

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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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

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DANIEL F. POLSENBERG (SBN 2376)

JOEL D. HENRIOD (SBN 8492)

ABRAHAM G. SMITH (SBN 13,250)

ADRIENNE BRANTLEY-LOMELI (SBN 14,486)

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

DPolsenberg@LRRC.com

RICHARD G. CAMPBELL, JR. (SBN 1832)

KAEMPFER CROWELL

50 W. Liberty Street, Suite 700

Reno, Nevada 89501

RCampbell@KCNVLaw.com

Attorneys for Appellant

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1 changes -- not changes, but things that were happening.
2 Sewage pipe is always a great example. It caused a great
3 delay. So that started, you know, I'd say late July, early
4 August is when we really started to have to look at the full
5 ramifications of that, along with other things.

6 Q. So the push in the schedule was due primarily to
7 the change orders?

8 A. Correct.

9 Q. The scope changes?

10 A. It was change orders, I mean, that was a big part
11 of just simply not being able to complete site work, by the
12 time we added the exterior work cut off, along with business
13 concerns, I would say.

14 Q. Potential unknowns when you say business concerns?

15 A. Starwood really wanting to know that you can open
16 in a -- had a gray time. Primarily, it was the change
17 orders. But that was also part of it, Starwood, and looking
18 at what the past couple of snow seasons had been.

19 Q. Did you tell Mr. Yount in this either late July or
20 August time frame when you knew that the construction --

21 A. I did --

22 Q. Let me finish my question. Did you tell Mr. Yount
23 that in July, August time frame that the construction
24 schedule was going to be pushed out?

1 A. Not Mr. Yount, but I did tell, I don't know if he
2 was the accountant or attorney, Mr. Tratner.

3 Q. And did you tell him the reason for why the
4 construction schedule was going to be pushed out?

5 A. You mean the opening schedule?

6 Q. Yeah, why the --

7 A. Yes. That it was construction and business.

8 Q. Did you ever have any discussions with Mr. Yount
9 that the schedule was going -- that the opening scheduled was
10 going to be pushed out past the December 12th date?

11 A. I think when I told him about that, honestly, I
12 think we spoke two, maybe three times, mostly in e-mail. But
13 I know we had an e-mail interchange where I did tell him that
14 it was pushed to a soft opening in late spring and the grand
15 opening on Father's Day.

16 Q. You did have some conversations with Mr. Yount
17 about the schedule push back?

18 A. I'm not sure if we spoke about that at the time,
19 but I know I sent him an e-mail. He had sent me an e-mail
20 asking about that, inquiring about that, and I sent him an
21 e-mail to let him know that.

22 Q. Let's see if we can identify that e-mail.

23 A. Probably early October, actually.

24 Q. I think that's exhibit number --

1 MR. LITTLE: 36.

2 MR. CAMPBELL: 36. Thank you, counsel.

3 THE WITNESS: I'm trying not to destroy it. Got
4 it.

5 BY MR. CAMPBELL:

6 Q. Do you believe this is the only e-mail you sent to
7 Mr. Yount regarding the schedule change?

8 A. Yes.

9 Q. Do you believe there were oral conversations with
10 Mr. Yount about the schedule change?

11 A. I don't recall if I had those conversations with
12 him. I'm not sure if Mr. Marriner did. I would say our
13 architect, who he knew very well, most of those -- many of
14 those decisions were kind of coming from him.

15 Q. Did you ever tell Mr. Yount that the schedule push
16 was due primarily because you were worried about a slack
17 winter and not enough tourists to fill the hotel?

18 A. That was one reason.

19 Q. When did you tell him that?

20 A. I told -- I don't think I spoke with Mr. Yount
21 about that. I think I spoke with Ken Tratner about that.

22 Q. Did you send an e-mail to Mr. Tratner?

23 A. Yes.

24 Q. There would be an e-mail string in here that would

1 confirm that, that the opening was pushed back?

2 A. At one point in time, we had looked at opening for
3 the party and then doing an opening in April or May, I think
4 when we talked. As we got a little further down the line, we
5 realized there was no way TRPA -- it wasn't TRPA. I'm sorry.
6 Washoe County would not give us a partial permit, basically,
7 to habitat the building.

8 Q. Just to clear for the record, you're pretty
9 confident that you sent Mr. Tratner an e-mail with reasons
10 for not opening on time, one of them being a potential soft
11 winter, and two being the change orders in the budget?

12 A. I think what I sent him -- I don't remember what
13 the reasoning was, but telling him what the -- I mean, in the
14 e-mail it was telling him when it was pushed back to. I
15 thought I talked to him and explained that.

16 Q. You don't know if in the e-mail or not there was a
17 reason?

18 A. Off the top of my head, I don't recall.

19 Q. So it's my understanding in July, you actually had
20 a conversation with Mr. Yount?

21 A. I believe so.

22 Q. Let's track to the exhibits. I know we've done
23 this a couple of times, but it will help us confirm these
24 dates.

1 A. What exhibit?

2 Q. Let's start with Exhibit Number 12.

3 A. Got it.

4 Q. This is dated July 16th of 2015 from Mr. Marriner
5 to Mr. Yount and you're cced on it. And it looks like
6 Mr. Yount had sent some questions to Mr. Marriner and then
7 did Mr. Marriner forward these questions to you?

8 A. I believe so.

9 Q. Okay. And then it looks like there was -- you
10 were trying to set up a time to respond to those questions?

11 A. Correct.

12 Q. Then if you go to Exhibit Number 22 -- excuse
13 me -- Exhibit Number 15.

14 A. Got it.

15 Q. And in the e-mail, again, from Mr. Yount, Mr.
16 Marriner, it goes down, it says you had a chance to talk -- I
17 understand that you and Robert had a chance to talk
18 yesterday. He hopefully was able to answer most of your
19 questions. So in that meeting, I would assume, would have
20 been on the 21st, as referenced in the e-mail?

21 A. Yes.

22 Q. You had a conversation with Mr. Yount?

23 A. That's what it says.

24 Q. Did you tell him in that meeting that the project

1 had been hit by some 5 million in change orders?

2 A. I believe, as I recall, there was a document where
3 I basically answered the questions and we spoke about the
4 same thing. That anything, any discussion would have been
5 around the fact that we knew we had at least 5 million and
6 then some, but that we were in capital raising and that we
7 were projecting that we need to raise an extra nine of debt,
8 along with the 1.5.

9 Q. Outside of any documents, do you remember in the
10 conversation with Mr. Yount that you told him in that
11 conversation probably would have been -- the 21st is the
12 first time you talked to him, right?

13 A. Yes.

14 Q. And do you remember in that conversation on the
15 21st telling him that the project was over budget, 5 million
16 plus?

17 A. In excess of 5 million.

18 Q. And you also said it could be more coming?

19 A. There will be more coming.

20 Q. Let me see if I can refresh your recollection with
21 your deposition here. May I approach?

22 THE COURT: You may.

23 BY MR. CAMPBELL:

24 Q. Page 37. So it starts at line four, I asked

1 Mr. Radovan, what do you remember? We were talking about the
2 conversation with Mr. Yount on the 21st.

3 A. Uh-huh.

4 Q. And you say -- why don't you go ahead and just
5 read the answer starting at line five.

6 A. What do you remember of it? Just telling him
7 about the project. It was the first time we had spoken, I
8 believe. Just telling him about the project and where it
9 was. Then we were talking about it was over budget. We had
10 been hit by 5 million plus at the time and probably more
11 coming going through the project. I'm not sure at that point
12 in time whether we had officially said we're pushing the
13 opening date, but I don't recall that.

14 Q. So it was probably 5 million. You didn't say it
15 was definitely over 5 million?

16 A. No, I think I did say that eventually. Isn't that
17 what I just read?

18 Q. And you just said and probably more coming. You
19 didn't know for sure?

20 A. We knew for sure. That's why we were raising
21 another \$9 million. Dave put it really well, these things
22 are kind of fluid. And as we go through a process, when you
23 have a thing you know you have to deal with, you don't know
24 what the price point of that is going to be. So you go

1 through a period of time where you're trying to ascertain how
2 much that is. We might have an estimate of what that is.
3 Actually, at that point in time, I'm saying it's over 5
4 million and then some.

5 At that point in time, if you look at the change
6 order logs and Mark Zakuvo logs, it was actually 2.5 that was
7 actually signed on that date. We knew there was quite a bit
8 more coming. But we just didn't know what the effect of it
9 yet.

10 I'll use the sewer pipe again, a thing like that
11 goes to repermitting, because you're taking out a pipe that's
12 40, 50 years old, and a 40, 50-year-old code. Now when you
13 replace that thing, you have to go to current day code. It's
14 not just time issue, it's where it is, the cost of
15 permitting, the cost of design, and then how long does it
16 take you to do that. Because every day you have a contractor
17 doing something, it costs.

18 So you go through a period of time where you're
19 trying to ascertain what that number is. So there's things
20 we knew that were coming and new things we were being hit by.
21 That's why this drew out over a number of months. But we
22 were taking, you know, very calculated numbers and using
23 those for what we needed to raise.

24 Q. In this July time frame in this conversation,

1 though, you only told Mr. Yount that it was hit by 5 million
2 plus and there was probably more coming, right? You didn't
3 tell him it was going to be nine, you didn't tell it was
4 going to be ten, right?

5 A. I told him we were raising an extra \$9 million to
6 cover for anything else that might happen.

7 Q. We'll go through that. That's in an e-mail, I
8 believe. But orally in this meeting, you didn't tell him
9 nine, you didn't tell anything else than this 5 million plus?

10 A. 5 million plus. And like I said, that's why we
11 were raising more money, because we knew that was roughly
12 coming.

13 Q. Then if we go to Exhibit Number 18. This was a
14 follow-up e-mail from you to Mr. Yount kind of answering the
15 questions he had propounded to Dave Marriner before.

16 A. Correct.

17 Q. And let me ask you this, in the meeting with
18 Mr. Yount, the telephone conversation, not the meeting, but
19 the telephone conversation, I believe it's the couple days
20 before that, as reflected in that e-mail, did you tell him
21 about the refinance of the mezzanine in that conversation
22 also?

23 A. I believe so.

24 Q. And did you tell --

1 A. You know, I looked at it in the write-up I did was
2 basically documenting our conversation, as I recall.

3 Q. Okay. And so your recollection was that you told
4 him that you were going to refinance the mezzanine piece with
5 the less costly piece?

6 A. Yes.

7 Q. And that was to cover the things enumerated in
8 this e-mail, that list?

9 A. Correct. I think there was -- I know that Dave
10 had sent him the update and I think, you know, the best of
11 our knowledge at that time, it pretty well lined out the
12 things that were problematic in that update that Hal
13 Thannisch and Kevin Case did.

14 And those are the things, if you go through all
15 the logs, the change order logs into the next couple of
16 months, it's pretty much all those issues that were priced
17 out and ended up getting the change orders. So we knew most
18 of the issues. We just didn't know how much they cost yet.
19 But we figured, when you say working between Peter Grove,
20 Allen Kevin, Mark Zakuvo and Penta that those are the rough
21 numbers.

22 Q. 9 million?

23 A. 9 million, plus -- it's really 10.5, because that
24 was the reason for the going out and raising that next piece

1 for the change orders that had actually been approved in
2 July.

3 Q. So just to be clear, your estimation was that to
4 cover the change orders actually issued by July and what you
5 anticipated in the very near future, that number could be as
6 high as 10.5?

7 A. It was nine at that time.

8 Q. But the some point, it could be up to 10.5?

9 A. We were pushing -- we were looking at nine at that
10 time, but hoping we could control it at that mostly.

11 Q. Now, in this e-mail, there's no quantification of
12 the amount of the change orders, that it's nine, that it's
13 seven, that it's five, right?

14 A. On this e-mail?

15 Q. Yes. Again, we're looking at Exhibit Number 18.

16 A. No.

17 Q. And you said Mr. Marriner had sent him Exhibit
18 Number 10, which is the monthly construction status report.
19 That, again, that delineated some change orders, but it
20 delineate the amount of the change orders?

21 A. That's correct. At that point, we still did not
22 know those, but we had estimated them right around the 9
23 million.

24 Q. If you'd look at Exhibit Number 24, Mr. Radovan?

1 A. Yes.

2 Q. This is an e-mail from you to Mr. Yount with
3 Mr. Tratner copied on that. Do you see that?

4 A. I do.

5 Q. When you say, I owe Ken the updated pro forma and
6 condo numbers, those would be numbers that talk about the
7 cash flow at the back end of the project?

8 A. I think what he had asked for is the hotel, the
9 hospitality pro forma. Because he was looking at having
10 some -- he had some hospitality people that he wanted to take
11 a look at it and get their opinion. This is rate, occupancy,
12 hotel performance. Those would be the sales numbers.

13 Q. That would show not so much the construction
14 portion of it, but once the hotel is open, what the cash flow
15 is going to look like?

16 A. Correct.

17 Q. Room rates, occupancy rates?

18 A. That's right.

19 Q. Those kinds of things?

20 A. Exactly.

21 Q. Then if you go to Exhibit Number 25, that's an
22 e-mail from Pete Dordick to Mr. Yount, Mr. Tratner is copied
23 on it, too. It says, Robert asked me to forward the enclosed
24 documents regarding the Cal Neva project. These includes our

1 projections for the condo project and our ten-year pro forma.
2 Is that the same thing you testified to?

3 A. Yes.

4 Q. The back end hotel performance?

5 A. Correct.

6 Q. Who is Pete Dordick?

7 A. Pete Dordick worked for us for about a year.

8 Q. Do you know what time frame he worked?

9 A. I think it was January -- January to December.

10 Q. January of?

11 A. Of 2014 -- sorry -- 2015.

12 Q. To December 2015?

13 A. Correct.

14 Q. I asked Mr. Criswell earlier in his questioning if
15 he ever remembered a meeting where the three of you were
16 together in Las Vegas discussing about Mr. Yount's
17 investment. Do you remember that meeting at all?

18 A. I do not. I remember being -- we were there at
19 the -- in Vegas at the Aria under a totally different
20 circumstance.

21 Q. You don't remember Mr. Criswell telling you that
22 there was a problem with the way Mr. Yount's purchase had
23 been structured?

24 A. Absolutely not.

1 Q. So the e-mails you talked about earlier, we saw a
2 couple of e-mails with Mr. Tratner involved in this August
3 time frame. The e-mails that you said you sent to
4 Mr. Tratner regarding the schedule issues, would those be in
5 that same August time frame?

6 A. I believe so, early August. Actually, that might
7 have been a conversation. I think I had a -- I think that's
8 where I spoke with him talking about the delays being
9 construction related due to the elements we talked about,
10 plus the business side of things as well, pressure from
11 Starwood.

12 Q. So you think there was actually no e-mails
13 commemorating that discussion?

14 A. Not me to him.

15 Q. Those were just oral conversations you said you
16 had with Mr. Tratner?

17 A. Correct. Yes.

18 Q. We talked earlier about the push in the schedule,
19 the same thing that you said you told to Mr. Tratner. That
20 by August, you knew the schedule was not going to be on track
21 for a December opening?

22 A. Correct.

23 Q. Did you tell Mr. Marriner that?

24 A. I believe so.

1 Q. And he would have known that?

2 A. I think, actually, Dave was traveling most of
3 August. He was down in Laguna or something of that type.

4 Q. Would he have known that the schedule was going to
5 be pushed?

6 A. I'm not sure actually. I couldn't say. He was
7 not involved in the construction aspects.

8 Q. Let me see if I can refresh your recollection.
9 Again, if I may approach, your Honor?

10 THE COURT: You may.

11 MR. CAMPBELL: Page 38, counsel.

12 BY MR. CAMPBELL:

13 Q. Let's see if this helps your recollection. I had
14 asked you some questions about Mr. Marriner. And at line
15 seven, I say, question, so Mr. Marriner would have known
16 about the same time you knew that the project schedule was
17 going to be pushed? You answer, yes. And I say, it's not
18 something you held back from him? And your answer was, of
19 course not. Does that refresh your recollection?

20 A. Yes, it does.

21 Q. So Mr. Marriner would have known in the August
22 time frame?

23 A. He would have known it if he was not traveling.

24 MR. CAMPBELL: Trying to be deliberate so we don't

1 repeat some of the stuff. Sorry for the little delay.

2 BY MR. CAMPBELL:

3 Q. Mr. Radovan, you've also been here in the court
4 and heard some testimony about the Mosaic loan?

5 A. Yes.

6 Q. When did you initiate conversations with the
7 Mosaic people about refinancing the project?

8 A. I believe that was probably September initially.
9 We had a broker, Phil Siber, who was working with us on that.
10 I believe it was somewhere in September.

11 Q. Could it have been as early as late August?

12 A. I don't think so.

13 Q. Okay. If I told you that in your deposition
14 testimony, you said it was probably either late August or
15 September?

16 A. Yes.

17 Q. You want me to show you?

18 A. September. No. That's fine.

19 Q. It could have been as early as late August?

20 A. Could have been. I'm thinking more September.

21 Q. Okay. And in your conversations with Mosaic, what
22 was the initial amount of that loan you were talking about?

23 A. I think it was in the high 40s, I believe, 48,
24 originally.

1 Q. Did that change?

2 A. It did.

3 Q. What did the number change to?

4 A. It went into I think it was 51.

5 Q. And when did that number change?

6 A. In late October, early November.

7 Q. So your recollection by the end of September it
8 was still \$48 million?

9 A. I believe so.

10 Q. Did you ever tell Mr. Yount that instead of a
11 mezzanine refinancing, you were looking for a new loan to
12 refinance the entire project?

13 A. I don't believe I did. We were looking at a lot
14 of different financing elements, and this was one that came
15 in as an option that allowed us to, when you take out the
16 mezz and the first, it was more expensive than the current
17 first, yet substantially cheaper than the mezzanine. So at
18 the blended rate, it did better than the two other loans.

19 Q. That would give you the funds, then, to finish the
20 project?

21 A. Correct.

22 Q. Without that refinancing, the funds would not --

23 A. Without a financing, as we've been talking about,
24 since even quite a bit before July, I was trying to ascertain

1 what that number was. When you're doing something of this
2 type, you don't want to repeatedly go out for capital. You
3 want to make sure what your capital requirement is and go out
4 one time.

5 Q. So by September, you were pretty confident that
6 this project was not going to go forward without a refinance?

7 A. We knew we needed a refinance. I wouldn't say
8 it's not going forward. There's way you can deal with that,
9 capital call, raise equity. But the preference of the
10 members was to not be diluted and go get debt. We certainly
11 felt we were under a debt equity ratio that was quite low.

12 Q. Did you ever tell the members that there was a
13 potential for a capital call?

14 A. We discussed it.

15 Q. When did you discuss that?

16 A. Sorry?

17 Q. When did you discuss that?

18 A. We discussed it as early as April and as some
19 things we saw coming. What really happened is we got through
20 the tower pretty well with some minor bumps in the road on
21 the tower. And as a typical rule, this happened for two
22 reasons on the Cal Neva. One, is that it -- the tower is the
23 farthest thing closest to the Lake and kind of down the hill.
24 So you had to start there and work your way out of the hotel.

1 It also happens that the vast, vast majority of
2 the rooms are in the tower. In a hotel -- we have 191 rooms.
3 In a hotel, you have to, first of all, make sure that your
4 room product is really good and you try to button down those
5 costs. Because your biggest risk in a hotel is always in
6 your room, because if you have one problem, you have 191
7 problems.

8 We got through that very easily. As Mr. Marriner
9 was saying yesterday, we're functioning 95 percent complete.
10 The only thing that is not complete in the tower is the
11 restaurant down on the bottom floor, which was about
12 85 percent.

13 As we got into the really old stuff, start to
14 break out that area, that's the elements that were built in
15 1934 is where we started having problems, both on the site
16 and interior.

17 Q. Under the refinance of the debt, you talked about
18 the total refinance. Was that an additional 21 million in
19 debt that would be loaded on to the project through that
20 mezz --

21 A. 20.

22 Q. 21?

23 A. It was 20.

24 Q. And that 20 million that was needed, that was the

1 money needed to pay for the change orders at that time frame?

2 A. Correct. Change orders and as we got to what we
3 decided to do, what the executive committee asked us to do in
4 early November was to take the loan up and they agreed to
5 approve that loan, if we could get a bit more money, I think
6 it was an extra 4 to 5 million, and I remember one or two
7 other minor things, which Mosaic agreed to do, and so that we
8 would have enough to complete.

9 So, basically, that was an added 15 and then
10 another five for contingency that we knew just so we had a
11 really nice buffer for anything else that could possibly
12 happen.

13 Q. But either way, you were going to add \$20 million
14 of debt to the project?

15 A. We were adding 16 -- 20 million of costs and 16
16 million of capital.

17 Q. But that the debt, I think your earlier testimony
18 was that the debt was going to be 20 million additional debt?

19 A. It was 16 million. We had 35 and we were going to
20 51.

21 Q. Did you ever tell Mr. Yount that you were adding
22 that amount of debt to the project?

23 A. I don't believe so. It was a bit more than we had
24 discussed originally looking at a mezz. But as the

1 verifications of all those, you know, the added 9 million,
2 everyone -- we were told we should go get more money and that
3 was already into early to mid November at that point.

4 Q. So Mr. Yount was not knowing anything about that
5 much additional added debt without you telling him about it?

6 A. The added, no.

7 Q. Now, by September of 2015, you'd actually
8 quantified the amount of the additional change orders. It
9 wasn't a moving target anymore?

10 A. We had it pretty well locked in at that point,
11 locked in. There was still some moving parts, but we felt
12 pretty good about where the number was.

13 Q. Let's look at the change orders. I know I've gone
14 over those with Mr. Criswell. If you could go to Exhibit
15 Number 43?

16 A. Got it.

17 Q. I know it's hard to follow. Change order number
18 12 that we talked about earlier.

19 A. Number 12. Got it.

20 Q. So as of the mid September, the change order had
21 pretty well been quantified as to that -- the \$9.3 million,
22 approximately?

23 A. Right.

24 Q. Now, if you go up to exhibit number -- same

1 exhibit, but if you'd flip over to change order number 13.

2 A. Yes.

3 Q. Change order number 13 then added approximately
4 another \$914,789 to the project, right?

5 A. Right.

6 Q. And that was -- this copy doesn't have a signed
7 version, but it says approval date of 11/10/15. Was this
8 change order actually approved and signed off?

9 A. I don't believe this one has been.

10 Q. Okay.

11 A. It's out there, but I think that's when we got --

12 Q. So change order 12 was the last one you had
13 actually executed?

14 A. I believe so.

15 Q. But the leg work, so to speak, for change order
16 number 13 would have been through the document between the
17 contractor and your construction manager that kind of
18 detailed those, right?

19 A. Yes.

20 Q. And those documents are behind this change order
21 is my understanding of how this change order process worked?

22 A. Right.

23 Q. So if you look at that change order number 13 that
24 we just looked at, it wasn't executed. But if you look at

1 the backup documents, a lot of these change orders it looks
2 like were in discussion. The very next page looks like Lee
3 Mason signed one on 9/2/15 and then signed some additional
4 ones on 10/26. So were these change orders being discussed
5 on --

6 A. Well, these are various PCOs, which details the
7 different items. And so that's just a cost reconciliation of
8 that item. And then that all rolls up into the overall
9 change order, which I don't think has been approved yet.

10 Q. If you go to the one that is three or four pages
11 past that, it's got a change order add on and it says
12 approximately \$784,500.86?

13 A. Correct.

14 Q. And that was signed off on by Mr. Mason in August
15 of 2015, right?

16 A. Yes.

17 Q. The additional \$784,000 was at least being talked
18 about back in August as to the change orders?

19 A. Uh-huh.

20 Q. Let's go to change order 14, if you keep going.
21 Again, does not appear that this change order was executed.
22 Do you see that?

23 A. Okay. Sorry.

24 Q. Are you with me?

1 A. Yes.

2 Q. We're at change order 14 and it says, specialty
3 restaurant reconciliation, correct?

4 A. Correct.

5 Q. This adds another \$1.452 million to the project?

6 A. That is one that we got a price on it and it was
7 still under debate with what do we do with that.

8 Q. And number was being at least talked about with
9 Mr. Mason, if you look at the next page?

10 A. Yes.

11 Q. At the end of September.

12 A. I think we got it down to 1.2, I believe. Yes.

13 Q. So as change order 12, you knew you had about
14 9.3 million and it's fair to say there was discussions about
15 adding some more money to the project?

16 A. Yes.

17 Q. Was that the money that you were seeking from the
18 refinance, would that have also gone to change order 13?

19 A. Yes. It would have taken everything into account.

20 Q. And change order 14?

21 A. Yes. If we so decided to go forward with that.
22 We knew we wanted to have the money or not. That was still
23 under debate.

24 Q. At least 13, that was --

1 A. It would have taken us, it also had enough capital
2 to take us through 14 as well.

3 Q. If you decided to go with it?

4 A. Correct.

5 Q. In this September, end of September time frame,
6 you knew Mr. Yount was still interested in contributing into
7 the project, right?

8 A. Vaguely.

9 Q. When you say vaguely, what do you mean by vaguely?

10 A. There was so little communication that it -- I had
11 no clue whether we were going to get there or not.

12 Q. Can you look at Exhibit Number 29?

13 A. Got it.

14 Q. This is an e-mail on September 8th between Mr.
15 Marriner, Mr. Yount and you're copied on that, correct?

16 A. Yes, I am.

17 Q. And it appears this is Mr. Yount and Mr.
18 Marriner's discussions about potentially getting a trust
19 officer in order to handle his investment, right?

20 A. Correct.

21 Q. Was it your understanding that the issue with
22 Mr. Yount's investment was not the availability of his cash
23 to do that, but it was more related to how to get his IRA --
24 money out of his IRA into the investment?

1 A. I couldn't tell you. Mr. Yount can obviously
2 write that check very simply. I don't know.

3 Q. This e-mail that you were copied on, clearly
4 projects that there would be a trust officer involved in
5 this, right?

6 A. I -- are you talking about 29?

7 Q. Exhibit 29, if you look at the first page. And
8 then the second page, Mr. Marriner writes Mr. Yount --

9 A. I think that's Dave reaching out to Mr. Yount just
10 asking, where are we? Any further questions? What can we do
11 to help?

12 Q. If you look at the second page, Exhibit 2495,
13 you're copied on the e-mail from Mr. Marriner on August 26th?

14 A. Right. Okay.

15 Q. And it says, checking to see if Jim Litchie at
16 Starker Services is able to accomplish your agent service for
17 your IRA?

18 A. Yes.

19 Q. You were in the loop as to what the issue was, as
20 far as Mr. Yount's funding?

21 A. That doesn't mean an intent to invest. And right
22 up until somebody writes a check, there's no deal. As Dave
23 said yesterday, I mean, people make offers on homes and walk
24 away two seconds later. That wasn't enough for us to sit and

1 wait for that period of time. There was really minimal
2 communication over a period of three and a half months.

3 Q. Okay.

4 A. I guess -- sorry.

5 Q. So we're up to September 8th on this e-mail.

6 Mr. Yount is at least communicating -- still communicating
7 with Mr. Marriner about funding, right?

8 A. Correct.

9 Q. Is that the point in early mid September when you
10 decided to go to Mr. Busick?

11 A. I started talking to Mr. Busick around, I think it
12 was right after Labor Day. And we were having dinner, having
13 a glass of wine, and told him where we were on the raise of
14 the added 1.5, and he said, yeah, I might be interested and
15 it kind of went forward from there.

16 Q. So did you ever tell Mr. Yount that Mr. Busick --
17 that you were communicating with Mr. Busick?

18 A. No.

19 Q. Did you ever tell --

20 A. We were talking to three or four others as well.

21 Q. Okay. And it's my understanding of the sequence,
22 Mr. Busick did a site visit?

23 A. So after my brief conversation with Les Busick
24 about it, Phil Busick, his son lives in Napa Valley, he

1 actually came to the office and went to lunch and wanted to
2 talk about it. I went through the process of where the
3 project is. They were a little distressed -- not a little,
4 they were quite distressed about the change orders, but at
5 the same time, were very happy with the project.

6 So we spent time and so I guess Les had asked Phil
7 to come sit down with me to go through it where it is. And
8 then thereafter, I don't know if this was now, the second or
9 third week, I honestly don't remember the date, that he went
10 through with Dave and the Penta guys. So they put together
11 kind of a list of all of the change orders, price points of
12 those things. Some that weren't completed yet, they were
13 pending, there was the signed off, ones that we knew
14 100 percent, those were the categories, and the pending ones
15 as well.

16 Les is a life-long construction guy and he wanted
17 to be able to go through those things with Lee. And,
18 frankly, I thought it was great that I wasn't able to be up
19 there, so he could go through it with Lee. So he went
20 through it with Lee and Dave and I think they spent four or
21 five hours, and he came away happy with understanding what it
22 is. Not happy that much was added. But these things, they
23 weren't anything due to I would say poor behavior or poor
24 management or anything.

1 These were all things -- there were some things
2 where we're making decisions, whether it's Starwood or things
3 that we thought we needed. A porte-cochere, a good example,
4 in a place like that, you need a porte-cochere at that level
5 as a luxury standard.

6 And also we had to qualify for Starwood's luxury
7 collection. They have a big list of things that you have to
8 have if you're going to be under that brand, any brand. If
9 you're Four Seasons, if you're Marriott, they will have a
10 standards list that you have to comply with. We actually
11 were very successful in getting many of those things not into
12 the project.

13 So the point is that Les came away from that very
14 happy and actually wanting to spend more money on doing other
15 things in the project.

16 Q. So Mr. Busick made his decision, because he was
17 fully informed of the scope of the change orders?

18 A. I would say that and where is the project standing
19 at that point in time and the likelihood of success.

20 Q. So when did Busick fund, according to your --

21 A. 29th.

22 Q. Did you know that after the 29th, Mr. Yount was
23 still interested in participating in the private placement
24 memorandum?

1 A. I did not know that until I was informed of that,
2 I don't know, a couple of days later.

3 Q. Informed by who?

4 A. I don't remember if it was Mr. Yount or Dave.

5 Q. Do you remember a conversation with Mr. Marriner
6 where he said, we've got a perfect storm brewing. If
7 Mr. Yount and Mr. Busick fund at the same time, what are we
8 going to do?

9 A. It wasn't the same time, that was impossible, but
10 I remember them talking about, it looked like they both could
11 fund. I think Les had already funded.

12 Q. And did you tell Mr. Marriner what you were going
13 to do if they, you know, contemporaneous funding like that?

14 A. It wouldn't be contemporaneous. But if later
15 Mr. Yount wanted to fund, there's an available share under
16 the PPM under the CR Cal Neva's founders share.

17 Q. So you would have to know whether or not Mr. Yount
18 wanted to still continue to buy a CR share?

19 A. Whether he wanted to buy a founders share.

20 Q. Yes. But he couldn't buy a PPM share anymore,
21 right?

22 A. Sure, he can. There's one available, the CR Cal
23 Neva. It was preapproved in the PPM that every single
24 investor signed.

1 Q. Under the PPM, it was capped to 18 and a half
2 million, right? I mean, to 20 million, but there was only
3 \$1.5 million left.

4 A. No. There was an available one under the CR Cal
5 Neva founders share in the PPM preapproved by everybody who
6 signed it. Every single investor signed that.

7 Q. It wasn't a part of the PPM offering?

8 A. Yes, it is.

9 Q. It was a sale of your share?

10 THE COURT: Hang on a second.

11 THE WITNESS: I'm not an attorney, but that is how
12 it was told to us given what was written in the PPM.

13 THE COURT: All right. Mr. Campbell.

14 BY MR. CAMPBELL:

15 Q. So you thought it would be the same deal, the same
16 sale to Mr. Yount, even though all the documents and
17 discussions with him were to be him to close out part of the
18 final PPM?

19 A. That he would be buying a founders share.

20 Q. Okay. Can you go to Exhibit Number 33?

21 A. Yes.

22 Q. You're copied on this e-mail. It's from Ms. Hill
23 to Mr. Coleman. Ms. Hill, I understand, is your personal
24 assistant?

1 A. I have a person who does that, yes.

2 Q. And she writes to Mr. Coleman, who is your counsel
3 at that time, right?

4 A. Correct. One of, but, yes, he handled these
5 situations.

6 Q. But he was a counsel who would handle this type of
7 a situation?

8 A. Correct.

9 Q. And it says he has prepared to fund next week. We
10 identified an individual and he is prepared to fund. That
11 was Mr. Yount, right?

12 A. Correct.

13 Q. You knew Mr. Yount was prepared to fund?

14 A. As of that point in time.

15 Q. As of October 2nd.

16 A. Correct.

17 Q. Who would like to use your trust account to
18 process this transaction.

19 A. Correct.

20 Q. Why would you use Bruce Coleman's trust account to
21 process a transaction where you were selling directly to
22 Mr. Yount?

23 A. Because he's buying the available share under the
24 PPM, the CR Cal Neva founders share.

1 Q. Let me get this straight. Your position is that
2 under the PPM, even though the cap was met with Mr. Busick,
3 you could still proceed under the PPM with all the
4 subscription agreement documents and still sell Mr. Yount the
5 share?

6 A. That is how I understand it.

7 Q. Ms. Hill says to Mr. Coleman, we assume there's
8 some sort of swap agreement CR will have to sign this paper
9 to paper this transaction above and beyond the typical
10 documentation.

11 A. Correct. We were trying to make sure that
12 everything was done in the proper manner.

13 Q. You knew, at least you were copied on this e-mail,
14 that there had to be some kind of a, quote, swap agreement?

15 A. I asked her to do that to find out, is there
16 anything else other than what we normally do in this
17 transaction?

18 Q. And normally would be the subscription agreement
19 that a subscriber would sign in the documents that were
20 provided to him under the PPM?

21 A. Correct.

22 Q. You asked her to find out?

23 A. Yes. If there's anything else other than what is
24 normally required.

1 Q. And then Bruce Coleman wrote back within a couple
2 of days to Ms. Hill and says, yes, there is something else,
3 correct? Are you looking at the e-mail, second page?

4 A. Yes.

5 Q. And it says, it requires that no member may sell
6 any part of his interest unless there's written approval from
7 the other members holding at least 67 percent. And he goes
8 on, you don't need to have a formal reading, but you need to
9 have something in writing.

10 A. I saw this after the fact. She had asked me if we
11 needed approval and I told her that -- it was preapproved.

12 Q. Well, your testimony is that you asked Ms. Hill to
13 make sure that there was -- that the transaction was
14 documented properly, Bruce Coleman gave her advise, and you
15 never found out about it?

16 A. She said we needed approval. I told her that it
17 was preapproved in the PPM.

18 Q. If it was preapproved in the PPM, why would you
19 ever ask her to go out and get a -- ask Mr. Coleman for what
20 kind of additional swap agreement you might need?

21 A. For the reason we try to do everything the right
22 way to make sure every I is dotted and T crossed.

23 Q. So this was -- essentially, what you were
24 proposing was a contract between CR Cal Neva and Mr. Yount

1 for him to directly buy one of your shares?

2 A. No. What I was proposing was that he was part of
3 the PPM and buying into that, and I was asking, is there
4 anything else required?

5 Q. And then a few days later, Ms. Hill receives an
6 assignment of interest in a limited liability company to be
7 used for the investment of Stuart Yount?

8 A. Yes. I believe that was actually after he had
9 funded, a couple of days thereafter.

10 Q. Did Ms. Hill tell you that now we have a document
11 that needs to be signed?

12 A. She did.

13 Q. Did you have Mr. -- did you have anybody execute
14 that document at that time?

15 A. No. What he had told us is that we needed to go
16 through the operating agreement, which I think it was maybe
17 even Bill who called me at that point in time. And we need
18 to get an approval of the transfer. I personally didn't
19 agree with that, but our he's our attorney, so --

20 Q. So at the time that Mr. Yount was funding, is it
21 your testimony that you now knew that you needed approval of
22 the transfer?

23 A. After he had funded, a couple of days later, yes.
24 That's what I was told.

1 Q. And did you ever try to get approval of the
2 transfer?

3 A. We went to the operating agreement and looked at
4 how those worked and we were going to do that, as it says, in
5 the next annual meeting.

6 Q. You don't believe you needed any conversation or
7 confirmation from Mr. Yount to tell him that instead of
8 buying under the PPM, he was going to in essence buy a share,
9 one of your shares?

10 A. I had thought Dave had actually told him that. I
11 did not. I communicated with him, talked to him two times.

12 Q. So if you thought Dave told him that, was it your
13 understanding that before this deal should be consummated,
14 Mr. Yount should have been informed about it?

15 A. I don't know. What I understand is Mr. Yount was
16 wanting a founders member share.

17 Q. Do you know if Mr. Yount was told by Dave?

18 A. I don't know for sure. He says no now.

19 Q. You heard Mr. Marriner's testimony. Did you tell
20 him not to tell Mr. Yount?

21 A. Of course not.

22 Q. Was there any prohibition from him telling Mr.
23 Yount?

24 A. Of course not.

1 Q. Do you think that the NDA agreement that he had
2 signed, the nondisclosure agreement that he signed --

3 A. No.

4 Q. -- prevented Mr. Marriner from telling
5 Mr. Yount --

6 A. No.

7 Q. -- oh, by the way, we shared the Busick thing, the
8 share, no more room under the PPM, but Robert is going to
9 sell you one of his shares?

10 A. No. As far as -- sorry. Whether Dave's NDA? I'm
11 sorry. I'm not understanding your question.

12 Q. Would that have prevented Mr. Marriner from
13 telling Mr. Yount?

14 A. I don't believe so.

15 Q. Did you bother to ask Mr. Marriner if in fact he
16 told Mr. Yount?

17 A. He was gone.

18 Q. You didn't call him or e-mail him or anything to
19 try to confirm whether Mr. Yount knew about the switch?

20 A. I did not.

21 Q. You said after you got the assignment agreement
22 from Mr. Coleman and you looked at the operating agreement?

23 A. Correct.

24 Q. Okay. And what did you look at in the

1 operating -- what were you looking for?

2 A. The transfers. The transfers.

3 Q. That would be the operating agreement at section?
4 That's Exhibit Number 5, I believe. And that's section 12.2,
5 is that what you were looking at?

6 A. Article 12.

7 Q. Article 12. So you read that?

8 A. Yes.

9 Q. And you saw there needed to be approval?

10 A. Yes. That's why Bruce was pointing out article
11 12.

12 Q. And did you see in the section at the bottom, end
13 of section 12.2, right before 12.3 on the next page that any
14 attempt to transfer such interest without such approval will
15 be null and void and will not bind the company or the other
16 members?

17 A. That's correct. If you go on to 12.3,
18 requirements for transfer, it goes on to say you actually
19 have to, first of all, complete the transaction, everything
20 signed. Then at the annual meeting or a special meeting, get
21 that approved. And if it's not approved, he keeps all the
22 economic benefits without members' approval.

23 Q. The direction that Ms. Hill gave to Mr. Coleman in
24 that Exhibit Number 33 we were looking at, says that Ms. Hill

1 told him, you have previously told me that you have approval
2 from the necessary members to transfer 1 million of the CR
3 share. Did you tell Ms. Hill that you had approval?

4 A. I told her it was preapproved as far as the PPM
5 goes.

6 Q. So your position is that the section 12.2 wasn't
7 necessary, because it had already been preapproved?

8 A. I didn't know. That's not what I said. I said we
9 asked him what was required under the PPM. Was there
10 anything that was different, because he has to sign the PPM,
11 otherwise he's not a founding member. So you have to start
12 there. Then what else? And so she asked and he said it
13 needs approval.

14 I thought in the PPM, it is preapproved under the
15 PPM, because the CR for reasons exactly like this, is we had
16 the ability to do that, so that we could for somebody that we
17 thought would be beneficial to be a member, that we had the
18 ability to do that. There's a number of places that we were
19 only going to be in for a million, but at the proper time, we
20 wanted to share that share. When he came back --

21 Q. Just to be clear --

22 THE COURT: Let him finish.

23 THE WITNESS: When he came back a couple of days
24 later and pointed to the operating agreement of the transfer

1 that we needed, we said, okay, let's go to that and what is
2 required with that? So the document that he sent still had
3 to comply with this.

4 And it says, first, you have to sign all of those
5 documents and actually close that, then at the annual meeting
6 or special meeting ask for the approval, and so we went by
7 this document.

8 BY MR. CAMPBELL:

9 Q. Your interpretation of the document?

10 A. I suppose so and it also is and it's --

11 Q. I don't understand.

12 THE COURT: Just a minute. Mr. Little, did you
13 have an objection?

14 MR. LITTLE: No, your Honor. Just that he allow
15 the witness to finish.

16 MR. CAMPBELL: I'm sorry. I thought he was
17 through, your Honor.

18 THE COURT: Go ahead, Mr. Campbell.

19 BY MR. CAMPBELL:

20 Q. Mr. Coleman told Ms. Hill that preapproval had to
21 be done, correct?

22 A. Correct.

23 Q. And sent a document, here's how you transfer --
24 here's how you do that, right?

1 A. Correct. That was after the fact, though.

2 Q. And your understanding is that there didn't have
3 to be any other documents necessary, no contract between
4 Mr. Yount, no notice to Mr. Yount, no agreement from
5 Mr. Yount that he was agreeing to buy a CR share with the
6 PPM?

7 A. He's buying under the PPM a founders share.

8 Q. So that's your position?

9 A. Yes.

10 MR. LITTLE: I am going to lay an objection.
11 Counsel has used the word preapproval. If you look at the
12 Exhibit 33, it doesn't say preapproval, it says approval, and
13 the operating agreement speaks for itself.

14 THE COURT: All right. I'll make that note.
15 Mr. Campbell, would this be a good time to take an evening
16 break?

17 MR. CAMPBELL: Sure, your Honor.

18 THE COURT: Mr. Radovan, you may step down.

19 MR. LITTLE: Your Honor, before we --

20 THE COURT: Go ahead.

21 MR. LITTLE: Before we go off the record, we were
22 talking with your staff informally about a schedule, and it
23 looks like we're hoping and shooting to get done with
24 testimony by Friday and we were talking about maybe

1 scheduling another day at your earliest availability for
2 closing arguments and decision from the bench or however
3 you're going to rule on that.

4 And I'd like to do that now so we're not spending
5 ten hours tomorrow night preparing closing arguments, if
6 we're not going to get that, which it doesn't look like we
7 will, particularly with the holiday.

8 THE COURT: Mr. Campbell, how much longer do you
9 think you'd need with Mr. Radovan?

10 MR. CAMPBELL: I don't think I need a whole lot
11 more time with Mr. Radovan, but tomorrow morning we have Mr.
12 Coleman that is probably going to be between direct and cross
13 and redirect and it's probably going to take at least an hour
14 and a half, I would guess.

15 THE COURT: Who is left on the witness list after
16 Mr. Coleman?

17 MR. LITTLE: Mr. Yount.

18 MR. CAMPBELL: And then Mr. Brandon Chaney and
19 then a potential impeachment witness.

20 THE COURT: We may not get through the testimony
21 this week. Mr. Wolf, what are your thoughts?

22 MR. WOLF: So we added a witness, I shouldn't say
23 added, we included in our trial statement Les Busick, we
24 won't be calling him. So the only witnesses left are

1 Mr. Yount, Mr. Radovan and Mr. Chaney and Mr. Coleman. I
2 certainly would like to complete testimony this week and
3 resume for arguments and ruling at a later date.

4 THE COURT: I agree.

5 MR. WOLF: I'd add any rebuttal testimony from Mr.
6 Marriner would be extremely brief.

7 THE COURT: All right. Well, let's get through as
8 much as we can this week and we may have to carve out another
9 day for testimony and then another day for argument. I'd
10 like to be able to rule from the bench.

11 So I thought we had an agreement this afternoon to
12 continue this case that is set for September 11th, however, I
13 seem to get some indication from the plaintiff's counsel that
14 they want to go forward. Well, this Court will do its level
15 best to clear the deck and give you all the time you need to
16 put on the case you feel is necessary on your client's behalf
17 and we'll just work around it. But we'll have a better idea
18 of when that window will open probably in the next day.

19 MR. LITTLE: Can we agree that the closing
20 arguments are going to be pushed to the another day?

21 THE COURT: Yes.

22 MR. LITTLE: Thank you, your Honor.

23 THE COURT: Based on I'm what I'm hearing,
24 Mr. Little, you may need another day for witnesses.

1 MR. LITTLE: Let's hope not.

2 THE COURT: But we'll see. All right. But we'll
3 continue to work on our schedule and make sure that it works
4 with everybody here as well and we'll get it done. I
5 appreciate the hard work that all of the attorneys are doing
6 on behalf of their clients. They're doing an outstanding job
7 and it's of great assistance to the Court. All right.
8 Mr. Campbell, anything else before we break for the evening?

9 MR. CAMPBELL: We'll see you tomorrow morning.

10 MR. LITTLE: No, your Honor.

11 MR. WOLF: Thank you, 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 30, 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 Plaintiffs, vs. CRISWELL RADOVAN, et al, Defendants, 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 389, 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 26th day of September 2017.

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

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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 III

20 August 31, 2017

21 9:00 a.m.

22 Reno, Nevada
23

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

1 APPEARANCES:

2 For the Plaintiff:

3 RICHARD G. CAMPBELL, ESQ.
4 Attorney at Law
5 100 W. Liberty
6 Reno, Nevada

7 For the Defendant:

8 HOWARD & HOWARD
9 By: MARTIN LITTLE, ESQ.
10 3800 Howard Hughes Parkway
11 Las Vegas, Nevada

12 ANDREW WOLF, ESQ.
13 Attorney at Law
14 264 Village Blvd.
15 Incline Village, Nevada

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1 RENO, NEVADA, August 31, 2017, 9:00 a.m.

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3 --oOo--

4 THE COURT: Good morning, ladies and gentlemen,
5 Mr. Little, your witness.

6 MR. CAMPBELL: I think we agreed to take Mr.
7 Coleman of order.

8 THE COURT: That's what I expected.

9 MR. CAMPBELL: Mr. Coleman is my witness.

10 THE COURT: Just a minute. Let's swear Mr.
11 Coleman in.

12 (One witness sworn at this time.)

13 MR. CAMPBELL: Your Honor, I think I need to stand
14 up there to have the witness see me.

15 THE COURT: That's fine.

16 BRUCE COLEMAN

17 called as a witness and being duly sworn did testify as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Good morning, Mr. Coleman. Can you see me okay?

22 A. Yes, I can.

23 Q. How long have you been representing Mr. Criswell
24 or Mr. Radovan on any, either individually or any of the

1 legal entities they have?

2 A. I started representing an entity owned by
3 Mr. Criswell in 1981, and then I met Mr. Radovan somewhere
4 around the year 2000 when the two of them first started their
5 own companies.

6 Q. When you started in 1981, you haven't been in the
7 courtroom, but Mr. Criswell testified you were kind of a
8 general counsel to his company, is that correct?

9 A. Yes. He had a real estate development company. I
10 was the in-house general counsel.

11 Q. And how long were you in-house with his company?

12 A. Six years.

13 Q. After six years, did you go to a firm or
14 something?

15 A. Yes. Starting in '87 until now, I've been in law
16 firms.

17 Q. Once you started in a law firm, did you continue
18 as kind of an outside general counsel for Mr. Criswell?

19 A. Yes. I did projects from time to time.

20 Q. How many different projects do you think you
21 helped -- let's start with Mr. Criswell up until 2000?

22 A. You mean after I left his company and then worked
23 with him from the outside from that point until the year
24 2000?

1 Q. Let's say from when you started kind of -- you
2 started in-house, then you transitioned to an outside general
3 counsel. So that period of representation, both in-house and
4 then outside general counsel up until the year probably 2000?

5 A. Oh, hard to say. Dozens of projects.

6 Q. And then you met Mr. Radovan in approximately
7 2000?

8 A. Yes.

9 Q. Is that when Mr. Criswell and Radovan formed some
10 kind of partnership or entity?

11 A. Yes.

12 Q. From 2000 until today, have you been continuously
13 representing Criswell Radovan or one of their myriad
14 entities?

15 A. Yes.

16 Q. How many projects do you think you worked on for
17 Criswell and Radovan?

18 A. Probably 20.

19 Q. Were you continuing to act as Criswell Radovan's
20 outside general counsel?

21 A. I wouldn't call it general counsel. I'm just an
22 outside counsel working on projects they hired me to work on.

23 Q. Did you represent either of the two individuals in
24 an individual capacity?

1 A. Not that I can think of. It was always in terms
2 of a project.

3 Q. No individual lawsuits or anything like that you
4 took an individual representation?

5 A. No. I don't do litigation and the real estate
6 work I do is for their companies.

7 Q. Have any of those projects that you've worked on
8 over the years with either Mr. Criswell, or both Mr. Criswell
9 or Mr. Radovan ever ended up in some type of litigation?

10 A. Yes.

11 Q. How many different times, do you think?

12 A. I can think of two just off the top of my head.

13 Q. Okay. Any bankruptcy filings on any of the
14 projects that you had helped on?

15 A. I believe, again, this goes back a number of
16 years, I believe there were one or two.

17 Q. And did those involve the -- either the Criswell
18 entity or Criswell Radovan or one of their development
19 entities filing or were they involved as a creditor, to your
20 knowledge?

21 A. No. Both of these were related to the Criswell
22 Development Company entities in the '80s, the 1980s.

23 Q. And were they the entity filing in some type of
24 chapter of bankruptcy?

1 A. I believe so. I mean, I know so in one case. The
2 other one, it may have just been just a foreclosure. I'm not
3 sure if there was an actual bankruptcy.

4 Q. Now, it's my understanding sometime in 2013 you
5 were asked by either Mr. Criswell or Mr. Radovan, one of the
6 two or in concert, to represent them on the purchase and
7 redevelopment of the Cal Neva Lodge property up at Lake
8 Tahoe?

9 A. That's correct.

10 Q. You were either contacted by one or both of them.
11 Do you know who first contacted you about representation in
12 that matter?

13 A. I don't recall. It may have actually been Brandyn
14 Iverson who worked with them.

15 Q. Have you worked with Brandyn Iverson, I believe
16 that's Mr. Criswell's daughter, over some of these projects?

17 A. Yes.

18 Q. How many projects have you worked with her on?

19 A. Probably at least a dozen.

20 Q. When you were first retained, it's my
21 understanding that you assisted them in forming some type of
22 corporate entities in the State of Nevada?

23 A. Yes.

24 Q. And that would be CR Cal Neva LLC?

1 A. Yes.

2 Q. Criswell Radovan LLC was already in existence for
3 a number of years, correct?

4 A. Yes, it was.

5 Q. Did you assist them in forming Criswell Radovan
6 LLC as a Nevada corporation or limited liability company?

7 A. No.

8 Q. And my understanding is you prepared some
9 additional documents related to the securities offering that
10 was used in the project, is that correct?

11 A. I prepared the operating agreement for Cal Neva
12 Lodge LLC.

13 Q. Your counsel has told me that you've got the
14 binders in front of you that were overnighted to you. Do you
15 have those with you now?

16 A. Yes, I do.

17 Q. If you could look just to exhibit number --

18 A. I'm sorry, which exhibit?

19 Q. Exhibit Number 3.

20 A. Okay. Okay.

21 Q. That's the operating agreement. The back half of
22 that exhibit, though, had a draft operating agreement,
23 correct?

24 A. Yes.

1 Q. It's undated, it's unsigned. That was attached to
2 the private placement memorandum to show the investors how
3 the operating agreement -- how the members' relationships
4 would be governed between each other?

5 A. Yes.

6 Q. It's my understanding that you drafted the
7 operating agreement?

8 A. Yes, I did.

9 Q. And did you assist in drafting the private
10 placement memorandum, which is the first half of Exhibit
11 Number 5?

12 A. No, I didn't.

13 Q. Did you review it during your course of drafting
14 the operating agreement so you can make sure that the terms
15 were consistent in the two documents?

16 A. I probably referred to it some for any facts I
17 might need for my drafting.

18 Q. Let's switch to Exhibit Number 5, which is the
19 amended and restated operating agreement.

20 A. Okay.

21 Q. Do you have that in front of you, Mr. Coleman?

22 A. Yes, I do.

23 Q. It's my understanding this document was amended as
24 of May 1, 2014, a couple of months after the private

1 placement memorandum was issued. As amended, were there any
2 significant changes between the two documents?

3 A. I don't recall anything significant, just some
4 polishing.

5 Q. And this amended restated operating agreement is
6 the document that the various members of the LLC that had
7 contributed under the private placement memorandum, this is
8 what would have governed the relationship with those people?

9 A. Yes, it is.

10 Q. And CR Cal Neva would also be governed from their
11 role in the LLC under this agreement, correct?

12 A. Yes.

13 Q. Could you look at section 7.4 of that amended and
14 restated operating agreement, Exhibit Number 5?

15 A. Okay. Just a second. Okay.

16 Q. 7.4 talks about a development services agreement,
17 correct?

18 A. Yes.

19 Q. And under that development services agreement,
20 Criswell Radovan were to act as kind of the developer under a
21 separate contract to assist in developing the project,
22 correct?

23 A. You say Criswell Radovan. I can't remember which
24 entity it was that was named as the developer. It says CR

1 meaning CR Cal Neva or its affiliate. Like I said, I can't
2 remember exactly which entity was the developer entity.

3 Q. That's my mistake. It was CR Cal Neva was named
4 as the developer.

5 A. Okay.

6 Q. And also they were the manager under the operating
7 agreement, correct?

8 A. Yes.

9 Q. I'm interested in the latter half of the section
10 7.4. You can see it. It starts as a total of 2 million out
11 of such costs. I want to be clear. It's your understanding
12 that the developers, either CR or Criswell Radovan, somehow
13 put money into the project for certain purposes, and in
14 return for putting that money into the project, they would
15 receive two shares under the private placement memorandum?

16 A. That's correct.

17 Q. And if we look at that, not all of it was cash
18 advanced. It appears that some of it was either an infusion
19 of the fees they had received under the development services
20 agreement or at least a book entry transferring that as an
21 amount, right?

22 A. Yes. I believe it says \$480,000 of it's
23 development fee was recontributed.

24 Q. All right. And when you drafted this document,

1 did you do any -- had you seen documents or a paper trail or
2 financial records that confirmed the cash into the project as
3 set forth in this paragraph?

4 A. No. I wasn't asked to do that. I don't typically
5 do that.

6 Q. That was just based on what your clients had told
7 you?

8 A. That's correct.

9 Q. Generally, section 7.4 governed how CR Cal Neva
10 got their two shares under the PPM and how they were to be
11 treated under the PPM as members?

12 A. Yes. I mean, the whole document refers to how
13 they're to be treated. But, yes, this document is why they
14 got 2 million interest.

15 Q. Did you assist at all in negotiating the
16 construction loan with Hall Financial I believe was the
17 company?

18 A. Yes.

19 Q. And what was your role in assisting with that?

20 A. Reviewing the loan documents. I say I assisted.
21 They actually had another outside counsel in California that
22 was the main attorneys representing the company in connection
23 with that loan, but I did assist them.

24 Q. Had you ever worked at all with Hall Financial on

1 any other previous loans that either Mr. Criswell's company
2 or Criswell Radovan had negotiated with Hall?

3 A. No.

4 Q. Part of the private placement memorandum included
5 what is called a subscription agreement. Are you familiar
6 with that document?

7 A. Yes.

8 Q. Did you assist in drafting that document?

9 A. No.

10 Q. Did you understand that under the subscription
11 agreement, that was what a potential investor under the
12 private placement memorandum would sign if they wanted to
13 invest?

14 A. Yes.

15 Q. In essence, it was a contract between a potential
16 investor and the company governing the terms of their
17 investment?

18 A. As -- I'm not a securities lawyer, but as I
19 understand it and from reading it, the main purpose is to
20 have the investor represent that they understand that this is
21 not going to be a security, it's a private offering. And the
22 investor represents that they're a qualified investor or
23 whatever the term is, you know, that they have sufficient net
24 worth and sophistication to make an investment like this and

1 that they would then be bound by the company documents.

2 Q. Okay. And that they would also -- they would sign
3 off on it and the terms that they agreed to would be the
4 terms that they're bound to?

5 A. Yes.

6 Q. And do you recall that document also had an
7 acceptance for someone at CR Cal Neva to sign and accept that
8 subscription agreement?

9 A. Yes.

10 Q. It's my understanding that under the subscription
11 agreement, your law firm, Powell, Coleman and Arnold, was
12 designated as the escrow agent to collect and distribute
13 funds under the subscription agreement?

14 A. Yes.

15 Q. And those funds were deposited into your firm's
16 trust account, correct?

17 A. Correct.

18 Q. Had you in the past handled escrow -- acted as an
19 escrow agent for transactions similar to this one?

20 MR. LITTLE: Object to the form. What do you mean
21 similar to this one?

22 BY MR. CAMPBELL:

23 Q. A real estate investment, some kind of a
24 development deal where the investors or partners or something

1 like that would deposit money into your trust account?

2 MR. LITTLE: I'm still unclear. You mean similar
3 to Mr. Yount's transaction or similar --

4 THE COURT: What is the objection?

5 MR. LITTLE: That it's vague.

6 THE COURT: All right. Sustained. Go ahead.
7 Just clear it up.

8 BY MR. CAMPBELL:

9 Q. Mr. Coleman, have you ever participated in any
10 type of real estate transaction where your firm acted as the
11 escrow agent?

12 A. I don't believe so.

13 Q. Is this the first time that your firm or at least
14 you as a partner in the firm were set up as the escrow holder
15 or the escrow agent for a transaction?

16 A. Yes. I mean, I have had occasionally clients or
17 parties send money to my trust account to be distributed, but
18 it's -- I don't ever recall having an escrow agreement such
19 as this before now.

20 Q. Okay. And generally when those parties deposited
21 money into your trust account, that money would not go out of
22 your trust account until certain conditions were met or
23 agreements were signed, is that correct?

24 A. When somebody sends the money to my trust account,

1 they would let me know how I was to handle it.

2 Q. Were those usually written instructions?

3 A. Usually. I mean, there may have been occasions
4 where it was oral.

5 Q. Okay. And I'm sure you're familiar with Texas Bar
6 Rules and I believe Nevada Bar Rules provide that -- Rules of
7 Professional Responsibility provides that funds in a trust
8 account have to be delivered to either a client or a third
9 party when the client is or third party is actually entitled
10 to receive those funds?

11 A. Yes.

12 Q. It's my understanding that the subscription
13 agreement on the Cal Neva transaction, there were actually
14 escrow instructions contained in the subscription agreement
15 package, correct?

16 A. Yes.

17 Q. And those written escrow instructions set forth
18 how money that came in under the Cal Neva PPM would be
19 distributed to whoever?

20 A. Yes.

21 Q. Let's go to Exhibit Number 33, Mr. Coleman.

22 A. Okay.

23 Q. We had a discussion in your deposition about
24 certain communications back and forth between you and your

1 client. And during the deposition, do you recall that the
2 communications that set forth in section -- in Exhibit Number
3 33, we didn't discuss them, because there was a confidential,
4 attorney-client confidentiality issue?

5 A. Yes.

6 Q. And I assume your counsel has now told you that
7 they waived the confidentiality as to Exhibit 33?

8 A. Yes.

9 Q. If you look at the first page of Exhibit 33,
10 Ms. Hill had sent you an e-mail. Are you familiar with
11 Ms. Hill?

12 A. Yes.

13 Q. How did you become familiar with her?

14 A. She is the assistant to Mr. Radovan and
15 Mr. Criswell.

16 Q. Does she on a regular occasion act as their
17 conduit to provide information to you, you to provide
18 information to them through her?

19 A. Yes.

20 Q. And what did you understand as to what kind of
21 authority she had to make decisions on behalf of the company?

22 MR. LITTLE: Objection, vague and overbroad.

23 THE COURT: Overruled.

24 THE WITNESS: She was, as we said a minute ago,

1 she would provide information or instructions to me that
2 originated from Criswell Radovan and she was kind of the
3 person who would keep track of paper work or kind of the
4 detail type person, but she's not the one that would make the
5 binding decisions on their companies.

6 BY MR. CAMPBELL:

7 Q. So you saw her as kind of -- somewhat of a conduit
8 between Mr. Radovan and yourself. She would gather
9 documents, forward you stuff, things like that?

10 A. Yes.

11 Q. That either Mr. Radovan or Mr. Criswell pretty
12 much spoke on behalf of the company and were the clients that
13 you were representing?

14 A. Correct.

15 Q. On the first page of Exhibit Number 33, she tells
16 you that Cal Neva is now identified a person who will take
17 the place of one of CR Cal Neva's \$2 million investment
18 bringing them down to \$1 million. When this e-mail was sent
19 on October 2nd, had you become aware that Mr. Les Busick had
20 invested approximately one and a half million into the
21 private placement memorandum?

22 A. I had heard -- I was familiar with him, since he
23 was already an investor, and I had heard that he was
24 discussing with them putting in another million and a half.

1 I don't know if on that date of October 2nd I had heard he
2 had completed that transaction.

3 Q. At some point close to October 2nd of 2015, did
4 you find out that in fact he had completed that transaction?

5 A. Yes.

6 Q. Okay. And then when you saw the first line from
7 Ms. Hill, take the place -- it says, an investor will take
8 the place of CR Cal Neva's \$2 million investment. Did you
9 take that to understand that Cal Neva were selling one of the
10 two shares that they were allocated in the private placement
11 memorandum that we talked about in the operating agreement
12 earlier?

13 A. Yes.

14 Q. They actually had two designated shares,
15 \$1 million each, right?

16 A. Yes.

17 Q. So this would have been a sale from Criswell
18 Radovan -- I mean, excuse me, CR as an entity to that
19 potential investor that was identified there?

20 A. That's correct.

21 Q. And then the next paragraph says, he is prepared
22 to fund next week and would like to use your trust account to
23 process the transaction. Did Ms. Hill or anyone tell you why
24 they wanted to use your trust account?

1 A. No.

2 Q. At that time, though, you were still the
3 designated escrow agent for the PPM to collect money under
4 the private placement memorandum, correct?

5 A. By that time, all the money had been collected
6 except for the million and a half.

7 Q. But under the PPM --

8 A. At that point, I didn't have any more money in the
9 account that hadn't already been distributed.

10 Q. At that point, the private placement memorandum
11 when Mr. Busick invested was still open for some additional
12 investment, and under the subscription agreement under that
13 private placement memorandum, you were the designated escrow
14 agent?

15 MR. LITTLE: I'm going to object. It
16 mischaracterizes the evidence.

17 THE COURT: Sustained. Rephrase the question.

18 BY MR. CAMPBELL:

19 Q. Under the private placement memorandum, we've
20 agreed that you were the escrow holder, correct, for money
21 collected under the private placement memorandum?

22 A. Yes.

23 Q. And prior to Mr. Busick's investment, there was
24 still room under the private placement memorandum for an

1 investor to invest?

2 A. Correct.

3 Q. And when an investor signed that subscription
4 agreement, they would see under the subscription agreement
5 that the money was to be tendered to Powell Coleman's trust
6 account to be held in escrow?

7 A. Well, I need to clarify that. Until the first
8 \$14 million was raised, it would be held in escrow and none
9 of it would be released to the company until 14 million had
10 been collected. And then after that, there was -- it may
11 have still gone into escrow, but it could be immediately
12 released.

13 Q. Okay. Let's look at that subscription agreement.
14 Maybe it will help us through this a little bit. Can you
15 look at Exhibit Number 42, Mr. Coleman?

16 A. Okay. I've got it.

17 Q. And this is from Sherrie Montgomery and there's an
18 e-mail below from Sherrie Montgomery to Heather Hill, again,
19 who we just talked about. In the first e-mail, Sherrie
20 Montgomery is saying to Heather, attached are the signed
21 document for the Yount IRA, please forward. And then we go
22 on to the next pages in that document and this is the actual
23 subscription agreement?

24 A. Yes.

1 Q. And in that subscription agreement that Mr. Yount
2 signed, part of the subscription agreement included the
3 escrow instructions to escrow and wire transfer information
4 where Powell Coleman was still designated as the escrow
5 agent?

6 A. Yes.

7 Q. And Mr. Yount's money ultimately did come into
8 your escrow account, correct?

9 A. Yes.

10 Q. Let's go back to Exhibit Number 33. Are you there
11 with me, Mr. Coleman?

12 A. Yes, I have it here.

13 Q. Thank you. After the sentence in the second
14 paragraph, the trust account, we assume there's some sort of
15 swap agreement CR will need to sign to paper this transaction
16 above and beyond the typical documentation. You saw that,
17 correct, in the e-mail?

18 A. Yes.

19 Q. And then, you know, the final paragraph just talks
20 about the wire instructions. That would be the wire
21 instructions to your trust account, correct?

22 A. Yes.

23 Q. So if we go to the next page in this exhibit, it
24 was an e-mail from you to Ms. Hill dated October 6th. You

1 start, still haven't got the million dollars. In the
2 meantime, you want to go ahead and make them aware of some
3 requirements in the operating agreement. Do you see that?

4 A. Yes.

5 Q. Okay. In this e-mail, when you say you want to
6 make them aware of the requirements of the operating
7 agreement, and then when you kind of delineate what those
8 requirements are, are you responding to Ms. Hill's question
9 on the previous page where she says, we assume there's some
10 sort of swap agreement CR will need to sign?

11 A. Not really. She and I had a telephone
12 conversation contemporaneously with this. I don't know
13 exactly which day it was. I told her I would be preparing
14 a -- the agreement was an assignment agreement where the CR
15 Cal Neva LLC would assign the million dollar interest to the
16 purchaser. That's what I guess she was referring to was a
17 swap. She didn't know what the name would be of whatever I
18 prepared.

19 This October 6th document in her e-mail was -- it
20 just occurred to me that they might not remember this
21 requirement, so I wanted to make them aware of it.

22 Q. And this was a requirement under the operating
23 agreement when one member would sell or transfer his share to
24 a third party?

1 A. Yes.

2 Q. So you were basically giving them legal advice on
3 how to paper this transaction. The legal advice you were
4 giving them was the second page October 6th e-mail, this is
5 what you need to do?

6 A. Yes. And, I mean, the way -- I mean, it was a
7 recommendation on how to do it. The operating agreement
8 didn't specifically say exactly how you get that approval. I
9 mean, what form the approval would take. There's different
10 ways to get it.

11 Q. It just required some type of written approval
12 from 67 percent of the members in the company?

13 A. Yes.

14 Q. And in the last page of that agreement -- excuse
15 me -- of that exhibit, Exhibit Number 33, you say, I'm
16 attaching a proposed form of assignment of interest in
17 limited liability company to be used for the investment of
18 Stuart Yount.

19 A. Yes.

20 Q. I wasn't provided with that assignment of
21 interest, but that was just a form that would assign one
22 share from CR to Mr. Yount, both parties would agree to it
23 and sign it?

24 A. Correct.

1 Q. Now, you know that Mr. Yount is the investor at
2 least by October 16th, correct?

3 A. Yes.

4 Q. And prior to writing this e-mail, did you have --
5 you had knowledge that Mr. Busick had already made his
6 investment?

7 A. Yes.

8 Q. So you knew Mr. Yount could not invest under the
9 PPM after Mr. Busick's money came in, because it was
10 essentially closed out under the terms of that offering?

11 MR. LITTLE: Objection, mischaracterizes evidence.

12 THE COURT: Overruled.

13 THE WITNESS: The way I would answer that question
14 is it wasn't -- when I first became aware that Mr. Yount
15 wanted to invest, it wasn't in the context of, well, either
16 he or Mr. Busick would be investing. It was we are
17 selling -- CR is selling one of its shares to Mr. Yount.
18 BY MR. CAMPBELL:

19 Q. Okay. That's what CR told you they were going to
20 do?

21 A. Yes.

22 Q. But you knew -- you've been keeping track of the
23 investments under the PPM?

24 A. Yeah.

1 Q. You knew -- excuse me. Go ahead.

2 A. What they told me made sense, that there wasn't
3 anymore room for Mr. Yount to invest under the \$20 million
4 private placement.

5 Q. Because of Mr. Busick's previous investment of the
6 1.5 million?

7 A. That's correct.

8 Q. And then it goes on in the second sentence, you
9 have previously told me that you have approval from the
10 necessary members to transfer 1 million of the CR interest to
11 Stuart Yount. This previously told me, who told you that
12 they had approval from the necessary members?

13 A. Heather Hill.

14 Q. In your previous page, you had told Heather Hill
15 that you'll need some kind of a writing, something in writing
16 to approve this deal. Did she give you any type of written
17 document that said the members have, you know, ratified or
18 approval this transfer?

19 A. No.

20 Q. Did she tell you that there had been some type of
21 a member vote and that the members had somehow voted, had a
22 meeting and actually voted on approving this transfer?

23 A. No.

24 Q. She just said they've approved it?

1 A. Yes.

2 Q. And you took her for her word at that?

3 A. Well, I mean, she said we have the approval.

4 Q. Okay. So she didn't tell you in any shape or form
5 how they had the approval?

6 A. No.

7 Q. And you didn't ask her for any written documents
8 to backup that statement?

9 A. No.

10 Q. Who was it that first told you that someone was
11 going to buy one of the CR shares? Was that the first time
12 you heard was the first page of Exhibit 33?

13 A. Yes, Heather Hill.

14 Q. And did you --

15 A. She called me on or about the same time she sent
16 this e-mail. I don't know which came first.

17 Q. Okay. And that's the point where either the
18 e-mail or the telephone call, you became aware that they were
19 now going to sell a share to some unnamed investor at that
20 point?

21 A. Yes.

22 Q. Did you ever talk to Mr. Radovan or Mr. Criswell
23 to confirm that in fact the other members of the LLC had
24 indeed approved such a transfer of the share at or about this

1 time frame?

2 A. Not at that time.

3 Q. And then I believe, if you recall, the money was
4 received into your trust account about October 13th or 14th,
5 correct?

6 A. Yes.

7 Q. And then -- actually, October 14th, and then on
8 October 15th, the very next day, you released it from your
9 trust account to Criswell Radovan LLC, correct?

10 A. Yes.

11 Q. And just to confirm that, let's look at Exhibit
12 Number 71?

13 A. Okay. Just a minute.

14 Q. That's probably in the second binder there.

15 A. Yes. Okay.

16 Q. That's the next to last page in that exhibit.
17 It's got a Bates stamp of CR 245.

18 A. Okay.

19 Q. CR Cal Neva was the owner of that share, correct?

20 A. Yes.

21 Q. Do you know why it was sent to Criswell Radovan
22 LLC?

23 A. CR Cal Neva requested me to send it there, because
24 they had an outstanding loan from Criswell Radovan in excess

1 of the million dollars, so they wanted to pay it directly to
2 Criswell Radovan.

3 Q. Let me get this straight. CR Cal Neva had been
4 loaned a million dollars from Criswell Radovan LLC?

5 A. My understanding was it was more than that. I'm
6 not sure the number.

7 Q. Did you prepare some type of a note documenting
8 that loan between those two companies?

9 A. No. I believe they had done that in-house.

10 Q. Just like an intercompany book transfer, if you
11 know?

12 A. Well, I don't know. I'm sure there was some
13 documentation, but I don't know -- like I say, I wasn't
14 involved in the documentation.

15 Q. But, anyway, they just basically told you, send it
16 directly to us, because CR Cal Neva owes us some money?

17 A. Correct.

18 Q. In this October time frame, you were representing
19 both Criswell Radovan LLC and CR Cal Neva LLC?

20 A. Criswell Radovan LLC? I don't recall that entity
21 doing anything that I was representing them on at that point.

22 Q. But you had a continuing relationship doing legal
23 work for Criswell Radovan LLC?

24 A. Oh, sure. Yeah.

1 Q. And at the same time you were representing the Cal
2 Neva Lodge LLC, correct?

3 A. Yes.

4 Q. So as representing the Cal Neva Lodge LLC,
5 ostensibly you're representing its members also, correct?

6 A. Yes.

7 Q. And you understood that Mr. Yount after this
8 transaction was going to become a member of the LLC, even
9 though he was buying a CR share, under your understanding, he
10 would still become a member?

11 A. Yes. He would -- he's buying a member share. So
12 he would step into their shoes and become a member for that
13 million dollars.

14 Q. Did you ever contact Mr. Yount or any other
15 members of the LLC to ask about this transaction, the CR
16 share transfer to Mr. Yount?

17 A. I didn't have any information on Mr. Yount and did
18 not contact him, no.

19 Q. Did you ever contact any of the other members of
20 the LLC to tell them about this transfer of the share?

21 A. No. That's not something I would typically do.
22 The client would do that.

23 Q. And at any time after October 13th up until, let's
24 pin it at February 1st of 2016, did you ever see any written

1 documentation whereby Mr. Yount agreed to purchase a CR
2 share?

3 A. No.

4 Q. Let's go to page 61, Mr. Coleman.

5 A. Okay.

6 Q. This is a multi page e-mail string and it looks
7 like you're not on the copy until the very first page of the
8 string dated January 25th, 2016.

9 A. Yes.

10 Q. Correct. And then there's a redacted portion
11 underneath. I assume that redacted portion had something to
12 do with Mr. Radovan asking you for some legal advice?

13 A. I assume so.

14 Q. And then do you remember that under this redacted
15 portion, that Mr. Radovan had forwarded you the Stuart Yount
16 e-mail to Dave Marriner and the other investors?

17 A. Yes.

18 Q. And in that e-mail, Mr. Yount says, I was never
19 asked, told or agreed to an investment or purchase of CR
20 \$1 million share. And then he says, see the attached
21 acceptance by Cal Neva Lodge of our founders unit?

22 A. Yes.

23 Q. So it was your understanding -- was this the first
24 time that you had heard that Mr. Yount had never agreed to

1 such a transaction?

2 A. This is first I had heard, yes.

3 Q. Without getting into any attorney-client
4 privilege, I assume you were looking into this particular
5 issue about Mr. Yount never having agreed to that. That's
6 why the e-mail was sent to you?

7 A. I assume so.

8 Q. Do you remember?

9 A. No.

10 Q. Let's go to Exhibit Number 63.

11 A. Okay.

12 Q. This is an e-mail from Mr. Criswell to Mr. Yount
13 and both you and Mr. Radovan are copied on that. Do you see
14 that?

15 A. Yes.

16 Q. And Mr. Criswell says to Mr. Yount, I've been very
17 busy since we had the Hyatt meeting. He goes, at that time,
18 I told you that I would send you documents we discussed with
19 you by Monday, however, then he goes on, there's a problem
20 with those. So had you been preparing documents for
21 Mr. Yount to sign on or about -- or between that January 25th
22 date and the February 1st date as reflected in this e-mail?

23 A. Yes.

24 Q. Who asked you to prepare those documents?

1 A. Mr. Criswell.

2 Q. And without getting into any privileged
3 communications, was information provided to you to assist in
4 filling in the -- filling in the blanks in the documents, so
5 to speak?

6 A. Yeah. He gave me instructions on what he would
7 like me to prepare, if that's what you're asking.

8 Q. Sure. Let's flip over to Exhibit 64 now, Mr.
9 Coleman.

10 A. Okay.

11 Q. It looks like now Mr. Criswell, it's an e-mail
12 string, the first couple of pages on the e-mail string show
13 some kind of a redaction between you and Heather Hill and
14 Criswell Radovan copied on the e-mail. Do you see that on
15 the middle of the first page on 212?

16 A. Yes.

17 Q. So I assume there was some kind of attorney-client
18 communication back and forth about those documents?

19 A. Yes.

20 Q. And then if we go further in the e-mail, you've
21 actually attached some documents. Am I reading this right,
22 that below the redaction, you had attached and sent documents
23 via e-mail to your clients?

24 A. Yes.

1 Q. Okay. And those documents were three-fold. There
2 was an assignment of interest in the limited liability
3 company?

4 A. Right.

5 Q. A purchase agreement?

6 A. Yes.

7 Q. And then finally a resolution?

8 A. Yes.

9 Q. And those were the three documents that you sent
10 to your clients?

11 A. Yes.

12 Q. I'd like to walk you through some of the language
13 in those. Let's start with the assignment of the interest.

14 A. Okay.

15 Q. On the second -- on the third whereas, it says,
16 the assignee and assignor have erroneously executed a
17 subscription agreement. Why was that language put into this
18 assignment document?

19 A. That was at the request of Mr. Criswell to reflect
20 the fact that there had been a misunderstanding as to the
21 documents that were necessary to be signed back in October.

22 Q. You'd seen Mr. Yount's e-mail that Mr. Radovan
23 forwarded to you, correct?

24 A. Yes.

1 Q. That's Exhibit Number 61?

2 A. Yes.

3 Q. Under number one, did it appear to you that
4 Mr. Yount was under the -- was agreeing that he was some kind
5 of -- had erroneously executed some document?

6 A. That's not the -- yes, his language does indicate
7 that.

8 Q. Let's go on to the next, it goes on, the
9 subscription agreement dated October 13th, that was what the
10 exhibit I showed you before that Mr. Yount actually signed,
11 correct?

12 A. Yes.

13 Q. And then that subscription agreement that he
14 signed indicated that he was purchasing an interest as a
15 preferred member of the company from the company, correct?

16 A. Yes.

17 Q. And then it goes on, when it actually -- when it
18 is actually the intention of the parties that assignee
19 purchase such interest from assignor rather than the company.
20 Where did that information come to you that somehow it was
21 the intention of both parties to do this CR sale to
22 Mr. Yount?

23 A. From Mr. Criswell.

24 Q. As we mentioned before, you had not received any

1 independent confirmation that in fact there was some kind of
2 intent of the parties to enter into that type of an
3 agreement?

4 A. No. Up until this point, the only information I
5 had was that CR was selling its share to Mr. Yount.

6 Q. And in Exhibit Number 61, again, Mr. Yount said he
7 was never asked, told or agreed to an investment or purchase
8 of the CR 1 million share. So you just went ahead and put
9 this language in at the direction of Mr. Criswell?

10 A. When Mr. Criswell called me to request me to
11 prepare this, he said that he had had a conversation with
12 Mr. Yount and that he had told Mr. Yount that he would like
13 to correct what had been done before and that is when he
14 asked me to prepare this. He said that Mr. Yount was --
15 would look at what we prepared and decide what to do.

16 Q. You say correct what had been done. Did
17 Mr. Criswell explain that correct?

18 A. The fact that he had always agreed to sell half of
19 his interest, and the way it was documented did not reflect
20 that.

21 Q. When you say he had agreed to sell half of his
22 interest, that was CR?

23 A. I mean CR, but he told me.

24 Q. So if we go to the next document in this exhibit,

1 number 64, it's the purchase agreement.

2 A. Yes.

3 Q. Now, this purchase agreement, the way you drafted
4 it, was to have CR or have CR purchase Mr. Yount's share from
5 the purported transaction that took place back in October of
6 2015. Is that what I'm reading correctly here?

7 A. This purchase agreement prepared as it was
8 explained to me by Mr. Criswell is that he had offered in
9 that conversation he had with Mr. Yount that if for any
10 reason Mr. Yount did not want to keep the million dollar
11 interest, that CR would buy it back from him for a million
12 dollars if CR itself had been repaid the money it had loaned
13 to the company, to Cal Neva Lodge LLC.

14 Q. So you were assuming that in fact at that point in
15 time, Mr. Yount legally owned his share in the CR, his share
16 of the CR?

17 A. These two documents go together. So that if the
18 first document that is signed, then CR -- it would be
19 documented that CR had sold a million dollar share to Yount
20 and then the purchase agreement was an option for Yount to
21 sell it back to CR if he didn't want it.

22 Q. So it's my understanding, the first document, the
23 assignment, and ultimately the third document, which we'll go
24 into a little more detail, the resolution of the members,

1 those both had to be accomplished before Mr. Yount would have
2 title to his share?

3 A. Yes. Before he officially becomes a member,
4 approval would have to be attained.

5 Q. And if you look at Exhibit Number 4 to the
6 purchase agreement -- excuse me -- paragraph number four in
7 Exhibit 64 on the purchase agreement.

8 A. Okay.

9 Q. You see where it says approval of members?

10 A. Yes.

11 Q. This is a condition to closing, right?

12 A. Yes.

13 Q. And a precondition to having the deal consummated,
14 so to speak?

15 A. Well, this is a purchase agreement. If for Yount
16 to then sell back his interest to CR, it says it would
17 require the purchase -- I mean, the approval of the
18 67 percent.

19 Q. The same thing that you were telling Ms. Hill in
20 October under Exhibit 33 that for CR to sell their share to
21 Mr. Yount, you had to have this same type of approval as set
22 forth in paragraph four of this purchase agreement?

23 A. Yes.

24 Q. Let's go to the resolution, the last document

1 here.

2 A. Okay.

3 Q. This says, at a special meeting of the members on
4 January 27th, 2016, the undersigned members holding at least
5 67 percent of the percentage interest in the company approved
6 the following resolution and the resolution is approving the
7 share transfer we've just been talking about. Did someone
8 tell you that there was actually a member meeting on
9 January 27th and that the members had in fact approved this
10 deal?

11 A. No. This was intended as a -- something to be
12 sent around to all the members. The operating agreement
13 allows written consent by the members in lieu of an actual
14 meeting. So, in other words, they would just vote by a
15 ballot sent around.

16 Q. So there was no meeting on the 27th?

17 A. No.

18 Q. And you made the effective date back to
19 October 13th, 2015. Was this in order to get the membership
20 approval to be backdated to when the actual sale to Mr. Yount
21 purportedly took place?

22 A. Yes. We wanted it to be effective as of the date
23 he actually put his money in.

24 Q. And it looks like, if you look at Exhibit Number

1 65, you actually sent Mr. Yount these documents we've just
2 been discussing, correct?

3 A. Yes.

4 Q. And I believe, subject to check, that the only
5 change was the amount of the -- put in about the note that CR
6 had made a loan to or Criswell Radovan had made a loan?

7 A. That's what it appears, yes.

8 Q. And that's in the purchase agreement?

9 A. Yeah. The paragraph three of the purchase
10 agreement had been expanded.

11 Q. So this purchase agreement?

12 A. Yeah, those were the conditions upon which CR Cal
13 Neva would be willing to buy back the Yount interest if he
14 didn't want to keep it.

15 Q. Okay. So you sent these to Mr. Yount, it looks
16 like at 4:59 p.m. on February 2nd. And if you go to Exhibit
17 Number 66, Mr. Yount sent you an e-mail back about an hour
18 and a half later at 6:29. And I don't need to read it, but
19 do you agree with me Mr. Yount wasn't going to sign what you
20 sent to him, correct?

21 A. Yes.

22 Q. And he didn't agree with any of the
23 representations that we were just talking about, about
24 someone made a mistake or the intent of the parties was such?

1 A. That's correct.

2 Q. And then, actually, Exhibit 66 is just the e-mail.
3 If you go to 67, that includes the actual attachment to the
4 e-mail, which is the subscription agreement that we talked
5 about before?

6 A. Yes.

7 Q. And in that attached subscription agreement at
8 page 259, we see that the CR Cal Neva had in fact accepted
9 the terms of the subscription agreement?

10 A. Yes.

11 Q. Let's go to the next exhibit, which is Exhibit
12 Number 70.

13 A. Okay.

14 Q. This again is an e-mail string where Mr. Yount is
15 now sending you his -- the wire transfer funds that he sent
16 to your firm on 10/14 of 2015, right?

17 A. Yes.

18 Q. That's the third page of this document, confirms
19 that the Western Alliance Bank sent a million dollars to your
20 trust account?

21 A. Yes.

22 Q. And then it looks like you in turn, it looks like
23 the next day, sent an e-mail to Mr. Criswell and Mr. Radovan
24 where you were, it looks redacted below so there was some

1 kind of attorney-client confidential information now about
2 what Mr. Yount had sent these documents?

3 A. Yes.

4 Q. Let's go to Exhibit Number 71.

5 A. Okay.

6 Q. And then this kind of follows up on Mr. Yount's
7 previous e-mail. Let's go back to the first part of the
8 string. So on the 16th, we just looked at the previous
9 e-mail, he shows the wire transfer to your firm, and the he
10 asked you some questions on the second e-mail on 244. You
11 say, I'll check my records and get back to you as to where
12 your money went. And then you get back to him later on, and
13 you say, I've attached the receipt for the wire transfer,
14 which we just looked at.

15 And then he asks you on top of page 243, why did
16 you send our money to CR instead of Cal Neva LLC, please?
17 And you respond to him on the first page of this e-mail, I
18 was told by CR. So when you say you were told by CR, that's
19 the conversation that we talked about on or about October --
20 first couple days in October of 2015?

21 A. Yes.

22 Q. And you say below, because Cal Neva Lodge had
23 already sold the -- all of the shares it was authorized to
24 sell under the terms of the agreement. I had no question the

1 sale -- question the sale of a portion of CR's interest to
2 you.

3 A. Yes.

4 Q. And then he goes on, give me the documentation
5 that says you were told. You didn't tell him you didn't have
6 any documentation, right? You responded saying, I do not
7 represent you and do not feel it's appropriate to get into a
8 back and forth conversation with you with your previous
9 transaction with CR. If you have any issues with that
10 transaction, I suggest you deal directly with CR.

11 I'm wondering why you sent that message. Weren't
12 in fact at that time you were representing CR and he's
13 talking to you about the legal issues related to that
14 representation?

15 A. No. I felt they were factual issues. He wanted
16 to know why I thought that there was a sale of the CR
17 interest to him. And since they were the ones that had dealt
18 with each other, I presumed, they could discuss that. Plus,
19 you know, I'm an attorney and he isn't. So I didn't want to
20 just get into that unless I was needed.

21 Q. Again, your assumption that you just testified to
22 was based on no written documents, no confirmation from
23 Mr. Yount, it was only your clients had told you had
24 happened?

1 A. Yes.

2 Q. Let's go to Exhibit Number 72. It looks like you
3 and Mr. Yount had another e-mail string and he's following up
4 saying -- he gave you a refresher saying January 27th, you
5 had told him, I am the attorney representing the company, and
6 he says Cal Neva, I assume. And then you come back to him
7 and say, my statement was accurate. I have represented and
8 continue to represent the Cal Neva Lodge LLC. I did not
9 represent the company with respect to your transaction,
10 because the company couldn't sell any more money under the
11 terms of the operating agreement.

12 So are you saying that -- you were still
13 representing Cal Neva Lodge LLC in October of 2015. We
14 established that right? You told me that?

15 A. Yeah. That's correct.

16 Q. But you were just in this transaction, what you
17 were telling Mr. Yount, I'm not doing any -- I'm not
18 technically representing Cal Neva in this deal, I'm
19 representing CR?

20 A. Correct.

21 Q. Then he goes on on March 23rd, he once again
22 respectfully requests any documentation of the written escrow
23 instructions causing his \$1 million to be given to CR. You
24 never responded to do that e-mail, right?

1 A. No.

2 Q. Because you didn't have any documentation to give
3 him, correct?

4 A. I didn't want to continue going back and forth
5 with him.

6 Q. But you didn't have any documentation to give him,
7 right?

8 A. Well, I wasn't the escrow holder so, no, I had no
9 escrow documents.

10 Q. You had no documents whatsoever that somehow
11 papered the transaction back in October 13th of 2015?

12 A. No, because the document I had prepared was not
13 signed.

14 MR. CAMPBELL: That's all I have, Mr. Coleman.
15 Thank you.

16 THE COURT: Mr. Little.

17 MR. LITTLE: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MR. LITTLE:

20 Q. Good morning, Mr. Coleman. Could you turn over to
21 Exhibit 42 in the binder?

22 A. Yes.

23 MR. LITTLE: You need me to come up?

24 THE COURT: It might help him.

1 THE WITNESS: Okay. Just a second.

2 THE COURT: Perhaps you can just point it at you
3 and stay seated at the table.

4 MR. LITTLE: I'll stand. It's all right. Thank
5 you, your Honor.

6 BY MR. LITTLE:

7 Q. Are you there, Mr. Coleman?

8 A. I got that in front of me now.

9 Q. This is the subscription paper work that Mr. Yount
10 filled out in connection with this transaction. The point I
11 want to clear up is what you said at the end. Did you
12 receive or see the subscription paper work that was filled
13 out by Mr. Yount at any time before you sent the money to
14 Criswell Radovan?

15 A. No.

16 Q. What are the instructions you did receive with
17 respect to this transaction?

18 A. CR had told me that Mr. Yount would be sending his
19 payment through my trust account, and when I received it, I
20 was to wire it to them.

21 Q. Now, counsel asked you whether you saw any
22 agreement with Mr. Yount agreed to purchase CR Cal Neva
23 share. Do you recall that?

24 A. Yes.

1 Q. Did he send you \$1 million, correct?

2 A. Yes.

3 Q. And did he give you any instructions contrary to
4 the instructions that had been given to you by CR Cal Neva?

5 A. He gave me no instructions.

6 Q. Sir, did you believe you were acting as an escrow
7 agent with respect to this transaction?

8 A. No.

9 Q. Did you believe that this was being treated as an
10 escrow situation under the private placement memorandum?

11 A. No. This was different than that. I mean, the
12 private placement memorandum had an escrow, because none --
13 it was starting from \$0. None of the investors wanted to put
14 in money first and have their money used and then risk there
15 not being enough money raised to go in there. So it was all
16 collected and held until \$14 million was there.

17 This was totally different. This was just one
18 owner selling a part of its share to one buyer. The buyer
19 pays and the owner sells.

20 Q. And you used your trust account for other purchase
21 and sale agreements like this, right?

22 A. I'm sorry. That didn't come through.

23 Q. Sorry. Have you used your -- I think you said
24 earlier that you have used your trust account for other

1 purchase and sale agreements like this?

2 A. Yes.

3 Q. Sir, can you turn over to Exhibit 5? I want to
4 explore the transfer section in the operating agreement.

5 A. Okay. Just a second. Okay.

6 Q. Let's start with section 12.3.

7 A. Okay.

8 Q. The second sentence says, subject to --

9 A. Okay.

10 Q. Subject to satisfying the requirements of this
11 article 12, any such transfer requiring approval of the
12 members pursuant this article 12 will be considered by the
13 members at the members' next annual or special meeting. Did
14 I read that correctly?

15 A. Yes.

16 Q. Can we now go over to section 12.6.1?

17 A. Okay.

18 Q. And that section says, following satisfaction of
19 the requirements of sections 12.3 and 12.4, a proposed
20 transfer of interest requiring the members' approval will be
21 submitted to the members for their approval after the
22 transferee has executed this agreement and any other
23 documents. Are you still there, sir?

24 A. Yes.

1 Q. And any other documents and instruments as the
2 company require. Did I read that correctly?

3 A. Yes.

4 Q. Sir, was CR Cal Neva required to get preapproval
5 from the members before they could close this transaction
6 with Mr. Yount?

7 A. No. The language that we previously read said it
8 could occur at the next annual or special meeting.

9 Q. Now, sir, is Mr. Yount's purchase of CR -- one of
10 CR Cal Neva's founders share, is it still a founders share in
11 Cal Neva Lodge?

12 A. Yes. It's the same as what CR Cal Neva held.

13 Q. If we look at 12.6.2 on page 35, even if by some
14 chance the members or 67 percent of the members refused to
15 approve Mr. Yount as a member, he would still hold the
16 economic benefits of that share?

17 MR. CAMPBELL: Objection. I don't think that's
18 what the document says. There's some additional conditions.

19 THE COURT: I'll let you clear that up on
20 redirect. You can answer the question.

21 BY MR. LITTLE:

22 Q. Sir, did you understand the question?

23 A. Could you repeat it, please?

24 Q. Sure. If by, hypothetically, this was brought to

1 the members for vote at the next annual meeting, which I'll
2 represent to you was in April, and the members, they couldn't
3 get 67 percent of the vote, would Mr. Yount still hold the
4 economic benefits of that interest?

5 A. That's what section 12.6.2 says, yes.

6 Q. Sir, I want to clarify something you said at the
7 beginning. You referenced two either bankruptcies or
8 foreclosures in the 1980s under Criswell Development,
9 correct?

10 A. Yes.

11 Q. That was before Criswell and Radovan came together
12 in the 1990s, correct?

13 A. Correct.

14 Q. That was also under a severe economic depression
15 of the 1980s?

16 A. Yes. There was a pretty bad real estate recession
17 in Texas in the late '80s.

18 Q. And your not aware, sir, of any bankruptcies that
19 have been filed with respect to any of the Criswell Radovan
20 entities, correct?

21 A. Correct.

22 MR. LITTLE: That's all I have. Thank you, sir.

23 THE COURT: Thank you. Mr. Wolf.

24 MR. WOLF: No questions, sir.

1 THE COURT: Thank you. Mr. Campbell.

2 REDIRECT EXAMINATION

3 BY MR. CAMPBELL:

4 Q. Mr. Coleman, when Ms. Hill told that they wanted
5 to use your trust account to handle this transaction, did you
6 question why they would want to use your trust account to
7 handle a transaction between an entity and an individual?

8 A. No.

9 Q. It could have been sent directly to CR, correct?

10 A. It could have been.

11 Q. And as we talked earlier, the documents that you
12 prepared in January -- excuse me -- in February and sent to
13 Mr. Yount that he didn't sign, those documents were really
14 intended to validate and make legal the transaction that took
15 place back in October of 2015, correct?

16 A. It was intended to document it the way I had been
17 told that it was -- the deal was done.

18 Q. But if the money sitting in your trust account,
19 you had been told the deal was done, if in fact the
20 conditions to a transfer had not occurred correctly, doesn't
21 section 12.2 of Exhibit 5 say any attempt to transfer or
22 encumber any such interest without such approval will be null
23 and void and will not bind the company or the other members,
24 correct?

1 A. Yes. That's correct.

2 Q. So if Mr. -- if the other members didn't approve
3 and the money was already gone out of your trust account,
4 that money would not have been protected in your trust
5 account, and, in fact, Criswell Radovan would not be legally
6 entitled to it, because the transfer would have -- the
7 attempted transfer was null and void, correct?

8 MR. LITTLE: Objection, mischaracterizes the
9 evidence.

10 THE WITNESS: No.

11 THE COURT: Overruled.

12 THE WITNESS: The section we read a minute ago,
13 12.3, approval ultimately has to be obtained, but it didn't
14 have to be obtained before they did their transaction.

15 BY MR. CAMPBELL:

16 Q. But if we look --

17 A. It would be at the next annual meeting.

18 Q. Your testimony when I talked to you about the
19 purchase agreement that you drafted, section four says that
20 as a condition to closing, approval has to be obtained,
21 right, you agreed with me on that?

22 A. That was the proposed deal that was being made by
23 CR and Yount.

24 Q. But a condition to close --

1 A. In other words, that was -- that was a private
2 agreement. And the way I was told to document that is this,
3 you know, we'll get the approval at the same time. That
4 doesn't mean that the operating agreement required it to be
5 done that way. That's just what the parties were proposing
6 or what my client was proposing.

7 Q. I understand that. But your testimony as it
8 related to the agreement that you sent Mr. Yount on that
9 paragraph number four was that as a condition to closing,
10 that approval had to be obtained, right?

11 A. Yes.

12 Q. And you're a transactional attorney, you
13 understand what a closing is, right?

14 A. Sure.

15 Q. And usually a closing involves all the parties in
16 agreement and then funds are released to the certain party
17 that is entitled to them, right?

18 A. Yes.

19 Q. Let's go back to section 12 here again. Under
20 12.1, it says, each member here agrees that its interest and
21 any economic benefit thereon are not transferable except as
22 provided in this article, right?

23 A. Yes.

24 Q. And then economic benefit is defined on its own,

1 not as an interest, but as part and parcel of an interest.
2 It's actually a definition of economic interest, right?

3 A. Correct.

4 Q. Then if you go to 12.6.3, if a proposed transfer
5 of interest is approved by all the members, the transferee
6 will then be admitted as a member and will be vested with the
7 rights and powers, right?

8 A. Correct.

9 Q. And that transfer of interest was never approved
10 by the members, right?

11 A. That is correct.

12 Q. Okay. And 12.6.4 just talks about if the proposed
13 transfer of interest is refused, then the -- the members
14 interest will be not be admitted as a member, they will not
15 have the right to participate in the business or anything
16 like that?

17 A. Yes. They would just have economic interest, but
18 no voting rights or any other.

19 Q. So it really delineates that they may -- in fact,
20 it says, when they're defined in section 12.2 -- excuse me --
21 12.1, economic benefit or economic interest only means the
22 profits or other compensation?

23 A. Yes.

24 Q. So there is a difference between getting a share

1 that is approved versus getting a share that has never been
2 approved through this type of transaction?

3 A. That's correct.

4 Q. So you may get -- you may not have any voting
5 rights, any membership, any interest in the company, but you,
6 ultimately, you get a carve out to say, well, at least at the
7 end of the day there's some type of a return or compensation
8 or income, then that quasi nonmember might be able to get
9 some economic benefit. Isn't that what we're talking about?

10 MR. WOLF: Objection, compound, vague.

11 THE COURT: It is. I'll sustain. But I
12 understand where he's going. Go ahead, next question.

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

14 THE COURT: Thank you.

15 RECROSS EXAMINATION

16 BY MR. LITTLE:

17 Q. One brief question. Mr. Coleman, we saw a series
18 of correspondence between you and Mr. Yount. Didn't he make
19 it pretty clear that he had no interest in having this issue
20 submitted to the membership for a vote, right? He wanted
21 out. Is that what you understood from his letters to you or
22 his e-mails?

23 A. That's what it appeared.

24 MR. LITTLE: Thank you.

1 THE COURT: Mr. Wolf.

2 MR. WOLF: Nothing. No questions.

3 THE COURT: Thank you, Mr. Coleman.

4 MR. CAMPBELL: One follow-up to that, your Honor.

5 THE COURT: Hold on, Mr. Coleman. You're not off
6 the hook yet. Go ahead, one more, Mr. Campbell.

7 REDIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Mr. Coleman, when you say in response to
10 Mr. Little's question, he wanted out, wasn't Mr. Yount in
11 those e-mails that we just talked about saying, I'm not going
12 to sign an agreement that I didn't agree to?

13 A. That's correct.

14 Q. And did you ever see any document where he says, I
15 want out?

16 A. He -- I mean, I don't know what his thought
17 process was. I mean, I never saw -- he wasn't demanding that
18 it be put to a vote for the members to get fully a membership
19 share.

20 Q. What he was saying is, I'm not going to sign any
21 of these documents you sent me, right?

22 A. Yes.

23 Q. And they were all part and parcel of the
24 assignment of the interest in the -- all three of them were

1 interrelated, right?

2 A. Yes.

3 MR. CAMPBELL: That's all I have. Thank you.

4 THE COURT: That's five questions.

5 MR. CAMPBELL: One area.

6 THE COURT: All right. Thank you, Mr. Coleman.

7 We'll take our morning break here. Court's in recess.

8 (A short break was taken.)

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

10 MR. CAMPBELL: I think Mr. Radovan is still on the
11 stand, your Honor.

12 THE COURT: Thank you. Mr. Campbell, your
13 witness.

14 BY MR. CAMPBELL:

15 Q. Good morning, Mr. Radovan.

16 A. Good morning.

17 Q. Yesterday afternoon, it was late in the day and I
18 just want to clear up a couple of things from your testimony
19 yesterday.

20 A. Okay.

21 Q. Is it your understanding that the only written
22 e-mail or document sent to Mr. Yount regarding the amount of
23 the change orders was the Exhibit Number 18, which is that
24 July e-mail.

1 A. Is it 18? I believe so.

2 Q. But I believe it's your position that you did tell
3 Mr. Yount about this verbally sometime in September?

4 A. No. I didn't say that. I said that this was the
5 result of a conversation I had with him in July.

6 Q. Maybe you misunderstood. But is it your position
7 that you did tell Mr. Yount about this \$9 million change over
8 sometime in September, a couple of months later?

9 A. No. I was referring to this document at the same
10 time in July.

11 Q. Let me refresh your recollection here. Do you
12 remember in your deposition you told me that you thought
13 there was an e-mail in September of 2015 that told
14 Mr. Yount --

15 A. Yes.

16 Q. -- that he had --

17 A. Correct.

18 Q. -- that you were over budget by 9 million?

19 A. Right.

20 Q. -- whatever the number was, right?

21 A. Yes.

22 Q. Then we took a break, and then you came back after
23 the break, you said I want to make a correction for the
24 record?

1 A. Right.

2 MR. CAMPBELL: May I approach, your Honor?

3 THE COURT: Yes, you may.

4 BY MR. CAMPBELL:

5 Q. You say I want to make a correction --

6 MR. LITTLE: What page are you at, counsel.

7 MR. CAMPBELL: Sorry, counsel, page 54.

8 BY MR. CAMPBELL:

9 Q. Right after the break, I asked you a question. We
10 were talking about Mosaic and I asked you, did you ever tell
11 Mr. Yount about the Mosaic, and you say, I did not. And then
12 you say, I want to make -- clear the record. Then we went
13 on, and you say, when I spoke earlier about the late
14 September, early October, that would have been a verbal
15 conversation, not an e-mail that was sent. Right?

16 A. Correct. I was referring to the July conversation
17 and e-mail.

18 Q. Just to refresh your recollection, it is your
19 position in late September or early October, you told
20 Mr. Yount that there was in fact a --

21 A. No. I was referring to the July conversation.
22 I'm sorry. I misstated that.

23 Q. So the correction in the deposition was wrong,
24 too, there was no verbal conversation?

1 A. Correct.

2 Q. So the only written document we have that purports
3 to tell Mr. Yount about the over budget amount is your
4 e-mail, that Exhibit Number 18?

5 A. Correct. As well as the conversation at that time
6 as well.

7 Q. Right. And the conversation around those dates?

8 A. Correct.

9 Q. And as to Mr. Tratner, I just wanted to make
10 clear, too, there are no contemporaneous written documents,
11 an e-mail or a letter or anything else, where Mr. Tratner and
12 you had a conversation that said, oh, by the way, there's a
13 delay in the project?

14 A. No. I had a conversation with him and discussed
15 that with him.

16 Q. But there's no written documentation
17 contemporaneous around that time?

18 A. Not from me. We did send him information. That
19 information was requested.

20 Q. We don't have a writing that says, Mr. Tratner, I
21 wanted to let you know that the project is over budget 9
22 million because of change orders?

23 A. I think I probably had the same conversation with
24 them relative to this e-mail.

1 Q. With Mr. Tratner?

2 A. I believe so.

3 Q. Let's move into this October, November time frame
4 right about when Mr. Yount funded.

5 A. Uh-huh.

6 Q. Was the project pretty much out of money by that
7 time?

8 A. No.

9 Q. Were you paying all of the other contractors on
10 the job?

11 A. Yes.

12 Q. Xavier Moulin, he was somebody you had just hired
13 to be kind of the hotel --

14 A. General manager.

15 Q. -- general manager. Did you pay him all the money
16 that you owed him under the contract?

17 A. There, we were paying him, but he -- in the time
18 he departed as the project got into February, he was still --
19 he was owed money.

20 Q. And, in fact, he sued Criswell Radovan claiming
21 that he was --

22 A. Cal Neva and Criswell Radovan.

23 Q. He was claiming that he was never paid the up
24 front moving expenses that he was entitled to?

1 A. He gave us those expenses as he departed.

2 Q. And your understanding of your agreement with him
3 was that you were going to pay his moving expenses to go from
4 the Bahamas to Lake Tahoe?

5 A. Certainly.

6 Q. Were you paying Hal Thannisch at that time in
7 October of 2015?

8 A. Yes.

9 Q. You know Mr. Thannisch filed a claim in the
10 bankruptcy court for some \$94,000?

11 A. Correct.

12 Q. So when did that money accrue?

13 A. I think it was -- it went from November, December
14 and January.

15 Q. There was no construction on the project in
16 November and December, was there?

17 A. Yes, there was. Construction didn't stop until
18 the holidays and there was still construction going on in
19 January.

20 Q. You're saying all the Thannisch claims in the
21 bankruptcy court for \$94,000 was all work --

22 A. He was still working for months in January and
23 February, working with Penta.

24 Q. And then who was Paul Duesing?

1 A. Paul Duesing is the interior designer.

2 Q. When was Paul Duesing doing work?

3 A. Throughout the construction.

4 Q. They filed a claim for \$90,000, correct?

5 A. Correct.

6 Q. Was that for work performed that was on the book
7 by October?

8 A. Basically, anything prepetition, anything that
9 would be on the book was anything that was unpaid at the
10 point of the filing, which was in May.

11 Q. So some of that Paul Duesing money owed to him was
12 due and owing by October and November of 2015?

13 A. Probably by November, not in October.

14 Q. And how about North Star Demolition, what was that
15 company?

16 A. One of the contractors.

17 Q. Was that outside of the Penta contract?

18 A. You know, I'm not sure, actually.

19 Q. And they -- I assume from their name North Star
20 Demolition, they did demolition work?

21 A. Yeah. It was probably one of the asbestos
22 abatement companies.

23 Q. When was that work done?

24 A. Most of the work was done in -- preclosing. So

1 that would have been summer of 2015. Because that work, the
2 majority of that work had to be completed prior to the loan
3 closing. So we had a separate contract where Penta, because
4 of the nature of the asbestos issues, they did not want to be
5 part of the contract.

6 So we paid them to manage the process, but paid,
7 it was probably four different asbestos abatement companies.
8 So we did most of that asbestos abatement prior to the
9 contract happening, because it was outside the contract.
10 That did continue on.

11 But right at the end, as we got into the certain
12 areas of the old building, they would abate certain small
13 areas at one time. There's still -- the showroom still needs
14 the abatement. It's simple, what do you call it, the popcorn
15 on the ceiling kind of stuff. But I don't know what their
16 claim is, but it would have been something that was done
17 probably November, December.

18 Q. That was \$96,000 of demolition work you're
19 claiming was done in November, December?

20 A. There could have been some in October as well.

21 Q. And then Brandyn Iverson, we talked about her.
22 There's a list on the schedule for \$100,000. Was that --

23 A. She loaned the company --

24 Q. Was that part of the note?

1 A. She loaned the company \$100,000.

2 Q. When was that?

3 A. And that's along with her, Mike Dickson, Charles
4 Munnerlyn, that was done, I believe, in February.

5 Q. Of?

6 A. Of 2016.

7 Q. While we're on the subject, let's go to Exhibit
8 Number 65. I'm not going to go over all the details of the
9 purchase agreement that we just went through with Mr.
10 Coleman. I just have one real focused area. That's under
11 the purchase agreement. And if you look, that's Bates stamp
12 270 within the purchase agreement?

13 A. I'm sorry. It's what?

14 Q. 270. There's three documents attached to that
15 e-mail.

16 A. Okay. Yes.

17 Q. And what I'm looking at is under the closing date,
18 paragraph three?

19 A. Okay.

20 Q. Are you with me?

21 A. I am.

22 Q. In that paragraph, there's a condition to the
23 closing, but it talks about the company repays the buyer
24 \$1,016,388 previously loaned to the buyer from the company.

1 So that was a loan that -- between your various entities?

2 A. Correct.

3 Q. And we know that you used Mr. Yount's \$1 million
4 to pay off a previous -- some previous debt you had, right?

5 A. Yes.

6 Q. When was this 1 million plus dollars loaned? When
7 did that take place?

8 A. It was from things that were over and above the
9 \$2 million of equity that we were loaning into the company
10 for -- during the period of time where we were paying out
11 those big, fat extension, quarterly extension fees.

12 Q. Do you remember when this loan, was it a single
13 loan or a series of loans?

14 A. It was a series of loans. I think it was three.
15 Actually, we did a -- that number has come down. As we did
16 a -- from this point in time on, this was done February 2nd,
17 we did an audit and there are two entities, Cal Neva and Cal
18 Neva Lodge. How that happened was we did the seller
19 financing on the Canyon Capital.

20 So to create that structure, they did New Cal Neva
21 Lodge was their entity. We came in as Cal Neva Lodge. So
22 the equity in the company if we raise all the equity and
23 we're able to close with the minimum of 14, we basically
24 bought out Canyon. And so we ended up having the two

1 entities, Cal Neva Lodge where all the equity lied, and then
2 New Cal Neva Lodge where the land was held, all owned by Cal
3 Neva Lodge. It wasn't done by design. It was a function of
4 the financing. So really they're functionally one company.

5 So as we closed in 2015 -- sorry -- 2014 and took
6 Canyon out, we had kind of that stub year for the new entity.
7 So we really because of the two entities, we couldn't do a
8 full audit, annual audit until 2016, because of the two
9 entities. So when we did that audit, that number did come
10 down to I think it was about 800,000.

11 Q. But at least as of October, November of 2015, that
12 amount had been loaned to the company?

13 A. Yes.

14 Q. And that would be a debt to Cal Neva, right?

15 A. A debt to Cal Neva owed to CR Cal Neva.

16 Q. Was that debt disclosed to the members of the LLC?

17 A. Oh, certainly.

18 Q. Let's move to the December 12th meeting. You've
19 been here through the trial. Mr. Criswell said there was
20 initially an executive committee meeting, is that correct?

21 A. Correct. Really, the whole meeting was held. I
22 think what happened is that the executive committee, you
23 know, walked in and basically they said let's just -- as a
24 general rule, unless there was certain things that we thought

1 shouldn't be heard by the overall, we held these meetings
2 open to the public -- open to members. Nobody was excluded
3 from an executive committee meeting.

4 Q. So what was designated as an executive committee
5 meeting, preparing some notes?

6 A. It included many other members.

7 Q. All of the members all were heard?

8 A. Right.

9 Q. Do you remember who the members were in that
10 meeting who were not on the executive committee?

11 A. Some of them, Dicksons, Munnerlyns, Martins,
12 Dave -- Marriners, Molly, and some of the IMC folks that were
13 not on the board.

14 Q. When you say IMC, that was an entity that
15 invested, but actually -- it was an investment club --

16 A. Yes.

17 Q. -- that has five or six members, correct?

18 A. Right.

19 Q. So according to Mr. Criswell, you gave the initial
20 kind of presentation?

21 A. Uh-huh.

22 Q. To what we now know as the executive committee
23 members and some of the members?

24 A. Right.

1 Q. And did you tell them at that point that there had
2 been an amount of the over budget that was --

3 A. Certainly. They were aware of that from the
4 meeting the month before in November.

5 Q. The executive committee members?

6 A. The executive committee members and there were a
7 number of nonexecutive committee members in that meeting as
8 well.

9 Q. What was the amount in the -- that was discussed
10 in that meeting as to at that time the amount?

11 A. I think it was right around the 9 million, 9
12 million and change.

13 Q. As we talked yesterday, there were two more change
14 numbers in the line that took that number way up, right?

15 A. Took it up to the 10.1, I believe was what the
16 number was.

17 Q. And did you tell them that those change orders are
18 in the line that we haven't signed yet?

19 A. Certainly.

20 Q. It was higher than nine?

21 A. Ten.

22 Q. It would be the total order change order 12,
23 proposed change order 13 which was not executed, and I
24 believe 14 had to do with the kitchen, kind of whether or not

1 to do it?

2 A. Sure. And those things were all functionally
3 known, we just didn't have numbers to them. Frankly, I think
4 they were all the items in the July update just with numbers
5 attached to them.

6 Q. This was the first time that the numbers to the
7 change orders were provided to all of these people?

8 A. No. That was in November as well.

9 Q. And did you tell the group there in that first
10 member meeting, slash executive committee meeting, about the
11 Mosaic loan?

12 A. Yes.

13 Q. And did you tell them that the Mosaic loan was --
14 the amount of the Mosaic loan was going to be --

15 A. Yes.

16 Q. -- approximately \$21 million?

17 A. 51.

18 Q. 51.

19 A. Yes. We discussed that back in November as well.

20 Q. And it was going to be adding another 21 million
21 of debt to the project?

22 A. 20, yes.

23 Q. Just so I'm clear on the number, because I think
24 there's been a couple of different numbers bandied around.

1 MR. CAMPBELL: If I may approach, your Honor?

2 Page 51, counsel.

3 THE COURT: Certainly.

4 BY MR. CAMPBELL:

5 Q. Mr. Radovan, in your deposition, we had a
6 discussion about the Mosaic loan. And I asked you, so you're
7 looking to raise approximately another 21 million. And you
8 say, correct. And what was that 21 million going to? You
9 say, it was fees and the different loans and then all of the
10 balance to complete. It was probably in September when we
11 started with them. And then I asked you, so in September,
12 you were injecting 21 million of additional money to complete
13 the project? You said, roughly that. Did that refresh your
14 recollection?

15 A. Yes. That's going from 51 up to 71.

16 Q. So you told the members at that meeting that the
17 Mosaic loan, total amount of the Mosaic loan was now going to
18 be 51?

19 A. 50.

20 Q. That was an increase in debt of at least 20 to \$21
21 million?

22 A. From 35 to 51, 16 million.

23 Q. Did you tell them that without that Mosaic loan or
24 some other financing that the project was not going to be

1 complete in the spring of that next year?

2 A. Yes. We said that we needed -- we needed that
3 financing, that or any other type of financing. But -- well,
4 we'd been talking about that for months, that we were seeking
5 financing.

6 Q. Did you tell them where you were in the process
7 with Mosaic?

8 A. Yes. And we spoke with them in the meeting prior.
9 They had asked me to go back -- I had asked for approval of
10 that loan in November, early November. And they had asked me
11 to go back and get the loan amount up, and I forget what the
12 other one or two minor issues, and achieve that end.

13 Q. So you met with Mosaic in November?

14 A. Spoke with them. Yeah, I did meet with them.

15 Q. Spoke with them?

16 A. Yeah.

17 Q. And then --

18 A. So we were asking to have the loan approved and
19 that's kind of where it got a little testy, the IMC and
20 Molly, basically. Molly was chirping in that we should raise
21 equity, not debt.

22 Q. Did you continue to talk to Mosaic after that
23 meeting in December?

24 A. Spoke with them a couple of times, told them that

1 we have to get the loan approved, and what the direction from
2 the members, you know, and then the executive committee is
3 let's take a look -- let's go through the holidays and see
4 where we end up getting next month. That was the direction
5 we were given.

6 Q. You kind of told Mosaic that you had a meeting
7 and --

8 A. And we did not have approval yet.

9 Q. And then in January, did you meet with Mosaic
10 also?

11 A. No. Sorry. We had a board meeting on the 27th,
12 an EC meeting, a member meeting on January the 27th, in which
13 the loan was approved unanimously by the executive committee
14 to move forward and that I was to set up a meeting with
15 Mosaic, which I did. The other members of the EC wanted to
16 come to that meeting as well.

17 So this is on a Wednesday. So as soon as we got
18 out of that meeting, I set up the meeting, told them it was
19 now approved. They said, great, looking forward to moving
20 forward. We set up a meeting Monday, I think it was
21 February 1st or 2nd, 4:00 at the Palo Alto Four Seasons
22 Hotel.

23 Q. Bear with me while I try to find this exhibit.
24 Could you look at Exhibit Number 49, Mr. Radovan?

1 A. Yes.

2 Q. Okay. It appears that Heather Hill then sent the
3 group around December 17th, sent the group a package of
4 documents for a meeting for the next day, right?

5 A. Uh-huh.

6 Q. And in that package of documents, there was a --
7 included a budget, which was like the third page?

8 A. Right.

9 Q. Third page of the exhibit. Okay. So this budget,
10 was this the same numbers that you had been discussing with
11 the members of the LLC at that December 12th meeting?

12 A. Correct.

13 Q. And if we look down at the comparison, if I'm
14 reading this correctly, there's three columns in this budget
15 sheet, right?

16 A. Correct.

17 Q. The first one, my copy is a little hard to read,
18 but it says total project and then in the second column is
19 budget, would that be the original budget?

20 A. Yes.

21 Q. And then the third column shows the variance?

22 A. Uh-huh.

23 Q. So as of at least in this December time frame, the
24 total land and predevelopment costs had jumped up

1 \$3.6 million?

2 A. No. Those are the -- from the original 13, those
3 were the financing costs attached to the seller financing and
4 the bridge loans. If you look at those, those are numbers we
5 talked about yesterday.

6 Q. It was mainly a shifting of numbers from the total
7 development financing?

8 A. Just so we showed in one category all costs that
9 went towards land.

10 Q. In the original budget, that was up to 9 million?

11 A. The original budget is 13.

12 Q. No. No. On the total development and financing
13 costs?

14 A. I'm sorry?

15 Q. Maybe let's do a side-by-side comparison just so
16 we're clear?

17 A. You want to just drop down to the bottom?

18 Q. No, actually, let's look at Exhibit Number 4, I
19 believe.

20 A. Are we keeping the other one open?

21 Q. Yeah, if you could keep the other one open, maybe
22 that will help. You get to Exhibit Number 4 and you go to
23 what would be the -- go all the way back to narrative, past
24 page 20, and then go five pages past page 20.

1 A. So what page? Sorry.

2 Q. It's a budget table that looks very similar to the
3 budget we were looking at 49. It's got a bold and then codes
4 and everything.

5 A. Yes.

6 Q. So if we look at the budget in Exhibit Number 49
7 and the original budget, we can then compare those to the
8 budget in Exhibit 4?

9 A. Those would be exactly the numbers that are on
10 front page and the --

11 Q. With the exception of the total development and
12 financing costs. That number has changed from 7.7 to 9.031
13 million?

14 A. Correct.

15 Q. How does that number change for development and
16 financing cost? Is there additional interest and fees?

17 A. Well, the interest, yeah, that would have been --
18 well, so we put the land cost stuff up top that was specific
19 to that, and then any other finance costs higher than what
20 was projected, whether it's a new financing or what we
21 thought we were -- where we were going to be with the
22 Picketts, that was a 12 percent loan, and anything as far as
23 fees, anything that was above and beyond what we'd originally
24 thought we could get.

1 Q. Would it be fair to say that this budgeting table
2 in 49 assumed the costs for the refinance?

3 A. Yes, definitely.

4 Q. And put those into the --

5 A. Correct.

6 Q. -- into the financing costs?

7 A. Yes.

8 Q. And then let's go back now to just focus on the
9 exhibit or the table in Exhibit 49.

10 A. Okay.

11 Q. We've got a jump in the design cost of about a
12 million dollars, right?

13 A. Correct.

14 Q. And then at this point, a total construction cost
15 had jumped \$10.65 million?

16 A. Correct.

17 Q. Did that include change order 14?

18 A. That includes everything, the whole kitchen sink.
19 That includes 14 on the other one, 1.2 to 1.4 on the
20 restaurant as well.

21 Q. Furniture and fixtures had gone up 1.1 million and
22 there's some others. There's a reduction in the development
23 and financing, we just talked about how that took place. The
24 total preopening costs, that jumped a million dollars. Where

1 did that come from?

2 A. That's for operating expenses. You put in an
3 operating reserve for once the hotel is open. So you have a
4 period of time that you can operate the hotel. Because it
5 will open in the red and you'll be losing money for the first
6 year, maybe two. So you always have an operating reserve.
7 And so often times that is not just a thing that the
8 developer puts in. We put in what we feel is appropriate,
9 but Starwood will have a certain number that they require to
10 have in there.

11 Q. Okay.

12 A. So it was probably a Starwood scenario.

13 Q. Just so we're clear, this kind of evidences or
14 documents the number that you were talking to the members at
15 the December 12th meeting?

16 A. Correct.

17 Q. And it's approximately the same number that you
18 testified earlier that you knew in September of 2015?

19 A. In July.

20 Q. In July.

21 A. Pretty much so. Pretty close.

22 Q. That the total refinance was going to add 20 plus
23 million dollars to the project in debt?

24 A. Correct. Well, no, sorry. 20 to the budget, 16

1 to the debt, the differential between the actual budget and
2 the sources used.

3 Q. You were here yesterday also and the day before
4 when Mr. Marriner was here?

5 A. Yes.

6 Q. Would you agree with both those gentlemen's
7 description of what happened after the executive committee
8 slash member meeting as to some pretty upset people?

9 A. Yes, the IMC, Molly, Mr. Yount.

10 Q. Do you believe they were upset because what they
11 had just been told in the meeting?

12 A. No. They had heard that before. They heard that
13 the month before. They were in the meeting the month before.
14 And, honestly, that was -- that was staged with the IMC and
15 Molly.

16 Q. Mr. Yount was in the meeting the month before?

17 A. No.

18 Q. Who was in the meeting the month before?

19 A. Most of the IMC, Les Busick, Phil Busick, Bill and
20 myself and two or three others I forget off the top of my
21 head. I actually don't recall that Dave was there.

22 Q. Okay. One final area, Mr. Radovan. I'm not going
23 to pin myself to a number of questions. Maybe we'd refer to
24 an exhibit would be the best way to start this. Let's look

1 at Exhibit Number 63. We can use that as a starting point.

2 A. 63 or 64? I'm sorry.

3 Q. 63. Back in the December 12th meeting, it's my
4 understanding that Mr. Yount and Mr. Criswell talked?

5 A. Yes.

6 Q. Were you in that conversation?

7 A. No.

8 Q. Did you have a conversation with Mr. Criswell
9 after the meeting he had with Mr. Yount?

10 A. Yes.

11 Q. As the record reflects, Mr. Criswell sent
12 Mr. Yount a couple of e-mails talking about that side
13 conversation, correct?

14 A. Uh-huh.

15 Q. Did you talk with Mr. Criswell about paying
16 Mr. Yount back?

17 A. We discussed that and honestly I think we had a
18 disagreement on that. And basically we had said that Bill
19 would, you know, handle conversations with Mr. Yount, because
20 they started that conversation.

21 Q. You said you had a disagreement. Did Mr. Criswell
22 want to pay him back and you not?

23 A. No. It had nothing to do with that. We were very
24 strong proponents of project. At that point in time, this is

1 not a troubled project. We had financing to cover the
2 overages. Starwood is marketing the project for an opening
3 in a couple of months. We have a new chef. A new general
4 manager had been there since September. This project is
5 moving forward and frankly there's absolutely no reason that
6 the hotel should not have opened last summer. It happened
7 because the Mosaic loan was tanked on purpose.

8 Q. We've heard that testimony. What I'm interested
9 in here, you and Mr. Criswell had a conversation about paying
10 Mr. Yount back?

11 A. We discussed what had happened and he thought it
12 would be good that he would work with Mr. Yount to find a
13 mutually acceptable scenario. And I had told him what had
14 happened. And so Bill is a very great person that wants to
15 keep everyone happy and so decided to go out of his way to
16 help Mr. Yount feel better about the situation. Put it that
17 way.

18 Q. Did you take the position that Mr. Yount was not
19 entitled to his money back?

20 A. I told Bill how the transaction happened, and just
21 as I discussed yesterday, that the PPM had the available
22 founders share. We went through the same closing regimen
23 that we did with anyone else. Bruce then did tell us we
24 needed to get that assignment and we were -- had that

1 documentation to do that at the next annual meeting and had
2 planned to do that.

3 In between that, Bill was then working with
4 Mr. Yount. And all the elements that you kind of talked to,
5 anything that went past the 12th was Bill working with
6 Mr. Yount.

7 Q. So you say you had a closing the same as all the
8 other agreements?

9 A. Any of the -- under the PPM.

10 Q. So you're comparing closing Mr. Yount with the
11 closings from the other investors?

12 A. Yes, because it was an available founders share
13 under the PPM.

14 Q. And when you talk about a closing, that's a
15 closing of a transaction where all the documents have been
16 executed and that's when the money is released?

17 A. Correct.

18 Q. You're a developer, too, you understand what a
19 closing is?

20 A. I do.

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

22 THE COURT: Thank you. Mr. Little.

23 MR. LITTLE: Thank you, your Honor.

24 CROSS EXAMINATION

1 BY MR. LITTLE:

2 Q. Mr. Radovan, we beat a lot of horses to death the
3 last couple of days. I'm going to try not to beat them any
4 further. Can you look at Exhibit 3 and 4? Three is the PPM,
5 right; four is the confidential offering memorandum?

6 A. Yes.

7 Q. They're both dated in March of 2014, correct?

8 A. Correct.

9 Q. Well before Mr. Yount became interested in
10 possibly investing?

11 A. Correct.

12 Q. Now, counsel asked you whether these were updated
13 before they were submitted or provided to Mr. Yount. Do you
14 recall that?

15 A. Yes.

16 Q. Can you tell us why they were not?

17 A. On advice of counsel, securities counsel, that
18 everyone needed to sign the same document and you couldn't
19 have different documents that were floating around at
20 different times. So everyone had to sign the same document.

21 That's why when we first started talking in July,
22 we updated to what is different in this document to where it
23 was at that point in time. So that -- it was purely on
24 advice of counsel.

1 Q. Go over to Exhibit 3, please, sir. And turn over
2 three pages in, at the bottom it will have three little iii.

3 A. Yes.

4 Q. Up in the top in bold letters, follow me, it says,
5 neither the delivery of this memorandum nor any sale made
6 hereunder shall under any circumstances create any
7 implication that there has been no change in the affairs of
8 the company after the date of this memorandum. Did I read
9 that correctly?

10 A. Yes.

11 Q. Go over to page 11. Let's look at the section
12 talking about forward looking statements.

13 A. Okay.

14 Q. The first sentence says, certain statements
15 contained in this memorandum, including, without limitation,
16 statements containing the words believes, anticipates,
17 intends, expects, and words of similar import constitute
18 forward looking statements. Those would be things like the
19 budget that you gave in these documents, correct?

20 A. Correct.

21 Q. Now, down at the bottom, the last two sentences
22 say, given the uncertainties, prospective investors are
23 cautioned not to place undue reliance on such forward looking
24 statements. The company disclaims any obligation to update

1 any such factors or to publically announce the result of any
2 revisions to any of the forward looking statements contained
3 herein to reflect future events or developments. Did I read
4 that correctly?

5 A. Yes.

6 Q. Now, there's been a few times where counsel has
7 asked you, well, did you tell Mr. Yount this, or did you tell
8 him that, right before he decided to invest. You remember
9 those types of questions?

10 A. Certainly.

11 Q. Let's break that down a bit. In your mind, did
12 you think a deal was going to happen with Mr. Yount after,
13 say, mid August?

14 A. Well, as I kind of talked about yesterday, you
15 know, this was a three-and-a-half, four-month process from
16 the original conversations. And it certainly didn't seem to
17 myself, Mr. Marriner that we were getting there. If you look
18 at that entire period of four months, I spoke to him twice,
19 had a number of e-mails go back and forth. Dave, I don't
20 know how many times. But continually asking, checking in, do
21 you need anything from us?

22 Dave I think a couple of times asked for, do you
23 want a site tour, even just to create contact. I was driving
24 through Yountville and took pictures of one of Mr. Yount's

1 great forefathers, the founder of the town of Yountville, and
2 just a way to reach out, Mr. Yount is a great guy and really
3 enjoy talking to him.

4 But there was very little conversation. I think
5 he was traveling for a bit of that time as well. It just
6 didn't seem there was that much going on. We usually --
7 people will typically close anywhere from two to three days
8 to a couple of weeks.

9 Q. Let's look at some of these efforts that you and
10 Mr. Marriner made to reach out to Mr. Yount and ask if he
11 needed information or wanted tours. Let's go to Exhibit 29.
12 And let's look at the second page of that document first.
13 This is an August 26th, 2015 e-mail from Mr. Marriner to
14 Mr. Yount, correct?

15 A. Correct.

16 Q. And you're copied on it?

17 A. Yes.

18 Q. Take your time to read it, but essentially Mr.
19 Marriner is asking Mr. Yount saying, talking about progress
20 to the project and inviting him to come do a tour with him to
21 discuss that progress and see it.

22 A. Right.

23 Q. Let's go over to the first page of that exhibit.
24 We move forward a couple of weeks to September 8th. It's

1 another e-mail from Mr. Marriner to Mr. Yount, again, asking
2 him if he wants to do a tour and see the updated progress,
3 correct?

4 A. Correct.

5 Q. Let's go over to Exhibit 30. Go over to page two.
6 This is a little over a week after that, on September 16th,
7 again, Mr. Marriner is reaching out to Mr. Yount asking if he
8 has questions and wants to do another tour and see an update,
9 correct?

10 A. Correct.

11 Q. Exhibit 35, this is an October 6th, 2015 e-mail to
12 Mr. Yount, you're copied, Mr. Marriner is copied from Heather
13 Hill asking if there's anything else he needed, correct?

14 A. Correct.

15 Q. Exhibit 37, a couple days before Mr. Yount funds,
16 Mr. Marriner -- excuse me -- October 10th, so a couple of
17 days before he funds, Mr. Marriner is again asking him, does
18 he want a site tour as he moves forward towards funding?

19 A. Correct.

20 Q. To your knowledge, did he take Mr. Marriner up on
21 any of those gestures or offers to come look at the property?

22 A. Not that I'm aware. No.

23 Q. And when you and your company were and Mr.
24 Marriner were reaching out saying, do you need any additional

1 information, did he respond affirmatively?

2 A. No.

3 Q. Did Mr. Yount ask you for any information that you
4 didn't provide?

5 A. No.

6 Q. And had you answered all of his questions
7 truthfully?

8 A. Certainly.

9 Q. Do you believe the information you gave him was
10 truthful as of the time he closed?

11 A. Yes.

12 Q. Let's look at Exhibit 36. There is one question
13 that Mr. Yount asked you a few days before he closed,
14 correct? And he asked how the schedule was holding up?

15 A. Correct.

16 Q. And you told him that there was going to be a soft
17 opening in spring with a grand opening on Fathers's Day,
18 correct?

19 A. Correct.

20 Q. Was that information accurate at the time?

21 A. Yes.

22 Q. What was that based on?

23 A. That was based on the change orders, with
24 everything taken into account, with Penta having agreed, an

1 opening schedule with them, with Starwood aligned to that,
2 because they were actually out marketing at this point in
3 time. So that became a set date.

4 Q. So it was based on information provided to you by
5 your contractor?

6 A. Correct.

7 Q. And, in fact, in this e-mail you were telling him
8 that you had just brought in the general manager and chef,
9 right?

10 A. Yes.

11 Q. Now, we've already gone through the mathematical
12 exercise of comparing the change orders through the end of
13 September with that \$10.5 million that you told Mr. Yount
14 about in July. I'm not going to waste the Court's time going
15 through that exercise. We can do the math ourselves.

16 MR. CAMPBELL: I'm going to object as to
17 mischaracterization of the evidence that he told Mr. Yount
18 \$10.5 million.

19 THE COURT: Overruled. Go ahead, Mr. Little.

20 BY MR. LITTLE:

21 Q. Mr. Radovan, do you believe that the budget
22 numbers of you gave Mr. Yount in July were still accurate in
23 early October when he invested?

24 A. Yes. It was at the nine level that we discussed

1 in July.

2 THE COURT: Go ahead.

3 MR. LITTLE: Do you want to break?

4 THE COURT: No.

5 BY MR. LITTLE:

6 Q. Mr. Yount has alleged that he was duped into
7 buying one of CR Cal Neva's two founders shares, because the
8 project was failing. Is there any accuracy to that
9 statement?

10 A. Absolutely not.

11 Q. Please tell us, you've gone over it, I don't want
12 to belabor it too much, but tell us the status of the
13 construction and financing when Mr. Yount finally got around
14 to investing?

15 A. It was moving incredibly well. There was 100 plus
16 people on site. And at that point, we're gearing towards
17 opening. We were already scheduling an installation for
18 February. We were just completing all of the major exterior
19 things. Pool had been ready for gunite, basically, pool, hot
20 tub, all the grading in the back complete. We were in
21 opening mode.

22 Q. And you heard Mr. Marriner testify yesterday that
23 he walked the job with Mr. Busick and Penta's top guy on the
24 project within a week or so of Mr. Yount investing, correct?

1 A. Correct.

2 Q. And Mr. Busick came out of that meeting and
3 invested another million and a half dollars?

4 A. Correct.

5 Q. And that million and a half dollars went into the
6 project, correct?

7 A. Correct. And by the way, he came out of that also
8 wanting to spend more money. Saying, windows here, let's do
9 this, let's do this. It wasn't just that -- like I say, this
10 was a project moving forward towards opening.

11 Q. And Penta was being paid at this point in time?

12 A. Certainly.

13 Q. Let's clean that up for the record. Let's look at
14 Exhibit 152. Turn over to the Bates number CR 359. It's
15 towards the end.

16 A. 152? I'm sorry.

17 Q. 152, Bates number 359.

18 A. Okay.

19 Q. This is an unconditional waiver and release upon
20 progress payment dated October 1st, 2015 signed by Lee Mason
21 on behalf of Penta Building Group, correct?

22 A. Correct.

23 Q. Can you tell the Court what an unconditional
24 waiver and release is?

1 A. An unconditional waiver and release basically
2 means that they're giving up any lien rights that they have
3 to this amount of work. So up -- they can't do -- they can't
4 put a lien. It's a full release. They have no rights prior
5 to October 1st to anything on that site at that point in
6 time.

7 Q. So you didn't sell one of your -- one of CR Cal
8 Neva shares because you thought the project was failing.
9 Help explain to the Court, why sell one of CR Cal Neva's
10 shares to Mr. Yount once Mr. Busick closed out the
11 subscription?

12 A. We had the -- as it was delineated, and there's a
13 number of places where the CR Cal Neva share was there,
14 Mr. Yount is a very prominent guy in the community, he's been
15 there a long time, neighbor, very influential, great guy, we
16 thought he would be a fantastic person to have as a member
17 and investor in the project.

18 Q. And can you tell this Court why this matter did
19 not go to a vote at the next annual meeting in April?

20 A. We never got there. The suit was filed, I think,
21 on the 4th or 5th.

22 Q. So you understood that Mr. Yount didn't want it to
23 go to member approval?

24 A. Correct.

1 MR. CAMPBELL: Objection, that mischaracterizes
2 the testimony.

3 THE COURT: Sustained. Go ahead, next question.

4 BY MR. LITTLE:

5 Q. Well, by filing suit, what was your understanding
6 of whether Mr. Yount wanted his founders share to go to
7 member approval?

8 A. That he did not want that.

9 THE COURT: All right. Thank you.

10 BY MR. LITTLE:

11 Q. Sir, was there a time in 2016 when Mr. Yount was
12 excited about his or at least appeared to you to be excited
13 by his founding member interest in Cal Neva Lodge?

14 A. Well, it certainly seemed so in February, March
15 when there was a potential sale of the property for, I don't
16 remember what the price point was, 120 or \$130 million.
17 There had been a group called GECI that had approached me in
18 December of 2015 wanting to discuss a potential acquisition
19 of the property.

20 You know, went down the path with them. Did some
21 due diligence on the people. And it was very obvious that to
22 me that it was -- it was kind of a scam. Our attorneys had
23 known of these people. They had been around for a couple of
24 years, never closed a project, and I warned everyone, I said,

1 there is this thing out there and -- but don't get all --
2 don't start thinking this is out there.

3 And so one of the IMC guys, Paul Jamieson, said,
4 hey, Robert, I'll help you with this and then we'll go down
5 the path with that. So Paul started really believing that
6 was a real deal and spent about a month and a half on that
7 and thought he got to a contract with them of about 130, 135
8 million or something like that.

9 And definitely people -- there was people that
10 thought that was real and Paul certainly did and was telling
11 everyone and he got really excited about it. I continually
12 cautioned, this is not, and that's how it turned out.

13 Q. Was Mr. Yount attending member meetings in late
14 2015, 2016?

15 A. Yes, into 2016. Yes.

16 Q. Sir, did Mr. Yount buying one of the CR Cal Neva's
17 founders shares negatively affect the project at all?

18 A. Well, as we now understand, you know, what had
19 happened with the Mosaic loan, basically, the IMC, Molly
20 Kingston and Mr. Yount were communicating a lot.

21 MR. CAMPBELL: Objection, there's no foundation.

22 THE COURT: Sustained.

23 BY MR. LITTLE:

24 Q. I think you misunderstood my question. My

1 question was, did Mr. Yount buying one of CR Cal Neva's
2 shares negatively impact the project?

3 A. Oh, no.

4 Q. Did it cause any money to be pulled out of the
5 project?

6 A. Absolutely not.

7 Q. Was any of the money that CR Cal Neva receive from
8 the sale of the founders share put back into the project?

9 A. Yes. There was a couple of hundred thousand that
10 when things did go, something started being unpaid in
11 November, we were basically loaning money to the project to
12 make payments to the different consultants.

13 Q. Is there any difference between the founders share
14 Mr. Yount purchased from CR Cal Neva different from any of
15 the other founders shares?

16 A. Absolutely not.

17 Q. You had started to tell the story through counsel
18 about how the Mosaic loan was torpedoed. We got up through
19 the January 27th, 2016 executive committee meeting where they
20 approved the Mosaic loan, correct?

21 A. Correct.

22 Q. And then you set up a meeting with Mosaic at the
23 Four Seasons on or about February 2nd?

24 A. Yes. On Monday at 4:00 in the afternoon.

1 Q. What happened from there?

2 A. Well, as I was driving down to that meeting, I
3 received an e-mail from the Mosaic folks. And it read,
4 basically, it started off, Robert, as you're aware, we met
5 with a number of the investors today, and I don't remember
6 the exact wording, but it sounds like things are a bit of a
7 mess there and we're going to give you the opportunity to get
8 this cleaned up, we'll tear up the term sheet and you can
9 resubmit at some point in time. Basically, we're out.

10 Q. If you look at Exhibit 124, the third page in. Is
11 this the e-mail you received from Mosaic?

12 A. Yes.

13 Q. And they indicate that they met with a group who
14 represented themselves as investors in Cal Neva?

15 A. Correct.

16 Q. And they were interested in hearing about the
17 history of Mosaic's involvement in Cal Neva with you and
18 Mosaic explained our deal with you and told them how he met
19 you. And we told them that we issued a term sheet and we
20 told them that you executed it and the day you executed it.
21 Correct?

22 A. Correct.

23 Q. And then he goes down on to indicate in the second
24 paragraph that they went on to explain a little of the

1 history of the deal from their perspective, and to tell you
2 the truth, there seems to be a little bit of a mess right
3 now, and we're going to take a step back, tear up the
4 executed term sheet, give you and the ownership time to
5 figure things out on your own and at the right moment.
6 Correct?

7 A. Correct.

8 Q. They didn't become interested again after that
9 point in time, did they?

10 A. No.

11 Q. And who did you understand was behind that
12 meeting, that secret meeting?

13 A. A number of the IMC guys.

14 Q. That include Mr. Chaney?

15 A. Mr. Chaney, Mr. Jamieson. I'm not sure who else.

16 Q. And did you come to understand that Mr. Yount was
17 working behind the scenes with the IMC group?

18 A. That's what we have found through discovery.

19 Q. Can you turn over to Exhibit 122?

20 A. Yes.

21 Q. This is a January 31st, 2016 e-mail between
22 Mr. Jamieson and Mr. Yount, correct?

23 A. Correct.

24 Q. And Mr. Jamieson is part of the IMC group?

1 A. Correct.

2 Q. It's regarding talk with Jeremy and he's also part
3 of the IMC group?

4 A. Correct.

5 Q. And he's indicating right there, but to be clear,
6 they do not know this particular meeting is happening.
7 That's referencing you guys, right?

8 A. Correct. The EC days earlier, three days earlier,
9 the entire EC approved the loan. This is not an approved
10 meeting in any way, shape or form.

11 Q. Down at the bottom, Mr. Yount puts some numbers or
12 bullet points that he was sending to Mr. Jamieson. Number
13 one is referencing, he said three of the EC is having a
14 meeting with Mosaic in Sac on Monday without CR. Is that
15 legit without CR, without their advanced permission? And
16 number two, he said, he said he's been told that Mosaic are
17 sharks and will want the project to go broke, flush out
18 investors and take it for themselves. Do you see that?

19 A. Yes.

20 Q. And then above that, look at the last paragraph
21 that Mr. Jamieson wrote to Mr. Yount. It says, lastly, we
22 should be getting an LOI from an equity party before
23 Wednesday. This is the one who would be friendly and
24 favorable. I believe Hall and Penta would stay in if this

1 party were to enter. I also had a great call with Roger
2 yesterday and can fill you in when you're back. Did you
3 understand that the IMC group and Mr. Yount were proponents
4 of some other form of financing?

5 A. As we understand Roger, Roger is Wittenberg, who
6 was working with North Light and that introduction was made.

7 Q. Who was that introduction made by?

8 A. As I understand, by Mr. Yount.

9 Q. Let's turn over to Exhibit 125.

10 A. Yes.

11 Q. Molly Kingston is whom?

12 A. She is an investor in the project.

13 Q. And this is a February 2nd e-mail with Mr. Yount
14 and Ms. Kingston?

15 A. Right.

16 Q. And it looks like it's the day of that meeting?

17 A. It was the day after.

18 Q. And the first paragraph says, I spoke with Paul
19 this morning. I learned the EC minus CR met with Mosaic and
20 had a, quote, good meeting, end quote. Right?

21 A. Yes.

22 Q. And then down at the bottom, the kind of the third
23 paragraph up, it starts with, to that end.

24 A. Yes.

1 Q. It says, to that end, CR must immediately resign
2 and cede their 20 percent. What's your understanding about
3 that?

4 A. Well, at the -- there was a meeting. We were
5 asked, Bill and I were asked to come back up to the meeting
6 room where the member and EC meeting was held on the 27th.
7 And what had -- we had actually sat down with Mr. and
8 Mrs. Yount to discuss the situation, Bill and I, and then we
9 were asked to come up. The Younts came up as well.

10 The IMC and Molly and Busicks and Dicksons were in
11 the room. And basically the guy who -- Brandon Chaney and
12 Jeremy Page led the meeting. And basically within
13 30 seconds, it became a shouting match where Jeremy is
14 pointing his finger at my partner and screaming at him, I
15 will bury you. And basically saying that we had to give up
16 our rights and interest to the IMC.

17 Q. Not give your share back to the project, but give
18 it to IMC?

19 A. To the IMC. And it was interesting that just one
20 of the couples, the Dicksons, who were there, were not part
21 of it and they stuck around to have a couple of glasses of
22 wine. And they pretty much jumped and just talked about how
23 inappropriate the entire thing was. That this should not --
24 it should not be some secret meeting and if they wanted to do

1 something with us, they always have the ability to remove us
2 at any time. Shareholders could remove us today. At any
3 point in time for no reason, we can be removed.

4 Q. In fact, in the last paragraph of this e-mail,
5 Ms. Kingston is referencing you or Criswell Radovan facing
6 swift civil and criminal action. Do you see that?

7 A. Yes.

8 Q. Is it your understanding they were making
9 accusations of financial improprieties with the bookkeeping?

10 A. Yes.

11 Q. And they had a full audit performed, did they not?

12 A. Yes.

13 Q. What's your understanding of the results of that
14 audit?

15 A. Showed absolutely no improprieties at all.

16 Q. It's been a year and a half since this point in
17 time?

18 A. Yes.

19 Q. And is CR Cal Neva still the manager of Cal Neva
20 Lodge?

21 A. Yes.

22 Q. And there's provisions under the operating
23 agreement for you to be removed, right?

24 A. At any point in time.

1 Q. And that hasn't happened?

2 A. No.

3 Q. Sir, do you believe the Mosaic loan would have
4 closed but for the interference by the IMC group and
5 Mr. Yount?

6 A. Yes.

7 Q. What would that loan have meant to this project?

8 A. That means we would have opened on Father's Day.
9 No. It probably would have been a little later, because at
10 that time we were now looking at closing that loan probably
11 30 days out from that point, so late February. You know, we
12 were trying to get it closed and Mosaic was on track for a
13 late -- sorry -- late November, early December closing of the
14 loan.

15 So we probably would have been open in the summer,
16 but we would have now at this point been open for almost a
17 year and a half, had two summers under our belt, and the
18 record snowfall, I think the place would be a screaming
19 success.

20 Q. Do you believe their actions are what caused Cal
21 Neva Lodge to have to file bankruptcy?

22 MR. CAMPBELL: Objection, I don't believe there's
23 a foundation for that.

24 THE COURT: I think he's the manager.

1 THE WITNESS: I certainly believe so.

2 THE COURT: Overruled.

3 THE WITNESS: At that point in time, we were
4 continually working at, you know, other scenarios after that
5 happened. But, you know, the kind of word gets around a
6 little bit. And Molly was out shopping it. You know, we
7 kept hearing that it's being shopped around the place by
8 somebody.

9 So it became difficult to get there. We were
10 working with Colombia Pacific. We had Langham, the hotel
11 operator, were very interested. They were going to buy out
12 the Starwood franchise. We pretty much had a deal set with
13 them. They were going to buy out the IMC, Molly, Mr. Yount
14 as part of the deal and just wanted the group gone. Come in,
15 put up enough capital. They were keeping Hall in, Ladera in.
16 So we were working on that very strongly, as well as the
17 Colombia Pacific loan in parallel paths.

18 Ladera had in May, towards the end of May now, was
19 a -- was their first period where we had to start paying them
20 or renegotiate them. They had the ability then to foreclose
21 against the company interests of Cal Neva Lodge, CNL, the
22 equity holders.

23 They gave us one two-week extension to the get the
24 Colombia Pacific loan closed and we were working through that

1 with the appraisals, everything with them. Then they
2 decided, this is like 4:00 in the afternoon, we're not going
3 to give you the other extension. Do what you need to do. We
4 filed Chapter 11 then on that date to avoid foreclosure.

5 BY MR. LITTLE:

6 Q. Sir, can you qualify how CR Cal Neva has been
7 damaged by Mr. Yount and IMC's interference?

8 MR. CAMPBELL: Objection, lack of foundation.

9 THE COURT: Sustained. I'm sorry. Overruled. Go
10 ahead.

11 THE WITNESS: I can tell you personally, you know,
12 this thing is going to cost Bill and I at least 1.6 million,
13 revenues that would have come to our operating company, a
14 million dollars a year, roughly. Bill nor I have not been
15 paid one penny in the last two years, which has dramatically
16 cost us.

17 And the entire time, you know, me and my staff and
18 Bill, we have worked tirelessly without getting paid, despite
19 all of the, sorry, crap, worked to protect everyone's
20 interests. And it's been a huge, huge toll on myself, my
21 family. As Dave talked about it the other day, it's been
22 unbelievably difficult, not just the capital side of it is
23 devastating, and this never should have happened. This came
24 from a couple of people trying to steal a project.

1 BY MR. LITTLE:

2 Q. Now, Mr. Yount has indicated that he intends to
3 call Brandon Chaney as a witness at this trial?

4 A. Uh-huh.

5 Q. You talked about him before. Is he kind of the
6 one --

7 A. He's the kind of appointed leader of the IMC, as
8 far as the group goes.

9 Q. And that's the same group that Mr. Marriner
10 testified had threatened to take legal action against him if
11 he didn't join their side?

12 A. Correct.

13 Q. And is that the same group that Mr. Marriner
14 testified was spreading lies and rumors to other investors
15 that he had been instructed or he had instructed the IMC
16 group not to tell Mr. Yount about cost overruns?

17 A. Correct.

18 Q. Now, was Criswell Radovan or one of its entities
19 previously involved in litigation with Mr. Chaney?

20 A. Yes.

21 Q. Can you tell us about that?

22 A. Yes. We had, in 2015, we had put a winery, what
23 used to be the Cuvaision Winery up in Napa --

24 THE COURT: Could you spell Cuvaision?

1 THE WITNESS: C-u-v-a-i-s-o-n.

2 THE COURT: Thank you.

3 THE WITNESS: And had gotten control of that,
4 we're in contract on that, and seeking capital partners for
5 that. Brandon and his partner, Anthony Zobot, came in and
6 were the capital partners for that. That was in April of
7 2015.

8 As we went down the path, I was able to raise all
9 the debt for that. He had put in 2 million into that. The
10 balance of that I raised on debt. We got into a situation
11 where he couldn't basically fund anymore, so we started
12 loaning money to the project. I think we had about 300,000
13 loaned to the project just to keep the doors open.

14 By December of 2015, I was able to put it into
15 contract -- well, sorry. We had it under an LOI with a very
16 strong group that wanted to buy the property for
17 15.1 million. As we went into January, we had negotiated the
18 sale purchase and sale contract with this group, very well
19 funded equity fund that had done other things in Napa Valley,
20 Southern California and the Bay Area, so, very, very strong
21 group. And this was part of the business plan they were
22 doing around the Valley. So what would have happened in that
23 scenario is that in a matter of 10 months Mr. Chaney would
24 have got his \$2 million, plus a ten percent return and an

1 extra \$3 millions.

2 We got into a situation where we had been loaning
3 this \$300,000. We needed to -- I remember the date, because
4 it was on my birthday, January 22nd, Mr. Chaney came into the
5 office and said he'll loan us \$25,000, gave us a note.
6 Because we need to pay the -- it was a payroll day and so we
7 needed that \$25,000 to make payroll.

8 So he came in and had a note for the 25 that he
9 wanted me to sign, the manager. And then an operating
10 agreement that had a red line in it that basically showed --
11 the red line showed that he added the note, basically, into
12 the operating agreement, amended restated. So I signed that
13 and went through all the red line stuff.

14 What he had done is he changed the document pretty
15 substantially. And so as he then next week came back and
16 with the changes he had made gave himself full control and
17 was trying to foreclosure us out of the project. And so we
18 got an attorney, obviously. Real quickly discovered that
19 Brandon had just wholeheartedly changed the entire document.
20 Bruce had done the operating agreement, found it all.

21 So our attorney called his attorney to say, you
22 know, what you're attempting to do, you can't do. You can't
23 foreclose a partner out, first of all, so we're giving you a
24 three-day warning to stop. And also Brandon had refused

1 right at the end to sign the purchase agreement on -- for the
2 winery and basically saying, sign this, then I'll -- we'll
3 sign the purchase agreement next week.

4 So what ends up happening two days later out of
5 the three, he filed suit against us for mismanagement and
6 fraud. Sued Heather and Lisa in our office for \$4 million
7 each. So I can tell you we end up settling and he paid us.

8 BY MR. LITTLE:

9 Q. Is it fair to say that Mr. Chaney has an ax to
10 grind against you and Mr. Criswell?

11 A. Certainly.

12 MR. LITTLE: That's all I have. Thank you, sir.

13 THE COURT: Mr. Wolf, let's take our lunch break.
14 Thank you very much.

15 (A lunch break was taken.)

16 THE COURT: Mr. Radovan, please resume the stand
17 and you remain under oath. Mr. Wolf, your witness.

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

19 CROSS EXAMINATION

20 BY MR. WOLF:

21 Q. Mr. Radovan, earlier in your testimony today, you
22 discussed the timing of Mr. Yount's lawsuit being served
23 versus an upcoming meeting at which you planned to submit the
24 proposed transfer of the CR membership interest to Mr. Yount.

1 A. Correct.

2 Q. Do you have any reason to believe that the members
3 were not prepared to approve that transfer of the CR
4 membership share to Mr. Yount?

5 A. No reason that I can perceive. I believe they
6 would have. He had been in the meetings previously in the
7 last couple of months with all of the members.

8 Q. In that regard, did Mr. Yount, did he behave or
9 comport himself as a member, attending meetings, receiving
10 investment information as other members?

11 A. Yes.

12 Q. Did the members as well as the managers treat
13 Mr. Yount as a member?

14 A. Yes.

15 Q. And was there any time where he was excluded from
16 membership information or participation because of the manner
17 in which his interest had been purchased?

18 A. Absolutely not.

19 Q. I'd like you to turn to Exhibit 122 in the book,
20 in one of the books.

21 A. Got it.

22 Q. At the bottom of the first page of that two-page
23 document, it's labeled 4797, there appears to be an e-mail
24 from Mr. Yount. I'm not sure to whom. Do you see that

1 January 30, 2016 at the bottom?

2 A. Yes.

3 Q. The bottom of page 1 of Exhibit 122?

4 A. Yes.

5 Q. And it reads, he said three of the EC is having a
6 meeting with Mosaic in Sac on Monday without CR. Is that
7 legit without CR, without their advanced permission, question
8 mark. Do you see that?

9 A. Yes.

10 Q. Do you understand that to be Mr. Yount expressing
11 his feelings or concern about a meeting happening between
12 certain members of the EC and Mosaic without CR's knowledge
13 or permission?

14 MR. CAMPBELL: Objection. I think the document
15 speaks for itself. He's asking for Mr. Yount's mindset and I
16 think the document speaks for itself.

17 THE COURT: Sustained.

18 BY MR. WOLF:

19 Q. Did Mr. Yount ever share with you prior to the
20 meeting with Mosaic that you were driving to, that there was
21 going to be a meeting between members of the EC and Mosaic in
22 advance of your planned meeting with Mosaic?

23 A. No.

24 Q. Do you believe that he should have so informed

1 you?

2 A. Well, those people who knew, certainly somebody
3 should have.

4 Q. And why do you say that?

5 A. It was totally unauthorized and, frankly,
6 interference. And, obviously, in the letter that Mosaic
7 said, starts off with, as you know. That is -- so they
8 obviously told Mosaic they were authorized to do that.

9 Q. So the, as you know, words in the e-mail you
10 received from Mosaic's representative actually was not
11 accurate. You did not know that had happened?

12 A. Exactly.

13 Q. When did you become aware of efforts by the IMC
14 group or certain of its members to, for lack of a better
15 word, cut you and Bill Criswell and Criswell Radovan out of
16 the project, out of the --

17 A. At the time, the first time that was seen was at
18 the second meeting on -- after the EC and member meeting on
19 January 27th. But as we have come to find out in discovery,
20 it started on December 13th or earlier.

21 Q. And what did you determine began on or before
22 December 13th in regard to efforts to remove you or replace
23 you?

24 A. That Brandon and Paul had an entire drop box file

1 with to-dos with different people of the team between Molly,
2 Brandon, Paul about different things to do. Mr. Yount was in
3 that chain.

4 MR. CAMPBELL: Objection, I don't think there's
5 any foundation.

6 THE WITNESS: He is in the communications.

7 THE COURT: Just a minute. It's overruled. Go
8 ahead, you can answer.

9 THE WITNESS: It was in a small group of -- it
10 wasn't out to the investors, it was to a small group of
11 people who were having that discussion, and, you know, at
12 least going down that path. Otherwise, they didn't -- they
13 didn't speak with any of the other investors who obviously
14 didn't want to have anything to do with it.

15 THE COURT: Next question.

16 BY MR. WOLF:

17 Q. What conditions did the IMC group propose to your
18 approving the Mosaic loan? To frame the context a little
19 better, it sounds like in November and December, the IMC
20 group approved the terms of the Mosaic loan. What further
21 conditions did they impose on you as a condition of signing
22 the loan document?

23 A. Just the November meeting, they asked for a few
24 changes to happen. And so then it was approved in January to

1 go forward with the term sheet as it was at the time.

2 Q. Was there an effort to remove you as manager to
3 move forward with the loan later?

4 A. No. They tried to -- it was approved at the EC
5 meeting and then later they basically put a piece of paper in
6 front of us that said, basically, you need to get out, and
7 here's the document to sign and you're giving your rights,
8 title and interest in the project to the IMC.

9 Q. And what was their threat or inducement for you to
10 do that?

11 A. Well, as Jeremy said, screamed at Bill in Bill's
12 face, I will bury you. It's just a bunch of threats.

13 Q. What other sorts of threats?

14 A. This is going to end horribly for you. We're
15 going to sue you. We're going to destroy you, blah, blah,
16 blah.

17 Q. Around what time frame?

18 A. The day, you mean?

19 Q. The time frame month?

20 A. Right away.

21 Q. Month and year?

22 A. It wasn't any specific -- it's we're going to do
23 this to you.

24 Q. No. The time the threat was made?

1 A. So that was January 27th, I'm sorry, probably 4:00
2 or 5:00 in the afternoon.

3 Q. The IMC group, they were proponents of an
4 independent audit happening, correct?

5 A. Yes.

6 Q. Did they select an auditor?

7 A. Yes.

8 Q. When was the auditor selected and tasked to the
9 independent --

10 A. They had -- it was kind of funny how it worked.
11 So it was a day or two before New Years, I believe, and one
12 of the things that had been discussed in the December meeting
13 was to -- the IMC wanted to have a separate accounting firm
14 to kind of look over our shoulder. So they suggested one
15 some of those guys use. And they wanted us to interview this
16 person.

17 And so this was, it wasn't New Years Eve, but it
18 was probably the day before, I believe. We all flew back
19 from somewhere. I actually had to fly up. So the intention
20 was to interview this person, Darcy Casey, or something like
21 that. And so, I mean, I flew back, you know, we had come
22 back from the holidays, but everyone came in to talk to this
23 person and so spent about a half hour talking to her.

24 She left and then came back 20 minutes later with

1 a document that says, basically, you need to give me all your
2 books and records right now kind of thing. And that's how
3 this kind of got started.

4 Q. Ultimately, they completed, that firm completed
5 its audit or forensic review?

6 A. Yes.

7 Q. Or whatever it might have been of your books and
8 records?

9 A. Yes.

10 Q. And when was that completed?

11 A. Completed in March.

12 Q. March of 2015?

13 A. March of 2015.

14 Q. Or 2016?

15 A. I'm sorry. 2016.

16 Q. And in what form was that? Was it a written
17 report?

18 A. Yes.

19 Q. And was it shared with the EC?

20 A. Yes.

21 Q. Was it shared with other members besides the EC?

22 A. I believe it was shared with the membership.

23 Q. Was it shared with Mr. Yount, to your knowledge?

24 A. Yes.

1 Q. What was the conclusion of the report, as far as
2 you understood it?

3 A. You know, in a layman's verbiage here, basically,
4 that some things could be done better, but there were no
5 improprieties was the gist of it.

6 Q. From October 2015 when Mr. Yount invested until
7 April when the lawsuit was started, this lawsuit was started,
8 did Mr. Yount ever through his words or conduct indicate an
9 intent at some time to be a member and at other times to want
10 to get his money back? Did he vacillate in that regard?

11 A. Well, he was at all the meetings and acted as a
12 member and then at the same time saying that he wanted out.

13 Q. Were there times when he appeared to lean more in
14 one direction or other?

15 A. I wouldn't say so.

16 Q. Now, when the lawsuit was initiated, how were you
17 informed of it, this lawsuit?

18 A. This lawsuit. We were -- as I described the
19 lawsuit that Brandon Chaney had filed against us, we were in
20 mediation, it was probably April 4th or 5th, in mediation in
21 San Francisco. And Mr. Chaney handed it to the judge as he
22 was coming back into our room and said, here's a copy of the
23 lawsuit, basically, give this to Robert and Bill.

24 Q. Here's a copy of Mr. Yount's new lawsuit, please

1 give it to Bill and Robert?

2 A. Yes.

3 Q. Are you aware of any other support or
4 encouragement or anything of that nature by Mr. Chaney to
5 Mr. Yount in conjunction with the prosecution or initiation
6 of this lawsuit?

7 A. Not that I'm aware of.

8 MR. WOLF: Thank you. That's all the questions I
9 have, your Honor.

10 THE COURT: All right. Mr. Campbell.

11 REDIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Mr. Radovan, I hate to have you flip through all
14 the books. Hopefully, we'll get through it quickly.

15 A. Sure.

16 Q. Can you look at Exhibit 152 quickly?

17 A. By the way, I was going over my notes and records
18 yesterday, we had spoken about meet, speaking of Ken Tratner,
19 around early August and I had spoken with him about the
20 overall project. But in going back over my notes, it looked
21 like I was actually speaking with you, Mr. Yount, on the
22 schedule issues. I'm sure I spoke with him about those
23 things as well, but my notes that was what I was talking
24 about. Sorry about that.

1 Q. Let me get this clear. You're correct from your
2 testimony yesterday with regards to your conversations with
3 Mr. Tratner?

4 A. Yes.

5 Q. And go through that one more time, your notes?

6 A. Going from my notes, I had conversations with
7 Mr. Yount and Mr. Tratner on the overall project. So totally
8 different topics on budget, project. Mr. Tratner,
9 hospitality numbers, all of that, all of the stuff we were
10 giving him, and then roughly at the same time having a
11 conversation with Mr. Yount where that -- where the subject
12 of the schedule came in where we had pushed it back for the
13 first -- for the first period of time.

14 Q. So you're saying that you talked to Mr. Yount in
15 addition to Mr. Tratner?

16 A. Yes.

17 Q. About the schedule changes?

18 A. Yes.

19 Q. And that would have been in the August time frame?

20 A. Correct. August 10th, around there.

21 Q. So you're changing your testimony that I pointed
22 out earlier in your deposition that it was late September
23 when you told Mr. Yount about the schedule change and the
24 cost?

1 A. Well, the first schedule change, yes, it was in
2 early August.

3 Q. But you're sure you talked to Mr. Tratner also?

4 A. Yes.

5 Q. And the discussion with Mr. Tratner included the
6 schedule changes and the amount of the change orders?

7 A. To the best of my recollection.

8 Q. So let's go back to 152. You got that in front of
9 you?

10 A. Yes.

11 Q. Mr. Little showed you that to somehow say that as
12 of the last progress report dated October 6th, 2015, that
13 Penta had released and accepted everything that had been done
14 so far, right?

15 A. Sorry. Which one are we going to?

16 Q. It's Exhibit 150 he was just pointing to you, I
17 believe the last change order or the last pay app, which was
18 number ten, the last page of that document?

19 A. Okay.

20 Q. And this document was dated October 6th of 2015,
21 right?

22 MR. LITTLE: Did you say Exhibit 150?

23 MR. CAMPBELL: I'm sorry 152. 152. I'm sorry.

24 THE WITNESS: Right. Which one do you want me to

1 turn to?

2 BY MR. CAMPBELL:

3 Q. The very last page of 152?

4 A. 00360?

5 Q. Yes. And that's the pay app for number,
6 application number ten, right?

7 A. Yes.

8 Q. So that pay app was dated October 26th. That's
9 when Penta signed off on it, right?

10 A. Correct.

11 Q. And that pay app would have been to pay for things
12 that were occurring on the job prior to October 6th, back
13 in -- could have been September, August, for all we know?

14 A. Correct.

15 Q. And then if you look at Exhibit 149?

16 A. Yes.

17 Q. And page 424 on the Bates stamp.

18 A. Yes.

19 Q. This is a -- it looks like a progress report
20 prepared for Hall, correct?

21 A. Correct.

22 Q. And at page 424, it says, Penta and subcontractor
23 work on the project has reported stopped. The date of this
24 document is in January.

1 A. January 26th.

2 Q. And it says, Penta reports being paid only through
3 September, correct?

4 A. That's what it says.

5 Q. And then in -- by the time of the January -- or
6 the December, early December meeting with -- at the
7 Fairwinds, Penta was owed, I believe, approximately over
8 \$7 million?

9 A. By the time this document was here.

10 Q. Yeah.

11 A. Yes.

12 Q. So Penta was never paid any money after this pay
13 order -- this pay order?

14 A. This pay app was paid in late October. It was the
15 September pay app. It's always you finalize the pay app at
16 the end of the month and typically you get paid 30 days
17 later.

18 Q. But it was submitted for work performed prior to
19 the date of the pay app?

20 A. Right.

21 Q. But by December, over \$7 million were owed to
22 Penta, correct?

23 A. For two pay apps. When those pay apps came due,
24 this was probably the pay app for December.

1 Q. And at that point in December, there was no money
2 to make those payments to Penta, correct?

3 A. That's true.

4 Q. And then shortly after that, I believe in the
5 first part of January, Hall again notified you as manager of
6 the Cal Neva that the project was out of -- the loan was out
7 of balance, correct?

8 A. Correct.

9 Q. And they were going to stop funding on the loan?

10 A. Yes.

11 Q. You testified in response to Mr. Little that
12 documents that you reviewed in discovery proved to you that
13 Yount somehow had involvement with the undermining of the
14 Mosaic loan. Do you remember that testimony?

15 A. Yes.

16 Q. What documents are you talking about?

17 A. The documents where the -- the e-mails where they
18 were planning that meeting. There's actually an e-mail where
19 Mr. Yount points out that bringing in -- with the terms of
20 North Light coming into the deal is not as good for everyone,
21 as long as the Mosaic loan is in place, and I think it was on
22 Friday before they did it.

23 Q. So if we go through all the documents, what you're
24 talking about is all the e-mail --

1 A. Yes.

2 Q. -- chatter back and forth?

3 A. Yes.

4 Q. With the Incline Men's Group?

5 A. Yes.

6 Q. Mr. Yount, Ms. Kingston?

7 A. Yes.

8 Q. That's where you're getting the impression that
9 somehow Mr. Yount interfered with the Mosaic loan?

10 A. That he's part of the group doing it, yes.

11 Q. And you're claiming that somehow Mr. Yount and the
12 IMC are responsible for you and Mr. Criswell losing millions
13 of dollars, correct?

14 A. Given that loan being tanked, that is -- I'm just
15 talking about what it's cost us. The rest of the investor
16 group, that could -- you know, we'll see where that ends up,
17 but it's a substantial, substantial amount.

18 Q. Did you file a compulsory counterclaim against
19 Mr. Yount from his lawsuit?

20 A. No.

21 Q. Did you file any lawsuit against the IMC or any of
22 the other investors for interfering with that loan?

23 A. No. The outcome is not yet determined.

24 Q. You said the winery sale with Brandon Chaney, and

1 you put a lot of details surrounding that particular lawsuit,
2 right?

3 A. Yes.

4 Q. You settled that lawsuit, correct?

5 A. We did.

6 Q. Did you sign a confidentiality agreement not to
7 disclose the terms of the settlement?

8 A. I did not confirm, didn't say anything, but just
9 that it settled.

10 Q. You're saying the settlement agreement doesn't
11 have any kind of confidentiality agreement?

12 A. I'm sure it does.

13 Q. And, finally, let's go to Exhibit Number 124. And
14 let's go to the back of that document, starting at the --
15 would be the page -- this one on top says page 78 of 1 and it
16 starts with, begin forward message, Sterling Johnson to
17 yourself?

18 A. Right. Yes.

19 Q. And you received this e-mail?

20 A. Yes.

21 Q. Mr. Little had you read only a portion of the last
22 paragraph. He left out a couple of lines. Could you read
23 the entire last paragraph that says, we also told them?

24 A. We also told them for the better part of three

1 months, we have not heard much from you or your team. We
2 went on to explain a little bit of the history of the deal
3 from their perspective, and to tell you the truth, it seems
4 to be a little bit of a mess right now. We're going to take
5 a step back, tear up the executed term sheet, give you and
6 the ownership time to figure things out on your own, and at
7 the right moment, if you desire, reintroduce the deal to
8 Mosaic.

9 Q. So Mr. Johnson is telling you that we haven't even
10 heard from you for -- that would be dated February 1st, so
11 that would be November, December, January, correct?

12 A. We did not have all that much going on. We were
13 waiting for the approval.

14 Q. Do you know who called the meeting for the --
15 between the Incline Men's Club and Mosaic?

16 A. I do not know. I can guarantee you, it wasn't
17 Mosaic.

18 Q. You're absolutely positive about that?

19 A. I am.

20 MR. CAMPBELL: That's all we have.

21 THE COURT: Thank you. Mr. Little.

22 RECROSS EXAMINATION

23 BY MR. LITTLE:

24 Q. Sir, while we're on Exhibit 24, I think you

1 already explained this in your testimony, but the delay that
2 Mosaic is talking about here, is that something that is
3 attributable to you or Mr. Criswell?

4 A. No. We were waiting for approval. You know, as
5 we said in the November meeting, I was given direction, go do
6 X, Y and Z with them. I met with Mosaic and then they agreed
7 to those aspects. We took it back to the committee, tried to
8 do that on the 12th, and nobody wanted to -- it didn't even
9 get to the point of being able to ask for the approval,
10 honestly.

11 There was too much argument over we should be
12 raising equity, we should be raising this, raising that, do a
13 capital call, these types of things. By the time we got
14 around to the January 27th, we had a structured meeting and
15 asked for the approval of the loan and which was unanimously
16 given.

17 Q. Sir, counsel asked you if you had filed a
18 compulsory counterclaim against Mr. Yount in this litigation.
19 You have through me in the pleading filed an affirmative
20 defense for unclean hands, have you not?

21 A. Yes.

22 Q. So look at Exhibit 149. This is the January third
23 party report for Hall. Go to page three again.

24 A. Okay.

1 Q. Under status, first bullet, Penta's reporting that
2 there wasn't a slow down until November, correct?

3 A. Correct.

4 Q. And at this point in time, even at the end of the
5 year, there was still money under the Hall loan to fund pay
6 applications that Penta was presenting?

7 A. There was another 9 million.

8 Q. You don't control what Hall does or doesn't do
9 with its funding?

10 A. Correct.

11 Q. Now, counsel objected and said there was no
12 foundation that Mr. Yount had been conspiring with the IMC
13 group to oust you and take this loan. Can you go to
14 Exhibit 109?

15 MR. CAMPBELL: Objection. I think that
16 mischaracterizes my question. I asked him to please show --

17 THE COURT: I understand what you're saying. We
18 can do without the adverbial clause. Just ask the question.
19 Exhibit 109?

20 MR. LITTLE: Yes, your Honor.

21 BY MR. LITTLE:

22 Q. Mr. Wolf had asked you when this dated back to and
23 you were talking about, I believe this is the next e-mail,
24 I'm going to show you. This is a December 17th, 2015 e-mail

1 from Mr. Chaney and Mr. Yount and some of the other investors
2 are copied on that, right?

3 A. Yes.

4 Q. And he indicated he created a drop box for
5 information he received from CR and other documents obtained
6 from other sources for their eyes only, correct?

7 A. Correct.

8 Q. And that was part of what you were referring to?

9 A. Yes.

10 Q. And if you look over to the next Exhibit 110?
11 Mr. Yount, by the way, I think I asked this, but he's copied
12 on the list of people that that e-mail is going to, right, on
13 109?

14 A. Yes.

15 Q. And similarly, 110, it's a week later,
16 December 26th, 2015, Paul Jamieson of IMC is sending an
17 e-mail to several people, including Mr. Yount, correct?

18 A. Correct.

19 Q. And they're sending an action item list for their,
20 quote, divide and conquer approach, right?

21 A. Correct.

22 Q. And they're saying for obvious reasons that this
23 isn't to be shared with Criswell Radovan?

24 A. Correct.

1 Q. If we go over to Exhibit 115, e-mail communication
2 between Mr. Chaney and Mr. Yount. The subject line is
3 tomorrow. And he's asking Mr. Yount to call him, that he has
4 something to discuss with him about you.

5 A. Correct.

6 Q. And if we turn over to Exhibit 119, this is a day
7 before the January 27th meeting that we've been talking
8 about, right?

9 A. Yes, it is. It's the day of, early morning.

10 Q. Again, this is an e-mail communication from Paul
11 Jamieson of IMC and Mr. Yount is copied on it, correct?

12 A. Correct.

13 Q. And down below, they're referring to a productive
14 meeting and talking about key points for how tomorrow's
15 meeting at the IMC with Criswell Radovan will go. Do you see
16 that?

17 A. Yes.

18 Q. And they give kind of a series of branches which
19 way it's going to go depending on what happens. If you go
20 down to number three --

21 A. Yes.

22 Q. -- it says if you and Bill are not willing to
23 leave, then Stuart, Mr. Yount, is going to urge Criswell
24 Radovan to reread his e-mail, correct?

1 A. Correct.

2 Q. Does that sound like coercion to you?

3 MR. CAMPBELL: Objection.

4 THE COURT: Sustained.

5 MR. LITTLE: I'll withdraw. I don't have any
6 further questions. Thank you.

7 THE COURT: Mr. Wolf.

8 MR. WOLF: If the Court would indulge one
9 question?

10 THE COURT: Go ahead.

11 RECROSS EXAMINATION

12 BY MR. WOLF:

13 Q. Mr. Radovan, you testified earlier that the
14 acrimony at the December 12th, 2015 meeting at the Fairwinds
15 appeared to you to be staged. Would you explain your
16 testimony, your impression in that regard?

17 A. The IMC guys that were there had themselves all
18 around the room. This is even from Heather and Lisa in our
19 office who were sitting behind them, you know, saw them all
20 texting each other, you say this now, now you say this. So
21 they were continually texting each other about, you attack on
22 this, you attack on that.

23 MR. CAMPBELL: Objection, there's no foundation
24 for those texts.

1 THE COURT: Just a minute. Sustained. I'll allow
2 you another question.

3 MR. WOLF: I guess my response would be, your
4 Honor, I think the question was okay. He started talking
5 about things that were outside his personal knowledge. So I
6 would augment the question by saying please answer with
7 things you observed or heard yourself.

8 THE WITNESS: It was all staged. They all had
9 certain things that they were to say and --

10 MR. CAMPBELL: Same objection.

11 THE COURT: Overruled.

12 THE WITNESS: They were positioned all around the
13 room. And it was one at a time to do his thing and then the
14 other one jumped in on top of that and another came up with
15 another. So it was a staged event.

16 BY MR. WOLF:

17 Q. That's based on your own observation of it?

18 A. Yes.

19 MR. WOLF: Thank you, your Honor.

20 THE COURT: Thank you, Mr. Radovan. Mr. Campbell.

21 MR. CAMPBELL: I call Mr. Yount.

22 (One witness sworn at this time.)

23 THE COURT: Mr. Yount, pull that mic a little bit
24 closer to you so Ms. Koetting can hear you. You don't have

1 to chew on it, but -- that will be fine. Thank you,
2 Mr. Campbell, your witness.

3 GEORGE STUART YOUNT

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

5 follows:

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Good afternoon, Mr. Yount.

9 A. Good afternoon.

10 Q. Can you just tell me a little bit of background on
11 your employment at the present time?

12 A. On my what?

13 Q. Employment.

14 A. Oh. I'm employed by Fortifiber Corporation, which
15 my father started in 1939. I've worked there since 1969.
16 And I was technically not head of it from 1976 when my father
17 stepped out of the office and he got a separate office with
18 he and his secretary. But I was formerly president -- or
19 chairman and CEO as of 2001 when he passed away.

20 Q. And what does Fortifiber do?

21 A. We make residential building products, such as the
22 black paper that goes behind stucco walls, flashing that goes
23 around windows and other products that go into a residential
24 house.

1 Q. You sell it to contractors or builders?

2 A. No, not contractors. We sell it to building
3 material dealers.

4 Q. One step removed from the contractor level?

5 A. One, sometimes two steps.

6 Q. Fortifiber is not a company that is involved in
7 construction, per se, of buildings?

8 A. Oh, no.

9 Q. It's like selling widgets to a car manufacturer?

10 A. Yes.

11 Q. So have you ever been involved in the construction
12 of some kind of commercial enterprise?

13 A. I was involved in building two factories for my
14 company, if that's what you mean.

15 Q. Yeah. But you hired general contractors to do
16 that?

17 A. Yes. Absolutely.

18 Q. And have you ever made an investment into some
19 kind of real estate development or commercial building type
20 venture?

21 A. No.

22 Q. And I understand you live at Lake Tahoe?

23 A. I do.

24 Q. How long have you lived up there?

1 A. 21 years. And before that, I was a Nevada
2 resident part-time. Well, when I went to college in 1967, I
3 went to UNR, as my father did in 1926.

4 Q. And then just, we'll get this out of the way, you
5 recently have built a guest house addition to your regular
6 house, right?

7 A. That's true.

8 Q. And Peter Grove's name has come up, he's an
9 architect?

10 A. Yes.

11 Q. We'll go through that later in your testimony.
12 Peter Grove was at one time working for you?

13 A. Yes. He was not involved in the building of our
14 main house, which we moved into 19 years ago today. But the
15 beach house, he followed on the previous architect, Jeff
16 Lindall, who had also designed the beach house and brought it
17 to fruition since Mr. Lindall had sold the business and
18 retired.

19 Q. How long was Mr. Grove involved with you?

20 A. Four years, three or four years.

21 Q. When did you first hear about the Cal Neva being
22 redeveloped and reopened?

23 A. I ran into Mr. Marriner in 2014, I think the
24 spring, at a restaurant and he was telling me a little about

1 it. We weren't there to see each other. We were there with
2 other people, but we talked briefly.

3 Q. My understanding, you've been through this whole
4 trial, you saw an initial e-mail that you and Mr. Marriner
5 had an e-mail exchange back in February of 2014?

6 A. Sounds right.

7 Q. And Mr. Marriner sent you, looked like may have
8 sent you some documents, but at least cut and paste as part
9 of the document and sent it to you?

10 A. Correct.

11 Q. Were you interested in investing at that time?

12 A. No, I was not.

13 Q. On the time line, as we've seen through the
14 e-mails, it looks like in June of 2015, you made contact with
15 Mr. Marriner again about the Cal Neva?

16 A. Correct.

17 Q. Tell me about how that contact came about.

18 A. Well, my situation had changed to where I might be
19 interested in such a project and participating and,
20 therefore, I reached out to him, first of all, to see how the
21 project was going.

22 Q. What did Mr. Marriner tell you?

23 A. He said it's going famously. He said it's going
24 very well. It's still scheduled to be opened December 12th

1 of 2015. He also said that there was still a million and a
2 half investment possibility still available.

3 Q. Let's flip back to February of 2014. Did Mr.
4 Marriner, when he sent you some -- any documentation, ask you
5 to sign a nondisclosure agreement?

6 A. He did.

7 Q. Did you sign it?

8 A. No.

9 Q. And he sent you the documents anyway?

10 A. Yes.

11 Q. Between that February 2014 and the June 2015 time
12 frame, had you been following the progress of the Cal Neva?

13 A. Not really, except driving by on the street you
14 might see something. That's it.

15 Q. Some of the other investors, the names have kind
16 of been circulated around the courtroom, were any of those
17 investors friends of yours or acquaintance of yours?

18 A. Les Busick was an acquaintance.

19 Q. Had you talked to Mr. Busick at all?

20 A. No.

21 Q. In that time frame we're talking about?

22 A. No. I don't think I had seen or spoke to
23 Mr. Busick during that time frame.

24 Q. Did you see Mr. Marriner on a regular basis?

1 A. No, not a regular basis. As he said, we might see
2 each other in the grocery store, although I didn't do much of
3 that, but, you know, restaurant or something, passing by,
4 very briefly, brief occasion.

5 Q. You weren't close friends and went back and forth
6 to each other's house?

7 A. No.

8 Q. So in June of 2015, why all of a sudden were you
9 now maybe potentially interested in the Cal Neva?

10 A. My 401K plan had excess money in it that I was
11 just investing in mutual funds and I thought it might be a
12 spot for it to invest. It was dedicated to my charitable
13 foundation, so that when I pass, that money would go to the
14 charitable foundation. But it was -- I was told it was a
15 possibility to be able to move that 401K money into an IRA
16 that would then be able to invest in Cal Neva. That proved
17 to be quite difficult, by the way.

18 Q. Let's talk about that just for a minute since you
19 brought it up. So you had to get some type of accounting
20 assistance or trust company assistance to be able to move
21 from a retirement fund and make a different kind of
22 investment --

23 A. Yes.

24 Q. -- in a development?

1 A. You saw Premier Trust in there is who we finally
2 found. But it was difficult to find someone who was able to
3 do that transition and the laws are very, very strict on
4 401Ks and IRAs and all that, as you might know.

5 Q. In that time frame between that June, when you
6 first talked to Mr. Marriner, and up until the time you made
7 your investment in early October, had you ever told Mr.
8 Marriner that you really weren't interested in the project?

9 A. No. In fact, we communicated regularly by e-mail
10 and the calls.

11 Q. And you were in pretty constant communication,
12 pretty regular communication with Mr. Marriner throughout
13 that time frame?

14 A. Yes. Yes.

15 Q. So we can get a good record here, let's start
16 looking at a couple of exhibits in that time frame that will
17 help us walk through this. Let's first look at Exhibit
18 Number 7.

19 A. Seven. Yes, sir.

20 Q. Now, we move to July 12th of 2015.

21 A. Yes.

22 Q. And the e-mail string looks like it was attempting
23 to set up some kind of a site tour, correct?

24 A. I believe so.

1 Q. And did you do that site tour of the Cal Neva?

2 A. Yes, I did.

3 Q. And who took you on that site tour?

4 A. David Marriner.

5 Q. And did Mr. Marriner seem to have a pretty good
6 knowledge of the project?

7 A. I'm sorry?

8 Q. Did Mr. Marriner have knowledge of the project? I
9 mean, he knew where to take you and what to show you and
10 everything?

11 A. Absolutely.

12 Q. What did he tell you in that site tour about the
13 project?

14 A. We went all through the project and he would point
15 out different areas of what was being done and when it was
16 being done and in some cases why it was being done. And he
17 told me that it was definitely on track and on schedule for
18 the December 12th opening.

19 Q. Did he seem pretty intimately familiar with the
20 details of the construction and what was needed to be done
21 and what had yet to be done?

22 A. Yes. He was very experienced in construction
23 himself, as well as he had been involved in that project for
24 a year or so directly, I believe.

1 Q. And then if we go to Exhibit Number 8 next?

2 A. Eight?

3 Q. Yes.

4 A. All right.

5 Q. Now, it looks like you're now -- Mr. Marriner is
6 telling you, kind of following up on the actual tour of the
7 project?

8 A. Correct.

9 Q. And he goes on and he says, as I mentioned in the
10 tour, Robert has released an additional 1.5 million of
11 equity?

12 A. Yes.

13 Q. Did Mr. Marriner, was this the first time that he
14 explained to you about how the Cal Neva was going to raise
15 money for the development?

16 A. The \$20 million cap and all of that?

17 Q. Yes.

18 A. I don't remember if it was -- it was on or about
19 this time, but, yes.

20 Q. But he said on the tour he told you that Robert
21 had released an additional 1.5 million of equity?

22 A. Correct. It was the last 1.5 possibility.

23 Q. You don't remember if it was at the tour, but
24 somewhere in this July 14th time frame, did he explain to you

1 that the money being raised, the equity being raised was
2 under a private placement memorandum?

3 A. Yes.

4 Q. And did you understand what a private placement
5 memorandum was?

6 A. Yes.

7 Q. And then it appears that then Mr. Marriner follows
8 on and says, asked me to forward some documents for you,
9 which would be the -- he says the PPM?

10 A. Private placement memorandum.

11 Q. Private placement memorandum. And then he sent a
12 founders progress report with colored renderings and finish
13 designs, right?

14 A. Yes.

15 Q. And you got those documents?

16 A. I did.

17 Q. And you looked at those documents?

18 A. I did.

19 Q. And then it goes down next and it says, the date
20 on your PPM secures your position in line to secure a cabin
21 location if you choose to buy a cabin. What was that about?

22 A. I'm sorry. Could you speak up just a little bit?
23 I've had a cold and my ears are clogged.

24 Q. The date on your PPM secures your position in line

1 to select a cabin location if you choose to buy a cabin.

2 A. Correct.

3 Q. What was that about?

4 A. That was what I believe they called the 28 units
5 they had permission to build, and as a founding member, you
6 had the right to buy one of those, in the first position to
7 buy them.

8 Q. Okay. And then he says, the last eight pages are
9 our signature pages. Do you remember seeing a package in the
10 PPM, something along the lines of a subscription agreement or
11 an agreement where you would sign documents?

12 A. Yes.

13 Q. And what did you understand that subscription
14 agreement with the last eight pages of signature pages was?

15 A. It was agreeing to the PPM and terms and
16 conditions of the operating agreement and also instructions
17 as to how to invest, I believe.

18 Q. And in return for you sending in a check?

19 A. Yes. I think it also told me where to send the
20 check.

21 Q. We'll look at that document a little later.

22 A. Okay.

23 Q. This site visit, this was done in July of 2015.

24 Did you ever take any more site visits prior to making your

1 investment?

2 A. No.

3 Q. When you looked at the private placement
4 memorandum, did you review those in pretty good detail?

5 A. I tried to, yes.

6 Q. And did you see some budgets and time lines and
7 things like that?

8 A. And pro formas, yes.

9 Q. Let me ask you this. As you know, there have been
10 some various different documents. Exhibit 3 is the actual
11 private placement memorandum and then Exhibit 4 is called a
12 confidential offering memo.

13 A. Yes.

14 Q. Do you remember if, as part of the private
15 placement memorandum, which is Exhibit Number 3, that you
16 also received this Exhibit Number 4, which was the offering
17 memo with the pictures and the renderings and things like
18 that?

19 A. Yes.

20 Q. Did you review that also?

21 A. Yes, I did.

22 Q. And that had basic -- that had some
23 representations about the construction budget, how solid the
24 budget was?

1 A. Yes. I believe so.

2 Q. The schedule?

3 A. Uh-huh.

4 Q. And it had numbers ascribed to the budget, where
5 the money was going to go?

6 A. Correct.

7 Q. And then to make sure, there was another exhibit,
8 which is number five, which is an amended and restated
9 operating agreement.

10 A. Yes.

11 Q. And this one, it kind of -- there was an operating
12 agreement within the PPM, but it was unsigned. This is an
13 actual signed version with all the members' signatures?

14 A. Yes.

15 Q. And did you get a copy of that, you know, on or
16 about that same time frame?

17 A. I believe it was a similar time frame, if not the
18 same.

19 Q. And did you read it in that time?

20 A. I did.

21 Q. Let me ask you, can you look at schedule 4.3?

22 A. In that document?

23 Q. Yes.

24 A. Yes.

1 Q. So you looked at the budget, right, in some of the
2 other documents?

3 A. Yes.

4 Q. And you read the private placement memorandum, you
5 knew how much money could be raised under that?

6 A. Yes.

7 Q. And did you look at this uses of capital
8 contributions?

9 A. Yes.

10 Q. And what was your understanding of what the table
11 4.3 is in this document is for?

12 A. It's saying once -- at the time of this document,
13 they had raised eight and a half million, but they were going
14 to 20 million. Is that what you're asking?

15 Q. No. On the 4.3, it says uses of capital
16 contribution.

17 A. Oh. Okay.

18 Q. Just the schedule 4.3.

19 A. I'm looking at clause 4.3.

20 Q. Go to the very back of the document. I believe
21 even past the signature pages?

22 A. Got it. Too many 4.3s. My apologizes.

23 Q. On schedule 4.3, what did you understand these
24 three bullet points to represent?

1 A. First one says it's to repay the \$6 million bridge
2 loan. Second point is payment of approximately \$10 million
3 to redeem the equity interest in the New Cal Neva. And the
4 third is to provide additional development capital for the
5 project.

6 Q. So it was your understanding from reading this
7 that the raise of equity under the private placement
8 memorandum once it was -- all the money was fully raised,
9 that would provide some additional development funds for the
10 project?

11 A. Yes.

12 Q. Was that important to you?

13 A. Of course. No funds, no project.

14 Q. Next in the sequence of e-mails regarding your
15 discussions with Mr. Marriner --

16 A. What exhibit are you on, sir?

17 Q. Let's go to Exhibit Number 11.

18 A. Yes, sir.

19 Q. Mr. Marriner says, I hope you received my
20 documents yesterday, and those would be the documents we were
21 just talking about, Exhibits 3, 4 and 5?

22 A. Yes.

23 Q. And then it looks like he's sending you some
24 basic, they call it basic term sheets for preferred

1 investors. Had you asked for something like that?

2 A. I don't remember asking for it.

3 Q. He just sent that, right?

4 A. Yes.

5 Q. And he's telling you also at the bottom, we
6 project to have the hotel refinanced within two to
7 three years and return the investors' capital and preferred
8 return?

9 A. Yes.

10 Q. Your understanding is that he was just trying to
11 project out to you how much money you might make at the back
12 end of this project?

13 A. I believe so, yes.

14 Q. And then he tells you it's a rough outline and you
15 have to look to your legal advisor to flesh it out, right?

16 A. Yes.

17 Q. Is Mr. Radovan on this e-mail?

18 A. No.

19 Q. And then if we go to the next Exhibit Number 12, I
20 don't know if you had another conversation with Mr. Marriner,
21 but he's now telling you, thanks for taking the time to
22 review our founding membership, preferred membership. And
23 then Robert Radovan will give you a response to your
24 question. So you had sent him an e-mail below that

1 specifically asked Mr. Marriner some questions, right?

2 A. Correct.

3 Q. And those questions are the ones at the bottom of
4 that e-mail?

5 A. Correct. And a little bit on the next page as
6 well.

7 Q. And it says, looking forward to having you on our
8 founding members team.

9 A. Correct.

10 Q. What did you understand that to mean?

11 A. He was trying to sell me a share of the project.

12 Q. Under the private placement memorandum?

13 A. Private placement, excuse me.

14 Q. Let's go to the questions you proposed to Mr.
15 Marriner.

16 A. Okay.

17 Q. I won't through all of them, but a couple of them.
18 On number four, it says, it appears you're raising 20
19 million, and you said the entire investment is some 60
20 million?

21 A. Yes.

22 Q. Where is the other 40 million coming from and do
23 members have any liability for it? So when you're asking Mr.
24 Marriner, you said, it appears you're raising 20 and you said

1 the entire investment is some 60, did Mr. Marriner tell you
2 that the entire investment would be \$60 million?

3 A. Either Mr. Marriner or one of the documents. I
4 don't remember which. That was my understanding.

5 Q. Okay. But that came from some other source? You
6 didn't glean that -- it looks like somebody told you or some
7 document told you?

8 A. Correct.

9 Q. And then the 12th question on the next page?

10 A. Yes.

11 Q. You ask him, the manager or its affiliates take
12 out more than 1.2 before the members are paid?

13 A. Right.

14 Q. Why were you asking that question?

15 A. I wanted to make sure that the project wouldn't be
16 drained before it was done. And I would be, as an investor,
17 I would be returned along with them, not after them.

18 Q. Okay. Do you remember, just going back to that
19 same exhibit, number 12, do you remember having any telephone
20 conversations or personal meetings with Mr. Marriner where
21 you discussed some of the terms or the items in the
22 investment?

23 A. No, I do not remember.

24 Q. Not to say they don't have happen, you just don't

1 remember?

2 A. Yes.

3 Q. The next document is Exhibit Number 13.

4 A. Yes.

5 Q. That's July 17, 2015, correct?

6 A. What about it?

7 Q. Have you got that in front of you?

8 A. Yes, I do.

9 Q. Great. And this is from Peter Grove to yourself?

10 A. Correct.

11 Q. It starts -- it looks like at the bottom of the
12 document, you had had some communication with Mr. Marriner,
13 and then you attached that and then did a follow on and
14 reached out to Mr. Grove and said, what do you rate the
15 project's chance of success?

16 A. Yes.

17 Q. And why were you asking Mr. Grove that question?

18 A. Because he was the architect for the project and I
19 knew him, so I thought he might answer me accurately.

20 Q. And he did send you an answer, right, in the text
21 and the e-mail before?

22 A. Yes.

23 Q. And he says, I'm going to say pretty good. He
24 goes on, on the short-term they are in fund raising mode.

1 Construction costs are exceeding budget. They, we are trying
2 to get our arms around it to keep in check. Mr. Grove
3 doesn't put how much costs are exceeding the budget, right?

4 A. Correct.

5 Q. Did you ever have any other follow-up
6 conversations with him where he actually put a number to that
7 issue?

8 A. No.

9 Q. Let's go to Exhibit Number 14.

10 A. Yes, sir. I'm there.

11 Q. This is from Mr. Marriner to you, and it's a
12 follow on e-mail from you -- initial e-mail from you to him
13 on the 19th and it looks like an e-mail you sent to him,
14 you're asking him for some comparisons from some other
15 properties in the Basin?

16 A. Yes. It was part of -- it was what was listed in
17 their information that they had sent me, so I was questioning
18 it.

19 Q. They had put information in there basically
20 saying, this is how we compare to similar projects in the
21 Basin?

22 A. Yes.

23 THE COURT: Squaw Peak?

24 THE WITNESS: Squaw, the Ritz, the Embassy Suites,

1 and the Hyatt Regency.

2 BY MR. CAMPBELL:

3 Q. And then he responds back, and he says, Robert is
4 out of town. He's going to be back in the saddle. And he
5 says, we have a draft response to your question being
6 reviewed, right?

7 A. Correct.

8 Q. He doesn't say Mr. Radovan is preparing a draft
9 response?

10 A. No, he doesn't.

11 Q. You understood that Mr. Marriner was at least
12 working on some kind of draft response?

13 MR. WOLF: Objection, leading.

14 THE COURT: Speculation. Sustained.

15 BY MR. CAMPBELL:

16 Q. What did you interpret the word we in the e-mail
17 from Mr. Marriner?

18 A. I interpreted we as to mean that he and Robert
19 Radovan was working on a draft response.

20 Q. And then let's go to Exhibit Number 15. Again,
21 this is Marriner and you communicating by e-mail. It looks
22 like a lot of your communications were with Mr. Marriner by
23 e-mail?

24 A. Correct.

1 Q. Was it kind of your habit at that time to
2 communicate with parties via e-mail?

3 A. Yes. Most of it.

4 Q. I see you carry an iPad around with you.

5 A. I do.

6 Q. Is that pretty much how you communicate with
7 people?

8 A. Yes.

9 Q. At this point, he says, I understand that you and
10 Robert had a chance to talk yesterday in the first e-mail at
11 the bottom of the string?

12 A. Yes.

13 Q. Do you remember that conversation with Robert?

14 A. I mentioned it happened. I don't remember the
15 details of it.

16 Q. Let's go back to Exhibit Number 14. At the bottom
17 of Exhibit Number 14, that first page, it says, as I
18 understand it, you're over budget by more than 5 million so
19 far. What will that and likely more funding needs come from?

20 A. Correct.

21 Q. As you understood it, where did your understanding
22 come from? Had someone told you about the budget was
23 \$5 million over?

24 A. Robert Radovan had told me it was over 5 something

1 million or perhaps more over budget at that point.

2 Q. And that would have been in the conversation?

3 A. Possibly the day before.

4 Q. Or that day of, right around that same time frame?

5 A. Yes.

6 Q. That's where you got the \$5 million number?

7 A. Yes.

8 Q. Did Mr. Radovan at that time tell you that the 5
9 million and more might even total 9 or 10 million?

10 A. I believe he told me at the time that he was
11 mentioning about the possibility of a refinancing the
12 mezzanine loan. Should I not get into that?

13 Q. I'm talking about this meeting. When you would
14 this discussion with Mr. Radovan --

15 A. He told me that it was a time about 5 million,
16 maybe six, and that he was looking to create a cushion of
17 some \$3 million, making a total of nine.

18 Q. Okay. But he didn't tell you that the change
19 orders he estimated, what the amount of the change orders he
20 estimated to be at the time?

21 A. He expected more change orders, but he did not
22 tell me there was any anticipated directly specifically over
23 5, 5 to 6.

24 Q. And he didn't ascribe a number to the amount of

1 those change orders that he anticipated?

2 A. No more than nine, I believe, because that's what
3 he was looking to potentially fund.

4 Q. Did he tell you that the change orders could
5 amount to 9 million?

6 A. Not what he knew at that point. But he wanted to
7 have a cushion to be able to deal with that.

8 Q. And then back to Exhibit Number 15. Mr. Marriner
9 now he's confirming your conversation and he said he hopes to
10 answer most all of your questions. He said, I have attached
11 the recent Cal Neva progress report, confidential. That's, I
12 believe, Exhibit Number 10?

13 A. Yes, I believe so.

14 Q. And did you review that when you got it from Mr.
15 Marriner?

16 A. Yes, I did.

17 Q. Okay. If you look at page 16 of that report, did
18 you look at the construction summary when you got that
19 report?

20 A. One second. Yes.

21 Q. Did Mr. Marriner when he sent you this report or
22 afterwards tell you what the amount of the budget impact was
23 going to be?

24 A. No. I don't believe so. I assumed it was what

1 they had been talking about.

2 Q. Now let's go to Exhibit Number 18.

3 A. Okay.

4 Q. And you've been in the courthouse, there's been a
5 lot of discussion about this exhibit. You've heard this,
6 right?

7 A. Yes.

8 Q. So this kind of follows up, it's from Mr. Radovan
9 to yourself, and it kind of follows up on your conversation
10 with him and the discussion about the questions and answers?

11 A. Yes.

12 Q. In points one and two was your understanding from
13 Mr. Radovan as to what you were investing in under?

14 A. Yes.

15 Q. And was that the private placement memorandum?

16 A. Private placement memorandum up to a million and a
17 half dollars. It was still available.

18 Q. And was it your understanding that that was all
19 the more that could be raised under the private placement
20 memorandum?

21 A. Correct. That would reach the \$20 million limit.

22 Q. And then he tells you about the capital stack,
23 which is the equity, the mezzanine, and then the debt and the
24 total capital to the project?

1 A. Correct.

2 Q. And your understanding is that they were going to
3 raise \$55.5 million through various sources?

4 A. Correct.

5 Q. Okay. And then he says, we are refinancing the
6 mezzanine piece with a less costly 15,000?

7 A. 15 million.

8 Q. 15 million. Do you remember the conversation with
9 Mr. Radovan the day before about that refinancing of the
10 mezz?

11 A. Basically, just what it says here. I don't
12 remember details.

13 Q. Anything different?

14 A. I don't.

15 Q. And in the e-mail he says it's less costly. Do
16 you remember anything of him telling you about being a less
17 costly loan?

18 A. At this point, the project had gone along so far
19 that I was assuming that he could get better financing at a
20 lesser rate, because of the project being within two or
21 three months of completion.

22 Q. So that's what you understood from --

23 A. That was my understanding.

24 Q. And then it says, it goes on, this is to cover the

1 added costs of regulatory and code requirements, which change
2 already added by the two counties and the TRPA. Did you talk
3 about that in your conversation with him?

4 A. No. I saw it on the list on the report that you
5 had me look at.

6 Q. In the actual conversation, I assume that was over
7 the telephone?

8 A. Yes. But -- no, I had not met him yet before.

9 Q. Is that in the conversation where he told you that
10 the change orders at that point were 5 million plus, right?

11 A. 5 million, yes, 5 to 6.

12 Q. I believe your earlier testimony was he told you
13 he was going to pay off the mezz loan. That was the six plus
14 interest, right?

15 A. Correct.

16 Q. And he was going to use the additional 9 or 9 less
17 whatever the interest was --

18 MR. LITTLE: Your Honor, I'm trying to be lenient.
19 I understand it is a bench trial. But these are substantive
20 issues, but could we ask the witness to testify and not
21 counsel.

22 MR. WOLF: Join that objection.

23 MR. CAMPBELL: I'll try to be better, your Honor.

24 THE COURT: Thank you.

1 BY MR. CAMPBELL:

2 Q. What did Mr. Radovan tell you as to the specific
3 uses of the refinance?

4 A. He said it was going to be used to pay off the
5 \$6 million mezzanine loan and whatever interest was owed on
6 it and the remainder would be used for the 5 to \$6 million
7 change orders and the roughly 3 million or I guess less would
8 be kept as a cushion in case there was other change orders
9 that would happen.

10 Q. And it also goes down and says, we have also added
11 some costs for design upgrades within the project. And he
12 says, predevelopment of the condo units is also included with
13 this.

14 A. Yes.

15 Q. Do you remember the discussion you had with him
16 about that?

17 A. Well, they were created, because TRPA had changed
18 their philosophy on condo units. They were getting more
19 focused on developing an area and therefore were more lenient
20 on units in such a denser area like where the hotel was.

21 Q. What did you understand when he said, we also
22 added costs for design and upgrades?

23 A. Preliminary design and application or whatever was
24 necessary to secure those 28 units.

1 Q. And that would be, when he says costs, you'd have
2 to spend money for that?

3 A. Yes, sir.

4 Q. Did he quantify how much money out of the
5 mezzanine refinance that he was going to use for those design
6 upgrades, predevelopment of the condos?

7 A. I don't recall him saying how much.

8 Q. He didn't say that was a minimal cost? He didn't
9 say anything about how much that would be?

10 A. I do not recall.

11 Q. Did he tell you what the interest on the Ladera
12 loan was going to be?

13 A. I don't recall that.

14 Q. In this July time frame, right about this -- right
15 after this July 25th date, let's say in the next week or so
16 after that, did Mr. Marriner or Mr. Radovan ever have any
17 further discussion with you about these change orders?

18 A. I don't believe so.

19 Q. Going into August of the next month, did
20 Mr. Radovan or Mr. Marriner -- did you have any discussions
21 with them about the amount of change orders?

22 A. No. I don't believe so.

23 Q. And in September of 2015, right up until you
24 invested, right there in the first half of October, did Mr.

1 Marriner or Mr. Radovan ever quantify what the change orders
2 in the project were prior to your investment?

3 A. I was not aware of changes from when we talked
4 about the 5 to 6 million with the \$3 million cushion. And as
5 you said, I do almost everything by e-mail, very little by
6 conversation.

7 Q. Had you been told prior to your investment, you
8 know, tendering the money -- what would you have done if you
9 had been told prior to the investment that the change orders
10 were now closing in on 9 to \$10 million?

11 A. I would ask a lot of questions about, when your
12 cushion is gone, what would you I expect in the future?

13 Q. But you were never told that?

14 A. No.

15 Q. Would that have given you any pause?

16 A. Absolutely. I would start questioning, if it's
17 that quickly that much more, how much more is it going to be
18 in the near future after that?

19 MR. LITTLE: Are we at a stopping point to take a
20 break?

21 MR. CAMPBELL: It's as good as any.

22 THE COURT: Mr. Yount, you may step down. Watch
23 your step going down. I can assume that we'll spend the rest
24 of the afternoon with Mr. Yount. What's our schedule for

1 tomorrow? Will you be done?

2 MR. CAMPBELL: I don't think so, your Honor.

3 Actually, I think Mr. Yount is going to take the rest of the
4 day and then I assume these guys are going to have some
5 significant cross examination of him.

6 MR. LITTLE: You think it will go through the rest
7 of the day?

8 MR. CAMPBELL: I don't know.

9 MR. LITTLE: If we take it up to 4:00 or 4:30, I
10 would like ask the Court's indulgence to not start and stop
11 and just go on to tomorrow.

12 THE COURT: I agree. Let's say you take Mr. Yount
13 on cross starting tomorrow morning, how much time?

14 MR. LITTLE: An hour to two hours.

15 THE COURT: Mr. Wolf?

16 MR. WOLF: 15 minutes to 30 minutes on top of
17 that.

18 THE COURT: Okay.

19 MR. WOLF: At tops.

20 THE COURT: Thank you. And then after Mr. Yount?

21 MR. CAMPBELL: I'd have redirect, depending on
22 their cross.

23 THE COURT: But after Mr. Yount?

24 MR. CAMPBELL: After Mr. Yount, we have

1 Mr. Chaney, who we talked about earlier in the trial. And
2 then we have one potential -- one for sure, potentially two
3 rebuttal witnesses.

4 THE COURT: Well, at the end of the day, let's
5 talk about the calendar, where we go from here with the
6 addition of these witnesses. I've been working with
7 Ms. Clerk about some of the other trials and we're looking at
8 trying to open up a couple of days for everybody here to wrap
9 up. But let's talk about it at the end of the day.

10 MR. LITTLE: Thank you, your Honor.

11 THE COURT: Thank you very much. Court's in
12 recess.

13 (A short break was taken.)

14 THE COURT: Mr. Yount. Mr. Campbell, your
15 witness.

16 BY MR. CAMPBELL:

17 Q. Mr. Yount, could you turn to Exhibit Number 19 in
18 the book?

19 A. Yes, sir.

20 Q. It's an e-mail to you from Mr. Tratner. Who is
21 Ken Tratner?

22 A. Ken Tratner is my CPA for many years. He's in the
23 Los Angeles area.

24 Q. It appears from this e-mail you're sending him

1 some facts and figures relating to the project?

2 A. Yes.

3 Q. And the e-mail says also that you're attaching
4 some summary sheet? Is that Exhibit 21, investment notes,
5 you called it?

6 A. Yes.

7 Q. So that was the attachment, one of the attachments
8 you sent to Mr. Tratner?

9 A. Correct.

10 Q. And also, I attached the offering, what were you
11 referring to there?

12 A. The PPM I believe it's called.

13 Q. And then you say, my investment in the LLC would
14 be 1 million of a \$60 million project. Where did you get the
15 number that the project was going to be 60 million?

16 A. I believe Mr. Marriner had told me that number.
17 But in any case, the PPM shows 51 plus the 20 million mark
18 would go to increase the budget to 55-ish, plus the 5 million
19 in change orders that Mr. Radovan told me about would make
20 60.

21 Q. And when you say the PPM, are you referring to the
22 offering memorandum, the tables in the offering memorandum?

23 A. Yes, probably. I get those terms mixed up.

24 Excuse me.

1 Q. That's Exhibit Number 4?

2 A. Yes. That's the one.

3 Q. And you're talking about kind of the budget.

4 You've been in the trial?

5 A. Yes.

6 Q. You've seen that document a bunch, correct?

7 A. Correct.

8 Q. And the e-mail you're talking about was the one
9 you just discussed earlier where you said -- it said in
10 reference to Mr. Marriner, you said you told me?

11 A. Yes.

12 Q. Then it looks like you also attached the inquiry
13 to the project architect Mr. Grove?

14 A. Yes. I believe so.

15 Q. That's that earlier e-mail we talked about?

16 A. Yes.

17 Q. And what were you asking? What kind of advice
18 were you asking from Mr. Tratner?

19 A. I wanted him to look at the pro formas and
20 especially the back end functioning of the payouts that were
21 projected in there. He could look it over and see if it made
22 any sense to him. I don't know what you call it, but the pro
23 formas, they were saying year one, year two, year three would
24 come to such and such a cash flow and when I would be paid

1 out.

2 Q. Kind of the income stream?

3 A. Yes, the income stream.

4 Q. And then in the actual Exhibit Number 21, which
5 was the notes you had?

6 A. Yes.

7 Q. You mention that 60 million again?

8 A. Yes.

9 Q. And then at this point you also understood what
10 the 2 million the developer's 2 million was about? If you go
11 down to the third line?

12 A. Yes.

13 Q. And then did you cut and paste the rest of this?

14 A. I believe so, yes.

15 Q. Because it looks fairly familiar to Exhibit Number
16 18?

17 A. Yes. Good source.

18 Q. So let's go to Exhibit Number 22 now.

19 A. All right.

20 Q. Exhibit 22 is August 3rd and it looks like Dave is
21 reaching out to you again, kind of where you are on moving
22 forward, correct?

23 A. Yes.

24 Q. And then you said, I've been dealing directly with

1 Robert. Thanks. He will be taking questions from my CPA,
2 more soon.

3 A. Yes.

4 Q. Had you already talked to Mr. Tratner about a
5 meeting with Robert? I assume that's Mr. Radovan?

6 A. Yes. By telephone, they weren't going to
7 physically meet.

8 Q. You knew they were going to talk?

9 A. Absolutely. I requested that they talk.

10 Q. And then if we go to Exhibit Number 23, that's an
11 e-mail string between you and Mr. Tratner, and then
12 Mr. Tratner and Mr. Radovan?

13 A. Yes.

14 Q. I think if you look at the next page, and I think
15 Mr. Radovan testified to this yesterday.

16 A. Yes.

17 Q. The discussion with Robert appeared that it
18 centered around the -- some pro forma investor returns?

19 A. Yes.

20 Q. Is that the kind of document you were asking
21 Mr. Tratner to review?

22 A. Yes.

23 Q. Again, that was related to what?

24 A. The cash flow in the future and did it make sense

1 that I would be paid out as indicated? The assumptions, were
2 they reasonable, et cetera.

3 Q. And then Exhibit Number 24, Mr. Radovan tells you
4 that he's been talking to Mr. Tratner and he owes him some
5 information?

6 A. Yes.

7 Q. And then we go to Exhibit Number 25, this is from
8 Pete Dordick to you and Mr. Tratner, so you got his e-mail?

9 A. Yes.

10 Q. And you saw the attachments to this e-mail?

11 A. Yes.

12 Q. And that was your understanding of what
13 Mr. Tratner was tasked to look at those kinds of pro formas?

14 A. Yes. Yes.

15 Q. Let's go next to Exhibit Number 27.

16 A. 27. All right. I have it.

17 Q. What are you telling Mr. Tratner in this -- what
18 are you telling Mr. Tratner in this Exhibit Number 27 e-mail?

19 A. What it says. That we -- Robert called me and we
20 chatted a bit.

21 Q. You had a conversation with him about the
22 schedule?

23 A. Yes. And he said it was absolutely on track for
24 the Sinatra 100th birthday party, which would be

1 December 12th.

2 Q. He says, however, they're fearful of the possible
3 huge cost of another winter with little snow and tourists.

4 A. Absolutely.

5 Q. So they're only opening up for the party and not
6 really doing the soft opening until March to pick up the
7 spring break?

8 A. Correct. That they're going to be ready to go.

9 Q. This came from a conversation between you and
10 Mr. Radovan?

11 A. Yes.

12 Q. Did Mr. Radovan give you any other reasons in
13 this, I assume it was a telephone conversation?

14 A. Yes.

15 Q. Did he give any other reasons in that telephone
16 conversation about the opening date?

17 A. No. None whatsoever.

18 Q. And you made this -- you sent this e-mail
19 contemporaneously or in very close proximity to the time
20 frame that you had that conversation with Mr. Radovan?

21 A. Correct. Yes.

22 Q. Other than that conversation with Mr. Radovan, did
23 Mr. Radovan tell you that there were other reasons for the
24 schedule to slip?

1 A. No.

2 Q. And if you look at Exhibit Number 28, you reached
3 out to Peter Grove again. Why were you asking him about the
4 opening then?

5 A. Between the pictures and what I had seen, I was
6 concerned whether it could be done on time and I just wanted
7 some assurance besides what Robert had said.

8 Q. Did Mr. Grove ever respond to you?

9 A. I don't believe so.

10 Q. And then Exhibit Number 29, again, Mr. Marriner's
11 contacting you?

12 A. Yes.

13 Q. And talking about moving forward, right?

14 A. Yes.

15 Q. Did you ever tell him, no, I'm not interested?

16 A. No.

17 Q. And he was trying to help you to facilitate this,
18 right?

19 A. He was trying --

20 MR. LITTLE: Objection, your Honor, leading.

21 THE COURT: Just a minute.

22 MR. LITTLE: I'm trying to be lenient here.

23 THE COURT: I know you are, but I promise I won't
24 be misled.

1 MR. LITTLE: Okay.

2 THE COURT: Do your best. Go ahead.

3 THE WITNESS: I'm sorry, your Honor.

4 THE COURT: Go ahead.

5 BY MR. CAMPBELL:

6 Q. Let's go to Exhibit Number 30. What's Mr.
7 Marriner telling you in this document?

8 A. He's asking if I'm making progress on the
9 self-directed IRA. And I said, yes, I'm making progress.
10 And then he asked -- that was on September 8th and again on
11 the 16th he asked.

12 Q. When he says, Robert hopes to close out the final
13 founding membership very soon, what did you understand that
14 to mean?

15 A. He wants to sell the last million and a half as
16 quickly as he can.

17 Q. It looks like he also asked you to do a tour?

18 A. Yes.

19 Q. Did you do another tour before you --

20 A. Not before I invested. Time was too short in my
21 schedule and not able to.

22 Q. 31, it's an e-mail between you and Mr. Driver.
23 Who is Mr. Driver?

24 A. Doug Driver was my CFO of many years and at that

1 time he was my CFO.

2 Q. Mr. Driver says he's e-mailing you based on an
3 e-mail you had sent him?

4 A. Yes.

5 Q. What answer on the valuation question are you
6 talking about?

7 A. As to whether the pro formas and projections were
8 reasonable or not.

9 Q. And he hadn't answered you yet?

10 A. No. He was still analyzing.

11 Q. But you were ready to proceed?

12 A. I was ready to proceed.

13 Q. Other than these due diligence that I think
14 Mr. Tratner was doing, did you ever follow-up on the status
15 of the change orders from the conversations you had back in
16 July?

17 A. I assumed if there was a -- if there was something
18 different than the change orders, I would have been told that
19 by Mr. Radovan or Mr. Marriner.

20 Q. Did you do any due diligence on the schedule?

21 A. Other than talking to Peter Grove, no. Again, I
22 would have thought that the developer would have told me if
23 there was a change in the schedule or other reasons that he
24 already said or Mr. Marriner.

1 Q. Exhibit 34, Mr. Yount, can you turn to that page?

2 A. Okay.

3 Q. This is an e-mail string, so take a minute and
4 review back to the beginning of this e-mail string.

5 A. I'm sorry?

6 Q. Take a moment and review back, go back and go to
7 the start of the e-mail string and try to review going
8 forward. What was happening in this e-mail string?

9 A. It started with me saying that I was -- I had
10 called Fidelity, who was the holder of my 401K funds, and
11 telling them to issue a check and mail it to me. And then I
12 went forward from there.

13 Q. And then?

14 A. Dave thanked me for the hard work in getting that
15 put together, because it was not easy.

16 Q. And then on October 3rd in this string,
17 Mr. Radovan actually sent you an e-mail, correct?

18 A. Yes.

19 Q. On the second page. And he's saying, actually,
20 the funds should be wired into our attorney's account in
21 accordance with the documents?

22 A. Correct.

23 Q. Do you know what documents he was talking about?

24 A. I think the PPM if I'm getting the right document

1 name.

2 Q. And then he later goes on and says, Heather in my
3 office will send you the wire instructions first thing on
4 Monday.

5 A. Yes.

6 Q. Did Heather Hill send you those wire instructions
7 later, do you recall?

8 A. I believe she did. On the first page of this, it
9 says I sent the wiring instructions to both Doug and Premier
10 Trust.

11 Q. So by October 3rd of 2015, had you decided to make
12 the investment?

13 A. Yes. I asked for the check and it was ready to
14 go.

15 Q. And Mr. Radovan was in the loop?

16 A. I believe so. Yes. Yes. On October 1st, he was
17 in the loop.

18 Q. Let's backup in time just a little bit back to
19 July. You were aware that mezzanine finance was being
20 discussed?

21 A. Yes. Ready to go.

22 Q. You were aware that mezzanine refinance was being
23 discussed?

24 A. Correct.

1 Q. Were you aware that there was a total refinance of
2 the project?

3 A. Absolutely not.

4 Q. Did anybody ever give you any details about the
5 nature or amount of the refinance of the project?

6 A. Before my investment?

7 Q. Yes.

8 A. No.

9 Q. And you sat through the court today, you heard the
10 numbers that Mr. Radovan ascribed to that refinance, correct?

11 A. Yes.

12 Q. And you've heard Mr. Radovan's testimony about
13 whether the project would proceed or not without the
14 refinance?

15 A. Correct.

16 Q. If you had been told about that, the timing of
17 the -- or the pendency of the refinance and the project
18 completion, and the amount of the refinance, what would you
19 have done?

20 A. I would not have invested.

21 Q. And why?

22 A. Because the project then would have been so far
23 over budget I would have really been worried. And the costs
24 were escalating quickly with that indication.

1 Q. You also heard Mr. Marriner talk about, well, you
2 were -- I think he intimated that you were aware of a total
3 refinance because of some discussions with Roger Whittaker --
4 Wittenberg?

5 A. Wittenberg. No, I believe I was asked to put them
6 together so they could talk about the mezzanine finance,
7 refinance. I was never told about it being a total
8 refinance.

9 Q. Maybe explained this little better for the Court.
10 Mr. Marriner reached out to you?

11 A. I believe so.

12 Q. What did he tell you?

13 A. I believe he wanted me to make contact with
14 Wittenberg, since he knew I knew him well, and put him in
15 contact with either Robert, which probably --

16 Q. Just that?

17 A. Well, I think it was to discuss the mezzanine
18 financing, but I don't remember for sure if that's what they
19 wanted to discuss, I believe.

20 Q. Just as a facilitator?

21 A. Yes. A friend calling a friend.

22 Q. Did you ever attend any discussions about
23 refinance in the minutes with Roger?

24 A. I didn't get into the details of anything. I

1 asked him if he wanted to talk to them about that. He says,
2 I'm not a financier, I'm a developer, and so no.

3 Q. And at about that same time frame, before you
4 invested, had you ever talked to anybody about a total
5 refinance package?

6 A. No.

7 Q. Okay. Mr. Marriner talked, in his testimony,
8 talked to you about the North Light -- some discussions with
9 North Light. Were those before you invested?

10 A. I had no discussions with North Light before,
11 during or after. I've never spoken to North Light.

12 Q. You've also sat through the court and heard some
13 of the testimony about the Hall loan out of balance issue?

14 A. Yes.

15 Q. Had you ever been told in July or August that
16 money, equity and infusion needed to keep the loan in
17 balance?

18 A. At no time before I invested was I aware of that.

19 Q. What if you had been told that prior to your
20 investment?

21 A. I would have inquired a lot more about it and been
22 concerned.

23 Q. Were you ever told about whether or not Hall was
24 continuing to fund in August of 2010 or 2015?

1 A. I had no reason to think they weren't funding as
2 they had been.

3 Q. Let's go to Exhibit Number 35 now.

4 A. Yes, sir.

5 Q. Take a minute to look at that string, that e-mail
6 string again.

7 A. Okay.

8 Q. It looks like the first string is an e-mail from
9 yourself to Mr. Radovan on October 1st?

10 A. Correct.

11 Q. And the e-mail is pretty self-explanatory, you're
12 talking about investment vehicle and how you were going to
13 fund, right?

14 A. Yes.

15 Q. And then Ms. Hill then sent you something?

16 A. I'm sorry?

17 Q. Ms. Hill then sent you something at the top of the
18 e-mail?

19 A. Yes, she sent the instructions, I believe. She
20 says it looks to be correct my wiring instructions.

21 Q. So on October 1st, Mr. Radovan knew that you were
22 proceeding towards funding?

23 A. Correct.

24 Q. Let's go to Exhibit Number 36.

1 A. Okay.

2 Q. Why this communication with Mr. Radovan on
3 October 10th?

4 A. Why what, sir?

5 Q. Why were you having this communication with
6 Mr. Radovan on October 10th?

7 A. I just wanted to make sure that my money was going
8 in and it was still on schedule.

9 Q. And how did he respond?

10 A. He says, looking good, soft opening in spring and
11 grand opening Father's Day weekend, just brought in our
12 general manager and chef. You want me to continue?

13 Q. That's fine. So that soft opening in spring, was
14 that consistent with the other e-mail note you made about
15 what he had told you?

16 A. Yes.

17 Q. And this was prior, October 10th was prior to the
18 funding date?

19 A. I believe so by two or three days, four days.

20 Q. And did Mr. Radovan ever send you any other e-mail
21 at around this October 10th time frame and informed you about
22 the mezzanine finance, the amount of the change orders at
23 that time, or the -- anything else related to your
24 investment?

1 A. No.

2 Q. This was it?

3 A. This was it, as far as I remember.

4 Q. Let's go to Exhibit Number 38.

5 A. Yes.

6 Q. And who is Sherrie Montgomery?

7 A. She works for Premiere Trust who is the
8 facilitator or trust agent for my IRA.

9 Q. And you weren't copied on this e-mail, but what's
10 your understanding of what Ms. Montgomery -- that Heather
11 Hill sent Ms. Montgomery?

12 A. Heather says, the full subscription booklet and
13 operating agreement as exhibits is attached, the smaller PDF,
14 et cetera. You want me to read it?

15 Q. Go ahead and read it.

16 A. The smaller PDF is the placed out subscription
17 packet that needs to be filled out with all the investing
18 information, LLC charter, IRS EIN statements, wire
19 instructions to our corporate account or Criswell Radovan
20 LLC. Once we receive the funds, I will recirculate the
21 operating agreement updating the capital stack with
22 Mr. Yount's investment.

23 Q. The last statement in this e-mail, did you
24 actually get wire instructions -- well, let me backup.

1 Strike that. Were all of these documents provided to you
2 after this e-mail from of Ms. Hill to Ms. Montgomery?

3 A. As far as I know.

4 Q. Did you ever see this e-mail -- the actual e-mail
5 itself?

6 A. I don't recall. I'm not copied on it.

7 Q. Okay. Were you ever told as to where you were
8 supposed to wire the \$1 million?

9 A. I believe the wiring instructions in the document
10 said to send it to Mr. Coleman, but yet at one point they
11 were saying I should send it to Criswell Radovan, I believe.

12 Q. Was there some confusion over that?

13 A. Yes, there was some confusion.

14 Q. How did you resolve that?

15 A. My CFO said send it to Mr. Coleman as the
16 documents say you should.

17 Q. And it looks like Exhibit Number 39?

18 A. Yes.

19 Q. An e-mail to Mr. Radovan, wire transfer is going
20 to arrive tomorrow, right?

21 A. Correct.

22 Q. And then next day, or the same day, Marriner
23 writes you an e-mail says, welcome as a founders unit
24 ownership?

1 A. Yes.

2 Q. And then let's go to Exhibit Number 42.

3 A. Yes.

4 Q. See all the attached documents?

5 A. Yes.

6 Q. What was your understanding of these attached
7 documents?

8 A. They were confirming that my transaction had taken
9 place and that I had bought from Cal Neva LLC a founders
10 share of \$1 million.

11 Q. And that was your understanding?

12 A. Yes.

13 Q. And was that your understanding all through your
14 negotiations?

15 A. Yes.

16 Q. With Mr. Marriner?

17 A. Absolutely.

18 Q. And then just for the record, exhibit.

19 MR. WOLF: I'm going to object to the last
20 question, lacks foundation, the phrase, negotiations with Mr.
21 Marriner.

22 THE COURT: That was his understanding. The
23 question was, what was your understanding through all of your
24 negotiations with Mr. Marriner. What's the objection?

1 MR. WOLF: I believe he was asked about his
2 understanding of the document and he's referred to
3 negotiations with Mr. Marriner. I don't have a problem with
4 his understanding of the document. The question interjected
5 a fact not established.

6 THE COURT: All right. I'll overrule. Thank you.

7 MR. WOLF: Thank you.

8 THE COURT: Mr. Campbell.

9 BY MR. CAMPBELL:

10 Q. And then if you look at exhibit -- strike that.
11 Just for the record, go back to --

12 A. 41.

13 Q. I'm sorry Exhibit Number 40.

14 A. Yes, sir.

15 Q. And that's been established as the acceptance of
16 the subscription with Mr. Radovan's signature?

17 A. Yes, sir.

18 Q. Did you receive that?

19 A. I received that and I see it right here.

20 Q. Okay. When you got the acceptance of Mr. -- of
21 the subscription agreement signed off by the president, where
22 did you think you were in the process?

23 A. I thought I had bought a founders share from Cal
24 Neva LLC, who he's signing for here.

1 Q. At any time prior to the -- you making your
2 investment on or about that October 13th date, had anyone
3 told you about potential other investors taking out the last
4 piece of the PPM?

5 A. No.

6 Q. And you sat through the trial, you understand now
7 that Mr. Les Busick had in fact done that?

8 A. Yes.

9 Q. If you had found out that Mr. Busick had already
10 funded the 1.5 million, would you have continued to invest?

11 A. No. I would have called Mr. Busick and
12 congratulated him and gone away.

13 Q. And you know through sitting through three days of
14 the trial as to what transpired with your money, right?

15 A. Yes.

16 Q. Okay. And you heard Mr. Radovan testify that he
17 instead decided to sell you one of their shares?

18 A. He decided on his own.

19 Q. Just to confirm, you had never been told this
20 prior to the investment?

21 A. No, not even close to the investment.

22 Q. Mr. Marriner never told you?

23 A. No.

24 Q. Mr. Radovan never told you?

1 A. No.

2 Q. Anybody at CR ever tell you?

3 A. No.

4 Q. Did Bruce Coleman ever tell you?

5 A. No.

6 Q. If you had been told that you could not buy a
7 share under the PPM, but instead were buying a share of the
8 CR portion of the PPM, would you have proceeded with the
9 transaction?

10 A. No chance in hell.

11 Q. Why not?

12 A. Because to me that is a clear indication that the
13 developer knows that the project is going to die and they're
14 trying to escape with my money and it's not going into the
15 project.

16 Q. You didn't find that out until a much later date,
17 right?

18 A. Oh, yeah, until I believe late January.

19 Q. Okay. Let's proceed sequentially here. So I
20 believe you then had some kind of a breakfast meeting with
21 Mr. Radovan and Mr. Marriner?

22 A. Correct.

23 Q. And when did that take place?

24 A. Latter part of October.

1 Q. And what happened at that breakfast meeting?

2 A. We discussed the project. I was again reassured
3 that it was on schedule, on track, and then we went over to
4 the Cal Neva project and walked the project.

5 Q. Any mention in those meetings after you had
6 invested about the fact that you had purportedly bought a CR
7 share?

8 A. No. None whatsoever.

9 Q. Did you take a tour of the property at that time?

10 A. Yes.

11 Q. About that same time frame?

12 A. That same day with Mr. Marriner and Mr. Radovan
13 following breakfast, I believe.

14 Q. And the discussions you just testified, was that
15 during the tour and breakfast?

16 A. Yes.

17 Q. So after that meeting, sometime in October, did
18 you attend any member meetings or executive committee
19 meetings of the Cal Neva Lodge LLC?

20 A. I never was at an executive committee meeting that
21 didn't include the shareholders, but I was at several
22 meetings, yeah, because I thought I was shareholder.

23 Q. Did you attend a meeting, either executive
24 committee or member meetings in October of 2016?

1 A. I don't recall.

2 Q. How about the November? You heard testimony about
3 the November meeting? Did you attend that meeting?

4 A. No, I did not.

5 Q. Had you been talking to any of the other investors
6 in the October, November time frame?

7 A. I don't believe so.

8 Q. Did any of them reach out to talk to you at all?

9 A. No. I don't believe so.

10 Q. Had you ever met any of the other investors other
11 than, I think you said Mr. Busick you knew?

12 A. No. I don't believe so.

13 Q. Did you know --

14 A. Except at one of those meetings, perhaps.

15 Q. Okay.

16 A. Not outside of that.

17 Q. It's my understanding that you attended the party
18 slash meeting on December 12th of 2015?

19 A. Yeah. The party, yeah.

20 Q. And you heard Mr. Radovan testify about, it was
21 kind of a two-part meeting?

22 A. Yes.

23 Q. Did you attend the executive committee member
24 portion of that where Mr. Radovan gave a speech?

1 A. No. As far as I knew, it was only the executive
2 committee, not the members until later and we were touring
3 the project at that time, I believe.

4 Q. You were on property. That was at the Fairwinds,
5 right?

6 A. I was on property after the executive committee
7 meeting for the party.

8 Q. And so were you in the party when the meeting
9 broke up?

10 A. Basically, yes, I believe so.

11 Q. And tell me what happened when that meeting broke
12 up and the party started?

13 A. The party started and Mr. Radovan started to
14 explain to everyone the status of the project. And there was
15 quite a bit of disturbance and upset. And then Mr. Criswell
16 stood up by his side to help also explain what was going on.

17 Q. Prior to December 12th, had you ever talked to the
18 members of the IMC?

19 A. No. I don't believe so.

20 Q. And --

21 A. I didn't even know there was such a thing, except
22 in the books and records, or the documents.

23 Q. Okay. We've heard various takes on what happened
24 at the party.

1 A. Yes.

2 Q. What was your take on the mood of the other
3 investors?

4 A. I think most of the investors were quite disturbed
5 and no one I know of was saying, calm down, except for
6 Mr. Criswell and Mr. Radovan.

7 Q. You heard the testimony that it appeared from a
8 couple of people that it appeared that the Incline Men's Club
9 was leading the charge?

10 A. I did not get that impression at that time. And
11 maybe wasn't looking for it, but I didn't see the so called
12 staging of them around the room situation either. But I
13 didn't know them either.

14 Q. And from your appearances, the investors looked
15 pretty upset?

16 A. They were so upset, as Mr. Marriner said in his
17 testimony, he told his wife not to come to the party. Yes,
18 there was quite a bit of upset.

19 Q. Okay.

20 A. I think well beyond IMC.

21 Q. And that happened right after the -- right after
22 what Mr. Radovan explained to the members?

23 A. Yes.

24 Q. And what did he explain to the members?

1 A. He explained the project was substantially over
2 budget and it had to be totally refinanced or, basically, I
3 believe it wasn't going to continue.

4 Q. Did he --

5 A. Refinanced or other capital put in somehow some
6 way.

7 Q. Did he mention a number to your recollection?

8 A. He probably did, but I was kind of stunned at the
9 moment. So, no, I don't recall.

10 Q. Prior to that time, I think your testimony was you
11 didn't know about a total refinance at all?

12 A. No.

13 Q. And did Mr. Radovan or Mr. Criswell talk about the
14 number ascribed to the change orders?

15 A. The number of change orders?

16 Q. The number ascribed to the change orders?

17 A. They may have. I don't recall what it was.

18 Q. You don't remember any discussion of how much the
19 change orders amounted to?

20 A. I was under the impression from their discussion
21 that it was substantially more than the 5 or 6 million, let
22 alone the 9 million that was discussed previously.

23 Q. Okay.

24 A. And the project was not ready to be opened.

1 Q. Okay. Now, by December, did you know about the --
2 you buying a CR share instead of a --

3 A. No.

4 Q. -- a PPM share?

5 A. No.

6 Q. And you heard Mr. Criswell, it appears you had
7 some kind of a separate conversation with him?

8 A. Yes.

9 Q. Tell me about that?

10 A. We went up to him and we were extremely upset and
11 this was my first time meeting Mr. Criswell, and we said,
12 this is not what we signed up for. We want our money back.
13 This is totally misleading and we feel we've been taken
14 advantage of.

15 Q. What was Mr. Criswell's response?

16 A. We had some discussion on it, and he said, let us
17 try to explain it to you over the next couple of weeks. But
18 if you're not satisfied, then I will do my best to get your
19 money back. And if -- I don't remember, I think it was the
20 next day he said they would buy it themselves if they got
21 paid 900 and something thousand, which was supposedly owed
22 them by the Cal Neva.

23 Q. Prior to making your investment, had you ever
24 heard about loans that either CR or Criswell Radovan was

1 making to the project?

2 A. No. I was not aware of it.

3 Q. Would that have concerned you?

4 A. If they were excessive, they were large like
5 million dollar kind of loans.

6 Q. And why? Why would that concern you?

7 A. Why would the project be short of money when it
8 was totally funded at that stage? Therefore, how would they
9 ever finish it?

10 Q. So how long did you talk to Mr. Criswell at that
11 December 12th meeting?

12 A. Ten minutes, perhaps.

13 Q. And Exhibit 46 is a follow-up to that
14 conversation.

15 A. I have to get to a different book now.

16 Q. Sure.

17 A. Okay. Exhibit 46.

18 Q. You there?

19 A. Uh-huh.

20 Q. And you had sent Mr. Criswell -- you attached the
21 e-mail that Mr. Radovan had sent you right prior to making
22 your --

23 A. Yes.

24 Q. -- investment. That's the e-mail below it?

1 A. Yeah. I thought about it overnight and just want
2 out.

3 Q. Okay. And when you say this was the reassurance
4 we need to proceed, what were you talking about?

5 A. I'm sorry, sir?

6 Q. When you say, this was the reassurance we needed
7 to proceed in the second line of that, what reassurance were
8 you talking about?

9 A. The reassurance that the project was on track.

10 Q. And you say the financial wheels were coming off?

11 A. Yes.

12 Q. Where did you get that impression?

13 A. From the presentation at the party, so-called
14 party the day before, the night before.

15 Q. Then you go on in the next paragraph and you say,
16 we appreciated your commitment upon hearing last night that
17 you were also shocked?

18 A. That was the impression that I had, that he was
19 shocked about the lack of information as well.

20 Q. Did you discuss with him about information being
21 provided to you in that meeting the night before?

22 A. I discussed with him that it was shocking what
23 Mr. Radovan had to say about how badly in trouble the project
24 seemed to be and the lack of information during the couple of

1 months since we invested that didn't give any indication of
2 that.

3 Q. And did Mr. Criswell tell you anything about the
4 reporting?

5 A. I believe he made a comment that we've probably
6 not done a very good job of reporting.

7 Q. And on the 13th of December, is this the first
8 time in writing that you demanded to get your million dollars
9 back?

10 A. Yes. Well, I talked about it the night before,
11 but he tried -- he said he wanted me to wait a couple of
12 weeks and get more information before I made that final
13 decision. And thinking about it overnight, it was just too
14 much for me to bear.

15 Q. And then if you go to Exhibit Number 47?

16 A. Okay.

17 Q. This is an E e-mail string, it looks like from Mr.
18 Marriner to you starting -- well, it looks like he sent the
19 first one on December 14th and then he did a cut and paste
20 from some other e-mails previously, correct?

21 A. There's the July 22nd e-mail attached.

22 Q. Okay. Do you see the -- Mr. Marriner in his
23 e-mail to you is explaining the progress report, then there's
24 some bold letters, unfortunately, did not have the financial

1 details associated with the list of change orders.

2 A. I'm sorry. Where are you reading, sir?

3 Q. In the middle of the second paragraph under Mr.
4 Marriner's e-mail?

5 A. Okay.

6 Q. Do you see the bold letters?

7 A. Yes.

8 Q. Was that how the e-mail was sent to you?

9 A. Yes. This is it.

10 Q. What was your understanding of what Mr. Marriner
11 was bolding this text for?

12 A. Evidently. Certainly a different size font.

13 Q. You didn't do that, though?

14 A. No, I did not do that.

15 Q. Had you talked to Mr. Marriner prior this e-mail
16 either on the 12th or the 13th?

17 A. I might have talked to him on the 12th at the
18 party slightly. I don't remember any detail.

19 Q. You don't remember breaking out after Mr. -- the
20 discussion with Mr. Criswell and trying to find Mr. Radovan
21 and talk to him?

22 A. I don't recall.

23 Q. In that e-mail below, same page on Exhibit 47,
24 couple of paragraphs below the highlighted section.

1 A. We're working hard.

2 Q. Yeah. The second sentence says, we've all been
3 shocked regarding the recent announcement about the cost
4 overruns. Is that an accurate assessment of the mood in the
5 meeting?

6 A. Shocked is an understatement, yes. It's hard for
7 me to understand how he can be that close to the project and
8 be shocked.

9 Q. Mr. Yount, you've been in the courtroom, you heard
10 Mr. Radovan and Mr. Little's discussion about participating
11 with the IMC in some kind of plan or scheme, right?

12 A. Yes. I was shocked, immensely shocked by those
13 comments.

14 Q. The comments you heard in court today?

15 A. Yes.

16 Q. Did you ever conspire to somehow undermine the
17 Mosaic loan?

18 A. That would be insane. I was going to get paid if
19 the Mosaic loan went through. All I did was try to calm the
20 IMC and do anything I could to make sure that the project got
21 funded, because as soon as it would have gotten funded, CR
22 would have been paid their \$900,000 and they would have paid
23 me the \$1 million on my share that I never got back.

24 Q. Isn't that what Mr. Criswell told you in the

1 e-mail he sent you the next day after the meeting?

2 A. Yes. I was surprised they weren't thanking me for
3 helping to calm them as much as I had, including trying to
4 get them not to confront Mosaic themselves. And including
5 talking to Jeremy Page after his outburst they spoke of
6 earlier and telling him he was out of line and off base and
7 after that he no longer participated at all. He left it up
8 to Paul Jamieson.

9 Q. Okay. Did you have conversations with the other
10 members of the LLC related to the Mosaic loan itself?

11 A. You mean the IMC?

12 Q. IMC, yes.

13 A. Yes, there was conversation, but I didn't
14 participate in trying to change anything or condoning that
15 meeting that they had.

16 Q. In fact, you saw the testimony earlier that you
17 had actually asked whether they could even do that meeting,
18 right?

19 A. Did I what, sir?

20 Q. Whether they could even do that meeting?

21 A. It seemed out of line to me, which is why I raised
22 the question. As we said, I'm no attorney and I'm not a
23 member of the EC, but I just don't think that was an
24 appropriate thing to do from what I was reading or hearing.

1 Q. And did you attend the meeting with Mosaic?

2 A. No, not at all. I've never spoken to anyone in
3 person or on the phone or any e-mail directly with Mosaic.

4 Q. And you never took any actions whatsoever with any
5 of the other members to somehow undermine the Mosaic loan?

6 A. Not a chance. It would be to my detriment. Why
7 would I do that? I didn't care who funded, as long as
8 somebody funded it so they would get their money and I would
9 get mine.

10 Q. Was that your position pretty consistently?

11 A. Very consistently.

12 Q. And that would be since December?

13 A. Yes, since December 12th.

14 Q. And that was your position in January?

15 A. Yes.

16 Q. And how about February?

17 A. Yes. How about today? Yes.

18 Q. Let's look at Exhibit Number 50.

19 A. All right. You want me to start at the back
20 again?

21 Q. Sure.

22 A. Okay.

23 Q. And on the very first, go all the way to the back,
24 the 2677 document?

1 A. 2677, yes.

2 Q. Okay. That was the e-mail earlier we talked about
3 Mr. Criswell and --

4 A. That was the December 16th e-mail.

5 Q. Yes. Mr. Criswell tells you, as you will see in
6 the information you will be receiving this week and in the
7 coming weeks, will show that Criswell Radovan has lent over
8 900 to the Cal Neva project, which is expected to be repaid
9 as soon as the project has new financing funded from the debt
10 equity or some combination thereof?

11 A. Yes.

12 Q. Was that your understanding of the source of funds
13 that might pay you back?

14 A. When they got that those funds paid, he would pay
15 me back. Not that I agreed with that, but that was their
16 stance.

17 Q. And what was your understanding of the status of
18 the Mosaic loan in this December time frame?

19 A. I thought it was still imminent.

20 Q. Let's go back on the same e-mail, Exhibit Number
21 50.

22 A. Where am I going, 50?

23 Q. Exhibit number 50. Let's look at the first page
24 of that.

1 A. Yes.

2 Q. Mr. Jamieson says, you and I are on the same page.
3 The approach is key to turning this project around. So you
4 had been talking to Mr. Jamieson about what?

5 A. About making the project a success, getting it
6 refunded so it could continue on and so I could get paid and
7 get out.

8 Q. Let's put this at January 8th now.

9 A. What exhibit?

10 Q. January 8th, I'm just referring to a time frame.
11 By January 8th, it would have been after the holidays?

12 A. Yes.

13 Q. Were you aware then about the CR's purported sale
14 to you?

15 A. No.

16 Q. Okay. And if you can look at Exhibit Number 54?

17 A. Yes.

18 Q. Did you see that -- I see you're cced on this.
19 Did you see the cap table that is attached to that?

20 A. I did.

21 Q. Did you review it?

22 A. Did I review it?

23 Q. Yes, the cap table.

24 A. Yes.

1 Q. And do you see something missing from the cap
2 table?

3 A. Yes, me.

4 Q. Did you ask somebody about that?

5 A. I believe I did. I don't remember if I called Mr.
6 Marriner or Mr. Radovan, but I was upset that I did not -- I
7 was not on the table.

8 Q. Okay. And did either of them respond to you?

9 A. I don't remember.

10 Q. Okay. Let's go to Exhibit Number 55.

11 A. Okay.

12 Q. This is another Paul Jamieson to Stuart Yount.
13 For the Court, tell us who Paul Jamieson is?

14 A. Paul Jamieson is a member of the IMC and one of
15 the investors.

16 Q. You didn't know Mr. Jamieson before December 12th?

17 A. No. Except for maybe seeing him at a meeting, but
18 not outside any of the Cal Neva stuff.

19 Q. So Mr. Jamieson is sending an e-mail to you.
20 Roger, who would that be?

21 A. Roger Wittenberg.

22 Q. Heather?

23 A. Heather is his step daughter who runs the
24 Biltmore.

1 Q. And then Geri is your wife?

2 A. Geri is my wife.

3 Q. Sitting in the back, suffering through this?

4 A. 47 years.

5 Q. What is Mr. Jamieson telling this group here?

6 What happened that precipitated this e-mail?

7 A. I believe he spoke with Mr. Wittenberg, who he
8 knew prior to me. I don't know if it's before I knew
9 Mr. Wittenberg, but he knew -- I was not the introduction to
10 him, to Mr. Wittenberg. I believe they had done some work
11 together years prior and I don't know the detail of it.

12 Q. And he says, thank you for putting together the
13 meeting to discuss the Cal Neva. Did you put together the
14 meeting?

15 A. I don't think I put together the meeting. I am
16 listed in the to column, but Roger, I could have, I don't
17 recall that. I may well have told Roger, I believe, Paul
18 Jamieson wants to speak to you about it.

19 Q. Were you in that meeting?

20 A. No.

21 Q. Do you know what the conversations with North
22 Light centered around?

23 A. Probably financing. They were the financier of
24 the Biltmore and Boulder Bay Redevelopment.

1 Q. Did you follow-up with Mr. Jamieson on this e-mail
2 about North Light as a viable refinancing option?

3 A. I may well have. I don't remember. I was not
4 really in it.

5 Q. Were you in any discussions with Roger or North
6 Light to follow up on the details of some kind of a
7 refinance?

8 A. Never with North Light. I talked with Roger
9 fairly frequently, because he's a good friend and he's on my
10 Board of Directors and I know him well, but -- and he told me
11 that he was already well aware of Paul Jamieson and knew him
12 well.

13 Q. So it would be fair to say Mr. Jamieson was
14 looking at different options for financing?

15 A. Absolutely.

16 Q. Go to Exhibit Number 56.

17 A. All right.

18 Q. This is an e-mail from you. And I assume this is
19 pretty much all the investment group and management in the
20 cc. In the cc, it's the investment group and the management?

21 A. I believe so.

22 Q. And you put in quotes about the discussion of the
23 previously circulated equity table.

24 A. Yes.

1 Q. Are you quoting from the minutes of the meeting?

2 A. I believe so.

3 Q. Were you at that meeting?

4 A. I believe so.

5 Q. Okay.

6 A. Which -- January 8th?

7 Q. Yes.

8 A. Yes, I believe I was.

9 Q. Was that the first executive meeting that you
10 attended?

11 A. No. I believe there was one in December within a
12 couple of weeks of the December 12th situation and I flew to
13 St. Helena and met with -- that EC meeting, EC and
14 shareholder meeting I attended in person.

15 Q. And that was an executive committee meeting?

16 A. Yes, but it included shareholders. It wasn't just
17 the executive committee.

18 Q. And you heard Mr. Radovan, the shareholders were
19 pretty much always welcome into the executive committee
20 meetings?

21 A. Yes, that's what he said. Yes.

22 Q. You found that to be true?

23 A. Yes, I did.

24 Q. What happened in that December executive meeting

1 you attended?

2 A. I didn't attend that one -- oh, the second one.
3 I'm sorry. Yes, that was, again, a rousing discussion of the
4 concerns we all had and what they were doing about it.

5 Q. Did Mr. Radovan or Mr. Criswell give you any
6 update on the Mosaic progress?

7 A. They probably did. I don't remember the details.

8 Q. Let's go to the next executive committee that you
9 believe you attended. What was the discussion about a note
10 to be made to you?

11 A. It was some discussion about because I had nothing
12 to show for them agreeing to pay me back or owing me money or
13 anything that they might at least start with pretty much
14 useless piece of paper that would say they did.

15 Q. So this would have stemmed out of your
16 conversations with Mr. Criswell about getting paid back?

17 A. Yes.

18 Q. And then the highlighted portion below with the
19 three question marks is your question about what's going on
20 with the note, so to speak?

21 A. Yes.

22 Q. Let's look at Exhibit Number 58. And this is an
23 e-mail string between you and Molly Kingston. Who is Molly
24 Kingston?