

INDEX

	PAGE
Court Calls Case	3
TESTIMONY OF ELLEN B. HASKING, FKA, COHEN	
Direct Examination by Mr. Carew	5
Cross Examination by Mr. Kane	9
Redirect Examination by Mr. Carew	15
TESTIMONY OF JEFFREY S. COHEN	
Direct Examination by Mr. Kane	17
Cross Examination by Mr. Carew	26
Redirect Examination by Mr. Kane	29
CLOSING ARGUMENTS	
By Mr. Carew	31
By Mr. Kane	33
THE COURT'S RULING	36
Transcriptionist's Certificate	40

COURT CALLS CASE

1 THE COURT: Thank you. We're on the Record now. The Court will
2 call the case of *In re the Marriage of Cohen*, although I know the
3 Petitioner now goes by Haskins. The Case Number is 93DR266. Would
4 Counsel announce their presence, please?

5 MR. CAREW: Your Honor, William L. Carew for the Petitioner in this
6 matter. My Registration Number is 1156.

7 MR. KANE: Your Honor, Hayden Kane appearing on behalf of and with
8 Jeff Cohen, ah, Registration Number 22143.

9 THE COURT: Thank you, and I know both Parties are present. I met
10 briefly with Counsel in Chambers. One issue that we discussed,
11 hopefully we resolved so would Counsel like to memorialize that?

12 MR. CAREW: Your Honor, yes, William Carew. Ah, the Parties have
13 agreed that Petitioner is entitled to 20.06 percent of Respondent's
14 gross Military Retired Pay. Again, the date of his retirement, May 31,
15 2007. In the event there is a waiver of Military Retired Pay to get VA
16 Disability, she will continue to get the same percentage and amount she
17 would otherwise be entitled to but for the waiver of Military Retired
18 Pay to get VA Disability, and Mr. Cohen will at the end of each
19 calendar year send her a 1099 so that in the event she receives any
20 cash directly from him she will have to report that as income, and
21 counter clockwise he will be able to deduct that on his Income Tax
22 Return. The Court advised that if there is any problem with that, the
23 Court will retain jurisdiction to clean that up at a later date.

24 THE COURT: That's correct. Mr. Kane?

25 MR. KANE: The only—I think the number actually is 20.6 percent,

1 not 20.06, that we've agreed upon.

2 MR. CAREW: I'll take 20.6.

3 THE COURT: So a little more.

4 MR. CAREW: Yes.

5 THE COURT: All right. And just for the Parties' sake, what we're
6 saying is that Mr. Cohen should not have to pay any taxes on what is
7 paid to Ms. Haskins, and there's always the problem that he's going to
8 receive a statement from the military agreement saying how much he
9 received, but he would have paid some of it over to her, and I've heard
10 the term "nominee income", which sometimes Parties put on their Tax
11 Returns and give the Social Security Number of the person to whom it
12 was paid. I respect Mr. Carew's knowledge in this field, and if it's a
13 1099, that is certainly appropriate. The point is that the money she
14 actually receives she would have to report as income, and we also know
15 that typically there is the problem that, well, you can say gross
16 retirement, but often the military will take it out of the net
17 disposable retired pay, meaning there might be a small amount he has to
18 make up to make her whole that the military won't withhold from his
19 pay. Am I correct on that Mr. Carew?

20 MR. CAREW: Yes, Your Honor, that's correct.

21 THE COURT: So a lot of that can be remedied by the 1099 as he
22 described, and as I told Counsel in Chambers, I would retain
23 jurisdiction to do whatever is necessary to assure if there were
24 problems and they needed further clarifying Orders we could do that in
25 here.

1 MR. CAREW: That's exactly right.

2 MR. KANE: Um, I'm not aware that the 1099 is exactly the way to get
3 that accomplished. The only thing that we're stipulating to, frankly,
4 is that we just wanted her to pay her own taxes as per the original
5 Agreement.

6 THE COURT: Yeah, the intent is known. It's not specifically that
7 medium. Whatever works.

8 MR. CAREW: A W-2 would be fine. Just give that to us. May I call
9 the former Mrs. Cohen to the stand as a witness?

10 THE COURT: Ma'am, if you would come forward to be sworn.

11 (The following is the testimony of Ellen Betsy Haskins after being
12 first duly sworn states as follows):

13 ELLEN BETSY HASKINS FKA COHEN

14 DIRECT EXAMINATION BY MR. CAREW

15 Q: Please state your full name, please.

16 A: Ellen Betsy Haskins.

17 Q: And are you the Petitioner in this matter?

18 A: I am.

19 Q: And you were formally married to Jeffrey S. Cohen, and he is in
20 Court today?

21 A: Yes.

22 Q: And a Decree of Dissolution of Marriage was entered in this
23 case. Do you recall the date?

24 A: I believe it was the 27th of April, 1993.

25 Q: All right, now Ms. Haskins, we're here in Court today, we're

1 asking the Court to enter an Order concerning insurance, is that
2 correct?

3 A: Yes.

4 Q: And do you request that your interest in the Military Retired
5 Pay be covered and protected by life insurance?

6 A: Yes.

7 Q: And, ah, are you willing to pay the life insurance premiums
8 concerning any insurance that the Court may order in this matter?

9 A: Absolutely.

10 Q: And if the insurance company requires a physical or blood
11 testing or urinalysis of Mr. Cohen, are you willing to pay for that
12 also?

13 A: Yes.

14 Q: Now, I'm going to ask you how much insurance do you want the
15 Court to enter that you will be allowed to take out on the life of Mr.
16 Cohen?

17 A: Ah, roughly \$454,000.00.

18 Q: All right. How old is Mr. Cohen, if you know?

19 A: He is forty-nine and three months.

20 Q: All right. And how did you come up with that \$450,000.00 of
21 coverage?

22 A: Um, there is a life expectancy, and I think mortality chart, and
23 it says that a male forty-nine years old is expected to live another
24 30.7 years, so I took the 30.7 years, multiplied that by the amount
25 that I'm getting paid every month in his retirement.

1 Q: And how much is that? That is how much are you getting per
2 month?

3 A: Ah, approximately \$1,236.00.

4 Q: And eighty-two cents?

5 A: And eighty-two cents, yeah.

6 Q: And so you determined—you have before you a copy of a Life
7 Expectancy Tables of the State of Colorado?

8 A: I do.

9 Q: And then you determined his life expectancy because he is age
10 forty-nine, then determined because you're receiving his military, your
11 part of the Military Retired Pay, you multiplied that times the amount
12 of months left in his life?

13 A: That's correct.

14 Q: And that's how you came up with that \$453,000.00?

15 A: Yes.

16 Q: Did you include any COLA's?

17 A: I didn't.

18 Q: All right, so you understand that the law provides for COLA's?

19 A: Yes.

20 Q: And, ah, you did not figure that in to your compilation of what
21 it is that you wanted this life insurance coverage?

22 A: No, I didn't.

23 Q: All right. Do you have that Life Expectancy Chart before you
24 there, this, ah...

25 A: I do.

1 Q: Okay, can I have just a moment please.

2 THE COURT: It's 13.25.102.

3 MR. CAREW: Yes, it is, Your Honor, and 103 and 102 says it can be
4 taken notice by the Court or admitted into evidence. Um, Ms. Haskins,
5 are you also asking for attorney fees in this case?

6 A: I am.

7 Q: Ah, you don't have any particular amount; you would leave that
8 to the discretion of the Court.

9 A: Yes.

10 Q: Why is it that you feel you are entitled to life insurance to
11 cover your interest in the Military Retirement?

12 A: I feel I'm entitled to it because this is a vested interest that
13 I have and part of my divorce.

14 Q: Do you understand that in the event your former husband should
15 die that you no longer will receive any monies from DFAS or anybody
16 else for your interest in the Military Retired Pay?

17 A: Yes, I do.

18 Q: All right. Now, if you should die, you know what happens to
19 your part of the Military Retired Pay that you were entitled to?

20 A: I do. Jeff will receive his full retirement, and the portion
21 that I would be entitled to.

22 Q: All right. And you understand that your interest in the
23 Military Retired Pay can't—you can't transfer it to anybody? Do you
24 understand that?

25 A: I understand that.

1 Q: You can't will it to anybody.

2 A: I understand that.

3 Q: Ah, it just goes away in the event of your death.

4 A: Uh-hum, yes.

5 Q: And so is it your understanding that you want the same kind of
6 protection that he has in the event of your death, that is in the event
7 of your death his Military Retired Pay is restored a hundred percent,
8 and you want something to protect your interest in his military
9 retirement?

10 A: Yes, I want to...

11 Q: That's why you want insurance.

12 A: Yes, I want to protect my interest.

13 Q: All right, and, again, you're asking for the Court to enter an
14 Order for life insurance and for attorney fees?

15 A: Yes, right.

16 Q: The other attorney has an opportunity to cross-examine you, and
17 the Judge may wish to ask you some questions. Do you understand?

18 A: I do.

19 Q: All right, thank you.

20 THE COURT: Mr. Kane, please.

21 MR. KANE: May I approach, Your Honor?

22 THE COURT: You may.

23 CROSS EXAMINATION BY MR. KANE

24 Q: Ms. Haskins, I'm handing you what's been marked as Exhibit One
25 in this case, and a copy of that I believe I already gave to Counsel.

1 Can you identify that document, Ma'am?

2 A: It reads that's our Separation Agreement between Ellen Betsy
3 Cohen, Petitioner and Jeffrey S. Cohen, Respondent.

4 Q: And this is your Separation Agreement that you entered into I
5 believe you mentioned in April of 1993?

6 A: I believe we were separated before then, but it does say
7 separation, yes.

8 Q: All right. And to your knowledge this was your agreement with
9 Mr. Cohen as to how you were going to divide the assets and resolved
10 all outstanding issues, is that right?

11 A: That's correct.

12 Q: In fact on that first page, it looks like the last--"whereas it
13 is the desire of Husband and Wife to settle, determine and agree upon
14 in respect of property rights and financial obligations to each other".
15 Do you see that?

16 A: I do.

17 Q: And I would ask you...

18 THE COURT: Mr. Kane, excuse me, just give me the date again, so I
19 can look along with you. What's the date it was filed?

20 MR. KANE: Ah, I have it the date of 21st of April of 1993. If you
21 would like me to—I would approach with my copy, Your Honor, as soon as
22 I'm done questioning on the Separation Agreement so you might have it
23 readily available.

24 THE COURT: Ah, April of '93, oh, I do have it. All right. You
25 don't need to give me a copy. I have the Court's file copy.

1 MR. KANE: Very good. Ma'am, I'd ask you to turn to Paragraph
2 Sixteen, it's on Page Five and Six of this Agreement. Do you see that?
3 Actually just Page Six.

4 A: You don't want me to read the first part of Sixteen?

5 Q: Well that first part of Paragraph Sixteen essentially we have
6 agreed to. Would that be fair that we have agreed to the amount that
7 is due to you on a monthly basis given the calculation that's
8 enumerated here in Paragraph Sixteen?

9 A: We have agreed to that, yes.

10 Q: All right. Well the second paragraph of that states that, and
11 it's the second and disagree with me if I am misreading this, "the
12 Court shall retain jurisdiction only to the extent necessary to
13 determine the number of months of Husband's total active military
14 service or retirement". What does that mean to you?

15 A: Exactly what it reads.

16 Q: Yet you are here today asking for further essential, or making a
17 claim for insurance in regard to those benefits?

18 A: That's correct. When Jeff and I got divorced, I wasn't aware
19 that when Jeff, God forbid, passes away that my military retirement
20 ceases.

21 Q: But Paragraph Twenty of this does indicate that you did have
22 some contingencies in regard to life insurance; life insurance was
23 contemplated at the time of this Agreement.

24 A: It was contemplated for our children. Our children were minors
25 at the time. He was active duty. He flew, and if anything happened to

1 him we still had their college education that's addressed in here
2 that we would have to cover financially, and he would have child
3 support that they would be getting that they would no longer get, God
4 forbid, if he died.

5 Q: So now we're here fourteen years after this is entered for you
6 to obtain life insurance at this point?

7 A: We're actually here because I need a mil--because of that, and I
8 need a military order to give to the Government in order to get his
9 retirement that I'm entitled to, so we're here for two things.

10 Q: All right, and let's talk a little bit about that. Have you
11 received any checks from Mr. Cohen?

12 A: I have.

13 Q: All right, and he at least through September has sent you a
14 check for each month with September being due, would that be fair?

15 A: Um, I received a check for--he retired on May 31st, I received a
16 check for June and I received a check for July, and I do not have one--I
17 received two checks. I don't have one for August.

18 Q: And have you negotiated those drafts? Cashed them?

19 A: The checks that I just received on Friday certified from Jeff,
20 they have been deposited in the bank.

21 Q: Had you received other checks prior to that?

22 A: I had received two checks prior to that. They have not been
23 cashed as you know.

24 Q: Ma'am, I would ask you to look at the last page of this
25 Separation Agreement. It's in Paragraph Twenty-three. First, is that

1 your signature on that document?

2 A: Yes, it is.

3 Q: Do you see in Paragraph Twenty-three, that's not on Page Six,
4 but on Page Seven of that Agreement, there's a sentence that states as
5 follows: "From this day forward neither of the Parties hereto shall
6 have any claim of any kind against the other or against the estate of
7 the other or personal representative, devisee or legatee of the other".
8 Do you see that language?

9 A: I've read it.

10 Q: And you agreed to that?

11 A: I did agree to that.

12 Q: And isn't this a claim as we sit here today for insurance?

13 A: This is not a claim for insurance. This is a claim that allows
14 me to keep what is mine and what the Court has already given me.

15 Q: And that would be your interest in Mr. Cohen's retirement pay,
16 right?

17 A: The retirement pay has already been give to me. It is my
18 insurable interest in his retirement pay.

19 Q: So why did you wait fourteen years to take care of this
20 insurable interest that you indicated issue?

21 A: When Jeff and I got divorced and we worked out everything that
22 we had agreed upon, we didn't know that when Jeff died, or I didn't
23 know, I can't speak for him, that when Jeff died that I would not
24 receive anymore of what was given to me in the Divorce Decree. I also
25 need the Order from the Court to give to, I think it's DFAS, allowing

1 me to tell them that they can accept it and pay me directly. The
2 other thing, too, is when we divorced we didn't know how long Jeff was
3 going to be in there, be in the military, and we agreed to what the
4 numerator and the denominator is, so, that could be decided upon
5 fourteen, fifteen years ago.

6 Q: And you came up with the number of \$454,000.00 using Life
7 Expectancy Tables that are part, essentially, of a statutory scheme
8 here in Colorado?

9 A: What was that? A statutory what?

10 Q: There is a Statue.

11 A: Right.

12 Q: A table?

13 A: Uh-huh.

14 Q: That says here is what the life expectancy is?

15 A: I expect Jeff to live longer than that.

16 Q: So then if that is how you're basing this, then if he continues
17 to live, then shouldn't the amount that would be insured be reduced
18 pursuant to that expectancy table?

19 A: Well, I don't have a crystal ball. I don't know how long he's
20 going to live, and I am not savvy to the way that life insurance works,
21 but I know when you buy it, when you buy it a certain age and you
22 insure for a certain age, if you go to get more as you get older, or
23 get more, I don't know about getting less, but things change; rates
24 change, so basically I would like to lock into a rate.

25 Q: So you're indicating here today that because you didn't know or

1 you didn't make any arrangements at the time of the Dissolution in
2 1993, that now you should be able to make those arrangements fourteen
3 years later?

4 A: I did not know at the time of the divorce, and I am asking the
5 Court for that, yes, at my expense.

6 Q: Ma'am, you had an attorney assist you and counsel you in regards
7 to the execution of this Agreement, correct?

8 A: Yes...

9 Q: 1993?

10 A: Correct.

11 Q: And who was that?

12 A: Thomas Gresham.

13 Q: Okay, thank you. That's all I have.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION BY MR. CAREW

16 Q: Now this--prior to his retiring, prior to this date, did you know
17 what your insurable interest was?

18 A: I had no idea.

19 Q: And now that he's retired, are you able to determine his--your
20 insurable interest in his life and of the military retirement.

21 MR. KANE: I would object to the form and the characterization of
22 the question in regards that determining insurable interest has
23 anything to do with the numerator or the denominator.

24 THE COURT: Actually, that's more argument than anything else, so I
25 accept the point you're making, Mr. Carew.

1 MR. KANE: All right.

2 MR. CAREW: Now, Ms. Haskins, you have received two checks for the
3 correct amount, is that right?

4 A: That's correct.

5 Q: And that was for if he retired on May the 31st, it's for June and
6 July. You have not received a check for August, and that's due, is it
7 not?

8 A: It should be. Usually I've noticed that the checks are written
9 on the seventh and they arrive about the seventeenth.

10 Q: You have received the one—you haven't received three checks,
11 you've received two?

12 A: I've received two checks for the amounts.

13 Q: And you're entitled to three and there's one due?

14 A: Yes.

15 Q: So, what you're asking for is the same kind of protection that
16 Mr. Cohen has in the event of your death; you want the same kind of
17 protection in the event of his death, correct?

18 A: Yes.

19 Q: Thank you.

20 THE COURT: Thank you. May she step down?

21 MR. KANE: I have no further questions, Your Honor.

22 MR. CAREW: Yes.

23 THE COURT: Ma'am, you may step down, but before you call another
24 witness Mr. Carew, or if you are about to rest, I need to ask Mr.
25 Lawyer where his case is and what—how much time he thinks he'll need.

1 MR. LAWYER: Um, probably an hour and fifteen minutes.

2 THE COURT: Very well. We're easily going to get to it this
3 afternoon. I would expect this matter to be done, what do you think,
4 gentlemen? Another twenty minutes at the most?

5 MR. CAREW: Exactly.

6 THE COURT: Thank you. Do you have any other evidence, Mr. Carew?

7 MR. CAREW: No, Your Honor, thank you.

8 THE COURT: Mr. Kane?

9 MR. KANE: Ah, I would call Jeff Cohen.

10 THE COURT: Thank you.

11 (The following is the testimony of Jeffrey S. Cohen after being
12 first duly sworn states as follows):

13 JEFFREY S. COHEN

14 DIRECT EXAMINATION BY MR. KANE

15 Q: Please state your name for the Record.

16 A: Jeffrey Steven Cohen.

17 Q: And, Mr. Cohen, your present occupation?

18 A: Ah, a Defense Analyst.

19 Q: And the issue here obviously surrounds your military pay. Were
20 you ever in the military?

21 A: Previously I was.

22 Q: And how long were you in the military?

23 A: Um, just over twenty-six years for official purposes.

24 Q: And you just recently retired?

25 A: I did.

1 Q: All right. You were divorced from Ms. Haskins back in
2 April of 1993, is that right?

3 A: That's correct.

4 Q: All right. Sir, is that Separation Agreement still up there for
5 you to review?

6 A: No, Sir, it's not.

7 Q: I handing you what's been marked as Exhibit One. Do you
8 recognize that document?

9 A: I do.

10 Q: And that's the Separation Agreement, the Contract that you
11 reached with Ms. Haskins back in April of 1993, is that right?

12 A: Yes, it is.

13 Q: You heard me go over specific parts of that, specifically
14 regarding retirement. Do you recall that?

15 A: I do.

16 Q: I believe it was Paragraph Six.

17 A: Okay.

18 Q: And you note the language in that Separation Agreement that says
19 the Court will retain jurisdiction only in regards to retirement for
20 the numerator or the denominator, is that right?

21 A: Correct.

22 Q: Is there anything in there with regards to a Spousal Benefit
23 Plan or life insurance securing any sort of interest that she may or
24 may not have?

25 A: There is nothing.

1 Q: Is that simply an oversight, or is that an explanation?

2 A: There was actually an explanation. My attorney was a prior
3 military attorney, and that was a calculated input by my attorney to
4 make sure that she did not get that; either a Survivor Benefit Plan or
5 a life insurance policy.

6 Q: So that was not simply an oversight?

7 A: It was not. It was intended by my attorney and me.

8 Q: And that was—that is consistent with the last part of that which
9 indicates that neither Party would bring any claim against one another
10 of any kind?

11 A: Correct.

12 Q: Favorable or otherwise?

13 A: Correct.

14 Q: Has Ms. Haskins ever inquired as to this insurable interest
15 prior to this time?

16 A: Never.

17 Q: You stated you were in the military, correct?

18 A: I was.

19 Q: What did you do for the military?

20 A: I was a flyer for fourteen years of my career, and was in
21 Military Claims Operations as a Senior Office.

22 Q: Military in and of itself is a dangerous occupation. Were there
23 ever any deployments that were significantly dangerous where there was
24 a significant chance that you...

25 A: Yes, there were. I deployed to Operation Allied Force and

1 Operation Iraq..

2 (Parties talking over)

3 THE COURT: Sir, Sir, there is an objection, so let me rule on that
4 before you answer.

5 MR. CAREW: That's not relevant or germane to our issue before the
6 Court. He's in the military. We understand that that's a serious
7 business and dangerous, but that has nothing to do with our case today.

8 THE COURT: The relevance, Mr. Kane?

9 MR. KANE: The timing of the request. If she's so concerned about
10 his life and retirement, then why does she wait until now to make that
11 request for insurance.

12 THE COURT: Well, I'll sustain the objection as to relevance because
13 I would anticipate in a twenty-six year career, particularly having
14 been a flyer at one time, that he would have—it's very conceivable that
15 he went into harm's way.

16 MR. KANE: All right. Fair enough, Your Honor. Um, Mr. Cohen, you
17 in fact brought this issue up in regards to military retirement to Ms.
18 Haskins attention, did you not?

19 A: I did.

20 Q: I approach with what's marked as Exhibit Two. I'm handing a
21 copy of that to Opposing Counsel. Can you identify that document, Sir?

22 A: It was a letter I sent Ellen informing her that I was going to
23 retire.

24 Q: And what is that dated?

25 A: One March.

1 Q: And does that letter actually go into what the percentage
2 is? The 20.6 percent that we have agreed to here today?

3 A: Yes, it does.

4 Q: There's been some question in regards to the payments that you
5 have sent Ms. Haskins in regard to this matter. I would like to
6 approach with what has been marked as Respondent's Exhibit Three and a
7 copy of that contemporaneously to Opposing Counsel. Mr. Cohen, do you
8 recognize that document?

9 A: I do.

10 Q: And what is that document?

11 A: It's my initial Retiree Account Statement, with a copy of a
12 voided check that I sent to Ellen.

13 Q: All right. And, if I can briefly, Your Honor, there may be a
14 slight question as to the admissibility of the next Exhibit I'm about
15 to come up with, and I want to clear that with Opposing Counsel.

16 THE COURT: And would you, while he's looking, give me an offer of
17 proof of the relevance of what you're about to show me, because how
18 does it relate to life insurance I guess is my question?

19 MR. KANE: I guess it relates to the attorney's fees issue, Your
20 Honor, in regards to we have been dutifully trying to get the money to
21 Ms. Haskins.

22 THE COURT: I see.

23 MR. CAREW: Well, Your Honor, first of all, I'm going to object to
24 this document because it talks about negotiations and negotiated
25 settlements.

1 MR. KANE: That's fine.

2 MR. CAREW: And the second one shows the Exhibit as to the two
3 checks he sent, he sent two checks for the amount due on August 17 '07,
4 I have no objection to that one, and his retiree account I think was...

5 MR. KANE: Your Honor, let's just cut to the chase. Mr. Cohen, um...

6 THE COURT: Well, I think that there's a stipulation to what the
7 contents of the document you want in in regards to when and that he did
8 forward the checks. What would you like to put in the Record on that?

9 MR. KANE: And that's all I'm going to make a Record on here, Your
10 Honor. You're absolutely right. Let's cut to the chase. There were
11 essentially four checks cut covering all that without getting into any
12 negotiations or anything like that, what happened? When did you send
13 the checks and why?

14 A: I sent a check on I believe, first, to correct prior Record I
15 received my first retirement check in July. Retirement pay is paid in
16 arrears, so my retirement pay for June was actually received in July.
17 I received it on two July and sent the first check to Mrs. Haskins on
18 six July. I received my second check on two August, and I believe I
19 sent a check to Mrs. Haskins on, I believe it was seven August, and
20 then those checks--neither of those checks had gotten cashed, so I
21 stopped payment on both those checks assuming they had been lost,
22 reissued the checks again at the end of August; I sent her two more
23 checks for a total of four checks now, and as of when I left home
24 yesterday none of the four had been cashed, and I get--I mean I received
25 my third retirement check on two September, but I haven't been home to

1 write a check on that plus this Court date was coming up.

2 MR. KANE: All right. Your Honor, as an offer of proof because
3 essentially I have the label on the one part that I now agree would not
4 be appropriate...

5 THE COURT: And I can provide you labels if you need them, but go
6 ahead with your offer of proof.

7 MR. KANE: These would be marked collectively as Exhibit Three, I
8 believe. Mr. Cohen, can you identify those documents?

9 A: Yes, the second page is the original checks that I had sent.
10 The second page, ah, the top page are the additional checks I sent
11 dated the seventeenth, which did arrive to Mrs. Haskins' house by
12 certified mail on the twentieth, and she did not take delivery on them
13 until the thirtieth.

14 Q: All right. The Separation Agreement also makes reference, and I
15 guess again in regard to the insurance issue, you are not agreeable to
16 cooperate with an insurance policy being taken out on you to the
17 benefit of Ms. Haskins. Would that be a fair statement?

18 A: That is a very fair statement.

19 Q: Can you tell the Court your reasoning in regard to that
20 position?

21 A: Ah, Mrs. Haskins, if you refer to our base Separation Agreement,
22 there's a \$30,000.00 settlement in there that Mrs. Haskins received.
23 That was for her suing her former lover for a marital breach of
24 contract. As you are aware that has been inadmissible in the State of
25 Colorado since 1960 something, and it just goes to show that she will

1 go to almost any extreme for money...

2 MR. CAREW: I'm going to object, Your Honor, to this line of
3 questioning and the answer.

4 THE COURT: Yeah, I think that—I'll hear from you Mr. Kane, but he's
5 obviously taken an opportunity to volunteer things where he thinks
6 there's marital misconduct here.

7 MR. KANE: I think...

8 THE COURT: Unless I misunderstood...

9 MR. KANE: you missed the point.

10 MR. COHEN: Yes, Sir, if I may clarify.

11 THE COURT: Well, what was the—restate your objection, Mr. Carew.

12 MR. CAREW: Well, he's going into things and facts that are not
13 relevant to the issues before us. Apparently there is some overlay in
14 this case that he wants to bring up that's not relevant.

15 THE COURT: And what is it, oh this, I'm sorry, I read it now. It's
16 Paragraph Fourteen about a personal injury claim for \$30,000.00, um,
17 what's the relevance of going into that Mr. Kane?

18 MR. KANE: The relevance would be the motive in regards to money
19 from the perspective of Ms. Haskins.

20 THE COURT: Well, I'm going to sustain the objection. I don't think
21 that's relevant. The real issue here is why is it unreasonable for him
22 to cooperate on a health exam for a policy at her expense, and so I
23 understand his position is that this is, I guess, a money grab on her
24 part.

25 MR. KANE: Your Honor, at this point I would like to offer

1 Exhibits, I believe are One through Four, the Separation Agreement,
2 copies of the checks into evidence.

3 THE COURT: Any objection?

4 MR. CAREW: Ah, I need to see that Exhibit if I may Mr. Cohen.
5 Thank you. May I approach the witness? I'm going to object to, ah,
6 not to Exhibit Three, but the second part of Exhibit Three, Your Honor,
7 we have agreed that the amount due per month is \$1,236.82 currently,
8 and the checks that have not been cashed are not relevant. He's
9 showing an entry that is not relevant, so that's my objection to that
10 one. The Separation Agreement I don't think has to be introduced into
11 evidence. That's part of the file, and what was number Four? That's
12 it, Your Honor. I'm sorry.

13 THE COURT: So, say again the Exhibits Mr.—I heard One, Two, and...

14 MR. KANE: Three is a copy of the checks that were sent recently.
15 The second page of Three is the checks that were not cashed that he put
16 a stop payment. I guess the only reason those were offered again is in
17 regards to the issue of attorney's fees in this case in regards to my
18 client's efforts to pay what is due and owing to Ms. Haskins.

19 THE COURT: All right, and so your offering—I only heard three
20 numbers, but they included Four, so I'm confused.

21 MR. KANE: Three is two pages.

22 THE COURT: Okay, so One—I'll accept Exhibits One, Two, and Three.
23 I agree that one of them is already in the Court file, but since I'm
24 going to have to do an evidence envelope anyhow I'll let them all in.
25 And may I see them? I have Exhibits One, Two and Three. Thank you.

1 Mr. Carew, cross?

2 MR. CAREW: Ah, yes.

3 THE COURT: I'm sorry, you weren't done.

4 MR. KANE: Mr. Cohen, you're making a claim for attorney's fees in
5 this case?

6 A: I am.

7 Q: And costs?

8 A: I am.

9 Q: Could you give the Court grounds for that request?

10 A: Um, I have made every effort in good faith to transmit all
11 agreed-upon sums to Mrs. Haskins. This case did not need to go to
12 Court at all, and she would not allow me to testify by phone, so I had
13 to fly here to Colorado at my own expense to appear today as well as
14 miss days from work. So I have done everything I can to cooperate on
15 this case, and have been proactive in it. We have sent her all the
16 forms that she needs to get payment direct from DFAS. But still I have
17 appeared today, so to me this is--the whole time for being here today
18 is frivolous.

19 MR. KANE: That's all the questions I have.

20 THE COURT: Mr. Carew?

21 MR. CAREW: Thank you, Your Honor.

22 CROSS EXAMINATION BY MR. CAREW

23 Q: Mr. Cohen, do you understand I'm Ellen's attorney, and I'm just
24 the lawyer in this case. I just present the evidence as I see it, so I
25 have no ill feelings towards you. A couple of things that I'd like to

1 talk about. One of the Responses that your attorney has filed for
2 you is a claim that you, and you've testified, you sent her all these
3 papers and all she had to do is send them to DFAS, isn't that correct?

4 A: Correct.

5 Q: All right. Well, listen, Mr. Cohen, your retired '06 are you
6 not?

7 A: I am.

8 Q: And is it your testimony that she could have sent a 2293 to DFAS
9 to get paid?

10 MR. KANE: Objection. Relevance.

11 MR. CAREW: Well, Your Honor, ah, he's testified that he has sent
12 her all the documents that she needed to process her claim, and I'm
13 trying to bring out evidence that you can't send in the 2293 until we
14 have a Court Order.

15 THE COURT: Well, the Court will take Judicial Notice that DFAS will
16 not accept--requires clarifying Orders for the coverture formula which
17 can't be created until the person retires, and so it clearly requires a
18 clarifying Order in order for DFAS to then honor claims for direct
19 payments.

20 MR. CAREW: Thank you, Your Honor. Now, Mr. Cohen, you also state
21 or your attorney has stated in one of the pleadings that he filed for
22 you, and I assume that you were aware of the pleadings; you had an
23 opportunity to review them before they were filed by your attorney?

24 A: Yes.

25 Q: All right. One of the positions that you take, and I quote, "it

1 is the position of the Respondent that a policy of insurance taken
2 out on the life of another without his or her consent is void and
3 against public policy in that it might be a fruitful source of crime".
4 Do you really believe that there is a possibility of a crime in this
5 case? Is that what you're saying?

6 A: I do believe that is a possibility.

7 Q: Now, ah, so it's your objection in this case and why we're here
8 today is that you have an absolute objection to any Order entering for
9 Mrs.—for Ellen to have some insurance coverage on your life, is that
10 correct?

11 A: That is correct.

12 Q: You understand since you're a retired '06 that in the event of
13 her death your Military Retired Pay to you is restored a hundred
14 percent?

15 A: That is correct.

16 Q: If you die and there is no insurance her interest in the
17 military retirement goes away, isn't that correct? Terminates. She
18 will not get anything.

19 A: Our Separation Agreement...

20 Q: No, no, no. Listen to the question.

21 THE COURT: He doesn't need to answer that. The Court will accept
22 that as a fact.

23 MR. COHEN: If I could, Your Honor?

24 THE COURT: You may.

25 MR. COHEN: Our Separation Agreement followed the act that covers...

1 THE COURT: I'm going to stop you now. Now you're not
2 responding to his question. His question was, and your attorney can
3 stand up and ask additional questions, but if you were going to answer
4 his question, his question was her retired pay evaporates with your
5 death, and the Court agrees with him that if you disagree with that,
6 but you want to explain why you think that's fair that's up to your
7 attorney to ask the question.

8 MR. CAREW: No further questions, Your Honor.

9 THE COURT: Thank you Mr. Carew. Mr. Kane?

10 REDIRECT EXAMINATION BY MR. KANE

11 Q: Mr. Cohen, you've been questioned about what happens to the
12 benefits in regard to if you die, that they terminate to Ms. Haskins,
13 is that right?

14 A: Correct.

15 Q: Is that consistent with the law in this regard specifically,
16 U.S.C. 1048 that controls that?

17 A: Yes, it is.

18 Q: That's all I have.

19 THE COURT: Okay, I have a couple of questions. Mr. Cohen the, ah,
20 while my own experiences aren't relevant, I happened to go through a
21 physical recently for my wife to receive, ah, former wife who receives
22 a share of my military retirement to take out life insurance on me, and
23 it took less than five minutes for a nurse to come to my Chambers, ask
24 me a few questions, take a blood sample and take a urine sample. Do
25 you have any reason to believe that this would be anymore time

1 consuming for you than what I've just described?

2 A: Do I have to answer that yes or no?

3 THE COURT: No, you can--do you have any reason to believe that what
4 you would have to undergo to cooperate on a life insurance exam by, for
5 example as I gave you, a nurse, would be anything more than the five or
6 ten minutes I went through?

7 A: If I'm allowed--am I allowed to answer that question fully, Your
8 Honor.

9 THE COURT: Yes, yes. It's my question, so I'm letting you answer
10 it.

11 A: Okay. To me this is not a point of inconvenience. This is a
12 point of principle. Um, I have no desire to let my ex-wife take a life
13 insurance policy on me. I don't know the circumstances of your
14 divorce, it's not my business obviously, but Mrs. Haskins has done
15 things of questionable before with money. I don't want to put myself
16 in a position to allow that to happen again. I just--the law that
17 allowed her to take a piece of my retirement pay in the first place was
18 clear that this benefit ends when I die or she dies, whichever happens
19 first. So, I have no desire to--the key to my argument is I have no
20 desire to let her take life insurance. It isn't about convenience.

21 THE COURT: But I guess I need an answer to my question. You don't
22 have any reason to believe that you would have to undergo anything more
23 than that in terms of what would be required to you if you did do this?

24 A: I guess we're in a circle because, again, you're right. It
25 won't take long, but I've done these things myself, and it took a lot

1 more than five minutes.

2 THE COURT: No, I understand your position on it, but the point is I
3 just--because I've had the one experience, and I don't get to testify,
4 and I'm not saying that's what would happen with you. I'm just asking
5 you if you had any reason to believe you would have to undergo anything
6 more than that.

7 A: I underwent a life--a physical for life insurance policy fairly
8 recently since my retirement. It took over an hour.

9 THE COURT: Any questions in light of mine?

10 MR. CAREW: No, Your Honor.

11 MR. KANE: No, Your Honor.

12 THE COURT: You may step down, Sir. Any additional evidence, Mr.
13 Kane?

14 MR. KANE: No, Your Honor.

15 THE COURT: Argument or additional...

16 MR. CAREW: Argument.

17 THE COURT: Go ahead, Mr. Carew.

18 MR. CAREW: May it please the Court, Your Honor.

19 THE COURT: Yes.

20 CLOSING ARGUMENT

21 BY MR. CAREW

22 MR. CAREW: It is the law in the State of Colorado and other
23 jurisdictions. I refer the Court to my Reply in support of the Motion.
24 I don't know if the Court has had an opportunity to take a look at
25 that, but the leading case in the State of Colorado is *In re the*

1 **Marriage of Payne**, that came up from El Paso County to the Colorado
2 Court of Appeals, and Judge Anderson was the Judge on that case, and
3 the Colorado Court of Appeals did say that the former wife did have an
4 opportunity to insure her interest in the retirement pay of the former
5 husband. One of the reasons I suspect that that issue of insurance
6 wasn't brought up until the time of his retirement at which time the
7 Motion was properly filed, was you don't know what her insurable
8 interest is in his retirement or his life until he retires because you
9 don't know what the Hunt Formula, the formula is in place and the
10 approximate amount that she's entitled to. Once that has been
11 determined by the fact that he retires and we know the Life Expectancy
12 Tables of the State of Colorado, which the Court has taken jurisdiction
13 of, you can very well see that not including COLA's, that it comes out
14 to over \$450,000.00. Then entering an Order for either SBP or
15 insurance, we're not asking for SBP in this case, Survivor Benefit
16 Plan, that's part and parcel of this Court's Order awarding her a
17 percentage of the Military Retired Pay, and that's all it is. It would
18 be different if in the case of **Payne** or the California case, the **Smith**
19 case that I reported, or set forth in my Reply, if we were asking him
20 to pay for it, that was consideration that was given to Mrs. Haskins
21 and she is asking the Court to just simply enter an Order requiring
22 life insurance coverage and she'll pay for it. So, she's paying for
23 her own insurable interest. It seems to me, and I'm just an attorney,
24 it's rather inequitable or in the event of her death that he gets the
25 entire military retirement back a hundred percent, but in the event of

1 his death, which could be tomorrow, God, hopefully it doesn't
2 happen, but she gets nothing further. And, it's just a vehicle to
3 protect her interest and her interest in the Military Retired Pay.

4 Now the other issue is one of attorney fees. That's entirely up to
5 the discretion of the Court. I understand that. My client understands
6 that. The law in the State of Colorado is clear that this is
7 discretionary with the Court. We would ask the Court for reasonable
8 attorney fees. Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Carew. Mr. Kane?

10 BY MR. KANE

11 MR. KANE: Your Honor, ah, first and foremost I think the analysis
12 has to start with the Separation Agreement in this case. That
13 Agreement was made with Counsel back in 1993. That resolved any and
14 all outstanding issues in this case. Specifically, as noted, that the
15 Court would only retain jurisdiction in regards to the formula and no
16 other issues surrounding retirement. In addition to that, that
17 Separation Agreement also indicates that no Party will bring a claim
18 equitable or otherwise as of the execution of that document. So, it is
19 our position that this claim for insurance at this point, clearly
20 outside the six-month window of Rule 59 and 60, this is clearly a
21 property interest. The case that I provided, the *Gordon Estate*,
22 clearly shows that insurance has a property aspect to the client, and
23 we're not talking about maintenance, we're not talking about child
24 support, we're talking about property, and the case law in Colorado is
25 fairly well settled that once a property settlement is entered by the

1 Court, that cannot be disturbed with change in circumstance. That
2 change in circumstance seems to be that she didn't have—know that she
3 could do it. She didn't know how long and that's why we're here today.
4 I would suggest to you that that was an issue that should have been
5 resolved at the time of the Dissolution in 1993. That is no fault of
6 my client, and he should not be held to that standard.

7 We questioned whether or not there is, in fact, an insurable
8 interest here. Their argument is, well if he dies then she doesn't get
9 anything. Well, first, that's the state of the law. U.S.C.—10 U.S.C.
10 1048, that is the state of the law, so insurance beyond that would
11 actually be inconsistent with the state of the law that governs this
12 area.

13 The other argument is well, if she dies he gets some sort of
14 windfall. No, he would just get the retirement that he had actually
15 earned with his service in the military. We have concerns, and we have
16 raised those concerns in regards to the public policy realm of such an
17 order in this case, specifically whether it is contrary to public
18 policy for Party to take out an insurance policy on the life of
19 another. The Courts in the Country have ruled that that is contrary to
20 public policy, specifically it is a Court of Appeals case out of South
21 Caroline that is *Browning vs. Browning*, 621 S.E.2d 389 that has grave
22 concerns with the public policy considerations of allowing such an
23 insurance policy to be issued.

24 The cases cited by Counsel all involve maintenance. First they all
25 involve a decision made by a Trial Court Judge at a disputed hearing in

1 regards to the discretion of that Court to award it at that time
2 when the Court still had jurisdiction in regards to the property at
3 issue. It is our position all those cases deal with maintenance,
4 including the **Payne** case, which the Petitioner relies on. The **Payne**
5 case, as I read it, has a hard spin towards maintenance. Apparently a
6 long relationship; the former spouse not having any gainful employment,
7 and essentially the maintenance that was awarded was consistent with
8 the retirement pay that she would get, so there's really a maintenance
9 element to that. Again, we are not talking maintenance here or any
10 financial obligation. This is a property issue, and these property
11 issues should have been resolved at the time of the Separation
12 Agreement in April of '93, some fourteen years ago.

13 I also would raise the practical concerns; how much insurance.
14 \$454,000.00 has been placed out there. That is simply based on a table
15 of life expectancy. If that is the theory, then should not that
16 insurance reduce as time goes on if that is in fact what we're going to
17 use, and because the law states that if he dies that that property
18 interest ends, then wouldn't that be considered a windfall to the
19 Petitioner in this case. I don't—I just can't get around that. As far
20 as taxes, it's in the Agreement all will pay their own share. My
21 client expects his attorney's fees and costs for responding to this
22 Motion.

23 THE COURT: Thank you. Did you wish to rebut?

24 MR. CAREW: Your Honor, the **Payne** case had to do with, ah, the Court
25 Ordered the Husband to elect the available Survivor Benefit Plan

1 protection, or a mutually agreed-upon alternative plan. That **Payne**
2 case in El Paso County which is the leading case in Colorado had
3 nothing to do with protection. It was an SBP question.

4 MR. KANE: It also didn't deal with an insurance policy which
5 Colorado case says is property.

6 THE COURT'S RULING

7 THE COURT: All right, well the Court has heard the evidence and
8 heard the Arguments of Counsel. I would first point out that I believe
9 the case has been well presented and argued by Counsel. The issue
10 before the Court appears to be in contract law, where you have a
11 contract, and in this case incorporated into a Court Order, and the
12 Husband is taking the position that she is now bringing forth a claim.
13 The Court would first note that the Husband is under the impression he
14 did some sharp dealing some fourteen years ago, because it wasn't an
15 oversight; it was calculated. The Court would note that means there
16 wasn't a meeting of the minds. If this was something he really didn't
17 want back then, it should have been in the Agreement. No insurance.
18 And if there wasn't a meeting of the minds that was something that
19 could have been litigated. He could have added the language that there
20 was no claim by insurance, but the issue is whether insurance is a
21 claim, and there is no request for anything other than his modest
22 cooperation on a insurance company evaluation as to whether or not he's
23 insurable. He says, well, I'll accept that it might take even an hour
24 of his time, but I would still find that that time is minimal, and I
25 would find we're not talking about a property issue; we're talking

1 about an issue where the Court has continuing jurisdiction over the
2 Parties, and that she has an insurable interest, and it's merely a
3 matter of seeking the Court's intervention to assure her ability to
4 protect a very strong property interest she's already been awarded, but
5 she can only secure the security of by his cooperation which is very
6 minimal. I'm surprised the Husband has testified that the other side
7 prevented him from appearing telephonically. I have never denied a
8 Motion to Appear Telephonically since I've been on the Bench, so I
9 realize he has gone through considerable expense and time to be here,
10 and this is a point of extreme principle with him. I candidly have not
11 seen anybody fourteen years post Decree with as much rancor and
12 animosity as I'm seeing here, and it disappoints me of a military
13 officer who is probably very chivalrous in many other regards, but
14 regardless it is a point of passion with him, but the Court finds it is
15 not a property claim. It is not something contemplated by the
16 Agreement or the prior Court Order, and it's the Order of the Court
17 that Mr. Cohen is to reasonably cooperate with a exam which normally
18 means somebody coming to his office or home at a point of convenience
19 and shouldn't take more than an hour or so, and he is to cooperate on
20 that.

21 I would also add as a part of my Findings I do find that it would be
22 inequitable that her property interest evaporates upon his death, but
23 that his property interest goes up by twenty-five percent on her death.
24 I realize her interest is twenty percent, but if he currently has
25 eighty percent, he just had a twenty-five percent increase upon her

1 death, and that would be the Order of the Court.

2 In regards to attorney's fees, I'm going--there has been no evidence
3 showing where the Parties are in their respective positions
4 financially, so 14-10-119, which is the one we use for their respective
5 positions financially, I have no evidence on that. Given that the key
6 issue about how the income would become taxable to her was not resolved
7 until Counsel met with me in Chambers. I'm simply going to leave the
8 Parties each with their respective attorney's fees and costs. I don't
9 find there was any bad faith or anything such as that which would cause
10 me to award attorney's fees. And, Mr. Carew, I'll ask you to prepare
11 the Order.

12 MR. CAREW: I will do so, Your Honor.

13 THE COURT: Thank you.

14 MR. CAREW: There's no limit on that insurance policy? We had asked
15 for \$453,000.00. Is that all right with the Court.

16 THE COURT: Well, at first my concern was that the maximum she would
17 get under the Survivors' Benefit Plan is fifty-five percent, but that's
18 of his total retirement if they had stayed together, and I understand
19 where she's coming from on that. I will limit it to \$400,000.00. The
20 reason I'm doing that is if he dies tomorrow, she gets \$400,000.00,
21 that's--if she gets six percent interest, which is a pretty modest
22 return on well-invested money, that's \$24,000.00 a year, breaking more
23 than what she's receiving. However, she's incurring the expense, and
24 we all know very quickly that the amount needed as the cost of living
25 increases are added often does not go down as fast as people would

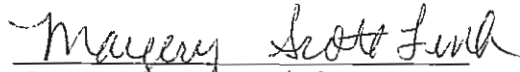
1 think, and I would note that I've often seen experts testify that
2 when you discount it back to present value versus the cost of living, I
3 have seen it often done the way she did, which ends up with the total
4 sum as the current present value. While that present value may go
5 down, she's going to have considerable expense, and I see no reason
6 that the insurance company would grant it. I suspect she may have
7 difficulty there. I don't know, but at this point that's a reasonable
8 amount and I will authorize \$400,000.00.

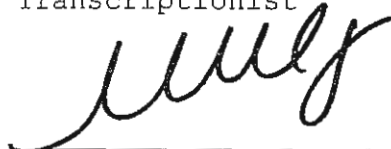
9 MR. CAREW: Thank you, Your Honor.

TRANSCRIPTIONIST'S CERTIFICATE

The above and foregoing is a true transcript of the requested portion of the hearing in proceedings taken in the above-entitled case, which was recorded in the El Paso County Combined Court at the time and place set forth above, which was listened to and transcribed to the best of my ability.

Done this 12th day of November 2007.


Margery Scott Link
Transcriptionist


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