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SUZANNE NOWACKI : SUPERIOR COURT  
V : JUDICIAL DISTRICT  
 : STAMFORD, CONNECTICUT  
MICHAEL NOWACKI : DECEMBER 2, 2009

B E F O R E:

HONORABLE TAGGART ADAMS

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

REPRESENTING THE PLAINTIFF:

KEVIN COLLINS, ESQ.

REPRESENTING THE DEFENDANT:

MICHAEL NOWACKI, SELF REPRESENTED

ATTORNEY FOR THE MINOR CHILDREN:

VERONICA REICH, ESQ.

Kathy Jordan  
Court Recording Monitor

1           THE COURT: Good morning, everybody. Please be  
2 seated. Would everybody be kind enough just to  
3 introduce themselves.

4           MR. COLLINS: Good morning, Your Honor, for the  
5 Plaintiff Suzanne Nowacki now Suzanne Sullivan  
6 Attorney Kevin Collins.

7           MR. NOWACKI: Michael J. Nowacki, pro se.

8           MS. REICH: Good morning, Your Honor, I'm  
9 Veronica Reich. I am with Bai Pollack Sacco and I am  
10 the attorney for the two minor children Tim and Kerry  
11 Nowacki.

12           THE COURT: Okay. Thank you very much. The  
13 matters that I think I have in front of me today are  
14 motion 178 by Mr. Nowacki to modify custody, modify  
15 the child related expenses and the pickup procedures,  
16 and that was filed I think in February of this year.  
17 Motion 181 which is seeking basically the same relief  
18 and that was filed in March and motion 182, a motion  
19 for contempt, regarding fraudulent expenses, health  
20 insurance, failure to comply with parenting plan, and  
21 a number of other matters.

22           I then have motion 192 filed on behalf of Ms.  
23 Sullivan the contempt of parenting plan against Mr.  
24 Nowacki, 199 to modify the co-parenting joint custody  
25 plan and 200 to modify support asking for support  
26 under the guidelines. Those are the ones that I  
27 understand are in front of me. I understand there

1 has been a mistrial with regard to I think the  
2 matters involving the issues I think initiated by Mr.  
3 Nowacki to modify the child related expenses which I  
4 think would be 178 and 181. Does that make sense?

5 MR. COLLINS: It does, Your Honor. My  
6 recollection is we were proceeding on one of those  
7 two motions before Judge Novack and we hadn't reached  
8 any of the other motions at this point.

9 THE COURT: Mr. Nowacki, what do you think?

10 MR. NOWACKI: Your Honor, I called Jeff Diamond  
11 when I received the notice verbally from him and then  
12 I got a written notice yesterday. The motion that  
13 was originally introduced motion 174 dates back to  
14 September the 9<sup>th</sup>.

15 THE COURT: There is a motion 174 dating back I  
16 think to that point, and yes it does cover kind of  
17 the same issues. I didn't have any indication that  
18 was officially one that had been started.

19 MR. NOWACKI: Yes, Your Honor, that was the  
20 original April 29, motion that was in play because  
21 that goes back to the beginning of the process and  
22 the subject of retroactivity.

23 THE COURT: You think that what has been  
24 mistried is not only 178, and 181 but 174?

25 MR. NOWACKI: Yes, Your Honor.

26 THE COURT: Mr. Collins?

27 MR. COLLINS: Your Honor, Mr. Nowacki may be

1 right that it was 174, I don't remember because these  
2 were sort of ad seriatim motions.

3 THE COURT: There is a great similarity in the  
4 motions. In fact the covering document -- the formal  
5 document is almost identical.

6 MR. COLLINS: All I had asked of Mr. Nowacki and  
7 Judge Novack was to tell me which motion we were  
8 dealing with and that is what we'll do. So, frankly,  
9 in light of what Your Honor had just said, if Mr.  
10 Nowacki wants to proceed on 174, 178, or 181 is of no  
11 moment to me other than he wishes to argue for  
12 retroactivity back to September of '08 when he filed  
13 the motion and that is discretionary on the part of  
14 the Court anyway. So, as long as I know which motion  
15 we're dealing with I don't care which motion we  
16 proceed with because I think as Your Honor indicated  
17 they are all fundamentally similar.

18 THE COURT: Thank you. What I'm going to do and  
19 174 was filed --

20 MR. NOWACKI: September the 9<sup>th</sup>, Your Honor.

21 THE COURT: September '08?

22 MR. NOWACKI: That is correct.

23 THE COURT: Okay. What I'm going to do is we  
24 will hear those three. I'm not going to get into the  
25 issues that may have been on the notice sent out to  
26 you regarding custody, the parenting plan, because I  
27 think those matters are on appeal. There is an issue

1 that is related directly to those matters that are on  
2 appeal and there is a stay. So, I'm not going to  
3 deal with those. I will hear and we are going to get  
4 this all done today, by the way. I will hear and I  
5 guess I would like to get some identification, there  
6 are a lot of motions for contempt, I couldn't count  
7 them. I couldn't understand some of them and that  
8 may be my fault.

9 I would like to isolate what the important  
10 issues are and hear evidence if that is being  
11 proposed on whatever it is that either party wants to  
12 go forward today with on the motions for contempt. I  
13 have 182 as I mentioned, I have 192 and there may be  
14 others, 182 by Mr. Nowacki, 192 by Mrs. Sullivan --  
15 how do you wish to be identified Ms. Sullivan?

16 MS. SULLIVAN: Ms. Sullivan.

17 THE COURT: All right. That is a motion for  
18 contempt of the existing parenting plan alleging that  
19 Mr. Nowacki is only paying part of what he is  
20 supposed to be paying. So, that is what I want to do  
21 today. I have some exhibits and I think they were  
22 probably submitted at the hearings that have now been  
23 mistried, but I'm not sure.

24 MR. COLLINS: Yes, Your Honor.

25 THE COURT: Ms. Reich, I'm not ignoring you. I  
26 am going to hear from you in a second.

27 MS. REICH: Thank you, Your Honor.

1           THE COURT: They seem to be bank statements,  
2 broker statements, W2's more broker statements and so  
3 on and so forth there was a hearing and a transcript  
4 in front of Judge Tierney, and there's some emails.  
5 What are these in connection with?

6           MR. COLLINS: Mr. Nowacki's motion for  
7 modification, Your Honor.

8           THE COURT: All right. Are they all Mr.  
9 Nowacki's exhibits or are they both sides' exhibits?

10          MR. COLLINS: I don't recall.

11          MR. NOWACKI: There are a few defendant  
12 exhibits.

13          THE COURT: I actually don't have an exhibit  
14 list here which --

15          MR. NOWACKI: I believe it's in the other  
16 folder, Your Honor.

17          THE COURT: What I've got are full exhibits, and  
18 I don't have a list of them but can we get an  
19 agreement that those exhibits can be transferred to  
20 this hearing?

21          MR. COLLINS: I would just have to look at them  
22 quickly, if I could, but there is sort of a  
23 collateral issue. I did have a non party witness who  
24 testified and we just received notice of this at some  
25 point on Monday. I feel that I need to recall that  
26 witness --

27          THE COURT: Is there a transcript?

1           MR. COLLINS: I didn't order a transcript  
2 because I didn't know this matter was going to be  
3 mistried. Mr. Nowacki may have a transcript. It is  
4 the testimony of Attorney Thomas Colin and I think  
5 that is critical to my matter. I tried to reach  
6 Attorney Colin and he is in Middletown on a matter.  
7 So, I do feel a little prejudiced by the fact that I  
8 don't have Attorney Colin unless his testimony can be  
9 submitted to the Court and I did not order a copy of  
10 the transcript. So, I don't know how Mr. Nowacki is  
11 inclined on that.

12           THE COURT: Mr. Nowacki, what do you think?

13           MR. NOWACKI: I have absolutely no problem and I  
14 have copies of the transcript, Your Honor.

15           MR. COLLINS: That will satisfy me and we will  
16 submit this to the Court for review.

17           THE COURT: All right. That seems to be an  
18 efficient way to do things. I will now hear from  
19 Attorney Reich -- before that, was there an agreement  
20 on the exhibits?

21           MR. COLLINS: Your Honor, perhaps while Attorney  
22 Reich is speaking I can just quickly look at them.

23           THE COURT: That's right, there wasn't quite an  
24 agreement on it.

25           MR. COLLINS: I just can't quite remember what  
26 is in evidence. Shall I look at them right here,  
27 Your Honor?

1 THE COURT: Help yourself.

2 MR. COLLINS: Thank you.

3 MS. REICH: Thank you, Your Honor. I am the  
4 attorney for the minor children and when this matter  
5 was begun before Judge Novack I appeared there and  
6 because the issues that Judge Novack was dealing with  
7 were exclusively financial there was an agreement  
8 with the parties and Judge Novack accepted it that my  
9 presence was not necessary.

10 I was looking to save time and money for the  
11 parties, and if my presence is not necessary I don't  
12 need to sit here through the proceedings. When we  
13 received the notice that it was mistried and we would  
14 be proceeding today the list of motions that we were  
15 advised would be heard before Your Honor included  
16 several that have to do with children's issues in  
17 which I would be involved.

18 THE COURT: What were the list of the motions?  
19 They should be the same as what I just read off  
20 otherwise there was some miscommunication, I think,  
21 and it may be I'm not jumping to conclusions.

22 MS. REICH: Well, I read the list, Your Honor,  
23 and the judicial notice included motions that did  
24 have to do with the children's issues, even number  
25 181 which is Mr. Nowacki's motion to modify. It is  
26 primarily about money issues but it specifically  
27 indicates that he was looking for modification

1           regarding pickup procedures for the children.

2           THE COURT: Yes, at least in one of those  
3 motions he was.

4           MS. REICH: Correct. Among that list of motions  
5 that we did get was motion number 199 and 200. One  
6 of them is Ms. Sullivan's motion to modify on  
7 financial issues and the other is a motion to modify  
8 on custodial issues.

9           THE COURT: Right.

10          MS. REICH: I am here today, Your Honor, and I'm  
11 happy to remain here if that is what the Court  
12 wishes. If Your Honor will limit today's proceedings  
13 to financial issues then I would certainly leave it  
14 to the parties and the Court to see if I need to  
15 remain. I'm perfectly willing to but I don't want to  
16 incur costs for the parties if it's not necessary.

17          THE COURT: I understand. My intention is not  
18 to get into the custody and the parenting issues  
19 which I believe are subject to an order of Judge  
20 Schofield that the parties, meaning the parents,  
21 undergo either psychiatric or a psychological  
22 evaluation and I can't remember which, and that  
23 decision has been appealed and there is a stay.

24          MS. REICH: Your Honor, yes, it has been  
25 appealed.

26          THE COURT: Am I correct that there is a stay?

27          MS. REICH: I wouldn't assume that, Your Honor,

1 but that's not my decision.

2 THE COURT: Whose decision is it?

3 MS. REICH: Well, I assume it will be some  
4 judge's decision if there is a motion to dismiss the  
5 appeal.

6 THE COURT: Isn't there an automatic stay?

7 MS. REICH: There is, Your Honor, but the  
8 automatic stay as far as I know --

9 THE COURT: You probably know more than I do.  
10 So, say what you need to say.

11 MS. REICH: Thank you, Your Honor. I didn't  
12 want it to appear that I am lecturing the Court.  
13 There is a stay on most matters when an appeal is  
14 filed. The Practice Book rules specifically say that  
15 order regarding custody, child support and alimony  
16 are not stayed pending appeal it would be my opinion,  
17 and this is my opinion, that an order to participate  
18 in a psychological evaluation is not only an  
19 interlocutory order, which can't be appealed, but is  
20 also in the nature of a custody motion, a custody  
21 type proceeding and those orders would not be stayed  
22 either.

23 THE COURT: I see.

24 MS. REICH: So, that would be my position.

25 THE COURT: Well, I am going to adhere to what I  
26 said before. I don't think I'm going to get into it.  
27 I may get into it later or somebody may get into them

1 later. Under those circumstances I think there is  
2 certainly a basis for you to leave. So, let's hear  
3 from the other people first.

4 MR. NOWACKI: Your Honor, when I was downstairs  
5 with Judge Schofield I did ask the question in  
6 regards to are the other orders of the court, which  
7 were made sequentially in the development of the  
8 entire case starting with Judge Novack's first  
9 hearing after we came here on March 30<sup>th</sup>, where Judge  
10 Harrigan had to recuse himself because he had heard  
11 the pretrial conference, so, the first real hearing  
12 and that out of the delays that occurred during the  
13 course of production, requests for production, by the  
14 time we got to Judge Shay on June 15<sup>th</sup> --

15 THE COURT: Mr. Nowacki, I've asked you whether  
16 Attorney Reich's presence is needed today under the  
17 guidelines that I've given about what's going to  
18 happen today.

19 MR. NOWACKI: I was getting to the point --

20 THE COURT: I don't need to hear the history of  
21 the case.

22 MR. NOWACKI: Her appointment itself I am  
23 bringing into question in the context of the motions  
24 as they were heard sequentially because a lot of the  
25 problems that evolved, evolved out of the delays in  
26 the process, and that the tension that developed had  
27 to do with the very beginning of the financial

1 motions that resulted in a lot of these other motions  
2 being filed including attempt to change primary  
3 custody. This was a financial related issue when it  
4 started. Our children have benefited from the  
5 existing custody arrangement.

6 THE COURT: Do you think she should be here  
7 today?

8 MR. NOWACKI: No.

9 THE COURT: Mr. Collins?

10 MR. COLLINS: Your Honor, I concur. If there  
11 are no custody matters today I don't believe Attorney  
12 Reich needs to be here.

13 THE COURT: Okay. I may regret it because I'm  
14 maybe ankle deep in the water at this point, but at  
15 this point I think that you're excused.

16 MS. REICH: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. REICH: I will certainly be available if I  
19 am needed at a later time.

20 THE COURT: Thank you very much. Now, I want to  
21 go forward with 174, 178, and 181. Is there a  
22 transcript of all of the proceedings in front of  
23 Judge Novack?

24 MR. NOWACKI: I actually have all of them, Your  
25 Honor.

26 MR. COLLINS: I do not, Your Honor. Mr. Nowacki  
27 orders the transcripts to support his grievances

1           against everybody so he orders them and I do not.

2           THE COURT: Okay. What I am proposing then in  
3           addition to using the transcript for your witnesses  
4           is that we not repeat ourselves. I can review the  
5           transcript as well the full transcript which I can  
6           order from the court monitor. We are going to finish  
7           today.

8           MR. COLLINS: I would prefer to start out Ab  
9           initio there are a lot of things that I think we went  
10          pretty far afield in some of those hearings and that  
11          is why I look forward to a streamlined hearing today.

12          THE COURT: We'll see.

13          MR. NOWACKI: Your Honor, my position would be  
14          that all the transcripts be included and reviewed in  
15          the context of the decisions that the Court may make.

16          MR. COLLINS: I would respectfully suggest, Your  
17          Honor, that the purpose of a mistrial is to negate  
18          the prior proceedings. Although I have no objection  
19          for the sake of time to those exhibits and I presume  
20          Mr. Nowacki will use the exhibits and cross-examine  
21          my client on them. So, I have no problem with those  
22          being the exhibits in this matter, but I think that  
23          the testimony has to start afresh.

24          THE COURT: All right. Let's start then.

25          MR. COLLINS: Thank you, Your Honor.

26          THE COURT: Mr. Nowacki.

27          MR. NOWACKI: Good morning, Your Honor. First

1 thing I would like to do with permission of counsel  
2 is to share a couple of issues of our children.

3 THE COURT: Share what?

4 MR. NOWACKI: Pictures of our children.

5 THE COURT: No. Let's move on.

6 MR. NOWACKI: Because that is what today is  
7 really all about. It's not about me, it's not about  
8 anything other than getting a modification.

9 THE COURT: Have you got testimony that you want  
10 to present?

11 MR. NOWACKI: Yes. I would like to, first of  
12 all, the exhibits that Mr. Colin reviewed are  
13 acceptable to me.

14 MR. COLLINS: I have no objections to them being  
15 full exhibits, the ones that I looked at earlier,  
16 Your Honor.

17 MR. NOWACKI: All right. And there are up to  
18 date financial affidavits in the court file, Your  
19 Honor.

20 MR. COLLINS: Your Honor, we submitted a  
21 financial affidavit on behalf --

22 THE COURT: Just a second, I can tell what I  
23 have seen -- actually, the last thing in the file is  
24 I believe an affidavit of Ms. Sullivan, and it was  
25 filed on, and I don't have a date right off the bat,  
26 but it was filed on November 12<sup>th</sup> in court.

27 MR. COLLINS: Yes, Your Honor, it is dated

1 November 10<sup>th</sup>.

2 THE COURT: It is dated November 10, you are  
3 correct. The last affidavit I have of Mr. Nowacki  
4 was filed in court on September 15, and it was  
5 updated to September 15<sup>th</sup>, and that is what I have.

6 MR. NOWACKI: That would not be the most up to  
7 date financial affidavit.

8 THE COURT: All right.

9 MR. NOWACKI: Mr. Collins received a copy of  
10 that and I do have extra copies for one and all that  
11 was dated November 12<sup>th</sup>.

12 THE COURT: This is your affidavit?

13 MR. NOWACKI: Yes, Your Honor.

14 THE COURT: Any objection?

15 MR. COLLINS: I don't have any objection I just  
16 don't know if I have a copy, Your Honor.

17 MR. NOWACKI: I carry lots of copies of those.

18 THE COURT: No objection?

19 MR. COLLINS: No objection, Your Honor.

20 THE COURT: I am going to mark that as the next  
21 exhibit. Updated 2000 scratched out and it appears  
22 to be 2009; is that right, Mr. Nowacki?

23 MR. NOWACKI: That is correct, Your Honor.

24 THE COURT: It's signed on page 11 and will be  
25 marked as the next full exhibit.

26 MR. NOWACKI: Your Honor, may I just inquire on  
27 that.

1 MR. COLLINS: Is there a raised seal or  
2 indication that is the notary, I cannot tell whether  
3 or not this is a notary.

4 THE COURT: He is a notary. I happen to know  
5 him because he works in the courthouse.

6 MR. COLLINS: Okay. Good very good.

7 THE COURT: And he has told me that notaries are  
8 not required to have a seal, and I have told Mr.  
9 Ahern that he better go get a seal because a lot of  
10 people don't know that. I don't think he has one  
11 yet, but he is a notary.

12 MR. COLLINS: Thank you, Your Honor.

13 MR. NOWACKI: And a wonderful guy I might add.

14 THE COURT: All right. Do you have any  
15 witnesses?

16 MR. NOWACKI: Your Honor, I would just like to  
17 define what I believe the issues are here.

18 THE COURT: I know what the issues are; I've  
19 read your motion.

20 MR. NOWACKI: Thank you. One question I have is  
21 I requested from Attorney Collins an update on the  
22 financial records more than ten days ago and Attorney  
23 Collins did not comply with that request.

24 THE COURT: Present either what evidence or  
25 testimony that you wish to present.

26 MR. NOWACKI: I am just saying that I don't have  
27 some up to date information. I would like to call

1 Suzanne Nowacki to the witness stand.

2 MR. COLLINS: Your Honor, if I may, may I give  
3 Ms. Sullivan a copy of her current financial  
4 affidavit. I am sure Mr. Nowacki is going to be  
5 examining her on that.

6 THE COURT: Do you have a copy for me, is this  
7 the one that's in the file?

8 MR. COLLINS: It is the one in the file.

9 THE COURT: The problem with me is if you have  
10 an extra copy it would be appreciated because you  
11 literally have to tear these files apart to get to  
12 the bottom.

13 MR. COLLINS: I have two copies. I would not be  
14 able to follow along but if the clerk could possibly  
15 make -- my client just said she has an extra copy.  
16 With that said I have one for the Court and my client  
17 will retrieve her copy.

18 THE COURT: Thank you. This has not been marked  
19 as an exhibit. It's in the file so I'm going to  
20 allow Ms. Sullivan to have a copy in front of her and  
21 we will swear the witness in.

22

23

24

25

26

27 S U Z A N N E S U L L I V A N

1 of 183 Brushy Ridge Road, New Canaan, Connecticut  
2 called as a witness by the Defendant, being first  
3 duly sworn, was examined and testified under oath  
4 as follow:

5 THE CLERK: Could you please state your full  
6 name and address for the record.

7 THE WITNESS: Suzanne Sullivan, 183 Brushy Ridge  
8 Road, New Canaan, Connecticut.

9 MR. NOWACKI: I would like to hand the financial  
10 affidavit dated June 14, 2005, to the witness.

11 THE COURT: Has that been marked as an exhibit?

12 MR. NOWACKI: Yes, Your Honor, it is number 15.

13 THE COURT: Is this the 2005 affidavit?

14 MR. NOWACKI: That is correct, Your Honor.

15 THE COURT: Okay. I don't have a copy of that.

16 MR. NOWACKI: I will be able to provide it.

17 THE COURT: Okay, go ahead.

18 DIRECT EXAMINATION BY MR. NOWACKI:

19 Q This was the last financial affidavit that was  
20 entered into the court records attached to the separation  
21 agreement; is that correct?

22 A Yes. I believe so.

23 Q And on that financial affidavit there was a series of  
24 assets that reflected a fair representation at that point  
25 in time of expenses and also assets between the two of us;  
26 is that correct?

27 MR. COLLINS: Objection, Your Honor. I don't

1 know what the question is, form.

2 THE COURT: Overruled.

3 A Yes.

4 Q I would ask you to go to page 8 which list a joint  
5 Neuberger Herman account; is that correct?

6 A It doesn't say this is the joint account, but okay.

7 Q And the asset value of the securities there in terms  
8 of what you stated the value to be did that remove the  
9 margin line that was on that account.

10 MR. COLLINS: Objection, Your Honor, no  
11 foundation.

12 THE COURT: Overruled.

13 A It's on page 7 and the note says net of margin loan.  
14 So, I guess it does.

15 Q So, the difference between the asset value and the  
16 total value of the account would be about \$124,000?

17 A I don't know.

18 Q The question relates to the removal of that loan from  
19 June 29, 2005 to the point in time that it was retired  
20 because on your current financial affidavit there is no  
21 margin loan; is that correct?

22 MR. COLLINS: I am going to object, Your Honor.  
23 I would like to know where this is within the  
24 parameters, the four corners of motion 174, and how  
25 it relates to a post judgment motion for  
26 modification.

27 THE COURT: I am going to ask that question too,

1 but not yet.

2 MR. COLLINS: Very good.

3 A I'm sorry, what is the question?

4 Q The question is between June 29, 2005, and the  
5 production which was given to me by Kevin Collins, which I  
6 believe commenced in August of 2006, there was a margin loan  
7 at some point in time retired.

8 A Right.

9 Q That is currently not on the financial affidavit.

10 A Right.

11 Q And the source of the funds that were used to retire  
12 that margin loan came from what source?

13 MR. COLLINS: Objection, relevance. We are on a  
14 motion to modify child support.

15 THE COURT: Overruled.

16 A When we got divorced you paid me a lump sum from the  
17 house when you refinanced the house. I took that cash and I  
18 put it into my Neuberger & Berman account and that retired  
19 the margin loan.

20 Q Thank you. And then in the fall of 2005, prior to  
21 your marriage to David Barrington which was in 2006, the two  
22 of you purchased a home in New Canaan, Connecticut; is that  
23 correct?

24 THE COURT: All right. Now, I am going to ask  
25 what does that have to do with your motion? I want  
26 an answer in thirty seconds or less. I don't want a  
27 two hour dissertation.

1           MR. NOWACKI: It has to do with the claim that  
2           Mr. Collins will make at a later point in time about  
3           whose assets have grown since the point in time of  
4           June 29, to today.

5           THE COURT: I don't think it is relevant to this  
6           motion, ask another question.

7           MR. NOWACKI: Okay.

8           Q    You purchased a home and did any of the proceeds from  
9           the Neuberger Berman account go towards the purchase of the  
10          home?

11          MR. COLLINS: Objection, relevance.

12          THE COURT: Sustained. I think we need to focus  
13          here on what the testimony of the witness can do to  
14          add to the information that is already in evidence or  
15          can be easily documented.

16          MR. NOWACKI: Your Honor, there are questions  
17          about the validity of the financial affidavit that  
18          has been submitted to the Court, and that is what is  
19          had to do with.

20          THE COURT: The validity of which affidavit?

21          MR. NOWACKI: Of the most current financial  
22          affidavit.

23          THE COURT: You haven't asked a single question  
24          about the most current.

25          MR. NOWACKI: I am leading to it.

26          THE COURT: Don't lead to it get to it.

27          MR. NOWACKI: Okay.

1 Q Did any of the proceeds from the \$450,000 go towards  
2 the purchase of the home that is on the current financial  
3 affidavit?

4 MR. COLLINS: Objection, relevance.

5 THE COURT: Sustained.

6 Q We have an agreement that calls for a split on the  
7 children's related expenses; is that correct?

8 A Yes.

9 Q And the separation agreement calls for a split on  
10 those expenses of 65% to myself and 35% to you; is that  
11 correct?

12 A Yes.

13 Q And again the year 2004 your income was \$173,312; is  
14 that a fair assessment?

15 MR. COLLINS: Objection, Your Honor, I site  
16 Borkowski and it goes back behind the judgment of  
17 June 2005. Under Borkowski the information from '04  
18 which is during the pendency of these proceedings is  
19 no longer relevant. The benchmark period starts with  
20 June 2005, the date of dissolution, and the financial  
21 affidavit which is Exhibit 15.

22 THE COURT: I'll hear testimony about 2004, I  
23 just want an answer to the question what was your  
24 income in 2004?

25 THE WITNESS: I don't remember, I'm sorry.

26 THE COURT: Let's move on.

27 Q Can I show you a --

1 THE COURT: Let's move on.

2 MR. NOWACKI: Can I show her a document to  
3 refresh her memory?

4 THE COURT: Yes.

5 MR. NOWACKI: Thank you.

6 A 2004, this says \$173,312, I don't know what this  
7 document is but that's what it says.

8 THE COURT: Does that refresh your recollection  
9 as to what your income was in 2004?

10 THE WITNESS: It sounds about right.

11 THE COURT: It does refresh your recollection,  
12 let's move on.

13 Q And in the exhibits here is there a copy of an  
14 employment contract? I think it is in the other pile there  
15 which would be helpful to have the access point to that but  
16 I will hand you a copy of your employment contract.

17 THE COURT: What do you mean it's in the other  
18 pile, Mr. Nowacki?

19 MR. NOWACKI: In the manila envelope.

20 THE COURT: Has it already been marked?

21 MR. NOWACKI: Yes, Your Honor.

22 THE COURT: You can have access to that.

23 MR. NOWACKI: Thank you, Your Honor.

24 THE COURT: Leave it right here, if it's marked  
25 in there find it and use it.

26 Q You signed a new employment contract --

27 THE COURT: When?

1 Q In 2005, is that correct?

2 A Yes, I did.

3 Q And do you recollect what the parameters of that  
4 employment contract with your employer the Fox Broadcasting  
5 Company was in terms of the increments and the duration of  
6 your employment contract?

7 MR. COLLINS: I'm going to object to the form of  
8 the question, Your Honor.

9 THE COURT: Overruled.

10 A I had a three year contract that I signed in 2005,  
11 and I don't remember what each year was, I'm sorry.

12 Q I have a document that will help refresh your memory.  
13 More relevant really is the question of what then was the  
14 new employment contract that you signed in March of 2008,  
15 that resulted in your promotion to vice president at Fox  
16 Broadcasting.

17 THE COURT: Is that a question?

18 MR. NOWACKI: Yes.

19 A What is the question?

20 Q The question is did you sign a new employment  
21 contract?

22 A Yes, I did.

23 Q And do you recall the parameters of the yearly  
24 increases starting in March of 2008?

25 A I think it was 175 the first year wait --

26 Q Was the first year 260,000?

27 MR. COLLINS: Objection, leading, Your Honor.

1           A    I don't know what my base salary was --

2                   THE COURT:  I think you can lead her.

3                   THE WITNESS:  I'm sorry.

4                   MR. COLLINS:  It's his witness.

5                   THE COURT:  Adverse witness.

6                   MR. COLLINS:  I think the employment contract is  
7           in evidence.

8                   THE WITNESS:  If I could just see it.

9           Q    The increments were from March --

10                   THE COURT:  You are not to testify, you ask her  
11           a question.

12           A    I'm sorry, if I could see the contract I could read  
13   it.  I just don't know what the base salary was each year  
14   because --

15                   THE COURT:  Is the contract in evidence?

16                   MR. NOWACKI:  I just looked for it, Your Honor,  
17           I thought it was.

18                   THE COURT:  That is not the right pile; those  
19           are documents for identification.

20                   MR. COLLINS:  Something has been moved over,  
21           this says it's a full exhibit on this pile.

22                   THE COURT:  Maybe I misidentified the pile.

23                   MR. COLLINS:  Exhibit 3, which is a full  
24           exhibit, I think is what Mr. Nowacki is referring to.

25                   THE COURT:  Mr. Nowacki, I want you better  
26           organized.  We have spent 15 minutes here and we have  
27           about 3 pieces of information now.

1 MR. NOWACKI: Okay.

2 Q I'm handing you a copy of what has been listed as  
3 Exhibit 3 and would you please inform the Court as to --

4 A The first year was 260 from March 10, 2008 to March  
5 9, 2009, the second year was 275 from March 10, 2009 to  
6 March 9 2010, and the third year is 290 form March 10, 2010  
7 to March 2011. So, it is an increase of \$15,000 a year.

8 THE COURT: Mr. Nowacki, I am not going to go  
9 through this again. That document is perfectly  
10 credible evidence as far as I can see at this point  
11 that is already in evidence. Why do we have to  
12 repeat it? What are you trying to establish, tell  
13 me.

14 MR. NOWACKI: Establish that there is also bonus  
15 money on top of that.

16 THE COURT: That is also in evidence, is it not?

17 MR. NOWACKI: Each year's progression, no; it  
18 isn't.

19 THE COURT: Then you certainly should have  
20 gotten right to that point. I don't want my time  
21 wasted here.

22 MR. NOWACKI: Yes, sir.

23 Q Do you recall what your bonus was that was paid in  
24 August of 2006, August of 2007, and August of 2008, and `09.

25 A I know `08 and `09.

26 Q In August of 2009 I received a bonus of \$75,000 gross  
27 and in August of 2008 I received a bonus of \$100,000 gross

1 and prior to that I don't remember.

2 THE COURT: In '08 you received a \$100,000 bonus  
3 and in '09 you receive a \$75,000 bonus.

4 THE WITNESS: Yes.

5 Q In addition to that in your employment contract there  
6 is also a car allowance of \$7200 annually; is that correct?

7 A That began with this latest contract, yes.

8 Q In addition to that you also have a current Neuberger  
9 and Berman income from your 1099 statements that go through  
10 the ones that I have for a full year would have gone through  
11 the calendar year 2008; is that correct?

12 A Dividend income which is on my financial affidavit,  
13 yes.

14 Q And that amount for the 2007 year is in Exhibit 18  
15 and that amount would be \$17,734; is that correct?

16 A According to my 2007 tax return; yes.

17 MR. COLLINS: Your Honor, I'm confused. This is  
18 2007?

19 THE COURT: I think that is what he said.

20 MR. COLLINS: Okay, and the relevance?

21 MR. NOWACKI: Is income progression.

22 MR. COLLINS: Your Honor, the criterion on a  
23 motion to modify is a material change in  
24 circumstances between the benchmark dates. The  
25 benchmark dates would be June of 2005 and the current  
26 financial circumstances of the parties. It's not  
27 relevant what happened in 2007. I thought he was

1 asking her a question about her financial affidavit  
2 anyway.

3 THE COURT: We are all over the place.

4 MR. NOWACKI: I was attempting, Your Honor, to  
5 show a progression of income.

6 THE COURT: The relevant dates really are 2005,  
7 the fall of 2008 when you made your first motion and  
8 now.

9 MR. NOWACKI: I will limit my questions to those  
10 parameters, Your Honor.

11 THE COURT: We are going to get through this  
12 witness in about 15 minutes.

13 MR. NOWACKI: Okay.

14 Q Looking at the 2008 detailed income statement that is  
15 attached to your tax return

16 THE COURT: What exhibit are we talking about?  
17 All you're doing and you are wasting your time is  
18 getting her to confirm stuff that is already in  
19 evidence.

20 MR. NOWACKI: Correct.

21 THE COURT: Why are you wasting your time and my  
22 time doing that?

23 MR. NOWACKI: Because, Your Honor, there is a  
24 question about --

25 THE COURT: Those are full exhibits.

26 MR. NOWACKI: Or dividend income as it relates  
27 to something that is on the `2006, `07, and `08 tax

1 returns that was not on the 2005 financial affidavit.

2 That is questionable relevance too.

3 MR. COLLINS: And now we are approaching where  
4 we get stalled with Judge Novack. Mr. Nowacki is  
5 claiming, and he can correct me if I'm wrong, that  
6 the 2005 financial affidavit is fraudulent. I ask  
7 the Court if the Court would inquire of Mr. Nowacki,  
8 if that's what he is setting out to prove here  
9 because that is where we get hung up because that is  
10 a whole different kettle of fish.

11 Judge Novack had explained to Mr. Nowacki that  
12 if he is claiming that the 2005 financial affidavit  
13 is fraudulent there is a different kind of a motion  
14 and an Oneglia hearing which must then be pursued.  
15 So, my question is am I defending a claim that the  
16 2005 affidavit is fraudulent or is Mr. Nowacki not  
17 claiming that?

18 THE COURT: I think that question needs to be  
19 asked, Mr. Nowacki because this is a motion for  
20 modification and it doesn't have anything to do with  
21 whether 2005 was wrong it has only to do with whether  
22 there is a substantial change of circumstance between  
23 2005 and the present. So, are you trying to show a  
24 substantial change of circumstance or whether the  
25 2005 was fraudulently or incorrect.

26 MR. NOWACKI: Substantial change in  
27 circumstances.

1           THE COURT: Then let's stay to that. It has  
2 nothing to do whether something was in the 2005  
3 affidavit or not.

4           MR. NOWACKI: All right, Your Honor.

5           THE COURT: It has nothing to do with that.

6           MR. NOWACKI: It does have to do with the  
7 subject of inheritance that may have been given to  
8 Suzanne Sullivan post June 29<sup>th</sup>, 2005 that may or may  
9 not be on the financial affidavit that relates to the  
10 foreign dividend income statement that is on the 2008  
11 return.

12          MR. COLLINS: It is the same place where we get  
13 hung-up, Your Honor. Mr. Nowacki, I don't know what  
14 the Court knows at this point. Mr. Nowacki has filed  
15 multiple, if I understand correctly whistle blower  
16 complaints with the Internal Revenue Service claiming  
17 that my client and her family, some of which are  
18 deceased, have defrauded the IRS. The upshot is --

19          THE COURT: All right.

20          MR. COLLINS: I need to know what I'm defending.

21          THE COURT: Mr. Collins, I'm trying to help.

22          MR. COLLINS: I understand, Your Honor.

23          THE COURT: I am trying to get both parties get  
24 through this thing as quickly as possible. What I  
25 want to hear in your questions to Ms. Sullivan is  
26 information that is not already admitted into  
27 evidence that has to do with her change of

1           circumstances, if there is such a thing, between 2005  
2           and today. If I don't hear some questions about that  
3           in the next 15 to 20 seconds I am going to excuse her  
4           as a witness.

5           MR. NOWACKI: Your Honor, I would like to enter  
6           into exhibit a copy of the grandmother's will that  
7           relates to generational skipping options that were  
8           available to the family that get to the heart of the  
9           issue of whether or not there is undeclared assets on  
10          the current financial affidavit that would relate to  
11          a substantial change in circumstance that is not  
12          reflected on the financial affidavit.

13          THE COURT: Go ahead.

14          MR. NOWACKI: Okay.

15          Q    So, I'm going to ask you to look at a copy of a  
16          document which is the Jane Mulligan revocable trust  
17          agreement dated June 27, 2002.

18          THE COURT: What is she going to know about  
19          that?

20          MR. NOWACKI: Because she's mentioned --

21          THE COURT: Do you want to put it into evidence?

22          MR. NOWACKI: Yes, Your Honor.

23          THE COURT: Offer it in evidence.

24          MR. NOWACKI: I'm offering it in evidence.

25          MR. COLLINS: I Object.

26          MR. NOWACKI: Overruled.

27          THE COURT: It's in evidence, move on. Get it

1           marked and get it into evidence.

2           MR. NOWACKI: Okay.

3           Q    On June 29, 2005 to the present period of time did  
4 you receive any other distribution of inheritance from the  
5 estate of Jane Mulligan involving a generational skip that  
6 was available in the revocable trust agreement that is now  
7 in the court records?

8           A    No. I can elaborate --

9           THE COURT: No. Just move quickly applies to  
10 both sides.

11          THE WITNESS: Okay.

12          Q    So, there was one distribution and that was it?

13          MR. COLLINS: Your Honor, that is not what she  
14 testified to.

15          MR. NOWACKI: I understand that.

16          MR. COLLINS: Then he is testifying.

17          THE COURT: Did you ask the question or not?

18          Q    Was there just one distribution from the trust?

19          A    I don't know that it was a distribution from the  
20 trust. What I believe is that when my grandmother died my  
21 sister and I each received \$62,000 out of her estate. I  
22 don't think it was from the trust per se, but I'm not an  
23 estate attorney so I'm not sure.

24          THE COURT: When did you receive the \$62,000?

25          THE WITNESS: January 2005.

26          Q    Isn't true that on January 20, 2005, you received a  
27 wire transfer from the Swiss Bank Corporation for \$132,100

1 with Elliot Cohen as the trustee, who is the trustee, on the  
2 Jane Mulligan estate; isn't that correct?

3 A I believe it was UBS in Princeton, New Jersey that  
4 transferred out of my grandmother's estate account that  
5 amount into my Citibank account.

6 Q Correct. So, that was a trust distribution; is that  
7 correct?

8 A I don't know the difference, I'm sorry.

9 THE COURT: Well, the number is different.

10 THE WITNESS: I'm sorry?

11 THE COURT: You said you testified that you got  
12 62,000 and we're going to close this off because this  
13 is prior to the divorce.

14 THE WITNESS: What amount did he say?

15 THE COURT: 132, listen to the question.

16 THE WITNESS: I'm sorry

17 THE COURT: Did you get 132,000 into your  
18 Citibank account? What was the number?

19 MR. NOWACKI: \$132,100.

20 THE WITNESS: If that's what it says then that's  
21 right, sorry.

22 A Yes. If that's what it says then that is correct on  
23 my Citibank statement from January 2005.

24 THE COURT: All right, move on.

25 MR. NOWACKI: Okay.

26 THE COURT: I want to tell you that we are  
27 limiting it between the time of the divorce and now,

1 and you just went beyond that.

2 MR. NOWACKI: All right. I'm going to --

3 THE COURT: Don't talk while I'm talking. I am  
4 going to limit your questioning very severely. Ask  
5 the next question.

6 Q On your 2008 return I would like you to look at what  
7 is referred to as a foreign tax credit and there is a  
8 statement here in part one and above that the note says on  
9 form 11 16, if you pay taxes to one foreign country --

10 MR. COLLINS: I'm gong to object, Your Honor,  
11 Mr. Nowacki is testifying from a document. If this  
12 document is in evidence --

13 THE COURT: Sustained.

14 MR. NOWACKI: Okay.

15 Q Would you please read this statement --

16 THE COURT: No. She may not read it because it  
17 is not in evidence.

18 MR. NOWACKI: It is, Your Honor, it is Exhibit  
19 4.

20 THE COURT: Then why does she have to read it?

21 MR. NOWACKI: Because it relates specifically to  
22 foreign dividend income.

23 THE COURT: It's in evidence. Why is she going  
24 to read it's a waste of time, move on.

25 MR. NOWACKI: Okay. I was just trying to  
26 establish that it is an income.

27 THE COURT: It's in evidence.

1 MR. NOWACKI: Thank you, Your Honor.

2 Q In addition to that, I only have information through  
3 08 on your Neuberger & Berman statement. So, my question to  
4 you is has there been any change in terms of any  
5 distributions that you would have gotten since Neuberger &  
6 Berman's last statement that I was given by Kevin Collins in  
7 production in August of 2008. Has there been any change  
8 between August in 2008 and today in terms of any further  
9 distributions that production has not been provided.

10 MR. COLLINS: Your Honor, I don't understand the  
11 question I don't know what he means by distributions.

12 THE COURT: That is fairly easy to understand.  
13 Overruled.

14 A No. I don't think so. It is just whatever the  
15 market has changed between then and now, but I thought we  
16 had provided all my Neuberger statements through 2009.

17 THE COURT: Just answer the question.

18 A No. I didn't receive any distributions.

19 Q Exhibit 6 indicates a foreign wire transfer fee of  
20 \$15 from April 9, 2008 from your Chase statement. Would you  
21 please confirm that is what this document does indicate.

22 A Yes.

23 Q So, in the context of if there is a wire transfer fee  
24 that comes from a foreign account and that there are no  
25 foreign income references on your current financial  
26 affidavit could you please help us understand how there is  
27 not a foreign account, and how you have foreign account and

1 you have a \$100,000 distribution.

2 A Sure.

3 Q That has a foreign wire transfer figure.

4 A If you take a look at my April 2008 Neuberger &  
5 Berman statement you will see that \$100,000 came directly  
6 out of my Neuberger & Berman account which is held in New  
7 York to pay my 2008 taxes which you can see that's about  
8 what I owed on my 2008 taxes. It didn't come from any  
9 foreign source it came from my Neuberger & Berman account.

10 Q I would like you to look at this exhibit number 9  
11 which is a copy of the wire transfer indicating the source  
12 of that \$100,000 and you provided this to the court prior;  
13 is that correct?

14 A Yes, I did.

15 Q All right.

16 THE COURT: If you have something to show me,  
17 show me. What am I looking at?

18 MR. NOWACKI: That is a copy of the actual wire  
19 transfer form that was supplied in previous testimony  
20 that indicates that there was a \$100,000 transfer  
21 that was done on an organization known as SWIFT  
22 Network and I would like to provide some information  
23 to the Court as it relates to what the SWIFT Network  
24 is.

25 MR. COLLINS: Your Honor, how is that relevant  
26 to a motion to modify the child support?

27 MR. NOWACKI: Substantial change of income, Your

1 Honor.

2 THE COURT: If you are going to supply  
3 information you are going to have to testify.

4 Q I am going to hand you a document that indicates what  
5 SWIFT stands for. Would you please inform the Court from  
6 this document what the SWIFT Network represents.

7 MR. COLLINS: Objection, Your Honor, he is  
8 attempting to have this witness testify from a  
9 document not in evidence and there is no foundation.

10 THE COURT: He is asking her if she could look  
11 at a document, he is not offering the document in  
12 evidence he is asking her if she can look at a  
13 document and provide testimony.

14 MR. COLLINS: No, Your Honor, that is  
15 inappropriate.

16 THE COURT: No, it's not.

17 MR. COLLINS: Refreshment of recollection.

18 THE COURT: Mr. Collins.

19 MR. COLLINS: May I be heard on it? I need to  
20 make a record on this.

21 THE COURT: You have been heard, sit down. Can  
22 you provide an information about that document?

23 THE WITNESS: I don't know what this document  
24 is, but I know what SWIFT has been explained to me  
25 by Citibank which is the software that they use for  
26 wire transfers. It says right here that as of  
27 November 2008, --

1 THE COURT: You are testifying from a document,  
2 just tell me what you know.

3 THE WITNESS: It's like a software that keeps  
4 track of wire transfers between various banks.

5 THE COURT: All right. Thank you. Move on, Mr.  
6 Nowacki, ask questions.

7 MR. NOWACKI: I am, Your Honor.

8 Q I am handing you a copy of a document that involves  
9 Swiss bank accounts in regards to whether or not there are  
10 branch offices in the United States. Would you please read  
11 that document --

12 THE COURT: No. You ask her questions about her  
13 information. You are not to ask her to read things  
14 and then regurgitate them that is not testimony.

15 Q Do you know whether or not there are - -

16 THE COURT: Mr. Nowacki, clean off that piece of  
17 wood that you everything on and move back to your  
18 desk and ask questions.

19 Q -- To the best of your knowledge are there Swiss bank  
20 branches in this country which have the ability for you to  
21 go to an ATM machine and withdraw money.

22 MR. COLLINS: Objection, relevance.

23 THE COURT: Sustained.

24 Q The Swiss bank corporation - -

25 THE COURT: Are you talking SWIFT or Swiss?

26 MR. NOWACKI: Swiss.

27 THE COURT: S-w-i-s-s as in the nation?

1 MR. NOWACKI: Correct.

2 Q That in 2005, are you aware that the Swiss Bank  
3 Corporation did not exist?

4 MR. COLLINS: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q You referenced earlier UBS, and UBS was created in  
7 1998 through the merger of the Swiss Bank Corporation and  
8 the --

9 THE COURT: This is testimony, ask the question.

10 MR. NOWACKI: I'm asking her --

11 THE COURT: You are not asking her you are  
12 giving a dissertation.

13 Q Are you aware of the date UBS was created?

14 MR. COLLINS: Objection, Your Honor.

15 THE COURT: Sustained, you are giving a  
16 dissertation.

17 Q Are you aware of the date when UBS was created?

18 MR. COLLINS: Objection.

19 THE COURT: Sustained. Ask a relevant question  
20 or we are going to excuse Ms. Sullivan from the witness  
21 stand.

22 Q In the financial affidavit that you presented to the  
23 court you used parameters for the valuation on your house.  
24 Could I ask you to define what you used as a document  
25 source.

26 THE COURT: What exhibit are we referring to?

27 MR. NOWACKI: That's on the financial affidavit.

1 THE COURT: Which financial affidavit?

2 MR. NOWACKI: Suzanne Sullivan's financial  
3 affidavit dated November 12<sup>th</sup>, where she declares the  
4 value of her home on the financial affidavit.

5 THE COURT: What page are you looking at?

6 MR. NOWACKI: I believe it's on page 2.

7 THE COURT: Right.

8 Q What did you use as your reference point for the  
9 valuation of that home on your financial affidavit?

10 A It was a valuation that was done when we refinanced  
11 our home in 2008.

12 Q All right. Does that relate to the town assessment  
13 from the Town of New Canaan on what your property was valued  
14 at which was dated October 7, 2009?

15 MR. COLLINS: Your Honor, is he testifying from  
16 the document. I don't know what he's doing.

17 MR. NOWACKI: I'm asking whether or not the  
18 number that is on the financial affidavit --

19 THE COURT: She just said it wasn't. She just  
20 said it came from the appraisal that they got when  
21 they refinanced their house in whatever year she's  
22 testifying. It has nothing to do with an appraisal  
23 from New Canaan or an assessment from New Canaan.

24 MR. NOWACKI: Right. What I am trying to  
25 establish, Your Honor, is that there is a difference  
26 between that appraisal and a more recent document --

27 THE COURT: You mean an assessment, and there

1 usually is, move on.

2 Q And that currently based on the information that you  
3 provided in your financial affidavit you indicate that you  
4 made a \$2000 contribution towards your mortgage; is that  
5 correct?

6 A Yes.

7 Q Your total mortgage payment per month on that home  
8 when you transferred that money into a joint account --

9 THE COURT: Where is that?

10 MR. COLLINS: Front page, Your Honor, section 2  
11 line item number 1.

12 Q So, you make a contribution of \$2000 and the payment  
13 that is on your chase account that comes out of your joint  
14 account --

15 THE COURT: I can't hear the question.

16 Q You also have a joint checking account where the  
17 mortgage payment is issued monthly; is that correct?

18 A The mortgage is paid out of our joint checking  
19 account, yes.

20 Q What is that mortgage amount monthly?

21 A I don't know.

22 Q Is it over \$5000 a month.

23 A Oh, I would imagine so.

24 MR. COLLINS: Your Honor, at this point, I would  
25 just like to make sure -- I don't know if Mr. Nowacki  
26 is digging through the ID file or the full exhibit  
27 file and I think that is the ID file. Can we remove

1           that file?

2           THE COURT: No. I'm not going to remove it  
3 because if we want exhibits I don't want him taking  
4 20 minutes looking through his briefcase.

5           MR. COLLINS: I understand, and I just don't  
6 want them to get mixed -- I'm not really paying  
7 attention, Your Honor, as to what exhibits he is  
8 using --

9           THE COURT: You are paying attention, Mr.  
10 Collins, you are doing a very good job.

11          MR. COLLINS: I'm paying attention but I'm not  
12 picking it up quickly enough I think.

13          Q    You just stated that you don't know the amount of  
14 money that is paid monthly out of your joint account.

15          A    Yeah.

16          THE COURT: How do you get then to the point  
17 where you're contributing \$2000.

18          THE WITNESS: I transfer from my individual  
19 account into our joint account \$2000 and then my  
20 husband pays the mortgage bill out of our joint  
21 account.

22          THE COURT: Thank you.

23          Q    So, on a relative basis to your joint incomes you  
24 \$2000 contribution represents a fair percentage of that  
25 mortgage payment or not?

26          MR. COLLINS: Objection, Your Honor, irrelevant.  
27 Form of the question, subjective question.

1 THE COURT: Sustained.

2 Q The incomes of both parties are already established  
3 in the 2008 tax return; is that correct?

4 A Which both parties?

5 Q Yourself and, David Barrington, your husband?

6 A Yeah.

7 Q You were married to David Barrington on what date?

8 THE COURT: What is the point of this? We are  
9 wasting time.

10 MR. NOWACKI: I am trying to establish the asset  
11 values that are listed on the financial affidavit  
12 because Attorney Collins will make an argument --

13 THE COURT: Don't anticipate what is the point?  
14 We are talking about her situation.

15 Q And the home is in joint ownership; correct?

16 A Yes.

17 Q And the current mortgage and also the home equity  
18 loan totals roughly a million five.

19 A There is no home equity loan; it is just a mortgage  
20 of a million five.

21 Q It's now just a mortgage of a million five, okay.  
22 You are the custodian of the children's accounts; correct?

23 A Yes. The children's Neuberger and Berman accounts  
24 that my parents fund; yes.

25 THE COURT: What is the relevance of this?

26 MR. NOWACKI: It relates to transfer of assets  
27 from an account that has yet to be identified as part

1 of the production given to Kevin Collins into the  
2 children's accounts.

3 THE COURT: I don't think that has anything to  
4 do with this case move on.

5 MR. NOWACKI: Well, it's an asset that has been  
6 transferred.

7 THE COURT: I've already decided that the  
8 question is not going to be asked.

9 MR. NOWACKI: Okay.

10 Q Question about disability insurance in regards to the  
11 motions at hand. Does FOX have an option available through  
12 your employer for you to increase your disability insurance  
13 through your employer?

14 MR. COLLINS: I'm going to object, Your Honor, I  
15 don't know whether that is within the four corners of  
16 the motion. If it is I would need to see that, but I  
17 don't know what the relevance is in any event.

18 THE COURT: Overruled.

19 A I don't know. I have disability insurance through my  
20 employer, and I don't know if there is the ability to buy  
21 more.

22 MR. NOWACKI: The relevancy of that question,  
23 Your Honor --

24 THE COURT: Unless you ask it you don't have to  
25 establish the relevancy. Just move on and ask  
26 questions you are wasting a lot of your time and the  
27 clock is ticking.

1 Q Let's talk about the structure, please, of the 65/35  
2 in regard from your view was the 65/35 that was established  
3 on the children's related expenses a fair assessment of what  
4 the percentage of incomes were at the point in time that we  
5 signed the separation agreement?

6 A Yeah, if you put our two incomes together --

7 THE COURT: Yes or no.

8 THE WITNESS: Yes.

9 THE COURT: I don't know what the relevance of  
10 that is, 65/35 is what it is whether it was fair or  
11 not then is not particularly in front of me.

12 MR. NOWACKI: All right.

13 Q The question now is in regard to your current income  
14 at 290,000 effective in 2010 currently 275,000, do you  
15 believe that is a substantial change of income from when we  
16 got divorced in 2005?

17 MR. COLLINS: Objection, Your Honor. It calls  
18 for a legal conclusion that is what a court can  
19 decide.

20 THE COURT: I can hear her answer.

21 A I don't know what the definition of substantial is,  
22 it is certainly an increase though.

23 Q So, in terms of your W2 for last year 2008 which is  
24 the only year that we have full information on your W2  
25 indicated that your income was a salary of \$275,000 plus a  
26 bonus of \$100,000.

27 MR. COLLINS: Your Honor, Mr. Nowacki seems to

1 be digging through that ID file again and now he's  
2 moved on.

3 MR. NOWACKI: I believe it is on the tax return.

4 THE COURT: Why don't you just ask her is the  
5 tax return correct or not?

6 Q Is your tax return correct?

7 A Yes.

8 Q And the dollar figure there.

9 THE COURT: I can read the dollar figure.

10 MR. NOWACKI: Okay.

11 Q So, in terms of the variables that I'm asking the  
12 Court to consider, interest income is on the tax return,  
13 foreign dividend income --

14 MR. COLLINS: Objection, Your Honor, is it a  
15 question or summation.

16 Q Is there anything that should be in that tax return  
17 that isn't in the tax return?

18 THE COURT: Didn't you just ask that question?  
19 You asked her if it was accurate.

20 MR. NOWACKI: On the W2 income.

21 MR. COLLINS: No, on the tax return.

22 THE COURT: You are not advancing your case, Mr.  
23 Nowacki. You are going over and over what is already  
24 in the evidence.

25 MR. NOWACKI: Okay.

26 Q The current split of 65/35 in terms of the children's  
27 related expenses would you say that is currently a fair

1 percentage for you to be paying based upon the increase in  
2 your income since June 29, 2005?

3 MR. COLLINS: Objection, Your Honor.

4 THE COURT: Overruled.

5 A I think within the context of the entire divorce  
6 agreement, yes, it's fair.

7 Q I would like to reference the split at the point in  
8 time of the divorce and the testimony that you gave on June  
9 29, 2005 when that agreement was signed. At that point in  
10 time did you testify that the agreement that we came to on  
11 the split of assets was reasonable and fair?

12 MR. COLLINS: Objection, Your Honor, if Mr.

13 Nowacki wants to --

14 THE COURT: Sustained.

15 MR. NOWACKI: Exhibit 10, Your Honor.

16 THE COURT: What is the point of it?

17 MR. NOWACKI: It is a transcript from --

18 THE COURT: Don't hand me exhibits, Mr. Nowacki.

19 MR. NOWACKI: I'm sorry.

20 THE COURT: I will take a look at them, promise.

21 That is part of my oath of office.

22 MR. NOWACKI: Thank you. I appreciate that.

23 THE COURT: Any further questions?

24 Q The change which you requested in the custody  
25 arrangement was there a financial motivation to your  
26 decision to pursue that course of action?

27 A Absolutely, not.

1 Q Could you help define the timing of the decision to  
2 file for primary custody relative to certain decisions that  
3 the Court made in regards to providing discovery on your  
4 income.

5 A I can't define it based on court decisions. What I  
6 define it by are the things that you were saying to the  
7 children that were --

8 THE COURT: I don't want to hear this. This has  
9 nothing to do with the motions in front of me.

10 MR. NOWACKI: It certainly affects our children  
11 and --

12 THE COURT: A lot of things affect your  
13 children, Mr. Nowacki, but move on and deal with the  
14 motion that I'm trying to deal with here. If you  
15 don't have any further questions of her I think I  
16 would like to ask a few questions.

17 MR. NOWACKI: I think I'm finished, Your Honor,  
18 thank you.

19 THE COURT: What are the monthly expenses,  
20 generally, in the last twelve months that are subject  
21 to the split whether it's fair or not of the 65/35.  
22 What is the average total amount of expenses that get  
23 split?

24 THE WITNESS: Annually it averages around --  
25 I don't know, \$60,000 a year annually.

26 THE COURT: \$60,000?

27 THE WITNESS: Yes.

1 THE COURT: For both children?

2 THE WITNESS: Yes.

3 THE COURT: And that includes just generally  
4 what?

5 THE WITNESS: The biggest expense is the nanny,  
6 the nanny's car, extracurricular activities for the  
7 kids, sporting goods equipment for the kids. It  
8 excludes things like food and clothing. Health  
9 insurance is included.

10 THE COURT: Thank you. Mr. Collins, do you have  
11 any questions?

12 MR. COLLINS: Just a few, Your Honor, if I may.

13 CRISS-EXAMINATION BY MR. COLLINS:

14 Q Ms. Sullivan, does your financial affidavit dated  
15 November 10, 2009, reflect all of your income?

16 A Yes.

17 THE COURT: I have a copy of this. Did we mark  
18 this as an exhibit or not?

19 MR. COLLINS: To my knowledge, no, Your Honor.

20 THE COURT: I want this marked as an exhibit.  
21 Is there a copy marked that you have? I think you  
22 are the one who wanted Ms. Sullivan to have it.

23 MR. COLLINS: I gave a courtesy copy to the  
24 Court.

25 THE COURT: Yes, you did.

26 MR. COLLINS: Ms. Sullivan has a copy and I have  
27 my copy.

1           THE COURT: All right. When she is finished  
2           with it I am going to have it marked as a full  
3           exhibit.

4           MR. COLLINS: Yes, Your Honor.

5           Q    Just to be clear your financial affidavit reflects  
6           all income from whatever source both earned and passive; is  
7           that correct?

8           A    Yes.

9           Q    The circumstances surrounding the execution of the  
10          separation agreement on or about June 24, 2005 was the sole  
11          reason for the 65/35 split in child support predicated on  
12          the relative incomes of the parties?

13          A    Not solely, no.

14          Q    What were the other considerations in entering into  
15          that agreement?

16          THE COURT: What is the relevance of that?

17          MR. COLLINS: Your Honor, that is the essential  
18          point of the testimony of Attorney Colin that this is  
19          a financial mosaic as defined by the Appellate Court.

20          All financial circumstances are considered in making  
21          a deal, so, just because there has been some change  
22          in the relative income of the parties doesn't  
23          necessarily necessitate a modification of the child  
24          support predicated on that sole thing. Everything  
25          has got to be looked at including circumstances  
26          surrounding the agreement.

27          In fact, Mr. Nowacki hit the point quite well

1           when he suggested that Ms. Sullivan, Mrs. Nowacki at  
2           the time, indicated it was fair and equitable under  
3           the circumstances. The reality is the circumstances  
4           are everything contained in this document not just  
5           that little carved out portion. It was her testimony  
6           before and it's her testimony now that this was part  
7           of the financial mosaic.

8           THE COURT: I don't think she has made any thus  
9           far.

10          MR. COLLINS: That is why I'm asking her. She  
11          did say to Mr. Nowacki on direct that the relative  
12          incomes of the parties was not the sole consideration  
13          in establishing the percentage.

14          THE COURT: I will let her answer the question.

15          Q    So, what other considerations were there, ma'am,  
16          other than the relative incomes of the parties in ascribing  
17          65/35 to the apportionment and child support.

18          A    The way the assets were being split.

19          Q    And what was your understanding about the way the  
20          assets were being split as it related to the total financial  
21          picture?

22          A    That my ex husband was getting more than 50% so the  
23          offset were other things related to expenses.

24          Q    Among those other things was that the 65/35?

25          A    Yes.

26          Q    So, the assets he has already received his  
27          distribution, right?

1 A Yes.

2 Q There is no givesy-backsies on that, is there?

3 A Right.

4 MR. COLLINS: I have nothing further, Your  
5 Honor.

6 THE COURT: Anything else?

7 MR. NOWACKI: Yes, Your Honor. Since Attorney  
8 Collins has raised the subject of the asset  
9 distribution, I believe that at the last hearing we  
10 established that there the split was approximately  
11 60/40.

12 THE COURT: For who?

13 MR. NOWACKI: 60 for myself and 40 percent for  
14 Suzanne and the differential --

15 THE COURT: If you want to argue that is fine.  
16 Ms. Sullivan is on the witness stand and you ask  
17 questions of her is the way we do this.

18 BY MR. NOWACKI:

19 Q The question here is there is a document that was a  
20 working proposal dated June 10, 2005. Have you ever seen  
21 this document?

22 A Yes.

23 Q And at that point in time --

24 THE COURT: I don't want to see it. I don't  
25 want a working proposal, move on.

26 Q That the difference of roughly \$600,000 between a  
27 true 50/50 split --

1 THE COURT: Don't testify, ask a question.

2 Q -- The question is at the point in time that we were  
3 married was there a difference in our premarital assets that  
4 was in this document that you say --

5 MR. COLLINS: I'm going to object, Your Honor.

6 THE COURT: Ask the question. Don't refer to a  
7 document that I don't want to have in evidence.

8 A There was probably a difference in our premarital  
9 assets. I don't know what the difference was.

10 Q Documentation was provided

11 THE COURT: Ask a question. If I have to say  
12 that again we are not going to have any more  
13 questions. Ask a question.

14 Q Are you aware that there was documentation that was  
15 provided to your attorney at the time, Tom Collin, that  
16 would support a 180,000 differential at the point in time  
17 that we were married.

18 MR. COLLINS: Objection.

19 THE COURT: Overruled.

20 A No. I just said I don't know what the difference  
21 was.

22 THE COURT: Ms. Sullivan, when you say there was  
23 a difference who had more and who had less in the  
24 premarital asset department before you got married?

25 THE WITNESS: I think he's saying he had more.

26 THE COURT: I want to know what you're saying.

27 THE WITNESS: I think he probably had more.

1 Q So, if that difference was \$188,000 then the  
2 remainder of the difference between that and a fair split  
3 was roughly \$120,000 worth of expenses; is that correct?

4 MR. COLLINS: Objection, Your Honor, it assumes  
5 facts not in evidence.

6 MR. NOWACKI: I will put those into evidence at  
7 a later point in time.

8 Q As part of our agreement we agreed to pull off the  
9 UCONN cap; is that correct?

10 MR. COLLINS: Objection, Your Honor, now we are  
11 beyond the scope.

12 THE COURT: Your redirect is limited only to  
13 areas of the cross-examination which was pretty  
14 limited.

15 MR. NOWACKI: Okay, Your Honor. I have no  
16 further questions.

17 MR. COLLINS: No re-cross, Your Honor.

18 THE COURT: Ms. Sullivan, you can step down,  
19 thank you.

20 THE WITNESS: Thank you.

21 MR. NOWACKI: I would like to testify now, Your  
22 Honor. Might we take a short break?

23 THE COURT: Before we take the break you are to  
24 testify to facts only and there will be no going back  
25 before 2005. You are going to be limiting the  
26 testimony you give to the issues that are in front of  
27 the court right now. These are not the contempt

1 issues we are going to do this after that. Given  
2 those parameters how long do you expect your  
3 testimony to be?

4 MR. NOWACKI: Forty minutes.

5 THE COURT: Cut it in half. We will reconvene  
6 at 20 minutes to 12 and I expect Mr. Nowacki's  
7 testimony to be finished at noon. Use the time in  
8 order to condense.

9 (Morning recess)

10 (Back on the record)

11 THE COURT: All right. Mr. Nowacki, we are  
12 going to continue this matter with your testimony.  
13 Let me just tell you that I'm going to let you do it  
14 in a narrative. You are not to refer to any written  
15 information unless it has been admitted as an  
16 exhibit. You are not to read from any written  
17 information unless it has been admitted as an  
18 exhibit.

19 If you want to offer something as an exhibit we  
20 will consider but you are not to read anything unless  
21 it has been admitted. Second of all, I'm going to be  
22 pretty sharp about what is relevant because we've  
23 gotten off track a few times on other parts today so  
24 I'm a little unguarded about that. I'm going to let  
25 you do it in a narrative which means you don't have  
26 to ask yourself questions but there is a focus that  
27 is brought by questions. So, that is a focus that

1 someone who is trained as a lawyer uses so they get  
2 the relevant information to the trier of fact whether  
3 it is a jury or a judge in efficient fashion. I want  
4 you to be efficient in that manner to the best of  
5 your ability.

6 MR. NOWACKI: Yes, Your Honor.

7 THE COURT: The last think is you will be taking  
8 an oath and since everything you say on the stand  
9 will be testimony you will be subject to the  
10 penalties of perjury. Come on up.

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26 M I C H A E L J. N O W A C K I

27 of 319 Lost District Drive, New Canaan, Connecticut

1 called as a witness by the Defendant, being first  
2 duly sworn, was examined and testified under oath  
3 as follows:

4 THE CLERK: Could you please state your name and  
5 address for the record, spelling your last name.

6 THE WITNESS: Michael Joseph Nowacki,  
7 N-o-w-a-c-k-i; 319 Lost District Drive, New Canaan,  
8 Connecticut.

9 THE COURT: All right. Have a seat.

10 MR. NOWACKI: The first subject I would like to  
11 address, Your Honor, is the subject of the  
12 differential in the final distribution of assets.  
13 There was a \$182,000 difference in the premarital  
14 assets and I have documents if necessary to introduce  
15 to validate each and every point that would result in  
16 those assets.

17 If that is necessary I would offer those as  
18 evidence and if its not necessary and Attorney  
19 Collins wants to stipulate that is fine with him I  
20 would like to move on to the next point.

21 THE COURT: That is your decision, Mr. Nowacki,  
22 nobody else's decision.

23 MR. NOWACKI: I'm going to just give a two page  
24 document as evidence of those assets that will go  
25 back to --

26 THE COURT: Just produce the document please,  
27 hand it to the marshal.

1 MR. NOWACKI: And while I'm --

2 THE COURT: Don't discuss it.

3 MR. NOWACKI: No, I'm not. I'm going to move to  
4 the next subject.

5 MR. COLLINS: Your Honor, I need an opportunity  
6 to see the document.

7 THE COURT: Yes. Give the document to the  
8 marshal before you do anything else.

9 MR. NOWACKI: All right.

10 MR. COLLINS: I object, Your Honor, it is  
11 predicated on hearsay and also it would appear to me  
12 to be -- there is no foundation for the document. It  
13 would appear to be hearsay. It provides information  
14 that can only be derived from another source so it is  
15 second hand source material.

16 THE COURT: I'm going to take it and mark it as  
17 the next exhibit, move on, Mr. Nowacki.

18 THE CLERK: Defendant's Exhibit 24.

19 MR. NOWACKI: On the basis of the information  
20 that was put together at the last hearing on  
21 September the --

22 THE COURT: Don't give me the background testify  
23 to facts.

24 MR. NOWACKI: That the marital distribution was  
25 roughly 2 million 045.

26 THE COURT: To whom?

27 MR. NOWACKI: To myself, and Suzanne's total was

1 I believe 1 million 434. So, the differential I'm  
2 just going to say roughly was \$300,000.

3 THE COURT: That doesn't sound right.

4 MR. NOWACKI: To get to 50/50.

5 THE COURT: I see there was a 600,000  
6 difference.

7 MR. NOWACKI: Correct. So, the differential  
8 between the 188 and the 300 was constituted in  
9 pulling off the cap that would have resulted had we  
10 tried the case and it was my feeling that the  
11 children's best interest would be served by not  
12 having a Connecticut State cap and that they should  
13 not have a penalty that would be accrued to them  
14 because it was my feeling --

15 MR. COLLINS: I'm going to object, Your Honor,  
16 this has to do with college.

17 MR. NOWACKI: That is correct.

18 THE COURT: I find it irrelevant, move on.

19 MR. NOWACKI: The reason why there is relevancy  
20 to college in the context --

21 THE COURT: Move on, Mr. Nowacki. Don't argue  
22 with the judge, very bad idea.

23 MR. NOWACKI: All right. I was trying to give  
24 an explanation for the remainder of the difference to  
25 get to the 300.

26 THE COURT: I'm looking at the clock.

27 MR. NOWACKI: Okay. In terms of variables that

1 are on my W2 that are important for the Court to note  
2 that --

3 THE COURT: Is that an exhibit?

4 MR. NOWACKI: It is, I believe, already.

5 THE COURT: Your W2, is that an exhibit?

6 MR. NOWACKI: I believe that is in evidence.

7 THE COURT: Okay. Thank you.

8 MR. COLLINS: For what year, Your Honor?

9 MR. NOWACKI: For 2008, it involves a complex  
10 transaction for the company where options that are  
11 part of the separation agreement were distributed to  
12 us in the ability to take unrestricted options which  
13 were declared on the financial affidavit in 2005  
14 which were part of a split of money to occur at a  
15 later point in time and that Suzanne and I came to a  
16 mutual decision to take those unrestricted options  
17 and turn them into restricted options.

18 Those two tranches that were delivered in 2008  
19 and 2009 show up as income on my W2. That should be  
20 excluded from the Court's consideration if you look  
21 at the W2 income in its consideration because that  
22 income and those stock options are split down the  
23 middle 50/50. That is reflected in my financial  
24 affidavit where it references certain options that  
25 have all been granted and a second tranche came in  
26 2009 in June. I just want to make sure that the  
27 Court in looking at that information --

1           THE COURT: You are saying that they were split  
2 between you and your ex wife?

3           MR. NOWACKI: -- That is correct, and that is  
4 reflective of a written agreement that the two of us  
5 had to split those options. There is also a major  
6 change in CBS's dividend that occurred due to the  
7 current economic situation. So, if you look at a  
8 historical 2008 dividend statement that would be  
9 reflective of information that's in the financial  
10 affidavit that CBS's quarterly dividend went from 27  
11 cents to 5 cents.

12           I do not have any other income that relates to  
13 stocks etc. that are non 401K related or non pension  
14 related assets. The reason why I'm here and  
15 representing myself is I have no liquidity in my  
16 life, and that is why I from the beginning of this  
17 process was not in the position, in consideration of  
18 the educational agreement that we made, that is a  
19 relevant part of the discussion here because we are  
20 all suffering from the diminution of the value in the  
21 529 plans for our children.

22           If you go back to 2004 and that's reflective in  
23 my financial affidavit there are declines of roughly  
24 25 to 30% in the 529 provisions which necessitates my  
25 request that there be a modification based on a  
26 substantial change in circumstance in those  
27 educational provisions where we pulled off the cap --

1           THE COURT: I just want to interrupt here, Mr.  
2 Nowacki. I am not aware of any of the motions that  
3 I've looked at that have asked for that relief. I  
4 may be wrong; I don't have 100% recall. What motion  
5 makes that --

6           MR. NOWACKI: It's in motion 174, Your Honor.

7           THE COURT: Thank you.

8           MR. NOWACKI: And the suggestion that I would  
9 like to make to the Court which I think is fair and  
10 reasonable in the consideration of what was agreed  
11 to.

12          THE COURT: I am just interested in facts; I  
13 will hear suggestions later.

14          MR. NOWACKI: When we structured the agreement  
15 in 2005, the Connecticut State cost for a four year  
16 college was roughly \$16,500 per year. So, the  
17 expected cost in the discussions surrounding the  
18 settlement projected a four year college education  
19 cost of \$265,000.

20          So, per child there was in excess of what the  
21 Court would have decided which would have been  
22 limited to the Connecticut State cap a \$200,000 per  
23 child distribution that would have been split 65/35.

24          If you look at that 200,000 differential and split  
25 it 65/35 it is roughly on top of the differential of  
26 \$200,000 would give a value of the difference between  
27 the two parties of \$70,000, or the difference between

1           134 and we'll call it 135 and the 65. That \$70,000  
2           differential accounts for the remainder of the  
3           difference between what would have been a 50/50 split  
4           and that is why this is important.

5           The reason why I am asking the Court to make the  
6           determination about college expenses now is our son  
7           Timothy who is now age 15, and we hope about 45  
8           minutes ago was named the starting goalie for New  
9           Canaan High School, Tim has aspirations to want to go  
10          to prep school. Prep school is not covered under the  
11          agreement and that both parents are of the agreement  
12          that Tim's best interest would be served to go to  
13          prep school.

14          In order for that to be affordable based upon  
15          the declines in my income this year from 2009 to 2008  
16          roughly a 23% decline in W2 income, that option is  
17          not affordable based on current commitments that are  
18          fully listed in the financial affidavit. So, the  
19          reason why I am requesting that the Court make this  
20          determination now is that adjustment in the college  
21          expenses will make that prep school education  
22          affordable for Tim.

23          We understand that is not something the Court is  
24          going to order, but it does give an explanation for  
25          the reason why I'm requesting to the Court at this  
26          point in time to make a determination as to what that  
27          split should be. My suggestion that I have offered

1 to Attorney Collin and he --

2 MR. COLLINS: I am going to object, Your Honor.

3 THE COURT: I don't want suggestions I want  
4 facts. You can make a suggestion when I let you sum  
5 up briefly.

6 MR. NOWACKI: That accounts for the \$300,000  
7 differential.

8 THE COURT: You have two minutes left in your  
9 testimony.

10 MR. NOWACKI: All right. What I'm trying to do  
11 here in terms of the structure of the child related  
12 expenses is to achieve proportionality based on  
13 current income including dividend income, including  
14 all the factors that the Court can consider in making  
15 adjustments on those expenses and that needs to be  
16 done now because that will also impact the  
17 affordability of prep school.

18 There is no statute of limitation of when the  
19 nanny is going to be leaving us as service in the  
20 agreement. That is an issue that the two of us need  
21 to deal with at a later point in time once both kids  
22 have their driver's license. That is one thing that  
23 was not addressed in the agreement that has a  
24 relevancy to the affordability of prep school because  
25 that prep school education will run probably \$55,000  
26 a year, and that my suggestion here is that between  
27 the two of us that be split based upon whatever the

1 income percentages are that are reflective of the new  
2 percentages that each of us are going to be  
3 responsible for based on the Court's decision.

4 The reason for urgency about this is we are  
5 talking about trying to enable Tim to go to prep  
6 school starting next year. In order for him to do so  
7 the SSAT's that he would need to take would need to  
8 be taken in the next two months in order to be able  
9 to make those prep school things. He is a wonderful  
10 kid, his sister has expressed no desire. I have said  
11 to both Kevin Collins and I've said to Veronica Reich  
12 that whatever the educational decisions that are made  
13 for Tim that I will make a parallel donation to Kerry  
14 at the point in time that she graduates from college  
15 which is also not covered because I love both these  
16 kids the same.

17 That is what this is about this is about making  
18 sure underneath Connecticut State law that everything  
19 that these children would have been given in their  
20 lives is not compromised by a change of income of one  
21 party during this period of time. I have done my  
22 level best to offer suggestions to settle this issue.

23 MR. COLLINS: Objection, Your Honor, the  
24 discussion of settlement is not permissible.

25 THE COURT: I agree, move on.

26 MR. NOWACKI: My motivation is to strictly  
27 ensure --

1           THE COURT: I don't want to hear about your  
2 motivation. I want to hear facts; if you've run out  
3 of facts are you finished?

4           MR. NOWACKI: Your Honor, I have no further  
5 issues at this point in time, and I am a minute over.  
6 Thank you.

7 CROSS-EXAMINATION BY MR. COLLINS:

8       Q     Mr. Nowacki, in June of 2005 you submitted a  
9 financial affidavit; is that correct, sir?

10      A     That is correct, sir.

11      Q     On November 12, you filed a financial affidavit; is  
12 that correct?

13      A     That is correct, sir.

14      Q     Okay. Isn't a fact, sir, that your base salary has  
15 increased since the date of dissolution?

16      A     I don't recollect the proportionality of that -- I  
17 believe that increase is somewhere around less than 10%  
18 between 2005 and current.

19           THE COURT: Is the question income or salary?

20           MR. COLLINS: Salary, Your Honor.

21      Q     So, would this refresh your recollection, sir, if I  
22 show you today's financial affidavit, or I should say the  
23 November 12<sup>th</sup>, affidavit, your gross salary is reflected on  
24 today's affidavit and your gross salary is reflected on the  
25 one from the date of dissolution. Does that refresh your  
26 recollection, sir?

27      A     Yes. I believe that reflects about a 10%

1 differential.

2 Q Sir, just does it refresh your recollection?

3 A Yes.

4 Q Okay. Is your income higher today than it was at  
5 the date of dissolution?

6 A Are you speaking of base salary?

7 Q I'm talking about the line where it says salary and  
8 there is a number across from it.

9 A I'm just wanting to find the reference point and the  
10 answer is yes it is higher.

11 Q What was your salary on a monthly basis as of the  
12 date of dissolution?

13 A \$17,980.

14 Q And what was your salary as of your affidavit of two  
15 weeks or so ago?

16 A \$20,283.

17 Q So, an increase of somewhere around 23 or 2400  
18 between those two dates in base salary?

19 A Roughly 2300, that is correct, sir.

20 Q Now, on your current financial affidavit dated  
21 November 12, 2009, can you tell me from looking at your  
22 financial affidavit what your total gross bonuses were paid  
23 to date in 2009?

24 A On a gross basis?

25 Q On a gross basis, sir.

26 A Here are the four gross numbers for the four  
27 quarterly reviews.

1 Q How many bonuses have you received this year?

2 A There are four, sir.

3 Q When did you receive the first one for 2009?

4 A In February of 2009, and that is listed on the  
5 financial affidavit, the next one was 5-20-09.

6 Q What did you receive in February of `09?

7 A A bonus of \$6100.

8 Q When was your next bonus paid?

9 A 5-20-09

10 Q And how much was that?

11 A That gross was \$6100.

12 Q And when was the next one paid?

13 A \$7450.

14 Q When?

15 A Paid on August 20, 2009.

16 Q And when was the next one paid?

17 A 10-24-09 was \$6140.

18 Q If you add those three together it is something  
19 slightly north of \$25,000. Would you agree with that, sir?

20 A Yes. I would assess that at \$25,640.

21 Q All right. So, are you expecting any more bonuses  
22 this year?

23 A No, sir.

24 Q So, your monthly salary is calculated at the rate of  
25 \$20,283 gross and you've received something slightly more  
26 than \$25,000 gross in bonuses this year; is that correct,  
27 sir?

1 A That is correct.

2 Q Okay. Do you have any other sources of income, sir?

3 A There was an annual bonus that is noted right below  
4 that on page 2 of the financial affidavit and the prior  
5 year you can see it was higher, and the following year it  
6 is lower.

7 Q Were you paid that bonus in 2009?

8 A That was paid in 2009; that is correct, sir.

9 Q How much was that annual bonus paid in 2009?

10 A \$85,500.

11 Q And that was your gross?

12 A That is correct, sir.

13 Q So, in total bonuses --

14 THE COURT: The \$85,500 bonus was for what year?

15 MR. NOWACKI: It was for the year 2008 paid in  
16 2009.

17 THE COURT: Was that paid on a quarterly basis?

18 MR. NOWACKI: No, sir.

19 THE COURT: Are there two types of bonuses or  
20 did the loan structure change?

21 MR. NOWACKI: No. There always have been two  
22 types of bonuses.

23 THE COURT: So, there is an annual bonus and  
24 then a quarterly bonus.

25 MR. NOWACKI: That is correct, sir.

26 THE COURT: Okay.

27 Q If we add the gross numbers together of the annual

1 and the quarterly bonus that is \$110,000 in bonuses received  
2 this year; is that correct, sir?

3 A That is correct, sir.

4 Q And your base salary on an annualized basis is  
5 \$240,879.

6 A That is correct, sir.

7 Q So, your total compensation is somewhere north of  
8 \$350,000. Is that correct?

9 A That is correct, sir.

10 Q Sir, what is the basis for your application for a  
11 modification of child support today?

12 A That the relative percentages of each parties income  
13 as a portion of the total is substantially different than it  
14 was on June 29, 2005.

15 Q Is it your proposition, sir, that the percentages  
16 should equate identically to what your relative incomes are?

17 A Well, income includes investment income, dividend  
18 income, perks such as car allowances etc. The answer to  
19 that question is yes as long as it includes all the  
20 variables that are part of the compensation package plus  
21 interest income that is accrued.

22 Q So, your position is that what this Court should do  
23 by way of modification is to add your total income to Ms.  
24 Sullivan's total income together whether passive or earned  
25 and get the relative percentages and apply that to the  
26 payment of expenses; is that correct?

27 A That is a fair assessment of what I would view as

1 being fair and reasonable, yes.

2 Q Now, you have talked about college, is that a factor  
3 in your application today for a modification?

4 A Yes, sir, it is.

5 Q Tim you indicated is a freshman in high school; is  
6 that correct.

7 A That is correct, sir.

8 Q And Kerry is what year in school?

9 A Kerry is in 7<sup>th</sup> grade.

10 Q So, Tim won't be going to college for almost four  
11 years and Kerry for almost six years; is that a fair  
12 statement?

13 A That is correct, sir. God willing they go to  
14 college.

15 Q Right.

16 Q Now, the question I would have is are you submitting  
17 the proposition that if you get a modification today that  
18 you will somehow take the difference and put it toward  
19 education for the children either private school or college?  
20 Is that your proposition?

21 A The answer to that is there are a number of  
22 variables, it is not the sole place where that money  
23 necessarily goes. There are also other expenses such as a  
24 car for the children and other kinds of things that would  
25 not be classified where some of that savings may be devoted  
26 to an expense for them that is not strictly educational but  
27 would be considered an offset against the need to have a

1 nanny. I can't tell you how the budget goes because I don't  
2 know what the income is going to be.

3 Q What I'm asking you is this. Is your proposition  
4 that if you get some relief on the 65/35 that you will  
5 designate that money toward education?

6 A Absolutely.

7 THE COURT: Aren't we getting into the same  
8 settlement discussions?

9 MR. COLLINS: I am trying to get the basis of  
10 the motion.

11 THE COURT: You are talking about the settlement  
12 discussions, are you not?

13 MR. COLLINS: No, Your Honor. He and I have not  
14 had this discussion.

15 THE COURT: Is there a substantial difference  
16 between talking about discussions and settlement that  
17 took place before and settlement right now?

18 MR. COLLINS: No.

19 THE COURT: I don't want to get into this.

20 MR. COLLINS: Your Honor, I will get away from  
21 this but it is not by way of settlement.

22 Q Do you have any other basis for your application for  
23 modification of the child support that you are claiming?  
24 You said relative incomes and --

25 A Passive income.

26 Q No.

27 A Perks.

1 Q That is not my question. Material change in  
2 circumstance is what you claim, is it not, sir? There is a  
3 substantial change in circumstances.

4 A I believe that has been established.

5 Q Your circumstances have not declined since June 24,  
6 2005, have they sir?

7 A Quite truthfully, I do not remember the 2005 bonus  
8 and other compensation off the top of my head.

9 Q Okay.

10 A So, I can't answer that question because I don't  
11 recollect the 2005 numbers.

12 Q On today's financial affidavit you reflect that you  
13 have total assets in the amount of two million 673,000; is  
14 that correct?

15 A That is correct, sir.

16 Q And you testified a little while ago about getting  
17 two million \$45,000 at the time of dissolution, did you not?

18 A That is correct, sir.

19 Q So, your asset position has improved to the tune of  
20 \$600,000 since the date of dissolution by using those  
21 numbers. Those two numbers being your testimony from before  
22 and your affidavit right now; is that correct?

23 A Primarily due to increases in the vesting in my 34  
24 years of service at the CBS television network; that is  
25 correct.

26 Q Regardless of why it has improved.

27 A That is correct, I was 54 and the vesting started at

1 55.

2 Q So, do you agree with Ms. Sullivan's testimony that  
3 the annualized number for the children's expenses as defined  
4 in Exhibit B is about \$60,000.

5 A I believe that is reflective in the September 9,  
6 original motion and it summarizes, I believe, a couple of  
7 years before that --

8 THE COURT: The answer is yes or no.

9 A I believe it's \$60,000.

10 Q So, you believe it's \$60,000, that's a rate of \$5000  
11 per month. So, you're suggesting that \$5000 a month be  
12 changed to reflect the actual relative incomes of the  
13 parties; correct?

14 A Proportionately, yes.

15 Q Where is --

16 THE COURT: This is for both children.

17 MR. NOWACKI: Yes.

18 Q So, under the current circumstances you would pay  
19 approximately about 38,000 out of 60,000 and Ms. Sullivan  
20 would pay approximately 22,000 under the current  
21 circumstances; right?

22 A That is correct, sir.

23 Q Your position is that gap should be closed now  
24 because of your relative incomes.

25 A If you add both sets of incomes and divide the  
26 percentages appropriately I think that is what is reasonable  
27 and fair because that is the structure of how we came to the

1 original agreement and it is consistent.

2 Q Is it your position, sir, that there was no  
3 consideration on your part to the 60/40 split as it relates  
4 to the way the child support was determined 65/35?

5 A Absolutely no relationship whatsoever.

6 Q Okay. So, your testimony is Ms. Sullivan is  
7 incorrect when she states that?

8 A That is correct, sir.

9 Q And is it your position that Attorney Colin through  
10 the transcript that is going to be submitted to this Court  
11 is incorrect when he testified to that; is that correct?

12 A That is correct, sir.

13 Q Is it your proposition that you received an other  
14 than equal distribution of the assets because you came into  
15 the marriage with certain premarital assets?

16 A It is a portion of the differential, yes. We  
17 established that is a fair assessment.

18 Q Did you have an understanding at the time that there  
19 was nothing automatic about premarital assets being carved  
20 out of the ultimate asset distribution in family law in the  
21 State of Connecticut?

22 A It's one of the 12 factors that I believe the Court  
23 can consider.

24 Q Yes, but there is no mandatory thing about it, is  
25 there?

26 A It's nothing that I'm aware of, but I'm not a lawyer  
27 and the judge would have to inform me as to whether or not

1 that is the case or not. All I know is that it falls into  
2 the discretion of the Court.

3 MR. COLLINS: I have nothing further, Your  
4 Honor.

5 MR. NOWACKI: Your Honor, I would like to  
6 address the subject of what is in the motion as it  
7 relates to disability insurance.

8 THE COURT: No. You've had your chance, this  
9 would be redirect and that would not cover on cross-  
10 examination. Why didn't you do it the first time  
11 around?

12 MR. NOWACKI: Ineptitude, self admitted.

13 THE COURT: I'll give you a couple of minutes.

14 MR. NOWACKI: In the context of percentage of  
15 incomes that our bonuses represent the issue of  
16 disability insurance becomes a factor of significance  
17 because the percentages --

18 THE COURT: Don't tell me what is significant.

19 MR. NOWACKI: -- Okay. Two weeks ago CBS issues  
20 as employees for the first time the ability for us as  
21 part of our executive compensation program to have an  
22 elective to cover disability insurance. It is  
23 something that I proposed to the company about two  
24 years ago and that finally got approved.

25 Sales people who represent the advertising  
26 department of CBS a bigger portion of our income,  
27 roughly a third of my income is based upon variables

1           what I would not be able to cover the expenses unless  
2           I took out that insurance. I also believe that we  
3           share that responsibility and this is a  
4           responsibility that both of us should make to ensure  
5           that at a later point in time there cannot be a claim  
6           because one of us unexpectedly gets disabled that we  
7           would be unable to meet the obligations that we  
8           intend to make. I view that being in the best  
9           interest of our children.

10           THE COURT: You want her to get more disability  
11           insurance because you are getting more disability  
12           insurance.

13           MR. NOWACKI: For the best interest of the  
14           children.

15           THE COURT: Anything else?

16           MR. NOWACKI: Life insurance falls into the same  
17           category.

18           THE COURT: You forgot about that as well?

19           MR. NOWACKI: I did.

20           THE COURT: This is all in your papers.

21           MR. NOWACKI: Yes.

22           THE COURT: Thank you. Any recross?

23           MR. COLLINS: No, Your Honor.

24           THE COURT: You're excused. Thank you very  
25           much.

26           MR. NOWACKI: Thank you, sir.

27           THE COURT: Does that complete the testimony

1 from the defendant in connection with the motions?

2 MR. NOWACKI: Is it time for a closing  
3 statement?

4 THE COURT: No. We have two sides to the case.

5 MR. NOWACKI: Okay.

6 THE COURT: Mr. Collins?

7 MR. COLLINS: I believe that Mr. Nowacki rested.  
8 All that I would respectfully request is Mr. Nowacki  
9 allow the Court to review the testimony of Tom Colin.  
10 I don't believe there is anything that I would cover  
11 with Ms. Sullivan other than what we covered on  
12 direct and cross. So, if that is submitted to the  
13 Court I would rest.

14 THE COURT: All right. Now, Mr. Nowacki, I  
15 understand that you want to sum up, make argument so  
16 to speak?

17 MR. NOWACKI: Yes, Your Honor.

18 THE COURT: I would like to move on to the  
19 contempt issue before lunch at least to outline what  
20 they are. So, I'm going to give you each five  
21 minutes.

22 MR. NOWACKI: Since 2005 and well before that I  
23 have been an actively involved parent in both of our  
24 children's lives. During the course of the evolution  
25 of these motions unfortunately this has turned into a  
26 custody fight. I will tell you that I'm very  
27 concerned about that issue as it relates to the best

1 interest of our children. My entire intent as a  
2 parent has been to enable the dreams of my children.

3 My dreams as a father are well grounded in what  
4 happened in my first marriage where I had a wife who  
5 was promiscuous and five years into that child's life  
6 when she sued me for divorce and the court made a  
7 decision to give her a million and a half dollars  
8 without a hearing whatsoever and a DNA test was done  
9 on that child and that child was not mine.

10 Timothy John Nowacki was born on November 1,  
11 1994 and that was my mother's 70<sup>th</sup> birthday what a  
12 wonderful present it was in the context of that the  
13 judge who heard that case said he could do nothing.  
14 I offered to adopt Nicholas and she wanted to take  
15 money. She refused to allow me to adopt that child.

16 For the last 13 years I have prayed for that  
17 young man and two years ago I reached out and I found  
18 that young man and I have reconnected with him in a  
19 beautiful way. So, I have seen the pain of being  
20 separated from a child that you love.

21 The reason why I am so righteously indignant  
22 about an attempt to turn this into a financial issue  
23 and take these children out of my life that you might  
24 as well take my heart and rip it right out of my  
25 body. I have been there at every moment of these  
26 children's lives. I have spent more time with these  
27 children since June 29, 2005 than their mother has.

1 At every opportunity because it's all I ever wanted  
2 to be, all I ever wanted to be is a dad. The fact  
3 that this Court could take those children and remove  
4 them from my life I find reprehensible. It's not  
5 what they asked to have happen when they met with  
6 Veronica Reich. When she came into the courtroom and  
7 she reported that she gave false testimony. She did  
8 not represent her clients at all. I'll bring my  
9 children into this courtroom and have them testify  
10 for themselves because she did not.

11 I have a family and I want to love that family.  
12 To have a court come in and suggest that you are  
13 going to legislate my ability to love my children  
14 every single day is wrong. I want to be an active  
15 part of these children's lives in the same way I was  
16 until Suzanne decided she did not want to be married  
17 to me any longer. My sole effort is to maintain the  
18 relationship that I have with my children in the same  
19 way that they would have had we been able to enable  
20 their dream to have two parents who are married for a  
21 lifetime and to set an example for them that they  
22 could look up to with honor. Thank you.

23 MR. COLLINS: Your Honor, I think that the  
24 statutory criteria is quite clear here. The Court  
25 must consider financial circumstances of the parties  
26 at the time of the date of dissolution and the Court  
27 must consider the financial circumstances of the

1 parties as of the date of the application for  
2 modification. I would respectfully suggest that  
3 thankfully on the financial level both parties have  
4 improved their lot.

5 Ms. Nowacki (sic) has improved her lot from an  
6 income standpoint. Mr. Nowacki has also improved his  
7 lot from an income standpoint and also has improved  
8 his lot on assets. I would respectfully submit Your  
9 Honor that the testimony of Ms. Sullivan with regard  
10 to the circumstances regarding the 65/35 I find to be  
11 compelling and should be considered by this Court.

12 Mr. Colin, my predecessor counsel in this  
13 matter, also testified similarly that it was part of  
14 the financial mosaic. It is in fact law that we are  
15 a community property state and whether or not you  
16 came in with premarital assets while the Court may or  
17 shall perhaps consider the source of the assets and  
18 may consider whether or not they were premarital or  
19 inherited or whatever. There is no compulsion upon  
20 the Court after such consideration that an equitable  
21 asset distribution will necessarily reflect what the  
22 parties came in with or inherited or anything like  
23 that.

24 What I would respectfully suggest, Your Honor,  
25 is that Your Honor leave the status quo as it was  
26 because that was the circumstances at the time which  
27 involved Mr. Nowacki who has improved his lot from an

1           asset standpoint by roughly \$600,000. He has come in  
2           here basically looking to bridge the gap between  
3           about 38 and \$22,000. I think, and I could be wrong,  
4           his motions tend to go on, but I think he's asking  
5           for somewhere in the 50/50 area which would put us at  
6           somewhere around 30 and 30.

7           I would respectfully suggest that he already got  
8           his consideration for the 65/35 per the testimony of  
9           my client and Attorney Colin in this matter, and that  
10          consideration isn't back on the table. So, why do we  
11          get to do a consideration of what was agreed to 4 and  
12          ½ years ago when the consideration for that in my  
13          view was quite clear and was buttressed by the  
14          testimony of Attorney Colin. So, Your Honor, what do  
15          we have here? What we have here is I think that the  
16          defendant --

17          THE COURT: Do I have testimony of what the  
18          split of assets was in 2005?

19          MR. COLLINS: -- Well, Mr. Nowacki testified  
20          that it was 60/40. He further testified that it was  
21          two million 45,000 to him and a million 434 to her  
22          and that actually is 70/30. So, you've gotten  
23          conflicting testimony this morning.

24          THE COURT: That is what I thought.

25          MR. COLLINS: What I would say is it was 60/40  
26          on one part of his testimony and 70/30 if you  
27          extrapolate those percentages from these numbers.

1           So, in any event it is unusual if one looks at the  
2           circumstances when Ms. Sullivan, Ms. Nowacki at the  
3           time, was making substantially less than Mr. Nowacki  
4           was that she would get hammered for 60/40 or actually  
5           I would guess 70/30 unless there was some quid pro  
6           quo the circumstances would suggest and support the  
7           position of Ms. Sullivan and Attorney Colin that  
8           there was a quid pro quo here and that has already  
9           been gotten.

10           The bird in the hand is already on the  
11           defendant's side of the table, and now he wants a  
12           giveback and it's not really fair because he already  
13           got his consideration. So, 70/30, 60/40 with a woman  
14           that was making substantially less than he and waived  
15           alimony as is in the separation agreement is an  
16           extraordinarily bad result for Ms. Sullivan.

17           Indeed and in fact the reason that Judge  
18           Harrigan was recused in this matter is because he  
19           would not accept the separation agreement and it went  
20           before Judge Tierney and he accepted it as fair and  
21           equitable. That is my understanding of what  
22           happened.

23           THE COURT: I don't want to hear that, do I,  
24           it's pure speculation.

25           MR. NOWACKI: Not only that it misrepresents  
26           things.

27           THE COURT: You've had your opportunity.

1           MR. NOWACKI: Thank you.

2           MR. COLLINS: In any event, Your Honor, it is an  
3 unusual result under the totality of the  
4 circumstances which existed on June 24, 2005. Mr.  
5 Nowacki had counsel at the time, he had Mr. Parrino  
6 very capable counsel. Ms. Sullivan had very capable  
7 counsel in the person of Tom Colin. They had to have  
8 done it for a reason. People don't run roughshod  
9 over Tom Colin. The circumstances would suggest  
10 there was a quid pro quo. I respectfully request  
11 that under those circumstances a deal is a deal and  
12 the Court reaffirm the orders of June 24, 2005 and  
13 leave the percentages exactly the way they were.

14           THE COURT: Thank you very much, both of you.  
15 That will conclude the matter and I will take it  
16 under advisement the matter of motions 174, 178, and  
17 181. Now, I want to talk about motions for contempt  
18 that are pending. Those that I'm aware of and those  
19 that I think were on the calendar today were number  
20 182, on behalf of Mr. Nowacki, and number 192 on  
21 behalf of Ms. Sullivan.

22           Now, we are going to start at about 2:15 this  
23 afternoon because Judge Schofield wants to see you  
24 all at 2:00. Whether it is going to be here or not I  
25 will find that out. I would like to get an idea and  
26 contempt basically means a reasonably clear order and  
27 allegation that an order has been willfully violated.

1           What I would like to get from you Mr. Nowacki is what  
2           order are you talking about and how was it willfully  
3           violated. This is your chance to give a two or three  
4           minute, and I emphasize the two or three, opening  
5           statement but I need to know because there are a lot  
6           of motions for contempt floating around in this case.  
7           The one I have is 182; so, tell me what's the order,  
8           what is so clear about it and how is it willfully  
9           violated?

10           MR. NOWACKI: Your Honor, this has to do with  
11           the structure of the parenting plan itself with  
12           regard to the primary responsibilities that are  
13           outlined in the parenting plan where there was a  
14           significant differential of the time that was to be  
15           the primary responsibility of one parent, which was  
16           Suzanne, that was transferred to me primarily in the  
17           area of the travel hockey responsibility for our son  
18           Tim.

19           Because I have substantially more vacation time  
20           than Suzanne does that she was appropriating my  
21           vacation time by making plans that circumvented her  
22           primary care responsibilities that then required me  
23           to assume additional responsibilities.

24           THE COURT: Let me try to clarify this in my  
25           mind. My understanding is that the present  
26           circumstances involve a transfer of physical custody  
27           of the children every week?

1 MR. NOWACKI: Sunday night at 5:00.

2 THE COURT: So, you are saying that the week  
3 that Ms. Sullivan has the children you are required  
4 to do things that you didn't want to do?

5 MR. NOWACKI: Well, I had to take on  
6 responsibilities because --

7 THE COURT: For something that you didn't want  
8 to do, this is hockey, right?

9 MR. NOWACKI: I understand that but it was the  
10 sense that it was being orchestrated.

11 THE COURT: Okay. So, you're telling me that in  
12 the parenting plan there is a strict requirement that  
13 during that period the custody and responsibility for  
14 the children getting them to where they are supposed  
15 to be is one person's responsibility?

16 MR. NOWACKI: It is primary responsibility.

17 THE COURT: Primary responsibility. so, is that  
18 the gist of the contempt motion that I'm going to  
19 hear this afternoon?

20 MR. NOWACKI: That is one of the focuses.

21 THE COURT: I am asking what the gist is. I  
22 gave you two or three minutes and we've already taken  
23 four minutes, some of it which was my time, I agree,  
24 but you have only given me part of it? What is the  
25 rest of it?

26 MR. NOWACKI: A contempt in regards to the  
27 quarterly reconciliations that we do financially that

1 there were health care costs of her husband which was  
2 unknowing to me buried in the children's healthcare  
3 expenses.

4 THE COURT: Okay.

5 MR. NOWACKI: And that was not discovered until  
6 financial affidavits revealed that to me and then I  
7 had to wait an extended period of time to find out  
8 what the initiation date of that was and that all  
9 these things relate to additional financial  
10 obligations for travel that then fall under my  
11 responsibilities wear and tear on your car.

12 THE COURT: Okay.

13 MR. NOWACKI: I am asking for that to be  
14 considered by the Court as part of its retroactivity  
15 decision going back to September 9, on those  
16 expenses.

17 THE COURT: Wait a minute are we mixing and  
18 matching two motions?

19 MR. NOWACKI: The two issues relate to one  
20 another.

21 THE COURT: I understand they relate but there  
22 are two motions, two different standards, there are  
23 two different things that one has to prove and I'm  
24 not mixing and matching and I don't think you should  
25 do that either.

26 MR. NOWACKI: I would say the retroactivity on  
27 the children's expenses was a subject that came up

1 early in the conversation about my request is it go  
2 back to the date of the first motion.

3 THE COURT: Nobody is disagreeing with that but  
4 what does that have to do with a contempt motion?

5 MR. NOWACKI: The contempt motion is the  
6 transferring of additional financial responsibilities  
7 as part of --

8 THE COURT: Contempt has to be a violation of a  
9 clear order.

10 MR. NOWACKI: And the clear order was primary  
11 responsibility was transferred.

12 THE COURT: All right.

13 MR. NOWACKI: And it has to do with financial  
14 information.

15 THE COURT: All right. The health expenses and  
16 the improper use or misuse of primary responsibility  
17 and non primary.

18 MR. NOWACKI: And there are other financial  
19 related issues to the quarterly reconciliations that  
20 also came up.

21 THE COURT: We are going to be finished in a  
22 couple of hours if not less.

23 MR. NOWACKI: I understand that.

24 THE COURT: You just can't keep adding potatoes  
25 to the pile. It is not Thanksgiving here.

26 MR. NOWACKI: It is all in the motion.

27 THE COURT: Well, you get it out before 4:00

1 this afternoon.

2 MR. NOWACKI: Yup.

3 THE COURT: Okay. Well, maybe before 3:00  
4 because I have to hear another contempt motion. My  
5 notes show that there was a failure to share expenses  
6 and I don't think that's a contempt issue. There was  
7 the health of Kerry involved and there were bruises  
8 on Tim and there was something about the nanny. All  
9 of this hardly amounts to contempt, I think.

10 It just seems to me that you got up one  
11 afternoon and said I'm really ticked off and I'm  
12 going to write a motion and it all spilled out.  
13 There is nothing wrong with that. I'm just saying  
14 that I am not sure it all belongs in a contempt  
15 motion.

16 MR. NOWACKI: It's a question of intent, Your  
17 Honor. Intent is really what the issue is.

18 THE COURT: All right. Mr. Collins?

19 MR. COLLINS: Your Honor, my motion is fairly  
20 simple. Mr. Nowacki's position had been and I filed  
21 this in May --

22 THE COURT: This is 192?

23 MR. COLLINS: -- It is Your Honor, that the  
24 65/35 was unfair, he had filed a motion some nine  
25 months earlier and that it is our position in my  
26 motion 192 that Mr. Nowacki did not true-up, so to  
27 speak, on the quarterly reconciliations to the tune

1 of 65/35 as of that point.

2 THE COURT: Okay.

3 MR. COLLINS: Simply put.

4 THE COURT: All right. Let's get started on  
5 182. Mr. Nowacki?

6 MR. NOWACKI: I think I am going to testify  
7 first and I think that will expedite things.

8 THE COURT: Okay.

9 MR. NOWACKI: Do I need to be re-sworn?

10 THE COURT: Yes, you do.

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25 M I C H A E L J. N O W A C K I

26 of Lost District Drive, New Canaan, Connecticut,

27 called as a witness by the Defendant, being first

1       duly sworn, was examined and testified under oath  
2       as follows:

3               THE CLERK: State you name for the record.

4               THE WITNESS: Michael J. Nowacki.

5               THE COURT: Thank you.

6       TESTIMONY OF MR. NOWACKI

7       BY MR. NOWACKI:

8               MR. NOWACKI: Our children have complicated  
9       schedules and there is no question about that. They  
10      both play travel sports.

11              THE COURT: Your children have complicated what?

12              MR. NOWACKI: They both play travel sports.

13              THE COURT: Okay.

14              MR. NOWACKI: Tim plays a lot of travel ice  
15      hockey and Kerry plays travel soccer, travel  
16      baseball, and Tim played travel baseball as well.  
17      Plus he played some tennis and other stuff during the  
18      summertime. The execution of any parenting plan  
19      particularly one where you have many conflicts of  
20      schedule as we do with the children's things requires  
21      both of us to be willing to consider helping out on  
22      the weekend that is there non primary care.

23              The issue of contempt was primarily centered on  
24      the long distance travel responsibility during the  
25      period of time from 2005 to 2009. Tim played for  
26      travel teams in Darien that made it to the national  
27      championships in 2007 and on March 1<sup>st</sup> of that year I

1 got an email from Suzanne basically declaring that  
2 she had a business trip in the second week of March  
3 and then two weeks following she was going away for  
4 her 40<sup>th</sup> birthday and that was the only time that  
5 birthday could be celebrated according to the  
6 conflicting schedules between her husband herself.

7 What evolved at the point in time that we  
8 received that notice was that Tim's team played very  
9 well and they went to the regional championships in  
10 Rhode Island and for the early part of the week of  
11 that trip --

12 THE COURT: You started off on March 1<sup>st</sup>, where  
13 are we now?

14 MR. NOWACKI: -- We are now two weeks later,  
15 March 18, 19 and that as a result of a business  
16 conflict I was then required to go to Rhode Island  
17 for a couple of days, and with the provision for  
18 primary care responsibility we understand with  
19 business conflicts and I was less offended about that  
20 particular situation than it was the possibility of  
21 Tim's team was going to qualify for the national  
22 championship which they did.

23 The net result was that Suzanne had made plans  
24 to go away for her birthday, my view of that would  
25 have been you can celebrate that in some other  
26 fashion, but what that required was to go to Buffalo  
27 was for me to take four more days of vacation time

1 off. So, now we're talking about a half dozen days.  
2 At the point in time that she sent the email there  
3 was absolutely no regard --

4 THE COURT: This was the national championship?

5 MR. NOWACKI: Yes.

6 THE COURT: And you were going to miss that  
7 regardless of whether Ms. Sullivan was there or not?

8 MR. NOWACKI: The answer would have been we  
9 probably would have worked out some schedule.

10 THE COURT: The answer is you would have gone to  
11 watch those games anyway.

12 MR. NOWACKI: Not necessarily.

13 THE COURT: Are you sure?

14 MR. NOWACKI: For the whole week, I don't know.

15 THE COURT: Your kid is in the national  
16 championship -- you are not just blowing smoke at me,  
17 are you? You're a hockey fan, aren't you?

18 MR. NOWACKI: I do like hockey.

19 THE COURT: You're blowing smoke at me.

20 MR. NOWACKI: No.

21 THE COURT: You would have not gone to your  
22 child's playing in some kind of junior national  
23 championship?

24 MR. NOWACKI: I would have split the time.

25 THE COURT: Okay.

26 MR. NOWACKI: The choice was not mine. It was  
27 taken away from me.

1 THE COURT: Okay.

2 MR. NOWACKI: I also have a job that has  
3 responsibilities that are compromised because the  
4 general sense is because I have more vacation time  
5 therefore the allocation of that goes to Suzanne and  
6 her husband and I don't believe that's fair, and I  
7 don't believe it is my responsibility and it is well  
8 orchestrated.

9 THE COURT: I was testing you on that because I  
10 will tell -- well, that's neither her nor there.

11 MR. NOWACKI: Let me put it this way when you've  
12 done as much traveling to see your son play as I have  
13 I think part of the joy is having Suzanne enjoy that  
14 with her son.

15 THE COURT: So, let's keep to the facts.

16 MR. NOWACKI: There is a litany of hockey events  
17 that are in the motion as it relates to same kinds of  
18 things. There is ASE championship game so therefore  
19 the team has a game scheduled after she made her  
20 plans to host a party at her house, and that game was  
21 against a team up in Boson. So, the net result is  
22 Dad has to go. You got New Hampshire that weekend of  
23 that hockey season in 2008, it falls on Suzanne's  
24 weekend and Dad goes. I love my kids but also at  
25 some point in time there is the manipulation of my  
26 life that doesn't allow me to have some free time to  
27 get on with my life.

1 THE COURT: Let me just ask you this, you say  
2 dad goes, is that because you had to drive him there  
3 or was that because one parent had to be there?

4 MR. NOWACKI: Well, it's a safety issue.

5 THE COURT: The team gets there by itself, you  
6 don't take the team up, do you?

7 MR. NOWACKI: No.

8 THE COURT: They have accommodations when they  
9 go there.

10 MR. NOWACKI: That is all part of what the  
11 parent does.

12 THE COURT: Then why was a parent required to be  
13 there?

14 MR. NOWACKI: It's a safety issue, Your Honor,  
15 Tim plays goal tender.

16 THE COURT: Yes.

17 MR. NOWACKI: Did you ever take a puck in the  
18 head at 85 miles an hour?

19 THE COURT: No.

20 MR. NOWACKI: You don't want to.

21 THE COURT: And your being there is going to  
22 keep that from happening.

23 MR. NOWACKI: No. It allows you to attend to  
24 the medical issues.

25 THE COURT: They don't have a doctor at these  
26 games?

27 MR. NOWACKI: No.

1           THE COURT: I find that hard to believe. Go  
2 ahead.

3           MR. NOWACKI: The issue is one of being  
4 responsible for the primary care duties and there  
5 isn't an occasion since June 29<sup>th</sup>, 2005 where I have  
6 not fulfilled my primary care responsibility.

7           THE COURT: But your primary care responsibility  
8 don't require you, necessarily, to be physically  
9 present with either of your kids all the time. You  
10 don't attend Kerry's 7<sup>th</sup> grade science class, do you?

11          MR. NOWACKI: But on matters of safety I think  
12 it is very important with hockey that is all. There  
13 are all sorts of injuries that occur in hockey,  
14 concussions etc and I would not want to transfer  
15 those responsibilities. In fact, quite truthfully,  
16 when we do have these issues I have to get a signed  
17 permission slip from Suzanne that will transfer the  
18 primary care responsibility on her weekend to make  
19 those decisions if I need to on short notice. So, I  
20 can show you the national championships going across  
21 the border to Canada turned out to be one of the  
22 things that the kids wanted to do so I have to go  
23 through all that process. It's just more work.

24          THE COURT: What else?

25          MR. NOWACKI: Health care expenses. Unbeknownst  
26 to me in the fall of 2006 Suzanne's husband Dave  
27 Barrington's contract for his employment was not

1 renewed. Kerry had just finished going through a  
2 palate expander for her healthcare and the  
3 determination was that because all of my dental  
4 benefits had been used up for the lifetime cap in the  
5 palate expander that it made sense to transfer the  
6 kids to the FOX healthcare plan.

7 Unbeknownst to me and I don't find this out  
8 until February of 2009 that when Dave Barrington's  
9 contract was not renewed she buried the costs of Dave  
10 Barrington's healthcare costs in the children's  
11 related expenses without telling me.

12 THE COURT: That is something that judges and  
13 lawyers call a conclusory statement. Usually  
14 conclusory statements are not permitted and I'm not  
15 going to permit that statement so I'm going to strike  
16 that testimony. If you want to give me the facts I  
17 will listen to them.

18 MR. NOWACKI: I will give you the emails of the  
19 exchange that occurred when that enrollment happened  
20 and you can see the story changed.

21 THE COURT: I don't want to see the emails; I  
22 want your testimony.

23 MR. NOWACKI: The first number I got was \$500 a  
24 month was what her healthcare plan was.

25 THE COURT: Are we going to go through this  
26 again? When I have a question I want to ask you or a  
27 statement I want to make to you it is really in your

1 best interest, it really is, for you to stop talking  
2 and listen. Am I not making that clear to you?

3 MR. NOWACKI: I wasn't finished with my answer;  
4 I'm sorry, Your Honor.

5 THE COURT: You said something about burying Mr.  
6 Barrington's expenses in the kid's health expenses.  
7 I can understand burying, quote/unquote, in the FOX  
8 health plan, but I'm not sure how that translates  
9 into burying it into the expenses that you eventually  
10 have to pay for. Why don't you focus on that.

11 MR. NOWACKI: When the children were on my plan  
12 in 2006, you have an employee cost and then you have  
13 a family cost and the differential in my case because  
14 I'm not remarried would be considered the  
15 differential that is attributable to the children.  
16 That is how we established the baseline of what the  
17 children's portion of the health insurance was.

18 The FOX plan calls for an employee plus spouse  
19 and then there is a family differential to put  
20 everybody underneath the same umbrella. What I got  
21 told at the point in time they were enrolled in  
22 Suzanne's healthcare plan because she had unused  
23 benefits which made sense to use in Kerry's brace  
24 work that needed to be done because we saved a couple  
25 of thousand dollars by doing that is that I got  
26 charged the difference between Suzanne and the total  
27 which meant that I was paying for Dave Barrington's

1 health insurance.

2 THE COURT: See, it's really not so hard to do  
3 it, it really can be done. Good.

4 MR. NOWACKI: I appreciate your direction. And  
5 that went on as I had to wait until I believe April  
6 17<sup>th</sup>, when I got a letter from Natasha Peterson at  
7 FOX --

8 THE COURT: Why are we going into the discovery  
9 part of it? That is what you said happened, let's  
10 move on to something else.

11 MR. NOWACKI: I was just covering the length of  
12 period time that it occurred, it went on for two  
13 years plus. At enrollment time even though those  
14 costs were known I was told that the enrollment dates  
15 that FOX had always fell a couple of days outside the  
16 window of when CBS's end date was for enrolling and  
17 changing the kids to my plan. So, it was well  
18 orchestrated because I do know for a fact that those  
19 dates --

20 THE COURT: You are wasting your time now.

21 MR. NOWACKI: -- fell in within the same window.  
22 So, it continued and it continued unbeknownst to me  
23 and I find that to be fraudulent.

24 THE COURT: Just move on. What is the next  
25 matter?

26 MR. NOWACKI: There was approximately \$1850  
27 worth of healthcare expenses that I had incurred

1 during the period of time between January 1, 2007 and  
2 in essence to February 15, which was the  
3 reconciliation that I refused to settle on which is a  
4 topic of conversation of why Kevin Collins filed his  
5 contempt motion was because until I got that  
6 documentation I said I'm not going to continue to  
7 spend that money and it took me two and a half months  
8 to get that information.

9 So, was I in non compliance with the court order  
10 which is what Kevin Collins said, I say no, because I  
11 had to stand up for doing what is right and I was  
12 deceived which is the pattern of conduct. That is  
13 the issue; this is not an isolated incident. This is  
14 an attempt to manipulate the situation to her  
15 advantage.

16 THE COURT: Let's forget the editorializing and  
17 why don't we just get to the facts. That is what you  
18 are supposed to be swearing to here.

19 MR. NOWACKI: That is a fact.

20 THE COURT: You cannot swear to other people's  
21 motives. Therefore, don't do it while you are on the  
22 witness stand.

23 MR. NOWACKI: In regard to healthcare decisions  
24 for the children --

25 THE COURT: Why is this an issue of contempt?

26 MR. NOWACKI: Because we have a joint parenting  
27 agreement that indicates that both parents should be

1 involved in healthcare decisions.

2 THE COURT: What is that defined as, what is  
3 healthcare decisions defined as?

4 MR. NOWACKI: Dental work, that I get  
5 categorized as being difficult because I try to do  
6 things economically, efficiently.

7 THE COURT: Why don't you try to just give me  
8 the facts. You are saying it was a contempt of the  
9 healthcare provision just go ahead.

10 MR. NOWACKI: In November of 2006 as we are  
11 enrolling Kerry in Suzanne's healthcare plan  
12 effective January 1, 2007 that independent of any  
13 consultation she went to the person, Dr. Osherow, who  
14 had done the original work.

15 THE COURT: What work?

16 MR. NOWACKI: For the palate expander, and Dr.  
17 Osherow's estimate for that work would have been with  
18 top and bottom I believe about \$6700.

19 THE COURT: What is a palate expander?

20 MR. NOWACKI: Cross bite, it is kind of a device  
21 that you put inside your mouth and it gets your jaws  
22 aligned in an appropriate fashion. So, the  
23 appointment gets setup before there is any  
24 consultation about the situation and then I end up  
25 being the difficult party because --

26 THE COURT: You are bringing a contempt motion  
27 for something that happened in 2006 and you're

1 bringing a contempt motion in 2009? What is going on  
2 here? Am I not just right that you all you wanted  
3 was to spill our guts out one afternoon.

4 MR. NOWACKI: No. It's an accumulative series  
5 of events that manifest itself because I can't come  
6 into the court every time one of these things happen.

7 THE COURT: You could have fooled me when I  
8 looked at the file.

9 MR. NOWACKI: Well, I put it all in there, it  
10 was all in one motion because I only wanted to go  
11 through this once.

12 THE COURT: Okay. What is next?

13 MR. NOWACKI: It relates to the continuance of  
14 that kind of an appointment where the higher option  
15 is chosen and then I'm informed and then I have to  
16 undo it. This happened with the appointment with Dr.  
17 Cohen who Tim is now seeing as a therapist where  
18 Suzanne went out independent, found someone, informed  
19 me of the first appointment time.

20 THE COURT: Who is Dr. Cohen?

21 MR. NOWACKI: Dr. Jeffry Cohen is the therapist  
22 that Tim started seeing about a month ago. So, I get  
23 an email saying Tim wants to go 12:57:24, I found  
24 this person Dr. David Israel, and then what do I have  
25 to do, I have to say is he within the United  
26 Healthcare Benefits Plan?

27 THE COURT: Dr. Israel or Dr. Cohen I'm mixed up

1 now.

2 MR. NOWACKI: Well, Dr. Cohen is in the plan and  
3 Dr. Israel is who she set the first appointment with  
4 and told him about it.

5 MR. COLLINS: Your Honor, I have to object.  
6 This motion is dated March 9<sup>th</sup>, we are talking about  
7 things of a more recent vintage. So, they are not in  
8 the motion.

9 THE COURT: That's a good point. Let's move on.

10 MR. NOWACKI: It's the pattern of conduct, that  
11 is the issue here. I am trying to establish a  
12 pattern of conduct.

13 THE COURT: No. You are trying to establish a  
14 violation of a clear order.

15 MR. NOWACKI: That is right.

16 THE COURT: This is not an antitrust case.

17 MR. NOWACKI: I understand that.

18 THE COURT: Pattern and practice is really not  
19 an issue here.

20 MR. NOWACKI: A joint healthcare decision  
21 involves the consultation of both parents. I was not  
22 being consulted, and I believe that is contempt.

23 THE COURT: Okay.

24 MR. NOWACKI: You may disagree.

25 THE COURT: All right. Anything else?

26 MR. NOWACKI: The rest of it is covered in the  
27 motion. I am not going to get into it because the

1 Court has more important things to do. This is a  
2 good time to take a lunch break. You will consult  
3 with Madame Clerk at the second floor clerk's office  
4 at 2:00 to find out where you should be and then we  
5 will resume here as soon as you're finished with  
6 Judge Schofield.

7 MR. COLLINS: Thank you, Your Honor.

8 THE COURT: We'll stand in luncheon recess.

9 (Back on the record)

10 THE COURT: Is everyone here that is supposed to  
11 be here?

12 MR. COLLINS: Yes, Your Honor.

13 THE COURT: Mr. Nowacki, have you finished your  
14 testimony in connection with that first contempt  
15 motion. It sounded to me like you had but I don't  
16 want to make an assumption.

17 MR. NOWACKI: No, Your Honor, I was not  
18 finished.

19 THE COURT: All right. Come on up, let's go.  
20 You understand that you remain under the obligations  
21 of the oath that you took earlier today?

22 MR. NOWACKI: Yes, Your Honor.

23 THE COURT: All right. Please be seated. We  
24 talked about the travel sports, health care expenses  
25 of Mr. Barrington, we talked about the health care  
26 decisions.

27 MR. NOWACKI: Correct.

1 THE COURT: Some of which had nothing to do with  
2 your motion, but let's move on. What else is there?

3 MR. NOWACKI: We have issues here in regards to  
4 financial information in the affidavit as it relates  
5 to the authenticity of information in there. I  
6 believe in the previous motion we discussed a number  
7 of items the Court can consider which I believe are  
8 not included relating to distributions from the  
9 family estate which I don't think have been fully  
10 disclosed.

11 As you know on January 20, 2005, there was a  
12 distribution of \$132,100 from the Swiss Bank  
13 Corporation. The Swiss Bank Corporation, Your Honor,  
14 did not exist in 2005. In 1998, the Swiss Bank  
15 Corporation merged with the Union Bank of Switzerland  
16 to create UBS.

17 MR. COLLINS: Your Honor, I'm going to object at  
18 this point. I don't know what the significance of  
19 this is to the motion for contempt.

20 MR. NOWACKI: The issue relates to the validity  
21 of the financial information in the affidavit.

22 THE COURT: Which affidavit?

23 MR. NOWACKI: In the affidavits that have been  
24 supplied to me starting with June 14, 2005.

25 THE COURT: That was not discussed in your  
26 motion.

27 MR. NOWACKI: I believe it is, Your Honor.

1 THE COURT: If it is it shouldn't have been.  
2 That goes back to an issue that is not properly in  
3 front of this Court in connection with a motion for  
4 contempt. You are contesting the validity of the  
5 original divorce and that is not in front of me right  
6 now. Move on.

7 MR. NOWACKI: If the Court is making decisions  
8 based upon information that is not accurate in the  
9 financial affidavit.

10 THE COURT: I didn't make any decision in  
11 connection with the divorce or the division of assets  
12 or the division of alimony or child support. Let's  
13 move on.

14 MR. NOWACKI: In relation to decisions that are  
15 made about expenses that are not in the separation  
16 agreement. There are a number of expenses that have  
17 been filed that do not relate to items on schedule B,  
18 which is the schedule of expenses that relate to the  
19 quarterly reconciliations.

20 THE COURT: Give me an example.

21 MR. NOWACKI: Phone expenses for the nanny being  
22 submitted at higher amounts than what were incurred.

23 THE COURT: Do you have evidence of that?

24 MR. NOWACKI: Yes.

25 THE COURT: Please give it to me, we are  
26 waiting.

27 MR. NOWACKI: I understand that.

1           THE COURT: You've been on the stand for five  
2 minutes and I've taken one note.

3           MR. NOWACKI: It relates to the combination that  
4 was requested of Suzanne Sullivan to take existing  
5 cell phone plans which included the nannies and to  
6 combine them to make the cost more efficient which  
7 she refused to do. There is a reasonable assumption  
8 here in a joint custody arrangement where you're  
9 paying greater expenses, a percentage of the  
10 expenses, that those expenses are discussed in  
11 advance of their being submitted and that you have  
12 the opportunity as efficient as possible.

13          THE COURT: I don't think that is a matter for  
14 the contempt. I understand your potential irritation  
15 about it, let's go onto something that is a little  
16 more serious than that.

17          MR. NOWACKI: Okay. The nanny and the processes  
18 by which we go through and decide the benefits  
19 package for the nannies, which have been agreed to by  
20 the nanny, that Suzanne has refused to agree to.  
21 This is an important aspect of cost management of  
22 things that you learn along the way of what happens  
23 when you prepay for vacation time and then billing  
24 for it when in fact that wasn't agreed to at the  
25 beginning of the process. We have a number of  
26 instances with Marie Walsh where she worked for us  
27 for three months and she was prepaid two weeks worth

1 of vacation time and that the net result is I have to  
2 bear the cost of what we didn't agree to at the  
3 beginning of the process which is to pay the nanny  
4 one week of paid vacation time after six weeks worth  
5 of service.

6 THE COURT: Is that in the agreement?

7 MR. NOWACKI: That is in the provision that we  
8 have --

9 THE COURT: Where is that?

10 MR. NOWACKI: In the separation agreement there  
11 is a provision that says we can make changes to the  
12 original agreement by mutual consent in writing.

13 THE COURT: Where is that?

14 MR. NOWACKI: In the separation agreement.

15 THE COURT: No. Where is the original agreement  
16 and where is the change?

17 MR. NOWACKI: The change is in email exchanges  
18 between the two parties which validate that those  
19 were the terms by which we then hired the nanny and  
20 then Suzanne makes payments outside of the agreement  
21 that we have prepays that vacation time and then  
22 submits in a financial review that we do quarterly  
23 that is inconsistent with the agreement that we made  
24 to not prepay vacation time.

25 So, that has happened four or five times.  
26 Again, it puts me in a position of being viewed as  
27 the unreasonable party when all I'm trying to do is

1 live with what we said we said we were going to do,  
2 and that is what a lot of this is about. I try to  
3 live within the agreement and then I get put in the  
4 position, Your Honor, where I get viewed as the  
5 unreasonable party, and that has resulted in other  
6 motions that are now in front of the Court in regard  
7 to late payments on various things, and that is  
8 inconsistent with the other written agreements that  
9 are not part of the original separation agreement  
10 that we reach in writing via email on a regular  
11 basis.

12 We then make those arrangements and then there  
13 is non compliance with the written arrangement. The  
14 nanny agrees to the terms of the arrangement; I agree  
15 to the terms of the arrangement, and Suzanne agrees  
16 not to sign that arrangement. That puts me in a  
17 situation whereby two of the three parties have  
18 signed the arrangement and she is the one excluding  
19 and withholding her signature from the arrangement  
20 that has been agreed to by the nanny and the nanny is  
21 the employee.

22 That includes amounts that are raises and  
23 subjects that then causes Kevin Collins to file  
24 motions for contempt which when we get to those we  
25 can explain exactly what was going on at that point  
26 in time. In the beginning of the agreement we agreed  
27 that disputes, and those disputes were not refined to

1 just child related disputes that we would go to the  
2 guardian ad litem to have her attempt to resolve  
3 issues to keep them out of court. Suzanne refused at  
4 the beginning of this process to sit down with Lacie  
5 Bernier to have discussions about trying to have an  
6 agreement outside of court that could be reached that  
7 has resulted in this acrimony. It's not in the  
8 spirit of the joint parenting agreement to have these  
9 disputes.

10 THE COURT: I don't want to hear about the  
11 spirit. You don't hold contempt about the spirit of  
12 things. You are beginning to run out of your time.

13 MR. NOWACKI: Okay. Lacie made herself  
14 available and Suzanne refused. I have interference  
15 here from David Barrington in the parenting plan. It  
16 started on November 25, 2005 --

17 THE COURT: I don't think I can hold Mr.  
18 Barrington in contempt, let's go on.

19 MR. NOWACKI: He has --

20 THE COURT: He is not a party to this agreement,  
21 he is not a party before the Court, let's move to  
22 something else.

23 MR. NOWACKI: In the context of restrictions --

24 THE COURT: Did you hear what I said?

25 MR. NOWACKI: I understand.

26 THE COURT: Let's move on. The actions of Mr.  
27 Barrington are not going to be part of this

1 testimony.

2 MR. NOWACKI: Here are the questions in regard  
3 to --

4 THE COURT: I don't want questions I want  
5 factual information or I'm going to ask you to sit  
6 down.

7 MR. NOWACKI: David Barrington and Suzanne  
8 Sullivan together put up obstacles that would not  
9 allow me to drive down the driveway of their house  
10 for picking up our children. That put both the  
11 children and myself in a very uncomfortable situation  
12 where there are two different rules in two different  
13 houses. To have had those children carry their  
14 hockey bags up and down a hundred foot driveway when  
15 it was completely unnecessary, in my opinion, puts  
16 them in non compliance with the parenting plan which  
17 is to not make our children's lives tougher but to  
18 make them easier.

19 Those same restrictions do not exist for Suzanne  
20 Sullivan at my house where she is treated  
21 respectfully when she drops off those children I load  
22 the car for her on virtually every occasion and the  
23 same courtesy is not offered to me and that alienates  
24 me from my children. In my opinion that is a matter  
25 of contempt, and this behavior has gone on for a long  
26 period of time. When a non party to this agreement  
27 engages in sending me emails at my corporate email

1 address --

2 MR. COLLINS: I'm going to object, Your Honor,  
3 Your Honor has already ruled on the actions of a  
4 third party.

5 THE COURT: Mr. Nowacki, don't just deliberately  
6 do what I told you not to. Inadvertently, perhaps, I  
7 will let you get away with it. I just said that Mr.  
8 Barrington's actions here are irrelevant as to  
9 anything that is in front of me in this court; did  
10 you hear me say that to you several times? Did you  
11 hear me say that to you?

12 MR. NOWACKI: Yes, Your Honor.

13 THE COURT: Are you going to pay attention to it  
14 or are you going to ignore it? Quickly, now.

15 MR. NOWACKI: I will have to pay attention to  
16 it, Your Honor.

17 THE COURT: Let's do so.

18 MR. NOWACKI: Patterns of lying.

19 THE COURT: Give me facts and not descriptions,  
20 please.

21 MR. NOWACKI: It is very difficult for me to  
22 constantly have to be validating information as it  
23 relates to the children's schedule when things are  
24 being misrepresented to you. Going to church when  
25 you are on a hockey tournament, there are  
26 requirements in the parenting agreement that say that  
27 she must comply with getting the children to church.

1 On at least have a dozen occasions when Suzanne has  
2 been on the road with the children at various  
3 activities whether it be ski trips, whether it be  
4 with Kerry or with Tim there is a lack of vigilance  
5 to the compliance with the agreement.

6 THE COURT: What does that have to do with  
7 lying?

8 MR. NOWACKI: Because then she tells me that she  
9 has taken the children to church and that puts me in  
10 a situation when I verify with the children that they  
11 didn't go to church of having to confront her with  
12 that information. That is an area of compliance that  
13 is important because what it does is it sets up a  
14 scenario where dad is the bad cop. Suzanne regularly  
15 arrives late at Mass, in many cases where I end up  
16 being late to Mass when I have to take the children  
17 to church at 5:15 on Sunday nights. It happened last  
18 weekend. She left the home --

19 MR. COLLINS: Your Honor, this is beyond the  
20 scope of a motion dated March.

21 MR. NOWACKI: It's a conduct pattern of conduct.

22 THE COURT: It's the subject matter however that  
23 was brought up.

24 MR. NOWACKI: And it relates to a pattern of  
25 conduct, and it puts me in an uncomfortable position  
26 of having to have our children do what they are  
27 supposed to do which is to tell the truth, and then I

1 have to confront Suzanne.

2 THE COURT: Why did you wind up having to take  
3 them to Mass at 5:30 or whatever time it was.

4 MR. NOWACKI: In the parenting agreement there  
5 are provisions that says if the parent whose primary  
6 weekend it is has not fulfilled the Sunday Mass  
7 obligations by 2:00 in the afternoon then it is a  
8 requirement that the other parent contact the non  
9 primary parent so that person can then fulfill the  
10 Mass obligation and I wrote that into the agreement  
11 because the children have a responsibility to go to  
12 Mass.

13 THE COURT: Thank you. Move on.

14 MR. NOWACKI: So, being late to Mass, leaving  
15 early from Mass, puts me in a situation where I then  
16 have the children arrive on time and stay for the  
17 duration of the Mass it creates a conflict zone with  
18 my children because both of us are not complying with  
19 the timeliness of getting our children to church on  
20 time and not leaving early. These things are being  
21 done to specifically undermine aspects of the plan,  
22 and it is unfair to me and it goes on constantly. It  
23 is a non compliance issue.

24 THE COURT: All right. You have repeated that  
25 three times. Do you have any other factual  
26 information you wish to give me because your time is  
27 coming to the end.

1           MR. NOWACKI: February vacation has been an  
2 issue between the two parents in regards to what the  
3 parenting plan calls for. Again, there was a  
4 situation in February of 2008, where Tim had a hockey  
5 tournament in Hershey, Pennsylvania, and this is a  
6 constant aspect, he ended up going with somebody else  
7 that weekend because it was less convenient for  
8 Suzanne to go with him.

9           One of the things that is affecting my ability  
10 to be an equal parent to our daughter in foisting the  
11 responsibilities of going on these trips and gives a  
12 false impression to our daughter who I love equally.  
13 So, it affects the amount of time that I can then  
14 spend with both children and that is terribly unfair  
15 to Kerry and it is terribly unfair to me.

16           Your Honor, I have an outside ice skating rink  
17 at my home and every weekend when Tim is on a weekend  
18 Kerry has eight of her friends come over to my  
19 outdoor rink to have her friends with a big bonfire  
20 and that is what I do on my off weekend when Suzanne  
21 is away with Tim. I love these kids and all I'm  
22 trying to do is to be a good dad.

23           THE COURT: All right. Anything else?

24           MR. NOWACKI: I'm looking through the motion to  
25 see if there is anything else. I talked about the  
26 pickup and drop off procedures -- the setting up of  
27 doctor and dentist appointments for the children has

1           been an issue. The children are covered under  
2           insurance policies and those insurance policies call  
3           for maintenance issues every six months and Suzanne  
4           inasmuch as she has had the children on the  
5           maintenance program under her insurance policy on  
6           occasion has gone as much as a year and then when I  
7           contact her about having it happen she will use the  
8           excuse that she didn't get the notice from the  
9           doctor. It's just issues --

10           THE COURT: We are getting pretty pickiune.  
11           Have you covered the main points because time is  
12           short.

13           MR. NOWACKI: Okay. The subject of the  
14           additional costs as it relates to all of the hockey  
15           travel.

16           THE COURT: You already talked about that.

17           MR. NOWACKI: It is in the motion so what I'm  
18           looking for the Court to consider as an offset on  
19           those primary care weekends.

20           THE COURT: We are talking about contempt. Let's  
21           try not to morph between one and the other.

22           MR. NOWACKI: Okay. The only other thing I  
23           would like to address, Your Honor, is a couple of  
24           misstatements that were made by Attorney Collins.

25           THE COURT: There haven't been any misstatements  
26           in this hearing yet, Mr. Collins hasn't said  
27           anything.

1           MR. NOWACKI: As related to what Mr. Collins  
2 testimony was it's under a grievance complaint in the  
3 same way that Mr. Colin --

4           THE COURT: Does that have anything to do with  
5 the contempt or are you just trying to get everything  
6 out here?

7           MR. NOWACKI: Your Honor, it relates to the  
8 subject of the authenticity of information that has  
9 been provided to the Court --

10          THE COURT: I don't think so, anything else, Mr.  
11 Nowacki?

12          MR. NOWACKI: I don't think so, that's it.

13          THE COURT: Mr. Collins, cross-examination?

14          MR. COLLINS: Yes, Your Honor.

15 CROSS-EXAMINATION BY MR. COLLINS:

16          Q   Mr. Nowacki, you are familiar with the separation  
17 agreement dated June 24, 2005, sir?

18          A   Yes, sir.

19          Q   And you are familiar with the parenting plan which is  
20 appended thereto and incorporated therein dated --

21          THE COURT: Mr. Collins, please speed it up. Of  
22 course, he is aware of it. Let's get right to the  
23 questions.

24          MR. COLLINS: Yes, Your Honor.

25          Q   With regard to the custody and parenting plan, sir,  
26 what specific areas of that parenting plan which is a court  
27 order do you allege that Ms. Sullivan is in contemptuous

1 violation of, what specifics?

2 A I've addressed those issues in my testimony of where  
3 she was in non compliance with the parenting plan.

4 Q Okay. Just showing you so you have the benefit of  
5 it, sir, tell me specifically what paragraphs what  
6 provisions Ms. Sullivan is in contempt of pursuant to your  
7 motion dated March 9, 2009?

8 A Her execution --

9 Q Just site the paragraph --

10 A -- of her primary care responsibilities.

11 Q Where? Tell me where it is in this agreement.

12 A We have an alternate week primary care  
13 responsibility.

14 Q Has she failed to adhere to the alternate week  
15 schedule?

16 A As it relates to weekend travel with Tim, absolutely.

17 Q So, only as it relates to weekend travel with Tim; is  
18 that correct?

19 A It's not correct.

20 Q I'm trying to hone in on where she is -- so, tell me  
21 which provision you are claiming that she is in contempt of.  
22 specifically.

23 A We discussed Mass --

24 Q So, where is that, give me the provision.

25 A Point 29, on page 4 of the parenting plan.

26 Q Is it your testimony that --

27 THE COURT: Where is the parenting plan?

1           MR. COLLINS: It's appended to the separation  
2 agreement, Your Honor.

3           THE COURT: Is that Exhibit A?

4           MR. COLLINS: It is not, it is Schedule C.

5           THE COURT: I thought I had the whole thing  
6 here. Okay.

7       Q    Are you alleging, sir, that Ms. Sullivan is in  
8 contemptuous violation of paragraph 29?

9       A    Yes, sir.

10       Q   It is your allegation that she has failed to bring to  
11 bring the children to Mass?

12       A    On certain Sundays, yes.

13       Q    When, specifically, what days did she fail to bring  
14 the children to Mass?

15       A    Syracuse, New York in 2008.

16       Q    When in 2008?

17       A    September.

18       Q    Okay.

19       A    Trip to Washington that was in November of 2007,  
20 Martin Luther King weekend with Kerry when she went on a ski  
21 trip.

22           THE COURT: What year?

23           THE WITNESS: That would have been 2008. I

24       A    I could have the weekend wrong. It might be February  
25 on a three day weekend. There was a Labor Day weekend where  
26 Kerry had a soccer tournament in 2006 and those are the four  
27 that come to my mind.

1 Q So, you're claiming the failure to take one or both  
2 of the children to Mass on those four days is a contemptuous  
3 violation of paragraph 29; is that correct?

4 A Particularly when you ask your children to say  
5 otherwise.

6 Q Is that correct or not correct?

7 A That is correct.

8 Q Now, how do you know that they didn't go to Mass?

9 A I asked the children.

10 Q So, you quiz the children on their Mass attendance or  
11 do you ask Ms. Sullivan?

12 A Sometimes I ask them what were the readings in the  
13 gospel and what did you learn?

14 Q So, when they get back to you if they are unable to  
15 tell you the gospel readings you infer from that they didn't  
16 go to Mass that Sunday?

17 A No. In some cases I do ask them where did you go to  
18 Mass when you went to Syracuse. Did you go to the place  
19 where we went the last time we were at Mass in Syracuse or  
20 did you go to another place? There are lots of ways to ask  
21 the question without putting them in the middle of the  
22 situation.

23 Q But aren't you putting them in the situation?

24 THE COURT: That is not relevant.

25 MR. COLLINS: I'll withdraw it, Your Honor.

26 Q Specifically, sir, what other provisions of the  
27 custody and parenting plan that you allege Ms. Sullivan is

1 in violation of?

2 A 25.

3 Q 25?

4 A Neither parent shall do anything that will estrange  
5 the children from the other parent.

6 Q Okay.

7 A The pickup procedures for the children is a direct  
8 attempt, in my opinion, to estrange me from my children.

9 Q So, that's it, it's the driveway thing; is that  
10 correct?

11 A That's the point on 25, yes.

12 Q What other specifics, sir, do you allege the Ms.  
13 Sullivan is in contemptuous violation of the parenting plan?

14 A 12, medical appointment, we've discussed this before  
15 about making appointments in advance of consultation just  
16 recently with Dr. Israel.

17 Q Let me ask you about that, the last sentence in  
18 paragraph 12 says that the mother shall have the  
19 responsibility in odd number years and the father shall have  
20 the responsibility of setting appointment in even numbered  
21 years. This is an odd numbered year, is it not, sir?

22 A Yes.

23 Q Okay. And is it your allegation that in 2009 she has  
24 set up appointments in violation of paragraph 12?

25 A Annually we make --

26 Q Sir, yes or no?

27 A We made a decision --

1 Q Yes or no, is it your position that Ms. Sullivan is  
2 in contemptuous violation of this court order because she  
3 has made appointments this year with medical providers?

4 A Without consultation, that is the issue that is the  
5 issue, joint legal custody.

6 Q Paragraph 12 says that the primary responsibility of  
7 scheduling the children's medical appointments will rotate  
8 yearly so if she made appointments this year and this is an  
9 odd numbered year how is that in violation of the court's  
10 order?

11 A Because there is supposed to be, in other words,  
12 everything that follows from the subject of what is meant by  
13 joint legal and physical custody.

14 Q So, what in paragraph 12 are you alleging  
15 specifically in paragraph 12 and I gave you a copy for your  
16 benefit.

17 A Okay. Making appointments in advance of a  
18 consultation that those appointments were being made,  
19 choosing a health care provider, making an appointment,  
20 informing Tim of that appointment before I was informed that  
21 an appointment was made.

22 Q And what specifically, sir, --

23 A And that provider was outside the health care  
24 network.

25 Q And where is that in violation of paragraph 12?

26 A Tell me the provision, I am inviting you to make your  
27 case.

1 Q I made the case to say that joint legal custody  
2 involves a consultation with the parents to make those  
3 appointments upon mutual consent and the issue was it was  
4 discussed with Tim, the appointment was made before it was  
5 discussed, and that she went outside the health care  
6 provider network which was the first question that I was  
7 appropriately asking because it is an attempt to raise the  
8 costs associated for his care without going through the  
9 option to find an acceptable provider which we then found  
10 within ten days, and Dr. Cohen is a perfectly fine choice.

11 Q Did you hear Judge Adams say to you that to make a  
12 finding of contempt there has to be a clear and unequivocal  
13 order. Point me to where it says that one has to pick a  
14 physician within the medical plan. Point book and page  
15 where is the order?

16 A If you go to the separation agreement there are  
17 provisions in the separation agreement that says that the  
18 less expensive medical plan must be adhered to.

19 Q And is that alleged in your motion?

20 A It sure is, it's in the separation agreement.

21 Q What else do you allege is a contemptuous violation,  
22 specifically?

23 A We've covered the issue already in regards to what  
24 primary care involves.

25 THE COURT: Are you asking him to repeat his  
26 earlier testimony?

27 A What does primary care mean, it means that you take

1 the responsibility and you make a request of the other  
2 parent if you need help.

3 Q To which provision are you referring?

4 A As to what primary care is?

5 Q I just want to know what you're referring to.

6 A Primary care --

7 Q Not your definition tell me the provision where does  
8 it say what you're saying and how did she violate it. Just  
9 point me where it says that.

10 A Point A, it says the following parenting points, that  
11 the children will be with each party starting Sunday at 5  
12 p.m. until the following Sunday at 5 p.m.

13 Q Are you talking about paragraph 2 subsection A?

14 A Yes.

15 Q Okay. You're saying that she has violated that?

16 A I am saying that she is non compliance.

17 Q Well, you are alleging contempt, what remedies do you  
18 seek today if this court finds Ms. Sullivan in contempt?

19 A What I hope will be will be a clear definition that  
20 based on whatever the court deems to be the appropriate  
21 sanction which is up to the Court to decide that there will  
22 be a clear message to say that we need to comply with the  
23 parenting plan. I do and it's a source of tension that can  
24 be removed if we both just pay attention to what we're  
25 supposed to do. I don't make plans on my primary care  
26 weekend and then come back and say would you cover this for  
27 me because I've made plans in advance, I don't do it, it's

1 not fair.

2 Q Let me ask you this, if on Ms Sullivan's time there  
3 is a hockey tournament and it's out of state or out of town  
4 or whatever, has she at any time said to you either you take  
5 him or he isn't going? Has she put it to you that way in  
6 effect?

7 A No.

8 Q So, has she asked you to go because she for whatever  
9 reason didn't feel she could go?

10 A And it is always a matter of convenience.

11 Q But have you assented as I presume a good father  
12 would.

13 A And the answer is in some cases I had no choice given  
14 to me, that is the issue.

15 Q Was there an option for Tim to travel with the team  
16 without a parent?

17 A I believe in the course of three years there has been  
18 four times where Tim was not accompanied by one of his  
19 parents.

20 THE COURT: So, the answer to his question is  
21 there is an option for your son or daughter to travel  
22 with the travel team without a parent.

23 THE WITNESS: My view is --

24 THE COURT: And the answer is, yes, there is.

25 THE WITNESS: There is an option and I don't  
26 believe it's the safest option for him.

27 THE COURT: That is what you say. Move on,

1           please.

2           Q    Sir, you've testified about the cost of Mr.  
3 Barrington's health insurance being quote/unquote buried  
4 in the cost of the entire premium; is that correct, sir?

5           A    That is correct, sir.

6           Q    And you discovered this at some point in early 2009  
7 or late 2008?

8           A    The first I noticed it was in the financial  
9 reconciliation that we did on February 15<sup>th</sup>.

10          Q    Of this year?

11          A    That is correct, and it was immediately brought to  
12 the attention of Attorney Tom Colin by email.

13          Q    My predecessor counsel.

14          A    That is correct, sir.

15          Q    And at some point after some discussion did Ms.  
16 Sullivan write you a check to compensate you for that?

17          A    On June the 14<sup>th</sup>.

18          Q    Okay. And how much did she pay you?

19          A    I believe the check was for \$1153 which also factored  
20 in that the recocillation indicated that I owed her at that  
21 point in time \$650 so the entire adjustment was \$1850.

22          Q    Is there any doubt in your mind that you've been  
23 compensated for that at this point six months ago give or  
24 take?

25          A    On June 14, after waiting --

26          Q    Sir, yes or no have you been compensated?

27          A    The answer is I have been compensated but not without

1 a lot of trouble to get there.

2 Q But you have been compensated; correct?

3 A That is correct.

4 Q So, it's really not an issue today, is it?

5 A Not today, no, but when the motion was filed it was  
6 an issue.

7 Q What are the issues with the phone expenses with the  
8 nanny that you allege that is in contemptuous violation of  
9 the court order?

10 A I have been very respectful in each decision that's  
11 made during the entire period of time since we signed this  
12 parenting agreement to secure the best prices, to get them  
13 most value, and to not take money and spend it  
14 unnecessarily. What I have done is I have made some  
15 suggestions along the way that have saved both of us  
16 significant amounts of money, and that includes my request  
17 two years ago to combine the nanny's --

18 THE COURT: I don't want to hear that. You are  
19 here on a contempt motion. I don't want to hear your  
20 testimony about the last four years. I don't want to  
21 hear what went right. I want to hear something  
22 relevant to this motion that you are pursuing.  
23 Please keep your questions along that line too.

24 MR. COLLINS: I will try, Your Honor.

25 Q What specifically, sir, does the phone issue vis a  
26 vie the nanny violate in the parenting plan or the  
27 separation agreement.

1 A Efficiencies.

2 Q Where is the efficiency provision? I just want book  
3 and page, I am defending my client from who knows what  
4 ramifications of your allegation for contempt. I think I am  
5 entitled to know what you're relying on. What are you  
6 relying on specifically in the court's orders, that she has  
7 violated relative to the nanny's telephone.

8 A The renewal of the plan is one of the shared expenses  
9 so when you renew the plan every two years that is an  
10 opportunity to combine the plans to make them more  
11 efficient. I make a suggestion and the suggestion is  
12 ignored and the net result is I end up paying more. It is  
13 an intentional effort at every time where there is an  
14 opportunity to choose what is more expensive.

15 Q Is cost the only factor in your mind?

16 A It's the spirit of the agreement. I respect  
17 Suzanne's money and I would like her to respect mine. That  
18 is what the issue is, it's a lack of respect.

19 Q How much do you claim that her claim has cost you  
20 with regard to the nanny's telephone?

21 A About \$1000.

22 Q Over what period of time?

23 A Between the last two renewals ago which would have  
24 been and we just renewed so that would be four years ago.

25 THE COURT: So, it cost \$1000 over four years.

26 THE WITNESS: Yup, and that is in one of the  
27 financial reconciliations on May 15, 2009 where I

1           made that adjustment.

2           Q    And you made that adjustment unilaterally; correct?

3           A    I made that adjustment after repeated efforts to try  
4   to get the phone line combined and along with that it  
5   coincided with adding Tim's name to that plan and it made  
6   more efficient for Tim to be added.  When Kerry's plan was  
7   up for renewal I suggested we add Kerry on to that plan and  
8   because at each increment and what did I do with those  
9   savings, Mr. Collins, as you well know, I bought my daughter  
10  a computer.

11          Q    I don't know anything of the sort, sir.

12          A    It didn't go to me.

13                    THE COURT:  You keep your answers to the  
14   question being asked.  Do you understand, your last  
15   answer was non responsive.  Do you understand what I  
16   just said?

17                    THE WITNESS:  He accused me of a unilateral  
18   thing and it wasn't unilateral, that was his  
19   question.

20                    THE COURT:  Did you understand what I said?

21                    THE WITNESS:  Yes, sir.

22          Q    Is it your position, sir, that the refusal or the  
23   failure of Ms. Sullivan to agree with you on for instance of  
24   a telephone plan or something like that violates these court  
25   orders and it is contemptuous?

26          A    Yes, I do.

27          Q    Under what provision, sir?

1 THE COURT: Let's move on, please.

2 MR. COLLINS: Very good, Your Honor.

3 Q You cited in your testimony, sir, that among the  
4 elements of your allegation of contempt is patterns of  
5 lying. Where do I find that in the Court's orders, sir?

6 THE COURT: You're not going to find it. Let's  
7 not waste anybody's time. It's not to say that can't  
8 be a motion for contempt but you're not going to find  
9 an anti lying provision in the agreement. I went  
10 through it before and I didn't see it.

11 Q Do you believe, sir, that you are in compliance with  
12 the court's order of 65/35 percent regarding child's  
13 expenses to date?

14 A Actually, the November 15, reconciliation I only  
15 yesterday got the nanny's accounting of the gas expenses and  
16 I will write a check for whatever is due before we leave  
17 here today.

18 THE COURT: The question was do you believe you  
19 are in compliance. That was a non responsive answer,  
20 the question did not call for that answer. The  
21 question called for a yes or no answer. Ask it  
22 again.

23 MR. COLLINS: Yes, Your Honor.

24 Q Do you believe, sir, that you are in compliance to  
25 date with the court's order regarding the division of the  
26 children's related expenses on a 65/35 percent basis?

27 A No.

1 MR. COLLINS: I have nothing further, Your  
2 Honor.

3 THE WITNESS: May I respond?

4 MR. COLLINS: There is no question pending.

5 THE WITNESS: Do I get a redirect on myself?

6 THE COURT: A very brief one. I am going to  
7 keep it under a minute.

8 MR. NOWACKI: Okay.

9 REDIRECT EXAMINATION BY MR. NOWACKI:

10 MR. NOWACKI: September 9, we filed a motion,  
11 September 15, there was a financial reconciliation  
12 due and I paid that. In February I had to wait until  
13 June 15, that which was due me from February 15. So,  
14 in fact, at that point in time Suzanne was not  
15 compliant with the court order of 65/35 because I  
16 wasn't paid what I was due once I found out about the  
17 fraudulent expenses.

18 THE COURT: Is this just a rehash of what we've  
19 heard for the last -

20 MR. NOWACKI: No. It is dealing with --

21 THE COURT: -- You have about 30 seconds, finish  
22 it up.

23 MR. NOWACKI: May 15, that check was held up  
24 because of the phone expenses. I was requesting  
25 documentation about that, and I did not get that  
26 information until October so as a result that payment  
27 got paid for May 15<sup>th</sup>, I don't remember the exact

1 date but that was deferred until which point in time  
2 that information was finally provided to me. The  
3 September 15, reconciliation was paid \$3112 was paid  
4 two weeks ago and the November 15, reconciliation  
5 which hasn't been completed yet because I didn't get  
6 the gas expenses from the nanny until yesterday.

7 I am prepared to pay that so it is not  
8 delinquent, but the assertion that I'm late, I have  
9 never been late during that entire period of time  
10 between June 29, 2005, I paid all my bills on time on  
11 the day it was due. Until which point in time I  
12 found out about the fraudulent expenses.

13 THE COURT: Thank you.

14 MR. NOWACKI: Thank you.

15 THE COURT: Mr. Collins?

16 MR. COLLINS: No, Your Honor, thank you.

17 THE COURT: All right. You may step down. Any  
18 other witnesses or evidence, Mr. Nowacki?

19 MR. NOWACKI: No, Your Honor.

20 THE COURT: Mr. Collins?

21 MR. COLLINS: Yes, Your Honor. I would like to  
22 call Ms. Sullivan, if I may.

23 THE COURT: We are going to take a ten minute  
24 recess.

25 MR. COLLINS: Yes, Your Honor.

26 THE COURT: We've got this motion and another  
27 motion and we are going to finish today. If I'm curt

1 with you now it is going to get worse, understand?

2 MR. COLLINS: Understood.

3 (Recess)

4 (Back on the record)

5 THE COURT: All right. We'll continue. Mr.  
6 Nowacki, do you have any further evidence on your  
7 motion that you wish to put in?

8 MR. NOWACKI: Yes, Your Honor.

9 THE COURT: What is that?

10 MR. NOWACKI: I would like to take the witness  
11 stand.

12 THE COURT: I thought we just excused you. I  
13 don't think Mr. Collins has any further questions.

14 MR. COLLINS: No, Your Honor, not of Mr.  
15 Nowacki.

16 THE COURT: And you had been given a chance to  
17 respond in the form of redirect and we completed  
18 that.

19 MR. NOWACKI: I don't believe so.

20 THE COURT: His redirect was fairly narrow.

21 MR. NOWACKI: I would like to discuss the  
22 subject of this estrangement which was a topic of  
23 conversation regarding the non compliance issues. I  
24 was just handed something that I will illustrate and  
25 defines exactly what the problem is here.

26 THE COURT: All right, come on up.

27 MR. NOWACKI: Do I need to be re-sworn?

1 THE COURT: No you will remain under the  
2 obligation of the oath that you took earlier.

3 MR. NOWACKI: Thank you, Your Honor. I was just  
4 handed a decision that Judge Schofield made  
5 downstairs, an ex parte emergency order for  
6 modification of custody and the parenting plan. I  
7 would like to address a few items that are in this  
8 motion that directly relate to what the issues here  
9 are in this court that are simply incomprehensible to  
10 me.

11 THE COURT: Do they have anything to do with  
12 your motion for contempt?

13 MR. NOWACKI: Yes, it does.

14 THE COURT: I just wanted to make that  
15 determination, go ahead.

16 MR. NOWACKI: This has to do with the subject of  
17 estrangement and the use of the 3<sup>rd</sup> party sources  
18 which is a non compliance issue of this parenting  
19 plan. The use of David Barrington to estrange me  
20 from my children is simply unacceptable. Before they  
21 were even married I got an email in November of 2005  
22 instituting Dave Barrington giving me instructions --

23 MR. COLLINS: Objection, Your Honor. This  
24 predates the date of dissolution it is not within --

25 MR. NOWACKI: Sir, that is November of 2005.

26 MR. COLLINS: Mr. Nowacki is correct. In any  
27 event, Mr. Barrington is not a party to this action

1 so where does it fit within the ambit of contempt  
2 against Ms. Sullivan.

3 MR. NOWACKI: This is the use of 3<sup>rd</sup> parties to  
4 create estrangement. I received a communication on  
5 roughly November 25, just after Suzanne and David  
6 Barrington purchased the home at 183 Brushy Ridge  
7 Road, that email was sent to my corporate email  
8 address and it instructed to me as to what the terms  
9 and the conditions would be of the drop off and the  
10 pickup of our children. I was not to step foot  
11 outside of the car to give our children a hug or I  
12 would be arrested for trespassing.

13 MR. COLLINS: Objection, Your Honor, this is  
14 hearsay.

15 MR. NOWACKI: No, Your Honor, it is not, it is  
16 an email.

17 THE COURT: Do you have a copy of the email?

18 MR. NOWACKI: I sure do.

19 THE COURT: Do you want to mark it as an  
20 exhibit?

21 MR. NOWACKI: I sure would.

22 THE COURT: Let's get going then.

23 MR. NOWACKI: Okay. I would like to address  
24 then the sequence of conversation --

25 THE COURT: Mr. Nowacki, --

26 MR. NOWACKI: No. I'm going to give you the  
27 other illustration.

1           THE COURT: Don't tell me, no, ever. Mr.  
2 Nowacki, I asked you to get the email marked as an  
3 exhibit.

4           MR. NOWACKI: I will. I was then going to give  
5 you the next illustration of where the estrangement  
6 occurred.

7           MR. COLLINS: May I see it, please.

8           MR. NOWACKI: Yes.

9           MR. COLLINS: No objection, Your Honor.

10          THE COURT: All right Full Exhibit.

11          MR. NOWACKI: After a period of time I decided  
12 at some risk that I would go down that driveway. My  
13 feeling was that I was being abused and our children  
14 were being abused and putting them through a process  
15 of --

16          THE COURT: Go ahead. I don't want to hear  
17 about the feeling.

18          MR. NOWACKI: So, for about a period of two  
19 years we went through this process where I was able  
20 to come down the driveway and that was good for the  
21 children. It allowed them to stay out of the weather  
22 and Tim is a lot of time seating coming out of hockey  
23 practice and it is good for his health, and Suzanne  
24 has always been treated very respectfully --

25          THE COURT: We've heard all this, Mr. Nowacki.

26          MR. NOWACKI: So, on May 18, I handed to Ami  
27 Jayne Wilson, the associate of Kevin Collins, a copy

1 of the wire transfer dated January 20, 2005 --

2 MR. COLLINS: Your Honor, Objection.

3 MR. NOWACKI: I am linking this to the next  
4 Dave Barrington issue.

5 THE COURT: Sustained. Move on.

6 MR. COLLINS: Thank you, Your Honor.

7 MR. NOWACKI: On the following weekend on Sunday  
8 of Memorial Day weekend of 2009, I get an email from  
9 Dave Barrington to my corporate email address which I  
10 asked him to never contact me on my corporate email  
11 address, it becomes company property at that point in  
12 time, and Dave Barrington reinstated when I then  
13 brought up the subject again of the wire transfer  
14 because Kevin Collins did not have a copy of it at  
15 that point in time. This kind of retaliation through  
16 a third party --

17 THE COURT: Do you have a copy of that email.  
18 Will you provide that to the clerk before you leave  
19 here today and a copy to Mr. Collins.

20 MR. NOWACKI: Correct. On the date of April 29,  
21 I got off the 6:08 from Grand Central Station --

22 THE COURT: I don't need the details, Mr.  
23 Nowacki, you are wasting my time and your time.

24 MR. NOWACKI: Well, this is an issue of  
25 retaliation.

26 THE COURT: Don't tell me what it is just tell  
27 me the facts.

1           MR. NOWACKI: I have a letter from Mark  
2 Silverman that confirms that on the date after the  
3 first court hearing --

4           MR. COLLINS: Objection, Your Honor. He is  
5 testifying from a document that is not in evidence  
6 from somebody I don't even know who it is.

7           MR. NOWACKI: I would like to put this in  
8 evidence.

9           MR. COLLINS: If he wants to offer it he can  
10 offer it and I'll object to it.

11          THE COURT: You have had your time, this is  
12 redirect, and keep it to the subject.

13          MR. NOWACKI: Estrangement.

14          THE COURT: I'm not sure that is the subject. I  
15 am going to give you one more try to testify and then  
16 I'm going to cut you off.

17          MR. NOWACKI: On three occasions I have had to  
18 call the police department on Mr. David Barrington.

19          THE COURT: For what?

20          MR. NOWACKI: For harassment, one time the  
21 Metro-North police report, and I have a copy of that  
22 and the second time was in regard to the email that  
23 he sent me at my corporate email address after I  
24 asked him never to contact me at that email address  
25 again. The third time was last Saturday night at our  
26 high school hockey game where earlier in the day  
27 Suzanne and David went down and filed an erroneous

1 police report on certain issues with the New Canaan  
2 Police Department and I tried to pick up a copy of  
3 that police report which is being amended because of  
4 the lies that were told. What was told to Police  
5 Officer --

6 MR. COLLINS: Objection, Your Honor, hearsay.

7 MR. NOWACKI: The police report stated.

8 MR. COLLINS: Objection.

9 MR. NOWACKI: I will mark the police report as  
10 evidence.

11 MR. COLLINS: Objection.

12 MR. NOWACKI: And the MTA police report as  
13 evidence.

14 MR. COLLINS: Objection.

15 THE COURT: Both are sustained. Anything else,  
16 Mr. Nowacki?

17 MR. NOWACKI: The last thing about estrangement  
18 really upsets me a great deal. In the motion that I  
19 was just handed by the court it suggests to me that I  
20 have said to our children because of the whistler  
21 blower case that was opened that your mother is going  
22 to go to jail. I will tell you that I have never  
23 said that to our children.

24 THE COURT: Thank you very much.

25 MR. NOWACKI: It's not true, it came from her  
26 grandparents.

27 THE COURT: Thank you.

1 MR. COLLINS: Your Honor, I have one or two  
2 questions on cross.

3 THE COURT: No. I don't think so.

4 MR. COLLINS: Very good, Your Honor, I waive it.

5 THE COURT: Your Honor, I've decided to decline  
6 the invitation to put Ms. Sullivan on the stand so I  
7 rest.

8 MR. NOWACKI: I would like to call Suzanne  
9 Nowacki.

10 THE COURT: Your case has been finished. Let's  
11 move on to the second contempt motion, please. Now,  
12 before we move on to the second motion, I do want to  
13 clarify something, Mr. Nowacki, I am not asking you  
14 here you are not in the witness chair but you are  
15 still under oath, you testified and I want to be sure  
16 that my notes are correct and complete -- this is my  
17 note of your testimony that you were not in  
18 compliance with the 65/35 agreement, and then you  
19 went on to say something else which I understood to  
20 say that I am not in compliance because I have asked  
21 for verification or backup or something like that and  
22 therefore I have not paid promptly but I have paid  
23 everything that has been verified. Is that a fair  
24 summary of your testimony, yes or no?

25 MR. NOWACKI: November 15, has not been paid  
26 period, because that information came yesterday and I  
27 was planning on paying it today.

1           THE COURT: Okay. Mr. Collins, your motion for  
2 contempt is basically that he has not been paying his  
3 65/35 payments.

4           MR. COLLINS: Yes, Your Honor.

5           THE COURT: Am I to understand that you disagree  
6 with his testimony or do you agree with it and the  
7 lack of compliance has been in the timing.

8           MR. COLLINS: No. I believe that my client will  
9 testify that he is not fully paid up.

10          THE COURT: Let's move on then.

11          MR. COLLINS: Thank you, Your Honor. I am going  
12 to call Ms. Sullivan to the stand. Your Honor, if I  
13 may, when Mr. Nowacki was on the stand I gave him my  
14 copy of the separation agreement may I request that  
15 back from him at this time?

16          THE COURT: That seems reasonable.

17          MR. COLLINS: Thank you.

18          MR. NOWACKI: Mm Hmm.

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1 S U Z A N N E S U L L I V A N

2 of Brushy Ridge Road, New Canaan, Connecticut,  
3 called as a witness by the Plaintiff, being  
4 first duly sworn, was examined and testified  
5 under oath as follows:

6 THE CLERK: Could you please state your full  
7 name and address for the record, spelling your last  
8 name.

9 THE WITNESS: Suzanne Sullivan, S-u-l-l-i-v-a-n;  
10 Brushy Ridge Road, New Canaan, Connecticut.

11 THE COURT: Please have a seat. Just so the  
12 record is clear we have just completed testimony and  
13 the evidence on motion 182, which was Mr. Nowacki's  
14 motion for contempt. We are now beginning to hear  
15 motion 192.

16 MR. COLLINS: That is my understanding, Your  
17 Honor.

18 THE COURT: Is that your understanding as well,  
19 Mr. Nowacki?

20 DIRECT EXMAMINATION BY MR. COLLINS:

21 Q Ms. Sullivan, good afternoon.

22 A Good afternoon.

23 Q Ms. Sullivan, is it your position, ma'am, that Mr.  
24 Nowacki is in compliance with the court order vis a vie the  
25 65/35 split of child related expenses?

26 A No, he is not.

27 Q In what way do you claim that he is not in

1 compliance, ma'am?

2 A There have been various expenses that he has deferred  
3 after these proceedings, that he has taken out of our  
4 quarterly reconciliations, and then there are other expenses  
5 like Tim's goalie equipment that he has required me to pay  
6 50% of or Tim couldn't have it.

7 THE COURT: Please let me try to take some  
8 notes, Ms. Sullivan. You are saying that he is not  
9 in compliance because of there are various expenses  
10 that he has deferred until when?

11 THE WITNESS: After there is a ruling on all of  
12 these motions.

13 THE COURT: Which expenses were those.

14 MR. COLLINS: Primarily, expenses related to  
15 nanny Katie Bowen for vacation time and a raise that  
16 she was given in January of 2009.

17 THE COURT: The nanny vacation time and what  
18 else?

19 THE WITNESS: Her raise.

20 THE COURT: And then there is something that he  
21 has required you to pay 50% of -- and that involves  
22 hockey equipment?

23 THE WITNESS: And there are some other things  
24 that he has deferred too, but they are minor like the  
25 kids baseball registration and softball registration  
26 that he has just removed from the reconciliations.

27 THE COURT: Okay. Is there any documentation

1 with regard to any of this?

2 MR. COLLINS: No, Your Honor, it is just her  
3 testimony.

4 THE COURT: Okay. Since when has he required  
5 you according to your testimony to pay 50% of your  
6 son's hockey expenses?

7 THE WITNESS: That began over the summer  
8 probably like in June or so and it was just for his  
9 equipment which came to over \$1000.

10 THE COURT: What we have at issue then is \$150.

11 THE WITNESS: It might be more than that.

12 THE COURT: How much more?

13 THE WITNESS: I think we each paid \$1000 so the  
14 equipment in total was about \$2000.

15 THE COURT: You said it was a little over \$1000.

16 THE WITNESS: For me, sorry, my portion.

17 THE COURT: So, it might be \$300.

18 Q When you testified a moment ago about the nanny's  
19 vacation time that is specifically in paragraph 3 of  
20 schedule B, is it not, nanny's salary, bonus, paid vacation,  
21 and any employer tax liability is required to be split  
22 65/35.

23 A Yes.

24 Q Did you pay the nanny's vacation time?

25 A Yes.

26 Q How much?

27 A I think the amount in dispute is maybe 7 days or a

1 little over a week. So, we were paying her at the time \$450  
2 a week, I think.

3 Q Did you pay her the 450?

4 A Yeah.

5 Q Did Mr. Nowacki contribute to that?

6 A No.

7 Q Do you know why he didn't contribute to that, did he  
8 tell you?

9 A Because he said that I had prepaid her before she was  
10 owed the vacation time, and I didn't consult with him on  
11 giving her days off.

12 Q Okay. With regard to any other nanny related  
13 expenses has he held back on any of those?

14 A Just that former nanny's raise.

15 Q The raise.

16 A Yes.

17 Q And did you and Mr. Nowacki discuss the raise?

18 THE COURT: Just a second, you prepaid vacation  
19 time and what nanny was this? Do we have a name for  
20 the nanny?

21 THE WITNESS: Katie Bowen.

22 THE COURT: And the former nanny was who?

23 THE WITNESS: That is the former nanny and this  
24 is all related to her.

25 THE COURT: Okay. All right, and then there was  
26 a raise?

27 THE WITNESS: For her as well.

1 THE COURT: And who gave her the raise?

2 THE WITNESS: It was agreed upon when we hired  
3 her that after her first year she would receive a \$50  
4 a week raise and so after her first year I started to  
5 pay her raise and he wouldn't agree to reimburse me  
6 for it, and for quite some time he actually withheld  
7 the raise from her. When she finally left us he gave  
8 her back raise but he called it a loan to her.

9 THE COURT: How much are we talking about?

10 THE WITNESS: \$50 a week for 25 weeks.

11 THE COURT: That would be \$1250?

12 THE WITNESS: Sounds right.

13 Q Are there any other elements that he has refused to  
14 pay 65/35?

15 THE COURT: Let me just stop you there, Mr.  
16 Collins.

17 MR. COLLINS: Yes, Your Honor.

18 THE COURT: Is there some document evidencing  
19 the agreement between you and Mr. Nowacki to a raise  
20 after one year?

21 THE WITNESS: I don't know there might be, but I  
22 don't have it with me though.

23 THE COURT: You think there might be>

24 THE WITNESS: I do think that there probably is,  
25 when we hired her there was probably some kind of  
26 email communication between the two of us saying  
27 let's pay her \$400 a week and after one year raise

1 her to 450.

2 THE COURT: Okay. Your testimony is you and Mr.  
3 Nowacki agreed?

4 THE WITNESS: Yes.

5 Q Are there any other elements that Mr. Nowacki has  
6 failed to pay 65/35% of?

7 A Kerry's lost retainer.

8 Q A lost retainer?

9 A Yes.

10 Q How much was that?

11 A I think it was \$350 or something.

12 Q Why did Mr. Nowacki not pay that?

13 A Because it was lost at my house.

14 Q So, you paid 100% of the replacement retainer?

15 A Yes.

16 THE COURT: How much was that?

17 THE WITNESS: I think it was about \$350.

18 Q Was there any discussion between you and Mr. Nowacki  
19 as to what would happen if you didn't pay 50% of Tim's  
20 goalie equipment?

21 A Oh, yes.

22 Q What was the discussion?

23 A That Tim wouldn't be able to get his new goalie  
24 equipment if I wasn't willing to pay my quote/unquote fair  
25 share.

26 Q And sports equipment is in paragraph 2 of schedule B,  
27 is it not?

1 A I think so, yes.

2 Q And that is within the ambit of the 65/35 child  
3 related expenses?

4 A Yes.

5 Q Has Mr. Nowacki self helped in giving himself a  
6 credit against any payments for like the nanny's cell phone?

7 A I think --

8 THE COURT: We don't want to hear about thinking  
9 we want to hear about facts and your own personal  
10 knowledge.

11 THE WITNESS: Okay.

12 A On either the November reconciliation or the one  
13 prior to that he gave himself a credit for the nanny's  
14 phone.

15 Q And how much was that?

16 A It was \$1000.

17 Q Okay. So, he has deducted \$1000 off of his  
18 obligation because you and he had a disagreement over the  
19 nanny's cell phone?

20 A Yes.

21 Q What is the disagreement over the cell phone?

22 A It has to do with the plan that she signed up for and  
23 the fact that I pay her cell phone bill on an out of pocket  
24 basis and he thinks that I'm over charging him for the  
25 amount of the plan.

26 Q Do you know why he thinks that?

27 THE COURT: I'm going to object on my own basis.

1 MR. COLLINS: I won't pursue that.

2 Q Are there any other elements of the 65/35 split that  
3 come to mind that Mr. Nowacki owes you for?

4 A None that I can think of, no.

5 MR. COLLINS: Nothing further, Your Honor.

6 THE COURT: Mr. Nowacki.

7 MR. NOWACKI: I need to approach the documents.

8 THE COURT: Give it to the marshal.

9 CROSS-EXAMINATION BY MR. NOWACKI:

10 Q Is there anything in the separation agreement that  
11 requires that each and every expense that each of us pays  
12 2/3<sup>rd</sup>'s of every single expense?

13 THE COURT: Do you mean 65%?

14 MR. NOWACKI: 65%, I'm sorry, Your Honor.

15 A I don't know if it is specified in the agreement.  
16 The way that we had previously had handled it was we each  
17 paid certain expenses and then we reconciled on this  
18 quarterly basis at 65/35, and that in the court motion of  
19 September 9, was there an accounting of the summary of the  
20 annual expenses about how much money actually exchanged  
21 hands between parties.

22 MR. COLLINS: Objection, Your Honor, I don't  
23 know what he's referring to by motion of September  
24 9<sup>th</sup>.

25 MR. NOWACKI: September 9, was the original  
26 motion for the modification that was filed. It has a  
27 summary of the children's related expenses.

1 THE COURT: September 9, 2008?

2 MR. NOWACKI: 2008, Your Honor.

3 MR. COLLINS: I don't know what the relevance of  
4 that is, Your Honor. That motion is what we dealt  
5 with this morning. I would further point out that  
6 the Court can take judicial notice that in section  
7 5.1 of the separation agreement reference to the  
8 expenses makes reference -- no; my mistake, that is  
9 the custody and parenting plan -- 4.1 makes reference  
10 to the expenses on schedule B.

11 So, the 65/35 applies to expenses as listed on  
12 schedule B appended to the separation agreement. So,  
13 I don't think there is any question as to what the  
14 percentage applies to and what the expenses are. It  
15 is all delineated in schedule B.

16 THE COURT: I think that is helpful, Mr.  
17 Collins, but in a sense you are giving the answer to  
18 your client.

19 MR. COLLINS: That was not my intention; my  
20 intention was to guide the Court.

21 THE COURT: You did guide the Court and I'm  
22 going to check it, obviously, but you also guided  
23 your witness.

24 MR. COLLINS: I didn't mean to do that, Your  
25 Honor.

26 THE COURT: And I don't want you to do that.  
27 The question to you, Ms. Sullivan, is there anything

1 in the separation agreement in the appendices and  
2 indexes and so on that says that you and your ex  
3 husband pay 65/35 on every expense.

4 THE WITNESS: On every expense, yes, but not  
5 necessarily at the time the expense is incurred.

6 THE COURT: Well, you are contradicting your  
7 counsel, you understand that?

8 THE WITNESS: Okay. That is my understanding  
9 then of the agreement.

10 MR. NOWACKI: Your Honor, I am going to ask the  
11 marshal to show a series of materials that take each  
12 quarterly reconciliation that has occurred through  
13 the February reconciliation and --

14 THE COURT: February what?

15 MR. NOWACKI: November of 2005, which would have  
16 been the first reconciliation, for illustration  
17 purposes the reason why I'm doing it is to show how  
18 the plan worked.

19 THE COURT: Let me say something. This motion  
20 for contempt was filed in the summer of this year; am  
21 I correct?

22 MR. COLLINS: May, Your Honor, to be exact.

23 THE COURT: So, I am really only interested in  
24 what has happened based on that.

25 MR. COLLINS: The answer is no; it doesn't go  
26 back to 2005.

27 THE COURT: When does it go back to?

1 MR. COLLINS: It goes back to the November  
2 reconciliation from 2008.

3 THE COURT: Does it say that in the motion?

4 MR. COLLINS: It says paragraph five and six  
5 illustrate the basis of the motions. It says in the  
6 fall of 2009 and that's a typo it should say the fall  
7 of 2008 the defendant filed a motion for modification  
8 post judgment to modify the aforementioned paragraph,  
9 that being section 4.2 increasing the percentage of  
10 the child related expenses which plaintiff is  
11 responsible and that's paragraph 5.

12 Paragraph 6 of my motion says awaiting the  
13 hearing on the aforementioned motions which is his  
14 motion from September of 08, the defendant has  
15 unilaterally decided to modify the agreement - -

16 THE COURT: All right. So, I think we are  
17 talking about actins that you purportedly, allegedly  
18 took, Mr. Nowacki, since September 2008. I don't see  
19 the relevance of her going through your motion for  
20 contempt from 2005. Let's move on to another --  
21 let's just remember this is your cross-examination at  
22 this point is limited to what Mr. Collins asked and  
23 what Ms. Sullivan testified about on direct.

24 MR. NOWACKI: Would you please just go to the  
25 section --

26 THE COURT: I just said that is not relevant.

27 MR. NOWACKI: It's going to September --

1           THE COURT: That is another issue. Mr. Nowacki.  
2           You have got to listen to what I say. It doesn't help  
3           you to keep kind of overruling the rulings that I  
4           make. It doesn't help you and that is just a word to  
5           the wise.

6           MR. NOWACKI: Your Honor, I'm trying to give to  
7           the witness the post September 15, 2008 and forward  
8           reconciliations.

9           THE COURT: All right. If you limit to that  
10          because I think you document goes back to 2005.

11          MR. NOWACKI: It did.

12          THE COURT: If you are going to keep your  
13          questions to September 2008, that's fine.

14          MR. NOWACKI: Correct.

15          THE COURT: Let me just say that I think what  
16          you handed her is your motion paper relating to  
17          motion 174; is that correct? What did you give her?

18          MR. NOWACKI: I gave her the quarterly  
19          reconciliations.

20          THE COURT: I haven't seen that; it is not in  
21          evidence.

22          MR. NOWACKI: That's correct and I'm asking that  
23          be marked as evidence and then hand it to the  
24          witness.

25          MR. COLLINS: As long as they are limited to the  
26          period in question, I have no objection.

27          THE COURT: Please mark it Exhibit 1.

1 MR. NOWACKI: And here is the September 15.

2 THE COURT: I don't know what you're talking  
3 about. You have asked something to be marked. How  
4 many -- we are not doing this piecemeal.

5 MR. NOWACKI: No.

6 THE COURT: We are wasting time if we are. What  
7 is that?

8 MR. NOWACKI: That is the September 15,  
9 reconciliation.

10 THE COURT: Is that something that has already  
11 been marked?

12 MR. NOWACKI: I don't believe so, Your Honor.

13 THE COURT: Why is the first thing getting  
14 marked?

15 MR. NOWACKI: Those are the subsequent  
16 reconciliations.

17 THE COURT: You are beginning to overstep your  
18 bounds, Mr. Nowacki. You know there is a time limit  
19 here. I don't know whether you are trying to  
20 deliberately slow this down or not, are you?

21 MR. NOWACKI: No, Your Honor. I've tried to  
22 address the subject of how these expenses were paid.

23 THE COURT: You have taken five minutes to get  
24 one exhibit marked and now you want another exhibit  
25 marked. What is the second one?

26 MR. NOWACKI: September 15, 2008 reconciliation.

27 THE COURT: And what is the first one you

1 wanted?

2 MR. NOWACKI: That is the rest of the  
3 reconciliations since them.

4 THE COURT: All right. Mark that as Exhibit 2.  
5 Do you know what these documents are?

6 THE WITNESS: They seem to be his records of the  
7 reconciliation and I have my own documents too, so I  
8 don't know if these necessarily match up or not.

9 THE COURT: There is no such thing as a formally  
10 recognized reconciliation?

11 THE WITNESS: We have some that are saved as  
12 final but I don't know if these are the final ones or  
13 not is what I'm trying to say. I can't tell by just  
14 looking at them if they are the final ones.

15 THE COURT: You agreed to the first one, do you  
16 agree to the second one?

17 MR. COLLINS: I agree to them for what they are  
18 worth, Your Honor.

19 THE COURT: Full exhibits 1 and 2. Go ahead,  
20 Mr. Nowacki.

21 Q On that exhibit --

22 THE COURT: Which one?

23 MR. NOWACKI: September 15, 2008

24 THE COURT: That is Exhibit 2.

25 Q -- Exhibit 2, when you look at the expenses that are  
26 paid is it true that in some cases I pay 100% of certain  
27 expenses and you pay 100% of other expenses; is that

1 correct?

2 A Yes.

3 Q And in some cases we split expenses based upon an  
4 email exchange that we may have about who is going to pay  
5 for certain expenses so we don't have duplicates of those  
6 expenses.

7 A Yes. And then we reconcile them quarterly, that is  
8 what I said before.

9 Q So, on September 15, the total expenses on that report  
10 was?

11 A \$8132.

12 Q Correct. And based upon how we allocated those  
13 expenses during the course of the prior period of time what  
14 was the amount you actually paid, and then was there a check  
15 that was written to you for the difference of what was owed  
16 on the 65/35 that we agreed to as the overall umbrella?

17 A According to this you paid me \$458.

18 Q Correct. And you received that check in a timely  
19 fashion; is that correct?

20 A Probably, yes.

21 Q The next affidavit would be February 15, 2009 and  
22 that is where we got into the controversy surrounding the  
23 payment of health care expenses and its retroactivity.

24 A On this reconciliation you deducted \$1800 for the  
25 health insurance. However, on this reconciliation there are  
26 other things that you also deducted like the nanny's  
27 vacation.

1 Q Right. I am going to mark as an exhibit an email  
2 that was agreed to by Katie Bowen which she said okay by me  
3 looks fine. That email is dated --

4 THE COURT: We don't quote from documents until  
5 they are admitted into evidence.

6 MR. NOWACKI: Can you show that to Mr. Collins,  
7 please.

8 MR. COLLINS: Your Honor, this is four pages,  
9 and I have not seen it before, may I have a moment to  
10 review.

11 THE COURT: Yes.

12 MR. COLLINS: Thank you, Your Honor.

13 THE COURT: No. We are not going to spend our  
14 small remaining time going through every single  
15 check. Ms. Sullivan has testified to about 4 to 5  
16 items which she says you are in contempt for not  
17 paying. Why don't you focus on that?

18 MR. NOWACKI: That is what this relates to, Your  
19 Honor.

20 MR. COLLINS: Your Honor, this could be helpful  
21 if Mr. Nowacki could point out what he's referring to  
22 in the first document because otherwise I've got to  
23 read all four pages in extremely small print. I just  
24 want to know what he wants into evidence here.

25 Mr. Nowacki: I think the Court can review that  
26 as part of the documents the Court will review.

27 THE COURT: Mr. Collins is asking for your help

1 otherwise I've got to sit and read it.

2 MR. NOWACKI: Katie Bowen quit.

3 MR. COLLINS: No. I just want to know with a  
4 point.

5 MR. NOWACKI: This document resurrected her  
6 employment, it set out the terms under which she was  
7 going to continue the employment.

8 MR. COLLINS: I want to know the purpose of the  
9 offer and I want Mr. Nowacki to point me to the  
10 purpose of the offer.

11 MR. NOWACKI: The purpose of the offer was to  
12 keep her employed.

13 MR. COLLINS: No, the offer in evidence.

14 MR. NOWACKI: And the offer that she agreed to  
15 she said okay to --

16 MR. COLLINS: Is what?

17 MR. NOWACKI: Was that we were going to defer  
18 her raise, that we were guaranteeing its payment at  
19 the point in time that the Court made its  
20 evaluations.

21 MR. COLLINS: Show me where?

22 MR. NOWACKI: -- endless delays resulted in  
23 Katie - -

24 THE COURT: What evaluation?

25 MR. NOWACKI: In the Court evaluations that  
26 started April 29<sup>th</sup>, is that delays occurred and she  
27 agreed to those terms and this document is what the

1 terms were that she agreed.

2 THE COURT: I don't want to hear it. I'm not  
3 going to admit it.

4 MR. NOWACKI: It relates to her testimony.

5 THE COURT: It may relate, but I'm not going to  
6 admit it because what you owed under the agreement  
7 has nothing to do with whether Ms. Bowen agreed to a  
8 deferral or not. You were required to pay certain  
9 things in a timely fashion. The fact that somebody  
10 else has said you don't have to follow the court  
11 order is meaningless to me. Move on to something  
12 else. Thank you.

13 Q On February 15, I did not pay that reconciliation and  
14 you were made aware of what that condition was; is that true  
15 or not true?

16 A You did not pay the February 15, reconciliation; that  
17 is correct.

18 THE COURT: Did you understand why it was not  
19 being paid?

20 THE WITNESS: Yes. I understood why.

21 THE COURT: That was what?

22 THE WITNESS: He wasn't in agreement with the  
23 things in the reconciliation he wanted to defer it  
24 until after the Court made a ruling on possibly on a  
25 new split of expenses.

26 THE COURT: Is that correct.

27 MR. NOWACKI: That is incorrect. The reason it

1           was provided and I will say the reason it wasn't  
2           provided that I had just found out I had been paying  
3           the healthcare costs of David Barrington unbeknownst  
4           to me, and until which point in time that I got  
5           documentation that reconciliation could not be  
6           complete.

7           A    But you deducted 1800 in this and you still didn't  
8           pay it.

9           Q    That then became the reconciliation that occurred  
10          that I waited until June 15 -- didn't you pay me 1150 on  
11          June 14, just before Judge Shay was to have his order for  
12          production.

13          A    Yes. I paid you \$1100 in June.

14          Q    And is it true that in roughly April of 2007 there  
15          was a letter that was given to me from Natasha Peterson that  
16          established the date of Dave Barrington's start of his  
17          healthcare costs underneath the family plan that I was  
18          paying for as January 1, 2007; correct? You supplied me  
19          with that document; is that correct?

20          A    I supplied you with a document from my HR department  
21          on my health insurance, yes, but I didn't realize that is  
22          what we were talking about here.

23          Q    That was the function of why the payment was delayed  
24          is that we could not get documentation that related to the  
25          start date.

26          A    But there are other things that you deferred on here,  
27          baseball payments, softball payment, nanny's vacation,

1 nanny's raise, that had nothing to do with any health  
2 insurance.

3 Q Didn't you receive a check for 50% of those costs  
4 which you refused to cash?

5 A You are not supposed to pay me 50%, you are supposed  
6 to pay me 65%. So, I didn't cash those checks because they  
7 weren't in a correct amount. I ripped them up and threw  
8 them away.

9 Q All right. Isn't true that the February 15,  
10 reconciliation that you owed me for past healthcare bills  
11 that were passed along to me for David Barrington that  
12 result in a payment to me in the February 15,  
13 reconciliation; isn't that the case?

14 A Yes. I paid you for what you believed were health  
15 insurance, co payments, or premiums or whatever that you  
16 think were Dave's.

17 Q Correct.

18 A To just try to move things forward.

19 Q Did you do that with the understanding then that  
20 completed the February 15, reconciliation?

21 A No, there were still outstanding issues from the  
22 February 15, reconciliation that were then on the May and  
23 then were on the September and then were on November and you  
24 still haven't paid me for them.

25 Q And in some cases you just said on the court record  
26 that you ripped up the check for 50% of those payments; is  
27 that correct?

1 A Because you owed me 65%

2 Q I owed you 65 of an unknown number; isn't that  
3 correct?

4 A No. The number is known it was 225 for baseball, it  
5 was 165 for softball they are right on here you have the  
6 copies of the emails where I signed the kids up for these  
7 things.

8 Q And the reason why I was only paying 50% is because  
9 we didn't know the start date of the health care insurance;  
10 is that correct?

11 A No. I thought we already moved on from the  
12 healthcare insurance.

13 Q But you were given checks and you decided not to cash  
14 those checks; is that correct?

15 A Yes.

16 MR. COLLINS: Your Honor, this has been asked  
17 and answered like three times.

18 Q All right. We get to the May 25, resolution and we  
19 still don't have a resolution at that point in time on the  
20 February 15, resolution; is that correct?

21 A I think so, yes.

22 Q Didn't you write me a check on June --

23 A I said I wrote you a check in June.

24 Q You handed me a check finally for the February  
25 reconciliation.

26 A The May isn't here.

27 Q Isn't true that when you look at those

1 reconciliations the payment for the car lease was tied to an  
2 agreement that we made when I took over the entire car  
3 payment when Kerry started her braces to equalize the amount  
4 of out pocket for you when you put the children underneath  
5 the plan. So, I took on a 526 obligation from January 1,  
6 2007, and I paid that until which point in time that the  
7 agreement that we reached via email said that at the end of  
8 the process of Kerry's orthodontic we would revert to what  
9 we had been doing which was I would write a check for the  
10 car payment, and you were writing me a check and we would  
11 put the two checks together and that constituted the  
12 payment; isn't that correct?

13 A I don't even understand the question anymore. We  
14 said before that we each paid certain things and then we  
15 reconciled them 65/35. At one point over the summer you  
16 started handing me the car lease and I was paying 100% of  
17 it. So, that increased that amount at the reconciliation  
18 you owed me. I don't know what your point is beyond that.

19 Q Well, isn't true that the reason why that was handed  
20 to you is you did not reassume your 1/3<sup>rd</sup> payment when  
21 Carrie's dental expenses were finished.

22 A That may be.

23 Q Thank you. Therefore, in this particular case there  
24 was money exchanged at the end of the reconciliation periods  
25 on a timely fashion based upon documentation that I  
26 requested which you refused to provide me with --

27 A No, it wasn't.

1 Q Such as the healthcare list which that came from an  
2 HR letter on April 27, and that resulted in a delay; is that  
3 correct?

4 THE COURT: We've been through this.

5 MR. NOWACKI: Okay.

6 THE COURT: Move on to something new.

7 Q The May 14 reconciliation there was a dispute in  
8 regards to the cell phone plans because wasn't Tim added to  
9 your cell phone plan?

10 A Tim has always been on my cell phone plan.

11 Q And did you acknowledge that Tim was on your cell  
12 phone plan and failed to add the nanny when you could have  
13 added the nanny to the cell phone renewal.

14 A Tim has always been on my cell phone plan and you've  
15 always known that Tim was on my cell phone plan.

16 THE COURT: Non responsive to the question.

17 THE WITNESS: I don't understand the question.

18 Q Tim has had a cell phone for a decent period of time  
19 and when the cell phone came up for renewal you added Tim  
20 which saved you money, but you didn't add the nanny which  
21 cost me money; is that correct?

22 A No. It is one bill that I get every month and I pay  
23 every month.

24 Q But when you had the opportunity to add the nanny to  
25 the cell phone plan, did you do so?

26 A The nanny has been on my cell phone plan, I don't  
27 know for how long. I have always paid the nanny's cell

1 phone.

2 Q And your personal cell phone is on Verizon; correct?

3 A All three of the cell phones were on one bill.

4 Q Therefore, then, there was a savings that was accrued  
5 at some point in time that you did not define; is that  
6 correct? Because each cell phone plan that gets added  
7 decreases the cost.

8 A I've provided you with these bills and you see  
9 exactly how much they are. I can't even answer that  
10 question because it doesn't make sense.

11 THE COURT: It's not a laughing matter, Ms.  
12 Sullivan.

13 THE WITNESS: It's frustrating to me.

14 THE COURT: Try to answer the questions with a  
15 straight face, please. Did you hear what I said,  
16 ma'am?

17 THE WITNESS: Yes, sir, and I've provided  
18 him the cell phone bills. He's adjusted the  
19 reconciliations as he saw fit for the cell phone  
20 bills, and still has not paid me the money that he  
21 owes me for the September and the November  
22 reconciliations even after he took out what he  
23 thought the adjustments should be for the cell phone  
24 bills.

25 Q Okay. On the September 15, reconciliation did you  
26 just receive a check for \$3100 and some odd dollars?

27 A Yes. I notified you that was an incorrect amount

1 because things had been removed from the reconciliation.

2 Q And that is an adjustment that will be made today  
3 based upon the differences that were a transfer from a  
4 Microsoft 2003 program which is what my computer is on at  
5 home and yours which is the updated one that you do in your  
6 office.

7 THE COURT: Ask a question.

8 Q So, you received the vast majority of that money  
9 absent what you then raise as an issue -- you said what was  
10 owed was \$3600 based on what you submitted and based on what  
11 I gave you back was 3113; correct?

12 A Yes, but there are still beyond that other  
13 outstanding things that you have continued to defer such as  
14 the nanny's raise, the nanny's vacation time, the softball,  
15 the baseball, all those things you have still deferred.

16 Q Correct. And didn't you receive a blank check on May  
17 18, when I handed Ami Jayne Wilson other documentation for a  
18 number of expenses and you did not cash those checks; isn't  
19 that correct?

20 THE COURT: I wouldn't cash a blank check  
21 either. What do you mean by a blank check?

22 MR. NOWACKI: I left the line open for you to  
23 make the check out to for Kerry's hockey camp for  
24 \$200. I gave her a check for \$200 and Suzanne was  
25 supposed to take care of enrolling Kerry in that  
26 camp. She never did, what did she do with that  
27 check, it's unknown. I paid the entire amount for

1           \$375 just as I paid on that reconciliation in  
2           September.

3           THE COURT: You are not testifying here.

4           Q    Did I pay for the entire cost of Kerry's hockey camp  
5           for \$375?

6           A    And then we reconciled it, yes. Just like I pay 100%  
7           of other things and then we reconcile.

8           Q    Correct. And did you not receive from your attorney  
9           checks for \$200 or \$190 for soccer that you did not cash?

10          A    Because it was outside of the reconciliation period.

11          Q    That was a yes or no, please.

12          A    I did not cash it, yes.

13          Q    So, you had checks that you could have cashed that  
14          would have closed the gap on what you said that I was  
15          deferring that you decided not to cash ; is that correct?

16          A    Yes.

17          Q    Isn't true that you also received a check for \$769 or  
18          in that near vicinity for the September 15<sup>th</sup>, reconciliation  
19          that you did not cash.

20          A    No. I don't think that's true; I think I cashed  
21          that.

22          Q    I apologize, that would have been for the May 15<sup>th</sup>,  
23          reconciliation for \$769; did you ever cash that check?

24          A    Yeah, I think so.

25          Q    I don't believe you have. My check register doesn't  
26          indicate that it ever cleared. So, the aspect of what is  
27          going on here is the appearance that I was not making

1 proportionate --

2 THE COURT: Is that a question?

3 THE WITNESS: I'm saying --

4 THE COURT: Is that a question?

5 THE WITNESS: No, Your Honor.

6 THE COURT: Then ask a question.

7 THE WITNESS: Yes, Your Honor.

8 Q On the goalie pads for Tim, did you attend the  
9 session at West Co in Brookfield with me to make a decision  
10 about what kind of pads Tim was going to get?

11 MR. COLLINS: Objection, relevance.

12 THE COURT: Overruled.

13 A No, I didn't.

14 Q Okay. Are you aware that we spent 3 or 4 hours  
15 making a tactical decision to get the most amount of wear  
16 out of those pads and to choose pads that were made in  
17 Canada hand sewn that were more expensive than other  
18 equipment that we could have picked that would have been  
19 less expensive that he would have outgrown sooner; are you  
20 aware of that?

21 A No.

22 Q Were you sent an email outlining the choices  
23 concerning the goalie equipment and what Tim wanted to see  
24 happen which was to get goalie pads that had a thigh which  
25 was two inches higher so he could grow into the pads and  
26 that they would last him at least two years. Do you recall  
27 getting an email to that effect?

1       A    I don't remember those specifics.  I know that I got  
2 a lot of emails about Tim's goalie equipment and my response  
3 to them was Tim should get what he wants.

4       Q    Okay.  So, the cost of those goalie pads was \$2200;  
5 is that correct?

6       A    That is what I testified to earlier.

7       Q    At that point in time you were made aware that my  
8 income at that point in time in the year was down 25%; is  
9 that correct?

10               MR. COLLINS:  Objection, Your Honor, what is the  
11 relevance of that.

12               THE COURT:  Overruled.

13       A    Yes, you have made me aware that your income is down.

14       Q    So, the tough choice I had to make was whether - -

15               THE COURT:  Is this testimony or a question.  I  
16 can tell you right now what you're saying isn't  
17 helping you one bit.  You are in essence saying  
18 that you were not going to abide by the 65/35 rule  
19 because your income is lower.

20               MR. NOWACKI:  What I was saying, Your Honor,  
21 actually is I had a choice to make about --

22               THE COURT:  We are going to end the questioning  
23 here because I think we're getting more testimony  
24 than facts.

25       Q    The question is we made a joint decision to pay  
26 50/50; isn't that correct?

27       A    No.  It wasn't a joint decision; I made it very clear

1 to you that you left me with no choice but to pay 50% or  
2 otherwise Tim wasn't going to get his equipment.

3 Q Was the choice that Tim wasn't going to get his  
4 equipment or he wasn't going to get \$2200 goalie pads?

5 A I don't know.

6 Q If you weren't there how would you know what the  
7 decision was?

8 A From multiple emails from you.

9 Q Correct. And there were cheaper goalie pads  
10 available for \$1400 that you received an email on, didn't  
11 you?

12 A I don't remember that specific email.

13 Q So, the choice was get him the pads he wants for  
14 \$2200 and split the costs so he would get what he wants in  
15 hopes that by the time we got to September 15, that we would  
16 have been done with this already, and it wouldn't have been  
17 an issue; is that correct?

18 A I don't know what the question is -- is what correct?

19 Q That the choice that had to be made was to pay \$2200  
20 and get him pads that would last longer or \$1400 for pads  
21 that he was going to outgrow.

22 A That wasn't how I understood the decision that I made  
23 which was I had to pay 50% of Tim's goalie equipment, and  
24 that is what I understood.

25 THE COURT: What he's trying to get at Ms.  
26 Sullivan, is you testified that you were told unless  
27 you paid 50% of the hockey equipment Tim would not

1 get any equipment. He is now inquiring now was  
2 whether that was really your understanding or not.

3 THE WITNESS: That was my understanding, yes.

4 THE COURT: Well, he's entitled to inquire.

5 A That was my understanding.

6 Q Do you know who runs the West Co hockey shop?

7 THE COURT: Sustained. Ask another question.

8 Q There were two choices to be made on the hockey  
9 equipment; is that correct, the \$1400 pad or the 2200 pad?

10 THE COURT: We covered that. She doesn't agree  
11 with your recollection. It doesn't make you right or  
12 wrong.

13 Q On April 10, did you receive a request for production  
14 from your attorney?

15 MR. COLLINS: I object, Your Honor.

16 THE COURT: Sustained.

17 Q Will you accept a check from me today for the  
18 November 15, reconciliation and cash it, please.

19 THE COURT: Sustained.

20 Q Did you get an email yesterday from Katie Waters  
21 indicating what the gas expenses have been since the last  
22 reconciliation?

23 A Yes.

24 Q What time in the afternoon did that arrive?

25 A It was after lunch.

26 Q Would you say it is reasonable or unreasonable that I  
27 may not have the time to finish that November 15,

1 reconciliation?

2 MR. COLLINS: Objection, Your Honor.

3 THE COURT: Overruled.

4 A I think it is reasonable if you rely on her for the  
5 gas expenses. For me, I keep track of them on my own so I  
6 don't rely on her for those.

7 Q Okay. So, the delinquency did have something to do  
8 with yesterday when we were dealing with a whole bunch of  
9 issues relating to a car accident and a hit and run that  
10 happened here in Stamford the day before; is that correct?

11 A I don't know what the delinquency is related to, no.

12 Q Yesterday did you receive an email from me in the  
13 morning that indicated I had a client meeting out of Newark,  
14 New Jersey for lunch?

15 THE COURT: We are not getting anywhere with  
16 this type of information. Do you have any further  
17 questions. We are going to move on here, we are  
18 running out of time, and you've been over about three  
19 subjects about four times apiece.

20 Q Question about Katie Bowen, did she resign in roughly  
21 mid February?

22 A Yes.

23 Q When I wrote the email dated Saturday February 28,  
24 did that result in her staying and keeping her employment  
25 through the middle of June?

26 MR. COLLINS: Objection, relevance.

27 THE COURT: Overruled.

1       A    I don't believe that was the only reason why she  
2 chose to stay.

3       Q    Did we pay her in total when she left what she was  
4 owed, to the best of your knowledge.

5       A    My understanding based on emails from you that you  
6 gave it to her in a loan.

7       Q    But she was given the money.

8       A    She was loaned the money that she was owed.

9       Q    Correct. Nothing was withheld from the nanny when  
10 she departed.

11      A    It was withheld on a weekly basis up until the times  
12 she left in June.

13      Q    And at that time was she also paid for her past  
14 vacation pay for the six month period of time that she had  
15 worked?

16      A    I paid her for everything; the point is you haven't  
17 reimbursed me for it, we both paid her.

18                THE COURT: I'm sorry, Mr. Nowacki, you are  
19 going around in circles and you've used up your time.  
20 We have already been through this.

21                MR. NOWACKI: I wanted to have these two  
22 documents given as exhibit.

23                THE COURT: I know and you failed. I said they  
24 are not admissible, and I said that about 15 minutes  
25 ago. You are excused, Ms. Sullivan.

26                THE WITNESS: Thank you.

27                MR. COLLINS: Anything further, Mr. Collins?

1 MR. COLLINS: No, Your Honor, I rest on this  
2 motion.

3 THE COURT: Mr. Nowacki, your opposition?

4 MR. NOWACKI: May I introduce these two  
5 exhibits, Your Honor.

6 THE COURT: If you give me relative testimony I  
7 will certainly consider it. You weren't going to get  
8 them in through the testimony and foundation laid by  
9 Ms. Sullivan.

10 MR. NOWACKI: I apologize, Your Honor.

11 THE COURT: Let me just tell you we are going to  
12 stop at 4:55 because we have to have time for staff  
13 to get their work done and out of here by 5:00. They  
14 would prefer I stop at 4:45 and I hope we can stop at  
15 quarter of.

16 MR. NOWACKI: I will do my best, sir. I would  
17 like to introduce two letters there is one email  
18 dated February 28, from Katie Bowen that Suzanne  
19 Sullivan was copied on that has a response from Katie  
20 Bowen that says, looks okay to me --

21 MR. COLLINS: Your Honor, he's reading it --

22 MR. NOWACKI: -- have a good weekend.

23 MR. COLLINS: -- into the record.

24 MR. NOWACKI: I am just identifying what that  
25 exhibit is.

26 THE COURT: No. You tell me why it's relevant,  
27 give me some factual testimony.

1           MR. NOWACKI: What this email basically does is  
2 it outlines the conditions under which Katie agreed  
3 to stay.

4           THE COURT: Who wrote the email?

5           MR. NOWACKI: I wrote the email and Katie  
6 responded that it was fine with her.

7           THE COURT: You wrote the email to her?

8           MR. NOWACKI: That is correct.

9           THE COURT: Did you copy Ms. Sullivan?

10          MR. NOWACKI: Yes, sir, I sure did.

11          THE COURT: What were the circumstances that you  
12 wrote the email.

13          MR. NOWACKI: Katie Bowen had resigned.

14          THE COURT: Why had she resigned?

15          MR. NOWACKI: She resigned because she felt she  
16 should be paid a raise and I talked to her about my  
17 financial circumstances, about how much my income was  
18 down and that was not anticipated by anybody and not  
19 my economic situation when we hired her.

20                 I agreed to pay her at the end of her term of  
21 her service, pay her vacation pay appropriately and  
22 what that did was to outline the terms so she felt  
23 comfortable with the agreement that resulted in her  
24 staying for four additional months.

25          THE COURT: Objection?

26          MR. COLLINS: Yes, Your Honor. It's not  
27 relevant and Ms. Sullivan testified that ultimately

1 this lady got her money but Ms. Sullivan was not  
2 reimbursed.

3 THE COURT: I heard that testimony, it doesn't  
4 mean I agree with it.

5 MR. COLLINS: I understand that, Your Honor.

6 THE COURT: I am going to admit the exhibit.  
7 What is next?

8 MR. NOWACKI: I also have a letter which Katie  
9 Bowen signed dated June 11, 2009, which basically  
10 outlined the terms under which she was leaving, so  
11 the issue of back pay and what couldn't be contested  
12 in the court here, which it has been contested.

13 THE COURT: Who wrote that letter?

14 MR. NOWACKI: That letter was at her request. I  
15 wrote the letter, she signed it and Suzanne has a  
16 copy of it. She is on the title of the page. There  
17 is additional email that is also attached to that.

18 THE COURT: Did Ms. Sullivan pay some of the  
19 expenses from either vacation pay or weekly wage to  
20 Ms. Bowen?

21 MR. NOWACKI: As did I, sir.

22 THE COURT: That is not my question.

23 MR. NOWACKI: She did.

24 THE COURT: At what percentage?

25 MR. NOWACKI: She paid as we did all the nanny  
26 expenses 50/50.

27 THE COURT: Anything else?

1           MR. NOWACKI: May I put this in the exhibit  
2 list, Your Honor.

3           THE COURT: Have you shown it to Mr. Collins?

4           MR. COLLINS: I have it, Your Honor, and I don't  
5 object.

6           THE COURT: Anything else, Mr. Nowacki?

7           MR. NOWACKI: I just want to address the 65/35  
8 issue.

9           THE COURT: Very briefly, it's been addressed  
10 all afternoon. The history was that in some cases  
11 you paid 100% of some expenses, you paid 25% of some,  
12 you paid nothing on some and then at the end line for  
13 the two years prior to that there was all of \$1000 on  
14 \$60,000 that was exchanged through the quarterly  
15 reconciliations.

16           MR. NOWACKI: One year the money came to me and  
17 one year the money ended up going to her. It was a  
18 very fair arrangement in regard to the allocation of  
19 those expenses how the cash flow worked on them and  
20 the dates of the reconciliations, Your Honor, totally  
21 ties to the dates for my quarterly reviews. That is  
22 why it was set up in the manner that it was, at the  
23 end of the month of August, where we don't have a  
24 reconciliation as usually one of us was on vacation  
25 and that's the history of that.

26           THE COURT: Anything else?

27           MR. NOWACKI: No, Your Honor.

1           THE COURT: Thank you. Mr. Nowacki, he gets a  
2           chance to cross-examine you, and you are still under  
3           oath.

4           CROSS-EXAMINATION BY MR. COLLINS:

5           Q    Mr. Nowacki, are you familiar with section 4.2 of the  
6           separation agreement?

7           A    Off the top of my head I don't recollect that  
8           particular section.

9           Q    I will show 4.2, sir, does that refresh your  
10          recollection?

11          A    Sure.

12                THE COURT: 4.1 of what, Mr. Collins?

13                MR. COLLINS: The separation agreement.

14                MR. NOWACKI: Page 11.

15                THE COURT: Yes.

16          Q    Do you see, sir, in section 4.1 where it makes  
17          reference to Schedule B?

18          A    Yes, sir.

19          Q    Do you know what the schedule has in it that  
20          constitutes the child related expenses?

21          A    Yes.

22          Q    In reading 4.1 in its entirety, sir, do you  
23          understand that the items as listed in schedule B are to be  
24          paid at a rate of 65/35 pursuant to that agreement?

25          A    Pursuant to the agreement that we both have agreed to  
26          pay specific dollar amounts on sports equipment.

27          Q    No, sir.

1 A There isn't an open ended checkbook.

2 Q Sir, do you agree that 4.1 provides that all the  
3 items listed in schedule B are to be paid at the  
4 apportionment of 65% by you and 35% by Ms. Sullivan, do you  
5 agree with that?

6 A On the date specified.

7 Q Sir, do you agree?

8 A Yes.

9 THE COURT: It says what it says.

10 MR. COLLINS: I'm sorry?

11 THE COURT: It says what it says.

12 MR. COLLINS: Right.

13 Q Have you paid all of the expenses as listed in  
14 Schedule B to date at the rate of 65/35?

15 A With the exception of the September 15, which needs a  
16 small adjustment, and the November 15, which will be handled  
17 today, sir. Yes, I have, sir.

18 Q What about the hockey equipment?

19 A It was reconciled at the end of that period of time.

20 Q Did you not mandate that it be paid at the rate of  
21 50/50?

22 A In order to afford the more expensive equipment, yes;  
23 I did, sir.

24 Q Do you not see sports equipment in section 2 of  
25 Schedule B?

26 A That is correct and we both agreed to pay 50/50.

27 Q But your understanding of that was that he would get

1 the lesser equipment unless Ms. Sullivan didn't agree to pay  
2 the 50/50; correct?

3 A And under the circumstances of my income being down  
4 that was a perfectly legitimate concern of mine.

5 Q But that was your edict, was it not, sir?

6 A That was the choice we had to make, yes.

7 Q But that was the choice forced upon her; correct?

8 A No. She could have chosen the lesser equipment, she  
9 could have had 65/35 in the lesser equipment.

10 Q The June 11, 2009 letter, Exhibit 4, Mr. Nowacki, you  
11 drafted this so called agreement for Katie Bowen the nanny  
12 to sign; is that correct?

13 A At her request, yes, I did.

14 Q Did she ask you to reflect in the sixth paragraph  
15 therein, first, there is a loan granted to me of \$1100 for  
16 the 23 weeks of raise due me thorough June 12, 2009. Did  
17 she ask you to make that a loan?

18 A She asked me to draft the letter and I did so, sir.

19 Q And who determined that the payment of her  
20 retroactive raise was a loan? Was it you, Ms. Sullivan, or  
21 Katie Bowen?

22 A When she signed the letter she made the agreement.

23 Q But who insisted on it being reflected as a loan?

24 A She asked me to draft a letter, I did so, and she  
25 agreed to it.

26 Q Did she say to you I want this reflected as a loan or  
27 did you say I want it to be reflected as a loan?

1       A    What she said was would you please draft the letter  
2 for me.

3       Q    Sir, answer the question, who insisted the loan  
4 language be in there you or Katie Bowen?

5       A    Neither.

6       Q    Who drafted the document?

7       A    I drafted it.

8       Q    Did she tell you at any time I want you to make that  
9 payment of my retroactive raise a loan? Did she ever tell  
10 you that prior to you drafting this document?

11      A    She didn't ask for me to do anything but to draft the  
12 letter so I did.

13      Q    Who determined it was a loan?

14      A    I wrote the letter, so that was what was drafted and  
15 that is what she signed.

16      Q    So, who does she owe the money to?

17      A    It goes back into the reconciliation.

18      Q    The loan is to whom?

19      A    Is to the reconciliation.

20      Q    No. There was a loan which has been granted to me  
21 for \$1100 for the 23 weeks due me from June 12, 2009, a loan  
22 which is granted to me. You drafted it, Katie Bowen signed  
23 it, can I not correctly infer that this would suggest that  
24 you or you and Ms. Sullivan made a loan to her in the amount  
25 of \$1100?

26      A    The answer is that is what the agreement says.

27      Q    So, when does she have to pay the loan back and to

1 whom?

2 A The loan goes to the reconciliation statement that  
3 dates back to February where it said specifically in the  
4 previous email that those were the terms. The terms were  
5 that the loan would be fulfilled at which point in time that  
6 the Court made its determination.

7 Q So, what you're saying is that you wouldn't agree to  
8 pay her that money if it was characterized as anything but a  
9 loan pending the determination of this Court on your motion  
10 for modification; is that correct?

11 A That is incorrect.

12 Q Okay.

13 A You cannot make that inference.

14 Q Then why is it reflected as a loan? I just want to  
15 know who gets paid the money? Katie Bowen, it would suggest  
16 to me, owes somebody \$1100.

17 A Right.

18 Q Does she --

19 A The reconciliation --

20 Q -- Does Katie Bowen owe \$1100 to somebody?

21 A To both of us.

22 Q She does?

23 A Yes.

24 Q When is she going to pay that?

25 A She has been given the money and the loan is forgiven  
26 at the point in time that the Court makes its decision.

27 Q Okay.

1 A So, I've paid half and Suzanne has paid half.

2 Q Is the loan conditional upon how this Court rules?

3 A Well, the Court is going to make a determination as  
4 to what the new percentages are.

5 Q Why is her money conditioned on what this Court  
6 rules.

7 THE COURT: All right. We are not getting  
8 anywhere.

9 MR. COLLINS: Okay.

10 THE COURT: I see the letter, I heard the  
11 questions and I heard the answers.

12 Q You received compensation for what you claim to be  
13 the insurance premium for Mr. Barrington in June; is that  
14 correct?

15 A Yes, sir.

16 Q And you have been fully compensated now pursuant to  
17 the way you calculated that you had been sort of taken  
18 advantage of; is that a fair statement?

19 A It was what Suzanne also agreed.

20 Q Is it an outstanding issue between the two of you  
21 anymore?

22 A Not any longer, no.

23 Q Then why haven't you trued-up on the other items in  
24 the February reconciliation such as softball and baseball  
25 and all those other things? Why haven't you trued-up on  
26 those?

27 A Because there were limited funds to make all of the

1 decisions based upon the decline of the income. So, the  
2 decision to be made was based upon the funds that are  
3 available and the financial affidavit that the Court has in  
4 its hands very clearly indicates that since February of last  
5 year if you look at past financial affidavits that have been  
6 filed with this Court -- very clearly, I am in deep debt for  
7 having paid the 65%.

8 Q You have 2.6 million dollars worth of assets, do you  
9 not, sir?

10 A Non liquid assets, that is correct, sir.

11 Q And if you have your job through the end of this year  
12 you will be paid in excess of \$350,000 gross from our  
13 employment; isn't that correct, sir?

14 A Sure, that's what the affidavit says.

15 Q And so you couldn't pay a \$225 baseball registration,  
16 you couldn't pay 65% of that?

17 THE COURT: I am going to bring this to a halt.  
18 I get the point. Let me just tell you, and I'm  
19 speaking to both parties now, Mr. Nowacki you owe the  
20 expenses that are on Schedule B on a 65/35 basis  
21 until the Court says otherwise. I think it would be  
22 in your best interest to pay the 65/35.

23 You also owe money, you have admitted owing, for  
24 at least the last two reconciliations the September  
25 and November or something, and I'm not quite sure  
26 what they are, and the fact that you actually offered  
27 to pay some money today. I am suggesting that those

1 two conditions that you owe the 65/35 until changed,  
2 if it is changed, and there is no guarantee it will  
3 be. If it changes then she's going to owe you money  
4 back, but right now you owe it, and you are in  
5 violation of court orders by owing it. You are not  
6 entitled to say I'm going to pay 50/50 until the  
7 Court says you are only to pay 50/50 or 53/47 or  
8 whatever it is. Is that clear?

9 MR. NOWACKI: Yes, Your Honor.

10 THE COURT: So, I am suggesting to you that you  
11 pay these items promptly.

12 MR. NOWACKI: And I said I will.

13 THE COURT: I didn't hear you say would, I heard  
14 you say it's something you don't contest --

15 MR. NOWACKI: I --

16 THE COURT: Just a second, I am talking. I  
17 didn't ask you to respond. So, I'm suggesting that  
18 you pay those at the appropriate percentage rate ASAP  
19 because the Court hasn't made any decision yet. What  
20 I am suggesting to Ms. Sullivan is that I get a  
21 report in ten days of what you believe has not been  
22 paid, and if we're talking about a couple hundred  
23 dollars I want the motion for contempt withdrawn.

24 MR. COLLINS: Yes, Your Honor.

25 THE COURT: If we're talking about a nebulous  
26 sum -- you both make a tremendous income. You both  
27 spend it lavishly according to the affidavits I've

1 read, \$100 a piece or \$80 for some and a \$100 a piece  
2 for lunch and dinner in New York. I'm not trying to  
3 make an example of you, I am just telling you the  
4 facts of life. You are both extremely lucky people.

5 We've got the other version of the divorce court  
6 in this courthouse and it's down in room 1A, go down  
7 there sometime, so those are people who don't have a  
8 damn cent and they are trying to get child support,  
9 they are trying to get rent paid and they get hauled  
10 off in manacles.

11 Now, that is not probably going to happen to  
12 either one of you. So, stop spewing about a couple  
13 of hundred dollars here and there. Now, I think they  
14 are both kind of tough questions. I'm not saying  
15 anybody is entirely wrong or entirely right on either  
16 one of these things that we've talked about today,  
17 and I don't know what I'm going to do about that.

18 I don't need any further information on the  
19 motions for modification of the 65/35. I do want  
20 some information that will come essentially from both  
21 of you but I'm asking for Ms. Sullivan and her  
22 attorney to give me the information copy and file it.  
23 Don't just send me a little letter, file it in  
24 response to court orders given on December 2, about  
25 what you now claim is due and that's ten days so you  
26 have ten days to do what I suggested when I was first  
27 talking to you. Is anybody unclear about what I just

1           said?

2           MR. COLLINS: Not unclear, Your Honor, I just  
3           want a clarification, Ms. Sullivan just asked me a  
4           relevant question. Do we do the reconciliation after  
5           Mr. Nowacki pays what he thinks he owes or do we do  
6           the reconciliation before he pays?

7           THE COURT: After the ten days, in other words,  
8           if you think based upon what you kind of conceded  
9           that you owed, based on getting reconciliation and  
10          based upon my advisement to you is that you owe 65/35  
11          until otherwise directed, and if it subsequently  
12          becomes a decision of the Court that you should owe  
13          less for a period of time then Ms. Sullivan owes you  
14          money back.

15          I am suggesting this timeline and you can tell  
16          me in the next thirty seconds because that's all  
17          we're going to have. I am suggesting that you make  
18          those payments in five days and you make your report  
19          in ten.

20          MR. NOWACKI: Not a problem.

21          THE COURT: No problem?

22          MR. COLLINS: Agreed, Your Honor.

23          THE COURT: Thank you, Your Honor.

24          MR. COLLINS: Quick question, did the Court  
25          receive the transcript of the testimony of Mr.  
26          Colin?

27          THE COURT: I don't know.

1           MR. NOWACKI: It's in the court reporters'  
2 office. I thought I brought a copy with me, but when  
3 I checked, Your Honor, I did not.

4           THE COURT: All right.

5           MR. NOWACKI: I know it is ordered.

6           THE COURT: You've ordered it?

7           MR. NOWACKI: Yes, I did.

8           THE COURT: I don't want to take your copy but  
9 if it has been ordered -- can I ask the court monitor  
10 to check on that. That would have been from the  
11 hearing of what day?

12          MR. NOWACKI: September 24<sup>th</sup>, I believe.

13          THE COURT: That's the only part I want.

14          MR. COLLINS: That is the only part I offer,  
15 Your Honor.

16          THE COURT: That is Thomas Colin C-o-l-i-n, the  
17 9-24 testimony of Thomas Colin and you've ordered  
18 that, Mr. Nowacki, so you are going to get a copy and  
19 then I will get a copy from the court monitor's  
20 office directly.

21          MR. COLLINS: Thank you, Your Honor.

22          MR. NOWACKI: Thank you, Your Honor.

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1 SUZANNE NOWACKI : SUPERIOR COURT  
V : JUDICIAL DISTRICT  
MICHAEL NOWACKI : STAMFORD, CONNECTICUT  
: DECEMBER 2, 2009

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C E R T I F I C A T I O N

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10 I hereby certify the foregoing pages are a true  
11 and accurate transcript, to the best of my ability, of the  
12 recorded proceedings of the above referenced case, heard  
13 before the Honorable Taggart Adams, Judge, in the Stamford  
14 Superior Court, Stamford, Connecticut, on the 2<sup>nd</sup> day of  
15 December 2009.

16 Dated at Stamford, Connecticut this 11<sup>th</sup> day of  
17 January 2010.

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Kathy Jordan  
Court Recording Monitor