

1 Q What was the purpose of including that column?

2 A It was just to -- the reason I did that is I wanted
3 to separate the real estate transfers from cash transfers,
4 because -- and so I -- I setup two separate columns, one for
5 the net book value, because I didn't know what the fair market
6 value of all of the real estate was on the transfers. So I
7 wanted to just -- I could quantify the value of cash going
8 back and forth. And to just in -- -- and then it allowed me
9 then to -- to say well, this is the cash back and forth. This
10 is the net number of the real estate transferred back and
11 forth if that's to be an exchange and there's still 50 percent
12 of the Miss -- Mississippi property due back. I was able to
13 come up with a value based on the most current appraisals that
14 were done by -- had -- Larry Bertsch had done.

15 Q Okay. Before the end of 2004 when the transfers of
16 Mississippi property occurred from the ELN Trust to the EL --
17 the LSN Trust, I'm sorry, how much was owed to whom between
18 the two entities?

19 A Before any real estate was transferred in 2004
20 Eric's trust owed Lynita's trust \$324,940.

21 Q That's reflected on Exhibit 7, right?

22 A That is correct.

23 Q And then the book value, you said you used the book
24 value of that Mississippi property to come up with the -- what

1 number?

2 A Million three hundred and seven-eight thousand eight
3 hundred and eighty-three dollars of --

4 Q And was it your opinion that was below the fair
5 market value at that time?

6 A Yes.

7 Q Based on what?

8 A Based on many conversations I had with Eric actually
9 back when he was acquiring this property. For example, a lot
10 of that property was acquired before the state of Mississippi
11 was going to put all this white sand in and increase --
12 increase the value of all the beachfront property. Eric is
13 always buying stuff at discount hopeful -- you know, that's
14 well, the goal. And but he -- as he is putting it together,
15 he was -- he laid out all of the -- the aerial maps, all the
16 tracks. He was just showing me -- it wasn't that I was
17 helping him plan how to do it. It was -- he was excited about
18 this land. And this is back in 2000 -- prior to 2004 when he
19 was actually acquiring it. And I was aware of the state
20 spending millions to improve the beachfront and -- and make a,
21 you know, all that white sand improvement so that it would
22 have been white sand beaches all in front of this property.

23 Q Okay. So in essence, you took the book value of --
24 of the property that -- at 1.3 or almost 1.4, applied it here

1 and wipes out that \$325,000 that had been due at that point
2 leaving about a million dollar net.

3 A Correct. Going the other way.

4 Q Going the other way. Okay. And that's really the
5 conclusion at the bottom there, right, that that credit for
6 that and -- well, hold on. You have one more, don't you? You
7 have that -- as for the Wyoming --

8 A 200 acres, yes.

9 Q That you gave a value of 250,000, that's book value?

10 A That is book value. That's what he had in --

11 Q Okay. So that brings you up to about 1.25 at that
12 -- is that right?

13 A About 1.3.

14 Q Now if you ignore all this real property transfers
15 and just assume that every time that Eric gave -- or Eric's
16 trust gave Lynita's trust a piece of property was a gift and
17 every time that Lynita's property -- or Lynita signed a deed
18 transferring property back to Eric's trust was just a gift,
19 where would that leave you on this chart?

20 A To follow the real estate transfers were treated as
21 gifts that I've split out here, it would show that Eric's
22 trust owed Lynita's trust \$971,269.

23 Q And that's the conclusion you reached in the cash
24 only transaction column?

1 A That is correct.

2 Q So that's total receivable due on property exchanges
3 and cash loans and then it says \$971,269, is that correct?

4 A That is correct.

5 Q However, you actually saw some evidence in the
6 record that at least some of the properties that Eric's trust
7 transferred to LSN Trust was to negate debt, existing debt,
8 correct?

9 A That is correct.

10 Q So that 971,000 would be a very conservative figure.

11 A Correct.

12 Q Based on that. Let me just wrap it up with maybe
13 one or two more questions. I spent less than an hour asking
14 questions on direct and you had a day and a half of cross
15 here. Anything that Mr. Dickerson showed you or represented
16 to you or had you look at in his very lengthy cross
17 examination other than your failure to put the 40 percent
18 interest and maybe you including that -- including your
19 failure to put the 40 percent interest in Eric Nelson
20 Auctioneering onto the balance sheet in 2001, has anything
21 changed your opinion or any of the conclusions that you have
22 set forth in this report?

23 A No.

24 MR. SOLOMON: I have nothing further.

1 MS. FORSBERG: Just a quick question.

2 RECROSS EXAMINATION

3 BY MS. FORSBERG:

4 Q You heard a lot of questions from Mr. Dickerson
5 about -- and you got a lot of information from Eric. But you
6 also pulled all the bank statements, isn't that correct?

7 A That is correct.

8 Q And there's only one small one you couldn't find if
9 I recall your testimony, is that right?

10 A It was an early account back -- that was a Bank of
11 America Money Market account.

12 MS. FORSBERG: I think that's all my questions.

13 THE COURT: Is that it? Anything more? Do you want
14 one or two? Because I don't want to go back and forth
15 forever. I'll give Mr. Solomon one or two followup if we
16 need, but --

17 * * * * *

18 ATTEST: I do hereby certify that I have truly and
19 correctly transcribed the digital proceedings in the
20 above-entitled case to the best of my ability.

21

22

Adrian Medrano

23

Adrian N. Medrano

24

1 TRANS

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Alvin L. Quinn
CLERK OF COURT

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5
6 EIGHTH JUDICIAL DISTRICT COURT
7 FAMILY DIVISION
8 CLARK COUNTY, NEVADA
9

10 ERIC L. NELSON,)
11 Plaintiff,) CASE NO. D-09-411537-D
12 vs.) DEPT. L
13 LYNITA NELSON,) (SEALED)
14 Defendant.)
15 _____)

16
17 BEFORE THE HONORABLE FRANK P. SULLIVAN
18 DISTRICT COURT JUDGE
19

20 TRANSCRIPT RE: NON-JURY TRIAL - VOL II

21 MONDAY, JULY 23, 2012
22
23
24

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RECROSS EXAMINATION

2 BY MR. DICKERSON:

3 Q Sir, there -- from what you've seen, there is no
4 question that Eric Nelson received that \$350,000 that that
5 check referenced management. Is there any question in your
6 mind?

7 A There was -- no, I believe he received it.

8 Q And if I were to show you the bank statement, the
9 LSN Trust drawn on that account for the month of December 2005
10 which I will do on my phone so that you can verify, okay. So
11 if I can show you it indicates a debit from her account of
12 \$350,000 return of posted check. Do you see that?

13 A I do.

14 Q Okay. And so that indicates to you that the check
15 here -- it's check number 1769 is recorded twice.

16 A I do.

17 Q So is there any question looking at that that he
18 received that \$350,000?

19 A No, there is no question.

20 Q Okay.

21 A And I -- I included it in my report, yes.

22 Q And the journal entry that you referenced didn't
23 have anything on that as to what it was for. It didn't say
24 loan, did it?

1 A The journal entry -- well, it was posted to a due to
2 due from. So he treated it as a loan.
3 Q It didn't say loan, correct?
4 A Well, my journal entries, by posting the two, the
5 loan account, is --
6 Q Your journal entries.
7 A My -- yes.
8 Q You're talking about the company's journal entry.
9 A Did not say -- I didn't know.
10 Q You didn't look at Lynita's journal entry on her
11 general ledger for that, did you?
12 A I did not.
13 Q So you don't know what it says.
14 A No, I don't.
15 Q And that's not one of the journal entries that was
16 given to you by Mr. Nelson. The --
17 A Do you mean the --
18 Q The general ledger for that account, on Lynita's
19 account?
20 A I have -- like I -- I do have some of Lynita's
21 general ledge accounts, but we -- I did not go through those.
22 Not -- not looking at this transaction I did not.
23 MR. DICKERSON: I have nothing further.
24 THE COURT: Do you want to followup on that, Mr.

1 Solomon, or --

2 REDIRECT EXAMINATION

3 BY MR. SOLOMON:

4 Q Bottom line, that was not -- it was treated as a due
5 to due from not as a management fee, is that correct?

6 A That is correct.

7 MR. SOLOMON: Nothing further.

8 THE COURT: It wasn't so bad, huh, Mr. Gerety?

9 THE WITNESS: No. Can I come back? Yeah.

10 THE COURT: Sure. Because you may be back more than
11 you care of this, so --

12 MR. SOLOMON: Well, he is going to back, actually --

13 THE WITNESS: Yeah.

14 MR. SOLOMON: -- so --

15 THE COURT: So I'll direct you not to discuss your
16 testimony other than of course with the counsels and things
17 like that so that any other witnesses called, okay?

18 THE WITNESS: Okay.

19 THE COURT: Thanks. Thanks for coming down here
20 today and you're free to leave for today and I guess they'll
21 call you back if they need you.

22 THE WITNESS: All right.

23 THE COURT: Do you want to take a few minute break
24 see where we --

1 MR. SOLOMON: Yeah, if we -- you don't mind, Your
2 Honor.

3 (Off record)

4 THE COURT: This is recalling the matter as to Eric
5 Nelson and Lynita Nelson, case number D-411537. We just took
6 a brief recess after concluding the testimony of Mr. Gerety.
7 I think you wanted to call Ms. Lynita back?

8 MR. SOLOMON: I do, Your Honor. I know that counsel
9 had a question about ordering here.

10 MS. FORSBERG: We have a couple questions. Mr.
11 Dickerson and I were talking in the break trying to figure
12 this out. When we started our first day, we said we're going
13 to try to get through all of the trust issues first and then
14 you would start on the rest. That is how you would like it to
15 go.

16 THE COURT: Yeah, that's probably the easiest way to
17 do it you think or --

18 MR. DICKERSON: Well, I --

19 MS. FORSBERG: I think it is in case we get rid of
20 them.

21 MR. DICKERSON: Personally, I thought the best way
22 to do it, because I only have -- now I only have three
23 witnesses that'll be Larry Bertsch, Lynita and possibly
24 Rochelle McGowan who's been subpoenaed. I noticed that she

1 was subpoenaed to appear today and I noticed she hasn't been
2 out. She hasn't come or hasn't contacted --

3 MR. SOLOMON: I told her that I was positive my case
4 would be over today and that I would give her at least an hour
5 notice when --

6 MR. DICKERSON: Okay. Now I'll go through you, okay
7 --

8 MR. SOLOMON: All right.

9 MR. DICKERSON: -- but she was subpoenaed. So I
10 only have three witnesses. My -- and that's for the entire
11 case.

12 THE COURT: Okay. Then you get --

13 MS. FORSBERG: But again, Your Honor, what we --

14 MR. DICKERSON: So my thought -- what I was thinking
15 would occur is after the trust finishes this case the
16 Plaintiff could finish its case and then we can go forward and
17 --

18 MS. FORSBERG: Are we finishing the --

19 MR. DICKERSON: -- respond to both.

20 MS. FORSBERG: -- complete trust case both sides --
21 I mean, on both sides of the trust, get it out, all your
22 witnesses for the trust?

23 MR. DICKERSON: Yes.

24 MS. FORSBERG: Okay. So all of the trust case, all

1 your witnesses for the trust --

2 MR. DICKERSON: All the trust --

3 MS. FORSBERG: -- and then after the --

4 MR. DICKERSON: -- and the Plaintiff's case. I only
5 have three witnesses that I need now for the Plaintiff's case
6 and the trust case.

7 MS. FORSBERG: So you're -- I guess I'm still
8 confused on what you're saying, Bob. So we'll do all of the
9 trust like we have said, Your Honor, because that's what we
10 had planned on. We had also said that back when we started
11 this. You would like to get that part done --

12 MS. PROVOST: What she's --

13 MS. FORSBERG: -- to make --

14 MS. PROVOST: What she's wondering Bob is does --

15 MR. DICKERSON: I understand.

16 MS. PROVOST: -- is she interrupting --

17 MR. DICKERSON: I know what she wants.

18 MS. PROVOST: -- or is she going after?

19 MR. DICKERSON: My concern is this is I don't want
20 to be accused of putting something on that the trust could
21 object to. The trust plans on leaving when they feel that we
22 presented our case --

23 THE COURT: Okay.

24 MR. DICKERSON: -- on the trust. My preference

1 would be let's let the trust finish this case. I don't know
2 how much more Rhonda has. I don't know how she could have
3 anymore. I mean, it may very well. I mean, Mr. Nelson was on
4 the stand the vast majority of the time, but whatever she
5 wants to put on, let's put it on for the entire case and then
6 we'll put on for the entire case.

7 MS. FORSBERG: See, and that was all we talked
8 about. We talked about doing all the trust issues and then
9 moving forward, because if you have a ruling on it, then it
10 certainly cuts it down on what we need to -- because it's
11 going to be a lot longer if we -- if we don't. I mean, if
12 we're not going to end it until then and we're going to have
13 to have another day, it makes sense if the Court can and I
14 know the Court would like to clear out part of this to get it
15 resolved, because you would like it off your docket.

16 So that would certainly make it quicker for the
17 Court also if we did it the way we had discussed the first day
18 and the way you had discussed whenever we -- they brought me
19 for this

20 THE COURT: I don't know if we can keep it that
21 clean, because it's also cross related. I'm sure Eric's going
22 to be on the stand with a lot of questions from the prior
23 testimony and explaining a lot of things that Mr. Gerety
24 testified to. So I'm not so sure we can separate the Nelsons

1 from the trust. I don't know if it would be that clean and
2 everything. I know McGowan, fine, because McGowan will be
3 clearly trust issues. So who else do you have, Mr. Dickerson?
4 You have basically Rochelle McGowan and --

5 MS. FORSBERG: Larry Bertsch.

6 THE COURT: -- Larry Bertsch.

7 MR. DICKERSON: And Lynita.

8 THE COURT: And Lynita. And Lynita's going to -- I
9 figure we --

10 MS. FORSBERG: All them will go --

11 MR. DICKERSON: And I don't plan on calling any
12 experts.

13 THE COURT: And then who would you have? Just Eric
14 or I don't know who you're planning on calling or --

15 MS. FORSBERG: For the other part of the case --

16 THE COURT: Yeah.

17 MS. FORSBERG: -- it's going to be Lynita and --

18 THE COURT: And Eric?

19 MS. FORSBERG: -- and it'll be Eric primarily. And
20 then depending on what happens with it, it would be Larry
21 Bertsch if we need to call him regarding values depending on
22 if those properties stay in or they -- they're out. You know,
23 I mean, that's a big question for the Court.

24 MR. DICKERSON: Now keep in mind, I believe -- boy,

1 it's a year and a half. I believe Lynita was already
2 examined, so --
3 MS. FORSBERG: She was --
4 THE COURT: Yeah, she testified.
5 MS. FORSBERG: -- part -- they didn't --
6 MR. DICKERSON: -- I think they have completed an
7 examination, so --
8 MS. FORSBERG: They did not. They stopped for the
9 experts.
10 MR. DICKERSON: They did?
11 MS. FORSBERG: You had the experts coming and you
12 had Paul Alanese (ph) here and you guys stopped.
13 THE COURT: We had started and stopped and Eric and
14 got through some --
15 MS. FORSBERG: And then she had the --
16 MR. DICKERSON: I'm trying to remember it.
17 MS. FORSBERG: I know you are. I just want you to
18 know a little bit.
19 MR. DICKERSON: No. No. No. I'm just trying to
20 remember. I'm thinking back that far --
21 MS. FORSBERG: Yeah, I know.
22 MR. DICKERSON: -- and I think --
23 MS. FORSBERG: It's --
24 MR. DICKERSON: -- you may be right. I'm trying to

1 -- we did all that --

2 THE COURT: Yeah, we had stopped I think both,
3 because we tried to talked -- all the -- the goal was that
4 once we heard some of the testimony from the experts I thought
5 it might get the case settled. So we --

6 MS. FORSBERG: So then it --

7 THE COURT: -- kind of went into a settlement mode
8 and it kind of fell apart from there. So we had started both.
9 I --

10 MS. FORSBERG: Started both and finished to -- you
11 have finished your cross on Eric and Mr. Jimmerson -- because
12 you sat at the end and towards the -- I thought you had
13 finished and you said you finished your cross, but I still
14 have my redirect left.

15 THE COURT: Mr. Solomon, who are you thinking of
16 calling as far as from the Trust's perspective as far as --

17 MR. SOLOMON: I'm almost done.

18 THE COURT: All right.

19 MR. SOLOMON: I have Lynita which hopefully will
20 take less than an hour and then I have Eric and take the rest
21 of the day and I hope we're done by the state of my case.

22 THE COURT: Well, okay.

23 MR. SOLOMON: My only issue, obviously I'm not
24 thrilled about sitting here talking about alimony if that's

1 what they're going to be talking about or --

2 THE COURT: Absolutely. We'll let --

3 MR. SOLOMON: -- other issues and dividing assets if
4 the -- but I'll do whatever the Court says. The one thing I
5 have a concern about is I did a pretrial memo stating forth
6 our legal positions, et cetera. There is none coming from the
7 other side.

8 MR. DICKERSON: Oh, I --

9 MR. SOLOMON: I understand they intend --

10 MR. DICKERSON: The rule can come -- I'm going to
11 present ours when we begin our case in chief.

12 MR. SOLOMON: And let me finish if then --

13 THE COURT: Well, yeah, let Mr. Solomon finish.

14 MR. SOLOMON: Then you'll have a chance.

15 THE COURT: Yeah, you can continue.

16 MR. SOLOMON: They intend I'm told now to file a
17 pretrial memo at the beginning of their case and I'm not going
18 to have an opportunity to really review and respond to it
19 unless the Court gives us time after --

20 THE COURT: I was planning on giving you both --
21 everybody who wanted to if they want to do post-trial briefs
22 to help clarify what they think the law is or any special
23 things they want me to look, because there's been a lot of
24 testimony with a lot of exhibits, if there's something they

1 want to highlight, I'm fine with that if everybody wants to do
2 that, because it gives you a chance to --

3 MR. SOLOMON: And my only --

4 MS. FORSBERG: And technically --

5 MR. SOLOMON: -- apology on that is he's got a
6 vacation I'm trying to protect for him, because he's already
7 --

8 THE COURT: Yeah.

9 MR. SOLOMON: -- missed one through another trial
10 that I put him through and I promised to go on this one.

11 THE COURT: We'll make sure. We'll make sure. I'm
12 not going to put any bows --

13 MS. FORSBERG: And Your Honor --

14 THE COURT: -- on any attorneys.

15 MS. FORSBERG: -- and technically Mr. Karacsonyi was
16 right. We have already -- both this side and that side have
17 done pretrial memos back the year and a half, two years ago.

18 MR. DICKERSON: But I haven't done my pretrial memo
19 --

20 THE COURT: For the --

21 MR. DICKERSON: -- with respect to the --

22 MS. PROVOST: The trust issue.

23 MR. DICKERSON: -- the trust --

24 THE COURT: The trust.

1 MR. DICKERSON: -- case.

2 THE COURT: That's right. The trust case.

3 MR. DICKERSON: I mean, we've done our pretrial memo
4 with respect to Plaintiff's case.

5 THE COURT: Yeah, then it was all done. Yeah, that
6 was back in 2000 --

7 MS. FORSBERG: Pretrial memos are usually done --

8 MR. SOLOMON: And I'm not objecting to it.

9 MS. FORSBERG: -- so many days in advance.

10 MR. SOLOMON: I just want a chance to respond to
11 it. That's all.

12 THE COURT: Yeah.

13 MR. SOLOMON: And you said you would give us that
14 and that's fine. And I appreciate that.

15 THE COURT: That's fine since I'll give everybody a
16 chance to do a post-trial brief. The case since there's so
17 much testimony we heard, I'll be glad to give you a chance on
18 that, the long things you want me to look at detailed because
19 there's so many exhibits. I don't know if I'll read every
20 exhibit that's been submitted. I'll definitely do the ones
21 that there will be a lot of testimony on. But there's an
22 awful lot of ones you may want to highlight my attention to to
23 give everybody a chance. It may help me focusing on the -- my
24 decision as well.

1 And answering your question as far as I'm not sure
2 I'll be able to rule on the trust at the close of their case
3 since it has the trust issue because there's so much things, I
4 know they're going to have testimony as to Eric on how things
5 transpired. Maybe we'll get that done today and if that's
6 enough information, but I just don't see how. I'd like to get
7 Rochelle done, Ms. Lynita done and Eric done and Mr. Bertsch
8 done and see where we're at at that point and see if we need
9 to, because I know you probably not like to hang around for
10 other testimony. Do you have any problem on some of their
11 testimony in their case? There might be some flow over it,
12 some questions that have already been asked by the Trust. I
13 mean, they might be depending on some stuff that they go
14 through.

15 So I'm inclined -- my thing is to get Bertsch done,
16 McGowan done this week.

17 MR. DICKERSON: Well, Bertsch cannot be here until
18 Wednesday --

19 THE COURT: Til Wednesday.

20 MR. DICKERSON: -- morning. And then Rochelle
21 McGowan and we'll get them done. And then Eric and Lynita --

22 MR. DICKERSON: She can be here tomorrow.

23 THE COURT: -- Eric and Lynita if we get those done
24 by Wednesday, then we'll see where we're at and then --

1 MR. DICKERSON: Okay. So who do you want to go
2 next?

3 THE COURT: You want Lynita, is that -- I believe.
4 Is that who you wanted, Mr. Solomon?

5 MR. SOLOMON: I'm putting her on, yeah.

6 MR. DICKERSON: Oh, no. No. But who will present
7 their case next, the Plaintiff or the --

8 MS. FORSBERG: Call the trust and then you said all
9 the trust then the --

10 THE COURT: Yeah. Let's get --

11 MS. FORSBERG: -- then we can start the alimony
12 issues just in case they decide they want to go there or --

13 THE COURT: Okay. Let's get McGowan and see where
14 we're at and then I'll figure out on that. I'm going to look
15 at the testimony. I want to renew my notes from -- I'll read
16 it tonight that we have to have from back in 2010 and see
17 where Ms. Lynita was, where Mr. Eric was and then see where
18 we're going. I think the best thing probably would be to have
19 Plaintiff put their case on since they're ones that filed it
20 on that and then you do your case separate. There's some
21 claim to that way, I think, but I just want to see if I can
22 separate the trust purely from the other issues. I'm not so
23 sure --

24 MS. FORSBERG: Right.

1 THE COURT: -- with all the overlap.
2 MS. FORSBERG: So you want to hear all the trust
3 people first and then --
4 THE COURT: Yeah.
5 MS. FORSBERG: -- the other. I got you.
6 THE COURT: Get all the trust done so we get them
7 done and --
8 MS. FORSBERG: Thank you.
9 THE COURT: -- then let the Plaintiffs put their
10 case.
11 MR. DICKERSON: And that leaves us -- boy, I hate
12 wasting a day tomorrow. The only one we have -- we have
13 tomorrow is Rochelle McGowan and she's --
14 THE COURT: How about --
15 MR. DICKERSON: -- going to be real --
16 THE COURT: How long is --
17 MS. FORSBERG: Do you think Eric and Lynita are
18 going to be done in --
19 THE COURT: Eric and Lynita, I don't know how
20 they're going to take. Are they going to take a day --
21 MS. FORSBERG: -- day --
22 THE COURT: with Eric and Lynita?
23 MS. FORSBERG: -- to a half a day? I mean --
24 MR. DICKERSON: Well, for now --

1 MR. SOLOMON: Well, I think it's -- my examination
2 is less than an hour for each of them --

3 THE COURT: All right.

4 MR. SOLOMON: -- but --

5 THE COURT: Let's get them on and see where we're at
6 and at the end of the day, we'll see where we're at. And if
7 we're done with that, then we'll --

8 MR. SOLOMON: Yeah, the thought was crossed --

9 THE COURT: Okay.

10 MR. SOLOMON: -- and whether that -- will be a
11 little bit tomorrow.

12 THE COURT: Okay. Yeah. Because I don't want to
13 lose a day.

14 MR. DICKERSON: Okay.

15 THE COURT: I definitely don't want to lose a day.

16 MR. SOLOMON: I call Lynita Nelson to the stand.

17 THE COURT: There's an awful lot of things you may
18 want to close those up and get them out of your way. I don't
19 know if they'll be referring to those documents or not.
20 There's an awful lot of paper in your way. So feel free to
21 move those so you can --

22 MR. SOLOMON: Get them out of the way.

23 THE COURT: Yeah, we'll get that out of the way for
24 you, because it's -- we can just --

1 MR. SOLOMON: Is the main exhibit book up there?
2 THE WITNESS: I'm sorry?
3 THE COURT: See what -- yeah, why don't you see what
4 they got up to what you know you're going to be referring to.
5 That way we get it all set up and --
6 MR. SOLOMON: Our exhibit book.
7 THE COURT: But take the other ones back. Yeah.
8 Okay.
9 MS. FORSBERG: I think it's --
10 MR. SOLOMON: Two small ones or one big one.
11 THE COURT: Yeah, we'll swear you in --
12 THE WITNESS: Okay.
13 THE COURT: -- since it's been a couple days. We'll
14 have you stand up and get you sworn in since it's been a
15 couple days.
16 THE CLERK: You do solemnly swear the testimony
17 you're about to give in this action shall be the truth, the
18 whole truth and nothing but the truth, so help you God?
19 THE WITNESS: Yes.
20 THE CLERK: Thank you. You may be seated.
21 THE COURT: We'll continue the examination as Mr.
22 Solomon had called Ms. Lynita as a witness last week. We had
23 continued it to accommodate other witnesses. So Mr. Solomon,
24 you may pick off -- pickup where you left off or at your

1 pleasure.

2 MR. SOLOMON: Thank you, Your Honor.

3 LYNITA NELSON

4 called as a witness on behalf of the Intervener and being
5 previously sworn, testified as follows on:

6 DIRECT EXAMINATION CONTINUED

7 BY MR. SOLOMON:

8 Q I'm sure we've all forgotten why we were going to
9 play that video, so let me go back and refresh you on that.
10 In their preliminary argument, opening argument, your counsel
11 claimed that Mr. Burr had sent you to Mr. Koch to review the
12 prenuptial agreement and that he was a tenant of Mr. Burr.
13 And I asked you wasn't it a fact that Mr. Burr told you there
14 were several lawyers you could see and Richard was just one of
15 them and you chose Richard because he was close, he was down
16 the street? And you denied that. Do you recall that?

17 A I don't recall what I said the other day, but I -- I
18 know that you wanted to show me the video of what I had stated
19 earlier, so --

20 Q Okay. Well, whether or not you remember what you
21 said a couple days ago, isn't it a fact that Mr. Burr told you
22 there were several lawyers you could see to advise you with
23 respect to the prenuptial agreement, Mr. Koch was one of them,
24 and you chose him because he was down the street, is that

1 testimony?

2 A I testified the other day that he directed me there
3 and I -- I agree with what he stated the other day on the
4 stand.

5 Q I'm not sure that was an answer to my question. Did
6 you understand my question?

7 A It sounds like you don't think so.

8 Q I don't. That's why I'm asking you.

9 THE COURT: Do you recall Attorney Burr referring
10 you to -- giving you more names and Mr. Koch to -- if there
11 other names he gave you or you just remember Attorney Koch?

12 THE WITNESS: I just remember him telling me of the
13 attorney that was down the street.

14 Q Do you recall I also asked you the other day when
15 you were testifying whether Mr. Koch asked you if you
16 understood the prenuptial agreement and you told him -- I'm
17 sorry, I said prenuptial agreement. The property separation
18 agreement or separate property agreement. And you told Mr.
19 Koch that you did understand it. Do you recall telling Mr.
20 Koch that?

21 A I would have told him, yes, that I understood it. I
22 would have told him that.

23 Q Okay. Let's play back the video.

24 (Videotape recording plays)

1 Q Okay. Now if you open up that book in front of you,
2 and turn to Exhibit 11.

3 A I'm there.

4 Q Okay. This is a letter that Mr. Burr sent to Mr.
5 and Mrs. Eric Nelson on June 19th, 1998 at the Palmyra
6 residence. Do you open the mail at Palmyra?

7 A Most of the time, but not Mr. Burr's things. I --
8 sometimes I would, sometimes I wouldn't, but Eric took care of
9 that, so I would have given it to him whether or not I opened
10 it or not.

11 Q Okay. As we're sitting here today, do you recall
12 why Mr. Burr sent you a declaration of gift form?

13 MR. DICKERSON: Object to the form of the question,
14 sent to both of you.

15 THE COURT: I think it says send to both Mr. And
16 Mrs. Nelson at the Palmyra address.

17 MR. SOLOMON: That's fine, but he sent it to her
18 too, so --

19 THE COURT: Yeah.

20 MR. SOLOMON: -- I'm not sure it's improper
21 question, but okay.

22 THE COURT: You can ask it.

23 THE WITNESS: So I need you to ask that again.

24 BY MR. SOLOMON:

1 Q The question, do you want me to repeat it?
2 A If you would.
3 Q Yes. As you're sitting here today, do you know why
4 Mr. Burr's office sent to you and Eric a declaration of gift
5 form?
6 A I do not. I don't ever remember seeing this.
7 Q You don't recall seeing it?
8 A No.
9 Q Okay. If you could turn to Exhibit 12.
10 (Whispered conversation)
11 Q Have you had a chance to look at that?
12 A Yes, sir.
13 Q This appears to be an email from L. Nelson, is that
14 you?
15 A Yes.
16 Q Okay. And it's subject as Lynita Nelson Trust. And
17 you sent it to Barbara Morelli at Jeff Burr's office?
18 A Yes, sir.
19 Q Is this an email you composed?
20 A Yes.
21 Q It's dated January 26th, 2009. And it's talking
22 about changes you're want to your estate planning, is it not,
23 your trust?
24 A Yes, sir.

1 Q And the third paragraph down says for my successor
2 trustee I want to have it as Connie Jan (ph) and Reegie Van
3 Borum (ph). And then the second one Annette Judd (ph). Do
4 you see that?

5 A Yes, sir.

6 Q And that's a change on your trust, is it not?

7 A It is.

8 Q And then you say the next paragraph they would also
9 serve as distribution trustee in the above order. Do you see
10 that?

11 A Okay. Yes, sir.

12 Q So you're asking Jeff Burr's office to effectuate
13 changes in your trust?

14 A Yes, sir.

15 Q And was that for the purposes of removing Eric, the
16 position as he was in at that time under your trust?

17 A I wanted to make sure that whatever was decided as
18 far as our community property would go to our kids. That was
19 my -- that was my main thing. I -- in my mind, it --

20 Q Ma'am, this doesn't have anything to do with that,
21 does it? This is changing the trustees from --

22 MR. DICKERSON: Has she finished?

23 MR. SOLOMON: Well, if she had answered the question
24 instead of answering what she wants to answer --

1 MR. DICKERSON: Well, she did answer the question.

2 MR. SOLOMON: -- it would go a lot faster.

3 MR. DICKERSON: She answered the question.

4 THE COURT: She started to answer. Why don't you
5 finish up during one -- the purpose of that you said was what?

6 THE WITNESS: I just wanted to make sure that if
7 anything happened to me during the divorce that the children
8 would -- if there was anything that was decided that the
9 children would get whatever my portion of the split was of the
10 trust. And in order to do that, I had to make these other
11 changes, because I knew that I could trust them to do that.

12 BY MR. SOLOMON:

13 Q Okay. In fact --

14 A That was the purpose of it.

15 Q In fact, if you look at the last paragraph, it says
16 regarding the distribution of the trust, I want to make
17 changes to that also, but that's nothing something you
18 discussed in this memo, is it?

19 A No, I -- I'm just asking her when do I do that,
20 because I didn't really completely understand the process of
21 that.

22 Q Isn't the fact that you knew that what you were
23 doing here or requesting was you were requesting Mr. Burr's
24 office to help you to effectuate a change in removing Eric as

1 successor trustee from your trust and substituting other
2 individuals, yes or no?

3 A That was not my main intent.

4 Q Was that one of the things you set here?

5 A Well, in doing what I am requesting, that's what
6 that would have done.

7 MR. SOLOMON: I move to admit 12, Your Honor.

8 MR. DICKERSON: No objection.

9 MS. FORSBERG: No objection.

10 THE COURT: Hereby admitted as Exhibit Number 12.

11 (Intervener's Exhibit 12 admitted)

12 BY MR. SOLOMON:

13 Q Well, can you turn to Exhibit 14?

14 A Sure. I'm there.

15 Q All right. Turn to the second to the last page,
16 you'll see your signature, is that correct?

17 A Yes, sir.

18 Q All right. This is a total amendment and
19 restatement of the Nelson Trust. According to the signature
20 pages, you signed it on February 17th, 2009.

21 A Okay.

22 Q Isn't it true that you did not confer with Eric
23 about how you were changing the disposition of assets in this
24 restatement?

1 A That's correct. I did not.

2 Q And did you understand that under this document you
3 were making a disposition of your assets or the assets in this
4 trust upon your death?

5 A I don't understand what disposition is.

6 Q You were saying in case I died, I want my assets to
7 go to your kids, I believe, correct?

8 A Well, it wasn't estab -- as far as I was concerned,
9 Eric's assets were my assets and mine were his. So -- and
10 that hadn't been decided yet, because --

11 Q You know --

12 A -- we had just started the divorce --

13 Q -- if you just answer the question instead of
14 answering what she wants --

15 MR. SOLOMON: Your Honor --

16 THE COURT: Well, I mean, she --

17 MR. SOLOMON: -- I mean, it's unbelievable.

18 THE COURT: She -- you'll get a chance on cross exam
19 to establish it, but if you could be more precise to get us a
20 lot sooner on that, but if you can answer the questions more
21 direct, we appreciate it and Mr. Dickerson will get a chance
22 to bring more out as you want. But if you can --

23 THE WITNESS: I guess I don't under --

24 THE COURT: -- it would just save you some time.

1 THE WITNESS: I don't understand what he's asking me
2 then.

3 THE COURT: Okay.

4 BY MR. SOLOMON:

5 Q And so you --

6 THE COURT: Restate it then.

7 Q -- if you don't understand what I'm asking me, tell
8 me that and I'll rephrase the question.

9 A Sure. Will you rephrase that for me?

10 Q I would be happy to. You understood when you were
11 signing this document that you were controlling, specifying
12 how you wanted these assets and this trust to go upon your
13 death, isn't that true?

14 MR. DICKERSON: Well, I object to the form of the
15 question, because it assumes that there are more than one
16 asset. And this trust only includes Palmyra only.

17 THE WITNESS: Yeah, if it listed the assets, I mean,
18 does it list the assets here?

19 BY MR. SOLOMON:

20 Q Whatever assets were in here, whether it's one asset
21 or 10 assets or a thousand assets, didn't you understand that
22 when you executed this document you were seeking to control
23 the disposition of those assets and that trust upon your
24 death?

1 A No.

2 Q Turn to Exhibit 14.

3 A I'm there already.

4 THE COURT: I thought we just went through it.

5 Q 15, I'm sorry.

6 A Okay.

7 Q Let's go to Exhibit 17.

8 A Okay. I'm there.

9 Q Is that your signature on the document?

10 A It is, sir.

11 MR. SOLOMON: Offer 17.

12 MS. FORSBERG: I have no objection.

13 THE WITNESS: It's -- it's on --

14 MR. DICKERSON: No objection.

15 THE COURT: No objection? Hereby admitted as

16 Exhibit Number 17.

17 (Intervener's Exhibit 17 admitted)

18 BY MR. SOLOMON:

19 Q Would you turn to Exhibit 19?

20 A Sure. Okay. I'm there.

21 Q Okay. Let me have you go back to 18 for a second.

22 A Okay.

23 Q Is that your signature on 18?

24 A It is, sir.

1 Q And did you understand that by signing this document
2 you were directing the transfer of above number -- above
3 referenced account to you as trustee of the 1993 Nelson trust?

4 A Could you ask me that again? I was reading this, so
5 --

6 Q Okay. Did you understand that when you signed this
7 document that you were directing the transfer of that account
8 number at the top to yourself as trustee of your 1993 Nelson
9 Trust?

10 A You're asking me if this particular account number
11 was going to be designated as my trust account? Is that the
12 same thing that you're asking me?

13 Q That's pretty close.

14 A So is that it?

15 Q Can you answer that one?

16 A I -- I -- what I have understood that? Probably not
17 at the time.

18 Q All right. Turn to Exhibit --

19 MR. SOLOMON: Oh, I'm sorry. Offer 18.

20 MR. DICKERSON: I have no objection.

21 MS. FORSBERG: No objection.

22 THE COURT: Hereby admitted as Exhibit 18.

23 (Intervener's Exhibit 18 admitted)

24 BY MR. SOLOMON:

1 Q Turn to 19.
2 A Sure.
3 Q Is that your signature on the last page of that
4 document?
5 A Yes, it is, sir.
6 Q And you did that on February 17th, 2009, correct?
7 A Yes, that's what it's dated.
8 Q Okay. And if you can turn to the first page of the
9 exhibit, do you understand this is your will?
10 A I see that at the top, yes, sir.
11 Q Okay. Did you understand it was your will when you
12 signed it?
13 A Yes, I think I -- this one I did understand a little
14 more clearer.
15 Q Okay. And in Paragraph 3, it indicates that
16 whatever assets you have, you're giving, devising and
17 bequeathing to the trustee of the LSN Nevada Trust established
18 in 2001. Do you see that?
19 A Yeah, I'm reading that. Uh-huh (affirmative).
20 Q Okay. Did you understand that what you were saying
21 there is you wanted your assets distributed pursuant to the
22 terms of the 2001 LSN Nevada Trust?
23 A I would not have understand that section, no.
24 Q So you had no clue where you're devising your

1 assets.

2 A I had no clue what?

3 Q You had no clue where you were devising your assets
4 upon your death, is that your testimony?

5 A You have to tell me what -- I don't understand
6 devising.

7 Q You had no clue where you were leaving -- to whom
8 you were leaving your assets upon your death?

9 A I understood that I was leaving them to Section 2 to
10 my children. That's how I understood that it would be.

11 Q Did you read this document before you signed it?

12 A I wouldn't swear on it I did, no, but I -- I would
13 think that -- I think that they probably went over it with me.

14 Q Okay. And that's your initials on each page?

15 A Yes, sir. It is.

16 Q Okay. Turn to Page 4.

17 A Okay. I'm there.

18 Q Is it true that in Article 9 at the bottom that on
19 February 17th, 2009 pursuant to this instrument you named Noah
20 Harbor (ph) as the legal guardian for your children while they
21 were still minors?

22 A Yes, I did.

23 Q Would you turn to Exhibit 22?

24 A I'm there.

1 Q This purports to be a letter dated January 30th,
2 2001 from Jeff Burr's office to you and Eric at the Palmyra
3 address. And it says it serves to a followup on your meeting
4 with Jeff Burr and Melina Barr (ph) and also to confirm the
5 fees for services we will provide. Do you recall meeting with
6 Jeff and Melina with respect to a asset protection trust?

7 A I would have -- the dates in that I -- I don't
8 recall, but I -- I would have gone to go and sign the
9 paperwork. That's the only time I would go and meet with Jeff
10 was to sign -- I mean, prior to the divorce starting. So I
11 would have only gone to sign the paperwork.

12 Q Okay. So when Jeff testified otherwise, you're
13 saying he was incorrect.

14 MR. DICKERSON: Objection. Jeff did not testify
15 otherwise.

16 MR. SOLOMON: He certainly did.

17 MR. DICKERSON: He testified --

18 MS. PROVOST: And he testified that he didn't
19 recall.

20 MR. DICKERSON: -- that this was a letter and he
21 testified --

22 MR. SOLOMON: He testified he had several meetings
23 with her including two before she saw him.

24 THE COURT: I don't remember his testimony off the

1 top on that, but my understanding that there were some
2 meetings that he testified to with them both on that. But why
3 don't you restate the question and we'll --

4 BY MR. SOLOMON:

5 Q Assuming I'm correct and the testimony bears me out,
6 then Mr. Burr testified that he met with you on more than one
7 occasion before you signed that agreement with the purpose of
8 explaining to the trusts to you, is it your testimony that he
9 was inaccurate?

10 MR. DICKERSON: Objet to the form of the question
11 and it mischaracterizes Mr. Burr's testimony.

12 THE COURT: Well, did you recall meeting with Mr.
13 Burr other than signing the paperwork? I guess that's kind of
14 the question out there.

15 THE WITNESS: I -- I couldn't say yes or no, because
16 this wasn't our first -- this wasn't our first trust that we
17 ever setup with it. And -- and I know at that time I did go
18 in. Before this one, I couldn't tell you --

19 MR. SOLOMON: Okay.

20 THE WITNESS: -- for sure.

21 BY MR. SOLOMON:

22 Q The turn to Exhibit 23.

23 A Okay. I'm there.

24 Q Okay. This is a letter dated February 15th, 2001

1 from Jeff Burr's office to you and Eric at the Palmyra address
2 including drafts of these trusts and asking you that when
3 you're ready to schedule an appointment to further review the
4 drafts are sign the original documents. Do you recall
5 receiving this letter?

6 A I do not, no.

7 Q Would you turn to Exhibit 21?

8 A Sure.

9 Q This is Mr. Burr's notes that he testified to on
10 January 15th, '01.

11 A Uh-huh (affirmative).

12 Q And he wrote to Melina and says we need two new
13 trusts, one for Eric and one for Lynita. And then it says
14 they want to see drafts when they return. Do you recall
15 asking Mr. Burr for an opportunity to see drafts of the asset
16 protection trust?

17 A No, I don't. I mean, Eric made the appointments. I
18 -- I never made the appointments at this time and I -- I don't
19 know. Eric did all that. I -- I can you that I don't recall
20 being at a meeting where Kells Blue Water Marine was discussed
21 and that -- that's on this note, because he wouldn't have
22 talked about that in front of me.

23 Q Would you turn to 25?

24 A Sure. I'm there. I'm sorry.

1 Q Is that your signature on Page 31?

2 A Yes, it appears it is.

3 Q And that was assigned according to this on May 30th,

4 2001 about five months after you had received the drafts, is

5 that correct?

6 A That's what the notaries has signed as.

7 Q Okay. Do you know Edith Plummer (ph), the notary?

8 A I don't. That doesn't sound familiar to me.

9 Q Is that somebody at Jeff Burr's office?

10 A That name I don't -- it doesn't sound familiar. I

11 mean, it's not -- Eric never had anybody at his office by that

12 name I don't think.

13 Q Would you turn to Exhibit 26?

14 A Sure. Okay.

15 Q Well, this is a letter dated May 30th, 2001 from

16 Jeff Burr's office to you at Palmyra residence. Do you see

17 that?

18 A I do, yes.

19 Q Okay. So if you received a letter made out to you

20 from Jeff Burr's office at your house, would you open it?

21 A If it had to do with Jeffrey Burr, not always. Then

22 if I would have opened it once like this, I probably would

23 have -- I wouldn't have opened anymore, you know, because I

24 just gave them to Eric. That's what he wanted.

1 Q So your testimony is that Mr. Burr sends you a
2 letter, you open it maybe or maybe not and then you don't even
3 read it?

4 A Right, because -- well, do you want me to elaborate
5 it on it or --

6 Q Well, you answered it.

7 A Okay. That's true.

8 (Whispered conversation)

9 MR. SOLOMON: Okay. Offer 26.

10 MS. FORSBERG: No objection.

11 THE COURT: Hereby admitted as --

12 MS. PROVOST: I was going to say --

13 THE COURT: It's already been admitted?

14 MS. PROVOST: -- it was admitted on the 17th.

15 MR. SOLOMON: Oh, it's already been admitted?

16 THE COURT: It's already admitted.

17 MS. FORSBERG: Yeah, 26. I --

18 MR. SOLOMON: Thank you.

19 BY MR. SOLOMON:

20 Q Exhibit 27.

21 A Okay. I'm there.

22 Q All right. Here's a letter dated May 30th, 2001
23 from Jeff Burr again to you only at the Palmyra residence.
24 Did you read this letter?

1 A It doesn't look like it, because Eric's made notes
2 on it. So I may not -- I probably didn't see it at all.

3 Q Okay. Can you explain then why you signed on Page 4
4 that I hereby understand and acknowledge receipt of this
5 letter and I accept responsibility for the transfer of my
6 assets to my trust?

7 A Eric would have asked me to sign it.

8 MR. SOLOMON: 20 -- is that offered? Is that in?

9 MR. LUSZECK: 27 --

10 MS. PROVOST: 27's in.

11 MS. FORSBERG: 27's in.

12 MR. LUSZECK: Yeah, it's in.

13 Q Would you turn to 28?

14 A Sure. Okay. I'm there.

15 Q All right. Here's a letter to you and Eric to your
16 Palmyra address dated May 30th, 2001. And do you recall
17 receiving this letter?

18 A Oh, no, I wouldn't.

19 Q You wouldn't have?

20 A I wouldn't have remembered receiving it. Unh-unh
21 (negative).

22 Q So you may or may not. You don't remember. Is that
23 what you're saying?

24 A Like I said, that if I opened it, there's very

1 little that Eric just wanted me to give all the stuff to him,
2 because he was handling it.

3 Q Okay. Did you read it, this letter?

4 A Most likely not.

5 Q Did you read any part of it?

6 A Probably not.

7 Q Okay. Can you explain then why you signed Page 3?

8 A Certainly why I signed everything, because Eric
9 asked me to.

10 Q Okay. So you signed it without reading anything
11 that you were signing.

12 A Yes, that's true.

13 Q That's your testimony.

14 A Yes, that's it.

15 Q Did you ever read anything during your marriage?

16 A From Jeff?

17 Q From anybody.

18 A Sure.

19 MR. SOLOMON: Offer 28, Your Honor.

20 MR. DICKERSON: No objection.

21 MS. FORSBERG: No objection.

22 THE COURT: Hereby admitted as Exhibit 28.

23 (Intervener's Exhibit 28 admitted)

24 BY MR. SOLOMON:

1 Q Would you turn to Exhibit 30?

2 A Sure. I'm there.

3 Q Okay. All right. These are waiver of notice and

4 annual consent -- or I'm sorry, waiver of notice and consent

5 to hold annual -- semi annual trustees meeting of LSN Nevada

6 Trust dated June 1st, 2001. Is that your signature?

7 A Yes.

8 Q If you turn back --

9 MR. SOLOMON: Is that offered? Is that in?

10 MR. LUSZECK: No.

11 MR. SOLOMON: Offer 30.

12 MS. FORSBERG: No objection.

13 THE COURT: It's already been admitted.

14 MS. FORSBERG: Oh, I didn't have it.

15 MR. LUSZECK: Oh, I don't have it down either.

16 MS. PROVOST: It was July 16th.

17 MR. DICKERSON: I believe all the exhibits are all

18 Defendant's.

19 BY MR. SOLOMON:

20 Q All right. Would you turn back to Exhibit 29?

21 A Sure. Okay. I'm there.

22 Q Is -- that's a two page document. The second page

23 is entitled legal notice and it's dated January -- or I'm

24 sorry, dated May 30th, 2001.

1 A Uh-huh (affirmative).

2 Q Signed by you as trustee. Is that your signature?

3 A Yes, sir.

4 MR. SOLOMON: I don't have that one.

5 MS. FORSBERG: No.

6 MR. SOLOMON: All right. Offer -- our record, we

7 don't have that one admitted, so I would offer it.

8 MR. DICKERSON: I have no objection.

9 MS. FORSBERG: No objection.

10 THE COURT: Hereby admitted as Exhibit 29.

11 (Intervener's Exhibit 29 admitted)

12 BY MR. SOLOMON:

13 Q Would you turn to 32?

14 A Sure. I'm there.

15 Q 32 is a certificate of business fictitious firm name

16 indicating that you as trustee of the LSN Nevada Trust are

17 conducting business under the name of Nelson Professional

18 Plaza. Is that your signature on the page?

19 A That's my signature, yes.

20 MR. SOLOMON: Offer 32.

21 MS. FORSBERG: No objection.

22 MR. DICKERSON: No objection.

23 THE COURT: Hereby admitted as Exhibit 32.

24 (Intervener's Exhibit 32 admitted)

1 BY MR. SOLOMON:

2 Q Do you turn to Page -- or Exhibit 33? This is a
3 certificate of business fictitious firm name certifying that
4 you as trustee of the LSN Nevada Trust are conducting business
5 under the fictitious name of Tierra Del Sol. Is that your
6 signature?

7 A It is. That's interesting.

8 MR. SOLOMON: Offer 33.

9 MS. FORSBERG: No objection.

10 MR. DICKERSON: No objection.

11 THE COURT: Hereby admitted as Exhibit 33.

12 (Intervener's Exhibit 33 admitted)

13 BY MR. SOLOMON:

14 Q Turn to Exhibit 35.

15 A Sure. I'm there.

16 Q This is minutes of a special meeting, trustee's
17 meeting of the LSN Nevada Trust dated January 3rd, 2002. And
18 it appears to have your signature. Did you sign the same?

19 A When I say that it's my signature, I'm not always
20 stating that I would have signed it on this document.

21 Q Okay. Do you have any reason to believe that you
22 didn't sign this document?

23 A I believe that I did sign some documents, but I'm
24 not going to testify that I signed my name to every document

1 that has my signature on it.

2 Q Okay. So you're saying it looks like your signature
3 but you don't know if you signed this document. Is that your
4 testimony?

5 A That is my signature, yes.

6 Q Okay.

7 A But I'm not saying I signed that particular
8 document.

9 Q All right. Would you turn to Exhibit 36?

10 A Sure.

11 Q Do you recall Lana Martin distributing a hundred
12 thousand dollars to you?

13 A I would not have known that, no.

14 Q Would you turn to 38?

15 A Sure. Okay. I'm there.

16 Q This is a minutes of a special meeting of a
17 trustee's meeting of LSN Nevada Trust dated April 1st, 2002.
18 Does that appear to be your signature?

19 A That looks like my signature.

20 Q Would you turn to Page 40?

21 A Yeah, to Exhibit 40?

22 Q Yes.

23 A Okay.

24 Q Thank you.

1 A Yes. I'm there.

2 Q All right. This is a letter dated May 3, 2002 to
3 you at the Palmyra address. Do you recall receiving this
4 letter?

5 A I do not.

6 MR. SOLOMON: Offer 40.

7 MS. FORSBERG: No objection.

8 MR. DICKERSON: I believe it's already been
9 admitted, hasn't it?

10 MS. PROVOST: No, 40's not.

11 MS. FORSBERG: No, it's not.

12 MR. DICKERSON: Okay. No objection.

13 THE COURT: 40 is hereby admitted as Exhibit Number
14 40.

15 (Intervener's Exhibit 40 admitted)

16 BY MR. SOLOMON:

17 Q 41.

18 A Okay. I'm there.

19 Q All right. This is a distribution authorization for
20 \$200,000 on May 20th, 2002. Do you recall receiving a
21 \$200,000 payment from your trust?

22 A I have never seen this, no.

23 Q That's not what I'm asking. Do you recall receiving
24 a \$200,000 from your -- payment from your trust?

1 A I never received that -- or I -- I mean, I'm saying
2 I -- I don't even -- know anything about this document. I've
3 never seen it before.

4 Q Were you aware that it was your counsel that
5 produced these documents to us in this case?

6 A I wouldn't except for now that you said that I see
7 DEF on the bottom. So I think that's probably theirs.

8 Q Did your counsel get these documents from you?

9 A No, it wouldn't have been from me. I don't have
10 this. I've never had this paper.

11 Q Who is your distribution trustee now?

12 A Now or during this time that this letter was made?

13 Q Now.

14 A Connie Jan Van Borum and Reed.

15 Q Okay. Does she maintain the documents for the LSN
16 Trust?

17 A What do you mean does she maintain it?

18 Q Does she maintain any documents from the LSN Trust
19 on your behalf?

20 A Well, she has a copy of this. She has a copy of my
21 trust.

22 Q Okay. Does she have a copy of your minutes?

23 A There aren't any minutes.

24 (Whispered conversation)

1 Q All right. Would you turn to 44?
2 A Sure.
3 Q A letter dated March 26th, 2003 to you at the
4 Palmyra address. Do you recall receiving this letter?
5 A I -- I don't recall. No.
6 MR. SOLOMON: Offer 43.
7 MS. FORSBERG: No objection.
8 THE WITNESS: It's not my writing on there.
9 MS. PROVOST: 43 is already in.
10 MR. DICKERSON: You mean 44, I think.
11 MR. LUSZECK: 44.
12 MR. SOLOMON: I'm sorry, 44.
13 MR. DICKERSON: 44.
14 MR. SOLOMON: Thank you.
15 MS. FORSBERG: Oh, I thought the --
16 MR. SOLOMON: Offer 44.
17 MS. FORSBERG: No objection.
18 MR. DICKERSON: No objection.
19 THE COURT: Hereby admitted as Exhibit 44.
20 (Intervener's Exhibit 44 admitted)
21 BY MR. SOLOMON:
22 Q Would you turn to 48?
23 A Sure. Okay. I'm there.
24 Q All right. This is minutes of an annual trustee's

1 meeting for the LSN Nevada Trust February 25, 2004. Does that
2 appear to be your signature at the bottom of the page?

3 A It appears to be my signature, yes.

4 THE COURT: 20 -- 48.

5 THE CLERK: Yes, it's already in.

6 Q Would you turn to 50?

7 A Okay. I'm there.

8 Q Appears to be a copy of a minutes of a special
9 meeting, a trustee's meeting of the LSN Nevada Trust dated
10 April 14th, 2004. Does that appear to be your signature at
11 the bottom of the page?

12 A Oh, I'm just trying to look real quick. Oh, I see.
13 Yes. April 14th. That does appear to be my signature.

14 Q Would you turn to 51?

15 A Okay.

16 Q It's a copy of a May 3, 2004 letter from Jeff Burr's
17 office to you regarding holding meetings for your LSN Nevada
18 Trust. Do you recall receiving the same?

19 A I don't.

20 MR. SOLOMON: Offer 50.

21 MS. FORSBERG: No objection.

22 MR. DICKERSON: No objection.

23 MR. SOLOMON: 51, I'm sorry.

24 MS. FORSBERG: Oh, excuse me.

1 THE COURT: Hereby admitted as Exhibit 51.

2 (Intervener's Exhibit 51 admitted)

3 BY MR. SOLOMON:

4 Q Would you take a look at Exhibit 52?

5 A Sure. Okay.

6 Q Did you -- it appears to be minutes of a special
7 meeting of the trustee's LSN Nevada Trust dated May 20th,
8 2004. Do you recognize their signature at the bottom?

9 A Yes. That appears to be my signature.

10 Q Will you turn to 56?

11 A Yeah.

12 Q This is minutes of an annual trustee meeting for LSN
13 Nevada Trust dated February 20th, 2005. Do you recognize your
14 signature at the bottom of that page?

15 A I do recognize my signature.

16 Q All right. Would you turn to Page -- I'm sorry,
17 Exhibit 63?

18 A Okay. I'm there.

19 Q Is this an email that you sent to Rochelle McGowan
20 on or about December 13th, 2005?

21 A It looks like it, but I wouldn't have --

22 Q Is your -- email at the bottom, sorry, your email
23 address twiggywinkle@cox.net [sic] or was it then?

24 A Yeah, it's -- it's actually tiggywinkle. And that's

1 -- the number, the dollar sign and allotments, I don't talk
2 like that. But it looks like a reply. It looks like Rochelle
3 -- or I don't know. I -- I don't use the word allotment. So
4 I -- I don't deny that I might have asked her for the ledger
5 or monthly checks. What year was that? That was in '05?

6 Q It says that on December --

7 A Yeah.

8 Q -- 12th, 2005 11 --

9 A I'm just saying I don't --

10 Q Let me finish my question.

11 A -- use that word allotments.

12 Q I heard that.

13 A Oh, good.

14 Q It shows that on December 12th, 2005 at 11:47 p.m.
15 you sent an email to Rochelle that says hi, Rochelle, will you
16 email me a ledger of the monthly checks I have received this
17 year. Thank you. Signed, Lynita. Do you recall asking --

18 A I --

19 Q -- her that?

20 A I -- I don't recall.

21 Q Okay.

22 A But I'm not saying that --

23 Q And you were talking about the month -- I'm sorry.

24 You were talking about the monthly checks that you had

1 received as distributions from your trust, the LSN Trust,
2 isn't that true?

3 A I -- I don't recall that email, so I couldn't
4 specify what I was asking.

5 Q But what other monthly checks have you received from
6 the LSN Trust other than your distributions checks?

7 A I wouldn't really know.

8 Q Isn't it true that you spoke with Rochelle on a very
9 consistent basis?

10 A That's -- couldn't be further from the truth.

11 Q And the top portion of this exhibit appears to show
12 that after you dispatched that email to Rochelle she replied
13 to you on the next day on December 13th, 2005 at 9:35 a.m.
14 saying attachment LSN disbursements on excel spreadsheet and
15 here you are. Do you recall receiving the LSN Trust
16 disbursement spreadsheet from Rochelle?

17 A I don't recall it. That doesn't mean that she
18 didn't send it.

19 MR. SOLOMON: Offer 63.

20 MS. FORSBERG: No objection.

21 MR. DICKERSON: No objection.

22 THE COURT: Hereby admitted as Exhibit 63.

23 (Intervener's Exhibit 63 admitted)

24 BY MR. SOLOMON:

1 Q If you could turn to Exhibit 69, please.

2 A Sure. I'm there.

3 Q Okay. This appears to be an email from Rochelle to
4 you dated November 20th, 2006 regarding a new credit card. It
5 says hey, Lynita. I got you a new business credit card.
6 Wells Fargo. We're being idiots when I was just trying to
7 increase the corporate limit asking for three years of tax
8 returns, financial statements, et cetera. So I got you this
9 new card instead through Chase. It has a \$12,000 limit and
10 you get three percent back on all purchase. Do you recall
11 this event?

12 A Oh, I -- I do remember them getting credit cards for
13 me. So I don't recall this email specifically. But I
14 remember a similar situation to this that it could be
15 referring to.

16 MR. SOLOMON: Offer 69.

17 MS. FORSBERG: No --

18 MR. DICKERSON: No objection.

19 MS. FORSBERG: No objection.

20 THE COURT: Hereby so admitted as 69.

21 (Intervener's Exhibit 69 admitted)

22 BY MR. SOLOMON:

23 Q Would you turn to 72?

24 A To 72?

1 Q Yes.

2 A Okay.

3 Q 72, Exhibit 72.

4 A Okay. I'm there.

5 Q All right. Did you become aware that Lana Martin

6 ceased to be your dist -- the distribution of the LSN Trust at

7 some point and Noah Harbor became it instead?

8 A Yes. Eric told me.

9 Q Okay. Turn to 74.

10 A Okay. I'm there.

11 Q All right. Here's an email at the bottom from

12 Amanda Strongberg (ph). That's your daughter?

13 A Yes.

14 Q And it's dated May 4, 2007. It's to Rochelle. It

15 says stuff for my Mom. It says my Mom wanted me to email you

16 and see if you could give her a copy of whatever paper she

17 needs with her trust name stuff on it to open a new account.

18 Do you see that?

19 A I do.

20 Q Okay. And then a response from Rochelle to Amanda.

21 It looks like four minutes later saying okay. Do you see that

22 at the top?

23 A I do, sir. Uh-huh (affirmative).

24 Q Did you ask your daughter to email Rochelle to get

1 you paperwork from the trust that you could open a new
2 account?

3 A I -- I'm sorry, what was the question? I got a
4 little lost by that. I forgot the first.

5 Q Do you recall asking your daughter to communicate
6 with Rochelle to get trust documents so that you will be able
7 to open up a new account for the trust?

8 A I -- I don't recall it, but I -- I know that if
9 Amanda wrote this that I would have asked her to do that,
10 sure.

11

12 MR. SOLOMON: Okay. Offer 74.

13 MS. FORSBERG: No objections.

14 MR. DICKERSON: It's not 74, is it?

15 MS. FORSBERG: It's 70 --

16 MS. PROVOST: Yeah, that's 74.

17 MR. SOLOMON: 74, yeah.

18 MS. PROVOST: 74?

19 MS. FORSBERG: Yeah.

20 THE COURT: Okay.

21 MR. DICKERSON: No objection.

22 THE COURT: Hereby admitted as Exhibit 74.

23 (Intervener's Exhibit 74 admitted)

24 BY MR. SOLOMON:

1 Q Would you turn to 75?

2 A Yeah. I'm there.

3 Q All right. At the bottom of that first email is
4 from you to you Rochelle on November 6th, 2007 at 12:31 p.m.
5 subject, house, Aubrey. It says hi, Rochelle. Will you send
6 me the new house address.

7 A I see that.

8 Q Okay. And that was the house address for the
9 Harbors Hills purchase?

10 A Yeah, that's what she's -- yeah. Yes.

11 Q Okay. And then you received a reply from Rochelle
12 about 15 minutes later saying okay, your house address is 2721
13 Harbor Hills Lane, Las Vegas, Nevada. The house is in your
14 trust. The escrow company said they're recording today so I'm
15 just waiting a confirmation from them. Eric said you were
16 going to call to put the utilities in your name. Do you
17 recall receiving that response?

18 A Vaguely, yes.

19 Q Okay. Did you put the utilities in your name?

20 A I believe I did.

21 MR. SOLOMON: Offer 75.

22 MR. DICKERSON: No objection.

23 MS. FORSBERG: No objection.

24 THE COURT: Hereby so admitted.

(Intervener's Exhibit 75 admitted)

BY MR. SOLOMON:

Q Would you turn to 76?

A Sure.

Q The bottom is an email from you to Rochelle dated March 17th, 2008 -- I'm sorry, that's not the first one. The first one is at the very bottom. It's from Rochelle to you dated March 17th, 2008 at 3:02 p.m. It says hi, Lynita. Eric asked me to email this to you to see if you could sign and get back to me as soon as possible. He lost one of the ones I gave to him for you to sign. Can you sign and maybe have Erica drop off at the office since Eric is out all week. This is part of the Mississippi correction work that you signed before, but they have to have a certificate of trust for your 2001 trust to file with recorder's office. Thanks, Rochelle. And then in the middle it says I need a copy -- this is from you to Rochelle dated March 17th at 4:13, a couple hours later, saying I need a copy of Exhibit A it is referring to. Do you see that?

A Yes.

Q All right. Now if you'll look at the document that's attached that she had forwarded to you, on the first page, D, it says see Exhibit A attached hereto and made a part here of. Do you see that?

1 A Well, I don't know that she -- I don't know that she
2 sent that. Is there something that shows that she did attach
3 that?

4 Q Well, it says I need a copy of Exhibit A it is
5 referring to. Do you see that?

6 A I do, but that doesn't mean she gave it to me.

7 Q Well, let's assume that she did.

8 MR. DICKERSON: Gave what to her?

9 MR. SOLOMON: The attachment to --

10 MR. DICKERSON: I think the confusion is is Exhibit
11 A marked. Ask her if she received this document that's Bate
12 -- that's 0002. I think she can tell you that.

13 Q Okay. Did you receive the attachment, that's the
14 next two pages of this exhibit?

15 A I think I have a copy of this. I'm not -- I'm -- I
16 don't recall if I got it from her.

17 Q Okay. Well, let's back up, because I'm a little
18 confused with your testimony. The bottom email says Eric
19 asked me to email this to you to see if you could sign it and
20 get it back to me. So something's being sent to you, right?
21 And then you reply back that I need a copy of Exhibit A that
22 it's referring to, whatever is sent to you, that's what you're
23 saying in your email, are you not?

24 A Well, the top of her -- the subject says certificate

1 TRANS

2 COPY

FILED

JUL 23 2014

CLERK OF COURT

3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8
9

10 ERIC L. NELSON,)
11)
12 Plaintiff,)
13 vs.)
14 LYNITA NELSON,)
15 Defendant.)
16)
17)
18)
19)
20)
21)
22)
23)
24)

CASE NO. D-09-411537-D

DEPT. L

(SEALED)

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL - VOL I

MONDAY, JULY 23, 2012

1 APPEARANCES:

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MONDAY, JULY 23, 2012

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ADMITTED

MONDAY, JULY 23, 2012

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1 LAS VEGAS, NEVADA

MONDAY, JULY 23, 2012

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:53:59)

4
5 THE COURT: This is the time in the matter of
6 continuation of adjudicatory hearing in the matter of Eric
7 Nelson and Lynita Nelson, case number D-411537. We'll get
8 everybody's appearance for the record and we'll get this show
9 on the record. We'll start with Mr. Solomon.

10 MR. SOLOMON: Yes, bar number 418, Mark Solomon, on
11 behalf of Lana Martin, the distribution trustee. She by the
12 way is in a -- had to take her son up to Reno --

13 THE COURT: UNR.

14 MR. SOLOMON: -- for UNR for orientation, so she'll
15 be back when she can.

16 THE COURT: Counsel, remember, it's Reno. Good job,
17 counsel. If you said University of Nevada, I would have
18 thrown you out of court or contempt or something I would have
19 found.

20 MR. LUSZECK: Jeff Luszeck, bar number 9619, on
21 behalf of Lana Martin, distribution trustee.

22 MS. FORSBERG: Good morning, Your Honor. Rhonda
23 Forsberg, 9557, on behalf of Eric Nelson who is present to my
24 right.

1 THE COURT: Good to see you again Mr. Nelson as
2 always.

3 MR. DICKERSON: Your Honor, Bob Dickerson, bar
4 number 0945, and Katherine Provost, bar number -- oh, she's
5 not here.

6 THE COURT: She's not here.

7 MR. DICKERSON: She will be coming back I will
8 presume. And we're representing Lynita Nelson who is with us
9 and also sitting at counsel table is Melissa Antanassio.

10 THE COURT: It's good to see you, Ms. Lynita, as
11 always. It's good to see you. I think we left off with --
12 Mr. Gerety was cross examined. So is that where we're going
13 to pickup?

14 MR. DICKERSON: Yes, Your Honor. Please.

15 THE COURT: Sir, we'll get you up here. We'll get
16 you sworn in. Make sure you -- there's some water on the
17 table if you want to grab one. I'm not sure if there's one up
18 there for you or not, but there's some -- there's some? Okay.
19 Let me make sure.

20 If you guys need any water, just let us know or
21 there's Coke or Diet Cokes if you want available as well for a
22 nominal fee -- no. Feel free if you need more water or stuff
23 and we'll get it cold for you.

24 THE CLERK: You do solemnly swear the testimony

1 you're about to give in this action shall be the truth, the
2 whole truth and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you.

5 DANIEL GERETY

6 called as a witness on behalf of the Intervener and being
7 previously sworn, testified as follows on:

8 CROSS EXAMINATION CONTINUED

9 BY MR. DICKERSON:

10 Q Mr. Gerety, how are you this morning?

11 A Good.

12 Q I just have a few clarification questions that need
13 to understand with respect to your report. And then I would
14 like to go through a few other exhibits with you. If you turn
15 to your report -- do you have it? Oh.

16 A I don't.

17 Q Let's get that for you.

18 THE COURT: Do you have any of the -- is that Mr.
19 Gerety's report? There you go.

20 Q It is Exhibit 168. Take a look at your report and
21 direct your attention to --

22 THE WITNESS: Your Honor, may I grab my reading
23 glasses?

24 THE COURT: Absolutely.

1 THE WITNESS: Thank you. Excuse me.

2 THE COURT: I don't need glasses either. I do it
3 because it makes me look intellectual to try to fake out the
4 attorneys. By the second time I read the decision, they know
5 I'm not that smart anyways, but that's okay.

6 THE WITNESS: Okay.

7 Q I would like to direct your attention to Page 2.
8 That -- the second paragraph there. It starts I spoke with
9 Shelly Newell (ph). Looking at all of Eric and Lynita's
10 accounting for the business entities and you go through them.

11 And as I understand it -- and you getting down to
12 the next sentence. She told me that during this time period
13 all of the assets and the counties were kept separate. The
14 only exception we were aware of was that Lynita's separate
15 property -- now that would be her revocable trust, is that
16 correct?

17 A Revo -- yes, the revocable trust.

18 Q Received part of the proceeds from the disposition
19 of Las Vegas Casino which was owned by Eric's separate
20 property trust. Lynita's separate property trust received 50
21 percent of Tierra Del Sol real estate and 75 percent of
22 Sycamore Plaza. Both of these properties were received as
23 part of the proceeds from the sale of Las Vegas Casino. Okay.
24 Now you learned that from Shelly Newell?

1 A The exact percentages probably came from Eric.

2 Q Now in your testimony, I don't know whether it was
3 on cross examination or your direct examination, but my
4 understanding is you're aware that Las Vegas Casino was sold
5 sometime in 2009 or 2001, is that correct? Or 2009 or --
6 excuse me. 1999 or 2000.

7 A That's -- I -- as I said, if I remember my testimony
8 correctly, I wasn't sure of the exact year. And I believed it
9 was in those two years.

10 Q And so then if I understand what you're trying to
11 tell us there is that you learned through somebody whether it
12 was Eric, Shelly Newell or somebody else that the proceeds
13 from the Las Vegas Casino is how Lynita acquired an additional
14 75 percent interest in Sycamore Plaza and how she acquired a
15 50 percent interest in Tierra Del Sol, is that correct?

16 A That's correct.

17 Q Now if I may direct your attention to Exhibit KKK.
18 I believe --

19 MR. SOLOMON: Madam clerk, do you have Exhibit KKK?
20 It would be four pages. Do you reflect that I offered Exhibit
21 KKK?

22 THE CLERK: Not yet.

23 MR. SOLOMON: I have not offered it yet. Okay. So
24 if I may then if I can have the exhibit book.

1 Q Mr. Gerety, I'm going to direct your attention to
2 this exhibit book to Plaintiff's Exhibit KKK which is this
3 exhibit right here. Okay. Now the front sheet sir I can
4 represent to you is a summary. Let's put KKK aside a second,
5 okay? I want to come back to that. Let's go to Exhibit R --
6 triple -- quadruple R. Can you find that in there?

7 A Where are they labeled at?

8 Q They're -- I'll find them for you.

9 A Okay.

10 Q It's blue sheets.

11 A And the blue sheets were blank. Oh, here we go.
12 Here's Q, so --

13 Q Quadruple R is going to be next.

14 A Yeah. There we go.

15 Q So this is quadruple R. With respect to this
16 exhibit, sir, I can represent to you that the front page is a
17 summary outlining the deeds that are attached. So I want you
18 to assume for a moment if you just look at that summary,
19 because I will be getting those deeds in for another witness,
20 but I want you to assume that there's --

21 MR. SOLOMON: Can you hold on for a second? We're
22 still struggling trying to find the page.

23 THE COURT: Okay. Sure. Just let us know when
24 you're -- we should be all on the same page.

1 MR. SOLOMON: So I think we're there.

2 THE COURT: Looking at quadruple R?

3 MR. SOLOMON: The one that's called chain of title
4 timeline property of Tierra Del Sol is --

5 MR. DICKERSON: Yes.

6 MR. SOLOMON: -- quadruple R?

7 MR. DICKERSON: Yes.

8 MR. SOLOMON: All right. Thank you.

9 BY MR. DICKERSON:

10 Q Sir, there is a warranty deed in here and it's the
11 third one from the bottom. So take a look at that one. The
12 warranty deed that the transaction date was signed on January
13 25th, 2004 -- excuse me, 1994. And recorded on February 1st,
14 1994. And that by way of that warranty deed, the property was
15 transferred from Eric Nelson's separate property trust to the
16 Nelson Trust with Lynita Sue Nelson, the trustee.

17 Now that is at least five to six years prior to the
18 sale of the Las Vegas Casino, is that not correct?

19 MR. SOLOMON: Object, lack of foundation. He knows
20 when the sale was. He said he didn't know.

21 THE WITNESS: I said I wasn't sure what year it was,
22 but I --

23 MR. DICKERSON: Your testimony before this court was
24 either 1999 or 2000.

1 MR. SOLOMON: His testimony was --

2 THE WITNESS: Was --

3 MR. SOLOMON: -- he didn't remember the date and he
4 thought it might have been around that time period.

5 THE COURT: He thought it was 1999 Yeah, whether he
6 thought it was 1999 or 2000 it was his understanding.

7 THE WITNESS: Yes, I thought it was prior because --
8 because it was prior to the 2001 which is when I did all my
9 tracing. And this is just -- I knew some proceeds came in and
10 that -- I believe that year. I don't know when the sale took
11 place.

12 BY MR. DICKERSON:

13 Q But your testimony was you were told 1999 or 2000.

14 A No, my testimony was I'm not sure. I think it was
15 --

16 Q Okay.

17 A -- in that period of time.

18 Q And we'll go through some other exhibits that I
19 think may refresh your recollection.

20 A Okay.

21 Q But this would indicate that -- that warranty deed
22 would indicate that Lynita Nelson through her revocable trust
23 acquired that property in early 1994, would you agree?

24 A I'm not sure. I'm not -- see, I got to follow

1 through the whole -- your sheet here. I can see a warranty
2 deed, but I'm not -- I didn't know what's -- look at the deed.

3 Q Well, do you see that she originally acquired an
4 interest by way of a warranty deed in 1993? Do you see the
5 third one from the top?

6 A I do.

7 Q And so she originally acquired a 50 percent interest
8 in that property, July of 1993.

9 A Okay.

10 Q She then apparently conveyed that property in 1994
11 to American Financial Partners, a Nevada partnership. And
12 that is a partnership in which Eric had an interest, is that
13 correct? You're familiar with --

14 A I'm -- I'm not familiar.

15 Q You're not familiar with that. Okay. And then we
16 see that American Family -- American Financial -- Nevada
17 general partnership which indicates Eric Nelson's partner
18 conveyed it to Eric Nelson's separate property trust in
19 February of 2000 -- or of 19 -- February of 1994. And in that
20 very same day, the warranty deed that we're referencing
21 earlier conveys to Lynita a 100 percent interest in this
22 property Tierra Del Sol. Is that how you understand it?

23 A Oh, I can't see it. There's no percentages here on
24 this second warranty --

1 Q But we see that --
2 A -- but --
3 Q But go up to the one warranty deed where it says
4 Berkley Enterprises and the Nelson Trust each have an
5 undivided one -- 50 percent interest. They both --
6 A Right.
7 Q -- sold. They're 50 percent interest or a hundred
8 percent interest or conveyed it to American Financial
9 Partners. Do you see that?
10 A Okay. I see that.
11 Q American Financial Partners now owns a hundred
12 percent and conveys the property to Eric Nelson.
13 A Okay.
14 Q The same day as the previous deed up above where
15 Lynita conveyed her 50 percent to American Financial Partners.
16 A Okay.
17 Q Do you see that? So all these transactions, those
18 three, you'll see they all occurred -- the transaction
19 occurred on January 25th where the deeds were signed. All
20 those deeds were recorded on February 2nd of 1994. And the
21 end result of those three deeds being filed is that Lynita --
22 or the Nelson Trust which is Lynita Nelson's, excuse me,
23 revocable trust, now had a hundred percent interest in the
24 Tierra Del Sol property as of February 1st, 1994.

1 A Okay.

2 Q Okay. Now we then see that the next warranty, the
3 grant bargain sale deed in October of 2001 was conveyed from
4 Lynita's revocable trust to her irrevocable trust. Do you see
5 that?

6 A I do.

7 Q And then we see that on August 5th of 2005 Lynita
8 sold that property to this entity -- or conveyed the property
9 to this entity reflected over -- on the far righthand side.
10 Do you see that?

11 A I do.

12 Q Okay. Do you know how much was received from that
13 sale that occurred on October 5th, 2005?

14 A I've -- I've seen the documents on it. I don't
15 remember the exact numbers off the top of my head.

16 Q And were those -- where did you see those numbers?

17 A In the work I was doing.

18 Q And in fact, you saw that the money from the sale of
19 that -- of Tierra Del Sol was deposited into Eric's account,
20 is that correct?

21 A A portion of it, yes.

22 Q I believe it was \$1,460,190, is that correct?

23 A That number sounds correct. I believe that's
24 correct without looking.

1 Q Okay. Look at Page 7 of your report, the last
2 paragraph. Is that correct?

3 A That is correct.

4 Q So that we know then on September 28th there was a
5 deposit in Eric's the trust, Eric's irrevocable trust
6 non-account for that amount. And you have traced that to the
7 transit -- the sale of Tierra Del Sol, isn't that true?

8 A That is correct.

9 Q And then you go on and you say the property was
10 owned by Lynita's irrevocable trust. Eric transferred 25,000
11 to Lynita's irrevocable trust from its Mellon account
12 immediately after receive the Tierra Del Sol proceeds. And
13 also paid Lynita's 2005 federal and Arizona individual income
14 taxes and tax preparation fees totaling \$606,965 in 2007 as
15 partial repayment of the Tierra Del Sol sales proceeds.

16 Okay. Now that 25,000 was the one check that we saw
17 last week, the \$25,000 check that says loan payment for you to
18 exhibit --

19 A Possible.

20 Q -- in your report I believe that's tab number -- oh,
21 it's mine. It's our exhibit -- and I see JJJ. I think that
22 one has -- hold on. I'm showing you Exhibit quadruple J which
23 has been admitted into evidence. Do you see the see last
24 check here is for 25,000 loan payment? Is that the one you're

1 referencing, the 25,000 that went in that you immediately paid
2 to Lynita?

3 A No.

4 Q Okay. So that's --

5 A That's not --

6 Q -- another one.

7 A That's another one.

8 Q Okay. All right. Now do you know how the sales
9 transaction for the sale of Tierra Del Sol was treated on tax
10 returns?

11 A I'm -- I can only assume. I don't know, because I
12 never looked at Lynita's personal returns.

13 Q Okay. If you'll take a look in the exhibit book to
14 Exhibit triple S.

15 MR. SOLOMON: F as in Frank.

16 MR. DICKERSON: S as in Sam.

17 MR. SOLOMON: S, Sam. Okay. Sorry. Or in Solomon.

18 MR. DICKERSON: There you go.

19 Q All right. Are you on --

20 A I am.

21 Q -- quadruple S?

22 A I am.

23 Q This sir is Lynita Nelson's individual tax return
24 for the year 2006. Can you verify that by looking that I --

1 it is in fact your 1099 for 2006?

2 A Yes, it appears to be that.

3 Q And you can see that the -- looking at the front
4 page of this, it indicates federal Arizona, so it indicates a
5 total tax of \$509,400 for federal income taxes and \$139,240
6 for Arizona taxes, is that correct?

7 A That's correct.

8 Q And that was the exact amount you referenced in your
9 report totaling \$606,965, is that correct?

10 A Yes, I believe it is.

11 Q Well, if you look and if you'll turn to -- can you
12 turn to Form 6252, Installment Sale Income? Are you there,
13 sir?

14 A There's a number of them. Just which one do you
15 want me to turn to?

16 Q Look for the one for Tierra Del Sol. It's --

17 A Okay. I'm there.

18 Q Do you see it?

19 A I found it.

20 Q Okay. So you see the Form 6252, Investment Sale
21 Income for Tierra Del Sol. And looking under part two, sir,
22 does that not in fact reflect that the sales proceeds from the
23 sale of Tierra Del Sol was \$3,000,499, nine hundred and
24 ninety-six -- let me state that. \$3,499,996. Does that

1 indicate that to you?

2 A That is the portion of the sales proceeds received
3 during 2006.

4 Q Okay. And so that portion -- and then it indicates
5 that previous payments were 1,275,000, is that correct?

6 A That is correct.

7 Q All right. So it -- from the sale of Tierra Del
8 Sol, at least \$1,275,000 was received in prior years prior to
9 2006, is that correct?

10 A That's correct.

11 Q And do you know where that money went?

12 A No.

13 Q And why is that?

14 A I only have traced the money that went into Eric's
15 trust.

16 Q And then of the \$3,499,996 that was received in
17 2006, you have traced how much of that into Eric's account?

18 A Well, just as I stated previously it was the one
19 million four -- 1.4 million or whatever million it was.

20 Q \$1,460,190?

21 A Yes.

22 Q So now when you say that Eric paid that amount for
23 Lynita's taxes, that's because the entire sales was reports on
24 Lynita's taxes, isn't that correct?

1 A Yes.

2 Q Now if I can direct your attention to Exhibit
3 quadruple V.

4 A Okay.

5 Q Now sir, if you'll take a look at the summary sheet
6 here, again, that front page reports to summarize the deeds
7 that are attached. And if you'll take a look at this, you'll
8 see that on July 13th, 1993 Lynita acquired a 25 percent
9 interest in the Sycamore Plaza property. Do you agree with
10 that?

11 A I do.

12 Q In fact, that's the interest in Sycamore Plaza that
13 is reflected on that schedule that is attached to the separate
14 property agreement, the 1993 separate property agreement that
15 we discussed last week, correct?

16 A I believe that's correct, yes.

17 Q So now we see then that less than a year later, in
18 fact, 6.5 months later, on February 1st, 1994 Lynita's trust,
19 now this would be the Nelson Trust, that would be her separate
20 -- that would be the revocable trust, correct?

21 A Correct.

22 Q Then received the other 50 percent that was
23 previously owned by Berkley Enterprises, is that correct?

24 A No, it was 75 percent.

1 Q 75, I'm sorry. 75 percent. So then at least as of
2 February 1st, 1994 Lynita owned a hundred percent interest in
3 the Sycamore Plaza, is that correct?

4 A That's correct according to this.

5 Q And then we see that on July 30th of 1999 some three
6 and a half years later Lynita's revocable trust sold that
7 property to Sola Family Limited Partnership. Do you see that?

8 A I see that.

9 Q Do you know how much was received from the sale of
10 Lynita's 100 percent interest in Sycamore Plaza?

11 A I do not.

12 Q Do you know where that money went?

13 A I do not.

14 Q If you will turn to the last page of your report,
15 the one paragraph there that starts with the analyzed. I
16 understand that this -- I'm reading from the second sentence.
17 It says as of September 30th, 2011, so that would be during
18 the -- these court proceedings. You would -- in fact, you
19 recall testifying before this Court in 2010, is that correct?

20 A That is correct.

21 Q So what you're telling us here then, as of September
22 30th, 2011 Eric's revocable -- or irrevocable trust owed
23 Mellon Bank \$1,110,998, is that correct?

24 A That's correct.

1 Q And you indicate that this entire amount has been
2 paid off by Eric since September 30th, 2011, is that correct?

3 A That's correct.

4 Q If I may direct your attention to Exhibit quadruple
5 X. Are you there, sir?

6 A Not yet. Okay.

7 Q All right. This is a document sir that was on that
8 CD that you gave me last Thursday, I believe it was.

9 A Okay.

10 Q Do you recognize this document?

11 A It's one of them that Angelo (ph) prepared.

12 Q Well, do you know what it -- Angelo prepared this,
13 is that correct?

14 A That is correct.

15 Q All right. And this purports to set out --

16 A Well, I take that back. I believe he did, yes. I'm
17 not positive.

18 Q And how can you tell?

19 A Well, I can't from here. So I --

20 Q Can you confirm that this was prepared -- this is
21 the unaudited balance sheet or unadjusted balance sheet
22 prepared by Eric Nelson?

23 A It appears to me that this -- this is a summary of
24 each year, yes. That's what it is.

1 Q And this is -- was prepared by Eric Nelson, correct?
2 Or somebody under his --

3 A I'm -- I'm not sure. I'm not sure who prepared it.

4 Q Okay. And so this is the unadjusted balance sheet
5 for a 10 year period starting on May 31st, 2001 and running
6 through September 30th, 2011, is that correct?

7 A Can you repeat the question again?

8 Q This is the unadjusted balance sheet for the Eric
9 Nelson Nevada Trust, the irrevocable trust, Eric's irrevocable
10 trust, from May 31st, 2001 through September 30th, 2011, is
11 that correct?

12 A That is correct.

13 Q And this reflects how each of these transactions
14 were reported on the trust books, is that correct?

15 A It shows what the ending balances were in each
16 account at specific dates, it doesn't actually say well, how
17 were they recorded. It's just the end -- ending balances on a
18 particular date. It doesn't show the actual journal entries
19 or what -- what accounts were hit with each transaction.

20 Q Where did the comments come from under the comments
21 section?

22 A Again, it -- these were notes that were prepared.
23 What -- where that asset went.

24 Q By whom?

1 A I'm not sure.

2 Q So least taking these first one, two, three, four,
3 five, six, seven, eight, nine -- so at least the first eight,
4 nine, appear that in 2004 each of those first nine properties
5 were transferred to Lynita's trust, is that correct?

6 A yeah, that's the Mississippi properties that we show
7 transferred.

8 Q And you don't know where that information came from?

9 A Are you saying who prepared this or what --

10 Q Where did that information come from about the
11 transfer? Do you know where that came from?

12 MR. SOLOMON: Hold on. That's ambiguous, because
13 this witness knows personally, and that's one question, but I
14 think the question is does he know where that comment came
15 from and he doesn't. So --

16 MR. DICKERSON: Well, he can say that. I asked him
17 does he know where it came from.

18 THE WITNESS: I -- I did.

19 THE COURT: He says he doesn't know --

20 THE WITNESS: I said I don't know who prepared this.
21 So I -- I can look at my file and see -- find this work paper
22 and possibly I can tell if this was prepared by -- but --

23 BY MR. DICKERSON:

24 Q You can find this in your file?

1 A Possibly.

2 Q Okay.

3 A Yeah, I can -- I'm sure I can find this, but --

4 MR. DICKERSON: Do you mind Judge if we take a short
5 five minute break while he look for that and I can run to the
6 restroom real quickly?

7 THE COURT: We can take --

8 MR. DICKERSON: Yeah.

9 THE COURT: Yeah, want to take a five minute break
10 and see if you can --

11 MR. DICKERSON: Oh, Judge, while we're on the
12 record, we do intend to be calling Larry Bertsch. And on --
13 right now it looks like he's available on Wednesday.

14 MS. PROVOST: Morning.

15 MR. DICKERSON: Wednesday morning. So we would like
16 to arrange that. I don't want to do anything improperly. And
17 knowing that he has been appointed by the Court as a special
18 master, I do want to present his testimony. But I would like
19 to talk to him before I put it -- put him on the stand. And
20 Katherine has an appointment to meet with him today I believe
21 at 1:00 o'clock. So with the Court's permission, I would like
22 Katherine to go through with that meeting to just go through
23 -- be able to go through with Mr. Bertsch the report and try
24 to basically get his testimony down to as short and succinct

1 as possible.

2 MR. SOLOMON: Your Honor, I object to that. That is
3 improper. You're not allowed to interview a special master
4 and then call -- his report speaks for himself. He's a court
5 appointed special master. He's not a witness for them. He's
6 not a -- they're not allowed to have ex parte communications
7 with him.

8 MR. DICKERSON: Well, we are under your order.

9 MR. SOLOMON: That -- in fact, your order says it
10 shouldn't.

11 THE COURT: Let Mr. Solomon finish.

12 MR. SOLOMON: There should not especially at this
13 stage. He's filed his report. His report is his report. And
14 the parties are stuck with it and I object to them
15 interviewing him at this point.

16 MR. DICKERSON: I know of no case law that prevents
17 us from doing that. I do know of case law that would prevent
18 me from giving him additional documents right now and try to
19 have him change the report, but simply to meet with him, talk
20 about his report and get an understanding of specifically what
21 he means by this so that we can make a succinct presentation
22 to the Court, I don't -- I know of no case law that prevents
23 that.

24 THE COURT: And when do you plan on meet -- when is

1 the schedule meeting?

2 MS. PROVOST: 1:30.

3 MR. DICKERSON: 1:00 o'clock today.

4 MS. PROVOST: 1:30.

5 MR. DICKERSON: 1:30 today.

6 THE COURT: Let me look at it and I'll have a quick
7 down and dirty research and have a decision for you.

8 MR. DICKERSON: Yeah.

9 MS. PROVOST: If we can --

10 THE COURT: I'll double check it quickly. You join
11 in in that objection?

12 MS. FORSBERG: Of course. And I join in the
13 objection, Your Honor. And the other thing, he's the hearing
14 master and you appointed him that way. It would just be like
15 --

16 THE COURT: Special master.

17 MS. FORSBERG: -- me having communication with you.
18 I mean, without them. That's just not right.

19 MR. DICKERSON: Well, that's been going on
20 throughout the course. I mean, he's --

21 THE COURT: I'll --

22 MR. DICKERSON: -- met with him and --

23 MR. SOLOMON: Prior to his report.

24 THE COURT: Yeah, I'll have my law --

1 MR. SOLOMON: He took evidence.

2 THE COURT: Yeah, I'll have my law clerk look at
3 that. I know we met to get information so he could submit his
4 report. But let me check on it real quick and give you a
5 decision by lunch. All right. We'll be in recess for five
6 minutes.

7 (Off record)

8 THE COURT: Okay. This is going back on the record
9 in the matter of Eric Nelson and Lynita Nelson, case number
10 D-411537. We took a brief recess. And Mr. Dickerson, pickup
11 where you left off at your pleasure.

12 BY MR. DICKERSON:

13 Q Now Mr. Gerety, during a -- your break you had an
14 opportunity to call your associate Angelo.

15 A That is correct.

16 Q And what's Angelo's last name?

17 A Ruccio.

18 Q How do you spell that?

19 A R-U-C-C-I-O.

20 Q And I'm going to call him --

21 A There's a --

22 Q -- Angelo if you don't mind.

23 A Yeah.

24 Q Angelo is an associate that works with you in your

1 office, is that correct?

2 A That is correct. He's the -- he is the one who
3 helped me prepared this report and do a lot of it, digging
4 through the GLs and so forth.

5 Q We were discussing Exhibit quadruple X, is that
6 correct?

7 A That's correct.

8 Q After consulting with Angelo during the break, you
9 determined who prepared this Exhibit X?

10 A Yes.

11 Q Who did?

12 A Angelo prepared this. It is taken from the client's
13 general ledgers and the comment section which I believe you
14 asked for previously were prepared by Angelo.

15 Q Are those comments from the general ledger or
16 elsewhere?

17 A It's a combination. It was his understanding at the
18 time. This is a preliminary work paper. It's really been
19 superceded with -- this is part of the initial phase of the
20 work and trying to pull everything together and get it side by
21 side. And this was the initial. And he had told me this was
22 his -- his comments, but some of those comments would have
23 been changed after we found out more information in some old
24 documents.

1 MR. DICKERSON: Okay. Your Honor, I move for
2 admission of Plaintiff's Exhibit quadruple X.

3 THE COURT: Any objection? Hereby admitted as
4 Plaintiff's quadruple X.

5 (Plaintiff's Exhibit XXXX admitted)

6 BY MR. DICKERSON:

7 Q And if you'll take a look at Exhibit quadruple Y,
8 the next Exhibit in order. During the break, I had asked you
9 also since you had Angelo on the phone to inquire him how this
10 document originated, is that correct?

11 A This is also prepared by our office, one of our
12 staff people. It's really connected with that prior
13 spreadsheet. It's a copy -- most of it was copied from there
14 and just the prior years.

15 Q Now this one is entitled at the top Eric L. Nelson
16 Nevada trust unadjusted balance sheet. And that is just for
17 the years, what, 2010 and 2011?

18 A Correct.

19 MR. DICKERSON: Your Honor, I move for admission of
20 Exhibit quadruple Y.

21 MR. SOLOMON: Can I voir dire the witness to --

22 THE COURT: Absolutely.

23 VOIR DIRE EXAMINATION

24 BY MR. SOLOMON:

1 Q Okay. Is this is a preliminary document also that
2 was not -- it was revised over time?

3 A Yes, it is.

4 Q So this was a -- similar to quadruple X, the
5 preliminary balance sheet that was used as a starting point?

6 A That is correct.

7 Q Okay. And it was revised over time?

8 A That is correct. We -- the information from these
9 spreadsheets was we actually put in a different software,
10 Creative Solutions Accounting, which is our trial balance
11 software. And we really moved forward using that and didn't
12 use these spreadsheets.

13 MR. SOLOMON: Okay. No objection with that noted in
14 the record.

15 MS. FORSBERG: No objection, Your Honor.

16 THE COURT: Hereby admitted as quadruple Y.

17 (Plaintiff's Exhibit YYYY admitted)

18 CROSS EXAMINATION CONTINUED

19 BY MR. DICKERSON:

20 Q And if you take a look at the next exhibit, it's
21 quadruple Z. This, sir, also was a document that was on that
22 CD. The previous one also was on your CD. Quadruple Y was
23 also on your CD, correct?

24 A Correct.

1 Q And Quadruple Z also was on your CD, is that
2 correct?

3 A Yes.

4 Q Can you tell us what this is?

5 A This was a to do list we had given Lana and Eric of
6 information we were requesting. So we were asking for the
7 assignments to the Nevada trust, copies of the assignments of
8 all these assets and things we were missing that we were
9 asking for. Again, it's a preliminary document. And these
10 are Angelo's notes.

11 Q So for example, so that's Angelo's writing over the
12 side for example where it says unable to locate?

13 A Yes.

14 MR. DICKERSON: Your Honor, move for admission of
15 Exhibit quadruple Z.

16 MR. SOLOMON: Yeah, no objection.

17 MS. FORSBERG: No objection, Your Honor.

18 THE COURT: Hereby admitted as quadruple Z.

19 (Plaintiff's Exhibit ZZZZ admitted)

20 BY MR. DICKERSON:

21 Q Okay. If you look at the next one, what do you all
22 it when it's five? Five --

23 MS. PROVOST: A times five, too many.

24 Q This is another document that was on your CD, is

1 that correct?

2 A That's correct.

3 Q Okay. And this is an email that Lana Martin sent to
4 Angelo on -- recorded to be on December 6th, 2011?

5 A That is correct.

6 MR. DICKERSON: Move for admission of Exhibit five
7 As.

8 MR. SOLOMON: I have no objection.

9 MS. FORSBERG: No objection, Your Honor.

10 THE COURT: Hereby admitted as --

11 (Plaintiff's Exhibit AAAAAA admitted)

12 BY MR. DICKERSON:

13 Q Have you -- this email indicates that it was copied
14 to you, is that true?

15 A That's true.

16 Q And did you read it?

17 A Let me -- let me read it here and I'll tell you if I
18 remember reading it.

19 Q Let's go through each paragraph and then what I can
20 do is ask you if you understand what's being said and --

21 A Okay.

22 Q So the first paragraph says the ELN wires attachment
23 shows the wire going from what we call Eric's personal account
24 to Mellon.

1 A It's not personal.

2 Q And what is being referred to there?

3 A The Mellon account was an account in the name of
4 Eric's irrevocable trust.

5 Q And apparently the wire shows it was going -- that
6 the Mellon account was Eric's personal account, is that
7 correct?

8 A No, the transfers to and from the Mellon account
9 were running through draws and capital contributions on the
10 GL. It never said one way or another -- it always said -- and
11 I don't think it said one way or another. There may have been
12 -- you know, I'm trying to remember on the GL. It may have
13 been called personal on some of the comments, one or -- if
14 some of the transactions and the GL, but that account was
15 never actually on the GL. It was just descriptions of the
16 journal entries that were made.

17 Q Indicating that it was the Mellon account was Eric's
18 personal account, is that correct?

19 A It may have.

20 Q Okay. I also sent you copies of a wire that was --
21 that went into that account prior for \$1,000,000 from Mellon
22 LOC. We don't have the 2007 bank statements for that account,
23 because Dickerson never requested them. I have attached
24 January 2008 showing a balance in that account. This account

1 was open when Eric sold the racetrack as far as I know. Okay.

2 Then do you know what she's talking about there?

3 A The Mellon account was opened with the proceeds from
4 the sale of Wyoming Downs if my memory serves me correct.

5 And -- and we did get all the statements on that account.

6 Q The only account Eric had in his name personally was
7 a small bank -- a small account at B of A that was garnished
8 in 2007 for about \$5,000 and they had a small joint account at
9 Wells Fargo prior to separation that had an average of about
10 10,000 in it. So can you confirm that through your studies
11 you could find no personal bank account for Eric other than
12 what she's referenced here?

13 A That is correct.

14 Q The big loans from LSN, that's Lynita's trust,
15 correct?

16 A Correct.

17 Q Well, actually, from an HECL, that stands for home
18 equity credit line?

19 A Correct.

20 Q Okay. So big loans from LSN were actually from a
21 home equity credit line on the Palmyra house which is always
22 been in the name of the Nelson trust, Lynita's old trust. If
23 Eric did not pay these loans back in cash, they Lynita
24 probably paid the home equity credit line back receiving money

1 she had at Silver State Credit Union. And ELN transferred
2 property to her to pay it off the books. So she's given an
3 explanation as to how these loans were handled?

4 A She's -- yeah, she's explaining what the wires were
5 going back and forth.

6 Q We'll have to order copies of statements if we have
7 to go back. I can forward you all statements that I have that
8 this is what I sent to Dickerson. Let me know what else you
9 need.

10 MR. DICKERSON: Did I move for admission of this?

11 MS. PROVOST: Yeah, it's in.

12 MR. SOLOMON: It's already in.

13 THE COURT: It's in.

14 Q Now if we can move back to the first exhibit I
15 referenced, Exhibit quadruple K. I'm going to ask you -- back
16 to this exhibit. You may need to pullup the general ledger
17 that you have on your computer.

18 A Oh, shoot. Those aren't lettered. H.

19 Q I'm going to start with the first column though, the
20 one that says sale of High Country Inn.

21 A Okay.

22 Q All right. I -- I'm assuming then you have general
23 entries for the checking account at Bank of America that ends
24 in 2798.

1 A Let me check.

2 Q Actually, if you'll take a look, there is general
3 ledger Eric L. Nelson Nevada Trust general ledger for the
4 period from January 1, 2007 to December 31, 2007. Turn to
5 that page.

6 A The -- which page though?

7 Q Well, at the bottom, it says 7/23/2012 at 9:05 a.m.
8 MS. PROVOST: No, that's just the predate. That's
9 just the predate.

10 A That's -- on what account number are you looking at?

11 Q I'm looking at account number that ends -- this is a
12 Bank of America account 2798.

13 A Is there an account number on the lefthand side?

14 Q No, but I can show you the page of --
15 MS. PROVOST: It's the '07 general ledger.

16 Q Excuse me, the page from there by assisting in
17 finding it.

18 MS. PROVOST: Oh, it's the '07 general ledger is the
19 --

20 A Okay. Yeah. Here's the --

21 MS. PROVOST: It's a page -- it's a --

22 A -- account number right here.

23 MS. PROVOST: -- a selection page.

24 Q So it's 110.

1 A Okay.

2 Q Okay.

3 MR. SOLOMON: Sorry, what is it?

4 MR. DICKERSON: It's account number 10010.

5 Q And when you say account number 10010, that's just
6 what you labeled it, is that correct, for --

7 A That was the client's GL account number for that
8 particular year. The numbers changed. We used one set
9 through our exhibits in the -- that I attached in my reports
10 so they stayed the same this year. But the client's general
11 ledgers did change their account numbers throughout the years.
12 This was from the client's general ledger itself.

13 Q All right. Are you on that page?

14 A I am.

15 Q All right. What I would like you to do is to be
16 able to confirm the entries that are reflected here under that
17 column that sale of High Country Inn. Can you confirm that
18 there was a deposit on January 3, 2007 of 500,000?

19 A I can.

20 Q And does it say where that money came from?

21 A The comment description says Hideaway Casino, LLC.

22 Q Now these are the general ledgers of the claim,
23 correct?

24 A Correct.

1 Q And these have not been adjusted by you in any way.

2 A That's correct.

3 Q All right. So now can you then confirm \$50,000
4 being paid to Clarence Nelson by way of check number 1999 on
5 January 4th of 2007?

6 A Let's see. Clarence Nelson --

7 Q Check number 1919.

8 A On January 2nd? Uh-huh (affirmative). For 50,000.

9 Q Yes. Is that the -- it's reflected on the general
10 ledger as January 2nd?

11 A Yes, but the -- the GL I'm looking at, yes.

12 Q You can't tell when it cleared the bank from the
13 general ledger?

14 A No. No, that's the date the check was written.

15 Q Okay. But check number 1919, \$50,000 to Clarence
16 Nelson, is that correct?

17 A Correct.

18 Q Does it indicate anywhere on the general ledger why
19 Clarence Nelson was given \$50,000 on January of 2007?

20 A That would depend on what the other side of the
21 journal entry is, the cash disbursement's journal would say.
22 So I would have to trace that through -- I mean, that would --
23 just off the GL it would take me awhile to trace it through,
24 but it -- it's coming from the cash of the disbursements

1 journal, so I would have to look at the other side of the
2 journal entry. This is -- they credited cash. They would
3 have debited something which would show what it was charged
4 to.

5 Q Well, let's just go through then first and confirm.

6 A You can't tell from this the cash account where it
7 went.

8 Q Can you confirm that check number 1920 was in the
9 amount of \$50,000 payable to Paul Nelson?

10 A Yes, I can.

11 Q Now Clarence and Paul are Eric's brothers?

12 A Yes. I believe that's correct.

13 Q Can you confirm another hundred thousand dollar
14 check? That's check number 1924 to Clarence Nelson in the
15 amount of a hundred thousand?

16 A Yes.

17 Q Can you confirm check number 1926 in the amount of
18 9,500 to Eric Nelson?

19 A Yes.

20 Q From check number 1931 in the amount of 15,000 to
21 Dynasty Development?

22 A Which check number again, 1931? 15,000 did you say?

23 Q Yes.

24 A Yes. That's correct.

1 Q Can you confirm check number 1921 in the amount of a
2 hundred and fifty thousand dollars to Carlene Gutierrez?
3 A Check number 1951 was --
4 Q 1921. 21.
5 A Oh, I'm sorry.
6 Q I may have misspoken. I --
7 A Check for a hundred and fifty thousand to Carlene
8 Gutierrez?
9 Q Carlene Gutierrez is Eric's sister, is that correct?
10 A That is correct.
11 Q Now can you confirm a hundred thousand dollars
12 deposited into this account on January 16th, 2007?
13 A I'm -- a hundred thousand from Hideaway Casino I
14 show deposited January 17th.
15 Q So that would have been from Hideaway, is that
16 correct?
17 A That's correct.
18 Q And then we see a payment to Mellon Bank or check
19 number 1925 to Mellon Bank in the amount of a hundred and
20 fifty thousand eight hundred and ninety-three dollars and
21 fifty-one cents?
22 A That's correct.
23 Q And then do you see check number 1933 in the amount
24 of \$10,000 made payable to Joan Ramos?

1 A According to this, there's two check 1933s, but
2 there is one for Joan Ramos for 10,000.

3 Q So the general ledger reflects two checks?

4 A When you look at -- well, the next check is -- also
5 has the same number on it to Rochelle McGowan.

6 Q Okay. And that's in the amount of 10,000?

7 A Correct.

8 Q So that is -- that check is not showing up as check
9 number 1932 on the general ledger?

10 A Not on the spreadsheet I'm looking at, no.

11 Q Do either of those -- taking those two checks to
12 Rochelle McGowan and Joan Ramos, does it indicate on there
13 that it is paid -- being paid as a bonus?

14 A No.

15 Q Do you see the next check 13 -- 1934 \$10,000 to Lana
16 Martin?

17 A 1934, \$10,000 to Lana, yes.

18 Q Okay. Does it indicated on there the reason for the
19 check?

20 A No.

21 Q All right. Then do you see a 35 -- this is check
22 number 1935, \$35,000 to Riverwalk Entertainment, new account.

23 A I see the check to Riverwalk Entertainment of
24 35,000.

1 Q Does it say what it is for?

2 A No.

3 Q Thank you. Do you see then check number 1939 to
4 Lindell Professional Plaza for a hundred thousand dollars?

5 A I do.

6 Q And can you confirm then that there was a deposit
7 into this account from January 24th, 2007 in the amount of
8 \$1,947,153.37?

9 A I can.

10 Q Now would you tell the Court what is reflected as to
11 where that money went on the general ledger?

12 A Well, just from the cash account it doesn't say in
13 the description. You have to go to the cash disbursements --
14 or cash receipts journal on the -- on the GL -- or on the
15 client's GL software.

16 Q On the general ledger, does it indicate that it was
17 a wire into the -- this account?

18 A It does.

19 Q And does it indicate that the reference is
20 miscellaneous or the --

21 A The comment section says miscellaneous, yes.

22 Q Now you'll have to go to where to learn where that
23 money came from?

24 A You can go to the cash receipts journal and you can

1 see what accounts that -- that were credited for that account.

2 Q Are you able to do that right now?

3 A No, I don't have Peachtree software on this
4 computer.

5 Q Do you know when the closing for the sale of High
6 Country Inn occurred?

7 A I could find out. I don't recall off the top of my
8 head.

9 Q Where would you find that out?

10 A I would through my work papers.

11 Q Your work papers. So what would you be looking for
12 for that purpose?

13 A Well, I can -- actually, I can probably tell from my
14 report what year it was in by looking at when it was -- when
15 we took it off of the GL and showed it as a sale. So I could
16 go to Exhibit 8 and --

17 Q I'd like to refer you to -- your Page Number 167.

18 A Yes, it was a -- that's -- that work paper shows the
19 year we reported the gain from the sale of that property.

20 Q You're talking about High Country Inn, is that
21 correct?

22 A Talking about High Country Inn.

23 Q Okay. So based upon looking at that, can you
24 confirm that the deposition into this account that we're

1 talking about, Eric Nelson's account, on January 24th 2007,
2 was a wire transfer from the title company for the sale of
3 High Country Inn?

4 A Not from this work paper.

5 Q What was -- what does your bottom entry indicate?

6 A It does say that High Country Inn was sold on
7 January 22nd which is two days earlier than that wire.

8 Q Okay. And what would you look to to determine -- is
9 there anything else you could look to do determine where that
10 1.9 million came from?

11 A Let's see. I mean, there's -- there's a number of
12 things. I can go to the bank, bank accounts. I can go look
13 at our journal entries that we have here.

14 Q Possibly if we looked at Eric Nelson's 2007 tax
15 return that was issued.

16 A That would show what the sales proceeds were.

17 Q Okay. We're going to get to that in a second. So
18 let's move on. Can you confirm the deposit in this account on
19 January 26th, 2007 of \$27,432.39?

20 A Yes, from First American Title.

21 Q And that is -- does it indicate on there what it's
22 for?

23 A It does not, not in this -- that particular account
24 it does not.

1 Q So you cannot tell then from that what that -- what
2 -- the purpose of that money being deposited into the --

3 A You -- you can if I go through all the accounts and
4 then find the other side of that journal entry. It's -- but
5 just looking at the cash account, it doesn't give me a
6 description of what it -- that deposit's for.

7 Q Can you confirm then after those two deposits check
8 number 1938 in the amount of \$1,250,000 being payable to the
9 Eric L. Nelson Nevada Trust?

10 A Say that again, Bob, I'm sorry?

11 Q Check number 1938. Okay. What is that?

12 A It's a tran -- it's -- it's just a transfer to
13 another account out of this account.

14 Q And what account -- does it say what it's --

15 A It doesn't say the exact account that it was
16 transferred to.

17 Q And can you confirm check number 1942?

18 A With Chad Ramos?

19 Q And does it say on the general ledger what it is
20 for?

21 A Not in this particular account it does not.

22 Q And check -- and that's a \$50,000 check to Chad
23 Ramos, is that correct?

24 A That is correct.

1 Q And then can you confirm check number 1944?

2 A It's a check to High Country Inn for 15,000.

3 Q Okay. How about check number 1946?

4 A It's a check to Eric Nelson for 9,500.

5 Q And how about check number 1945?

6 A This is a check to Dynasty Development for 30,000.

7 Q Now if you could move from this exhibit temporarily
8 and if I can have you please take a look at Exhibit quadruple
9 N. Are you there, sir?

10 A Not yet. Okay.

11 Q Exhibit quadruple N purports to be at least the
12 first three pages of Eric Nelson's 2007 individual federal
13 income tax return, is that correct?

14 A That is correct.

15 Q And you prepared this return for Eric Nelson, did
16 you not?

17 A I did.

18 MR. DICKERSON: For the record, Your Honor, the
19 entire tax return, 2007 tax return is Plaintiff's Exhibit 86.

20 Q By taking a look at this, if you turn to the
21 schedule D. And I probably was incorrect when I said the
22 first three pages. It's -- I don't know if schedule D is
23 necessarily the third page, but --

24 MR. SOLOMON: It's the first two pages.

1 A It's -- it's not, but --
2 Q Oh, it -- okay.
3 A -- it's in this exhibit it is.
4 Q So the third page here is schedule D showing capital
5 gains and losses, is that right?
6 A That is correct.
7 Q Now when you put down there under the long term
8 capital gains Wyoming Hotel, that is referencing High Country
9 Inn that we just talked about.
10 A That is correct.
11 Q Now you put on here date acquired 3/1/2002, is that
12 correct?
13 A That's correct.
14 Q Where did you get that date of acquisition? When --
15 how did it --
16 A I would have to look at my work papers for the tax
17 return.
18 Q And are they on --
19 A No.
20 Q They're not. Okay. So and it indicates that the
21 Wyoming hotel then sold for \$1,240,000?
22 A That's correct.
23 Q And then you also have on there the Wyoming OTB of
24 760.

1 A That's correct.

2 Q That's the off track betting?

3 A That's correct.

4 Q So the total amount that Eric Nelson received in
5 2007 is roughly the \$2,000,000 that you have here?

6 A That's correct.

7 Q IS that rounded?

8 A No.

9 Q Okay. Now if I can direct your attention --

10 MR. DICKERSON: Your Honor, move for the admission
11 of Exhibit -- what is it?

12 MS. PROVOST: Quadruple N.

13 MR. DICKERSON: Quadruple N.

14 MR. SOLOMON: No objection.

15 MS. FORSBERG: No objection, Your Honor.

16 THE COURT: It's hereby admitted as quadruple N.
17 (Plaintiff's Exhibit NNNN admitted)

18 BY MR. DICKERSON:

19 Q Now so I'll have you move back one exhibit to
20 quadruple M as in mother. We can go through this or this
21 again. The first page purports to be a summary of the deeds
22 to the property known as High Country Inn. And if we can
23 start with this, we can see that -- in January of 2000,
24 Lynita's revocable trust, that's the 1993 trust, received

1 title to this property. Do you see that, sir?

2 A I do.

3 Q And we see for some reason whatever it may be in --
4 on January -- excuse me, on May 18th of 2001, there is another
5 deed conveying the same property to Lynita. This would be in
6 a quitclaim deed.

7 A Say that again, Bob?

8 Q Take a look at the second. Do you know what Evanson
9 Golf Club (ph) is?

10 A It's my understanding that's Soras's entity.

11 Q So this is an entity owned by Soras.

12 A Correct.

13 Q So somebody had Mr. Soras sign a quitclaim deed on
14 April 13th, 2000 that was recorded May 18th, 2001. Do you see
15 that?

16 A I do.

17 Q The deed is behind this if you want to take a look
18 at it and confirm. All right. Then we see that again as of
19 this point of time at least May 18th of 2001 a hundred percent
20 ownership interest of the High Country Inn is in Lynita's
21 revocable trust. Do you agree with that?

22 A Repeat the question? I don't --

23 Q At least as of May 18th, 2001 a hundred percent
24 ownership of the High Country Inn is in -- is being held in

1 the name of Lynita's revocable trust, is that correct?

2 A It appears that way.

3 Q Now we see that we go to December of 2002. And
4 what's interesting here is Lynita's revocable trust purporting
5 to be the owner of this property conveys it to the Grada
6 Financial Partnership. Do you see that?

7 A I do.

8 Q And then we see that Grada Financial Partnership
9 approximately six years later on January -- in January 2007
10 conveys it back to Lynita's irrevocable trust. Do you see
11 that, sir?

12 A I do.

13 Q And then we see that we have another quitclaim deed
14 from Frank Soras conveying it to Lynita's -- this property to
15 Lynita irrevocable trust. Do you see that?

16 A I do.

17 Q And we see Roscoe Westin Lamplighter Motels (ph).
18 Do you know what that is?

19 A Not sure. Again, I think the -- the Wyoming
20 corporations were Soras's entities, but I would have to look
21 to be sure. This really goes back to Evanson Golf Club too.
22 I think they're Soras's.

23 Q See, for whatever reason it may be, there's a
24 quitclaim deed signed by this Roscoe Westin Lamplighter Motels

1 confirming that Lynita has a hundred percent ownership
2 interest in High Country Inn, correct?

3 A Correct.

4 Q And then we see we get to January 18th of 2007, a
5 deed is signed that is recorded on January 23rd, 2007. I
6 noticed that all of these interesting -- we go back up to the
7 warranty deed that was originally signed December 29th of
8 2006. So all of those deeds that one, two, three, four, five,
9 the last five deeds are all being recorded on January 23rd,
10 2007. Do you see that, sir?

11 A I do.

12 Q And we see that this warranty deed that we're
13 referencing that Lynita's irrevocable trust now is conveying a
14 hundred percent interest in the High Country Inn to Eric's
15 irrevocable trust, correct, sir?

16 A Correct.

17 Q Now so at least from what we're seeing here and
18 assuming all of this is correct, the ELN Nevada Trust first
19 acquired this property on January 23rd, 2007, is that right?

20 A That's correct.

21 Q And then we see that immediately thereafter within
22 two minutes a deed is recorded from Eric's irrevocable trust
23 to Wyoming Lodging, LLC. Do you see that?

24 A Correct.

1 Q And that is the final sale -- that's who Eric
2 finally sold the Wyoming hotel to, to the High Country Inn,
3 correct?

4 A I believe that's correct.

5 Q And so the proceeds for the sale of that property
6 would have been coming from Wyoming Lodging, LLC, correct?

7 A Correct.

8 Q Now looking at this, does that give -- confirm to
9 you where the deposit into Eric's account came on January
10 24th, 2007 in the amount of \$1,947,153?

11 A Yes. It appears that it's coming from the sale of
12 High Country Inn.

13 Q Now going back to that tax return that you prepared
14 for Eric Nelson in 2007 --

15 A Okay.

16 Q -- can you please explain to us why you used an
17 acquisition date of March 1, 2002?

18 A Because that's when Eric's holding period starts for
19 tax purposes.

20 Q I'm sorry, sir?

21 A That is when Eric's holding period starts for tax
22 purposes.

23 Q That would be -- that's when the Eric Nelson Trust
24 --

1 A Trust -- the trust or grantor trust for tax
2 purposes. So they are ignored. And transfers between
3 spouses, you get the same holding period as transfers. So
4 even transfers between the trust, the two irrevocable trusts
5 that transferred between those -- even if it's a sale, even if
6 it's for compensation, the sale gets ignored because they're
7 grantor trust and they're treated for income tax purposes on
8 -- from the individuals and those sales between individuals
9 are ignored for individual spouses. Married spouses are
10 ignored for income tax purposes. And therefore whichever
11 spouse transfers back and forth holds it, you get that holding
12 period. So that's -- that's why we use that date.

13 Q So you use that date because it goes back to at
14 least that date if not earlier that Lynita's separate property
15 trust, the revocable trust acquire the property, is that
16 correct?

17 A That's correct. And looking at this, probably
18 should have used 2000, because the contribution of Grada would
19 have been a tax free transfer. And again, you get the -- you
20 carryover holding period even if it's going to a partnership
21 if it's a tax free transfer under -- which it would have been.
22 And transfer back -- if -- if it was a tax free transfer over
23 that.

24 Q Why would a transfer from any trust by Lynita

1 whether it's her revocable trust or irrevocable trust to Grana
2 [sic] Financial Partnership be a tax free transfer?

3 A It would have if it was a capital contribution.

4 Q So in other words, it would have to show up on her
5 capital contribution account?

6 A Yeah, if that's what happened.

7 Q For Grada, correct?

8 A Or -- or say that again? Sorry

9 Q The partnership, the Grada Financial Partnership
10 account would have to show that she made a capital
11 contribution of whatever the value of this property will be.

12 A That is -- that's correct. It would have to be a
13 transaction as a capital contribution in exchange for
14 additional capital or partnership interest which will be tax
15 free under 729. If it was a sale to the partnership, not as a
16 partner, a partnership transaction, but as independent, then
17 it would have started a new holding period.

18 Q Okay. Now do you believe based upon what you know
19 this property sold for in 2007 that when it was transferred
20 that same day to Grada Finan -- well, excuse. When it was
21 transferred to Grada in 2002, could you at least reasonably
22 believe that it was worth more than 13, \$14,000?

23 A Yes.

24 Q Now if the books for Grada Financial indicated that

1 all -- now first of all Grada Financial, there are six
2 members?

3 A I -- I am not sure.

4 Q Do you know who the partners are of Grada Financial
5 Partnership?

6 A It's my understanding that they're some of Eric's
7 family members.

8 Q Okay. And who else, anybody else?

9 A I'm -- I'm not sure. Lynita's a partner and that's
10 -- I don't know if there's any other independent parties.

11 Q If I can direct your attention to Exhibit quadruple
12 W. Sir, I will --

13 A Okay.

14 Q -- represent to you that this Exhibit quadruple Q
15 purports to be a -- the U.S. return of partnership income
16 filed by Grada Group, LLC. 2005.

17 A Okay.

18 Q Now is Grada Group, LLC the same as Grada Financial
19 Partnership? It is, is it not? You don't know?

20 A Oh, well, I could -- I would assume that, but I
21 don't know.

22 Q Okay. If you'll take a look then, attached to this
23 return are K-1s for each of the partners. Can you take a look
24 at that? And not that these K-1s relate to anything dealing

1 with what we've talked about High Country Inn, but if you can
2 take a look at the K-1s, can you confirm that one of the
3 partners is Alita C. Nelson Trust?

4 A Yes, there's a K-1 for that.

5 Q At least in 2005 her beginning capital account was
6 \$13,178?

7 MR. SOLOMON: Your Honor, at this point, let me
8 interpose an objection. Counsel's asking questions on an
9 exhibit that's not in evidence, number one. Number two, this
10 witness doesn't even know what Grada Group, LLC is. Eric's
11 not part of this. This isn't anything this witness has
12 reviewed before to my knowledge.

13 MR. DICKERSON: Well --

14 MR. SOLOMON: The document will speak for itself in
15 any case if it ever comes into evidence and it's inappropriate
16 in examination.

17 MR. DICKERSON: Your Honor, the purpose of this is
18 to question this witness with respect to capital account and
19 what we can do is go directly to Lynita's capital account
20 which is take a look at the K-1.

21 MR. SOLOMON: But her -- he never reviewed Alita's
22 contributions. He wasn't hired to do that, he didn't do that.
23 He had nothing to this.

24 THE COURT: Then I'm not sure what you're going to

1 add to it if he hadn't reviewed those documents. Do you have
2 any knowledge of those documents or --

3 THE WITNESS: No, I've never looked at --

4 MR. SOLOMON: We have reason to believe it's the
5 wrong entity.

6 MR. DICKERSON: All right. So --

7 THE COURT: So you don't even know if Grada
8 Financial is the same as Grada Group?

9 MR. DICKERSON: All right. So let's --

10 THE WITNESS: No, I do not.

11 BY MR. DICKERSON:

12 Q Then you as you sit here today, you have no clue as
13 to how the transfer of the property that was held in Lynita's
14 irrevocable trust or purportedly held in Lynita's irrevocable
15 trust on -- in December of 2002 how that was recorded on the
16 books of the Granada -- of the Grada Financial Partnership?

17 A No, I have never looked at their books.

18 Q And I believe you also confirmed earlier then that
19 what you have seen that the money that you referenced, his
20 \$1,947,153.37 that was wired into Eric's bank account at Bank
21 of America, the one ending in 2798, that none of those monies
22 went to Lynita, is that correct?

23 A The proceeds from High Country Inn were -- a hundred
24 percent of those were deposited into Eric's account if that's

1 your question.

2 Q And you can confirm that after that money was
3 deposited in that no monies were given to Lynita from those
4 proceeds, is that correct?

5 A No, that's not correct, because every year there was
6 money. There was transfers back and forth between the trust.

7 Q So you're assuming that some portion of that may
8 very well have been some of this money?

9 A Well, it's -- it could have been some of that.

10 Q Okay. Now if you can then go back to your general
11 ledger, I would like to go through the second column here on
12 Exhibit quadruple K. And there are not that many here so we
13 can get through these. Can you confirm from the general
14 ledger that on July 22nd, 2007 a deposit of \$966,780.73 was
15 deposited into this same account that we've referenced earlier
16 in the name of the ELN Trust Nevada Trust at Bank of America.

17 A Let me check.

18 Q Okay. I was unable to find it.

19 A Which account number?

20 Q Yeah, I was unable to find it. Can you find it?

21 A I do not find that -- well, I'm just looking at the
22 one account which -- I mean --

23 Q And you did not see it recorded on this account that
24 we're referring to the account number --

1 A I did not see a deposit on July 2nd --
2 Q What I'd like you to do --
3 A -- in that amount.
4 Q -- take a look at that same exhibit that we're
5 referencing, Exhibit KKKK. And if you'll go back from that
6 summary sheet -- okay. Did you find it?
7 A Well, there -- there's deposits on June 30th posted
8 of 966,780.73.
9 Q So it shows a June 30th.
10 A Yes.
11 Q Okay. So if you'll go -- all right. Which may
12 explain it. So it shows it is on their books as being June
13 30.
14 A That's when the deposit's posted, yes.
15 Q Which is the last day of the month.
16 A Yes.
17 Q So if that was a Friday, it may explain why the
18 bank's records indicate July 2nd possibly?
19 A Possible.
20 Q Take a look then if we go back to the -- go back two
21 blue pages in the exhibit book. You're going to find a Bank
22 of America statement for the period January 1, 2007 through
23 June 31, 2007. Do you see that?
24 A This is two blue pages and --

1 Q Do you see --
2 A -- I've got a Bank of America letter.
3 Q Now come back one.
4 A Okay.
5 Q Do you see the statement Bank of America statement
6 for July 1, 2007 through July 31st?
7 A I do.
8 Q All right. Turn to the second page.
9 A Yeah.
10 Q You'll see that apparently that deposit that you've
11 reference in June 30th, 2002 was actually posted on the bank
12 statements for July 2nd of 2000.
13 A Okay.
14 Q Correct?
15 A Correct.
16 Q So now on the general ledger, does it indicate where
17 that deposit came from?
18 A Yes, it's two checks, actually. One from Chicago
19 Title and one from Paul and Sue Nelson.
20 Q From who?
21 A Paul and Sue Nelson.
22 Q Does it indicate how much they were?
23 A The check from Chicago Title is \$756,780.73. And
24 the cash receipts from Paul and Sue Nelson was 210,000.

1 Q And the one from the title company, does it indicate
2 what it was for?

3 A It just says Chicago Title. The other side of the
4 entry probably does, but you're only looking at one part of
5 the journal entry.

6 Q All right. Now from the general ledger, are you
7 able to confirm that after that deposit check number 2033 in
8 the amount of \$7,000 was Eric Nelson?

9 A 2033? 2033, here we go. It was -- that check was
10 issued on June 20th to Eric Nelson. So it was prior to the
11 deposit for 7,000.

12 Q So it may have cleared the bank reflected in that
13 July statement. Okay.

14 A Sure.

15 Q Check number 2041, is that to Rochelle McGowan for
16 \$3500?

17 A 2041, one second. Rochelle owes 3,500 issued on
18 July 3rd.

19 Q And does it indicate why --

20 A No, just --

21 Q -- Rochelle McGowan is receiving this money?

22 A -- it -- this -- it just shows who the payee is.

23 Q Okay. Check number 2044, is that to Lana Martin in
24 the amount of \$1,705.05?

1 A That is correct.

2 Q Check number 2040, is that to Megan Ramos for \$3500?

3 A 3500, correct.

4 Q And do you know who Megan Ramos is?

5 A I do not.

6 Q Next one, check number 2051, \$9,675. Is that to

7 Chad Ramos?

8 A It is.

9 Q Does it indicate what it's for?

10 A No.

11 Q Check number 2050, is that to Dynasty Development

12 for 25,000?

13 A It is.

14 Q Okay. And you see a transfer of a million dollars

15 to another account, is that correct?

16 A Yes.

17 Q Does it say what account it's being transferred to?

18 A Money Market account.

19 Q Does it give an account number?

20 A It does not.

21 Q If the July statement for this account reflected

22 that it's going to account number ending in 4215, do you know

23 what account that is?

24 A Let's see. Not off the top of my head I don't. You

1 said 4215?

2 Q 4215.

3 A It's -- are you sure you have the right number?

4 It's not 43 --

5 Q 4215. Is that not a new account, new Market Account

6 that was open in the name of Eric L. Nelson Trust, Nelson &

7 Associates, Eric Nelson trustee?

8 A It's Eric Nelson Nevada Trust, yeah.

9 Q Is that correct?

10 A Yes. That it's to Nevada. I've got different

11 account numbers here, but maybe this is the account number

12 where it's coming from, but it's -- it's -- the beneficiary of

13 that, I've got the actual wire transcript copy. I've got it

14 open in front of me.

15 Q The million dollar one?

16 A The million dollar one.

17 Q So what account is this million dollars being

18 transferred into?

19 A It says here the ID number is 50100404354, Mellon

20 Bank Money Market account in the name of Eric L. Nelson Nevada

21 Trust.

22 Q All right. And then you see check number 2054. Is

23 that to Dynasty Development?

24 A Let me go back to the GL here. Okay. Repeat that

1 Bob for me?

2 Q Check number 2054.

3 A To Dynasty Development for 20,000.

4 Q How about check number 2081?

5 A Amanda Nelson for 32,458.

6 Q And that's Eric's daughter?

7 A I'm not -- not sure.

8 Q Check number 2083.

9 A Okay. I found it. To Deecus, LLC. \$9,000.

10 Q I'm sorry? Is it -- we're talking about 2083.

11 A Yes.

12 Q And that was to?

13 A Deecus, LLC for 9,000.

14 Q Do you know what Deecus, LLC is?

15 A I don't recall. That name doesn't sound familiar to

16 me.

17 Q Spell it?

18 A D-E-E-C-U-S.

19 Q If you'll take a look at the bank statement that you

20 were looking at earlier, that would be the July 2007 --

21 A Okay.

22 Q -- bank statement. And if you go to the second to

23 the last page, I think you're going to find this check number

24 2083 in the amount of \$9,000.

1 A Uh-huh (affirmative). I see it.

2 Q Okay. And this indicates it's made payable to Chad
3 Ramos, is that correct?

4 A That is correct.

5 Q And it indicates on there it's a loan.

6 A That's correct.

7 Q And Eric signed this check, is that correct?

8 A That looks like his signature, yes.

9 Q And how about check number 2057?

10 A Per the -- per the GL, that's a check written to
11 Eric Nelson for \$8,000.

12 Q I'm sorry if I already asked you this. The deposit
13 that was made on according to the general ledger on June 30th
14 of 2007 which is reflected on the bank statement as having
15 been posted on July 2nd, 2007, does it indicate in the general
16 ledger where that's from or what it's for?

17 A It does not in the -- this particular account that
18 I'm looking at.

19 THE COURT: The Court's indulgence, please.

20 Q Can you help me sir? Referencing your report to the
21 sale of the Tropicana Albertson property?

22 A Are you referring to Exhibit 7 which shows the
23 transfers between the two trusts or an actual explanation?

24 Q Do you have actually -- did you write anything in

1 your report itself, the written -- the letter of this
2 property? Do you reflect anywhere in your report what the
3 property sold --

4 A One second. No, I don't other than reporting we had
5 a good gain on the general ledger where we would have on
6 Exhibit 8. The actual dollar amount is it's posted -- we
7 posted it, but not -- it's not reflected in the written part
8 of my report.

9 Q Anywhere in your report does it reflect the sale of
10 the Tropicana Albertson land and how much Eric Nelson received
11 from that and when he received it?

12 A It wouldn't say -- it would not reflect when he
13 received it -- it other than the year itself and the gain from
14 that sale, obviously. So I mean, you can back into it, I
15 guess, that --

16 Q What would you be looking for that?

17 A See, that was sold in -- was it --

18 Q 2007.

19 A -- 2007?

20 Q June 25th, 2007.

21 A Let's see here.

22 Q We talked about this last Thursday, do you recall?

23 A Uh-huh (affirmative). I -- well, we talked about
24 the sale, yes. I understand there's -- it's account --

1 Q And you looked at -- you had looked at something and
2 you were able to confirm that Eric receives something in
3 excess of half the -- the sale proceeds. This is a piece of
4 property that he owned with his brother, is that right?

5 A That is correct.

6 Q That you can recall. And that I believe you recall
7 we discussed the sale price of being \$1,457,000?

8 A That is approximately what -- yeah, what I remember.
9 I don't remember the exact numbers.

10 Q And do you recall that we talked about the money
11 that was wired to Eric from the sale of this property that he
12 received \$966,780.73?

13 A I mean, off the top of my head, again, I don't
14 remember the exact numbers.

15 Q And again, if you'll just look then one more
16 occasion to Exhibit quadruple I. Is that in the book? Take a
17 look at the summary sheet up front.

18 A Quad -- quadruple I?

19 Q Yes.

20 A There is nothing there, blank.

21 Q Oh, okay.

22 MR. DICKERSON: Madam clerk, do you have that one,
23 quadruple I?

24 Q I'm showing you what's been marked as quadruple I.

1 This again purports to -- these are the deeds showing the
2 chain of title with respect to the Tropicana Albertson land.
3 And from this, you can see that Eric Nelson's irrevocable
4 trust acquired a 50 percent interest in this property in May
5 of 2002.

6 A Okay. Yes, I do.

7 Q And that January of 2005 the -- Eric's trust
8 conveyed that 50 percent interest to Lynita's trust.

9 A Correct.

10 Q And we see that Lynita then owned that property for
11 two and a half year -- 2.8 years and then we get to June 25th
12 of 2007. We have a deed conveying that 50 percent interest in
13 the property to Eric's trust.

14 A That's what this spreadsheet shows.

15 Q And that very same day Eric and his brother conveyed
16 the property to Las Vegas Center Limited, correct?

17 A Correct.

18 Q And that's -- it was from that transaction on June
19 25th, 2007 that Eric and his brother received \$1,457,000, is
20 that correct?

21 A I believe that number is correct, yes.

22 Q And all those proceeds Eric received the \$966,780.73
23 that was deposited into his account on July 2nd, 2007,
24 correct?

1 A Well, I -- I'm not sure of the exact dates, but
2 yeah. I mean, I know it was deposited into his account.

3 Q And it was reflected on the general ledger -- Eric's
4 -- the trust, the general ledger for this account that deposit
5 actually have been made on June 30th.

6 A Correct.

7 Q All right. Now you also indicated to us last week
8 that you also were given the general ledgers that Eric had in
9 his possession with respect to the LSN Trust, correct?

10 A Correct.

11 Q Now specifically you were given the general ledger
12 for account number that -- the account number that ends in
13 2743 at Bank of America for the LSN Nevada Trust, is that
14 correct?

15 A I don't recall.

16 Q Can you look on -- you can find it on your disc. If
17 showed you or -- or his account number, what you need?

18 A Let's --

19 Q What number --

20 A What years is the GL for? It's sorted by -- the
21 filenames are --

22 Q 2000 --

23 A -- in year.

24 Q It's 2005.

1 A Okay. That's --
2 Q I'd like to take you to August of 2005 and it's
3 account number 10004.
4 A Just a minute here. Yeah, I have GL open. And
5 which account number did you want me to look at?
6 Q 10004.
7 A Okay.
8 Q Now this is the account that is held in the name of
9 LSN Nevada Trust dba Tierra Del Sol, correct?
10 A It's the Bank of America account is all it says. It
11 says LSN/NPP-Bank of America.
12 Q Okay. Can you confirm that in that account a
13 payment -- or check number 1562, is that reflected?
14 A What date?
15 Q January -- or excuse me, August 2nd 2005.
16 A Have any deposits that date -- you said account
17 10004?
18 Q This will be a check. This will be a check number
19 15 --
20 A Oh.
21 Q -- 62. Do you see check number 1562?
22 A Not out of this account.
23 Q Are you looking at account number 2743?
24 A I don't know what the account number is. I just

1 have the -- the GL. It doesn't say what the account number
2 is.

3 Q Let me show you the --

4 A It's a Bank of America account, right?

5 Q Yes.

6 A That I do have. And you're looking for check number
7 disbursement --

8 Q 1562.

9 A Check numbers are bouncing all over the place.
10 They're not in order. I won't -- here we go. Let me get -- I
11 have account -- check number 1562 for \$20 to the Arizona
12 Department of Water Resources.

13 MR. SOLOMON: Are you looking at the account, Bob?

14 Q Okay. Let's move on.

15 THE COURT: It's about noon. Is it now a good time
16 to break? Do you want to go a little bit longer? I don't
17 know what --

18 MR. DICKERSON: This would be a good time to break.

19 MR. SOLOMON: Can I ask counsel for --

20 THE COURT: Sure.

21 MR. SOLOMON: -- the Court how long this witness is
22 going to be?

23 MR. DICKERSON: 10 to 15 more minutes at most.

24 THE COURT: Do you want to finish him and take a

1 later lunch or you just want to wait until we come back?

2 MR. SOLOMON: I'm going to be with him for awhile
3 too, so --

4 THE COURT: Okay. As far as the request to meet
5 with the Special Master Bertsch, I don't think that's
6 appropriate. I haven't a chance to research it. I have my
7 law clerk researching it. But he was appointed as a special
8 master. We gave everybody access to him before so to get all
9 their information, shared documents, shared documents back and
10 forth so everybody had a chance so they could get all their
11 input to prepare.

12 He has done the report and I think it speaks for
13 himself. I'd rather have him examined. It may take a little
14 bit longer in cross examine, but that's okay. I'd rather have
15 it done in open court to ask any question so everybody is
16 present there. So I'm going to direct Mr. Dickerson not to
17 meet with Mr. Bertsch as our special master and we'll just do
18 it in open court. It may take a little bit longer, but I'd
19 rather do it that way in open court with everybody present.

20 MR. DICKERSON: No problem. Thank you.

21 THE COURT: All right. Thanks. We'll be in recess
22 til 1:30.

23 (Off record)

24 THE COURT: This is the time set in the matter of

1 continuation of the adjudicatory hearing as to Eric Nelson and
2 Lynita Nelson, case number D-411537. Just got back from our
3 lunch break on it. Mr. Gerety, we'll have you continue your
4 testimony. Remember, you're still under oath and we'll kind
5 of pickup where we left off and hopefully try to finish you up
6 this afternoon.

7 MR. DICKERSON: Okay.

8 THE COURT: Mr. Dickerson, you can pickup where you
9 left off at your leisure.

10 BY MR. DICKERSON:

11 Q Mr. Gerety, I only have very few questions to ask
12 you and it's in regards to Page 364 of your report.

13 A Okay.

14 Q Are you there, sir?

15 A I am.

16 Q Can you tell me what this page -- what this is?

17 A This is a -- it was the -- let me just look at it
18 quick here just to make sure. This was when Eric restructured
19 the deal with Sorsa (ph) and the contracting entered into.

20 Q But this page isn't the contract, is it? Is that --
21 that's -- writing up at the top in larger print, is that part
22 of the contract?

23 A This is part of the contract. It's signed by both
24 parties as a memorandum of the -- what they've agreed to.

1 Q So the contract that was signed by Eric and Frank
2 Sorsa purportedly signed by them in February of 201, at the
3 very top, spells Mr. Sorsa's name wrong and then talks about
4 \$1,360,000 debt verified, nine percent net payments, 10,300
5 per month since 2001, see tax return, traded 20 homes Arizona,
6 paid \$862,000, net profit over 500,000 January 2010. This
7 comes with a continual liability of guarantee of \$1,360,000 to
8 Soras, again, spelled incorrectly, now due to Bob Dickerson,
9 question is very real. So are you telling me that is all part
10 of the contract that Eric Nelson entered into?

11 A This is -- this was what was given to me as a signed
12 agreement between the two parties.

13 Q So you haven't seen the original of any signed
14 agreement.

15 A This is all I have seen.

16 Q Now it talks about a guarantee of \$1,360,000. Have
17 you ever seen such a guarantee?

18 A Yes. It was -- it's actually the original cash that
19 Soras had given Lynita.

20 Q Have you seen a written guarantee?

21 A I have not seen -- no, I'm sorry. I'm not seeing a
22 written guarantee.

23 Q So you've seen no written personal guarantee from
24 Eric Nelson or any other -- or any entity owed -- owned by

1 Eric Nelson or his trust, is that correct?

2 A That is correct.

3 Q Now if I understand, I'm trying to -- if the
4 agreement that Eric Nelson reached with Frank Soras in
5 February of 2010 was the trading of 20 homes were 862 -- or
6 where they paid \$862,000 and Eric writes that apparently a net
7 profit of over 500,000 in January of 2010. Why is it that
8 anymore money is owed to Mr. Soras?

9 A They have the guarantee -- you've got -- the
10 guarantee is right in this agreement that if you look at
11 number four here, Eric further guarantees a minimum allocated
12 price for the homes of the million three sixty-five. Allocate
13 -- you know, they're allocating, here's 20 homes, we think
14 they have a value of this. So that's number four. So Eric's
15 guaranteeing a purchase price of the sale of those homes of
16 the million 365. He's given then property to satisfy part of
17 that guarantee, but he's still guaranteeing that when they're
18 sold, he'll get his million three sixty-five.

19 Q Okay. So we're talking when the 20 homes sell, Mr.
20 Soras is to receive \$1,365,000, correct?

21 A Right.

22 Q Is that correct?

23 A That's correct. And this isn't -- that's -- this is
24 where the -- I -- first written guarantee I see of the amount.

1 Q Well, this is a written guarantee by BanOne.

2 A Which is owned a hundred percent by Eric. That's
3 the trust, Eric's trust.

4 Q Eric's trust. That was a mistake, wasn't it? It
5 was owned by Eric's trust?

6 A The homes -- these homes were.

7 MR. DICKERSON: Okay. I have nothing further of
8 this witness.

9 MR. SOLOMON: I probably will be two and a half
10 days, Your Honor.

11 THE WITNESS: That's not funny, Mark.

12 REDIRECT EXAMINATION

13 BY MR. SOLOMON:

14 Q All right. Going back to Thursday, I know that was
15 a long time ago, at the beginning of Mr. Dickerson's cross,
16 the first thing I have on my notes to ask you about, Mr.
17 Dickerson discussed with you a Bank of America account that
18 was Eric's -- I think it was not in the general ledger that
19 you reviewed, is that right, all that testimony?

20 A Yes. In an early account, yes.

21 Q Were you able to ascertain whether or not that was
22 Eric's separate property account?

23 A We were.

24 Q He asked you a question that in essence was a

1 statement that all adjustments that you made meant that the
2 ELN Trust did not keep its asset separate and you responded
3 that was a false statement. Do you recall that exchange?

4 A I do.

5 Q And why was in your opinion that a false statement?

6 A Because -- because they were keeping each of their
7 assets separate. They were keeping transactions that went
8 between the trust. They were posting those and keeping track
9 of each transaction. So it -- in my opinion, they were doing
10 a good job of keeping the assets separate and titled separate.
11 They transferred titles if there were exchanges and --

12 Q Did any of the adjustments that you made in -- in
13 dealing with the accounts and correcting them changed
14 something that wasn't separate to something that was separate?

15 MR. DICKERSON: Object to the form of the question.

16 THE COURT: I think -- you know what he means? Do
17 you understand what he's saying?

18 THE WITNESS: I do. And --

19 THE COURT: Overruled. He may answer.

20 THE WITNESS: Repeat it though for me one more time

21 --

22 BY MR. SOLOMON:

23 Q Sure.

24 A -- since we had the interruption.

1 Q Absolutely. Did any of your adjustments that you
2 made changed the nature from something that wasn't separate to
3 something that was now separate?

4 A No.

5 Q And Mr. Dickerson did catch on one error in your
6 report and that was the -- it appears that you didn't put a 40
7 percent interest in Eric Nelson Auctioneering into the
8 calculus when you created the balance sheet, is that correct?

9 A That is correct.

10 Q Was it ever shown in your report?

11 A Yes, it -- it was picked up on the general ledger
12 and shown as an asset in a later year, I think 2006, 2004,
13 maybe. I forget which year.

14 Q Did the failure to pickup that asset in the 19 --
15 I'm sorry, the 2001 balance sheet affect any conclusion you
16 made in the report whatsoever?

17 A It doesn't change the title or who owns that entity.
18 So no.

19 Q Mr. Dickerson asked you a bunch of questions about
20 an 11 acre parcel that Lynita or her trust had in Wyoming.
21 And are you familiar with what if anything she got in the
22 transfer of her 11 acre parcel?

23 A Yes, I am now -- should I --

24 Q Before I ask -- well, before I ask that, did you

1 review what Eric's trust got for the sale of the land that it
2 sold to the buyer?

3 A Yes.

4 Q Did that include the 11 acres?

5 A It -- as far as proceeds? I mean, it did, yeah. I
6 mean, it -- it did. The cashee received cash is what he
7 received on that.

8 Q But that wasn't for the 11 acres, was it?

9 A No, it wasn't.

10 Q That's what I'm asking.

11 A Oh, I'm sorry.

12 Q So the cash that the ELN Trust received for the sale
13 of its property to the buyer which was approximately how much?

14 A I think the net number was -- what was it,
15 11,000,000, 12,000,000, something like that.

16 Q And the consideration of that 11,000,000 did not
17 include to your analysis the 11 acres that Lynita had --

18 MR. DICKERSON: Object to the leading nature --

19 Q -- is that correct?

20 MR. DICKERSON: -- of the question.

21 BY MR. SOLOMON:

22 Q Did it include the 11 acres that Lynita had?

23 A No.

24 MR. DICKERSON: I would object without the laying of

1 a foundation as to how --

2 THE COURT: Overruled.

3 THE WITNESS: No, I didn't believe it did.

4 BY MR. SOLOMON:

5 Q Now let's turn to the Tropicana Albertsons property
6 that you were asked a lot of questions on Thursday and today
7 about that transaction. If I remember your testimony
8 Thursday, you said that originally you hadn't known that the
9 property at some point had actually been titled in the name of
10 Lynita's trust, is that correct?

11 A That is correct.

12 Q Based upon what Mr. Dickerson showed you and
13 anything else you have seen including I think it's Exhibit
14 5.04 of your report -- no, it's 5.03. Do you have Exhibit
15 quadruple I up there still?

16 A I believe I do.

17 Q Do you have it?

18 A Yes, I do. I have it.

19 Q All right. From these documents including your
20 Exhibit 5.03, can you tell us what this transaction -- how
21 this transaction flowed?

22 A Yes. Eric borrowed Eric's trust, the Nevada trust,
23 borrowed 700,000 from Lynita's Nevada trust, the LSN Nevada
24 Trust. And as collateral for that note, Eric completed a deed

1 of trust -- or Eric's trust prepared a deed of trust and --

2 Q Deed of trust or deed? Take a look at Exhibit IIII.

3 A This -- it's a -- let's see and make sure I'm
4 looking at it. It's a grant bargain and sales deed.

5 Q Okay.

6 A And it's -- it's -- that is in -- in accordance with
7 the note that he would give them that deed to hold as security
8 of payment of the note.

9 Q Okay. Now what happened next?

10 A Next the deed was transferred back in 2007. And
11 they record it.

12 Q Do you see that deed in that IIII?

13 A I -- yes, I do.

14 Q And it's signed by Lynita?

15 A It is.

16 Q And what does it say above that in bold?

17 A It says to relinquish any interest that grantor may
18 have acquired through deed recorded January 5th in the book,
19 book number, document number.

20 Q Okay. And what was the effect on that deed as far
21 as collateral for that \$700,000 note at that point?

22 A That collateral was returned on that note.

23 Q Okay. And then what did Eric do with the property?

24 A He sold it.

1 Q Okay. And what did he do with proceeds?
2 A They were deposited into his account.
3 Q Okay. So at the end of the day Lynita still owed
4 the \$700,000 under the note, is that correct?
5 A Yes. That's correct.
6 Q And was she paid back?
7 A She was.
8 Q Was that explained to the Court in your direct
9 testimony when you went through the due to and due from
10 analysis?
11 A It was.
12 Q All right. Mr. Dickerson spent a lot of time on
13 Tierra Del Sol, both Thursday and again today. A lot --
14 trying to get to the exact numbers because I don't want to
15 waste a lot of time here. The testimony has been Eric
16 received approximately 1.4 million dollars out of that
17 transaction, correct?
18 A Correct.
19 Q Okay. Has Lynita received proceeds from that
20 transaction?
21 A She did.
22 Q approximately how much did she receive?
23 A If I remember what the total sales price is now.
24 Q Was it about 3.5?

1 A I believe that's correct. I don't -- I don't
2 remember the sales price now, but she -- she received most of
3 it, yes.

4 Q Okay. Do you recall whether that transaction was
5 run through an escrow?

6 A It was.

7 Q Okay. And the seller was who?

8 A The seller was Lynita's trust.

9 Q Okay. Do you know how Eric got the 1.4 million
10 dollars out of that escrow? Who signed for that?

11 A I did not see the escrow statement on that.

12 Q Okay. Do you know anyway anybody could have signed
13 for it, but at the LSN Trust?

14 MR. DICKERSON: Object, calls for speculation.

15 MR. SOLOMON: Does these all the time, Your Honor,
16 that I'm asking knowledge of it, what happens in the industry.

17 THE COURT: Well, I think it speaks for itself on
18 that. As far as your understand is Lynita was a seller of the
19 trust?

20 THE WITNESS: Lynita was a seller. She was in
21 control. Should have been -- should have been in control of
22 the escrow. I did not see the escrow instructions, but and --
23 so she would have had to sign for them if she was in control
24 of the escrow.

1 BY MR. SOLOMON:

2 Q Okay. In any case, your testimony is Eric got about
3 1.4 million dollars out of that transaction. And then I think
4 you testified that you were able to trace some of his use.

5 A Yes.

6 Q And 670,000, whatever the number was, went to
7 payment of her taxes, Lynita's --

8 A Correct.

9 Q -- taxes?

10 A It was 600 and something, yes.

11 Q All right. \$25,000 went right back to her, if I
12 recall?

13 A That's correct.

14 Q So that left a balance due from Eric to her for the
15 other portion of the 1.4. Were you able to determine whether
16 that was paid back?

17 A It was.

18 Q Okay. And was that demonstrated to the Court in
19 your testimony when you went through -- on my direct the due
20 to and due from analysis?

21 A Yes, it was.

22 Q Do you have JJJJ up there?

23 A I think I do. It may have been taken back.

24 Q Okay. Thank you. Mr. Dickerson showed you this

1 exhibit and asked you a question of whether -- oops, sorry.
2 What did I do with it? Oh, there it is. Asked you a question
3 if you knew what that second check for \$350,000 was and where
4 it said a memo of management fee.

5 A Yes.

6 MR. DICKERSON: Are these new?

7 MR. SOLOMON: Yeah we got them something -- we got
8 them from Bob's, yeah. So I need to mark them. What's next
9 in order?

10 MR. LUSZECK: We are at 169, maybe.

11 MR. SOLOMON: This is from the book you gave us. Do
12 you remember where?

13 MS. FORSBERG: Yes, I do. Right here. It's from
14 checks and deposits binder two.

15 MR. SOLOMON: It's 169. This is the original one.

16 MR. LUSZECK: Yeah.

17 MR. SOLOMON: Okay. So we don't really need that.
18 Now what's the next one?

19 MR. LUSZECK: I believe 169, Intervener's 169.

20 MR. SOLOMON: This is 169. Do you have any objection
21 to this document?

22 MR. DICKERSON: No.

23 MR. SOLOMON: Offer 169.

24 THE COURT: Any objections?

1 MS. FORSBERG: No objection.

2 THE COURT: Hereby admitted as Intervener's 169.

3 (Intervener's Exhibit 169 admitted)

4 BY MR. SOLOMON:

5 Q I'll show you that. Did anything that you reviewed
6 in doing your report show that Eric actually received a
7 \$350,000 management fee?

8 A We -- we did see -- if I look at my Exhibit 7 that
9 there was a \$350,000 deposit that came in, I believe. Where's
10 the --

11 MR. LUSZECK: Oh, right there.

12 A Actually, I have -- I -- I need to go back to the
13 general ledger to see exactly if that got -- I did see where
14 it was posted, but it may have been reversed and I didn't -- I
15 would have to look. I don't recall, because we netted the --
16 all the numbers together.

17 Q Do you want to look?

18 A In my Exhibit 7. By -- the account numbers were
19 different and not -- an in the right --

20 Q And shortcutting this, do you know whether you
21 posted this as a fee to him as opposed to a loan?

22 A It was not --

23 MR. DICKERSON: I'm sorry?

24 A It was not posted as a fee.

1 Q Okay. So it was never posted as a fee.

2 A No.

3 Q All right. Let's not waste anymore time on that
4 then.

5 A We -- let me go -- I have a journal entry for it,
6 actually. I -- if I remember correctly. Yeah, we -- we did
7 post a journal entry for \$350,000 and showed it as a payable
8 to -- to Lynita. It was not posted as a management fee. And
9 actually, it wasn't the -- I don't -- let me go to that
10 journal entry. It -- it was not -- we posted an asset for the
11 Bank of Nevada CD. So there was a CD.

12 Q What does that mean?

13 A It means that Eric's trust invested in the CD for
14 350,000. It was not posted by the -- by the client as a
15 management fee and it was not posted by us as a management
16 fee.

17 Q Okay. Do you have KKKK up there?

18 A I do.

19 Q All right. Mr. Dickerson asked you about his
20 summary on the top.

21 MR. DICKERSON: Which exhibit are we referring to?

22 MR. SOLOMON: KKKK.

23 Q You started off with the lefthand columns if you
24 will on sale of High Country Inn. It started off on January

1 3rd, 2007 with a \$500,000 entry there. Do you see that?

2 A I do.

3 Q Does that have anything to do with the sale of High
4 Country Inn?

5 A No, as we stated in -- when Mr. Dickerson was asking
6 me questions, that came from another entity. It had nothing
7 to do with this sale.

8 Q Okay. What entity did it come from?

9 A It came -- I'm trying to remember the name of the
10 entity now. It was on the check that he had me look at.

11 MR. DICKERSON: I don't see --

12 MR. SOLOMON: I don't --

13 A Sure. Save me the --

14 MR. DICKERSON: It was Hideaway.

15 A It came from Hideaway Inn. Thank you.

16 Q Okay. And all these payments that he asked you
17 about, the Clarence Nelson, Paul Nelson and Eric and Dynasty
18 Development and Carlene Gutierrez (ph), did that come from the
19 proceeds of the sale of High Country Inn?

20 A No.

21 Q Okay. Those all proceeded that sale, did they not?

22 A They did.

23 Q And the 1.9 million dollars that showed on that
24 schedule that went to Eric's -- or the ELN Trust, on or about

1 January 24th, 2007, that was after Eric acquired title to that
2 property, is that correct? Eric's trust acquired title to
3 that property?

4 A Correct.

5 Q And that was pursuant to a deed that Lynita signed,
6 correct, on behalf of the LSN Trust?

7 A Yes, that and the deed that -- it's also the OTB
8 transaction which came through Soras. So that's -- those
9 proceeds include both -- both properties or fractions of
10 property.

11 Q That was a pretty complicated transaction, was it
12 not?

13 MR. DICKERSON: Object to the form of the question.
14 BY MR. SOLOMON:

15 Q In your experience, did you believe that was a
16 complicated transaction?

17 A It was.

18 Q Mr. Dickerson asked you to explain part of it in
19 your cross examination. Do you recall that?

20 A Yeah, I do. Yes, I do.

21 Q Do you think you can explain that transaction now?

22 A The -- I think I can.

23 Q Okay. Let me lay a foundation as to how he's doing
24 it. Okay. How do you know about that transaction?

1 A Through my discussions with Eric and following all
2 the -- the deeds and so forth.

3 Q Did you also thought -- hold on. Let me get the
4 foundation down. Did you also follow the money trail in your
5 accounting?

6 A I did.

7 Q And are those the type of things that accountants
8 rely upon in understanding transactions?

9 A It is.

10 Q Would you please explain the transaction?

11 MR. DICKERSON: May I just voir --

12 THE COURT: Sure.

13 MR. DICKERSON: -- a couple questions?

14 VOIR DIRE EXAMINATION

15 BY MR. DICKERSON:

16 Q When did you have this conversation with Eric? Was
17 -- has it been last Thursday?

18 A On the -- the --

19 Q What you're going to -- what you're about to explain
20 to us based upon --

21 A Yes.

22 Q -- conversations you've had with Eric since last
23 Thursday, is that correct?

24 A The -- some of it has been, yes. Some of it was

1 prior to that.

2 MR. DICKERSON: And I would say it would be based
3 upon hearsay and the proper person to explain the transaction
4 would be Eric Nelson.

5 MR. SOLOMON: Experts are allowed to testify based
6 upon hearsay and Mr. Nelson will be --

7 THE COURT: I'll allow him to testify. And Mr.
8 Nelson will be on there and we'll see how things jive
9 together, I guess.

10 MR. SOLOMON: Exactly.

11 THE COURT: This is based on your understanding?

12 THE WITNESS: It is.

13 THE COURT: But some of these are based on
14 conversations you had with Eric since last Thursday though and
15 some would be from prior ones?

16 THE WITNESS: That is correct.

17 THE COURT: Okay. You may proceed.

18 THE WITNESS: The High Country Inn, the first part,
19 and I'm not sure if you want me to cover both parts of it or
20 --

21 REDIRECT EXAMINATION CONTINUED

22 BY MR. SOLOMON:

23 Q Whichever way -- yeah, I do want you to cover both
24 parts of it if you can and in anyway you can to make it less

1 complicated.

2 A I'll cover the OTB part first and that is -- there's
3 a deal struck with Soras and that piece of it was sold to him
4 and kind of in effect similar way I've seen Eric doing things
5 is giving him a deed to hold as security on the cash that he
6 had given Lynita's trust. So Soras had title to that and then
7 there was rent he was paying -- it was setup as a like kind
8 exchange originally. And Soras had issued a note and then
9 there was guarantees to rent that back, because of a sale
10 lease back and then of course that property wasn't worth -- it
11 wasn't doing what it was supposed to do. There was no reason
12 to leave it. The lease kind of -- there just was no value for
13 leasing.

14 Q What was OTB property?

15 A It was a -- it was a -- really a -- it's -- part of
16 the hotel -- it's part of the restaurant I believe and really
17 the restaurant itself in -- in the hotel. And so it's kind of
18 an undivided -- I -- I think it had been divided. I'm not --
19 I haven't seen the paperwork on that, but I believe it was
20 somehow divided. I'm not sure how.

21 Q Anyway, Soras had given him money. It helped Soras
22 out because he was able to qualify for a like kind exchange in
23 time. And again, Soras held that property and he was
24 collecting 10,000 a month on the money he had given Lynita's

1 trust and that of everything.

2 A Because that property -- because of what gaming
3 falling through and so forth in Wyoming that they weren't able
4 to do what they thought they were able to do there, Eric
5 substituted the security on and effect that loan by giving the
6 39th Avenue -- the Phoenix property. And he took back the
7 OTB. So and that's how Eric re -- I -- I may have missed a
8 step. There was a couple other property exchanges in there.

9 Q Well, how did Eric get the property? That's the
10 step you missed.

11 A Well, Eric got the property by giving Soras 39th
12 Avenue. Eric's trust owned a hundred percent on -- with no
13 deed -- no mortgage on it of some Arizona property, a
14 warehouse I believe it was, 39th -- it was 39th Avenue, I
15 believe. So Eric exchanged with Soras and obtained the OTB.
16 So the title was in his trust name. That's part of it. So
17 that's part of these proceeds is -- was derived from Eric and
18 Eric ended up giving him -- 39th Avenue was again transferred
19 back to Eric's trust and some Minnesota property was
20 transferred and then the Minnesota property was transferred
21 back to Eric's trust and Eric transferred him, has security on
22 the loan, houses from BanOne which is what the guaran -- that
23 contract between Eric and Soras was that we just looked at.

24 Q So are you saying that Soras's debt kept on

1 transferring on different properties of Eric?

2 A Correct.

3 Q Okay.

4 A And today it's with Arizona houses that were owned
5 by BanOne.

6 Q Okay. That's the OTB side. What's the hotel side?

7 A And the hotel side, if my memory is clear, Lynita
8 transferred that to the Grada (ph) partnership. Let me look
9 here. I -- and then I believe it came back to her.

10 MR. SOLOMON: This is MMMM?

11 MR. LUSZECK: Yeah.

12 Q Do you have MMMM up there?

13 A I should, yes.

14 MR. DICKERSON: What exhibit is he looked at?

15 A Looking for MM -- yeah, here it is. We got it.
16 Just a followup.

17 Q Quadruple M.

18 A The followed deeds -- so Lynita transferred it as --
19 to Grada. And that was a sale. And I -- and for -- it was at
20 10:35 Grada received some condemnation proceeds on some other
21 land that it owned. It needed to replace that property in
22 order to defer the gain on that. And so Lynita sold Grada the
23 hotel for 3.5 -- I think it was a 3.5 million dollar note. So
24 Grada qualified for deferral of that gain under Code Section

1 1035. Grada then transferred it back to Lynita and I don't
2 remember what part of that -- why that transaction was, why
3 they gave it back. I -- it was I believe an exchange, but I'm
4 not certain.

5 Q Do you remember anything about Lucky Lucky Lucky
6 property in that exchange?

7 MR. DICKERSON: Why do we lead him? Objection.

8 THE COURT: Do you want to rephrase the question?
9 Do you recall the steps you're going through now?

10 THE WITNESS: Yes. There was some property that was
11 owned by Lucky Lucky Lucky which Lynita's trust owned a
12 hundred percent of. And that was exchanged for this -- the
13 hotel here.

14 BY MR. SOLOMON:

15 Q And do you remember where the 3.5 million dollar
16 encumbrance ended up as a result of that?

17 A It's still there. It was still there. Lynita still
18 had that and they just swapped the security on it. So and the
19 property that Lucky Lucky Lucky owned was Minnesota -- or not,
20 excuse me, Min -- Missouri property. Mississippi, get the
21 right M there. I keep going south. I'll get there. But it
22 was a Mississippi property that Lucky Lucky Lucky owned. It
23 was transferred to Grada and Grada transferred back the hotel.
24 And then they swapped the security of the hotel -- so that the

1 3.5 million dollar note was still there and the security on
2 that was the Mississippi property.

3 Q Okay. Then what happened after LSN Trust got the
4 property back?

5 A It then transferred that property to Eric's trust.

6 Q And do you know what Eric gave up for that or Eric's
7 trust gave up for that?

8 A He -- he assumed the -- Soras's liability that was
9 there, that -- and they took over that guarantee. He -- that
10 was -- when he -- and he also gave -- I think it was '07.
11 That's -- he was kind of putting them altogether so that he
12 combined the hotel on both parts of it. So he was obviously
13 giving Soras better security on his note and took over that
14 liability on it was one of the main things he gave up on.

15 Q Okay. And then Eric sold that hotel, right, for the
16 1.9 that you talked about in --

17 MR. DICKERSON: I'm sorry. I missed that question.

18 Q Eric's trust sold that hotel for 1.9 million
19 dollars, correct?

20 A That is correct.

21 Q Do you know if he made any gain on that?

22 A There was a taxable --

23 Q Or what he had invested in it?

24 A There was a taxable gain, but if you look at him

1 assuming Soras's liability, that would I think believe wipe
2 out most of the gain right there as a million three of that
3 liability that he assumed.

4 Q Okay. Do you know how much he had invested into
5 that property?

6 A He had also through one of his other entities the --
7 what's the name of that -- it's the entity that has the barge
8 and stuff in it. We just -- Bobby just mentioned it earlier,
9 the --

10 MR. DICKERSON: Oh, Hideaway.

11 A Hideaway. Thank you. I can't remember all the
12 names, but Hideaway I have been told also invested a half a
13 million dollars in repairs into that hotel. So he had that
14 cost. And -- because Hideaway was managing the hotel and --
15 and so they had invested a half a million just in repairs.

16 Q Now let's go to Tierra Del Sol. Now let's go to
17 Exhibit 7 in your report.

18 A Okay.

19 Q This was the summary of transfers between the ELN
20 Trust and LSN Trust, correct?

21 A That is correct.

22 Q Now you have a column there that says cash only
23 transactions, do you see that?

24 A I do.

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee
of the Eric L. Nelson Nevada Trust dated
May30, 2001,

Appellant/Cross Respondent.

vs.

LYNITA SUE NELSON, Individually and in
her capacity as Investment Trustee of the
LSN NEVADA TRUST dated May 30,
2001; and ERIC L. NELSON, Individually
and in his capacity as Investment Trustee of
the ELN NEVADA TRUST dated May 30,
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada Trust
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

Supreme Court Case No. 66772

District Court Case No. D-09-

411537

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11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
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26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
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13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys' Fees and Costs	4611 – 4627

1 note on that and they'll deliver all the documents to the
2 attorneys office over the weekend on that, so about 10,000 --

3 MR. DICKERSON: I'll have it -- they'll be delivered
4 tomorrow.

5 THE COURT: Okay. Then Ms. Forsberg, you want a
6 copy as well?

7 MS. FORSBERG: Yes, please.

8 THE COURT: All right. So make copies for Mr.
9 Solomon and also for Ms. Forsberg and they'll deliver that
10 tomorrow so you have it over the weekend. So we'll admit
11 quadruple J, is that what it is?

12 MR. DICKERSON: Yes.

13 THE COURT: And we'll note the ongoing objections.
14 And for quadruple I, I don't think it was ever moved to be
15 admitted. So I don't know if that was --

16 MR. DICKERSON: No, I'm going to move that later.

17 THE COURT: Okay. I just want to make sure I didn't
18 --

19 MR. DICKERSON: Yes. I'm going to -- I need to lay
20 a foundation for that --

21 THE COURT: Okay.

22 MR. DICKERSON: -- through Ms. Antanassio. And so
23 that Your Honor is aware, I don't want you to -- we're not
24 going to be giving you --

1 THE COURT: I don't want 10,000 --

2 MR. DICKERSON: -- 10,000 pages.

3 THE COURT: I don't want the 10,000.

4 MR. DICKERSON: Okay. I guarantee you I want this
5 trial done before football season starts.

6 MR. LUSZECK: I -- Mr. Dickerson, I would be fine
7 with a disc. I don't know that you have to copy them. If you
8 can just copy them onto a disc.

9 MS. PROVOST: They're already in a book.

10 MR. DICKERSON: We already have them ready for you.

11 MS. FORSBERG: I'm trying to save some trees.

12 MS. PROVOST: The trees are already dead.

13 MS. ANTANASSIO: The trees are done.

14 MS. PROVOST: The trees are already dead.

15 THE COURT: It's already dead.

16 BY MR. DICKERSON:

17 Q All right. So I believe we've -- can you take a
18 look at Page 131 of your report? Your account 2210.

19 A Yes.

20 Q Can you explain that to us so that we can understand
21 what you've done here?

22 A It's really just we talked about. We posted the
23 client's HA-1. It would just be the cash transactions.

24 Q You're using this one as an example. The start of

1 the year December -- well, December 31 of 2004. There's 1.3
2 million owed by somebody to somebody else. Who --

3 A It's owed that as money owed by Lynita's trust to
4 Eric's trust.

5 Q Okay. And then you bring that -- what happens then?
6 You brought that over and then --

7 A And then there's --

8 Q What adjustments have you made?

9 A There's 226,000 we show posted by our client -- the
10 client. We reversed one of those entries of 250 which we
11 picked up later down below, I believe. But it shows the
12 \$350,000 check. It shows the \$250,000 check. The \$25,000
13 check would have been included in the 226 adjustment that was
14 on the client's books.

15 Q Okay. So where is the -- if the 25,000 -- that
16 \$25,000 check you say is included in the --

17 A 226,062.

18 Q What's the other 221?

19 A 221, where is that?

20 Q Yes.

21 A I don't see that number anywhere.

22 Q Well, no. That would be minus -- oh, I'm sorry.

23 That would be -- minus the 25. So 201,000. What is the rest
24 of that?

1 A Cash flowing in an out between the trust,
2 transactions that were between the trust.

3 Q That are not evidenced by a promissory note?

4 A Not that I'm aware of.

5 Q So now looking at those four promissory notes that
6 you have included under your tab 5, is that the extent of the
7 promissory notes that were provided by Eric Nelson and the
8 people that work for him reflecting the documentation that
9 they have supporting loans that his trust took from Lynita's
10 trust?

11 A Yes.

12 Q Did they provide you with any promissory notes from
13 Lynita's trust to Eric's trust?

14 A I don't believe so, but I would have to ask Angelo
15 for certain.

16 Q Do you recall ever seeing a promissory note signed
17 by Lynita Nelson made payable to Eric or to Eric's trust or
18 any entity within Eric's trust?

19 A I did not personally.

20 Q Now if you turn to your tab number 6, can you
21 explain what this is? It's not referenced in your report, I
22 don't believe. I mean, you don't reference tab 6 in your
23 report. So what does this mean?

24 MR. SOLOMON: Okay. What page are you on?

1 MR. DICKERSON: It's 72.

2 A This was our reconciliation of client's computer
3 records between 2004 and 2005. It didn't reconcile.

4 Q What didn't reconcile?

5 A The capital accounts, the retained earnings, the
6 capital accounts. There was journal entries where assumption
7 is there was journal entries posted after year end that they
8 didn't have printouts for. So I mean, it's what they had
9 printouts for which was writing off some of the assets that
10 were no longer there. And then this is our reconciliation to
11 what we needed to do to reconcile that which we really took it
12 down -- well, we're able to figure out exactly why they were
13 out of balance and get the adjustment made.

14 Q I'm sorry, you were or were not?

15 A I was --

16 Q Okay.

17 A -- able to. And this is -- these are the -- you
18 know, they -- what balance has changed and so forth. And it
19 was our reconciliation. You can see we tied it out to zero.

20 Q And how did you do that? How do you -- what did you
21 use in order to make your reconciliation?

22 A We were able to identify where the changes were and
23 the assets and so forth. And, you know, like they had
24 retained earnings, didn't tie. So there was a difference of

1 that. So there must have been --

2 Q Okay.

3 A -- they posted income from these accounts, these --

4 Q Well, one of these that we've talked about earlier
5 that's come up, Lucky Lucky Lucky Investment, you have over
6 there I guess a negative 63,801. What does that mean?

7 A That was -- that -- the investment account between
8 2004 and 2005 had changed by that amount. And I think the
9 reason was is the 2000 -- like I said, the 2004 probably when
10 they were doing the tax returns had made journal entries to
11 post income on the investments, the partnerships and things
12 like that that was not posted on the printouts that they had
13 -- that we had. So Luck -- Lucky Lucky Lucky had lost as a
14 63,000 in '04 that had not been posted. Las Vegas Casino was
15 written off, because it -- it was disposed of and they were
16 still carrying a balance there.

17 Q So is this just for income? Is this the income
18 statement of reconciliation --

19 A It's --

20 Q -- or is this --

21 A It's the equity.

22 Q -- the balance sheet?

23 A It's the balance sheet equity.

24 Q Okay. So can you tell us what did they -- what did

1 the trust carry Lucky Lucky Lucky on its books as -- for book
2 value?

3 A I can go back to the general ledger. It's -- let's
4 go to -- originally starting in 2001 it carried a balance of
5 400 -- or actually, at the end of 2001 it was carrying a
6 balance of 506,529.

7 Q And did you reduce it by the 63?

8 A And then that changes. In 2002, there was a loss of
9 466,000. So that the investment or either cash was pulled out
10 or a loss. The investment was changed to 40,000. So at the
11 end of 2002 it was being carried at 40,000. Part of that
12 probably -- see, 2002 was when that Mississippi property was
13 transferred to Lynita and payment of that note. So that's why
14 it was decreased because they moved real estate out of that
15 entity and paid down the note. And that was the original cost
16 of that Mississippi property or part of it. I -- that's just
17 -- it's in that number.

18 Q I see.

19 A And then so it changes each year based on the Lucky
20 Lucky transactions. And we were able to tie -- tie that out
21 and get it to reconcile. So it's just --

22 Q And is there a reason that you didn't make reference
23 to this particular number 6 in your report?

24 A Probably, because it -- I think we mentioned that in

1 our summary of findings and let me see here if I remember
2 right. It is mentioned. It's just I didn't -- never
3 referenced the exhibit. Let me see here.

4 Q That's all right. You just believe that you
5 indicated that you did some type of reconciliation, is that
6 right?

7 A It's referenced in my report.

8 Q Where is it?

9 A It's Page 6, DG-0006. The second paragraph from the
10 bottom says see Exhibit 6.

11 Q Okay. You're absolutely right. Thank you.

12 A I was --

13 Q Okay. So --

14 A I was believing you that it wasn't referencing.

15 Q I didn't -- I thought I would find 6 before 7 and
16 your reference 7 before 6. So okay. Speaking of that, then
17 let's take a look back to your report. We had left off Page
18 5, the first full paragraph. We noted income that belonged to
19 Lynita's trust that was deposited into Eric's trust accounts
20 which we explained below. We also noted income that should
21 have been received by Eric's trust that was never posted to
22 Eric's trust books. The income did not go into any of Eric's
23 other accounts and therefore, we have assumed that this income
24 was deposited into Lynita's trust. We posted the net amount

1 as due to Lynita's trust. These figures are included in
2 Exhibit 7. So explain that to us what you're telling us here.
3 We look at Exhibit 7. And can you --

4 A Yeah, I explained that yesterday and that -- because
5 Mark was questioning me on that also. There was rental income
6 from Tierra Del Sol that we saw that was -- Lynita's trust had
7 owned that property, but we saw rent and expenses being paid
8 by Eric's trust, rent coming in and expenses for that property
9 being paid by Eric's trust. So -- and it was being picked up
10 as income and expenses on his trust when it did not belong
11 there. So we reclassified that to a due to, due from.

12 Q So that would be --

13 A That's all in yesterday's testimony.

14 Q So that would be a due from Eric's trust to Lynita's
15 trust?

16 MR. SOLOMON: Did you say Tierra Del Sol or Lindell?

17 MR. DICKERSON: He said Tierra Del Sol.

18 THE COURT: He said Tierra Del Sol.

19 A I said Tierra Del Sol and my --

20 MR. SOLOMON: Yesterday you said Lindell, so --

21 THE WITNESS: Well, here. Let me --

22 Q So let's go over to 7.

23 A Well, maybe I'm speaking of the wrong property.

24 It's -- it's in the ab -- it's in my report though.

1 Q Let's take a look at Exhibit 7, because this might
2 be a good time for you to explain this to us.

3 A Okay.

4 Q All right. This is entitled summary of transfers
5 between Eric's trust and Lynita's trust, correct?

6 A Let me -- yes.

7 Q And the purpose of this is to show us what?

8 A The tran -- the summary -- summary of transactions,
9 transfers between the trusts.

10 Q Okay. Now your second column -- your first column
11 just, what, talks about, what, the year in which the
12 adjustment is being made or the year for which it's being
13 made?

14 A Correct.

15 Q And the second column says exchange of property at
16 book value -- BV is book value?

17 A Yes.

18 Q Slash --

19 A Fair market value.

20 Q -- fair market value.

21 A Correct.

22 Q Why are some of them book value and some of them
23 fair market value?

24 A Most of them are book value. The only item I picked

1 up was -- there was money due to Soras that wasn't reflected
2 on the books properly. I mean, it was shown as an asset when
3 it fact it was a net liability. And so that's one item.

4 Q On whose books?

5 A On Lynita's books originally.

6 Q So Lynita's books had a liability that was --

7 A It had a note receivable.

8 Q And it showed it as an asset?

9 A Correct.

10 Q And it was really a liability?

11 A Along with that, yes. That's correct.

12 Q All right. So let's go through if you can explain
13 -- maybe let's start with -- the cash transactions at the
14 first line simply means what, cash exchange between the
15 parties?

16 A Correct.

17 Q Between the trusts? Right. Now can you confirm
18 then if the number is a positive number, does that mean that
19 it's money going from or value going from Lynita's trust to
20 Eric's trust?

21 A If it's a positive number, that means it's value
22 going from Lynita's trust to Eric's trust, yes.

23 Q And then a negative number means that it's value
24 going from Eric's trust to Lynita's trust, correct?

1 A Correct.

2 Q Now does this then summarize all the adjustments
3 that you had to make based upon the books as you found them?

4 A That's not quite a correct statement. A lot of
5 these adjustments were actually made by Lana in the general
6 ledger. This is just summarizing the totals by year.

7 Q Okay. Well, then why -- if they were made by Lana
8 or the trust, wouldn't it have been corrected at the first of
9 each year.

10 A What do you mean corrected?

11 Q Well, wouldn't you have -- if corrections aren't
12 being made properly by people taking care of the books for the
13 trust, are these just adjustments that you had to make --

14 A No, that --

15 Q -- the last year?

16 A No. No, you're -- this is actual book entries made
17 by the client that we did not make any adjustments for. It's
18 summarizing what took place by year in the due to, due froms.

19 Q Okay. So let's look at --

20 A There are some -- let me finish. There are some
21 adjustments we made and those are also included on here, but
22 the bulk of this is --

23 Q Well, let's go through it then. Cash transactions,
24 2001. What does that reflect?

1 A Those are all the journal entries, cash coming in
2 and out between the trusts that was posted on the general
3 ledger in that year. That's not our adjustment. That's what
4 actually took -- those --

5 Q So that showed that approximately \$268,000 from
6 Lynita's trust went to Eric's trust?

7 A That's correct.

8 Q And then in 2002 it shows 440,000 apparently going
9 from Eric's trust to Lynita's trust?

10 A That's correct.

11 Q Now if you take a look at your footnote D, it says
12 this note was paid off in 2002 with Mississippi real estate
13 from Lucky Lucky Lucky Inc. It was not part of the property
14 transfer in 2004 to 2007. What does that mean?

15 A Just what it says. It means that Lucky Lucky Lucky
16 now had a liability to Lynita's trust. Eric transferred an
17 asset he had in payment. And then Lucky Lucky Lucky paid off
18 that note with property that was in Mississippi.

19 Q And that Mississippi property then went to Lynita?

20 A Yes, it did.

21 Q Okay. And so why is this showed at this point? I
22 guess you can make the correction in later --

23 A Oh, no. No. There's no correction for that. That
24 -- the title's transferred in 2002.

1 Q So as I read that then, that's property going from
2 Eric's trust to Lynita's trust?

3 A What went from Eric's trust to Lynita's trust was a
4 promissory note that Eric had a receivable from Lucky Lucky
5 Lucky. That satisfied the debt. I further explained that
6 Lucky Lucky Lucky paid off that note by transferring real
7 estate it owned. It was entitled in Lucky Lucky Lucky's name
8 to -- to Lynita's trust.

9 Q Now each of the next one, cash transactions, those
10 reflect what?

11 A Cash transactions posted on the general ledgers.

12 Q So then we take a look at 2003 then, a hundred and
13 ninety-six thousand plus was -- went from Lynita's trust to
14 Eric's trust?

15 A Correct.

16 Q And in 2003 676,000 plus again went from Lynita's
17 trust to Eric's trust?

18 A Correct.

19 Q And then 2004 just the opposite, is that right?
20 375,000 --

21 A That's --

22 Q -- almost 376,000 went from Eric's trust to Lynita's
23 trust?

24 A Correct.

1 Q Now what are the next ones on here? All under
2 Mississippi properties.

3 A This was the book value of all of the Mississippi
4 property that was retitled in Lynita's trust or transferred to
5 Lynita's trust in 2004.

6 Q So that's the book value.

7 A That's the book value.

8 Q All right. And so what you're telling us here is
9 then all of these assets then went from Eric's trust to
10 Lynita's trust, correct?

11 A Correct.

12 Q Okay. And then we have land Wyoming 200 acres and
13 again, this appears to be 250 -- is it 250,000 going --

14 A Yes.

15 Q -- from --

16 A Yes, it is.

17 Q Now where do you get the 250,000?

18 A That was the book value of that property. It's what
19 Eric's basis was on the books.

20 Q Is that for a hundred percent or 40 percent?

21 A I don't recall. I -- I thought it was a hundred
22 percent.

23 Q Okay. Now do you know that Larry Bertsch -- I
24 believe I may have the number off a bit, but I believe Larry

1 Bertsch has valued that at 405,000. Were you aware of that?

2 A How much? I didn't hear.

3 Q 405,000.

4 MR. SOLOMON: As of when?

5 MR. DICKERSON: The appraised value for the
6 property.

7 MR. SOLOMON: As of when?

8 MR. DICKERSON: Is there an obligation ?

9 A I'm aware that Larry Bertsch appraised that
10 property. I -- here, it's -- I posted it at book value.

11 Q At book value. And the reason for that?

12 A I -- well, because if I was told in 2004 that it was
13 worth a lot more, Eric thought that this Mississippi property
14 at the time was worth 10,000,000. I thought if I posted that,
15 he was transferring 10,000,000 of assets to Lynita's trust. I
16 -- I just wanted to -- because the -- the reason I did this in
17 -- at not at fair market value, but it was that the -- it was
18 supposed to be an exchange of -- here, I'm giving you this
19 property, you giving me this property and we're leveling off
20 the trust. We're -- I'm moving these assets here, you move
21 these assets here. And in the end, we owe each other nothing
22 for these transfers.

23 Q That was what your goal was. That's why you're
24 putting this together.

1 A I'm just showing here's the book values, what was
2 here, this year-to-date column. I'm -- I'm adjusting these in
3 the end at the very bottom. So in 2004, I did make journal
4 entries for the transfer and I just said here's the book
5 value. Even if the fair market value is substantially
6 greater, I didn't charge Lynita for the fair market value. I
7 charged -- charged the trust for its cost basis.

8 Q All right. Then we go to cash transactions for
9 2005. Apparently 576,000 went from Lynita's trust to Eric's
10 trust, correct?

11 A Repeat that?

12 Q 2005, cash transaction. \$576,000 plus in cash went
13 from Lynita trust to Eric's trust?

14 A Correct.

15 Q And then the next one cash -- okay, this is the tax
16 refunds. So you're giving Lynita credit for 47,000 -- or
17 excuse me, \$97,505 that Eric had actually put in his trust
18 from that joint tax return, is that correct?

19 A That is correct.

20 Q And then we see the next year transaction includes
21 Tierra Del Sol proceeds 2005. So we show an excess of a
22 million dollars going from Lynita's trust to Eric's trust, is
23 that right?

24 A A million dollars going from Lynita's trust to

1 Eric's, right. Correct.

2 Q And explain that to me when you say includes Tierra
3 Del Sol proceeds.

4 A That -- well, there was still a note receivable that
5 Lynita had on Tierra Del Sol and that deposit I think on
6 payment of that note went into Eric -- one of Eric's accounts.

7 Q And that would have been in 2006?

8 A Correct.

9 Q And that has been there in Eric's account since
10 2006?

11 A Well, you can see the following year that he paid
12 Lynita back more than that.

13 Q Well, what we have --

14 A So it really didn't stay -- you can't say that.

15 Q But what it shows though is in 2007 for whatever
16 reason it may be 1.481 million went from Eric's trust to
17 Lynita's trust, is that correct?

18 A That's correct.

19 Q And then we see the -- another cash trans -- well,
20 that's -- then we have the -- is it this -- the Lindell
21 building 50 percent?

22 A Yes. Let me line these up here. Yes.

23 Q Okay. So is that 50 percent of the value?

24 A Book value.

1 Q So the 749,627 is what -- it was carried on Eric's
2 books as being the book value, is that correct?

3 A That is correct.

4 Q Now do you show --

5 A Or I'm sorry. I take that back. That we reversed
6 that. That was what -- it appeared that it was carried on
7 Lynita's books for and then transferred to Eric's and then we
8 -- and then Eric was carrying the same basis on his books.

9 Q So when -- okay. So what you're doing is is by
10 making a book entry, are you putting that in Eric's or are you
11 putting that for Eric is how much is owed to Eric?

12 A No, I'm saying that's owed to Lynita.

13 Q Okay. And is that based upon the transfer of 50
14 percent interest?

15 A Yes.

16 Q And how about the rents? Are those included in
17 there or is that somewhere else?

18 A That would be in the -- in the cash transactions.

19 Q So if I understand, and correct me if I'm wrong,
20 what you found is that 50 percent of the Lindell building was
21 transferred from Lynita's trust to Eric's trust in 2007 and at
22 that time there was no compensation paid to Lynita for that,
23 is that correct?

24 A Well, that's not correct. I think the compensation

1 was paid in an earlier year with the transfer of the
2 Mississippi properties.

3 Q And how is that? The transfer of the Mississippi
4 properties was for everything that was owed up to that --
5 shall we go back to that --

6 A Not -- not the Mississippi properties that were in
7 Dynasty. So there was in addition to the property that was
8 originally owned by Eric's trust, Eric also transferred
9 properties owned by Dynasty, LLC. So there -- there's a
10 distinction. And --

11 Q So then it's your understanding based upon your
12 conversations with Eric that in exchange for him receiving 50
13 percent of Lindell, he transferred property in Mississippi
14 owned by Dynasty to Lynita?

15 A Yes.

16 Q Okay. And then we see Brian Head Cabin. That
17 apparently was in 2007 also which is we learned from Jeff Burr
18 it's kind of the year that there was discussions about
19 divorce. We see that 50 percent of the cabin went over to
20 Eric. You're aware that Lynita owned a hundred percent of
21 that.

22 A I am.

23 Q Okay. Now she received no compensation in 2007 for
24 transferring that 50 percent interest to Eric, did she?

1 A Because the compensation was paid on an earlier year
2 with the transfer of the Mississippi property.

3 Q Okay. So just can you explain to me how is
4 consideration paid in an earlier year for something that's
5 going to occur in the future?

6 A Yes. I mean, if there is an agreement that we're
7 going to move these things and it takes time to transfer
8 titles and things like that, that makes -- it makes sense.

9 Q So what earlier year was the Mississippi property
10 transferred?

11 A 2004.

12 Q And so here we are 2007. So it took him three years
13 to do a deed to a piece of property in Utah.

14 A Yeah, and the goal was is to cleanup those titles in
15 the Mississippi.

16 Q I see. And it took him three years to do a deed to
17 an office building over here on Lindell Avenue, correct?

18 A Uh-huh (affirmative). That's --

19 Q Now High Country Inn, you have an adjustment here.
20 Explain your adjustment of \$213,000 plus. What is that
21 telling you?

22 A That's the cost basis that they have in that
23 property.

24 Q Now is there a reason that you didn't use the 1.24

1 million that Eric received from the sale of that property?

2 A The same reason I didn't use the fair market value
3 of the other properties. I was booking every -- there at book
4 value.

5 Q Well, but all the other properties up to this point
6 in time continue to exist, don't they?

7 A High Country Inn was in existence at the time it was
8 transferred.

9 Q Well, High Country Inn sold in 2007 for 1.24
10 million, is that right?

11 A Yeah. And also -- and yeah, what -- what you're
12 missing is when it's sold, the portion that Lynita owned was
13 only a piece of it. There was the OTB that was sold to Soras.

14 Q But you already indicated earlier that she owned the
15 --

16 MR. SOLOMON: Your Honor, can you let him --

17 Q -- motel.

18 MR. SOLOMON: -- finish the question before he
19 interrupts?

20 THE COURT: Let him finish. Let him finish.

21 A So that OTB had been sold to Soras back in 2000 --
22 2004 prior. I'm not sure what year. Eric then acquired that
23 OTB property in 2007 by giving Soras other property. He gave
24 him first 39th Street Avenue warehouse in exchange for the OTB

1 property which was part of the hotel.

2 Q And this is what Eric told you?

3 A No, I saw the documents. I saw the transfers, I saw
4 the -- the agreements between Soras and Eric.

5 Q And when did you see these?

6 A As I was preparing a report during the time I
7 prepared the report. And then as -- after -- then 39th Street
8 was going to be sold. So Eric wanted it back from Soras. So
9 he gave Soras Arizona property from BanOne in exchange for
10 39th Avenue so he could dispose of it. And so Soras was
11 really hanging onto these things as security for his notes
12 just like we had the security similar, I guess, as because he
13 owed Soras money. And actually, it was Lynita's trust that
14 owed Soras money because it was Lynita's trust that entered
15 into the original transaction to sell part of the hotel to
16 Soras in that prior year.

17 So Lynita took cash and took cash of about a million
18 two, a million three on the sale of the OTB. I think maybe it
19 was in '02 or '04. And it also -- Lynita's trust would have
20 also taken a note, that note receivable which is about a
21 million dollars. But that note was tied to a requirement that
22 yeah, I'll pay you interest on the note, but you're going to
23 pay me back all this money and -- and rent so that it netted
24 out to 16,000 a month that had to be paid back to Soras each

1 month.

2 Q And Soras then paid back 10,000.

3 A Soras paid back 10,000. So yeah, it was a net.

4 Q Okay. So a net sent to Soras.

5 A It was -- or it was 26,000 -- I think it was a net
6 16 negative a month that the trust owed Soras. So it was
7 26,000 one way, 10,000 the other way. And I think if I bring
8 -- if I got the numbers right and my memory is right -- so
9 there is this huge liability.

10 Q In Lynita's trust.

11 A In Lynita's trust. And Eric took that last part of
12 the compensation you can say for taking these properties,
13 because Eric assumed that liability and negotiated with Soras
14 on -- on -- he entered into a new agreement with him. I'm
15 going to give you a million dollars of Arizona property and
16 I'm going to guarantee you that you collect rent on these.
17 I'm collecting rent of this amount right now. I'm going to
18 guarantee that you get your 16,000 a month in rent. Right. I
19 may have some of the numbers off, but it's right in that area.
20 And so Eric gave up the rent he had on that Arizona property,
21 let Soras hang on to the title until he got paid back. And
22 then Eric said when these properties sell, I guarantee you the
23 sales price of this. So if the properties don't value it what
24 was owed back to Soras, that Eric had guaranteed the

1 difference. And that was done after Eric took over the
2 liability from Lynita's trust. So that was part of the
3 compensation of this 2007 property.

4 Q Now you've --

5 A -- which is what I'm trying to reflect on of course.

6 Q You see no personal guarantee from Eric or the trust
7 to Soras, isn't that correct?

8 A No. I saw the agreement they signed. So I do see a
9 personal guarantee by Eric.

10 Q All right. And do you know if those documents were
11 -- well, you wouldn't know. Now originally then all of this
12 transaction that you just described somehow a liability ended
13 up in Lynita's trust, is that correct?

14 A I'm saying Lynita's trust received on the sale of
15 the OTB cash which she was allowed to invest and the note
16 receivable that he was paying interest on. But the deal was
17 is in the end I'm going to give you back the OTB I think is
18 the gentleman's agreement they had with Soras. And I'll just
19 -- and I get to use this cash now to invest. The trust gets
20 to use the cash to invest and from there just as long as I get
21 paid back and this is -- the net 16 a month was kind of like
22 interest on the money that Soras had paid him.

23 Q And do you know how Lynita was as you put allowed to
24 invest that money?

1 A I don't know, because I didn't trace Lynita's
2 records.

3 Q Do you know if Lynita has ever entered into any
4 transaction with Soras?

5 A Yeah, I saw the sales contract.

6 Q The sales contract signed by her, right?

7 A I believe it was signed -- yes.

8 Q And this was a transaction that was arranged by Eric
9 as you described.

10 A I think he -- yeah, I -- I believe he negotiated. I
11 don't know that for sure. I'm not sure.

12 Q And then when the liability was sitting there in
13 Lynita's trust, Eric figured a way to move it out of Lynita's
14 trust over to his trust, correct?

15 A Correct.

16 Q All right. Now you have Soras down here. You see
17 -- you mentioned Soras. ENR, that's a note receivable Soras.

18 A Okay. Bob, one question. The one point though I
19 was going to make after I got through the detail on answering
20 that question was -- geez, it's getting late in the afternoon.
21 I know there was a point to get to.

22 Q I'll tell you what. If you think about --

23 THE COURT: You can email it to us then you'll
24 remember.

1 THE WITNESS: Oh, you --

2 Q If you think about it and you stop me and I'm going
3 to give you the floor, okay?

4 A All right. All right.

5 Q All right. Back down to Soras. We see here you got
6 some adjustment that seems to suggest that Lynita owes Eric
7 \$1,580,000, is that right?

8 A Yes.

9 Q Okay. And why did you use that number?

10 A I was looking at that 16,000 a month cash flow. And
11 that's -- I've got the schedule back here just to confirm.
12 I'm thinking the right --

13 Q You got it at D-50, I believe. D-250.

14 A 250? Yeah.

15 Q It's what I'm trying to understand, because D-250
16 you made some adjustments on that.

17 A But what I'm -- what I'm doing is the net result was
18 is 16,000 has to be paid to Soras each month. After he pays
19 the 10,000, I need 26,000 back. So I was valuing -- I used
20 present value of the cash flows and what that liability was,
21 the value of that. So I used -- I used the current market
22 rate. I don't remember now. I would have to look. I think I
23 exhibited what interest rate I used to value that.

24 Q Okay. So in other words, the liability that Eric

1 removed from Lynita's trust, you're now assessing back to
2 Lynita because it's a liability in Eric's trust according to
3 you.

4 A That's correct.

5 Q Now is it a real liability?

6 A Very real.

7 Q Okay. Well, isn't Soras continued to be paid?

8 A Actually, yes. He's --

9 Q Okay.

10 A -- continued to be paid.

11 Q Now wasn't there a point in time that property in
12 Arizona was transferred, title to the property was actually
13 transferred to Soras in order to get rid of the obligation?

14 A That is correct.

15 Q And what happened to that transaction? Is it -- was
16 it still in existence or is it --

17 A Still in existence with the personal guarantees on
18 it.

19 Q And the property that was transferred to him was
20 supposed to cover the entire amount owed, is that right?

21 A That is correct.

22 Q And from those properties that were transferred,
23 Eric was telling him I will get you at least a net \$6,000 a
24 month rent, is that correct?

1 A That is correct.

2 Q So we transferred property out of Eric's estate or
3 Lynita's estate to Soras and titled in Soras's name, right?

4 A Correct.

5 Q And notwithstanding the fact that we've taking
6 roughly a million and a half dollars in property and transfer
7 it to Soras, you're not still showing a liability that's owed
8 by Lynita to Eric, is that right?

9 A Yes.

10 Q Now if you take a look at --

11 A It was an obligation she had.

12 Q Would you take a look at Page 250? Now you have
13 your Soras note there, but it appears as if you made an
14 adjustment and brought that down to \$500,000.

15 A That's correct.

16 Q Okay. And why did you do that?

17 A Because the deal was renegotiated in that year so
18 that Eric went and transferred the BanOne Arizona property to
19 Soras and guaranteed him the rent on that and since the
20 property was currently covering that rent, that wasn't -- if
21 any -- it looks like the future cash flows he was giving the
22 cash flows to him.

23 So -- and also -- and I -- and we looked at the
24 value of the property, approximate appraisal. I mean, which

1 was given to me by Eric of what the property securing that
2 was. And based on the real estate market in Arizona right
3 now, that it looked like that guarantee was about 500,000
4 short, that the -- the Arizona property's value was 500,000
5 short of what was still owed Soras.

6 Q Okay. So you used values that Eric gave you for the
7 properties.

8 A That is correct.

9 Q Now you didn't use the values that Larry Bertsch has
10 used for the properties in Arizona, have you?

11 A I think I actually looked at that too. I -- what --
12 I'm trying to recall. I had Angelo looking at that.

13 Q Well, are you --

14 A I may --

15 Q Go ahead. I'm sorry.

16 A I -- you know, I -- Bob, I don't remember --

17 Q Okay.

18 A -- if I -- because I --

19 Q Now --

20 A -- know I was looking at that to --

21 Q -- you realize that through -- he -- for the purpose
22 of what you are doing here with Soras, he provided you with
23 values that are less than book value of the property, isn't
24 that correct?

1 A I'm not sure.

2 Q Okay.

3 A I don't know. I would have to look.

4 Q Now can you tell me then that you have adjusted this
5 to 500,000, right?

6 A Correct.

7 Q Why do you not put it at 500,000 over here on your
8 Page 73?

9 A Because it -- the value of it, it was different at
10 the time Eric took it over. It wasn't until 2011 that they
11 renegotiated the loan.

12 Q Okay. So do you credit that anywhere here, the
13 additional almost \$1,000,000?

14 A Well, the renegotiation of note was due -- work
15 performance no -- 2011 had nothing to do with Lynita's trust
16 at that time.

17 Q Okay. So notwithstanding the fact that really the
18 true liability is only in your opinion as a contingent
19 liability of possibly 500,000. You're putting in here at one
20 point 5,000,000.

21 A And it also cost Eric all the BanOne property too.

22 Q Well, the BanOne property is all gone, correct?
23 It's gone from whatever estate whether this is Lynita's
24 estate, Eric's estate, it's gone from the family's estate,

1 isn't it?

2 A There was a payment made on that liability on that
3 real estate.

4 Q All right.

5 A And I do remember the point that I was going to make
6 earlier on the sale.

7 Q The floor is yours.

8 A It finally came back to me. It's moving slow now..
9 But when the sale of the hotel in Wyoming was made, those
10 proceeds cover part of the OTB and part the hotel. So it's
11 probably -- you know, I don't know what the split would be,
12 but not a hundred percent of those sales proceeds really were
13 for Lynita's share of the hotel.

14 Q Oh, I couldn't agree with you more. Not a hundred
15 percent was for her, but she didn't get a dime, did she?

16 A She got taken -- the Soras liability taken off her
17 books and she received the Mississippi property in 2004.

18 Q But you just put Soras back on her books.

19 A No, I didn't. I -- no, I didn't.

20 Q Okay. So why does she owe Eric 1.58 million?

21 A I'm adjusting everything at the end to \$1,000,000 on
22 the property transfers to actually not even 1,000,000, but I'm
23 showing it -- yeah, as the value of the 50 percent of the
24 Mississippi property. So if you look at the last entry, it's

1 adjusting all those property transfers --

2 Q Well, we're getting to that last entry right now.

3 A But -- but that's what I actually end up on the
4 books.

5 Q Okay. So let's get to the last entry. adjustment
6 to reflect value of 50 percent of Mississippi property due
7 back, total receivable due on property exchanges and tax
8 loans. Okay. So what you've done is you've thrown in a
9 number here of \$496,695 that Lynita owes Eric for 50 percent
10 of the value of the Mississippi property that was transferred
11 in her name for whatever reason is may have been transferred
12 into her name, correct?

13 A Correct.

14 Q Okay. And where did you come up with \$496,695?

15 A It's simple. I looked at all the book values and
16 all the journal entries I have for the transfers, accumulated
17 those. Right. You can see those in the running of the
18 property book value, fair market value column.

19 Q Okay.

20 A And then so -- so at the end of the day what should
21 be is that it -- it's the 50 percent of the Mississippi
22 property which is valued at a million. So I'm showing based
23 on these transfers that Eric in book value, not fair market,
24 but in book value gave -- well, other than the Soras liability

1 gave 503,000 to Lynita's trust in assets. That's -- so it's
2 showing that Lynita would owe 503,000 back. Well, if the deal
3 is is we're supposed to be even and -- but I'm -- I got
4 shorted out of a million of Mississippi property, 50 percent
5 because it -- the 80 -- the beachfront property is easily
6 worth 2,000,000 based on the appraisals, 50 percent of that is
7 a million. I -- that is -- that 496 figure is a million minus
8 the 503 already had booked over the years to get it to exactly
9 a million.

10 Q Okay. So it's just kind of a number you pulled out
11 of the air to get to a million.

12 A No, it's based on the appraisals. It's not pulled
13 out of the air. It's --

14 Q The appraisals that Bertsch has --

15 A Yes.

16 Q -- provided us?

17 A Yes.

18 Q And then your bottom line as I understand it is
19 Lynita's trust owes Eric's trust \$28,731, is that right?

20 A That's correct. And it's made up of two components.
21 It's made up of the cash and the property. And that's
22 separated that out.

23 Q Okay. If we just turn to tab 8 and we're not going
24 to go through every page here. I just kind of would like to

1 understand because you use a different form for different
2 years. Starting with 2001. The first column, December 31,
3 2000, you're just showing us that you had no value. It's just
4 -- all that zero.

5 A Yeah, we just didn't even use -- we didn't input
6 anything into 2000.

7 Q Okay. And so the second column, December 31, 2001
8 unadjusted. That's the number from Eric's general ledgers or
9 Eric's books?

10 A That is correct.

11 Q And then --

12 A It has a beginning -- it has beginning balances in
13 that year.

14 Q It's beginning balances notwithstanding the previous
15 years because you couldn't reconcile the previous years,
16 correct?

17 A Well, no. It includes -- it's the beginning balance
18 on that particular date of the --

19 Q Right.

20 A -- balance sheet.

21 Q Now adjustments and credits.

22 A Okay.

23 Q Those two columns, the next two columns. What do
24 they tell us? What do they -- is this your adjustments and

1 credits?

2 A It's a combination.

3 Q Okay.

4 A AJE Number 1 is the client's transactions as posed
5 to their general ledger. So that is just right off of their
6 GL. It's just a total for the year --

7 Q All right. And I apologize.

8 A -- of transactions going back and forth.

9 Q I'm trying to understand. You have used that AGE --
10 AJE Number 1. Oh, I see. So that's the -- so every AJE
11 Number 1 is something that shows up on the books, is that
12 right?

13 A Right. And so if you look at this first page, the
14 only entries on there are from the client's general ledger.

15 Q Okay.

16 A And if it's an entry we made, it would be two
17 through whatever.

18 Q Can you show me the first adjustment you made?

19 A Well, the journal entry is on the back. Let's go
20 straight to them. They're right after the trial balance. So
21 in that year, there is only two journal entries. One is the
22 -- okay. I'm on 86. I'm sorry. Go to 86. So the first one
23 we previously discussed that those were the beginning equity
24 accounts that were carried over from the separate property

1 trust. And so we were clearing out -- cleaning out those
2 accounts and showing that as beginning corpus or principle.

3 Q So what are we looking at here? On Page 86, what
4 are your adjustments? What numbers?

5 A Journal Entry Number 2, AJE-02.

6 Q Now what's AJE Number 3? Is that --

7 A And Number 3 is -- these were -- there's personal
8 federal tax expense that we showed as a distribution and there
9 was a due to from -- we posted, because Eric was paying the
10 joint tax return on that year. And so we allocated it 50/50
11 even though --

12 Q Let's do this then. For your AJE-02 adjusting
13 5/31/01, right?

14 A Correct.

15 Q Are there four adjustments there?

16 A It's one adjustment. It's four accounts that get --

17 Q So tell us the adjustment. What's -- what are you
18 adjusting and why?

19 A There was beginning numbers of -- in these accounts
20 which would not be there for a brand new trust. These were
21 told equity accounts and we're cleaning them up, reclassifying
22 them to corpus.

23 Q And then how about under JE-03?

24 A These were personal expense that was paid by the

1 trust that we allocated to distributions or to due to from
2 Lynita's trust.

3 Q Okay. And so we can -- let's take a look at the
4 next year, 2002 for the -- this is setup the same way then, is
5 that right? With the --

6 A That's --

7 Q -- columns.

8 A That is correct.

9 Q If you could turn to Page 88. The top entry there,
10 1225, that's Shelly Newell?

11 A Yes.

12 Q Now does that indicate that Shelly Newell owes
13 Eric's trust \$3,501?

14 A She did at the beginning of the year and it was paid
15 off during the year.

16 Q And then how about then 1325? PN consulting.
17 That's Paul Nelson consulting?

18 A Yes.

19 Q And what does record activity 2002?

20 A The trust loaned him some money. That's -- that's
21 what was posted in their general ledger. Again, that's AJE
22 Number 1. So it was what was posted during the year, cash
23 transactions in the client's general ledger.

24 Q And do you know if that's ever been paid back?

1 A Well, let's go to the --
2 Q Let's go to 103.
3 A Okay.
4 Q 103 appears that during this same year -- excuse me.
5 Let's go to -- well, if we go to -- let's go to 94 first. If
6 I understand it, this is a loan dating back to 2002. Is that
7 what that means?
8 A Well, what -- what are we look -- what are you
9 talking about?
10 Q Well, I'm on 88 again. So that --
11 A Oh, okay.
12 Q -- the 92 --
13 MR. SOLOMON: I'm sorry, where are you now?
14 MR. DICKERSON: On --
15 MS. PROVOST: 88.
16 MR. DICKERSON: -- 88.
17 Q The \$92,950, is that dating back to 2002?
18 A Yes.
19 Q And we're in 2002. Okay. So if you go over to 84,
20 that shows that --
21 MS. PROVOST: 94.
22 Q 94. That shows that we received interest on that
23 note, Eric received interest on that note of a hundred and 21
24 dollars?

1 A Which account are you looking at?

2 Q 4240.

3 A That's correct.

4 Q And then if we go to 103, it shows that again,
5 there's no principal payment at all during 2003, is that
6 right?

7 A No, that's incorrect. It was paid off during the
8 year.

9 Q Okay. So it's paid off in full. Do you know how it
10 was paid off?

11 A I don't recall.

12 Q Did you ask Eric how it was paid off?

13 A It would be in the general ledger. I just don't
14 recall.

15 Q Can you tell us how it was paid off?

16 A I got to invest in a new computer. I bought this
17 thing in 2005 and it's a little slow sometimes. I remember
18 that year.

19 THE COURT: Well, what -- I was born in the 50s.
20 I'm slow all the time, so okay.

21 THE WITNESS: So was I. I'm a 58er, so -- okay.
22 Let me see. General ledger 2003. And that is account 1325.
23 I'm looking at different account numbers here. Yeah, the
24 account numbers change throughout the year and we kept them

1 the same through -- in our books. It was different account
2 numbers back then. Let's see. Purchased a quarter int -- it
3 was a quarter interest in the Reno Albertsons. So it was paid
4 off with real estate, a quarter interest in some real estate.

5 Q So there was a transfer of real estate in Reno from
6 Paul Nelson to Eric Nelson?

7 A Correct.

8 Q Okay. All right. Now I only have one more entry to
9 ask you about and I'm through and I thank you for the time,
10 but --

11 A I can't believe this, Bob.

12 Q I'm going to turn to you 180 -- 160.

13 A 160.

14 Q The very last item there, the BanOne, it's 1340.

15 MR. SOLOMON: On Page 160?

16 MR. DICKERSON: Yeah, 160.

17 MR. SOLOMON: Oh.

18 A Yeah, notes receivable BanOne.

19 Q What is that \$4,768,000?

20 A That was -- I -- again, I am -- I -- without looking
21 at the GL, I'm going to tell you what I think it is, but I'm
22 --

23 Q Okay.

24 A -- not positive, is that was Eric's investment in

1 BanOne when they went and purchased a lot of the Arizona
2 property. That's how much money he's put into that. And it
3 was booked as loan to BanOne. And I can confirm that by --

4 Q Would you, please? It appears -- well, let's see.

5 A See, that's 2007.

6 (Whispered conversation)

7 A I'm showing you -- originally there was a hundred
8 thousand transferred. That'S not even in this number, just
9 the original investment in BanOne of a hundred thousand is a
10 purchase of a -- a house. And then it was money that was wire
11 transferred to First American Title Company for the Bullhead
12 City property.

13 Q So it was a purchase of property in Bullhead City?

14 A Yes.

15 Q Is that Mesa Vista?

16 A I -- I'm guessing. I don't -- I'm not positive what
17 they call it.

18 Q Now Kathy just told me -- pointed out to me because
19 I'm obviously tired and old that I forgot to talk to you about
20 anything about the debts.

21 A You lied to me.

22 Q Can you --

23 MS. PROVOST: Sorry. It's my fault for bringing it
24 up.

1 A You got me all excited.

2 THE COURT: He's an old lawyer. Is that enough
3 said? Come on, Mr. Gerety.

4 THE WITNESS: I should know better huh?

5 Q Let me ask you before you get to the debts. Can you
6 just tell us what Exhibit 9 is in there for?

7 A Exhibit 9 is the backup of the debts -- oh, I'm
8 sorry. Exhibit 9, the only thing here.

9 THE COURT: It's 258.

10 A Yeah, Exhibit 9 -- Exhibit 9 is the calculation in
11 my report where I stated that approximately 80 percent of the
12 assets in Eric's trusts were -- came -- or really generated by
13 the proceeds from the sale of Wyoming Downs. And that's the
14 calcula -- it's showing all the assets that are there as of
15 September the 30th.

16 Q And then tab 10 deals with -- is that your debts?

17 A Tab 10 is the value of the source obligation.

18 Q And --

19 A And I was saying it was 16,000. It was actually a
20 net 10 --

21 Q Pardon me?

22 A Originally I said it was 16,000 and my previous
23 testimony to you that I thought it was a net cash flow of
24 16,000. It's 10,000 as the actual number.

1 Q Oh, 10,000 is the net or 6,000 is the net?

2 A 10,000 is the net liability obligation per month to
3 pay to Soras at the -- in 2004. Or 2007, as of 2007.

4 Q Now this -- is this everything dealing with Soras?
5 Is that --

6 A Exhibit 10 deals with the valuation of Soras
7 liability. And it shows -- it's calculating what the present
8 value of those future cash flows are.

9 Q Okay. And that is Exhibit 9?

10 A That's Exhibit 10.

11 Q I mean, Exhibit 10. Excuse me. All right. So do
12 you know -- we talked earlier about property in Arizona, the
13 title to that property actually being transferred to Soras.

14 A Correct.

15 Q Correct. Now that property is being rented, is that
16 right?

17 A That is correct.

18 Q And Eric Nelson is managing those properties and
19 collecting the rents from Mr. Soras.

20 A That is correct.

21 Q And the rents on those properties are in excess of
22 \$10,000 a month.

23 A That is correct.

24 Q In fact, the rents are in excess of 16,000 a month.

1 A I -- I believe that's correct. That's somewhere in
2 that area, yes.

3 Q Do you know what --

4 A I'm not sure.

5 Q -- the rents are?

6 A I don't know the exact number.

7 Q So if the property is being rented to Soras, those
8 rental monies are what is being paid over to Soras, is that
9 correct?

10 A Restate the question? Make sure I heard --

11 Q The rent --

12 A -- you correctly.

13 Q Soras owns the properties, correct?

14 A The title is in his name currently.

15 Q Eric is managing the properties and collecting the
16 rents for Mr. Soras.

17 A Correct.

18 Q And Eric is required to pay a net of \$10,000 per
19 month to Mr. Soras, is that right?

20 A I believe that's correct, yeah. I -- I can't
21 remember the exact number --

22 Q And --

23 A -- that he's required to pay him --

24 Q And --

1 A -- but there is an obligation --

2 Q Okay.

3 A -- per month.

4 Q And the rents from those properties are in excess of
5 16,000 a month.

6 A I don't know the exact number. I do know that the
7 rents are in excess of the obligation to Soras. So I -- what
8 you're telling me sounds correct.

9 Q All right. So now I'm just trying to understand
10 your rationale of how you've done a -- I guess a present value
11 calculation of paying Soras a net of 10,000 a month.

12 A Simple. It's -- this is what the obligation was at
13 the end of -- at 2007 when Eric assumed that liability from
14 Lynita's trust. Eric's trust assumed the liability from
15 Lynita's trust. And so I'm -- and looking at it, what the
16 obligation was when he took it over. That was 2007. It
17 wasn't until four years later that Eric was able to hastily to
18 -- to renegotiate that, because he couldn't -- and workout a
19 deal, the here, I'll guarantee you the 10,000 by -- I'll give
20 you these properties, you -- you have title, you can control
21 me because all you got to do is we'll -- let me manage them
22 and I'll make sure you get your 10,000 a month. If the
23 rentals come up short, I guarantee you that you get your
24 10,000 a month or whatever that figure is that they

1 renegotiate it.

2 And so what I was valuing here was a 2007
3 transaction. And what happened four years later has nothing
4 to do with the value of what was happening when this was
5 transferred.

6 Q But in 2007 the secure -- do you know how that
7 transaction originally started with Soras?

8 A Yes.

9 Q Okay. Didn't it start originally with a piece of
10 property in Arizona?

11 MS. PROVOST: Wyoming.

12 Q Or it was in Wyoming. The first property was in
13 Wyoming.

14 A It started with the OTB.

15 Q Right. And money was being collected on that,
16 correct?

17 A Correct.

18 Q And again, it was a net of 10,000 and Eric was able
19 to pocket anything above 10,000, isn't that correct? Yes or
20 no?

21 A Yes. I --

22 Q Okay.

23 A -- that's --

24 Q And then --

1 A So here, let me rephrase that, if I could. Soras
2 basically says look, we'll -- we enter this like kind
3 exchange. I'm going to give you a million, two, three or
4 whatever that was and note, but you got to guarantee I'm going
5 to get my money back and I want 10,000 a month for giving you
6 this million three. I get to hold the title, just a security.
7 So Eric actually transferred title to him in the OTB. And
8 instead of a deed of trust, he actually gave him title and
9 said you can hold it. I can get that property back when I
10 want it. It's a gentleman's agreement that -- and I'll give
11 you other property as security.

12 Later down the road, Eric wanted to sell the hotel.
13 He gave him -- I -- so I got to -- Well, I got to get the OTB
14 back so I can sell it, because he couldn't sell the hotel
15 without the OTB. So he meets with Soras and -- and I'll give
16 you Arizona was 39th Avenue and I'll guarantee your rent on
17 this.

18 Q Now the hotel you're talking about is the hotel
19 that's in Lynita's trust.

20 A The hotel was in Lynita's trust, yes. And it tied
21 to -- though that was -- there was another piece of that
22 property that was called the OTB that Soras had title to.

23 Q So Eric wanted to sell the whole project thing, the
24 OTT and the -- the OBT and the --

1 MS. PROVOST: OTB.

2 Q -- hotel.

3 A So he had -- yeah. And so he had to get the OTB
4 back from Soras. And one reason -- plus, it wasn't gener --
5 there was nothing that generated rent for. And so he -- the
6 guarantee was coming out of his pocket.

7 Q Well, then he immediately transferred it over to
8 assets in Arizona. I believe it was an apartment complex,
9 wasn't it?

10 A It was -- what I -- my understanding was this 39th
11 Avenue, whatever that property -- I didn't even know what -- I
12 thought it was a warehouse.

13 Q Okay. All right. And were rental monies coming in
14 on that?

15 A And I don't -- I don't know on that one.

16 Q So what -- if I understand what you're telling then
17 -- well, then after the Arizona property it was transferred,
18 it was sold. It was then transferred to land in Mississippi,
19 the security for Mr. Soras, is that right?

20 A That is correct.

21 Q Okay. And then when Eric wanted to sell land in
22 Mississippi, he then got the land back from Mr. Soras and then
23 sold him land in Arizona.

24 A That's correct. And again, he's transferring the

1 title more as security of his obligation knowing that I'll
2 guarantee you you'll get paid back and hold this property as
3 title just as security instead of giving him a deed of trust
4 for a note, he's letting him hold title to the land.

5 Q And on each of these areas, each of these securities
6 that he transferred to him, money is being made on those, is
7 that correct, each month?

8 A I don't know that. No. I mean, with the OTB for
9 awhile, no, money wasn't being made on that. So originally
10 there was none. I -- I don't know about the 39th avenue. The
11 only one I know for certain that there is some money being
12 made this time was the new renegotiated property.

13 Q So --

14 A The new agreement.

15 Q -- when you come up with that 1.5 million that
16 Lynita owes to Eric, what you're attempting to do is say
17 you're assuming that no money was coming in to Eric in order
18 to payoff the -- the net 10 a month to Soras, is that correct?

19 A And then that's what was hap -- that was the case in
20 2007 when we did this value. The OTB was there was no gaming
21 going on there. It was empty, I believe. And the hotel was
22 not doing so well itself and there really wasn't any money
23 coming in, Bob.

24 Q Okay. Now did you know that Mississippi is still

1 titled in Mr. Soras's name?

2 A I -- no, I thought it was transferred back.

3 Q Okay. I don't believe it has, but we'll -- now that
4 you've raised it -- or I raised it --

5 THE COURT: As far as -- now is a good time to
6 break. I don't know how much time you have. I know you said
7 you wanted to go into the debts. I don't know if this is a --

8 MR. DICKERSON: Yeah. This is a good time to break.

9 THE COURT: Will you be able to come back on Monday
10 9:30 or --

11 THE WITNESS: I'll do that.

12 THE COURT: Did you schedule Mr. Bertsch when he's
13 -- because that's when I know he had a time.

14 MR. DICKERSON: No, I think --

15 MS. PROVOST: No, we told him we would let him know
16 because we wouldn't know --

17 MR. DICKERSON: We figure --

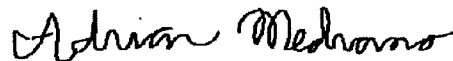
18 MS. PROVOST: -- until we saw what happened today,
19 so --

20 THE COURT: And you want me to open up Wednesday for
21 you as well?

22 MR. DICKERSON: Yeah. Yes, please.

23 MS. FORSBERG: Your Honor, I can do Wednesday, but I
24 do have a TPO hearing.

1 THE COURT: On Wednesday?
2 MS. FORSBERG: I do have a TPO hearing, so --
3 THE COURT: Okay. Yeah. We can just run back and
4 forth. We --
5 MR. SOLOMON: Those don't last long.
6 MS. FORSBERG: Except for the downstairs now. So
7 I'll really run.
8 THE COURT: Yeah, we'll call it a day.
9 (PROCEEDINGS CONCLUDED AT 17:06:41)
10 * * * * *
11 ATTEST: I do hereby certify that I have truly and
12 correctly transcribed the digital proceedings in the
13 above-entitled case to the best of my ability.

14
15 

16 Adrian N. Medrano
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CLERK OF THE COURT

OPPS

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Trustee of the ERIC L. NELSON

NEVADA TRUST, dated May 30, 2001

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON, LANA MARTIN, as
Distribution Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001

Defendants/Counterclaimants.

LANA MARTIN, Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON,

Crossdefendant.

Case No. D-411537

Dept. No. O

DATE OF TRIAL: July 16, 2012

TIME OF TRIAL: 9:00 a.m.

**OPPOSITION TO MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE TESTIMONY AND REPORT
OF DANIEL T. GERETY, CPA, LAYNE T. RUSHFORTH, ESQ., AND ANY PURPORTED EXPERT
TESTIMONY REGARDING THE INTERPRETATION OF LAW, AND APPLICATION OF FACTS TO
LAW; TO STRIKE THE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM;
AND COUNTER-MOTION TO CONTINUE TRIAL; AND FOR ATTORNEYS' FEES AND COSTS**

1 Lana Martin, Distribution Trustee ("Trustee") of the ERIC L. NELSON NEVADA TRUST,
2 dated May 30, 2001 (hereinafter "ELN Trust"), by and through her Counsel of Record, Solomon
3 Dwiggins & Freer, Ltd., hereby files the foregoing Opposition to Lynita's: (1) Motion in Limine to
4 Exclude from Trial the Testimony and Report of Layne T. Rushforth, Esq., and any Purported Expert
5 Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric
6 L. Nelson Nevada Trust's Pre-Trial Memorandum; and for Attorneys' Fees and Costs; and (2) Motion
7 in Limine to Exclude Testimony and Report of Daniel T. Gerety, CPA (hereinafter collectively
8 referred to as "Motion in Limine").

9 **I. INTRODUCTION**

10 Lynita's Motion in Limine is her latest request to impose a double standard by attempting to
11 apply a rule of procedure against the ELN Trust, which she herself has failed to comply with. Indeed,
12 Lynita seeks to exclude the expert reports and testimony of Dan Gerety, CPA and Layne Rushforth,
13 Esq. under NRCP 16.2, even though her own expert witness(es) failed to provide expert witness
14 report(s), and even though she has already stipulated to Mr. Gerety testifying as an expert witness at
15 trial regarding matters pertaining to the ELN Trust and LSN Trust. Noticeably absent from Lynita's
16 Motion in Limine is the fact that the ELN Trust advised her over six months ago that the Trustee had
17 retained Mr. Gerety (an accountant) and Mr. Rushforth (an attorney with expertise in estate planning
18 and NRS Chapter 166) as expert witnesses. Moreover, Lynita has made no effort to depose or
19 otherwise conduct discovery regarding the content or scope of their opinions.

20 Because Lynita undoubtedly realizes her timeliness argument is spurious, she also contends
21 that Mr. Gerety and Mr. Rushforth should be excluded because their expert opinions are inadmissible
22 at trial. Lynita, however, provides virtually no examples or statements from the expert reports to
23 which she objects. Rather, in a broad stroke, Lynita paints not only the entirety of their reports as
24 inadmissible, but alleges that their testimony at trial is likewise inadmissible. Lynita's inability to
25 point out specific examples of objectionable expert opinion, comes as no surprise as even a cursory
26 review of Mr. Gerety and Mr. Rushforth's reports illustrate that Lynita's sweeping allegations are
27 simply not true.
28

1 However, in the event this Court is inclined to grant Lynita's Motion in Limine, the ELN Trust
2 respectfully requests that this Court grant a short continuance so as to afford Lynita more time to try
3 to rebut these expert witness reports, as the ELN Trust will be unduly prejudiced if it were precluded
4 from calling either of Mr. Gerety or Mr. Rushforth as experts at trial.

5 **II. OPPOSITION TO MOTION IN LIMINE**

6 **A. NRCP 16.2 DOES NOT GOVERN THE DISCLOSURE OF EXPERT WITNESS REPORTS**
7 **IN THIS MATTER.**

8 NRCP 16.2 does not govern the disclosure of an expert witness report in a trial that has
9 already commenced.¹ Indeed, NRCP 16.2(a)(3)(B) provides that "a party who retains or specially
10 employs a witness to provide expert testimony in the case . . . shall deliver to the opposing party a
11 written report prepared and signed by the witness, within 60 days *before trial.*" (*Emphasis Added*).
12 Said rule clearly pertains to the disclosure of expert witness reports before a trial commences as
13 opposed to during the pendency of trial. In the instant action, trial commenced on or around August
14 30, 2010, and this Court has already heard seven days of trial testimony. Consequently, the sixty day
15 deadline set forth in NRCP 16.2(a)(3)(B) does not apply.

16 Upon information and belief, this Court never intended the sixty day deadline set forth in
17 NRCP 16.2(a)(3)(B) to govern the disclosure of expert witness reports for the continued trial. This
18 is evidenced by the fact that this Court repeatedly instructed the Parties to confer and agree upon
19 discovery deadlines. In fact, Lynita's Counsel admits in his July 9, 2012, e-mail that Counsel did
20 have a number of discussions regarding discovery deadlines, but an agreement was never formally
21 reached in writing. Noticeably absent from the July 9, 2012, e-mail is that Lynita's Counsel suggested
22 that the discovery deadline expire one (1) week before the continuance of trial on July 16, 2012,² on

23
24 ¹ In addition, Lynita's reliance upon NRCP 16.1 is perplexing as she freely admits that
25 in her Motion in Limine that NRCP 16.1 only applies in civil actions not involving domestic
26 relations.

27 ² The fact that the discovery deadline had not expired when the ELN Trust disclosed
28 Mr. Gerety or Mr. Rushforth's expert witness were disclosed is evidenced by the fact that they served
a Subpoena Duces Tecum upon Bank of America on July 2, 2012, requesting the production of

1 at least two separate occasions, a suggestion the ELN Trust never opposed. Indeed, the ELN Trust
2 took Lynita's Counsel's suggestion at face value and has operated under the belief that discovery
3 would remain open until at least one week before the continuance of trial on July 16, 2012. Lynita
4 's Counsel never indicated that they believed and/or intended for expert reports to become due sixty
5 days before the continuance of the trial on July 16, 2012, until after said deadline expired. If that was
6 their intent, they had a duty to inform the ELN Trust of the same prior the expiration of such
7 unannounced deadline. Lynita cannot now, after suggesting that discovery remain open until July 9,
8 2012, unilaterally rely upon an inapplicable discovery deadline under NRCP 16.2, when she failed
9 to come to an agreement with the ELN Trust on separate discovery deadlines as directed by this
10 Court.

11 Lynita has additionally waived her right to rely upon the enforcement of NRCP 16.2(a)(3) in
12 this matter because she has blatantly ignored the rule upon which she now relies. Indeed, Joe
13 Leauanae, Lynita's accounting expert witness, testified at his deposition on July 27, 2010, one month
14 before the August 30, 2010, trial that he had not issued any written reports in this case and that he did
15 not know whether he would be providing a report at all:

16 Q: Have you issued any written reports in this case?

17 A: No.

18 Q: Do you anticipate issuing a written report in this case?

19 A: I don't know.

20 Q: What would make that decision for you? Mr. Dicerson asking
21 for it or something like that, or is there some understanding
22 on your part already?

23 A: Discussions with Lynita and her counsel.³

24 To date, Mr. Leauanae has not provided an expert witness report. Lynita's failure to submit a report
25 for Mr. Leauanae was raised by Mr. Jimmerson on the first day of trial on August 30, 2010. Further,
26 it is unclear whether Lynita complied with NRCP 16.2(a)(3) with respect to her other expert witness,
27 Melissa Attanasio. In addition, Lynita failed to comply with NRCP 16.2(a)(3) with respect to Jeffrey
28

documents on July 6, 2012, which was the date Mr. Gerety's expert witness report was disclosed.

³ See Deposition Transcript of Joseph L. Leauanae at p. 24, l. 25 - p. 25, l. 9, attached
hereto as **Exhibit 1**.

1 Burr, Esq., who provided expert witness testimony on November 22, 2010, despite the fact that he
2 did not produce an expert witness report. Additionally, upon information and belief, Lynita intends
3 to illicit additional expert opinions from Mr. Burr at the continued trial on July 16, 2012. For these
4 reasons, this Court should deny Lynita's Motion in Limine in its entirety.

5 **B. NRCP 16.2 GRANTS THIS COURT AUTHORITY TO EXTEND THE DEADLINE FOR**
6 **EXCHANGE OF EXPERT REPORTS OR RELIEVE A PARTY OF THE DUTY TO**
7 **PREPARE A WRITTEN REPORT.**

8 In the unlikely event that this Court finds that the ELN Trust did not comply with NRCP
9 16.2(a)(3), this Court should exercise its authority to extend the deadline to exchange expert reports
10 or relieve the ELN Trust of the duty to disclose expert reports altogether for the reasons stated above.
11 Additionally, this Court should exercise its authority to extend the deadline for the reasons cited
12 below.

13 1. THE ELN TRUST TIMELY IDENTIFIED MR. GERETY AND MR. RUSHFORTH AS
14 EXPERT WITNESSES AND THEIR EXPERT WITNESS REPORTS DO NOT
15 PREJUDICE LYNITA.

16 Lynita's contention that the ELN Trust only recently disclosed Mr. Gerety and Mr. Rushforth
17 as expert witnesses is nonsensical as counsel for the ELN Trust advised this Court and Lynita's
18 counsel that the ELN Trust intended to retain "a forensic accountant and a trust expert [to] testify as
19 to the trust issues" on August 24, 2011.⁴ Further, the ELN Trust specifically identified Mr. Gerety
20 and Mr. Rushforth as expert witnesses on at least the following occasions:

- 21 1. On December 13, 2011, Lynita's counsel confirmed that they had been
22 informed by counsel for the ELN Trust that they intended to retain Dan Gerety
23 and Layne Rushforth.⁵
- 24 2. On March 6, 2012, the ELN Trust filed its Motion for Attorneys Fees and Costs
25 seeking the payment to "Gerety & Associates, CPA, the ELN Trust's expert
26 witness" who was in the process of preparing an expert witness report and
27 behalf of the ELN Trust, and "The Rushforth Firm, the ELN Trust's other
28 expert witness in this matter" who was also in the process of preparing an

4 *See id.*

5 *See December 13, 2011, Hearing VTS: 14:30:34.*

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expert witness report on behalf of the ELN Trust.⁶

3. On May 23, 2012, the ELN Trust once again confirmed that they had retained Mr. Gerety to prepare a tracing of the ELN Trust shortly after it was named a party in August 2011.⁷ Further, the ELN Trust expressed concern that Lynita and/or the LSN Trust had not done the same, as it believed Lynita had already done so through her forensic accountant, Joseph Leauanae

4. On June 16, 2012, the ELN Trust confirmed that it had retained expert witnesses and that their reports would be forthcoming.⁸

The Court should also deny the Motion in Limine because Mr. Gerety and Mr. Rushforth's expert reports do not prejudice Lynita. The purpose of an expert report is to "prevent an ambush at trial."⁹ "Thus whether a late disclosure is prejudicial depends on whether the expert testimony was unexpected and left the other party without adequate opportunity to prepare for it."¹⁰ Courts refuse to strike expert reports when a party has timely identified its expert witness. For example, in *BFI Waste System of North America v. Dekalb County, Georgia*, 303 F.Supp. 2d 1335 (N.D. Ga. 2004), the court denied the defendants' motion to strike an untimely written report. Although the court acknowledged in *BFI Waste System* that the report was untimely, it refused to strike the report because: (1) the defendants did not seek to depose the expert after receiving the expert report; (2) the defendants did not argue that the expert was not qualified as an expert; (3) the defendants did not seek additional time to evaluate the expert's method; (4) the plaintiff timely identified the expert; and (5) there was no indication that the defendants ever intended to introduce their own expert to rebut the

⁶ See Motion for Payment of Attorneys' Fees and Costs, previously filed on March 6, 2012, on file herein.

⁷ See Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions, previously filed on May 23, 2012, on file herein.

⁸ See Response to New Issues Raised in Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions, previously filed June 18, 2012, on file herein.

⁹ *Michelone v. Desmarais*, 25 Fed. Appx. 155, 158 (4th Cir. 2008) (quoting *Ortiz-Lopez v. Sociedad Espanola de Auxilio Mutuo Y Beneficiencia de Puerto Rico*, 248 F.3d 29, 35 (1st Cir. 2001)).

¹⁰ *Id.*

1 plaintiff's expert.¹¹ "All of these factors lead the Court to conclude that the expert report need not
2 be excluded."¹²

3 The considerations in *BFI Waste System* apply to this case as well because the ELN Trust
4 timely put Lynita on notice: (1) that it planned to retain and use expert witnesses; (2) of the identity
5 of said experts; (3) of the experts' area of specialties; and (4) of what issues the experts would opine
6 on. Having received notice of the ELN Trust's plan to use Mr. Gerety and Mr. Rushforth as expert
7 witnesses, Lynita had ample time to depose them. Lynita chose not to. At no point in time did Lynita
8 propound interrogatories regarding Mr. Gerety or Mr. Rushforth's opinions, or serve requests for
9 production of documents or a subpoena duces tecum requesting copies of documents received/review
10 by Mr. Gerety or Mr. Rushforth. Further, Lynita never asked for copies of said reports or even inquire
11 as to the status of the same. After the ELN Trust produced the expert reports, the ELN Trust
12 informed Lynita's Counsel that they would make Mr. Gerety and Mr. Rushforth immediately
13 available for depositions during the week of July 9, 2012.¹³ Still, Lynita chose not to take their
14 depositions. Lynita cannot, in good faith, argue that the ELN Trust's production of Mr. Gerety or Mr.
15 Rushforth's reports are prejudicial when she has declined to depose Mr. Gerety or Mr. Rushforth
16 and/or otherwise retain expert witnesses to testify regarding the issues contained within their reports,
17 when she had prior notice of their retention and where counsel had identified the scope of their
18 reports.

19 Further, any prejudice suffered by Lynita is a result of her, not the ELN Trust's, failure to
20 timely to disclose expert witnesses and reports. It is no secret that the fundamental issues regarding
21 the ELN Trust are its validity and whether the ELN Trust and LSN Trust were funded with Eric and
22 Lynita's community or separate property. Despite the fact that the ELN Trust is presumed valid, and
23

24 ¹¹ *Id.* at 1345.

25 ¹² *Id.*

26 ¹³ The ELN Trust would have also allowed Lynita to depose Mr. Rushforth at any time
27 after his expert witness report was disclosed on June 27, 2012; however, Lynita never made such
28 request.

1 Lynita bears the burden to show that the ELN Trust is invalid,¹⁴ she failed to retain a trust expert to
2 testify regarding this issue. Rather, her consistent approach has been to attempt to shift the burden
3 to Eric and the ELN Trust to prove that the ELN Trust is valid and separately funded.

4 Similarly, apparently Lynita failed to retain an accountant to perform a tracing even though
5 she bears the burden to prove by clear and convincing evidence that “[t]ransmutation from separate
6 to community property” occurred.¹⁵ Lynita obviously recognized the importance of a tracing months
7 ago when she requested that Mr. Bertsch conduct a tracing of any and all assets belonging to the ELN
8 Trust and LSN Trust, which this Court denied on July 11, 2012. To be quite frank, the ELN Trust
9 was dumbfounded when it learned that Lynita and/or the LSN Trust were taking the position that the
10 Separate Property Agreement somehow does not constitute clear and convincing evidence that Eric
11

12 ¹⁴ Where a settlor complies with all of the statutory requirements necessary to make a
13 valid will and trust, such documents are presumed to be valid. In Nevada, a will is presumed to be
14 valid unless proven otherwise by clear and convincing evidence. *See* NRS 133.040 (holding that a
15 will is valid so long as it meets the formalities set forth under statute). *See also In re Estate of Riley*,
16 479 P.2d 1 (Wash. 1970) (holding that a will is presumed to be valid, and the burden is upon the
17 contestants to prove the contrary by clear, cogent, and convincing evidence”); *Succession of McLean*,
18 580 So.2d 935, 939 (La. Ct. App. 1991) (stating that the provisions of a will are presumed to be valid
19 where is no reason to presume otherwise). Likewise, a trust enjoys a similar presumption. *See, e.g.,*
20 *In re Foster’s Estate*, 82 Nev. 97, 102, 411 P.2d 482, 484-85 (1966) (recognizing that an instrument
21 shall constitute a valid trust in Nevada as long as it indicates and intention to create a trust and
22 identifies the beneficiaries thereof). Once a proponent of a will has offered prima facie proof that
23 the will was duly executed, contestant then assumes the burden of proving a lack of testamentary
24 capacity, including a lack of sound mind, by a preponderance of the evidence. *In re Peterson’s*
25 *Estate*, 77 Nev. 87, 360 P.2d 259 (1961). Such presumption also applies to the challenge to a trust
26 or other contract. *See, e.g., General Motors v. Jackson*, 111 Nev. 1026, 1031, 900 P.2d 345, 349
27 (1995).

28 ¹⁵ *Sprenger v. Sprenger*, 110 Nev. 855, 858 (1994)(citing *In re Marriage of Weaver*,
Cal.App.3d 478, 273 (Cal. 1990). *See also* NRS 123.310; *Petition of Fuller*, 63 Nev. 26, 36 (1945)
29 (“[A] husband may convey all his interest in community property to his wife either for a valuable
30 consideration, or by way of gift. But the evidence necessary to show a transmutation of community
31 property into separate property must be of a clear and convincing character.”); *Barrett v. Franke*, 46
32 Nev. 170, 208 P. 435, 437 (1922) (“The right of the spouses in their separate property is as sacred
33 as is the right in their community property, and when it is once made to appear that property was
34 once of a separate character, it will be presumed that it maintains that character until some direct
35 evidence to the contrary is made to appear.”).

1 and Lynita transmuted all of their community property to separate property. The purpose behind Mr.
2 Gerety and Mr. Rushforth's report and testimony was to actually anticipate and rebut evidence and/or
3 expert opinions introduced by Lynita; however, to date, she has done neither. In light of the
4 foregoing, this Court should recognize that Lynita's Motion in Limine is nothing more than an
5 attempt to shift blame to the ELN Trust for her failure/inability to adequately prepare for the
6 upcoming continued trial.

7 2. THE ELN TRUST WAS UNABLE TO COMPLETE AND SUBMIT EXPERT WITNESS
8 REPORT UNTIL ITS EXPERT WITNESSES WERE PAID.

9 The ELN Trust was unable to submit expert witness reports sixty days prior to the continuance
10 of trial on July 16, 2012, because this Court only recently granted the ELN Trust authority to pay its
11 expert witness fees. Indeed, on March 7, 2012, the ELN Trust filed its Motion for Payment of
12 Attorneys' Fees and Costs, which sought, amongst other things, the payment of expert witness fees.
13 Said motion was not ruled upon until June 5, 2012, which was less than sixty days prior to the July
14 2012 trial continuation. Lynita has previously discounted this argument based on her self-serving
15 belief that such a request was improper as Eric and/or the ELN Trust had paid its fees in the past
16 without seeking Court approval; however, given Lynita's constant objections to any money spent by
17 Eric and/or the ELN Trust (even though she spends assets belonging to the LSN Trust in anyway she
18 deems fit), the ELN Trust was left with no choice but to file said motion. The necessity of such filing
19 is further exemplified by the fact that the Court only granted limited fees to pay the expert witnesses,
20 recognizing that the ELN Trust was prudent in seeking an order before paying the experts from any
21 source. After the Motion for Payment of Attorneys' Fees and Costs was granted in part, Mr. Gerety
22 was on vacation for one week thereby necessitating additional time to complete his report.

23 Lynita also seems to contend that the ELN Trust was somehow lackadaisical in preparing
24 expert reports because it filed its Notice of Appearance on August 19, 2011. Said contention could
25 not be any further from the truth. Further, Lynita ignores the fact that the scope of said reports did
26 not become clear until after the February 23, 2012, hearing when this Court ruled on the ELN Trust's
27 Motion to Dismiss and dismissed the majority of Lynita's claims. Despite this Court's express ruling
28

1 at the February 23, 2012, hearing, Lynita continued to make a frivolous argument that NRS 78
2 somehow applied, which this Court summarily rejected in its recent ruling July 11, 2012. As this
3 Court will certainly recall, on September 30, 2011, Lynita filed a frivolous Third-Party Complaint
4 naming numerous defendants and alleging spurious claims. Not only did Lynita's Third-Party
5 Complaint waste judicial resources, but it also inhibited the ELN Trust and its experts' ability to
6 complete their expert reports.

7 Even after the issues were narrowed, it took the experts a tremendous amount of time to look
8 at the thousands of transactions that occurred from 2001 to present. To the extent that documents
9 could not be located, the ELN Trust was forced to request said documents from banks and other
10 sources. Further, some of the documents were in the possession of Lynita's expert witness who
11 refused to comply with the ELN Trust's request to return the same based on instructions that he
12 received from Lynita's Counsel. This Court is undoubtedly familiar with this issue as it recently
13 ordered Lynita's expert to return the same.

14 **C. THIS COURT SHOULD NOT EXCLUDE THE EXPERT WITNESS REPORTS OF MR.**
15 **GERETY OR MR. RUSHFORTH.**

16 1. IN NEVADA, EXPERT TESTIMONY IS TYPICALLY ADMISSIBLE AS IT AIDS THE
17 TRIER OF FACT IN UNDERSTANDING EVIDENCE AND/OR DETERMINING ISSUES.

18 "The admission of expert testimony lies within the sound discretion of the district court."¹⁶
19 Nevada law affords a low threshold for admissibility of expert testimony under NRS 50.275 and only
20 requires a determination that the proffered expert testimony will assist the trier of fact in
21 understanding evidence or determining a fact at issue.¹⁷ As this Court is undoubtedly aware, the
22 admissibility of evidence in a bench trial is different from the requirements in jury trials because a
23 judge is capable of disregarding any impropriety and of differentiating between admissible and

24 ¹⁶ *Powers v. United Services Auto. Ass'n*, 114 Nev. 690, 699, 962 P.2d 596, 602 n.3
(1998).

25 ¹⁷ NRS 50.275 provides "If scientific, technical or other specialized knowledge will
26 assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified
27 as an expert by special knowledge, skill, training or education may testify to matters within the scope
28 of such knowledge."

1 inadmissible evidence.¹⁸ In a bench trial, the need for an advanced ruling on a motion in limine to
2 exclude evidence is “generally superfluous” and unnecessary because courts are well equipped to
3 make factual and legal determinations regarding the scope of evidence without an advance ruling on
4 the same.¹⁹ If the Court believes that any of Mr. Gerety or Mr. Rushforth’s conclusions invade the
5 province of the Court, it can simply disregard them just as it may disregard arguments of counsel.
6 Accordingly, this Court should deny the Motion in Limine to strike Mr. Gerety or Mr. Rushforth’s
7 reports and testimony at trial.

8 2. THE TESTIMONY OF MR. GERETY AND MR. RUSHFORTH IS OFFERED TO
9 ASSIST THE COURT REGARDING THE PRACTICABLE EFFECT OF THE TRUSTS
10 AT ISSUE WITHIN THE CONSTRAINTS OF NEVADA LAW, AND IS BASED UPON
11 RELEVANT FACTUAL ISSUES RAISED BY THE PARTIES.

12 “Fairness and efficiency dictate that an expert may state an opinion on a mixed question of
13 law and fact as long as the opinion is confined to the relevant issues and is based on proper legal
14 concepts.”²⁰ Similarly, in this case, expert testimony does not solely draw legal conclusions since “the
15 [trier of fact] would still have had to draw its own inference from that predicate testimony to answer
16 the ultimate factual question.”²¹ Indeed, Nevada law recognizes that “[a]n expert witness may state
17 conclusions on matters within his expert knowledge provided the conclusion is one laymen would
18 not be capable of drawing for themselves.”²²

19 Mr. Rushforth’s opinions referenced in his report are on factual issues, and are based on the

20 ¹⁸ *See, e.g., Landis v. American Potash & Chemical Corp.*, 78 Nev. 424, 437, 375 P.2d
21 402, 409 (1962) (“The case was tried to the court without a jury. . . [t]he trial judge will be presumed
22 to have relied only upon the admissible evidence without regard to any evidence that was
23 inadmissible.”).

24 ¹⁹ *See, e.g., United States v. Heller*, 551 F.3d 1108, 1112 (9th Cir.), cert. denied, --- U.S.
25 ----, 129 S.Ct. 2419 (2009).

26 ²⁰ *Birchfield v. Texarkana Mem'l Hosp.*, 747 S.W.2d 361, 365 (Tex. 1987) (interpreting
27 Texas Rule of Evidence 704 which is identical to NRS 50.295).

28 ²¹ *U.S. v. Moran*, 493 F.3d 1002, 1008 (9th Cir. 2007) (quoting *United States v.*
Morales, 108 F.3d 1031, 1037 (9th Cir. 1997)).

²² *Dawson v. State*, 84 Nev. 260, 261, 439 P.2d 472, 473 (1968).

1 terms of the ELN Trust and Lynita's spurious claims that the ELN Trust is the alter ego of Eric. His
2 testimony consists of much more than naked legal conclusions and is predicated on adequately
3 explored factual and legal criteria. Lynita's contention that Mr. Rushforth opines on issues of law
4 ignores the fact that the questions posed by Mr. Rushforth in his report formulate only the basis for
5 his opinion on the facts in issue.²³ Moreover, and notwithstanding Mr. Rushforth's testimony, this
6 Court, as the trier of fact, must still draw its own inference regarding the factual and legal issues in
7 this case. Therefore, Lynita's contention that Mr. Rushforth's opinion includes legal conclusions is
8 merely a tactic to preclude his entire testimony and expert opinion on primary issues before this
9 Court. Significantly, Mr. Rushforth's opinion is entirely consistent with past expert opinions in
10 Nevada and other states. *See, e.g., In re Estate of Bowlds*, 120 Nev. 990, 994, 102 P.3d 593, 596
11 (2004) ("Gardner Jolley, Esq., a Las Vegas attorney, testified as a probate expert" regarding estate
12 administration and applied applicable statutory provisions).

13 3. NEVADA REVISED STATUTES PERMIT EXPERT TESTIMONY TO "INVADE THE
14 PROVINCE" OF THE FACT FINDER ON ULTIMATE ISSUES.

15 NRS 50.295 provides that "[t]estimony in the form of an opinion or inference otherwise
16 admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of
17 fact."²⁴ Thus, excluding an expert's testimony on an issue because it is an "ultimate issue of fact for
18 the jury to decide" is, "of course, error of major consequence."²⁵ In Nevada, experts are permitted

19
20 ²³ *See Bludsworth v. State*, 98 Nev. 289, 291, 646 P.2d 558, 559 (1982) (holding that
21 any dispute over the evidence went to its weight and not its admissibility); *United States v. Newmont*
22 *USA Ltd.*, CV-05-020-JLQ, 2007 WL 4856859 (E.D. Wash. Nov. 16, 2007) ("As a general rule, the
23 factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility, and
24 it is up to the opposing party to examine the factual basis for the opinion in cross-examination.").

25 ²⁴ *See also Porter v. State*, 94 Nev. 142, 151, 576 P.2d 275, 281 (1978) ("In Nevada,
26 experts may testify as to ultimate issues of fact, even though such testimony traditionally invaded
27 the province of the jury.") (Gunderson, J., concurring).

28 ²⁵ *Alford v. State*, 111 Nev. 1409, 1411, 906 P.2d 714, 715 n.1 (1995) (*citing* Southern
Pacific Co. v. Watkins, 83 Nev. 471, 487, 435 P.2d 498, 508 (1967) (The court recognized that
"[t]he clear trend in the law of evidence is [] that an expert witness, in his field of expertise may
testify to matters which embrace the ultimate issue to be decided by the triers of fact.")).

1 to invade the province of the fact finder because the trier of fact is free to accept or reject an expert's
2 opinion.²⁶

3 **D. MR. RUSHFORTH'S TESTIMONY ASSISTS THE TRIER OF FACT BY PROVIDING**
4 **SPECIALIZED KNOWLEDGE REGARDING THE SEPARATE PROPERTY AGREEMENT,**
5 **SEPARATE PROPERTY TRUSTS, ELN TRUST AND LSN TRUST.**

6 Estate planning attorneys, similar to other specialized areas of law, have "technical, or other
7 specialized knowledge," and therefore are qualified as experts because of their special knowledge.
8 ²⁷ "If the attorney's expert testimony would assist the trier of fact, then it is admissible." *Brown v.*
9 *State*, 110 Nev. 846, 852, 877 P.2d 1071, 1075 (1994). *See also In re Marriage of Lund*, 174
10 Cal.App.4th 40, 49-50, 94 Cal.Rptr.3d 84, 92-93 (Cal. Ct. App. 2009) (in which the Court admitted
11 the parties' experts, estate planning lawyers, to provide opinion as to whether certain estate planning
12 documents had the effect of transmuting community into separate property); *Germain v. Girard*, 936
13 N.E.2d 451 (Mass. Ct. App. 2010) (qualifying a practitioner in estate planning to offer expert
14 testimony about the tax consequences of estate plan and ability of or inability of party to demand
15 principal from trust at her own discretion and the tax consequences of such discretionary access or
16 lack thereof); *Rio Grande Valley Gas Co. v. City of Edinburg*, 59 S.W.3d 199 (Tex. Ct. App. 2000)
17 (holding that estate planning attorney was qualified to give expert testimony about corporate
18 structures where her testimony was based on her experience in creating and organizing corporations
19 and her testimony satisfied the standards for reliability and relevancy of expert testimony. The Court
20 additionally held that although the expert commented on ultimate issues, the Court found that those
21 ultimate issues were sufficiently mixed with questions of fact to permit admission of her testimony).

22 The Motion in Limine completely ignores Mr. Rushforth's qualifications and concludes that
23 Mr. Rushforth's report is "nothing more than a legal memorandum purporting to describe and

24 ²⁶ *See Grondin v. State*, 94 Nev. 5, 6, 573 P.2d 205, 206 (1978).

25 ²⁷ *U.S. v. Llera Plaza*, 188 F. Supp. 2d 549, 563-64 (E.D. Pa. 2002) (stating that
26 "accountants, vocational experts, accident-reconstruction experts, appraisers of land or of art, experts
27 in tire failure analysis, or others, have technical, or other specialized knowledge, rather than
28 scientific knowledge.").

1 interpret Nevada law, and apply the facts of this case to Mr. Rushforth's alleged interpretation of
2 Nevada law." The Motion in Limine also ignores the fact that Mr. Rushforth is in part, being used
3 to rebut the expert witness opinions that Mr. Burr provided in favor of Lynita on November 22, 2010.

4 As this Court will certainly recall, Mr. Burr has not provided an expert report. Mr. Gerety will also
5 be used to respond to Lynita's defenses and cross-examination of Lana Martin, Rochelle McGowan
6 and Shelley Newell on issues pertaining to the ELN Trust.

7 Mr. Rushforth is more than qualified to render the opinions contained within the scope of his
8 expert report. A simple review of Mr. Rushforth's curriculum vitae attached as Exhibit A to Lynita's
9 Motion in Limine demonstrates that Mr. Rushforth has the experience, specialized knowledge and
10 training to give the opinions in his report regarding to complex trust and estate planning, including
11 Nevada self-settled spendthrift trusts. Mr. Rushforth was on the legislative committee that was
12 responsible for the drafting and implementation of NRS Chapter 166. Consequently, he is familiar
13 with the history and public policy behind NRS Chapter 166. Mr. Rushforth's expertise in "applying
14 the law" in the field of trust planning speaks for itself, and Lynita fails to support her conclusion that
15 Mr. Rushforth is merely "being offered to advise the Court about Nevada law." It would be
16 impossible for estate planning specialist such as Mr. Rushforth to prepare complex trust and estate
17 documents, including self-settled spendthrift trusts, and to give planning advice to trustors, trustees,
18 and trust beneficiaries, without giving opinions as to how the law - including tax and trust law - apply
19 to the specific situations in question. As a result, this Court should deny Lynita's Motion in Limine.

20 **E. MR. GERETY SHOULD ALSO NOT BE EXCLUDED FROM TESTIFYING AT TRIAL,**
21 **NOR SHOULD HIS REPORT BE EXCLUDED, BECAUSE LYNITA HAS ALREADY**
22 **STIPULATED TO MR. GERETY TESTIFYING AS AN EXPERT IN THIS MATTER.**

23 Mr. Gerety should not be precluded from testifying at the continued trial on July 16, 2012,
24 because Lynita's Counsel, after conducting an extensive voir dire examination qualifying him as an
25 expert witness, already agreed to allowing Mr. Gerety to testify as an expert witness so long as Mr.
26 Jimmerson did not object to Mr. Burr being called as a witness. Throughout his testimony on October
27 20, 2010, Mr. Gerety provided expert opinions regarding the ELN Trust and LSN Trust. Indeed, Mr.
28 Gerety opined that the ELN Trust and LSN Trust's bank accounts and investments were maintained

1 separately,²⁸ and that the ELN Trust kept good records.²⁹ Further, Mr. Gerety responded to a series
2 of questions presented by Lynita's Counsel regarding the ELN Trust, including, but not limited to the
3 purpose of the ELN Trust and distributions that were made.³⁰ At the conclusion of his testimony, Mr.
4 Jimmerson specifically reserved the right to recall Mr. Gerety as a witness depending on Mr. Burr's
5 testimony.³¹

6 In addition to testifying as an expert witness, Mr. Gerety has prepared the tax returns and
7 provided other professional services for the ELN Trust and LSN Trust for a number of years, and as
8 such, has personal knowledge regarding the assets contained therein thereby making him a percipient
9 witness as well.

10 Lynita also tries to unsuccessfully argue that Mr. Gerety's report is improper because it
11 interprets for the Court "the very same matters addressed by the court's Special Master." As this
12 Court confirmed in its July 11, 2012, Finding of Facts and Order, the scope of Mr. Bertsch's
13 appointment was specifically limited to provide a "forensic accounting intended to provide the Court
14 with an accurate evaluation of the parties' estate."³² Mr. Bertsch's report did just that by identifying
15 the existence of assets and how said assets were titled. What the reports did not do, because it would
16 exceed Mr. Bertsch's scope of appointment, is perform a tracing of the assets currently owned by the
17 ELN Trust and LSN Trust. For this reason, Lynita filed a motion requesting that Mr. Bertsch trace
18 the source of all current assets held by either the ELN Trust or LSN Trust, which this Court denied
19 on July 11, 2012. Mr. Gerety's report did what Mr. Bertsch's reports did not do: perform a tracing
20 of the ELN Trust from inception through present. Mr. Gerety's report does not address the same
21 matters addressed by Mr. Bertsch, but rather performs the tracing: (1) that this Court repeatedly stated
22

23 ²⁸ See Trial Testimony of Dan Gerety at p. 330, ll. 2-7, attached hereto as **Exhibit 2**.

24 ²⁹ See *id.* at pp. 349, ll. 1-25.

25 ³⁰ See *id.* at pp. 374-375.

26 ³¹ See *id.* at pp. 400, ll. 3-8.

27 ³² See Findings of Fact and Order, previously filed on July 11, 2012, on file herein.
28

1 it wanted to see; and (2) Lynita requested when she filed her motion requesting that Mr. Bertsch trace
2 the source of assets held by the ELN Trust. For this reason, Mr. Gerety's report is proper and should
3 not be excluded.

4 **F. LYNITA'S MOTION IN LIMINE SHOULD BE DENIED AS A MATTER OF LAW**
5 **BECAUSE THEY ARE UNTIMELY.**

6 EDCR 2.47 provides that a motion in limine "must be in writing and filed not less than 45
7 days prior to the date set for trial and must be heard not less than 14 days prior to trial." Lynita's
8 contention that she could not file this Motion in Limine within the time period prescribed by EDCR
9 2.47 is simply not true as the ELN Trust repeatedly informed this Court and Lynita that the expert
10 reports of Mr. Gerety and Mr. Rushforth were forthcoming and that a significant amount of time and
11 expense had been spent in preparing the same. Notwithstanding, Lynita waited until six days before
12 the continued trial date to submit the instant Motion in Limine, despite the fact that Mr. Rushforth's
13 report was disclosed on June 27, 2012. Said Motion in Limine is untimely, and as such, should be
14 denied as a matter of law.

15 **G. THE MOTION IN LIMINE SHOULD BE DENIED BECAUSE THE RELIEF REQUESTED**
16 **THEREIN IS OVERBROAD.**

17 Over broad requests for an order in limine must be denied.³³ Generally, instead of ruling on
18 motions requesting an order in limine, "[a] better practice is to deal with questions of admissibility
19 of evidence as they arise" at trial.³⁴ Lynita's Motion in Limine sweeps much too broadly and should
20 be denied. An unlimited ban on Mr. Gerety and Mr. Rushforth's testimony a week before trial is
21

22 ³³ See, e.g., *Sperberg v. The Goodyear Tire and Rubber Co.*, 519 F.2d 708, 712 (6th
23 Cir. 1975) (warning against entering "orders in limine that exclude broad categories of evidence"),
24 *cert. denied*, 423 U.S. 987 (1975); *National Union Fire Ins. Co. of Pittsburgh, Pa. v. L.E. Myers Co.*
25 *Group*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996) ("the current motion is too sweeping in scope to be
decided in limine.").

26 ³⁴ *Sperberg*, 519 F.2d at 712. See also *Hawthorne Partners v. AT & T Technologies,*
27 *Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993) (evidence should be excluded on a motion in limine
28 "only when evidence is clearly inadmissible on all potential grounds ... [and] [u]nless evidence meets
this high standard, evidentiary rulings should be deferred until trial").

1 unwarranted and unnecessary.³⁵ Such broad relief would exclude evidence relevant to Lynita's
2 allegations and the ELN Trust's defenses. Further, granting Lynita's Motion in Limine would not
3 preclude her experts from testifying about accounting issues pertaining to the ELN Trust and LSN
4 Trust, even though they never submitted expert reports. Thus, not only is Lynita's requested relief
5 over broad, but such testimony sought to be excluded would be offered to contradict other testimony
6 anticipated at trial, and therefore the wholesale striking of the ELN Trust's experts must be rejected.

7 The preferred method for dealing with Lynita's objection is on an instance-by-instance
8 occasion at trial wherein she will have the opportunity to not only object to Mr. Gerety and Mr.
9 Rushforth's testimony as presented, but also have the ability to cross-examine their proffered opinions
10 and methods, and present opposing argument and opinion in support of her case. Such method not
11 only guarantees that this Court will have the best evidence presented before it from which to render
12 its decision, but also guarantees a due and adversarial process to all parties.

13 **H. LYNITA'S REQUEST FOR ATTORNEYS' FEES AND COSTS ARE UNWARRANTED.**

14 As evidenced by the fact that two separate attorneys' filed substantially similar motions
15 regarding substantially similar issues, Lynita is trying to run-up attorneys' fees and costs based on her
16 belief that this Court is inclined to grant her attorneys' fees and costs incurred in this Divorce
17 Proceeding. Lynita's attorneys' fees and costs are unwarranted because: (1) the ELN Trust complied
18 with the Rules of Civil Procedure and this Court's specific instruction; and (2) Lynita is seeking to
19 hold the ELN Trust to a different standard than as applied to herself, as she failed to provide an expert
20 report for Mr. Leauanae prior to the commencement of trial on August 30, 2010. Further, Lynita's
21 Counsel did not make a good-faith effort to resolve this matter prior to filing the Motion in Limine
22 as they merely demanded that the ELN Trust agree to their unreasonable request to withdraw the
23 reports. This "take it or leave it" mentality does not constitute trying to resolve an issue in good faith.

25 ³⁵ Lynita's request to strike the ELN Trust's Pre-Trial Memorandum because it attaches
26 a copy of Mr. Rushforth's report is equally misguided. In the unlikely event this Court agrees with
27 Lynita's unfounded position that Mr. Rushforth's report is improper, the logical approach would be
28 for this Court to strike the report as opposed to the Pre-Trial Memorandum in its entirety.

1 It is the ELN Trust, not Lynita, that is entitled to attorneys' fees and costs for opposing Lynita's self-
2 serving Motion in Limine the week before trial.

3 **III. COUNTERMOTION TO CONTINUE THE JULY 16, 2012, TRIAL**

4 In the event this Court is inclined to grant the Motion in Limine, the ELN Trust respectfully
5 requests this court to continue this matter to give Lynita sufficient time to attempt to rebut Mr. Gerety
6 and Mr. Rushforth's report. A court may grant a continuance upon a showing of good cause,³⁶ which
7 will not be overturned absent abuse of discretion.³⁷ Such latitude and discretion supports the
8 well-settled policy of this State that cases should be decided on their merits.³⁸ [C]ontinuances should
9 be liberally granted, especially when the continuance is sought because of a claim of insufficient time
10 to conduct discovery.³⁹

11 Although the Motion in Limine were brought in bad faith as Lynita was advised that the ELN
12 Trust had retained Mr. Gerety and Mr. Rushforth in 2011, the ELN Trust will be severely prejudiced
13 if the Motion in Limine are granted. Consequently, a short continuance is appropriate in lieu of
14 striking the ELN Trust's expert witness reports and precluding Mr. Gerety and Mr. Rushforth from
15 testifying at trial.

21 ³⁶ *Southern Pacific Transportation Co. v. Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234
22 (1978); *Sheeketski v. Bortoli*, 86 Nev. 704, 708, 475 P.2d 675, 678 (1970).

23 ³⁷ EDCR 1.90(b)(5) ("The trial shall go forward on the date originally set, unless the
24 court grants a continuance upon a showing of good cause."); *see also* EDCR 7.30.

25 ³⁸ *See, e.g., Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790 (1992) ("Nevada's . . . basic
26 underlying policy that cases should be decided on the merits . . ."); *Price v. Dunn*, 106 Nev. 100,
27 787 P.2d 785 (1990); *Yochum v. Davis*, 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982); *Hotel Last*
28 *Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963).

³⁹ *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 475 (Minn. Ct. App. 2005)

1 **IV. CONCLUSION**

2 In light of the foregoing, the Motion in Limine should be denied in their entirety.
3 Alternatively, this Court should grant a brief continuance so as to allow Lynita to retain an expert
4 witness and disclose an expert witness report.

5 DATED this 13th day of July, 2012.

6 SOLOMON DWIGGINS & FREER, LTD.

7
8 By: 

9 MARK A. SOLOMON, ESQ.
10 Nevada State Bar No. 0418
11 JEFFREY P. LUSZECK
12 Nevada State Bar No. 9619
13 Cheyenne West Professional Centre'
14 9060 West Cheyenne Avenue
15 Las Vegas, Nevada 89129
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 ERIC L. NELSON

9 Plaintiff(s),

CASE NO. D411537

10 -VS-

DEPT. NO. O

11 LYNITA SUE NELSON

12 Defendant(s).

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**FAMILY COURT
MOTION/OPPOSITION FEE
INFORMATION SHEET
(NRS 19.0312)**

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR OPPOSITION TO MOTION IN LIMINE TO EXCLUDE FROM TRIAL
THE TESTIMONY & REPORT OF DANIEL T. GERETY, CPA, LAYNE T.
RUSHFORTH, ESQ., & ANY PURPORTED EXPERT TESTIMONY REGARDING
THE INTERPRETATION OF LAW, & APPLICATION OF FACTS TO LAW; TO
STRIKE THE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; &
COUNTERMOTION TO CONTINUE TRIAL; & FOR ATTORNEYS' FEES & COSTS

**Motions and
Oppositions to Motions
filed after entry of a final
order pursuant to NRS
125, 125B or 125C are
subject to the Re-open
filing fee of \$25.00,
unless specifically
excluded. (NRS 19.0312)**

NOTICE:

*If it is determined that a motion or
opposition is filed without payment
of the appropriate fee, the matter
may be taken off the Court's
calendar or may remain undecided
until payment is made.*

Mark correct answer with an "X."

1. No final Decree or Custody Order has been
entered. ☒ YES ☐ NO
2. This document is filed solely to adjust the amount of
support for a child. No other request is made.
☐ YES ☒ NO
3. This motion is made for reconsideration or a new
trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐ YES ☒ NO

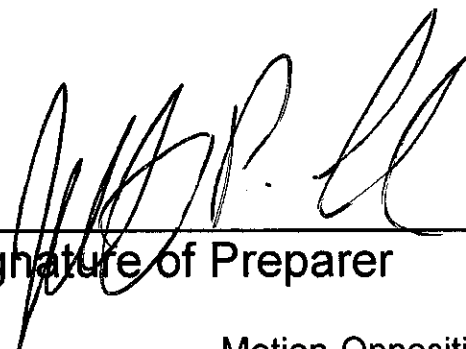
If you answered YES to any of the questions above,
you are not subject to the \$25 fee.

Motion/Opposition ☐ IS ☒ IS NOT subject to \$25 filing fee

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Dated this 20th of July, 20012

Jeffrey P. Luszek
Printed Name of Preparer


Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

EXHIBIT 1

EXHIBIT 1

Joseph L. Leauanae - July 27, 2010
Nelson vs. Nelson

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

**CERTIFIED
TRANSCRIPT**

ERIC L. NELSON,

Plaintiff,

VS.

LYNITA NELSON,

Defendant.

) CASE NO.: D-09-411537-D
) DEPT. NO.: O

VIDEO DEPOSITION OF

JOSEPH L. LEAUANAE

Taken at Stephens, Gourley & Bywater

July 27, 2010

10:12 a.m.

3636 North Rancho Drive

Las Vegas, Nevada

Reported by: Donna L. Medenbach, CCR # 313

Depo International, L.L.C.
517 South Ninth Street, Las Vegas, NV 89101 (800) 982-3299

1 A. Not right now.

2 Q. And what remains to be done, as I understand
3 your testimony, is you need to meet more with
4 Mr. Nicolatus to discuss good will issues from his
5 perception.

6 A. I would say that those discussions, and
7 Mr. Nicolatus and I have been involved in other cases
8 where we've been able to successfully settle valuation
9 issues just because a lot of it comes down to the
10 availability of information, and what's changed since
11 that information was last updated. So determining the
12 value of the good will is perhaps more an exercise in
13 art than it is in science at this point.

14 Q. I believe that.

15 As far as missing information, what
16 information would you -- may you still need in order
17 to come -- to arrive at that good will valuation.

18 A. Just because in Nevada we have to update
19 through the date of trial, just whatever information
20 exists from the last date of information we have to
21 right now.

22 Q. As I understand your testimony, you're not
23 sure what the last date of information was?

24 A. That's correct.

25 Q. Have you issued any written reports in this

1 case?

2 A. No.

3 Q. Do you anticipate issuing a written report
4 in this case?

5 A. I don't know.

6 Q. What would make that decision for you?
7 Mr. Dickerson asking for it or something like that, or
8 is there some understanding on your part already?

9 A. Discussions with Lynita and her counsel.

10 Q. Looking at your work to put together the
11 valuation that you've done and the forensic
12 accounting, within Anthem Forensics, who's assisted
13 you in putting this together?

14 A. I've had various staff assist me, but the
15 most assistance has been provided by Kyle Vaden.

16 Q. Would you spell his last name, please?

17 A. Yes, V as in Victor, a-d as in David, e-n as
18 in Nancy.

19 Q. And does Kyle have a title within Anthem
20 Forensics?

21 A. Associate.

22 Q. Associate. And does he have a degree?

23 A. Yes, he does.

24 Q. What's his degree?

25 A. Master's in accounting.

Joseph L. Leauanae - July 27, 2010
Nelson vs. Nelson

Page 106

1 I, the undersigned, a Certified Court
2 Reporter of the State of Nevada, do hereby certify:

3 That the foregoing proceedings were
4 taken before me at the time and place herein set
5 forth; that any witnesses in the foregoing
6 proceedings, prior to testifying, were duly sworn;
7 that a record of the proceedings was made by me using
8 machine shorthand which was thereafter transcribed
9 under my direction; that the foregoing transcript is
10 a true record of the testimony given.

11 Further, that before completion of the
12 Proceedings, review of the transcript was requested.

13 I further certify I am neither
14 financially interested in the action nor a relative
15 or employee of any attorney or party to this action.

16 IN WITNESS WHEREOF, I have this date
17 Subscribed my name.

18
19 Dated: 8.6.10

20
21 

DONNA L. MEDENBACH

22 CCR No. 313

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EXHIBIT 2

EXHIBIT 2

1 TRANS

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FILED

OCT 06 2011

Alma L. Sullivan
CLERK OF COURT

ORIGINAL

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

vs.

LYNITA S. NELSON,

Defendant.

CASE NO. D-09-411537-D

DEPT. O

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL

WEDNESDAY, OCTOBER 20, 2010

D-09-411537-D NELSON 10/20/2010 TRANSCRIPT
VERBATIM REPORTING & TRANSCRIPTION, LLC
11115 North La Canada, Suite 275, Oro Valley, Arizona 85737 (520) 861-0711

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INDEX OF WITNESSES

DIRECT CROSS REDIRECT RECROSS

TUESDAY, OCTOBER 19, 2010

PLAINTIFF'S WITNESSES

ERIC NELSON -- 17 -- --

* * * * *

DEFENDANT'S WITNESSES

None

* * * * *

WEDNESDAY, OCTOBER 20, 2010

PLAINTIFF'S WITNESSES

ERIC NELSON -- 151 -- --

DANIEL GERATY 298/316 371 -- --

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DEFENDANT'S WITNESSES

None

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1 A No.

2 Q Is there any bank account that is owned by Eric and
3 Lynita Nelson?

4 A Not that I'm aware of, no.

5 Q So they have separate bank accounts and they
6 maintain their investments separately.

7 A Everything I have reviewed shows that.

8 Q And that's been in place now for several years
9 predating this divorce.

10 A That is correct.

11 Q Now so I -- I like now to return to the loss
12 carryforwards. What is the effect of -- because of the
13 discord that exists between the majority shareholders of
14 Dynasty -- I'm sorry, the majority shareholders of Silver
15 Slipper and the minority interest to the Nelsons, there may be
16 differences on how to operate that asset, you know, continuing
17 to operate it, selling it.

18 I mean, there's different things. Filing bankruptcy
19 to cram down debt that -- that is suffocating the company. I
20 mean, there's a lot of different choices, agree?

21 A There's always even when people are in a -- work
22 together well there's disagreements.

23 Q Okay. All right. And so for purposes of -- of the
24 tax return, Mr. Nelson's tax return, how do you report

1 Q Another subject I wanted to discuss with regard to
2 the party's balance sheet. Is the record that Eric have his
3 staff have maintained, are they regionally maintained?

4 A Yes. He has a general ledgers kept on each entity
5 and provided with all the information that we need to prepare
6 the return. And if we have questions, they're able to get us
7 the documentation we need to finish the (indiscernible).

8 Q And are the -- is the bookkeeping in the records you
9 maintained adequate for your purposes?

10 A They are.

11 Q And based upon how other people, other clients of
12 your firm keep their records, how would you say that Mr.
13 Nelson keeps his books and records?

14 A They're -- they're good. They're good compared to
15 other clients. We have pretty good clients as far as record
16 keeping overall. They're not -- I think they're good records
17 completely.

18 Q And when you use the word good, I want to know
19 whether or not you consider them reliable.

20 A I consider them reliable.

21 Q Reliable to the point that you feel comfortable in
22 preparing tax returns when you're stating their operations.

23 A Yes, because I mean, my reputation gets put on the
24 -- this tax return every time I sign a return.

1 entity under state law.

2 MR. JIMMERSON: It's what a revocable trust is.

3 THE WITNESS: Right. Well, it but -- the quest --

4 MR. DICKERSON: Do you want to testify?

5 MR. JIMMERSON: Okay. But what is -- I don't know
6 what you're confusing --

7 THE WITNESS: I think what you --

8 MR. JIMMERSON: An revocable trust is created by
9 every grantor and there the trustee.

10 THE WITNESS: What I think you're --

11 MR. DICKERSON: That's an irrevocable trust, Jim.

12 MR. JIMMERSON: No, it's a revocable trust. Go
13 ahead.

14 THE WITNESS: Whether --

15 BY MR. DICKERSON:

16 Q Whoa. Whoa. Whoa. We're talking about an
17 irrevocable trust, aren't we?

18 A Yes.

19 Q Okay. And the pur -- purpose of making irrevocable
20 is to protect the assets from creditors, correct?

21 A That's one purpose, yes.

22 Q And what are the other --

23 A There could be other purposes.

24 Q Now if you take a look at the provisions of this

1 trust. All right. If you take a look at section 3.3 at Page
2 3. This talks about distributions to Eric Nelson; is that
3 correct?

4 A That's correct.

5 Q And what it requires is that before any distribution
6 can be made to Eric Nelson to the trust, it requires the
7 approval of the other trustee; is that correct?

8 A That is correct.

9 Q Now have you -- over the years Eric Nelson just
10 distributes monies to him through the trust; is that correct?

11 A I -- I don't know. I --

12 Q Have you ever seen any authorizations from Lana --
13 from Lana Martin authorizing all the distributions to Mr. --

14 A I have not reviewed any. So I -- I don't know one
15 way or the other.

16 Q And there are other potential beneficiaries under
17 this trust, are there not?

18 A There are.

19 Q And those are Lynita and their children; is that
20 true?

21 A I don't think Lynita's a beneficiary. If you go to
22 -- let's see, article 2.1. It says that it's for the benefit
23 for Eric and other beneficiaries. It lists the name of the
24 spouse, but it doesn't list her as a beneficiary. It says it

1 just lists her -- here is the spouse.

2 Q Okay.

3 A And then it goes the names of five -- now living
4 children. List there. And -- and they shall appear under be
5 referred.

6 Q So it's your understand that Lynita --

7 A That's the children of the trustee and also be
8 permissible beneficiaries. So that's all one sentence with
9 the children, but it never says anything about Lynita being a
10 beneficiary.

11 Q So you understand the stress not to include Lynita
12 as a beneficiary.

13 A That's how I read this section 2.1, yes. Actually,
14 it's -- I think it's pretty clear.

15 Q Okay. Now with respect to the -- let's go in
16 reverse order. Well, first of all, let's start with the --
17 the cast -- the lost carryforwards that Eric Nelson has
18 available to him. What -- are -- does he have any loss
19 carryforwards that the sources from something other than
20 Silver Slipper?

21 A Yes. If you go to the form 6198.

22 Q What page is that?

23 A It starts on Page 30 is the Silver Slipper. I --
24 well, I take that back. It looks like it's just the Silver

1 A It's -- yes.

2 Q Thank you, sir. I have nothing further.

3 MR. JIMMERSON: At this time I don't either. I'd
4 like to have the -- reserve the right to recall him. Maybe we
5 can have a preliminary discussion with Mr. Berr on the stand
6 and Mr. Geraty, because I -- I want to be right on this.
7 Judge, you can order it be divide it in half if you -- if --
8 if you -- if you decide Eric can buy this, that will solve it.

9 Eric does not buy this, you know, then you divide it
10 in half. You can issue an order that transfers that. The
11 problem is it -- you don't have the ability to bind the IRS in
12 the assessment. That's the heartache here. And we're trying
13 to find a way that Lynita can enjoy the same benefits if you
14 go down the road of -- of Mississippi.

15 The other -- the other part of that of course is as
16 we're going through this case is that it may not be wise to
17 divide the asset in half if you have a \$3,000,000 one person
18 obligation which is why we brought this up, because I want
19 Lynita to know the can of worms she's going be taking if she
20 gets involved in half of Mississippi, that's all.

21 MR. DICKERSON: And you know something, we --

22 THE COURT: I -- I think the issue is for the --

23 MR. DICKERSON: -- we --

24 MR. JIMMERSON: And that's okay.

1 MR. DICKERSON: Great. Thank you.

2 THE COURT: Of course after you get my decision
3 maybe we'll go through -- we wanted to go to a different
4 judge, but that's all.

5 Thanks everyone for your time and your -- I do
6 appreciate --

7 MR. DICKERSON: You too as well.

8 THE COURT: It's getting better, but the -- the
9 order of the court might do appreciate that, the first couple
10 of tents and we still get some tent sections, but I do
11 appreciate that. I think we're getting there with everybody
12 being respectful to each other and I do appreciate it on
13 behalf of the Court and for the parties.

14 MR. JIMMERSON: Thank you, Judge.

15 MR. DICKERSON: Thank you.

16 MS. NELSON: Thank you, Your Honor.

17 * * * * *

18 ATTEST: I do hereby certify that I have truly and
19 correctly transcribe the digital proceedings in the above-
20 entitled case to the best of my ability.

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Adrian Medrano, Transcriptionist