

1 THE COURT: -- by March 25th?

2 MR. MARKS: The objections?

3 MR. SMITH: Yeah.

4 THE COURT: The objections.

5 MR. SMITH: That will work.

6 THE COURT: So the objections, any objections from

7 the defendant to portions of the deposition transcripts, the

8 specific excerpts or any exhibits that haven't already been

9 admitted into the record, that will be due on the 25th.

10 MR. SMITH: We'll probably file a -- if there's any

11 issues of import, we'll probably file a brief pleading of some

12 sort, before the day of the hearing --

13 THE COURT: In response to the objection.

14 MR. SMITH: -- and then we'll argue it at the

15 hearing.

16 THE COURT: Okay. And then what I anticipate is,

17 unless I need something additional from the real estate

18 appraisers, setting some type of a time line for the

19 submission of closing briefs and --

20 MR. MARKS: Will you entertain oral argument?

21 THE COURT: In terms of closing arguments, or as to

22 those issues?

23 MR. MARKS: Closing argument.

24 MR. SMITH: Today?

1 MR. MARKS: No.  
2 THE COURT: Later.  
3 MR. MARKS: Do you want written or oral closing or -  
4 -  
5 THE COURT: I think my preference would be to get  
6 something in writing.  
7 MR. SMITH: Yeah, that would be --  
8 MR. MARKS: And you'll set the date --  
9 THE COURT: Given these issues.  
10 MR. MARKS: -- after April 6th?  
11 THE COURT: I will, because I'm not sure -- the real  
12 estate issue is a little bit of a moving target, as much as I  
13 want to pin that down.  
14 MR. MARKS: The only issue with us, Your Honor, is  
15 sometimes you get these briefs, and you really want to say  
16 something about the cases or analyze the cases. I think,  
17 depending on what happens, I -- will you at least consider  
18 oral closings on April -- not to be done April 6th, but in  
19 terms of that --  
20 THE COURT: At a later time?  
21 MR. MARKS: Yeah, at a later time.  
22 THE COURT: Well, I'm not going to say -- I'm not  
23 going to close the door on it right now.  
24 MR. MARKS: Okay.

1 THE COURT: I think my preference -- but just so  
2 both sides know, my preference is to get something in writing,  
3 given the issues that we're talking about, the voluminous  
4 documents. I am -- I'm toying with some type of page  
5 limitation.

6 MR. MARKS: Okay.

7 THE COURT: I feel it would be appropriate. But at  
8 the same time, I also don't have a problem with even if it's  
9 updated marital balance sheets. I think those type of  
10 attachments as exhibits, whether or not I need to lay out a  
11 protocol for that, I don't know -- I don't know that I need to  
12 do that --

13 MR. MARKS: Because if you have --

14 THE COURT: -- with everyone here.

15 MR. MARKS: -- oral argument, then, if you have  
16 questions or comments, we can respond; otherwise, it's just  
17 totally in writing.

18 MR. SMITH: Why don't we leave it in your  
19 discretion, Your Honor, that, after the writing, if you feel  
20 there's still a need for oral (indiscernible).

21 THE COURT: I can call you in. I can call you in,  
22 and that's fair. I'm -- Mr. Marks, I'm not going to close the  
23 door on that, but --

24 MR. MARKS: Okay. Thank you.

1 MR. SMITH: Your Honor, the only concern we have now  
2 is the concern that was raised in the pretrial motion, and  
3 that is: Between now and then, we'd like to, first of all,  
4 have our name added to those accounts; and secondly, divide up  
5 some amount of money, so that Mr. Kogod, if he wants to  
6 continue to support Ms. Khapsalis and the children, can do so  
7 from his money, and not from joint money that's --

8 MR. MARKS: Your Honor, we agree. What I'd like is  
9 you to do an absolute decree of divorce, subject to your --  
10 and community property, subject to your decision. We would  
11 agree, maybe, 2 million a piece should be divided.

12 MR. SMITH: That has --

13 MR. MARKS: We can put her on any account, as long  
14 as it's understood that they each can give their money to  
15 whoever they want. They can't try to gain a tactical  
16 advantage, where his money goes to her, but her money goes as  
17 a POD.

18 MR. SMITH: This is a non-issue.

19 MR. MARKS: It was an issue --

20 MR. SMITH: Our position --

21 MR. MARKS: -- in the documents that we saw.

22 MR. SMITH: It is a non-issue.

23 MR. MARKS: Okay. Fine.

24 MR. SMITH: The -- in terms of the -- so \$2 million

1 would be acceptable. We'll put \$2 million in --  
2 THE COURT: Meaning 2 million each?  
3 MR. SMITH: Yeah.  
4 THE COURT: Okay.  
5 MR. SMITH: So the expenditures of any kind for the  
6 payment of the Oak Pass home or any expenditures for the  
7 benefit of the -- of Nadya --  
8 THE COURT: That would come from --  
9 MR. SMITH: -- will come from --  
10 THE COURT: -- defendant's portion.  
11 MR. MARKS: And then how do you want to handle Lake  
12 Las Vegas? That needs to be sold and split. Right now, it's  
13 coming out of joint funds.  
14 MR. SMITH: Well, miss -- we're happy to have it  
15 sold and split, but it should paid from at least until the  
16 time of the entry of the decree from joint funds, the  
17 earnings. And then, after that time, the parties would be  
18 equally responsible for the cost of the home.  
19 THE COURT: Okay.  
20 MR. MARKS: Hold on. But we should get -- in other  
21 words, you can say an absolute decree of divorce, everybody's  
22 money goes to themselves, you keep the accounts that are here  
23 joint. The delay shouldn't enure to the plaintiff's benefit,  
24 versus the defendant.

1 MR. SMITH: This -- we're actually saying the same  
2 thing. The delay will be the -- any benefit would be  
3 mitigated by the fact that they'll have their own money. But  
4 the entry of the decree is the date at which the parties'  
5 community estate ends. So they use their own money to handle  
6 their own expenses in the meantime, and then the community --  
7 the funds from the earnings continue to be deposited into the  
8 account, until such time as the community is severed.

9 MR. MARKS: Your Honor, he should be able to have  
10 his own money with his earnings. He would pay the Lake Las  
11 Vegas to maintain that, until it's sold. But the delay just  
12 shouldn't be that it -- that his paycheck is in the 6446, just  
13 indefinitely. It should be today is the legitimate cutoff,  
14 knowing we're not dividing everything, but the community  
15 property should end, subject to your decision because we agree  
16 on 99 percent. All of this is over the disputed waste.

17 THE COURT: Well, listen --

18 MR. MARKS: Everything else --

19 THE COURT: -- I view -- notwithstanding there are  
20 some loose ends, I view February 26th, 2016 -- although I  
21 understand procedurally -- and that's going to be this Court  
22 issuing the decree of divorce --

23 MR. SMITH: Yes.

24 THE COURT: -- which is going to take some time for

1 me to prepare.

2 MR. MARKS: But we're asking a cutoff date --

3 THE COURT: I'm using -- I'm looking at today as the  
4 line of demarcation for me, in terms of valuation issues,  
5 because this is truly the end of evidence, but for the real  
6 estate issues. I'm not going to receive any additional  
7 evidence.

8 MR. MARKS: What about moving to divide everything,  
9 because we are so close to everything --

10 THE COURT: No.

11 MR. MARKS: -- subject to the disputed --

12 THE COURT: I'm going to leave that up to you, but  
13 I'm going ahead with the \$2 million a piece.

14 MR. MARKS: Okay.

15 THE COURT: I think it make some sense --

16 MR. MARKS: (Indiscernible)

17 THE COURT: -- perhaps to go --

18 MR. MARKS: His paycheck can go into his account,  
19 but he'll pay the Las Vegas expenses, most to sell that, you  
20 know, reasonably expeditiously because community property  
21 should end here.

22 THE COURT: Well, is there any objection to putting  
23 the house on the market?

24 MR. MARKS: No, it's on.

1 MR. SMITH: None.  
2 MS. VARSHAY: No.  
3 MR. SMITH: But Ms. Kogod is going to need a little  
4 bit of time to relocate to the new residence.  
5 THE COURT: Understood. But we'll go ahead -- that  
6 -- it sounds like there's a stipulation to sell, though.  
7 MR. MARKS: But community property should end today.  
8 THE COURT: Well, I -- like I said, I look at today  
9 as the --  
10 MR. MARKS: Okay.  
11 THE COURT: -- line of --  
12 MR. MARKS: So my client's --  
13 THE COURT: -- demarcation.  
14 MR. MARKS: -- paycheck is his paycheck.  
15 MR. SMITH: My only question, Your Honor --  
16 THE COURT: Future, yes.  
17 MR. MARKS: Right.  
18 MR. SMITH: -- we would ask that any considerations  
19 contained in the decree be retroactive to the time of today.  
20 THE COURT: In terms of -- I'm not sure I follow.  
21 MR. SMITH: Support.  
22 THE COURT: Oh, it would, it would.  
23 MR. SMITH: Yes, right. Very good.  
24 THE COURT: It would because I -- basically, I'm

1 treating that as the defendant's separate property. So you're  
2 right, any -- it would necessary go back to today's date.

3 MR. SMITH: Thank you, Your Honor.

4 THE COURT: Okay? All right. Thank you for your  
5 appearances.

6 (COUNSEL CONFER BRIEFLY)

7 MR. MARKS: Your Honor, will you divorce them  
8 subject to your decision? In other words, can we get a decree  
9 of divorce, subject --

10 THE COURT: Well, I don't know that I need -- I'm  
11 certainly happy to pronounce the --

12 MR. MARKS: Yeah, can you pronounce --

13 THE COURT: If the parties want. But the  
14 understanding, I think both sides know, legally, until I sign  
15 that written decree that I'm going to prepare and it's filed,  
16 it's not official.

17 MR. MARKS: But can you --

18 MR. SMITH: We understand, Your Honor.

19 THE COURT: So I find --

20 MR. SMITH: I'll try to refrain from telling our  
21 client to go out and get married ago.

22 THE COURT: Well, so I find that, based on the  
23 testimony that's been offered, there is a basis to grant the  
24 parties a divorce on the grounds of incompatibility;

1 therefore, an absolute decree of divorce is granted, restoring  
2 the parties to the status of single, unmarried individuals,  
3 with the plaintiff, henceforth, known by the last name of  
4 Cioffi.

5 But as I tell every party, when I -- after I recite  
6 those words, you're not officially divorced until the written  
7 decree is signed by me and filed with the Clerk of the Court.  
8 So, even though I've pronounced you divorce, it's not official  
9 until the paperwork is completed. And unfortunately, that's  
10 still going to be a little bit of time; hopefully, not much  
11 time, but we're at the end of the road, so --

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: All right. Thank you.

14 (THE PROCEEDINGS CONCLUDED AT 16:48:28)

15 \* \* \* \* \*

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

19 

20

21

Adrian N. Medrano

22

23

24

1 healthy is not a bad idea. I don't know if that's all of  
2 Equinox or if it's my share of Equinox because I think Nadya's  
3 is in her categories.

4           The idea that I can't -- Gabriel goes to the gym;  
5 she has a membership that I paid for since we lived in  
6 California, at 24 Hour Fitness. I continue to pay for it. So  
7 the idea that I can't go to a gym that has better hours, is  
8 closer to my home -- it's literally in walking distance of my  
9 home, Equinox. I can walk there. The idea that I shouldn't  
10 be able to have one, I -- I don't quite understand.

11       Q     They have insurance, 126,269. Did you look at the  
12 backup to that?

13       A     No, I've not had a chance to look at the backup to  
14 that, but it goes all the way back. And up until this day, I  
15 have paid Chubb Insurance, which I think has been the primary  
16 insurance company for Lake Las Vegas. A period of time that I  
17 paid State Farm, which was the insurance carrier for the cars  
18 in Lake Las Vegas. I don't know up until what point, but I'm  
19 --

20       Q     And you --

21       A     And even on my own, protecting assets, as Richard  
22 said, you know, given the price of these homes and the cars,  
23 of course you want good insurance on them; it would be silly  
24 not to.

1 Q Do you believe that's waste, having insurance?  
2 A No. I think it's a smart investment.  
3 Q Okay. And I think meals and entertainment, they're  
4 saying 201,000 over eight years is community waste. Do you  
5 agree with that?  
6 A Not at all.  
7 Q Did you look at their backup for meals and  
8 entertainment?  
9 A No, I haven't seen any.  
10 Q How much is 201,000 over eight years?  
11 A Oh, my goodness. What is it, \$25,000 a year. So  
12 it's \$2,000 a month.  
13 Q Do you believe that's excessive, based on your  
14 lifestyle?  
15 A Not at all, and remarkably consistent with  
16 Gabrielle's \$1,500 a month.  
17 Q And who do you normally take out?  
18 A Business colleagues, friends, my parents; Nadya and  
19 the kids, obviously, at time, but a variety of people.  
20 Q All right. I think, on the insurance -- well,  
21 before I get to insurance, did you -- under "Lodging," do you  
22 see the amount they have for lodging? And that's Item 75.  
23 And did you go back and -- and I think it's Exhibit 60 and 61  
24 -- to look at the lodging?

1           A     I did, and I noticed that there are a lot of trips  
2 on there to Singapore and dates -- first of all, no one --  
3 I've never taken anyone to Asia. Again, I think Nadya went to  
4 Germany and to Kazakhstan, which I didn't go to. There were  
5 trips to Amsterdam, there were trips to Singapore. There are  
6 a lot of domestic trips to Texas, New York, places I  
7 absolutely can tell you were business-related.

8                     And then there were some times when Nadya and I did  
9 go somewhere together; to Las Vegas, to Palm Springs for  
10 meetings, where I took two rooms, one for the nanny and the  
11 girls. And since I was there on work, I, legitimately,  
12 expensed my room because I would have had to be there, anyway.  
13 But everything was put in this bucket, with no consideration  
14 for business or business reimbursement or just the ability to  
15 take a couple of days, and go away for a few days.

16           Q     Did they give -- in terms of your travel, do you get  
17 checks back from your -- the travel agency, Concur?

18           A     Yes, we use Concur as our system.

19           Q     And did they -- in looking at their -- at the chart,  
20 their backup, did they credit you all the checks that came  
21 back?

22           A     Yeah. Given that I don't have the number for Concur  
23 -- I tried to get it during the lunch break -- I can't opine  
24 on the number that they put out there this morning.

1 Q But did they credit -- when you look at Exhibit 60  
2 and 61 --

3 A I understand --

4 Q -- that's their backup.

5 A -- the question now. There is no reconciliation at  
6 all for being reimbursed for any of these expenses from my  
7 company.

8 Q And if you look at Exhibit 60 and 61, for instance,  
9 they have Chubb. Who's -- what has -- this is Chubb  
10 insurance.

11 A Chubb is an insurance for homeowners.

12 Q And what house was it?

13 A It was -- I know it's been Lake Las Vegas for a  
14 period of time; and at some point, we also insured -- or I  
15 insured Oak Pass with Chubb because of the value of the home.

16 Q They also have -- they've listed, if you look at  
17 Number 67 through Number 73, all those loans. Do you see --  
18 do you recall all those community loans?

19 A I do. Washington Mutual, which is ironic, 45,980.60  
20 for two years in a row. They went out of business in early  
21 2008. The last time we used Washington Mutual was when we  
22 lived in Coto de Caza. It was the first bank loan we took out  
23 (indiscernible) parkway. When we moved to Lake Las Vegas in  
24 2003, we switched our business to Bank of America. So I don't

1 even know what it is. I mean, I know they went out of  
2 business many years ago, and I know we have used those once in  
3 our lifetime, just once, when we bought our first house in  
4 Coto de Caza. We got private financing when we bought the  
5 second home in -- in Coto de Caza.

6 Q When you look at loan payment, for instance, B of A,  
7 if you took out a loan with B of A, would that have been  
8 community waste?

9 A It all rolls up into the real estate, which I'm  
10 taking credit for.

11 Q So do you believe any of those payments, from 67 to  
12 73, should be community waste?

13 A Without any backup on things like Chase, where I  
14 look at 4,000 and I have no idea what it is, and the twelve or  
15 13,000 for Wells Fargo, which I don't know what it is. But  
16 certainly, the ones associated with the house, I -- I,  
17 unequivocally, say they're not waste. They're all reflected  
18 in the value of the real estate.

19 Q And on 64, they have legal fees not related to the  
20 divorce, I think. And they -- they're saying 38,597. Did you  
21 hire lawyers regarding your real estate and other  
22 transactions?

23 A I hired lawyers on our real estate, I hired lawyers  
24 to set up the trust, I hired real estate -- I hired lawyers to

1 look through real estate agreements. I hired lawyers to  
2 establish promissory notes to my parents and my brother. I --  
3 I've used lawyers throughout my life, for the last 10 years.

4 Q And would those have benefitted the community, if it  
5 was relating to the real estate, because you're taking the  
6 real estate?

7 A I believe so, yes.

8 Q If you go to item -- Page 2, there was payments to  
9 individuals, you, for 46,000, on Item 84.

10 A I -- I don't know how to -- I don't know how to  
11 comment on that.

12 Q But anything to you would have not -- do you believe  
13 that payments to you would have been considered waste?

14 A No. On -- on the surface, I don't.

15 Q There's "need canceled check," 172,000. Do you  
16 believe that's waste?

17 A I'm in the same category. Without knowing what's in  
18 that, I -- I couldn't begin to opine.

19 Q They have property management, 8,000. Do you think  
20 that's waste?

21 A No, I don't. I think some -- some homes require  
22 some level of property management, so I don't.

23 Q They have shopping, 192,732, over eight years. What  
24 kind of shopping do you generally do?

1           A     I buy a lot of clothes. I travel, I go through wear  
2 and tear on suits and shoes and luggage and raincoats and  
3 jackets. I mean, if you look at my lifestyle and the number  
4 of airplanes and the number of hotels; the number of climates,  
5 tropical, cold, et cetera, it a very reasonable number. If  
6 you look at 192,000, we're back to roughly \$2,000 a month in  
7 kind of clothing.

8           Q     Is that similar to what Gabby would spend?

9           A     I'm not aware of her -- I think she was somewhere  
10 around \$1,200 a month, if I recall her FDF.

11                   MR. MARKS: Okay. Court's indulgence.

12                               (COUNSEL CONFER BRIEFLY)

13 BY MR. MARKS:

14           Q     If you go to 114, "Uncategorized," they're saying  
15 it's 55,224 for waste. Do you know what that is?

16           A     I don't know how to even respond to "Uncategorized."  
17 I -- I couldn't even opine on what's in that category.

18                               (COUNSEL CONFER BRIEFLY)

19 BY MR. MARKS:

20           Q     On Number 31, "Cellular, AT&T."

21           A     Yeah. Up until recently, I have paid Gabrielle's  
22 AT&T bill. I think she would tell you that, literally, in the  
23 last couple of months, she asked me to get the account out of  
24 my name and in her name, so she could take it on herself. I'm

1 sure there is some aspect, over the years, of Nadya being T-  
2 Mobile or AT&T. But since 2003, when we moved to -- to Lake  
3 Las Vegas, I've been paying her AT&T bill. And -- yeah, and  
4 that's cellular. Yes. Okay.

5 (COUNSEL CONFER BRIEFLY)

6 BY MR. MARKS:

7 Q If you go in -- I think it's Exhibit 60 -- well,  
8 first, they have payments to individuals on Item 82 of 65,839.

9 A Yeah.

10 Q And then I think it's in 61.

11 (COUNSEL CONFER BRIEFLY)

12 BY MR. MARKS:

13 Q In 61, there's a chart they've prepared, it's Page  
14 100. If you start at -- if you'd go in 61, and look at Page  
15 100.

16 A You know, the -- the ring is right through the  
17 numbers. All I see is 144. Am I looking at the right --

18 Q Yeah. It's 100 and 101 --

19 A Yeah, I know, I got that. But they've got the hole  
20 punched right through that, and all you see on every page --

21 Q So everything is in -- everything is in alphabetical  
22 order.

23 A Okay. So give me some reference --

24 Q So, for instance, there's a "Black Box,

1 Audio/Video." Would that be something for home?

2 A Yeah. Black box, audio/video was actually for a  
3 car.

4 Q There's, for instance -- there's --

5 (COUNSEL CONFER BRIEFLY)

6 BY MR. MARKS:

7 Q On payments to individuals, if you look at Item 5267  
8 --

9 A 5267?

10 Q On the left-hand side, there's a payment to Ken  
11 Heuer.

12 A I'm trying to go as fast as I can.

13 Q Fifteen -- sixty -- \$400?

14 Q Three hundred.

15 A Yes.

16 Q Do you know what that was?

17 A Yeah. Sometimes, if some executives or a family  
18 member, either had a birth, and we didn't put it on the  
19 expense account, would call and say, so-and-so had a baby, I'm  
20 going to order something from me, would you like your name on  
21 the card, and I send a check, yes.

22 Q And then --

23 A Or pay in cash, when I see them the next time.

24 Q And then you see there's -- they're including

1 cleaning and cleaning service. Do you see that?

2 A Point me, please.

3 Q Under "Notes" to the right of (indiscernible).

4 A Okay.

5 Q There -- do you recognize any of these other  
6 individuals?

7 A Yeah, some of the names on here, I do. Robert  
8 Lewis, literally, when I wasn't home in Denver, because I  
9 wasn't there four days a week, would make sure there's some  
10 food in the refrigerator and my car got turned on once a week,  
11 so he just did little errands around the house when I wasn't  
12 there, picked me up at the airport when I came in. Some of  
13 these -- so there's a lot of "Robert Lewis" over a year-and-a-  
14 half period.

15 You know, Ronda Shelton works for DaVita. You know,  
16 Zelda Richardson, my ex-wife, I don't know why I ever wrote  
17 her a check. So I recognize, periodically, a couple of these.

18 Q Then, on the next page, 5314, there's a forty-  
19 thousand-dollar Federal Funds to somebody at Swift.

20 A So it's a capital call. You know, it was one of our  
21 mutual funds.

22 Q Then, under --

23 A I saw Swift a lot in there.

24 Q Under that is Federal Funds to Chase.

1 A What line item, please?

2 Q The next, it would be Item 5317.

3 A Yeah, I don't know what the fifteen -- just the  
4 Chase, I don't --

5 Q 5317.

6 A Yeah, but it says "To Lisa Urich." I don't know,  
7 Dan.

8 Q Okay.

9 A I couldn't tell you who Lisa Urich is.

10 Q All right. Without, I guess, blowing the rest of my  
11 remaining time by going line by line through Exhibit 60 and  
12 61, do you believe that Exhibit 6 accurately reflects  
13 potential community waste?

14 A No, not at all.

15 Q And is Exhibit 6 part of your reasonable and regular  
16 business expenses or -- living expenses, as well as some  
17 business expenses, over the eight-year period?

18 A I think it is a very reasonable reflection of  
19 reasonable living, personal, business expenses over an eight-  
20 year period.

21 MR. MARKS: Okay. I want to move some exhibits in.  
22 Let's see if we can do that.

23 (COUNSEL CONFER BRIEFLY)

24 BY MR. MARKS:

1 Q You -- there was a comment made by Mr. Smith about  
2 the trade that happened this week.

3 A Yes. I'm anxious to explain that.

4 MR. MARKS: Your Honor, I'd like this marked next in  
5 order. Your Honor, would you like a copy of it?

6 THE COURT: Once it's admitted.

7 MR. MARKS: Okay. I'll leave it up here.

8 THE COURT: Okay.

9 THE WITNESS: Can I have a copy to walk you through?  
10 Because we're talking about the 250,000 SARs.

11 MR. MARKS: Well, do you want -- are you waiting for  
12 the original, or do you want to just move --

13 THE COURT: You can proceed with that.

14 THE WITNESS: We're talking about the 250,000 SARs  
15 that were traded --

16 THE COURT: What has this been marked as?

17 THE CLERK: It's 4-N.

18 (COUNSEL AND CLERK CONFER BRIEFLY)

19 THE COURT: 4-M and 4-N?

20 THE CLERK: Yeah.

21 THE COURT: Okay.

22 THE WITNESS: Can I walk you through the  
23 transaction?

24 BY MR. MARKS:

1 Q Sure. For the Form 4, for the United States  
2 Securities and Exchange Commission.

3 A At some point in my career, I was issued 250,000  
4 stock options that had a vesting period between April 15th and  
5 May 15th of 2015. As I testified the other day, regretfully,  
6 at the time that they vested on the 15th of April and May of  
7 last year -- and they had been the same -- the stock was  
8 trading somewhere between 80 and \$85 a share. We were in a  
9 blackout because we had knowledge of some government subpoenas  
10 coming as it related to Medicare Advantage. So, by the time  
11 my block blackout, as a Section 16 officer, ended, the stock  
12 had depressed to as low as, you know, 64 or 65, \$66.

13 So what we ended up doing was deciding the stock was  
14 so deeply depressed, if I had traded it the first day that I  
15 could start trading again, which was last Monday, that the  
16 stock price was at \$62 and change per share.

17 So here's the way to think about it. I had 250,000  
18 options at a weighted price of \$43.35 a share. So here's the  
19 way the calculation goes because you can't sell options, you  
20 can only trade shares. So you have to convert options to  
21 shares. So you take 250,000 options.

22 Q Okay.

23 A You take the difference between the price you sell  
24 that day; in this case, a weighted average of sixty -- \$62.56.

1 Q Okay.

2 A Okay? And so you subtract 62.56 from 43.35, and you  
3 get roughly -- let's just say you get \$19 a share.

4 Q Okay.

5 A You have \$19 times 250,000 options, which is -- I  
6 don't know -- let's say roughly four and a half, \$5 million.

7 Q Okay.

8 A Gross dollars.

9 Q Okay.

10 A You then say, the stock at that day was trading at  
11 \$62 a share, you've got \$5,000 worth of options, you divide it  
12 by 62.

13 Q Uh-huh.

14 A And then you come to a share number --

15 Q Uh-huh.

16 A -- because you can't trade options; you can only  
17 trade real shares.

18 So we had -- that day, when they made the trade, we  
19 had -- our gain was 76,766 gain shares.

20 Q What is "gain shares"?

21 A A real share, a real DaVita share.

22 Q Okay.

23 A But we owe taxes on this; you don't -- you don't get  
24 this -- you're taxed at the time of the transaction --

1 Q Okay.

2 A -- at my effective tax rate.

3 So what they ended up doing was selling enough of  
4 those 76,000 shares to cover the tax liability only. So they  
5 had to sell, at that price, 33,290 shares, to cover the tax  
6 liability. There was no escaping that, you got to pay the  
7 taxes.

8 Q Right.

9 A So, at the end of the day, we, in our portfolio,  
10 inherited 43,476 real shares of DaVita stock, valued that day  
11 at, roughly, \$62 and change.

12 Now, to put it in perspective, because it's a moving  
13 target, was that a good investment, as opposed to selling it  
14 at a depressed time, and they were going to expire in another  
15 30 to 45 days, totally off the table; and we're getting ready  
16 to enter another blackout because we're getting to the end-of-  
17 quarter earnings and earnings prep?

18 Q Okay.

19 A And I have some knowledge of -- so we're going to be  
20 in another blackout. So my window was two weeks. I had to  
21 require clearance from our general counsel, chief accounting  
22 officer, which I did. Then you have a seven-day window to  
23 trade, that's it; then you have to reapply.

24 So we ended up taking into the account 43,476

1 shares, valued that day at -- post -- this is after-tax gains  
2 of \$2,716,000. To put it in perspective, was it a good  
3 decision? We bought the shares at \$62 that day. Today,  
4 they're up about \$66 a share. Now they could go back down;  
5 that is the market. But we would have left a ton of money if  
6 we took that narrow window we had, and traded, and just cashed  
7 the option out instead of buying shares. This was a good  
8 business decision.

9 Q So those shares are now in your UBS account.

10 A They're in our UBS account.

11 Q And you did this in consultation with Bob Galen. Is  
12 that right?

13 A Bob Galen only executes the trade. You get  
14 permission from your company to trade, which is required. I  
15 did that. The order then goes to Bob that says, Dennis has  
16 250,000 shares. They convert options, they converted into  
17 shares. And they tell Bob that, Dennis, today, has 76,000  
18 shares, and before we give you those, you got to pay the tax  
19 bill, so you -- so yes.

20 MR. MARKS: I move the admission of these two  
21 exhibits.

22 THE COURT: 4-M and 4-N, any objection?

23 MR. SMITH: No objection.

24 BY MR. MARKS:

1 Q And Mr. Smith keeps using a seven --

2 THE COURT: M and N are admitted.

3 MR. MARKS: Sorry, Your Honor.

4 (DEFENDANT'S EXHIBITS MMMM AND NNNN ADMITTED)

5 BY MR. MARKS:

6 Q Mr. Smith keeps using a seven-million-dollar figure.

7 Do you know where he's getting that from?

8 A You know, I don't. And I think this is what's  
9 confusing for a lot of people that aren't in the corporate  
10 world, that aren't issued options. When options are typically  
11 reported, they will say, Dennis traded X, and it is the stock  
12 price that day, without any consideration to you don't own  
13 that share, you only own the strike price, the delta between  
14 the strike price and the -- the stock.

15 So I have no idea where the 7 million -- it was 9  
16 million during his opening. I have no idea where that came  
17 from.

18 Q Okay.

19 (COUNSEL CONFER BRIEFLY)

20 BY MR. MARKS:

21 Q On Mr. Smith's chart, he has other options or  
22 potential monies that you'd be getting in the next potential  
23 year or two. I'd like to go through that, and just clarify  
24 that with the Court.

1           He has on his chart, I think, and LTIPs -- let me  
2 see where his chart is. Do we have our chart?

3                           (COUNSEL CONFER BRIEFLY)

4 BY MR. MARKS:

5           Q     If you turn, Dennis to exhibit 4-F.

6           A     In whose binder, Dan?

7           Q     It would be in our binder; it would be in Binder 4.

8           A     In F?

9           Q     4-F, as in Frank. All right. Do you have that?  
10 This is going to be the breakdown.

11          A     No, I've got 2-H, I'm sorry.

12                   THE COURT: 4-F.

13                   THE WITNESS: I'm still looking.

14 BY MR. MARKS:

15          Q     So it would be in Volume 4, which is probably the  
16 next -- no, Volume 4.

17          A     Okay. All right. I've got 4-F.

18          Q     Okay. Can you walk the Court through what this  
19 exhibit is, in terms of your -- what you have remaining, in  
20 terms of stock options and LTIPs.

21                   First, do you want to explain what's the difference  
22 between a SAR, an RSU, and a PSU?

23          A     Yeah. A SAR is an option; it's the exercise we just  
24 went through. You're granted -- SARs are another way of

1 saying options. You're granted X number of SARs the day the  
2 compensation committee awards them. Whatever the stock price  
3 is at the close of that day, that's your strike price.

4 Q Okay. And what's a "PSU"?

5 A Before I do that, let me do an RSU.

6 Q Okay.

7 A It's easier to transition. A restricted share that  
8 you're giving is, at the point it vests, you just own a share  
9 of DaVita stock. It's -- there's no -- there's no strike  
10 price. If you're given 5,000 RSUs, when they vest, if you're  
11 still there -- there is no pro rata -- if you're still there,  
12 you get 5,000 shares of DaVita stock.

13 Q And if you're not there, you get nothing.

14 A You get nothing.

15 Q Okay. And what's a "PSU"?

16 A Companies have gotten more sophisticated, and  
17 they've decided executives like myself that have benefitted  
18 from the overall stock price doing well, they've gone to  
19 what's a PSU, where they arbitrarily assign some very specific  
20 goals on your relevant business units, and they put targets  
21 around there.

22 So, in my case, my PSUs, which is a performance  
23 share unit, is based on the performance of Healthcare Partners  
24 California and Nevada, the markets I've been running, and

1 DaVita Healthcare Partners International. So they're --  
2 they're almost like SARs, but rather than based on a strike  
3 price, they're based on an artificial financial objective that  
4 you have to achieve.

5 Q And what are cash LTIPs are part of the award,  
6 they're literally cash. You're given a target over a four-  
7 year LTIP. The measurement period is typically year three of  
8 that four-year LTIP. And if you hit your target, which is  
9 based on operating income or EBITDA or discretionary to the  
10 compensation committee, you know, if you hit it at a hundred  
11 percent, and your cash LTIP is a million dollars, you'd get a  
12 million dollars. If you hit it at 150 percent of target,  
13 you'd get a hundred and fifty. And typically, below 90, you  
14 just drop. So from 90 to 100, you might get some pro rata,  
15 but below a certain cutoff, you just get nothing.

16 Q Okay. So what do you have remaining, right now, for  
17 DaVita?

18 A I've got a share of some -- Kidney Care LTIP, I  
19 think, was issued to me in 2012 and '13, where half of it will  
20 vest on April 15th or 16th, maybe 17th, of 2016, half, and  
21 half will vest in the same time period in 2017.

22 Q Okay. And then what do you have left, in terms of  
23 RSUs, PSUs, and SARs?

24 A Yeah. I can't read the writing on here, again, it's

1 all blacked out. So is there a better -- is there a better  
2 sheet?

3 Q Well, I'll approach with -- we have --

4 MR. MARKS: Mr. Smith, you can double-check whether  
5 you believe these are correct. Mr. Smith handed me the RSUs,  
6 the PSUs, and the cash LTIPs.

7 THE WITNESS: Okay. Which one do you want me to --  
8 so payable, we have 36,466 RSUs. I think there's two  
9 grantings: One for -- one for 12,000 -- or one for 22,000,  
10 and one for 14,000, so they must have been part of two  
11 different grants, that vest sometime in 2016, so they're real  
12 shares.

13 BY MR. MARKS:

14 Q Okay.

15 A I -- I have no idea where the 7 million, well, I  
16 don't want -- I don't want to deal with -- I can't deal with -  
17 -

18 Q Okay.

19 A -- Number 9.

20 The SARs, currently unvested, are -- I've got  
21 220,000 options that vest in '17 and '18. And if I'm not  
22 mistaken, they have a strike price, if I'm not mistaken, of  
23 somewhere around 59 to \$60 a share. They were issued when the  
24 stock was trading higher. Beyond that, I honestly don't know.

1 Q Okay. All right.

2 (COUNSEL CONFER BRIEFLY)

3 BY MR. MARKS:

4 Q Is everything dependent on you actually being there  
5 on the day, the vesting day?

6 A Yeah. If you're not there for stock options or  
7 restricted or PSUs or LTIP, there's no pro rata distribution.  
8 It's all or nothing, be there on that day.

9 Same thing as annual bonuses. You know, if I quit -  
10 - if I got fired January 1st, and annual bonuses aren't paid  
11 until March or April, you have to be there at the time that  
12 they're awarded.

13 (COUNSEL CONFER BRIEFLY)

14 BY MR. MARKS:

15 Q Okay. Starting at -- we have Exhibit S, which is in  
16 Volume 2. I want to move some exhibits in now.

17 A I'm sorry. Yes?

18 (COUNSEL CONFER BRIEFLY)

19 BY MR. MARKS:

20 Q Volume 2.

21 A Okay.

22 Q Okay. Is Exhibit S the B of A 6446 account?

23 A Yes.

24 MR. MARKS: Move the admission of Exhibit S.

1 THE COURT: Any objection to Exhibit S?  
2 MR. SMITH: Now I -- Exhibit S. Is that your PCPD?  
3 THE WITNESS: No.  
4 MR. MARKS: No. That's the B of A account.  
5 THE COURT: B of A account.  
6 MR. SMITH: If it's -- it's from the B of A account.  
7 UNIDENTIFIED: Exhibit S is the Bank of America  
8 ending 6446.  
9 MR. SMITH: Yeah, that's fine.  
10 UNIDENTIFIED: (Indiscernible)  
11 MR. SMITH: No objection.  
12 THE COURT: Exhibit S is admitted.  
13 (DEFENDANT'S EXHIBIT S ADMITTED)  
14 MR. MARKS: Exhibit T --  
15 MR. SMITH: Your Honor, let me note that these  
16 things -- these account statements, and so forth, are all part  
17 of the exhibit that you had pending, based upon the review of  
18 the flash drive by Mr. Marks.  
19 THE COURT: And part of 108?  
20 UNIDENTIFIED: 108.  
21 THE COURT: Was it 108?  
22 MR. MARKS: The question is: Are you really going  
23 to be able to look at it that way? This way, we have the most  
24 recent statements.

1 THE COURT: Well, as long as I know that -- and let  
2 me get back to -- is there any objection to the admission of  
3 108, having had a chance to review that? I know I was  
4 deferring that.

5 MR. MARKS: No, it's just cumulative. It's got tax  
6 returns, it just has a lot of stuff we've --

7 THE COURT: Okay.

8 MR. MARKS: -- already put out.

9 THE COURT: So Exhibit S and 108 are admitted.

10 (PLAINTIFF'S EXHIBIT 108 ADMITTED)

11 THE COURT: Is T a continuation of that information?

12 MR. MARKS: T is another B of A account.

13 THE COURT: Okay. Any objection?

14 MR. SMITH: No.

15 THE COURT: Exhibit T is admitted.

16 (DEFENDANT'S EXHIBIT T ADMITTED)

17 MR. MARKS: U is a Wells Fargo Dennis account. Do  
18 you have any objection to U?

19 MR. SMITH: No.

20 THE COURT: Any objection to U? Exhibit U?

21 (COUNSEL CONFER BRIEFLY)

22 THE COURT: Exhibit U?

23 (COUNSEL CONFER BRIEFLY)

24 MR. SMITH: I don't have objections to -- from U

1 through -- are you going to try and move the other ones in, as  
2 well?

3 MR. MARKS: Yeah.

4 MR. SMITH: U through 2-E. They're all account  
5 statements and so forth.

6 THE COURT: Okay. So Exhibit U through 2-E are  
7 admitted into the record.

8 (DEFENDANT'S EXHIBITS U THROUGH EE ADMITTED)

9 MR. MARKS: Then, Your Honor, we have our  
10 appraisals, real estate appraisals, starting at 2-F, which I  
11 don't know if they ever moved theirs in or what we're doing on  
12 that.

13 MR. SMITH: I thought we were waiting to the end of  
14 this to --

15 THE COURT: Yeah. Yeah, I'm going to be looking at  
16 another date to -- so we'll wait on both sides, in terms of  
17 the real estate appraisals.

18 MR. MARKS: Okay. Court's indulgence.

19 (COUNSEL CONFER BRIEFLY)

20 MR. MARKS: Starting 2-L are more account  
21 statements.

22 THE COURT: 2-L. Is that the next binder, Counsel?

23 MR. MARKS: Yes.

24 (COUNSEL CONFER BRIEFLY)

1 MR. MARKS: 2-L is another party UBS account.  
2 THE COURT: Are you moving to --  
3 MR. MARKS: Yes, I'm moving to put it in.  
4 THE COURT: Exhibit 2-L, Counsel?  
5 MR. SMITH: 2-L?  
6 THE COURT: It looks like there may be more  
7 statements.  
8 MR. SMITH: Yeah. Yeah. I mean, we have all the  
9 updated credit cards that are on the marital balance sheet.  
10 (COUNSEL CONFER BRIEFLY)  
11 MR. MARKS: So, Your Honor, 2-M through 2-W could  
12 come in.  
13 MR. SMITH: And let me just note for the record,  
14 I've looked on, basically, his copies, and he's represented  
15 these were all just updated account statements.  
16 THE COURT: Understood. So 2-M through 2-W are  
17 admitted.  
18 (DEFENDANT'S EXHIBITS MM THROUGH WW ADMITTED)  
19 MR. MARKS: And are all the financial disclosure  
20 forms in?  
21 MR. SMITH: Yes, they're already in.  
22 MR. MARKS: Okay.  
23 (COUNSEL CONFER BRIEFLY)  
24 MR. MARKS: The NEA documents start at Exhibit 3-S.

1 I don't know if they are in.

2 (COUNSEL CONFER BRIEFLY)

3 MR. SMITH: Yeah, that's fine.

4 MR. MARKS: So we would admit 3-S.

5 MR. SMITH: No objection to 3-S.

6 THE COURT: Exhibit 3-S is admitted into the record.

7 (DEFENDANT EXHIBIT SSS ADMITTED)

8 MR. MARKS: 3-T is NEA.

9 MR. SMITH: No objection to 3-T.

10 THE COURT: Exhibit 3-T is admitted.

11 (DEFENDANT'S EXHIBIT TTT ADMITTED)

12 (COUNSEL CONFER BRIEFLY)

13 MR. MARKS: 3-W is the explanation of what Dennis  
14 just testified; it came from DaVita.

15 MR. SMITH: I have no objection to 3-W.

16 MR. MARKS: This is the DaVita cash performance  
17 award.

18 (COUNSEL CONFER BRIEFLY)

19 THE COURT: Any objection?

20 MR. SMITH: No objection.

21 THE COURT: 3-W is admitted.

22 (DEFENDANT'S EXHIBIT WWW ADMITTED)

23 MR. MARKS: And if you go to 3-V, that explains the  
24 LTIP program, that's been produced.

1 THE COURT: Any objection to 3-V?

2 MR. MARKS: V.

3 THE COURT: 3-V, as in Victor? 3-V, as in Victor,  
4 any objection?

5 (COUNSEL CONFER BRIEFLY)

6 MR. SMITH: Ms. Varshay will --

7 THE COURT: Okay. 3-V, as in Victor, any objection?

8 MS. VARSHAY: No objection, Your Honor.

9 THE COURT: Okay. 3-V is admitted.

10 MR. MARKS: 3-X. This was produced, this is the  
11 performance criteria.

12 MS. VARSHAY: Okay. No objection, Your Honor.

13 THE COURT: 3-X is admitted.

14 (COUNSEL CONFER BRIEFLY)

15 MR. MARKS: And 3-Y is the Radiology Partners that  
16 was produced.

17 (COUNSEL CONFER BRIEFLY)

18 THE COURT: Any objection to 3-Y?

19 MS. VARSHAY: I -- okay. I don't remember seeing  
20 this, but no objection.

21 MR. SMITH: No. Okay.

22 THE COURT: 3-Y is admitted.

23 (DEFENDANT'S EXHIBIT YYY ADMITTED)

24 MR. MARKS: And 3-Z is Radiology Partners. It was

1 produced.

2 THE COURT: Any objection?

3 MS. VARSHAY: No objection, Your Honor.

4 THE COURT: 3-Z is admitted.

5 (DEFENDANT'S EXHIBIT ZZZ ADMITTED)

6 MR. MARKS: 4-A is another Radiology Partners  
7 document. It was produced.

8 MS. VARSHAY: Okay. Your Honor, these are documents  
9 that were like letters and things like that, that I don't  
10 recall.

11 MR. MARKS: But you got it.

12 MS. VARSHAY: Yeah, but -- I know they're Bates-  
13 labeled, but I don't know if they were produced.

14 MR. MARKS: Yeah, they were produced. All right. I  
15 mean, I don't -- there's enough Radiology Partners in here. I  
16 don't want to waste my time.

17 THE COURT: Okay.

18 MR. MARKS: If you don't want -- are you objecting  
19 to it or --

20 MS. VARSHAY: Yes.

21 THE COURT: Is there are an objection?

22 MS. VARSHAY: Yes, there is.

23 MR. MARKS: It doesn't matter, I can withdraw that  
24 document.

1 THE COURT: Okay.

2 (COUNSEL CONFER BRIEFLY)

3 THE COURT: All right.

4 MR. MARKS: All these securities things are in.

5 MS. VARSHAY: They were admitted, yeah.

6 (COUNSEL CONFER BRIEFLY)

7 THE COURT: Was 4 -- 4-B was admitted, has that been  
8 admitted?

9 MR. MARKS: 4-B is part of another --

10 MS. VARSHAY: 4-B is part of our plaintiff's  
11 notebook.

12 THE COURT: Oh, okay.

13 MS. VARSHAY: Yeah.

14 MR. MARKS: We're trying to figure out what's not  
15 duplicate.

16 THE COURT: Okay. I appreciate that. So we're not  
17 -- yeah, 4-B doesn't need to come in.

18 (COUNSEL CONFER BRIEFLY)

19 MR. MARKS: 4-G is the movie (indiscernible).

20 MS. VARSHAY: No objection, yep. That's fine.

21 THE COURT: 4-B is admitted into the record?

22 THE CLERK: I think he said 4-G.

23 MR. SMITH: 4-G.

24 THE COURT: Oh, 4-G. I'm sorry.

1 (DEFENDANT'S EXHIBIT GGGG ADMITTED)  
2 (COUNSEL CONFER BRIEFLY)  
3 THE COURT: 4-H did you say?  
4 MR. MARKS: Yeah.  
5 THE COURT: Is admitted. Okay.  
6 (DEFENDANT'S EXHIBIT HHHH ADMITTED)  
7 MR. MARKS: 4-I?  
8 (COUNSEL CONFER BRIEFLY)  
9 MS. VARSHAY: No objection, it's a UBS statement.  
10 THE COURT: 4 --  
11 MR. MARKS: Okay. 4-I.  
12 THE COURT: 4-I is admitted.  
13 (DEFENDANT'S EXHIBIT IIII ADMITTED)  
14 (COUNSEL CONFER BRIEFLY)  
15 MR. MARKS: 4-J is his W-2s.  
16 THE COURT: Any objection?  
17 MS. VARSHAY: No.  
18 THE COURT: 4-J --  
19 MR. MARKS: 4-K is the --  
20 THE COURT: -- is admitted.  
21 (DEFENDANT'S EXHIBIT JJJJ ADMITTED)  
22 MR. MARKS: -- life insurance.  
23 MS. VARSHAY: No objection.  
24 THE COURT: 4-K is admitted.

1 MR. MARKS: Thank you.

2 (DEFENDANT'S EXHIBIT KKKK ADMITTED)

3 MR. MARKS: Yeah, 4-A was admitted, right? Just not  
4 4-B. Was 4-A admitted?

5 THE CLERK: Yes.

6 MR. MARKS: Okay.

7 (COUNSEL CONFER BRIEFLY)

8 MR. MARKS: Do you object to 4-F, which is the  
9 document he's reviewing, the --

10 MR. SMITH: Which one?

11 MR. MARKS: The one he --

12 MR. SMITH: The one we just presented?

13 MR. MARKS: Yeah.

14 MR. SMITH: I don't know. I don't have -- you mean  
15 the stock thing, right?

16 MR. MARKS: The stock thing.

17 MR. SMITH: Yeah, I don't have an objection.

18 MR. MARKS: Okay. 4-F.

19 THE COURT: 4-F is admitted.

20 MR. SMITH: Oh, I thought that was something you  
21 just got.

22 MR. MARKS: No, 4-M and 4-N was what I just did. We  
23 -- going through his SARs and PSU.

24 (COUNSEL CONFER BRIEFLY)

1 THE COURT: I think 4-F was previously admitted.

2 MR. MARKS: Okay. So there's nothing else. Okay.

3 I'll pass the witness (indiscernible).

4 THE COURT: All right.

5 (COUNSEL CONFER BRIEFLY)

6 THE COURT: Okay. But F was part of a prior  
7 discussion, I thought. Oh, we didn't have it. Okay, so it is  
8 admitted then.

9 (COUNSEL CONFER BRIEFLY)

10 THE COURT: All right. Cross-examination, Counsel.

11 (COUNSEL CONFER BRIEFLY)

12 CROSS EXAMINATION

13 BY MR. SMITH:

14 Q On the exhibit we were just looking at the -- with  
15 the Schedule 4 on it.

16 (COUNSEL CONFER BRIEFLY)

17 MR. MARKS: 4-M, 4-N.

18 MR. SMITH: 4-N?

19 MR. MARKS: 4-M and 4-N is what I just showed.

20 (COUNSEL CONFER BRIEFLY)

21 BY MR. SMITH:

22 Q Okay. Can you go back to 4-N?

23 A I -- Mr. Marks just took my document.

24 (COUNSEL CONFER BRIEFLY)

1 THE WITNESS: Okay. Which one?  
2 BY MR. SMITH:  
3 Q Let's go through that quickly, just to -- so you  
4 know where the numbers came from, Mr. Kogod.  
5 A Okay.  
6 Q The total tranche was 250,000, so --  
7 A Yes.  
8 Q And when you converted those SARs, based on the  
9 strike price, you wound up with 173,234 shares, correct?  
10 A Incorrect.  
11 Q What did you wind up with?  
12 A Seventy-six thousand, seven hundred and sixty-six  
13 shares.  
14 Q That's -- okay. So --  
15 A It's -- it's simple math. It's strike price to  
16 shares, times a number. I don't know where you're getting the  
17 number from.  
18 Q What is the -- what is the -- what does the 120,816  
19 constitute?  
20 A Where are you looking, please?  
21 Q I'm looking at the amount of securities beneficially  
22 owned, following reported transaction.  
23 A I think that we -- we -- effectively, after this  
24 trade, I had 77,000 DaVita shares in my account.

1 Q That's right.

2 A Now I have another forty-three. As a result, I  
3 think, if you add those numbers up, it's 120,000 shares in our  
4 DaVita account.

5 Q Right. And at today's price, it's about \$7.7  
6 million.

7 A Okay. But you're showing it as an incremental. All  
8 that's incremental is this --

9 Q Actually --

10 A -- 43,476 that we just added. We've always had  
11 those other shares in the account.

12 Q I'm not showing anything. I'm just --

13 A Okay.

14 Q You're asking me where the seven point --

15 A Got it.

16 Q Well, you had indicated where the 7.7 million comes  
17 from. That's the shares that you own.

18 You're indicating these are in the DaVita account,  
19 but we don't have any record of them being in the DaVita  
20 account.

21 A They're in the UBS account, and the --

22 Q Or excuse me, the UBS account.

23 A I'm quite certain you have every one --

24 Q Do you know what account they're in?

1           A     Nicole, can we find that, please? I don't, off the  
2 top of my head, sitting here.

3           MR. MARKS: It's the one that he keeps the stock in,  
4 right?

5 BY MR. SMITH:

6           Q     And you've provided an explanation for your --  
7 through your attorney, of your SARs and RSU, PSU, right?

8           A     I've given you the best example I can. We have a  
9 full-time executive that administers. You now know the full  
10 extent of my knowledge on PSUs, RSUs, and cash LTIPs, yes.

11                   (COUNSEL CONFER BRIEFLY)

12 BY MR. SMITH:

13           Q     We've been provided through discovery --

14           MR. SMITH: May I approach, Your Honor?

15           THE COURT: Yes, you may.

16 BY MR. SMITH:

17           Q     This is Exhibit 123. You provided through discovery  
18 an analysis of your PSU, LTIP, and RSU, and SARs. Is this  
19 that analysis?

20           A     I believe it is.

21           Q     Okay. And so that's the -- the likely payout was  
22 addressed by your financial person at DaVita, correct?

23           A     There is on -- yes, but there's one caveat. First  
24 of all, it's a guesstimate. There's a -- there's a -- there's

1 a discrete financial target that we are going to earn 250  
2 percent of. And then, as I was emailed today, there's a  
3 discretionary component. So if you assume I'm going to get  
4 the same 225 or 250 on the discretionary part, I'm not. But  
5 that's a reasonable number.

6 Q Okay. But whatever it is, that's going to be --  
7 there's going to be a value associated with your cash LTIP,  
8 correct?

9 A There will be a first payout April 2016, some value.

10 Q Okay. And that's for -- that is for your 2015  
11 earning, correct?

12 A Now it is a cash LTIP awarded in 2013, and it will  
13 be paid out, the first half, in 2016.

14 Q So it's for previous work. In other words, it's not  
15 something that -- for work in the future, right?

16 A Yes. It was -- it was awarded in '13.

17 MR. SMITH: Your Honor, you had asked us to provide  
18 a larger -- this is as large --

19 THE COURT: Right, a balance sheet.

20 MR. SMITH: This is as large as we could get it.

21 THE COURT: Okay. All right.

22 MR. SMITH: I'm going to provide that. I've  
23 provided a copy to Mr. Marks. The information that we've  
24 added is the same information that had been identified by Mr.

1 Kogod today.

2 We have indicated in ours that the stock, at today's  
3 value, is 7.74 million, and we don't have a record that it's  
4 contained in a UBS account. If that's corrected, we'll advise  
5 the Court. But there's -- today, because this transaction  
6 happened so recently, and we don't have the account statement,  
7 showing the funds being deposited into the UBS, we just --

8 THE COURT: That can be verified, though.

9 MR. SMITH: It can be verified.

10 THE COURT: Okay.

11 MR. SMITH: So --

12 THE COURT: And is this marked as an exhibit or is -

13 -

14 MR. SMITH: I think we should.

15 THE COURT: Okay. Let's --

16 MR. MARKS: But Your Honor, based on the testimony  
17 today, Mr. Kogod is saying he's got two more million and  
18 change of UBS shares, in addition -- in addition to what he  
19 already had in his UBS account. They're adding --

20 MR. SMITH: No, no, no.

21 THE COURT: No, I think --

22 MR. MARKS: -- we think --

23 THE COURT: -- he's saying there's 76,000.

24 MR. SMITH: Seventy something thousand.

1 MR. MARKS: Okay.

2 THE COURT: Seventy-some-odd thousand shares.

3 MR. MARKS: Right.

4 THE WITNESS: He's looking at the total value of

5 what I had in there before, plus the shares of the trade of

6 last week --

7 MR. MARKS: Should be in the --

8 THE WITNESS: -- at the current value of --

9 BY MR. SMITH:

10 Q The 77,000 would be worth what?

11 A The 77,000 -- it's all based on whatever the stock

12 price is that day.

13 Q So 77,000 times 64, roughly, today, I think.

14 A I can't do the math --

15 MR. MARKS: But it should be in the UBS --

16 THE WITNESS: Four -- forty -- 4 million, 4.2.

17 THE COURT: That's 4.9 million.

18 MR. SMITH: Right.

19 MR. MARKS: And it should be in the UBS account --

20 MR. SMITH: It should be.

21 MR. MARKS: -- as part of the UBS account.

22 MR. SMITH: But we don't think it is, so we don't

23 know, but that's something we want to verify. We're not

24 suggesting --

1 MR. MARKS: Hold on. We have a statement.  
2 (COUNSEL CONFER BRIEFLY)  
3 THE WITNESS: Okay. I think getting you  
4 verification will be quite simple.  
5 MR. SMITH: Exactly.  
6 THE COURT: Yeah, I --  
7 BY MR. SMITH:  
8 Q That's why I'm saying I'm not suggesting that this  
9 is something nefarious. I'm just saying we had to account for  
10 the money, that's all.  
11 A Right, right. Yeah. I don't know the effect of  
12 transfer date of shares, from last week's trade into UBS, but  
13 there will be a confirmation if they're not already deposited  
14 in the account.  
15 MR. SMITH: And for the record, our PCPD is 124.  
16 Let me move on, Your Honor.  
17 THE COURT: Oh, this is marked as 124?  
18 MR. SMITH: Yes, Your Honor.  
19 THE COURT: So is there any objection to the  
20 admission of 124?  
21 MR. MARKS: No.  
22 THE COURT: 124 is admitted.  
23 MR. MARKS: (Indiscernible) ours --  
24 THE COURT: Correct.

1 MR. MARKS: -- that can come in, also.

2 (PLAINTIFF'S EXHIBIT 124 ADMITTED)

3 (COUNSEL CONFER BRIEFLY)

4 THE WITNESS: This is marked, do you want this back?  
5 Do you want it back?

6 MR. SMITH: You can just put it right there, they'll  
7 pick it up at the end.

8 THE COURT: Have you offered yours, Mr. Marks?

9 MR. MARKS: No, I'm -- well, I tried to this  
10 morning.

11 BY MR. SMITH:

12 Q Mr. Kogod, the -- in terms of the accounting of the  
13 GMC loan, when you were asked about that in your deposition,  
14 you didn't know that the GMC expenditure had included a loan,  
15 did you?

16 A I wasn't shown Schedule 6. We only went through  
17 Exhibit 2.

18 Q I understand. But we asked you about the GMC --  
19 GMAC loan, and you said it was for cars; that's what you said.

20 A GMC does -- I do have -- have had leases through  
21 GMC.

22 Q I understand.

23 A You didn't say GMAC Mortgage.

24 Q Okay. But that was the -- we said that there was a

1 loan from GMAC, here was the amount, and you said it was for  
2 cars. We were all surprised, too, but you said that was the  
3 only thing that you could think of.

4 A If you had said GMAC Mortgage, I would have clearly  
5 -- that's not the question you asked me.

6 Q All right. In terms of the -- let me just do it  
7 this way. You haven't provided any additional documentation,  
8 other than production of bank account statements, correct?

9 A Interrogatories.

10 Q Okay.

11 A Financial --

12 Q Interrogatories.

13 A Financial --

14 Q But your --

15 A -- disclosures.

16 Q -- interrogatories -- your interrogatories doesn't -  
17 - they don't contain an accounting of the expenditures that  
18 you've made for Nadya Khapsalis or the children, do they, does  
19 it?

20 A Exhibit 2 did such a good job of categorizing those,  
21 I accept those.

22 Q But what I heard today was that Mr. Teichner  
23 indicated that it would be a waste of money to repeat the  
24 effort. The fees that -- you heard the fees today that were

1 paid by mister -- or paid -- or excuse me, incurred by mister  
2 -- or Anthem's office was about \$96,000?

3 A I heard.

4 Q And that's what you were trying to save, \$96,000, by  
5 not doing your own accounting?

6 A I don't know what the number would have been.

7 Q Well, that's how much you spent to get a new Ferrari  
8 during the time of this action.

9 MR. MARKS: Objection. Argumentative.

10 BY MR. SMITH:

11 Q Isn't it?

12 THE COURT: Sustained.

13 BY MR. SMITH:

14 Q Isn't that true?

15 THE COURT: Sustained.

16 MR. MARKS: Objection.

17 THE WITNESS: If you can buy me a new Ferrari for  
18 96,000, please show me how to do that.

19 BY MR. SMITH:

20 Q That's what you paid to upgrade --

21 MR. MARKS: Objection. Argumentative.

22 BY MR. SMITH:

23 Q -- your existing Ferrari.

24 A A seven-year-old --

1 MR. SMITH: He answered the question.

2 BY MR. SMITH:

3 Q In regard to -- you've never provided the expense  
4 reports, correct; associated with the cash expenditure or any  
5 other expenditures you said that you used for -- when you were  
6 on trips, have you?

7 A I don't have cash receipts, so -- and I have -- have  
8 not been asked to provide it, either.

9 Q The expense reports?

10 A Sure. Not to my knowledge. And I don't have them,  
11 anyway; I don't keep cash receipts.

12 (COUNSEL CONFER BRIEFLY)

13 BY MR. SMITH:

14 Q If I understand the gist of your testimony, you're  
15 saying that you wouldn't have spent any more money, other than  
16 the in vitro, if you had a relationship with Nadya or did not  
17 have a relationship with Nadya; that's your contention?

18 A Yes. I testified that I would have spent the same,  
19 or perhaps greater, had I not been in a relationship with  
20 Nadya.

21 Q Okay. And when you filled out your -- or your FDF,  
22 in May of 2015, everything in that FDF was accurate, correct?

23 A To the best of my knowledge, yes.

24 (COUNSEL CONFER BRIEFLY)

1 MR. SMITH: Okay. No, that's -- pass the witness.  
2 I've run out of time, Your Honor. I'm sorry.

3 MR. MARKS: I have a couple of follow-ups.

4 THE COURT: All right. Redirect.

5 (COUNSEL CONFER BRIEFLY)

6 THE WITNESS: Yes, it's very distracting over here,  
7 too.

8 MR. MARKS: It's kind of distracting.

9 REDIRECT EXAMINATION

10 BY MR. MARKS:

11 Q Mr. Kogod, did you have anything to do with  
12 preventing DaVita from complying with any subpoenas or  
13 providing any documents in this case?

14 A I urged our in-house counsel, labor relations,  
15 Caitlin Moughon, to cooperate any way she can. She said she  
16 had some concerns about proprietary information, sought  
17 outside counsel. My only conversation with Caitlin was to be  
18 in contact, be accessible, be available. And her job is to  
19 protect the company. I --

20 Q Even though you're the COO, did you, in any way,  
21 impede or stop or prevent any disclosure by DaVita?

22 A Quite the contrary. I called her personally, and  
23 asked her to cooperate.

24 Q Okay. Counsel asked what you produced. Did you

1 produce significant numbers of documents in this case?

2 A I can't even tell you how many tens of thousands,  
3 I'm sure.

4 Q Okay. And you provided credit card statements?

5 A Everything that was -- that was asked for that was  
6 possible to reproduce, I produced.

7 Q And then they asked for certain questions in the  
8 Answers to Interrogatories that were (indiscernible) did you  
9 answer those?

10 A I did.

11 Q And during your deposition, did you go line by line,  
12 and answer all those questions about any expenditures on the  
13 Leauanae or the Anthem report, correct?

14 A Line item by line item.

15 Q And they only chose to ask you about Exhibit 2, and  
16 not Exhibit 6, right?

17 A That's the only exhibit they put in front of me..

18 Q And you would have answered any question, correct?

19 A Correct.

20 Q And you had no idea what Leauanae's backup was,  
21 until sometime after February 12th, when I --

22 MR. SMITH: These are leading, Your Honor.

23 BY MR. MARKS:

24 Q Did you have any idea of the -- what they were

1 accusing you of, waste or shopping and lodging and meals --

2 A I understand the question.

3 Q -- until you saw the backup?

4 A No.

5 MR. MARKS: Okay. That's all I have.

6 (COUNSEL CONFER BRIEFLY)

7 THE COURT: You may step down.

8 THE WITNESS: Thank you, sir.

9 MR. MARKS: Your Honor, I have to -- I'd like to  
10 admit our marital balance sheet as next in order?

11 THE COURT: And which --

12 MR. SMITH: I don't have an objection to that.

13 MR. MARKS: And our asset and debt sheet is --

14 THE COURT: Has that been marked or is --

15 MR. MARKS: I'm going to mark it now.

16 THE COURT: Okay.

17 MR. SMITH: Is that something new or is this --

18 MR. MARKS: No, it's what I handed you at the first  
19 day.

20 MR. SMITH: Okay.

21 MR. MARKS: Just you put yours in, so I was going to  
22 put mine in.

23 MR. SMITH: No problem. Is it different than what's  
24 on your pretrial memorandum?

1 MR. MARKS: It was the one I handed you day one.  
2 MR. SMITH: So the answer is, yes, it's different  
3 than the pretrial memorandum?  
4 MR. MARKS: Only --  
5 MR. SMITH: The only reason I ask is because --  
6 MR. MARKS: -- the marital balance sheet.  
7 MR. SMITH: -- I've represented to the Court that we  
8 went through the balance -- the marital balance sheets, and we  
9 --  
10 THE COURT: In the pretrial memo and --  
11 MR. SMITH: Yes, and we just showed exactly what the  
12 differences are. So, Your Honor, if you -- if we could, as  
13 part of our closing, we will include an analysis of the  
14 updated ones --  
15 THE COURT: Okay.  
16 MR. SMITH: -- so that we can address those in  
17 argument.  
18 MR. MARKS: It was very close.  
19 THE COURT: Okay.  
20 MR. MARKS: I think we had a typo.  
21 MR. SMITH: Yeah, it was really -- it's very --  
22 there was very few differences.  
23 MR. MARKS: There's very few differences.  
24 THE COURT: All right. So this is going to be

1 exhibit --

2 THE CLERK: Well, is it one or two exhibits?

3 THE COURT: Two.

4 MR. MARKS: Two exhibits.

5 THE COURT: Two separate, yeah.

6 THE CLERK: Two separate. Okay?

7 (COUNSEL AND CLERK CONFER BRIEFLY)

8 THE COURT: 4 P's and 4 O's.

9 THE CLERK: The assets is 4 O's and then the marital  
10 balance sheet will be 4 P's.

11 MR. SMITH: There's two exhibits or one?

12 MR. MARKS: The other didn't change. Do you want to  
13 mark our copy?

14 MR. SMITH: These are the two that the clerk is  
15 marking now, Dan?

16 MR. MARKS: Yes.

17 MR. SMITH: Okay. So Mr. Marks has provided me a  
18 copy of what he's provided to the clerk, Your Honor. Thank  
19 you.

20 (DEFENDANT'S EXHIBITS OOOO AND PPPP ADMITTED)

21 (COUNSEL CONFER BRIEFLY)

22 THE COURT: I do want the exhibits for both parties,  
23 fees on both sides. Well, you're going to -- I think -- I  
24 believe they were offered.

1 MR. MARKS: They were put in yesterday.  
2 THE COURT: Okay.  
3 MR. MARKS: So here's mine.  
4 THE COURT: I believe they were admitted.  
5 MR. SMITH: What was that, Your Honor?  
6 THE COURT: Your attorneys' fees and expert fees.  
7 MR. SMITH: If they're not, we would offer them in,  
8 Your Honor.  
9 THE COURT: They were, that's Exhibits 100 through  
10 103; those were admitted. And yours are marked -- this is  
11 Exhibit Q, 4-Q?  
12 THE CLERK: Oh, this is another one?  
13 MR. MARKS: Yeah. Sorry.  
14 THE COURT: So there are two exhibits, Mr. Marks, or  
15 --  
16 UNIDENTIFIED: One.  
17 MR. MARKS: One exhibit.  
18 THE COURT: So this is 4-Q.  
19 (DEFENDANT'S EXHIBIT QQQQ ADMITTED)  
20 (COUNSEL AND CLERK CONFER)  
21 THE COURT: That's admitted.  
22 THE CLERK: It is? Okay.  
23 THE COURT: Right.  
24 MR. MARKS: This is Mr. Jimmerson's fees.

1 THE COURT: Okay. So that will be --  
2 MR. MARKS: Just for completeness.  
3 THE COURT: That will be 4-R, is admitted, as well.  
4 MR. MARKS: Just so you're complete, yes.  
5 THE COURT: Okay.  
6 (DEFENDANT'S EXHIBIT RRRR ADMITTED)  
7 THE COURT: All right, Mr. Marks, any additional?  
8 MR. MARKS: Yeah, I have the two depositions. I'm  
9 just trying to clean up the housekeeping here.  
10 MR. SMITH: Let me -- on a housekeeping matter, Your  
11 Honor, I think Mr. Marks and our firm will have incurred  
12 additional charges as part of this file. So I think it makes  
13 --  
14 THE COURT: Right.  
15 MR. SMITH: -- it seems reasonable, Your Honor --  
16 THE COURT: To submit a supplement, right. That's  
17 what I would expect from both sides.  
18 MR. MARKS: And I'm not sure Mr. Teichner submitted  
19 his bills.  
20 THE COURT: Okay.  
21 MR. MARKS: I'm going to submit those as part of the  
22 supplement.  
23 THE COURT: Okay.  
24 MR. SMITH: I --

1 MR. MARKS: I'm not sure he's attached --  
2 (COUNSEL CONFER BRIEFLY)  
3 THE COURT: Mr. Smith, do you have Exhibit 123?  
4 MR. SMITH: It's possible.  
5 (COUNSEL CONFER BRIEFLY)  
6 (COURT AND CLERK CONFER BRIEFLY)  
7 THE CLERK: Is that being admitted?  
8 MR. SMITH: The thing? What's that?  
9 THE COURT: 123.  
10 MR. SMITH: Oh, yes.  
11 THE CLERK: 123.  
12 MR. SMITH: Yes, 123 is.  
13 THE COURT: I don't believe there was any objection  
14 to that. Exhibit 123.  
15 (PLAINTIFF'S EXHIBIT 123 ADMITTED)  
16 MR. MARKS: Your Honor, I have the two depositions.  
17 Do you want me to give them to you?  
18 THE COURT: Yes. Well, let's -- no, let's -- we're  
19 going to mark the deposition transcripts as exhibits, as well.  
20 MR. MARKS: Yeah, so we'll give them to the clerk.  
21 THE COURT: Yes.  
22 THE CLERK: Oh, they're not being published?  
23 THE COURT: No. I think these were --  
24 MR. MARKS: These were relating to your ruling --

1 THE COURT: Just Mr. Kogod's are being published,  
2 right. So I believe the understanding -- Mr. Smith --

3 MR. MARKS: I have a question about that. Can I --  
4 Mr. Smith gave you his portions; I was going to give you mine.

5 THE COURT: Okay. And those are the complete  
6 depositions.

7 MR. MARKS: Well (indiscernible).

8 THE COURT: Right. And I believe Mr. Smith -- Ms.  
9 Varshay, did you stipulate --

10 MS. VARSHAY: Yeah.

11 THE COURT: I think, previously, we agreed that  
12 these two deposition transcripts would come in --

13 MS. VARSHAY: Which two?

14 THE COURT: -- entirely?

15 MS. VARSHAY: Which two?

16 THE COURT: They're the --

17 MR. MARKS: Eugene and Stephanie.

18 MS. VARSHAY: Oh, we did agree? I don't know about  
19 that.

20 (COUNSEL CONFER BRIEFLY)

21 THE COURT: Right. I believe, at the beginning --

22 MR. MARKS: These were the two --

23 THE COURT: -- you had indicated you didn't have a  
24 problem with those coming in, and agreed --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

(COUNSEL CONFER BRIEFLY)

THE COURT: Right. Okay. So we're going to mark those --

MR. SMITH: And I assume that there's going to be a form of the question -- I can't remember if there were or not.

MR. MARKS: There were, it was pretty calm.

MR. SMITH: Yeah. Yeah.

THE COURT: Okay. So these are going to be admitted as -- admitted as 4-S and T.

THE CLERK: 4-S and 4-T?

(DEFENDANT'S EXHIBITS SSSS AND TTTT ADMITTED)

THE COURT: And then the deposition transcripts that you --

MS. VARSHAY: We've already given them the excerpts.

MR. SMITH: And what about the transcripts themselves (indiscernible).

MS. VARSHAY: Yes. Yes.

THE COURT: Yeah, we need to mark those. And then I'm going to lay out the protocol on how we're going to --

MR. MARKS: I have one question --

MR. SMITH: And we have rebuttal from Mr. Leauanae.

THE COURT: Okay. No, and I get that, and you'll get that --

MR. SMITH: Because I have a lot of time left.

1 (COUNSEL CONFER BRIEFLY)

2 THE COURT: It probably doesn't matter, she just

3 needs to know which is which.

4 MR. MARKS: So what are the next two?

5 THE COURT: S -- 4-S and 4-T.

6 MR. MARKS: Okay. So Eugene would be SSSS --

7 THE COURT: Eugene is four S's, and then --

8 MR. MARKS: Stephanie would be 4-T.

9 THE COURT: -- Stephanie is four T's.

10 MR. MARKS: Your Honor, I have a question on this

11 murky publication of the deposition. I -- this is published.

12 THE COURT: Mr. Kogod's deposition.

13 MR. MARKS: Right. Other than what was read for

14 impeachment, you can't, in closing or in a brief, quote what

15 was not read or utilized in the trial.

16 THE COURT: If it hasn't been referenced in some

17 specific capacity, and that includes Anthem Forensics' report

18 --

19 MR. MARKS: I understand.

20 THE COURT: -- it's not something that I'm going to

21 be looking at.

22 MR. SMITH: (Indiscernible)

23 MR. MARKS: And I used --

24 THE COURT: Right.

1 MR. MARKS: I used Mrs. Kogod's depo, which some  
2 judges would say it's published if you use it. But respecting  
3 your --  
4 THE COURT: Right.  
5 MR. MARKS: -- how you did it --  
6 THE COURT: I --  
7 MR. MARKS: -- it would be in the record for  
8 impeachment and for you -- and for any purpose, as a party --  
9 THE COURT: Well --  
10 MR. MARKS: -- it doesn't --  
11 THE COURT: -- understood, but --  
12 MR. MARKS: It's not officially published.  
13 THE COURT: Yeah, I --  
14 MR. MARKS: Okay. Just so we're clear.  
15 THE COURT: Again, I've got plenty of reading to do,  
16 so --  
17 MR. MARKS: Okay. So just so we're clear.  
18 MR. SMITH: Okay. So I just wanted that clear;  
19 that's the Court's ruling --  
20 THE COURT: Correct.  
21 MR. SMITH: -- in terms of the --  
22 THE COURT: Correct.  
23 MR. MARKS: And just I preserve my objection to the  
24 appellate court, to reading outside of court. I'm not waiving

1 that just because I'm cooperating with the Court's ruling.

2 THE COURT: I -- understood.

3 MR. MARKS: Is that clear on the record?

4 THE COURT: Right. Understood.

5 THE CLERK: So with these, are these exhibits or are  
6 they --

7 THE COURT: Yeah. Are you talking about these  
8 depositions?

9 MR. SMITH: (Indiscernible)

10 MR. MARKS: All the depositions I started to read by  
11 saying, I thought there was a case, and I thought the proper  
12 procedure is it has to be read. But you've done your  
13 procedure, where we can file our objections --

14 THE COURT: Well, and that came up early on. Did  
15 you find a case, since we've been in court.

16 MR. MARKS: (Indiscernible) where the judge can't  
17 reread a transcript.

18 THE COURT: Well, then, without any legal precedent  
19 that's been offered to the Court, otherwise, I'm inclined, in  
20 lieu of having the transcripts read into the record, I  
21 maintain the same protocol that I discussed, based on the  
22 discussion we had, that we will mark these exhibits -- these  
23 deposition transcripts as exhibits.

24 It's my understanding that a summary of the excerpts

1 that will be relied on by the plaintiff has been forwarded to  
2 defendant. You'll have the opportunity to lodge any  
3 objections regarding those specific excerpts, and then I will  
4 make a determination as to what portion, based on my rulings  
5 in that regard, that I will read.

6 MR. MARKS: So --

7 MS. VARSHAY: Those objections being a written form,  
8 and then we get to respond to it, or --

9 THE COURT: Well, it should be in a written form.  
10 So I'm going to lay out that protocol.

11 MR. SMITH: Will you give us some time to do that?

12 THE COURT: Right.

13 MR. SMITH: We're just getting those excerpts now.

14 THE COURT: Right.

15 MR. SMITH: We have a -- for some reason, on the  
16 reporter on Nadine Khapsalis, she gave us a certified  
17 transcript, and said it was a sealed transcript. Is that  
18 acceptable?

19 MR. MARKS: That's acceptable.

20 MR. SMITH: All right.

21 THE COURT: Okay. So this will be exhibit -- next  
22 in order on plaintiff's side is?

23 MR. SMITH: So we actually are offering all of the  
24 depositions. So should we mark these as exhibits then?

1 THE COURT: Yeah, that's what I'm inclined to do --  
2 MR. SMITH: Okay.  
3 THE COURT: -- is have them marked as exhibits.  
4 MR. SMITH: All right. So let's -- we'll just go in  
5 order then. Nadine's certified transcript will be the next.  
6 (COUNSEL AND CLERK CONFER BRIEFLY)  
7 THE COURT: Okay. Okay. All right.  
8 (PLAINTIFF'S EXHIBITS 125 ADMITTED)  
9 THE COURT: Okay. Okay. Mr. Marks?  
10 MR. SMITH: What about the protocol on the exhibits  
11 that are attached to the depositions; how are we going to do  
12 that? Because those are brought in through the witnesses  
13 themselves.  
14 THE COURT: Right. I -- really, it -- and you're  
15 talking about some exhibits that are not already part of the  
16 record?  
17 UNIDENTIFIED: Yes.  
18 MR. SMITH: A few, a few. Not many, but there's a  
19 few.  
20 MR. MARKS: We'll make our objections at the time.  
21 THE COURT: I'll deal with it the same way.  
22 MR. MARKS: The problem was, on the ones we did, we  
23 added them as separate exhibits, and they weren't objected to.  
24 If there's objections when it moved in (indiscernible) the

1 depo (indiscernible).

2 MR. SMITH: Technically, these had to be moved in by  
3 the party who actually stated, I've seen the exhibit, yes,  
4 I've seen this, I know this, and (indiscernible).

5 THE COURT: Well, I would use the same protocol, I  
6 would expect. To the extent that Mr. Marks has any objections  
7 to any of the exhibits that are attached to the deposition  
8 transcript, I'm going to give him that opportunity to do that.

9 MR. SMITH: Very good. All right.

10 MR. MARKS: But I think, honestly, anything of super  
11 significance, they've moved in.

12 THE COURT: It's already been.

13 MR. MARKS: It's in.

14 THE COURT: It's already part of the record.

15 MR. SMITH: (Indiscernible)

16 MR. MARKS: I can't imagine there's something --

17 MR. SMITH: The only thing I can think of is that  
18 each of them went through and gave their own testimony about  
19 specific documents. So it may be easier for the Court, when  
20 reviewing that, to look at those specific documents, as  
21 opposed to the larger document that we've admitted, in terms  
22 of all the statements and --

23 THE COURT: Well, and to that extent, what I would  
24 expect is that, if it is already part of the record, there

1 really would be no basis to object to it.

2 MR. MARKS: To object, right. I would say 99  
3 percent is part of the record --

4 THE COURT: Right.

5 MR. MARKS: -- and we would have moved it in.

6 THE COURT: All right. Do you have any additional  
7 examination, Mr. Marks?

8 MR. MARKS: No, Your Honor. I just want to make  
9 sure all our exhibits --

10 (COUNSEL CONFER BRIEFLY)

11 MR. MARKS: Okay. We rest.

12 THE COURT: Okay. All right. Mr. Smith indicated  
13 he had rebuttal, he had a rebuttal witness. He has 10 minutes  
14 remaining.

15 MR. MARKS: How much do I have?

16 THE COURT: Oh, no. Wait a second. Hang on.

17 MR. MARKS: He said he was out of time.

18 THE COURT: He has 16 minutes remaining; you have --

19 (COUNSEL CONFER BRIEFLY)

20 MR. MARKS: Your Honor, I thought he had 26 minutes  
21 when he started the afternoon. He had Mr. Kogod on the stand  
22 on cross. I don't -- he said, I don't see -- and Mr.  
23 Teichner. How can he still have time?

24 THE COURT: He had -- yeah, and you have 23 minutes

1 left.

2 MR. MARKS: He had six -- he had 24 minutes or 26  
3 minutes before Mr. Teichner, and then he crossed --

4 THE COURT: No. No. He had -- hang on.

5 (COUNSEL CONFER BRIEFLY)

6 THE COURT: He used -- he had 35 minutes --

7 MR. SMITH: I only used like 10 minutes. The rest  
8 of it's been --

9 MR. MARKS: He used some time with my client.

10 MR. SMITH: Ten minutes.

11 THE COURT: He used 10 minutes.

12 MR. SMITH: Right.

13 MR. MARKS: And Mr. Teichner.

14 THE COURT: Mr. Teichner was from 11:45 to 11:52 on  
15 voir dire, 2:03 to 2:10 and 2:17 to 2:19, and then 3:47 to  
16 3:57 on the defendant, so --

17 MR. SMITH: Right.

18 (COUNSEL CONFER BRIEFLY)

19 MR. SMITH: I recall Joseph Leauanae.

20 (COUNSEL CONFER BRIEFLY)

21 THE COURT: Please remain standing and raise your  
22 right hand to be sworn.

23 THE CLERK: Do you solemnly swear that the testimony  
24 you're about to give in this action shall be the truth, the

1 whole truth, and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE COURT: You may be seated. Counsel, you may  
4 proceed.

5 JOSEPH LEAUANAE

6 called as a rebuttal witness on behalf of the Plaintiff and  
7 being first duly sworn, testified as follows on:

8 DIRECT EXAMINATION

9 BY MR. SMITH:

10 Q Exhibit 64 and 65, which --

11 THE COURT: Well, let me have you state your full  
12 name for the record, first, and spell your --

13 MR. SMITH: Oh, sorry.

14 THE COURT: Spell your last name, please.

15 THE WITNESS: Leauanae, L-e-a-u-a-n, as in Nancy, a-  
16 e.

17 MR. SMITH: Now I have 15 and a half minutes.

18 BY MR. SMITH:

19 Q The -- you had two rebuttal report to Mr. Teichner's  
20 report, that's 64 and 65. Is that right?

21 MS. VARSHAY: Yes. Yes. It's in Volume 4.

22 THE WITNESS: I have 64 in front of me.

23 BY MR. SMITH:

24 Q All right. Now do you recognize that document?

1 A I do.

2 Q Is that your rebuttal report dated February 5th,  
3 2016?

4 A It is.

5 MR. SMITH: And I would move for the admission.

6 MR. MARKS: No objection.

7 THE COURT: Exhibit 64 is admitted.

8 (PLAINTIFF'S EXHIBIT 64 ADMITTED)

9 BY MR. SMITH:

10 Q And Exhibit 65. Can you tell me what that document  
11 is?

12 A 65 is a summation of footnotes that were contained  
13 in various reports. I believe, actually, for these footnotes,  
14 they are for the rebuttal reports.

15 MR. SMITH: Move for the admission of 65.

16 MR. MARKS: Can I voir dire on this?

17 THE COURT: Yes, you may.

18 MR. SMITH: His time.

19 VOIR DIRE EXAMINATION

20 BY MR. MARKS:

21 Q Are these the exact same footnotes in your report,  
22 only blown up, in a different format? In other words, you're  
23 saying Footnote 1. Were these actually in your reports?

24 A Reference to these would have been in the footnotes

1 to the rebuttal report.

2 Q So you just blew up this chart of all your footnotes  
3 in all your reports, or just your rebuttal report?

4 A No. This chart was created as a document to reflect  
5 the various footnotes, and more as a correlation of the  
6 summary exhibits that support those footnotes.

7 Q And you did this for preparation for trial?

8 A I believe it may have been done in preparation for  
9 the deposition, my deposition.

10 MR. MARKS: I have no objection.

11 THE COURT: No objection?

12 MR. MARKS: No objection.

13 THE COURT: Exhibit 65 is admitted.

14 (PLAINTIFF'S EXHIBIT 65 ADMITTED)

15 BY MR. SMITH:

16 Q You've heard the testimony of Mr. Teichner about the  
17 work that he did on this case.

18 A I have.

19 Q In your opinion, as a -- well, let me first -- your  
20 CV is contained in the initial report provided by Anthem  
21 Forensics?

22 A I believe it was, yeah.

23 MR. SMITH: Yeah, I move for the admission of Mr.  
24 Leauanae as an expert, based on his CV, attached to his

1 report.

2 THE COURT: Any voir dire or objection?

3 MR. MARKS: No objection.

4 THE COURT: Okay. The Court recognizes this witness  
5 as an expert.

6 BY MR. SMITH:

7 Q Based upon your expertise in forensic accounting,  
8 and based upon the information you heard today from Mr.  
9 Teichner, did Mr. Teichner do -- did he do adequate due  
10 diligence to support the information contained in his report?

11 A In my opinion, the opinions that Mr. Teichner has  
12 rendered in his report do not reflect adequate due diligence.

13 Q Can you briefly explain that; very briefly, please?

14 A Yes. As a forensic accountant, you should be  
15 expected to do certain things. Mr. Teichner indicated in his  
16 deposition, and confirmed once again this morning, that, in  
17 reviewing the notations and the instructions that he received  
18 from Mr. Kogod, he did no additional verification procedures.  
19 Specifically, he indicated that he didn't believe, as a  
20 forensic accountant, he needed to verify any of those  
21 recitations from Mr. Kogod.

22 Q Mr. Kogod represented today that -- or testified  
23 today that the amount of money that we allocated, or you  
24 allocated in Anthem's report for Mr. Kogod was the same as the

1 money that he estimated had been spent by Gabrielle?

2 A I believe --

3 MR. MARKS: Objection. No foundation for this.

4 THE COURT: Overruled.

5 THE WITNESS: I believe I heard that testimony.

6 BY MR. SMITH:

7 Q And do you believe that -- is that accurate, based  
8 upon the report that you and Ms. Allen had prepared; that  
9 Dennis' allocation of funds, under the report that you did,  
10 under, specifically, Exhibit 6, is the same as the spending?  
11 In other words, his spending would have been equal, based upon  
12 those observations or allocations.

13 A That is not correct.

14 Q And what was the amount that was allocated to Mr.  
15 Kogod in the process of determining the excess spending for  
16 Exhibit 6?

17 A I believe it was approximately 2.4.

18 Q All right. And what he testified that he had  
19 estimated for Gabby was 1.8, I believe, correct?

20 A That sounds correct.

21 MR. SMITH: All right. All right. Nothing further.  
22 Pass the witness.

23 CROSS EXAMINATION

24 BY MR. MARKS:

1 Q In your report, Page 13 -- do you have your report,  
2 sir?

3 A I don't. Which report would this be?

4 Q December 15th, Exhibit 57.

5 A Okay.

6 MR. SMITH: It's in the first book.

7 MS. VARSHAY: It's in the same book.

8 MR. SMITH: Same book?

9 MS. VARSHAY: Yeah, Book 1.

10 THE WITNESS: Well, I'm in 64 right now.

11 (COUNSEL CONFER BRIEFLY)

12 BY MR. MARKS:

13 Q You co-authored your report, correct?

14 A That is correct.

15 Q Would you go to Page 13?

16 A Yes.

17 Q In the middle of page, "Assessment of Potential  
18 Community Waste Not Elsewhere Classified in this Report," you  
19 state, quote:

20 "While we have sought to identify potential  
21 community waste related to specific cost centers, the  
22 documentation that we have thus far received has prevented us  
23 from being able to precisely allocate other outflows between  
24 Dennis and non-community uses."

1 Did you say that?

2 A Yes.

3 Q "As such, we have prepared a summary of outflows not  
4 elsewhere classified in this report, in an attempt to allocate  
5 these outflows between Dennis and non-community uses."

6 Did you say that?

7 A Yes.

8 MR. SMITH: And Your Honor --

9 BY MR. MARKS:

10 Q You believe --

11 MR. SMITH: -- we admitted the reports, right?

12 MR. MARKS: The reports are not --

13 THE COURT: No, no, the reports are not.

14 BY MR. MARKS:

15 Q You believe that community waste is not for the  
16 expert to determine. Isn't that correct?

17 A That's correct.

18 Q And it's for the Court to determine, correct?

19 A It -- I believe that's correct, yes.

20 Q And your job is to put potential monies spent in  
21 various buckets, as you've said, and the Court will determine  
22 whether those buckets are waste or not, correct?

23 A We wear various hats. In this particular  
24 engagement, that was one of the instructions that we received,

1 yes.

2 Q All right. And you agree that it's -- you did not,  
3 in your report, have a legal determine -- a legal definition  
4 of "community waste." Is that correct?

5 A That is correct.

6 Q Okay. And you're criticizing Mr. Teichner for  
7 relying on Dennis, correct?

8 A I criticize Mr. Teichner for, essentially, taking  
9 what Mr. Kogod had told him, not doing any verification  
10 procedures on those recitations from Mr. Kogod, accept --  
11 accepting them wholly as fact, and then presenting them as an  
12 opinion.

13 Q Okay. And you and Jenny Allen took various  
14 expenditures from the bank statements, and you worked very  
15 closely with Mrs. Kogod regarding her input on those. Isn't  
16 that correct?

17 A We worked with Mrs. Kogod, where her input was  
18 helpful.

19 Q Okay. And forensic accountants do that all the  
20 time, don't they?

21 A As part of their verification procedures, in  
22 addition to other processes, yes.

23 Q When we asked you for backup on Exhibit 6, do you  
24 recall that at your deposition on February 9th --

1 A I do.

2 Q -- of 2016?

3 A I do.

4 Q And then you sent us the backup, I think, on  
5 February 13th?

6 A The 144 pages of schedules, yes.

7 Q Correct.

8 Those schedules don't provide any underlying backup  
9 or verification, do they?

10 A That's incorrect.

11 Q All they are is listings of expenditures.

12 A That is incomplete.

13 Q Okay. But that's what you provided.

14 A That is incomplete, as to what I provided.

15 Q Did you provide any checks, receipts, et al?

16 A I provided references in that 144 pages to the exact  
17 statement and the exact date of the transaction that could  
18 have been verified.

19 Q Right. But did you provide any checks, receipts, et  
20 cetera?

21 A To the extent that that information referenced Bates  
22 Numbers, it was already in the discovery file.

23 Q But in those -- in the documentation you provided,  
24 that included various references, for instance, to GMAC

1 Mortgage, correct?

2 A Yes.

3 Q It provided various hotels, correct?

4 A Transactions reflected, yes.

5 Q Okay. In those schedules, which I think are

6 admitted as Exhibit, what, 60 and 61, did you provide any

7 analysis of (indiscernible) 60 or 61, is there any analysis on

8 those charts?

9 A Yes.

10 Q Isn't it just a listing?

11 A No.

12 Q Now you've gone up against Mr. Teichner in court.

13 A I wouldn't characterize it as that. I mean, there

14 is a camaraderie between experts.

15 Q Okay. There's camaraderie, but you've also been an

16 expert, and he's been an expert opposing you. Isn't that

17 right?

18 A We've been involved in matters where our clients

19 have opposed each other, yes.

20 Q And you've testified where you thought there was no

21 waste, and he thought there was waste, correct?

22 A That's incorrect.

23 Q You never had a case regarding waste with Mr.

24 Teichner?

1 A I don't believe that characterization is correct.

2 Q Okay. Isn't it true that what you do is  
3 characterize transactions that occur over a period of time,  
4 and you're not saying the way we're characterizing them  
5 (indiscernible) community waste?

6 A Speaking specifically to this engagement, that's  
7 fair.

8 Q And community waste is a legal determination that is  
9 ultimately a finding for the trier of fact. Isn't that  
10 correct?

11 A That is correct.

12 MR. MARKS: That's all I have, Your Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q Mr. Leauanae, you had indicated that you -- or Mr.  
17 Teichner said he did have a case against you at some point,  
18 correct?

19 A Yes.

20 Q All right. I just wanted to clear that up for the  
21 record. But that case did not involve -- well, it doesn't  
22 matter. All right.

23 The -- in all of your charts that you've provided  
24 with your reports -- let's take a look at 57. In Exhibit 1 of

1 57, it -- Exhibit 1 to your report, you provide a complete  
2 outline, and I mean in excruciating detail, of all of the  
3 accounts you've received, by month, date, and you've indicated  
4 what you don't have. So anyone reading this report could know  
5 exactly what's -- what accounts that you looked at, correct?

6 A As of this date, and encompassed in Exhibit 1, yes.

7 Q And in Exhibit 2, and other exhibits, just by  
8 example, including Exhibit 2 to this report, and including  
9 Exhibit 60, when Mr. Marks asks for backup and you provide him  
10 additional information, you include the same information. Do  
11 you see that? You see a reference number, a date, an amount,  
12 a category, the use, check number, location, and the account  
13 and the amount of the check. So anyone looking at these  
14 statements could simply go to the source document that was  
15 exchanged during discovery and get this information, correct?

16 A That's correct.

17 MR. SMITH: All right. Thank you.

18 THE COURT: All right. Any additional questions,  
19 Mr. Marks?

20 (COUNSEL CONFER BRIEFLY)

21 MR. SMITH: Your Honor, just as a housekeeping  
22 matter, I had read from the deposition of Mr. Teichner today.  
23 I have the sealed transcript, if you want to publish that. I  
24 think it has to be in the record, but with the same

1 understanding, that the only portion --

2 THE COURT: The same protocol. Okay. So that will

3 be published.

4 MR. SMITH: So this will become the next in order.

5 THE CLERK: But it's being published it --

6 MR. MARKS: What number?

7 THE COURT: Yeah, we won't mark it as an exhibit --

8 MR. SMITH: Oh, okay.

9 THE COURT: -- it's just being published --

10 MR. SMITH: Good, perfect.

11 THE COURT: -- as Mr. Kogod's was.

12 MR. SMITH: Okay. Perfect.

13 And then in the transcript, you'll have the numbers

14 that were referenced, I note.

15 THE COURT: Right, right.

16 Mr. Marks, any additional --

17 MR. MARKS: I just -- Court's indulgence.

18 (PAUSE)

19 MR. MARKS: I have nothing further.

20 THE COURT: All right. You may step down.

21 Okay. Any additional testimony?

22 MR. MARKS: Court's indulgence.

23 (COUNSEL CONFER BRIEFLY)

24 MR. SMITH: I'd like to call in surrebuttal Mr.

1 Teichner, briefly.

2 THE COURT: Okay. I remind you, you're still under  
3 oath.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Counsel, you may proceed.

6 RICHARD TEICHNER

7 called as a surrebuttal witness on behalf of the Defendant and  
8 being first duly sworn, testified as follows on:

9 DIRECT EXAMINATION

10 BY MR. MARKS:

11 Q Mr. Teichner, you heard Mr. Leauanae's testimony --

12 A Yes.

13 Q -- criticizing your report as not being up to the  
14 standards of a forensic accountant?

15 A Yes.

16 Q Do you believe his report is up to the standards of  
17 a forensic accountant, that you're used to, in the 20 years of  
18 your experience?

19 A No.

20 Q And why not?

21 A Well, just for some examples, if -- again, getting  
22 back to Exhibit 6, which is the most blatant, for example,  
23 today, the testimony was that the GMAC payments were for  
24 mortgage. They classified that as a Cadillac payment, not

1 based on independent verification, but based on what they  
2 think. And I am not sure what Mr. Kogod said in a deposition  
3 about having a Cadillac.

4 But this -- this Exhibit 6 is fraught with  
5 assumptions and -- and no backup for those expenditures.  
6 They've got cash expenditures, withdrawals. They've got --  
7 blanketly took all the -- the credit card payments and put  
8 those in the column that consisted -- that they allege is  
9 community waste. They have canceled checks that they didn't  
10 receive; they assume it's community waste. They've made many,  
11 many assumptions.

12 And they claim they have backup for Exhibit 6, and  
13 the backup they -- they provided, even though there might be  
14 some references, they still -- I still don't know what kind of  
15 analysis they did to determine that a payment from a bank  
16 account, from a bank statement, how they know, necessarily,  
17 that is community waste. I mean, again, they're -- they have  
18 not provided any particular evidence saying why these items  
19 are community waste. In fact, as I just mentioned, many of --  
20 many of them are blatantly not community waste.

21 Q You heard Mr. Leauanae criticize you for relying on  
22 Dennis' testimony; you heard that, correct?

23 A Yes.

24 Q Didn't you hear Ms. Allen relying on Dennis'

1 deposition and financial disclosure form to create their  
2 Exhibit 6?

3 A She did mention that, yes.

4 Q Okay. So is that being consistent?

5 A No.

6 Q And didn't they rely on the plaintiff for a part of  
7 that analysis?

8 A Right. As -- as I mentioned, as I testified this  
9 morning, or earlier today, is that it -- both in the report  
10 and in Mr. Leauanae's deposition, they said they relied on  
11 Gabrielle, on Mr. Smith, and on the Court's -- the Court's  
12 directive. And they didn't say anything -- they didn't say  
13 they relied on anything else. I'm not saying they didn't, but  
14 I'm just, you know, saying -- I'm just quoting what they said.

15 Q Did you see any -- did you see any verification, as  
16 you would normally, when an accountant is doing an audit, and  
17 you do third-party verification; did you see any third-party  
18 verification here in their report?

19 A No.

20 Q And when they refer to "backup" for Exhibit 6, do  
21 you consider that backup, what they sent me?

22 A No. What -- again, the -- to some extent, they do  
23 refer to -- you know, to certain documents. But again,  
24 there's no -- they don't tell why they say these items are

1 community waste.

2 Q So there's no analysis in their report.

3 A That -- that I see, no.

4 Q It's basically a listing (indiscernible).

5 A Yeah. Yeah.

6 MR. MARKS: All right. I'll pass the witness.

7 CROSS EXAMINATION

8 BY MR. SMITH:

9 Q No other third-party information, really?

10 A I'm sorry.

11 Q I thought you told me you read all the depositions.

12 A Yes.

13 Q Well, I thought you said -- just said there was no  
14 third-party information provided by --

15 MR. MARKS: I said "verification," Counsel;  
16 "verification," not "information."

17 BY MR. SMITH:

18 Q Isn't the process of verification or doing a  
19 forensic accounting looking into others' testimony in regard  
20 to how they characterize certain expenses?

21 A Certainly.

22 Q Wouldn't it be significant if Nadya said, I spent  
23 this money here? That's a significant fact, correct?

24 A Yes, and I'm -- I'm not -- I'm not saying that she

1 didn't, and I'm not --

2 Q Yeah, but the answer is, yes, that's a significant  
3 fact.

4 A Well, you gave me an example, but --

5 Q And that's third-party verification, when you say,  
6 is this expense something you spent.

7 A That is a third-party verification --

8 Q Yes.

9 A -- which may --

10 Q And so --

11 A -- have been --

12 Q -- if you read --

13 A -- refuted by --

14 Q Thank you --

15 A -- Mr. Kogod.

16 Q -- Mr. Teichner.

17 If you read all those depositions, you know that,  
18 throughout those depositions, we asked specific questions to  
19 those individuals to verify information that is contained in  
20 Mr. Leauanae's report, right?

21 A No. No.

22 Q Okay. Well --

23 A Only -- only --

24 Q -- I understand --

1 A -- to a --

2 Q -- you don't believe --

3 A Only to a --

4 Q -- that's true.

5 A -- small extent.

6 Q Okay. Thank you.

7 A And say --

8 MR. SMITH: That's all I have, Your Honor.

9 MR. MARKS: I have one follow-up.

10 THE COURT: Okay.

11 REDIRECT EXAMINATION

12 BY MR. MARKS:

13 Q From your review of the depositions, did Mr. Smith  
14 ever ask Dennis about Exhibit 6's \$3.6 million?

15 A No, not that I --

16 Q To the extent -- and if the 3.6 million was such a  
17 big deal in this case, should they have asked Dennis about it  
18 during his deposition?

19 A I would think so, yes.

20 RECROSS EXAMINATION

21 BY MR. SMITH:

22 Q In fact, all of the information that's contained in  
23 Exhibit 6 is comprised of expenditures that are addressed in  
24 the exhibit that was presented to Dennis at his deposition,

1 and that we went through, line by line. Do you remember how  
2 many transactions there were?

3 A We did not go through, line by line --

4 MR. MARKS: Objection.

5 A -- in Exhibit 6 at all.

6 MR. MARKS: That assumes facts not in evidence.

7 MR. SMITH: Well, no, no.

8 THE WITNESS: Not when I was there.

9 THE COURT: Hang on.

10 MR. MARKS: (Indiscernible)

11 THE WITNESS: Not what I've read.

12 THE COURT: There's an objection.

13 MR. MARKS: Assumes facts not in evidence.

14 THE COURT: A foundation needs to be laid. The  
15 objection is sustained.

16 MR. SMITH: We'll just -- we're done with this  
17 witness. We'll recall mister -- do you want to come up?

18 THE COURT: Okay. You may step down.

19 MR. MARKS: No, you can't have sur-sur-surrebuttal.  
20 This is -- there's rebuttal, we did surrebuttal, I thought  
21 that -- that's got to be the end, isn't it?

22 THE COURT: Well, what's the offer?

23 MR. MARKS: We're doing surrebuttal.

24 THE COURT: I --

1 MR. SMITH: The offer is --

2 MR. MARKS: The depositions are going to speak for  
3 themselves. You published Dennis' deposition; you can see what he  
4 was asked. You can -- the trier of fact, you can make that  
5 determination.

6 THE COURT: Is there an offer as to the necessity of  
7 any additional testimony?

8 MR. SMITH: Well, the offer is that Mr. Leauanae  
9 would testify that the -- if he were presented with the same  
10 information that Mr. Teichner was presented with, in terms of  
11 a report like his, the efforts he would have made, and what he  
12 would have done to perform his due diligence.

13 MR. MARKS: He already said that.

14 THE COURT: Well, and I don't need that.

15 MR. SMITH: Okay.

16 THE COURT: I'm good.

17 MR. MARKS: We did the same thing.

18 THE COURT: All right.

19 MR. MARKS: Do we have any time left?

20 THE COURT: You've got a couple of minutes each.  
21 Did you want to make a closing?

22 MR. SMITH: A closing in a couple of minutes?

23 MR. MARKS: Your Honor, what's your pleasure  
24 regarding closings, oral or briefs?

1 THE COURT: Well, here's where I'm at. First of  
2 all, I do want to outline a time line. We have the issue on  
3 the deposition excerpts. I want to coordinate that in  
4 conjunction with the real estate appraisals.

5 My thought is to set a -- set, basically, just some  
6 type of a status hearing, which serves as a deadline to have  
7 those reports completed; and then, at that status hearing,  
8 determine whether or not I need to hear from those experts.  
9 It would be non-evidentiary. I just want to get an idea of  
10 whether or not there's the need for anything further.

11 MR. MARKS: But before we go there, you understand  
12 we have an objection that it was after the discovery cutoff.

13 THE COURT: Right, and I --

14 MR. MARKS: In other words, we're hampered by the  
15 fact they updated a week before trial, and two months after  
16 the --

17 THE COURT: Well, we -- and we've argued this.

18 MR. SMITH: (Indiscernible)

19 THE COURT: I previously ruled.

20 MR. MARKS: I thought you didn't rule, and you said  
21 --

22 THE COURT: No, I did.

23 MR. MARKS: -- we'd argue it Friday.

24 THE COURT: No, listen, I ruled. I made a couple --

1 well, I did, at one point, defer to another time to actually  
2 rule on the motions.

3 But here's where I'm at, regardless of how it's come  
4 down. I said before, I'm not inclined to go down the path of  
5 having experts provide the Court with an opinion as to fair  
6 rental value; I said that earlier.

7 MR. MARKS: Right.

8 THE COURT: I said I'm not --

9 MR. MARKS: We had a number --

10 THE COURT: So, at the same time I was saying that,  
11 I said, I am inclined, given the timing of when the prior  
12 appraisals were completed, to -- because it -- I am inclined,  
13 the bottom line is, to have updated appraisals submitted. The  
14 plaintiff intended to offer updated appraisals; I'm not  
15 receiving those appraisals.

16 I've already -- and both sides -- and Mr. Marks,  
17 during your case, you said you want the real estate appraisals  
18 in; I said no.

19 MR. MARKS: Well, we objected, and you never ruled,  
20 so maybe after --

21 THE COURT: Well, my --

22 MR. MARKS: We objected to the drive-by. They had  
23 an appraisal. They went ahead and just did an updated drive-  
24 by, trying to change the values by a huge amount on a drive-

1 by, based on that alone, where the guy never went --

2 THE COURT: Well --

3 MR. MARKS: -- in the house.

4 THE COURT: And again, that goes to --

5 MR. MARKS: (Indiscernible)

6 THE COURT: And if the -- if defendant's expert  
7 basically says nothing has changed since the prior appraisal  
8 was completed, then I understand there's going to be a  
9 difference, and I've got to determine what I need to do to  
10 resolve that, whether I have additional, limited evidence  
11 taken in by the real estate appraisals, but I want to give you  
12 that opportunity.

13 If you're telling me, right now, look, we're  
14 sticking with those numbers, at that time, that's fine. But  
15 I'm going to give you that chance. So I'm just looking at how  
16 much time you want for that.

17 MR. MARKS: So you're considering the drive-by over  
18 my objection, just so the record is clear.

19 THE COURT: Well, no, no.

20 MR. MARKS: No?

21 THE COURT: For the -- for sake of this record, I  
22 want to be very clear. I have not considered anything --

23 MR. MARKS: Okay.

24 THE COURT: -- in terms of real estate appraisals.

1 MR. MARKS: Okay. Fair enough.

2 THE COURT: Nothing has been admitted, there's not  
3 been a shred of testimony offered. Other than what both  
4 parties may have reflected on their marital balance sheets,  
5 which have come into the record, I have no evidence, right  
6 now, as I sit here, regarding real estate values.

7 MR. MARKS: Okay.

8 THE COURT: So we can get into this drive-by notion,  
9 whatever it is. I haven't considered anything.

10 MR. MARKS: Okay.

11 THE COURT: So I'm just looking for a time line, set  
12 really what I hope is a short hearing, to say, okay, do we --  
13 do I need anything further, or are our numbers close enough  
14 that --

15 MR. MARKS: Okay. That's fine.

16 MR. SMITH: That will be up to Mr. Marks because  
17 it's his expert that needs the time.

18 THE COURT: How much time, Mr. Marks, do you --

19 (COUNSEL CONFER BRIEFLY)

20 MR. MARKS: We have to call him. When I talk to him  
21 --

22 THE COURT: All right.

23 MR. MARKS: Realize, I called him, I think, Thursday  
24 or Friday, called him Monday, had to call him back Tuesday to

1 cancel everything. He was telling me three weeks.

2 THE COURT: So, if we come back in 30 days, do you  
3 think that's sufficient? And I'm not trying to pinch, in  
4 terms of time, but --

5 (COUNSEL CONFER BRIEFLY)

6 MR. SMITH: I'd like the record to be clear, when we  
7 submitted the large exhibit that's on flash drive, so the  
8 Court, when looking through it, will know, we submitted all of  
9 the disclosures. That would include both parties' disclosures  
10 of expert reports, so --

11 MS. VARSHAY: Of the appraisals.

12 MR. SMITH: I think the appraisals would be included  
13 in that giant morass. But we understand that you haven't  
14 considered those at this point --

15 THE COURT: Right.

16 MR. SMITH: -- you haven't even looked at that. And  
17 that --

18 THE COURT: They haven't been admitted.

19 MR. SMITH: Those would be considered by the updated  
20 appraisals at the time future.

21 THE COURT: Right.

22 MR. SMITH: And then you'll make a determination --

23 THE COURT: Right.

24 MR. SMITH: -- as to how you're going to deal with

1 them then.

2 THE COURT: So I'm looking at March 29th, at 1:30,  
3 if you can check your calendars.

4 (COUNSEL CONFER BRIEFLY)

5 THE COURT: And I don't need the parties here.

6 MR. SMITH: That's my Easter holiday, Your Honor.

7 THE COURT: That's fine, that --

8 MR. SMITH: Is that Easter? No.

9 (COUNSEL CONFER BRIEFLY)

10 THE COURT: Right. It's the week --

11 MR. SMITH: I thought I was going to be in New York.  
12 I don't know if that's --

13 THE COURT: Well, and Mr. Kogod indicates he won't  
14 be able to be here, but really, the only purpose of that  
15 hearing is to determine whether or not I'm going to need any  
16 testimony from the real estate appraisers. Right, either  
17 party may appear by phone, that's fine.

18 (COUNSEL CONFER BRIEFLY)

19 MR. SMITH: Okay. I'm told I'm in trial that day.

20 THE COURT: How about April 6th, at 11?

21 MS. VARSHAY: April 6th, at 11?

22 (COUNSEL CONFER BRIEFLY)

23 MS. VARSHAY: Yes, that's fine.

24 MR. SMITH: That works.

1 THE COURT: Mr. Marks?

2 MR. MARKS: That's fine.

3 THE COURT: All right. And either party may appear  
4 by phone at that, or -- and there's no necessity that you  
5 appear. So I'll make a determination at that time whether or  
6 not I'm going to need anything further, just from the real  
7 estate appraisers.

8 MR. MARKS: If we get the appraisals, do you want us  
9 to bring them, file them; what do you want us to do?

10 THE COURT: What's that?

11 MR. MARKS: If we can get the appraisals by then, do  
12 you want us to just bring them to court, exchange them with  
13 counsel, file them --

14 THE COURT: By --

15 MR. MARKS: -- or --

16 THE COURT: Well, I would exchange them prior to  
17 that point in time. My intent, also, at that hearing, is to  
18 address the deposition excerpts, and make rulings on any  
19 objections that have been made, so --

20 MR. SMITH: So should we say a week before then, by  
21 at least a week, we have that information?

22 THE COURT: If you have the -- can you have any  
23 objections --

24 MR. SMITH: (Indiscernible)

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3  
4       DENNIS KOGOD,

5                                   Appellant/Cross-Respondent,

6       v.

7  
8       GABRIELLE CIOFFI-KOGOD,

9                                   Respondent/Cross-Appellant.  
10

                                  Electronically Filed  
                                  Aug 07 2017 08:17 a.m.  
                                  Elizabeth A. Brown  
                                  Clerk of Supreme Court  
Supreme Court Case No. 1994  
District Court Case No.  
D-13-489442-D

11  
12                                   **RESPONDENT/CROSS-APPELLANT'S APPENDIX**

13  
14                                   RADFORD J. SMITH, CHARTERED  
15                                   RADFORD J. SMITH, ESQ.  
16                                   Nevada Bar No. 002791  
17                                   GARIMA VARSHNEY, ESQ.  
18                                   Nevada Bar No. 011878  
19                                   2470 St. Rose Parkway, Suite 206  
20                                   Henderson, Nevada 89074  
21                                   (702) 990-6448  
22                                   rsmith@radfordsmith.com  
23  
24  
25  
26  
27  
28

1                    **INDEX TO RESPONDENT/CROSS-APPELLANT'S APPENDIX**

2

3                    

<b>Document</b>	<b>Page No.</b>
Non-Jury Trial Transcript for February 26, 2016 <sup>1</sup>	RA 0001-00188

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27                    

---

<sup>1</sup> Appellant has included all the remaining Trial Transcripts in his Appendix. However, the transcript of  
28 the Trial on February 26, 2016 is incomplete in the Appellant's Appendix and is therefore being included  
in the Respondent's Appendix.

1 TRANS

2 COPY

FILED

APR 28 2016

*Alvin J. Blum*  
CLERK OF COURT

3  
4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7 GABRIELLE CIOFFI-KOGOD, )

8 Plaintiff, )

CASE NO. D-13-489442-D

9 vs. )

DEPT. Q

10 DENNIS L. KOGOD, )

(SEALED)

11 Defendant. )

12  
13 BEFORE THE HONORABLE BRYCE C. DUCKWORTH  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: NON-JURY TRIAL - VOL. II

16 FRIDAY, FEBRUARY 26, 2016

17 APPEARANCES:

18 The Plaintiff:  
19 For the Plaintiff:

GABRIELLE ROSE CIOFFI-KOGOD  
RADFORD SMITH, ESQ.  
GARIMA VARSHNEY, ESQ.  
2470 St. Rose Parkway, Suite 206  
Henderson, Nevada 89074  
(702) 990-6448

21 The Defendant:  
22 For the Defendant:

DENNIS L. KOGOD  
DANIEL MARKS, ESQ.  
NICOLE YOUNG, ESQ.  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-6812

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X   O F   W I T N E S S E S

DIRECT   CROSS   REDIRECT   RECROSS   VOIR  
DIRE

FRIDAY, FEBRUARY 26, 2016

PLAINTIFF'S WITNESSES

Joseph Leauanae (Rebuttal)	343	347	353	--	344
-------------------------------	-----	-----	-----	----	-----

DEFENDANT'S WITNESSES:

Robert Teichner (Surrebuttal)	356	359	361	361	
----------------------------------	-----	-----	-----	-----	--

\* \* \* \* \*

I N D E X O F E X H I B I T S

ADMITTED

FRIDAY, FEBRUARY 26, 2016

PLAINTIFF'S EXHIBITS:

64 - Rebuttal report	344
65 - Chart	345
108 - Bank Statements	304
123 - Bills	332
124 - PCPD	321
125 - Transcript	339

DEFENDANT'S EXHIBITS:

F - Surrebuttal report	230
S - Bank of America statements	303
T - Bank of America statements	304
U through EE - Accounts statements	305
MM through WW - Account statements	306
SSS - NEA documents	307
TTT - NEA documents	307
WWW - DaVita documents	307
YYY - Radiology Partners documents	308
ZZZ - Radiology Partners documents	309
GGGG - Movie	311
HHHH - USB statement	311
IIII - Unidentified	311

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X   O F   E X H I B I T S (CONT.)

ADMITTED

DEFENDANT'S EXHIBITS:

JJJJ - W-2s	311
KKKK - Life Insurance information	312
MMMM - Options information	297
NNNN - Options information	297
OOOO and PPPP - Marital balance sheet	329
QQQQ - Jimmerson fees	330
RRRR - Jimmerson fees	331
SSSS and TTTT - Transcripts	334

1 THE COURT: All right. We are back on the record in  
2 the Cioffi-Kogod matter.

3 MR. MARKS: Your Honor, Court's indulgence for a  
4 second.

5 THE COURT: Okay. I believe we'll have Mr. Teichner  
6 take the stand, though.

7 MR. MARKS: Yeah, that's fine.

8 THE COURT: Well, okay. Please, go ahead.

9 (COUNSEL CONFER BRIEFLY)

10 MR. MARKS: Your Honor, I just was handed a proposed  
11 sheet by counsel, and he's dealing with this same issue  
12 regarding the stock that there was some testimony on, and he's  
13 added a bunch of other stock there was no testimony on. It's  
14 like I have a real concern if you use a sheet in which there's  
15 no testimony. Is that where we'll deal with that in closing  
16 or --

17 THE COURT: Well, I have no idea what you're  
18 referring to, so --

19 MR. MARKS: All right. Is this in evidence,  
20 Counsel? You just handed it to me.

21 MR. SMITH: No. The -- and again, I don't want to  
22 use any up of my time if that's what we're doing here. The  
23 testimony --

24 THE COURT: Well, it's going on someone's time.

1 MR. SMITH: Well, the testimony was that it was on  
2 Form 4 of the United States Security Exchange Commission  
3 filing. That's what Mr. Kogod testified about, 110 shares  
4 (sic). The form, which is a public record the Court can take  
5 judicial notice of actually indicates 120,000 shares, and it  
6 lays out all of the information that we've now added to the  
7 PCPD.

8 There's no -- on the PCPD from defendant, there's no  
9 reference to this stock holding. So -- and I think he  
10 testified that it's all in a accountant UBS, and we don't have  
11 access to these accounts, and it's only happened in the last  
12 few days. So we don't know what happened to it. But we do  
13 know it's on the Form 4. And again, that's a public record.  
14 So --

15 MR. MARKS: But --

16 THE COURT: Has that form been admitted?

17 MR. SMITH: No, but we certainly could.

18 MR. MARKS: But Your Honor, here's the problem. I  
19 think my client testified that, on certain SEC documents, it  
20 would have the total sale, but it wouldn't take into account  
21 on certain documents that there was a strike price --

22 THE COURT: Right.

23 MR. MARKS: And he testified --

24 THE COURT: In terms of the option --

1 MR. MARKS: -- and then they just ignored that in  
2 this form. So I just want the Court to be aware, we're trying  
3 to finish, we're trying to do things quickly. He never asked  
4 questions about other restricted stock, other unvested.

5 MR. SMITH: Well, is this --

6 MR. MARKS: And he's added on a chart. I don't know  
7 what he's going to do. He never asked my client any questions  
8 about it.

9 MR. SMITH: What's that suggestion, here, that these  
10 things don't exist? He did this two days before the trial,  
11 and it's in a Form 4 that --

12 MR. MARKS: The numbers are wrong.

13 MR. SMITH: -- we filed with the United States  
14 Securities Exchange Commission.

15 MR. MARKS: But the numbers are wrong. Simply, the  
16 numbers are wrong.

17 MR. SMITH: Well, look, the numbers are contained in  
18 Form 4 if you would have contested. But what are you going to  
19 say, that we're going to leave that asset out because he did  
20 it two days before trial? I mean, I don't even understand the  
21 argument.

22 THE COURT: Yeah, I'm not sure what you're asking me  
23 to do.

24 MR. MARKS: We sent them --

1 THE COURT: If there's --

2 MR. MARKS: -- the statements. There -- we are --  
3 my client testified that it would say he sold shares at a  
4 price, but not, in that document, give the strike price. We  
5 sent them UBS documents, showing the exact amount that went  
6 into the account after the trade.

7 MR. SMITH: But it didn't show the stock. It's  
8 120,000 shares that haven't been realized. How do you show  
9 the stock? Where's the statement that shows the stock?

10 MR. MARKS: We gave them the -- we gave them all of  
11 the documentation. And they have access to Bob Gable, who was  
12 their broker for both of them.

13 MR. SMITH: This is silly. They --

14 MR. MARKS: It's not silly.

15 MR. SMITH: -- this happened two days -- okay.

16 MR. MARKS: They're trying to say there's money that  
17 we don't have. He had a window; he, on the stand, testified  
18 that he had that window or could lose it.

19 MR. SMITH: On the stand, he testified he had  
20 110,000 shares. It actually turns out that the document he  
21 filed with the SSC (sic), through his attorney in fact, says  
22 120,816. I'm not making this stuff up.

23 MR. MARKS: Is this in evidence yet?

24 MR. SMITH: If it doesn't exist, it doesn't exist.

1 He's here, he can explain it to us.

2 MR. MARKS: All right. Then --

3 MR. SMITH: But here's the form.

4 MR. MARKS: I have a document; we'll just introduce  
5 it, Your Honor, please.

6 THE COURT: Okay. All right. I remind you you're  
7 still under oath.

8 MR. MARKS: Can we have a time check, Your Honor,  
9 before we start?

10 THE COURT: You've used 390 minutes.

11 MR. MARKS: What do I have left?

12 THE COURT: One hundred and fifty minutes.

13 MR. MARKS: What does Rad have left?

14 THE COURT: Thirty-five minutes.

15 MR. MARKS: So 150 is 2 hours.

16 THE COURT: Yeah.

17 MR. MARKS: Because I want to save a half.

18 (COUNSEL CONFER BRIEFLY)

19 BY MR. MARKS:

20 Q Okay. So we're going to try and go quickly, Mr.  
21 Teichner. Are you on Exhibit D, which is your report --

22 A Yes.

23 Q -- that's in evidence.

24 On Page 2 of your report, you say there's a lack of

1 basis for JLL's opinion on potential community waste. Can you  
2 turn to that page?

3 A Yes.

4 Q Why do you think there's a lack of basis for JLL's  
5 opinion on potential community waste?

6 A Well, I think he did not take into consideration --  
7 well, him and Anthem did not take into consideration, first of  
8 all, as -- as it was brought out regarding Exhibit 6, there is  
9 no basis for most, if not all, of those items on that exhibit.  
10 There's no underlying documentation that shows that -- those  
11 items of community waste. In fact, there are loan payments,  
12 there are capital expenditures, there's cash that Mr. Kogod  
13 used as a number -- a variety of things that they included on  
14 that schedule, so there was no basis for that.

15 In addition, they -- I don't think they took into  
16 consideration, or they did not apparently, based on the  
17 report, Anthem's report, is that the Kogods were living apart  
18 for much of the time. And it goes back to 2004, maybe a  
19 little -- 2003; And that, in 2010 is where they were  
20 completely separated. So that wasn't taken into account, that  
21 they were living their own lives. So there's personal  
22 expenses that each one had. And it did not take into account  
23 Ms. Kogod's expenditures in relation to Mr. Kogod's.

24 There's -- they made a number of assumptions

1 regarding the yacht expenses. They -- they even made  
2 assumptions based on what they included for Nadya. There were  
3 -- not only were there a number of items that Mr. Kogod had  
4 eliminated based on his deposition and some -- to some extent,  
5 before and after his deposition, but also, there are  
6 expenditures, undoubtedly, that benefitted both Mr. Kogod and  
7 Nadya and the children, and they didn't do an allocation as to  
8 those expenses that would be attributed only to Ms. Kogod and  
9 the -- I'm sorry, Mrs. Nadya and the children.

10           And then, also, I don't -- they did not take into  
11 account, which I know is a very contested issue, the fact that  
12 the expenditures that Mr. Kogod had -- had made over the  
13 period of time that we're talking about, and primarily, based  
14 on my observations, from 2008 through around November -- mid-  
15 November 2015, didn't take into account the fact that his  
16 expenditures, normal living expenditures were still a very  
17 small percentage; normal living expenditures, including  
18 expenditures for Nadya, which could have been made -- if he  
19 wasn't with Nadya, it could have been for somebody else. He  
20 could have gone out with his friends, whatever. Those total  
21 expenditures, in relation to his income, was relatively very  
22 small; much, much smaller than all the statistical information  
23 out there.

24           Q     Now, did mister -- did Anthem have any definition of

1 "waste" contained in their report?

2 A I did not see any definition of waste, no.

3 Q Was there any explanation as to any objective  
4 standard that you could see as to what Anthem considered  
5 waste, versus non-waste?

6 A No.

7 Q If there's no standard regarding waste, how can one  
8 actually conclude something is potential community waste if  
9 there's no standard?

10 A Well, I don't know what standards they may or may  
11 not have used, but they certainly didn't indicate what those  
12 were in the report.

13 Q From your experience in reports -- and you've done  
14 reports where you're alleging potential community waste,  
15 correct?

16 A Correct.

17 Q What are -- what factors, in your experience, are  
18 usually present for a claim of potential community waste?

19 A Well, generally, it's reckless spending; what we  
20 call "reckless spending," where spending is made on all kinds  
21 of things, like maybe alcohol, drugs, gambling, particularly  
22 excessive gambling, and especially in relation to what  
23 somebody earns or their net worth. So if they're basically  
24 just paying their estate or -- or their income that they earn,

1 then that certainly is a strong consideration for waste.

2 Q Normally, do -- is there an element of financial  
3 misconduct, in your experience?

4 A Yes. I mean, reckless spending, I think -- inherent  
5 and reckless spending is financial misconduct.

6 Q Normally, in your experience of community waste, is  
7 there a diminution or diminishment of the estate?

8 A That's one -- certainly -- that's certainly what  
9 you have to look at, as well as, again, how much of the  
10 earnings are being wasted, as well.

11 Q Did the Anthem report take into account anything to  
12 do with Dennis' earnings, *vis-a-vis* his spending?

13 A No.

14 Q Did Anthem take into account anything to do with  
15 Dennis' net worth or the community net worth as it related to  
16 the spending?

17 A No.

18 Q You then -- also, on Page 2 of your report, you  
19 indicate that there's no explanation of analyzing the 27,200  
20 transactions. Can you elaborate on that?

21 A Well, again, I didn't see any definition of  
22 "analyzed," and I'm still not sure what was done to analyze,  
23 since I haven't seen where they have substantiated or  
24 otherwise supported most, if not all, of the transactions that

1 they listed and considered as potential waste.

2 Q You were at Mr. Leauanae's deposition, weren't you?

3 A Yes.

4 Q Where he was asked about the report?

5 A Yes.

6 Q Did he explain adequately what he did regarding  
7 analyzing the transactions, in your opinion?

8 A Well, he did give a general explanation, but when  
9 you started pinning him down, particularly on the items on  
10 Exhibit 6, he said he didn't know what most of those were, and  
11 that he would provide backup later on.

12 Q And do you know when he provided the backup?

13 A It was shortly after his deposition testimony. It  
14 was -- it was at the end -- I believe it was the end of the  
15 week, by Friday of that week, that he was deposed.

16 Q Now he was deposed on February 9th, so that's a mere  
17 couple of weeks ago. Do you recall that?

18 A Yes.

19 Q And do you recall, at the end of the week -- so I  
20 think it was the 13th -- he provided the backup that we were  
21 dealing with this morning?

22 A I recall that was the date that I received it from  
23 the office, yes.

24 Q Do you believe that is sufficient backup to it for

1 him to analyze the alleged community or potential community  
2 waste that he referenced?

3 A No, it was just mainly a listing of the -- of the  
4 expenditures in some other format, but it still didn't  
5 organize it by Buckus, and it didn't give the explanation why  
6 any of those were potential waste.

7 Q Now you hear Ms. Allen's testimony this morning,  
8 correct?

9 A Yes.

10 Q Okay. And you hear her explain they were primarily  
11 looking for whether Dennis spent money on third parties,  
12 correct?

13 A Yes.

14 Q Okay. And specifically, Nadya, correct? They were  
15 looking at expenditures to Nadya, primarily.

16 A Well, I -- I don't know if it was just Nadya, only  
17 because I'm not sure whether they were saying some of the  
18 expenditures on Exhibit 6, which are the unallocated  
19 expenditures, were also, you know, fall in -- fell into that  
20 category. But I know that the expenditures for Nadya was  
21 being -- it was a focus.

22 Q Okay. On Exhibit 6, the unallocated, did they --

23 MR. SMITH: Let me just note for the record.

24 There's no -- in Exhibit 6, there is no reference of any word

1 "unallocated." This is something that's -- the objection is  
2 it mischaracterizes the document.

3 MR. MARKS: On Exhibit 6, the --

4 THE COURT: The document speaks for itself, but the  
5 objection is overruled.

6 MR. MARKS: I'll just rephrase.

7 BY MR. MARKS:

8 Q The assessment of potential community waste, not  
9 elsewhere classified.

10 A Yeah, I'm just -- I was using the word "unallocated"  
11 because that's been used in the testimony today.

12 Q Okay. Using the assessment of potential community  
13 waste not elsewhere classified, that we discussed with Ms.  
14 Allen, I think you heard her answer that she was concerned  
15 about whether any of that went to third parties, correct?

16 A Yes.

17 Q Okay. Is there anything about the backup that was  
18 sent by Anthem that you reviewed that suggested any of the  
19 assessment of potential community waste not elsewhere  
20 classified went to third parties?

21 A No.

22 Q Now, if you --

23 A I mean, when you say it "went to third parties," if  
24 there was a payment for Starbucks, or whatever it was, that's

1 a third party. But for the benefit of a third party, no.

2 Q Okay. Now if you'd go to Page 3 of your report.

3 A Yeah, I'm there.

4 Q Okay. The second full paragraph, you write:

5 "JLL states that Anthem was specifically asked to  
6 'provide observations about the spending and potential waste,'  
7 yet, he offers Anthem's opinion that potential community waste  
8 is approximately 6.2 million."

9 And you say:

10 "There is no basis on which JLL can offer such an  
11 opinion by Anthem."

12 Can you elaborate on that?

13 Q Well, again, I don't see where he has come up with  
14 anything meaningful as potential community waste of being  
15 \$6.2, especially in light of the fact that so many of these  
16 expenditures, particularly on Exhibit 6, which is 3.6 million  
17 and change of the 6.2, are not expenditures at all. They're -  
18 - there's capital expenditures -- I mean capital investments,  
19 there's loan repayments; there's all kinds of items that were  
20 brought out today that have no basis for being even called  
21 potential community waste, in my opinion.

22 Q Okay. Let's go to Exhibit 6, the Anthem report. Do  
23 you have that? We have your report, and I think your report  
24 has a schedule that deals with Exhibit 6.

1           A     I'm -- which -- under which tab --  
2           Q     Exhibit 57 in the books in front of you. They've  
3 marked Exhibit 57 as Exhibit 6 of the Anthem report.  
4                     (COUNSEL CONFER BRIEFLY)  
5           THE WITNESS: I'm sorry. What letter tab is it  
6 under?  
7 BY MR. MARKS:  
8           Q     You're in the --  
9           A     Exhibit -- if I --  
10          THE COURT: It's in there. It's in the black  
11 binders, not the white ones.  
12          THE WITNESS: Okay.  
13                     (COUNSEL CONFER BRIEFLY)  
14          MR. SMITH: Are you looking for Joe's report or --  
15 you found it.  
16          MR. MARKS: Yeah.  
17          MR. SMITH: Oh, you got it?  
18          MR. MARKS: I got it.  
19          MR. SMITH: It's 57, actually.  
20          MR. MARKS: Right. 57 is the December 15th report  
21 in Exhibit 6.  
22          MR. SMITH: Are you looking at 56 or 57?  
23          MR. MARKS: 57.  
24          MR. SMITH: 57.

1 MR. MARKS: Exhibit 6 of 57.

2 MR. SMITH: Okay.

3 BY MR. MARKS:

4 Q Mr. Teichner, are you in Exhibit 6 of 57?

5 A Yes.

6 Q Okay. And then, if you have your report open, which

7 is Exhibit D, specifically, Page 4 of your report.

8 A Okay.

9 Q And in the middle of the page, you have a category,

10 "Expenditures After Deletions From JLL's Report;" Exhibit 6,

11 titled "Assessment of Potential Community Waste not Elsewhere

12 Classified." Do you see that?

13 A Yes.

14 Q Okay. Can you tell the Court what you did as it

15 related to Exhibit 6 of the Anthem report?

16 A I went through various line items in the adjusted

17 column, which is the far-right column on Exhibit 6, and

18 deleted a number of those items that I -- well, that either,

19 obviously, not items that should not be -- that should not be

20 considered as potential waste, such as, again, capital

21 investments that were assets.

22 Q So let's go through it.

23 A Yeah.

24 Q Did you do a Schedule 1 to your report?

1 A Yes.

2 Q And is -- in Schedule 1 to your report, did you make  
3 certain deletions?

4 A Yes.

5 Q Can you tell -- if you turn to Schedule 1 in your  
6 report, can you tell the Court what deletions you made and  
7 why?

8 A Well, do you want me to go through each one?

9 Q Yeah, why don't you go through and -- just as  
10 quickly as you can, the deletions and why you did it.

11 A Okay. I went through -- there were a number of  
12 expenditures for automobiles, and one of the ones that's in  
13 the adjusted column is -- it says "GMAC Cadillac, \$273,300,"  
14 and I deleted that one because, again, either the car --  
15 either this expense -- expenditures for an automobile or the  
16 cost of an automobile. And if it's the cost of an automobile,  
17 again, that would be -- have been as asset, and if that asset  
18 was traded in, sold, eventually, that would wind up in other  
19 assets.

20 Q When you got the backup from Mr. Leauanae, and you  
21 went through GMAC Mortgage, did you see what appeared to be  
22 mortgage payments?

23 A As far as the -- as far as the GMAC payments, there  
24 was a mortgage loan on the house. And I'm not sure, by the

1 way, whether these -- this particular GMAC, all of this GMAC  
2 payment is mortgage payments, but certainly, it appears -- and  
3 again, I don't have the backup for all this. But it appears  
4 that, based on the round amounts that were shown here, those -  
5 - those could be a combination. I -- they're round amounts,  
6 so I don't where the round amounts came from.

7 But there were mortgage payments on a residence, and  
8 that was GMAC, that was later refinanced; that loan was later  
9 refinanced with B of A, Bank of America. And so, whether  
10 these are all mortgage payments or a combination of mortgage  
11 payments and auto payments, I don't know. But in any event,  
12 either way, it's either for maintenance of an auto, for the  
13 cost of an auto that was either sold or traded in, or for the  
14 mortgage payments.

15 Q Okay. Did you see the backup provided by Mr.  
16 Leauanae that said "GMAC Mortgage"?

17 A Mr. Leauanae?

18 Q Yeah.

19 A From his -- no.

20 (COUNSEL CONFER BRIEFLY)

21 BY MR. MARKS:

22 Q If you'd hold your spot and go to Exhibit 60.

23 MR. MARKS: May I approach the witness, Your Honor -

24 -

1 THE COURT: Yes, you may.

2 MR. MARKS: -- so I can speed this along?

3 THE COURT: Yes, you may.

4 BY MR. MARKS:

5 Q Are you on Exhibit 60?

6 A Yes. I was going to go to the next --

7 Q Before we go to the next one, did you want to look

8 at Exhibit 60, the backup? Before you go to that. Can you

9 turn to Exhibit 60, is's in the (indiscernible).

10 A Exhibit 60?

11 Q Correct. Page 3 of Exhibit 60. I don't know if we

12 have a sticker.

13 (COUNSEL AND CLERK CONFER BRIEFLY)

14 MR. MARKS: Thank you very much.

15 BY MR. MARKS:

16 Q On Exhibit 60, Page 3, you were sent that from --

17 you were sent that from my office after we received in on the

18 Friday after Mr. Leauanae's deposition?

19 A Correct.

20 Q Okay. And did you see a bunch of GMAC Mortgage

21 payments?

22 A Yes. The GMAC, that says "auto-related, Cadillac,"

23 was paid to GMAC Mortgage Company.

24 Q Yeah.

1           A     At lease these -- these items that they listed. And  
2 I -- and I don't know if those total the amounts, but they  
3 appear to be plenty close --

4           Q     All right.

5           A     -- if not -- yeah.

6           Q     All right. Let's go back to your report, which is  
7 Exhibit D. I think I put a Post-It in there. Do you have  
8 your report?

9           A     Yes.

10          Q     Okay. If you go back to your report, did you make  
11 another deletion?

12          A     Yes.

13          Q     The next one, I think, is 466,649 for a luxury --  
14 auto-related luxury, not elsewhere classified. Can you  
15 explain to the Court what you did there?

16          A     Yeah. The \$466,000 of the total of a million-three  
17 was placed in the adjusted column. And again, mister -- my  
18 understanding is Mr. Kogod was, basically, an auto collector  
19 to -- I mean, he had a number of automobiles. And that was, I  
20 guess, one of his hobbies or, you know, one of his -- one of  
21 the things he liked to do, was to have a number of  
22 automobiles. And they weren't all, necessarily, at the same  
23 time because he had leased them, he had traded -- he had  
24 bought some, traded them in for other automobiles. But it

1 appears from here -- from this schedule, that they included  
2 both expenses and -- and the cost of automobiles, which again,  
3 were either sold, traded, or retained, and -- and in some  
4 form, reported in the marital balance sheet as an asset.

5 Q Okay. So the cars would be on the marital balance  
6 sheet. Is that right?

7 A The cars, or if they were sold and a new car was  
8 bought or traded.

9 Q Okay.

10 A Yes.

11 Q At Mr. Leauanae's deposition, I think he said he  
12 used 3,700, a figure as a car allowance. Do you recall that  
13 testimony?

14 A Yes, uh-huh.

15 Q Do you believe that's a proper -- that an accountant  
16 like Mr. Leauanae has a right, in a family law matter, to just  
17 arbitrarily set a car allowance?

18 A No.

19 Q Okay. The next deletion you have is 25,000 capital  
20 -- I think it says "for capital call."

21 A Yes.

22 Q Why did you delete that?

23 A Well, capital call is usually -- well, it is  
24 additional money for an investment that you have, so it's

1 certainly an asset.

2 Q On the next page of -- or I think Item 57, you  
3 deleted 60,000 or so for art work. Why did you do that?

4 A Because that was art work in Mr. Kogod's home and  
5 his house that he bought out of the money that was allocated  
6 to him as separate property. And so it's an asset of his, but  
7 it's also included -- it's also part of the cost of his home,  
8 or it's a furnishing. And art, usually, that costs that much  
9 money is -- has some retained value.

10 Q Did you --

11 A It could even go up in value.

12 Q Did you also -- Item 68, loan payment B of A,  
13 249,000. Why did you delete that?

14 A Those -- those were loan payments -- well, I --  
15 again, I got -- I eliminated virtually all the loan payments  
16 because the loan payments were either on a mortgage -- they  
17 were either mortgage payments or loan payments or payments on  
18 money that Mr. Kogod borrowed. And if -- whether it's a line  
19 of credit or whatever -- for whatever reason he borrowed it,  
20 if he can make more money investing, or a greater return on an  
21 investment than what he pays interest on a borrowing, then it  
22 makes sense, economic sense, to borrow money and then invest  
23 it.

24 Now this particular B of A -- I think this was -- I

1 believe, but I'm not certain, that it's all related to  
2 mortgages.

3 Q So you deleted all of the mortgages.

4 A Yes.

5 Q Because did you believe that Mr. Kogod was a  
6 reasonably prudent investor, based on his portfolio?

7 A Yes.

8 And let me just add that the -- that the homes that  
9 Mr. Kogod had bought all went up in value. I mean, my  
10 understanding is they've all gone up in value from the time he  
11 purchased them. So, if anything, that benefits the community.

12 Q And you deleted 172,000, saying you need canceled  
13 check. Why did you do that?

14 A Because I don't have any idea, whatsoever, what  
15 those checks were for. And to assume that all those canceled  
16 checks of 172,400 is a waste is a unfounded assumption that --  
17 it's certainly something I would never do.

18 Q And is it -- in your experience, is it common that  
19 it's difficult to get records going back more than seven years  
20 or seven years or more, right now, from banks?

21 A Often, yeah. And sometimes, even less period than  
22 that.

23 Q Okay. So you made these deductions from Exhibit 6,  
24 correct?

1           A     Yes.

2           Q     From their Exhibit 6.

3           A     Yeah.

4           Q     And then the remaining amount, you have an opinion  
5 regarding whether the remaining amount of 1.8 is reasonable  
6 living expenses for somebody at Mr. Kogod's level.

7           A     Yes. But just let me qualify that there are other  
8 items on this schedule, now, that I have since found out that  
9 also are not -- should be -- should be eliminated from this  
10 schedule, as well.

11          Q     Okay. Explain to the Court what you're talking  
12 about.

13          A     There is -- there is -- line -- it's on the second  
14 page, and it's Reference Number 173, "Withdrawals and Cash  
15 Advances."

16          Q     Okay.

17          A     Three hundred fifty thousand, five hundred dollars.

18          Q     Okay.

19          A     Now, again, my understanding is those cash  
20 withdrawals and advances were for either normal living  
21 expenses or for cash advances; cash that had to be taken out  
22 for travel, whether domestic or foreign, and again, just  
23 normal -- normal, I guess, cash expenditures.

24          Q     You heard --

1           A     And to -- excuse me. And to assume that cash  
2 advances are -- without having any backup, is community waste,  
3 again, is -- is an assumption that -- that there's no proof  
4 that -- that it is waste.

5           Q     You heard Ms. Allen's testimony this morning.

6           A     Yes.

7           Q     Did she classify, other than Nadya, every other item  
8 of cash that Dennis spent over the last eight years to be  
9 potential waste; is that the three fifty number?

10          A     I believe so. Now the only -- the only  
11 qualification to that is, on that line item, 173, the total  
12 cash was 629,500, and this 279,000, that is not included in  
13 there.

14          Q     Right.

15          A     But that two seventy-nine, my understanding is  
16 that's what they added in on the Exhibit 9, where they  
17 compiled or summarized all of the items of community waste.  
18 So that two seventy-nine is also included in the total amount  
19 that they claim is community waste. So that makes -- I'm  
20 pretty sure that's what that two seventy-nine is because it's  
21 the same amount, and it's cash paid out.

22                 So -- so, to answer your question, the 350,000 then  
23 would be the other cash expenditures that Mr. Kogod --  
24 withdrawals that Mr. Kogod made. And again, to assume that

1 those are potential community wastes, I think, is -- is just  
2 an assumption that they made with no -- no basis whatsoever.

3 Q If you deduct the three fifty from that amount, and  
4 look at it over an eight-year period, what is the average  
5 yearly expenditure?

6 A Less -- I guess, less than -- less than 200,000 a  
7 year.

8 Q Okay. And did you recall what Mrs. Kogod was  
9 spending during the same period, the plaintiff?

10 A Well, I believe it was 13,000 and change per month.

11 Q And that's about 180,000 a year?

12 A It's close; not quite, but yeah.

13 Q A hundred and eighty --

14 A Twenty-six and -- let's see. Twenty-six and one  
15 thirty, a little less than that, yeah.

16 Q One eighty. And if you multiply that over eight  
17 years, do you know what that number comes to?

18 A It's like a million -- a million-four, something  
19 like that.

20 Q Yeah, it's over a million-four.

21 A Yeah.

22 Q And if you deduct the three fifty from the one eight  
23 four two, aren't you at about a million-four and change?

24 A Yes.

1 Q So aren't -- isn't that the same level of spending?  
2 A Yes.  
3 Q All right. You had some comments, I think,  
4 regarding the yacht or the boat. Did you -- would you like to  
5 go back to your report and -- which is Exhibit D? And on Page  
6 5 of your report, you analyzed the Anthem report, Schedule 3,  
7 which dealt with yacht expenditures. Do you -- are you  
8 familiar with that?  
9 A Yes.  
10 Q You've reviewed Schedule 3 to the Anthem report --  
11 A Yeah.  
12 Q -- regarding yacht expenditures?  
13 A Yeah, yes.  
14 Q Okay. And do you have any criticism of the way  
15 they've added up what they're claiming is potential community  
16 waste?  
17 A Yes.  
18 Q Can you explain it to the Court.  
19 A Yes. Included in their figure for the -- for the  
20 yacht expenses, which is about -- oh, gosh. Let's see. I  
21 have to look at the report. But it's five hundred and  
22 something thousand dollars, five forty-five, somewhere in  
23 that neighborhood.  
24 They've included a few things that don't belong

1 there. First of all, they included equipment for the -- for  
2 the yachts that are really part of the yachts. It certainly  
3 would increase the value of the yachts. And so -- so I did  
4 take out all of those expenditures.

5           And then what I -- what I disagree with is the fact  
6 that they include, also, in the -- in the total amount of  
7 potential community waste relative to the yacht, is that  
8 they're including the -- a net loss on what the total yachts  
9 yielded during this, I think it's a two-and-a-half year  
10 period, more or less.

11           And that's -- you know, I mean, some yachts go up in  
12 value, some go down in value. And it's one -- it's -- you can  
13 look at it as another investment besides being a hobby. But  
14 the fact that there was a loss, you know, that -- they include  
15 that as a waste. But if it had gone up in value, if the  
16 yachts had gone up in value, I'm sure they would have not, you  
17 know, shown that otherwise.

18           So, also, it's -- to me, it's just cherry-picking  
19 because Mr. Kogod had all kinds of real estate investments and  
20 other investments that all appreciated. So, to take one asset  
21 like a yacht, and include a loss and call it community waste,  
22 to me, is -- is not appropriate.

23           Q     Okay. I want to clarify that the yacht transaction  
24 in the Anthem report is Exhibit 5 to their report.

1 A Yes.

2 Q And then you made deletions to Exhibit 5 in your  
3 Schedule 3, correct?

4 A Correct.

5 Q And in your Schedule 3, you eliminated certain  
6 expenses?

7 A Yes.

8 Q As you just testified?

9 A Yes.

10 Q Okay. And can you -- on Page 5 of your report, you  
11 indicated that, after eliminations, there were expenditures of  
12 145,000.

13 A Right.

14 Q And that's over, approximately, a three-year period.

15 A I believe a little bit less, yes.

16 Q Okay.

17 A Yeah.

18 Q And you say in here that -- do you believe the mere  
19 fact that Dennis had a yacht constitutes community waste, just  
20 because it's an expensive item?

21 MR. SMITH: To the extent, it's calls for a legal  
22 conclusion, I object.

23 THE COURT: Noted for the record, but the witness  
24 may answer.

1 BY MR. MARKS:

2 Q Do you believe that, just because you have a yacht,  
3 it's community waste?

4 A That a yacht expense could be community waste?

5 Q No, that, in this case, they're saying it's  
6 potential community waste, I guess, just because he had a  
7 yacht. Do you agree with that?

8 A No.

9 Q Okay. You've done cases for wealthy individuals  
10 over the years, correct?

11 A Yes.

12 Q What types of hobbies, toys, do they usually have?

13 A Expensive cars, boats.

14 Q Do they have planes?

15 A Planes, some have airplanes. Yes.

16 Q Other than this boat and car, did Dennis have  
17 expensive or extensive hobbies in your -- based on your  
18 experience of other cases of forensic accounting?

19 A Based on my experience of high-income earners, yes,  
20 other -- well, I'm not sure if I should answer yes. Ask the  
21 question again.

22 Q Do you have experience with high-income earners?

23 A Yes.

24 Q How did the -- Dennis' he had three cars, I think,

1 and the yacht for a short period of time. How did that  
2 compare with your experience of other high-income earners?

3 A Again, it's not unusual at all.

4 Q Okay. You did a chart that compared the percentage  
5 of each year's expenditures to total expenditures from 2008 to  
6 2015, correct?

7 A Yes. Schedule 5 to the report.

8 Q That's Schedule 5 to your report, and I think it's  
9 at -- it's at your report D037, correct?

10 A Yes.

11 Q Can you explain what you did?

12 A Yes.

13 Q Tell the Court what you did.

14 A What I did was try to take all the living expenses,  
15 including the expenditures from Nadya and Jennifer, the yacht  
16 expenses; again, just the expenses, not the loss on -- not the  
17 cost of the equipment, and money is paid to the family, Mr.  
18 Kogod's family. And in Exhibit 6, as -- as modified -- and I  
19 have a schedule on how I modify that Exhibit 6, but again --  
20 or how I allocated it, I should say, the expenses among the  
21 years -- because the total -- if you go out to the total  
22 column of -- for Exhibit 6, you come up with the one million,  
23 eight forty-two, that was the total on my Schedule 2.

24 Q Okay.

1           A     And so I took all -- all the expenditures, living  
2 expenditures, basically -- by the way, that million-eight  
3 probably includes -- and I think I qualified this in a  
4 footnote, but the -- that -- the modification, we already, I  
5 think, established that, at least I did, that 350,000 -- that  
6 should be reduced by \$350,000.

7                     And there's probably some business expenses in  
8 there, as well. But assuming they're all living expenses, if  
9 you take the living expenses of all the -- all his living  
10 expenses that we have taken from these other schedules, and  
11 add them up year by year, and compare that with the income  
12 that Mr. Kogod earned, then take a percentage of the expenses  
13 in relation to the income, those percentages are down towards  
14 the bottom of the page, based on total income and after-tax  
15 income.

16                    And so you can see there's variations throughout the  
17 year, but they're all relatively very small. Maybe 2008, 2009  
18 are certainly higher than -- than the other years. But if you  
19 take an average over the eight-year period or almost-eight-  
20 year period, the total expenditures in relation to his income,  
21 total income, is 5.3 percent; and in relation to his after-tax  
22 income, is 9.8 percent.

23           Q     And in your experience, how does it -- how do those  
24 numbers compare to other individuals?

1       A     Well, you know, it's certainly very, very low. Most  
2 -- you know, because I do quite a bit of divorce work, most of  
3 the time, the expenditures are 50 percent or more of someone's  
4 income; sometimes the expenses are more than their income.  
5 But even with higher-net-worth individuals, I found -- I found  
6 high -- much higher expenses.

7           Also, if you compare this with the Bureau of Labor  
8 Statistics data, which, again, that's a whole different level  
9 of income, but if -- but anything over \$150,000 of -- 150,000  
10 or more of earnings, the expenditures were something like --  
11 pre-tax, were 54.3 percent, I believe, and after tax was 64.9  
12 percent. Those are the -- those are 2014 figures, by the way.

13           So this is for people earning \$150,000 or more.  
14 Those are the percentages of personal living expenses to  
15 income. So -- so, you know, of course the expenses -- the  
16 percentage of expenditures on this schedule is greatly lower  
17 than those percentages.

18       Q     And do you think Anthem should have considered the  
19 percent of expenditures versus total income in making a waste  
20 or potential waste analysis?

21       A     Yeah, I think they got to look at that the  
22 expenditures in that context. Yes, absolutely.

23       Q     All right. And then, you also looked at Exhibit 2  
24 to the Anthem report, the expenditures for Nadya and the

1 children?

2 A Yes.

3 Q Did you look at that schedule?

4 A Yes, I did.

5 Q Okay. And did you make certain deductions based on  
6 Dennis' deposition testimony?

7 A (No verbal response)

8 Q Did -- Dennis, in his deposition, was he asked by  
9 Mr. Smith about certain expenditures?

10 A Yes.

11 Q Okay. And did you rely on his statements under oath  
12 to make deletions or corrections to that Exhibit 2 to the  
13 Anthem report?

14 A Yes.

15 Q In general, was Exhibit 2 to the Anthem report  
16 giving any credit to Dennis for food, CVS Pharmacy, items for  
17 the home that he shared with Nadya, et cetera. Were they  
18 giving him any credit at all?

19 A It didn't appear that they did. They certainly  
20 included expenditures that Mr. Kogod had indicated were solely  
21 for him.

22 Q You also did a surrebuttal report in this case?

23 A Yes.

24 Q And I think that's contained in Exhibit F. Is that

1 right?

2 A Yes.

3 Q And that's based on your rebuttal to the -- I guess  
4 the surrebuttal report that Anthem produced after your report,  
5 correct?

6 A Correct.

7 MR. MARKS: All right. I move the admission of  
8 Exhibit F.

9 MR. SMITH: No objection.

10 THE COURT: Exhibit F is admitted.

11 (DEFENDANT'S EXHIBIT F ADMITTED)

12 MR. MARKS: Your Honor, I'll pass the witness.

13 THE COURT: Any cross examination?

14 CROSS EXAMINATION

15 BY MR. SMITH:

16 Q I'm going to ask you a series of yes-and-no  
17 questions, Mr. Teichner. Okay?

18 The -- tell me -- I'm going to show you a copy of  
19 the transcript of your deposition.

20 A Sure.

21 Q Tell me if I read this portion of the deposition  
22 correctly.

23 A Sure.

24 Q "Question: Okay. So is it fair to say, then, all

1 of the deletions that are contained in your expert report are  
2 deletions that you were identified to" --

3 MR. MARKS: Can I have the page? I'm sorry, Your  
4 Honor.

5 MR. SMITH: Yes. Page 61, Line 19.

6 MR. MARKS: Okay. I know you want to hurry, but can  
7 I just get it, pull it out so I can follow? What is it?

8 MR. SMITH: It's 61, 19.

9 MR. MARKS: Okay. Hold on.

10 (COUNSEL CONFER BRIEFLY)

11 THE COURT: All right. Go ahead.

12 BY MR. SMITH:

13 Q Okay.

14 "So it's fair to say, then, all the deletions that  
15 are contained in your expert report are deletions that were  
16 identified to you by Dennis, either at his deposition or in  
17 his subsequent conversation?

18 "Answer: Yes, or even prior conversation. I wasn't  
19 really -- well, I wouldn't say it was a conversation. He  
20 actually went through each item and line, deleted it with a  
21 yellow marker.

22 "Question: Once you received that information,  
23 either in the form of the yellow deletions, or testimony at  
24 the deposition, or a conversation subsequent to the deposition

1 with Mr. Kogod, did you do any independent analysis of the  
2 expenditures to verify information that was provided to you by  
3 Mr. Kogod?

4 "Answer: No.

5 "Question: Why not?

6 "Answer: Because when you say 'verify,' I'm not  
7 sure what you mean by verify, first of all. But no, why not?

8 "Question: Let me break that down because you said  
9 that you don't understand the question, essentially. So it's  
10 my understanding, as a forensic accountant, when someone  
11 indicates they expend money in a particular way, one of the  
12 things to do is to look at, for example. receipts or other  
13 information about the expenditure. That would include bank  
14 statements, receipt statements, information from other  
15 depositions in the like. Did you do any kind of that kind of  
16 analysis whatsoever on any of the expenditures that you  
17 identify that Mr. Kogod deleted from the report of Mr.  
18 Leauanae and Ms. Allen as potential community waste?

19 "Answer: No.

20 "Question: Why not?

21 "Answer: For the same reason I didn't look at all  
22 of the -- at any of the expenditures that mister -- or that  
23 Anthem included. That was not something I was asked to do."

24 Is that -- did I accurately read that testimony?

1 MR. MARKS: Well, that's not the whole answer, Your  
2 Honor. Doesn't he have to read the whole answer? It goes on  
3 for like three more paragraphs, four paragraphs.

4 MR. SMITH: Oh, okay. That's fine. Let's read it.  
5 I've highlighted it, as well.

6 BY MR. SMITH:

7 Q Now in the answer it says:

8 "That I was asked to do. I'm not going to question  
9 mister -- Dennis' testimony as being untrue, nor am I going to  
10 question his other deletions as being untrue. As a forensic  
11 accountant, we don't always verify everything. I didn't think  
12 it was necessary, particularly in light of my -- the general  
13 concepts of my report that none of the expenditures are  
14 justifiably potential community waste, based on all the  
15 reasons I gave. So there was no -- there was really no reason  
16 to do that. I just went ahead and did this for what it's  
17 worth.

18 "It really -- I don't know if it has any bearing,  
19 one way or another, these deletions, because, if it turns out  
20 that none of the expenses are considered potential community  
21 waste, it's a moot point."

22 Okay. And then the next question -- all right.

23 So did I read those questions and answers correctly,  
24 Mr. Teichner?

1 A Yes.

2 Q You -- what is the amount of money somebody can  
3 spend on a girlfriend without it being community waste?

4 A What amount?

5 Q Yeah, what amount.

6 A Well, I don't think there's any threshold amount. I  
7 think it's you got to take it, again, in context as to whether  
8 those expenditures are -- would have been made otherwise.  
9 That's -- you know, you got to take into -- take into account  
10 how much was expended, what the person's earnings were, how --  
11 whether or not that person is living -- is apart from their  
12 normal spouse and for how long.

13 It doesn't -- you got to take it in a -- you got to  
14 take the expenditures in context, and then say, what's  
15 reasonable, are these living expenses expenditures that --  
16 that Mr. Kogod would have spent anyway, had he not had a  
17 girlfriend, or are they a little bit more. And if they're a  
18 little bit more, then still, is it that -- is he dissipating  
19 the marital estate by doing this, while his income is going  
20 up, while his net worth is going up. I think you have to take  
21 this all into context.

22 Q Mr. Leauanae and Ms. Allen's report, Anthem's  
23 report, addressed expenditures that could be for the benefit  
24 of Nadya and the children. You would agree?

1 A Yes.

2 Q Those expenditures were based upon the notion that,  
3 when you spend money without the consent of the other party,  
4 on a girlfriend, a mistress, including things like in vitro  
5 fertilization, trips abroad, mansions, Ferraris, Bentleys,  
6 that those things are community waste. You don't agree?

7 A Again, I think you have to put into context how much  
8 was spent, whether those amounts would have been spent,  
9 elsewhere in some other fashion, and what impact, if any, does  
10 that have on the dissipation on the marital estate.

11 Q So, if the marital estate is large enough, or if I  
12 make enough money, I can have as many girlfriends as I want.

13 A Well --

14 Q Is that your testimony?

15 A I think, if you've lived apart from your spouse for  
16 a long period of time, I think you're entitled -- yes, I think  
17 -- I mean, you've asked me -- you're not asked me a legal  
18 opinion, obviously, because I'm not a lawyer, but --

19 Q I'm asking the fundamental basis of your finding  
20 that there was no community waste because he didn't spend  
21 enough money to make it community waste. That's what you're  
22 saying, correct?

23 A Yeah, in effect, it -- he didn't spend enough in the  
24 context that I just gave you.

1 Q Right. So, if I'm a rich guy, I leave my wife, I  
2 can spend as much as the community earnings on a girlfriend as  
3 I please, correct?

4 MR. MARKS: Assumes facts is not in evidence. No  
5 foundation. That's not what he's saying.

6 THE COURT: Overruled.

7 BY MR. SMITH:

8 Q Is that right?

9 A Well, as much as the community -- of the community  
10 earnings, depending on how -- two things: It depends on how  
11 much the community earnings are, and it depends how much --  
12 what the expenditures of the other spouse are because the  
13 other spouse -- if the other spouse is spending as much money  
14 on something else, what difference does it make what one  
15 spouse spends the money on?

16 If one spouse spends money on a girlfriend, and  
17 another spouse spends money on entertainment in the same  
18 amount -- I'm just giving you a hypothetical now -- the same  
19 amount, then why should one spouse be hit with community waste  
20 and the other not?

21 Q Did miss -- are you aware of any facts in this case  
22 that suggests that Ms. Kogod spent money that Mr. Kogod was  
23 unaware of?

24 A I -- no.

1 Q Are you aware of whether or not Mr. Kogod actively  
2 concealed both his spending and earnings in this case from  
3 Mrs. Kogod; do you know whether that happened?

4 A I know that, for a period of time, she was not  
5 aware.

6 Q Oh, no, no. That's not what my question was. My  
7 question was: Did he actively conceal, did he mislead her in  
8 regard to both his earnings and his assets?

9 A Oh, I -- not that I know of. I -- did he mislead  
10 her? No, not that I know of.

11 Q Did he tell her about the yacht, to your knowledge?

12 A Well, how is that misleading? I mean, he didn't  
13 tell her -- did she ask him if he had a yacht, and he said,  
14 no, I don't have a yacht? That -- you're asking me if he  
15 misled her. I don't know if -- I have not seen anything where  
16 he's misled her.

17 Q You said that there was no backup for this  
18 information. If you look to the charts in your report --  
19 let's look at those together.

20 A Which charts?

21 Q The charts in the report. Exhibit 2. In any of the  
22 exhibits, because they're essentially Mr. Leauanae and mister  
23 -- Allen's charts. You've just put them into a different  
24 form, haven't you?

1           A     Pretty much, yes.

2           Q     Right. And this -- you said there was no backup.

3 But in every chart that's provided in Mr. Leauanae's report

4 and Ms. Allen's report, every chart that they submitted in

5 terms of the backup, not only is -- the identification of the

6 date, the type of expense, the account number, and the amount,

7 it's all identified in the backups, right?

8           A     It's a listing of expenditures. That doesn't --

9           Q     Wait, wait, wait.

10          A     That doesn't mean it's waste.

11               MR. MARKS: He said -- he won't --

12 BY MR. SMITH:

13          Q     Look at look at Exhibit 60.

14               MR. MARKS: He's trying to finish, and the -- and

15 you're cutting him off.

16               MR. SMITH: I've only got limited time. That wasn't

17 --

18               MR. MARKS: I know, but you can't come --

19               THE COURT: Move on, move on.

20               MR. SMITH: Move to strike as nonresponsive.

21               THE COURT: Stop. Let's move along.

22 BY MR. SMITH:

23          Q     Exhibit 60. Look at it, please.

24          A     Tell me which -- what exhibit that is again, because

1 I -- what -- under what tab?

2 MR. SMITH: You know, I'll pass the witness. I'm  
3 done. I pass the witness, Your Honor.

4 THE COURT: Any redirect?

5 MR. MARKS: Yes.

6 REDIRECT EXAMINATION

7 BY MR. MARKS:

8 Q Did you look at when there was a diminution, meaning  
9 a dissipation, of assets in this case?

10 A Yes.

11 Q And there was no dissipation, correct?

12 A Correct.

13 Q You don't know whether Dennis had access or was  
14 monitoring anything that Gabby was spending money on, do you?

15 A Say it -- say that again.

16 Q Did Dennis monitor what Gabby was spending money on  
17 over, let's say, the last five years?

18 A I don't know. But I don't think -- not that I know  
19 of.

20 Q Okay. Counsel asked you, if you spend money on a  
21 girlfriend, do you -- is it waste or not waste. What if  
22 Dennis just had a friend who was not romantically involved;  
23 would that be waste?

24 A Again, I -- if -- I mean, again, you've got to take

1 everything into context. If he's living apart from his wife,  
2 he's got his own life, she's got -- the wife has her own life.  
3 Yes, I think you're entitled to go out and have friends, have  
4 girlfriends, you know, have some entertainment, enjoyment in  
5 your life. That's -- that's --

6 Q And would that apply --

7 A Again, that's not a legal opinion, obviously.

8 Q Would that apply to Gabby, as well as Dennis?

9 A Yes.

10 Q And do you -- did you -- did Anthem, in their  
11 report, ever consider that the parties were living separate  
12 and apart for at least five years in their analysis?

13 A No.

14 Q Did they ever consider it?

15 Did they ever consider the -- how much Dennis spent  
16 versus his income for all of those years; did they look at it  
17 --

18 A No.

19 Q In other words, if he spent 200,000 a year that they  
20 claim is unallocated, and over eight years, he spent 1.6  
21 million, let's say, and during that same period of time, he  
22 spent 50 million -- he earned 50 million, did they take any  
23 sort of proportionality rule into effect?

24 A No.

1 Q In fact, in their report, they say if you spend a  
2 dollar that they think is incorrect, they should get their 50  
3 cents back, in spite of the fact that the Court said we should  
4 look at 5,000 or more, correct?

5 A They said that, in -- essentially, in so many words,  
6 yes.

7 Q And do you believe you have to look at the  
8 proportionality of what someone earns versus what someone  
9 spends in any forensic divorce case?

10 A When there's waste involved, you mean?

11 Q Yeah, a large waste.

12 A Yeah. Yes.

13 Q Okay. Did they show any asset that (indiscernible)  
14 both sides of the marital balance sheet of about \$40 million,  
15 correct?

16 A Yes.

17 Q In your experience of community waste -- and you've  
18 had other cases where you and Mr. Leauanae are on opposite  
19 sides, right?

20 A (No verbal response)

21 Q You and he have been on opposite sides, where he's  
22 saying no waste and he's saying waste, correct?

23 A One case, yes.

24 Q Okay. In those instances, isn't there money,

1 literally, disappearing, gone, so that there's not an equal  
2 division?

3 A Money is -- yes. Money is gone, cannot be found,  
4 and it's a huge part of -- in fact, it dissipated the -- the -  
5 - the -- if you -- the case you're talking about, it  
6 essentially dissipated the entire community, as far as we  
7 know, but we don't know what happened to the --

8 Q Well, talking in general. But one party says the  
9 estate should be 500,000; the other part is saying, oh,  
10 there's only 100,000. And the person accusing of waste is  
11 saying, where did that other money go, it should be back in  
12 the pot, correct?

13 A Right.

14 Q In this case, both are saying the estate is 40  
15 million, right?

16 A Yes.

17 Q And all -- and what they're saying is, we don't like  
18 the way you were living over the last eight years, and we want  
19 3 million back.

20 MR. SMITH: Leading.

21 BY MR. MARKS:

22 Q Isn't that what they're really saying?

23 MR. SMITH: Leading, Your Honor.

24 THE COURT: Overruled.

1 BY MR. MARKS:

2 Q Isn't that really what they're saying? We don't  
3 like how you live over the last eight years, we don't like  
4 what toys you had or cars you had or dinners you had or  
5 girlfriends you had, and we think we should get the money  
6 back, even though we both agree this is a forty-million-dollar  
7 estate. Isn't that what they're really saying?

8 A That's my view, yes.

9 Q And in your experience of doing this for 30 years  
10 and going up against Mr. Leauanae on both sides, where --  
11 there are cases where he says there's no waste at all, right?

12 A Yes. I've been doing this type of work all -- about  
13 20 years.

14 Q Okay. There were cases where Mr. Leauanae says,  
15 there's no waste, even though it's a diminution case where  
16 there's no -- the parties don't agree on what the net worth  
17 is, correct?

18 MR. SMITH: Objection. Foundation.

19 THE COURT: Sustained.

20 MR. MARKS: Your Honor, I'm laying foundation.

21 BY MR. MARKS:

22 Q You've been against Mr. Leauanae, where the parties  
23 disagree on what the net worth to be divided is, correct?

24 A Well, just -- just to clarify that, in the case we

1 had, we really didn't address net worth. We addressed --  
2 earnings were addressed, but not net worth.

3 Q Okay. But there was money allegedly gone.

4 MR. SMITH: Objection.

5 THE WITNESS: Yes.

6 MR. SMITH: Vague and ambiguous. Money allegedly  
7 gone here or there?

8 BY MR. MARKS:

9 Q Not to be divided. Is that right?

10 MR. SMITH: I have an objection, Your Honor. The  
11 questions is vague and ambiguous.

12 MR. MARKS: I'll rephrase.

13 MR. SMITH: I don't know which -- what case he's  
14 referring to.

15 MR. MARKS: I'll rephrase. I'm not --

16 THE COURT: Sustained.

17 MR. MARKS: -- referring to any case. I'll rephrase  
18 it.

19 BY MR. MARKS:

20 Q In your experience in doing this for 30 years --

21 A Twenty years.

22 Q -- or 20 years --

23 A This type of work.

24 Q -- of doing forensic, the normal waste claim is

1 where there is missing money or assets, correct?

2 A Missing or knowing where it went, such as gambling,  
3 let's say; it's missing because somebody gambled the money  
4 away, let's say, just for an example.

5 Q And is less money to be divided, so there has to be  
6 an unequal division to equalize it, correct?

7 A Yes.

8 Q And that's not this case, is it?

9 A Correct. It's not.

10 MR. MARKS: I'll pass the witness.

11 RECROSS EXAMINATION

12 BY MR. SMITH:

13 Q Mr. Teichner, you didn't provide any accounting  
14 whatsoever, correct?

15 MR. MARKS: Objection. Asked and answered this  
16 morning.

17 THE COURT: Overruled.

18 BY MR. SMITH:

19 Q You didn't provide any independent accounting of the  
20 spending of Dennis Kogod or Ms. Khapsalis or anyone else,  
21 correct?

22 A I didn't do -- make a listing of -- when you say  
23 "accounting," we've got to clarify this because I didn't make  
24 a list, go through the expenditures and make a listing. The -

1 - the -- the nature of my accounting was going through the  
2 expenditures with Mr. Kogod, and also asking questions about  
3 certain items and what the reasonableness is.

4           And when I -- for example, on -- and for the yacht,  
5 just to give an example, yeah, I did accounting. I -- I  
6 eliminated the -- like I said, the equipment. I eliminated  
7 the loss on -- on the sale of the yacht, and just took into  
8 account those expenditures that were for maintaining the  
9 yachts during the period of time that they were held.

10           Q     You --

11           A     Not saying that they're even potential community  
12 waste.

13           Q     You have not provided a single, underlying document,  
14 independent of your citation to the report of Mr. Leauanae,  
15 correct?

16           A     Well, the only -- as far as -- when you say  
17 "underlying document," I mean, I -- certainly, I looked at the  
18 -- the answers to the --

19           Q     No, no, no. I'm saying have you recorded --

20           A     Those are under oath.

21                   MR. MARKS: He's answering.

22 BY MR. SMITH:

23           Q     I'm sorry.

24           A     I mean, we've got depositions --

1 MR. SMITH: He's not --

2 MR. MARKS: The question was non -- I mean the  
3 answer was nonresponsive.

4 THE COURT: Correct.

5 BY MR. MARKS:

6 Q Have you provided a single, independent document to  
7 prove these accountings you said you did, other than the --  
8 these charts that were provided to you by Mr. Kogod -- or  
9 mister -- or Anthem's report?

10 A Again, it you've got the depositions. If you want  
11 the -- if you want the schedules that Mr. Kogod --

12 THE COURT: No. You need to -- you need to answer  
13 the question Counsel is asking.

14 WITNESS: I'm not sure what --

15 BY MR. SMITH:

16 Q Have you provided a single, independent document to  
17 verify your accounting, other than your review of the charts  
18 that were provided to you by the Anthem report?

19 A No, I did not -- no, I did not provide the listing  
20 that Mr. Kogod had yellow-lined.

21 Q In fact, your charts that are on your report  
22 reference the exact same references that were referenced by  
23 mister -- or Anthem's report because you didn't look at any  
24 underlying documents, correct?

1 A Correct.

2 Q Okay.

3 MR. SMITH: That's all.

4 THE COURT: Any redirect?

5 FURTHER REDIRECT EXAMINATION

6 BY MR. MARKS:

7 Q When you were at Mr. Leauanae's deposition with me

8 and we went through his Exhibit 6, and we tried to find out

9 where he made all of these adjustments, he said, I'll send you

10 -- he didn't know, correct?

11 MR. SMITH: This is the improper use of a

12 deposition. If he's going to put words in the mouth of Mr.

13 Leauanae, he should use the deposition, Your Honor.

14 MR. MARKS: It's just foundational.

15 BY MR. MARKS:

16 Q Did Mr. Leauanae say he was going to send backup to

17 explain the adjustments on Exhibit 6?

18 A Yes.

19 Q Do you recall that?

20 A Yes.

21 Q Okay. And did Mr. Leauanae actually send backup, or

22 just send more schedules; did he send any underlying backup?

23 A No

24 Q Okay. So you didn't get any backup from them when

1 you had questions regarding Exhibit 6 to their report,  
2 correct?

3 A Correct. And in fact, I -- you wrote a letter. I  
4 saw a copy of a letter that you wrote, I guess it was  
5 addressed to Mr. Smith, about we want the backup and I've --  
6 we've never seen it.

7 Q Okay. So all you got -- all we got is more, just  
8 schedules, listings that didn't have any backup, correct?

9 A Correct.

10 MR. MARKS: All right. I'll pass the witness.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you.

13 MR. MARKS: Your Honor, can we take a five-minute  
14 break?

15 MR. SMITH: How many minutes do I have left?

16 THE COURT: You have used nine minutes this  
17 afternoon.

18 MR. SMITH: So I've got 30 -- 26 left?

19 THE COURT: Yeah.

20 MR. SMITH: Twenty-six left.

21 (COUNSEL CONFER BRIEFLY)

22 THE COURT: All right. Let's take a break.

23 MR. SMITH: We took a short lunch. Can you give us  
24 each another seven and half minutes? What? Right.

1 MR. MARKS: How much time do I have left?

2 THE COURT: You have used -- I'll look at the time

3 allocations when we come back and look at our --

4 MR. SMITH: Thank you, Your Honor.

5 THE COURT: The goal is to be -- I have to dismiss

6 my staff by 5, so if that means any extra time, I'm happy to

7 give it out. I just don't know if the numbers add up, so I'll

8 take a look at that.

9 (COURT RECESSED AT 14:20:21 AND RESUMED AT 14:33:46)

10 THE COURT: We're back on the record in the Cioffi-

11 Kogod matter.

12 Your next witness?

13 MR. MARKS: I need a time check.

14 THE COURT: You have used 473 of 540 minutes.

15 That's just over an hour.

16 MR. MARKS: And what is Mr. Smith at?

17 THE COURT: Oh, wait a second. Hang on. Mr. Smith

18 has used 514 minutes.

19 MR. MARKS: So he has 26 minutes; I have 73 minutes.

20 THE COURT: Correct, 67 minutes.

21 MR. MARKS: 540 minus --

22 THE COURT: Oh, wait a second. Yeah. Hang on.

23 MR. MARKS: Seventy-seven minutes.

24 THE COURT: Right.

1 MR. MARKS: Okay. I have 77; Mr. Smith has 26?

2 THE COURT: I believe that's correct. Let me just

3 --

4 (COUNSEL CONFER BRIEFLY)

5 THE COURT: That's correct. All right.

6 MR. MARKS: Okay. I'm going to call Mr. Kogod back.

7 THE COURT: Okay. Please remain standing and raise  
8 your right hand to be sworn.

9 THE CLERK: Do you solemnly swear that the testimony  
10 you're about to give in this action will be the truth, the  
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE COURT: You may be seated.

14 DENNIS KOGOD

15 having been called as a witness on his own behalf as  
16 Defendant, having been first duly sworn, testified as follows  
17 on:

18 DIRECT EXAMINATION

19 BY MR. MARKS:

20 Q Mr. Kogod, you're familiar with the supplemental  
21 expert report, the December 15th report?

22 A I am.

23 Q Okay. And you reviewed the schedules, I think, with  
24 Mr. Smith during his -- during your deposition, correct?

1 A As well as Mr. Teichner and yourself, yes.

2 Q Okay. So I'd like to quickly, because we have  
3 limited time remaining, first going to Exhibit 2 of that --

4 (COUNSEL CONFER BRIEFLY)

5 BY MR. MARKS:

6 Q Exhibit 57 is their report, and Exhibit 2 of Exhibit  
7 57.

8 A Okay. I've got Exhibit 57.

9 Q And then the attachment is Exhibit 2, I believe, is  
10 the expenses for Nadya and Rachel.

11 A Okay.

12 Q All right. And you heard the -- you've heard the  
13 testimony in court from Ms. Allen as to how she did the  
14 calculation of the expenses of Nadya and the children?

15 Q I have.

16 Q Okay. And she's concluding that you spent 1.6  
17 million over an eight-year period for Nadya and the children,  
18 correct?

19 A Correct.

20 Q All right. And did you go over those expenses with  
21 Mr. Smith at your deposition?

22 A I did, line item by line item.

23 Q Okay. And did you, therefore, essentially account  
24 by telling him your opinion as to each line item on that

1 exhibit?

2 A I opined on who they should be allocated to and took  
3 out those that were clearly mislabeled.

4 Q Okay. On Exhibit 2, are there items that clearly  
5 were not for Nadya and the children, or were in another way  
6 were for you, your benefit?

7 A In the original report before I pulled them out at  
8 my depo or since getting a revised report back?

9 Q Let's say the original report, before you pulled  
10 them.

11 A There were several things on there. We talked about  
12 dry cleaning yesterday. We talking about a lot of clothing  
13 stores that are clothing stores for men, and there were  
14 clothing stores that were for men and women that Nadya would  
15 buy me work clothes; a lot of medication that I paid cash for,  
16 so a lot of charges at CVS. I think there were some car  
17 payments. There were a host of things that clearly didn't  
18 belong ascribed to Nadya.

19 Q And did you honestly answer those?

20 A I did.

21 Q And from that 1.6 million, how much did you believe  
22 was for your benefit and not for Nadya and the children; how  
23 much did you deduct?

24 A I think we deducted -- was it 586,000, roughly?

1 Q Roughly, or five sixty.

2 A Five sixty, I'm sorry.

3 Q And that was contained in some -- that number,  
4 approximately, was contained in Mr. Teichner's report,  
5 correct?

6 A Correct.

7 Q Okay. And from that number, did that include food  
8 that you would have shared with Nadya and the girls?

9 A If I'm not mistaken, we then went back and  
10 attributed a value to food, if I'm not mistaken.

11 Q Okay.

12 A So, rather than taking it out on just saying every  
13 grocery bill was for me, we tried to do it proportionally.

14 Q Okay. And what -- so explain to the Court, what do  
15 you think you spend for Nadya and the girls at -- including  
16 cash, over the eight-year period.

17 A I think your opening statement said it correctly.  
18 Between expenses, the children, their care, Nadya, and all of  
19 her care, and her books and cash to her and her family, and  
20 groceries that were associated with Nadya and the kids and the  
21 nanny, I think the 1.5 million that you talked about, clearly,  
22 clearly, reflects what I've spent over eight years.

23 Q Now when they say you didn't do any accounting, when  
24 you take cash out of an ATM, do you write down what you're

1 spending it for?

2 A No, I don't.

3 Q Would you have been doing expenditures such as that  
4 for an eight-year period?

5 A No, I don't. I haven't.

6 Q They had every single transaction, 23,000 or so,  
7 transactions of -- wasn't that -- weren't those transactions  
8 coming out of your bank statements, credit cards, et cetera?

9 A They were coming from a every available source, yes.

10 Q And did you prevent the plaintiff from getting those  
11 documents?

12 A No, not at all. We provided everything we could,  
13 and those at the bank required subpoenas. I think they went  
14 ahead and subpoenaed -- subpoenaed those.

15 Q And the documents that they didn't get, is that  
16 because if you or because of a banking issue?

17 A It's because the banks stopped keeping records or  
18 they only keep them for so many years. Going back before 2008  
19 was just impossible.

20 Q And did they ever file, from your knowledge, a  
21 motion to compel discovery, claiming that you didn't  
22 cooperate?

23 A No, they didn't.

24 Q Okay. So, when they keep saying you didn't do an

1 accounting, what more could you have done than what you did in  
2 cooperation with them, in terms of just giving your honest  
3 opinion of what you spent on Nadya and what you spent on  
4 yourself?

5 A I think, between the two days of deposition, the  
6 financial disclosures, which highlighted myself and for  
7 somebody else, and all the bank statements including those  
8 that have Nadya's name on there, are attributed to Nadya. I  
9 think we did a pretty thorough accounting of her expenses.

10 Q Okay. And you recall that we got their supplemental  
11 report on December 15th, 2015, correct?

12 A I do.

13 Q And we had agreed that Mr. Teichner's report, I  
14 think, would be due in late January for this February trial,  
15 correct?

16 A I think we even asked for a week extension, correct.

17 Q Okay. But when you go the December report, prior to  
18 getting the December report, did you have any idea that there  
19 would be 3.6 million in alleged on allocated or unclassified  
20 expenses that were not in a category?

21 A I was shocked when you called me and told me that  
22 was the number, and even more surprised when I looked through  
23 and saw what the entries were that made up that 3.6.

24 Q So would there be any way to account for the 3.6,

1 I'm going to call it "unallocated," on their Exhibit 6, prior  
2 to December 15th?

3 A Can you ask the question again, please?

4 Q Would you have in any way anticipated that there  
5 would be a plaintiff's claim for 3.6 million on unallocated  
6 expenses prior to December 15th.

7 A No, not at all.

8 Q Okay. So, in terms of -- I'm going to come back to  
9 Exhibit 6. Let's -- let's talk, staying on Exhibit 2.

10 If you weren't living with Nadya and the girls, and  
11 you're just living in LA for the past eight years,  
12 essentially, on your own, do you have an opinion as to what  
13 you would spend on yourself for entertainment, food, clothing,  
14 et cetera?

15 MR. SMITH: Foundation, Your Honor.

16 THE COURT: Sustained.

17 BY MR. MARKS:

18 Q You've lived in LA since when?

19 A Other than a two-year period that I was going back  
20 and forth between LA and Denver, clearly, from 2010 --  
21 actually from 2004, when I was in Overland, a very small time  
22 in Las Vegas, 2010, none in Vegas, splitting a year -- two  
23 years in Denver and LA; so, effectively, since 2010.

24 Q Form 2000 to 2004, you were also in the Orange

1 County area, which is the suburb of LA, isn't it?

2 A Yes, we -- yeah.

3 Q Okay. From --

4 A 2003.

5 Q From all your time in Southern California, did you -  
6 - were you able to observe the cost of living there?

7 A It is a significantly high place to live, and LA  
8 County even more so than Orange County.

9 Q Okay. So, in their report, they're basically saying  
10 1.6 million on Nadya and the girls, which is 200,000 a year,  
11 for eight years. Isn't that correct?

12 A That's what they're alleging, yes.

13 Q Okay. So, if you weren't living with Nadya and you  
14 didn't have two girls, in terms of your living expenses, do  
15 you have an opinion, as to during that eight years, whether  
16 you expenses would have been higher or lower than 200,000 a  
17 year?

18 A I think, at minimum, they would have been the same.  
19 If I hadn't gone out to dinner with Nadya -- and you can  
20 separate the in vitro, I get that. But I would have gone out  
21 with friends, I would have probably gone out on other dates, I  
22 would have -- I would have taken some trips. I would have  
23 found things to occupy my time. I was literally living a  
24 different world, apart from Gabrielle. So the thought that I

1 was going to sit home in the house and do nothing for five  
2 years, and not have any social life -- so the cost of living  
3 with Nadya is probably less than the cost of me living with a  
4 guy who's going to go out and drink equally. So, at minimum,  
5 the same; more likely, more.

6 Q You understand that they're saying it's community  
7 waste because it's a girlfriend.

8 A I do.

9 Q You understand that. Do you think that's realistic  
10 based on your lifestyle and Gabby's lifestyle over the eight  
11 years?

12 A No, I don't. And then I think, when you look at her  
13 FDF and you say fifteen to 21,000, I think the amounts we  
14 spent over that eight years were remarkably close. I think  
15 what's at issue here is the girlfriend versus, I have life, I  
16 had to eat, I had to go out. And I think what we're just  
17 getting entangled is, is it just -- it happened to be the  
18 emotional issue of it's Nadya and a girlfriend.

19 Q So do you have an issue with Gabrielle spending  
20 180,000 a year on whatever she spends during the same period;  
21 do you have an issue with that?

22 A I not only had -- I didn't have an issue, I didn't  
23 have any visibility either. The checking account has always  
24 been in her name, her credit cards are in her name, she gets

1 the bills, she gets the statements. I have no idea how much  
2 she was writing checks to her family to keep up the Brooklyn  
3 home. So it didn't matter to me. But at the end of the day,  
4 the amounts are remarkably consistent over that eight-year  
5 period.

6 Q On their Exhibit 2, do they include things for the  
7 home like some small furniture, sheets, pillowcases; things  
8 like that?

9 A Yeah, there were -- there were costs in there,  
10 particularly to furnish Edenberg and Oak Pass from Crate &  
11 Barrel, too, which is not a high-end store by any means.  
12 Ross, where laundry and linen things or -- and sheets are  
13 purchased. So there were a bunch of entries that had to do  
14 with furnishing a home that was my primary residence in Los  
15 Angeles.

16 Q Do they also have expenses for Mo in -- under Nadya.

17 A Yeah, they did. And I've heard the testimony back  
18 and forth this morning. And at the end of the day, that was  
19 my investment. Nadya, other than going to one trade show and  
20 then getting frustrated that it did -- there just wasn't  
21 anything for her to do, and she knew that. This was an  
22 investment decision similar to, I iChill and Radiology  
23 Partners, where you bet on people.

24 Radiology partners, I bet on my former CFO and our

1 Chief Operating Officer that they're good people; the same  
2 thing with iChill. I met two remarkable designers that were  
3 highly qualified, had a lot of credentials, and just thought  
4 it was either -- like I said, it was either going to be really  
5 big, or we'll lose a little bit of money and -- "we," meaning  
6 the portfolio, and that's when I -- when I refer to "we," I  
7 think about the portfolio and Nadya. I read her -- I heard  
8 her testimony, and it's just wishful thinking.

9 Q Okay. But the portfolio is you and Gabby, correct?

10 A When I say "we," I think -- yes. The portfolio, as  
11 the money sitting in the account that was going to fund it.

12 Q And you understood that if Mo had taken off and  
13 become another John Varvatos, that it would have been a  
14 community asset, correct?

15 A No question about it.

16 Q Okay. Also on Exhibit 2, there are car payments.  
17 Do you see those; BMW?

18 A I do.

19 Q Do you believe those should have been considered  
20 waste?

21 A No, I don't at all. I've had multiple cars over the  
22 years at the same time. Other times, where I actually had a  
23 car in Denver, as well, because I was going back and forth. I  
24 don't think that should be community waste at all.

1 A Those BMWs were owned by you, or leased by you?

2 A They were -- they were leased by me, correct.

3 Q Okay. But Nadya could only drive a car because you  
4 allowed her to drive a car, correct?

5 A That's correct.

6 Q And you've had multiple cars before Nadya, and you  
7 had multiple cars after Nadya. Isn't that right?

8 A We had multiple cars in North Carolina, we had  
9 multiple cars in Orange County, we had multiple cars in Las  
10 Vegas. I -- all the way back from 1993, I've had multiple  
11 cars, and nice cars.

12 Q So, whether you have a girlfriend or not, you always  
13 have multiple cars.

14 A I have; I just enjoy driving them.

15 Q All right. The next item I wanted to talk about was  
16 the cash. They have on Exhibit 3 -- they're claiming, one way  
17 or another, all of the cash that you withdrew from ATMs over  
18 an eight-year period as community waste. Do you understand  
19 that?

20 A I do.

21 Q And tell the Court what your use of cash in LA is.

22 A It's not just Los Angeles, it's domestically and  
23 internationally. I just -- I use cash a lot. I'm on the go,  
24 you pull up a car in Los Angeles, and it's a twenty-to-twenty-

1 five-dollar valet. I typically -- you come out of a  
2 restaurant, you give your ticket, and you don't want to stand  
3 their handing credit cards to guys that are running back and  
4 forth.

5 I tip when I walk in restaurants. That's  
6 particularly beneficial when you're trying to get a nice  
7 reservation at a restaurant because you're entertaining a  
8 group of physicians or hospital executives.

9 Over the years, I've paid for private lessons just  
10 for health and fitness, and krav maga and others and mat fees  
11 and coaches.

12 And you know, my lifestyle is just based on cash.  
13 So much of what I do, when I fly, I tip the baggage handlers,  
14 the limo drivers or the -- I just -- my system is just based  
15 on one of cash. I'm moving too quickly to hand credit cards  
16 to every single person. And it's just so easy to reach into  
17 my pocket and pay the valet, and pay the gardener, and pay  
18 everyone else that I can possibly pay in cash because it's  
19 just quicker.

20 Q And when you do foreign travel, explain what -- how  
21 do you use American cash?

22 A Yeah. Only recently, the -- literally, the last  
23 three or four trips, I've tried to buy currency in the U.S.  
24 before I've left, my most recent two trips, one to Brazil and

1 one to Germany. But prior to that, you take cash and you shop  
2 around for the best exchange rate.

3 I mean, typically if you exchange dollars at the  
4 airport here, you take a terrible beating. They just -- your  
5 arbitrage between buying and selling, it's terrible, but they  
6 rely on the fact that you're in a hurry. So you take cash and  
7 you find out the best place when you land there, where to  
8 convert cash in the local currency, and -- and there you go.

9 Q In your experience, if you had American dollars,  
10 cash American dollars, did you get a better rate than if you  
11 were dealing with credit cards and paying fees and all of  
12 that?

13 A If you are buying things from vendors, yes, the  
14 dollar is -- is much coveted around the world; the strength of  
15 the dollar, so, yes.

16 Q So, when reviewing the chart, what accounting would  
17 you have every kept regarding your use of cash for eight  
18 years? What could you have done; do you know?

19 A I can't think of a single thing I could that would  
20 be any more scientific than what's been done.

21 Q But over an eight-year period, they are claiming all  
22 of the cash you spend is in this unallocated potential  
23 community waste column. Is that realistic?

24 A No, it's not realistic at all.

1 Q And how much cash do you think, over eight years --  
2 they're saying it's three fifty in cash in your column, that's  
3 about 40,000 a year in cash.

4 A And I think that's a pretty close number to what I  
5 probably spend over eight years, for myself, for business, for  
6 things where I didn't charge my company. You know, I look at  
7 my income. And I stop at Starbucks in the morning and you  
8 spend \$20 in a different country or at a nice hotel. I would  
9 never, in a million years, think of sticking a receipt back to  
10 company that's rewarded us nicely, saying, here's my morning  
11 breakfast. So I think the number is a very reasonable  
12 accounting of what I've spent over that eight years.

13 Q And when you lived with Gabby, did she also utilize  
14 cash a lot?

15 A Gabrielle always had cash in her bedroom drawer,  
16 stuffed in one of her -- yes, she did.

17 Q The next issue the yacht. Tell the Court, in your -  
18 - how -- what kind of work day and hours have you worked over,  
19 let's say the last five years.

20 A Yeah. On average, I work five and a half to six  
21 days a week. My mornings start sometimes at six o'clock in  
22 the morning. The only time I can talk to my European and  
23 middle operations -- Middle East operations are six, seven,  
24 eight o'clock in the morning because, after that, we're nine,

1 ten hours difference. They're closing down for the day.

2 I then work a normal day, domestically, with my  
3 domestic responsibilities, which could include travel, could  
4 be including recruiting physicians, doing state and village  
5 (sic), meeting hospital administrators, visiting clinics,  
6 doing town halls, et cetera.

7 Then, when I get home, my Asian operation is just  
8 opening; six, seven o'clock at night, Singapore is just  
9 opening the next day for business.

10 On top of that, by example, in the last four weeks,  
11 I've taken two international trips. I went to Germany for  
12 three days, and I went to Brazil for three days. Out of those  
13 three days, I took a red eye going on a commercial flight,  
14 spent all night in an airplane, got to the country, worked,  
15 had one night in the hotel, and flew red eye back the next  
16 day, only to return to work domestically at Healthcare  
17 Partners.

18 The number of times I've taken trips to places like  
19 India and Dubai and Saudi, 22 hours each way for a meeting  
20 with the Minister of Health. You get an hour, and that's all  
21 you get. You know, there's nothing lavish about that  
22 lifestyle. At the end of the day, it is another long flight  
23 where you're not even going to get -- you don't even bring  
24 clothes with you because you're not going to be at a hotel.

1           So five and half, six days a week. Conference calls  
2 routinely on weekends with my boss, with the senior staff, et  
3 cetera. I work really hard.

4           Q     Okay. So, in your peer group, what type of  
5 recreational opportunities do people in your peer group have.

6           A     I think what you said, the majority of people --

7           MR. SMITH: Foundation, Your Honor.

8 BY MR. MARKS:

9           Q     Are you --

10          THE COURT: Sustained.

11 BY MR. MARKS:

12          Q     Are you familiar with other high-level executives in  
13 your company and other healthcare or other companies?

14          A     I can readily recognize the people in my peer group  
15 at DaVita and what they've done.

16          Q     And what have they done?

17          A     Mostly, more than anything else, real estate. And  
18 you know, my boss has --

19          MR. SMITH: Objection. Foundation, Your Honor. How  
20 does he know this?

21          THE COURT: Sustained.

22 BY MR. MARKS:

23          Q     Do you have communications with your peer group  
24 regarding what toys, perks they have?

1           A     I have been physically in many of their homes,  
2 outside of their primary residences, to be able to tell you  
3 firsthand; ski chalets, beach houses, lake houses.

4           MR. SMITH: The foundation, Your Honor, as to who,  
5 when, where, what he saw.

6           MR. MARKS: This is just for foundation of the  
7 yacht. I don't want to kill all my time talking about  
8 everybody's beach house or ski chalet.

9           MR. SMITH: Well, you can't just, generally, say  
10 everybody owns a yacht.

11          MR. MARKS: I'm not saying everyone owns a yacht. I  
12 think he's very frugal compared to what his peers --

13          THE COURT: Well --

14          MR. SMITH: That's an opinion, not an argument --

15          THE COURT: Well, listen. The objection is  
16 sustained. From a time standpoint, just so you're aware your  
17 time was actually at 445. So I want to correct that. You,  
18 actually, starting this examination, had 95 minutes remaining,  
19 not 77, so --

20          MR. MARKS: Okay.

21          THE COURT: But the objection is sustained.

22          MR. MARKS: Okay. Let me rephrase it.

23 BY MR. MARKS:

24          Q     Tell us a little about you love of boating growing

1 up.

2 A My grandfather had a sixty-foot Chris Craft, all  
3 wooden, at the Chesapeake Bay. We lived in Baltimore,  
4 Maryland until I was 17 years old. And for a majority of  
5 those years, every weekend, my mother and my father would go  
6 down to the Chesapeake, and we'd go -- we'd go around  
7 Annapolis.

8 I didn't touch a boat for many, many years, A,  
9 because I couldn't afford it; B, I wasn't really living in a  
10 place that was accessible to the water. And then, somewhere  
11 around 2013, when I had to give up the two things I loved  
12 doing the most for myself, which were --

13 Q Tell the Court about that.

14 A Playing golf and -- and mixed martial arts,  
15 competing at a national level. I gave up -- I tore two  
16 rotator cuff, and I -- I tore -- I herniated a disk in my neck  
17 to go along with two in my lower back. So I, literally, gave  
18 up the things that I enjoyed doing.

19 And as it turned out, I was taken back to the water.  
20 It brought me, there, some peace and serenity. As you  
21 mentioned the other day, it was a -- it was a good vehicle to  
22 take people that worked for me out on -- four, five, six hours  
23 into the ocean, out to Catalina. You talk about a captive  
24 audience. There's not many places that they can go, and say,

1 hey, we can't stay in this meeting anymore, we're going to go  
2 elsewhere, it's not that big of a boat. So it simply replaced  
3 two other hobbies that I had a real passion for going into  
4 boating.

5 And when I took up boating, I -- honest to God, I  
6 could be sitting out there, and it didn't matter what happened  
7 the other six days of the week, those hours were mine.

8 Q What was the -- how expensive was golf in LA?

9 A Yeah. There are very few public courses in LA.  
10 You're really talking about Pacific Palisades, going down to  
11 Trump National, and there may be one or two other courses up  
12 in Malibu, and then you go down to Newport Beach and Pelican  
13 Bay. And we're talking about two to \$350, depending on the  
14 time of the year and the season, just for greens fees. Forget  
15 golf balls, forget the snack cart, forget the parking, forget  
16 the gas, forget, you know, I broke a club, I'm going to buy a  
17 shirt, et cetera. So, easily, just on average, 250 to \$300 a  
18 day to play a round of golf in Los Angeles or Orange County.

19 Q And is that for one person?

20 A Yes, just for one person.

21 Q That's not bringing anybody.

22 A No, no.

23 Q Okay. And what about mixed martial arts; how  
24 expensive was that?

1           A     You know, I was taking about 100 and -- I don't  
2 know. When I had time, 180 hours -- 180 minutes of lessons a  
3 week. So I paid mat fees, I paid trainer fees. I was  
4 competing in a lot of local contests. I competed in two of  
5 the senior tournaments in Brazilian jujitsu, the North  
6 American Open. You know, by the time you finish the week, by  
7 paying gym fees and your trainers and the coach and the mat,  
8 equipment, clothing, et cetera, you could easily spend \$500 a  
9 week on mixed martial arts, as a serious practitioner. I'm  
10 not talking about someone who goes to the gym once, but  
11 someone who truly enjoys the sport and competes.

12           Q     So, in terms of the yacht, could you trace, briefly,  
13 the purchase of the yacht and -- the two yachts and the sail?

14           A     Yeah. I think we -- 2012, November, December, we  
15 were down in San Diego at the -- it wasn't the American  
16 Society of Nephrology. We were down at meetings staying at  
17 the Marriott, at the waterfront, at that marina. And looking  
18 out over the water, it was just like when I went to Lake Las  
19 Vegas, I was struck by the beauty of the water, the boats.

20                   I went downstairs, I found a broker. There were a  
21 bunch down there because there were a lot of charter  
22 companies. And I purchased a fifty-six-foot 2007 cruiser for  
23 about \$580,000.

24                   I went down for X number of weekends to get

1 certified by a captain, where an insurance company would  
2 actually grant me a license or insurance to take the boat off  
3 property, passed all the Coast Guard requirements, et cetera,  
4 and transported the boat up from San Diego up to Marina Del  
5 Rey.

6 Q Okay.

7 A And I think I traded that boat somewhere around June  
8 of 2014 for a smaller boat, but one -- a little bit more  
9 modern, the electronics, it was safer to handle, et cetera.  
10 And I bought a fifty-foot -- actually a fifty-eight-and-a-  
11 half-foot Marquis.

12 Q Okay. And then, ultimately, what happened to the  
13 Marquis?

14 A Sold the boat roughly July 2015 to a private  
15 individual.

16 Q Okay. And in that -- and the Anthem report is  
17 claiming potential community waste of some \$626,000 plus. Do  
18 you believe that's --

19 A I don't --

20 Q -- legitimate?

21 A No, I don't believe it at all. First of all, they  
22 put the acquisition prices in, and as Richard said, they put  
23 some equipment in there that allowed for a better trade-in on  
24 the boat, so I don't agree.

1           And I don't agree that the operating expenses are  
2 waste. They're no different than any other hobbies. They're  
3 no different than maintaining a house and have a garden, and a  
4 pool, and replacing a wall and painting the exterior. It's  
5 just the cost of something you enjoy doing, so I don't agree  
6 with it.

7           Q     And was that your only hobby during that period of  
8 time?

9           A     Once I gave up golf and mixed martial arts, the boat  
10 was pretty much it, yes.

11          Q     And when you sold the boat, did the proceeds go into  
12 a UBS account?

13          A     They did.

14          Q     So there was -- there would be nine ninety that's  
15 back in the UBS account.

16          A     I would hope, since -- that would be a little bit  
17 more, since it was July, that it's done something, even if it  
18 generated some normal interest from just being in a -- in a --

19          Q     Okay.

20          A     -- saving's account.

21          Q     So do you think you should be charged any community  
22 waste for owning the yacht for the three years?

23          A     No, I don't.

24          Q     The next issue is relating to what we're calling

1 Exhibit 6, that I'm calling "unallocated," and they have the  
2 long phrase of "assessments of potential community waste not  
3 elsewhere classified." I hope I can use the word  
4 "unallocated" because it's shorter. And the -- just so you  
5 know, that's Exhibit 6. And the backup that we received on  
6 February, I think, 12th from Anthem would be exhibit --

7 (COUNSEL CONFER BRIEFLY)

8 BY MR. MARKS:

9 Q Would be exhibit -- in Exhibit 60 and 61. And I  
10 think you've reviewed Exhibit 60 and 61. I have a loose copy.  
11 Isn't that right?

12 A I have a -- yes. Multiple times.

13 Q Okay. And so, if you can keep Exhibit 6 open and  
14 Exhibit 60 and 61 both open, so I can refer back and forth.

15 A I'll do my best, yes.

16 Q Okay. You reviewed Exhibit 6, which is the  
17 assessment of potential community waste not otherwise  
18 elsewhere classified, correct?

19 A I have.

20 Q And you couldn't review that in full until we got  
21 the backup on February 12th of 2016, correct?

22 A Correct.

23 Q So was there any accounting you could have done?

24 A Not in that short time frame, no.

1 Q Okay. And in fact, wasn't that the discovery cut  
2 off that day when we got there?

3 A That was my understanding, yes.

4 Q Okay. So I'm going to go through some items. The  
5 first, in the far-right-hand corner, those adjust -- where it  
6 says "Adjusted," that will add up to the 3.6 million. Do you  
7 understand that?

8 A I do.

9 Q Item 7, auto-related, GMAC Cadillac, 273,300. After  
10 you reviewed the backup in Exhibit 60 and 61, what did you  
11 determine that charge was?

12 A I think I determined what anyone would. When the  
13 word "mortgage" is following it, and ascribing that a Cadillac  
14 Escalade, which is an eighty-five-to-ninety-thousand-dollar  
15 vehicle is \$273,000, when Cadillac lease payments are captured  
16 otherwise, that it -- that it was a mistake. That was the  
17 mortgage, the first mortgage for Edenberg.

18 Q And Edenberg was rolled into Oak Pass?

19 A Yes. And on my side of the balance sheet.

20 Q Okay. So you don't believe that should be potential  
21 community waste?

22 A Not at all.

23 Q The next item is 466,694.86, auto-related, luxury,  
24 not elsewhere classified. You heard how Ms. Allen gave you a

1 car allowance of a certain amount of money and looked at your  
2 FDF and your depo testimony, and I guess, determined 466,694  
3 is -- they want to consider waste. Should that be waste in  
4 your opinion?

5 A Not at all. And I think Richard did a good job of  
6 this category. But arbitrarily assigning an auto allowance of  
7 \$3,700, I don't even know how they arrive at that.

8 Q Are you taking the cars on your side of the column?

9 A Taking the cars and the depreciations on my side of  
10 the column.

11 Q Do you have an exotic car hobby; would you classify  
12 yourself as a lover of exotic cars?

13 A I love driving nice cars, yes.

14 Q Okay. And would you have nice cars whether you were  
15 married or not married, have a girlfriend or not have a  
16 girlfriend?

17 A I would have nice cars, and that is a habit that  
18 began back in 1991, living in Philadelphia, with a purchase of  
19 our first Infinity QX56, which was a high-end luxury car, in  
20 1991.

21 Q The next item, 17, is bank fees, cash advance. Do  
22 you know why -- do you believe that bank fees should be  
23 considered waste?

24 A I don't. You know, I can't, every time I need cash,

1 ride around town. I don't have the luxury of working three  
2 days a week, at leisure, and trying to find a Bank of America  
3 ATM. Sometimes, you just accept what you have if you need  
4 cash, and you pay the 3.95 or the 4.95 associated with the  
5 transaction.

6 Q Do those -- in other words, they have bank fees,  
7 finance charges, foreign transaction fees. Why would Nadya or  
8 some community waste issue relate to foreign transaction fees?

9 A You know, the only thing I can think of, if Nadya --  
10 she made one trip to Kazakhstan to visit her family, and I  
11 think one trip to Germany. I may, directionally, be off  
12 during the years. But I think that was captured on all of her  
13 credit cards. I think the foreign transactions were charges  
14 on my credit card, and the fees associated with the credit  
15 cards charging an arbitrage between kind of local currency and  
16 conversion.

17 Q They're saying you -- loan interest, that I guess  
18 you shouldn't have had any interest over eight years. You had  
19 26,000 in interest. Can you explain that?

20 A I don't know how you have a loan to finance things  
21 that end up adding value, in most cases, not all, and not have  
22 any interest associated with those.

23 Q You're pretty debt-free, though, aren't you?

24 A Yes, I am debt-free. The home in Oak Pass is paid

1 for, Carlyle is paid for, and my parents' condo and my  
2 brother's condo are all paid for --

3 Q But you --

4 A -- so --

5 Q But you have a UBS line of credit.

6 A I do.

7 Q And why do you use that; for what?

8 A Yeah. There are times when a capital call will come  
9 in, and as Richard said, a capital call is you make a pledge  
10 to a fund to commit X number of dollars, let's just say  
11 \$500,000. They don't take it all at once; they, periodically,  
12 will send an email saying, you have a capital call due  
13 tomorrow or the next day. And when you look at your portfolio  
14 and you start moving things around, you, literally, make a  
15 business decision.

16 My line of credit is somewhere about 1.4 percent.  
17 You know, there are not a lot of rates you can access with  
18 that. So you just say, rather than take money or liquidate  
19 something that's generating three or four or five percent,  
20 access a line of credit. It -- it's not free money, but it's  
21 less-expensive access to capital than taking something out of  
22 a fund that's performing higher.

23 Q Now has Gabby --

24 MR. SMITH: Foundation, Your Honor. I don't know

1 where any of those numbers came from.

2 THE COURT: Sustained.

3 BY MR. MARKS:

4 Q What -- in terms of your line of credit, is your  
5 interest rate on your line of credit?

6 MR. SMITH: Foundation, Your Honor. Where's --

7 MR. MARKS: He would know his own interest rate,  
8 wouldn't he?

9 MR. SMITH: Well, I don't know. You'd have to look  
10 at a document, which he's never provided, in terms of --

11 MR. MARKS: No, but do you know what the -- he could  
12 know what the rate is on his line of credit.

13 THE COURT: The witness may answer the question.

14 THE WITNESS: 1.4 -- 1.4 percent, the last time I  
15 checked.

16 BY MR. MARKS:

17 Q Is your dealings in your portfolio with your line of  
18 credit, was that helping or hurting Gabby?

19 A It was, ultimately, helping.

20 Q The next item they have is "Capital Call Mutual  
21 Fund." Do you know what that is?

22 A It's the same concept. You -- you sign up to  
23 participate in a fund; and rather than taking all of your  
24 money up front and sitting on it, they only take money, as

1 needed, to purchase something in their portfolio. That  
2 benefits you. Otherwise, your money is sitting there, not  
3 doing anything at all, in terms of interest. So any capital  
4 call -- and there's a whole bunch throughout the -- since  
5 2011, since we had UBS, so that's what that capital call is.

6 Q Then they have "CC Payments," I guess all the credit  
7 card payments. Why would those be community waste?

8 A I -- I don't have any idea.

9 Q Do you use your personal card both for personal and  
10 business?

11 A Up until very recently, I used my personal cards for  
12 business, primarily, get the AmEx points. Certain hotels,  
13 with AmEx, will give you late checkout, upgrade to a higher  
14 room, free internet. So yeah, yes, I use my personal cards a  
15 lot.

16 Q Then they have dues and subscriptions, 23,000.

17 A Yeah.

18 Q Do you see that on Line 43?

19 A I do. I -- dues and subscription. I'm sorry.  
20 Which line, Dan?

21 Q 43.

22 A Yeah. I don't know what the cost is of Equinox, and  
23 I'm assuming -- you know, I'm entitled to a health club  
24 membership; I work out a lot. In a stressful job, staying