

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 PIERRE HASCHEFF, AN Case No. 86976
3 INDIVIDUAL,

4 Appellant/Cross-Appellant,

5 vs.

6 LYNDA HASCHEFF, AN
7 INDIVIDUAL,

8 Respondent/Cross-Appellant.

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9 **APPENDIX TO APPELLANT'S OPENING BRIEF**

10 Volume 1 of 8 – Pages AA 0001-0250

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1 **PET**

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10 **SECOND JUDICIAL DISTRICT COURT**

11 **WASHOE COUNTY, NEVADA**

12 In the Matter of the Administration of the
13 SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

14 In the Matter of the Administration of the
15 SAMUEL S. JAKSICK, JR. FAMILY TRUST,

16 Wendy Jaksick,

17 Respondent and Counter-Petitioner,

18 v.

19 Todd B. Jaksick, Individually, as Co-Trustee of the
20 Samuel S. Jaksick, Jr. Family Trust, and as Trustee
21 of the SSJ's Issue Trust, Michael S. Kimmel,
22 Individually and as Co-Trustee of the Samuel S.
23 Jaksick, Jr. Family Trust, and Stanley S. Jaksick,
24 Individually and as Co-Trustee of the Samuel S.
25 Jaksick, Jr. Family Trust, Kevin Riley, Individually
26 and as former Trustee of the Samuel S. Jaksick, Jr.
27 Family Trust and Trustee of the Wendy A. Jaksick
28 2012 BHC Family Trust,

Petitioners and Counter-
Respondents.

**COUNTER -PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY
DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT
TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

1 Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) by and through her
2 attorneys of record, the law firm of Fox Rothschild LLP, complains against Petitioners and Counter-
3 Respondents and alleges as follows:

4 **PARTIES**

5 1. Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) is an
6 individual who resides in Texas.

7 2. Counter-Respondent Todd B. Jaksick, in his Individual capacity (“Todd”), is an
8 individual who resides in Reno, Nevada.

9 3. Counter-Respondent Todd B. Jaksick, in his capacity as Co-Trustee of the Samuel S.
10 Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Todd”), resides in Reno, Nevada.

11 4. Counter-Respondent Todd B. Jaksick, in his capacity as Trustee of the SSJ’s Issue Trust
12 (“Issue Trust Trustee”), resides in Reno, Nevada.

13 5. Counter-Respondent Michael S. Kimmel, in his Individual capacity (“Michael”), is an
14 individual who resides in Reno, Nevada.

15 6. Counter-Respondent Michael S. Kimmel, in his capacity as Co-Trustee of the Samuel
16 S. Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Michael”), resides in Reno, Nevada.

17 7. Counter-Respondent Stanley S. Jaksick, in his Individual capacity (“Stanley”), is an
18 individual who resides in Reno, Nevada.

19 8. Counter-Respondent Stanley S. Jaksick, in his capacity as Co-Trustee of the Samuel
20 S. Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Stanley”), resides in Reno, Nevada.

21 9. Kevin Riley, Individually (“Kevin”), is an individual who resides in Sacramento,
22 California.

23 10. Kevin Riley, as former Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Former
24 Family Trust Co-Trustee”), is an individual who resides in Sacramento, California.
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11. Kevin Riley, as Trustee of the Wendy A. Jaksick 2012 BHC Family Trust (“BHC Trustee Kevin”), is an individual who resides in Sacramento, California.

12. Family Trust Co-Trustee Todd, Family Trust Co-Trustee Michael and Family Trust Co-Trustee Stanley shall collectively be referred to herein as the “Family Trust Co-Trustees”.

13. Family Trust Co-Trustees, Former Family Trust Trustee, Issue Trust Trustee and BHC Trust Trustee shall collectively be referred to herein as the “Trustees”.

14. Todd, Family Trust Co-Trustee Todd, Issue Trust Trustee, Michael, Family Trust Co-Trustee Michael, Stanley, Family Trust Co-Trustee Stanley, Kevin, Former Family Co-Trustee and BHC Trustee Kevin shall collectively be referred to herein as the “Counter-Respondents”.

15. The Court has proper venue pursuant to NRS 13.040.

INTERESTED PERSONS – THE FAMILY TRUST

16. The following individuals interested in the Samuel S. Jaksick, Jr. Family Trust are entitled to notice of this *Complaint*:

Name & Address	Age	Interest
Todd B. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Co-Trustee & Beneficiary
Michael S. Kemmel, Esq. Hoy Chrissinger Kimmel Vallas 50 West Liberty Street, Ste 840 Reno, Nevada 89501	Adult	Co-Trustee
Stanley S. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Co-Trustee & Beneficiary
Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Adult	Beneficiary

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Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 1 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 2 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 3 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 4 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Adult	Presumptive Remainder Beneficiary
Luke Jaksick c/o Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Minor	Presumptive Remainder Beneficiary
Benjamin Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Presumptive Remainder Beneficiary

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Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Presumptive Remainder Beneficiary
Regan Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary
Sydney Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary
Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary

INTERESTED PERSONS – THE ISSUE TRUST

17. The following individuals interested in the SSJ's Issue Trust are entitled to notice of this *Complaint*:

Name & Address	Age	Interest
Todd B. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Trustee & Beneficiary
Stanley S. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Beneficiary
Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Adult	Beneficiary
Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Adult	Beneficiary

1 2 3 4	Luke Jaksick c/o Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Minor	Beneficiary
5 6 7	Benjamin Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
8 9 10	Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
11 12 13	Regan Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
14 15 16	Sydney Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
17 18	Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary

THE FAMILY TRUST

18. The Samuel S. Jaksick, Jr. Family Trust Agreement (As Restated) (the “Restated Family Trust Agreement”) establishing The Samuel S. Jaksick, Jr. Family Trust (the “Family Trust”) was executed by Samuel S. Jaksick, Jr. on June 29, 2006. *Please see a copy of the Family Trust attached as Exhibit “I” to the Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters, which was originally filed in Cause No.PR17-00445 (the “Petition for Confirmation in Cause No.PR17-00445”).*

1 22. Samuel S. Jaksick, Jr. Samuel S. Jaksick, Jr. (“Samuel”) was a native Nevadan who
2 had a gift for finding and capitalizing on business and real estate opportunities in Nevada. Samuel’s
3 success and reputation were due in large part to the prosperous and well known planned communities
4 he developed throughout Nevada. Over the course of his life, Samuel amassed a substantial amount
5 of wealth, real estate and other property rights.

6 23. During his life, Samuel was married three times. His first marriage was to Gwendolyn
7 Jaksick and that marriage ended in divorce. During his marriage to Gwendolyn, Samuel had three (3)
8 children Stanley S. Jaksick (“Stanley”), Todd B. Jaksick (“Todd”) and Wendy A. Jaksick (“Wendy”).
9 Samuel’s second marriage was to Rebecca Porter and that marriage ended in divorce; no children were
10 born of this marriage. Samuel’s final marriage was to Janene Jaksick (“Janene”). Samuel’s final
11 marriage ended when he predeceased Janene, by approximately a year and a half. Samuel and Janene
12 did not have any children together.

13 24. Samuel loved his wife, Janene, children and grandchildren very much. He supported
14 them throughout their lives and always made it clear he intended to support them when he passed. He
15 was also very proud of the property and wealth he had acquired and intended that his family enjoy and
16 benefit from that property for generations. Samuel engaged in Estate planning and the creation and
17 funding of two primary (2) trusts to accomplish his objectives.

18 25. The Samuel S. Jaksick, Jr. Family Trust. Samuel executed The Samuel S. Jaksick, Jr.
19 Family Trust Agreement (As Restated) (the “Family Trust Agreement”) establishing The Samuel S.
20 Jaksick, Jr. Family Trust (the “Family Trust”) on June 29, 2006. The Family Trust was funded with a
21 significant amount of property at the time it was created.

22 26. The purpose of the Family Trust was to provide for Samuel during his life and, upon
23 his death, to provide for his wife through the funding of a Marital Trust and his children through the
24 funding of a Decedent’s Trust. The Decedent’s Trust essentially provides each of Samuel’s children
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1 a one-third interest in the Decedent's Trust and for the distribution of income and principal for his
2 children's health, education, support and maintenance.¹ The Decedent's Trust also provides for
3 discretionary distributions of certain principal for the health, education, support and maintenance of
4 his grandchildren.² However, Samuel's primary intent and purpose to provide for his children is made
5 clear by the Family Trust, which provides "the primary concern of the Grantor is the proper health,
6 education, support, and maintenance of the Beneficiary, and the interest of the other beneficiaries in
7 the trust are to be subordinate to those of the Beneficiary."³
8

9 27. Samuel was designated as the initial Trustee of the Family Trust.⁴ If at any time Samuel
10 failed to serve as Trustee and failed to appoint a successor trustee, the Family Trust provides that
11 Stanley, Todd and another person designated in the Family Trust were to serve as Co-Trustees.⁵

12 28. The Purported Second Amendment to the Family Trust. On December 10, 2012,
13 Samuel S. Jaksick, Jr. purportedly executed the Purported Second Amendment to the Family Trust
14 (the "Purported Second Amendment"). Although the Purported Second Amendment was allegedly
15 executed in 2012, Wendy was not aware of its existence until it was produced to her after she retained
16 counsel in 2016. The Purported Second Amendment, like many other documents created during
17 Todd's involvement with Samuel's Trusts and various businesses, came out of nowhere and is contrary
18 to Samuel's intent concerning Wendy as expressed by Samuel over the years.
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20 29. Based on Wendy's understanding of Samuel's intent, she does not believe Samuel
21 would have or did sign the Purported Second Amendment. Based on information and belief, it is
22 Wendy's understanding that Samuel's secretary often signed Samuel's name on documents when
23 Samuel was not present, and Todd or someone on Todd's behalf signed Wendy's and her daughter's
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26 ¹ Paragraphs D.4. and F.1. of Article II of the Family Trust Agreement.

27 ² Paragraph F.2. and F.1. of Article II of the Family Trust Agreement.

28 ³ Paragraph F.2. of Article II of the Family Trust Agreement.

⁴ Paragraph A. of Article IV of the Family Trust Agreement.

⁵ *Id.*

1 name on documents related to the Trusts. Additionally, there are numerous documents related to the
2 Trusts, the administration of the Trusts and Samuel's businesses that Wendy believes Todd
3 manufactured after the fact to suit his needs. Accordingly, based upon information and belief, Wendy
4 believes the Purported Second Amendment may be invalid and she may contest it. However, at this
5 time, Wendy does not have sufficient information to proceed with a contest of the Purported Second
6 Amendment. Wendy reserves the right to amend this *Counter-Petition* to contest the validity of the
7 Purported Second Amendment once she obtains information necessary to fully evaluate such claim.
8

9 30. The SSJ's Issue Trust. Samuel executed The SSJ's Issue Trust Agreement (the "Issue
10 Trust Agreement") establishing The SSJ's Issue Trust (the "Issue Trust") on February 21, 2007.
11 Wendy disputes the validity of the documents attached to the version of the Trust Agreement attached
12 as *Exhibit "I"* to the *Petition for Confirmation in Cause No. PR17-00445* which purport to contain a
13 description of the properties or purports to contain an accurate description of the properties and the
14 diagrams of same attached to the Trust agreement.
15

16 31. The purpose of the Issue Trust was to hold, protect, and preserve family real estate for
17 the use and enjoyment of Samuel and his family for many generations.⁶ The terms of the Issue Trust
18 provide for the use of the trust property by Samuel's issue, but prohibit the distribution of the income
19 or principal from the Issue Trust until the earlier of such time as all of Samuel's issue are deceased or
20 the expiration of Nevada's perpetuity period (which is currently 365 years).⁷ Samuel intended the
21 Issue Trust hold, protect and preserve important existing family property such as the approximately
22 20,000 acres of property known as the 49 Mountain Ranch. But Samuel also intended that the Issue
23 Trust purchase and maintain homes for each of his children. Samuel maintained one or more
24 substantial life insurance policies payable to the Issue Trust to fulfill its purpose and his intent. At the
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28 ⁶ Paragraph B. of Article II of the Issue Trust Agreement.

⁷ Paragraphs B.3. and B.4. of Article II of the Issue Trust Agreement.

1 time of Samuel's death, the Issue Trust was beneficiary of a life insurance policy insuring Samuel's
2 life in the amount of \$6 million.

3 32. Todd was designated to serve as the sole Trustee of the Issue Trust ("Issue Trustee")⁸
4 and has served in that capacity since the Issue Trust was established in February 2007.

5 33. Samuel died in a tragic accident on April 21, 2013.

6 34. As a result of Samuel's death, Todd, Stanley and Kevin Riley ("Kevin") were appointed
7 and served as Co-Trustees of the Family Trust. On July 31, 2013, Kevin purportedly resigned as Co-
8 Trustee and Todd and Stanley served as two Co-Trustees until December 2016, when Todd
9 purportedly appointed Michael S. Kimmel ("Michael") to serve as the third Co-Trustee under the
10 authority of the Purported Second Amendment. Interestingly, Todd's appointment was made not long
11 after the Purported Second Amendment surfaced for the first time. Todd, Stanley and Michael shall
12 be known herein as the "Family Trust Co-Trustees".
13

14 35. The Family Trust Co-Trustees and the Issue Trustee have refused to keep Wendy
15 informed and failed to fully disclose to her information concerning the assets and property of the
16 respective Trusts, their administration of the respective Trusts and the transactions they were
17 conducting on behalf of the respective Trusts. The Family Trust Co-Trustees and Issue Trustee used
18 their positions to control and utilize the assets and property of the respective Trusts for their personal
19 benefit at the expense of the Trusts, Wendy and Wendy's interest in the Trusts. As a result of such
20 actions and breaches of fiduciary duties, Wendy was forced to retain counsel to attempt to compel the
21 Family Trust Co-Trustees and Issue Trustee to comply with the obligations and fiduciary duties under
22 the Trust, to keep Wendy informed about the Trusts and their actions as Trustees, to fully disclose and
23 to stop self-dealing
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25

26 36. The Lake Tahoe Property. In the 1970s, Samuel acquired the lakefront property on
27

28 ⁸ Paragraph A. of Article IV of the Issue Trust Agreement.

1 Lake Tahoe located at 1011 Lakeshore Blvd., Incline Village, Nevada 89451 (the “Tahoe Property”).
2 The Tahoe Property was Samuel’s main residence until his death. Wendy and Stanley were raised in
3 the house during the 1980s before they left for college. When Samuel executed the Family Trust, the
4 Tahoe Property was listed on Schedule A as property initially conveyed to the Trust.⁹ The terms of
5 the Family Trust specifically address the Tahoe Property and Samuel’s intention that the Tahoe
6 Property be retained and administered as a separate trust for the benefit of his wife and children.¹⁰ In
7 this respect the Family Trust provides as follows:
8

9 The Lake Tahoe Residence and Residential Funds shall be retained and
10 administered as a separate trust for the benefit of the Surviving Spouse
11 and the Grantor’s children who are living on the date of death of the
12 Grantor and shall be held, administered, and distributed as hereafter
13 provided.

14 On the death of the Grantor, ... [a]t the expiration of the six (6) month
15 period set forth in the preceding sentence, the Surviving Spouse and
16 each of the Grantor’s living children shall have the right to use and
17 occupy the Lake Tahoe Residence, rent free, for such equal periods
18 throughout each calendar year ... until such time as the Lake Tahoe
19 Residence is sold.¹¹

20 The Family Trust further provided that upon the sale of the Tahoe Property, the sales proceeds shall
21 be divided in three (3) equal shares for the benefit of his children. It was clear Samuel intended that
22 all his children would benefit equally from the use of the Tahoe Property while it was administered as
23 an asset of the Trust and from the proceeds upon its sale.

24 37. On December 5, 2011, the Tahoe Property was apparently transferred from the Family
25 Trust to SSJ, LLC, a single member limited liability company wholly owned by Samuel. Just over a
26 year later, on December 28, 2012, Todd, as Manager of SSJ, LLC, signed and recorded a purported
27 Grant, Bargain and Sale Deed purportedly transferring the Tahoe Property to Incline TSS, Ltd. This

28 ⁹ Schedule A of the Family Trust Agreement.

¹⁰ Paragraphs D.2.a. and G. of Article II of the Family Trust Agreement.

¹¹ Paragraphs G. and G.1. of Article II of the Family Trust Agreement (emphasis added).

1 was done just days after Samuel had open heart surgery in Los Angeles, California and while he was
2 still in the hospital there. Wendy believes the purported transfer to of the Tahoe Property to Incline
3 TSS, Ltd. may be invalid and she may contest such transfer, but does not have the information at this
4 point to make such determination. Wendy reserves the right to contest this transfer as she obtains
5 additional information through.

6 38. At some point, Todd and his family purportedly acquired a forty-six percent (46%)
7 interest in the Tahoe Property. The Tahoe Property was worth approximately \$15 million at the time
8 of Samuel's death. To acquire a nearly fifty percent (50%) interest in the Tahoe Property would have
9 required Todd and his family to make a substantial payment and no such payment was ever made.
10 Additionally, transferring an interest in the Tahoe property to Todd and his children was contrary to
11 Samuel's intention for the property and does not make any sense. Samuel included specific provisions
12 in the Family Trust to protect and preserve the Tahoe Property for use by his wife and all his children
13 so that all of his children would benefit from the property equally. It is clear that Todd simply took
14 the interest in the Tahoe Property for himself and his family. Accordingly, Wendy contests and
15 disputes that Todd and his family validly acquired and own forty-six percent (46%) of the Tahoe
16 Property and disputes and contests the validity of any records that purport to establish such ownership.

17 39. When Samuel died just four (4) months after the purported transfer of the Tahoe
18 Property to Incline TSS, Ltd., Todd realized he could not or did not want to make his and his families'
19 portion of the payments owed on the approximately \$6 million loan on the Tahoe Property. As a
20 result, Todd came up with a scheme to pay down the debt with the funds from the \$6 million life
21 insurance policy payable to the Issue Trust. The day after Samuel died, Todd approached Stanley and
22 Wendy and told them they should agree to use the \$6 million in insurance proceeds payable to the
23 Issue Trust to pay down the Tahoe Property loan. Todd represented to Stanley and Wendy that paying
24 down the debt would benefit all three of them as owners of the property. Stanley and Wendy were led
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1 to believe that the three of them would own equal interests in the Tahoe Property after the paydown
2 of the debt. Todd never disclosed to Stanley and Wendy that he and his family had acquired an interest
3 in the Tahoe Property and it was no longer wholly owned by the Family Trust. As a result, Stanley
4 and Wendy signed a consent agreeing to Todd's proposal.

5 40. Stanley and Wendy later discovered that Todd and his family apparently, directly or
6 indirectly, acquired the forty-six percent (46%) interest in the Tahoe Property and that the Issue Trust
7 owned the remaining fifty-four percent (54%). If Todd and his family did own forty-six percent (46%)
8 of the Tahoe Property and had Todd been forthright and not misleading about it, Wendy, and
9 presumably Stanley, would have never agreed to Todd's proposal to pay down the Tahoe Property
10 loan with the insurance proceeds from the Issue Trust. Under such circumstances, paying down the
11 Tahoe Property debt only benefits Todd and his family while harming Stanley and Wendy. Todd and
12 his family received the benefit of the debt reduction on their interest in the property without having to
13 contribute any funds to pay down the debt.
14

15 41. Meanwhile, Wendy and Stanley lost the benefit and use of the \$6 million in life
16 insurance proceeds. The debt payment eliminated the \$6 million in liquidity Samuel intended the
17 Issue Trust use to purchase, own and maintain houses and other property for his children during their
18 lifetimes. Wendy's and Stan's and the family's use of the Tahoe Property is subject to the total and
19 absolute control of Todd as purported part owner and sole Trustee of the remaining ownership interest.
20 Retaining the \$6 million in insurance funds in the Issue Trust for the benefit of all three children was
21 in the best interest of Stanley and Wendy, not paying towards the debt on a property over which Todd
22 claims control. Distributing such funds to pay down the Tahoe Property debt was only in the best
23 interest of Todd and his family and just another instance of Todd's efforts to gain personally at the
24 expense of Wendy and Stanley and completely contrary to the intent of the Decedent. Additionally,
25 Todd was and is now in complete control of the Tahoe Property, by the forty-six percent (46%) interest
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1 he allegedly purportedly acquired and because he was and is the sole Trustee of the portion of the
2 property not owned by him and his family. Todd, as the sole Trustee of the Issue Trust, breached his
3 fiduciary duties to Wendy and Stanley as beneficiaries of the Issues Trust.

4 42. Wendy admits that she and Stanley signed a consent allowing the use of the \$6 million
5 in insurance proceeds, but first, the consent they signed was the result of misrepresentations and fraud
6 by Todd and possibly others and, second, the consent they signed is not the purported consent attached
7 to *Exhibit "7"* to the *Petition for Confirmation in Cause No. PR17-00446*. Whatever consent Stanley
8 and Wendy signed was based on representations made by Todd that were false and were made to
9 induce Stanley and Wendy to agree to the proposed debt payment and should be found invalid, ab
10 initio, and set aside.

12 43. The Purported Indemnification Agreements. Samuel S. Jaksick, Jr., Individually as
13 Trustee of the Family Trust, and on behalf of his representative, executors, trustees, successors and
14 assigns and Todd B. Jaksick and Dawn Jaksick, Individually, TBJ SC Trust and TBJ Investment Trust,
15 and on behalf of their representatives, executors, trustees, successors and assigns purportedly executed
16 the Indemnification and Contribution Agreement on January 1, 2008 (the "Purported
17 Indemnification"). A copy of the purported Indemnification Agreement is attached as *Exhibit "10"*
18 to the *Petition for Confirmation in Cause No. PR17-00445*. Although the Purported Indemnification
19 was allegedly created and executed in 2008, and requires Samuel and the Family Trust to pay and
20 indemnify Todd individually for various obligations of Todd, the Family Trust and family businesses,
21 no one was aware of the existence of the Purported Indemnification until Todd produced it
22 approximately two (2) years after Samuel's death, when it became convenient for Todd to attempt to
23 explain, allow or exonerate his bad acts or bogus payments to himself or his avoidance of his
24 obligations and expenses. If such an agreement existed prior to Todd producing it, Stanley, Wendy,
25 the attorneys for the Trusts and the accountant would have known about it and Todd's reliance on it
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1 long before Todd produced it. Wendy contends that the Purported Indemnification is invalid because
2 it was forged, altered or manufactured by Todd and possibly others and contests same and contends it
3 is not binding on anyone or the Family Trust. Wendy also contests all transactions that occurred or
4 obligations Todd avoided as a result of the Purported Indemnification as such are invalid and should
5 be set aside or, in the case of obligations Todd avoided, such obligations should be enforced.

6 44. It appears Todd manufactured the purported Indemnification Agreement and is using
7 it to pay off any obligations he incurs in relation to the Trusts in addition to his personal obligations.
8 The purported Indemnification Agreement attached as *Exhibit "10"* to the *Petition for Confirmation*
9 *in Cause No. PR17-00445* has, apparently, been used by Todd and his family to fund his lifestyle, and
10 includes the payment by the Family Trust of personal obligations of Todd including, but not limited
11 to the following:
12

- 13 a. Home Loan – WAMU: Mortgage Loan for 4505 Alpes Way in favor of Wells Fargo in
14 the original principal amount of \$1,435,000.00 with monthly payments of \$7,281.67
15 with Todd, individually, as the 100% responsible party;
16
17 b. Line of Credit: Home Equity in favor of Wells Fargo: The original principal amount of
18 \$485,000.00 with approximate monthly payments of \$1,400.00 with Todd,
19 individually, as the 100% responsible party;
20
21 c. Mortgage Construction Loan in Favor of First Independent Bank: The original principal
22 amount of \$3,060,000.00 with monthly payment on the 1st of each month of \$5,774.00
23 with maturity date of August 1, 2008, with Todd, individually, as the 100% responsible
24 party; and
25
26 d. Cadillac automobile loan: Note in favor of GMAC in the original principal amount of
27 \$33,600.00 with monthly payments of \$700.00 due on the 20th of each month with
28 maturity date of May 20, 2010, with Todd, individually, as the 100% responsible Party.

1 The Purported Indemnification Agreement attached as *Petition for Confirmation in Cause No. PR17-*
2 *00445* further indicates that all of these personal obligations have been paid off. Accordingly, Todd
3 appears to be relying on the Purported Indemnification as authority to use the Family Trust as his
4 personal piggybank at the expense of the Family Trust and the beneficiaries. Todd never bothered in
5 any capacity to inform Wendy of any such transactions prior to them occurring. These were all Todd's
6 transactions by Todd that materially affected the interest of Wendy and Stanley.

7
8 45. Additionally, based on information and belief, Todd appears to be acquiring property
9 of the Trusts, directly or indirectly, and paying for such property with a note instead of cash. Todd
10 then, apparently, uses the Purported Indemnification to avoid the obligation to repay the note,
11 ultimately acquiring the property without ever paying for it or forcing the Family Trust to pay for it.
12 Based on information and belief, it appears Todd used this scheme when he acquired Samuel's cattle
13 after his death. Based on information and belief, it also appears Todd has acquired other trust property,
14 including valuable water rights, this way, sold the property to third-parties and then avoided or
15 cancelled the note he used to acquire the property and retained the money he received from the sale to
16 the third-party.
17

18 46. Wendy was very recently informed that an alleged Indemnification and Contribution
19 Agreement similar to Todd's may have been executed in favor of Stanley ("Stanley's Purported
20 Indemnification"). Because Wendy believes that she and other family members would have been
21 aware of any such indemnity agreement long before now, pending the discovery of additional
22 information concerning same, Wendy contends any such Indemnity Agreement is invalid and contests
23 same.
24

25 47. Sale of Bright Holland, Co. Property. In 2016, Todd negotiated the sale of certain
26 property owned by Bright Holland, Co. known as the Fly Ranch (the "Fly Ranch Property") to the
27 Burning Man Project. It is believed that Fly Ranch Property sold for \$6.5 million. Wendy was never
28

1 informed concerning the proposed sale and only learned of the sale when she read about it in the news.
2 Wendy was told she has a thirteen percent (13%) interest in Bright Holland through her interest in the
3 Wendy A. Jaksick 2012 BHC Family Trust, which was apparently established by Samuel on December
4 17, 2012 (the "BHC Family Trust"). At the time the BHC Family Trust was created, it was funded
5 with thirteen shares of Bright Holland, Co. stock accordingly to the trust agreement's schedule of
6 assets. It is Wendy's understanding that similar trusts were established for Todd and Stanley, and each
7 child had an equal amount of shares and interest in Bright Holland, Co.
8

9 48. Despite the substantial amount of funds received by the sale of the Fly Ranch Property,
10 the Trustee of the BHC Family Trust refused and continues to refuse to use any of the funds for
11 Wendy's benefit despite repeated requests by Wendy for distributions needed for her and her family's
12 living expenses. Instead, Wendy was told the proceeds from the sale would be held in escrow for the
13 potential purchase of replacement property or would be used to pay down debt. Apparently, Todd
14 made the decision that no funds would be distributed to or for Wendy's benefit from the sale despite
15 his awareness that Wendy desperately needed the funds for her and her family's living expenses. The
16 is consistent with and appears to be a part Todd's ongoing efforts and his scheme to minimize
17 distributions to Wendy in order to starve her and her family and force her to agree to a settlement of
18 her interests in the Trusts for substantial discounted sum. Todd clearly let his personal disdain for
19 Wendy and her family in his Individual capacity taint his judgment and ability to act in Wendy and
20 her family's best interest as her Trustees; and irreconcilable conflict of interest and bias. Additionally,
21 Kevin, in his Individual and Trustee capacities, has simply followed Todd's lead and failed to act in
22 Wendy's best interest.
23

24 49. Sale of Bronco Billy's Casino. Based information and belief, Samuel, through the
25 Family Trust, owned an eighteen percent (18%) interest in Bronco Billy's Casino ("Bronco Billy's").
26 In 2015, Bronco Billy's was apparently sold for approximately \$30 million, netting approximately
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1 \$5.4 million for the Family Trust's interest. Wendy expected her share of the Family Trust would
2 substantially benefit from its one-third interest in the sale proceeds. However, despite Samuel's
3 interest being held in the Family Trust, it was represented to Wendy that she and her share of the
4 Family Trust did not have an interest in Bronco Billy's. Instead, apparently Todd and Stanly, directly
5 or in trust, each owned fifty percent (50%) of Samuel's interest in Bronco Billy's at the time of the
6 sale. When Wendy complained about the Bronco Billy's transaction, she was told she did not have an
7 interest in Bronco Billy's and she and her share of the Family Trust were not entitled to any of the
8 proceeds of the sale because she did not have a gaming license from the Colorado Division of Gaming;
9 a ridiculous response. In essence, Todd and Stanley stole Wendy's interest in the Trust and, in turn,
10 in the sale proceeds from Bronco Billy's.
11

12 50. This explanation makes no sense unless Samuel's eighteen percent (18%) interest in
13 Bronco Billy's was transferred out of the Family Trust to Todd and Stanley before the sale. If the sale
14 occurred while the interest was held in Trust, the proceeds of the sale would be paid to the Trust and
15 equally apportioned between the children's share of the Trust, without regard to any Colorado gaming
16 license. The Family Trust owned the interest in Bronco Billy's and would have received the proceeds
17 of the sale, not Wendy in her individual capacity; accordingly, there would be no reason Wendy or
18 any of them would need a gaming license. If, however, the interest was transferred out of the Family
19 Trust before the sale, then Todd and Stanley would have wrongly received a substantial benefit from
20 the Family Trust at the expense of Wendy's interest. Todd and Stanley could not have ended up with
21 one-hundred percent (100%) ownership in the interest in Bronco Billy's without wrongfully taking
22 Wendy's share of the Trust. They had to take her interest away from her without telling her. Such
23 action by the Co-Trustees would be a, per se, breach of the Trust Agreement and a breach of their
24 fiduciary duties to Wendy, unless her share of the Trust received other property in an amount equal in
25 value and liquidity.
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1 51. Despite Wendy's requests, Co-Trustees have further breached their fiduciary duties to
2 Wendy by refusing to provide her with full disclosure and an accounting concerning the Bronco Billy's
3 transaction. She still does not know all of the details of the sale and the transaction. Wendy has never
4 received confirmation of what happened to the Family Trust's interest in Bronco Billy's or that her
5 share of the Family Trust was made whole as a result of the Bronco Billy's sale, and, therefore,
6 reasonably believes that it was not made whole.

7 52. This transaction is perfect example of the Co-Trustees' continued efforts to manipulate
8 the Family Trust and its property and to use their position of authority and control over same for their
9 personal benefit at the expense of the Trust, the beneficiaries of the Trust and, particularly, at the
10 expense off Wendy and her family. It is also consistent with and appears to be a part of the Co-
11 Trustees' ongoing scheme to minimize distributions to Wendy in an effort to force her to agree to
12 settle her interest in the Trusts.

13 53. The Purported Second Amendment to the Family Trust. On December 10, 2012,
14 Samuel S. Jaksick, Jr. purportedly executed the Purported Second Amendment. Although the
15 Purported Second Amendment was allegedly executed in 2012, Wendy was not aware of its existence
16 until it was produced to her after she retained counsel in 2016. The Purported Second Amendment,
17 like many other documents created during Todd's involvement with Samuel's Trusts and various
18 businesses, came out of nowhere and is appears to be contrary to Samuel's intent concerning Wendy
19 as expressed by Samuel over the years.

20 54. Based on Wendy's understanding of Samuel's intent, she does not believe Samuel
21 would have or did sign the Purported Second Amendment. It is Wendy's understanding that Samuel's
22 secretary often signed Samuel's name on documents when Samuel was not present, and Todd or
23 someone on Todd's behalf signed Wendy's and her daughter's name on documents related to the
24 Trusts. Additionally, there are numerous documents related the Trusts, the administration of the Trusts
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1 and Samuel's businesses Wendy believes Todd manufactured after the fact to suit his needs.
2 Accordingly, based upon information and belief, Wendy believes the Purported Second Amendment
3 may be invalid and she may contest it. However, at this time, Wendy does not have sufficient
4 information to proceed with a contest of the Purported Second Amendment. Wendy reserves the right
5 to amend this *Counter-Petition* to contest the validity of the Purported Second Amendment once she
6 obtains information necessary to fully evaluate such claim.

7 CAUSES OF ACTION

8 **Count 1: Breach of Fiduciary Duties.**

9
10 55. Wendy incorporates by reference the foregoing paragraphs 1 through 54 as if fully
11 stated herein.

12 56. "The fiduciary obligations of a trustee are great."¹² "Perhaps the most fundamental
13 duty of a trustee is that he must display throughout the administration of the trust complete loyalty to
14 the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests
15 of third persons."¹³

16
17 57. In Nevada a "trustee is a fiduciary who must act in good faith and with fidelity to
18 the beneficiary of the trust. He should not place himself in a position where it would be for his
19 own benefit to violate his duty to the beneficiary."¹⁴Said fiduciary duties, include, but are not
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¹² *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987).

27 ¹³ BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992); *see also* 76 AM. JUR. 2D TRUSTS § 349 (2010) ("A
trustee is a fiduciary of the highest order and is required to exercise a high standard of conduct and loyalty in the
administration of the trust").

28 ¹⁴ *Bank of Nevada v. Speirs*, 95 Nev. 870, 874, 603 P.2d 1074, 1077 (1979).

1 limited to, the duty of full disclosure,¹⁵ fidelity,¹⁶ fairness, loyalty, avoidance of self-dealing and
2 utmost good faith.

3 58. NRS 164.015(1) provides that "[t]he court has exclusive jurisdiction of
4 proceedings initiated by the petition of an interested person concerning the internal affairs of a
5 nontestamentary trust. Proceedings which may be maintained under this section are those
6 concerning the administration and distribution of trusts, . . . including petitions with respect to
7 a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust
8 in NRS 153.031."
9

10 59. N.R.S. 153.031 provides that a "beneficiary may petition the court regarding any aspect
11 of the affairs of the trust, including: . . . (g) Instructing the trustee; (h) Compelling the trustee to report
12 information about the trust or account, to the beneficiary; . . . (q) Compelling compliance with the
13 terms of the trust or other applicable law; . . ."
14

15 60. Similarly, N.R.S. 163.115 provides that "[i]f a trustee commits or threatens to
16 commit a breach of trust, a beneficiary or cotrustee of the trust may maintain a proceeding for any
17 of the following purposes that is appropriate: (a) To compel the trustee to perform his or her duties;
18 (b) To enjoin the trustee from committing the breach of trust; . . . (f) to set aside the acts of the
19 trustee; . . ."
20

21 ¹⁵ See, e.g., *Blue Chip Emerald LLC*, 299 A.D.2d 278, 279 (N.Y. 2005) ("[W]hen a fiduciary, in furtherance of its
22 individual interests, deals with the beneficiary of the duty in a matter relating to the fiduciary relationship, the
23 fiduciary is strictly obligated to make 'full disclosure' of all material facts."). See also *Zastrow v. Journal
24 Communications, Inc.*, 718 N.W.2d 51, 61 (Wis. 2006) ("[I]f a trustee does not make a full disclosure of material
25 facts to a beneficiary, that conduct is a breach of the trustee's duty of loyalty. . . The law concludes this breach is
26 intentional."); *Flippo v. CSC Associates III, L.L.C.*, 547 S.E.2d 216, 222 (Va. 2001) (Even if a fiduciary's actions are
27 legal, he is in breach when his legal actions are for his own benefit and not for the beneficiary); *Taylor v. Nationsbank
28 Corp.*, 481 S.E.2d 358, 361 (N.C. Ct. App. 1997) (Found many courts "have determined that a trustee has a duty of
full disclosure of all material facts for the protection of a beneficiary's present and future interests in the trust.")
(citations omitted); *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (Trustees owe beneficiaries "a fiduciary duty
of full disclosure of all material facts known to them that might affect [the beneficiaries'] rights.") (citations omitted);
Lind v. Webber, 134 P. 461, 466 (Nev. 1913).

¹⁶ *Bank of Nevada*, 95 Nev. at 873, 603 P.2d at 1076 ("A testamentary trustee is a fiduciary who must act in good
faith and with fidelity to the beneficiary of the trust. He should not place himself in a position where it would be for
his own benefit to violate his duty to the beneficiary").

1 61. Moreover, a party who knowingly participates in another’s breach of fiduciary duty
2 may be liable for breach as a joint tortfeasor.¹⁷ Indeed, trustees are liable to beneficiaries for the
3 actions undertaken by a co-trustee unless they expressly disavow in writing and/or attempt to prevent
4 such breach. See N.R.S. 163.100.

5 62. The Trustees breached their fiduciary duties owed to Wendy by failing to fully disclose
6 and inform Wendy of all matters that materially affected the Trusts and the beneficiaries at every step
7 of their administration of the Trusts, by failing to act in the best interest of the Trusts and their
8 beneficiaries, by placing their own interests over and above the interests of the Trusts and the
9 beneficiaries, by self-dealing, by not being truthful, by failing to act in good faith, by misrepresenting
10 and deliberately withholding and refusing to provide information and documents, by failing to timely
11 and adequately account, by exhibiting extreme carelessness, hostility and bias towards Wendy and her
12 family and by acting in bad faith, intentionally and with reckless indifference to the interests of the
13 Trust and its beneficiaries and by misappropriating assets of the Trusts. Such breaches have caused
14 actual damages to the Estate and its beneficiaries.
15

16 63. At a minimum, Trustees breached the following duties: (i) duty of full disclosure, (ii)
17 duty of loyalty/fidelity, (iii) duty to not self-deal, (iv) duty of good faith and fair dealing and to not
18 take advantage of their beneficiaries and (v) misappropriation of trust assets
19

20 64. Accordingly, as a direct violation of the Trustees’ breaches and conduct, Wendy is
21 entitled to surcharge the Trustees for damages resulting from such breaches and actions, the amount
22 of which will be proven at trial.¹⁸ The gamesmanship of the Trustees, and particularly Todd, and their
23

24 ¹⁷ See *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942) (A party who knowingly participates
25 in another's breach of fiduciary duty may be liable for the breach as a joint tortfeasor); RESTATEMENT (SECOND) OF
26 TRUSTS § 326 (1959) ("A third person who, although not a transferee of trust property, has notice that the trustee is
27 committing a breach of trust and participates therein is liable to the beneficiary for any loss caused by the breach of trust.");
BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992) (Person who knowingly aids trustee in committing a breach
28 of his duties is liable to the beneficiary).

¹⁸ See, e.g., RESTATEMENT (THIRD) OF TRUSTS § 70(b) (2007). See also *Pierce v. Lyman*, 3 Cal. Rptr. 2d 236, 241
(Cal. Ct. App. 1991) (Recognizing that "[t]he beneficiaries of a trust may sue a trustee to recover profits or recoup losses

1 complete disregard for Wendy, her rights, constitutes a breach of fiduciary duty, conspiracy and aiding
2 and abetting. Accordingly, Wendy is entitled to surcharge the Trustees for damages resulting from
3 such breaches and actions.

4 **Count 2: Failure to Disclose and Adequately Account to Compel Accounting.**

5 65. Wendy incorporates by reference the foregoing paragraphs 1 through 64 as if fully
6 stated herein.

7 66. The law clearly and unequivocally imposes a duty upon a trustee to provide clear and
8 accurate accounts with respect to his administration of the Trust to the Trust's beneficiaries. *See, e.g.*,
9 RESTATEMENT OF TRUSTS (Second) § 172. A beneficiary's right to an accounting is founded
10 upon the fiduciary relationship that exists between the beneficiaries and the trustee. Indeed, courts
11 recognize that:
12

13 As a general matter of equity, the existence of a trust relationship
14 is accompanied as a matter of course by the right of the beneficiary
15 to demand of the fiduciary a full and complete accounting at any
16 proper time. . . . The scope of each accounting depends of course
17 upon the circumstances of the individual case, and, as a general rule
should include all items of information in which the beneficiary has
a legitimate concern.

18 67. Pursuant to NRS 165.135, a trust accounting is required to contain the following
19 information:

20 1. An Account must include:

- 21 a. A statement indicating the accounting period;
22 b. With respect to the trust principal:
23 i. The trust principal held at the beginning of the accounting
24 period, and in what form held, and the approximate market value
25 thereof at the beginning of the accounting period;
26 ii. Additions to the trust principal during the accounting period,
with the dates and sources of acquisition;

27 _____
28 resulting from a trustee's breach of the duty of loyalty, the duty to avoid conflicts of interest, the duty to control and
preserve trust property, the duty to make trust property productive and the duty to dispose of improper investments).

- 1 iii. Investments collected, sold or charged off during the accounting
2 period;
- 3 iv. Investments made during the accounting period, with the date,
4 source and cost of each investment;
- 5 v. Any deductions from the trust principal during the accounting
6 period, with the date and purpose of each deduction; and
- 7 vi. The trust principal, invested or uninvested, on hand at the end of
8 the accounting period, reflecting the approximate market value
9 thereof at that time;
- 10 c. With respect to trust income, the trust income:
- 11 i. On hand at the beginning of the accounting period, and in what
12 form held;
- 13 ii. Received during the accounting period, when and from what
14 source;
- 15 iii. Paid out during the accounting period, when, to whom and for
16 what purpose; and
- 17 iv. On hand at the end of the accounting period and how invested;
- 18 d. A statement of unpaid claims with the reason for failure to pay them;
- 19 and
- 20 e. A brief summary of the account, which must include:
- 21 i. The beginning value of the trust estate:
- 22 a. For the first accounting, the beginning value of
23 the trust estate shall consist of the total of all
24 original assets contained in the beginning
25 inventory.
- 26 b. For accountings other than the first account, the
27 beginning value of the trust estate for the
28 applicable accounting period must be the ending
 value of the prior accounting.
- ii. The total of all receipts received during the accounting period,
 excluding capital items.
- iii. The total of all gains on sales or other disposition of assets, if
 any, during the accounting period.
- iv. The total of disbursements and distributions during the
 accounting period.
- v. The total of all losses on sales or other disposition of assets, if
 any, during the accounting period.
- vi. The total value of the trust assets remaining on hand at the end
 of the accounting period.

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2. A summary of the account pursuant to paragraph (e) of subsection 1 must be in substantially the following form:

...

3. In lieu of segregating the report on income and principal pursuant to subsection 1, the trustee may combine income and principal activity in the account so long as the combined report on income and principal does not materially impeded a beneficiary's ability to evaluate the charges to or credits against the beneficiary's interest.

68. The Counter-Respondents have failed to fully disclose and account to Wendy for many years. The purported "Trust Accountings" included with the *Petition for Confirmation in Cause No. PR17-00445* and the *Petition for Confirmation in Cause No. PR17-00445* do not satisfy the statutory requirements, and, as result, the Trustees have failed their obligations under Nevada law. Additionally, it is impossible to evaluate and/or fully understand the Trust assets and Trust administration without the records and information relied on to prepare the purported "Trust Accountings."

69. Despite Wendy's objections to the "Trust Accountings" and the Trustees' failure to provide her with the backup for the Trust Accountings, the Trustees have made no effort to amend or supplement the accountings to comply with Nevada law or to provide Wendy with the support and additional information necessary for Wendy to fully understand the Trust Accountings and the Trustees' administration of the Trusts. As a result, Trustees have breached and continue to breach their fiduciary duties of full disclosure and the resulting attorneys' fees and costs are damaging Wendy and the Trusts.

70. The Trustees should be compelled to prepare and file accountings for each Trusts that comply with the statue and provide Wendy and the other beneficiaries a full understanding of the assets and administration of the Trusts. Additionally, the Trustees breaches of fiduciary duty of full disclosure and to render proper statutory accountings for the Trusts, warrant this Court entering an order surcharging the Trustees.

1 **Count 3: Civil Conspiracy and Aiding and Abetting.**

2 71. Wendy incorporates by reference the foregoing paragraphs 1 through 70 as if fully
3 stated herein.

4 72. "[C]ivil conspiracy is a combination of two or more persons who, by some
5 concerted action, intend to accomplish some unlawful objective for the purpose of harming another
6 which results in damage."¹⁹ "[L]iability attaches for civil aiding and abetting if the defendant
7 substantially assists or encourages another's conduct in breaching a duty to a third person."²⁰
8 Furthermore, NRS 163.110 holds trustees equally liable for actions of co-trustees.
9

10 73. Wendy asserts that the Trustees, acting in their Individual and Trustee capacities,
11 have conspired and/or aided and abetted the Trustees to the extent they undertook any actions,
12 which resulted in a breach of the Trustees' fiduciary duties. As a direct violation of the Trustees'
13 breach of fiduciary duties, the other Trustees, in their Trustee capacities or in their individual
14 capacities, are liable to Wendy for damages resulting from the Trustees' breaches, the amount of
15 which will be proven at trial.
16

17 74. To the extent Kevin claims he had resigned as Co-Trustee of the Family Trust or
18 the BHC Family Trust and was not serving as Trustee of these Trusts at the time any of the acts
19 complained of herein occurred is of no significance. Wendy asserts that the Trustees and Kevin,
20 acting as in his individual capacity, conspired and/or aided and abetted the Trustees to the extent
21 he undertook any actions, which resulted in a breach of the Trustees' fiduciary duties. Kevin, in
22 his individual capacity, is liable to Petitioner for damages resulting from the Trustees breaches,
23 the amount of which will be proven at trial.
24

25
26 _____
27 ¹⁹ *Collins v. Union Federal Sav. & Loan Ass-n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

28 ²⁰ *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998), *disapproved on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

1 75. For the additional reasons as set forth herein, the Trustees, in their Individual and
2 Trustee capacities, are further liable to Wendy for civil conspiracy and aiding and abetting, the amount
3 of damages, of which, will be proven at trial.

4 **Count 4: Aiding and Abetting Breaches of Fiduciary Duty.**

5 76. Wendy incorporates by reference the foregoing paragraphs 1 through 75 as if fully
6 stated herein.

7 77. The Trustees each had a fiduciary relationship with relationship, and owed fiduciary
8 duties to, Wendy.

9 78. The Counter-Respondents were aware of the fiduciary relationships each of the
10 Trustees had with Wendy as well as the fiduciary duties each of the Trustees owed to Wendy.

11 79. The Counter-Respondents knew or should have known that each of the Trustees
12 breached their fiduciary duties to Wendy.

13 80. The Counter-Respondents provided substantial assistance to each other in breaching
14 their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting with
15 their fraudulent actions/statements and other wrongful conduct.

16 81. The Counter-Respondents acted intentionally and/or in concert with each other to
17 provide substantial assistance in each Trustees' breaching of their fiduciary duties toward Wendy.

18 82. As a direct and proximate result of the actions of Counter-Respondents, Wendy has
19 been substantially damaged.

20 **Count 5: Actual Fraud.**

21 83. Wendy incorporates by reference the foregoing paragraphs 1 through 82 as if fully
22 stated herein.

23 84. The elements of intentional misrepresentation are: (1) A false representation made by
24 the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant
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1 has an insufficient basis of information for making the representation; (3) defendant intended to induce
2 plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a
3 result of relying on the misrepresentation.²¹

4 85. Todd, in his Individual and Trustee capacities, made material and intentional
5 misrepresentations to Wendy, which were false, which Todd knew were false when made, which were
6 intended to be acted upon by Wendy, were relied upon by Wendy and resulted in damages to Wendy.

7
8 86. Wendy has suffered injury and has been damaged by Todd's efforts, actions and
9 fraudulent conduct, and these damages were directly caused by such actions and due to Wendy's
10 reliance on Todd's misrepresentations and false representations. Todd, in his Individual and Trustee
11 capacities, should be held liable for all damages resulting therefrom.

12 87. The purported consent, in which Wendy and Stanley agreed to pay down the Tahoe
13 Property loan with the \$6 million in life insurance proceeds, was executed as the result of one or more
14 intentional misrepresentations made by Todd, in his Individual and Trustee capacities, to Wendy and
15 Stanley, and, therefore, should be set aside and declared void as if it were never signed.

16
17 **Count 6: Removal of Trustees and Appointment of Independent Trustee(s).**

18 88. Wendy incorporates by reference the foregoing paragraphs 1 through 87 as if fully
19 stated herein.

20 89. N.R.S. 156.070 provides for the removal and appointment of Trustees as follows:

21 The trustee shall, when directed by the court, account to it for all his or
22 her acts as trustee, and the court may, from time to time, upon good
23 cause shown, remove any trustee, and appoint another in his or her
24 place.

25 90. Wendy requests the Trustees be removed by the Court for the breaches of fiduciary
26 duties and other actions described herein, as well as, their strong bias against Wendy and her family

27
28 ²¹ *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998).

1 that has created an irreconcilable conflict in their administration of the Trusts. Upon the Trustees
2 removal, Wendy requests the Court appoint Nevada State Bank, the successor trustee named in Article
3 IV, Paragraph A(1) of the Family Trust, or some other qualified independent trustee(s).

4 **Count 7: Unjust Enrichment and Constructive Trust.**

5 91. Wendy incorporates by reference the foregoing paragraphs 1 through 90 as if fully
6 stated herein.

7 92. “Unjust enrichment occurs whenever a person has and retains a benefit which in equity
8 and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the
9 loss of another, or the retention of money or property of another against the fundamental principles of
10 justice or equity and good conscience.”²²

11 93. Trustees took actions in the administration of the Trusts that resulted in Trustees
12 receiving personal benefits and control of property of the Trusts. Because of such actions, breaches
13 of fiduciary duty, the misapplication of property of the Trusts, the creation and reliance on invalid
14 Purported Indemnification and other invalid documents; Todd, in his Individual and Trustee capacities,
15 and persons acting on his behalf and others fraudulently inducing Wendy and/or Stanley to sign
16 purported documents; and because of the fiduciary and/or confidential relationship between Trusts and
17 Wendy, a constructive trust, for the benefit of the Trusts and/or Wendy, should be imposed upon any
18 benefit or property acquired as a result of the transactions described herein or any unfair transaction
19 with the Trusts, because Todd, Todd’s family, Stanley, Michael, Kevin and possibly others have been
20 unjustly enriched.
21
22

23 **Count 8: Trustees Should be Precluded from Using Assets of the Trust to Defend this Matter.**

24 94. Wendy incorporates by reference the foregoing paragraphs 1 through 93 as if fully
25 stated herein.
26

27
28 ²² *Nevada Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 363, 741 P.2d 802, 804 (1987).

1 95. A trustee is not entitled to payment of attorney's fees and expenses of litigation from
2 the assets of the trust when the trustee breached the trust, unless a benefit was conferred upon the trust
3 as a result of the trustee's actions.²³ As demonstrated herein, the Trustees have, at a minimum, breached
4 the following duties (i) duty of full disclosure, (ii) duty of loyalty/fidelity, (iii) duty to not self-deal,
5 (iv) duty of good faith and fair dealing and to not take advantage of their beneficiaries and (v)
6 misappropriation of trust assets. Trustees defense of such actions, which are all the fruits of their own
7 illegal and fraudulent conduct, is done in bad-faith and without just cause. Additionally, it is clear
8 based on the Trustees actions that hold a strong bias against Wendy and her family that has created an
9 irreconcilable conflict in their administration of the Trusts. Based on the numerous breaches of
10 fiduciary duty and conflicts of interest, it is in the best interests of the Trusts that any and all attorney's
11 fees and costs incurred by the Trustees, in their Individual and Trustee capacities, in defending this
12 matter be paid from the Trustees' own personal resources and not assets of the Trusts, as they are the
13 only persons that would benefit from using trust assets to defend their wrongful and self-serving
14 actions.²⁴
15

16
17 _____
18 ²³ See, e.g., *Estate of Bowlds*, 120 Nev. 990, 102 P.3d 593 (Dec. 2004) (Citing *Matter of Estate of Rohrich*, 496 N.W.2d
19 566, 571 (N.D. 1993) (An attorney's services must benefit the estate to justify compensation from estate assets)). See
20 also *Gump*, 1 Cal. App.4th at 605, 2 Cal.Rptr.2d at 278.

21 ²⁴ "In the court's discretion, fees incurred by the trustee in defending against a beneficiary's claim of breach [of duty] may
22 not be payable from the trust during the pendency of the litigation." Bogert's Trusts and Trustees § 971 (footnote omitted).

23 *See also Sierra v. Williamson*, 784 F. Supp. 2d 774, 777 (W.D. Ky. 2011) ("[W]hether a trustee is entitled to
24 attorney's fees from the trust corpus is not a matter of right, but is warranted where the trustees were not at fault in
25 the litigation and the amount of attorney expenses was reasonable . . . the Court believes that the proper procedure is
26 to allow [the trustees] to seek reimbursement from the Trust after the conclusion of this case, assuming [the trustees]
27 are successful and their expenses reasonable."

28 *See also Sierra*, 784 F. Supp. 2d at 778 ("Delaying reimbursement of trustees until after litigation is
warranted because 'the need to protect beneficiaries from self-interested trustees outweighs the innocent trustee's need
for immediate payment of its attorney's fees.") (citation omitted).

See also Wells Fargo Bank v. Sup. Ct., 22 Cal. 4th 201, 213 n.4, 990 P.2d 591, 599 ri.4 (2000) ("The better
practice may be for a trustee to seek reimbursement after any litigation with beneficiaries concludes, initially retaining
separate counsel with personal funds.").
See, also, Jacob v. Davis, 128 Md. App. 433, 466, 738 A.2d 904, 921 (1999) ("The general rule is that at trustee is
entitled to attorneys' fees paid from the trust if it successfully defends an action brought by the beneficiary.")

1 96. In the instant case, the actions of the Trustees, in their Individual and Trustee capacities,
2 are so intertwined that it would be extremely difficult to segregate out the legal services being provided
3 between the various capacities. Additionally, the Trustees have significant wealth and otherwise have
4 the means to defend themselves in this matter.

5 97. To authorize the Trustees to utilize assets of the trust to defend themselves in this
6 matter would further deplete the assets of the Trusts. This is also true in light of the fact that the
7 Trusts have been drained of liquid assets by the Trustee breaches of fiduciary duties and payment
8 of Todd's obligations under the Purported Indemnity Agreement that has been contested.
9

10 98. As such, the Trustees, in their Individual and Trustee capacities, should not only be
11 precluded from continuing to pay their legal fees from the Trusts, but they also should be compelled
12 to reimburse the Trusts for all legal fees paid to date.

13 **Count 9: Disgorgement of Trustee Fees.**

14 99. Wendy incorporates by reference the foregoing paragraphs 1 through 98 as if fully
15 stated herein.
16

17 N.R.S. 153.031(3) provides:

18 If the court grants any relief to the petitioner, the court may, in its
19 discretion, order any or all of the following additional relief if the court
20 determines that such additional relief is appropriate to redress or avoid
21 an injustice:

- 22 (a) Order a reduction in the trustee's compensation.
23 (b) Order the trustee to pay to the petitioner or any other party all
24 reasonable costs incurred by the party to adjudicate the affairs of the
25 trust pursuant to this section, including, without limitation, reasonable
26 attorney's fees. The trustee may not be held personally liable for the
27 payment of such costs unless the court determines that the trustee was
28 negligent in the performance of or breached his or her fiduciary duties.

100. Wendy believes that the Trustees' have been paying themselves trustee's compensation.

27 (citations omitted; emphasis added); Restatement (Third) of Trusts § 88, cmt. d ("*To the extent the trustee is*
28 *successful* in defending against charges of misconduct, the trustee is normally entitled to indemnification for
reasonable attorneys' fees and other costs") (emphasis added).

1 101. Based upon the various breaches of fiduciary duties as set forth herein, this Court
2 should enter an order requiring Family Co-Trustees' and Issue Co-Trustee's to disgorge any and all
3 trustee compensation they have been paid.

4 102. Clearly, the Trustees' actions in engaging litigation counsel and incurring significant
5 legal fees, does not benefit the Trusts and does not amount to good faith based on the Trustees' various
6 breaches of fiduciary duties as set forth herein. This Court should compel the Trustees to obtain
7 reimbursement on behalf of the Trusts of the entire retainers paid to their litigation counsel from the
8 Trusts.
9

10 103. Additionally, such conduct constitutes a further breach by yet again depriving the Trust
11 of the use of such funds.

12 **Count 10: Contest of Purported Consent Agreement.**

13 104. Wendy incorporates by reference the foregoing paragraphs 1 through 103 as if fully
14 stated herein.

15 105. NRS 30.030 and NRS 30.040 provide that any person whose rights, status or other legal
16 relations are affected by contract may have determined any question of construction or validity arising
17 under the contract and obtain a declaration of rights, status or other relations thereunder
18

19 106. Wendy contests the purported consent attached to *Exhibit "7"* to the *Petition for*
20 *Confirmation in Cause No. PR17-00446* (the "Purported Consent"), because it is not the version of
21 the consent that she signed, or, in the alternative, it was signed based on representations made by Todd,
22 in his Individual and Trustee capacities, that were false and were made to induce Stanley and Wendy
23 to agree to the proposed debt payment. As a result, the Purported Consent should be found invalid, ab
24 initio, and set aside.
25

26 107. Wendy also contests all actions taken by Todd, in his Individual and Trustee capacities,
27 associated with the Purported Consent and requests the Court declare all such actions invalid.
28

1 **Count 11: Contest of Purported Indemnity Agreement.**

2 108. Wendy incorporates by reference the foregoing paragraphs 1 through 107 as if fully
3 stated herein.

4 109. NRS 30.030 and NRS 30.040 provide that any person whose rights, status or other legal
5 relations are affected by contract may have determined any question of construction or validity arising
6 under the contract and obtain a declaration of rights, status or other relations thereunder.

7 110. Wendy contests the Purported Indemnification Amendment and contends it should be
8 should be set aside and declared invalid because it was manufactured and forged by Todd or someone
9 at Todd's behest and was never signed by Samuel.

10 111. Wendy also contests all actions taken by Todd, in his Individual and Trustee capacities,
11 under the Purported Indemnification and all transactions that occurred or obligations Todd, in his
12 Individual and Trustee capacities, avoided as a result of the Purported Indemnification and requests
13 the Court declare all such are invalid and should be set aside or, in the case of obligations of Todd that
14 were avoided, in either his Individual and Trustee capacities, such obligations should be enforced.
15

16 **Count 12: Wendy is Entitled to be Awarded Attorneys' Fees and Costs.**

17 112. Wendy incorporates by reference the foregoing paragraphs 1 through 111 as if fully
18 stated herein
19

20 113. Wendy is additionally entitled to recover damages, including attorneys' fees and
21 costs incurred by her to avoid, minimize, or reduce the damage caused by wrongful conduct of the
22 Trustees. NRS 153.031(3)(b) and 164.005 provide that if the court grants any relief to a beneficiary,
23 the court may order the trustee to pay the beneficiary all reasonable costs incurred by petitioner to
24 adjudicate the affairs of the trust, including, without limitation, reasonable attorney's fees, and the
25 trustee may be held personally liable for the payment of such costs if the trustee was negligent in
26 the performance of his or her fiduciary duties.
27

1 wrongful actions;

2 9. Prohibiting the Counter-Respondents from paying their attorneys' fees and costs from
3 the Trust, and an order disgorging the amounts already paid to their attorneys;

4 10. For the Counter-Respondents to reimburse the Trust for all legal fees, accountant fees
5 and all costs paid from the Trusts;

6 11. Declaring the Consent Agreement signed by Wendy and Stan in association with the
7 pay down of the Tahoe Property loan invalid and void;

8 12. Declaring the Purported Indemnification in favor of Todd void;

9 13. Declaring all actions taken by Todd, in his Individual and Trustee capacities, under the
10 Purported Indemnification are invalid and should be set aside or, in the case of obligations of Todd,
11 that were avoided, in either his Individual and Trustee capacities, such obligations shall be enforced;
12

13 14. For reasonable attorney fees and costs of Wendy; and

14 15. For such other and further relief as the court deems proper.

15 Counter-Petitioner requests a jury trial.

16 DATED this 19th day of January, 2018.

17
18 **FOX ROTHSCHILD LLP**

19 By: /s/ Mark J. Connot

20 MARK J. CONNOT (10010)

21 1980 Festival Plaza Drive, #700

22 Las Vegas, NV 89135

23 Telephone: 702.262.6899

24 *and*

25 **SPENCER & JOHNSON, PLLC**

26 R. Kevin Spencer (*PHV to be filed*)

27 Texas Bar Card No. 00786254

28 Zachary E. Johnson (*PHV to be filed*)

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Attorneys for Respondent Wendy A. Jaksick

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AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the **COUNTER -PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** filed by Wendy A. Jaksick in the above-captioned matter does not contain the social security number of any person.

DATED this 19th day of January, 2018.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

MARK J. CONNOT (10010)
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135
Attorneys for Respondent Wendy A. Jaksick

VERIFICATION

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The undersigned verifies under penalty of perjury that after a diligent inquiry of the facts and review of pertinent documents, the **COUNTER -PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** is true as to the best of his knowledge, except for those matters stated on information and belief, and that as to such matters the undersigned believes it to be true.

By: /s/ Zachary E. Johnson
Zachary E. Johnson

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 19th day of January, 2018, I caused the above and foregoing document entitled **COUNTER - PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** to be served as follows:

- service was made via electronic service through the Second Judicial District Court's Odyssey E-File and Serve system;
- by placing same to be deposited for mailing in the United States Mail, first class postage prepaid, in Las Vegas, Nevada;
- pursuant to EDCR 7.26, to be sent via facsimile;
- to be hand-delivered; and/or
- via email.

to the attorney(s)/party(ies) listed below at the addresses indicated below:

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Todd B. Jaksick 8600 Technology Way, Ste. 110 Reno, Nevada 89521	Luke Jaksick c/o Wendy A. Jaksick P.O. Box 2345 Allen, Texas 75013
Stanley S. Jaksick 8600 Technology Way, Ste. 110 Reno, Nevada 89521	Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511
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Maupin, Cox & LeGoy Donald A. Lattin, Esq. L. Robert LeGoy, Jr., Esq. Brian C. McQuaid, Esq. 4785 Caughlin Parkway Reno, Nevada 89519 <i>Attorneys for Petitioners</i>	Michael S. Kimmel, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust c/o Maupin, Cox & LeGoy Donald A. Lattin, Esq. L. Robert LeGoy, Jr., Esq. Brian C. McQuaid, Esq. 4785 Caughlin Parkway Reno, Nevada 89519
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/s/ Monica Wilson
An Employee of Fox Rothschild LLP

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*Attorneys for Stanley Jaksick, in his individual capacity
and as beneficiary of the SSJ's Issue Trust*

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

* * * * *

In the Matter of the Administration of the
SSJ ISSUE TRUST,

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

WENDY JAKSICK,

Respondent and Counter Petitioner,

v.

TODD B. JAKSICK, Individually, as Co-Trustee
of the Samuel S. Jaksick, Jr. Family Trust, and as
Trustee of the SSJ's Issue Trust, MICHAEL S.
KIMMEL, Individually and as Co-Trustee of the
Samuel S. Jaksick, Jr. Family Trust, and
STANLEY S. JAKSICK, Individually and as Co-
Trustee of the Samuel S. Jaksick, Jr. Family
Trust, Kevin Riley, Individually and as former
Trustee of the Samuel S. Jaksick, Jr. Family Trust
and Trustee of the Wendy A. Jaksick 2012 BHC
Family Trust,

Petitioners and Counter-Respondents.

STANLEY JAKSICK,
Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, Individually and as Trustee
of the SSJ's Issue Trust.

CASE NO.: PR17-00445
DEPT. NO.: 15

MCDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

1 Stan (33.33%), Wendy (33.33%), and Todd (33.33%), so that Todd owned the entirety of the
2 Lake Tahoe Residence. After Sam’s death, Todd was apparently unable to service the remaining
3 mortgage on the Lake Tahoe Residence that he had assumed through Incline TSS. Rather than
4 disclose material information about the true ownership of Incline TSS, Todd led Stan to believe
5 that the Lake Tahoe Residence was “Jaksick family property” and in danger of being lost to the
6 bank. The very morning after Sam died, Todd convinced Stan to agree to use the life insurance
7 proceeds in the Issue Trust to reduce the debt on the Lake Tahoe Residence. After this
8 transaction, Todd provided the Issue Trust with a 54% interest in Incline TSS, reserving all
9 management rights to himself. Thus, not only was Stan deprived of his rightful one-third interest
10 in the Lake Tahoe Residence, he was misled into *paying* for an 18% share (one-third of the 54%
11 interest in Incline TSS held by the Issue Trust) out of the life insurance proceeds belonging to the
12 Issue Trust. It made absolutely no sense to divert the liquid assets of an irrevocable, asset-
13 protected trust into an external entity such as Incline TSS, which held a single-asset still exposed
14 to a multi-million-dollar mortgage and to other potential creditor’s claims.

15 The misrepresentations by Todd changed over time and were made both informally and
16 formally. Through the Issue Trust Petition, Todd asks the Court to approve four Agreements &
17 Consents to Proposed Action in order to relieve Todd of “any liability for actions reasonably
18 taken in reliance on such Agreements & Consents.” Issue Trust Pet. ¶ 8. Todd failed to disclose
19 key material facts to Stan or actively misled Stan concerning these Agreements & Consents. For
20 example, through the Agreement and Consent to Proposed Action dated June 5, 2013, Todd
21 obtained the consent of Stan and Wendy to “utilize the life insurance funds being received by the
22 Issue Trust to invest in and restructure the Company in order to protect and preserve the use and
23 enjoyment of the Tahoe Residence for future generations of the Jaksick family.” Issue Trust Pet.
24 Ex. 7. As mentioned above, the signature page of this document was presented to Stan the
25 morning after Sam had passed away and Todd represented to Stan that it had to be signed right
26 away to protect the “family” from losing the Lake Tahoe Residence. It is unusual to say the least
27 that trust counsel could have drafted the complete Agreement and Consent by Monday morning
28 after Sam had passed away on Sunday, as the date on the document is certainly inaccurate and

1 there is no doubt that Stan’s signature was requested on April 22, 2013. Additionally, Todd never
2 disclosed to Stan that Todd was the 100% owner of Incline TSS or how he had acquired this
3 interest in the entity. He also never provided any of the documents referenced in the Agreement
4 and Consent that materially affect the nature of the document. Finally, Todd represented in the
5 document itself that the Tahoe Residence was “Jaksick family real property.” *Id.* Consequently,
6 Stan believed that the use of Issue Trust assets to service the mortgage of the Tahoe Residence
7 was appropriate because the transfer was intra-family. No one would have rationally agreed (and
8 no attorney or financial advisor should have ever advised) to the use of the Issue Trust’s life
9 insurance proceeds to service mortgage payments for real estate that Todd owned individually
10 outside of the Issue Trust and over which Todd and not the Issue Trust would have control.

11 Due to Todd’s actions, he has financially benefitted from the reduced debt on the Lake
12 Tahoe Residence, which he controls exclusively, and from low-interest loans to his other entities.
13 This benefit has come at the expense of the beneficiaries and of the Issue Trust, which has
14 exchanged a debt-free, liquid asset over which it had total control for a partial ownership in an
15 entity controlled by Todd and holding a single debt-laden piece of real property.

16 **II. PARTIES**

17 1. Petitioner / Counter-Respondent Todd Jaksick is the Trustee and a beneficiary of the
18 Issue Trust who resides in Washoe County, Nevada.

19 2. Respondent / Counter-Petitioner Stanley Jaksick is a beneficiary of the Issue Trust who
20 resides in Washoe County, Nevada.

21 3. Wendy Jaksick is a beneficiary of the Issue Trust who resides in Dallas, Texas.

22 **III. TRUST HISTORY**

23 4. The Issue Trust was executed by Sam on February 21, 2007. Issue Trust Pet. Ex. 1. The
24 Issue Trust was created as an irrevocable trust and has not been modified or amended since its
25 creation.

26 5. At the time of Sam’s death, the Issue Trust held a \$6,000,000 life insurance policy for
27 him; a 49% interest in a closely held company – Home Camp Land and Livestock Co, Inc.; and a
28 49% interest in ranch land known as 49 Mountain Ranch. Issue Trust Pet. Ex. 3. Upon

1 information and belief, Todd owns the other 51% of Home Camp Land and Livestock Co, Inc.
2 and the other 51% of 49 Mountain Ranch.

3 6. Todd was designated to serve as the sole Trustee of the Issue Trust from its inception and
4 has served alone in that capacity since 2007. Issue Trust Pet. Ex. 1.

5 **IV. LAKE TAHOE RESIDENCE**

6 7. Upon information and belief, Sam acquired the Lake Tahoe Residence in the 1970s and
7 used it as his primary residence until his death on April 21, 2013.

8 8. The Lake Tahoe Residence was conveyed to the Samuel S. Jaksick, Jr. Family Trust
9 (“Family Trust”) in 2006 when that trust was created. Family Trust Pet. Ex. 1, Sch. A.

10 9. The Family Trust specifically provided that the “Lake Tahoe Residence and Residential
11 Fund shall be retained and administered as a separate trust for the benefit of the Surviving
12 Spouse and the Grantor’s children who are living on the date of death of the Grantor.” Family
13 Trust Pet. Ex. 1, Art. II, ¶ G.

14 10. As a result of the subsequent death of the surviving spouse of Samuel S. Jaksick, Jr.,
15 Janene Jaksick, each of his three children “shall have the right to use and occupy the Lake Tahoe
16 Residence, rent free, for such equal periods throughout each calendar year as the Trustee shall
17 determine, in the Trustee’s sole discretion, until such time as the Lake Tahoe Residence is sold . .
18 .” Id. Art. II, ¶ G(1).

19 11. If the co-trustees of the Family Trust unanimously voted to sell the Lake Tahoe
20 Residence, then the proceeds were to be distributed equally between Stan, Wendy, and Todd. Id.
21 Art. II, ¶ G(4).

22 12. The Second Amendment to the Family Trust, executed on December 10, 2012, stated that
23 “Settlor amends the Trust to eliminate those provisions with respect to the Lake Tahoe home
24 because of its existing option and pending sale. Should the Lake Tahoe home be sold prior to
25 Settlor’s death, the Trust provisions with respect to the Lake Tahoe home shall no longer apply.”
26 Family Trust Pet. Ex. 2.

27 13. On November 1, 2010, Sam and Incline TSS entered into a Real Estate Option
28 Agreement concerning the Lake Tahoe Residence. Exhibit 1. Upon information and belief, this

1 Option Agreement was intended to reduce the estate tax liability for Sam but not to constitute an
2 actual transfer of the Lake Tahoe Residence outside of the Jaksick family.

3 14. The Option Agreement states that the Lake Tahoe Residence was appraised in July 2010
4 at \$6,500,000. *Id.* This valuation was well below the actual market value of the property at the
5 time of the appraisal. On March 22, 2010, Sam obtained a valuation of the Lake Tahoe
6 Residence stating that the property should have a sales price of \$13,000,000 and an asking price
7 of up to \$15,400,000. Exhibit 2. Even if full payment was made under the Option Agreement,
8 the Family Trust received only a fraction of the value that it should have obtained from the sale
9 of the Lake Tahoe Residence.

10 15. The Option Agreement further states that Incline TSS has the option to purchase the Lake
11 Tahoe Residence for \$7,250,000 “in excess of the appraised value since it is the Buyer’s desire to
12 retain the Property for future generations, if possible.” Exhibit 1. This provision makes little
13 sense because a higher sales price would make it less likely for the buyer to be able to afford
14 maintenance and taxes on the Lake Tahoe Residence rather than the other way around. The Lake
15 Tahoe Residence had a mortgage of \$6,300,000 owed to Bank of America at the time of the
16 Option Agreement. Exhibit 1. Incline TSS was supposed to use the sales proceeds to “satisfy the
17 debt on the Property when it becomes due if the debt cannot otherwise be assumed by the
18 Buyer.” *Id.*

19 16. Incline TSS was required to pay an initial option payment of \$50,000 to the Family Trust
20 prior to February 28, 2011 and additional annual payments of \$50,000 to maintain the option,
21 which had to be exercised prior to January 15, 2017. *Id.* Upon information and belief, the Option
22 Agreement expired due to Incline TSS’s failure to timely make these payments.

23 17. On December 5, 2011, the Family Trust assigned its right, title, and interest in the Lake
24 Tahoe Residence to SSJ LLC pursuant to an Option to Purchase and Escrow Instructions, dated
25 November 1, 2011. Exhibit 3. This Option to Purchase appears to be a separate document than
26 the Option Agreement dated November 1, 2010.

27 18. Upon information and belief, Incline TSS claims to have exercised its option to purchase
28 the Lake Tahoe Residence from SSJ, LLC on December 28, 2012. Upon information and belief,

1 Sam was undergoing open-heart surgery only a few days prior to the exercise of this option and
2 would not have been aware of the transaction.

3 19. Upon information and belief, Incline TSS does not appear to have validly exercised the
4 Option Agreement, in part, because it did not timely pay the entire amount owed under the
5 Option Agreement. Upon information and belief, neither SSJ, LLC nor the Family Trust appear
6 to have received the consideration owed by Incline TSS, resulting in Todd acquiring the Lake
7 Tahoe Residence for free or nearly free.

8 **V. AGREEMENT & CONSENTS**

9 **A. Agreement and Consent to Proposed Action – June 5, 2013**

10 20. Pursuant to the terms of the Issue Trust, the \$6,000,000 in proceeds from the life
11 insurance policy were to be held for the benefit of Stan, Wendy, and Todd and their issue. Issue
12 Trust Pet. Ex. 1.

13 21. The Agreement and Consent to Proposed Action dated June 5, 2013 stated that Incline
14 TSS was “the owner of the Jaksick family real property commonly known as 1011 Lakeshore
15 Blvd., Incline Village, Washoe County, Nevada (the ‘Tahoe Residence’), and is currently in the
16 process of restructuring and refinancing certain obligations relating to Company’s ownership of
17 the Tahoe Residence.” *Id.* ¶ C. This was a misrepresentation by Todd in that it stated that the
18 Lake Tahoe Residence was “Jaksick family real property.” The Family Trust holds multiple
19 overlapping interests in entities such as Incline TSS and there is no suggestion that Todd
20 informed Stan that Incline TSS had a different ownership structure than the Issue Trust or any
21 other family entities. Todd caused Stan to believe that Stan had an interest in the Lake Tahoe
22 Residence in order to persuade him to consent to the diversion of the life insurance proceeds,
23 while in reality at Todd was 100% owner of the Lake Tahoe Residence through his personal and
24 family trusts. (holding interests in Incline TSS as the Trustee of the TBJ SC Trust and as the
25 Trustee of the Todd Jaksick Family Trust).

26 22. This Agreement and Consent inaccurately is dated June 5, 2013. On the morning of April
27 22, 2013, the next day after Sam died, Todd requested that Stan attend an 8:00 a.m. meeting to
28 sign the document. Todd presented Stan with the signature page of the Agreement and Consent

1 and informed Stan that without his signature, the family would be at risk of losing the Lake
2 Tahoe Residence to the bank. Todd never informed Stan that the only person with an interest in
3 the Lake Tahoe Residence was Todd. Stan was also not provided with the time to review the
4 document or to even request any of the other documents referenced therein.

5 23. The Agreement and Consent states that Todd had the ability to use the capital
6 contribution by the Issue Trust to “pay off that certain Unsecured Promissory Note dated
7 December 28, 2012, in favor of SSJ LLC, a Nevada limited liability company, in the original
8 face amount of \$7,103,255.32.” Issue Trust Pet. Ex. 1. Stan was never provided with a copy of
9 the Unsecured Promissory Note nor were the consequences of this consent explained to him.
10 Essentially, this provision seems to allow Todd to take the life insurance proceeds belonging to
11 Wendy and Stan and use them to pay off Todd’s individual note, in a manner that only benefitted
12 Todd.

13 24. The Agreement and Consent states that the purpose of the transaction was to “preserve
14 the use and enjoyment of the Tahoe Residence for future generations of the Jaksick family.” Id.
15 This was a misrepresentation. Todd never informed Stan that Todd had the right to unilaterally
16 decide to sell the Lake Tahoe Residence or to control the property in his unfettered discretion.

17 25. The Agreement and Consent states that Todd can “utilize some or all of the life insurance
18 funds being received by the Issue Trust to invest in Company in exchange for a membership
19 interest in Company to be determined based upon the final value of such capital contribution and
20 Company’s assets and liabilities as determined and agreed upon by the Trustee and Company.”
21 Id. Stan was never advised that the ultimate determination as to membership interest was
22 material. Because he believed that he had the same ownership interest in the Issue Trust assets as
23 in the Lake Tahoe Residence, the transfer of assets between these entities was not material. By
24 misleading Stan, Todd caused Stan to suffer a loss in his interest in the Lake Tahoe Residence.

25 26. Despite the boilerplate language in the Agreement and Consent that it was prepared by
26 counsel, Stan was never advised of his right to retain individual counsel nor was he given
27 adequate time to obtain counsel as Todd produced the signature page on April 22, 2013 and
28 demanded that it be signed that morning. Furthermore, as a fiduciary Todd had a duty to ensure

1 that Stan understood and had access to all information necessary to provide his informed consent
2 to the document.

3 27. The effect of this Agreement and Consent was to use the assets belonging to Wendy and
4 Stan to benefit Todd. No reasonably informed beneficiary would have ever consented to this
5 transaction and no actually informed fiduciary would have ever permitted such a transaction to
6 proceed.

7 **B. Agreement and Consent to Proposed Action – August 28, 2014**

8 28. The Agreement and Consent purports to loan \$115,000 from the Issue Trust to the Family
9 Trust.

10 29. Todd's decision to charge the Family Trust an interest rate of 6% and to select security as
11 the Toiyabe Investment Co. constituted a breach of his fiduciary duties as he was favoring his
12 interests in the Issue Trust and Family Trust over that of the other beneficiaries.

13 30. Despite the boilerplate language in the Agreement and Consent that it was prepared by
14 counsel, Stan was never advised of his right to retain individual counsel nor was he given
15 adequate time to obtain counsel.

16 31. Stan was not informed of material facts critical to an evaluation of the Agreement and
17 Consent.

18 32. Upon information and belief, this Agreement and Consent is misdated.

19 **C. Agreement and Consent to Proposed Action – September 25, 2014**

20 33. The Agreement and Consent purports to loan \$150,000 from the Issue Trust to the
21 Family Trust.

22 34. Todd's decision to charge the Family Trust an interest rate of 6% and to select security as
23 the real property at 4005 Quail Rock Lane constituted a breach of his fiduciary duties as he was
24 favoring his interests in the Issue Trust and Family Trust over that of the other beneficiaries.

25 35. Despite the boilerplate language in the Agreement and Consent that it was prepared by
26 counsel, Stan was never advised of his right to retain individual counsel nor was he given
27 adequate time to obtain counsel.

28 36. Upon information and belief, this Agreement and Consent is misdated.

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D. Agreement and Consent to Proposed Action – November 13, 2015

37. During or prior to 2016, Todd was again having difficulty making mortgage payments on the Lake Tahoe Residence that he exclusively controlled through his management of Incline TSS and his position as Trustee of the Issue Trust.

38. Sometime after the Agreement and Consent was signed on April 22, 2013, Todd led Stan to believe that Todd had separately acquired a 46% interest in Incline TSS. Todd led Stan to believe that this interest had been purchased by Todd for fair market value and with Todd’s own funds. In 2014, Todd and Stan began to have discussions concerning the potential for Stan to purchase an additional individual stake in Incline TSS, similar to what he believed Todd had done. Stan only offered to purchase this additional interest in reliance on these representations and because he had been led to believe that Todd’s acquisition of his 46% interest in the Lake Tahoe Residence was legitimate. If Stan had his rightful one-third share of the Tahoe Residence, there would have been no interest in pursuing this pursue this buy-in arrangement.

39. Upon information and belief, Todd and Stan contemplated a transaction whereby Stan would obtain a 17.02%, Class A membership in exchange for \$1,500,000. Stan made initial payments of \$235,000 but was subsequently unable to continue making payments due to financial constraints related to the contemplated source of funds for the purchase. Additionally, Stan received additional advice indicating that the contemplated transaction did not make any financial sense. After Stan ceased making payments under the promissory note, Todd retained the \$235,000 already paid despite informing Stan that the transaction was terminated. Todd has also not provided Stan with any increase in ownership percentage as a result of this partial payment.

VI. ACCOUNTINGS

40. Each of the four accounts (“Accounts”) provided by Todd was prepared by an accounting firm, Rossmann MacDonald & Benetti, Inc., that was “not independent with respect to the Estate of Samuel S. Jaksick, Jr.” or “with respect to the SSJ’s Issue Trust.” See Issue Trust Pet. Exs. 3-6.

1 41. Upon information and belief, these four Accounts were prepared by this non-independent
2 accounting firm using information that was transmitted by Todd and relied upon his
3 representations without independent analysis or review.

4 42. With respect to the 2013 Account, Stan objects to the values listed for the 49% interest in
5 ranch land (49 Mountain Ranch) and the 49% interest in Home Camp Land and Livestock Co.
6 Inc. Issue Trust Pet. Ex. 3. Specifically, the 2013 Account does not provide sufficient detail into
7 the valuation of these entities to allow the beneficiaries of the Issue Trust to analyze them. Stan
8 further objects to the trustee fees paid to Todd for the reasons set forth herein.

9 43. With respect to the “investments” detailed in the 2013 Account. Stan objects to the
10 description of the note receivable that was apparently entered into with Incline TSS. The 2013
11 Account does not adequately describe the nature of this self-serving “investment” by Todd
12 whereby he apparently loaned funds to his separate company, Incline TSS, in the amount of
13 \$873,000. Stan further objects to the description of the note receivable that was apparently
14 entered into with Home Camp Land and Livestock Co. The 2013 Account does not adequately
15 describe the nature of this self-serving “investment” by Todd whereby he apparently loaned
16 funds to his separate company, Home Camp Land and Livestock Co., in the amount of
17 \$98,930.39. *Id.*

18 44. With respect to the 2014 Account, Stan objects to the values listed for the 49% interest in
19 ranch land (49 Mountain Ranch), the 49% interest in Home Camp Land and Livestock Co. Inc.,
20 and the 54% interest in Incline TSS, Ltd. Issue Trust Pet. Ex. 4. Specifically, the 2014 Account
21 does not provide sufficient detail into the valuation of Home Camp Land and Livestock Co. Inc.
22 or Incline TSS Ltd. to allow the beneficiaries of the Issue Trust to analyze these assets. Stan
23 further objects to the trustee fees paid to Todd for the reasons set forth herein.

24 45. With respect to the “investments” detailed in the 2014 Account. Stan objects to the
25 description of the note receivable that was apparently entered into with Home Camp Land and
26 Livestock Co. The 2014 Account does not adequately describe the nature of this self-serving
27 “investment” by Todd whereby he apparently loaned funds to his separate company, Home
28 Camp Land and Livestock Co., in the amount of \$98,930.39. Stan further objects as the 2014

1 Account details loans that were made by Todd to the Family Trust with an interest of 6% but
 2 Todd loaned funds to his own company, Home Camp Land and Livestock Co. Inc., at an interest
 3 rate of only 3%.

4 46. With respect to the 2015 Account, Stan objects on the same bases as to the 2013 and
 5 2014 Accounts. Additionally, Stan objects to the description of the Home Camp Land and
 6 Livestock Co. note receivable that was extended to December 31, 2018 and the description of the
 7 payment made by this entity to the Internal Revenue Service on behalf of the Issue Trust as there
 8 were sufficient funds in the Issue Trust to pay this tax obligation. Stan further objects to the
 9 unexplained increase in value of Home Camp Land and Livestock Co. from an estimated
 10 \$1,050,000 in 2014 to an estimated \$3,500,000 in 2015.

11 47. With respect to the 2016 Account, Stan objects on the same bases as to the 2013, 2014,
 12 and 2015 Accounts.

13 48. Stan reserves all rights to challenge or approve these Accounts based on further
 14 discovery.

15 **VII. INTERESTED PERSONS**

16 49. The names, ages, and addresses of the Trustee and beneficiaries of the Issues Trust
 17 entitled to notice of this document are as follows:

Name & Address	Age	Beneficial Interest
Todd Jaksick c/o Maupin, Cox & Legoy 4785 Caughlin Parkway Reno, Nevada 89519	Adult	Trustee & Beneficiary
Stanley Jaksick c/o McDonald Carano 100 W. Liberty St. Reno, Nevada 89511	Adult	Beneficiary
Wendy Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Adult	Beneficiary
Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Adult	Beneficiary

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Luke Jaksick c/o Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Minor	Beneficiary
Benjamin Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
Regan Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
Sydney Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary

50. Stan believes that the interests of all beneficiaries of the Trust, both current and future, including unborn or unascertained persons, can adequately and properly be represented by the beneficiaries identified above, in accordance with NRS Chapter 164.

COUNTER-PETITION

1. Stan alleges, pursuant to NRS 164.010, NRS 164.015, NRS 163.115, and NRS 153.031, as follows.
2. This Court has already assumed jurisdiction over the Issue Trust. Stan is a beneficiary of the Issue Trust and is therefore a proper interested party to raise these claims.

FIRST CLAIM FOR RELIEF – Breach of Fiduciary Duties

3. Stan realleges the foregoing allegations as if set forth herein verbatim.
4. A trustee has “a duty to administer the trust, diligently and in good faith, in accordance with the terms of the trust and applicable law.” Restatement (Third) of Trusts § 76 (2007).
5. NRS 163.050 provides that “no trustee may directly or indirectly buy or sell any property for the trust from or to itself or an affiliate, or from or to a director, officer or employee of the

1 trustee or of an affiliate, or from or to a relative, employer, partner or other business associate of
2 a trustee, except with the prior approval of the court having jurisdiction of the trust estate.”

3 6. Todd has breached these duties as set forth herein. Specifically, Todd has engaged in self-
4 dealing conduct and the imprudent use of Issue Trust assets.

5 7. As a result of said breach, Stan has suffered actual economic harm entitling him to an
6 award of compensatory damages.

7 8. Because Todd’s breach of his fiduciary duty was done maliciously and with the intent to
8 defraud Stan, and in conscious and willful disregard of Stan’s property rights, Stan is entitled to
9 an additional award of punitive damages subject to proof at trial. Stan is also entitled to an award
10 of reasonable attorney’s fees and costs as provided under Nevada law.

11 **SECOND CLAIM FOR RELIEF – Breach of Duty of Impartiality**

12 9. Stan realleges the foregoing allegations as if set forth herein verbatim.

13 10. A trustee has a “duty to administer the trust in a manner that is impartial with respect to
14 the various beneficiaries of the trust, requiring that: (a) in investing, protecting, and distributing
15 the trust estate, and in other administrative functions, the trustee must act impartially and with
16 due regard for the diverse beneficial interests created by the terms of the trust; and (b) in
17 consulting and otherwise communicating with beneficiaries, the trustee must proceed in a
18 manner that fairly reflects the diversity of their concerns and beneficial interests.” Restatement
19 (Third) of Trusts § 79 (2007).

20 11. Todd has breached these duties as set forth herein and specifically by favoring his own
21 economic interests over Stan’s interests. Converting the life insurance proceeds into an interest in
22 Incline TSS favored Todd over Stan.

23 12. As a result of said breach, Stan has suffered actual economic harm entitling him to an
24 award of compensatory damages.

25 13. Because Todd’s breach of his fiduciary duty was done maliciously and with the intent to
26 defraud Stan, and in conscious and willful disregard of Stan’s property rights, Stan is entitled to
27 an additional award of punitive damages subject to proof at trial. Stan is also entitled to an award
28 of reasonable attorney’s fees and costs as provided under Nevada law.

1 an additional award of punitive damages subject to proof at trial. Stan is also entitled to an award
2 of reasonable attorney's fees and costs as provided under Nevada law.

3 **FIFTH CLAIM FOR RELIEF – Surcharge**

4 24. Stan realleges the foregoing allegations as if set forth herein verbatim.

5 25. NRS 163.115 provides that if a trustee commits a breach of trust, a beneficiary may
6 maintain a proceeding for any of the following purposes that is appropriate:

- 7 “(a) To compel the trustee to perform his or her duties.
8 (b) To enjoin the trustee from committing the breach of trust.
9 (c) To compel the trustee to redress the breach of trust by payment of
10 money or otherwise.
11 (d) To appoint a receiver or temporary trustee to take possession of
12 the trust property and administer the trust.
13 (e) To remove the trustee.
14 (f) To set aside acts of the trustee.
15 (g) To reduce or deny compensation of the trustee.
16 (h) To impose an equitable lien or a constructive trust on trust
17 property.
18 (i) To trace trust property that has been wrongfully disposed of and
19 recover the property or its proceeds.”

20 26. Todd has caused the Issue Trust to suffer economic damages including the attorney's fees
21 and costs of Stan.

22 27. The Issue Trust is entitled to surcharge Todd for any and all losses occasioned by Todd's
23 conduct.

24 **SIXTH CLAIM FOR RELIEF – Accounting**

25 28. Stan realleges the foregoing allegations as if set forth herein verbatim.

26 29. The Accounts do not satisfy the statutory requirements for trust accountings and do not
27 provide Stan with adequate information to understand the assets of and transactions by the Issue
28 Trust.

30. Todd should be compelled to prepare and file accountings for the Issue Trust that comply
with Nevada law and provide Stan with a full understanding of the assets and administration of
the Issue Trust.

31. Stan reserves his rights to object to or confirm the Accounts once sufficient information
is provided to assess their compliance.

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SEVENTH CLAIM FOR RELIEF – Deceptive Trade Practices

32. Stan realleges the foregoing allegations as if set forth herein verbatim.

33. Under NRS § 41.600, a civil action may be brought by “any person who is a victim of consumer fraud.” Under the Nevada statute, “consumer fraud” includes, among other things, “an unlawful act as defined by NRS 598.0915 to 498.0925, inclusive.

34. Todd violated NRS 598.0915 et seq. by making the misrepresentations and concealing the material facts alleged herein. Stan justifiably relied upon said misrepresentations and suppression and concealment as alleged herein, and thus has stated a claim for consumer fraud.

35. As a result of said breach, Stan has suffered actual economic harm entitling him to an award of compensatory damages, trebled by statute.

36. As a result of the deceptive trade practices by Todd, Stan has been damaged in an amount in excess of \$15,000. Because Todd’s deceptive actions were done maliciously and with the intent to defraud Stan, and in conscious and willful disregard of Stan’s property rights, Stan is entitled to an additional award of punitive damages subject to proof at trial. Stan is also entitled to an award of reasonable attorney’s fees and costs as provided under Nevada law.

EIGHTH CLAIM FOR RELIEF – Fraudulent Misrepresentation

37. Stan restates and incorporates herein by reference the foregoing allegations.

38. The material representations made to Stan by Todd as set forth above were fraudulent. In particular, Todd represented that he had acquired the Lake Tahoe Residence for fair market value and that the use of the Issue Trust assets with respect to the Lake Tahoe Residence was for the benefit of “Jaksick family property.”

39. These false representations were communicated to Stan directly by Todd or indirectly through the Agreements & Consents. These false representations were communicated for the purpose of inducing Stan to agree to using Issue Trust assets for Todd’s benefit and to induce Stan to contribute additional capital to Incline TSS.

40. As a result of said breach, Stan has suffered actual economic harm entitling him to an award of compensatory damages.

1 41. Because Todd’s actions constituting fraud, suppression, and concealment were done
2 maliciously and with the intent to defraud Stanley, and in conscious and willful disregard of
3 Stanley’s property rights, Stanley is entitled to an additional award of punitive damages subject
4 to proof at trial. Stanley is also entitled to an award of reasonable attorney’s fees and costs as
5 provided under Nevada law.

6 **NINTH CLAIM FOR RELIEF – Negligent Misrepresentation**

7 42. Stan realleges the foregoing allegations as if set forth herein verbatim.

8 43. Todd failed to adequately disclose material facts relating to the above transactions,
9 including but not limited to the fact that Todd was the sole owner of Incline TSS prior to the
10 capital contribution by the Issue Trust. By failing to inform Stan concerning the consequences of
11 the actions taken by the Issue Trust, Todd caused Stan to take actions inconsistent with his own
12 best interests but benefitting Todd.

13 44. As a result of said breach, Stan has suffered actual economic harm entitling him to an
14 award of compensatory damages.

15 **TENTH CLAIM FOR RELIEF – Fraud in the Inducement**

16 45. Stan restates and incorporates herein by reference the foregoing allegations.

17 46. The material representations made to Stan by Todd as set forth above were fraudulent. In
18 particular, Todd represented that he had acquired the Lake Tahoe Residence for fair market value
19 and that the use of the Issue Trust assets with respect to the Lake Tahoe Residence was for the
20 benefit of “Jaksick family property.”

21 47. These false representations were communicated to Stan directly by Todd or indirectly
22 through the Agreements & Consents. These false representations were communicated for the
23 purpose of inducing Stan to agree to using Issue Trust assets for Todd’s benefit and to induce
24 Stan to contribute additional capital to Incline TSS, Ltd.

25 48. As a result of said breach, Stan has suffered actual economic harm entitling him to an
26 award of compensatory damages.

27 49. Because Todd’s actions constituting fraud, suppression, and concealment were done
28 maliciously and with the intent to defraud Stanley, and in conscious and willful disregard of

1 Stanley's property rights, Stanley is entitled to an additional award of punitive damages subject
2 to proof at trial. Stanley is also entitled to an award of reasonable attorney's fees and costs as
3 provided under Nevada law.

4 **ELEVENTH CLAIM FOR RELIEF – Unjust Enrichment**

5 50. Stan realleges the foregoing allegations as if set forth herein verbatim.

6 51. Todd has been unjustly enriched as a result of his diversion of Issue Trust assets and the
7 other wrongful actions alleged herein.

8 52. Todd has been enriched by the transfer of the life insurance proceeds to Incline TSS, the
9 retention of Stanley's contributions toward the purchase of interest in Incline TSS, trustee fees
10 obtained from the Issue Trust, and loans made by the Issue Trust to benefit Todd.

11 53. Stan is entitled to recover the amount of such unjust enrichment derived by Todd in an
12 amount to be shown by proof at trial.

13 **TWELFTH CLAIM FOR RELIEF – Breach of Implied Covenant of Good Faith and Fair**

14 **Dealing**

15 54. Stan realleges the foregoing allegations as if set forth herein verbatim.

16 55. Todd had an implied duty of good faith and fair dealing arising out of the Issue Trust and
17 the Agreements and Consents to Proposed Action. Todd specifically had the duty and obligation
18 of good faith to not take actions inconsistent with the rights of Stan under the Issue Trust or to
19 countervene the spirit of the Agreements and Consents to Proposed Actions.

20 56. Todd has breached his implied covenant of good faith and fair dealing as a result of the
21 material breaches, fraudulent conduct, and suppression and concealment as alleged herein.

22 57. As a result of said breach, Stan has suffered actual economic harm entitling him to an
23 award of compensatory damages.

24 58. Because Todd's actions constituting fraud, suppression, and concealment were done
25 maliciously and with the intent to defraud Stanley, and in conscious and willful disregard of
26 Stanley's property rights, Stanley is entitled to an additional award of punitive damages subject
27 to proof at trial. Stanley is also entitled to an award of reasonable attorney's fees and costs as
28 provided under Nevada law.

1 **THIRTEENTH CLAIM FOR RELIEF – Restrain the Use of Trust Assets and Dissipation**
2 **of Assets**

3 59. Stan realleges the foregoing allegations as if set forth herein verbatim.

4 60. Given the allegations set for herein, the Court should restrain Todd from using the assets
5 of the Issue Trust to defend his improper actions.

6 **FOURTEENTH CLAIM FOR RELIEF – Removal of Trustee**

7 61. Stan realleges the foregoing allegations as if set forth herein verbatim.

8 62. NRS 164.040(2) provides that this Court may appoint a temporary trustee to administer
9 the Trust.

10 63. Given the allegations set for herein, the Court should issue an order removing Todd as
11 Trustee and directing the appointment of a neutral, institutional Trustee, until the resolution of
12 the claims set forth in this Counter-Petition.

13 64. Todd continues to use his powers as Trustee to benefit himself and disadvantage all other
14 beneficiaries. It would cause irreparable harm to the beneficiaries if Todd were to remain as
15 Trustee and use Issue Trust assets to pay for defending his unreasonable actions that were taken
16 in bad faith.

17 **VIII. PRAYER FOR RELIEF**

18 WHEREFORE, Stanley Jaksick requests that the Court enter orders and judgment for the
19 following relief:

- 20 A. For the removal of Todd Jaksick as Trustee of the Issue Trust and the appointment
21 of a temporary trustee of the Issue Trust;
- 22 B. For the restraint of Todd Jaksick's ability to use Issue Trust assets to defend his
23 actions in this litigation;
- 24 C. For an award of damages in an amount to be proven at trial in excess of fifteen-
25 thousand dollars;
- 26 D. For an award of punitive and statutory damages;
- 27 E. For surcharge of Todd Jaksick and recovery from Todd Jaksick for all actual,
28 compensatory damages, including consequential damages and punitive damages;

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- F. For Todd Jaksick to disgorge any trustee fees or assets received from the Issue Trust and to return all property obtained from the Issue Trust;
- G. For proper accountings of the Issue Trust;
- H. For an award of pre- and post-judgment interest until the judgment is paid in full;
- I. For an award of attorney's fees and costs of suit; and
- J. For such other and further relief as this Court deems just and proper.

Affirmation

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

McDONALD CARANO

By /s/ Adam Hosmer-Henner
Adam Hosmer-Henner, Esq.
100 West. Liberty Street, 10th Floor
Reno, Nevada 89501

*Attorney for Stanley Jaksick, in his individual capacity
and as beneficiary of the SSJ's Issue Trust*

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VERIFICATION

I, Stanley Jaksick, have read the Amended Objection to the Petition for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters; Counter-Petition re: Issue Trust and know its contents, which are true to my own knowledge except for those matters stated on my information and believe, and as to those matters, I believe them to be true.

I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is true and correct.

DATED: 3-23-18

By 
Stanley Jaksick

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO and that on March 23, 2018, I served the foregoing on the parties in said case through the Court's e-filing system as follows:

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503

Donald Lattin, Esq.
Robert LeGoy, Esq.
Brian C. McQuaid, Esq.
Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

Philip L. Kreitlein, Esq.
470 E. Plumb Lane, Ste. 310
Reno, NV 89502

Mark J. Connot, Esq.
Fox Rothschild, LLP
1980 Festival Plaza Drive, # 700
Las Vegas, NV 89135

In addition, copies were mailed to the following addressed as follows:

Todd Jaksick
c/o Maupin, Cox & Legoy
4785 Caughlin Parkway
Reno, Nevada 89519

Wendy Jaksick
c/o R. Kevin Spencer
Spencer Law, P.C.
500 N. Akard Street, Ste. 2150
Dallas, Texas 75201

Sawyer Jaksick
c/o Lisa Jaksick
5235 Bellazza Court
Reno, Nevada 89519

Amanda Jaksick
c/o Dawn E. Jaksick
6220 Rouge Drive
Reno, Nevada 89511

Benjamin Jaksick
c/o Dawn E. Jaksick
6220 Rouge Drive
Reno, Nevada 89511

Sydney Jaksick
c/o Lisa Jaksick
5235 Bellazza Court
Reno, Nevada 89519

Regan Jaksick
c/o Lisa Jaksick
5235 Bellazza Court
Reno, Nevada 89519

Alexi Smrt
11 Bahama Court
Mansfield, Texas 76063

Luke Jaksick
c/o Wendy A. Jaksick
c/o R. Kevin Spencer
Spencer Law, P.C.
500 N. Akard Street, Ste. 2150
Dallas, Texas 75201

Kevin Riley
Rossman MacDonld & Benetti, CPA's
3838 Watt Avenue, Suite E-500
Sacramento, California 95821

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Michael Kemmel, Esq.
Hoy Chrissinger Kimmel Vallas
50 W. Liberty Street, Ste. 840
Reno, Nevada 98521

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: March 23, 2018.

By 
Jill Nelson

4822-0762-3007, v. 5

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INDEX OF EXHIBITS

EXHIBIT #	DESCRIPTION	NUMBER OF PAGES
1	Real Estate Option Agreement, dated November 1, 2010	5
2	Valuation of 1011 Lakeshore Drive, Incline Village, NV	2
3	Notice of Assignment of Option to Purchase Concerning Real Property	4

4822-0762-3007, v. 5

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

FILED
Electronically
PR17-00445
2018-03-23 06:29:12 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6594539 : csulezic

Exhibit 1

Exhibit 1

REAL ESTATE OPTION AGREEMENT

THIS OPTION AGREEMENT is made as of November 1, 2010, by and between Samuel S. Jaksick, Jr., Trustee of the Samuel S. Jaksick, Jr. Family Trust ("Seller") and Incline TSS Ltd, a Nevada limited liability company ("Buyer"), with reference to the following facts:

RECITALS

A. WHEREAS, on or about July, 2010, the Seller obtained an appraisal on his home located at 1011 Lakeshore Blvd., Incline Village, Washoe County, Nevada ("Property") in order to sell the Property.

B. WHEREAS, the appraised value of the Property is Six and One Half Million Dollars (\$6,500,000.00).

C. WHEREAS, the Buyer approached the Seller and requested Seller to sell the Property to the Buyer pursuant to this Option Agreement.

D. WHEREAS, Buyer is willing to pay Seller the amount of Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000.00), an amount in excess of the appraised value since it is the Buyer's desire to retain the Property for future generations, if possible.

E. WHEREAS, the Parties acknowledge that Seller owes approximately Six Million Three Hundred Thousand Dollars (\$6,300,000.00) to Bank of America, the secured lender on the Property and that the equity in the Property is approximately Two Hundred Thousand Dollars (\$200,000.00).

F. WHEREAS, Buyer acknowledges and agrees the sales proceeds will be used to satisfy the debt on the Property when it becomes due if the debt cannot otherwise be assumed by the Buyer.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree as follows:

1. Option Consideration. This Option is granted to Purchaser for the following consideration:

(1) The Buyer shall pay a Fifty Thousand Dollars (\$50,000.00) initial option payment to Seller for the Option on or before February 28, 2011. Buyer also agrees to make an annual payments to Seller in the amount of Fifty Thousand Dollars (\$50,000.00) commencing on or before January 15, 2012 and on January 15th of each year thereafter until the Option is exercised. The initial deposit and subsequent annual payments are referred to herein as "Deposits".

(2) The purchase price for the Property is Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000.00) ("Purchase Price") less the Deposits. The Deposits shall be applied to the Purchase Price. Should Buyer exercise the Option as set forth hereinafter, Buyer agrees that it shall purchase the Property for the sum of Seven Million Two Hundred Fifty Thousand Dollars (\$7,250,000.00) less the Deposits. Seller and Buyer agree the Purchase Price less the Deposits may be

paid by delivery by Buyer to Seller of an unsecured promissory note within ten (10) days of the exercise of the Option subject to the Seller's and lender's approval and the Buyer's note to Seller will be reduced by the amount of the lender's debt assumed by the Buyer. The note will include a ten (10) year maturity date, interest only payments at two and one quarter percent (2.25%) per annum. A copy of the unsecured note is attached as **Exhibit A**. Seller and Buyer acknowledge and agree that the Deposit represents fair value for the option consideration.

2. **Notice of Exercise.** The Option may be exercised by Buyer, only if Buyer delivers his notice of exercise by letter to Seller on or before January 15, 2017, otherwise the Option shall expire and the Deposits shall be forfeited. A copy of the Notice of Exercise is attached as **Exhibit B**.

3. **Expiration of Option.** This Option shall expire on midnight on January 15, 2017.

4. **Assignment.** Purchaser may assign its right, title and interest in this Option. The Seller shall not assign, transfer or convey or further encumber the Property.

5. **Title.** Seller shall convey to Buyer or its nominee, good and marketable title to the Property herein described, free and clear of all liens and encumbrances unless otherwise agreed to by Buyer except the Bank of America lien which will be paid off on or assumed at the closing. Conveyance of title to Buyer or its nominee, shall be executed, or completed within sixty (60) days after exercise of the Option. During such period, title may be examined by Buyer or its nominee, by any method selected and Buyer may cancel the purchase of the Property and Seller shall return the Deposits received in the event Seller is in breach of this Section.

6. **Prorations.** All debt payments, taxes and insurance for the year in which the sale under this Agreement is consummated, shall be prorated equally between the Parties as of the date the closing and the date the Property is acquired.

7. **Closing Costs.** All closing costs, including escrow fees, transfer fees, recording fees and document preparation fees shall be borne by Buyer unless otherwise provided herein.

8. **Documentation.** Seller and Buyer agree to execute any and all documents necessary to effectuate the terms and conditions of this Option and the sale and transfer of the Property pursuant to the terms of the Agreement, including any necessary and applicable escrow instructions, agreements and deeds and Seller shall specifically execute and deliver to Buyer a grant, bargain and sale deed conveying all right, title and interest in the Property to Buyer or its designee.

9. **Governing Law.** This Agreement shall be governed and interpreted according to the laws of the State of Nevada. Jurisdiction and venue with respect to any dispute arising out of this Agreement shall be in Washoe County, State of Nevada.

10. **Real Estate Commissions.** Both Seller and Buyer represent and warrant to the other that neither party has dealt with any real estate office, broker or salesperson in the handling of this transaction and that no real estate commission is due and owing to any party.

11. **Successors and Assigns.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

12. **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

13. **Waiver.** Waiver by either party hereto of any term, condition or covenant and the performance of same shall not be deemed a waiver of any subsequent or other term, condition or covenant. No condition, term or covenant shall be deemed waived unless such waiver is in writing and signed by the parties hereto.

14. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties and shall supercede all prior correspondence, agreements and understandings, both verbal and written.

15. **Modifications.** This Agreement may not be amended or modified unless such amendment or modification is in writing and signed by both parties hereto.

16. **Memorandum of Option.** Seller agrees Buyer may record a Memorandum of Option substantially in the form attached as **Exhibit C**.

17. **Notice.** All notices, requests, demands, and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given (1) when hand delivered to the other party; or (2) when received when sent by telex or facsimile at the address and number set forth below (provided, however, that notices given by facsimile shall not be effective unless either (a) a duplicate copy of such facsimile notice is promptly addressed to the parties as set forth below, or (b) the receiving party delivers a written confirmation of receipt for such notice either by facsimile or any other method permitted under this paragraph; additionally, any notice given by telex or facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day); or (3) three business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; for (4) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

To Purchaser: Incline TSS Ltd
 4005 Quail Rock Lane
 Reno, Nevada 89511

To Seller: Samuel S. Jaksick, Jr.
4005 Quail Rock Lane
Reno, Nevada 89511

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

18. **Time.** Time is of the essence of every provision herein contained.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original.

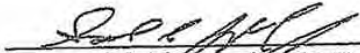
20. **Attorneys' Fees.** If either party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration or mediation for any relief against the other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advance written notice by such Action and/or enforcing any judgment, order, ruling or award (collectively, a Decision) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any Decision entered in such Action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and costs on the request of either party. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) postjudgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. "Prevailing Party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached or who obtains substantially the relief sought by it.

21. **General Interpretation.** The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption of rule requiring construction against the party causing such instrument or any portion thereof to be drafted or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.

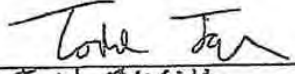
22. **Headings and Labels.** Article, section and subsection titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

IN WITNESS WHEREOF, this Agreement was entered into and executed the first day above written, in Washoe County, State of Nevada.

SELLER:


Samuel S. Jaksick, Jr., TRUSTEE
Samuel S. Jaksick, Jr. Family Trust

PURCHASER: Incline TSS Ltd

By: 
Name: Todd JAKSICK
Title: MANAGER

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2018-03-23 06:29:12 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6594539 : csulezic

Exhibit 2

Exhibit 2



3/22/10

March 22, 2010

Samuel S. Jaksick Jr.
Stan Jaksick
4005 Quail Rock Lane
Reno, NV 89511

Re.: 1011 Lakeshore Drive, Incline Village, NV

Dear Sam and Stan:

Thank you for meeting with me recently to give you an idea of available lake front homes that may be of interest to you and your family.

When we met you asked for an opinion of value for your Lakeshore home here in Incline Village, and I have reviewed the available data to determine a price range that would be applicable should you decide to market your property.

I need to state first, that there is no property currently on the market and none have sold in the most recent time that would compare to your own.

There was a sale of 1.25 acres on Pine Cone Circle, sold on 9-8-09 for \$8,985,000. And that sale was for 85.57% of asking price. Asking price was \$10,500,000.

The most comparable properties that have sold are East of 1013 Lakeshore (Erickson) and the first one to sell was 1019 Lakeshore, 2.02 acres, sold March of 2006 for \$14,000,000.

1021 Lakeshore, 2.02 acres, sold September of 2007 for \$16,000,000.

1029 Lakeshore, 4.2 acres, sold January 2008, for \$28,000,000., List Price was \$32,500,000.

Sales Price was appr. 86% of asking price. This new owner over the years acquired parcels totaling between 13 and 14 acres.

There is one property, 573 Lakeshore, consisting of two parcels, on the most Westerly part of Lakeshore Drive, 4.7 acres on rocky shoreline, listed for \$12,000,000. currently in escrow. There is no sales information available at this time, and I would not use it as a direct comparative.

Strictly averaging sales prices for the acreages that are comparable to your own property, the average sales price of those sales would suggest a sales price of appr. \$13,000,000. for 1011 Lakeshore. Considering that sales prices seem to be appr. 85/86% of asking prices that would suggest an asking price of up to \$15,400,000. Of course, you have to take into consideration the market fluctuation from the top prices then to today. This is meant to be a guideline and it is what the sales records do support.

Premier Properties of Lake Tahoe
Po. Box 3815, Incline Village, NV .89450
Ph: 775-833-0444 or toll free 800-560-1544
Fax: 775-833-1999

Email: ina@premiertahoe.com ; website: www.premiertahoe.com

AA 0073

A second request you had made in our meeting was for information for rental income for the year.

I have looked into the various luxury rentals and none suggest that they are able to rent the properties year round. For those types of rentals, the year round rentals, it is possible to rent for a period of time for \$15,000. per month. It would almost depend on luck or unusual circumstance.

On a more short term basis, prices vary a great deal for high end luxury homes with pier, buoy, 5000sq.ft. and more. Some produce income of up to 50K a week Christmas, Fourth of July and others, more modest homes produce appr. \$20,000. for a month in the off season and up to \$35,000. in the height of summer.

It would not be reliable income, in other words, to consistently obtain \$200,000. for a year is extremely difficult. There are homes, which gross income averaging between 130K to 150K per year.

This type of income, the rental income, short or long term, by the month, week, and weekends is however, very possible, and I would be pleased to assist. It just may not be in the range of 200K per year. Of course, we would be happy to engage the other rental companies into this process to make sure that we maximize the potential.

You have an ideal location, with the Incline Village facilities available to families, and the Hyatt so close, and if this is what you decide to do, I am positive we can be successful on your behalf.

I would want to prepare a proposal for you after viewing the property again to include preparation, advertising and more.

I trust that this is useful information for you and look forward to talking with you again in the very near future.

Please, know that I always appreciate the opportunity to do business with you.

Sincerely,

Premier Properties of Lake Tahoe

Ina Haupt
Broker

Encls.

Premier Properties of Lake Tahoe
Po. Box 3815. Incline Village, NV .89450
Ph: 775-833-0444 or toll free 800-560-1544
Fax: 775-833-1999

Email: ina@premiertahoe.com ; website: www.premiertahoe.com

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Jacqueline Bryant
Clerk of the Court
Transaction # 6594539 : csulezic

Exhibit 3

Exhibit 3

DOC # 4087048

02/23/2012 03:13:29 PM
Requested By
RIVERSIDE DRIVE PROFESSIONAL
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: \$17.00 RPTT: \$0.00
Page 1 of 4



APN 130-230-34

Recording Requested by:
Name: Pierre A. Hascheff
Address: 1029 Riverside Drive
City/State/Zip: Reno NV 89503

When Recorded Mail to:
Name: Pierre A. Hascheff
Address: 1029 Riverside Drive
City/State/Zip: Reno, Nevada 89503

Mail Tax Statement to Grantee:
Name:
Address:
City/State/Zip:

for Recorders Use Only

NOTICE OF ASSIGNMENT OF OPTION TO PURCHASE CONCERNING REAL PROPERTY

(Title of Document)

Please complete Affirmation Statement below:

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

OR

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: NRS 239B.030

(State specific law)

Nanette Childers _____ N/A
Signature Title

Nanette Childers _____
Print Signature

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink. (Additional recording fee applies)

APN 130-230-34

Recording requested by and
after recording return to:

Pierre Hascheff
1029 Riverside Drive
Reno, Nevada 89503

**NOTICE OF ASSIGNMENT OF OPTION TO PURCHASE
CONCERNING REAL PROPERTY**

NOTICE IS HEREBY GIVEN that Samuel S. Jaksick, Jr., Trustee of the Samuel S. Jaksick, Jr. Family Trust, as optionor ("Sam"), on December 5, 2011, assigned all its right, title and interest to SSJ LLC, a Nevada limited liability company as optionee ("SSJ"), for valuable consideration, under and pursuant to a certain Option to Purchase and Escrow Instructions, dated November 1, 2011 ("Option"), to purchase certain real property located within the County of Washoe, State of Nevada more specifically described on Exhibit A attached hereto.

This Memorandum of Assignment of Option is prepared for the purpose of providing notice of the Options and the other terms of the Agreement.

Nothing contained in this Memorandum shall be deemed to modify, amend or alter any of the terms or conditions of the Agreement, or otherwise affect the rights and obligations of the parties under the Option. In the event of any inconsistency between the terms of this Memorandum and the terms of the Option, the terms of the Option shall control.

This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed by their duly authorized representatives as of the date first above written.

ASSIGNOR:
Samuel S. Jaksick, Jr. Family Trust

ASSIGNEE:
SSJ LLC

By: [Signature]
Samuel S. Jaksick, Jr., Trustee

By: [Signature]
Name: Todd Jaksick, Manager

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

On this 16 day of February, 2012, before me, Notary Public, in and for said county and state personally appeared Samuel J. Jaksick, Jr., Trustee of the Samuel S. Jaksick, Jr. Family Trust, known to me to be the person who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

[Signature]
Notary Public



STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

On this 16 day of Feb., 2012, before me, Notary Public, in and for said county and state personally appeared Todd Jaksick, known to me to be the person who executed the foregoing Memorandum of Option to Purchase Concerning Real Property and who acknowledged to me that he executed the same in his capacity as Manager of SSJ LLC, for and on behalf of said limited liability company, and further that he did so freely and voluntarily and for the uses and purposes therein mentioned.

[Signature]
Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

PARCEL 1:

All that real property, being a portion of Section 22, T.16N., R.18E., M.D.B.&M., Washoe County, State of Nevada, more particularly described as follows:

Beginning at the Northeast corner of the Jaksick property as shown on Record of Survey Map 3405, filed in the office of the County Recorder of said County on April 6, 1988, File No. 2197148;
Thence S 19°43'00" W 758.91 feet;
Thence N 54°37'41" W 106.55 feet,
Thence N 19°43'00" E 770.15 feet;
Thence S 70°17'00" E 102.60 feet to the Point of Beginning of this description.

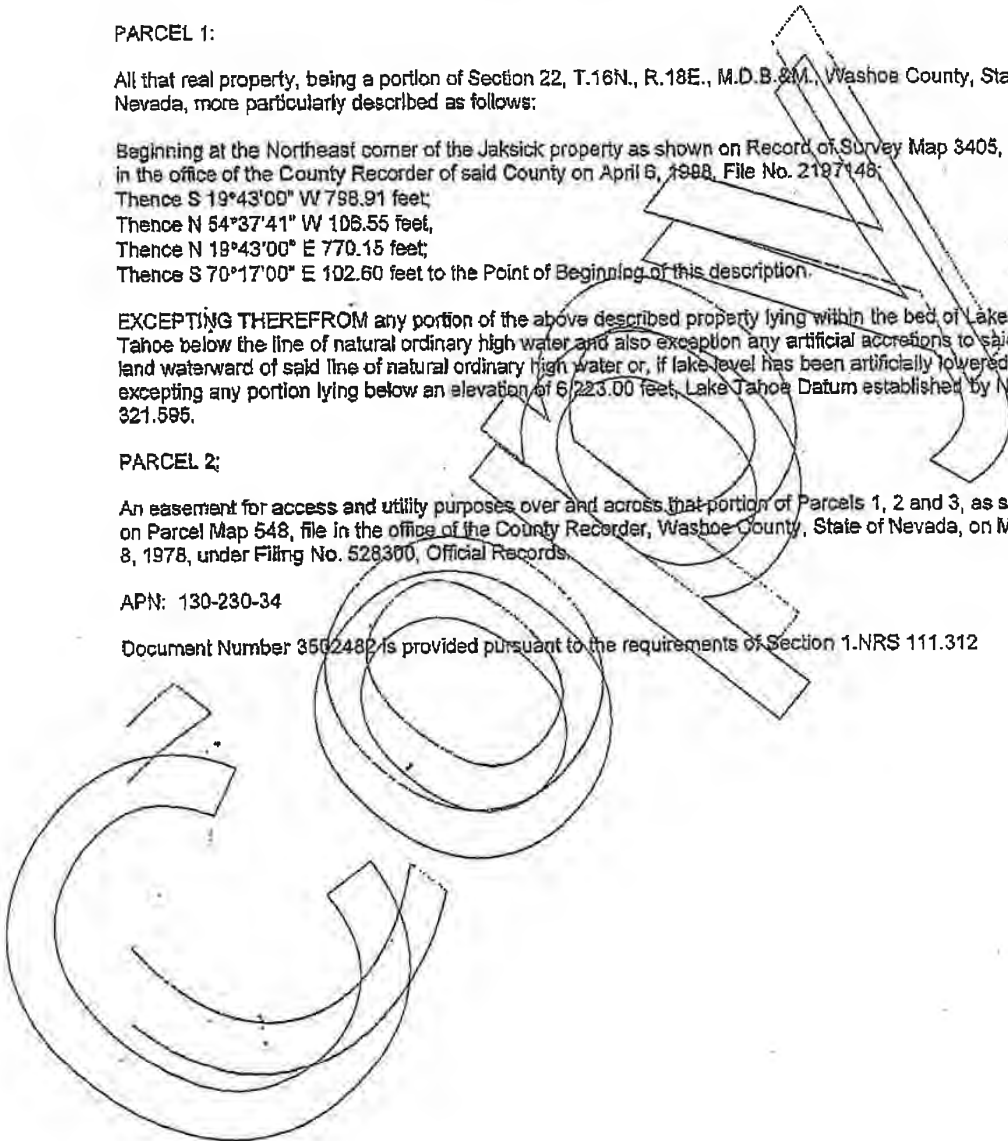
EXCEPTING THEREFROM any portion of the above described property lying within the bed of Lake Tahoe below the line of natural ordinary high water and also exception any artificial accretions to said land waterward of said line of natural ordinary high water or, if lake level has been artificially lowered, excepting any portion lying below an elevation of 6223.00 feet, Lake Tahoe Datum established by NRS 321.595.

PARCEL 2:

An easement for access and utility purposes over and across that portion of Parcels 1, 2 and 3, as shown on Parcel Map 548, file in the office of the County Recorder, Washoe County, State of Nevada, on March 8, 1978, under Filing No. 528300, Official Records.

APN: 130-230-34

Document Number 3502482 is provided pursuant to the requirements of Section 1.NRS 111.312



1 Code #4185
SUNSHINE LITIGATION SERVICES
2 151 County Estates Circle
Reno, Nevada 89511
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

9
10 In the Matter of the Administration of the Case No. PR17-00445
PR17-00446
11 SSJ's ISSUE TRUST Dept No. 15

12 _____ /
13 In the Matter of the
administration of the
14 SAMUEL S. JAKSICK, JR.,
FAMILY TRUST
15 _____ /

16
17
18 TRANSCRIPT OF PROCEEDINGS
19 JURY TRIAL - DAY 6
20 FEBRUARY 22, 2019
21 RENO, NEVADA

22
23
24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP
25 JOB NO. 530283

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A P P E A R A N C E S

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A P P E A R A N C E S
(Continued)

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I N D E X

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
Exhibit 316	Financial Risk; Demonstrative Exhibit	--	32
Exhibit 318FF	Photograph	--	9
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Exhibit 327	Demonstrative Chart, Professionals Providing Advice to Todd	--	33
Exhibit 495	Correspondence Dated 8/16/14 from Wendy Jaksick to Todd Jaksick, Sam Jaksick, and Kevin Riley, Re: Wendy Jaksick 1995 Insurance Note	--	14

1 RENO, NEVADA, FRIDAY, FEBRUARY 22, 2019, 8:29 A.M.

2 -o0o-

3 (Whereupon the following proceedings
4 were outside the presence of the jury.)

5 THE COURT: Are we going to continue with Mr. Todd
6 until Mr. Hascheff appears?

7 MR. ROBISON: Yeah. He is scheduled to be here at
8 9:00.

9 THE COURT: 9:00. Okay. Great. Let's have our
10 jury, please.

11 (Whereupon the following proceedings
12 were in the presence of the jury.)

13 THE COURT: Good morning. Counsel, you may continue
14 your examination.

15

16 TODD JAKSICK,
17 called as a witness, having been previously sworn,
18 testified as follows:

19

20 CROSS EXAMINATION

21 BY MR. ROBISON:

22 Q Good morning, sir.

23 A Good morning.

24 Q Please tell the Court and jury how old you are.

25 A 48.

1 Q And are you married?

2 A Yes, sir.

3 Q To whom?

4 A My wife Dawn.

5 Q How long have you and Dawn been married?

6 A 21 years.

7 Q Do you have any children?

8 A Yes, I do.

9 Q Their names, please.

10 A Ben and Amanda.

11 Q And their ages?

12 A Ben is 18 and Amanda is 16.

13 Q How long have you resided in Washoe County?

14 A My whole life.

15 Q Where did you go to school?

16 A Elementary or --

17 Q Just tell us what your educational background is,
18 what schools you went to.

19 A Okay. I went to Jessie Beck here, and then I went to
20 Swope Middle School, and then went to Reno High School, and
21 went down to Chico Butte College for a year after I got out of
22 high school, and then I came back to UNR and TMCC.

23 Q Sir, you have testified about a considerable number
24 of transactions, loans, deals. Where did you learn all of
25 this?

1 A From my father and being around my father and doing
2 transactions and things with him and him explaining all of the
3 deals that he has done in the past, and then actually having
4 real life experiences with him and actually going out and
5 acquiring properties, as well as my dad had me take a real
6 estate class to go in and learn about land and water rights
7 transactions, some stuff like that, so I did that.

8 Q When was that?

9 A That was probably around '98. '97, '98.

10 Q And did you actually negotiate with, for example,
11 bankers and sellers of properties during your experiences with
12 your father?

13 A Yes.

14 Q Tell us a little bit about that, please.

15 A That's pretty much what we do on a daily basis.
16 That's how we make our living is being able to go out and
17 acquire pieces of property and make different transactions and
18 buy and sale land, and so we are constantly doing that with,
19 negotiating with people, the lenders.

20 Q All right. Your father died on April 21st, 2013?

21 A Correct.

22 Q Correct, sir? Prior to your father's death, who was
23 making the decisions and calling the shots?

24 A Dad.

25 Q Why is that?

1 A Just that's just the way it worked. I mean, I had
2 the utmost respect for dad and our relationship, and
3 everything we did together it was always dad was the one that
4 was making the decisions on the transactions and the business
5 things that we did, but he would send me out to work on deals
6 for him on his behalf and the family's behalf, and but when it
7 came down to real decisionmaking it was dad making those
8 decisions before he passed away.

9 Q Did you contest or dispute decisions your father made
10 prior to his passing?

11 A No.

12 Q Why?

13 A Because he, he always knew the right answer.

14 Q All right. Before you is a book of exhibits. I
15 would ask you to look at Exhibit 318FF. What is that, sir?

16 A 318FF? It's a picture.

17 Q Is it a true and accurate depiction of you and your
18 father?

19 A This, no. This is actually a picture of dad and Ben
20 and Amanda and dad's dog.

21 Q Did your father spend time with your kids?

22 A Absolutely, yes.

23 MR. ROBISON: I would ask that be admitted and shown
24 to the jury.

25 MR. SPENCER: No objection, Your Honor.

1 THE COURT: It is admitted. You may publish it to
2 the jury.

3 THE CLERK: Thank you.

4

5 (Exhibit Number 318FF was admitted into evidence.)

6

7 BY MR. ROBISON:

8 Q Can you tell us where that photograph was taken?

9 A That's up at Lake Tahoe at dad's house at the lake.

10 Q And based upon the size of your children, can you
11 tell us approximately when that photograph was taken?

12 A Oh, probably maybe 2008 or so.

13 Q And does that depict your children with your father?

14 A Yes. That's Amanda on the left and then Ben and
15 obviously dad and, and his dog.

16 Q What was his dog's name?

17 A This dog here is Binka, and his newer dog is the
18 same, it's Ghita.

19 Q Who took care of Ghita after your father's passing?

20 A My -- I still do have Ghita.

21 Q And what does photograph 318GG depict, please? It's
22 in the book, not on the screen yet.

23 A Okay. Yeah, it's another family photo of dad and
24 Dawn and my kids, myself, and then Dawn's dad.

25 Q True and accurate depiction of the family at that

1 point in time?

2 A Yes.

3 MR. ROBISON: I would ask it be admitted and
4 published to the jury.

5 MR. SPENCER: No objection.

6 THE COURT: 318GG is admitted, Ms. Clerk, and may be
7 published.

8 THE CLERK: Thank you.

9

10 (Exhibit Number 318GG was admitted into evidence.)

11

12 BY MR. ROBISON:

13 Q Identify the persons depicted in that photograph,
14 please.

15 A Starting on the left is myself, and then Ben, and
16 then Dawn's dad, and Amanda, and then my wife Dawn, and then
17 dad's in the close forefront picture.

18 Q And where is that photograph taken?

19 A At the roof, on top of the roof at the ranch.

20 Q And when you say the ranch, we have heard --

21 A In Eagleville.

22 Q I'm sorry?

23 A In Eagleville.

24 Q All right. Is that the ranch that has been
25 characterized as a special place for your father?

1 A Yes.

2 Q And why was that a special place?

3 A It's just his favorite place on earth. He just loves
4 Eagleville and 49 Mountain area and that. He just loves being
5 at the ranch and around --

6 Q Did you --

7 A -- that area.

8 Q I'm sorry, did you and your family spend a
9 considerable amount of time with your father at the ranch?

10 A Yes, absolutely. I would say that we would, you
11 know, spend at least from the time the kids were little, I
12 would say at least once a month we would spend the weekend up
13 there, and when it got towards hunting season it could be two
14 to three times a month we would go, two or three weekends of
15 the month we would all go up together.

16 Q Let me change topics, sir. After your father's
17 passing, you woke up and were charged with administering that
18 estate, your father's estate, with your brother, correct?

19 A Correct.

20 Q Did you see that coming?

21 A No.

22 Q Was your father's passing quite a shock and a
23 surprise?

24 A Yes. It was an accident.

25 Q Tell the jury, if you could, please, how you

1 acclimated to the fact that your father, the decisionmaker, is
2 gone and now it's on your shoulders and your brother's
3 shoulders.

4 A I mean, it absolutely has been very difficult
5 obviously trying to jump into the magnitude of all of the
6 things that dad had going on, but luckily Stan and I had a lot
7 of familiarity working with the companies and stuff with dad
8 and we were working with the family, so it wasn't like we were
9 starting from ground zero.

10 We had a tremendous amount of institutional knowledge
11 in each one of the companies and the entities, and then with
12 the support of Kevin Riley, the accountant, who has been
13 adamantly familiar with all of dad's and the family's finances
14 for, you know, 10, 15 years prior to dad passing, we made a
15 really good team, a really good team of being able to jump in
16 and do what we needed to do.

17 Q When was Mr. Riley appointed co-trustee of your
18 father's Family Trust?

19 A I think dad put Kevin Riley as co-trustee in December
20 of 2012. Dad had another partner he was working with at the
21 same law firm, both of them --

22 Q Accounting firm?

23 A Accounting firm.

24 Q Thank you.

25 A And that was Ray Benetti, but really Kevin had been

1 working on the family stuff for a lot longer, so Kevin was a
2 better fit.

3 Q And by that time Mr. Riley had been working on your
4 father's estate for many years, correct, sir?

5 A Yes, sir.

6 Q Do you know why Wendy was not designated in any way
7 as a trustee or co-trustee of the Family Trust?

8 A Dad just didn't want to have Wendy involved in the
9 businesses. On the weekends every once in awhile for horse
10 shows and baseball and stuff, Wendy and dad did things that
11 they enjoyed to do, but he did not involve her in any of the
12 business operations or want her to be a trustee because of her
13 past financial difficult situations and other concerns he had.

14 Q Did you after your father's passing help provide for
15 financial support for your sister?

16 A Yes.

17 Q Has she written you basically and acknowledged that?

18 A I'm sorry, I didn't understand the question.

19 Q Has she written, authored correspondence to you
20 basically acknowledging the fact that you have provided for
21 her support?

22 A It's possible.

23 MR. ROBISON: Your Honor, pursuant to stipulation I
24 would ask that 495 be admitted and displayed to the jury.

25 THE COURT: 495 is admitted.

1 THE CLERK: Thank you.

2

3 (Exhibit Number 495 was admitted into evidence.)

4

5 BY MR. ROBISON:

6 Q And can we blow up at least the third paragraph,
7 Mark. That would be the third. Do you recall this letter,
8 sir?

9 And, actually, I wanted the fourth paragraph, Mark, I
10 apologize. Thank you.

11 Would you read that to the jury, please?

12 A Sure. "Since dad's death, Todd has used this note as
13 a way to pay me monthly as well as pay for my rent at the
14 office, my utilities, and insurance. I am waiting on an exact
15 accounting, but roughly \$8,000 in medical insurance, \$8,100 in
16 rent for the office, \$2,500 in utilities, various
17 distributions of approximately \$10,000, and \$30,000 payout in
18 monthly payments of \$3,000. Today's approximate value of the
19 note is \$215,000."

20 Q Are you aware of the note to which your sister is
21 referring to in that letter that she sent?

22 A Yeah. I'm pretty sure she would be talking about a
23 life insurance note, that when dad had some life insurance
24 earlier on and he cashed it out, and I think he got about
25 \$700,000 in a cashout value and that dad gave Stan, Wendy, and

1 Todd each a note for one-third of that \$700,000.

2 Q Let me break that up a bit. That's a large bite.

3 A Okay. Sorry.

4 Q So your father had a life insurance policy on his
5 life?

6 A Previously, and he cashed it in.

7 Q So what did he do with the money that he got from
8 cashing in the life policy?

9 A I don't recall exactly what he did with it, but he
10 gave us notes in replacement.

11 Q But who were the beneficiaries of the life policy?

12 A Oh, okay. Stan, Wendy, and myself.

13 Q So when your father cashed it out, did you and Stan
14 and Wendy get the distribution?

15 A No.

16 Q What did he do, then? Did he take the money
17 elsewhere?

18 A Yes.

19 Q And what did he do to make up for the fact that you
20 did not get the proceeds from that life insurance policy?

21 A We didn't expect him to do anything, but he did a
22 note saying that I will owe you --

23 Q What is a note?

24 A A note is basically a document that says in, I will
25 pay you your one-third of that note in the future, and I think

1 he was going to pay it back in like 2017.

2 Q All right. Well, he passed away, so what became the
3 effect, then, of the promissory note that he made for you and
4 Stan and Wendy?

5 A It was suggested by counsel that we file a creditor's
6 claim on behalf of those notes.

7 Q And did you help Wendy with that creditor's claim
8 that she made?

9 A I did.

10 Q And is that the payments that she is receiving as a
11 result of you helping her process that creditor claim?

12 A Yes.

13 Q All right. Now, did you receive money from the
14 insurance note?

15 A Stan and I haven't received any money on the
16 insurance note, no.

17 Q Therefore, is Wendy the only recipient of this
18 \$200,000 that was designed by your father to make up for the
19 life insurance proceeds?

20 A Yes.

21 Q Why is that?

22 A I think I mentioned yesterday, we were trying to
23 figure out ways to continue to get money to Wendy, and this is
24 one of the ways that we figured out a way to get money to
25 Wendy on a monthly basis was to keep getting her cash so that,

1 and apply it towards this note so she would have funds to be
2 able to live and --

3 Q Was she gainfully employed at this time?

4 A I'm not exactly sure. At one point in time she was
5 doing some work at a horse training facility off and on, and
6 Stan and I mentioned that to her that, you know, what are you
7 thinking about doing for some employment? And one of the
8 things that interested her was becoming an EMT, so Stan and I
9 figured out a way to pay for EMT training so that she could
10 get certified and become an EMT.

11 Q To your knowledge, did she utilize those funds to
12 become certified?

13 A My understanding is, yes, that's what we heard from
14 the law firm down in Las Vegas that she did get certified.

15 Q Do you know whether thereafter she obtained any
16 employment as an EMT or a paramedic or anything of that
17 nature?

18 A Yeah. It's my understanding she was working at a
19 hospital or somewhere down in Texas doing that very thing.

20 Q All right. And in addition to her then receiving her
21 salary from the EMT employment, you continued to fund her
22 needs?

23 A Up until the point where we had a discussion on the
24 phone, which there was a letter shown yesterday that Mr. --
25 Maupin, Cox & LeGoy, Mr. Lattin had written, went to the point

1 where Kevin Riley, there was a phone call between --

2 Q Let me break that down. Excuse me for interrupting.

3 A Okay.

4 Q Are you referring to the letter Mr. Lattin wrote
5 which sent to Wendy a \$5,000 payment that suggested it might
6 be her last?

7 A Yes.

8 Q And that \$5,000, was that part of the insurance note
9 that Wendy was drawing down on from the Family Trust?

10 A I guess you could categorize it there, but there was,
11 there was -- this note paid in full of about the \$215,000,
12 plus we had paid approximately another \$250,000 on top of
13 that, so I don't know if it was applied towards the insurance
14 note or other payments.

15 Q After the insurance note is paid down, the proceeds
16 going to Wendy, did you and your brother continue to support
17 her?

18 A Yeah. We, over a period of time there has been about
19 another \$250,000 or more that's been given to her to keep
20 income coming in.

21 Q And were those disbursements from the Family Trust
22 even though the debt has not been paid off?

23 A A portion of it was. Then it was a recommendation by
24 counsel and the family accountant that we should find other
25 means to do that, so we found other avenues and places where

1 funds could come from so we could continue to keep funding
2 Wendy.

3 Q Other places and other avenues, do you mean by that
4 sources of money for Wendy other than the Family Trust?

5 A Yes.

6 Q For example, where?

7 A There is a company called Lakeridge Golf Course, and
8 Montreux Golf Club, and Jaksick Family, those three entities
9 Stan was able to figure out, it's an entity that we each own a
10 third of, but Stan was able to do some budgeting and allocate
11 some additional funds in and through those entities to be able
12 to get more funds to Wendy.

13 Q All right. And I showed in opening statement for
14 demonstrative purposes Exhibit 315. Are you familiar with
15 these disbursements that were made to Wendy over the last five
16 or six years? Please blow up the lower box.

17 A I'm assuming, yeah, that sounds right.

18 Q So was, as far as you know, was the insurance paid
19 for Luke?

20 A Luke's health insurance?

21 Q Yes, sir.

22 A Yes. What I recall is Luke had health insurance, and
23 then we got, I remember getting an e-mail from Wendy like an
24 emergency about Luke's health insurance, and Stan, Mike, and I
25 as the co-trustees talked about getting Luke health insurance.

1 We all agreed to doing that. We gave Kevin Riley the approval
2 to go ahead and get Luke's health insurance.

3 Kevin Riley, our understanding, he actually made that
4 payment and Luke did have health insurance and that it was a
5 reoccurring payment on the insurance, and I don't know whether
6 it has lapsed or not, but we had given approval to pay Luke's
7 health insurance, yes.

8 Q Has the trust paid your insurance?

9 A No.

10 Q Has the trust paid Stan's insurance?

11 A No.

12 Q Has the trust paid your kids' tuition or educational
13 expenses?

14 A No.

15 Q Has the trust paid the educational expenses for
16 Stan's kids?

17 A No.

18 Q Has the trust paid for vacations for you?

19 A No.

20 Q Has the trust paid, as far as you know, vacations for
21 Stan?

22 A No.

23 Q Has the trust paid your living expenses?

24 A No. Stan and I did get some fees associated with
25 being trustees for a period of time, so.

1 Q But your father provided for that, did he not?

2 A That's correct, yes.

3 Q And did anybody complain with respect to you and Stan
4 receiving trustee's fees for managing this very complicated
5 estate?

6 A Not that I'm aware of.

7 Q Did Luke get cash payments?

8 A Not directly like handed cash, but through Wendy we
9 were assuming Wendy was always taking care of Luke.

10 Q And was the rent paid, as far as you know, for Wendy
11 through these other sources of money?

12 A Up until a point of time that was our understanding
13 was that she was using funds to pay rent, and sometimes we
14 would pay rent directly for her, but, like I said yesterday,
15 when she went down to Texas and she had the additional
16 attorneys, we told Wendy's attorneys to make sure that Wendy's
17 rent was being paid out of those checks.

18 Q How much did you and Stan pay to get her the
19 paramedic, the EMT training?

20 A I don't recall.

21 Q But did you receive that kind of disbursements from
22 Lakeridge or any other source?

23 A No.

24 Q And as far as you know did your brother?

25 A Not that I'm aware of.

1 Q Why then does Wendy get 591 in disbursements and you
2 and your brother do not?

3 A Well, we were just trying to make sure that she was
4 taken care of, care of her and get her to a point where she
5 could get going on her own, and get a job, and eventually
6 these funds would be, Wendy had agreed that these funds would
7 be offset against future funds that she was going to be
8 entitled to until her attorney said that they wouldn't.

9 Q Well, was it your understanding prior to 2017 that
10 everybody would agree that this 591, and whatever else in
11 addition to that was distributed to Wendy, would be an offset
12 against her entitlement under the Family Trust?

13 A That was our, that was the discussions we had.

14 Q And did Wendy necessarily agree with that?

15 A Early on she did agree with that, yes.

16 Q And then something happened that changed it?

17 A We had received a letter from her counsel down in
18 Las Vegas, Dana Dwiggins, that said that any of the payments
19 that we had previously paid would not apply towards anything.

20 Q Is it your understanding, then, that she is
21 considering this just gifts out of your generosity now and not
22 an offset against her entitlement under the trust?

23 A I don't know the current status of that.

24 Q So when your father passed, you found your way into
25 the offices of Maupin, Cox & LeGoy, correct, sir?

1 A Yes.

2 Q For what purpose?

3 A The estate was so upside down and we needed obviously
4 legal advice and help, but it was Kevin Riley's recommendation
5 at the time that we should be looking at options for
6 bankruptcy.

7 Q You were considering putting the Family Trust into a
8 bankruptcy proceeding or in Bankruptcy Court?

9 A Kevin Riley thought that that might be inevitable,
10 because of the financial situation that the Family Trust was
11 in and the debt obligations that it had, plus Bronco Billy's,
12 the casino operation, which a lot of the income was coming
13 from, we weren't able to get any of the income because nobody
14 had a gaming license, so there was no additional cash flow
15 coming in.

16 Q Well, that was my question, what cash existed in the
17 bank account to pay these loan payments?

18 A We had to get creative to be able to work on
19 selling --

20 Q Answer my question, please. What cash was in the
21 bank account to pay these banks and these lenders? How much
22 cash was there?

23 A None.

24 Q None?

25 A Yeah.

1 Q So what did you do, Todd, to get cash into that
2 Family Trust so it could start paying its bills?

3 A I started working on -- we were already working on
4 prior transactions even before dad passed away. Some of those
5 transactions were starting to materialize.

6 Kevin had kind of come up with the game plan of being
7 able to utilize the life insurance proceeds to buy into Tahoe,
8 and so we were able to kind of start accessing some of those
9 funds. As I mentioned the other day, funds were able to come
10 from the life insurance proceeds through Incline TSS to be
11 able to --

12 Q Let's stop with the life insurance proceeds.

13 A Okay.

14 Q I believe the testimony has been that 4.9 was used
15 for the Issue Trust to purchase 54 percent of Incline TSS,
16 true?

17 A Yes.

18 Q All right. Well, that leaves another million one of
19 cash proceeds. What happened with that million one?

20 A It stayed in reserves in that account and we didn't
21 utilize that additional one at that time. There was a point
22 in time later that we did loan some of those funds to the
23 Family Trust to continue to keep getting them by until they
24 could get paid back.

25 Q Let's slow that down a little bit. So the Issue

1 Trust had approximately a million one over and above its
2 payment that went to the bank, and so the Family Trust had to
3 borrow money from the Issue Trust?

4 A Yes, there was times that the Family Trust did have
5 to do that.

6 Q And was the funds borrowed by the Family Trust from
7 the Issue Trust, were those used to pay down debt and keep the
8 Family Trust alive and well?

9 A Yes.

10 Q Was there anything to disburse to beneficiaries say
11 in the first six months of 2013?

12 A Not without funding of things like you are talking
13 about.

14 Q Where did you get the impression that you couldn't
15 disburse until the debts are paid down?

16 A From counsel, from the attorneys at Maupin, Cox &
17 LeGoy, and that's kind of written in the rule book as well.

18 Q And by the rule book are you referring to the
19 language of the trust?

20 A Yes.

21 Q Now, are you aware, sir, that the trust, the Family
22 Trust, gives the co-trustees immense power?

23 A Yes.

24 Q And you have the power to borrow money?

25 A Yes.

1 Q And your father gave the trustees that power?

2 A Yes.

3 Q Did your father give the co-trustees the power to
4 sell and buy?

5 A Yes.

6 Q Did your father's Family Trust give the co-trustees
7 the power to go out and try to maximize return of investments?

8 A Yes.

9 Q And did you, sir, together with your brother do your
10 best to implement those powers to save the Family Trust?

11 A Absolutely.

12 Q How so?

13 A Working full-time on this trying to figure out each
14 individual asset and how we could turn them into whether they
15 could generate some cash flow. Like I mentioned yesterday,
16 some of the easements we were working on, some land sales, the
17 sale of the Tahoe buy-in, working with the Colorado Division
18 of Gaming to get our gaming licenses so we could get those
19 funds released at some point in time.

20 Q What is involved in being investigated by a Gaming
21 Commission?

22 A It's quite complicated. They look at everything that
23 you have ever done to be able to -- it's very strict.

24 Q Did you have discussions with Wendy about whether she
25 should apply for a gaming license to facilitate the payment of

1 that money to the Family Trust?

2 A Yes.

3 Q Tell us about that, please.

4 A Well, we had discussions with Wendy early on about
5 she had concerns about not being able to get licensed.

6 Q Why?

7 A Well, she had -- she hadn't filed tax returns I think
8 it was like for five or seven years and that would be
9 something that the Colorado Division of Gaming would not look
10 favorably upon.

11 Q She did not file tax returns at all?

12 A Wendy had indicated that she hadn't filed tax returns
13 for five to seven years.

14 Q All right.

15 A As well as she had judgments out and actively against
16 her. For example, she had Judge Freeman who had a \$60,000
17 judgment that was actively pursuing her.

18 Q Was that discussed with Wendy with respect to the
19 decision that she apply or not apply for a gaming license?

20 A We discussed all of those things, and we still gave
21 Wendy an application, the fingerprint cards. I made her a
22 binder and put all of the different forms and everything, and
23 I said, Wendy, you have got nothing to lose by trying. You
24 might as well just fill out the forms and send them to the
25 Division or to the Colorado gaming attorney and he can give

1 you his opinion.

2 But it was basically to determine, just the one thing
3 alone, forgetting the other thing, that not filing those tax
4 returns would be really a red flag, so that's why we entered
5 into the ACPA to allow Wendy five years to kind of get her
6 stuff cleaned up.

7 Q So we fast forward to today. Is there still
8 \$33.5 million of debt owed by your father's Family Trust?

9 A No.

10 Q What is the approximate amount of debt that that
11 Family Trust now owns -- owes, excuse me?

12 A Okay. Yeah, we were at \$33 million in debt and then
13 we are now, I think you had a reference of like 3.5 was
14 remaining. I think it's less than that. It's probably in
15 that \$2 million range, but the asset values are quite
16 significant on the other side as well.

17 Q All right. Well, given the scope of everything that
18 you've done with your brother and the other co-trustees since
19 April of 2013, do you think that the Family Trust is getting
20 near to making its disbursements to the beneficiaries?

21 A Absolutely, yes. I think we already would have been
22 there. Had we not gone through this, we would have been
23 there.

24 Q The question is whether or not you are getting close
25 to being able to make disbursements under the Family Trust?

1 A Yes.

2 Q And with regard to Sam's entire estate plan, the
3 interest in Jackrabbit and these other entities, what is your
4 estimate that Wendy will receive as a result of Stan -- Sam's,
5 your father's testamentary devices?

6 A I would say it could approach \$4 million.

7 Q Can you give the jury your best estimate as to when
8 that might happen, disbursements being made?

9 A We would like to try to wrap up the estate as quickly
10 as we can, so it depends on probably the outcome of this, and
11 but we are shooting for the end of this year to be able to
12 disburse all of the assets in the trust.

13 Q By the way, did that \$4 million include Luke's share?

14 A Yeah, that includes Luke's share.

15 Q And then how is it that Luke is a direct beneficiary?

16 A In some of the disbursements, the way dad set things
17 up was in the Second Amendment Wendy's one-third share was
18 split up 80 percent for, 80 percent for Wendy and 20 percent
19 for Luke, so that's how Luke gets a portion, because Luke gets
20 20 percent of Wendy's share.

21 Q Was your share split up?

22 A No.

23 Q Was Stan's?

24 A No.

25 Q Just Wendy's?

1 A Correct.

2 Q All right. So through these last six years almost
3 that you and the co-trustees have been administering this
4 trust, could you have done it without the help of attorneys?

5 A No, definitely not.

6 Q Could you have done this, what you have done, without
7 the assistance of accountants?

8 A No, absolutely not.

9 Q How about without the assistance of appraisers?

10 A No. Yes, we would have absolutely needed the
11 appraisers' help, too.

12 Q I want to revisit Exhibit 316 that we talked about
13 earlier in my opening statement. You won't have it in front
14 of you. How did it come about that you, Todd, found yourself
15 guaranteeing \$20 million worth of debt?

16 A Through various transactions that we were working on
17 on behalf of the family, and ranches that dad and I were out
18 buying ourselves together, and the deals that dad and I were
19 doing together, some of that debt was not debt that I
20 personally had. It was just dad's debt.

21 Q Let me ask you this question. Some of this debt, did
22 it go to other enterprises; for example, some of the Montreux
23 interests?

24 A For example, if you look at that White Pine one on
25 the bottom.

1 Q Yes, sir.

2 A \$2.3 million, dad got that loan out because Montreux
3 needed money and he secured the ranch property up in
4 Eagleville.

5 THE COURT: I'm going to interrupt for just a moment,
6 please. You referred to this screen as Exhibit 316.

7 MR. ROBISON: Yeah. I think you got the wrong one
8 up, Mark.

9 THE COURT: I just want to make sure that whatever we
10 broadcast is formally admitted unless it's for demonstrative
11 purposes.

12 MR. ROBISON: This is for demonstrative purposes,
13 Your Honor, as I used in my opening statement.

14 THE COURT: Right. So I don't know, is it a marked
15 exhibit?

16 MR. ROBISON: Yes.

17 MR. SPENCER: It has not been admitted though,
18 Your Honor.

19 THE COURT: So I typically don't mark demonstrative
20 exhibits, so I just want to make sure we have a record of what
21 is being broadcast. My preference is to just have you seek
22 its admission and I'll --

23 MR. ROBISON: All right. Thank you.

24 THE COURT: -- bring it into the Court's record.

25 MR. ROBISON: I would ask 316 be admitted for

1 demonstrative purposes.

2 MR. SPENCER: For demonstrative purposes only. I
3 haven't seen any evidence that supports any of that yet.

4 THE COURT: Right.

5 MR. SPENCER: So it's not evidence.

6 THE COURT: So I just want what occurs within this
7 courtroom to be included within the court file. 316 is
8 admitted for the purposes described.

9 THE CLERK: Thank you.

10

11 (Exhibit Number 316 was admitted into evidence.)

12

13 BY MR. ROBISON:

14 Q And then with that in mind, we highlighted the bottom
15 debt that you guaranteed. Did that money find its way to your
16 pocket?

17 A No.

18 Q Where did it go?

19 A The majority of that went to Montreux Golf Club.

20 Q Do you have interest in Montreux Golf Club?

21 A No.

22 Q Does any of your trusts have interest in Montreux
23 Golf Club?

24 A No.

25 Q And that's operated primarily by your brother?

1 A I'm sorry, it went to Montreux Development Group, I
2 apologize.

3 Q All right. We talked about many deals that you and
4 your father were involved in. Did your father also involve
5 himself in business deals with your brother Stan?

6 A Yes.

7 Q And those were primarily golf course type activities?

8 A For the most part, yes, and the Montreux Development.

9 MR. ROBISON: And if we could show 357 -- 327, which
10 I would ask be admitted for demonstrative purposes,
11 Your Honor.

12 MR. SPENCER: Your Honor, again, for demonstrative
13 purposes. I object to it being admitted as evidence.

14 THE COURT: 327 is admitted for the purposes
15 described.

16 THE CLERK: Thank you.

17

18 (Exhibit Number 327 was admitted into evidence.)

19 (Phone ringing)

20 THE COURT: That's all right. We will attend to that
21 out of the jury's presence. Inadvertent events occur in the
22 courtroom all the time. Please don't hold it against anybody,
23 but we will continue.

24 BY MR. ROBISON:

25 Q Through the years, Todd, has it been necessary to

1 rely on the legal advice of Maupin, Cox & LeGoy?

2 A Yes.

3 Q Do you understand that that firm specializes
4 primarily in estate planning?

5 A I do.

6 Q Have you believed that their advice has been
7 wholesome and legitimate and worthy of being relied on?

8 A Yes.

9 Q How so?

10 A Because they have done a fantastic job. They worked
11 for dad. Prior to dad passing away, dad respected them. Dad
12 worked with them and we continued that relationship.

13 Q As co-trustee did you rely on their advice?

14 A Absolutely.

15 Q Would that be the same of the advice given by Brian
16 McQuaid?

17 A Yes.

18 Q Now, Bob Sader is depicted up there. What was his
19 role, sir?

20 A Bob Sader is an attorney in town and he helped us out
21 on one of the entities known as Buckhorn Land & Livestock, and
22 he was also helping out with Montreux Development Company, so
23 he helped out with a couple of the entities.

24 Q Roger Morris is identified as, on this particular
25 exhibit. What was his role, sir?

1 A Roger Morris was the Colorado gaming attorney.

2 Q What did he do?

3 A He basically held our hands through the entire
4 process of getting our, starting our applications all the way
5 through getting licensed in Colorado.

6 Q And that's with the Bronco Billy's transaction?

7 A Yes.

8 Q Did you rely on his advice?

9 A Yes.

10 Q Did you find it to be reasonable and prudent advice?

11 A Yes. He was an excellent attorney.

12 MR. ROBISON: Your Honor, I would ask permission to
13 interrupt the testimony at this time, because we have another
14 witness waiting.

15 THE COURT: Yes. Ladies and gentlemen, we expected
16 that we would have another witness at 9:00. Let's all stand
17 as we change out witnesses.

18 Deputy, Mr. Pierre Hascheff.

19 MR. SPENCER: Your Honor, I request that it be noted
20 that he is being called out of order as part of their case.

21 THE COURT: Yes.

22 THE CLERK: Please raise your right hand.

23

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PIERRE HASCHEFF,
called as a witness, having been duly sworn,
testified as follows:

THE COURT: Please be mindful of the microphone.

DIRECT EXAMINATION

BY MR. ROBISON:

Q Good morning.

A Good morning.

Q Would you please tell us your name.

A Pierre Hascheff.

Q Mr. Hascheff, would you please give the Court and jury a description of your educational background.

A Okay. So University of Nevada, accounting degree, then after that I worked for a CPA firm, and then went to law school.

Q Which CPA firm did you work for?

A That was a long time ago. It was Barbieri, Chancellor & DeWitt, I think. It was. Thereafter it was, I worked for a CPA firm in Sacramento where I went to law school, got my law degree. Then got a Master's.

Q What's a Master's?

A It was a Master's in tax law at San Francisco.

Q Does that require more education than just being a

1 lawyer like --

2 A Correct, another year.

3 Q All right. In that year did you specialize in any
4 particular area of the law to get your Master's?

5 A No. You basically take everything.

6 Q As part of your Master's course?

7 A Yeah. It could be corporations, partnership, estate
8 planning.

9 Q All right. And then after obtaining your -- what's
10 it called, a Master's of Law?

11 A It's called an LLM, Master's in Tax Law.

12 Q All right. After receiving your Master's in Tax Law,
13 what did you then do next?

14 A Once I got done with that, I came back here to
15 practice law.

16 Q Can you give us a history of your professional
17 background then?

18 A Sure. So I went to work for a firm, primarily
19 litigation, so I did that for about a year. Then I moved onto
20 in-house counsel for Sierra Pacific. I did that for about
21 three years, I think. Then thereafter I went to, back then it
22 was called Hill, Cassas, de Lipkau & Erwin and I worked for
23 them until I went out on my own.

24 Q And while working with Sierra Pacific, what type of
25 law did you involve yourself in?

1 A Primarily transactional and some rate work.

2 Q And then with Hill, Cassas, what type of work did you
3 pursue there?

4 A Same thing, transactional and estate planning and
5 probate.

6 Q When lawyers use the phrase estate planning and
7 probate, can you please tell the jury what is meant by that?

8 A Well, it would be trusts, wills, for example. Then
9 if the client passed away and there was a will, but no trust,
10 then you would have to probate the estate.

11 Q What does that mean?

12 A That means you have to file documents with the court.
13 You have to lodge the will with the court. You have to go
14 through a bunch of notice procedures to ultimately distribute
15 the property to beneficiaries.

16 Q All right. So if a trust is involved other than just
17 a will, how does that affect the probate proceeding in court?

18 A Well, you avoid the probate if you have a trust.

19 Q How so?

20 A That's just the way it works, because technically the
21 person, the decedent does not own the property. His trust
22 does. So when the decedent passes away, he doesn't have any
23 property to probate. It's all in his trust. Same vehicle to
24 get the property to the beneficiaries, but you save the cost
25 of the probate.

1 Q Well, who then takes care of distributing the assets
2 that are owned by the trust if not supervised by the court?

3 A It's just not supervised by the court.

4 Q Do the trustees then have the power and discretion to
5 follow the provisions of the particular trust agreement?

6 A Correct.

7 Q And in your career, Mr. Hascheff, did you draft
8 trusts so that you could assist your clients in avoiding a
9 probate process?

10 A Yes.

11 Q Is that intended to be a cost-saving device?

12 A It does save costs, yes.

13 Q How so, sir?

14 A Because you don't have to come to court and spend the
15 time doing the probate. It's basically done outside the
16 courtroom process or probate process, so it does save quite a
17 bit of fees.

18 Q All right. When you say you left Hill, Cassas and
19 went into practice for yourself, for what period of time are
20 we talking about, sir?

21 A Probably 1991. I mean, I'm not sure about that date,
22 1991 until I stopped in 2013.

23 Q From approximately that period of time, where did you
24 concentrate your practice of law?

25 A Again, it was primarily transactional and then some

1 estate planning.

2 Q Did you draft trusts?

3 A I did draft trusts.

4 Q Mr. Hascheff, our State Bar requires us to be
5 continuously educated, correct?

6 A Correct.

7 Q Did you pursue your CLE requirements?

8 A Yes.

9 Q CLE stands for continuing legal education?

10 A Correct.

11 Q Where did you pursue most of your CLE that's required
12 by the State Bar?

13 A Well, I don't know if it's still around, but the
14 Practicing Law Institute, which is nationally known lawyers
15 that basically teach those classes, the American Bar
16 Association, same thing, nationally recognized lawyers, and
17 then I did a lot through CEB, which is California Continuing
18 Education of the Bar. Again, very, very good lawyers.

19 Q And during that period of time where you were a
20 sole -- was it a sole practitioner?

21 A Yes.

22 Q Did you draft trusts?

23 A Yes.

24 Q For many clients?

25 A Yes.

1 Q How does one learn how to draft a trust and what to
2 provide for?

3 A Well, first of all, when you are a young lawyer you
4 work for a senior lawyer that knows how to draft trusts. He
5 has been doing it for a long time, right, so you learn through
6 that process. You learn through continuing legal education,
7 and that's basically how most lawyers learn.

8 They start young and then ultimately they are tutored
9 by lawyers that have been doing it for a long time, and then
10 ultimately between that and continuing education you become
11 proficient at what you are doing.

12 Q And during the period of time that you were a sole
13 practitioner, did you also run for public office?

14 A Yes.

15 Q Would you explain what you did in that regard to the
16 jury, please.

17 A Yeah. I was a councilman for 20 years.

18 Q A what?

19 A A councilman for 20 years, Reno councilman.

20 Q All right. What is involved in being a Reno City
21 Council person?

22 A Well, it's pretty much local level, so it's all about
23 services. Making sure we have enough police, fire, parks,
24 those sorts of things, because that's what the constituents
25 want is services.

1 Q During the 20 years of service for the City, how many
2 times were you elected?

3 A Five.

4 Q When were -- what's the period of time that you last
5 served as a City Council person?

6 A It was November of 2012.

7 Q During your tenure as a sole practitioner practicing
8 in the area of probate law did you become acquainted with a
9 gentleman by the name of Sam Jaksick?

10 A Yes.

11 Q Could you please give us an idea of how you became
12 acquainted with Sam?

13 A Typically what happens is I get a phone call and it's
14 a referral, so I can't remember who, but somebody had given
15 him my name. So they called my office, we made an
16 appointment, and I met with him.

17 Q All right. Using as a mark in time a placeholder, we
18 talked about some Indemnification Agreements. You are
19 familiar with those, sir?

20 A Yes.

21 Q I believe they are according to the testimony drafted
22 in 2007, effective 2008. Would that refresh your recollection
23 as to the period of time that you first met Sam?

24 A I think it was before then.

25 Q What did he come to you for?

1 A They had -- I'm just trying to recall what the
2 initial engagement was. They had some real property that they
3 were looking at to develop. If I recall correctly, that was
4 the initial assignment.

5 Q And how did you help with that?

6 A I went through their documents. For example, they
7 were acquiring, they were acquiring quite a few ranches, so I
8 did primarily all of that real estate work, negotiated with
9 the lenders, for example.

10 Q When we say real estate work, you and I know what we
11 are talking about, but what do you mean real estate work?
12 What is involved?

13 A Well, if you sell property, real property, then you
14 are going to have to help draft the documents.

15 Q The sale agreement?

16 A The sale agreement, for example, or if the other side
17 prepares those documents, you are going to review them. You
18 then have to negotiate with the lenders, right, because there
19 is going to be financing typically involved. So it's either
20 buying or selling or in some cases trying to get the required
21 permits for the property and there is also some water rights
22 that are involved as well.

23 Q Did Sam become an important client to you?

24 A Yeah. He was one of my better clients, yes.

25 Q And tell us about the evolution of your relationship

1 with Sam from the day he first walked into your office until
2 late 2012?

3 A First of all, very kind, very kind guy, gentleman.
4 Good man. Loved to hunt.

5 Q Did you develop an understanding or a belief about
6 his business acumen, his business expertise, so to speak?

7 A Yes.

8 Q Tell us about that.

9 A He was a sharp guy. I mean, he was a very sharp guy.
10 He had, he had kind of a rough history, if I remember
11 correctly. He was a boxer.

12 And he, basically, went to the bank, as he explained
13 to me, and actually convinced the bank to give him a loan, I
14 think it was like \$5,000, and I think that was his first, took
15 that \$5,000 and I think, if I remember correctly, he started
16 to develop Lakeridge.

17 Q Now, Lakeridge, just so we all know, is what?

18 A Lakeridge is that community that's in Reno.

19 Q A 900-acre PUD south of town at Lakeridge and
20 McCarran?

21 A Yeah. I wasn't involved in that, but I know he did,
22 he was instrumental, if my understanding is correct, he was
23 instrumental in developing that.

24 Q Golf course community?

25 A That's correct. Thereafter, I think he was involved

1 in the Caughlin Ranch, that was before my time as well, and
2 then I think he did some work at Arrowcreek, and then
3 obviously after that the prize jewel was Montreux.

4 Q Why is that the prize jewel?

5 A Because that's the, it has the PGA Tour there. I
6 wasn't there for that process, but I did help on some, some of
7 the issues with Montreux after it was, after it was developed.

8 Q Did you provide legal service for the development of
9 Saddlehorn?

10 A That I can't remember.

11 Q Did you provide legal services for the development of
12 the Caughlin Ranch area?

13 A No.

14 Q And I assume from what you just said you weren't
15 involved in providing legal services for the development of
16 the golf course communities?

17 A Correct.

18 Q Were you involved in Sam's development of ranch
19 properties?

20 A Yes.

21 Q And how did that go and please explain to us what you
22 did?

23 A Well, some had to do with water rights, and we had
24 water rights engineers that were on staff, so I had interfaced
25 with them in preparing those documents. They were buying

1 ranches as well as selling ranches, so I participated in that.

2 Q Did you notice whether Todd was involved in these
3 enterprises along the years?

4 A Yeah, he was involved.

5 Q How so?

6 A It was primarily him that worked with Sam in the
7 acquisition and sale of the ranches.

8 Q And when Todd would be involved in these deals did
9 you form an impression as to his business acumen?

10 A Yeah. He was pretty smart.

11 Q And kind of an apple that didn't fall far from the
12 trunk?

13 A Yeah. I guess you could say that, yes.

14 Q Over the years did you provide individual services
15 for Todd that were unrelated to what you did for Sam?

16 A Yes.

17 Q Did you understand that there was any kind of
18 conflicts of interest in doing that?

19 A I did not perceive a conflict. Typically what
20 happens is, I mean, Sam was the client. All right. I took my
21 direction from him. If he comes to me and says, hey, I want
22 you to do this for my kids, then I would do it.

23 I did that with all of my clients when it came to
24 family. If they wanted me to help their son or their
25 daughter, then I would prepare documents and assist.

1 Q And do you see in our community where probate
2 lawyers, estate planning lawyers do that frequently, represent
3 various family members in the development of their estates?

4 A Yes.

5 Q And when a probate lawyer represents the, I will call
6 him the patriarch, has it been your experience it would also
7 involve some representation for the kids?

8 A Yes. Amass to, yes.

9 Q And over the years did you provide independent legal
10 services for Stan?

11 A Yes.

12 Q And how about Wendy?

13 A Maybe one.

14 Q Was that to get her out of some trouble?

15 A Yeah. I think it was refreshed in my deposition. I
16 don't think I ever met Wendy, but apparently I did some work.
17 I think Sam had posted a cash bail for her and he wanted to
18 get the cash bail back once the case was concluded, and they
19 didn't know how to do that, so I wrote the DA and we were able
20 to get the money back.

21 Q Did Sam give you any admonishments or warnings not to
22 get involved with Wendy?

23 A Well, I remember when I first started working for
24 them she had called my office.

25 Q Yes, sir.

1 A So, of course, I called him up and said, you know,
2 Wendy called me. She set up an appointment to meet me, and he
3 said cancel it. In fact, he said, I don't remember, but he
4 said I will take care of it, but I don't want you doing any
5 work for her.

6 Q Did, then after that phone call with Sam did you ever
7 do work for Wendy?

8 A No, not unless he asked me to.

9 Q To your knowledge, Mr. Hascheff, was Wendy involved
10 in any of these ranch activities that Todd and Sam came to you
11 for legal advice about?

12 A No, she was not.

13 Q Did you have any discussions with Sam that to the
14 effect that she was not to be involved in ownership of the
15 ranches?

16 A Well, the way he structured it, she had no ownership.

17 Q Do you know why?

18 A Well, as I understood it, she was not a very good
19 money manager, and she was in trouble, and then typically if
20 you have creditor issues --

21 Q Creditors after her to collect money --

22 A Correct.

23 Q -- from her?

24 A Correct, and then they could potentially try to go
25 after a membership interest in a company, stockholder

1 interests, the membership interests in an LLC, so it just
2 could wreak havoc, so it's the prudent way to avoid all of
3 that just by simply keeping that individual out of the family
4 business.

5 Q How about her involvement in the golf communities and
6 the golf developments, was she involved in that at all in
7 terms of an ownership interest?

8 A As far as I know, no.

9 Q Did you and Sam talk about that as well?

10 A Well, they were structured by the time I got onboard
11 and she did not have an interest.

12 Q Do you recall, Mr. Hascheff, when you first started
13 discussing with Sam estate planning?

14 A Not exactly.

15 Q Okay. Do you recall a point in time where Sam
16 discussed with you the needs to protect his sons from creditor
17 exposure?

18 A Yes.

19 Q Do you recall when that first occurred, sir?

20 A It was during the crash, the market crash.

21 Q And what is your knowledge or opinion of when that
22 crash occurred? What period of time was it in effect?

23 A There is various opinions on that --

24 Q Right.

25 A -- but it would have been in that '06 range. So the

1 long and the short of it was they had a lot of property tied
2 up in real estate and they had a lot of debt service, a lot of
3 liability, because they had acquired these ranches in part
4 with the end game, because they were, they all were, all had
5 lots of water rights associated with them, and the end game
6 was with the economy, when the economy took off like it did,
7 that this community, just like Vegas, would run out of water.

8 And what you could do is you could buy up ranches,
9 water rights came with the ranches, and then convert those
10 water rights which were dedicated for rural use, you know,
11 watering farms, the ranches, et cetera, convert them to
12 municipal use and then pipe it to, in this case you could pipe
13 it to Reno. The Vidler project was the one that was the first
14 one, I think, to get off the ground.

15 Q That, however, requires the State Engineer's
16 involvement?

17 A Correct.

18 Q And the State Engineer is sometimes cooperative and
19 sometimes otherwise?

20 A Correct.

21 Q And then that also involves the protestation process,
22 does it not?

23 A Correct.

24 Q And what is the protestation process?

25 A Well, they notice it if there is going to be a

1 conversion of water rights to municipal, and that's just one
2 example, because pretty much everything is noticed. Anybody
3 that thinks they have some kind of interest can protest.

4 Q And then aren't you also required to demonstrate
5 beneficial use to even have water rights?

6 A Correct.

7 Q Is that a constant battle with the State Engineer's
8 office?

9 A Well, in this case it never got, that project never
10 got off the ground, but there was a lot of ranches with a lot
11 of debt service, but, yes, typically throughout the,
12 throughout the water rights entitlement process you are going
13 to have protests all the way through. Even if the State
14 Engineer approves your project or your change in use, for
15 example, or point of diversion, then they can always appeal
16 it.

17 Q And these disputes with the State Engineer are they
18 not like many lawsuits where there is hearings and
19 administrative proceedings?

20 A Correct.

21 Q Very expensive?

22 A Correct.

23 Q Now, getting back to Sam's discussions about
24 protecting his sons, would you tell us about how that came
25 about and what he said?

1 A Right. So when the market crashed, there was a real
2 concern that the property was a lot, was below market now and
3 was worth a lot less than what they paid for it.

4 Q What happened to the debt, did it go down with the
5 market?

6 A No, it did not go down, and then there was a concern
7 that there was not enough cash flow to pay those occurring,
8 reoccurring obligations, the payments to the bank. They had
9 gone out and borrowed money from other parties to make things
10 work, and there was an issue whether there was enough cash
11 flow to pay those people back. It was an issue of debt
12 becoming due and not having the money to pay it, so there had
13 to be extensions, so --

14 Q Did you help negotiate those?

15 A Todd pretty much did the negotiations with the bank
16 and then I would get involved at a certain point.

17 Q And he was trying to keep the creditors at bay so
18 that he could save some of these properties?

19 A Correct.

20 Q And how did he go about doing that?

21 A Well, to get back to your initial question, so what
22 Sam was concerned about is when he acquired all of these
23 properties, both Stan and Todd executed personal guarantees
24 along with him. All right. Todd more so than Stan, because
25 Todd was involved in more of those transactions.

1 So if, if they were not able to service the debt, pay
2 the bills, so to speak, then the bank would call the loan.
3 There would be a default, and then they would basically go
4 after each one of the personal guarantors.

5 Q Now, I'm sorry, we talked a little bit about the
6 One-Action Rule.

7 A Correct.

8 Q One-Action Rule means you don't have to go after the
9 property if you have got a personal guarantee in that respect,
10 right, sir?

11 A Maybe said a little different way is the One-Action
12 Rule requires the lender to foreclose on the property first.
13 So let's say you owe 10 million and the property is worth 8
14 million. So you foreclose on the property. The lender takes
15 the property back, and then there is another process, legal
16 process, but ultimately the lender can only recover the
17 difference, the 2 million, because they got the \$8 million
18 property back.

19 Q So the deficiency is where the guarantors are
20 extremely exposed?

21 A They are, but most lenders basically have a provision
22 in their documents that say they have the right to forego
23 going after the property and going after the personal
24 guarantor directly.

25 Q In other words, to get the loan the borrower waives

1 the One-Action Rule and puts his personal assets out in front?

2 A Correct, so the lender does not foreclose on the
3 property. In part, so, for example, if the lender finds out
4 the property might be contaminated, environmentally
5 contaminated, they are going to say we don't want the
6 property. We are going to come after you, the borrower.

7 And if the borrower has a house, the borrower has
8 money in the bank, if they think they can recover, you know,
9 the proceeds of the loan quicker going directly against the
10 guarantor instead of foreclosing on the property first, they
11 retain that right.

12 Q So, Mr. Hascheff, what did Sam do to protect his sons
13 from that kind of financial exposure on those personal
14 guarantees?

15 A Well, if I recall correctly, we sat down and
16 basically did like a chart, and then we looked at the total
17 debt. We looked at the exposure. We looked at cash flow
18 projections and took the worst case scenario, because a lot of
19 these loans they might be separate loans, but they will be
20 with the same lender, different properties, and they have what
21 they call cross-default provisions in them.

22 Q Is that also known as cross-collateralization?

23 A Correct. So let's say you are current on four loans,
24 but you default on one, then all four become due.

25 Q It can wipe out all four properties?

1 A Correct.

2 Q Even though there is only a default on a loan on a
3 single piece of property?

4 A Correct.

5 Q Is that because the borrower put up all four pieces
6 of property to secure a loan on the one piece of property?

7 A That could be. It could be. It could be that they
8 are just four separate properties, four separate loans, but in
9 each one of those loan documents for each one of those
10 properties it says if one goes in default, we are going to
11 treat all four of them in default.

12 Q That's the cross-default provision?

13 A Correct.

14 Q One default is a default of all?

15 A Correct.

16 Q And that exposes all of the properties that
17 collateralized the debt to be foreclosed upon?

18 A Correct.

19 Q And did you help Sam with that problem insofar as his
20 sons had guarantied these debts?

21 A So a lot of these, a fair amount of these loans were
22 before I came onboard.

23 Q Yes, sir.

24 A So we analyzed, I looked at all of the loan
25 documents, all right, to determine that they had waived the

1 One-Action Rule, determined that there could be cross-default
2 problems, et cetera, with total exposure.

3 And then we said, okay, one way to deal with this is
4 to do an Indemnity Agreement, which basically says, look, he
5 was concerned his sons would get wiped out and they would have
6 nothing, so the concept was an Indemnity Agreement to say,
7 look, if the notes -- There is a problem. All right. There
8 is a claim.

9 And it didn't have to be from a lender. Basically,
10 he tried to capture any type of claim that might result that
11 could wipe out the boys, that these trusts, Sam's estate would
12 basically step up and pick up that bill, basically.

13 Q Well, what did you and Sam talk about with respect to
14 this concept, this term indemnification?

15 A Well, what that means is and the discussions were if
16 you don't want to have the boys wiped out, you know, and wind
17 up having to run out and have their house basically foreclosed
18 on and all of their assets gone and then try and make a claim
19 against the trust, for example, that the trust could step up
20 first and take care of those obligations.

21 Q Okay.

22 A And that would basically insulate the boys from being
23 subject to potentially 35, \$40 million worth of debt.

24 Q All right. So step back and you say Sam is trying to
25 protect Stan and Todd, but there is also, doesn't that also

1 create exposure to Sam's family estate?

2 A Yes.

3 Q How so?

4 A Well, if they had to respond --

5 Q Who is they?

6 A Well, if the trust, the estate had to respond, then,
7 yes, they would be basically stepping up and paying those
8 obligations, which is going to reduce the value of the estate.

9 Q Is that what Sam wanted, as far as you know, with
10 your discussions with Sam?

11 A I mean, he would have preferred that it go a
12 different way. In other words, nobody ever thought that he
13 would be in such deep trouble, so this was a way, I mean, the
14 last thing he wanted to do was see his kids basically wiped
15 out, so he understood that by stepping up and providing that
16 indemnity, all right, that insulation, that his estate would
17 be affected.

18 Q Was it easy to draft documents for Sam?

19 A What do you mean by easy?

20 Q Well, were there multiple drafts?

21 A Well, that's with any client you are going to have
22 several drafts.

23 Q All right. And with respect to this term
24 Indemnification Agreement, did you and Sam work on several
25 different drafts?

1 A Yes.

2 Q And why was that?

3 A Well, just like when you draft documents, you are
4 going to exchange drafts back and forth. You are going to
5 have comments from the client. You have to think of things
6 you didn't think about when you first drafted the document.

7 You will have meetings with the client. The client
8 will tell you things that he probably didn't tell you at the
9 beginning, so it's going to be kind of a living, breathing
10 document until you get to the final one.

11 Q All right. Let's put up Exhibit 11, please. We are
12 going to show you what's been marked and admitted in evidence
13 as Exhibit 11 and I'm going to ask you if you recognize that
14 as one of the Indemnification Agreements?

15 A It is.

16 Q May I approach the witness?

17 A It does say Indemnification and Contribution
18 Agreement, yes.

19 Q Let me give you the hard copy. It might be easier.

20 A Okay.

21 Q Do you recognize that, sir, as a document that you
22 prepared for your client, Sam Jaksick?

23 A Yes, this is the one.

24 Q And is this document prepared almost exclusively as a
25 result of your discussions with Sam?

1 A When you say exclusively, yeah, I discussed this
2 document with him.

3 Q Did you do one for Todd and Dawn, which is
4 Exhibit 11? Dawn being Todd's wife.

5 A Yes, I listed her as well.

6 Q And did you also do one to benefit Stan?

7 A Yes.

8 Q Why?

9 A Because they are the ones that had the exposure.

10 Q Stan and Todd?

11 A Correct.

12 Q All right. With respect to Exhibit 11, there are
13 various recitals. Tell the jury, please, what a recital is
14 when we refer to those in a document like this.

15 A Well, you don't have to put recitals in the document.
16 Sometimes I didn't. Sometimes I did. Recitals just kind of
17 lay out what is trying to be accomplished by the parties.

18 Q Is that the lettered paragraphs on Exhibit 11?

19 A Correct.

20 Q And that's more or less a roadmap of what the
21 document is going to provide?

22 A Yes, for the most part.

23 Q And if we turn to the second page of Exhibit 11,
24 please. Was this a pretty detailed document, Mr. Hascheff?

25 A When you say detailed, I mean, it's, it's an

1 agreement that I have used, not exactly the same terms,
2 obviously, but I have drafted Indemnity Agreements before.

3 Q For other clients?

4 A For other clients.

5 Q All right. And in this respect Sam's estate is
6 required to do what?

7 A To basically indemnify Stan according to his
8 agreement and Todd according to his agreement any claims,
9 liabilities, basically any exposure that would result from the
10 personal guarantees and other liability.

11 Q Let's use Ag Credit for an example. Ag Credit was a
12 creditor, true?

13 A Correct.

14 Q Sizable loan?

15 A If I remember right, yes.

16 Q All right. So if Ag Credit came after Todd who
17 guaranteed the debt and Todd had to pay \$6 million, what would
18 be the effect of this agreement under that scenario?

19 A If there was a claim against him?

20 Q Yes.

21 A Then the estate would step up and pay that bill.

22 Q Even though part of that loan was taken on property
23 owned 51 percent by Todd's trusts?

24 A Correct.

25 Q Is that what Sam wanted?

1 A What he wanted was the boys to be held harmless. All
2 right. Because otherwise those two could get completely wiped
3 out, and then the estate, there would be a gross inequity if
4 they were wiped out, had no personal assets anymore, and then
5 the estate went one-third, one-third, one-third.

6 Q All right. Let's turn to the signature page, please.
7 Why is Todd required or why does Todd's signature appear on
8 Exhibit 11, the Indemnification Agreement in his favor?

9 A Okay. Could you ask that question again?

10 Q Why is Todd signing on the document?

11 A Because I want him to sign it.

12 Q Why is that, sir?

13 A To acknowledge that there is an Indemnity Agreement
14 and that he is bound by it. The estate is bound by it and, of
15 course, he is bound by it. He understands.

16 Q All right. And the entities that are signed by Todd
17 is the TBJ SC Trust and the TBJ Investment Trust. Did they
18 have exposure on these loans, sir?

19 A They had some exposure. I can't remember if it was
20 on, it was on specific loans.

21 Q And then, of course, Todd has to sign it as an
22 individual above that. Do you see that, sir?

23 A Correct.

24 Q Is that something that you required?

25 A Yes.

1 Q Todd had to understand it and agree to it?

2 A Yes.

3 Q Now, why is the document signed by Sam Jaksick, Jr.
4 and by Sam as Trustee of the Samuel S. Jaksick, Jr. Family
5 Trust?

6 A Well, typically, that's the way you do it, because
7 ultimately if there was an asset that was not in the trust
8 that was in his name, both he individually and in his capacity
9 as trustee were basically going to be the indemnitors.

10 Q Is there any question in your mind, Mr. Hascheff,
11 that Sam Jaksick wanted this document to be fully enforceable
12 to protect Todd and to protect Stan under his?

13 A Yes, because we went through this document a lot.

14 Q All right. Do you recall that there were different
15 drafts?

16 A Yes.

17 Q All right. Let's see 11A, please. And if you go to
18 the third page, Mark, please, paragraph 14.

19 A I'm sorry, paragraph 14.

20 Q Okay. Why?

21 A Why did I put 14 in?

22 Q Why did you take it out?

23 A Well, it's a typical provision that I have in
24 agreements, but when I first drafted the document -- let me
25 just see. This was an older one. Yeah, this was an older

1 one.

2 Q Correct.

3 A And so typically you do that if you think that you
4 are going to have one party in one jurisdiction and another
5 party in a different jurisdiction, so you are basically
6 agreeing to one jurisdiction, forum jurisdiction is what we
7 call it, which would be the State of Nevada, in this case
8 County of Washoe, so we won't have any jurisdictional battles
9 as to where this agreement is going to be enforced.

10 Q Everybody agrees that any dispute will be right here
11 in Washoe County?

12 A Right. But in my mind it didn't really apply to this
13 case, because the boys, both Todd and Stan, were here locally.
14 It didn't look like they were going to go anywhere, so I just
15 took it out.

16 Q All right. Let's take a look at the signature page
17 on the Exhibit 11A, please. Now, if you look at the second
18 signature on the right of Samuel Jaksick, do you see that,
19 sir?

20 A Where he signs as trustee?

21 Q Yes.

22 A Okay.

23 Q That's different than Exhibit 11 in that there is
24 handwriting with respect to the trustee position and the date.
25 Why is that?

1 A Well, if I recall correctly, what happened is this
2 is, this is kind of an ongoing thing. This is the same thing
3 that happened with the Second Amendment. Apparently, there
4 was another, there was a -- I didn't know which trust was
5 actually the operative trust, so I left it blank, because I
6 knew he had a trust, but I didn't really have my arms around
7 the, what that, the date of the trust, for example.

8 So when he came in, I basically wrote down, because I
9 thought it was June 29th, 1996. Actually, that should, that
10 was the wrong date. It should be 2006, I believe.

11 Q And you were intending to refer to 2006 Restated
12 Samuel S. Jaksick, Jr. Trust, correct?

13 A Yeah, it should have been 2006, and I can't remember
14 if Sam told me it's 1996, why I put 1996, but come to learn
15 later that it was really 2006.

16 Q Going to Exhibit 11A, which we have on the screen,
17 and Exhibit 11, which we previously showed the jury, in terms
18 of protecting Todd what is the difference?

19 A There should be, there should be no difference,
20 because the intent was to basically hold the boys harmless.

21 Q Regardless of that jurisdiction clause?

22 A Correct.

23 Q Whether it's in or out doesn't make any difference?

24 A Correct.

25 Q It's still intended to protect Todd from being wiped

1 out?

2 A Correct.

3 Q And then there is yet another draft, Mr. Hascheff,
4 and that's Exhibit 11B, and can we please see that? And let's
5 go to the signature page on that, please. All right. If you
6 look at the right hand signature of Mr. Jaksick, you will see
7 that it's handwritten, but there is not a date there. Can you
8 explain that for us, please?

9 A That's because I didn't know the, remember, I didn't
10 know the date. I wanted to honestly do the best I could to
11 make sure that I wanted him individually and him, and Sam in
12 his capacity as trustee to be responsible under the Indemnity
13 Agreement, and I don't believe I had a date at that point, so
14 I said I would just fill that date later.

15 Q Mr. Hascheff, do each and every one of these drafts,
16 11A and 11B, provide for the same protection for Todd
17 regardless of the changes on these handwritten dates?

18 A Yeah. The intent was basically to hold him harmless
19 in the event of a catastrophe.

20 Q Do you have any question in your mind that Sam signed
21 these documents?

22 A No, he signed them.

23 Q You know that?

24 A Well, he either signed them in my office or he signed
25 them in his office, but he signed a lot of documents in my

1 office, so presumably this one was also signed.

2 Q After these drafts were prepared and Exhibit 11 was
3 signed, did you and Sam continue to discuss the need to
4 protect the kids?

5 A Well, I think that the exposure even continued after
6 I stopped representing them, because it was a daily grind
7 basically doing the cash flow statements, getting extensions
8 from lenders, you know, just trying to hold off what could
9 otherwise be a catastrophe.

10 Q Now, if we put 11 back on the screen, please, you
11 have looked at these documents throughout these proceedings
12 particularly in light of the deposition that you have given,
13 true, sir?

14 A Yes.

15 Q Is Exhibit 11 the one that is intended to be valid,
16 binding, and effective in this case?

17 A Yes, because that was the one that ultimately had
18 retyped in the date of the trust. Again, it should be 2006,
19 not 1996.

20 Q And in your mind, based on your discussions with Sam,
21 is it your position that Sam intended Exhibit 11 to be valid,
22 binding, and effective and applicable in this case?

23 A Yes.

24 Q Have you so advised Todd over the years that this is
25 the effective, binding, valid one, Exhibit 11?

1 A Ultimately, there were three drafts, right?

2 Q Right.

3 A Signed agreements, but ultimately this, if I remember
4 correctly, this was the last one. This was the one that was
5 going to be operative.

6 Q All right. When you did this, again, were you, were
7 you concerned at all that if Sam passed and Todd and/or Stan
8 tried to protect themselves with this document it might
9 adversely affect the Family Trust, was that in your mind at
10 all?

11 A My mind?

12 Q Yes, sir.

13 A Yeah. It was a potential that the trust could be
14 depleted.

15 Q But, nonetheless, is this something your client Sam
16 Jaksick wanted to achieve?

17 A Yes, because we had discussions about it.

18 Q And did you fulfill your client's intent in having
19 this document signed by Sam and Todd?

20 A Yes.

21 Q And likewise with Stan?

22 A Yes.

23 Q Where did Exhibit A come from on Exhibit 11? Please
24 show the first page. There you go.

25 A Well, if I remember, one of my recitals said the

1 obligations was a nonexclusive list, so I typically like to
2 put a list of obligations and attach it as an Exhibit A so
3 there is no doubt what obligations would then be covered by
4 the agreement. It's nonexclusive. There might be a few out
5 there that we didn't capture, but we try to capture all of it,
6 as much as we could.

7 Q For the maximum protection of Todd Jaksick?

8 A Correct.

9 Q Were you aware of the fact that a debt used to
10 construct his home was on that exhibit?

11 A You mean his house?

12 Q Yes, sir.

13 A Yeah, his house was on there.

14 Q Why?

15 A Again, we were trying to capture every potential
16 claim or liability, so we just put the kitchen, we put
17 everything in there, just not to take any chances.

18 Q Did Sam agree to that?

19 A Yeah. This was an exhibit that was with the
20 Indemnity Agreement.

21 Q All right. So Sam intended to protect Todd's house
22 at the time?

23 A He wanted to protect the boys, period.

24 Q Did you argue or dispute the fact that any of these
25 debts should be on this exhibit when you were negotiating with

1 Sam Jaksick to create this document?

2 A I'm sorry?

3 Q Bad question, I apologize. Was there any debate,
4 dispute about what debts should be on Exhibit A when you were
5 negotiating this with Sam?

6 A Well, they helped prepare that exhibit, so, I mean, I
7 got, I didn't do all of this. I did, I did the ones I knew
8 about, the obligations I knew about, and then they basically
9 backfilled it with everything else.

10 Q Did you have any question that Sam intended to
11 indemnify Todd with those debts listed on Exhibit A to Exhibit
12 11 in evidence?

13 A Yeah. If there was a catastrophe, we were not going
14 to take any chances and leave something out.

15 Q Did you have any, formulate any thoughts about
16 whether or not that estate was headed towards insolvency and
17 perhaps bankruptcy?

18 A His trust?

19 Q Yes.

20 A His trust estate? If the loans got called and all of
21 these things that we thought could and might happen, yeah,
22 then there would be nothing left.

23 Q We evolve beyond 2008. Is the recession still in
24 full force and effect here in 2008, sir?

25 A I mean, I couldn't tell you. You could talk to two

1 different economists and one would say no and maybe another
2 one would say yes, but they obviously were still struggling.

3 Q All right.

4 A Like I said, even after I stopped representing them
5 then, they were still trying to negotiate loans, as I
6 understood it.

7 Q All right. With the presence of a recession and the
8 magnitude of the debt that Sam had, did that have any effect
9 in your involvement in developing an estate plan for Sam
10 Jaksick?

11 A Are you asking me whether the fact that he could be
12 insolvent had something to do with the estate planning?

13 Q No. I'm asking whether or not the existence of these
14 creditors had any involvement in your assistance in preparing
15 an estate plan for Sam?

16 A Well, you always take into consideration there is
17 creditors, right.

18 Q Were you involved in the creation of SSJ, LLC?

19 A Yes.

20 Q What is SSJ, LLC?

21 A If I remember correctly, it's a, it's a limited
22 liability company and it was a sole member limited liability
23 company. It was Sam's limited liability company.

24 Q The Family Trust was the member?

25 A Correct.

1 Q All right. Just so we can, a limited liability
2 company, is that a creature of statute here in Nevada?

3 A Yes.

4 Q And it's intended to do what for its owners?

5 A Shelter them from liability.

6 Q So who operates a limited liability company? Who is
7 the boss?

8 A It's the member or manager.

9 Q And the manager operates the company as though --

10 A It's like the president of a corporation.

11 Q All right. There we go. And then who owns a limited
12 liability company? What are the owners referred to as?

13 A Members.

14 Q So members are owners and the manager manages?

15 A Correct.

16 Q Sometimes they are the same?

17 A Correct.

18 Q All right. So SSJ, LLC was formed to take title to
19 the Lake Tahoe house?

20 A Yes.

21 Q All right. What did you know about the Lake Tahoe
22 house in 2011 when SSJ, LLC was formed?

23 A Well, there was a concern that the, obviously, the
24 lenders, there was still some issues. There were some other
25 third party lenders that were making a lot of noise about

1 suing Sam.

2 Q Do you recall their names?

3 A It was Dilts & Durham.

4 Q Dilts & Durham?

5 A Correct.

6 Q And when you say they were making noises, what do you
7 mean?

8 A Well, they had, Sam had borrowed money from them.

9 Q Right.

10 A And they wanted to get paid back, and if I remember
11 right it was the loan came due. He didn't have the money to
12 pay it back, so.

13 Q Did that put the Lake Tahoe house at risk?

14 A It did.

15 Q How so?

16 A He was worried about, I mean, obviously, it's a
17 beautiful home on the lake.

18 Q Right.

19 A And he didn't, he did not want to lose it, and the
20 concern was, and then, of course, he had a loan on that
21 property, too, of over \$6 million. He was worried about not
22 being able to service that debt. If I remember right, it was
23 an interest only debt.

24 Q With Bank of America?

25 A Yes, and it was going to mature and then, therefore,

1 the payments would be kicked up, and he did not have the cash
2 flow to make those payments, and the concern was that he
3 didn't have a heck of a lot of equity in the house, because of
4 the decline of the property values during the recession, so he
5 could very well lose the house to a variety of different
6 creditors. So what we wanted to do is shelter that house, so
7 one way to do that would be to get it into an LLC.

8 Q Is there anything wrong with that legally?

9 A To do creditor protection?

10 Q Yes, sir.

11 A No.

12 Q Exactly.

13 A No.

14 Q Many lawyers in this community specialize in that
15 area, do they not?

16 A Correct.

17 Q All right. So with regard to this creditor
18 protection plan, what was involved?

19 A So we sat down and had several meetings on this about
20 whether we could sell the house to a separate LLC. That
21 became too problematic. The other alternative was to do an
22 Option Agreement, in part because the Option Agreement meant
23 that we could have a family LLC. Basically put, it would be
24 an option between the family LLC and the owner of the house,
25 which was Sam.

1 Q And in that particular case did that, was that why
2 Incline TSS, Ltd was formed?

3 A Yes.

4 Q And did you do the work to effectuate an option for
5 Incline TSS to acquire the Lake Tahoe house?

6 A Yes.

7 Q Did you do so pursuant to your client's insistence?

8 A Yes, because obviously what clients do, they go to
9 their lawyer and say here is my problem. Here is my issue.
10 Here is my concerns. Help me figure out how to solve this
11 problem. So we kicked around alternatives and this turned out
12 to be the alternative to best fit this particular transaction.

13 Q Did you recommend them the creation of this limited
14 liability company that we referred to in this trial as Incline
15 TSS, Ltd?

16 A Yes.

17 Q And that was to be owned at the time by Todd's two
18 trusts?

19 A If I remember correctly, that was the only two
20 entities that had any money to make the option payments.

21 Q All right. But was Stan supposed to be involved at
22 that point in time back in 2010?

23 A He could have, but the problem was he was in the
24 middle of a divorce.

25 Q What effect did that have on Sam's estate plans?

1 A He didn't want to give him any property or have any
2 of the ventures until he got that finalized.

3 Q Why? What's the reason behind that?

4 A And I didn't handle his divorce, but as I understand
5 typically this is what occurs, is if there is a divorce, then
6 it's a community property state, so even though the husband
7 may own 100 percent of that LLC or that interest in a
8 corporation, or any other property for that matter, then the
9 wife is entitled to half of it. I mean, there are exceptions,
10 but simply put that's the rule.

11 So if you put him on a venture or put him in a deal
12 and then the divorce is ongoing, and then they finally get to
13 and they try to equalize the estate, that those potentially
14 would be up for division between the husband and wife.

15 Q So Sam could wake up one morning and find that his ex
16 daughter-in-law was his partner?

17 A Could be. You could draft around that, but for the
18 most part that was his concern, and the way it was explained
19 to me is we will worry about Stan, we will worry about Stan,
20 but once he gets his divorce final, then we are going to work
21 towards --

22 Q Was it your --

23 THE COURT: Ladies and gentlemen, during this
24 midmorning break, please do not discuss this case amongst
25 yourselves. Please do not form or express any opinion about

1 this matter until it's submitted to you. We will see you in
2 the courtroom at 10:30. I'm sorry, hold on, 10:15.

3

4 (Whereupon a break was taken from 10:00 a.m. to 10:15 a.m.)

5 (Whereupon the following proceedings
6 were in the presence of the jury.)

7 THE COURT: Please be seated.

8 Counsel, you may continue.

9 BY MR. ROBISON:

10 Q Before the recess, Mr. Hascheff, we were discussing
11 the creation of Incline TSS, Ltd. Was that a Nevada limited
12 liability company?

13 A Yes.

14 Q All right. And was Sam involved in the directives of
15 how to form that company?

16 A Well, said maybe a different way, I'm a lawyer. I'm
17 the one that's preparing the documents. I'm the one that's
18 filing with the Secretary of State. I'm the one making sure
19 it's legally formed, for example, has the provisions that it
20 needs to have on the documents, for example. But as far as
21 him knowing what the entire game plan was, the concept of what
22 we were trying to accomplish, yes.

23 Q Okay. So let's break this thing down. Incline TSS,
24 TSS is Todd, Stan, and Sam acronym, correct?

25 A It could be. I can't remember that, but --

1 Q All right. So Incline TSS, Ltd is a limited
2 liability company. It's managed by whom?

3 A Ultimately, it's managed by Todd.

4 Q Okay. Do you recall that when it was created and
5 filed with the Secretary of State, it showed that Stan was
6 also a manager?

7 A That is correct.

8 Q But that later went away because of the divorce?

9 A Correct.

10 Q All right. So now we know who manages. Who are the
11 owners of Incline TSS when it's created in 2010?

12 A I believe it was Todd's trusts.

13 Q All right. And Sam was aware of that?

14 A Yes.

15 Q Is it your testimony, sir, that Sam was aware that
16 only Todd's trusts were the owners of Incline TSS, Ltd?

17 A He is, was, yes.

18 Q That was his intent?

19 A Well, we structured it, yeah, and at the end of the
20 day he knew exactly what we were doing.

21 Q That's what he wanted?

22 A Well, we had to basically when we formed the company,
23 the LLC, we had to properly fund it, all right, and we still
24 had cash flow problems, if I remember. The only entities that
25 had any money to put in the companies that TSS could fund the

1 option payments were those two companies.

2 I mean, there could be some others, but we took, I
3 mean, it's a lot of moving pieces here. We had, we need to
4 conserve cash, continue to pay debt, keep creditors off, and
5 we needed to basically find some cash to basically put in this
6 company to structure the deal.

7 Q So in 2010 when Incline TSS is formed, the Family
8 Trust is the owner of the Lake Tahoe house, correct, sir?

9 A Yes, the Family Trust was the owner, yes.

10 Q All right. So did Sam want Incline to have an option
11 to purchase the Incline house?

12 A Yes.

13 Q Why?

14 A Well, there were a few reasons. One is, number one,
15 the creditor issue, so if it got out of, if he did not have
16 title anymore, then there would be nothing for the creditors
17 to attach.

18 Q Let me interrupt you. Sam had creditors at that
19 point in time in 2010, correct, sir?

20 A Yes.

21 Q But Incline TSS had just been formed. It did not
22 have creditors, did it?

23 A No.

24 Q So the house if transferred to Incline TSS would not
25 necessarily be subjected to creditor claims?

1 A No. They were not a personal guarantor. They were
2 not on any loans. They basically had zero exposure.

3 Q So could Sam's creditors then reach across and grab
4 an asset owned by Incline TSS?

5 A Well, that's why it wasn't involved.

6 Q That's why Sam wasn't involved?

7 A Correct, because as long as there is some kind of
8 tangential connection, even if it's remote, it just causes
9 problems, so and if I remember right, Todd's two trusts had
10 enough cash to do the funding and also were not, I don't
11 believe they had very much exposure either.

12 Q All right. So was it Sam's intent that Incline TSS
13 have an option to purchase the Incline house?

14 A Yes.

15 Q And was the price arrived at, the option price,
16 purchase price \$7,250,000?

17 A If I recall, yes.

18 Q All right.

19 A It was based on an appraisal.

20 Q All right. But that option was not exercised for
21 several years, correct, sir?

22 A I believe that's correct.

23 Q All right. So when you do an option, would you tell
24 the jury what an option is, please?

25 A All right. So instead of buying the property

1 outright, like you just go buy a house and get title, for
2 example, you have a loan on it, with an option it gives you a
3 right to buy the property, and then the terms of the option
4 basically set forth the conditions and the terms of which you
5 can exercise that option. And when you do exercise the
6 option, the sales price is already in the agreement. So you
7 exercise the option, that means in this case Sam through his
8 LLC now has to sell the property to TSS once the option is
9 exercised.

10 Q Got it.

11 A And people do that for a variety of different
12 reasons. We really didn't have the cash to buy the house
13 outright through this TSS, so the option was a pretty good fit
14 to basically keep making option payments to keep the right to
15 buy the house alive until we could go out and try to find
16 cash, you know.

17 We were hoping something would turn around. Houses
18 in Montreux could be sold. There could be a variety of
19 things. We just didn't have that crystal ball yet.

20 So it was basically a way to keep it alive and,
21 therefore, since he no longer owned the house outright,
22 somebody had an option to buy it, so the option encumbers,
23 right? You can't go sell it to anybody else. And if a
24 creditor comes, the option basically should take precedent
25 over a creditor trying to attach the house, so that was one

1 way to structure it.

2 Q What you just discussed with us was discussed between
3 yourself and Sam?

4 A Yes.

5 Q Can we please show the witness Exhibit 23.5. If you
6 need the hard copy, Mr. Hascheff, please let me know and I
7 will make sure I retrieve it.

8 A Yeah, I do want the hard copy.

9 Q Okay. I'm on it. 23.5, please. Oh, you have got it
10 in front you, sir.

11 A This says 1 through 13.

12 THE CLERK: It's not there.

13 MR. ROBISON: Thank you.

14 BY MR. ROBISON:

15 Q Would you blow up the first paragraph, please. Did
16 you prepare that document?

17 A Yes.

18 Q All right. Just generally tell us what was intended
19 to be accomplished by that particular document?

20 A Well, TSS would have the -- you said it's 23.5?

21 Q Yes, sir.

22 A TSS would be the buyer and then Samuel Jr. Family
23 Trust, which owned the home, was going to be the seller.

24 Q All right. Now, is that a document that gets
25 recorded with the Washoe County Recorder's Office or a

1 Memorandum of Option, anything like that?

2 A Well, you can typically do it both ways, but I always
3 prefer just to do a Memorandum of Option.

4 Q What is the effect of recording with the Washoe
5 County Recorder's Office a Memorandum of Option?

6 A You put all third parties on notice that this
7 property is encumbered.

8 Q So everybody in the world is put on notice that
9 Incline TSS can purchase that house?

10 A Correct.

11 Q All right. And if they do anything with the house,
12 they take it subject to that option?

13 A Correct. That's my opinion, yes.

14 Q And is that why you record those documents?

15 A Yes.

16 Q All right. Now, in this particular instance it
17 describes in the memorandum the terms of the deal that Incline
18 TSS gets with respect to the option, correct, sir?

19 A Correct.

20 Q What are the terms of the deal?

21 A Well, there was supposed to be a \$50,000 it looks
22 like initial payment. Purchase price was 72, excuse me,
23 \$7,250,000. If I remember right, the debt was \$6.3 million,
24 so it outlines the terms of these option payments. It would
25 have to occur on the 15th, January 15 of each month until the

1 option was exercised, and then once the option was exercised
2 there was going to be a promissory note that was going to be
3 given from TSS to Sam.

4 Q And the terms of that note, 10 years, 2.5 percent
5 interest?

6 A Correct.

7 Q Now, did you and Sam negotiate different terms that
8 might apply before you finalized this memorandum?

9 A When you say different terms --

10 Q Do you recall any discussions about a 6 percent
11 interest rate for a five year term?

12 A Right. So I believe in the initial draft, because
13 obviously when you do creditor protection work you are always
14 concerned that a creditor might come in and try to set aside
15 the transaction, so to make it bulletproof, so to speak, you
16 should have, try to make it as arm's length as possible. But
17 once we put those in, that was like an initial draft, that was
18 kind of my recommendation, if I remember correctly.

19 Q The 6 percent at five years?

20 A Yeah, because I thought that they could cash flow
21 that.

22 Q Right.

23 A But they couldn't.

24 Q Okay.

25 A So that's why we went to these relaxed terms, because

1 that would be something that they could afford, because the
2 last thing you want to do is set up terms that they can't
3 keep --

4 Q Sure.

5 A -- and then arguably they are in default and then the
6 whole transaction gets unraveled.

7 Q Do you recall that you might have sent the wrong
8 memorandum to Ticor Title?

9 A Yeah, that's what I have been -- yes, that's what
10 happened.

11 Q Let's see Exhibit 542, please. Can you tell the
12 jury, please, how it came about that you sent the wrong
13 memorandum to Ticor?

14 A Well, first of all, it shouldn't have happened,
15 because that was not the operative agreement. It looks like
16 that was a prior agreement that was ultimately changed to the
17 terms. And what I think may have happened is I could have
18 been out of the office and they needed a copy of the Option
19 Agreement and my secretary sent it.

20 Q They, Ticor?

21 A Ticor, yeah, because they would need a copy of it in
22 order to close the transaction, and it's happened before and I
23 have sent what I thought might be the correct document and it
24 really isn't. It should have been, but I think my secretary
25 just sent the old document.

1 Q But the valid, binding, effective one is the one that
2 refers to the 10 year note at 2 1/4 interest?

3 A That's correct.

4 Q All right. Why was the note to be unsecured,
5 Mr. Hascheff?

6 A Well, again, a lot of moving parts when you are
7 trying to do something like this, but --

8 Q Unsecured, just so we are clear, means what?

9 A Unsecured means that typically taking a house, you
10 buy a home, for example, you get title to the home when you
11 buy it. You had to finance it, right, with the lender, so the
12 lender secures your promise to pay the lender with the home.

13 Q A deed of trust?

14 A Correct. And so if you don't pay up your note
15 payment like you are supposed to, your lender will foreclose
16 on your house. So that note, that promise to pay is secured
17 by the home.

18 Q Okay. But in this instance the lender, which would
19 be SSJ?

20 A Right. So just to back up a little bit, initially,
21 if I remember correctly, the transaction was structured
22 between the trust and TSS, and then what I wanted to do is put
23 another limited liability company in the middle.

24 Q Is that another layer of protection?

25 A Correct.

1 Q How so?

2 A Because it's SSJ now, so the trust owned SSJ, which
3 was a single member LLC owned by the family, Sam's Family
4 Trust.

5 Q Let me mine into that a bit. 2010, the trust owns
6 the Lake Tahoe house?

7 A Correct.

8 Q If Sam dies, the Lake Tahoe house is disposed of in
9 accordance with the terms of the Family Trust document --

10 A Correct.

11 Q -- then in effect, right?

12 A Correct.

13 Q But then you with your client Sam transfer the house
14 from the trust to the new limited liability company called
15 SSJ, LLC?

16 A Correct, yes.

17 Q Now, who owned the member SSJ, LLC?

18 A His trust.

19 Q All right. So there is a different owner after you
20 accomplish that transfer in 2011, correct?

21 A Right. SSJ owned the house.

22 Q All right. So if Sam had died when the Lake Tahoe
23 house was owned by SSJ, LLC, how would it have been
24 distributed?

25 A Okay. So the, this assumes that Sam passes away and

1 SSJ still owns the house?

2 Q Yes, sir.

3 A All right. So the membership interest would be
4 subject to the trust.

5 Q Federal estate tax on the house?

6 A Yeah, if he meets the threshold.

7 Q Now, if SSJ owns the Family Trust and, excuse me,
8 Family Trust owns SSJ, creditors can still get to the house
9 through a charging order, correct?

10 A Well, maybe just backing up a little bit, I think
11 Nevada still does, but at the time had one of the most
12 favorable charging order statutes in the country, which means
13 that if a creditor comes after you, let's say because you
14 default on a personal loan, but your property is in an LLC,
15 the only thing they can attach is the membership interest in
16 the LLC. They can't get to the asset.

17 Q They don't get the asset, just the membership
18 interest?

19 A Just the membership interest, and in some states if
20 you are able to attach the membership interest as a creditor,
21 you can then in effect pierce the LLC and get to the property.

22 Q Okay.

23 A Nevada did not allow that. The Nevada statute
24 basically said that the only way, the only thing you get by
25 attaching the member's interest is basically any cash that's

1 distributed to the member. They can't get to, there is ways
2 you could, but typically you could bulletproof it by
3 structuring the transaction that way.

4 Q And in doing this transaction with SSJ, LLC, are you
5 doing your best to effectuate Sam's intent?

6 A And to protect the house.

7 Q All right. So let's move into 2012. Pretty busy
8 year for Sam Jaksick?

9 A Just as busy as ever, so, I mean, he had surgery, I
10 think, in 2012. If I remember right, I think we were selling
11 property.

12 Q Let's turn it back a little bit to April of 2012.

13 A Okay.

14 Q Do you remember working with Sam on a Second
15 Amendment and a Fifth Amendment to his estate plan?

16 A Yes.

17 Q Tell us about that, please.

18 A All right. So typically what happens is the client
19 comes to you and says, look, I want you to amend my trust. I
20 want to change the terms of my trust.

21 I hadn't drafted any of his trusts before, so I said
22 provide me with copies of all of your trust agreements, your
23 amendments, everything, so I can read them and see, you know,
24 the progression of what's the operative document.

25 So, if I remember correctly, they brought me some but

1 not all of the trust, and as I read through them I said we are
2 missing some documents. So it was kind of a give and take
3 saying you brought me another one. I still don't have all of
4 the documents.

5 Then when I thought we really had our arms around all
6 of the documents, I was drafting documents and amending the
7 trust documents that they had provided me, and ultimately I
8 can't remember the exact dates, but after we had drafted these
9 documents and they had signed them, they told me that there
10 was another document they thought that was out there, which
11 they ultimately provided me with.

12 Q Is that the 2006 restated trust agreement?

13 A Correct. That came in at the last minute.

14 Q Okay.

15 A So then when I read that document, I said, well, we
16 just wasted a bunch of time, because I'm amending documents
17 that are no longer the operative documents.

18 Q Back to the drawing board?

19 A Correct.

20 Q All right. So in April you have got a signed Fifth
21 Amendment and you have got a signed Second Amendment. How did
22 that happen?

23 A The only thing I can say about that is I thought the
24 Fifth Amendment was the operative document, and then we did
25 the Second Amendment on the heels of that document probably, I

1 don't know. I didn't know which one was the operative
2 document.

3 So I obviously did a Fifth and a Second, and then
4 come to find out, because all of this happened in April, so
5 between April and ultimately December when the Second
6 Amendment was actually prepared, I was able to get my arms
7 around exactly which documents were the operative documents.

8 Q All right. Got it. So we go through the summer
9 of 2012 into this period, say December of 2012. Were you
10 aware that Sam was scheduled for some heart surgery?

11 A Yeah, he was supposed to have heart surgery.

12 Q Okay. Did you draft the Second Amendment?

13 A Yes.

14 Q Did you do so with Sam's assistance?

15 A Yes.

16 Q Did Sam tell you what his intent was?

17 A Yeah. He told me where he wanted his property to go,
18 yes.

19 Q All right. Now, by this time was it clear to you,
20 based on what Sam had represented to you, whether or not Wendy
21 was to have any ownership in the Lake Tahoe house?

22 A She was not.

23 Q Sam made that absolutely clear to you?

24 A That it was structured that way, yes.

25 Q And did Sam give you an explanation as to why he did

1 not want Wendy to have an ownership in the Lake Tahoe house?

2 A It was the same reason she wasn't, had an ownership
3 in the other entities, because --

4 Q Creditor claims, things like that?

5 A Yeah, potential issues with problems.

6 Q Did you honor Sam's intent to make sure that she had
7 no interest in the Lake Tahoe house?

8 A Correct, I did.

9 Q All right. So when you did the Second Amendment, can
10 you tell us generally what the substantive changes were in
11 Sam's estate plan accomplished by the December 10th, 2012
12 Second Amendment to trust?

13 A I don't remember all of the provisions, but the Lake
14 Tahoe house was no longer in his estate, so he said that it's
15 no longer, that's not an asset that's going to be distributed.

16 Q Well, by that time had the TSS option actually been
17 exercised?

18 A I can't remember if it was exercised or not, but
19 there was a provision in there that said that, there was a
20 note in the Second Amendment saying the house is under option
21 and it's not, it's not available for distribution.

22 Q Even though at that time Todd's two trusts were the
23 sole members, the sole owners of Incline TSS, were you aware
24 of any intent that Stan be permitted to buy in notwithstanding
25 Todd's ownership?

1 A Yeah. It was, the details were not exactly worked
2 out, but it was, it was the intent that Stan would eventually,
3 once the divorce was final, that we would be able to sit down
4 and work through his buy-in. I --

5 Q How is -- I'm sorry, I interrupted you.

6 A Go ahead.

7 Q What was -- was Stan to utilize perhaps lots at
8 Montreux to fund the buy-in to the Incline house?

9 A That was one of the options, yes.

10 Q And was that --

11 A Because he was going to get, Sam was gifting him
12 stock in the company that owned Montreux.

13 Q Toiyabe?

14 A Toiyabe.

15 Q And Toiyabe owned what?

16 A It owned Montreux.

17 Q And then Sam gifted 80 percent of Toiyabe to Stan?

18 A I don't remember the exact percentage, but it was, it
19 was a healthy percentage.

20 Q And do you know why Sam intended to give that gift to
21 his son Stan Jaksick?

22 A Well, Stan was really the golf course expert, so he
23 wanted to make sure that Stan would basically own the majority
24 of the golf course.

25 Q Okay. And how was Stan to buy into the house then

1 during this divorce proceeding?

2 A He couldn't until the divorce was final.

3 Q Was that discussed at length with Sam?

4 A Yes.

5 Q And when the option was exercised by Incline TSS,
6 that transferred the house out of the Family Trust to Incline
7 TSS, correct?

8 A Well, what we did is we took the house from the
9 Family Trust, conveyed title to SSJ.

10 Q Right.

11 A And then SSJ sold it to TSS.

12 Q Knowing that Wendy had nothing to do with Incline
13 TSS?

14 A Correct.

15 Q Did Sam indicate to you in any way that he wanted
16 Wendy to ever have an ownership interest in Incline TSS?

17 A No, she was not supposed to have an ownership
18 interest.

19 Q Was Sam's intent clear that Wendy was not to have an
20 ownership interest in any assets because of creditor issues?

21 A I mean, the short answer is yes. I mean, if he came
22 to me and said, hey, I have got another venture and I think I
23 would like to put Wendy in it, we would do it, but he was
24 always concerned about creditor issues and other issues and he
25 did not want that to be disruptive to any of the entities,

1 therefore, she was not an owner.

2 Q All right. Are you aware that her share to be
3 received under the Family Trust is to be received by her
4 sub trust?

5 A Her share in the Family Trust?

6 Q Yes, sir.

7 A Right. She has, if I recall correctly, she has a
8 life estate earning interest.

9 Q What is a life estate?

10 A Well, what happens is he was concerned that if she
11 got the property or the money outright, she might spend it,
12 and he wanted to make sure his grand kids, her children, had
13 something. So he made some directives for them through the
14 children's trusts and then he made sure that she would be
15 taken care of, which means for life she would get
16 distributions so that she could be, she could live.

17 All right. And then whatever she didn't spend,
18 because the trustee would basically allocate the money to her
19 on a monthly basis, for example, whatever she didn't spend
20 would then go to the grand kids when she passed away.

21 Q And that's what Sam wanted?

22 A Yes.

23 Q Do you recall who the trustees of Wendy's sub trusts
24 were to be?

25 A I couldn't tell you.

1 Q Do you recall any involvement, Mr. Hascheff, in
2 preparation of durable power of attorney, healthcare provide
3 attorney, and a general power of attorney for Sam?

4 A Yeah. I believe I prepared those, yes.

5 Q What are those documents? What is the significance
6 of those documents?

7 A A healthcare power of attorney is when you, for
8 example, give someone, usually a family member, power of
9 attorney to make healthcare decisions for you. So let's say
10 you are incapacitated, you are hospitalized, whatever, that
11 person or doctor can rely on a power of attorney that says I
12 can make healthcare decisions for you.

13 A general power of attorney is the financial side,
14 which means I'm giving you my power of attorney, usually a
15 child, to sign off for me if I'm incapacitated, that you can
16 make my financial decisions for me.

17 Q And did he give that power of attorney to Todd?

18 A I believe he did, yes.

19 Q Why Todd and nobody else?

20 A Well, because that's what he wanted, so that's who he
21 wanted.

22 Q Did you form an impression that Todd was getting the
23 majority or more than his siblings as a result of Sam's estate
24 planning?

25 A Yeah, he was getting more.

1 Q Why?

2 A Well, the way as I understood it, based on my
3 conversations with him, it was Todd did quite a bit of work on
4 all of the --

5 Q When you say him, are you talking about Sam, the
6 conversations with Sam?

7 A My conversations with Sam, he obviously left all
8 three of his kids, but he wanted to reward them based on their
9 contribution to these assets that were ultimately generated,
10 and Todd worked on a lot of them, the majority of them.

11 Most of the deals, in fact, all of the deals that we
12 worked on, it was just Sam and Todd that worked on them. All
13 right. And then he wanted to make sure that Stan got a share
14 of the estate as well as Montreux, and I thought maybe there
15 might be one or two other entities.

16 But Todd worked on all of the ranch transactions, so
17 he, he thought it would be appropriate to reward Todd, by Todd
18 worked on these, Todd generated the value for those, and he
19 should get those.

20 Q All right. Do you recall that in the 2006 document
21 there was a deduction from Wendy's share of \$1.5 million?

22 A Yes.

23 Q Did you and Sam talk about that?

24 A Yes. So what happened is in the prior document he
25 had put in that, if I remember right, her one-third share,

1 when she got her one-third share after he passed away, that
2 they would deduct \$1.5 million from her one-third share, so
3 when we drafted the Second Amendment he did not want that
4 deduction to occur.

5 Q Did he explain why he wanted that deduction from
6 Wendy's share out of the Second Amendment?

7 A Well, in part because Todd was getting the majority
8 of the assets, Stan was going to be second, and that was the
9 way to equalize, provide her with some value so she wouldn't
10 have to take a \$1.5 million hit.

11 Q All right. Now, the house then is designed in
12 December of 2012 to be outside of the Family Trust?

13 A Correct.

14 Q And the reasons for that, sir, are what? You
15 mentioned creditor protection. Were there other reasons?

16 A Well, I think, and this was I think Kevin, the
17 accountant's concern that there potentially would be an estate
18 tax consequence if the house, it was worth about \$7 million,
19 whatever it was, so he was concerned. It had a lot of debt on
20 it, so it wasn't completely taxable, so but it was taxable.

21 And then the other thing was there was talk about
22 legislation being changed in 2013 that would create an excise
23 tax on capital gains, so Kevin was concerned that if we didn't
24 transfer it by 2012 and they eventually wanted to sell it,
25 then potentially that would be a problem.

1 Q Let's back up. You mentioned capital gains. Tell us
2 what a capital gains tax is.

3 A Well, it's the difference between what you sell your
4 house for, your property for, and what you paid for it,
5 basically.

6 Q So if you bought a house for \$100,000 and you sold it
7 for \$200,000, that profit of \$100,000 would be subjected to
8 capital gains tax?

9 A Correct.

10 Q And the capital gains tax in 2012 was a lesser amount
11 than anticipated to be in 2013?

12 A Correct.

13 Q Is that one of the reasons why this had to be done in
14 2012?

15 A That was pretty much Kevin's brainchild. I mean,
16 obviously, if he had a personal residence, there is an
17 exclusion.

18 Q Right.

19 A So there is some benefits when you sell a residence
20 versus a different piece of property, investment property, for
21 example, but he said those were two important issues from his
22 perspective.

23 Q It would save the Jaksick family thousands of dollars
24 if it closed in 2012, correct?

25 A Yeah. Kevin would be better, he thought there was

1 going to be a financial.

2 Q Was Kevin Riley recommending the transfer of the
3 house to Incline TSS?

4 A He was definitely onboard.

5 Q Was he one of the architects of that entire estate
6 plan with you?

7 A Yeah. He was probably the primary lead on that, yes.

8 Q And did he discuss with you the tax implications and
9 the various structures of how that would benefit the family?

10 A I can't remember all of the details. I just know
11 that those were two important issues to him. My, my primary
12 concern was creditor protection.

13 Q All right. So the option that was sold to Incline
14 TSS, was that exercised in December 2012?

15 A I believe it was.

16 Q And was there some problems with the dates?

17 A When you say problems with the dates --

18 Q On the notice of exercise of the option, do you
19 recall anything about that?

20 A Yeah. When I was reviewing the documents in
21 preparation I think for my deposition and today, the notice of
22 exercise was dated December 21st, all right, but I don't think
23 the option was exercised until after that date. Probably, we
24 were waiting for the B of A approval. Once we got B of A
25 approval --

1 Q Let me interrupt you. Why do you need the bank's
2 approval to do these transactions?

3 A Well, typically and in this, typically bank documents
4 say that if you transfer the property it triggers a default,
5 and now you are in trouble because they accelerate the entire
6 loan, which would have been \$6 million, so you cannot transfer
7 the property.

8 And the way they define transfer in the documents,
9 it's all encompassing. If you put an option on the property,
10 it could be considered a transfer, and, therefore, a default.
11 Therefore, the note is accelerated and now you owe the bank
12 \$6.3 million, whatever it is.

13 Q Now that Incline TSS is going to own the house and
14 Incline TSS is owned by two of Todd's trusts, do you know what
15 the plan was to raise money to sustain that house?

16 A Okay. Could you ask that --

17 Q Yeah. How was the house going to be sustained with
18 Incline owning it, do you know?

19 A Well, it was structured because it has got to be, it
20 has got to be arm's length, so the way it was structured is
21 once TSS owned the property, it would have to continually find
22 at least \$50,000 a year, okay, to basically -- excuse me, back
23 up a second.

24 Sam still wanted to live there, okay, even though TSS
25 owned it.

1 Q Now, is there a danger with that with regard to the
2 IRSS -- IRS?

3 A You say danger.

4 Q Could the IRS consider the transaction from SSJ, LLC
5 to Incline TSS a sham if Sam just continued to live there rent
6 free?

7 A That would be one issue. So would the creditors,
8 because if you are actually doing an arm's length transaction
9 with a third party, albeit a family entity owns the property,
10 you can't just let somebody live there for free. So we
11 structured that he would have to rent the house and pay fair
12 market value rent or something close to it and that would help
13 fund the option payments.

14 Q And also to validate the arm's length transaction
15 nature of the transfer?

16 A Yeah. We tried to make it as close to arm's length
17 as we could.

18 Q Even though it's an interfamily type of deal?

19 A Correct.

20 Q All right. Were you comfortable with that in terms
21 of the structure of that transfer to protect the Lake Tahoe
22 house from creditors?

23 A Well, when you say comfortable, anything can happen,
24 you know, but we did the best we could under the
25 circumstances.

1 Q Mr. Hascheff, was it Sam's intent to transfer that
2 house to Incline TSS?

3 A Yes.

4 Q No question about that?

5 A No question about it.

6 Q All right. So Incline TSS executes a note for the
7 purchase price. Is seller financing unusual in your role?

8 A No.

9 Q What is seller financing?

10 A Well, instead of you having to go, like TSS having to
11 go to the bank and borrow the money to purchase the Incline
12 house, that was not an option. All right. That was --

13 Q There was already a \$6.3 million loan on it?

14 A Correct. So given the cash flow issues that were
15 being experienced, the best option was to basically do an
16 unsecured note interest only and they would pay for it that
17 way, and then obviously the option, excuse me, the note would
18 finally sunset and then you would have to pay off the note.

19 Q Regardless of all of the ramifications, Incline TSS
20 still has to pay \$7.25 million?

21 A Correct.

22 Q And the option payments that it made were to be
23 credited against the purchase price?

24 A Correct.

25 Q All right. So if there were a deed of trust, and a

1 deed of trust again is what?

2 A It's basically a lien on the property.

3 Q Okay. So if SSJ, LLC had asked for a secured note,
4 that that \$7.25 million note be secured by a deed of trust,
5 that's behind the bank, isn't it?

6 A Correct.

7 Q In other words, the bank has priority for the 6.3,
8 correct?

9 A Yeah.

10 Q But the deed of trust then becomes an asset of the
11 Family Trust, correct?

12 A Well, it would have been SSJ.

13 Q Which was owned by the Family Trust?

14 A Right.

15 Q And, therefore, a deed of trust would have been an
16 asset. Creditors could have gone after it, correct, sir?

17 A Well, potentially, yes. So if it's unsecured and the
18 note goes into default, because TSS cannot make the payments,
19 then that's the only asset you have to worry about that
20 potentially creditors could attach.

21 All right. If there is a deed of trust and the
22 creditors attach the note, and now there is a lien that backs
23 up the note, we were concerned that the creditors could now
24 foreclose on the property.

25 Q Well, not only that, let's walk through this. Say in

1 March of 2013, assume there is a deed of trust in favor of
2 SSJ, LLC on the Lake Tahoe house and Incline defaults, SSJ
3 could foreclose on that second deed of trust, correct?

4 A Correct.

5 Q And when it does, it gives the property back subject
6 to the B of A loan, correct?

7 A That would be, that could be one option, yes.

8 Q And the creditors would then have a shot at the house
9 because it would then be owned by the Family Trust by virtue
10 of the foreclosure?

11 A Run that by me again.

12 Q The creditors would have access to the house because
13 of that foreclosure process?

14 THE COURT: Excuse me.

15 MR. SPENCER: Your Honor, I will object as leading
16 questions.

17 THE COURT: Sustained.

18 MR. ROBISON: I will rephrase.

19 BY MR. ROBISON:

20 Q What would happen, Mr. Hascheff, if there were a deed
21 of trust on the house and SSJ, LLC foreclosed on that deed of
22 trust? What is the consequence of that?

23 A Well, it's a little bit more detailed than that.

24 What happens is the bank is still there, correct?

25 Q Correct.

1 A All right. Well, if, if SSJ tries to foreclose on
2 the house, it's subject to the bank's loan and that means the
3 bank is going to also foreclose on the house. They are not
4 going to let SSJ take the house.

5 Q Who gets the house?

6 A The bank.

7 Q That's right. Is that what Sam wanted?

8 A No.

9 Q Is that why there is an unsecured promissory note?

10 A That would be one reason, yes.

11 Q So were you talking to Sam at all, Mr. Hascheff, when
12 he was hospitalized down in Los Angeles?

13 A I can't recall if I was talking to him or not.

14 Q Were you talking to Todd?

15 A Probably, yes.

16 Q Was Todd doing a lot of work in December to help
17 facilitate all of these loose ends that had to be done by the
18 end of the year?

19 A Yeah. I mean, that's pretty much the way it always
20 worked.

21 Q Okay. Do you recall that your office received
22 signature pages for the Second Amendment to trust on
23 December 18?

24 A Well, there is an e-mail basically where those
25 signature pages were sent to us, yes.

1 Q Okay. So to understand how this happened, you are
2 with Stan drafting --

3 A Sam.

4 Q I'm going to do this the rest of my life -- You are
5 with Sam drafting the Second Amendment?

6 A Correct.

7 Q Before he leaves for the hospital?

8 A Correct.

9 Q All right. And you are working at your office on the
10 draft?

11 A Correct.

12 Q You get it finalized. Does it go over to Sam's
13 office and then he signs it there?

14 A I can't recall if he did or if he signed it in my
15 office, but typically he would sign. Jessica would print out
16 the documents, and then she would give them to him. He would
17 sign them, and then they would get them back to us.

18 Q They would send the signature pages back over to your
19 office?

20 A It could be just the signature page or sometimes the
21 entire agreement. I've done it both ways.

22 Q Then to keep an accurate file you would put the
23 document together, signature page with the Second Amendment?

24 A Correct.

25 Q Do you believe that's what happened in this case?

1 A That's the way it generally happened, yes.

2 Q Do you believe that Sam's signature is forged on the
3 Second Amendment?

4 A No, it's not forged.

5 Q Do you have any reason to believe that Sam's
6 signature on the Option Agreement is forged?

7 A I don't think it's forged, no.

8 Q And you worked with Sam and you believe that's his
9 signature on that Option Agreement?

10 A I'm not a handwriting expert, but I have no reason to
11 believe it's not his signature.

12 Q You have probably seen Sam sign how many documents?

13 A A few, quite a few.

14 Q Do you have any reason to believe that any documents
15 that you negotiated and prepared for Sam Jaksick were forged
16 by somebody else?

17 A I have no reason to believe that.

18 Q Is it your belief that his signatures were put on the
19 documents that you prepared to make them valid, legal, and
20 effective?

21 A Well, typically what would happen is I would get the
22 signature page, or the document with the signature page back,
23 and then we would basically attach it to the document, and
24 then we would scan it and then e-mail it to him, so they would
25 always have a copy of what we considered to be the operative

1 draft, the operative final agreement.

2 Q Would it be fair to say that you were in the process
3 in December of 2012 and into January of 2013 of more or less
4 winding down your practice?

5 A January of 2013?

6 Q Yes, sir.

7 A For the most part, yes.

8 Q Why was that?

9 A Well, because, I mean, the short story was, yes, I
10 had gotten an opinion that said I could continue to practice
11 law.

12 Q From whom?

13 A It was from the judicial ethics.

14 Q Why judicial ethics?

15 A Well, that's who makes the determination, so they
16 said as long as I, my practice did not interfere with my
17 judicial duties, then I could continue to practice. Then, and
18 then I was told, no, you can't, you cannot practice law once
19 you take the bench.

20 Q When did you take the bench?

21 A I took the bench I think sometime early January '13.

22 Q When did you get that final opinion?

23 A It was later. I don't recall when, because the
24 Incline Justice of the Peace, he actually has a private
25 practice, so that's what they thought. It was finally sorted

1 out and I could not.

2 So the other opinion I got was as long as you wind
3 down your practice, you can still practice, because you have
4 to wind it down, and then I can't remember when that all
5 happened, but the ultimate decision was I could not.

6 So, in effect, I was winding it down, because I just
7 didn't have enough time, so that's when Nick Palmer came
8 onboard and he basically took over my responsibilities and
9 that was sometime in 2013, I think it is.

10 Q And is it your best recollection, Mr. Hascheff, that
11 the Second Amendment was signed before Sam went down for his
12 heart surgery?

13 A That's what he wanted to do.

14 Q He wanted to get it done?

15 A Correct.

16 MR. ROBISON: Very well. Your Honor, may I just
17 confer with my client?

18 THE COURT: Yes.

19 MR. ROBISON: I will pass the witness, Your Honor.
20 Thank you.

21 THE COURT: Let's all stand, ladies and gentlemen.

22 Mr. Lattin, you may begin.

23 MR. LATTIN: Thank you, Your Honor.

24

25

CROSS EXAMINATION

1

2 BY MR. LATTIN:

3 Q Mr. Hascheff, I represent the trustees of the Samuel
4 S. Jaksick Family Trust. Do you know who they are?

5 A I believe it's Stan, Todd, and then it should be
6 Kimmel.

7 Q Okay. And just going back to the point in time when
8 you are doing some estate planning for Sam and you are
9 drafting documents for him, did you find out at that point in
10 time who the trustees were of the Family Trust?

11 A You mean as they were listed in the Second Amendment?

12 Q Yeah. No, as they were listed in the Family Trust
13 document?

14 A You mean the 2006 document?

15 Q Yes.

16 A I can't, it was Todd, Stan, and I think a guy by the
17 name of Benetti --

18 Q Okay.

19 A -- that passed away, and so I couldn't tell you other
20 than those two.

21 Q Okay. And that's correct, it was Todd and Stan, and
22 then it ended up being Kevin Riley, who we will talk about in
23 a minute.

24 Do you know why Sam put in Stan and Todd as trustees
25 of his Family Trust?

1 A Well, typically that's what families do. It's going
2 to be your kids, usually the kids that have some financial
3 acumen that you trust to be able to manage the affairs of the
4 trust.

5 Q So was it your understanding, then, that Sam put in
6 Todd and Stan because they had this financial acumen that you
7 are speaking of?

8 A Yeah, because I think he trusted both of them, yes.

9 Q And they were also his business partners?

10 A Yes.

11 Q Okay. Now, was that also -- well, you represented
12 Sam for how many years? Do you know approximately how many
13 years it was?

14 A It was probably 10 --

15 Q Okay.

16 A -- or more.

17 Q And during that time frame, you already testified
18 that you were, you knew Sam to be involved with Stan and Todd
19 as well in various businesses?

20 A Correct.

21 Q Okay. Did you find out in your transactions with Sam
22 that he did trust Stan and Todd?

23 A Yeah, he did trust both of them.

24 Q And that would be one of the reasons why he put them
25 in as trustees; is that correct?

1 A Correct.

2 Q Now, you have mentioned the name Kevin Riley, and the
3 jury met him the first day, because he was here and was here
4 for opening statements. Who is your understanding as to who
5 Kevin is and what his relationship was with the Jaksick
6 families?

7 A Well, he worked with a firm out of Sacramento, and I
8 believe the initial person was a Ray Benetti. He was a
9 principal in that CPA firm. And then I believe Ray passed
10 away, so Kevin took over all of the Jaksick work. So when I
11 came onboard, I believe Kevin was already there and he was
12 already the, he was the CPA for Sam Jaksick. He did all of
13 their work.

14 Q And when you say all of their work, are you talking
15 about all of the various entities that Sam had?

16 A Yeah. He did all of their tax work.

17 Q Okay. And the real estate work that you did and the
18 other things that you did for Sam, did you work with Kevin?

19 A Oh, yes.

20 Q And did you get an understanding as to his actual
21 involvement with the family and the family entities?

22 A Yeah. We really didn't do anything without Kevin
23 being involved, because everything we did had some kind of a
24 tax consequence to it, and then he did all of the returns. He
25 was very familiar with the spreadsheets, the accounting, so we

1 didn't, we very seldom, if any, did anything without Kevin's
2 involvement.

3 Q And you talked about some of these transactions and
4 why they were being done and cash flows and cash flow analysis
5 and things like that. Was Kevin involved in those?

6 A I believe he was.

7 Q Okay. Would it be fair to say that Kevin was the one
8 that really truly had an understanding of the, all of the
9 financial aspects of the various Sam Jaksick entities?

10 A I think he did, yes.

11 Q Okay. And through your contact with Sam and Kevin,
12 did you come to an understanding that Sam also trusted Kevin?

13 A Oh, I believe he did, yes.

14 Q And is that your understanding as one of the reasons
15 as to why Kevin was also a trustee for a period of time?

16 A I believe so, yes.

17 Q Okay. So Sam put in people that he trusted --

18 A Correct.

19 Q -- to manage his estate?

20 A Yeah, and it's not unusual to have a trustee, as your
21 lawyer to be your trustee or your accountant, because they are
22 very familiar with your financial affairs.

23 Q Did you ever have any discussions with Sam about
24 putting Wendy in as a trustee?

25 A No, she was not going to be a trustee.

1 Q Okay. And in your interactions with Kevin Riley did
2 you gain an understanding that he did know the financial
3 aspects of the Jaksick entities?

4 A Oh, he did, because he would do, he did the financial
5 statements for all of the entities as well as the tax work.

6 Q Okay. And in your interactions with the Jaksick
7 family members, Todd, Stan, and Sam, is Kevin the one that you
8 would characterize as having the full understanding of all of
9 the finances?

10 A Yeah. He was, he was the lead when it came to that.

11 Q Okay. And you are a CPA as well, correct?

12 A Correct.

13 Q And you had an opportunity to look at Mr. Riley's
14 work. Did you find his work to be good financial work?

15 A When you say look at, I mean, he would provide the
16 accounting and the spreadsheets and, I mean, I didn't do an
17 audit on his work, but I trusted his, if I saw a financial
18 statement I believed it was accurate, because --

19 Q Okay.

20 A -- just based on my discussions with him he was very
21 knowledgeable about all of the Jaksick entities.

22 Q Okay.

23 A He knew what he was talking about.

24 Q Okay. He knew what he was talking about, so he would
25 be a logical person to be a trustee?

1 A Yes.

2 Q Okay. Now, in the process of estate planning, and
3 you have described the Second Amendment and what you did in
4 that regard, and you have talked generally about what the
5 Second Amendment did.

6 Why was it that Sam wanted to do that Second
7 Amendment and particularly at that period of time in December
8 of 2012 when he did that?

9 A Well, it's not, it's not unusual, but if dad or mom
10 are going in for surgery, they may not come out, they
11 typically take another fresh look at their estate planning and
12 their documents, and if they want to make changes, they want
13 to make the changes before they go into surgery.

14 And that was the intent here, he did want to make
15 some changes, and I think he believed he may not come out of
16 this surgery and that's why there was a push to try to get it
17 done before he went.

18 Q Okay. Would that be the same thing with regard to
19 the other transactions that you talked about with Mr. Robison
20 as far as transfer of the house and things like that as well?

21 A That would have a little bit to do with it, but
22 primarily it was creditor protection. We were trying to get
23 things insulated so he wouldn't lose the home, for example.

24 Q Okay. So when Sam is asking you to do the Second
25 Amendment, it's right before his surgery, and you find that is

1 something that typically happens with people who are going in
2 for medical treatment?

3 A Yeah. It's not unusual to have a client come to you
4 and say I'm having surgery. I may not come out, so I want to
5 make sure my planning is up to date.

6 Q Okay. And so when he is taking that fresh look at
7 things and making the changes that you have already outlined
8 for the jury, he wanted to keep Stan and Todd in as trustees;
9 is that correct?

10 A Correct.

11 Q And also Kevin Riley?

12 A Yeah. I put in the people he wanted me to put in.

13 Q Okay.

14 A Now, Stan and Todd, if I remember correctly, that my
15 trustee provision in the Second Amendment is virtually
16 identical as the 2006 trust that the LeGoy firm basically
17 drafted, so I basically mirrored that provision other than I
18 believe Kevin Riley.

19 Q Okay. And so in looking at that, it was Sam's intent
20 to keep Stan and Todd in as trustees?

21 A Correct.

22 Q Consistent with what he did in December of 2006 when
23 he did the Family Trust?

24 A Yeah. The June of 2006 trust?

25 Q Yes.

1 A Yes.

2 Q Now, with regard to the Family Trust and the Second
3 Amendment that you did, now, there has been a discussion
4 yesterday about Fourth, Second, Third, Fifth Amendments. At
5 the time that you did the Second Amendment and at the time of
6 Sam's death, what was your understanding as to what the
7 operative estate planning documents were?

8 A Well, like I said, initially I got the other
9 agreements piecemeal, so I was trying to put them together and
10 that took sometime, and then ultimately when I did the Fifth
11 Amendment, that's when I really, just after that, between
12 April and December of 2012 I finally got my arms around all of
13 the agreements. I finally figured out there were no more
14 agreements.

15 I finally figured out that the June 2006 Trust
16 Agreement is the operative document and that's the document
17 that should be amended, so there really shouldn't be a Fourth
18 and a Fifth Amendment.

19 There should be the 2006 Trust Agreement that was
20 done by the LeGoy firm and then there should be an amendment
21 to that agreement, so what I did is I took the Fourth
22 Amendment that I prepared and said really that was the First
23 Amendment to the 2006, because you got to piece this thing
24 together, and ultimately the draft that I'm doing in December
25 of 2012, that's really the Second Amendment.

1 Typically, when you do amendments, you basically say
2 the Second Amendment replaces the First Amendment or the Third
3 Amendment replaces the Second Amendment, so you really have
4 just a couple operative documents, so it makes it simple. I
5 have one, the main trust, which is the 2006 trust, and then
6 ultimately the changes that Sam intended and the changes he
7 wanted which were in the December Second Amendment.

8 Q Okay. So would it be fair to say, excuse me, that
9 the operative documents for the trustees to administer were
10 the Samuel S. Jaksick December 2006 Family Trust and then the
11 Second Amendment that you did?

12 A Yeah. It would be the June 2006 trust prepared by
13 the LeGoy firm and my Second Amendment.

14 Q Okay. And anything else in between was replaced and
15 done away with?

16 A Correct.

17 Q And that was the intent of your Second Amendment?

18 A Correct, and that was his intent.

19 Q Okay.

20 A Because that's what accomplished the objectives.

21 Q You have talked a lot both in response to
22 Mr. Robison's questions and to mine about Sam's intent, and
23 you are talking about his medical condition, and he is getting
24 surgery, and he is going to go in for surgery.

25 Did you believe that in, at the time that you are

1 looking at all of those documents and you are doing the Second
2 Amendment that he eventually signed, did you find that Sam had
3 a full understanding of the property that he owned?

4 A Yeah. He was competent.

5 Q Okay.

6 A I mean, we exchanged drafts, and he would change
7 percentages and then we would go back and forth. I mean, he
8 was in my office signing documents a lot. I never -- he was
9 competent. He never showed me any signs that he was not or he
10 didn't understand what he was doing.

11 Q So it was your belief that he fully understood what
12 he was doing when he signed not only the Second Amendment, but
13 the other documents that he was, you were preparing for him at
14 the end of 2012?

15 A Yeah. He understood what he was signing, yes.

16 Q Okay.

17 A He was competent and he understood what he was
18 signing.

19 MR. LATTIN: Okay. Thank you. That's all I have.

20 MR. KREITLEIN: Nothing for this witness, Your Honor.

21 THE COURT: All right. I'm not sure who it is,
22 Mr. Spencer, you?

23 MR. SPENCER: Yes.

24 THE COURT: You may begin. Let's just take one
25 minute and stand.

1

CROSS EXAMINATION

2 BY MR. SPENCER:

3 Q Mr. Hascheff, you were hired by Sam to dot I's and
4 cross T's; is that right?

5 A I was hired by him to prepare documents, yes.

6 Q Well, you testified that was one of your tasks was
7 that you were hired by Sam to dot I's and cross T's, correct?

8 A I don't remember testifying to that, but I was hired
9 to prepare documents, yes.

10 Q All right. And one second.

11 A Are you talking about in my deposition?

12 Q Yes, sir.

13 A Okay. I thought you meant this testimony.

14 Q Oh, I apologize, in your deposition do you remember
15 saying that?

16 A I could have possibly said that, yes.

17 Q Okay. And that was one of your tasks, right, to make
18 sure things were correct, right?

19 A Yeah. To the best of my ability, yes.

20 Q Not to, not to dot T's and cross I's, but to do
21 things accurately?

22 A That's the way a lawyer should be, yes.

23 Q Okay. And you were aware that Sam Jaksick had lots
24 of property, weren't you?

25 A Yeah. He did have lots of property, yes.

1 Q In fact, he had, you understood that he had hundreds
2 of thousands of acres of land, correct?

3 A Yeah, he had quite a bit.

4 Q And that at one point he was the largest landowner in
5 Northern Nevada, correct?

6 A That was my understanding, yes.

7 Q And that with that land comes water rights, right?

8 A It had water rights, correct.

9 Q And that those water rights were very valuable,
10 correct?

11 A They were at one point, yes.

12 Q Yes. And, in fact, there was a deal that was worked
13 with Eco2 that you worked on, right? Eco2 Systems I think it
14 was.

15 A Was Eco2 Systems, I'm sorry, was Eco2 Systems the
16 tree farm?

17 Q Yes, sir.

18 A Okay. Yeah, I was aware of it.

19 Q And that was projected, if it had worked out, and we
20 all know it didn't work out, but if that had worked out it was
21 projected to bring in \$1.4 billion, right?

22 A I don't recall it being that much, but it was going
23 to be some money.

24 Q Can we pull up Exhibit 167, please. You remember
25 seeing this projected revenue?

1 A Do you know who did this one? Was it Eco2?

2 Q You can show 166 to show that that's connected. Eco2
3 was the one where there were going to be 14,000 acres set
4 aside to build 1 point, or not to build, but to plant
5 \$1.3 million -- 1.3 million trees, convert that to carbon
6 credits, and then those credits sold on the market. Do you
7 remember that?

8 A Yeah, that's what Eco2 I think projected, yes.

9 Q Yes. And so then the next slide, 167, the income
10 that was projected, if all of that had worked out as planned,
11 \$1.414 billion, right?

12 A That's what it says.

13 Q All right. That deal fell apart, but there were
14 other deals that you worked on, too, right, in relation to the
15 water, I mean?

16 A Yeah. I mean, I dealt with the water rights, yes.

17 Q You remember the Spring Mountain deal, correct?

18 A Correct.

19 Q And that that was a very valuable conceptual --
20 Conceptually, that was a very valuable deal that if it had
21 worked out would have monetized a lot of money, right?

22 A Oh, yeah, but for the crash it could have been a, it
23 could have been a game changer, yes.

24 Q Yes, and but for the crash it would have, could have
25 been worth hundreds of millions of dollars, right?

1 A Could have been, yes.

2 Q And then you mentioned the Vidler project where you
3 talked about the water being rural, but if it could get into
4 the urban areas it could be worth a lot of money, right?

5 A Correct.

6 Q And Vidler was building a pipeline in order to send
7 money into the -- send water into the urban areas?

8 A Correct.

9 Q And presumably developers, other people that would
10 want to buy that water at the end of the pipe, right?

11 A Right, because you can't build a home unless you have
12 got the water rights.

13 Q Right. And so there were several different deals
14 that you were working with the Jaksick family on in relation
15 to the water rights that were worth hundreds of millions of
16 dollars or more, right?

17 A Yeah. If they could have come to fruition, yes.

18 Q And certainly the market has changed as we are here
19 now today, right, with the development that's going on in this
20 area?

21 A Yeah. There is an uptick, yes.

22 Q And Vidler is still working on water projects, to
23 your knowledge, right?

24 A That I wouldn't know, but I would think yes.

25 Q Okay.

1 A I don't know.

2 Q All right. And so Sam's assets were obviously over
3 the estate tax exemption amount, correct?

4 A Correct.

5 Q In 2013 when he passed away, suddenly the exemption
6 amount, estate tax exemption amount was \$5.25 million; do you
7 remember that?

8 A I don't recall what it was, but it was more than a
9 million.

10 Q Right. It had gone up. With the law changes, it was
11 increasing annually based upon inflation and other things,
12 right?

13 A I believe so, yes.

14 Q All right. And some of Sam's estate tax had been, or
15 let me ask you, did you know that some of Sam's estate tax
16 exemption had been used already?

17 A That was pretty much a Kevin Riley thing.

18 Q All right. And did you have a sense of what needed
19 to be done from an estate tax planning standpoint to benefit
20 Sam's estate or was it just creditor protection?

21 A You mean when we did the Lake Tahoe, for example?

22 Q Well, yes, that and the other things that you did.

23 A Well, again, Lake Tahoe was creditor protections.

24 Q What about the Second Amendment?

25 A The Second Amendment, when we say Second Amendment,

1 Kevin would have been able to do the calculations on what the
2 potential estate tax savings would be. The Second Amendment
3 was simple, basically Sam wanting to change the terms of his
4 2006 trust.

5 Q That Maupin, Cox had prepared, correct?

6 A Correct.

7 Q And you did not provide Sam any estate tax planning
8 advice then, did you?

9 A You mean what his potential tax would be?

10 Q What his potential tax was?

11 A No. I let Kevin do those calculations.

12 Q Well, and you did not do any estate tax planning in
13 relation to the estate planning that you were doing though,
14 did you?

15 A No, but I worked with Kevin. Kevin was familiar with
16 the Second Amendment, and then he would typically run the
17 numbers or tell me if I had to change a provision, because he
18 had, he was very close to that issue, much more personal
19 knowledge than I did, so he was always involved, and if he
20 said I don't want you to do this because it's going to create
21 a problem, then we wouldn't do it.

22 Q And Kevin Riley was right in the middle of all of
23 this as far as the decisions that were being made, right?

24 A Yeah. For the most part, yes.

25 Q And he was included, if there were meetings that

1 people would have to make decisions, Kevin Riley was right
2 there in those meetings making those decisions with everyone
3 else or participating, right?

4 A For the most part, yes. There were some that he was
5 not at, but ultimately he would see the final, and then if he
6 wanted to tweak it, he would change it, and then we would
7 change it.

8 Q He would either be there in the meetings where
9 everything was discussed and participate in them or he would
10 be consulted as the final word on whether the decision should
11 be made?

12 A Yeah. For the most part, yeah.

13 Q All right. And what about Mr. Kimmel, do you know
14 what his involvement was at the meetings?

15 A I don't remember having him in any meetings.

16 Q Not in any that you were involved in?

17 A Correct.

18 Q Okay. But you did not provide tax advice to
19 Sam Jaksick concerning the estate documents, did you?

20 A No. I think it was, Kevin did the calculations.

21 Q Well, I'm talking about estate planning documents,
22 you did not provide tax advice to Sam, did you?

23 A I mean, I'm trying to, when you say did I sit down
24 and run some numbers for him, no, I never did that. Did I sit
25 down and say irrespective of what Kevin thinks, I think there

1 is going to be a problem, I didn't do any of that. I just
2 relied on Kevin because he would do the calculations and he
3 was really responsible for the tax side of it.

4 Q All right. And so here you were doing estate
5 planning documents that affected Sam's dispositive plan and
6 knowing that he had these assets, hundreds of thousands of
7 acres, largest landowner in Northern Nevada, hundreds of
8 millions potentially worth of water rights, if not billions,
9 and no tax advice given to him; is that right?

10 A Kevin was the -- and you keep characterizing it this
11 way, but Eco2, if I remember correctly, they were investigated
12 for securities fraud. All right. So that deal, my advice to
13 Sam was don't do it.

14 Q We heard --

15 A Because I didn't believe in them, but they invested
16 their money, you know. They thought this was a good deal for
17 them. I didn't think it was, but they did it anyway. Then on
18 Vidler, I can't remember the exact, not Vidler, but Spring
19 Creek I mean --

20 Q Spring Mountain?

21 A Spring Mountain, these were numbers on a board if you
22 could get it permitted, if the economy kept going. It went
23 from a lot of money to nothing, basically, overnight with the
24 economy crashing.

25 All right. And the other transactions, that he had

1 lots of, he had lots of property, but when the economy
2 crashed, all of that, all of that value went down just like
3 everybody else's.

4 Q And that's why I used the word potentially, so my
5 question was the acreage was there, and you knew that there
6 was lots of acreage, largest landowner in Northern Nevada,
7 water rights, all of this value above the tax exempt amount
8 and you as the estate planner did not provide any estate
9 planning, estate tax planning advice; is that right?

10 A Yeah. I relied on Kevin. Kevin was the one who ran
11 the numbers.

12 Q Okay. But you were the one preparing the documents,
13 and so it would have been, and I think you went through your
14 credentials earlier, you have done estate planning and you
15 were just changing the dispositive plan without consideration
16 of how that affected Sam's estate taxes?

17 A Well, I wouldn't say without consideration, because
18 Kevin was the one that we met together and we decided that
19 this is what Sam wanted to do, and Kevin never said once that
20 based on everything else that is going on from a tax
21 perspective it's going to create a problem.

22 Q Well, except in relation to the house, Lake Tahoe,
23 right? It was Kevin's idea, his number one priority to get
24 the house out of Sam's estate, right?

25 A It was a priority, yes.

1 Q Okay. And so that was just part of the, the
2 decisionmaking. Kevin Riley said we got to get this house out
3 of the estate, right?

4 A He said there were two reasons, one was the excise
5 tax and the potential estate tax.

6 Q Well, the excise tax, it was a 3.8 percent net,
7 3.8 percent rate applied to a net investment income tax,
8 right?

9 A Yeah. I don't remember the details, but, again,
10 Kevin thought it might be about half a million dollars, if I
11 remember.

12 Q And do you know if that applies to your homestead as
13 opposed to stocks and bonds and that sort of thing?

14 A I couldn't tell you. I probably knew then, but I
15 couldn't tell you today, but it was Kevin, when his trust
16 accountant tells him these are two things that are important
17 to me, and we have to move the house anyway for creditor
18 protection, then now we have got more than just one reason to
19 do it.

20 Q Well, did you know in 2012 that the exercise of the
21 option triggered over a million dollars in capital gains
22 taxes?

23 A Yeah, we knew there was going to be a hit.

24 Q Okay. And if it hadn't been sold or the option had
25 not been exercised, that million and a half dollars or

1 million, something over a million dollars in capital gains tax
2 would not have been owed, would it?

3 A I mean, you would have to talk to Kevin about that.

4 Q Okay.

5 A My primary responsibility is he did not want to lose
6 his house, so that's why we did what we did.

7 Q Well, but it created other problems. Moving the
8 house out of Sam's name created other problems, the ones you
9 mentioned. He still wanted to live there, but as Mr. Robison
10 said, you didn't want it to look like a sham, so you had to
11 create lease agreements, remember?

12 A Yeah, true.

13 Q Okay. And a lease agreement of \$22,000 on top of the
14 20 something thousand, 21 or \$22,000 that he owed to Bank of
15 America, right? Were you aware of that?

16 A Well, he owed Bank of America \$6.3 million, right?

17 Q Yeah, and the payments, the monthly payments were at
18 least \$21,000 not counting the taxes and everything over that,
19 right?

20 A Yeah. I don't remember what the payment was, but
21 there was a payment.

22 Q So, and did you know Sam's cash position at that time
23 to make 40 plus thousand dollars a month in payments on Lake
24 Tahoe property?

25 A Well, I knew, I mean, I wasn't completely familiar

1 with all of his financial affairs, but there were cash flows
2 prepared, so we structured it so the payments could be made.
3 We did not want to structure the transaction within a few
4 months he would go into default, so the collective group
5 primarily with them doing their cash flow projections so we
6 can basically make these payments under these terms.

7 THE COURT: Counsel, ladies and gentlemen, during
8 this next recess please do not discuss this case amongst
9 yourselves. Please do not form or express an opinion about
10 the matter until it's submitted to you. This is our very
11 abbreviated noon recess, 30 minutes. We will see you in the
12 courtroom at 12:00 noon. Stand for the jury.

13 See you soon.

14 (Whereupon a break was taken from 11:30 a.m. to 11:58 a.m.)

15 THE COURT: Are we ready? All right. Bring in the
16 jury, please.

17 (Whereupon the following proceedings
18 were in the presence of the jury.)

19 THE COURT: Please be seated.

20 Counsel, you may continue.

21 BY MR. SPENCER:

22 Q Mr. Hascheff, your practice did not include complex
23 estate tax planning, did it?

24 A What do you mean by complex?

25 Q Well, you were, you were drafting documents for

1 clients as opposed to developing estate plans to deal with
2 estate taxes and avoid estate taxes, right?

3 A That would be a fair statement, yes.

4 Q All right. And I mentioned the estate tax exemption.
5 I just want to make sure everybody understands what that is.
6 The estate tax exemption is an amount of money or property
7 that can be passed or transferred to other people estate tax
8 free; is that correct?

9 A Correct.

10 Q And so if you give away a certain amount of money
11 during your lifetime, it could reduce that estate tax
12 exemption amount when you die, right?

13 A That's correct, it would reduce it.

14 Q As long as it's over, you can give away a certain
15 amount per year to different people, but if you go over that
16 then that triggers a transfer tax, right?

17 A Correct, and it's offset against that exemption.

18 Q Offset against that exemption, and so while someone
19 that doesn't have to pay a gift tax during their life may have
20 a full exemption, Sam used some of his exemption earlier,
21 didn't he, or do you know?

22 A I would assume he did, because I know he gave gifts
23 to his kids.

24 Q And assuming he did means you don't know if he did,
25 though, right?

1 A I know he gave gifts and then, again, this would have
2 been a Kevin issue, because he would have to do the gift tax
3 returns.

4 Q And you did not refer Sam to any other estate planner
5 that does complex estate planning, did you?

6 A No.

7 Q And he had actually previously retained Maupin, Cox &
8 LeGoy, Mr. LeGoy to do estate planning before, right?

9 A Yeah. He had done the 2006, correct.

10 Q Mr. LeGoy would be qualified to do estate tax
11 planning in your opinion; is that right?

12 A I believe he would be, yes.

13 Q All right. And you did not tell Sam to go back to
14 Mr. LeGoy because this may be over your head because you don't
15 do this complex type of tax planning work, right?

16 A Again, it's not unusual to have a team. Kevin Riley
17 was doing the tax work. I was basically preparing the
18 documents. You could even possibly have an insurance, the
19 insurance agent in the room when you basically do the estate
20 planning. All right. And if I recall correctly, if I recall
21 correctly, I mean, for whatever reason Sam wanted me to do it,
22 so I did it.

23 Q You don't know what that reason is, do you?

24 A I thought maybe it was because he wanted to try to
25 get this done because of his surgery, which was upcoming, and

1 I don't know if LeGoy could have met that timeline or not.

2 That may have had something to do with it.

3 Q Well, all of that is speculation. Do you know why
4 Sam had you do it versus Mr. LeGoy do it?

5 A I just recall that I thought it might be something to
6 do with his schedule, but, I mean, if a client asked me to do
7 it, I did it. I trusted Kevin. We were a team to basically
8 put this together.

9 Q And you did not contact Mr. LeGoy regarding Sam's
10 previous or prior estate planning, did you?

11 A I don't believe I did contact him.

12 Q And, therefore, you did not request that Mr. LeGoy
13 forward Sam's documents over to you so you would have a full
14 file, did you?

15 A I didn't know Mr. LeGoy had prepared the 2006
16 document.

17 Q Well, did you -- couldn't you just ask your client
18 Sam and say, hey, where are the documents? Does Mr. LeGoy
19 have them? You could have done that, right?

20 A I asked him to provide me with their estate planning
21 documents, the trusts and all of the amendments. And, like I
22 said before, they came in piecemeal, so as I started to piece
23 things together after all of the amendments were prepared,
24 here comes the 2006 document that changed everything.

25 Q Right. And you had already started working on estate

1 planning documents before you even knew that document existed,
2 right?

3 A Right.

4 Q And generally good practice would be to gather all of
5 the documents that you know you are going to have to be
6 dealing with and to find out all of the assets that the client
7 has so that you can make a proper assessment about the
8 representation, right?

9 A Well, it's impossible to know what documents are out
10 there when you didn't prepare them, so the only way you are
11 going to know what's out there is if your client brings them
12 to you.

13 Q And because of that impossibility, Mr. LeGoy would
14 have been a better person to be doing this estate planning
15 than you, because you didn't have the information, right?

16 A I don't know if I agree with that.

17 Q Okay. In relation to Mr. -- well, there is a lot of
18 Mr. Jaksicks. I will use first names. In relation to Sam's
19 representation, you have mentioned that you also represented
20 Todd and Stan, right?

21 A Correct.

22 Q And you thought you might have represented Wendy, but
23 you have never spoken to her and it ended up being about
24 something else, right?

25 A Yeah, I don't recall meeting with her.

1 Q Okay. And but at the time you were working on Sam's
2 estate planning, making these changes that benefited Todd --
3 well, let me back up. Did the changes that you made in Sam's
4 estate plan benefit Todd?

5 A And Stan.

6 Q And Stan?

7 A Yes.

8 Q All right. And so at the time you were representing
9 Sam and making these changes that benefited Todd and Stan,
10 they were also your clients, right?

11 A They were my clients, but I believe that's correct,
12 it was at the time.

13 Q And you don't have any engagement letters evidencing
14 when you were hired or the scope of your representation, do
15 you?

16 A I could have had an engagement letter.

17 Q Well, could have had and having are two different
18 things. You don't have one, do you?

19 A I mean, I could have one. I haven't seen it in
20 discovery.

21 Q So --

22 A But typically my practice was with a new client I
23 would do an engagement letter, but as time went on I did not
24 do a new engagement letter for every new transaction.

25 Q Right. And no engagement letter that outlined what

1 you would do for, what you were going to do for Sam even back
2 when you started representing him?

3 A There could have been one at the very beginning, yes.

4 Q That was back in '07 or something?

5 A Yeah, when I started.

6 Q Okay. Could have been, but you don't know for sure?

7 A Unless I see it.

8 Q All right.

9 A I typically would do an engagement letter. Sometimes
10 I wouldn't. It would just depend on the client.

11 Q All right. And you testified earlier you did not
12 perceive any conflict between representing Sam, Todd, and Stan
13 at the same time?

14 A Well, when you say -- no, I didn't perceive a
15 conflict, because typically when a father or mom, whoever is
16 my primary client, comes in and says I need you to do some
17 work for my kid, I would do it, and ultimately your clients
18 don't like to hear you say, well, I can't do the work because
19 I may have a conflict with your kid.

20 All right. They understand the dynamics of the
21 transaction. Both sides understand the dynamics of the
22 transaction. I know a lot of lawyers that are not going to
23 force clients to execute conflict waivers when they are family
24 members, because you do things between family.

25 But definitely I would do conflict letters and

1 waivers when I had, for example, the Jaksicks were doing
2 ventures with third parties, I did have an engagement letter
3 and I did have a conflict waiver.

4 Q You wouldn't violate ethics in relation to conflicts
5 because a client is begging you or saying, hey, you know, I
6 really don't need that or I don't want to do that, would you?

7 A Repeat the question, please.

8 Q Yeah. If you have a conflict that exists and a
9 client is saying, hey, I don't want to sign a conflicts
10 letter, I want you to represent everybody, you wouldn't in
11 light of that violate ethics and go forward with that conflict
12 just because they are asking you to, would you?

13 A Again, I didn't perceive that there was going to be a
14 major conflict between the boys and their dad.

15 Q I wasn't asking about that. I was talking in
16 general. If you perceive a conflict and the client says I
17 don't care about that, I want you to go forward anyway, and
18 the conflict exists, you wouldn't go forward anyway, would
19 you?

20 A If the client says I understand what the conflicts
21 are, let's move forward, then we are going to move forward.

22 Q You think all conflicts are waivable?

23 A I would have to go back and look at the rules.

24 Q Okay. So you don't know that?

25 A I mean, some conflicts are not waivable.

1 Q Right. And changing the dispositive plan of Sam,
2 which you knew before was essentially one-third, one-third,
3 one-third between his three children with the reduction of
4 1 1/2 million to Wendy, you remember that, right?

5 A Right.

6 Q And you didn't find out about that until later when
7 the '06 document was finally given to you, correct?

8 A I couldn't tell you the time frame, but he did not
9 want the \$1.5 million reduction for Wendy. He wanted that
10 out.

11 Q He wanted that out and that's this part of the Second
12 Amendment, right?

13 A Correct.

14 Q Okay. And do you recall what the Fifth Amendment
15 said in that regard?

16 A I would have to go back and look, but the Fifth was
17 very close to the Second.

18 Q Yeah. And so the Fifth Amendment, which is Exhibit
19 155, do you see that?

20 A Yeah. Can I have the hard copy?

21 Q Oh, sure. Let me get it for you.

22 A And what exhibit is it?

23 Q 155.

24 A Okay. I have it.

25 Q And you see this is the Fifth Amendment to the Family

1 Trust at the top?

2 A That's correct.

3 Q Restated Pursuant to the Third Amendment Dated
4 November 30th of 2005. This is your document, right, that you
5 prepared?

6 A Right, I prepared this.

7 Q All right. And, Keith, if you would flip to the last
8 page, signature page. And this shows it's the Fifth Amendment
9 at the top. The Fifth Amendment to the Family Trust was
10 executed on April 27th of 2012?

11 A Correct.

12 Q And that's typed in along with, the April 27th of
13 2012 is typed into the jurat down below?

14 A Correct.

15 Q And Nanette Childers is the notary. She worked for
16 you, right?

17 A Correct.

18 Q And looking on page 2, Keith, which is JSK 1828 of
19 Exhibit 155. Paragraph 3.2 indicates that Wendy would get a
20 trust for her lifetime 100 percent, right?

21 A You know, whatever her share was would be held in
22 trust.

23 Q Her share would be one-third, Todd's one-third, and
24 Stan one-third, right?

25 A Yeah, whatever the 2006 agreement provided.

1 Q And you mentioned that it would be held in trust,
2 correct?

3 A Let me see, yes.

4 Q For her lifetime, and then the provisions below
5 provide for some distributions for her children?

6 A Correct.

7 Q Okay. And you were talking earlier in your previous
8 testimony about Wendy having these financial issues and
9 potential creditor problems, right?

10 A Correct.

11 Q And you agree that these trusts that were created for
12 Wendy took care of that issue, didn't it?

13 A That was the intent.

14 Q And it cured the problem, didn't it?

15 A I don't know if it cured the problem.

16 Q Yes. If Wendy doesn't have ownership, it's owned by
17 a trust, it cured any of the issues, all of the issues that
18 you were talking about relating to Wendy, didn't it?

19 A No, it didn't.

20 Q All right.

21 A All it cures is that anything that's held in the
22 trust for her benefit it's going to be distributed by the
23 trustee to her, because I believe it had a spendthrift
24 provision in the 2006 trust that creditors could not attach
25 the money until possibly the trustee distributed it to her,

1 and if they were there at the right time they might be able to
2 attach that distribution.

3 Q So the issue about her being bad with money is solved
4 by creating this trust that you are talking about, right?

5 A No, it's not.

6 MR. SPENCER: Okay. Your Honor, I need to open and
7 publish Volume 2 of Mr. Hascheff's deposition --

8 THE COURT: Yes.

9 MR. SPENCER: -- taken November 17th of 2018.

10 THE COURT: Ladies and gentlemen, just stand for a
11 moment. Counsel, if you will see me at a quick sidebar.

12 (A sidebar discussion was held off the record.)

13 THE COURT: Ladies and gentlemen, we just talked
14 about some of the mechanics of introducing evidence to
15 streamline for your efficiency.

16 So with that, Counsel, you may proceed.

17 MR. SPENCER: May I approach?

18 THE COURT: Yes.

19 BY MR. SPENCER:

20 Q Mr. Hascheff, I'm handing you Volume 2 of your
21 deposition taken November 17th of 2018.

22 A Okay.

23 Q And turn to page 177, please.

24 A Okay.

25 Q And I'm referencing line 3 which was the question I

1 just posed to you, and I will reread it, "So the issue about
2 her," that would be Wendy, "her being bad with money is solved
3 by creating this trust that you are talking about?" Do you
4 see your answer there on line 6?

5 A And I think I said that. It said with respect to the
6 trust, this trust, because it's a life estate and she only
7 gets distributions when the trustee authorizes it and even
8 then a creditor can attach it. That did not solve any other
9 creditor problems that may exist.

10 Q Well, but if everything that Wendy is getting is in
11 trust, then that issue is solved as far as Wendy's creditors
12 and possible exposure there, right?

13 A Right, but it wouldn't solve the problem if she was a
14 member in one of the joint ventures, though.

15 Q Well, as far as you knew everything Wendy was going
16 to inherit was going to be in trust, right?

17 A I knew about this trust agreement, yes.

18 Q Yeah. And so her being bad with money would not have
19 been a reason to disinherit, that Sam would have disinherited
20 her, would it?

21 A I don't, I don't view that as disinheriting her.

22 Q I'm talking about in relation to the Lake Tahoe
23 property, you basically said that Sam wanted to disinherit
24 Wendy, right?

25 A No.

1 Q Well, he didn't want to include her in it, let me put
2 it that way?

3 A But in all honesty, she wasn't included in any other
4 joint venture, even the joint ventures before I got there.
5 That was, that was his intent, because I think you are asking
6 the question in a way that somehow with my assistance we
7 devised a plan to disinherit her and that was not the case.

8 Q Absolutely what happened in relation to Lake Tahoe.
9 She owned one-third of it through her trust when all of this
10 started and by the end of it she owned zero. That's what
11 happened, right?

12 MR. ROBISON: Your Honor, I object to the term
13 ownership. She doesn't own anything.

14 MR. SPENCER: Had an interest in.

15 MR. ROBISON: Beneficial interest.

16 THE COURT: So you are technically correct and I will
17 give you an opportunity, if necessary. You may proceed.

18 MR. SPENCER: I will clear that up.

19 BY MR. SPENCER:

20 Q When all of this started, Wendy had a one-third
21 beneficial ownership interest in the Family Trust that owned
22 Lake Tahoe, right?

23 A Well, if I recall correctly, the 2006 trust took the
24 residence, the Lake Tahoe house, and put it in some kind of a
25 personal residence trust.

1 Q Uh-huh.

2 A So, I mean, I would have to go back and look and see
3 if she owned a third of that document. Maybe she did and
4 maybe she didn't, but even if she did, he, we needed to get
5 the house out. He did not want to lose his house.

6 Q Are you saying that the Lake Tahoe property went into
7 a qualified personal residence trust?

8 A No. It was in his 2006 document.

9 Q Right. And was it a qualified personal residence
10 trust?

11 A I would have to go back and read it.

12 Q All right. We will check that. But the main reason
13 that Wendy was, I believe I understood the main reason that
14 Wendy was not being included in certain assets was because she
15 was bad with money?

16 A That's what he told me. I mean, that's what it was
17 before I became on board and became their attorney and that's
18 the way it was throughout the process.

19 Q And you do not know a thing about Wendy's past or
20 whether she is bad with money or not? And I'm talking about
21 you yourself.

22 A I know what Sam told me.

23 Q Right. That's hearsay. You yourself don't have any
24 personal knowledge of that, do you?

25 A Well, I had lawyers calling my office that

1 represented creditors, her creditors, asking me to produce
2 documents, so that would be one aspect that would confirm what
3 I was told.

4 Q Uh-huh. And that was that Freeman judgment?

5 A I believe it was.

6 Q Okay. And other than that, you did not know the
7 financial situation of Wendy yourself, did you?

8 A You mean did I know what her financial statement
9 looked like, no.

10 Q You didn't know what judgments she had against her,
11 if she did?

12 A I knew she had judgments against her.

13 Q She had one. You didn't know, you personally didn't
14 know what they were, did you?

15 A No. I didn't do an audit or investigation, no.

16 Q And you don't have a single note in your file
17 relating to what Sam said about disinheriting or if he wanted
18 to disinherit Wendy, do you?

19 A When you say disinherit, she just got less than
20 everybody else.

21 Q Uh-huh. So putting everything in trust curing the
22 issue of any financial problems she may have had was not a
23 reason Sam would have disinherited, would want to disinherit
24 her from having any interest in Tahoe, what else could there
25 be, do you know?

1 A I thought I answered that. I mean, he didn't, it
2 wasn't his intent to disinherit her. She was going to get
3 less and she was not going to be, she was not going to be in
4 any of the joint ventures, she was not going to be in any of
5 the LLCs, and she was not going to be in Lake Tahoe.

6 Q And that was based on your discussions with Sam,
7 right?

8 A Yes.

9 Q And you don't have anything that memorializes that
10 other than the documents you prepared, do you?

11 A Well, the client reads the document.

12 Q Sir, I'm asking --

13 A And --

14 Q I'm asking in your file.

15 THE COURT: Hold on.

16 MR. SPENCER: Sorry.

17 THE COURT: I just want to make sure we are one at a
18 time. Were you finished?

19 THE WITNESS: Yeah. No, I wasn't finished.

20 BY MR. SPENCER:

21 Q Okay.

22 A He would review the documents. He would sign it. He
23 signed it. He understood it. That's what he wanted. That
24 was his objectives.

25 Q Thank you for not answering my question. I asked a

1 different question.

2 A Okay. Sorry.

3 Q I said you don't have a single thing in your file
4 that memorializes that that was what Sam wanted, that Wendy
5 not be included in Lake Tahoe, other than the documents you
6 prepared, correct?

7 A I would have to go back and look at my files. Maybe
8 I do. I just, I know that's the end document was the one he
9 approved.

10 Q Do you recall testifying to that, sir, that you don't
11 have anything else in your file other than the documents?

12 A I possibly don't. I don't know.

13 Q I will refer you to page 178, which is the next page
14 in your deposition, Volume 2, taken November 17 of 2018.

15 A Okay.

16 Q Starting at line 7, and, Keith, we can bring page 178
17 up. "But that's the end result of the transaction. I'm
18 asking you about before the transactions when and how did Sam
19 convey that Wendy should be excluded from the Lake Tahoe
20 property?" And your answer at line 11 was what?

21 A "Just based on my discussions."

22 Q Yeah. And then my next question at line 13, "And so
23 you don't have anything that memorializes any of that, do you,
24 other than the documents?" And your answer was?

25 A "Correct, and my discussions with Sam and Kevin, who

1 were also involved."

2 But what you need to understand, and you didn't ask
3 this question, there could have been memos that went back and
4 forth between Kevin and I, between Kevin and I that said, hey,
5 this is what we are going to do for the Tahoe house. This is
6 why we are doing it, creditor protection. I believe there
7 were some memos in my file that went back and forth between
8 the team, so that would memorialize the discussions.

9 Q And that's totally contrary to your answer, right?

10 A I mean, you are asking me a third question. I just
11 gave you the answer.

12 Q Well, maybes and could have beens are all
13 speculation. It's all assumption. I asked you
14 specifically --

15 MR. LATTIN: Argumentative.

16 THE COURT: Overruled.

17 BY MR. SPENCER:

18 Q I asked you specifically about whether you had
19 anything that memorialized it and you don't have anything that
20 memorialized it other than the documents you prepared, and you
21 said correct, right?

22 A Right, and I said it was based on our discussions.

23 Q Based on the discussions, yeah.

24 A Right.

25 Q And as far as memorializing those discussions, you

1 didn't have anything else other than the documents you
2 prepared, and you said correct?

3 A Correct, with the understanding that there still may
4 be memos in my file, which they were.

5 Q All right.

6 A So maybe I didn't completely answer the question, I'm
7 sorry, but there were memos.

8 Q Maybe there were memos, right?

9 A I believe there were.

10 Q Okay. And so the Indemnification Agreement that
11 benefited Todd.

12 A Okay.

13 Q That clearly had an effect upon Sam and his property,
14 didn't it?

15 A Yeah. It would affect the trust.

16 Q Adversely, correct?

17 A Yeah. If bad things happened, yes.

18 Q Well, let's talk about that for a second. I think
19 your position has been that if there was something
20 catastrophic or if there was a total wipeout, Sam wanted to
21 protect his sons, right?

22 A Correct. That was the linchpin. That wasn't the
23 only reason.

24 Q Well, but that was how you expected the
25 Indemnification Agreement to be applied, right?

1 A Well, it wasn't drafted to just wait for a
2 catastrophic agreement -- I mean a catastrophic event. The
3 agreement was drafted so that if a lot of these obligations
4 became due piecemeal that they wouldn't have to respond, that
5 the trust would step up first.

6 Q Uh-huh. And so the catastrophic event or the wipeout
7 was one of the reasons then?

8 A Correct.

9 Q And but you did not intend for the Indemnification
10 Agreement to be a gift document, did you?

11 A You said a gift document?

12 Q Yes, sir. You know what a gift is, right?

13 A Yeah.

14 Q It's when someone gifts, delivers something to you
15 and says you can have it and then you accept it, right?

16 A Correct.

17 Q Okay. And if the trust is paying debts or
18 obligations of Todd, that's a gift, isn't it?

19 A I look at it as a transaction.

20 Q Oh, it's a transaction. A gift is a transaction
21 also, isn't it?

22 A It is.

23 Q Okay. And so this Indemnification Agreement
24 radically changed Sam's dispositive plan, didn't it?

25 A It could affect the trust, the Family Trust, yes.

1 Q Every dollar that's paid out based upon the Indemnity
2 Agreement reduces a dollar that could be distributed to the
3 beneficiaries, right?

4 A Potentially, yes.

5 Q Well, not potentially. It's true.

6 A It could be.

7 Q Well, if you spend a dollar based on the
8 Indemnification Agreement that's a dollar that's no longer in
9 the trust, right?

10 A Right, but then there is the other side. There is
11 the asset side which means if things get better, there is
12 going to be more assets in the trust, so, yeah, it would have
13 a dollar reduction, but if the values of the property
14 increased it could easily be an offset.

15 Q Well, then some of the property apparently was owned
16 by entities that Todd had an interest in, right?

17 A Correct.

18 Q And the indemnity, the way you saw it, was that the
19 trust would pay Todd's obligation on his share of the debt and
20 those entities, too, right?

21 A Because they were both, usually they were joint and
22 severally liable, both Sam and Todd, as well as --

23 Q So -- I'm sorry, I didn't mean to cut you off. Go
24 ahead.

25 A As well as Stan.

1 Q Okay. So the trust was paying 100 percent of the
2 obligation and Todd was getting 51 percent of the benefit,
3 right?

4 A That could potentially work out that way, yes.

5 Q Yeah. And all of those entities where that was the
6 setup that was the result, correct?

7 A When you say the result --

8 Q The result of the trust paying 100 percent of the
9 debt and Todd getting 51 percent of the benefit, right?

10 A That's true. The alternate, the converse could be
11 true. He could wind up responding to the entire debt and only
12 get one-third of the trust.

13 Q Not with the Indemnification Agreement.

14 A That's why it was drafted.

15 Q That was total protection for Todd so he wasn't
16 exposed to anything, was he?

17 A Well, he was exposed, but this was the way for the
18 trust to respond to that.

19 Q Exposed on paper, but not in reality, because the
20 Indemnity Agreement protected that, right?

21 A Yeah. To the extent there were assets to respond,
22 yes.

23 Q Okay. So to the extent that Todd has said, oh, my
24 gosh, I took over all of this risk and I was obligated on all
25 of this debt, the truth is that he wasn't because the

1 Indemnity Agreement covered it according to you, right?

2 A Yes, it eventually covered it, yeah, but that's what
3 Sam wanted.

4 Q All right. So there was no exposure to Todd in
5 relation to those debts as long as the trust could pay
6 whatever might come?

7 A As long as the trust had the money to pay it,
8 correct.

9 Q And the way Indemnity Agreements work generally is
10 that there is an agreement that says, hey, if somebody comes
11 knocking on your door for payment of some obligation, I agree
12 to pay it instead of you, right?

13 A Right, responding to somebody else's debt.

14 Q But if they don't come knocking on your door, it
15 never has any effect, right?

16 A Who is they?

17 Q It's a general, a general concept. If the debtor, if
18 the debtor comes to you and says, hey, you owe this money and
19 I have indemnified that and I say, wait a minute, I will pay
20 that, because I have indemnified it.

21 A You mean a creditor comes?

22 Q I'm sorry, a creditor, I apologize.

23 A That's why I was confused.

24 Q I didn't mean to confuse you and I sometimes speak
25 too fast. So if a creditor comes to the door and says, hey,

1 you owe this money and I said, no, wait a minute. I
2 indemnified that, I'm going to pay that, then I will pay it
3 under the Indemnity Agreement, but none of that ever happens
4 unless someone comes knocking, right?

5 A Well, you could have an actual claim filed. There
6 could be some exposure that has not ripened into a claim and
7 may have to step in with a lawyer and try to defend that, but
8 typically someone will come and say you owe something, but it
9 wasn't drafted with that in mind.

10 Q But that's the typical, what I'm getting at, that's
11 the typical way an indemnity works is you only have to perform
12 under your indemnity obligation if someone is demanding that
13 that amount be paid?

14 A When you say typically, you know, it doesn't have to
15 be that way. Sometimes it is. Sometimes it's not.

16 Q All right. Well, then explain an indemnity to the
17 jury, please.

18 A Like you just said.

19 Q All right. That's what I thought.

20 A No, no. So what happens is I owe the creditor money.
21 All right. Someone comes in and says, in the event that
22 creditor comes after me, then he is going to step in and he is
23 going to pay the bill for me.

24 All right. But it doesn't necessarily mean somebody
25 has to file a lawsuit against me. It could just be a

1 potential claim that was drafted basically to cover the gamut
2 of any exposure.

3 Q Okay. And that's the part I wasn't understanding, so
4 I appreciate that. So it doesn't have to be a lawsuit
5 necessarily. Someone could just say here is a demand letter,
6 you need to pay me the money?

7 A Right, or you default on a note.

8 THE COURT: Mr. Spencer, I'm just going to ask that
9 you slow your cadence just a little tiny bit for our reporter.

10 MR. SPENCER: I apologize. I will do that.

11 BY MR. SPENCER:

12 Q And so, all right, and so it doesn't have to be a
13 lawsuit. It just has to be someone asking for or demanding
14 money, right?

15 A There has got to be some kind of trigger.

16 Q Yeah. Otherwise, the indemnity is just there and
17 nothing ever happens, correct? If there is no trigger, then
18 it's just there in the event of a trigger?

19 A It could be, it could be a demand letter. It could
20 be a lawsuit. It could be a claim. It could be a potential
21 claim. It could be anything that could trigger an Indemnity
22 Agreement.

23 Q And you understand that there were debts on the
24 Exhibit A attached to Todd's indemnity that were his personal
25 debts?

1 A Yeah. His home was on there.

2 Q And it was not the intent that the trust pay his home
3 mortgage as a matter, just as a matter of course?

4 A The, I think I testified in my deposition that I
5 think the home was on it, Exhibit A.

6 Q Yes.

7 A But then they showed the financial statement, I think
8 someone showed me the financial statement and I believe I
9 testified that it probably shouldn't include the home. Is
10 that what I testified to?

11 Q It certainly is.

12 A Okay.

13 Q And that was not, you said that was not the intent of
14 the indemnity?

15 A Not with respect to the home.

16 Q But the problem is that the indemnity doesn't qualify
17 that. It says that everything on Exhibit A is covered, right?

18 A Correct, but as I explained in my deposition, the
19 concern was that he could lose his home, just like Stan could
20 if bad things happened, so that was one way to at least
21 protect his house.

22 Q And that would not happen until well after all other
23 property that was available from the Family Trust was
24 exhausted, right?

25 A It could happen both ways. I mean, they were jointly

1 and severally liable, which means the bank can go after both
2 of them or either of them, and the trust, I mean, Todd could
3 be fighting a lawsuit with a lender trying to foreclose on his
4 home, on his other assets, do that simultaneously with the
5 trust experiencing the same lawsuit, and then whoever is,
6 whoever has the money is the one who is going to wind up
7 paying the debts. Sam did not want Todd or Stan to be wiped
8 out.

9 Q And if the trust paid for Todd's house, that would be
10 a gift, wouldn't it?

11 A Again, I said it was just a typical Indemnity
12 Agreement between, you know, father and son.

13 Q All right. Let me rephrase. If the trust paid, the
14 Family Trust paid for Todd's house that would be a gift
15 transaction, wouldn't it?

16 A I don't agree with that.

17 Q Well, how could it not be?

18 A Well, typically when you draft an Indemnity
19 Agreement, the indemnitor says I'm going to pay somebody
20 else's bill. Nobody fills out a gift tax return.

21 Q Well, but that's one of the problems here, isn't it?
22 That could trigger a gift, correct?

23 A Kevin knew about this. He didn't say anything about
24 this being a potential gift.

25 Q Wait, you think Kevin knew about the Indemnity

1 Agreement back in, before 2014, let's say?

2 A I don't know when he knew, but he knew.

3 Q Well, he didn't know until 2014, so --

4 A Okay.

5 Q -- when the Indemnity Agreement was being prepared
6 and signed, you didn't, you did not consult with Kevin about
7 whether this created a gift problem, did you?

8 A I mean, I don't know if I did or didn't. Generally
9 Kevin was involved.

10 Q You don't know if you did or you didn't talk to Kevin
11 Riley about whether this triggered a gift?

12 A Typically, he was involved.

13 Q And you are a CPA, right?

14 A Correct.

15 Q And you know that gifts over and above that exclusion
16 amount that you can give annually are gift taxable?

17 A Yeah, if it's a gift transaction.

18 Q And it doesn't matter what the title of the document
19 is that may create the gift. If it's a gift, in the eyes of
20 the IRS it's a gift, isn't it?

21 A In the eyes of the IRS it is.

22 Q Yeah. And so without talking to Kevin Riley, who you
23 said was the, knew all about the finances and he was the tax
24 adviser, correct?

25 A Correct.

1 Q And without talking to him, this Indemnity Agreement
2 was entered by Sam, right?

3 A Yeah. Like I mentioned, he was usually involved in
4 all of the transactions. I mean, I don't know what he
5 testified to, but I talked to him pretty much on every deal.

6 Q Well, he testified he didn't know about the Indemnity
7 Agreement until at least 2014. That surprises you, doesn't
8 it?

9 A Yeah, it does.

10 Q Okay. And if --

11 A Maybe he was wrong, I don't know.

12 Q If he is part of the team, why wouldn't you have
13 forwarded the Indemnity Agreement to him before that?

14 A We typically did.

15 Q And but not in this case, correct?

16 A I don't know if we did or didn't.

17 Q He is the one preparing the estate tax return and he
18 doesn't know whether gifts have been made under the Indemnity
19 Agreement or not, does he?

20 A Assuming it's a gift and assuming we didn't tell him,
21 then maybe yes.

22 Q So let's go back to this conflict issue a minute. So
23 you are drafting a document that is detrimental to one of your
24 clients, or at least potentially detrimental to one of your
25 clients, Sam, that is beneficial to one of your other clients,

1 Todd, right?

2 A Todd and Stan, yes.

3 Q Well, hold on. Let's stop there. Stan's indemnity
4 was never completed because it didn't have an Exhibit A
5 attached, right?

6 A Well, they were supposed to complete the Exhibit A.

7 Q Okay. Well, it was not ever attached. The first
8 time Stan saw it, there was no Indemnity Agreement, no Exhibit
9 A to it, and that was recently.

10 A Okay. I don't know about that, but --

11 MR. ROBISON: Your Honor, I have to object to the
12 misstatement of the evidence and mischaracterization. There
13 was a creditor's claim filed in October of 2013 that laid it
14 out for everybody and he is misstating the evidence.

15 MR. SPENCER: Well --

16 THE COURT: I don't know how to respond.

17 MR. SPENCER: I will prove that up with Stan, so I
18 will move on to the next thing.

19 THE COURT: Please do.

20 THE WITNESS: May I ask a question? Just because it
21 doesn't have an Exhibit A doesn't mean it's valid.

22 BY MR. SPENCER:

23 Q Doesn't mean it's invalid?

24 A It's still valid even without an Exhibit A.

25 Q Okay. But you relied upon the parties, Todd and

1 Stan, to create their own Exhibit A, right?

2 A Yeah. That would be my preference, yes.

3 Q So you didn't have any idea of the scope or the
4 breadth of the Indemnification Agreement that you had
5 prepared, did you?

6 A For who?

7 Q For either one of them?

8 A It was an all inclusive Indemnity Agreement for both.

9 Q And covered everything, right?

10 A Yes.

11 Q And even if there was no one knocking on the door for
12 payment it covered it, right?

13 A Well, the intent was that if there was any potential
14 exposure, instead of the kids coming out-of-pocket that this
15 trust would basically respond.

16 Q Covered everything, even if someone was not knocking
17 on the door for payment, right?

18 A Yeah. I think it could, yes.

19 Q And what we also know is that Sam didn't know the
20 breadth of it either, because the Exhibit A's were going to be
21 prepared by Todd and Stan, right?

22 A Of course he knew.

23 Q I'm talking about the Exhibit A's that were going to
24 be attached. They were preparing them, not Sam, correct?

25 A Sam prepared the Exhibit A. Sam and Todd basically

1 prepared Exhibit A that went along with the Indemnity
2 Agreement.

3 Q That's your understanding?

4 A Yeah. I mean, I assisted, but I didn't know every
5 single debt. They were supposed to basically do that
6 in-house.

7 Q And just so that I'm clear, and I think it may be,
8 but I want to make sure, there are no waiver of conflict
9 letters that you know of between the Jaksick family members,
10 is there?

11 A I don't believe there is.

12 Q Okay. Let's pull up Exhibit 114.

13 A 114?

14 Q Yes, sir. Do you have it there or can I get it for
15 you?

16 A You need to get it for me.

17 Q Okay.

18 A Okay.

19 Q All right. So you see this is a letter dated
20 May 11th of 2007 on your letterhead?

21 A Yes.

22 Q When were the, when was the first Indemnification
23 Agreement signed, do you know?

24 A Let's see, so it could have been based on this letter
25 sometime in 2007.

1 Q Okay. Could have been, but you don't know, right?

2 A Well, I say enclosed the executed Todd B. Jaksick, so
3 it looks like he signed it sometime in May.

4 Q Signed of Todd's, but you enclosed a draft of Stan's?

5 A Let's see, "Please have Mr. Jaksick execute Stan
6 Jaksick's Indemnification Agreement and provide me with the
7 original," yes.

8 Q Okay. And so the big question I have got on this is
9 why would you have not dated the document sometime back in May
10 or prior to that 2007, May 11, 2007?

11 A I believe what happens, we came to the conclusion
12 that the effective date would be January 1st, 2008.

13 Q Well, that's what's all over the documents, but my
14 question was different. Why wouldn't you have signed it or
15 dated it back on the date that it was actually signed rather
16 than some date in the future?

17 A It could have been it was a subsequent draft. There
18 were several drafts of the Indemnity Agreement that were
19 revised.

20 Q Do you typically have your client sign drafts?

21 A No, but it does happen when, it does happen when you
22 do the document and then a few months later we figure out
23 there is probably some more that we need to change, so then
24 there will be another Indemnity Agreement and we will toss the
25 old one.

1 Q But that's different than a draft. That's signing a
2 valid binding document that you change your mind and you want
3 to change later, correct?

4 A Correct.

5 Q So you sign that document that's in effect until you
6 sign a new document that changes its terms?

7 A Correct.

8 Q That's not a draft. That's a binding document. You
9 don't typically have people sign drafts, do you?

10 A No, but frankly clients sign them. You send them a
11 draft document and it comes back signed.

12 Q Well, that's the problem with sending clients, or
13 sending documents that you prepare out to your clients for
14 signature, because they don't know the rules and what is
15 supposed to be done in that regard, do they, typically?

16 A They know. They know.

17 Q Oh, you tell them?

18 A Yeah. It's a draft.

19 Q You tell them to sign drafts?

20 A No.

21 Q Okay. And so in this case there were multiple
22 versions that you say were drafts, but they all were signed,
23 right?

24 A I don't believe a draft was signed.

25 Q Okay. So all of the versions that have signatures

1 attached were valid, binding, and binding documents?

2 A Until they were replaced.

3 Q Until they were replaced?

4 A Right.

5 Q All right. And if they are all dated the same date
6 and there is no other date on them anywhere, then how is
7 anyone to determine what, which one replaces which other one?

8 A Well, you mean the effective date of, was it
9 January 1st, 2008?

10 Q Yes. Click to Exhibit 11 real quick, we will come
11 back to that one, at the very top. Do you see that?

12 A Yeah, January 1st, 2008.

13 Q The Indemnity Agreement is made and entered into as
14 of the 1st day of January, 2008?

15 A Correct.

16 Q And that clearly would indicate that it was signed on
17 that date, right?

18 A It could have been.

19 Q Well, then which one was signed back in May, around
20 May 11th of 2017?

21 A I would have to see the copy that was attached to
22 this letter.

23 Q Well, we don't have that, so do you know what was
24 attached?

25 A Not without looking at it.

1 Q All right.

2 A I know we started this process in 2000, there were
3 additional drafts, and then we finally landed on the, I
4 believe it was 11, which was the final draft, the final
5 operative document.

6 Q And you also know there has got to be some earlier
7 version of this somewhere, because this one is dated
8 January 1st, 2008, and it doesn't say as, it doesn't say
9 effective. It says as of, made and entered into as of January
10 1 of 2008, right?

11 A That's what it says.

12 Q As opposed to effective on that date?

13 A Correct.

14 Q And there is nothing in this document, and flip to
15 the last page, Keith, to the signature page, that indicates
16 any other date on this document, right?

17 A Let's see the signature page. No, I think it said,
18 yeah, the date and year first written above, so that would
19 have been January 1st, 2008.

20 Q No, what it says, "In witness whereof, each party has
21 each signed --" strike that. "Each party has each executed as
22 of the day and year first written above."

23 A Right.

24 Q Okay. And so that would indicate it was signed on
25 January 1st, 2008, right?

1 A It would be, yeah.

2 Q Okay. But then you know that there are other
3 versions of this document with the exact same dates on them,
4 right?

5 A Yeah. There was I think 11A and B.

6 Q Uh-huh. So let's go back real quick, Keith, to
7 Exhibit 114, and so we don't know which of these versions we
8 have of Exhibit 11 was the one that you enclosed in the
9 May 11, 2017 letter, do we?

10 A Are you asking me if -- could you ask the question
11 again, please?

12 Q Do you know whether, do you know which of these
13 versions of Exhibit 11 of the Indemnity Agreement was enclosed
14 in this May 11, 2017, or 2007 letter?

15 A It could have been none of them.

16 Q Okay. And so if it was none of them, then what would
17 it have been?

18 A It could have been an earlier document that we
19 executed.

20 Q Okay. What happened to that document?

21 A I don't know. Everything was produced in discovery.
22 I don't know.

23 Q And in that regard, you had 33 or 34 boxes of
24 documents that related to Jaksick issues?

25 A Yeah, at least.

1 Q And you turned those over to Todd Jaksick around the
2 time that you were closing down your practice?

3 A Yes.

4 Q January of 2013, might have been a little after that?

5 A It would have been after, because I sold the
6 building. I had all of my client boxes in the basement of my
7 office, so when the building sold then I had to move the
8 boxes.

9 Q All right. And so sometime in early, earlier part of
10 2013?

11 A Probably later.

12 Q Later, but it was in 2013?

13 A That I basically started to phase out my practice?

14 Q That you turned over the Jaksick files and boxes to
15 Todd Jaksick?

16 A I don't know if it was 2013.

17 Q Well, when was it?

18 A I can't -- it was whenever my building sold.

19 Q When did it sell?

20 A I can't remember. I don't know, maybe 2014. I don't
21 know.

22 Q Okay. So back in that time frame, then, right?

23 A Correct.

24 Q It wasn't more recently like 2017 or 2016?

25 A We are in 2019 already. I think my building sold

1 before 2016.

2 Q Okay. And we have talked about the draft and the
3 executed version, but in the middle of that third paragraph
4 there is a sentence there that says, "As always --" And, by
5 the way, you see in that letter this is written to Jessica
6 Clayton, right?

7 A Correct.

8 Q And so, "As always he has the right to have
9 independent counsel review the Indemnification Agreement to
10 make sure his interests are protected." You are talking about
11 Sam there, right?

12 A Correct.

13 Q And the sentence above acknowledges that Sam when
14 executed, when he executed the Indemnification Agreement, he
15 agreed to accept substantial liability by indemnifying both
16 Todd and Stan for any of these obligations?

17 A Yeah, that's what I said.

18 Q So you are advising of the substantial liability he
19 is taking on and that he can go talk to some other lawyers
20 about it, right?

21 A Correct.

22 Q And so that, that would indicate that you are
23 representing someone besides him, wouldn't it?

24 A Besides Sam?

25 Q Yeah.

1 A His, like we talked about, his trust would have
2 substantial exposure.

3 Q Sure, but this letter the way it's written indicates
4 you were representing Todd and Stan, not Sam, right?

5 A Well, this was the Indemnity Agreement, I prepared
6 one for Todd and one for Stan, and for the trust to basically
7 indemnify the obligations.

8 Q Sure. And so Todd and Stan were your clients in
9 relation to this letter, correct?

10 A Probably Todd. I don't know about Stan.

11 Q All right.

12 A But either way, I mean, the conversations I had with
13 Sam saying you have substantial exposure, you can go see
14 another lawyer, you know, to double-check my work, see if it's
15 satisfactory, and he said, no, I don't need to go see somebody
16 else.

17 Q "I'm representing Todd in this transaction. You
18 should probably go talk to independent counsel about it."

19 A I'm representing both of you.

20 Q Okay. That's, that sentence indicates the conflict
21 that existed. You are acknowledging it in that sentence,
22 aren't you?

23 A Yeah, there was a potential conflict, which my client
24 knew about and chose not to go see another lawyer.

25 Q Well, this particular issue created a conflict that

CERTIFICATE OF SERVICE

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's electronic filing system to the following registered users:

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DATED this 16th day of November, 2023.

/s/ Diana L. Wheelen
An Employee of Fennemore Craig, P.C.