

Exhibit 8

To be filed under seal pursuant to Stipulated Protective Order

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4 CASE NO. 2:11-cv-3695RDP

5
6 DRUMMOND COMPANY, INC.,

7 Plaintiff,

8 vs.

9 TERRENCE P. COLLINGSWORTH,
10 individually and as agent of
11 Conrad & Scherer, LLP; and
12 CONRAD & SCHERER, LLP,

13 Defendants.
14 _____/

15 633 South Federal Highway
16 Fort Lauderdale, Florida
17 Monday, August 24, 2015
18 9:09 a.m.

19 VIDEOTAPED DEPOSITION OF
20 WILLIAM R. SCHERER

21 Taken by MARIA ISABEL PORRAS,
22 Registered Professional Reporter and Notary
23 Public in and for the State of Florida at Large,
24 pursuant to Notice of Taking Deposition Pursuant
25 to Rule 30(b) of the Federal Rules of Civil
Procedure in the above cause.

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

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100 Brookwood Place
7th Floor
Birmingham, Alabama 35209
BY: William Anthony Davis, III, Esq.
H. Thomas Wells, III, Esq.
Benjamin T. Presley, Esq.

ON BEHALF OF THE DEFENDANTS:

Conroy & Scherer, LLP
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Fort Lauderdale, Florida 33301
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Susam Godfrey
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BY: Kenneth McNeil, Esq.

Spotswood, Sansom & Sansbury, LLC

One Federal Place
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Birmingham, Alabama 35203
BY: Robert Spotswood, Esq.

ALSO PRESENT:

Videographer: Justin Routt

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1 THE VIDEOGRAPHER: Okay. We now commence
2 the videotape deposition in the United States
3 District Court of the Northern District of
4 Alabama, southern division in the matter of
5 Drummond Company, Inc., plaintiff, versus
6 Terrence P. Collingsworth, individually and as
7 agent of Conrad & Scherer, LLP and Conrad &
8 Scherer, LLP, defendants, Case 2:11-cv-3695RDP.

9 Our witness today is William Scherer.
10 Today's date is August 24th, 2015. The time is
11 exactly 9:09 a.m. We're located at 633 South
12 Federal Highway, Fort Lauderdale, Florida, 33301.

13 Will all attorneys please identify
14 themselves for the record and state who they
15 represent?

16 MR. DAVIS: This is Tony Davis for the
17 plaintiffs.

18 MR. PRESLEY: Ben Presley for Drummond
19 Company, plaintiff.

20 MR. WELLS: Trey Wells for the plaintiff.

21 MR. SPOTSWOOD: Robert Spotswood for Conrad
22 & Scherer, LLP and Terrence Collingsworth.

23 MR. FREVOLA: Al Frevola for Conrad &
24 Scherer and Mr. Scherer.

25 MR. MCNEIL: Ken McNeil for the defendants.

1 THE VIDEOGRAPHER: Court reporter, please
2 swear him in.

3 THE REPORTER: Can you raise your right
4 hand, please?

5 Do you solemnly swear or affirm that the
6 testimony you're about to give will be the truth,
7 the whole truth and nothing but the truth?

8 THE WITNESS: I do.

9 MR. SPOTSWOOD: Let me say a couple of
10 things before we get started. First of all, I'd
11 like to designate the transcript as confidential,
12 to have a baseline designation on it. If we feel
13 parts of it are not confidential, we will so
14 advise after we have the transcript in accordance
15 with the protective order.

16 With respect to objections, I'm fine with
17 the usual objections, which basically boils down
18 to all objections, except objections as to form.
19 The questions that are preserved for form
20 objections, I will simply note those for the
21 record.

22 We are not waiving attorney/client
23 work-product privileges by offering this witness
24 who is here individually. And as we proceed,
25 from time to time, as a representative of Conrad

1 & Scherer, we will instruct the witness not to
2 answer questions that we believe will invade the
3 privilege.

4 We do understand our obligation here with
5 respect to the 30(b)(6) notice, is to designate a
6 representative on the topics listed in the
7 revised notice that we ultimately agreed upon
8 with the help of the special master, and we have
9 undertaken to discharge those obligations in good
10 faith and to the best of our ability in the
11 limited time available to us.

12 We understand the Court fundamentally wants
13 testimony about who knew what and when regarding
14 the specific issues to be resolved at the hearing
15 starting on September 1. We certainly hope and
16 will attempt to accomplish that today. We do
17 understand that the deposition here today is
18 limited to the issues of the September 1 hearing.

19 With that, you may proceed.

20 MR. DAVIS: Okay. Thank you.

21 EXAMINATION

22 BY MR. DAVIS:

23 Q. Good morning, Mr. Scherer.

24 A. Good morning.

25 Q. My name is Tony Davis, and with me is Trey

1 Wells and Ben Presley of our law firm in Birmingham,
2 Alabama. I'll be asking you some questions here
3 today.

4 And I want you to know, please, if I ask you
5 anything that's unclear, I want you to please ask me
6 to clarify the question, if you feel like it's
7 ambiguous in any way.

8 A. Yes, sir.

9 Q. We can take a break at any time that you
10 need to. And we will have -- we have, I think, the
11 right to take seven hours of testimony, and we'll try
12 to accomplish that within that time frame.

13 We are here at your offices in Fort
14 Lauderdale; is that correct?

15 A. That's correct.

16 Q. And have you ever given a deposition before?

17 A. Yes, sir.

18 Q. You have? How many times?

19 A. Several, over the years.

20 Q. Really?

21 Do you mind sharing with us, please, sir, on
22 what occasions?

23 A. As expert witness, primarily, going back for
24 a long time. Also, in -- in cases that the firm has
25 been involved in or I have been involved in. Maybe

1 not the firm. Maybe me or my business interests.

2 Q. Okay.

3 A. And expert testimony as recently as a few
4 weeks ago.

5 Q. Well, have you individually ever been sued
6 before?

7 A. In a business context over some land issues
8 a long time ago.

9 Q. Okay. Nothing related to your practice of
10 law?

11 A. No, sir.

12 Q. And have you been a plaintiff before,
13 individually?

14 A. Yes, sir.

15 Q. What?

16 A. In those same business --

17 Q. In business situations?

18 A. -- type situations.

19 Q. What sort of businesses do you have?

20 A. I have a real estate development and
21 management businesses. That's actually my wife and
22 our -- and mine, but she's the principal of it.

23 Q. Okay. And what's the name of that entity?

24 A. SMD Realty and Development and Share
25 Management.

1 Q. Do you have any interest in this -- the bank
2 that we're -- that houses this building?

3 A. I started to say no, but yes. In its
4 predecessor, two or three banks ago, and I think we
5 still have some small stock interest in the bank. I
6 think. I'm not even a hundred percent sure on that.
7 It's not significant.

8 Q. I see there's a name change to the bank
9 here. It used to be First United; is that correct?

10 A. Well, it used to be -- yeah, it was First
11 United, and then it was something else; and then it
12 was First Union, and then it was Equitable, or --
13 it's been a lot of banks. A lot of different names,
14 yeah.

15 Q. Okay. Are you -- you're on the board or any
16 position like that --

17 A. No, sir.

18 Q. -- of this bank?

19 A. No, sir.

20 Q. What about with First United?

21 A. No, no.

22 Q. You understand you are under oath and this
23 testimony can be used in the hearing beginning
24 September 1st in Birmingham, Alabama, with Judge
25 Proctor?

1 A. Certainly.

2 Q. And do you plan to attend that hearing?

3 A. Yes, sir.

4 Q. So we would expect you to testify live in
5 that hearing?

6 A. Yes, sir. I mean, if my lawyers ask me to.

7 Q. Okay. This law firm that -- where -- where
8 we're located is Conrad & Scherer, LLP. Is that
9 the --

10 A. Yes, sir.

11 Q. Okay. And what is your role with regard to
12 the law firm?

13 A. I'm the principal partner, managing partner.

14 Q. Okay. And is that a formal designated
15 position within the LLP?

16 A. Yes, sir.

17 Q. Managing partner?

18 A. Yes, sir.

19 Q. Okay. And what are the duties and
20 responsibilities of the managing partner?

21 A. To manage the affairs of the law firm.

22 Q. Okay. And how long have you had that
23 position?

24 A. For -- there's a growl, my stomach
25 growling -- 35 years.

1 Q. Okay. Were you one of the original founders
2 of Conrad & Scherer, LLP?

3 A. Yes, sir.

4 Q. And when was the firm founded?

5 A. About 1975.

6 Q. And did it begin as Conrad & Scherer?

7 A. No, it began as other names. You know, mine
8 was the last when it began.

9 Q. But since 1975, you've been in the practice
10 of law essentially within this law firm --

11 A. Yes.

12 Q. -- that we're here now?

13 A. Yes, sir.

14 Q. And does the firm operate with an executive
15 committee?

16 A. No, sir. Not formal, informal.

17 Q. It does informally?

18 A. Yes, sir.

19 Q. And so you have others within the firm that
20 have some guidance with regard to firm management?

21 MR. SPOTSWOOD: Object to the form.

22 THE WITNESS: We have others in the firm
23 that help with the management of the firm.

24 BY MR. DAVIS:

25 Q. Okay.

1 A. On a need basis.

2 Q. All right. So informally, as far as the
3 executive committee, who would be the informal
4 participants of that?

5 MR. SPOTSWOOD: Object to the form.

6 THE WITNESS: Now?

7 BY MR. DAVIS:

8 Q. Yes, presently.

9 A. Probably Mr. Frevola.

10 Q. Okay. In 2009, who would that have been?

11 A. Probably Mr. Frevola, also.

12 Q. Okay. From 2009 to the present, who all has
13 been involved as an informal participant, as far as
14 executive committee or management of the firm?

15 MR. SPOTSWOOD: Object to the form.

16 THE WITNESS: What's the date again, sir?

17 BY MR. DAVIS:

18 Q. 2009 to the present?

19 A. Mr. Frevola and my son, William Scherer,
20 III.

21 Q. Okay. Is he known as Billy?

22 A. Yes. Just to distinguish between Bill and
23 another guy whose name is the same, but not. I've
24 already gotten -- Bill is already taken, so he had to
25 be Billy. He does not go by Billy, other than here.

1 Q. Okay. And so, when was he involved with you
2 in the management of the firm, what time frame?

3 A. Well, he joined the firm 20 years ago. And,
4 you know, from time to time during that 20 years, he
5 was -- gotten involved as a partner in the firm and
6 as my son.

7 Q. Okay. But from 2009 up until today's date,
8 Billy Scherer, when he was here with the firm would
9 have been involved with you in making decisions with
10 regard to the firm management?

11 MR. SPOTSWOOD: Object to the form. You
12 may answer.

13 THE WITNESS: Yes. I think that's a fair
14 statement.

15 BY MR. DAVIS:

16 Q. And Billy Scherer is a -- was a partner in
17 the firm?

18 A. Yes, sir.

19 Q. And is he still with the firm?

20 A. No, sir, he left.

21 Q. And when did he leave?

22 A. In June of 2014.

23 Q. Okay. And can you please tell us why he
24 left the firm?

25 A. To start his own law firm.

1 Q. Okay. And what's the name of that firm?

2 A. The Scherer Law Firm.

3 Q. Did other members of this firm go with him?

4 A. No, sir.

5 Q. Are there any minutes that the firm has with
6 regard to the informal executive committee?

7 A. No, sir.

8 Q. With regard to the firm organization, there
9 was -- there is a CFO, is there not?

10 A. Yes, sir.

11 Q. And who is the present CFO?

12 A. Eldon Haze. Eldon Haze.

13 Q. Okay.

14 A. I've missed that. It's not Haze. It's
15 close to Haze. I'm sorry. He's -- he's been with us
16 less than a year. It's Eldon.

17 Q. I would've thought Eldon would've been the
18 hard part.

19 A. Well, I got Eldon, but I'm just blanking on
20 his last name. But I think it's Haze or close to
21 Haze.

22 Q. I got you.

23 And how long, can you tell us, that -- has
24 Mr. Haze been the CFO?

25 A. About a year, I believe.

1 Q. And prior to that?

2 A. Richard Drath.

3 Q. Richard Drath?

4 A. Yes, sir.

5 Q. And so Mr. Drath left sometime in 2014?

6 A. About a year ago, yes, sir.

7 Q. Okay. And where is he today?

8 A. He's retired.

9 Q. Is that the reason he left the firm?

10 A. Yes.

11 Q. Was to retire?

12 A. Yes.

13 Q. And what was the role -- and what is the
14 role, duties and responsibilities of the CFO?

15 A. To help run the law firm from the financial
16 side and the administration side. It's more of a
17 firm administrator. We don't use titles like CFO, I
18 don't think. It's more like -- the old firm
19 administrator. He happened to be a -- have an
20 accounting background, as does Eldon.

21 Q. Okay.

22 A. It's Eldon Hills.

23 Q. When did you finish law school?

24 A. December, 1972.

25 Q. Okay. And you're licensed to practice in

1 the state of Florida?

2 A. Yes, sir.

3 Q. Any other states?

4 A. Indiana and Washington, DC.

5 Q. And you were counsel of record in the
6 litigation in Alabama in which the plaintiffs,
7 generally, were Balcerro?

8 A. Yes, sir.

9 Q. And you were admitted pro hac vice?

10 A. Yes, sir.

11 Q. And tell us, as a lawyer, what
12 that -- admitted pro hac vice means?

13 A. It means I am permitted to practice with the
14 permission of the Court and have to practice in
15 conformity with the bar rules of the great state of
16 Alabama.

17 Q. Okay. And have you been admitted in that
18 capacity in any other cases?

19 A. Yes, from time to time. I don't have a
20 memory of any other cases at this point.

21 Q. Baloco is one?

22 A. No.

23 Q. It was also Mr. Collingsworth had.

24 A. No, sir.

25 Q. Okay. Have you ever been disciplined as a

1 lawyer?

2 A. No, sir.

3 Q. As a managing partner of this law firm, do
4 you have the authority to execute notes on behalf of
5 the firm?

6 A. Yes, sir. Promissory notes?

7 Q. Right.

8 A. Yes, sir.

9 Q. And have you done that in your capacity as
10 managing partner?

11 A. Oh, yes. Yes, sir.

12 Q. So this firm does participate in litigation
13 financing arrangements?

14 A. Yes, sir.

15 Q. Is Mr. Collingsworth a member of this firm?

16 A. Yes, sir.

17 Q. And does he have a special designation or a
18 particular designation as a member of the firm?

19 A. No, sir.

20 Q. Is he the managing partner of the
21 Washington, D.C. office?

22 A. Not designated, but that's his capacity as
23 the senior lawyer in charge of the office in
24 Washington, D.C.

25 I don't think we ever designated him as the

1 managing partner.

2 Q. If he represented himself as the managing
3 partner, that would -- you would not dispute that,
4 though, would you?

5 A. No. No, sir.

6 Q. So he has the capacity in the role of being
7 the senior partner in the Washington, D.C. office to
8 make decisions concerning the day-to-day management
9 of that office in Washington, D.C.?

10 MR. SPOTSWOOD: Object to the form.

11 THE WITNESS: Within certain limitations.

12 BY MR. DAVIS:

13 Q. Okay. And how long has Mr. -- is
14 Mr. Collingsworth a partner of Conrad & Scherer, LLP?

15 A. Okay. You asked that, and I said yes.

16 Q. Okay. And how long has he been a partner?

17 A. Since 2008.

18 Q. Okay. And as a partner in the law firm, he
19 has all the rights, duties, privileges of a
20 partner -- any other partner in the law firm?

21 A. Yes, sir.

22 Q. Is he compensated based on a point system or
23 equity system?

24 MR. SPOTSWOOD: Object to the form. You
25 may answer.

1 THE WITNESS: I'm not exactly sure what you
2 mean by "equity system," but he's compensated by
3 the firm with a draw, and would share in the
4 profits generated on the work of his cases.

5 BY MR. DAVIS:

6 Q. Have you -- has the law firm or you, as
7 managing partner, ever had to discipline
8 Mr. Collingsworth?

9 A. No, sir. By "discipline," do you mean some
10 formal action taken against him?

11 Q. Right.

12 A. Yeah. No.

13 Q. Have you reprimanded him in any way with
14 regard to any of his conduct in a professional way?

15 MR. SPOTSWOOD: I'm going to -- to the
16 extent that that would require you to disclose
17 work product or attorney/client privileged
18 information, I would instruct you not to answer.
19 Otherwise you may answer.

20 THE WITNESS: I would say more in the
21 nature of scolding.

22 BY MR. DAVIS:

23 Q. Okay.

24 A. Not different than a lot of other lawyers in
25 the firm.

1 Q. And please tell us what matters you have
2 scolded Mr. Collingsworth about.

3 A. I wouldn't know. I can't recall.

4 Q. You can't recall at all?

5 A. No, at all.

6 Q. So you have no recollection whatsoever as to
7 what you scolded one of your partners --

8 A. That wasn't my answer.

9 Q. Okay.

10 A. Your question was on what matters, legal
11 matters, what cases.

12 Q. All right.

13 A. And I told you I couldn't -- I can't
14 remember.

15 Q. Okay. Do you have a recollection about
16 anything with regard to scolding Mr. Collingsworth?

17 MR. SPOTSWOOD: Same instruction. To the
18 extent that that would require you to disclose
19 information protected by the attorney/client or
20 work-product privileges, I would instruct you not
21 to answer.

22 THE WITNESS: Only relative to him working
23 on other cases, other than the cases in
24 Washington, D.C., to help the firm and me with
25 other matters, other firm matters, nonspecific.

1 I have no memory of -- at this time, of what that
2 would be. But it's not any different than asking
3 other partners and the lawyers in the firm to
4 help out --

5 BY MR. DAVIS:

6 Q. Okay.

7 A. -- on cases --

8 Q. As --

9 A. -- on our legal work.

10 Q. As of today August 24th, 2015,
11 Mr. Terry Collingsworth is a partner in good standing
12 with this law firm?

13 MR. SPOTSWOOD: Object to the form. You
14 may answer.

15 THE WITNESS: Yes, sir. You've asked if
16 he's a partner, and I said he is. This is the
17 third time.

18 BY MR. DAVIS:

19 Q. Okay. And I said as of today.

20 A. Well, I answered as of today. I -- you
21 asked me if he's a partner of the firm and I said,
22 "Yes, sir. He is a partner of the law firm."

23 Q. Okay. And I'm going to tell you something
24 right now. It may happen again where I may ask you
25 something more than once.

1 A. I'll forgive you.

2 Q. I want to tell you, I appreciate you
3 pointing it out to me.

4 A. I'll forgive you.

5 Q. And I really do. So that may happen again.
6 It may happen again and again and again. So let's
7 just sort of get used to it.

8 A. Well, when it happens again and again and
9 again, then it's kind of intentional there. I'm
10 understanding that, you know, a fellow lawyer, you
11 sometimes can't quite remember what we've covered.
12 But I'll do my best to --

13 Q. Okay.

14 A. -- tell you if you've asked it and I've
15 answered it.

16 Q. I ask you as -- and he is represented, is he
17 not, by the same lawyers that the law firm is
18 represented by --

19 A. Yes, sir.

20 Q. -- in this case?

21 A. Yes, sir.

22 Q. And with regard to the case, which we're
23 here on today, is the law firm being defended in any
24 way through insurance coverage?

25 A. No, sir.

1 Q. So with regard to the defamation case,
2 Conrad & Scherer has no insurance defense provided to
3 it?

4 A. Yes, sir. That's true.

5 Q. Did, at some point in time, this law firm
6 have insurance defense provided to it?

7 A. Yes, sir.

8 Q. And what was the -- and was the law firm
9 provided to defend Conrad & Scherer's interest?

10 A. I beg your pardon?

11 Q. What -- was there a -- a law firm appointed
12 by the insurance company to represent?

13 A. Yes, sir.

14 Q. Okay. And what was that law firm?

15 A. Brad Smith. I don't know the name of his
16 firm.

17 Q. Is Brad Smith still counsel for Conrad &
18 Scherer?

19 A. I don't believe so.

20 Q. Do you know when Mr. Smith ceased
21 representing Conrad & Scherer?

22 A. In November 2014, I believe.

23 Q. Okay. And can you tell us why that
24 occurred?

25 A. Because we substituted for him with new

1 counsel.

2 Q. Okay. And was the decision to substitute a
3 decision that was made by you, as managing partner?

4 A. Yes, sir.

5 Q. And when you made that decision, did that
6 necessarily mean that you would no longer have
7 insurance defense provided?

8 A. In part.

9 Q. Okay. Was there a formal position taken by
10 the insurance company that it would no longer defend
11 this law firm in the defamation action?

12 MR. SPOTSWOOD: I'm going to say to you
13 that to the extent that you can answer that
14 question without invading the work-product or
15 attorney/client privilege, fine. Otherwise, I'm
16 going to instruct you not to answer it.

17 THE WITNESS: Okay. I don't think I can
18 without that.

19 MR. DAVIS: Okay. Let me say this: We --
20 we have read -- and I'm sure you have, too -- the
21 transcript of Terry Collingsworth's deposition;
22 and Judge Proctor's take on where we are in this
23 case, and the what did you know and when did you
24 know it, and the other issues that he says.

25 We believe we have wide -- wide latitude to

1 make inquiry. And we're going to put you on
2 notice. That's what our position today.

3 MR. SPOTSWOOD: I understand that.

4 MR. DAVIS: There's a pending motion to
5 compel, and we expect that'll be resolved by
6 mid-week. But we are making inquiry on what we
7 consider to be good faith inquiries on what did
8 this firm know and when did it know it.

9 So I would not have asked that question if
10 I did not think that was a good faith inquiry.

11 MR. SPOTSWOOD: I'm sorry, Tony. I'm not
12 going to waive the attorney/client work --

13 MR. DAVIS: Okay.

14 MR. SPOTSWOOD: -- product privileges.

15 MR. DAVIS: All right.

16 MR. WELLS: We just need you to mark every
17 instruction not to answer.

18 THE COURT REPORTER: Okay.

19 MR. WELLS: Thanks.

20 BY MR. DAVIS:

21 Q. Up until the time -- and I'm going to ask
22 this again -- but did you say Mr. Smith left or
23 ceased representing the firm in November of 2014?

24 A. I believe so, yes.

25 Q. Okay. Up until that point in time, to your

1 knowledge as the managing partner of this firm, was
2 Mr. Smith making reports to the insurance carrier
3 concerning the progress of the case?

4 A. I have no knowledge --

5 Q. Okay.

6 A. -- about that.

7 Q. So if Mr. Smith was making reports to the
8 insurance carrier about the progress of the case, he
9 was not copying you or someone here at Conrad &
10 Scherer with regard to those reports?

11 MR. SPOTSWOOD: Object to the form. You
12 may answer.

13 THE WITNESS: Yes, sir. That's correct.

14 BY MR. DAVIS:

15 Q. Okay.

16 A. I never received any copies of reports.

17 Q. And who -- what is the insurance carrier
18 that was defending the case up until November of
19 2014?

20 MR. SPOTSWOOD: Object to the -- object to
21 the form. Sorry.

22 THE WITNESS: That wasn't the answer.

23 The -- the -- I said the insurance company is not
24 defending the case now. I didn't say they
25 stopped defending the case in November of 2014.

1 So to the extent of that testimony, your
2 question is a little bit off.

3 BY MR. DAVIS:

4 Q. All right. I can see that.

5 So up until November, 2014, what insurance
6 carrier was providing a defense?

7 A. Fireman's Fund.

8 Q. And was Fireman's Fund also providing
9 indemnity?

10 A. Under a reservation of rights, they were
11 defending the case.

12 Q. Okay.

13 A. And obviously there's not been a reason for
14 indemnity --

15 Q. Right.

16 A. -- issues to arise.

17 Q. And when a decision was made to change
18 counsel in November of 2014, did Fireman's Fund
19 continue to provide a defense?

20 A. For a time.

21 Q. Okay. And can you please tell us how long
22 that lasted?

23 A. Not precisely because I can't recall when it
24 ceased.

25 Q. Okay. Best estimate.

1 A. Within the next six, eight months, maybe.

2 Q. Okay. And so Fireman's Fund was paying
3 some -- I would expect -- if not all, of the expense
4 of new counsel that was brought in.

5 A. In the beginning.

6 Q. Okay. Did Fireman's Fund pay the defense
7 cost of Mr. Niewoehner that was also counsel before
8 November, '14?

9 A. Yes.

10 Q. And with regard to this litigation involving
11 the defamation case, which we're here for your
12 testimony, does the law firm have a point person that
13 would have dealt with the insurance company?

14 A. At what time?

15 Q. 2011, when the suit was filed.

16 A. It would've been Mr. Collingsworth.

17 Q. Okay. Did Mr. Collingsworth continue to be
18 the point person up until November of 2014?

19 MR. SPOTSWOOD: Object to the form. You
20 may answer.

21 THE WITNESS: No.

22 BY MR. DAVIS:

23 Q. Okay. At what point in time was a different
24 point person --

25 A. In late July when Mr. Niewoehner --

1 Niewoenher joined the defense of the firm team.

2 Q. Okay. Who became the point person then for
3 the law firm?

4 A. Me and Mr. Niewoehner.

5 Q. Was the decision to bring Mr. Niewoehner on
6 board a decision made by the law firm, or you, as
7 managing partner, or was it made by the insurance
8 carrier?

9 A. By the partnership and me, as managing
10 partner.

11 Q. And tell us why the partnership made that
12 decision.

13 MR. SPOTSWOOD: I'm going to instruct you
14 not to answer that, unless you can do so
15 without -- do so without waiving the
16 attorney/client or work-product privileges. If
17 you can, that's fine.

18 THE WITNESS: I felt that Mr. Smith needed
19 more help.

20 BY MR. DAVIS:

21 Q. Okay. Did you -- were you critical of
22 Mr. Smith at any -- at that point in time in July of
23 2014?

24 A. Yes.

25 Q. In what way?

1 MR. SPOTSWOOD: That -- it's just -- I'm
2 going to caution you about not revealing
3 attorney/client privileges or work product. But
4 other than that, if you can answer without doing
5 that.

6 THE WITNESS: I, again, said -- reiterate
7 my testimony, or repeat my testimony, that I
8 thought he needed more help, and could not match
9 the Drummond's efforts to get sanctions against
10 our firm. And Mr. Collingsworth and I thought
11 that he needed more help.

12 BY MR. DAVIS:

13 Q. When did Mr. McNeil and his firm first get
14 contacted by this law firm concerning representating
15 (sic) -- representing its interest?

16 MR. SPOTSWOOD: Object to the form. Are
17 you talking about this litigation?

18 MR. DAVIS: Yes, the libel case.

19 THE WITNESS: At about the same time.

20 BY MR. DAVIS:

21 Q. July, 2014?

22 A. Yes, sir.

23 Q. Had the law firm engaged Mr. McNeil and his
24 law firm prior to that time for any other matters?

25 A. Yes, sir.

1 Q. What were those?

2 A. He was representing the firm in an action
3 against a partner who left the firm in '08 in a --
4 what they call "client-grabbing case." It's been
5 going on for a long time.

6 Q. And when did Mr. McNeil get involved in
7 that?

8 A. Maybe 2010, I think. I don't remember
9 exactly. Because the case has been going on so long.
10 It might've been a little later.

11 Q. So you're telling us that the first time
12 Mr. McNeil and his law firm was engaged by Conrad &
13 Scherer, LLP, with regard to the defamation case, was
14 the summer of 2014, July?

15 A. No, sir. That's not what I said.

16 Q. Okay.

17 A. You asked me when he became involved.

18 Q. Okay.

19 A. And I said in about the summer. He was not
20 engaged until November.

21 Q. Okay. And what was his involvement prior to
22 the engagement?

23 MR. SPOTSWOOD: You can, to the extent you
24 can answer that without invading the
25 attorney/client or work-product privileges, you

1 may answer.

2 THE WITNESS: I don't think I can.

3 MR. SPOTSWOOD: Okay.

4 MR. DAVIS: You're going to refuse to
5 answer that?

6 MR. SPOTSWOOD: Yes.

7 MR. DAVIS: Okay. Note that.

8 And that's based on attorney/client
9 privilege?

10 MR. SPOTSWOOD: Yes.

11 MR. DAVIS: And work product?

12 MR. SPOTSWOOD: Yes.

13 MR. DAVIS: And we believe that clearly
14 goes to what did you know and when did you know
15 it.

16 BY MR. DAVIS:

17 Q. At the time Mr. Niewoehner was involved --
18 he became engaged by Conrad & Scherer, did you, as
19 managing partner, believe that there had been
20 misrepresentations made by Mr. Collingsworth in
21 pleadings or in court proceedings?

22 A. No, sir.

23 Q. Do you keep a timesheet with regard to the
24 time that you spend on the defamation action?

25 A. Yes, sir. Generally, I keep a time on

1 everything that comes through my desk in my office.
2 And the Drummond matters is one matter not separated
3 from the defamation case or the Balcerro case, or any
4 other issue in Drummond's, it would just be Drummond.

5 Q. Do you, as managing partners -- as the
6 managing partner, do you -- did you ever report
7 directly to Fireman's Fund with regard to any
8 progress of the case?

9 A. No, sir.

10 Q. Or a case analysis?

11 A. No, sir.

12 Q. I asked you about Mr. Smith and his law
13 firm.

14 Have you seen any reports that have been
15 furnished to the insurance company concerning the
16 progress of the case?

17 A. I think you asked me that, and I said no.
18 And that's still my answer.

19 Q. That would not include any reports by
20 Mr. Collingsworth?

21 MR. SPOTSWOOD: The question is:
22 Mr. Collingsworth reports to the insurance
23 company?

24 MR. DAVIS: Right.

25 MR. SPOTSWOOD: Yeah.

1 THE WITNESS: No.

2 MR. DAVIS: Okay.

3 THE WITNESS: I have not seen any of
4 Mr. Collingsworth's reports to the insurance
5 company, to my knowledge.

6 BY MR. DAVIS:

7 Q. Did you, as managing partner, ever bring to
8 the attention of the insurance company that -- the
9 fact that they are defending a reservation of rights,
10 they had an obligation to keep you advised as to the
11 progress of the case?

12 MR. SPOTSWOOD: I'm going to just simplify
13 my instruction, and just call it the privilege
14 instruction --

15 MR. DAVIS: Okay.

16 MR. SPOTSWOOD: -- just to shorten things.
17 Subject to my privilege instruction, you
18 may answer.

19 THE WITNESS: I don't -- I think the answer
20 to that is no.

21 BY MR. DAVIS:

22 Q. Did you ever receive or have you ever
23 received any reports concerning the progress of the
24 case from any source?

25 MR. SPOTSWOOD: Same instruction.

1 THE WITNESS: No, not reports, as such.

2 BY MR. DAVIS:

3 Q. Okay. Did you receive -- so Terry
4 Collingsworth would not report to you concerning the
5 progress of the case?

6 A. I was not -- not a report, as such.

7 Q. Okay. Communications?

8 A. I was following the progress of the case via
9 being on -- being directed to me as the pleadings
10 were being filed and the motions and such. But in
11 terms of reporting on the case, not -- not really.

12 Q. Okay. And was there a particular lawyer
13 within the firm or a particular person within the
14 firm that was providing you this information?

15 A. No. It -- I -- I'm -- I am -- I was
16 receiving regularly the -- the activity in the case
17 via my e-mail.

18 Q. Okay.

19 A. And monitored in that fashion.

20 Q. And that would be e-mails from
21 Mr. Collingsworth, for instance?

22 A. Yes.

23 Q. Okay.

24 A. And I think court filings, as well.

25 Q. With regard, for instance, pleadings in the

1 case, did you review those prior to them being filed?

2 A. No.

3 Q. So when the answer was filed in this case,
4 you did not review it prior to it being filed?

5 A. No, sir.

6 Q. But you did review it after it was filed?

7 A. I'm not even sure if that's so.

8 Q. Okay. But you said you do review pleadings?

9 A. No. I said they come through on my e-mail,
10 and whether I review them or not, or just know that
11 they are being filed, are two different things.

12 Q. I see.

13 What about transcripts of hearings, are you
14 given those?

15 A. At what time?

16 Q. At any time since this case has been filed?

17 MR. SPOTSWOOD: To the extent that would
18 involve communications with your counsel, I would
19 instruct you not to answer that.

20 THE WITNESS: I can't answer that.

21 MR. DAVIS: Mark that. I would, for the
22 record, say that that -- we think -- it's
23 extremely material to the issue as to the law
24 firm's position in this case, and that you have
25 been instructed not to answer.

1 THE WITNESS: I have.

2 MR. DAVIS: Read that last question back,
3 please.

4 (Thereupon, the requested portion of the
5 record was read back by the court reporter.)

6 MR. DAVIS: And he refused to answer.

7 BY MR. DAVIS:

8 Q. Have you seen court orders issued by Judge
9 Proctor?

10 A. Yes.

11 Q. To your knowledge, have you seen all of his
12 orders?

13 A. Yes.

14 Q. Have you seen declarations that have been
15 filed by Mr. Collingsworth?

16 A. Yes.

17 Q. Did you see those declarations in draft
18 form?

19 A. No.

20 Q. So the only declarations you have seen are
21 those that -- the only time you've seen those
22 declarations is after they have been filed?

23 A. Yes, sir, and provided to me by my counsel.

24 Q. Okay. Did you ever tell Mr. Collingsworth
25 that something in his declarations was not true?

1 MR. SPOTSWOOD: I'm going to allow you to
2 answer that if you can without invading
3 attorney/client and work-product privileges.

4 THE WITNESS: No.

5 MR. DAVIS: Okay. I'm just asking his
6 direct communications with Mr. Collingsworth.

7 BY MR. DAVIS:

8 Q. I know your lawyer told you not to answer
9 this, but I'm going to ask it again.

10 Have you reviewed the October 10th, 2013
11 hearing transcript?

12 A. Yes.

13 Q. And when did you review that?

14 A. When it was provided to me by my lawyers.

15 Q. Okay. Did you understand that Judge Proctor
16 made some rulings concerning document production?

17 A. Yes.

18 Q. And what, if anything, did you, as managing
19 partner, do to implement the order of the Court?

20 MR. SPOTSWOOD: I object to the form of
21 that. And also, if you can answer that without
22 invading the attorney/client or work-product
23 privileges, you may answer, otherwise not.

24 THE WITNESS: We engaged a new defense
25 team, and moved heaven and earth to uncover every

1 bit of information that could be uncovered to
2 satisfy the Court's order and orders of the
3 Court.

4 BY MR. DAVIS:

5 Q. So tell me, when you saw the transcript of
6 October -- for the hearing of October 10th, 2013.

7 MR. SPOTSWOOD: Bill, he's saying '13 not
8 '14.

9 THE WITNESS: I understand.

10 MR. SPOTSWOOD: Okay.

11 THE WITNESS: Not until much later.

12 BY MR. DAVIS:

13 Q. Okay.

14 A. And the answer I gave was as to the '14
15 order, not the '13. I never saw the '13, if that's
16 what your question -- I misunderstood it.

17 Q. I'm asking about the -- there was a hearing
18 on October 10th, 2013.

19 A. Yes, sir. I misunderstood.

20 Q. All right. You have never seen that
21 transcript?

22 A. No, I have.

23 Q. You have?

24 When did you first see that one?

25 A. When my lawyers gave it to me in 2014.

1 Q. Okay. Which lawyers were those?

2 A. My new trial team.

3 Q. Is that Mr. Niewoehner?

4 A. Well, or -- and/or Mr. McNeil.

5 Q. Did they also provide you the April 21st,
6 2014 hearing transcript?

7 A. Yes, sir.

8 Q. Okay. So you think it was the summer of
9 2014, when you first, as managing partner, read those
10 two transcripts?

11 MR. SPOTSWOOD: You may answer to the
12 extent that you can do so consistent with the
13 privilege instructions.

14 THE WITNESS: It was in the summer of 2014
15 when my lawyers made me aware of the transcript
16 and the -- and what went on at the hearing.

17 MR. DAVIS: Okay.

18 THE WITNESS: And the Court's position
19 through my counsel.

20 BY MR. DAVIS:

21 Q. And you were aware then in the summer of
22 2014, that Mr. Collingsworth had represented there
23 were only three witnesses that had received payments?

24 A. Yes, sir.

25 Q. And that was from a direct inquiry, among

1 other things, from Judge Proctor?

2 MR. SPOTSWOOD: I'm sorry. Hang on a sec.

3 Could you repeat the question?

4 (Thereupon, the requested portion of the
5 record was read back by the court reporter.)

6 MR. SPOTSWOOD: Object to the form. You
7 may answer.

8 THE WITNESS: I was aware of the
9 representation that there were only three
10 witnesses who received witness assistance
11 payments.

12 BY MR. DAVIS:

13 Q. When -- when did you become aware of that?

14 A. I was aware of -- oh, excuse me.

15 When did I become aware of what, sir?

16 Q. What you just said.

17 A. No. Of the --

18 Q. The three witnesses -- that it was
19 represented that only three witnesses had received
20 assistance payments.

21 A. Sometime in the summer of 2014.

22 Q. Okay. Did you, as managing partner, ever
23 provide any reports to the insurance carrier?

24 MR. SPOTSWOOD: Object to the form. You
25 may answer.

1 THE WITNESS: No, except through counsel.

2 BY MR. DAVIS:

3 Q. Okay. So you are aware, then, that your
4 counsel has provided reports to the insurance
5 carrier?

6 MR. SPOTSWOOD: Object to the form. You
7 may answer.

8 THE WITNESS: I am aware that my counsel
9 have had discussions with Fireman's Fund. I
10 don't know about reports.

11 BY MR. DAVIS:

12 Q. Okay. Which counsel?

13 A. I don't have any knowledge about reports.
14 My -- all counsel who have represented us.

15 Q. Okay. Including Mr. McNeil?

16 A. Yes, sir.

17 Q. Mr. Spotswood?

18 A. Yes, sir -- I don't know about
19 Mr. Spotswood, but Mr. McNeil --

20 Q. Mr. Niewoehner?

21 A. Mr. Niewoehner and Mr. Smith.

22 Q. Do you, as managing partner, have knowledge
23 as to whether your counsel has reported to the
24 insurance carrier that there were misrepresentations
25 made by Mr. Collingsworth?

1 MR. SPOTSWOOD: I'm going to instruct you
2 not to answer with respect to the substance of
3 communications between your counsel and your
4 insurance carrier on the grounds that that's
5 protected by attorney/client and work-product
6 privileges.

7 MR. DAVIS: Okay. And we object. We think
8 that goes to the very essence of the sanctions
9 hearing. It goes directly to what Judge Proctor
10 said. Inquiry should be made on, we believe, as
11 to what did you know and when did you know it.

12 MR. SPOTSWOOD: I don't think --

13 MR. DAVIS: So you --

14 MR. SPOTSWOOD: I'm -- I'm -- look, Tony,
15 I'm here to do my job to the best of my ability.
16 If -- if -- the Judge orders this witness, after
17 we have briefed this issue and we have a hearing
18 with him, then we'll come back and answer those
19 questions; but I'm going to stand on my
20 objection.

21 MR. DAVIS: Well, I'm going to tell you
22 right now, we're going -- we're going to seek
23 more than coming back and having a follow-up
24 testimony. I just -- that's why we're here.
25 We're here in Fort Lauderdale today to make -- to

1 conduct discovery on what we consider to be the
2 Judge's framed up to be the issues, so...

3 BY MR. DAVIS:

4 Q. So let me -- let me back up. Because we may
5 be having an issue here of just semantics. But I
6 referred to the term "reports," and you -- I think
7 you have told me that you do know that your lawyers
8 have had communications with the insurance carrier
9 about the status of the case.

10 A. Yes, sir.

11 Q. Okay. And you know that Mr. Smith had those
12 communications and that Mr. Niewoehner and Mr. McNeil
13 have had those communications?

14 A. Yes, sir.

15 Q. Okay. Were you ever on a conference call
16 when those -- when any oral communications were being
17 made?

18 A. No, sir.

19 Q. Have you seen e-mails that your counsel has
20 sent to the insurance carrier concerning the status
21 of the case?

22 A. I don't believe so.

23 Q. Are you aware that Terry Collingsworth gave
24 his testimony last week?

25 A. Yes, sir.

1 Q. Okay. And what involvement did you have
2 with regard to preparing him for that testimony?

3 A. None.

4 Q. None whatsoever; is that correct?

5 A. None. Tony, "none" and "none whatsoever" is
6 the same answer.

7 Q. "None" in Fort Lauderdale might not be the
8 same thing in common Alabama.

9 A. All right. Okay. All right.

10 Q. Thank you for pointing that out to me,
11 though.

12 Who -- who was involved with preparing Terry
13 Collingsworth last week?

14 A. Our trial -- our lawyers.

15 Q. Okay. Do you know which ones?

16 A. All of them.

17 Q. Okay. Did --

18 A. I guess. I don't know. I think they were
19 all involved.

20 MR. SPOTSWOOD: Testify on what you know,
21 based on firsthand knowledge.

22 THE WITNESS: Yeah, you're right. I don't
23 know which ones.

24 I'm not sure Mr. Spotswood was, but I
25 believe that the other two were.

1 BY MR. DAVIS:

2 Q. Have you seen a copy of his deposition
3 transcript?

4 A. Yes, sir.

5 Q. You have.

6 Is there anything in that testimony that you
7 disagree with?

8 MR. SPOTSWOOD: Object to the form of that.
9 That's a terrible and unfair question.

10 THE WITNESS: Yeah.

11 MR. SPOTSWOOD: If you've got specific
12 things you want to ask him about, fine.

13 THE WITNESS: Yeah, I'm not -- I don't --
14 you have to ask me about -- that deposition was
15 seven hours. You'll have to ask me --

16 MR. DAVIS: All right.

17 THE WITNESS: -- specific questions.

18 MR. DAVIS: I will.

19 BY MR. DAVIS:

20 Q. You did see in the testimony that Terry
21 Collingsworth said that he forgot about pay -- his
22 payments to El Tigre and Samario? Did you see that
23 in the testimony?

24 A. Yes. I think that's a fair summary of -- I
25 don't know if he said the word "forgot." But I think

1 that's a fair assessment of his testimony.

2 Q. Do you think that was a truthful answer?

3 A. I'm not the judge of whether that was
4 truthful or not. My opinion about that is the issue
5 in the case. I'll let the Judge make that
6 determination.

7 Q. Okay. I'm asking you, as a managing
8 partner, when one of your partners testifies --

9 A. In my view, that's the essence of the
10 decision that the Judge is going to have to make.
11 And I don't think that -- that, you know, my opinion
12 of that is a proper question. So I'll defer that to
13 the Judge.

14 Q. Well, you told us you will be in Birmingham
15 next week to testify. If Judge Proctor asked you
16 that question, what would your answer be?

17 A. My answer is going to be the same. It's,
18 "Your Honor, that's your call, not my call." I know
19 what he said, and I know what he said is his reasons
20 for making the misrepresentations. And I know that
21 it makes no sense to me, logically, why he would not
22 have told about those other witness assistance
23 payments -- was being made.

24 Logically, I can't fathom how he would not
25 have made -- he would not have told the Court, but he

1 didn't.

2 Q. Okay. Does Conrad & Scherer adopt that
3 position that he said, in his deposition, that he
4 forgot about those payments?

5 A. We have no -- we have no reason to adopt or
6 not adopt Mr. Collingsworth's testimony. It's not
7 whether we -- we could give it any kind of imprimatur
8 of legitimacy or not. It's just what he said.

9 And you know, I'm going to testify about
10 what I know. And when I knew about it; and what he
11 said to me --

12 Q. Okay.

13 A. -- or to the firm, about that issue.

14 If you ask those questions, I'll answer
15 them. But in terms of judging it, that's the Judge's
16 job, not my job.

17 Q. Okay. Well, what --

18 A. I'm just the client.

19 Q. -- did Mr. Collingsworth tell you about that
20 answer?

21 MR. SPOTSWOOD: Object to the form of that.

22 THE WITNESS: He -- he never told me
23 anything about that answer.

24 BY MR. DAVIS:

25 Q. Okay.

1 A. About -- in his deposition, about that
2 answer.

3 Q. Right.

4 A. But his statements to the Court concerning
5 only three witnesses is -- is exactly the same as he
6 was telling us --

7 Q. Yeah.

8 A. -- me, and the firm. That it was three and
9 only three.

10 Q. And are you saying that you, as managing
11 partner of the firm, had absolutely no knowledge that
12 there were payments to more than three witnesses?

13 A. Absolutely. Until such time as we reported
14 it to the Court, the new trial team did. I learned
15 about it when the Judge learned about it. Either,
16 you know, shortly before or shortly after.

17 Q. You talking about in November of 2014?

18 A. Yes, sir. And then in December, and, then,
19 on.

20 Q. So just to be clear on this, you've read Mr.
21 Collingsworth's testimony from last week, and, as we
22 sit here today, Conrad & Scherer, LLP and
23 Mr. Collingsworth are still represented by the same
24 counsel; is that correct?

25 A. Yes, sir.

1 Q. And there has been no separation -- formal
2 separation of the interest of Mr. Collingsworth and
3 Conrad & Scherer, LLP?

4 A. Oh, I -- I don't know about that. I'm --
5 they're represented by the same -- we're represented
6 by the same trial team. I don't know that the -- the
7 rest of your characterization is accurate.

8 Q. All right. And you're not, as the managing
9 partner, going to sit here and -- are going to take
10 the position right now that what Mr. Collingsworth
11 said last week was something that was -- that is
12 totally not accepted by Conrad & Scherer, LLP?

13 MR. SPOTSWOOD: Object to the form of that.

14 THE WITNESS: I don't understand your
15 question.

16 MR. DAVIS: Okay. Let's read it again. It
17 probably wasn't a good question, but let's see
18 what it is.

19 THE WITNESS: Well, it wasn't too bad, but
20 it's -- probably ought to be clarified.

21 MR. SPOTSWOOD: I think in fairness to the
22 witness you've got to be specific about what
23 exactly you're talking about. Not just a general
24 statement about the seven hour deposition.

25 MR. DAVIS: I think he knows what we're

1 asking.

2 MR. SPOTSWOOD: Okay.

3 MR. DAVIS: Can you read that last
4 question, please?

5 (Thereupon, the requested portion of the
6 record was read back by the court reporter.)

7 MR. SPOTSWOOD: Same objection.

8 THE WITNESS: I think that's a "when did
9 you stop beating your wife" kind of question.
10 The answer to that is, is that clearly Mr.
11 Collingsworth admitted that he had falsely
12 represented the witness payments of El Tigre and
13 Samario to the Court.

14 To the extent he did that, we cannot accept
15 that conduct, if it was intentionally done to
16 mislead the Court.

17 BY MR. DAVIS:

18 Q. Okay.

19 A. Okay. It's real simple. If the Court
20 accepts his explanation that he did not -- was not
21 acting in bad faith, that if he's had -- had
22 compartmentalized it, or however he said it -- and
23 the Court accepts that -- that's the Court -- that's
24 the issue.

25 So it's not my job, as a managing partner,

1 at least at this stage -- to do anything other than
2 provide the Court with what the firm knew, what the
3 partnership knew and when we knew it.

4 Q. Okay.

5 A. And I'm -- provided -- I'm here to do that,
6 and I've worked real hard to try to educate myself to
7 be able to give that kind of testimony.

8 Q. Based on what you have done working real
9 hard to get to them facts and I assume the truth,
10 have you done that?

11 A. Yeah, you bet you.

12 Q. Sitting here today, do you believe
13 Mr. Collingsworth forgot about the fact that payments
14 had been made to El Tigre and Samario?

15 MR. SPOTSWOOD: Object to the form. You
16 may answer.

17 THE WITNESS: He said he did.

18 BY MR. DAVIS:

19 Q. Okay. Have you seen evidence to the
20 contrary?

21 MR. SPOTSWOOD: To the extent you can
22 answer that subject to the privilege objection,
23 you may do so.

24 THE WITNESS: Have I seen evidence to the
25 contrary that he forgot?

1 BY MR. DAVIS:

2 Q. Yes.

3 A. No.

4 Q. Have you seen evidence that he -- which
5 would lead you, as a reasonable person, to believe
6 that he intentionally misled the Court?

7 A. I have seen evidence that supports his
8 position that he compartmentalized the payments, in
9 his mind, as not coming from the law firm. Because
10 the law firm didn't make any of those direct payments
11 nor have any knowledge of it, ever, until we
12 discovered it.

13 So whether or not he did that intentionally
14 or whether it was accidental or that he didn't
15 remember it, is the issue in the case that's for
16 Judge Proctor, not for me. Ultimately, I'm going to
17 have to make some decisions on it, but I don't have
18 to make them now.

19 Q. You don't?

20 A. I don't believe so. No, sir.

21 Q. You say the law firm has not made payments
22 to El Tigre and Samario?

23 A. No, sir. I didn't say that.

24 Q. I thought you did.

25 A. No.

1 Q. Did the law firm -- has the law firm made
2 payments to El Tigre and Samario?

3 A. Yes, sir.

4 Q. Is the law firm still making payments to El
5 Tigre and Samario?

6 A. Yes, sir. The payments being the assistance
7 payments to their family for security, right? I
8 mean, that's what our position is. That's what we
9 thought was going on.

10 Q. Have you ever been to Colombia?

11 A. No.

12 Q. Have you ever met Ivan Otero?

13 A. No, sir.

14 Q. Have you ever met -- ever met Francisco
15 Ramirez?

16 A. No.

17 Q. When was the first time -- and forgive me if
18 I've -- if I've asked this before, but when is the
19 first time that you, as managing partner, knew that
20 Terry Collingsworth had represented, in any court,
21 that the only witnesses to receive assistance were
22 Charris, Gelvez, Duarte?

23 A. It would've been in the summer of '14, to
24 the best of my memory and knowledge of the firm --

25 Q. Okay.

1 A. -- as managing partner of the firm.

2 Q. As counsel of record in the Balcerro case,
3 did you review interrogatory responses that were
4 filed on behalf of the plaintiffs?

5 A. No.

6 Q. Did you review -- or as counsel of record,
7 did you know that deposition testimony pursuant to
8 letter rogatory were being taken in the spring and
9 summer of 2012 in Colombia in the Balcerro case?

10 A. More so as the managing partner of Conrad &
11 Scherer, then as being on the pleadings in Balcerro.
12 I was on the pleadings in the Balcerro to help try the
13 case if it ever went to trial. I had no other active
14 involvement in it at all. But, as a managing
15 partner, and trying to keep track of everything that
16 goes on in a law firm, I had some vague understanding
17 that that was going on because I, you know, saw the
18 paperwork.

19 MR. DAVIS: Okay. Let's take about a short
20 break.

21 THE VIDEOGRAPHER: Going off the record.

22 THE WITNESS: How short?

23 THE VIDEOGRAPHER: It is 10:23 a.m.

24 MR. DAVIS: Ten minutes.

25 (Thereupon, a recess was taken, after

1 which the following proceedings were held:)

2 THE VIDEOGRAPHER: We're back on the
3 record. It's 10:36 a.m.

4 BY MR. DAVIS:

5 Q. As managing partner of the law firm, what is
6 your role in managing the firm finances?

7 A. Well, I'm ultimately the responsible person.

8 Q. Okay. And how do you go about overseeing
9 those expenses?

10 A. Having professional management manage it.

11 Q. Okay. That would be, like, Mr. Drath?

12 A. And -- and Mr. Hill -- Hills.

13 Q. All right. And so do you get some sort of
14 reports that show what the firm's expenses are on a
15 weekly or monthly basis?

16 A. No. They keep them, and we just visit.

17 Q. Okay.

18 A. I don't have reports, as such.

19 Q. Do you, as managing partner, report to the
20 firm partners as to what the expenses are?

21 A. Not generally.

22 Q. Okay. So you're the one, though, that would
23 have the knowledge of -- that -- concerning expenses
24 of litigation?

25 MR. SPOTSWOOD: Object to the form. You

1 may answer.

2 THE WITNESS: Generally, yes.

3 BY MR. DAVIS:

4 Q. And if -- if the firm was paying on a
5 monthly basis witness assistance payments, you would
6 have knowledge of that?

7 MR. SPOTSWOOD: Object to the form. You
8 may answer.

9 THE WITNESS: Yes, generally. Not
10 specifically.

11 BY MR. DAVIS:

12 Q. All right.

13 A. And perhaps not at the time, but maybe
14 later.

15 Q. All right.

16 A. Depends on, you know -- in this case
17 particularly, the finances are monitored by the
18 financial people with just general reports to me.

19 Q. \$22,700 (sic) a month as going out as an
20 expense for witness assistance, is that something
21 that would be brought to your attention?

22 MR. SPOTSWOOD: Object to the form. You
23 may answer.

24 THE WITNESS: Not necessarily.

25 BY MR. DAVIS:

1 Q. Not necessarily?

2 A. Right.

3 Q. Really?

4 A. Yes. The fact of witness assistance
5 payments was brought to my attention. The details of
6 it whether it was 2,700 or 3,700 mixed in with all
7 the other expenses in the case was just reported to
8 me generally.

9 Q. Okay. The -- what did you do, as managing
10 partner, to make sure that payments to witnesses or
11 assistance was something that was ethical?

12 MR. SPOTSWOOD: Subject to the privilege
13 objection, you may answer.

14 THE WITNESS: We -- we were of the view
15 that witness assistance payments was ethical and
16 had made that determination long ago and with
17 respect to the witness assistance payments that
18 were made, we felt that -- then and now, that
19 that was -- that those could be ethically made.
20 And that was the position of the firm, and I
21 agreed with it.

22 BY MR. DAVIS:

23 Q. Okay.

24 A. Or that was the position of Mr.
25 Collingsworth in the cases, and I agreed with it.

1 Q. And what did you do, as the managing
2 partner, to make certain that those payments were for
3 services that were as represented?

4 A. Just as you make certain that any payments
5 of a firm, you document it, and you accept the
6 representation of the people involved that that's
7 what they're for, and they are accounted for in that
8 way.

9 Q. Okay. So you would say --

10 A. And we accounted for them.

11 Q. You got actual documentation, then, that
12 shows that payments to the witnesses in the Balcerro
13 case were for security?

14 A. Yes.

15 Q. Okay. And have you produced those documents
16 in this case?

17 A. I believe they are on the privilege log.
18 The answer to the question is: Yes, as far as I
19 know. I mean, we produced whatever our counsel has
20 told us to produce, and in the form that they asked.

21 Q. And you -- you have reviewed those expense
22 documents that designate the security issues?

23 A. No, not necessarily.

24 Q. Okay.

25 A. Other than through counsel.

1 Q. Tell me what those documents -- how they
2 would say, would it say "X" amount of pesos for a
3 bodyguard?

4 A. Yes, I believe so.

5 Q. Would it say --

6 A. Well, wait. Excuse me. Hold on a minute.

7 MR. SPOTSWOOD: Hang on a second. To the
8 extent that you can answer that question based on
9 your firsthand knowledge, and without revealing
10 attorney/client privilege communications, you may
11 do so.

12 THE WITNESS: Uh-huh. I have no knowledge
13 of the -- directly, other than through counsel,
14 and other than the firm's practices to account
15 for everything that goes through the firm.

16 BY MR. DAVIS:

17 Q. Okay.

18 A. And -- and when I say account for it, I'm
19 also talking about the amount and what it was for.

20 Q. Well, I'm asking you, as managing partner,
21 you said you've actually seen those documents and --
22 and exactly how the expenses --

23 A. No, I didn't say that. You asked me if
24 those documents are -- have I seen them, and I
25 have -- I cannot testify that I have seen the

1 accounting record, except generally.

2 Q. And so you then, as managing partner, you
3 say you rely on counsel's representation as to how
4 that money is being spent?

5 A. No. I said I rely on our accounting.

6 Q. Okay.

7 A. And our manage firm management.

8 Q. Okay. And --

9 A. As to how that money is being spent, and I
10 have revisited it in preparation for my testimony in
11 this case through counsel.

12 Q. Are you prepared then to testify under oath
13 as to what the \$2,700 a month that was given to
14 Mr. Ivan Otero for Samario and El Tigre, what that
15 money was used for?

16 A. I can testify under -- I am under oath, so,
17 yes. I can testify under oath that the payments were
18 made to Otero, and the firm's records reflected that
19 it was for security for Otero.

20 Q. Okay.

21 A. As I understand it.

22 Q. Okay. And did you ever get any -- have you
23 ever had any discussions with Mr. Otero about those
24 expenses?

25 A. No, sir.

1 Q. Never have?

2 A. "No, sir," means never have.

3 Q. Okay. Even today -- even as of today?

4 A. "No, sir," means never have, even today.

5 Q. Okay. Even preparing to be a 30(b)(6)
6 witness, you have not had any discussions with him?

7 A. That's correct.

8 Q. All right. And with regard to -- and we'll
9 go back to something I've asked you about earlier.
10 But with regard to this case where the law firm is
11 being sued and Mr. Collingsworth is being sued, you,
12 as managing partner, have the responsibility for the
13 firm to keep up with how the litigation is
14 progressing, do you not?

15 MR. SPOTSWOOD: Object to the form. You
16 may answer.

17 THE WITNESS: Generally, yes.

18 BY MR. DAVIS:

19 Q. Okay.

20 A. Specifically, no.

21 Q. All right. Is there here -- is there
22 anybody in the firm who has responsibilities for
23 keeping up with the litigation?

24 A. Mr. Collingsworth.

25 Q. Okay. Anybody other than you and

1 Mr. Collingsworth?

2 A. People that work with Mr. Collingsworth.

3 Q. Okay. Anybody in the Fort Lauderdale
4 office?

5 A. No, sir.

6 Q. And is it a significant matter that this
7 firm has been sued for defamation?

8 A. It has become significant because of the
9 sanctions proceeding. It was not viewed by me as
10 that significant prior to the sanctions issues
11 arising.

12 Q. Okay. And when, in point in time, would you
13 say that it became significant to you and to the law
14 firm?

15 A. When the sanctions issues arose.

16 Q. Okay. And at that point, did you elevate
17 your interest in the litigation?

18 A. Yes.

19 Q. And you -- how did you apprise yourself of
20 the status and progress of the case?

21 A. Through counsel.

22 Q. And how would counsel give you those status
23 reports and appraisals?

24 MR. SPOTSWOOD: Don't reveal the substance
25 of any communication with counsel.

1 THE WITNESS: We communicated every way
2 possible.

3 BY MR. DAVIS:

4 Q. Okay. By telephone?

5 A. Yes.

6 Q. By cell phone?

7 A. I'm sure.

8 Q. By e-mail to you?

9 A. Yes.

10 Q. By e-mails to others in the Fort Lauderdale
11 office?

12 A. Yes.

13 Q. By --

14 A. I'm talking about existing counsel, right?

15 Q. Right.

16 A. Yeah.

17 Q. By written reports, such as letters?

18 A. I don't know about letters.

19 Q. Okay.

20 A. E-mail communications, yes. Letters, I
21 don't know.

22 Q. And these would be communications that have
23 been given to you by counsel, Chris Niewoehner?

24 A. Yes.

25 Q. Kevin McNeil?

1 A. Ken McNeil.

2 Q. Ken McNeil?

3 A. Yes.

4 Q. Robert Spotswood?

5 A. Yes.

6 Q. Brad Smith?

7 A. Not to me from Brad, who I understand is
8 still in the case. I said that he was withdrawn or
9 been -- he's been replaced. He's not taken an active
10 role. But I understand he's still on the pleadings.

11 Q. Okay. Have you ever met Brad Smith?

12 A. One time.

13 Q. Where?

14 A. In Birmingham before the last hearing that
15 didn't go forward.

16 Q. Any other lawyers that have provided any
17 information about the status or progress of this
18 case, other than the ones you have given us?

19 A. No.

20 Q. Which sanctions issues caused you to start
21 paying attention to this case, or believed that it
22 was significant?

23 A. Well, the ones that arose in the summer,
24 that I became aware of in the summer.

25 Q. 2014?

1 A. Yes, sir.

2 Q. Okay. So from 2014, summer of 2014 forward,
3 we can say you've had a heightened awareness with
4 regard to the issues in this case?

5 MR. SPOTSWOOD: Object to the form. You
6 may answer.

7 THE WITNESS: That would be a fair
8 statement.

9 BY MR. DAVIS:

10 Q. Was Billy Scherer involved in keeping up
11 with the status and progress of the defamation case?

12 A. Yes.

13 Q. Was that one of his duties and
14 responsibilities here as a partner?

15 A. Yes.

16 Q. Did he have more responsibility or more
17 hands on involvement than you did with regard to
18 that?

19 A. In the beginning, yes.

20 Q. Okay. So when suit was filed, Billy Scherer
21 had -- would have been sort of the point person for
22 the defamation case?

23 MR. SPOTSWOOD: Object to the form. You
24 may answer.

25 THE WITNESS: Yeah. No, I don't think so.

1 I think Terry was still the point person.

2 BY MR. DAVIS:

3 Q. Okay. But you say in the beginning, he had
4 more involvement.

5 What do you mean by "in the beginning?"

6 A. Well, when the case started, and it started
7 a proceeding, and he had some involvement. I
8 don't -- I don't think much, but some.

9 Q. Would he have been the person here at the
10 firm that would have been dealing with
11 Mr. Collingsworth concerning discovery?

12 A. No.

13 Q. Who would that have been?

14 A. Mr. Collingsworth and the staff.

15 Q. Okay. And when subpoenas were sent to the
16 firm or to third parties, who would have had the
17 involvement with this firm concerning the subpoena
18 issues?

19 A. Mr. Collingsworth, primarily.

20 Q. Okay. And what was your role?

21 A. Didn't have one.

22 Q. Okay. So with regard to subpoenas issued to
23 third parties, such as Parker Waichman, IR Advocates,
24 Dan Kovalik, you are saying here today you had no
25 involvement concerning the responses?

1 A. That's not exactly a fair statement.

2 MR. SPOTSWOOD: And to the extent that that
3 requires you to reveal information you acquired
4 through counsel, I would instruct you not to
5 answer.

6 THE WITNESS: Okay. I can only -- then,
7 I'll answer it only that with respect to the
8 subpoenas that were of financial records, I had
9 some knowledge about that. And only in a general
10 sort of knowledge that we were going to move to
11 protect what we felt was obvious work product and
12 attorney/client privilege. So I knew there were
13 proceedings regarding the right to take that kind
14 of discovery.

15 BY MR. DAVIS:

16 Q. Did you and Billy Scherer have a falling
17 out, so to speak, over the handling of this case?

18 MR. SPOTSWOOD: To the extent that would
19 require you to reveal attorney/client
20 communications or work product, I will instruct
21 you not to answer that.

22 THE WITNESS: Okay. I'm not going to
23 answer that.

24 BY MR. DAVIS:

25 Q. Okay.

1 A. I'll say generally that this whole matter
2 caused pressure on my son, and -- and I think it had
3 something to do with causing him to decide to go out
4 on his own because of not only just this case, but
5 all the management issues that were -- that we were
6 involved in at the time. Not just this case. If I
7 were to be fair, I can't say that this case had
8 nothing to do with it.

9 Q. What -- what -- what problems was he having
10 with regard to the way the case was being handled?

11 A. The way the firm was being handled. Working
12 for me --

13 Q. Okay.

14 A. -- as I now understand it.

15 Q. Did you ever have any discussion with Billy
16 Scherer about the fact that there were
17 misrepresentations being made in Gordon, Alabama?

18 A. No, not directly. Only through counsel.

19 Q. Okay. Which counsel?

20 A. It would be Mr. McNeil at that point.

21 Q. Did Billy want the firm to take a position
22 which you disagreed with?

23 A. No, not that I know of.

24 Q. Is it your testimony Mr. Scherer, as the
25 managing partner of Conrad & Scherer, LLP, that until

1 the summer of 2014, Terry Collingsworth was the
2 designated representative of Conrad & Scherer in
3 complying with Conrad & Scherer's discovery
4 obligations?

5 A. First, the lawyer that was representing us,
6 and then the firm responding to the requests and
7 Mr. Collingsworth, in that order. We had a lawyer.
8 We've had lawyers all along --

9 Q. Okay.

10 A. -- that's -- we depended on to properly
11 manage the flow of discovery in the case.

12 Q. So if in the spring of 2014, discovery
13 requests were sent to the law firm, your lawyers
14 would have gone to Terry Collingsworth for those
15 responses and productions?

16 A. I don't understand what you mean, my
17 lawyers.

18 Q. Your lawyers in the spring of '14, Brad
19 Smith, would have gotten information for the
20 discovery responses from Mr. Collingsworth and not
21 from you?

22 A. Well, no. He didn't get them from me, and I
23 don't know where he got them exactly, other than
24 through Collingsworth. And I don't have information
25 that he ever contacted the firm or me to try to

1 determine how to respond to the discovery, other than
2 through Mr. Collingsworth.

3 Q. Okay. But you, as the managing partner,
4 have told us you were reviewing pleadings and
5 responses that were filed.

6 A. No, sir. I said that I was -- I was getting
7 notice of the flow of pleadings and information
8 through -- of this case, and all my other cases, all
9 the other cases in the firm; and so that I had a
10 general awareness of the flow of the case. Nothing
11 specific.

12 Q. Okay.

13 A. And it has mostly been from my review
14 because of the 30(b)(6) partnership designated person
15 that I've come to even have that awareness.

16 Q. You are aware, are you not, that Terry
17 Collingsworth signed discovery responses on behalf of
18 him and the law firm?

19 A. Yes, sir.

20 Q. And you're aware that Terry Collingsworth
21 appeared in court both as a representative of Terry
22 Collingsworth and the law firm?

23 A. Yes, sir.

24 MR. SPOTSWOOD: Wait a minute. Are you
25 talking about in the defamation case?

1 MR. DAVIS: Yeah.

2 MR. SPOTSWOOD: No, sir.

3 THE WITNESS: Yeah, that's not true.

4 BY MR. DAVIS:

5 Q. Are you aware that Brad Smith --

6 A. Yeah, that's not true. I thought you were
7 referring to the Balcerro case. In the defamation
8 case, Terry Collingsworth is a -- was a client the
9 same as the firm, and we had representation.

10 Q. When Terry Collingsworth made
11 representations to Judge Proctor in April of 2014,
12 concerning the number of witnesses that were being
13 paid -- given assistance, as you would say, he was
14 speaking for himself and for the law firm, was he
15 not?

16 A. No. He was speaking for himself, in my
17 opinion. I have -- he was the client. And he was
18 defending -- he was there as a party. He was not
19 speaking on behalf of the law firm, as you said.

20 I don't -- I'm not taking any pride of
21 authorship or responsibility for statements made by a
22 co-party, Mr. Collingsworth; so at that time, we were
23 represented by Mr. Smith. We were not represented by
24 Terry Collingsworth.

25 Q. When Terry Collingsworth stood up in court

1 and said, "The defendants -- I represent that the
2 defendants did this," was he -- who -- who were the
3 defendants?

4 MR. SPOTSWOOD: Object to the form of that.

5 THE WITNESS: I don't know if that's
6 exactly what he said. I only know that he was
7 there as the client, and he got involved in that
8 discussion with the Court.

9 BY MR. DAVIS:

10 Q. What had you done, as managing partner of
11 this firm, to notify Judge Proctor that Terry
12 Collingsworth was not speaking for the law firm when
13 he made those representations?

14 A. There's no notification required on that.
15 What we have done is we have produced all of the
16 records and supplemented in accordance with Judge
17 Proctor's order to clarify and to complete the
18 discovery, and the discovery requests, and that's
19 what we've done through counsel.

20 Q. Did you, as the managing partner, authorize
21 Terry Collingsworth to make witness payments?

22 A. To the extent payments were made with full
23 disclosure to the firm as to what those payments were
24 for and were -- came through the firm, yes. I have
25 no knowledge that he made witness payments to

1 witnesses that we know nothing about, at this point.

2 So I have no knowledge that Mr.
3 Collingsworth made any witness payments that were not
4 reported to the law firm.

5 Q. Okay. So those payments that were made to
6 Charris, Gelvez, Duarte, Samario and El Tigre were
7 authorized by the law firm?

8 MR. SPOTSWOOD: Object to the form. You
9 may answer.

10 THE WITNESS: Yeah. The payments to the
11 first three, as was represented to the Court, is
12 what the firm thought was being paid for witness
13 assistance payments. And the representations to
14 the Court about only three are the exact self
15 saying that were represented to us and to the
16 firm, and that the firm was supporting
17 financially, according to our records. Period.

18 Until such time as we then learned about El
19 Tigre and Samari -- Samario. I'm mispronouncing
20 it probably.

21 BY MR. DAVIS:

22 Q. But do you know of any other witnesses that
23 have received payment in Colombia?

24 A. Other than what we have disclosed?

25 Q. Yes.

1 A. No.

2 Q. You have no knowledge?

3 A. Yes, I have no knowledge. Or no, I don't
4 know of any other. I think the answer is the same.

5 THE VIDEOGRAPHER: Ten minutes to tape
6 change.

7 BY MR. DAVIS:

8 Q. With regard to the litigation in the Balcerro
9 case, does the firm have an operating account or
10 litigation expense?

11 A. The firm has litigation expense accounting.
12 The way you ask it is, is there some special account
13 just for Balcerro, and it would be like every other
14 open, pending, active case we have. So that's how
15 the accounting is done.

16 Q. Okay. Is there -- do you have -- for the
17 different cases that you have, do you have separate
18 accounts for each case for the expenses?

19 A. What do you mean "separate accounts"?

20 Q. Well --

21 A. We account --

22 Q. -- account number.

23 A. We account for each of the cases based on
24 the case, separately.

25 Q. All right. How --

1 A. We don't have separate accounts as such that
2 I know of.

3 Q. All right. But that's something the CFO
4 would do, would --

5 A. Of course.

6 Q. -- make sure the expense is attributed to
7 the --

8 A. Yes.

9 Q. -- pertinent case?

10 A. Yes, like every case.

11 Q. And is the operating account that the
12 witness payments were made from, is that an account
13 only for the alien tort claim cases or is it for all
14 plaintiff's cases?

15 A. It's for all cases.

16 Q. Okay.

17 A. I mean, whether it's the plaintiff or
18 defendant, it all matters.

19 Q. All right. So that's a good point there.
20 There's no designation within the firm as to
21 plaintiff cases and defense cases?

22 A. No, I'm not saying that. But from an
23 accounting standpoint, I don't believe there's any
24 distinction. There is obviously more accounting on
25 hourly cases because you have to collect the fees on

1 it. As you know, on the contingent cases, it's just
2 keeping track of the time and the expenses.

3 Q. Has Conrad & Scherer used any other bank
4 account to pay for expenses, including witness
5 payments in the Drummond litigation?

6 A. Not to my knowledge. Other than what's been
7 disclosed, and if there are other accounts, it's been
8 disclosed and produced. I don't -- from my
9 knowledge, I don't believe so.

10 Q. And what does the firm require in -- to
11 document expenses?

12 MR. SPOTSWOOD: Object to the form. You
13 may answer.

14 THE WITNESS: The normal sort of
15 documentations for the expense.

16 BY MR. DAVIS:

17 Q. All right. So we've been over this
18 somewhat. But if Mr. Collingsworth goes to Colombia,
19 and he has a plane ticket and a hotel fare or
20 expense, he then puts that on the expense report and
21 submits it to the firm?

22 A. Yes, sir.

23 Q. And he gets reimbursed by the firm?

24 A. Yes, sir.

25 Q. All right. And as far as -- and I'm going

1 to go back over it once again, but as far as an
2 expense payment for -- that goes to a third party,
3 such as a witness, what documentation do you get?

4 A. We would have the documentation concerning
5 how the payment was made, and who it was made to, and
6 who requested it, and the circumstances --

7 Q. Okay.

8 A. -- of it would be on our books and records
9 that have been produced.

10 Q. But you don't have the particular invoices
11 that support that?

12 A. We might have.

13 Q. And if you have them, you would have
14 produced them?

15 A. Yes, sir. There's nothing regarding this
16 matter that hasn't been produced.

17 Q. As managing partner, what have you done and
18 what has been your role with regards to complying
19 with document request that have been presented to the
20 law firm?

21 A. Hiring the best lawyers I could get on the
22 case to make sure that happened.

23 Q. Okay. And did you work personally with the
24 lawyers on gathering those documents?

25 A. No.

1 Q. Who did, with regard to the law firm?

2 A. Administration.

3 Q. Who?

4 A. Well, it would be the accounting department.
5 It would be everybody in the whole firm to make sure
6 that it's complete. IT for sure.

7 THE VIDEOGRAPHER: Five minutes to tape
8 change.

9 BY MR. DAVIS:

10 Q. Is there any sort of approval process the
11 firm has with regard to expenses?

12 MR. SPOTSWOOD: Object to the form. You
13 may answer.

14 THE WITNESS: Yeah, at a certain level.
15 The partner on the file, and then me, if it
16 becomes an issue.

17 BY MR. DAVIS:

18 Q. Okay. What is the level?

19 A. Don't have a level.

20 Q. Dollar amount?

21 A. We don't have a dollar amount.

22 Q. Okay.

23 A. Just reasonable, common sense kind of
24 unwritten rules. And you know, the management of the
25 firm, firm administration would know to bring me

1 something if it's an issue.

2 Q. Okay. If -- if someone said, "I want to go
3 to New York for a seminar, and I need -- it's going
4 to -- the total expenses is going to be about
5 \$4,000," would you have to approve that in advance?

6 A. No. That would be done through
7 administration.

8 Q. Okay.

9 A. And it would also depend on who's asking.

10 Q. Have you made any inquiry as to the current
11 expenses that are being paid for or with regard to
12 Samario and El Tigre?

13 A. I have.

14 Q. Okay. And what is your understanding as to
15 why those payments are being made?

16 A. That they're -- they are still in need of
17 witness protection for their families, and that this
18 is -- families have been relocated, and -- and that's
19 my understanding.

20 Q. Okay.

21 A. Or somehow protected.

22 Q. How are they being protected?

23 A. I don't know.

24 Q. You don't know that?

25 A. No. I don't have that level of detail.

1 Q. So you don't know whether or not the money
2 is, in fact, being spent for security?

3 A. Only by virtue of the representations of the
4 people that are on the ground, including Mr. Otero,
5 our co-counsel.

6 Q. Okay. Anybody else besides Mr. Otero?

7 A. That people are on the ground there. I --
8 well, I think Mr. Collingsworth, and there may be
9 others. I don't have their names.

10 THE VIDEOGRAPHER: Two minutes to tape
11 change.

12 BY MR. DAVIS:

13 Q. What's the approval process within the firm
14 for cash withdrawals?

15 MR. SPOTSWOOD: Object to the form. You
16 may answer.

17 THE WITNESS: Same as any other expense.

18 BY MR. DAVIS:

19 Q. Okay. So Mr. Collingsworth told us in
20 testimony that he handed Ivan Otero \$5,400 in cash in
21 2011.

22 Did he have to get approval for that cash
23 withdrawal?

24 A. Approval from whom?

25 Q. From the law firm.

1 A. Yes.

2 Q. Did you personally approve it?

3 A. I didn't. I don't have a recollection of
4 it.

5 Q. Okay. What is the level that he could
6 withdraw in cash without approval?

7 A. There's really no level. My understanding
8 on that one was that it got wire -- we had -- the
9 firm had approved of Otero's monthly expense, and
10 that was for part witness payment and part for his
11 own expense and protection. And that -- that 5,000
12 had gotten wired to him, and somehow it got reversed
13 and it was cashed. Something like that. I believe
14 that's my knowledge of it. All after the fact.

15 Q. You didn't know about it at the time?

16 A. No. I don't have a recollection of any of
17 that at the time. I don't believe I did.

18 Q. Okay.

19 THE VIDEOGRAPHER: Tony, tape's run out.

20 MR. DAVIS: All right.

21 THE VIDEOGRAPHER: Can I change it? Okay.

22 We are off the record. This ends tape one. It's
23 11:15 a.m.

24 MR. DAVIS: Let's take a bathroom break.

25 (Thereupon, a recess was taken, after

1 which the following proceedings were held:)

2 THE VIDEOGRAPHER: We're back on the
3 record. This begins media two. It is
4 11:30 a.m.

5 BY MR. DAVIS:

6 Q. You are aware, are you not, Mr. Scherer,
7 that Ivan Otero is a conduit for the payments to
8 Samarior, El Tigre and Jaime Blanco?

9 A. No.

10 Q. Okay. You're not aware that the payments,
11 monthly payments to Samario and El Tigre go to Mr.
12 Otero?

13 A. Yes, I'm aware of that.

14 Q. Okay. Are you aware of the amount that
15 eventually ends up to Samario and El Tigre or their
16 families?

17 A. I've been advised --

18 Q. Okay.

19 A. -- about it by my lawyers.

20 Q. How much is that?

21 A. I think it's \$2,700 a month.

22 Q. Okay. And of that 2,700 a month, how much
23 of that ends up with -- to Samario, do you know?

24 A. No.

25 Q. Or El Tigre?

1 A. No.

2 Q. Or Mr. Otero?

3 A. No.

4 Q. Are you aware that Mr. Otero keeps some of
5 that money?

6 A. Yes.

7 Q. Did Mr. Otero have a contingency fee in the
8 Balcerro case? Does he have one?

9 A. Now. I'm aware of it now. I'm aware he had
10 one -- has one.

11 Q. Oh, you're saying you had no knowledge of
12 that?

13 A. I'm not sure.

14 Q. You're not sure that you --

15 A. No, I'm not sure I did.

16 Q. Really?

17 A. Yeah, really.

18 Q. As managing partner, would it not be
19 something that should have been brought to your
20 attention that part of the attorneys' fees that would
21 eventually come to this firm would be split with
22 another lawyer?

23 A. Yes, generally, with respect to Mr. Otero
24 and his multiple cases. I'm not sure which case he
25 was involved in; which of the cases he was not.

1 Q. Okay. And you don't --

2 A. And -- excuse me.

3 Q. Excuse me.

4 A. Until I was -- until I informed myself to
5 prepare for this deposition, and I'm going to tell
6 the Court exactly what I'm telling you. I'm not
7 going to --

8 Q. Right.

9 A. If the Judge wants a follow-up question,
10 I'll certainly answer it. But...

11 Q. Okay. Are you aware that Francisco Ramirez
12 has a contingency fee agreement?

13 A. I had no awareness of it until late. Did I
14 know of it at the time? Maybe. I don't have a
15 memory of it.

16 Q. Okay. Do you know of anyone else at Conrad
17 & Scherer that had knowledge of the contingency fee
18 arrangements with Mr. Otero and Mr. Ramirez?

19 A. Well, Mr. Collingsworth.

20 Q. Okay. Do you recall having discussions with
21 Mr. Collingsworth prior to those agreements being
22 reached?

23 A. Only in a vague general sort of way.

24 Q. Okay. Tell us exactly what you recall.

25 A. I don't. I don't recall the specifics of

1 the contingent fee arrangements with lawyers that are
2 co-counsel on those cases.

3 Q. Were you aware that Mr. Otero represented
4 Samario and El Tigre?

5 A. No, I don't believe I was.

6 Q. Were you aware that he represented Jaime
7 Blanco?

8 A. No, not until now.

9 You asked was and the answer was no. I have
10 no recollection of that information.

11 Q. You are aware that Mr. Otero was paid
12 \$80,000 in April of 2009, by your law firm?

13 A. I'm not sure I remember that until I went
14 back and revisited it --

15 Q. Well, I'm asking you.

16 A. -- now.

17 Q. Did you know at the time that that was --

18 A. I don't have a recollection of it --

19 Q. Okay so --

20 A. -- specifically.

21 Q. An \$80,000 payment to a lawyer in South
22 America would be something that you may not have
23 known about?

24 A. No, I didn't say that. I said I don't have
25 a recollection of it. My recollection is only that

1 we had co-counsel that was splitting expenses and
2 that that payment to him and his retention got agreed
3 upon and it was made. The details of it or the
4 amount of it, I do not, as we sit here today, have a
5 recollection of. I have informed myself of it to
6 prepare for this deposition.

7 Q. Do you know what that \$80,000 was used for?

8 A. To pay him a retainer to get involved in the
9 multiple cases, as I understand it today.

10 Q. Okay.

11 A. And I believe that's what my understanding
12 was back then, but I don't have a specific
13 recollection of it.

14 Q. So it's your understanding there was a
15 retainer paid plus a contingency fee?

16 A. Yes.

17 Q. Are you aware that Francisco Ramirez
18 assistant Yineth Baeza as a conduit for the payments
19 to Charris?

20 MR. SPOTSWOOD: Object to the form. You
21 can answer.

22 THE WITNESS: I was not aware of the
23 details of how the Charris family got their
24 assistance payments.

25 BY MR. DAVIS:

1 Q. In January of 2012, your law firm started
2 wiring money to International Rights Advocates before
3 that money was sent off to Colombia. Do you know why
4 that procedure was put in place?

5 A. No.

6 Q. You have no knowledge whatsoever?

7 A. None whatsoever.

8 Q. For --

9 A. Other than -- other than what I've learned
10 from my lawyers reviewing the facts in the case.

11 Q. It's your testimony then, as managing
12 partner, you had no knowledge whatsoever in January
13 of 2012, as to why that money was being paid directly
14 to International Rights Advocates?

15 MR. SPOTSWOOD: Object to the form. You
16 can answer.

17 THE WITNESS: That I can recall now whether
18 I was generally informed by the management or
19 Terry at that time, I don't have a recollection
20 and I don't have records --

21 BY MR. DAVIS:

22 Q. Okay.

23 A. -- to refresh me other than what my lawyers
24 have provided me in terms of that information --

25 Q. Before --

1 A. -- today.

2 Q. -- you testified here today, did you confer
3 with Terry Collingworth about various topics that you
4 may be examined on?

5 A. No, sir.

6 Q. When is the last time you talked to Terry
7 Collingworth?

8 A. Last week.

9 Q. Okay. Was that before or after his
10 testimony?

11 A. Before.

12 Q. It was?

13 A. Yes, sir.

14 Q. And was it -- were you talking to him in
15 person?

16 A. Yes.

17 Q. Where was he?

18 A. In Washington.

19 Q. Okay. So you actually went to Washington?

20 A. I was thinking New York. Excuse me. Yes,
21 Washington.

22 Q. You went to Washington.

23 Now, he testified last Monday, so did you go
24 to Washington on Sunday before or --

25 A. No. Saturday.

1 Q. Saturday? And --

2 A. Friday. Excuse me, we went to Washington on
3 Friday. I travel a lot in cases and --

4 Q. Right.

5 A. -- it's kind of running together here.

6 Q. Right.

7 A. It's kind of like you, I'm sure.

8 Q. Right.

9 A. I went to Washington on Friday and came home
10 on Monday.

11 Q. Okay. And you said, "we went to
12 Washington." Who all went to Washington?

13 A. I went to Washington with Mr. Niewoehner. I
14 went to Washington.

15 Q. Okay. Anyone else?

16 A. Nobody from my firm.

17 Q. What lawyers were there?

18 A. Mr. McNeil and Mr Niewoehner and Ms. --
19 Ken's partner.

20 MR. SPOTSWOOD: Lindsey Eccles.

21 THE WITNESS: Lindsey Eccles.

22 BY MR. DAVIS:

23 Q. Okay. And what was the purpose of the
24 meeting?

25 MR. SPOTSWOOD: I'm going to instruct you

1 not to answer to the extent that it would require
2 you to invade the privilege.

3 MR. DAVIS: Okay. I'm just asking what the
4 purpose is.

5 THE WITNESS: Tony asked us to come up and
6 we came up and prepared.

7 BY MR. DAVIS:

8 Q. Prepared his testimony?

9 A. Whose testimony?

10 Q. Terry's Collingsworth's testimony.

11 A. No. Prepared for the proceeding and really
12 that is attorney/client.

13 MR. SPOTSWOOD: Don't describe anything
14 about the substance of this meeting.

15 THE WITNESS: Okay.

16 MR. SPOTSWOOD: Which is clearly protected
17 by attorney/client privilege.

18 THE WITNESS: Okay. Then we're done.

19 BY MR. DAVIS:

20 Q. And when did you return to Fort Lauderdale?

21 A. Monday.

22 Q. So you stayed in Washington Saturday and
23 Sunday?

24 A. Yes, sir.

25 Q. Okay. And did the lawyers stay there

1 Saturday and Sunday also?

2 A. No, we have an office there. So we worked
3 in that office there on Sunday because flights were
4 all cancelled because of some airplane -- air traffic
5 glitch and I couldn't get home, so I had to stay
6 until Monday to come home rather than Saturday or
7 Sunday. So I worked out of the DC office.

8 Q. You knew, did you not, that Mr.
9 Collingsworth was going to be deposed last Monday in
10 Birmingham?

11 A. Yes.

12 Q. And you have not talked to Mr. Collingsworth
13 since last Friday, Saturday or Sunday, a week ago?

14 A. That's correct.

15 Q. Who is Jarley, and I'm pronouncing it, I
16 know, wrong, J-a-r-l-e-y Maya Sanchez?

17 A. I don't know.

18 Q. Have you ever met with him?

19 A. No.

20 Q. Communicated with him, to your knowledge?

21 A. No.

22 Q. I think you described him in some sort of
23 declaration or some answer or something as Colombian
24 co-counsel, a consulting attorney.

25 Is he a Colombian criminal attorney?

1 A. I don't know.

2 Q. Okay. Do you know who he represented, if he
3 is counsel?

4 A. No, sir.

5 Q. To your knowledge, has Jarley Maya Sanchez
6 ever received any money from Conrad & Scherer?

7 A. I don't know. To my knowledge, no.

8 Q. Okay. Does he have a contingency fee
9 agreement?

10 A. I don't know.

11 Q. Are you aware of a firm known as Secure
12 Point?

13 A. Yes.

14 Q. What is your understanding as what Secure
15 Point is?

16 A. Some kind of an investigative firm.

17 Q. Did you have any involvement with the
18 retaining Secure Point?

19 MR. SPOTSWOOD: Hang on just a second. I'm
20 sorry.

21 (Thereupon, a phone interruption was had.)

22 (Thereupon, a discussion was held off
23 the record.)

24 MR. DAVIS: Mr. Spotswood phone rang and we
25 took a break.

1 MR. SPOTSWOOD: Let the record reflect that
2 I did not answer it.

3 BY MR. DAVIS:

4 Q. Mr. Scherer was telling me that he had his
5 cell phone out of commission for a few days when it
6 got in the river or fell in the river or something.

7 A. I went upside down in a kayak with my
8 grandson and it got all wet.

9 Q. Yeah. Well --

10 A. Anyway.

11 Q. But you did make a good effort to retrieve
12 what was on the phone?

13 A. Oh, it got all retrieved because we back it
14 up. So I got it, but it took five days to get it.
15 But it was a wonderful five days. I highly recommend
16 it.

17 Q. You didn't have to answer it or communicate
18 with it?

19 A. Right.

20 Q. Speaking of which, did you know Terry
21 Collingsworth had given his MacBook to his niece?

22 A. Not until I was advised by my lawyers in
23 this case.

24 Q. Okay. Were you aware that it allegedly had
25 been stolen?

1 A. No. At the time, no.

2 Q. When were you first aware of that?

3 A. When my lawyers told me about it, when it
4 came up in this case.

5 Q. Just recently?

6 A. Yes, sir.

7 Q. Were there any rules put in place by the law
8 firm with regard to retaining computers and
9 electronic data here in the firm?

10 A. Yes. We have a very simple system. We own
11 all the computers and all the laptops and we require
12 all firm business to be done on our computers and our
13 laptops and when somebody leaves, they leave their --
14 we don't treat a laptop or a desktop any differently,
15 so in our view, you know, that rule is fully full
16 proof. Use the firm's computers that we buy for you.
17 If it's a laptop or a desktop, when you're doing firm
18 business, period. And that's the deal.

19 Q. Do you know Lorraine Leete?

20 A. I did not know of her until recently,
21 advised about her.

22 Q. Did she have a Conrad & Scherer laptop?

23 A. Apparently not.

24 Q. Did Mr. Collingsworth use a Conrad & Scherer
25 laptop?

1 A. Does now.

2 Q. When?

3 A. After that Mac, which I don't know whether
4 that was a firm computer or not. But he's got a firm
5 computer now, laptop. His desktop, of course, is the
6 firm. All the computers in that office are the
7 firm's.

8 Q. You say he has a laptop now. Can you tell
9 us when he got that?

10 A. No. Other than what's been -- what came up
11 in the Williams' report, it's the first time I
12 learned of it.

13 Q. Okay. So would it have been agreeable to
14 you that he had given -- if he had had a Conrad &
15 Scherer laptop -- given it to his niece?

16 A. Not really. If it was a Conrad & Scherer
17 laptop, he should have, you know, turned it in, like
18 everybody else. But whether it was his own or he
19 paid for it -- I mean, Macs, we don't usually do Macs
20 here, so that was --

21 Q. What do you mean?

22 A. We don't -- we don't do Mac laptops.

23 Q. Let me --

24 A. I have one that I can't use. I'm supposed
25 to use. I don't use it in the firm, but -- so I

1 guess we do have Macs. I have a Mac.

2 Q. Do you know of electronic data that is no
3 longer available to be reviewed because of any
4 actions taken by Mr. Collingsworth?

5 A. No, sir.

6 MR. SPOTSWOOD: Tony, you know we've
7 designated --

8 MR. DAVIS: Yeah.

9 MR. SPOTSWOOD: -- others --

10 MR. DAVIS: All right.

11 MR. SPOTSWOOD: -- on those topics?

12 BY MR. DAVIS:

13 Q. Let me get back to Secure Point. Were you
14 involved in the retaining of the Secure Point?

15 A. I think so. I have a memory that they were
16 recommended to us to be able to help us get
17 information or investigation in these cases and that
18 we engaged them. That's all I remember.

19 Q. All right.

20 A. And when I say "we," our firm and our
21 co-counsel at that time.

22 Q. Did you personally meet with the principals
23 of that firm?

24 A. No.

25 Q. Did you ever meet with Joe Carrera or Mark

1 Carlson?

2 A. No.

3 Q. Is it true that Conrad & Scherer paid Secure
4 Point for its services?

5 A. Yes, I believe we did.

6 Q. Okay. Do you know how that payment was
7 made?

8 A. No.

9 Q. Was it made from the operating account?

10 A. I don't know.

11 Q. You don't know that?

12 A. I haven't looked at that. I believe it to
13 have been, but I don't know.

14 Q. Do you have a judgment as how much was paid
15 to Secure Point?

16 A. \$100,000 or something like that.

17 Q. What did you do --

18 A. Half by us and half by our co-counsel. I
19 think. Something in that range.

20 Q. Who was co-counsel that would have paid
21 half?

22 A. I'll tell you in a minute.

23 Q. Parker Waichman?

24 A. Thank you. Parker's firm.

25 Q. What did you do to verify that the Secure

1 Point expenses were legitimate?

2 A. Relied on the lawyers that were working with
3 them, like every other expense in the firm for
4 outside investigators, you know.

5 Q. Is that what you would understand as they
6 were doing the investigation?

7 A. Yes.

8 Q. In Colombia?

9 A. Yes.

10 Q. On your behalf?

11 A. Yes, sir.

12 Q. Were they providing security to witnesses?

13 A. I can't recall. I don't remember exactly
14 what they were doing. They were investigators and
15 maybe they were providing security. I can't --
16 Secure Point sounds that way. I don't have a
17 recollection.

18 Q. Were they providing securities to your
19 lawyers?

20 A. I don't have a memory of it. I believe that
21 there was security for our lawyers when we went down
22 there to take depositions.

23 Q. Okay.

24 A. And I don't know whether or not it was
25 arranged through those folks or not. I don't have a

1 memory of it.

2 Q. Let me just say this, and I'm trying -- I
3 mean this because you and I are in the same age, so
4 to speak, but you strike me as being sharp.

5 A. Thank you.

6 Q. Do you have any problems with your memory in
7 any way?

8 A. Other than the flow of the river flowing
9 through and the river is flowing faster and I'm
10 getting older, but no.

11 Q. Okay.

12 A. In fact, I have a big active trial load,
13 practice load of what I consider to be my own cases
14 that I'm responsible for. I hold those clients, you
15 know, my duties to them higher than my duties to the
16 firm in this case, so, you know, that's just the way
17 it is.

18 Q. Okay. You've told me three or four times
19 that, you know, you don't recall, you don't recall
20 about this, that or the other specifics.

21 Prior to our meeting here today, though, you
22 did make efforts to refresh your recollection, did
23 you not?

24 A. When I said I don't recall, it was in
25 response to your questions at the time.

1 Q. Okay.

2 A. And I've been trying to make my responses
3 clear as to what I knew and when I knew it.

4 Q. I think Mr. Collingsworth has testified that
5 Secure Point did not provide any security services.

6 Would you agree with that?

7 A. I would accept that, if that's what he said.
8 He would know better than I would.

9 Q. You know that there was an arbitration with
10 your firm and Secure Point?

11 A. Yes, sir.

12 Q. And what was the issue being arbitrated?

13 A. Over how much we owed them.

14 Q. Okay. Was there any other issue --

15 A. No.

16 Q. -- about what was done or what should have
17 been done or...

18 A. No, not to my knowledge. My knowledge is
19 the payment issue.

20 Q. What was the resolution of that?

21 A. It got resolved.

22 Q. It has been resolved?

23 A. Yeah, it got resolved, you know, a long time
24 ago.

25 Q. Okay.

1 A. I do remember that.

2 Q. You would agree, would you not, that every
3 brief and pleading that's been filed in this
4 defamation case by the defendants has been filed on
5 behalf of both Mr. Collingsworth and Conrad &
6 Scherer?

7 A. Yes, sir. I believe that's so.

8 Q. Let me show you what we marked here as
9 [Exhibit 1](#).

10 (Plaintiff's [Exhibit No. 1](#) was thereupon
11 marked for Identification.)

12 BY MR. DAVIS:

13 Q. Ask you to please -- if you can see this.
14 This is a reply brief in support of work product
15 privilege and renewing motion to compel. If you can
16 look to the signature certification line at the end
17 of the -- at the end of that matter on Page 22. It
18 says, "Attorney for defendants, Terry Collingsworth,
19 individually, and Conrad & Scherer, LLP."

20 So we can agree that it was filed on behalf
21 of both defendants; is that correct?

22 A. This is Brad Smith was the lawyer and I
23 don't know what "attorneys for defendants, Terry
24 Collingsworth, individually, and Conrad & Scherer"
25 means. Terry Collingsworth did not appear and

1 certainly did not represent the firm because Brad
2 Smith did.

3 Q. Okay.

4 A. So I have no idea. Let me just finish. So
5 I have no idea what that's supposed to mean.

6 Q. Well, if you go to Page 21, you see his
7 signature line?

8 A. Brad Smith's?

9 Q. Right.

10 A. "Respectfully submitted."

11 Q. It would have been under that with his
12 telephone number, his e-mail address and then it
13 says, he's the attorney for defendants, Collingsworth
14 and Conrad & Scherer.

15 A. I would agree with that, yes.

16 Q. All right. Did you draft any part of this
17 brief?

18 A. No, sir.

19 Q. Did you review it before it was filed?

20 A. No, sir.

21 Q. Did you review it after it was filed?

22 A. No, sir, until recently provided to me by my
23 counsel.

24 Q. Only recently?

25 A. Yes, sir.

1 Q. Did anyone at Conrad & Scherer review this
2 at the time it was filed?

3 A. Yes, sir.

4 Q. Other than Mr. Collingsworth?

5 A. And his people in his office.

6 Q. Yeah.

7 A. No, nobody. Other than Mr. Collingsworth
8 and the people in his office.

9 Q. Okay. I want you to look at Page 1,
10 Introduction and Summary of Argument. It doesn't
11 have a number on the page, but it's the first page.

12 A. Yes, sir.

13 Q. Last full sentence, "In doing so, Drummond
14 continues to falsely accuse defendants of improperly
15 paying witnesses for their testimony. When the facts
16 are clear, defendants properly provided security
17 assistance to three witnesses whose family members
18 were threatened by Drummond's operatives in
19 Colombia."

20 Is that a true statement?

21 A. No.

22 (Plaintiff's [Exhibit No. 2](#) was thereupon
23 marked for Identification.)

24 BY MR. DAVIS:

25 Q. Let me show you what's marked as [Exhibit 2](#).

1 Do you see, sir, that this is also a brief
2 that was filed in the United States District Court
3 for the Northern District of Alabama in the
4 defamation case?

5 A. Yes, sir.

6 Q. And you see on the front page, first page of
7 that brief, that Brad Smith says he is attorney for
8 defendants, Terry Collingworth and Conrad & Scherer,
9 LLP?

10 A. Yes, sir.

11 Q. Would you agree that this brief was filed on
12 behalf of both the defendants, Collingsworth and the
13 law firm, Conrad & Scherer?

14 A. Yes, sir.

15 Q. Did you draft any part of this brief?

16 A. No, sir.

17 Q. Did you review it before it was filed?

18 A. No.

19 Q. Did you review it after it was filed?

20 A. No.

21 Q. Did you review it recently?

22 A. Yes.

23 Q. Okay. And when we talk about recently, when
24 would that be?

25 A. When my lawyers provided it to me recently.

1 Q. Okay. Is that in the last week?

2 A. Well, I don't know the last week, but
3 certainly.

4 Q. Was it provided to you at the time when you
5 went to Washington Friday a week ago?

6 MR. SPOTSWOOD: I'm going to let you answer
7 that question with the caveat that I don't want
8 you invading or revealing communications with
9 your counsel or work product.

10 THE WITNESS: When I say "recently," I mean
11 after we retained additional counsel and got into
12 this matter.

13 BY MR. DAVIS:

14 Q. Okay.

15 A. I reviewed this thing and whether I reviewed
16 it, how much I reviewed it as opposed to how much I
17 recently reviewed it, I can't tell you, because I
18 don't remember. But I'm telling you, as I sit here
19 today, I reviewed it. But I didn't at the time it
20 was filed or have any knowledge of its contents at
21 that time.

22 Q. So you told us that counsel came on board in
23 the summer of 2014. It could have been as early as
24 the summer of 2014, when you reviewed this?

25 A. I doubt it. I don't think that would be

1 accurate. It would be after that.

2 Q. All right. Fall of 2014?

3 A. Probably. Probably. And I may not have
4 reviewed it all. I just have a recollection of
5 reviewing these filings prior to preparing for this
6 depo today.

7 Q. Look at Page 1 of that brief, please, not
8 the Roman Numeral, but Page 1.

9 A. Yes, sir.

10 Q. Introduction and Summary of Argument, the
11 second sentence, quote, "The facts show Drummond's
12 accusations to be maliciously false, all the more so
13 because Drummond failed to conduct any investigation
14 of its false allegations before headlining them in
15 its brief."

16 Do you think that's a true statement?

17 MR. SPOTSWOOD: Object to the form. You
18 may answer.

19 I mean, in fairness to the witness, Tony,
20 this does not tell him what the accusations are
21 that we're talking about.

22 BY MR. DAVIS:

23 Q. In our motion, it said that -- that there
24 had not been a disclosure of all witness payments.
25 This was a motion for sanctions that had been filed

1 by Drummond and the response filed on behalf of your
2 lawyers is that what we say in our motion is
3 maliciously false.

4 Do you agree with that?

5 A. I don't know what was in your motion, okay,
6 so if it's -- if it references and if that is based
7 on the disclosure of the three witnesses in failing
8 to disclose more, then it is incorrect and false. If
9 that's what that means. If it means something else,
10 I don't know, as we sit here, because I'm not -- I
11 don't have that level of detail.

12 Q. Okay. Look at Page 5, if you would. This
13 brief was filed August -- I mean, excuse me, April
14 14, 2014. So this was in the spring of 2014 before
15 your new lawyers came on board and it's represented
16 in this brief that Mr. Collingsworth and your law
17 firm, the defendants have been working diligently --
18 this is the last paragraph, first sentence -- to
19 comply ever since and now represent that their
20 production in response to the Court's October 15
21 order is complete.

22 Do you know that as of April, 2014, there
23 had not been a disclosure to Drummond by your firm
24 and Mr. Collingsworth of payments to El Tigre and
25 Samario?

1 A. Do I know -- you've asked that question a
2 little difficult, but I'll answer it. At that time,
3 we did not produce documents with respect to those
4 payments.

5 Q. Okay.

6 A. So to the extent of that in this sentence,
7 it's wrong.

8 Q. Okay. And you are aware in the spring,
9 April of 2014, there had been no documents produced
10 to Drummond, which showed that payments had been made
11 by Mr. Albert Van Bilderbeek to Ivan Otero for the
12 benefit of Jaime Blanco?

13 A. I'm aware of that.

14 Q. Do you know why your lawyers on your behalf
15 in this brief said that what Drummond was filing in
16 its motions was maliciously false?

17 A. I answered that already.

18 Q. Okay.

19 (Plaintiff's [Exhibit No. 3](#) was thereupon
20 marked for Identification.)

21 BY MR. DAVIS:

22 Q. Let me show you [Exhibit 3](#). This is a brief
23 dated July the 9th, 2014. It is filed by Bradley
24 Smith, attorney for defendants, Terry Collingworth
25 and Conrad & Scherer, LLP.

1 Would you agree that this brief was filed on
2 behalf of both defendants?

3 MR. SPOTSWOOD: Tony, I do not see an as
4 filed stamp on this. I'm not contesting that it
5 was filed. Is there a stamp?

6 MR. PRESLEY: This was filed with Special
7 Master Bob.

8 MR. WELLS: And, therefore, filed under
9 seal with the Court.

10 MR. SPOTSWOOD: Got it. Thank you.

11 THE WITNESS: This was filed on behalf of
12 both Mr. Collingsworth and the firm.

13 BY MR. DAVIS:

14 Q. Okay. Did you draft any part of this brief?

15 A. No, sir.

16 Q. Did you review it before it was filed?

17 A. No.

18 Q. And when did you first review it?

19 A. Same answer as before. When I started
20 looking into the issues raised in this sanction
21 matter, sometime in the late summer and then more
22 recently to prepare for my depo today, my deposition
23 today.

24 Q. Okay. So you recently reviewed it within
25 the past week?

1 A. Yes, sir.

2 Q. But the first time it was brought to your
3 attention was probably the fall of 2014?

4 A. Yes.

5 Q. I want you to please look at Page 4, last
6 paragraph, second sentence, "Defendants thoroughly
7 have documented these, quote, payments, end quote,
8 were actually security assistance provided to
9 relocate family members of three witnesses who
10 received credible death threats attributable to
11 Drummond before the witnesses were to testify against
12 Drummond. Exhibits. The three witnesses who
13 received security assistance, Libardo Duarte, Jose
14 Gelvez Albarracin and Jairo Jesus Charris Castro, all
15 first provided a written statement to either
16 plaintiff's counsel, defendants herein, or the
17 Colombian authorities."

18 Was that representation true?

19 A. No.

20 Q. Was it false?

21 A. It is -- it doesn't say it directly, that
22 only these three, but certainly it says that the
23 documents produced were all the documents on payments
24 and that they were just three, and that is false. So
25 to the extent that's what this is communicating to

1 the Court, it's false.

2 (Plaintiff's Exhibit No. 4 was thereupon
3 marked for Identification.)

4 BY MR. DAVIS:

5 Q. Let me show you Exhibit 4.

6 A. Another brief crime-fraud brief that was
7 filed by Mr. Smith on behalf of -- in his
8 representation of Terrence Collingworth and Conrad &
9 Scherer, LLP.

10 Did you review that before it was filed?

11 A. No.

12 Q. Did you review it after it was filed?

13 A. No, sir.

14 Q. Did you draft any part of it?

15 A. No, sir.

16 Q. Look at Page 2, first full sentence on the
17 page, "But the only thing fraudulent about
18 defendants' provision of security assistance to
19 persons threatened with death by Drummond
20 representatives is Drummond's false and misleading
21 rendition of the record facts. Defendants previously
22 documented, based on documents they disclosed in
23 discovery in Balcerro, that they provided security
24 assistance to relocate family members of three
25 witnesses, Libardo Duarte, Jose Gelvez Albarracin and

1 Jairo Jesus Charris Castro."

2 Is that a true statement?

3 A. In part, yes. That we -- that there were
4 security payments to relocate those three family
5 members, yes, that is true.

6 Q. Okay. Why is "family members" and "three
7 witnesses" italicized? I mean, not italicized,
8 emphasized.

9 A. I don't know if that's to mean only three or
10 to mislead the Court or to incorrectly state the
11 record. It doesn't say that there weren't more,
12 which there clearly were, so to the extent that was
13 to communicate that there were only three, it's
14 incorrect.

15 Q. It's not only incorrect, it's false?

16 A. It's false. I don't know the difference
17 between false and incorrect.

18 Q. Other than your declarations and
19 interrogatory responses, have you had any involvement
20 in drafting any other pleadings in this case?

21 A. No.

22 Q. Are you aware that Judge Proctor ordered the
23 parties to submit to him proposed findings of fact in
24 our case?

25 A. Yes.

1 Q. What involvement did you have, as managing
2 partner, with regard to the preparation of those?

3 A. I relied on my lawyers.

4 Q. What involvement did you have with regard to
5 the response to Drummond's proposed findings of fact?

6 MR. SPOTSWOOD: Again, I'm instructing you
7 not to communicate --

8 THE WITNESS: Right.

9 MR. SPOTSWOOD: -- any of your discussions
10 with your lawyers about --

11 THE WITNESS: Right.

12 MR. SPOTSWOOD: -- those facts.

13 THE WITNESS: Right.

14 BY MR. DAVIS:

15 Q. When you say you relied on your lawyers,
16 excuse me, am I to take it you had no involvement
17 with regard to giving your lawyers information as to
18 what could be presented as facts?

19 MR. SPOTSWOOD: Same instruction.

20 THE WITNESS: Yeah. I would have to tell
21 you what I've communicated with my lawyers, so I
22 could not answer that. It seems to me.

23 BY MR. DAVIS:

24 Q. No, I just want to say -- I want you to say
25 yes or no, did you provide any information?

1 MR. SPOTSWOOD: I think that's invasive of
2 privilege. I'm going to instruct you not to
3 answer.

4 BY MR. DAVIS:

5 Q. So you're not going to share with us -- is
6 it your position then that the response of the
7 preparation of the proposed findings of fact was done
8 by your lawyers and not by you?

9 MR. SPOTSWOOD: Object to that as being
10 invasive of the attorney/client privilege.

11 MR. DAVIS: Okay.

12 MR. SPOTSWOOD: To the extent you can
13 answer that without conveying the attorney/client
14 privilege, which involves communications with
15 your lawyers about the scope, facts, et cetera,
16 involved here, you may do so. But otherwise, I'm
17 instructing you not answer.

18 BY MR. DAVIS:

19 Q. Is it your position, as managing partner of
20 the firm, that Conrad & Scherer is not guilty of bad
21 faith with regard to representations to the Court?

22 A. Yes, sir.

23 Q. Is it your position that Conrad & Scherer is
24 not guilty of bad faith with regard to spoliation of
25 evidence?

1 A. Yes, sir.

2 Q. Is it your position, as managing partner of
3 Conrad & Scherer, that the defense of bad faith is
4 advice of counsel?

5 A. No, it's the facts. Didn't know.

6 Q. So --

7 A. We did not know. As managing partner, I did
8 not know. The firm did not know that these
9 representations regarding three witnesses were being
10 made. I learned about it. The firm learned about it
11 when the Court learned about it.

12 Q. Is it your position that Conrad & Scherer
13 was -- once it learned about it, made full disclosure
14 to the Court?

15 A. Yes, sir.

16 Q. Is it your position that Conrad & Scherer,
17 once it learned about it, made prompt disclosure to
18 the Court?

19 A. Yes, sir. To the lawyers first and then to
20 the Court.

21 Q. Is it your position that Conrad & Scherer
22 made a full disclosure with regard to the payments
23 made by Mr. Van Bilderbeek to Jaime Blanco promptly
24 in a full disclosure?

25 A. When we learned of it, yes.

1 Q. And when you say, "when we learned of it,"
2 that would be when the firm learned of it exclusive
3 of Mr. Collingsworth's knowledge?

4 A. Yes, sir.

5 Q. Okay. Who else, beside Mr. Collingsworth,
6 do you cut from the herd, so to speak?

7 A. Well, I'm not cutting anybody from the herd.
8 I'm just trying to tell you the facts of what we knew
9 and when we knew it.

10 Q. If information were known to Christian
11 Levesque -- was she a member of Conrad & Scherer?

12 A. Yes.

13 Q. Okay. Was she a partner?

14 A. No.

15 Q. Would information imputed to her, known to
16 her, be imputed to the law firm, in your opinion?

17 A. Not bad faith. You don't impute bad faith
18 in a sanctions, in my judgment. You can't impute bad
19 faith to me because of some misdeed of a lawyer in my
20 firm that I had no knowledge about in my judgment.

21 Q. What lawyers were involved on behalf of
22 Conrad & Scherer in preparing the proposed findings
23 of fact?

24 A. Current counsel of record.

25 Q. Name those for me.

1 A. I have Mr. Spotswood, Mr. McNeil and Mr.
2 Niewoehner. I don't know whether Mr. Smith was. I
3 don't think so.

4 Q. Is it Conrad & Scherer's position that the
5 proposed findings of fact on behalf of Conrad &
6 Scherer were presented in a good faith manner?

7 A. Yes, sir.

8 Q. Is it your position, as managing partner,
9 that Conrad & Scherer's responses to Drummond's
10 proposed findings of fact were prepared in good faith
11 by your lawyers?

12 A. I believe so, yes.

13 Q. Did you review the proposed findings of fact
14 before they were submitted to the Court?

15 A. No.

16 Q. Did you review the responses to the
17 proposed -- to Drummond's proposed findings of fact
18 before they were submitted to the Court?

19 A. No, sir.

20 Q. So is it Conrad & Scherer's position,
21 through you, as managing partner, that those proposed
22 findings of fact are the work product of the lawyers
23 only and not of the client?

24 A. No.

25 Q. The lawyers prepared the responses. You had

1 no involvement with the responses. Who at Conrad &
2 Scherer had involvement with the responses?

3 A. I didn't say I didn't have involvement.

4 MR. SPOTSWOOD: Yeah. That's exactly
5 right.

6 BY MR. DAVIS:

7 Q. Okay.

8 MR. SPOTSWOOD: And I'm not going to let
9 him answer that question.

10 BY MR. DAVIS:

11 Q. Tell me -- tell me what your involvement
12 was.

13 MR. SPOTSWOOD: No, sir, I'm not permitting
14 him to answer questions that involve the
15 attorney/client privilege. No, sir.

16 MR. DAVIS: Okay. So those responses that
17 could go or could be probative to the issue of
18 what did Conrad & Scherer know and when did it
19 know it and these are findings of fact, those
20 responses that were probative on what it knew,
21 when it knew it, you're not going to allow him to
22 answer?

23 MR. SPOTSWOOD: I have been letting him
24 answer all morning questions about what he knew
25 about specific factual things. I'm not going to

1 allow you to use this deposition to invade the
2 attorney/client privilege with respect to a
3 pending motion that deals with historical facts.
4 I have not seen a motion to strike our pleadings
5 as in violation of Rule 11 or as in any other way
6 in derogation of my firm or Steptoe's firm or
7 Susman Godfrey's firm's responsibility to the
8 Court.

9 Lunch?

10 THE WITNESS: Pardon?

11 MR. SPOTSWOOD: Lunch?

12 THE WITNESS: Are they here?

13 MR. FREVOLA: I'll find out.

14 MR. DAVIS: Well, I can say this for sure.

15 Deposition goes by a little quicker when you tell
16 him not to answer.

17 BY MR. DAVIS:

18 Q. So I'm looking at some things that I was
19 going to ask you, if you're not going to answer them,
20 I don't know what to do other than to advise you that
21 I think it is something that we have a right to ask.

22 Let me show you exhibit --

23 MR. SPOTSWOOD: Yeah. And I would say,
24 Tony, again, I have tried very hard to answer --
25 allow this witness to answer specific questions

1 about what he knew and when he knew it. The
2 questions that go beyond that and into, you know,
3 his communications with his lawyers in connection
4 with preparation of the pleadings and motions in
5 connection with the sanctions practice of yours
6 is out of line, and I'm very comfortable on that.

7 MR. FREVOLA: Lunch is here, by the way.

8 MR. DAVIS: I think we will take this time
9 and break for lunch.

10 THE VIDEOGRAPHER: Off the record. It's
11 12:29.

12 (Thereupon, a recess was taken, after
13 which the following proceedings were held:)

14 THE VIDEOGRAPHER: We're back on the
15 record. It is 1:09 p.m.

16 MR. SPOTSWOOD: Before we get started, I
17 wanted to say one thing on the record here and
18 that is, we have designated this witness with
19 respect to various topics, including the findings
20 and facts -- of fact issues. And by doing so, I
21 had anticipated that he would be here, able and
22 available for you to ask him questions about
23 specific findings of fact and whatever you want
24 to ask him about that that does not invade the
25 attorney/client privilege, but I am not here to

1 tell him not to answer specific questions
2 regarding specific findings of facts and
3 positions taken in the court.

4 And I also wanted to mention that on topics
5 11 and 12, JC Rodriguez is an additional person
6 and he might have been mentioned on one, if not
7 both, previously. But he is an additional person
8 of knowledge on those two topics of 11 and 12 on
9 your notice.

10 MR. DAVIS: Okay. We're back on the
11 record; is that right?

12 THE VIDEOGRAPHER: If you're asking me,
13 yes.

14 BY MR. DAVIS:

15 Q. Let me ask you, please, sir, about Richard
16 Drath. He is a former CFO, is that correct?

17 A. Yes, the firm administrator.

18 Q. And he's no longer with the firm?

19 A. Right. As I mentioned this morning, he's
20 retired.

21 Q. He got cc'd on various documents, which
22 we've seen that have been produced to us.

23 A. Yes, sir.

24 Q. And he would have been -- the reason he was
25 cc'd was because he was the firm administrator?

1 A. Yes, sir.

2 Q. And tell us exactly what the duties and
3 responsibilities of a firm administrator are?

4 A. Running the firm.

5 Q. Okay. Does he have the ability to hire and
6 fire?

7 A. The clerical, yes. And, you know, not
8 lawyers, but practically everybody else. He was with
9 us for a long, long time and he was -- worked closely
10 with me, and I tried to have him run the firm while I
11 practiced law.

12 Q. All right. And as far as expense items,
13 monthly expense items, litigation expenses, he was
14 aware of those?

15 MR. SPOTSWOOD: Object to the form. You
16 may answer.

17 THE WITNESS: Yes, he and his staff.

18 BY MR. DAVIS:

19 Q. And did he ever express any concern to you
20 concerning the payment of witnesses?

21 A. No.

22 Q. You paused a minute. Why did you pause?

23 A. Well, because I was trying to think through
24 your question.

25 Q. Why did he leave, retired?

1 A. Third time. Third time. Retired. He's 76
2 or so and retired.

3 Q. Have you seen the responses, the proposed
4 findings of facts that were filed by Conrad &
5 Scherer?

6 A. Just the recent findings of fact?

7 Q. Yes.

8 A. Is that what you're talking about? Yes.

9 Q. Proposed findings of fact.

10 A. Yes.

11 Q. Are you aware that in Number 367, proposed
12 finding of fact says that, "Conrad & Scherer did not
13 intentionally misrepresent the scope and extent of
14 payments to witnesses and pleadings, interrogatory
15 responses, sworn declarations, correspondence with
16 the opposing party and in open court"? Are you aware
17 that this proposed finding of fact was submitted as
18 what Conrad & Scherer's knowledge and intents were?

19 A. Yes.

20 Q. Were you aware before it was filed?

21 A. Yes.

22 Q. Is that still Conrad & Scherer's position
23 today?

24 A. Our position is that's a question of fact
25 for the Court. Not for Conrad & Scherer. It's a

1 question for the Court.

2 Q. Oh, it is.

3 Well, is it Conrad & Scherer's position, as
4 stated in 369, that Conrad & Scherer was not aware of
5 the representations made by Terry Collingsworth to
6 this Court were not accurate at the time they were
7 made?

8 A. Yes, sir.

9 Q. And you have told us earlier today that
10 certainly by the summer of 2014, you became aware, as
11 managing partner of Conrad & Scherer, that certain
12 misrepresentations or false information had been
13 presented to the Court?

14 MR. SPOTSWOOD: Object to the form of that.

15 You may answer.

16 THE WITNESS: That's not what I testified
17 to.

18 BY MR. DAVIS:

19 Q. Were you -- what did you testify to?

20 A. I testified that in the summer I started to
21 be concerned that our attorney needed help because of
22 the serious issues raised in the sanctions, and we
23 started looking into it and we engaged -- I engaged
24 additional counsel to help. That's what I said.

25 Q. Okay.

1 A. That was my testimony. And my testimony was
2 further that I learned of the incorrectness of the
3 three witness and only three witness payments,
4 assistance payments when the Court did, as we were
5 advising the Court and Drummond and so it was an
6 evolving process and up to today.

7 Q. So when you, as managing partner, learned of
8 the incorrectness of the statements and
9 representations that have been made by your partner,
10 Terry Collingsworth, did you confront Mr.
11 Collingsworth about those misrepresentations?

12 MR. SPOTSWOOD: Object to the form. And to
13 the extent you can do so without invading the
14 attorney/client privilege with respect to
15 communications about this pending matter, you may
16 answer. Otherwise, I have to instruct you not to
17 answer.

18 THE WITNESS: All communications concerning
19 that have been with counsel and through counsel.

20 BY MR. DAVIS:

21 Q. Okay. So are you going to answer the
22 question?

23 A. No. I mean, I have answered it. All
24 communications with Collingsworth are through
25 counsel, which you know are privilege, so I'm not

1 going to go any further than that. I'm going to
2 adhere to my counsel's instruction.

3 Q. Okay. I think my question was: Did you
4 confront him or did you discuss with him the fact
5 that these misrepresentations have been made?

6 A. Without counsel being present?

7 Q. Yes.

8 A. No.

9 Q. Did you confront him or discuss with him
10 about the misrepresentations with counsel?

11 MR. SPOTSWOOD: I'm not going to let him
12 answer that. That's going to unnecessarily
13 invade the privilege.

14 BY MR. DAVIS:

15 Q. Is it your testimony, Mr. Scherer, that once
16 you learned that your partner had made
17 misrepresentations to a Federal Court in Alabama, you
18 did not discuss this with your partner except in the
19 presence of counsel?

20 A. Yes, sir. And I might add that the
21 knowledge of and the nature of and the extent of the
22 incorrect information that was put before the Court
23 was -- evolves from the summer through the fall, so
24 it wasn't like a light went off.

25 Q. You had knowledge that the

1 misrepresentations had been made in June of 2014,
2 when your son, Billy, brought that to your attention,
3 did you not?

4 MR. SPOTSWOOD: Object to the form. You
5 may answer.

6 THE WITNESS: No, that's not true. My son
7 sent an e-mail to our lawyer, advising our lawyer
8 of --

9 MR. SPOTSWOOD: Whoa, whoa, whoa, whoa.

10 THE WITNESS: Thank you, sorry.

11 I only know of a communication that was in
12 June that the firm discovered. I did not
13 discover it, but the firm did in June, concerning
14 an earlier e-mail that I never learned about
15 until we became fully aware of what was going on.

16 BY MR. DAVIS:

17 Q. And when was that?

18 A. When was what?

19 Q. When did you --

20 A. Become fully aware?

21 Q. Yes.

22 A. Through November, December.

23 Q. Are you telling us that your son knew in
24 June of 2014 about an e-mail that he sent to your
25 lawyers, but you were not aware of that e-mail or

1 that he had sent it to the lawyers?

2 MR. SPOTSWOOD: Object to the form. To the
3 extent you can answer that without waiving the
4 privilege, go ahead.

5 THE WITNESS: Yes. Because the e-mail was
6 unclear and so it was not brought to my
7 attention. It was brought to the attention of
8 the lawyers who were -- the lawyer who was
9 representing us.

10 (Plaintiff's [Exhibit No. 5](#) was thereupon
11 marked for Identification.)

12 BY MR. DAVIS:

13 Q. Let me show you [Exhibit Number 5](#), please.

14 You've seen this before, have you not?

15 A. Yes, sir.

16 Q. Okay. And I see in the e-mail there where
17 it says, "From Terry Collingsworth, sent Sunday, May
18 22nd, 2011, 6:41 p.m." It was cc'd to you, is that
19 correct, as one of the parties receiving it?

20 A. Yes, sir.

21 Q. Okay. A large portion of this is
22 privileged, but at the bottom of the page, "Gave Ivan
23 \$5,400 for security costs for ET and Samario. Need
24 to pay 2,700 per month to maintain until we get deps
25 in the can and depending on what happens, we may need

1 to do more for the families."

2 MR. SPOTSWOOD: I think you left out part
3 of that, which is "security costs for him," comma
4 "ET and Samario."

5 MR. DAVIS: Okay. I did, excuse me.

6 BY MR. DAVIS:

7 Q. I noticed on the one -- on this exhibit here
8 it is from Pauline Koper to William R. Scherer, III,
9 cc'd Danielle Kisslan.

10 Who is Pauline Koper?

11 A. She is my secretary.

12 Q. Okay. And she was sending this to William
13 R. Scherer, III. Do you know why she was sending
14 this to William R. Scherer, III?

15 A. She was forwarding it to him because it was
16 not -- he was not on the e-mail that was sent to me
17 on that Sunday.

18 Q. Okay. So he would have received this e-mail
19 on May 23rd, 2011, in the ordinary course of
20 business?

21 A. Yes, sir.

22 Q. Now, on the bottom of the page, number five,
23 there is a date of 6/25/2014. Do you know what that
24 date is?

25 A. Yes, sir.

1 Q. What is that date?

2 A. That's the date that -- I believe that is
3 the date that it was retrieved as we were
4 investigating the claims, as the firm was
5 investigating the claims made in the sanctions and it
6 was retrieved in pursuance of an examination of the
7 records of the firm and my son found it and forwarded
8 it to counsel in the defamation case, in the libel
9 case.

10 Q. Okay. Which counsel?

11 A. Mr. Smith.

12 Q. So who printed this? Was it Billy that
13 printed it?

14 A. It was the firm that printed it, on June
15 25th, 2014.

16 Q. Who in the firm printed it?

17 A. I don't know who printed it. But my son is
18 the one that found it and forwarded it to counsel
19 saying -- forwarded it to counsel. I'm not going to
20 say what he said.

21 Q. When did he forward it to counsel?

22 A. That day or shortly thereafter.

23 Q. Okay.

24 A. A day later.

25 Q. And why was Billy involved with --

1 A. He was involved in the Wichmann case and the
2 issue with respect to -- with respect to Drummond's
3 claims was injected into that case and he was
4 searching for documents with respect to payments,
5 security payments, made by us with -- that had been
6 somehow obtained from Parker Wichmann -- Parker
7 Waichman, excuse me, and so looking into that --
8 those issues, he came across this e-mail of the firm
9 dating back May 23rd, May 22nd, 2011, and he
10 forwarded it along.

11 Q. And was he the person that had primary
12 responsibility in the firm for gathering documents
13 that had been requested in the libel case?

14 A. No.

15 Q. Who was, who had that responsibility?

16 A. Mr. Collingsworth and his lawyers -- and his
17 Washington, DC staff.

18 Q. Did Billy tell you on this date of June
19 25th, 2014, that he had printed this e-mail and was
20 forwarding it on to counsel?

21 A. No.

22 Q. When did you learn that he had forwarded it
23 on to counsel?

24 A. Only recently.

25 Q. Being when?

1 A. When it was discovered by the new team in
2 doing searches of all of our records.

3 Q. Did Billy forward this e-mail to Ken McNeil
4 on or about June 25th, 2014?

5 MR. SPOTSWOOD: I'm going to instruct you
6 not to answer. That's attorney/client
7 communication.

8 THE WITNESS: Okay.

9 MR. DAVIS: That's what do we know and when
10 do we know it, and you're not going to --

11 MR. SPOTSWOOD: Ken McNeil is not on trial
12 here.

13 BY MR. DAVIS:

14 Q. He was counsel -- wasn't Ken McNeil your
15 counsel in the Wichmann case?

16 A. He was.

17 Q. He was in the process of gathering --

18 MR. SPOTSWOOD: That's exactly right.

19 BY MR. DAVIS:

20 Q. He was gathering documents in the Wichmann
21 case, is that right, Ken McNeil was?

22 A. Yes, that's correct.

23 Q. And he, as your lawyer in the Wichmann case,
24 was given this e-mail?

25 MR. SPOTSWOOD: I'm going to instruct you

1 not to answer any questions about your law firm's
2 communications with Ken McNeil either in writing
3 or verbally.

4 BY MR. DAVIS:

5 Q. What is the first discussion you had with
6 Billy Scherer about this e-mail in 2014?

7 A. I've never had discussions with him about
8 it.

9 Q. Not at all?

10 A. Not at all.

11 Q. What discussions did you have with Billy
12 Scherer about this e-mail in 2011?

13 A. I have no recollection of having discussions
14 with him or anybody else about this e-mail in 2011.

15 Q. Did you instruct Pauline Koper to forward it
16 to Billy in 2011?

17 A. I don't recall that. She would do that as a
18 matter of routine.

19 Q. Why would it be a matter of routine?

20 A. Because keeping everybody on issues
21 pertaining to my stuff involved.

22 Q. Before your testimony here today, did you
23 make inquiry, as managing partner of the firm and as
24 a 30(b)(5)(6) deposition representative, as to why
25 this e-mail was forwarded to Billy Scherer?

1 A. It was forwarded to Billy Scherer. He found
2 it.

3 Q. And I'm talking about May 11th, May of 2011.

4 A. No. Because it's obvious to me why it was.

5 Q. Okay. And what is that obvious reason?

6 A. She forwards e-mails to the appropriate
7 people that I'm working with on issues, on cases, on
8 matters, on firm matters, and so that's why she would
9 have forwarded it to him. Terry left him off of the
10 e-mail to me, so my secretary forwarded it to my son.
11 I never asked her why she did it or if she would
12 recall it. Because it seems obvious.

13 Q. What role did Billy play in the Balcerro
14 case?

15 A. None.

16 Q. Yet he was receiving e-mails about payments
17 to witnesses?

18 A. He was receiving e-mails about expense items
19 and management of the firm assisting me in not just
20 Balcerro, but all of the human rights cases --

21 Q. So you --

22 A. -- as I believe I testified this morning
23 when we talked about him.

24 Q. You never had any discussions with Billy
25 about paying witnesses until we get the depositions in the

1 can?

2 A. I never had any discussion with him about
3 this particular e-mail that I recall at the time or
4 at the time he -- at the time I received it on May
5 22nd, 2011 or later when it was found in June of
6 2014.

7 Q. Okay. You -- it is true though that you did
8 receive this e-mail from Mr. Collingsworth May 22nd,
9 2011?

10 A. I stated that.

11 Q. Did you discuss with Mr. Collingsworth what
12 he meant by "deps in the can"?

13 A. No, sir. I have no recollection of
14 receiving this or processing this or being involved
15 in this at all at that time in May of 2011.

16 Q. Did you bill time in Balcerro for receiving
17 this e-mail?

18 A. Yes, sir.

19 Q. How much time did you put on it?

20 A. .2.

21 Q. Okay. So does that refresh your
22 recollection that you did read the e-mail?

23 A. It does not. It refreshes my recollection
24 only that the record shows that I gave it a minimal,
25 which means I looked at it. It doesn't mean I

1 digested it or read it. That's a minimum entry.

2 It's a contingent fee case and so it tells me that I
3 didn't spend time on it. At least that's the best I
4 can do in recollecting on this document.

5 Q. Well, there's something -- you received --
6 it's something that you billed time on in your time
7 sheets. And is it your testimony that you forgot
8 about the payments to Samario and El Tigre after
9 this -- you receiving this e-mail?

10 A. No. That's not my testimony. My testimony
11 is, I never knew it. Never perceived that this down
12 at the bottom .10 was in any way different than the
13 information that the firm had at that time that they
14 were paying security costs for only three
15 witnesses -- family of the three witnesses.

16 Q. Okay. And you're telling us that the
17 e-mail, itself, which says, "Until we get deps in the
18 can and depending on what happens, we may need to do
19 more for the families," that had no significance to
20 you at that point in time?

21 A. No, sir. No, sir.

22 Q. And as we have discussed from that point
23 forward even until today, there is \$2,700 a month
24 coming from a Conrad & Scherer account going to Ivan
25 Otero, which then goes to Samario and El Tigre?

1 A. Yes, sir.

2 MR. SPOTSWOOD: Object to the form. Sorry.

3 BY MR. DAVIS:

4 Q. On that e-mail that was sent on May 22nd,
5 2011, it is also copied to Richard Drath, the office
6 administrator.

7 A. Yes, sir.

8 Q. Who is also the chief financial officer at
9 that time.

10 A. Yes.

11 Q. Why would he be given this information from
12 Mr. Collingsworth that "we need to pay \$2,700 a month
13 to maintain until we get deps in the can"?

14 A. Because it was Mr. Drath's job to fund it --

15 Q. Okay.

16 A. -- if it was going to be funded by the firm
17 or split with the co-counsel. And Mr. Drath was
18 really the administrator of the firm administering
19 the money part of all of our practice.

20 Q. So --

21 A. Not just -- not just for human rights cases,
22 but everything.

23 Q. So the fact that the payments were made in
24 2011 and it continued to be made since then, does
25 that mean that Mr. Drath approved those payments?

1 MR. SPOTSWOOD: Object to the form. You
2 may answer.

3 THE WITNESS: It meant that the firm
4 approved those payments and that Mr. Drath was
5 involved in that, because if those payments were
6 made and they actually did get started to be
7 made, that Mr. Drath would have to have been the
8 one in the accounting department to make sure
9 that happened.

10 BY MR. DAVIS:

11 Q. And the fact that from May, 2011 until the
12 present time that the payments had been made, does
13 that not indicate that you also, as managing partner,
14 approved the payments?

15 MR. SPOTSWOOD: Object to the form. You
16 may answer.

17 THE WITNESS: Yes. The firm has made those
18 payments and they were approved by the firm and,
19 therefore, by me as managing partner of the firm.

20 BY MR. DAVIS:

21 Q. Can you tell me of anyone else at Conrad &
22 Scherer that Billy Scherer showed this e-mail to in
23 2014?

24 A. No. I don't recall that he cc'd or
25 presented a copy of this to anybody in the firm when

1 he forwarded it.

2 Q. Okay. I'm going to ask you: Does the firm
3 have knowledge of anyone, other than Billy Scherer,
4 that saw or reviewed or had knowledge of this e-mail
5 in 2014, other than you, Ms. Koper and Billy Scherer?

6 A. Wait a minute. You're in 2014?

7 Q. Yes.

8 A. Well, I don't know that the -- Ms. Koper or
9 I had any knowledge of it in 2014.

10 Q. Well, sure you did, because you knew about
11 it in 2011.

12 A. That doesn't mean that I had knowledge that
13 Billy had found it in 2014.

14 Q. Okay.

15 A. Because I didn't.

16 Q. Did this e-mail that Billy found and
17 forwarded to counsel, did it have anything to do with
18 his leaving the law firm?

19 A. No.

20 Q. Did Billy at that point in time ask or
21 recommend to you that there ought to be some sort of
22 ethics opinion from the bar about this issue?

23 A. No.

24 Q. Let me show you some interrogatories
25 responses.

1 (Plaintiff's Exhibit No. 6 was thereupon
2 marked for Identification.)

3 MR. DAVIS: This is Exhibit 6.

4 MR. SPOTSWOOD: And the date on this
5 certificate is March 5, 2015.

6 MR. DAVIS: Right.

7 BY MR. DAVIS:

8 Q. These interrogatories were in response to
9 knowledge about assistance that were being provided.
10 Have you read these responses? Go to Page 7. Have
11 you read that response?

12 MR. SPOTSWOOD: Just to be clear, do you
13 want to ask him about a particular person or a
14 particular response in which case, I think, in
15 fairness you should let him read what you're
16 going to ask him about.

17 BY MR. DAVIS:

18 Q. I said Page 7, which says, "Defendant,
19 Conrad & Scherer."

20 A. Right.

21 Q. Have you read that response?

22 A. I'm reading it now.

23 Q. Do you see it?

24 A. I'm reading it.

25 Yes, sir.

1 Q. All right. I see on the second sentence
2 there under, "Defendant Conrad & Scherer."

3 A. What page, please?

4 Q. Seven. It says that "Mr. Scherer receives
5 an estimated thousand of e-mails a month. He did
6 receive one e-mail report in May of 2011, which
7 indicated that payments would be made to Mr. Otero
8 for security that included the brief reference to
9 security payments for families of El Tigre and
10 Samario. "

11 A. Yes, sir.

12 Q. Is that a true statement?

13 A. Yes, sir. But -- yes, sir, it's a true
14 statement that I received it and that it briefly
15 indicated what it indicated. My testimony here is I
16 don't have any present recollection of that --

17 Q. Okay.

18 A. -- at all. And when I went back and looked
19 at my time records, a .2 means I really didn't spend
20 much time on it. That's my testimony.

21 Q. 12 minutes, right?

22 A. Well, .2 means it came through and I opened
23 it and that's all. It doesn't mean anything else. I
24 mean, if I had spent more time on it, it would have
25 said.

1 But remember, this is a contingency fee
2 case. This isn't where the time is accurate. It's
3 just an indication of what I did, what action I took
4 with stuff as it comes through. Did I just read it
5 or did I look at it and spend time on it or do
6 something with it, and my time records reflect that.
7 If I spent 20 minutes or a half hour or hour and a
8 half, it would reflect that.

9 Q. Well, you go on --

10 A. It just tells me that I just received it and
11 didn't register anything of importance, didn't
12 register anything with respect to the knowledge of
13 the firm, which was at that time we were making
14 assistance payments to three witnesses' families.

15 Q. Did Billy Scherer keep time records --

16 A. Yeah.

17 Q. -- in Balcerro?

18 A. I'm not sure. I imagine he did, but -- he
19 did things on the files, unless it was
20 administrative, so I never looked at that. I will.

21 Q. You go on to say in this discovery response,
22 that, "Mr. Scherer was not aware of exactly what Mr.
23 Otero was doing with his money."

24 What does that mean?

25 A. Just what it said.

1 Q. What does it exactly mean?

2 A. Well, it means that with respect to what
3 security he was providing for himself with respect to
4 that, whether it was an armored car or guards or some
5 other form, I did not know -- do not know. And the
6 firm doesn't know.

7 Q. Had you ever been in any discussions with
8 any other counsel, co-counsel in any other cases
9 about the issue of paying witnesses?

10 A. Yes.

11 Q. When, where and what case?

12 A. The --

13 MR. FREVOLA: Hold on a second. You're
14 talking about other firm cases? I just want to
15 make sure. Because I'm here to protect some of
16 the firm's interest.

17 MR. DAVIS: Yeah.

18 THE WITNESS: Be more specific.

19 BY MR. DAVIS:

20 Q. Chiquita, were there discussions?

21 A. I was not involved in any discussions with
22 the Chiquita counsel.

23 Q. About payments of witnesses?

24 A. Correct.

25 Q. And never was an issue at all?

1 MR. SPOTSWOOD: I am going to caution you
2 if we get into an arena where you're talking
3 about attorney/client communications or
4 communications with co-counsel in Chiquita or any
5 other piece of litigation, I'm going to instruct
6 you not to answer.

7 THE WITNESS: All right. I can't answer it
8 then.

9 (Plaintiff's Exhibit No. 7 was thereupon
10 marked for Identification.)

11 BY MR. DAVIS:

12 Q. Let me show you Exhibit Number 7. This is
13 an e-mail -- two e-mails, one from Jack Scarola to
14 Terry Collingsworth and he's saying, "Bill and
15 Terry," and it's also addressed to you, concerning an
16 ethics opinion about compensations to witnesses.

17 Do you recall that?

18 A. No.

19 Q. You don't recall this e-mail at all?

20 A. No, I don't.

21 Q. Do you remember having a meeting in
22 Washington, DC with Mr. Scarola and others?

23 A. Yes.

24 Q. Do you remember that the issue of payments
25 to witnesses was discussed in that meeting?

1 A. I -- I can't discuss with you meetings with
2 co-counsel or other lawyers in the Chiquita case
3 without getting into issues with work product and
4 attorney/client privilege. So I can't do it.

5 Q. All right. But it is your testimony here
6 today that with regard to [Exhibit 7](#), you have no
7 recollection about receiving that e-mail in July,
8 2011?

9 A. Not as I sit here today, no.

10 Q. And this was two months after you received
11 the e-mail about deps in the can, and --

12 A. Two months about after the e-mail from --

13 Q. May of 2011?

14 A. -- of May -- of two months after [Exhibit 5](#).
15 Yes.

16 Q. So just a little over a month, really?

17 A. Yes, just a month later, correct.

18 Q. So in May, June, July, you, as managing
19 partner, did not have any awareness about issues
20 being out there concerning Mr. Collingsworth making
21 payments to witnesses in cases that Conrad & Scherer
22 had?

23 A. What do you mean "issues about being out
24 there"? Certainly, we knew that the firm was
25 supporting families of witnesses at that time, so I

1 knew that. That's not out there. That's a fact.

2 Q. Okay. Did you have any discussions with
3 anybody at Parker Waichman about this depositions in the can
4 e-mail that you received in May of 2011?

5 A. No, sir.

6 THE VIDEOGRAPHER: Ten minutes till tape
7 change.

8 BY MR. DAVIS:

9 Q. At the time you received the e-mail from Mr.
10 Scarola, July the 5th, 2011, is it not true that
11 Conrad & Scherer had paid in the Balcerio case,
12 Halcon, Gilarte (phonetic), Gelvez, Charris, Samario
13 and El Tigre?

14 A. Yes.

15 Q. Did you disclose any of these payments to
16 your co-counsel in Chiquita?

17 MR. SPOTSWOOD: I can't --

18 BY MR. DAVIS:

19 Q. All right.

20 A. I'm not going to --

21 Q. All right.

22 A. -- waive their privilege or ours.

23 Q. By July of 2011, had you forgotten that you
24 were making payments to El Tigre and Samario?

25 A. I already told you, I never forgot it

1 because I never knew it. It didn't register. Wasn't
2 something to forget. Didn't --

3 Q. So 2000 --

4 A. I wasn't aware of it. What I was aware of
5 is that we were making witness payments to three
6 families, period. That was the information that was
7 in the firm and it's supported overwhelmingly by the
8 firm's records that I have reviewed to prepare myself
9 for today.

10 Q. Well, now, there are records every month,
11 are there not, in this firm of payments made in the
12 amount of \$2,700 on a monthly basis for Samario and
13 El Tigre?

14 A. No. It's to Otero is what the firm records
15 show except for that e-mail that I don't recall
16 seeing. So that the payments to Otero are security
17 payments for Otero.

18 The level of knowledge of the firm at that
19 time was that there were three families. I don't
20 know whether I thought that Otero was helping with
21 those three families or what. I do not remember, as
22 we sit here today, about the state of mind of the
23 firm, other than the representations to the Court
24 were the same that we were getting in the firm.
25 Three families.

1 Q. Are you aware that in November, 2014 that
2 your firm, as a defendant in the defamation case,
3 disclosed a \$100,000 payment to a consultant in
4 response to one of the interrogatories concerning
5 witness payments?

6 A. Yes, sir.

7 Q. Who is that witness?

8 MR. SPOTSWOOD: Yeah, I'm sorry, I object
9 to the form. I think the word was "consultant"
10 rather than "witness" and if you have an
11 interrogatory response that he can look at. If
12 you don't, I think I do.

13 BY MR. DAVIS:

14 Q. I'm just asking you, do you know who that
15 \$100,000 payment went to?

16 A. Well, show me the interrogatory, because
17 there's --

18 MR. SPOTSWOOD: That's not it.

19 THE WITNESS: I know that's not it.

20 Show it to me. I'm not trying to make you
21 go do something. There are two \$100,000 payments
22 and we don't want to get confused. I don't
23 think. There's 100,000 a couple of times that
24 number, so I need to see what we're talking
25 about.

1 THE VIDEOGRAPHER: Five minutes to tape
2 change.

3 (Plaintiff's Exhibit No. 8 was thereupon
4 marked for Identification.)

5 MR. SPOTSWOOD: This is Exhibit 8?

6 BY MR. DAVIS:

7 Q. On Page 14...

8 MR. SPOTSWOOD: This Exhibit 8, this is a
9 supplemental discovery response dated November
10 24, 2014, for the record.

11 MR. DAVIS: That's correct.

12 THE WITNESS: And what page are you
13 referring to?

14 BY MR. DAVIS:

15 Q. Page 14.

16 A. Yes, sir.

17 Q. I think it's actually 13 and 14 that it
18 starts. On Page 13, see where it says "consultant"?

19 A. Yes, sir.

20 Q. Okay. It goes on to 14 and it says, "The
21 consultant was paid \$100,000."

22 A. Yes, sir.

23 Q. Can you tell me who that is?

24 MR. SPOTSWOOD: That information has been
25 logged, I believe, and is subject to work-product

1 privilege claim.

2 BY MR. DAVIS:

3 Q. Are you aware that on the privilege log, as
4 Mr. Spotswood said, which has been prepared, that the
5 \$100,000 came from Mr. Collingsworth's personal
6 checking account?

7 A. Yes, sir.

8 Q. Okay. Can you explain why the transaction
9 was framed in a manner in which the money came from
10 his account as opposed to the firm's account?

11 A. Yes, sir.

12 THE VIDEOGRAPHER: Two minutes.

13 THE WITNESS: We wouldn't pay it.

14 BY MR. DAVIS:

15 Q. The firm would not?

16 A. That's correct.

17 Q. Why not?

18 A. Because it was a money issue. We spent so
19 much money on these cases already and it was the
20 alien -- the alien tort claims issues were going to
21 the Supreme Court --

22 MR. SPOTSWOOD: I think we're going to have
23 to stop because his tape is about to run out.

24 THE WITNESS: All right.

25 THE VIDEOGRAPHER: Is that okay?

1 MR. SPOTSWOOD: Yeah.

2 THE VIDEOGRAPHER: We're off the record.

3 This is the end of media two. It's 2:04.

4 (Thereupon, a recess was taken, after
5 which the following proceedings were held:)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 2:07 p.m.

8 This begins media three.

9 MR. SPOTSWOOD: It would be helpful if the
10 court reporter would read back the question and
11 then the answer because I know we interrupted an
12 answer with this tape change.

13 (Thereupon, the requested portion of the
14 record was read back by the court reporter.)

15 THE WITNESS: And additionally, it arose
16 without giving us time to consider it and then it
17 appears or we know that Mr. Collingsworth,
18 because of what he considered to be emergent
19 issues, paid it himself to the -- paid the money
20 to this consultant himself.

21 BY MR. DAVIS:

22 Q. So did Mr. Collingsworth make the payment to
23 the witness?

24 A. Yes, sir. That's my understanding.

25 Q. Okay.

1 A. Wait.

2 Q. And --

3 A. Hold on a second.

4 Are you talking about the consultant?

5 MR. SPOTSWOOD: Yeah, it's a
6 mischaracterization of the testimony. To the
7 consultant.

8 THE WITNESS: To the consultant.

9 BY MR. DAVIS:

10 Q. Okay.

11 A. Is that what you're --

12 Q. Yeah.

13 A. The person we're talking about here,
14 consultant.

15 Q. Right.

16 A. Not a witness. And I'm sorry, I shouldn't
17 have answered so quickly.

18 Q. And --

19 A. It's my understanding that he did pay.

20 Q. He did pay?

21 A. The consultant \$100,000.

22 Q. And he paid it --

23 A. To get access to the prisons and he got
24 access so that he and you can take the depositions of
25 the prisoners.

1 Q. \$100,000 to gain access to public
2 facilities?

3 A. Yes, sir.

4 Q. And it's your understanding he paid for that
5 from his own account, out of his own account?

6 A. Yes, sir.

7 Q. Where did those funds come from?

8 A. His own account.

9 Q. Where did they come from?

10 A. His own funds.

11 Q. What is Mr. Collingsworth's draw with Conrad
12 & Scherer?

13 A. About 160 or \$175,000 or something like
14 that, I think. I'm not sure about that. It might be
15 old.

16 Q. Has he received any money over and above
17 that for his percentage of cases that he's handled or
18 is entitled to receive money from?

19 A. He has received other compensation, other
20 money in the form of loans, I think. I don't think
21 he has received anything additional other than that,
22 from my memory.

23 Q. So do you have any -- can you tell us today,
24 do you have any idea as to where the source of this
25 \$100,000 is?

1 A. Well --

2 MR. SPOTSWOOD: If you can do that without
3 revealing attorney/client communications or work
4 product, you may answer the question.

5 THE WITNESS: I cannot.

6 BY MR. DAVIS:

7 Q. You cannot because you don't know or because
8 you believe it would be violating attorney/client
9 privilege?

10 A. I think it would be violating
11 attorney/client work product to talk about that.

12 Q. So it is fair to say you do know the source
13 of the fund, but you don't feel you can say it today?

14 A. Money is fungible, so I don't know whether
15 or not, you know, it came from -- where it came from,
16 other than it was his money.

17 Q. Did you know Lorraine Leete or do you know
18 her?

19 A. No. You asked me that this morning and I
20 said I didn't.

21 Q. You don't know her and never met her?

22 A. No.

23 Q. So did you ever have any discussion with her
24 by telephone or otherwise about payments to
25 witnesses?

1 A. No, sir.

2 Q. Richard Gordon, did you ever discuss
3 anything with him about payments to witnesses?

4 A. No, sir.

5 Q. Susana Tellez, a Conrad & Scherer employee.

6 A. Yes.

7 Q. Is she still employed at Conrad & Scherer?

8 A. She was in the DC office, and I don't think
9 so.

10 Q. How often do you visit the DC office?

11 A. Not often. I was there, I mentioned to you,
12 last week, but I don't believe I had been to this new
13 office since we moved a couple of years ago.

14 Q. This lawsuit that Mr. Wichmann has filed
15 against Conrad & Scherer, is that still ongoing?

16 A. He did not file --

17 MR. SPOTSWOOD: I was going to say object
18 to the form of that one.

19 BY MR. DAVIS:

20 Q. You filed, Conrad & Scherer, a claim?

21 A. He grabbed the cases. We sued him.

22 Q. Okay. Excuse me.

23 A. It's okay.

24 Q. Who represents Conrad & Scherer in that
25 case?

1 A. Susman Godfrey.

2 Q. Ken McNeil?

3 A. Mr. McNeil.

4 Q. Did you -- have you appeared also as counsel
5 of record in that case?

6 A. I don't -- I'm not sure. I can't remember.

7 Q. What about Billy Scherer?

8 A. Well, if he appeared, he would have appeared
9 for the firm and I believe we were in it in the
10 beginning and then I think we were substituted, but
11 I'm not sure.

12 Q. Have you ever actually appeared in court on
13 behalf of your firm in that case?

14 MR. SPOTSWOOD: You mean, a physical
15 appearance at the courthouse?

16 MR. DAVIS: Yes.

17 THE WITNESS: We're talking about as a
18 lawyer in the case or as a witness --

19 BY MR. DAVIS:

20 Q. Yes, as a lawyer.

21 A. -- in the case?

22 Q. As a lawyer, have you actually --

23 A. I -- I don't think so. I think I've always
24 been represented by counsel.

25 Q. Okay.

1 A. We've had hearings and such over the years,
2 but I don't have a recollection of acting as my own
3 lawyer.

4 Q. Have you actually physically gone to court
5 and attended hearings?

6 A. Oh, yes.

7 Q. You have? Has Billy Scherer actually
8 attended hearings in that case?

9 A. Yes.

10 Q. Are you aware that there is -- filings have
11 been made in that case concerning payments to
12 witnesses?

13 A. Yes.

14 Q. Do you know when those filings were made?

15 A. You have to show me.

16 (Plaintiff's [Exhibit No. 9](#) was thereupon
17 marked for Identification.)

18 MR. SPOTSWOOD: Just to be clear what's
19 going on here from looking at this, it appears
20 that Plaintiff's [Exhibit 9](#) consists of Exhibit
21 24, part one, Exhibit 24, part two, a pleading in
22 the defamation case that was filed on June the
23 12th, 2015. And in turn, it's making -- the
24 actual attachments are from the Wichmann case and
25 I have not looked to see what the dates of those

1 attachments are.

2 Oh, sorry, it looks like one was filed --
3 the one that's Exhibit 24, part one, was filed
4 September 23rd, 2014.

5 MR. WELLS: It's all the same filing. The
6 cover filing and all of the remaining pages and
7 attachments are exhibits.

8 MR. SPOTSWOOD: All on September 23, 2014.

9 MR. WELLS: Right.

10 MR. SPOTSWOOD: Okay.

11 I need to take a break at this point --
12 this second, if we can break for five minutes.

13 THE VIDEOGRAPHER: Okay. We're off the
14 record. It's 2:19 p.m.

15 MR. DAVIS: Are you going to discuss with
16 him the question?

17 MR. SPOTSWOOD: No, I'm not going to
18 discuss with him the question.

19 (Thereupon, a recess was taken, after
20 which the following proceedings were held:)

21 THE VIDEOGRAPHER: We're back on the
22 record. It is 2:27 p.m.

23 BY MR. DAVIS:

24 Q. We've got [Exhibit Number 9](#), that we have
25 shown you, Mr. Scherer. Do you have that with you?

1 A. Yes, sir.

2 Q. Have you had a chance to review it?

3 A. A little bit of time looking through it
4 while at the break.

5 Q. Okay. Do you recognize this as a filing in
6 litigation, Conrad & Scherer versus William Wichmann,
7 et al.?

8 A. Yes.

9 Q. I noticed on Page 13 of the filing that Ken
10 McNeil is the lawyer representing the firm; is that
11 correct?

12 A. Yes, sir.

13 Q. And Ken McNeil is your lawyer in this
14 case --

15 A. Yes, sir.

16 Q. -- in the defamation case. I also notice on
17 Page 14 that William R. Scherer is counsel; is that
18 correct?

19 A. Yes, sir. That's what it says.

20 Q. It says, "Local counsel of record, William
21 R. Scherer" with a bar number -- and "William R.
22 Scherer, III"?

23 A. Yes, sir.

24 Q. From the affidavit that's filed in that,
25 which is Exhibit A, affidavit of Terry

1 Collingsworth --

2 MR. SPOTSWOOD: What's the exhibit number
3 on it? I'm showing Exhibit A as a privilege log.

4 MR. DAVIS: Page 152 of 170 .

5 MR. SPOTSWOOD: I'm sorry, what is the
6 exhibit number?

7 MR. DAVIS: Nine. You're talking about our
8 exhibit?

9 MR. SPOTSWOOD: Yeah, I mean, these start
10 with Exhibit A.

11 MR. DAVIS: Yeah.

12 MR. SPOTSWOOD: And so I'm trying to find
13 the affidavit. That's all.

14 MR. DAVIS: Go past all of the charts.

15 MR. SPOTSWOOD: Okay.

16 MR. DAVIS: It's Exhibit F.

17 MR. FREVOLA: What's the page number again
18 from the ECF filing?

19 MR. PRESLEY: 152 of 170.

20 MR. FREVOLA: Okay. Got it. You got it,
21 Bill, from the ECF filing?

22 THE WITNESS: No, not yet. Just hold on.

23 MR. SPOTSWOOD: You look at the number on
24 the top here, 152.

25 THE WITNESS: Yes, sir, got it.

1 BY MR. DAVIS:

2 Q. You see that's an affidavit of Mr.
3 Collingsworth?

4 A. Yes, sir.

5 MR. SPOTSWOOD: And just for the record,
6 this is dated 12, August, 2014. That's the
7 execution date for the affidavit.

8 THE WITNESS: I think so, yes.

9 BY MR. DAVIS:

10 Q. It was filed September --

11 MR. WELLS: 23rd.

12 BY MR. DAVIS:

13 Q. September.

14 If you turn, if you would, to Page 156 of
15 170, which is actually Page 5 of Mr. Collingsworth's
16 affidavit.

17 A. Yes, sir.

18 Q. And you see beginning at Paragraph 20 --
19 well, Paragraph 18, it says, "Among the documents
20 produced here, and provided to Drummond defendants as
21 part of the extensive discovery in Balcerro case and
22 in the Drummond libel case, are documents regarding
23 funds for security provided to the families of
24 Charris, Duarte and Gelvez, all witnesses in
25 Balcerro."

1 Do you see that?

2 A. Yes, sir.

3 Q. Do you see in Paragraph 20, he describes
4 making payments to Jairo Jesus Charris Castro?

5 A. Yes.

6 Q. Do you see in Paragraph 21, he again
7 continues to refer to Charris payments?

8 A. Yes.

9 Q. And so in 22?

10 A. Yes.

11 Q. Do you see in 23, he refers and describes
12 the payments to Libardo Duarte?

13 A. Yes.

14 Q. Do you see in 24, he describes to Jose
15 Gelvez Albarracin's family?

16 A. Yes.

17 Q. You see Paragraph 25, he describes payments
18 to alias Halcon?

19 A. Yes.

20 Q. You see Paragraph 26?

21 A. Yes.

22 Q. Can you read the first sentence of Paragraph
23 26?

24 A. "The final individual who receives security
25 measures is Claudia Balcerro."

1 Q. Was there any disclosure in this affidavit
2 that was filed by you, Mr. Billy Scherer, William
3 Scherer, III and Mr. McNeil that there were payments
4 to Samario and El Tigre?

5 A. No.

6 Q. Were there any disclosures that payments had
7 been made to Jaime Blanco by Albert Van Bilderbeek?

8 A. No.

9 Q. And it is true that this filing and this was
10 for a court appearance in September of 2014?

11 A. Yes, sir.

12 Q. And September of 2014, was after Billy
13 Scherer in June of 2014 had seen the e-mail, which
14 originated in May of 2011 from Mr. Collingsworth
15 concerning the payment to Samario and El Tigre until
16 depts are in the can?

17 A. It was after he found the e-mail and
18 forwarded it to the lawyer, Mr. Smith. That's true.

19 Q. And I'm going to ask you again and your
20 lawyer has refused to let you answer, but I'm going
21 to ask you again.

22 When you knew that Mr. Collingsworth had
23 made misrepresentations concerning witness payments,
24 you said you confronted and discussed that with Mr.
25 Collingsworth?

1 MR. SPOTSWOOD: Object to the -- I have
2 instructed him not to answer questions that
3 relate to conversations among his counsel and Mr.
4 Collingsworth concerning anything including
5 witness payment issues.

6 MR. DAVIS: Okay. I understand you don't.

7 BY MR. DAVIS:

8 Q. And you will not share with us when it was
9 you had those discussions with Mr. Collingsworth?

10 A. The response to the question is when we
11 learned that Mr. Collingsworth had made incorrect
12 statements to the Court in the proceedings that we
13 are now involved in, and it was certainly after this
14 affidavit that was provided in August by Mr.
15 Collingsworth. Because at the time of this
16 affidavit, the firm's knowledge was the same as Judge
17 Proctor and in the court filings. Until such time as
18 we supplemented and advised everybody, and it was
19 after this August affidavit that we learned, that the
20 firm learned, about the facts of these additional
21 payments and understood them in a manner that
22 could -- we could advise the Court and we did advise
23 the Court in extensive filings after that that were
24 within the time frame set by the Court in my view.

25 But at the time that this thing was filed in

1 the Wichmann case, this was our level of knowledge,
2 this filing, I can tell you that and I'm testifying
3 to that and did not know that the payments were any
4 different than were stated here. Did not appreciate
5 the El Tigre and what's the other name? Sorry.

6 MR. SPOTSWOOD: Samario.

7 THE WITNESS: Samario.

8 BY MR. DAVIS:

9 Q. I want to say --

10 A. I also -- I also did not appreciate -- let
11 me just finish and then we're done.

12 Q. All right.

13 A. I also did not appreciate the assistance in
14 getting Jaime Blanco's money for his lawyers until
15 after this was filed. But it was shortly after this
16 was filed. Because in November, you know, we started
17 supplementing in the Drummond case court with what
18 you have here, plus a lot more.

19 Q. I'll move to strike every single thing that
20 you just said.

21 A. I'm sure.

22 Q. And we're going to move to strike it, and
23 say that it is an abuse of what we're doing here
24 today. It has been totally obstructive that you wish
25 to testify as to what was knowledge to you and the

1 law firm, but you preclude us from gaining any
2 information or making any meaningful discovery on
3 that issue, so what you want to say is -- I
4 understand that you are going to tell us what you
5 knew and what the firm knew, but we can't make
6 inquiry as to anything with regard to information
7 that was in any way shared with your lawyers.

8 A. You know, Counsel, I'm not arguing with you.
9 I'm just trying to tell you the facts as we knew them
10 and, you know, not invade attorney/client and
11 work-product privilege that has been asserted in this
12 case and other cases, so...

13 Q. I want to say once again, I think the Court
14 used the term "this Alice in Wonderland." You want
15 to say one thing, but you preclude us from finding
16 out in discovery. So that's where we are.

17 MR. SPOTSWOOD: That's not where we are.

18 Where we are is we have raised these issues with
19 Judge Proctor. He has received briefs on these
20 issues. I believe we have a conference schedule
21 with Judge Proctor on Wednesday to discuss these
22 very issues and we will, of course, address those
23 issues with him.

24 MR. DAVIS: So --

25 MR. SPOTSWOOD: And in the meantime, we are

1 not going to breach the attorney/client privilege
2 or the work-product privilege in this deposition.
3 We're not going to do it.

4 BY MR. DAVIS:

5 Q. Is it your -- and I don't mean to have to do
6 this, but from what you're saying here today, is it
7 your testimony that, you, as a lawyer for Conrad &
8 Scherer, your son, Billy Scherer, and Mr. McNeil,
9 will swear to Judge Proctor that they had no
10 knowledge of any witness payments or any
11 misrepresentations made by Mr. Collingsworth before
12 November of 2014?

13 A. Yes.

14 Q. Okay.

15 A. Before --

16 MR. SPOTSWOOD: Wait a minute.

17 THE WITNESS: Let me finish. The
18 filings --

19 MR. SPOTSWOOD: Wait a minute.

20 THE WITNESS: Hold on. Let me just --

21 MR. DAVIS: We'll take that --

22 MR. MCNEIL: He was not able to make his
23 objection, Bill. Go right ahead.

24 You're asking about somebody else's
25 knowledge and that's not -- go ahead.

1 MR. DAVIS: It's what? Hold on. You're
2 speaking up now. Somebody else's knowledge is
3 what, is not pertinent to our inquiry as to what
4 did you know and when did you know it?

5 MR. SPOTSWOOD: No. Look, what we have
6 authorized him to testify to and what we have
7 designated him to testify to, as the firm
8 representative, is what the firm knew and when
9 they knew it with respect to these
10 representations, among other topics. And he has
11 answered those questions.

12 If you want to go beyond that and inquire
13 about his communications with counsel in these
14 cases, including communications with me, with Mr.
15 McNeil, with Mr Niewoehner, do we believe those
16 are protected by the attorney/client privilege,
17 absolutely we do.

18 And we have told the Court what our
19 position is in writing with respect to the scope
20 of the alleged crime-fraud exception, which is
21 what you're arguing should allow you to breach
22 these privileges. That's an open issue, as we
23 sit here today. And to the extent that these
24 questions require him to do that, then we're not
25 permitting you to answer those questions.

1 MR. DAVIS: Okay.

2 BY MR. DAVIS:

3 Q. Mr. Scherer?

4 A. Yes, sir.

5 Q. Is it your position, as a managing partner
6 of Conrad & Scherer, and is it Conrad & Scherer's
7 position that Conrad & Scherer and Bill Scherer, as
8 managing partner, and its agents, servants and
9 employees, had no knowledge about the
10 misrepresentations of Mr. Collingsworth until
11 November of 2014?

12 MR. SPOTSWOOD: Object to the form of that.
13 That definition of his responsibilities as a
14 30(b)(6) witness is way off the mark.

15 MR. DAVIS: I'm just asking him as a --

16 THE WITNESS: You put in agents, employees
17 and --

18 BY MR. DAVIS:

19 Q. Right.

20 A. You qualified it. I'm saying that as of the
21 firm and me, as the managing partner, we had no
22 knowledge of these witness -- this failure to
23 disclose witness assistance payments until we made
24 the appropriate filings before Judge Proctor --

25 Q. Okay.

1 A. -- that began in November and in December
2 and in January.

3 And that's my testimony. That's my belief.
4 That's what I'll testify to. That's what I have --
5 and I haven't found anything in the record that I've
6 looked at that makes me think I had any knowledge of
7 that before, or that Mr. Collingsworth was making
8 these incorrect statements to the Court in the
9 filings. And that's the firm's position. That's my
10 position.

11 Q. Okay. What about Billy Scherer sending the
12 e-mail in June of 2014, talking about payments to
13 Samario and El Tigre, to your legal counsel?

14 A. The e-mail that he sent is unclear and I
15 already testified that I don't even have a
16 recollection of reading it. I did get it.

17 Q. I didn't ask you about you --

18 A. Let me finish.

19 So that I didn't have a recollection ever of
20 of it imparting knowledge to me that was different
21 than what Mr. Collingsworth was telling the Court and
22 telling us. And when my son found that document and
23 forwarded it, it was in reference to work on the
24 Wichmann case, and it took a little bit of time in
25 order to put two and two together. And when we did,

1 we advised the Court and Drummond, you, as to what we
2 had learned. And up through today, we have made a
3 full disclosure about everything that we possibly
4 could learn or know from turning this firm upside
5 down at tremendous cost.

6 So that's my answer. I mean, you don't like
7 it, but that's my answer.

8 Q. Okay. You're not telling Judge Proctor that
9 Brad Smith represented Conrad & Scherer in the
10 Wichmann case, are you?

11 A. No, of course not.

12 Q. So why was Brad Smith getting a document
13 that Billy had come across in the Wichmann review?

14 A. Because he said in --

15 MR. SPOTSWOOD: Wait a minute.

16 THE WITNESS: Oh, I can't tell you that.

17 MR. SPOTSWOOD: Don't go into any
18 communications with counsel. No.

19 THE WITNESS: Yep, I'm sorry.

20 I can only tell you that he forwarded it to
21 Brad Smith. That's what the record shows. It
22 doesn't show -- it doesn't give me any more
23 knowledge about that document concerning those
24 witnesses to have alerted us that there were
25 misstatements being made in Alabama before Judge

1 Proctor until such time a month later that we
2 told Judge Proctor and you what we were learning.

3 BY MR. DAVIS:

4 Q. And briefs that were filed in the summer of
5 2014, which would say as many as nine times that only
6 three witnesses had been paid and were filed by
7 Mr. Smith after he had received the e-mail from Billy
8 Scherer. Does that raise any issue in your mind as
9 to whether Mr. Smith knew or should have known that
10 there were more than three witnesses that had been
11 paid?

12 MR. SPOTSWOOD: To the extent it requires
13 you to go into the communications with counsel --

14 THE WITNESS: Mr. Smith was our lawyer and
15 we were communicating with him. And in terms of
16 how he perceived that document relative to what
17 he was working on, I can't tell you.

18 BY MR. DAVIS:

19 Q. How would anybody find out what Mr. Smith
20 knew or didn't know at that point in time?

21 A. Well, it's attorney/client privilege with
22 respect to the communications with our counsel. But
23 I only know what I've determined from my review as
24 30(b)(6). The fact of the matter, as I was living
25 this, I thought there were only three witnesses that

1 were being supported up to the time when we learned
2 differently and we supplemented the record as quickly
3 as we could at great expense to me and my firm. I'm
4 just telling you that. So if you want to know what I
5 knew and when I knew it, you're getting it right
6 here. It was right after this filing in Wichmann
7 that caused us to start looking and caused me to get
8 more help legally.

9 Q. Is that what caused you to start looking,
10 was the filing in Wichmann?

11 A. Yes. Because prior to that, I thought I had
12 a viable case going with a counsel hand on it and a
13 partner involved in it that, you know, was serious
14 because it was against the firm, but it wasn't what
15 it is now, with these sanction proceedings. So you
16 know, that's what started us looking to see whether
17 or not things appropriately were being disclosed, be
18 it your sanctions motion and your filings.

19 Q. When you filed the Wichmann filing in the
20 court of which you were the lawyer, what did you do
21 as a lawyer to make certain that what was being
22 represented to the Court was truthful?

23 A. I did the best I could with the information
24 that I had in conjunction with the firm and our
25 counsel.

1 Q. So you --

2 A. Tried my best.

3 Q. You talked to Mr. McNeil about it to make
4 sure it was truthful?

5 MR. SPOTSWOOD: No, we're not talking --

6 THE WITNESS: We're not going there. I
7 can't go there.

8 BY MR. DAVIS:

9 Q. Did you talk with Mr. Collingsworth to make
10 sure it was truthful?

11 A. I never talked to Mr. Collingsworth.

12 Q. Okay. So what did you do to make sure that
13 what was being filed was, in fact, truthful?

14 A. Just what I said, tried our best with the
15 records that we had and the searches that were done
16 and our continuing investigation.

17 Q. When the motion for sanction was filed in
18 2014, what did you do, as managing partner, to
19 determine the merits of the motion?

20 A. When? At what time?

21 Q. At any time after the motion was filed.

22 A. When was it filed?

23 Q. In --

24 A. The one in April? You talking about April?

25 Q. Right.

1 MR. SPOTSWOOD: And respect the privilege
2 objection.

3 THE WITNESS: I will. I will.

4 Started our inquiry as to the correctness
5 of the representations that were made and what
6 Drummond was doing as well.

7 BY MR. DAVIS:

8 Q. What all was involved with the inquiry?

9 MR. SPOTSWOOD: Same objection with respect
10 to the privilege issue.

11 THE WITNESS: Considering whether we needed
12 additional counsel to be involved.

13 BY MR. DAVIS:

14 Q. And once again, I'm going to ask you because
15 I can't get it fixed in my mind anyway. But when the
16 motion for sanction was filed, did you at that point
17 in time ask or confront Mr. Collingsworth about the
18 particulars of the motion?

19 MR. SPOTSWOOD: And again, I'm not sure
20 that's...

21 THE WITNESS: I never talked to Mr.
22 Collingsworth except through counsel and with
23 counsel present.

24 BY MR. DAVIS:

25 Q. Okay.

1 A. Okay? As I've stated before.

2 Q. So the answer would be, "Yes, I talked to
3 him but only in the presence of lawyers"?

4 A. That would be a fair statement.

5 Q. Okay. And when was the motion filed?

6 MR. PRESLEY: April 2nd, 2014.

7 BY MR. DAVIS:

8 Q. Okay. April 2nd. In relation to April 2nd,
9 when was that? You can't ever seem to give me a
10 date on that.

11 A. Well, you're all over the place, too. That
12 thing was filed in April. I don't know when I
13 reviewed it. I can't recall exactly. But it was
14 after that and it was in reference to what was going
15 on in the Wichmann case that caused me to believe
16 that I needed additional counsel, to help out here.

17 And as I mentioned to you, Chris Niewoehner
18 was the first in the end of July, so somewhere
19 between -- when that thing was filed in April and
20 July and then Mr. McNeil in November.

21 Q. You're saying the first time you talked to
22 Mr. McNeil about Collingsworth was in November?

23 MR. SPOTSWOOD: We're not going there.

24 THE WITNESS: I didn't say that. What I
25 talked to him is attorney/client privilege. But

1 I didn't say that. I said that's when he was
2 hired, engaged.

3 BY MR. DAVIS:

4 Q. Was Collingsworth involved or is he involved
5 in the Wichmann case?

6 A. No. Other than providing the affidavit that
7 you saw.

8 Q. Let's go back to [Exhibit Number 5](#), which you
9 have.

10 A. Yes, sir.

11 Q. You see at the bottom of that exhibit, it
12 says, "Confidential pursuant to protective order"?

13 A. I do.

14 Q. Who put that on there?

15 A. I have no idea.

16 Q. Conrad & Scherer has no idea?

17 A. I have no idea and so...

18 Q. Managing partner --

19 A. As a managing partner, I don't -- I don't
20 know who put that on there and I didn't really -- I
21 didn't really look into that because I didn't know
22 anybody would challenge this because it seems to be
23 pretty confidential and privileged to me, so -- and
24 it also says over here "Confidential" down at the
25 bottom on both pages, so it looks like a confidential

1 document.

2 Q. You know when it was put on?

3 A. No, no, sir, I don't.

4 Q. Do you know who Jaime Blanco is?

5 A. Yes.

6 Q. Who is he?

7 A. He's a prisoner, a Colombian prisoner.

8 Q. When were you first aware of the name Jaime
9 Blanco?

10 A. The -- I have a recollection of knowing of
11 him when the issue arose as to his demand, request,
12 need for an attorney to represent him. That's a
13 vague recollection. I have since, as part of my
14 30(b)(6), confirmed that there were inquiries made to
15 the firm about paying him or paying his attorney and
16 the date has slipped me. You'll have to help me with
17 the date. I knew it last night, but I don't have it
18 today.

19 Q. Did you authorize, as managing partner of
20 Conrad & Scherer, did you authorize Terry
21 Collingsworth to offer to Mr. Blanco that Van
22 Bilderbeek would pay him?

23 A. No.

24 Q. Did you know that Collingsworth had offered
25 this to Mr. Blanco?

1 A. No.

2 Q. If you had known, what would you have done?

3 MR. SPOTSWOOD: Object; hypothetical.

4 THE WITNESS: Can I answer it?

5 MR. SPOTSWOOD: Sure.

6 THE WITNESS: Would have told him to
7 disclose it.

8 BY MR. DAVIS:

9 Q. Okay. But you think the payment, itself,
10 would have been okay to do?

11 A. The ethics opinions that were received and
12 the research received confirms that it is appropriate
13 to pay the lawyer's fees in that situation, so yeah,
14 I believe that was so. But we didn't do it.

15 Q. Even if the witness says, "I'm not going to
16 testify unless I get paid"?

17 A. That's your characterization, but if the
18 witness demonstrates a need for legal assistance and
19 doesn't have the means to pay it and it's appropriate
20 to get testimony and it's fully disclosed, yes.

21 Q. Okay.

22 A. That's our position. That's what I believe
23 the law to be.

24 Q. So it was never fully disclosed though, was
25 it?

1 A. It was never paid and not disclosed until we
2 disclosed it to you and the Court in November and in
3 December.

4 Q. Is Albert Van Bilderbeek a client of the
5 firm?

6 A. Mr. Collingsworth's deposition says that Van
7 Bilderbeek engaged him to act as their attorney and
8 there's a retainer agreement to that effect, so the
9 answer has to be yes.

10 Q. Have you ever met either the Van
11 Bilderbeeks?

12 A. No, sir.

13 Q. Have you ever had any discussions with them?

14 A. No, sir. Don't know the first thing about
15 them.

16 Q. Was any conflict check ever done to
17 determine whether or not there's a conflict within
18 the firm in representing Mr. Van Bilderbeek?

19 A. The Van Bilderbeek retainer agreement was
20 never presented to us for inclusion in the firm, and
21 we did not know about it. I did not know about it.

22 Q. Has he ever paid -- Van Bilderbeek ever paid
23 any money to the firm?

24 A. Not to my knowledge.

25 Q. Did he pay the \$100,000 to Mr. Collingsworth

1 for the consultant?

2 A. Not to my knowledge.

3 Q. When Mr. Collingsworth would go to Europe to
4 meet Van Bilderbeek, who paid those expenses?

5 A. I understand that we may have paid for him
6 to go to do -- or to go to the Netherlands and The
7 Hague, something, a while ago one time.

8 The other visits that he made, I don't have
9 a record that we paid or that there was a request for
10 it, so that's my knowledge. I need to do more to
11 answer that question, and I will, from the firm's
12 records, but I think that's factual.

13 Q. Are you aware that Mr. Van Bilderbeek paid
14 at least \$95,000 to Jaime Blanco through Ivan Otero?

15 A. Only by virtue of our filings in this case.

16 Q. So when did you find out about the payments
17 to Jaime Blanco?

18 A. At or near the time we filed with the Court
19 and, you know -- when you and the Court learned about
20 it, that's when I learned about it.

21 Q. That filing was in January of 2015.

22 A. Okay.

23 Q. Is it your testimony, as managing partner of
24 Conrad & Scherer, that Conrad & Scherer had no
25 knowledge of these payments prior to January of 2015?

1 A. Yes, sir, or shortly there before. And when
2 I say "shortly," I mean in terms of processing the
3 information and getting it as a supplement --

4 Q. You did know --

5 A. -- discovery.

6 Q. -- that Jaime Blanco testified in the
7 Balcerro case?

8 A. I did.

9 Q. You did know that there was discussions with
10 your firm and Parker Waichman about he wanted to be
11 paid prior to his testimony?

12 A. Yes, sir. He wanted to have his attorneys
13 paid prior to his testimony.

14 Q. You knew that Parker Waichman would not
15 agree to do that?

16 A. Yes.

17 Q. And yet, you knew he testified?

18 A. I knew we didn't agree to pay it either.

19 Q. Well, we do now know that Mr. Collingsworth
20 arranged for it to be paid, do we not?

21 A. It appears so.

22 Q. And Mr. Collingsworth, when he made those
23 arrangements, was the managing partner of the Conrad
24 & Scherer DC office?

25 MR. SPOTSWOOD: Object to that.

1 THE WITNESS: We've been over that. He's
2 the partner in the DC office that's in charge.
3 Yes.

4 BY MR. DAVIS:

5 Q. Did you read the transcript of Mr. Blanco?

6 A. No.

7 Q. His testimony?

8 A. No.

9 Q. Never read it?

10 A. No, sir.

11 Q. Did you know that one of the partners in
12 this firm, Mr. Collingsworth, asked him in that
13 testimony as to whether he had received anything of
14 benefit prior to his testifying?

15 A. I've read that in preparing for today in the
16 papers.

17 Q. And what did Mr. Blanco respond?

18 A. He said no. I think the question wasn't
19 exactly the way you ask it, but...

20 Q. Do you think Mr. Collingsworth at that time
21 that he elicited that response knew that it was not
22 truthful?

23 A. No, I don't. I'm not going to be the judge
24 of that. I just know that the question was
25 open-ended and vague and you didn't follow up on it.

1 I wish you had of.

2 Q. Why?

3 A. Because maybe it would have gotten in
4 quicker.

5 MR. SPOTSWOOD: Let's let Tony answer --
6 ask the questions here today.

7 THE WITNESS: I'm sorry, I won't do that.

8 BY MR. DAVIS:

9 Q. You're not blaming us for not knowing that
10 the payment had been made, do you?

11 A. Well, you didn't ask him. I won't do that.
12 I'm sorry.

13 MR. SPOTSWOOD: Thank you.

14 BY MR. DAVIS:

15 Q. Yeah. I want to hear that again.

16 Your partner asked a question of his
17 witness. That witness gives him an answer and we
18 have been asked time and again interrogatories, of
19 which you are counsel of record, and told that there
20 is nothing of assistance being given to any witness,
21 and you're saying we're supposed to keep following up
22 in the testimony?

23 A. I'm saying that question and that response
24 is unclear to me to be able to characterize it the
25 way you asked me to characterize it. That was my

1 response.

2 MR. SPOTSWOOD: I also object to the form
3 of that question.

4 BY MR. DAVIS:

5 Q. Well, you now know, do you not, Mr. Scherer,
6 that you were counsel of record, along with your
7 partner, Terry Collingsworth, for the Balcerio
8 plaintiffs and that there were submitted sworn
9 answers to interrogatories that were false? You know
10 that now, don't you?

11 MR. SPOTSWOOD: Object to the form of that.

12 But you may answer.

13 THE WITNESS: Yeah, I do know. That's
14 true. That's right. I was counsel of record.
15 But as I testified previously, I had nothing to
16 do with that filing and any bad faith in that
17 response, if there is any, and it's determined to
18 be, it's not imputed to me if I didn't intend to
19 mislead the Court, which I sure did not intend to
20 do.

21 BY MR. DAVIS:

22 Q. Are you still counsel of record in Balcerio?

23 A. Yes.

24 Q. Let me show you exhibit -- this will be

25 [Exhibit 10](#).

1 (Plaintiff's Exhibit No. 10 was thereupon
2 marked for Identification.)

3 BY MR. DAVIS:

4 Q. This is an e-mail stream. I'm going to ask
5 you about the first page. This is Gary Falkowitz --
6 Falkowitz's writing to Terry and then Terry's
7 response to him, of which you are copied.

8 Do you see that?

9 A. Yes.

10 Q. And just in general what Mr. Falkowitz is
11 asking Terry, he says, "Regarding the potential for
12 paying Jaime Blanco's legal fees, please see the
13 following notes and concerns," and he outlines some
14 notes and concerns that he has.

15 Do you see that --

16 A. Yes, sir.

17 Q. -- dated April 13, 2011?

18 A. Yes.

19 Q. And then Terry responds -- that would be on
20 the top of this document to Mr. Falkowitz. And who
21 is Mr. Falkowitz?

22 A. He was co-counsel with the Parker Waichman
23 firm.

24 Q. Okay. And I see that you're copied on this,
25 Bill Scherer?

1 A. Yes, sir.

2 Q. And that would be you and not your son?

3 A. I don't know. I think it could have been
4 either one of us, but I don't know the difference. I
5 don't know.

6 Q. Richard Drath is also --

7 A. Yes.

8 Q. Okay. What is Terry's response to these
9 questions that he posed about the payments to Jaime
10 Blanco's legal fees?

11 A. He says, "As opposed to him saying Drummond
12 had nothing at all to do with it," question mark.

13 Q. Okay. So after you saw this e-mail
14 exchange, Mr. Collingsworth saying "as opposed to hi,
15 saying Drummond had nothing to do with it," you then
16 became aware that Mr. Collin -- that Blanco did, in
17 fact, testify against Drummond?

18 A. I never said I saw this.

19 Q. Okay. You're copied on it?

20 A. Yes.

21 Q. Yeah. You deny that you've ever seen it?

22 A. I don't have a recollection --

23 Q. Okay.

24 A. -- of ever getting it at the time.

25 Q. That's my fault. I should have asked you

1 that.

2 A. Yes, you should of.

3 Q. You, sitting here today, can testify that
4 you have no recollection?

5 A. I have a recollection of the issue. I do
6 not have a recollection of this e-mail.

7 Q. Okay.

8 A. I have a recollection -- I have a
9 recollection that the issue of paying for legal fees
10 for a lawyer for a witness, was an issue that came
11 up. And my memory is that we didn't do it. That's
12 my memory.

13 As 30(b)(6), I've looked into it in a lot
14 more depth. And again, the records that I have
15 reviewed confirms my memory and that is the issue
16 came up. It was presented and we didn't do it and
17 co-counsel didn't do it either, even though they
18 found it to be ethical. I got an ethical opinion
19 from it. I didn't remember all of that. I only
20 remembered that we didn't pay 50 percent of \$100,000
21 for some witness's lawyer that was needed to get him
22 to testify. That's my memory and it's confirmed by
23 my 30(b)(6) review.

24 Q. Okay. Do you recall that Mr.
25 Collingsworth response -- his response there wherein

1 he said, "As opposed to him saying Drummond had
2 nothing at all to do with it" --

3 A. It was obviously a sarcastic response, but I
4 don't recall -- not only do I not recall that, I
5 didn't recall receiving this memo, this e-mail, other
6 than being informed of it. But I have since
7 investigated it, as I'm supposed to do, and I'm
8 telling you.

9 Q. Well, you have now found out --

10 A. I'm telling you that the firm didn't make
11 the payment. Declined to do it.

12 Q. But you know that Mr. Blanco did testify
13 against Drummond?

14 A. Yes.

15 Q. And would that lead you to believe, as a
16 reasonable person, that somehow the payment was made?

17 A. No, it didn't. It's just the opposite of
18 that. The explanation was that he somehow got over
19 his issue or got another lawyer or got some way
20 around the obstacle and then testified.

21 Q. Who gave you that explanation?

22 A. There's records in my file that there is
23 that explanation that I didn't remember at the time
24 when the man gave a statement. But I have since in
25 my 30(b)(6) determined that there is some reference

1 in the record that he got around whatever obstacle it
2 was in his deposition -- his statement or deposition
3 went forward. That's all I know.

4 Q. Okay. Have you produced those records that
5 are in your file?

6 A. Yes.

7 Q. You have?

8 A. Yes.

9 Q. Every bit of them?

10 A. Yes. I don't hold anything back.

11 Q. Are those communications from Mr.
12 Collingsworth to you?

13 A. I can't recall. They're produced -- they
14 are privileged marked and I can't recall. It wasn't
15 to me. I don't think so. I think I saw it in my
16 investigation. I can't -- I can't recall.

17 MR. SPOTSWOOD: And we are not waiving here
18 privilege claims with respect to documents that
19 are on a privilege log.

20 THE WITNESS: The fact of the matter is is
21 that from my standpoint and the firm's
22 standpoint, these witnesses and these people are
23 like names that I don't -- I did not then have
24 locked in, like I have now. I also have a little
25 trouble with the Spanish names, which I

1 shouldn't, but -- since my two sons are married
2 to Spanish women, but I have difficulty with
3 those names. So that's another issue of having
4 this thing locked in. It's just the facts.

5 BY MR. DAVIS:

6 Q. Do you think Mr. Collingsworth lied to you
7 with regard to the Jaime Blanco payments?

8 A. Mr. Collingsworth said that he was -- in his
9 deposition, you know what he said. And it's not me
10 to judge yet. It's an issue for the Court to
11 determine as to that.

12 I don't have any record that Mr.
13 Collingsworth denied or told me, whether I would ever
14 ask him directly or whether anybody ever asked him
15 directly, whether he had anything to do with getting
16 Blanco paid -- got the lawyers paid, so -- so I have
17 no memory or record that he lied to me. I don't
18 think because I don't think I asked him directly
19 or -- the record reflects that.

20 Q. Okay. Do you have any firsthand knowledge
21 that Mr. Collingsworth lied as to anything in his
22 deposition testimony, anything that you know that he
23 said that you know is not true?

24 A. In the deposition you just took?

25 Q. Yes.

1 MR. SPOTSWOOD: I think a 300-plus page
2 deposition, I think that's outside the scope of
3 the topics that have been designated for this.
4 It's an unfair question to the witness.

5 BY MR. DAVIS:

6 Q. It's not. It's what did you know and when
7 did you know it. If you know something now after
8 having read something that he just said under oath
9 and you know it's not true, I think you should take
10 some affirmative action on that or at least that
11 would be my opinion, as a lawyer and officer of the
12 court and otherwise.

13 A. Well, I am an officer of the court and I
14 will let the Court make the decision. The fact of
15 the record as it stands now, as supplemented, is as
16 full and complete and accurate as anything we can
17 possibly do within our capabilities and beyond.
18 Because it's gone beyond my capability financially to
19 do this, so -- and from that standpoint, everything
20 is out there and I believe Mr. Collingsworth, in his
21 deposition that you just took, referenced that it's
22 all out there, that there's nothing else. There's
23 even things going back way before he joined our firm
24 that's in there. So the answer to your question
25 isn't fair, I don't think --

1 Q. Okay.

2 A. -- to put me in a position to do that at
3 this point.

4 Q. Did Mr. Collingsworth ever tell you that he
5 forgot that he had made payments to Samario and El
6 Tigre?

7 A. Mr. Collingsworth, all of his communications
8 with me regarding this, since we got new counsel,
9 have been through counsel.

10 Q. Okay. At any time before you got new
11 counsel, did he ever say that?

12 A. No. Because -- no.

13 MR. SPOTSWOOD: That's your answer.

14 THE WITNESS: Thank you. No.

15 BY MR. DAVIS:

16 Q. So there's never been any communications
17 that you and Collingsworth had -- have had that
18 concerns the issues of this sanction hearing that has
19 been taking place without the presence of counsel?

20 A. No, that's not true.

21 Q. So you've had conversations about issues in
22 the sanction hearing without counsel being present?

23 A. That's not your question. Your question was
24 conversations about issues that are involved and
25 certainly we had communication and conversations with

1 Mr. Collingsworth about the witness assistance
2 payments before counsel -- new counsel were involved.

3 Q. Okay.

4 A. Okay?

5 Q. What did he tell you about the witness
6 assistance payments?

7 A. That there were three. Same thing he told
8 the Court.

9 Q. So with regard to that statement, he lied to
10 you?

11 MR. SPOTSWOOD: Object to that.

12 THE WITNESS: Given his explanation that he
13 didn't recall it, he didn't intend to
14 misrepresent. And given the fact that it makes
15 no sense as to why he would have done that,
16 because he could disclose six, if you can
17 disclose three, what difference does it make? So
18 it makes no sense that he would have lied to me
19 about that.

20 I'm just telling you that we confirmed with
21 him three witness payments, witness assistance
22 payments, before, you know, this issue got hotly
23 contested, to verify what our records, and I have
24 confirmed that our records in our firm show those
25 same three people that you keep naming, and it's

1 consistent with that.

2 BY MR. DAVIS:

3 Q. When did he tell you that there were three
4 witnesses?

5 A. Often.

6 Q. When?

7 A. Often. Up through the time of the filing of
8 that affidavit in September.

9 Q. When was the first time he told you?

10 A. I can't remember.

11 Q. Was it before or after the hearing in April
12 of 2014?

13 A. I can't recall. I think it was -- I think
14 it was always that that's what it was limited to with
15 all the communications that we had with him. And
16 it's substantive in the record. And you know, as he
17 said, in his mind, that's what he thought, you know,
18 came from the firm and he thought that was the truth,
19 drawn from what he called fine line whatever.

20 What I'm telling you is that he drew that
21 same line with us, as to three witnesses and three
22 witnesses only.

23 MR. SPOTSWOOD: Where are we on the clock?

24 THE VIDEOGRAPHER: How much time do we have
25 left on this particular tape?

1 MR. SPOTSWOOD: I'm curious to see if it's
2 time for a break here.

3 THE VIDEOGRAPHER: We started on this one
4 at 2:07 and it's now 3:31 and take away six
5 minutes, and 14 -- an hour and 14 actual on and
6 an hour and 26, even not including the break. So
7 far that would be two, four, five, a little under
8 five and a half hours total time.

9 MR. DAVIS: Let's take about a five, ten
10 minute break.

11 THE VIDEOGRAPHER: Okay. We're off the
12 record. It's 3:31 p.m.

13 (Thereupon, a recess was taken, after
14 which the following proceedings were held:)

15 THE VIDEOGRAPHER: We're back on the
16 record. The time is 3:45 -- 3:46.

17 BY MR. DAVIS:

18 Q. Are you aware that there were documents that
19 showed payments from Conrad & Scherer of Ivan Otero
20 that were funneled to El Tigre and Samario? Are you
21 aware of that?

22 MR. SPOTSWOOD: Object to the form. You
23 may answer.

24 THE WITNESS: I am aware that there are
25 firm documents that show that payments to Otero

1 for the benefit of El Tigre and Samario, that
2 there is some reference to that, other than this
3 [Exhibit Number 5](#).

4 BY MR. DAVIS:

5 Q. Okay.

6 A. I'm also aware that the records generally,
7 just say, "Security, Otero" except for, I believe
8 some reference.

9 As to this [Exhibit Number 5](#), by the way, I
10 did -- it was forwarded to me by my son -- or not by
11 my son. It was forwarded to me by my son or not by
12 my son, but it came to my -- it was forwarded to me
13 on June 25th, 2014 or about there. The same
14 document. Because I told you I didn't have a memory
15 of Billy sending this document anywhere. And so I
16 was -- I don't recall it. I don't recall the event
17 of it. I don't recall whether this was the trigger
18 that caused me to raise a concern that I needed to
19 get more legal help, but it might have been, but I
20 don't think it was the document. I think it was
21 feedback I got from the document. I don't think it
22 was the document itself.

23 Q. Did you say earlier today you had not gotten
24 that e-mail in 2014?

25 A. Yes, that's what I said. I said I don't --

1 Q. And now you're saying you did -- he did send
2 it to you?

3 A. My son didn't, but I received it. It was
4 forwarded to me.

5 Q. Okay. From whom?

6 MR. SPOTSWOOD: I can't let him answer that
7 question. That would be invasive of the
8 attorney/client privilege.

9 BY MR. DAVIS:

10 Q. Well, it leads me to think that you got it
11 from your lawyer, one of your lawyers?

12 MR. SPOTSWOOD: I'm not going to let him
13 answer that.

14 BY MR. DAVIS:

15 Q. Okay. If --

16 A. I can tell you that I don't have a
17 recollection of reviewing it. I only have a
18 recollection that this, as well as other things, may
19 have been the trigger that caused me to believe I
20 needed to get more help in the file.

21 Q. Okay.

22 A. On the case.

23 Q. Do you have a recollection -- not what was
24 discussed, but do you have a recollection in 2014 of
25 discussing this e-mail with one of your lawyers?

1 A. No.

2 Q. Is it your recollection that Billy Scherer
3 forwarded the e-mail to you?

4 A. He did not.

5 Q. But you got it from somebody?

6 A. I got it.

7 Q. And it's your understanding --

8 A. And I testified earlier that I didn't -- I
9 didn't have a memory. I still don't have a memory of
10 this document at all back originally or later.

11 Q. Anything else you told --

12 A. Other than my review for the 30(b)(6).

13 Q. All right. Anything else you told us today
14 you now want to correct?

15 A. No.

16 Q. That's it?

17 A. That's it. Not bad, huh?

18 Q. Well --

19 MR. SPOTSWOOD: Don't do that.

20 THE WITNESS: Yeah, I was just...

21 BY MR. DAVIS:

22 Q. So you get this e-mail forwarded to you --
23 that's hard for me to say -- but you don't know, but
24 it could be, that's what made you decide to get
25 additional counsel?

1 A. That and other -- the whole -- the whole
2 facts surrounding the controversy as it was
3 escalating caused me to believe that I was
4 shorthanded --

5 Q. Okay.

6 A. -- in the case. We were.

7 Q. Did you consider at best this point in time,
8 June of 2014, that you -- that your law firm had a
9 conflict of interest with Terry Collingsworth?

10 A. No, not a conflict of interest.

11 Q. Okay.

12 A. At that time, it was that we were concerned
13 that enough effort wasn't being made in order to
14 really discover the facts that were subject -- the
15 facts that were the subject matter of the sanctions
16 proceeding and the whole libel case.

17 Q. Do you have a conflict of interest now?

18 MR. SPOTSWOOD: Again, I think that he's
19 been asked and answered -- asked that question
20 and answered it in terms of the factual questions
21 at hand. And I don't really think it's
22 appropriate to go any further on that. But you
23 can answer.

24 THE WITNESS: I'm giving the same answer as
25 I gave before, and that is whether or not his

1 actions were in bad faith or whether or not our
2 actions were in bad faith, or before Judge
3 Proctor to determine. And until he does that,
4 you know, that's his job, not my job. And so,
5 you know, I'm hoping he accepts Terry's
6 explanation that in his own mind, he had it
7 confused with all the other issues and things
8 that he was dealing with and drew a line and
9 didn't try to deceive anybody, mainly the Court,
10 candor to the Court, and then to us and I hope it
11 turns out that way.

12 BY MR. DAVIS:

13 Q. You told us --

14 A. But in terms of my bad faith, I don't
15 believe I'm in bad faith at all. So me or the firm,
16 as managing partner of the firm, those are two
17 separate issues.

18 Q. You have told us that you've seen documents
19 where payments were being made to Ivan Otero by
20 Conrad & Scherer that referenced El Tigre and
21 Samarío?

22 A. I said I saw a document, singular.

23 Q. Really?

24 A. Singular.

25 Q. As you're getting ready for this 30(b)(6),

1 you've seen only one document? Is that what you're
2 telling us here right now?

3 A. You're talking about prior documents. Not
4 what we have filed, of course. We filed hundreds of
5 documents, thousands of documents.

6 Q. I'm talking about Conrad & Scherer documents
7 that show payments to witnesses and you say you've
8 only seen one?

9 A. You just took my answer completely out of
10 context.

11 Q. Well, maybe so.

12 A. Go back and ask the question, please.

13 Q. Tell me what you're talking about that
14 you've only seen one document?

15 A. Go back and ask the question.

16 Q. Have you seen documents, plural, that
17 reflect payments made by this law firm to Ivan Otero
18 that reference El Tigre and Samario?

19 A. Yes. My --

20 Q. That's all I wanted to know. Yes or no?

21 A. Yes.

22 Q. Are you aware that those documents have been
23 produced to Drummond in this litigation?

24 A. All of the documents referencing any
25 payments, all of them have been produced.

1 Q. Are you aware that those documents have been
2 redacted?

3 A. You will have to be more specific about what
4 documents you're talking about.

5 Q. I'll show you one.

6 (Plaintiff's Exhibit No. 11 was thereupon
7 marked for Identification.)

8 BY MR. DAVIS:

9 Q. Exhibit 11. So you've got there Exhibit 11,
10 a document, Bates Stamp CS011423.

11 Was that produced by Conrad & Scherer?

12 A. I don't know. I think so.

13 Q. What does the CS mean to you on the Bates
14 Stamp?

15 A. It means Conrad & Scherer, Bates Stamp
16 number.

17 Q. Okay. Who put the "Confidential pursuant to
18 protective order" stamp on there?

19 A. I don't know.

20 Q. Do you see that this document has redactions
21 on it?

22 A. Yes, sir.

23 Q. Who made those redactions?

24 A. I don't know. Just looking at this
25 document, sir, there have been thousands of documents

1 produced and redactions, and I don't know.

2 Are these the redactions that were subject
3 to the Brad Smith --

4 MR. SPOTSWOOD: Let him ask --

5 THE WITNESS: Let me back up. Let me back
6 up.

7 MR. SPOTSWOOD: Let him ask the questions.

8 THE WITNESS: I will.

9 MR. WELLS: This is paragraph or topic 17
10 of the 30(b)(6) notice. The Conrad & Scherer's
11 knowledge and position regarding redaction and
12 withholding the documents from the production of
13 documents by the defendants on May 22nd and 27 of
14 2014, and you all designated Mr. Scherer. This
15 document is being shown right now as one of those
16 documents.

17 THE WITNESS: Thank you. Okay. Now I'm
18 prepared to testify.

19 BY MR. DAVIS:

20 Q. All right. Does Conrad & Scherer know who
21 made these redactions?

22 A. Yes.

23 Q. Who made the redactions?

24 A. Counsel.

25 Q. Which counsel?

1 A. My belief that the -- I mean, if it's not
2 attorney/client privilege or work-product privilege,
3 I'm happy to give you my -- wanting to tell you how I
4 think this happened, but as a 30(b)(6) witness, this
5 was redacted by counsel.

6 Q. Which counsel?

7 A. Whoever was representing us at the time of
8 the filing, which I think was Mr. Smith.

9 But there also appears to be, not the
10 Sharpie redactions, but other redactions from above
11 on those and I don't -- I can't tell you from our
12 review how those redactions took place.

13 Q. Conrad & Scherer then cannot answer this
14 question that we designated as to --

15 A. Any better than that that it was counsel
16 that would have done the redactions on the document
17 that was marked "Privileged" because it is financial
18 documents. It's also work product and
19 attorney/client because of identification of
20 witnesses.

21 Q. Are you saying that counsel did the Sharpie?

22 A. I believe so.

23 Q. Okay. Then who did the other redactions?

24 A. I don't -- I'm not sure and we can't -- I
25 can't testify that I know who did it, whether it was

1 counsel or whether it was at the direction of counsel
2 or whether it was at the direction of Mr.

3 Collingsworth, or whether he did it. I can't tell.

4 Q. How would you recommend that we get the
5 answer to this if Conrad & Scherer doesn't know the
6 information?

7 A. Well, if it's -- if it's determined not to
8 be a privileged document. If it's a privileged
9 document, you shouldn't have it anyway.

10 (Plaintiff's [Exhibit No. 12](#) was thereupon
11 marked for Identification.)

12 BY MR. DAVIS:

13 Q. Let me show you [Exhibit 12](#). This is the --
14 a document that has the same Bates number on it,
15 CS011423.

16 Do you see that?

17 A. Yes.

18 Q. It also has on the right hand, bottom right
19 hand corner, "CSTC000255 confidential."

20 A. Yes, sir.

21 Q. Who placed that designation on this
22 document? I'm asking Conrad & Scherer's knowledge of
23 that.

24 A. My knowledge of it is that I don't know,
25 other than it appears to be Collingsworth, TC,

1 confidential.

2 Q. And then it looks like there were two
3 separate redactions made to that document; is that
4 correct?

5 A. Appears to be, yes.

6 Q. And you're saying, to your knowledge, one
7 redaction was made by counsel?

8 A. It appears that this is an effort to and I
9 don't know -- I can't tell you which is -- which was
10 produced, which came first, the Sharpie redaction or
11 the other -- the Sharpie redaction seemed to have
12 took out Ivan Otero, \$2,700, as privilege from this
13 document.

14 Okay. I can't really -- I can't really tell
15 you from my 30(b)(6) examination without discussing
16 the lawyers -- discussion with the lawyers concerning
17 this document. I couldn't do it by my review.

18 MR. SPOTSWOOD: Tony, for the record, you
19 guys know which document came first, right?

20 MR. DAVIS: Yeah.

21 THE WITNESS: Okay.

22 BY MR. DAVIS:

23 Q. Did you --

24 MR. WELLS: What we don't know is who did
25 the first round of redactions. We think we know

1 who did the second round of redactions. Who
2 made the decisions in between?

3 THE WITNESS: Tell me what you know which
4 is which, then, and that might help me.

5 MR. PRESLEY: Exhibit 11 was the document
6 that was first produced.

7 THE WITNESS: Okay.

8 MR. PRESLEY: Exhibit 12 was when it was
9 reproduced.

10 THE WITNESS: Okay.

11 MR. FREVOLA: Can you tell us when it was
12 reproduced?

13 MR. PRESLEY: November of 2014. I think at
14 11:15 p.m. on November 17.

15 THE WITNESS: Okay.

16 THE VIDEOGRAPHER: Excuse me, your mic
17 right there, there's some interference, for some
18 reason. This one, all of a sudden. I don't know
19 if it's your phone or something. Can we go off
20 the record for a second? I'm getting
21 interference. It's 4:07 p.m.

22 We're off the record.

23 (Thereupon, a recess was taken, after
24 which the following proceedings were held:)

25 THE VIDEOGRAPHER: We're back on the

1 record. It's 4:07 p.m.

2 THE WITNESS: The -- you know, I'm
3 really -- I'm really drawing a blank on this --
4 these two. I believe I know who did this one
5 with the Sharpie redaction and so do you. And
6 with respect to the second one, that includes
7 Ivan Otero that's not redacted, providing that
8 information, appears to be, you know, from the
9 new team based on additional information --
10 providing additional information.

11 BY MR. DAVIS:

12 Q. So you're saying the second redaction was
13 done by Mr. Niewoehner or Mr. McNeil?

14 A. No, no.

15 MR. SPOTSWOOD: Tony, you know, look, we
16 have a legal team that worked very hard on all of
17 this, who did this specific redaction. This was
18 produced as a part of the supplemental
19 production. You guys know that.

20 THE WITNESS: Yeah.

21 MR. DAVIS: We say it's very, very
22 important in this case because Mr. Collingsworth
23 had made representations to the Court in April
24 that there were only three witnesses and then
25 affirmatively in May, there were redactions

1 taking place which should have shed light on
2 those misrepresentations.

3 MR. SPOTSWOOD: I believe he's answered
4 your questions about what he thought was the
5 source of this.

6 BY MR. DAVIS:

7 Q. Who provided the information to counsel as
8 to what should or should not be redacted?

9 A. The information in the documents are
10 provided by the firm. Counsel makes the decision as
11 to what to redact and what not to redact, based on
12 what's privilege and what's not and the rulings of
13 the Court, but it appears to me that the supplemental
14 [Exhibit 12](#), supplemental information, is providing
15 the information, as we were learning it, to the Court
16 and to you.

17 Q. So if indeed the redaction was made in bad
18 faith --

19 A. Which redaction?

20 Q. On [Exhibit 11](#).

21 A. Yes, sir.

22 Q. If indeed those redactions were made in bad
23 faith, that is, an attempt to prevent plaintiffs from
24 learning about witness payments, is it Conrad &
25 Scherer's position that the bad faith, the redaction

1 was the sole work of counsel?

2 MR. SPOTSWOOD: Object to the form of that.

3 You may answer.

4 THE WITNESS: The -- no, our position is
5 that the -- whoever made those redactions, that
6 we corrected it when the firm learned of -- of
7 the facts of the case concerning the witness --
8 the witness protection payments, and it's clear
9 that the Ivan Otero payment is disclosed there in
10 November. So, you know, the prior redaction of
11 it, whether it was in good faith or bad faith, it
12 was corrected by the firm.

13 BY MR. DAVIS:

14 Q. Is that Conrad & Scherer's position in this
15 case that if something was done in bad faith, it's
16 okay as long as it's corrected?

17 A. No, that's not the position. The position
18 is it's up to the Court to determine if something is
19 in bad faith or not and we're not going to be the
20 judge of it, other than to tell you the facts of the
21 case; and then certainly producing [Exhibit Number 12](#)
22 in November demonstrates the good faith of the firm
23 in trying to correct a record in a timely fashion.

24 Q. Well, if the firm knew about it in June and
25 waited until November to disclose it, is that good

1 faith or bad faith?

2 A. It's not bad faith. It might be slow in
3 getting the picture, but it's not bad faith. That's
4 for sure.

5 Q. That's your opinion?

6 A. That's -- well, that's my testimony.

7 MR. WELLS: Bob, I need to ask the
8 question. Is it the defendant's position that
9 Conrad & Scherer cannot put forward the 30(b)(6)
10 representative to explain exactly how [Exhibit 11](#)
11 was redacted?

12 MR. SPOTSWOOD: This is the 30(b)(6)
13 deposition representative of Conrad & Scherer.
14 You have sent a deposition notice to the lawyer
15 for Conrad & Scherer, I'm sorry, a hearing
16 subpoena for the lawyer for Conrad & Scherer. We
17 believe that that invades the attorney/client
18 privilege.

19 Now, this witness has told you what he, as
20 Conrad & Scherer's representative, knows about
21 this. I believe that's the extent of our
22 obligations. If we don't know what was going
23 through the lawyer's mind or what he was doing
24 and cannot disclose that information without
25 invading the attorney/client privilege, then

1 we're at an impasse. I mean, this gentleman
2 knows what he knows based upon his records.

3 MR. DAVIS: Okay. Let me say this --

4 MR. WELLS: Answer the question.

5 THE WITNESS: One at a time.

6 MR. WELLS: Does he know and it's
7 privileged or is it just Conrad & Scherer could
8 not possibly answer that question regardless of
9 privilege?

10 MR. SPOTSWOOD: I think that the point is
11 that to the extent that this redaction
12 involved -- if you're asking what did he know and
13 when did he know it, that's one thing. If you're
14 asking him, does he know why this particular
15 redaction was made, I think the only way to
16 figure that out would be through attorney/client
17 communications.

18 That's my belief. And Bill, are you --

19 THE WITNESS: Look, I don't know.

20 Redactions are done by lawyers, okay, and the
21 firm did not -- from the firm and me, as managing
22 partner, have anything to do with redacting these
23 documents that I can determine apart from being
24 represented by counsel in the case.

25 MR. WELLS: Okay.

1 THE WITNESS: And apart from complaining
2 that how in the world are our bank records not
3 privileged and confidential.

4 THE VIDEOGRAPHER: Ten minutes till tape
5 change.

6 THE WITNESS: And that's the statements
7 made to the lawyers.

8 MR. WELLS: What I'm trying to get clear to
9 know whether it's a lack of knowledge or
10 privilege issue we're dealing with. On Exhibit
11 11, we have two sets of redactions.

12 MR. SPOTSWOOD: Yes.

13 MR. WELLS: One of which appears to have
14 been done by computers, everything just appears
15 white next to the dates and then what I presume
16 is the second of which looks like it was done
17 with a Sharpie marker. And it sounds like our
18 30(b)(6) representative here has testified that
19 the Sharpie was done by counsel. And I'm unclear
20 as to whether it's a lack of knowledge as to who
21 did the computer redaction or if that's a
22 privilege issue or what.

23 MR. SPOTSWOOD: So the computer redaction,
24 you're talking about --

25 THE WITNESS: The top part.

1 MR. SPOTSWOOD: -- the top part?

2 MR. WELLS: Yeah, everything that's white.

3 MR. SPOTSWOOD: Up on [Exhibit 12](#)?

4 MR. WELLS: Eleven.

5 MR. SPOTSWOOD: [Exhibit 11](#).

6 MR. WELLS: That's a bank statement where
7 there would be writing next to every single date.

8 MR. SPOTSWOOD: Right.

9 MR. FREVOLA: And none of those redactions
10 changed from one to the other, right?

11 THE WITNESS: Right.

12 MR. WELLS: Just the Sharpie.

13 MR. SPOTSWOOD: I believe that the witness'
14 testimony is that counsel in the case are
15 responsible for the Sharpie redactions. I don't
16 believe he knows the other answer to that. But
17 if I'm wrong, please correct me.

18 THE WITNESS: And on 12, there was --
19 there's an effort to correct and supplement the
20 record and supplement [Exhibit 12](#) and that's what
21 my understanding of those two exhibits.

22 BY MR. DAVIS:

23 Q. Did you, as a 30(b)(6) representative,
24 understand that you would be speaking for the firm?

25 A. Yes.

1 Q. And do you understand that by doing so,
2 you're obligated to make diligent inquiry into,
3 including interviewing various people and looking at
4 documents so that you can answer for the firm?

5 A. Yes.

6 Q. Who did you make inquiry with with regard to
7 these issues of redactions as described in the
8 30(b)(6) notice of May 22nd and 27th?

9 A. Counsel.

10 Q. Okay. Did you make inquiry as to -- which
11 counsel?

12 MR. SPOTSWOOD: I'm going to instruct him
13 not to answer that. I do not believe it's
14 appropriate for him to be questioned about his
15 communications with counsel.

16 BY MR. DAVIS:

17 Q. All right. So once again, you're going to
18 say counsel gave you information as to the -- what
19 you needed to know about the redactions?

20 A. Yes, sir.

21 Q. Okay. But you're going to say you cannot
22 tell us because it's privileged?

23 A. I told you what I know about the redactions
24 and everything else is privileged and probably the
25 statement about a Mr. Smith and the Sharpie is

1 probably privileged also, but you seem to already
2 know that, so I believe it's already in the record.

3 Q. Did you personally or did you, as the
4 representative of Conrad & Scherer, make inquiry
5 directly of Mr. Collingsworth concerning redactions?

6 A. No, sir.

7 Q. Did you make direct inquiry of Brad Smith
8 concerning redactions?

9 A. No, sir.

10 Q. Is it your position, Conrad & Scherer's
11 position, that if these documents had not been
12 redacted in May, your new counsel could have made
13 disclosures sooner than November?

14 MR. SPOTSWOOD: Object to the form. You
15 may answer.

16 THE WITNESS: Maybe.

17 THE VIDEOGRAPHER: Five minutes to tape
18 change.

19 BY MR. DAVIS:

20 Q. So with regard to the top part of this
21 exhibit, which has been redacted concerning the
22 deposits and activity description, we don't know who
23 redacted that?

24 A. Yes, we do know. I'm reasonably sure who
25 redacted it and the people in the firm don't redact

1 documents. They just produce them.

2 Q. Who are you reasonably sure who did that?

3 A. Who did what, who produced the documents?

4 Q. No.

5 A. Our accounting department or the bank.

6 Q. Who did the redactions?

7 A. It would be counsel.

8 Q. Okay. Counsel also did the Sharpie marking
9 out?

10 A. Yes, that's my belief.

11 MR. SPOTSWOOD: You're obviously talking
12 about different sets of counsel --

13 THE WITNESS: Correct.

14 MR. SPOTSWOOD: -- at different periods of
15 time?

16 THE WITNESS: Correct.

17 MR. WELLS: No, no, no.

18 MR. PRESLEY: No.

19 MR. WELLS: We're just talking about
20 [Exhibit 11](#) that was produced in May when there
21 was only one set of counsel, but there were two
22 redactions on that document.

23 MR. SPOTSWOOD: Correct. I mean, that's
24 when Brad Smith was representing the law firm.

25 THE WITNESS: He's asking about both.

1 MR. WELLS: No, no, no, we're just --
2 there's two sets of redactions on this Exhibit
3 11.

4 THE WITNESS: Yes.

5 MR. WELLS: That's the question.

6 THE WITNESS: Well, then my answers were as
7 to 12.

8 It's my belief that as a 30(b)(6) witness
9 that the redactions on 11 were counsel and Mr.
10 Collingsworth, working with counsel, who would
11 have been providing the input to counsel with
12 respect to how those documents came to be
13 redacted.

14 Now I can't tell you any more than that.

15 BY MR. DAVIS:

16 Q. Let's go to [Exhibit 11](#).

17 A. Eleven?

18 Q. Yeah. You see where it says, "Deposits and
19 activity descriptions"?

20 A. Yes, sir.

21 Q. Is that whited out area, is that something
22 that's been redacted, to your knowledge?

23 A. You mean, the absence of data next to the
24 dates?

25 Q. Right.

1 A. Yes, sir.

2 Q. Okay.

3 THE VIDEOGRAPHER: Two minutes left.

4 BY MR. DAVIS:

5 Q. Who made that redaction?

6 A. I just gave that answer.

7 Q. Give it again.

8 A. Documents are provided by the firm to the
9 lawyers involved in the issue, so that it would have
10 been Mr. Collingsworth and Mr. Smith.

11 Q. Did you have information that Mr.
12 Collingsworth personally was involved with the
13 redactions?

14 A. No, sir. I only know that he was personally
15 involved with the production of the documents and the
16 raising the privilege issues, along with our counsel
17 at the time. Not anybody else at the firm and not
18 me, as managing partner.

19 Q. Did you have any conversation or have you
20 had any conversations with Mr. Collingsworth
21 regarding the decision to redact and withhold
22 documents showing the \$2,700 monthly payments to Ivan
23 Otero?

24 A. No, sir.

25 THE VIDEOGRAPHER: I need to change the

1 tape. Is that okay to go off the record?

2 MR. SPOTSWOOD: Yes.

3 THE VIDEOGRAPHER: We're off the record at
4 4:24. End of media number three.

5 (Thereupon, a recess was taken, after
6 which the following proceedings were held:)

7 THE VIDEOGRAPHER: We're back on the
8 record. It's media four. It's 4:36 p.m.

9 BY MR. DAVIS:

10 Q. Let's go back and look at Exhibits 11 and 12
11 again.

12 A. Yes, sir.

13 Q. And I'm asking you this on behalf of Conrad
14 & Scherer's knowledge.

15 A. Yes, sir.

16 Q. And you, as managing partner. But what we
17 have here, if we look at 12, we can see that \$2,700,
18 Ivan Alfredo Otero Mendoza and 5,700 -- \$575 to
19 Claudia Balcerro. Those two matters are on that
20 document. And then if we look at [Exhibit 11](#), we can
21 see that they have been marked through with the
22 Sharpie.

23 A. Yes.

24 MR. SPOTSWOOD: That one of them has.

25 MR. DAVIS: Yeah.

1 BY MR. DAVIS:

2 Q. The privileged information has been marked
3 through with a Sharpie on Exhibit 11.

4 A. Yes, sir.

5 Q. Now, you told us counsel made the Sharpie
6 redactions?

7 A. That's my belief, yes.

8 Q. Okay. Well, I'm asking you, that's why
9 we're here today. We've come a long way to take
10 30(b)(6) depositions.

11 What is the law firm's knowledge as to who
12 provided the information to counsel so that counsel
13 would redact that information?

14 A. The redaction protocol, I guess if that's
15 the right word for it, would have been Mr.
16 Collingsworth and the firm knowledge is that the
17 other redactions, these blank spaces, are account
18 activity that didn't relate to Drummond at all, other
19 matters, other expenses, and that the -- there was a
20 mistake made in redacting Ivan Otero, because it
21 was -- felt that that was an expense. That was work
22 product and not a fact of payment as ordered by the
23 Court.

24 And when new counsel reviewed it -- and, of
25 course, if it was just Otero in his capacity as

1 co-counsel, it would have been an expense of the
2 litigation, which is work product and not
3 discoverable. But because the Court ordered fact of
4 payment, that's why the Exhibit Number 12 then was
5 reproduced without the redaction because at that time
6 the firm was aware that Otero's \$2,700 also included
7 some fact of payment to the witnesses for protection.
8 So therefore, the new team amended the disclosure to
9 include \$2,700 to Ivan Otero.

10 Q. Who told Brad Smith what expenses were
11 Drummond related and which were not?

12 A. I believe that the protocol given to the
13 firm was to only send expenses that related to the
14 Drummond litigation, that you didn't get expenses
15 related to other cases, so that was all redacted,
16 either by the firm or by Mr. Collingsworth, when he
17 received it, knowing that it wasn't -- but I think
18 that my memory is that the firm's accounting
19 department would know which ones are related to
20 Drummond and which ones are related to X, Y, Z,
21 non-Drummond cases.

22 But the issue of whether it was a fact of
23 payment or an expense was confused because Otero is a
24 lawyer and it's -- the firm's records, accounting
25 records show that Otero is an attorney and it was for

1 security. Period.

2 Q. Security --

3 A. It wasn't clear.

4 Q. -- for El Tigre and Samario?

5 A. No. It just said "security" in my view, I
6 believe. It was not clear in the records. In the
7 beginning, it was. There was some record, like I
8 tried to tell you, and we got into it, about one
9 document that split it up. But after that, it was
10 just on the record as security to Otero. That's the
11 best of my ability to reconstruct that.

12 And that's how -- that's why [Exhibit 12](#)
13 corrected the record with respect to Exhibit Number
14 1, because clearly the Otero payments were for him,
15 for security and expenses, litigation expenses, and
16 also for the families of those two witnesses.

17 MR. SPOTSWOOD: You made reference to
18 [Exhibit 1](#). You meant [Exhibit 11](#)?

19 THE WITNESS: I meant 11. 11 and 12 is
20 what I'm talking about.

21 MR. SPOTSWOOD: Yes, sir.

22 BY MR. DAVIS:

23 Q. So is it Conrad & Scherer's position that
24 Mr. Collingsworth was the sole person, the sole
25 lawyer from Conrad & Scherer that was involved with

1 redactions in May?

2 A. Yes.

3 Q. That was a duty that was delegated to him by
4 Conrad & Scherer to handle as part of the libel
5 litigation?

6 MR. SPOTSWOOD: Object to the form of that.
7 You may answer.

8 THE WITNESS: Every lawyer is responsible
9 for the document production on the cases that
10 he's involved in. Mr. Collingsworth was involved
11 in the libel case --

12 BY MR. DAVIS:

13 Q. But you were involved, too?

14 A. -- as a party. As a party and he was also
15 engaged to help counsel.

16 Q. Okay.

17 A. Because it was his cases.

18 Q. But you're involved also because the law
19 firm was being sued?

20 A. I'm not arguing with you, sir. I'm just
21 telling you that it was in relation to his cases, and
22 so he would be the partner that would be in charge.
23 Just like I would be the partner in charge of the
24 documents and discovery and matters that I handle
25 myself as opposed to somebody else.

1 Q. You say it's his case, but you were counsel
2 of record in --

3 A. I'm not going to argue with you. We've
4 already established that I filed a notice of
5 appearance in Balcerro to try the case. I told you
6 that. I also told you that I had no involvement in
7 it at all, other than in a monitoring role.

8 (Plaintiff's [Exhibit No. 13](#) was thereupon
9 marked for Identification.)

10 BY MR. DAVIS:

11 Q. Let me show you [Exhibit 13](#).

12 This was a document that was produced by
13 Conrad & Scherer.

14 A. Yes, sir.

15 Q. As the 30(b)(6) representative of the firm,
16 tell us where this document was located in Conrad &
17 Scherer.

18 A. I don't know. I just know that it was
19 uncovered in the search by the new team.

20 Q. Okay. Did you make -- prior to your
21 testimony here today, did you make any inquiry as to
22 where this document was located before it was
23 produced?

24 A. The -- no.

25 MR. SPOTSWOOD: Hang on for a second.

1 Okay. If we're still talking, I guess we're not
2 talking anymore about topic 17. But go ahead.

3 THE WITNESS: My --

4 MR. FREVOLA: Could we establish what topic
5 that relates to as a 30(b)(6)?

6 MR. WELLS: Number 11. Conrad & Scherer's
7 knowledge -- excuse me, Conrad & Scherer's
8 searches for documents in response to Drummond's
9 written discovery request in this case from
10 October, '11 through October 15, 2014.

11 MR. FREVOLA: So I'll let counsel handle
12 it.

13 MR. SPOTSWOOD: I think we know from the
14 document number that this was produced after
15 that, right?

16 MR. FREVOLA: That's what I thought.

17 MR. SPOTSWOOD: Am I wrong about that?

18 MR. FREVOLA: Yeah.

19 MR. SPOTSWOOD: CSTC003658, what's the date
20 of production on that; do you know?

21 MR. WELLS: Also, responsive to Conrad &
22 Scherer's knowledge regarding the truth or
23 falsity of representations being challenged in
24 the sanctions hearing considering that document
25 unequivocally brings the falsity --

1 MR. SPOTSWOOD: Okay. Let's stay on topic
2 for a second. My question was: Wasn't this
3 document produced after October 15, 2014?

4 MR. WELLS: Yes.

5 THE WITNESS: My understanding that the new
6 team discovered --

7 MR. SPOTSWOOD: Go ahead.

8 THE WITNESS: -- this document and produced
9 it.

10 BY MR. DAVIS:

11 Q. But you don't know where it was discovered?

12 A. In the firm's -- in the searches of the
13 firm's records of thousands of pages.

14 Q. Here in Fort Lauderdale?

15 A. In Fort Lauderdale and in Washington.
16 Everywhere.

17 Q. Do you know why it was not discovered
18 sooner?

19 A. Inadequate search.

20 Q. Who do you blame for that?

21 A. I don't blame anybody. It was just
22 inadequate to obtain all of the facts in issue.

23 Q. You have told us in your interrogatory
24 responses that you received an estimated thousands of
25 e-mails per month. Is that a true statement?

1 A. I believe it to be true. I saw it in there.
2 I get lots of e-mails.

3 Q. Have you deleted any e-mails or documents
4 relating to Drummond since October of 2011?

5 A. No.

6 Q. Have you given away any of your computers?

7 A. No.

8 Q. Have you disposed of any computers or hard
9 drives?

10 A. No.

11 Q. Have you lost any?

12 A. No.

13 Q. Did you understand that you were to retain
14 your computers and hard drives and e-mails?

15 A. Yes.

16 MR. SPOTSWOOD: Let's be clear, the Court's
17 order about retaining the actual computers,
18 themselves, did not come until much later than
19 October, 2011.

20 BY MR. DAVIS:

21 Q. You understand you had an obligation prior
22 to the Court's order; do you not?

23 A. Yes. To do what?

24 Q. Retain all of the pertinent e-mails,
25 documents, computers?

1 A. Not computers. Information, yes.

2 Q. What did Conrad & Scherer do? You, as a
3 company representative, corporate representative, can
4 you tell us what Conrad & Scherer did to make certain
5 that the Court's order of April, 2014 was complied
6 with concerning retention of all electronic data?

7 A. I had previously mentioned to you that the
8 firm owns all of the computers, the desktop, laptops
9 and that all of the firm and the lawyers and
10 personnel of the firm are required to use those for
11 firm business. And we retain them and everything on
12 them and never delete any of that. And when a new
13 computer comes in, the old computer is -- to keep the
14 information that's on it and even the hard drive. So
15 that we think we have a very strong robust system
16 that automatically maintains documents without having
17 to receive some notice to retain documents in the
18 file, like we give, and with respect to the Court's
19 order.

20 When the Court's order was entered, it was
21 implemented, here again, with some kind of a second
22 lock, as I understand it.

23 Q. How was it implemented in Washington?

24 A. The information was passed in Washington,
25 but the Washington data, the information in

1 Washington is on our servers here, so -- and backed
2 up, so we thought we had a fair safe double lock
3 system, robust.

4 MR. SPOTSWOOD: I will also mention that we
5 have designated Juan Carlos Rodriguez, who is a
6 technical specialist here.

7 THE WITNESS: And he, tomorrow, can explain
8 that to you far better than I can.

9 BY MR. DAVIS:

10 Q. Okay. When did you first become aware, as
11 managing partner, that the computers and hard drive
12 identified in Mr. Dennis Williams' report had been
13 disposed of?

14 A. When I read Mr. Williams' report and your
15 deposition of him.

16 Q. You did not know it until then?

17 A. No.

18 Q. Does C&S have a policy, Conrad & Scherer,
19 have a policy with respect to the loss or theft of an
20 employee's computer?

21 A. If it's one of our firm -- the employees
22 have all -- all the employees have firm computers, so
23 if one of them was to lose it, they would report it.
24 I don't know that that's ever happened. I don't
25 believe it has.

1 Q. Mr. Collingsworth has disposed of the
2 computer that was not a firm computer; is that
3 correct?

4 A. Well, it's a question whether it was a firm
5 computer or not.

6 Q. What is your position?

7 A. If it was -- I thought it was his. But in
8 his depo, I'm not sure what he said -- I can't
9 remember -- whether it was a firm computer or his
10 computer. As a senior partner, I mean, we wouldn't
11 quibble over the value of a used Mac computer.

12 Q. Is there a policy with regard to wiping old
13 computers before they're disposed of you?

14 A. Like with a cloth? I'm sorry, I couldn't
15 help myself.

16 Q. That's Hillary Clinton's question.

17 A. That's right. I said I wasn't going to do
18 that, but I couldn't help it. It was one of those
19 irresistible -- because I knew you were going to ask
20 me and I was going to say, "You mean like with a
21 cloth?"

22 Q. Yeah.

23 A. When you say wiping, when a computer is
24 replaced or broken down, it's a firm -- whether it's
25 desktop or laptop, the firm's IT department transfers

1 all the data out of it and puts it on the new one.

2 And so, you know, for a lawyer like me, it's
3 like a file cabinet full of files and when you get a
4 new file cabinet, you take all the files out of the
5 old and put it in the new one and then you take the
6 old file cabinet and you give it away to Goodwill or
7 somebody. So all of the file information is taken
8 off of the old computers and put on the new ones and
9 then they are -- then in addition for belt and
10 suspenders, I believe he takes the hard drives and
11 holds them in a box in his office or in a storage of
12 computer stuff, even though the data is all
13 transferred. That's my understanding.

14 Q. Do you have any information about the
15 missing hard drive of Mr. Collingsworth?

16 A. None whatsoever, other than what I've read
17 in the Williams' report. Somehow in the move. By
18 the way, I said two years ago and it wasn't two years
19 ago, it was in December. Time goes, I guess.

20 Somehow in the move, that hard drive, which
21 had, I believe had all the data off of it already on
22 our firm server, somehow was misplaced or something.

23 Q. Have you ever asked Mr. Collingsworth what
24 happened to it?

25 A. No, I haven't talked to Mr. Collingsworth

1 about the issues in this case --

2 Q. So you don't --

3 A. -- except through counsel.

4 Q. So you don't have any knowledge then,
5 firsthand knowledge about that?

6 A. No.

7 Q. Have you asked Mr. Collingsworth about the
8 disappearance of his e-mails or computers?

9 A. That's the same question you've been asking,
10 right?

11 Q. Yeah.

12 A. No.

13 Q. I just asked you specifically on a hard
14 drive. But any e-mail gaps or deletions that he made
15 or anything like that.

16 A. I'd have to refer to the Williams' report
17 and tomorrow you can talk to our IT guy about that.

18 Q. I'm asking about your personal inquiry, as
19 managing partner of the firm, when you have a partner
20 that has missing e-mails, is giving away computers,
21 has missing hard drives, what have you done, as
22 managing partner, to investigate?

23 A. I testified that I first learned of this
24 when I read the Williams' report and the deposition a
25 week ago. And --

1 Q. So it's your testimony --

2 A. May I finish?

3 Q. -- as managing partner --

4 MR. SPOTSWOOD: Let him finish.

5 THE WITNESS: Let me finish, please. I'm
6 slow talking and I'm getting slower because it's
7 getting later.

8 And that the -- all of the dialogue with
9 Mr. Collingsworth about that issue has been
10 through counsel.

11 BY MR. DAVIS:

12 Q. So just to be clear on that, you will tell
13 Judge Proctor, you, as managing partner, have
14 conducted no personal investigation or inquiry
15 concerning the loss of the electronic data of Mr.
16 Collingsworth?

17 A. No, sir. I'm going to tell him that when I
18 learned of it, we already had a very knowledgeable
19 expert on it and that expert and the lawyers were
20 dealing were Mr. Collingsworth to see if any
21 information was lost or if there was some intentional
22 deletion. That's about what I will tell him.

23 Q. Okay.

24 A. Same thing I'm telling you. I'm not going
25 to tell him anything different than I'm saying here.

1 Q. It was told -- we were told about this
2 spoliation issue, I will call it, in March of 2015.

3 Did you have knowledge of this issue before
4 that time?

5 A. No.

6 Q. You did not?

7 A. No.

8 Q. So from March of 2015 until almost September
9 of 2015, you, as managing partner, had not made any
10 direct inquiry of Mr. Collingsworth?

11 A. I said I didn't know about it until a week
12 ago, so how would I have made inquiry about it if I
13 didn't know about it? I did not know about it until
14 a week ago. That's my testimony.

15 Q. Did you know that your law firm had hired
16 Dennis Williams?

17 A. I knew that the law firm had hired forensic
18 expert in order to handle issues raised in the case.
19 Our searches and such.

20 Q. Was that an expense that had to be approved
21 by you?

22 A. It's on my nickel so ultimately, yes.

23 Q. Did you know that he had been hired because
24 there were missing e-mails?

25 A. I told you I learned of the missing e-mails

1 when I read his report. I thought he was hired in
2 order to give testimony as to the thoroughness of our
3 examination and investigation into all of the records
4 of the firm in order to supplement the inquiry of the
5 Court concerning fact of payment to witnesses.

6 Q. When was the first time your e-mails were
7 searched for purposes of this litigation?

8 A. I have no idea. I mean, the entire firm's
9 e-mails were searched, including my own from the
10 beginning. And so in terms of that whole process,
11 you'll have to ask the IT about that. I just know
12 that every e-mail in the firm was searched and mine,
13 of course, are available as well as everybody else's.

14 Q. Does the firm still have all of your
15 e-mails?

16 A. Yes.

17 Q. So we can look at them now?

18 A. Yes.

19 MR. SPOTSWOOD: That's not an offer.

20 THE WITNESS: That's not an offer, but --

21 BY MR. DAVIS:

22 Q. What about Billy Scherer's e-mails?

23 A. Yes.

24 Q. Are all those still available?

25 A. Yes. Our firm has robust retention of

1 e-mails going back even on closed matters.

2 Q. Yeah.

3 A. All e-mails and all documents, everything in
4 the firm that's ours that's on our computer is on our
5 work product is saved.

6 Q. For the purposes of that answer, you include
7 Mr. Collingsworth --

8 A. Yes.

9 Q. -- as a member in good standing with your
10 firm?

11 A. Yes.

12 MR. SPOTSWOOD: Obviously subject to the
13 whole Williams' report, findings and --

14 THE WITNESS: Right.

15 MR. DAVIS: All right. We're going to
16 depose your person tomorrow and we will ask him
17 issues about 30(b)(6) on spoliation, otherwise.
18 And I want to say this: We believe that, and I'm
19 not trying to be uncivil about it, but we got
20 some incomplete answers today and we may want to
21 come back tomorrow after his deposition and
22 finish up what we consider to be appropriate
23 30(b)(6) questions to you and you can -- you may
24 have to answer that "I've already answered in
25 full," but just for the record, make certain that

1 we pin it down. We don't feel like we want to do
2 it today because we may be going into things that
3 we will go into tomorrow.

4 So we're going to take the deposition
5 tomorrow reserving possibly a chance to take a
6 30 -- to have to finish up the 30(b)(6) with you
7 tomorrow. But we believe all things being equal,
8 maybe everything has been answered. But we'll
9 see.

10 THE WITNESS: Thank you.

11 MR. DAVIS: All right. Hold on for a
12 second.

13 THE VIDEOGRAPHER: Just go off the record
14 we're off the record at 5:04 p.m.

15 (Thereupon, a recess was taken, after
16 which the following proceedings were held:)

17 THE VIDEOGRAPHER: We're back on the
18 record.

19 THE WITNESS: You don't need to be on the
20 video.

21 Just correct it.

22 THE VIDEOGRAPHER: You want to end the
23 video?

24 THE WITNESS: Yes.

25 THE VIDEOGRAPHER: We're off the record.

1 This ends the videotape deposition.

2 MR. SPOTSWOOD: I noted this off the
3 record, but we have corrected that Mr. Frevola,
4 in fact, joined the law firm in December of 2010,
5 after having been away from the firm for some
6 long period of time.

7 (Thereupon, the deposition was
8 concluded at 5:09 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, the undersigned authority, certify that
WILLIAM R. SCHERER personally appeared before me
and was duly sworn.

WITNESS my hand and official seal this 25th
day of August, 2015.

MARIA ISABEL PORRAS

Notary Public - State of Florida
My Commission No. EE 840373
Expires: October 27, 2016

1 CERTIFICATE OF REPORTER

2
3
4 STATE OF FLORIDA :
5 : SS.
6 COUNTY OF MIAMI-DADE :
7

8 I, MARIA ISABEL PORRAS, Registered
9 Professional Reporter and Notary Public in and
10 for the State of Florida at Large, do hereby
11 certify that I reported the deposition of WILLIAM
12 R. SCHERER, a witness called by the Plaintiff in
13 the above-styled cause; that said witness was
14 duly sworn in by me; and that the foregoing
15 pages, numbered from 1 to 244, inclusive,
16 constitute a true and correct transcription of my
17 shorthand report of the deposition by said
18 witness.

19 I further certify that I am not an attorney
20 or counsel of any of the parties, nor a relative
21 or employee of any attorney or counsel connected
22 with the action, nor financially interested in
23 the action.

24 WITNESS my hand and official seal in the
25 City of Miami, County of Miami-Dade, State of
Florida, this 25th day of August, 2015.

MARIA ISABEL PORRAS

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