



Peter Ho <peter.ho@gmail.com>

road map

John Minton <jminton@ayhmf.com>

Tue, Sep 26, 2017 at 9:45 PM

To: "Peter C. Ho" <peter.ho@gmail.com>, Shan-Yuan Ho <shanyuan@gmail.com>, Della Lau <DellaLau@launet.com>

Cc: "Daniel E. Lassen" <dlassen@ayhmf.com>, Carol Loza <cloza@ayhmf.com>

Dear All –

In response to Peter's request for a roadmap, I provide the below. Please let me know if you have questions or wish to have a phone call to discuss any aspect.

1. Phase I (September 2016)

Phase I involved our initial meeting and subsequent phone calls and email exchanges, review and analysis of many emails and other voluminous documents that you provided (translations, medical records, trust-related documents, financial records, and other documents), preparing the initial petition and lis pendens, attention to recording, filing and service of same, research regarding the recordings issue (more on this later), preparation of subpoena documents, strategy meetings and analysis, and attention to the amended petition.

Estimated cost: \$30,000-\$35,000

2. Phase II (September 2016 – December 2016)

Phase II focuses on further factual development of the case. This includes review and analysis of information that you continue to provide to us, and gathering information from Debby and nonparties. Regarding gathering information from Debby, we will be sending "discovery" requests to her, including (i) document demands (requiring her to produce all documents relevant to topics we list), (ii) interrogatories (requiring her to provide, under oath, written answers to various questions we pose to her), and (iii) requests for admissions (requiring her to admit or deny a series of factual statements we pose to her) (requests for admissions are valuable because if the court later finds that Debby denied any statement "unreasonably," it can order her to pay our attorneys' fees required to prove the statement in question).

With respect to gathering information from nonparties, we will be sending subpoenas to various nonparties, including (for starters) John Martin, Sterling Bank and Old Republic Title.

Discovery may be served on a party 20 days after service of a petition. In our case, "D Day" – when Debby is hit with a flurry of discovery documents – is October 12. Responsive records and information are typically due approximately 30 days later.

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We will want to incorporate all of the information we have been processing into an amended petition, which serves as a developing narrative that the court will look to in assessing the case as it progresses. Assuming we take the matter to trial eventually, we will need to submit a “trial brief” to the court beforehand. A trial brief must be a thorough presentation of all factual issues and legal claims. Our amended petition (and if we decide to do it, a “second” amended petition later on) serves as a ready-made document to modify for trial brief purposes.

Once Debby “lawyers up,” we can expect a round of discovery requests sent to us. Debby’s counsel will want all documents and information on which we base our case. Dan and I will work with you to gather documents and craft responses to interrogatories and requests for admissions.

Estimated cost: \$40,000 - \$60,000

3. Phase III (January – July 2018)

With the benefit of documents having been exchanged between the parties and received from nonparties, and written information exchanged between the parties through interrogatories and requests for admissions, next the parties move to taking depositions. A deposition is essentially an interview, taken under oath in a conference room, in which all questions and answers are recorded for use at trial. Litigants must disclose all witnesses who they believe will have relevant testimony to provide at trial. Surprise trial witnesses are not allowed. We will want to take the deposition of all witnesses whose testimony (i) we are worried we might lose due to age or infirmity, and whose testimony we want the judge to hear (if the witness is later unable to attend trial, the deposition testimony can serve as a substitute), (ii) we are not sure is in our favor or not, and we don’t want to learn is against us for the first time at trial (a deposition allows us to know, in advance, what the witness will testify to at trial, allowing us to prepare for more powerful cross-examination), and (iii) we believe is against us (we depose this person for the same reason as we do those in the previous category). We do not need to take the deposition of healthy witnesses whose testimony we are certain is favorable. However, we will have to disclose such witnesses to Debby, and her counsel will have the opportunity to depose them. You three will each have your depositions taken, and I will prepare and defend you.

Estimated cost: This is a difficult one to assess, because it depends so much on the number of witnesses. For planning purposes, assume an average of \$15,000 per witness, which includes preparation and attendance at the deposition. The cost for a deposition can vary greatly by witness. Some could be closer to \$7,500 (if minimal preparation is required) and others could be in the \$25,000 range. Assuming 10 fact witness depositions, the cost estimate is approximately \$150,000.

4. Phase IV (August 2018 – November 2018)

Phase IV is focused on supplemental written discovery requests (directed to Debby as well as nonparties), and additional supplemental fact discovery.

Cost estimate: \$20,000 - \$40,000

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5. Phase V (December 2018 – February 2019)

Phase V involves working with expert witnesses. In this case, the court will likely find it useful to hear from a neurological expert who has reviewed all relevant medical records, put together a timeline, and can walk the judge through it in a coherent way. Each side retains its own expert for this purpose. I have worked with several neurological experts who I know to be persuasive at trial. I called my first choice this morning, to ensure the other side doesn't "burn" him. (Recall our discussion of this concept in the context of retaining attorneys – a similar dynamic can occur here.) The expert we choose will opine that based on all of the medical records he has reviewed, your father was highly susceptible to undue influence and manipulation by Debby during key time periods in the case. Each expert is deposed before trial.

Cost estimate: \$40,000 - \$50,000 for the expert depositions; \$30,000 - \$40,000 for our expert's fees (experts bill by the hour)

6. Phase VI (March 2019 – May 2019)

Trial preparation. Preparing witnesses for trial testimony, preparing outlines for cross examining witnesses, preparing trial brief.

Cost estimate: \$60,000 - \$80,000

7. Phase VII (June 2019)

Trial. Estimate 7 full court days. \$100,000 - \$150,000

8. Phase VIII (July 2019)

Post-trial briefing. The trial judge will commonly ask each side to prepare a proposed Statement of Decision, with citations to trial testimony and exhibits.

Estimated cost: \$25,000 - \$30,000

A few notes:

a. My initial estimate of total estimated costs in the \$500,000 range was based on a traditional case schedule, in which we would go to trial within 18 months of the filing of the petition. Costs go down significantly if our petition-to-trial timeline is compressed. Inevitably there is more work to do when a case schedule is extended, as it allows the other side to “make us work” via additional discovery, motions filed with the court, etc.

b. Regarding motions – a motion is a brief filed with the court in which one side is asking for a court order of some kind. Motions can take many forms. Often they are used during the discovery process, when one side believes the other side is behaving inappropriately. Motion practice is not explicitly covered above, but one or more motions will inevitably arise as part of the case. Some motions can be resolved relatively inexpensively (e.g., under \$15,000), others can be more involved depending on the importance and complexity of the issue raised (e.g., how and to what degree certain tape recordings may be used during the trial).

c. As noted, the estimates provided above are just that. This case may evolve in a way that is more straightforward, with less aggressive defensive maneuvers by Debby’s counsel, than I am predicting. The above estimates are based on an average level of aggressiveness by Debby. If she is more aggressive than anticipated (an approach that incidentally will cost her more money), we can expect our costs to rise.

Again, feel free to send questions or let me know if you’d like to have a call to discuss.

Best,

John

John D. Minton

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From: Peter C. Ho [<mailto:peter.ho@gmail.com>]
Sent: Monday, September 25, 2017 12:17 AM
To: John Minton; Daniel E. Lassen; Carol Loza
Cc: Shan-Yuan Ho; Della Lau
Subject: road map

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