

1 I will overrule your objection. Answer
2 the question.

3 THE WITNESS: The answer is, no, I do not
4 recall the conversation as you described it.

5 BY MS. SYKES:

6 Q. Okay. So let me understand:

7 We went into a settlement agreement,
8 correct, with -- No, let me back up.

9 On a certain date, which I don't have that
10 in front of me, Judge Mulhern requested a settlement
11 that Lumbermans settle this out of court; is that
12 correct?

13 A. Your characterization -- Based on
14 your characterization, I would say no.

15 Q. So at no point did Judge Mulhern suggest
16 we go into a settlement agreement?

17 A. Judge Mulhern did suggest that the parties
18 consider settling the matter instead of going to
19 trial.

20 Q. Okay. With that said, at any point in time
21 did you and/or, you know, somebody give me a call and
22 request that I come down to the court because
23 Judge Mulhern suggested that we settle this?

24 A. That did occur.

1 Q. At any point in time was I made aware that
2 settling this may mean that I could not rebuild
3 my home or replace my home?

4 A. Can you please reread -- May I ask that
5 it be reread?

6 THE COURT: Yes, please reread the question.

7 (Record read as requested.)

8 THE WITNESS: Not that I am aware of.

9 BY MS. SYKES:

10 Q. At any point in time did you come to me and
11 tell me that by settling "X" amount of dollars would
12 go to Mary G. Sykes?

13 A. I did not tell you that any given amount
14 would go to you or Mary G. Sykes.

15 Q. The question was, did you tell me that
16 anything -- any moneys would go to Mary G. Sykes?

17 MS. FARENGA: Objection, it was just
18 answered.

19 MR. SCHMIEDEL: Objection, cumulative.

20 THE COURT: Sustained.

21 MS. SYKES: I did not ask about --

22 THE COURT: Sustained.

23 BY MS. SYKES:

24 Q. Okay. Was there an appeal in this case?

1 MR. SCHMIEDEL: On the settlement?

2 MS. SYKES: No.

3 BY MS. SYKES:

4 Q. Was there an appeal in this case, any appeal
5 in this case?

6 MR. SCHMIEDEL: Objection, relevance.

7 THE COURT: Sustained.

8 BY MS. SYKES:

9 Q. At one point did the Appellate Court come
10 down with a decision as to what -- or, a time period
11 in which Lumbermans Mutual had to pay for damages?

12 MR. SCHMIEDEL: Objection, relevance.

13 THE COURT: Sustained.

14 BY MS. SYKES:

15 Q. At any point in time were we directed by
16 the Appellate Court on how, if any, settlement
17 damages were to be paid or what they were to be paid
18 on?

19 A. There was an interlocutory appeal that
20 occurred during this lawsuit, and there was
21 an Appellate opinion issued. It is a matter of
22 public record what it states.

23 Q. And in that, Judge Justice Gordon actually
24 gave dates for damages; is that correct?

1 MR. SCHMIEDEL: Objection, relevance to
2 the issue of the settlement of the case.

3 MS. SYKES: It is very relevant, Your Honor.

4 MS. FARENGA: Objection to the form.

5 THE COURT: No, sustained.

6 This is not the basis upon which the matter
7 was put before the Court.

8 I just want to make sure you understand,
9 this is about who had a right to the money.

10 MS. SYKES: Correct, who had a right to
11 the money.

12 BY MS. SYKES:

13 Q. Did the Appellate Court make a determination
14 as to how that money which meant who had a right to
15 the money?

16 MR. SCHMIEDEL: Objection with respect
17 to the --

18 THE COURT: Was that a question?

19 MS. SYKES: Yes, it was.

20 BY MS. SYKES:

21 Q. Did not the Appellate Court ruling make
22 a determination as to what damages were to be paid?

23 MS. FARENGA: Objection.

24

1 THE WITNESS: That is not my understanding
2 of what the Appellate Court ruling states.

3 BY MS. SYKES:

4 Q. So the Appellate Court ruling, which I do
5 not have in front of me, basically says the damages
6 should be paid between March 16th, something like
7 that, or February 19th and March 23rd?

8 MS. FARENGA: Objection.

9 BY MS. SYKES:

10 Q. All damages were to be paid, that they were
11 liable for paying damages during that time; you do
12 not recall that?

13 MS. FARENGA: Objection.

14 MR. SCHMIEDEL: Objection.

15 THE COURT: Basis.

16 MR. SCHMIEDEL: Relevance, Judge.

17 It doesn't have any relevance --

18 MS. SYKES: Relevance is --

19 MR. SCHMIEDEL: -- to the issue of
20 the settlement of the case.

21 MS. FARENGA: I am not finished.

22 Also that is not a question to ask a witness
23 between one day or, no, maybe it was another day
24 did the Court say something. And it is only relevant

1 to --

2 MS. SYKES: Objection to Ms. Farenga.

3 THE COURT: Stop, ma'am.

4 MS. FARENGA: -- would be with regard to
5 a final order -- appeal, excuse me, to appeal a final
6 order. That is not an interlocutory. That is not
7 relevant to this proceeding.

8 BY MS. SYKES:

9 Q. When we sat into...

10 When we sat in the settlement agreement --

11 THE COURT: I think that you are withdrawing
12 the question.

13 BY MS. SYKES;

14 Q. When you, Mr. Salam --

15 THE COURT: I hear no answer. Therefore,
16 I assume that she is withdrawing her question.

17 What is your next question?

18 MS. SYKES: Obviously, you feel
19 an Appellate Court decision is not, Your Honor,
20 is not an appropriate means of which how damages and
21 where damages and money should go from a contract.

22 THE COURT: Do you think I am here to be
23 questioned?

24 MS. SYKES: Well --

1 THE COURT: I don't know why you are making
2 that --

3 MS. SYKES: -- if you'd allow me to ask
4 a question.

5 THE COURT: I don't know why you are making
6 that statement. I assume it is a statement to me.

7 MS. SYKES: Right, it is, Your Honor.

8 THE COURT: That is out of order.

9 Now, you can ask this witness another
10 question if you'd like.

11 MS. SYKES: Well, we are trying to find out
12 how the money should be -- was to be divvied up based
13 on law, Your Honor.

14 BY MS. SYKES:

15 Q. With that said -- And I just happen to have
16 these because I pulled them out this morning because
17 I read your name in a thing.

18 But here is a --

19 THE COURT: I don't know what this "thing"
20 is.

21 MS. SYKES: What?

22 THE COURT: And if you have something,
23 show it all the counsel.

24 MS. SYKES: I am. (Tendering document.)

1 BY MS. SYKES:

2 Q. Here is an e-mail that you wrote me
3 regarding the release of the money, would you please
4 read that to me.

5 THE COURT: Let the record reflect that
6 this would be -- How should we name this?

7 MS. FARENGA: We haven't even read it yet,
8 Your Honor.

9 THE COURT: I want an exhibit name.
10 I am going to call it Gloria Sykes'
11 Exhibit 1 for identification.

12 MR. SCHMIEDEL: Judge, I would indicate for
13 the record I object because part of the deal here was
14 I had sent...

15 On March 30th last in court we were to
16 exchange not only the name of witnesses but any
17 documents that were going to be used at the hearing.

18 Ms. Sykes did not appear, did not present
19 any witnesses, did not present any documents that
20 she was going to have offered. And, in fact,
21 the order that was entered indicated that we were
22 going to proceed on my witnesses and my documents.

23 MS. SYKES: Your Honor --

24

1 THE COURT: And that sounds pretty much of
2 what the order says; what is your argument?

3 MS. SYKES: My argument is this:

4 I never saw a copy of the summons or
5 service. All I saw was an order saying that
6 he should be summoned, which no one could even read
7 or understand. I never received any documentation of
8 what his argument was or testimony was, and I believe
9 that the law says something about I should receive
10 these fourteen days or ten days prior to. And,
11 of course, I did not.

12 THE COURT: All right. The problem that
13 you have, ma'am -- and you could collect all of these
14 that I had called Gloria Sykes Exhibit 1 for
15 identification -- is that there was an order that was
16 entered while you were here.

17 That order is, as has been stated,
18 it required you to be here on the 30th and
19 to exchange any list, any evidence, with counsel.

20 MS. SYKES: Your Honor --

21 THE COURT: You were not here.

22 MS. SYKES: -- but the order that I --

23 THE COURT: No, ma'am.

24

1 Withdraw this. This is improperly before
2 the Court.

3 MS. SYKES: Your Honor, the only order
4 I got --

5 THE COURT: No, ma'am, I am not going to
6 argue that.

7 Ask your next question.

8 MS. SYKES: Okay. At any point in time --

9 THE COURT: You may collect all these little
10 documents --

11 MS. SYKES: At any point in time --

12 THE COURT: -- and all these papers
13 you passed out.

14 MS. SYKES: That's fine.

15 BY MS. SYKES:

16 Q. At any point in time do you recall writing
17 me an e-mail in which it says:

18 "Here is a copy of the release.

19 It needs to be signed by you and your mother
20 and then notarized and returned to me or

21 Jean. Jean is putting a copy in the mail.

22 It is a statement release that says you and

23 Mary are settling and releasing any claims

24 you have, whether known or unknown, of any

1 type. Do not worry about recitals. They
2 are not binding and, although the release
3 says you acknowledge receipt of \$1.3 million,
4 this too is standard and we do not turn over
5 original of release until we receive
6 the funds. This is standard, too."

7 MS. FARENGA: Objection.

8 MR. SCHMIEDEL: Judge, I have an objection.
9 She cannot read from a document that is not in
10 evidence, and the same principle applies to her
11 not turning over the document to reading from
12 the document that she did not turn over previously.

13 MS. FARENGA: And have relied on
14 a document -- using a document that the witness is
15 going to rely on that she didn't produce.

16 BY MS. SYKES:

17 Q. Do you recall ever --

18 THE COURT: Stop, ma'am.

19 MS. SYKES: I withdraw it.

20 THE COURT: You withdraw the question?

21 MS. SYKES: Withdraw it.

22 BY MS. SYKES:

23 Q. Do you ever recall writing me any kind of
24 e-mail that basically said that or ever telling me

1 and/or mother's attorney when you signed this that
2 she is just a person of interest and that the reason
3 for, once we sign any documents, was that it releases
4 Lumbermans that my mother cannot come back after
5 the fact and sue them for something else?

6 MS. FARENGA: Objection as to the form and
7 because it is compound.

8 THE COURT: What was...

9 All right. It is a compound question.

10 MS. FARENGA: I will withdraw my objection.

11 THE COURT: Okay.

12 THE WITNESS: I do not recall writing
13 an e-mail as described by you.

14 BY MS. SYKES:

15 Q. And you don't recall ever telling me that?

16 A. As I sit here today, I do not recall telling
17 you what you have described as the way you described
18 it.

19 Q. Okay. And if I told you I have over
20 100 e-mails from you regarding, in fact, bringing
21 Mary G. Sykes in and your responses, do you recall
22 ever writing me e-mails regarding that?

23 A. I think it is very likely I may have written
24 you e-mails about that. As I sit here today I do not

1 recall when, if, or what they said.

2 Q. Okay. But you do admit that you and I
3 did have discussions, as well as Jean Moszkowicz and
4 I, because she was always copied on e-mails where
5 you did discuss with me Mary's role in this and
6 why you brought her into this proceeding?

7 MS. FARENGA: Objection. The first question
8 concerned e-mails, and now she has translated that to
9 so those were discussions and we had discussions.

10 So now she is talking about e-mails. She is
11 saying that they had discussions, which is putting
12 words in the witness' mouth.

13 MS. SYKES: It is one thought pattern,
14 whether you had put it in writing or you verbalized
15 it with me.

16 THE COURT: With me? Because I assume that
17 you are making your argument about why I should not
18 sustain the objection.

19 MS. SYKES: Yes, I am making that argument
20 why not to sustain the objection because...

21 It is a very clear question, whether or not
22 he put it in writing, he verbalized it to me, at any
23 point in time did he discuss with me...

24

1 THE COURT: Read back the original question
2 because I think you changed it.

3 (Record read as requested.)

4 THE COURT: I am going to allow the answer.

5 THE WITNESS: Yes.

6 BY MS. SYKES:

7 Q. Okay. So did you ever lie to me?

8 A. No.

9 Q. Did you ever -- "Lie" is a strong word.

10 Did you ever even fudge with me a little bit
11 so you might lull me into some kind of sense of
12 security?

13 MR. SCHMIEDEL: I object. I don't know
14 what -- I don't have any idea.

15 THE WITNESS: I believe I met all of
16 my obligations to you and did right by you and
17 represented you zealously and very well.

18 THE COURT: And I am going to note for
19 the record that there may have been an objection, but
20 I think I am going to allow your answer to stand.

21 THE WITNESS: Thank you.

22 MS. SYKES: And I agree.

23

24

1 BY MS. SYKES:

2 Q. Mr. Salem, did you ever in writing or
3 verbalized to me that because of my wonderful
4 recollect and being an honest person and keeping such
5 a, you know, great paper trail on this whole
6 Lumbermans thing, that I was actually a good client?

7 A. I did and I do believe...

8 I did state to you and I do believe that
9 without you and your efforts and your stick-to-it'
10 iveness (sic), okay, that we would have never gotten
11 the outcome that we did.

12 Q. And when I did have to appear in court,
13 there was a couple of times, regarding -- I think
14 there was one so they can pay for living expenses.

15 Was I the only witness brought forth
16 regarding that situation?

17 A. I don't recall. I do recall you testifying
18 as to expenses at some point because I believe
19 we were trying to get the Court to enter an order
20 requiring the insurance company to start paying
21 your expenses.

22 Again, I believe that was after the Court
23 had granted summary judgment prior to the appeal.
24 I do not recall if there was another witness involved

1 in that hearing or not.

2 Q. Okay. Do you recall showing up late
3 afternoon at my mother's and my house at 60 --
4 where I was living at that point, in order to get
5 certain documents signed?

6 A. I am not sure when --

7 MR. SCHMIEDEL: Objection, foundation.

8 THE WITNESS: -- what time.

9 THE COURT: I think she said she doesn't
10 know when it was.

11 BY MS. SYKES:

12 Q. It was right before the documents were
13 signed.

14 You needed certain documents signed that
15 you testified that I didn't want my mother to sign it
16 because I wanted total control.

17 Do you remember coming to the house?

18 A. If you -- I do recall at some point around
19 the end of mine and Jean's representing of you and
20 your mother, showing up at the house where you live
21 with your mother.

22 Q. Prior to anything being signed or any
23 settlement, final settlement?

24 A. Prior to that final order that was entered

1 by Judge Mulhern that attached the executed --

2 Q. Do you --

3 A. -- settlement documents.

4 Q. Thank you very much. I'm sorry. I didn't
5 mean to step on you.

6 Do you recall going downstairs and talking
7 to my mother?

8 A. I do not recall the details of that visit.

9 Q. Do you recall sitting upstairs on my lawn
10 furniture that I had upstairs and talking to me?

11 A. Again, I do not recall the details of that
12 visit.

13 Q. But you do recall coming over to the house?

14 A. I do recall somewhere in that time period
15 I did come over to the house and see you and
16 your mom, and I do recall being upstairs; but that's
17 really all I recall.

18 Q. Do you recall a document which I do not see
19 here, which is not presented by...

20 And by the way, Your Honor, I never received
21 these documents.

22 THE COURT: No, of course not. You weren't
23 here.

24

1 MR. SCHMIEDEL: I mailed them to her, Judge.

2 MS. SYKES: No, I gotten all my mail,
3 Mr. Schmiedel.

4 THE COURT: I don't know if you got all of
5 them. I don't think you could ever -- you could ever
6 say you had all your mail.

7 BY MS. SYKES:

8 Q. Do you recall a document or an affidavit
9 that you wrote that said prior to any agreement or
10 signature, that you and/or Jean Moskowitz would have
11 to talk to both Mary G. Sykes and to me?

12 MS. FARENGA: Objection, Your Honor.

13 If there is a document and a document was
14 properly noticed up, the witness needs to --
15 excuse me -- the questioner needs to show the witness
16 the document.

17 MS. SYKES: Well, Your Honor, my argument is
18 that Mr. Schmiedel and Ms. Farenga apparently pick
19 and choose what documents are going to be put before
20 the Court.

21 THE COURT: Of course, that's what you do.

22 MS. SYKES: Right.

23 So there is a document out there that
24 Mr. Salam has signed -- and I will get that document,

1 Your Honor -- and Ms. Moskowitz had signed, that
2 basically stipulated that until they spoke to both of
3 us independently they would not move forward with any
4 signatures on any documents.

5 MS. FARENGA: Same objection.

6 BY MS. SYKES:

7 Q. I am asking whether or not you recall that
8 document?

9 THE COURT: I am going to allow you to
10 answer.

11 THE WITNESS: I do not recall a document
12 as described by you in that question.

13 BY MS. SYKES:

14 Q. Okay. So had I been noticed and knew
15 what you were going to testify to, which I --

16 THE COURT: Do you have a question?

17 MS. SYKES: I do.

18 THE COURT: What is your question?

19 BY MS. SYKES:

20 Q. You are saying that you...

21 Do you believe there is that document?

22 MR. SCHMIEDEL: Objection, that's not
23 his answer. That's not his testimony.

24

1 BY MS. SYKES:

2 Q. Do you believe there is a document that
3 I just described?

4 A. As described by you, no, I do not.

5 Q. Okay. At any point in time in September '08
6 or October '08 or prior to, you had an opportunity
7 though and throughout this session to meet and talk
8 to my mother, Mary G. Sykes; correct?

9 MS. FARENGA: Objection.

10 THE COURT: I will allow the question.

11 THE WITNESS: I was free to talk --
12 I understood myself to be free to talk with
13 your mother.

14 BY MS. SYKES:

15 Q. And you did speak with Mary G. Sykes?

16 A. At the time we were retained and I believe
17 at the -- I don't recall the details, but in that
18 time period we just discussed upstairs in 6014 North
19 Avondale, which I believe is the house that your mom
20 and you lived in, the front house on the second
21 floor, I do recall meeting with you and her in that
22 general time period we discussed. I don't recall
23 exactly what we discussed at that time.

24 Q. Now, you claim that the reason there was

1 a disagreement as to -- Oh, let me back up.

2 Who sent me...

3 I can't bring this document in, but somebody
4 had to write up these documents, these affidavits and
5 appropriations and all this stuff.

6 You claim that you didn't write those up?

7 A. I don't know exactly what you are referring
8 to by "all that stuff."

9 Q. Well, Mr. Schmiedel asked you a question
10 about the appropriation deal, and you claim that
11 you did not write that.

12 A. Exhibit 5, which is titled "Settlement
13 Apportionment Agreement" that I was questioned about,
14 no, I did not write this.

15 Q. Could perhaps Ms. Moskowitz, who is not
16 here, have written it up?

17 MR. SCHMIEDEL: Objection to this
18 speculative nature.

19 THE COURT: Sustained.

20 BY MS. SYKES:

21 Q. So, in other words, you don't know who wrote
22 that up but ultimately somebody wrote that up?

23 A. I do not know who wrote that, that is
24 correct.

1 Q. And you are standing before this Court today
2 and telling me that you never asked for
3 an appropriation agreement --

4 MR. SCHMIEDEL: Apportionment agreement?

5 BY MS. SYKES:

6 Q. -- apportionment agreement?

7 MS. FARENGA: A specific apportionment
8 agreement?

9 BY MS. SYKES:

10 Q. Okay. You never asked for it and the Court
11 never asked for it; that it just randomly appeared?

12 A. I have no idea how this document came into
13 existence. I was not involved in it.

14 Q. So you weren't involved in it, but that
15 doesn't mean that Ms. Moskowitz wasn't involved in it
16 or Lumbermans involved in it?

17 THE COURT: What is your question?

18 MR. SCHMIEDEL: I objection to the form of
19 the question.

20 THE COURT: What's your question?

21 BY MS. SYKES:

22 Q. My question is:

23 Just because you were not involved in it,
24 that doesn't mean that another attorney or the Court

1 or Lumbermans was not involved in it?

2 A. Again, I have no --

3 MR. SCHMIEDEL: Objection to the form of
4 the question.

5 THE COURT: What's the basis of
6 your objection?

7 MR. SCHMIEDEL: Form of the question.

8 THE COURT: I will sustain that.

9 Let us move on, ma'am. Ask a question.

10 BY MS. SYKES:

11 Q. Why wouldn't an appropriational (sic)
12 contract be presented to the Court that Mary G. Sykes
13 and I was asked to sign?

14 A. Again, I don't know how this document came
15 to be. I believe -- Well, now I would be
16 speculating.

17 My understanding would be that -- I don't
18 want to speculate.

19 MR. SCHMIEDEL: I ask that he not speculate.

20 THE COURT: Please do not speculate, sir.

21 MR. SCHMIEDEL: Answer the question.

22 BY MS. SYKES:

23 Q. So we cannot sit here today, Mr. Salam, and
24 know that --

1 THE COURT: This sounds like argument.

2 BY MS. SYKES:

3 Q. -- anybody else from the court --

4 THE COURT: Ms. Sykes, now you are getting
5 into argument.

6 Ask a question of this witness, please.

7 MS. SYKES: My question is...

8 And, Your Honor, this is very important,
9 that there has been allegations made by
10 Mr. Schmiedel --

11 THE COURT: That's called argument, ma'am.

12 MS. SYKES: Right.

13 THE COURT: But this is not the time for
14 argument.

15 We have a witness. You are to ask
16 the witness questions, test his knowledge of
17 the facts, and ask him to respond to your questions.
18 Not make an argument to the witness.

19 BY MS. SYKES:

20 Q. Mr. Salam, was there another attorney
21 involved in this case?

22 MR. SCHMIEDEL: Objection, cumulative,
23 asked and answered.

24 THE COURT: All of the above --

1 MS. SYKES: I never asked it.

2 THE COURT: -- sustained.

3 Ask your next question.

4 BY MS. SYKES:

5 Q. Were you privy to every conversation that
6 I had had with Ms. Moskowitz?

7 A. No, I was not.

8 Q. Were you privy to every conversation that
9 Mary G. Sykes had with her attorney Larry? And
10 I cannot pronounce his last name.

11 A. Abramowitz?

12 Q. Yes.

13 MS. FARENGA: Objection.

14 THE COURT: Can you spell that?

15 MS. FARENGA: Go ahead.

16 THE WITNESS: I believe his name is
17 identified --

18 MS. FARENGA: I am not saying "go ahead"
19 to the witness. I thought that the court reporter
20 needed to take it down.

21 THE COURT: I had actually asked
22 the question before you objected.

23 MS. FARENGA: I'm sorry.

24 THE COURT: Can you spell his last name?

1 THE WITNESS: Not offhand.

2 THE COURT: Okay.

3 THE WITNESS: I believe it is listed in
4 the affidavit.

5 THE COURT: That's all right, Abramowitz?

6 THE WITNESS: Abramowitz.

7 THE COURT: Abramowitz, all right.

8 You are making an objection?

9 MS. FARENGA: Just that it assumes
10 Mary Sykes had an attorney named Larry Abramowitz.
11 That's all.

12 MS. SYKES: Mr. Salam already
13 acknowledged --

14 THE COURT: I am going to allow
15 the question -- allow the answer, and we will be able
16 to tell from the answer if counsel -- if the witness
17 knows if there was such an attorney.

18 But I think in that he's offered
19 the attorney's name, there is an indication that
20 there is an answer.

21 You may answer the question, counsel --
22 I mean, Mr. Witness. I'm sorry.

23 THE WITNESS: I am not sure which question
24 is pending. Sorry.

1 THE COURT: Okay. What was the last
2 question?

3 (Record read as requested.)

4 THE WITNESS: No.

5 THE COURT: That's the answer to that
6 question.

7 Ask your next question.

8 BY MS. SYKES:

9 Q. Just so it is on record here:

10 Mary G. Sykes did have an attorney as far as
11 you know representing her in part in signing any kind
12 of contract with you and Ms. Moskowitz?

13 MR. SCHMIEDEL: Objection, asked and
14 answered at the very beginning.

15 THE COURT: Sustained.

16 Move on. Ask another question.

17 BY MS. SYKES:

18 Q. Okay. This appropriation contract
19 ultimately became part of a final court order;
20 is that correct?

21 A. If you are referring to the settlement
22 apportionment agreement marked Exhibit 5,
23 my understanding is, yes, it was attached as
24 an exhibit to an order entered by Judge Mulhern.

1 Q. And Judge Mulhern was -- Again, I can't
2 remember the date, okay, right now which is
3 interesting.

4 But Judge Mulhern received that document?

5 A. I was not in court the day of the order that
6 we are talking about. My co-counsel, Jean Moskowitz,
7 appeared in court that day.

8 So I am not aware of what did or didn't
9 happen. I received a copy of the order from Jean
10 after it had been entered.

11 Q. Okay. So, in other words, you cannot
12 testify today as to really what went on on that day
13 in court when moneys were appropriated?

14 A. When that order was entered, I could --
15 I was not there. I have no basis to testify other
16 than what I had been told.

17 Q. So it would be very fair to say that
18 you cannot present any facts whatsoever as to
19 how that contract came about or how Judge Mulhern
20 received that particular appropriation?

21 A. That is correct, I have no independent
22 knowledge.

23 Q. At any point in time was there an objection
24 by anybody regarding the appropriation and/or

1 the settlement agreement?

2 MR. SCHMIEDEL: Objection, Judge. He just
3 answered the question, he had no knowledge.

4 MS. SYKES: I asked --

5 THE COURT: Sustained, sustained.

6 MS. SYKES: I asked at any point in time
7 anybody objected to the appropriation deal
8 at the time or the final settlement order.

9 MR. SCHMIEDEL: Objection, he just answered
10 he had no knowledge.

11 BY MS. SYKES:

12 Q. So you don't know if anybody objected?

13 THE COURT: I assume you are withdrawing
14 the question; what is your next question?

15 BY MS. SYKES:

16 Q. Have you received anything...

17 As the attorney of record, did you receive
18 a Section 214.01 in 2008 or in 2009 or in 2010
19 basically challenging the final order and
20 this appropriation deal that was part of the final
21 order?

22 A. I am not aware -- I do not recall receiving
23 anything as described by you.

24 Q. Did the appropriation deal actually --

1 Can I get the...

2 THE COURT: No, thank you. I'm sorry.

3 BY MS. SYKES:

4 Q. Did the appropriation deal actually
5 appropriate money to you for your services?

6 A. I am not sure what you mean by
7 "the appropriation deal." I thought you were
8 referring to the apportionment agreement.

9 Q. The apportionment. I keep calling it...
10 The apportionment agreement.

11 A. Exhibit 5, the apportionment agreement,
12 as I read it, does not refer to payment to
13 the attorneys.

14 Q. Okay. But in order for funds to be
15 distributed Mary G. Sykes, according to you, would
16 have okayed that.

17 MR. SCHMIEDEL: Objection, Judge, to
18 the form of the question.

19 Okayed what?

20 THE COURT: Yes, it is not clear and so I am
21 going to sustain it.

22 BY MS. SYKES:

23 Q. This specific deal --

24

1 THE COURT: Why don't you restate
2 the question.

3 BY MS. SYKES:

4 Q. Again, Mr. Salam, you ultimately saw
5 this settlement appropriation --

6 MR. SCHMIEDEL: Objection, asked and
7 answered.

8 BY MS. SYKES:

9 Q. -- agreement, you ultimately saw it; did you
10 not?

11 MR. SCHMIEDEL: Cumulative.

12 THE COURT: He has acknowledged that, and
13 so I am going to sustain the objection.

14 What is your question?

15 BY MS. SYKES:

16 Q. When you received this from Jean Moskowitz
17 with the court order attached to it from a judge,
18 Judge Mulhern, did you have any reason to believe
19 that what it says here:

20 "Gloria and Mary have thoroughly
21 discussed the apportionment of the settlement
22 and have made an agreement that Gloria
23 should have received the entire amount of
24 the settlement"?

1 MR. SCHMIEDEL: Objection, Judge,
2 he's already answered that he has no knowledge about
3 the apportionment agreement and no involvement
4 in the apportionment agreement.

5 THE COURT: I believe the question -- Yes,
6 I will sustain the objection.

7 BY MS. SYKES:

8 Q. Well, as an attorney on record, you would
9 have had to have seen this and have knowledge of it
10 at a certain point in time; is that not true?

11 MR. SCHMIEDEL: Objection, asked and
12 answered. He already testified as to when he had
13 the agreement.

14 MS. SYKES: Okay.

15 THE COURT: I will sustain the objection.

16 BY MS. SYKES:

17 Q. If you had any concerns that there was any
18 wrongdoing going on, would you have not brought it
19 up?

20 MS. FARENGA: Objection, what wrongdoing?

21 Now she is asking about wrongdoing,
22 not about the apportionment agreement.

23 MS. SYKES: Yes, it is.

24

1 We are here today because this Court is
2 claiming that my mother was functionally incompetent
3 when she signed this.

4 THE COURT: In that I don't know who those
5 last comments were directed to, I don't believe --

6 MS. SYKES: To you.

7 BY MS. SYKES:

8 Q. Are you aware why we are here today?

9 THE COURT: Excuse me, ma'am.

10 Your last comments will be stricken.

11 They are inappropriate and out of order.

12 I have an objection. I believe it was
13 asked and answered; is that what I heard?

14 MR. SCHMIEDEL: Correct.

15 BY MS. SYKES:

16 Q. So in other words --

17 THE COURT: If that is the objection, I will
18 sustain the objection.

19 Ask your next question.

20 BY MS. SYKES:

21 Q. So as allegedly representing Mary in this
22 case, for whatever your reasons are that you don't
23 recall, would you not find -- would you not have
24 wanted to protect Mary G. Sykes?

1 THE COURT: I am listening.

2 MS. SYKES: You have a Dr. Shaw here who is
3 going to be taking the stand later --

4 THE COURT: No, he won't.

5 MS. SYKES: -- stating that Mary G. Sykes is
6 competent on this date.

7 With that said as her representative,
8 Mr. Salam, if he felt that Mary was incompetent
9 at any point in time is it not his obligation to
10 protect Mary Sykes?

11 THE COURT: You see, that sounds like
12 argument.

13 MR. SCHMIEDEL: Yes, it is argument.

14 MS. SYKES: Well, Your Honor, where can I
15 argue this if I can't argue it by asking the person
16 who is supposed --

17 THE COURT: You don't argue by asking.
18 You get them to answer your questions which give you
19 a foundation upon which you could build and make
20 your argument.

21 BY MS. SYKES:

22 Q. My question is this, did Mary Sykes retain
23 you and pay you any money or agree to pay you any
24 money?

1 MR. SCHMIEDEL: Objection, asked and
2 answered.

3 MS. SYKES: No, he didn't answer that
4 question.

5 THE COURT: I don't think he did, and I am
6 going to allow him to answer.

7 THE WITNESS: The agreement -- Yes,
8 Mary Sykes retained me. The agreement we had with
9 Mary Sykes is documented in this contract for
10 legal services that was marked as Exhibit 2.

11 BY MS. SYKES:

12 Q. Okay. On this Exhibit 2, the client has
13 no obligation to pay any costs or expenses directly
14 incurred in the litigation and shall not be paid by
15 Gloria Jean Sykes -- and these shall be paid by
16 Gloria Jean Sykes.

17 A. It does state that, yes.

18 Q. In other words --

19 MS. FARENGA: Objection to "in other words."
20 It is not a question restating --

21 THE COURT: Overruled.

22 BY MS. SYKES:

23 Q. Will you please read what number three says,
24 Mr. Salam.

1 A. "The client" -- And that refers to
2 Mary Sykes.

3 "The client has no obligation to pay
4 any of the costs and expenses directly
5 incurred in the litigation as these
6 shall be paid by Gloria Jean Sykes."

7 Q. Okay. What does that basically mean?

8 A. My understanding is that we were trying to
9 communicate with Mary because you were the --
10 the main...

11 This case involved mostly your facts and
12 situation, and you were taking the lead in it. And
13 you were the one who was figuring out how to, to the
14 extent you had given Jean and me some money to cover
15 costs, costs that are going to be incurred, we wanted
16 to make it clear to Mary that she would not have to
17 go out-of-pocket at all in this case. That you were
18 the one who is obligated to cover costs and expenses.

19 That is my understanding of what we meant
20 at the time by paragraph 3.

21 Q. And if Mary G. Sykes or my client is going
22 to receive some kind of financial benefit from some
23 settlement, then why would not Mary G. Sykes also be
24 obligated to pay some of the costs?

1 MR. SCHMIEDEL: Objection, he just asked and
2 answered the question.

3 MS. SYKES: No, he didn't.

4 THE COURT: I have to agree with Ms. Sykes.
5 I am going to allow you to answer
6 the question, counsel.

7 THE WITNESS: The reason we set it up that
8 way was because obviously Mary had limited funds; and
9 my understanding was that, you know, the whole point
10 of having her was we perceived it was potentially
11 necessary to protect the case.

12 That's a poor description.

13 We wanted to make clear to Mary that she was
14 not going to have to write a check or be responsible
15 for any costs or expenses unless there was, in fact,
16 a recovery, unlike you who had already contributed
17 funds to Jean and me to cover certain expenses and
18 costs. You had gone out-of-pocket, okay.

19 So it was to draw that discontinuation and
20 make clear to Mary she did not, okay?

21 BY MS. SYKES:

22 Q. You made a very important statement right
23 now and then you backed off from it, but
24 Mary G. Sykes was brought into the case to protect

1 for damages.

2 Was it not true that what you explained to
3 me and to Mary G. Sykes through her attorney
4 that you were very concerned that Lumbermans would
5 only pay half the damages on the home so --

6 A. I'm sorry. Go ahead and finish
7 the question. I apologize.

8 Q. Yes.

9 A. There was a discussion. And my recall of
10 that topic, okay, the reason we added Mary was that:

11 My co-counsel has become concerned that
12 because Gloria was the only insured on the contract
13 and, yet, the deed indicated that they both had
14 what under my interpretation of law is an undivided
15 half interest in the whole, that somehow Lumbermans
16 was going to try to make the argument, well, then
17 they are only responsible for half the damages.

18 That was what ultimately led to the decision
19 to add Mary to the negligence counts.

20 My legal opinion was that probably didn't
21 have to occur, but it was done, okay? And that is
22 what happened.

23 It is a separate issue in my opinion as to
24 what is or isn't Mary's interest in the home, which

1 I have no knowledge of, other than the deed that sits
2 in front of me that I was not involved in.

3 Q. Right, and, again, you weren't. You and
4 I...

5 In fact, you do recall back when this was
6 happening, you also voiced that to me that there was
7 no need to bring Mary G. Sykes into this case?

8 A. I believe you were probably aware of
9 the debate between my co-counsel and me about that,
10 yes.

11 Q. And do you recall me agreeing with you?

12 MS. FARENGA: Your Honor, I am objecting to
13 this line of questioning and the relevance. Mary was
14 added to the case. She was. That's done.

15 MS. SYKES: My argument, Your Honor, is
16 the reason why she was brought in and then the --
17 which brings about the reason for the appropriation
18 in which we have been very clear and Mr. Salam has
19 been very clear, too, that at no point did
20 Mary G. Sykes -- through her counsel, Mr. Salam and
21 Ms. Moszkowicz and/or Larry, which I still can't
22 pronounce his last name -- did she ever ask for or
23 expect any damages from this.

24

1 MS. FARENGA: Objection as to what Mary
2 thought.

3 THE COURT: I think that -- I don't know
4 if there was...

5 If I may, I don't think there was a question
6 in that statement, and so there is nothing for you to
7 answer.

8 BY MS. SYKES:

9 Q. Was there at any point in time --
10 and you are going to say asked and answered --
11 through this retainment, this contract that you had
12 with my mother in '06, I do not see anything here --
13 and please go over it again -- that says Mary is
14 filing a claim for a portion of the damages; Mary is
15 filing a claim for punitive damages; Mary G. Sykes is
16 filing any claim whatsoever against my contract.

17 Will you please go through this and tell me
18 what year that you were contracted to and brought her
19 in for a specific reason, which you just described to
20 the Court earlier.

21 A. May I answer?

22 THE COURT: Yes, you may.

23 THE WITNESS: This contract says what
24 it says.

1 In addition, as I recall, there was a cover
2 letter when this was sent to your mother, okay,
3 explaining what she was being added to and other
4 details.

5 So this was not the only communication...

6 In addition to meeting with her and
7 her lawyer, okay, and discussing the details, okay,
8 this was sent to her with a cover letter further
9 explaining the nature of our representation.

10 BY MS. SYKES:

11 Q. Right.

12 And if we have that cover letter, it would
13 clarify all of this; is that correct?

14 A. It contains additional information. Without
15 seeing it, I do not as I sit here today recall
16 exactly what was in it.

17 Q. I understand.

18 Do you have the cover letter?

19 THE COURT: Are you offering the cover
20 letter?

21 MR. STERN: I believe this is what they are
22 referring to. (Tendering document.)

23 MS. SYKES: (Examining document.)

24

1 BY MS. SYKES:

2 Q. Okay. Would you please read that.

3 A. Yes.

4 Q. All I need is, Mr. Salam, and I am sorry but
5 the part that pertains to -- that relates to Mary G.
6 Sykes.

7 A. It is two paragraphs. Let me read the whole
8 letter and we will...

9 THE COURT: Yes, that will be fine.

10 MR. SCHMIEDEL: Judge, do you want a copy of
11 the letter?

12 THE COURT: No. I can hear. Thank you.

13 THE WITNESS: This is a letter on
14 Jean Moskowitz' letterhead. It dated April 13th,
15 2006. It states:

16 "Dear Mary: Enclosed herewith is
17 a contract for legal services for you
18 to review with your attorney, which comports
19 with what we discussed at our meeting on
20 Monday. Kevin Salam and I will be
21 representing both yours" -- "your interest
22 and your daughter Gloria's interest in
23 the counterclaim against Lumbermans which
24 relate to their negligence and damage

1 to the subject property, including
2 the negligent counts in the counterclaim
3 based upon respondeat superior against
4 the third parties hired by Lumbermans.

5 "The remaining counts in the
6 counterclaim relates solely to actions
7 against Lumbermans by Gloria, which include
8 the breach of insurance contract count
9 and concomitant estoppel account,
10 the infliction of emotional distress count,
11 the consumer fraud count, the bad-faith claim
12 (Section 155) against Lumbermans, and
13 the spoliation of evidence claim.

14 "Additionally, please be advised that
15 at present no legal conflict exists with
16 our joint representation of both of you.
17 There are no legal inconsistencies in
18 your respective positions as they are
19 complimentary positions. A potential
20 conflict may arise down the road in
21 the event Lumberman makes a settlement
22 offer and both of you do not agree to
23 accept it.

24

1 "In that event Kevin and I may be
2 forced to withdraw our representation of
3 one of you. We are hopeful that the
4 situation will not arise and, of course,
5 if Lumbermans makes any settlement offer
6 whatsoever we will promptly advise.

7 "Very truly yours, Jean Moskowitz."

8 BY MS. SYKES:

9 Q. Okay. And again so her only interest was
10 for damages to the structure to that building,
11 correct, to 6014, the structure?

12 A. That was my understanding based on
13 my understanding that she had an interest in the home
14 as evidenced by the deed that was provided to me
15 as Exhibit 1.

16 MR. SCHMIEDEL: Judge, this is bifurcation.
17 Ms. Sykes did say 6014. I believe she is referring
18 to 6016.

19 MS. SYKES: I mean 6016. Thank you.

20 BY MS. SYKES:

21 Q. So 6016, that property, you were in that
22 property?

23 A. Yes.

24 Q. Quite often?

1 A. Yes.

2 Q. There was mold damage; is that correct?

3 A. Yes.

4 Q. To your knowledge who lived in that property
5 at the time there was the mold damage?

6 A. My understanding was that was where
7 you resided, and your mother resided in the home --
8 the other home in front of that property.

9 Q. And obviously there was, as you brought
10 here, there was -- you knew that I was diagnosed with
11 a small rare breast cancer --

12 MR. SCHMIEDEL: Judge, I am going to
13 object --

14 BY MS. SYKES:

15 Q. -- is that correct?

16 MR. SCHMIEDEL: -- to this line of
17 questioning. It is not relevant to Mary Sykes'
18 interest in the property and the counts that relate
19 to the property.

20 The testimony has been that she has
21 an interest in the property and settled the property
22 interest as well as the other counts.

23 MS. SYKES: I will withdraw that. I will
24 withdraw, Your Honor.

1 THE COURT: I will tell you what you are
2 going to have to do, and I am going to give you
3 a choice:

4 I am one of the presenters next week
5 at the Judicial Conference. I had to change
6 my entire presentation.

7 I have a teleconference scheduled for
8 4:00 o'clock with other judges who are in that
9 presentation.

10 I anticipate that our conversation will last
11 no more than 15 or 20 minutes.

12 Now, I don't know what time the court
13 reporter has to stay today.

14 THE REPORTER: 5:00'ish.

15 THE COURT: All right. I can come back.
16 I am going to say my guess would be 4:20, and we can
17 go to 5:00; but the court reporter is going to go and
18 I am going to have to go.

19 And so I am offering that to you.

20 MR. SCHMIEDEL: I'd like to finish Mr. Salam
21 today at least.

22 THE COURT: All right. Then I will step off
23 the bench now and we will have a 20-minute break.
24 I promise to be back.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. SYKES: Thank you, Your Honor.

4 THE COURT: Let me make it absolutely clear:
5 No one can speak to the witness even though we are
6 taking a break, and we are not -- we are going to
7 wait until I come back. You cannot talk to him
8 at all, and he can't talk to you.

9 THE WITNESS: Thank you, Your Honor.

10 MS. SYKES: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (A recess was taken.)

13 THE COURT: And we are back.

14 Where is Ms. Farenga?

15 MR. STERN: Ms. Farenga said she is
16 on the 12th floor, but we can proceed without her.

17 THE COURT: All right. Then we will pick up
18 where we were.

19 I will tell you, this is what I'd like to do
20 so that we can kind of figure out where we were.

21 Could you go back and read the last question
22 and answer.

23 (Record read as requested.)

24 THE COURT: All right.

1 MR. SCHMIEDEL: The objection was relevance.

2 MS. SYKES: Your Honor, I apologize for
3 leading and --

4 THE COURT: Just wait.

5 As to your objection, she hadn't finished
6 the question. I do know where she was going.

7 You are going to withdraw the question,
8 I take it. So if you can ask a proper question.

9 MS. SYKES: I am going to withdraw that
10 question, and I just did some homework so I am not
11 leading as I would do in my work. And, again,
12 I apologize to this Court.

13 THE COURT: No, no, no. You should be
14 leading. You should be asking leading questions,
15 seeking a yes or no answer.

16 MS. SYKES: But, Your Honor, I am used to
17 putting the question forward so the people I am
18 interviewing can, you know, respond.

19 THE COURT: From that onto the --

20 MS. SYKES: Right, right, right.

21 THE COURT: Okay.

22 MS. SYKES: And that's what I was just
23 getting my mindset around during this 20 minutes.

24