

1 BRADFORD G.Y. CARNEY, ESQUIRE, IN THE
2 et al. CIRCUIT COURT
3 Plaintiffs FOR
4 vs. BALTIMORE COUNTY
5 LINDA A. SENEZ Case No. 03-C-08-012713
6 Defendant

7 _____/
8 LINDA A. SENEZ
9 Counter-Plaintiff

10 vs.
11 BRADFORD G.Y. CARNEY, ESQUIRE,
12 et al.
13 Counter-Defendants

14 _____/

15 The deposition of BRADFORD CARNEY was held
16 on Thursday, August 25, 2011, commencing at 10:45 a.m.,
17 at the Law Offices of Royston, Mueller, McLean & Reid,
18 LLP, 102 West Pennsylvania Avenue, Suite 600, Towson,
19 Maryland 21204, before Paula J. Eliopoulos, Notary
20 Public.

21 REPORTED BY: Paula J. Eliopoulos

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PROCEEDINGS

(Carney Deposition Exhibits 13, 25, 27, 28, 37 and 39 were marked by Mr. Dowell. They were not used in the deposition or identified.)

Whereupon,

BRADFORD CARNEY,

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY MR. DOWELL:

Q Can you give us your name and address, please.

A Bradford Carney, 102 West Pennsylvania Avenue, Towson, 21204.

Q And, Mr. Carney, how long have you practiced law?

A The results from the bar exam was on Friday, May the 13th, 1977, was sworn in in June, 1977 by the court review.

Q Can you describe your law practice as it existed in 2006?

1 A It consisted of general litigation, civil
2 litigation matters, domestic matters, serious and
3 minor criminal matters.

4 I don't know at the time exactly whether
5 or not I was doing any E & O defense work. I've done
6 a lot of E & O defense work over the course of my
7 career and a lot of title insurance defense work.

8 But it varies at any given time, any given
9 month, any given quarter.

10 Q Did you work full-time in 2006?

11 A Yes.

12 Q Did you -- other than what you just said,
13 did you have any particular area of concentration in
14 2006?

15 A Other than what I just said, no.

16 Q And how long have you been with the
17 Royston firm?

18 A October 31st, 1996.

19 Q Have you always been of counsel to the
20 firm?

21 A From day one.

1 Q And what did you do before you came to the
2 Royston firm?

3 A I was an equity partner at a firm known as
4 Weinberg & Green, now known as Saul, Ewing.

5 Q How long were you with Weinberg?

6 A Ten years, '86 to '96.

7 Q Did you do the same thing at Weinberg as
8 you're doing here?

9 A Yes. Although some of the cases tended to
10 be much bigger in scope and dollar amounts at issue.
11 Multi-week trials versus a one or two-week trial. I
12 had an eight-week trial in Federal Court. So, that
13 was the primary difference.

14 Q And when you came to the Royston firm and
15 became of counsel, what did that mean?

16 A That meant that I was not going to have to
17 buy in as you would in any traditional partnership,
18 that I would be able to pay them so much per month for
19 my overhead costs, and what I billed and collected, I
20 would receive after my overhead was paid to the law
21 firm.

1 I did not have any administrative
2 responsibilities. I didn't have any personnel
3 responsibilities. I didn't have to participate in any
4 committees.

5 I was essentially allowed to sit down and
6 practice law. My overhead covers my secretary. It
7 covers my malpractice insurance. It covers my
8 parking. And it covers everything.

9 Q So, you've never been a partner at this
10 firm?

11 A Never.

12 Q Nevertheless, in your tenure as of counsel
13 at the Royston law firm, you were permitted to use the
14 Royston letterhead; correct?

15 A Absolutely.

16 Q And you were permitted to use the Royston
17 letterhead on not only letters but billing; is that
18 correct?

19 A Correct. Well, it's not letterhead. It's
20 bill head.

21 Q Well, bill head. It still said the

1 Royston firm; correct?

2 A Yes, it does say the Royston firm on it.

3 Q Did you and Ms. Senez ever have any
4 conversation about your status here at the firm being
5 of counsel as opposed to being a partner?

6 A If we did, I don't recall it.

7 Q The money that you received from
8 Ms. Senez, did that go into your personal account and
9 then you paid your expenses, or did that go into the
10 firm account?

11 A All money is funneled through the firm's
12 account when it's received by any client. And at the
13 end of the month, my overhead is deducted from those
14 funds. They're posted to my credit, and I receive the
15 difference.

16 I can't begin to tell you whether or not
17 her funds went to me, went to overhead. They
18 certainly went to one, either one in whole or in part,
19 but I couldn't begin to tell you which.

20 Q Would it be fair to say that the money you
21 received from Ms. Senez was commingled with the firm's

1 money and then you received your share of those fees
2 at some future date?

3 A Yes, it was commingled with the other
4 funds of the law firm. There's no question about
5 that. Whether or not I received any part of those
6 fees, I don't know. It depends on the month.

7 Q When did you -- were you finished?

8 A If it's a slow month, it may be that all
9 fees that I bring in here go just to my overhead.

10 Q When did you become Linda Senez's lawyer?

11 A Some time in 2004. I think it was 2004.
12 And I want to say it was late summer --

13 Q And --

14 A -- ish.

15 Q And how did it come to be in the summer of
16 2004 that you became her lawyer?

17 A I got a phone call from a lawyer named
18 Rusty Bergen, who generally described to me the nature
19 of the litigation that Linda was involved in, and he
20 wanted to know if I was interested because her then
21 lawyer, Judy Ensor, had been appointed to the Circuit

1 Court bench for Baltimore County, and obviously had to
2 get out of the case, and she had to find new legal
3 counsel.

4 So, I -- after talking to Rusty, I said,
5 yes, I'd be interested, but I need to go talk to her,
6 I need to go look at the property that's at issue.

7 And we said, fine, and we set up a meeting
8 with Linda.

9 Q And do you recall when that meeting took
10 place?

11 A No. I mean, it's on my bills somewhere,
12 I'm sure.

13 Q Do you know what you did for Ms. Senez
14 between the summer of 2004 when you said you were
15 retained to become her lawyer and let's say January of
16 2006? For that year and a half period, do you know
17 what you did?

18 A Sure.

19 Q Tell me what you did.

20 A Well, I reviewed the pleadings that had
21 been filed. I communicated with opposing counsel on a

1 regular basis. I have a working professional
2 relationship with both Calvin Jenkins, Nip Jenkins,
3 and his associate, now partner, Rob Thompson.

4 Through them, I met Neil Lanzi, who was
5 also involved in this case from the zoning
6 perspective.

7 I looked at all the discovery that taken
8 place. Virtually all the discovery had taken place
9 before I got involved in the case.

10 I was advised by prior counsel that the
11 case was in a settlement posture, that she had
12 negotiated what she felt was a very fair and equitable
13 settlement for all parties and that really I was just
14 needed to make that settlement happen, to sort of tie
15 up the loose ends.

16 That obviously didn't happen. Those
17 negotiations did not result in a settlement obviously.

18 I made the determination as to what I
19 needed to do from a discovery perspective, if
20 anything, and I needed to take a deposition in order
21 to establish the 20-year period of time, because she

1 had only been in title for less than 20 years, and her
2 predecessor in title had been in title for about just
3 under 20 years.

4 So, I had to tack those two together. So,
5 I had to take his deposition, which was in South
6 Carolina, which I took on my birthday, if I may add.

7 And I had to meet with Linda on a
8 relatively frequent basis. I had to decide what
9 exhibits we wanted to enter into evidence, what
10 exhibits we wanted to create.

11 This is a non-jury trial obviously. So, I
12 had to educate a judge as to what the issues were. I
13 had to frame those issues. I had to let the judge
14 understand where the properties were located. So, we
15 had to dig out some blowups made of the properties at
16 issue.

17 And we generally prepared for trial as I
18 do in all trials. Witness outlines, maybe an outline
19 of my opening argument, a skeletal outline of maybe
20 what my closing argument would be, if I did that.
21 Sometimes I don't do that.

1 Just generally prepare for trial with the
2 assistance of Jim Quinn, who was my paralegal at the
3 time.

4 Q So, my original question was what did you
5 do between when you were first retained in the summer
6 of '04 until January of '06.

7 Are you saying you did all that during
8 that period of time?

9 A I think I was assuming -- was January, '06
10 the time of the trial?

11 Q Well, I haven't asked you that.

12 A I can't remember. I don't even remember
13 what the date of the trial is. So, I'm assuming that
14 what you're taking me through trial.

15 And if you are, then, yes, that's what I
16 did. The trial was some time after that.

17 Q My question was what did you do between
18 when you were retained in the summer of '04 and
19 January of '06?

20 A Well, that's a very broad question, and I
21 can't answer it specifically. You have my bills. My

1 bills tell you what I did.

2 Q Okay. Let me show you Exhibit 1 and ask
3 you if you can identify that.

4 (Carney Deposition Exhibit 1 was marked
5 for purposes of identification.)

6 A It's an engagement letter which was not
7 signed. This one at least is not signed by Linda
8 Senez.

9 Q Did that outline what all the fees were
10 going to be and, you know, generally what your
11 responsibilities were and so forth?

12 A Yes, it did, indeed, outline the fees.

13 Q And --

14 A And expenses.

15 Q I'm sorry.

16 A And expenses. Generally just talked about
17 me defending the case. And I said I'm going to take
18 whatever steps I think are necessary and reasonable to
19 defend the complaint filed by the Collinses and to
20 prosecute her counterclaim for adverse possession.

21 Q Just a few minutes ago, I asked you -- in

1 fact, I think it was one of the first questions about
2 when you thought you were retained. You said the
3 summer of '04.

4 Is that incorrect?

5 A I guess I was wrong. That was when the
6 lawsuit was filed. Pardon me. You're correct. I was
7 not involved in the case. Obviously Judy Ensor was
8 involved in the case.

9 I got in not too terribly long before
10 trial started, maybe within six months, something like
11 that. So, you're right. This was January of '06.

12 Q So, all the things you mentioned would
13 have occurred after January of '06?

14 A Absolutely. Between January of '06 and
15 trial.

16 Q Let me show you Number 2.

17 (Carney Deposition Exhibit 2 was marked
18 for purposes of identification.)

19 Q What is that document?

20 A It's a bill dated February 8th, 2006 for
21 time spent by me in the month of January --

1 Q You first --

2 A -- 2006.

3 Q You first billed for any services it
4 appears on January the 12th of '06; correct?

5 A If, in fact, this is the first bill that
6 ever went out, and it probably is, since my engagement
7 letter is dated in January. So, that's probably the
8 case.

9 Q So, according to that, you started billing
10 before actually you were retained.

11 Would that be a fair statement?

12 A No, that's not true at all. She -- the
13 billing -- I met with Linda Senez. I met with Rusty
14 Bergen. I reviewed the pleadings binder and then I --
15 after meeting with Linda Senez, I drafted the
16 engagement letter the -- probably the day after I met
17 with her or the day of, frankly.

18 I met with Linda and Rusty Bergen on the
19 13th of January and I drafted my engagement letter on
20 the 13th of January, the same day.

21 Q Did Mr. Bergen have any responsibilities

1 with respect to Ms. Senez's legal representation?

2 A Initially it was contemplated that Rusty
3 Bergen and I were going to be co-counsel because I
4 said that in this letter.

5 In fact, Rusty really had no substantive
6 responsibilities whatsoever. I think his appearance
7 was entered, but I'm not even sure whether that's
8 true. I'd have to look at the pleadings binder.

9 Q Did he assist you at all in the
10 representation?

11 A No.

12 Q Did he, in fact, do anything in the case?

13 A I don't think so. I may have sent him
14 copies of certain pleadings.

15 Q Did you have any --

16 A I know I talked to him periodically about
17 the status of the case.

18 Q Did you have any understanding or
19 agreement with Mr. Bergen about sharing the fee in any
20 way?

21 A No understanding whatsoever. We were not

1 to share fees. He never received a dime from this law
2 firm or from me.

3 Q Okay.

4 A Whether or not he received any fees from
5 Ms. Senez, I'm not party to.

6 Q Do you recall indicating to Ms. Senez that
7 you had a particular expertise or concentration in
8 law?

9 A Not specifically. I mean, we had general
10 conversations. She didn't quiz me about my background
11 and my expertise.

12 I think Rusty may have made certain
13 representations to Linda because Rusty Bergen and I
14 have known each other for several years and we
15 practiced law together at Weinberg & Green and any
16 predecessor law firm for many years.

17 So, Rusty was intimately involved with my
18 background and my area of expertise, and I assume, but
19 don't know for a fact, that he discussed that with
20 Linda.

21 Q Do you generally as a habit or routine

1 enter your appearance shortly after you are retained
2 in a civil case?

3 A I enter my appearance. When I enter my
4 appearance depends on the case, depends on the issue
5 and depends on the strategy.

6 But if I'm going to get into a case,
7 absolutely I enter my appearance.

8 Q Let me show you 3 and ask you to tell me
9 what that is.

10 (Carney Deposition Exhibit 3 was marked
11 for purposes of identification.)

12 A It's an entry of appearance filed in this
13 case in the Baltimore County Circuit Court.

14 Q And that was filed in mid July of '06.
15 Would that be correct?

16 A It was. It was.

17 Q Is there any reason you filed your
18 appearance in July of '06 after you were retained in
19 January of '06?

20 A I'm sure there was. I couldn't tell you
21 what it is right now. Probably had to do with the

1 fact that it was my understanding that this case was
2 in the settlement posture. It really was not going to
3 go forward from a litigation perspective.

4 And, therefore, I didn't need to enter my
5 appearance until it became apparent that the case was
6 not going to settle and was going to be litigated.

7 (Carney Deposition Exhibit 4 was marked
8 for purposes of identification.)

9 Q I'm showing you Number 4, which is a page
10 from the transcript of the hearing of May 13th of '09.

11 MS. LIPPINCOTT: And just for the record,
12 this is page E-248.

13 MR. DOWELL: Actually it's page 11 of the
14 original transcript.

15 THE WITNESS: That's extract 248, page 11.

16 MS. LIPPINCOTT: Thank you.

17 Q Do you remember attending that hearing and
18 making statements to the court?

19 A I'm sorry. Which hearing are you
20 referring to?

21 Q This would be the May 13th, 2009 hearing

1 before Judge Bollinger.

2 A Yes, I do remember attending that hearing.

3 Q You indicated, according to the
4 transcript, that you took Linda Senez's case only on
5 the condition you could get it postponed because it
6 was set for trial in a couple of weeks of your coming
7 on board.

8 A If I said it, that was a true statement.
9 I do recall when Rusty first contacted me, I obviously
10 asked him when the case was scheduled for trial. He
11 told me. I don't remember what the answer was.

12 But obviously it was in a short period of
13 time. And I told him, look, there's no way I can get
14 in and try a case like this with these issues without
15 having time to prepare, and I don't have time to
16 prepare in the short time frame between now and trial.

17 So, I got it postponed.

18 Q To use your phrase to come on board, you
19 came on board in January of '06; isn't that correct?

20 A Yes.

21 Q Are you saying there was a trial date set

1 in January of '06?

2 A I don't know when the first trial date is.
3 It was somewhere close to that. I don't know when it
4 was. This case had been going on since 2004. So, I'm
5 sure there was a trial date.

6 Q Okay.

7 (Carney Deposition Exhibit 5 was marked
8 for purposes of identification.)

9 Q Showing you Number 5.

10 Can you tell me what that is?

11 A It's a letter from me to Coral, a retired
12 civil assignment person in Baltimore County Circuit
13 Court.

14 I reviewed the background of the case from
15 a settlement perspective with her, asking her for a
16 trial date and to set the case in so we have a
17 scheduling order.

18 Q You hadn't entered your appearance when
19 you wrote that letter; had you?

20 A I don't know. When's the date of my
21 appearance? July. No. I hadn't entered my

1 appearance.

2 Q I find it unusual that you would write a
3 letter asking for a trial date in May when you hadn't
4 entered your appearance.

5 Can you explain that?

6 A No. Probably either forgot to enter my
7 appearance and realized that I hadn't done it at a
8 later time, thought I did it and didn't do it.

9 I know Coral. I have a working
10 relationship with her for many, many years. It's not
11 unusual for me to communicate with her.

12 Obviously I sent copies of this letter to
13 all parties involved, including the client and
14 opposing counsel.

15 Q You indicated in the last sentence of
16 paragraph one of that letter, quote, additionally, I
17 would respectfully request that this matter be set in
18 for a trial, end quote; correct?

19 A I say I would respectfully request that
20 this matter be assigned a trial date after a
21 conference call, which I will be happy to initiate

1 between the parties.

2 Q Wait. Are we looking at the letter of
3 May 25th of '06?

4 A Sure am.

5 Q The last sentence, first paragraph?

6 A I was reading the last sentence in the
7 second paragraph. Additionally, I would request this
8 matter be set in for trial. Yes, it says that.

9 Q So, is it correct to say that the first
10 time this matter was going to be set in for trial
11 would have been based on your request to Pearl
12 Burdynski in your letter of May 25th, 2006?

13 A No, I don't think that's fair to say at
14 all. I was asking that the case be given a trial
15 date. I believe that it had trial dates.

16 And as I said in the opening sentence to
17 Pearl, that this case has a tortured history of failed
18 settlement attempts with private mediators before
19 Judge Citone. The failed attempts at settlement have
20 knocked the case off the traditional track toward
21 trial.

1 Normally in Baltimore County, you don't
2 get a trial date until you go to the settlement
3 conference.

4 And obviously the parties had been to a
5 settlement conference in front of Judge Citone. I was
6 not involved in all that.

7 If you don't settle the case, then you are
8 assigned a trial date. For reasons that I was not
9 privy to, this case was not assigned a trial date at
10 that time.

11 Q Are you certain -- I'm sorry.

12 A Whether or not it had a trial date at some
13 point in time prior to me getting involved in the
14 case, I don't know.

15 The scheduling order and the docketing
16 index speak for themselves. So, it either did or it
17 didn't.

18 Q You told Judge Bollinger in this Exhibit
19 Number 4 that the case was set for trial within a
20 couple of weeks of me coming on board.

21 Was that a true statement?

1 MS. LIPPINCOTT: Objection. Asked and
2 answered.

3 A First of all, if I said it, I said it.
4 And I said it. I believed it at the time that I said
5 it.

6 If I misspoke or if I was wrong, then I
7 stand corrected. It was certainly not my intention to
8 ever mislead the court.

9 This has no consequence whatsoever as to
10 the issues adjudicated by Judge Bollinger to begin
11 with.

12 Q Am I correct in saying that you don't know
13 as you sit here today whether or not there was a trial
14 date within two weeks or a couple of weeks of you
15 coming on board in January of '06?

16 A I obviously believed that that was the
17 case when I appeared before Judge Bollinger. If I was
18 mistaken or I misspoke, then I was mistaken and I
19 misspoke.

20 Q Well, what is your present recollection of
21 that?

1 MS. LIPPINCOTT: Objection.

2 A I don't have a recollection. The docket
3 speaks for itself.

4 Q After asking for a trial date in May of
5 2006, you eventually secured a trial date of
6 July 19th, 2006.

7 Do you recall that?

8 A No. It will be in my pleadings binder. I
9 would have a notice of trial date that would be in the
10 pleadings binder I received from central assignment.

11 Q Do you recall asking the court for a
12 postponement of the July 19th, 2006 trial date based
13 on the fact that you had not yet deposed Arthur Myers?

14 A I don't recall that specifically, but if I
15 did, I did. I'm sure there's a letter asking for a
16 postponement or a motion, one or the other.

17 (Carney Deposition Exhibit 6 was marked
18 for purposes of identification.)

19 Q Number 6 is again from the transcript of
20 May of '09, and line 16 to 17, you indicated to the
21 court discovery to the extent it had been done was

1 done; correct?

2 A That's what it says.

3 Q And you, in fact, testified here today
4 when you first got into this case, discovery had been
5 done, and I believe you indicated you thought it was
6 fully completed as of the time you got in the case in
7 January of '06?

8 MS. LIPPINCOTT: Objection. Misstates the
9 previous testimony.

10 You may answer.

11 A Because of the age of the case, it was my
12 belief that the discovery had been concluded by the
13 various parties involved.

14 After I reviewed the pleadings, as I
15 indicated earlier, I determined that one of the
16 essential elements of adverse possession that we were
17 not able to prove it absent a stipulation from
18 opposing counsel and/or the Collinses, which I was not
19 going to get.

20 So, I had to nail down his -- that
21 element. In order to nail down that element, I had to

1 get his under oath testimony. So, I took his
2 deposition.

3 Q Well, that's not discovery; is it?

4 MS. LIPPINCOTT: Objection.

5 A That's not discovery.

6 Q Mr. Myers' deposition?

7 A My God! Taking a deposition as part of
8 the discovery process is covered by the discovery
9 rules of the Maryland Rules of Procedure.

10 To say that a discovery deposition is not
11 part of discovery is to reflect a complete ignorance
12 to the rules of discovery.

13 Q Did you consider Mr. Myers' deposition a
14 discovery deposition?

15 A No. It was a de bene esse deposition for
16 use at trial.

17 Q I understand that.

18 So, that's my point, that it's not
19 discovery. Would you agree with that?

20 A No, I would not agree with that ever. Of
21 course, it was discovery.

1 Q Is it correct to say --

2 A Just because you note a deposition as
3 being de bene esse doesn't mean you have to use it.
4 Okay?

5 Q But you did use it.

6 A I did use it because it was what I needed
7 to do and it nailed down the element I needed to nail
8 down.

9 Q Okay.

10 A But to the extent it is discovery, and
11 then if you decide if it's favorable to your position,
12 then you can enter it into evidence or choose not to
13 enter it into evidence.

14 Q And you did --

15 A I was not compelled to enter it into
16 evidence.

17 Q And you did decide it was favorable?

18 A Absolutely. Absolutely.

19 Q Did you consider taking any depositions
20 other than the deposition of Mr. Myers?

21 A Considered it.

1 Q And tell me what you considered doing and
2 why that wasn't done.

3 A I considered talking to various different
4 people. And after reading through other documents,
5 reading through pleadings, talking with opposing
6 counsel, talking with Linda, I decided I didn't need
7 to take anybody's deposition.

8 It was a relatively straightforward -- the
9 issues were relatively straightforward. So long as we
10 had a proper survey, and Linda had commissioned a
11 survey by -- from a guy named Brian Deitz that she
12 paid for. She was or he was her surveyor.

13 And we agreed the survey was accurate and
14 professionally done. Not only did we agree, we being
15 Linda Senez and I, but Calvin Jenkins, opposing
16 counsel, Neil Lanzi and everybody involved in this
17 lawsuit agreed that it was professionally done and it
18 was accurate and we were all going to live with it.

19 Q What has to be proven to have a successful
20 adverse possession claim?

21 A Do you want me to go through the elements

1 with you?

2 Q Uh huh.

3 A It has to be actual, open, notorious,
4 hostile, continuous for 20 years and notorious.

5 Q Other than the underlying case, how many
6 adverse possession cases have you tried?

7 A I can't tell you. I represented Chicago
8 Title doing their claims defense work for many years.
9 Adverse possession was an issue in many, many, many of
10 those cases.

11 Some of those cases went to trial. Some
12 of those cases, the majority of those cases settle,
13 because there was a thing called a survey and boundary
14 exclusion in a title insurance policy, which allows
15 most title insurance companies to escape boundary
16 disputes.

17 Q So, you can't give me a number or an
18 approximate number --

19 A No.

20 Q -- how many cases?

21 A No, I cannot. I can only tell you it

1 was -- over the years, it's been more than the average
2 lawyer, because this issue, frankly, doesn't come up
3 that often.

4 And most lawyers will tell you that even
5 though they're general civil litigators, that they
6 very rarely, if ever, handle an adverse possession
7 claim.

8 Q Can you explain what hostility of
9 possession means?

10 A Well, it sure doesn't mean animus the way
11 the judge thought it meant. Simply means that you're
12 possessing the property in conjunction with the other
13 elements openly. You actually possess it. You
14 actually possess it openly.

15 Notoriously means that the whole world can
16 see that you're possessing it. And in a matter
17 inconsistent with the true owner's use of the
18 property. You're using it in a way that's
19 inconsistent with the owner's use of the property.

20 And that's what hostility means. It has
21 nothing to do with animus or ill will or anything

1 along those lines, as the judge thought it did.

2 Q What facts did you offer to prove
3 hostility of possession in the underlying case?

4 A It was the totality of the evidence,
5 Linda's testimony, the cross examination of the
6 Collinses.

7 We elicited the fact that she maintained
8 the property all the way to the border of the property
9 prior to the time that she put up the fence, that she
10 maintained the property up to the fence after the
11 fence was erected.

12 She did all the gardening. She did all
13 the cutting of the grass, the weeding, the this, the
14 that, the general maintenance of the property.

15 She treated the property as hers from that
16 point, from the time the fence was erected. Treated
17 the property as hers before the fence was erected.

18 She maintained the property right up to
19 the wall, although the wall was not on her property,
20 and I believe Linda knew that the wall was not on her
21 property because there was a prior survey.

1 Q Wait. Let me stop you there.

2 You said you believe she knew that the
3 wall was not on her property.

4 A Part of the wall. Just part of the wall.

5 Q And that would be the wall extending down
6 toward the water; correct?

7 A Correct.

8 Q So, when do you feel she knew that the
9 wall was not on her property?

10 A Well, the person that she bought the
11 property from, Mr. Myers, had a survey done because he
12 was very concerned not about the wall, not about
13 anything having to do with the northern side of the
14 property, he was concerned about the southern boundary
15 of the property, and he wanted to make sure when he
16 sold it that the southern boundary was properly
17 established and there wouldn't ever be any dispute
18 with the property owners that abutted his property on
19 the southern side. This is according to his
20 testimony.

21 And so, he got a survey done. That survey

1 showed that his boundary was fine on the southern
2 border, and it did show that the wall ran right down
3 the property line. But toward the end of the property
4 ending at the water, it veered a little bit over onto
5 the Collinses' side of the two contiguous properties.

6 Q Are you saying you actually saw the survey
7 that Mr. Myers claimed to have done?

8 A No. I never saw it.

9 Q Why not?

10 A I didn't have it.

11 Q Why didn't you ask him for it?

12 A I didn't need it. But I wanted for him --
13 I had Mr. Deitz's survey that showed the same thing.
14 Mr. Deitz's survey was the survey that we all agreed
15 upon would be a joint exhibit, was going to be the
16 survey that everybody was going to agree that we're
17 not going to attack it, we're not going to attack
18 Mr. Deitz. We agreed that he was a professional. We
19 agreed the survey was accurate. Therefore, we're not
20 even going to put him on the witness stand.

21 Q When was Deitz's survey done?

1 A I don't know. I'd have to see the survey.

2 Q And when was Myers' survey done?

3 A I have no idea. I'd have to see the
4 survey. I assume some time just prior to the time
5 Linda bought the property, which I think was around
6 2000.

7 Q You never saw the survey and you never
8 asked for the survey that Myers did?

9 A I don't know whether I asked for it or
10 not. I might have.

11 Q If you asked for it, you didn't get it;
12 right?

13 A I don't know. If it's in the file, it's
14 in the file. If it's not in the file, I didn't get
15 it. Whether I asked for it not, I don't know.

16 Q Was there any other potential evidence you
17 could have offered in your client's behalf to prove
18 hostility of possession that was not offered?

19 A To prove hostility of possession that was
20 not offered, no, I don't believe so.

21 Q Was there any testimony which concerned

1 you during the trial because you felt it could be used
2 by the trial judge or some appeals court to conclude
3 that Linda Senez did not prove hostility of
4 possession?

5 A Throughout the course of the trial -- you
6 have to understand there was a trial judge, who was a
7 relatively new trial judge, who was difficult at best.

8 And her understanding of the law of
9 adverse possession was not what I hoped it would have
10 been.

11 We like to think that most judges are
12 familiar with the law when they take the bench in a
13 particular case. It was apparent to me that she was
14 not well-schooled in the law of adverse possession.

15 And the testimony that was elicited from
16 Linda more than adequately -- and the deposition
17 testimony of Mr. Myers more than adequately
18 established the elements of adverse possession,
19 hostility being one of them.

20 The only thing that gave me concern at the
21 trial, and I knew this going in, was Linda's

1 conversation with Mrs. Collins at some point in time
2 about the erection of the fence.

3 She advised me, knew this before trial,
4 that she had had a discussion with Mrs. Collins about
5 where the fence was going to go. There was just
6 general neighborly discussion about what do you think
7 it would look like here, what do you think it would
8 look like there.

9 According to Linda, she never ever, ever
10 asked permission from Mrs Collins or Mr. Collins as to
11 where the fence could be placed.

12 She had a conversation with Ms. Collins
13 just generally about the placement of the fence, and
14 she then put the fence up.

15 And there was no conversation between she
16 and Mrs or Mr. and Mrs. Collins thereafter until they
17 ended up in the dispute, because once the fence was
18 up -- they were friends before the fence was up. They
19 were friends after the fence was up.

20 As the Court of Special Appeals noted,
21 they had keys to each other's homes. They were --

1 they used to have a drink together. They would --
2 they're just very good neighbors toward one another
3 until the storm came and she had to rebuild her house.

4 Q There's a couple of --

5 A In March.

6 Q -- parts I'd like to ask you about.

7 One is you said it was apparent to you
8 that the judge was not well-schooled in adverse
9 possession law; is that correct?

10 A Yes.

11 Q And when did that become apparent to you?

12 A When she -- just the nature of her rulings
13 and demeanor. And then became glaringly apparent to
14 me when she issued a ruling from the bench.

15 Q Well, prior to her ruling on the bench,
16 was it apparent to you before that?

17 A In part just as a trial lawyer, you get a
18 feel for what a judge knows or what a judge doesn't
19 know or whether a judge is expert in a particular area
20 or not expert.

21 You can just glean that from the way that

1 certain objections are ruled upon. That's just a
2 general feeling that comes with experience.

3 Q And you did, in fact, glean that during
4 the course of the trial that the trial judge was not
5 particularly well-schooled in adverse possession?

6 A I generally had that feeling, yes.

7 Q Okay.

8 A As was borne out by the Court of Special
9 Appeals.

10 Q Did you alter your presentation of the
11 case or your arguments to the court in any way knowing
12 that the judge was not well-schooled in that area of
13 the law?

14 A Alter in any way? No. I presented the
15 case as I deemed I needed to present it. I had to
16 educate this judge. It was my job in any case,
17 whether it's -- this judge or any other judge to make
18 sure that the court understood -- knew what the
19 elements are, understood what they meant and that we
20 had proved the elements. And this is how we proved
21 it. That was all part of what was done during the

1 course of the trial.

2 Q And how did you specifically explain that
3 to the trial judge, those things that you just
4 mentioned?

5 A Well, the only way you would ever explain
6 it is through opening argument and closing argument.
7 Otherwise, it's a matter of putting on testimony.

8 The testimony explains it. Argument is
9 argument. Argument is not testimony.

10 Q Did you feel you properly explained it in
11 the closing argument?

12 A Absolutely.

13 Q My original question to you was was there
14 any testimony in the course of the case from any party
15 that concerned you because you felt it could be used
16 by the trial judge or some appeals court to conclude
17 that she had not proven the element of hostility of
18 possession?

19 A The testimony that concerned me was the
20 testimony that exactly was seized upon by the Court of
21 Special Appeals, and it resulted in Linda's adverse

1 possession claim not prevailing, and that was the
2 discussion that she had with Mrs. Collins.

3 Q And what specific testimony was that?

4 A There was -- just generally there's a
5 discussion between Linda and Mrs. Collins about the
6 placement of the fence. When Linda was contemplating
7 erecting a fence, she had a neighborly discussion with
8 her neighbor about where the fence was going to go.

9 Q And what specifically was it, Mr. Carney,
10 about that testimony that concerned you?

11 A Because if she asked permission to do
12 anything with the fence that would break the element
13 of hostility, she would be tacitly recognizing
14 someone's superior interest to hers. Thus the element
15 of hostility would be lost.

16 Q So, I just want to make sure I'm clear on
17 this.

18 You're saying that because Ms. Senez asked
19 permission or at least the testimony showed --

20 A No. No. No. I'm not saying that at all.
21 No. No. No. No. No.

1 Q Let me finish my question. That would be
2 helpful.

3 A Go ahead.

4 Q Is it your position that since the
5 testimony showed that Ms. Senez asked for the
6 Collinses' permission to erect a fence that that was
7 the problem with the hostility of possession issue?

8 MS. LIPPINCOTT: Objection as to form.
9 Lacks foundation.

10 You may answer.

11 A That is not what I'm saying.

12 Q Well, please tell me.

13 A You mischaracterized --

14 Q Please tell me.

15 A -- Ms. Senez's testimony. Ms. Senez never
16 testified that she asked Ms. Collins -- Mrs. Collins
17 for permission to put the fence anywhere.

18 She had a discussion with Ms. Collins --
19 Mrs. Collins about where the fence was going to go,
20 but Linda never asked the woman for permission to do
21 so.

1 If she would have done so, I would have
2 advised her immediately, Linda, by doing that, you are
3 tacitly recognizing her superior interest in this
4 parcel of real property. Thus the element of
5 hostility is gone and you've got no shot at an adverse
6 possession claim.

7 Q So, let's start over here.

8 What exactly was it that --

9 A I'm not going to start over again. I'm
10 going to answer your question, but I'm not going to
11 answer the same question over and over.

12 Q What was specifically -- I'm unclear on
13 specifically who said what, which in your view
14 concerned you about the hostility element.

15 A Mrs. Collins testified at trial that she
16 had a conversation with Linda, which we all knew
17 about, and that during the course of that
18 conversation, Linda asked her whether it would be okay
19 to place the fence in a particular area, whether on
20 the wall, in front of the wall, but asked her
21 permission.

1 She testified that she really couldn't
2 answer Linda's question because she owned the property
3 with her husband and she had to consult with her
4 husband.

5 Q Uh huh.

6 A She further testified that before she got
7 back to Linda, Linda just went out and had the fence
8 put up.

9 Q Okay.

10 A And then her husband testified and
11 corroborated that.

12 Q When Linda Senez bought her property, a
13 concrete block wall existed which she thought was the
14 border between the two properties.

15 Is that a fair statement?

16 A I have no idea what Linda thought when she
17 bought the property.

18 Q She never told you what she thought?

19 A I don't know what she thought when she
20 bought the property. I wasn't there. I wasn't a
21 participant. I didn't advise her.

1 Q Did she advise you at any time during the
2 representation that it was her belief that when she
3 bought the property and thereafter until the Deitz
4 survey was done, for example, that she thought that
5 the concrete block wall was the borderline between the
6 two properties?

7 A I don't recall specifically ever having a
8 conversation one way or the other with Linda about
9 that, what her beliefs were, what her subjective
10 beliefs were.

11 We knew objectively once the Deitz survey
12 was in hand what the facts were. When we got that
13 survey, I just don't know, unless I have it in front
14 of me.

15 Q Was it your client's position at trial
16 that when she bought the property, she believed that
17 the concrete block wall was the dividing line between
18 the two properties?

19 A I would have to review the transcript. I
20 believe that that was her position, but I can't
21 without looking at her testimony from the trial

1 transcript say for sure that that's what she said.

2 Q Do you think it was important that it be
3 proven that she believed that the concrete block wall
4 was the property line?

5 A Her subjective belief has nothing to do
6 with proving the elements of adverse possession. What
7 she did has everything to do with it. Her subjective
8 beliefs have got nothing to do with it.

9 She openly, notoriously and actually
10 possessed the property in a hostile manner for 20
11 years. Whether she believed it was hers or not is
12 irrelevant.

13 Q Do you think it was important for you to
14 bring out during the course of her testimony that she
15 believed the concrete block wall was the dividing line
16 between the properties?

17 A No.

18 Q And why is that?

19 A For reasons I just stated. Her actions
20 are what are important. Her subjective beliefs have
21 nothing to do with it.

1 Q Before the trial, Ms. Senez provided you
2 with the names of Chris Barkley and Joan Bowerman,
3 whose testimony would have supported her belief that
4 the wall was the dividing line between the properties.

5 Do you recall those names?

6 A No.

7 MS. LIPPINCOTT: Objection. Lacks
8 foundation.

9 THE WITNESS: Excuse me. The answer is
10 no.

11 Q Did you ever talk to Ms. Barkley or
12 Ms. Bowerman to find out what they would have
13 testified to?

14 A I can't remember. I don't know.

15 Q If there was no memo in any of your notes
16 or records, would it be fair to say that that would be
17 an indication that you did not talk to them?

18 A Not necessarily, no. I don't necessarily
19 draft a file note regarding every conversation I have
20 with every potential witness.

21 Q So, you don't recall those names at all?

1 A Not really, not off the top of my head as
2 I sit here.

3 Who are they? Were they realtors?

4 Q Yes, sir.

5 A Appraisers or realtors?

6 Q Realtors.

7 A Realtors. Whose testimony would never
8 have established the borderline to begin with because
9 they're not experts. They're nothing but realtors.
10 They have no expertise. They wouldn't have been
11 allowed to opine as to anything.

12 They certainly would not have been allowed
13 to opine as to what Linda Senez's objective state of
14 mind -- or subjective state of mind was vis-a-vis the
15 location of the wall.

16 Q Is it correct to say, Mr. Carney, that you
17 believed that the concrete block wall was the border
18 between the two properties before the trial?

19 A No. I believed what the Deitz survey told
20 me. And the Deitz survey said it is in part demarking
21 the boundary between the two properties. It is right

1 on the line for much of its length, but it veers off
2 toward the water.

3 (Carney Deposition Exhibit 7 was marked
4 for purposes of identification.)

5 Q Show you Number 7. Tell me what that is.

6 A It's a letter from me dated August
7 the 30th to Rob Thompson, who was one of the lawyers
8 representing the Collinses.

9 Q Is it correct in the first paragraph of
10 that letter you indicated to Mr. Thompson, and I'm
11 quoting, as you know, the Senez and Collins properties
12 were divided by a cement wall which recently collapsed
13 and so forth.

14 A The document speaks for itself.

15 Q Yeah. So, is it correct to say that you
16 were of the opinion at least when you wrote that
17 letter that the two properties were divided by the
18 cement wall?

19 A That is a figure of speech. I was not
20 saying that they are legally and accurately divided by
21 the cement wall.

1 What I was saying was that that which we
2 all took for granted, that Linda's property and the
3 Collinses' property were demarked and separated by a
4 wall.

5 Whether or not the wall ran right down the
6 property line was not the point of this paragraph or
7 this sentence. It's just a visual. When you look at
8 the two properties, you can say, okay, that's
9 Collinses' property on that side, that's the Senez
10 property on this side.

11 That's what anybody would think when they
12 first go out there and look at the two properties.

13 Q Okay.

14 A I wasn't making a legal statement.

15 (Carney Deposition Exhibit 8 was marked
16 for purposes of identification.)

17 Q Showing you Number 8. Ask you if you can
18 identify that?

19 A If you're asking me if I have an
20 independent memory of it, I do not.

21 Q I'm asking you to identify it, first of

1 all.

2 A It appears to be an e-mail to me and Rusty
3 Bergen dated in October of 2006. October 30th.

4 Q If, in fact, that is what it purports to
5 be, that it was an e-mail to you October 30th, 2006
6 from Ms. Senez, the first thing it mentions is a
7 February, 1984 zoning variance.

8 Do you recall receiving this e-mail and do
9 you recall ever looking at the zoning variance?

10 A I don't recall receiving this e-mail. I'm
11 sure I did. And no. The zoning variance, there was a
12 dispute between the Collinses -- well, actually
13 between the zoning authorities and Linda Senez, which
14 was, I believe, precipitated by a complaint by the
15 Collinses. But I was not involved in the zoning
16 issue.

17 She had independent counsel for the zoning
18 matters, and Neil Lanzi was involved in the case from
19 a zoning perspective. That was not part of my
20 engagement.

21 Q Do you see number four on that e-mail

1 where it says the site plan she received at settlement
2 wouldn't give her a clue about the real property line?
3 Do you see that?

4 A I see it. I see that.

5 Q Do you recall her telling you that and
6 talking about that with her that she did not know the
7 real property line as of the time she bought the
8 property?

9 A Well, she refers to a site plan that she
10 received at settlement. I don't recall whether I ever
11 saw the site plan and I don't know whether she's
12 referring to the survey that Mr. Myers had
13 commissioned as a consequence of his concern regarding
14 the southern boundary line or whether she's talking
15 about a location survey.

16 I don't know what she's talking about
17 here.

18 Q The first line in that e-mail says
19 attached are some of the documents and items we
20 discussed last week.

21 And it says -- talks about the variance.

1 It talks about the site plan she received at
2 settlement; correct?

3 MS. LIPPINCOTT: Objection. The document
4 speaks for itself.

5 Q Well, did you ever -- do you recall ever
6 receiving those documents for her in this e-mail?

7 A I have no independent recollection of
8 receiving these documents one way or the other. If
9 they were attached to the e-mail, they were attached.

10 Q And you see the next to the last paragraph
11 there where she talks about the two real estate
12 agents, Barkley and Bowerman?

13 A The two real estate agents that can
14 confirm 341 was not on the market when I met with
15 Mr. Myers and put in a bid are Chris Barkley and home
16 selling assistance and Joan Bowerman. I think it was
17 Long & Foster. Yeah, that's what it says.

18 Q When you -- or actually as of today's
19 date, do you believe that her telling you that these
20 two real estate agents existed and could confirm that
21 the 341 property was not on the market, do you believe

1 that that had any significance to her case?

2 A That the 341 property was not on the
3 market. 341 is the Collinses' address?

4 Q That's her property.

5 A That's her address. 340; right?

6 Q 339.

7 A 339. She's saying the two real estate
8 agents could confirm that her property was not on the
9 market when she first met with Mr. Myers and put in a
10 bid.

11 Well, I don't know how the property -- no.
12 The answer to your question is their testimony in this
13 regard, if they would have got on the witness stand
14 and said Linda knew that the property was not on the
15 market when she met with Mr. Myers, who cares? What
16 relevance does that have?

17 Q Well, I'm just asking you is it of any
18 significance to you that the property was not on the
19 market at the time her realtor actually approached
20 Mr. Myers?

21 A None.

1 (Carney Deposition Exhibit 9 was marked
2 for purposes of identification.)

3 Q I'm showing you Number 9, which is the
4 zoning variance.

5 Do you ever recall having seen this
6 document which Ms. Senez indicates she sent to you in
7 an e-mail on October 30th, 2006?

8 A Do I recall independently?

9 Q Do you recall ever seeing it?

10 A I don't have an independent recollection
11 of seeing the document, but if Linda sent it to me
12 with an e-mail as an attachment, I read it.

13 Q Do you think the document has any
14 significance with regard to her case?

15 A I don't know. I'd have to reread it. And
16 I'm having a very hard time doing it because it's so
17 lightly printed.

18 Q It's lightly printed. I can read it.

19 Can you read it?

20 A I'm struggling with it right now.

21 Q Uh huh.

1 A You have to understand, as I said to you
2 before, my representation had nothing to do with
3 Linda's zoning dispute with the county.

4 Q I understand that.

5 Go ahead and read it. Tell me if you
6 think it had any significance to her case.

7 A This has to do with a side yard setback of
8 one foot instead of required -- I think that says two
9 feet, maybe. I don't know what it says. And an
10 average height of 19 feet instead of the required 15
11 feet.

12 I can't read the second sentence at all.
13 Talks about the garage and the back. Driveway to the
14 left of the house. The building permit, height
15 restriction. The need for more storage area. Wanted
16 to add a second story to the garage.

17 Property being bordered on each side by a
18 retaining wall. It says she's not sure how far the
19 retaining wall is from the side property line. They
20 believe it's about a foot inside.

21 Her discussion about the garage. I'm not

1 sure the distance between the garage and the side
2 property line.

3 Purchase the property and no survey was
4 every made. Average height of the garage, 19 feet.
5 Willingness to change the roof in order to comply.

6 We seek relief. Asking for a variance.
7 Restrict application of the zoning regs because it
8 would cause them difficulty.

9 Top paragraph is virtually illegible.
10 Talks about an advertisement and then a prayer for
11 relief.

12 So, your question now on this is what?

13 Q My question was do you see anything in
14 that document that you think might have been helpful
15 to her adverse possession case?

16 A No. This is a document -- this was a
17 petition filed by her predecessor in title for a
18 variance. It did discuss the wall, but, again, it
19 makes no never minds because we had a survey and that
20 showed what we needed it to show.

21 Q Let's move on.

1 (Carney Deposition Exhibit 10 was marked
2 for purposes of identification.)

3 Q Showing you Number 10. Number 10 is
4 actually from the trial transcript, and specifically
5 I'm referring to page 171, lines 19 to 23.

6 I'll let you read that and I'll tell you
7 what next I'm referring to.

8 And then page 172, lines one to two. And
9 then page 172, lines 19 --

10 A I'm sorry. Lines one to two?

11 Q Lines one to two.

12 A Okay. I read those.

13 Q 172, lines 19 to 23.

14 A Okay.

15 Q And page 173, lines five and six.

16 A I don't know who she's referring to when
17 she says he. He seems, I don't know who she's
18 referring to.

19 Q That would be Mr. Myers. 173, lines 22 to
20 25.

21 A Okay.

1 Q And then 174, lines two to three.

2 A Okay.

3 Q Why did you not tell the trial judge that
4 it had been clearly established in Mr. Myers'
5 testimony that the concrete block wall was built
6 before he owned the property?

7 MS. LIPPINCOTT: Objection. Lacks
8 foundation.

9 You may answer.

10 A In the exercise of my trial strategy, I
11 did not think it was necessary because his de bene
12 esse deposition was entered in its entirety.

13 As a matter of fact, if my memory serves
14 me correctly, the court took a recess so it could go
15 read the de bene esse deposition of Mr. Myers. So,
16 she was familiar with his deposition testimony.

17 And, frankly, how long the wall had been
18 up was -- the testimony was that the wall was there
19 when Mr. Myers bought the property. There's no
20 question that that testimony was elicited.

21 There was testimony from Mr. Myers that

1 the wall fell down during the course of his ownership.
2 There was testimony from Mr. Myers that the wall was
3 reerected by the Cooks, the Collinses' predecessor in
4 title.

5 And that it was built in the same
6 footprint that it was in when it fell, but it was
7 built in a more workmanlike fashion. It was a
8 sturdier wall. It had weep holes put in it.

9 Q Right.

10 A And that's how it was when he left or sold
11 the property to Linda. There's no question in my mind
12 that everybody was satisfied that the wall had been
13 there for over 20 years in one form or another. The
14 wall or its predecessor wall that had fallen down and
15 been rebuilt. That wasn't in dispute.

16 The court was seizing on something that it
17 was really unnecessary to seize upon.

18 Nip Jenkins and I never disagreed that
19 that -- how long the wall had been there. It wasn't
20 an issue.

21 Q So -- well, would you agree with me that

1 the court appeared to have been confused at the end of
2 the case about how long the wall had been there?

3 A I don't recall.

4 MS. LIPPINCOTT: Objection. Calls for
5 speculation.

6 Q Well, based on what you just read.

7 A I can't tell you whether the court is
8 confused. I mean, I don't know where this is in the
9 overall. Is this part of the court's comments from
10 the bench after closing argument or is it something
11 during the course of the trial?

12 Q It's during the closing arguments.

13 A It's during the closing arguments?

14 Q Uh huh.

15 A Okay. The court, Mr. Dowell, you have had
16 the benefit I know of reading the Court of Special
17 Appeals opinion, as have I.

18 It is obvious that the court was confused
19 regarding at least one, if not more, of the elements
20 of adverse possession, as Judge Holliger's opinion
21 painfully described.

1 And so, yes, you can say the court was
2 confused. The court wasn't on top of its game
3 regarding its proper understanding of the elements of
4 adverse possession, sure.

5 The Court of Appeals -- the Court of
6 Special Appeals said so.

7 Notwithstanding my efforts to the
8 contrary, notwithstanding my closing argument,
9 notwithstanding the proof that had been elicited at
10 trial, judges make errors. That's why we have
11 appellate courts.

12 Q I'm not talking about that, sir.

13 A Well, you are talking about it.

14 Q I'm talking about the concrete block wall
15 and when it was built.

16 Do you agree with me the trial judge was
17 confused about that at the end of the case?

18 A I can't agree or disagree with you about
19 whether the trial judge was confused. Her remarks
20 speak for themselves.

21 Q Nevertheless, the judge having said what

1 she said, as we just went over, you did not feel it
2 necessary to inform the judge that the wall had been
3 there prior to 1980 prior when Mr. Myers owned the
4 property, you did not feel that was necessary?

5 A I had done that. I had done that during
6 the course of the trial through the testimony, through
7 the testimony of Linda, through the testimony of
8 Mr. Myers, through the testimony of the Cooks, the
9 cross examination of them and their direct testimony.

10 Everybody agreed that the wall had been
11 there for at least 20 years.

12 Q But at the end --

13 A It wasn't an issue.

14 Q But the judge is the important person,
15 correct, because she makes the decision, not you, not
16 the witnesses, but the judge?

17 A That's all true, sure.

18 Q And if the judge doesn't understand a key
19 element of the case, how long the wall had been there,
20 do you agree that it would be the trial lawyer's duty
21 to inform the judge that she's incorrect and she --

1 and of the true facts of the situation?

2 MS. LIPPINCOTT: Objection. Lacks
3 foundation. Calls for speculation.

4 You may answer.

5 A We had advised the court, the mouths of
6 multiple witnesses and through the deposition
7 testimony of Mr. Myers as to how long the wall had
8 been there.

9 If she didn't get it, then she didn't get
10 it. I can't change what a judge doesn't get. That's
11 why we have the appellate process and the appellate
12 court said so, she didn't get it.

13 Q How many times did you read Mr. Myers'
14 deposition transcript before the trial?

15 A I have no idea.

16 Q Do you recall reading it just once the day
17 before the trial?

18 A I read it --

19 MS. LIPPINCOTT: Objection.

20 A I don't know when -- I read it before the
21 trial. You always read -- if I'm going to put a

1 deposition transcript into evidence, I'm going to
2 certainly read it.

3 Q Right.

4 A Whether or not I read it the day before
5 trial, I probably did. I'm sure I read it other times
6 as well, or at least part of it.

7 You have to remember I took it. So, I
8 know what it said. It wasn't like I'm reading a
9 deposition that you took in another case and I want to
10 find out what was said. I know what was said. I was
11 there. I lived it. I took it.

12 Q Was -- if you had read the transcript, you
13 would have billed for that time; correct?

14 A Maybe, maybe not. I would have billed for
15 general trial preparation. That can subsumed into a
16 general trial preparation entry on my time slips. I
17 don't break it -- when I'm preparing for a trial, I
18 don't break it down piece by piece, like read
19 correspondence from Brice Dowell dated. Read
20 correspondence from Linda Senez dated. I don't break
21 it down in that fashion. I put general trial

1 preparation.

2 Q So, if you had read Mr. Myers' deposition
3 transcript, you wouldn't have broken that down, you
4 would have just included that in general trial
5 preparation billing?

6 A Probably so. Probably so.

7 Q Do you recall ever having made any notes
8 of his trial testimony, what specifically was in there
9 that was helpful and hurtful?

10 A I made notes when I took his deposition I
11 think. I don't have them in front of me.

12 Q Do you still have those notes somewhere?

13 A I don't have -- you have everything. I
14 don't know what you have. I don't know what notes I
15 have, what notes I don't have. Whether or not I
16 have -- never mind.

17 (Carney Deposition Exhibit 11 was marked
18 for purposes of identification.)

19 Q I'll show you Number 11, page 179, lines
20 five and six.

21 A May I ask what this is?