Q Okay. So you're not referring to her trust assets going back and forth into -- or going into Eric's trust, correct?

A No, we documented that in the report.

Q Now you have here see item 12 of our observation form review of trust accounting below. So what is item 12? Is that --

A Let's see. Where are we at again? I lost my spot here.

Q I don't have a tab 12 on mine. Is there a tab 12 somewhere or --

A Item 12.

Q Item 12. What's item 12?

A Of our observations -- oh. I don't know if that's a typo. I think I had these observations on the following page at the bottom numbered at one time.

Q Okay. So which what --

A So would it be probably approximately the 12 -- let me see. We're talking about -- it's -- it's referring to the paragraph at the bottom of Bates Number 8.

Q 8? Oh, okay.

A And it's just -- it's talking about the same thing.

Q Okay. So we'll get to that paragraph, but that's what your referencing?

A That's what I'm referencing. I must -- I think I had these numbered originally and deleted it and forgot to change that reference.

Q Okay. So what are you telling us here by that sentence? What are we supposed to be observing or what's the relevance of this?

A I -- there was net operating losses. What I'm telling you here is there are net operating losses incurred due to losses on Eric's separate property that were carried back to 2001 and 2002 which was a joint income tax return. The refunds were deposited into Eric's trust. I'm not sure what the legal ramifications are if that would be Eric's separate property, because it -- the refunds were generated from Eric's separate property losses or if it should be split 50/50. Whatever.

What I did do is I showed that 50 percent of that was due back to Lynita's trust is how I posted in the books. But that was just -- it's an observation of money that came in that I wasn't sure of it's character.

Q But that would be -- so the entire hundred and ninety-five thousand ten dollars went into Eric's trust, correct?

A Correct.

Q And that was based upon the bookkeeping of Eric and

his young ladies that you referred to here earlier, correct?

A Correct.

Q Okay. And so you just decided to correct that entry whether it was a mistake, however you want to characterize it and to credit half of that back to Lynita.

A Yeah. And then whether that entry is correct, I'm saying I don't know if that was correct even for me to do that. It may a hundred percent belong.

Q Okay.

A But I wasn't sure. So I took the conservative approach and --

Q Now what year was that deposited into Eric's trust -- the trust --

A I mean, it's 2006.

Q So six years ago.

A Correct.

Q And Eric has had the use of those monies since that time.

A Actually, I think she had a hold of that -- in 2006, she really owed him money overall.

Q Well, but under your theory.

A Right. Because of all of the property transfers that went to Lynita's trust that it was substantial assets transferred to Lynita.

Q Let me ask you. Did she compensated anything for giving Eric 50 percent interest in the cabin?

A I'm -- I -- yes. She --

Q What did she get?

A She's getting all the Mississippi property going her way.

Q But you gave half of that back.

A Yeah, so 50 percent of it.

Q Did she get anything for transferring half of Lindell to Eric?

A Again --

Q Did she get anything for transferring --

A Yes.

Q -- half of -- what did she get?

A 50 percent of the Mississippi property.

Q And who told you that?

A As I answered before, it was Eric and what the transaction was. And also I -- Lana and I discussed it also with her.

Q When was the Mississippi property transferred into Lynita's trust?

A 2004.

Q When was Lindell transferred into --

A That was -- I'm sorry.

Q When was 50 percent of Lindell transferred into Eric's trust?

A 2007.

Q When was 50 percent of a cabin transferred into Eric's trust?

A 2007.

Q Now we have already heard from Jeff Burr that discussions with Eric with respect to issues pertaining to the divorce were as early as I believe August of 2007.

A I'm -- I'm not aware of that, so --

Q Then moving on. However, even regarding these tax refunds, it is our understanding that these refunds were generated from losses from Eric's 2001 trust property and may have been treated as Eric's separate property. Now you've gotten that understanding from whom?

A That's my own.

Q Okay. Eric had the capability to file an amended return on his own to claim these refunds, however, we did not trace where the original tax payments came from or reviewed the original returns to confirm our understanding. So you didn't even review the returns?

A They were -- I couldn't -- they didn't have copies of them.

Q So you're just going by memory.

A No. I'm -- I'm saying I know -- yeah. Well, I know that the losses were part of that audit that we went through, so I was --

Q But you -- okay. So you're just going by your memory.

A As far as what? I mean, what did --

Q The losses.

A That the losses were from Eric's --

Q Yes.

A Yes. That's correct.

Q Because we could not confirm our understanding these refunds. We adjusted the books to show that one-half of the refund was due back to Lynita's trust. Next paragraph. There were transfers made of assets back and forth between Lynita's trust and Eric's trust. Eric's trust -- now is that a mistake here? Are one of those supposed to be Lynita's trusts? It says Eric's trust and Eric's trust made loans --

A Yes.

Q -- between --

A Yes. Yes.

Q Okay.

A One of those is supposed to be Lynita's.

Q So just one of those we'll make Lynita's trust. Okay.

A Correct.

Q All right. So Eric's trust and Lynita's trust made loans between each other as evidenced by written notes between them. We have accounted for transactions between these trusts as a due to due from account in order to keep track of what was due to each trust and then see Exhibit 7 for a list of these transfers. Well, let's first go to tab 5 of your report. Tab 5 consists of four promissory notes that the Bates stamp number on the bottom of this is from you.

A Okay.

Q Okay. Which indicates that this was received from you. Who did you receive these from?

A I -- Lana and Eric.

Q And when?

A I don't recall when. I would have to look at the Bates stamps on the files.

Q Okay. And will that be shown --

A Probably a year ago.

Q Okay. Now let's take the first one. It's a $440,000 note that was due to be paid on or behalf January 1 of 2002.

A Uh-huh (affirmative).

Q Was this note ever paid out?

A Yes.

Q And where is the evidence of that?

A We traced it. There is an assignment of property. Deeds were transferred to the satisfaction of this note as they agreed.

Q So what you're telling us then is sometime approximately in September of 2001 Eric borrowed $440,000 from Lynita's trust.

A Correct.

Q And that would have been cash from her trust?

A Uh-huh (affirmative).

Q Is that a yes?

A That -- yes, sorry.

Q Do you know why Eric's trust would have needed $440,000 in cash during that period of time?

A I would have to go back and look at it. I don't recall.

Q Was this during the same period of time that he had that million dollar cash flow that you were telling us about?

A No, that was prior. That was in '98. Million dollar -- the billion dollar cash flow we were talking about earlier was back in '98. This is in 2001.

Q So apparently in 2001 he needed some money.

A Apparently.

Q Do you know how many of these type of transactions

that -- where he needed money from Lynita's trust that occurred between 1993 and 2001?

A No.

Q And instead of paying back in cash, what did Eric do?

A He -- originally, he transferred a note of equivalent amount from Lucky Lucky Lucky -- I think it was Lucky Lucky Lucky if my memory is right. A note receivable from that entity and then that entity transferred some Mississippi property to her satisfaction. I think it was Mississippi. It may have been -- I just know it was real estate for sure. I -- I --

Q Do you know what --

A I think it was Mississippi. I would have to look.

Q Do you know what real estate?

A Well, that's what I was saying. I'm -- I'm a little fuzzy on which -- but there was -- there was deeds -- deeds that we saw on the transfer.

Q Now you obtained this from minutes, Eric's minutes?

A From the -- actually, there was -- I'm sorry, I don't -- there was a written agreement that we looked at whether it was in the minutes. I forget exactly. I just recall seeing -- we did cite notes -- minutes on that. I believe -- I'm not sure if it was the minutes itself.

Q But we are looking -- we have seen minutes dated August 31st of 2001 where references made of Eric's trust borrowing $440,000 from Lynita's trust.

A Uh-huh (affirmative).

Q Now the purpose of that was to purchase Viva Gaming Management, Inc. Is -- does that refresh your recollection on anything?

A Well, that it states what the purpose is right there.

Q Okay. And that is a business entity that went defunct?

A Correct. That was a Mexico operation.

Q And essentially Eric lost his entire investment in that investment?

A That is correct.

Q And so you're telling us then he then transferred -- well --

A With -- within less than a year from this date he transferred first, the note and then that note Lucky Lucky Lucky, it -- I'm sure it was Mississippi property. He gave a few tracks of land in Mississippi in exchange to pay off that note.

Q And do you know what tracks of land he gave her for this $440,000 in tax --

A It's --

Q -- that he took from her?

A -- it's on my -- it's on my CD, the -- the documents and the deeds. The deeds were there.

Q Now is that -- does that land still exist today?

A I believe it does.

Q Now is that part of the land that you decided to give half back to Eric?

A No.

Q Okay. So how did you separate that land from the other?

A There was 80 acres of beach front that had been transferred to Lynita in 80 -- in 2004. And so I ignored all the other tracks and only valued the 80 acres out of the 200. I kind of just -- because that was the most valuable tracks at the time.

Q And who owns the 80 acres today?

A Lynita's trust.

Q And do you know what the value of that is?

A Yes. Based -- Well, based on the recent appraisal, it -- it -- 12 acres of it valued at a million, nine. 12 or 14 I forget --

Q That 80 acres, do you know what that 80 acres value is?

A Well, the rest of it was not valued, so it didn't have that much of a value.

Q Pardon me?

A The rest of it didn't -- there was maybe a half a million on some of the other acreages, but the key 15 acres was worth almost two.

Q And is that -- what appraisal are you looking at?

A The one that Larry Bertsch had --

Q And does that appraisal include -- is that acreage that you're talking about included in this 80 acres that you think went to Lynita?

A Which -- okay. I'm confused on the question. Which -- say it again, please?

Q I'm just curious about -- you told us that somehow a decision was made that instead of giving Lynita back the $440,000 cash that Eric took from her in September of 2001 she somehow ends up with property in Mississippi.

A Uh-huh (affirmative).

Q Is that a yes?

A Correct. That's a yes.

Q And do you know specifically what property she ended up with?

A I can look at the deeds and tell -- show you, but I don't have -- I would have to look at my work papers.

Q All right. The next promissory note that we see is Eric again taking a hundred and seventy-two thousand two hundred and ninety-three dollars and 80 cents from Lynita's trust sometime in May of 2002, is that right?

A That is correct.

Q Let me go back to the first one for a second, okay? September of 2001, did that note, that 40 -- $440,000 show up on Eric's books?

A Yes.

Q Where? Other than the minutes, did that $440,000 loan show up on his general ledger?

A It -- not initially it wasn't there, not until --

Q So you made the adjustment.

A Correct.

Q Okay. So you made the adjustment. It was never on his books.

A That did not get posted.

Q All right. Now the hundred and seventy-two thousand two hundred and ninety-three dollar and eighty cent promissory note, do you know why Eric took this money from Lynita's trust in May of 2002?

MR. SOLOMON: Object to the form of the question. It assumes facts that are not in evidence.

THE COURT: But you saw it as a loan?

THE WITNESS: I just saw it as a loan. I didn't look at what it was for.

BY MR. DICKERSON:

Q Do you know why Eric needed this loan from Lynita's trust in May of 2002?

A No.

Q Was this loan ever paid off?

A Yes, it was.

Q When and how?

A I don't recall. No.

Q How do you know that it was paid off?

A Well, I go back to the books and follow it through.

Q Well, isn't it a fact that this loan also never showed up on any of Eric's books other than in the minutes?

A I don't believe so. I think it does show up on there.

Q But can you show us where it's reflected in his books? Where are you looking? I might be able to help you.

A I'm looking at account 2205 on 92, the Bates Number 92.

Q You're on there?

A I am. And it's -- it's buried in the 2002 transactions.

Q Can you tell us where it is?

A C -- HAE001, record 2002 activities. The money that Eric borrowed, he also paid Lynita back. And he actually paid her back 265,000 in cash that went from Eric's trust to Lynita's trust.

Q Okay. So what --

A During that year.

Q -- was done then --

A So it's netted together.

Q And this is what year?

A 2002.

Q So in 2002, what you're saying is that he did what? Took all of from --

A I'm saying that --

Q -- all the monies that he borrowed from her during 2002 and did what with it?

A He actually paid her back more than we borrowed in 2002 and paid part of the money that he's got. It only left a balance of 27,000 that was due, Lynita's trust. Originally, he owed her 270. He borrowed more money and then paid her back substantially all of it.

Q And what is the entry of this log? What -- the one that you're referring to on Page 92.

A It's journal entry number one.

Q So what year -- your -- this was done in 2002?

A Yes.

Q So are there any promissory notes for the other amounts that are reflected there?

A There was some money that came in and out that we didn't see promissory notes for.

Q So apparent -- did you see any minutes with respect to that?

A Not for every transaction, no.

Q Did you have any conversation with Lynita as to whether those transfers to Eric were authorized by her?

A I did not.

Q Okay. We move to the next promissory note, $700,000 in October of 2003. Can you tell me why Eric would need to take $700,000 in cash from Lynita in October of 2003?

A I don't know the reason for the note, so no.

Q So now it appears -- do you know what -- was this ever paid off?

A That's -- let's see. Because there's cash going in and out. So we've -- at the end of 2003 Eric's trust shows it owes Lynita's trust 707,000.

Q How much?

A $707,402.

Q And what's what -- and that's reflected where?

A On account number 2205, the same account number.

Q Bates stamp number?

A Bates Number 107.

Q All right. So what does that entry -- you're looking at 2205, about the fourth one down.

A Correct.

Q What does that show us?

A It shows what the ending balance was. The net money coming in and out between the two trusts was 680,000 that year.

Q And what is the 707 mean?

A That's the ending balance.

Q Owed to who?

A Lynita's trust.

Q Now was that ever paid off?

A Let's go to next year. Yes. It was paid off in 2004.

Q How?

A Let's go to -- Exhibit 7 shows the transactions on an annual basis. It probably would be easier to go there. Let's see. Exhibit 7 would be before -- and this up here. A lot of it was paid back in 2004. As far as cash coming in and out, there was still a balance due at the end of 2004 of 324,940. And then that's in 2004 Eric transferred all the Mississippi property. And according to the minutes I saw,

part of that note was paid off with Mississippi property. But just with cash in and out, there's still a balance of cash due of 3 -- 324,940.

Q Didn't you see from the minutes that the -- take a look at the promissory note itself and that you're referencing. Doesn't this provide that as collateral for this note, a grant bargain sale deed will be completed to transfer that portion of the property owned by Eric L. Nelson Nevada trust commonly known as Tropicana Albertson land, the appraiser number there, to Lynita's trust. Now moving on, a minimum monthly payment will be paid with a monthly income from Eric L. Nelson's trust monthly mortgage interest payment from the Heiser (ph) trust of $2,098.43. This payment will be applied to principal beginning monthly on or about December 1, 2003 through August 1 of 2006. On September 1, 2006, a balloon payment will be made for the total outstanding principal plus six percent APR on the balance. Okay. I may have read that somewhat incorrectly, but you've got it. You read that with me, right?

A I listen to you every day, yes.

Q All right. So do you show any monthly payments going to Lynita of $298.43?

A I don't recall what the monthly amounts were.

Q You don't recall --

A I --

Q -- seeing any of those, do you?

A Well, I don't recall, period, what -- I didn't -- I had Angelo tracking, Angelo, my assistant -- the manager in my office tracking this. So he's the one who did the -- the part of the work, the bookkeeping part and tracing the transactions. So that's why I don't recall.

But what he did is summarize the cash coming in and out and there was 300 and some thousand paid off during the year. I don't remember each monthly entry. There's too many transactions.

Q Do you know that this prop -- this note was paid off by a transfer of the Tropicana Albertson land?

A What I do -- no, that actually never got transferred. That Tropic -- the deed never was transferred. I think it -- and so we did not reflect that being transferred because there was no actual transfer of that Tropicana land. So the minutes, that's not what happened.

Q Well --

A I think it was booked that way by --

Q What if I told you that on November 12th, 2004 the deed was signed by Eric's trust conveying that Tropicana land to Lynita's trust, but that was not recorded until January 5th of 2005? What was the date it was recorded?

A When you have -- you have something that I haven't seen here.

Q I'm going to go through something here. Are we --

THE COURT: Do you want to finish up this and then we'll take a break?

MR. SOLOMON: Mr. Dickerson, have these documents ever been disclosed to us before?

MR. DICKERSON: They are deeds. They are --

MR. SOLOMON: Have they ever been disclosed to us before?

MR. DICKERSON: No, because I am responding to your expert witness whose report you gave me a week before trial. I'm giving them now.

MR. SOLOMON: Well, I'm not sure the transfers between the trusts were not known to you prior to our expert witness.

MR. DICKERSON: I didn't know what your expert was going to say.

BY MR. DICKERSON:

Q I'm showing you what's been marked as quadruple I. Can you take a look at this, sir? There is a deed, the number at the top of the recording. It is 20050 -- 150. And it ends with 004265. Do you see that?

A Which one? Say that one more time, please.

Q Let me help you find it. It's --

MS. PROVOST: About halfway through.

Q There's a grant bargain sale deed that appears to have been signed by Eric L. Nelson trustee, the Eric L. Nelson Trust, on November 12 of 2004. Do you see that?

A I do.

Q It appears that this deed was recorded in January 1 of 2000 -- or January 5th of 2005.

A Correct.

Q And this property, are you familiar with this deed? Are you familiar with the transaction?

A I am somewhat familiar with the transaction and we -- it was recorded on the books as if it was transferred. And when we investigated it, we could not find any evidence that it was ever transferred and could not find any deeds or so --

Q You did not find this deed?

A We didn't. Angelo did not --

Q So Angelo --

A -- come up with this.

Q -- searched for the deed, but he just couldn't find the deed, is that right?

A Evidently.

Q All right. So this is a deed to the property referring to the Tropicana Albertson land, is that right?

A I'm -- well, I'm not sure of the legal description, but if that matches that, I'll have to take your --

Q And you see that Eric's trust is transferring to Lynita's trust 50 percent interest in this land?

A Correct.

Q And then we see as you take a look at the next deed, well, we see that he claims -- look at the declaration of value form, a few pages back. He claims that this transfer from his trust to her trust is exempt from the transfer tax pursuant to Nevada law because it's a transfer from husband's trust to wife's trust.

A Correct.

Q Do you agree that that's accurate?

A That's what it says.

Q But do you agree is that -- that is a legitimate exemption?

MR. SOLOMON: Objection, relevance.

MR. DICKERSON: Okay. I'll accept it.

THE COURT: Well -- now a good time to break? I don't know how much longer you have. We have a few minutes

MR. DICKERSON: Okay. I'll just go --

THE COURT: -- we could finish.

MR. DICKERSON: I'm just going to get through this.

THE COURT: Okay.

BY MR. DICKERSON:

Q Do you see sir then that the next deed is another deed that is now recorded in June 25th of 2007 approximately two and a half years later where Lynita's trust is transferring the property back to Eric's trust? Do you see that?

A I am. I do.

Q And do you know why that was done?

A I'm -- again, not -- well, I -- it was all part of the -- I'm not sure why.

Q Do you know what considerations Lynita received for transferring her interest in this Tropicana Albertson land to Eric's trust?

A I do not.

Q Now if we take a look at the next deed, do you see that there's a grant bargain sale deed, the same property? And now Paul Edward Nelson, a married a man, and Eric L. Nelson Trust are conveying to the Las Vegas Center Limited LLC. Are you familiar with this transaction?

A I am not that familiar with the transaction as a whole note.

Q Do you know how much money Eric received from the sale of this property?

A It --

Q Do you know how much?

A I'm not sure if it was a sale or a contribution to partnership.

Q Well, let's take a look at the declaration of value form which is back here. It appears that the sale was for $1,457,000, is that right?

A That's correct.

Q And this sale was made on the exact same day that Lynita transferred her interest in this same property to Eric's trust, is that right?

A Let me look at the dates.

Q Is that true, sir?

A Just a second. Let me get to the right deed here. It's not the same day. It's close in time.

Q Well, it's --

A It's two months apart.

Q It looks like the deed -- take a look at the deed that Lynita conveyed -- Lynita's trust conveyed to Eric's trust was recorded on June 25th, 2007.

A But it was signed on November 28th, 2006.

Q So it was signed in, it was held off and recorded on June 25th, 2007, is that correct?

A Correct.

Q So whoever decided to record this on that date

waited almost seven months to do so, correct?

A Correct.

Q And then we see that on that same day by way of a deed that is dated January 11, 2007, this grant bargain sale deed is actually recorded in which Eric and his brother that -- Paul Nelson is his brother, right?

A Yes.

Q Apparently are conveying this property to Las Vegas Center, LLC, true?

A True.

Q And it appears from the declaration of value form that appears to have been signed by Eric or not?

A By Eric and Paul.

Q It looks as if the sales price was $1,457,000, is that right?

A That's correct.

MR. SOLOMON: Object, it's either sales price or total value.

THE WITNESS: It's value -- yes.

BY MR. DICKERSON:

Q Well, sales price of property.

A Or value.

MR. SOLOMON: Hold on.

Q Can you tell us how Eric booked this on his books?

A Right now I don't recall. I would have to look and see.

Q Can you look for it?

MR. DICKERSON: I'll tell you what, is this a good time to take a break?

THE COURT: Yeah, why don't we --

Q Okay. Why don't you look at that during the break and tell us how he recorded this transaction on his books.

A Okay.

Q Then I would also like you to look in there and tell us how much of this 1.457 million did Lynita receive. Okay?

THE COURT: We'll be in recess until about 2:30. You can leave everything here and we'll lock it all up for you.

THE WITNESS: Okay.

(Recess in proceedings)

* * * * * *

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 Medrano

Adrian N. Medrano

TRANS

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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

THURSDAY, JULY 19, 2012

APPEARANCES:

The Plaintiff:	ERIC L. NELSON
For the Plaintiff:	RHONDA FORSBERG, ESQ. 64 N. Pecos Rd., #700 Henderson, Nevada 89074 (702) 990-6448
The Intervener:	NOT PRESENT
For the Intervener:	MARK SOLOMON, ESQ JEFFREY P. LUSZECK, ESQ. 9060 W. Cheyenne Ave. Las Vegas, Nevada 89129 (702) 853-5483
The Defendant:	LYNITA NELSON
For the Defendant:	ROBERT DICKERSON, ESQ. KATHERINE PROVOST, ESQ. 1745 Village Center Cir. Las Vegas, Nevada 89134 (702) 388-8600

MR. SOLOMON: -- her out, but didn't know she snuck in from the back door.

THE COURT: I thought we --

MS. FORSBERG: Oh, snuck in.

THE COURT: -- started going back.

MR. SOLOMON: We've been waiting 10, 15 minutes for you.

THE COURT: Yeah. Or setup a motion to have you held in contempt, Mr. Dickerson.

(Off record)

THE COURT: This is reconvening the matter of Eric Nelson and Lynita Nelson, case number D-411537. We took a recess for lunch. We're ready to pickup where we left off. Mr. Dickerson, you can proceed at your pleasure.

MR. DICKERSON: Thank you, Your Honor.

BY MR. DICKERSON:

Q Mr. Gerety, before we left, I had asked you if you could check your records to determine how much money Eric Nelson received from the sale of the Tropicana Albertson property. And then also --

A Okay.

Q -- add on that if you could also check to see how much Lynita received if anything from the sale of that property.

A Okay. I thought -- well, okay. I thought the question was how was it recorded, the transfers of the Tropicana property and my client's --

Q I do want to get to that. That's my next question. You're --

A Okay.

Q -- one step ahead of me. But do you know how much she actually received from the sales proceeds of the roughly 1.4 million dollars?

A I do have it in our file because I have the sales documents, but off the top of my head I don't remember the exact amount.

Q Do you know that he received a great -- greater than half the amount?

A I do not know that.

Q Are you aware that on September 2nd, 2007 he deposited $966,780.73 into his deed -- his trust account?

A I do know that the number was in that range, yes.

Q Okay. And do you know where that -- do you know where that 900 -- I'm going to use 966,000. Do you know where that $966,000 came from?

A I believe it came from the sale of the property.

Q And do you know why he received more than 50 percent of the sales proceeds?

A I don't recall at this time without looking at the contracts.

Q Now of the monies that were received from the sale of the Tropicana Albertson property, how much if any -- how much money if any did Lynita Nelson or her trust receive?

A She didn't -- I don't believe she received anything from the sale of that property.

Q Now in going through your adjustments that you have under tab 8, you have entries for the Tropicana Albertson land, do you not?

A We do.

Q Okay. Let's first -- I'm going to first direct you to Page Number DG-00117. And the Tropicana land that we're referring to is what you call account number 1580, is that right?

A That is correct.

Q Okay. So now 1580, if we take a look, this is for the year 2004. And it shows that the beginning balance for this was zero, true?

A That is true.

Q And you for some reason determined that you were going to reverse this and make that a -- do an adjustment for a hundred and seventy-six thousand five hundred and forty dollars, is that right?

A That's correct.

Q And that is because you somehow were of the impression that that land was never transferred to Lynita.

A That's correct.

Q And that you've seen the deed.

A I just saw it for the first time. I talked to Angelo while we were on break about this entry and -- and the deeds and so forth. And we were told that that property was never intended to be transferred and that it was reversed in 2007 but since it was never intended to be transferred we booked that entry at -- in '04. In fact, the reverse.

Q Okay. So not withstanding the fact that this promissory note that is at your Page 70 of your report --

A Uh-huh (affirmative).

Q -- indicates that if this $700,000 in cash that Eric took -- or Eric borrowed from Lynita's trust was not paid, then the -- this collateral, this grant bargain sale deed, the land would be conveyed to her.

MR. SOLOMON: It does not say that at all.

Q Well, let's see. As collateral for this note, a grant bargain sale deeds will be completed to transfer that portion of the property owned by Eric L. Nelson Trust commonly known as Tropicana Albertson land to the LSN Nevada Trust. Okay. Do you know if that grant bargain sale deed was

executed?

A As you showed me the deed, the thing is is it should have been a trust deed and --

Q There's no question it should have been a trust deed, but this is how Eric Nelson handles all his transactions, isn't that right? Many of his transactions.

A Well -- well, I can't say that. I --

Q Eric Nelson invests in real estate, does he not?

A He does.

Q All right. So if Eric Nelson decides that he is going to secure a note by a grant bargain sale deed instead of a deed of trust like most people would do, that's his choice, is it not?

A It's his choice. You would then give somebody here. You can hold onto this deed. This is your security. When I pay the note back, you give me back the deed. And that's what it looked like it happened is we took care of the note. You give me back the deed so the deed was transferred back to Eric's --

Q Tell me --

A -- trust.

Q -- where do you show that this $700,000 was ever repaid to Lynita?

A If you go to my Exhibit 7 which is on --

THE COURT: DG-00073?

A Yes. You can see that actually in '04, the net amount that actually went to Eric's trust was only 375, because he had paid money back. There's money coming back and forth there.

Q Where are you talking about, sir?

A That's cash transactions of -- for 2004. You got cash -- in 2003, you had 676. So I think the 2003 is when that note if I'm not -- got my years right was taken out. In '04, a large portion of that money come back to Lynita's trust. Eric had transferred 370 -- almost 376,000 net.

Q Do you know how he did that?

A I can -- I'll have to look at -- I'll have to look at the actual journal entries.

Q Can you do that?

A I'll need to get my CD out, computer out. And he also transferred all the Mississippi property which there was a few -- there's even minutes that said that part of the Mississippi property was to be in satisfaction of all the amounts owed at 2004.

Q No, but those were for loans dating back to 2002, is that right?

A It's --

Q I'll take a look at --

A I --

Q -- the -- I'll take a look at those minutes.

A We'll look at the minutes and see exactly the wording.

Q Yeah, I'll get the wording for you. This is the one where I believe it was to balance off the trust if I recall. Do you remember those minutes?

A But as of 2007 is when that deed was transferred back. And I'm showing that 2007 Lynita's trust actually before the transfers of property owed Eric's trust money.

Q According to your adjustments.

A That's correct.

Q Okay. Now --

MR. DICKERSON: May I have Exhibit -- oh.

Q Actually, do you have an exhibit book in front of you, sir?

MR. SOLOMON: He can only do one thing at a time. What do you want him to do? You asked him to look at his journal.

THE COURT: Yeah, he's looking for the --

MR. DICKERSON: Thank you.

THE WITNESS: Let's see. All right. On the biggest number, there was a number of payments, loan payments being made monthly. The biggest one was in October 6th, 2004,

Lindell Professional Plaza, a loan payment -- it was 350,000 was made.

Q What was that for?

A To pay down -- to pay down the loans between the two trusts.

Q Okay. So are you saying that there's evidence somewhere of Lynita borrowing $350,000 from Eric's trust?

A What I'm saying is there -- that's a loan payment going back to Lynita. And so it's -- it's against those -- the loans that Eric had borrowed from Lynita.

Q Okay.

A So there was a $350,000 payment --

Q And what note -- what does that pay off? What loan or note or transaction, what does that pay off?

A I didn't combine -- I didn't -- I just grouped all the balan -- the due tos, due froms in one account which is really what the -- the general ledger had done too. And so we just kept track in total. So I didn't apply -- I didn't really look at it on whether it went to one individual note or not.

Q Can I ask you to do this? Can I ask you to take a look at Exhibit 139 in the exhibit book next to you?

A And then -- okay. There's also other large payments.

Q Do you want to go through them?

A And then it's the transfer of the Wyoming property listed there.

Q When was that, sir?

A The general led -- per the general ledger it was posted November 15th, 2004.

Q And does that indicate why it was transferred?

A Just says transfer of Wyoming and -- no, it does not.

Q So you --

A But it -- it shows -- it indicates that it's a payment on the loan.

Q Well, does it -- where does it say that?

A It's being applied against the loans.

Q No, but it doesn't say it on the general ledger that it's being applied to the loans.

A Well, the -- by -- by charging it against a loan is indicating that it's a payment on the loan --

Q Well --

A -- which is the question --

Q -- who charged it?

A -- you asked.

Q You charged it?

A No, the -- the -- Lana, whoever was doing the books

in 2004.

Q So what journal entry is that?

A I -- there's no journal entry number here. It's not one of my journal entries. It's in --

Q So where is the corresponding journal entry or is there any -- where would we look for how Lana would have handled this?

A She would have posted a receipt of Wyoming property. How Lana -- I mean, it would have -- the Wyoming property would have gone off of the assets. Eric gave the asset to Lynita. The transferred title. And that's -- so you would have reduced the assets and reduce the liabilities at the same time.

Q Now if you take a look then at Exhibit 139.

A 139.

Q Are you on that exhibit, sir?

A I am.

Q Now the last resolution reads it resolved that all Mississippi and Las Vegas properties owned by the trusts will be transferred to the LSN Nevada Trust in exchange for final payment due on loans outstanding from 2002 and to level off the trust. Now did you -- have you seen that -- those minutes before?

A I saw this for the first time Friday.

Q Last Friday.

A Yeah.

Q Now notwithstanding this, first of all, do you have anything in the records that you show that all the Mississippi property and all the Las Vegas property was transferred to Lynita?

A There -- yes, there was -- there was property owned by Dynasty, Mississippi property where Dynasty actually transferred deeds. There was property owned by Eric's trust. And Eric's trust transferred deeds. There was -- so I mean, yeah, the Mississippi property was in the number of entities, but --

Q So what --

A -- but yes, but there were transfers of the deeds that which I show on Exhibit 7, those transfers.

Q So was all the Mississippi property transferred to Lynita pursuant to these minutes to -- as final payment on all outstanding loans for 2002?

MR. SOLOMON: Object, lack of foundation. I mean, it didn't even say that. It says properties owned by the trust. The witness just testified there's properties owned by Dynasty. There were also transfers --

MR. DICKERSON: Dynasty's isn't owned by the trust. I thought I -- Dynasty's owned by the trust, counsel.

MR. SOLOMON: You know, counsel, you know the difference between a property owned by the trust and a property owned by Dynasty and what these minutes say in it and there's no --

MR. DICKERSON: No, I don't.

MR. SOLOMON: -- foundation --

MR. DICKERSON: No, I don't understand --

MR. SOLOMON: -- this witness would know.

MR. DICKERSON: -- what anything Eric does. That's the problem.

THE COURT: Let's keep the civility and let's keep the --

BY MR. DICKERSON:

Q Were the -- were all the Mississippi properties transferred?

A I believe so.

MR. SOLOMON: What's the question?

Q Were all the Mississippi properties transferred?

A Yes, they were.

Q And how about all the Las Vegas properties?

A I don't -- I would have to look. I don't recall.

Q Okay. Can you -- will you please? Can you tell us what Las Vegas properties were owned by Eric's trust on November 20th of 2004.

A Just looking at this quickly, let me go to Exhibit -- the only property, there's 39th Avenue which I don't believe is in Las Vegas.

Q I believe that's in Arizona if I recall.

A And then there's the Tropicana land.

Q So the Tropicana land is the only property that Eric Nelson trust owned, that's the one that we're talking about, Tropicana Albertson land was the only land the trust owned on November 20th of 2004, is that correct?

A That's correct.

Q Okay. Now notwithstanding this, it's my understanding that because you were told by Eric Nelson that there was an agreement that all the Mississippi property would -- half of it will be transferred back to his trust. You accepted that representation and you made adjustments based upon that representation, is that correct?

A That is correct.

Q In fact, what you've done is -- well, we'll get to that. That's set forth in your tab 7, I believe, isn't it?

A Correct. The transfers are represented there.

Q And notwithstanding the fact that the minutes indicate that all Las Vegas properties are to be transferred to Lynita's trust, you ignored the fact that it was transferred to her and then the day it sold the deeds were --

the two deeds were recorded and Eric got all the money.

A That's false. That's not correct what the statement you just said.

Q All right. Correct it for me.

A I never saw a transfer of that. So it was not ignored.

Q I'm sorry. I didn't --

A And --

Q I didn't mean it that way. I didn't mean that you were doing anything -- but you have ignored that now.

A No, I did not ignore it. I questioned it, we investigated it and we saw no transfer. We saw -- and as now that I look at it, it -- you know, there was a deed already secured, I don't --

Q But I didn't hear -- understand your testimony earlier. My understanding was --

A I didn't ignore this is what I'm saying.

Q My understanding is that during the lunch hour you called your associate and your associate told you that he was aware of the deed but was told that it was --

A No.

Q -- recorded by a mistake and so you all backed it out.

A That's incorrect.

Q Okay. Correct me.

A That's not what I said.

Q Correct me, please.

A I said that we asked about the transfer. We were told that there -- there was no -- it was never transferred. We never -- I said we never saw a deed and we never further looked for a deed, because we -- we were told that that property never actually was transferred.

Q So you really --

A We have --

Q You have never --

MR. SOLOMON: Can you let him finish?

MR. DICKERSON: I'm sorry.

THE COURT: Finish. Yeah, let him finish.

MR. DICKERSON: Yeah, I will.

A And so --

MR. DICKERSON: He can say it gently.

A -- we made the journal entry because there wasn't as far as the records that we looked at, there was no transfer.

Q But you did not due diligence on your own, is that correct?

A And it -- well, and then we saw the property was sold and it was titled in Eric's trust name. It appeared to us. There was no transfer. So it didn't --

Q Did you see the date --

A We did do due diligence, so that statement's not correct.

Q Did you see the deed in which the transferring of the title to Eric?

A To where?

Q From Lynita to Eric, did you see that deed?

A No.

Q So what deed were you provided with?

A We -- with a sales contract which showed that the sale was in Eric's trust name which meant that he had to have the deed at that time.

Q Can you tell me why on your journal entry back here the one we just referred to, I think it was 117?

MR. SOLOMON: How about Bates stamp?

Q Why did you do that adjustment recorded as a hundred and seventy-six thousand five forty?

A That's where -- how it was carried on the books originally as.

Q Well, when was it on the books?

A It had always been on the books.

Q Okay. So if we go back to the previous year, let's go back to 2 -- now this is Item 1580, correct?

A Oh, I'm sorry.

Q Now if we go back to 2000 -- this is 2004. So if we go back to 2003, is there an item for 1580?

A No, there's not.

Q Okay. Let's go back then to 2002.

A No, that account number didn't exist.

Q Okay. How about 2001?

A I don't know. I don't believe it's there either.

Q So when you just told us that that's the value that was always on the books for, what are you referring to?

A Well, let me look at my journal entry here and I'll tell you. I -- my memory was wrong on that. I'm not sure. I would have to question Angelo on that. I'll let the basis of that number is -- general ledger Page 17. Let me just go back to the general ledger. He's -- his reference on that journal entry is the Page 17 of the general ledger for that year. This is 2004. Okay. Okay. The reason -- the reason that -- it was actually in account 1460 on the client's GL. So it was carried on -- on the -- Eric's trust general ledger under account 1406. I'm not sure why -- I'm not sure why I'm not seeing it -- that account here. But there was a beginning balance at the beginning of January of '04 for the Las Vegas Albertson land. And that's where the number comes from is what that was being carried at.

Q And what is the number on there?

A a hundred and seventy-six thousand five thirty-nine seventy-two.

Q And is that the cost basis?

A Yes.

Q And what year is that?

A 2004 general ledger.

Q Is that -- does that general ledger entry show up on the company -- the trust general ledger for 2005?

A No, because the -- that's why we were reversing it was it was -- the journal entry was on the client's general ledger in November 30th of 2004 showing that the property was transferred to LSN.

Q And that would be in accordance with the minutes that we just went over, wouldn't you agree?

MR. SOLOMON: Object, lack of foundation. This client has no way of interpreting what those minutes mean.

MR. DICKERSON: Well, he's been listening to everybody in the trust office. He's been listening to Eric.

MR. SOLOMON: Well, you ask some foundation --

MR. DICKERSON: He's been listening to Lana.

MR. SOLOMON: -- if he knows.

THE COURT: If he knows it. Do you know it? Do you have any basis?

THE WITNESS: No, I mean, the first time I saw those

minutes were just Friday. So that's -- it's relatively new to me.

BY MR. DICKERSON:

Q So you started your assignment in September of last year. You met with Eric. You have met with Lana. You have met with Rochelle. You have met with Shelly. And not one of them provided you with those minutes? Those are the trust minutes.

A We have a lot of the minutes. We did not have that particular page. And the minutes we really asked for were the ones for distributions just to show that there were distributions approved.

Q Well, you were also interested in the transfers between the trust, right?

A That is correct.

Q Was it part of the assignment to show there's no commingling of the trust property?

A Just we -- we asked about the transfer and we received email from Lana that it had not really -- was no intent to be transferred or was not transferred. I am not sure of the exact wording.

Q Well, do you know who walked the deed down and recorded it?

A Of course not. I didn't know it existed.

Q All right. If we move then to the next promissory note. That is your Page Number 71. What is this promissory note?

A It's a promissory note for $250,000 made out in December of 2005.

Q And do you know what it's for?

A No.

Q Do you know why Eric Nelson's trust borrowed another $250,000 from Lynita's trust in December of 2005?

A No.

Q Do you know if this loan was ever paid off?

A Again, I -- in 2005, actually, the cash transactions, there's more than 250 borrowed by Eric. There's about 576,000 in cash. 2006, there was more. In 2007 in cash transactions and postings, Eric had paid back close to a million five. So -- and again, like I said, I didn't trace those to individual notes. I just traced it to the total balance that was due.

Q When you say he paid back, you're -- now you're going from the -- again, the general ledger that was provided to you?

A Using that, yes.

Q And did it show how it was paid back and how that million dollars that you just talked about was paid to Lynita?

A The million five, let's go to cash transactions in 2007. Let's see. I have to pull up the 2007 general ledger.

Q Is that when this was paid off or reportedly paid off?

A Well --

Q I mean, this is December --

A Yes.

Q It indicates that it's due 12 months. So it may have been a month late, but it should have been paid off sometime in 2006. What does 2006 show?

A 2006 shows -- and it may have been paid off, but 2006 shows the net transactions, because there's money going back and -- I mean, there's transfers, there's payoffs, loan payments. And then there is money -- you know, other money coming and going both ways. But the net number, Eric had increased the amount that owed Lynita by 97,500 per their GL.

Q Okay. Now with respect to this particular note, the one on Page 71, if I can direct your attention to your Page Number 128.

A To my Page Number 128?

Q Right. Were you -- oh, I thought you were looking for something. Is that --

A Well, you asked me to turn to --

Q Oh.

A -- Page 128, so I was just waiting for a question.

Q Oh, I thought I asked a question. I'm so sorry. Do you see the transaction there 250?

A Yes.

Q Is that the transaction that you're referring to?

A It may be. I'm not positive if it's the same one or not.

Q Okay. Is this that promissory note? What --

A Like I said, I'm not sure if it's the same transaction or not. It was --

Q It seems to be the same date. The note's dated December 12 and it indicates record 12125 check from Lynita's trust, check number 1776 --

A Uh-huh (affirmative).

Q And the funds were used to get a CD. Now have you ever seen that check?

A I don't recall the source. We were following up on that deposit.

Q But it says here in your -- the column here under work paper per Lana, what does that mean?

A Per Lana.

Q Per Lana. I'm sorry. It Lana. I apologize. I know that. Per Lana.

A We were -- where the -- yeah, asking where that

money came from --

Q So --

A -- and then which we found it came from Lynita's trust, a CD that was in Lynita's name that -- or -- well, it's -- it describes it here. So there was a check number and we -- were funds used to setup a CD.

Q And you learned that then from Lana. She gave you that information.

A That's correct.

Q And then the same thing with the check right below that. It appears there is a $350,000 check per Lana, is that right?

A That's correct.

Q And that would be check number 1769?

A That's correct.

Q And then what is the next one? It says GLP15. What does that mean?

A GLP -- where do you see GLP?

Q Oh, I'm looking under your work papers. See work paper?

A Oh, that's general ledger Page 15.

Q So that's the --

A So that's the client's general ledger that comes from what they had posted.

Q Okay. So that's where you got the information, correct? So this column --

A Correct.

Q -- entitled work paper, for us to understand what -- how this form of your works, you're trying to tell us the source of the information?

A That's correct.

Q Now when it is blank such as the ones here on the top of Page 128, what does that mean?

A We didn't make any journal. The work papers are for the journal entries. Journal entry number one is -- just comes straight from their general ledger. It's what they posted. So there was no -- the work paper is the client's postings. So we didn't need to reference it to anything else.

Q Well, did you make adjustments? Say for --

A No.

Q -- look at 103. Did you make any adjustments there?

A No.

Q Okay. I guess that's going to be my next question, because I'm trying to figure out what your adjustments are, but --

A Well, again, I'll just repeat what I had mentioned a number of times it he journal entry AJE number one is not our adjustment. Those are the cash transactions as posted in the

-- in the general ledger prepared by Lana -- or -- and whoever was posting to the books. So AJE-01 comes directly from the general ledger. It's really not our adjustment. It's -- we're just summarizing all the transactions in one entry.

Q Well, so that we understand, looking at this page then, 218 at the top, we've established work paper is the source of the -- your information, correct?

A Correct.

Q The next column is simply what the ending balance was of the previous year.

A Correct.

Q Correct. And now the next two columns are for adjustments or --

A On this particular trial balance, the next column was the beginning. It's really the first -- the one dated December 31st, 2004 is the ending. The one dated December 31st unadjusted is really the same numbers if you look at it. It's just the beginning of the year balances.

Q Okay. I noticed your form changed over the year as you -- I'll go back --

A Yeah, I --

Q -- and try to clear that up. But I want to show you what's been marked as our next exhibit in order. This is Exhibit quadruple J. Those checks that we're referring to on

Page 218 --

A You mean 128, correction.

Q I'm sorry, what was it?

A 128.

Q Oh, I'm sorry. Yeah. 128. The -- starting with the $250,000 check dated December 12th, check number 1176 --

A Uh-huh (affirmative).

Q -- is --

A Yes.

Q -- this -- the first one, is that the check that you're referring to?

A Well, it's the same check number, yes --

Q Okay.

A -- as what we've referred to.

Q So it appears to be a --

A Go ahead.

Q It appears to be a check drawn on the account of Lindell Professional Plaza for $250,000. And this check is signed by Rochelle --

MS. PROVOST: McGowan.

Q -- McGowan, is that correct?

A Yes.

Q And the memo was loan.

A Yes.

Q All right. And then the next check is at the 200 -- the $350,000 check.

A Yes.

Q And this one again, 350,000 signed by Rochelle McGowan, but the memo says for management fee. And this is made to Eric personally, correct?

A Correct.

Q Okay. Can you tell me anything -- what do you know about this?

A Well, we did -- we did not record it as a management fee. We recorded it as a loan on the books with our adjustment and showed that that money was due back to Lynita.

Q But apparently the intent of when that $350,000 was taken from Lynita was that it be a management fee?

MR. SOLOMON: Object, lack of foundation. How would --

A I --

MR. SOLOMON: -- this witness know?

A All I can --

THE COURT: You know --

A -- say is -- I'm sorry, Judge.

THE COURT: Not that if you know. If you have any --

THE WITNESS: I -- I don't. All I can say is it

says management fee in the memo section of the check. I have no idea what the client was thinking or what Rochelle was thinking.

BY MR. DICKERSON:

Q Okay. But did -- now did you make an adjustment here?

A I made an adjustment to post it as a loan.

Q So why did you make that decision to oppose what Eric wanted as a management fee to a loan?

MR. SOLOMON: Object to the form of the question that Eric wanted that. All we know it was a mistake in the beginning. Who knows.

A Per -- that was our discussion with Lana. We -- we saw the money being deposited in there and we -- we were conservative in showing it as a loan.

BY MR. DICKERSON:

Q Okay. And then the check -- the next check, 751, that's the one for $25,000 again signed on -- all three of these are signed on Lynita's account Lindell Professional Plaza. This one is again by Rochelle McGowan and it says loan payment. What do you understand that to be?

A Again, we posted that to made sure it ran through the due to, due from and show as a loan.

Q So you look at this and you treated that as a loan

from Lynita and not a loan payment by Lynita to Eric.

A Again, we ran the due to, due froms together in one account. So a loan payment would still get posted to the same account whether it was a loan or a payment. It would still run through the same general ledger account.

Q Well, you treated this as a due from Eric to Lynita.

A I treated it as a credit to the due to, due from Lynita's trust and so whether -- loan payments would have been a credit to that account, a new loan would have been a credit to that account.

Q How did you treat it? Did you treat it as a --

A I treated it as a credit to that account.

Q I guess I -- let me simplify it, because I don't understand the credit/debit. I -- are you treating this as a loan from Lynita to Eric?

A I'm treat -- well, the -- whether I treated it as a loan payment or as a loan, it's the same journal entry. It's -- and in fact, in 2005 it showed that Lynita's trust before some of these transactions owed Eric money.

Q Based upon --

A So there would have been a debit balance in that account and if there was a loan payment, that would have been a credit. If Eric borrowed money from Lynita, that would have been a credit. We would have debited cash in Eric's GL and

credited the due to, due from.

Q Okay.

A So I guess I wasn't making a distinction is the point I'm trying to make.

Q I understand. Okay.

MR. DICKERSON: Your Honor, move for the admission of Exhibit JJJJ.

THE COURT: Any objections?

MR. SOLOMON: First time I've seen it, I think.

MS. FORSBERG: Yeah, first time I've seen it.

MR. SOLOMON: Has it been produced?

MR. DICKERSON: Listen, this is in -- I'm going -- no, it's being produced right now based upon the report we got from him a week ago.

MR. SOLOMON: May I inquire how long he's had this document and he didn't know it was relevant to his case before he received a report and couldn't produce it? Is that his theory of this ambush?

MR. DICKERSON: You can see that it says Wednesday, June 26th Central Time. So that's when it was ordered.

THE COURT: It's on the bottom.

MR. SOLOMON: Well, yeah. It says June 26th at the bottom, a month before the report he received this but didn't decide to disclose documents to us even though we have

routinely disclosed documents to him as we received them. You know, amazing, Your Honor, this apparently only works one way and objecting.

MR. DICKERSON: Objection?

MR. SOLOMON: Yes, it's untimely produced.

MR. DICKERSON: And I move for the admission, Your Honor. This is part of the rebuttal.

MS. FORSBERG: Your Honor, I also object. And he also has the obligation under 16.2 to continue to produce documents and he didn't. And he had this one a month before he got this report. Had he even followed 16.2 which he was under the obligation to at the beginning of this -- before the beginning of this trial, you know --

MR. DICKERSON: 16.2 only deals with documents that become relevant in a proceeding. Who would ever think that we're going to have a report like this --

MS. FORSBERG: Relevant?

MR. DICKERSON: -- that has more and more -- well, I won't even comment on it. Okay.

MR. SOLOMON: Look at your own pleading to determine whether it was relevant, because you pled that they were treating this alter ego and running monies back and forth.

THE COURT: Thank you.

MR. SOLOMON: Gee, I guess that might be relevant.

THE COURT: Yeah. How much probative value the Court gives I guess is another on that, but they will be admitted.

(Defendant's Exhibit JJJJ admitted)

THE COURT: Let's get this thing and move on on that issue. I think his testimony has gone through his ledger in detail showing --

MR. DICKERSON: So Judge --

THE COURT: -- what he posted.

MR. DICKERSON: -- to -- as you understand as you well know, okay, under the rules when we get a report, we're entitled to --

THE COURT: Allowed to go through.

MR. DICKERSON: -- have 30 days.

THE COURT: Absolutely.

MR. DICKERSON: So I'll tell you what I'm going to do. I'm going to have them delivered to each of them tomorrow binders. There's probably 10,000 pages?

MS. PROVOST: At least.

MR. DICKERSON: I'm going to have binders, probably 10 binders.

MS. PROVOST: I think it was 10.

MR. DICKERSON: I think 10 binders each. Easily in the estimate 10,000 pages. I'm going to have those send over.

I'm not going to Bates stamp them. They're going to be in a binder that is labeled as to what they are such as this one, but I'm not going to Bates stamp them, but those will be over to each of your office tomorrow and bless you.

THE COURT: Do you plan on --

MS. PROVOST: We don't plan on --

THE COURT: -- using them or you just --

MS. PROVOST: -- using all 10,000 documents, but if they --

MR. DICKERSON: I don't plan on using them all.

MS. PROVOST: -- want them produced ahead of time before we realize which ones we need to use, then I guess that's what they want.

THE COURT: Yeah, well, they're making a record. We have a nice record on that and the issue of them telling to --

MR. SOLOMON: The record -- I would like a record of when they got those documents.

MR. DICKERSON: Monday, this Monday.

MR. SOLOMON: You got all those documents this Monday.

MR. DICKERSON: Monday, yeah.

MR. SOLOMON: All right.

MR. DICKERSON: Trust me, Monday, is when all these were made.

THE COURT: Did you want -- do you want the delivered?

MR. DICKERSON: Well, all the doc --

MR. SOLOMON: Sure.

MR. DICKERSON: When they were made. Everything was compiled over the weekend and everything was copied.

MS. FORSBERG: Well, then how does this one show June 6th? That wasn't Monday.

MR. DICKERSON: No, the documents were complied. They're put together over the weekend after we get his report and the binders are put together.

MR. SOLOMON: So you had the documents for months but decided to compile them this weekend.

MR. DICKERSON: No, listen. These are documents that they had. Rochelle McGowan, his puppet --

THE COURT: No, they're all --

MR. DICKERSON: -- signed it.

THE COURT: They're all -- let's strike the puppet comment. We'll strike it on effect. These are the documents everybody apparently access to or they came on that. There's a lot of documents that everybody's been putting on that and the more, the better I guess. There's a lot of arguments that people are hiding things on that, but it looks like there's documentation for everything on that good or bad, but we'll

LAS VEGAS, NEVADA THURSDAY, JULY 19, 2012

PROCEEDINGS

(THE PROCEEDINGS BEGAN AT 09:33:56)

THE COURT: This is the time set in the matter of continuation of adjudicatory hearing as to Eric Nelson and Lynita Nelson, case number D-411537. We'll get everybody's appearance for the record, starting with Mr. Solomon.

MR. SOLOMON: Thank you. Mark Solomon, bar number 418, on behalf of Lana Martin, the distribution trustee.

THE COURT: Thank you.

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

MS. FORSBERG: Good morning, Your Honor. Rhonda Forsberg, 9557, on behalf of Eric Nelson.

THE COURT: Good morning, Ms. Lana.

MS. PROVOST: Good morning, Your Honor, Katherine Provost, bar number 8414 and Robert Dickerson, bar number 945, on behalf of Melissa -- on behalf of Lynita Nelson who is seated to my left. And also present at counsel table is Melissa Antanassio.

THE COURT: Good morning, Ms. Lynita. It's always good to see you. I guess where we left off, Mr. Gerety was on the stand.

MR. DICKERSON: Yes, Your Honor.

THE COURT: Well, Mr. Gerety, we'll have you come back up here. We'll get you all sworn back in again and get this show on the road for you.

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

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated.

DANIEL GERETY

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

CROSS EXAMINATION CONTINUED

BY MR. DICKERSON:

Q Mr. Gerety, you --

MS. FORSBERG: Your Honor, I believe I'm next.

MR. DICKERSON: Oh, I am so sorry. I'm so rude.

MS. FORSBERG: With three -- it's okay. But mine will be really brief for you, sir.

THE WITNESS: Okay.

MS. FORSBERG: I would ask every question that Mr. Solomon asked. So -- in my case, okay? Therefore, I'm not going to repeat them for the Court. We'll just make this stand as well.

THE WITNESS: All right.

THE COURT: Okay.

MS. FORSBERG: Sorry, Bob. I didn't mean to make you sit down.

MR. DICKERSON: All right.

THE COURT: I'm going to watch you --

MR. DICKERSON: Didn't get to the gym -- I haven't been to the gym this week and I've lost five pounds, so --

THE COURT: Okay.

MR. DICKERSON: -- I need trials.

BY MR. DICKERSON:

Q Mr. Gerety, I am going to show you what is marked as -- well, this is marked as Intervener's Exhibit 168. And that purports to be a complete copy of your report, is that correct?

A Yes, it appears so.

Q In fact, this is the report that you actually brought to Court with you yesterday, is that true?

A Yes.

Q And I believe you provided to the Court at the end of our proceedings.

A That is correct.

Q Now I'm going to leave the exhibit book. I'm going to put this --

A Sure.

Q -- one over here. And sometimes I may make reference --

A All right.

Q -- to that.

MR. DICKERSON: And Your Honor, I apologize in advance. I do have a number of potential exhibits to use. I haven't had time to have them premarked as we go through. I understand causes a little bit of delay, but if you bear with us, I think we can get through this.

THE COURT: Not a problem.

Q All right. Mr. Gerety, as I understand it, you have been working as a CPA for Eric Nelson and his various entities since 1998, is that correct?

A That is correct.

Q And if I understood your testimony yesterday, you primarily started with Mr. Nelson working with Wyoming Downs and the Phoenix Leisure project, is that true?

A That is correct.

Q And then -- and you have consistently continued to work with him throughout the years up into this date, is that correct?

A That is correct.

Q So we're looking at what, a good 15 years you have

been Mr. Nelson's CPA?

A That is correct.

Q Now in that 15 years you have defended Eric Nelson on a number of tax audits?

A That is correct.

Q In fact, there is a tax audit going on right now that you're representing Eric Nelson?

A That is correct.

Q How many tax audits have you represented Eric Nelson over the last 15 years? How many have you --

A I have helped him with three.

Q And in doing a tax audit for Mr. Nelson, what do you do?

A The first one, actually, Eric was handling themself until we got to the complex transaction to explain that to the IRS. And he pulled me in and I walked the IRS through the transaction, how basis was computed and went through all the tax codes and everything else with the IRS which the IRS found -- find. And actually, the entire audit was a no change.

Q And that was in what year?

A Oh, jeez. I don't recall exactly which year. It -- it was a number of years ago. It may have been around 2005, somewhere --

Q Okay.

A -- around there.

Q Now if I understood you, you're currently working on a tax audit with Mr. Nelson?

A There's an audit going on and Eric's been -- Eric's been handling most of it himself at his office. I think I was -- I think they were just about finished with that, actually. I haven't been that involved with it though.

Q Now Mr. Gerety, the attorneys for the ELN Trust filed a motion with this Court on March 6th, 2012. And the motion was entitled motion for payment of attorney's fees. And they represented in that motion and I'm reading from Page 4 starting at Line 7. It says further, the ELN Trust currently owes Gerety & Associates, CPA the ELN Trust expert witness $34,901.05. And Gerety & Associates, CPAs requests an additional $25,000 to be held as a retainer to offset fees associated with the preparation of an expert report on behalf of the ELN Trust. Now are those representations correct?

A They are.

Q So as of March 6th, 2012, Eric Nelson -- or excuse me, ELN Trust or Nelson owed you just short of $35,000?

A That's -- that sounds about right, yeah.

MR. DICKERSON: If I may have this marked as our next exhibit in order.

THE COURT: Quadruple H?

Q Mr. Gerety, I'm showing you what's been marked as quadruple H. And it's Exhibit quadruple H.

A Okay.

Q This is the billing statement that was attached to that motion that I just read from. And does this reflect the just short of $35,000 that was owed to you by Eric Nelson?

A It does.

Q Now I noticed that the bill is made payable to Eric Nelson -- or it was sent to Eric Nelson, is that right?

A It was.

Q This was for services rendered to Eric Nelson, is that correct?

A It was actually for the trust and for Eric Nelson both, actually.

Q Well, if we look at this bill, it appears as if it relates to services that you performed and this was probably sometime in October of 2011 the services in the amount of $8,421.05?

A That would have been -- that's when that invoice date was.

Q And so --

A It would have been prior to that.

Q What were those services for?

A I would have to look at the invoice.

Q Do you have any recollection of what you did in the month of August for Eric Nelson individually or the ELN Trust?

A You know, there's been a number of things. I know we looked at some of the Silver Slipper agreements in 2011 which just related to the issues going on with that. There was --

Q When you say the issues going, that would be the lawsuit that --

A Lawsuit.

Q -- Eric Nelson has going on with Paul Alanese?

A That is correct. Some of -- probably most of it was related to this case.

Q In what respect? What would have been doing in October of 2011 with respect to this case?

A In October, well, we started work on the accounting in September of 2011.

Q Then I noticed then you apparently stopped working for the month of November and December, is that correct?

A That's not correct.

Q Why is that not correct?

A This is just when I invoiced him. So I probably held off about three months before I invoiced again. So there was continuous time going on.

Q Okay. And then you billed him on January 31st, 2012

in addition of $26,480?

A I believe that's correct. Yes.

Q And what is your --

A This just shows the balance due on those invoices. It's not what the total -- you know, I mean, if nothing was paid on that invoice, that's correct, but if he had made payment previously, then that invoice could have been greater than that.

Q Well, wouldn't the payment have been reflected on the billing statement?

A Normally it would. Yeah, I guess that's correct.

Q So I mean, actually, you take a look at it. It shows invoice number 10876 was in the amount of $8,421.05 and invoice 11246 was in the amount of $34,901.05, is that correct?

A Correct.

Q Or actually, I take that back. We both misstated it. That last invoice, 11246, was in the amount of $26,480.

A Excuse me, yes.

Q Bringing the total to the 34,901.

A But that's the -- yeah.

Q And so you received no payments from either Eric Nelson individually or the ELN Trust during this period of time all the way up through at least March 6th of 2012, is

that right?

A I would have to look at my records.

Q Has this billing statement been paid?

A I have been -- I -- I have been paid -- I know I received like 20,000 on this and I -- I may -- this may have been. I --

Q You don't know?

A -- again, I don't recall.

Q So as you sit here today, you do not know how much is owed to you by either the ELN Trust or Eric Nelson?

A I would have to look at my records.

Q And where would you look?

A On my -- on our billing record -- on the Creative Solutions software we have.

MR. DICKERSON: Your Honor, move for the admission of Defendant's Exhibit quadruple H.

MR. SOLOMON: No objection.

MS. FORSBERG: No objection.

THE COURT: Hereby admitted as quadruple H.

(Defendant's Exhibit HHHH admitted)

BY MR. DICKERSON:

Q How much Mr. Gerety have you received from Eric Nelson individually or the ELN Trust over the last 15 years? Would you have a good estimate, ballpark amount?

MR. SOLOMON: Object to the form of the --

A No --

MR. SOLOMON: Hold on. Let me object to the form of that question. How much has he received from Eric Nelson individually? I don't know what individually means. As investment trustee, as an individual person not an investment trustee? It's vague and ambiguous.

MR. DICKERSON: Maybe he could clear that up in his cross -- redirect.

THE COURT: Do you know what he means as far as --

BY MR. DICKERSON:

Q How much money have you received for services rendered by you to either Eric Nelson, any of Eric Nelson's entities, the ELN Trust, anything dealing with Eric Nelson over the last 15 years?

A I'm not sure. Those tax returns, things like that, are probably -- you know, I don't even -- see, I don't actually do the billing. They're probably somewhere around $5,000 a year. And depending on the planning back when I was at McGladrey, you know, with Dynasty, we had some extensive work done then with the jockey club deal. So that probably ran 30,000 or so in some years.

Q How about since 2008 when the -- essentially when the divorce situation came to arise? What -- do you recall

how much you've received since then?

A I'm not sure. Again, I -- you know, it's easy to determine. I just need to printout a report. But I don't --

Q Well, we know that you testified before this Court in the year 2010.

A Correct.

Q Do you know how much you received from Eric Nelson or ELN Trust or any of his entities during 2010?

A Probably somewhere between 10 to 20,000.

Q Now have you ever -- did you ever have a discussion with Eric Nelson about giving him an opinion that you thought it might be wiser for him to hire an independent CPA to do the work that you were asked to do instead of somebody that he's had an association with for the past 15 years?

A I did not have that conversation with him.

Q Now in the preparation of your report if I understood you correctly, you were -- the primary source of the information you received was from Eric Nelson and secondarily from Lana Martin, Shelly Newell (ph) and Rochelle McGowan, is that correct?

A That's a fair state -- correct statement.

Q Now you have never talked to Lynita Nelson, did you?

A No.

Q Did you ever have any questions that you thought in

order for you to prepare an appropriate report for this Court that it would have been helpful for you to talk to Lynita Nelson?

A I -- I -- well, I was looking at just the transactions in Eric's trust. So I -- I thought talking to the trustees of the trust would be sufficient since they had full knowledge of what went on with this trust.

Q Well, you noticed there were a number of transactions in which there were purported loans from Lynita's trust to Eric's trust, is that correct?

A That is correct.

Q Did you ever give any consideration about talking to Lynita Nelson about what she understood those loans to be?

A I did not.

Q Did you ever make any suggestion to anybody involving this case that maybe it might be wise to take the deposit of Lynita Nelson to clear up any questions you may have or to verify matters that you've set out in your report?

A I was looking if they just added -- I'm trying to find the original documentation of the transactions, looking at what contracts were signed.

Q Did Eric Nelson provide you with the general ledger for the LSN Trust?

A I have some cop -- some years, yes.

Q So what years of the LN -- LSN Trust do you have general ledger for?

A I would have to look at my file. I don't recall off the top of my head.

Q Now in your report -- well, I will get to the report and the less. It -- if I understand your report correctly then, Mr. Gerety, you made absolutely no review of any transactions that occurred between the years 1993 and 2001, is that correct?

A No reviews, not a correct statement. We were trying to get those records, so we did start to look at some of those records. But it was too incomplete to do any type of report.

Q So in your report you make no reference to any materials that you have examined for the period of time between 1993 and 2001, isn't that true?

A Me -- well, we had records for 2001.

Q Okay. And that was the opening balance sheet --

A And the assignments. And I -- we looked at the separate property agreements from '93. We looked at the -- the signed -- all the agreements that were done in '93. So no. I mean, that's not a -- we did look at those records.

Q So you looked at the separate property list from 1993, is that correct?

A That is correct.

Q If you will, let's take a look then sir at Exhibit 4, in the exhibit book that's in front of you. If you take a look at Exhibit 4, please.

A Okay.

Q This is the separate property agreement. You reviewed that, is that correct?

A That is correct.

Q So that is a document prior to 2001 that you reviewed.

A Correct.

Q And then if we take a look at the attachments to that, let's start with Exhibit A. Do you understand, sir, Exhibit A to be the property that is to go into Eric L. Nelson's separate property trust dated July 13th, 1993?

A That is correct.

Q Let's take a look at that. This list under Item 1, two bank accounts. One at First Interstate Bank and the other at Bank of America.

A Uh-huh (affirmative).

Q Is that a yes?

A That -- yes, that is a yes.

Q Do either of those two accounts exist today?

A Actually, I don't think --

Q Let me go back.

A I would have to --

Q Did either of those two accounts exist in 2001?

A I would have to look at the account numbers. I don't have them memorized.

Q You did not verify that in doing your study?

A No, because I was looking at what the assignments were. After -- because we didn't have the records to trace those accounts --

Q Okay. So you could not --

A -- in 2001.

Q You could not trace those two accounts, is that correct?

A I'm saying -- yes, through what the transactions went on in those accounts --

Q Is there anything in your report that has been marked as Intervener's Exhibit --

MS. PROVOST: 168.

Q -- 168, is there anything in your report that you can turn to to tell us whether in 2001 either of those two bank accounts were in existence?

A I could look at the trial balance.

Q Would that be Exhibit -- tab 2?

A Exhibit --

Q It would be Exhibit -- let's call it tab --

A All right.

Q -- for -- is that tab 2?

A Yes.

Q All right. Now on tab 2, do you see either of those two accounts reflected on what you're saying is -- this is what you call the trial balance sheet?

A Correct.

Q And that is purporting to be a trial balance sheet of the assets owed by the Eric L. Nelson Trust as of May 31st, 2001, is that correct?

A That is correct.

Q Do you see either of those two bank accounts listed on tab 2, that --

A Let's --

Q -- trial balance sheet?

A No, I do not, but I think we need to go to tab 8 --

Q Okay.

A -- which is -- because there are a few accounts not shown. There was a Bank of America Money Market account that we couldn't get statements for that existed in 2001.

Q And can you tell me what that account number was?

A Not off the top of my head.

Q Is it anywhere in your --

A Not without looking.

Q Is it anywhere in your report?

A I don't think the account number's in my report. It would be in my file.

Q Can you show me where under tab 8 you're making reference to some money market account at Bank of America?

A Actually, I -- there was account 1001 money market account, but I don't think that's not the Bank of America one, I don't believe.

Q Can you give us your -- by the way, on the bottom of these --

A And that's -- that is -- as I stated earlier yesterday, that is the one account we could -- Bank -- we could not get statements from Bank of America on.

Q Okay. So is there anywhere in here where you can confirm whether that account number of Bank of America 990005372 was in existence as of May 31st, 2001?

A I would have to look at my file. Not from my report I cannot.

Q Now if you were to look at your file, what would you be looking for?

A The -- what records we had on with the money market. There's the general ledgers would show that money was transferred from that account.

Q Now you did not bring any of your records with you

today, did you?

A I have them on CD.

Q Okay. Did you make an inventory of all the records that you reviewed?

A We have all of them on that CD, yes.

Q Well, did you make an inventory? Did you -- as documents came in, did you make an inventory or --

A Well, when you say inventory, I mean, just a list on one sheet of paper or what do you mean by inventory?

Q Yes, that's what I mean, but I don't --

A I don't have it one sheet of paper.

Q I would assume it would be more than one sheet of paper.

A No, we just have all the documents themselves.

Q So you never made a log as to when you received a document, who you received it from?

A No.

Q Why?

A I didn't need to. We scanned it in. We got the scan dates. So I have the dates that they were scanned attached to the files and we sorted, split them up and sorted them so we -- as for our work papers.

Q Is there any chance I could get a copy of that CD --

A Sure.

Q -- say later today?

A Uh-huh (affirmative).

Q Is that a yes?

A A -- I can give you one right now.

Q I appreciate that. I'll take that right now.

A This was made last week, so if there's anything that came in, anything that came in last week like I got some documents Thursday and Friday -- or Friday actually, they're not on here. Because this was made prior to those documents coming.

Q Okay. So will we find out what documents were given Friday -- was that before you prepared your report or --

A Those --

Q -- after?

A That was after.

Q Now what documents were those that you received? What documents did you receive last Friday?

A They came from your office. There were minutes. There were some other documents that you can -- did I take that? I'm sure I -- this is an extra copy. I have one still on my computer.

Q Okay. Great. Thank you very much. So what you just handed me then is a disc that contains all the documents that were provided to you so that you could prepare your

report, is that correct?

A That is correct.

Q Now the documents that you received last Friday, can you tell us what they were? It was something you received from my office?

A Yes, it was -- it was stuff that you submitted as evidence to Mark's office. So --

Q Okay.

A -- Mark's office sent it to me.

Q I was going to say I was just wondering why I would be sending you something.

A No.

Q All right. So you received it from Mark Solomon's office.

A Correct.

Q What documents did you receive specifically?

A I received the minutes which -- for over the years for Lynita's and Eric's trust --

Q You had not reviewed any of those minutes?

A I reviewed some. I reviewed some of the distributions. I didn't review any of Lynita's minutes, no.

Q So if understand you correct, in preparing your report, you reviewed none of Lynita or L -- let's call it for easier -- let's call it Lynita's trust and Eric's trust. Is

that easier for you?

A Sure.

Q It's easier for me.

A Okay.

Q Okay. You reviewed none of the minutes for Lynita's trust?

A No, I wasn't working on her trust. And that wasn't provided to me.

Q Okay. And we'll get into that. And then you only reviewed some of the minutes from Eric's trust?

A I -- when we reviewed -- we -- the minutes we asked for were -- that is correct, because there were more minutes that you provided that Eric didn't have. We -- because we have minutes, but they weren't -- you had addi -- there was additional minutes I hadn't seen when I got your list. Does that make sense, that answer?

Q Well, the interesting thing is is how we obtained the minutes. It would have been through sources affiliated with Eric. At least with Eric's trust.

MR. SOLOMON: Well, I object to testifying in that regarding.

MR. DICKERSON: Well, all right. I guess we'll just have to establish that.

THE WITNESS: Well, that -- and that's what Eric had

too is because some of the documents we couldn't get. He said had given to you and you were going to charge him for those to come back.

BY MR. DICKERSON:

Q Of those what he's talking about is bank records that he --

A Right.

Q -- gave to Jolie Alanine (ph), correct?

A I'm not sure who he gave them too, but I just know that he had trouble getting some of the original documents that had been provided back because he had given the originals.

Q And but --

A Who they were given to, I don't know for sure.

Q Those were bank records, correct? Not minutes.

A That is correct.

Q And did you get all the bank records you eventually wanted?

A The only bank records we did not get and we asked Bank of America for them and Bank of America said they were -- they couldn't provide them were a money market account from 2001 through 2000 -- I forget '3 or '3 or '4.

Q And do you have that money market listed anywhere in your report?

A No, because we couldn't verify what was in there --

Q So you --

A -- at the time.

Q -- don't know how much was in there?

A I don't.

Q Do you know --

A I know what was transferred from there to this trust, yes.

Q Okay. And is that in your report?

A It's just -- it's in the balance sheets, yes.

Q But you couldn't confirm how that money got into the money market account?

A I could not.

Q Okay. And so what asset do you trace from that money market account?

A None. It was just gradual deposits coming in. I mean, you can't trace it to one individual.

Q How much money was in that money market account?

A I don't recall now. I had Angelo doing that work. I don't recall how much was transferred in. I can look --

Q Where would you --

A -- and see.

Q -- look, sir?

A I would look at our journal entries and -- and the

-- the balance sheets that we prepare.

Q Is that in your report?

A Let's see if I can tell here.

Q You're going to -- oh, I'm sorry. You're looking in -- at your report now?

A I am. I'm trying to think if we had -- it was all -- it was all in the early years. Most of it came in in 2001, '2. So it was again money being transferred at the beginning of the trust. It was in 2001, there was a hundred and ninety-seven thousand five hundred coming in.

Q Can you give me your --

A And I --

Q Give us your Bates stamp number at the bottom. And for the record, the DG --

A There's no --

Q -- that stands for Daniel Gerety or Dan Gerety?

A What -- what --

Q Your Bates stamps at the bottom where it says?

A I don't have any Bates stamps on this file.

Q Okay. So what -- oh, okay. You don't have -- oh, that's your -- okay. All right. Wow, that's going to make it difficult for us then, I think.

A It's Exhibit 8, Page --

Q I'll tell you what.

A -- 5.

MR. DICKERSON: I'll tell you want. Can -- is there anyway, Judge, we could -- wow. I think then for the record we're going to need the one with the Bates stamp, but there's just so many documents. Is there anyway we can switch the two exhibits or maybe have this one the -- we can have it twice. We can have this one there. Now does this one have the --

THE COURT: That one doesn't have the -- do you have -- yeah, we can switch them. Whatever we need to do to follow -- see -- could be easier for him to follow with the Bates stamp, yeah.

MR. DICKERSON: What I'm doing here is we had taken out of this one Bates stamps that were DG-00422 and 00423. So I'm replacing them from my book and putting them in this one as we're going -- two pages. This one's marked as Intervener's next. So that would be 169.

MR. SOLOMON: Are you marking that?

MR. DICKERSON: 169.

THE COURT: Can we just do --

THE CLERK: Is this the same information?

THE COURT: Yeah, we just replace that with the 168?

THE CLERK: With the exhibit?

THE COURT: Okay. Just mark that one 168 and we'll take the marker off the other one and just switch them out

then. Just make sure --

MR. DICKERSON: All right.

THE COURT: -- we get that one back.

BY MR. DICKERSON:

Q Mr. Gerety, we're going to give you your book back that were -- for our purposes you could --

THE COURT: That way it would be easier for you to follow without the stamps on the bottom. And we'll just --

MR. DICKERSON: Did you want to put the date on it? You didn't put the date on this one.

THE CLERK: Yeah.

MR. DICKERSON: Did you want to do that?

THE COURT: Yeah, you can use the same date unless someone's thinking it's a different document, yeah.

THE WITNESS: All right.

BY MR. DICKERSON:

Q Okay. Mr. Gerety, we're showing you now what has been marked as Intervener's Exhibit 168. Could you refer to Bates stamp number where you're referring to?

A It is Bates Number 78.

Q All right. So what specific entry on that Bates Number 78 --

A Look -- look at account 3005.

Q Okay.

A It says contributions. There's a hundred and ninety-seven thousand five hundred that came into the trust during 2001 that was not shown as an asset at the beginning. I would have to look at the general ledger to get the detail on that, because this is what the client had posted in their books what the trustees had -- had posted to the books at that -- in that year, because this is just a total. But I -- if memory serves me right, I believe that was from that money market account.

Q All right. How do you -- okay. Why don't we just take this entry as an explanation so you can explain? Because we're going to get into this a little later and explain some of these transactions. But you have these pages setup under your tab 8 of -- let's take the first column, the December 31st, 2000. All of those appear as I go through your report, all those columns have a zero, is that correct?

A That is correct.

Q And why?

A We didn't post -- we didn't -- here's what we did. We took the client's general ledger balance as of December 31st in 2001. So these were the ending balances on the second column. We didn't -- because we weren't tracing 2 -- the year 2000. We didn't bother dropping those numbers in.

Q Okay.

A This --

Q So --

A This is done on our software. Do you have a question?

Q So I think what you're telling us is you didn't really have any numbers prior to December 31st of 2001. So you're using the numbers that you did have as of December 31st, 2001, is that correct?

A That's not -- no, that's not a correct statement. The general ledgers would have had beginning balances for 2001. So they would have had January -- starting with January 1 what the beginning balances were that we had.

Q Is there a reason that you didn't use that then as the ending balance for December 31st of 2000?

A No, because that would be January. Why would we use it for December?

Q Well, I would think that the balance on January 1st of 2001 is going to be the same as December 31st of 2000. I don't think much happens between those -- between 12:59 and --

MR. SOLOMON: Object to the --

MR. DICKERSON: -- midnight.

MR. SOLOMON: -- form of the question.

THE WITNESS: Well, that's a whole year.

BY MR. DICKERSON:

Q No, I'm talking about December --

A January 1 through December 31st?

Q No, you have -- you're showing the balance -- for example, on column 2, you're showing the unadjusted balances as of December 31st, 2001, is that correct?

A We are showing --

Q Look at that page --

A We are showing January 1st, really that December 31st, 2001 unadjusted numbers --

Q Yes.

A -- are the beginning balances that were on the GL as of January 1st, 2001. And then our journal entry one is to post all the transactions exactly as they the -- the client's general ledger had post them to what accounts. So journal entry number one is posting that. And that 197 was posted by the client. That's why if it's a journ -- AJE -- A -- AJE01 stands for adjusting journal entry 01.

Q So can we look then at your second column? And you're saying that as of December 31st, 2001 for that item that you referenced the 3005. Why does it show a negative 3,454,000 plus?

A As I had testified yesterday, the client's general ledger was showing accumulation of what went on from '93 through 2001. So that was what was -- had been posted on the

client's general ledger prior to 2001. These were beginning balances that were there. So it was an accumulation of -- of years.

Q Well, how could you then -- why did you adjust it?

A Because this is a new trust. It -- it included the balances from the separate property trust. They just continued to separate property trust general ledger, so it had all this separate property trust GL balances in there instead of starting a brand new general ledger. So the capital counts that retained earnings, there was retained earnings there that there weren't no retained earnings at the beginning of the trust. So those retained earnings of -- that accumulated from '93 on, so we needed to back all that out to start with a fresh trial balance. And we made journal entries for that.

Q But the client did not do that, is that correct?

A The client just continued as if it was the same trust going forward.

Q And so what you are trying to do if I understand it then is you're trying to say notwithstanding what the client's intent may have been, whatever it was, you're going to fix this so that it's the way it should have been done, is that correct?

MR. SOLOMON: Object to the form of the question.

THE WITNESS: I'm reclassifying -- if I saw things

that were posted incorrectly, for instance, there were no capital contributions on January 1st, I'm backing those out. I'm starting with beginning capital, what was actually transferred based on the assignments and the assets that are held on the trust and what that equity is.

BY MR. DICKERSON:

Q So the ELN Trust apparently indicated that it had some asset here worth 3,454,000?

A It's showing that it had assets worth more than that. So --

Q All right. So --

A At least 6,000,000 in assets.

Q And you found that you needed to adjust those.

A Again, I was backing out the equity accounts, retained earnings, distributions, contributions that had happened previous to the formation of this trust.

Q What's the 197,500? That's in the column under adjusted credits. What does that mean?

A If -- I would have to look again at the general ledger that has all the detail, because this is the total for the year. But I believe that was money that was transferred from the Bank of America Money Market account.

Q To where?

A To the cash account, Wells Fargo account or wherever

one of the accounts I have on the balance sheet.

Q But it doesn't show it here as to where that money was transferred, does it?

A No. Again, I would have to look at the general ledger to get the detail.

Q And it doesn't say where that 197,500 came from.

A Not on this, no. It's just a summation.

Q So is it --

A It's a summary.

Q -- anywhere in your report that it will tell us that?

A Probably not. I don't believe so.

Q So why did you adjust that over in the fifth column where it says December 31st, 2001 adjusted? Why did you negative that out?

A I didn't. That's the balance.

Q Is that not a negative?

A It's a credit which is the 197 is in the credit column. So a credit is a negative number.

Q Okay.

A So the -- the first column is your beginning balances. The -- or I should say the first column with numbers. The second column is your beginning balances. The second column are debits if you would or what were debiting

accounts for which are positive. One way to say it is is a plus. And the fourth column are credits where we're crediting accounts which will be a negative. It doesn't have brackets in the credit column, because it's -- it's defined as a credit or a negative number up above. And then you add all these across and you come up with 197.

So you start off with a credit balance, we debit that credit balance to eliminate it. And we post the transactions that came in curing the year. That's a credit. So if it's a credit to a contribution, that means it's a debit to a cash account. So it balances. So we end up with a credit balance which is equity.

Q Now what do you mean here --

A Principal.

Q -- on that one where it says record 2001 activity, the income's statement activity is from 1/1 to 12/31/2001? What does that mean?

A That means those were the transactions in total that would run through this account as posted on the client's general ledger. So it's the sum of from January 1 on.

Q And so again, if I understand you then, you're trying to fix the books of ELN Trust to the way you believe they should read, is that correct?

A I -- yes, I am -- if I see anything that was posted

incorrectly, a bookkeeping error, I'm going to correct the bookkeeping errors.

Q How do you determine that it's a bookkeeping error versus an intentional entry? How do you make that determination?

A I saw no intentional -- I mean, it's -- it's -- you can -- from 23 to 30 years of experience, I forget how many years I got now, in correcting clients' books, you see what clients are doing. And some people don't get it, other people, I'm lucky, I guess, I can see mistakes client make and I know what they're thinking. You know, it's just you can tell how they make their entries. So you can see what is just honest -- they just -- they don't -- they make a bookkeeping error.

Q So you're --

A So based on my experience of working 30 years with clients, there isn't anything I saw that wasn't intentional. It was they were posting the cash coming in and the cash going out and sometimes they post it to the wrong account.

Q Okay. So you're making assumptions that they just made the mistake and you're going to fix it for them, is that correct?

A This isn't a major mistake. This is just -- they just carried the GL forward.

Q Yeah, well, we're going to go in -- you have made numerous adjustments in your report, is that correct?

A That's correct.

Q Okay. Now let's go back to Exhibit 4, the schedule A of Exhibit 4. That's in the exhibit book -- no, not yours, the actual exhibit book there. This is back to that separate property agreement. Going back to the property that was purportedly transferred into Eric Nelson's irrevocable trust in 1993, is that correct?

MR. SOLOMON: Now hold on.

A No.

MR. SOLOMON: You misstated that.

THE WITNESS: That's incorrect, because this was a revocable trust.

Q Now did I say irrevocable? I'm so sorry.

A Yes.

Q I -- that was a misstatement. So yeah, 1993 revocable, 2001 irrevocable.

A Correct.

Q Okay. So we'll -- this -- we'll refer to the 1993 trust. So these assets then were transferred to the 1993 trust?

A Off of schedule A here, yes.

Q All right. So we talked about the two bank accounts

and established that none of those were in existence on may 31st of 2001, correct?

A I didn't confirm that on the Bank of America account.

Q You haven't confirmed it one way or another.

A Well, I said there was a money market account at Bank of America. I would have to go back and look at my records to see if it was the same account number or not. I don't know.

Q Okay. And would that be on the disc that you just gave me?

A Yes, it would.

Q Okay. Now if you go down, we now see under item 2 real property that was transferred into Eric Nelson's 1993 trust, is that correct?

A That's correct.

Q Can you tell me Palm Park Apartments, that shows nowhere on your report, is that correct? That was not in existence on May 31st of 2001, correct?

A I believe that's correct without looking, yes.

Q Well, I -- I want you to look if you -- you're pretty certain that that's not on there, isn't that correct? Do you want to go back to --

A I'm pretty certain, yeah. I mean --

Q Okay.

A -- again, I don't recall every single -- I mean --

Q Well, that's why we have your report. We're going to help you --

A That's right.

Q -- recall. Okay. So if you can go back to that tab 2. Do you see Palm Park Apartments anywhere on tab 2 of your report?

A Yeah, I'm looking at tab 8, the first -- first year.

Q Tab 8 now?

A And I do not -- and I do not see that asset anywhere there.

Q Can you tell me what happened to that asset?

A I do not, no.

Q Okay. How about 304 Ramsey, Las Vegas, Nevada? You don't find that anywhere in your report either, do you?

A Correct.

Q Can you tell me what happened to that property?

A I do not know.

Q We go down to the next one. 12 acres on Cheyenne, Las Vegas, Nevada. That's not anywhere in your report either, is it?

A No, I don't believe it is.

Q Can you tell me what happened to that property?

A I do not know.

Q The next item, 10 acres on Cheyenne, Las Vegas, Nevada. That's also is nowhere in your report, is that true?

A Correct.

Q And can you tell me what happened to that property?

A I do not know.

Q How about 1098 Evergreen, Phoenix, Arizona? That also appears nowhere in your report, is that correct?

A I would have to look again.

Q Take a look, please.

A I don't believe it is. It's not showing as an asset directly owned by the trust. It could be an asset. I don't think it's there, but it could be an asset held in an LLC that has its own trial balance.

Q In any documents that you reviewed that were provided to you or in any conversation that you either had with Eric, Lana, Rochelle, who is the other one?

A Shelly.

Q Shelly. Can you tell us what happened to that property, the Evergreen property?

A I did not ask them what happened. I asked them if -- here's what I asked. I talked to Shelly Newell who was doing all the accounting from the time this '93 trust was created up through the time that the 2001 trust was created.

And I asked her if she -- she told me she look -- made sure that she was part of getting the titles changed. She was to the trust name. She worked on that. She posted -- she told me that she kept everything separate, that they -- and knowing how she did their bookkeeping from the times I worked with her, you know, I -- that's -- that's what I asked is I didn't ask what each individual asset was. I asked if they kept everything separate and she told me they had done that and the accounting.

Q She told you they kept everything separate all the way up through all the time that she did the work, correct?

A That is correct.

Q And Nola told you that she kept everything separate during the period of time she kept --

A I didn't talk to Nola.

Q Lana, excuse. Lana told you she kept everything separate, correct?

A That is correct.

Q And Rochelle, was it Rochelle --

A Uh-huh (affirmative).

Q -- McGowan, is that a yes? She told you --

A Yes.

Q -- she kept everything separate, correct?

A Correct.

Q And Eric told you they kept everything separate, isn't that correct?

A Correct.

Q Now we go through your report and we see hundreds and hundreds of adjustments, is that correct?

A That's correct.

Q Okay. So they obviously didn't keep the records correct, did they?

A That's a false statement.

Q All right. Let's go on to the next page, Exhibit 49 -- or excuse me, 49, lots and notes, vacant land, Queen Park subdivision, Queen Creek Arizona Inn. Is that -- does that property appear anywhere in your report?

A No, it -- no, it does not.

Q Okay. Do you know what happened to that property?

A I do not.

Q How about 41 lots and notes, vacant land, in Los Rancheros Del Rio subdivision Sunland Park, New Mexico? Is -- does that appear anywhere in your report?

A It does not.

Q Do you know what happened to that property?

A I do not.

Q Okay. We now move down to apparently that the trust stores beneficial interest in the following notes receivable.

So we have notes receivables from Sport of Kings. Is that note receivable appear anywhere in your report?

A No.

Q Do you know what happened to that note receivable?

A I do not.

Q Do you know if it was ever collected upon?

A I do not.

Q Do you know how much it was?

A No.

Q Okay. Number 4, all of trustor's beneficial interest in the following described automobiles. A 1988 Mercedes. Now I note that in your report you make reference to about $94,000 -- 90 -- yeah, just close to 94,000. We take a look at your tab 2, the last item on there, automobiles, $93,779.54. Is that the Mercedes, the 1998 Mercedes in 2001?

A I'm not sure.

Q That would be the 1988.

A I had Angelo in my office traced the titles of the cars in that. And so I didn't do that personally. It was Angelo Ruccio who helped me with this report.

Q Do you know --

A So I'm not sure what -- which cars in that, because I didn't look at them for --

Q So the only car that he received, Eric received,

that went into his 1993 trust was a 1988 Mercedes, is that correct?

A Yes.

Q Okay. Now here we are roughly 13 years -- well, the car will be 14 years old by 2001. Is that the 90 -- roughly $94,000 automobiles or automobiles is plural?

A It's plural.

Q Do you know what automobiles are included in there?

A Again, I would have to look at my -- the details of the report. I -- like I said, Angelo traced the -- all of those and I don't know which was -- I don't recall which -- all those that it were.

Q Do you know what happened to the 1988 Mercedes if anything?

A I do not.

Q All right. Then we move down to apparently number 5, all of trustor's beneficial interest and the following described partnership interest. And it lists Eric Nelson Auctioneering 40 percent. Does that appear in your report somewhere?

A It does. I mean --

Q Can you show us where it is? Because it should be on number -- on tab 2, should it not?

A Tab 2 is what -- it's a summary of what came from --

Q A summary of what came from Shelly Newell, correct?

A A summary of what came from Lana.

Q Well, May 31st, 2001, Shelly Newell was handling the books, was she?

A Well, it was Lana who hand -- handed me the GLs I guess is what I'm saying.

Q Okay.

A So yes. So that's correct.

Q So --

A That --

Q -- would you point out to the Court where Eric Nelson Auctioneering, his partnership interest in Eric Nelson Auctioneering -- actually, let's say his 40 percent interest in Eric Nelson Auctioneering is?

A It's not on there.

Q All right. Now do you know what Eric Nelson's interest in -- in -- or the trust interest? When I say Eric, I'm using that for meeting Eric or the trust. Do you know what Eric, his trust, any entity that he may be associated with, what ownership interests he has in Eric Nelson Auctioneering on May 31st, 2001?

A I -- I don't recall.

Q Do you know that it -- do you know that it was a hundred percent interest at that time?

A I always thought he had a hundred percent of it, yes.

Q But at least at the time of all he transferred into his trust in 1993 was a 40 percent interest, would you agree?

A I agree.

Q Do you know how he acquired the additional 60 percent interest?

A I do not.

Q Okay. Do you know what interest he owns today in Eric Nelson Auctioneering?

A I think it's a hundred percent.

Q Now the next item partnership that he had is Casino Gaming International, LTD. A hundred percent interest. Does that show anywhere in your report as being an item or an asset owned by him on May 31st, 2001?

A I believe that was sold prior to that, disposed of prior to that.

Q So it sold sometime prior to 2001, is that correct?

A That's correct.

Q So you have no records to indicate how much money he received from the sale of that?

A Just personal knowledge.

Q Is this your personal knowledge or his personal knowledge?

A My personal knowledge of -- I -- it's been a long time.

Q Well, let's tell us. Let's use your personal knowledge. How much did Eric Nelson received from his sale of Casino Gaming International, LTD and when did he receive it?

A If -- what I remember is -- and if it's the same as Las Vegas Casino Entity, what he called that, I looked at the K-1s. Eric brought those in at the time he was disposing of that just to let him know what the tax consequences were going to be. And -- and if I'm thinking of the same entity because I was calling it something else, but I think it's the same entity, is he got 50 percent of Tierra Del Sol he ended up with on the disposition of that. There was another rental property. And it was over a million in cash that he received on the disposition of that.

Q Okay. So he received a 50 percent interest in Tierra Del Sol, is that correct?

A That's correct.

Q And he received what you believe -- this is just from your memory.

A This is just from my memory.

Q And you believe you received a million dollars in cash.

A Yeah, I think it was in excess of that, but right

around -- I think it was right around that.

Q And do you know what he did with the million dollars in cash?

A The -- well, I -- shortly after that, I know some of it was used to buy Wyoming Downs.

Q How do you know that, sir?

A I was involved in that transaction.

Q How do you know that that cash is what was used? Do you know where it was deposited?

A Actually, no.

Q Okay. And do you know where any money that he used to purchase any interest in Wyoming Downs, what bank account that came out of?

A No, I do not recall.

Q You have no records of any of that, isn't that correct?

A That is correct.

Q Now do you know what happened to Tierra Del Sol? Do you know where the ownership of that went?

A He transferred it to Lynita's trust.

Q So that went to Lynita's trust, is that correct?

A That is correct.

Q Yet, it was something that he purportedly according to your memory and recollection received when he sold Casino

Gaming International, LTD.

A That's correct.

Q All right. Now we've gone through all the assets that Eric Nelson owned or was transferred to his 1993 trust and it appears it's the only item that he owed in 19 -- in 2001 and the only item he owed today is his interest in Eric Nelson Auctioneering and that doesn't appear on either your tab 2, your trial balance sheet, does it?

A No, it does not.

Q Does it appear anywhere else in your report?

A Just transactions between that entity. There's some loans that are shown to that entity that show up here throughout the years.

Q So you've only treated it as an entity in which loans are going to and from?

A Yeah, it should be -- it's shown as an asset and it's -- it's not -- not on there.

Q So a little mistake by Shelly Newell.

A This -- well, and -- and a mistake by me for -- because I knew about it.

Q But it's not a big deal, is it? I mean, that we --

A Well, if it --

Q -- forget an asset like that.

A It -- it's still kept -- as long as it's kept

separate and the --

Q All right.

A -- transactions going to and from it --

Q But you can't tell us --

A -- are recorded --

Q -- sir what's been kept separate, can you?

A I cannot --

Q You have no records between 19 --

MR. SOLOMON: Hold on. Hold on.

Q -- 93 and 2001 --

MR. SOLOMON: You know --

Q -- do you?

THE COURT: Let him answer. Let him answer.

MR. SOLOMON: -- you asked him a question, he started --

THE COURT: Let him answer it.

MR. SOLOMON: -- answering and he cut him off.

THE COURT: Let him answer. You can finish it.

THE WITNESS: I can tell what was kept separate from 2001 to 2000 -- and today.

BY MR. DICKERSON:

Q And that is why you made the numerous adjustments, is that true?

A Part of it was good assets that belonged on the

books.

Q And that is why you made the numerous adjustments, is that true?

A Well, that's not -- I wouldn't word it that way.

Q All right. And you have reviewed no records between 1993 to 2001 in order for you to make additional adjustments to fix whatever issues or problems there were at the time.

A We did not have the records to go through that and confirm.

Q And in order for you to fix the Tierra Del Sol or what you considered to be a mistake with Tierra Del Sol, you give it back to Eric, don't you?

A I'm not sure what you're talking about.

Q Make an adjustment and give Eric the money from Tierra Del Sol?

A No, I -- Eric would report that as his asset and then he would report the transfer.

Q All right. Well, we'll go through --

A So that -- I wouldn't say that's a mistake if it was transferred.

Q We will go through -- well, we'll go through Tierra Del Sol shortly.

A We were stating, so --

Q Okay. All right. Let's take a look at your nine

page report.

A Okay.

Q That's the letter that is dated July 5, 2012 addressed to Mr. Solomon, is that correct?

A That's correct. July 5th, yes.

Q If I can -- let's go through this. And I would like to go through each paragraph and try to understand what you're telling us that you've done. We start off -- and I will read this. You correct me if I make a mistake because I often do that. Not intentional. But starting with the first paragraph. As requested, we analyzed the trust accounts -- the trust accounting of Eric L. Nelson Nevada Trust dated May 30, 2001. And then you referred to that as throughout your report as ELNNVT, correct?

A Correct.

Q Do you mind if instead of me using those words that I just call it Eric's trust?

A That's fine with me.

Q From inception to September 30, 2011, now why did you limit your study to September 30, 2011?

A That's when we first started the work and that's all the records were completed through. And as we got going, we were concentrating on just getting done what we originally assigned to do.

Q Were you asked to review the accounting for Lynita's trust?

A No.

Q Do you know why?

A We were not defending her trust, so I wasn't concerned of what happened in her trust. I was only concerned with whether Eric's trust was operating, you know.

Q Well, if I understood you in your direct testimony, you indicated that there were '02s and what was the term you used?

MS. PROVOST: Due tos and froms.

A Due to, due from.

Q Due to, due from. Now if I understood your testimony also, and I may be mistaken, but you said that that's how it was recorded by Shelly Newell, Lana Martin, Rochelle McGowan and Eric as due tos and due froms.

A That is correct.

Q Can you show us anywhere on that tab 2 of your report where it shows that anything that Eric Nelson owed to Lynita's trust or anything that was owed by Lynita's trust to Eric?

A There is in the balance as I stated yesterday there was no beginning balance.

Q That's because they didn't keep any due tos or owed

-- what's the term again?

MS. PROVOST: Due tos, due froms.

Q Due tos, due froms. There was nothing in their records reflecting that, isn't that true?

A That's not -- I can't say that's a true statement. I'm just saying as of the beginning of January there was no balance. That doesn't mean there weren't balances in prior years.

Q But they never recorded those balanced, isn't that true?

A That's not true.

Q How do you know that, sir?

A Because you just read --

Q Did you see --

A -- you just -- I -- that's not what I said. So that statement you made is not true based on what I had answered.

Q Tell us --

A So you're misstating what I said.

Q Okay. Then let me see if we can clear this up. On December 31st, 2001, can you tell us what Eric's books reflected he owed to Lynita's trust?

A On December 31st, 2001?

Q No, May 31st, 2001.

A It showed zero.

Q Okay. Can you tell us on Eric's books for May 31, 2000 -- what did it show that Lynita's trust owed to him?

A Zero.

Q Then you what attempted to do is you went through your study is you attempted to make a determination of these due tos, due froms and make certain adjustments, is that correct?

A We traced all the transactions and yeah, we just -- we looked at -- when there was transfers of real estate and cash and if we found -- if we found an error, there's -- for example, as I stated yesterday, there was rent coming in from Tierra Del Sol that should have gone to Lynita's trust. And if we found that, we would post that as that money owed back to her --

Q Okay.

A -- to account for it.

Q But Eric and none of his bookkeepers ever treated that as an owed to Lynita, did they?

A Not on that -- those particular transactions.

Q And when you did your calculations, you didn't figure out how long Eric held on to any of Lynita's money and attributed some type of rate of return on that either, did you?

A I did not.

Q Okay. Now --

A But it -- it went back and forth, because there are times where her trust owed him money.

Q We will go through those.

A So it --

Q Okay. We'll go through those so we'll show the back and forths that you're talking about. Okay. Now in order for you to verify these due tos, due froms, one would think that the generally accepted accounting principle would be to take a look at the general ledger of Lynita's to see how it was reported on her books, would you agree?

A It's good. It would be helpful to know that the two books agreed with each other.

Q And that is the generally accepted accounting principle, is it not?

A You normally -- if I'm auditing, I'm going to send confirmations. I mean, you don't normally get to look at other people's books.

Q Well, but Eric had her books, did he not?

A I don't -- I don't know.

Q You never asked?

A I did not. We weren't hired to look at her transactions.

Q But I thought you told us earlier that he did give

you some of her general ledgers.

A I have some of the GLs.

Q Did you ever look at them?

A I did.

Q Okay. And did you see anything on there that showed that Lynita was owed any money by Eric?

A Yes.

Q What did you show?

A I don't recall the numbers.

Q With respect to anything that you characterize as a loan from Eric to Lynita or a loan from Lynita to Eric, did you ever decide that it might be wise to ask Lynita what her take on that would have been?

A I did not.

Q Is that what you would call generally accepted accounting principles?

A Well, it depends on how you're applying those so you don't misuse the term. This was a special procedures report.

Q A special procedures report prepared by a man who has been working for Eric Nelson for 15 years, correct?

A That's correct.

Q Let's move on with your letter. We were unable to analyze the trust accounting of the Eric L. Nelson separate property trust dated July 13, 1993. From 1993 to 2001 as we

have been informed that the accounting records going back to 1993 were no longer available. Okay. So who told you that they were no longer available?

A Lana

Q Anybody else?

A Eric, Lana -- I mean I -- we were asking Lana to start with.

Q We have also quantified the contingent non-contingent debt of the trust. Okay. So that is what the last part of your report, is that correct?

A That is correct.

Q And that information is based upon information that you received from Eric, is that right?

A That is correct.

Q Okay. Now we move on. A copy of my credentials is attached to Exhibit 1. Okay. And then you go through talking about your fees. You're -- you charge 465 an hour?

A Correct.

Q And is it your associate Angelo charges 360 an hour, is that correct?

A That's correct.

Q All right. Next paragraph. This report is based on facts and information I am aware of today. I reserve the right to modify this report should other information become

available to me. Now you mentioned earlier that since writing this report on July 5th, 2012 you received additional documents. I'm assuming then based upon you testifying here yesterday that your reservation of rights to modify this is not affected at all by what you saw last week.

A The only thing that I would consider modifying it for was -- and I don't know if that's -- it was in the minutes that I hadn't seen one -- one piece of minutes that I hadn't seen, that there was some Minnesota -- or not -- Mississippi property that was transferred as payment of debt that I wasn't aware of. So that would have reduced -- that would have changed the amount that was, you know, due to, due from based on that.

Q How would it change it under your terms of accounting principles?

A Well, the way I recorded the transfers was based on what I was told and that it was an exchange. So I took all the Mississippi property as being exchange for the property that Eric received so as an equal -- of equal value. If a piece of some of those properties were not actually part of that exchange but to pay off a note, I would have reduced the cash that it was due which would have reduced the amount that was due to Lynita's trust.

Q Well, according to your report, Lynita's trust owes

Eric's trust money, correct? According to --

A Well, it's --

Q -- your report --

A According to my report, her trust would still -- the -- finish the transaction which was 50 percent of the Mississippi property. And I did place a value on that and I think it was 28 that came out that it zeroed out or close to 28,000.

Q The bottom line of your report after doing what you have told the Court you've done, Lynita's trust owes roughly $28,000 to Eric's trust, is that correct?

A That's correct.

Q Okay. Now with the additional information you got, you want to revise the report to do what?

A If I -- I wasn't aware of a few pieces of the Mississippi property being transferred as payment of the cash that was due. And so that would increase the amount that Lynita owed Eric's trust.

Q Okay. So you now think Lynita even owes Eric's trust more money, is that right?

A Possibly. I haven't had a time to investigate those minutes. I just received them Friday and I haven't talked to anybody about them. So I --

Q And --

A -- don't know what I would do yet until I followed up with it.

Q And with your respect to the Minnesota -- Mississippi properties, you relied upon what Eric told you, is that correct?

A That is correct.

Q All right. And Eric told you that the transfer of all the Mississippi property to Lynita was all part of an agreement to first transfer it to her and then transfer half back to him, is that correct?

A Along with other -- other properties, yes.

Q And so what you did is you took Eric at his word and says okay, there was an agreement, between whom it may have been, God only knows, but there was an agreement and so you decided to make an adjustment and give Eric half of the land in Mississippi even though it -- right now it's held in Lynita's trust, is that correct?

MR. SOLOMON: I object to the form of the question especially the God only knows portion of it.

MR. DICKERSON: I strike that portion.

THE COURT: So stricken.

THE WITNESS: That's correct.

BY MR. DICKERSON:

Q Okay. Now you then are relying upon the credibility

of Eric Nelson, is that right?

A That's correct.

Q If I were to told you that this Court at least on one occasion with respect to a temporary protective order has found him not to be credible, would that affect your decision, sir, on his credibility?

A No.

Q If I told you that there was a bankruptcy judge in Mississippi that found him so totally non-credible that he dismissed his bankruptcy action in Mississippi, would that affect your --

MS. FORSBERG: Your Honor, we have to object to that. That misstates anything -- there's nothing --

MR. DICKERSON: May I --

MS. FORSBERG: -- in the record that says that.

MR. DICKERSON: -- complete the question? It's a proper impeachment.

THE COURT: Well, he ask the question. I don't know if it's true or not, but he could ask the question.

THE WITNESS: I don't know what the facts of it are. So it's hard for me to make a judgment.

BY MR. DICKERSON:

Q But if I told you that a bankruptcy judge in Mississippi has found Eric Nelson to be so non-credible that

he dismissed his bankruptcy action filed, would that affect your opinion of Eric Nelson's credible?

MR. SOLOMON: Objection. Assumes facts not in evidence.

THE WITNESS: I -- again, I don't know what the facts are behind it. It's --

BY MR. DICKERSON:

Q I want you to assume it's true. Assume it's true, would that affect your opinion of his credibility?

A That what's -- that a judge dismissed his bankruptcy? That is not even --

Q That a judge in a written decision and order found him so unbelievable and non-credible that he dismissed his bankruptcy action? If that were a fact, would that affect your opinion of Eric Nelson's credibility?

A I still would judge him based on my personal experience with him and not what somebody else had.

Q A personal experience and a professional relationship over the last 15 years in which you had been paid money over all of those years by Eric Nelson, is that correct?

A That is correct, that I found him very --

Q All right.

A -- credible in all his business dealings.

Q All right. Moving down, understanding of facts.

Now this understanding of facts was provided to you by whom?

A Eric --

MR. SOLOMON: Vague and ambiguous. I don't know, what understanding of the facts and what regard?

BY MR. DICKERSON:

Q Understanding the facts, your next section is titled understanding of facts. Where did you get the information to put in this section, sir?

A I -- I received this information from Eric and Lana and Rochelle also.

Q All right. On July 13th, 1993, Eric Nelson and Lynita Nelson entered into a separate property agreement dated April 28th, 1993 in order to divide and convert their community property into separate property. I have been told that this was done for three reasons, that Lynita did not want to be associated with the ownership in any business with gaming or alcohol to there would be no requirement for Lynita to be licensed for gaming if she had no community property interest in any of the gaming properties, and three, to protect the assets transferred to Lynita from Eric's potential creditors due to the businesses he was investing in. Now who told you that?

A Eric

Q Okay. So Eric specifically told you that these

trusts were entered into to protect the assets transferred to Lynita from Eric's potential creditors due to the businesses he was investing in, is that right?

A And it came also --

Q Is that what he told you, sir?

A That this is what --

Q Okay.

A -- he told me.

Q Now reading on. I have been told that this agreement split all the investment assets of Eric and Lynita except for possibly a small bank account that was used to pay personal expenses. The next paragraph. On July 13th, 1993, Eric Nelson formed the Eric L. Nelson separate property trust and Lynita Nelson formed a similar trust. I am advised that Eric and Lynita's separate property was transferred into each of their respective separate property trusts. Who advised you that?

A I -- let me see what I am saying here. Eric would have advised me of that.

Q Now the next sentence, it is my understanding that both Lynita and Eric had full knowledge of the transfers made to each separate property trust. Who told you that?

A Based on Jeff Burr's depositions and -- and Eric's also. I mean, that's --

Q So you did read Jeff Burr's deposition?

A I read some of them.

Q Which ones did you read? There's only -- he was only deposed two days.

A I read -- I don't recall which days.

Q About that thick. Do you mean --

A Yeah, I know.

Q -- the whole thing?

A And I read a section of them.

Q Well, how much did you read?

A I read most of one day, actually. And I don't recall which day or which --

Q Did you read the second day, third day or first and second?

A Like I said, I don't recall.

Q All right. Did you read his trial testimony?

A I'm trying to remember if I did or not. I don't -- I don't recall.

Q Okay. Now you then -- next paragraph. I spoke to Shelly Newell who handled all of Eric's and Lynita's accounting for all business entities. Now the first one there is referencing Eric's 1993 trust, is that correct?

A That is correct.

Q I guess the second one there is referencing Eric's

2001 trust.

A Correct.

Q Lynita Sue Nelson separate property trust and LSN Nevada Trust which for our purposes I'm going to refer to as Lynita's trust or Lynita's 19 -- or 2001 trust.

A Okay.

Q From sometime prior to 1993 to 2001, she told me that during this time period all the assets and accounting were kept separate. Now we have established earlier that you have been told that by all of the women that you spoke to that have kept the books, is that right?

A Oh, I'm sorry. Repeat the question?

Q We have heard you testify earlier that not only did Shelly Newell tell you she kept them separate but so did Lana Martin and so did Rochelle McGowan told you that they kept the assets separate, is that correct?

A That's correct.

Q The only exception we were aware of that Lynita's 1993 trust received part of the proceeds from the disposition of Las Vegas Casino Inc. which was owned by Eric's 1993 trust, correct?

A Correct.

Q So Lynita's 1993 trust received 50 percent of the Tierra Del Sol real estate and 75 percent of Sycamore Plaza

real estate. Both of these properties were received as part of the proceeds from the sale of the Las Vegas Casino. Shelly Newell is currently a CPA who is employed as an auditor for the Gaming Control Board. Now she currently is a CPA. She's already testified here. She was not a CPA during any period of time that she was working at Eric's office. Do you agree with that?

A That's correct. I agree with that.

Q Now so who told you that Lynita received her interest in Tierra Del Sol and Sycamore Plaza as part of the proceeds from the Las Vegas Casino Inc.?

A Shelly had told me, Eric had told me.

Q Okay. Now I could go back to Exhibit 4, Plaintiff's -- Intervener's Exhibit 4. Let's now take a look at schedule B. Let's go through -- now you made no investigation as to what would have happened to any of the assets that were transferred into Lynita's 1993 trust, did you?

A No.

Q So if we take a look at this, you have no idea what happened to either of the three bank accounts that are reflected on schedule B of Exhibit 4?

A It's --

Q When I say three, I mean, there's more than three. One, two, three, four, five, six, seven, eight. So eight

different bank accounts you have no idea whatever happened to those, is that right?

A Which tab are you on? I'm not in the right spot.

Q Go to Exhibit 4.

A Right.

Q And go to schedule B which is going to be the last several pages, the last four pages, three pages.

A Okay.

Q You have -- I'm assuming you have no idea what happened to any of those bank accounts that are reflected on that page, is that correct?

A Yeah, that's a correct statement.

Q Now you know that she still lives in the Palmyra home.

A Correct.

Q Okay. And moving to the next page, do you know what happened to the East Indian School Road property?

A I do not.

Q Do you know what happened to the 10 acres on West Flamingo?

A I don't recall.

Q Do you want happened to the Pine Hurst (ph) property?

A No.

Q Now we see the next two, Sycamore Plaza, there's an asset that she owned in 1993, correct?

A That's correct.

Q And 16 and Bell, that is the Tierra Del Sol that you're referring to, is that correct?

A Correct.

Q Okay. And then the Hartford property -- now neither of those two exist today, would you agree? Neither the Sycamore Plaza or the Tierra Del Sol?

A That's -- there's been -- yes, that's correct.

Q And the Hartford property, do you know what happened to that?

A No.

Q How about the Polaris property?

A Maybe -- I -- I don't recall.

Q Do you know anything about these notes receivables? There's three note receivables there. Do you anything of what happened to those?

A No.

Q How about the life insurance policy that's listed under 40? Do you know anything about that?

A No, I do not.

Q Now when did Las -- when did Eric, meaning Eric or his trust or anything relating to Eric, sell the Las Vegas

Casino Inc.?

A If -- I believe it was -- I may be mistaken, but I believe it was around '99, 2000, somewhere around there.

Q So '99 or 2000. Okay. Now moving on. On May 30, 2001, Eric formed his 2001 trust and Lynita formed her 2001 trust, correct?

A Correct.

Q These two trusts were irrevocable Nevada spendthrift trusts. Once formed, Eric and Lynita then proceeded to irrevocably gift the property from his or her separate property trust to his or her respective irrevocable Nevada spendthrift trust. Is it my understanding that each spouse made these transfers with full knowledge of what the other spouse was doing? Now who told you that?

A Again, I -- I -- actually, I spoke with Jeff Burr personally. I read his deposition. Eric told me, Lana told me.

Q When did you speak with Jeff Burr personally?

A Prior to his court testimony.

Q Yesterday.

A No, awhile back.

Q So back in 2010?

A Yeah, I think -- yeah.

Q So that would have been November 22nd, of 2010 you

talked to him --

A Well, I'm not sure --

Q -- about --

A -- of the date.

Q -- it being your understanding that each spouse made these transfers with full knowledge of what the other spouse was doing and he told you that in November of 2010?

A I called him and asked him because I did not have copies of the separate property agreements. I called him and asked him if there was separate property agreements made and asked him what -- how --

Q When did you do that?

A Sometime prior to over a year ago.

Q Would that have been prior to November of 2010?

A When did he -- what date -- you know, I don't --

Q November 22nd.

A -- recall my dates that well.

Q November 22nd, 2010 is when he testified.

A Then it would have been prior to that.

Q Okay. Now did Eric not give you a copy of the separate property agreement?

A I ended up getting him copies. I can't even --

Q Why did you call Jeff Burr to get it and not get it from him?

A I didn't have one. I did not have copies of it. I asked Jeff if he had copies he could give me and if there were any made and so forth. So I asked him how --

Q Why didn't you --

A -- just --

Q -- ask Eric for a copy of the separate property agreement?

A I did.

Q And what did he tell you?

A I don't recall. And I don't even recall if it's from Jeff or Eric that I got them. I just --

Q All right. All right. So reading on, I have been told that the purpose of creating these trusts was to give each spouse even great asset protection than what they had before the creation of the two trusts. Based on the numerous continuing education I have attended regarding asset protection planning and irrevocable Nevada spendthrift trust, if things are done correctly, the grantors and beneficiaries' creditors are unable to access the assets of the trust once they have been in the trust for over a two year period. This holds true for even alimony and child support. Once the assets are gifted to an irrevocable Nevada spendthrift trust, the assets are no longer considered the grantor's assets.

Moving on, procedures and work performance. So this

is -- now you're going to describe what you did, is that correct?

A That's correct.

Q Okay. We analyzed the thousands of transactions posted to the general ledger of Eric's 2001 trust from its start date of May 30, 2001 through September 30, 2011. We analyzed the cash receipts and journal entries as posted to the general ledger to determine if the transactions belong to Eric's 2001 trust and were properly posted. We looked at assignments and transfers to and from Eric's 2001 trust, bank statements, cancelled checks, sales documents, appraisals, Lynita's -- no, excuse me, Eric's 2001 trust minutes, distribution authorizations and the general ledger of related entities. Now who provided you with those documents?

A Lana, Eric, Rochelle.

Q Now my understanding is the disc that you gave me earlier contains all the documents that they provided to you, is that correct?

A That's correct.

Q Except for what you received last week that was apparently some minutes that we had sent over.

A Right. That is correct.

Q Okay. The assets of each trust were kept separate on the books. Now again, where do you get that statement? Is

that what you were told by Shelly Newell, Lana Martin and Rochelle McGowan?

A And by our observation.

Q Okay. Well, if that were true, sir, then you would need no adjustments, would you agree?

A No.

Q Okay. Let's go on. Whether we discover any bookkeeping errors, we made adjustments whenever we discussed any bookkeeping errors. We made adjustments to ELN's books. We post the transaction as a business would do to keep its books. We are providing the trial balance for Eric's 2001 trust for each year and as part of Exhibit A along with a list of journal entries we made to correct the books. Note, that the first journal entry each year is a summary of the transactions that were posted on Eric's 2001 books before any of our adjustments.

The trust accounting starts with a balance sheet of May 31, 2001. Now that's Exhibit 2 that we looked at, is that correct?

A Correct.

Q Since there were beginning balances in the equity accounts on the balance sheets, capital contribution draws and retain earnings, it appears that for ease of accounting the person doing the bookkeeping for Eric's 2001 trust used the

Peachtree accounting file used for Eric's 1993 trust with its ending account balances and just changed the name to Eric's 2001 trust. Okay. So explaining that, that's what you explained earlier as this is what you believe happened, is that correct?

A That's correct.

Q We traced beginning assets per the May 31, 2001 balance sheet to the assignments or other source documents contained in Exhibit 3. Now what are source documents that you're referring to? What are the source documents? Is that everything under tab 3?

A Everything under tab 3.

Q So when you refer to source documents then, we just need to look at what is -- in -- under tab 3?

A Correct.

Q All right. Let's go to -- what's the first document?

A It's Bates 17.

Q Yes. What is that?

A What is it?

Q Yes.

A It's the assignment and assumption of corporate stock for Phoenix Leisure Inc.

Q And why are you including this in here?

A Because it was assigned to his 2001 trust.

Q Okay. So the purpose of this is just to show that this was put into the 2001 trust?

A That's correct.

Q Okay. Take a look then. The next item is 19. What is that $16,000 promissory -- why is that in here?

A This is showing that the note was actually payable to Eric's Nevada Trust.

Q Okay. Now do you know what happened with this note?

A Off the top of my head, I -- I don't know without going back and looking.

Q So why are you including it in here?

A It was one of the original assets of the trust.

Q Okay. So that would be something that was reflected on Exhibit 2?

A Well, no, it wouldn't, because it didn't come in until 2002.

Q Well, then if it didn't come in in 2002, what is our -- what's 3 doing for us then? These are not assets that --

A It's just a source document showing where that asset came from. And it was originally written in the trust name.

Q Well, can you tell me why it was written in the trust name?

A Because it came from the cash out of the trust.

Q How do you know that? Do you see that?

A We would have traced that with the books.

Q So where is it traced here? Where do you trace this?

A Well, I know.

Q And it's a minor amount, $16,000 --

A It's through the general ledger.

Q -- but I'm trying to understand how do you do your tracing?

A We saw the entries on the general ledger showing that that money was -- there's a check written to him and a -- and a note coming back. So we were able to trace it based on the general ledger journal entries posted by the client.

Q Okay. What is the next -- it's a grant bargain sale deed 20. What is that in here for?

A This is the conveyance of -- it's just the assignment from Eric prop -- the ownership title changing from the separate property trust to the Nevada trust, this particular land.

Q And is that essentially -- we take a look at -- you got various deeds here. Is that simply why it's in here to show that it went from Eric's separate property trust to his -- his 1993 trust to his 2001 trust?

A Right.

Q Okay. So moving on. You have summary of findings. Let's start at that section. Is that right?

A Okay.

Q We find no evidence that any community property was transferred to Eric's 2001 trust or that any community property was commingled with the assets of Eric's 2001 trust. Now when you use that term community property, what are you referring to?

A I am referring to Eric and Lynita's community property.

Q Okay. So can you tell me what you considered to be community property in 2001?

A It looked to me that they didn't really have any community property. They had separated their property for the most part. I didn't see any community property. There was no assets transferred to the trust that came from Eric individually or Lynita individually. The assets came from only from trust assets.

Q Okay. So your opinion was then that there was no community property. So why --

A I -- I -- I'm not aware of any. Let me --

Q That's fine. I'll accept your statement. But I'm trying to understand here. So you're of the frame of mind there was no community property, so you found no evidence of

any community property --

A Well, that's -- you're misstating what I said.

Q Okay.

A I said that the only assets we saw going in the trust came from other trust assets, separate property trust. Nothing came from individual source assets that were in their individual names.

Q But what you're not telling us here however is that regardless of how you want to characterize the property in Lynita's trust, her 1993 trust and her 2001 trust, no matter how you want to characterize the char -- the property in Eric's 1993 trust or his 2001 trust, you did see transfers of property going between those two -- those trusts, did you not?

A I saw transfers of property going between the two trusts.

Q So by making that statement, you found no evidence of any community property that was transferred to Eric's 2001 trust and that there was no community property commingled with the assets of his 2001 trust, you're not telling us that you didn't see any assets from Lynita's going into Eric's 2001 trust and vice versa, is that right?

A That's correct.

Q And you're also not telling us that you didn't see any commingling of the assets from Lynita's 2001 trust into

Eric's 2001 trust, isn't that true?

A If -- if we're able to separately account for them, they haven't been commingled. So that's why I'm making that statement.

Q But you're telling us from an accounting perspective if you can find it, you can back it out and fix the books, isn't that right? Isn't that what you're telling us? You can fix the books if you can trace it in, you can take it out with an adjustment?

A We can account for it, yes --

Q Thank you.

A -- is what I'm saying.

Q Now next sentence. Eric and Lynita kept general ledgers on Eric's 2001 trust and Lynita's 2001 trust separate assets and always maintained separate books and records of their separate property. Now who told you that? Who told you that?

A Shelly.

Q But they always maintain separate books and records on their separate property. Who told you that?

A Shelly Newell

Q Anybody else?

A Eric, Lana. I mean, well, I heard it from numerous sources.

Q Yet, we also find that as a result of your adjustments, Mississippi property for example --

A Uh-huh (affirmative).

Q We find that on Lynita's separate property, right? Correct?

A I'm not -- which -- which Mississippi --

Q Mississippi property, the one that --

A Which Mississippi?

Q The one that Eric told you about the agreement.

A Well, that wasn't her separate property. It was the trust property. I mean, there's a difference.

Q Okay.

A You've got personal property --

Q I apologize.

A -- and trust property.

Q I apologize, sir. You're right. The property -- the Mississippi property, a hundred percent of it is in Lynita's property -- Lynita's trust, correct?

A As of today, yes.

Q Okay. And then Eric told you about some agreement so you decided you were going to make the adjustment that Eric told you about and give him 50 percent back, isn't that true?

A An agreement seemed to go with the facts that I was able to --

Q Did you -- who was the --

A -- follow.

Q -- agreement between?

A Trustees.

Q Did you ask Lynita about that?

A I did not.

Q Why?

A I just -- hadn't -- wasn't -- I hadn't talked to her.

Q All right. The next sentence. A due to, due from account was debited and credited contemporaneously whenever transfers were made between the two trusts. Now what you're telling us, that's what you did.

A No.

Q Well, where is the due to and due from that's on any of their books?

A Every year. It's from 2001 going through 2011. There were due to, due froms. There's two different accounts that were kept.

Q Can you show us where they are?

A Yeah. It's account 2205 was one.

Q Can you give us a numbered one?

A Oh, I'm sorry. Sorry. Bates Number 78, just starting with 2001.

Q 78.

A Uh-huh (affirmative).

Q So which item are you referring to?

A Account number 2205. It's the second from the top.

Q Okay. Well, now --

A And that was booked --

Q -- it --

A -- on their general ledgers. That's journal entry number one which is not really my entry. It's what the client's entries.

Q So the client entry was zero.

A No. You're -- the client entry was 270,000 during the year. The beginning balance was year as I stated earlier, but during 2001, Lynita's trust lent Eric's trust $270,000.

Q And then what did you do with that?

A Nothing. I didn't adjust it.

Q And how was that evidenced, that loan?

A Well, that's a contemporaneous general ledger entries that the client Lana made or whoever was doing the books on that year.

Q And how was it evidenced? Is there a promissory note evidencing it?

A There may have been on that one. I don't recall without looking at my -- at the file.

Q Okay. So move --

A And then you go down to account number 2210, the next one. And this is where Eric's trust had paid some of Lynita's expenses and it showed Lynita owed Eric's trust that money back.

Q And this is what you're telling us, this is on the general ledger of December 31st --

A On this particular one, no. This was -- this was our entry, because it's a journ -- it's journal entry three. So but --

Q All right. So let's go off the one that you say -- the one up above, the one dealing with 270,000. You're telling us that we will find that on the general ledger for Eric Nelson's trust of -- for the year end December 31st, 2001?

A Right. That shows that his trust owed Lynita's trust that money back.

Q All right. Now moving on with your report. Wyoming Horse Racing Inc. was purchased in the name of Eric's --

A Which page are you on again, summary findings?

Q Yeah, we're on Page --

A Okay. Got it.

Q -- 3.

A I'm -- I'm with you.

Q The horse -- Wyoming Horse Racing Inc. was purchased in the name of -- now this is Eric's 1993 trust, correct?

A Correct.

Q On May 29, 1998 per stock certificates we cited. So you're relying strictly on a stock certificate, is that correct, to determine when it was acquired?

A That is correct.

Q Okay. And --

A And also -- I'll take that back. And also personal knowledge because I worked with Eric on that transaction which happened in '98. So I was aware when he had acquired it, because I helped structure the transaction.

Q Now this is a transaction then that occurred during that period of time between 1993 and 2001, is that right?

A That is correct.

Q And you have no records other than the stock certificate to tell us what happened with that money, isn't that correct?

A That's correct. A written record, yes.

Q Based upon the separate property agreements that were -- that -- based upon the separate property agreements, there was enough separate property assets and proceeds to make this purchase. For example, there was more than enough cash flow, more than a million dollars from Eric's Casino Gaming

Investment which was Eric's separate property to make this purchase of approximately $250,000. So now tell us where -- do you have a balance sheet for May 29, 2000 -- excuse me, May 29, 1998 for Eric's 1993 trust?

A No.

Q Okay. Do you have income statements -- income tax returns for his trust or any of its entities during that period of time of 1998?

A I don't recall. I don't think I do though.

Q So where is it that you come to the conclusion that there was a cash flow of a million dollars from Eric's Casino Gaming Investment?

A I -- I reviewed the K-1 at the time that transaction closed on the final K-1 with Eric. And we went over it and advised him on what his tax consequences would be on that transaction back in -- at the time of the sale.

Q But when was the sale?

A I -- again, I -- I don't recall now what year it was, but it was after '98.

Q Okay. But I'm asking -- you're telling us that there was enough cash flow in 1998. What do you have from 1998 to show what the cash flow was?

A I'm just saying what I'm saying is is from one transaction provided Eric with enough cash, more than enough

cash to make that purchase. So there's no -- I'm just putting what the evidence was there.

Q But where is the evidence? Can you -- can we see the evidence?

A I'm sure we can get the K-1s from that transaction.

Q Where are they, sir? Are they going to be on this disc?

A They are not on that disc.

Q Okay. So how can you tell us what the cash flow of Eric --

A Because I saw the cash flow at the time of the transaction.

Q So you're going by your memory.

A Correct.

Q All right. And you're going by the memory of when he sold Casino Gaming Investment?

A Correct.

Q And what year did he sell Casino Gaming Investment?

A I don't recall now exactly what year.

Q So you can't remember when it was sold but you can remember what the cash flow was, is that right?

A Like I said earlier, my years get mixed together.

Q All right. I understand, sir. It happens. But you're telling us that you can vividly remember what the cash

flow was in 1998.

A I remember it was at least a million dollars is what I remember. Vividly, that's not an exact dollar amount.

Q So can you give this Court any documentation to support that?

A I'm sure we can find it. I was not able to --

Q But you based your report on something that you --

A From my memory, yes.

Q From your memory. All right. Now can you tell us from your memory what Eric did? Let's assume there was a million dollars cash flow. A million dollars goes into his pocket, all cash. Can you tell us from your memory what he did with it?

A Of course not.

Q Wyoming Horse Racing Inc. then sold to Wyoming Downs Racetrack shortly after its purchase to Dynasty which later became Phoenix Leisure for the cash and installment note. Wyoming Race Horsing -- Wyoming Horse Racing Inc. and Phoenix Leisure were assigned to Eric's Nevada trust in 2001. When Phoenix Leisure defaulted on the installment note, Wyoming Horse Racing Inc. Repossessed the track. The track was then sold in 2006 for cash. Wyoming Horse Racing Inc. then liquidated and distributed the proceeds from the sale to Eric's 2001 trust $11,120,958 was deposited in Eric's 2001

Mellon account. The proceeds from this sale makeup 78 percent of all the assets currently held in Eric's 2001 trust. See Exhibit A. Okay. Let's talk about that.

So what you're telling us is this asset that Eric acquired in May of 1998 during a period of time you have no record to tell how he purchased it or acquired it, he later sold in 2006 and received 11,120,000 -- just short of $11,121,000, correct?

A Yes. I mean, that's what I said here.

Q Okay. And that money then accounts for almost 80 percent of what Eric owns today, is that correct?

A That is correct.

MR. SOLOMON: While there's a pause, can I make an inquiry of the timing here? We've been going on a couple hours and --

THE COURT: Do you want to take a break? Maybe we can go to 12:30 since --

MR. SOLOMON: Sure.

THE COURT: -- I -- because we won't be coming back until 2:30 because I got to --

MR. DICKERSON: That would be great.

THE COURT: Why don't we take a 10 minute break or so and then we'll plan on going to 12:30, because we won't be back until 2:30 then. Okay?

THE WITNESS: Okay.

(Off record)

THE COURT: This is going back on the record as to Eric Nelson and Lynita Nelson, case number D-411537. This Court will note that Mr. Nelson had been in the court this morning and came a few minutes late and didn't want to interrupt the proceedings. It's good to see you, Mr. Eric. And we're ready to go forward. We'll pickup where we left off with Mr. Gerety. Mr. Dickerson.

MR. DICKERSON: Thank you.

BY MR. DICKERSON:

Q Mr. Gerety, during the break you had an opportunity to talk with Mr. Solomon and Mr. Luszeck and Eric Nelson out in the foyer area by the men's room, did you not?

A I did.

Q And you were discussing your testimony, is that correct?

A Not -- just a little bit, yeah.

Q Okay. And what did you --

A Just --

Q -- discuss?

A The one comment Mark made was to -- when you asked compound questions or when there's like three, four or five issues you throw in one sentence to not just answer that,

answer each one individually and not all of them at once.

Q Explained to you that when I ask a compound question he has an opportunity to object?

A He did not explain that to me.

Q Evidence 101. All right. What else did you discuss?

A That was -- that was really it.

Q What else did you discuss?

A That was really it. Most of this conversation was with Eric and --

Q Okay. Now we're on -- we're talking about the Wyoming property and that $11,121,000 approximately was received in 2006. Now this was the result of a sale of property to Wyoming Horse Racing, LLC, is that correct?

A Bob, where are you at again? Let me catchup here.

Q We're at the bottom of Page 3.

A Okay. And what was the question?

Q All right. When it says here the track was sold in 2006 for cash, Wyoming Horse Racing, Inc. then liquidated and distributed the proceeds from the sale to Eric's 2001 trust for $11,121,000 approximately.

A That's correct.

Q Now was that the sale of -- that was just the sale of the land?

A Yes, I believe that's correct. It was the -- the track itself. The structures also.

Q And this was done on August 30th of 2006?

A I don't remember the month, but was in 2006.

Q Now the land that was sold was -- consisted of several parcels, did it not?

A That's correct.

Q Okay. Are you familiar with the parcels? Are you familiar with this transaction?

A I'm not that familiar with each of the individual parcels.

Q But one of those parcels, an 11 acre parcel, was owned by Lynita's trust, was it not?

A I believe she -- yeah, she had some parcels there.

Q Can you tell us --

A She had the hotel I think or --

Q How much of the sales, the 11,000,000 plus went to Lynita to compensate her for the 11 acres that was sold in 2006?

A I'm not sure. I would have to go back and look at the detail.

Q Was any?

A I don't recall.

Q Now you've gone through Eric's records. Did you

make any determination whether he gave Lynita any money from a sale of the sale that occurred in 2006?

A I don't believe so.

Q You don't believe he did.

A No.

Q Is that reported anywhere on your report as a '02 due from, due to?

A It would be Exhibit 7. I do not show what the transfer of 11 acres to Eric's trust if more -- anything like that were --

Q But do you show any of the proceeds from this sale going to Lynita as a result of a sale of 11 acres of that property that she owned in her trust?

A Based on my recollection, no. Again, to -- to confirm that, I would have to look at the sales docs.

Q And that was not reflected on the trust records that you reviewed either, isn't that right?

A That's correct.

Q All right. We're on Page 4 of the first full paragraph. The cash proceeds from the sale of the track in 2000 -- or excuse me, in 1998 to Phoenix Leisure as explained in the paragraph above were reinvested in minority stock interest in Phoenix and loans to Phoenix by Eric's 2001 trust. Now how do you confirm that, sir?

A I again help structure that transaction with Eric and it was part of the deal that the sales proceeds that he would reinvest back into Phoenix Leisure.

Q Can you tell us how much was reinvested?

A Just I think all of the cash, most of -- almost --

Q And do you have any records to confirm that?

A It's just from my -- from my memory, because that was part of a deal that was structured. I'm trying to think if I --

Q So you remember --

A -- what records I may have. Let me --

Q -- that from 15 years ago, is that right?

A Let me -- that's correct.

Q Okay. When the loans were in default, a deal was struck so that Eric's 2001 trust would give back all his stock to Phoenix and cancel the notes receivable from Phoenix in exchange for a casino river boat and a long term lease in Mississippi. Now who told you that?

A I was aware of it, because I was -- again, worked on that transaction.

Q In 1998.

A That one happened after '98. That was when -- what year was that? That was when Eric called his notes with Phoenix Leisure. So that would have been 2000 -- it was the

same year that Silver Slipper first K1 -- I forget which year now. I'm getting my years run together. 2004 seems like yesterday to me because of why -- but --

Q 1951 seems like yesterday.

THE COURT: Not me. I'm too young. At least that's my story.

THE WITNESS: Yeah, I'm too young that -- for that too --

THE COURT: That's my story.

THE WITNESS: -- just barely.

THE COURT: I'm sticking to it.

THE WITNESS: But that's when I started my own practice was '04 and it just seems like it's been -- it's been a year. But let me think -- it -- it's the same year that the investment in Silver Slipper was. It was 2003, maybe. '4. I forget. I forget what year it was.

Q So you have -- you would have records to support those things, is that right?

A Yes, I would.

Q And where are those?

A In my file. I have a whole another file on Silver Slipper.

Q So then moving on, ELN contributed the boat and long term lease to Silver Slipper Casino Ventures in exchange for

ownership in the Silver Slipper. The boat was distributed back to Eric's 2001 trust. Later, Eric's 2001 trust received $1,560,000 for its ownership in Silver Slipper. And that is done during the -- that's during these court proceedings, is that correct?

A That's correct.

Q Just last year as I recall.

A That is correct.

Q This money can also be traced back to Eric's 2001 trust Casino Gaming Investment and the purchase of Wyoming Horse Racing which were Eric's separate property prior to the gift of separate property to Eric's 2003 trust. I don't know if I read that correctly, but can you explain that last sentence to us, what you're trying to tell us?

A What I'm trying to say is the money that the Silver Slipper investment came from Phoenix Leisure which that investment came from Wyoming Horse Racing which came from the Las Vegas Casino Investment.

Q Okay. So Las Vegas Casino Investments was sold prior to 2001, correct?

A That is correct.

Q And you have no records to show where the proceeds from that sale went, isn't that correct?

A Not trace those funds.

Q And Wyoming Horse Racing, Inc. which we discussed earlier sold in 1998. Was that -- actually, it was --

A No.

Q -- acquired. I'm sorry, it was acquired --

A It was acquired --

Q It was acquired by Eric in --

A '98.

Q 1998. And you have no records to indicate from where the monies came to acquire that, isn't that correct?

A That's -- that's correct. I did not trace those funds.

Q In regards to the potential two year window in which creditors pursue assets transferred to an irrevocable Nevada spendthrift trust, capital contributions or gifts were made to Eric's 2001 trust in 2009 and 2010 which total $96,328. What does that sentence mean? What are you trying to tell us there?

A It says that the -- during the last two years or during 2009 and 2010 there were contributions of money that came into the trust of 96,000. Of that 96,000, 76,000 was from income tax refunds from 2007 and '8 which was Eric's separate tax returns.

Q Okay. And the original tax paid for these years was paid --

A And 20,000 of that 96 came from a separate property money market account that was held in Eric's -- still was in Eric's separate property trust name.

Q Okay. So what is the signif -- what's your purpose of putting this in here? What are you telling us?

A The purpose is is that all of the assets that are held by the trust had been in there longer than two years.

Q Oh.

A Other than this 96,000.

Q Oh. I --

A It's for statute of limitations documentation.

Q Okay. So you're saying that the only monies available would be what? If we -- if the statute of limitations provisions applied to a creditor. What would --

A That there's only 96,000 that came in. Really, it's been three years, four -- almost going on four years now. So those -- those are probably gone.

Q We did not trace the balance of the $305 of contributions to corpus due to the immateriality of this amount. From the information we analyzed, we saw no contributions or gifts to the trust the last two years that Lynita would have a community property or any type of interest in. Okay. Well, that -- what does that last sentence mean? Were there contributions of the trust, period?

A I just --

Q Well, forget the part whether Lynita would have -- you know, Lynita would have a community property interest in, because that's kind of a conclusion on your part, right?

A It is.

Q Okay. So striking your conclusion, are you telling us that there have been no contributions into Eric's trust over the last two years?

A Other than what I've described here, that's what I'm saying.

Q All right. Then moving on. Except for the hundred and ninety-five thousand ten dollars of joint federal income tax refunds from 2001 and 2001 which were deposited into Eric's 2001 trust in 2006, we found no evidence that any of Lynita assets were ever transferred to Eric's 2001 trust. Does that mean any of her assets? Have you never found any evidence of any of her assets being transferred to Eric's trust?

A Correct. Distinguished between her personal assets and the trust assets.

Q Oh. Oh, you're talking about her personal assets.

A That's what I said here, yeah.

Q Okay. So what personal assets does she have that's not in her trust?

A I don't know. I --

Q So for example, by --

A We saw none coming into this trust.

Q By that sentence, you're not attempting to tell this Court that for example, the Utah cabin that was a hundred percent in her name now was --

A It wasn't -- I wasn't in her name. It was in her Nevada trust name.

Q I'm sorry. Okay. I'm using them interchangeably. I -- and you're right.

A You can't really.

Q All right. So the Utah cabin that was a hundred percent in the name of her trust, the fact that 50 percent is now in Eric's trust, you're not referring to that as being in her property and not in his trust, correct?

A That's -- I am not referring to that.

Q And same thing with Lindell, Lindell that was a hundred percent in her trust that now miraculously -- strike that. That now 50 percent of that is in Eric's trust. You're not referring to a transaction like that?

A I'm not.

Q And something like Tierra Del Sol, you're not referring to something like that either?

A And none of those were her personally assets.

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.	**Supreme Court Case No. 66772** **District Court Case No. D-09-411537** Electronically Filed Dec 01 2015 10:34 a.m. Tracie K. Lindeman Clerk of Supreme Court
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.	**Consolidated With:** **Supreme Court Case No. 68292**

RECORD ON APPEAL
VOLUME 15

MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
JEFFREY P. LUSZECK
Nevada State Bar No. 9619
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Centre'
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorney for Appellant

Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.

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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 Attrorneys 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

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4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
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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

referred you to this page, and I believe misstated the question that was asked of you and what your answer was.

His question to you starting on page 9 was

MR. SOLOMON: Hold on until I get there.

MR. DICKERSON: Thank you. Page 74.

BY MR. DICKERSON:

Q His question at line 9 was, "You have no understanding one way or the other whether there was an agreement between Lynita and Eric to ignore the separate property agreement in the event of a divorce; is that correct as a factual matter?"

And your answer was, "Right"; is that correct?

A Yes.

Q So you have no idea one way or the other whether there was any specific agreement?

A Right. I guess I just said I was not aware of one, but there could have been one.

Q And, in fact, you were party when these two people, Lynita and Eric, expressed their interest to you prior to even drafting that separate property agreement; isn't that correct?

A The intent

Q You were party to them expressing to you what their intent was?

A Yes.

Q If I could refer you to page 77?

MR. SOLOMON: And, Your Honor, I don't think that this is proper examination. (Indiscernible - 14:26:00) and proper use of a deposition.

THE COURT: Well, the only way is to ask the question and see if he needs to clarify it. I'm not sure what (indiscernible - 14:26:09) on that, but ask him a question and see if he needs to clarify the answer. If he did or if that helps clarify it, I guess, ask him a question first and see if he needs to refresh it or clarify it.

BY MR. DICKERSON:

Q Isn't it true, sir, that you told Mr. and Mrs. Nelson when you were meeting them prior to the execution of the separate property agreement that it was highly possible that for dissolution purposes, property in either trust could be characterized as community property based upon facts and circumstances surrounding the ownership that property and how it was acquired and dealt with, do you recall telling them that?

A Again, I don't know if I -- could you repeat the question? I need to hear it one more time.

Q Did you explain to Mr. and Mrs. Nelson, prior to them executing the separate property agreement, that it was highly possible that for dissolution purposes, the property in

either trust could still be characterized as community property based upon facts and circumstances surrounding the ownership of that property and how it was acquired and dealt with?

A Again, we had a discussion about, you know, dissolution and what impact the agreement might have on a dissolution proceeding and again I stated that the very safest approach would be to equalize the ownership by gift; however, again, there was a possibility depending on the facts and circumstances that a Court could decide otherwise.

I don't know how I might have characterized that or that's something I usually talk about.

Q Decide otherwise if there were not gifts made; is that correct?

A If there were other facts and circumstances surrounding the acquisition of property and the transfer and the operation of the trusts, yes.

Q All right. Mr. Burr, if you'll please -- I'd like to refer you to -- let's start with Exhibit 40. Exhibit 40 is a letter dated May 3rd, 2002, and this is a standard letter that you send out to all your clients, is it not?

A Yes.

Q In fact, you send it out annually to each of your clients as of the date, basically a year after they have

entered into the agreements?

A Yes.

Q Now, this letter was sent a year later after the parties entered into their trusts that are in question here in these proceedings; is that correct?

A Yes.

Q Now, you indicate in the second paragraph -- you're sending them proposed minute; is that correct?

A No, just suggesting that they hold a meeting and then at that meeting, minutes could be generated or put together to document the meeting.

Q So that's to remind them to have annual meeting; is that correct?

A Yes.

Q And then you've also said, "In addition, I have enclosed a distribution execution form which should be executed by your distribution trustee prior to a distribution occurring."

Now, you do have a form that you send to your clients; is that correct?

A Yes.

Q Would you take a look, say, for example, at Exhibit 121 or 122, either one of those. Is that the form that you send to your clients?

A Yes, that's one of the forms.

Q Is that the form that you would have sent with this particular letter -- and blank, obviously.

A Again, it has two or three variations, but some form like that or a small variation of it would be.

Q What is the purpose of sending that form annually -- to well, what was the purpose in this case of sending it to Eric and Lynita Nelson?

A Just to remind them of the requirement that distributions need to be authorized by their distribution trustee and to give them a form that they could use to accomplish that.

Q Now, if a creditor ever challenged distributions made by the -- to the trustor, so distributions made to the trustor of a trust, if a creditor ever challenged that, did you advise the Nelsons as to what they needed to do to document that it was authorized?

A Yes, I told them that it was important to have a written authorization for any such transfer.

Q Now, if you'll take a look, just briefly, at Exhibit 44 and Exhibit 51 and Exhibit 57. Are you looking at those, sir?

MR. SOLOMON: I'm sorry, which are you how many

MR. DICKERSON: I just want him to confirm.

BY MR. DICKERSON:

Q These are the letters that you send out annually; is that correct?

A You said 44. What was the other one?

Q Forty four.

A The next one was?

Q Fifty one.

A And the other one?

Q Fifty seven.

A Yes.

Q One fourteen, 122 -- or 114 first?

A Yes.

Q One twenty two?

A Yes.

Q One thirty five?

A Yes.

Q And, one sixty one?

A Yes.

Q Now, with respect to the meetings, moving back to the 1993 time frame, Lynita expressed to you that she did not want to go through the licensing process; is that right?

A Yes.

Q Now, you had mentioned that as far as you understood it, an equal division of the parties' property that they owned

in 1993, the attempt was to separate that and make two lists; is that correct?

A Yes.

Q Now, were appraisals made?

A Not that I'm aware of, no.

Q Isn't it true that they simply relied -- or you simply relied upon and the parties simply relied upon what Eric said the values would be?

MR. SOLOMON: Object to the lack of foundation.

THE COURT: Sustained.

If you know?

BY MR. DICKERSON:

Q How were the values determined?

A I just asked that the parties prepare the property split that they both feel comfortable in the split and felt it was fair.

Q And did you do any verification?

A No.

Q And there were no appraisals made; is that correct?

A No.

Q Okay. That's true?

A No, there were no appraisals that I'm aware of, anyway.

Q Take a look at Exhibit 3. Exhibit 3 is a letter

from you to Richard Coke dated July 13th, 1993, correct?

A Yes.

Q And that's the same day that the separate property agreement that is marked as Exhibit 4 was signed by the parties; is that correct?

A Yes -- I don't know. What exhibit was the --

Q Exhibit 4.

A I mean the separate property agreement.

Q Exhibit 4.

A Oh, Exhibit 4, I just want to make sure. July 13th, yes.

Q Now, Lynita was in your office. Eric was in your office meeting with you on July 13th of 1993; isn't that correct?

A I just don't recall.

Q Do you recall giving this letter to Lynita at the conclusion of your meeting with her so that she could take this letter to Richard coke, meet with him, and sign the agreement at his office?

A I don't recall that, no. But it appears it has the same date. I just don't recall.

Q Would you please take a look at Exhibit 2.

A Yes.

Q What is Exhibit 2?

A It appears -- it's the schedule -- it happens to be the schedule that Eric presented with the names written next to what assets belonged to whom.

Q Do you know where this fax originated from?

A Only by looking at it. I don't have any personal knowledge.

Q Where does it indicate that it originated from?

A Rosyln D. Hinton (phonetic), Las Vegas casino.

Q What was Las Vegas casino?

A I don't know.

Q And are you familiar with what's attached, the property schedule attached?

A Only only as I view it here. I don't recall any personal knowledge, other than just the schedule itself.

Q You don't recall ever seeing this?

A No, I believe I would have seen it when it was sent over.

Q Do you know whose handwriting that is?

A I can only assume it's Eric's. I can't tell you for sure.

Q Now, you testified before this Court in November of 2010 that you explained to the parties that notwithstanding the fact that the trusts that were entered into in the year 2001, although they were irrevocable, that they really weren't

irrevocable, in that they could take all the assets out, if they so desired; isn't that correct?

A Not exactly, I don't believe.

MR. SOLOMON: I object to the form of the question.

MR. DICKERSON: All right.

BY MR. DICKERSON:

Q Are these trusts truly irrevocable?

A They are irrevocable by statute and by the terms of the trust.

Q How do you get around it being truly irrevocable by the statute?

A Well

MR. SOLOMON: Hold on. That assumes it's possible, so object to the form of the question.

BY MR. DICKERSON:

Q Is it possible to get around the agreement being totally irrevocable?

A Well, I think what I explained is that there are all kinds of powers that the trustor reserves under the statute, for example, the power of changing the beneficiaries; powers to distribute to assets to anyone but him or herself; power to -- power of -- see, what's it called again, I'm drawing a blank -- veto power that the statute gives the trust, if there's any proposed distribution by a non trustor or trustee.

I mean there are all of these other powers that the trustor has, but technically it's still in the irrevocable trust.

Q And if the trustor can convince the distribution trustee to turn over all the assets to them?

A Then that would be one way to terminate it, yes.

Q Mr. Burr, if I can have you take a look at the Eric L. Nelson Nevada Trust.

(Pause.)

MR. SOLOMON: What are you looking for, Bob?

MR. DICKERSON: Eric's trust.

MR. SOLOMON: Eighty six.

MR. DICKERSON: It would have taken me forever to get there. Thank you.

THE COURT: We're just lucky it wasn't EEEE; it would have taken us a long time to get there.

(Laughter)

BY MR. DICKERSON:

Q Would you please turn to Exhibit 86. This is the Eric L. Nelson Nevada Trust; is that correct?

A Yes.

Q And this is the trust that you have characterized as being irrevocable; is that correct?

A Yes.

Q Now, if we take a look at page 1 of the trust, isn't

it true that it basically designates that Eric Nelson is the trustor and he is the original trustee; is that correct?

A Yes.

Q And that Lana Martin is the original distribution trustee?

A Yes.

Q Now, you are given -- in order for this trust to remain effective and to serve the purposes that it was prepared for, to protect them from creditors, the trustor and the trustees need to fully comply with the provisions of the trust; is that true?

MR. SOLOMON: Your Honor, I find this understanding that Mr. -- number one, it's outside the scope, but more importantly, object to my expert report on the basis that he's asking questions of law. Mr. Dickerson has been doing this now for about five questions, including the irrevocability and what the law provides with respect to that and --

MR. DICKERSON: No, I'm asking --

MR. SOLOMON: -- now we're going -- we're making it an expert witness on the law when they objected to me being able to do the same through Mr. (indiscernible - 14:43:27).

MR. DICKERSON: Let me rephrase the question.

BY MR. DICKERSON:

Q In your discussions with Eric Nelson, did you inform

him that in order for this trust to remain effective to protect him against his creditors he had to make sure that this -- that the terms of this trust were fully complied with?

A Yes.

Q And one of the terms that you told him that needed to be specifically complied with is that all distributions to him needed to be approved by a distribution trustee appointed in accordance with the terms of this trust; isn't that correct?

A To be -- okay, I have to give a little commentary, if I can. Certainly that's the safest way to have the trust to be effective, to meet all the formalities. Certainly, if a formality might have been forgotten, or just one or two, there might be with way to rehabilitate the exercise of the discretion of the trust to still cause it to be enforceable.

So I just want to make sure that it's clear that I'm not saying that one little mistake would cause the trust to be unenforceable; it's just that all the formalities need to be complied with and the more you comply with the formalities, the more enforceable and stronger it is. I hope that --

Q Okay. Now, there are occasions, there are at least two occasions in which Eric Nelson came to you and asked you to, in your capacity, as the trust advisor, for you to remove a distribution trustee and substitute in another trustee; is

that correct?

A To the best of my recollection, yes.

Q Take a look at Exhibit 49. Let's take a look at Exhibit 49 -- 149, excuse me.

Do you see that, sir?

A Yes.

Q Okay. This is a change of distribution trustee for the Eric L. Nelson Nevada Trust, correct?

A Yes.

MR. DICKERSON: Has this been admitted into evidence?

MS. PROVOST: One forty nine, yes.

BY MR. DICKERSON:

Q Okay. This is signed by you on page 2?

A Yes.

Q Why did you do this? Why did you sign this document?

A Typically, it's done after consulting with the trustor and the trustor expressing concern about a particular distribution trustee continuing to serve either logistically or whatever reason.

Q Did Eric Nelson tell you who he wanted appointed as the distribution trustee?

A Yes.

Q Now, you did this pursuant to section 11.3 of the trust agreement; is that correct?

A Yes.

Q Go back to that trust agreement and let's look at that section 11.3.

A Was it 80 -- 80 something -- 86?

Q Eighty six, yes.

A Section -- what section, Bob?

Q Eleven point three. You are on page 14.

A Okay.

Q Now, if we look at this, under trust consultant, it indicates that Jeffrey L. Burr, LTD, a Nevada corporation, herein known as consultant to the trust, will have the right and power by giving ten days written notice to the trustee to remove any trustee named herein, except the trust consultant may not remove the trustor as a trustee hereunder and/or any successor trustee and to appoint either one, an individual who is an independent trustee, pursuant to Internal Revenue Code Section 674, as amended or, two, a Nevada bank or trust company to serve as trustee or as co trustee of the trusts created hereunder. And in event of death, resignation, competency -- it goes on.

But it was that first portion that I read is the provision under which you removed Lana Martin, distribution

trustee, and substituted Nola Harber in her place; is that correct?

A Yes.

Q And that was done at the (indiscernible - 14:48:33) of Eric Nelson?

A Yes.

Q And I trust that you explained to him at that time that if you did -- well, were you aware that Nola Harber is Eric's sister?

A I certainly am now. Whether I knew it then or not, I don't know.

Q Did you explain to him that under Section 11.3 that 11.3 would only allow you to appoint either an independent trustee as provided under the Internal Revenue Code or a Nevada bank or trust company?

MR. SOLOMON: I object to the form of the question because it says -- it specifies 674, not just the entire Code.

THE COURT: Yeah. That's an independent trustee pursuant to IRS Code Section 674, as amended.

BY MR. DICKERSON:

Q Did you explain that to him?

A I don't think I did, no.

Q Let's take a look at Section 674. I'm showing you what's been marked as FFFF. This is Section 674 of the

Internal Revenue Code, is it not?

MS. FORSBERG: Can I have a copy, Bob?

MR. DICKERSON: Oh, I'm so sorry, guys.

THE WITNESS: It appears to be, yes.

BY MR. DICKERSON:

Q Now, if you take a look at this rule, the reference to independent trustee appears under subsection 8, under subsection C; is that correct?

A I'm sorry, where?

Q Take a look at the second page.

A Okay.

Q Go down to C at the bottom, "Exceptions for certain powers of independent trustees. Subsection A shall not apply to a power solely exercisable without the approval or consent of any other person by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parts who are subservient to the wishes of the grantor."

Did I read that correctly?

MR. SOLOMON: Objection; irrelevant.

BY MR. DICKERSON:

Q Did I read that correctly?

MR. SOLOMON: One, speaks for itself.

THE WITNESS: The part that you read, it looks like

you read it correctly, yes.

BY MR. DICKERSON:

Q Now, are you aware that Section 672 defines the term "subordinate party"?

A I would have to review it.

Q I'll have you review it now.

I'm showing you what's been marked as Exhibit GGGG. Exhibit GGGG is Section 672 of the Internal Revenue Code which is Title 26 of the United States Code, and subparagraph C reads, "Related or subordinate party, for purposes of this part, the term "related or subordinate party" means any non adverse party who --" and then we move down to two "-- who meet any one of the following: grantor's father, mother issue, brother or sister, an employee of the grantor, a corporation or any employee of a corporation in which the stock holdings or the grantor or and the trust are (indiscernible 14:52:50) control, a subordinate employee of a corporation in which the grantor is an executive. For purposes of subsection F and Section 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect to the exercise or non exercise of the powers conferred upon him and as such, party shall not be subservient by a preponderance of the evidence."

Did I read that correctly?

MR. SOLOMON: Speaks for itself.

THE WITNESS: Yeah, as far as I can tell, yes.

MR. DICKERSON: Your Honor, I move for the admission of these two exhibits, quadruple E and quadruple F.

MS. PROVOST: F and G.

MR. SOLOMON: Number one, they are law: they are not admissible; number two, they are irrelevant because I know where counsel is trying to go, but it is a legal argument and it's a wrong legal argument, but he can't do it through this witness. He can argue it at the end of the case if he thinks that that trust prohibits a 672 person from serving. It's a legal argument solely and an incorrect one at that. But it has nothing to do with this witness or evidence to be introduced at trial.

THE COURT: I have a tendency to agree; it legal. If you can cite any codes I would be glad to look at them and research them, but I don't think the evidence of this type

MR. DICKERSON: If it is not admitted, I provide Your Honor with (indiscernible - 14:54:18).

THE COURT: Sure. If you want to put it in the closing or do it now on that and just leave them on the side or if you want to do it during your closing. I'll give everybody a chance if I find that people need it to brief so they can have a nice record on the law. I'll give everybody

that side if we need it. Rest assured, I'm not real smart, but I read everything and I'll research everything that's referenced on that because I like to read. I don't have a life, so I will read and every code that they want. I will read it, analyze it, and research it. That's what I get paid to do.

BY MR. DICKERSON:

Q Would you please take a look at Exhibit 162.

Give me one second. Going back to 149, Eric's sister, Nola Harber, was appointed as the distribution trustee on February 22nd, 2007; is that correct?

A Yes.

Q So from that day forward she would have been the person authorizing any distributions to Eric?

A Yes.

Q Okay. Now, if you take a look at Exhibit 162, Exhibit 162 appears to be another change of trustee for the Eric L. Nelson Nevada Trust; is that correct?

Is there a 162?

A Oh, yeah, I'm just looking at it.

Yes.

Q Why -- is that your signature on page 3?

A Yes.

Q Why did you make -- why did you sign this document

and make the changes that are set forth in this document?

A I met with Eric and a discussion was had regarding that position and he expressed desire to change it and I agreed.

Q So by way of Exhibit 162, this change of trusteeship, you did several things, did you not?

A Yes.

Q Okay. First you removed Nola Harber as the distribution trustee and you substituted Lana Martin; is that correct?

A Yes.

Q And then, in addition, it appears that you actually made amendments to Section 11.1 and 11.2 of the so called irrevocable trust, the Eric L. Nelson Nevada Trust; is that right?

A I made a change of trusteeship, yes.

Q If you take a look, it appears that you really revised Sections 11.1 and 11.2, would you agree?

A Yes.

Q And do you believe that would be authorized, that type of an amendment to a revocable trust would be authorized?

A Yes, just because the distribution trustee has the power to change trustees and those two sections relate to trustee changes.

Q But does the distribution -- does the trust advisor have the authority to remove a successor trustee before the successor trustee even becomes trustee?

A I would have to go back and look at the agreement again, if you want me to.

Q Look at Section 11.3.

A That was in 80

Q Eighty six.

A Eighty six. Yeah, it says, "Jeffrey L. Burr, Ltd., shall have the right and power to remove any trustee named herein. That would include investment trustee or distribution trustee."

Q But do you believe that that gave you the authority to remove a successor trustee before that successor trustee even took over a service as either the investment trustee or the distribution trustee?

A Yes, because it goes on to say, "To remove any trustee named herein, and/or any successor trustee."

Q And you interpret that to allow you to do what you have done?

A Yes.

Q Now, do you interpret the provisions of Section 11.3 to allow you to do any of this without giving ten days written notice to the trustee or the successor trustee that you intend

to remove?

A Notice would be an issue if there wasn't some type of waiver of notice or consent because the agreement does say there should be ten days.

Q It requires ten days notice, does it not?

A Right.

Q And isn't it true, Mr. Burr, that on either of these two occasions with respect to Exhibit 149 or 162, was such a ten day notice given to any of the trustees that were being removed?

A I am aware of no notice that was given.

Q And you have provided us with a copy of your entire file; is that right?

A Yes.

Q So as a result of Exhibit 162, pursuant to the request of Eric Nelson, you removed Lynita Nelson as the successor investment trustee of his trust; is that correct?

A Yes.

Q And that was done on June 11th June 8th, 2011?

A Yes.

Q And you were aware, Mr. Burr, that we were involved in these court proceedings?

A Yes.

Q In fact, you had testified in November of 2010?

A Yes.

Q Why would you do that without notifying either Lynita or her attorneys? Let's start out, did you ever notify Lynita or her attorneys that this was being done?

A No.

Q Why?

A I had done the same thing for Lynita earlier and because it was a divorce proceeding, I thought it was presumed that they no longer wanted each other to be beneficiaries. I might have erred, but that's the position that I took.

Q Is there a reason that you really would have even gotten involved in the middle of a divorce proceeding doing what you did with respect to both Lynita or Eric?

A Well, again, being unaware of family law, not the intricacies of it, I knew that there was a lot of, you know, acrimony, between the two parties and that if one of them were to pass way before the divorce proceeding were completed, it would work a very unfair result, so I was just trying to help out to change the estate plan documents.

Q Well, why would it why would it result in an unfair result? All a party can do is give away one half of their share of any community property, wouldn't you agree?

MR. SOLOMON: Object.

THE WITNESS: But Eric's half was beginning to

Lynita.

MR. SOLOMON: Hold on.

THE COURT: He can explain now what he did.

BY MR. DICKERSON:

Q Would it not make since, since you did not cater to the -- you do not have background in family law or divorce law, that you would at least contact the attorneys involved to determine whether such an action would be in violation of a joint preliminary injunction?

MR. SOLOMON: Irrelevant to anything that this Court is going to decide.

THE WITNESS: In this case I learned that.

THE COURT: I think he explained why he did that. He said maybe he should have, maybe he shouldn't have, but we'll leave it at that and move forward.

BY MR. DICKERSON:

Q Sir, if you would please take a look at Exhibit 28. Is that a letter that you sent to Mr. and Mrs. Nelson on May 30, 2001?

A It's a letter, yes, but it would have been presented at our office instead of mailed.

Q And is that your signature on page 2?

A Yes.

Q The third paragraph on there you recognized and say,

"As we discussed in our prior meeting, you have the option of having me represent you jointly or separately. If you choose to have me represent you jointly, then I will be under the legal duty to immediately tell the other spouse anything which one of you later tells me in confidence which relates to your estate planning. Failure to reveal information to the other spouse would be a violation of the attorney client joint relationship.

On the other hand, if you choose to have me represent each of you separately, then I must keep anything later told to me in confidence from the other, even though it may prejudice what the other had relied upon in making his or her own estate plan."

A Yes.

Q Is there a reason why you did not contact Lynita to let her know that Eric was removing her as the successor investment trustee?

MR. SOLOMON: Object. It's not relevant to this case. We're not here to (indiscernible - 15:05:02) or try Mr. Burr's issues. It has nothing to do with this case and it is irrelevant.

MR. DICKERSON: I don't think it is irrelevant. I think it goes to the issue of whether this Court even has to recognize what was done, including, including, Your Honor, and

I'll get to what he did for my client with respect to changing a will.

MR. SOLOMON: Those issues aren't in front of this Court, as far as I know.

MR. DICKERSON: Then why were why did this submit those documents into evidence? Because they want to argue that my client knew what was going on. That's where I'm going next with this questioning.

MR. SOLOMON: No, that's not why we offered them you want to hear the relevance?

Well, her separate property is her separate property to the exclusion of ours at the same time that you are arguing it is community; that's why we submitted them.

THE COURT: I'll read the report on that, but let's move on. (Indiscernible - 15:05:56.) Mr. Burr is not on trial here, so I don't want to (indiscernible - 15:06:05) his integrity. He's well respected, so I don't want -- I mean he can answer the questions.

You've been very forthwith so far, very (indiscernible - 15:06:06) on that, but I want to make sure that we don't put him in any unnecessary positions.

BY MR. DICKERSON:

Q Mr. Burr, let's look at the documents that counsel showed you. Let's take a look at Exhibit 77 -- let's take a

look at Exhibit 14. This is the total amendment and restatement of the Nelson trust originally dated July 13th, 1993; is that correct?

A Yes.

Q When did you prepare this document for Lynita?

A I was signed on February 17th, 2009, so sometime probably several weeks before the signed date.

Q That was during of course of these divorce proceedings?

A Yes.

Q Did you ever contact me or any attorney representing Lynita to let them know that you were doing this?

A Not that I recall, no.

Q Take a look at Exhibit 75 -- I'm sorry, the power of appointment, is that 74?

A Eighty one.

Q Eighty one, when was 81 prepared by you?

A I believe the same time that the statement was done, which was July -- it's February 17th, 2009.

Q Any time prior to preparing this and having Lynita sign this, did you contact me to inquire whether this would be appropriate to do?

A No.

Q Did you contact any attorney representing Lynita in

this divorce case?

A No.

Q Take a look at Exhibit 77, please. Exhibit 77, what you've done is you've changed the distribution trustee under Lynita's Trust; is that correct?

A Yes.

Q Okay. Before doing that, did you contact me or any attorneys representing Lynita?

A No.

MR. SOLOMON: In the divorce, is that

MR. DICKERSON: Yes.

MR. SOLOMON: The divorce wasn't filed, was it?

MR. DICKERSON: Yes, it was.

MR. SOLOMON: I don't think it is filed in any of those documents that you just went through.

MS. FORSBERG: It's not.

MR. DICKERSON: It was filed in

MS. PROVOST: June.

MR. DICKERSON: June of '09.

MS. FORSBERG: No, May 6th, 2009.

MR. DICKERSON: After all of these documents were done, so ...

MR. SOLOMON: I object to that question, now.

//

BY MR. DICKERSON:

Q Wait a second. Did you -- you knew that I was representing Lynita at the time, did you not?

A Yes.

Q In fact, you originally brought Lynita to my office sometime in June of 2008, if I recall -- or was it -- it may have been May of 2008?

A Yes.

Q Is that correct?

A Yes.

Q Exhibit 19, from Lynita's will, when was that done?

A Yes, that was done February 17th, 2009.

Q Okay. And, again, did you contact me or any attorney representing Lynita, with respect to the divorce, prior to having her execute that will?

A No.

MR. SOLOMON: (Indiscernible - 15:10:55), so I object to the form of the question.

BY MR. DICKERSON:

Q Mr. Burr, do you know what was going on at that period of time, February of 2009?

A Yes.

Q Do you know of settlement discussions that were going on during that period of time?

A Yes.

Q Do you -- you originally referred Mrs. Burr [sic] to Bryce Duckworth, did you not?

MS. PROVOST: This is Mrs. Nelson.

(Laughter)

MR. DICKERSON: Don't refer Mrs. Burr.

(Laughter)

BY MR. DICKERSON:

Q You originally referred Mrs. Nelson to Bryce Duckworth; is that right?

A Yes.

Q And Bryce continued to represent Mrs. Burr --

MS. PROVOST: Nelson.

(Laughter)

BY MR. DICKERSON:

Q -- Mrs. Nelson up until shortly before he took the bench?

A Yes.

Q And then just prior to him taking the bench, both you and Mrs. Nelson came to my office and we had a discussion with Mrs. Nelson; is that right?

A Yes.

Q Now, that all occurred in the year 2008, correct?

A Best of my recollection, yes.

Q In fact, do you recall having discussions with Eric as early as September of 2007 wherein he discussed with you his desire to get a divorce, do you recall?

A I actually reviewed my records and our discussions with both parties began in August of that year.

Q Well, now, let's take a look at -- do you know what was going on in August of 2007?

A Again, in reviewing my billing records, there were two or three meetings that were had with Lynita and Eric and it says in my billing records to discuss property settlement issues.

Q Okay. And do you know specifically what you were discussing with Lynita?

A Just the fact that she and Eric had decided to get a divorce and they wanted to have some -- they knew they had to do a property settlement and they were hoping to do it amicably.

Q Now, Mr. Burr, isn't it true that under both these 2001 trusts that you prepared for Mr. and Mrs. Nelson that the trust itself authorizes each of them to make distributions to the other without any approval of the distribution trustee?

A Yes.

(Pause.)

Q Mr. Burr, under the original separation agreement

that you -- separate property agreement that you prepared for the -- Mr. and Mrs. Nelson, that would be Exhibit 4 --

A Yes.

Q -- you prepared in 1993, there is a provision in there, and I'll refer you to paragraph four.

MR. SOLOMON: What exhibit are you in?

MR. DICKERSON: Exhibit 4.

MR. SOLOMON: Give me a second to get there. What paragraph?

MR. DICKERSON: Page 2, paragraph four.

BY MR. DICKERSON:

Q It provides, "The parties hereto shall each have a right of first refusal to match any offer of sale and purchase relating to each party's sole and separate property, whether held in trust or otherwise. Each party agrees to give at least 30 days notice prior to such sale and allow the other party 30 days from receiving said notice to purchase the offered property under the same terms and conditions as set forth in the offer to sell or purchase."

Did I read that correctly or reasonably correctly?

A Yes.

Q What's the purpose of that provision, why do you include that in?

A Again, the agreement was meant predominately to

protect the clients from outside creditors. To the extent, perhaps a cabin, any kind of asset might have been allocated to one spouse versus the other, the spouse that didn't possess that property in their trust would have the ability to retain or maintain or keep that property by having this right of first refusal. It just gave flexibility.

Q So before any asset could be sold, it would require 30 days notice to the other party; isn't that correct?

A Yes.

Q Now, if you take a look at exhibit -- excuse me, paragraph seven which, again, makes reference to paragraph four that we just. It says, "Notwithstanding paragraph four above, husband and wife, each respectively may transfer his or her own property by gift or inheritance as they wish to a revocable trust without violating this agreement."

Did I read this correctly?

A Yes.

Q What is the purpose of that provision?

A As with many buy/sell agreements and right of first refusals, you have permitted transfers and here if they're going to do an equalizing gift to one another, we don't want that to fall within this 30 day provision. So it's meant, I think, to cover estate planning transfers or gifts or transfers between the parties especially.

Q But it also allows a transfer only to a revocable trust; isn't that correct?

A Yes.

Q And it doesn't authorize a transfer to an irrevocable trust, does it?

A No.

Q I think the answer to that, is that correct, that it does not?

A It does not.

Q It does not allow transfer to an irrevocable trust; is that correct?

A It does not allow transfer to an irrevocable trust without triggering Section 4.

If I may, too -- it's just coming to me -- another reason is if Eric, for example, did have this large liability and his assets were exposed and there was a personal asset that he owned like a cabin or something, this would allow Lynita to step in and take that asset before the creditors did. Of course you would have to substitute consideration for the asset, but that's another reason for it.

MR. DICKERSON: I have nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. SOLOMON:

Q Is the LSN Trust a grantor trust?

A For tax purposes?

Q Yes.

A Yes.

Q Okay. And Section 674 deals with trying to keep access out of a grantor's estate, correct?

A The one that Bob keeps referring to?

Q Yes.

A Yes, I believe so. I don't have it in front of me anymore. I'm kind of drawing a blank right now.

Q We'll argue that later.

And Eric's trust, self settled spendthrift trust, is a grantor trust?

A Yes.

Q And it's designed, in fact, he can substitute assets of equivalent value and you've made it intentionally defective, did you not?

A Yes.

MR. DICKERSON: I'm sorry, what was that question?

BY MR. SOLOMON:

Q In crafting the trust you made it an intentionally defective grantor trust?

A We drafted it so, yes, it would be a grantor trust.

Q Okay. Meaning that it's going to be taxable on their he states?

A Yes.

Q And if you have that situation you don't need an independent trustee as defined under 672 of the Internal Revenue Code; isn't that correct?

MR. DICKERSON: Objection, Your Honor.

It's irrelevant. The trust agreement provides for the appointment of an independent trustee.

MR. SOLOMON: No, it doesn't. That's an argument, and not a question, and it doesn't refer to 672; it refers to 674.

THE COURT: 674 is what the trust said.

BY MR. SOLOMON:

Q But in any case, the question stands. Do you recall it?

MR. DICKERSON: Well, I object to it.

BY MR. SOLOMON:

Q If you have a grantor trust

MR. DICKERSON: The ruling on my objection?

THE COURT: (Indiscernible - 15:20:53) the grantor's trust so that they're taxable under the estate -- amended the trust.

THE WITNESS: This trust was taxable, subject to estate tax when the party passed away and so that section wouldn't have any application tax wise.

BY MR. SOLOMON:

Q Exactly. With respect to Exhibit 4 that you just looked at, Mr. Dickerson asked you about whether the agreement provided that it could be assets could be transferred to an irrevocable trust, you met with both Lynita and Eric at the time that you proposed to use the two self settled spendthrift trusts, correct?

A Yes.

Q And the plan that you discussed with both of them is that they're going to be taking these assets that were in their separate property trusts, which were revocable, and transferring them to their respective irrevocable trusts; isn't that true?

A The idea was to roll the assets from one trust to another in addition to other assets that may have been outside the trust.

Q And they were both in agreement with that plan and signed on to it, correct?

A Yes.

Q Mr. Dickerson asked you about whether any distributions, in fact, were made that did not have prior approval of the distribution trustee, whether that invalidated it and you tried to explain that you're not trying to say that that would, per se. Isn't there Nevada statutes directly on

point on that issue?

A I'm sorry. One more time?

Q Aren't there Nevada statutes that directly address that issue?

A You might have to educate me. The only one that I'm aware of is the one that says that no distributions may be made to a trustor without the authorization of another person.

Q You don't recall the statute in 166 that says if the settlor makes distributions to himself on occasions, that is not evidence of invalidity of the trust?

MR. DICKERSON: To which I object, Your Honor.

That statute was not in effect in 2001.

MR. SOLOMON: It doesn't matter.

MR. DICKERSON: Sure it does it. That statute was not in effect in 2001.

THE COURT: Sustained. We'll get there in legal arguments, I'm sure.

THE WITNESS: I --

THE COURT: You don't need to answer that. You've already testified as to the distributions.

BY MR. SOLOMON:

Q Now, you said it was important to have prior written authorization for distribution if the creditor were ever to challenge the trust. Is that a requirement or is that just

good evidence?

A I think the statute -- I mean in my opinion, the statute says that before a trustor receiving a distribution, it's supposed to be authorized by another person.

Q Right. I'm talking about a writing.

A Oh, a writing?

Q The question that Mr. Dickerson asked you had to do whether it was important to have a prior written authorization should a creditor ever challenge whether the trust is operating in accordance with its terms and law?

A That's a good question. I would have to review the statute again to see if it suggests a written authorization or just an authorization. So I can't answer that, sorry.

Q We'll argue that at law, too.

In fact, do you recall that under the terms of your trust, in this case both Lynita's Trust and Eric's Trust, that it will allow prior authorization to occur by telephonic communication?

A Yes.

MR. DICKERSON: Which I object to that question. It mischaracterizes. It talks about the meetings --

THE WITNESS: What -- do you want me to review the trust?

MR. DICKERSON: -- and how a meeting would occur.

THE COURT: (Indiscernible - 15:25:28) that section because I thought that with the annual meetings I thought, but I can look and see what it says.

THE WITNESS: Can I --

THE COURT: What exhibit was it?

MR. DICKERSON: Exhibit 86.

THE WITNESS: Let me read the -- can I review the exhibit?

THE COURT: Yeah, why don't you look at 86.

THE WITNESS: Oh, I'm sorry.

MS. PROVOST: Eighty six.

THE COURT: Okay. Page 3, Section 3.3 maybe.

THE WITNESS: It does say

THE COURT: I'm not sure if that -- there's something else, but --

THE WITNESS: Yeah, it does say that the meeting held, which must include the distribution trustee can be telephonic -- can be done telephonically.

BY MR. SOLOMON:

Q That meeting can authorize the distribution and that distribution, if it was done telephonically, wouldn't necessarily be in writing, correct?

A Yes.

Q Thank you.

(Pause.)

BY MR. SOLOMON:

Q Can you turn to Exhibit 1.

A Yes.

Q There's a note there that says, "Julie, see if Dave Jones can meet with her for advise her on the agreement."

Do you see that?

A Yes.

Q Who's Dave Jones?

A You know, I was trying for remember the same thing. I know that there's a David Jones that's an attorney. Well, it must be the David Jones that I know. I forget which firm he was at, at the time, but he's a local attorney.

Q And that "her" in there would be Lynita?

A Yes.

Q Does this refresh your recollection as to whether or not you had discussed with Lynita various attorneys she might see?

MR. DICKERSON: To which I object. You never asked that question.

THE COURT: The notes -- basically your testimony refers to Dave Jones?

THE WITNESS: That's who we initially had in mind and then it changed to Richard Coke and I don't know why.

THE COURT: And with her it would have been Lynita.

THE WITNESS: I believe it would have been someone we would have recommended.

MR. SOLOMON: Nothing further.

MR. DICKERSON: I have nothing further.

MS. FORSBERG: Nothing.

MR. SOLOMON: You're free.

THE COURT: I don't know. I wouldn't say "free."

(Laughter)

THE WITNESS: Thank you.

THE COURT: I apologize for making you come down a second time. It's always a pleasure to see you.

THE WITNESS: Thank you.

Good to see you, Your Honor. Thank you.

THE COURT: We'll take a break.

THE WITNESS: Am I free to leave?

THE COURT: So far, but I wouldn't answer my mail for awhile or answer my door.

(Laughter)

THE WITNESS: My phone is going to be off for awhile.

UNIDENTIFIED FEMALE SPEAKER: I'd run and run fast.

THE COURT: We really apologize for that (indiscernible - 15:29:22).

THE WITNESS: That's okay. I know these things happen. We get a calendar call, you gotta do them.

THE COURT: Thank you.

It's 3:30, what did you want to do? Did you want to start your experts and get it going?

We can take a ten minute break until about a quarter to 4:00. The only thing is that a lot of times when we start that late, then we end up the next day going over everything that we did the last hour because people want to refresh.

I'll leave it up to you guys. I'm fine to keep going, so I'll leave it up to you, whatever you think.

MR. SOLOMON: He's here. He's waiting.

MR. DICKERSON: We can start with him and then I take it that you're going to probably take the rest of the day for him, I would imagine?

THE COURT: Yeah, why don't we take a ten minute break and at least get an hour or so of testimony.

(Break taken from 15:29:59 15:42:49)

THE COURT: Before we start, I just want to let me get this on the record. This is the time set in the matter of Eric Nelson and Lynita Nelson, case number D 411537. We are coming back from a brief recess.

Tomorrow I have mental health court at 1:30. It normally takes about 45 minutes, so if you want to go a little

bit longer in the morning like until 12:30 and take a longer lunch break so I don't tie you guys up on it, just so you can plan on your witnesses. I know you got your experts. Because my mental health court is at 1:30, I never know how many are on there because it depends on how many kids they throw in those locked hospitals over the last week.

MS. FORSBERG: Your Honor, if you have that -- it would at least last until about 2:30, I have just a quick return on an FMC return at 2:30. I just --

THE COURT: Okay.

MS. FORSBERG: I am trying to get somebody to cover it, but if I can go to it, I won't have to.

THE COURT: Yeah, just let us know. That should be quick on that.

MS. FORSBERG: Okay.

THE COURT: So we should be done by about 2:30, but let me know if you're running a few minutes late that way because I'll feel bad knowing that we tied up witnesses sitting there for an extra hour.

MR. SOLOMON: Appreciate it.

THE COURT: Of course after this trial, maybe I'll get on those psychotropic medications, myself.

(Laughter)

THE COURT: Get the kids off and I'll start taking

them.

MR. SOLOMON: Save some for us, counsel.

THE COURT: And it's on the record, so I guess there goes my campaign re election. They always like my transcripts, because throw stuff on the record that makes them smile when they're transcribing it.

(Laughter)

Are you ready to go forward at this time, Mr. Solomon? I take it you want to call Mr. Gerety?

MR. SOLOMON: I call Mr. Dan Gerety.

THE COURT: Watch your step when you go up on that step there.

MR. GERETY: Okay, Your Honor.

THE COURT: They got a book there for you. I see you got your own book, too. There's a lot of books up there for you, so we'll move it around for you just so make sure that you're comfortable.

MR. GERETY: Yeah, let me make sure.

THE COURT: Remain standing and raise your right hand and they'll get you sworn in and we'll get this started for you.

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

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated.

THE COURT: Could you state and spell your name for the record so we get it, first and last.

THE WITNESS: First name is Daniel, D A N I E L. Gerety is the last name, G E R E T Y.

THE COURT: Thank you.

DANIEL GERETY,

called as a witness on behalf of the Intervenors, testified as follows on:

DIRECT EXAMINATION

BY MR. SOLOMON:

Q Mr. Gerety, you're a resident of Clark County, Nevada?

A I am.

Q How long have you been so?

A Since '96, January of '96.

Q You're a certified public accountant?

A I am.

Q Where are you licensed as such?

A In Nevada.

Q And how long have you been a CPA?

A Since 1982.

Q And what have you done between 1982 and currently,

with respect to your work experience?

A I started in 1982, I went to work for McGladrey & Pullen, a public accounting firm in Galesburg, Illinois. I stayed in Galesburg for nine years and transferred to our Peoria office in 1996 and transferred with McGladrey to Las Vegas in January of '96. Started off as an auditor with them and later became a tax partner with that firm. I was with them almost 23 years. I left in 2004 and started my own firm and that's where I'm at today.

Q Okay. Do you focus your accounting practice in any specific areas of accounting?

A At taxation as a whole, and also our best niche is estate and gift planning.

Q And in your accounting practice, do you prepare accountings for irrevocable trusts?

A I do.

Q How many do you do or have you done over the years?

A Hundreds. I mean I started in the '80s. We prepared the returns for four different banks, all their trust returns and even advised them as when their accounting was off and what they should allocate the income and principal. So I've been doing it for a long time.

Q And in your accounting practice, do you prepare accountings for self settled spendthrift trusts?

A I do.

Q How long have you been doing that?

A Since -- we've had them since '99. Well, not really. Probably about 2001, '02, somewhere around there when our clients first had them.

Q Have you ever served or do you currently serve as distribution trustee of any self settled spendthrift trusts?

A I do.

Q And you indicated that one of your niche practices is in estate and gift planning?

A That's correct.

Q Okay. Is part of that involved you in advising clients with respect to irrevocable trusts and self settled spendthrift trusts?

A It does.

Q And are you -- have you attended continuing education courses with respect to those types of trusts?

A A substantial amount. I've even taught courses in Steve Oceans (phonetic) and Dick Oceans and I have taught courses. I'm teaching one coming up in September which will cover material on trust and spendthrift trusts. I attended a lot. I go to the Hicklinger (phonetic) estate planning conference every two or three years which is down in Florida and the AICPA's estate planning conference. Actually, I'm

scheduled to attend that Monday, which I paid for and will probably miss.

Q What's the Heckerling --

A The Hicklinger [sic] is the University of Miami Hicklinger Institute, continuing legal education. It's probably the largest estate planning conference in the country. They probably have 4,000 attorneys that attend that down in Orlando. I'm one of the few accountants that actually attends that.

Q When were you retained by me to serve as an expert in this case?

A When we first started work I went with Angela to start going through tracing of the transfers into the trust and so forth, was in September of 2011.

Q And did that project take you a lot of time?

A It did.

Q Before I get more into that, what specifically were you asked to do?

A Originally we were asked to try to trace the assets from the separate property agreement that was in -- was it '93, if I remember it right, '93, I think -- from '93 all the way to September of 2011 at the time and we weren't able to get all of those old records. We were not able to do a tracing from '93. The best we -- with the records that were

available, was to go from 2001 to 2011.

Q Had you ever performed services for Eric prior to your retention as an expert in this matter?

A Yes.

Q What when's the first time you recall providing services to Eric Nelson in entities in which he was involved?

A If my memory is correct, it was '98, 1998. Chanel Castle, who was one of my partners at McGladrey referred me to Eric and we worked together on the Wyoming Downs transaction and the sale and the exchange with which was Dynasty, Inc., now it became Phoenix Leisure -- I helped him structure that entire deal. That was the first time of working with Eric.

Q Okay. And subsequent to that time, did you remain involved in any of Eric's businesses?

A Yes. We became the accountants for Phoenix Leisure. We did all the tax work for that company after it sold The Jockey Club and it owned Wyoming Downs at that time. We any time Eric would have a complex transaction come up, even though I wasn't preparing his tax returns, he called on me to help structure the transactions if it was a complicated transaction.

So, the Washington card house, I was involved with intimately, and we did the returns for those when -- and you know, whatever needed to be done there -- looked over the

accounting. There was K-1 -- if I remember right, the Las Vegas casino, when that deal was closing out, Eric was bringing me those final K 1s to advise him on exactly how those should be treated for tax. I actually advised him CPA on how that should be handled. The Silver Slipper deal, I was intimately involved with that and a lot of the things that came up, reviewing the partnership agreement and stuff like that, with Eric.

Q Did you represent Eric or Lynita or any of the entities with respect to any tax returns or tax audits?

MR. DICKERSON: Object to the form of the question and the compound nature. I'm sure that you're going to break it down, if you do, but

MR. SOLOMON: I will break it down.

MR. DICKERSON: Thank you.

THE WITNESS: Yes.

BY MR. SOLOMON:

Q Who did you represent?

A I represented Eric, and it was a year -- I wasn't involved in the preparation of the tax return. Eric was actually handling the audit himself and they got to a sticking point with the auditor and it was a deal that had to deal with basis on Wyoming Downs and losses and whether there was enough basis to deduct that, so I had to go through with the IRS

auditor, the transaction on how we got basis and gave him a copy of a memo that I had done on tracking everything and we there was some substantial losses that were being carried back and, yeah, it resulted in a no change on that particular audit.

Q Did you do any other audit work for him?

MR. DICKERSON: Can we have a time frame for that?

THE WITNESS: That was -- God, what year was that. You know, I'm not sure probably four years ago. I would guess four years, but I'm not positive. I don't remember.

BY MR. SOLOMON:

Q Okay. Did you do any other tax audit work with him?

A Yes. We just -- I actually filed a Tax Court petition with another attorney and took that through appeals and got that settled just recently, just last year, which had to do with The Silver Slipper, the deductibility of those losses and his basis in that entity.

Q Have you done any tax preparation services for Eric or his entities?

A Yes. We started preparing Eric's personal separate return in 2006 and we've been doing that since then.

Q Do you recall becoming aware of the separate property agreement between Eric and Lynita and their separate property trusts in connection with any other work you did for

them -- or for him?

A Yes, I was aware of the trust

MR. DICKERSON: And just for the record, Your Honor, I raise the same objection that I discussed earlier, that any questioning by the trust with respect -- by the ELN Trust with respect to the 1993 separate property trust, they do not have standing.

THE COURT: So noted.

THE WITNESS: Okay. Yes, I mean I was aware that the trust existed. You know, I don't exactly remember when. It would have had -- I had to have known because I reviewed all of the sales transactions of Wyoming Downs and I was intimately involved with all of the contract work which would have showed that it was his separate property trust, as the person transacting that, so I was aware of that at that time.

BY MR. SOLOMON:

Q At some point did you become aware of the self settled spendthrift trust that Eric had?

A Yes.

Q When was that?

A Again, I'm not sure how early. You know, obviously I was aware of it as early as 2006 because I prepared tax returns for the trust. Prior to that, I really don't recall how much -- I don't recall what year I became aware of them

prior that.

Q Do you recall -- do you have any recollection of speaking with Eric about transferring assets between his self settled spendthrift trust and Lynita's?

A I do.

MR. DICKERSON: Objection.

THE COURT: He answer the question.

BY MR. SOLOMON:

Q What do you recall?

MR. DICKERSON: Objection to any hearsay, Your Honor.

THE COURT: It's overruled. You can go ahead.

MR. SOLOMON: For the purposes of the truth.

MR. DICKERSON: Well, what's it being offered for? It's irrelevant.

MR. SOLOMON: No, it's not. It's pertinent.

THE COURT: Overruled. Have you finished your answer?

THE WITNESS: Eric -- we were going over some other transaction, I don't recall which one, but while we were meeting I know he then asked me -- he did ask me at one time what's the best way to transfer assets between the two trusts, as far as protecting? I want to put safer assets over in Lynita's Trust and transfer riskier ones in mine. He asked me

what was the best way and my advice was, you know, the best way I saw was do exchanges as if you were, you know, transferring property for value.

BY MR. SOLOMON:

Q In connection of your preparation of Eric's tax returns, did you regularly get financial information and records from his staff?

A Yes.

Q Did you ever work with Shelley Newell when you were helping Eric structure some of these transactions?

A Yes, I worked a substantial amount of time with Shelley, Shelley Newell.

Q How would you judge her confidence in bookkeeping?

A I thought she was very confident. She was very enthusiastic about what she was doing. She pretty much ran all of the details of the card houses in Washington. She was very involved with Phoenix Leisure and kind of a partial management position, it would seem like to me, in just the accounting, she was very involved and provided us with the information that we needed to do those returns.

Q Did you find her bookkeeping to be reliable?

A I did.

Q Have you ever worked with Lana Martin?

A Yes.

Q How would you judge her competence in bookkeeping?

A I think she's competent. She's not an accountant, but she's competent. We got everything that we needed to prepare the tax returns.

Q Did you find her bookkeeping generally to be reliable?

A Yes.

Q Now, you indicated earlier that I asked you to prepare a tracing analysis of whether the ELN self settled spendthrift trust and the LSN self settled spendthrift trust kept their assets separate. What did you do to perform that task?

A We gathered all the general ledgers that were available for 2001 through September of 2011.

MR. DICKERSON: I'm sorry, what was the start date?

MS. PROVOST: 2001.

THE WITNESS: 2001.

MR. DICKERSON: Starting in January?

THE WITNESS: The general ledgers went from January to -- yes, I answered the question, and we -- so then we looked at what the beginning assets were. We followed deposit coming in. We followed -- made sure that we could -- knew what assets were coming into the trust, where they were coming from. And so we looked at all of the capital contributions,

if they were recorded that way. We made sure to look at the income to make sure it was income from the assets owned by the trust. We looked -- we just traced really all of the money coming into the trust and in particular, we looked at a lot of expenses and made sure they belonged to the trust and traced and started asking questions and gather more information because we were missing bank statements. Some of the trust accounts, we had to get statements for because all of the activity wasn't actually posted there and even though it was just investment accounts is what it was, so when the money came in and out they were posting that.

BY MR. SOLOMON:

Q Okay. Did you also track outflows?

A Yes.

Q So you basically tracked all of the inflows and outflows during that time period?

A Yes.

Q And you indicated that if there were gaps in your information, what did you do to try -- if there were gaps in your information from what you had been initially provided, what did you do to fill in those sources?

A We put together a list of what the gaps were. We worked together with Lana and Rochelle and, you know, here's what we need. What is this? If we couldn't tell what it was,

where did this come from? Give us the backup on it.

They had to go back to the bank to get statements. They had to, you know, Eric didn't have all of the original documents is why we had to go back to the banks, so it was and then once we got those questions answered, those gave us new questions. So as each time we got your questions answered, we had more questions, which caused us to keep asking for more information before we got through it all.

Q And besides bank statements, did you get transaction statements?

A We got deeds of trust. We got sales agreements. We got closing documents. We got assignments, some minutes, not all of them. We got spreadsheets on summaries of titles and summaries of what the transactions were.

Q And can you estimate how many transactions you had to look at over the course of that time?

A It thousands, obviously, of transactions. I mean each year -- each year -- so what, we were covering nine years ten. Yeah, one through -- 11 years, we had 11 years of transactions and each year had easily 400 transactions going through it, just one checking account. So, yeah, a lot.

Q And had -- were some of the accounts closed by the time you were looking?

A Oh, yeah -- yes.

Q That's why you had to go back to the bank to get some of the records?

A Yes. The bank had some problems because they were old. We only keep them for four years, five years, and we were trying to go back to 2001.

Q All right. You indicated that you had a balance sheet as a -- from January 1, 2001?

A Correct.

Q And what was that a balance sheet for, for what entity?

A What it appeared to us and it appeared to me, they had kept the GL for -- a general ledger, excuse me -- a general ledger for a separate property trust

Q You're talking about Eric's separate property trust?

A Eric's separate property trust.

And they just continued that general ledger for the Nevada trust, the Eric Nelson Nevada Trust. So all the assets in March, or as they were gradually transferred during 2001, they all show as being owned -- they're all on that general ledger on January and there was retained earnings and so forth. So obviously what they had done is taken their separate property trust and just continued going forward. They didn't start a brand new general ledger.

Q Okay. Did you make a conclusion from that as to

where the source of the 2001 trust assets originated?

A Well, it's -- if they just continued the general ledger, they were continuing the accounting for the separate property of Eric's on a previous general ledger and just, the conclusion you can make is they just carried it forward. Then we -- but we also looked at each of those assets that were listed there and then looked for the assignments and said where are the assignments? We made sure we tracked down every assignment and if there was one that we couldn't find or if there was an exception we would note it. Like the cars were never titled in the trusts name, for instance.

Q And as you had questions with respect to the issues, who would you discuss those with?

A With Rochelle, Lana and Eric, the three of them. Lana originally was kind of our main contact, along with Eric.

Q Did you make any inquiry whether the assets of the of any of them, whether the assets of the ELN separate property trust and the LSN separate property trust were kept separate?

A Yes, and I even went and spoke with Shelley Newell specifically because I was asking who was doing the accounting then, who has that knowledge? And Shelley had been working for Eric and had done the accounting for the separate property trusts from at least before 2000 -- from '93 -- excuse me. I

think she quit right around 2001. She didn't quit Eric, but she quit preparing the accounting for the trust.

So I met with her and spoke with her and she assured me that everything had been kept separate; that was her priority. She was doing the accounting. She made sure that everything was kept separate is what she had told me.

Q Are you aware of any -- did you become aware of any loans that were made between the ELN Trust and the LSN Trusts from 2001 through the end of year period?

A Yes.

Q What did the books of accounts that remain paying for the ELN Trust contain to reflect those?

A The general ledger kept -- there were actually two accounts that kept track of due to/due froms the two trusts. So when the loan was made, they would book that on the general ledger and show a liability. As it was paid off they would show it being paid off and show the assets being transferred that was used to pay that off.

The due to/due from went both ways though. Sometimes the trust would pay an expense for an asset of Lynita's Trust and they would show that from due from Lynita's Trust and back and forth. So it was debits and credits going back and forth, cash in and out, and they separated it and accounted for it every year.

Q Were you able to determine whether all of the loans that had been so booked had been satisfied?

A Yes. The first one was like a $440,000 loan. Assets, there was some Mississippi property that was used to pay that off from Lucky, Lucky, Lucky and cash in and out, you could just I was just tracing the dollars going back and forth. And for the most part, it looked like the major notes were paid off, but there was still -- I had -- I had prepared an exhibit of the cash coming in and out. If you ignore some of the property transfers, there was still cash due to Lynita's Trust at September of '11, just looking at cash only. Like I said, some of those notes were paid off with property.

Q And did it appear from reviewing the general ledgers that those loans between the trusts occurred after they became the 2001 self settled spendthrift trust?

A The loans that I -- yes. Actually, there was -- the beginning balance sheet did not show any due to/due froms at January 1 of 2001. The first time there were transactions that appeared in those accounts, but obviously we didn't look back at prior years, but there was no prior balance. So in 2001 was the first time and there was a $440,000 loan signed document actually in that year.

Q Now, in reviewing the records from the ELN Trust, did you find any issues with bookkeeping had been done?

A There was some issues, yes, that we saw. We made journal entries because we were able to track and look at everything and basically say, well, this should have been, so it was classified as this and it should have been classified this way and made any corrections as we went to what we thought was the proper accounting.

Q Okay. Is -- and you've done this type of process on a number of occasions where you've reviewed bookkeeping done internally from a business or a trust and then reviewed it?

A We make journal entries for just about every client that we do tax returns for.

Q So it's a common practice that CPAs do when they get in house bookkeeping from clients to review those and determine whether or not things have been properly classified and posted?

A That's correct.

Q As you find things that have been classified or posted in a way that you would think is technically incorrect, what do you do?

A We talk to the client and we make journal entries and give them to the client so they can post them to their books.

Q And can you give the Court some examples of some of the mispostings that you saw in this case?

A Yes. The biggest was we saw a lot of activity going through the capital accounts, capital contributions and distributions and there were a few -- Eric kept his main investment account was not actually kept on the books. So like the Mellon account, for instance, that balance was not tracked, only the transfers back and forth between that, and they were recorded as a capital contribution if money was coming from the Mellon account into a checking account into the trust or buying and asset.

Q Before you go on, let's make sure that we understand that.

So they were recording -- when Eric was taking money out of the Mellon account and transferring it into some other account --

A Owned by the trust.

Q -- that was being tracked on the books, it was showing as if he was putting new assets into the trust?

A Correct.

Q A capital contribution?

A A capital contribution is what it was showing.

And so we went and -- and so the transactions within that account were incorrectly shown as distributions and contributions and they were not; they were just transfers between one trust account and another trust account. So we

received all of the monthly statements for that account and on a monthly basis trans -- reported -- recorded the just and journal entries of every single transaction that went through, interest, dividends, and then the transfers, we booked that asset on the books, trust GL, as an asset, and so it eliminated all of those distributions and capital contributions on their GL.

Q You talked about the capital contributions. The distribution side would be if the trust wrote monies out of some accounts that were being booked for Eric that went into his Mellon account that was -- that looked like, at least on the books it was a distribution to him; is that correct?

A That's correct.

MR. DICKERSON: Objection; leading, Your Honor.

MR. SOLOMON: It's a recap, Your Honor.

MR. DICKERSON: Your recap is improper, too, then.

THE COURT: Let's move on.

THE WITNESS: There was -- but that was -- that's probably where most of our journal entries came from, as far as the number of journal entries because we were posting those on a monthly basis, so there would be 12 journal entries for one year, you know, for each month's activity.

Shall I continue?

MR. SOLOMON: Sure.

MR. DICKERSON: Is there a question pending?

BY MR. SOLOMON:

Q What other issues?

MR. SOLOMON: What's that?

MR. DICKERSON: Is there a question pending?

MR. SOLOMON: Yes, I said, "What issues did he find with the books?"

THE COURT: (Indiscernible - 16:16:22) some -- if you can give an example of some of the issues. You talked about the Mellon account.

THE WITNESS: Yeah, that was one issue.

We -- let me see if I remember here. We had the Terra Del Sol was told a year or two after that, there was still a note balance due. That was deposited in Eric's Mellon account, which was an asset of Lynita's Trust, belonged to Lynita's Trust. So that was -- we made the journal entry for that, that showed that that should have gone through the due to/due from.

Then there were expenses of Lynita's personal taxes were paid by Eric's personal trust and we posted that back as a due to/due from.

BY MR. SOLOMON:

Q Let me -- I'm going to stop you and go through some of the details on these before we move on to too many issues.

A Okay.

Q You indicated that the Terra Del Sol funds had been posted into his trust; is that right?

A One payment came into his trust, yes. Not all of the funds, but -- and it was after the sale, a year or so after the sale when the payment was made.

Q And do you recall how much that was?

You can refer to your report if you need to refresh your recollection.

A I think it was around -- let's see. It was just over a million dollars.

Q Do you know what happened to that million dollars after it was transferred in?

A Yes. Approximately -- it was immediately -- it was almost the same day that $25,000 of it was transferred to Lynita's Trust. Then later that same -- I think it was that same year -- let me go back here again -- about $600,000 of it went to pay Lynita's personal tax liability and that's where a majority of it went, was back to Lynita, actually, not all of it, though.

Q You said a little over a million. Was it $1.4 million? Can you tell us what the actual number is?

A Yeah. Sir, you're right. I was looking at the wrong number on that schedule. It was a million four, sixty

one ninety --

Q Okay.

A -- which came from Fidelity Title.

Q Were those Terra Del Sol proceeds commingled?

A No, I mean we've accounted for them separately.

MR. DICKERSON: Object to the form of the question. What do you mean accounted for them?

MR. SOLOMON: I'm going to ask a follow up questions.

BY MR. SOLOMON:

Q After these funds were deposited into the ELN separate property trust account, were there enough liquid assets in that trust to meet both all of its outflows and to reimburse the LSN Trust?

MR. DICKERSON: Object to the form of the question.

MR. SOLOMON: On what grounds?

MR. DICKERSON: How would he know it's enough? I mean let's give us a number and we can figure out whether it's enough.

MR. SOLOMON: Let me re ask the question. I'm told that I misstated it.

THE COURT: 1.461 was the number with some change on that.

//

BY MR. SOLOMON:

Q Let me ask it this way: Did you do an analysis of whether -- what the cash outflows were or the ELN's separate property trust after the Terra Del Sol's proceeds were deposited, that $1.4 million dollars were deposited did I misstate it again?

MR. LUSZECK: You said separate property trust again.

MS. FORSBERG: Self settled.

MR. SOLOMON: It must be getting late.

MR. DICKERSON: You're getting like me -- not that bad. Sorry, that wasn't defensive.

BY MR. SOLOMON:

Q All right. Did you do an analysis, Mr. Gerety, of whether after the $1,460,190 of Terra Del Sol money was posted into the books of the ELN Trust of what outflows thereafter came out of that trust at all times until the end of accounting period?

A Yes.

Q As a result of that analysis, were you able to conclude whether there was enough liquid assets in the ELN Trust at all times after that deposit of $1.4 million dollars to return the money to the LSN Trust and to meet all of the outflows for the ELN Trust?

A Yes, there was.

Q Now, you also indicated there was some misposting I'm not sure how you characterized it -- of a property that was owned by both trusts?

A Yes.

Q What does that relate to?

A The Lindell commercial building was transferred so that it was a 50/50 ownership. Fifty percent of it was transferred from one trust to the other. When -- after that happened, it appeared that, and, again, I didn't review Lynita's Trusts, all of her GLs and so forth, but Eric was not receiving his 50 percent of the rent initially after that transfer for a number of months. But then after that Eric started receiving a hundred percent of the rents. His trust I shouldn't say Eric -- Eric's Nevada trust started receiving a hundred percent of those rents and was paying a hundred percent of the expenses on that property.

Q Either way, when you said Lynita's Trust was receiving all of the rent, was her trust paying all of the expenses as far as you could tell?

A It appeared that way, yes.

Q Okay.

A That's my assumption, but I wasn't able to confirm that.

Q Eric's trust wasn't paying them?

A No.

Q Okay.

A There was also a house -- Arnold, 830 Arnold.

Q All right. Before you move on away from the Lindell, what were you able to do to correct that posting errors or those booking errors?

A We showed the expenses and the rent that was collected by Eric and took 50 percent of that money and showed that Eric's trust owed that back to Lynita's Trust --

Q Okay.

A -- and then booked that into the due to/due from account and a payable between the trusts.

Q Okay. Were any of those funds commingled such that you couldn't account for any of them?

A No, we were able to account for all of those funds, and like I said before, there were plenty of liquid assets to satisfy those obligations.

Q Okay. And enough liquid assets in Eric's trust to satisfy all of his outflows, irrespective of those monies, right?

A Yes.

Q All right. You mentioned 830 Arnold, what's that?

A It's just a little house. It was minor. A small

amount of rent, maybe $7,000 a year or something like that, but Eric's trust, for a period of time was receiving -- it looked like he was receiving the rents for that, that should have gone to Lynita's Trust.

Lynita's Trust had owned it since 2004 and from 2008 through 2011 it looked like Eric's trust was collecting that money. I think it netted something less than $7,000 a year.

Q Were you able to make adjustments to rectify that?

A Yes.

Q In your opinion, were those funds commingled

MR. DICKERSON: Object to the form of the question.

BY MR. SOLOMON:

Q Such that -- can I finish it?

MR. DICKERSON: Oh, I'm sorry. I thought you put a question mark there. I'm sorry.

MS. FORSBERG: It's getting late.

THE WITNESS: No. We were able

BY MR. SOLOMON:

Q Hold on. I gotta get the question out before you answer it. In your opinion, were those funds commingled such that you could not account for the same?

A No, we were able to account for them separately.

Q And, again, at all times while that money was on the books for Eric's trust, was there sufficient cash in his trust

to pay for all of his outflows?

A Yes.

Q And to reimburse that amount?

A Yes.

Q All right. Did you see any issue with respect to any tax refunds that had been received in any years?

A Just one. There was a refund of from a net operating loss carryback, I believe, to a year prior to the trusts. Let me see, let me make sure I'm getting the right. Not prior to -- in 2006, there were tax refunds of $195,010 that was received from the IRS due to the net operating loss carryback to 2001 and 2002. So they were 2001, 2002 refunds, and that was a joint tax return and that money was deposited into Eric's trust.

Q Okay. Whose property or losses generated that tax refund?

A It -- those refunds, I think were the same years going through audit and those losses had been generated from Eric's separate property is what created the net operating losses. So it was his losses that had caused the refunds.

Q Notwithstanding that, you did what with that in terms of your adjustment?

A Well, I wasn't sure, because I wasn't able to trace it. I didn't have which trust paid what in taxes, if it was

their separate property coming back and didn't do an actual true tracing of that refund. I split it 50/50, so I showed that half of it was due back to Lynita's Trust.

Q Did you feel that was the conservative methodology to handle that issue?

A I am certain that my approach to that favored Lynita, as far as the accounting went, so, yes.

Q So, for this entire period, did you find that any of the assets owned by the two self settled spendthrift trusts were commingled in a way in which you could not separately account for them?

A No.

Q Can you verify to this Court that the ELN Trust, at all times had sufficient funds to reimburse the LSN Trust for anything it owed it and to cover its own outflows?

A It did.

Q In preparing your analysis, did you also become aware that there were transfers of properties between the two trusts?

A Yes.

Q And when did those occur?

A The first one we saw was in 2002 which was property transferred to pay off a note and there was an agreement signed by both parties saying that we're transferring this as

satisfaction of this note.

And then in 2004, there was substantial -- all of the Mississippi property owned by Dynasty, owned by Eric's trust, owned by all the other entities, almost all of them, I should say, were transferred to Lynita's Trust.

Q Do you recall now, now that you've done this accounting, was this at or about the time that Eric had called you and asked your advice about how to transfer properties between the trusts?

A I just don't remember what year that was, so I can't say if it was. It may have been, but I can't say.

Q Were you able to confirm whether the transactions had been completed between the trusts?

MR. DICKERSON: I'm sorry. I don't understand the question so I need to object to it.

What transaction are we talking about?

MR. SOLOMON: The ones he just testified to, the transfers between the trusts in --

MR. DICKERSON: 2004?

MR. SOLOMON: -- 2004 through

THE WITNESS: It was explained to -- it was explained to me that the transfers were to start cleaning up the title on Mississippi and then that there was going to be transfers back, that it was part of an exchange and that in

the end result there would be some of the source notes and property that were related to source would be transferred to Eric's trust and that the -- in the end, the plan had been that 50 percent of the Mississippi property would be owned by each trust.

There was -- I was told that there were documents prepared that

MR. DICKERSON: May we have a foundation as to time and who he's speaking to?

THE COURT: Sure. Do you want to

THE WITNESS: During this -- the timing of this was during preparing my report. I was asking what's -- what is going on with the transfers and that's the response I received, was that there -- the goal was to

MR. DICKERSON: From whom?

THE WITNESS: From Eric, sorry. From Eric Nelson.

And that there were LLCs prepared to hold the Mississippi property and once the titles had been cleaned up, they would place those Mississippi properties into those LLCs and the LLCs would be owned 50/50. So whether it was complete or not, based on what I was told, the one piece that hadn't been completed on the exchanges was 50 percent of the Mississippi property or really all of the Mississippi property going into those was three or four LLCs which would have been

owned 50/50. That part was not done.

BY MR. SOLOMON:

Q What did you do to reflect that transaction since it had not been completed?

A As we went through the GL, I showed the transfers at book value for the most part, except for a source as just going through the due to/due froms. But then I looked at those transfers were supposed to be in exchange, so there shouldn't have been a due to/due from, other than making sure all of the property got transferred.

So what did not get transferred was the Mississippi properties, beachfront property, which was worth, according to the appraisals that were just prepared recently were worth about two million, the beachfront alone was. And I took a million dollars and said, okay, here's the net of those exchanges that occurred in '04 through '07 and say, well, there's still a million -- the property stills needs to be done and adjust the due to/due from between the two trusts for that million that was still a liability of Lynita's Trust back to Eric's trust for that Mississippi property.

Q If the transaction had been completed, that would be reversed?

A That would be reversed; that's correct.

Q Throughout your analysis, did you find any instance

in which the parties' community property was placed into the ELN trust?

A Repeat the question. I wasn't quite ready.

Q Yes. Throughout your analysis, did you find any instance in which the parties' community property was placed into the ELN Trust?

A No. Found no evidence of that.

Q In connection with your work, did you review the ELN Trust?

A Yes.

Q Okay. And as a result of that, were you aware of some of the formalities that were required by the terms thereof?

A Yes.

Q Did you observe any formalities of the ELN Trust which had not been complied with?

A No.

Q Did you review the distributions that had been made to Eric from that trust?

A Yes.

Q And from your observations, were the formalities of the ELN Trust complied with in connection with those distributions?

A Yes.

Q Did you observe any of the terms -- any terms of the ELN Trust that were violated?

A (No audible response.)

Q And were you able to trace all of the assets and liabilities that the ELN Trust since its inception to the end of your accounting period?

A Yes.

Q Are all of the assets currently in the ELN Trust --

A Mark?

Q -- traceable --

THE COURT: I think he wants to finish the question.

THE WITNESS: Mark, let me just clarify that --

MR. SOLOMON: Oh, I'm sorry.

THE WITNESS: -- just to be correct.

There was one account early in -- through '01, '02, a Bank of America money market account that we did not get statements for and that one I could not

BY MR. SOLOMON:

Q Okay. Did you have an understanding from talking to parties what that account was for?

A It was a separate property account. It came from a separate property trust, yes.

Q Are all of the assets currently in the ELN Trust traceable back to the assets with which that trust was funded

in 2001?

A Yes.

Q Did you do an analysis of the liabilities associated with ELN Trust, either directly or through its holdings?

A Yes, I did.

Q And what materials did you review in order to do that analysis?

A Eric had put together a package for me which had all of the documents that supported those liabilities listing he listed them out and what the contracts were, the lawsuits, bankruptcy claims, things like that, that had been filed.

Q And was that the same information that was provided to Mr. Birch?

A Yes, it was, or I should say I assume it was. I was told it was, but I didn't

Q And as of the date of the report, how much in liabilities were there?

A As of the date of the report there was real -- I mean there were like book liabilities and then there were contingent liabilities which I broke out. As of September 30th, Eric's Nevada trust owed Mellon Bank a million, one ten, that has since been paid off. We didn't review what the tenant deposits due back were, which we thought were minor, but there were $945,000 of other liabilities that were

reflected on the books and there were $6,744,000 of liabilities that were contingent, some of them, actually, I think are -- were for past attorney fees that hadn't been booked yet because they hadn't been paid, so not on the accounts accrual basis, but they were not booked.

So of that -- and then there were some that I just couldn't quantify. You know, some of them actually belonged to the Mississippi properties which you just couldn't quantify what contingency there might be. But the total of $6,700,000 in contingent and real liabilities that are not on his books.

MR. SOLOMON: I have nothing further, Your Honor.

THE COURT: Do you want to break down? It's about a quarter to 5:00.

MR. DICKERSON: Yeah, we can break.

I would like to just do one thing right now so we can just start

THE COURT: Sure.

MR. DICKERSON: I would like to move for the admission of his entire report. Do we have a copy for the judge?

THE WITNESS: I have one here.

MR. SOLOMON: Do you have one?

THE WITNESS: Actually, I can give you this whole binder. I'll pull out what wasn't in my report.

MR. SOLOMON: Or we can make one -- do you have one?

MR. DICKERSON: I can have one made and bring it tomorrow.

MR. SOLOMON: That's fine. We'll deal with it tomorrow then.

THE WITNESS: I have my digitally, so I don't mind giving you this.

THE COURT: Whatever you want to do, if it doesn't work out, he can just pull that out and

THE WITNESS: Except I'll need it on cross.

(Laughter)

THE COURT: We'll have it marked and admitted and give it back to you to review. I'm sure you're going to admit it.

MR. DICKERSON: If there's no objection, can the entire report be admitted?

THE COURT: No objections?

MS. FORSBERG: No objections.

MR. SOLOMON: No objections.

THE COURT: Mr. Gerety's report will be admitted as Intervenor's wherever we're at.

THE CLERK: Number 168.

THE COURT: Intervenor's 168. I want to say that was Intervenor's 168, Daniel Gerety's expert report.

(Whereupon, Intervenor's Exhibit No. 168 is admitted into evidence.)

THE COURT: He's got a right to -- did you pull out the stuff you need? Why don't you pull it out, that way she can mark it and keep it so we don't lose it.

THE WITNESS: All right.

THE COURT: He's going to pull out the stuff that's not in his report and we'll get it marked and then we'll be in recess until 9:30 tomorrow.

MR. SOLOMON: Sure.

THE COURT: We're off the record.

(Proceedings concluded at 16:47:58)

* * * * *

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.

William J. Garling

William J. Garling, CET
Certified Electronic Transcriber
CET**D-543

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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 I

THURSDAY, JULY 19, 2012

APPEARANCES:

The Plaintiff:	ERIC L. NELSON
For the Plaintiff:	RHONDA FORSBERG, ESQ. 64 N. Pecos Rd., #700 Henderson, Nevada 89074 (702) 990-6448
The Intervener:	NOT PRESENT
For the Intervener:	MARK SOLOMON, ESQ JEFFREY P. LUSZECK, ESQ. 9060 W. Cheyenne Ave. Las Vegas, Nevada 89129 (702) 853-5483
The Defendant:	LYNITA NELSON
For the Defendant:	ROBERT DICKERSON, ESQ. KATHERINE PROVOST, ESQ. 1745 Village Center Cir. Las Vegas, Nevada 89134 (702) 388-8600

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