

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE:	§	
	§	Chapter 11
J.C. PENNEY DIRECT MARKETING	§	
SERVICES LLC, <i>et al.</i> ,	§	Case No. 20-20184 (CML)
	§	(Jointly Administered)
DEBTORS.	§	

OLD COPPER COMPANY INC. F/K/A	§	
JC PENNEY COMPANY INC. AND	§	
COPPER SUB CORPORATION INC.	§	
F/K/A JC PENNEY CORPORATION	§	
INC., AS WIND DOWN DEBTOR IN	§	
JC PENNEY DIRECT MARKETING	§	
SERVICES LLC,	§	
	§	Adv. Pro. No. 25-02002
PLAINTIFF,	§	
	§	
V.	§	
	§	
JACKSON WALKER LLP,	§	
	§	
DEFENDANT.	§	

JACKSON WALKER LLP’S MOTION TO DISMISS COMPLAINT

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Jackson Walker LLP (“Jackson Walker”) files this *Motion to Dismiss* (the “Motion”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Federal Rules”), as made applicable by Rules 7008 and 7012 of the Federal Rules of Bankruptcy Procedure (the

“Bankruptcy Rules”), to dismiss the *Complaint* (the “Complaint”) filed by The Old Copper Company, Inc. f/k/a J.C. Penney Company, Inc. and Copper Sub Corporation, Inc. f/k/a J.C. Penney Corporation, Inc., as Wind Down Debtor in *In re J.C. Penney Direct Marketing Services, LLC* (the “Wind Down Debtors”). In support of this Motion, Jackson Walker respectfully shows the Court as follows:

PRELIMINARY STATEMENT

1. The Complaint represents nothing more than a second bite at the apple, attempting to capitalize on an unprecedented situation that, ultimately, had no impact on the Debtors (and in turn, the Wind Down Debtors). Indeed, the ultimate relief sought in the Complaint, if granted, would result in a complete windfall and would ***unjustly enrich the Wind Down Debtors*** who received the benefit of Jackson Walker’s services. Jackson Walker’s legal services were indisputably necessary and reasonable, and the Court approved the services—which would have been performed by another law firm if not Jackson Walker—without objection. This is particularly true where ***the Wind Down Debtors have admitted that there was not a single substantive result in the underlying bankruptcy cases that was in any way affected by the alleged undisclosed relationship***¹—an intermittent relationship that Jackson Walker was entirely unaware of when the plan was confirmed, and only thereafter understood to be in the past and did not discover had resumed until ***over a year after*** the plan (which was consensual) was confirmed.²

2. Notably, the Wind Down Debtors finally admitted there was no harm to them related to the actions of Ms. Freeman and former Judge Jones (which they knew from the beginning

¹ See *Plaintiff’s Response and Objection to Motion to Intervene* [Adv. Dkt. No. 8 at ¶ 4] (“Plaintiff does not claim that any substantive results in the Bankruptcy Case were affected by the undisclosed relationship.”).

² Tr. of Dec. 6, 2023 U.S. Trustee Interview of Elizabeth Freeman (“Freeman Interview”) 42:7-9, 90:23-25; 136:7-19; 142:22-143:1-4, 167:21-25; attached as **Exhibit A**.

because of the extraordinary success of the bankruptcy proceeding as discussed below) after their counsel incurred hundreds of thousands of dollars in legal fees actively participating in over 40 depositions, serving discovery on Jackson Walker and other third parties (including former Judge Jones), and reviewing thousands of pages of documents in the related duplicative litigation being spearheaded by the United States Trustee (for which the Wind Down Debtors have joined) for the past 18 months.

3. Now, with the end in sight, and just three months before trial commences before Chief Judge Rodriguez in the consolidated cases which involve the same operative facts and nucleus of law, the Wind Down Debtors filed the instant adversary proceeding asserting three different claims seeking the same ultimate relief: fee disgorgement.

4. This duplicative litigation should be seen for what it is. At best, a leverage play to try to extract a higher settlement from Jackson Walker; and at worst, a selfish attempt to continue to drum up additional litigation costs.

5. The Wind Down Debtors' Complaint should be dismissed for the following reasons:

- Since the Complaint involves the same nucleus of operative facts as the matters pending before Chief Judge Rodriguez, which the Wind Down Debtors' joined and who intend to participate in the upcoming trial, it amounts to impermissible claim splitting.
- The disgorgement claim should be dismissed because it is a remedy not a cause of action.
- Bankruptcy Rule 2014 does not apply, and if it did, there was no duty to supplement disclosures after the confirmation of the plan, which was before Jackson Walker had any indication of a current or past intimate relationship between Ms. Freeman and former Judge Jones.
- The breach of fiduciary duty claim fails for the additional reason that the Wind Down Debtors claims are professional negligence claims, thus the anti-fracturing rule requires the dismissal of the fiduciary duty claim.

- The negligence claim fails because there are no allegations of causation or damages.

6. For these reasons and as set forth more fully below, the Complaint should be dismissed.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the Complaint pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. JW consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

FACTUAL BACKGROUND³

A. The Debtors Retain Advisors to De-Lever their Capital Structure.

8. The chapter 11 cases were filed at the peak of the COVID-19 pandemic in May of 2020 when the retail industry was decimated.⁴ And even before the global pandemic, the Debtors struggled while many of their peers “plod[ded] down the path to extinction.”⁵ This resulted in the Debtors retaining Kirkland & Ellis LLP (as legal counsel) and Lazard Freres and Co. LLC (as investment banker) almost a year earlier in July 2019, to assist the Debtors with a global resolution

³ This Court can consider and take judicial notice of pleadings and orders filed and entered in the main bankruptcy cases for purposes of a motion to dismiss filed under Bankruptcy Rule 7012. *See Artho v. Happy State Bank (In re Artho)*, 587 B.R. 866, 878 (Bankr. N.D. Tex. 2018) (“[T]he Court finds that the filings made in Artho’s bankruptcy case are matters of public record, or they are referred to in Artho’s complaint and are central to Artho’s claims against the Defendants. . . . The Court therefore considers the filings in Artho’s bankruptcy case.”) (citing *Meyers v. Textron, Inc.*, 540 F. App’x 408, 409-10 (5th Cir. 2013) (finding it appropriate that the lower court took into account public records and prior court proceedings in deciding a Rule 12(b)(6) motion)).

⁴ J.C. Penney temporarily closed *all* of its 846 stores on March 18, 2020. *See Declaration of Bill Wafford, Executive Vice President, Chief Financial Officer of J.C. Penney Company, Inc., in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “Wafford Declaration”), filed in *In re J. C. Penney Company, Inc., et al.*, Case No. 20-20182, Dkt. No. 25 ¶¶ 6-7. At the time of the chapter 11 filing, April year-over-year net sales tumbled by ~88% and store sales decreased to nearly zero. *Id.* ¶ 8.

⁵ *Id.* ¶ 10.

to de-lever their capital structure.⁶ The Debtors then engaged AlixPartners, LLP as their restructuring advisor to commence contingency preparations.⁷

9. To set up the Debtors for long term success, these premier advisory firms developed a deleveraging strategy that was only possible with the tools available in a chapter 11 proceeding.⁸ These efforts ultimately led to the pre-petition execution of a restructuring support agreement (“RSA”) with the Debtors’ first lien lenders that contemplated a plan designed to accomplish the very thing the Debtors had been trying to do since mid-2019—eliminate the nearly \$5 billion in debt burdening the Debtors’ business and preventing their prior implemented “Plan for Renewal” from flourishing.⁹ This pre-negotiated restructuring agreement was reached following several weeks of extensive, arm’s length negotiations,¹⁰ and presented the debtors “best and most viable option to emerge from chapter 11.”¹¹ And as acknowledged by the Debtors, “[t]he transaction itself [was] necessarily predicated on speed—it was not an option to languish in chapter 11 during key business seasons with value depleting at an astonishing rate due to the high costs of being in chapter 11.”¹²

B. The Debtors File for Bankruptcy in the Peak of COVID-19.

10. On May 15, 2020 (the “Petition Date”), J.C. Penney Company, Inc. and its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United

⁶ *Id.* ¶ 20.

⁷ *Id.* ¶ 22.

⁸ *Id.* ¶ 23.

⁹ *Id.* ¶ 24.

¹⁰ *Id.* ¶ 25.

¹¹ *Id.* ¶ 26.

¹² *Id.*

States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the “Bankruptcy Court”).¹³

11. Two days before the Petition Date and after negotiation of the RSA which was signed two days later, on May 13, 2020, the Debtors engaged Jackson Walker to serve as co-counsel and conflicts counsel.¹⁴ The Debtors sought approval of Jackson Walker’s retention on June 11, 2020,¹⁵ which the Court approved on July 7, 2020.¹⁶

C. The Debtors’ RSA, Sale Process, and Mediation.

12. On May 15, 2020, the Debtors and the Consenting First Lien Lenders (as defined in the RSA) entered into the RSA, which contemplated a comprehensive reorganization of the Debtors’ businesses by establishing both a financially sustainable operating company (“OpCo”) and a holding entity for certain of the Debtors’ real property assets (“PropCo”), as well as providing for various financing arrangements geared towards a successful going-concern outcome for the Debtors.¹⁷ To ensure the restructuring transactions maximized value for all stakeholders, the RSA also provided for a robust market-testing process seeking interest in and bids for, among other things, providing debt or equity financing to OpCo and/or purchasing some or all of the assets of the Debtors (the “Market Test”).¹⁸

13. The Market Test consisted of an exhaustive process to scour the market for potential partners or buyers. This Market Test, which the Debtors’ advisor, Lazard Frères & Co. LLC (“Lazard”), officially launched on May 28, 2020, followed the Debtors’ efforts since mid-2019 to

¹³ See Case No. 20-20182, Dkt. No. 1.

¹⁴ See Case No. 20-20182, Dkt. No. 685-1.

¹⁵ See Case. No. 20-20182; Dkt. No. 685.

¹⁶ See Case. No. 20-20182; Dkt. No. 963.

¹⁷ See Case No. 20-20182, Dkt. No. 25, § IV.

¹⁸ *Id.*

find a transaction to address the Debtors' capital structure.¹⁹ The chapter 11 cases thereafter proceeded as most chapter 11 cases proceed—with intense negotiations amongst the major stakeholders working towards a plan of reorganization.

14. Following the extensive sales process conducted in the bankruptcy cases, the Debtors ultimately entered into an Asset Purchase Agreement (the “APA”) for the sale of substantially all of the Debtors' assets between an entity formed by Simon Property Group (“Simon”) and Brookfield Property Group (“Brookfield” and, with Simon, the “OpCo Buyers,”), the Debtors, and an ad hoc group of first lien lenders (the “First Lien Majority Group”).²⁰ The Debtors believed that the APA and the integrated transaction contemplated therein presented the best opportunity for the Debtors' businesses to survive as a going concern, avoid what would have otherwise been the largest retail liquidation in history, and allow for up to 60,000 employees to keep their jobs.²¹ The Debtors announced their agreement in principle with Simon, Brookfield, and the First Lien Majority Group on September 9, 2020.²²

15. Notwithstanding that agreement in principle, various other disputes remained to resolve in the cases. To that end, the Court appointed Judge Marvin Isgur in or around September 2020 to help the principle stakeholders mediate issues associated with the Debtors' exit from bankruptcy. That mediation spanned more than a month. Jackson Walker was not involved in the mediation calls with Judge Isgur or other stakeholders,²³ all of which were held virtually given the

¹⁹ See Case No. 20-20182, Dkt. No. 1592, ¶ 21.

²⁰ See Case No. 20-20182, Dkt. No. 1681-24.

²¹ See Case No. 20-20182, Dkt. No. 1592, ¶ 5.

²² See generally Sept. 9, 2020 Hr'g Tr., Case No. 20-20182, Dkt. No. 1393.

²³ As reflected in *Jackson Walker LLP's Second Interim and Final Fee Application for Allowance and Payment of Fees and Expenses as Co-Counsel and Conflicts Counsel to the Debtors for the Period from May 15, 2020 through December 14, 2020* (Case No. 20-20182, Dkt. No. 2739), only 7.5 of the total 754.6 professional and paraprofessional hours were related to the mediation.

ongoing pandemic, and Jackson Walker had no substantive role in leading, negotiating or otherwise driving any result in the mediation process, plan process, or otherwise.²⁴

16. Those mediation efforts ultimately proved successful.²⁵ Judge Isgur worked “tireless[ly]” to mediate in the Debtors’ cases until October 31, 2020, when the First Lien Minority Group²⁶ reached an agreement in principle with the DIP Lender Group,²⁷ which was finalized and presented to the Court through the proposed Sale Order.²⁸

17. After the announcement of the Settlement Agreement, the Court entered its Sale Order on November 9, 2020,²⁹ approving the sale of substantially of the Debtors’ assets to Copper Bidco LLC (the “PropCo Purchaser”) and Copper Retail JV LLC (the “OpCo Purchaser”, a Simon/Brookfield special purpose entity).³⁰ The Court also approved the Settlement Agreement on November 9, 2020, which was attached to the Sale Order.

18. As this Court acknowledged just last year, “[t]he Plan and the Sale Order reflected a highly complex global settlement struck in connection with mediation during the Covid-19

²⁴ Compare Jackson Walker’s 156.6 hours and \$1,07,229.50 in fees regarding “Plan and Disclosure Statement” to Kirkland and Ellis LLP’s 7,504 hours and \$7,663,531.00 in fees regarding “Restruct. Trans/DS/Plan Conf/Emergence.” [Dkt. Nos. 2739 and 2767].

²⁵ Just months ago, on August 22, 2024, the Wind Down Debtors themselves described the mediation as successful, stating to this Court: “Despite their initial disagreements regarding the proposed Sale, the Debtors, DIP Lenders, and Minority Group ultimately engaged in successful mediation before Judge Isgur and reached a global settlement of issues regarding the Sale.”). See Case No. 20-20184, Dkt. No. 1554, ¶ 4.

²⁶ The “First Lien Minority Group” comprised an ad hoc group of unaffiliated holders of (i) term loans and first lien notes and (ii) second lien notes, as set forth in the *Verified Statement of the First Lien Minority Group Pursuant to Bankruptcy Rule 2019*. See Case No. 20-20182, Dkt. No. 1515.

²⁷ The “DIP Lender Group” refers to the First Lien Majority Group and the DIP lenders represented by Milbank LLP.

²⁸ See Case No. 20-20182, Dkt. No. 1775.

²⁹ “Sale Order” refers to the *Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement, (B) The Sale of the Opco Acquired Assets and the Propco Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* entered in Case No. 20-20182 at Dkt. No. 1814.

³⁰ *Id.*

pandemic. The consideration for the sale was detailed in a motion seeking the relief at the November 2020 sale hearing.”³¹

19. The sale of the OpCo Acquired Assets and the PropCo Acquired Assets (both as defined in the Asset Purchase Agreement)³² closed on December 7, 2020. Under the Asset Purchase Agreement and Sale Order, substantially all of the Debtors’ assets were distributed between OpCo, the entity running the Debtors’ retail operations on a go-forward basis, and PropCo, the real estate entity serving as landlord to OpCo.³³

D. The Debtors’ Plan Confirmation.

20. On December 12, 2020, the Debtors filed their *Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* (the “Plan”).³⁴ The Plan enjoyed widespread support and was overwhelmingly accepted.³⁵

21. On December 14, 2020, the Court held a hearing to consider confirmation of the Debtors’ Plan and entered the *Order Approving the Disclosure Statement for, and Confirming, the Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates* (as amended, the “Confirmation Order”),³⁶ just before the holiday shopping season and just as the Debtors hoped and planned for pre-petition. Pursuant to the Plan and Confirmation Order, “[f]rom and after the Confirmation Date, any requirement that Professionals [including

³¹ Sept. 9, 2024 Hr’g Tr. at 4:14-18, Case No. 20-20182, Dkt. No. 159.

³² See Case No. 20-20182, Dkt. No. 1668.

³³ See Case No. 20-20182, Dkt. No. 1592.

³⁴ See Case No. 20-20182, Dkt. No. 2162.

³⁵ See *Amended Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates*, Dkt. No. 1985 at Exhibit A-1. Indeed, almost 90% of general unsecured claimholders accepted the Plan. *Id.*

³⁶ See Case No. 20- 20182, Dkt. Nos. 2169, 2190.

Jackson Walker] comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Court.”³⁷

22. The Plan’s effective date occurred on January 30, 2021 (the “Effective Date”).³⁸ Pursuant to the Plan, on the Effective Date, all of the Excluded Assets (as defined in the Asset Purchase Agreement) “vest[ed] in the Wind Down Debtors for purposes of liquidating the Estates, free and clear of all Liens, Claims, charges, or other encumbrances.”³⁹

23. The Plan included broad release and exculpation provisions in favor of the Released Parties⁴⁰ and Exculpated Parties,⁴¹ which the Confirmation Order approved. Thus, as a Released

³⁷ See Case No. 20-20182, Dkt. No. 2190 at ¶ 104-105; Plan at Art. II.C.4.

³⁸ See *Notice of (I) Propco Closing and (II) Occurrence of Effective Date*. Case No. 20-20182; Dkt. No. 2508.

³⁹ See Plan Art. IV.D.1.

⁴⁰ Pursuant to Article I.A.167 of the Plan, a “Released Party” includes each of the following, solely in its capacity as such:

(a) the Debtors, the Wind-Down Debtors and the Plan Administrator; (b) the ABL Agent; (c) the ABL Lenders; (d) the Term Loan Administrative Agent; (e) the Term Lenders; (f) the First Lien Notes Trustee; (g) the First Lien Noteholders; (h) the Holders of Secured Swap Claims; (i) the Second Lien Notes Trustee; (j) the Second Lien Noteholders; (k) the Unsecured Notes Trustee; (l) the Unsecured Noteholders; (m) the Purchaser Group; (n) the DIP Agent; (o) the DIP Lenders; (p) the Consenting First Lien Lenders; (q) the PropCo Trustee; (r) the Term Loan/First Lien Notes Collateral Agent; (s) the Minority First Lien Group and its members; (t) with respect to each of the foregoing parties in clauses (a) through (s), each of such party’s current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, and management companies; and **(u) with respect to each of the foregoing parties in clauses (a) through (t) (and groups consisting of such parties), each of such party’s Related Parties**; and (v) all holders of Claims or Interests; provided that any holder of a Claim or Interest that (i) validly opts out of the releases contained in the Plan, (ii) files an objection to the releases contained in the Plan, or (iii) votes to reject the Plan shall not be a “Released Party.”

Plan Art. I.A.167 (emphasis added).

⁴¹ Pursuant to Article I.A.78 of the Plan, an “Exculpated Party” includes each of the following, solely in its capacity as such:

(a) each of the Debtors; (b) each of the Consenting First Lien Lenders and any group thereof; (c) the Creditors’ Committee and its members; (d) the Purchaser Group; (e) each current and former Affiliate of each Entity in clause (a) through the following clause (f); and **(f) each Related Party of each Entity in clause (a) through this clause (f)** including, among others, agents and trustees

Party,⁴² the Plan unconditionally released Jackson Walker from:

any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative Claims, asserted or assertable on behalf of any of the Debtors, their Estates, or the Wind-Down Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity or otherwise . . . based on or relating to, or in any manner arising from, in whole or in part, . . . the business or contractual arrangements between any Debtor and any Released Party, . . . or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the . . . filing of the Chapter 11 Cases, . . . or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction.⁴³

24. Likewise, the Plan fully exculpated Jackson Walker (as an Exculpated Party) from:

any Cause of Action for any Claim related to any act or omission based on the formulation, preparation, dissemination, negotiation, entry into, filing, execution, and implementation of any transactions approved by the Bankruptcy Court in the Chapter 11 Cases, including . . . any . . . contract, instrument, release, or other agreement or document . . . created or entered into in connection with . . . the filing of the Chapter 11 Cases, . . . or any other

under the First Lien Debt Documents, the Term Loan Credit Documents, and the DIP Credit Documents.

Plan Art. I.A.78 (emphasis added).

⁴² Jackson Walker qualifies as a “Related Party” under Article I.A.166 of the Plan, which provides:

“Related Party” means, with respect to any person or Entity, each of, and in each case in its capacity as such, current and former directors, managers, officers, investment committee members, special or other committee members, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, **attorneys (including any other attorneys or Professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity)**, accountants, investment bankers, consultants, representatives, and other Professionals and advisors of such Person or Entity, and any such Person’s or Entity’s respective heirs, executors, estates, and nominees.

Plan Art. I.A.166 (emphasis added).

⁴³ Plan Art. X.C; *see also* Plan Art. X.D; Confirmation Order, ¶¶ 106 & 109-112.

postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors or the Wind-Down Debtors, except for Claims related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a Final Order of a court of competent jurisdiction.⁴⁴

25. ***Jackson Walker had no knowledge of any intimate relationship—past or present—at the time the Confirmation Order was entered and when the Effective Date occurred.***

E. The Related United States Trustee Litigation.

26. Years later, on November 2, 2023, the U.S. Trustee filed his *Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(B)(6) and Federal Rule of Bankruptcy Procedure 9024 Approving the Retention and Compensation Applications of Jackson Walker LLP, Sanctions, and Related Relief* (as subsequently amended, the “Rule 60 Motion”).⁴⁵ This Court referred discovery and pre-trial matters regarding the Rule 60 Motion to a newly-created miscellaneous proceeding (the “Miscellaneous Proceeding”) on December 11, 2023.⁴⁶ This Court later referred for final trial on the merits the issue of “[w]hether the Final Order Allowing Compensation and Reimbursement of Expenses for Jackson Walker LLP should be vacated” to the Miscellaneous Proceeding on October 11, 2024.⁴⁷

27. The allegations in the Complaint are based entirely on the same facts and circumstances alleged in the U.S. Trustee’s Rule 60 Motion: that Jackson Walker allegedly violated its obligations and/or duties under various legal authorities regarding the relationship between its former partner, Elizabeth Freeman, and former bankruptcy judge David Jones.

⁴⁴ Plan Art. X.E; *see also* Confirmation Order, ¶¶ 106 & 113.

⁴⁵ *See* Case No. 20-20184, Dkt. Nos. 1236, 1351.

⁴⁶ *See* Case No. 20-20184, Dkt. No. 1266.

⁴⁷ *See* Case No. 20-20184, Dkt. No. 1616.

28. On January 3, 2024, Jackson Walker filed its *Emergency Motion for Entry of an Order Requiring Any Party-in-Interest Who Asserts Standing or Indispensable Party Status to File a Notice Stating a Basis for Indispensable Party Status or Standing in Connection with Jackson Walker LLP Fee Matters* in connection with the Rule 60 Motion, seeking to require all indispensable parties and parties asserting standing to join in the Rule 60 Motion and the Miscellaneous Proceeding to “enable the Court to grant effective relief.”⁴⁸

29. On March 26, 2024, the Court entered an *Order Requiring Any Party-in-Interest Who Asserts Standing or Indispensable Party Status to File a Notice Stating a Basis for Indispensable Party Status or Standing in Connection with Jackson Walker LLP Fee Matters*.⁴⁹

30. On April 11, 2024, the Wind Down Debtors filed their *Notice of Party-in-Interest and Indispensable Party Status*⁵⁰ asserting that they had standing to participate in the Rule 60 Motion.

31. During the course of the Miscellaneous Proceeding, the U.S. Trustee, Jackson Walker, the Wind Down Debtors, and other interested parties engaged in extensive discovery spanning more than 7 months. This culminated in tens of thousands of pages of documents produced, and more than 43 depositions taken which included that of former Judge Jones, former Judge Jones’s staff, Ms. Freeman, numerous Jackson Walker attorneys and personnel, Jackson Walker’s outside ethics counsel, the U.S. Trustee and other U.S. Trustee trial attorneys. The

⁴⁸ See *Order Setting Non-Evidentiary Electronic Status Conference*, see Miscellaneous Proceeding, Dkt. No. 20; see also Dkt. No. 45, Dec. 21 Hr’g Tr. at 18:16-20; see also Dec. 21 Hr’g Tr. at 20:5-7 (“I’m hesitant to issue a Scheduling Order, you know, with specific deadlines if all the parties are not currently before the Court.”); Dec. 21 Hr’g Tr. at 29:20-24 (“Yeah, I’m really concerned about [the standing and indispensable party issues]. I really am. ***I want to make sure we have everybody here that should be here in dealing with these issues. I don’t want anybody to have to deal with this a second time or have anybody left out.***”) (emphasis added).

⁴⁹ See Case No. 20-20184; Dkt. No. 1386.

⁵⁰ See Case No. 20-20184, Dkt. No. 1413.

depositions went well beyond key parties, including various third-parties such as former Judge Jones's ex-spouse and his housekeeper, Ms. Freeman's ex-spouse and her counsel, and other attorneys who practice bankruptcy in the Southern District of Texas.

32. The Wind Down Debtors, through their counsel, attended almost all the depositions, questioned witnesses, sent discovery requests to Jackson Walker, and received documents produced by Jackson Walker and the U.S. Trustee. The Wind Down Debtors also actively participated in numerous meet and confer calls between Jackson Walker, the U.S. Trustee, and other parties in interest, including conferences regarding pretrial matters leading up to the trial scheduled to commence before Chief Judge Rodriguez on May 12, 2025.

33. On January 16, 2025, the Wind Down Debtors filed their *Notice of Joinder to United States Trustee's Amended and Supplemental Motion for (1) Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) and Federal Rule of Bankruptcy Procedure 9024 Approving the Retention and Compensation Applications of Jackson Walker LLP, (2) Sanctions, and (3) Related Relief* (the "Joinder"), stating:

Through this Joinder, [the Wind Down Debtors] join[] and adopt[] the relief sought in the UST Motion, including the allegations, arguments, and pleadings made and/or filed by the U.S. Trustee in support thereof, to the extent of seeking (a) to vacate the orders approving the retention and compensation of Jackson Walker LLP as Debtors' counsel, and (b) disgorgement of fees and expenses paid to Jackson Walker in the JCP Bankruptcy Cases.⁵¹

34. On March 13, 2025, in accordance with Chief Judge Rodriguez's scheduling order, the Wind Down Debtors sent a preliminary Witness and Exhibit List to Jackson Walker in anticipation of the May 2025 trial.

⁵¹ See Case No. 20-20184; Dkt. No. 1644.

F. The Wind Down Debtors Commence this Adversary Proceeding.

35. On January 18, 2025, after participating in the U.S. Trustee’s Rule 60 Motion for the past 18 months, the Wind Down Debtors filed their Complaint against Jackson Walker, initiating this Adversary Proceeding. In their Complaint, the Wind Down Debtors principally allege that “JW’s failure to disclose the Relationship as required by the Bankruptcy Code and Bankruptcy Rules, justifies disgorgement of all fees it received from JCP.”⁵² The Complaint contains the following three causes of action:

Count 1: Disgorgement for Failure to Make Bankruptcy Disclosures.

- The Wind Down Debtors’ first claim asserts that Jackson Walker’s failure to disclose the relationship between former Judge Jones and Ms. Freeman (the “Relationship”) justifies disgorgement of all fees it received from the Debtors. *See* Complaint at ¶¶ 41-45.

Count 2: Breach of Fiduciary Duty

- The Wind Down Debtors’ second claim asserts that Jackson Walker’s failure to disclose the relationship at the time it was retained by the Debtors and/or prior to seeking final approval of its fees warrants disgorgement of all fees it received from the Debtors. *See id.* at ¶¶ 46-49.

Count 3: Negligence

- The Wind Down Debtors’ third claim asserts that Jackson Walker’s failure to put policies and procedures in place to prevent the failure to make proper disclosure constitutes professional negligence that warrants disgorgement of all fees it received from the Debtors. *See id.* at ¶¶ 50-52.

36. As shown below, each of these causes of action are either procedurally or substantively defective, and must be dismissed as a matter of law.

LEGAL STANDARD

37. Federal Rule of Civil Procedure 12(b)(6), made applicable through Bankruptcy Rule 7012, authorizes dismissal of a complaint if it fails to state a claim upon which relief can be

⁵² Complaint ¶ 42.

granted.⁵³ While the Court must accept as true all well-pleaded facts in the complaint, dismissal of a complaint is warranted if the plaintiff has not pleaded “enough facts to state a claim to relief that is plausible on its face.”⁵⁴ The plausibility standard asks for more than “a sheer possibility that the defendant acted unlawfully.”⁵⁵

38. A “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.”⁵⁶ Additionally, unwarranted inferences in the complaint will not defeat a Rule 12(b)(6) motion to dismiss.⁵⁷ Thus, to the extent that the Wind Down Debtors have set forth conclusory allegations or attempt to rely on unwarranted inferences of fact, the Court should not accept such allegations or inferences as true.⁵⁸

ARGUMENT

39. The Wind Down Debtors’ three claims should be dismissed because they violate the rule against claim splitting. Further, Counts 1, 2, and 3 should be dismissed for failing to state a claim upon which relief can be granted. Count 1—disgorgement for failing to make bankruptcy disclosures—is not a recognized cause of action and, in any event, the Bankruptcy Rules do not allow for a private right of action. Count 2—breach of fiduciary duty—should be dismissed because it is barred by the anti-fracturing rule, which prevents a plaintiff from converting a professional negligence claim into a claim for breach of fiduciary duty. Count 3—negligence—

⁵³ FED. R. CIV. P. 12(b)(6).

⁵⁴ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁵⁵ *Id.*; see *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009) (“[A] complaint ‘does not need detailed factual allegations,’ but must provide the plaintiff’s grounds for entitlement to relief—including factual allegations that when assumed to be true ‘raise a right to relief above the speculative level.’”).

⁵⁶ *Fernandez-Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284 (5th Cir. 1993).

⁵⁷ *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

⁵⁸ See *id.*; see also *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (finding that the Court is not bound to accept legal conclusions as true).

should also be dismissed for the Wind Down Debtors' failure to plead facts regarding two elements of a negligence claim: causation and injury. Jackson Walker discusses each of the grounds for dismissal below.

A. The Rule Against Claim Splitting Requires Dismissal of the Wind Down Debtors' Complaint.

40. The Complaint is based entirely on the same nucleus of operative facts alleged in the U.S. Trustee's Rule 60 Motion, which the Wind Down Debtors joined and in which the Wind Down Debtors have fully participated. The Complaint should therefore be dismissed in its entirety under the rule against claim splitting.

41. "The rule against claim splitting prohibits a party or parties in privity from simultaneously prosecuting multiple suits involving the same subject matter against the same defendants."⁵⁹ The rule is based on principles of res judicata and "protect[s] the defendant from being harassed by repetitive actions based on the same claim."⁶⁰ The Fifth Circuit has applied the claim splitting rule where there is no final judgment.⁶¹ Where an earlier suit is pending, the relevant factors are (1) whether the parties are the same or in privity and (2) whether "the same claim or cause of action" is involved in both suits.⁶²

42. In determining whether two suits present the same claim or cause of action, the Fifth Circuit applies the transactional test from the Restatement (Second) of Judgments § 24.⁶³ "[T]he critical issue is whether the two actions were based on the 'same nucleus of operative

⁵⁹ *General Land Off. v. Biden*, 71 F.4th 264, 269-70 (5th Cir. 2023).

⁶⁰ *Id.* at 270 (citing *In re Super Van, Inc.*, 92 F.3d 366, 371 (5th Cir. 1996)).

⁶¹ See *Friends of the Earth, Inc. v. Crown Cent. Petroleum Corp.*, 95 F.3d 358 (5th Cir. 1996); *Oliney v. Gardner*, 771 F.2d 856 (5th Cir. 1985).

⁶² See *Gulf Island-IV, Inc. v. Blue Streak-Gulf Is Ops*, 24 F.3d 743, 746 (5th Cir. 1994); *Oliney v. Gardner*, 771 F.2d 856, 859 (5th Cir. 1985).

⁶³ See *Petro-Hunt, LLC v. United States*, 365 F.3d 385, 395-96 (5th Cir. 2004).

facts,” and “we look to the factual predicate of the claims asserted, not the legal theories upon which the plaintiff relies.”⁶⁴ The modest differences between the Wind Down Debtors’ claims in the two suits have no bearing on the transactional test.⁶⁵ Moreover, the relief requested by the Wind Down Debtors (disgorgement of fees) is wholly duplicative of the relief requested in the Miscellaneous Proceeding (sanction in the amount of full disgorgement of fees).

43. Here, *all* the facts alleged in the Complaint are contained within the Rule 60 Motion, related pleadings, and discovery, which will proceed to trial in the Miscellaneous Proceeding next month (May 2025), as shown in the chart below:⁶⁶

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
““JW is a law firm based in Texas, comprised of attorneys licensed to practice under the laws of the state of Texas, including, among others, the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, as well as specific rules applicable to the courts and jurisdictions in which they are practicing. In bankruptcy cases, attorneys are subject to the rules specified in the Bankruptcy Code, and the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and the U.S. Trustee Guidelines. See, e.g., Bankruptcy Code §§ 327-331; Bankruptcy Rules 2014-2017.” ⁶⁷	“[T]he Bankruptcy Code requires that debtors’ counsel satisfy rigorous standards for employment and compensation, including that counsel is both conflict-free and disinterested. 11 U.S.C. §§ 327, 328(c), 330. Bankruptcy Rules 5002 and 5004 and 28 U.S.C. § 455 impose parallel requirements on judges to ensure their orders approving employment and compensation, among others, are likewise free of conflict or partiality. In addition to lawyers’ ethical obligations under the Code, the case law interpreting it also establishes that debtors’ counsel has fiduciary duties to the estate and to the Court. <i>ICM Notes Ltd. v. Andrews and Kurth, L.L.P.</i> , 278 B.R. 117, 123 (S.D. Tex. 2002), <i>affirmed</i> , 324 F.3d 768 (5th Cir. 2003). And this Court itself—through a local rule—requires attorneys to comply with the Texas

⁶⁴ *Eubanks v. FDIC*, 977 F.2d 166, 171 (5th Cir. 1992) (citation omitted).

⁶⁵ See *Nilsen v. City of Moss Point, Miss.*, 701 F.2d 556, 560 n.6 (5th Cir. 1983) (holding that a transaction “may be single despite different harms, substantive theories, measures or kinds of relief” when applying transactional test for a res judicata analysis).

⁶⁶ By referencing the allegations in the Complaint and in the Rule 60 Motion, related pleadings, or discovery in the Miscellaneous Proceeding, Jackson Walker does not admit the factual nature of any of the allegations but merely directs the Court to the sources of information as proof that all of the facts alleged in the Complaint overlap with those alleged in the Miscellaneous Proceeding.

⁶⁷ Complaint at ¶ 7.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
	Disciplinary Rules of Professional Conduct. S.D. Tex. Loc. R., App. A, Rule 1(A). ⁶⁸
““The retention of counsel representing bankruptcy debtors must be approved by the bankruptcy court, which can grant such application only if the attorney/firm (1) does not “hold or represent an interest adverse to the estate” and (2) are “disinterested.” Bankruptcy Code § 327; Bankruptcy Rule 2014. In support of an application to be employed as counsel for a debtor, the attorney must file a verified statement identifying all “connections” with the parties in interest. Bankruptcy Rule 2014(a).”⁶⁹	“Section 327 expressly prohibits the estate from retaining professionals unless they “do not hold or represent an interest adverse to the estate, and . . . are disinterested persons.” 11 U.S.C. § 327.”⁷⁰ “All professionals seeking to be retained as estate-paid professionals—whether for a trustee, debtor-in-possession, or official committee—must file a Rule 2014 verified statement disclosing all of the professional’s “connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States [T]rustee or any person employed in the office of the United States [T]rustee.” Fed. R. Bankr. P. 2014.”⁷¹
“A debtor’s attorney’s obligations do not end once the court approves retention. The attorney’s compensation during the case is also subject to court approval. See, Bankruptcy Code §§ 328-331; Bankruptcy Rule 2016. The court may deny allowance of compensation if, at any time during the case, the attorney “is not a disinterested person, or represents or holds an interest adverse to the interest of the estate.” Bankruptcy Code § 328(c).”⁷²	“Section 328(c) provides that “the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, <i>at any time</i> during such professional person’s employment under section 327 or 1103 of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.” 11 U.S.C. § 328(c) (emphasis added).”⁷³
“JCP was a national retailer based in Texas. Needing to reorganize its debts during the	“Notwithstanding Jackson Walker’s admitted knowledge of the secret relationship between

⁶⁸ Rule 60 Motion at ¶ 77.

⁶⁹ Complaint at ¶ 8.

⁷⁰ Rule 60 Reply at ¶ 26.

⁷¹ Rule 60 Motion at ¶ 102.

⁷² Complaint at ¶ 9.

⁷³ Rule 60 Motion at ¶ 125.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
COVID19 Pandemic, JCP sought the protection of the provisions of title 11 of the United States Code. JCP retained JW (as co-counsel) in early May 2020 to file petitions for relief in the United States Bankruptcy Court for the Southern District of Texas on May 15, 2020 (the “Petition Date”) and represent it in the JCP Cases. At the time JCP retained JW, it was unaware of the Relationship, and JW did not inform it of the Relationship (nor did it inform JCP of the Relationship at any time, as discussed below).⁷⁴	its partner, Ms. Freeman, and Judge Jones no later than March 2021, see Prelim. Resp. ¶ 13, Jackson Walker never publicly disclosed that relationship in any pending, closed, or subsequently filed case during the following 20 months while Ms. Freeman was a partner—or thereafter when she was Jackson Walker’s contract attorney or recommended conflicts/co-counsel.”⁷⁵
“JCP filed its Application to Retain Jackson Walker LLP as Co-Counsel and Conflicts Counsel for Debtors and Debtors in Possession (the “Retention Application”) on June 11, 2020 [ECF 685] 5, supported by the Declaration of Matthew Cavanaugh [ECF 685-2], a JW partner (the “Cavanaugh Declaration”). The Retention Application provided: “To the best of the Debtors’ knowledge, these attorneys have no interest adverse to the Debtors or to the Debtors’ bankruptcy estates and are disinterested. The Firm has no connections with the Debtors, the Debtors’ creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any other person employed in the office of the United States Trustee herein, except as disclosed in the Cavanaugh Declaration.” [ECF 685 at 7.]”⁷⁶	“Even Jackson Walker understood this because it acknowledged that its attorneys’ connections are the firm’s connections when it sought retention. <i>See, e.g., In re Basic Energy Services, Inc.</i>, No. 21-90002, ECF No. 809, Jackson Walker Retention Appl. (disclosing that “to the best of the Debtors’ knowledge, <i>these attorneys</i> have no interest adverse to the Debtors, or to the Debtors’ bankruptcy estates, and <i>are disinterested.</i>”) (emphasis added).”⁷⁷
“The Cavanaugh Declaration likewise states that JW does not have any undisclosed “connections” and is “disinterested.” 6 [ECF 685-2 at 5.] Specifically, the Retention	“Unfortunately, at every important moment in this matter, JW chose not to disclose but instead to conceal what it knew or had good reason to know about the Relationship.”⁷⁹

⁷⁴ Complaint at ¶ 10.

⁷⁵ Rule 60 Motion at ¶ 31.

⁷⁶ Complaint at ¶ 11.

⁷⁷ Rule 60 Reply at ¶ 23.

⁷⁹ Expert Report of Professor Jonathan C. Lipson Regarding Certain Disclosure and Ethics Matters, filed at Dkt. No.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
Application and Cavanaugh Declaration did not disclose any Relationship between Freeman and Jones.” ⁷⁸	Notwithstanding Jackson Walker’s admitted knowledge of the secret relationship between its partner, Ms. Freeman, and Judge Jones no later than March 2021, see Prelim. Resp. ¶ 13, Jackson Walker never publicly disclosed that relationship in any pending, closed, or subsequently filed case during the following 20 months while Ms. Freeman was a partner—or thereafter when she was Jackson Walker’s contract attorney or recommended conflicts/co-counsel.” ⁸⁰
“The Court entered its Order Granting the Application of Debtors and Debtors-in Possession to Retain Jackson Walker LLP as Co-Counsel and Conflicts Counsel for Debtors and Debtors-in Possession (the “Retention Order”) on July 1, 2020 [ECF 963]. The Retention Order included the following language: ‘ORDERED that Jackson Walker LLP will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Jackson Walker LLP will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Fed. R. Bankr. P. 2014(a); it is further’”⁸¹	Deposition testimony in the Miscellaneous Proceeding, in which counsel for J.C. Penney participated and asked questions: Mr. Charboneau [counsel for the U.S. Trustee]: Let’s mark for identification as Exhibit 15 Jefferson 551 through and including 553. (Deposition Exhibit 15 marked for identification.) By Mr. Charboneau: Q. Are you looking at an order entered in the JC Penney case? A. Yes. Q. I want to turn your attention to Jefferson 552, and the second paragraph says: Ordered that Jackson Walker LLP will review its files periodically during the pendency of these Chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Jackson Walker LLP will use reasonable efforts to identify such further developments and will promptly me a

571-1 in the Miscellaneous Proceeding.

⁷⁸ Complaint at ¶ 12.

⁸⁰ Rule 60 Motion at ¶ 31.

⁸¹ Complaint at ¶ 13.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
	supplemental declaration as required by Fed Rule of Bankruptcy Procedure 2014(a). Do you see that? A. Yes. ⁸²
“After the Retention Order was entered, JW never supplemented the Cavanaugh Declaration. This failure goes beyond an innocent oversight. At least as of the Van Deelen Allegations (defined below) made on March 6, 2021, Cavanaugh consciously knew that his declarations might be considered false and even spent three hours on March 8, 2021, re-reading his declarations in prior cases: [screenshot of text message of Matthew Cavanaugh, 3/6/2021, 11:07 PM, taken from JW_00025810, produced in Miscellaneous Proceeding]”⁸³	Text message of Matthew Cavanaugh, 3/6/2021, 11:07 PM, JW_00025810, produced in Miscellaneous Proceeding.
“Apparently ignoring the purpose of disclosure and despite knowing about the Relationship, JW did not supplement its disclosures and instead filed its Second Interim and Final Fee Application for Allowance and Payment of Fees and Expenses as Co-Counsel to the Debtors for the Period from May 15, 2020 Through December 14, 2020 (the “Fee Application”) [ECF 2739] on March 10, 2021 (less than 12 hours after a hearing in another case that directly related to JW’s failure to disclose the Relationship). On April 5, 2021, JW certified the absence of objections to the Fee Application [ECF 2854]. Even in the face of the Van Deelen Allegations, Jones approved the Fee Application on April 8, 2021, approving JW’s fees and expenses incurred from the Petition Date through Confirmation, in the amount of \$1,101,482.21 without requiring further disclosure.”⁸⁴	“On JW’s theory, a law firm has no such disclosure obligations even when they have actual knowledge of the conflict—a theory JW put into practice in February, 2022, by which time they indisputably learned that EF and DJ were in the Relationship yet failed to amend any of their Rule 2014 statements in the Cases. Indeed, they have not to this day amended those disclosures, even though they concede the impropriety of the Relationship. ... [JW] did not inform its cocounsel, Kirkland & Ellis, and did not otherwise seek client consent. Nor did it amend any of its public disclosures in the cases.”⁸⁵

⁸² Miscellaneous Proceeding, Jefferson Dep. 223:17-224:11; *see also* Jefferson Exhibit 15 (copy of order in question).

⁸³ Complaint at ¶ 14.

⁸⁴ Complaint at ¶ 15.

⁸⁵ Expert Report of Professor Jonathan C. Lipson Regarding Certain Disclosure and Ethics Matters (emphasis

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
“On information and belief, the Relationship began as early as 2013, and Freeman and Jones co-owned a home beginning in 2017. On May 14, 2018, Freeman left her employment as a law clerk for Jones to become a partner at JW. Obviously, at the time Freeman joined JW, she was aware of the Relationship. Thus, JW had imputed knowledge of the Relationship beginning in May 2018. Despite this knowledge, no one informed JCP of the Relationship when it retained JW two years later.”⁸⁶	“Ms. Freeman is a former law clerk to Judge Jones and was a partner at Jackson Walker from May 14, 2018, until December 2022.”⁸⁷ Because Texas law imputes one attorney’s knowledge to all those in the firm, Jackson Walker was obligated to disclose what Ms. Freeman knew about her relationship with Judge Jones throughout her tenure—before March 2021, between March 2021 and March 2022, and between March 2022 and November 2022, regardless of when others at Jackson Walker knew definitively of the relationship.”⁸⁸
“On March 6, 2021, Cavanaugh received an email from Michael Van Deelen (“Van Deelen”), a creditor in the McDermott case, questioning the truthfulness of an anonymous letter he purportedly received the previous day claiming Freeman and Jones were in a romantic relationship (the “Van Deelen Allegations”). On March 8, 2021, Van Deelen informed the Court (Jones) of the Van Deelen Allegations by filing an addendum to a motion to recuse Jones (the “Recusal Motion”). The Recusal Motion had been pending for seven months and, until supplemented by the March 8 addendum, was based on allegations unrelated to the Relationship.”⁸⁹	“An intimate relationship between Judge Jones and Ms. Freeman was first alleged in March 2021 in an adversary proceeding in the case of <i>In re McDermott Int’l, Inc.</i>, No. 20-30336 (Bankr. S.D. Tex.), in which Jackson Walker was Debtors’ counsel. In the adversary proceeding, a pro se plaintiff, Michael Van Deelen, moved to recuse Judge Jones, almost a year before, on July 23, 2020. <i>Van Deelen v. Dickson</i> (<i>In re McDermott Int’l Inc.</i>), Adv. No. 20-3309, (Bankr. S.D. Tex.), ECF No. 4 (July 23, 2020) (“Van Deelen” or “adversary proceeding”). ... That recusal motion, as originally filed, did not raise the relationship between Judge Jones and Ms. Freeman as a basis for recusal but was instead based on allegations of “corruption.” See Van Deelen, ECF No. 4. In March 2021, Mr. Van Deelen filed an amended recusal motion and attached an

removed), filed at Dkt. No. 571-1 in the Miscellaneous Proceeding.

⁸⁶ Complaint at ¶ 16.

⁸⁷ Rule 60 Motion at ¶ 10.

⁸⁸ Rule 60 Motion at ¶ 79.

⁸⁹ Complaint at ¶ 17.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
	anonymous letter that he said he had received just days before accusing Judge Jones of “corruption.” <i>Van Deelen v. Dickson</i> (In re McDermott Int’l Inc.), No. 21-3369 (Bankr. S.D. Tex.), ECF No. 33 at 37–38 (Jan. 9, 2023) (Order on Appeal Affirming Dismissal of the Adversary Proceeding and Denial of Motion to Recuse). The letter alleged that Judge Jones “has had a romantic relationship” with Ms. Freeman. <i>Infra</i> ¶¶ 23 & 36.”⁹⁰
“At JW’s request, the Court sealed the addendum to the Recusal Motion, thus shielding the Van Deelen Allegations from the public and parties in the various bankruptcy cases, including JCP. The hearing on the Recusal Motion was set for March 10, 2021, and assigned to Judge Isgur (the “Recusal Hearing”). Judge Isgur denied the Recusal Motion, leaving the case pending before Jones where the Van Deelen Allegations would remain under seal. Thus began a series of actions by decision makers at JW that were designed to evade their duties of disclosure to their clients and the Court.”⁹¹	“The same day that Mr. Van Deelen filed this Addendum, Jackson Walker moved to file unnamed documents under seal, stating that it had received increasingly “antagonistic communications” from the pro se plaintiff that Jackson Walker alleged contained “defamatory statements.” <i>Van Deelen</i>, ECF No. 36 (Mar. 8, 2021). The clerk of court then sealed the documents that Jackson Walker filed, referred them to chambers for consideration, and maintained them under seal while the motion to seal was pending. <i>Van Deelen</i>, ECF No. 37 (Mar. 8, 2021). ... The next day, March 9, 2021, Judge Jones contacted Judge Isgur and asked Judge Isgur to reassign the recusal motion from Judge Jones to another judge; Judge Isgur entered an order that he would hear the motion to recuse. <i>Van Deelen</i>, ECF No. 40 (Mar. 9, 2021). Judge Isgur also ordered that “[t]he [anonymous letter] is sealed, pending the Court’s determination of whether there is credible, admissible evidence in support of the

⁹⁰ UST Motion at ¶ 17-20.

⁹¹ Complaint at ¶ 18.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
	allegations” <i>Id.</i> That document remains under seal.” ⁹²
“The Relationship remained under wraps until October 2023 when Van Deelen filed suit against Jones and others. This suit and the Van Deelen allegations ignited a firestorm among the media and legal community. That same week, the United States Court of Appeals for the Fifth Circuit (the “Fifth Circuit”) opened an investigation of Jones. The U.S. Trustee’s Office filed Motions for (1) Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) and Federal Rule of Bankruptcy Procedure 9024 Approving the Retention and Compensation Applications of Jackson Walker LLP, (2) Sanctions, and (3) Related Relief in multiple bankruptcy cases, including the JCP Case [ECF 1236, 1351] (the “Rule 60 Motions”), all of which were consolidated for discovery and pretrial matters in a Miscellaneous Proceeding (Misc. Proc. No. 23-00645), which is pending before Chief Bankruptcy Judge Eduardo Rodriguez (the “Fee Dispute”). The parties have conducted considerable discovery in the Fee Dispute, including depositions of at least 18 JW attorneys (and former attorneys). Finally, Judge Isgur made the Disciplinary Referral, which is pending before Judge Lee Rosenthal in the United States District Court for the Southern District of Texas.”⁹³	“On October 4, 2023, Mr. Van Deelen sued Judge Jones in the United States District Court for the Southern District of Texas for his conduct in the McDermott case.”⁹⁴ “Later on October 13, the Chief Judge of the Fifth Circuit filed the Ethics Complaint against Judge Jones, finding ‘probable cause to believe that misconduct by Judge Jones has occurred.’ Ethics Compl. p. 1. According to the Ethics Complaint, ‘Judge Jones is in an intimate relationship with Elizabeth Freeman. It appears that they have cohabited (living in the same house or home) since approximately 2017.’ <i>Id.</i>; <i>see also</i> Ex. 2.”⁹⁵ “Kevin Epstein, United States Trustee for Region 7 (“U. S. Trustee”), moves for an order (1) granting relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure vacating orders approving Jackson Walker LLP’s (“Jackson Walker”) applications for retention and for compensation and expenses, (2) sanctioning Jackson Walker by ordering the return of all fees and expenses previously paid to the firm, and (3) any further relief the Court deems appropriate.”⁹⁶
“Cavanaugh and other JW attorneys testified in depositions that they did not know about the Relationship until Freeman, after being confronted about the Van Deelen Allegations, admitted a past Relationship, but denied it was	“Similarly, Ms. Polnick’s testimony that she did not know of a continuing Relationship between [Ms. Freeman] and [former Judge Jones] is not credible. She frequently testified in deposition that text exchanges between

⁹² UST Motion at ¶¶ 21-25.

⁹³ Complaint at ¶ 19.

⁹⁴ UST Motion at ¶ 36.

⁹⁵ UST Motion at ¶ 41.

⁹⁶ UST Motion at p. 4.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
ongoing. However, there is contradictory evidence on this point, and the evidence demonstrates that at least one JW attorney (other than Freeman herself) knew that Jones and Freeman jointly owned a home where they lived together well before the Van Deelen Allegations surfaced.” ⁹⁷	herself and [Ms. Freeman] regarding the Relationship were merely “jokes” or “anecdotes” and did not, in fact, show that she knew the Relationship was ongoing: [screenshot of text messages omitted]. Yet, these contemporaneous text exchanges suggest that she did know of the Relationship and that it was ongoing.” ⁹⁸
“Cavanaugh testified in his deposition that he discussed the veracity of the Van Deelen Allegations with Freeman on March 10, 2021, “following the recusal hearing” despite JW’s pleading that admitted JW attorneys discussed the Van Deelen Allegations with Freeman on March 6, 2021. ¹¹ Cavanaugh, among other JW attorneys, failed to produce any text messages from this time period, claiming there were none. However, JW bankruptcy attorney Veronica Polnick (“Polnick”) failed to delete relevant text messages from an old iPad. Even though Polnick turned the iPad over to JW months earlier, JW withheld the data until the eve of Polnick’s deposition.” ⁹⁹	“Q. Did you ever have any conversations with Elizabeth Freeman -- I think you testified earlier that she didn't come in on that Monday, but did you ever have any conversations with her regarding the veracity of the allegations? A. Yes. Q. When? A. Uh, following the recusal hearing. Q. Okay. So that the recusal hearing took place on the 9th or 10th. A. Correct. Q. It would have been following that, but how soon after that? A. Uh, that same day.”¹⁰⁰
“The text messages revealed that Cavanaugh and Polnick discussed the Van Deelen Allegations with Freeman on March 6, 2021, almost immediately after receiving them. The messages further show that JW knew the significance of the Relationship, which had the potential to wreak havoc on their lucrative bankruptcy practice. [screenshot of text messages of Matthew Cavanaugh and Veronica Polnick on 3/7/2021 and 3/8/2021, taken from JW 00025799 and	Text messages of Matthew Cavanaugh and Veronica Polnick on 3/7/2021 and 3/8/2021, JW_00025799 and JW_00025806-07, produced in Miscellaneous Proceeding.

⁹⁷ Complaint at ¶ 20.

⁹⁸ *Supplemental Expert Report of Professional Jonathan C. Lipson Regarding Certain Disclosure and Ethics Matters* at p. 4, Misc. Proc. No. 23-00645, Dkt. No. 599-4.

⁹⁹ Complaint at ¶ 21.

¹⁰⁰ Miscellaneous Proceeding, Cavanaugh Dep. 138:19-139:7.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
JW_00025806-07 produced in Miscellaneous Proceeding]” ¹⁰¹	
“Importantly, the text messages also indicate that several senior JW partners, including its general counsel, knew about the Relationship at least as early March 7, 2021, and worked to circle the wagons to protect JW: [screenshot of text messages of Matthew Cavanaugh and Veronica Polnick on 3/7/2021, taken from JW_00025798-99 produced in Miscellaneous Proceeding]”¹⁰²	Text messages of Matthew Cavanaugh and Veronica Polnick on 3/7/2021, JW_00025789-99, produced in Miscellaneous Proceeding.
“Moreover, it appears that Polnick, a close friend of Freeman and Jones (and Jones’ former law clerk) knew about the Relationship “before”: [screenshot of text messages of Matthew Cavanaugh and Veronica Polnick on 3/9/2021, taken from JW_00025818 produced in Miscellaneous Proceeding]”¹⁰³	Text messages of Matthew Cavanaugh and Veronica Polnick on 3/9/2021, JW_00025818, produced in Miscellaneous Proceeding.
“Polnick also testified she knew Freeman and Jones owned a home together and that her knowledge pre-dated her JW employment.”¹⁰⁴	“Q. Okay. Now, did you ever learn anything about a joint tenancy or anything? A: Yes. Q: When did you learn that? A: Somewhere between 2017 and '18. Q: And what was the occasion for you learning that? A: I looked up Liz Freeman in the property records and found that agreement.”¹⁰⁵
“When confronted with the Van Deelen Allegations in connection with a motion to recuse Jones, Cavanaugh immediately considered the truthfulness of prior disclosures. JW, on the other hand, also	Text message of Matthew Cavanaugh, 3/6/2021, 11:07 PM, JW_00025810, produced in Miscellaneous Proceeding.

¹⁰¹ Complaint at ¶ 22.

¹⁰² Complaint at ¶ 23.

¹⁰³ Complaint at ¶ 24.

¹⁰⁴ Complaint at ¶ 25.

¹⁰⁵ Miscellaneous Proceeding, Polnick Dep. 353:6-14.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
worried whether Jones would be permitted to remain their go-to judge or if he would be disqualified under 28 U.S.C. § 455.” ¹⁰⁶	
“Despite undisputable knowledge and advice from its ethics attorney, JW never disclosed the relationship. In failing to do so, as Judge Isgur observed, JW “defiled the very temple of justice” it had profited from inhabiting. JW consciously chose not to disclose the Relationship . . . ever.” ¹⁰⁷	“Notwithstanding Jackson Walker’s admitted knowledge of the secret relationship between its partner, Ms. Freeman, and Judge Jones no later than March 2021, see Prelim. Resp. ¶ 13, Jackson Walker never publicly disclosed that relationship in any pending, closed, or subsequently filed case during the following 20 months while Ms. Freeman was a partner—or thereafter when she was Jackson Walker’s contract attorney or recommended conflicts/co-counsel.” ¹⁰⁸
“Instead, JW took inadequate actions in an attempt to address the issue. It “removed” Freeman from cases before Jones. It allegedly took measures to prevent Freeman from profiting off cases before Jones, even though the evidence will show that JW still paid Freeman very handsomely for the originations of the cases in front of Jones. It asked Jones to make disclosure, which he refused to do. And, ultimately, it fired Freeman, while continuing to work with her on a contract basis. These half-hearted efforts did nothing to ameliorate its ethical duties. Simply put, the revenue from appearing in front of Jones outweighed JW’s view of its professional obligations.” ¹⁰⁹	“JW again informed Ms. Freeman that she could not work on any cases pending in former Judge Jones’s court, and JW removed her share of partnership profits from cases in front of former Judge Jones which resulted in a retroactive reduction in Ms. Freeman’s compensation of approximately \$46,373 for 2021 and \$32,595 through November 2022.” ¹¹⁰ As former Judge Jones and Ms. Freeman continued refusing to publicly acknowledge their relationship, JW coordinated Ms. Freeman’s exit from the firm. Ms. Freeman executed the Withdrawal Agreement on November 29, 2022. Ms. Freeman’s withdrawal from JW was effective as of December 1, 2022, at which time Ms. Freeman started her own firm: The Law Office of Liz Freeman PLLC.” ¹¹¹

¹⁰⁶ Complaint at ¶ 26.

¹⁰⁷ Complaint at ¶ 27.

¹⁰⁸ Rule 60 Motion at ¶ 31.

¹⁰⁹ Complaint at ¶ 28.

¹¹⁰ Rule 60 Response at ¶ 48.

¹¹¹ Rule 60 Response at ¶ 58.

Factual Allegations asserted in this Complaint	Factual Allegations asserted in the Miscellaneous Proceeding
	“Jackson Walker also retained and billed for Ms. Freeman as a contract attorney after she resigned from Jackson Walker.” ¹¹²
“JW should have informed JCP about the Relationship. As Judge Isgur has observed, this clearly violated JW’s duties to JCP.” ¹¹³	“Jackson Walker violated these obligations by not disclosing at any time Ms. Freeman’s relationship with Judge Jones and by continuing to seek appointment, to perform services, and to be paid in cases before him.” ¹¹⁴

44. As this chart illustrates, the Complaint relies on the “same nucleus of operative facts” as those alleged in the Miscellaneous Proceeding. Indeed, the various documents and text messages cited by the Wind Down Debtors in the Complaint were obtained by the Wind Down Debtors in discovery in the Miscellaneous Proceeding, which, as shown in the above chart, entirely encompasses the facts alleged in the Complaint. The “factual predicate” of the claims asserted in the Complaint is identical to those asserted in the Miscellaneous Proceeding: they arose out of the same nucleus of operative facts and share a common factual predicate—Jackson Walker’s alleged actions or inactions regarding Ms. Freeman’s and former Judge Jones’s relationship.

45. Further, the Rule 60 Motion preceded the filing of this Adversary Proceeding by over a year. This Court referred a portion of the determination of the Rule 60 Motion—namely, a decision on whether to vacate Jackson Walker’s final fee application—to Chief Judge Rodriguez, who is presiding over a multi-week trial beginning May 12, 2025. The Wind Down Debtors have participated throughout the Miscellaneous Proceeding, and will undoubtedly participate fully in that trial, and in any subsequent proceedings related to the Rule 60 Motion. To allow both the

¹¹² Rule 60 Motion at ¶ 115.

¹¹³ Complaint at ¶ 29.

¹¹⁴ Rule 60 Motion at ¶ 15.

Rule 60 Motion and the Complaint to proceed would violate the principles of judicial economy recognized by the rule against claims splitting. The Complaint therefore creates a “vexatious concurrent or duplicative litigation”¹¹⁵ and should be dismissed.

B. The Wind Down Debtors’ Claim for “Disgorgement for Failure to Make Bankruptcy Disclosures” Should be Dismissed for Failure to State a Claim.

(1) Disgorgement is a Remedy, Not a Claim

46. Count 1 for “fee disgorgement” should be dismissed for failure to state a claim. Fee disgorgement is a remedy, not a claim.¹¹⁶ Indeed, Jackson Walker has been unable to locate a single case within the Fifth Circuit that has authorized a free-standing fee disgorgement claim. On the contrary, courts have authorized fee disgorgement as a remedy to breach of fiduciary duty claims.¹¹⁷

(2) Bankruptcy Rule 2014 Does Not Apply

47. Notwithstanding the forgoing, *even if* Count 1 were to be construed as a claim for “failure to make bankruptcy disclosures” rather than as a claim for “fee disgorgement”, Jackson Walker had no duty of disclosure under Federal Rule of Bankruptcy Procedure 2014 (“Rule 2014”). Rule 2014 sets forth the procedural mechanism through which courts are able to assess whether a firm has or represents a disqualifying or other adverse interest under sections 327(a),

¹¹⁵ *Katz*, 655 F.3d at 1218.

¹¹⁶ See e.g., *Liu v. Sec. & Exch. Comm’n*, 591 U.S. 71, 92, 140 S. Ct. 1936, 1950, 207 L. Ed. 2d 401 (2020) (noting that disgorgement is an equitable remedy); *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978) (holding that disgorgement is restitution, remedial but not punitive); *U.S. Commodity Futures Trading Comm’n v. Tayeh*, 848 F. App’x 827, 828 (11th Cir. 2021) (“Disgorgement is an equitable remedy intended to prevent unjust enrichment from ill-gotten gains and must not be used punitively.”); *United States Sec. & Exch. Comm’n v. Camarco*, No. 19-1486, 2021 WL 5985058, at 13 (10th Cir. Dec. 16, 2021) (“[I]n *Liu*, the Supreme Court observed that courts . . . have recognized that disgorgement, a form of restitution, is an equitable remedy.”).

¹¹⁷ See e.g., *In re Food Mgmt. Grp., LLC*, 380 B.R. 677, 713 (Bankr. S.D.N.Y. 2008) (granting disgorgement of fees to address a breach of fiduciary duty and holding “Bankruptcy law also gives a court wide discretion in fixing a remedy for breach of fiduciary duties by a bankruptcy professional”) (internal citations omitted).

328(c), or 1103(b) of the Bankruptcy Code, as applicable.¹¹⁸ Rule 2014 defines the universe of potential adverse interests, requiring disclosure of connections with only (a) the debtor, (b) creditors, (c) any other party in interest, (d) the attorneys and accountants of the debtor, creditors, or parties in interest, and (e) the United States trustee and its employees.¹¹⁹ The rule’s language is limiting,¹²⁰ persons not enumerated in the rule’s text are not within its scope.¹²¹

48. The language of Rule 2014 is clear and unambiguous: a professional must disclose, to the best of the applicant’s knowledge, known connections between the professional and parties in interest, attorneys and accountants in the case, the United States trustee, and any person employed in the office of the United States trustee—but no one else. Thus, because the plain language of Rule 2014 does not mandate disclosure of connections to judges and requires disclosure only of known connections, Jackson Walker did not violate Rule 2014 in these chapter 11 cases and Count 1 should be dismissed.

49. If the text of Rule 2014 is plain and unambiguous (which it is), this Court is required to “enforce the [rule’s] plain meaning, unless absurd.”¹²² The purposeful omission of judges from Rule 2014’s scope is unremarkable and not absurd. Judges are charged with their own obligations—whether through statutes, rules, or canons of conduct—to take action when there may be a reason for the judge to recuse or disqualify himself. The purpose of Rule 2014—to provide the court with information sufficient to determine whether to approve the professional’s retention

¹¹⁸ See, e.g., *Kravit, Gass & Weber, S.C. v. Michel (In re Crivello)*, 134 F.3d 831, 836 (7th Cir. 1998); COLLIER ON BANKRUPTCY ¶ 8.03[1][a] (16th ed.) (“Section 327 is implemented by [Bankruptcy Rule 2014], which states the requirements of the application to be employed.”).

¹¹⁹ FED. R. BANKR. P. 2014(a).

¹²⁰ See 11 U.S.C. § 102 (providing that, under the Bankruptcy Code, the terms “includes” and “including” are not limiting).

¹²¹ *In re Condor Ins. Ltd.*, 601 F.3d 319, 324 (5th Cir. 2010) (“Generally where there are enumerated exceptions ‘additional exceptions are not to be implied, in the absence of a contrary legislative intent.’”).

¹²² *Seago*, 91 F.4th at 390 (quoting *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 486 (5th Cir. 2013)).

application—is satisfied through the plain reading of Rule 2014 because of the independent duties of the presiding judge. Indeed, disclosure under Rule 2014 “allows the *court* to decide, in an informed manner, whether the retention should be approved. . . . [The *court*] should not have to ‘rummage through files or conduct independent factfinding investigations’ to determine if the professional is disqualified.”¹²³ In the case of an applicant having a connection to a presiding judge, the judge would already be informed of such connection and would not need to investigate but could—and in fact is obligated to¹²⁴—simply rely upon his or her own independent knowledge of the connection.

50. Thus, when viewed with the separate obligations imposed upon a presiding judge to recuse or disqualify, the omission of a judge in Rule 2014 makes sense and is not absurd: a professional need not disclose a connection to the presiding judge because the judge and mediator each have an independent obligation to analyze his own connections and either recuse or disqualify, if required, on his own. As such, Jackson Walker had no obligation, as a matter of law, to disclose any connections with Judge Jones under Rule 2014 and Count 1 must be dismissed.

(3) Even if Rule 2014 Applies (Which it Does Not), the Confirmation Order Terminated Any Ongoing Duty to Supplement Post-Confirmation

51. Under the Bankruptcy Code and Rules, the “continuing duty to disclose matters which may impact on conflicts or disinterestedness arises from the disclosure requirements of § 327,” thus, disclosure is required only during the period of employment under section 327.¹²⁵

¹²³ See *In re Granite Partners, L.P.*, 219 B.R. 22, 35 (Bankr. S.D.N.Y. 1998) (emphasis added).

¹²⁴ See 28 U.S.C. § 455(c) (“A judge should inform himself about her personal and fiduciary financial interests.”).

¹²⁵ *In re Keller Fin. Servs. of Fla., Inc.*, 243 B.R. 806, 814–15 (Bankr. M.D. Fla. 1999) (finding that, “in this case, the representation was not undertaken while Williams Reed was the attorney for the debtor in possession, [therefore], disclosure was not required under the circumstances.”).

52. Here, Jackson Walker’s employment as an estate professional under section 327 terminated on December 14, 2020, the date that the Confirmation Order was entered. Indeed, the Plan and Confirmation Order expressly note the termination of estate retention:

Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Wind-Down Debtors or the Plan Administrator, as applicable, may employ and pay any Professional in the ordinary course of business without further notice to or action, order, or approval of the Court.¹²⁶

53. Likewise, the Plan authorized the Wind-Down Debtors, through the Plan Administrator, to retain the services of attorneys on a post-confirmation basis, to be paid “in the ordinary course of business” and “not subject to approval of the Bankruptcy Court.”¹²⁷ Taken together, these provisions make clear that Jackson Walker’s obligation to make disclosures under Rule 2014—to the extent such obligation ever existed (which Jackson Walker disputes) ceased on December 16, 2020, *months before even allegations of a prior relationship were first raised*.

54. Count 1 should be dismissed.

C. The Wind Down Debtors’ Breach of Fiduciary Duty Claim is Barred by the Anti-Fracturing Rule.

55. Under applicable Texas law, the anti-fracturing rule prevents the Wind Down Debtors from converting their professional negligence claim into a claim for breach of fiduciary duty.¹²⁸ “Texas courts do not allow . . . plaintiffs to ‘recast’ fundamentally negligence-based

¹²⁶ *Order Approving the Disclosure Statement for, and Confirming the Amended Joint Chapter 11 Plan of Reorganization of J. C. Penney Company, Inc. and its Debtor Affiliates*, Dkt. No. 2169 in Case No. 20-20182 (emphasis added); see Plan Art. II.C.4.

¹²⁷ *Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and its Debtor Affiliates*, Dkt. No. 2162 in Case No. 20-20182.

¹²⁸ *Forshee v. Moulton*, 694 S.W.3d 803, 809 (Tex. App.—Houston [14th Dist.] 2024, no pet.).

claims into other causes of action, such as fraud, breach of contract, or breach of fiduciary duty.”¹²⁹ “The gravamen of a professional negligence complaint focuses on the quality or adequacy of the attorney’s representation.”¹³⁰ Further, “merely characterizing conduct as a ‘misrepresentation’ or ‘conflict of interest’ does not transform a professional negligence claim into a fraud or breach of fiduciary duty claim.”¹³¹

56. At its core, the Wind Down Debtors’ Complaint sounds in negligence. The Wind Down Debtors assert that “JW had an obligation to disclose the Relationship to JCP” and “[f]ailure to do so means JW was not ‘disinterested’ and was not qualified to represent JCP.”¹³² This is a direct attack on Jackson Walker’s “quality or adequacy” of its representation¹³³—a claim based on a standard duty of care, not a claim for fiduciary duty. Indeed, the “gravamen” of the Wind Down Debtors’ Complaint is that Jackson Walker knew it was unqualified “but proceeded anyway,”¹³⁴ and failed to disclose its disqualification to the Wind Down Debtors. This claim does not involve allegations of “a fraudulent scheme” or that Jackson Walker’s actions were “intended to harm” the Wind Down Debtors.¹³⁵ Rather, the claims, at their core, are claims of professional negligence.

57. Indeed, the Complaint is no different than the claims asserted in *Forshee v. Moulton*, wherein the Texas Court of Appeals held that the anti-fracturing rule barred breach of fiduciary duty claims where the plaintiff alleged that her attorney “breached her fiduciary duty. . .

¹²⁹ *Id.* (citations omitted).

¹³⁰ *Id.*

¹³¹ *Id.* (citations omitted).

¹³² Complaint at ¶ 36.

¹³³ *Forshee*, 694 S.W. at 809.

¹³⁴ *Pitts v. Rivas*, -- S.W.3d --, Case No. 23-0427, 2025 WL 568114, at *6 (Tex. Feb. 21, 2025).

¹³⁵ *Id.*

by undertaking a representation fraught with conflicts of interest.”¹³⁶ The *Forshee* court expressly held: “[a]s to Forshee’s allegation that Moulton represented her without disclosing conflicts of interest, we disagree that Forshee’s factual contentions will support a breach of fiduciary duty claim independent of her negligence claim.”¹³⁷

58. Where, as here, the Wind Down Debtors have asserted that Jackson Walker owed a duty to them to disclose a “conflict of interest” arising from one of Jackson Walker’s partner’s relationship with the presiding judge, and that Jackson Walker breached that duty, the claim likewise sounds in negligence, not breach of fiduciary duty. The Wind Down Debtors do not allege any *facts* showing that Jackson Walker obtained any improper benefit from representing them, or that Jackson Walker placed its own pecuniary interest over the Wind Down Debtors’ interest. Rather, the allegations involve only “the question of whether [Jackson Walker] failed to exercise the degree of care, skill, or diligence in performing [its] duty to inform the plaintiffs about issues that court arise” due to the alleged conflict of interest.¹³⁸

59. At bottom, the Complaint states allegations of legal malpractice—that Jackson Walker did not make disclosures to its clients that a law firm of ordinary skill and knowledge would have made. The anti-fracturing rule thus requires that these allegations “be litigated as one for professional negligence, and the [Wind Down Debtors] may not re-label the allegations under a different claim to obtain a litigation advantage.”¹³⁹

60. For these reasons, Count 2 must be dismissed because it is barred by the anti-fracturing rule.

¹³⁶ *Forshee*, 694 S.W. at 810.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Pitts*, -- S.W.3d --, 2025 WL 568114, at *3.

D. The Wind Down Debtors' Negligence Claim Should be Dismissed For Failure to Plead Causation and Damages.

61. To state a claim for negligence, the Wind Down Debtors must prove that: (1) Jackson Walker owed a duty to the Wind Down Debtors; (2) Jackson Walker breached that duty; (3) Jackson Walker's breach proximately caused the Wind Down Debtors' injuries; and (4) compensable damages occurred.¹⁴⁰ Further, because the Wind Down Debtors' negligence claim against Jackson Walker stems from Jackson Walker's representation of the Debtors in their bankruptcy cases, the Wind Down Debtors must further prove that, "but for" Jackson Walker's alleged breach of duty, the Wind Down Debtors "would have made a greater recovery in the underlying case."¹⁴¹

62. Although the Complaint (when construed in the light most favorable to the Wind Down Debtors) alleges that Jackson Walker had a duty to disclose the existence of the relationship between former Judge Jones and Ms. Freeman and that Jackson Walker breached that duty by failing to make any disclosure, the Complaint is wholly devoid of any assertion of proximate causation or damages. Indeed, the entirety of Count 3 (other than an assertion of law) reads:¹⁴²

51. JW failed to put policies and procedures in place to prevent the failure to make proper disclosures. Even when JW admitted that it heard allegations about the Relationship, it failed to exercise normal care to investigate the facts. As only one example, JW waited months to interview Freeman. JW did not even ask Polnick or other attorneys with knowledge of the Relationship what they knew about it. As a result, JCP was never told of the Relationship by JW.

63. There is no allegation of damages or causation, rendering Count 3 for negligence insufficient to state a claim. Further, the Complaint does not contain a single allegation that could

¹⁴⁰ See *Alvarado v. Love & Huston, G.P.*, Case No. 4:19-cv-2148, 2021 WL 1428477, at *6 (S.D. Tex. Apr. 15, 2021).

¹⁴¹ *Id.*

¹⁴² Complaint at ¶ 51.

support an inference that the chapter 11 cases would have been handled differently but for Jackson Walker's alleged negligence and breach of duty. The Complaint contains only conclusory allegations that "JCP paid JW's fees without proper knowledge" of the relationship between Ms. Freeman and former Judge Jones (also unknown to Jackson Walker at the time) and that "the terms of Retention Order were clearly violated,"¹⁴³ but the Complaint entirely fails to allege any link between these costs and the alleged professional negligence. The Wind Down Debtors did not, for example, allege the cases would have been handled differently or that a different chapter 11 plan would have been approved but for Jackson Walker's alleged violation of the Retention Order. Nor did the Wind Down Debtors allege that those costs would somehow not have been incurred but-for Jackson Walker's alleged professional negligence and breach of duty. Therefore, the Wind Down Debtors failed to establish damages causation as required to plead professional negligence under Texas law.¹⁴⁴

64. The Wind Down Debtors also failed to plead the existence of damages. There are no allegations in the Complaint that can support any inferences that the Wind Down Debtors suffered any damages whatsoever. Indeed, the Wind Down Debtors' negligence claim is a disguised motion for sanctions, which the U.S. Trustee already lodged (and the Wind Down Debtors joined) in his Rule 60 Motion, which is currently pending in this Court, with Chief Judge Rodriguez presiding over certain referred matters in the Miscellaneous Proceeding. The Complaint alleges a potential "remedy" if the Wind Down Debtors prevail,¹⁴⁵ but this does not

¹⁴³ See Complaint at ¶¶ 38, 39.

¹⁴⁴ See *Nabors v. McColl*, No. 05-08-01491-CV, 2010 WL 255968, at *1 (Tex. App. Jan. 25, 2010) ("Plaintiff seeking to recover in negligence must prove that the defendant's breach of a legal duty proximately caused his damages."); *Rangel v. Lapin*, 177 S.W.3d at 24 (holding that the plaintiff failed to state a claim because it did not allege that it would recover differently in a suit against a third party as a result of the defendant's negligence).

¹⁴⁵ See Complaint ¶ 52 ("[d]isgorgement is a proper remedy for an attorney's violation of disclosure obligations under the Bankruptcy Code and Rules, even if the failure to disclose was due to negligence or inadvertence.").

describe damages pursuant to a negligence claim as a matter of law. “The general measure of damages in a legal-malpractice case is the difference between the amount the plaintiff probably would have recovered in the absence of malpractice, and the amount recovered.”¹⁴⁶ Nowhere in the Complaint do the Wind Down Debtors allege that their chapter 11 cases would have ended differently but for Jackson Walker’s alleged negligence. And they cannot, as the Wind Down Debtors have already judicially admitted that there was not a single substantive result in the underlying bankruptcy cases that was in any way affected by the alleged undisclosed relationship.¹⁴⁷ The Wind Down Debtors’ negligence claim should be dismissed.

CONCLUSION

65. Based on the forgoing, the Wind Down Debtors’ claims should be dismissed pursuant to Federal Rule 12(b), as incorporated by Bankruptcy Rule 7012. Jackson Walker further requests that the Court grant Jackson Walker such other and further relief to which it may be entitled, either at law or in equity.

¹⁴⁶ *Chamblee Ryan, P.C. v. JBS Carriers, Inc.*, 691 S.W.3d 797, 810 (Tex. App. 2024), review denied (Jan. 31, 2025).

¹⁴⁷ See *Plaintiff’s Response and Objection to Motion to Intervene* [Adv. Dkt. No. 8 at ¶ 4] (“Plaintiff does not claim that any substantive results in the Bankruptcy Case were affected by the undisclosed relationship.”).

Dated: April 10, 2025.
Houston, Texas.

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: /s/ Jason L. Boland

Jason L. Boland (SBT 24040542)
William Greendyke (SBT 08390450)
Julie Harrison (SBT 24092434)
Maria Mokrzycka (SBT 24119994)
1550 Lamar Street, Suite 2000
Houston, Texas 77010-3095
Telephone: (713) 651-5151
jason.boland@nortonrosefulbright.com
william.greendyke@nortonrosefulbright.com
julie.harrison@nortonrosefulbright.com
maria.mokrzycka@nortonrosefulbright.com

Paul Trahan (SBT 24003075)
Emily Wolf (SBT 24106595)
98 San Jacinto Blvd., Suite 1100
Austin, Texas 78701
Telephone: (512) 474-5201
Email: paul.trahan@nortonrosefulbright.com
Email: emily.wolf@nortonrosefulbright.com

-and-

RUSTY HARDIN & ASSOCIATES, LLP

Russell Hardin, Jr. (SBT 08972800)
Leah M. Graham (SBT 24073454)
Jennifer E. Brevorka (SBT 24082727)
Emily Smith (SBT 24083876)
5 Houston Center
1401 McKinney, Suite 2250
Houston, Texas 77010
Telephone: (713) 652-9000
Email: rhardin@rustyhardin.com
Email: lgraham@rustyhardin.com
Email: jrbrevorka@rustyhardin.com
Email: esmith@rustyhardin.com

Counsel for Jackson Walker LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the CM/ECF system to all parties registered to receive such service.

/s/ Jason L. Boland

Jason L. Boland

Elizabeth Freeman - Confidential

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AUDIO TRANSCRIPTION
CONFIDENTIAL INTERVIEW OF
ELIZABETH FREEMAN

Elizabeth Freeman - Confidential

2

1 MR. LAYNG: Let me introduce myself.
2 I'm Pat Layng. I work out of Chicago. I've been
3 asked basically to do part of the investigation
4 surrounding the case. That's why I'm here is really
5 to piece together what happened and we're really just
6 dealing with what happened. What goes from there is
7 not going to be my decision it will be the UST in --
8 in this region's decision.

9 I do very much appreciate you being
10 here. Just for the record, we have Liz Freeman, Tom
11 Kirkendall, Pat Layng, Millie Sall, and Nan Eitel here
12 and we're recording. I just ask that you be as, you
13 know, accurate as you can be and as truthfully as you
14 can be. And if there is something that we ask that
15 you feel like you can -- can't answer accurately or
16 truthfully, I prefer you just don't answer it then.
17 That -- that's the best way to do it.

18 A Okay.

19 BY MR LAYNG:

20 Q I would ask you to preserve any documents
21 you have having to do with your relationship with
22 Judge Jones and your tenure at Jackson Walker and --
23 and beyond with your law offices. And -- and I will
24 just say no one gets any pleasure asking these
25 questions or -- or going through this, but it is the

Elizabeth Freeman - Confidential

1 nature of the inquiry that we do need to ask about the³
2 relationship, and we are going to try to be as
3 thorough as we can.

4 A Okay.

5 Q So you may get a little tired of our
6 questions, but I think that's necessary so we can
7 figure out exactly what happened.

8 A Okay.

9 Q So I'll start with your background, and I'll
10 start real -- real -- real basic. Where were you
11 born?

12 A Las Cruces, New Mexico.

13 Q Okay. And did you grow up there?

14 A No.

15 Q Where did you grow up?

16 A I moved every year or two or three growing
17 up.

18 Q In what part of the country?

19 A Oklahoma, Nebraska, Missouri, California,
20 New Mexico, Pennsylvania.

21 Q Why all the moves?

22 A Corporate nomads.

23 Q Corporate nomads?

24 A Uh-huh.

25 Q Your -- your -- your father? Your mother?

Elizabeth Freeman - Confidential

4

1 Both?

2 A My father.

3 Q Okay. And what -- can you give me your
4 parents names?

5 A April and Burton Freeman.

6 Q Burton, B-U-R-T-O-N?

7 A Yes.

8 Q And what did he -- what's he do for a living
9 or did for a living?

10 A He was an engineer.

11 Q Okay. And so let's move to your high
12 school. Did you go to several high schools or one?

13 A I went to three high schools.

14 Q Three high school, okay. And where were
15 they? Just --

16 A William Howard Taft in Tarzana, California;
17 Fremont High School in Fremont, Nebraska; North
18 (inaudible) High School in Kansas City, Missouri.

19 Q Is that where you graduated from?

20 A Yes.

21 Q Okay. Wow, you weren't kidding.

22 A Nope.

23 Q That's a lot of movement. How about
24 college?

25 A University of Missouri.

Elizabeth Freeman - Confidential

5

1 Q Okay. In Columbia?

2 A Yes.

3 Q All right. You graduated from there?

4 A Yes.

5 Q What degree?

6 A Political Science.

7 Q All right. And did you immediately go to
8 law school or did you work between?

9 A I worked for six months teaching English as
10 a second language in Oklahoma.

11 Q All right. Maybe that wasn't what you
12 wanted to do for your career so you went to law
13 school?

14 A Yeah. Well, no. I knew I was going to go
15 to law school.

16 Q Okay.

17 A I started at Baylor in the spring.

18 Q Okay. Spring of what year?

19 A Ninety-five.

20 Q So that's kind of like interesting because a
21 lot of people start in the fall. So you -- it was mid
22 -- mid-year starting?

23 A Baylor has small classes and -- very small
24 classes like 85, 90, 100. And they start in fall and
25 spring.

Elizabeth Freeman - Confidential

6

1 Q Oh.

2 A Because they're on a quarter system.

3 Q And did you graduate from Baylor?

4 A I did.

5 Q All right. So when did you graduate?

6 A 1997.

7 Q After law school, where did you work?

8 A First -- first was clerking for Wes Steen.
9 He was a bankruptcy judge in Houston. I worked with
10 him for three years.

11 Q As -- as a law clerk?

12 A Yes.

13 Q Judicial law clerk?

14 A Yes.

15 Q Oh, okay. So that's a good job, right? A
16 pretty good job?

17 A It was.

18 Q All right. And that's here you said
19 Houston? Where did you (inaudible) say?

20 A Yes.

21 Q All right. So that was from what year to
22 what year?

23 A '97 to 2000.

24 Q And I guess you learned a lot about
25 bankruptcy at that time?

Elizabeth Freeman - Confidential

7

1 A I'd like to think so.

2 Q Sure. Were you interested in bankruptcy in
3 law school?

4 A No.

5 Q Okay. So that was just kind of
6 happenstance? You applied and -- and got that job
7 or --

8 A No. I did an internship. I took a
9 bankruptcy class and loved it. And then I did an
10 internship in the Spring of '96 with Bill Greendyke.

11 Q Oh, okay.

12 A And decided that that's what I wanted to do,
13 so that's when I started looking for bankruptcy
14 clerkships.

15 Q To get a clerkship is hard. Did you do well
16 in law school?

17 A I did well. Well -- certainly well enough.

18 Q Did you graduate with honors or --

19 A No.

20 Q Okay. But well in the bankruptcy class you
21 took?

22 A Yes.

23 Q Okay. So after the clerkship with, was it
24 Judge Steen; did you say?

25 A Steen, yes.

Elizabeth Freeman - Confidential

8

1 Q Yeah. What -- what did you do?

2 A I went to work as an associate at what
3 became Locke Lord.

4 Q Locke Lord?

5 A Uh-huh.

6 Q All right. What was it then?

7 A Ladell, Sapp, Sibley, Hill & Laboome.

8 Q Okay. Locke Lord's a lot easier. And what
9 -- what city were you in?

10 A Houston.

11 Q And -- and what -- what was your job there?
12 What did you do there?

13 A I was a bankruptcy associate.

14 Q Bankruptcy associate. Okay. And what years
15 were you there?

16 A From 2000 until I believe 2009.

17 Q And were you an associate the entire time?

18 A I was.

19 Q And did you work on, mainly what, Chapter
20 11's?

21 A A wide variety of things. I worked in
22 bankruptcy. I worked in corporate. I worked in
23 litigation. Pretty much went where work was. There
24 was a time period where there wasn't a lot of
25 bankruptcy going on in Houston --

Elizabeth Freeman - Confidential

9

1 Q Right.

2 A -- and so I found myself doing corporate
3 securities, real estate, mass tort litigation, just --

4 Q Okay.

5 A -- whatever was out there, I did.

6 Q Were you in a particular group there in that
7 firm?

8 A The bankruptcy group, officially. But there
9 were not fine lines between the sections.

10 Q And after Locke Lord, did you -- did you
11 leave Locke Lord?

12 A I did. I went to Porter Hedges.

13 Q Okay. And why did you leave Locke Lord to
14 go to Porter Hedges?

15 A I -- I was not thrilled with the merger
16 mania and having a small firm become a giant corporate
17 monster.

18 Q Okay. So the firm that you started with
19 changed very much?

20 A Yes.

21 Q All right. Is Porter Hedges a small firm?

22 A Yes.

23 Q And where is it located?

24 A It's in Houston.

25 Q Houston? Is it -- is it exclusively a

Elizabeth Freeman - Confidential

10

1 Houston firm or --

2 A It -- I think there's a very small Oklahoma
3 City office, but it was Houston when I was there.

4 Q So you started with Porter Hedges in 2009;
5 is that right?

6 A I believe it was 2009.

7 Q Did you start as an associate as well or a
8 partner?

9 A No, I started as a partner.

10 Q Okay. Was it -- what kind of partner?

11 A Non-equity.

12 Q Non-equity?

13 A Yeah.

14 Q Okay. How many tiers were there? Do you
15 know?

16 A Two.

17 Q Two. So it was non-equity. And what --
18 what department were you in?

19 A Bankruptcy.

20 Q Bankruptcy. Okay. And how long did you
21 work there?

22 A A little over two years.

23 Q And then what?

24 A I went to clerk with Jones.

25 Q I'm going to ask you, at some point did you

Elizabeth Freeman - Confidential

11

1 -- and this is new to me. It's not available where
2 I'm from. Board certification bankruptcy?

3 A Yes.

4 Q Tell me about that. Are you -- are you
5 board certified in bankruptcy?

6 A Yes.

7 Q And how does that come about?

8 A You take an exam.

9 Q And when did you do that? Generally, I
10 won't hold you to it.

11 A Mid 2000s.

12 Q Okay.

13 A I don't remember.

14 Q Okay. And what -- what's the point of doing
15 that?

16 A There were very few women in the
17 restructuring practice and I am a small woman who at
18 least in the past looked a lot younger than I was, and
19 I thought I was pretty smart and fairly good and I
20 wanted some certification to help me in my career so
21 that I would be taken more seriously.

22 Q And what kind -- does it just test you on
23 your bankruptcy knowledge?

24 A Yes.

25 Q Okay. Are there any --

Elizabeth Freeman - Confidential

12

1 MR. KIRKENDALL: It's actually good
2 advertising.

3 MR. LAYNG: Right.

4 MR. KIRKENDALL: Is what it is if you
5 get right down to it.

6 MR. LAYNG: I get it. I get it.

7 A Yeah. It's --

8 BY MR. LAYNG:

9 Q I mean, you're a specialist, right? Is that
10 how --

11 A Yeah. It's a -- it's an intense full-day
12 exam.

13 Q It's hard.

14 A And not -- the pass rate is not very high.

15 Q Did you pass?

16 A Yes.

17 Q The first time?

18 A Yes.

19 Q Okay. Are there any heightened expectations
20 as well of being a board-certified bankruptcy
21 attorney?

22 A From whom?

23 Q I -- I don't know. I'm just asking if there
24 are any?

25 A No. I, you know, I had high expectations of

Elizabeth Freeman - Confidential

13
1 myself, but, you know, I'm not aware of there being
2 anything --

3 Q All right.

4 A -- formal.

5 Q Let me ask you about -- switch gears a
6 little bit about, and now we're going to get into
7 personal -- your personal life but again I think it's
8 the nature of the inquiry. At some point did you get
9 married?

10 A Yes.

11 Q You've been married once?

12 A Yes.

13 Q All right. So when did you get married?

14 A 2000 -- 2001.

15 Q And how long was that courtship? Do you
16 know?

17 A Over three years. Why does this matter?

18 Q It -- it doesn't. I -- I'm just trying to
19 get in my mind the -- the timeline.

20 A Okay.

21 Q What -- what's the name of your -- now your
22 ex-husband? I know what --

23 A His name is Nick Simms.

24 Q Nick Simms?

25 A Yes.

Elizabeth Freeman - Confidential

14

1 Q Okay. And he was also an attorney, if I

2 remember, correct?

3 A Yes.

4 Q Was he at Porter Hedges?

5 A Yes. He's still at Porter Hedges.

6 Q Okay. Did you meet him there?

7 A No.

8 Q Okay. Where did you meet him?

9 A I was clerking for Steen and he was at

10 Bracewell Patterson at the time.

11 Q Okay. All right. As a result, you got

12 married in 2001?

13 A Yes.

14 Q And you had children, correct?

15 A Yes.

16 Q Okay. How many children, two?

17 A Two.

18 Q And at some point the marriage ended?

19 A Yes.

20 Q When did it end?

21 A 2013.

22 Q Now was that -- was there a separation

23 before that and then -- and then eventually a actual

24 divorce decree or --

25 A Yes.

Elizabeth Freeman - Confidential

15

1 Q Take us through that time, Liz.

2 A There -- there was. Nick and I remain very
3 good friends, and I know people say that.

4 Q No. I --

5 A But we are -- we're generally good friends
6 and I don't really want to talk about it a lot. He's
7 been drug into all of this and I'm not --

8 Q I -- I understand. Again, you don't have to
9 answer the questions if you don't want to.

10 A Okay.

11 Q You're here completely voluntarily, so --
12 but I'm -- I'm trying to be thorough and I'm trying to
13 figure out all the players, so...

14 A Sure.

15 Q You -- you get divorced in 2013. When did
16 you separate?

17 A In 2012.

18 Q 2012. Okay. Do you know when in 2012?

19 A No.

20 Q All right. When you separated --

21 A Yes.

22 Q -- did you live -- where did you live?

23 A I -- I --

24 Q Before you separated, I guess when you were
25 married and you were living together where were you

Elizabeth Freeman - Confidential

16

1 living?

2 A In Houston.

3 Q Do you know the address?

4 A 927 Queen Annes and we --

5 Q And is that a residence or a house?

6 A It is a house.

7 Q Single family?

8 A It is a house but we also had what we call
9 the river house and that's out on the San Jacinto
10 River.

11 Q And what's the address there?

12 A 21899 Rio Villa.

13 Q Okay. All right. So you both -- you
14 jointly own that?

15 A We jointly owned. And when we separated, I
16 took the river house and he took the in-town house.

17 Q Okay. So it was a townhouse that -- that --
18 what was the street name? Queen Annes, did you say?

19 A Queen Annes.

20 Q Okay. Queen Annes?

21 A Uh-huh.

22 Q All right. So in the -- and that was in the
23 divorce decree; you got the river house. He got the
24 Queen Annes house?

25 A Yes.

Elizabeth Freeman - Confidential

17
1 Q Okay. And before -- but when you separated
2 did you leave the Queen Anne house or did he leave it
3 or did you both just live together?

4 A We -- we lived together --

5 Q Okay.

6 A -- in the house largely, you know, weekends
7 -- the river house was my home --

8 Q Sure.

9 A -- and I had it before we got married.

10 Q Okay. So when did you buy that?

11 A In '99.

12 Q Is that like a resort? I don't know the
13 Houston area. Is that like -- the river house -- I
14 have no idea.

15 MR. KIRKENDALL: Very blue-collar.

16 BY MR. LAYNG:

17 Q I have no idea. Okay. I mean, it sounds
18 nice.

19 A You can tell he's not from here, right?

20 Q Yeah. I don't know. I mean it sounds nice,
21 the river house.

22 UNIDENTIFIED SPEAKER: Excuse the guy
23 from Chicago.

24 A Those that are out there lovingly refer to
25 it as the redneck Riviera.

Elizabeth Freeman - Confidential

18

1 BY MR. LAYNG:

2 Q I got it. I got it. Okay.

3 MR. KIRKENDALL: It's the -- the river
4 that when you see Houston after a hurricane, it
5 normally produces most of the flooding.

6 MR. LAYNG: Okay.

7 MR. KIRKENDALL: At least in the
8 Eastern Houston area.

9 A Yeah.

10 BY MR. LAYNG:

11 Q Hopefully you don't have flooding at that
12 house?

13 A Oh, yeah.

14 Q You do?

15 A A lot of -- the house is on stilts.

16 Q Really?

17 A It is also the river that caught fire in
18 1994.

19 Q I thought that was the -- the Cleveland
20 river Cuyahoga?

21 A Yeah.

22 Q All right. So separated in 2012 and then --
23 and then the decree was in 2013?

24 A Yes.

25 Q Okay. And what happened with the custody of

Elizabeth Freeman - Confidential

19

1 the children?

2 A We split the custody.

3 Q So how did that work?

4 A Nick had the kids Monday, Tuesday. I had
5 them Wednesday, Thursday and we alternated weekends,
6 but we remained close so we didn't always stick to
7 that if he had to travel or, you know, something was
8 going on we were very flexible.

9 Q You would -- you would work it out?

10 A We had -- had keys to each other's houses.

11 Q Right.

12 A It was -- it's always been a very close
13 relationship.

14 Q So the -- the river house versus the Queen
15 Anne house where were the kids, like, when you have
16 during the week, did the school in between or how did
17 that work, I mean --

18 A When we were divorced?

19 Q Yeah.

20 A I got a condo, a really shitty condo that I
21 stayed at when I had the kids initially.

22 Q Okay. Where's that? What was the address
23 there?

24 A I --

25 Q Best you can. If you --

Elizabeth Freeman - Confidential

20

1 A It was a two-minute walk from Nick's
2 place --

3 Q Okay.

4 A But I don't --

5 Q Was it in a -- in a --

6 A Kings --

7 Q What was it?

8 A Kingsbrook. I don't -- I don't remember.

9 Q That's fine. So it's all right. If it
10 comes to you, that's fine.

11 A But I bought it because it was right -- or I
12 didn't buy it. I rented it just because it was right
13 there next to Nick.

14 Q And it was like a one-bedroom for you?

15 A No. It was a three-bedroom.

16 Q Three bedrooms for the children?

17 A Yeah.

18 Q Okay. So they would stay there, what was
19 that you said Wednesday, Thursday?

20 A Typically, it was Wednesday and Thursday.

21 Q Okay.

22 A And then on weekends, holidays, any time
23 that it school wasn't in session I would go to the
24 river.

25 Q Got it. Okay. All right. All right. I

Elizabeth Freeman - Confidential

21

1 want to ask you about your relationship with Judge
2 Jones. When did you first meet?

3 A In 1996.

4 Q And how did you meet?

5 A Bill Greendyke introduced me to Marvin Isgur
6 and David Jones when they were in the Rio Star
7 bankruptcy case.

8 Q And -- and what were you doing? I mean,
9 were you --

10 A I was his intern.

11 Q Okay. That was back when you were interning
12 with Judge Greendyke?

13 A Yeah.

14 Q Got it. All right. So just take me
15 through. At that point you just had met him. You had
16 just a friendship or a professional relationship, or
17 just tell me kind of how it -- how it developed.

18 A They were the first, you know, Isgur and
19 Jones were the first lawyers that I met when I was in
20 Houston, and we just became friends. I didn't see him
21 or talk to him very much. When I was working for
22 Steen, Steen didn't like them, so that was -- that was
23 interesting. But then once I came out into private
24 practice, I did a lot of lender side work and they
25 were frequently trustee counsel or debtor's counsel

Elizabeth Freeman - Confidential

22

1 and so I was on the other side of those two a lot.
2 Then Isgur took the bench and so I was dealing with
3 Jones a lot. Jones tried to get me to come over to
4 work with him. I had a lot of experience on the
5 finance side of the house.

6 Q Who was Jones working with at that time?

7 A He was at Porter Hedges by then.

8 MR. KIRKENDALL: In the interest of
9 full disclosure, so when Liz met Judge Jones and
10 Marvin Isgur, Marvin and David (inaudible) I had hired
11 both out of law school.

12 A That's right. That's right. It was still
13 Kirkendall Isgur back in that time.

14 MR. KIRKENDALL: Right. Right.

15 BY MR. LAYNG:

16 Q All right. So when was it that he asked you
17 to come to Porter Hedges? And I don't know if you
18 said yes at that time or later.

19 A No. He -- he bugged me for a couple of
20 years to come over and work at Porter Hedges.

21 Q Okay. And you were basically professional
22 colleagues at that time? You -- you saw him in court
23 but you didn't have any social interaction with him?

24 A No. Oh, no. We were friends.

25 Q Oh, you were friends. You became friends?

Elizabeth Freeman - Confidential

23

1 A Yeah. No. We became friends pretty early
2 on in part through Randy Williams. You know, Randy
3 used to always have Christmas parties and so I would
4 see him there and then we would go grab lunch a lot.
5 We were just (inaudible) of court. Things like that.

6 Q You'd see him at like Fire Association or --
7 events that kind of thing?

8 A Uh-huh.

9 Q Is -- is a -- and I hate to characterize it,
10 but is the bankruptcy bar in Houston pretty small and
11 tightknit?

12 A It's tiny and tightknit.

13 Q It's tiny?

14 A Yeah.

15 Q Okay. And tightknit. Okay. So it's almost
16 in -- whether you like it or not, you're going to see
17 these people in various events and in court?

18 A Yeah. And especially at the time, there
19 were very few people from out of town coming in.
20 There weren't a huge number of cases, and so it's
21 different than it is now. You know, it was less of a
22 national forum and so, yeah, you saw all the same
23 people from Texas case after case, after case, after
24 case.

25 Q So -- so you knew people and you knew him

Elizabeth Freeman - Confidential

24

1 and you were friendly with him?

2 A Uh-huh.

3 Q Have lunch, that kind of thing. So -- and
4 he -- he obviously thought a lot of you as far as a
5 lawyer so he'd asked you to come to Porter Hedges?

6 A Yeah. He and John Higgins both, but I think
7 that Jones probably was pushing it more.

8 Q And you didn't want to do that at first?

9 A I was loyal to Jack -- or loyal to Locke
10 Lord.

11 Q Okay. And did that change at some point?

12 A Yes.

13 Q Not loyalty, but that you decided to --

14 A Yeah. It was an abusive relationship I
15 needed to get out of.

16 Q So --

17 A And I stayed too long.

18 Q Okay.

19 A And still love the people, but it turned
20 into something that I wasn't willing to commit so much
21 to.

22 Q That was that big -- too big -- okay. So
23 and then Porter Hedges offered you an income
24 partnership as well, correct?

25 A They did. I was going to become a partner

Elizabeth Freeman - Confidential

1 at Locke Lord and I just decided I didn't want it and²⁵
2 I moved to Porter Hedges instead.

3 Q Okay. And at that time, you went to work
4 for the bankruptcy department? Was --

5 A Uh-huh.

6 Q -- Judge Jones in that department?

7 A Yeah. Yes.

8 Q Was he in any way in your chain of command
9 or just a colleague?

10 A It didn't work like that.

11 Q Okay.

12 A You know, John -- John Higgins was the
13 official head.

14 Q Okay.

15 A But, you know, Porter Hedges is a hundred
16 lawyers and I think partner-wise it was John Higgins,
17 Jones, Matt Vonn and myself who were bankruptcy people
18 and then there was a group of associates. They were
19 looking for somebody who could work with the
20 associates and train associates.

21 Q And that was you?

22 A And that was me.

23 Q Okay. Is that just something you were good
24 at, or how did you get good at that?

25 A I'm a mother hen.

Elizabeth Freeman - Confidential

26

1 Q Okay.

2 A I'm a mother hen. I train -- I like to
3 train people. I like working with the younger
4 associates, and I helped hire some people and, you
5 know, help train them.

6 Q At Porter Hedges?

7 A Yeah. And create -- create a section as
8 opposed to a group of individuals who were basically
9 solos together.

10 Q Yeah. So you like to have good chemistry in
11 the -- in the group?

12 A Yes.

13 Q Okay. So that's Porter Hedges and you there
14 -- you said you were there for two years if I remember
15 correctly?

16 A Yeah. I think it was a little over two
17 years.

18 Q During that time, was it -- did you remain
19 just a professional and friendly relationship with
20 Judge Jones?

21 A Yeah.

22 Q And then you said that you became his law
23 clerk?

24 A Yep. When he was appointed to the bench,
25 which was something I was not happy about, that he got

Elizabeth Freeman - Confidential

27

1 appointed to the bench.

2 Q Why weren't you happy about it?

3 A Because we had a great thing going at Porter
4 Hedges as, you know, the section was doing great and
5 we were having a lot of fun and it was certainly
6 disruptive to what we had going on.

7 MR. KIRKENDALL: Jones was a big
8 generator of business for Porter Hedges --

9 MS. FREEMAN: Yeah.

10 MR. KIRKENDALL: -- the time he was
11 there.

12 A And the, you know, the cases were fun and
13 the chemistry --

14 BY MR. LAYNG:

15 Q Was he one -- and I understand it was
16 completely professional at this point but was he one
17 of the reasons why you went to Porter Hedges, so
18 seeing him leave was disappointing?

19 A Getting the chance to work with him, you
20 know, was certainly something that was important to
21 me, but also he was such a big gen[sic] -- business
22 generator. I worked with everybody over there -- not
23 just Jones but having him leave kind of left a vacuum.
24 It also --

25 Q That was 2011?

Elizabeth Freeman - Confidential

28

1 A It was 2011.

2 Q Okay.

3 A And I had -- my relationship with my husband
4 was tough. We were great friends, are great friends.
5 We just weren't very good at being married, and it had
6 been difficult for a long time and --

7 Q Was it and I -- and I -- this is coming from
8 somebody whose wife is a lawyer, two -- two lawyers
9 raising children, is that pressure we're talking
10 about?

11 A A little bit, but not really.

12 Q Okay. Just personalities?

13 A Very different personalities.

14 Q I got it. Okay.

15 A And, you know, I was primarily responsible
16 for the kids and it was -- it just put a lot of
17 pressure on me and the kids were in elementary school
18 at the time. When Jones took the bench he had a
19 vision for what he wanted to do with the court and he
20 knew I had been, you know, clerk before. And I was
21 also a fairly good foil for him and there were those
22 who were concerned about his temperament.

23 Q So you, what, you were good kind of at --
24 good kind of keeping him on the straight and narrow?

25 A Yeah. Telling him to cut it out.

Elizabeth Freeman - Confidential

29

1 Q Okay.

2 A Kirkendall knows exactly what I'm talking
3 about. It just --

4 Q So you worked well together?

5 A We -- we -- we worked well together. It was
6 kind of a good cop, bad cop, worse cop sort of
7 situation.

8 Q All right.

9 A And, you know, it was just -- it was we had
10 complementary skill sets.

11 Q You mentioned his vision for the court.
12 What was that vision if you don't mind telling us?

13 A He's talked about it a lot in the press. He
14 wanted to create a court that he wanted to practice
15 in. He wanted a court that was accessible.

16 Q Meaning what?

17 A That if you call the case manager, the case
18 manger would call you back.

19 Q The case manager at the law firm?

20 A No, at the court.

21 Q You mean the employee of the court?

22 A Yeah. You know, the court would be
23 responsive. The court would call you back.

24 Q Oh, I get it. Okay.

25 A The court -- the courts would give you

Elizabeth Freeman - Confidential

30

1 settings. That you had availability and access to
2 hearings, ruling from the bench as opposed to taking
3 things under advisement for six months.

4 Q And that wasn't true before? That was not
5 true at least in court in 2011?

6 A It was -- it was inconsistent.

7 Q Okay.

8 A But, yes, it was an issue. I mean, it's an
9 issue in a lot of courts.

10 Q Sure.

11 A It just is what it is and he was hoping that
12 by setting a good example, you know, that he could be,
13 you know, pointing the spear and a leader in that
14 regard and I think he proved successful.

15 Q So, when he left --

16 A Yeah.

17 Q -- your idea was just to continue at Porter
18 Hedges or you -- you became a law clerk at some point,
19 right? How did that come about?

20 A No. I -- I went with them. He asked me to
21 come over and help him.

22 Q Were you his first clerk or --

23 A Yeah.

24 Q All right. And you said -- now that's
25 giving up an income partnership, right? I mean, is

Elizabeth Freeman - Confidential

31

1 that -- was that a tough decision?

2 A Yes.

3 Q So you took a pay cut?

4 A I took a massive pay cut.

5 Q Massive pay cut, okay. That would
6 probably --

7 A But I needed --

8 MR. KIRKENDALL: Probably had a better
9 parking spot but massive pay cut.

10 BY MR. LAYNG:

11 Q Yeah. No, I get it. I get it.

12 A I had kids in elementary school, and I was
13 struggling with work-life balance.

14 Q Got it.

15 A And ultimately at the end of the day that's
16 the reason that I did.

17 Q Okay. Okay. Although I'm guessing he
18 didn't promise you not a lot of work. I mean, it
19 sounds like you were going to have to work hard as a
20 law clerk as well but maybe not the same hours?

21 A No. We had -- we had a deal.

22 Q What was that?

23 A And it was if there was an event -- a school
24 event or if, you know, the kids had spring break or
25 anything else like that I was going to go do that.

Elizabeth Freeman - Confidential

32

1 The understanding was I would get the work done
2 because I was an experienced lawyer. I had the
3 ability to get everything that needed done, done
4 quickly.

5 Q It wasn't a big adjustment to be a law
6 clerk? You've already done it, right?

7 A Right. I had done it once before.

8 Q Yeah.

9 A And so, no, it really wasn't.

10 Q How many other people -- did he get another
11 clerk or did he have an administrative assistant?

12 A He had a (inaudible) his secretary,
13 long-time secretary.

14 Q And what -- what and she remained throughout
15 or --

16 A Yes.

17 Q What's her name?

18 A Liz Miller.

19 Q Liz Miller? Okay. And how did he hire her?
20 Do you know where she came from?

21 MR. KIRKENDALL: Liz was a -- Liz was,
22 I believe, a secretary with my firm when David was
23 there, a lawyer there.

24 MR. LAYNG: Oh, okay. So you poached
25 her, too.

Elizabeth Freeman - Confidential

1 MR. KIRKENDALL: I think -- I think Liz³³
2 went with him to both firms that he was after our
3 firm --

4 MR. LAYNG: Okay.

5 MR. KIRKENDALL: -- dissolved in 2000.
6 So I think Liz was a long-time employee of David's.
7 BY MR. LAYNG:

8 Q Okay. So is -- Liz, you. Any -- any other
9 clerks?

10 A No.

11 Q Has that changed? I'm just curious. It
12 used to be that you get --

13 A You can have two or you can have a legal
14 assistant.

15 Q Right.

16 A Liz Miller ended up getting her accounting
17 degree and she was secretary/paralegal kind of --

18 Q But she did more than just answer phones
19 and --

20 A Yes.

21 Q -- and type up appointments and all that?

22 A She basically functioned much like a typical
23 first-year right out of law school clerk, not doing
24 legal research, but all the other administrative side
25 things.

Elizabeth Freeman - Confidential

34

1 Q Was the deal when you came over that it
2 would be a term of so many years or was it indefinite?
3 How was it --

4 A It was open-ended, but I had to promise him
5 two years.

6 Q Two years?

7 A And I promised two years.

8 Q All right. All right. So you worked for
9 him obviously for six.

10 A Uh-huh.

11 Q Was there any time during that did he say,
12 okay, I want you up for another two years or is it so
13 indefinite you just kept working and it wasn't really
14 discussed?

15 A It was indefinite and I just kept working.

16 Q Okay. You like the work?

17 A Yeah, too much.

18 Q What do you mean?

19 A I don't -- I still don't have good work-life
20 balance.

21 Q So you get into it and just work and work
22 and work?

23 A Uh-huh.

24 Q Okay. That's a "yes"? I know you didn't
25 say it verbally.

Elizabeth Freeman - Confidential

35

1 A Yeah.

2 Q All right. So was it during this time that
3 your relationship with Judge Jones changed?

4 A Yeah. It, you know, it certainly did. I
5 don't want to talk about the inception of the
6 relationship. You know, I'll tell you that by, you
7 know, '16, '17 we were in an intimate relationship.

8 Q All right. I get it. I understand. Were
9 you a law clerk then?

10 A Yes.

11 Q Okay. And you used the years -- can I ask
12 you why you don't know what year it started?

13 A Because nothing was ever really formalized.
14 I mean, we have had a weird relationship and it's not
15 -- it is -- it's not like other relationships I've
16 ever had, you know, where, you know, oh, you're
17 boyfriend and girlfriend, your fiancé, you know like
18 that. It's just -- we actually have spent very little
19 time talking about our relationship and what are we;
20 and where are we and you know what are we going to do.
21 It's --

22 Q It just was?

23 A It just was.

24 Q Okay. I get that. I get that. I
25 understand it's not something you want to talk about

Elizabeth Freeman - Confidential

36

1 but what I would -- I'll just ask this. You don't
2 have to answer it. So there's a line that some people
3 -- I'll just use my own. So there's a line, right,
4 and you're friends, and you're really friends, good
5 friends, you laugh at -- you enjoy each other's
6 company. At some point, I'll just use the term
7 romantic.

8 A Okay.

9 Q It may not be sustained --

10 MR. KIRKENDALL: Can I suggest?

11 MR. LAYNG: Go ahead.

12 MR. KIRKENDALL: I would just suggest
13 intimate because that's actually what the -- the -- I
14 guess it would be the commentary to the code the
15 judicial ethics uses -- intimate relationship.

16 MR. LAYNG: Tom, I understand. I -- I
17 -- I just -- and I don't even care about what the --
18 the code is right now. I just -- I'm just trying to
19 figure out what happened, right? So -- so I -- I -- I
20 -- I know it's -- I'm not comfortable talking about
21 other people's relationships. But I -- I -- what I'm
22 trying to get to is, you talk about a weird
23 relationship. I'm kind of understanding it, kind of
24 not. So at -- at some point the friendship may be not
25 sustained, but there were times maybe where it was

Elizabeth Freeman - Confidential

37
1 more than just being a friend, you were a little more
2 romantic. Does that make sense or am I missing it
3 completely?
4 A Yeah. No. It's -- it ran hot and cold.
5 Q Okay.
6 UNIDENTIFIED SPEAKER: May I?
7 MR. LAYNG: Of course.
8 UNIDENTIFIED SPEAKER: So, I mean I
9 would say it was a relationship where it was kind of
10 flip-flop like sometimes you were intimate and
11 sometimes you were not.
12 THE WITNESS: Yes.
13 UNIDENTIFIED SPEAKER: And sometimes
14 you didn't understand why or --
15 THE WITNESS: Yes.
16 UNIDENTIFIED SPEAKER: You didn't talk
17 about why?
18 THE WITNESS: Yes.
19 UNIDENTIFIED SPEAKER: All right.
20 BY MR. LAYNG:
21 Q And so when you talk about 2016, 2017,
22 that's kind of when those events may have taken place?
23 A Yeah.
24 Q Okay. All right. So --
25 A And --

Elizabeth Freeman - Confidential

38

1 Q Go ahead.

2 A Any way.

3 Q All right.

4 A I would rather focus on private practice,
5 and I understand you need a degree of background. It
6 just -- one, it's not something I'm incredibly proud
7 of or comfortable talking about. It's not something I
8 talk about to other people and, you know, I've been
9 run through the ringer in the press and so I have an
10 incredibly heightened sensitivity right now.

11 Q I get it.

12 A And I just -- I just want y'all to
13 understand my discomfort and my hesitancy.

14 Q I understand completely. I mean, but --

15 A And --

16 Q -- I'm just trying to -- so for my -- okay.
17 I don't mean to interrupt you.

18 A I just -- yeah. I'm trying to be open --

19 Q I know.

20 A -- and balanced.

21 Q Answer what you can.

22 A My family --

23 Q And if you can't, just tell me what you
24 said. You say, I don't want to answer that.

25 A Okay.

Elizabeth Freeman - Confidential

1 Q That's fine. I -- I'm going to be thorough.³⁹
2 I can't help it. I'm going to do -- I'm going to ask
3 questions about things that are probably very
4 uncomfortable. They are not intended to embarrass or
5 humiliate, they're just to get to what was happening,
6 the facts.

7 But again, you're here voluntarily. If
8 you don't want to answer, you don't have to answer
9 them. There may be a time at some point in the future
10 that that may not be the case, but we will -- we will,
11 you know, we'll -- and I'm not threatening it. I'm
12 just saying that -- we're all here cooperating
13 voluntarily but at some point it may be a little more
14 compelling.

15 UNIDENTIFIED SPEAKER: There was --

16 MR. LAYNG: Go ahead.

17 UNIDENTIFIED SPEAKER: Do you -- do you
18 think you had control over that relationship?

19 THE WITNESS: I'm not sure what you
20 mean.

21 UNIDENTIFIED SPEAKER: Well --

22 THE WITNESS: Like, could I have
23 controlled of Jones and told Jones --

24 UNIDENTIFIED SPEAKER: Not control,
25 control. But, like, you know you mentioned it could

Elizabeth Freeman - Confidential

40

1 be hot and cold and sometimes you date people who are
2 that way, right? So just wanted some context in terms
3 of, you know, we put ourselves in some relationships
4 like that and sometimes they're not good for us,
5 sometimes they're great. You know, it just depends.
6 So I was just curious as to, you know, whether he was
7 the one that was hot and cold as opposed to you were
8 hot and cold.

9 THE WITNESS: Probably both. It's -- I
10 think you have two emotionally unavailable people.

11 UNIDENTIFIED SPEAKER: Okay.

12 THE WITNESS: And that's probably a lot
13 of why, you know, we existed, sometimes closer than
14 other times without much overlap of personal life, you
15 know. I've got family, you know, I travel with my
16 family. I do things with family and he's not --
17 that's -- that's not him.

18 BY MR. LAYNG:

19 Q So at some point the judge was married at
20 some point, right?

21 A Yes.

22 Q Okay. Do you know when that marriage ended?

23 A Eleven or 12.

24 MR. KIRKENDALL: It was 2012. They've
25 been married actually twice.

Elizabeth Freeman - Confidential

1 MR. LAYNG: This is the second marriage⁴¹
2 we're talking about?

3 MR. KIRKENDALL: It's a second
4 marriage.

5 MR. LAYNG: Okay.

6 MR. KIRKENDALL: I think it lasted
7 roughly ten years.

8 MR. LAYNG: Do you -- do you know that
9 person's name?

10 MR. KIRKENDALL: Yeah. It's Dana
11 Desenberg. She's a lawyer here in Houston.

12 BY MR. LAYNG:

13 Q So you said 2016, 2017 and it was hot and
14 cold, weird relationship, but at some point does it
15 become a committed relationship or exclusive
16 relationship?

17 A That was never really discussed.

18 Q So --

19 A It was for me.

20 Q It was for you?

21 A It was for me.

22 Q Okay.

23 A Let's put it that way.

24 Q I thought -- and that's all you can talk
25 about is really you, right?

Elizabeth Freeman - Confidential

42

1 A Right.

2 Q So, okay. So, when did it become a
3 committed or exclusive relationship if you have any
4 idea?

5 A I --

6 Q Were you still a law clerk or was it --

7 A I -- I mean, I don't know if it would be
8 accurate to say that it's ever been a committed,
9 exclusive relationship.

10 Q Okay. What would you -- I mean, is it
11 always been weird or at some point become a little
12 more, I don't know, routine or -- or --

13 A Like in -- in July of '22, and I know it
14 sounds odd that I won't remember this one with
15 specificity, but it was the first time we really had a
16 conversation in July of '22 because it was right after
17 my 50th birthday which is why I remember.

18 Q Okay.

19 A But I don't think that there was ever really
20 a conversation before that.

21 Q All right. But in your -- in your mind you
22 were exclusive with Judge Jones? You weren't going to
23 date other people at that time?

24 A I didn't. I didn't date --

25 Q Did he? Do you know?

Elizabeth Freeman - Confidential

43

1 A I'm not going to answer that.

2 Q Okay. You prefer not to answer it or you
3 don't know the answer?

4 A I can't answer with certainty.

5 Q Okay. Fair enough. Let me ask about living
6 arrangements. At some point did those change?

7 A They've been inconsistent. I've always had
8 my river house. That -- that's -- that was my home,
9 my happy place, you know, weekends, holidays any time
10 I wasn't working that's where I was. And, you know,
11 when I had the kids, and actually when I was working
12 and I didn't have the kids I was typically out at the
13 river place. When I had the kids, I would be at Rolla
14 because their school was right there. They went to
15 Hunters Creek Elementary and then up through the
16 private -- or the public schools in that area.

17 Q Okay. So --

18 A So I was -- but --

19 Q So, go ahead.

20 A Other than when they were out of school
21 during the pandemic, I've always had a presence at
22 Rolla.

23 Q All right. Rolla is the house that -- that
24 Jones lives in?

25 A Yes.

Elizabeth Freeman - Confidential

1 Q Okay. You say "always," but that started at ⁴⁴
2 some point, didn't it? When did it start?

3 A He bought it in '17 or -- I think it was
4 '17.

5 MR. KIRKENDALL: Yeah, it was.

6 THE WITNESS: Okay.

7 MR. KIRKENDALL: He bought it in 2017.

8 BY MR. LAYNG:

9 Q So -- you say -- so tell me about the
10 presence. What -- what -- what did that entail? What
11 are you talking about? Did you live there certain
12 days?

13 A Yes, if -- if the kids were there I was
14 there for sure. But with Nick's travel, sometimes I
15 would be there on a Monday or Tuesday but I don't
16 think I -- or if I was traveling, you know, I wouldn't
17 be there.

18 Q When did that start? Did you move in your
19 stuff? Did you have stuff there --

20 A Yeah. I've --

21 Q -- like clothes, toiletries?

22 A I've -- I've -- I have always had stuff
23 there.

24 Q Always? When does it start?

25 A When he bought it in '17.

Elizabeth Freeman - Confidential

45

1 Q Okay. Tell me about buying that house.

2 Were you involved in that?

3 A Yes.

4 Q Tell me about it.

5 A He wanted to downsize from the house that he
6 had. He had a very large house.

7 Q Where was that?

8 A It was in -- it was actually in that area.

9 MR. KIRKENDALL: It was in the Memorial
10 area of Houston, just on Memorial.

11 BY MR. LAYNG:

12 Q Okay. So --

13 A And -- and so we'd -- I'd looked at houses
14 with him and picked it out and bought it.

15 Q All right. So at that point, were you --
16 did you have a -- you had a relationship with him --

17 A Yes.

18 Q -- but beyond friendship?

19 A Yes.

20 Q Let's put it that way.

21 A Yes.

22 Q Okay.

23 A Yes.

24 Q So you're -- he's buying a house. Did you
25 understand that was going to be a house that you were

Elizabeth Freeman - Confidential

46

1 going to live in?

2 A Yes.

3 Q Okay. So that was discussed?

4 A Yes.

5 Q I mean, that's sort of significant. At some
6 point you have a relationship with somebody who's
7 going to -- you're going to live together?

8 A We knew that we were going to live together.

9 Q When was that discussed?

10 A You mean, the -- that we would live together
11 at Rolla?

12 Q If you can remember the conversation, yeah,
13 that -- we're going to buy a house and we're going to
14 live together?

15 A Well, he bought the house.

16 Q Correct. All right.

17 A Yeah. I didn't contribute anything to the
18 house.

19 Q But I mean, I'm -- I -- at some point there
20 had to have been, maybe not. You tell me. A
21 conversation where you -- you discussed buying a
22 house?

23 A Yeah.

24 Q Downsizing?

25 A Yeah.

Elizabeth Freeman - Confidential

1 Q And you being part of that household living⁴⁷
2 there?

3 A Yes. Yes. Like, we -- we were living -- I
4 was living with him with the kids when I had the kids
5 at his prior house.

6 Q All right.

7 A And that was --

8 Q So -- so let's stop there. I'm sorry to
9 interrupt.

10 A Yeah.

11 Q So you were living at the other house you
12 just mentioned, the bigger house?

13 A I --

14 Q The one he wanted to downsize?

15 A I was staying there when I had the kids,
16 yes.

17 Q Okay. So -- so I am interested in that,
18 Liz, because that -- that -- just I'm trying to
19 explore the contours of the relationship.

20 A Okay.

21 Q When that happens, okay. When you start
22 staying at his house -- what did you call it, the
23 Memorial?

24 A Yeah.

25 Q When did that start?

Elizabeth Freeman - Confidential

48

1 A Trying to think of when my lease on the
2 condo was up. I -- I don't want to tell you the wrong
3 thing.

4 Q I'm not going to hold you to it, just --
5 just ballpark it.

6 A It was --

7 Q I mean, were you a law clerk --

8 A I was -- I was -- I was a law clerk.

9 Q Can you -- can you -- so you know when you
10 bought the house, July 2017 just as -- just as a
11 landmark. Okay?

12 A Yes. Yeah. It had been at least a couple
13 of years.

14 Q Okay.

15 A That, you know, I -- that I stayed with him
16 at that house.

17 Q How did that begin? I mean, was that before
18 you were romantic or --

19 A No. The lease on the condo was up and he
20 and I were intimate. Is that -- what is the word?

21 Q Intimate.

22 A Intimate, okay. My kids were embarrassed by
23 the condo and I was -- it was --

24 Q It's a kid's job is to be embarrassed by
25 you.

Elizabeth Freeman - Confidential

49

1 A It was -- it was not very nice. It wasn't
2 very nice.

3 Q That was the Queen Annes place?

4 A No. Queen Annes, that's -- that's their
5 dad's house.

6 Q Oh, I'm sorry. Okay.

7 A And that's a -- that's a -- that's a nice
8 house, but I had this condo. I was on a law clerk
9 salary, and I was taking care of my grandmother in a
10 retirement home that I was supplementing that so she
11 would be able to live well. And so I couldn't afford
12 something --

13 Q You had the river house, too, right?

14 A And I had the river house.

15 Q Is that -- was that paid for already or was
16 that --

17 A Oh, yeah.

18 Q Okay. So that was paid for. You still have
19 to pay property tax and all that and maintenance
20 but --

21 A Right.

22 Q -- but you're paying for the condo?

23 A Yeah.

24 Q Okay.

25 A And I couldn't afford something nicer. I

Elizabeth Freeman - Confidential

50

1 could afford the condo.

2 Q Uh-huh.

3 A But it was pretty --

4 Q Embarrassing?

5 A It was embarrassing for the kids. It was
6 safe. It was clean.

7 Q Right.

8 A But it was not nice, and, you know, I was
9 talking to him about the kids being embarrassed and
10 da, da, da and he said, well, you know, you could --
11 you guys could move in here.

12 Q Okay. That would be for that part of the
13 time where you weren't at the river house?

14 A Yeah.

15 Q Okay. And would it be even when the kids
16 weren't around, would you be -- stay there?

17 A No. I mean --

18 Q It was just when the kids were there?

19 A Nothing personal against him. It's just the
20 river house was my house and that's where I was happy.

21 Q Right. But so when the kids were with you,
22 you would be there?

23 A Uh-huh.

24 Q Okay. And I thought you said this. I don't
25 want to put words in your mouth. I thought you said

Elizabeth Freeman - Confidential

51

1 you had already, were using the word -- I use
2 romantic. You're using intimate. Whatever. You were
3 already having a romantic relationship with him at
4 that point?

5 A Yes.

6 Q Okay. So -- so you were going to stay with
7 him in his room when you were there? I mean, you
8 didn't have a separate room?

9 A It was for a variety of reasons sometimes,
10 yes, sometimes, no.

11 Q Got it. Got it. Understood? All right.
12 What you -- I mean, are we talking 2016 or 2015 or
13 does that --

14 A I think -- I think '15.

15 Q Okay. All right. And so that continued
16 until it was time to downsize. Why -- why was it time
17 to downsize?

18 A Because he had a 7500 square foot house on a
19 less than \$200,000 a year salary.

20 MR. KIRKENDALL: And that was -- he was
21 single at that point.

22 A And he was single. And, you know, and he --
23 David made his money and saved incredibly well. He's
24 got, you know, financial resources, but a 7500 square
25 foot house is really kind of silly and, you know, I

Elizabeth Freeman - Confidential

52

1 don't know all the reasons that he chose to sell it.

2 BY MR. LAYNG:

3 Q Okay.

4 A You know, I -- I, you know, I can't say.

5 MR. KIRKENDALL: That was a home that
6 he bought when he was married to Dana Desenberg and so
7 in the property settlement he took the home.

8 MR. LAYNG: He got the house?

9 MR. KIRKENDALL: Yeah.

10 MR. LAYNG: Yeah, okay.

11 MR. KIRKENDALL: The (inaudible)
12 consideration I think.

13 THE WITNESS: Yeah.

14 MR. KIRKENDALL: To a large extent you
15 know it was at that point far larger than he
16 intended --

17 MR. LAYNG: Got it.

18 A Right. And he sold it and he bought -- he
19 bought the Rolla house and then he bought a house on
20 Lake Livingston.

21 BY MR. LANG:

22 Q Okay. Like what's -- I have a feeling
23 that's nicer than the river house, right?

24 A It's still not my happiest place. I mean, I
25 bought a house in that same neighborhood.

Elizabeth Freeman - Confidential

53

1 Q Well, let's -- so -- so again for my
2 purposes, the timeline now 2015, when -- when you had
3 the kids you stayed with Judge Jones at the previous
4 house. What's the name of it, Memorial house?

5 A Uh-huh.

6 Q So that -- you're a law clerk. So I -- I
7 just trying to feel this out. So when that happened
8 -- before you did that -- that -- that relationship,
9 the weird relationship, on-and-off relationship had
10 been started. When did it really start? I mean, how
11 soon did it start after you became a law clerk?

12 A I'm not going to talk about that.

13 Q What's that?

14 A I'm not going to talk about that.

15 Q Not what happened, but when it happened?

16 A I don't think it matters. I'm not going to
17 talk about it.

18 Q Okay. I can't help myself. It's some time
19 before that, right? I mean, you don't want to
20 pinpoint that? Is there a reason you don't want to
21 pinpoint that? I don't see the --

22 A I don't really know.

23 Q Oh.

24 A And also --

25 Q You don't want to guess?

Elizabeth Freeman - Confidential

54

1 A Yeah. One, I don't want to guess.

2 Q Okay.

3 A And I just don't know why it matters. You
4 know, I'll just -- I'll tell you that, you know,
5 certainly by '15, you know, '14, '15 we were in an --

6 Q That's fine.

7 A -- intimate relationship.

8 Q I get it. I -- I -- you know, -- I just --
9 just trying to figure that out. All right. So when
10 you -- it's time for the downsize. You are part of
11 the equation in deciding what house you helped him --

12 A Yes.

13 Q -- look for houses?

14 A Yes, I did.

15 Q Okay. And you -- how many houses did you
16 look at, a lot of them?

17 A No.

18 Q Settled on that one fairly quickly? Was it
19 a tear down?

20 A It was a spec house. Not really my jam.

21 Q Why not?

22 A I don't -- it was just not my thing.

23 Q Okay.

24 A So, I don't know.

25 UNIDENTIFIED SPEAKER: Spec is a

Elizabeth Freeman - Confidential

55

1 brand-new construction.

2 BY MR. LAYNG:

3 Q Yeah. So it was purchased in a -- in a
4 particular manner?

5 A Yes.

6 Q Was that discussed and how did that come
7 about?

8 A It was not discussed before it came time for
9 closing.

10 Q So you had no idea he was going to make you
11 a co-owner?

12 A I did not.

13 Q When did you find that out?

14 A Closing.

15 Q Tell me about that. What happened?

16 A He did a remote type of close and there were
17 paperworks to sign and he had me sign the survivorship
18 agreement. And I -- I was surprised because, like I
19 said, I didn't contribute anything to it, you know. I
20 was surprised initially, but my understanding after
21 looking at it and doing a little bit of research was
22 that it was basically an asset planning device. Jones
23 -- Jones --

24 MR. KIRKENDALL: It's a -- it's -- it's
25 a new concept under Texas law not really particularly

Elizabeth Freeman - Confidential

1 well developed yet. Maybe it is now. When he did it,⁵⁶
2 it wasn't. But it's -- so Liz is the executor of his
3 -- of Judge Jones' will. The benefit of having joint
4 tenancy with right of survivorship is is that upon the
5 death of the co-owner in this case would be Jones --

6 THE WITNESS: Or me.

7 MR. KIRKENDALL: The property -- yeah.
8 The property would pass to the other joint owner
9 without having to go through probate. That's the
10 benefit of it.

11 MR. LAYNG: Yeah. I understand. I
12 understand.

13 BY MR. LAYNG:

14 Q So what did he say to you about that when
15 you were surprised?

16 A You know, just basically it's asset
17 planning; it makes sense. Jones has other staff or
18 heirs in his will, as well. And so I was surprised,
19 but not shocked just because Albert Alonzo, Liz
20 Miller, and I think, you know, his former courtroom
21 Deputy are also beneficiaries of his estate.

22 Q Did you look at this as a further commitment
23 of the relationship?

24 A I know this may be hard to believe but no,
25 not really.

Elizabeth Freeman - Confidential

57

1 Q If that's your answer.

2 A No. Jones is not verbose with regards to
3 feelings, and he does things to take care of people,
4 but doesn't really talk about it.

5 Q Got it. But it was -- it was an act of some
6 affection, I mean, at least that's --

7 A It -- it was. Actually made me a little
8 uncomfortable. I wish he hadn't done it.

9 Q You mentioned that -- Tom mentioned that you
10 were the executor of his will. Was that already true
11 at the time this happened or does that happen later?

12 A I think there have been different versions
13 of the will and -- because I recall there being two,
14 and I think I was the executor of both and I remember
15 seeing one. I've seen one recently only because I was
16 working on my own will and I pulled up a will that,
17 you know, I had and it was a 2014 draft that Jones
18 had. And I was the executor of that one, so I can't
19 tell you time otherwise.

20 Q That's fine. Did -- did you know -- so you
21 -- when it happened when he -- when he made you
22 executor of his will? I mean --

23 A I -- I know there --

24 Q -- generally? 2014?

25 A I know -- I know there was a draft with '14

Elizabeth Freeman - Confidential

58

1 on it. I don't know if it was executed. I don't know
2 if that was the first one. I can't tell you for sure.

3 Q Is there a discussion with him about
4 becoming the executor of his will?

5 A No.

6 Q What -- how did you learn of it?

7 A I saw the draft. I needed --

8 Q How did you see the draft?

9 A Because I needed a copy of a will to work on
10 for myself as opposed to starting from scratch.

11 Q Oh, so you were working on your own will and
12 he showed you his?

13 A Yes.

14 Q And you were the executor. That's the first
15 you heard of it?

16 A Yes.

17 Q And did you object? Did you -- did you have
18 a discussion then?

19 A No. But it made sense. And, you know, I am
20 the executor of my sister's will and my parent's will
21 and so, no.

22 Q Again, did you look at that as a -- you
23 maybe were, you know, a member of the circle of trust?

24 A I am in his circle of trust, you know, I
25 always have been regardless of the nature of the

Elizabeth Freeman - Confidential

1 relationship. We've always -- going back to the early⁵⁹
2 2000's.

3 Q How many people are in that circle?

4 A Small.

5 Q Who would it be?

6 A Albert Alonso.

7 Q You --

8 A Liz Miller.

9 Q Okay.

10 A Me, Tom Kirkendall, Marvin Isgur. It's just
11 a really small, you know, if -- it was just -- it's a
12 small group. Jones is not someone who, you know, he
13 doesn't -- doesn't talk a lot about personal things.

14 MR. KIRKENDALL: And just to give you
15 an example. Even though I agree with Liz, I was, you
16 know, one of the people that's closest to David. I
17 didn't know that Liz and David had any sort of
18 intimate relationship. Didn't know that Liz and her
19 children were staying with David when she had them. I
20 mean, that's not something that was shared with me.

21 THE WITNESS: Yeah.

22 MR. KIRKENDALL: Nor did I expect it to
23 be. So when I was retained by Liz in April of 2022
24 that's the first that I -- that I knew about this.

25 MR. LAYNG: We've been going for a

Elizabeth Freeman - Confidential

60

1 while. Are you okay to keep going or --

2 A I actually wouldn't mind going to the
3 bathroom.

4 Q Go ahead.

5 A Jan -- Jan Northrup. She's in the tree of
6 trust.

7 Q Okay. Thank you. I was, like, who?

8 A I just -- trying to think of the people that
9 he really is close to. It's -- it's --

10 Q One last question before you go to the
11 bathroom just so I don't forget it. Are you a
12 beneficiary of his estate other than the house?

13 A I'm sure I am, but I don't know.

14 Q Okay. All right. We -- be -- pause it and
15 then we can take a break. Anybody else? Do you know
16 they are?

17 MR. KIRKENDALL: Five minutes.

18 MR. LAYNG: Yeah.

19 (BREAK TAKEN)

20 BY MR. LAYNG:

21 Q All right. We left off; we were talking
22 about the house so when you -- when you -- when your
23 children were in town, you would stay at the -- the
24 new house, the Rolla house? Is that R-O-L-L-A?

25 A Yes.

Elizabeth Freeman - Confidential

61

1 Q Rolla house, okay. You had your things
2 there?

3 A I had things there, yeah.

4 Q And you had things at your river house, too?

5 A Yeah.

6 Q Do your children have things there, as well?

7 A Yeah.

8 Q Okay. And it was closer to your children's
9 school? Is that what you said?

10 A Very.

11 Q Okay. All right. So that existed for --
12 well, you were talking earlier about like you have
13 your own family. So did you not -- did you not take
14 vacations with Judge Jones?

15 A Never.

16 Q Never?

17 A Never.

18 Q Okay. No weekend getaways, nothing?

19 A Never.

20 Q Okay. You mentioned in the house, he paid
21 for the house. Did -- did you pay for anything with
22 the house with regard to maintenance or utilities
23 or --

24 A I didn't -- I didn't pay for anything until,
25 you know, I went back and looked at everything.

Elizabeth Freeman - Confidential

62

1 December of 2021, I paid half of the real estate
2 taxes.

3 Q Okay.

4 A That's it.

5 Q Why did that take place?

6 A By that point in time I was no longer
7 working on Jones' cases, and I was carved out from
8 compensation from any of Jones' cases and he and I
9 started talking a little bit again and he asked me if
10 I would pay that and I did.

11 MR. KIRKENDALL: That was after she
12 left Jackson Walker.

13 MR. LAYNG: Right. And -- and -- and I
14 get it.

15 BY MR. LAYNG:

16 Q What about birthdays, holidays, stuff like
17 that? Did you spend holidays and birthdays with Judge
18 Jones?

19 A Generally no. I generally travel for the
20 holidays, you know, Christmas and Thanksgiving.
21 Family is in Oklahoma or my parents live -- they split
22 their time between the house that we have in -- on
23 Livingston and a sailboat in the Caribbean.

24 Q Your parents?

25 A Yeah.

Elizabeth Freeman - Confidential

63

1 Q Okay.

2 A Yeah. I want to be cool like them when I
3 grow up. And so I was almost always traveling and he
4 never traveled with me. Birthdays, usually I would do
5 birthdays with friends. Birthdays, usually I would do
6 birthdays with friends, the friend group would
7 typically -- and he would do the same. The friend
8 group was similar and so, like, if there was a
9 birthday party like good friends with Susan Tran and
10 Brendon Singh who are some bankruptcy attorneys in
11 town and they have a Victorian house south of
12 downtown. And they do a lot of events at that
13 property and so we would have -- Brendon Singh and I's
14 birthday is 10 years apart but days of each other.
15 Brendon and I would do a party together and Jones
16 would frequently come to that --

17 Q Okay.

18 A -- with a lot of other people. Or if they
19 had something -- I think they had something for Jones
20 a couple of times, you know, so I was often there.

21 Q For your birthday or his birthday?

22 A Both.

23 Q Okay.

24 A I don't -- I don't remember. I frequently
25 didn't do anything for my birthday. I'm not a

Elizabeth Freeman - Confidential

1 birthday person. I don't hate it but I don't love it.⁶⁴

2 Q Got it.

3 A But for like my 50th, I had a joint party
4 with Brendon, but a lot of the times Jones' evidence
5 class -- he taught a class and the young lawyers would
6 take him out for his birthday and I would usually go
7 to that.

8 Q Any other close friends or that same circle
9 of trust or is there other people in that friendship
10 circle you were just talking about?

11 A Yeah. In term -- in terms of people that
12 Jones will talk to?

13 Q Sure.

14 A No.

15 Q Okay.

16 A He's just -- keeps everything very close to
17 the chest.

18 Q Got it.

19 A And even within that circle, he obviously
20 doesn't talk about everything.

21 Q Okay.

22 A That's just who he is. I'm very private as
23 well, always have been. I hate social media. I don't
24 talk about stuff openly with hardly anybody.

25 Q Understood.

Elizabeth Freeman - Confidential

65

1 A That's just my nature.

2 Q Did you guys commute to work together?

3 A No.

4 Q So you were a law clerk and you were staying
5 with him and you guys wouldn't come in the same car?

6 A No.

7 Q You would drive separate cars?

8 A Yes.

9 Q And I'm guessing he had different parking
10 than you, right?

11 A No. He parked in the same lot.

12 Q But you wouldn't -- you take separate cars?

13 A Yes.

14 Q Is there a reason for that?

15 A We're ridiculous.

16 Q I'm just asking.

17 A We just -- we've always maintained
18 separation, professional versus personal, and you know
19 if we were going to a conference we traveled
20 separately. We just -- we've always siloed.

21 Q Okay. Did you have a conversation with him
22 at some point during this time, early, later, mid --
23 I'm still talking kind of before -- before you were at
24 Jackson Walker. About the portrayal of your
25 relationship to the outside world?

Elizabeth Freeman - Confidential

66

1 A No.

2 Q So, there was no -- there was -- there was
3 -- it was just a tacit understanding that we're going
4 to be private about this, or not private about it or
5 if people know, they know, or you had no --

6 A We never talked about it. And again, just
7 because we are both so private it would not have been
8 something.

9 Q Kind of understood?

10 A Yeah. I guess so.

11 Q Let me ask you: Did -- did -- did you tell
12 anybody that you were having a relationship with Judge
13 Jones?

14 A Told Albert and Liz and at the time the
15 courtroom deputy was Deanna.

16 Q Who's that? Deanna?

17 A Deanna Staples.

18 Q So Albert Alonso --

19 A Yes.

20 Q -- and then Liz. What was her last name?

21 A Miller.

22 Q Miller. Okay. And who told them?

23 A I think I did.

24 Q Do you know when?

25 A No.

Elizabeth Freeman - Confidential

67

1 Q Ballpark? Early on? Don't guess.

2 A It's -- it -- no, not early on.

3 Q Was there something that precipitated it
4 that you thought you had to tell them?

5 A I don't remember.

6 Q Was there a reaction?

7 A Not really.

8 Q Because they already knew or just because
9 they're close to the vest.

10 A Albert -- Albert said it makes sense.

11 You're the only two that could stand each other.

12 Q He said that at the time that you told him?

13 A Yes. And I just -- I remember it just
14 because it was funny --

15 Q Yeah.

16 A -- and also probably slightly accurate.

17 Q Okay. All right. Did you tell any of your
18 family?

19 A Yes.

20 Q Do you mind telling us who you told?

21 A I was -- I don't know if I so much -- I
22 don't think there was anybody that I didn't tell, but
23 I don't recall. I don't recall how it came about,
24 maybe just organic. You know, my sister is Army and
25 at the time she was frequently stationed overseas.

Elizabeth Freeman - Confidential

68

1 And again --

2 Q Is she your only sibling?

3 A No. I've got two younger brothers, as well.

4 Q So you told them, as well?

5 A Yeah. Now did I have a sitdown

6 conversation: Hey, I want to tell you something.

7 Probably not. That's --

8 Q But it came up?

9 A Yeah. I -- I -- I don't -- I can't -- I
10 don't have a specific recollection. I just don't
11 know.

12 Q Okay. You told your parents?

13 A Yes.

14 Q Anybody else in your family?

15 A My -- I have cousins.

16 Q How would you describe it to them?

17 A I don't think I ever did describe it.

18 Q What do you mean? You told them you had a
19 relationship. What did you say?

20 A I mean, I don't remember sitting down and
21 having a conversation.

22 Q Right, but when it did come out, how did you
23 put it?

24 A I don't -- I don't remember because I don't
25 recall a conversation.

Elizabeth Freeman - Confidential

69

1 Q Did you tell anybody else, any other
2 colleagues, friends?

3 A You know before Jackson Walker which I know
4 we'll get into later.

5 Q Yeah.

6 A I don't recall. I don't think so.

7 Q Okay.

8 A I mean --

9 Q Do you have a close personal, like,
10 girlfriend or -- that you confide in?

11 A No.

12 Q So that's not somebody you would tell.
13 Okay. Anybody -- you didn't have a fellow clerk so
14 you talked about your people in the clerkship.
15 Anybody else at the courthouse?

16 A Probably not. Again, not a talker.

17 Q Okay. How about any of the lawyers? This
18 is still when you're a law clerk. Maybe in the --

19 A Probably -- probably not.

20 Q Anybody ask you about it where you denied it
21 or told them yes?

22 A I'm -- I'm -- I'm sure there are people. I
23 know that there are people who have -- a few have
24 asked, but people rarely asked me. You know, they
25 would ask Albert.

Elizabeth Freeman - Confidential

1 Q Was -- was Albert told the -- what he should⁷⁰
2 say if someone asked?

3 A No. No.

4 Q So he said what he said?

5 A Whatever he said, I don't know.

6 Q When you were a clerk did you -- did you
7 hear rumors about you having a relationship with Judge
8 Jones?

9 A Albert had told me. That may be why I told
10 Albert. I don't know. I -- I know that people had
11 asked Albert. I heard about it later. I don't recall
12 anything at the time.

13 Q Was it -- did you tell any school staff or
14 anybody like youth sports that your kids are doing,
15 you know that -- that -- I don't know if Judge Jones
16 ever picked them up from school or anything?

17 A No.

18 Q Okay.

19 A He didn't pick them up from school. He did
20 coach my -- he was a basketball player and --

21 Q Judge Jones or your son?

22 A Well, both.

23 Q Okay.

24 A And it's funny because my ex-husband asked
25 Jones to coach Alex's basketball because he was a very

Elizabeth Freeman - Confidential

71
1 good basketball player, a good basketball coach, and
2 Nick's Australian. Knows soccer but didn't know
3 basketball. And so he did coach. There's a local
4 sports league. It's not school it's --

5 Q Yeah. I get it. Yeah. It's like a -- like
6 a extra -- I don't know what you call it. I get it.
7 It's not a school, but it's like a park district kind
8 of thing or something?

9 A Yeah.

10 Q Okay.

11 A And he coached basketball teams when Alex
12 was, like, in -- I don't remember if it was elementary
13 or middle school.

14 Q Was it -- was it -- was it when you were
15 clerking?

16 A Yes.

17 Q Law clerking?

18 A Yeah.

19 Q So Judge Jones was the -- your -- your
20 ex-husband asked Judge Jones to coach. So your ex --
21 ex-husband knew that you were having a relationship --

22 A Yes.

23 Q -- with Judge Jones?

24 A Yes.

25 Q Okay. I didn't ask that, sorry.

Elizabeth Freeman - Confidential

72

1 A Yeah.

2 Q Okay. And do you remember telling him?

3 A Yes. Well, I mean, I know that it was
4 discussed but I don't --

5 Q You don't remember what -- how you said it?

6 A I don't remember.

7 Q All right. So you say you get along with
8 your ex-husband?

9 A Very well.

10 Q So he -- it was his idea to have Judge
11 Jones --

12 A Yeah.

13 Q -- coach your son?

14 A Yeah.

15 Q And so he did coach your son?

16 A He did.

17 Q Okay. Did -- did the fact that you had a
18 relationship with Judge Jones at that time come up
19 with any other people that were involved in the
20 coaching or -- that -- that's -- that -- that's my
21 question. School staff or anybody like that know that
22 you have to tell them: Hey, if I'm not available call
23 Judge Jones. Or you probably had your ex-husband but
24 I don't know.

25 A Yeah.

Elizabeth Freeman - Confidential

73

1 Q I'm just asking.

2 A Yeah. No, not that I'm aware of.

3 Q Any other members of the general public know
4 when you were a law clerk that you told? I'm just --
5 just a catchall. I'm just throwing that out there.

6 A I don't know because, you know, it's -- it's
7 -- I wasn't hiding it but I wasn't advertising. I'm
8 just not somebody who talks about these things and so
9 I don't know.

10 Q Were you in -- in public while you were a
11 law clerk with Judge Jones, did you go to dinner with
12 him?

13 A Very rare occasion we might go to
14 Chick-fil-A or to a Chinese buffet. But did we have
15 dates? No.

16 Q Would -- I get no pleasure asking this. Did
17 you ever have any public displays of affection,
18 holding hands in public, anything like that?

19 A No.

20 Q Is that -- that's just not his style, your
21 style?

22 A Right.

23 Q Okay. Other than telling people, now this
24 is kind of a similar question. I won't go through all
25 the same people, but did people witness through a

Elizabeth Freeman - Confidential

74

1 date, I know you say you didn't go on dates, but
2 somehow witness that you guys were together? Maybe
3 who you didn't want to know or didn't care to ask, but
4 just saw you and could tell that you were a couple,
5 you know?

6 A I don't know.

7 Q Okay. Let me ask about plus one events. So
8 were there events where you were invited or Judge
9 Jones was invited where you were his plus one or he
10 was your plus one?

11 A No.

12 Q Never have?

13 A No.

14 Q Okay. Now, it's a tiny, you said it was a
15 small bankruptcy community. Were there any events
16 that you went to in the bankruptcy community were you
17 and Judge Jones acted as a couple?

18 A No.

19 Q And that was on purpose or just the way you
20 were?

21 A It's just the way we were. If it work was
22 work and if it was not work.

23 Q Okay. Would you go together?

24 A Not that I remember.

25 Q So you go separately?

Elizabeth Freeman - Confidential

75

1 A Typically, yeah.

2 Q Were there chance encounters where you were
3 together at a grocery store, walking dogs? I know he
4 has pets, right?

5 A Yeah.

6 Q Where people in the community saw you?

7 A Yes.

8 Q Okay. Tell me about that. People that --
9 that were like bankruptcy lawyers or just regular
10 people?

11 A I think I ran into Tara Grundemeier who's a
12 taxing authority lawyer walking the dogs once, you
13 know, stopped and talked to her.

14 Q In the morning kind of deal or at night or
15 do you remember?

16 A It was at night.

17 Q Okay. And was she surprised? Did you
18 notice anything about it, like, well, she's --
19 she's --

20 A No.

21 Q So you just acted naturally and she acted
22 naturally?

23 A Yes.

24 Q You guys often walk the dogs together?

25 A It -- when I was clerking we did because our

Elizabeth Freeman - Confidential

76

1 schedule was somewhat similar and so it made sense.

2 When I was in private practice, our schedule was so
3 different, almost never.

4 Q What would you do together in public? What
5 would you do? I mean, what -- you mentioned you went
6 to Chick-fil-A and you went to the buffet. Were there
7 any other things you guys would do together as a
8 couple?

9 A As a couple?

10 Q Yeah, as a couple. You tell me. I don't
11 want to put words in your mouth.

12 A Okay.

13 Q You tell me.

14 A Given how much we were separate in many ways
15 it may beg the question what is it that you actually
16 did do together. I have -- I have a lot of interests.
17 I water ski, I snow ski, I hike, I mountain bike, and
18 these are all things that I do myself, you know, with
19 my friends. What Jones and I did or, you know, do
20 together is fix golf carts, fix lawnmowers. I know it
21 sounds weird.

22 Q No, I'm impressed.

23 A He's good at electricity. I can turn a
24 wrench, you know, because I grew up the child of
25 farmers and so we would work on stuff together, you

Elizabeth Freeman - Confidential

77

1 know, maybe we would go to Lowe's.

2 Q Home Depot?

3 A And Home Depot and, you know, piddle with
4 stuff.

5 Q So not -- not a lot of public things?

6 A We just -- we just don't. We've never spent
7 a lot of time together.

8 Q Explain that to me. So you mean working
9 you're together as a law clerk, you're there all the
10 time, right?

11 A Yes. Yeah.

12 Q Which probably led to the relationship in
13 the first place, right? So the -- outside of that was
14 not a lot together. Is that what you're saying?

15 A Not really.

16 Q Okay.

17 A Not a lot.

18 Q You gave me kind of a strange look when I
19 said that led to it. So what -- I said something
20 wrong.

21 A No. It just -- I was just thinking
22 obviously a lot of thinking back on things. This --
23 the amount of stuff we do together is just not that
24 much. And I know it seems odd and it -- maybe it is,
25 but we're both very independent people. And given the

Elizabeth Freeman - Confidential

78

1 way that we've siloed things, I'm just -- I'm gone a
2 lot. And I'm off doing things with friends and
3 family, a lot that Jones just didn't ever participate
4 in.

5 Q Did you tell -- you said those friends that
6 you ski with and mountain bike with and stuff, did you
7 tell them about your relationship?

8 A I mean, if he -- sometimes he would come out
9 and help me at the house with stuff, you know,
10 electricity and things like that and so they would see
11 us together and so --

12 Q When you say "the house," you mean the river
13 house?

14 A The river. Yeah.

15 Q Okay. So they saw him come out working on
16 the lawnmowers and the --

17 A Yeah. And when we had floods. We had a
18 couple of floods and he and others would come out and
19 help me clean up, things like that so --

20 Q And they could tell that there was a
21 relationship as opposed to just being a friend and
22 helping?

23 A I'm sure they could.

24 Q How could they tell that? Did you act
25 affectionate?

Elizabeth Freeman - Confidential

79

1 A Maybe, maybe not. I don't know.

2 Q Okay. Well, let me move on to finance. I
3 know we beat that to death, so let's go to finance.

4 UNIDENTIFIED SPEAKER: I have one
5 question.

6 MR. LAYNG: Oh, you do. Okay. So
7 we're not done.

8 UNIDENTIFIED SPEAKER: So, no, it's
9 only one. But, you know, you mentioned that from time
10 to time you may have had friends come over to the
11 river house. Would those be the same friends in the
12 inner circle or just completely different people?

13 THE WITNESS: Well, my -- my friends
14 that I water ski with. Neighbors.

15 UNIDENTIFIED SPEAKER: All right.
16 Neighbors.

17 THE WITNESS: Yeah.

18 UNIDENTIFIED SPEAKER: Do they -- do
19 they -- your neighbors know that he was a judge or he
20 was just some guy that shows up here and there?

21 THE WITNESS: I don't know.

22 UNIDENTIFIED SPEAKER: All right.

23 THE WITNESS: I don't know.

24 UNIDENTIFIED SPEAKER: Go ahead.

25 BY MR. LAYNG:

Elizabeth Freeman - Confidential

80

1 Q Okay. So I -- I touched on this before,
2 just talking about the financial ties and I know that
3 Tom mentioned there weren't really any but I -- I'm
4 just going to ask you. So the real estate -- the --
5 the real estate we talked about, right, the Rolla
6 house that you were -- have the right of survivorship
7 with and you paid the exemptions in December of 2022.
8 Any other time you paid taxes?

9 A No. It was -- I paid in 2022. I also paid
10 December of 2021.

11 Q Oh, okay. So you paid twice?

12 A Yeah.

13 Q Both end of year?

14 A Yeah.

15 Q Half of -- half of it?

16 A I paid half, yeah.

17 Q So December of '21 and December of '22?

18 A Yeah. After I was gone from Jackson Walker.

19 Q Okay. All right. And it was half you said?

20 A Uh-huh.

21 Q And that was at his request or you just
22 decided that or how did that work?

23 A He asked me about it and it just seemed
24 fair.

25 Q Okay. Were there any -- you -- you didn't

Elizabeth Freeman - Confidential

81

1 pay any utilities there?

2 A No.

3 Q Okay. And any other maintenance repair that
4 you paid for, lawn mowing, anything like that?

5 A No.

6 Q Okay. You guys mow lawns around here,
7 right? That's not a --

8 A You do mow.

9 Q Okay, good.

10 A You get -- you get people to do it.

11 Q Okay. I get it.

12 A At least in town so --

13 Q You mentioned -- I think you mentioned this
14 but I -- I want to ask about it. There's another
15 house that I call the Coldspring home. It's on a lake
16 I believe. It's owned by Judge Jones, correct?

17 A Yes.

18 Q All right. Is -- your parents live there?

19 A No. I -- I have a house that -- I bought
20 the house. It is in my parent's name because it's a
21 homestead in their parent -- in their name and they're
22 over 65. It is in the same neighborhood.

23 Q It's not his house?

24 A No.

25 Q Okay. Got it. All right. And what -- so

Elizabeth Freeman - Confidential

1 when did -- that house is also up by that lake, right?⁸²
2 A It's in the same neighborhood.
3 Q When did you buy that house?
4 A I think it was really early of '21.
5 Q Twenty-one?
6 A Yeah. January of '21, maybe.
7 Q All right. I probably know the answer to
8 this but I am going to ask you anyway. Cell phones
9 all separate, no --
10 A Everything is separate.
11 Q You don't -- you don't share cell phone
12 plans?
13 A No.
14 Q No vehicles shared?
15 A No.
16 Q Okay. Any loans from or to him?
17 A No.
18 Q Gifts. Did he ever provide you any jewelry,
19 any rings, any -- any gifts like that?
20 A Trying to think. And I was -- I've been
21 racking my brain to try to think about this. I'm not
22 aware -- in December of '22 he gave me a necklace.
23 Just like holidays. You know; birthdays, no. There
24 is no anniversary. Christmas, like, I would take
25 pictures of the dogs, you know, and give him framed

Elizabeth Freeman - Confidential

83

1 pictures. Things -- little trinkety-type things. I
2 just can't remember anything of any significance.

3 Q The necklace, was it a nice necklace?

4 A It was -- it was pearls. It was pretty.

5 Q And you said you get -- is this all
6 throughout the -- from -- from the law clerk days
7 or --

8 A No. He gave -- he gave me presents when we
9 were law clerks. Once I went into practice we, for a
10 few reasons, there were still trinkets, but it wasn't
11 nice gifts --

12 Q Okay.

13 A -- like you would give a partner. He's -- I
14 know it sounds --

15 Q So when you were a law clerk he gave you
16 some gifts that were inexpensive gifts. Is that what
17 you're saying?

18 A They were -- yeah. Yeah. He would give me
19 nice stuff. Like he gave me a camera when I was a law
20 clerk and he gave me another necklace when I was a law
21 clerk.

22 Q What kind of necklace was that? What that a
23 nice necklace?

24 A Yes. But jewelry, like something like that,
25 I think that's it.

Elizabeth Freeman - Confidential

1 Q Any -- like you were -- very active any of ⁸⁴
2 that kind of stuff like skis or trips?

3 A No. No.

4 Q No loans? You never borrowed money from him
5 and he never borrowed money from you? You give me a
6 funny look. The answer is, no?

7 A Yeah.

8 Q Okay. I'm just -- I'm just asking. Did --
9 provide any --

10 A We -- he -- he --

11 Q -- investments for you?

12 A He let me -- no. No investments.

13 Q Okay.

14 A In -- he let me use airline miles.

15 Q Okay.

16 A Once. He -- because he doesn't --

17 Q Do you know when that was?

18 A Yeah. In '22, when I went to Australia. He
19 gets all these miles and he never -- he doesn't travel
20 so he let me use airline miles to upgrade to go visit
21 my sister in Australia.

22 MR. KIRKENDALL: Do you know when that
23 trip was?

24 THE WITNESS: July.

25 MR. KIRKENDALL: I can tell you. It

Elizabeth Freeman - Confidential

85

1 was at the --

2 THE WITNESS: I think it was --

3 MR. KIRKENDALL: Yeah. It looks like
4 it would have been July of --

5 THE WITNESS: -- July or August.

6 MR. LAYNG: 2022?

7 MR. KIRKENDALL: Of 2022.

8 BY MR. LAYNG:

9 Q Do you know what airline?

10 A United.

11 Q So, no -- did you share any investment
12 accounts?

13 A No.

14 Q Did you share any savings or checking
15 accounts?

16 A No.

17 Q So you always kept that separate?

18 A Yes.

19 Q PayPal, Venmo, Zelle? Do you have anything
20 like that with him?

21 A No.

22 Q No Bitcoin, I guess? Have to ask.

23 MR. KIRKENDALL: Wish she did.

24 THE WITNESS: Yeah.

25 MR. LAYNG: Maybe not.

Elizabeth Freeman - Confidential

1 MR. KIRKENDALL: Did you see what it is⁸⁶
2 today?

3 MR. LAYNG: Oh, is it up?

4 MR. KIRKENDALL: It's over \$44,000.

5 MR. LAYNG: I don't understand Bitcoin
6 so I don't invest in it.

7 MR. KIRKENDALL: There was a -- there
8 was a Bitcoin case, a Bitcoin miner case filed here in
9 December of last year.

10 UNIDENTIFIED SPEAKER: Yeah. Core
11 Scientific.

12 MR. KIRKENDALL: Yeah. Core and the --
13 the price of Bitcoin at that point was like sixteen
14 five. And just as of yesterday --

15 MR. LAYNG: Wow.

16 MR. KIRKENDALL: -- that's the last
17 time I took a look at it was forty-four eight.

18 BY MR. LAYNG:

19 Q Do you have any, what I call -- share any
20 streaming services? Like do you -- are you on his
21 Netflix account or anything?

22 A No.

23 Q Okay. How about Amazon Prime, eBay,
24 anything like that?

25 A Nope.

Elizabeth Freeman - Confidential

87

1 Q Okay. Those are all separate. Now let me
2 ask you: Health insurance?

3 A Yes.

4 Q Would you --

5 A No.

6 Q Did you get on his health insurance plan?
7 Did he get on yours?

8 A No.

9 Q Never happened? Okay. Life insurance?

10 A No.

11 Q Is your -- is he a beneficiary for your life
12 insurance?

13 A I don't have any life insurance.

14 Q Does he?

15 A Not -- I -- I don't know.

16 Q That's fine. 401(k) for savings plans. Do
17 you know who -- you're his beneficiary?

18 A I don't know who his beneficiaries are. My
19 beneficiaries are my children.

20 Q Okay. And you never discussed that you
21 would be beneficiary on his?

22 A No.

23 Q Pension or anything like that?

24 A I don't know.

25 Q Not his pension but that's -- okay. You

Elizabeth Freeman - Confidential

88

1 know you mentioned the estate planning and then found
2 out about being the executor. Do you know who you
3 replaced?

4 A No.

5 Q And you believe you're a beneficiary, but
6 you're not sure?

7 A I believe I am, but I'm not sure.

8 Q Your -- your belief is based on?

9 A The -- the fact that I know he's mentioned
10 before Albert and Liz.

11 Q So when you're asked for emergency contacts,
12 do you put him down? Do you put -- who do you put
13 down?

14 A It's usually my daughter because she's 21.

15 Q Okay.

16 A My son, no. Because he's a derp. He's 18
17 but, no. Nick is usually my emergency.

18 Q The person you put --

19 A Yeah.

20 Q Have you ever put Judge Jones down for your
21 emergency contact?

22 A Maybe recently.

23 Q How recent?

24 A Like, I just did health insurance, yeah,
25 last night.

Elizabeth Freeman - Confidential

89

1 Q That's recent.

2 A So I did -- I know I did it then but
3 generally it would be Nick or my daughter or my
4 sister, Emily.

5 Q Taxes, tax returns, any -- any joint tax
6 returns or --

7 A No.

8 Q All right. I'm going to move on unless
9 anybody wants to supplement. Okay. So let's talk
10 about Jackson Walker --

11 A Uh-huh.

12 Q And the -- the -- the law clerkship. How
13 did that recruitment begin?

14 A I was -- I needed to make a change and I was
15 interested in going back into private practice. I
16 talked -- and Matt Cavanaugh and I had been friends
17 for a long time. We both clerked for Judge Steen, and
18 so I knew him when he was an intern for Steen, you
19 know, and I was an alum. And I interviewed with --
20 you know, made it known that I was looking to go out
21 into practice and interviewed at like Haynes and
22 Boone, with Jackson Walker. Let me think. Who else?
23 There were one or two more that I talked to. I talked
24 with a couple of small, you know, boutique firms.

25 Q When was this?

Elizabeth Freeman - Confidential

1 A Oh, man. April -- March, April, May of '18.⁹⁰

2 Q And you said you wanted to make a change.

3 Was that financial reasons or other reasons?

4 A It was a variety of reasons, yeah.

5 Q What were they?

6 A One, you know, financial would have been
7 nice. I was still taking care of my grandmother and
8 that was -- that put a degree of strain on the
9 finances. I don't -- don't regret it for a moment,
10 but it was expensive. You know, kids getting into
11 high school was really, especially my daughter was
12 really expensive.

13 Q Were they in private schools?

14 A No. But daughters are expensive.

15 Q Okay.

16 UNIDENTIFIED SPEAKER: Do you have any
17 daughters?

18 MR. LAYNG: I do.

19 A Okay. So you know.

20 BY MR. LAYNG:

21 Q I must have been a bad dad. So, yeah, in
22 some ways --

23 A You know, and I was, you know, a little -- I
24 was -- I was bored and David and I's relationship was
25 not great and we weren't really intimate anymore, and

Elizabeth Freeman - Confidential

91

1 so I just was ready to move on.

2 Q Were you still living with him at the Rolla
3 house?

4 A Yes.

5 Q So did you tell Judge Jones that, hey, I'm
6 looking for a job?

7 A Yes.

8 Q And what was -- what was his reaction?

9 A You never get much of a reaction from Jones
10 but, you know, he said he understood.

11 Q Did you discuss with him possibilities of
12 where you were going?

13 A I'm sure I did.

14 Q Did he -- was he at all involved in the
15 process? Did he --

16 A No.

17 Q Okay.

18 A Not that I -- not that I'm aware of.

19 Q Okay. That's fine. So you told us the type
20 of places you interviewed at?

21 A Uh-huh.

22 Q And that took place you said -- or is that
23 Spring of 2018?

24 A Yeah. Spring of '18.

25 Q Tell me about the interview process in --

Elizabeth Freeman - Confidential

92

1 for Jackson Walker. Who did you talk to? How did
2 that work?

3 A I talked to Cavanaugh, then talked to the
4 bankruptcy people and then some other people in other
5 sections.

6 Q And during that interview process was there
7 any mention at all of your relationship with Judge
8 Jones?

9 A There was not.

10 Q Was it asked?

11 A No.

12 Q Did they ask you during the interview
13 process about any possible connections or conflicts
14 you might have?

15 A There was a conflict questionnaire, you
16 know, cases that you worked on, that type of thing. I
17 remember that. I don't remember all of the detail.

18 Q You don't have a copy of that?

19 A No.

20 Q Okay. Was that during the interview process
21 or after you actually accepted the offer?

22 A I don't remember.

23 Q Why did you settle on -- not settle on, why
24 did you choose?

25 A Cavanaugh and I were really good friends and

Elizabeth Freeman - Confidential

93

1 I was looking forward to working with him. I think
2 Bruce Ruzinsky is one of the finest people and lawyers
3 that anyone could know, and the chance to be able to
4 work with him was --

5 Q Those are both members of the -- of the
6 bankruptcy group of Jackson Walker?

7 A Yes.

8 Q And you knew both of them well?

9 A I knew Matt really well. I knew Bruce well
10 enough. I admired him greatly. I knew he was a
11 really good guy.

12 Q So you -- you decided to -- did they give
13 you an offer?

14 A They did.

15 Q How many times did you interview with them?

16 A I don't recall for sure and it was a series
17 of, you know, meetings and going into the office. You
18 know, it was -- it was several -- it was at least
19 several conversations or meetings, but I don't recall.
20 I can't tell you for sure what the process was.

21 Q During the -- that process and let me get
22 the whole process before you started I guess. Was
23 there a discussion about what your role would be if
24 you joined the firm, what was expected of you?

25 A Patty Tomasco was there, too. I forgot

Elizabeth Freeman - Confidential

94

1 about that. I'm sure that there was. I'm sure there
2 was.

3 Q That's fine. That's fine.

4 A Yeah.

5 Q So did you -- was there a negotiation over
6 what your -- what your compensation would be and what
7 your position would be and all that?

8 A There was.

9 Q Okay. And did you -- were you represented
10 at all in that negotiation or it was just you?

11 A No, it was just me.

12 Q Okay. Who did you negotiate with?

13 A It -- it was not much of a negotiation. An
14 offer was presented to me. I -- and it was a base
15 plus incentive compensation. I negotiated a lower
16 base.

17 Q Explain that to me.

18 A Because I didn't know how it would work and
19 I would much rather come in and knock it out of the
20 park and do a really, really good job and exceed
21 expectations as opposed to being over paid and
22 underperforming.

23 Q Okay. So what would -- how would that work?
24 What would the bonus be? I mean --

25 A The compensation at Jackson Walker is almost

Elizabeth Freeman - Confidential

95

1 entirely objective. It's -- there's a formula.

2 Q Right.

3 A You know, some places it's a black box and
4 you don't really know what the alchemy is, but what I
5 negotiated for was a lower base but they would just
6 true it up on the back end if I was able to perform.

7 Q What performance -- how would you -- what
8 was the criteria for performance?

9 A I think -- I think that it was based on an
10 assumption of 1500 billable hours a year which would
11 be amortized because I would be starting in the middle
12 of the year and I never fully understood the formula.
13 Cavanaugh was the whiz at it. You know, it's a
14 certain percentage of and but the compensation --

15 Q It's not just how many hours you work, is
16 it? I mean, what else are they looking at?

17 A It's not based on how many hours you work.
18 It's based on collection. You've got to hit the
19 hours, but because so much in bankruptcy, you know, is
20 delayed compensation it's -- they're looking at a
21 metric of hours plus collection at least at the
22 beginning.

23 Q How did you get collection credit? How does
24 that happen? How do you get collection credit?

25 A I don't -- I'm not sure what you mean.

Elizabeth Freeman - Confidential

96

1 Q How to get credit for collection? I mean,
2 you bring the -- you bring the matter in. Is that how
3 you get it?

4 A Oh, that's origination.

5 Q Okay. That's origination?

6 A And so --

7 Q That would have been -- the collections is
8 just what -- go ahead.

9 A Yeah. If you get paid on your time.

10 Q Okay.

11 A It's just -- that's it.

12 Q But how, would I -- I guess the matter comes
13 into the Jackson Walker bankruptcy group?

14 A Right.

15 Q How do you -- I mean, so why do you --
16 anybody -- everybody gets that benefit, right?

17 A Yeah. The origination is, you know, you
18 take a look at who it was that was responsible for
19 bringing in the deal.

20 Q Is that part of the compensation formula?

21 A It is. It's a small part of it at Jackson
22 Walker. I think it's 10, but I'm not --

23 MR. KIRKENDALL: It's 15 percent.

24 THE WITNESS: It's 15. Okay, thanks.

25 MR. KIRKENDALL: 15 percent of total

Elizabeth Freeman - Confidential

97

1 collections.

2 A Okay. And when a matter would come in
3 whomever it was that was responsible for taking the
4 call, bringing it in, you know, making a pitch. They
5 would discuss amongst themselves how you would
6 allocate the originations.

7 BY MR. LAYNG:

8 Q Got it. Okay. But the -- was about the
9 money -- the money that was brought into the group you
10 got credit for, that's what you mean by collections?

11 A No. Collections is collections on your own
12 time. So bill an hour, get paid for an hour of your
13 time.

14 UNIDENTIFIED SPEAKER: They're some
15 attorneys who bill a lot of hours --

16 MR. LAYNG: And don't get collections.
17 I got it.

18 UNIDENTIFIED SPEAKER: -- and they
19 collect none, and so that's -- that's why.

20 MR. LAYNG: Understood.

21 BY MR. LAYNG:

22 Q And so based on that you would get a bonus?

23 A Well, it was not a bonus. It was, call it
24 more of a true-up. It wasn't sprinkles --

25 Q You get that on the back end?

Elizabeth Freeman - Confidential

98

1 A We would get it on the back end. I didn't
2 want a really high number and then not be able to hit
3 it.

4 Q Okay. So what was your compensation? Do
5 you remember what they were going to pay you?

6 A I think that the first year it was 250.

7 Q Okay. And then there would be a --

8 A A -- a true-up based on performance.

9 Q Okay. That ended up being what? Do you
10 know?

11 A I don't remember.

12 Q Can you ballpark what you would usually get?
13 Would it be significant?

14 A I thought so. I'm, at the end of the day,
15 cheap. So, yeah, it was significant.

16 Q Would it be over six figures?

17 A Oh, yeah. Yeah.

18 Q Was it as much as your base or more?

19 A I don't think it was as much as my base that
20 first year. But I'm -- I am a grinder. I woefully
21 under bill for the time I put into things, but I work
22 a lot of hours and so my pay was high.

23 Q What was your work in a year?

24 A I'm sorry?

25 Q How much would you work in a year, how many

Elizabeth Freeman - Confidential

99

1 hours?

2 A It depended on the year. I can't -- I don't
3 have the numbers anymore.

4 Q Okay.

5 A But I -- I, you know, I think there was one
6 year it was 3200.

7 Q Really?

8 A Never -- yeah, so it about killed me. I
9 never want to do that ever again. And that was, like
10 I said, under billing dramatically. I did nothing but
11 work.

12 Q Okay.

13 A But other times I was doing a lot more, you
14 know, management especially as the team got bigger. I
15 spent a lot less time working on matters and a lot
16 more time dealing with people, you know, and
17 assignments, and making sure that things were getting
18 taken care of, and administrative side stuff.

19 Q How were you compensated for that?

20 A You're not.

21 Q You're not. Is not compensated work?

22 A No.

23 Q They don't throw something at the end of the
24 year for that?

25 A I, you know, that -- when I said it was

Elizabeth Freeman - Confidential

100
1 largely objective, you know, there was, you know, a
2 little bit of sprinkle at the end, but it was pretty
3 minimal.

4 Q Got it. So was there an employment contract
5 when you -- when you started Jackson Walker?

6 A I don't recall that there is. I think it's
7 at-will.

8 THE WITNESS: Tom, do you remember?

9 MR. KIRKENDALL: I was never
10 presented --

11 A I don't -- I don't think so.

12 MR. KIRKENDALL: -- presented a
13 contract.

14 A I don't think so.

15 BY MR. LAYNG:

16 Q What about the partnership, was it income
17 partner? Is that what they call it?

18 A Yes.

19 Q Was that ever something that was negotiated
20 or was that really pretty much the way they always did
21 it?

22 A I can't tell you how JW always does it. I
23 know that I was brought in as an income partner
24 because, you know, when you get somebody of a certain
25 year of seniority if they're not a partner it looks --

Elizabeth Freeman - Confidential

101

1 Q Yeah.

2 A It looks strange and given that their goal
3 was for me to be able to lead.

4 Q That was the first time you were partner.
5 You were not a partner at Porter Hedges?

6 A I was.

7 Q You were a partner?

8 A Yes.

9 Q Okay. I didn't ask that.

10 A Yeah, you did.

11 Q Did I?

12 A Uh-huh.

13 Q Okay. Was there any discussion about
14 promotion to an equity partner at the time you
15 started?

16 A At the time I started? They talked
17 basically about how equity would work, you know, what
18 kind of numbers you would need to hit or whatever. I
19 didn't come in with dreams of grandeur. I didn't pay
20 a ton of attention to it.

21 Q And you knew you were going to be in -- is
22 there a formal bankruptcy group?

23 A There -- there is but the lines at JW again
24 are not fine. It's people get pulled from all kinds
25 of sections just depending on what the need is and

Elizabeth Freeman - Confidential

102

1 what the issue is.

2 Q Okay. You talked about the, I think it's
3 been described as lateral partner questionnaire?

4 A Yeah.

5 Q When did you receive that?

6 A I don't remember. It would either have been
7 before I was -- before I accepted an offer or right
8 after. It would -- it would have definitely been
9 before I started, but I don't recall sequencing when
10 it happened.

11 Q Okay. Do you have a copy of it?

12 A No.

13 Q Okay. Did -- what it -- what did it ask and
14 what did you -- what did you answer, if you remember,
15 particularly about Judge Jones?

16 A I don't remember if it asked anything about
17 Judge Jones.

18 Q Well, I guess it didn't name him but did it
19 ask about connections, conflicts, that kind of thing?

20 A I know the questionnaire asked about cases.
21 I don't recall anything else on the questionnaire. I
22 just don't remember.

23 Q In the -- in the preliminary response that
24 was filed by Jackson Walker --

25 A Uh-huh.

Elizabeth Freeman - Confidential

103

1 Q -- have you read it?

2 A Yes.

3 Q Okay. Did you have anything to do with it
4 being prepared?

5 A I did not. I have not discussed this with
6 any of the Jackson Walker people. I have -- we have
7 purposely stayed away from one another.

8 Q You say "purposely," so you -- there was
9 some discussion about staying away from each other or
10 you just stayed away from each other?

11 A There was -- there was a discussion that,
12 hey, we just need to not, you know, everybody just
13 needs to not talk about this and so we have not. I
14 have had some conversations with Jackson Walker about
15 pending cases. They're working with me and GWG and so
16 we'll discuss discrete matters on that Auto Plus and
17 there's a Chapter 7 case, The Landing, but it's been
18 via e-mail.

19 Q Okay. When was it discussed about staying
20 apart?

21 A Well, we just did and then Cavanaugh and I
22 had a glass of wine, gosh, probably the third week,
23 second or third week of October where we just said we
24 just need to make sure that, you know, not to talk
25 about anything and then we talked about cases and

Elizabeth Freeman - Confidential

104

1 nothing else.

2 Q Understood.

3 A So --

4 Q Anybody else present?

5 A Jason Boland. It was before Boland was
6 formally engaged, but it -- I now understand that it,
7 you know, that was in the works.

8 Q So in that preliminary response it said that
9 you disclosed matters about -- you couldn't work on
10 cases that you were working on as a law clerk, but you
11 did not disclose your relationship?

12 A I did.

13 Q Does that ring -- does that refresh your
14 memory? If it doesn't, that's fine, but I mean does
15 that sound right? Does it not sound right?

16 A I can't -- I can't say for sure. I know
17 that I didn't -- I know I didn't disclose the
18 relationship. I, you know, we talked about it and
19 agreed that I would not be appearing in his court and
20 I didn't appear in his court.

21 Q Can I drill down on that a little bit?

22 A Yeah.

23 Q You talked to Judge Jones about not
24 appearing in his court when you were going to go to
25 Jackson. So when did that conversation take place?

Elizabeth Freeman - Confidential

105
1 A Well, as a former law clerk, number one --
2 Q I understand.
3 A -- you just wouldn't.
4 Q Well, you say you just wouldn't but you --
5 you -- you seem like at least you talked about it?
6 A Oh, yeah.
7 Q Can you tell me about that conversation?
8 A I don't remember a specific conversation.
9 But I -- I, you know, I remember talking with
10 Cavanaugh and others but, you know, it -- it was in a
11 -- in a lot of ways pretty easy because of the former
12 law clerk you can't appear in the judge's court. And
13 the typical -- there's not a rule, but the typical
14 process is as long as somebody was a law clerk you
15 don't appear in that judge's court for that equal
16 period of time. And since I was a law clerk for six
17 years, you know, I was not going to be --
18 Q So Judge Jones didn't tell you that? You
19 just understood -- how do you understand that rule?
20 A It's just the way. It's just the way.
21 Q The way.
22 A This is the way. You know, I -- I don't
23 know. I just --
24 Q So do you remember talking to Judge Jones
25 about not appearing before him when you went into

Elizabeth Freeman - Confidential

106

1 private practice at Jackson Walker?

2 A I don't remember a specific conversation,
3 but I know that I knew I would never appear before him
4 and --

5 Q And the source of that was "the way", or the
6 source of that was at some point you did talk to him,
7 you just don't know when?

8 A It's -- that's just the way that all the law
9 clerks work --

10 Q Okay.

11 A -- in all the courts. You know, all the
12 judges have the same understanding and I don't know
13 if -- I'm not aware of it being codified or written
14 down anywhere. It's just how it works.

15 Q Right. You understood you weren't going to
16 appear before the judge for the number of years that
17 you were his clerk?

18 A Yeah.

19 Q What about the fact that you had this
20 relationship?

21 A I -- in looking at it, I didn't think that
22 that required disclosure.

23 Q And we're talking about at the time, I
24 assume.

25 A Yeah.

Elizabeth Freeman - Confidential

107
1 Q We're going back in time to when you started
2 Jackson Walker. Can you tell me why you didn't
3 believe that or what the reasoning was in your mind,
4 your understanding?

5 A Yeah. I mean, Tom can go into this deeper.
6 Went and looked at the rules and just did not think
7 that it was something that was going to be required
8 and I knew I wasn't going to appear in his court and
9 regardless of whether we were intimate or not he was
10 just, you know, he and I were such close friends and
11 people knew we were such close friends. I just wasn't
12 going to do it anyway.

13 Q Okay. You contemplated that you had this
14 relationship?

15 A Yeah.

16 Q And you then did some research?

17 A Yes.

18 Q Just you or did you have any help?

19 A Jones looked at it as well.

20 Q Okay.

21 A He -- he and I looked at it and we talked
22 about it.

23 Q Tell me about that. So you and Jones looked
24 at it before you started at Jackson Walker, right when
25 you started. Do you know approximately when that was?

Elizabeth Freeman - Confidential

108
1 A I think it was before. I mean, I know -- I
2 know it was before.

3 Q Shortly before or like in that Spring?

4 A It would have been in the Spring because I
5 know it was when I was looking and I was trying to
6 figure out, you know, what I thought the boundaries
7 were.

8 Q Do you know where that took place, that
9 conversation?

10 A It would have been at the courthouse.

11 Q Okay. Who was present?

12 A Probably just he and I.

13 Q And the best you can remember what was said
14 and was done?

15 A I remember we looked at cases. I remember
16 we looked at the rules and the canons.

17 Q Judicial canons?

18 A I remember he looked at that as well, yes.

19 Q And you looked at cases. Do you remember
20 any of the cases --

21 A You know, as I sit here right now, I can't
22 tell you the names. You know, I know there was an
23 Edith Clement case. I know that there was something
24 out of New Orleans, you know, looked at the --

25 MR. KIRKENDALL: Judge Clement case,

Elizabeth Freeman - Confidential

109

1 I'm sure it was one.

2 MR. LAYNG: I think you mentioned that.

3 A Yeah. Keith London, you know, he -- his
4 girlfriend appeared before him frequently and so we
5 looked at that. We looked at the Shelby Jordan
6 complaint that was filed with regards to Judge Schmidt
7 and I -- but, you know, I don't have it all in front
8 of me so --

9 BY MR. LAYNG:

10 Q No. I understand. I understand.

11 A But I remember we just looked through a lot
12 of different cases and, you know, we talked about it
13 trying to figure out, you know, where the -- where the
14 guardrails needed to be.

15 Q And do you remember what you said to each
16 other or do you remember?

17 A This is more than five years ago.

18 Q I know it is. I know it is.

19 A It's almost six years ago.

20 Q Can you give us the gist of what you came up
21 with?

22 A The gist is we thought as long as I didn't
23 appear in the court that it was -- that it was fine.

24 Q At this time were you still living at Rolla?

25 A Yes.

Elizabeth Freeman - Confidential

110
1 Q You mentioned earlier that you had some lack
2 of intimacy at some point?

3 A Uh-huh.

4 Q That was maybe part of one factor in your --
5 in your decision to go into private practice?

6 A It was certainly a factor, but it was the
7 lack of financial connection --

8 Q I understand.

9 A -- more than anything.

10 Q I'm not saying it was primary. But I'm just
11 saying so your -- your -- your decision to not put
12 this in the lateral partner questionnaire was an
13 intentional decision based on your research and
14 discussion with Judge Jones?

15 A I don't -- I don't remember that the lateral
16 partner questionnaire had anything related to it.

17 Q Is that -- that didn't -- that didn't spur
18 this conversation? This is just a general
19 conversation you had because what do you got to --

20 A Yeah.

21 Q What are we going to do when you're in
22 private practice conversation?

23 A Yes.

24 Q Okay. All right. And the understanding and
25 I don't want to put words in your mouth so this is

Elizabeth Freeman - Confidential

111
1 really important. If I'm wrong, tell me. Was -- your
2 not appearing for six years in front of him, and I
3 think the other part of the rule if I'm not corrected
4 is you can't sign any pleadings?

5 A Yeah. I didn't sign any pleadings.

6 Q Okay. And that was -- that was -- was
7 enough as far as guardrails or however you want to put
8 it --

9 A Yeah.

10 Q -- you didn't have to disclose it?

11 A Yeah. We thought so.

12 Q Okay. Was that your decision or Judge
13 Jones' decision?

14 A Yeah. He was certainly resolute in that
15 being his decision and his opinion and, you know, I --
16 I can't remember every bit of it, but, you know,
17 obviously I got comfortable with it.

18 Q No -- no debate about maybe you should
19 disclose or anything like that?

20 A We -- we talked about it and a lot of the
21 concern that we had was a few things, you know, one he
22 was concerned about weaponizing, you know. And I'm --
23 I don't mean to say that there was anything wrong with
24 that at all, but I'm going to use it for example.
25 When Judge Schmidt was on the bench in Corpus Christi

Elizabeth Freeman - Confidential

112
1 the case got filed. You know, Shelby Jordan wasn't on
2 the pleadings people would immediately run to hire
3 him, you know, because that was your -- that was your
4 in and there were a lot of people that question the
5 things that Judge Schmidt did because of that. And so
6 it was weaponizing Shelby Jordan's, you know, firm and
7 I just don't --

8 Q So I understand because I don't know this
9 history here.

10 A Yeah.

11 Q Shelby Jordan had a relationship with the
12 judge?

13 A They were best friends. They played in
14 bands together.

15 Q Okay. Okay.

16 A They -- they --

17 Q Thank you.

18 A -- they vacationed together.

19 Q I just needed the background.

20 A It was, yeah. And, you know, we wanted to
21 avoid that, you know, good or bad. And, you know, go
22 hire Jackson Walker because of this or that and maybe
23 I'm oversensitive to it and it's not really a thing
24 anymore but again as a woman in this practice, you
25 know, I wanted to stand on my own and be known for

Elizabeth Freeman - Confidential

113
1 what I could do and my skills and, you know, flay my
2 reigns and not because of, you know, some relationship
3 that I had.

4 Q Did you look at the disclosures. I'm sorry
5 to interrupt you. Go ahead finish your thought.

6 A No, that was it.

7 Q So you looked at it like it would be an
8 advantage that you didn't want as opposed to --

9 A I -- or a disadvantage. I mean, it cuts
10 both ways and I was more concerned about the
11 disadvantage than I was there being some sort of
12 perceived advantage, because quite frankly if people
13 know our judges, if you're tight with the judge the
14 expectations are higher. And, you know, whether it's
15 Lopez or Isgur or, you know, Jones when John Higgins
16 or Joshua Wolfshohl, one of his people would come in
17 they have much higher expectations for people that
18 they're close to.

19 There's no benefit. I -- I didn't want
20 the disadvantage. I didn't want the advantage. I
21 didn't want people to think well you gotta go hire
22 Freeman for this or that or whatever.

23 Q Did you discuss others parties though, not
24 about the hiring, but other parties to -- to -- on the
25 other side of say your firm and your client?

Elizabeth Freeman - Confidential

114

1 A Yeah.

2 Q Was that discussed about their right to know
3 that there was a relationship between you and the
4 judge?

5 A I don't know. I don't think so.

6 Q Were you given any training or instruction
7 or direction of what to disclose by -- by Jackson
8 Walker on that lateral partner questionnaire or -- or
9 just generally what you needed to disclose?

10 A I -- I don't remember. I remember doing the
11 questionnaire. I cannot tell you what was on it for
12 sure. I haven't looked at it in almost six years.

13 Q Was there any discussion about, not the
14 intimate relationship, but like the fact that you were
15 -- had the right of survivorship on the house and
16 executor of his will?

17 A No.

18 Q Okay. So did -- did -- did -- did Jackson
19 Walker put any restrictions on what you could do other
20 than the -- the -- who put those restrictions about
21 the six years not appearing, not signing?

22 A I think it was kind of joint. It was just
23 understood, you know, I made it clear that that was
24 the rule and --

25 Q Did Jackson Walker put any additional

Elizabeth Freeman - Confidential

115

1 restrictions on you?

2 A I don't recall there being any additional
3 restrictions.

4 Q Did --

5 A When I started, no.

6 Q Did anybody talk to you about mediations? I
7 know that you can't appear before Judge Jones --

8 A No.

9 Q -- and sign the pleadings, but was there any
10 mention about mediations?

11 A No.

12 Q By you or Judge Jones or by Jackson Walker,
13 did you ever discuss that?

14 A No.

15 Q All right. And -- and you said that Judge
16 Jones looked at the judicial canons. Did he look at,
17 do you know Rule 5004 at all or 28 USC 455? Do you
18 remember that?

19 A I don't remember. I'm not -- I don't
20 remember them by number.

21 Q I know. I know. That would be the judicial
22 disqualification rule.

23 A I'm sure he did. I know that he looked at
24 that.

25 Q Okay. Was there any discussion about the

Elizabeth Freeman - Confidential

116

1 appearance of impropriety, that kind of thing?

2 A I mean, that was kind of part of the overall
3 discussion and, you know, the lack of the financial
4 relationship more than anything else. You know, it
5 was the primary concern.

6 Q Not the -- not the romantic relationship?

7 A I mean, yeah, that too. But like I said at
8 the time, you know, we were not there.

9 Q So --

10 MR. KIRKENDALL: May I just --

11 MR. LAYNG: Go ahead.

12 MR. KIRKENDALL: I may have a better
13 understanding of this because, you know, I talked to
14 Judge Jones and I got involved in April of 2022, but
15 my impression was, was that he had thoroughly looked
16 at it and he concluded that because under the
17 bankruptcy rules and bankruptcy code that Jackson
18 Walker didn't have a disclosure obligation. That
19 those disclosure obligations were with -- were with
20 regard to connections with other parties of interest,
21 creditors, and in the bankruptcy cases. It wasn't
22 with regard to a judge.

23 He concluded that he didn't have a
24 disclosure obligation under 455 because there was not
25 -- because Liz wasn't his spouse and under the -- the

Elizabeth Freeman - Confidential

117
1 commentary to the canons regarding spousal involvement
2 in the case. She -- they were not sharing both an
3 intimate and a household relationship. So that in a
4 nutshell was his -- his position.

5 BY MR. LAYNG:

6 Q I understand that's his position. Is that
7 what you remember, too, in the discussion?

8 A Yeah.

9 Q So I don't understand that last part because
10 weren't you sharing a household and weren't you having
11 an intimate relationship?

12 A Well, you know I was --

13 MR. KIRKENDALL: I failed to mention.
14 His interpretation of sharing a household was there
15 was joint ownership in terms of the property, joint
16 accounts, joint liabilities related to the property.
17 And since there were none with regard to, in other
18 words, Liz didn't have any interest in the property
19 that she bought and since she didn't share any
20 accounts, no liabilities, no other asset, joint asset
21 ownership in the house that that was not a household
22 relationship. That was his conclusion.

23 MR. LAYNG: Understood.

24 BY MR LAYNG:

25 Q Did -- so would -- we talked about what I'll

Elizabeth Freeman - Confidential

118
1 use -- I'll use a shorthand for it kind of the clerk
2 guidelines or whatever you want to call them that were
3 -- there were no other guidelines with JW. You
4 started May 14th, 2018. Does that sound right? I
5 think that was -- from your response.
6 A Sure.
7 Q No. Don't say sure --
8 A I --
9 Q -- you -- you don't remember?
10 A I don't remember. It was -- it was in
11 that --
12 Q Around there?
13 A Sure.
14 UNIDENTIFIED SPEAKER: I'm sorry. What
15 day?
16 MR. LAYNG: I have May 14th, 2018.
17 BY MR. LAYNG:
18 Q But you're not sure of the exact date?
19 A I know it was in May of '18.
20 Q Okay.
21 A But I don't remember the date.
22 MR. KIRKENDALL: I believe it was May
23 14th, 2018.
24 THE WITNESS: Okay.
25 MR. KIRKENDALL: That's what my notes

Elizabeth Freeman - Confidential

119

1 say.

2 BY MR. LAYNG:

3 Q So you were in the bankruptcy group, but
4 said the lines weren't real strict on that but you did
5 mostly bankruptcy work for them?

6 A Yeah.

7 Q Can you tell me who was in that group and
8 not just the attorneys, but the non-attorney staff
9 that worked with you?

10 A Yeah. Do you want at the time or --

11 Q You can do at the time and then if it
12 changed, you can tell me.

13 A Okay. Because a lot of people got hired.

14 Q Okay. Go ahead.

15 A Bruce Ruzinsky, Scott Rose, Patty Tomasco,
16 Matt Cavanaugh, Jennifer Wertz, Vienna Anaya, Kendra
17 Gradney when I started. And then hired Veronica
18 Polnick, Gen Graham, Emily -- oh and Kristhy Peguero
19 was there at the time, Machir Stull. Oh, Mike Held in
20 Dallas was there.

21 Q Those are all attorneys?

22 A Yes.

23 Q Okay.

24 A And then -- or Kendra Gradney is an
25 assistant. Then Daniela Trevino and Jolene Pupo were

Elizabeth Freeman - Confidential

120

1 assistants that got hired. Rebecca Chaikin. I'm
2 trying to think. I may be forgetting somebody.

3 Q That's fine. That's pretty good, I think.
4 I couldn't do that if someone asked me. I mean, that's
5 excellent. Did any of those people know about your
6 relationship with Judge Jones?

7 A When I got hired?

8 Q At any time.

9 A I don't think so.

10 Q Did they learn about it?

11 A Yes.

12 Q When?

13 A You know, obviously when the Van Deelen
14 thing happened.

15 Q Anybody before that?

16 A I, you know, I can't tell you for sure.

17 Q I understand you can't tell me for sure. Do
18 you think somebody knew before that?

19 A I don't -- I don't -- I don't think
20 Cavanaugh knew and I -- I don't think Bruce Ruzinsky
21 knew. I don't know with regards to anybody else.

22 Q Okay. So you mentioned in the -- I -- I
23 call it the judicial disqualification matter letter
24 which is the draft letter that's attached to the
25 preliminary response.

Elizabeth Freeman - Confidential

121

1 A Uh-huh.

2 Q Have you seen that letter?

3 A Uh-huh.

4 Q They say that you -- you were credited with
5 growth and complex cases worked by JW and your
6 leadership (inaudible) was recognized as integral and
7 the debtor practice had substantial growth; is that
8 accurate?

9 A I think so.

10 Q And how -- how did you contribute to the
11 growth?

12 A I'm a mother hen, and I take care of the
13 team and, you know, I was largely administrative and I
14 think by helping to grow the team and making sure that
15 people were -- knew what to do in cases, they were on
16 top of cases, they were responsive. You know, that
17 the brand was good, that the work product was thus
18 good and that attracted more work.

19 Q Did -- did work go -- debtor work increase
20 quite a bit when you started there, from when you
21 started to --

22 A It -- it did. All work increased.

23 Q Is any of that you think because of your
24 relationship Judge Jones?

25 A No.

Elizabeth Freeman - Confidential

122

1 Q Are you sure of that?

2 A Positive.

3 Q Who was the head of the bankruptcy section
4 when you started?

5 A Bruce Ruzinsky.

6 Q Okay. Let's see. One of the members of it
7 -- what you mentioned was Patty Tomasco?

8 A Yeah.

9 MR. KIRKENDALL: Patty -- Patty
10 Tomasco.

11 MR. LAYNG: Tomasco. Okay.

12 BY MR. LAYNG:

13 Q And did you have any -- just a professional
14 relationship with her, friendship, anything like that?

15 A Just professional.

16 Q And at some point she left JW?

17 A She did.

18 Q Do you know why she did?

19 A You'd have to ask Patty.

20 Q So in -- in January of 2018, case file is
21 called EXCO Resources?

22 A Uh-huh.

23 Q It's assigned to Judge Isgur?

24 A Yep.

25 Q Are you familiar with that case?

Elizabeth Freeman - Confidential

123

1 A Yes.

2 Q Okay. And if you -- you -- you from what I
3 can tell billed and received fees, not just you but
4 your part of their fees was about \$185,000?

5 A Right.

6 Q Does that sound about right?

7 A I don't know. Tom has the numbers.

8 MR. KIRKENDALL: So, it's the EXCO
9 case?

10 MR. LAYNG: Yeah, EXCO Resources, Inc.

11 MR. KIRKENDALL: So the -- the question
12 you're asking is what --

13 THE WITNESS: Overall?

14 MR. LAYNG: I'm not asking a question.
15 I was just trying to set the background.

16 THE WITNESS: Okay.

17 MR. KIRKENDALL: Okay.

18 BY MR. LAYNG:

19 Q I'll ask one now. So in that case Judge
20 Jones was a mediator?

21 A Yes.

22 Q Okay. Did you disclose your relationship
23 with Judge Jones to anyone in that case?

24 A No.

25 Q Okay. Is there a particular reason why you

Elizabeth Freeman - Confidential

124

1 did not?

2 A Did not think it was necessary.

3 Q Was there a time when you were asked about
4 connections with the mediator or --

5 A No.

6 Q -- is there a formal process to say, hey,
7 who has -- does anybody have connections with this
8 mediator?

9 A No.

10 Q Okay.

11 MR. LAYNG: Go ahead.

12 MR. KIRKENDALL: For what it's worth,
13 so he's not acting as a judge in that case. He's
14 acting as a mediator. So, you know, there's a
15 definite difference. And again, having done
16 mediations myself and I still do them, my sense is is
17 that there's no formal, you know, mediation statute
18 saying this is what has to be disclosed, but I think
19 it's on the mediator to disclose close personal
20 relationships. I do as a normal matter of course with
21 lawyers that are -- never have been, you know,
22 disqualified or told they don't want to use my
23 services.

24 But I think it's the mediator's
25 obligation to do it, and I don't know if Judge Jones

Elizabeth Freeman - Confidential

125

1 ever looked at that issue. I never asked him.

2 BY MR. LAYNG:

3 Q Do -- do you know if he did?

4 A I have no idea.

5 Q Okay. Did you ever discuss -- I mean, was
6 this the first case that you, I mean he mediated that
7 you worked on at Jackson Walker?

8 A Yes.

9 Q Was there any discussion with him about the
10 appropriateness of -- with him mediating a case with
11 you? Were you -- you represented a party in the
12 mediation?

13 A Yeah. We were local counsel for the
14 Unsecured Creditors Committee in that case and no, he
15 and I did not discuss it.

16 Q What was your involvement in the case? I
17 mean you just said what you -- who you represented but
18 what did you do on the case generally? Did you work
19 on the mediation?

20 A I did work on the mediation and I did attend
21 the mediations. This was one where there were, I
22 think there were questions of potential fraudulent
23 transfers from principles out of the company. Quinn
24 Emanuel and Brown Rudnick were involved and so it was
25 very litigation intensive, and I had done a thought of

Elizabeth Freeman - Confidential

126

1 fraudulent transfer type work in the past and so I
2 helped come up with some of the theories of, like,
3 anti-avoidance action theories.

4 Q Uh-huh.

5 A And I worked mostly on that, if I -- if I
6 remember correctly.

7 Q Did the mediation take place in Houston or
8 was there --

9 A There were a series of mediations in that
10 one, and I -- I attended some but not all of them. I
11 feel like one might have been in New York but I think
12 the others were here at Kirkland's offices.

13 Q I mean, I looked at the petition.

14 A Okay.

15 Q At it does have some nonwork travel for you
16 and Patty Tomasco.

17 A Tomasco, okay. That must have been her and
18 I going to either a meeting or a mediation. I don't
19 know.

20 Q So in mediations do you sit in the room with
21 the mediator?

22 A Sometimes.

23 Q Did you in that case?

24 A Yeah. He would definitely have come in. So
25 in these big cases you're -- depends on how many

Elizabeth Freeman - Confidential

127

1 parties there are. And that one, I remember there
2 being debtors, the target principles, there are some
3 bondholders, unsecured creditors committee. So it's a
4 big group and the judge would typically move around.
5 Like, they don't do joint sessions. He would just go
6 move around and just go talk to people.

7 Q And you were one of the parties he talked
8 to?

9 A Yeah. He would come in and I would be one,
10 but I would be in a room with 20, 25 people or more.

11 Q Did anybody else know in that mediation that
12 you were having a relationship with the judge?

13 A I don't know. But at that time, yeah --
14 yes, I lived at Rolla but we were not intimate at that
15 time.

16 Q All right. Is -- is that the basis for you
17 not telling them because you were not intimate at that
18 time or is it that the basis that you didn't think you
19 needed to?

20 A I just didn't think that I needed to.

21 Q I guess those guidelines don't talk about
22 mediation, right?

23 A No.

24 Q The ones about -- okay. Because your --
25 your -- your belief is you couldn't appear for -- in

Elizabeth Freeman - Confidential

128

1 front of a court?

2 A Right.

3 Q Okay. So let me ask you about Westmoreland
4 Coal Company.

5 A Uh-huh.

6 Q That filed in October of 2018?

7 A Okay.

8 Q And you billed about \$29,000 worth of fees
9 and Jackson Walker billed about 670,000. The
10 retention application was filed November 8th. When a
11 retention application goes around, isn't there a
12 conflicts check?

13 A Yes.

14 Q Okay. How did that work at Jackson Walker?
15 How did it work with Westmoreland, if you remember?

16 A So, I -- I assume the system is the same.
17 Typically whomever the attorney is that opens it is
18 the person that receives the conflicts and runs
19 through every -- everything and prepares the
20 affidavits, and I -- I didn't do that. So this is
21 based on what I know.

22 Q Oh, you never did that? You never did the
23 conflict checks?

24 A Well, a conflict would come through and
25 every lawyer in the firm would receive this.

Elizabeth Freeman - Confidential

129

1 Q Right. Right.

2 A And you would click off, you know, that you
3 were -- like the conflict would be the name of the
4 potential client and then all of the associated or
5 affiliated parties, all of the adverse parties,
6 related parties, whatever and so you would check off
7 if there was some sort of -- you know, I've done work
8 with AT&T or whatever.

9 Q That would be done by paper, actually paper
10 checked off or would you --

11 A No. It -- well, it would come through a
12 system and then if you clicked that there was a hit or
13 some sort of contact then that would go back to the
14 Conflicts Department which would generate hundreds or
15 thousands of pages of report and then the lawyer would
16 have to sit there and flip through that report page by
17 page and so I just -- I almost never did that.

18 Q You never did?

19 A I never, unless it was a matter that I was
20 opening which I didn't usually do. And like if Matt
21 and I did something together I did more of the admin.

22 Q Okay.

23 A Managing the team.

24 Q But you would get -- when a case got opened
25 that you were going to work on that case like

Elizabeth Freeman - Confidential

130

1 Westmoreland --

2 A Yeah.

3 Q -- you would get that, it would be
4 circulated to you?

5 A Yes, I would say that.

6 Q All right. And was there an opportunity for
7 you to put in you had a connection with Judge Jones?

8 A No.

9 Q Why not?

10 A Because it was always before a case was
11 filed. You never knew who was going to end up drawing
12 it.

13 Q Would you know it's a complex case?

14 A Yeah.

15 Q So there's a 50/50 chance, correct?

16 A Yes.

17 Q And once it was assigned to Judge Jones, do
18 you still have an obligation to do that, if you
19 thought you had an obligation in the first place? I
20 understand your position is you didn't.

21 A Right. It was -- that's not the way the
22 conflict system is built.

23 Q What do you mean? Explain that.

24 A There's no Judge Jones. You know, click.
25 it's an automated-ish system that produces this

Elizabeth Freeman - Confidential

131

1 massive pile of paper.

2 Q Yeah, but if you have a connection with
3 somebody that's not on there you would list it even if
4 it's not automatically generated?

5 A If you were aware of it, yeah.

6 Q Okay. And you were aware of that connection
7 with Judge Jones?

8 A Yes.

9 Q But you had a position that you felt you
10 didn't need to disclose it, correct?

11 A Yes.

12 Q Okay. And at that time was anybody aware at
13 West -- when Westmoreland came through and Jones was
14 assigned? Did anybody have any --

15 A I don't think anybody would have been aware
16 prior to Van Deelen.

17 Q Okay. I'm sorry. I ask some of these
18 questions over and over again. I appreciate you being
19 patient with me. So that case he's a presiding judge.
20 You didn't appear before him?

21 A Right.

22 Q And you didn't sign any of the pleadings?
23 Is that -- is that right?

24 A Right.

25 Q Did you ever go to court when he was in

Elizabeth Freeman - Confidential

132

1 court?

2 A No, never went to court.

3 Q You wouldn't sit in the gallery or anything
4 like that?

5 A No.

6 Q Okay. And any cases like that?

7 A No.

8 Q Jones Energy, April 14th, 2019, Judge Jones
9 was the presiding judge. You billed about 20,000 in
10 fees. What's your involvement in that case, if you
11 remember?

12 A That was a pre-pack. I don't recall exactly
13 what it was I would have been doing. A lot of the
14 times my work was more process and procedure oriented
15 and especially when you're doing the local counsel
16 work. You know, counsel wants to know how do -- how
17 do you get this accomplished? You know, here --
18 here's the process. Here's the CNO process, the COC
19 process, you know, whatever.

20 Q Because you're local counsel, right?

21 A Right.

22 Q So you're telling that to who? To -- to --

23 A To whomever the lead is.

24 Q Many of these cases it was Kirkland and
25 Ellis?

Elizabeth Freeman - Confidential

133
1 A It was frequently Kirkland and Ellis, yeah.

2 Q Did you deal with anybody in particular when
3 you would tell them procedure and process?

4 A Typically the young associates.

5 Q Okay.

6 MR. KIRKENDALL: Just one question.
7 The UST exhibit of Ms. Freeman's fees and J. Walker --
8 JW's fees, Jackson Walker's fees, has Liz at ten, five
9 for that case not 20,000. Is there -- I just wanted
10 to know if there --

11 MR. LAYNG: That's what -- this is
12 right out of our Exhibit 6.

13 MR. KIRKENDALL: Yeah.

14 MR. LAYNG: That's where I got it.

15 MR. KIRKENDALL: Yeah.

16 MR. LAYNG: So if it's wrong, I
17 apologize.

18 MR. KIRKENDALL: Yeah. Yeah, all
19 right. Yeah, it's 10,582 for those.

20 BY MR. LAYNG:

21 Q And -- and the same question: It wasn't
22 disclosed? You didn't disclose it. Did anybody know
23 about the relationship during that case, the pendency
24 of that?

25 A I don't know.

Elizabeth Freeman - Confidential

134

1 Q Until after Bandito, right?

2 A Yeah. I don't know.

3 Q Understood. Sanchez Energy in August
4 of 2019 is again a mediation case?

5 A Yes.

6 Q Same questions. No disclosure? No --
7 nobody knew?

8 A I don't know.

9 Q Okay.

10 MR. KIRKENDALL: I think the Sanchez
11 mediation order, actually that was quite a bit later
12 than that. It was like in March of -- March 26th,
13 2020.

14 THE WITNESS: Yeah.

15 MR. KIRKENDALL: Is when that mediation
16 order was entered.

17 THE WITNESS: Yeah.

18 BY MR LAYNG:

19 Q And then January of 2020 is McDermott
20 International.

21 A Yeah.

22 Q Which is Bandito was involved in that case?

23 A Yes.

24 Q That was also assigned to Judge Jones.

25 What's your involvement in that case --

Elizabeth Freeman - Confidential

135
1 A I remember I was doing a lot of process side
2 stuff. And if I remember correctly the majority of
3 what I was doing, or at least what I remember was
4 working on engagement, and this was an issue of
5 whether you engage a CRO under 363 or if you employ a
6 CRO under 327. And I think that was --

7 Q Did you (inaudible) figure it out?

8 A Yeah, I think that's --

9 Q Okay.

10 A Let me say that's what I remember about that
11 case is, you know, working through those issues.

12 Q All right. So same question, same answers,
13 right, on disclosure?

14 A Yeah.

15 Q Okay. I want to stop there for a second
16 because we're getting -- I want to talk about March
17 of 2020. The pandemic begins for all of us.

18 A Uh-huh.

19 Q And I'm looking at your preliminary
20 response. Well, not yours but Jackson Walker's but at
21 some point, you tell me, I mean did the relationship
22 with Judge Jones change?

23 A It did later but not during this time.

24 Q Okay. Tell me -- tell me about that. If
25 you can kind of put that on a timeline. So you're

Elizabeth Freeman - Confidential

136

1 looking at me funny so I must be saying something
2 wrong. What did I --

3 A I just -- about -- about March of '20 or
4 about when?

5 Q No. This -- no, don't use my timeline.

6 A Okay.

7 Q Did the relationship change from what I
8 think I understood as a law clerk? I know that there
9 was -- you mentioned right when you went to Jackson
10 Walker that there was a lack of intimacy and then --
11 but you're still staying at the house and all that?

12 A Right.

13 Q Did it change further, I guess?

14 A Yeah, and it was December of '21.

15 Q Okay. All right. Go ahead.

16 A When we kind of started talking about us,
17 but then it was still very uncertain and not, you
18 know, there was another long period of lack of
19 intimacy until end of July of '22.

20 Q Okay. So I guess I'm a little confused.

21 A Yeah. Me, too.

22 Q Are you -- do you need a break?

23 A Sorry. I'm tired.

24 Q I know. I forgot you.

25 MR. KIRKENDALL: Yeah. Let's take a

Elizabeth Freeman - Confidential

137

1 break.

2 UNIDENTIFIED SPEAKER: We may want to
3 take a quick break for lunch.

4 MR. KIRKENDALL: Yeah. I mean it's up
5 to you.

6 BY MR. LAYNG:

7 Q Is that okay?

8 A Yeah. No, that's fine.

9 UNIDENTIFIED SPEAKER: I mean, if I'm
10 tired you've got to be exhausted.

11 A Yeah. I haven't had a lot of sleep and
12 Judge Jones' dad died yesterday so --

13 Q What happened?

14 A His father passed away.

15 Q Judge Jones'?

16 A Yes.

17 Q Oh, I'm so sorry to hear that.

18 UNIDENTIFIED SPEAKER: Here in Harris
19 (inaudible).

20 A So there was not much --

21 Q Oh, terrible.

22 A I didn't sleep much last night so --

23 Q Well, I'd like to continue if we can take a
24 break now.

25 UNIDENTIFIED SPEAKER: Do you want me

Elizabeth Freeman - Confidential

138

1 to pause it?

2 MR. LAYNG: Yeah, pause it.

3 UNIDENTIFIED SPEAKER: All right.

4 BY MR. LAYNG:

5 Q So we're back on after lunch.

6 So I want to get back to the
7 relationship we were talking about before, but before
8 I do that there's a question I had about working in
9 the bankruptcy group and the increase in business.

10 A Uh-huh.

11 Q Do you know how the Jackson Walker, Kirkland
12 and Ellis relationship -- business relationship was
13 spurred or got started? Because I guess they were
14 debtors counsel a lot and you guys were local counsel,
15 Jackson Walker was local counsel?

16 A Yeah. I know that there was -- it was -- I
17 don't remember which case. I only know -- I only know
18 secondhand --

19 Q Okay.

20 A -- how it got started. Cavanaugh can tell
21 you more about it or Patty could. But they'd gone to
22 a conference and met Jamie Sprayregen and knew that
23 Kirkland had cases they were going to file down here
24 and the courts, you know, courts here are different
25 than a lot of other places.

Elizabeth Freeman - Confidential

139

1 The Rules of Evidence are enforced for
2 example. Things like that. It's less paper trials
3 versus live trials. And they're just nuances and the
4 assumption that Patty and Matt made was that big firms
5 coming down here would need spirit guides to help them
6 with process and procedure. Some -- the connection
7 came up somehow like that.

8 Q And that -- that -- did that start when you
9 were there? Before you were there?

10 A It was before I was there.

11 Q Okay. Did it continue when you were there?

12 A Yes.

13 Q All right. So, let's go back to -- so I
14 understand it. We were talking about the relationship
15 change and maybe I was confused, so I want to kind of
16 see if I can make sense of it. It started at Jackson
17 Walker. You were still spending time living at least
18 part-time at Rolla --

19 A Yes.

20 Q -- with your children?

21 A Yes.

22 Q Did that change? Did your living
23 arrangement change at some point in that coincide and
24 you can answer it as --

25 A Sure.

Elizabeth Freeman - Confidential

140

1 Q -- did that coincide with the change in
2 relationship or some other reason? Just tell me kind
3 of what happened.

4 A So I -- just to be completely clear I always
5 had stuff at Rolla. I've always had the keys to it
6 and presence at Rolla. I don't want anything that I
7 say to be misinterpreted as me saying that, you know,
8 I was never there or didn't have a presence --

9 Q Got it.

10 A -- or the ability to be there.

11 Q So that's from -- so again I'm sorry to
12 interrupt. That's from whenever it started --

13 A Whenever -- when I started practice,
14 practice until today. It's just that has never --

15 Q Okay. Got it.

16 A -- there's not been a --

17 Q Got it. Got it.

18 A But I wasn't -- I can't tell you for sure
19 how many times, but during the pandemic when the kids
20 were not in school I wasn't present much if I was at
21 all. Because I went out to the river and then I know
22 I went up to the lake some, but I don't think that I
23 came back to Rolla. I might have. I don't remember
24 coming back to Rolla for a long time. I took my
25 computer, all my equipment, everything and I just

Elizabeth Freeman - Confidential

141
1 wasn't there. That's -- that's the period of time.

2 Q When was that? Can you tell us when that
3 was?

4 A Pandemic --

5 MR. KIRKENDALL: The pandemic started
6 in March of 2020 and so --

7 THE WITNESS: Yeah, started in March of
8 '20.

9 MR. KIRKENDALL: The kids were out of
10 school all the way until the following September.

11 THE WITNESS: Yeah.

12 MR. KIRKENDALL: Or August, September.

13 THE WITNESS: Yeah.

14 MR. KIRKENDALL: The following. So
15 would have been August, September of 2020.

16 THE WITNESS: Yeah.

17 MR. KIRKENDALL: Does that sound right?

18 THE WITNESS: Yeah. Yeah.

19 A You know because when the kids weren't you
20 know the summertime when the kids weren't there you
21 know -- that's when I wanted to be, you know, I wanted
22 to be out close to the water. Even if I was working I
23 could at least look at it.

24 BY MR. LAYNG:

25 Q Okay. So -- so the relationship didn't

Elizabeth Freeman - Confidential

142
1 change? The pandemic changed? I mean basically the
2 pandemic is why you left?

3 A Yeah. I mean, we were not -- we were not
4 intimate during that time period anyway and because of
5 the pandemic and I had no reason to be there because
6 the kids weren't there, you know, because when the
7 kids were not at school that's when I just wasn't
8 around.

9 Q Okay. So you were living there when the
10 kids were in school because it was convenient to live
11 there for their schooling?

12 A Yeah.

13 Q Okay. When -- when did the relationship as
14 far as romantic relationship change?

15 A It was probably December of '21. You know,
16 it was around Christmas and the holidays and we
17 just --

18 Q No, no, no. Before -- so you were romantic
19 up to a point?

20 A We were.

21 Q Why don't you just go back in time for me.

22 A I -- I -- I don't remember exactly when it
23 was.

24 Q Sure.

25 A If it was '17 or beginning of '18, but I

Elizabeth Freeman - Confidential

1 know that early, you know, January, February of '18 we¹⁴³
2 were crosswise. I know we were not intimate in -- in
3 that time period and that's part of why I just needed
4 the change and why I decided to leave.

5 Q Okay. Was the crosswise because you were
6 not exclusive anymore?

7 A I'm not going to talk about that.

8 Q What can you tell me about the crosswise?

9 A I don't think it really matters. Just --

10 Q All right. So was he seeing someone else?

11 A I'm not going to talk about it.

12 Q Were you seeing someone else?

13 A No.

14 Q All right. So you're living in Rolla and
15 then in March 2020 because you were no longer romantic
16 you said, why not live in the river house? My kids
17 don't have to go to school anymore but you left stuff
18 there -- still stuff there?

19 A Always had stuff there.

20 Q Yeah. And you would come back from time to
21 time?

22 A I might -- I might have.

23 Q You said you have keys and -- and --

24 A I've always had keys -- I just -- I don't
25 want to tell you that I didn't.

Elizabeth Freeman - Confidential

144
1 Q No. I appreciate that, I do. And -- and so
2 your contact with him was limited to just court or not
3 court. You didn't go to court.

4 A Didn't go to court. You know, we -- we --
5 we never didn't, you know, talk, you know, even now --

6 Q Would you call each other up?

7 A Yeah, we'd talk to each other. Never really
8 e-mailed or texted much. He's not a texter. But you
9 know we would call and talk. I took -- I took Champ
10 one of the dogs with me.

11 Q So is that your dog, his dog?

12 A Is was his dog.

13 Q Okay. What kind of dog is that?

14 A But he like -- but he loved me more. It was
15 a Rottweiler mix.

16 Q Oh, okay. How many dogs does he have?

17 A At the time there were three.

18 Q Why did you take his dog?

19 A Because I liked him.

20 Q All right.

21 A And he liked me and the dog liked going out
22 to --

23 Q And that happened during the pandemic when
24 you took him?

25 A Yeah, and the dog liked going out with me.

Elizabeth Freeman - Confidential

145
1 It was not a -- it wasn't a taking without permission.
2 Q Oh, I understand.
3 A I didn't -- I didn't steal the dog.
4 Q Right. Right.
5 A But, yeah, I had Champy with me.
6 Q And when you called, would it be on the
7 phone, by Zoom or some other video, or how did you do
8 it?
9 A It would have to be by phone. We didn't do
10 Zoom or whatever.
11 Q All right. You still own the house jointly?
12 You still have stuff there?
13 A Yes.
14 Q You're still his executor?
15 A As far as I know. I don't know.
16 Q Did you still ever use the house to host
17 things, events or use that Rolla house when it's
18 convenient?
19 A I -- I never had.
20 Q Not to --
21 A I never had anybody at that house.
22 Q Oh, you never had anybody at the Rolla
23 house? Okay. Just the kids, right? I mean, you
24 lived there.
25 A Well, yeah, like if my parents would come

Elizabeth Freeman - Confidential

146
1 into town sometimes, you know, I'd pick them up at the
2 airport or if I had to drop them off at the airport or
3 something like that, but I didn't have parties.
4 Q Okay.
5 A I didn't have social events.
6 Q Events there.
7 A No.
8 Q Okay. All right. So let's -- so there --
9 they're -- there are obviously a whole host of cases
10 that you worked on during the pandemic. There's a lot
11 of cases that were filed. A lot of them were presided
12 by Judge Jones.
13 A Uh-huh.
14 Q Did you continue not to appear before him?
15 A Right.
16 Q Or -- or sign and you didn't disclose --
17 A I did not.
18 Q -- your past relationship or any
19 relationship?
20 A I did not.
21 Q Okay.
22 A Just for clarity and then it didn't come up.
23 I have never once discussed a case with Jones. He and
24 I --
25 Q *** Why don't I ask that, yeah. So -- so --

Elizabeth Freeman - Confidential

147
1 (***) I don't hear your version --> well, I was going
2 to ask that. Yeah, so --

3 A We never talked about cases.

4 Q You never talked even about administrative
5 not necessarily legal issues, but --

6 A No.

7 Q -- nothing like about like going to this
8 case you going to be there?

9 A Nope.

10 Q Nothing?

11 A No.

12 Q Is that something that you discussed, like,
13 hey, we can't talk about cases?

14 A No.

15 Q It just never happened?

16 A We just siloed. Just like travel and
17 driving to the courthouse and everything else it just
18 work was completely and totally siloed.

19 Q And that was never breached?

20 A With regards to a case that we had, no. We
21 did talk -- if -- if we talked about work stuff like,
22 you know, I have a really interesting case that's in
23 front of -- was is in front of Judge Bohm. You know,
24 I might talk to him about that, like, hey, I got --

25 Q But not his cases?

Elizabeth Freeman - Confidential

148

1 A No.

2 Q Okay.

3 A No. And we talked about Chapter 13s. That
4 was actually his passion is Chapter 13 savings plans,
5 so we would talk about.

6 Q But those weren't your cases?

7 A No.

8 Q Okay. All right. At some point you got
9 elected as an equity partner?

10 A Yes.

11 Q When was that?

12 A '21.

13 Q January '21 it says in the preliminary
14 responses. Is that right?

15 A Okay. Yeah.

16 Q When -- when was that decided? It was -- it
17 was effective January, right, but when -- when did it
18 actually get voted on?

19 A I don't know.

20 Q Sometime before?

21 A I don't know.

22 Q You don't know. Okay. Was that something
23 that you expected to be --

24 A They -- they talked to me about it.

25 Q What criteria was used to -- whether or not

Elizabeth Freeman - Confidential

149

1 you should become a --

2 A I -- I don't know. I assume contribution to
3 the firm, you know, performance, but I -- I don't
4 really know.

5 Q Was there a change in compensation?

6 A I think the formulas stay about the same but
7 there is a share of profits, but profits for Jones
8 cases got carved out for me later. So this is -- I
9 know this will sound really weird especially for
10 someone in bankruptcy practice, compensation was never
11 really my focus. And I know that there are people
12 that can tell you the formulas and they love to look
13 at what other people are doing, and what other people
14 are producing and whatever. I -- I -- that was just
15 never me. I never did that.

16 Q As an equity partner though you got profits.
17 Was that the difference or is that not --

18 A Yeah. You would get a share of the profits,
19 but I can't tell you what the numbers were. I just
20 don't know.

21 Q All right. So let's now talk about March
22 2021.

23 UNIDENTIFIED SPEAKER: Before we get
24 there.

25 MR. LAYNG: Go ahead.

Elizabeth Freeman - Confidential

1 UNIDENTIFIED SPEAKER: So you mentioned¹⁵⁰
2 that the profit from the Jones cases was carved out.

3 THE WITNESS: Yeah.

4 UNIDENTIFIED SPEAKER: Do you remember
5 around what time was that and -- and why?

6 THE WITNESS: It was -- it was after
7 Van Deelen, and I don't remember the exact dates. I
8 know we -- I mean, off the top of my head, I don't
9 know but I know that Tom has the numbers. And what
10 they did is they went back and basically true upped
11 and corrected for the entire year. So that I never
12 ended up getting any profits off of Jones cases. They
13 screwed up the calculations. I had to write a check.

14 UNIDENTIFIED SPEAKER: Do you remember
15 as to what that might be?

16 MR. KIRKENDALL: The -- the number of
17 how much she lost as a result of it?

18 UNIDENTIFIED SPEAKER: Yeah.

19 MR. KIRKENDALL: I have no idea.

20 UNIDENTIFIED SPEAKER: All right.

21 MR. KIRKENDALL: I don't -- they --
22 they, to my knowledge, I haven't seen that number
23 produced by Jackson Walker. But the Van Deelen case,
24 so to speak, began in say March 10th of 2021 and so it
25 was soon after that. And so Liz had been an equity

Elizabeth Freeman - Confidential

151

1 partner for a couple of months at that point.

2 It was shortly after that that Jackson
3 Walker took the actions that it did, which was
4 basically directed Liz not to work on any Jones cases
5 until I think the following May of 2022. I think that
6 was the directive or agreement, and they basically
7 spun out any of the firm's collections on Jones cases
8 from Liz's share of that profits. So she didn't --
9 whatever she got in 2021 was not attributable to any
10 of the firm's collections in Jones cases.

11 UNIDENTIFIED SPEAKER: And do you know
12 who made that decision? Who approached you and said
13 we're going to do this?

14 MR. KIRKENDALL: I think -- I think it
15 was a firm decision, but so they probably have a
16 committee that, you know, decided upon it but I think
17 Pat Calison -- is that his name?

18 A Cowlshaw, yeah. And a lot of the
19 discussions and things that were going on, they
20 weren't really talking to me about it. They just
21 kinda came back and said, it's this. And I said, you
22 know, okay or no.

23 UNIDENTIFIED SPEAKER: So you don't
24 take, but we take, right? I mean, they took it from
25 you and then went into somebody else's pocket. All

Elizabeth Freeman - Confidential

1 right. Do you have the name of that person? I think¹⁵²
2 we do, right?

3 MR. LAYNG: Yeah.

4 UNIDENTIFIED SPEAKER: All right.

5 BY MR. LAYNG:

6 MR. LAYNG: Yeah, I want -- I want to
7 get to that --

8 MR. KIRKENDALL: So -- so I think it
9 was Pat Cowlshaw would have been -- would have been
10 -- he was the managing partner at the time?

11 THE WITNESS: No. Pat was the general
12 counsel.

13 MR. KIRKENDALL: General Counsel.

14 THE WITNESS: Wade Cooper is the
15 managing partner.

16 MR. KIRKENDALL: Okay. All right. All
17 right. So but Pat was the one who, you know, I think
18 was directing the firm with regard to retaining an
19 outside ethics expert, and so I think the ethics
20 expert was basically, you know, advising the firm in
21 terms of what they with the parameters of what they
22 should do and then Pat was -- was basically
23 translating that to the firm.

24 BY MR. LAYNG:

25 Q Well, I think it's a good distinction that

Elizabeth Freeman - Confidential

153
1 you would make Liz on what you know and -- and what
2 you may have heard. So when I go through this
3 McDermott case obviously it's what you -- you
4 participated in and then if you heard something, let
5 me know that --

6 A Okay.

7 Q -- so we can know the source.

8 So in March of 2021 we mentioned
9 earlier when we were talking about the McDermott case
10 there was I guess as early July of 2020 a motion to
11 recuse Judge Jones that the ^ Van Deelen had --

12 A Okay.

13 Q -- had filed. Were you aware of that
14 original motion to recuse?

15 A Yes. I heard that it got filed.

16 Q And did you work on that motion?

17 A No.

18 Q Discuss it with anyone?

19 A No. As soon as that got filed, I was out
20 and I had nothing to do with anything.

21 Q No, no, no. I'm sorry to interrupt. I hope
22 I'm being clear. It was filed in July of 2020, the
23 original motion to recuse. It did not have the
24 anonymous letter on it at that time.

25 A Oh, oh, got it.

Elizabeth Freeman - Confidential

154

1 Q Okay. Do you remember that it was
2 originally filed in July of 2020?

3 A I don't -- I didn't -- I -- I don't want to
4 tell you that I never knew about. I don't remember
5 knowing about it.

6 Q That's fine. If you don't remember, that's
7 fine.

8 A I don't remember. I don't remember.

9 Q Okay. So you don't remember if you worked
10 on it originally when it was originally filed?

11 A I don't know. I mean, you'd have to look at
12 the fee statements to see if I had any time related to
13 it.

14 Q Okay. So then in -- in March he raised a
15 new basis for recusal. It started with an e-mail to
16 -- to Matt Cavanaugh?

17 A Yeah.

18 Q Saturday, March 6th. Do you remember that?

19 A I know that it happened.

20 Q Okay. What do you know? What -- what --
21 tell us about what -- how you became aware of this?

22 A I know Matt got it. He talked to or showed
23 it to or something. I don't know how to Veronica
24 Polnick and Veronica --

25 Q Is that something Matt told you he did or

Elizabeth Freeman - Confidential

155

1 did you witness it?

2 A No. I know Matt did that because Veronica
3 then, you know, called me.

4 Q Okay. So that's who called you about it?

5 A First.

6 Q Okay.

7 A And then -- and then I talked to Matt about
8 it afterwards.

9 Q Let's go kind of station to station. So
10 Veronica Polnick?

11 A Uh-huh.

12 Q She's a partner or a --

13 A She's a partner now. She was an associate.

14 Q Then.

15 A Yeah.

16 Q And do you know why she called you as
17 opposed to Matt directly calling you?

18 A I think just because of the nature of it and
19 it was awkward.

20 Q Oh, a woman versus a man thing?

21 A Yeah.

22 Q Okay.

23 A But I've never asked why but I assumed
24 that's why.

25 Q So it was a Saturday you got a call?

Elizabeth Freeman - Confidential

156

1 A I don't --

2 Q Do you know if it was the same day that the
3 e-mail came in?

4 A I don't know. I know it was a weekend.

5 Q It was a weekend? All right. And what --
6 what did she tell you?

7 A She told me, you know, that this came in
8 and --

9 Q Did -- did she describe what it was?

10 A Yeah, she told me.

11 Q What did she say?

12 A I don't -- I can't -- you know, I can't
13 quote it. I don't --

14 Q I don't want you to quote it, but do you --
15 do you have any -- I mean, I don't want to put words
16 in your mouth. So I want you to tell me what was
17 said. I don't tell you what was said?

18 A Just that -- that, you know, Matt got this,
19 you know, and she -- she was basically, you know,
20 asked me about it.

21 Q Well, that's -- so Matt got "this." What is
22 "this"? Did she describe what "this" was?

23 A It -- it was an e-mail from Van Deelen and
24 going back through.

25 Q Take your time.

Elizabeth Freeman - Confidential

157
1 A Yeah. And I actually met her in person. You
2 know, we sat down at our, you know, restaurant and she
3 -- I think he sent it to her and she showed it to me.

4 Q He, being Cavanaugh?

5 A I think. I think. At some point in time I
6 saw it and I don't remember if I saw it then or if I
7 saw it on Monday.

8 Q It being the anonymous letter?

9 A Yeah, I've -- I've seen it before.

10 Q Is that what you were talking about?

11 A No. I've never seen this.

12 Q You've never seen the anonymous letter?

13 A Maybe I just saw an e-mail. Maybe I didn't
14 -- I don't -- I've not seen this.

15 Q Well, the stuff that's attach -- that --
16 what I'm showing her just so if someone is listening
17 to this tape, what I'm showing her is the -- the top
18 of the -- is what was filed with the civil rights suit
19 by Van Deelen.

20 A Okay.

21 Q He may have included other things that
22 weren't there in early March of 2021.

23 A Okay.

24 Q So the first page is what you should look
25 at. Just the first page.

Elizabeth Freeman - Confidential

158

1 A Okay. Okay. Got it.

2 Q Which is titled, just so we know what we're
3 talking about is: Corruption involving Judge David R.
4 Jones chief banking just of the U.S Bankruptcy Court
5 for the Southern District of Texas. That page is what
6 I'm referring to as the anonymous letter.

7 A I don't remember if this is it.

8 Q Okay.

9 A This doesn't look familiar. I don't know if
10 I was just -- if it was surreal or what.

11 Q And this you're referring to the first page?

12 A The first page. I don't -- I'm sorry. I
13 don't mean to be difficult.

14 Q You don't have to apologize. It's what you
15 know so --

16 A I just don't know.

17 Q That's fine. So what did -- so who's
18 present at that restaurant?

19 A Just Veronica and I.

20 Q What restaurant was it, do you know?

21 A Gringos.

22 Q Okay. And that was with just you two?

23 A Uh-huh.

24 Q And what happened? Just tell me -- tell me
25 what you said to the best you remember.

Elizabeth Freeman - Confidential

159
1 A She -- she I remember she told me about the
2 e-mail and you know was basically, you know, just
3 verifying, you know, this.

4 Q I -- I'm sorry -- I got -- I got to ask for
5 as much -- so how did she characterize it? What did
6 she say the e-mail said?

7 A She might have shown it to me. I'm sorry.
8 It was three and a half years ago.

9 Q I'm not --

10 A I just don't remember.

11 Q What I'm -- what I'm trying to get to is did
12 she say someone says you had a relationship, an
13 intimate relationship, or a romantic relationship with
14 Judge Jones? Is -- is that what she said to you? I
15 mean, what -- what's the gist of the -- what did she
16 say that, you know, started the hubbub you know?

17 A Yeah. Basically that Matt received this,
18 you know, and, you know, is this true and what are we
19 going to do and how do we --

20 Q What is true? When she says "this true"?

21 A -- and how do we deal with this?
22 I -- I can't tell you. I don't remember in that level
23 of detail. It was three and a half years ago.

24 Q I got it. I got it.

25 A I don't remember.

Elizabeth Freeman - Confidential

160

1 Q What's the gist of what she said? You say

2 -- you keep saying "this," so I -- I know what you

3 mean --

4 A Yeah.

5 Q -- I think, but I want to make sure I know

6 what she said to you.

7 A I remember that she had -- she had either

8 seen the e-mail or she had a copy of it and Matt had

9 received it and --

10 Q What -- what was the -- what was the -- what

11 did the e-mail say?

12 A I don't -- it was something like Van Deelen

13 sent something to him and I don't remember if it was a

14 threat or a question. I just don't remember.

15 Q About what?

16 A About -- about Jones and I.

17 Q Okay.

18 A And I just don't remember.

19 Q That you and Jones had a romantic

20 relationship?

21 A Yes.

22 Q Is that -- is that correct?

23 A Yeah. I never had a copy of it. I don't

24 know.

25 Q Okay.

Elizabeth Freeman - Confidential

161

1 UNIDENTIFIED SPEAKER: Give me a
2 second. So just for my own clarity. Is there in your
3 mind, is the e-mail different than what he showed you?
4 Like, when I thinking about the e-mail, there may be
5 e-mails that we get, right?

6 THE WITNESS: Right.

7 UNIDENTIFIED SPEAKER: And it says see
8 attached. So I'm just curious if there's an e-mail
9 and in the body of the e-mail there's something or,
10 you know, there's nothing in the e-mail other than see
11 attached and then the letter is attached.

12 A Yeah, I -- I don't know because I just -- it
13 -- it -- I never had a copy of it. I never saw a
14 printout of it. I know it happened.

15 UNIDENTIFIED SPEAKER: So no one
16 forwarded --

17 THE WITNESS: No.

18 UNIDENTIFIED SPEAKER: -- the actual --

19 THE WITNESS: No.

20 UNIDENTIFIED SPEAKER: Okay. -- e-mail
21 to you?

22 THE WITNESS: No. No. So I just don't
23 know.

24 BY MR. LAYNG:

25 Q Okay. So tell us -- let's go back to the

Elizabeth Freeman - Confidential

1 restaurant. What did she ask you? What did you say?¹⁶²

2 A You know, we weren't there very long and I
3 -- I don't remember if I called Matt. I just don't
4 remember.

5 Q Did she ask you if it was true?

6 A I'm sure she did knowing Veronica.

7 Q And what did you say?

8 A I don't remember the conversation.

9 Q Do you remember saying, yes, it's true or,
10 no it's not true or --

11 A I, you know --

12 Q -- it's not accurate?

13 A I may -- I may have told her, you know,
14 that, you know, yeah, we lived together. We are not
15 together anymore. I just don't -- you're asking me to
16 speculate right now and I just --

17 Q No, I don't want you to do that.

18 A -- I just don't remember.

19 Q Don't -- don't speculate but do you remember
20 what your reaction was? It -- it must have been quite
21 a shock, I'm assuming.

22 A It -- it -- it was.

23 Q Okay.

24 A It was and I just don't -- I can't tell you.
25 I can't quote you because then a series of events

Elizabeth Freeman - Confidential

163

1 began and if you asked me to quote something, I
2 can't --

3 Q I -- I'm not asking you to quote but I want
4 -- I'm asking -- you were there, I wasn't.

5 A Right.

6 Q I don't want to put words in your mouth. I
7 don't want -- I want you to tell me what happened
8 because you were there, but I naturally have to -- if
9 I'm confronted with something like this --

10 A Yeah.

11 Q -- I'm sure it was shocking, but I also
12 think I would remember what I said or what I didn't
13 say or I would say, you know --

14 A Right. There were -- there were a series of
15 conversations that happened after and I can't tell you
16 who said what when and at what conversation, and I
17 don't want to tell you something that's wrong.

18 Q Okay.

19 A Because I just don't recall.

20 Q Well, tell us what you remember. Go through
21 what you remember about who you talked to and what was
22 said, the best you remember knowing that you can't
23 quote it *** yourself *** I understand

24 A Right. I remember, you know, talking to
25 Veronica and then we left and then at some point in

Elizabeth Freeman - Confidential

164
1 time, you know, I talked with Bruce and Cowlishaw and
2 Cavanaugh but I don't remember if it was that day. I
3 don't remember if it was that week. I know it was
4 quick and I just don't recall.

5 Q Okay. So again you talked to Veronica. You
6 don't remember exactly what you said there. And then
7 you talked to who else?

8 A I know I talked to Matt Cavanaugh.

9 Q By himself or with others?

10 A I'm sure I talked to him by himself, but I
11 don't remember.

12 Q Was it in person or on the phone?

13 A It would have been in person, but I don't --
14 and I know I talked with Bruce and Matt together.

15 Q Let's go back to Cavanaugh. What was said
16 during that conversation?

17 A I just -- I don't remember a specific
18 conversation.

19 Q Did you admit, deny, or explain the
20 relationship in that conversation?

21 A Right.

22 Q Do you remember?

23 A Yeah. I just don't remember.

24 Q Well, then the next person or people you
25 talked to?

Elizabeth Freeman - Confidential

165

1 A I know I talked to Bruce and Matt together.

2 Q Okay. Bruce Ruzinsky?

3 A Yes.

4 Q And Matt Cavanaugh *** all together, in

5 person?

6 A Yes.

7 Q Do you know where?

8 A Bruce's office.

9 Q Okay. Do you know when?

10 A No.

11 Q Do you know what was said?

12 A Just discussion about whether it was true or

13 not, whether we still had a relationship or not, and

14 then in dealing with Van Deelen, I was basically

15 carved out. And so I didn't do anything related to it

16 anymore and so I didn't know what was going on.

17 Q I'll ask you about that in a second, but I

18 mean the conversation was it true and still ongoing,

19 but what was said then?

20 A I don't remember the conversation.

21 Q Did you -- did you admit to a relationship

22 with the judge?

23 A I'm sure that I admitted that there had been

24 a relationship and at that time we were not intimate.

25 We were not on good terms when this was happening.

Elizabeth Freeman - Confidential

166

1 Q Right. What did they ask you? Did they
2 just ask about the relationship? Did they ask about
3 any other connections you had with the judge?

4 A I doubt -- I don't remember them asking
5 about any other connections.

6 Q Did they ask about details about your past
7 relationship with the judge?

8 A I don't recall that they did.

9 Q Did they ask how long it had been going on?

10 A I remember that they did.

11 Q Did they ask any questions about what the
12 living arrangements were?

13 A No, not that I know of.

14 Q Did they ask anything about financial ties?

15 A I don't remember.

16 Q Okay. Did you talk to Judge Jones about
17 this that weekend?

18 A I did call him and tell him.

19 Q When? Do you know when?

20 A No. I told him that it happened and that
21 was the end of the conversation.

22 Q What did you tell him to the best of your
23 memory?

24 A I told him that Van Deelen had sent an
25 e-mail to Matt Cavanaugh.

Elizabeth Freeman - Confidential

167

1 Q That said that you had had a --

2 A Yeah.

3 Q -- romantic relationship?

4 A Yeah, and that was it, and then --

5 Q Did he react to that?

6 A No.

7 Q Did he tell you what to do?

8 A No.

9 Q Okay. And do you know if that was before or
10 after he received a copy of the e-mail?

11 A I didn't know he got a copy of it.

12 Q Okay. So you don't -- you're not aware of
13 any copies being delivered to the judge?

14 A I didn't know that.

15 Q Until I just that just now?

16 A I didn't know that.

17 Q Okay. All right. So you say you got carved
18 out. You had these conversations. You admitted that
19 there was a past relationship, right?

20 A Yeah.

21 Q And you still had -- had owned a house with
22 him?

23 A Yeah.

24 Q Did you tell that to Jackson Walker?

25 A I did not. I didn't consider it my house.

Elizabeth Freeman - Confidential

168

1 I didn't pay for it. I didn't pay for anything
2 associated with it.

3 Q But you were. It was your house. I mean --

4 A That's not -- that's not how I view. I
5 can't sell; it's not my house.

6 Q Well, it was jointly -- jointly owned. You
7 understood that, right, I mean at that time?

8 A I knew it was a tenancy in common.

9 Q Right. All right. And you lived in that
10 house? You still had stuff in the house?

11 A I always had stuff in that house, yes.

12 Q Okay. Did they ask about any of those
13 things?

14 A I don't think --

15 Q That weekend?

16 A I don't think so.

17 Q So if you look at the -- their preliminary
18 response they say something basically a senior trial
19 partner reached out to Elizabeth Freeman to confirm
20 there had been a romantic relationship. No further
21 details were sought at that time. Who's the senior
22 trial partner they're talking about, if you know?

23 A It might have been Chip Babcock.

24 Q Okay. I don't think you mentioned him when
25 we were talking earlier. Did you have a conversation

Elizabeth Freeman - Confidential

169

1 with him?

2 A I did talk to Chip about it, yes.

3 Q That weekend?

4 A I don't think so.

5 Q Well, this is like the first -- I mean, I
6 can't -- I can't speak for them, but if you read the
7 preliminary response from what I could tell it's the
8 first person who reached out to you, but that's --

9 A Was Chip?

10 Q Well, someone reached out to you to confirm
11 there had been a romantic relationship. Seems like
12 your -- Chip is -- is that -- in that time?

13 A I don't remember that but I can't tell you
14 that it's wrong. I -- the whole thing was surreal and
15 I just --

16 Q Let's talk about that, so --

17 A I can't remember.

18 Q -- why was it so surreal? I mean, you had a
19 relationship. Someone knew about it. They delivered
20 it.

21 A Yeah, it was upsetting.

22 Q It was upsetting?

23 A Yeah.

24 Q It -- it -- it -- did -- this says no
25 further information was sought at that time. Do you

Elizabeth Freeman - Confidential

170

1 remember that, that they just asked about the
2 relationship? Did you try to give them more
3 information? Did they -- did they just say we don't
4 want to know anymore?

5 A They didn't ask more and I wasn't involved
6 in conversations. You know, conversations that
7 happened about -- there was a frustrating lack of
8 conversation with me.

9 Q At that time?

10 A Throughout. It's -- and, you know,
11 conversations were happening. People were talking
12 about stuff, doing, you know, whatever they were doing
13 and I wasn't folded in, and so it was really
14 frustrating to me because I didn't know what was going
15 on, you know, or what people were concerned about.
16 And -- I -- I -- and I don't know -- and I don't know
17 why.

18 Q Well, do you know there was a Motion to
19 Recuse hearing? Are you aware of that?

20 A No. No.

21 Q You're not aware of the Motion to Recuse
22 hearing in the Van Deelen case?

23 A In July?

24 Q Actually --

25 MR. KIRKENDALL: March 10th.

Elizabeth Freeman - Confidential

171

1 UNIDENTIFIED SPEAKER: March.

2 THE WITNESS: Oh, I did not know Judge
3 Jones had a Motion to Recuse hearing. I didn't know
4 that.

5 MR. LAYNG: It was Judge Isgur.

6 MR. KIRKENDALL: It was Judge Isgur.

7 THE WITNESS: Oh, okay.

8 BY MR. LAYNG:

9 Q I don't want to tell you what you know so
10 you tell me what you know.

11 A Okay.

12 Q So you don't know that?

13 A I -- I -- I had heard later that Judge Isgur
14 had a hearing. But I didn't -- I did not listen. I
15 did not participate. Nobody asked me questions about
16 it. I don't know what happened.

17 Q Did Judge Isgur know that you had a
18 relationship?

19 A Not that I'm aware of.

20 Q Do you know about whether Kirkland Ellis
21 knew that there was a relationship?

22 A Not that I'm aware of.

23 Q Did you know that Kirkland Ellis represented
24 Jackson Walker at that Motion to Recuse?

25 A I did not know that.

Elizabeth Freeman - Confidential

172
1 Q What hap -- did you have anything to do with
2 the hearing for --

3 A No.

4 Q -- the Motion to Recuse?

5 A Nothing.

6 Q Did you have anything to do with any
7 response to Van Deelen to his e-mail?

8 A No.

9 Q Are you aware of any response to Van Deelen?

10 A No.

11 Q Were you aware of the results of that Motion
12 to Recuse hearing?

13 A No.

14 Q So you -- you didn't know that -- that it
15 was denied?

16 A I -- I knew there was -- I knew Isgur had
17 some sort of hearing, but I don't know what happened
18 and I don't really know what it was related to. I
19 know -- what I know is just like second and third-hand
20 and things I've heard in the press and whatever. I
21 just was not --

22 Q I -- I -- weren't you curious about that? I
23 mean, they're talking about your relationship, your
24 livelihood?

25 A I was told to stay out of it, and I did.

Elizabeth Freeman - Confidential

173

1 Q Who told you that?

2 A That was my impression given that I was not
3 folded into anything.

4 Q Who told you to stay out of it?

5 A Nobody said the words "stay out of it," but
6 nobody involved me in anything and nobody asked me
7 questions and I was told, you know, to stay away from
8 the case.

9 Q So what was asked about you and your
10 relationship with Judge Jones at that time?

11 A I know that there -- there was a question
12 about whether we had a continued romantic relationship
13 and I said, no, because we didn't, not at that time.

14 Q Okay. So that --

15 A But I -- but I didn't tell them about the
16 house.

17 Q Did they ask about the house?

18 A No. I just don't -- I would remember if
19 they did but they didn't.

20 Q Why didn't you volunteer that information?

21 A Because I didn't view it as my house.

22 Q Did they ask about how long the relationship
23 had lasted?

24 A No.

25 Q They just wanted to know when it ended?

Elizabeth Freeman - Confidential

174

1 A They didn't even ask that, I don't think.

2 Q What did they ask?

3 A I don't remember the exact questions, but
4 they wanted to know if we -- if I was in a romantic
5 relationship with Jones.

6 Q Who asked?

7 A I can't tell you who all asked me. I know I
8 talked with Bruce about it. I know I talked with Matt
9 about it. I know I talked with Pat about it.

10 Q So it's a lot of discussions. What was
11 talked about in those discussions?

12 A Basically, you know, was I communicating
13 with Jones about the case? Was I in a romantic
14 relationship with Jones?

15 Q Presently?

16 A Yeah, I remember that.

17 Q And they didn't ask about past?

18 A I -- I'm sure I talked about it. They may
19 have.

20 Q They never showed you the letter that I --

21 A I --

22 Q -- the anonymous letter?

23 A I know I saw a letter. I can't even tell you
24 that it's that.

25 Q Right.

Elizabeth Freeman - Confidential

175
1 A It may have been that. It may not have been
2 that. I don't know.

3 Q Did they ask you if the letter was true?

4 A I'd have to go back and read it and look at
5 each of the lines and this, this is it.

6 MR. KIRKENDALL: You know, I'm not sure
7 because that's, I mean, because --

8 A Because I remember something and it was so
9 wonky.

10 MR. KIRKENDALL: Yeah, and we're
11 probably --

12 MR. LAYNG: I -- I -- I cannot tell you
13 if what you looked at is that. I can tell you only
14 that that is what was attached to Van Deelen's civil
15 rights suit.

16 MR. KIRKENDALL: Yeah, see that's --

17 MR. LAYNG: Everything else is sealed.

18 MR. KIRKENDALL: See that's the problem
19 is -- is that --

20 THE WITNESS: Oh, maybe this is it. I
21 just don't know.

22 MR. KIRKENDALL: Yeah, that's the
23 problem because Van Deelen, you know, is, you know,
24 he's kind of --

25 BY MR. LAYNG:

Elizabeth Freeman - Confidential

176

1 Q Remember. I'm asking if they asked you
2 about that letter and the truth of it?

3 MR. KIRKENDALL: Let's see if I've
4 got --

5 A You know, because they were -- they were
6 just like assertions about taking bribes and trading
7 sex for rulings and things like that, and no, you
8 know, absolutely not.

9 Q Right. I understand and did they -- did
10 they ask you that question? They being the people at
11 Jackson Walker?

12 A I -- I know we talked about it.

13 Q Who's "we"?

14 A I know Bruce and Matt for sure, and I talked
15 about, maybe Cowlshaw, maybe Chip. I don't know but
16 I didn't have that many conversations about it.

17 Q And do you know when those conversations
18 took place? Was it that weekend?

19 A No. It wouldn't -- I don't think -- I don't
20 remember being called into the office. I remember
21 talking in the office, but I just -- I don't know.

22 Q Was ever a discussion with -- ever, I'm
23 going to say ever, that during that time was there a
24 discussion about disclosing the relationship in the
25 pending or past cases that you -- that you -- Jackson

Elizabeth Freeman - Confidential

177

1 Walker had worked on in front of Judge Jones?

2 A I don't remember.

3 Q Was it specifically talked about -- about
4 disclosure in the McDermott case?

5 A I don't remember.

6 Q Did --

7 A And what to do in McDermott, as soon as this
8 came out, what to do in McDermott was --

9 MR. LAYNG: You can keep that.

10 A -- was not anything that I was involved in
11 at that point. From that point forward I was out of
12 there.

13 BY MR. LAYNG:

14 Q At that point being that weekend?

15 A Yeah, yeah. I had no further discussions --

16 Q So you had nothing to do with why it was not
17 disclosed to Judge Isgur at that time?

18 A No.

19 Q Do you know who wrote that anonymous letter?

20 A Nope. I think Van Deelen did.

21 Q You think he fabricated it?

22 A Yeah.

23 Q How would he know about your relationship?

24 A I don't know.

25 MR. KIRKENDALL: That does look like

Elizabeth Freeman - Confidential

178
1 the original letter. I checked my files and that does
2 look like -- he didn't have the attachments.

3 MR. LAYNG: Right. The attachments
4 were later added. Sorry about that confusion.

5 BY MR. LAYNG:

6 Q All right. Did Jackson Walker -- did you
7 talk to Jackson Walker about continuing to take cases
8 in front of Judge Jones --

9 A Yeah. That's when --

10 Q -- at that time?

11 A I don't -- I don't remember exactly when it
12 was -- what time. You know, that's when we folded
13 into, you know, no more Liz on Jones' cases.

14 Q Was that almost -- was that right at that
15 time?

16 A It was pretty fast, but I can't tell you
17 exactly.

18 Q Who made that decision?

19 A It was -- I don't know. This -- this is
20 whomever it was that was having conversations and it
21 was posed to me and I agreed.

22 Q Okay. Could -- could you kind of limit to
23 who could it possibly be? I know you don't know who
24 exactly who it was, but of the people that you were
25 talking to at that time who was that? I mean --

Elizabeth Freeman - Confidential

179

1 A Whomever --

2 Q -- who of the universe of people that would
3 have told you that?

4 A Oh, who told me?

5 Q Yeah.

6 A It could have been Brazier. It could have
7 been Cowlshaw or Cooper.

8 Q What was it that they said?

9 A I -- I don't remember.

10 Q Well, the gist of it.

11 A Basically that I wouldn't participate in any
12 Jones' cases anymore. I wouldn't work on Jones'
13 cases.

14 Q How about before it was assigned?

15 A I worked on it before it was assigned and
16 then as soon as the case got assigned if it ended up
17 in front of Jones, I'd step out.

18 Q All right. There was a letter. Let me get
19 that preliminary response at. It was some e-mails
20 attached to it. Let me hand that to you. I don't
21 know if you got a chance to look at that before?

22 A Yeah.

23 Q That's got --

24 A Okay.

25 Q It's document 1244-1 page one of six. It

Elizabeth Freeman - Confidential

180

1 was filed with the preliminary response. It starts
2 with an e-mail from you on August 27, 2021?

3 A Yeah.

4 Q To Pat Cowlshaw and there's a thread.
5 There's an earlier e-mail from Pat Cowlshaw to you
6 and then attached is a draft letter dated August blank
7 2021. Are you familiar with this?

8 A Yes. Yeah.

9 Q So this all happened -- Van Deelen all
10 happened in March of 2021 and this letter is dated
11 August 27th of 2021?

12 A Yeah.

13 Q So what happened between August or March
14 of 2021 and August of 2021 on -- on your relationship
15 with Jones and Jackson Walker's dealing with it?

16 A I didn't work on Jones' cases and I didn't
17 receive any sort of income off of Jones' cases.

18 Q Okay. Well, if -- if you look at the
19 preliminary response. It talks about the managing
20 partner met with you on several occasions, both to
21 better understand the relationship on a current and
22 going forward basis and to keep you apprised of
23 management's thinking. Is that what happened? Did
24 that happen after March of 2020?

25 A Yeah, no that -- yeah, Wade Cooper and I

Elizabeth Freeman - Confidential

181
1 grabbed coffee at least once. I think there was at
2 least once, maybe twice that we did talk.

3 Q And do you know when that was? Sometime in
4 that period?

5 A Sometime in that period, but I don't know.

6 Q Just you two?

7 A Yes.

8 Q Okay. And -- and what was said during those
9 conversations or conversation?

10 A I -- you know, I can't remember specific
11 conversations just generally. We were talking about
12 this and, you know, the importance of me on the team
13 and what I brought to the table and the fact that, you
14 know, they just thought it would be fair if I stayed
15 out of Jones' cases and I agreed.

16 Q Okay. Did they -- did they talk about the
17 fact that you did not disclose this to them in the
18 past? Was there any discussion about that you should
19 have told them about this? Jackson Walker that is?

20 A I -- I can't -- I don't recall. I can't say
21 yes. I can't say no. I don't remember.

22 Q So -- so Wade Cooper. Anybody else discuss
23 it in that -- in the interim period *** between March
24 and August of 2021?

25 A I know I had conversations with Chip

Elizabeth Freeman - Confidential

182

1 Babcock, Bruce Ruzinsky and Matt Cavanaugh.

2 Q And what were those about?

3 A Just general conversations about this. I
4 can't remember any particular conversation.

5 Q Were they all together or -- or separately
6 with these people?

7 A I -- I -- I remember sitting down in Bruce's
8 office and I remember sitting down in a conference
9 room once. But I -- I can't give you details of
10 meetings.

11 Q I understand that.

12 A I just didn't --

13 Q Who was present in the conference room?

14 A Definitely I think Wade, Matt and Bruce and
15 at least one convert -- in at least one conversation.

16 Q Do you remember what the gist of that
17 conversation was or what was said?

18 A Not with particularity, I just don't.

19 Q What was the subject matter?

20 A Just generally, you know, what are we gonna
21 do going forward? How are we going to deal with this?

22 Q And what do you remember about what they
23 were going to do about it going forward?

24 A You know, carving me out of the Jones'
25 matters.

Elizabeth Freeman - Confidential

183
1 Q Did you discuss any of this during the
2 interim period with Judge Jones about this?
3 (Audio recording concluded.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Elizabeth Freeman - Confidential

184

CERTIFICATE OF TRANSCRIPTION

I, Lisa Raghuthaman, Certified Verbatim Reporter, hereby certify that the foregoing is a true and accurate transcription of the digital recording provided to me in this matter.

I further certify, that I am neither counsel for, related to, nor employed by any of the parties in the action in which this recorded audio was taken, and further that I am not financially or otherwise interested in the outcome of this matter.

Certified to by me on this the 5th day of July, 2024.

Lisa Raghuthaman, CVR
Infinity Reporting Group, LLC
11200 Richmond Avenue, Suite 410
Houston, Texas 77082

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

IN RE:	§	
	§	Chapter 11
J.C. PENNEY DIRECT MARKETING	§	
SERVICES LLC, <i>et al.</i> ,	§	Case No. 20-20184 (CML)
	§	(Jointly Administered)
DEBTORS.	§	

OLD COPPER COMPANY INC. F/K/A	§	
JC PENNEY COMPANY INC. AND	§	
COPPER SUB CORPORATION INC.	§	
F/K/A JC PENNEY CORPORATION	§	
INC., AS WIND DOWN DEBTOR IN	§	
JC PENNEY DIRECT MARKETING	§	
SERVICES LLC,	§	
	§	Adv. Pro. No. 25-02002
PLAINTIFF,	§	
	§	
V.	§	
	§	
JACKSON WALKER LLP,	§	
	§	
DEFENDANT.	§	

ORDER GRANTING JACKSON WALKERS' MOTION TO DISMISS

[Relates to Dkt. No. __]

This Court, having considered the *Motion to Dismiss Complaint* (the “Motion”) filed by Defendant Jackson Walker LLP (“Jackson Walker”), is of the opinion that the Motion should be GRANTED and the Wind Down Debtors’ Complaint should be DISMISSED for the reasons set forth in the Motion.

It is therefore ORDERED that Jackson Walker’s Motion to Dismiss is GRANTED and this case is DISMISSED with prejudice.