

1 memory. There is a time that they designate oh, I think in
2 elementary school there is a time that they designate for you
3 to sign up to go in and see them.

4 Q And you did the signing but not Eric, correct?

5 A Well, most likely. I mean --

6 Q And you're also the one who takes initiative to call
7 the doctors for the kids or anything like that if you need to
8 setup appointments for dentists and doctors and stuff like
9 that, right?

10 A Well, Eric's told me that he's not going to do that.
11 So if they need something, I would do that. Uh-huh
12 (affirmative).

13 Q But you don't have to rely on --

14 A I'm responsible for that.

15 Q -- Eric to do all this for your children or give you
16 permission or to -- how to do this, do you?

17 A It would be nice if he helped with that.

18 Q My question was you don't feel that you have to rely
19 on him to describe how to do that, is that correct?

20 A I don't rely on Eric to tell me how to setup
21 appointments?

22 Q Correct.

23 A I don't. I would like him to be in -- I would like
24 him to be involved in it. I certainly would like that.

1 Q So you're capable of setting up those appointments
2 on your own, right?

3 MR. DICKERSON: We'll stipulate to that.

4 MS. FORSBERG: Thank you, Bob.

5 Q All the way back through your marriage you've been
6 able to do that, correct --

7 MR. DICKERSON: We'll stipulate to that.

8 Q -- which just didn't happen to after the divorce
9 began, right?

10 A I don't know. Did you stipulate to that?

11 MR. DICKERSON: I stipulated to that too.

12 MS. FORSBERG: If you can let her answer, it would
13 be helpful, but --

14 MR. DICKERSON: Okay.

15 Q You are capable of doing all that, right, ma'am?

16 A Of making appointments --

17 Q Yeah.

18 A -- for the children?

19 Q Uh-huh (affirmative).

20 A I feel like I've done that. Uh-huh (affirmative).

21 Q You've done a good job with that with the children,
22 haven't you?

23 A In my opinion, I felt like I have.

24 Q And you didn't feel like you needed to get Eric's

1 permission to do any of that all during your marriage, did
2 you?

3 A Not necessarily permission, but I knew there was a
4 time in our marriage I think he was gone working for an
5 auction company. And I was -- I was really, really wanting to
6 talk to him and -- and really have a partner in it. And --
7 and I hung up from that phone call and I told myself and I
8 told him when he got home you know, I -- I realize how this is
9 going to work. If something happens to the children while
10 you're gone, you want me to handle it? Do you want me to go
11 to the hospital, do whatever, and you don't want any part of
12 it?

13 Q I don't think that was my question, but okay. But
14 you again were capable of doing that, right?

15 A Certainly.

16 MS. FORSBERG: I think I have no further questions
17 Your Honor. Let me check.

18 MR. DICKERSON: I just have one question.

19 REDIRECT EXAMINATION

20 BY MR. DICKERSON:

21 Q If you'll take a look at Exhibit 178, an email
22 talking about credit cards.

23 A Oh, is it the one they just gave me?

24 Q Yeah.

1 THE COURT: Yeah.

2 A Okay.

3 Q I have never seen this before. I -- so I don't know
4 what this is about. Can you explain to the Court what this is
5 about?

6 A Well, it looks like I'm asking that there's two
7 bills that should be coming to the house and I haven't seen
8 them. It might be -- it might be for -- I don't know when we
9 bought Harbor Hills, but -- oh, this is '07, so it's not that.
10 There are two specific bills I want to have come in, but it's
11 been a few months for one and shorter for the other since I've
12 got them here. I guess I was just looking for some bills.
13 Oh, and -- and then I tell him it's my Southwest Visa card.
14 So I'm just asking if they were getting it at the office.

15 Q And had you always received that at your home?

16 A Well, it was the first credit card that I applied
17 for myself. I did it. And so I would have requested that it
18 came to the house. So --

19 MR. DICKERSON: All right. I have nothing further,
20 Your Honor.

21 RECROSS EXAMINATION

22 BY MR. SOLOMON:

23 Q I just have a couple on that one document.

24 A On this same one, sir?

1 Q Yeah.

2 A Okay.

3 Q You say there are two specific bills I want to come
4 to the house. You knew there were other bills that were being
5 handled at the office, isn't that true?

6 MR. DICKERSON: It's been asked and answered how
7 many times?

8 THE COURT: Well, you can answer it. Let's get it
9 done.

10 THE WITNESS: I knew that the credit card -- credit
11 cards that Eric gave me and I did say earlier that he wanted
12 -- like there was a time and I don't know when but there was a
13 card that I was supposed to use for business if I used things
14 that could be applied to business items. Like if I went and
15 got the school stuff for the kids. And so I knew that at that
16 time I knew there were multiple credit cards.

17 BY MR. SOLOMON:

18 Q Were you paying all the bills and all the assets
19 that you knew were in your trust personally?

20 A I was onl -- at this time, I had -- I had just
21 gotten a credit card bill and then I bought --

22 Q Did you hear the question?

23 MR. DICKERSON: Can she finish it?

24 MR. SOLOMON: I'm talking about credit cards. It's

1 not my question.

2 MR. DICKERSON: Well, then why are we moving --

3 THE WITNESS: Well, you could just say --

4 MR. DICKERSON: And this is beyond the scope of my

5 --

6 THE WITNESS: You can maybe say it just a little
7 different, but if that's how you want to question me, that's
8 fine, but would -- I don't mind if you ask me again.

9 BY MR. SOLOMON:

10 Q I'll rephrase it and see if you understand the
11 question.

12 A That would help.

13 Q Did you know you were not paying all the bills and
14 all the properties that were in your trust?

15 A I didn't know what anything about the trust. So
16 you're specifically --

17 Q All right.

18 A -- saying the trust.

19 Q Let's go to another question then. That answers it.

20 A Good.

21 Q You say at the bottom line before the word thank you
22 I will be in on Friday morning. Do you see that?

23 A Yeah.

24 Q Okay. So does that refresh your recollection that

1 in fact you did go in to the office to deal with issues?

2 A I went to the office. I never negated that I never
3 went to the office. Even though at one point I -- I didn't
4 get a key.

5 MR. SOLOMON: Nothing further, Your Honor.

6 MR. DICKERSON: Nothing further.

7 THE COURT: Thank you, Ms. Lynita.

8 THE WITNESS: Oh, goodness. Thank you. I can get
9 down?

10 THE COURT: Yeah.

11 THE WITNESS: Thank you.

12 THE COURT: At your own risk.

13 MR. SOLOMON: I guess the question is what you want
14 to do. There's no way I can do it in 15 minutes.

15 THE COURT: Yeah, there's no way we can get with
16 Eric. And I imagine I want to give him the same experience
17 that Ms. Lynita had the opportunity to experience and we'll
18 get Mr. Nelson the exact same experience. I think it's only
19 fair. So I want to make sure everybody has enough time to go
20 through -- as far as how long --

21 MR. SOLOMON: I don't think it'll be even more than
22 an hour for me.

23 THE COURT: What do you think?

24 MR. SOLOMON: Maybe less, because it's our --

1 MR. DICKERSON: As I sit here right now, I can't
2 think of a question I would ask him.

3 MR. SOLOMON: Let's try it and we can get it over.
4 So short. Do you want me to go?

5 THE COURT: I'm okay if you guys want to get done.
6 I'm okay. Do you need to get coverage? What do you need to
7 do? How do you like -- should we -- do we need to get
8 somebody to come in if we did about an hour? If we call it by
9 6:00, would that -- are you okay with that? I don't know if
10 you -- because I don't have a life so I'm okay. As we -- did
11 you want to take a break to call people and we'll go to 6:00
12 if we can get it done?

13 MR. SOLOMON: If we got a restroom break in two
14 minutes and --

15 THE COURT: Yeah.

16 MR. SOLOMON: -- we're ready to go.

17 THE COURT: Why don't we take a break. I just want
18 to make sure if people have to call and people have to pickup
19 kids or anything. So I want to make sure that I -- everybody
20 has a chance to make sure everything's taken care of. Why
21 don't we take a five minute break and if we get it done in an
22 hour and I want to make sure we'll get you out by 6:00 at the
23 latest. Does that work? I don't know if we got kids to
24 pickup or what's going on. So I know those that people --

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THE WITNESS: I'm not needing that.

THE COURT: Is that --

MR. SOLOMON: Thank you, Your Honor. I really appreciate it.

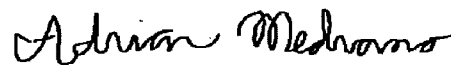
THE WITNESS: I'll refer to them.

THE COURT: Yeah, I don't think I said --

(Off record)

* * * * *

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



Adrian N. Medrano

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Clerk of Court
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

vs.

LYNITA NELSON,

Defendant.

CASE NO. D-09-411537-D

DEPT. L

(SEALED)

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL - VOL II

WEDNESDAY, JULY 25, 2012

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1 THE COURT: This is recalling the matter of Eric
2 Nelson, Lynita Nelson, case number D-411537. Everybody just
3 took a brief recess. We're going to continue at this time.
4 We'll get Mr. Nelson sworn in.

5 THE CLERK: You do solemnly swear the testimony
6 you're about to give in this action shall be the truth, the
7 whole truth and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: You may proceed at your pleasure, Mr.
11 Solomon.

12 ERIC NELSON

13 called as a witness on behalf of the Intervener and being
14 first duly sworn, testified as follows on:

15 DIRECT EXAMINATION

16 BY MR. SOLOMON:

17 Q Eric, let's try and get through the main points and
18 so we can get this done here.

19 A Thank you.

20 Q All right. In 1993 you met with Jeff Burr with
21 respect to a desire to change -- to protect your assets, is
22 that correct?

23 A Yes. And to separate them away from gaming.

24 Q And why didn't Lynita want to be involved in gaming?

1 A Oh, in our LDS faith there's kind of a fine line
2 whether you're working the industry or owning an industry.
3 And of course the -- any association with the liquor side of
4 it is a little bit more difficult. And I grew -- I was in LDS
5 and didn't have -- I mean, it wasn't LDS. I didn't grew up in
6 the LDS religion. So I probably didn't have the convictions
7 that she had. So we had quite a discussion on that.

8 Q We meaning you and --

9 A Lynita and myself.

10 Q Did she have an adversity to being involved in
11 businesses involved in liquor?

12 A Yes.

13 Q And you were interested in obtaining businesses that
14 involved both gaming and liquor and that time, is that right?

15 A More of the real estate transaction side of it, but
16 the overlay would be gaming properties, yes.

17 Q Is that the reason why you went to Mr. Burr in 1993
18 --

19 A Yes.

20 Q -- to deal with those issues? Now did you meet --
21 do you recall whether you met with Mr. Burr initially?

22 A Well, in 1991 --

23 Q Well, I'm at in 1993.

24 A '93.

1 Q I'm skipping '91.
2 A Excuse me.
3 Q Let's move on.
4 A '93, possibly. I don't recall.
5 Q Do you recall that Lynita met with you and Mr. Burr
6 with respect to the 1993 plan at some point?
7 A Yes.
8 Q And do you recall the discussions that you had with
9 Mr. Burr and Lynita at those -- on those meetings?
10 A Yes.
11 Q Is it more than one meeting --
12 A Yes.
13 Q -- that Lynita participated in?
14 A Yes.
15 Q And was she a participant, a real participant in the
16 meeting in terms of giving input with respect to her desires
17 and goals?
18 A I would say yes.
19 Q And did -- what do you recall Mr. Burr told you
20 about what plan existed at that time with respect to how you
21 could protect not only divide the assets, to keep gaming away
22 from -- gaming and electric away from Lynita's side but also
23 to protect the assets?
24 A That would be form a separate property.

1 MR. DICKERSON: We discussed all this in 2010. Is
2 it -- if it feels it's necessary for him to repeat all of
3 this, it's fine, but it just seems like we're going over the
4 same old stuff, you know,

5 MR. SOLOMON: I disagree. I've read the transcripts
6 and I don't think he's gone through this the way I need to go
7 through it with respect to the interests.

8 MR. DICKERSON: I thought you read the transcripts
9 and --

10 MR. SOLOMON: I did read the transcripts.

11 MR. DICKERSON: -- I thought you asked Mr. Burr
12 questions that Mr. Jimmerson didn't and I didn't hear one.

13 MR. SOLOMON: Well, that is absolutely untrue. You
14 can save that for argument. There is a lot --

15 THE COURT: All right. Well --

16 MR. SOLOMON: -- of differences between Mr. --

17 THE COURT: -- why don't get this done and the
18 longer we argue, the longer we'll be here. So why don't we
19 move forward and give you your --

20 THE WITNESS: Would you ask -- reask the question,
21 please?

22 BY MR. SOLOMON:

23 Q Sure. The question was what did Mr. Burr tell you
24 was the only way that he thought you could accomplish your

1 goals which you needed to do?

2 A That would be to separate our assets with separate
3 property -- with the separate property agreement.

4 Q Was there any -- did you make any promises or
5 pledges to Lynita at any time that if you did that, if you
6 separated your properties, it would not be separate property
7 for all purposes?

8 A No.

9 Q What -- do you recall a discussion in Lynita's
10 presence with Mr. Burr with respect to the risks involved
11 between you two if you were to follow this plan and do a
12 separate property agreement and divide your property?

13 A Yes.

14 Q And what did he tell you?

15 A Basically tomorrow if Lynita or myself elected to
16 divorce, that property would be separate.

17 Q Did he tell you you could -- did he discuss whether
18 you could have separate property for purposes of protecting
19 your creditors but that it wouldn't really be separate
20 property as between yourselves?

21 MR. DICKERSON: Object to leading nature.

22 THE COURT: Rephrase it.

23 BY MR. SOLOMON:

24 Q Did he tell you anything with regard to how --

1 whether or not the separate property was for all purposes or
2 not?

3 A All purposes. It was separate.

4 Q What discussions did you have with Mr. Burr in
5 Lynita's presence about how you could make gifts to each other
6 and why you would?

7 A He said basically we could gift properties between
8 the -- you know, to each other and they could level, but the
9 word level didn't mean it would have to be equal. They could
10 go relatively freely back and -- you know, to one trust there
11 periodically per year.

12 Q Did you have discussions with Mr. Burr in the
13 presence of Lynita about possible transactions between the
14 trusts?

15 A Yes.

16 Q What was said?

17 A That we could agree mutually to have -- sell one or
18 borrow money between either one of the trusts.

19 Q Did he say anything about the necessity or
20 desirability of keeping the assets accounted for and
21 liabilities accounted for?

22 A Yes.

23 Q What did he say?

24 A That we should do accounting to make sure that

1 periodically didn't have to be early though that we would be
2 able to keep a count within some range of owing each other's
3 trust and we could either do it with money or we could do it
4 with property or we didn't have to do it at all.

5 Q Did he ever advise you in Lynita's presence about
6 any special tax benefits that existed with respect to
7 borrowing money back and forth between the trust?

8 A Well, I'm not quite sure if Mr. Burr gave me any
9 indication on those issues but I was aware -- and he did
10 indicate that because of the two trusts we were fortunate
11 enough with -- from the IRS standpoint that we when we combine
12 the assets that they would roll up. But in essence, they'll
13 be separate. And then I knew that gave me advantages and
14 exchanges, multiple transactions that would work between the
15 trusts. And so those areas he made me more -- or -- or agreed
16 with or, you know, said that same in the same that that could
17 happen.

18 Q Now you made Lynita a beneficiary of your trust, did
19 you not?

20 A Yes.

21 Q Then she made you a beneficiary of her trust.

22 A Yes.

23 Q And was that discussed --

24 A Yes.

1 Q -- that you were going to do that? Okay. And if
2 your trust were to benefit in its operations, it was intended
3 she would benefit as a beneficiary of that, correct?

4 A Yes.

5 Q And vice versa.

6 A That is correct.

7 Q Now I believe Lynita testified that you didn't keep
8 her informed with respect to what was going on in the business
9 world of your life, is that true?

10 A I would disagree that I didn't keep her informed.

11 Q With respect to the day-to-day management of the
12 assets in both your trust and her trust, did you have
13 discussions with her?

14 A Yes.

15 Q Can you explain to the Court the nature of those
16 discussions, how that would come about?

17 A Well, in -- in our household we would meet at least
18 once a week and talk about the children. We talk about their
19 schedules. We talked about what I was doing at my workplace,
20 what she had planned. And that's basically how that would
21 work and it would at least be at least several times a month.
22 But I would say more apt to be at least once a week because of
23 our children's schedule and my schedule, business schedule and
24 transactions that were going on not only with Lynita and with

1 myself but other things in the business world.

2 Q Would you discuss specific transactions that you
3 were entertaining doing?

4 A Yes.

5 Q Would that be true with respect to the management of
6 your trust?

7 A Yes.

8 Q Is that true -- well, let me back up a little bit.
9 Lynita testified she didn't even know what assets went into
10 which trust, is that true?

11 A She -- she may say that, but I -- I find that
12 impossible to believe.

13 Q What did you do to divide the trusts between -- I'm
14 sorry, divide the assets between the two trusts in 1993?

15 A 1993 we took some of the prime assets that would
16 have low risks that were free and clear and put into Lynita's.
17 But at the same time we did that to my trust too. I have 14
18 fourplexes there. I had houses free and clear. But then I
19 had several gaming properties that were completely separate.
20 So I ran the gaming side of it with real estate transactions
21 and Lynita had real estate transactions and I would say at
22 that time they're very close to being equal in equity with the
23 exception that I have all the liability on my side. So we
24 walked through those areas extensively in '93.

1 Q That's what I'm going to focus on. We walked
2 through those -- who's the we?

3 A Lynita and myself.

4 Q What -- did you have a list of assets developed at
5 one point before the division occurred in 1993?

6 A Yes.

7 Q All right. Did you go through that list with
8 Lynita?

9 A Yes. I want to note though that I made sure that it
10 was overly fair and weighted toward the children and Lynita.

11 Q Was she in agreement with the division that you
12 proposed?

13 A Yes.

14 Q Now with respect to the operation or the management
15 of the assets within each other's trust, who as between the
16 two of you was primarily responsible for scenes of the
17 day-to-day affairs of those assets?

18 A Well, to be honest with you, I manage my trusts in
19 the investment side of it and Lynita's investment side of it,
20 but I depended heavily on the girls in the office to run the
21 day-to-day operations on her side and my side. And that's why
22 they had a tremendous amount of conversations with checks and
23 expenses and things that would require her signature. See,
24 there's a lot of assets at that time.

1 Q Was that day-to-day management done with Lynita's
2 knowledge and consent?

3 A I would say yes.

4 Q Do you say yes or do you know yes?

5 A Yes.

6 Q And how do you know that?

7 A Because we had conversations weekly that would
8 require her to have communications with the girls. I had
9 communications with the girls on a daily basis.

10 Q By the way, was the division that of the assets that
11 you said that you worked out with Lynita for the separate
12 property agreement accurately reflected in Exhibit 4?

13 A Yes.

14 Q What if anything did Mr. Burr tell you and Lynita in
15 connection with the separate property agreement and the
16 separate property trust that were done in 1993 about the
17 desirability of keeping those assets separate?

18 A That it was important that we divided all assets and
19 that we placed all assets into the separate property
20 agreements. We wouldn't have any community property. And
21 that they would be divided and be -- and we needed to run them
22 separately with checkings and meetings and check the proper
23 checks and balances.

24 Q And what efforts did you make to ensure that that

1 thereafter occurred?

2 A Well, I followed up with Lynita to make sure that
3 she's working with the girls and transferring all the deeds.
4 The girls were preparing all the transactions and the deeds.
5 We had the capability to do that in the office and so Lana was
6 over Lynita's and -- and actually mine at -- at -- on the
7 transferring of those assets there. So we followed up to make
8 sure all the accounts were properly listed. I think we
9 actually ran the DVA and other information that was required
10 on the legal news. And then we reported back to Jeff that all
11 had been completed.

12 Q Thereafter and I mean over the years going all the
13 way up through 2001 when he gets to the sale of self-settled
14 spendthrift trust, what did you do to ensure that your staff
15 kept the trust and the assets separate and accounted for?

16 A Well, we would have daily meetings but minimum a
17 solid two times a week and make sure that bills were being
18 paid accordingly and that as far as -- and it's close as
19 accurately as we could that they were being paid from the
20 right accounts.

21 Q Were there occasions -- I'm not sure there were any
22 before -- let me ask. Were there any occasions before 2001
23 trust were established where your trust borrowed money from
24 Lynita's separate property trust?

1 A Before 2001?

2 Q Yeah.

3 A Not likely. I can't -- if there was, it would be
4 recorded on a due to, due from, a very simple form to make
5 sure that was in a small range. Let's say, you know, her
6 would flow up, mine would flow down and then we try to keep
7 that in equitable positions. So it's not likely we had --

8 Q Well, Rochelle testified -- Shelly testified there
9 were no loans back and forth in that period but there were
10 common expenses that went into due tos, due froms.

11 A Yeah.

12 Q Is that your recollection?

13 A Yeah. That -- that would be more apt. I had good
14 cash flow and Lynita had good cash flow back in 1993.

15 Q Let me turn to the 2001 trust. Why did you decide
16 that it would be beneficial to do a new trust in 2001?

17 A Well, in visiting Jeff, it's an out -- some pamphlet
18 information that's been reviewed and -- and gone over. And he
19 said this was a much better and much more efficient --
20 efficient -- official way to be able to protect assets inside
21 the trusts and outside.

22 Q And did you discuss that information you learned
23 from Mr. Burr with Lynita?

24 A Yes.

1 Q And was she amenable to creating a trust for herself
2 for that purpose?

3 A Yes.

4 Q Before I get into that, let's talk about Wyoming
5 Downs. Do you recall when you acquired Wyoming Downs?

6 A 1998.

7 Q So that was after the separate property trusts were
8 created in '93 but before the 2001 trust were created.

9 A Yes, sir.

10 Q What funds were used to acquire Wyoming Downs?

11 A Well, the sale of Las Vegas Casino we were fortunate
12 to sell the casino and we made out with an amount of cash and
13 capital and properties that allowed me to invest on my side.

14 Q Now do you recall whether before you created the
15 2001 trust whether in fact you ever made gifts of properties
16 in your trust to Lynita's separate property trust?

17 A Yes.

18 Q Was that in 1994?

19 A '94, yes.

20 Q Okay. What was -- what happened in that year?

21 A 1994, one of my partners and myself we had -- I had
22 -- had a company, the Las Vegas Casino, and built it. My
23 brother Cal built the facility. And in the licensing process,
24 the Gaming Commission requested that we diversified all our

1 equity to gather and we -- we so did that, but in that process
2 there a sale was pending. And so I sold the casino facility
3 with that partner too at the same time.

4 So what I'm again saying is there were assets that I
5 had with a partner that were not in gaming, Tierra Del Sol,
6 Sycamore Plaza, some notes, Polaris. And so we had to divide
7 those out of Lynita's trust and my trust and then I could --
8 then I could sell the casino too.

9 Q Okay. And so as a result of that transaction, what
10 did you gift to Lynita's separate property trust?

11 A Lynita had some assets and she traded them in to the
12 Sycamore asset to level off. So she took Sycamore and gave
13 Mr. Walter some of her assets. I ended up with the chunk of
14 Tierra Del Sol and out of that side of it I gave that to
15 Lynita. So that transaction there would -- would take -- she
16 got -- she was gifted Tierra Del Sol 75 percent, but I kept
17 the cash from the sale of the casino.

18 Q Okay. And how about Sycamore Plaza? Was she -- did
19 she get an interest in that as a result of that too?

20 A Yeah, she moved her -- her interest from 50 percent
21 to 100 percent.

22 Q Did you tell Lynita that that was going to happen at
23 or about the time it did?

24 A Oh, yes. That was quite a big issue.

1 Q I had asked you as a lead in to that whether -- from
2 where you paid the consideration to acquire Wyoming Downs.
3 Let me -- and I think you explained it was from the proceeds
4 of Las Vegas Casino, part of that same transaction that we're
5 talking about?

6 A Actually, those were two transactions. One were to
7 divide the assets that was required by the Gaming Commission.
8 The other one was from the sale of the Las Vegas Casino which
9 was not a complete sale. It was 85 percent of my interest. I
10 maintained 15 percent after 1994.

11 Q Were any of the assets in Lynita's separate property
12 trust used to purchase the Wyoming Downs investment?

13 A Definitely not.

14 Q All right. Back into the 2001 self-settled
15 spendthrift trust, you indicated that you talked to Mr. Burr
16 and then you talked to Lynita about and you were both on board
17 to do that. Did you meet with Mr. Burr?

18 A Yes.

19 Q Both of you?

20 A Yes.

21 Q Was there more than one meeting that Lynita
22 participated in with respect to the establishment of that
23 trust and Mr. -- with Mr. Burr yourself?

24 A Not -- not only Lynita, the complete office staff.

1 Q And what were the self-settled spendthrift trusts to
2 be funded with?

3 A Her separate property and her -- and her accounts
4 and my separate and my accounts. Just -- we just follow the
5 ledgers forward.

6 Q And was Lynita aware that your trust to the ELN
7 Trust was going to be so funded from your separate property
8 trust?

9 A Yes.

10 Q And that was discussed in her presence?

11 A Oh, yes.

12 Q All right. After the two self-settled spendthrift
13 trusts were established, were there transfers between them on
14 occasions?

15 A Periodically, yes.

16 Q And what type of transfers would those include?

17 A There were loans where I borrowed money and there
18 were assets that we had agreed on in transactions how to work
19 together closer with the trust since I was benefitting her
20 trust and she was benefitting my trust with these separate
21 property trusts. We devised the plan in 2004 to combine some
22 assets and move forward but separately.

23 Q I'll get to that 2004 transaction in a minute, but
24 Lynita has testified that she was unaware that her trust was

1 lending money to your trust, is that true?

2 A That is not trust.

3 Q Tell the Court what in fact occurred with respect to
4 the loans.

5 A The loans were signed by Lynita. We had met. We
6 had gone over it. She had loaned the money, signed the -- the
7 signa -- the loan documents in those areas there. And she was
8 aware -- she would get monthly ledgers. I would bring them
9 home on what the expenses were on the accounts. And I would
10 go over them with her. And you would see it plain as day.

11 Q And did you discuss with her what you were going to
12 be using the loan proceeds for?

13 A Oh, yes. I want to note that every loan had been
14 paid back completely.

15 Q That was going to be my next question. To your
16 knowledge, has every single loan that's ever been taken from
17 Lynita been paid back?

18 A From me, my family, Grada, anyone that's borrowed
19 money from the LSN has paid her in full.

20 Q Now in addition to loans, were there property
21 transactions involving each trust?

22 A Yes.

23 Q Was it your understanding that the two self-settled
24 spendthrift trusts also enjoyed the same tax benefits of doing

1 transactions between each other without recognition of gain?

2 A Exactly. This is a big transactional part of taxes
3 inside these two trusts that complicate the -- the
4 transactions to the normal people listening to it, but they're
5 very unique to be able to use the separate property trust in
6 IRS exchanges and back and forth, because they are separate,
7 but at the same time you can file them on the same return.

8 Q Was it your understanding that resulted from the
9 fact that you were husband and wife and that these were
10 grantor trusts?

11 A Yes, I was fully aware of that.

12 Q All right. You started to talk about something that
13 occurred in 2004 between you and Lynita with respect to
14 property and transactions. Can you tell the Court what
15 happened?

16 A Well, yeah. I was doing a project at the Silver
17 Slipper down in Mississippi and I invested since 1998 years
18 down there in developing property on the waterfront. And was
19 working with the federal government in putting in a mile beach
20 in front of our property. And I was excited about it, because
21 they had concluded that they were going to agree with my
22 findings that it would protect the road. And I had purchased
23 property and Lynita had properties in her name. And it was a
24 fun --

1 Q Was it her name or her trust name?

2 A Lynita's trust name. And it was an exciting time
3 for myself because we had that project moving forward. And
4 Lynita had desire and she has stated this and she is exactly
5 right and I agree that we wanted to work together in the
6 non-gaming assets and somehow develop a plan that we could
7 work forward on taking properties and moving them -- rolling
8 them forward and she would have half and I would have half.
9 And that way we would still have it separate but and protect
10 the children from my creditors and from the IRS but at the
11 same time benefit both of our trusts as we move forward.

12 Q What specific discussions did you have with her
13 about accomplishing -- how to accomplish that?

14 A That would be through multiple transactions that
15 were tax free that would roll over for the next two, three
16 years. Once the deeds were cleaned up, we could clean and
17 cleanse the deeds. And it -- it speaks for itself. You know,
18 the -- the deeds in Mississippi are over three inches thick.
19 And so we had developed a plan and I had -- I had developed a
20 plan I should say. But I had to share it with her the vision
21 of how we can clean these things up and how we can move all
22 these transactions and there is some assets that were more
23 sacred than others. Mississippi was a sacred asset. I -- I
24 felt the land part of it, the cabin and Lindell were

1 definitely some key assets that were going to be long term
2 holds.

3 Q Okay. And I understand -- you're saying that Lynita
4 wanted to be involved in this Mississippi project, is that --

5 A Yeah, and all the projects, join things 50/50, her
6 own half, I own half with the exception of the gaming assets.
7 That's when we started that plan.

8 Q And what did you do in 2004 to start to bring that
9 plan in fruition in terms of transfers?

10 A There was probably -- I know the, the deeds were
11 probably 40 deeds, but that 40 deeds encompasses maybe a
12 hundred and fifty different parcels inside those deeds and
13 maybe 250. And so we had engaged surveyors to start the
14 process of that. But the first step would be the deeds into
15 Lynita's name and start marching forward in Mississippi. And
16 then at that time there, I had -- had No -- that would be
17 Rochelle. And I had Nola start working the cabin with Lynita
18 because Nola and Paul Harbor own part of the lands. It was --
19 and the deeds were commingled meaning that Paul owed some,
20 Nola -- Paul and Nola owned some and then we owned them
21 together with Paul and Nola and ourselves several hundred
22 acres like that.

23 So we had to pick and choose the parcels. We had to
24 get the right parcels deeded correctly and we had to clean up

1 water rights. And that in itself took three years. And
2 that's the same thing that was being developed in Mississippi
3 of which some of these deeds were being signed by Lynita
4 periodically. And the deeds would be worked on as we rolled
5 them out.

6 Q Why did the deeds go a hundred percent to Lynita in
7 Mississippi when it -- you said the intent was you're going to
8 own 50/50?

9 A One of the unique parts of the -- the -- having two
10 different trusts is the safety net of having Lynita's trust
11 and my trust away from different creditors. There is a
12 transaction with the Silver Slipper and DDJ, the mortgage
13 company that we're entering into some large transactions. So
14 I contacted Jeff Burr and said Jeff, they want me to sign
15 personally for this and I'm concerned because it is a
16 multi-billion dollar head shrimp from New York, difficult to
17 deal with. And they also want to have the -- my name on the
18 trust on a document. He said send it over.

19 So I sent over the documents to him, then we
20 discussed it. And I discussed with him that I wanted to
21 remove Lyni -- to protect the land too. One of the
22 suggestions is you can put it all in Lynita's name and that
23 would definitely separate it from the Silver Slipper guys even
24 though they took a hundred and twenty-five acres and we had to

1 pledge that, I was not willing to pledge all the other land
2 there. So felt it was a clean distinction with them that we
3 had separated that property at that time. And so it's a good
4 way to start engaging and marching forward with the overall
5 plan.

6 Q What was the goal though or the intent though with
7 respect to getting you back a 50 percent interest? How is
8 that supposed to work?

9 A At the same time I sit -- I met with Jeff Burr and
10 I'm not sure if Lynita was there, but I started the project
11 and we -- we formed a six or seven LLCs that would ramp up to
12 a parent LL LLC that -- that Lynita would and myself would own
13 50/50, our trusts. So Jeff -- Jeff formed all the LLCs and
14 what we would do is we would clean the title up in ones like
15 -- I think it was Bay Harbor that would be encompassing
16 approximately five or six acres on the beachfront. We would
17 take that, stick that into Bay Harbor. Then we would go to
18 number two and number three as we had the attorneys and the
19 surveyors clean the deeds up.

20 Q So if I understand your testimony in order to asset
21 protect these for awhile while you're dealing with your casino
22 partners and -- and to cleanup the titles, you transferred
23 them all into the LSN Trust but the intent was that you were
24 going to eventually create these LLCs that would be 50/50 and

1 send the titles back.

2 A Yes. And that part of the reason is the value I
3 thought was so valuable at that particular time in 2000 and
4 2004, 2005 when the economy was rocking and rolling,
5 beachfront property was off the hook with -- we had all the
6 environmental areas worked out. So that was exciting and
7 Lynita agreed hey, we'll put all this, the cabin property,
8 Lindell, several other transactions, all 50/50 benefit her
9 trust. I'm a beneficiary of her trust, her as mine, and we
10 can march this forward.

11 MR. SOLOMON: 174 and 175. Do you mind if I show
12 him copies just to move on? That's right. Thank you.
13 They're both in, aren't they, 174 and 175? Jeff?

14 MR. LUSZECK: What's up?

15 MR. SOLOMON: 174 and 175 into evidence? Yes.

16 MR. LUSZECK: Yes, they have been.

17 MR. SOLOMON: All right.

18 Q Is 174 the operating agreement that you -- for the
19 LSE that you just discussed in your testimony?

20 A Yes, and I have a board here if you wanted me to
21 ever put a board up. But it's not necessary.

22 Q And that was signed by Lynita?

23 A Yes.

24 Q On Page 39? And 175, what's that? How did that fit

1 into a plan?

2 A That shows Lynita dropping it into Bar Harbor Beach,
3 one of the LLCs. Uh-huh (affirmative). And it would be six
4 parcels that would seven -- let's see. It looks like about 30
5 lots which will be seven different parcels. So it is an
6 extensive warranty deed with surveys, right-of-ways and things
7 like that taken care of.

8 Q All right. This is a warranty deed transferring
9 property into an LLC called Bay Harbor Beach Resort, is that
10 correct?

11 A Yes.

12 Q All right. And how did fit under the LLC that we
13 just looked at?

14 A That would be one of the drop downs I call it of the
15 six LLCs that would ramp up to the Emerald Bay. That's
16 allowed me to manage these assets here. But when it came to
17 selling them and everything, Lynita would have to sign off on
18 everything. That's 50/50 her trust and my trust just as we
19 had talked about.

20 Q Okay. Does part of that same -- would you call it
21 an agreement or understanding that you had with Lynita about
22 dividing these assets 50/50? What other assets were conveyed
23 back and forth?

24 A Well, I know the -- you know, the agreement was that

1 we do the cabin, we would do all -- you know, virtually, that
2 we were moving forward with the majority of the non-gaming
3 assets which would be the cabin and Lindell and Mississippi
4 land.

5 Q Was High Country Inn one of the properties that was
6 to be conveyed?

7 A High Country Inn was -- do you want me to tell you
8 how that was acquired?

9 Q Sure.

10 A And that was acquired on the Sycamore trade on the
11 1031. She bought two parcels, Lynita. That would have been
12 the 1999, the Tropicana 3.3 acres there with -- with the Cal
13 Bluewater Marina, a portion of that land. And the other one I
14 believe was the 2000 transaction to the High Country Inn.

15 Q Do you recall that that was transferred to your
16 trust in or about 2007?

17 A Yes.

18 Q How did that come about?

19 A The -- I know the equity has been an issue on how
20 that was designed, but I sold the racetrack and of course
21 Lynita had the land there and Frank Soras (ph), we had a
22 gaming operation that on some machines and that had failed.
23 And so Soras had wanted to get out of that transaction. We
24 had about 1.3 million sixty I believe that he had loaned into

1 Lynita's trust. So that was a debt of 1,000,000, three sixty.

2 The High Country Inn at that time was used in a
3 1035, not a 1031 exchange, but a 35 from the Grada Group on a
4 piece of property sold on West Flamingo. So we had designated
5 a motel. The motel business of course had dropped off too.
6 And so the desire was was to transfer and move those two
7 assets off the books because that had become a safe harbor
8 asset and a change more to a risky operation needless to say
9 because of the debt load and Wyoming Downs not being involved
10 as far as the guarantee on the rents on that and the High
11 Country Inn.

12 And so I took property that was on 39th Avenue. Mr.
13 Bertsch had almost correctly the -- how the -- how that title
14 ran. So I transferred -- I had a property that was free and
15 clear worth approximately a million three which would have
16 been 39th Avenue.

17 So what you can do is you can transfer debt they
18 call it. And because the uniqueness of the trusts that allows
19 me to move that debt to 39. So in essence by doing that, I
20 wiped out a million, three-sixty debt of -- that would have
21 been gone to Lynita and gave up one of my properties. So even
22 though I profited from that, it's like I sold 39th Avenue in
23 essence.

24 So the balance of the money, three or \$400,000 would

1 be required for taxes on the motel side of it. And so when
2 you see a sale of a million seven, million nine, that would
3 inquire part of the tax coming back in that area too. So it
4 really wasn't a major net gain to me, because I gave up a
5 property and paid the income taxes in those areas.

6 Q Okay. Did Lynita sign off on the documents?

7 A Definitely signed off on the documents.

8 Q Did you do your best to explain that transaction to
9 her before she did so?

10 A Yes, and the other part of it that she understood is
11 that she was getting a 40 percent part of the Wyoming land.
12 And so she did get that land part of it. So it wasn't just a
13 complete give up. Sometimes these transactions are not normal
14 transactions when you're doing things on a third party basis.
15 This is a related party transaction, so you could do things in
16 six months, a year. You can do it three years down the road.
17 That's the benefit and the luxury. However, any given time
18 either one of those parties can say no.

19 Q Now before I leave the plan that you had that --
20 between 2004 and 2007 to get into a 50/50 position with
21 respect to the non-gaming assets, did Lynita ever complete the
22 plan?

23 A No.

24 Q What specifically did she not do to -- to that?

1 A We had spent hundreds of thousands of dollars in
2 cleansing the deeds in Mississippi with environmental things
3 that were going to evaporate and we were going to lose some --
4 some major environmental fill ins that we could fill some of
5 the properties in. And I was somewhat desperate to get those
6 deeds signed with Lynita and approached Jeff Burr. The deeds
7 were completely completed. It took three years from our
8 attorneys and surveyors to correct these deeds. And her
9 counsel rejected the idea to sign them. And although she did
10 sign part of that, the first phase of it, the three-quarters
11 of the phase was not signed and we lost extensive value in
12 that property or she did.

13 Q All right. I'm -- Mr. Bertsch had a report that was
14 gone through in part today with one of the tabs and if I
15 remember which one it was, described I think it was like a 15
16 page summary of transactions that occurred --

17 A Yes, sir.

18 Q -- over time. Basically is that report accurate to
19 your information?

20 A Basically. It's -- it's pretty accurate.

21 Q So I'm trying not to go through those. We'll assume
22 that that's the case if we need to argue with those
23 transactions. We're -- well, let's talk about at least some
24 of them that aren't covered there at all. Tropicana

1 Albertsons was not covered in that report, is that correct?

2 A Yes, sir.

3 Q See if I get right to the road and save some time.

4 There was a note for \$700,000 that we have seen here.

5 A Yes.

6 Q And it's said for a collateral you're going to give
7 property.

8 A Yes.

9 Q And what did you do in that regard?

10 A Sometimes the simplest transactions are you have
11 someone. You must have a degree of trust in this, but you do
12 what they call like a car loan. You deed -- you just hand
13 them the deed and they'll give you the money. And so in
14 essence we would do a note and I would give her additional
15 collateral in that area, particularly in this area because my
16 brother Paul had brought the property, found it and he was
17 part of that transaction, 50/50 owner with my trust.

18 Q So --

19 A Then I deeded the property to her in -- in essence
20 to hold the deed which is reflected in the deeds.

21 Q So that was given to her as collateral and not as an
22 outright transfer?

23 A That's correct.

24 Q And then at some point, that property was sold,

1 correct?

2 A Yes. Yes.

3 Q Did you discuss the fact that you had an opportunity
4 to sell this property with Lynita?

5 A Definitely.

6 Q Did you ask her to transfer the deed back?

7 A Yes.

8 Q And did you do so?

9 A Yes.

10 Q Okay. And you received some proceeds from that
11 sale.

12 A Yes.

13 Q And Mr. Dickerson made a point that you made more
14 than 50 percent off of that. Why?

15 A Because involved in the transaction my brother
16 wanted to borrow money. That was part of the 700. That's why
17 we deeded the deed -- or how she held the deed. So he paid
18 his loan back with giving me additional proceeds in essence to
19 that.

20 Q Okay. And did you pay back that loan to Lynita?

21 A Yes.

22 Q Now you've already testified that before the 2001
23 trusts were established I think you said 1994 -- or actually,
24 you testified 1993 Lynita's separate property trust had an

1 interest in Sycamore and then you gifted her the balance of
2 the interest in 1994 that brought her up to a hundred percent,
3 correct?

4 A Correct. And in essence, that's how it worked. The
5 bottom line is she ended up with a hundred percent in '94.

6 Q The Sycamore sold.

7 A The Sycamore was sold, yes.

8 Q What happened to the proceeds?

9 A I believe it was sold in '99. Half the --
10 approximately half the proceeds, 875,000 if I'm correct rolled
11 into 3.3 acres at the Tropicana line -- line -- land that the
12 trust --

13 Q Tropicana or Russell?

14 A Excuse me, Russell Road.

15 Q Okay. And do you know what the other proceeds were
16 used for?

17 A It would have been early 2000 to complete the -- the
18 half -- the other half of the 1031 would have been I believe
19 would have been from that Sycamore Plaza for -- so -- or
20 excuse me. I'm sorry, Your Honor. The High Country Inn.

21 Q You're talking about the Sycamore proceeds.

22 A The proceeds would have been High Country Inn.

23 Q And the High Country Inn was owned by the LSN.

24 A Yes.

1 Q All right. So the proceeds from Sycamore went to
2 acquire an interest in High Country Inn for LSN.

3 A Yes.

4 Q And you also went to acquire a 3.3 acre parcel on
5 Russell Road that was also held by LSN Trust, correct?

6 A Yes.

7 Q All right. Let's talk about Tierra Del Sol which is
8 not covered in Mr. Bertsch's narrative. Tierra Del Sol was
9 owned by which trust?

10 A Lynita's.

11 Q And was that property sold at some point?

12 A Yes.

13 Q Approximately do you recall approximate proceeds
14 that were received over time from that sale?

15 A Well, I know the last proceeds was approximately
16 three and a half million dollars -- or 3.4 million.

17 Q Okay. And did Lynita's trust directly receive part
18 of those proceeds?

19 A Approximately. A little over -- I believe
20 \$2,000,000 she opened the Mellon account at that time.

21 Q Did she sign off on escrow allowing monies to come
22 to you?

23 A Yes.

24 Q And do you recall approximately how much came to

1 you?

2 A Approximately 1.4 million.

3 Q Let's go back with the balance that went directly to
4 her trust. Do you know at least part of the uses of that --
5 those proceeds?

6 A The 2,000,000?

7 Q Yes.

8 A Yes, he -- we worked with Bob Martin of Mellon.
9 He's the president of Mellon in Las Vegas here. And designed
10 a plan to send her 15,000 direct deposit every month.

11 Q Do you know if any of those proceeds that went to --
12 directly to her trust were used to discharge any obligation on
13 the Palmyra residence?

14 A Of the 2,000,000?

15 Q Yes. I'm sorry?

16 A No.

17 Q Was there a line of credit on -- with Wells Fargo on
18 the Palmyra -- I can't say that word, Palmyra?

19 MR. DICKERSON: Palmyra.

20 MR. LUSZECK: Palmyra.

21 MS. FORSBERG: Palmyra.

22 MS. PROVOST: Palmyra.

23 MR. SOLOMON: Yes. Palmyra. Thank you. That's --

24 Q Was there?

1 A The balance of the proceeds if that's where you're
2 getting at is I paid taxes probably about 650,000 for my
3 trusts that paid the combination of taxes at that time,
4 because I believe it was a joint return. And so what I paid
5 her taxes on that, the balance of it because of the booking
6 due to and due from, it's easier to -- for our tracking, our
7 purposes, several ways you can do it, but we paid Lynita's
8 line of credit off. In essence though, we paid 100 percent of
9 that money back to her with the exception of the taxes.

10 Q Okay. Well, my point is that there was a line of
11 credit on the Palmyra residence, correct?

12 A Yes.

13 Q And that was in Lynita's trust.

14 A Yes.

15 Q Some of the proceeds were used to pay off that loan.

16 A Yes. I believe that's correct.

17 Q Well, let's talk about Wyoming Downs if we can. We
18 heard that Lynita -- and you're welcome to grab any board you
19 have here to explain this. You've heard that Lynita owned
20 seven acres that were given up at some point.

21 MR. DICKERSON: 11 acres.

22 MR. SOLOMON: 11 acres. I'm sorry.

23 Q Were given up at some point.

24 A All right. Let's see if -- all right.

1 Q All right. All right. Where was the 11 acres that
2 Lynita's trust or the LSN Trust conveyed?

3 A This would be the Wyoming Downs property. This is
4 the LSN property here. There was a river that runs across
5 here and a freeway or a roadway that runs across here. The
6 property that we're talking about, it's this parcel right
7 here, is the 11 acres.

8 Q Okay. And you sold what property for \$11,000,000?

9 A This is the property that sold for 11,000,000, this
10 gaming property, the racetrack.

11 MR. SOLOMON: I might do three documents at once
12 just to make it go faster. So give me a second to get them
13 marked.

14 (Whispered conversation)

15 Q All right. I'm showing you what has been marked as
16 180, 181 and 182. What are these documents in reference to?

17 A 182 is the asset purchase agreement that would
18 define the buyer and seller of the four corporations of the
19 buying meeting --

20 Q Let me speed this up. Are those three documents
21 related to the sale of your -- or the Wyoming Downs property?

22 A Yes.

23 Q And does that have anything to do with the sale of
24 the 11 acres?

1 A No.

2 MR. SOLOMON: 180, 181, 182 which I now offer.

3 MS. FORSBERG: No objection.

4 MR. DICKERSON: (Indiscernible) before this?

5 MR. SOLOMON: I don't know whether you did --

6 MR. DICKERSON: I mean, I noticed there's no Bates
7 stamps on this. So just to --

8 MR. SOLOMON: I don't know. I don't even know if we
9 can get them from your binders.

10 MR. DICKERSON: I have no objection.

11 THE COURT: Hereby admitted as Exhibits 180, 181 and
12 182.

13 (Intervener's Exhibits 180 through 182 admitted)
14 BY MR. SOLOMON:

15 Q All right. So how much did you receive or how much
16 did the ELN Trust receive for the sale of the Wyoming Downs
17 property under those agreements?

18 A Approximately 11.4 million.

19 Q And is that reflected in those documents?

20 A I believe so, yes.

21 Q All right.

22 THE CLERK: 183.

23 Q Let me show you 171 that's already in evidence. 171
24 that's already in evidence. And then you -- proposed 183.

1 A Yes.

2 Q Are these the documents that are in reference to the
3 sale of the 11 acres?

4 A Yes.

5 MR. SOLOMON: And we offer 183, Your Honor.

6 MS. FORSBERG: No objection.

7 MR. DICKERSON: Again, I inquire why it was I never
8 provided with this prior to today.

9 MR. SOLOMON: I don't know that you weren't. Oh,
10 I'm sorry. I don't.

11 THE WITNESS: I would -- I would say that these --
12 all these documents were fully made aware to Melissa and Joe.

13 MR. DICKERSON: Do you have anything to support that
14 it was ever provided in discovery? Can you call Lynita to --
15 I'm going to object to this until it's authenticated through
16 Lynita.

17 THE COURT: 183?

18 MR. DICKERSON: Yes.

19 THE COURT:

20 BY MR. SOLOMON:

21 Q Eric, do you know that Lynita executed this
22 document?

23 A Yeah.

24 Q All right. How do you know that?

1 A Because in order for her to gain a \$2,000,000 option
2 from a prior that was buying this, we had to gain access to --
3 to this property which there's no access to this property
4 because of the river. And so what we did was deed this
5 property to the track owner in lieu of receiving an easement
6 which is this easement right here which is both of these
7 documents here. And we come across through Wyoming Downs, so
8 they're really excited about it, but that made this property
9 much more valuable. So we had extensive conversation on this
10 \$2,000,000 option that she was going to receive.

11 Q You had the extensive conversation with her?

12 A With Lynita, yes.

13 MR. SOLOMON: Okay. We would offer that, Your
14 Honor. It bears her signature. It's notarized. It's the --

15 MR. DICKERSON: And the same objection.

16 MR. SOLOMON: -- deed in response to. It's already
17 in evidence. And it was 171.

18 MS. FORSBERG: No objection.

19 MR. DICKERSON: I just think it needs to be -- be
20 authenticated through her and after it's authenticated through
21 her, then I would have no objection.

22 THE COURT: I'll give you a chance. We can put her
23 at the end for a minute if we --

24 MR. DICKERSON: Yeah.

1 THE COURT: -- need to authentic it, but it looks
2 like it pretty well speaks for itself. But we'll give it a
3 chance.

4 BY MR. SOLOMON:

5 Q All right. So with that background, what did
6 Lynita's trust get for giving up the 11 acres?

7 A Well, what rather Paul and sister Alita work on
8 master plans for me. They're working with me for the last 25,
9 30 years on the Las Vegas Casino. My brother built it. My
10 other brother Cal -- Cal built the Las Vegas Casino. Paul
11 built the Fitzgerald's Casino and two in Mississippi. Paul
12 was the general contractor for the Silver Slipper as it
13 started off. So we did -- done work together all for many,
14 many years.

15 So what we had Your Honor was a master plan that had
16 been -- this had been the racetrack. And so Paul and Alita
17 had worked on CC&Rs and everything. And -- and it did get
18 deeded where the parcels got developed into -- a -- these 80
19 acres of the -- excuse me, these 200 acres here into 80 lots.
20 And so that -- that was a great value too, but we needed the
21 right easements and right-of-ways to get this value here.

22 And so you increase the value regardless if you
23 exercise these options or not because we -- we corrected all
24 the right-of-ways here. And this is the parcels that was

1 given up this square of the property

2 Q All right. Eric, we don't have a lot of time, so
3 let me get down to the bottom line. She gave up the 11 acres
4 to get an easement so that she could develop the property with
5 your brother. Is that --

6 A Yes.

7 Q -- what you're saying?

8 A Yes.

9 Q Thank you.

10 A Sorry.

11 MR. SOLOMON: Boy I appreciate it. I can get that
12 done a lot faster. All right. I'm almost done anyway.

13 Q Now you just -- maybe it's an opportunity to a
14 moment. You just talked about doing a lot of transactions and
15 a lot of deals and involvements with your family.

16 A Yes, sir.

17 Q Over the course of time did you make payments out of
18 your trust to family members?

19 A Yes.

20 Q What were those for?

21 A Well, most of them were for services rendered. My
22 brothers are -- are general contractors, very talented in the
23 past. And they -- they still have building abilities real --
24 pretty much anything. My brother Cal bought all the BanOne

1 properties in Nevada including the Mesa Vista parcels. My
2 brother Paul bought all the parcels. I -- I hadn't seen any
3 of the parcels in the Arizona homes that we bought down there.
4 So many, many projects.

5 Q Okay. Were there occasions where you leant money to
6 your family members?

7 A Yes.

8 Q And were those paid back?

9 A Yes, in full all the time.

10 Q Do you know whether Lynita's trust ever lent money
11 to any of your family members?

12 A I believe she did, yes.

13 Q And were those paid back?

14 A A hundred percent.

15 Q Now one of the things that you testified and have
16 heard before in this court that one of the goals of separating
17 the assets was to keep free and clear properties on Lynita's
18 side.

19 A Yes.

20 Q Is that goal been maintained to the best you could
21 over the years?

22 A Yes, on occasions some properties would become more
23 gold and remain solid and so they would move into Lynita's
24 like the Tierra Del Sol property. However, sometimes like the

1 High Country Inn they would become less value because shifting
2 laws or something like that. And they would move out.

3 Q Okay. On today whose trust has the liabilities
4 associated with the assets?

5 A My trust virtually has all the liabilities of the
6 trusts.

7 Q Did -- we saw a check that was made out for \$350,000
8 that said management fee on it. Do you recall that?

9 A Yes, sir.

10 Q And we also saw some smaller checks that had a
11 notation of management fee. Did you ever charge a management
12 fee to Lynita or Lynita's trust for any of the services that
13 you provided in helping her administer those trusts?

14 A No.

15 Q Do you have any idea why it said met -- those checks
16 said management fee on them?

17 A Well, definitely the one for 350,000 is a mistake.
18 That's definitely a loan. And that was caught in the due tos,
19 due from and -- and did -- Dan did the correction on the trial
20 balance in those areas there.

21 The only thing on the two checks, I think -- can
22 think of only two other checks that said Eric Nelson on them.
23 And that's because there was a storm, the Katrina storm in
24 Mississippi. And I -- and plus another storm. And I was

1 going down and working on the RV park where Lynita's going to
2 pay for some of those bills down there. And I brought cash
3 down there and paid the day of. That's what -- I mean, other
4 than that, it was only 7 -- or 12,000 total. So but I paid it
5 back in addition to that. It was paid in full for the way
6 that Dan booked it, so --

7 Q Lynita testified that either you directly or somehow
8 indirectly encouraged her not to talk to your office staff.
9 Is that true?

10 A Definitely not. Definitely not. They liked Lynita
11 better than they liked me.

12 Q Mr. Dickerson's stipulating that too. From your own
13 observations did Lynita talk to your office staff?

14 A 100 percent. Not only did she talk to, we had
15 interaction and my children worked in the office. So it was
16 impossible not for the three older girls to work in that
17 office and not have interpleading -- you know, interfacing
18 back and forth.

19 Q Would there be occasions that you brought documents
20 home for Lynita to sign?

21 A Yes.

22 Q And how did that come about?

23 A Firstly, I wanted to send checks home, bills home,
24 usually put them in the envelope, deeds home I'm sure, and I

1 would ask to request Lynita to sign them. But she would have
2 -- she would have conversations and it's important on this
3 with Rochelle because Rochelle and Lana were running her side
4 of things there to make sure things were done properly and
5 correct.

6 Q And how do you know that?

7 A I heard the conversations.

8 Q Did you ever tell Lynita she couldn't read any of
9 the things that you were bringing home for her to sign?

10 A Definitely not. I just want to make a note. If I
11 was going to change any signature on anything, I would have
12 done it on the Mississippi deeds. We lost so much money on
13 that, that was ridiculous.

14 MR. SOLOMON: I may be done. Can I have a minute to
15 look through my notes. Oh, no, I'm not. That's why I have
16 him here.

17 Q All right. What exhibit is this?

18 MR. LUSZECK: Dan's report is 168.

19 MS. FORSBERG: The blue binder, I believe.

20 MR. SOLOMON: Got it.

21 Q All right. Can you turn -- does your tabs have -- I
22 don't think it does.

23 A It's numbered.

24 Q All right. It's a Bates stamp at the bottom. It's

1 about maybe a third of the way through. It's DG-00161.

2 Actually, it's 160 I want you to look at.

3 A Okay.

4 Q All right. There's a -- this is an Eric L. Nelson
5 Nevada Trust trial balance sheet. And Mr. Dickerson raised
6 this in a question with Lynita. She would like to further
7 investment. It's a little over 4.7 million. Do you see that?

8 A Yes.

9 Q Can you tell the Court what that is?

10 A That's the purchase of the Mesa Vista subdivision
11 approximately a hundred lots and 20 homes.

12 Q Okay. And would you turn two pages in -- or I guess
13 it's three pages in. It's Bates stamp 163.

14 A Yes.

15 Q And do you see there's at the bottom account number
16 2105, Mellon Bank.

17 A Yes.

18 Q And do you see the activity out of there for 4.6 --
19 a little over 4.6 million dollars?

20 A That's that.

21 Q Okay. So you took money out of the Mellon Bank
22 account to acquire that Mesa property?

23 A Yes.

24 Q And the Mellon Bank account was funded with what

1 proceeds?

2 A The sale from Wyoming Downs.

3 Q All right. Can you turn to the white book above

4 you, Exhibit 2?

5 A Okay.

6 Q What is that?

7 A I believe I have the LSN Nevada Trust. Is that the

8 right --

9 Q No, it's the --

10 A Oh.

11 Q -- fax cover sheet to Melina Barr (ph) --

12 A I'm sorry.

13 Q -- from Roselene Pitman (ph) and then a list of your

14 assets.

15 A Okay. Got it.

16 Q What is that?

17 A This is assets -- how old is this? 1993. And it

18 lists bank accounts, percentages of ownerships of properties

19 and investments.

20 Q Let me lead you a little bit so we can move this on.

21 Is this a list of assets that you developed and sent to Jeff

22 Burr's office for --

23 A Yes.

24 Q -- the vision for this 1993 trust?

1 A Excuse me, yes.

2 Q All right. Is this the list that you went over with
3 Lynita to divide the assets?

4 A Yes.

5 MR. SOLOMON: We would offer 2.

6 MS. FORSBERG: No objection.

7 MR. DICKERSON: Can you just establish whose
8 handwriting is on that?

9 MR. SOLOMON: Sure.

10 BY MR. SOLOMON:

11 Q Whose handwriting where it says your name, her name
12 or both names?

13 A I believe that's mine. That's mine.

14 MR. DICKERSON: No objection.

15 THE COURT: Hereby admitted as Exhibit 2.

16 (Intervener's Exhibit 2 admitted)

17 BY MR. SOLOMON:

18 Q Would you turn to 87? I guess I should look before
19 I do that, but --

20 THE COURT: Is that Intervener's 2?

21 MR. SOLOMON: Yes.

22 MS. FORSBERG: Yes.

23 THE COURT: I got the book on that. Do you got
24 Intervener's 2?

1 Q Is this a letter that Mr. Burr sent to you on or
2 about May 30th, 2001 regarding operation of your trust?

3 A Yes.

4 MR. SOLOMON: Offer 87.

5 MS. FORSBERG: No objection.

6 MR. DICKERSON: No objection.

7 (Intervener's Exhibit 87 admitted)

8 BY MR. SOLOMON:

9 Q 88, is this a letter dated May 30th, 2001 that Mr.
10 Burr sent to you regarding the operation of your asset
11 protection trust?

12 A Yes.

13 MR. SOLOMON: Offer 88.

14 MS. FORSBERG: No objection.

15 (Intervener's Exhibit 88 admitted)

16 MR. DICKERSON: These are not already in?

17 MS. PROVOST: 88 I think was already in.

18 THE COURT: No, we need to look at -- yeah, we need
19 to get the book on there. Do you got anymore? Because I want
20 to take the book.

21 MS. PROVOST: 88 I think is already in.

22 THE COURT: So we got Exhibit 2, 87 and 88.

23 MS. FORSBERG: I didn't have it in either.

24 THE COURT: Well, we'll look at the book.

1 THE WITNESS: I believe they're in, but that's --

2 THE COURT: We'll see what they got and then we'll
3 grab the book and get it all caught up. You didn't know what
4 they are, right?

5 MR. SOLOMON: Do you have any objections to 89 to
6 98?

7 THE COURT: 2, 87 and 88. Yeah, just grab that one.
8 You can use mine to title stuff so you know.

9 MR. SOLOMON: Your Honor, we offer 89 to 99?

10 MR. LUSZECK: 98.

11 MR. SOLOMON: To 98.

12 MS. FORSBERG: We have no obligation.

13 THE COURT: 80 -- 89 through 98 inclusive?

14 MR. SOLOMON: Yes.

15 (Intervener's Exhibit 89 through 98 admitted)

16 MS. PROVOST: Katherine, do you have 122 as being
17 admitted yet?

18 MR. SOLOMON: Probably should ask the clerk. She's
19 more able to -- the Court, yeah, but --

20 MS. PROVOST: I got 122 being admitted on the 16th.

21 MR. LUSZECK: Let's see. 135. Madam clerk, do you
22 have that as being admitted yet?

23 MS. PROVOST: I do. Let me see if she does. On the
24 16th as well.

1 THE CLERK: I need the book.

2 THE COURT: She needs the book.

3 MR. DICKERSON: You need the book?

4 THE COURT: Shall we give her the book? She needs
5 the book so she can figure out had admitted or not because
6 it's marked in that one. So she needs to get the log. And
7 you can give them my book. You can look at my book if he
8 needs to. That way you can -- they -- if he wants to look at
9 mine he can refer to mine if he needs it that way she can get
10 those marked and -- do you have the log in the front there?
11 Is that what that is? Oh, okay. Because right now we've got
12 2and essentially 87 through 98. Yeah, 87 through 98. And
13 they were asking on 135 if that had been admitted. We just
14 showed it off. Did you show -- we just showed it off and we
15 didn't see it admitted at 135?

16 MR. DICKERSON: We have that it was admitted.

17 THE COURT: Okay. And these are done by different
18 clerks, so they're not organized as -- at least to Tasha. So
19 we'll double check it. I mean, we'll double check to -- yeah,
20 135.

21 MR. LUSZECK: What about 161, Katherine?

22 MS. PROVOST: Yeah, 161.

23 THE COURT: Yeah, 135 was --

24 MR. SOLOMON: Okay. Then we offer 161.

1 correct?

2 A That is correct.

3 Q And at the same time that the related individuals
4 contributed that \$419,000 their related individuals received
5 \$3,900,100 -- \$3,900,115.29.

6 A That is correct. The details of all of this are in
7 the exhibits behind there.

8 Q It's in the B exhibits and the C exhibits, correct?

9 A That is correct.

10 Q And over this three year period of time Eric Nelson
11 or an entity related to Eric Nelson paid \$809,000 in
12 professional fees?

13 A That is correct.

14 Q And Mr. Nelson draws an expenses, that would be
15 draws and expenses recorded on the books for Eric Nelson
16 personally, correct?

17 A That's what we determined in going to the books,
18 that --

19 Q And that's \$697,476.

20 A That is correct.

21 Q The children's expenses, you have included the adult
22 and the minor children in that column?

23 A I would have to look at the schedules back there,
24 but the details are back here by individual and who received

1 the money.

2 Q Okay. I'll represent that --

3 A So the details -- the details are there. If you
4 look on the back and it says pay to relatives, you will see
5 the relative listed and the amount that's applicable to them.
6 So the details are all behind the schedule. This is just
7 summary schedule.

8 Q We've already gone through bill Katherine. We did
9 that earlier. Lynita Nelson of the income available, she
10 received payment of \$89,517.12 on her behalf over three years,
11 is that correct?

12 A That's what the schedule shows.

13 MS. PROVOST: Okay. No further questions, Mr.
14 Bertsch.

15 CROSS EXAMINATION

16 BY MR. SOLOMON:

17 Q If you're still on that page, Mr. Bertsch, tab 11,
18 6818.

19 A Yes, sir.

20 Q At the Beginning of direct examination, you were
21 asked to comment on that relative to an increase in monies
22 attributable to the Bella Katherine house. And I think you
23 were asked to look at tab 1 initially where it's listed at
24 1.602.

1 A Yes, that was as of December the 31st.

2 Q And the only point I want to make on 6818 is that's
3 not just improvements on 6. -- I'm sorry, tab 11, Bates 6818,
4 is it? It's improvements and expenses.

5 A I don't know. I would have to look at the details.
6 I don't have the detail here. I will say however very little
7 relates to operating expenses for that as I recall. The
8 1,000,000 six, if you go back to tab 3 --

9 Q Well, let me just ask it this way, Mr. Bertsch.
10 DEF-006818 in tab 11 you're listing Bella Katherine at
11 \$1,839,494.79. Your application description says it's
12 improvements and expenses, is that correct?

13 A That's what it says.

14 Q Tab 1 is your list of initial list of assets at
15 value, correct?

16 A Tab 1 is dated I believe December 31st, 2011. It
17 was -- this was submitted about halfway through December.

18 Q 2, at 14894.

19 A Tab 2?

20 Q Yes. On the Soras transaction --

21 A I'm sorry, 12894. Just one minute. I'm sorry,
22 12894?

23 Q No, 14894.

24 A Oh, okay.

1 Q It's the third page.

2 A Yes.

3 Q All right. Under the Soras transaction there, it's
4 a -- has a contingent liability of \$623,000 at market value of
5 houses does not meet the \$1,360,000.

6 A That's correct. Contingent liability.

7 Q Exactly. And let's figure out what your definition
8 of a contingent liability is. Let's do it in context of that
9 lis pendens that you talked about. You are aware from your
10 report that there was a lis pendens filed on a property for a
11 million dollars, is that correct?

12 A Which one are you referring to?

13 Q It's 14893.

14 A I believe I was told that..

15 Q Okay. And if somebody files a lis pendens on your
16 property for a million dollars, it may be worth zero or it may
17 be worth a million dollars, is that your point?

18 A That's right. It may be contingent, it may be zero.
19 It could be a million or some place in between. You have to
20 prove that it relates to the property.

21 Q I understand. There's a lot of elements to prove
22 entitlement to recover on a lis pendens including whether it
23 relates to the property. It also depends on what the value of
24 the debt is, the true value of the debt, correct?

1 A That's correct.

2 Q But would you agree that if somebody filed a lis
3 pendens on your property, that at least is some detriment to
4 the property until it's removed?

5 A Only in selling the property.

6 Q Okay.

7 A Just tells somebody hey, look out for this thing, it
8 may be years. So if you're selling the property, the title
9 company likes it, they got to find out what it is.

10 Q Right. And a contingent liability means just that,
11 it's contingent upon in this case somebody proving their case
12 and proving that they have a debt and proving that they have
13 liability that they can recover on that. Do you agree with
14 that?

15 A That's -- you're getting into legal now.

16 Q Okay.

17 A I know enough, I'm dangerous.

18 Q All right. I just want to see what you meant in
19 your testimony about --

20 A Yeah.

21 Q -- the contingent liabilities. I think you've
22 answered it.

23 A On my schedule what I did, counselor, was I referred
24 to the charts of people who would be aware of what might be

1 there and might not be there, but then so I listed out what I
2 felt.

3 Q With respect to the Russel Road property that you
4 discussed in your direct examination you were asked whether
5 Lynita's or Lynita's trust received any consideration for her
6 returning title back to the property or cancelling her
7 interest in the entity I guess there was, would you agree that
8 consideration can include relief from debt?

9 A You guys are the attorneys. Does it? I'm just
10 saying, she did not receive cash --

11 Q Okay.

12 A -- that I'm aware of.

13 MR. SOLOMON: I have nothing further.

14 THE COURT: Ms. Forsberg?

15 CROSS EXAMINATION

16 BY MS. FORSBERG:

17 Q Okay, Mr. Bertsch. Let's go back to the question he
18 just asked just so that we'll start there since it's so fresh.
19 Is it true that you didn't review her -- Ms. Lynita Nelson's
20 bank records back into 2004?

21 A I did not.

22 Q So you wouldn't know if she received any cash for
23 that transaction on Russell Road, is that correct?

24 A On the records that I did see relating to Russell

1 Road, I did not see any indication of anything that she
2 received for that transaction.

3 Q Would it be your assumption if the -- anything that
4 she received would have been in 2004, correct? Because that's
5 been the -- your note show that deal occurred?

6 A I don't want to be coy answering this, but it could
7 have almost been anytime with the way things were going. I
8 only reported on the documents that I saw.

9 Q But you did know you didn't see bank records from
10 Lynita Nelson's trust from 2004, correct?

11 A I -- I did not.

12 Q That's going far back. Let's go to -- we had a
13 little bit of discussion about Bella Katherine of the home
14 that Eric lives in, correct? Let's go to that if we could.
15 First, let's go to Exhibit 1. And I believe Mr. Solomon
16 covered that that your thing says it's increased expenses and
17 improvements, correct?

18 A That's what the statement says, yes.

19 Q If you look on Exhibit 1, you also have -- we also
20 have a similar type residence for Ms. Nelson, is that correct,
21 Palmyra?

22 A That is correct.

23 Q On the Palmyra home I see a preliminary appraisal of
24 725, is that correct?

1 A I believe we have it in the back of the book.

2 Q But then if I note that you don't include a cost
3 with her improvements, is that correct?

4 A No, because it was an appraisal that would include
5 the cost. This was from an outside appraiser that appraised
6 the property. So if you have an outside appraiser that comes
7 in and appraises the property, any improvements would be made
8 as part of that appraisal.

9 Q And would that be the same with the Bella Katherine,
10 so it should be within that appraisal?

11 A The appraisal for Bella Katherine was an appraisal
12 that Mr. Nelson commissioned. It was not commissioned by the
13 Court.

14 Q Was it done by the same appraiser that you used in
15 --

16 A I can't answer that. I don't know if it was or not.
17 I don't recall that.

18 Q You don't recall? Perhaps we can look.

19 MS. PROVOST: If not, I can shortcut it. It's not
20 the same thing.

21 MS. FORSBERG: And perfect.

22 MS. PROVOST: It's not the same thing.

23 Q Now I show on tab 19 though I showed that that
24 appraisal came from you. It was filed by you, is that

1 correct, on Bella Katherine?

2 A We had received it. We filed it with the Court so
3 they would be aware of it.

4 Q If we look at the very second page of tab 19, it
5 actually shows who the client was. And is that you?

6 A Oh, I remember this now. Eric wanted to get an
7 appraisal on this and he wanted to use the same party. And he
8 asked us to work with the person to appraise these property
9 and he paid us directly for the appraisal. The estate did not
10 pay for that appraisal.

11 Q And did Nick show up with that appraiser?

12 A I don't know. You would have to ask Nick.

13 Q If we look on Exhibit 10 --

14 MR. SOLOMON: Tab 10?

15 MS. FORSBERG: Oh, I'm sorry. Tab 10 in their
16 exhibit, the bazillion letters that we're up to now.

17 MS. PROVOST: Bazillion Gs.

18 MS. FORSBERG: Bazillion Gs.

19 Q What do you show as the total on the period you did
20 for improvements on the Palmyra home?

21 A Will you refer me to the particular schedule or
22 something?

23 Q Yes, we can go to Page DEF-6915 under Exhibit A of
24 tab 10.

1 A Okay.

2 Q Now I show that there's a housing expense section in
3 there towards the bottom of that page, is that correct?

4 A Yes. Uh-huh (affirmative).

5 Q And do you see that -- it looks like Ms. Lynita also
6 did some improvements to that property, is that correct,
7 during your time?

8 A She did improvements. The -- let's see. What was
9 the date of the appraisal? Can you tell me that?

10 Q It's -- I don't think it was filed November --
11 October 12th according to tab 19.

12 A October 12th of 2011?

13 Q Correct.

14 A Okay. The expenses that were put into house
15 improvements during the period of January/December was \$1700.
16 If the appraisal came in in October, I considered that the
17 improvements for December the 10th and December -- you know,
18 for the period of 2010, 2009 would have been included in that
19 appraisal.

20 Q And the same with the Bella Katherine one with Mr.
21 Nelson that you showed us a minute ago up to that date of the
22 appraisal, correct?

23 A To the date of the -- I -- whatever the date the
24 appraisal was, that would be what it was worth.

1 Q You included everything --
2 A Yeah.
3 Q -- to that point.
4 A All this schedule tells you and it tells you on the
5 other one, because the Court did not order that I be -- that I
6 get an appraisal for the Bella Katherine.
7 Q Understand.
8 A Only ordered to going on this one.
9 Q Okay. We'll switch gears a little bit. We heard a
10 lot about Russell Road so far this morning. Okay. So if we
11 can go to tab 3, please. On Page 4 of 15 on your -- which is
12 your explanation of Russell Road.
13 A Bates stamp?
14 Q DEF-6484.
15 A Yes.
16 Q Page 415.
17 A Uh-huh (affirmative).
18 Q You actually note in here that you talked to both
19 parties regarding the foreign agreement, correct?
20 A Yes. I was looking to see it.
21 Q Okay. And you said both of them said the other
22 party has it, correct?
23 A That is correct.
24 Q But you did start to say that you did see the

1 instrument where Lynita Nelson signed her interest to get out
2 of the debt she signed herself into on the guarantee, is that
3 correct?

4 MR. DICKERSON: Object, Your Honor. There's no -- I
5 don't believe there was any evidence of that.

6 MS. FORSBERG: He says saw instrument. He said saw
7 instrument --

8 THE COURT: Do you --

9 MS. FORSBERG: -- and she cut him off.

10 THE COURT: Do you recall instrument?

11 THE WITNESS: I saw the instrument -- or I was given
12 a copy of an instrument that she signed to release that, yes.

13 MS. FORSBERG: One minute, Your Honor.

14 BY MS. FORSBERG:

15 Q If we go to tab 10. Under -- this one I believe is
16 Lynita Nelson's accounting for her income and expense report,
17 is that correct?

18 A That is correct.

19 Q On the total income column for her, on Page --

20 A What page are we talking --

21 Q -- D -- 6915.

22 A Yes.

23 Q Can you tell me if you reviewed all of her Schwab
24 investment account statements?

1 A I believe we --
2 Q -- of her income?
3 A -- did, the bank accounts and Schwab accounts.
4 Q And you came up with a total of \$2,091,000 for the
5 -- that period?
6 A Well --
7 Q January '09 to December --
8 A Yes, that's what it states. Uh-huh (affirmative).
9 I know we had to look at it because we got sale of investment.
10 The only place you would get that from would be from a Schwab
11 account. So we did have that account, yes.
12 Q On unknown deposits, we don't know where those came
13 from, they showed up?
14 A We were not able to identify those specifically.
15 Q Did Lynita explain --
16 A Most of which was in 2009.
17 Q Sorry to switch you back and forth. Just a few more
18 questions. We're almost there.
19 A No problem. I'll get something to look at.
20 Q We talked about on Exhibit -- or tab 2 in that book
21 on Page 893, 4893.
22 A Tab 2 and what was the --
23 Q 14893.
24 A Okay.

1 Q We went through a lot of these liabilities until she
2 kind of short circuited the -- do you recall that?

3 A Pardon me?

4 Q We went through a lot of these liabilities with Ms.
5 Provost, correct?

6 A Yes, she did.

7 Q She questioned you on a lot of these liabilities.

8 A Uh-huh (affirmative).

9 Q And we talked about this Martin loan. If you go
10 almost in the section of MS Bay, this is Martin loan Dynasty
11 of \$200,000.

12 A Right.

13 Q Do you recall we talked about that?

14 A Yes.

15 Q And you stated that it didn't say anything about the
16 hundred and twenty acres.

17 A No, I did not say that. I said that the note
18 indicated as collateral the acreage. It did not indicate that
19 the loan was directly related to it. It was only collateral
20 on the side.

21 Q So you're saying it's on the note -- and but is that
22 why you didn't include it in the --

23 A The note said it's collateralized by the land.

24 Q Okay. Correct.

1 A Okay. So it didn't pay the note because it's -- did
2 not connect that to the purchase of the property.

3 Q Even though the promissory note says that it's
4 collateralized, correct?

5 A It's collateralized by the land.

6 Q In your report in Exhibit 11 -- or tab 11, we should
7 get back to the page you were on before. On 6818, Defendant's
8 6818. 680 -- tab 11.

9 A I have it.

10 Q 6818.

11 MS. PROVOST: Thank you.

12 Q Are you there? Okay. Perfect. Ms. Provost talked
13 to you about what these properties, these rental interest
14 income, that section, that it netted.

15 A Yes.

16 Q Do you recall that question? But those expenses
17 that you show for the real expenses, that doesn't include all
18 the operating expenses for the business netted out of that
19 amount, does it?

20 A For which business?

21 Q It's further down.

22 A Which business?

23 Q All of these properties, they're managed by Eric's
24 employees in the office, would you agree? These BanOne

1 houses, Lindell, all of those, correct? The ones that you
2 show the income.

3 A This only comes from the books and records of the
4 cost that apply directly to those properties.

5 Q That's exactly my question. You're following me
6 just perfect. If you get to -- so then we had the real
7 expenses and you netted out what the profit of those should
8 be, correct?

9 A That's correct.

10 Q Okay. And if we look further down in the report
11 where it says applications, do you see where it says company
12 operating expenses?

13 A Yes.

14 Q Those aren't taken into consideration on your net
15 amount of \$1,024,000, is that correct?

16 A That is correct.

17 Q So is that because they didn't classify them in the
18 records?

19 A I have to -- I have to think of whether it was
20 company Lindell or company some -- the houses. I have to go
21 back and look.

22 Q And that's probably why you put them in a separate
23 category, is that why?

24 A I don't recall at this point. I would have to go

1 back and see what that is.

2 Q So to get a true net of what those properties were
3 earning, we would have to figure out what each expense was --

4 A I think that --

5 Q -- and apply it back.

6 A -- what company operating expenses includes the
7 salaries and so forth for him to operate all the companies not
8 specifically the ones up above. That's what I think that
9 probably is if I look at it. In other words, he had a lot of
10 companies there.

11 Q Right. Right.

12 A So he had salaries and stuff. So that's what that
13 is and not specifically related to the -- both properties.

14 Q Okay. Not specifically tied to them, but he could
15 have paid --

16 A Not specifically --

17 Q -- them with separate --

18 A -- tied to them.

19 Q Right. I got you.

20 A If I had a specific tie in, I would have put it
21 there, so --

22 Q So it would have to take all of his expenses and all
23 of the companies to figure out what the net is, because they
24 wouldn't necessarily be tied to each one, correct?

1 A Well, the company expenses there may be other things
2 that he does that's not related to this. For example, his
3 real estate part of a part like that. And then what you would
4 have to do is go down and I'm not saying you don't put it up
5 above, but you would have to have the schedule to allocate it
6 to see if any that is appropriately on this is books and I
7 kept it that way so you would have to --

8 Q I got you.

9 A -- make an allocation.

10 Q Would that be the same thing with the professional
11 costs because if some of them were related to like BanOne
12 properties if he paid for them out of the ELN Trust because
13 the ELN Trust owns BanOne?

14 A Which one are you talking about?

15 Q Professional costs where it says 809,000.

16 A Wasn't allocated, but I listed all the professional
17 fees and who got paid the professional fees.

18 Q Just they weren't allocated to like BanOne if he --
19 even if they were with BanOne or if they were with Lindell?

20 A No, we were not given that information. It was
21 recorded as professional fees and we recorded all the
22 professional fees. And if you go back to the schedule, it
23 will tell you exactly who got paid in the amount. It's all
24 listed in the detail.

1 Q But that's why they're not tied to those because
2 they weren't -- they're broken out that way.

3 A No. It was not kept that way.

4 Q And you said this is primarily this sheet is all
5 about the ELN Trust numbers that you've listed. You've listed
6 all the assets on the other page what this is to refer to,
7 right?

8 A It's listed with all his operations not specifically
9 designated as ELN Trust because it was not listed that way in
10 the beginning of the case.

11 Q I got you. But from this report on that six -- on
12 Page 6818, you show that his operation whether however it was
13 listed in the beginning paid Lynita during that time period
14 89,517?

15 A That is correct.

16 Q And then you explained that all the children
17 expenses can be broken out but during that same time period
18 during this divorce proceedings Eric Nelson Trust properties
19 or however these are all listed in the beginning of your
20 report shows children expenses of 407,000, correct?

21 A That is correct. And it's listed out in the
22 details.

23 Q Perfect.

24 A Okay.

1 Q Mr. Bertsch, you sat through a lot of these
2 proceedings I recall since at least since my time in the case
3 you were certainly on through a lot of the proceedings,
4 correct?

5 A A lifetime.

6 Q And it seems like there was a lot of --

7 THE COURT: How about me, Mr. Bertsch?

8 THE WITNESS: You don't know how it's all yet.

9 Q And in the beginning from what I found from watching
10 some of the video transcripts from when I was not here, there
11 was a lot of concern about the Russell Road property, but that
12 was prior to the exercise of the purchase agree option, is
13 that correct? Did I lose you?

14 A Yeah, you did.

15 Q Okay. I'll go -- I'll restate the question then.
16 There was some concerns about the fact that Mr. Nelson entered
17 into the Russell Road agreement purchase. Do you recall that?

18 A Yes, in the beginning there was concern about that.
19 Uh-huh (affirmative).

20 Q And that was prior to the church exercising their
21 church on that, isn't that correct?

22 MR. DICKERSON: If it will help matters, I'll
23 stipulate to that.

24 MS. FORSBERG: That's fine.

1 A So many dates going around. You got to give me --
2 Q He stipulated, so it's okay.
3 A You have to give me a little time to understand.
4 THE COURT: We're okay. They --
5 Q It's okay. He stipulated.
6 THE COURT: They have stipulated.
7 Q So we're okay.
8 A Okay.
9 Q You don't need to answer that. Okay.
10 MR. DICKERSON: Not that it changed after that
11 either, but it was before -- it was asserted before the church
12 bought it.
13 MS. FORSBERG: Certainly.
14 Q Mr. Bertsch, you also had to -- part of your task
15 was to track or find anything given to related individuals,
16 correct?
17 A I believe so. That's the reason that we -- that
18 became an issue. So when we did the -- the financial
19 statements, we specifically spelled out the related
20 individuals to --
21 Q And then --
22 A -- bring it to the attention of the court. That's
23 all.
24 Q And in your report, you show 1099s for a lot of

1 individuals, correct? So your report covers all of those,
2 right?

3 A What the report says is that we ask on a lot of the
4 individuals did they file 1099s. We received copies of the
5 1099s and I also stated I had no evidence that they were ever
6 filed with the IRS.

7 Q It wasn't your task to go search into IRS. That's
8 what you're saying, correct?

9 A No, I was not going to go that far. I just stated
10 what I found.

11 Q Correct.

12 A That's it.

13 Q And just one last couple of questions. During your
14 search, did you find any missing funds or assets when you
15 reviewed all the statements?

16 A Give me an example. I counted for all the funds.

17 Q Okay.

18 A I'm not going to go there by addressing that. I
19 have reported what I have found, the interpretation of missing
20 funds is like delivery to a speaker to a milkman to a mother.
21 It all means something different, so I prefer --

22 Q But you would have shown the --

23 A -- not to go there.

24 Q But had you found anything that was suspicious to

1 you, you would have listed it in the report, correct?

2 A Probably.

3 MS. FORSBERG: No further questions, Your Honor.

4 THE COURT: Any redirect?

5 MS. PROVOST: Okay. We're fine.

6 MR. SOLOMON: All right.

7 THE COURT: That's all there is. Thank you Mr.

8 Bertsch for coming down here today. And as far as

9 housekeeping, I have a 1:30 hearing I have to do, because

10 apparently I'm the only one that can do it. I guess I must

11 have the wisdom of Solomon, I guess. So I'll be doing that at

12 1:30. And so do you want to come back at 2:00? That would

13 give you a little bit longer for lunch and that way you won't

14 be tied up for that.

15 MS. FORSBERG: Your Honor, just to remind the Court,

16 I have the TPO that I had to go that you when you added this

17 is at 2:00 o'clock.

18 MR. SOLOMON: Oh, boy.

19 THE COURT: At 2:00 o'clock?

20 MS. FORSBERG: Uh-huh (affirmative). So I didn't

21 know about your --

22 THE COURT: Did you want to -- I hate to have you

23 guys hanging around so --

24 MR. SOLOMON: How long will that take?

1 THE WITNESS: Your Honor, after listening to all
2 this testimony and so forth, they know you're Solomon.

3 THE COURT: The Court gives the weight to the
4 decision and decide --

5 MS. PROVOST: Wait, we can only have one Solomon in
6 the courtroom at a time. We already have one.

7 THE COURT: So --

8 MS. FORSBERG: And you're not supposed to follow
9 that one, are you?

10 THE COURT: -- Mr. Solomon, maybe you can do my 1:30
11 hearing. That would give me a break. What do you think of
12 that? I'm okay with that.

13 (Off record)

14 THE COURT: We'll reset to catch your breath on.
15 Could you give --

16 MS. FORSBERG: I shouldn't run upstairs.

17 THE COURT: Is it a Diet Coke, Rhonda, or --

18 MS. FORSBERG: Regular. Thank you.

19 THE COURT: -- regular Coke. Regular. We'll get her
20 --

21 (Off record)

22 THE COURT: This is the time set in the matter of
23 continuation of Eric Nelson and Lynita Nelson, case number
24 D-411537. And I believe we'll pickup with Ms. Lynita. I

1 believe we were questioning her -- I think Mr. Dickerson. We
2 think we left off at -- I think you're discussing Exhibit 5D
3 with her at the time when we called a recess to accommodate
4 the witnesses.

5 MR. SOLOMON: We stipulated to 5H. No, we just did.

6 MR. DICKERSON: Your Honor, do you want her resworn?
7 I -- she testified yesterday.

8 THE COURT: Yeah, we better swear her in, yeah.
9 Thanks.

10 THE CLERK: You do solemnly swear the testimony
11 you're about to give in this action shall be the truth, the
12 whole truth and nothing but the truth, so help you God?

13 THE WITNESS: Yes.

14 THE CLERK: Thank you. You may be seated.

15 MR. DICKERSON: 5H.

16 THE COURT: Any objection, Ms. Forsberg, to 5H?

17 MS. FORSBERG: No, I'm sorry, Your Honor.

18 THE COURT: Hereby be admitted as 5H.

19 (Defendant's Exhibit HHHHH admitted)

20 LYNITA NELSON

21 called as a witness on behalf of the Defendant and being
22 previously sworn, testified as follows on:

23 DIRECT EXAMINATION

24 BY MR. DICKERSON:

1 Q Lynita, I'm showing you what has been admitted as
2 Exhibit 5H. Yesterday there was a little confusion with
3 respect to that \$350,000 check that was received in case
4 management fees for Eric. The question was what cleared your
5 account. Does this Exhibit 5H reflect that it did in fact
6 clear your account?

7 A Yes.

8 Q Okay. And it shows -- let's take a look at the
9 second page. It shows that that \$350,000 check which is check
10 number 169 apparently was initially deposited on December 9 of
11 2005, is that correct?

12 A Yes.

13 Q And if you take a look on the front page, it appears
14 that on December 12th, that check was returned of posted check
15 which is highlighted on the first page, correct?

16 A Yes, sir.

17 Q And it appears that that check was deposited or
18 posted again on December 15th and did in fact clear at that
19 time.

20 A Yes, it did.

21 Q Just only one clarification. I think I represented
22 yesterday that it was my understanding that the check had not
23 cleared because of your insufficient funds. But if you look
24 at this check on the back of the statement on the back page,

1 on December 9th there was 357,000 plus. So I have no clue as
2 to why that check didn't clear or whether there's possibly a
3 mistake on the part of the bank. But that's the sole reason
4 for that is to show that \$350,000 check did in fact clear this
5 account.

6 All right. If I may, do you have the Intervener's
7 exhibit book there?

8 A No, I -- I have --

9 Q This one right here.

10 THE COURT: Okay. That's the one with the yellow.

11 MS. PROVOST: Try to keep Bertsch and the Gerety
12 ones back.

13 A Okay.

14 Q Oh, and actually --

15 A Do I just leave this here?

16 Q -- I'm actually going to need that. I'm going to
17 need that in a second.

18 A Okay.

19 Q If I can turn you -- direct your attention to
20 Exhibit 34. And this is a letter dated October 12th, 2001
21 addressed to you and Eric at your Palmyra home, is that
22 correct?

23 A Yes, sir.

24 MR. DICKERSON: Your Honor, move for admission of

1 Exhibit 34.

2 MS. FORSBERG: No objection.

3 MR. SOLOMON: The problem Your Honor is it says it
4 has a replacement page but it doesn't. So it's an incomplete
5 exhibit and I have no idea what this relates to.

6 MR. DICKERSON: Well, it's in your exhibit book.

7 MR. SOLOMON: Can't help it. It doesn't mean I'm
8 endorsing it.

9 MR. DICKERSON: Well --

10 MR. SOLOMON: I didn't offer it because I saw the
11 problem.

12 MR. DICKERSON: Well, regardless of whether they're
13 -- it references because there has been a number of references
14 of things that it included, I move for the admission of 34,
15 Your Honor.

16 MR. SOLOMON: I just don't know it has any relevance
17 when it can't tell what the heck was change. All I know was a
18 dot was changed. I have no idea --

19 THE COURT: And it says it has a close -- close a
20 replacement page for the above referenced trust. I'm not sure
21 what it's about on that, but I'll allow.

22 MR. SOLOMON: Other than relevance, I have no
23 objection.

24 THE COURT: I'll allow it in. I'm not sure how much

1 probative, but we'll -- it will be admitted. We'll note the
2 objection on it.

3 (Intervener's Exhibit 34 admitted)

4 BY MR. DICKERSON:

5 Q Lynita, you heard what Rochelle McGowan testified
6 here yesterday, did you not?

7 A Yes.

8 Q Do you have any general comments with respect to
9 what she testified about yesterday?

10 A You mean my thoughts about what she testified to?

11 Q Yes.

12 A Well, she testified to many things that I disagree
13 with.

14 Q What do you disagree with?

15 A That she ever met with me, that I ever met with her
16 and Lana, that phone calls happened and either or Lana were on
17 the other side of that listening to it, that we went to lunch
18 meetings together, that she pre-notarized things. I'm not
19 sure if -- if she's testified to that or I was just asked
20 about that, that I came to the office and notarized things or
21 she would come to the house and notarize things for me.

22 Q So --

23 A I don't know that there was anything to be honest
24 with you that I agreed with what she said.

1 Q With respect to her testimony that she had lunch
2 meetings with you, have you ever had a lunch meeting with
3 Rochelle McGowan?

4 A I remember two times that I called and asked them if
5 I could bring them lunch.

6 Q And where is that?

7 A So I asked what they wanted and brought lunch to the
8 office. But it didn't happen very often, because Eric didn't
9 like me to do that. So he kind of gave me a hard time about
10 it.

11 Q Did he tell you why he didn't want you to do that?

12 A He said it was just uncomfortable with me being with
13 the girls.

14 Q Now --

15 A Because I invited him too and he wouldn't come, so
16 --

17 Q I'm sorry?

18 A I invited him. I said do you want to come. I'm
19 coming to bring lunch to the girls. And he was like no, I
20 don't want to be there.

21 Q Okay. So you -- there are two occasions in which
22 you took lunch to the office?

23 A That I specifically recall. Yeah, I couldn't tell
24 you what I brought, but I do remember bringing lunch. Uh-huh

1 (affirmative).

2 Q And that was the lunch then at the office?

3 A It was at the office. Uh-huh (affirmative).

4 Q And did you discuss any business during either those
5 two occasions?

6 A No. I don't recall talking business to the girls at
7 all, ever.

8 Q At any time.

9 A No. I mean, there were some things like -- I mean,
10 I'm sure there was -- there was probably some mention of
11 things, but at the luncheon, that wasn't the purpose of the
12 lunch. It was just -- kind of just hey, I -- I like being
13 with -- it was to be with the girls, do you know what I'm
14 saying? That's why I went. I really liked being with them.

15 Q Other than those occasions, did you ever take them
16 to lunch at a restaurant?

17 A No.

18 Q How about discussions with --

19 A There might have been a Christmas party that I went
20 to that they were at, but that was -- yeah. I just remember
21 maybe a couple of those.

22 Q A couple Christmas parties?

23 A I mean, as far as like at the office or at my house.
24 They might have been there, but I remember a gift exchange at

1 the office but I don't remember if Lana and Rochelle were
2 there.

3 Q Okay. This was at Christmas time, a gift exchange?

4 A Yeah, I remember one specific time that I went to
5 the office I was invited to the gift exchange.

6 Q Were you invited annually?

7 A No, I only remember going twice there.

8 Q Did you ever have any discussions with Rochelle
9 McGowan where you discussed anything relating to business?

10 A I don't -- I don't know if it was Rochelle or Lana
11 who kind of told me how to -- or kind of helped me if I had
12 questions on the Harbor Hills house because I had never -- I
13 had never like setup gas or done any of that connection kind
14 of thing and -- but I don't know if it was Rochelle or Lana.

15 Q So other than some discussion you had with either of
16 those women about setting up the utilities at Harbor Hills, do
17 you recall ever having any other conversation with Rochelle
18 McGowan about business related matters?

19 A Not decisions. I mean, she might have said
20 something to me, but as far as like hey, do you want to do
21 this or can we do this or the -- we just -- I didn't have that
22 relationship with her at all. I didn't have a relationship --
23 a business relationship with Rochelle.

24 Q Did you ever discuss money issues with her?

1 A No.

2 Q How about did you ever have any discussion with her
3 about the Gateway lots in Arizona?

4 A I don't recall ever discussing -- I don't know why I
5 would talk to her about that. Eric -- Eric did all that. He
6 would come home and -- you know, I -- I just don't know when I
7 would have talked to her about it.

8 Q How about did you ever have any discussion with the
9 -- Rochelle McGowan with respect to the real property in
10 Mississippi?

11 A No, the only one that really ever mentioned anything
12 about the land was Eric.

13 Q Now if I can direct your attention to Exhibit KKK.

14 A Okay.

15 Q And if you go to the --

16 A But I don't -- do I --

17 Q I'm sorry.

18 A -- have the book for that?

19 Q I'm sorry. It's JJJ. Go to Exhibit JJJ.

20 MS. PROVOST: Four Js.

21 Q JJJ.

22 A But I don't -- I don't know that I have that book up
23 here, do I?

24 Q I think you do.

1 A This one with the blue pages?

2 Q It's -- let me get this one out of the way. It's

3 JJJ, I believe.

4 THE COURT: Four Js?

5 MS. PROVOST: Four Js.

6 THE CLERK: Four Js.

7 Q Okay. Now the --

8 MS. PROVOST: Four Js.

9 MR. DICKERSON: I think it's KKK now.

10 Q Yeah. If you go to Exhibit KKK.

11 MS. PROVOST: K.

12 MR. SOLOMON: All right. Now you got me all --

13 MS. PROVOST: KKKK.

14 MR. SOLOMON: KKK or just --

15 MS. PROVOST: KKKK.

16 MR. DICKERSON: Four Ks. Four Ks.

17 THE WITNESS: But I don't think you gave me the

18 book.

19 Q Oh.

20 A Trying to keep you looking good, but I just didn't

21 know how to do that one.

22 Q You're making me look stupid.

23 A Sorry.

24 Q That's how you make me look the way I am. Can you

1 turn to KKKK, please?

2 A Okay.

3 Q And specifically, I believe it is in the last
4 section of this exhibit. We have checks. And specifically,
5 I'm directing your attention to the check to Wells Fargo.
6 That's check number 1562. Do you see that?

7 A Yes.

8 Q Now --

9 MR. SOLOMON: I have no idea what you just said.

10 MR. DICKERSON: Oh, let me --

11 MR. SOLOMON: Thank you.

12 MR. DICKERSON: Do you have one?

13 (Whispered conversation)

14 THE COURT: Four Ks, right?

15 THE CLERK: Yes.

16 THE COURT: This, right?

17 THE CLERK: That's not it.

18 MS. FORSBERG: Perfect. Thank you.

19 Q All right. Are you on that page then? It's the
20 Wells Fargo check in the amount of 67,771 -- no, that's --
21 let's see. 67 -- that's 6 --

22 MS. PROVOST: Just read the numbers.

23 MR. DICKERSON: Yeah.

24 MS. PROVOST: 600 --

1 Q \$677,717.48. Do you see that check?
2 A I -- I do, sir.
3 Q Now did you ever have a bank account at Wells Fargo?
4 A No.
5 Q Did you ever have a line of credit, you personally
6 have any line of credit at Wells Fargo?
7 A No.
8 Q Did you ever open a line of credit at Wells Fargo in
9 the name of your trust?
10 A Not that I knew of.
11 Q Did -- is there anybody that you know that just may
12 be sitting in this courtroom today that had a line of credit
13 at Wells Fargo?
14 A I was told, yeah, that there was a line of credit on
15 the house, I believe.
16 Q Who told you that?
17 A Eric.
18 Q Now tell us about it. Did Eric have an account at
19 Wells Fargo?
20 MR. SOLOMON: I ask which house?
21 MS. FORSBERG: Yeah.
22 MR. DICKERSON: Which house. You may. Good fair
23 question.
24 Q Which house are you talking about?

1 A Palmyra.

2 Q So what were you told by Eric with respect to a line
3 of credit at Wells Fargo bank in which the house was -- that
4 was secured?

5 A I just remember our conversation once where he had
6 said something and I asked a question about it and he said oh,
7 there's a -- I don't -- I don't recall what it was about for
8 sure. And he said well, I've got a line of credit on --
9 against the house. And I said oh, okay.

10 Q All right. At anytime in your life have you ever
11 drawn on a line of credit at Wells Fargo bank?

12 A Not to -- not that I knew of.

13 Q At anytime in your life have you ever applied that
14 you know of ever applied for a line of credit at any financial
15 institution?

16 A Not -- no. I don't even think for a loan. I don't
17 know.

18 Q Now when Ms. McGowan testified yesterday that this
19 check to Wells Fargo she believed dealt with a line of credit
20 in which the Palmyra home was the security for the line of
21 credit, do you recall that? Do you recall that being your
22 testimony?

23 A I think I recall it, yes. Uh-huh (affirmative).

24 Q Now that separate property agreement that you and

1 Eric entered into in 1993 had a specific provision restricting
2 either of you from encumbering the Palmyra home without the
3 consent of the other party. Do you recall that?

4 A I remember that we were supposed to ask each other,
5 yeah.

6 Q Did Eric ever ask you at anytime during your
7 marriage if he could draw upon the line of credit that was
8 secured by the Palmyra home?

9 A No.

10 Q Okay. Now did you ever have any line of credit at
11 Irwin Union Bank?

12 A I did not, no.

13 Q Do you know what -- take a look at check number
14 1563.

15 A Okay. I'm there.

16 Q Do you know what this indicates that it's a LOC
17 payoff and it's being paid to Irwin Union Bank. Do you know
18 what line of credit that is referencing?

19 A No, I don't even know what LOC is.

20 Q I'm sorry?

21 A I don't even know what LOC is.

22 Q And you never had a line of credit at Irwin Bank, is
23 that right?

24 A Oh, yeah. I guess that's line of credit, LOC. I

1 got it.

2 Q Okay. I wasn't meant to lead you, but you --

3 A No.

4 Q -- never had a line of credit at Irwin Bank, have

5 you?

6 A I did not, sir. No.

7 Q Have you ever had a bank account at Irwin Bank?

8 A No.

9 Q Do you know where Grada Financial (ph) of whether

10 Grada Financial had a bank account in August of 2005 at Irwin

11 Union Bank?

12 A I don't know anything about the Grada stuff. I just

13 --

14 Q So you --

15 A -- I know that -- well, I don't know if you want me

16 to --

17 Q So you do not know whether Grada add a line of

18 credit at Union -- at Irwin Union Bank?

19 A No, I don't. I wouldn't know that.

20 MR. DICKERSON: All right. Now that we are on

21 Exhibit KKKK, four Ks -- or four Ks, it's my understanding,

22 madam clerk, that this exhibit has been offered but yet to be

23 admitted?

24 THE CLERK: For KKKK?

1 MR. DICKERSON: Yes.

2 THE CLERK: It hasn't been.

3 MR. DICKERSON: Other than the first page of this
4 exhibit, do you have any objection?

5 MR. SOLOMON: I don't, but other than the first
6 page.

7 MR. DICKERSON: Rhonda, same thing or --

8 MS. FORSBERG: Yes.

9 MR. DICKERSON: Okay. Then Your Honor, other than
10 the first page and I'll go through her with respect to the
11 first page of all these exhibits, I will move for the
12 admission of Exhibit KKKK.

13 THE COURT: Any objections?

14 MR. SOLOMON: No objection.

15 THE COURT: Other than the first page?

16 MS. FORSBERG: Other than the first page.

17 THE COURT: All right. It will be so admitted other
18 than the first page.

19 BY MR. DICKERSON:

20 Q So let's start on that first page. All right.

21 MR. DICKERSON: With respect to this first page,
22 Your Honor, I am going to offer it, but I believe that it
23 would be more appropriate that we delete the footnotes. So if
24 we could interlineate those and delete the footnotes and then

1 I would like to offer -- well, let me establish with the
2 witness.

3 MR. SOLOMON: Why don't you represent what it is and
4 maybe we'll stipulate to it?

5 MR. DICKERSON: Well, all it is -- all these are on
6 each of them and I believe they're appropriate summaries under
7 NRS 52.275, all this is is a summary of the exhibits that are
8 attached.

9 MR. SOLOMON: My only problem with this one frankly
10 was when you started off with the -- you have a column that
11 says sale of High Country Inn. And then I find out the
12 \$500,000 was not from the sale of High Country. It's from the
13 sale of some completely different asset --

14 MR. DICKERSON: Absolutely. And that --

15 MR. SOLOMON: -- and it implied that it was from the
16 High Country. And I don't know if you've done that in other
17 exhibits.

18 MR. DICKERSON: No, that was never even the attempt
19 to imply. That's just showing what the starting -- starting
20 on that date and you get down to the High Country which is on
21 the 24. So I -- and all of these entries at least for the
22 first columns were confirmed by Dan Gerety of each of those
23 amounts are reflected on these statements. And each of these
24 amounts are reflected in the general ledger for this account

1 that's the ELN Trust account.

2 MS. FORSBERG: But Your Honor, it wasn't even just
3 that. It was all the way down. A lot of these were entries
4 that had to do with the account for Nelson & Associates. They
5 had nothing to do with that. All -- quite the way down. It
6 wasn't even just one or two. It was Mr. Solomon just
7 mentioned. It was three-quarters of the way down. It's just
8 --

9 MR. DICKERSON: I don't understand the objection.

10 MS. FORSBERG: The objection is they don't apply to
11 the sale of High Country. It's not just the one entry. It's
12 --

13 MR. DICKERSON: That's not --

14 MS. FORSBERG: -- all the way down.

15 MR. DICKERSON: That's not what the representation
16 is. The representation is is the wire -- on January 24th, the
17 wire from this title company of --

18 THE WITNESS: You wouldn't have.

19 MR. DICKERSON: -- 1,947,000 plus, that is from the
20 sale of High Country Inn. And we will stipulate that. The
21 other is just showing the money in the account and where the
22 money went.

23 THE COURT: So what your concern is the --

24 MR. DICKERSON: And I mean, each of these are

1 supported. The checks are attached. The checks are attached
2 to each of those. The checks indicate what it is for. And
3 all this is is a summary of each of these accounts, each of
4 these statements.

5 MR. SOLOMON: Well, I don't think it's a --

6 MR. DICKERSON: Take it for example --

7 MR. SOLOMON: I don't have any problem --

8 MR. DICKERSON: Take the first one.

9 MR. SOLOMON: -- with the summary --

10 MR. DICKERSON: Take the first one.

11 MR. SOLOMON: -- for illustrative purposes only. I
12 mean --

13 MR. DICKERSON: Absolutely.

14 MR. SOLOMON: -- that --

15 MR. DICKERSON: That's all --

16 MR. SOLOMON: -- if that's what they are --

17 MR. DICKERSON: That's all --

18 MR. SOLOMON: -- but they're not independent
19 evidence.

20 MR. DICKERSON: No.

21 MR. SOLOMON: They're summary under our code.

22 MR. DICKERSON: Conceded, absolutely --

23 MR. SOLOMON: Well, then --

24 MR. DICKERSON: -- a hundred percent true --

1 MR. SOLOMON: -- the Court has discretion --
2 MR. DICKERSON: All it is is --
3 MR. SOLOMON: -- to allow them for that.
4 MR. DICKERSON: -- our summary of what the exhibits
5 to simplify it for the Court. You can tear it apart --
6 THE COURT: And not evidenced that it is from the
7 sale of High Country Inn or from the sale of Tropicana or from
8 the sale --
9 MR. DICKERSON: Or --
10 THE COURT: -- of Tierra Del Sol. Is that what your
11 concern was that that's --
12 MR. SOLOMON: Well, that was one of the concerns and
13 it's not a source on that because you would have to -- for
14 example, the fact that 1.9 million dollars came in on one day
15 doesn't mean those other checks came from that 1.9 --
16 THE COURT: All right.
17 MR. SOLOMON: -- million dollars. They can argue
18 that, but if there was a million dollars in the account
19 before, there are \$10,000,000 in the account, it doesn't --
20 it's not a source analysis. If they're trying to use it for
21 that, I have an objection for that too.
22 THE COURT: But they're saying that --
23 MR. SOLOMON: They can argue whatever they want to.
24 THE COURT: They're saying just for summary.

1 MR. DICKERSON: But where the money went. And the
2 money went --

3 MR. SOLOMON: Well --

4 MR. DICKERSON: -- into his account and the money
5 didn't go to her. And it's a summary of those statements that
6 are attached.

7 MS. FORSBERG: I guess then why would you include
8 all these things that went back out if it had nothing to do
9 with that?

10 MR. DICKERSON: Because Rhonda, take a look at the
11 statement. It is just a summary of what is in the statement.
12 If you go to the first one --

13 MR. SOLOMON: We have no objections to --

14 MR. DICKERSON: -- take a look. The first --

15 MR. SOLOMON: Hold on. We have no objections to the
16 summaries as summaries for what they are as opposed to
17 independent evidence from an expert.

18 MS. FORSBERG: Correct.

19 THE COURT: Okay.

20 MR. SOLOMON: And that's acceptable.

21 THE COURT: You okay with that?

22 MR. DICKERSON: But if you take a look at the first
23 statement, it starts off January 3rd, \$500 deposit. So all it
24 says here, depo -- you know, 500,000 was deposited on that

1 date. You go --

2 MR. SOLOMON: It's the caption, Bob, that's --

3 MS. FORSBERG: Yeah, it's the caption.

4 MR. SOLOMON: -- put it off.

5 MS. FORSBERG: That's the problem.

6 MR. SOLOMON: When you --

7 MS. FORSBERG: The sale of High Country Inn above

8 it. That is not part of High Country Inn.

9 MR. DICKERSON: Well --

10 MR. SOLOMON: That was the problem with it.

11 MR. DICKERSON: -- we're dealing with the High

12 Country Inn on the 24th, the next one --

13 MR. SOLOMON: I understand that.

14 MR. DICKERSON: Okay. And the next one deals with

15 the Tropicana.

16 MS. FORSBERG: What the title says.

17 MR. DICKERSON: Okay.

18 THE COURT: All right. So it will be so admitted,

19 but we'll note, this is a summary of the documents attached on

20 it, not as independent corroboration evidence about the sale

21 of the Tierra Del Sol, sale of Tropicana or for the sale of

22 High Country.

23 (Defendant's Exhibit KKKK admitted)

24 MS. PROVOST: And that would be --

1 MR. SOLOMON: Are you going to offer the other ones
2 for the --
3 MS. PROVOST: That would be --
4 MR. SOLOMON: -- same purpose --
5 MR. DICKERSON: Absolutely.
6 MR. SOLOMON: -- without the footnotes?
7 MR. DICKERSON: Well --
8 THE COURT: Did you want to --
9 MR. DICKERSON: -- there are no footnotes on the
10 other side.
11 MR. SOLOMON: There was.
12 THE COURT: Did you want us to leave the footnotes
13 on this one? I --
14 MR. SOLOMON: Oh, there are footnotes on some of
15 them. I'm looking for example on -- I don't know what exhibit
16 it is.
17 THE COURT: Do you have the KK --
18 MR. SOLOMON: LLL.
19 THE COURT: Blackout they were -- yeah. Did you
20 want us to do -- delete the footnotes on that summary page as
21 well?
22 MR. DICKERSON: I think that would be fair.
23 THE COURT: Okay.
24 MR. DICKERSON: I mean, I would like to have them,

1 but I'm not -- I -- I think it's fair to delete them.

2 THE COURT: Yeah. Okay. We might on that. We'll
3 just delete them. We'll cross -- do you need it now to cross
4 it out or something with a black marker or just whiteout?

5 MR. DICKERSON: If we -- she has the original there,
6 can I just have the witness -- can you just --

7 THE COURT: Yeah, you want to do it?

8 MR. DICKERSON: Actually --

9 MS. PROVOST: I can.

10 THE COURT: Do you want to liquid or whiteout,
11 whatever is easier?

12 MR. DICKERSON: Is this good?

13 THE COURT: Yeah, that would be fine.

14 MR. DICKERSON: Lynita, those footnotes at the
15 bottom, would you just cross a line through those so it can't
16 be read?

17 THE COURT: And just make sure that they --

18 THE WITNESS: Not looking very pretty.

19 THE COURT: I will fix it up at the end. We'll make
20 sure for the record the purpose of that is -- I'll make a note
21 to -- it's KKK.

22 MR. SOLOMON: In the interest of moving this on, I
23 will stipulate to the others of summaries if you remove the
24 footnotes.

1 MR. DICKERSON: I don't -- which one has a footnote,
2 Mark?

3 MR. SOLOMON: I can show it to you, but I can't tell
4 you what it is. It looks like it's -- this might be our next
5 summary. Right here.

6 MS. PROVOST: You were on K, so go to L.

7 MR. SOLOMON: I think -- it looks like everyone has
8 footnotes.

9 MR. DICKERSON: I don't know -- oh, I see. No, I
10 think for example you're talking about an asterisk. I think
11 that's all the deed says.

12 MS. PROVOST: On L.

13 MR. SOLOMON: Well, you have one. Due to time --
14 due to receiving document 71212 there was time to examine
15 individual parcels shall they relate to ownership. That's one
16 of yours.

17 MR. DICKERSON: Which one are you talking -- which
18 one's this?

19 MR. SOLOMON: Again, I think that's -- that one's
20 MMMM. And I don't know why you need any of those footnotes.
21 The Court can look at the original documents to get the
22 information from these documents, some of these documents.

23 MR. DICKERSON: Well, I don't have any problem with
24 the footnotes being removed.

1 MR. SOLOMON: All right.
2 MR. DICKERSON: Okay.
3 MS. PROVOST: So that would be I, K, L, M, P, Q.
4 MR. DICKERSON: Okay. Yeah, I don't have any
5 problem with the footnotes being removed from these.
6 MR. SOLOMON: Why don't you offer them in bulk then?
7 MR. DICKERSON: Okay. Then I will offer all of the
8 summaries and I believe we're talking --
9 MS. PROVOST: I.
10 MR. DICKERSON: -- these are all four? These are
11 all four Ls, M, P, Q, R, T, U and V.
12 MR. SOLOMON: I'm sorry, could you repeat that?
13 Four L?
14 MR. DICKERSON: L -- well, we actually have I.
15 MR. SOLOMON: Four I?
16 MR. DICKERSON: We have I. Yeah, let's see. I has
17 -- yes, I, L, M, P, Q, R, T, U, V. And that's it.
18 THE WITNESS: Do you want me to black those out then
19 just as we get to them?
20 THE COURT: We'll do it.
21 THE WITNESS: Oh, okay.
22 THE COURT: We'll do it at the end. So you're
23 looking right now would be quadruple I, quadruple L, quadruple
24 M as in Mary?

1 MR. DICKERSON: Yes.

2 THE COURT: Quadruple P, quadruple Q, quadruple R,
3 quadruple T, quadruple U, quadruple V with the notation and
4 summaries sheet should just be for summary purposes only and
5 not independent corroboration of --

6 MR. SOLOMON: Also, those will be stricken.

7 THE COURT: And the footnotes will be all -- any
8 footnotes on any of those summary sheets will be stricken. Is
9 that --

10 MR. SOLOMON: So stipulated, Your Honor.

11 MS. FORSBERG: So stipulated, Your Honor.

12 THE COURT: Okay. You got that? Okay? Okay.
13 Hereby admitted as accordingly on that with the footnotes
14 stricken.

15 (Defendant's Exhibits IIII, LLLL, MMMM, PPPP, QQQQ, RRRR,
16 TTTT, UUUU, VVVV admitted)

17 BY MR. DICKERSON:

18 Q Okay. Lynita.

19 A Yes.

20 Q Is there anything that you feel needs to be further
21 investigated with respect to determining where money may have
22 gone?

23 A There is a -- I believe it's a payout that was
24 stated on general ledger that was supposed to have gone to

1 First American Title for over \$4,000,000.

2 Q If I may refer you to Dan Gerety's report which is I
3 believe next to you, we'll take a look at Bates Number
4 DG-00160.

5 A Okay.

6 Q Are you speaking of the very last entry on that page
7 which is account 1340?

8 A Yes. Uh-huh (affirmative).

9 Q Now I inquired of Mr. Gerety when he was on the
10 stand about his understanding of that adjustment that has been
11 made and he could not recall -- he did not know where it went
12 or what it was for. Do you recall that?

13 A I remember that. Uh-huh (affirmative).

14 Q Is that -- does that transaction concern you?

15 A Yes.

16 MR. DICKERSON: All right. I have nothing further.
17 Thank you, Lynita. Thank you.

18 THE WITNESS: Thank you.

19 MR. SOLOMON: Can I have one minute, Your Honor?

20 THE COURT: Sure. We'll just a couple minute break.

21 (Off record)

22 MR. SOLOMON: -- in his way in here, actually.

23 THE COURT: We're going back on the record in the
24 matter of Eric and Lynita Nelson, case number D-411537. Mr.

1 Solomon, you can proceed at your pleasure.

2 MR. SOLOMON: Appreciate it, Your Honor.

3 CROSS EXAMINATION

4 BY MR. SOLOMON:

5 Q Lynita, I'm going back to the beginning of your
6 examination by Mr. Dickerson. Lord knows when that was right
7 now, but I think it was yesterday. You indicated that you
8 lost trust in Eric sometime in about November of 2007 and it
9 had something to do with a draft of a trust that you saw for
10 the kids.

11 A Yes.

12 Q Correct?

13 A Yes, sir.

14 Q Okay. And you said you read it and Eric was trying
15 to get you to sign it as soon as possible, but when you read
16 it, you just weren't comfortable with it and you wanted to
17 understand it.

18 A Yes.

19 Q What did you -- and in my notes, is that accurate?

20 A That's what I say -- yeah, that's what -- it sounds
21 pretty close.

22 Q So you took the time in a document he asked you to
23 read to read it.

24 A Actually, own -- I didn't get past the part of -- of

1 that. I didn't read past that.

2 Q You had no problem, Eric asked you to sign the
3 document as soon as possible, but you sat down and at least
4 read it to you as a point that you decided to stop reading it,
5 correct?

6 A Yes.

7 Q And you told me you weren't going to sign it because
8 you weren't comfortable with it.

9 A Yes.

10 Q And isn't that true with every document he ever
11 presented to you you have the opportunity to read it and the
12 opportunity not to sign it if you didn't want to, just like
13 this one.

14 A I didn't feel that way, no.

15 Q Now you said you went to Mr. Burr in 2009 to change
16 your trust and that was something you decided to do on your
17 own, correct?

18 A It was, yes.

19 Q Eric didn't prompt you to do that.

20 A He did not.

21 Q And you went there because you knew the trust didn't
22 make the provisions that were still consistent with your
23 present intent in that time.

24 A Yes.

1 Q Had you read the trust, the 2001 LSN Trust?

2 A I knew who the -- I knew that I wanted to have my
3 kids in there and I knew that I didn't --

4 Q My question is did you read -- ever read the 2001
5 LSN Trust?

6 A I'm -- I'm not sure.

7 Q Okay. Would you agree there was nothing -- whether
8 or not you did there was nothing that would have stopped you
9 from doing that if you had wanted to?

10 A Will you ask that again? I think --

11 Q Sure. Would you agree that whether or not you can
12 remember you ever read the 2001 LSN Trust there was nothing
13 that would have stopped you from doing so if you had desired?

14 A That's correct. I didn't -- well, at the time I
15 didn't feel like there was. I mean, there may have been
16 something, but I mean, my level of understanding -- I mean,
17 that's why I went to Jeff.

18 Q Would you agree there's nothing in your 2009 trust
19 amendments that state that it's designed to dispose of
20 anything less than 100 percent of the assets in the LSN Trust?

21 A Do I understand it to say that?

22 Q Yes.

23 A I don't believe I do.

24 Q Okay. There's nothing in that trust that --

1 A Do I understand that? Unh-unh (negative).

2 Q There's nothing in the amendments at all that you
3 prepared in 2009 that says it's designed, those amendments and
4 the provisions that you changed were designed to do anything
5 less than transfer 100 percent of the assets in the LSN Trust
6 to your beneficiaries upon your death, correct?

7 MR. DICKERSON: Object to the form of the question.
8 She did not prepare that document.

9 MR. SOLOMON: She signed it.

10 THE COURT: Do you understand?

11 MR. DICKERSON: The question is prepared. His
12 question was that you prepared it.

13 BY MR. SOLOMON:

14 Q All right. Same question, caused to be prepared.

15 A Did I understand that? Is that what you're asking
16 me? Or that --

17 Q Isn't it true there is nothing in the documents that
18 you signed in 2009 that says that less than a hundred percent
19 of the assets contained in the LSN Trust were going to be
20 disbursed at your death in accordance with the desires you
21 expressed in a document you signed?

22 A I'm not sure that I under -- that I understand that
23 that was in there, but I mean, I -- I don't understand that
24 part of it. So if you were to ask me if it was in there

1 today, I would tell you I didn't know.

2 Q And I heard you correct, did I not, that you agreed
3 that with what Mr. Burr testified to this Court --

4 A In -- in --

5 Q This trial that's taken over the last two weeks
6 here.

7 A I think that when I was asked -- when I said that,
8 it was in regards to telling me which attorney to go to. I
9 don't know if it was ever --

10 Q And you were asked whether or not you heard Jeff
11 Burr's testimony with respect to what happened in 1993 and how
12 that trust was set up and whether you agreed with this
13 testimony and you said you did.

14 A And who --

15 Q Do you recall that?

16 A -- asked me that? I don't --

17 Q You said you trusted Jeff and Eric to -- in
18 connection with your execution of this estate plan. Do you
19 recall that?

20 A Yes.

21 Q Okay. And you --

22 A I mean, what year are you specifying?

23 Q 1993 --

24 A Oh, okay.

1 Q -- when you set up the separate property agreement
2 and the separate property trust.

3 A Okay.

4 Q And you understood that -- at least you claimed that
5 the gist of what you understood was this was a device or an
6 estate plan that would help -- an asset protection plan that
7 would help protect the assets -- your assets from creditors,
8 correct?

9 A Well, not specifically mine. They were ours. They
10 were Eric and mines.

11 Q Did they -- did you understand they were going to
12 help protect your assets?

13 A If you say Eric and me, yeah.

14 Q Okay.

15 A Sure. I'll agree to that and our children whenever
16 they came, yes.

17 Q And you agree to the whole plan, did you not, by
18 signing it?

19 A I did sign that in -- yeah, I don't deny that I
20 signed those.

21 Q And you said in your examination with respect to the
22 division assets, you didn't know what they were or how that
23 even happened, but do you recall that the division of assets
24 was contained in schedules in the very documents you signed?

1 A They weren't -- they weren't there that day.
2 Q They weren't, huh?
3 A No, I -- I didn't see them until the divorce started
4 or ended or middle, wherever. Whenever they mattered.
5 Q So your --
6 A After he --
7 Q -- testimony is that --
8 A After he changed his mind.
9 Q Do you remember that letter to Mr. Koch? You were
10 asked whether you walked over with him.
11 A Uh-huh (affirmative).
12 Q Do you remember that had the assets schedules
13 attached to it?
14 A It didn't have the assets on there.
15 Q Yes, it did.
16 A Okay.
17 MR. DICKERSON: Are you testifying, counsel?
18 Q Do you want to see it?
19 A Is it attached to -- I didn't take --
20 Q It's attached to the exhibit.
21 A I didn't take the assets over there. I didn't know
22 -- if I did, I didn't know what they were attached to. I
23 think I -- I think it was a letter if I took anything. We
24 didn't have them that day and Jeff told us to -- Eric -- to

1 Eric to get them and to get it done.

2 Q Okay. So your testimony is that the day you signed
3 you didn't even have -- that you didn't even have an asset
4 schedule.

5 A I -- I believe that Jeff told Eric to do it.

6 Q Okay. Do you have the Intervener's exhibits? I
7 think it's the big one up there.

8 A Is this you?

9 Q Yes.

10 THE COURT: In the yellow one, yeah.

11 A Okay.

12 Q Would you turn to Exhibit 3?

13 A Sure.

14 Q Are you there?

15 A I am now.

16 Q Okay. This says July 13th, 1993. That's the same
17 date you signed the separate property agreement, correct?

18 A Okay.

19 Q It says dear Richard, enclosed for your review and
20 signature, please find the separate property agreement and the
21 attached schedules A and B. Do you see that?

22 A I do and that might have been dated that way, but I
23 didn't walk over there with a list.

24 Q Well, if you keep on going to the exhibits, you can

1 see those schedules A and B.

2 A Well, I'm not saying that that letter wasn't written
3 and that wasn't sent and somebody dated that.

4 Q You just testified that one, this -- those schedules
5 weren't attached to this letter, number one. Number two, you
6 testified that --

7 A I said that I did --.

8 Q -- they weren't even prepared prior to the time you
9 signed it.

10 A I said I did not take schedules over there.

11 Q Okay.

12 A That's what I said.

13 Q And if you look at the separate property agreement
14 which is Exhibit 4, the next one.

15 A Okay. I'm there.

16 Q You see those schedules? And they proceed your
17 signature.

18 A They weren't there that day.

19 Q Okay.

20 A If they were, I would have known what it was and I
21 testified I didn't know --

22 Q Would you turn to --

23 A -- what they were.

24 Q I'm sorry. Would you turn to Page Bates stamped at

1 the bottom BURR-00160?

2 A Yes. I'm there, sir.

3 Q All right. Is that your signature?

4 A It is, sir.

5 Q And that's your certification?

6 A Well, but I think that I agreed to the -- to the
7 trust.

8 Q And if you read down below, it says personally
9 appeared before me, Lynita Sue Nelson, who acknowledged to me
10 she executed the forgoing schedule A.

11 A It does say that, but I also told you that Jeff told
12 Eric to get it -- to get it ready and to give it to him.

13 Q But that was at a prior meeting, wasn't it? Before
14 the execution.

15 A It could have been. But I mean, we don't know that.
16 You don't know that.

17 Q Your testimony on cross was you didn't know what was
18 in your trust at any time.

19 A I didn't.

20 Q You had no clue.

21 A Unh-unh (negative).

22 Q Never communicated with anybody at the -- either
23 Eric's or Eric's office about any of that, ever.

24 A That was something that Eric handled and he didn't

1 ever feel the need to include me in that.

2 Q Oh, well, you know when you were asked whether
3 Rochelle ever brought things over and discussed with -- the
4 same with you, your response was no, he didn't do that. Eric
5 would do that. Do you recall telling Mr. Dickerson that?

6 A Uh-huh (affirmative).

7 Q So which is it? Did Eric discuss that with you or
8 not discuss it with you, business of the trust?

9 A Handing me a piece of paper and telling me it needed
10 to be signed, I don't consider it having it discussed,

11 Q And you were too intimidated to say hey, what am I
12 signing, what's this about, what is -- what's going on here.
13 Is that your --

14 A I have never --

15 Q -- testimony?

16 A I have never said that.

17 Q Okay. So you had the ability to do that --

18 A Would you like me to clarify?

19 Q -- anytime you wanted to. I don't know. I don't
20 know what you're trying to convey to the Court. So let me ask
21 the questions.

22 A I guess I'll take the opportunity to do so.

23 THE COURT: That's -- sure, if you want to. Do you
24 want to finish your answer first? Do you want to finish it?

1 THE WITNESS: I would like to.

2 THE COURT: Go ahead.

3 THE WITNESS: In our marriage since it sounds like
4 it's an appropriate time to inform those who are here today
5 that Eric wanted to take care of the business. And my
6 responsibility was to take care of the children.

7 BY MR. SOLOMON:

8 Q Okay.

9 A And that's what's happened. And he defined that by
10 what he did. And it really -- you know, for a number of
11 years, you ask can you tell me about it, can you share this
12 with me. Will you talk to me about it. And after a certain
13 amount of time you just don't ask anymore because it's
14 probably not going to happen.

15 Q Okay. So you made a choice --

16 A And in order for --

17 Q -- not to ask anymore because you were -- for
18 whatever reason you decided --

19 A Well, not --

20 Q -- not to.

21 A -- never. No. Of course I wanted to know. I
22 wanted to -- I wanted to be a part of his life. I wanted to
23 be a part of the business. I hadn't finished college. I was
24 hoping someday that I could go in and work in the office and

1 do everything with him together and --

2 Q Let me ask this so we can move on.

3 A -- it's clear that that's not what he wanted.

4 Q Do you recall signing deeds transferring properties
5 into your separate property trust?

6 A I do, sir. I have -- I have seen all my signatures.

7 Q Okay.

8 A Yeah.

9 Q And if you bothered to look at those deeds at the
10 time you signed them, you would have known it was in your
11 trust, correct?

12 A It wasn't a matter of being looking at it. It was
13 very clear that Mr. Nelson wanted to run the business and he
14 didn't want me to be a part of it.

15 Q Isn't it true that when you testified to this Court
16 you didn't even know it was in your trust, that wasn't true
17 because you did know it was in your trust? Not only did you
18 have the schedules, but you also signed the deeds transferring
19 properties into your separate property trust.

20 A That's not true, sir.

21 Q So you looked at those deeds and it didn't dawn on
22 your when you're transferring assets from your family trust in
23 1991 to your separate property trust that hold on, maybe this
24 is an asset in my separate property trust?

1 A You know --

2 Q It didn't register?

3 A -- when you're standing in the bathroom, you got
4 little kids running around, you see a white piece of paper and
5 your husband that you trust and live with and had five
6 children with asks you to sign something --

7 Q But you know you had a trust.

8 A -- you sign it.

9 Q Did you know you had a trust?

10 A I knew I had a separate property trust that my
11 husband asked me to go and do to protect everything that we
12 had.

13 Q All right. And you knew that because Mr. Burr had
14 told you that it was important to separate your assets in
15 order to accomplish that plan, correct? You knew that.

16 A To protect some of the assets we would have or could
17 have in there. Yes, sir.

18 Q Okay. And then you said you had this arrangement
19 with your husband that he would run the finances and you would
20 run the home, correct?

21 A That's how he wanted it to be. I didn't agree with
22 the arrangement all the time.

23 Q Oh, okay. So you vetoed it and said you can't do
24 that?

1 A In order to have a marriage and to allow him to
2 bring whatever I thought was happiness to him, that's what I
3 did.

4 Q Now a lot of people make compromises in life, but
5 isn't it true that your testimony is that you ran the house,
6 you let him run the businesses?

7 A That's not what I testified to.

8 Q All right. Well, the Court will decide what you
9 testified to.

10 A Would you like me to clarify it?

11 THE COURT: Hold on.

12 A I took care of the children and he took care of the
13 business and that's how he wanted it to be.

14 Q Okay. And you exceeded to that.

15 A That's how it happened.

16 Q You didn't exceed to that?

17 A Tell me what exceed means.

18 Q You agreed to it for whatever your motivation was.

19 A I'm going to say I allowed it to happen.

20 Q There you go. Well, we'll accept that. And that
21 would be true not only with respect to the 1993 separate
22 property trust that you relied upon Eric and his office staff
23 to help manage your assets, but that's also true with respect
24 to the LSN Trust in 2001.

1 A I'll need you to repeat that again if you could.

2 Q You relied upon Eric and you relied upon Eric's
3 staff to manage on a day-to-day basis the assets that were put
4 into your separate property trust in 1993 and the assets that
5 were put in to your 2001 trust in 2001, isn't that true?

6 A I never talked -- I -- I really wasn't given a
7 choice. That's --

8 Q You exceeded to it.

9 A That's how Eric's done it.

10 Q How is that? I'll give you that.

11 A I'll say what I've said before. That's how Eric
12 wanted it and that's how it happened.

13 Q Okay. And in fact, you knew all along that Eric was
14 helping manage the assets in your trust and in his trust,
15 isn't that true?

16 A That he was managing it?

17 Q Yes.

18 A It was something -- it was something that we should
19 do together.

20 Q Okay. And in fact, he did. He would come home to
21 you and he would tell you what was going on his business,
22 wouldn't he?

23 A I'm sorry to tell you that you don't know that.

24 Q Well, that's what you testified earlier.

1 A Well, if you want to conclude it that way, that's
2 your decision, I suppose.

3 Q And you're not telling this Court, are you, that you
4 didn't have periodic and frequent -- let's leave the word
5 frequent out because we can argue over that. You had periodic
6 communications with Eric's staff with respect to your accounts
7 and the payment of your bills and the acquisition of your
8 assets and disposition of your assets. Are you telling the
9 Court otherwise?

10 A I have testified and I will again under oath tell
11 you again that I have sworn to tell the truth. And what I
12 have said is the truth.

13 Q Okay. I'm showing you what's been =marked as 178.

14 A Thank you.

15 Q An email from you at the bottom to Rochelle dated
16 November of 2007. It says hi, Rochelle. There are two
17 specific bills, I want to come to the house. There's been a
18 few months for one. I showed her for the other since I've
19 gotten them here. Are you getting them there, hopefully. Did
20 you change them, will you change them back here. Thank you.
21 It's my Visa, you know, account number. And the other one is
22 my Southwest charge card Visa. If you need the number of
23 assets, I'll be on Friday morning. I'll give it to you then.
24 Okay. Thank you. Lynita. Did you send an email to Rochelle?

1 A It looks like I did.

2 Q All right. So you knew that she was paying the
3 bills for your trust.

4 A This Southwest card, they -- they have never paid.
5 That's mine.

6 Q You knew --

7 A That's mine.

8 Q I'm not talking about those two. I'm talking about
9 --

10 A Oh, what are you talk --

11 Q -- didn't you knew --

12 A -- we're on a different question?

13 Q -- that she was paying the bills for your trust?

14 A No, I didn't know that she was paying the bills for
15 the trust. I know that they paid my credit cards bills and I
16 had like -- Eric got me cards that he wanted to specify what I
17 spent with it so that he could write it off at the office for
18 taxes.

19 Q So when you said there were two specific bills I
20 want to come to the house, you didn't know that there was lots
21 of other bills that were being paid there?

22 A Well, I -- what I -- like I just explained, the --
23 the only bill that I knew for sure -- well, he -- he paid the
24 house bills. Like -- like I -- I didn't pay for bills the

1 water --

2 Q The house was owned by the LSN Trust. You knew
3 that, didn't you?

4 MR. DICKERSON: Can she finish the answer, Your
5 Honor?

6 THE COURT: Finish --

7 MR. SOLOMON: Go ahead.

8 THE COURT: Do you want to finish?

9 A Well, I -- I knew that he paid the expenses of the
10 house and sometimes work that was done at the house. I knew
11 that he had the girls pay that. And there was a credit card
12 sometimes more than one credit card that he asked the girls to
13 pay. I knew of that.

14 Q Okay. You knew the house was owned by the LSN
15 Trust, right?

16 A I did. Uh-huh (affirmative).

17 Q Okay.

18 A Because it's free and clear. Uh-huh (affirmative).

19 MR. DICKERSON: And actually, for the record, Mark,
20 that house is owned by the --

21 MS. PROVOST: Nevada Trust.

22 MR. DICKERSON: -- the Nevada trust.

23 A The Nevada Trust. The LSN Trust.

24 Q Oh, I'm sorry. Yes.

1 A Which is different. So yeah, I'm sorry.
2 Q You're right.
3 A I should have --
4 Q Thank you.
5 A -- clarified that as well.
6 MR. SOLOMON: Yeah, I move to admit 178.
7 MS. FORSBERG: No objection.
8 MR. DICKERSON: No objection.
9 THE COURT: Hereby admitted as Exhibit 178.
10 (Intervener's Exhibit 178 admitted)
11 BY MR. SOLOMON:
12 Q Did you have periodic conversations with Joan Ramos
13 at the office with respect to trust business?
14 A Not trust business. She was handling some --
15 something to do with Gateway. They were trying to do a
16 report. And I know she contacted me or I contacted her on
17 that.
18 Q And when was that?
19 A It was when we were -- had already agreed to get
20 divorced. I couldn't tell you the date.
21 Q Was it 2008 or later?
22 A Yeah. I remember talking to her about that. And I
23 --
24 Q First time you ever talked to her about trust

1 finish?

2 MR. DICKERSON: Can you finish the question --

3 answer?

4 THE COURT: Well --

5 MR. SOLOMON: She answered it.

6 THE COURT: Let her finish here. She's still

7 speaking. Did you -- you can finish it.

8 THE WITNESS: I had a little --

9 THE COURT: Did you remember it?

10 THE WITNESS: I mean, there were other things that

11 we talked about, but it wasn't with the trust. You know, it

12 was just personal things. So I just remember Gateway is all I

13 remember. And it -- it was meeting for that.

14 Q All right. I'm showing you what's been mared as

15 179.

16 A Okay. Thank you.

17 Q On this email from you to Joan --

18 MR. DICKERSON: Actually, it's to Rochelle.

19 MR. SOLOMON: I'm sorry?

20 MR. DICKERSON: It's to Rochelle.

21 MR. SOLOMON: Oh, it's to --

22 A It's --

23 MR. SOLOMON: -- Rochelle. It's message for Joan.

24 Thank you.

1 Q Dated April 23, 2007. It says hi, will you tell
2 Joan I'm running late, I'll be in by 1:00 o'clock. Do you see
3 that?

4 A Yeah, I see it. That's what it says.

5 Q Okay. And then in the response Rochelle comes back
6 and says okay, no hurry. She said Erica can bring them in
7 tomorrow if you want.

8 A Okay.

9 Q So you were saying on it below you were -- you
10 intended to bring some documents in yourself --

11 A That's not what it says.

12 Q -- personally. I'm asking you.

13 A Oh, I have no idea.

14 Q Isn't that what was happening here? You were coming
15 in, you were going to bring some documents in for Joan -- I
16 mean, yes. And --

17 A That's what it said. It could be --

18 Q Would you let me finish the question and then you
19 can interrupt?

20 A I will, sir.

21 THE COURT: Let me him finish and we'll let you
22 clarify.

23 A We'll do that for each other.

24 Q I know what it says.

1 THE COURT: Let's calm down. Let's --

2 THE WITNESS: Okay.

3 THE COURT: -- be civil to each other.

4 Q I'm not asking you what it says. I'm asking you
5 what it means. There's a difference, okay? Isn't this what
6 you meant here is the -- Rochelle is telling you -- I'm sorry,
7 you're telling Roch -- hold on. You're telling Rochelle at
8 the bottom. You're asking her to tell Joan that you're
9 running late and you'll be in by 1:00 p.m. And you're
10 intending to go into the office. Let's stop there.

11 A That's -- would appears to be happening.

12 Q Okay. And then on the top, Rochelle responds and
13 says okay, no hurry. She which I'm assuming means Joan said
14 that Erica can bring them in tomorrow if you want.

15 A Okay.

16 Q Isn't that referring to the fact of documents that
17 you were going to be delivering?

18 A I have no idea.

19 MR. SOLOMON: Move to admit 179.

20 MR. DICKERSON: No objection.

21 MS. FORSBERG: No objection.

22 THE COURT: Hereby admitted as Intervener's 179.

23 (Intervener's Exhibit 179 admitted)

24 MR. DICKERSON: I just would point out that none of

1 these have been provided in discovery, but I really couldn't
2 care less.

3 BY MR. SOLOMON:

4 Q Now we saw minutes after minutes after minutes with
5 respect to the LSN Trust that you actually signed. Do you
6 recall that?

7 A Yes, sir.

8 Q Okay. Did you ever tell anybody no, I'm not going
9 to sign any minutes?

10 A Well, Eric would have been the only one that
11 presented me with that.

12 Q Did you ever tell anybody --

13 A And I did not tell --

14 Q -- that you're not going to sign any minutes was the
15 question.

16 A I don't recall ever telling him I wouldn't sign it.

17 Q When you were signing those minutes, you -- it's
18 your testimony you never asked Lana or Nola who had cosigned
19 those, some of them, any questions, correct?

20 A I never read the papers that I signed. Eric gave
21 them to me and I was trusting that what he was having me
22 signed was something that needed to be signed.

23 Q So the answer is that you never asked Lana or Nola
24 to cosign any of those minutes, any questions about anything

1 --

2 A I never knew they had anything to do with it.

3 Q And one of Mr. Dickerson's questions he asked you
4 about Nola Harbor becoming distribution trustee. And you said
5 I didn't want to switch. Do you recall that?

6 A I do.

7 Q So you were happy with Lana Martin being the
8 distribution trustee, is that right?

9 A I didn't say that.

10 Q I know you didn't say that, but if you said I didn't
11 want to switch, that's what that means, isn't that true?

12 A I didn't want to switch to Nola.

13 Q All right. So you didn't at any point switch from
14 Lana prior to that time, did you?

15 A I don't believe so. And I trusted her as well.

16 Q Do you have Exhibit quad -- triple B -- five B? If
17 you don't, I'll see if I can find it.

18 A I don't think I have that book. I'm sure I don't.

19 THE COURT: That's the one with the --

20 MR. SOLOMON: Yeah, the first one there.

21 THE COURT: Flip around there. The first one's the
22 application for the assessment and taxation.

23 MR. SOLOMON: Thank you so much.

24 Q I'm showing you what's been marked as quintuple,

1 that's the right word, B.

2 THE COURT: I like that. Good.

3 A Five B. Okay.

4 MR. SOLOMON: I'm going to leave that one up, Your
5 Honor.

6 THE COURT: That's good. I like that. Because no
7 one else could figure it out, so --

8 MR. DICKERSON: He gets the gold star for the day.

9 THE COURT: Good going.

10 Q But your testimony was that all of these deeds or
11 applications or whatever is in here were all signed apparently
12 by someone other than you.

13 A That's true, sir, but I didn't -- I mean, this is
14 what we presented. I -- it's all the same thing. Okay.

15 Q Do you realize that there's seven separate notaries
16 that notarized your signatures in just these documents alone?

17 A I hadn't counted them, actually.

18 Q You're welcome to count them. I'll represent to you
19 there's seven.

20 A I believe you.

21 Q Okay. And the only one that ever worked for Eric
22 would be Rochelle. Are you aware of that?

23 A Well, I kind of disagree.

24 Q Are you going to count the receptionist to the

1 building?

2 A Well, if she -- you mean the one that was like the
3 central receptionist?

4 Q Yes. She didn't work for Eric, did she?

5 A Well --

6 Q She worked for the building.

7 A -- if she was a notary, she would have worked for
8 him.

9 Q Okay. That's your definition of work. Was he on
10 his payroll?

11 A Well, I wouldn't know that. And Cindy Nuhn (ph) has
12 done work for him for many, many years. And so she gets paid
13 to be a notary. So I would consider --

14 Q Okay.

15 A -- him to --

16 Q How about the notaries that working with title
17 companies? Would you agree they're not employed by Eric?

18 A Well, that's what Cindy Nuhn is. She works at a
19 title company. But aren't we charged for that? Don't you pay
20 for a notary?

21 Q I don't know. You generally would know with a title
22 company, but I'm not here to testify, so --

23 A Yeah, I wouldn't --

24 Q So what --

1 A -- I wouldn't know either.

2 Q -- payments are you aware of that Eric made to Cindy
3 Nuhn?

4 A Well --

5 Q Just a notarized documents? Do you think he paid
6 her something to notarize documents?

7 A I understood that when a notar -- that you pay a
8 notary to sign.

9 Q So you're not --

10 A I know it --

11 Q -- aware of any -- you're really not aware of any
12 payments that he made to Cindy Nuhn. You're just making an
13 assumption that he paid something to have it notarized.

14 A I'm not saying he did.

15 Q Okay.

16 A I'm just saying that he did business with her. So
17 in a sense --

18 Q All right.

19 A -- I --

20 Q You have accept those too. Why do you think five
21 other notaries notarized your signature if you didn't sign it?

22 A He's charming.

23 MR. SOLOMON: I'll pass the witness.

24 CROSS EXAMINATION

1 BY MS. FORSBERG:

2 Q Fortunately, Mr. Solomon asked some of my questions,
3 so it won't be so horrible. Can you tell the Court why you
4 bought Harbor Hills?

5 A Our marriage was struggling and I had just -- I saw
6 this house. And I said you know what, if nothing else and
7 everything works out, my mom can live in there. And he
8 thought Alita could live there as well. So --

9 Q So you're saying your marriage was struggling so you
10 bought it for your mother to live in?

11 A I said if things didn't work out, then my mom could
12 move in. We had discussed that or we had discussed that Alita
13 could live there. That's what I said.

14 Q You just a few minutes ago when Mr. Solomon asked
15 you about switching trustees. Do you recall that question?
16 And you stated you didn't want to switch to Nola. Do you
17 remember that answer?

18 A Well, he said that's what I said. So I mean, I -- I
19 know that I did not want to have Nola at that time -- I didn't
20 want to go from Nola -- from Lana to Nola.

21 Q And you just said because you didn't want Nola,
22 correct?

23 A That's right. Uh-huh (affirmative).

24 Q Now isn't it true ma'am that on your new -- if you

1 look at Number 19 in the --

2 A Oh.

3 Q -- Intervener's book, please.

4 A Exhibit 19?

5 MR. DICKERSON: I got it.

6 A Sorry about that.

7 Q Now we're both knocking things down. I knocked this

8 thing and you knocked that over.

9 A We're not used to such little work space. Okay.

10 Okay. 19 is my will.

11 Q Right.

12 A Okay.

13 Q So you want this Court to believe that you didn't

14 want Nola to be the trustee of your -- the distribution

15 trustee, but you wanted her to be the guardian of your

16 children? And isn't that what you did in 2009, ma'am?

17 A At -- at that time I did. Uh-huh (affirmative). I

18 did. I thought she was the best one at that time to take care

19 of the children.

20 Q But not the distribution trustee.

21 A That's true. Two different things.

22 Q I know it's been awhile in this thing since we've

23 had Shelly Newell on the stand, but you remember when Shelly

24 was testifying, correct?

1 A I remember she was here.

2 Q You heard Shelly testifying to you talking to her
3 about pow-wows with Eric. Do you remember that?

4 A The -- oh, say that again? I'm sorry.

5 Q Do you recall Shelly testifying here -- let's go
6 back one step.

7 A I remember she was here.

8 Q And you remember she testified.

9 A Yes.

10 Q Okay. And you remember she talked about you telling
11 her you would have pow-wows with Eric monthly.

12 A Oh, I do. Uh-huh (affirmative). I do remember
13 that.

14 Q And isn't that true you had pow-wows with Eric
15 monthly to discuss your business?

16 A Well, I -- I thought it was interesting that she
17 thought she knew what happened in my house. I thought that
18 was interesting.

19 Q Ma'am, but I don't think that's what she testified
20 to. She testified to you telling her what occurred.

21 A Oh, did she?

22 Q Yes.

23 A Oh, well --

24 Q Do you recall that?

1 A -- I don't know. I mean, I may have said that to
2 her.

3 Q A few minutes ago -- I'm working back for things and
4 we'll get through this. A few minutes ago you testified to
5 the fact that you were so interested in being involved in the
6 business. Do you recall that testimony you just gave?

7 A I thought so I said, but I wanted to be involved --

8 Q You said you wanted to, but Eric wasn't really
9 interested in that, right?

10 A Yeah, he didn't want that.

11 Q And you wanted to be interested -- involved in the
12 business, right?

13 A Absolutely. Uh-huh (affirmative).

14 Q But yet, you want this Court to believe that even
15 though you wanted to be involved in the business that when
16 they gave you all these multiple, multiple documents we saw
17 that you didn't bother to read any of them if you're still
18 interested?

19 A It wouldn't have mattered. You don't know how many
20 times I asked about things.

21 Q I don't think that was my question.

22 A You don't know that.

23 Q My question was you want them to believe that though
24 you were still interested that you didn't bother to read all

1 these documents you were given or even some of it?

2 A But that's what I testified to. So yes. Like I
3 said, I swore to tell the truth on the stand.

4 Q We know we did

5 A And that's what I'm doing.

6 Q That's correct. You did.

7 A Like I said, I swore to tell the truth on the stand.

8 Q We know you did.

9 A And that's what I'm doing.

10 Q That's correct. You did.

11 A Okay. Well, I think some people forgot.

12 Q I agree.

13 A Uh-huh (affirmative).

14 Q You testified about -- a few minutes ago about not
15 knowing anything about the line of credit on the Palmyra
16 house, is that correct?

17 A I don't think I said I didn't know. I -- I said
18 that --

19 Q Until Eric told you.

20 A -- Eric had mentioned it, yeah. Uh-huh
21 (affirmative).

22 Q And you said he mentioned that you had one already
23 on the house at that time, right? Whenever it was he
24 mentioned it, it was that it was already in existence, is that

1 correct?

2 A Uh-huh (affirmative).

3 MR. DICKERSON: Is that a yes?

4 A Yes.

5 MS. FORSBERG: Thank you, Bob.

6 Q Just we forget this got -- this needs to be
7 transcribed into written form. That's why he was clarifying
8 for you. But wouldn't the only person that would be able to
9 sign those documents for a loan be you as investment trustee
10 of the LSN Trust or the Nevada trust in the case that it
11 turned out to be?

12 A Well, I believe when we had the Nevada trust, I
13 think that was with Eric and I together, right? I'm not sure
14 --

15 Q So you're saying the Palmyra house is not in the
16 trust name.

17 A It's in I believe our original trust we ever set up.
18 And that was us together if I understand that correctly.

19 Q You also testified Ms. Nelson that you were
20 basically told not to ask questions by Eric, right?

21 A Well, that -- that sounds as if I was verbally told
22 that and I'm sure I was told that. But in a sense, I mean,
23 there's a lot of ways that people can convey that without
24 saying it, but there were times I was told that, yeah.

1 Q But you also testified in November of 2007 --
2 A Uh-huh (affirmative).
3 Q -- that when you made questions he set up an
4 appointment for you to go meet with Jeff after you talked to
5 Barbara Morelli, isn't that correct?
6 A When I went in to discuss the trust, you mean the
7 kids' trust?
8 Q Your children's trust, yes.
9 A He may have. I don't -- I don't know who made that
10 appointment. For the kids' trust?
11 Q Right.
12 A I don't -- I don't know.
13 Q But he didn't try to stop you from going to an
14 appointment with Jeff, did he?
15 A Well, we went together. I wouldn't sign them
16 without him going, so he was highly motivated to go.
17 Q Can you turn to Exhibit 4 please in the Intervener's
18 book?
19 A Sure. This one that I have?
20 Q The big one, that --
21 A Okay.
22 Q -- big one. You just testified a minute ago that
23 that was in your joint trust before the '93 separate --
24 A I --

1 Q -- property agreement, right?

2 A The house?

3 Q Yes. Palmyra, I'm sorry.

4 A I said I was thinking -- I said I thought that the
5 very first house that we setup was Eric and I together.

6 Q You think it's in the '91 trust.

7 A I believe that was -- yeah, I think that's the one
8 it was in. I -- like I said, I mean, I -- I knew we had the
9 house in '91. So I mean, in -- yeah, when we first setup the
10 trust. So I understood that at that time it would have been
11 in Eric and my name. But like I said, I -- I don't really
12 understand a lot of it, so --

13 Q If you'll turn to Bates label on that Exhibit 4 --

14 A Sure.

15 Q -- to 158, please. BURR-000158.

16 A Sure. Okay.

17 Q The very last sentence on that page, can you tell me
18 what property that is that's in that was discussed in the
19 separate property agreement?

20 A Yeah, it's -- it's 7065 Palmyra.

21 Q So that home was put to you as your separate
22 property at that time, correct?

23 A Well, I -- I don't want to get confused, but yeah,
24 not -- not that day. I don't -- it -- I mean, it's here on

1 this paper, so certainly. I mean, I'm not telling you when I
2 saw that or when it got there, so I wouldn't know that.

3 MS. FORSBERG: The Court's indulgence, Your Honor.

4 Q When you went to meet with Jeff Burr and Eric about
5 the children's trust, did Eric agree to change the trust, the
6 children's trust to the way you wanted them?

7 A I believe he did. Uh-huh (affirmative).

8 Q But yet, this was the reason for your divorce is
9 that he -- he put that trust in, is that correct? Because he
10 put it in his -- him being the controlling manager of those
11 children's trusts to begin with, right?

12 A I never said that.

13 Q Didn't you say the reason you stopped trusting him
14 was because you read the trust documents and it showed him as
15 the manager?

16 A I did not say that, no.

17 Q I'm sure I can check the transcript.

18 A That would be great.

19 Q But he complied and made the changes you requested,
20 correct? On the children's trust.

21 A I understood that he did. I relied on Jeff to
22 accommodate us on that.

23 Q Did you ever the trust after the fact after they
24 were changed and modified?

1 A No, I can't say that I did.

2 Q So you want the Court to believe you made the effort
3 of calling Barbara Morelli about these trusts, you made the
4 effort of going to -- make an appointment whether it was you
5 or Eric with Jeff, that you went in and made the changes to
6 them but that you never looked at it?

7 A Whatever I just said is what I said. I don't know.
8 But you want to misconstrue or restate it.

9 Q Is that what you're telling us what I just said --

10 A What did I --

11 Q -- the whole line?

12 A What did I say? What did I say?

13 Q That you --

14 A I said I --

15 Q -- called Barbara Morelli.

16 A -- I don't know that I did. I said I don't know
17 that I did read it. That's what I said to you.

18 Q I believe it's been so long since you were on the
19 stand originally, Lynita. So bear with me one minute.

20 THE COURT: Her testimony as to the trust was that
21 Eric drafted the trust for the children. Eric was a manager
22 of the trust. Lynita would not sign it. She called Barbara
23 Morelli, a paralegal. Would not sign the meeting without a
24 meeting with Attorney Burr. They met with Attorney Burr

1 November 2007. Attorney Burr added Lynita as a co-manager
2 with Eric and then Lynita signed the document. So that was
3 her testimony as to that issue on that. Do you want to do a
4 followup as far as she saying she never --

5 MS. FORSBERG: Thank you.

6 THE COURT: -- read it?

7 MS. FORSBERG: That's perfect.

8 Q So you did end up signing those trust -- those
9 children's trust, didn't you?

10 A I know that they're in existence -- or at the
11 beginning of the divorce of the litigation I -- I mean, I have
12 copies of the trust.

13 Q My question was did you sign those trusts, ma'am?

14 A I'm sure I did.

15 Q Did you read those trusts?

16 A Probably, not all the way through.

17 Q But this was after you didn't trust Eric. You're
18 saying you still didn't read documents?

19 A Well, I was at Jeff's office, so Jeff was the
20 attorney. I don't know what you're trying to establish. I
21 don't understand what you're asking me.

22 Q Lynita, the other -- you testified a little bit
23 regarding Dan Gerety's -- in Dan Gerety's report, there is a
24 promissory note. Do you recall that? If you'll -- if we can

1 have that exhibit.

2 A I do. There's several of them, actually.

3 THE COURT: Do you want --

4 Q Do you have that exhibit of Dan Gerety's --

5 THE COURT: Mr. Gerety's expert report? It would be

6 one to the --

7 A In here? In -- this is Dan Gerety's.

8 THE COURT: Yeah.

9 Q Oh, yeah.

10 THE COURT: It would be in the blue book.

11 Q That's Dan Gerety's blue.

12 THE COURT: It wo0uld be the blue book.

13 Q Correct.

14 THE COURT: Yeah.

15 A Sure.

16 THE COURT: The blue binder.

17 A And what number is it?

18 Q Can you look under tab 5, please?

19 A I don't have tabs. If you could give me the exhibit

20 number, I can find it that way.

21 Q Oh, the DG-00069.

22 A So it's pretty much just 69?

23 Q Yes.

24 A Okay.

1 Q I didn't include tabs on this.

2 A The zeros kind of lost me. Okay. Sure. I'm there.

3 Q Okay. And do you recall your testimony was that you

4 have never seen or heard of the -- this one before? Do you

5 recall that testimony? Before your divorce action.

6 A I'm not even sure what loan it is, because there's a

7 note. I -- I mean, I hadn't seen this paper at all, no.

8 Q So you testified you have never heard of this loan.

9 A I never knew when Eric would get loans, no.

10 Q Can you turn to Exhibit 38 in the Intervener's book,

11 please?

12 A Sure. You said 38?

13 Q 38, please.

14 A Okay. Okay. I'm there.

15 Q That was your signature on that page you testified

16 to, correct?

17 A Uh-huh (affirmative).

18 Q So you've seen this document at the very least of

19 whether you read it or not, you've seen this document, right?

20 MR. DICKERSON: What document?

21 MS. FORSBERG: 38.

22 A Exhibit 38.

23 Q In the Intervener's book.

24 A Well, I also had stated in my testimony that I --

1 that while it's my signature, I don't know that some were cut
2 and pasted. So -- and you're correct that I wouldn't have
3 read -- I -- I didn't read it. He gave me very little time.
4 When he handed me stuff, he just handed it to me when I was in
5 the middle of things. It's not like we sat down on the couch
6 or the table and said okay, honey. This is -- well, I want to
7 explain this to you. Well, that didn't happen in our house.

8 Q So you had pow-wows according to Shelly, right?

9 A Well, Shelly didn't live in our house. I was
10 married to Eric, not Shelly.

11 Q Do you see the last -- above the last resolve of
12 this one, this document that you signed?

13 A I -- you're looking -- I'm looking for the word
14 resolved. Oh, yeah. At the bold.

15 Q Right above the last -- right above that, the last
16 little paragraph above that where it says Eric L. Nelson
17 Nevada Trust.

18 A Okay. I see that.

19 Q So you signed this document but you're saying you
20 never -- you had no knowledge of the note. This promissory
21 note references that, does it not? Take a minute and read
22 them both.

23 A Okay. And what number is -- is the one in here?

24 Q 69.

1 A 69? Okay. So you want me to compare that these are
2 to tell you if they're the same.

3 Q Right. Are they referencing the same event, ma'am?

4 A Well, it says in the promissory note that the value
5 was received from Eric L. Nelson and promises to pay LSN and
6 that doesn't say that in that --

7 Q Ma'am, if you're giving --

8 A -- in the --

9 Q -- a loan from LSN to Eric Nelson, wouldn't that be
10 the same language?

11 A Well, it doesn't say that on the meetings. It just
12 says that -- it doesn't say anything about LSN.

13 Q Doesn't it say that you're -- that loan from LSN, if
14 you look at the resolve right above that one, it says loan
15 from LSN Nevada Trust to the following, right? So it means
16 your trust is giving Eric L. Nelson Trust a hundred and
17 seventeen thousand two hundred and ninety-three dollar and
18 eighty cent loan. Is that correct what that says? Did I read
19 it correct?

20 A So you're -- are you saying that underneath that
21 resolve, that part you just read is what was resolved?

22 Q Yes.

23 A Oh, okay.

24 Q Do you see that, that it says --

1 A I see that it says that.

2 Q -- loan from the LSN Trust.

3 A Yeah. Uh-huh (affirmative). I see that. And what
4 are you asking me again? I'm sorry.

5 Q Isn't this promissory note referencing exactly what
6 you signed on Exhibit 38?

7 A It appears that it might be. Uh-huh (affirmative).

8 Q Thank you. You talked about not going to lunches
9 with the girls but yet you brought lunches in and you went to
10 Christmas parties.

11 A That's what I recalled.

12 Q Right? Do you recall going to Sammy's with them?

13 A I don't recall that. It doesn't mean it didn't
14 happen. I just don't recall it.

15 Q Lynita, I'm sorry to jump around, but since I'm the
16 third one in the row, it kind of makes it a little hard.

17 MS. FORSBERG: I apologize Your Honor too, but --

18 THE COURT: Well --

19 A I don't mind.

20 Q Do you recall saying that when you read this
21 separate property agreement you didn't like the word separate?

22 A It actually wasn't when I read it. It's when Eric
23 told me that we needed to go, that that's what he wanted us to
24 do, that we -- he wanted the -- you know, to draft those so it

1 would protect us.

2 Q So that --

3 A It -- it wasn't at the I mean, I -- I did talk about
4 it in front of Jeff, you know what I'm saying?

5 Q So you questioned Jeff and advised Jeff you were
6 uncomfortable with the word separate, right?

7 A I talked to Jeff about how I -- I didn't -- yes, I
8 guess I would say yes to shorten that up. Like yeah, of my
9 concern about separating things that we were married I believe
10 is what my testimony was, that we were married and I didn't
11 like the idea of separating things. I just thought that
12 wasn't good.

13 Q But you signed it, right? You signed that separate
14 property agreement. You don't dispute that, right?

15 A I don't dispute signing those property agreements.
16 That's true. I did it because I trusted him,

17 Q Ma'am, you also testified about -- you thought it
18 was important. You understood it was important to keep things
19 equal, correct, in the trust?

20 A Jeff told us that that's how it was supposed to be.

21 Q And that was whenever you did the first trust,
22 correct?

23 A I don't recall when it was. The very first trust,
24 it wasn't separate. It -- I understood that it was together.

1 So maybe I misunderstand that.

2 Q I'm sorry, the second. You're correct. I meant the
3 1993, not the '91.

4 A Yeah. I wouldn't remember, but --

5 Q Lynita, just a couple other questions.

6 A Okay.

7 Q In the very beginning Mr. Solomon I believe asked
8 you about where you attended college, right?

9 A I don't remember, but if he did, okay.

10 Q And I believe you testified you went to BYU for two
11 years, correct?

12 A I don't know that it was completely two years. I
13 think I was there for two years, but I'm not sure.

14 Q And it was BYU Provo, right? It wasn't one of the
15 other --

16 A Uh-huh (affirmative).

17 Q And you took college courses --

18 A Yes.

19 Q And you took college courses there, right? You
20 didn't just take institute, correct?

21 A No, that's correct. I didn't even take institute I
22 don't think.

23 Q Do you recall what courses you took?

24 A I remember one. I had a lab. It was a hoarder

1 culture class.

2 Q So did you take --

3 A So I had the lab.

4 Q -- the basic college classes you think the first
5 couple years?

6 A I didn't take -- I -- I don't know. I mean, that's
7 up for interpretation. Whatever people think basic, I -- I
8 didn't consider myself a basic person, so I would probably say
9 no, I didn't take normally what basic students take.

10 Q Did you flunk out of BYU or just choose not to go?

11 A I chose not to go.

12 Q Did you have any Fs on your report card at the time?

13 A I don't know. I suppose you're going to tell me
14 whether or not I did. Bring it on.

15 Q No. No, I'm not going to. I would not do that to
16 you.

17 THE COURT: If you remedial classes, you go to UNR.

18 A And then you become an attorney?

19 THE COURT: And then a judge.

20 MS. FORSBERG: A judge.

21 Q Do you help your children with all their schoolwork,
22 ma'am? Did you --

23 A I don't. Unh-unh (negative).

24 Q Who does all that?

1 A The kids pretty much do it on their own. They're
2 pretty independent about that. If they need help, if I'm able
3 to help them, they're really smart kids.

4 Q Do you meet with their counselors and their teachers
5 when need be?

6 A I was -- yeah.

7 Q And you decide when you need to call them and set
8 that up?

9 A The counselors?

10 Q Yeah.

11 A Well, which counselors are you talking about?

12 Q Any of your childrens when they needed during the
13 years.

14 A A school counselor --

15 Q Yeah.

16 A -- or their psychologist? Ask me the question
17 again. I'm distracted.

18 Q When you needed to setup appointment or needed to
19 meet with anybody, you're making those calls and setting up
20 those appointments, right?

21 MR. DICKERSON: What's anybody?

22 MS. FORSBERG: Any of the school counselors she just
23 referenced ahead.

24 A I don't know. There is a time -- no, this is from

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	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
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
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
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4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
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2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
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 THE COURT: Yeah, just write your name on it --

2 MR. SOLOMON: Thank you. I appreciate that.

3 THE COURT: -- and I'll open it here. Okay?

4 MS. MCGOWAN: Okay.

5 THE COURT: And then just give it to whoever, so
6 it'll save you a trip.

7 MS. MCGOWAN: Okay. Cool.

8 THE COURT: All right?

9 MR. SOLOMON: Thanks.

10 THE COURT: Thank you. Why don't we take a five
11 minute break, ten minute break, give you a chance to see what
12 is --

13 (Recess taken from 16:06:55 to 16:07:06)

14 MR. KARACSONYI: That's good for us.

15 MR. SOLOMON: I'm just concerned -- you want to do
16 this on the record or off the record, about scheduling?
17 Because --

18 THE COURT: Why don't we go off, and see --

19 (Recess taken from 16:07:15 to 16:17:15)

20 THE COURT: Going back on the record as Eric Nelson
21 and Lynita Nelson, Case Number D-411537.

22 We took a brief recess. We'll pick up where we left
23 off, with the cross examination of Ms. Nelson.

24 Ms. Lynita, you're still under oath, so we won't

1 need to swear you back in, okay?

2 MS. NELSON: Okay.

3 LYNITA NELSON

4 having been called as a witness on behalf of the Plaintiff and
5 previously duly sworn, testified as follows:

6 CROSS EXAMINATION CONTINUED

7 BY MR. DICKERSON:

8 Q Okay. Lynita, we left off, I believe, the last
9 exhibit we talked about -- you need an exhibit book in front
10 of you. This would be -- the last exhibit we left off was 59,
11 so it's going to be 60.

12 Okay. Let me see if I can just rush through this.
13 Exhibit 60. It purports to be a meeting on August 3rd, 2005
14 at Jeff Burr's office, with you, Lana Martin and Rochelle
15 McGowan. Did this meeting ever occur?

16 A No.

17 Q You were not present for any such meeting?

18 A No.

19 Q Did you have any discussion with either of these two
20 women, either Rochelle McGowan or Lana Martin, with respect to
21 all the Mississippi properties being destroyed back in
22 Hurricane Katrina?

23 A No, I did not.

24 Q Do you know what houses were owned in Mississippi?

1 Do you know what houses were owned in Mississippi at all?

2 A I know of --

3 Q Talking about this time frame.

4 A Oh.

5 Q Not what you know now. In 2005, August of 2005, did

6 you know of any houses that existed in Mississippi?

7 A I don't know. I don't know if I would have then.

8 Q How about the Arnold Home (ph), did it exist?

9 A Well, I'm just not -- I -- I don't know that I -- I

10 went there before '05.

11 Q Take a look at Exhibit 61.

12 A Okay.

13 Q Were you at this meeting that purportedly occurred

14 on August 12th, 2005?

15 A No, sir.

16 Q Do you recall ever having any discussion with Lana

17 Martin or Rochelle McGowan about revising the Arizona

18 properties?

19 A No. Never.

20 Q Were you aware of any Arizona properties that are

21 owned, or were owned in August of 2005, by LSN Trust?

22 A No.

23 Q How about Tierra del Sol Shopping Center, were you

24 aware, in August of 2005, that the LSN Trust was the owner of

1 the Tierra del Sol Shopping Center?

2 A I don't know.

3 Q Were you aware that it sold? That the shopping
4 center sold?

5 A (No audible response.)

6 Q Were you aware of any of this discussion, if you
7 take a look at that?

8 A I -- I -- I was never at this meeting. I never
9 discussed anything with them at all about any properties.
10 So --

11 Q Exhibit 62, were you at this purported meeting that
12 occurred in November of 2005?

13 A I was not.

14 Q Did you have any discussions with Lana Martin or
15 Rochelle McGowan regarding the purpose of new Mississippi
16 land?

17 A No.

18 Q Did you have any discussion with them about revising
19 the Mississippi properties?

20 A No.

21 Q Exhibit 64. This purports to be a meeting --

22 A Well --

23 Q -- May 10th, 2006. Were you present at this
24 meeting?

1 A No.

2 Q Did you ever have any discussion with Lana Martin or
3 Rochelle McGowan about selling two lots in Gateway's Arizona
4 property?

5 A No.

6 Q Did you have any discussion with them at this time
7 purported in May of 2006, about revising Arizona properties?

8 A No.

9 Q Exhibit 65.

10 A Were you at this purported meeting that occurred on
11 July 8th, 2006?

12 A No.

13 Q Did you have -- do you know anything about the sale
14 of the Indian School Condo in Arizona?

15 A At this time?

16 Q Yeah, in 2006. July of 2006.

17 A I wouldn't have, on this day at Jeff's office. No.

18 Q I'm sorry?

19 A It's -- it has Jeff's -- I think that's Jeff's
20 address, so no, I wouldn't have any discussions at that time.

21 Q No, no, no, I'm not talking about that.

22 A Oh, do I know that we have a --

23 Q See what -- no, no, no. You misunderstood the
24 question.

1 A Oh.

2 Q I -- the -- this purported meeting occurred at

3 Jeff's office, but --

4 A Right.

5 Q -- do you know anything about Indian School Condo in

6 Arizona?

7 A I know that we have a condo -- we had one. Yes.

8 Q Did you know that it sold some time in 2006?

9 A Eric told me he was going to sell it.

10 Q Exhibit 66. This is a meeting, did you -- were you

11 in attendance at this purported meeting that occurred on

12 August 28th, 2006?

13 A No, sir.

14 Q Did you ever have any discussion with either

15 Michelle McGowan (sic) or Lana Martin regarding revising a

16 Mellon account?

17 A Nope.

18 Q Did you ever have any discussion about a \$3.5

19 million note paid off and wired to LSN Nevada Trust Mellon

20 bank account?

21 A I didn't --

22 Q Did you have any discussion about that?

23 A Nope. I didn't even know they knew I had a Mellon

24 bank account.

1 Q Did you know anything about a \$3.5 million note?

2 A Nope.

3 Q Exhibit 67. Did -- were you in this purported
4 meeting that occurred on October 15th, 2006?

5 A No.

6 Q Exhibit 68. Were you at this purported meeting that
7 occurred on November 5th, 2006?

8 A No, sir.

9 Q Were you -- at any time did you authorize a loan to
10 Wyoming Horse Racing?

11 A No, sir.

12 Q Exhibit 69. Do you recall this email you received
13 from Rochelle McGowan?

14 A I -- I vaguely remember her telling me that she was
15 getting me a new card. Uh-huh (affirmative).

16 Q This is about --

17 A Or Eric. Yeah.

18 Q -- a credit card?

19 A Yes. He would get credit cards and tell me to use
20 like a certain card for certain -- I don't -- at one time I
21 just had one card that I used for everything. But then he
22 started one I'd -- he wanted it separated, so I had one card
23 for business, one for personal and so I guess they got me a
24 new card.

1 Q Okay.

2 A Except for '06, to be honest with you, I don't know
3 if it was in '06 or '07, but I don't -- I don't want to say --
4 she's saying she got me a card, but there was one time that I
5 was told that I was going to get a card, but I never got it.
6 It was him canceling my cards.

7 Q Exhibit 70.

8 A It might have been then.

9 Q Exhibit 70. Were you at this purported meeting that
10 occurred on November 22nd, 2006?

11 A No.

12 Q Do you know what W-Y-H-R means?

13 A I would not have known then. I think I know what it
14 means now.

15 Q What does it mean?

16 A Wyoming Horse Racing.

17 Q Did you ever have any discussion with either Lana
18 Martin or Rochelle McGowan about what is set out in Exhibit
19 70?

20 A No.

21 Q Take a look at Exhibit 71.

22 A Okay. I'm there.

23 Q This purports to be a meeting at Jeff Burr's office
24 on February 22nd, 2007. Now Nola Harber is purportedly

1 present with Rochelle McGowan and you.

2 A And me.

3 Q Were you at this meeting?

4 A No.

5 Q Now, this talks about the selection of Nola Harber
6 to replace Lana Martin as the distribution trustee. Were you
7 aware of that? Were you aware that Nola, your sister-in-law,
8 Nola Harber, was substituted in as the distribution trustee of
9 the LSN Nevada Trust, some time in February of 2007?

10 A I was told that that's what was going to happen.

11 Q Did you sign the documents authorizing that to
12 happen?

13 A I'm sure I did.

14 Q And why did you change distribution trustees in
15 February of 2007?

16 A Because Eric told me we needed to.

17 Q Did he tell you why?

18 A He did.

19 Q And what did he tell you?

20 A That there was -- he was doing some transaction at
21 the bank and -- because I asked why, because I didn't want to
22 switch. And he said that at the bank they had asked for the
23 documents for the trust and said that Lana had to be a signer
24 or be signed on whatever deal he was doing, and he was really

1 angry about it and said, if that's the case, if -- if -- if
2 the trustee has to sign on things, I can't have Lana on there
3 anymore, because I can't trust her and so I need Nola on
4 there.

5 Q Did he explain why he couldn't trust her?

6 A No. I just --

7 Q Now, is this something dealing with the bank that
8 her husband worked at?

9 A I didn't ask.

10 Q Exhibit 73, what is Exhibit -- were you at this
11 purported meeting that occurred March 21st of 2007?

12 A I'm sorry, did you go to 76, did you say?

13 Q No, 73.

14 A Oh. Okay.

15 Q Were you at this purported meeting?

16 A No.

17 Q Did you ever have any discussion with Lana Martin --
18 this is interesting --

19 A Yeah.

20 Q I never saw that before, the first time. So, this
21 purports -- the minutes say that it's between Rochelle
22 McGowan, Lana Martin and you, and this is in March of 2007,
23 with a signature place for Nola Harber as the distribution
24 trustee. Right. So, were you at any purported meeting that

1 occurred in March of 2001 with -- I don't care whether Lana
2 was there, Rochelle was there, Nola was there? Were you at
3 any such meeting?

4 A Nope.

5 Q Did you have any discussion with any of those three
6 women regarding deeds to the Utah property to -- were adjusted
7 to reflect a 50/50 ownership by the LSN Trust and Eric L.
8 Nelson Trust?

9 A Nope.

10 Q Exhibit 103.

11 A Okay. Okay, I'm there.

12 Q Certainly.

13 A Oh.

14 Q I don't need these, these are -- these I'll deal
15 with Eric. So, I think we have gone through all the minutes
16 that I (indiscernible) aware of that purport to be annual
17 meetings or any meeting between you and any distribution
18 trustee or anyone else concerning the LSN Trust.

19 Okay. Would you take a look, please, at Exhibit
20 173. That would be --

21 A Is it in here?

22 Q -- do you see Exhibit 173?

23 A I think it just goes to 167.

24 THE COURT: 173, isn't that loose?

1 MR. DICKERSON: Okay.

2 THE COURT: I think 173 is loose, I think. Yeah.

3 BY MR. DICKERSON:

4 Q Showing you what has been admitted into evidence as
5 Exhibit 173.

6 A Okay.

7 Q Prior to that document being introduced into
8 evidence yesterday, I believe it was yesterday, I'm getting
9 all my days mixed up, but prior to that document being
10 admitted into evidence in these proceedings, had you ever seen
11 this document before?

12 A No, I hadn't.

13 Q Now, is that your signature?

14 A It is.

15 Q And do you believe you signed this?

16 A You know, I -- I -- I -- I don't believe that I
17 would. It's -- you know, I signed a lot of things, so --

18 Q Did you ever have this document in your possession
19 and anything dealing with your trust?

20 A Well, I'd never seen it before, so it -- it was -- I
21 think I saw it yesterday on the stand. Did you show me?

22 Q I believe so, hat's when it was --

23 A And I was -- I was just surprised, because Lucky,
24 Lucky, Lucky is a name that I've -- it's always kind of been

1 Eric's thing that he's kind of --

2 Q Now in the -- wow, I guess we're almost into four
3 years of this case being litigated and pending before this
4 Court. Prior to yesterday had you ever seen this document?

5 A I have not.

6 Q Now, if you'd take a look -- if I can give you Dan
7 Gerrity's report, it's Exhibit (indiscernible).

8 (Attorney and clerk confer.)

9 BY MR. DICKERSON:

10 Q I'm showing you Exhibit 168.

11 A Okay.

12 Q I think at Tab 5, if I recall, are some promissary
13 notes. Well, no, I guess I tabbed them. Which one was
14 promissary notes?

15 A You have a Bate number? I can find it with that.

16 Q Oh, yeah. Yeah, absolutely. (Indiscernible) Better
17 yet. Thank you. Can you turn to Bate Number DG-00068.

18 MS. FORSBERG: Which exhibit are we on, counsel?

19 MR. DICKERSON: 68.

20 MR. LUSZECK: Oh, sorry. 168, Gerrity's report.

21 THE COURT: 168.

22 MR. DICKERSON: Well, it's Exhibit 168, but it's 68
23 of -- the Bates Stamp Number is DG-00068.

24 THE WITNESS: Okay.

1 BY MR. DICKERSON:

2 Q Are you there?

3 A Yes.

4 Q Now, prior to you receiving Dan Gerrity's report,
5 approximately two weeks ago, had you ever seen this promissary
6 note before?

7 A No.

8 Q And does that include the four years that this case
9 has been litigated?

10 A I've never seen it.

11 Q Was this note ever delivered to you?

12 A Nope.

13 Q Okay. Let's take a look at exhibit -- the next
14 page, 69. Same question with this. Prior to you receiving or
15 seeing Dan Gerrity's report, approximately two weeks ago, have
16 you ever seen this promissary note before?

17 A No.

18 Q Take a look at the next page, 70. Again, same
19 question. Prior to receiving Dan Gerrity's report,
20 approximately two weeks ago, had you ever seen this promissary
21 note before?

22 A No. Um mm (negative). No.

23 Q And the next page, 71. Same question. Had you ever
24 seen this promissary note, prior to receiving Dan Gerrity's

1 report, approximately two weeks ago?

2 A No.

3 Q Take 176, I believe that one may be loose also. I'm
4 showing you what has been marked as Exhibit 176. I believe it
5 was admitted into evidence yesterday.

6 A Oh, yes. Okay.

7 Q Can you tell the Court what that is about?

8 MR. SOLOMON: Hold on. Did we get it?

9 (Pause in proceedings.)

10 THE WITNESS: I can answer?

11 BY MR. DICKERSON:

12 Q Yes. Tell the Court what this email exchange is
13 about.

14 A Yes. Our daughter, Carli, was going to Mexico with
15 Alita and --

16 Q So, that's Eric's sister?

17 A It is. Uh-huh (affirmative). His oldest sister.

18 Q I keep -- when I hear those I keep getting confused,
19 Lynita, Anita, Alita, so.

20 A I know. Anyway, she was going to Mexico with Alita
21 and what we've done in the past is provided a note that says
22 that it's okay for our children to travel outside of the
23 country with whoever they're going with. And that -- you want
24 me to tell you what I recall from it or?

1 Q Yes. Please. What is --

2 A It's just -- I think it was the day -- I didn't look
3 up to see the travel time, but I think they were leaving that
4 night or the next day. And so we were just trying to figure
5 out a way that both Eric and I could sign it, because I
6 believe he was at the office and I was at home.

7 Q Okay. Do you have Exhibit 5 D's in front of you?

8 MR. SOLOMON: I'm sorry, what is it?

9 MR. DICKERSON: Five -- DDDDD, 5 D's.

10 THE WITNESS: Is it in -- is it in a book? It's --
11 I think it's in the one with blue, right?

12 (Attorneys confer.)

13 BY MR. DICKERSON:

14 Q Showing you the exhibit that has been admitted into
15 evidence as -- has been admitted into evidence as 5 D's.

16 A Okay.

17 MR. SOLOMON: I'm sorry, it takes a while to find
18 it, because they're so strewn. I apologize. We're doing our
19 best.

20 MR. DICKERSON: No problem.

21 MR. LUSZECK: I think it's --

22 MR. SOLOMON: Ah, we found it.

23 MR. DICKERSON: We can all relax. Take a big
24 breath.

1 MR. SOLOMON: We found it.

2 MR. DICKERSON: Okay.

3 MR. SOLOMON: It's like an Easter egg hunt.

4 BY MR. DICKERSON:

5 Q All right. These checks, the Lindell Professional
6 Plaza --

7 A Yes.

8 Q -- as far as you know was owned 100 percent by you,
9 by the LSN Trust, in 2005. Is that correct?

10 A Yes.

11 Q Yes.

12 A Now, these checks, if you take a look at them, did
13 you authorize any of these checks to be issued to Eric?

14 A No.

15 Q Do you -- were you aware, until this litigation
16 started, that apparently you were being charged some type of
17 management fee?

18 MR. SOLOMON: Object. Because there's no evidence
19 that she was in fact charged a management fee.

20 THE COURT: There's multiple memos that say
21 management fee, but overruled, you can ask it.

22 MR. SOLOMON: We --

23 THE COURT: But it said it's the memo, there's been
24 no evidence that it's a management fee yet, but just the

1 memos. You --

2 BY MR. DICKERSON:

3 Q Were you aware that you were paying Eric some type
4 of management fee?

5 MR. SOLOMON: Object.

6 THE WITNESS: No, I --

7 MR. SOLOMON: Assumes facts not in evidence.

8 THE WITNESS: -- didn't. I had no clue.

9 BY MR. DICKERSON:

10 Q Did you ever authorize a management fee to be paid
11 to Eric or anyone else?

12 A No. Nobody asked me either.

13 Q Do you remember that management fee check that we
14 saw, the one that says management fee, for \$350,000?

15 A Yes, I do.

16 Q Did you ever authorize \$350,000 to be given to Eric,
17 in any form of a management fee?

18 MR. SOLOMON: Object. The evidence reflected that
19 that check never cleared.

20 MR. DICKERSON: Oh, I think you're so wrong. Mr.
21 Gerrity testified yesterday --

22 MR. SOLOMON: He testified there was a \$350,000
23 transaction, but we showed you the check that was --

24 MR. DICKERSON: No. We showed him the bank

1 statement, and he confirmed that that check cleared.

2 THE COURT: Well, I'll have to double check. I just
3 saw a check (indiscernible) drawing against unavailable, but I
4 don't know if it subsequently cleared or not, but I'll double
5 check (indiscernible).

6 You can ask the question on that. We'll verify it
7 to see whether there's --

8 MR. DICKERSON: Okay.

9 THE COURT: -- this money. And I'll check his
10 ledgers.

11 BY MR. DICKERSON:

12 Q Are you aware that that check cleared the account?

13 A I understood that it did.

14 Q And you got --

15 MR. SOLOMON: Object. Foundation. How did she
16 understand?

17 BY MR. DICKERSON:

18 Q Have you seen the bank statement for -- let me get
19 the second. I believe that was July, but let me ...

20 MR. DICKERSON: Do you recall, Your Honor, yesterday
21 I showed Mr. Gerrity, when I showed him my phone and we went
22 through the bank statement, it was on my phone? In fact, it's
23 still here.

24 THE COURT: I remember you showing him something on

1 the phone. Yeah.

2 MR. DICKERSON: It's still here. And in fact it's
3 going to be in your bank binders, given to you.

4 Do each of you have your bank binders here?

5 MR. LUSZECK: Yeah.

6 MS. FORSBERG: Which one?

7 MR. LUSZECK: Which one? I've got about five boxes
8 with bank binders in them.

9 MR. DICKERSON: They would be the December '05 bank
10 statement drawn on the Bank of America account in the name of
11 Lesson Nevada Trust, d/b/a Lindell Professional Plaza. Do you
12 have that?

13 MS. FORSBERG: I do not have bank, investment loans.
14 I have checks and deposits but that's (indiscernible).

15 MR. DICKERSON: I'm going to show you -- actually,
16 maybe we should -- just need to confirm this. Okay? Because
17 Mr. Gerrity was shown this yesterday.

18 THE COURT: I remember you showing him on your
19 phone. That exhibit they showed, but --

20 MR. DICKERSON: Yeah. Yeah, he was shown that
21 the --

22 MS. FORSBERG: It only showed one entry when I saw
23 it. It didn't show the in's, the outs, the in's, the out's.

24 MR. DICKERSON: It's showing that the --

1 MS. FORSBERG: It showed one entry, that's it.

2 MR. DICKERSON: -- check went through twice. It
3 shows the check going through twice and it shows it being
4 backed out once. So, what happened was, it went through, he
5 cashed the check, prior to the funds being put in. It was
6 then put back through and it cleared when it went through the
7 second time. So, you see there?

8 MR. SOLOMON: Oh, we'll look at this. Yeah, we'll
9 find it.

10 MR. DICKERSON: Okay?

11 BY MR. DICKERSON:

12 Q So, can you confirm that that check did clear the
13 account?

14 A Yes.

15 Q Now, did you --

16 MR. SOLOMON: Your Honor, move to strike. How can
17 she confirm?

18 THE COURT: Yeah. I'll double check that and see
19 all the testimony on that.

20 THE WITNESS: I actually --

21 THE COURT: But to your belief the check cleared?

22 THE WITNESS: I actually saw the statement this
23 morning.

24 MR. DICKERSON: I'll tell you what, you know, I'm

1 surprised -- I was going to -- I have the statement at my -- I
2 will offer that statement tomorrow, because it's --

3 THE COURT: We'll get that, if you need that.

4 MR. DICKERSON: -- on my --

5 THE COURT: Just -- and I'll go through my testimony
6 (indiscernible) I got so many pads that I'll go through.

7 MR. DICKERSON: -- it's on my desk. So, I will do
8 that and we'll pick up with her on that tomorrow.

9 BY MR. DICKERSON:

10 Q So, did you ever authorize a \$350,000 loan to go to
11 Eric or any entity owned by his -- the trust, the ELN Trust?

12 A No, sir.

13 Q And management fee also, ever authorize a management
14 fee to be paid to Eric for \$350,000?

15 A No.

16 Q If I may, can you turn to ... You testified
17 yesterday with respect to letters that would come to your
18 home, either the ones addressed to you and Eric together or
19 just to you, from Jeff Burr's office.

20 A Yes.

21 Q Now, you had indicated that you would generally give
22 those letters just directly to Eric?

23 A Yes.

24 Q Why?

1 A Because he -- he was handling it. That's what --
2 that's how he wanted to be, and he took care of it. He took
3 care of the business and that was considered the business, so.

4 Q What was your role in the Nelson family? What was
5 your role to play?

6 A What did I do where?

7 Q What was your role in the family? What --

8 A Oh. Just -- well, to take care of the children.

9 Q And did you do that?

10 A Yes, I did. Probably far and beyond what was to
11 their betterment, but I did. I think I did a great job.

12 Q In fact at least three of them are productive adults
13 today?

14 A They are.

15 Q Still two at home?

16 A Yes.

17 Q And your oldest is getting -- he'll be a senior next
18 year. Is that right?

19 A The -- the -- yep, Garrett that's at home, is -- is
20 going to be a senior and he's at class right now in New York,
21 in -- taking a summer class, and he's doing really good.

22 Q And that's at Columbia University?

23 A Yes.

24 Q Is that where he desires to go?

1 A Yes, he does.

2 THE COURT: I couldn't even spell Columbia, so I
3 don't think I could be admitted. Now's a good time to break.
4 It's about ten to five. Is it a good time to break or?

5 MR. DICKERSON: This would be a good time. Yes,
6 Your Honor.

7 MR. SOLOMON: May I inquire how much further you
8 have with this witness?

9 MR. DICKERSON: Not all that long. Let's see. I
10 just need to go through a few of the exhibits that you went
11 through yesterday, just to clarify.

12 But we will start with Larry Birch tomorrow.

13 THE COURT: We should finish Mr. Birch in the
14 morning. I know he's got to leave, right? I think he's --

15 MR. DICKERSON: Yes. He has to leave.

16 THE COURT: And then if we finish Ms. Lynita, then
17 Mr. Nelson, I guess depending on how long it takes, I guess
18 we'll see.

19 So, there's a chance we may finish tomorrow, at
20 least from the Trust's perspective.

21 MR. LUSZECK: We just have two housekeeping matters.
22 First one, Mr. Dickerson, when do you intend to disclose your
23 pretrial memo or your --

24 MR. DICKERSON: Actually --

1 MR. LUSZECK: -- remember when you said when you
2 started your case-in-chief and you started today with
3 Rochelle, so --

4 MR. DICKERSON: Well, actually I made the decision,
5 and the judge said that he was going to take post-trial
6 briefs, that I am not going to bore the judge with a 75 page
7 pretrial memorandum. I'm going to do it in the form --

8 THE COURT: As a post-trial?

9 MR. DICKERSON: -- of post-trial brief, in which we
10 can interpose the testimony and what's occurred in trial.

11 MR. LUSZECK: Yeah, but --

12 MR. DICKERSON: So --

13 MR. SOLOMON: You know, they had the advantage of
14 ours to rely in that, but I hope we're going to have an
15 opportunity not to just blind briefs, that we can respond to
16 each other's briefs, too?

17 THE COURT: Yeah, I'm fine with that if you want to.
18 Yeah. I mean, I wasn't plan --

19 MR. SOLOMON: Because otherwise we won't have an
20 opportunity to even know what they're saying or what their
21 position is.

22 THE COURT: Yeah, I was planning on blind briefs

23 MR. SOLOMON: Because they've never done --

24 THE COURT: -- just to keep it going, but I'm okay,

1 give you a chance to -- I'll give any chance. You know, this
2 has been going on long enough and I know there's going to be a
3 lot of things going on with -- I'm sure there will be appeals
4 one way or the other, or I would likely count on it. So, we
5 might as well get everything out there. And my thing is
6 definitely do the case they way they see and get everything up
7 there so they finally get final resolution.

8 So, I'm fine to get everybody a chance --

9 MR. SOLOMON: Well, then I'm fine without his
10 pretrial brief, as long as we get to cross brief.

11 THE COURT: Okay. Yeah, I'll give you a chance to
12 respond.

13 MR. SOLOMON: I appreciate that.

14 THE COURT: I don't -- I've got to give everybody a
15 fair chance so they felt they were heard.

16 MR. SOLOMON: Okay.

17 THE COURT: I'm not a smart judge, but I try to give
18 everybody a chance to be heard. So, I think that's the key.

19 MR. SOLOMON: We're starting 9:30 with Larry?

20 MR. DICKERSON: Larry.

21 THE COURT: Mr. Birch.

22 MR. SOLOMON: Okay.

23 THE COURT: And then we should finish you, Ms.

24 Lynita, about July 28th, 2019. It seems like you've been on

1 here for about nine days, other than with the break
2 (indiscernible).

3 MR. LUSZECK: And then just quick --

4 THE COURT: Sure.

5 MR. LUSZECK: -- housekeeping with Mr. Birch, too.
6 I know he's only available till 1:00.

7 THE COURT: Yeah, he says he's got get out of here.

8 MR. LUSZECK: Are we going to split time with Mr.
9 Birch?

10 MR. DICKERSON: I don't anticipate Mr. Birch's
11 testimony will be that long. We're going to introduce his
12 reports, Katherine's going to be handling his examination. Go
13 through his reports --

14 MR. SOLOMON: Is she quicker than you?

15 MR. DICKERSON: Hope so.

16 THE COURT: When we see what time he has I'll give
17 you guys each 50 and 50, depending on what his time -- I don't
18 know if he needs to be out by 1:00 or 1:30. Whatever time he
19 needs to be out, I'll ask him at the beginning. We'll figure
20 out, if we start at 9:30, if he needs to be out by 12:30 I
21 give everybody an hour and a half and if we need to bring him
22 back subsequently, in fairness, we will but we'll try to avoid
23 that.

24 MR. SOLOMON: Appreciate it, Your Honor. Thank you.

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MR. DICKERSON: Thank you, Judge.

(PROCEEDINGS CONCLUDED AT 16:49:47)

* * * * *

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

/s/ Susan LaPooh

Susan LaPooh, CET

1 TRANS

FILED

JUL 23 2014

Ann L. Sullivan
CLERK OF COURT

COPY

6 EIGHTH JUDICIAL DISTRICT COURT

7 FAMILY DIVISION

8 CLARK COUNTY, NEVADA

11 ERIC L. NELSON,

12 Plaintiff,

13 vs.

14 LYNITA NELSON,

15 Defendant.

CASE NO. D-09-411537-D

DEPT. L

(SEALED)

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

20 TRANSCRIPT RE: NON-JURY TRIAL - VOL I

21 WEDNESDAY, JULY 25, 2012

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1 LAS VEGAS, NEVADA

WEDNESDAY, JULY 25, 2012

2 PROCEEDINGS

3 (THE PROCEEDINGS BEGAN AT 09:49:35)

4
5 THE COURT: Are we ready? This is the time set in
6 the matter of the continuation of adjudicatory hearing as to
7 Eric and Lynita Nelson, case number D-411537. Can we get Mr.
8 Bertsch sworn in so he can sit down and we'll have everybody
9 else introduce themselves? We'll swear you in first so you
10 can otherwise by the time everybody is introduced you'll be
11 standing up for about three minutes.

12 THE CLERK: You do solemnly swear the testimony
13 you're about to give in this action shall be the truth, the
14 whole truth and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. You may be seated.

17 THE COURT: And we'll get appearance for the record.
18 We'll start with Mr. Solomon.

19 MR. SOLOMON: Thank you. Mark Solomon, bar number
20 418, on behalf of Lana Martin, the distribution trustee. And
21 I have Mr. Dan Gerety here with me.

22 THE COURT: Good to see you again, Mr. Gerety.

23 MS. FORSBERG: Good morning, Your Honor.

24 MR. GERETY: Good to see you, Judge.

1 MS. FORSBERG: Rhonda Forsberg, 9557, on behalf of
2 Eric Nelson who is present to my right.

3 THE COURT: Good to see you, Mr. Eric.

4 MR. LUSZECK: Jeff Luszeck, bar number 9619, on
5 behalf of Lana Martin, distribution trustee. And she is
6 present to the left of me.

7 THE COURT: You know how I always say it's always
8 good to see everyone who's not attorneys. I guess I should
9 say good to say attorneys too, but, you know, I took an oath
10 when I took the bench, so I got to --

11 MS. PROVOST: Good morning, Your Honor, Katherine
12 Provost, bar number 8414, on behalf of Lynita Nelson who is
13 present to my left along with Bob Dickerson, bar number 945.

14 THE COURT: Good to see you, Ms. Lynita.

15 MR. DICKERSON: Your Honor, as a preliminary matter
16 before we get started, I don't know if we moved for the
17 admission of Exhibits 5Es and 4Fs. Those were the subpoena
18 duces tecum for Rochelle McGowan and I believe four or five
19 emails. I can't remember whether that last one was an
20 additional email or what that in which she was questioned on.
21 I don't know if those were moved for admission.

22 MS. PROVOST: Yes.

23 MR. DICKERSON: They were? And they were admitted.
24 Thank you.

1 THE COURT: All right.

2 MR. DICKERSON: I didn't do my chores yesterday
3 then.

4 THE COURT: Yeah, and that's why I have Ms. Tasha.
5 She's the best. So that's why I have her. She makes me look
6 better than I am, so --

7 MR. SOLOMON: Another preliminary matter. I do have
8 the sealed --

9 THE COURT: Okay. And I'll check that out during
10 break to confirm that. I kept that so I could confirm that.
11 That's the notary book so I'll confirm that with the two
12 exhibits we had set in subject to verification. That would be
13 5Cs and the Intervener's 177 that I said I will look and
14 confirm that with the original and make sure that it was
15 consistent with the original so I'll review that as soon as I
16 get a break.

17 Are we all ready to go forward at this time?

18 MS. PROVOST: Yes.

19 MR. DICKERSON: Yes, Your Honor.

20 MS. PROVOST: We are, Your Honor. Your Honor, we're
21 going to be calling Larry Bertsch out of order to accommodate
22 Mr. Bertsch's schedule. It's my understanding that we can
23 have you until about 1:00 o'clock this afternoon but you have
24 a commitment at 2:00 o'clock that you have to be there?

1 THE WITNESS: That is correct. Okay.

2 MS. PROVOST: Okay. We're hoping to get through you
3 today and not have to make you come back, but we'll see how
4 that goes. I'll do some questioning first and then I expect
5 Mr. Solomon and Ms. Forsberg may have some questions for you.

6 THE COURT: Are we okay going through lunch until
7 about 1:00, taking a late lunch so we accommodate Mr. Bertsch
8 if we need? I'm just thinking now because then I can give you
9 guys each an hour and a half at this point or I don't know if
10 we need to break before then, then I'll just cut the time
11 down.

12 MR. DICKERSON: That would be great. That's fine
13 with us.

14 MS. PROVOST: I don't anticipate being longer than
15 an hour, maybe an hour and a half.

16 THE COURT: It's -- oh, okay. All right. Are we
17 each --

18 MR. SOLOMON: The answer is I'm going to need a
19 break a few minutes before 12:00 to cancel an appointment I
20 had at 12:00 or --

21 THE COURT: Okay.

22 MR. SOLOMON: -- 12:15, but I can do that.

23 THE COURT: Okay. We'll see where we're at. Maybe
24 we'll get done by -- why don't we take a break after and about

1 to see where we're at. If it looks like we won't need that
2 time that we want to cancel, it looks like you need that extra
3 half hour, then we'll take a break so you call go for sure.

4 Okay. With that --

5 MR. SOLOMON: I'm sorry to interrupt --

6 THE COURT: That's all right.

7 MR. SOLOMON: -- Your Honor.

8 THE COURT: That's all right.

9 MR. SOLOMON: Can I have some clarification? Are
10 you offering this with respect to the trust matter or are you
11 offering Mr. Bertsch with respect to the divorce matter or
12 both?

13 MR. DICKERSON: Both.

14 MS. PROVOST: Both.

15 MR. SOLOMON: Okay. All right. Okay. Because
16 there's a lot of stuff that's in this report that has nothing
17 to do with our case. And so I'm not going to object because I
18 understand it may be relevant to her case, but I don't want to
19 -- by not objecting to that is on relevancy grounds on mine.
20 I don't want to waive anything. So --

21 THE COURT: And it will be noted on that. There is
22 a lot of issues that will overlap with the domestic case on
23 that. So if there's a failure to object to relevancy, we
24 won't put that as a waiver of it. And since we are trying to

1 in the interest of judicial accounting we try to avoid Mr.
2 Bertsch coming back. We'll try to see if we can get
3 everything covered on that. But we'll notice that and
4 anything afterwards, if you want to do any objections
5 afterwards, we can do that for the record so we got a nice
6 record on it.

7 MR. SOLOMON: Appreciate it. Thank you, Your Honor.

8 MS. PROVOST: Thank you, Your Honor.

9 THE COURT: Are you guys okay or do you anymore
10 chairs or things? You're okay?

11 MR. LUSZECK: We need a little more leg room, but --

12 MR. GERETY: We all have grandkids and --

13 LARRY BERTSCH

14 called as a witness on behalf of the Defendant and being first
15 duly sworn, testified as follows on:

16 DIRECT EXAMINATION

17 BY MS. PROVOST:

18 Q Good morning, Mr. Bertsch. You were appointed as a
19 special master by this Court by order dated April 4th, 2011,
20 is that correct?

21 A I don't have it in front of me. I don't remember
22 the date. If you can show me, I will look at it.

23 Q I don't believe that I brought the order with me,
24 but I will represent that it was in April 4th, 2011 ordering

1 that -- it isn't part of the Court's record. You understand
2 you were appointed as a special master, correct?

3 A I do not understand it. It does not have special
4 master in the order.

5 Q Okay. You were appointed by this Court to perform
6 some -- a forensic accounting intended to provide the Court
7 with an accurate evaluation of the parties' estate. Is that
8 your understanding?

9 A That is not my understanding. My understanding is
10 that I was to go from the 1st of January of 2009 to certain
11 dates as went through the trial to report certain information
12 to the Court. I was not to make an evaluation. I was only to
13 report what I found.

14 Q Okay. I -- the question I asked you was taken from
15 the language in the Court's order so that --

16 A Okay.

17 Q -- we're clear.

18 A May I see the court order?

19 Q I will see if I have it.

20 MS. PROVOST: The Court's indulgence, please.

21 THE COURT: We'll get it. Look on April 4th, 2011.
22 We can print it up there. We can -- do you have some
23 questions you want to ask and we'll print it out?

24 MS. PROVOST: I can do that.

1 THE COURT: We can find it on there and we'll just
2 --

3 MS. PROVOST: Thank you, Your Honor.

4 THE COURT: -- print a copy up on that. We'll --

5 MS. PROVOST: And also your July 13th, 2011 order
6 because I anticipate --

7 THE COURT: Okay. July 13th.

8 MS. PROVOST: -- you may have a question about that.

9 THE COURT: Pull up April 4th and July 13th. We'll
10 pull that up and get a copy.

11 BY MS. PROVOST:

12 Q And Mr. Bertsch, are you aware that the Court
13 entered a second order addressing the scope of your duties
14 that is an order from the April 10th hearing which was filed
15 July 13th, 2011? Do you recall a second order being entered?

16 A Not unless I have a change to look at it. I don't
17 remember these dates and things, so --

18 Q Okay. I'm going to represent to you what the court
19 order indicates and then ask you whether or not this is what
20 you believe your duties entailed. The Court order indicated
21 that you were to prepare a monthly income and disbursement
22 accounting.

23 MR. SOLOMON: Can I ask which order you're referring
24 to?

1 MS. PROVOST: This is the July 13, 2011 order.

2 Q And to prepare a plan for liquidation and valuation
3 of assets to trace all disbursements to family members. Do
4 you recall the Court asking you to do those two things?

5 A In general, yes, we did that.

6 Q And as a result of the Court's direction, have you
7 prepared a number of written reports that you had filed with
8 the Court between July 5th, 2011 and May 1st of 2012.

9 A We have filed reports with the Court the dates. I
10 cannot confirm, because I don't have them in front of me.

11 Q Would it help you if I provide you with a binder
12 with all of your reports in it?

13 A It would be very helpful.

14 MS. PROVOST: Madam clerk, can I have Exhibit
15 quadruple G, please?

16 MR. DICKERSON: Essentially, 5G.

17 MS. PROVOST: 5G, oh, triple -- I don't know five.

18 MR. DICKERSON: I don't know what you're --

19 THE COURT: Has anybody figured out -- we got to
20 quadruple. We didn't know how you do 5.

21 MR. DICKERSON: I don't know.

22 MS. PROVOST: 5Gs.

23 THE COURT: Well, if anybody can figure it out with
24 that, I'll go with 5Gs.

1 MR. DICKERSON: Cinco Gs.

2 THE COURT: Do cinco Gs. There you go.

3 Q Okay. Mr. Bertsch, I've handed you a binder that's
4 marked as 5Gs. If you could take a look through that on the
5 first -- very first two pages is an index that I believe
6 represents all of the reports that you have filed with the
7 Court in this action. And those would be numbers 1 through 17
8 and then numbers 18 through 23 being the appraisals that you
9 had commissioned in this action and tab 24 being your
10 application for fees and allowances that you filed in this
11 action. If you can just tab through and confirm that that is
12 in fact the case.

13 A Yes. I have either signed them or Mr. Miller had
14 signed them. And I recognize his signature.

15 Q And Mr. Miller is Nicholas Miller, your associate?

16 A Yes, he is a partner with my firm.

17 Q And he has also been appointed by the Court to
18 perform some work in this case.

19 A Yes. I -- I -- if I recall and I'm only recalling
20 now the order I think appointing it did list both people in
21 that order.

22 Q And that's my understanding as well. And with
23 respect to the appraisals that are contained in Exhibit 5Gs, I
24 have only included the cover page and the appraisal report as

1 opposed to the full appraisal which you have filed with the
2 Court. That is for the purposes of not killing additional
3 trees. I believe that you have filed the full report with the
4 Court meaning that the Court has received -- for example, I
5 know the Brian Head report I believe was a hundred pages in
6 length. You have filed the full appraisal reports with the
7 Court, have you not?

8 A It's my recollection that we did.

9 Q And I asked the Court just if you need to reference
10 anything specific in those appraisals that this binder 5Gs
11 only contains the summary report and not the complete
12 appraisal. The complete appraisal has been on file with the
13 Court.

14 THE COURT: Just so you know it's already part of
15 the record so the Court reviewed those in its entirety.

16 Q Mr. Bertsch, can I direct you to tab 24, please?

17 A Okay.

18 MS. PROVOST: Before I ask you any questions, Your
19 Honor, I move for the admission of Exhibit 5Gs.

20 THE COURT: Any objections?

21 MS. FORSBERG: Your Honor, they're already part of
22 the court record. All of them are are filed, so I mean --

23 THE COURT: Think of this matter with the --

24 MS. FORSBERG: -- if she wants to do it just as a --

1 THE COURT: But they already had been filed. This
2 makes it a nice thing for the record. We'll have them all
3 organized at one time on that. It would be easier for
4 reference. So the Court will accept 5G. The exhibit hereby
5 admitted as record since it's already in.

6 (Defendant's Exhibit GGGGG admitted)

7 BY MS. PROVOST:

8 Q Okay. Mr. Bertsch, tab 24 is the application of
9 forensic accountants for allowances of fees and reimbursement
10 of expenses that you filed April 26th, 2012, correct?

11 A Yes. That's what the document states.

12 Q And the second page of that report that indicates
13 you have been paid a total as of that time \$60,000?

14 A That's what the document states, yes.

15 Q And as of that date, you had a total outstanding of
16 \$58,938.

17 A As the document states.

18 Q And that on Page 5 which -- or you can look at the
19 reference 6852, you were holding \$44,100 on that date.

20 A That is correct.

21 Q And it's my understanding -- can you confirm that
22 you have received payment of the \$44,100?

23 A I had the court order. I moved it from my trust
24 account into my operating account.

1 Q So that would leave a balance of \$14,838 owed to you
2 after that payment, correct?

3 A I believe that's correct, yes.

4 Q And is there any additional amounts owed to you in
5 addition to that \$14,838 owed to you as of today?

6 A Only the amounts would be in preparation for this in
7 attending this court hearing.

8 Q Do you intend to submit a final application for fees
9 and allowances to this Court?

10 A I do.

11 Q Mr. Bertsch, where did the information to prepare
12 all of your reports come from?

13 A It came from Mr. Nelson, his office, his employees
14 and from Lynita Nelson and her consultant.

15 Q And when you say Mr. Nelson's employees, do you
16 specifically recall who those employees were?

17 A Yes, they were Rochelle and Lana.

18 Q And Lana Martin, the distribution trustee for the
19 ELN Trust.

20 A That is correct.

21 Q And did you meet with any of these persons to -- in
22 preparation of your reports?

23 A Many times.

24 Q All of those persons.

1 A All of the people. If you go through my report, you
2 can see I probably listed in there every time I had meetings
3 with either Mr. Nelson and his people or Mrs. Nelson and her
4 people.

5 Q And prior to the issuing of any report, did you
6 provide each person in this case meaning Mrs. Nelson, Mr.
7 Nelson or Ms. Martin on behalf of the ELN Trust the
8 opportunity to express any concerns about your report?

9 A We dis -- we discussed things. Whether I gave them
10 the --

11 MR. SOLOMON: I'm sorry.

12 A -- preliminary report --

13 MR. SOLOMON: I'm sorry. I need to object before
14 you answer it.

15 THE WITNESS: Oh, okay.

16 MS. PROVOST: I can break it down.

17 MR. SOLOMON: Okay. I appreciate that, because you
18 said --

19 THE COURT: Yeah, it's compound there.

20 MR. SOLOMON: -- that by --

21 BY MS. PROVOST:

22 Q Prior --

23 MR. SOLOMON: -- Lana as distribution trustee, but
24 that wasn't the only capacity he was speaking to her in. I

1 don't even know if he spoke to her in that capacity.

2 Q Prior to your issuing your report, did you provide
3 any report? Did you provide Mrs. Nelson the opportunity to
4 express any concerns about what your report would state?

5 A As I recall on a couple of them, we may have
6 submitted the reports prior because we had additional
7 questions that we wanted to understand before we filed the
8 report. But there were some that we just filed based upon the
9 information we had.

10 Q And did you provide Mr. Nelson with that same
11 opportunity to express any concerns?

12 A I don't really recall which ones.

13 Q What about Ms. Martin? Did you meet with Ms. Martin
14 with respect to any concerns about your reports?

15 A Ms. Martin was at meetings that we had with Mr.
16 Nelson. I did not meet with her individually.

17 Q In your meetings with Ms. Martin, did she express to
18 you that she was a representative for meaning either the
19 distribution trustee of or in another capacity of
20 representative for the ELN Trust?

21 A Not that I recall.

22 Q Were you aware that Ms. Martin was the distribution
23 trustee for the ELN Trust?

24 A That was really not brought out. So we knew that

1 she worked with Mr. Nelson on his books and records but there
2 was not that distinction at the time.

3 Q And are you aware of Ms. Martin having any other
4 capacity with respect to the ELN Trust other than as
5 distribution trustee?

6 A I was aware and was told that she worked with the
7 Eric Nelson Trust and also with the Lynita Trust as being a
8 trustee of type.

9 Q And I believe your testimony was you don't recall if
10 Mr. Nelson expressed concerns about your reports.

11 MR. SOLOMON: Asked and answered.

12 THE COURT: Overruled. You can --

13 BY MS. PROVOST:

14 Q Is that correct? You don't recall --

15 MR. DICKERSON: Would you --

16 Q Did Mr. Nelson -- I want to make sure I have your
17 testimony correct. You don't recall Mr. Nelson expressing
18 concerns about your reports?

19 A Yes. In fact, there is one report filed afterwards
20 because of his concerns of the reports. And we went through
21 all of the items and we issued the second report stating our
22 position on what information we received.

23 Q Would that be the report contained at tab 11, the
24 April 23rd, 2012 report?

1 A No, that's not the report.

2 Q Which report are you referring to then? Because
3 that is the last file.

4 A Well, you would have to give me an opportunity to
5 look through this.

6 Q Take as much time as you need.

7 A I believe you're talking to in report number 12.

8 Q The report number 12 was prepared by you after
9 meeting with Eric Nelson about the concerns for any of your
10 previous reports.

11 A We had filed a report. We then obtained a list of
12 his responses relating to the report because he goes in and
13 says the report said something, his response and then we
14 either corrected it or said it did not require any correction.
15 And that's report number 12.

16 Q In my preparation for today, I noticed you did not
17 file a source and application of funds report for an entity
18 called BanOne, LLC. Is that just an oversight or is that
19 something -- why has that report not been filed?

20 A It surprises me. Number 6 was a BanOne and number 7
21 was a BanOne. And number 14. So there were some schedules
22 filed in connection with BanOne.

23 Q Number 6 is the income and expense report for
24 BanOne, LLC. Number 7, the income and expense for BanOne

1 Arizona which is a separate entity. And number 14, the source
2 and application of funds report for BanOne, Arizona. My
3 question is you didn't file a separate source and application
4 of funds report for BanOne?

5 A No, I filed the income and expense which they're
6 somewhat single. I -- the source and application fund, the
7 income and expense. One's on a case basis, one's on accrual
8 basis. But most of the records you'll find were probably on a
9 cash basis.

10 Q So then as I understand your reports, if we wanted
11 to -- if the Court wanted to have an understanding of a
12 particular entity, for example, BanOne, LLC, it would look to
13 both the filing of the income and expense report and if a --
14 and a source and application report if it exists. And that
15 would give the Court the understanding for that particular
16 entity for the time that you prepared the report from '09
17 through first quarter of '12.

18 A I cannot tell you if the Court would understand from
19 those two type statements. I -- I can tell you I would. But
20 you're asking me what the Court would do and I --

21 THE COURT: Yeah.

22 A -- I can't answer that.

23 THE COURT: Well, I'm not so sure Mr. Bertsch's
24 insulting me or not, but it's probably an accurate statement.

1 I'm not so sure I'll understand it, but --

2 THE WITNESS: I'm -- I'm trying not to make a
3 decision for you.

4 Q Did you make your best efforts by the filing of
5 these reports per entity to provide the Court with an accurate
6 information pertaining to each entity as you found it to be?

7 A Yes, I did.

8 Q And are you satisfied that you have provided the
9 Court with accurate -- an accurate evaluation or an accurate
10 information for each entity that you filed these reports?

11 A Yes, it was from their records.

12 Q And when you indicate their regards, you're
13 referring to records provided by Eric Nelson and/or his
14 associates and Lynita Nelson?

15 A That's correct.

16 Q Lynita Nelson's information is set forth in the
17 reports contained at tabs 10 and 17, correct?

18 A That is correct.

19 Q And then the remaining tabs which would be tabs, 4
20 through 9 and 11 through 16 pertain to information for
21 entities either involving Eric Nelson or related to Eric
22 Nelson, correct?

23 A You're going too fast for me.

24 Q 4 through --

1 A The reason that you have so many reports and let me
2 state it this way. We started with the income and expense
3 analysis. So the -- we felt it would give the Court an
4 opportunity to see what happened with the entities. And as
5 the case went on, they wanted to kind of update it. And we
6 kind of changed the part at the bottom where you see source
7 and application of funds to a -- a format that says well,
8 here's where the funds came from and here's where they went.
9 So the source and application funds are going to be strictly
10 on a cash basis. Here's where the cash came from and this is
11 where the cash went.

12 In taking the books of the company that would more
13 or less be like on a back or a cruel basis if you use the
14 income and expense there, but it still tells the same picture.
15 The source and application fund tells you where the cash went.

16 Q Okay. And I don't want to take too much of your
17 time since the Court has indicated it has reviewed your
18 reports, but just a few moments to make sure we have the
19 accurate information. For tab 1, I read this report and
20 please correct me if I am incorrect in my understanding as
21 providing the court with titled ownership for each asset, an
22 asset value and the source of that asset value. Is that a
23 correct understanding of this report?

24 A State that again?

1 Q This report tells the Court titled ownership of an
2 asset, a value of that asset and a source of that value, is
3 that correct?

4 A That would be correct.

5 Q And by providing the Court with a listing of each
6 asset by title, you're not implying any of the assets to be
7 either the separate property of a particular titled individual
8 or a party, are you?

9 MR. SOLOMON: For a trust property?

10 A I am just --

11 Q For a trust property.

12 MR. SOLOMON: Okay. Either of the above.

13 MR. DICKERSON: Is that an objection? Let's make
14 the objection and have a ruling upon the objection.

15 MR. SOLOMON: Vague and ambiguous question because
16 it was incomplete.

17 THE COURT: Overruled. You can -- did you
18 understand the question, Mr. Bertsch?

19 THE WITNESS: I do.

20 THE COURT: All right. You can answer it if you
21 understand.

22 THE WITNESS: As we went through the books and
23 records from the 1st of January 2009 and followed the records
24 that were provided to us by the parties, this is the summary

1 we made and we're saying that under the books considered which
2 were Eric Nelson whether it's trust or not but the property
3 that was in his basic name one way or another was the top
4 part. The bottom part where it says that Lynita Nelson,
5 that's what was on the books as considered part of stuff that
6 was titled in her name and then below was property that was in
7 both their names. And whether it was trust or not, because at
8 this time the trust was not an issue.

9 BY MS. PROVOST:

10 Q And you would agree it's not your job to determine
11 whether property is community, separate or an asset of the
12 trust.

13 MR. SOLOMON: We stipulated to that, Your Honor.

14 MS. FORSBERG: Yes, we stipulated to that, Your
15 Honor.

16 A That's his Honor's decision, not mine.

17 Q That's all I wanted you to confirm.

18 A I'm sorry about that.

19 Q As we sit here today looking at this chart, is there
20 anything that you believe needs to be updated to provide the
21 Court with an understanding of the assets of Eric Nelson,
22 Lynita Nelson either individually, together as community or as
23 property of the trust.

24 A Well, the thing I will admit, it keeps moving and

1 moving and moving. And if you will see by this schedule, it's
2 -- it's saying for example it gives the date at the top by
3 saying approximate case. That's as of 3/31/2011. And I'm
4 sure that has changed and it has changed below. But it was a
5 moving target. That's the reason that we put the dates saying
6 as of that date, that's where we are.

7 Later on, we were asked to update it. This schedule
8 was not updated. This is a schedule that was submitted
9 December the -- of 2011. And the purpose of this schedule was
10 trying to update with some of the appraisals that we were
11 directed together.

12 Q If you have updated any figures, would those updates
13 be found in your later filed reports?

14 A I did not take some of the later filed reports and
15 go back and adjust this schedule.

16 Q Would that information be contained in your later
17 filed reports?

18 A Yes, I believe it would.

19 Q Looking at this schedule, I made a note for the 2911
20 Bella Katherine Circle residence, this schedule indicates
21 1.602171 in costs. And can you explain what do you mean by
22 the costs there?

23 A We traced through the records cash that was spent
24 through the account saying that -- that the amount of money

1 that was spent on the Bella Katherine property was \$1,602,171.
2 And I think we filed a report and we explained how all that
3 came about and where the money was in our first report. We
4 were quite detailed on accumulating the money for the
5 \$1,602,171.

6 Q And are you aware -- has that cost amount increased
7 since the filing of this schedule?

8 A Can't answer that because I haven't been directed to
9 followup on that particular part.

10 Q If I ask you to look at Bates Number DEF-6818, would
11 that assist you?

12 A And where would that tab be?

13 Q Let me see which tab that is. That's tab 11, Exhibit
14 B-1. Do you got the page, Mr. Bertsch?

15 A I do.

16 Q And is -- has the costs for the Bella Katherine
17 residence increased from the 1.602171 figure?

18 A This schedule would indicate that it has.

19 Q And what is that increased to?

20 A On the first schedule, the -- that was filed
21 December the 23rd, quite obviously by schedule 11 there would
22 have been another \$80,000, but on the 2011 total I would have
23 to look and see how much of that was in either November or
24 December.

1 Q And it's fair to say that amount has increased.

2 A Well, at -- at least increased by the \$80,000.

3 Q So the total number for the Bella Katherine
4 residence now is approximately 1.839 494.

5 A Only adding the 80,000. I don't know how much it
6 might be in that figure of 99,868 until I look at the detail
7 and compare it back to schedule.

8 Q Returning back to that --

9 A It says that the figure through the three months is
10 1,839,494.79. So if you want to look at it, if you compare
11 the two figures, the new amount would be the 1,839,494.79.
12 Through the -- that would be January, February, March, April
13 15th, approximately.

14 Q Of 2012.

15 A Of 2012. That's correct.

16 Q And are you aware of any additional costs or monies
17 had been placed into the Bella Katherine residence since
18 April?

19 A I did -- let me see. Do we have a report after the
20 three and a half months? I think that might have been the
21 extent of it, right?

22 Q I believe that's your last report, yes.

23 A Yes, then I -- I have no information beyond that.

24 Q And you had indicated that you believe the cash that

1 Eric Nelson and/or Lynita Nelson have as you -- had on your
2 schedule, tab 1 has decreased since the filing of that report,
3 is that correct?

4 A It has changed yes.

5 Q And are you aware of what cash either party has
6 available to them at this time?

7 A Today?

8 Q Yes.

9 A No. I have submitted a report that shows what
10 balance they had at like April 15th of 2012, but I have not
11 worked on any of the records since that time.

12 Q Looking at that schedule under tab 1, you have
13 listed Russell Road property 65 percent and a \$4,000,000 value
14 with the words court accepted. Can you explain what is that
15 asset?

16 A That asset is the Russell Road property currently
17 that was sold to the Oasis Baptist Church under a -- a sales
18 agreement.

19 Q And within your reports, is there anywhere that you
20 detail the history of the Russell Road property?

21 A Yes, there is.

22 Q And I believe -- I just want to make sure, that is
23 under tab 3 beginning at Bates DEF-6484. Is that correct
24 understanding?

1 A I believe that's -- that goes on for -- it's on 84,
2 85, 86 and part of 87 is the explanation for the Russell Road
3 property. It's about three and a half pages long.

4 Q Are you aware is Eric Nelson or any entity related
5 to Eric Nelson presently receiving income from the Russell
6 Road property?

7 A According to the information and I gleamed from
8 this, if rent was being paid, I believe that the other party
9 involved in this was to submit the rent to Eric Nelson that
10 would be considered interest on the loans that he had made to
11 the other party.

12 Q And by the other party, are you talking about the
13 purchaser of the property or another individual?

14 A I'm talking about the other partner, CJ & ENL.

15 Q And who is his partner in CJ ENL?

16 A I -- I believe it's Cal Nelson.

17 Q And Cal Nelson is Eric's brother?

18 A That's my understanding.

19 Q And I hate to make you go back and forth, but I'm
20 going to direct you back to tab 11. And I'll give you two
21 page numbers I would like you to look at for me. The first
22 would be page DEF-6836. And the second, DEF-6847.

23 A 47?

24 Q Yes.

1 A Okay. I have those two pages.

2 Q And approximately -- or actually, exactly how much
3 monthly income was Eric Nelson or an Eric Nelson related
4 entity receiving from Cal Nelson during the periods of time
5 reflected on those two pages of these schedules?

6 A Under related individuals, we have income coming in
7 of a hundred and sixteen thousand six-seventy. Under the --
8 the income portion. Let me see if there's any other down
9 here. That is on -- during the year 2011. During the year
10 2012, the total amount was \$11,667.

11 Q And it appears from these two schedules that Ms. --
12 that Cal Nelson was making what appears to be regular payments
13 of \$11,667 a month. Is that correct?

14 A I can't really say whether it was Cal Nelson or
15 whether it was CJ&E and L -- LLC at this point.

16 Q One of the two.

17 A One of the two.

18 Q And is it your belief then that those \$11,667 a
19 month payments are the interest payments for the Russell Road
20 property?

21 A I can't say for sure, because I haven't looked at
22 the records. I'm saying if you go back and read the writeup
23 that I had, one of the caveats in there was that when the rent
24 was paid the amount -- what happened, it was like a 50/50 but

1 then it turned out to be a 6535. So if the rents were to be
2 paid to Cal's portion, the one-third, it would then be turned
3 over to Eric which would be interest for the \$2,000,000 that
4 Cal owes Eric Nelson.

5 Q And all of that is contained in your three and a
6 half page explanation under tab 3.

7 A The way I understand it.

8 Q Okay. Going to direct you to tab 2. And I don't
9 have too many more questions. I have a few more, but not too
10 many more. I'm going to try to go through this as quick as I
11 can. Tab 2, please.

12 A Okay.

13 Q With respect to the Russell Road property before we
14 move on, that property that has been sold to the Oasis Baptist
15 Church, do you recall or are you aware -- actually, let me ask
16 you, are you aware of how that property came to be held by CJ
17 ENL?

18 A That's explained on my writeup on the other place of
19 how every transaction took place to get to where it is.

20 Q Prior to that property being owned by CJ ENL, do you
21 recall who owned that property?

22 A Where is the tab we were looking at? Let me go back
23 and refresh it.

24 Q It's at tab 3.

1 A Three, yeah. The property was purchased by Lynita
2 Nelson's trust. And that was done on November the 11th, 1999.

3 Q And at the time that the property was transferred to
4 CJ ENL, was Mrs. Nelson compensated for her interest in the
5 property?

6 A Only to the extent that she became a 50 percent
7 partner. It's in the company that was formed, CJ ENL.

8 Q And at some point in time did Mrs. Nelson -- are you
9 aware at some point in time did Mrs. Nelson cease to be a
10 partner in CJ ENL?

11 A I believe that is explained in Paragraph 3.

12 Q Can you provide the Court with a brief summary of
13 that event?

14 A It's my understanding -- we're going through this
15 transaction that we'll start with Lynita Nelson had in her
16 trust \$855,000 which was used to purchase 3.3 acres at East
17 Russell Road. Cal put in \$20,000 down payment on the
18 property. And that would be like an earnest payment. With
19 that, they then formed this company called CJ&ENL, LLC. And
20 then the property was put into CJ&ENL. So it was like a
21 capital contribution on her part.

22 What happened later on, then they obtained a
23 business loan on the property of 3.1 million to build a
24 building and to start the operations as Cal Bluewater Marine.

1 It's my understanding when they bought this property, that was
2 to be property that would be rented to Cal's Bluewater Marine.
3 So it would be a property that would be receiving rental
4 income for the property that was purchased. And the loan to
5 the business bank was guaranteed by Cal and his wife.

6 Then during 2004 which is five years later, I was
7 told, and I never seen this, but I was told that there was a
8 flooring contract on the inventory of the boats which I
9 understand you have to sign a flooring contract. And they
10 felt well, you know, with the flooring contract, the business
11 wasn't doing good. So it's guaranteed. So to get Lynita
12 Nelson to get out of this situation, they asked her to forfeit
13 the interest in the company to Cal -- to Cal.

14 Q And who provided you with all of this information?

15 A I received this from -- from I believe Eric Nelson.

16 Q So in 2004 to get Mrs. Nelson out of an alleged
17 flooring contract, she was asked to forfeit her interest in CJ
18 ENL.

19 A Yes. And I did see that instrument.

20 Q And have you requested that flooring agreement?

21 A I have. It was never provided.

22 Q Was there any explanation as to why it wasn't
23 provided to you?

24 A Yeah, and then each party kept saying well, the

1 other's got the contract. The other's got the contract. So
2 it was like this. So I didn't receive it.

3 Q And has Lynita Nelson ever provided you with any
4 business contracts?

5 A I can't answer that, because I don't recall.

6 Q When you say each party was saying that the other
7 had the contract, which parties are you referring to?

8 A I'm referring to Eric Nelson and his people and
9 Lynita. I think I state that in here.

10 Q At the time that Mrs. Nelson forfeited her interest
11 in CJ ENL, are you aware of or did she receive any payments
12 for that 3.3 acres of property?

13 A I did not see any payment.

14 Q Are you aware of Mrs. Nelson received back her
15 capital account funds for CJ ENL?

16 A I am not aware of that.

17 Q Are you aware of what happened to Mrs. -- to the
18 \$855,945 capital account?

19 A It was used to purchase the land. So to purchase
20 the contact for the land, the money was spent there.

21 Q After Mrs. Nelson relinquished her interest in CJ
22 ENL, what happened to the assets that were in her capital
23 account and monies reflected in her capital account?

24 A The answer it made on the books as to the

1 forfeiture. I took the capital account from her and placed it
2 in the capital account of Cal Nelson.

3 Q Okay. I'll direct you to tab 2. And specifically
4 DEF-14892. This appears to be another schedule similar to the
5 one we previously looked at, is that correct?

6 A That is correct.

7 Q And following this schedule are two pages of notes.
8 I'm assuming that these are the description of liabilities
9 indicated on the schedule, is that what this is, those next
10 two pages?

11 A That is correct. That was a summary of the
12 liabilities we were given that would apply to those
13 properties. And so I wrote that up stating what the condition
14 of those liabilities were. So if you see for example see
15 attached description of liabilities, that's what these two
16 pages represented.

17 Q And there is no description attached to the first
18 schedule. It has that notation see attached description of
19 liabilities but it was nothing attached, it would be this same
20 set of -- it would -- that referral on the first schedule
21 would be referring to these pages at DEF-14893 and 14894?

22 A That's correct.

23 Q And looking at these description of liabilities, can
24 you explain to us what is your understanding of the

1 liabilities as you have expressed them here?

2 A Would you be more specific with your question?

3 Q I will. With respect to the Brian Head, Utah Cabin
4 Brian Head area, is there a liability?

5 A As I state there, I'm saying that there was -- I was
6 told there was a verbal agreement with Eric's sister, Haber
7 (ph) and his husband, Paul Haber (ph), to split up and -- and
8 sell the property and the sale of the property due to a pawn
9 in the approximately of that Habers property. No value of
10 liability was listed. In other words, they're going to make a
11 claim and I -- I can't put -- I didn't see any evidence of any
12 specific amount.

13 Q So you would treat that liability as a zero
14 liability, because right now there is no evidence?

15 MR. SOLOMON: Object, leading, number one. Number
16 two, and that's not --

17 BY MS. PROVOST:

18 Q How would you treat --

19 MR. SOLOMON: -- his testimony.

20 Q How would you treat that liability today?

21 MR. SOLOMON: Your Honor, I don't think he's
22 entitled to give that opinion now. He's rendered his report.
23 She's now asking how he's going to treat it now. He's not
24 here to extend or add to his report. His report is what it

1 is. And you're not --

2 MS. PROVOST: I would --

3 MR. SOLOMON: -- entitled to use him as an expert
4 witness to try and determine what values are when he hasn't
5 even investigated it.

6 THE COURT: I think as far as --

7 MS. PROVOST: I'll --

8 THE COURT: Do you --

9 MS. PROVOST: I'll rephrase it.

10 BY MS. PROVOST:

11 Q How -- what did you intend by your sentence no value
12 of liability stated?

13 A I did not have any documented evidence as a lawsuit
14 or an agreement that would give me a value as to a liability
15 on this property.

16 Q Okay. With respect to the next which is Wyoming
17 property, can you explain for me what is the liability with
18 respect to the Wyoming property?

19 A On that, I had the Eric reports of liability to
20 Eric's brother and sister, Paul Nelson, Alita Nelson
21 respectively by proof of an operating agreement stating
22 ownership in Wyoming estates. Okay. The agreement was
23 provided was not signed by other party. Property is currently
24 titled in the LSN Trust at a hundred percent. So where's the

1 liability?

2 Q So when you say where is the liability --

3 A Well, it -- I'm questioning myself. So if I had
4 this in front of me, where is the liability?

5 Q And it has been represented previous in these
6 proceedings that -- we've heard testimony from Daniel Gerety
7 and he provided the Court with documentation for what he found
8 to be liabilities. His representation was that the same
9 information was provided to you and if I provide you with Mr.
10 Gerety's report now, I would like you to take a look and
11 confirm that yes, this is the same information you were
12 provided with or no, this is not the same. Can you do that
13 for me?

14 A I will see if I recall.

15 MS. PROVOST: Madam clerk, may I have Exhibit
16 Intervener 168 I believe is Mr. Gerety's report? It would be
17 in the binder.

18 THE COURT: Get a blue one, yeah.

19 Q Okay. Mr. Bertsch, I'm bringing to you Intervener's
20 Exhibit 168 that has been admitted into evidence. And I will
21 get you to tab 11 which was Mr. Gerety's report on
22 liabilities. For the record, I have turned to page -- turn to
23 page DG-268. And I would like you to take a look at this page
24 and then the pages which follow. And DG-268 represents that

1 his information was provided to you on 9/20/11 in a binder
2 following the format of your report which is following this
3 reference page. If you can take a look through the documents
4 that follow and if you can confirm for me yes, you did see all
5 of this documentation previously or no, you did not.

6 A Well, I don't recall unless I see what was given to
7 me on 9/11. It wasn't this.

8 Q Okay. Can you take a look through the pages that
9 follow and if you do recall, tell us yes, I have seen that
10 document or no, I have not? I believe each document at the
11 top you'll see it says like Exhibit 11.0101 or a Exhibit
12 11.0102 If you could tell us whether or not you have seen
13 that if you recall.

14 A This looks familiar. It's still no sight.

15 Q Okay. So were you looking at --

16 A On DG-00288, this is the document I remember a
17 couple of the marks on it, but it is not a signed document
18 which I stated.

19 Q Okay. And so that document which began at DG-271
20 through DG-289 is a document you recall seeing.

21 A 288.

22 Q 288.

23 A Oh, yeah. It would be 289. And that's the
24 information that I have stated for the Wyoming property.

1 Q Okay. Can I direct you to DG-271, please? Is this
2 the document you're referring to in your note regarding the
3 Wyoming property when you state agreement provided is not
4 signed by other party?

5 A This is the document that had not been signed, yes.

6 Q And who is this agreement purport to be between?

7 A It purports to be between Nola -- I'm sorry, Paul,
8 Eric and Alita says that's the ownership. But the property
9 was titled to the LSN Trust. So if I have property title
10 there and I have an agreement that's not signed, that's all
11 I'm reporting.

12 Q And the very first paragraph, who does it indicate
13 the initial members to be? It's the very first paragraph on
14 Page 271. Who is entering into the agreement?

15 A Well, there you have Paul Nelson and Lynita Sue
16 Nelson Trust and Lynita Nelson. Eric is not listed in that
17 first part.

18 Q But he is listed under the ownership schedule.

19 A He's listed under 1.5.

20 Q And is Eric listed again on Page 272 under 2.1?

21 A Oh, the capital contributions? No.

22 Q Is he listed as a member under initial percentage
23 interests and units?

24 A Are you referring to Page --

1 Q Page 272.

2 A -- DG -- oh, 272. Okay. I was on 289. He's listed
3 under B.

4 Q As having a 40 percent interest.

5 A 40 percent interest.

6 Q And then which party was to sign this agreement to
7 make this a valid and binding agreement between them? It's
8 Page 288.

9 A According to Page 288 would be Paul Nelson, Lynita
10 Sue Nelson Trust and herself as trustee and Alita C. Nelson
11 Trust, Alita C. Nelson as trustee.

12 Q And under this agreement, if this agreement were
13 signed, what interest would Lynita Sue Nelson's trust have?

14 A Without going back and reading everything, it
15 appears it would be 40 percent.

16 Q I thought that was what Eric's ownership interest
17 is.

18 A If you go to Page 289, he had -- he doesn't sign the
19 agreement. If this is meant to be an operating agreement, he
20 would certainly sign the operating agreement.

21 Q And have you ever seen a signed copy of this
22 agreement?

23 A I have not.

24 Q Did you request a signed copy of this agreement?

1 A I don't recall.

2 Q Okay. Moving onto DG-291 and the documents that
3 follow, do you recall having received this documentation? It
4 would be 291 through 363. Sorry, 361.

5 A As I remember the second one and if you read the
6 letters from Mr. Duke (ph), he indicates and his belief is
7 that the lawsuit does not have true merit.

8 Q And that's what is reflected in your notes?

9 A And that's what I've stated in reading the
10 correspondence from Mr. Duke.

11 Q The paragraph prior to your notes on the Manis (ph)
12 issue, you indicate that Eric reports a contingent liability
13 due to wetland issues. No value is given for liability. Did
14 you see that --

15 A I never seen a document where -- what the issues
16 are.

17 Q Did you see the exhibits in Mr. Gerety's report
18 dealing with the wetland issue?

19 A Yes, but I have not seen any -- I did not see any
20 complaint by federal government or anything else that came up
21 with what an issue is, because normally they do and they
22 normally give a value so you have a value. So just saying I
23 have a contingent liability in case they come after me, I
24 didn't consider that was a real liability and that's what I

1 was looking at here.

2 Q Okay. The next set of documents beginning at DG-363
3 and continuing on, and I'll grab the page number for you, deal
4 with a liability allegedly owed to Frank Soras. If you could
5 take a look through those documents and tell me whether you
6 had seen those before.

7 A I think the -- my report, that Soras section
8 explains this whole thing about Mr. Soras that he has
9 collateral. And there is no lawsuit pending as to the
10 liability other than what I've explained in that portion of my
11 report.

12 Q And in your report you indicate Frank Soras has --
13 or Frank Soras has approximately 30 acres title to him, and
14 I'm summarizing. Eric has represented to us that Frank Soras
15 has deeded the property back to Dynasty, but this has not been
16 recorded yet. Did you ask him why it was not recorded? Did
17 you ask Eric that?

18 A Yeah, and they hadn't got around to --

19 Q Are you aware -- has that property been deeded back
20 to Dynasty at this point in time?

21 A I have no knowledge of that.

22 Q Was that property included in the appraisal that was
23 performed for the property held by Dynasty in this action?

24 A Yes, it was.

1 Q Those 30 acres were included.

2 A Yes.

3 Q Have any appraisals --

4 A It can be separated, because when we had the

5 appraisal, we had the appraisal done overall and then we had

6 appraisal done by sections.

7 Q And your report indicates that Mr. Soras has new

8 collateral of 20 homes in Phoenix, Arizona, is that correct?

9 A That is correct.

10 Q Have any appraisals been performed on any of the

11 homes in Phoenix, Arizona?

12 A They have not. Both parties accepted the value of

13 the homes in -- the value of the homes in Phoenix, Arizona.

14 Q Mr. Bertsch, can you look at Page DG-364? Have you

15 seen this document before?

16 A I believe so. Uh-huh (affirmative).

17 Q So the next set of documents appeared to --

18 A If you're going to ask me a more specific question,

19 can you give me time to read it?

20 Q I will.

21 A Okay.

22 Q And the next set of documents begin at DG-368. And

23 go on to DG-400. Have you seen that documentation before?

24 A Slow down a second. I'm still reading. Okay. You

1 question about Soras now?

2 Q Having read the Soras -- re-reviewed the Soras
3 documentation, is there anything that you would change with
4 respect to what you have reported on your liabilities notes on
5 Page 14893?

6 A Not other than what I've explained in writing about
7 the Soras note in my report. I think the two are not in
8 conflict.

9 Q Is any liability owed to Mr. Soras at this time?

10 MR. SOLOMON: Object. At this time?

11 BY MS. PROVOST:

12 Q Was any liability owed to Mr. Soras at the time that
13 you issued your report?

14 A There was a liability, but he received property in
15 lieu of that. So he had then in fact been paid. You know,
16 this is a very complicated -- you almost have to go back to
17 the beginning of this entry, because it was kind of a doctor
18 transaction for Mr. Soras to begin with.

19 Q What do you mean by a doctor transaction? What can
20 you recall about this transaction?

21 MR. SOLOMON: I'm sorry, I didn't hear that
22 question. I apologize.

23 Q What did you mean by when you say it was a doctor
24 transaction? What do you recall about this transaction?

1 A The transaction was to be the purchase of a -- over
2 the track betting place in -- up near Wyoming in Green River I
3 think it is. Is it Green River or is it Evanston?

4 Q It's Evanston.

5 A It's one of the two, Green River or Evanston, both
6 bike stops. The Evanston, there was a property that was in
7 the name of Lynita Nelson that was this over track betting
8 place. It was ruled eventually that it was illegal to have
9 this. And it was sold or financed by this -- Mr. Soras, a
10 million two thirty, I believe. And he put in another
11 \$1,000,000 on the note, because he was trying to offset the
12 other side with the 1031 exchange.

13 Q And you're talking about Lynita Nelson, not Alita
14 Nelson. I'm sorry.

15 A No, Lynita. Okay. So what he did is he -- he put
16 extra money in there to make sure that he had a 1031 exchange
17 deferred. So the million dollars came in as another note for,
18 you know, to pump up the 1031 exchange. That's how it got
19 confused in the beginning and the reason you see the split,
20 that the property's worth a million two but the actual sales
21 agreement said 2.3 million to help Mr. Soras with his 1031
22 exchange. So that's how you get the division between the 1.2,
23 because that's actually the only money that was borrowed
24 against the property and the debt against the property.

1 The million dollar note was I give it to you, you
2 hold it so we can go through the legitimate period so it isn't
3 exposed in the 1031 exchange and then we'll give it back. So
4 that's the original transaction that happened on this.

5 Then as Mr. Soras wanted to be paid, they -- since
6 the property was not there, then to payoff the note, what
7 happened is he was to get property in the Mississippi, the 30
8 acres or something. And that was collateral, because he says
9 I don't have the collateral of the building anymore. I need
10 collateral for my note, because he put up the money like an
11 investment. So he wanted collateral against his note. So he
12 took the property in Mississippi.

13 Then as he got to the Mississippi, he started
14 feeling uncomfortable is what I recollect. And therefore, he
15 wanted other property. And I recollect, and I'm not sure of
16 this, so this is just what I -- what I recollect, property in
17 Phoenix was -- was a shopping center then came in as kind of a
18 substitute for additional collateral to secure the 1.3 note.
19 That property was sold. He's still wanted additional
20 collateral. So in the end, then he was given these houses in
21 BanOne, these eight houses or so forth of a value. So that
22 would be his collateral against the payment of the -- the
23 note.

24 During that period of time however, what happened is

1 the rent collected. He owned them but he didn't operate them.
2 The rent collected on that was to be the interest payment
3 against the 1. -- the -- the note at 1.3 or 2.3, however
4 they're going to classify it.

5 Then he decided I want the property. So give it to
6 me. And the deal was if I can sell it to payoff my note, I'm
7 okay, but if I sell the property and don't payoff my note, you
8 may have to pay me some extra. But anyway, we're going to
9 forget about the million dollars. That's going to go bye-bye.

10 And in giving him the property in the BanOne, it was
11 my understanding that then he would turn the property in
12 Mississippi back by this quitclaim deed. And I ask about it,
13 but it had never gotten around to it. So I don't know if it's
14 in his name or not. I know it's a very complicated thing, but
15 that's my understanding of the transaction.

16 Q Your understanding of the entire transaction
17 involving Mr. Soras.

18 A Basically. And I've written it up. It's in the --
19 if you go to -- I forget again what page it is where I wrote
20 this up, you'll find a complete writeup of the transactions of
21 the Soras note.

22 Q Is that likely in tab 3 where you had the writeup
23 for the Bella Katherine property? Take a look at tab 3.

24 A It would be on Page 13 of 15 or DEF-6493.

1 Q The next set of liabilities that you address deal
2 with -- it appears loans to Dynasty Development Group. And
3 that would be documents beginning at DEF-401 and those are
4 several loans. Those go through DEF --

5 A Well, in the next one I'm stating, Eric reports that
6 DDJ, Dynasty Development, I guess that's what that is. Has a
7 thousand -- a million dollars lis pendens on Dynasty on
8 property. You know, you can file a lis pendens against
9 anything. It doesn't mean anything other than it clouds the
10 title. If you don't have a judgment, I mean, you can file a
11 lis pendens and says hey, look out for this thing when you're
12 -- you're going to sell this property. And whether it's a
13 claim or not, I don't know. Anybody can file a lis pendens to
14 kind of obstruct the piece of property being sold.

15 Q Did you receive any documentation that that million
16 dollars indicated in the lis pendens was an actual liability?

17 A If I had received it and I felt comfortable with it,
18 I would have reported it.

19 Q And I don't see it here in your notes, correct?

20 A No, I -- I was just told and I have no reason to
21 believe that it's in default judgment or anything else. It's
22 a lis pendens.

23 Q And the next says Bob Martin loan, Dynasty, \$200,000
24 and is secured by a hundred and twenty acres of Dynasty land.

1 Did you receive any documentation supporting this loan?

2 A I don't recall. Is it in the book here?

3 Q Let me take a look. Take a look at DG-402. Did you
4 receive this note?

5 A I don't recall, but if I had, I stated exactly what
6 it is. It's -- it's not -- this is only as collateral. Why
7 would this be indicated as a debt against the \$200,000 note?
8 That's not what the note says.

9 Q The next deal is with a claim for legal fees by
10 Harold Duke. And I'll refer you to DG-404 and 405. Did you
11 recall ever receiving this documentation?

12 A I did, but I don't think there was an amount. The
13 amount of fees at that time were me to -- to -- were to be
14 determined.

15 Q DG-404, that is a proof of claim that appears to
16 have been filed in Mississippi bankruptcy. Is that what you
17 understand DG-404 to be?

18 A That's correct, but there's no amount on there.

19 Q Do you know what --

20 A Oh, there's a 378.

21 Q Do you know what happened in this bankruptcy?

22 A It was dismissed for bad faith.

23 Q The next is a three percent claim against a hundred
24 and twenty acres by Cliff McCarly (ph). Have you seen DG-407?

1 A I don't really recall remembering that one
2 specifically. I may have, because I'm talking about three
3 percent claim against -- well, I got a hundred and twenty
4 acres. This says a hundred and twenty-five. So I really -- I
5 can't recall.

6 Q So is that a liability owed at the time that you
7 issued this report?

8 A This letter doesn't appear that it's a liability
9 relating to MSA.

10 Q Okay. The next, it appears to be a claim by Harold
11 Duke once again in the amount of 400,000 against Dynasty.
12 Have you seen the documents -- actually, there are no
13 documents provided from Mr. Gerety in response to this claim.
14 Have you seen any additional documents for a Harold Duke claim
15 of \$400,000 against Dynasty? Have you seen any documents?

16 A I have not seen any. I was told this, therefore I
17 felt it was necessary to put it in.

18 Q Okay. And then there are one --

19 THE COURT: This is a housekeeping matter. It's
20 about 25 after 11:00. How much longer are you thinking to
21 take? I'm just trying to see on that with the time on. I
22 know you have an appointment on that. Is -- are you going to
23 finish up in a few minutes and I could give you the rest of
24 the time to just go through lunch to -- if you get done with

1 Mr. Bertsch, but I'm trying to get him done so Mr. Bertsch
2 doesn't need to come back if at all possible.

3 MR. SOLOMON: Okay, Your Honor.

4 THE COURT: And so yeah. And that whole side will
5 see --

6 MS. PROVOST: I'm going to shortcut it a little bit.

7 THE COURT: I mean, if you need to bring Bertsch
8 back for the divorce side, if we have to do that, we will, but
9 I want to try to --

10 MS. FORSBERG: They have actually questioned a lot
11 of divorce. IF we can go through the question, we can cut
12 even that shorter, Your Honor. So that will even go quicker
13 is the hope.

14 THE COURT: Okay. And I want to give you a fair
15 chance on it to try and deal with the time, because I know --
16 is now a good time to take a break so you can call your -- you
17 said you need to call him on that.

18 MR. SOLOMON: Yeah, I don't know how long --

19 THE COURT: Is it --

20 MR. SOLOMON: How long do you anticipate being now?

21 MS. PROVOST: Maybe another 10 minutes.

22 THE COURT: Why don't you try to --

23 MR. SOLOMON: We'll make it. I don't think I need
24 to call if that's true.

1 MS. FORSBERG: But we're going to have to go through
2 with him after that he's saying.

3 MR. SOLOMON: No, I -- mine's not going to be very
4 long. Yours is going to be long? I'm just asking.

5 MS. FORSBERG: No, not too many so far.

6 THE COURT: Why don't you --

7 MR. SOLOMON: How far --

8 THE COURT: -- finish up and see where we're at and
9 see --

10 MR. SOLOMON: I'm going to have him --

11 MS. FORSBERG: So far --

12 MR. SOLOMON: -- summarize instead --

13 MS. FORSBERG: Yeah.

14 MR. SOLOMON: -- of going into this kind of stuff.

15 MS. FORSBERG: Yes.

16 BY MS. PROVOST:

17 Q Rather than go through each of the rest of the
18 liabilities individually, have you reviewed or can you review
19 quickly DG-409 through DG-423 and tell me if any of those
20 documents are new to your eyes?

21 MR. SOLOMON: There -- apparently there's a
22 consensus. We need a break on our side of the table here, but
23 not for my call, if you get my drift.

24 MS. PROVOST: Your Honor, why don't we take a quick

1 break and then --

2 THE COURT: Why don't we take a five -- why don't we
3 take a break now.

4 MS. PROVOST: -- Mr. Bertsch can review the book and
5 --

6 THE COURT: Now would be a good time to take a --

7 MS. FORSBERG: Do you see how fast some people --

8 THE COURT: -- quick break.

9 MS. FORSBERG: -- jumped up for that?

10 THE COURT: Emergency break.

11 (Off record)

12 THE COURT: This is going back on the record in the
13 matter of Eric Nelson and Lynita Nelson, case number D-411537.
14 We took a brief recess. I want to see if we can finish up Mr.
15 Bertsch in time on that. If not, we need to do something
16 we'll deal with. I want to give everybody a fair chance on
17 that. We'll see what -- how the questions will go and we'll
18 figure out from there. You can pick up where you left off,
19 Ms. --

20 BY MS. PROVOST:

21 Q Mr. Bertsch, during the break, did you have an
22 opportunity to examine the rest of those pages, DG-409 through
23 DG-423?

24 A I did.

1 Q And are any of those documents new to your eyes?

2 A I don't believe so, because and what it's stating in
3 there, most of that is there is an option and an option. So I
4 don't know what an option is in relationship to having a
5 liability. It doesn't create a liability in my mind if
6 somebody has an option to buy.

7 Q And when you're referring to the options, you're
8 referring to --

9 A I'm referring on the top of Page DFF-0014894 under
10 tab 2, I believe.

11 Q 4089, you said?

12 A 14894 under tab 2, the second page -- third page.

13 Q Your tab 2.

14 A Tab 2 of the book.

15 Q Okay. And that options that you're discussing, if
16 you look at DG-429, is this the contract that you're referring
17 to?

18 A I'm just looking in general that these are all
19 options giving someone else the option to purchase part of
20 what you have. I'm not clear why that becomes a liability
21 against assets.

22 Q Okay. Mr. Bertsch, if you can look at one question
23 on your tab 3, Page 6478 and 6479 and 6480.

24 A All right. I'm at 6478.

1 Q And the schedule continues on 79 and 80, does it
2 not?

3 MR. SOLOMON: 79 -- I'm lost. 6478.

4 MS. PROVOST: 6478, 79 and 80. That's one schedule.

5 MR. SOLOMON: Got it.

6 Q This schedule delineates for the Court which assets
7 are income producing?

8 A Yes.

9 Q And I believe that's the only place where you have
10 included that information. Am I incorrect in my
11 understanding?

12 A This schedule, and you have to go back in what it
13 was used for, was a hearing that we had I believe in making a
14 determination from this Court of which ones did we need
15 appraisals on to come down to a value. So this schedule was
16 prepared for the Court's knowledge of the properties, the
17 values if they were income producing or not because that was a
18 question and that's what this schedule was used for.

19 I believe after that it may have been -- just
20 getting the appraisal on this property is like getting an
21 appraisal. So we were directed then to get appraisals. I
22 believe that's what this was for.

23 Q Okay. Your tab 11, sir. What does this report tell
24 the Court?

1 A This was a source application filed pursuant to
2 April 10th hearing. I think this was -- let me look at this
3 for a second. This is a hearing where I was requested by the
4 Honorable Frank Sullivan to submit a source application of
5 funds to the Court no later than April 23rd. And so this was
6 in answer to that direction was given by the Court.

7 Q And if I -- if we look at DEF-6818, that is this
8 schedule that you prepared, a summary schedule that you
9 prepared?

10 A I believe that's true.

11 Q Okay. Looking at this Page 6818, it appears that
12 you have broken down the sources and applications of rental
13 and interest income at the top with the -- and then other
14 income and expenses in the middle and the application at the
15 bottom. So it looks like it's almost two separate schedules
16 with a summary at the very bottom. Is that fair to -- a fair
17 description?

18 A Well, the top part, it said sources. That's
19 basically the offer -- that's the BanOne houses, Lindell, they
20 already rent the RV park, rent can -- came in. When you get
21 down to the second part, it is saying this is operations. The
22 second part where it says source and application of other
23 income and expenses was other than the operations of the
24 BanOne house, the Lindell property and those which had an

1 income, because the top part is saying for example, BanOne
2 houses had a million three were only expenses for 499 taxes.
3 And then you have Lindell 341 and Lindell expenses. So those
4 were the things that were operational.

5 When you get down to the second part, where did
6 money come from? Well, related individuals, the sale of real
7 estate, the Silver Slipper and the Hideaway income, redemption
8 of CDs, Eric Nelson put in in other income not from the --
9 both sources. And then the applications were given below by
10 where did that particular -- where did the money go down below
11 that did not relate specifically to operations?

12 Q Okay. And from this schedule, it appears that the
13 rentals are running at a positive over the last three years,
14 is that correct?

15 A Yes, that is correct according to this schedule. If
16 you take the BanOne houses and million three, the only expense
17 had been 499 and 379. That would indicate there has been a
18 profit on the rentals of those houses.

19 Q And so for each of the last three years, 2009, 2010
20 and 2011, there has been profit from rentals.

21 A That's what the schedule proposed.

22 Q Then looking at the source and application for the
23 -- sources and application for other income, you have
24 \$419,598.83 listed as coming from related individuals,