

Case No. 74275

In the Supreme Court of Nevada

GEORGE STUART YOUNT, individually and in his capacity as owner of George Yount IRA,

Appellant,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10.,

Respondent.

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Clerk of Supreme Court

APPEAL

from the Second Judicial District Court, Washoe County, Nevada

The Honorable N. PATRICK FLANAGAN, District Judge

The Honorable JEROME POLAHA

The Honorable EGAN WALKER

District Court Case No. CV16-00767

APPELLANT'S APPENDIX

VOLUME 6

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1 Q. Did Mr. Criswell tell the other investors that the
2 amount of new debt needed under that loan would be
3 \$21 million?

4 A. Additional or the total?

5 Q. Additional debt.

6 A. Well, the total they were looking for was 50 to 55
7 million, I believe, from Mosaic and there was one other
8 lender that was possible. They had already done an appraisal
9 and moving toward a term sheet or maybe produce the term
10 sheet. But I think Mosaic was the most likely solution. And
11 that would have been 50 million, which would have been enough
12 to finish and open the hotel.

13 Q. And the other investors seemed upset about that
14 number between -- when they're talking about Mosaic, did the
15 other investors seem upset with that information?

16 A. I don't even know if the whole group was upset.
17 It was mainly a smaller group that was, you know, upset
18 about, you know, the lack of closing on the financing and
19 unexpected change orders. So it was just kind of a -- it was
20 the first time there was kind of a general discussion about,
21 where do we go from here? How are we going to complete the
22 hotel?

23 Q. Can you move to Exhibit Number 45? Mr. Marriner,
24 this looks like an e-mail you sent, would have been the next

1 day, right, December 13th?

2 A. Right.

3 Q. And you sent it to Mr. Radovan and Mr. Criswell.

4 And are the ccs Jamieson, Busick, Chaney, were they the
5 executive committee at the time?

6 A. That's correct.

7 Q. And when you talk about questions I could not
8 answer last night that need to be addressed, what questions
9 are you talking about?

10 A. Well, that was a question I was wondering where
11 did Stuart Yount fit into the capital cap table. I don't
12 know if a cap table had been issued at the meeting, but these
13 were questions that people were asking to me. And I was
14 having to say, I don't know. I'm not the developer. You're
15 going to have to ask Robert.

16 So I thought to bring transparency to the kind of
17 questions that were flying around the room, I wanted to put
18 it into an e-mail and just say, could you help me answer
19 these questions? Is there a new cap table that is going to
20 be delivered? And I think that was a question that the
21 Younts had is where did they fit on the cap table.

22 Q. And these were questions when you say you could
23 not answer, those were questions that people were addressing
24 to you?

1 A. It was to the whole room. People were saying,
2 hey, Dave, what do you think about this? What's going on
3 here? So I collectively thought I'd at least like to ask
4 Robert and Bill and kind of the executive committee. I said
5 before, you know, before it gets out of control, I think
6 these kinds of questions need to be answered.

7 Q. At the meeting, back to the 12th, was there any
8 discussion about a lack of providing reports and financial
9 information to the members of the LLC?

10 A. I recall that there were some concerns and
11 complaints that we kind of coasted through October and didn't
12 have kind of a -- the same kind of a recap on where we stood.
13 I think there were a lot of moving parts.

14 But there was some comments about, you know, we
15 really need to have monthly financial updates and quarterly
16 updates for us to feel like we really know what's going on in
17 the project. So that was probably part of the anxiety that
18 people had is we need to have monthly reports to get -- it's
19 like a pilot flying in a fog. Are we going to hit the
20 mountain or are we going to go over the mountain?

21 So in my experience, I would try and produce like
22 a variance report. Here's the budget, here's what we spent,
23 and here's where we're over or under, and that would have
24 been helpful, I think, if people would have been -- it's

1 easier to feel comfortable about a project if you're getting
2 regular financial.

3 Q. Was it your take-away from the investors on the
4 12th that they would have not been receiving those kinds of
5 monthly reports for a time period?

6 A. I think because it seemed like things were -- I
7 think the general consensus was we need to have more
8 financial reporting so that we know where the project sits.
9 It wasn't monthly. You know, it was barely happening
10 quarterly. I mean, July was a really good report and a lot
11 of pictures and financial information.

12 But, again, the executive committee, I believe
13 they were meeting monthly, but it's the general investors
14 that were going, well, we need to know. We need to have
15 transparency to whether the project is million over in
16 September and 2 million over in October. You know, I always
17 use the term it's easier to swallow small pills, you know, a
18 few, as opposed to you don't hear anything for a few months
19 and now the project is over budget, which we had heard maybe
20 a month or two sooner regarding the change orders.

21 Q. And then we go down to the next e-mail and it
22 says, we need a full accounting of Busick and Yount's
23 \$2.5 million have been used to fund the shortfall on this
24 project. Does that mean there had never been any accounting

1 provided to any of the members of the LLC prior to that
2 meeting about where that money went?

3 A. That was a question posed to me by one of the
4 investors said, you know, I understand that \$2.5 million was
5 just raised. How is that money being applied to complete the
6 hotel? And I said I would put that with in my list of
7 questions.

8 Q. The next line in the e-mail says, Stuart and Geri
9 Yount said they had an obligation to disclose the \$8.6
10 million of cost overruns that you were aware of as they were
11 closing their investment. Where did that 8.6 number come
12 from?

13 A. I think the 8.6 was a document that the executive
14 committee had circulated that had some completed change
15 orders and then there were proposed change orders. And I've
16 seen that document circulate, but there's a definitely a
17 break between existing change orders were somewhere in the 4
18 to \$5 million change and there were proposed change orders
19 and I think it totaled about 8.6. But some of those were
20 brand-new show kitchen which was going to be a million
21 dollars.

22 Well, that was proposed. Do we need a show
23 kitchen, or could that be pushed off a year? And I think the
24 investors started thinking, well, if we could have

1 discussions and talk about proposed as opposed to ones that
2 were mandated, maybe we don't need the driveway up to the
3 porte-cochere. So some of those had not even been initiated.

4 But I believe that \$8.6 is still consistent with
5 Robert had mentioned that was approximately 9 million, but I
6 think a lot of those things had been either already completed
7 or in the works.

8 Q. So the 9 million figure you're talking about when
9 I pointed out in your deposition, that Robert had told you
10 that nine was --

11 A. Approximately.

12 Q. Plus another 1.5 under the PPM?

13 A. Right.

14 Q. Lots of very frustrated and upset investors, we
15 talked about that. The next sentence, please keep in mind
16 that these are my friends and neighbors and they look to me
17 for advice and protection. What did you mean by that?

18 A. Well, I live in Incline and quite a few of these
19 people live in Incline and Robert lived down in St. Helena,
20 so I was just pleading with him. You know, let's have better
21 financial reporting and transparency, because I run into
22 these people every day at the grocery store.

23 You know, I looked at this as a, you know, a dream
24 project, you know, that was -- sorely needed in North Lake

1 Tahoe, and so it was really looked at as a very exciting and
2 positive project, but if it false into financial troubles,
3 it's going to be hard to live in Incline if things don't get
4 fixed.

5 So I was just trying to be transparent with Robert
6 and Bill, let's answer these questions, let's get a better
7 handle on financial reporting and keep the investors
8 up-to-speed on were the project is.

9 Q. When you say these are my friends and neighbors,
10 these people you're referring to are the people that you got
11 into the project and helped raise 14 million, plus
12 Mr. Yount's money and Mr. Busick's additional money?

13 A. I use the term friends, because when I do business
14 with people, I get to know them. We maybe go out to dinner.
15 So I develop fast friendships. These are not like my high
16 school friends, but I did feel, you know, protective. And,
17 you know, with Robert and Bill not living in Incline Village,
18 I was pleading with them to just say, you know, look, let's
19 keep this exciting project moving forward. Let's try to find
20 out what the problems are and let's solve the problems. We
21 were all in kind of a -- let's fix the problem.

22 Q. But when you're talking about these are my friends
23 and neighbors, you're talking about the people you got to
24 invest into the private placement memorandum, including

1 Mr. Yount and the 14 million that we talked about on the list
2 before, right?

3 A. Some of them were friends and some were clients.
4 Les Busick had been a friend. John Miller was a client and
5 bought a home that I built. So these are friends and
6 neighbors and some of them live a block from me and some of
7 them live a mile from me.

8 Q. You felt responsible to protect them and advise
9 them?

10 A. Of course.

11 THE COURT: Mr. Campbell, how many more areas do
12 you need to cover?

13 MR. CAMPBELL: I'm getting -- got one more page on
14 my outline if that helps.

15 THE COURT: It does.

16 BY MR. CAMPBELL:

17 Q. Mr. Marriner, let's go to Exhibit 47. Look at the
18 very bottom of that page from yourself to it looks like
19 Robert and Bill and Stuart. And in the sentence in the last
20 paragraph, you say, we have all been, quote, shocked
21 regarding the recent announcement of cost overruns, but we
22 remain confident that we can come together as a cohesive
23 team. The shock statement you made was the cost overruns
24 that you say you learned about in the December 12th meeting?

1 A. Yeah, the 8.6 million. I mean, that's -- I think
2 that December meeting was kind of the first time the whole
3 group was in the room at the same time talking about the
4 different change orders that had occurred.

5 Q. Go to Exhibit Number 56. Are you there, Mr.
6 Marriner?

7 A. Yes.

8 Q. This is an e-mail from Mr. Yount, it looks like to
9 the entire investment group. Is that pretty much who that cc
10 is, that's the investment group?

11 A. It looks like it.

12 Q. And you're included in that, correct?

13 A. Yes, and including secretary and accountants.

14 Q. And then there's a quote in there, this is
15 Mr. Yount, I understand this, but he's quoting like some
16 minute notes and he says, the discussion of the previously
17 circulated equity table arose. Stuart Yount requested that a
18 note be made to acknowledge his \$1 million investment. Bill
19 Criswell said that while there was an agreement to buy him
20 out, a note will be made in the meantime. Do you remember
21 the conversations in the January 8th meeting talking about a
22 note to Mr. Yount?

23 A. No.

24 Q. Did you hear Mr. Criswell in that meeting say they

1 were going to pay Mr. Yount back his \$1 million?

2 A. I don't know. I don't believe I was in -- that
3 might have been an executive committee meeting.

4 Q. Let's go to the next Exhibit Number 57. This is a
5 January 19th e-mail in the middle of the page and you're
6 actually reaching out to Heather Hill. And who is Heather
7 Hill just for the record? I don't think we've come up on
8 that name?

9 A. Robert's personal assistant or office manager.

10 Q. Then you say Heather, it may help Stuart if Robert
11 shows his 1 million in the form of a note from CR converted
12 to equity or paid back. So what had you heard about some
13 note to pay Mr. Yount back?

14 A. I'm a solution kind of guy and when I understood
15 there was some concern, I said, why don't you just put it on
16 the books as a note? So that Mr. Yount feels like his money
17 is identified somewhere. So I don't -- it may help Stuart
18 Yount if Robert shows his 1 million in the form of a note
19 from CR until converted to equity or paid back. That's just
20 a suggestion.

21 Q. Had Mr. Criswell or Radovan ever told you that
22 they were in fact going to pay Mr. Yount back evidenced by a
23 note?

24 A. I think there might have been some discussion, but

1 it certainly wasn't, you know, in my sphere of influence.
2 But if they were going to either put it in the form of a note
3 or raise additional capital and pay him, that was purely
4 between Robert and Bill and Mr. Yount.

5 Q. But what I asked you is, did you hear any
6 conversations or were you in any conversations with
7 Mr. Radovan or Mr. Yount where they said we are going to pay
8 Mr. Yount back his \$1 million?

9 A. No. It was probably an executive committee
10 meeting.

11 Q. Exhibit 61, do you have that in front of you?

12 A. Yes.

13 Q. The first e-mail in the string, there's several,
14 but I'm interested in the one on the first page. So it
15 starts Mr. Yount to -- on the 25th and it's addressed to you
16 and then it looks like the cc again to most all the investors
17 and some other people?

18 A. Not the one at the top to Bruce Coleman?

19 Q. No. Just the one there below.

20 A. Okay. Yes, it looks like the larger group.

21 Q. Okay. It says, Mr. Yount writing to you, I was
22 never asked, told or agreed to an investment of a purchase of
23 a CR 1 million share. See attached signed acceptance of the
24 Cal Neva Lodge LLC of our family unit purchased on 10/13/15.

1 Is this the first time you heard that Mr. Yount became aware
2 that he had been sold something different than what he
3 thought he was buying?

4 A. Well -- I'm sorry. Could you repeat the question?

5 Q. Is this the first time that you became aware that
6 Mr. Yount was under the impression that he bought one thing,
7 but in fact he bought -- what was given to him was something
8 else?

9 A. I'm just trying to understand how it's written
10 here investment. Yeah, I think that was the first time I was
11 made aware that the CR Cal Neva, whatever that was, was
12 something different than a regular founding member share.
13 Because it was never offered or I wasn't aware of what it
14 really, you know, what it was, other than it was part of the
15 original 20.

16 Q. Isn't what Mr. Yount saying, I was never told
17 about what the transaction that happened back on October 13th
18 a transaction that you knew about?

19 A. That's what he's saying.

20 Q. Exhibit Number 62, flip the page to that. This
21 e-mail string on just the first page starts out from
22 Mr. Yount to you. And then below that, you had written an
23 e-mail, Dave Marriner, Stuart, Robert will need to explain
24 how and why your investment was changed from taking 1 million

1 from the available 1.5 you signed up for to selling one of
2 your \$2 million shares. You go on, I was under the
3 impression that you were fully informed regarding the details
4 of the change. What left you with that impression?

5 A. Well, I left it up to Robert to sell him the
6 available share and left it at that. I was never involved in
7 the negotiating of any of the memberships.

8 Q. But you never confirmed with Robert whether they
9 ever told Mr. Yount?

10 A. No.

11 Q. And you never told Mr. Yount yourself?

12 A. No.

13 MR. CAMPBELL: That's all I have, your Honor.

14 THE COURT: Thank you very much. Mr. Wolf.

15 MR. WOLF: Yes, thank you, your Honor.

16 CROSS EXAMINATION

17 BY MR. WOLF:

18 Q. Mr. Marriner, would you please turn to Exhibit 22
19 in the exhibit book? Do you have Exhibit 22 opened, Mr.
20 Marriner?

21 A. Yes, I do.

22 Q. That's an e-mail string on August 3, 2015 between
23 you and Mr. Yount, do you see that?

24 A. Yes.

1 Q. Explain to the Court your reaction to receiving
2 the e-mail on August 3rd at 12:27 p.m. where Mr. Yount
3 stated, I've been dealing directly with Robert. Thanks. He
4 will be taking questions from my CPA early this week, more
5 soon. What was your reaction when you received that?

6 A. Well, I was relieved to know that, and I know
7 Stuart wanted to talk directly to the developer, and I
8 directed him as I directed everyone that I introduced to the
9 project, I said, please, address all of your investment
10 questions to Robert. He's the developer. I'm not. And I'm
11 excluded from discussing any confidential information.

12 So when he said, I've been dealing directly with
13 Robert. Thanks. He'll be taking questions from my CPA
14 earlier this week, more soon. I understood it was a hand off
15 from me making the introduction, that he and Robert would
16 work through all the questions associated with an investment.

17 Q. And if you turn to Exhibit 18, this is the prior
18 e-mail exchange on July 25th where Mr. Radovan in fact
19 answered questions posed by Mr. Yount?

20 A. Yes.

21 Q. By August 3, 2015, how did you perceive your role
22 as far as providing information to Mr. Yount regarding the
23 project? Where did you see yourself fitting in to the
24 picture?

1 A. I felt that Robert had taken over and was
2 answering all of Stuart's questions and Robert clearly did
3 not ever want to have two different messages going to an
4 investor. That's why he liked being in control of
5 discussions regarding the investment. So I felt this was
6 where Stuart and Robert had connected. Stuart had questions.
7 Robert was answering those questions. They were doing their
8 due diligence. So I felt that it was on a good track.

9 Q. And around the same time frame, July 25th to
10 August 3, 2015, what sort of investigation were you made
11 aware of was being conducted by Mr. Yount?

12 A. Mr. Yount had consulted the architect of the
13 project and asked his opinion about what he thought the
14 likely success of the project was. And Peter Grove said, I
15 think it's a great team. It's a great project. I know
16 they're in a fund raising mode. But my feel is that this is
17 a great project and much needed for North Lake Tahoe.

18 So I remember Peter Grove as a professional and
19 also Stuart Yount's personal architect on his estate on the
20 Lake in Incline. So he was seeking, you know, advice from
21 the project's architect, his trainer, his CPA. I felt like
22 Stuart was in a very deep dive due diligence and Robert was
23 answering the questions, I think, very well. And I think
24 Stuart went into this investment with his eyes wide open

1 regarding change orders, financing that needed to be
2 completed, whether it's the 15 million of mezz or the Mosaic
3 loan. So I felt pretty comfortable that the conversations,
4 it was moving forward.

5 Q. The information that you were aware of, which had
6 been provided to Mr. Yount up to August 3, 2015, did you
7 believe it fairly portrayed the project, the pitfalls, the
8 progress, the schedule and budget issues?

9 MR. CAMPBELL: Objection, foundation. I don't
10 know that he knows all the information that was provided to
11 Mr. Yount.

12 THE COURT: Overruled. You can answer the
13 question.

14 THE WITNESS: Yeah. I believe that the
15 information provided was accurate at the time it was
16 provided.

17 BY MR. WOLF:

18 Q. In questioning by Mr. Yount's attorney earlier,
19 there's a suggestion that Mr. Yount was not made aware of an
20 effort to obtain an overall refinancing of the entire
21 project. So in addition to an efforts to refi the mezzanine,
22 there was also a parallel efforts to refinance all of the
23 debt on the project. Did you have conversations with
24 Mr. Yount or did he provide any thoughts to you about overall

1 refinancing, and if so, will you explain what those were?

2 THE COURT: Do you have a time frame?

3 MR. WOLF: Summer of 2015.

4 THE COURT: All right. Thank you.

5 THE WITNESS: I was under the impression that
6 Mr. Yount was talking with Robert about additional financing
7 lenders that he was familiar with, with his business partner
8 at Boulder Bay. North Light I think was providing
9 \$140 million loan for the project across the street, yet
10 Boulder Bay actually wants to own the Cal Neva.

11 I thought it was a match made in heaven if the two
12 would get together. But it never did get together. But I
13 know that Stuart was contributing to helping locate a
14 possible lending source.

15 MR. CAMPBELL: I'm going to object. I don't think
16 there's a foundation for him to say that.

17 THE COURT: How did you know that? How did you
18 know?

19 THE WITNESS: Mr. Yount when we first started
20 talking said that his very good friend and member of the
21 Board of Directors for his company owns Boulder Bay across
22 street and he's working with a huge financial group called
23 North Light and I'd like to introduce them. And I actually
24 reached out to Roger.

1 THE COURT: Is that Mr. Wittenberg.

2 THE WITNESS: Wittenberg. And I invited them to
3 come and tour the site and also discussed the financing,
4 because I thought if there are any loaning across the street,
5 it made sense, it would be nice for the whole peninsula to be
6 designed in concert.

7 THE COURT: Did information come from the
8 plaintiff?

9 THE WITNESS: Yes.

10 THE COURT: Thank you. The objection is
11 overruled. Go ahead, Mr. Wolf.

12 MR. WOLF: Thank you.

13 BY MR. WOLF:

14 Q. In the course of your dealing -- strike that. Can
15 you say whether or not in the course of your dealings with
16 Mr. Yount from the time you informed him of the investment
17 opportunity until his investment in October of 2015, did you
18 provide any false information to him?

19 A. No, I did not.

20 Q. Did you provide information that you knew was
21 false?

22 A. No.

23 Q. Were you aware of information being provided to
24 him by others that you felt was suspicious or bogus?

1 A. No.

2 Q. Was there anything you did, heard or saw as an
3 attempt to mislead the Younts in making the investment?

4 A. No.

5 Q. What was the source of the financial and project
6 information you provided to Mr. Yount relative to the
7 project?

8 A. The documents created by the developer that I
9 forwarded, memorandum, confidential memorandum.

10 Q. Other information generated by the developer?

11 A. It was only information that had been preapproved
12 by the executive committee, which would have been the
13 memorandum or the quarterly reports.

14 Q. Did you ever come to doubt the information that
15 have been provided to Mr. Yount from the summer of 2015 until
16 his investment in October?

17 A. I didn't have any reason to doubt it. The project
18 seemed to be moving along very quickly.

19 Q. Please turn to Exhibit 10. Page 16 of Exhibit 10
20 is the construction summary.

21 A. Okay.

22 Q. So, again, Exhibit 10 is the July 2015 Cal Neva
23 renovation monthly status report?

24 A. Yes.

1 Q. Page 16 is the construction summary?

2 A. Yes.

3 Q. Was this information provided to Mr. Yount before
4 he invested?

5 A. Yes. Right upfront.

6 Q. Right upfront, this was provided to him in about
7 July of 2015?

8 A. I believe July, yes, right in the middle to end of
9 July.

10 Q. Did Mr. Yount ever discuss with you the content of
11 the construction summary?

12 A. No. I think all the questions were directed to
13 Robert.

14 Q. Based on everything you learned during the summer
15 of 2015 into the fall of 2015, did you have doubts about
16 whether Mr. Yount was fully advised about the costs and
17 schedule and budget challenges of the project?

18 A. I believe he was right up-to-speed on the change
19 orders, the need for additional financing, all of those
20 things were discussed openly.

21 Q. You testified earlier that you toured the project
22 with Mr. Les Busick on or about September 30th, 2015?

23 A. Yes.

24 Q. What did you observe with regard to activities on

1 site and the status of the completion during that tour?

2 A. Les Busick was kind of taking a good, hard look at
3 the project, because he was considering an additional
4 1.5 million investment. He wanted to meet with Lee Mason and
5 just walk the site. And we looked at all of the change
6 orders that were listed here.

7 And he felt that the project, Lee Mason said he
8 thought the project was moving very quickly. They had taken
9 the tower from November of 2014, they had completely gutted,
10 rebuilt, rebuilt the ceiling, removed asbestos, new sprinkler
11 system, new sewer line all between November and July. And to
12 me on a 200,000-square foot remodel, that was incredibly
13 well-managed.

14 I think we were all very pleased that the hotel
15 rooms were ready to occupy. That the unforeseen that
16 generally happens in or can happen in a remodel was the
17 Circle Bar and the foundation below was unexpected and caused
18 the delay that I believe caused the additional time frame
19 where we could not open.

20 Because everyone wanted to open, including
21 Criswell Radovan, it would have been a dream come true to
22 have Frank Sinatra's 100th birthday at the Cal Neva where he
23 made his mark.

24 Q. Let's talk a moment about Mr. Busick's status with

1 the project. He was on the executive committee, am I
2 correct?

3 A. Yes.

4 Q. He was one of the original founding investors?

5 A. Yes.

6 Q. And to your knowledge, what is Mr. Busick's
7 background?

8 A. Construction.

9 Q. So in the site visit with Mr. Busick, you have an
10 executive committee member with a background in construction
11 making a decision to invest an additional million and a half?

12 A. Yes.

13 Q. That's what was on the line, correct?

14 A. That's correct.

15 Q. And what else did you see besides the finished
16 tower?

17 A. We saw 75 to 100 people on site. They were
18 finishing up the mechanical. The areas that had been delayed
19 were getting close to drywall. Drywall had been delivered.
20 So even the areas that had been delayed were looking like
21 they could possibly catch up.

22 But there was a lot of activity and it was an
23 exciting time, because it literally felt like we could reach
24 the end zone.

1 Q. Were the sprinklers or sprinkler controls in place
2 at that visit?

3 A. Yes, the sprinklers, I believe the fire sprinkler
4 suppression systems were installed, the mechanical was
5 complete, and they were getting close to drywall.

6 Q. How about the new sewer line required by the
7 county?

8 A. That was completed as well.

9 Q. And what was Mr. Busick's impression from what you
10 observed? I'm not asking you to read his mind, but what did
11 you observe was his reaction to what was viewed at the site
12 on September 30, 2015?

13 A. He was pleased with the condition of the project
14 and Lee Mason was very open and, you know, was willing to
15 show us around the property. And he was, you know, a very
16 sharp on-site superintendent. So we walked away with a very
17 good feeling. And we also gave them a few suggestions, you
18 know, of adding a couple of windows. And Lee was, you know,
19 favorable to even talking about some ideas. The general
20 feeling was good.

21 Q. How about timing? What was the appearance of the
22 project in terms of completion from what you saw on
23 September 30, 2015?

24 A. Well, we were coming up to the winter. The

1 exterior paint, new roof, all the windows and everything, the
2 tower was complete. But the exterior looked pretty close to
3 being complete with the exception of the commercial area out
4 front. The porte-cochere was complete where you would drop
5 off guests.

6 So it, you know, it was still kind of looking
7 close, but it still felt in early October, late September
8 that they just might pull off the December opening or a
9 partial. You know, even if it was let's open and close off
10 an area that maybe was not finished. But I guess the county
11 would not give them a certificate of occupancy.

12 Q. On that same visit, September 30, 2015, was there
13 any indication that work was coming to a halt or the
14 contractor or subcontractors were pulling off the job?

15 A. No. Lee Mason was very excited about the project
16 getting completed.

17 Q. So how did that make you feel about the project?
18 From what you saw and knowing that Mr. Busick was prepared to
19 invest an additional million and a half, how did affect your
20 belief or impressions of the project at that time?

21 A. I couldn't have been more excited at that
22 particular moment, because you could see the project had come
23 a long way and you could see it was very close to being
24 finished. We were really down to drywall, flooring,

1 furnishings, and most of the furnishings had already been
2 purchased and delivered to a warehouse in Sparks. So we were
3 close for a giant 200,000-square foot remodel, which I've
4 been in construction development my whole career since
5 graduating from college and remodels scare the heck out of
6 me, because there's always unknown things behind certain
7 walls. I think they did a very good job to pull this project
8 together in a timely manner.

9 Q. So by September 30, 2015, was there adverse
10 information, material negative information that you were
11 aware of regarding the project that you felt you needed to
12 share with Mr. Yount?

13 A. No. We'd already addressed the change orders,
14 existing and future.

15 Q. About a month later, you did a tour with Mr. Yount
16 and maybe Mrs. Yount as well at the site about October 28th?

17 A. Yes.

18 Q. Did you see further progress happening since the
19 prior -- or strike that -- had further progress happened?

20 A. Sure.

21 Q. Since the prior visit?

22 A. At that point, the hotel tower was complete with
23 window coverings were either being installed or getting close
24 to being installed. So it was a good feeling. I didn't get

1 any negative reaction from the Younts after that tour.
2 Everybody was hopefully optimistic that we would open on
3 Frank Sinatra's 100th birthday, but there was no indication
4 there was a problem.

5 Q. So I'm going to move ahead a day or two here, I
6 think. When Mr. Radovan told you that he or one of his
7 entities, Criswell Radovan, would be able to sell a unit to
8 Mr. Yount, can you say if you had any impression that was a
9 detriment to Mr. Yount? Was that a negative or was that --
10 did that appear to be okay?

11 A. I was pleased to hear that there was another
12 founding membership available, because I wanted the Younts
13 involved. They live in the neighborhood. I know they were
14 interested and wanted to be a founding member. So if they
15 had missed out on that opportunity, I would have felt bad,
16 but the feeling of the project was still very positive at
17 that moment.

18 Q. At that point in time, or at any other point in
19 time, was there anything you heard or saw that led you to the
20 impression that Criswell Radovan was attempting to bail out
21 of the project?

22 A. No.

23 Q. When Mr. Radovan suggested that Criswell Radovan
24 or related entity could sell one of its shares to Mr. Yount,

1 did you think they were bailing out?

2 A. No.

3 Q. Did you believe that Mr. Yount might be adversely
4 impacted by acquiring a CR founders share rather than one of
5 the ones that was issued to Mr. Busick?

6 A. I understood it was part of the original founding
7 20 preferred memberships, so it should be considered equal.

8 Q. Did you have any reason to believe that those
9 shares were different?

10 A. No.

11 Q. Has anybody ever shared with you reasons why those
12 shares might be different?

13 A. I just considered that it was still part of the
14 original 20 and seemed to be the same.

15 Q. Mr. Yount is alleging that you intended to hurt
16 him financially through some kind of fraud. What is your
17 reaction and response to that?

18 A. Absolutely not. I wouldn't do anything to hurt
19 the Younts or any other investor in the project. I
20 considered it a privilege to be involved in. We all wanted
21 to see the Cal Neva, the Rat Pack come back. I mean, it was,
22 you know, nothing but excitement about being involved in
23 renovation of the North Shore of Lake Tahoe, especially
24 bringing 191 lake view rooms to market.

1 So being involved, I still think it is one of the
2 best real estate opportunities in North Lake Tahoe and
3 probably in Nevada. When it is -- when it's finally
4 finished, it's going to be sensational. It's a unique
5 location that cannot be duplicated with those views and that
6 location. You know, I'm just sorry that it fell into
7 problems.

8 Q. I'd like you to tell the Court what it's like to
9 be charged with fraud such as in this case?

10 THE COURT: I don't think that's necessary.

11 MR. CAMPBELL: I'll object to that.

12 BY MR. WOLF:

13 Q. How have these allegations affected you?

14 A. I can't even put it into words. It's ruined my
15 life, made it very difficult. I've never in 39 years as a
16 broker, developer, I've been a broker for over 2500 homes,
17 I've never been accused of fraud or lying or cheating. And
18 to have it come from a friend, kind of friend, and I thought
19 we were friendly, but it has ruined my life since the day
20 that lawsuit was filed.

21 It hurt me that the project failed or was thrown
22 into bankruptcy, because that was my next five years. I had
23 already laid out that I was going to help bring the most --
24 the dream of bringing the Cal Neva back to life was something

1 that I -- in my career, it can't be topped, and it turned
2 into an nightmare.

3 And my wife and I have to -- we have not slept
4 since this became a problem. It just -- and I spent the last
5 year trying to find another capital partner to help save the
6 existing founding members. If there's anything I can do to
7 finish this hotel and have it be a benefit to the people that
8 invested, I'd feel like -- you know, I'd feel better.

9 But to not be in a controlling position, I was
10 always -- I had some responsibility, but no control. And my
11 hands are tied to be involved in the success of the hotel.
12 But it's been very difficult for me at this time in my life
13 to be accused of fraud.

14 THE COURT: All right. Next question.

15 MR. WOLF: That's all I have, your Honor. I wish
16 to reserve further questions on rebuttal.

17 THE COURT: All right. Mr. Little.

18 MR. LITTLE: Thank you, your Honor.

19 CROSS EXAMINATION

20 BY MR. LITTLE:

21 Q. Good afternoon, sir. I want to start off by
22 talking about one of the first questions that Mr. Campbell
23 asked you?

24 THE COURT: Hang on a second.

1 THE WITNESS: Sorry. Just a minute. I want some
2 water.

3 MR. LITTLE: A good time to take an afternoon
4 break?

5 THE COURT: Let's take an afternoon break. Watch
6 your step going down. Court's in recess.

7 (A short break was taken.)

8 THE COURT: Mr. Marriner, come on up. You remain
9 under oath. Mr. Little, your witness.

10 MR. LITTLE: Thank you, your Honor.

11 BY MR. LITTLE:

12 Q. Good afternoon, Mr. Marriner. Would you please
13 turn over to Exhibit 3, the private placement memorandum, and
14 leave it there.

15 A. Yes.

16 Q. I want to talk to you about one of the first
17 questions that Mr. Campbell asked you about. Do you recall
18 him asking if you were registered to sell securities?

19 A. Yes.

20 Q. Sir, can you look at the bold language about
21 halfway down the page, it starts with the words, these
22 securities offered, I'm going to read that and follow along
23 with me and tell me if I read it correctly.

24 A. Okay.

1 Q. It says, the securities offered thereby have not
2 been registered under the Securities Act of 1933 as amended
3 or the securities laws of any state and are being offered and
4 sold on reliance on exemptions from the registration
5 requirements of said act and such laws for nonpublic
6 offerings. Did I read that correctly?

7 A. Yes.

8 Q. Do you have an understanding what that means in
9 terms of the question Mr. Campbell was posing to you?

10 A. Yes. That's the understanding I had that being
11 paid a referral fee for introducing investors was allowed.

12 Q. You understood that the developer had hired some
13 pretty expensive securities lawyers to put together this
14 document, correct?

15 A. Yes.

16 Q. And, sir, right below, that is another thing you
17 brought up, in bold the next paragraph says, purchase of the
18 preferred units involve certain risks and is speculative.
19 See risk factors. Did I read that correctly?

20 A. Yes.

21 Q. In fact, there's an entire section in this
22 memorandum dedicated to all the risks associated with
23 investing in this type of investment, correct?

24 A. Yes.

1 Q. This was a document that was provided to Mr. Yount
2 at the outset when he started his due diligence period?

3 A. Yes.

4 Q. Sir, you're a real estate developer, broker and
5 home builder, correct?

6 A. Yes.

7 Q. Would you agree with me that you have considerable
8 experience managing construction projects?

9 A. Yes.

10 Q. And working out of Lake Tahoe, you have an
11 understanding of the type of issues that contractors come up
12 against doing construction, particularly working in a high
13 mountain environment?

14 A. Yes.

15 Q. It's not unusual in large construction projects
16 for code upgrades or unforeseen site conditions that come up
17 during construction that have the contractor bring those
18 issues up and seek change orders for either adding costs or
19 time, correct?

20 A. Yes. That is correct.

21 Q. And that's particularly true when you're
22 renovating an older property like we're doing here?

23 A. Yes.

24 Q. Sir, isn't that what was happening in the June and

1 July 2015 time period?

2 A. Yes.

3 Q. And, in fact, that continued up until November of
4 that year, correct?

5 A. I believe so, yes.

6 Q. Now, sir, you were -- well, collectively, everyone
7 from the developer to the general contractor, Penta, to the
8 architect, Peter Grove, the construction manager, who we'll
9 talk about in a minute, and even the executive committee were
10 trying to get their arms around all of these changes,
11 correct?

12 A. Yes.

13 Q. And I think you referred to it as a moving target
14 or a fluid process, right?

15 A. That's correct.

16 Q. In other words, the types of construction changes
17 that were going on are typical and it's not something that
18 happens overnight and you can evaluate at one specific
19 moment, correct?

20 A. That is correct.

21 Q. It's something that the contractor is presented
22 over a period of time, right?

23 A. That's right.

24 Q. Now, sir, can you turn over to Exhibit 10, please?

1 Now, you were present for an investor meeting in July of 2015
2 where Mr. Radovan had given a construction progress report on
3 all of the changes that Penta was being faced with, right?

4 A. Yes.

5 Q. And that was a meeting not only for the executive
6 committee but all of the members of -- the preferred members
7 of this investment, correct?

8 A. That's correct.

9 Q. And you're familiar with this document?

10 A. Yes.

11 Q. And this document, this status report, was
12 something that was provided to the members at or before that
13 meeting?

14 A. At the meeting.

15 Q. And it's also a document that Mr. Radovan asked
16 that you share with Mr. Yount when he became interested in
17 investing, correct?

18 A. Yes.

19 Q. And if you look at the first page, you'll see that
20 this report is prepared by two third parties, correct?

21 A. Yes.

22 Q. A company called Case Development Services and
23 another Thannisch Development Services?

24 A. That's correct.

1 Q. Did you have an understanding that these were
2 third parties hired by the developer as construction managers
3 on the project?

4 A. Yes.

5 Q. In addition to Penta, these were another level of
6 oversight on the project, correct?

7 A. Right.

8 Q. I'm not going to belabor the point, because we've
9 gone over it, but on page 16, this third party is outlining a
10 number of important issues that the project is facing,
11 correct?

12 A. Yes.

13 Q. And one they're talking about the schedule. And
14 at this point in time, the third party is indicating that the
15 schedule for -- they're still on schedule for the
16 December 12th major event with the exception of the specialty
17 restaurant, correct?

18 A. Yes.

19 Q. So at this point in time, there was already one
20 aspect of the job that they were contemplating would have to
21 be continued?

22 A. Right.

23 Q. And they also indicated that the budget had been
24 adversely impacted due to about 16 or 17 construction issues,

1 correct?

2 A. Yes.

3 Q. And these are the code issues or the unforeseen
4 site conditions that we've been talking about?

5 A. That's correct.

6 Q. And a lot of these are quite significant, right?

7 A. Yes.

8 Q. Like we talked about the sewer issue. That wound
9 up being a pretty big issue on the project, correct?

10 A. Yes.

11 Q. And it was being reported here that because of all
12 of these changes, the contractor was working hard and the
13 schedule was being compressed to try to get it done in a
14 timely fashion?

15 A. Right.

16 Q. And, sir, you didn't have any reason to believe
17 that the information provided by these two third party
18 construction managers were inaccurate at the time?

19 A. No. It appeared to be accurate.

20 Q. And, sir, at the meeting of the investors, you
21 felt that Robert did a good job of giving the investors an
22 update on all the pending and proposed change orders that
23 Penta was presenting, correct?

24 A. It's a pretty complete list.

1 Q. But I'm talking about Robert's presentation. You
2 thought he did a good job at presenting all of those changes
3 to the investor group?

4 A. I think he went over all the detail of these
5 particular change orders and some proposed.

6 Q. And he went over some of the anticipated costs
7 that Penta was providing him for these change orders, right?

8 A. Yes.

9 Q. And, sir, Mr. Radovan told the investors at this
10 meeting that they were going to need to raise additional
11 capital to cover the costs for these changes that were either
12 being presented now or they anticipated coming down the pike?

13 MR. CAMPBELL: Objection, lack of foundation.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: They were talking about the mezz
16 being increased to 15 million.

17 BY MR. LITTLE:

18 Q. And there was also a discussion about raising that
19 additional \$1.5 million under the agreement, is that correct?

20 A. That's correct.

21 Q. But as you understood the operating agreement, the
22 developer or the managers had the right to raise this money
23 in different fashions. It could have been through debt, it
24 could have been through new equity, or it could have been

1 through a capital call, correct?

2 A. That's correct.

3 Q. But your understanding is that the executive
4 committee had voted to seek additional debt financing and go
5 out and seek that additional \$1.5 million in equity that was
6 available under this operating agreement?

7 A. Yes.

8 Q. And at the time, it was represented that they
9 believed that the additional \$9 million, along with that 1.5
10 that we're talking about, was needed to cover the existing or
11 actual change orders, as well as the ones that had been
12 proposed and/or they thought were coming down the pike,
13 correct?

14 A. I believe so.

15 Q. So you got involved in June or July to try to help
16 sell that last \$1.5 million piece of equity, correct?

17 A. That's correct.

18 Q. And that last \$1.5 million piece was not being
19 marketed exclusively to Mr. Yount, was it?

20 A. No.

21 Q. In fact, you said both you and Mr. Radovan were
22 going out to numerous sources to try to find it?

23 A. That's correct.

24 Q. Let's talk a little bit about Mr. Yount.

1 Mr. Campbell cut you off when you tried to get into his
2 background. He's a prominent member of the Lake Tahoe
3 community, correct?

4 A. Yes.

5 Q. Would you consider him to a sophisticated business
6 person?

7 A. Yes.

8 Q. He owns a large successful company that is
9 involved in the construction industry?

10 A. Yes.

11 Q. They manufacture and sell construction materials?

12 A. That's correct.

13 Q. And he owns approximately a \$75 million house in
14 Lake Tahoe near the Cal Neva project, correct?

15 A. Yes.

16 Q. Now, sir, in addition to the normal investment
17 documents, you said Robert asked you to share that
18 construction progress report with Mr. Yount, correct?

19 A. That's correct.

20 Q. Could you turn over to Exhibit 18?

21 A. Yes.

22 Q. This is an e-mail from Robert to Mr. Yount that
23 you were copied on, correct?

24 A. Yes.

1 Q. And in this e-mail, Robert was answering the
2 questions that Mr. Yount had proposed to you, correct?

3 A. That's correct.

4 Q. And isn't it true, sir, that you believe all the
5 information that Robert provided in this e-mail was true and
6 accurate?

7 A. I believe so.

8 Q. And even after walking the job with Penta at the
9 end of September, you believe this information was accurate?

10 A. Yes.

11 Q. And isn't it true that the information that is
12 provided in this e-mail is the same information that
13 Mr. Radovan was discussing with -- well, Mr. Radovan and the
14 members of the executive committee were discussing with the
15 other investors?

16 A. Yes.

17 Q. Isn't it true, sir, that Mr. Radovan was telling
18 Mr. Yount that they needed an additional \$9 million in debt,
19 plus obviously the \$1.5 million in equity that they were
20 trying to raise to cover the costs of these actual and
21 pending change orders?

22 MR. CAMPBELL: Objection lack, of foundation.
23 There's foundation that Mr. Radovan told Mr. Yount that it
24 was 9 million plus.

1 THE COURT: Just clear that up.

2 BY MR. LITTLE:

3 Q. Do you have an understanding that Mr. Radovan told
4 Mr. Yount that they were seeking to raise an additional
5 \$9 million in debt to cover the actual and pending change
6 orders?

7 A. That's in this e-mail.

8 Q. Exactly.

9 A. Yes.

10 Q. That's exactly what this e-mail says, correct?

11 A. Yes.

12 Q. Obviously, he would have known that they were also
13 trying to raise the \$1.5 million?

14 A. That's correct.

15 Q. Now, sir, Mr. Yount was told the financing wasn't
16 approved at this point in time, right?

17 A. That's correct.

18 Q. In fact, you indicated that Mr. Yount was trying
19 to help Mr. Radovan locate a lender?

20 A. That's correct.

21 Q. Now, sir, counsel talked to you about Exhibit 14.
22 Let's go to that for a moment. Tell me when you're there.

23 A. Yes.

24 Q. This is a July -- let's look at the one at the

1 bottom. It's a July 19th, 2015 e-mail from Mr. Yount to
2 yourself and Robert is cced on it, correct?

3 A. Yes.

4 Q. And down at the bottom, counsel asked you about --
5 he was trying to ask you where he got this information. And
6 it says, as I understand it, you're over budget by more than
7 \$5 million so far. Where will that and likely more funding
8 needs come from? Did I read that correctly?

9 A. Yes.

10 Q. Now, sir, if we look at this date, July 19th, and
11 flip really quick back to Exhibit 18, the e-mail where
12 Mr. Radovan answered the questions, Mr. Radovan was answering
13 these questions about the additional \$9 million in debt about
14 a week later, correct?

15 A. That's correct.

16 Q. So let's look at where Mr. Yount may have got this
17 information from. Can you turn over to Exhibit 13? You
18 understand who Peter Grove is, correct?

19 A. Yes.

20 Q. Peter Grove is the architect on the Cal Neva
21 project?

22 A. That's correct.

23 Q. You understand as the architect, he's intimately
24 involved in the construction change orders?

1 A. Yes.

2 Q. He would also be intimately involved in the pay
3 applications?

4 A. Yes.

5 Q. He knows all the financial details that were going
6 on in this project, correct?

7 A. I would think so.

8 Q. Mr. Grove he was not only the architect for the
9 Cal Neva project, he was the architect building Mr. Yount's
10 \$75 million home?

11 MR. CAMPBELL: Objection, lack of foundation.

12 THE WITNESS: That's what I understand.

13 THE COURT: Overruled.

14 BY MR. LITTLE:

15 Q. First of all, this e-mail is dated July 17th,
16 2015, correct?

17 A. Yes.

18 Q. And so if we flip back or flip forward to
19 Exhibit 14, it's two days before Mr. Yount sends the query to
20 you about the project being more than \$5 million over budget,
21 correct?

22 A. Yes.

23 Q. And Mr. Yount's e-mail string with himself and
24 Peter Grove, neither you nor Robert Radovan are copied on

1 this e-mail, correct?

2 A. That is correct.

3 Q. And at the bottom -- let's actually start on the
4 second page. The first e-mail Mr. Yount sent to Peter Grove
5 was on July 14th, and he says, we saw the project today and
6 we're pretty impressed. What holds you back from being an
7 investor, Peter? Do you see that?

8 A. Yes.

9 Q. And up above, Peter responds, a couple of those
10 zeros at the minimum offerings with an exclamation point?

11 A. Right.

12 Q. In other words, he's saying he doesn't have the
13 money to invest, correct?

14 A. Right.

15 Q. And then Mr. Yount's next e-mail directed only to
16 Peter Grove without copying you or Mr. Marriner is to ask,
17 what do you rate the project's chance of success? Do you see
18 that?

19 A. I'm sorry what? Is that the first page?

20 Q. Back to the first page.

21 A. Okay. Yes.

22 Q. On Exhibit 13.

23 A. Yes.

24 Q. So Mr. Yount is asking the architect for this

1 project how he rates the project's chances of success,
2 correct?

3 A. Yes.

4 Q. And at the top, the architect responds, I'm going
5 to say pretty good. And he says, short-term, they were in
6 fund raising mode. Construction costs are exceeding the
7 budget, and they, slash, we are trying to keep our arms
8 around it and keep it in check, correct?

9 A. Correct.

10 Q. Right here he's telling Mr. Yount they're in fund
11 raising mode, they're seeking financing?

12 A. Yes.

13 Q. And that there are budget overruns and they're
14 trying to get their arm's around it and keep it in check.

15 A. Yes.

16 Q. Then he goes on to say, long range, I'm a believer
17 in the Cal Neva, the vision and the direction the design is
18 going, correct?

19 A. Yes.

20 Q. And then he says some other things. And in the
21 next paragraph, he says, I really like the owners. They're
22 seem like real quality guys.

23 A. Yes.

24 Q. And at the end, he says, I'll continue to keep you

1 posted with pics as things progress, correct?

2 A. Yes.

3 Q. Would you turn over to Exhibit 28? This is an
4 e-mail, again, that Mr. Radovan and yourself are not copied
5 on, correct?

6 A. Yes.

7 Q. But it's produced in this litigation and admitted
8 into evidence. It's an August 18, 2015 e-mail to the project
9 architect again from Mr. Yount, correct?

10 A. Yes.

11 Q. This is about a month after the last e-mail,
12 right?

13 A. Yes.

14 Q. And he says, if they decide to, will they really,
15 and he put really in all caps, be ready for a full opening in
16 December on Sinatra's birthday, correct?

17 A. Correct.

18 Q. And it looks like that Mr. Yount is continuing to
19 solicit advise from third parties?

20 A. Yes.

21 Q. Outside of just yourself or Mr. Radovan?

22 A. That is correct.

23 Q. And then, sir, I think you also mentioned that he
24 had his accountant or CPA reviewing the investment on his

1 behalf, correct?

2 A. Yes.

3 Q. And you understood that the CPA was being provided
4 information by Mr. Radovan?

5 A. I believe so.

6 Q. And at any point in time did Mr. Yount or his CPA
7 tell you that they needed additional information that had not
8 been provided?

9 A. No.

10 Q. Are you aware of any claims in this lawsuit that
11 information hasn't been -- information was requested and not
12 provided?

13 A. No.

14 Q. And Exhibit 29, this is just one of the e-mails
15 back and forth, but it's September 8th, 2015. And it's got
16 K. Tratner with MHTCPA.com. Ken Tratner you understand
17 that's his accountant?

18 A. Right.

19 Q. So in September, he's still got his CPA reviewing
20 this investment on his behalf?

21 A. Right.

22 Q. Sir, you also did two site walks with Mr. Yount
23 before he decided to fund, correct?

24 A. That's correct.

1 Q. And you in fact offered to do more site visits
2 with Mr. Yount to update him on the progress of the project
3 and he didn't take you up on that?

4 A. That's correct.

5 Q. Sir, could you turn over to Exhibit 21? This
6 document has been produced in this case and I'll represent to
7 you that these are notes that Mr. Yount prepared and shared
8 with his CPA. Have you seen this document?

9 A. No, I have not.

10 Q. Well, at the top you see that it says, total
11 project costs is something slightly over \$60 million,
12 correct?

13 A. Yes.

14 Q. And if we look over at the -- let's go over to
15 Exhibit 4, the confidential offering memorandum. Turn over
16 to page 19. Tell me when you're there.

17 A. Yes.

18 Q. Down at the bottom under financial highlights, the
19 second bullet indicates the phase one development budget is
20 just under \$51 million, correct?

21 A. Yes.

22 Q. So at least according to Mr. Yount's notes, he
23 understood the project was about \$10 million over?

24 A. Correct.

1 Q. Whenever he prepared this document?

2 A. Right. Correct.

3 Q. And that would be consistent with the \$9 million
4 and the million and a half that we talked about before?

5 A. Yes.

6 Q. And if we turn over to the last page of
7 Exhibit 21, he indicates, expected to have a soft opening by
8 December 12th, 2015 for former owner Frank Sinatra's 100th
9 birthday party, full opening by April. Did I read that
10 correctly?

11 A. Yes.

12 Q. So by the time Mr. Yount prepared this document,
13 he had already been told and understood that the schedule was
14 slipping, correct?

15 A. Yes.

16 Q. Now, sir, turn over to Exhibit 27, please.

17 A. Yes.

18 Q. This is an August 12th, 2015 e-mail from Mr. Yount
19 to his CPA, correct?

20 A. Yes.

21 Q. And you'll see in the second paragraph that he
22 talks about asking if they were still on track for a December
23 soft opening. And he indicates that they're only opening for
24 the party and not really doing the soft opening until

1 March 1st to pick up the spring break families. They're
2 planning the big official opening after all the usual kinks
3 are smoothed out on Father's Day weekend June 17 in time to
4 settle in for 4th of July monster week, correct?

5 A. Correct.

6 Q. So as of August 12th, 2015, Mr. Yount now
7 understood that the schedule was slipping even further. Now
8 they were going to have the soft opening in March and the
9 grand opening on Father's Day?

10 A. Correct.

11 Q. And, sir, if we move over to Exhibit 36. In the
12 middle of the page, this is an October 10, 2015 e-mail
13 exchange between Robert Radovan and Mr. Yount, correct?

14 A. Correct.

15 Q. This is about three days before he decides to
16 invest?

17 A. Correct.

18 Q. And Mr. Yount asked Robert how the Cal Neva
19 schedule is holding up. Do you see that?

20 A. Yes.

21 Q. And Robert indicates, looking good, soft opening
22 in spring with grand opening on Father's Day weekend?

23 A. Yes.

24 Q. So, again, he's being told that the grand opening

1 is not going to be December 12th, but it's going to be pushed
2 all the way out until Father's Day?

3 A. That's correct.

4 Q. And this is before he invested?

5 A. Right.

6 Q. And, importantly, Mr. Radovan also tells -- I'll
7 bring that up in a minute. Sir, Mr. Radovan never asked you
8 to lie or mislead Mr. Yount about this project, did he?

9 A. No.

10 Q. You're not aware of anything that Mr. Radovan or
11 his company did to deceive Mr. Yount before he made his
12 investment, correct?

13 A. That's correct.

14 Q. Turn over to Exhibit 61. Flip into the third page
15 of that exhibit.

16 A. Okay.

17 Q. So we're looking at the Bates number on the
18 bottom, that's CR 274, and I want you to focus on the second
19 paragraph on the top. But just to lay some ground work, you
20 recall Mr. Campbell talking you about some of the investors,
21 particularly, the IMC group getting up in arms in December,
22 do you remember that?

23 A. Yes.

24 Q. And they were leveling some allegations against

1 Criswell Radovan?

2 A. Correct.

3 Q. And you were responding in this e-mail, correct,
4 to the executive committee and ultimately it was shared with
5 all the investors, right?

6 A. Yes.

7 Q. And in the second paragraph, you say, the
8 July 25th e-mail clearly demonstrates that Robert was not
9 making any attempt to hide the change orders or construction
10 budget increases from Stuart Yount, correct?

11 A. Correct.

12 Q. You believe that to be an accurate statement,
13 right?

14 A. Yes.

15 Q. Now, sir, we've talked about it and I want to
16 touch on it briefly. We know at the end of the September you
17 did a walk through with Mr. Busick?

18 A. Yes.

19 Q. And we keep talking about this gentleman Lee
20 Mason. Lee Mason is the lead construction superintendant for
21 Penta?

22 A. Penta Construction's on site manager.

23 Q. And Penta is the general contractor on this
24 project?

1 A. Yes.

2 Q. And the purpose of that site visit was for
3 Mr. Busick to get a clear picture of all the project's
4 changes and make sure that they were consistent with what was
5 known and had been represented since July, correct?

6 A. That's correct.

7 Q. And the information that Lee Mason gave you guys
8 was consistent with the information that Robert had given to
9 Mr. Yount and other investors, correct?

10 A. That's right.

11 MR. CAMPBELL: Objection, lack of foundation. I
12 don't know what information he's talking about.

13 THE COURT: Clear that up.

14 BY MR. LITTLE:

15 Q. The information that Lee Mason provided you and
16 Mr. Busick during this walk-through was consistent with the
17 information that Robert had provided Mr. Yount about cost
18 overruns and the schedule, correct?

19 MR. CAMPBELL: Objection.

20 THE WITNESS: In the construction July report, we
21 kind of went through that list of change orders to see if
22 they were necessary or not necessary.

23 BY MR. LITTLE:

24 Q. And there was no red flags that were raised during

1 this walk-through by you or Les, correct?

2 A. No.

3 Q. And Penta never said it wasn't being paid during
4 this time period?

5 A. No.

6 Q. And they never said that they were contemplating
7 stopping work or slowing down or anything of that nature?

8 A. No.

9 Q. Isn't it true that you came out of that meeting
10 feeling really optimistic about the project?

11 A. Yes.

12 Q. You felt it was consistent with what had been
13 represented by Robert to the investors back in July?

14 A. Yes.

15 Q. Now, I started to bring up before and I want to go
16 to it now. Go to Exhibit 37. Tell me when you're there.

17 A. Okay. Yes.

18 Q. So in the middle of the page, it's an October 10,
19 2015 e-mail that you wrote to Mr. Yount and his wife,
20 correct?

21 A. Yes.

22 Q. And this was about three days before he funded?

23 A. Yes.

24 Q. But if you look at the first paragraph, you still

1 didn't know at this point in time that he was actually going
2 to fund?

3 A. That's correct.

4 Q. And, in fact, you had said over this three,
5 four months, there had been like hot and cold periods where
6 it looked like he might invest and then he kind went radio
7 silent.

8 A. That's correct.

9 Q. And you were offering to give him another site
10 tour and he didn't take you up on it, correct?

11 A. That's correct.

12 Q. Now, importantly, let's talk about that next
13 paragraph. You tell Mr. Yount that the project just welcomed
14 their new GM Xavier Moulin on Friday, right?

15 A. Yes.

16 Q. They had also just hired an executive chef?

17 A. That's correct.

18 Q. They took Mr. Moulin and his wife over from the
19 Bahamas, correct?

20 A. That's right.

21 Q. And this gentleman had a significant reputation
22 that preceded him?

23 A. That's correct.

24 Q. Sir, does it sound like, if the company is hiring

1 and bringing over GM's and chefs, does that sound like a
2 project that the developer thinks is going to fail?

3 A. No.

4 Q. And, in fact, around the same time period, the
5 project had inked a deal with Starwood. You mentioned that
6 earlier, right?

7 A. I believe so.

8 Q. Tell us what you know about Starwood?

9 A. I don't know much about Starwood. I just know
10 their reputation and I thought the fact that we were accepted
11 into their luxury collection was a good choice.

12 Q. And this was happening in the same time period
13 that the plaintiff is now claiming that the developers really
14 believed this project was going to fail, right?

15 A. That's correct.

16 Q. Those two things aren't consistent, are they?

17 A. No.

18 Q. Sir, can you turn over to defense Exhibit 101?

19 A. Yes.

20 Q. Do you recall producing this document at your
21 deposition several months ago?

22 A. Not the cover sheet. Oh, yes, the --

23 Q. The cap table?

24 A. The cap table.

1 Q. And this is something you had in your records?

2 A. Yes. This was delivered to me by Brandyn
3 Criswell.

4 Q. Now, you testified there was some confusion on
5 your part as to the nature of what CR's investment was,
6 correct?

7 A. It was just not clear.

8 Q. But you understood that \$2 million that they held
9 was part of the \$20 million subscription?

10 A. That's correct.

11 Q. And from the time you started raising money for
12 the company, you understood that Criswell Radovan had the
13 right to reduce their interest to \$1 million if someone
14 wanted to purchase one of their shares, correct?

15 A. It's stated in the comments section.

16 Q. And you had that understanding?

17 A. Yes.

18 Q. Now, let's talk a little bit about the call
19 between you and Mr. Radovan in late September. That call was
20 prompted by a hypothetical that you raised, correct?

21 A. I didn't know if Mr. Yount's money was going to
22 come in or not, but I know Les Busick moves quickly. So we'd
23 been waiting three and a half, almost four months for
24 Mr. Yount's funds to materialize, and Les Busick was willing

1 to close quickly, so I -- that's when I called Robert to say,
2 well, it's looking like they might both fund at the same
3 time. But I didn't know it was hypothetical. I didn't know
4 when Yount would come in.

5 Q. And you understood and knew that Mr. Radovan had
6 lost all faith in Mr. Yount actually closing on this piece,
7 correct?

8 A. There is an e-mail in August 20th from Robert to
9 Stuart. I was out of town. And he said, Stuart, I
10 understand from Dave that you'll fund next week. And Stuart
11 responded, not likely, or Dave is being overly optimistic.
12 And after waiting three months, I think Robert was wondering,
13 you know, is he ever really going to fund?

14 A lot of people talk about, yeah, sure, I'm going
15 to make an offer on your house or whatever, but it really
16 comes down to signing a document and funding, that is
17 execution of a document for an investment.

18 Q. And his lack of faith in Mr. Yount actually
19 closing is why he moved on to other pastures, including
20 Mr. Busick, correct?

21 A. Yes. I believe so.

22 Q. And you'd agree with me that on this call,
23 Robert's main concern was getting that \$1.5 million sold?

24 A. That's correct.

1 Q. And that's the concern that he was expressing to
2 you during that call?

3 A. Right.

4 Q. And when Robert told you not to worry, he didn't
5 tell you to lie or mislead either Mr. Busick or Mr. Yount,
6 correct?

7 A. That's correct.

8 Q. He was just telling you that if that hypothetical
9 happened, Criswell Radovan had one of their shares they could
10 sell?

11 A. That's correct.

12 Q. Now, sir, you mentioned an investor group in this
13 subscription called the Incline Men's Group?

14 A. That's correct.

15 Q. Also referred to sometimes at IMG?

16 A. Or IMC.

17 Q. And they have about a \$6 million interest in the
18 subscription?

19 A. That's correct.

20 Q. So they're probably the largest investor?

21 A. It's a group of, I think there's -- I think
22 there's five or six or seven investors into a pool.

23 Q. Who are those investors?

24 A. The only ones that I know are Brandon Chaney, Tim

1 Rasich, Jeremy, Paul Jamieson. I can't remember Jeremy's
2 last name. It escapes me. Troy Gillespie. I think that's
3 it.

4 Q. And sometime in late December, January of 2016,
5 they made some legal threats against you, correct?

6 A. That's correct.

7 Q. And they told you you needed to get on the right
8 side?

9 A. That's correct.

10 Q. And you understood that to be their side, correct?

11 A. That's correct.

12 Q. And their side was trying to out Criswell Radovan
13 from management and taking back Criswell Radovan's equity
14 interest in the project, correct?

15 A. That's correct.

16 Q. Sir, can you turn over to Exhibit 59?
17 Specifically turn over to page two of the exhibit down at the
18 bottom. Actually, over on page three. I apologize. Sir,
19 during this time period, the IMC group or IMG group is not
20 only making legal threats about you, but they were spreading
21 some rumors about you, correct?

22 A. Yes.

23 Q. And you sent this e-mail to respond to these
24 rumors, correct?

1 A. That is correct.

2 Q. You sent it to the investors and the executive
3 committee to make it clear that Robert never asked you to lie
4 or do anything improper, correct?

5 A. That's correct.

6 Q. And then over on page 60 -- excuse me, Exhibit 60.
7 Another one of the rumors the IMG group was going around
8 telling people was that you had tried to encourage them to
9 withhold cost overruns from Mr. Yount, correct?

10 A. That's correct.

11 Q. And you wrote this response to call them out on
12 that, right?

13 A. Yes.

14 Q. And you asked them where this conversation
15 occurred, right?

16 A. That's correct.

17 Q. And they all told you different places, is that
18 right?

19 A. That's right.

20 Q. And they never responded to you and told you you
21 were wrong or lying, right?

22 A. No, they did not.

23 Q. And you were never told by Mr. Radovan or anyone
24 else at Criswell Radovan to hide or withhold cost overruns

1 from Mr. Yount, were you?

2 A. No, I was not.

3 Q. You understand that this same group has made
4 accusations of financial improprieties against Criswell
5 Radovan?

6 A. I understand that.

7 Q. And you understood that they had an independent
8 audit done on the company's books and records?

9 A. Yes. I believe that's so.

10 Q. And isn't it true that audit found zero
11 improprieties on the part of Criswell Radovan?

12 MR. CAMPBELL: Objection, I think there's lack of
13 foundation for that.

14 BY MR. LITTLE:

15 Q. Did you have that understanding?

16 MR. CAMPBELL: Same objection.

17 THE COURT: Sustained.

18 THE WITNESS: I didn't hear anything --

19 THE COURT: Hold it.

20 THE WITNESS: Sorry.

21 THE COURT: Lay a better foundation.

22 BY MR. LITTLE:

23 Q. Sir, have you ever heard that there were any
24 results from that audit that found improprieties on Criswell

1 Radovan's part?

2 A. No.

3 Q. And Criswell Radovan are still managers of this
4 project, correct?

5 A. Correct.

6 Q. And under the operating agreement, they could have
7 been removed had they done something wrong?

8 A. That's correct.

9 Q. Sir, you understood that Mr. Radovan had secured a
10 loan commitment in 2015 from the company we've been talking
11 about, Mosaic, correct?

12 A. That's what I understand.

13 Q. And you understood this loan would have replaced
14 the Hall and Ladera loans and provided the additional capital
15 to finish the project?

16 A. I believe it would have.

17 Q. And I think you said you understood it provided
18 some cushion to do some things that maybe weren't necessarily
19 needed, but would be nice to do?

20 A. Yes.

21 Q. Isn't it true that you understood that the IMC
22 group went to Mosaic's office behind Criswell Radovan's back
23 and said something to cause them to pull the plug on the
24 financing?

1 MR. CAMPBELL: Objection, lack of foundation.

2 THE COURT: How would he know that?

3 BY MR. LITTLE:

4 Q. I'll ask him. Did you hear that?

5 MR. CAMPBELL: Same objection.

6 THE WITNESS: I heard it as a rumor, but I was not
7 involved.

8 THE COURT: I'll consider that.

9 BY MR. LITTLE:

10 Q. Were you aware that the IMG group were pursuing
11 their own refinancing with Roger Whittemore, Mr. Yount's
12 friend?

13 A. I understood that they were in discussions with
14 North Light and I had even attempted to put them in touch
15 with North Light through another independent person, but they
16 never responded, but I guess IMC did later.

17 Q. Sir, are you aware of all the e-mails and
18 correspondence between the IMC group people and Mr. Yount
19 discussing how to oust the Criswell Radovan group and talk
20 about how to deal with the Mosaic loan?

21 A. I only saw those when I was -- when they delivered
22 the court files. And as I was looking through, I was
23 surprised to see that there was a group kind of talking about
24 removing Criswell Radovan as manager and taking over the

1 project.

2 Q. And securing financing separate and apart from
3 Mosaic?

4 A. I believe so.

5 Q. And you understood that Mr. Yount was involved in
6 those communications with the IMG group?

7 A. There were several e-mails confirming that.

8 Q. During the time period June-ish, June, July, all
9 the way until when Mr. Yount invested, we heard a lot about
10 in e-mails your name and Mr. Radovan's name come up.
11 Mr. Criswell wasn't involved in any of these discussions, was
12 he?

13 A. I don't believe he was involved.

14 Q. In other words, you're not aware of any
15 involvement that Mr. Criswell had with respect to Mr. Yount's
16 investment, are you?

17 A. Say that again.

18 Q. You're not aware of any involvement that
19 Mr. Criswell may or may not have had with respect to
20 Mr. Yount's investment?

21 A. No.

22 Q. I just have one other brief topic, sir. Counsel
23 had suggested to you that Criswell Radovan needed preapproval
24 from members of this investment group before it could sell

1 its share to Mr. Yount. Do you recall counsel talking to you
2 about that?

3 A. Yes.

4 Q. Could you turn over to Exhibit 5, which is the
5 operating agreement. Let's turn over to article 12, which
6 deals with transfers.

7 A. Okay.

8 Q. Section 12.1 says, each member. Member is a
9 defined term, right?

10 A. I'm sorry. Did you say 12.1?

11 Q. Yeah. It says, each capital M members, member is
12 a defined term, hereby agrees that interest and any economic
13 benefits herein are not transferable except as provided in
14 article 12. Do you see that?

15 A. Yes.

16 Q. If we quickly flip over to page eight and look at
17 section 1.48.

18 A. Yes.

19 Q. Criswell Radovan up at the top, they're defined as
20 a sponsor member, right?

21 A. Yes.

22 Q. Section 12.1 says member, it doesn't say sponsor
23 member, does it?

24 A. Yes.

1 Q. Let's go to section 12.3, the second sentence,
2 subject to satisfying the requirements of this article 12,
3 any such transfer requiring approval of the capital M members
4 pursuant to article 12 will be considered by the members at
5 the members' next annual or special meeting. Do you see
6 that?

7 A. Yes.

8 Q. So that suggests that the approval that they're
9 seeking happen at the next annual meeting, correct?

10 A. Correct.

11 Q. Not that it's some pre-requirement that you have
12 before you can close the transaction?

13 A. Right.

14 Q. In fact, if we go over to section 12.6.1 on page
15 34 of that agreement.

16 A. Yes.

17 Q. I'm going to read it. It says, following
18 satisfaction of the requirements of section 12.3 and 12.4, a
19 proposed transfer of interest requiring the members' approval
20 will be submitted to the members for their approval after,
21 and then it says in A, the transferee has executed this
22 agreement, which is the operating agreement, right?

23 A. Yes.

24 Q. And any other documents and instruments that the

1 company may require. Did I read that correctly?

2 A. Yes.

3 Q. Do you read that to mean what it says, which is
4 if, big if, Criswell Radovan was required to get some sort of
5 approval from the members to sell their share to Mr. Yount,
6 it would happen at the annual meeting after he signed the
7 operating agreement and any other documents that the company
8 required?

9 MR. CAMPBELL: I'm going to object. I think that
10 calls for a legal conclusion.

11 MR. LITTLE: I'll withdraw the question.

12 THE COURT: All right. The question is withdrawn.

13 BY MR. LITTLE:

14 Q. Then, sir, on 12.6.2. Let's go over to the second
15 page on 35 up at the top, the first full sentence there. It
16 says, if a proposed transferee of interest is not approved to
17 be a substitute member, then subject to the provisions of the
18 proposed transferee -- such transfer, such transferee may
19 receive the economic benefits of such interest pursuant to
20 the definition of economic benefits set forth under section
21 12.1, correct?

22 A. Yes.

23 Q. Even if they're not approved, they still get the
24 economic benefits of that transfer?

1 MR. CAMPBELL: Objection, your Honor.

2 THE COURT: It's argumentative, so sustained.

3 BY MR. LITTLE:

4 Q. Lastly, sir, counsel had made some argument or
5 some point about members can't take money out of the project.
6 Do you recall that testimony or that line of questioning?

7 A. Yes.

8 Q. Selling a founders share that a developer owns is
9 not taking money out of the project, is it? It's a paper
10 transaction. You're changing the name on the stock.

11 A. That's why I tried to stay out of any of the legal
12 documents. I'm not an attorney. And this is -- I put all of
13 that in Robert's court and his legal team, because I
14 honestly, you know, couldn't --

15 MR. LITTLE: Fair enough. I'll leave that for
16 argument. That's all I have, your Honor, subject to possibly
17 recalling Mr. Marriner in our case in chief.

18 THE COURT: All right. Thank you. Mr. Campbell.

19 REDIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Marriner, I hate to do this to you, but since
22 Mr. Little walked you through the operating agreement, I'd
23 like you to look at that with me, too. Let's backup. Your
24 understanding that Criswell Radovan had a \$2 million share of

1 the property was based on review of the cap table, right?

2 A. I had seen that on the cap table all along.

3 Q. And if you could look at Exhibit 61. If you look
4 at page two with the Bates stamp 273.

5 A. Yes.

6 Q. You say in your e-mail, which is a cut and paste,
7 and we've gone over this before. You say, the third or
8 fourth paragraph up, when the Younts' funding became
9 available in early October, Robert decided to sell to Younts
10 1 million of their \$2 million CR equity since Les Busick had
11 funded the 1.5 million of open equity, right?

12 A. Yes.

13 Q. That confirmed to you that's the same equity
14 that's in the cap table, the \$2 million share?

15 A. I believe so.

16 Q. If you look at page 74 of the operating agreement.
17 It's Exhibit Number 5, page 21, section 7.4.

18 A. What tab again?

19 Q. It's Exhibit Number 5. Towards the middle of the
20 paragraph, it reads --

21 A. I'm sorry. What page?

22 Q. It's page 21. I'm sorry.

23 A. Okay.

24 Q. So let me just read this. It starts in the middle

1 of the paragraph, CR has advanced approximately 1.667 million
2 in costs related to the project and has received and
3 recontributed 480 of its development fees. A total of 2
4 million out of such costs and recontributed capital fee shall
5 serve as a capital contribution of CR and shall be part of
6 the initial capital contributions described in section 4.2
7 above.

8 And it goes on, such capital contributions shall
9 be treated in the same manner as a capital contribution of
10 all other preferred members hereunder, right? That's what it
11 says?

12 A. Yes.

13 Q. And section 12.1 and the rest of 12 sets forth the
14 requirements to transfer a membership share, right?

15 A. Well, I'm going to have to trust an attorney or an
16 owner to make those kinds of decisions. I mean, honestly,
17 this is not that easy to understand. But I had trust in the
18 developer that they were doing what they knew was right. So
19 I'd have to read it a couple more times to honestly give you
20 a --

21 Q. I understand that. I want to point out one more
22 thing to you. At the end of 12.2, it says, any attempt to so
23 transfer or encumber any such interest without such approval
24 will be null and void and will not bind the company or the

1 other members. That would be as far as the share from one
2 member to the other without approval, right?

3 A. I'd have to get a legal opinion on that.

4 Q. So would you say that the -- Mr. Coleman was the
5 legal counsel for the developer, right?

6 A. Yes.

7 Q. And for Criswell Radovan and some of their other
8 entities?

9 A. Right.

10 Q. Would you say that Mr. Coleman would be the best
11 to tell Criswell Radovan what they needed to do as far as
12 approving this transfer?

13 MR. LITTLE: I'm going to object on foundation.
14 There were other attorneys involved besides Mr. Coleman.
15 Mr. Coleman had one role and there were California attorneys
16 in other roles. If he can lay a foundation that he knows
17 this stuff and he knows who it was, otherwise there's lack of
18 foundation.

19 THE COURT: Sustained.

20 THE WITNESS: I can't comment on it. I'd be
21 giving a legal opinion.

22 BY MR. CAMPBELL:

23 Q. Your position was that their legal counsel,
24 whoever it be, is the one who should really interpret this

1 agreement?

2 A. I would hope so.

3 Q. Okay.

4 THE COURT: Would it be fair to say no matter who
5 it is, it's not you?

6 THE WITNESS: Thank you. I like you.

7 MR. LITTLE: So stipulated.

8 MR. WOLF: We needed that late in the afternoon.

9 THE COURT: All right. Next question.

10 BY MR. CAMPBELL:

11 Q. Mr. Little pointed you to Exhibit Number 101,
12 which talked about kind of the reservation of the Criswell
13 Radovan share. Do you remember that question?

14 A. 101?

15 Q. Yes.

16 A. Yes.

17 Q. And I believe your testimony was that you viewed
18 this exhibit as saying that -- I think I wrote it down, that
19 that would indicate that if someone wanted to purchase one of
20 their shares, they could?

21 A. That is what it says in the comment section that
22 it can reduce to 1 million if someone wants a 500 K slot.

23 Q. Do you know if Mr. Yount wanted to buy one of the
24 CR shares?

1 MR. LITTLE: I'm going to object, standing
2 thinking about it, speculation.

3 THE COURT: Overruled.

4 THE WITNESS: I'm sorry. What's the question
5 again?

6 BY MR. CAMPBELL:

7 Q. Do you know if Mr. Yount wanted to buy one of the
8 CR shares?

9 A. I didn't -- I don't know.

10 Q. You didn't ask him, right?

11 A. No.

12 Q. And you don't know if Mr. Radovan asked him?

13 A. Well, I referred it to over to Mr. Radovan. I
14 figured they would discuss it.

15 Q. But you never confirmed with Mr. Radovan whether
16 Mr. Yount wanted to buy one of their shares?

17 A. No.

18 MR. LITTLE: Asked and answered.

19 THE COURT: Overruled.

20 BY MR. CAMPBELL:

21 Q. Could you go to Exhibit 27 again?

22 A. Okay.

23 Q. Mr. Little read part of this quote from
24 Exhibit 27, but he didn't read the entire quote. The entire

1 quote said, I asked if they were really on track for the
2 December soft opening. And he said they're absolutely on
3 track for the Sinatra 100 birthday party. However, the part
4 that Mr. Little didn't read, they're fearful of the possible
5 huge cost of another winter with little snow and tourists.
6 So they're only opening for the party and not really doing
7 the soft opening until March to pick up the spring break.

8 Did Mr. Radovan ever tell you that the reason for
9 delaying it was not because of construction related issues or
10 budget issues, but because they were fearful of a winter with
11 little snow and therefore few tourists?

12 A. No. I was not copied on this e-mail. But, no,
13 that was not discussed as a --

14 Q. Anyway, this e-mail represents what Mr. Yount,
15 apparently someone had told him, and he was relaying that to
16 Mr. Tratner, right?

17 A. That's what it looks like.

18 Q. Let's go back to Exhibit Number 4.

19 A. All right.

20 Q. A couple of questions there. Can you look at page
21 five of Exhibit Number 4?

22 A. Okay.

23 Q. Mr. Little asked you some questions about Starwood
24 coming into the project at or about September of 2015?

1 A. I believe so.

2 Q. Doesn't page five of Exhibit Number 4, it's
3 represented to the investors that Starwood has already
4 offered a term sheet to be in the project?

5 A. I'm sorry. What's the question?

6 Q. Exhibit Number 5.

7 A. I'm on page five.

8 Q. Exhibit Number 4, page five?

9 A. I'm on page five, what paragraph?

10 Q. It starts with Starwood?

11 A. Starwood has offered.

12 Q. Yeah.

13 A. Okay.

14 Q. So the developers and Starwood have already been
15 talking as of March of 2014, right?

16 A. Right.

17 Q. Okay. And then Mr. Little asked you about the
18 project budget. Let me find the page here. Just for
19 expedience sake, I believe your testimony was that Mr. Little
20 showed you a section of Exhibit Number 4, which set the
21 project budget at \$50 million, right?

22 MR. LITTLE: Page 19.

23 THE WITNESS: I don't see it. What page?

24 BY MR. CAMPBELL:

1 Q. I'm sorry. Thank you. Page 19, it says financial
2 highlights at the bottom of the page.

3 A. Oh, yes. I see the 51 million.

4 Q. And it says that project budget, 51 million. And
5 then I think Mr. Little then asked you to compare Mr. Yount's
6 exhibit, which showed a \$60 million budget in one of his
7 documents and asked you, doesn't that indicate that Mr. Yount
8 believed it was 10 million over budget, or over 9 to 10
9 million over budget. Do you remember that testimony?

10 A. I remember it.

11 Q. Let's look back in that same exhibit to page nine.

12 A. Okay.

13 Q. Do you see the table in the middle of the page?

14 A. Yes.

15 Q. We talked about this on your direct testimony,
16 right?

17 A. Yes.

18 Q. The 50.729 budget was based on the assumption --
19 on certain things, but if you go to the next box down, it
20 says if \$20 million is raised, then the budget goes up to
21 approximately \$56 million, right?

22 A. 66.

23 Q. 56. You add --

24 A. Oh, yes, the 52,729,787 plus the 50,166.215.

1 Q. And the conditions was once -- if there was 20
2 million in preferred equity, it would be raised. And the 20
3 million we're talking about the PPM, right?

4 A. Correct.

5 Q. As soon as the 1.5 million was raised, that either
6 Mr. Yount or Mr. Busick was taking, that would kick that
7 higher budget up, right?

8 MR. LITTLE: Foundation.

9 THE WITNESS: Well, you've lost me. Sorry.

10 BY MR. CAMPBELL:

11 Q. The condition to going to a \$56 million budget
12 instead of a \$50.729 million budget is if 20 million is
13 raised. It says that in the second box, right?

14 MR. LITTLE: I object. It's argument and
15 foundation.

16 THE COURT: I question whether or not this is the
17 witness that you want to ask this question to.

18 MR. CAMPBELL: Your Honor, he previously testified
19 that he knew the budget was \$56 million and change.
20 Mr. Little tried to get him to admit that it was on 51
21 million, therefore, Mr. Yount's documents that said it was a
22 \$60 million budget proves that somehow Mr. Yount knew it was
23 9 or \$10 million over budget. I think it's an important
24 point that he raised in the redirect of this witness as to

1 what Mr. Yount actually believed. Mr. Marriner's previous
2 testimony --

3 THE COURT: Wouldn't Mr. Yount be the best witness
4 to answer that question as to what he believed as to
5 opposed --

6 MR. CAMPBELL: I hate to leave, because he said
7 that Mr. Yount's e-mail proved that he knew it was
8 \$10 million over budget.

9 THE COURT: Let me hear from Mr. Little.

10 MR. LITTLE: I think he's confused, so he's
11 speculating. I just think there's a lack of foundation for
12 this line of questioning and there's a difference between
13 sources and leases.

14 THE COURT: I don't know if this helps the Court
15 answer that question as to what Mr. Yount knew.

16 MR. CAMPBELL: Can I ask one more question?

17 THE COURT: All right.

18 BY MR. CAMPBELL:

19 Q. Mr. Marriner, if Mr. Yount believed the budget and
20 interpreted this page as showing a close to \$56 million
21 budget, wouldn't his e-mail when he said that he had been
22 informed that there was a five plus million dollar over
23 budget cost, so if you take his 5 million and that 56
24 million, that means he thought it was 60 million?

1 A. I don't know where Mr. Yount got that --

2 MR. WOLF: Objection.

3 THE WITNESS: -- 5 million or more. That this is
4 a document dated in March and I'm sure there were -- I'm
5 sorry. I just, you know, it's confusing enough.

6 THE COURT: All right. Mr. Marriner, that's fine.
7 Next question.

8 BY MR. CAMPBELL:

9 Q. Okay. Let's go back to Exhibit 60, Mr. Marriner,
10 and page 168.

11 A. 60?

12 Q. 60, Exhibit 60.

13 A. Okay.

14 Q. And at page 168, we went over this a little
15 earlier in your testimony. It says, dear executive
16 committee, it's come to my attention that a false rumor has
17 been propagated throughout the investment group that Robert
18 asked me not to mention the cost overruns and change orders
19 to Stuart. The next paragraph, you dissuaded the rumor and
20 said what a good friend he was and I would not knowingly
21 participate in any activity that would hurt them or put their
22 investment at risk.

23 Didn't Mr. Radovan tell you not to tell Mr. Yount
24 about the switch to a sale of a CR share as opposed to

1 purchasing as part of the PPM?

2 A. No.

3 Q. Isn't that what your testimony in your deposition
4 said, that Mr. Yount told you not to tell him?

5 A. He said, I'll deal with it. He never said, don't
6 do anything. He said, if Mr. Yount's money funds, I will
7 deal with it.

8 Q. Going back over your deposition.

9 MR. WOLF: I would object to rereading. It was
10 asked and answered if he's asking him about the same
11 deposition testimony.

12 THE COURT: Just a minute. Overruled.

13 MR. WOLF: Asked and answered and argumentative.

14 THE COURT: Thank you. It's overruled. Go ahead,
15 Mr. Campbell.

16 BY MR. CAMPBELL:

17 Q. Mr. Marriner, remember when I showed you your
18 deposition and we looked at page 67, I asked you, did you
19 ever tell Mr. Yount, by the way, Mr. Busick is looking like
20 he may invest and that's going to close out the private
21 placement? You answered, I called Robert, because I report
22 directly to Robert. I said we could have a perfect storm if
23 Busick and Yount fund on the same day?

24 THE COURT: Slow down for Ms. Koetting.

1 BY MR. CAMPBELL:

2 Q. Because it was feeling like two people were
3 sending their money in at the same time. And Robert said,
4 don't worry, stay out of it. Didn't Mr. Radovan tell you
5 that?

6 A. I thought I had said, don't worry, I'll deal with
7 it. But clearly it's a very complicated situation and he
8 didn't want two stories. You know, all of the investment
9 conversations were to be handled by Robert.

10 Q. And I think your testimony earlier was that
11 somehow you felt that the nondisclosure agreement that you
12 signed prevented you from telling Mr. Yount about this?

13 A. Well, the NDA clearly states that, and I might
14 have a copy of it, but it clearly states that there is a
15 chain of command that the developer has certain information,
16 the executive committee has certain information, and I'm not
17 supposed to have private conversations about the investment
18 PPM discussion, because I'm not an attorney, I'm not a
19 securities broker. So just refer anything related to the PPM
20 to me.

21 So it was not don't. It was more of, you know,
22 don't worry about it. And I was telling you that was when I
23 was going out of town with my family and Robert just saying,
24 don't worry about it. If the funds materialize, I'll deal

1 with it.

2 Q. It was a little bit more than, don't worry about
3 it. He said, stay out of it, right?

4 A. I don't think that was, stay out of it. It was,
5 don't worry about it.

6 Q. And so initially, though, you offered to call
7 Mr. Yount and tell him, right?

8 A. Yes.

9 Q. And then you didn't call Mr. Yount, because
10 Mr. Radovan told you to stay out of it?

11 A. He said, I will take care of it. I can't remember
12 the exact words, but it was, you know, if it -- if it
13 happens, I'll deal with it.

14 Q. Do you believe that picking up the phone, telling
15 Mr. Yount, I just want to let you know that you're not going
16 to buy part of the PPM, Robert is going to sell you one of
17 his shares somehow violated the NDA?

18 A. It could have been a violation of privacy
19 information for me to pick up the phone and have that
20 discussion. Robert was responsible for that discussion.

21 Q. And you had communicated with Mr. Yount for
22 approximately four months, three or four months on this deal
23 and given him a lot of information?

24 A. The communication had shifted in August to Robert

1 and Stuart. And I clearly referred all questions that Stuart
2 Yount had. I said, Robert will answer. If you look at all
3 of my answer strings, Robert will answer, Robert will answer.

4 And when it came to the perfect storm, Robert will
5 answer. I'm not an attorney, I'm not a securities broker, or
6 all the things that you were telling me. So referring it to
7 Robert to have one person, one message, was the best choice.

8 Q. I think your testimony was also that Mr. Yount
9 went dark for a period of a long time. I can't remember
10 exactly what you said.

11 THE COURT: I think he called it radio silent.

12 BY MR. CAMPBELL:

13 Q. Radio silent.

14 A. Well, Robert uses the term radio silent.

15 Q. Didn't we see in the e-mails we looked at today
16 that in fact it was pretty much a whole plethora of
17 communications between you and Mr. Yount in the August,
18 September, October time frame?

19 A. We could go back over each e-mail and it was
20 always I shifted all of the questions to Robert.

21 Q. So we can look at those e-mails and see what
22 actually was in there?

23 A. Yes.

24 MR. CAMPBELL: That's all I have, your Honor.

1 THE COURT: Mr. Little.

2 MR. LITTLE: No, your Honor.

3 THE COURT: Mr. Wolf.

4 MR. WOLF: No, your Honor.

5 THE COURT: Mr. Marriner, you may step down.

6 THE WITNESS: Thank you. You're very kind.

7 THE COURT: Mr. Campbell, your next witness.

8 MR. CAMPBELL: Mr. Criswell.

9 (One witness sworn at this time.)

10 THE COURT: Just draw that mic a little bit closer
11 so Ms. Koetting can pick up your testimony. That's fine.

12 THE WITNESS: Is this okay?

13 THE COURT: It's more than fine.

14 THE WITNESS: Okay.

15 THE COURT: We have some water over there as well.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Campbell.

18 WILLIAM CRISWELL

19 called as a witness and being duly sworn did testify as

20 follows:

21 DIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q. Good afternoon, Mr. Criswell.

24 A. Good afternoon.

1 Q. You were one of the partners in Criswell Radovan,
2 which is an entity incorporated in Nevada, is that correct?

3 A. That's correct.

4 Q. And you and Mr. Radovan are the sole owners of
5 that company?

6 A. Um --

7 Q. Albeit --

8 A. No. My wife is one of the owners also.

9 Q. At one time, your daughter Brandyn?

10 A. My daughter was, too, and I can't tell you whether
11 or not she still has some interest.

12 Q. Okay. So is that, Criswell Radovan, is that kind
13 of your umbrella operating entity that handles most of your
14 business transactions?

15 A. No. We create separate LLCs for every activity we
16 do in terms of the ownership. Criswell Radovan is basically
17 just a conduit to move money through on behalf of each
18 project. And we keep accounting for each project separately.

19 Q. Okay. So does Criswell Radovan have assets,
20 buildings, anything?

21 A. No.

22 Q. Does it have employees?

23 A. I think at one time it had employees, but it just
24 became easier for those people to be employees of Criswell

1 Radovan just for the purpose of having insurance and having
2 one place to do payroll, but their salaries were still
3 allocated among the projects.

4 Q. So there would be an intermingling of a specific
5 project for one state with the Criswell Radovan books and
6 records as far as payroll and things like that?

7 A. Yes. And also when you're in our business, you
8 spend quite a bit of time looking for new opportunities. And
9 until there's a real opportunity that becomes funded and
10 becomes an entity itself, we use Criswell Radovan as the
11 entity that is pursuing that project and then we create the
12 separate LLC when it's funded.

13 Q. So Criswell Radovan wasn't capitalized, doesn't
14 own things, anything like that?

15 A. It occasionally has done some projects where it
16 acted directly and received money for fees for providing
17 consulting services.

18 Q. So in this instance for the Cal Neva, Criswell
19 Radovan formed one of these operating entities to take care
20 of the Cal Neva, right?

21 A. I don't think Criswell Radovan owns any entity
22 associated with Cal Neva.

23 Q. There's an entity called CR Cal Neva, which I
24 understand is an entity you and Mr. Radovan formed, another

1 Nevada LLC, which is in fact the manager designated under the
2 operating agreement, correct?

3 A. I believe that's correct.

4 Q. Who owns CR Cal Neva?

5 A. I believe Robert, my wife Sherry and I.

6 Q. And that entity is a sole purpose entity to
7 basically run the -- to be the manager of the Cal Neva Lodge?

8 A. That's correct.

9 Q. Not a separate company created just for that sole
10 purpose?

11 A. That's correct.

12 Q. And hadn't been capitalized or doesn't own any
13 buildings or anything like that?

14 A. That's correct.

15 Q. So as of today's date, does CR Cal Neva --

16 A. It may be the entity that owns the shares, the
17 membership shares.

18 Q. Do you know --

19 A. I'm not sure. I don't know that for a fact, but I
20 think it is.

21 Q. If it's not that, then it would be Criswell
22 Radovan LLC?

23 A. Right. But I don't think Criswell Radovan owns
24 those shares.

1 Q. So your recollection is it's CR Cal Neva?

2 A. That's my recollection.

3 Q. Does CR Cal Neva have any assets other than the
4 equity shares it owns?

5 A. I don't think so.

6 Q. It has one equity share, because it sold one of
7 them, right?

8 A. I believe that's correct.

9 Q. Transferred one of them?

10 A. Yes.

11 Q. I'd like to go through a history of the Cal Neva
12 and you and Mr. Radovan's involvement in the purchase and
13 early phases of development.

14 A. Okay.

15 Q. The original purchase of the property, I
16 understand, was a \$13 million purchase price?

17 A. That's my understanding.

18 Q. And you borrowed some -- you borrowed \$6 million
19 from an individual, I think his name was Wayne --

20 A. Wayne something. That's my understanding, yes.

21 Q. And that \$6 million you borrowed was 3 million of
22 it was allocated to the down payment with Canyon Capital?

23 A. That's right.

24 Q. And the other 3 million of that loan was allocated

1 to predevelopment costs?

2 A. That's correct. Canyon carried back \$10 million
3 interest.

4 Q. For a while, you had a joint venture with Canyon?

5 A. That's why I didn't say a note, because they were
6 a joint venture.

7 Q. But under the terms you had with Canyon, at a
8 point in time you could exercise a buyout of the balance of
9 the \$10 million of the \$13 million purchase price?

10 A. That's correct.

11 Q. There were conditions in the contract, we don't
12 need to get into, but those conditions were met and you were
13 able to execute, pay down the full \$13 million?

14 A. Eventually, yes.

15 Q. And then to pay the \$10 million purchase price,
16 it's my understanding that you entered into another loan with
17 some other investors, two individuals?

18 A. Yes. Because we needed to pay Canyon by a certain
19 date and we hadn't been able to raise all of the funds that
20 we needed and have all the contracts in place and everything
21 we needed in order to close with Canyon with the new investor
22 group. So we needed a bridge loan and we got a bridge loan
23 from two individuals.

24 Q. And that was the \$8 million loan, is that right?

1 A. You know, I don't remember.

2 Q. Now, the \$3 million in predevelopment costs that
3 the first investor advanced as part of the \$6 million loan,
4 it's my understanding that Criswell Radovan is saying they
5 also put another \$2 million into the project for
6 predevelopment costs, right?

7 A. You mean, are you saying that it would have gone
8 from 3 million to 5 million?

9 Q. No. That outside the loan -- there was 3 million
10 for predevelopment cost out of the 6 million that you
11 borrowed from the initial investors, right?

12 A. It was 3 million for predevelopment, 3 million
13 down payment and the 10 million position from Canyon, but I
14 don't remember how much the bridge loan was and whether or
15 not we had to come up with another 2 million on top of that,
16 or maybe there was some money left over from the
17 predevelopment funds before, because I don't think we spent
18 it all.

19 Q. Maybe I misspoke. Was the bridge loan 10 million,
20 not 8? Does that sound right? Because that's what you owed
21 Canyon?

22 A. We owed Canyon 10. I'm just telling you I don't
23 remember. I actually had very little involvement in that
24 transaction.

1 Q. Ultimately when Mr. Radovan gets on the stand, he
2 may be able to flesh out some of the details.

3 A. I hope so.

4 Q. I want to go back. You've been through court
5 today and you heard testimony from Mr. Marriner about
6 Criswell Radovan and CR's \$2 million investment into the
7 project, right?

8 A. Yes. That's correct.

9 Q. And were those also predevelopment costs into the
10 project?

11 A. I think some of them were and I think some of it
12 was cash that we put in. But I think it was all money that
13 was owed to us for one, either because we put money into the
14 project to get it closed with Canyon, or it was because we
15 were owed some development fees that we weren't paid.

16 Q. Maybe this will help you refresh your
17 recollection. If you could look at Exhibit Number 5?

18 A. Exhibit number 5. Okay.

19 Q. Go to page 21 of that exhibit at article 7.4.

20 A. I don't know how Mr. Marriner did this. These
21 books are heavy. Exhibit 5, amended and restated operating
22 agreement?

23 Q. Yes.

24 A. And what page.

1 Q. Page 21, it would be section 7.4.

2 A. Okay.

3 Q. And in the middle of that page, you'll see it
4 starts CR has advanced approximately \$1.667 million in costs
5 and has received and recontributed to the company \$480,000 of
6 development fees. Do you see that?

7 A. Okay.

8 Q. And it goes on, that makes up 2 million. Does
9 that refresh your recollection?

10 A. It does. Thank you, sir.

11 Q. So this is where your 2 million is represented as
12 being giving you the equity?

13 A. Yes, sir. I believe that's right.

14 Q. And that's the 2 million under the private
15 placement memorandum?

16 A. Correct.

17 Q. Tell us about the development services agreement.
18 You also entered into an agreement with the Cal Neva Lodge
19 through CR Cal Neva to act as kind of the developer?

20 A. Correct.

21 Q. And there was a separate contract entered into for
22 that?

23 A. I believe so, yes.

24 Q. And under that contract, you were to be paid

1 \$60,000 per month?

2 A. Correct.

3 Q. Okay. And according to this document, as of
4 June 1st of 2014, you had already taken \$480,000 in developer
5 fees?

6 A. If that's what that number means, I assume so.

7 Q. I'm just asking you, because it says, beginning in
8 early 2013, CR has received and recontributed to the company
9 \$480,000 of its development fees as of June 1st, 2015.

10 A. The reason say I'm not sure about that is because
11 I believe we were supposed to earn 1.2 million and I know
12 there was some portion of the million two we had not been
13 paid. And so that would be paid during the period of time
14 that the Cal Neva was under construction. And maybe the 480
15 might represent what we were owed but not paid under the
16 Canyon agreement.

17 Q. Nevertheless, it looks like however it was handled
18 on the books, CR decided to contribute back to the project?

19 A. That's correct.

20 Q. Forgiving it or actually infusing it?

21 A. I don't know whether they handled it on the books
22 by saying they paid us the money and then we contributed or
23 not.

24 Q. Or you handled it as a book transaction?

1 A. I don't know.

2 Q. That's how the 2 million came into being?

3 A. That's my understanding.

4 Q. And that's how CR got their equity share in the
5 \$2 million PPM?

6 A. I believe that's right.

7 Q. If you look at the back of that exhibit, same
8 Exhibit Number 5, it's at schedule 4.3 after the --

9 A. I see it.

10 Q. Okay. And so now we've got -- this is a document
11 that was part of the operating agreement and part of the
12 package in the PPM, at least an earlier version of it, right?

13 A. That's what I understand.

14 Q. And it was provided to all the potential
15 investors?

16 A. Yes, sir.

17 Q. And you're telling investors, this is what we're
18 going to use the \$20 million we raised. That's what we're
19 going to use it for. Am I reading that right? Uses of
20 capital contributions?

21 A. The uses, it says, uses as capital contribution
22 and it's a repayment of the loan amount of 6 million, plus
23 interest on or before April 30th, 2014, and payment to seller
24 of approximately \$10 million to retain the equity interest.

1 But I believe we weren't ready to close into the project with
2 the funding from the investors in Cal Neva, there was like a
3 two-month gap there, but we borrowed -- we got a bridge loan.

4 Q. So the bridge loan basically replaced that?

5 A. No. That's a different. I'm sorry. If you're
6 talking about the bridge loan that is referenced here, that's
7 the one from Wayne.

8 Q. I'm talking about number two. So you had to pay
9 seller \$10 million to redeem its equity interest?

10 A. Correct.

11 Q. You didn't have the cash at that time so you
12 borrowed another bridge loan in order to pay that?

13 A. Right. I can't tell you whether it's 10 million
14 or not.

15 Q. Okay. So basically the \$6 million note and the
16 \$10 million payment, albeit directly or through a bridge
17 loan, was going to be paid back from the investors' funds
18 through the private placement memorandum?

19 A. That's my understanding.

20 Q. If you know, do you know how much the accrued
21 interest was when you paid back the \$6 million loan?

22 A. No, I don't.

23 Q. Do you know how much the accrued interest was on
24 the \$10 million bridge loan when you paid that back?

1 A. I don't know that either.

2 Q. But both of those items, it's your understanding
3 were paid out of the equity raised from the investors?

4 A. I assume so.

5 Q. And then anything left over was supposed to
6 provide development capital for the project, right?

7 A. Left over from the contributions, the total
8 contributions?

9 Q. No. Paying back the bridge loan and making the
10 \$10 million payment?

11 A. Left over from what then?

12 Q. From your \$20 million raise?

13 A. After you make these two payments?

14 Q. Yeah.

15 A. It makes sense.

16 Q. Yeah. You use the 20 million raised under the PPM
17 for these specific purposes, pay back the six, pay the ten,
18 and in this case, pay the interest on the loan, and if there
19 was interest on the bridge loan, pay that back, too?

20 A. I would think so.

21 Q. Do you know how much was left after those payments
22 were made for additional development capital for the project?

23 A. No, I don't.

24 Q. And --

1 A. But I do know that of the 6 million, 3 million of
2 it was spent on plans and specifications and work done by the
3 lawyers and a lot of other things that were called
4 predevelopment expenses.

5 Q. That's what we talked about before, but you still
6 have to pay that loan back?

7 A. Sure.

8 Q. With interest?

9 A. Right.

10 Q. Do you know after those two payments were made,
11 was there anything left for development capital for the
12 project?

13 A. I do not know.

14 Q. You know \$20 million was going to be raised under
15 the private placement memorandum?

16 A. Correct.

17 Q. But you had to take \$2 million out of that,
18 because you guys got a \$2 million credit for money that you
19 already put in?

20 A. Yeah. But we probably paid those interest
21 payments that you're talking about ourselves.

22 Q. And so the actual -- the raise --

23 A. Where it says 1.6 or whatever it is, I think
24 that's money that we spent on interest or other payments that

1 had to be made.

2 Q. Okay. And so the additional predevelopment costs
3 would add that back in and that would give you some
4 development capital for the project?

5 A. Yeah. My guess is that it probably left -- we
6 didn't raise the full 20 right at first. So we're only 18.5.
7 And the difference between a million six and 18.5 is probably
8 left intact.

9 Q. And you also had to paid Mr. Marriner close to
10 half a million dollars for his -- under his contract, under
11 his commission for his contract?

12 A. I don't know if that was done concurrently or
13 whether it was accrued and paid later. I just don't know.

14 Q. But that came out of the raise under the PPM?

15 A. It might have been payments that we advanced.

16 Q. But at some point, he was paid a percentage of
17 what was raised? That's how it figured out?

18 A. That's correct. I think you said earlier today it
19 was three percent or something like that. That might be part
20 of that money that we already spent.

21 Q. Were you involved at all in the early formation of
22 the private placement memorandum, the offering memorandum
23 draft?

24 A. I wasn't very much involved, but I probably

1 reviewed one or two drafts before it was finalized.

2 Q. And Mr. Marriner said your daughter,
3 Ms. Iverson --

4 A. Yes.

5 Q. What work did she do on those?

6 A. Well, she was the CFO and legal counsel. But she
7 didn't provide legal services to the company. We used
8 outside firms for everything.

9 Q. Can you look at Exhibit 4, which is right in front
10 of Exhibit 5.

11 A. I'm sorry. We're still on Exhibit 5?

12 Q. Exhibit Number 4. It's the document sitting right
13 before that.

14 A. Exhibit Number 4. All right. What page?

15 Q. It's actually a table at the end of the narrative.
16 It's a -- there's a couple of tables at the very end of the
17 narrative. So if you go to page 20, there's two tables after
18 that.

19 A. I'm not sure I understand what you mean by a
20 table. I think that's what I'm having trouble with.

21 Q. Have you got to page 20 of Exhibit Number 4?

22 THE COURT: Mr. Campbell, you want to come up and
23 assist?

24 THE WITNESS: There's a page one under the

1 signature pages at the end of that.

2 THE COURT: Go ahead.

3 BY MR. CAMPBELL:

4 Q. If we go to page 20 here.

5 A. I'm sorry. I thought you said it was at the back.

6 Q. We'll go to page 20 and in there there's some
7 tables that continue on and some charts and budgets and
8 things like that.

9 A. Is this what you're referring to?

10 Q. Let's start here. So the first chart, I'll call
11 it, or table, says, Cal Neva hotel, \$35 million, \$20 million
12 debt. Are you on that page?

13 A. I see that, yes.

14 Q. And so this basically sources and uses of funds,
15 there's three boxes down there. Under uses, would that be
16 basically what we would call the project budget? You've got
17 a purchase price, architectural, you've got construction
18 costs?

19 A. Yeah. I would think that's correct.

20 Q. And then the second box, that's the project budget
21 at that point 50.279 million, right?

22 A. Yes.

23 Q. And then it shows an additional 5.166 million at
24 the bottom?

1 A. Correct.

2 Q. And it goes on to the next box and says,
3 basically, if equity 20 million is raised, then we'll do this
4 other \$5.166 million worth of work, right?

5 A. Yes. There's add scope for F and B, condo units,
6 development equity, and the Fairwinds Estate costs of
7 upgrades, if that's what you're referring to.

8 Q. And then if you go a few pages on -- you go to a
9 document, got black bold heading that says Cal Neva Hotel
10 Lake Tahoe. It reads up and down like a regular page. Do
11 you see that?

12 A. I do.

13 Q. And this again looks like a -- this would be the
14 development costs budget?

15 A. For the 28 managed residences.

16 Q. Well, I'm wondering, is this -- do you see where
17 it starts \$13 million purchase price, 18.7 construction, and
18 it goes down and comes up with the 50.729?

19 A. Okay. I see what you're talking about. I see it
20 now.

21 Q. Okay. So is this again a budget the same as what
22 was reflected in the previous table we looked at?

23 A. I think so. Yes.

24 Q. Same numbers, 50.729?

1 A. Yes.

2 Q. So this budget doesn't talk about the additional
3 scope if \$20 million is raised, right?

4 A. No.

5 Q. And then you said that there were -- that your
6 total development and financing costs was \$7.713 million?

7 A. Yes. I see that.

8 Q. So can you tell me or do you know what that \$7.7
9 million consisted of?

10 A. No, I can't.

11 Q. Could Mr. Radovan?

12 A. Maybe if we go to the line item behind that, it
13 might show it.

14 Q. But that would have been the number that someone
15 put in the budget that reflected --

16 A. It's in the 7000 category. So the 7000 category
17 is called development and finance costs and it's broken down
18 as being 7,713,498.

19 Q. And from there, we can see like the 70205 Clark?

20 A. Clark loan interest, yes.

21 Q. That was Wayne Clark was the name we were
22 struggling to get?

23 A. Yes. There you go. You're correct. Thanks.

24 Q. So the \$6 million loan when that was paid off

1 included another 1.476 in interest?

2 A. Right.

3 Q. And then the other one is financing costs. So
4 these are all really the financing costs related to the money
5 you guys borrowed to buy the hotel?

6 A. Yes. It's part of the acquisition cost.

7 Q. Yeah. Now, who prepared the budgets?

8 A. I don't know.

9 Q. Did your daughter, Ms. Iverson, work on the
10 preparation of these budgets?

11 A. She might have, but she had people who worked for
12 her that did that, too.

13 Q. And that was as an employee of?

14 A. Of Criswell Radovan, probably. Sometimes we use
15 outside people for this. I don't know.

16 Q. But you don't know how involved she was with the
17 budget, but you know she was at least involved?

18 A. I would guess that she was pretty involved, but in
19 an oversight role. She doesn't do the actual work of it.

20 Q. She was the CFO at the time, you said also?

21 A. Yes.

22 Q. Do you know if there were any preliminary budgets
23 that were higher than this number, the 50.729?

24 A. Not that I know of.

1 Q. You don't know if those budgets were ever whittled
2 down or cut in order to come up with a lower budgets?

3 A. Most budgets go through a process where sometimes
4 they're too high and we say, we don't need this, or we can
5 get that cheaper, or something like that.

6 Q. We don't know whether she did that or not?

7 A. I have no idea.

8 Q. And, then, again, the construction budget in
9 there, the total construction is \$18.7 million. Do you know
10 who did the construction budget for you?

11 A. More than likely, it was Hal Thannisch or some of
12 his people.

13 Q. Working under your direction?

14 A. He's a construction manager.

15 Q. He was actually the construction manager on the
16 project at a later date?

17 A. Yes. And I'm sure he got a lot of his information
18 from Penta or the architects.

19 Q. Were you at all involved in that preparation of
20 that construction budget?

21 A. Not that I remember.

22 Q. And if you know, who put the language in the
23 confidential offering memorandum that talked about how the
24 construction budget was arrived at?

1 A. I don't know, but I know we use outside counsel
2 for most everything.

3 Q. So that would have been outside counsel in
4 conjunction with Mr. Thannisch and your daughter?

5 A. I would think they would oversee. They look at it
6 to make sure it's correct.

7 THE COURT: Mr. Campbell, would this be good time
8 to break?

9 MR. CAMERON: Sure.

10 THE COURT: Mr. Criswell, you may step down.
11 Watch your step going down.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: Mr. Campbell, how much time do you
14 need budgeted for Mr. Criswell and who is next?

15 MR. CAMPBELL: So I think some of it is going to
16 go fairly quickly, but I'm guessing an hour and a half.

17 THE COURT: We might be able to finish up with
18 Mr. Criswell in the morning?

19 THE CLERK: Your Honor, we have a 1:15 tomorrow.

20 THE COURT: Okay. So we will reconvene at 1:30
21 tomorrow afternoon and we'll pick up with after Mr. Criswell?

22 MR. CAMPBELL: Mr. Radovan.

23 THE COURT: Okay.

24 MR. LITTLE: Your Honor, we have the one witness,

1 Bruce Coleman, that they're going to call after Mr. Radovan
2 and he's in Texas. And we've arranged to set up the Skype
3 thing, but we kind of need to have a little bit of direction
4 on where we're going. Based on how Mr. Marriner took, I'm
5 guessing that tomorrow we'll be lucky to get through
6 Mr. Criswell and Mr. Radovan.

7 So I guess I'm looking to you for direction, but I
8 don't think we're going to get Bruce on tomorrow afternoon.
9 I need to let him know.

10 THE COURT: My impression is it will probably be
11 Thursday morning.

12 MR. CAMPBELL: I would be agreeable to wherever we
13 are, if we want to set a specific time for Mr. Coleman. If
14 we take a witness -- since everybody else is here, I think,
15 and is going to be here for the duration. So if I'm in the
16 middle -- still on Mr. Radovan or your direct of Mr. Radovan
17 at 9:00 on Thursday morning, I have no objection to taking
18 him out of order.

19 MR. LITTLE: He's a couple of hours ahead. I'll
20 try to set him up Thursday morning around 9:00. That way
21 even if we don't finish Mr. Radovan and we go over, we can
22 finish it out.

23 THE COURT: All right.

24 MR. LITTLE: We're still looking at going to

1 Friday, right?

2 THE COURT: Yes. Mr. Wolf.

3 MR. WOLF: We're convening tomorrow morning at
4 9:00.

5 THE COURT: That's correct.

6 MR. WOLF: Resuming after the lunch break at 1:30?

7 THE COURT: That's correct. Anything else before
8 we adjourn?

9 MR. CAMPBELL: No, your Honor.

10 THE COURT: Mr. Little, Mr. Wolf.

11 MR. LITTLE: No, your Honor.

12 THE COURT: Court's in recess.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on August 29, 2017, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the trial in the matter of GEORGE S. YOUNT,
10 Plaintiff, vs. CRISWELL RADOVAN, et al., Defendant, Case
11 No. CV16-00767, and thereafter, by means of computer-aided
12 transcription, transcribed them into typewriting as herein
13 appears;

14 That the foregoing transcript, consisting of pages 1
15 through 203, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 25th day of September 2017.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

43

43

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 GEORGE S. YOUNT, et al.,)
12 Plaintiffs,)
13 vs.) Case No. CV16-00767
14 CRISWELL RADOVAN, et al.,) Department 7
15 Defendants.)
16 _____)

17
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME II

20 August 30, 2017

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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1 RENO, NEVADA, August 30, 2017, 9:00 a.m.

3 --oOo--

4 THE COURT: Mr. Criswell, please resume the stand.

5 You remain under oath. Mr. Campbell, your witness.

6 BY MR. CAMPBELL:

7 Q. Good morning, Mr. Criswell.

8 A. Good morning.

9 Q. I want to wrap up some of the items that we were
10 finishing yesterday regarding some of the initial phases of
11 the financing on the project. It's my understanding that
12 your daughter, Ms. Iverson, also loaned some money to the
13 project?

14 A. Yes, sir. That's correct.

15 Q. How much was that?

16 A. I believe that was about \$220,000.

17 Q. And when did she make that loan?

18 A. I believe it was at the time that we were still
19 trying to pay off Canyon.

20 Q. So it would have been early in the 2013, 2014 time
21 frame?

22 A. I believe so. Yeah, I think early in 2014.

23 Q. And then was the loan -- was the loan proceeds
24 intended to pay off, partially pay off Canyon?

1 A. Well, it was a loan to -- I believe it was
2 Criswell Radovan so that Criswell Radovan could meet the
3 obligations to pay off Canyon.

4 Q. So Criswell Radovan was short about 200 and
5 whatever, \$20,000 to make the payment to Canyon?

6 A. You know, I don't really remember why it was. I
7 just know that it was needed as a short-term situation.

8 Q. And then do you know when did Criswell Radovan or
9 CR start negotiating with Hall for the financing loan, the
10 construction financing?

11 A. I think it would have been in the either late fall
12 of 2013 or early in 2014.

13 Q. Had you or Mr. Radovan or one of your entities
14 ever done business with Hall before?

15 A. I had not done business with Hall, per se. I was
16 an acquaintance of Craig Hall, but I'd never done business
17 with him.

18 Q. What do you mean acquaintance, you knew him
19 socially or something?

20 A. Yeah. We both were in the development business in
21 Dallas.

22 Q. Were they a developer or a lender or both?

23 A. Both. Hall Financial I don't think was a
24 developer, but Craig Hall himself was a developer.

1 Q. Same family?

2 A. Yes.

3 Q. If you've got the book in front of you, Exhibit 1
4 in the plaintiff's binder.

5 A. All right.

6 Q. Were you at all involved in the initial
7 discussions with Mr. Marriner about contracting him to work
8 for you?

9 A. No, I wasn't.

10 Q. Were you familiar with the contract that he
11 finally entered into?

12 A. At some point in time, I became familiar with it,
13 but I wasn't familiar with it at the time.

14 Q. If you look at page one of the agreement, do you
15 think the scope of the agreement, Marriner will manage all
16 aspects of the sales of the five founding memberships and the
17 28 condominiums approved on the site plan, is an accurate
18 description of what he was supposed to do for you?

19 A. I had no idea. I wasn't involved in the
20 negotiations.

21 Q. As you sit here today, do you think that's an
22 accurate description of what he's supposed to?

23 MR. WOLF: Objection, foundation.

24 MR. CAMPBELL: He's a party to the contract.

1 THE WITNESS: The contract says what it says.

2 THE COURT: Overruled.

3 BY MR. CAMPBELL:

4 Q. Mr. Criswell, did you view him as your agent in
5 dealing with Mr. Yount?

6 A. Again, because I wasn't involved in that
7 relationship, I don't know what his role was. But I believe
8 he got paid a commission, so I would assume he's an agent.

9 Q. But didn't you view him as your agent?

10 A. Did I?

11 Q. Yes.

12 A. Not really. I wasn't involved.

13 Q. Mr. Radovan, do you remember when I took your
14 deposition back in April and we had a discussion about Mr.
15 Marriner?

16 A. I'm Criswell, not Radovan.

17 Q. Excuse me. Mr. Criswell. If I may approach, your
18 Honor. Maybe I can refresh the witness' recollection.

19 MR. LITTLE: What page, counsel?

20 MR. CAMPBELL: It is page 74.

21 MR. LITTLE: Thank you.

22 MR. CAMPBELL: And it is starting at line 21.

23 BY MR. CAMPBELL:

24 Q. I'm asking you some questions in your deposition

1 about Mr. Marriner's relationship. And I say, I just ask a
2 question, how do you know that? And your answer is, I don't
3 know how we know it, but I assume since he was our broker and
4 he was a primary communicator with Stuart Yount and he talked
5 to Robert. So did you understand -- was it your
6 understanding that he was the primary --

7 A. Sure, but for example --

8 Q. Let me finish. He was the primary communicator
9 and your broker for the sales of the -- at least the sales of
10 the shares?

11 A. I came to know that, but I never even saw this
12 consulting agreement until after the lawsuit was filed.

13 Q. As we sit here today, you understand that to be
14 his role?

15 A. I believe that is correct.

16 Q. Now, it's my understanding, and I think we talked
17 about it a little bit yesterday, Mr. Radovan was really the
18 person on site at Criswell Radovan or CR that was in charge
19 of most of the day-to-day operations and the development of
20 the hotel, at least from Criswell Radovan's perspective?

21 A. I think that's fair. I wouldn't say just
22 day-to-day. He was the man within our relationship, he and
23 I, that he was responsible for that project.

24 Q. Okay. You were off working on some other

1 projects?

2 A. Correct.

3 Q. But did Mr. Radovan keep you informed of what was
4 going on with the Cal Neva development?

5 A. Occasionally.

6 Q. And attended executive committee meetings for the
7 organization?

8 A. I believe I conducted either on the phone or in
9 person all of the executive committee meetings.

10 Q. We talked a little bit yesterday about the
11 development fee that CR Cal Neva was getting to help develop
12 this project, correct?

13 A. I think so.

14 Q. I think we talked yesterday in the document we
15 looked at was about \$60,000 a month?

16 A. Yes. That's right.

17 Q. Did that contract extend through the entirety of
18 the project or was that predevelopment services?

19 A. Well, it wasn't the entirety of the project. It
20 was the entirety of the construction period, which would have
21 included the predevelopment period.

22 Q. And I think when we looked at Exhibit Number 5
23 yesterday, we had a previous discussion on as of, I think --
24 if you look with me, maybe you can follow along, Exhibit

1 Number 5 at page 21.

2 A. Okay.

3 Q. And remember we talked yesterday as of a certain
4 date CR has received about \$480,000 in development fees, as
5 of June 1, 2014?

6 A. Yes, I see it.

7 Q. And albeit that may have been just a book entry,
8 not an actual cash receipt?

9 A. No. I believe it was an actual cash receipt.

10 Q. And then after June 1 of 2014, did CR continue to
11 receive development fees?

12 A. Yes, we did.

13 Q. Was that every month thereafter until a certain
14 time frame?

15 A. Yeah. There was a cap on the amount of money that
16 we could be paid as development fees of 1,200,000, and I
17 believe that that cap, counting the money that we had already
18 been paid, was reached somewhere in June or July of 2015.

19 Q. Was it all paid by that time?

20 A. I believe so.

21 Q. Can you look at Exhibit Number 44? The cover
22 sheet is just an e-mail and there's some attached financial
23 documents on the back?

24 A. Okay.

1 Q. I'm interested in the balance sheet that is
2 attached to this that has the columns going out until
3 September 30th, 2015, and then the second page of that
4 balance sheet, which would be page three of the balance
5 sheet.

6 A. Page two?

7 Q. Page three.

8 A. Page three. Sorry.

9 Q. It's under the other current liabilities.

10 A. Okay.

11 Q. And I just had some questions with you. It looks
12 like on the third entry down, it says due to CNL accrued
13 development fees, and it look like they were on the books on
14 the quarter ending March 31st, 2015. Am I reading that
15 right?

16 A. I see it, yes.

17 Q. And still on the books on June 20th, 2015?

18 A. Yes.

19 Q. And then it looks like there was a zero balance as
20 of September 30th, 2015. So were the remaining development
21 fees actually paid to Criswell Radovan in that quarter, June
22 30th to September 15th?

23 A. You know, I don't know. I assume they had been
24 paid before that, so maybe they were correcting an entry.

1 Q. From this accounting, it appears that it was --
2 that balance or that account payable was zero value in that
3 last quarter?

4 A. I don't know whether it was because it was paid or
5 because it was a mistake.

6 Q. And then there's a due to CRL. I don't know what
7 that entity stands for. Do you?

8 A. CRL, I believe, is what Lisa and Heather describe
9 Criswell Radovan LLC.

10 Q. Do you know what that \$653,000 debt on the books
11 is?

12 A. I believe that's money that was loaned by Criswell
13 Radovan to the project.

14 Q. So as of September 30th, that would be the amount
15 loaned by your entity?

16 A. I believe that's what it means.

17 Q. Okay. Did you make additional loans after
18 September 30th to the project?

19 A. Yes, sir, I think we did.

20 Q. And one other item, the NP to capital one, there's
21 a \$4 million plus. Do you understand what that is?

22 A. No idea.

23 Q. Does NP usually stand for note payable, do you
24 know?

1 A. I would think so.

2 Q. But you have no idea what that \$4 million plus
3 balance is?

4 A. No. I would think now that I'm looking at the
5 other two items there, the Hall loan and Ladera, that
6 probably is the loan on the Fairwinds Estate house. That was
7 the mortgage on the Fairwinds Estate house.

8 Q. Let's talk about that for a minute since you
9 brought it up. That's the Pay property?

10 A. It was before he -- before it became part of the
11 project.

12 Q. And when you did the exchange with the Pays and
13 Mr. Marriner's first commission, did the Pays give you title
14 to the Fairwinds?

15 A. I don't know how the transaction was papered. I
16 just know that it became an asset of the overall project.

17 Q. But the Pays, they had a note, right?

18 A. Yeah. I think that's what that means.

19 Q. And then Criswell --

20 A. It was a mortgage.

21 Q. And Cal Neva assumed that note?

22 A. I don't think we assumed it. I think we just
23 agreed we would pay it. But I wouldn't know.

24 Q. Do you know who is paying on that note now?

1 A. Do I know now? I have no idea. I do believe that
2 we loaned some -- Criswell Radovan loaned some money to the
3 project, to I believe it was New Cal Neva or Cal Neva to make
4 some of those mortgage payments.

5 Q. Okay. But to your knowledge, are the Pays now
6 still obligated on the mortgage since the Cal Neva is in
7 bankruptcy?

8 A. I don't know.

9 Q. Let's go to July of 2015. And I think your
10 testimony was that you attended most or all of the executive
11 committee meetings either in person or by phone?

12 A. I think that's right.

13 Q. Did you attend the July executive meeting?

14 A. Yes.

15 Q. At that meeting, was there any discussion about
16 Mr. Yount's potential interest in buying a \$1 million share
17 under the PPM?

18 A. No, sir.

19 Q. Was there a discussion about the budget shortfalls
20 and change orders?

21 A. Yes.

22 Q. Do you remember the amount that was being
23 discussed as to how much that budget shortfall either was or
24 was going to be in the very near future?

1 A. I think the amount that we had already understood
2 was owed was two and a half million, but would probably be up
3 to five shortly and it could go above that.

4 Q. Was there discussion in that meeting about a
5 refinance of the mezzanine loan?

6 A. Yes. There was a discussion as to whether or not
7 we should go out and raise additional capital or whether we
8 would get financing. And at that time, the most likely
9 scenario that we could do quickly would be a mezzanine loan
10 either to add on to the one that we already had or to
11 refinance it as a mezzanine loan.

12 Q. And so part of the refinance of the mezzanine was
13 to raise some additional debt or capital?

14 A. It would be debt.

15 Q. And how much debt was being discussed in that July
16 meeting as to what is necessary?

17 A. I think a total of 9 million in addition to the
18 six that was already there.

19 Q. The six meaning the --

20 A. The Ladera loan.

21 Q. So the idea was that the refinance would pay off
22 the Ladera loan?

23 A. Under one scenario. I believe there was at least
24 one member of Ladera in that meeting and I believe they had

1 indicated at that meeting that they would consider increasing
2 their mezzanine loan to cover either all or part of the 9
3 million.

4 Q. Was there another discussion about just paying
5 them off?

6 A. Yes. That was part of the alternative.

7 Q. And what was the accrued interest, do you know, of
8 the Ladera loan at that point?

9 A. At that time, I don't know, but it was probably 3
10 or 400,000, maybe.

11 Q. Were there any penalties associated with paying
12 that early?

13 A. I don't know.

14 Q. And of the 9 million you discussed, you testified
15 six and then whatever interest on top of that to pay that
16 off, what was the other uses of the money discussed in that
17 meeting?

18 A. You know, I don't know. But I believe it was to
19 cover the cost overruns that we were aware of, to pay
20 whatever interest was due to the Ladera if they didn't become
21 part of the financing, and to take care of potential future
22 needs.

23 Q. You said that the additional 9 million was needed.
24 How were you projecting additional future needs?

1 A. Well, there's the possibility that, in fact, we
2 thought there was a probability that there would be
3 additional cost overruns or items we wanted to add to the
4 project to get all the way to completion.

5 Q. And that forward looking projection put it in your
6 mind at \$9 million, give or take?

7 A. I believe it was deemed at that time in July to be
8 adequate.

9 Q. In that same meeting was there also a discussion
10 of a total refinance of the project?

11 A. I don't think that was discussed in that meeting.
12 I think at that time, Robert was recommending that we do a
13 mezzanine loan.

14 Q. Did there come a time when a total refinance was
15 being discussed between you and Robert?

16 A. Yes.

17 Q. And when was that?

18 A. Probably in the August, September time frame.

19 Q. Had you and Robert talked about the amount of what
20 the take out or total refinance amount of that new loan would
21 be?

22 A. I'm sure we did, but I don't remember anything
23 specific. I think it came about because when Robert was out
24 looking for mezzanine financing, several of the people he was

1 talking to said they would not be interested in the mezzanine
2 piece, but they would be interested in a refinance of the
3 whole thing.

4 Q. But you don't remember any details of the amount?

5 A. No, I don't.

6 Q. When did you become aware that Les Busick invested
7 an additional 1.5 million under the PPM?

8 A. Either towards the end of my trip to Europe or
9 when I came back from that trip.

10 Q. Do you know when you came back?

11 A. I think it was around October 10th.

12 Q. And was your understanding at that point in time
13 that once Mr. Busick made the investment, that the PPM was
14 essentially shut down, no more money could be raised under
15 it?

16 A. That was my understanding at the time.

17 Q. Did you know that Mr. Yount was -- made his
18 investment shortly after that?

19 A. Yeah. I found out about that time, yes.

20 Q. You found out about Mr. Yount's investment?

21 A. Yes.

22 Q. At about the same time that Mr. Busick --

23 A. I would say within a couple of days.

24 Q. Do you know if it was before Mr. Yount made his

1 investment?

2 A. I believe it was before Mr. Yount made his
3 investment. In fact, I'm sure of it, because Robert asked my
4 consent to sell one of our shares.

5 Q. Let's talk about --

6 A. When I say our shares, I mean CR Cal Neva -- yeah,
7 CR Cal Neva.

8 Q. Let's talk about that. You said Robert asked for
9 your consent. When did that conversation take place?

10 A. I think it probably took place a few days before
11 Mr. Yount actually funded.

12 Q. Do you remember hearing that in person or were you
13 still on your vacation somewhere?

14 A. No. We didn't have any discussions about
15 Mr. Yount until I came back from my vacation.

16 Q. Did Mr. Radovan tell you that he had talked to
17 Mr. Yount and he had agreed to such a transaction?

18 A. I don't recall any conversation about whether he
19 agreed or hadn't agreed.

20 Q. Did you have any conversation as to someone --

21 A. I think it was more like, if he were to invest,
22 would you be okay with us doing it?

23 Q. You knew he hadn't invested by the time of that
24 conversation?

1 A. That's correct.

2 Q. Did you know at that time that there was some type
3 of a procedure to have the other members approve such a sale
4 or transfer of one of the shares?

5 A. No, I didn't.

6 Q. At that time?

7 A. At that time.

8 Q. You later became aware of that?

9 A. I did.

10 Q. We'll talk about that later.

11 A. Okay.

12 Q. Prior to that time, you had seen the operating
13 agreement, and I assume you had reviewed the operating
14 agreement somewhere in -- during the course of this project?

15 A. Yeah. I would say back in the spring of 2014.

16 Q. Did it appear to you that it was Mr. Radovan's
17 idea to sell Mr. Yount a share of the CR -- the two CR
18 shares?

19 A. I don't know whose idea it was. I probably
20 thought at the time that he and Dave talked about, wouldn't
21 it be a good thing to continue to have Mr. Yount as a part of
22 the project, even though at the time there was no more money
23 that could be done. So we could sell him a preferred share
24 of one of CR.

1 Q. I'm sorry. Are you finished?

2 A. Yes.

3 Q. You didn't see any prohibition of Mr. Marriner
4 talking to Mr. Yount about selling a CR share?

5 A. First of all, I wasn't aware, as I told you, what
6 exactly his relationship was. So I certainly wouldn't have
7 been aware of any prohibition.

8 Q. You just testified, though, that one of the
9 assumptions you made was that Mr. Marriner may have told him?

10 A. Sure.

11 Q. So making that assumption, you didn't believe
12 there was any prohibition against Mr. Marriner making that
13 kind of recommendation, do you?

14 A. No. I don't remember that I would have had that
15 thought.

16 Q. As I showed you in the deposition, you viewed him
17 as your broker?

18 A. I think that's right.

19 Q. Can you look at Exhibit Number 33? This is a
20 string of three different e-mails between Mr. Coleman,
21 Mr. Radovan is on the first one, and then Heather Hill is on
22 the second two.

23 Just for the Court's clarification, counsel has
24 waived the attorney-client privilege on these documents.

1 THE COURT: Thank you.

2 THE WITNESS: Okay.

3 BY MR. CAMPBELL:

4 Q. The first document, Mr. Criswell, is to Heather
5 Hill and Mr. Radovan is cced on it, but it's to Bruce
6 Coleman. And Bruce Coleman was your attorney at this time?
7 When I say your, maybe I should define that. Was he the Cal
8 Neva Lodge LLC attorney?

9 A. I believe that's right.

10 THE COURT: Mr. Campbell, which exhibit are you
11 on?

12 MR. CAMPBELL: Excuse me, your Honor?

13 THE COURT: What exhibit?

14 MR. CAMPBELL: I'm sorry. We're on Exhibit Number
15 33.

16 THE COURT: Go ahead.

17 BY MR. CAMPBELL:

18 Q. So was Mr. Coleman representing the Cal Neva Lodge
19 LLC?

20 A. Yes.

21 Q. Was he also representing Criswell Radovan LLC?

22 A. I believe so.

23 Q. Was he also representing CR Cal Neva?

24 A. I don't know, but I would guess so.

1 Q. Was he representing you individually in any
2 capacity?

3 A. No.

4 Q. Had he in the past represented you individually,
5 either you or Mr. Radovan?

6 A. Not that I'm aware of.

7 Q. How many different projects --

8 A. That -- he was an employee many, many years ago of
9 a company that I owned called Criswell Development Company
10 and he was in-house legal counsel at that time.

11 Q. Let's delve a little into that history now that
12 we're on it. When would he have been your in-house counsel?

13 A. I don't think he was our in-house counsel. He was
14 general counsel for the company.

15 Q. Okay. Kind on an outside --

16 A. That would have been early '80s, like '81, '82
17 through '86, '87, something like that.

18 Q. And how many projects did Mr. Coleman work on with
19 you as counsel in some fashion?

20 A. Probably 10 or 12.

21 Q. And in all of those deals, did you have, like we
22 talked yesterday, kind of a new LLC formed to operate that
23 particular development projects?

24 A. Yeah. We had different partners in almost every

1 one of those projects, so each one was formed as a separate
2 company.

3 Q. And then Mr. Coleman worked on the legal matters
4 related to those developments?

5 A. We used outside, because my wife was also an
6 attorney, and she was president of the company. And she did
7 not want us, either her or Bruce, acting as lawyers to give
8 advice about things, but to make sure that the outside
9 counsel are doing what they're supposed to do.

10 Q. So I'm a little confused. You didn't want Bruce
11 to give you legal advice, but was he acting as your attorney
12 in some capacity?

13 A. No. He was acting as general counsel for the
14 corporation. And his job was to make sure that the outside
15 lawyers are doing what they're supposed to do.

16 Q. So he was your attorney at least to that
17 corporation as general counsel?

18 A. He wasn't my attorney. He was the attorney of
19 that company.

20 Q. Let's go back to Exhibit Number 33 here.

21 A. Okay.

22 Q. This is an exhibit that looks like Ms. Hill is
23 asking Mr. Coleman for some legal advice. And it says in the
24 second paragraph, he is prepared to fund next week, we now

1 know that's Mr. Yount, and would like to use your trust
2 account to process this transaction. We assume there is some
3 sort of swap agreement CR will need to sign to paper this
4 transaction above and beyond the typical documentation.

5 Had Mr. Radovan or Ms. Hill ever informed you that
6 they had been talking to Mr. Coleman about trying to paper
7 this transaction with Mr. Yount?

8 A. Not that I'm aware of. I was still in Europe at
9 that time.

10 Q. And if we go to the next e-mail, Mr. Coleman looks
11 like he's responding back to Ms. Hill and giving her it looks
12 like some legal advice that section 12.2 of the operating
13 agreement requires some investor, some other member approval
14 vis-a-vis a written vote, correct?

15 A. Okay. I see what it says.

16 Q. Did Ms. Hill or Mr. Radovan ever communicate to
17 you that to do this Yount transaction, there had to be some
18 kind of prior approval?

19 A. No.

20 Q. I'll start in this time frame.

21 A. In this time frame, no, he did not.

22 Q. Later on, did that come to your attention?

23 A. I don't think it ever came to my attention that he
24 needed prior approval.

1 Q. Okay. And if we go to the next page in this
2 exhibit, it looks like, again, Mr. Coleman back to Ms. Hill,
3 and she's sending him some kind of an assignment of interest
4 for the limited liability company for the investment of
5 Stuart Yount. And now Mr. Yount is identified. And then,
6 you have previously told me, and I assume this is Mr. Coleman
7 saying to Ms. Hill, you have previously told me that you have
8 approval from the necessary members to transfer the
9 \$1 million of the CR interest to Stuart Yount. Did Ms. Hill
10 ever tell you that she had got approval from the other
11 investors?

12 A. I don't recall that she ever told me that or who
13 she might have said that to. But I do know that we did have
14 prior approval to sell one of our interests.

15 Q. That's your position, you had prior approval?

16 A. Yes.

17 Q. Did Mr. Radovan ever tell you that your counsel
18 had sent you a document to have an assignment of interest
19 executed by Mr. Yount?

20 A. Would you say that again? I didn't follow that.

21 Q. Did Mr. Radovan ever tell you that Bruce Coleman
22 had sent a document for Mr. Yount to execute in order to
23 assign his interest for the -- for CR to assign their
24 interest to Mr. Yount?

1 A. No. I don't think he did.

2 Q. Did you have any discussions with Mr. Radovan
3 between this time frame, October, say, the first of October
4 up until about December 12th about Mr. Yount's investment and
5 the manner in which his investment was made?

6 A. Since I didn't get back from my trip, and I may
7 have mentioned, I don't know whether I said it yesterday or
8 not, but that was my 50th wedding anniversary trip and I
9 promised my wife I wouldn't do any business on that trip.

10 Q. Good idea.

11 A. So I think she knows what my inclination would
12 have been otherwise. So I kept to that promise. So I didn't
13 have any discussions with Robert until I got back.

14 Q. And we pinned that time around October 10th?

15 A. Yes.

16 Q. Between October 10th and let's move to
17 December 12th, had you had any discussions with Robert
18 regarding Mr. Yount's investment?

19 A. I think I had a discussion in which he said he
20 thought it was imminent and that we should probably have a
21 discussion if he does fund about what to do with the money.

22 Q. And did you have that discussion?

23 A. Well, yes and no. I don't know what you mean by
24 that. The discussion I just described or something else?

1 Q. You just testified that you had one discussion
2 with Mr. Radovan where he was telling you Mr. Yount's funding
3 was imminent and then you said we should have another
4 discussion about that.

5 A. That's correct.

6 Q. Did you have that other discussion?

7 A. We only had a brief discussion on about a portion
8 of it, but we never did have the discussion as to what would
9 be done with the funds.

10 Q. What was your brief discussion on the portion of
11 it?

12 A. I believe that I had made it clear that I wanted
13 to make sure that my daughter's note was paid off from the
14 source of those funds. That was my primary concern.

15 Q. Did you have ever have a conversation in Las Vegas
16 with Mr. Radovan where you were admonishing him that we
17 needed to get Stuart Yount's transaction correctly papered or
18 it might constitute securities fraud?

19 A. No, sir.

20 Q. You don't remember Pete Dordick being at a meeting
21 with you in December at the Aria Hotel Casino?

22 A. I don't remember even having a discussion with
23 Pete Dordick about anything about that project.

24 Q. It would have been you, Pete Dordick, Mr. Radovan?

1 A. I just don't remember any conversation like that.

2 Q. Let's move now to the December 12th executive
3 committee meeting and member party. You were here yesterday
4 when you heard Mr. Marriner talk about that? That dual part
5 meeting first was an executive committee meeting and the
6 second was kind of a Christmas party.

7 A. Yes, I heard that.

8 Q. Did you attend the executive committee meeting?

9 A. Yes, sir.

10 Q. And was there a presentation made to the executive
11 committee?

12 A. I'm pretty sure there was.

13 Q. Was there -- excuse me -- were there other members
14 of the LLC that were in attendance at that executive
15 committee meeting?

16 A. I believe that the executive committee meeting
17 that was started as an executive committee meeting was just
18 the executive committee. And then since a lot of the members
19 were going to show up for the party, I think the discussion
20 that we had at the executive committee is that we should
21 include the other members in at least a summary form about
22 what we had discussed.

23 Q. So did somebody go out to the party and ask other
24 members to come into the meeting room where the executive

1 committee was meeting?

2 A. No. I think we went into the main room where
3 there was room for a crowd of that size.

4 Q. So it kind of morphed into where the party was?

5 A. Yes.

6 Q. Did you make a presentation to the executive
7 committee at that meeting?

8 A. No. I don't think we made a presentation. But I
9 do think that Robert primarily led the meeting in discussing
10 the status of where we were at that point in time.

11 Q. And what did Robert tell the executive committee?

12 A. Well, you want me to tell you what took 45 minutes
13 to an hour?

14 Q. I'll rephrase it. Did Robert talk about the over
15 budget, the change orders from the over budget?

16 A. Yes, sir.

17 Q. And what did he tell the executive committee about
18 how much those change orders were at that point?

19 A. I don't remember what he said about the amount.
20 We can check on the minutes or that sort of thing as to what
21 the amount was. But I believe by that time, the main reason
22 why Robert wanted to -- I mean, the main thing he was trying
23 to accomplish at that meeting was to get the executive
24 committee to approve the Mosaic loan. That was the primary

1 purpose of that.

2 Q. So what did Robert tell the executive committee
3 about the Mosaic loan?

4 A. He said -- we had had an executive committee
5 meeting in early November, I think around the 5th, in which
6 we were discussing the Mosaic loan. And Robert was being
7 pushed by Mosaic to get their commitment letter signed and
8 approved at that meeting.

9 And there was a discussion at the meeting about
10 was -- there were four or five points that the executive
11 committee said they would like to see Robert go back and see
12 if he can get those changes made and then they would approve
13 it.

14 As of December 12th, that approval had still not
15 come, even though Robert had been successful in getting the
16 changes that they had requested.

17 Q. So did Robert tell you that he had actually met
18 with Mosaic between the November executive committee meeting
19 and the December executive committee meeting?

20 A. I don't know if he met with them or spoke with
21 them on the phone.

22 Q. But he said he had communicated with them?

23 A. Yes.

24 Q. Was the term sheet signed at some point with

1 Mosaic?

2 A. You know, I don't remember. I know we were
3 obligated to, in order to get the term sheet, put up \$50,000
4 on behalf of Cal Neva Lodge. Cal Neva Lodge didn't have the
5 funds at that time to do that. So Robert and I loaned
6 \$50,000 to Cal Neva Lodge in order to make that deposit or
7 payment to Mosaic.

8 Q. So when was -- do you know when that -- was it a
9 term sheet, a letter of intent, a loan commitment?

10 A. I think it was a conditional commitment.

11 Q. Do you know when Mosaic signed that?

12 A. No, I don't.

13 Q. Was it signed by the time of the December 12th
14 meeting?

15 A. I'm pretty sure it was. I think it was signed
16 before the November 5th meeting.

17 Q. So what was Robert telling the executive committee
18 about going ahead and approving the closure of that loan?

19 A. Well, because I think he had made it clear to
20 Mosaic that it still requires the approval of the executive
21 committee. Just like a lot of things that executives of a
22 company will negotiate and then get approval from a Board of
23 Directors.

24 Q. Did they approve it at that point, the executive

1 committee?

2 A. At what point?

3 Q. In the executive committee meeting on the 12th,
4 December 12?

5 A. No, I don't think they did.

6 Q. Was there a reason they didn't?

7 A. Not that I know of.

8 Q. Did Robert tell them what the amount of the Mosaic
9 loan was going to be?

10 A. Yes.

11 Q. And what was that?

12 A. But they knew that on the November 5th loan and
13 they asked to go back and get it increased and he was
14 successful in getting it increased.

15 Q. So what was the increased amount? What was the
16 initial amount, if you recall?

17 A. I don't remember. I think it was like 50 million
18 and they said go back and get 53 or 55 or something.

19 Q. Let's go back to the budget. You don't remember
20 the number, but do you remember Robert telling them that
21 there were in fact significant budget overruns because of the
22 change orders?

23 A. Yes. He had told them that back in July.

24 Q. It's my understanding that after the -- that was

1 two issues. Do you remember any other issues that were
2 discussed in that executive committee meeting or was that the
3 primary of the two of them?

4 A. I think that was the primary one, but there was
5 concern about whether the budget that he had expressed or
6 talked about in July was going to be increased if we did the
7 Mosaic loan. Because on top of the incremental 9 million
8 that he was talking about on the mezzanine, there was going
9 to be additional cost if the Mosaic was done in the way of
10 points and additional interest. I think Robert was anxious
11 to get an even bigger contingency. I think those were the
12 main points.

13 Q. Okay. And you heard Mr. Marriner testify
14 yesterday, it sounded like after the executive committee
15 meeting broke up, there was some I'll call it disharmony in
16 the meeting with the other investors?

17 A. Yeah. It was primarily things that were mentioned
18 by the people in the IMC group that were saying that they
19 weren't kept informed and that they thought that the Mosaic
20 loan was -- I don't remember how they phrased it, but they
21 were not happy about the fact that it was a much bigger loan.

22 I think a person by the name of Molly indicated
23 that she thought we should raise additional capital and not
24 add additional debt to the project.

1 Q. You're talking about Molly Kingston?

2 A. Yes.

3 Q. She's not part of the IMC, right?

4 A. I'm sorry?

5 Q. She's not part of the Incline Men's Club?

6 A. I don't think she is, but she acts like she is.

7 Q. Did you make any presentation to the members at
8 that social gathering?

9 A. We didn't make a presentation, but when Robert was
10 being, I'm going to use the word criticized severely by some
11 of the IMC people, I got up and stood next to him, so I could
12 defend and answer questions so he wasn't up there all by
13 himself.

14 Q. And do you remember defending and answering
15 certain questions?

16 A. I think I did.

17 Q. Do you agree with Mr. Marriner's assessment
18 yesterday that it was a pretty tense and contentious time in
19 that meeting because of the investors?

20 A. I think Mr. Marriner characterized it properly.

21 Q. You had a lot of upset investors, would it be fair
22 to say?

23 A. Well, it was almost exclusively the IMC group. I
24 think the way he described it yesterday was correct, but he

1 didn't identify. And you asked questions to him that made it
2 sound like everybody in the room was against it. That wasn't
3 the case. There was quite a few people in the room were
4 fairly supportive, so --

5 Q. The IMC had the biggest --

6 A. The IMC people were leading the charge on the
7 negative.

8 Q. And they had the biggest amount invested in the
9 project of any other investor?

10 A. Well, collectively, yes. I never understood how
11 they were allowed to be treated like a single entity and
12 everybody else wasn't. But that's a different story.

13 Q. Did you have a separate conversation with
14 Mr. Yount at that meeting?

15 A. After the meeting broke up and it became a, quote,
16 party, I did. And I may have answered a question that he
17 asked, I can't remember if I did or didn't, during the
18 meeting. But I did seek him out shortly after that, because
19 I was surprised at his reaction at that meeting.

20 And I in essence said, I would be happy to take
21 the next two or three weeks to fill him in on as much
22 information as he would want. Because I thought that if he
23 understood and knew all the facts, that he wouldn't be
24 unhappy about his investment.

1 Q. What was his reaction at that I'll call it a
2 meeting, but it was actually a social setting?

3 A. The essence of it was that he said, I never heard
4 any of this information. I didn't know about any of these
5 overruns. I don't think I would have made my investment if I
6 had known about this stuff or something to that effect.

7 Q. Okay. Did you tell Mr. Yount that the management
8 team, Criswell Radovan or CR, hadn't done a very good job of
9 reporting to the investors?

10 A. I don't think I said it to him individually, I
11 don't think. But I know I said it to the collective group
12 that I felt that if it was something you could fault us for
13 doing, and I said collectively, us meaning CR Cal Neva or our
14 role as manager, that I think that because things were moving
15 so quickly, we could have done a better job of talking to all
16 of the investors and not just the executive committee.

17 Q. So the better reporting, would you have included
18 better reporting on the budget changes that you knew of as
19 they were progressing?

20 A. Just reporting on the -- because I know they were
21 getting information about the budget changes from Hal
22 Thannisch and Mark Zakuvo in their monthly reports. So I
23 know they were getting that information. But I think it
24 would have been better if we had also communicated about what

1 we were doing about the financing and what we were doing
2 about the status of the project and the schedule and all of
3 that sort of thing.

4 Q. You said that Hal Thannisch would have provided
5 monthly budget reports?

6 A. Yes.

7 Q. Were there monthly budget reports?

8 A. Yes.

9 Q. In August, September, October, November?

10 A. It's my understanding, yes.

11 Q. So in that October time frame when you got back
12 from your trip, your anniversary, were you aware of the
13 amount of the change orders as of that -- in that early
14 October time frame?

15 A. I don't recall specifically other than getting my
16 copy of the October or the September monthly report that
17 showed those amounts. But they weren't inconsistent with
18 what I had been told before I left on my trip.

19 Q. Would you look at Exhibit Number 43, Mr. Criswell?

20 A. Okay.

21 Q. And this is a little tough, these aren't Bates
22 stamped, but let's look through. What I'm interested in is
23 the change order and I'll try to find it here. I believe
24 it's change order number 12. So if you flip through, I would

1 say it's about halfway through these change orders.

2 A. Is there some particular page?

3 Q. Unfortunately, these were not Bates. But if you
4 go through the changes. You'll see what happens is there's
5 a -- this package that was provided to me has all of the
6 backup, what we call the change order requests, or request
7 for proposal type documents. That's compiled. And then at
8 the end of that is kind of a compilation of all that with a
9 change and then a running schedule at the bottom.

10 We're looking for the one that says change order
11 number 12, approval date 9/14/15. Your Honor, if I may
12 approach and help the witness?

13 A. Yeah, if you wouldn't mind. Sorry.

14 Q. Sorry about that. Let's go to Exhibit 43. Okay.
15 He we go.

16 A. Okay.

17 MR. CAMPBELL: Your Honor, are you with me?

18 THE COURT: No. I have at the top of the page,
19 1407.0 Cal Neva resort renovation change order.

20 MR. CAMPBELL: I think that's the job number. So
21 what we're looking for the same document. In the middle it
22 will say change order number 12.

23 THE COURT: I'll find it. Go ahead.

24 THE WITNESS: This has a date of 10/9/15 at the

1 bottom.

2 BY MR. CAMPBELL:

3 Q. Those are the signature dates. Do you see that?

4 A. Yes.

5 Q. And then you see on the top the approval date,
6 which was 9/14/16.

7 A. Okay.

8 Q. Do you see the running total on the bottom in the
9 bottom bracket, it says, total for change order, and then
10 there's kind of a summary of all the changes to date.

11 A. The one where it says the new contract, some will
12 be?

13 Q. Exactly.

14 A. 26997.

15 Q. So by doing that math, we know that the actual
16 approved change orders that were signed off on in October and
17 were approved, it looks like in the middle of September,
18 constituted approximately, well, 9 million plus dollars,
19 correct?

20 A. Yeah. That's what the math says.

21 Q. That was consistent with what your understanding
22 was?

23 A. Yes.

24 Q. And this isn't a moving target. This is a

1 document that Criswell Radovan and your construction people
2 had approved the change orders and that was sent to the
3 contractor and that was a done deal, right?

4 A. I don't know whether this is approved or not.
5 Because they use terms like the contract sum will be
6 increased by this change order. But I don't know if this is
7 an approved change order or if it's a change order that has
8 been submitted.

9 Q. Do you see how Thannisch signed off on it?

10 A. Authorized by owner, yes.

11 Q. And you see Lee Mason. Who is that?

12 A. Okay.

13 Q. That's the Penta representative?

14 A. Lee Mason is, yes.

15 Q. Actually, I've got the exact amount \$9,387,277.

16 A. Okay.

17 Q. Now, on that same change order, it's at the
18 bottom, right in that same bracket we're looking at, it says
19 the new contract completion date of the change order will be
20 12/12/2015?

21 A. Okay.

22 Q. And that was always the target date that had been
23 conveyed to the investors and the potential investors, right?

24 A. I believe that at one time that was the

1 substantial completion date.

2 Q. You say at one time. Was that substantial
3 completion date changed?

4 A. I don't know. I know that eventually I've seen
5 either e-mails or discussions about the date being moved out
6 to like April for a soft opening and Father's Day grand
7 opening, that sort of thing. But I don't know when that was
8 formally approved, because I don't think anybody is
9 authorized to change contracts until that gets approved.

10 Q. That's usually what change orders are. You're a
11 developer, so you understand the change order process?

12 A. Sure.

13 Q. You knew about the mezzanine refinance in the
14 September 2015 time frame?

15 A. I'm sorry?

16 Q. You knew about either a mezzanine or a total
17 refinance potential in September of 2015, right?

18 A. I would think that's probably right about the time
19 I would have known.

20 Q. Without a refinance either through a mezzanine or
21 a refinance of the project, this project wasn't going to open
22 in December, was it?

23 A. Well, there's another alternative, and that is we
24 also could have raised capital from the investors.

1 Q. But without --

2 A. Without additional capital, is that what you're
3 asking?

4 Q. Yeah, without additional money, hard money from
5 some source, this project was not going to open on
6 December 12th?

7 A. Unless the Hall -- because there was still another
8 9 million or so left in the Hall loan. So that's where it
9 could have come from if there was satisfaction to Hall to do
10 so.

11 Q. But there was a potential for no satisfaction from
12 Hall, right?

13 A. I would guess so.

14 Q. But to your knowledge, without some additional
15 mezzanine or refinance of the project, the project was not
16 going to meet that December 12th opening date?

17 A. You mean as of the 9th of October?

18 Q. Well, as of somewhere in September or October of
19 2015, that knowledge was pretty common, wasn't it?

20 A. I would think that's a fair statement, but I don't
21 think it's predicated on whether they got additional third
22 party financing.

23 MR. CAMPBELL: May I approach?

24 THE COURT: Sure.

1 BY MR. CAMPBELL:

2 Q. Maybe that will refresh your recollection,
3 Mr. Criswell. I asked you to your knowledge -- counsel, I'm
4 sorry, page 69, starting at line nine. I asked you, but to
5 your knowledge, it would not have happened, soft opening in
6 spring, grand opening Father's Day without an additional
7 mezzanine loan or refinance of the project. And your answer
8 was?

9 A. That certainly is a safe assumption, other than
10 the fact that subsequent to that, I realized that that wasn't
11 a complete question you asked me, because --

12 Q. You say I think it's a fairly safe assumption.
13 That's what your answer to me was in your deposition?

14 A. That was, that's correct. But I realize you
15 hadn't also asked me if a additional capital that could have
16 been done.

17 Q. If there was additional capital, you would have
18 had to go to the members and ask for a capital call, right?

19 A. That's correct.

20 Q. And that never happened, right?

21 A. Didn't happen.

22 THE COURT: Ladies and gentlemen, let's take our
23 morning break. Court's in recess.

24 (A short break was taken.)

1 THE COURT: Mr. Criswell. Mr. Campbell, your
2 witness.

3 BY MR. CAMPBELL:

4 Q. Can you turn to Exhibit Number 46, Mr. Criswell?

5 A. Okay.

6 Q. And this is an e-mail from Mr. Yount to you. It
7 looks like the following day of the December 12th party,
8 correct?

9 A. Sorry. Would you rephrase that?

10 Q. This was an e-mail to you the day after the party
11 at the Fairwinds?

12 A. Yes, that's correct.

13 Q. December 13th. In this e-mail, it looks like
14 Mr. Yount had sent you an e-mail that Mr. Radovan had sent
15 him back in October prior to his investment. And he's
16 telling you that was a reassurance they needed to proceed.

17 And then he says, now we find the financial wheels
18 were coming off the Cal Neva bus at that time, and it not
19 only wasn't revealed to us, but other founder members told me
20 they had been admonished by Criswell Radovan before they
21 toured the project with us in October not to say anything.

22 So this was Mr. Yount's takeaway from what he
23 heard at the meeting that the financial wheels were coming
24 off the bus?

1 A. Am I supposed to speculate about what was in his
2 mind?

3 Q. This is what he sent you, right?

4 A. This is what he sent me.

5 Q. Were the other investors in the meeting, were they
6 concerned about it appeared that the financial wheels were
7 coming off the bus?

8 A. I didn't hear that from anybody else.

9 Q. And then in the second paragraph down, or sorry,
10 the first paragraph down, he calls it a financial
11 hemorrhaging. Would you agree that what was disclosed in the
12 meeting was a financial hemorrhaging?

13 A. No.

14 Q. Later you talk, we appreciate your commitment --
15 he said, we appreciate your commitment upon hearing this last
16 night that you were also shocked and would personally see
17 that we are made whole if we choose to back away from the Cal
18 Neva investment. Did you say that you were shocked?

19 A. I was shocked at his reaction. That's what I
20 meant.

21 Q. You weren't shocked at what you heard in the
22 meeting?

23 A. No. Because I had known about it since July.

24 Q. And then he asked for his money back, correct?

1 A. I think he asked for it that night, but I'm -- I
2 remember asking him if he would give us two to three weeks,
3 he and his wife, if they would give us two to three weeks to
4 explain. Because I'd never met the man until that evening.
5 I had no idea what he had been told or hadn't been told.

6 So I could only assume that he was telling the
7 truth, that he didn't know any of this information, and
8 that's why I asked if he would give us two or three weeks so
9 we could bring him up-to-speed. Then if he still wanted to
10 have his money back, that we would find somebody to buy his
11 share.

12 Q. You didn't dispute with him that he was not
13 entitled to his money back? You said you would try to find a
14 way to cash him out?

15 A. That's correct. By the way, the reason I did that
16 was that Robert had told me that there were other people that
17 wanted to invest at that time. So I didn't think we'd have
18 any trouble finding somebody.

19 Q. You didn't feel that he wasn't entitled to -- he
20 was not entitled to his money back?

21 A. I'm sorry. What?

22 Q. You didn't tell him that he was not entitled to
23 his money back?

24 A. I didn't tell him that one way or the other.

1 Q. In that discussion with him, did you have any
2 discussion with him about him having purchased one of your CR
3 shares?

4 A. No.

5 Q. Did he bring that up at all?

6 A. I don't think so.

7 Q. Did you tell him anything about that?

8 A. Why should I? I assumed he knew.

9 Q. How did you make the assumption that he knew?

10 A. Because Robert told me that he was buying one of
11 our preferred shares.

12 Q. That's it. He never told you that Mr. Yount
13 agreed or he signed any documents or anything like that?

14 A. If he closed, I assumed he agreed.

15 Q. Let's go to Exhibit Number 51. And this is an
16 e-mail string. It starts with that December 16th one that
17 you sent to him.

18 A. I'm sorry. I'm still reading. Would you mind?

19 Q. No problem.

20 A. All right. What's your question?

21 Q. First I'm asking, on the first page of this
22 document, I understand that you don't choose to wait for the
23 additional information you should receive over the next two
24 or three weeks, which will address solutions. Consequently,

1 you would like to know what I will do now. What additional
2 information are you talking about?

3 A. That was what I referred to that evening of the
4 12th that I met him and his wife, if they would hold off
5 asking to get bought out was if he would wait two or
6 three weeks. My assumption was when he said he had never
7 heard about any of this stuff, and that I assumed that,
8 because I didn't know otherwise, I assumed that a lot of the
9 information that we -- I subsequently learned he did have.
10 But that evening, I had no way of knowing that.

11 So I said, if you'll give us two or three weeks to
12 make sure you have all the information that you need to know,
13 then I assume that you'll either decide you want to keep your
14 investment, or if you don't, then we'll try to find somebody
15 else who will buy it.

16 Q. Let's break it into two parts. You said you were
17 going to send him some information. What were you
18 anticipating sending him?

19 A. I wasn't going to. I was going to ask Robert to
20 put together the information he would need to have.

21 Q. What information would that be?

22 A. I think it would be change orders, it would be
23 schedules, it would be what he's doing about financing, all
24 of this.

1 Q. All of the information that would lead a reasoned
2 investor to see all what's going in the project?

3 A. Sure.

4 Q. You said, the latter part of your answer before
5 that was then you found out he already had some of that
6 information?

7 A. No. I think Robert told me the next day when I
8 discussed it with him that he doesn't know what additional
9 information he would need, because he's already been given
10 everything.

11 Q. So Robert told you that he had been given all of
12 that information, which you thought was the change orders,
13 the budget items, the schedule issues?

14 A. Sure. I think I even said, well, send it to him
15 again just in case.

16 Q. Did you ever send that information to him?

17 A. Well, no, because he replied and said he didn't
18 care. He just wanted his money back then.

19 Q. Then in the second paragraph, it says, you'll
20 immediately try to find someone to buy the share. We talked
21 about that. And, second, if we're unable to find a buyer for
22 your share before we are reimbursed for the money we have
23 loaned to the project, almost 1 million, which should be
24 reimbursed from the first available funds from the new

1 project capitalization, and Robert and I will reimburse your
2 million, as soon as we have been reimbursed. Let's break
3 that down. The 1 million, when did you loan 1 million to the
4 project?

5 A. At the time, this was before the audit was
6 complete, but at the time, I was under the impression that we
7 had loaned 900 and some odd thousand dollars to the project.
8 So it's almost a million dollars. And Robert and I believed
9 in the project. We knew that the Mosaic loan was about to
10 happen and that would get the hotel open and finished by late
11 spring, early summer.

12 And we believed in it, and if it wasn't somebody
13 else standing by ready to buy the share, that we believed in
14 it enough that we would buy it ourselves.

15 Q. But the million dollars, was that a recent loan,
16 was that over time?

17 A. It was over time.

18 Q. It was an accumulation of everything you put in
19 the project?

20 A. Like the \$50,000 for Mosaic or the money we were
21 paying on the mortgage on the Fairwinds house and that stuff.

22 Q. Had that loan been evidenced by a note?

23 A. It was evidenced by intercompany transactions
24 between Cal Neva and CR and Criswell Radovan.

1 Q. So that would show another million dollars
2 indebtedness of the Cal Neva Lodge LLC if you had loaned them
3 money?

4 A. Correct.

5 Q. And were the investors told that you would execute
6 a note to further in debt the company by a million dollars?

7 A. I don't think it was evidenced by a note. I could
8 be wrong about that, but I don't think it was actually
9 evidenced by a note. It was a journal entry that was an
10 advance. And I don't think we were going to charge interest
11 on it. We just wanted to get paid back.

12 Q. So to your knowledge, the investors or Mr. Yount
13 had never been told, oh, by the way, there's also a million
14 dollar loan?

15 A. I don't know what Mr. Yount was told, but I know
16 the executive committee was aware we were advancing that kind
17 of money, because they were getting financial statements.

18 Q. If you go to the second page of that document,
19 this is an e-mail from you to Mr. Yount the day before.

20 A. I'm sorry. Are you talking about the next page
21 after that one?

22 Q. Yeah. Still in the same exhibit, number 51.

23 A. It's dated December 16th?

24 Q. Yes. It's an e-mail string. It has a Bates of

1 145 on the bottom there. Do you see that?

2 A. Okay.

3 Q. I'm interested in the what would be the fourth
4 paragraph down, you had a discussion in the previous
5 paragraphs about paying him back or how to pay him back. But
6 you said, the funds which you paid were spent almost
7 immediately on past due bills, which could not be paid from
8 direct resources at that time. What past due bills were
9 talking about?

10 A. I think I was mostly talking about bills that had
11 to do with other projects.

12 Q. With other projects from?

13 A. That Criswell Radovan was involved in.

14 Q. And those totaled close to a million dollars?

15 A. No. There are two different things we're talking
16 about. I was saying that we didn't have the money ourselves,
17 but that if we got the money back from Cal Neva that we had
18 advanced to pay for bills that they didn't have from any
19 other source. Because at that point, Cal Neva didn't have
20 any other money other than what they were going to get
21 through a refinancing and when Hall paid -- continued to pay.

22 Q. So you say Cal Neva didn't have any other money,
23 when did that financial shortfall start?

24 A. Probably in, I would guess in December or January.

1 No. It had to have been on December, because I wrote this on
2 December 16th.

3 Q. But you said that the funds were spent almost
4 immediately on past due bills. Well, the funds were received
5 from Mr. Yount in October.

6 A. I'm referring about to two different funds. One
7 is our ability to write a check to him and the other had to
8 do with -- and that was because the reason we advanced money
9 to Cal Neva was that Cal Neva didn't at that time have the
10 ability to write checks.

11 Q. But that's not what the document says. Maybe
12 we're confused. It says the funds which you paid, right,
13 meaning Mr. Yount?

14 A. Yes.

15 Q. And that would have been in October?

16 A. And that he paid to CR Cal Neva.

17 Q. No. The funds which you paid, Mr. Yount paid were
18 given to you, right?

19 A. It was given to --

20 Q. Criswell Radovan?

21 A. Criswell Radovan, yes.

22 Q. You're telling him that those funds, his million
23 dollars received in October was spent almost immediately on
24 past due bills.

1 A. Well, part of it was the money he owed to my
2 daughter -- I mean, Criswell Radovan owed to my daughter.
3 Part of it was past due bills for the Arlington projects,
4 some of it was past due bills for the winery, other projects
5 that Criswell Radovan was involved in.

6 Q. Let's talk about your daughter's money that was
7 owed to her. That was the note we talked about earlier?

8 A. Yes.

9 Q. So that was -- you paid her in the October time
10 frame about 200, 250, somewhere in that range?

11 A. Somewhere in that time frame, yes.

12 Q. And the rest of it had nothing to do with the Cal
13 Neva Lodge?

14 A. I think some of it did. I think it was
15 reimbursing money we had also put into Cal Neva, like the
16 \$50,000 that went to Mosaic, and maybe some other things. I
17 don't remember.

18 Q. Did you tell Mr. Yount specifically where the
19 money went?

20 A. No.

21 Q. And why not?

22 A. As I said in my testimony, I -- we were selling
23 him one of our shares and the money was coming to us, meaning
24 Criswell Radovan and CR Cal Neva, and that I believed we were

1 entitled to spend that money on whatever we wanted to spend
2 it on.

3 Q. You understand under your sale of your share to
4 him, he would have been a member of the LLC, right?

5 A. Yes.

6 Q. Let's look at Exhibit Number 49.

7 A. Okay.

8 Q. And this is a package it looks like Heather Hill
9 sent to the investors in the project. Am I looking at that
10 right?

11 A. I think that's a complete list, but I don't know
12 for sure.

13 Q. And let me ask you this, there's a new budget in
14 here, correct, that has got some different numbers. It looks
15 like a side-by-side comparison.

16 A. Okay.

17 Q. First let me ask you this, do you understand that
18 the only budget Mr. Yount had ever received would have been
19 in the confidential offering memorandum, exhibit number, I
20 believe it's number four.

21 A. I don't know. How would I know that?

22 Q. Do you know there was a budget in that document,
23 right?

24 A. Yes.

1 Q. And we looked at that yesterday, it was the same
2 kind of format?

3 A. How would I know that was the only one he
4 received?

5 Q. Do you know if he was provided any additional
6 budget?

7 A. I don't know.

8 Q. Maybe we can shorten this up. There's some items
9 in here, because the budget is potentially different as we
10 look at that. Would it be best to talk to Mr. Radovan about
11 that? Is he the best one to discuss these budgetary issues?

12 A. I think so. Sure. You know, when we finished up
13 yesterday, we were going through the budgets and what you
14 called tables and the PPM, I think it was, is that right,
15 when we were finishing up yesterday.

16 Q. There's really no question on the table. If you
17 want to clarify, I guess your counsel can ask you something.

18 A. Only that I noticed on those tables you had me
19 read, it had big bold print right up at the very top, debt 35
20 million, equity 20 million. It adds to 55. So I remember
21 yesterday listening to some of the conversations with Dave
22 and there seemed to be some question whether it was 51 or 55.
23 But the operating or the PPM on all of those tables that you
24 have you had me read yesterday all had big bold print right

1 at the very top, debt 35, equity 20.

2 So I don't -- I know that was a sources and uses
3 and this is a budget. That doesn't mean to say that they
4 don't intend to spend 55 million if they need to.

5 Q. But that was the budget. What you're talking
6 about, 55 million was the budgeted amount to be spent?

7 A. That's correct.

8 Q. And that would have been shown to Mr. Yount in
9 those operating memorandums or he would have seen that the
10 total budget for the project is 55 million?

11 A. That's correct.

12 MR. WOLF: I'm going to object. The document
13 speaks for itself.

14 MR. CAMPBELL: He's testifying about it.

15 THE COURT: Overruled. Next question.

16 BY MR. CAMPBELL:

17 Q. So while you're on that, if Mr. Yount saw that, or
18 if the document said, that piece he was provided in the
19 offering memorandum showed a \$55 million budget, and if
20 Mr. Yount was told that the budget was approximately
21 \$5 million over, then the budget would be \$60 million, right?

22 A. 60 million, plus I think he was also told we
23 needed an additional to 9 million. If you add 9 million to
24 that, it would take it to 64.

1 Q. You say he was told. We haven't seen any
2 documents where he was told it was over 9 million?

3 A. I heard the testimony.

4 Q. Let's go to Exhibit Number 56.

5 A. Okay.

6 Q. It appears there was a executive committee meeting
7 it looks like on 1/8 of 2016.

8 A. I'm sorry?

9 Q. If you look at the bottom, it looks like it
10 references an executive meeting that was held on 1/8/2016.
11 And above Mr. Yount sends an e-mail, it looks like everybody
12 on the service list, the investors and developers, and
13 Mr. Yount puts in quotes, the discussion of the previously
14 circulated equity table arose. Stuart Yount requested that a
15 note be made to acknowledge his 1 million investment. Bill
16 Criswell stated that while there was an agreement to buy him
17 out, a note would be made in the meantime. In the executive
18 committee meeting, Mr. Criswell, did you say that you had
19 agreed to buy Mr. Yount out?

20 A. No. I was referring to the e-mail where I said we
21 would use our best efforts to find somebody to buy his share.

22 Q. Are you saying that Mr. Yount was in error when he
23 quoted you from the meeting that was --

24 A. Yeah. We never said we would buy him out. The

1 only time I did was when I said, if we get our million
2 dollars back, under that set of circumstances, because we
3 believed in the project, and we hadn't found somebody else to
4 buy his share, we would buy it.

5 Q. Did you agree in that meeting that in lieu of
6 that, you would execute a note for a million dollars to him?

7 A. No.

8 Q. So Mr. Yount you're claiming was wrong?

9 A. Yes.

10 Q. When he says that a note was going to be made to
11 him?

12 A. Correct. Correct, there was no agreement.

13 Q. Let's move to Exhibit Number 61 next. Tell me
14 when you've had a chance to look at it.

15 A. Okay. I'm not sure I totally understand it, but I
16 read it.

17 Q. The other pages I'm not interested in. I'm just
18 interested in this very first page. And what it appears here
19 is that on January 25th, 2016, Mr. Yount sent an e-mail, it
20 looks like the entire group, specifically addressed to Mr.
21 Marriner, but a fairly big cc after that. And Mr. Yount
22 says, I never was asked, told or agreed to an investment or
23 purchase of a CR 1 million share. Then he says, see a signed
24 acceptance by the Cal Neva Lodge LLC of our founders unit

1 purchase on 10/13. Was this the first time you heard,
2 Mr. Criswell, that Mr. Yount had never in fact agreed to or
3 even asked or told about the purchase of the CR share?

4 A. I have no idea what he was told or what he wasn't
5 told. It's the first time, maybe, that I learned that he
6 felt that way.

7 Q. Did you ask Mr. Radovan when you got this e-mail,
8 hey, did he agree? Was there a signed document? Did you
9 tell him? Anything like that?

10 A. You know, at that time, I certainly think that
11 Robert's position and therefore I probably also felt that way
12 that he had to have been told by Dave Marriner, because he
13 was aware of it. But that was an assumption on our part. It
14 wasn't anything other than that.

15 Q. Because Robert had never told him to your
16 knowledge?

17 A. I don't think Robert said that he had told him
18 that, yeah.

19 Q. And you never told him?

20 A. No.

21 Q. And if you go up to the top of the string, it
22 looks like Mr. Radovan then forwarded the e-mail to Mr.
23 Coleman.

24 A. Okay.

1 Q. And then I assume since it's redacted and I think
2 counsel is still going to stand on the privilege, that
3 Mr. Radovan was reaching out to Mr. Coleman regarding
4 Mr. Yount's e-mail set forth below?

5 A. That's a safe assumption.

6 Q. Let's go to Exhibit Number 63 next.

7 A. 53 or 63?

8 Q. 63.

9 A. Okay.

10 Q. This is an e-mail from you to Mr. Yount and
11 Mr. Radovan and Mr. Coleman are copied on it. And now the
12 subject is the assignment of the interest in the Cal Neva
13 Lodge LLC. And you start out saying, we visited -- it's been
14 a hectic time since we visited at the Hyatt last week. When
15 did you visit with Mr. Yount?

16 A. Well, we had an executive committee meeting on
17 January 27th at the Hyatt and I believe that is also when the
18 executive committee approved going forward with the Mosaic
19 loan. And at that time, when that meeting was over, I had
20 approached, or Robert and I approached Geri and Stuart Yount
21 if we could visit with them in the lobby downstairs, because
22 I wanted to tell them -- I was still operating under the
23 assumption at that time that it had been a mistake for
24 Mr. Yount to sign the PPM, the subscription agreement,

1 because I never got involved in it and I was still operating
2 under the assumption that that document only pertained to the
3 \$20 million. So I had assumed that he had signed it by
4 mistake.

5 Q. Let me stop you right there so we have some
6 clarity on this. You knew that he had executed the
7 subscription agreement, which was provided to him?

8 A. I had found out by that time that he had signed
9 the subscription agreement.

10 Q. Did you also know that Mr. Radovan had signed an
11 acceptance of that subscription agreement?

12 A. I don't think I knew that at the time. I don't
13 think I discovered that until later.

14 Q. Sorry to interrupt. I just want to make that
15 clear for the record.

16 A. The only reason I know is that in the first
17 complaint that was filed by Mr. Yount and his attorney was
18 that they said I had signed it and I knew I hadn't. So that
19 was when I learned that Robert had.

20 Q. And then so go on. What else happened at the
21 meeting.

22 A. So I wanted to explain, it was my understanding
23 that they needed to sign a different document, which said
24 they were buying one of our shares. And I said that we would

1 send that to him in the next few days and I would contact
2 Bruce Coleman about preparing that.

3 Q. Okay.

4 A. I was mistaken, obviously. I didn't know that in
5 fact he did need to sign the subscription agreement in order
6 to buy his share.

7 Q. So you said Mr. Coleman, you would leave it to Mr.
8 Coleman to draft the appropriate documents?

9 A. Correct.

10 Q. Because you were under the -- you knew now or you
11 thought now that there was some kind of a mistake made?

12 A. Well, there were two mistakes made. One was me
13 assuming that he didn't need to sign the subscription
14 agreement and therefore he had done so in error.

15 The subsequent mistake was it turns out I was
16 wrong about that and that he actually did need to sign the
17 subscription agreement.

18 Q. And so you just in that meeting, you said, we'll
19 send you some documents, Mr. Yount, to talk about what we're
20 going to do with your money?

21 A. Yeah. I said -- and as I remember, I think, he
22 said that he would take it under advisement and he would look
23 at what Bruce sends and he would decide whether he would do
24 that or not.

1 Q. And then if we go to Exhibit Number 64, it just
2 looks like a follow on e-mail that same day. He got some
3 kind of advice from Bruce Coleman and then he e-mailed
4 Ms. Hill and Mr. Radovan and said let's have a call and talk
5 about the attachments.

6 A. Say again.

7 Q. I'm just trying to figure out here the sequence of
8 what happened. So on Exhibit Number 64, we have a Bruce
9 Coleman e-mail to you, Mr. Criswell and Mr. Radovan, with a
10 redacted, which I assume an attorney-client privileged
11 communication at the bottom of page 213.

12 A. What's your question? I'm sorry.

13 Q. Above it says, I will call you, and I would assume
14 you're meaning Ms. Hill and Mr. Radovan, to talk about the
15 documents.

16 A. That's me to Heather Hill, right?

17 Q. Yeah, with cc to Mr. Radovan.

18 A. And I will call you as soon as you acknowledged
19 that you received this e-mail and attachments. I promised
20 Stuart the only change -- okay. So I was basically wanting
21 them to review it before I sent it to Mr. Yount.

22 Q. Okay. And then attached to that e-mail at 214 are
23 the documents.

24 A. Okay.

1 Q. And did you and Mr. Radovan and Ms. Hill review
2 these documents when you got ahold of Mr. Coleman on or about
3 February 1st?

4 A. I was under the impression this is what needed to
5 be signed.

6 Q. Did you review these documents?

7 A. I think so.

8 Q. Let's go through that. The first one at Bates 214
9 is called an assignment of interest in limited liability
10 company.

11 A. Okay.

12 Q. And if you go down into the third whereas, it
13 says, assignor and assignee have erroneously executed a
14 subscription agreement dated October 13th, indicating the
15 assignee was purchasing an interest as a preferred member
16 from the company when actually the intent of the parties that
17 assignee purchase such interest from assignee rather than the
18 company.

19 So a couple there. Where did you get the
20 information -- or where did Mr. Coleman get the information
21 that somehow the two of you had erroneously signed the
22 subscription agreement?

23 THE COURT: How would he know where Mr. Coleman
24 got the information?

1 BY MR. CAMPBELL:

2 Q. Did you tell Mr. Coleman that the parties had
3 erroneously signed a subscription agreement?

4 A. I think I probably did. But I'm not a lawyer,
5 obviously, and I screwed up.

6 Q. And where did your belief come from that it was an
7 erroneous signed subscription agreement?

8 A. Obviously, I had not reread the subscription
9 agreement before I wrote this.

10 Q. And Mr. Yount never told you that he had
11 erroneously executed the subscription agreement, had he?

12 A. No, he didn't.

13 Q. In fact, his position if you look at Exhibit
14 Number 61 was that that's what he thought he was buying,
15 because he sent a copy of the share for purchase of PPM,
16 right?

17 A. Well, he needed -- it turns out that I
18 subsequently learned, he needed to sign the subscription
19 agreement. I don't know what he thought he was buying.

20 Q. If you look at Exhibit Number 61, he doesn't agree
21 that he was buying one of the CR shares and then he attaches
22 the subscription agreement to buy a founders unit, right?

23 A. Well, we never, I don't think, described it. I
24 think you showed it earlier today. I don't think we ever

1 communicated directly with Mr. Yount about whether he was
2 buying a CR share or not. We do know that he wanted a
3 preferred share, a founder member share, and that's what he
4 got.

5 Q. Okay. So the erroneous execution came from either
6 you or Mr. Radovan, but not from Mr. Yount?

7 A. The erroneous what?

8 Q. The document that -- whereas it says you and
9 Mr. Yount have erroneously?

10 A. Yeah, that came from me.

11 Q. And it goes on and says, indicating that assignee
12 was purchasing an interest as a preferred member of the
13 company when it is actually the intention of the parties that
14 assignee purchase such interest from assignor rather than the
15 company. Did you provide this language to Mr. Coleman that
16 it was the intention of the parties that Mr. Yount buy one of
17 your shares?

18 A. No.

19 Q. Why is that language in here? Did Mr. Yount ever
20 tell you that was his intent?

21 A. I don't know.

22 Q. But you were trying to get him to sign a document
23 agreeing that he intended all along to buy one of your
24 shares, right?

1 A. You know, I believe perhaps either Bruce didn't go
2 back and reread the subscription agreement when he did this
3 or something, but for some reason, he seemed to concur that
4 he had erroneously signed the wrong document.

5 Q. Did you concur in it, too, because you looked at
6 these documents, right?

7 A. Sure. Because I'm not a lawyer and I was
8 operating under the assumption that the subscription
9 agreement only pertained to the \$20 million investments. It
10 turns out they actually have to sign any time you're a
11 member.

12 Q. I'm not talking about the subscription agreement.
13 Now we're talking about the intent of the parties. And I'm
14 trying to find out where in the world did it come from to Mr.
15 Coleman that somehow the intent of the parties was for
16 Mr. Yount to purchase a CR share?

17 A. Because that's what I believed.

18 Q. You had no independent --

19 A. No.

20 Q. -- corroboration that was actually the intent?

21 A. No.

22 Q. But you wanted him to sign a document saying that
23 was his intent?

24 A. Because that's what I believed. I was trying to

1 solve a problem for Mr. Yount, who at that point in time
2 seemed to be pretty ambivalent about whether he wanted to
3 sell his share or keep it.

4 Q. It was also a problem for Criswell Radovan, wasn't
5 it?

6 A. Why?

7 Q. That you had sold a share without any
8 documentation backing it up?

9 A. No. I didn't see that as a problem.

10 Q. Isn't that what you're trying to do in these
11 documents sent to Mr. Yount?

12 A. I just thought it was cleaning up the -- it's not
13 the first time somebody signed the wrong document.

14 Q. Let's move to the purchase agreement. And Mr.
15 Coleman sent you this draft, right?

16 A. What purchase agreement?

17 Q. Purchase agreement, the next page, 217.

18 THE COURT: Still on Exhibit 64?

19 MR. CAMPBELL: Yes.

20 THE WITNESS: Okay.

21 BY MR. CAMPBELL:

22 Q. Read paragraph four to yourself.

23 A. Okay.

24 Q. And what did you understand this provision to

1 mean?

2 A. I took it to mean what Bruce wrote.

3 Q. That there had to be a vote to approve the
4 transfer in this case back to you?

5 A. At the time, right. Again, I'm not a lawyer, and
6 I didn't read either of the operating agreement or the
7 subscription agreement.

8 Q. So let's look back. Turn a couple of pages there
9 to the -- it's Bates 219 in the very same document,
10 Exhibit 64.

11 A. The last page, resolutions?

12 Q. Yes.

13 A. Okay.

14 Q. And so this e-mail was sent on February 1st and we
15 look at the resolution and it says, a special meeting of the
16 members held on January 27th, 2016, the undersigned members
17 holding at least 67 percent of the percentage interest in Cal
18 Neva have approved the following resolution. Was there a
19 member meeting on the 27th of January, which approved some
20 type of transfer of a share?

21 A. I don't know. I don't remember one. But maybe
22 the minutes show there was.

23 Q. Have you ever seen anything that has been a
24 written approval of the members to approve a transfer of a

1 share between you and Mr. Yount?

2 A. No.

3 Q. Let's assume there was never a meeting on the 27th
4 to approve the transfer, why would that -- why would this
5 resolution --

6 A. There was a meeting on the 27th. I just don't
7 remember whether this topic was discussed.

8 Q. Let's assume it did not approve the transfer of
9 the share in that meeting on the 27th, why would you send a
10 document?

11 A. Why would I assume that, because it might have.

12 Q. You don't know one way or the other?

13 A. I don't remember one way or the other. Maybe the
14 minutes will clarify that.

15 Q. It goes down at the very bottom and it says, this
16 resolution is to be effective as of October 13th, 2015.

17 A. Okay.

18 Q. Why was that going to be the effective date?

19 A. Probably that's when the money was transferred.

20 Q. Okay. So, in essence, you were trying to document
21 what happened back on October 13th, 2015 with Mr. Yount's
22 purchase of your share such that it appeared that he bought a
23 CR share instead of one under the PPM?

24 A. I thought that's what he did.

1 Q. That's what the purpose of these documents?

2 A. And I wanted to make sure he got interest from the
3 beginning or preferred return.

4 Q. And then we go to Exhibit Number 65. It looks
5 like Mr. Coleman then forwarded the documents to Mr. Yount,
6 correct?

7 A. Yeah. That's what it implies.

8 Q. And I believe the only change in those documents
9 was the amount of the purported loan of -- that was evidenced
10 in there about the closing date on the purchase agreement.

11 A. I think that's all I asked to change. I don't
12 know whether in fact there was anything else.

13 Q. Okay. And then if you could look at Exhibit
14 Number 66? Take a second to review that, Mr. Criswell.

15 A. Okay.

16 Q. Is it fair to say that Mr. Yount wouldn't sign the
17 documents and was in disagreement with what the documents
18 purported to say?

19 A. I think that's what it says. Remember, I was the
20 one that was mistaken on that subject. By the way, the third
21 paragraph down says, I will not sign anything that says this
22 assignment shall supersede. Per my understanding of
23 Mr. Criswell's intent, this was to be an offer to me that I
24 may execute it at such time in the future that CR puts my

1 \$1,000 -- it wasn't an unconditional offer.

2 Q. So Mr. Yount thought he was getting something a
3 little different, maybe a note?

4 A. He wasn't getting anything other than what I said.
5 I said he paid the million dollars. If -- it was
6 conditional -- if we got the million dollars and nobody else
7 has bought his share in the meantime, that we would be
8 willing to buy the share.

9 Q. It appears from Mr. Yount's response, he was
10 anticipating some other document that maybe reflected a note
11 to pay him \$1 million?

12 A. I don't know what he was anticipating.

13 Q. Let's go to Exhibit Number 69.

14 A. 69?

15 Q. Yes. It looks like you and Mr. Yount and
16 Mr. Radovan had a meeting.

17 A. I'm sorry. Do you want me to read it?

18 Q. Have you had a chance to review it?

19 A. I'm not as fast a reader as some others. Sorry.

20 Q. Tell me when you're done. I'm sorry.

21 A. Okay. Thank you.

22 Q. Do you remember that meeting on March 16th with
23 Mr. Yount?

24 A. The meeting that on March 17th with just

1 Mr. Yount.

2 Q. That says, based on yesterday's meeting, I felt I
3 needed again to summarize our position, simply put. So based
4 on the date of the e-mail, it looks like there was a meeting.

5 A. I don't remember having a meeting with Mr. Yount
6 on the 17th.

7 Q. On the 16th. Do you remember a meeting with
8 Mr. Yount where he espoused these positions?

9 A. No. I don't remember that. On March 16th?

10 Q. Yes.

11 A. No. I don't remember having a meeting like that.

12 Q. But Mr. Yount sent it to both of you, not just to
13 you or Mr. Radovan, cced to the other. He sent it to both of
14 you, right?

15 A. I see that he sent it to both of us, but I don't
16 remember such a meeting. After the meeting we had on the
17 27th, I don't remember another meeting with Mr. Yount.

18 Q. Was Mr. Yount still demanding his money back after
19 he found out about the way in which his money was taken and
20 the purchase of the CR share instead of part of the PPM?

21 A. I believe he was, but I think he was also -- I use
22 the term trying to have it both ways. Because I think there
23 was some exciting prospects at that moment and I think he
24 wanted to keep his share.

1 Q. That's not what he says in this e-mail. He says,
2 we want our 1 million back at a minimum and capitalize it
3 now, right?

4 A. Are you sure this was sent? Because I can't
5 imagine receiving something like this that is so full of
6 things that are erroneous.

7 Q. That's your opinion.

8 A. And not responding or did I respond?

9 Q. If you responded, then your counsel would have
10 given me a response document.

11 A. That's what I'm saying, I don't remember. There's
12 a lot about this that I don't remember.

13 Q. If you don't remember, that's fine. Independent
14 of this e-mail that you don't remember after February 1st and
15 2nd with the documents that your attorney sent Mr. Yount --

16 A. What date?

17 Q. After February 1st or 2nd, when Mr. Coleman sent
18 Mr. Yount these documents that we've been discussing, the
19 assignment agreement, the purchase agreement and the
20 resolution by the members, after that meeting or after that
21 e-mail to Mr. Yount, did Mr. Yount again contact you and say
22 I want my money back?

23 A. I don't remember that. I know he said he wouldn't
24 sign the document.

1 Q. Let's go to Exhibit Number 74. It looks like an
2 e-mail string between you and Mr. Radovan about April 20th of
3 2016.

4 A. Okay.

5 Q. And there's a large redacted portion. I assume
6 below your e-mail to Robert, there was some attorney-client
7 privilege communications with Mr. Coleman? Do you remember?

8 A. I don't remember what's involved in the redacted
9 portion of it. But I do remember having a discussion with
10 Robert about not bringing up the topic of buying out the
11 interest of -- Langham buying out the interest of Yount,
12 Molly Kingston and the IMC guys. That's what I was referring
13 to when I said not bringing it up at the EC meeting.

14 Q. The subject is Yount v. Criswell Radovan LLC.
15 Were you telling Mr. Radovan, since there's no urgency, let's
16 not bring up the lawsuit to the other investors until we have
17 a clearer picture?

18 A. No. It wasn't the lawsuit. It was the fact that
19 we were -- under the Langham agreement, we had worked out an
20 arrangement wherein, because they didn't want to invest in a
21 company with people like the IMC, Molly, and Mr. Yount as
22 people who were making a lot of problems for the project. So
23 that was why we wanted to have them bought out by Langham and
24 Langham insisted on it.

1 Q. Did you tell the executive committee?

2 A. No.

3 Q. About -- let me finish. About Mr. Yount's
4 lawsuit?

5 A. Well, I think they all knew about it.

6 Q. Did you tell them?

7 A. I don't remember. That wasn't what I was
8 referring to. If you want to understand what I'm saying, not
9 bring it up, it was just to make sure that you're clear, I
10 was referring to the buying out of their interests by
11 Langham, because the Langham deal wasn't done yet.

12 Q. And the Langham deal never got done, right?

13 A. Right.

14 Q. And no deal ever got done, right?

15 A. Unfortunately, after the Mosaic loan was
16 torpedoed, no, no other deal was done.

17 Q. Let me ask you this, since you brought it up. I
18 want to make sure this is your testimony. How was the Mosaic
19 loan torpedoed?

20 A. I wasn't in the meeting, but I know that we had
21 scheduled a meeting with the members or members of the
22 executive committee were invited to attend the meeting that
23 Robert had scheduled with Mosaic. I believe it was in the
24 afternoon in Palo Alto. And without any knowledge of ours or

1 without any permission from us, and we were the primary
2 negotiators with Mosaic, a rump committee of people went to
3 meet with Mosaic, and according to somebody who knew about
4 what happened in that meeting, they told a bunch of lies
5 about how we committed fraud and misrepresentation and
6 mismanaged the project and taking money out of the project
7 and all of this other stuff, which wasn't true. And within
8 an hour, Mosaic sent us a thing saying they're cancelling the
9 Mosaic loan.

10 Q. And when Mosaic sent a thing, did they mention any
11 other reason for cancelling the loan?

12 A. Other than that we don't want to get involved in a
13 project that has got a lot of problems and conflicting
14 positions within the ownership.

15 Q. And that's the only thing you remember being in
16 the e-mail?

17 A. Yes.

18 Q. And during that November, December, January
19 three-month period, was Mr. Radovan talking to Mosaic on a
20 fairly regular basis?

21 A. I don't know how often he talked to them after the
22 period in January when the loan got approved, but I would
23 assume he was.

24 Q. But you don't know for sure whether he was talking

1 to them or not?

2 A. No.

3 MR. CAMPBELL: That's all I have. Thank you.

4 THE COURT: Mr. Little.

5 MR. LITTLE: Thank you, your Honor.

6 THE COURT: I'm not going to constrain you. I've
7 got to break at quarter of.

8 MR. LITTLE: In ten minutes.

9 THE COURT: Unless you want to pick up at 1:30.

10 MR. LITTLE: I'd rather do that.

11 THE COURT: Mr. Criswell, you may step down.

12 We're going to start at 1:30.

13 MR. LITTLE: You said 1:30, your Honor.

14 THE COURT: Yes. I've got a 12:00 will take me to
15 1:00 and then what do we have?

16 THE CLERK: 1:15, your Honor, and that's it.

17 THE COURT: 1:15. So we'll pick up at 1:30.

18 Court's in recess.

19 (A lunch break was taken.)

20 THE COURT: Mr. Little.

21 MR. LITTLE: Thank you, your Honor.

22 THE COURT: Mr. Criswell, you remain under oath.

23 Mr. Little, your witness.

24 MR. LITTLE: Thank you, your Honor.

1 CROSS EXAMINATION

2 BY MR. LITTLE:

3 Q. Mr. Criswell, I want to jump around a little bit
4 and talk about some of the things that Mr. Campbell addressed
5 with you. If you could start by turning over to Exhibit 43
6 in your book? And I want to jump into that change order
7 number 12 that Mr. Campbell was talking to you about. If
8 you'll recall, it was approximately, I think, halfway through
9 Exhibit 43.

10 A. Okay.

11 Q. You'll see at the bottom, this change order number
12 12 is executed by New Cal Neva Lodge LLC and Penta, it looks
13 like on October 9, 2015.

14 A. I see that, yes.

15 Q. Let's go above into the section. Under the
16 original -- it says, under the original contract was
17 \$17.6 million in change, correct?

18 A. Yes.

19 Q. And then under that, it says the net change by
20 previously authorized change orders is what \$8.7 million?

21 A. Yes.

22 Q. So is that the amount of change orders that had
23 been authorized prior to this date?

24 A. That's correct.

1 Q. And then this change order is increasing that
2 \$8.7 million by another \$622,000 and change?

3 A. That's right.

4 Q. And I think Mr. Campbell totaled those, it's
5 somewhere around 9.2 or \$9.3 million?

6 A. That's what I understand.

7 Q. Sir, is that number, that 9.2, 9.3, consistent
8 with what Robert was telling everyone that the construction
9 team was forecasting for changes coming down the pike?

10 MR. CAMPBELL: I'm going to object as lack of
11 foundation in telling everyone?

12 THE COURT: Overruled.

13 THE WITNESS: That's certainly what he was telling
14 the people of the executive committee and the members that
15 were present for that meeting. And that was what he was also
16 saying was the reason why he needed to go out and get new
17 financing, mezzanine financing for an incremental \$9 million.
18 BY MR. LITTLE:

19 Q. As well as raising the additional 1.5 in equity
20 under the subscription?

21 A. That's correct.

22 Q. And those two numbers are \$10.5 million, correct?

23 A. That's right.

24 Q. And \$10.5 million is more than the sum of the

1 change orders in change order 12, correct?

2 A. That's right.

3 Q. Sir, can you turn to Exhibit 18?

4 A. 18, did you say?

5 Q. Yes, sir.

6 A. All right.

7 Q. This is a July 25th, 2015 e-mail that Mr. Radovan
8 sent to Mr. Yount. Do you agree with that?

9 A. That's what it says, yes.

10 Q. And this would have been some time a week or two,
11 couple weeks after that member meeting in July?

12 A. Yes.

13 Q. And we heard testimony that this was Robert
14 answering some questions that had been posed by Mr. Marriner.
15 Do you recall that?

16 A. Yes.

17 Q. And if we look at number three, Mr. Marriner is
18 referencing the fact that they're raising an additional
19 \$1.5 million under the subscription, right?

20 A. It's under the 20 million total, yes.

21 Q. But they're seeking to raise that money?

22 A. Yes.

23 Q. And if we drop below, there's a description that
24 the debt that's out there, the equity 20 million, a mezzanine

1 loan of 6 million, the first with \$29,500,000 and it totals
2 that up, right?

3 A. Yes.

4 Q. And below that Robert says, we are refinancing the
5 mezzanine piece with a less costly \$15 million mezzanine.
6 And he goes on to describe to cover the changes that are
7 going to be happening, right?

8 A. Excuse me. I just need to read it to make sure.

9 Q. Sure.

10 A. Okay. Yes.

11 Q. And the difference, obviously, between the
12 \$15 million he's seeking to raise and the \$6 million
13 mezzanine is \$9 million?

14 A. That's correct.

15 Q. And that \$9 million, plus the \$1.5 million is the
16 same budgetary number that Robert was talking to the members
17 at that July meeting that they needed to raise?

18 A. That's correct.

19 Q. Sir, could you turn over to Exhibit 4 and let's go
20 over to page nine of that exhibit. Tell me when you're
21 there.

22 A. Okay. I have it.

23 Q. Maybe it's just my confusion, but there seems to
24 be some confusion in the testimony about what the budget was

1 back when this document was originally circulated in March of
2 2014 and the -- whatever you call this here, it's a sources
3 and uses of funds. Do you see that?

4 A. Yes.

5 Q. And there's a difference between sources and uses,
6 would you agree with that?

7 A. Correct.

8 Q. The sources is talking about the funds that are
9 going to be raised for the project?

10 A. Yeah.

11 Q. And so under this, they were looking to raise
12 \$55,896,000 through three different methods?

13 A. Yes.

14 Q. And then the uses was what the company was
15 anticipating the costs were going to be on the project?

16 A. That's right.

17 Q. The budget, right?

18 A. The budget.

19 Q. And that was \$50,729,767?

20 A. Yes.

21 Q. Now, in fact, I brought it up with Mr. Marriner
22 yesterday, just if we turn over to page 19 and look under
23 that second bullet point under the bottom under financial
24 highlights, it says the phase one development budget is just

1 under \$51 million, right?

2 A. Right.

3 Q. Let's go back to this table. You had some
4 testimony earlier and I think you were looking at this
5 \$55.9 million number and saying if you add on to the 9
6 million that Robert was talking to everyone about raising,
7 that would be in the neighborhood of \$54 million or
8 \$64 million, right?

9 A. That's correct. \$64 million.

10 Q. But if you add that \$9 million to the 50.729
11 million, it comes to a little over 60 million, right?

12 A. That's right.

13 Q. Either way you look at that, the company is still
14 looking to add 9 more million dollars to its budget?

15 A. Right. Which is what Robert said at that time.

16 Q. And, in fact, that's what Robert -- we saw that
17 Robert told Mr. Yount that in trial Exhibit 18 in July?

18 A. Yes.

19 Q. Now, sir, did you understand that Mr. Yount wanted
20 to buy a preferred founders share?

21 A. At one point in time.

22 Q. At any point in time?

23 A. Any point in time. That is what I understood,
24 yes.

1 Q. Is the share that CR Cal Neva sold him a preferred
2 founders share?

3 A. Yes.

4 Q. Meaning he holds a preferred founders share in Cal
5 Neva Lodge?

6 MR. CAMPBELL: I'm going to object as a lack of
7 foundation that he actually holds it at this time.

8 THE WITNESS: My understanding is that's what we
9 bought and that's what we were selling.

10 BY MR. LITTLE:

11 Q. Sir, is there any difference between the share CR
12 Cal Neva sold Mr. Yount and what he would have got had he
13 beat Les Busick to the punch?

14 A. No.

15 Q. No indifference whatsoever?

16 A. No difference.

17 Q. Sir, we kind of just jumped into testimony. We
18 really don't get a chance to understand who the individuals
19 are. I want you to step back and have the Court tell the
20 Court a little bit about your development experience before
21 you and Mr. Radovan went into business together.

22 A. Well, I got into the real estate business in 1970
23 and I was the head of sales and marketing for the largest
24 developer in the United States. Then in the mid '70s, I went

1 to Dallas, first as a CEO and later -- I mean, first as the
2 CFO and then as the CEO of a subsidiary of a major public
3 company called Olin Corporation.

4 And then I started my own company in 1976. And,
5 frankly, I didn't have any money other than my wife's salary
6 as a lawyer and what I could borrow on my Mastercard. But we
7 built that company. By 1984, it was ranked the 19th largest
8 developer in the United States.

9 Q. And what sorts of projects did you develop during
10 this time period? What sorts of real estate work?

11 A. We originally started doing office buildings. We
12 did everything when I was at Kaiser. I went on from my own
13 account, we did office buildings, primarily in Dallas and
14 El Paso and Albuquerque. And during that time, we did about
15 over 3 million square feet of office space. And we also
16 built about 3,000 apartment units.

17 And then about two years after we started, three
18 years after we started our company, we did our first hotel,
19 which was the Hyatt Regency in Austin. And then after that,
20 we either developed or acquired 14 or 15 luxury or high-end
21 hotels.

22 Q. So the Cal Neva wasn't your first rodeo?

23 A. No.

24 Q. How long ago did you and Robert get into the real

1 estate development business together?

2 A. Well, we first met in November of 1995 and we
3 started in business in early '96.

4 Q. Can you tell us a little bit about Robert's
5 background?

6 A. Yes. First of all, when I was in the Navy, I was
7 an instructor of Special Operations and Naval Intelligence in
8 Coronado, California. And during that period of time, I
9 became very familiar with the Navy SEALs. And so when I met
10 Robert and knew he was not only a Navy SEAL, but he had been
11 one of the first people selected by Team Six, which we now
12 know about, it was supposed to be super top secret, but we
13 now know about Team Six, I knew this was a guy made of
14 special stuff. And he had a background deeply based in
15 construction. So I thought he would be a good partner to
16 have.

17 Q. Now, can we step forward and talk about the
18 company you formed, we talked about it, was Criswell Radovan
19 LLC?

20 A. That's correct.

21 Q. That's a limited liability company?

22 A. Yes.

23 Q. And I thought I understood you to say that the
24 projects you developed have other equity owners?

1 A. Yeah. It was always our pattern and intention was
2 to find the opportunities and then bring in other people to
3 bring in the capital. We might spend some of our money in
4 the front end in trying to hold the deal together and put the
5 financing in place and either get that money back when the
6 project was started or leave some of it in, but relatively
7 small amount of money compared to the rest of it.

8 Q. And so your other developments would be done other
9 their own single purpose LLCs?

10 A. They always were. Primarily, because the other
11 partners didn't want to have their project swept up in
12 anything else I might have going.

13 Q. And did your company have accounting people to
14 maintain books and records of --

15 A. Sure.

16 Q. -- separate books and records for each of the
17 companies?

18 A. Yes. Every project had its own accounting for and
19 reporting, et cetera.

20 Q. I don't want to go through everything, but can you
21 give the Court a flavor of some of the development projects
22 that Criswell Radovan had been involved in?

23 A. Sure. I had done on my own with Criswell
24 Development Company some large resort projects also. So one

1 of the things that Robert and I were first working on was a
2 resort project in Puerto Rico. And subsequent to that, we
3 worked on some other resort projects, particularly in the
4 Napa Valley. Robert moved to the Napa Valley. And we did a
5 project called Calistoga Ranch.

6 Just prior to that, we had completed successful
7 development of a Four Seasons Hotel in Dublin, Ireland. And
8 I had done work in London when I owned the Dorchester Hotel
9 with a partner.

10 And so that project then caused us to start
11 looking at doing a project in Napa. He tells a longer story,
12 but it basically was he tried to find a place in Napa to have
13 a wedding and couldn't do it, because everything was booked
14 up a year ahead of time. So he thought, hey, this might be a
15 good place to do a hotel. And we did a project called
16 Calistoga Ranch and it was enormously successful.

17 It is still zoned as an RV park, but it is rated
18 by U.S. News and World Report as the number five hotel in the
19 United States, the number two spa. It generates an average
20 of \$1,300 a night to stay in that hotel. And we sold a
21 tenths fractional interest for \$475,000. And it was sold for
22 \$1,300,000 a key a couple of years ago, which was the highest
23 price per key paid for any hotel in the United States at that
24 time.

1 So that then encouraged us to look for other
2 opportunities in the Napa Valley, because it's so constrained
3 by zoning. And we found a property called Aetna Springs,
4 which was opened in 1873, the oldest golf course West of the
5 Mississippi, about 3,000 acres of home sites and vineyards.

6 And then we looked for other opportunities like
7 that. We were successful in getting a Westin Hotel built in
8 downtown Napa. And so then the Dallas Police and Firemen,
9 who were our partners or one of the partners on the Aetna
10 Springs project invited us to help them act as development
11 consultants on 42-story luxury condo in downtown Dallas.

12 Q. Was that project that you were working on while
13 the Cal Neva was going on?

14 A. Yes. And, in fact, Robert and I decided since he
15 lived in the Napa Valley, he would be responsible for the
16 projects in California and the Napa area. And I had spent
17 over 20 years in Dallas and had a very close relationship
18 with the Dallas Police and Firemen, that I would work on that
19 project and other projects in Texas.

20 Q. Sir, prior to this project, had any of Criswell
21 Radovan's projects failed or be put into bankruptcy?

22 A. No, sir.

23 Q. And just to be clear, you were not actively
24 involved in the management of the Cal Neva project?

1 A. That's correct.

2 Q. Prior to October 13th, 2015 when Mr. Yount made
3 his investment, had you ever met him?

4 A. Never met him.

5 Q. Had you ever spoken with him?

6 A. No.

7 Q. Had you ever corresponded with him by e-mail or
8 letter?

9 A. Never.

10 Q. Had you ever had been copied on any correspondence
11 or e-mails from him?

12 A. Not that I remember.

13 Q. During the course of the Cal Neva project, did
14 Robert and Dave keep you updated on their conversations with
15 Mr. Yount?

16 A. I don't think so.

17 Q. Before Mr. Yount invested, did you know what
18 information had been provided to Mr. Yount?

19 A. No.

20 Q. Do you know what information he was discussing
21 with either Mr. Marriner or Mr. Radovan?

22 A. No.

23 Q. You've since as a result of this lawsuit seen the
24 information that he was provided, is that a fair statement?

1 A. Yes, I have.

2 Q. And do you believe that that information is
3 truthful and accurate?

4 A. I'm not sure -- is the question the information
5 that Mr. Yount was provided by Robert?

6 Q. Correct.

7 A. Yes. It looks like it is truthful.

8 Q. Were you aware prior to Mr. Yount closing what
9 documentation was being used to pay for the transaction?

10 A. No.

11 Q. Were you aware of any of the details on how his
12 money was being transferred?

13 A. No.

14 Q. Sir, did you understand and believe that CR Cal
15 Neva was authorized to sell one of its two founders shares?

16 A. Yes.

17 Q. What's the source of your belief?

18 A. Well, prior to closing, one of the things that
19 Robert and I decided or realized that we did not have the
20 ability to leave \$2 million invested in the project for a
21 long period of time. So we wanted to have the right to sell
22 one of our shares at some point in the future.

23 And that was evidenced, I'm pretty sure, in the
24 operating agreement or -- I'm sorry -- the subscription

1 agreement. And I know it was also approved by the investors
2 at the time of closing.

3 Q. Was that also in your loan with Ladera?

4 A. Yes.

5 Q. In fact, if you turn to Exhibit 150.

6 A. 150?

7 Q. Yes, sir.

8 A. Okay.

9 Q. Is this the loan agreement with Ladera?

10 A. Yes.

11 Q. And if you go over to page seven, under transfers
12 and property prohibited, and go about halfway down that
13 section, there's a section B. I'll let you interpret it, but
14 was it your understanding that Ladera wanted to make sure you
15 had \$1 million skin in the game?

16 A. Yes. It says that we, Robert and I, or our
17 immediate family members do not have at least \$1 million
18 preferred equity investment. Is that what you're asking
19 about?

20 Q. Yeah.

21 THE COURT: Mr. Little, where is that located? I
22 have Exhibit 150.

23 MR. LITTLE: Exhibit 150.

24 THE WITNESS: Page seven.

1 MR. LITTLE: It's actually page eight of the
2 exhibit, but at the bottom of it says seven.

3 BY MR. LITTLE:

4 Q. Did you understand that Ladera wanted you to have
5 a \$1 million share in the business?

6 A. Yes.

7 Q. Sir, did any of the other preferred investors ever
8 object to you selling and only holding a \$1 million share?

9 A. No.

10 MR. LITTLE: That's all I have. Thank you, sir.

11 THE COURT: Thank you. Mr. Wolf.

12 MR. WOLF: No questions. Thank you.

13 MR. LITTLE: Your Honor, I just reserve the right,
14 if necessary, to call Mr. Criswell back in our case in chief.

15 THE COURT: That's fine. Mr. Campbell, redirect.

16 REDIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Can you look to Exhibit Number 18, Mr. Criswell?

19 A. Okay.

20 Q. There's been a lot of discussion in this trial
21 about this particular exhibit and Mr. Little asked you if in
22 your interpretation of it, that showed it was a \$9 million
23 amount that was needed for cash infusion into the project by
24 looking at the math difference between paying back Ladera 6

1 million and then getting a new loan for 15. 15 minus six
2 equals nine, right?

3 A. Yes.

4 Q. There's no mention in this document of any
5 interest payable to Ladera, correct?

6 A. Not that I see right now. If you want me to study
7 it more, but I don't see any reference to -- but I assume
8 within the 9 million, there would be interest that was
9 accrued by that time payable to Ladera.

10 Q. And there's no mention in this document whether or
11 not there's a prepayment penalty due if the mezz loan was
12 refinanced early?

13 A. No. There's nothing mentioned about that in this
14 document.

15 Q. And there is a prepayment penalty in Exhibit
16 Number 150, right?

17 A. I don't know.

18 Q. At section five.

19 A. 150, did you say?

20 Q. Yes. This was the document that Mr. Little just
21 showed you.

22 A. What page?

23 Q. Page three, section five.

24 A. Okay. I see a reference to a prepayment penalty

1 of \$500,000.

2 Q. And whether it kicked in or not, there's no
3 mention anywhere in this document that was sent to Mr. Yount
4 whether there might be some additional prepayment penalty
5 paid on top of the interest to pay back the Ladera loan,
6 right?

7 A. I don't know what was told to Mr. Yount.

8 Q. And there's also some -- if you go through the
9 paragraph under the 55 million, it says, we have also added
10 some costs for design upgrades within the project.

11 A. Which paragraph about 55 million?

12 Q. It's right under 55 million.

13 A. And what document?

14 Q. I'm sorry. Same document we're in. It's that
15 letter, the Exhibit Number 18.

16 A. Okay. You're talking about in section three where
17 it refers to --

18 Q. Yes. If you go down to the paragraph that starts
19 with, we are refinancing the mezz?

20 A. Okay.

21 Q. And kind of in that paragraph, it says, we have
22 also added some costs for design upgrades within the project.
23 But those aren't quantified in this document, are they?

24 A. Right.

1 Q. So Mr. Yount wouldn't know what the costs of those
2 design upgrades are from this document?

3 A. I don't see how he could.

4 Q. And you've done a lot of transactions, you have an
5 impressive development background, sometimes when you
6 refinance or go into a new loan, are their fees associated
7 with the new loan?

8 A. A new loan, yes, there usually are.

9 Q. And there's no mention in this document of what
10 the fees might be taken out of the -- or payable for a new
11 loan, right?

12 A. If I recall --

13 Q. Just in this document. The question is, is there
14 mention in this document of any potential fees that might be
15 associated with the refinance?

16 A. I don't see them.

17 Q. Can you look at Exhibit Number 10 again?

18 A. Ten?

19 Q. Yeah.

20 A. Okay. What page?

21 Q. Page 16, the construction summary.

22 A. Okay.

23 Q. And you understand this was a report that was
24 provided at least to the members of the executive committee

1 in that meeting you attended in July of 2015?

2 A. Is that what this document is?

3 Q. Yes. It's a construction project update, monthly
4 status update.

5 A. In July of 2015. Okay.

6 Q. And if you look at page 16, it lists some adverse
7 affects to the budget, right?

8 A. Yes.

9 Q. Does it quantify those in any way, shape or form
10 as to the dollar amount for those budget changes?

11 A. I don't see any dollar amounts.

12 Q. You also testified earlier that you believe that
13 this type of report, a construction progress report, was
14 provided to all the investors after this July report?

15 A. I think it was.

16 Q. Have you seen an August, September, October or
17 November construction monthly status report anywhere in your
18 files?

19 A. I don't know. I didn't look for it.

20 Q. But your testimony was you believe these were all
21 sent to the investors?

22 A. Sure.

23 Q. But you don't know for sure?

24 A. I don't know for sure.

1 Q. Back to Exhibit Number 4. Mr. Little again asked
2 you about the budget, and, again, the table at page nine.

3 A. Okay.

4 Q. The first box shows a -- under uses, tabs up to
5 \$50,729,000 use, correct?

6 A. Yes.

7 Q. Then the second box, isn't that telling someone
8 that reads that, if there's 20 million in equity raised under
9 the PPM, then we're going to increase the budget by 5
10 million, 2.5, plus 2, plus 56?

11 A. I believe that's what it says. And that one also
12 does include an interest reserve for the mezzanine loan.

13 Q. It shows interest reserve, meaning there was some
14 reserve of payment of interest?

15 A. I believe the interest was accruing.

16 Q. So that interest payable, if you refinance the
17 mezzanine loan, might have been as high as \$896,000 if it was
18 refinanced in July?

19 A. No. I think that includes the amount of interest
20 that would happen over the life of the term of the loan.

21 Q. Do you know if Mr. Yount was ever provided a copy
22 of the Ladera loan?

23 A. No, I don't.

24 Q. He wouldn't know the extent of the loan or the

1 length of the loan term?

2 A. I don't know whether he would have known that or
3 not, because I don't know whether he was given a copy of it
4 or not.

5 Q. Mr. Little asked you about the difference between
6 a founders share that Mr. Yount would have received if he had
7 purchased under the PPM, and a founders share that he bought
8 from you, and you said there was no difference, correct?

9 A. As far as I know, there's no difference.

10 Q. If Mr. Yount had bought a founders share under the
11 PPM, where would the million dollars have gone?

12 A. You mean if he, Mr. Busick?

13 Q. Yes.

14 A. That money would have gone to be part of the
15 million five that was unfunded under the \$20 million cap.

16 Q. To be used for the project, correct?

17 A. Yes. That's right.

18 Q. Where did the million dollars go under the
19 transaction that you claim Mr. Yount entered into with the
20 sale to you?

21 A. Well, the million that was in there stayed in
22 there and then the money that he paid to buy our share went
23 to us.

24 Q. It didn't go into the project?

1 A. No. Because it was already in there.

2 Q. Sounds like you've done a whole lot of development
3 deals?

4 A. Yeah. That's why I'm as old and wrinkled and
5 tired as I am.

6 Q. And I assume in most of those development deals,
7 you've executed probably hundreds, if not thousands of
8 contracts?

9 A. I don't know whether I would say thousands, but
10 because I always hired people who worked for me as
11 construction managers and project managers, many of them
12 would sign contracts rather than I would have signed them,
13 but I've been involved in a lot of contracts.

14 Q. And usually the contract will spell out the terms
15 and the agreement among the parties and the payment and all
16 those types of things?

17 A. That's what contracts usually are.

18 Q. If parties agree to agree, but don't sign a
19 contract in large projects like this, they usually have a
20 letter of intent or a term sheet, something like that?

21 A. Sometimes, although I have a partner in New York
22 who is a very wealthy family member in an investment family,
23 that likes to brag to everybody about how he bought a hotel
24 in Tulsa, Oklahoma with me and did the entire transaction on

1 a handshake.

2 Q. At least on that one, you had a handshake, right?

3 A. It was over the phone, yeah.

4 Q. Was there a handshake with Mr. Yount to do a
5 million dollar contract?

6 A. I don't know.

7 Q. Was there any documents that commemorated that he
8 agreed to buy a million dollar share from you guys?

9 A. I've never seen one.

10 Q. Mr. Little asked you if you thought what was
11 provided to Mr. Yount was accurate and you said yes. I'm a
12 little confused. I thought your testimony earlier on my
13 direct examination was you didn't know exactly what was
14 provided to Mr. Yount. Mr. Radovan just told you that he
15 sent him some documents.

16 MR. LITTLE: I'm going to object, because my
17 question was different. My question was specific to after
18 the fact, after the litigation, your Honor, so we're talking
19 apples and oranges.

20 THE COURT: I'll let you clear that up. Go ahead,
21 Mr. Campbell.

22 MR. CAMPBELL: Was it sustained, your Honor?

23 THE COURT: Yes. But just ask another question.

24 BY MR. CAMPBELL:

1 Q. What did you see after the fact that you felt was
2 an accurate representation to Mr. Yount?

3 A. I saw what he described about as being the
4 overruns at various different times and the order of
5 magnitude of those overruns.

6 Q. You've got to be a little more specific for me.
7 Are you talking about exhibit number --

8 A. I have no idea, because, you know, I followed a
9 lot of e-mails and a lot of conversation trails in e-mails
10 and documents, et cetera. But I didn't see anything during
11 that entire process that looked like it was out of line with
12 what he had told me.

13 Q. So have you seen through the course of this trial
14 a lot of the documents that we've been using as exhibits as
15 the documents you're referring to that Mr. Yount had been
16 fully told about what was going on in the project?

17 A. I believe so.

18 Q. Is there anything else that you remember that you
19 see that wasn't in any of these documents that we've been
20 talking about so far?

21 A. I don't understand the question. Ask it again.

22 Q. You've testified that at some point you reviewed a
23 lot of documents and your response to Mr. Little was those
24 documents are all pretty accurate. I'm trying to figure out

1 what documents you saw. If you're able to give an opinion to
2 the Court that all of these documents are accurate, I'd like
3 to know what documents you're looking at?

4 A. What I meant by they appeared to be accurate is I
5 believe they were consistent with what Robert had been
6 telling people in the executive committee when I was present
7 and they were consistent with that information. And they
8 were also consistent with information that Robert told me.
9 And I've worked together with him for almost 22 years, and I
10 don't think that he would have lied to me about any of that
11 information.

12 Q. Did he tell that you he never told Mr. Yount that
13 the change orders before he tendered his money was over
14 \$9 million?

15 A. I don't know whether he told me that directly, but
16 he said that to other people.

17 Q. Did he tell you that he never told Mr. Yount that
18 without a refinance of the project, the project was not going
19 to open on schedule, if at all?

20 A. At what time? I don't think he ever said that,
21 but are you referring to before he invested or afterwards?

22 Q. At any time.

23 A. I don't think he ever said that.

24 Q. So a lot of your testimony that you believe what

1 Mr. Yount was provided was accurate was based on what Robert
2 told you he told Mr. Yount?

3 A. No. It was also seeing documents that I had been
4 present for when there were discussions given to the
5 executive committee.

6 Q. So do you know what those documents are?

7 A. Yeah. There was the monthly reports, the
8 information that we update the members of the executive
9 committee, such as change orders or prospective change
10 orders, things that he was working on on the mezzanine
11 financing, and then later on on the Mosaic financing.

12 Q. We've established that Mr. Yount got Exhibit 10,
13 which is the July 2015 change order. Do you have any proof
14 that Mr. Yount ever received an August or September or
15 October report?

16 MR. LITTLE: Your Honor, he's already asked this.

17 THE COURT: Overruled.

18 THE WITNESS: First of all, I was gone for about
19 three weeks of that period of time. I don't have any way of
20 knowing whether he did or didn't.

21 BY MR. CAMPBELL:

22 Q. Do you know if Mr. Yount was ever provided with
23 any change order summary or the change orders themselves?

24 A. I don't know. I think I do know, though that --

1 Q. I don't have a question.

2 THE COURT: I'd like to hear the answer. Go
3 ahead, Mr. Criswell.

4 THE WITNESS: You know, you showed me or that
5 exhibit dated October 9th, I think, change order 12, and that
6 would have been at the time that Mr. Yount was investing.
7 And those numbers, those amounts, the 8.7 million and the
8 additional 600,000 was totally consistent with what Robert
9 had told everybody back in July. And I know he said those
10 same numbers when sent that e-mail to Mr. Yount and even
11 talked about raising the additional \$15 million, minus the 6
12 to Ladera.

13 BY MR. CAMPBELL:

14 Q. How do you know he told Mr. Yount that the change
15 orders were going to be \$9 million? Based on what he told
16 you?

17 A. No. Because it's pretty clear that if the change
18 orders at the time of July were known to be in the range of
19 \$5 million, and I know he told everybody to expect more, and
20 he said he was going to raise \$9 million in addition to
21 Ladera's funding. And remember at that time, Ladera was
22 indicating they might stay in with your 6 million or even
23 come up with some or all of that mezzanine money. That's how
24 I'm pretty sure he knew. However, the order of magnitude

1 anticipated --

2 Q. Go ahead. I'm sorry. You're pretty sure he knew,
3 but you don't know what Robert actually told Mr. Yount?

4 A. I don't.

5 Q. In your meeting with Mr. Yount during the
6 December 12th meeting, did it appear to you that Mr. Yount --
7 did it appear to you that Mr. Yount seemed like he had --
8 felt like he had been fully informed as to what was going on
9 in the deal?

10 A. No.

11 MR. LITTLE: Objection, your Honor, calls for
12 speculation. I don't know how you can tell how somebody
13 feels.

14 MR. CAMPBELL: They have --

15 THE COURT: Let me figure this out, Mr. Campbell.
16 I think he can testify to how Mr. Yount appeared --

17 THE WITNESS: Correct.

18 THE COURT: -- on that date. Overruled.

19 THE WITNESS: That was the operative part of what
20 he said.

21 BY MR. CAMPBELL:

22 Q. Okay. And, finally, Mr. Criswell, I think
23 Mr. Little asked you that somewhere in the operating
24 agreement, the other members had preapproved you guys selling

1 one of your shares to a third party. Do you know where in
2 the operating agreement that is?

3 MR. LITTLE: I'm going to object. I didn't say
4 the operating agreement, but it was the private placement
5 memorandum.

6 BY MR. CAMPBELL:

7 Q. Sorry for that. Do you know where in the private
8 placement memorandum it says that the members have already
9 preapproved the transfer of your share?

10 A. I believe there was a table, as you describe it,
11 which laid out the amount of money people had invested or was
12 committed at that time. And there was a footnote in that
13 chart that indicated that the -- of the CR Cal Neva
14 \$2 million shares, that we had a right to sell one of them.

15 Q. And do you know where that footnote is?

16 A. Maybe Mr. Little could help me with that. I don't
17 know. It's in the PPM someplace. If somebody can tell me
18 the exhibit.

19 MR. LITTLE: Your Honor, I'll help short-circuit
20 this. It's Exhibit 3, page eight, footnote one, is one of
21 the areas that we're discussing.

22 THE WITNESS: Exhibit 3?

23 MR. LITTLE: Page eight, footnote one.

24 THE COURT: Thank you, Mr. Little.

1 MR. LITTLE: You're welcome.

2 BY MR. CAMPBELL:

3 Q. It's your interpretation of footnote one that this
4 is some kind of preapproval of Criswell Radovan selling a
5 share to a third party?

6 A. That's correct.

7 Q. And that would override your belief in the
8 operating agreement at section 12.2?

9 A. I don't know. Where would I find that?

10 Q. That would be in exhibit number -- it's actually
11 in the private placement memorandum I think also. Excuse me.
12 In Exhibit Number 3?

13 A. What page?

14 Q. Page 32, section 12.2.

15 A. 12.2, that says prohibited transfer?

16 Q. Yeah.

17 A. Okay. All right. What about it?

18 Q. Is it your opinion that section 12.2 overrides the
19 footnote that Mr. Little just showed you on page eight?

20 A. I'm not a lawyer, so I don't know. But I believe
21 there were other places where the reference was to the fact
22 that we didn't have to maintain more than a million dollars.
23 Like in the Ladera agreement that Mr. Little had me read.
24 And I believe there may have been some other place where it's

1 also clear that we only were required to keep 1 million in.
2 And anybody who signed that agreement agreed to it.

3 Q. Only required to keep 1 million and selling and
4 transferring a share to some other third party are two
5 different things, aren't they?

6 A. I don't know.

7 Q. So you would rely on -- I guess what you're
8 saying -- I'm a little confused, because you just said you're
9 not a lawyer, but you gave an opinion to this Court that
10 somehow this document preapproved your transfer to Mr. Yount.
11 What I'm hearing you say is that would really need an
12 attorney's advice as to what was actually required?

13 A. Sure.

14 MR. CAMPBELL: Thank you. That's all we have.

15 THE COURT: Mr. Little.

16 RE CROSS EXAMINATION

17 BY MR. LITTLE:

18 Q. While we're on that subject, would you turn over
19 to Exhibit 101?

20 A. Okay.

21 Q. You were here yesterday for Mr. Marriner's
22 testimony?

23 A. Yes.

24 Q. You recall him saying that Exhibit 101 was in his

1 records?

2 A. I'm sorry? Say again?

3 Q. Do you recall Mr. Marriner testifying that Trial
4 Exhibit 101 was in his records, his business records?

5 A. I don't remember a reference to a specific
6 exhibit, but --

7 Q. Well, are you looking at Exhibit 101?

8 A. Yes.

9 Q. Forget that question. This is a cap table, is it
10 not?

11 A. You mean the very first page? Is that what you're
12 asking me about?

13 Q. This is a cap table.

14 A. Yeah.

15 Q. Describes who held the founding member shares?

16 A. Okay.

17 Q. You see Criswell Radovan \$2 million?

18 A. Yes.

19 Q. What does it say over on the far right hand
20 column?

21 MR. CAMPBELL: Objection, the document speaks for
22 itself.

23 THE COURT: Overruled.

24 THE WITNESS: It says carriages to 1 million if

1 someone wants a \$500,000 slot.

2 BY MR. LITTLE:

3 Q. Is that the other document you were trying to
4 think about?

5 A. It well may be.

6 Q. Sir, please go to Exhibit 150, and let's go back
7 to page three. I'm going to wait until you get there,
8 because this is very important.

9 A. Exhibit 3?

10 Q. No. 150, page three?

11 A. Page three, okay.

12 Q. Let's look at section five again. Do you recall
13 counsel asking you, did you inform Mr. Yount that there was a
14 prepayment penalty if you refinanced the mezzanine loan? Do
15 you recall him asking that?

16 MR. CAMPBELL: Objection, I don't think that was
17 my question. I think I asked --

18 THE COURT: Just a minute. I'll allow you to
19 clear that up. Go ahead, Mr. Little.

20 BY MR. LITTLE:

21 Q. Counsel was asking that prepayment penalties for
22 the Ladera loan and whether that was told to Mr. Yount. Do
23 you recall that?

24 A. Yes.

1 Q. Let's actually read section five and we'll
2 conclude that it doesn't require prepayment penalty. First
3 sentence, borrowers shall have no right at any time to prepay
4 a portion of the principal amount of the loan that is less
5 than \$500,000. So let's stop there. Does that mean that
6 Ladera doesn't want partial prepayments?

7 A. I would think that's what that means, yes.

8 Q. The second sentence, borrower shall, however, have
9 the right to prepay without penalty principal amounts equal
10 or exceeding \$500,000 at any time. Did I read that
11 correctly?

12 A. Yes.

13 Q. So there was no prepayment penalty to Ladera, was
14 there?

15 A. I don't see one.

16 Q. Let's go over to Exhibit 20. I apologize. We're
17 bouncing back and forth between a lot of exhibits.
18 Exhibit 20 is a July 27th e-mail between Mr. Yount and
19 Mr. Radovan, correct?

20 A. Yes.

21 Q. And this is after the one we keep referring to,
22 Exhibit 18, where Mr. Radovan told Mr. Yount that he was
23 refinancing the mezzanine up to \$15 million?

24 A. That's my understanding, yes.

1 Q. And I thought I understood you to testify one of
2 the options was for Ladera just to increase the amount of its
3 loan, right?

4 A. I would say we're considering that at the time.

5 Q. Instead of paying them off, which may have had
6 interest payments due?

7 A. Correct.

8 Q. In this e-mail, Mr. Radovan is telling Mr. Yount
9 that he's actively refinancing the mezz, right?

10 A. Yes.

11 Q. And Mr. Yount is a sophisticated person, is he
12 not?

13 A. I would assume so, yes.

14 Q. Is there anything that prevented Mr. Yount from
15 asking for more details about the refinancing efforts?

16 A. No.

17 Q. Is there anything that prevented him from asking
18 for copies of the loan agreements if he wanted to look at
19 them?

20 A. No.

21 Q. Have you seen any documents where he asked, he or
22 his CPA asked for that information?

23 A. I don't think so.

24 Q. Similarly, there's nothing that prevented

1 Mr. Yount or his CPA or his attorneys from asking for copies
2 of change orders?

3 A. Correct.

4 Q. Let's look at Exhibit 13, because this is an
5 important issue that we talked about yesterday. This is a
6 July 17, 2015 e-mail to Peter Grove from Mr. Yount, correct?

7 A. Yes.

8 Q. And we established that Peter Grove is the lead
9 architect on the Cal Neva project?

10 A. Yes.

11 Q. And Mr. Radovan, yourself, Mr. Marriner are not
12 copied on this e-mail?

13 A. No, we're not.

14 Q. And the architect's telling Mr. Yount that
15 construction costs are exceeding the budget and that they're
16 trying to get their arms around it, correct?

17 A. Yes.

18 Q. So it appears that Mr. Yount was going around you
19 guys to third party sources for more information about the
20 cost overruns on this project?

21 A. I wouldn't say going around us. He was just
22 doing --

23 Q. Due diligence?

24 A. -- due diligence.

1 Q. Sir, counsel, asked you, well, if Mr. Yount had
2 bought that last share, his million dollars would have gone
3 into the project and it didn't. Do you remember that
4 testimony?

5 A. Yes.

6 Q. But Mr. Busick's \$1.5 million did go directly into
7 the project?

8 A. That's correct.

9 Q. In fact, Mr. Busick's investment put \$500,000 more
10 into the project than Mr. Yount's would have?

11 A. That's right.

12 MR. LITTLE: That's all I have.

13 THE COURT: Mr. Wolf.

14 MR. WOLF: Yes, if I may.

15 CROSS EXAMINATION

16 BY MR. WOLF:

17 Q. I'm going to try another crack at Exhibit 4. On
18 pages 9 and 19 of Exhibit 4, please, if you'll turn to those?

19 A. Page nine first?

20 Q. Yes. So you've been asked about this document
21 multiple times. I want to clarify it as best I can. Sources
22 refers to sources of capital investment and lender funds,
23 correct?

24 A. Yes. But it's pro forma.

1 Q. It's pro forma, but it's what's contained in the
2 confidential offering memorandum?

3 A. That's correct.

4 Q. As the pro forma numbers. And there's a total
5 raise of debt and equity of \$56 million, right?

6 A. Almost, yes.

7 Q. Almost. And then the uses indicates the budgeted
8 construction pro forma costs and other related costs. So we
9 have a purchase price, architect and engineering,
10 construction, F, F and E, development cost, financing,
11 contingencies, those add up to just shy of \$51 million,
12 correct?

13 A. Yes.

14 Q. And that's confirmed at the bottom of page 19 in
15 financial highlights. It refers to a total capitalization of
16 55 million, a phase one development budget of just under 51
17 million, correct?

18 A. That's correct.

19 Q. And the 51 million is composed of pro forma
20 numbers, I understand, 32 million in acquisition costs and
21 just under 19 million in construction hard costs, including
22 site work, correct?

23 A. Yes.

24 Q. So turning back to page nine, the just under 51

1 million was the originally projected budget for this project
2 as to both acquisition and the development, refurbishing of
3 the Cal Neva Resort, right?

4 MR. CAMPBELL: I'm going to object. I think that
5 mischaracterizes this document, whether that was the original
6 budget or whether it was a conditional budget based on money
7 raised.

8 THE COURT: Mr. Wolf.

9 BY MR. WOLF:

10 Q. To clarify, that was the budget as of March 2014?

11 A. That's what I would say it says, yes.

12 Q. And then the second box is uses of additional
13 equity. And I understand this to mean that if your pro forma
14 raise of 20 million does happen, you have a little bit more
15 capital and money on hand than you projected you will spend.
16 You'll have about 5 million 160-something thousand additional
17 funds?

18 A. Yes. That's what I would interpret that to mean.

19 Q. And the proposal, at least in this document, pro
20 forma, was to devote those funds to two and a half million in
21 change orders for added scope of F and B, venues, finishes,
22 et cetera. That was one possible use of that additional
23 money, correct?

24 A. Yes.

1 MR. CAMPBELL: I'm going to object. I don't think
2 the document says change orders. The document speaks for
3 itself.

4 THE COURT: I'll let you --

5 THE WITNESS: I think added scope assumes -- I'm
6 sorry, your Honor.

7 THE COURT: That's okay. Go ahead.

8 THE WITNESS: I was just going to say, it doesn't
9 say overruns, it says added scope. So it means in some of
10 the things that went into the 9 million that we expected
11 above and beyond what we had at that particular time in July
12 anticipated that we were going to add some scope, i.e.,
13 another restaurant, a bigger swimming pool area, things like
14 that.

15 BY MR. WOLF:

16 Q. So we have two uses listed in the second box for
17 the additional -- the hope was there would be this additional
18 capital on hand, the 5.16 million, the added scope items we
19 just talked about, and then 2 million for condo unit
20 development equity, correct?

21 A. Yes.

22 Q. Now, what is the 2 million in condo development
23 equity refer to?

24 A. We're allowed to -- under the zoning, we were

1 allowed to add or convert 28 units into condominiums if we
2 get the zoning changed to allow us to do that.

3 Q. So was the 2 million shown on this second box on
4 page 9 of Exhibit 4, was that the seed capital or the ante on
5 that second phase of the project?

6 A. I think most of that would be design development
7 and legal work that has to be done to get all of those
8 approvals done.

9 Q. So if you would please turn back to page 19 of
10 Exhibit 4? The phase one development budget, which is stated
11 just under 51 million, doesn't include that 2 million for the
12 condo development, which was commonly called phase two of the
13 development, correct?

14 MR. CAMPBELL: Objection. I don't think there's
15 anything in the record that calls for condo development phase
16 two.

17 THE COURT: Can you answer the question?

18 THE WITNESS: I'll try. This does refer to this
19 budget as just being phase one. And I think that's why what
20 you were looking at on nine, that additional 5 million or so
21 was considered future rather than something to be done right
22 then and there.

23 BY MR. WOLF:

24 Q. So based on this, the initially projected pro

1 forma budget for the project was this just under \$51 million
2 number, correct?

3 A. Yes, sir.

4 Q. And the subsequently calculated change orders that
5 we've looked at, those include the addition of 2.5 million
6 that's reflected in the second box as add-ons or added scope,
7 should they be successful in raising the additional capital?

8 A. Yes. I think that's a good interpretation.

9 MR. WOLF: That's all I have.

10 MR. CAMPBELL: Just one follow-up, your Honor.

11 THE COURT: All right. Just one.

12 REDIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q. Let's look at Exhibit Number 18, Mr. Criswell.

15 A. 18. Yes, sir. Okay.

16 Q. In that sentence I looked at before, it said under
17 total 55,000 financing, Mr. Radovan is telling Mr. Yount
18 there was an added expense for predevelopment of the condo
19 units is also included with this?

20 A. In the 55, 5?

21 Q. He just says, we are refinancing the mezzanine
22 piece with a less costly 15 million. This is to cover the
23 added costs of regulatory requirements, which were added or
24 designed. We have also added costs for design upgrades in

1 the project and predevelopment of the condo units is also
2 included with this. Right?

3 A. If I recall, it was something like a couple
4 hundred dollars for some design things we had to do to make
5 sure that the county approved the plans that we were
6 anticipating.

7 Q. And Exhibit Number 4 on page nine in the second
8 box down mentions condo unit development and added scope --

9 A. I'm sorry. In the same document?

10 Q. No. Exhibit Number 4, page nine.

11 A. I'm sorry. What's your question?

12 Q. The added scope in the second box, it says, add
13 scope for F and E, venues, and then also condo unit
14 development equity?

15 A. Yes, I see that.

16 MR. CAMPBELL: That's all I have.

17 THE COURT: All right. Mr. Criswell, you may step
18 down. Watch your step going down.

19 MR. LITTLE: Good time for a break?

20 THE COURT: Before we start with the next witness,
21 let's take our break. Thank you. Court's in recess.

22 (A short break was taken.)

23 THE COURT: Mr. Campbell, your next witness.

24 MR. CAMPBELL: Mr. Radovan.

1 THE COURT: Mr. Radovan.

2 (One witness sworn at this time.)

3 THE COURT: All right. Mr. Campbell.

4 ROBERT RADOVAN

5 called as a witness and being duly sworn did testify as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Good afternoon, Mr. Radovan.

10 A. Good afternoon.

11 Q. You sat through the whole entirety of Mr.
12 Marriner's and Mr. Criswell's testimony during the trial,
13 haven't you?

14 A. Yes, sir.

15 Q. I'll try not to be repetitive. As you know,
16 Mr. Criswell said you have a lot more knowledge about some of
17 the numbers, is that correct?

18 A. Certainly.

19 Q. And was he correct when he said that you were
20 pretty much the hands-on, day-to-day management of the Cal
21 Neva during this project?

22 A. That's correct. Yes.

23 Q. How often would you talk to Mr. Criswell and
24 update him on just the status of the project, things like

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1 that?

2 A. It depended on what was going on, honestly, and
3 what he was doing, what I was doing. But we talked quite
4 often, I'd say a number of times a week in general.

5 Q. I asked Mr. Criswell some preliminary questions
6 about the purchase of the property. I want to follow up real
7 briefly with you on that, because there was a little
8 confusion.

9 If you look at Exhibit 43 to Exhibit Number 5 --
10 schedule 4.3. Exhibit Number 5, schedule 4.3, it's towards
11 the very end of the document.

12 A. Exhibit 5. Are you talking about the operating
13 agreement?

14 Q. Yes.

15 A. What page?

16 Q. It would be the schedule at the very back entitled
17 schedule 4.3.

18 A. Uses of capital contributions?

19 Q. Yes.

20 A. Yes.

21 Q. This was a document provided to investors to kind
22 of show the investors where their investment under the
23 private placement memorandum would go, correct?

24 A. Correct.

1 Q. And the bridge loan that was the Wayne Clark, I
2 believe?

3 A. Uh-huh.

4 Q. The person we were talking about. How much of
5 payment was made to Mr. Clark in total for repayment of that?

6 A. In total, I think it was the six plus about
7 1.3-ish, if I recall off the top of my head, a million of
8 interest, interest and fees.

9 Q. So about \$7.3 million?

10 A. Correct.

11 Q. And from my understanding of Mr. Criswell, the
12 payment to the seller of approximately 10 million didn't
13 happen, instead there was a bridge loan, kind of an interim
14 bridge loan?

15 A. Correct.

16 Q. Instead of a payment to the seller, your proceeds
17 from the \$10 million bridge loan made that \$10,000 --
18 \$10 million payment to redeem the equity interest in the Cal
19 Neva?

20 A. Correct.

21 Q. And that bridge loan, my understanding, was then
22 paid out of the proceeds that was raised under the private
23 placement memorandum?

24 A. That and the Hall loan and -- it was all at the

1 same closing. So it was the Hall closing, Ladera closing and
2 the balance of the 18.5. It was all done on September 30th.

3 Q. So it was all deposited into one place, basically?

4 A. Right.

5 Q. Hall wasn't even depositing. Did they deposit
6 money right from day one?

7 A. No.

8 Q. Ladera did?

9 A. Ladera did.

10 Q. Ultimately, a certain amount was paid to pay off
11 that bridge loan, right?

12 A. Correct.

13 Q. And, again, that had interest?

14 A. Correct.

15 Q. And do you know what was paid on that bridge loan?

16 A. I think it was a million dollars.

17 Q. So that would bring us up to \$11 million?

18 A. On the full payment of that bridge, yes.

19 Q. So on items 1 and 2, there was \$18.3 million,
20 approximately, that would have been paid out of the money
21 that the private placement memorandum raised?

22 A. Correct. And as well as the Ladera.

23 Q. But the Ladera --

24 A. It came into the same bucket, basically.

1 Q. But it was specifically designated under the PPM
2 that this was where the investors' money was going to go to?

3 A. Yes. This would be the cost of the loan.

4 Q. And then the actual raise under the PPM once
5 Mr. Busick came in was \$18 million?

6 A. 18.5 at the time when Mr. Busick funded.

7 Q. The cap was 20 on the PPM, right?

8 A. Correct.

9 Q. And then two of that was the CR share?

10 A. The CR Cal Neva share.

11 Q. So only 18 new cash could be raised under the
12 private placement memorandum?

13 A. Outside of our two, that's correct.

14 Q. So that 18 was raised once Mr. Busick came in at
15 the end?

16 A. Correct.

17 Q. Out of the 18 that was raised, you heard Mr.
18 Marriner talk about, we talked about the commission that was
19 paid to him under his contract --

20 A. Correct.

21 Q. -- to assist you in raising the capital?

22 A. Right.

23 Q. Was that I think I identified it as approximately
24 \$490,000, something like that?

1 A. Something like that.

2 Q. Was that paid out of the proceeds directly? When
3 an investor invested, would you cut a check out of your bank
4 account?

5 A. Yes. Correct.

6 Q. So that would reduce the amount actually raised
7 under the PPM from 18 million minus 495?

8 A. Just like any other cost.

9 Q. Let's just round it to say 17.5. I think Mr.
10 Marriner was 495, somewhere in there. So at the end of the
11 raise, if my math is correct, there really was no additional
12 development capital for the project under the private
13 placement memorandum, correct?

14 A. Under the PPM, yes. Well, but he -- at the same
15 time, we were paying and closed, he would get capital in, but
16 it's not released until that closing date. So Mr. Marriner
17 got paid upon those things closing.

18 Q. Sure. But once it was all closed, the net raise
19 after taking Mr. Marriner's money out would have been 17 and
20 a half million or a little less?

21 A. Plus the six of Ladera, because he was part of
22 that.

23 Q. But that's not part of --

24 A. Right. I thought it you were asking me --

1 Q. That's not part of the what private placement
2 memorandum?

3 A. Correct.

4 Q. Was pitching to the prospective investors?

5 A. Correct.

6 Q. So my questioning is, if you look at it from that
7 pure perspective of raising 18 million in cash, minus Mr.
8 Marriner's fee, there was really no additional capital?

9 A. Well, our 2 million is real capital cash that was
10 in the deal. So if you want to take that fee out, it's
11 actually 19.5.

12 Q. But that was not accounted for in these payments
13 for the 18.3 million, right?

14 A. As far as payments that were earned by Mr.
15 Marriner?

16 Q. No. No. On what's listed in number 1 and 2,
17 those are actual hard dollars that --

18 A. Oh, yes.

19 Q. I understand you contributed capital.

20 A. Our two is in it.

21 Q. You contributed capital to the project for some of
22 the predevelopment costs?

23 A. Which that is part of the predevelopment cost. I
24 mean, our 2 million, we invested, you know, six hard cash

1 alongside that paid for a lot of those costs in the 6
2 million, especially because of the interest that was going to
3 that. That's what a lot of those predevelopment
4 expenditures, the biggest part of it was not architects, it
5 was paying that.

6 Q. Paying the --

7 A. The interest payments, because they were paid
8 quarterly on the bridge.

9 Q. So when you say that there was a total of, let's
10 say, 1.3 on the Wayne Hall loan, had some of that interest
11 been prepaid?

12 A. Not prepaid, but paid quarterly.

13 Q. So when you close that loan to repay Mr. Hall
14 back, you didn't actually write a check for 7.3. It was six
15 plus whatever the --

16 A. Six plus whatever the quarterly. I think it ended
17 up being 300 something, 250 or to 300 on a quarterly basis,
18 just off the top of my head what I recall.

19 Q. And did you out of the proceeds from the PPM, then
20 you did pay -- did you pay back CR or Criswell Radovan for
21 that prepaid interest or the quarterly interest payments?

22 A. No. Because that was equity that was in the
23 project. There were some that were loans like Brandyn
24 Iverson, that's where that loan originated from to make one

1 of those quarterly payments, as I recall, on that specific
2 one.

3 Q. And just so we're clear on this, let's look to
4 exhibit number -- bear with me. Exhibit Number 4. It's
5 towards the back after the narrative.

6 A. What page?

7 Q. Unfortunately, this one doesn't have -- it's not
8 paginated, but if you go to page 30 of the narrative.

9 A. On your Exhibit 4, right?

10 Q. Yes. And then if you continue flipping, you'll
11 see a budget sheet that looks like that.

12 A. Okay.

13 Q. And under the 7000 column, 70000, I guess, it
14 shows a total development and financing cost of
15 7.713 million?

16 A. Correct.

17 Q. And if we look back, Mr. Criswell walked through
18 this. I think he had a couple of questions on it. But if we
19 look back to page five of that budget, we then see the total
20 of the development and prepayment -- development and
21 financing costs?

22 A. Correct.

23 Q. So those development costs under 7100, those are
24 all of those predevelopment costs that you were just talking

1 about?

2 A. On the financing costs, yes.

3 Q. Well, there's financing costs. There's two
4 columns. There's 70100, which is the development expenses,
5 and there's 70200, which are the financing costs?

6 A. Correct.

7 Q. So the 70100 is the up front money you were
8 talking about that you put into the project?

9 A. Those are overall. Are you talking about the
10 70100 column?

11 Q. It tabs up to 2 million as the predevelopment
12 cost?

13 A. Yes. That's not predevelopment. It's development
14 expenses.

15 Q. But these are budgeted for opening the hotel?

16 A. Correct.

17 Q. And then we go down to the next column, the
18 financing, these were all the costs that we just talked
19 about?

20 A. Correct.

21 Q. As far as what the loans were going to cost you
22 with interest, any other fees and anything like that?

23 A. Correct.

24 Q. I asked Mr. Criswell, I believe, today about the

1 preparation of the construction budget for the project. He
2 said he think Hal Thannisch did some of it?

3 A. He did a lot of it.

4 Q. Were you involved in putting the construction
5 budget together?

6 A. I was.

7 Q. Was Brandyn Iverson also involved in it?

8 A. Yes.

9 Q. I mean, tell me about your involvement. Did you
10 review the documents? Did you walk through with Mr.
11 Thannisch?

12 A. We reviewed the documents and looked over the
13 programing side of things and then worked with Peter Grove,
14 his company, the architect. Spent time with pretty much
15 every single group that was different engineers and then
16 Penta as well on making sure we got our costs dialed in.

17 Hal Thannisch is not one of, he is the most
18 respected design construction guy in the hotel industry, not
19 just in the U.S., but in the world.

20 Q. And so there had been some due diligence putting
21 that budget together?

22 A. Yes, sir.

23 Q. Can you look at page six of the Exhibit Number 4?

24 A. Yes.

1 Q. And if you look at the project status, the second
2 bullet down, it says, the development budget is based on full
3 design documents allowing for a high degree of certainty. So
4 that's the due diligence you were just talking about,
5 Mr. Thannisch, Mr. Grove, your review of the documents,
6 Brandyn Iverson's review?

7 A. Yes. Along with all the third parties that we
8 rely heavily on.

9 Q. And when you say the GMP contract has been
10 negotiated with Penta. What does GMP stand for?

11 A. Guaranteed max price.

12 Q. So that's a fixed fee contract, so to speak?

13 A. Correct. It's basically, what you do, and this
14 really refers to an IGMP contract, because what ends up
15 happening with IGMP, basically, you're pricing a product like
16 a table. You know how much the table is going to be, but
17 then when certain changes happen to that table when they're
18 buying it out. So the contractor then takes the next step
19 and buys out every part of that and then that gets -- unless
20 we have changed something in the design, it becomes a
21 guaranteed max price pretty quickly after that.

22 Q. So what the investors were telling them, we got a
23 set, firm contract with Penta?

24 A. Correct.

1 Q. That's basically what you're telling them?

2 A. Given the program and what the agreement is that
3 they're building off, off drawings and specs.

4 Q. Let's move to Exhibit Number 1. This is Mr.
5 Marriner's contract. His testimony earlier in the trial was
6 that he was -- you were his prime contact, he was negotiating
7 this contract with you, is that correct?

8 A. That was on the contract between with myself and
9 Brandyn Iverson.

10 Q. But it looks like he put this contract together?

11 A. Yes.

12 Q. I think he testified that he put a kind of --

13 A. Yeah, he did.

14 Q. -- a term sheet or contract and gave it to you.
15 So this is the contract he sent to you?

16 A. Correct.

17 Q. And then tell me about the scope change in what
18 you had hired him to do and what he ultimately did?

19 A. Well, we had brought him on originally to help
20 kind of sales and marketing director for the condominium side
21 of things. Then we added what I would call a referral fee
22 type of situation with looking at originally with just
23 five -- what we were looking for was to have five local
24 founding investors. And as we were out raising capital on

1 the whole thing, and we ended up going through that five very
2 well and with a lot more interest, so it went pretty quickly
3 and we kept going, basically.

4 Q. So did you tell Mr. Marriner that instead of the
5 five founding members, he would be able to sell additional
6 founding members?

7 A. He could refer more, yes. And the same fee basis
8 would continue.

9 Q. But the language in the scope of the agreement,
10 Marriner will manage all aspects of the sales of the five
11 founding memberships and 28 condominiums approved on the site
12 plan. That was his language, right?

13 A. Correct.

14 Q. Was it your understanding that he had pretty
15 much -- was acting as your broker, your agent and could
16 manage all that?

17 A. Not as a broker agent on the memberships, because
18 that was being sold through the PPM. So that was more a
19 referral fee. I think what he had done there were more refer
20 to the 28 condos, which we would have fully documented that
21 in the future as we got to that. But that was more of
22 whether he would be the broker agent of record, that type of
23 situation. And you'd have to deal with both the California
24 and Nevada side, which is where he brought Steve Kegel into

1 it for the California side, as I understand it. But on the
2 referral side, it was purely a referral fee for three percent
3 or equity.

4 Q. When you say referral fee, he was given more
5 authority than just to bring a person into the fold, right?

6 A. No. I mean, what he was doing is that he would
7 register somebody and ask for -- you know, we would give him
8 permission to send documents, electronic docs that we had
9 prepared on to other people, but he registered those people
10 for his protection and ours. But everything was produced by
11 us.

12 Q. All the documents were produced by you?

13 A. Yes.

14 Q. Mr. Marriner did in fact communicate with the
15 people directly?

16 A. Certainly. No question.

17 Q. And were there some of the investors that Mr.
18 Marriner took the lead and did most of the communications
19 with?

20 A. You know, it differed by person. Some were less
21 interested and really digging in than others, I'd say that.
22 So some were quicker than others, let's put it that way.

23 Q. Were there some that he was the primary contact
24 for and you never talked to?

1 A. None that I never talked to. Whether I met with
2 them, there were some I had phone calls with, and they signed
3 up.

4 Q. When did you first become aware that Stuart Yount
5 was interested in subscribing under the private placement
6 memorandum?

7 A. I'd say around July.

8 Q. At that point, there was still a million and a
9 half dollars left under the private placement memorandum?

10 A. Correct.

11 Q. And then was it your understanding that Mr. Yount
12 was later provided with, and you don't have to look in
13 detail, but was provided by Mr. Marriner with both Exhibits
14 3, 4 and 5?

15 MR. WOLF: Objection, the question is
16 unintelligible. I can't hear what Mr. Campbell is saying.

17 MR. CAMPBELL: I'll rephrase.

18 BY MR. CAMPBELL:

19 Q. The question was, did you, without reviewing the
20 documents, did you believe that Mr. Marriner provided
21 Mr. Yount with Exhibits 3, 4 and 5?

22 A. The private placement memorandum, the offering
23 memorandum and the operating agreement. I am aware that he
24 certainly sent the PPM and the offering memorandum. I'm not

1 sure if he at that point had sent the operating agreement.

2 Q. That's the amended and restated operating
3 agreement, Exhibit 5?

4 A. Yeah. I'm not sure if he sent that at that time
5 or not.

6 Q. You don't know when and if he sent that?

7 A. I actually don't.

8 Q. These documents, at least Exhibit 3 and 4, are
9 dated in March of 2014, correct?

10 A. Correct.

11 Q. And then Exhibit 5 is dated May of 2014?

12 A. Correct.

13 Q. Mr. Yount's talking to Mr. Marriner in July of
14 2015, a year later, correct?

15 A. Correct.

16 THE COURT: Just a minute, Mr. Campbell. Would
17 you just pull that mic a little bit closer to you so my court
18 reporter can get you.

19 THE WITNESS: Great. I'm sorry.

20 THE COURT: Go ahead, Mr. Campbell.

21 BY MR. CAMPBELL:

22 Q. To your knowledge, were Exhibits 3, 4 and
23 potentially 5, not 5, Exhibits 3 or 4 ever updated or
24 supplemented to Mr. Yount?

1 A. Not that I'm aware of. Not the documents
2 themselves, other than information that was provided to him.

3 Q. Now, in July of that same time, 2015, had Hall
4 told you that the Hall -- the loan was out of balance and
5 that an equity infusion needed to be put in?

6 A. Not at that point. We saw it coming a little down
7 the line, so that's why we started looking to place that.

8 Q. Did you know that in July of 2015 that the Hall
9 loan was going to be out of balance in the very near future?

10 A. Yes.

11 Q. In your conversations with Mr. Yount, did you
12 explain to him that there needed to be an infusion of equity
13 to make sure the Hall loan was in balance?

14 A. No. We did speak about the fact that we were
15 definitely raising capital.

16 Q. Now, in July also, did you know that the
17 completion schedule of December 2015 was going to have to be
18 pushed back?

19 A. It was probably in August that that really kind of
20 went there. In July, we were still looking at opening in
21 December.

22 Q. So in August, it came to your attention it was
23 going to have to be pushed back?

24 A. Given what was happening on site with certain