

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOCA PARK MARKETPLACE
SYNDICATIONS GROUP, LLC, a
Nevada limited liability company,

Appellant,

v.

HIGCO, INC., a Nevada corporation,

Respondent.

Case No. 71085

District Court Case No. 14-1750780-B

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**APPENDIX
TO
APPELLANT'S OPENING BRIEF**

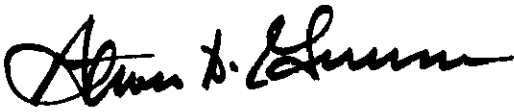
VOLUME II (Part 1 - APP 000247-363)

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CLERK OF THE COURT

NOTC
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DISTRICT COURT
CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked
Nevada corporation, et al.,

Defendants.

Case No. A-14-710780-B

Dept. No. XI

**NOTICE OF FILING TRANSCRIPTS OF
PROCEEDINGS**

TO: ALL PARTIES AND COUNSEL OF RECORD

PLEASE TAKE NOTICE of the filing of the following transcripts of proceedings
attached hereto:

Transcript of Proceedings BEFORE THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE – BENCH TRIAL – DAY 1 – TUESDAY, JULY 26, 2016

Transcript of Proceedings BEFORE THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE – BENCH TRIAL – DAY 2 – WEDNESDAY, JULY 27,
2016

Transcript of Proceedings BEFORE THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE – BENCH TRIAL – DAY 3 – THURSDAY, JULY 28,
2016

....

....

1 Dated this 28th day of November 2016

HEJMANOWSKI & McCREA LLC

2

By: /s/Charles H. McCrea

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Charles H. McCrea (SBN #104)

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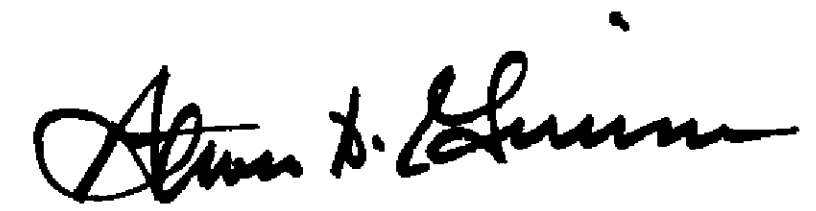
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of HEJMANOWSKI & McCREA LLC and that on this 28th day of November, 2016, I caused documents to which this is attached entitled **NOTICE OF FILING TRANSCRIPTS OF PROCEEDINGS** to be served by the Court's electronic filing system through E-Service pursuant to NRCP 5((b)(2)(D) and EDCR 8.05 on:

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

HIGCO, INC.

Plaintiff

vs.

BOCA PARK PARCELS LLC, et al..

Defendants
.

CASE NO. A-710780

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1

TUESDAY, JULY 26, 2016

APPEARANCES:

FOR THE PLAINTIFFS:

ERIC OLSEN, ESQ.
DYLAN CICILIANO, ESQ

FOR THE DEFENDANT:

CHARLES H. McCREA, JR., ESQ.

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, JULY 26, 2016, 1:23 P.M.

2 (Court was called to order)

3 THE COURT: Good afternoon. Would you like to make
4 an opening statement?

5 MR. OLSEN: We would, Your Honor.

6 THE COURT: Okay.

7 PLAINTIFF'S OPENING STATEMENT

8 MR. OLSEN: Boca Park, the landlord, made a promise
9 in this case, as the Court knows. The promise was that all
10 revenues -- gaming revenues in Boca Park belong to Three Angry
11 Wives. The form of the promise was a negotiated exclusive,
12 which you'll hear about, for gaming. It was gaming and
13 taverns, but what's relevant here is for gaming. And the
14 Court's already decided that Boca Park broke that promise by
15 finding liability in this case.

16 It broke the promise by entering into a lease with
17 Wahoo's, Wahoo's Tacos, that allowed gaming. Gaming there
18 started in May of 2012, and since that time not only has Boca
19 Park, the landlord, collected the full and increasing rent
20 from Three Angry Wives, but it's also collected base rent from
21 Wahoo's and it's entitled -- as a gaming establishment it's
22 entitled to collect at percentage rent based on Wahoo's
23 revenues.

24 When the defendant broke that promise in 2012 Three
25 Angry Wives, Higco -- it's trade name is Three Angry Wives, as

1 the Court knows, was nine years into a thirty-year lease with
2 extensions. It had established itself and Boca Park as a
3 gaming destination. There was no other gaming allowed in the
4 center, except there was gaming at the grocery store, at
5 Von's, and Long's was there for a period with gaming in the
6 drug store.

7 You'll hear that location is critical. It's
8 critical to any business, frankly, but it's particularly
9 critical to a gaming business. Here you have not only great
10 traffic patterns, a lot of traffic going by this location, but
11 traffic in the center, and it's an affluent area, which is a
12 perfect scenario for gaming.

13 You'll hear that an exclusive in a center like this
14 is critical. It's because there's potential for other gaming
15 establishments in a center like this to get that as part of
16 your negotiated deal, to get an exclusive on gaming to keep
17 out other competition is essential to the deal. Boca Park
18 took that away by allowing gaming within 600 feet or so of
19 Three Angry Wives.

20 Then Boca Park claimed that there was no exclusive.
21 Now, that issue of whether it was a different contract or what
22 the exclusive meant was previously resolved in declaratory
23 relief action. Now, however, after the Court has determined
24 liability on Boca Park's part it still claims that Three Angry
25 Wives has no damages or de minimis damages. Three Angry Wives

1 has been damaged because Wahoo's received revenue for gaming
2 at Boca Park. That's the issue. All Boca Park gaming is
3 supposed to be Three Angry Wives gaming. That is the universe
4 of gaming we're looking at here. There should be no option to
5 go to any other venue in Boca Park for gaming. I think of it
6 as more akin to a -- it's a lease provision, but I think it
7 was more akin to almost like a doctor's noncompete; when that
8 doctor leaves the practice and violates his noncompete every
9 patient should have been a patient of that prior practice.

10 Every Wahoo's gaming game is a loss for Three Angry Wives.

11 Between July 2012, a couple of months after they
12 opened for gaming, through June of last year, which is the
13 information that was studied by plaintiff's expert, Mr.
14 Agüero, and then reviewed by defendants' expert, during that
15 period of time over \$10 million in coin in you'll see went in
16 at Wahoo's. Wahoo's had about 400,000 in revenue for that
17 three-year period gained from gaming.

18 The evidence will show that Wahoo's in fact
19 increased relative -- well, not only relative, but over time,
20 over a three-year period its gaming increased substantially
21 while its food revenues declined. Mr. Agüero, the expert for
22 Three Angry Wives, is going to -- is going to tell you that
23 Three Angry Wives is entitled to \$1.1 million in damages over
24 the life -- well, [unintelligible] life of the lease with
25 21 years remaining on the lease of Three Angry Wives.

1 We also hear from Sean Higgins and you'll hear in
2 this case that that's -- and from Mr. Aguero, frankly, that's
3 a conservative figure because it's based on rated players.
4 And I know the Court knows what we mean by rated players,
5 people that are signed up for player tracking and are rated
6 players. Rated players at both locations is what was studied.
7 Three Angry Wives has unrated players, and Sean Higgins will
8 talk about that.

9 The total impact, just the total impact for 21-year
10 period is closer to 3.1 million. So the number that Mr.
11 Aguero has opined to is a conservative number, because he used
12 that subset which is easily tracked, easily measured, but he
13 used that as a basis. For the year 2014-2015 37.1 percent of
14 Wahoo's rated play was from Three Angry Wives rated players.
15 You'll also hear that rated play at Three Angry Wives
16 represents 56 percent of all Three Angry Wives play. So when
17 Mr. Aguero applies that 37.1 percent figure to all play it's
18 more than statistically relevant, it is easily done at
19 56 of rated play of all play being rated play.

20 Three Angry Wives will also provide evidence that
21 share play comes from Three Angry Wives customers. They know
22 who their customers are, they know which customers -- well,
23 their customers there before Wahoo's came in, and customers
24 that remained afterward, customers that play at both
25 locations.

1 Boca Park's expert is going to attack the damages.
2 They're going to say things like, you know, people sometimes
3 just want tacos and go over there. Wanting tacos is fine. We
4 have no objection to the taco stand being there. But it
5 should not be a place to gamble.

6 They also tried to exclude arbitrarily certain
7 shared players by categorizing them as, you know, either
8 Wahoo's players or Three Angry Wives players even though they
9 play at both locations, trying to drop out those dollars from
10 the equation. What they ignore again is that there would not
11 be any Wahoo's gaming customers but for a breach by the
12 defendant. The point is that all of these people gambled in
13 Boca Park, and Three Angry Wives had the exclusive. And these
14 players are known Three Angry Wives players. The attacks
15 really overlook the underlying issue, that gaming occurred --
16 we know gaming occurred in Boca Park, we know that. Our
17 expert looked at what happened at Wahoo's, the gaming at
18 Wahoo's to measure the damages, because none of that should
19 have occurred at Wahoo's because of the exclusive. That was
20 the broken promise, And that's why Three Angry Wives is
21 entitled to damages.

22 Again, you'll hear Sean Higgins, you'll hear Jeremy
23 Aguero, possibly Kevin Higgins, Your Honor. I know the Court
24 knows the case well, so we'll try to efficient. But I think
25 once the Court hears the evidence the Court will at least

1 award the \$1.1 million being sought.

2 THE COURT: Thank you, Mr. Olsen.

3 Mr. McCrea.

4 DEFENDANTS' OPENING STATEMENT

5 MR. MCCREA: Thank you, Your Honor. Just a couple
6 of points I'd like to make.

7 The evidence will show what it shows, and we believe
8 that at the conclusion of this trial you're going to find that
9 there is no substance evidence that will support an award of
10 money damages in this case. The damages are simply way to
11 speculative to ascertain with any reasonable degree of
12 certainty. And that will be clear through their own expert's
13 own testimony, I believe.

14 Mr. Olsen alluded to the fact that another court has
15 determined that this lease was breached by this -- by giving
16 Wahoo's the right to operate five slot machines on their
17 premises. The evidence is going to show that this breach was
18 an oversight on the part of my client. There were a couple of
19 leases executed with Three Angry Wives that were in the lease
20 file, and the first lease that was executed didn't have an
21 exclusive in it. Second lease was executed very shortly after
22 the first, did have the exclusive. At the time the Wahoo's
23 lease was negotiated the person who reviewed that file
24 inadvertently missed the exclusive provision.

25 The 21-year period that you heard Mr. Olsen allude

1 to is illusory. While the Three Angry Wives lease will
2 expire, assuming all extensions are exercised, sometime in --
3 well, it will expire June 30th, 2033. Wahoo's lease, assuming
4 that all extensions are exercised, will expire on November
5 8th, 2026. So they are seeking future damages for a period
6 six years longer than the two leases will run concurrently.
7 There's no intention and no desire on the part of my client to
8 extend the Wahoo's lease to allow gaming past the current
9 expiration date, and there's no intention or desire on the
10 part of my client to lease that space if it doesn't go to
11 Wahoo's to somebody else who would want to engage in gaming on
12 that -- in those premises so as long as the Three Angry Wives
13 lease is in effect.

14 Mr. Olsen alluded to the fact that the Wahoo's lease
15 has a percentage rent provision in it. That percentage
16 doesn't apply to gaming revenues. We can't collect a
17 percentage of gaming revenues, because we don't have a Nevada
18 gaming license.

19 We believe at the end of this case, Your Honor, as I
20 said, you are going to find that there is no substantial
21 evidence that would allow you to calculate with any reasonable
22 degree of certainty any money damages that Three Angry Wives
23 has suffered in this case. Thank you.

24 THE COURT: Thank you.

25 First witness. Before we start have you guys agreed

1 on your exhibits, or do you need me to address any issues?

2 MR. OLSEN: We have agreed on the exhibits. I think
3 certainly --

4 THE COURT: I have a 1 through --

5 MR. OLSEN: -- the expert reports have been
6 stipulated to. I don't know if everything else has.

7 THE COURT: I have Exhibits 1 through 20 proposed by
8 the plaintiffs. Do you have any objections to those?

9 MR. McCREA: I may have, Your Honor. Some I don't.

10 THE COURT: Okay. Do you want to tell me which you
11 don't?

12 MR. McCREA: I don't have any objection to the
13 lease, which was Exhibit 1.

14 THE COURT: So 1 will be admitted.

15 (Plaintiff's Exhibit 1 admitted)

16 MR. McCREA: I'm going to reserve objections to
17 Exhibit 2, because I don't know what it's being offered for.

18 THE COURT: Just tell me the ones you can stipulate
19 to. How's that?

20 MR. McCREA: Okay. 3 is fine.

21 THE COURT: 3 is admitted.

22 (Plaintiff's Exhibit 3 admitted)

23 MR. OLSEN: And 10, expert reports, are stipulated
24 to, Your Honor.

25 MR. McCREA: I was getting to them.

1 MR. OLSEN: Okay.

2 MR. McCREA: 10 we stipulate to.

3 THE COURT: 10 and 11?

4 MR. McCREA: 10 and 11.

5 THE COURT: Okay. Be admitted.

6 (Plaintiff's Exhibits 10 and 11 admitted)

7 MR. McCREA: I'll stipulate to 15.

8 THE COURT: 15 will be admitted.

9 (Plaintiff's Exhibit 15 admitted)

10 MR. OLSEN: 16 is your guy's exhibits which weren't

11 originally included, so --

12 MR. McCREA: These are exhibits to which report?

13 MR. OLSEN: Those are exhibits to --

14 MR. CICILIANO: 16 is the initial, 17 is the

15 rebuttal, 18 is the supplement.

16 MR. McCREA: Okay. Based on that representation I

17 don't have any objection to those exhibits.

18 THE COURT: So 16, 17, 18, 19 are admitted?

19 MR. McCREA: 19? I don't know what 19 is.

20 THE COURT: 16, 17, and 18 are admitted.

21 (Plaintiff's Exhibits 16 through 18 admitted)

22 THE COURT: So on Mr. McCrea's exhibits he's got 501

23 through 506, Mr. Olsen. Can you stipulate to any of those?

24 MR. OLSEN: 501 is stipulated.

25 THE COURT: Admitted.

1 (Defendants' Exhibit 501 admitted)

2 MR. OLSEN: I think we'll let them lay the
3 foundation and talk about the relevance on 502 and 503. 504
4 is stipulated.

5 THE COURT: 504 is admitted. How about 505?

6 (Defendants' Exhibit 504 admitted)

7 MR. OLSEN: 505 is stipulated.

8 THE COURT: It's admitted. And 506?

9 (Defendants' Exhibit 505 admitted)

10 MR. OLSEN: 506 I understand we got a substituted
11 version.

12 MR. McCREA: It may be duplicative. My initial
13 exhibit didn't have the exhibits attachment. Sounds like
14 you --

15 MR. OLSEN: But the Court has -- the Court has the
16 new one?

17 THE CLERK: Yes, we do.

18 THE COURT: Apparently I have the new one.

19 MR. OLSEN: Okay. Yeah. Because it looks like 506
20 was addressed. So we agree to the new 506.

21 THE COURT: 506 be admitted.

22 (Defendants' Exhibit 506 admitted)

23 THE COURT: All right. Now do you want to call a
24 witness? Does anybody want to invoke the exclusionary rule?

25 MR. OLSEN: We do not, Your Honor.

1 MR. McCREA: We do, Your Honor.

2 THE COURT: So if there's any witnesses in the

3 courtroom who are not seated at counsel table and you think

4 you're going to be called, please wait out in the hallway

5 until you're called.

6 Who's our first witness?

7 MR. OLSEN: That's not applying to experts, is it?

8 THE COURT: Doesn't apply to experts.

9 MR. OLSEN: Sean Higgins is our first witness. We

10 don't have anyone else.

11 THE COURT: Mr. Higgins, if you'd come forward,

12 please.

13 SEAN HIGGINS, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Thank you. Please be seated. And

15 please state and spell your name for the record.

16 THE WITNESS: Sean Higgins, S-E-A-N H-I-G-G-I-N-S.

17 DIRECT EXAMINATION

18 BY MR. OLSEN:

19 Q Mr. Higgins, what is your primary occupation?

20 A My primary occupation is an attorney.

21 Q You're a licensed attorney in the state of Nevada;

22 correct?

23 A Since 1990.

24 Q And you have a practice here --

25 THE COURT: Hold on a second.

1 Mr. Higgins, since you're a lawyer, I'm not sure if
2 you can have the M&Ms. They're usually for witnesses, but I
3 guess since you're on the stand you can have them. There's
4 also water in the pitcher.

5 Keep going, Mr. Olsen.

6 THE WITNESS: Thank you.

7 BY MR. OLSEN:

8 Q And as far as your experience as a lawyer, what are
9 your areas of practice?

10 A Well, primarily over the course of my practice I
11 have been the general counsel for a gaming company and an oil
12 company. Herbst Gaming and Terrible Herbst Oil Company for
13 17 years. Handled all of their legal matters, both gaming and
14 real estate, and that is my primary focus along with
15 government affairs from the local level all the way to
16 Washington, D.C.

17 Q And you're currently involved with -- you have a
18 gaming practice, as well, now?

19 A I have a gaming practice, as well, right now. I am
20 -- also work currently for Golden Entertainment, which is the
21 largest slot route operator in the state of Nevada and also
22 operates nonrestricted casinos.

23 Q In your work for the -- for Herbst and Herbst Gaming
24 did you involve -- did your practice involve dealing with slot
25 routes and bars?

1 A It was a very large portion of my practice.

2 Q And so you're familiar with how slot routes work and
3 the relationships between the bars and the slot companies?

4 A Intimately.

5 Q You understand slot participation and all of that;
6 correct?

7 A Very well.

8 Q Tell me about your experience as an owner of gaming
9 properties. What is your experience?

10 A Over the course of the last 17 years I have held
11 four separate licenses, four taverns. The initial one was for
12 the first Three Angry Wives, which was at the corner of
13 Horizon Ridge and Eastern in Henderson. We operated that bar
14 for approximately three years. We sold it. We had a good
15 offer on it, sold it while we were -- this bar was under
16 construction. I opened and operate a second tavern at the
17 Meadows Mall for about two and a half years, from '05 to '07.
18 I moved that location out to Henderson, as well, and operated
19 it from about '09 until I sold it three years ago, give or
20 take. So I've operated four separate taverns under my own
21 gaming license.

22 Q So you know -- you know the slot route and bar
23 business pretty well?

24 A Yes.

25 Q You mentioned that -- well, first of all let's just

1 be clear on the record. Three Angry Wives is a trade name for
2 Higco?

3 A Higco, Inc., yes.

4 Q Higco, Inc., the plaintiff in this case?

5 A That's correct.

6 Q Higco had the prior location over on Eastern?

7 A That is correct.

8 Q And what happened with that location?

9 A We sold it. We were in the process of -- we had
10 signed this lease or were about to when we had an offer made
11 on the location. And because of logistics we decided it was a
12 good time to sell the location as we were opening this
13 location.

14 Q And the new location, that's the location we're
15 talking about, the location at Rampart and Charleston?

16 A The location we're currently in, yes.

17 Q What's your role with Three Angry Wives?

18 A The company's owned by myself and my two brothers.
19 I would call -- you know, we each have titles in the
20 corporation. I would call myself the operational member of
21 the company mainly because of my background and understanding
22 of the slot route business and my years in gaming, you know,
23 with regard to actually the gaming side. We have management
24 onsite, but I probably spend more time physically at the
25 location than do my brothers with both customers and our

1 staff.

2 Q And you're an officer of the corporation?

3 A I'm the president.

4 Q Do you -- as part of your familiarity with
5 operations are you at the bar somewhat frequently?

6 A Absolutely. Depending on the week, it could be six
7 times, it could be four times, for one hour, two, several
8 hours, depending on the day of the week or what's going on.

9 Q And when you're there you're dealing with the
10 customers? Are you out amongst the customers?

11 A Absolutely. On a regular basis.

12 Q Do you know a lot of the customers personally?

13 A I would imagine if -- yes is the answer. If we
14 walked in there right now, I would know several people sitting
15 around the location as we speak.

16 Q When we say customers let me ask you in particular
17 about the people that are regular gamers at Three Angry Wives.
18 Do you know a lot of those people?

19 A I absolutely do.

20 Q When you were -- when you were selling -- had sold
21 the other location and were looking at a new location what
22 caused you to look at this area? When I say this area, the
23 Boca Park area, this part of the Summerlin area.

24 A Well, obviously Summerlin in the early 2000s was a
25 booming, you know, home development area. We were looking on

1 the west side. Ric Truesdale and I -- Ric is a real estate
2 agent -- talked about locations, and he and I met with Stacy
3 Rush. At some point in time over coffee or something we
4 talked about options and possibilities, because we really
5 wanted to be on the western end of town. Boca Park did not
6 have a tavern, they didn't think they could get a tavern.
7 However, being in the gaming business, I knew that there was
8 an exclusion to the distance requirement as long as you were
9 across a 100-foot right-of-way you could be less than the 1500
10 feet. So we met, we talked about that. And so obviously
11 eventually we ended up with the tavern here.

12 Q So Stacy Rush, he was a person that worked for Boca
13 Park?

14 A Yes, he did.

15 Q And so let's get back to location a second. What
16 was it about this particular -- not about Boca Park, but this
17 intersection, let's say, first of all that was a positive.
18 Why was that important?

19 A Well, because you've got major thoroughfare at
20 Rampart and Charleston, all four corners are commercially
21 developed with everything from grocery stores to specialty
22 stores, department stores, sporting goods stores, a slue of
23 restaurants on Charleston across the street, you know. So in
24 other words, you've got a high volume of regular traffic, and
25 then you have a high volume of traffic within those centers

1 themselves.

2 Q And there are -- well, at the time -- this is about
3 2001, correct, you were looking?

4 A Yes.

5 Q At the time were some of those anchor stores already
6 in operation?

7 A Yes, they were.

8 Q Do you recall? Like the Target? Was it --

9 A Target was absolutely there. I mean, and most of
10 the larger boxes were occupied by that time.

11 Q Was there any other location that from your
12 perspective compared for the external traffic-internal
13 traffic, we'll call it, reasons in that area?

14 A No. I thought our location inside Boca Park was the
15 best location in the -- I'll call it the neighborhood.

16 Q And is location important to a gaming bar?

17 A Location is critical to a gaming bar.

18 Q Boca Park, just so the Court's clear, when this --
19 at this time -- well, Boca Park's broken theoretically into
20 three phases; is that correct?

21 A My understanding. To the best of my understanding
22 that is correct.

23 Q And your location, Three Angry Wives, falls within
24 Phase 1; is that right?

25 A That's correct.

1 Q Where's Phase 2, if you know?

2 A Phase 2 is -- I think currently Total Wine is there,
3 I'm trying to remember the restaurant on the corner there.
4 It's where all the restaurants are, Cheesecake Factory, all
5 those -- my understanding is Phase 3 is the dirt that is never
6 -- that was never constructed on.

7 Q Now, the Three Angry Wives, the location you ended
8 up in is -- it abuts Charleston; is that correct?

9 A It because up to Charleston, yes.

10 Q And is that a good location?

11 A Yes, it is.

12 Q Now, you have an understanding of the purpose of
13 this trial, do you not?

14 A I absolutely do.

15 Q This is a damages case. You're aware that
16 liability's already been determined under the lease?

17 A Absolutely.

18 Q Let's take a look -- if the book is in front of you,
19 take a look at Exhibit 1, which is the Three Angry Wives
20 lease. And this has been admitted into evidence. Have you
21 seen it -- you've seen it before, obviously.

22 A I can always recognize it's my chicken scratch at
23 the top of the page, so I know it.

24 Q What's the -- if you look at the fundamental lease
25 provisions in the first couple of pages, that's probably what

1 we'll talk about mostly. What's the term of the lease?

2 A It's 30 years from the commencement date. Obviously
3 the commencement date wasn't determined at the time you enter
4 into the lease because you have to have the property
5 delivered. But 30 years from the commencement date.

6 Q And that 30 years is in some increments; correct?

7 A Correct.

8 Q Ten years and then options?

9 A That's correct.

10 Q Four five-year options; is that right?

11 A That is correct.

12 Q And based -- looking at this lease, what is the
13 lease rate?

14 A The lease rate changes depending on the year of the
15 lease itself. For the first initial term every two or three
16 years it is resetting, and then thereafter it's on the yearly
17 basis I believe at a 4 percent increase.

18 Q So according to this, at least, the first two years
19 were at \$3 a square foot; is that correct?

20 A That's correct.

21 Q Going up in year eight through ten to 3.50?

22 A Correct.

23 Q And then the -- after that 10 year there is a
24 provision on page 5, is that right, for rent adjusted to
25 104 percent of the prior year?

1 A Section 3.02, yes. Correct.

2 Q So the rent after -- the rent went up as per this
3 first page of the lease and has continued to go up every year;
4 is that right?

5 A That is correct.

6 Q And you've continued -- Three Angry Wives has
7 continued to pay the rent?

8 A We have.

9 Q Do you have any -- does the company have any
10 percentage rent at this location?

11 A No, we do not.

12 Q Take a look in the lease at the third page. It's
13 Bates stamped page HIGCO107. Do you have that?

14 A I do.

15 Q What is shown on that page?

16 A That is the language surrounding the exclusive use
17 at the location for a tavern and gaming, and it sets forth the
18 exception to that rule, which would be for the two locations
19 which currently had gaming when we opened, which were a Long's
20 Drug Store and a Von's Supermarket.

21 Q Neither of those were a tavern or a supper club;
22 correct?

23 A Neither of those was a tavern or a supper club.

24 Q I think it was mentioned in openings that there was
25 a prior declaratory relief action. Do you know what the issue

1 was concerning -- in that action concerning this provision?
2 Counsel may have alluded to it.

3 A Well, with regard -- there was a couple of issues.
4 With regard to this provision the landlord in no uncertain
5 terms told me personally, their representative, that I misread
6 the exclusive and I was incorrect as to what that exclusive
7 meant.

8 Q And that issue was resolved by the court in the
9 declaratory relief action in your and the bar's favor; is that
10 correct?

11 A That is correct.

12 Q And just -- I just want to say for the record I did
13 not say that the prior case was about a breach of the lease.
14 It was about a declaratory relief issue, a dispute about the
15 contract terms; is that correct? Do you understand?

16 A Yeah. And again, when you asked the question it was
17 also about the fact that the landlord produced a lease which
18 was not our lease and claimed that was the lease in the case.
19 So we had to also have the court determine that the correct
20 lease was the one that's in front of us today. They wouldn't
21 agree to that, either.

22 Q This lease, Exhibit 1, was signed on November 2nd,
23 2002; is that correct?

24 A November 5th, but --

25 Q Oh. November 5th. I'm sorry.

1 A I've seen it enough times, yeah.

2 Q Was the lease -- was it negotiated?

3 A For quite some time it was negotiated.

4 Q Let's take a look, if you would, at Exhibit 5. Have
5 you seen Exhibit 5 before?

6 A I have.

7 Q And what is Exhibit 5?

8 A This would have been a letter of interest or LOI,
9 whatever you want to call it, from Higco to Mr. Rush regarding
10 Boca Park, a tavern location inside of Boca Park.

11 Q Now, the date on this -- and did you draft this
12 document?

13 A It absolutely came from my desk.

14 MR. OLSEN: We'd offer this for admission, Your
15 Honor.

16 THE COURT: Any objection to 5?

17 MR. McCREA: Yes, Your Honor. We object. Parol
18 evidence. The lease agreement has an integration clause. I
19 don't know why any of the negotiations leading up to the
20 execution of that lease would be relevant or admissible.

21 THE COURT: So you're not contending that the
22 materiality of the exclusivity term was important to him and
23 it was negotiated between the parties? Because I think that's
24 the reason they're giving it to me.

25 MR. OLSEN: It is, Your Honor.

1 MR. McCREA: I don't know why -- okay.

2 THE COURT: That's the issue. I think he's offering
3 -- after looking at the findings of fact that were submitted
4 by both of you, my guess is he's offering it to me because he
5 wants to demonstrate that the exclusivity provision was
6 important to them when they negotiated this and it was a
7 negotiated term.

8 MR. McCREA: Well, I stand by my objection, Your
9 Honor.

10 THE COURT: Objection's overruled.

11 (Plaintiff's Exhibit 5 admitted)

12 BY MR. OLSEN:

13 Q And, Mr. Higgins, so this was sent -- well, the
14 first page says December 13th, 2001. The next two pages say
15 September 4th, 2001. Do you have an explanation for that?

16 A This was the same form I used for an LOI whether it
17 was a convenience store or a tavern or, you know. And
18 obviously we were -- we meaning the company, were opening
19 locations and entering leases all the time. So I would assume
20 I just overlooked the date on it.

21 Q And what was the -- looking at the first page,
22 there's a minimum rent proposal. This is a proposal, as I
23 understand it, going from Higco to the landlord; correct?

24 A Yes.

25 Q What was the initial proposal for minimum rent? I

1 see here it's not -- it's broken down per year --

2 A Yes.

3 Q -- but you can give us a monthly? Have you done the
4 monthly calculation?

5 A Yeah. That'd be \$2.50 a square foot per month.

6 Q And does this proposal contain on the second page an
7 exclusive?

8 A It does.

9 Q From the beginning of negotiations was an exclusive
10 for gaming important to the company?

11 A It absolutely was imperative, because a commercial
12 center of this size, because of the number of square feet
13 under roof, potentially could have more than one tavern
14 location or more than one gaming location. Because, remember,
15 supper clubs don't have the same distance requirements, so
16 they could have given a gaming license to Applebee's or anyone
17 else. And I wanted to ensure that the landlord did not do
18 that and that we had the exclusive for gaming in the center.

19 Q Take a look at Exhibit 6.

20 THE COURT: That's a proposed exhibit, too.

21 MR. OLSEN: Oh. Sorry.

22 BY MR. OLSEN:

23 Q Yes. Exhibit 6, do you have that in front of you?

24 A I do.

25 Q Now, what's in front of you, Mr. Higgins, is I think

1 a little bit out of order. So I'm going to -- as far as
2 dates.

3 A Okay.

4 MR. OLSEN: Can I approach, Your Honor?

5 THE COURT: You can. Because I can't look at it
6 right now.

7 MR. OLSEN: No. I understand.

8 (Pause in the proceedings)

9 BY MR. OLSEN:

10 Q Can you tell me -- even though it may be out of
11 order, can you tell me what comprises Exhibit 6, what's
12 contained in it.

13 A Well, it looks like several copies of an identical
14 document, some clean, some with comments on it. So it looks
15 like the same document that was passed around and comments
16 were made at various times.

17 Q Do you recognize these documents?

18 A I do recognize it. Yeah. It came from Ric
19 Truesdale, who would have been our real estate broker on this
20 transaction.

21 Q And would you classify the basic document as another
22 version of a letter of intent?

23 A I would.

24 Q And did you review -- well, were you responsible for
25 the contents of this?

1 A I still would have been responsible. And I think if
2 you look, the basic terms don't change that much. I mean, we
3 may have had a -- we may have tightened up some of the terms,
4 but it is basically still a very similar letter of intent.

5 Q And did you approve and sign the letters of intent
6 contained in Exhibit 6?

7 A I did.

8 MR. OLSEN: We'd offer Exhibit 6, Your Honor.

9 THE COURT: Any objection to 6?

10 MR. McCREA: The same objection, Your Honor.

11 THE COURT: Same ruling. Be admitted.

12 (Plaintiff's Exhibit 6 admitted)

13 BY MR. OLSEN:

14 Q Now, I'm going to -- I'm going to walk you through
15 this. We'll have to hop around on page numbers, because mine
16 is in date order, and it looks like yours is not. So if you
17 look at page 220, HIGCO220 at the bottom right-hand side --

18 A Got it.

19 Q -- that appears to be a fax cover page. Mr.
20 Truesdale is sending the document to you on March 14th, 2002;
21 is that correct?

22 A Correct.

23 Q And page 221, HIGCO221 would appear, would it not,
24 to be, if you look at the fax banner on top, the document that
25 was attached to that fax page?

1 A It does. That's the last four numbers of my fax
2 number at the time.

3 Q And pages 221 through 224 would appear to be that
4 initial LOI; correct?

5 A Yes.

6 Q All right. What was the proposal that Higco was
7 making as of this LOI on March 14th, 2002, to the landlord for
8 a lease at this location?

9 A We had asked for a 30-year term, \$2.50 a square
10 foot, a \$15-per-square-foot tenant improvement allowance, and
11 an exclusive for Boca Park for tavern and gaming at 1 and 2,
12 and additionally the right of first refusal for any type of
13 similar restaurant for Boca 3.

14 Q This is a little bit different than the first
15 exclusive proposal; is that right?

16 A It was.

17 Q It added Boca Park 2 and the undeveloped Boca Park 3
18 area; correct?

19 A That's correct.

20 Q This was -- oh. And by the way, if you look at
21 page 224, what is that diagram?

22 A This was the first location. It was called
23 Sundance. It was a specialty store of some sort which sits on
24 -- if you know Boca Park, where Tilly's presently sits today,
25 that was the first location they brought to us, saying, here's

1 -- they were still looking at it, but that's the location they
2 asked us if we'd be willing to go into at the time. So that
3 is what that shows. It shows them splitting that spot in I
4 don't know how many square feet on each side, but splitting
5 that spot.

6 Q Ultimately the location that you ended up with was
7 the one that backed on Charleston; correct?

8 A Yes.

9 Q And is that a preferable location?

10 A Well, yeah. But Boca Park -- we would have
11 certainly taken either location that the landlord offered at
12 the time.

13 Q Obviously an exclusive which was contained in this
14 LOI was important wherever you were located in the center; is
15 that fair to say?

16 A Absolutely fair to say.

17 Q You signed this letter, and then there is a copy of
18 it. It starts at page 213 and goes through 216. Do you have
19 that in front of you?

20 A I do.

21 Q Now, this appears to be the next version, because it
22 actually has a "Received" stamp on it. Is that what it looks
23 like to you on the first page?

24 A Yes.

25 Q And can you tell me whose -- well, can you tell me

1 whose handwriting is on the first page, on page HIGCO213?

2 A Well, I'm going to assume it's Mr. --

3 THE COURT: We don't want you to assume, sir.

4 THE WITNESS: Okay.

5 THE COURT: You knew that.

6 THE WITNESS: Well, I was dealing with Mr. Joe Vitti
7 at the time. Mr. Rush was no longer at Triple 5 or Boca Park,
8 whatever it was called at the time, and so that was the person
9 who I was dealing with. And obviously he has signed this
10 document and returned it to you.

11 BY MR. OLSEN:

12 Q He signed it on page HIGCO216?

13 A Correct.

14 Q No. 215.

15 A Yes.

16 Q And do you have an understanding that that's his
17 notations?

18 A Yes, I do.

19 MR. McCREA: Objection, Your Honor.

20 BY MR. OLSEN:

21 Q Do you have a recollection?

22 THE COURT: We don't want you to speculate, sir. So
23 if you have knowledge one way or the other, we'll take that.
24 But don't guess.

25 THE WITNESS: I absolutely received this back from

1 Jean Marc with the comments on it.

2 BY MR. OLSEN:

3 Q And what did you take the comment on the first page,
4 where it says "3.25" to mean?

5 A It would be his counteroffer to our \$2.50.

6 Q Did he make any change on this document to the
7 exclusive you proposed in the prior letter?

8 A He did not.

9 Q If you look at page 225 in the same exhibit through
10 229 -- well, I guess it's actual 230, how is this different
11 than what we just looked at?

12 A On page 225 on the top right those are my comments.
13 That's my handwriting, the counter \$2.75, \$10 a square foot
14 tenant allowance, and \$4 a square foot commission.

15 Q So is it fair to say there was continued back and
16 forth o this issue of price?

17 A Absolutely.

18 Q Take a look at Exhibit 7.

19 THE CLERK: Proposed.

20 BY MR. OLSEN:

21 Q This one should be in order. Have you seen
22 Exhibit 7 before? It's a letter dated April 1st, 2002.

23 A I have.

24 Q Did you authorize and approve this letter?

25 A Yeah, I signed this letter. [Unintelligible] under

1 my signature.

2 Q And is this another -- a response to the last
3 proposal from Mr. Joe Vitti?

4 A It is.

5 MR. OLSEN: We'd offer Exhibit 7, Your Honor.

6 THE COURT: Any objection to 7?

7 MR. McCREA: Same objection, Your Honor.

8 THE COURT: Be admitted.

9 (Plaintiff's Exhibit 7 admitted)

10 BY MR. OLSEN:

11 Q Now, your notes in the prior letter on
12 [unintelligible] it said 2.75 a square foot. This letter says
13 2.85 a square foot. What was happening here?

14 A Well, again at my instruction Mr. Truesdale drafted
15 this letter. In the first paragraph the base -- it says,
16 "Please note the base rent of 3420 annually, say 2.85 a square
17 foot per month is not only higher than most rents in the area,
18 it is the top of the market for inline space." So, yeah, we
19 were negotiating back and forth, but we wanted him to
20 understand they were pushing the very envelope as far as, you
21 know, what people were willing to pay even for exclusives for
22 taverns.

23 Q Did Mr. Joe Vitti in -- well, there was no change to
24 the exclusive in this document; correct?

25 A We did not, no.

1 Q And finally -- well, not finally. Let's take a look
2 at Exhibit 8. Exhibit 8, if you have it in front of you,
3 looks a lot like Exhibit 7, doesn't it?

4 A Yes, it does.

5 Q And is this another copy of the letter that you
6 sent, Exhibit 7, with some additional notations on it?

7 A Yes. This has additional notations on it.

8 Q That letter, Exhibit 7, went to Mr. Joe Vitti;
9 correct?

10 A That is correct.

11 Q Does Exhibit 8 appear to have his signature on it?

12 A It does.

13 Q And does it appear to have his notations on it?

14 A It has his and mine.

15 MR. OLSEN: We would offer Exhibit 8, Your Honor.

16 THE COURT: Any objection?

17 MR. McCREA: Same objection.

18 THE COURT: Overruled. Be admitted.

19 (Plaintiff's Exhibit 8 admitted)

20 BY MR. OLSEN:

21 Q What was Mr. Joe Vitti -- in this letter what was
22 his response on the per square foot?

23 A \$3.33, I think it was. Kind of hard to read here.
24 And then there's my notations after that.

25 Q And what are your notations?

1 A I said \$3.10 a square foot a month for a fixed term,
2 in other words, I was saying I would respond by paying him
3 3.10 but have no increases over the 10-year initial term.

4 Q And Mr. Joe Vitti's response -- the Boca Park
5 response was \$3.33 a square foot?

6 A Yeah.

7 Q And is there any change to the exclusive? Did he
8 make any notes on the exclusive here?

9 A No, he did not.

10 Q So you're going back and forth still negotiating at
11 this point on the per-square-foot price; correct?

12 A That's correct.

13 Q Finally, take a look at Exhibit 9. Have you seen
14 Exhibit 9 before?

15 A Yes, I have.

16 Q Can you tell me what it is.

17 A Exhibit 9 is the final -- seems to be the final
18 letter of intent which the parties ended up executing.

19 Q And what price -- well, and you approved the
20 contents of this letter and you signed it, and it was sent out
21 to Mr. Joe Vitti and then returned with his signature; is that
22 correct?

23 A That is correct.

24 MR. OLSEN: We'd offer Exhibit 9, Your Honor.

25 THE COURT: Any additional objections?

1 MR. OLSEN: Same objection.

2 THE COURT: Overruled. Be admitted.

3 (Plaintiff's Exhibit 9 admitted)

4 BY MR. OLSEN:

5 Q What was the proposal that Higco made to Boca Park
6 in this May 1st, 2002?

7 A Well, we came to \$3 per square foot for the primary
8 term. So we had come up with a set figure for the primary
9 term. We had asked for the same exclusive. We had asked for
10 a per-square-foot for a TI, and a 30-year term, I believe.

11 Q So you had -- you were \$3, Boca Park had been at
12 3.33, you proposed the same exclusive that you'd asked for
13 before; correct?

14 A Correct.

15 Q And did Boca Park accept the \$3?

16 A They did accept the \$3.

17 Q Did they accept the exclusive as is?

18 A They did not.

19 Q And what did they exclude from the exclusive?

20 A They excluded Boca Park 2 and the right of first
21 refusal on Boca Park 3.

22 Q So is it fair to say there was a compromise at that
23 point on the price and the exclusive?

24 A Yeah. We came to terms on the two of them, yes,
25 that's correct.

1 Q And is it fair to say there was -- there was a value
2 to you in the exclusive?

3 A There was absolutely a value in that exclusive,
4 which is characterized not just by this, but by the final
5 lease that we entered into.

6 Q And in the end you gave on the exclusive -- they
7 gave a price and you came to an agreement which resulted in
8 the lease; is that correct?

9 A Correct.

10 Q The exclusive was bargained for, you just said had a
11 value; right?

12 A Correct.

13 Q Can you put a specific dollar figure on that
14 exclusive?

15 A Well, I can't, because our last offer in this letter
16 of intent was \$3 for the initial term, which was 10 years.
17 The ultimate lease does not do that. And the reason we agreed
18 to the ultimate lease, which increased the rent every two
19 years, was because of the exclusive. And that was discussed.
20 If you look at the lease, it is not three years [sic] for the
21 initial 10-year term. It has increments. So I don't know
22 what the exact dollar figure is, but there was a reason we
23 agreed to that, because the landlord knew that there would be
24 no other gaming there, and we knew, as well.

25 Q And you've said already that was very important

1 to --

2 A Absolute.

3 Q And that's true especially because this location
4 could have additional gaming locations?

5 A Well, correct. Obviously -- and my recollection is
6 they were supposed to, you know, put a recorded deed
7 restriction, and they did not because there was a second
8 parcel which now has a veterinary clinic, but which would be
9 allowed to have gaming at one point in time, which they -- the
10 landlord failed to properly take care of, as well, in their
11 course of their, you know, title work. This is a large
12 company.

13 THE COURT: That was the stinky building; right?
14 Was that the building that smelled bad?

15 MR. OLSEN: Might be.

16 THE COURT: And [unintelligible] has the veterinary
17 clinic in it now?

18 MR. OLSEN: Yes.

19 THE WITNESS: That's the one.

20 BY MR. OLSEN:

21 Q So at one point that was poised to become a gaming
22 location?

23 A Well, it was under discussion. And the fact of the
24 matter is they had sold that parcel off without putting the
25 deed restriction on it even though it is in Boca 1. So --

1 Q And that was during the time of the exclusive that
2 you had?

3 A Yes. Absolutely.

4 Q It never came to be because it became a veterinary
5 clinic?

6 A Senator Edson came back and opened up a veterinary
7 clinic.

8 Q Had the -- but you said there was no deed
9 restriction put in by Boca Park.

10 A That's correct.

11 Q Had they ignored the exclusive in your lease at that
12 point?

13 MR. McCREA: Objection, Your Honor.

14 THE COURT: Sustained. We're not talking about
15 that. We're only here about damages.

16 MR. OLSEN: Thank you, Your Honor.

17 BY MR. OLSEN:

18 Q Mr. Higgins, what was the -- take a look at
19 Exhibit 15. Do you know the commencement date of the lease?

20 A The commencement date was September -- per this
21 letter was September 20, 2003, which had been the first day we
22 opened for business.

23 Q And Exhibit 15, is that a letter from John McCall,
24 corporate counsel Boca Park parcels?

25 A That is correct.

1 MR. OLSEN: We'd offer that.
2 THE CLERK: It's admitted.
3 MR. McCREA: It's already in.
4 MR. OLSEN: Oh. That is. Sorry.
5 BY MR. OLSEN:
6 Q All right. So the start of the lease was
7 September 30th [sic], 2003; correct?
8 A Yeah. September 20, 2003, that's correct.
9 Q And when did Three Angry Wives open for business as
10 a gaming establishment?
11 A I believe that date.
12 Q It had gaming from the start of its existence there;
13 right?
14 A From day one.
15 Q Did the location prove to be a good choice? Was it
16 a good location?
17 A Absolutely.
18 Q Can you tell me generally about the business between
19 2003 and 2012. Was it successful for food and beverage?
20 A Yes, it was.
21 Q Was it successful, Three Angry Wives, for its
22 gaming?
23 A Yes, it was.
24 Q Did you build a clientele throughout that period?
25 A Absolutely we did.

1 Q And throughout that period there was no other gaming
2 besides the grocery store and the drug store in that whole
3 center; right?

4 A Correct. At some point in time Long's became Party
5 City, or they closed. At some point in time Long's ceased to
6 exist at that location. I can't remember when.

7 Q And during that time -- you mentioned that you know
8 the customers at Three Angry Wives. Were you getting to know
9 them throughout that whole period, know who they are?

10 A Absolutely. We have customers who have been coming,
11 you know, if not from day one, you know, very soon thereafter.
12 We have a very good clientele. Yeah, I know a group of those
13 people.

14 Q And they've been coming -- have some of them been
15 coming since early on in the process?

16 A Absolutely. That would be a correct statement.

17 Q I'm going to have you look at Exhibits 13 and 14.

18 THE CLERK: Proposed.

19 BY MR. OLSEN:

20 Q Sorry. Proposed Exhibits 14 and 15. I'm sorry.
21 13, 14.

22 A 13, 14.

23 THE COURT: 13, 14.

24 MR. OLSEN: Yes.

25 THE COURT: Because 15's admitted.

1 MR. OLSEN: Yes.

2 THE COURT: Okay.

3 BY MR. OLSEN:

4 Q I'm not going to ask you detail on this, Mr.
5 Higgins, but can you tell me what Exhibit 13 is.

6 A Yeah. This would be the form our bookkeeper, Becky
7 Brown -- this is the format we look at our profit and loss
8 statements in, so this would have been something that Becky
9 Brown prepared for us, our bookkeeper, profit and loss from
10 January 2008 through August of 2015. And it looks like it's
11 on a month-by-month basis for that period of time.

12 Q And you have at least generally looked at this
13 document; is that correct?

14 A Yes, I have.

15 Q You know it to be something produced by your
16 bookkeeper, and you believe it to be accurate?

17 A Yes and yes.

18 MR. OLSEN: We'd offer Exhibit 13, Your Honor, into
19 evidence.

20 MR. McCREA: No objection.

21 THE COURT: Be admitted.

22 (Plaintiff's Exhibit 13 admitted)

23 THE COURT: Sir, do you need the magnifying glass?
24 I'm serious. We have it here for looking at shrunk building
25 plans, but this looks a lot like that. It's like a 2 font.

1 THE WITNESS: Thank you, Your Honor. I'm okay.
2 right now. But if I do, I will -- I appreciate that offer.

3 BY MR. OLSEN:

4 Q I will also have you look at Exhibit 14 now and tell
5 me if that -- if you recognize that document.

6 A Yes, I do.

7 Q Is that also a document prepared by your bookkeeper
8 at Three Angry Wives?

9 A It is.

10 Q Have you generally looked at it and generally
11 familiar with it?

12 A I am.

13 Q Do you believe it to be accurate?

14 A Yes. It looks like a profit and loss of our food
15 and beverage sales for the period of May 2011 through March of
16 2015.

17 MR. OLSEN: We would offer Exhibit 14, Your Honor.

18 THE COURT: Any objection?

19 MR. McCREA: No objection.

20 THE COURT: Be admitted.

21 (Plaintiff's Exhibit 14 admitted)

22 BY MR. OLSEN:

23 Q Now, I'm not going to ask you about the details, and
24 we have an expert to testify about the damages. But you have
25 a general idea of coin in and net win over time?

1 A Generally, yeah.

2 Q And the participation rate with the slot company?

3 A I understand it very well.

4 Q Is that constant, by the way?

5 A Well, it is not. But ours is. If you're over a
6 certain dollar figure, it remains constant. There are bands
7 for certain wins that fluctuate, but if you're over a certain
8 dollar amount, it does not fluctuate.

9 Q Exhibit 19. Take a look at that exhibit. This is a
10 proposed exhibit. It's not been stipulated to. Have you seen
11 it before?

12 A I absolutely have.

13 Q This is called Participation Agreement?

14 A It is.

15 Q And is this the agreement that pertains to Three
16 Angry Wives currently?

17 A It is for the Three Angry Wives in Boca Park.

18 Q Did you happen to -- I don't know if you did. Did
19 you happen to take a look at the expert report prepared by the
20 defendants?

21 A I glanced through it. I've not read it cover to
22 cover.

23 Q Did you see the reference to the participation
24 agreement in that report?

25 A I did.

1 Q You signed this document; correct?

2 A I did.

3 Q Do you recognize the form?

4 A I do.

5 Q Why do you recognize the form?

6 A Because this would have been a form I created at

7 some point in time when I was at Herbst Gaming.

8 Q This particular document was signed in 2013, though;

9 correct?

10 A After Sartini Gaming purchased all of the assets of

11 the reorganized Herbst Gaming, which was known as Affinity

12 Gaming at that time.

13 MR. OLSEN: Your Honor, we're going to offer this

14 document into evidence.

15 THE COURT: I'm waiting for Mr. McCrea to look at

16 it.

17 MR. OLSEN: Me, too.

18 MR. McCREA: No objection, Your Honor.

19 THE COURT: Be admitted.

20 (Plaintiff's Exhibit 19 admitted)

21 BY MR. OLSEN:

22 Q Is this document a loan document?

23 A It is not a loan document.

24 Q Could you tell me what the document -- I know it's

25 participation agreement, but does it have any reference to any

1 kind of interest rate or anything?

2 A If you look at Exhibit A to the participation
3 agreement, all of the particular terms of this contract are
4 contained in there. In other words, the form is on the front,
5 which you'd use for anyone, and the location-specific items
6 are on Exhibit A, if we've got it. And the performance bonus
7 payments, the participation in net win, and then we have
8 several things, ticket in, ticket out, you know,
9 [unintelligible] bank. We also have a signing loan for
10 \$100,000. And it talks about amortization of that loan.
11 Well, what that means is we received a payment of \$100,000
12 when we executed this, and over the life of the contract it is
13 a self-amortizing amount of money. In other words, each month
14 a certain figure of that dollar is simply taken off of it. If
15 for any reason we terminate the contract or the route operator
16 terminates the contract prior to the end of the seven-year
17 term, whatever is the remaining unamortized amount will have
18 10 percent interest added back from the date of the signing of
19 it, it'll be due and payable. However, so long as this is not
20 terminated within seven years, there is no money that is ever
21 required to be repaid from the location Three Angry Wives to
22 the slot route operator.

23 Q So this isn't a document that indicates any
24 borrowing on the part of Three Angry Wives?

25 A We did not borrow a nickel.

1 Q You said that you had from the start of operations
2 to 2012 at Three Angry Wives that it was successful on food
3 and beverage, successful in gaming. Does successful mean that
4 every year is the same, every year is better than the year
5 before?

6 A No, actually not. It fluctuated in about that time,
7 you know. It was successful because we paid off our loans, we
8 made money, and we've made money every year, some years more
9 than others, some years less than others, but ultimately it
10 has been a successful location.

11 Q You don't have any expectation prior to 2012 that
12 there was going to be another gaming location allowed in Boca
13 Park?

14 A I had every expectation that there would not be
15 another gaming location inside of Boca Park.

16 Q Because you had a contract; correct?

17 A That is correct.

18 Q Take a look at Exhibit 3. This is the Wahoo's
19 lease.

20 A Yes.

21 Q Now, did you ever see this lease before the
22 litigation?

23 A Never before the litigation.

24 Q How did you become aware that there was a lease
25 being granted by Boca Park for the Wahoo's?

1 A I don't know that I knew there was a lease. I
2 believe that I found out that they were in -- that Wahoo's was
3 before Gaming Control Board to be approved for a license at
4 the location.

5 Q So the landlord didn't give you the heads up that
6 that was happening?

7 A No, they did not.

8 Q Let's just take a look at some of the key terms in
9 this lease. You looked at it, so you have an understanding of
10 the term of the lease, that it's a 15-year lease?

11 A I do. Yes.

12 Q Technically it's five-year with two five-year
13 options?

14 A Correct.

15 Q And if you look down at the minimum monthly rent
16 section, does it include a percentage rent?

17 A It does.

18 Q Now, the percentage rent, it says it applies to
19 gross sales. It doesn't say gross sales of what, does it?

20 A It does not. But I'm a gaming attorney. I
21 understand that it can't be gross sales of gaming.

22 Q Counsel made that representation. You assume that's
23 probably correct, since he said [unintelligible] not licensed?

24 A Yes.

25 THE COURT: Probably correct?

1 THE WITNESS: If you don't have a gaming license,
2 the Gaming Control Board will quickly come talk to you if
3 you're participating in gaming revenues.

4 MR. OLSEN: I meant to say it's probably correct
5 they don't have one. That was one of Counsel's
6 representations.

7 BY MR. OLSEN:

8 Q Nonetheless, there is a percentage rent of 7 percent
9 of gross sales; is that correct?

10 A For a period of time, yes.

11 Q Well, if you look at the second page of the lease,
12 the period of time is under -- it's under Section F; correct?

13 A Yes. After the [unintelligible] says that they all
14 have a 6 percent percentage rent in the gross sales.

15 Q And thereafter --

16 A Right.

17 Q -- for the life of that lease. So Boca Park has an
18 interest in the revenues under this lease; is that correct?

19 A That is correct.

20 Q Approximately how far from Three Angry Wives is
21 Wahoo's located?

22 A Two football fields or less. Right across the
23 parking lot.

24 Q When it came to your attention that Wahoo's was on
25 the agenda for gaming approval did you approach the landlord?

1 A I did.

2 Q Did you point out the exclusive you had for gaming?

3 A I did.

4 Q I know there was subsequent litigation, but what was
5 the initial response?

6 MR. McCREA: Your Honor, I'm going to object --

7 THE COURT: Sustained.

8 MR. McCREA: -- on relevance grounds.

9 THE COURT: We're already past that.

10 BY MR. OLSEN:

11 Q What did they say to you in response?

12 MR. McCREA: Objection.

13 THE COURT: Sustained.

14 BY MR. OLSEN:

15 Q Has the existence of Wahoo's which opened for gaming
16 in 2012 affected business at Three Angry Wives?

17 A Absolutely.

18 Q Could you determine that when it initially opened,
19 at the very beginning? Could you tell there was an impact?

20 A It's difficult when we talk about time frames. I
21 mean, the day it opened, you know, the month after it opened,
22 six months after it opened. So, you know, I don't -- I guess,
23 you know, the day it opened, no. Eventually over time, yes.

24 Q Have customers -- now, you say you knew -- you know
25 the customers at Three Angry Wives and you've known them for a

1 long time; right?

2 A Absolutely.

3 Q Have customers that you know that are Three Angry
4 Wives customers gone over to Wahoo's to gamble?

5 MR. McCREA: Objection, Your Honor. Foundation.

6 THE COURT: Overruled.

7 THE WITNESS: Yes. And I can tell you specifically
8 I have gone to Wahoo's and bought a beer and seen all five of
9 the machines being played by customers who I would consider
10 Three Angry Wives customers. I have been sitting in Three
11 Angry Wives while a person's playing my gaming machine and
12 they get a text from Wahoo's bartender. It says, You have \$25
13 in free play, come across the street Wahoo's. So do I know
14 for a fact that my customers are going across the street?
15 Yes. I've seen the mailers that they bring in and say, I got
16 this from Wahoo's in the mail.

17 MR. McCREA: Objection, Your Honor. Hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: So, yes, I absolutely know for a fact
20 that my customers, both carded and uncarded, are going across
21 the street to Wahoo's to gamble.

22 THE COURT: And when you say carded you mean people
23 playing in your loyalty program.

24 THE WITNESS: People playing in my loyalty program,
25 that is correct.

1 THE COURT: All right. Thank you.

2 BY MR. OLSEN:

3 Q Okay. And let's focus on that for a second. So if
4 I -- if I were to use the term "rated play," which comes up in
5 -- will come up in examination, is that someone who is a
6 player in the player loyalty program or a carded player?

7 A Yeah. Right. There's a -- everyone has a card.
8 Either they have one on their person, or we have them behind
9 the bar. When they walk into the location, if they choose,
10 they put the card in the machine, and that basically tracks
11 their play. And you do it for numerous reasons, one of which
12 is to allow those people to be bonused or awarded points for
13 the amount that they play. Additionally, there are bonusing
14 features of games that if you aren't a carded player or rated
15 player that you can't participate in. So there's reasons to
16 do it. However, there's reasons people choose not to do it,
17 as well.

18 Q You're saying that -- are there -- are there
19 customers of Three Angry Wives that are we'll say your
20 customers, regular players that aren't rated players?

21 A We have many, many, many of our customers -- again,
22 I didn't know the number. I heard it's 50 percent. But I can
23 tell you from my own experience we have many players who are
24 there on a -- several trips a week who do not want their play
25 tracked, who do not want it for various reasons. Because they

1 don't want you to send mailers home to them because their
2 spouse may see them, they don't want to see them, they don't
3 want to get texts on their phone from you. There are reasons
4 why people choose not to be rated, you know. And I don't ask
5 them. It's none of my business why they choose to be rated or
6 not. But we have a very loyal following of non-rated players,
7 as well.

8 Q And have some or most of those non-rated players,
9 have they been customers since before the time Wahoo's was
10 there?

11 A Absolutely. Again, customers come and go, but we
12 have had a very, very solid base of customers for several
13 years.

14 Q And would that apply to rated players, as well? We
15 were talking about unrated players. Are there rated players
16 that you know to have been customers of Three Angry Wives
17 prior to the time Wahoo's even came in?

18 A I will say we'll keep both of those terms under our
19 employee of Three Angry Wives players. There are Three Angry
20 Wives players which will do both of those terms, rated and
21 non-rated, that have been customers and I'll go back, you
22 know, for 10 years or plus. So, yes, absolutely prior to
23 Wahoo's opening.

24 Q Have you seen some of those customers yourself over
25 at Wahoo's?

1 A I have been in Wahoo's and seen those customers
2 myself.

3 Q And if I understood your testimony, you actually had
4 observed some of those players at your bar receiving text
5 messages from Wahoo's?

6 A That is one of the -- again -- and I know this
7 because my bartenders and my management kind of put the
8 program together which ultimately a lot of people have used,
9 and Wahoo's was one of them, which was texting your players
10 with bonusing, basically saying, if you come in in the next
11 hour or 30 minutes or two hours we will bonus you \$50 or \$25.
12 And we found it to be a very good tool. Well, the Wahoo's
13 folks obviously found out about it and used it very similar to
14 the way we used it, and on several occasions, not one, we
15 would laugh, because as I'm -- they're sitting there in my bar
16 and I'm standing 5 feet from them, they'd go, look, look what
17 I'm getting. And it's a text from Wahoo's. So, yeah, I've
18 observed it on numerous occasions.

19 THE COURT: But they have to have the location
20 function turned on their phone for that to work.

21 THE WITNESS: That I don't know, Your Honor.

22 THE COURT: We know that. Don't ask us how we know
23 that.

24 BY MR. OLSEN:

25 Q And have you -- you testified you've also seen some

1 of these promotional materials you're talking about --

2 A Yes.

3 Q -- from Wahoo's.

4 A Yes. And, again, they have a slot route operator
5 like we have a slot route operator. As a matter of fact, it's
6 the same slot route operator company. And they assist in a
7 lot of those promotional activities, as well.

8 Q Since Wahoo's opened up have you, Three Angry Wives,
9 increased your promotions?

10 A I believe we have, yes.

11 Q I want to have you take a look at Exhibit 16.

12 THE COURT: 16?

13 MR. OLSEN: It is admitted. Okay. I hear you over
14 there.

15 BY MR. OLSEN:

16 Q 16 is admitted. This is actually an exhibit to
17 defendants' expert report, but I thought it was probably the
18 best -- easiest place to look at this information.

19 So page 14 in Exhibit 16 --

20 A Page 14?

21 Q Uh-huh. Now, page 14, this document says it is
22 prepared by defendants' expert, but it's using HIGC0393 and
23 394. Those are Bates-stamped pages from your QuickBooks
24 profit and loss statement. You may not be able to see that
25 without the magnifying glass.

1 A Well, when you say page 14, is it the exhibit number
2 at the bottom, 14, or where am I looking at here?

3 Q PL lower right --

4 A PL-TE00014?

5 Q Yes, sir.

6 A Okay. Yeah. I got that.

7 Q Okay. I just wanted you to look at the -- if you
8 can find the total gaming line about a third of the way down
9 on the page. You can really use that magnifying glass, if you
10 want.

11 A I don't need that. Total gaming. Yeah, I got it.

12 Q Okay. What's that figure?

13 A Well, the first one under May 11 is --

14 Q Sorry. If you'd take a look at the total. I'm just
15 going to look at the total.

16 A Oh. All the way down here. 1,442,896.85.

17 Q And this is for the year -- it's broken down into
18 fiscal years. This is May 11 to April 2012. Do you see that?

19 A Well, I'm going to tell you that that's the year
20 prior to them opening, prior to Wahoo's opening. It's not a
21 fiscal year. It's a year prior to them opening.

22 Q Fair enough. Not your fiscal year. It is the year
23 prior to the opening.

24 A Right.

25 Q And the -- if you look down to Gaming Promotions

1 almost to the very bottom --

2 A Yep.

3 Q -- what's that figure?

4 A 309,528.07.

5 Q Now, go ahead a couple of pages, one year --

6 A Okay.

7 Q -- to page PL-TE00016.

8 A Yep.

9 Q Now, you see the total gaming figure there?

10 A I do. \$1,312,076.65.

11 Q Wahoo's was open during this year; is that correct?

12 A It absolutely was. The whole year.

13 Q So that gaming number is a little bit lower than the

14 prior year?

15 A Over \$130,000 lower.

16 Q But really what I want you to look at is the gaming

17 -- total gaming promotion. Do you see that figure?

18 A I do.

19 Q Is that figure higher than the year before?

20 A It is. It is higher by \$48,000.

21 Q Take a look at page PL-TE18.

22 A Yep.

23 Q Is the -- it looks like the gaming figure for total

24 gaming is up a little bit, but the gaming promotion is

25 significantly higher, is it not? Do you see that figure?

1 A You are on page --
2 Q 18.
3 A Yeah. It looks like gaming is down again by another
4 \$60,000, unless I'm reading it wrong. \$50,000?
5 Q Actually, you're right about that. And the gaming
6 promotion?
7 A This is -- it looks like it's almost identical.
8 It's within \$7,000 of it.
9 Q Doesn't that say -- doesn't that say \$530,000?
10 A Yeah.
11 Q Three hundred fifty-seven.
12 A I'm sorry. Three fifty-seven. I'm sorry. Yes,
13 it's significantly higher. My apologies on that.
14 Q And then the following year at May 14-April 15
15 period that is page PL-TE20. How does the gaming compare --
16 A It's down even further. It's 1,090,813. So from
17 the first year it's down over \$400,000, and the promotion is
18 up from the mid three hundreds to five hundred and almost
19 eighty thousand dollars.
20 Q Okay. So the promotion is up in that year, as well.
21 A Yes.
22 Q So you testified to this. But you've seen some
23 evidence that in fact you're correct that gaming promotions
24 were up substantially after Wahoo's opening; is that right?
25 A Correct.

1 Q Was that by chance?

2 MR. McCREA: Objection, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: No, it was not. We felt had to drive
5 business some way into the location. And one of the ways you
6 attempt to drive business and bring gaming business back is by
7 doing promotional giveaways. And obviously in this instance
8 we felt that we needed to do that or at least try to do
9 something to get our gaming numbers back up.

10 BY MR. OLSEN:

11 Q And you believe that Three Angry Wives has been
12 damaged by the presence of Wahoo's; correct?

13 A Every dollar that goes into their location shouldn't
14 go into their location. They shouldn't be there. Any dollar
15 that is gambled there should be money that would be going to
16 my location. That location should not be there. It doesn't
17 matter if it's one dollar. There shouldn't be a dollar
18 gambled there. I had an exclusive, I negotiated for that
19 exclusive. I didn't get the benefit of my bargain. And so,
20 yes, every dollar that is put in there is, as far as I'm
21 concerned, a dollar that I should be entitled to.

22 Q Now, I think I asked you whether you looked at the
23 expert report or reports that defendant had prepared, and I
24 think your testimony is you're aware of them.

25 A Yeah. You know, I think I read the summary pages,

1 which were the first two or three pages. And, you know, I
2 wasn't going to look through the exhibits.

3 Q Did you happen to notice as you were looking through
4 the reports that certain players had been excluded in Mr.
5 Rosten's view from the count?

6 A Well, that jumped out at me, to be quite honest with
7 you. Yes. So I did notice that, that Mr. Rosten excluded two
8 specific players from his accounting.

9 Q And what were their names?

10 A Dylan Higgins and Mike Higgins.

11 Q And do you recall what the explanation of why, as to
12 why they were excluded?

13 A He made an assumption that they must have somehow
14 been related to myself and/or my brothers or my family in some
15 way, shape, or form.

16 Q Are they related?

17 A They are not related at all. However --

18 Q So they're not part of the ownership --

19 A They're not related -- they're not distant cousins.

20 Q You started to say however. What else --

21 A However, Dylan has worked for me for numerous years,
22 and here's one of the prime examples I can use a name. As are
23 a lot of my employees, my employees also gamble. They also
24 play video poker. And a lot of my employees will stay at the
25 bar afterwards, because they're allowed to, and gamble at the

1 bar, have a drink, gamble, do whatever. Just so happens that
2 Dylan and his father always used to stay at the bar and
3 gamble. However, once Wahoo's opened, Dylan and his father,
4 Mike, now gamble at Wahoo's. So -- and that has happened with
5 more than one of my employees. So the fact that they excluded
6 them is incorrect, too, but, second, it shows -- it's clear as
7 day, because I know who those people are, that my gaming
8 customers are walking across the parking lot and going into
9 Wahoo's and gambling.

10 Q Now, at the time that this breach occurred, the
11 lease was signed with Wahoo's, there was how much time
12 remaining on your lease?

13 A Twenty-one years.

14 Q We looked at the fact that the Wahoo's lease is a
15 15-year lease. Do you recall that?

16 A I do.

17 Q And you recall -- you probably recall statements of
18 Counsel in argument about the experts say that there was
19 fourteen and a half years left on the Wahoo's lease for
20 whatever reason, fourteen and a half years left when the
21 breach occurred. So why should Three Angry Wives get damages
22 beyond that fourteen-and-a-half-year life of the Wahoo's
23 lease, the whole twenty-one years of the Three Angry Wives
24 lease?

25 A Well, several reasons. The first is obviously we've

1 got a landlord here who obviously didn't care or wasn't
2 concerned about a single tenant in a single shopping center
3 and thus enforcing what was a very negotiated exclusive. But
4 second off, my brothers and I had built a business over the
5 course of many years. It takes time and effort. And you
6 bring customers into that business. I don't care when Wahoo's
7 closes. It will then be up to me to try to rebuild those
8 customers to bring them back to try to have them come to my
9 place. So the fact that they opened in the first place, as
10 far as I'm concerned, give me damages throughout the end of my
11 term. It isn't the term that Wahoo's is there, and who's to
12 say that Wahoo's doesn't continue to be a screaming success
13 and they sign another 10-year extension and they're there for
14 another 10 years? I mean, you don't want to be speculative,
15 but, again, I don't believe that matters. Because they now
16 have put me in a position, and my brothers and our company,
17 where we have to compete. And even if they close their doors
18 after 15 years, I then have to somehow bring those clientele
19 back into my location. So but for them entering in a lease in
20 contradiction to the exclusive I wouldn't be sitting here.

21 Q Well, let me ask you this. In your experience --
22 you've had years of gaming experience working for the slot
23 route, and you've dealt with a lot of bars; correct?

24 A Correct.

25 Q And a lot of landlords in the process, I assume.

1 A Many, many landlords.

2 Q Do you have any reason to expect a landlord for a
3 successful location, gaming location, wouldn't extend or renew
4 a lease or replace that with such a tenant?

5 A Well, I've seen them replace the tenant with another
6 gaming tenant. So to answer your question, no, I've never
7 seen a landlord throw a gaming tenant out who was ready,
8 willing, and able to pay rent even at the end of their initial
9 -- end of their final term.

10 Q Have you seen instances where one gaming tenant
11 leaves and another gaming tenant -- the landlord wants another
12 gaming tenant in and assures that there's one put in there?

13 MR. McCREA: Objection, Your Honor. Irrelevant.

14 THE COURT: Sustained.

15 MR. OLSEN: Withdraw the question.

16 BY MR. OLSEN:

17 Q Is there anything about this location where Wahoo's
18 is that by law is somehow limited in -- by ordinance, I mean,
19 limited in duration or otherwise limited in -- you know, any
20 reason another location, gaming location couldn't be there but
21 for your exclusive?

22 A Absolutely not.

23 Q You testified probably at length for the Court, but
24 you testified on at length the value and the critical nature
25 of the exclusive to the business. What's that exclusive worth

1 now?

2 A Not a whole heck of a lot, obviously, since we don't
3 have an exclusive since we aren't the only operator in there
4 currently offering gaming to the general public.

5 Q You've reviewed your own experts' reports; correct?
6 Just generally?

7 A Yes.

8 Q Are all the damages that have been suffered by Three
9 Angry Wives detailed in those reports?

10 A Yeah. Again, I believe -- no, I don't believe. I
11 know for a fact that there have been nonrated players who I've
12 seen at Wahoo's, and the fact of the matter is, you know,
13 limiting this to rated players is ridiculous and ludicrous,
14 because rated players -- just because they're rated doesn't
15 mean they're the only players. The fact of the matter is
16 Wahoo's has taken both rated and nonrated. And again, as far
17 as I'm concerned, any dollar that's gambled at Wahoo's is a
18 dollar that should be our damages.

19 Q So you don't think that that report, even though
20 it's a great report, captures all of the potential -- all the
21 actual damages?

22 A In all due respect to Mr. Aguero, no, I don't
23 believe it is.

24 Q For the reasons you stated, that it doesn't include
25 anything other than rated players and then applying that

1 formula?

2 A Correct. Correct.

3 MR. OLSEN: Court's indulgence.

4 (Pause in the proceedings)

5 BY MR. OLSEN:

6 Q I have one more question. Would Three Angry Wives
7 have signed a lease without the exclusive for gaming in this
8 location?

9 A We would have signed some lease in this location. I
10 can't tell you what the value of the lease would have been. I
11 think the location itself is a good location, but it certainly
12 is not worth what we pay for it.

13 Q So you wouldn't have paid this price?

14 A No.

15 MR. OLSEN: Pass the witness.

16 THE COURT: Mr. McCrea, I'm supposed to give my
17 staff a break every hour or so. We've been going about an
18 hour and 15 minutes. Is it okay if we take a break?

19 MR. MCCREA: It's fine.

20 THE COURT: Can I ask Mr. Higgins a question as he's
21 leaving.

22 Sir, is ETT on the participation agreement the same
23 one I remember from that tragic incident that you were here
24 one night all night on?

25 THE WITNESS: It is. But obviously the Herbsts no

1 longer own that company.

2 THE COURT: It's been transferred to the Sartinis,
3 who are my Todd Bice, John Bailey problem.

4 Okay. I'm going to step out.

5 (Court recessed at 2:47 p.m., until 2:56 p.m.)

6 THE COURT: Okay. Are you ready? Okay.

7 You may begin your cross-examination.

8 MR. McCREA: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. McCREA:

11 Q Good afternoon, Mr. Higgins.

12 A Good afternoon.

13 Q Towards the end of Mr. Olsen's examination of you
14 you were characterizing the reports or attempting to summarize
15 the report of your expert, Mr. Aguerro. And I think you said
16 that you didn't agree with his methodology from the standpoint
17 that you thought he only addressed play from rated players.

18 A I'm not sure I said his methodology. I'm not -- I
19 didn't get into the methodology, I don't believe.

20 Q Okay.

21 A I just said I think there's another universe of
22 players out there who may not be caught.

23 Q Okay. Is it your understanding that Mr. Aguerro's
24 report only renders an opinion on gaming revenues earned by
25 Wahoo's on rated players that played at both locations?

1 A Well, I can't -- I unless I reviewed the report
2 right now I could not tell you exactly that. So I'd have to
3 review the report. Happy to do so.

4 Q Okay. So you don't have an understanding as you sit
5 here either way. Is that your testimony?

6 A Right. I guess that's correct.

7 Q Okay. Whatever his report says it says.

8 A That's correct.

9 Q Okay. Now, Mr. Sean [sic], are there any other
10 businesses in your vicinity that you consider competitors
11 other than Wahoo's?

12 A Sure.

13 Q And what businesses would those be?

14 A You've got Martinis, Dotty's, The Pint, maybe
15 Chicago Brewing Company, maybe Lion's Tail.

16 Q What about Calico Jack's?

17 A I wouldn't consider -- you ask me what I consider, I
18 wouldn't consider it a -- and because of proximity and I think
19 clientele and what they offer, if you know the tavern
20 business, they offer a little different kind of an experience.

21 Q What's the difference?

22 A They do a lot of karaoke, big room in the back, live
23 music, different -- different kind of experience.

24 Q Okay. They also offer 24-hour dining?

25 A Sure.

1 Q 24-hour bar service?

2 A Sure.

3 Q And 24-hour gaming?

4 A Absolutely.

5 Q Fifteen slots?

6 A Yes.

7 Q And each of these other locations that you

8 identified as your competitors, Chicago Brewing Company, 15

9 slots?

10 A No. I think they're a nonrestricted. I think they

11 may have 20 or 35.

12 Q More than 15?

13 A I believe -- I believe they're a nonrestricted

14 operator, yes.

15 Q Okay. So it'd be more than 15?

16 A They would have, uh-huh.

17 Q And the Martini, 15 slots?

18 A Correct.

19 Q Okay. 24-hour food?

20 A Yes, to the best of my knowledge.

21 Q 24-hour bar service?

22 A Yes.

23 Q And you referred to a Dotty's. There are a couple

24 of Dotty's that are kind of in the same vicinity as Three

25 Angry Wives, aren't there?

1 A Well, again, I characterize it because of its
2 proximity to my location. I don't believe it's a competitor,
3 I don't think they draw in the same people at all. But it was
4 a Bilbo's for years and years and years before that. The new
5 location at the corner of Hualapai and Sahara is a different
6 driving pattern. I don't consider that a -- that's the only
7 one -- the next nearest one, so I don't consider that
8 competition via proximity. Because, again, I would argue
9 Dotty's doesn't compete because they're looking at a different
10 type of gamer altogether.

11 Q You mentioned Dotty's as a potential competitor.

12 A Because proximity more than because of their type of
13 gaming offered.

14 Q More than 15 slot machines?

15 A Yes.

16 Q 24-hour food service?

17 A I would --

18 Q If you'd call it that?

19 A I would disagree with that. But that's for another
20 day.

21 Q At least they represent that they've got 24-hour
22 food service?

23 A That's a fair enough representation.

24 Q And 24-hour bar service?

25 A Correct.

1 Q And the Lion's Tail, similar situation, 15 slot
2 machines, 24-hour food service?

3 A No food. No food.

4 Q Okay. 24-hour bar service?

5 A Correct.

6 Q And The Pint?

7 A Same thing. Same thing.

8 Q Now, in the year prior to the introduction of gaming
9 at Wahoo's was gaming revenue at Three Angry Wives increasing,
10 decreasing, staying about the same? What's your recollection?

11 A Well, I'd have to look. Again, I'll be honest with
12 you. I don't have a specific recollection. I know I've
13 looked at things and said it was down the year before, again.
14 But I haven't looked specifically. I can just tell you that I
15 know that I've heard that as part of the preparation for this.

16 Q Okay. If I told you that your federal income tax
17 returns in this case that were produced show that from 2010 to
18 2011, before Wahoo's opened and offered any gaming at all,
19 your reported revenues -- gaming revenues went from \$1,737,136
20 to 1,495,849, a decline of almost 14 percent, would you
21 dispute that?

22 A I would have -- again, I don't have it in front of
23 me, but I have no reason to believe you're not being truthful
24 when you make the statement. I don't have it in front of me.

25 Q Now, if I understood your testimony correctly when

1 you were examined by Mr. Olsen, you can't put a specific value
2 on the exclusive use provision that you negotiated.

3 A Well, no, I cannot.

4 Q Now, in that participation agreement that you signed
5 that had the -- I think it was referred to as signing loan --

6 A Yes.

7 Q -- for \$100,000.

8 A Correct.

9 Q And you said you didn't borrow anything. Was that
10 your testimony?

11 A Yeah. We have no requirement for repayment so long
12 as we continue that contract throughout its term.

13 Q Okay. I thought I understood your testimony also to
14 be that the -- that monthly payments were made, they were just
15 deducted from whatever your share of the gaming revenues were
16 and that --

17 A No. I said it's a self-amortizing loan, meaning all
18 they do is every month -- it started at 100,000, and I don't
19 know what 84 months divided by whatever one eighty-fourth is,
20 the next month you're going to owe 98,200, the next month
21 you'll owe -- it just keeps going down every month by one
22 eighty-fourth of that. We never pay a penny. It's self
23 amortizing. In other words, so at the end of six years and
24 eleven months there's \$1,350 or whatever the number is that's
25 outstanding. At the end of the seventh year there's nothing

1 outstanding. So there's never a repayment of any dollars to
2 any people.

3 Q I'm just trying to understand where that money comes
4 from.

5 A It comes from my slot route operator.

6 Q Okay. Does it come --

7 THE COURT: So is it forgiven during the term as
8 long as you remain a customer?

9 THE WITNESS: That is correct. I call it self
10 amortized, but it's forgiven.

11 BY MR. McCREA:

12 Q But the payment doesn't come out of your share of
13 the participation. Is that what you're saying?

14 A There's no payment.

15 Q Okay. Comes out of the slot operator's part of it;
16 is that your understanding?

17 A There is no payment. I mean, so there's no money --
18 after we get the \$100,000 there's no payment that exchanges
19 hands thereafter.

20 Q Okay. Do Von's and Long's still operate slot
21 machines in Boca Park?

22 A Neither location operates today.

23 Q Do you know when they closed?

24 A Von's was a Hagen's up until sometime this year, and
25 I know Hagen's had gaming devices up until -- and I don't know

1 the month or whatever, but they were Hagen's. Long's has been
2 Party City for a long time, I don't know, years.

3 Q When those businesses had gaming did you notice any
4 effect on your revenues?

5 MR. OLSEN: Objection. Relevance.

6 THE COURT: Overruled.

7 THE WITNESS: I wouldn't even -- they were there
8 when I got there.

9 BY MR. McCREA:

10 Q When they closed did you notice any effect?

11 A I can't recall that today. I wasn't privy to their
12 numbers, either.

13 Q All right. Your slot route operator is Golden
14 Gaming?

15 A A subsidiary thereof, yeah. Golden Entertainment.

16 Q Same slot operator at Wahoo's?

17 A Correct.

18 Q Tell me, did you say you represent Golden Gaming or
19 had represented Golden Gaming as an attorney?

20 A I actually work for Golden Gaming as their head of
21 business development and government affairs.

22 Q Okay. So you're currently employed by Golden
23 Gaming.

24 A I am.

25 Q So do you have access to their internal records?

1 A I guess I would. I guess I do. But I --

2 Q And do you know how many customers Golden Gaming has

3 that are members of their slot players club?

4 A I'm not sure I understand the question.

5 Q I'm not talking about specific individuals who may

6 be a member of the Golden Gaming slot players club, but

7 specific locations that offer that loyalty club to their

8 patrons.

9 A Every bar offers it in some way, shape, or form.

10 But it is not a single club. No one but my -- no one but

11 Three Angry Wives has access to Three Angry Wives' players

12 tracking club. In other words, a person at Golden does, but

13 no one -- in other words, Golden can't go to that player

14 tracking list and offer a PT's promotion to people on Three

15 Angry Wives or Wahoo's or anyone else, for that matter. In

16 other words, now, Golden PT's, their 50 locations have a

17 universal slot club that all -- but, you know, just pick a

18 bar. Lion's Tail, I don't know. They'll have a slot club,

19 but it'll be specific to them and their players.

20 Q And that's what yours is, is that --

21 A Yeah. That's what all of them --

22 Q Yeah. And that's what Wahoo's is?

23 A That's what all of them are, yes.

24 Q Will you turn to Exhibit 13, please.

25 A Sure. I'd like to direct your attention to some of

1 the pages you were looking at under your direct examination.

2 One of the things you went over with Mr. Olsen was
3 the gaming promotion, your gaming promotion expenses.

4 A Correct.

5 Q Now, did there come a point in time when you changed
6 your accounting treatment of certain expenses?

7 A I don't have a recollection.

8 Q I notice that there's an item called "Gaming Promo."
9 And if you look at -- I'm looking at the Three Angry Wives
10 profit and loss, and this is for the year 2011.

11 A Okay.

12 Q And this is page --

13 THE COURT: What Bates number?

14 MR. McCREA: HIGCO393.

15 THE WITNESS: Okay. 393. Got it.

16 BY MR. McCREA:

17 Q And I see that under Gaming Promo in there are no
18 entries.

19 A Oh. Okay. I can -- I understand the -- now that
20 you've pointed me to it, I can explain it. Up until that time
21 the machines didn't have the ability -- you had to do a mailer
22 or you could send it out via text, but you had to do something
23 which you then physically had to put money into the machine.
24 In other words, if you brought your phone in to me, you said,
25 here's my text, we would have to put a hundred dollar bill in

1 the machine. The technology advanced so you can do
2 downloadable credits into the game. That's the only
3 difference. So you'll notice the line Tavern Tracker
4 Promotion goes -- TT Promotion or TT mailer goes away
5 completely about the same time. So that you didn't -- it was
6 simply a different way. You didn't have to give people a
7 physical voucher or anything physical anymore, it could simply
8 be downloadable. It was a technology change.

9 Q Okay. So that explains --

10 A Yeah. It was a technology change.

11 MR. McCREA: Court's indulgence.

12 THE COURT: Uh-huh.

13 (Pause in the proceedings)

14 MR. McCREA: I have nothing further, Your Honor.

15 THE COURT: Mr. Olsen, any redirect?

16 MR. OLSEN: Just a few questions, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. OLSEN:

19 Q Mr. Higgins, you were asked about a few bars and
20 locations and whether you considered them competitors. Were
21 any of those bars and locations, were any of those inside of
22 Boca Park?

23 A None of them are inside of Boca Park, and all of
24 them have been in existence one way or another in excess of
25 10 or 15 years.

1 Q So prior to the time Wahoo's was --

2 A Well before. Not a single one of them -- all those
3 locations have been -- and I would go back. I think the only
4 one that opened post us was Martinis, and that was by several
5 months at most. So in the same time frame. Every other one I
6 mentioned has been open in some iteration since before we were
7 open.

8 Q They've been there the whole time, essentially,
9 Three Angry Wives has been in business?

10 A That is correct.

11 Q It was a little confusing, but as I understand the
12 participation agreement, the \$100,000 is like a bonus; is that
13 right?

14 A Yes. In exchange for signing a contract they will
15 give you that.

16 Q And that reduced automatically each month, that
17 \$100,000, until the seven years, I think it was --

18 A Yes.

19 Q -- is completed, and then it's down to zero; is that
20 right?

21 A Yeah. That's in our instance. I mean, some people
22 do a four-year contract, they get \$50,000. In other words,
23 the amount of bonus you get is in direct relation to how long
24 you're willing to do a contract for.

25 Q It wasn't a loan?

1 A In no way, shape, or form was it a loan.

2 Q It didn't come out of your -- any of your money, the
3 repayment?

4 A It did not.

5 Q Would you say that the Von's customers that were
6 there when it was operating were the same customers as Three
7 Angry Wives customers?

8 A No. I've been in this business since 1990. I've
9 been a general counsel for a slot route company from 1993 to
10 2010, and I now for the past five months have worked again at
11 a gaming company. I think I understand restricted gaming as
12 well as almost anyone in the state of Nevada, to be quite
13 honest with you, and those customers are by and large a
14 different customer than goes into a tavern. Now, there are
15 some people who game in both places. However, they are a
16 different customer by and large when you look at the
17 demographics for those people versus the demographics for
18 people who go into a tavern-supper club location to gamble.

19 Q Okay. And both ET&T, the Herbst operation, and
20 Golden have had machines in grocery stores over those years;
21 correct?

22 A Have and still do.

23 Q You've had a lot of experience with those locations?

24 A All the time.

25 Q When did you start at Golden Gaming?

1 A April of this year. End of April.

2 Q So you haven't been there throughout this case?

3 A No. I -- they were one of my consulting clients. I
4 for five years did just government affairs, and they were one
5 of my clients at both the local and state level, Carson City
6 and here, for their gaming route operations.

7 Q Okay. I want to have you look at Exhibit 13 again.
8 I think you were looking at --

9 THE COURT: What page?

10 MR. OLSEN: Page 393, Your Honor. And 94.

11 THE WITNESS: Okay.

12 BY MR. OLSEN:

13 Q Let's take a look at 394. If -- I wasn't quite
14 following the questioning, but it looks like on page 394 a new
15 line item was added for gaming promotion -- gaming promo in.

16 A Yes.

17 Q Okay. And you were talking about how the machines
18 had a function, added a function where promotions could be
19 done through the machines; is that right?

20 A That's exactly what -- it was just a change from a
21 mailer to basically direct downloadable credits, we'll call
22 them, to the gaming device itself.

23 Q And it looks like some of the categories that had
24 been below that line in the past, for example, tavern tracker
25 and gaming promotion other, after October 2012 gets sucked up

1 in that line which is gaming promo in; correct?

2 A Yes. There are several lines there that had dollar
3 values that ended up being zeros as you go forward because
4 it's simply -- again, everything -- rather than being a mailer
5 or a card we have, you know, physical card, we had a keno card
6 you would stamp when you got six of a kind, five of a kind.
7 We didn't use those anymore. It was all downloadable credits
8 to the game. So it just changed -- it was just a method by
9 which we were promoting our gaming to our customers. But,
10 nonetheless, if you look at -- starting at page 393 at
11 September of 12 --

12 First of all September 2012 is after Wahoo's opened;
13 correct?

14 A September of 2012. Okay. I'm looking.

15 Q That's when it opened, was May 2012 when Wahoo's
16 opened; right?

17 A Right.

18 Q So in September 2012, starting with October and
19 going forward, the amounts spent on total gaming promotion --
20 the total increases over all of those prior months on page 394
21 back into -- well into 2011, correct, the total promotion?

22 A Yes. They did. That's a different question, the
23 methodology that I was talking about. But, yes, absolutely we
24 increased our gaming promotion to try to retain customers.

25 Q Okay. So it's not just about moving the numbers.

1 The numbers grew; is that correct?

2 A Absolutely. But, again, the reason it changed was
3 different.

4 MR. OLSEN: Pass the witness.

5 THE COURT: And the different is because of a
6 technology improvement that your supplier of machines was
7 giving you to be able to access your customers.

8 THE WITNESS: That is exactly right, Your Honor.

9 THE COURT: All right. Thank you.

10 THE WITNESS: That is exactly correct.

11 THE COURT: Anything else, Mr. McCrea?

12 MR. McCREA: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. McCREA:

15 Q Mr. Higgins, do you have customers that patronize
16 Three Angry Wives exclusively?

17 A I wouldn't say that's -- I would not say that.

18 Q So your customers, even your good customers, often
19 go other places to eat and to play slot machines?

20 A I would agree with that.

21 Q And some of those places would be the customers --
22 or, pardon me, the competitors that we identified a few
23 minutes ago?

24 A Potentially. I can't, you know, tell you whether
25 those are the ones they frequent or not or where they go. But

1 I'm not going to say they don't eat or gamble anywhere else in
2 the city of Las Vegas.

3 Q Do you have any customers that you consider
4 exclusive customers of Three Angry Wives?

5 A What do you mean by exclusive? That they never set
6 foot in another restaurant or another tavern?

7 Q That they gamble exclusively at Three Angry Wives
8 and no place else.

9 A No.

10 MR. McCREA: Thank you.

11 THE COURT: Anything further of Mr. Higgins?

12 MR. OLSEN: No, Your Honor.

13 THE COURT: Mr. Higgins, thank you very much. You
14 may step down. You're welcome to leave, if you'd like, or to
15 remain in the courtroom.

16 Next witness.

17 MR. CICILIANO: Jeremy Aguero, Your Honor.

18 THE COURT: Mr. Aguero, if you'd come forward,
19 please, so we can swear you in. And as a non lawyer the M&Ms
20 are yours to devour.

21 JEREMY AGUERO, PLAINTIFF'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. Please
23 state and spell your name for the record.

24 THE WITNESS: My name is Jeremy Aguero, J-E-R-E-M-Y
25 A-G-U-E-R-O.

1 MR. CICILIANO: And, Your Honor, before we begin Mr.
2 McCrea and I have agreed that Mr. Aguero, as well as Mr.
3 Rosten, are qualified as experts. Reserve the right, of
4 course, to dispute their opinions, but they're qualified, so
5 hopefully we'll save that step.

6 THE COURT: Okay. And, sir, there's water in the
7 pitcher if you need some.

8 THE WITNESS: Thank you, ma'am.

9 MR. CICILIANO: In all candor to the Court --

10 THE COURT: Is that accurate, both the experts --
11 both sides stipulate to the experts' qualifications and we're
12 only going to worry about what they base their opinions on and
13 the weight to be given those opinions?

14 MR. McCREA: That is correct, Your Honor.

15 THE COURT: Okay.

16 MR. CICILIANO: Thank you, Your Honor. And not to
17 correct you, but Mr. Aguero may have gone to law school, but
18 not being a lawyer, so I don't know if that changes the M&M
19 opinion. I consider him to be the smarter one of us, so he
20 deserves probably an extra one.

21 DIRECT EXAMINATION

22 BY MR. CICILIANO:

23 Q Mr. Aguero, could you tell me where you currently
24 work.

25 A I'm a principal analyst for Applied Analysis based

1 out of Las Vegas, Nevada.

2 Q And what does Applied Analysis do?

3 A We're an economic fiscal and policy consultancy.

4 Q Okay. And what type of economic fiscal and policy
5 consultancy work do you do?

6 A We represent a relatively broad cross-section of
7 clients, everything from real estate to government to gaming
8 and related operations. We do work for utilities, some
9 litigation support work, a lot of urban economic work, some
10 survey-related work, and certainly a lot of general economic
11 analysis.

12 Q Okay. And just to narrow this down, with regards to
13 your experience with gaming could you give us a brief overview
14 of what you've done in your career.

15 A Sure. In 1997 I was a principal author for the what
16 was called then the Impact -- the "Economic Fiscal and Social
17 Impact of Gaming on the State of Nevada" that was delivered to
18 the Federal Gaming Impact Study Commission. I penned that
19 jointly with a professor at UNLV by the name of Shannon Bybee.

20 Subsequent to that, in 2000-2001 I was the chair of
21 the Governor's Task Force on Tax Policies Technical Working
22 Group that worked for a year to evaluate tax alternatives on
23 behalf of Governor Kenny Guinn. In doing that I analyzed any
24 number of gaming-related activities, both relative to
25 restricted and nonrestricted gaming licensees.

1 In 2007, 2009, 2011, and 2015 I analyzed various tax
2 alternatives on behalf of the State of Nevada. I have worked
3 historically for the Las Vegas Convention & Visitors Authority
4 to do economic and fiscal analyses surrounding visitation and
5 gaming expenditure level data. I have surveyed both residents
6 and visitors in multiple thousands of them relative to their
7 gambling behavior, and worked on various economic and fiscal
8 impact analyses, as well as feasibility studies both in and
9 out of Nevada.

10 THE COURT: Including things about stadiums.

11 THE WITNESS: Yes, ma'am.

12 BY MR. CICILIANO:

13 Q With respect to -- just breaking gaming down, with
14 respect to a gaming establishment issue in this case, the more
15 nonrestricted, have you done work specifically to those types
16 of entities?

17 A Yeah. I mean, a fair amount of work relative to
18 nonrestricted licensees. We did take a look -- did some
19 analyses relative to the smoking ban that existed several
20 years back. In addition to that there's been a lot of
21 discussion recently, both among restricted and nonrestricted
22 licensees, as well as I guess I should say the legislature as
23 a whole in terms of the development of some of these slot
24 parlors, the Dotty's, the Molly's, those type of things, and
25 what implications they're having both on the expansion and

1 trends in terms of consumer behavior as it relates to gaming.
2 So I understand the market. And in addition to that our
3 office has a system, it's called myresearcher.com, where we
4 track all gaming-related activity in the gaming sector.

5 Q And when you say you track all gaming-related
6 activity what does that mean just briefly, thousand-foot view?

7 A Well, for all of the data that are released by the
8 Gaming Control Board we've created a central repository for
9 all that information going all the way back in some cases well
10 before 1980 so we can actually see trends in the amount of
11 play, what new types of slot machines are coming online, those
12 type of things.

13 Q Okay. In your career have you analyzed the factors
14 that contribute to the success of a local gaming
15 establishment?

16 A Generally speaking the answer to your question is
17 yes. But those are the same economic factors that affect
18 almost any analysis that we do, supply, demand, and pricing.

19 Q Okay. And so for bars what happens to be important
20 factors?

21 A I would argue the most important factor is
22 convenience, location. That has a tendency to attract and
23 retain customers. Beyond that there's the quality of the
24 product, there's the ability of the operator, all of those
25 type of things. But I think all of those are second to

1 convenience and location.

2 Q And when you say convenience and location is that
3 location to one's home, or location to something else?

4 A Well, it can be both. I mean, the answer to your
5 question is yes. When we're talking about location really
6 we're talking about the equilibrium, if you will, between
7 supply and demand. On the supply side the question of
8 location is do I have a competitive market in which I'm
9 operating, can I be competitively positioned against the other
10 suppliers in the region. From a demand side it's largely
11 based on -- the first step in any analysis is going to be look
12 at all of the rooftops that are around a specific location.
13 It is a demonstrative factor. Beyond that you want to know
14 the income level and the marginal propensity to participate in
15 gaming activity. Certainly the population over the age of 21
16 is critically important in that regard.

17 Beyond that, however, there are other factors that
18 affect gaming operations, including bars and taverns, that are
19 also very important. I think the one that you were alluding
20 to is something like traffic counts, how much volume is moving
21 up and down the roads adjacent to where you are. That is
22 critical to almost any retail establishment. Certainly a bar
23 or a tavern it's important to, as well.

24 Another one that I would add into that would also be
25 consideration of surrounding developments. I mean, you take a

1 retail development like Boca Park, it is designed to draw
2 people -- the size of Boca Park, if you will, and having
3 anchor tenants is designed simply to draw people from a --

4 MR. McCREA: Your Honor, I'm going to object to
5 this. This is beyond the scope of his written report. He
6 didn't render any opinions on location or desirability of
7 locations or anything like that.

8 THE COURT: Overruled. Keep going.

9 THE WITNESS: And I think I was pretty close to
10 being done. My only point is that the ability to be adjacent
11 to areas where the population is going to naturally come to --
12 we think about it in terms of an attracter of consumer or an
13 attracter of that type of volume. You think about that size
14 matters. The bigger that retail development, the more it's
15 able to draw from a longer way out, and that's why everybody
16 from banks to bars want to be in those specific locations,
17 because they benefit from those adjacent uses.

18 BY MR. CICILIANO:

19 Q With those factors there, including roads, the
20 development's location, and effluence, how does Boca Park
21 rate?

22 A It is among the best locations in the Las Vegas
23 valley today.

24 MR. McCREA: I'm going to object to that, Your
25 Honor. That's his expert opinion. It wasn't --

1 THE COURT: You don't want to have your place called
2 one of the best locations? You can blow this up and use it.

3 MR. McCREA: Wonderful. But it's not -- and we're
4 very proud of that, Your Honor. But it's irrelevant and it's
5 beyond the scope of his expert report. He was required to put
6 whatever opinions he's going to express in this case in his
7 report. That opinion isn't in here.

8 THE COURT: Overruled. I think this is only part of
9 the basics for getting to his opinion as to why the issue
10 related to the exclusive is so important in this case.

11 Let's go.

12 BY MR. CICILIANO:

13 Q Have you had the opportunity to look at the gaming
14 markets in Southern Nevada in general?

15 A Yes, sir.

16 Q Okay. And what was the condition of that market
17 from 2008 to 2012 just generally?

18 A Generally speaking, from 2008 to 2012 it was
19 probably one of the most difficult periods that Southern
20 Nevada has seen relative to the gaming market as a whole.
21 Gaming revenues dropped precipitously with as the Great
22 Recession came online and held on. That continues still
23 today. I mean, it's become -- in terms of the overall gaming
24 market we continue to struggle to recover the gross gaming
25 revenue that the state of Nevada has come to rely on.

1 Q And did you have an opportunity to look at Three
2 Angry Wives' financials for that same period?

3 A I did.

4 Q Okay. And how did -- or what happened those
5 revenues from 2008 to 2012?

6 A Well, the principal focus of my analysis was really
7 sort of the period leading up to the opening of Wahoo's and
8 the period after the opening of Wahoo's. And so the revenues
9 were declining in advance of that, not inconsistent with the
10 fact that, frankly, Southern Nevada was among the hardest-hit
11 areas in the entire United States relative to the economic
12 downturn. We saw it in any number of different businesses
13 that we were looking at. Post that, not unlike the balance of
14 the economy, sort of starting in 2012, but really gaining in
15 -- a little bit after that, the market started to gain some
16 momentum back.

17 Q Okay. And earlier you were in the courtroom when
18 Mr. Higgins went through some of the gaming and advertising
19 numbers; is that correct?

20 A When you're talking about gaming you're talking the
21 promotion numbers?

22 Q Sorry. Promotion and overall gaming numbers.

23 A Yes, sir, I was.

24 Q And would you agree with just generally his numbers
25 he gave, like ballpark that's what you found to be true, as

1 well?

2 A Yes, sir. I think that's exactly right. And I just
3 want to make sure that I'm being clear. What I believe is
4 consistent is that the amount of promotional activity
5 increased at the latter end of that study period.

6 Q Okay. And that latter end of that study period was
7 the period in which Wahoo's was open?

8 A It was.

9 Q And do you believe that it would be accurate to --
10 in this case to just compare Three Angry Wives' gaming
11 revenues for to gaming revenues after Wahoo's opened?

12 A Look, I think it's a fair analysis to start there,
13 but, that being the only analysis, no, I don't think that'd be
14 appropriate in this case.

15 Q Okay. And do you have any opinion about the
16 economic benefits of the exclusive that Three Angry Wives had
17 in this case?

18 MR. McCREA: Objection, Your Honor. That's not part
19 of his report.

20 THE COURT: If it's not part of his report, we need
21 to --

22 MR. CICILIANO: Yes, Your Honor. We'll move on.

23 THE COURT: That's not part of the basic stuff I
24 expect to hear from an economist.

25 MR. CICILIANO: Sure.

1 THE COURT: Okay.

2 BY MR. CICILIANO:

3 Q When looking at -- have you had the opportunity to

4 look at how competition influences the location of a gaming

5 establishment?

6 A Yes, sir.

7 Q Okay. And how does proximity of a competitor

8 matter?

9 A It's incredibly important.

10 Q Why?

11 A Because the consumer has a choice at the point at

12 which proximity gets closer, right. Two competitors are

13 across the street from the other, that could be restricted or

14 nonrestricted licensees. Consumers don't have to drive past

15 one to get to the other. The convenience of those locations

16 provides -- the absence of the second location gives the first

17 one a competitive advantage.

18 Q And do you know generally where Wahoo's is located

19 in comparison to Three Angry Wives?

20 A Generally, yes, sir.

21 Q Okay. And if you'll turn to what should be the

22 smaller binder there, I believe it's Defendants' Exhibit 501,

23 which was stipulated.

24 THE COURT: Is this the map?

25 MR. CICILIANO: This is the map.

1 BY MR. CICILIANO:

2 Q Do you see the little notation that says "Three
3 Angry Wives"?

4 A Yes, sir, I do.

5 Q And the other notation that says "Wahoo's"?

6 A Yes, sir, I do.

7 Q Is that consistent with your recollection of their
8 general proximity?

9 A Yes, sir, it is.

10 Q And did you hear Mr. Higgins testify that they're
11 approximately two football fields or less away from one
12 another?

13 A I did.

14 Q Do you concur with that opinion?

15 A Generally speaking, yes. I think that the numbers
16 that we were using were roughly 660 feet, which is in the
17 ballpark.

18 Q Did you have the opportunity to look at other
19 competitors in the surrounding area to Three Angry Wives?

20 A I looked at them generally, both in terms of our
21 analysis as a precursor to it, as well as the rebuttal that we
22 asked to issue.

23 Q And you understand that Mr. Rosten was critical of
24 the fact you didn't consider those other competitors; is that
25 correct?

1 A I understand that, yes, sir.

2 Q Okay. And what did you determine or learn about
3 those other competitors?

4 A Well, the reality is that those competitors aren't
5 in Boca Park, right. Those competitors would be considered
6 secondary competitors in comparison to Wahoo's, and therefore
7 they weren't part of the determination that we looked at at
8 least for my analysis.

9 Q Okay. And were there gaming locations -- or were
10 there other gaming locations at those competitors' locations
11 prior to Wahoo's being there?

12 A Sure. The answer to that question is yes, that
13 those competitors existed before. I think it was mentioned
14 previously that there were some competitors and the drug
15 stores and the grocery stores that were there and did not
16 exist anymore, those Boca Park competitors. But then
17 certainly what's been clear is a turnover of gaming licensees
18 or turnover of brands, if you will, in a number of those
19 existing facilitates that are there today.

20 Q So would it be accurate to say, then, that the other
21 competitors that were discussed by Mr. Rosten were not new
22 gaming establishments in the sense that there had been gaming
23 on that property previously?

24 A The vast majority, yes, sir.

25 Q Okay. And in this case how would you classify what

1 your assignment was?

2 A My assignment was to evaluate damages based on the
3 fact that Wahoo's was operating inconsistent with the lease.

4 Q Okay. And what was your understanding of what was
5 inconsistent with their operations?

6 A That it had gaming and that gaming was supposed to
7 be exclusive with the previously cited exemptions to Three
8 Angry Wives.

9 Q And what is your understanding of where that
10 exemption came from?

11 A I believe I got it from having reviewed the
12 complaint and this document.

13 Q Okay. Did you have the opportunity to review Three
14 Angry Wives' lease?

15 A I did.

16 Q Okay. And what's the term of that lease?

17 A I believe it's 10 years with four five-year
18 extensions, if I'm remembering correctly.

19 Q So a total of 30 years?

20 A That's correct.

21 Q And did you review Wahoo's lease?

22 A Just briefly, yes.

23 Q And what's the term of that lease?

24 A I want to say it's 15 years total. I'd have to go
25 back and look at my report to be absolutely certain.

1 Q And in this case did you actually determine what you
2 believe to be plaintiff's damages --

3 A I did.

4 Q -- resulting from the breach of the exclusive?

5 A Yes, sir.

6 Q Okay. And did you determine those with a reasonable
7 degree of certainty?

8 A Yes, sir.

9 MR. McCREA: Objection, Your Honor. The report
10 doesn't determine them with a reasonable degree of certainty.

11 THE COURT: No. He does.

12 MR. McCREA: It's not in the report. He didn't
13 render an opinion that this was to a reasonable degree of
14 certainty.

15 THE COURT: Okay. Well, he's going to today; right?

16 MR. McCREA: It has to be in his report under
17 Rule 16.1.

18 THE COURT: No, it doesn't. Mr. McCrea, that
19 doesn't have to be in the report.

20 MR. McCREA: Your Honor, Rule 16.1(2)(b) states,
21 "The report shall contain a complete statement, all opinions
22 to be expressed and the basis and reasons therefore, the data
23 and other information considered by the witness in forming the
24 opinions."

25 THE COURT: And this is not the opinion. This is

1 the standard to which the opinion is tested, which is
2 different.

3 Sir, you may continue.

4 MR. CICILIANO: Thank you, Your Honor.

5 BY MR. CICILIANO:

6 Q And did you prepare a report in this case with your
7 findings?

8 A Yes, sir, I did.

9 Q Looking in the larger binder --

10 THE COURT: Go back so my record is clear as to
11 whether he did or did not express these opinions to a
12 reasonable degree of certainty in his field of expertise.

13 THE WITNESS: That's a question for me, Your Honor?

14 THE COURT: It's a yes or no.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Well, it was mostly a [unintelligible],
17 but --

18 MR. CICILIANO: Thank you, Your Honor.

19 BY MR. CICILIANO:

20 Q Did you prepare a report in this case with your
21 findings?

22 A Yes, sir, I did.

23 Q And in that large binder if you'd turn to
24 Exhibit 10, which has been admitted, is that your report?

25 A Yes, sir, it is.

1 Q Okay. And in determining or in preparing the report
2 where did you begin?

3 A Well, the very first step in the analysis was to
4 look both at revenues and expenditures for the two
5 competitors, in this case Three Angry Wives Pub and Wahoo's.
6 And then really the other step was to evaluate the underlying
7 economy during that same period. I was interested to know
8 whether or not some of those shifts were related or unrelated
9 to the economic activity at the time.

10 Q Going in did you make an assumption regarding an
11 allowable level of gaming that Wahoo's could have?

12 A No. Because my understanding was that it should
13 have been zero.

14 Q Okay. And when you said you looked at the overall
15 market with the two competitors, what did you do when you did
16 that?

17 A Look, in looking at the market with the overall
18 competitors, I mean, principally my interest was in coin in
19 and was in gaming revenue generated by those two properties
20 during the study period for my analysis.

21 Q Okay. And so you looked at Wahoo's gaming numbers?

22 A I did.

23 Q Okay. And over what period did you look at those
24 numbers?

25 A Wahoo's gaming numbers I had from July of 2012

1 through June of 2015.

2 Q And did you come up with a total gaming revenue
3 between July 2012 and June of 2015?

4 A Yes, sir, I did.

5 Q And what's that amount?

6 A \$399,923 in terms of gaming revenue.

7 Q And did you determine the amount of coin in during
8 that same period?

9 A Yes, sir, I did.

10 Q And what's the difference between revenue and coin
11 in?

12 A If a player comes and sits down with \$20 in their
13 pocket and they put that into a slot machine, that's \$20 that
14 comes in. That player then gets -- they play, they may win a
15 little, they may lose a little, but whatever comes back out of
16 that -- let's say they get \$18 paid back out, they then put
17 that \$18 back into the machine and they play again. That
18 churn of that money is what is commonly referred to as handler
19 coin in, and the revenue is what is the win that's ultimately
20 held, if you will, by the gaming -- the machine in that case.

21 Q Okay. And how did -- and how much was revenue from
22 -- how much was coin in from July 2012 to June 2015?

23 A \$10.5 million.

24 Q Okay. And did you also look at coin in and revenue
25 for the period of July 2014 to June of 2015?

1 A Yes, sir, I did.

2 Q And what was coin in for that period?

3 A \$4.73 million.

4 Q So that one year was approximately 50 percent of the
5 coin in for the entire three-year period?

6 A That's correct.

7 Q Okay. And what was the revenue for that same July
8 2014 to June 2015 period?

9 A \$149,500.

10 Q Okay. So that's just for that one year?

11 A That's correct.

12 Q Did you also look at Wahoo's food and beverage
13 during the same period?

14 A I did.

15 Q And how did food and beverage correlate with gaming
16 numbers?

17 A Food and beverage numbers were dropping while gaming
18 coin in was increasing.

19 Q And what does that indicate to you?

20 A That Wahoo's was getting better at being a gaming
21 bar.

22 Q And when you say getting better what does that mean?

23 A It means they were attracting and retaining quality
24 customers. It means that they were increasing the amount of
25 revenue that was going through their machines and generating

1 more revenue from the slot machines that they had while
2 generating less revenue from the food and beverage that they
3 had.

4 Q And going into the future what would you expect
5 Wahoo's gaming revenues to be more like, the total period, or
6 the individual -- or that last year?

7 A I think the most current year would be most
8 indicative of the pattern that they're expected to have on a
9 going forward basis.

10 Q And why is that?

11 A Because that's more indicative a gaming-related --
12 restricted gaming operation. I mean, that's a lucrative
13 operation. It will increase the revenue for them. And,
14 frankly, the time they took, the money that they spent to
15 develop those customers, it's important that they continue to
16 retain them. It's part of their business.

17 Q And did you consider whether or not plaintiff's
18 damages were equal to the amount of Wahoo's total gaming
19 revenue?

20 A Yeah. To be honest with you, that was my starting
21 point. At the outset of my analysis the very first analysis
22 that I looked at just took the total amount of that gaming
23 revenue, that \$3.1 million over that -- the totality of the
24 study period named said, well, that's the starting point for
25 the damages. That said, in my professional opinion I think

1 that's probably overly aggressive, which is why I went through
2 the steps that we were just talking about.

3 Q Okay. And when you say the total study period, what
4 was the length of that period?

5 A Twenty-one years.

6 Q Okay. And so what did you ultimately do to
7 determine what plaintiff's damages were?

8 A Okay. So ultimately the first step was to get
9 information about all of the rated players, because for rated
10 players we have information about who they are, how often they
11 gamble, and what their volume of play is. This is very
12 important, because it gives us a pretty good indication in
13 terms of their marginal propensity to play and, frankly, what
14 their value is to the specific location. We start with that.
15 We then obtained that information for both Three Angry Wives
16 and for Wahoo's, and those were independent lists. So that is
17 to say that it gave us all of the play-related information for
18 Three Angry Wives Pub and all of the play-related information
19 for Wahoo's. That was the starting point of our analysis,
20 because that gave us the ability to understand how those rated
21 players were playing. It also gave us the ability to
22 understand what share of the total play was coming from those
23 rated players.

24 Once we had those data we then cross-checked them
25 against each other, the objective being that while I may not

1 be able to day -- wouldn't be appropriate to say that every
2 dollar that went to Wahoo's would be a dollar that would
3 otherwise go to Three Angry Wives. What we do know is that
4 for a patron that had at least at some point been a Three
5 Angry Wives customers, that that -- any of those revenues that
6 otherwise benefitted Wahoo's would have been in my opinion
7 ill-gotten gains. So we start from that perspective, we
8 cross-check them, and then go from the \$3.1 million number and
9 move all the way down to a number that reflects only at this
10 starting point the share of players that went to both
11 locations. And that seemed to me to be a very reasonable and
12 fairly precise starting point for that analysis.

13 Q Okay. And if I understand you correctly, then you
14 went and obtained the ranked player information for Three
15 Angry Wives and for Wahoo's; is that correct?

16 A I just want to correct you. Ranked -- I think you
17 said ranked. It's rated. And I think that's -- in my world
18 that's an important distinction.

19 Q I have "rated" everywhere else in my notes besides
20 one space, and I, of course, read from that. Sorry.

21 THE COURT: It's okay. You can walk around and pick
22 that up.

23 MR. CICILIANO: All right. I'll grab it.

24 BY MR. CICILIANO:

25 Q So what percentage of Three Angry Wives' gaming

1 revenue is from rated play?

2 A A little over 50 percent, if I'm remember correctly.
3 I think the number is 56 percent.

4 Q And what percentage of Wahoo's gaming revenue is
5 from rated play?

6 A It was a little less than 50 percent. I want to say
7 it's 43, 44 percent of their play is rated.

8 Q Okay. And so you took the entire group of rated
9 play for what time period?

10 A Well, for two time periods, right. One is for the
11 summer -- I guess I should say June of 2012 through -- excuse
12 me, July of 2012 through June of 2015, that was one period.
13 The second period is July of 2014 through June of 2015.

14 Q Okay. And did you just take a sampling from that,
15 or did you take all rated --

16 A We took the entire universe, everything that was
17 provided to us. There was no sampling or redistribution that
18 was done.

19 Q Okay. And why -- do you know why you didn't go
20 before that time period, that 2012 time period?

21 A If I remember correctly, and I think that I am,
22 there was a change in the methodology that was used to collect
23 this information. I think they went to something called --
24 and I can look it up in my notes -- Edge, something Edge
25 technology that meant that we could not get similar

1 information on a going backward basis. In addition to that we
2 had a period that was very close to approximating when Wahoo's
3 opened. So, again, it seemed reasonable and appropriate to
4 use the universe that we had.

5 Q Okay. And if a player didn't use his or her card
6 when they went to Wahoo's or Three Angry Wives, would that
7 play have been captured?

8 A It would.

9 Q If they didn't use their card?

10 A I'm sorry. I guess I want to make sure I'm clear on
11 the question. If you're asking whether it would get into our
12 analysis at one point, it was very important. We wanted to
13 consider both rated and unrated play. If you're asking
14 whether someone that was a rated player, for example, at
15 Wahoo's and went over to Three Angry Wives but never used
16 their card would we have captured that person, no. And that's
17 a limitation of our analysis that I think was alluded to
18 earlier and I would agree with makes it somewhat conservative.

19 Q And when conservative you mean your analysis you
20 think would probably be lower than what actual damages are?

21 A Yeah, I think so. Look, I mean, if the top end
22 estimate the control total for purposes of our analysis here
23 today is \$3.1 million and the number that I'm opining to is
24 roughly \$1.1 million, that means that we've essentially carved
25 out the other let's call it \$2 million during that period.

1 And what you just mentioned, someone that was rated at one
2 location but wasn't rated at the other would not have been
3 included in my analysis. And there are other population
4 groups that also wouldn't have been included. Again I think
5 is -- unfortunately, we don't have the same level of data, and
6 so it would be difficult for me to include them as part of my
7 analysis.

8 Q And just briefly what are those other population
9 groups that wouldn't have been counted?

10 A Oh, I think there's several of them. I think
11 there's people that aged in during the period. That is to say
12 that they were under 21 and then became 21 and started to
13 participate in one location or the other. We are now the
14 fourth or fifth fastest-growing community over a million
15 people in the United States. Our population growth matters in
16 terms of consumption and related activities. Someone that
17 moved into the community, went to Boca Park, went over to, I
18 don't know Target or Office Max or whatever and decided to go
19 to one location versus the other would not have been included.
20 Anyone that would not have been on one of those two lists for
21 whatever reason was outside of the scope of that preliminary
22 analysis.

23 Q Okay. And did the level of -- or, sorry. Did you
24 determine whether or not -- when Three Angry Wives players
25 became rated at Three Angry Wives?

1 A No, sir.

2 Q And did that matter to your analysis?

3 A No, sir.

4 Q And why not?

5 A Because as long as they were a player at Three Angry
6 Wives seems to me that that was the determinative factor in
7 whether they were a shared player or not. Whether that was in
8 2005 or whether that was in 2015, they were still a shared
9 player.

10 Q And in looking at the rated player category did you
11 remove any players from those lists?

12 A no, sir.

13 Q Okay. And why not?

14 A Because -- forgive me. I hope I'm answering the
15 right question. The reason that I didn't remove anything is
16 because I wanted to make sure that we were looking at the
17 entire universe of shared players, everyone.

18 Q And did you attempt to normalize the data?

19 A There was no reason to, because you have the entire
20 universe. The idea of trimming the tails of outliers or
21 trying to normalize the universe of dataset frankly would just
22 be inappropriate.

23 Q And are you aware of the criticism in Mr. Rosten's
24 rebuttal report that you didn't remove the players, certain
25 players?

1 A Yes, I am.

2 Q Okay. And what percentage did he advocate removing?

3 A Well, he sort of had a number of ways that he
4 truncated it. I think it was the 15 percent threshold or the
5 tails. So that is to say if a player only played 15 percent
6 or less, I guess I should say, of their play at one location
7 they were considered a minimal player and were outside of the
8 scope. As was mentioned earlier, there were two players whose
9 names were similar to the owners that were extracted from
10 there, so they would have been out, and then there was a third
11 methodology, to be honest, I'm not a hundred percent sure
12 exactly how it was applied, that started with \$2500 and
13 considered that person a de minimis player overall, I believe.

14 Q And did you look at the list of the people he
15 excluded?

16 A Yes, sir, I did.

17 Q Okay. And in Exhibit 17 in the large binder in
18 front of you at Bates Number PL-TE00085 -- do you recognize
19 this document?

20 A Yes, sir, I do.

21 Q And what do you recognize that to be?

22 A This is the report that was prepared by Mr. Rosten.

23 Q Okay. And is it accurate to state that the -- is it
24 your -- well, is it your understanding -- there is the shaded
25 line on 0085. Do you see that line?

1 A Yes, sir.

2 Q And is your understanding that he advocates
3 eliminating everyone above that line?

4 A Yes, sir, that is my understanding.

5 Q Okay. And just for that group of people, who do
6 they represent?

7 A These represent players whose Three Angry Wives coin
8 in as a percentage of total coin in was less than 15 percent
9 of their total.

10 Q Okay. And during the time period looked at here
11 what was their coin in at Three Angry Wives? Their total coin
12 in.

13 A The total coin in from all of these folks?

14 Q Yes.

15 A At Three Angry Wives total coin in running total
16 41,205, if I'm looking at that math correctly.

17 Q Okay. And what was the total coin at Wahoo's?

18 A Total coin in at Wahoo's was -- forgive me. I can't
19 read that number. I think it's --

20 THE COURT: Do you want the magnifying glass?

21 THE WITNESS: I don't know that that's going to
22 help.

23 THE COURT: Yeah. They're small.

24 BY MR. CICILIANO:

25 Q It's a little pixelated.

1 A Maybe it's -- it's six hundred thousand and
2 something.

3 Q Okay. And for those -- so it's your understanding
4 that Mr. Rosten advocating removing the \$41,205 in coin in
5 from Three Angry Wives' numbers, as well as the six hundred
6 and fifty or so thousand from Wahoo's numbers?

7 A I believe so, yes, sir.

8 Q And would you advocate removing those figures?

9 A Absolutely not.

10 Q Okay. And if you take a look at a few of the people
11 on the list, I'm going to refer to a row number. On the very
12 left-hand side there's sequential numbering. Do you see that?

13 A I do.

14 Q Okay. And if you look at Row Number 15, could you
15 tell me what the Three Angry Wives coin in for that individual
16 would be.

17 A For Row Number 15 the Three Angry Wives coin in was
18 \$5,887.

19 Q Okay. And do you find that to be a significant
20 figure to include in the analysis?

21 A I do.

22 Q And why is that?

23 A It's a significant amount of money. Look, I'll be
24 honest with you. I don't think any of these should be
25 excluded, because they're reflective of play at both

1 locations. The ones that are higher, which I'm assuming is
2 what you're alluding to here, are particularly egregious,
3 because they're significant.

4 Q Okay. And if you'd turn, then, to page -- in the
5 same exhibit, which is Exhibit 17, PL-TE00087.

6 A I'm there.

7 Q Okay. And do you see the shaded line I believe
8 looks like it's about Row 134?

9 A I see it, yes, sir.

10 Q And do you have an understanding as to what
11 everything below that line represents?

12 A I do.

13 Q And what's that?

14 A This is where the coin in as a percentage of total
15 coin in at Three Angry Wives was greater or 85 percent or
16 greater to that location.

17 Q And what did those players contribute to Wahoo's?

18 A Excuse me. To Wahoo's. I want to say that's
19 \$97,820.

20 Q Okay. And if you look at Row 136 for that
21 gentleman, during that time -- during the time period of this
22 analysis how many Three Angry Wives visits did he make?

23 A He made 23 visits to Three Angry Wives.

24 Q And how many visits did he make to Wahoo's?

25 A He made -- I'm sorry. I slipped. Did you say 135?

1 Q -36. Sorry.

2 A I'm sorry. 136. So it would be 23 visits to Three
3 Angry Wives and 11 visits to Wahoo's.

4 Q Okay. And for Row Number 143 how many visits did
5 that individual make to Three Angry Wives?

6 A 139 visits.

7 Q And how many did he make to Wahoo's?

8 A 51.

9 Q And do you consider those to be significant factors
10 in your analysis?

11 A Absolutely.

12 Q And why is that?

13 A Because, again, I don't think any of these should be
14 truncated. They reflect play that was occurring at both
15 locations. And again, the ones that you're highlighting here,
16 it just shows that some of the volumes were very significant.
17 The fact that it was only 15 percent does not make them a
18 minor player either way.

19 Q Okay. And are you familiar with Mr. Rosten's
20 supplemental report?

21 A Yes, sir, I am.

22 Q Okay. And is it fair to say that he looked at
23 frequency of play in that report?

24 A Yes. Just to make sure that we're clear, this is
25 the report that has the histograms as the attachments?

1 There've been a number of reports. I want to make sure I'm
2 referring to the right one.

3 Q Sure. So what we're referring to now, if you turn
4 to Exhibit 18, starting I guess right after A portion, I guess
5 the 112, Plaintiff's 112 --

6 A Thank you, sir. Yes, this is the one.

7 Q -- are these the histograms you're referring to?

8 A Yes, sir, they are.

9 Q And what do the histograms track?

10 A These are looking at the volume of play for each
11 individual player at Three Angry Wives and at Wahoo's.

12 Q And does that volume of play matter to you?

13 A The volume of play of course is important, yes.

14 Q Okay. And does it -- or from these histograms can
15 you tell when one individual played at -- strike that.

16 Turn to an example of one. Turn to page -- it's PL-
17 TE000122.

18 A Thank you, sir. I'm there.

19 Q Okay. And looking at this individual for August of
20 2014 how many times did they play at Three Angry Wives, and
21 how many times did they play at Wahoo's?

22 A According to this document, they played six times at
23 Three Angry Wives and ten times at Wahoo's.

24 Q Is it your understanding they went 16 different days
25 to game?

1 A There's no way to tell.

2 Q Okay. So it's possible that some of these players,
3 as Mr. Higgins had testified to, were at Three Angry Wives and
4 then went to Wahoo's?

5 A I think it's equally likely that they played on
6 different days or the same day.

7 Q And does it matter to you in your analysis whether
8 or not they played on different days?

9 A It does.

10 Q Okay. And why?

11 A Because the analysis, again, looks at the total
12 universe of shared play between these two locations. And just
13 to be frank, I mean, we can go through as many of these as you
14 like, I'm happy to do it; but it doesn't matter if it's one or
15 one hundred and fifty-one. The reality is that this is shared
16 play between two locations, one of which had been there, the
17 other one that wasn't supposed to be there.

18 Q Okay. And for the sake of not getting something
19 thrown at me, I will move on past these histograms.

20 THE COURT: Thank you.

21 BY MR. CICILIANO:

22 Q What does your analysis of rated play between
23 Wahoo's and Three Angry Wives customers determine?

24 A Can you point me back to where my report was just so
25 I can point to specific numbers?

1 Q I believe it's Exhibit 10.

2 A 10. Thank you, sir.

3 If it's okay, I'd like to reference Exhibit 2 in
4 response to your question. So when we looked at --

5 THE COURT: Exhibit 2 to Exhibit 10?

6 BY MR. CICILIANO:

7 Q And that's on page AA00005; is that correct?

8 A Thank you.

9 THE COURT: That's a part of your report; right?

10 THE WITNESS: Correct.

11 THE COURT: Because, remember, we've got duplicate
12 numbers of what your exhibits are to your report, so we'll get
13 confused if we don't --

14 THE WITNESS: Thank you, Your Honor. I apologize.
15 So I'm looking at Exhibit 10 -- excuse me. Am I saying that
16 right? Exhibit 10 -- Exhibit 2 within Exhibit 10 on page
17 AA00005.

18 THE COURT: Thank you.

19 BY MR. CICILIANO:

20 Q And what did your analysis of rated play between
21 Wahoo's and Three Angry Wives rated customers determine?

22 A It determined that there was a significant share of
23 play that happened at both locations. If we looked since the
24 inception period, that is to say from July of '12 through June
25 of 2015, the number was about 28.7 percent. And if we looked