SAY "THE 15-MINUTE  
2 CONVERSATION," I'M NOT SURE EXACTLY WHAT YOU'RE ASKING  
3 ABOUT THERE.

4 MR. KUMP: I MOVE TO STRIKE. THAT WAS NOT IN  
5 RESPONSE TO ANY QUESTION.

6 THE COURT: IT IS STRUCK. BUT IT IS A GOOD  
7 OBSERVATION AS TO THE ADVOCACY INCLUDED IN YOUR QUESTIONS.

8 Q BY MR. KUMP: OKAY. I WILL GO BACK AND CLEAN  
9 THAT UP IN A MOMENT.

10 IN CONNECTION WITH PREPARING THE TRANSMUTATION  
11 AGREEMENT, DID YOU REVIEW THE MASSACHUSETTS RULES OF  
12 PROFESSIONAL RESPONSIBILITY AT ALL?

13 A NO, I DID NOT.

14 Q AND DID YOU REVIEW THE CALIFORNIA RULES OF  
15 PROFESSIONAL RESPONSIBILITY?

16 A I DON'T RECALL SPECIFICALLY LOOKING AT THEM  
17 AT THE TIME, NO.

18 Q OKAY. IF YOU COULD LOOK AT THE BINDER THAT  
19 IS IN FRONT OF YOU. AND IF YOU COULD LOOK AT EXHIBIT 26.  
20 NOW, WE HAD JUST LOOKED AT EXHIBIT 25, WHICH IS THE  
21 REDLINED, AND EXHIBIT 26 HAS BEEN IDENTIFIED AS THE  
22 VERSION THAT ACCEPTS ALL OF THE CHANGES IN EXHIBIT 25.

23 DO YOU RECOGNIZE THAT?

24 A CAN I JUST TAKE YOUR WORD FOR THAT?

25 Q YES, YOU CAN.

26 A OKAY. THANK YOU.

27 Q IF MR. KIRKPATRICK WILL TAKE MY WORD FOR IT.  
28 ON THE FIRST PAGE OF EXHIBIT 26 THAT ARE UNDER

1 RECITALS 5 AND 6, RECITAL NUMBER 6, WHICH IS A MIRROR OF  
2 NO. 5, BUT WE'LL LOOK AT NO. 6, SAYS, "JAMIE HAS HAD  
3 SEPARATE AND INDEPENDENT COUNSEL TO ADVISE HER OF HER  
4 RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT. COUNSEL HAS  
5 BEEN FULLY ADVISED AND INFORMED OF PREVIOUS AND EXISTING  
6 FINANCIAL AND MARITAL FACTS OF BOTH PARTIES AND HAS  
7 APPRISED JAMIE OF HER RIGHTS AND OBLIGATIONS UNDER THIS  
8 AGREEMENT WITH FULL KNOWLEDGE OF THOSE FACTS."

9 DO YOU SEE THAT?

10 A YES.

11 Q AND WAS THAT KEPT IN THE ORIGINAL -- EXCUSE  
12 ME -- WAS THAT KEPT IN THE AGREEMENT OR WAS THAT CHANGED?

13 A THAT PARAGRAPH WAS SUBSEQUENTLY CHANGED.

14 Q ALL RIGHT. ON PAGE -- PARAGRAPH NO. 3,  
15 REPRESENTATION BY INDEPENDENT COUNSEL, UNDER SUB A, IT  
16 SAYS, "FRANK ACKNOWLEDGES THAT HE HAS BEEN REPRESENTED BY  
17 INDEPENDENT COUNSEL OF HIS CHOICE," WITH A BLANK FOR A  
18 NAME. "JAMIE ACKNOWLEDGES THAT SHE HAS BEEN REPRESENTED  
19 BY INDEPENDENT COUNSEL OF HER CHOICE," WITH A BLANK FOR  
20 THE NAME.

21 AND THEN IT SAYS, "THE RESPECTIVE COUNSEL OF THE  
22 PARTIES HAVE ADVISED THE PARTIES WITH RESPECT TO THE  
23 RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT AND WITH  
24 RESPECT TO THE RIGHTS AND OBLIGATIONS WHICH THEY WOULD  
25 HAVE HAD IN THE ABSENCE OF THIS AGREEMENT. THE RESPECTIVE  
26 COUNSEL OF THE PARTIES HAVE REPRESENTED THEM IN CONNECTION  
27 WITH THE NEGOTIATION AND DRAFTING OF THIS AGREEMENT."

28 AND WAS THAT LANGUAGE ACCEPTED OR WAS THAT

1 CHANGED IN A SUBSEQUENT DRAFT?

2 A THAT LANGUAGE WAS CHANGED.

3 Q AND THEN IF YOU COULD TURN TO PAGE NO. 9 OF  
4 THE AGREEMENT. AND AGAIN, DOWN IN THE LOWER RIGHT-HAND  
5 CORNER AS WELL OF THIS EXHIBIT 26, LINE 9, THERE'S AN  
6 ENTIRE SEPARATE PAGE THAT IS NAMED "CERTIFICATION OF  
7 ATTORNEYS," WHICH HAS A PLACE FOR THE INDEPENDENT COUNSEL  
8 OF BOTH MR. MCCOURT AND MRS. MCCOURT TO GIVE A  
9 CERTIFICATION.

10 DO YOU SEE THAT?

11 A YES.

12 Q AND WAS THAT KEPT IN THE AGREEMENT OR WAS  
13 THAT SUBSEQUENTLY CHANGED?

14 A THAT WAS DELETED.

15 Q NOW, IF YOU COULD TURN BACK TO -- EXCUSE  
16 ME -- IF YOU COULD TURN TO EXHIBIT 27, WHICH IS THE NEXT  
17 ONE IN YOUR BOOK. EXHIBIT 27 WAS THE NEXT DRAFT THAT WAS  
18 PREPARED AFTER EXHIBIT 26. AND WE HAVE PREPARED A  
19 DEMONSTRATIVE TO SHOW THE DIFFERENCES THAT WERE MADE IN  
20 THE TWO.

21 AND SO IF YOU COULD TURN TO PETITIONER'S TRIAL  
22 EXHIBIT NO. 28. THAT SHOWS THE CHANGES THAT WERE MADE IN  
23 THE TWO DRAFTS. AND I BELIEVE YOU TESTIFIED AT YOUR  
24 DEPOSITION THAT MANY OF THESE CHANGES THAT ARE REFLECTED  
25 HERE IN THIS REDLINE WOULD HAVE BEEN MADE BY YOU IN MAKING  
26 CHANGES TO THE DRAFT PREPARED BY MR. CHAPMAN; CORRECT?

27 A WE WENT THROUGH A SERIES OF CHANGES. I KNOW  
28 THERE WAS AN ISSUE WITH THIS REDLINE, BUT THEY LOOK LIKE

1 THE CHANGES I MADE.

2 Q OKAY. NOW, IF YOU COULD TURN TO PARAGRAPH 3  
3 IN THE REDLINED. THIS SHOWS THAT IN THIS SUBSEQUENT  
4 DRAFT -- I'M LOOKING NEAR THE BOTTOM -- LANGUAGE WAS ADDED  
5 WHICH SAYS, QUOTE, FRANK AND JAMIE EACH CONSENT TO THEIR  
6 JOINT REPRESENTATION BY BINGHAM MCCUTCHEN, LLP, IN THE  
7 PREPARATION OF THIS AGREEMENT.

8 DO YOU SEE THAT?

9 A YES.

10 Q AND DID ANYBODY DISCLOSE TO MRS. MCCOURT, IN  
11 YOUR PRESENCE, THAT THE LAW FIRM HAD A CONFLICT OF  
12 INTEREST IN REPRESENTING BOTH OF THEM IN CONNECTION WITH  
13 THIS AGREEMENT?

14 A NO.

15 Q NOW, YOU BELIEVE THAT MR. AND MRS. MCCOURT  
16 HAD CONFLICTING INTERESTS IN DIVIDING UP THEIR PROPERTY  
17 AND OBLIGATIONS; CORRECT?

18 A I BELIEVE THAT THEY HAD A POTENTIAL FOR A  
19 CONFLICT.

20 Q WELL, WE'LL GET TO THAT IN A MOMENT. YOU  
21 BELIEVED THEY HAD --

22 A SO THE ANSWER TO YOUR QUESTION IS NO.

23 Q YOU BELIEVE -- WELL, YOU AT LEAST BELIEVED  
24 THEY HAD A POTENTIAL; IS THAT CORRECT?

25 A YES.

26 Q THERE WAS A POTENTIAL CONFLICT?

27 A YES.

28 Q AND AT THE TIME, IN FEBRUARY 2004, YOU

1 CONSIDERED YOURSELF AN EXPERT IN THE RULES AND  
2 REQUIREMENTS OF THE CALIFORNIA RULES OF PROFESSIONAL  
3 RESPONSIBILITY?

4 A YES.

5 Q AND YOU UNDERSTOOD THAT, EVEN WHEN THERE'S A  
6 POTENTIAL CONFLICT OF INTEREST, THAT THE LAWYER MUST HAVE  
7 THE INFORMED WRITTEN CONSENT OF EACH CLIENT IN ORDER TO  
8 ACCEPT THAT JOINT REPRESENTATION; CORRECT?

9 A CORRECT.

10 Q AND THAT INFORMED WRITTEN CONSENT MEANS THAT  
11 THERE MUST BE FULL DISCLOSURE IN WRITING OF THE RELEVANT  
12 CIRCUMSTANCES; CORRECT?

13 A I THINK THAT'S A FAIR SUMMARY OF THE RULE.

14 Q AND THERE MUST ALSO BE A FULL DISCLOSURE IN  
15 WRITING OF THE ACTUAL AND REASONABLY FORESEEABLE ADVERSE  
16 CONSEQUENCES TO THE CLIENT; CORRECT?

17 A YES.

18 Q AND YOU RECOGNIZE THAT'S CALIFORNIA RULE  
19 3-310 OF THE RULES OF PROFESSIONAL RESPONSIBILITY?

20 A I'LL TAKE YOUR WORD ON THE NUMBER.

21 Q OKAY. DID YOU EVER INFORM MRS. MCCOURT, IN  
22 WRITING OR ORALLY, OF ANY OF THE ADVERSE CONSEQUENCES OF  
23 BINGHAM REPRESENTING BOTH SHE AND MR. MCCOURT IN  
24 CONNECTION WITH THIS AGREEMENT?

25 A I INFORMED HER OF THE ISSUES IN THE LETTER  
26 THAT I PREPARED FOR THEM.

27 Q LET'S LOOK AT YOUR DEPOSITION, VOLUME NUMBER  
28 II.

1           A           ACTUALLY -- I'M SORRY -- THE ANSWER TO THAT  
2 QUESTION IS NO.

3           Q           OKAY. DID YOU EVER INFORM MRS. MCCOURT, IN  
4 WRITING OR ORALLY, THAT THE LAW FIRM OF BINGHAM MCCUTCHEN  
5 MAY BE TEMPTED TO FAVOR THE INTERESTS OF MR. MCCOURT OVER  
6 HER INTERESTS IN CONNECTION WITH THE AGREEMENT?

7           A           NO.

8           Q           DID YOU TELL MRS. MCCOURT, EITHER ORALLY OR  
9 IN WRITING, THAT BINGHAM MAY BE TEMPTED TO FAVOR THE  
10 INTERESTS OF MR. MCCOURT OVER HER INTERESTS BECAUSE THE  
11 DODGERS PAID A LARGE AMOUNT OF LEGAL FEES?

12          A           NO, I DIDN'T.

13          Q           NOW, ON YOUR DIRECT EXAMINATION, AT PAGE 104,  
14 YOU TESTIFIED THAT, DURING THE CONVERSATION YOU HAD WITH  
15 MRS. MCCOURT ON FEBRUARY 13TH, 2004, YOU CONSIDERED  
16 BRIEFLY THE CONCEPT OF HAVING MR. MCCOURT'S BUSINESSES BE  
17 COMMUNITY PROPERTY AND THE HOUSES BEING SEPARATE PROPERTY.

18                   DO YOU RECALL THAT?

19          A           YES.

20          Q           NOW, DURING THE THREE DAYS THAT I DEPOSED  
21 YOU, DO YOU RECALL THAT YOU NEVER TESTIFIED ABOUT THAT  
22 BRIEF CONVERSATION THAT YOU SAY YOU HAD WITH MRS. MCCOURT  
23 ON FEBRUARY 13TH?

24          A           I THOUGHT SOMEWHERE WE TOUCHED ON THAT, BUT I  
25 DON'T RECALL.

26          Q           DID YOU CONSIDER WHETHER IT WOULD BE POSSIBLE  
27 TO DESIGNATE THE HOMES AS SEPARATE PROPERTY AND HAVE THE  
28 DODGERS BE DESIGNATED AS COMMUNITY PROPERTY AND STILL GIVE

1 THEM THE CREDITOR PROTECTION THAT THEY WERE SEEKING?

2 A WELL, I DIDN'T THINK THAT THEY COULD  
3 ACCOMPLISH THAT.

4 Q IF YOU COULD LOOK AT YOUR DEPOSITION, VOLUME  
5 I, AT PAGE 225. AT LINE -- BEGINNING AT LINE 12 ON PAGE  
6 225.

7 "QUESTION: DID YOU CONSIDER THE POSSIBILITY OF  
8 WHETHER IT WOULD BE POSSIBLE TO DESIGNATE THE MCCOURTS'  
9 HOMES AS THEIR SEPARATE PROPERTY AND HAVE THE DODGERS  
10 DESIGNATED AS COMMUNITY PROPERTY AND STILL GIVE THEM THE  
11 CREDITOR PROTECTION THAT THEY WERE SEEKING?"

12 AND THEN, ON LINE 22, YOU TESTIFIED, "I DON'T  
13 RECALL DOING THAT."

14 AND THAT WAS TRUTHFUL AND ACCURATE TESTIMONY AT  
15 THE TIME; CORRECT?

16 A YES.

17 Q AND IS IT POSSIBLE FOR A MARRIED COUPLE TO  
18 CHARACTERIZE CERTAIN ASSETS AS SEPARATE PROPERTY AND ALSO  
19 CARRY ON A COMMUNITY PROPERTY BUSINESS IN WHICH THEY BOTH  
20 HAVE AN INTEREST?

21 A YES.

22 Q AND COULD A CIRCUMSTANCE EXIST WHERE A  
23 CREDITOR OF THE COMMUNITY PROPERTY -- COMMUNITY PROPERTY  
24 BUSINESS WOULD NOT BE ABLE TO REACH THE SEPARATE PROPERTY  
25 ASSETS AMONG THE OWNERS?

26 A THAT CIRCUMSTANCE COULD EXIST.

27 Q ALL RIGHT. NOW, IF YOU COULD LOOK AT -- BACK  
28 IN THE BOOK, AT EXHIBIT 93, WHICH IS YOUR -- THE TIME

1 RECORDS. AND ON THE FIRST PAGE, UNDER "FEBRUARY 18,  
2 2004," YOU SEE IT SAYS, "REVISED MARITAL AGREEMENT, DRAFT  
3 CORRESPONDENCE RE SAME."

4 DO YOU SEE THAT?

5 A YES.

6 Q AND IS ONE OF THE THINGS THAT YOU DID IN  
7 CONNECTION WITH THIS PREPARE A COVER LETTER THAT WAS GOING  
8 TO ACCOMPANY THE TRANSMUTATION AGREEMENT WHEN IT WAS SENT  
9 TO THE MCCOURTS?

10 A YES.

11 Q ALL RIGHT. IF YOU COULD LOOK AT  
12 EXHIBIT 31 --

13 THE COURT: COUNSEL, WE'RE GOING TO TAKE A  
14 10-MINUTE RECESS FOR THE REPORTER.

15 YOU CAN HAVE A SEAT.

16

17 (A PAUSE IN THE PROCEEDINGS.)

18

19 THE COURT: THANK YOU. PLEASE HAVE A SEAT.

20 SIR, YOU CAN TAKE THE STAND.

21 WHENEVER YOU'RE READY, COUNSEL.

22 Q BY MR. KUMP: MR. CAFFERATA, IF YOU COULD  
23 LOOK AT THE EXHIBIT BOOK IN FRONT OF YOU, WE HAD IT OPEN  
24 TO EXHIBIT 31. AND AT THE BOTTOM IS YOUR E-MAIL ON  
25 FEBRUARY 19TH TO MR. ESMail; CORRECT?

26 A YES, THAT'S CORRECT.

27 Q AND YOU WERE SENDING TO HIM TWO ITEMS, ONE  
28 WAS A DRAFT COVER LETTER THAT YOU HAD PREPARED; CORRECT?

1 A CORRECT.

2 Q AND THEN ALSO A DRAFT OF THE TRANSMUTATION  
3 AGREEMENT THAT YOU WERE SENDING TO HIM; CORRECT?

4 A CORRECT.

5 Q AND IN YOUR COVER E-MAIL, THE FIRST PAGE OF  
6 EXHIBIT 31, YOU WROTE IN THE SECOND SENTENCE, QUOTE, I  
7 HAVE NOT HAD A CHANCE TO SEE IF ANY CASE LAW DISCUSSES  
8 AGREEMENTS SIGNED BY A COUPLE MOVING TO CALIFORNIA,  
9 UNQUOTE.

10 DO YOU SEE THAT?

11 A YES.

12 Q AND IS IT YOUR UNDERSTANDING -- IS IT YOUR  
13 RECOLLECTION THAT AT SOME POINT AFTER THIS, YOU DID DO  
14 SOME RESEARCH ON THAT TOPIC?

15 A YES.

16 Q AND YOU ALSO INFORMED MR. ESMAIL, YOU SAID,  
17 QUOTE, THE EXPLANATION OF THE COMMUNITY PROPERTY SYSTEM  
18 AND THE DISCUSSION IN THE LETTER REGARDING REPRESENTATION  
19 ARE FAIRLY IMPORTANT TO HELP ENSURE THAT THE AGREEMENT  
20 WILL BE UPHELD. IT'S NOT JUST LANGUAGE FOR THE FIRM'S  
21 BENEFIT, UNQUOTE.

22 DO YOU SEE THAT?

23 A YES.

24 Q AND THAT WAS INFORMATION THAT YOU WANTED BOTH  
25 MR. ESMAIL AND MR. SILVERSTEIN TO UNDERSTAND; CORRECT?

26 A CORRECT.

27 Q IF YOU CAN TURN TO THE NEXT PAGE, WHICH IS  
28 THE FIRST PAGE OF THE COVER LETTER THAT YOU PREPARED?

1 NOW, THIS COVER LETTER, DID YOU EVER DISCUSS IT WITH  
2 MRS. MCCOURT?

3 A NO, I DID NOT.

4 Q OR WITH MR. MCCOURT?

5 A NO, I DID NOT.

6 Q AND IN THE FIRST PARAGRAPH OF THE LETTER, THE  
7 SECOND SENTENCE READS, QUOTE, THE AGREEMENT WILL PRESERVE  
8 YOUR PROPERTIES AS THE SEPARATE PROPERTY OF EACH OF YOU,  
9 RATHER THAN HAVING ANY PROPERTY BECOME COMMUNITY PROPERTY  
10 OR QUASI COMMUNITY PROPERTY UNDER CALIFORNIA LAW.

11 AND THAT'S A DESCRIPTION OF WHAT THE EFFECT OF  
12 THE AGREEMENT IS; CORRECT?

13 A YES.

14 Q AND AT THE -- DOWN NEAR THE BOTTOM OF THE  
15 LAST FULL PARAGRAPH, THE FIRST SENTENCE READS, "CALIFORNIA  
16 LAW ALLOWS A COUPLE TO CHANGE COMMUNITY PROPERTY TO  
17 SEPARATE PROPERTY AND VICE VERSA BY WRITTEN AGREEMENT."

18 AND THAT'S A REFERENCE TO THE TRANSMUTATION  
19 AGREEMENT; CORRECT?

20 A CORRECT.

21 Q AND YOU BASED THIS STATEMENT ON YOUR  
22 KNOWLEDGE OF THE CALIFORNIA FAMILY CODE THAT ALLOWS A  
23 TRANSMUTATION; CORRECT?

24 A CORRECT.

25 Q IN THE NEXT SENTENCE, YOU WRITE, QUOTE, THE  
26 ENCLOSED AGREEMENT WILL CONFIRM THAT ALL OF THE PROPERTY  
27 THAT IS TITLED IN FRANK'S NAME IS FRANK'S SEPARATE  
28 PROPERTY AND ALL OF THE PROPERTY THAT IS TITLED IN JAMIE'S

1 NAME IS JAMIE'S SEPARATE PROPERTY, UNQUOTE.

2 DO YOU SEE THAT?

3 A YES.

4 Q AND I BELIEVE I ASKED YOU AT YOUR DEPOSITION,  
5 AND COULDN'T RECALL WHY YOU USED THE WORD "CONFIRM" IN  
6 THAT SENTENCE; IS THAT CORRECT?

7 A I BELIEVE THAT'S CORRECT.

8 Q AND IN THIS SENTENCE, WHAT IT'S TALKING ABOUT  
9 IS THE PURPOSE OF THIS AGREEMENT; CORRECT?

10 A THESE TWO SENTENCES, "WHERE THE ENCLOSED  
11 AGREEMENT WILL CONFIRM THAT" --

12 Q YES, THAT SENTENCE.

13 A I'D SAY IT'S MORE ACCURATE TO SAY IT'S THE  
14 EFFECT OF THE AGREEMENT. IT'S THE EFFECT AND THE PURPOSE.  
15 IT'S BOTH.

16 Q AND THE PURPOSE OF THE AGREEMENT WAS THAT  
17 WHEN THE PROPERTY BECOMES QUASI COMMUNITY PROPERTY, THE  
18 AGREEMENT WAS TO MAKE SOME OF IT TO HER SEPARATE PROPERTY  
19 AND SOME OF IT TO HIS SEPARATE PROPERTY; CORRECT?

20 A CORRECT.

21 Q OKAY. NOW AT THE BOTTOM OF THE SECOND PAGE,  
22 THE NEXT PAGE OF THE LETTER, THE FIRST SENTENCE OF THAT  
23 LAST PARAGRAPH READS, QUOTE, THE TWO OF YOU HAVE  
24 CONFLICTING INTERESTS IN DIVIDING UP YOUR PROPERTY AND  
25 OBLIGATIONS, UNQUOTE.

26 DO YOU SEE THAT?

27 A YES.

28 Q AND AT THE TIME YOU WROTE THIS, YOU THOUGHT

1 THAT STATING IT THIS STRONGLY WAS THE PRUDENT WAY TO WRITE  
2 THE LETTER; CORRECT?

3 A I BELIEVE THAT'S THE WAY I CHARACTERIZED  
4 THAT, YES.

5 Q AND -- BY THE WAY, ON YOUR DIRECT  
6 EXAMINATION, ON PAGE 114, YOU TESTIFIED THAT YOU WROTE  
7 THIS BEFORE YOU HAD SPOKEN WITH MR. MCCOURT ABOUT THE  
8 AGREEMENT.

9 A IF I SAID THAT, I MISSPOKE. I MEANT TO SAY  
10 MR. SILVERSTEIN.

11 Q OKAY. I JUST WANTED TO CLARIFY. THAT'S AT  
12 PAGE 114 OF YOUR TESTIMONY. YOU DIDN'T SPEAK TO  
13 MR. MCCOURT ABOUT THIS LETTER; CORRECT?

14 A NO, I DID NOT.

15 Q AND THEN IN THE NEXT SENTENCE OF THAT LAST  
16 PARAGRAPH ON PAGE 2, YOU WROTE, QUOTE, ACCORDINGLY, IT  
17 WOULD BE ADVISABLE FOR YOU EACH TO HAVE SEPARATE COUNSEL  
18 WITH RESPECT TO THE AGREEMENT, UNQUOTE.

19 AND THAT WAS WHAT YOU WERE PROPOSING BE THE  
20 ADVICE GIVEN TO MR. AND MRS. MCCOURT; CORRECT?

21 A YES, THAT WAS.

22 Q ALL RIGHT. AND YOU UNDERSTOOD THAT THERE  
23 COULD BE CIRCUMSTANCES WHERE A COURT INVALIDATES AN  
24 AGREEMENT BASED ON THE LACK OF INDEPENDENT COUNSEL;  
25 CORRECT?

26 A YES, THERE COULD BE THAT CIRCUMSTANCE.

27 Q AND THEN ABOUT MIDWAY DOWN THAT PARAGRAPH,  
28 THERE'S A SENTENCE THAT BEGINS, "IF YOU PROCEED."

1 DO YOU SEE THAT?

2 A UH-HUH.

3 Q IT SAYS, "IF YOU PROCEED WITH EXECUTING THE  
4 AGREEMENT WITHOUT SEEKING INDEPENDENT COUNSEL, WE WOULD  
5 ANTICIPATE THAT A COURT WOULD FIND THAT THE TWO OF YOU ARE  
6 OF SUFFICIENT SOPHISTICATION AND BARGAINING POWER THAT THE  
7 LACK OF INDEPENDENT COUNSEL IS NOT A REASON TO INVALIDATE  
8 THE AGREEMENT, UNQUOTE.

9 DO YOU SEE THAT?

10 A YES.

11 Q NOW, ARE YOU AWARE OF ANY CASE THAT HAS SO  
12 HELD THAT?

13 A NOT SPECIFICALLY.

14 Q AND DO YOU HAVE ANY RECOLLECTION AS TO WHAT  
15 YOU BASED THIS STATEMENT UPON?

16 A NO.

17 Q NOW, IN -- WHEN YOU WERE PREPARING THIS COVER  
18 LETTER, DID YOU GIVE ANY CONSIDERATION TO INCLUDING WITHIN  
19 IT A DISCUSSION OF WHAT THE MCCOURTS WOULD BE GIVING UP  
20 UNDER MASSACHUSETTS LAW, IN THE EVENT OF A DIVORCE, IF  
21 THEY WERE TO SIGN THIS AGREEMENT?

22 A NO.

23 Q AND DID YOU AND MR. SILVERSTEIN DISCUSS  
24 WHETHER OR NOT, IN THIS COVER LETTER, THERE SHOULD BE ANY  
25 DISCUSSION AT ALL ABOUT WHAT THE MCCOURTS WOULD BE GIVING  
26 UP UNDER MASSACHUSETTS LAW IF THEY WERE TO SIGN THIS  
27 AGREEMENT?

28 A I DON'T BELIEVE SO, NO.

1 Q NOW, AT THE TIME THAT YOU PREPARED THE  
2 AGREEMENT IN 2004, DID YOU UNDERSTAND THAT UNDER FAMILY  
3 CODE SECTION 852(A), YOU COULD NOT RELY UPON THIS COVER  
4 LETTER TO SUPPLEMENT ANY OF THE TERMS OF THE ACTUAL  
5 TRANSMUTATION AGREEMENT?

6 A I DON'T RECALL THINKING ABOUT THE ISSUE.

7 Q OKAY. IF YOU COULD TURN TO EXHIBIT 41,  
8 PLEASE? EXHIBIT 41 IS A SERIES OF E-MAILS ON MARCH 22ND,  
9 2004, BETWEEN YOU AND MR. SILVERSTEIN; CORRECT?

10 A YES.

11 Q AND AT THE BOTTOM OF EXHIBIT 41 IS -- YOU  
12 START OUT THIS E-MAIL CHAIN TO MR. SILVERSTEIN. AND YOU  
13 WRITE IN THE SECOND SENTENCE, QUOTE, ONE QUESTION I HAVE  
14 IS, DO WE KNOW WHERE THEY WILL EXECUTE THE AGREEMENT?

15 DO YOU SEE THAT?

16 A YES, I DO.

17 Q YOU SAY, QUOTE, IT CURRENTLY CONTEMPLATES IN  
18 LOS ANGELES. IF THEY SIGN IN MASSACHUSETTS, PARAGRAPH 13  
19 AND THE JURATS NEED TO BE CHANGED.

20 AND THEN YOU WRITE, "I DON'T THINK IT IS A MAJOR  
21 FACTOR, BUT GIVEN THE WAY WE HAVE STRUCTURED THE AGREEMENT  
22 AS A PRE-CALIFORNIA RESIDENCY AGREEMENT, SIGNING IN  
23 MASSACHUSETTS PROBABLY MAKES MORE SENSE."

24 DO YOU SEE THAT?

25 A YES.

26 Q AND THE REFERENCE TO "PRE-CALIFORNIA  
27 RESIDENCY AGREEMENT," AS I UNDERSTAND IT, THAT MEANS YOU  
28 INTENDED TO HAVE THEM SIGN THE AGREEMENT BEFORE THEY

1 BECAME RESIDENTS OF THIS STATE; CORRECT?

2 A THAT'S CORRECT.

3 Q THEN MR. SILVERSTEIN RESPONDS TO YOU, IN THE  
4 MIDDLE OF THE PAGE, AND HE WRITES, "GOOD POINT TO RAISE.  
5 I HAD LEFT IT AS CALIFORNIA BECAUSE YOU HAD RAISED A  
6 QUESTION WHEN WE WERE AT DODGER STADIUM OF WHETHER THIS  
7 AGREEMENT WAS EFFECTIVE BEFORE THEY MOVED TO CALIFORNIA."

8 DO YOU SEE THAT?

9 A YES.

10 Q AND YOU THEN RESPONDED, AT THE TOP OF THE  
11 PAGE, LATER ON MARCH 22ND -- AND DO YOU KNOW IF, IN THE  
12 INTERIM, BETWEEN THE TIME YOU RECEIVED MR. SILVERSTEIN'S  
13 E-MAIL AND YOUR RESPONSE, DID YOU DO RESEARCH INTO THIS  
14 ISSUE OF WHETHER OR NOT THE AGREEMENT COULD BE SIGNED  
15 OUTSIDE OF THE STATE OR BEFORE THEY BECAME RESIDENTS?

16 A I'M -- I DON'T RECALL WHEN IN THE SEQUENCE OF  
17 EVENTS, WHAT DAY, I DID THAT RESEARCH.

18 Q OKAY. IN ANY EVENT, IN YOUR RESPONSE AT THE  
19 TOP, YOU WROTE BACK AND YOU SAID, "CALIFORNIA FAMILY CODE  
20 SECTION 850 SAYS MARRIED PERSONS, IN QUOTES, CAN ENTER  
21 INTO TRANSMUTATION AGREEMENTS."

22 DO YOU SEE THAT?

23 A YES.

24 Q AND SECTION 850 IS THE SPECIFIC CALIFORNIA  
25 STATUTORY SECTION THAT AUTHORIZES TRANSMUTATION  
26 AGREEMENTS; CORRECT?

27 A CORRECT.

28 Q AND IF YOU LOOK AT THAT STATUTE, AS YOU

1 OBVIOUSLY DID HERE, IT SPECIFICALLY REFERENCES MARRIED  
2 PERSONS; CORRECT?

3 A RIGHT.

4 Q AND IN YOUR RESPONSE TO MR. SILVERSTEIN, YOU  
5 THEN SAY, "UNDER FAMILY CODE SECTION 11, MARRIED PERSONS  
6 NEED ONLY BE LAWFULLY MARRIED" -- EXCUSE ME -- IT SAYS,  
7 "MARRIED PERSONS NEED ONLY BE LAWFULLY MARRIED UNDER  
8 FAMILY CODE 11, AND SO DOES NOT SEEM THAT THEY NEED TO BE  
9 RESIDENTS OR IN CALIFORNIA TO SIGN." CORRECT?

10 A CORRECT.

11 Q SO THE CONCLUSION -- THE ANALYSIS THAT YOU  
12 DID WITH RESPECT TO THIS ISSUE OF WHETHER OR NOT THE  
13 AGREEMENT COULD BE EFFECTIVE IF THEY SIGNED IT BEFORE THEY  
14 BECAME CALIFORNIA RESIDENTS WAS BASED UPON THE  
15 TRANSMUTATION STATUTES; CORRECT?

16 A WELL, THAT WAS THE STATUTE THAT THE AGREEMENT  
17 WAS PRIMARILY USING, SO -- AND I GUESS THAT WAS THE ONE I  
18 WAS WORRIED ABOUT BEING OPERATIVE -- I'M SORRY. DOES THAT  
19 ANSWER YOUR QUESTION?

20 Q YES, IT DOES. IT DOES.

21 A OKAY.

22 Q AND NEAR THE END OF THIS E-MAIL, IN YOUR  
23 RESPONSE, I GUESS IT'S ACTUALLY THE PENULTIMATE, OR THE  
24 SECOND-TO-THE-LAST SENTENCE, IT SAYS, QUOTE, SIGNING IN  
25 ADVANCE DOES CONFIRM THEIR STRONG DESIRE AT ALL TIMES TO  
26 PRESERVE THE SEPARATE PROPERTY STRUCTURE THAT THEY HAVE  
27 LIVED UNDER IN IT MASSACHUSETTS.

28 DO YOU SEE THAT?

1           A        YES.

2           Q        AND IS THIS A REFERENCE TO THE FACT THAT THEY  
3 HAD TITLE TO THE PROPERTY IN EACH OTHER'S NAMES WITH  
4 RESPECT TO THE BUSINESSES AND THE HOUSES WHILE THEY LIVED  
5 IN MASSACHUSETTS?

6           A        WELL, I DON'T KNOW IF I'D USE -- IT WAS A  
7 REFERENCE TO THEIR ARRANGEMENT OF THE HOUSES BEING  
8 MRS. MCCOURT'S AND THE BUSINESSES BEING MR. MCCOURT'S.

9           THE COURT:  BEFORE WE GO OFF THIS, THERE'S A LINE,  
10 SIR, IF YOU CAN LOOK AT IT, THAT STARTS WITH "I DON'T  
11 THINK THE TIMING."  DO YOU SEE THAT?  RIGHT IN THE MIDDLE  
12 OF THE PARAGRAPH?

13          THE WITNESS:  YES.

14          THE COURT:  "OF THE SIGNED AGREEMENT WILL FACTOR  
15 INTO THE FRAUDULENT CONVEYANCE ANALYSIS BECAUSE IT'S  
16 REALLY A QUESTION OF THE KNOWING OF THE CREDITORS."

17          THE WITNESS:  YES.

18          THE COURT:  WHAT DID YOU MEAN BY THAT, SIR?

19          THE WITNESS:  ONE OF THE ISSUES THAT WE LOOKED AT  
20 WAS FRAUDULENT CONVEYANCE.  AND, YOU KNOW, ONE OF THE  
21 ISSUES IN THAT ANALYSIS IS WHETHER OR NOT YOU DID THE  
22 TRANSACTION BEING AWARE OF THE CREDITORS.  AND AS I SORT  
23 OF GO ON TO EXPLAIN IN THE NEXT SENTENCE THERE, THE  
24 CREDITORS THAT WE WERE TALKING ABOUT WERE THE CREDITORS  
25 FOR FRANK'S PURCHASE OF THE DODGERS.  AND OBVIOUSLY, THEY  
26 KNEW ABOUT THEM WHEN THEY ENTERED INTO THIS AGREEMENT  
27 BECAUSE THE WHOLE REASON THEY WERE MOVING TO CALIFORNIA  
28 WAS BECAUSE FRANK WAS PURCHASING THE DODGERS.  SO IT

