

FST FA04-0201276S  
NOWACKI, SUZANNE

: SUPERIOR COURT  
: JUDICIAL DISTRICT

VS.

: STAMFORD, CONNECTICUT

NOWACKI, MICHAEL

: SEPTEMBER 24, 2009

**TESTIMONY OF ATTORNEY COLIN ONLY**

B E F O R E:

HONORABLE STANLEY NOVACK, JUDGE

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

REPRESENTING THE PLAINTIFF:

ATTORNEY KEVIN COLLINS

SELF-REPRESENTING DEFENDANT:

Mr. MICHAEL NOWACKI

Deirdre Clement  
Court Recording Monitor

1 T H O M A S C O L I N,  
2 of 81 Holly Hill Lane, Greenwich, Connecticut,  
3 called as a witness, being first duly sworn, was examined  
4 and testified under oath as follows:

5 THE COURT: All right. Go ahead.

6 MR. COLLINS: May I proceed, Your Honor?

7 THE COURT: Yes.

8 MR. COLLINS: Thank you.

9 DIRECT EXAMINATION BY MR. COLLINS:

10 Q Good morning, Mr. Colin.

11 A Good morning.

12 Q Mr. Colin, what is your profession, sir?

13 A Lawyer.

14 Q And are you admitted to practice in any  
15 jurisdictions?

16 A Yes.

17 Q Which jurisdictions are you admitted to practice in?

18 A Connecticut, New York, and Maine.

19 Q Connecticut, New York, and Maine?

20 A Yes.

21 Q And federal admissions?

22 A Yes.

23 Q Which one, sir?

24 A United States District Court for the District of  
25 Connecticut and Eastern District of New York. It could be  
26 southern, but I think it's eastern.

27 Q And, sir, do you have an area which you practice in

1 primarily?

2 A Yes.

3 Q And what was that area?

4 A Family law.

5 Q Do you practice in any other areas at this time?

6 A No.

7 Q Have you practiced in any other areas since, let's  
8 say, January of 2005?

9 A No.

10 Q Do you have any professional affiliations relative to  
11 your profession?

12 A Yes.

13 Q What would they be, sir?

14 A American Academy of Matrimonial Lawyers, Connecticut  
15 Bar Association, American Bar Association. That's what  
16 comes to mind. The local one here in town, the name changes  
17 every once in awhile.

18 Q Mr. Colin, you were involved in the matter of Suzanne  
19 Nowacki versus Michael Nowacki?

20 A Yes.

21 Q What was the nature of your involvement, sir?

22 A I represented Suzanne.

23 Q Okay. Did you represent her from the commencement of  
24 the proceedings?

25 A Yes.

26 Q And did you represent her through the conclusion,  
27 that is, with a decree of dissolution?

1 A Yes.

2 Q Do you recall, sir, the parties entering into a  
3 separation agreement?

4 A Yes.

5 Q Was Mr. Nowacki represented by counsel?

6 A Yes.

7 Q Do you recall who counsel was?

8 A Tom Parrino.

9 Q And to your knowledge, sir, was he at the attorney at  
10 the time of the decree of dissolution?

11 A Yes.

12 Q Okay. Were, sir, involved in the negotiation of the  
13 separation agreement?

14 A Yes.

15 Q And is it your recollection, sir, that a separation  
16 agreement was signed, and that this matter was not tried as  
17 a contested matter?

18 A Yes.

19 Q It's your understanding that the separation agreement  
20 was accepted by the Court as fair and equitable under all  
21 the circumstances?

22 A Yes.

23 Q In fact, sir, do you recall that one Judge,  
24 specifically Judge Harrigan, declined to adopt this  
25 agreement?

26 A I do not recall that.

27 Q Okay. Do you recall who it was entered before?

1 A No.

2 Q Okay. Do you have any recollection of the financial  
3 settlement in this matter?

4 A Somewhat.

5 Q Okay. Do you recall, sir, anything about the agreed  
6 upon percentage of certain child related expenses as to  
7 which of each party would carry them?

8 A Yes.

9 Q Do you recall, sir, in your dealings with the matter  
10 on what that was predicated on?

11 A You mean who we arrived at the numbers?

12 Q Yes, sir.

13 A My recollection is it was a packaged deal. Tom and  
14 I, Tom Parrino and I did the negotiations that I think  
15 Suzanne, I think, took somewhat less than a 50/50 split of  
16 the assets. I think, she waived alimony or got very limited  
17 alimony. And in exchange for that and whatever else we  
18 negotiated Mr. Nowacki got a greater share of the assets.  
19 And I thought he had to pay two-thirds or somewhere close to  
20 two-thirds of the college child expenses and things like  
21 that. That's my general recollection.

22 Q And with regard to that, sir, is it your recollection  
23 that the percentage that he was to pay toward child related  
24 expenses and college was predicated solely on the relative  
25 incomes of the parties at that time?

26 A Not solely on it, no.

27 Q Okay. That was a factor?

1 A I'm sure that was a factor, yeah.

2 Q As was the asset distribution?

3 A Yes.

4 Q As was a waiver of alimony?

5 A Yes. I don't remember if it was waiver or whether it  
6 was very little. But it was, you know, it was a typical  
7 case you negotiate the whole case you don't do it piecemeal.

8 Q Okay.

9 MR. COLLINS: May I approach the witness, Your  
10 Honor?

11 THE COURT: Yes.

12 BY MR. COLLINS:

13 Q Showing you the separation agreement, sir, asking you  
14 to look at Article 3, just let me know if your recollection  
15 is refreshed with regard to alimony?

16 A Yes.

17 Q In what way is your recollection refreshed with  
18 regard to alimony?

19 A Each party waived alimony.

20 Q And is it your position, sir, that that was part and  
21 parcel -- part of the reason that the child support was  
22 stipulated as it was?

23 A Yes.

24 Q Sir, at some point you resigned this case; is that  
25 correct, sir?

26 A Yes.

27 Q And when was that?

1 A I don't recall exactly. It wasn't that long ago, but  
2 I don't remember exactly. Maybe within the past six months  
3 or year something like that.

4 Q Sometime this year, sir?

5 A Yes. I can't tell you the exact date. I think I  
6 filed a motion actually.

7 Q Okay. But the motion was never acted on, was it,  
8 sir?

9 A Correct.

10 Q Did I file an appearance in lieu of your appearance?

11 A Yes.

12 Q Were you offended by my replacement of you in this  
13 case?

14 A No.

15 Q Why, sir, did you seek to withdraw from this case?

16 A Shortly before I moved to withdraw the emails I was  
17 getting from Mr. Nowacki were increasingly concerning to me.  
18 In my mind they were threatening to myself and my children.  
19 And I went to the Greenwich Police Department and reported  
20 it, and I told them what happened. And I wanted to get out  
21 of the case. I didn't want to be in the case where I felt  
22 myself or my children or my family were threatened. That's  
23 why.

24 Q And when you say, threatened, sir, in what ways did  
25 you feel threatened?

26 A I don't recall the specifics of the emails. But the  
27 emails I was getting from Mr. Nowacki, because he was

1 representing himself so he was communicating me, were  
2 disturbing. I mean, they were talking about my children.  
3 You know, a religious undertones to them about God.  
4 Disturbing to me, so I wanted to get off the case.

5 Q Did you leave the case because you were in any  
6 disagreement with Ms. Sullivan about your representation of  
7 her?

8 A Not all.

9 Q Is it a fair statement, sir, that you probably would  
10 have stayed in the case but for what you perceived to be  
11 those threats?

12 A Probably. I can't for sure, but I probably would  
13 have, yes.

14 Q Did you withdraw from the case -- withdrawn. Do you  
15 know what a noisy withdrawal is, sir?

16 A I'm sorry?

17 Q Do you know what a noisy withdrawal is, sir?

18 A No.

19 THE COURT: Neither do I.

20 MR. COLLINS: Okay. Mr. Nowacki will tell us.

21 THE COURT: Oh.

22 THE WITNESS: I never heard that before.

23 BY MR. COLLINS:

24 Q Were there any concerns that you have which  
25 contributed toward you wanting to withdraw from this case  
26 relative to the actions of Ms. Nowacki --

27 THE COURT: Is it really relevant to get

1 involved in that detail?

2 MR. COLLINS: I know it's coming, sir, that's  
3 all.

4 THE COURT: All right. He may answer.

5 BY MR. COLLINS:

6 Q Were you concerned about any of the activities or  
7 actions of Ms. Sullivan formerly Ms. Nowacki, is that why  
8 you got of the case, sir?

9 A Not at all.

10 MR. COLLINS: I have nothing further, Your  
11 Honor. Thank you.

12 THE COURT: You may inquire about what he just  
13 testified to.

14 MR. NOWACKI: Yes, sir.

15 CROSS-EXAMINATION BY MR. NOWACKI:

16 Q Mr. Colin --

17 MR. NOWACKI: I'd like to mark a couple of  
18 exhibits here. One is the Judge Harrigan transcript  
19 from June 29. And also the transcript in front of  
20 the Honorable Tierney also joined that same  
21 afternoon.

22 MR. COLLINS: I have no objection to either of  
23 those, Your Honor.

24 THE COURT: Mark the first by Harrigan, what's  
25 the next number?

26 THE CLERK: That would be Defendant's Exhibit  
27 10.

1 THE COURT: Ten.

2 (Exhibit 10, was marked as a full exhibit.)

3 THE COURT: And the other one will be 11.

4 THE CLERK: It would be 11.

5 (Exhibit 11, was marked as a full exhibit.)

6 MR. NOWACKI: And, Your Honor, I must admit that  
7 on a folded copy that I had in my documents of the  
8 Court, but I am returning Exhibit 7.

9 THE COURT: Oh, good. I'm glad you fessed up.  
10 That's okay.

11 MR. NOWACKI: And I apologize for that  
12 transgression. It was unintentional, I assure you.

13 THE COURT: I accept that. She's marking them  
14 as full exhibits.

15 MR. NOWACKI: Then I'm going to need a copy for  
16 myself and then I'm going to ask some questions.

17 THE COURT: I'm going to let the witness look at  
18 them. You probably need them; right?

19 MR. COLLINS: I'm sorry, Your Honor? I don't  
20 know what Mr. Nowacki is going to do.

21 THE COURT: All right. I'll hold them if he  
22 needs them.

23 MR. NOWACKI: Yes. I would like him to take a  
24 look at the...

25 THE COURT: Yes. Here you go.

26 BY MR. NOWACKI:

27 Q Good morning, Mr. Colin.

1 A Good morning.

2 Q Nice to see you. It's okay that we talk today --

3 A Could you please stand back by your counsel table?

4 Q I'd be happy to if you prefer me to do that. I have  
5 a little difficulty looking into your eyes, which I like to  
6 do.

7 THE COURT: All right. Let's move on.

8 BY MR. NOWACKI:

9 Q Okay. On June 29 we reported to court and we were  
10 assigned to Judge Harrigan that day as our first stop in  
11 attempt to get the agreement, which we both had signed at  
12 that point in time, approved by the Court; is that correct?

13 A I don't remember.

14 THE COURT: Is that June 29 of --

15 MR. NOWACKI: Of 2005.

16 THE COURT: Okay. He said, he didn't remember.

17 All right. Go ahead.

18 BY MR. NOWACKI:

19 Q Do you remember the sequence of the two judges who we  
20 saw that day?

21 A No.

22 Q All right. Would you go to the transcript from Judge  
23 Tierney, please?

24 A Judge Tierney, sure.

25 Q And would reflect then upon review upon that first  
26 page were there references to Mr. Parrino's comment saying,  
27 we had commenced an uncontested dissolution which Judge

1 Harrigan has just mistried upon learning that he had  
2 pretried the case and Attorney Colin was in the midst of the  
3 canvass of his client. Does that refresh your memory that  
4 we would have been before Judge Harrigan before we got to  
5 Judge Tierney that day?

6 A That's what it says, yeah.

7 Q So does that refresh your memory?

8 A It really doesn't. This is --

9 THE COURT: Well, could we get over that?

10 THE WITNESS: -- what it says.

11 MR. NOWACKI: Okay.

12 THE COURT: We went to Judge Harrigan he didn't  
13 do it because he pretried the case.

14 MR. NOWACKI: That's correct.

15 THE COURT: So you went to Tierney same day?

16 MR. NOWACKI: That's correct.

17 THE COURT: All right. Go ahead.

18 MR. NOWACKI: Okay.

19 BY MR. NOWACKI:

20 Q So in the course of the transcript here which totals  
21 with the certification 27 pages. I would ask you a couple  
22 of questions in regards to, you did ask your client Suzanne  
23 Nowacki at that point in time, to take the stand so that you  
24 could, basically, go through the agreement to insure it's  
25 fairness and it's equity. Is that a fair statement?

26 A I'm not sure if I asked her to go to the stand or  
27 whether the Court did, but I'm that's what happened. Yes.

1 THE COURT: What page a refresher maybe?

2 MR. NOWACKI: Page -- I'm trying to look here to  
3 see at what point in time she took the stand.

4 THE WITNESS: Which one am I looking at?

5 THE COURT: Tierney. I guess before Judge  
6 Tierney.

7 MR. NOWACKI: Tierney. Yes, this is Tierney.

8 BY MR. NOWACKI:

9 Q And at the bottom of page 7 --

10 THE COURT: Is the question whether or not the  
11 witness canvassed his client?

12 MR. NOWACKI: Yes.

13 THE COURT: And he said, he didn't remember  
14 whether he did.

15 THE WITNESS: Well, no, he asked me who called  
16 her to the stand me or -- whether or I called her to  
17 stand. I said, I don't know whether the Judge did or  
18 I, but I'm sure I asked her questions.

19 THE COURT: Okay. I misheard that.

20 BY MR. NOWACKI:

21 Q All right. So in any case, you do remember  
22 canvassing --

23 A I did. Page 7 I called Mrs. Nowacki to the stand.

24 Q Okay. Thank you. So you asked her a series of basic  
25 questions on page 9 and 10 which were perfunctory going  
26 through various signatures, turning to the parenting plan,  
27 confirming it was my signature, the guardian ad litem

1 signature. We're now on page 11, at page 11 you started  
2 going into the financial issues of the case in regards to  
3 lump distribution that was paid as part of the settlement;  
4 is that correct?

5 A What page?

6 Q Point 12 on page 11.

7 A Point 12 says --

8 Q Page 11 -- I'm sorry, point 15.

9 A Yeah, I see it.

10 Q So there was a \$450,000 agreement that I was required  
11 to pay within 30 days; is that correct?

12 A It says forthwith.

13 Q At point 22 it says, within 30 days; is that correct?

14 A Yes.

15 Q And to the best of your knowledge, was that portion  
16 of the agreement fulfilled by me by refinancing the home and  
17 getting that accomplished within 30 days?

18 A I assume so. I don't know for sure. I didn't hear  
19 any complaints.

20 THE COURT: Did you hear what he said, he said  
21 he didn't hear any complaints.

22 BY MR. NOWACKI:

23 Q On the Neuberger and Herman account that was  
24 referenced on page 12 that became the sole asset of Suzanne  
25 Sullivan along with all of the tax obligation and margin  
26 account information as well attached to that account.

27 That's on page 12 line 9 through line 12?

1 A Yes.

2 Q And that there were certain stock options that were  
3 granted to me in the year 2005 which were reviewed at that  
4 point in time, and that you agreed at that point in time  
5 that you client had said that was not going to be part of  
6 her distribution as part of the settlement; is that correct?

7 A I'm sorry, I don't understand the question.

8 Q In 2005 there were certain options that were granted  
9 to me, and you canvassed her on that subject starting with  
10 line 16 page 12. And that it was confirmed by your client  
11 in question on line 21 certain options granted in 2005 and  
12 certain restricted stock granted in 2005 to your husband are  
13 going to remain his sole property; correct?

14 A Yes.

15 Q And your client answered, right?

16 A Yes.

17 Q And then you went through a series of other assets  
18 personal property, you know, on page 13. And you make a  
19 point to say that the asset division was 60/40 at that point  
20 in time; is that correct?

21 A Which line are you on?

22 Q That's page 13 line 7.

23 A Yes, 60/40. 60/40 division your husband.

24 Q Okay. And that included all of the assets that were  
25 on the financial rundown that was attached to the agreement;  
26 is that correct? That was your evaluation of the 60/40?

27 A I don't remember.

1 Q Do you recall any conversations with Attorney Parrino  
2 in regards to the amount of assets that each of the two  
3 parties brought to the marriage and that being one of the  
4 reasons that I stood steadfast in my conversations with my  
5 attorney to say that there was a differential at the point  
6 the time we got married for almost \$200,000 between the  
7 assets that I brought to the marriage and the assets that  
8 your client brought to the marriage. Do you recollect any  
9 conversations with attorney about that?

10 A About what?

11 Q About whether or not there was a point to be made in  
12 regards to the 60/40 agreement that took into consideration  
13 that I had brought more assets to the marriage?

14 A I don't have specific recollection. I'm sure there  
15 was a discussion at some point, but I can't tell you a  
16 specific date and the conversation.

17 Q Okay. And there's no document that you can recall  
18 that would have reflected that; is that correct?

19 A That reflect --

20 Q That was ever shared with you that indicated that the  
21 differential was \$188,000 based upon what each party brought  
22 to the marriage?

23 A You mean a document that reflected a conversation  
24 that I had with Mr. Parrino?

25 Q Correct.

26 A I don't remember.

27 Q When I give testimony later -- we'll address that I

1 guess. Because if he didn't share that with you, then I  
2 can't hold you accountable for something that I shared with  
3 him. So I will reveal that as part of my testimony at a  
4 later point in time.

5 So then there were other matters here, do you recall  
6 a conversation we had with Laci Bernier in the room on the  
7 subjection of college expenses?

8 A Who's we?

9 Q In the room was myself, you, you client, Laci Bernier  
10 in your offices at the 1 Holly Lane?

11 A I don't remember specifically.

12 Q Okay.

13 A You mean during the divorce case?

14 Q Excuse me?

15 A You mean before the divorce or after the divorce?

16 Q No. When we structured the agreement. That that's  
17 what Mr. Collins is suggesting here is that certain things  
18 were not perhaps discussed in the agreement that should  
19 have.

20 And what I'm trying to nail down with you is to the  
21 best of your recollection, do you remember a specific  
22 conversation when we were in the room talking the funding of  
23 the college expenses which we agreed would be split 65/35?

24 A I don't recall a specific conversation, no.

25 Q Okay. You don't -- do you recall a conversation  
26 where we talked about UConn cap in your offices?

27 A Not specifically, no.

1 Q All right. Because there's a large difference  
2 between the UConn cap and a four year college education; is  
3 that correct?

4 A It depends what college you're talking about.

5 Q Well, pulled the cap off, and the cap currently is  
6 estimated four year college education would be somewhere of  
7 the vicinity my recollection of our conversation was  
8 \$265,000 was the benchmarking tool we used for that  
9 conversation. And that we used a benchmarking tool --

10 MR. COLLINS: Well, I'm going to objection, Your  
11 Honor. Is that a question or a statement?

12 THE COURT: Well, when you testify you can tell  
13 me that. You understand that.

14 MR. NOWACKI: I understand that. But I'm trying  
15 to refresh his recollection --

16 THE COURT: Yes. Fine.

17 MR. NOWACKI: -- of a very specific --

18 THE COURT: Fine.

19 MR. NOWACKI: -- conversation that we did --

20 THE COURT: Fine.

21 MR. NOWACKI: -- have on that subject.

22 THE COURT: Fine.

23 BY MR. NOWACKI:

24 Q In your offices. And I can assure you I can find the  
25 date in there.

26 A If anything you have to help me remember or look at,  
27 I don't recall a specific conversation about it though.

1 Q Do you recollect a meeting that was held in your  
2 office with Laci Bernier who was present, with Tom Parrino  
3 who was present, with myself, your client, and yourself?

4 A I don't.

5 Q Okay. That surprises me because you've always  
6 impressed --

7 MR. COLLINS: Objection, Your Honor.

8 THE COURT: Yes. Yes. The point is, sir, I  
9 want to understand your point. Your point is that  
10 that's part of the bargain for consideration that  
11 there was no cap for the college expenses shared, is  
12 that your point?

13 MR. NOWACKI: All right. Your Honor, what I'm  
14 really getting around to is a discussion about the  
15 law of diminishing returns.

16 THE COURT: All right.

17 MR. NOWACKI: At some point in time each case  
18 you get to a point where the cost of continuing the  
19 case is greater than the good that will be achieved.

20 THE COURT: I understand your Malthusian  
21 Doctrine here, but ask the next question.

22 MR. NOWACKI: All right.

23 THE COURT: It's called a futile utile.

24 BY MR. NOWACKI:

25 Q In 2005 when we had these discussions, because they  
26 would have proceeded the signing of the agreement. The  
27 UConn cap was in the vicinity of \$16,500, is that a fair

1 assessment based on your recollection of that conversation  
2 that day or no?

3 MR. COLLINS: Your Honor, I object. He said he  
4 can't remember the conversation.

5 THE COURT: He can't remember. That sounds  
6 about the area. I think we talked about that the  
7 last time we were here. Ask the next question.

8 MR. NOWACKI: All right.

9 BY MR. NOWACKI:

10 Q So if, if then the differential between the UConn cap  
11 and a four year private education in 2005 on the theoretical  
12 basis was \$265,000, the difference for four years would be  
13 approximately \$200,000 per child; is that correct?

14 A I'm sorry, I didn't follow that.

15 Q If the UConn cap for four years at sixteen five would  
16 be \$66,000 and the cost of four years would be \$265,000 that  
17 the differential is approximately \$200,000 per child; is  
18 that correct?

19 A Yeah.

20 Q If those are the facts?

21 A If those are the facts, and there's not scholarships  
22 or anything else.

23 Q Correct.

24 A Then the difference between those two numbers is  
25 \$200,000.

26 Q Correct. So, therefore, then with two children being  
27 involved here with Tim and Kerry being at the age they are,

1 the subject of education was an important one in every  
2 conversation that you had with my attorney, I would hope; is  
3 that correct?

4 A I wouldn't say education was a topic in every  
5 conversation, but it was a topic of conversations. I can't  
6 tell you it was every conversation.

7 Q And I'm really trying to get to the essence of the  
8 importance of that subject the children's education should  
9 not be compromised by divorce. Is that something that you  
10 share?

11 THE COURT: By what? By what?

12 THE WITNESS: The force?

13 MR. NOWACKI: By divorce.

14 THE COURT: Divorce, all right.

15 BY MR. NOWACKI:

16 Q Is that an opinion that you share?

17 MR. COLLINS: I'm going to objection, Your  
18 Honor. Is he an expert witness?

19 THE COURT: Well, I still don't know where we're  
20 going. That's the part that I started asking you  
21 about, sir.

22 MR. NOWACKI: All right. We're talking about  
23 the 60/40 split and the equity of the 60/40 split.

24 THE COURT: All right. And so?

25 MR. NOWACKI: All right. What I made so far is  
26 the point there was a potential differential of  
27 approximately \$200,000 --

1 THE COURT: Right. That I understand.

2 MR. NOWACKI: -- that exist in the premarital  
3 assets.

4 BY MR. NOWACKI:

5 Q And by pulling off the cap if we tried the case, you  
6 were well aware at that point in time, and that was a topic  
7 of discussion of that date that you cannot recollect.

8 That then the cap would be the net result of the  
9 maximum that the Court could award?

10 THE COURT: So your point is that you committed  
11 yourself to pay a lot more money than 65 percent of  
12 \$16,500, is that your point?

13 MR. NOWACKI: That is correct.

14 THE COURT: Okay. Next question.

15 BY MR. NOWACKI:

16 Q So with that said, we now have \$200,000 of  
17 differential between each child in future obligations that I  
18 was -- I felt a responsibility for to ensure that Tim and  
19 Kerry would not have an impact on their future because of  
20 this divorce. And I expressed that to you personally in  
21 that meeting.

22 MR. COLLINS: So, Your Honor, is this a question  
23 or testimony?

24 THE COURT: Yes.

25 BY MR. NOWACKI:

26 Q And do you recollect that conversation?

27 A What conversation?

1 Q That we had in your office with all of those people  
2 present, because you don't seem to remember anything that  
3 occurred in that meeting at this point in time, and I'm  
4 trying to refresh your memory?

5 MR. COLLINS: Well, Your Honor, I think I've  
6 been pretty lenient on this. This is not the proper  
7 way to refresh the recollection of the witness.

8 THE COURT: Well, be that as it may. I think  
9 you made your point, sir.

10 MR. NOWACKI: All right.

11 THE COURT: Because the agreement speaks for  
12 itself there's no cap. And you committed to pay 65  
13 percent of whatever school the child goes to. So  
14 it's there.

15 MR. NOWACKI: Correct.

16 BY MR. NOWACKI:

17 Q In the agreement to the best of your recollection, is  
18 there a stipulation in the agreement that makes the  
19 children's related expenses non-modifiable?

20 A I don't know. I'd have to look at. I don't believe  
21 so, but I'd have to look at.

22 MR. NOWACKI: Your Honor, can I --

23 MR. COLLINS: I stipulate that there's no non-  
24 modifiable clause, Your Honor, in Article 6 of the  
25 separation agreement.

26 THE COURT: My recollection it's not non-  
27 modifiable. That's why we're here.

1 BY MR. NOWACKI:

2 Q And relative to the college education is there any  
3 stipulation in the agreement that says the college split  
4 with the cap off was non-modifiable?

5 A I don't believe so.

6 Q So, therefore, there is a possibility here in the  
7 context of that agreement, if it doesn't stipulate that it's  
8 non-modifiable that it could be modifiable, is that your  
9 understanding of how an agreement would work as an attorney?

10 A I think that there's an issue of law there that I  
11 don't know the answer to. The Court will have to decide. I  
12 don't know.

13 Q And you remember conversations that you and I had  
14 about that subject in December of 2008 in your offices, do  
15 you recollect that conversation?

16 A Yes. Yeah, that's when you were representing  
17 yourself; right?

18 Q That is correct.

19 A Yes, I remember that.

20 Q So we have a gentleman's disagreement on the subject?

21 THE COURT: On what?

22 MR. NOWACKI: On the subject of whether or not  
23 the 65/35 cap in the agreement is subjection to  
24 modifiability?

25 MR. COLLINS: Your Honor, he's not called upon -  
26 - I think Mr. Colin said it best, that calls for a  
27 legal conclusion which is ultimately --

1           THE COURT: Well, the reason why you're having  
2           this line of questioning is that you suggested last  
3           time it was non-modifiable. That's why he's asking.

4           MR. COLLINS: I understand that, but I didn't  
5           ask it through this witness.

6           THE COURT: I understand.

7           MR. COLLINS: Okay.

8           THE COURT: So we'll argue about that later,  
9           okay.

10          BY MR. NOWACKI:

11          Q    You and I made a decision early on in this process to  
12          communicate by email which was more favorable to you and  
13          favorable to me; is that correct?

14          A    I don't think communicating to you by email was  
15          favorable to me.

16          Q    At the beginning of the process we agreed that that's  
17          how we would both communicate with one another; is that  
18          correct?

19          A    I don't recall a specific agreement to that effect,  
20          but I know we did communicate via email, yes.

21          Q    Okay. Do you recollect a conversation that you and I  
22          had with Laci Bernier on the phone with the tonality of some  
23          of your questions and your statements in these emails that  
24          were forwarded to Laci Bernier?

25          A    I'm sorry, I don't know what tonality means.

26          Q    That you tone was --

27          A    Oh, okay. Tone. What's the question?

1 Q Do you recollect a conversation that you and I had  
2 with Laci Bernier on a three way telephone conversation  
3 where we discussed the tonality of some of the emails we  
4 were exchanging were both on the edge of disrespectful, do  
5 you recollect that conversation?

6 A No.

7 Q Okay. I'm going to quote to you an email dated  
8 Thursday, February 5, 2009, at 9:01 a.m. that I will put on  
9 the court record.

10 MR. COLLINS: Your Honor, that's improper.  
11 Objection.

12 THE COURT: State what the basis of the  
13 objection is. Improper is not --

14 MR. COLLINS: He wants to testify or something.  
15 He wants to put something burdensly in evidence that  
16 is from a written document. The document is not in  
17 evidence.

18 THE COURT: Okay. That's a different story. So  
19 you going to offer it? You want to look at?

20 MR. NOWACKI: I'm ready to approach the bench  
21 with a series of emails which have been copied from  
22 Tom Colin to myself.

23 THE COURT: I'm really trying to help you move  
24 this thing along.

25 MR. NOWACKI: I understand.

26 THE COURT: I'm trying --

27 MR. NOWACKI: But Attorney Colin raised the

1 aspect of the reason why --

2 THE COURT: Okay. That's fair.

3 MR. NOWACKI: And that's what I'm --

4 THE COURT: That's fair.

5 MR. NOWACKI: That's what I'm addressing.

6 THE COURT: Okay. That's fair.

7 MR. NOWACKI: And I apologize that I have to do  
8 that because I would not go there.

9 THE COURT: No, no. That's fair. Okay. I  
10 withdraw my question.

11 MR. COLLINS: You've handed me stuff other than  
12 -- what do you want to put into evidence?

13 MR. NOWACKI: I want to quote from his email.

14 MR. COLLINS: Well, you got put the document --

15 MR. NOWACKI: And put it into evidence.

16 MR. COLLINS: I want to know what you want to  
17 put in evidence?

18 THE COURT: Which one or which ones you mean.

19 MR. COLLINS: Which one or ones?

20 MR. NOWACKI: This series page 1 through 5.

21 MR. COLLINS: Okay. Now, I need to look at  
22 this. So take the rest back.

23 No objection, Your Honor.

24 THE COURT: You want to mark them as one?

25 MR. NOWACKI: It's five pages of dialogue.

26 THE COURT: Let's make it one exhibit then.

27 MR. NOWACKI: One exhibit.

1 THE COURT: One number I mean.

2 MR. NOWACKI: One number.

3 THE COURT: And she'll staple it together.

4 MR. NOWACKI: Great. Thank you.

5 THE COURT: And if you want to put, like, A, B,  
6 C, and D on each page, so if you want to refer to one  
7 separately.

8 MR. NOWACKI: All right. And I would also like  
9 to mark this as the next exhibit, which is the  
10 correspondence from --

11 THE CLERK: Defendant's Exhibit 12 marked as  
12 full.

13 (Exhibit 12, was marked as a full exhibit.)

14 MR. NOWACKI: Indicating the date and time of  
15 the withdrawal.

16 MR. NOWACKI: No objection.

17 THE COURT: Is that one page?

18 MR. NOWACKI: Yes.

19 THE COURT: All right. That's the next one.  
20 She just marked 12. This will be 13.

21 THE CLERK: Thirteen. Defendant's Exhibit 13  
22 marked as full.

23 (Exhibit 13, was marked as a full exhibit.)

24 THE COURT: Put A, B, C on each page.

25 THE CLERK: Okay.

26 THE COURT: So that's he's referring to a page  
27 the record can be clear what he's talking about.

1 She'll give this right back to you.

2 MR. NOWACKI: And may I approach the bench  
3 because I do not have a duplicate copy of this  
4 document to ask this question to ask Attorney Colin's  
5 to read certain sections that he offered.

6 THE COURT: You mean approach the witness you  
7 mean.

8 MR. NOWACKI: Approach the witness. I'm sorry,  
9 Your Honor.

10 THE COURT: Do you have any problem with that,  
11 Mr. Colin?

12 THE WITNESS: No.

13 THE COURT: Yes, you may.

14 BY MR. NOWACKI:

15 Q I'd like you to review an email that you offered to  
16 me on Thursday, February 5, 2009, at 9:01 a.m., and you can  
17 read the entire exchange --

18 MR. COLLINS: Your Honor, it's in evidence, so  
19 if Mr. Colin needs to refresh his recollection or  
20 something that's fine, but --

21 THE COURT: Yes. Read it to yourself, and then  
22 ask him a question.

23 MR. NOWACKI: All right.

24 THE COURT: All right. You can ask him a  
25 question.

26 BY MR. NOWACKI:

27 Q On Thursday, February 5 at 9:01 a.m., do you

1 recollect writing the following based upon the review of  
2 this document:

3 Don't blame me for your children suffering. They're  
4 your kids not mine. And you're the one making these choices  
5 not me. Baseball and hockey have already been agreed upon  
6 you can't revoke that agreement now. I think the law is  
7 clear the current order must be complied with until  
8 modified. Just like you failed appreciate your  
9 contributions to the causes for the breakdown of the  
10 marriage, you fail to appreciate your role in the current  
11 dispute. You see yourself as a saint and everyone who  
12 disagrees with you as the devil. While I do respect your  
13 view, I disagree with it. I would very much like to resolve  
14 this dispute in an amicable manner, but it appears to be  
15 impossible.

16 Do you recollect writing that?

17 A No. I'm saying I didn't. If you're asking me  
18 whether I remember sitting there typing it, the answer is,  
19 no.

20 Q But you can confirm that you did write this email?

21 A Yes.

22 Q In the que of the email that you just reviewed there  
23 was a lot of explanations that were given about certain  
24 decisions that needed to be made based upon my changing  
25 income at the time in regards to things, like, prepay the  
26 Nanny for vacation time that was part of our original  
27 agreement. And you do recollect some of those things upon

1 the review of this document that related to detailed  
2 explanations that were given about changes in the procedures  
3 and the amount of money that I could contribute, and that  
4 rather than to change the percentages and deny the children  
5 while we were going through this process that I was asking  
6 for an agreement that my requests were reasonable and fair.  
7 Do you recollect any of that from what you just reviewed?

8 A I don't understand the question.

9 Q In this document is a detailed explanation for  
10 disputes we were having, is that a fair assessment?

11 A There's a what?

12 Q A detailed explanation concerning the disputes we  
13 were having about certain expenses in Schedule B?

14 THE COURT: By you? An explanation by you?

15 MR. NOWACKI: Yes.

16 THE COURT: All right.

17 BY MR. NOWACKI:

18 Q You recollect after having reviewed that that I was  
19 always very careful to --

20 A There's an email from you. There's emails from you  
21 to me in there.

22 Q Correct. Correct. Well, we were having a dispute at  
23 the time in regards to the aspect of what was affordable  
24 based upon my changing income at the time, do you recall  
25 that after reviewing this document?

26 A I recall the dispute was that I was that the position  
27 on behalf of my client was you have to comply with the

1 orders of the Court until they're modified. And it was your  
2 position that you were just going to modify it on your own  
3 now because there was some motion that had been filed that  
4 had not been heard upon. And my view was we could agree to  
5 disagree we have to have the motion heard, but until the  
6 orders are modified by the Court they're Court orders and  
7 they have to be complied with. That's my recollection of  
8 the dispute we were having.

9 Q And I would say that's a fair assessment of the  
10 dispute. That's fine. At the point time of February 15 or  
11 thereabouts, was it brought to your attention that there  
12 were expenses in the February 15, 2009, reconciliation  
13 which, I believe, had been fraudulently submitted to me tied  
14 to having David Barrington, Suzanne Sullivan's husband,  
15 healthcare costs underwritten by me in the amounts that were  
16 paid in our quarterly reconciliations. Are you aware of  
17 that conversation? Do you remember that conversation that  
18 we had about that subject?

19 MR. COLLINS: Your Honor, in light of Mr.  
20 Nowacki's objection of earlier about the path that I  
21 took with this last week --

22 THE COURT: You're saying it's outside the scope  
23 of the modification?

24 MR. COLLINS: I think it is.

25 MR. NOWACKI: Okay.

26 BY MR. NOWACKI:

27 Q All right. Let's go to the date of February 22,

1 2009. Do you remember that I contacted you about a document  
2 that I found in my files at home concerning a wire transfer  
3 from the Suisse Bank Corporation for \$132,100?

4 A No.

5 MR. COLLINS: Well, Your Honor, I don't know  
6 what this has to do with the motion for modification  
7 either.

8 THE COURT: Sustained.

9 MR. NOWACKI: This relates, Your Honor, to the  
10 reason why Attorney Colin resigned in my opinion, and  
11 that was a subject that was raised. Because of the  
12 threats that he has characterized in his testimony  
13 related to the discovery of this document and the  
14 implications for his client that were well detailed  
15 in an email exchange the day before he resigned.

16 THE COURT: All right. You want to reply?

17 MR. COLLINS: If he can connect as to why Mr.  
18 Colin resigned. I think, Mr. Colin testified as to  
19 why he resigned. If Mr. Nowacki wants to either  
20 impeach the credibility of the witness on that --

21 THE COURT: Well, that's what he's doing.

22 MR. COLLINS: Well, but he's testifying.

23 THE WITNESS: Trying to do.

24 THE COURT: Obviously.

25 MR. COLLINS: But, I mean, if he's got some  
26 evidence to show that Mr. Colin resigned for a  
27 different reason, you know --

1 THE COURT: Well, I'm going to vacate my ruling.  
2 He may answer the question.

3 THE WITNESS: I think I said, no.

4 THE COURT: Well, I didn't remember that. No.  
5 He said, no.

6 THE WITNESS: He asked me if I recall, and I  
7 said, no.

8 THE COURT: All right. He said, no.

9 BY MR. NOWACKI:

10 Q The context of the date that you resigned the date of  
11 that resignation and notification of that resignation came  
12 to me on Thursday the February 26, is that a fair assessment  
13 of your recollection?

14 A I don't remember. I don't know what you have.

15 Q Okay. This is Exhibit 13, if you can review that,  
16 and perhaps that will refresh your recollection?

17 A Okay. What's the question?

18 Q The question is, that's the day that I was notified  
19 of your resignation from the case; is that correct?

20 A That is not correct. This is an email that attaches  
21 our motion to withdraw. I don't think I'm officially off  
22 the case until I was replaced by Mr. Collins.

23 Q Sometime on the morning of February 26, did you go to  
24 the Greenwich Police Department and have a conversation with  
25 Lieutenant Lanett(ph), do you remember that conversation?

26 A I don't know the date, but I remember meeting a  
27 detective at the Greenwich Police Station.

1 Q And you opened up a harassment claim against me at  
2 that point in time; is that correct?

3 A I didn't open up anything. I report my concerns to  
4 the police. I don't know exactly what they did.

5 Q And at that point in time you asked Attorney Lanett -  
6 - I'm sorry, Detective Lanett to let me know that you were  
7 filing the necessary paperwork to withdraw from the case,  
8 and I was never to talk to you again; is that correct?

9 A I don't recall asking that. I know I told him I was  
10 going to get out of the case because of my concerns. And, I  
11 believe, he said he was going to call you and tell you not  
12 to contact me anymore. I don't specifically remember asking  
13 him to do that. I think he made the decision that that's  
14 what he said he was going to do.

15 Q Okay. And then from that point forward, aside of  
16 this courthouse, have you and I had any contact in any form?

17 A I think I saw you in the hallway once or twice.

18 Q I said outside the courthouse? I mean, outside the  
19 courthouse?

20 A Oh, outside. I'm sorry. Not that I'm aware of.

21 Q So I've abided by your request?

22 A I assume so. I haven't received any word that you  
23 haven't.

24 Q All right. The night before would have been February  
25 25, do you recollect that you and I got engaged in a late  
26 night series of emails, I was at a black tie dinner in New  
27 York City that night, that related then what you then showed

1 to Detective Lenett as your concerns about, quote, threats,  
2 that you felt were being made against your family?

3 A I don't recall a black tie dinner or the date of the  
4 emails. I remember the emails in general, because I'm not  
5 going to forget them. But I don't remember a black tie  
6 dinner. I don't know anything about that.

7 Q Do you recollect in one of those emails where I said  
8 to you, that you were putting your children at risk if you  
9 didn't resign from the case by 5 o'clock the next night  
10 because I was going to report you to the Bar Association for  
11 tax fraud and hiding tax fraud, are you aware of that?

12 A Reporting me for tax fraud?

13 Q No. Reporting your client for tax fraud?

14 A I remember you saying my children are risk. I don't  
15 remember what the other part said.

16 Q Well, the risk --

17 A You have the email.

18 Q The risk assessment and that email related to a  
19 parallel set of circumstances in as much as your pursuit of  
20 non-settlement of the case?

21 MR. COLLINS: Well, I'm going to object, Your  
22 Honor. If Mr. Nowacki has that email I have no  
23 objection to that going into evidence, but he's  
24 talking about an email. Mr. Colin's says he doesn't  
25 remember anything about tax fraud, but he does  
26 remember a threat levied against his children.

27 Now, Mr. Nowacki admitted as much. So I would

1           like to see the email if he has it because he's  
2           talking about it.

3           MR. NOWACKI: Well, I find it somewhat  
4           fascinating that Attorney Colin can remember the  
5           specifics of my email -- of his email or his  
6           understanding of my email and remembers not much else  
7           from the same email.

8           MR. COLLINS: Mr. Nowacki has a perfect spot  
9           here to impeach the credibility of this witness by  
10          producing that document.

11          MR. NOWACKI: I prefer not to.

12          MR. COLLINS: Go ahead.

13          THE COURT: Ask the next question. Let's move  
14          on.

15          MR. NOWACKI: All right.

16 BY MR. NOWACKI:

17         Q    Do you recollect in the email conversations we were  
18         having at that point in time of my assessment of the risk  
19         that you were putting to your children and their educations  
20         in the context of pursuing a course of action that was going  
21         to result in the diminution of the funds that were going to  
22         be available to pay for college education and the agreement  
23         by consuming legal fees that would go towards those college  
24         educations, do you remember an email to that extent?

25          MR. COLLINS: I object, Your Honor.

26          MR. NOWACKI: Well, that's in this email.

27          MR. COLLINS: That's fine. Your Honor, what Mr.

1 Nowacki is suggesting is that if Mr. Colin didn't  
2 capitulate to what he wanted to modify, then Mr.  
3 Colin was at fault for running up legal fees.

4 So the only way for there not to be increase  
5 legal fees in the case or the expenditure of legal  
6 fees was to capitulate to Mr. Nowacki. A common  
7 threat in this case, I assure you.

8 THE COURT: Aren't we going far afield here from  
9 the issue that we're here to solve today, which is  
10 the modification issue?

11 MR. NOWACKI: We are. Only because Attorney  
12 Collins put that into play.

13 THE COURT: Well, he did, and that's why I'm  
14 giving you the leeway to ask the questions. But  
15 there's got to be a point of diminishing return --

16 MR. NOWACKI: Right. Well, and it's coming very  
17 soon because we're at the point in time where  
18 Attorney Colin resigned.

19 THE COURT: All right. I want to take a recess,  
20 but I want to let you finish this line of  
21 questioning, so go ahead.

22 MR. NOWACKI: I'm trying to refresh the  
23 witness's memory of the email.

24 BY MR. NOWACKI:

25 Q And did you hand an email and was it put into the  
26 detective's records attached to that file?

27 A I remember showing emails that concerned me to the

1 officer. I don't remember if he gave them back to me or he  
2 kept them. That I don't remember what he did with them.  
3 But I remember bringing them and showing them to him.

4 Q All right. Well, I'll go down to the Greenwich  
5 Police Department and collect that police report and see if  
6 there's any evidence to validate my contention that there  
7 was an email sent the night before concerning a Suisse bank  
8 account and my concerns for you, your children, but also my  
9 needs to put this into the record because at that point in  
10 time March 23 was the end of the overseas voluntary  
11 compliance of the Internal Revenue Service?

12 A Of what?

13 THE COURT: Let's not go there, Mr. Colin.

14 BY MR. NOWACKI:

15 Q Well, I'm just saying that was the context of the  
16 emails that were sent that night because it was in February  
17 2009 when the wire transfers from the Suisse Bank  
18 Corporation sent by the trustee of the estate of Jane  
19 Mulligan was wire transferred to the account of Suzanne  
20 Sullivan, and that I discovered in that wire transfer in  
21 2009. Right at the period of time where Attorney Colin  
22 resigned the case.

23 THE COURT: Sir, when it's your time to testify  
24 you can tell me all that, and I'll listen to you.

25 MR. NOWACKI: Understand.

26 THE COURT: Okay. Ask the next question.

27 BY MR. NOWACKI:

1 Q All right. In 2004 in November you filed a financial  
2 affidavit for you client, do you recollect, that listed a  
3 distribution from her grandmother's estate of \$135,000, do  
4 recollect that?

5 A 2004?

6 Q Yes, 2004?

7 A I don't remember.

8 Q Okay.

9 MR. NOWACKI: I'm going to mark that.

10 THE COURT: Assume that's correct for the  
11 moment, ask the next question.

12 BY MR. NOWACKI:

13 Q And then the next question would be, when that money  
14 was distributed via wire transfer on January 20, 2005, the  
15 amount of the transfer was \$132,100; is that correct?

16 A I have no idea what you're talking about.

17 THE COURT: As oppose to what was the original  
18 inheritance?

19 MR. NOWACKI: One hundred and thirty-five  
20 thousand dollars.

21 THE COURT: And there's a difference between  
22 that and one thirty-two one, is that what you're  
23 saying?

24 MR. NOWACKI: Correct.

25 BY MR. NOWACKI:

26 Q And that 2 percent is the charge from the Suisse Bank

27 --

1 THE COURT: Oh, I see.

2 MR. NOWACKI: -- for the wire transfer fee.

3 THE COURT: I see. Okay. All right. You want  
4 to pursue it. If not, ask the next question.

5 MR. NOWACKI: Okay. I will.

6 THE COURT: Well, why don't we take our recess.  
7 We'll resume in 10 minutes.

8 (A recess was taken and court was reconvened.)

9 THE COURT: Okay. He's in the ballpark.

10 MR. COLLINS: Sorry, Your Honor.

11 THE COURT: It's okay. Go ahead. You want to  
12 mark something?

13 MR. NOWACKI: This is --

14 THE COURT: This is the one you're looking for,  
15 I guess.

16 MR. COLLINS: It's whatever Mr. Nowacki was  
17 referring to. Okay. I have no objection to the  
18 financial affidavits, Your Honor.

19 THE COURT: All right. Mark them as --

20 MR. COLLINS: Absolutely not. No.

21 THE COURT: Well, let's mark the financial  
22 affidavits in consecutive numbers.

23 THE CLERK: Okay. Defendant's Exhibit 14 marked  
24 as full.

25 THE COURT: Fourteen is the earlier date?

26 THE CLERK: June 14, yes, Your Honor.

27 (Exhibit 14, was marked as a full exhibit.)

1 THE COURT: And what's the next date?

2 THE CLERK: And November 1, 2000.

3 THE COURT: Same year.

4 THE CLERK: Oops, I apologize. This is two  
5 different years. I just realized that.

6 The November 1, 2004, is Defendant's Exhibit 14  
7 marked as full. And Defendant's Exhibit 15 that's  
8 June 14, 2005, Plaintiff's financial affidavit marked  
9 as full.

10 (Exhibit 15, was marked as a full exhibit.)

11 THE COURT: Okay.

12 BY MR. NOWACKI:

13 Q I would ask you to look at the financial affidavit  
14 dated November 1, 2004 and on page 8 would you identify  
15 point F and what does that indicate?

16 A Other assets.

17 Q And underneath that first line?

18 A Jane Mulligan Estate.

19 Q And underneath that?

20 A Inheritance.

21 Q And the amount?

22 A One hundred and thirty-five thousand.

23 Q Correct. Do you recollect the actual amount of the  
24 distribution that was received by your client on January 20,  
25 2005?

26 A No.

27 MR. COLLINS: Your Honor, I'm a little concerned

1 Mr. Nowacki has just taken an exhibit and putting it  
2 back towards his file.

3 MR. NOWACKI: I'm a klepto, sorry.

4 BY MR. NOWACKI:

5 Q On June 14, 2005, there's another financial affidavit  
6 here. Would you please look at page 8, and do you see any  
7 notation there at point F which would have been other assets  
8 that would make any reference to the inheritance that was  
9 given on January 20, 2005?

10 A I wouldn't know. I don't see the inheritance. But I  
11 thought you said she already got it. So if it went into one  
12 of these other accounts, I don't know.

13 Q Okay. And comparing the two financial affidavits in  
14 regards to the financial affidavit that accompanied the  
15 dissolution, on page 7 you have a Citibank account that  
16 lists assets of \$51,194; is that correct?

17 A There's three Citibank accounts.

18 Q Okay. The one that had the greatest assets in it?

19 A Okay. What's the question?

20 Q That totals one fifty-one; is that correct?

21 A No, fifty-one. Fifty-one thousand --

22 Q Fifty-one thousand?

23 A Fifty-one thousand one ninety four point seventy-one.

24 Q And to the best of your recollection, was that the  
25 only distribution that was received of \$132,100 before you  
26 filed the final financial affidavit?

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

1 I don't know where there is going. I don't know what  
2 it has to do with the motion to modify.

3 THE COURT: Well, first of all I don't  
4 understand the question. And second of all what is  
5 it related to?

6 MR. NOWACKI: Well, it's trying to establish the  
7 date and the timing of a distribution of the  
8 inheritance.

9 THE COURT: Well, does it show -- are you asking  
10 him whether or not the affidavit you wife produced at  
11 the time of the divorce shows it in some way?

12 MR. NOWACKI: That's correct.

13 THE COURT: Well, does it?

14 MR. NOWACKI: It does not.

15 THE COURT: Oh. You mean it doesn't show as  
16 being labeled the same way the earlier one was of  
17 inheritance of a hundred of thirty-five thousand?

18 MR. NOWACKI: That's correct.

19 THE COURT: All right.

20 MR. NOWACKI: So what I'm trying to establish is  
21 somewhere in between these two dates --

22 THE COURT: Right.

23 MR. NOWACKI: -- there was a distribution of the  
24 inheritance since it doesn't appear on the June 15  
25 day.

26 MR. COLLINS: Well, that may or may not be a  
27 fair inference, Your Honor. But Your Honor has made

1           it very clear that if Mister -- I can only infer that  
2           Mr. Nowacki is proceeding on some sort of a fraud  
3           claim, and we've dealt with that. Your Honor said if  
4           you want to make that claim you can make your motion.

5           THE COURT: Well, that's correct. Mr. Nowacki  
6           just said a few minutes ago that he's trying to  
7           persuade the Court that that was one of the reasons  
8           why Colin withdrew.

9           MR. COLLINS: Well --

10          THE COURT: That's what I thought he said.

11          MR. COLLINS: Well, that was in the context of  
12          February 2009. We're talking about the affidavits  
13          from November of '04 --

14          THE COURT: Right. That's a different  
15          affidavit; right? Because I thought you said there  
16          was another affidavit that showed 132 something, the  
17          difference was 2 percent which was a fee or  
18          something.

19          MR. NOWACKI: Right. And I'm going to provide  
20          to the Court --

21          THE COURT: Well, that's where we all thought --

22          MR. NOWACKI: -- if Mr. Collins will allow me to  
23          admit that a copy of the wire transfer that would  
24          represent the inheritance. And he seems to be avoid  
25          that being put into the evidence when, in fact, it  
26          relates the authenticity of the progression of the  
27          financial affidavit --

1 THE COURT: Well, I thought we went through this  
2 before --

3 MR. NOWACKI: -- the result of --

4 THE COURT: Excuse me. I don't mean to talk  
5 over you. I'm sorry. I thought we went through this  
6 before last time we were here that there was that  
7 indication in the records that your former wife  
8 explained one way and you explained another way. So  
9 isn't it a matter of record?

10 Now, the question is whether or not Colin knew  
11 about it and he says, no. Is that true?

12 THE WITNESS: That's true. Whatever his claim I  
13 don't really understand it, but I had nothing to do  
14 with me getting out of this case.

15 MR. NOWACKI: Okay.

16 THE COURT: Next question.

17 BY MR. NOWACKI:

18 Q To the best of your knowledge on the June 14  
19 financial affidavit the inheritance had been paid by the  
20 point in time we got to June 14, 2005, is that your best  
21 recollection?

22 A I have no recollection.

23 Q Okay.

24 THE COURT: Well, the record shows already in  
25 2004 it showed an inheritance that your former wife  
26 got. So what happened to it is another issue.

27 THE WITNESS: And I don't recall.

1 THE COURT: Okay.

2 BY MR. NOWACKI:

3 Q All right. On the Judge Tierney -- towards the back  
4 of your question of your client, you made comments of your  
5 level of satisfaction with the agreement. Were you  
6 satisfied with this agreement?

7 A Which page are you on?

8 Q Page 17.

9 A Seventeen. I could answer that two ways. I would  
10 say, one, yes, I'm satisfied because the client is satisfied  
11 with it. Ultimately, that's the gravamen. And if the  
12 client is satisfied with it, I'm satisfied with it. If  
13 you're referring to these questions, clearly it was less  
14 favorable to my client then I would she might get in a trial  
15 and what the pre-trial Judge thought she would get -- what  
16 the pre-trial Judge thought was a fair resolution. So she  
17 accepted less in my opinion, for what it's worth I'm not  
18 always right. And it's less than the pre-trial Judge  
19 thought she would get. So from that degree I was not  
20 satisfied. But ultimately, if the client is satisfied with  
21 it, I was satisfied. Which I was.

22 Q And on page 17 you ask a question, notwithstanding  
23 all of that information are you still willing to go through  
24 with this agreement? And your client?

25 A She said, yes, I am.

26 Q So, therefore, then at that point in time you waived  
27 your 20 day right as part of that testimony given on that

1 date to appeal the decision or the agreement that had been  
2 signed; is that correct, in order to be able to move the  
3 process along and get your \$450,000 to your client?

4 A It wasn't my right to waive. I didn't waive  
5 anything. I don't know whether Mrs. Nowacki at the time  
6 waived the 20 day right of appeal. That I don't.

7 Q I believe, that's in here.

8 A Okay.

9 MR. COLLINS: Well, whether it is or it isn't,  
10 Your Honor, I object on relevancy. What's the  
11 difference if had been waived?

12 THE COURT: Sustained. I don't know what  
13 difference --

14 MR. NOWACKI: The question is about the level of  
15 satisfaction of the agreement.

16 THE COURT: No, but he said waiver. That's what  
17 he was objecting to.

18 MR. NOWACKI: Okay.

19 THE COURT: Whether or not it waived.

20 MR. NOWACKI: Okay.

21 THE COURT: It's waived now it's past.

22 BY MR. NOWACKI:

23 Q Do you like me?

24 MR. COLLINS: Objection, Your Honor.

25 THE COURT: I'd like to hear the answer.

26 MR. COLLINS: I withdraw the objection, Your  
27 Honor.

1           THE WITNESS: I don't know you. I don't like  
2 what you've done. But whether I like you or not it  
3 would require me to know you, and I don't know. But  
4 I don't like what you've done. And I don't like that  
5 you've threatened my family. I had to get rid of a  
6 client that I liked. I had a very good relationship  
7 with. Everybody in my office liked. Probably, one  
8 of my top ten clients I have to say in terms of  
9 client relations. A wonderful client.

10           So do I like you? I don't really know you. And  
11 if I'm going to stick to how I am when I'm not  
12 working, I'm going to say I don't know you enough to  
13 whether I like you. But I don't like what you did in  
14 this case from day one to the day I left. It's  
15 despicable.

16 BY MR. NOWACKI:

17       Q    And what exactly are you referring to that you don't  
18 like.

19           THE COURT: All right. We've exhausted that.

20           MR. NOWACKI: Well, Your Honor, if --

21           THE COURT: It isn't really relevant to this  
22 case.

23           MR. NOWACKI: Well, it's relevant to the aspect  
24 that the witness comes here with a point of view.

25           THE COURT: But you made, you know, you made  
26 that point.

27           MR. NOWACKI: I just want to make sure that I

1 made the point.

2 THE COURT: You made the point.

3 MR. NOWACKI: Thank you. I have no further  
4 questions.

5 THE COURT: Do you have any other questions?

6 MR. COLLINS: Your Honor, I have very brief.

7 REDIRECT EXAMINATION BY MR. COLLINS:

8 Q Mr. Colin, do you agree, sir, with the statement that  
9 there's nothing automatic about pre-marital assets going to  
10 the person who brings them in the marriage under Connecticut  
11 law?

12 A Correct.

13 THE COURT: Wait, what was the question?

14 There's nothing --

15 MR. COLLINS: Would you agree there's nothing --

16 THE COURT: Oh, all right.

17 MR. COLLINS: -- automatic about pre-marital  
18 asset going to the person.

19 THE COURT: Right.

20 BY MR. COLLINS:

21 Q And so that was a point of negotiation, was it not,  
22 sir, in this matter?

23 A The pre-marital was part of the negation side.

24 Q Part of that package that you referred to?

25 A I suppose, yeah.

26 Q And it all related, sir, did it not to the whole  
27 percentage of child support?

1       A    Yes.  But my recollection, again, it was years ago,  
2   it was a genuine negotiation.  It wasn't like we isolated  
3   one thing away from the other.

4       Q    And, Mr. Colin, were there any other factors that  
5   were non-financially related that entered into why Ms.  
6   Nowacki now Ms. Sullivan accepted a deal that you were  
7   clearly entirely uncomfortable with?

8       A    Yes.  Reading this transcript now there was somewhat  
9   unusual language in there.  Sometimes I refer to it as movie  
10  star language because we use it for high profile cases than  
11  this.

12               THE COURT:  What was that?

13               THE WITNESS:  Where --

14               THE COURT:  Approximately

15               THE WITNESS:  Not that this is a high profile.

16               But you're not going to write any books about the  
17               case.  You're not going to bad mouth the other party.

18               THE COURT:  Oh, that was in the language?

19               THE WITNESS:  Yes.  When I was reading this  
20               transcript I had remember it.  But Mr. Nowacki had  
21               not made a secret during the proceeding that he was  
22               going to broadcast -- they're in the same business.

23               THE COURT:  I know that.

24               THE WITNESS:  That he was going to broadcast his  
25               issue with Mrs. Nowacki's relationship with her now  
26               husband at the time to others in their general  
27               business community.  Talk about it.  So we had some

1 language in here about how you got, basically, keep  
2 your mouth shut. It's on page --

3 THE COURT: What was the question?

4 MR. COLLINS: Were there any other factors non-  
5 financial which entered into why Ms. Nowacki now Ms.  
6 Sullivan took the financial deal she did.

7 THE COURT: Oh, okay. So that was a factor by  
8 agreeing to that language?

9 THE WITNESS: Page 16 of the transcript Article  
10 11 of the separation had these confidentiality and  
11 injunctive relief provisions they're out of the  
12 ordinary in my experience.

13 THE COURT: Okay.

14 THE WITNESS: And Mrs. Nowacki -- both parties  
15 were agreeing to those provisions. And I know that  
16 was important to my client.

17 THE COURT: All right.

18 BY MR. COLLINS:

19 Q And would you say that was a factor in wanting to get  
20 this matter settled whatever Mr. Nowacki broadcasting or  
21 threatening to broadcast about her and Mr. Barrington?

22 A Yes.

23 Q And all --

24 MR. NOWACKI: I object to the foundation of that  
25 question because Attorney Collins was not on the case  
26 at the time.

27 MR. COLLINS: Me or him?

1 MR. NOWACKI: Collins.

2 MR. COLLINS: Yes, well, that doesn't matter,  
3 so.

4 THE COURT: He's answered it. What's the next  
5 question.

6 BY MR. COLLINS:

7 Q So the answer is -- was that a material factor in Ms.  
8 Sullivan formerly Ms. Nowacki doing this deal as she did it?

9 A That was one of the factors, yeah.

10 Q Is it fair to say she just wanted to get the heck out  
11 of this thing?

12 A It's fair to say.

13 MR. COLLINS: Thank you.

14 THE COURT: You want to asking any more?

15 MR. NOWACKI: Yes, I do.

16 THE COURT: Sure.

17 RECROSS-EXAMINATION BY MR. NOWACKI:

18 Q Page 17 of the transcript of Judge Tierney line 19  
19 your question. Would you please read that question to the  
20 Court for the record?

21 A I read it.

22 Q And does this questions say:

23 "QUESTION: Do you believe that you're under any  
24 duress as result of anything that's transpired during  
25 the negotiations of this agreement or in general or  
26 your husband's conduct in particular?"

27 And what does the court record say as her response?

1 A "No, I'm not."

2 Q So her testimony, her sworn testimony refutes your  
3 allegation that she was under any duress?

4 A I never alleged she was under any duress. When did I  
5 allege she was under duress?

6 MR. NOWACKI: Could you read back his testimony,  
7 please?

8 THE COURT: Which part?

9 MR. NOWACKI: Just this last question from Mr.  
10 Collins in regards to, were there are other factors?

11 THE COURT: Yes, read it back or play it back  
12 you don't have to read it.

13 (The requested portion of the record was played  
14 back.)

15 THE COURT: No, the answer.

16 MR. NOWACKI: That's fair to say.

17 THE COURT: That's fair to say, that's what he  
18 said?

19 MR. NOWACKI: So he was in concurrence with  
20 question that suggested that she was under some level  
21 of duress. And the testimony on June 29 refutes  
22 that.

23 THE COURT: Okay. Next question.

24 BY MR. NOWACKI:

25 Q Page 17 the next question?

26 A Okay.

27 Q "QUESTION: Do you feel that anyone's forced

1           you, threatened you or coerced you into entering this  
2           agreement?"

3           Your client's answer was?

4       A     "No, I don't."

5       Q     The next question:

6                   "QUESTION:  And you just heard the recitation of  
7           the major items and provisions, do you still wish the  
8           Court to incorporate into the records into its decree  
9           this agreement if it finds it to be fair and  
10          equitable -- finds it to be fair and equitable?"

11          And your client's answer?

12       A     "Yes, I do."

13       Q     And your last question was:

14                   "QUESTION:  Do you have any questions about the  
15          agreement?"

16          And her answer?

17       A     That wasn't my last question.  Last question is:

18                   "QUESTION:  Do you have any questions of the  
19          Court?"

20       Q     Sorry about that.  The second to last question:

21                   "QUESTION:  Do you have any questions about the  
22          agreement?"

23          Your client's answer?

24       A     "No, I don't."

25       Q     And the final question:

26                   "QUESTION:  Do you have any questions of the  
27          Court?"

1           And your client's answer?

2           A    "No, I don't."

3           Q    So in the context of that your client felt the  
4 agreement was fair, reasonable, and equitable; is that  
5 correct?

6           A    Yes.

7           MR. NOWACKI: Thank you.

8           MR. COLLINS: No redirect, Your Honor.

9           THE COURT: Thank you, Mr. Colin.

10          MR. COLLINS: Your Honor, Mr. Colin is under  
11 subpoena, may he be released, please?

12          THE COURT: Yes, he can.

13          MR. COLLINS: Thank you, Your Honor.

14          (The witness was excused from the witness  
15 stand.)

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FST FA04-0201276S : SUPERIOR COURT  
NOWACKI, SUZANNE : JUDICIAL DISTRICT  
VS. : STAMFORD, CONNECTICUT  
NOWACKI, MICHAEL : SEPTEMBER 24, 2009

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and accurate transcript to the best of my ability of the recorded proceedings of the above referenced case, heard before the Honorable Stanley Novack, Judge, in the Stamford Superior Court, Stamford, Connecticut, on the 24<sup>th</sup> day of September, 2009.

Dated at Stamford, Connecticut this 12<sup>th</sup> day of October 2009.

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Deirdre Clement  
Court Monitor