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COURT OF APPEALS
STATE OF NEW YORK

URIAS,

Appellants,

-against-

NO. 18

BUTTAFUOCO & ASSOCIATES,

Respondents.

20 Eagle Street
Albany, New York
February 13, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Chrishanda Sassman-Reynolds
Official court Transcriber



1 CHIEF JUDGE WILSON: Last matter on today's
2 calendar is Number 18, Urias v. Buttafuoco and Associates.

3 MR. ZAHN: Good afternoon. My name is Daniel A.
4 Zahn, and I have the privilege of representing the Uriases
5 in this matter. They would have liked - - -

6 CHIEF JUDGE WILSON: Would you - - - Counsel, do
7 you want to reserve any time for rebuttal?

8 MR. ZAHN: I was going to get to that, Your
9 Honor.

10 CHIEF JUDGE WILSON: Sure.

11 MR. ZAHN: Ms. Delfina Urias would have liked to
12 have been here. We're from eastern Long Island, or at
13 least they are - - - they used to be. But she's in her
14 mid-eighties. There's a photograph of her with her late
15 husband at page 2804 of the record.

16 With that all said, I'd like to reserve three
17 hours.

18 CHIEF JUDGE WILSON: That's a little long.

19 MR. ZAHN: I'm sorry. I should have said five
20 minutes for rebuttal.

21 CHIEF JUDGE WILSON: Thank you.

22 MR. ZAHN: It is such an honor to appear before
23 you. Thirty-nine years as an attorney, and I thank you for
24 granting my clients' motion to have this matter heard
25 before you.



1 This court has a treasured opportunity to
2 specifically define the rule relating to attorneys
3 practicing before this court as well as any other court.

4 JUDGE TROUTMAN: In this particular instance,
5 there was an order that was approved for fees, correct?

6 MR. ZAHN: Yes, there was.

7 JUDGE TROUTMAN: And so why isn't it that you go
8 to reopen the original action instead of going for a new
9 plenary action?

10 MR. ZAHN: Well, not to not answer your question,
11 I just wanted to indicate, in addition to what I was saying
12 about the attorney's conduct before a court, the statute
13 487 also talks about a party, which means their own client.
14 Now, I think it's efficient use of my limited time to tell
15 you what my client would like.

16 JUDGE TROUTMAN: Okay. So in answer to my
17 question, the answer is what?

18 MR. ZAHN: The - - - the answer is, it doesn't
19 matter that there were prior orders from the trial court in
20 the underlying medical malpractice action.

21 JUDGE TROUTMAN: And so the - - -

22 MR. ZAHN: And - - - and I will get to that.

23 JUDGE TROUTMAN: You're - - - you're saying it
24 doesn't matter that a court approved those fees at all?

25 MR. ZAHN: Well, first of all, the court approved

1 the fees because it was a guardianship proceeding wherein
2 the court had to, according to the guardianship order,
3 approve the fee.

4 JUDGE GARCIA: But Counsel, on that - - - on that
5 history, I thought there was an approval of fees in Supreme
6 - - - and maybe it's Justice Baisley; if I have that right.
7 It then goes to guardianship court in Nassau. That was - -
8 - the first was in Suffolk. The Nassau justice sends it
9 back - - - the parties back to Suffolk, gets approved again
10 and then the Nassau guardianship court approves. So it
11 almost seems like you have two courts. One is actually
12 even deferring to the Suffolk court. And then you bring a
13 plenary action again in front of a third judge in Suffolk.

14 MR. ZAHN: Okay. First of all, there's actually
15 three judges involved. We have a medical malpractice case
16 where Mr. Urias, unfortunately, was put into a coma. Mr.
17 Buttafuoco's office represented his wife as guardian
18 because they had to go to guardianship court to get the
19 guardian order. Fast forward, they did depositions. There
20 was no trial. In order to settle that case the
21 guardianship order - - - in Nassau County, by the way, not
22 Suffolk, had to - - - or directed that it be any settlement
23 be approved. So in front of Judge Jones on August 2nd,
24 2009, there was an agreement to settle the case for 3.7
25 million dollars. Before that, by days, there was a

1 discussion because the Uriases wanted a trial. They wanted
2 4 million dollars or they wanted to go to trial. The offer
3 of 3.7 was not acceptable to them. There was a meeting in
4 the basement office of Buttafuoco, as the court knows.

5 JUDGE TROUTMAN: So if there was fraud and - - -
6 that caused them to take what they did not want, then open
7 back up the judgment and start afresh.

8 MR. ZAHN: Well, that's an interesting question
9 and an important thing. We're not seeking to undo the
10 three points.

11 JUDGE TROUTMAN: I know you're not, but that is -
12 - - but you - - - you keep saying that's what happened
13 here. That's the wrong that the attorney did. The
14 attorney induced them to do something that they did not
15 wish to do.

16 MR. ZAHN: No, that's not true either. And this
17 is another thing that's important is the - - -

18 JUDGE TROUTMAN: Let's go back to the attorney's
19 fees. So you're saying and - - - and with respect to the
20 settlement. Courts review settlements. They don't have to
21 accept settlements and they don't have to approve the fees.
22 The court can reject and is supposed to exercise judgment
23 with respect to the application before it. Are you saying
24 that they didn't - - - the court didn't have that
25 opportunity?

1 MR. ZAHN: No. I'm saying in an effort to get
2 the Uriases to accept the 3.7 million dollar settlement,
3 Mr. Buttafuoco told them in that pre-Judge Jones on-the-
4 record settlement, that he would reduce his fee from over
5 800,000 to merely 710, if they accept it.

6 JUDGE GARCIA: But isn't the point, Counsel - - -
7 isn't the point - - - I think Judge Troutman's point is,
8 isn't that dispute properly litigated in front of the judge
9 who entered - - - prove the settlement?

10 MR. ZAHN: Well, there - - - there really is no
11 dispute about that. There's no question - - -

12 JUDGE GARCIA: They're conceding that they - - -

13 MR. ZAHN: - - - but the Uriases and Mr.
14 Buttafuoco agreed that his legal fee would be 710.

15 JUDGE HALLIGAN: But isn't your argument that
16 there was deceit involved in procuring their agreement?

17 MR. ZAHN: Well, as I was saying in the beginning
18 when I was trying to present, the statute talks about on a
19 court and on a party slash here - - - Uriases. So that
20 aspect of the deceit and him saying he was entitled to
21 710,000 dollars as a reduction.

22 JUDGE HALLIGAN: So is your - - - is your
23 argument that there was deceit on a party or on the court
24 or both?

25 MR. ZAHN: Both.



1 JUDGE HALLIGAN: Okay.

2 CHIEF JUDGE WILSON: What is the deceit on the
3 court?

4 MR. ZAHN: Okay. The case was settled in front
5 of Judge Jones on April 2nd, 2009. There were no - - -
6 aside from abstractly saying you understand the 3.7;
7 certain things will be deducted, a lien, legal fees, et
8 cetera which were agreed to.

9 JUDGE TROUTMAN: So with respect to the - - -

10 MR. ZAHN: But - - -

11 JUDGE TROUTMAN: - - - legal fees, was there a
12 specific amount that the court approved?

13 MR. ZAHN: Absolutely not. And moreover, at - -
14 - part of that record, which had to be made because of the
15 guardianship order requiring it, Mr. Buttafuoco - - -

16 JUDGE CANNATARO: Sorry, your answer to Judge
17 Troutman's question - - - over here. "Absolutely not",
18 you're referring to the 2009 settlement allocution. But
19 there was knowledge of the fees awarded when it went to - -
20 - I think it's Judge Baisley who - - - who approved the
21 settlement.

22 MR. ZAHN: No. And - - - and that's - - -

23 JUDGE CANNATARO: He knew the fees, didn't he?

24 MR. ZAHN: No. That - - - that's what I wanted
25 to point out. I'm going to call it the syllabus of today's

1 thing. Those fees were not agreed to be reduced. The 710
2 number came - - -

3 JUDGE CANNATARO: No, let me interrupt. He knew
4 what the fee - - - he knew that he was awarding fees and
5 what the amounts of those fees were?

6 MR. ZAHN: Who?

7 JUDGE CANNATARO: Judge Baisley.

8 MR. ZAHN: That was later. That's what I was
9 trying to get at.

10 JUDGE CANNATARO: Okay. Later. But I just want
11 to make sure that some judge, who was approving the
12 settlement, saw the fees that were being given to counsel.

13 MR. ZAHN: No. That's - - - that's the deceit.

14 JUDGE CANNATARO: No judge ever saw those fees?

15 MR. ZAHN: Okay.

16 JUDGE GARCIA: Well, they saw the fee - - - they
17 saw the fees that they thought were being given to counsel.
18 Because I have a - - - this - - - unless the Supreme
19 Court's wrong here. They said, "As such, defendant's fees
20 in the amount of 864,000 and change were again approved."

21 JUDGE TROUTMAN: Um-hum.

22 MR. ZAHN: Well, it sounds good, but that's not
23 accurate. Because what happened is part of that settlement
24 on the record where it's just abstractly mentioning legal
25 fees and a - - - and a lien, was also a provision for the

1 establishment of a supplemental needs trust for Mr. Urias,
2 who was in a coma. That was part of the parameters of the
3 settlement that, according to the guardianship order, had
4 to be approved by the court. What happened is - - -

5 JUDGE TROUTMAN: I have a question. You're using
6 air quotes as if approved was not actually approved.

7 MR. ZAHN: I'm sorry, Your Honor?

8 JUDGE TROUTMAN: When you're talking, you - - -
9 you use air quotes. When you say "approved", are you
10 suggesting there was no actual approval by the court?

11 MR. ZAHN: The air quotes were for the
12 guardianship court. That order required the statement of
13 settlement to be put on the record on - - - on April 2nd,
14 2009, before Justice Jones. Part of that was the
15 establishment of a supplemental needs trust. What happened
16 after that is Mr. Buttafuoco realized that Mr. Urias was
17 too old for a supplemental needs trust. And the clients
18 also expressed that he did - - - they did not want to enter
19 into this structured settlement with someone, which Mr.
20 Buttafuoco suggested they do, and wanted the cash. So he
21 then told the insurance company - - - same insurance
22 company, MLM, for all of the defendants that were going to
23 pay the money - - - that they wanted the cash now. No
24 supplemental needs trust. And the carrier appropriately
25 said, well, we have the guardianship order that requires

1 the settlement to be on the record and that says
2 supplemental needs trust.

3 So then we get to Judge Baisley. So April 2nd
4 generically settled. July 20th 20 - - - 2009, the matter
5 comes again before Judge Baisley and Judge Baisley is
6 sitting in TAP - - - calendar control part. And he's
7 handling many, many cases. And so the parties appear. And
8 the defense attorney, ironically, gets up and says, Your
9 Honor, we need you to approve a change in the settlement
10 permit - - - parameters before we give Mr. Buttafuoco any
11 money of the settlement. And the judge says, okay, what
12 have we got? Well, Your Honor, there was the supplemental
13 needs trust, and I won't go through it, not entitled. So
14 we want to get rid of that. And the judge says, okay,
15 anything else? And they actually, the defense lawyer says,
16 I think there was an exhibit marked or something with legal
17 fees. Now we get into the specific legal fees, not
18 generically. And Judge Baisley says, okay. Mr. Buttafuoco
19 gets up and says, right, Your Honor, we followed the
20 schedule in 474. Okay.

21 JUDGE TROUTMAN: So you're saying before this
22 appearance, there were no actual fees approved by anyone?

23 MR. ZAHN: Correct.

24 JUDGE TROUTMAN: Okay.

25 MR. ZAHN: We followed the schedule. On the



1 record in front of a judge, I tell you something - - -

2 JUDGE HALLIGAN: And did a judge sign off on the
3 following of the schedule, as you put it?

4 MR. ZAHN: Well, well, that's the deceit.

5 JUDGE HALLIGAN: I'm just - - - I'm just asking,
6 I think, the same question Judge Troutman is. Which is if
7 we go through the record, will we not find any earlier
8 point at which a court signed off on the fees pursuant to a
9 schedule, whether you think that that was legitimate or
10 predicated on deceit or not?

11 MR. ZAHN: Are you talking about prior to Judge
12 Baisley on July 20th?

13 JUDGE HALLIGAN: Prior to the exchange that you
14 just relayed to us.

15 MR. ZAHN: There was only Judge Jones, and while
16 legal fees were mentioned, there was no number.

17 JUDGE GARCIA: But why isn't Judge Baisley the
18 one now to review the basis for that order and determine if
19 it should stand or not?

20 MR. ZAHN: Well, because he says, oh, I followed
21 the schedule. Judge says, okay. I mean, the schedule has
22 been around since the mid-80s. Everybody - - -

23 CHIEF JUDGE WILSON: Yeah. And the judge is - -
24 - and the judge is familiar with the schedule, and the
25 papers have the schedule in it. And it seems to me what

1 you're complaining about is that somebody made an argument
2 to the court that should have - - - they should have lost
3 and they ended up winning in front of the court.

4 MR. ZAHN: Well, no, Judge, it goes beyond that.
5 It - - - it's - - - it's - - -

6 CHIEF JUDGE WILSON: I just don't - - -

7 MR. ZAHN: - - - I followed the schedule. Now
8 the schedule - - -

9 CHIEF JUDGE WILSON: The schedule's in front of
10 you. It's like I followed the statute. You put the
11 statute in front of the judge. You say I followed it and
12 the judge reads it your way instead of somebody else's.

13 MR. ZAHN: Defense counsel indicated that - - - I
14 see my time's expired.

15 CHIEF JUDGE WILSON: Go ahead. Continue.

16 MR. ZAHN: Okay. Defense counsel indicated that
17 he thinks there was an exhibit. So on July 20th, in front
18 of Judge Baisley, there was a - - - an exhibit of the
19 transcript of the original settlement from April 2nd in
20 front of Judge Jones - - - Justice Jones. Second was the
21 guardianship order requiring court approval. And then the
22 third was an exhibit that Mr. Buttafuoco, on July 20th,
23 submitted to the court reporter to have marked as an
24 exhibit. So Mr. Cushing indicates that I think there's
25 something with legal fees. But thank you so much for

1 relieving us of the obligation to make sure a supplemental
2 trust - - -

3 JUDGE GARCIA: Should Judge Baisley be a witness
4 in your plenary action?

5 MR. ZAHN: I didn't get that far. Yes, but - - -
6 yet, but he - - -

7 JUDGE HALLIGAN: Well, I think you're suggesting
8 that he - - -

9 MR. ZAHN: - - - absolutely is a witness.

10 JUDGE HALLIGAN: - - - would be at page 33 of
11 your brief. Can I ask you just a very specific question,
12 Counsel. Where in the record would I look to find out
13 exactly what the nature of the deceit was that you are
14 alleging as the crux of your 487 action?

15 MR. ZAHN: Okay. Well, first of all, it's in
16 numerous places.

17 JUDGE HALLIGAN: I'm just asking if you can point
18 me to specific - - -

19 MR. ZAHN: A page number?

20 JUDGE HALLIGAN: - - - in the record? Yeah.

21 MR. ZAHN: I was going to say as much as this
22 case is important, future cases such as the AI will be - -
23 -

24 JUDGE HALLIGAN: Okay. But - - -

25 MR. ZAHN: No. But I'm saying - - -

1 JUDGE HALLIGAN: I'm just asking - - -

2 MR. ZAHN: - - - I'm not an AI. The record's
3 3,800 pages.

4 JUDGE HALLIGAN: Okay.

5 MR. ZAHN: I can't say it's page 648. But I can
6 say with absolute confidence it's in the affidavits of the
7 clients. It's on the record in front of Judge Baisley on
8 the 20th. It's part of the affirmation of Mr. Buttafuoco
9 in November of that year. And it's in the complaint, and
10 the amended complaint, and the proposed amended complaint.
11 I don't think there's any issue that that is not in the
12 record. But what - - - what I was going to say is - - -

13 JUDGE HALLIGAN: Sorry. Just so - - - just to
14 make sure I understand. The - - - the nature of the deceit
15 you're claiming is that the - - - the proper schedule was
16 not applied, or that the schedule was not applied
17 correctly?

18 MR. ZAHN: No.

19 JUDGE HALLIGAN: What exactly is it?

20 MR. ZAHN: That there was deceit. You know, in
21 our society it is many things that are in a constant state
22 of flux, but truth isn't one of them. He represented to
23 Judge - - -

24 JUDGE HALLIGAN: I - - - I get your point, but -
25 - -



1 MR. ZAHN: - - - Baisley. I don't mean to get
2 whatever. But he represented to Judge Baisley on July
3 20th, on the record, that his exhibit that he prepared,
4 that he marked, that sets forth his legal fees was in
5 accordance with the schedule - - -

6 JUDGE RIVERA: And the deceit is it wasn't,
7 right?

8 MR. ZAHN: And that's another issue.

9 JUDGE RIVERA: No. No. That's a yes or no.

10 MR. ZAHN: The - - - his exhibit - - -

11 JUDGE RIVERA: The deceit is that it was not in
12 accordance?

13 MR. ZAHN: Not remotely.

14 JUDGE RIVERA: Is that the position? Okay.
15 Okay. Got it.

16 CHIEF JUDGE WILSON: Thank you, Counsel. You've
17 got - - - you've got rebuttal.

18 MR. ZAHN: Oh, okay.

19 CHIEF JUDGE WILSON: Thank you.

20 MR. ZAHN: Thank you.

21 MR. CATALANO: Good afternoon. My name is Ralph
22 Catalano, and I represent the respondent, Daniel
23 Buttafuoco, and his law firm, Buttafuoco and Associates,
24 LLC.

25 JUDGE TROUTMAN: Can you explain the fees that

1 were or weren't approved by courts or a court?

2 MR. CATALANO: The fee that was approved by the
3 court and was approved by Judge Baisley and then re-
4 approved by Judge Baisley; the fee was 864,000 dollars,
5 with the schedule applied against the four claims. The
6 claims against the radiologist, the claim against the
7 radiology practice, the claim against the nurse - - -

8 JUDGE TROUTMAN: He separated them out?

9 MR. CATALANO: He - - - he calculated his fee
10 using the schedule but against the claims.

11 JUDGE TROUTMAN: And did - - - and you're saying
12 the court approved them?

13 MR. CATALANO: And the court approved that.

14 JUDGE TROUTMAN: An actual amount?

15 MR. CATALANO: An actual amount. The exhibits
16 were - - - were put in. I mean, he actually - - - he did
17 the math. He put them on three separate - - - did the
18 calculations by all the different claims, came up with the
19 four numbers, added them up - - -

20 JUDGE RIVERA: So then counsel, she takes the
21 position there was something deceitful in that process. So
22 is there anything in the Judiciary Law provision that
23 forecloses her choice to proceed on a plenary action,
24 rather than coming back in this action to - - - to charge
25 this argument?

1 MR. CATALANO: Yes. He - - - he can't proceed in
2 a plenary action - - -

3 JUDGE RIVERA: Yes.

4 MR. CATALANO: - - - because 5015 - - -

5 JUDGE RIVERA: Yes.

6 MR. CATALANO: - - - says he can't proceed in a
7 plenary action. There's a court order that approves the
8 fee, and that's a judicial determination. And if you go to
9 another case - - - if you go to another court and get a
10 conflicting judicial determination, then the sheriff is not
11 going to know which one to execute on. Because one is
12 going to say you're entitled to 864,000 dollars in fees
13 calculated against each of the claims, and the other
14 judgment is going to say, no, no, no, you can't do that; it
15 should only be this. And you're going to have the
16 inconsistency that 5015 is there to avoid.

17 JUDGE GARCIA: And you're going to have to have a
18 second judge essentially overturn the order of the first
19 judge, without involving that first judge in any way except
20 potentially as a witness?

21 MR. CATALANO: No. No. And you shouldn't. I
22 mean - - -

23 JUDGE GARCIA: Right.

24 MR. CATALANO: - - - and you shouldn't have to -
25 - -

1 JUDGE GARCIA: But I think under this - - -

2 MR. CATALANO: - - - you shouldn't have to call
3 Judge Baisley to - - - you know, the - - - to supreme - - -
4 to another Supreme Court part fifteen years later as a
5 matter of fact to say what's there - - -

6 JUDGE TROUTMAN: So is it - - -

7 MR. CATALANO: - - - to see.

8 JUDGE TROUTMAN: - - - your argument, it would
9 have been more appropriate to reopen it? Even just the
10 fees, in front of the other court?

11 MR. CATALANO: Yes. My argument is that the
12 Appellate Division was correct. If the Uriases are going
13 to claim that this order was the product of deceit, then
14 they got to go back to court under 5015 and tell the judge
15 that your order was the product of deceit. That's the
16 exclusive remedy - - -

17 JUDGE TROUTMAN: So the specific judge that
18 approved the order with the fees - - -

19 MR. CATALANO: Yes. That court, yes. That
20 court.

21 CHIEF JUDGE WILSON: So are there circumstances
22 in which you could bring a plenary action under 487?

23 MR. CATALANO: Not when there's a - - - well, not
24 when - - - not when what you're seeking to do is vacate or
25 disrupt an order. I mean, you - - - you can - - - you can

1 pursue a plenary action - - -

2 JUDGE HALLIGAN: So if you're - - - if you're the
3 prevailing party and there is some attorney deceit that is
4 involved, could you then use 487? You're the prevailing
5 party, so you're not looking to disrupt - - -

6 MR. CATALANO: Yes - - -

7 JUDGE HALLIGAN: - - - the judgment?

8 MR. CATALANO: - - - yes, you can.

9 JUDGE HALLIGAN: Okay.

10 MR. CATALANO: That's - - - that's - - -

11 JUDGE HALLIGAN: And here's what I'm struggling
12 with, okay. I take your point about 5015. But to - - - I
13 think Judge Rivera's question, I'm not sure what in the
14 text of 487 provides a basis to distinguish between a
15 prevailing party who wants to allege that there was some
16 attorney deceit that was at play, and a losing party that
17 wants to allege that - - - understanding that if the losing
18 party wants to allege that, it may well be that the effect
19 is to disrupt the judgment.

20 MR. CATALANO: Right. And I - - - I think the
21 answer to that is you're not going to look to Judiciary Law
22 487. What you're going to look to is 5015.

23 JUDGE HALLIGAN: Okay. But 487 provides a cause
24 of action where there is attorney deceit. Maybe - - -
25 maybe the way to come at that is to ask you another

1 question. What if you have a losing party and the losing
2 party wants to allege attorney deceit that would not
3 disrupt the judgment. So for example, the fees were simply
4 out of pocket on an hourly basis, or there's some other
5 attorney deceit that was at play, perhaps - - - you know,
6 monies that were awarded by the court, the attorney
7 otherwise pocketed. In that instance, would the losing
8 party be able to proceed under 487 if it was not relevant
9 to the judgment itself?

10 MR. CATALANO: Respectfully, I don't know because
11 I don't know the facts. But of the - - - the - - - what
12 are being contemplated - - -

13 JUDGE HALLIGAN: I'm saying whatever the facts
14 might be. If you have - - - you - - - you said that if you
15 have a prevailing party, the prevailing party, I think, you
16 said - - - correct me if I'm wrong, could use 487. Right?
17 If you have a losing party and the claim of deceit would
18 not disrupt or seek to overturn the judgment, could the
19 losing party also use 487?

20 MR. CATALANO: Anybody could use 487 as an
21 independent cause of action if you're not trying - - - if -
22 - - if you're not trying to disrupt an order or judgment.

23 JUDGE HALLIGAN: Okay. And where - - -

24 JUDGE CANNATARO: So it comes down - - - I'm
25 sorry.

1 JUDGE HALLIGAN: Sorry. Just - - - just to
2 finish, if I can.

3 JUDGE CANNATARO: Yeah.

4 JUDGE HALLIGAN: Where in the text of 487, do you
5 see this limitation or this gloss?

6 MR. CATALANO: It's - - - it's not - - -

7 JUDGE HALLIGAN: Are you telling us that you have
8 to read it to harmonize it with 5015 in that way?

9 MR. CATALANO: - - - it's not. It's 5015 that
10 says that. Because 5015 says fraud, misrepresentation, or
11 other misconduct. 487 - - -

12 JUDGE RIVERA: But then it says an adverse party.
13 Who's the adverse party in the action you say they had to
14 bring?

15 MR. CATALANO: Well, the plaintiff is not the
16 adverse party in this case because it's - - - was on the
17 plaintiff's application that the fees were approved.

18 JUDGE RIVERA: The fraud they're alleging is by
19 the lawyer. How is the lawyer the adverse party under
20 5015?

21 MR. CATALANO: Well, because to the extent that -
22 - - because - - - Buttafuoco's entitled to say I'm entitled
23 to these fees. Anybody that says he's - - -

24 JUDGE RIVERA: But he's not a party to that
25 action.

1 MR. CATALANO: Yes. And anybody - - -

2 JUDGE RIVERA: Did - - - well, just to clarify.
3 Do you read 5015(a)(3) when it says, "fraud,
4 representation, or the misconduct of an adverse party", to
5 mean the - - - an adverse party, as in a named party in the
6 action in which the court has rendered a judgment or order?

7 MR. CATALANO: Well, Buttafuoco would be the
8 adverse party here.

9 JUDGE RIVERA: Well, yeah.

10 MR. CATALANO: Because the plaintiff is going
11 back to court and saying the only reason I have this order
12 is because Buttafuoco - - - you know, committed a fraud on
13 this court.

14 JUDGE RIVERA: Yes. I understand. But he wasn't
15 a party to that action. So are you saying that somehow you
16 come back to that court and start some, like third-party
17 action against the lawyer so that they are now an adverse
18 party?

19 MR. CATALANO: He is a party.

20 JUDGE RIVERA: I just trying to understand who's
21 - - -

22 MR. CATALANO: He's a party.

23 JUDGE RIVERA: - - - the adverse party?

24 MR. CATALANO: He's a party. Buttafuoco's a
25 party.

1 JUDGE RIVERA: But to what action?

2 MR. CATALANO: To the proceeding that result in
3 that - - - in that order. So he's a party to the action.

4 JUDGE RIVERA: How can that be? He's the lawyer
5 of the - - -

6 MR. CATALANO: Well, if you - - -

7 JUDGE RIVERA: - - - of his client. He's not a
8 party.

9 MR. CATALANO: He's a party to - - - he's a party
10 to that relief. I mean, in - - - in that sense. I mean,
11 he's - - - he's - - - in a sense he's kind of like an
12 intervenor. Because if you look at the case that we cited
13 when we - - - talked about in our brief, Yalango by
14 Goldberg v. Popp. The attorney wasn't a party to the
15 medical malpractice case. That case was decided in the
16 context of a medical malpractice case. He was an
17 intervenor saying, I - - - - I'm entitled to - - - I want
18 to calculate my fees, a - - - a larger fee because of
19 extraneous - - - because of the, you know, extraordinary
20 circumstances. But he's a party. And Buttafuoco, to the
21 extent that he comes into court and it's an ancillary
22 proceeding, no question. But since he comes into court and
23 says, I'm entitled to these fees. Anybody that says, no,
24 you're not - - -

25 JUDGE RIVERA: But isn't the order - - -

1 MR. CATALANO: - - - whether it's now or later is
2 an adverse party.

3 JUDGE RIVERA: - - - isn't the - - - isn't the
4 order directed to his client that - - - or the other side,
5 the adversary, this is the amount - - -

6 MR. CATALANO: Well, the order is directed to
7 him.

8 JUDGE RIVERA: - - - that has to be paid out from
9 what the client is getting?

10 MR. CATALANO: Well, the order is - - - the order
11 gives him rights. It give - - - the order gives him rights
12 to 600 - - -

13 JUDGE RIVERA: That doesn't mean he's a party.

14 MR. CATALANO: Well, he - - - he was a party to a
15 - - - an application that granted him legal - - - those
16 legal rights.

17 JUDGE RIVERA: Okay. So how is he an adverse
18 party?

19 MR. CATALANO: Well, he's - - - to the - - -

20 JUDGE RIVERA: - - - if that's his client?

21 MR. CATALANO: - - - he wasn't - - - here, if - -
22 - if the Uriases had actually done what they were supposed
23 to do and say we object to this fee, he would have been an
24 adverse - - - they would have been an adverse party. Then
25 we - - - we wouldn't even be having this discussion.

1 JUDGE RIVERA: You mean, at the - - - at the time
2 he requested the fees; is that what you mean?

3 MR. CATALANO: Yes.

4 JUDGE RIVERA: Okay. The - - - are they then now
5 in conflict and he can no longer be her lawyer?

6 MR. CATALANO: Well, they will be in conflict, if
7 they get - - -

8 JUDGE RIVERA: No, no, at that moment.

9 MR. CATALANO: - - - that 5015.

10 JUDGE RIVERA: At that moment, when she says I
11 object - - -

12 MR. CATALANO: She never said she objected.

13 JUDGE RIVERA: - - - is she now - - -

14 CHIEF JUDGE WILSON: Yeah. But that's part of
15 the fraud that's alleged, I think. Right?

16 MR. CATALANO: No, no.

17 CHIEF JUDGE WILSON: Forget the fraud on the
18 court.

19 MR. CATALANO: No - - - that's - - -

20 CHIEF JUDGE WILSON: I mean, part of the fraud,
21 as I understood the allegation is Uriases were defrauded
22 because their lawyer didn't - - - was adverse to them, was
23 trying to get a bigger fee, and misrepresented what - - -
24 what his fees really could have been under the statute in
25 order to force a settlement and - - - and pretend that he

1 was getting a reduced fee when it really was an excessive
2 fee.

3 MR. CATALANO: Well, that's why - - - that's why
4 we argue. That's why we argue that while the exclusive
5 remedy was 5015, there was no fraud here. Because before
6 any application was ever made to the court for approval of
7 the fee - - -

8 JUDGE RIVERA: Well, do we have to decide that
9 issue?

10 MR. CATALANO: Well, I think you do have to
11 decide that issue.

12 JUDGE RIVERA: We have to decide whether or not
13 there actually was fraud?

14 MR. CATALANO: Well, I - - - I think you could
15 decide as a matter of law that there wasn't fraud. Because
16 the fraud that's being alleged here is that Buttafuoco went
17 to the court and defrauded the court into what - - - you
18 know, he was entitled to under the statute. And the
19 plaintiffs at the time knew perfectly well that - - - you
20 know that they - - - they - - - they said you're only
21 entitled to 510,000 dollars. And then when he made the
22 application, they said, okay, they agreed. So both
23 collateral estoppel - - - you know, would bar them from
24 relitigating because nothing that Buttafuoco did to keep
25 them from saying - - - you know, judge - - - you know, we

1 don't agree with that. Judge, this should be what the fee
2 is. Nothing that Buttafuoco did deprived the plaintiff of
3 a full and fair opportunity to do that. The plaintiff had
4 legal representation.

5 JUDGE TROUTMAN: So in this particular instance
6 when the case was settled, are you saying that the court
7 who accepted the settlement inquired of the Uriases, do you
8 understand that X amount is going to be deducted from the
9 settlement for fees? A specific amount?

10 MR. CATALANO: That never happened because the
11 plaintiffs never objected. But the - - - but the court
12 dealt squarely with the - - -

13 JUDGE TROUTMAN: But isn't the argument that, how
14 can I object if I don't know what the amount is?

15 MR. CATALANO: But the plaintiff did know what
16 the amount was. It's on this record that as of - - -
17 before - - - before anybody went to court, the plaintiffs
18 said, you're only entitled to 510,000 dollars.

19 JUDGE TROUTMAN: The record is the record.
20 Normally, at trial courts, you put the terms of the
21 settlement on the court record at the time that the court
22 is being asked to approve.

23 MR. CATALANO: Yes.

24 JUDGE TROUTMAN: So you're saying in this
25 instance, that amount was put on the record and the Uriases

1 knew exactly what that amount was?

2 MR. CATALANO: They did. They - - - they knew
3 that Buttafuoco was asking for 860,000 - - -

4 JUDGE TROUTMAN: No, no. Before the court? Was
5 that done before the court? Let me try it that way.
6 Because it seems that I'm saying record and you're saying
7 something else. When I say record, I'm referring to the
8 court proceeding.

9 MR. CATALANO: The - - - well, in the court
10 proceedings Buttafuoco presented his fees, they were
11 864,000 dollars. The plaintiff had legal representation.
12 Mr. Newman was representing her. They - - - they - - -
13 they disputed that he was entitled to that. But he never
14 challenged that; they never challenged that.

15 JUDGE HALLIGAN: So in - - - in what context
16 exactly did they dispute it, if they didn't challenge it?

17 MR. CATALANO: After - - - when - - - when they
18 hired Mr. Zahn, that's when they disputed.

19 JUDGE HALLIGAN: You mean at the time they did
20 not - - -

21 MR. CATALANO: At the time they did not - - - and
22 they had legal representation.

23 JUDGE HALLIGAN: And how do we know - - -

24 MR. CATALANO: It wasn't Buttafuoco, is what I'm
25 saying.

1 JUDGE HALLIGAN: - - - and how do we know, in
2 addition to the fact that they had legal representation,
3 how do we know that they knew it at the time?

4 MR. CATALANO: Because it's - - - because it's -
5 - - it's in the record. I mean, they - - - they conceded.
6 They conceded in - - - in - - - that on March 31st before
7 anybody ever went to court that Marta Urias did her own
8 calculation. She said I just did it.

9 JUDGE TROUTMAN: But - - - but see, that's the
10 problem here. You keep saying before court. When you get
11 an official court proceeding and when it - - - it's brought
12 before the court, your - - - information the judge gets
13 from the parties, what are the terms of the settlement? Do
14 you understand plaintiff or representative of, that these
15 are the specific terms? The settlement amount is X.
16 Deducted from that amount is the amount of X dollars of
17 fees, and a specific amount for the attorney's fees. And
18 are you satisfied with the attorney that he did what they
19 were supposed to do? Are you saying all those things
20 happened and they said, okay?

21 MR. CATALANO: Yes.

22 JUDGE TROUTMAN: Before the judge?

23 MR. CATALANO: Yes. Because - - - yes. The - -
24 - the settlement was - - -

25 JUDGE TROUTMAN: Not before court - - - not

1 before the court proceeding. In a court, with a
2 stenographer putting it down on that record?

3 MR. CATALANO: Yes. The settlement was allocuted
4 and Ms. Urias took the stand - - - stand and said, I agree
5 to the terms of the settlement. And then, the - - - in a
6 separate - - - separate - - - in front of Judge Baisley,
7 the defense said we're back Judge Baisley because it's not
8 going to be a supplemental needs trust, so we need that on
9 the record and we also need the fees on the record. Now
10 that's when Buttafuoco put his fees on the record. That's
11 when the plaintiffs knew that they - - - well, they - - -
12 they thought he was only entitled to 510,000 dollars. But
13 but Buttafuoco says no, I'm calculating against this
14 because I can.

15 JUDGE TROUTMAN: And was that the same fees that
16 were represented to the - - - at the earlier court
17 proceeding?

18 MR. CATALANO: No. They weren't. Those - - -
19 the only fees that were represented to the court in the
20 court proceeding were the 864,000 dollars in three separate
21 occasions. And on all three separate occasions, the
22 plaintiff, herself, represented by legal counsel who knew
23 that the - - - the - - - the - - - his client - - -

24 JUDGE RIVERA: Because the - - - the amount is
25 set forth where, on those three occasions?

1 MR. CATALANO: I'm sorry, Judge?

2 JUDGE RIVERA: Where would one turn to to see
3 that amount in those three proceedings?

4 MR. CATALANO: In - - - on Marta Urias' - - - on
5 Marta Urias' note.

6 JUDGE RIVERA: No, no. The amount that the
7 attorney requested. That 800-plus, I'm sorry. 864,000?

8 MR. CATALANO: That's in - - - that was Exhibit
9 3. That was Exhibit 3 that was attached to the order.

10 JUDGE RIVERA: So - - - so the reference is to
11 Exhibit 3, but the number is never actually articulated on
12 the record? Just to be clear. You could be relying on
13 Exhibit 3; I just want to be clear.

14 MR. CATALANO: I don't know that if 800 - - - the
15 actual number 864,000 dollars was ever - - - was ever - - -

16 JUDGE TROUTMAN: See that's the problem.

17 MR. CATALANO: I think it was because - - - I
18 think it was because I think that when - - - when it got to
19 Judge - - -

20 JUDGE TROUTMAN: But that's the problem, that
21 you're not even clear. Usually it's informed. An informed
22 agreement that I agree. You're saying you're not sure that
23 the actual number was - - -

24 MR. CATALANO: No. The actual number always was
25 864,000 dollars calculated against - - -

1 JUDGE TROUTMAN: That I know. But the question
2 is, you said there were three occasions?

3 MR. CATALANO: Yes.

4 JUDGE TROUTMAN: That specific - - - specific
5 amount was conveyed?

6 MR. CATALANO: That specific amount was conveyed
7 to everybody. It was conveyed to the court; it was
8 conveyed to the client.

9 JUDGE RIVERA: In open court?

10 MR. CATALANO: The 510,000 - - -

11 JUDGE RIVERA: Not - - - not over Exhibit 3, but
12 just in open court?

13 MR. CATALANO: - - - the 510,000 that was surely
14 known.

15 JUDGE TROUTMAN: Judge Rivera just asked you a
16 question. Was that amount conveyed in a courtroom before a
17 judge?

18 MR. CATALANO: Yeah. Judge Phelan, the
19 guardianship part. Because Judge Phelan said this is
20 supposed to be 510,000 dollars calculated against the whole
21 settlement. Go back to judge - - - go back to Judge
22 Baisley and make sure he knows this. And then they went
23 back to Judge Baisley. And that's when Buttafuoco said, I
24 can do this, look at the statute, it says claim or - - - or
25 action. And - - -

1 JUDGE RIVERA: And did he say this is - - -

2 MR. CATALANO: - - - Judge Baisley says, I'm
3 satisfied.

4 JUDGE RIVERA: - - - and did he say this is the
5 amount? Did he verbalize the amount?

6 MR. CATALANO: I - - - I don't know.

7 JUDGE RIVERA: Okay.

8 MR. CATALANO: But we do know - - - what we do
9 know is he went back to Judge Baisley because Judge Phelan
10 said it should only - - - it should be calculated against
11 the entire settlement - - - the entire case. And that's
12 510,000 dollars. Whether or not somebody used the magic
13 number 510,000 dollars, I do not know. But judge - - -
14 but - - - but Judge Phelan said it's supposed to be the
15 510,000 number - - - and again, the lower number against
16 all the claims. Judge Baisley said it was 864 was fine, go
17 back to Judge Baisley. Judge Baisley said, I'm satisfied.

18 And all of this, all of this took place with the
19 plaintiff's consent. And it wasn't just that she didn't
20 know what she was doing. It wasn't just that she didn't
21 have access to 474-a; she had legal representation. She
22 had already said, I don't think you're entitled to this.
23 And she did nothing. And that's not Buttafuoco's fault.
24 Because if she did say Judge - - - Judge Baisley, you know,
25 I object, then judge - - - then - - - then Buttafuoco could

1 have said, you know what? He would have made the - - - he
2 could have made the argument that I elaborated on my - - -
3 in brief. And he could have - - - he could have made a
4 record about why he is entitled to that. Because I don't
5 think the court should lose sight of the fact that - - -

6 JUDGE RIVERA: Well, why - - - why can't he do
7 that in a plenary action?

8 MR. CATALANO: I'm sorry.

9 JUDGE RIVERA: Why can't he do that in a plenary
10 action?

11 MR. CATALANO: Well, he's - - - he's defending
12 himself on a fraud claim, on a fraud that never existed.
13 That's the plenary action. Go defend yourself in a fraud
14 claim, even though you didn't defraud.

15 JUDGE TROUTMAN: That's for the finder of fact.

16 MR. CATALANO: I'm sorry, Judge?

17 JUDGE TROUTMAN: Wouldn't that be for the finder
18 of fact to determine whether there was or wasn't a fraud?

19 MR. CATALANO: No. Because I think if you make
20 the - - - the - - - the - - - the - - - what the claimed
21 deceit in this case is that he deceived the court to what
22 the law is or should be. That's not deceit. This court
23 has already said that in Bill Birds. It's not deceit for a
24 lawyer to sit - - - to go into a court and say, this is
25 what the statute is - - - is or should be, and that's

1 exactly what he did. Buttafuoco made an argument of law.
2 He misrepresented no facts whatsoever. He said, I'm
3 entitled to this fee.

4 CHIEF JUDGE WILSON: Thank you. Your red light's
5 on. Thank you. Rebuttal, please.

6 MR. ZAHN: May it please the court again. I'm
7 going to try to get my six things out that I tried in the
8 beginning. Number one - - - and they're brief. Number
9 one, 487 permits a several - - - a separate civil action.
10 Two, the amendment of the complaint has merit. Exhibit 3
11 is not in accordance with the schedule in 474, as a matter
12 of law. The Uriases' motion for summary judgment on the
13 limited issue of liability should be granted, and the
14 motion by Buttafuoco for summary judgment should be denied.
15 And the personal subpoena that I served on Justice Baisley
16 as a witness in this matter should be reinstated.

17 Now, very quickly. I don't - - - I know I don't
18 have much time and I don't think three hours would do it
19 justice. A couple of things. CPLR 5015 and 487, the
20 Judiciary Law, are mutually exclusive. They're - - -
21 they're alternate remedies. Could the Uriases have gone
22 back and made a motion, at least for the fraud part under
23 5015? Absolutely. No question about it. However, that is
24 not the exclusive remedy.

25 JUDGE SINGAS: So you're saying that there's a

1 choice. You could either do it through 487, or you can go
2 back to the underlying motion through the CPLR?

3 MR. ZAHN: Correct. Now, with reference, given
4 this thing has been delayed out by some twenty-five defense
5 motions and two trips to the AD, this case was commenced in
6 2011 and the acts occurred in 2009. Judge Baisley retired
7 this past summer. So under a 5015 where you'd go back to
8 that original judge, which is understandable, he's not even
9 there anymore.

10 JUDGE GARCIA: So should it depend on whether the
11 judge is still active?

12 MR. ZAHN: No, it shouldn't, Your Honor. And the
13 reason that the subpoena with reference to Judge Baisley is
14 required by statute - - - and now you're going to say what
15 statute? 487 - - - how is the plaintiff to prove that
16 there was a deceit practiced by an attorney upon the court?
17 Isn't the court a witness? Now here - - -

18 JUDGE HALLIGAN: Why wouldn't the record of the
19 proceedings be more than sufficient?

20 JUDGE TROUTMAN: Yes.

21 JUDGE HALLIGAN: And what could be revealed
22 that's not - - - be a subpoena.

23 MR. ZAHN: That was the argument that resulted in
24 Judge Condon - - - we've had numerous judges - - -

25 JUDGE HALLIGAN: But - - - but it would be

1 helpful to know your - - - your take on that.

2 MR. ZAHN: Okay. The - - - the record in this
3 case, right? We followed the schedule, isn't enough.

4 JUDGE HALLIGAN: Why?

5 MR. ZAHN: Because that is the linchpin to
6 everything that happened afterwards. It was that
7 transcript of Judge Baisley, who's sitting in TAP with - -
8 - at the time, tens and tens of lawyers.

9 JUDGE GARCIA: But has Judge Baisley seen
10 anything that's not in the record or said anything that's
11 not on the record, that you need to subpoena the judge for?

12 MR. ZAHN: Well, I'll pretend you're Judge
13 Baisley.

14 JUDGE CANNATARO: I'm sorry. What was that
15 answer?

16 MR. ZAHN: I said, I will pretend that Your Honor
17 is Judge Baisley. One of the questions why it's important
18 to answer your question, that the record is not enough, is,
19 Your Honor, on July 20th, 2009, when these parties appeared
20 and exhibits were marked, did you read any of the exhibits
21 or - - -

22 JUDGE TROUTMAN: Normally - - -

23 MR. ZAHN: - - - did you rely on the fact that
24 counsel said - - -

25 JUDGE TROUTMAN: Counselor, normally, you don't

1 have the right to do that to a trial judge. When a trial
2 judge renders decisions, they are bound to make the
3 decisions upon the record. If they fail to do so, they're
4 reversed by an appellate court. As to the discretionary
5 thought process of the court, are you suggesting now that
6 we have a rule that judges may routinely be subpoenaed so
7 that they can be explored as to how they decided - - - how
8 they weighed questions? And then should that not also
9 apply to juries?

10 MR. ZAHN: That is pretty dramatic. And - - -
11 and I understand the reluctance of anything remotely
12 resembling that. However, the statute places the burden -
13 - - 487 on the plaintiff to prove that there was deceit and
14 intent to deceive - - -

15 JUDGE HALLIGAN: Counsel, one other - - -

16 MR. ZAHN: - - - on the court. So how is the
17 plaintiff supposed to do that? What if he - - -

18 JUDGE GARCIA: Subpoena the lawyer.

19 JUDGE HALLIGAN: I - - - I don't want to
20 interrupt you, but just one other question.

21 MR. CATALANO: I'm sorry?

22 JUDGE GARCIA: Subpoena the lawyer. I mean, the
23 - - - the deceit is practiced by the lawyer. You want to
24 call a judge and say, did you actually read the exhibit?

25 MR. CATALANO: Was - - -

1 JUDGE GARCIA: What does that have to do with the
2 deceit?

3 MR. ZAHN: - - - was the court deceived? How
4 else are you going to demonstrate that the court is
5 deceived? Let's say the court - - - some court - - -

6 JUDGE CANNATARO: You want an admission from
7 Judge Baisley that he relied primarily or solely on the
8 representation of counsel in court, and didn't check the
9 papers to verify what he was hearing from the lawyer?
10 That's the deceit you're talking about?

11 MR. ZAHN: Yes. Because that's - - - I can't - -
12 - I'm not Judge Baisley, and only he can answer it. That's
13 the truth.

14 JUDGE CANNATARO: Well, the question is - - -

15 JUDGE HALLIGAN: What - - - what relief, in
16 addition to the subpoena - - - Counsel, over here. What
17 relief, in addition to the subpoena, are you looking for
18 here?

19 MR. ZAHN: What relief in addition to the
20 subpoena - - -

21 JUDGE HALLIGAN: Yeah. You just explained to us
22 why you think the subpoena of Justice Baisley should be
23 reinstated. What other relief in the 487 plenary action
24 are you looking for?

25 MR. ZAHN: Well, okay. In one sentence because I

1 noticed my time has expired. The Uriases would like this
2 court to reinstate the five causes of action against Mr.
3 Buttafuoco, and also naming Buttafuoco and Associates as a
4 defendant and remit this matter back for trial to the
5 Riverhead Supreme Court.

6 JUDGE HALLIGAN: I mean, the ultimate relief?
7 You - - - you are - - -

8 MR. ZAHN: That's the ultimate relief that we're
9 requesting from this court.

10 JUDGE HALLIGAN: Well, usually with a lawsuit I
11 think you're looking for some specific relief if you
12 prevail. So I thought you said, correct me if I'm wrong,
13 that you're not looking for the judgment to be vacated or
14 set aside. So what relief are you looking for were you to
15 proceed and prevail?

16 MR. ZAHN: It - - - it depends on which cause of
17 action. In - - - in - - - in essence - - -

18 JUDGE HALLIGAN: With respect to 487,
19 specifically?

20 MR. ZAHN: Okay. The 487, the deceit on the
21 clients to get them to settle the case, as well as on the
22 court or courts, is the difference between the mandatory
23 fee in 474 and his 864,000 that he was awarded, if you
24 will. And - - - and this is something else. The 710,000
25 dollars that was agreed before the case settled - - -

1 agreed. And it was presented, as you said, as a reduction,
2 which it wasn't, was never, ever approved, mentioned, or
3 otherwise appearing on the OCA statements or anything else.
4 Now, the syllabus in coming today indicated that that 710
5 was a compromise after the July 20th purported approval by
6 Justice Baisley of the 864. That's not - - - that's
7 Buttafuoco's argument. That's not the factual argument.
8 And I'm - - - if I may, Your Honor, I got just two or three
9 more things.

10 CHIEF JUDGE WILSON: If you can do it in thirty
11 seconds, please.

12 MR. ZAHN: Okay. All right. Again, 5015 and 487
13 are not - - - you could either go either way. Now with
14 reference to making an - - - an argument that the 864 is
15 proper under the statute - - - under the schedule, that's
16 grossly wrong. Section 4 does permit an attorney to ask
17 for an enhanced - - -

18 CHIEF JUDGE WILSON: We have that in your papers
19 already.

20 MR. ZAHN: Okay. Now, and the other thing you
21 need a good faith requirement. There's also - - - with
22 reference to the fraud, if - - - if fraud is part of an
23 overall scheme, that gets you out of the collateral
24 estoppel issue. And the other thing is, on July 20th, when
25 the specific amounts were put on the record - - - well,

1 they weren't even then put on the record. But real
2 importantly, the clients, my clients, the Uriases had no
3 clue that July 20th, 2009 ever took place, until in August
4 they got a letter from Mr. Buttafuoco indicating look at
5 what the court did on July 20th. It approved. And the
6 court never put any of the numbers on the record. Signed
7 the so ordered transcript the next day, making it a court
8 order. But the clients were shocked to see the 864.

9 CHIEF JUDGE WILSON: Thank you, Counsel.

10 MR. ZAHN: All right. Thank you.

11 (Court is adjourned)

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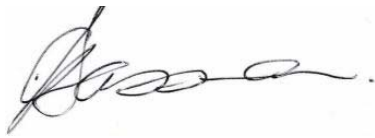
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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Urias v. Daniel P. Buttafuoco & Associates, No. 18 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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Date: February 20, 2024

