

Case No. 74275

In the Supreme Court of Nevada

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

Appellant,

vs.

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

Respondent.

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Clerk of Supreme Court

APPEAL

from the Second Judicial District Court, Washoe County, Nevada

The Honorable N. PATRICK FLANAGAN, District Judge

The Honorable JEROME POLAHA

The Honorable EGAN WALKER

District Court Case No. CV16-00767

APPELLANT'S APPENDIX

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1 A. Yes.

2 Q. Who is Molly Kingston?

3 A. Who is Molly Kingston? She's a shareholder.

4 Q. You heard the testimony, she was one of the
5 shareholders in the December 12th meeting?

6 A. Absolutely.

7 Q. Was she upset?

8 A. She's very upset. She's not a member of the IMC.

9 Q. So, I mean, the language in here is pretty
10 self-explanatory?

11 A. Yes.

12 Q. What were you talking to Molly about at the end of
13 January in regards to CR's continuation in the project?

14 A. She was concerned that whether the people that had
15 driven the bus off the cliff could -- should be driving the
16 bus when it's resurrected from the bottom of the cliff.
17 Which did not make a whole lot of sense to either of us, but,
18 again, my concern was getting paid.

19 Q. You said, I totally agree there's no way to the
20 finish line with these developers, thanks?

21 A. Yes.

22 Q. And that was your feeling at this time?

23 A. Yes.

24 Q. Why?

1 A. Because they had driven the bus off the cliff and
2 it was in terrible financial shape and I believe mismanaged
3 and so why would you continue with the people who did that?

4 Q. And in her e-mail to you down below, she says,
5 everyone wants them out, not only for their performance on
6 this project, but they have a reputation and history of
7 running projects into the ground?

8 A. That's what she said. I was not aware of that.

9 Q. But you hadn't been talking to all the other
10 members about forcing them out?

11 A. No.

12 Q. This is just an e-mail between you and her?

13 A. Yes.

14 Q. But you agreed at that time?

15 A. I agree with the concept. That was one potential
16 solution if they didn't get the Mosaic loan funded and pay
17 me.

18 Q. Then if you go to Exhibit Number 59?

19 A. 59. Okay.

20 Q. We're now up to January 25th?

21 A. Yes.

22 Q. And this appears to be you -- you had sent a draft
23 e-mail to Mr. Jamieson, right?

24 A. Yes.

1 Q. By January 25th, 2015, if you look at your draft
2 response, it appears -- are you now aware of the switch from
3 buying a PPM share to a CR share?

4 A. Yes. I'm aware of the bait and switch.

5 Q. How did you find out about that?

6 A. I believe Mr. -- in fact, I know Mr. Criswell told
7 me in a meeting with Mr. Criswell and Mr. Radovan I believe
8 at the lobby of the Hyatt Regency Lake Tahoe. It was a side
9 meeting to see -- one of their CR Cal Neva meetings with the
10 executive committee and the shareholders they wanted to
11 attend.

12 Q. Okay. And how did that subject come up?

13 A. He told me that is what is being done and I said,
14 I was never told that. I never had any discussion whatsoever
15 of buying a CR share. And I told them why that would bother
16 me greatly and I would not accept that.

17 Q. And did you continue on those discussions about
18 remedying that situation?

19 A. What was that?

20 Q. Did you continue in the discussion with
21 Mr. Criswell and Radovan about how to remedy that situation?

22 A. Pay me my money.

23 Q. Did they talk about a note at that time?

24 A. I don't recall.

1 Q. So you send a draft response to Mr. -- or a draft
2 e-mail to Mr. Jamieson?

3 A. Correct.

4 Q. Why did you send that draft to him?

5 A. Because I wanted to see if he thought it was
6 appropriate. I had been communicating with he and the IMC
7 and Molly since that December 12th event. That's where we
8 then got to know each other and we were all very upset.

9 Q. When you say you had been communicating with the
10 IMC, it looks like primarily Paul Jamieson, right?

11 A. He was kind of heading it up.

12 Q. I don't see any e-mails with Brandon Chaney?

13 A. Yeah.

14 Q. Or any of the other members, right? It was
15 primarily Mr. Jamieson?

16 A. Once Jeremy got rather aggressive in the meeting
17 with Mr. Radovan mentioned, I told him he was off base and
18 needed to tone down his threatening style. And that's when
19 he pretty well left me and everything there, too. But also
20 Paul Jamieson was on the executive committee. And he was a
21 minor stockholder compared to Brandon Chaney and Jeremy and
22 some of the others.

23 Q. And the Incline Men's Club was the single largest
24 investor in the PPM?

1 A. I believe so, \$6 million, as I understood it.

2 Q. Hold on a second. Let's go to 122 now, Mr. Yount.

3 A. All right.

4 Q. This centers around the meeting of the Incline
5 Men's Club with Mosaic, correct?

6 A. Yes.

7 Q. And what was your understanding of that meeting?
8 Let me ask you this, how did you find out that the Incline
9 Men's Club was going --

10 A. I believe Paul Jamieson told me.

11 Q. And did you have some concerns about that?

12 A. I did. As I said in there, my number one is, the
13 meeting without CR, is that legit without CR and without
14 their advanced permission?

15 Q. And then you wrote that you heard that Mosaic are
16 sharks. Where had you heard that?

17 A. I don't remember for sure, but I believe it was
18 Molly might have said that. But that's only a vague
19 recollection.

20 Q. And then you go on, on number three, he said
21 there's no way the redone appraisal will come with needed to
22 get the 71 million funding. We'll still be unfunded. What
23 are you talking about there?

24 A. I believe the condition under the Mosaic loan was

1 an appraisal that would substantiate the loan they were going
2 to give. And I don't -- and there was a lot of concern of it
3 coming up with the 71 million, which is what it would have
4 taken, I believe, to fully fund what they were looking for,
5 CR was looking for, I should say.

6 Q. Had you seen the Mosaic loan term sheets, anything
7 like that?

8 A. Some of the meetings, they would have term sheets
9 that I would see brief at the meeting, yes.

10 Q. And somehow you knew about there was some kind of
11 a condition in the Mosaic loan about an appraisal?

12 A. Yes.

13 Q. And so what you're saying here is there needed to
14 be an appraisal for that loan to close, is that what you're
15 trying to say?

16 A. I'm trying to say that what they thought -- what
17 they were espousing they would get would probably not be
18 gotten if couldn't -- CR, by the way, probably not be
19 obtained if the appraisal did not come up to this level of 71
20 million.

21 Q. And then in Mr. Jamieson's e-mail above that, he's
22 kind of responding to your e-mail about the Mosaic situation?

23 A. Yes. Is there a question?

24 Q. Just looking. Let's go now to Exhibit Number 61?

1 A. 61?

2 Q. Yes, sir. This is the same e-mail that you had
3 asked Paul Jamieson to pass on in the draft, right, at the
4 bottom of that first page?

5 A. I believe so.

6 Q. Okay. Did you get a response from Mr. Marriner
7 immediately after that to --

8 A. I don't recall. I imagine there was a response.
9 I don't know that.

10 Q. And if we go to Exhibit Number 62? Does this
11 refresh your recollection?

12 A. Yes.

13 Q. As to whether Mr. Marriner responded?

14 A. Mr. Marriner has responded at that point, and he
15 says, Robert will need to explain why our investment was
16 changed from taking 1 million of the available 1.5 that you
17 signed up to fill to selling you one of their 2 million.

18 Q. And --

19 A. I was under the impression that you were fully
20 informed regarding the details of that change. I am very
21 upset that your transaction was so poorly executed. You want
22 me to go further?

23 Q. No. That's good. You weren't fully informed,
24 though?

1 A. I was not even minorly informed.

2 Q. Okay. Did Robert ever get back to you and explain
3 to you about the change?

4 A. I don't recall.

5 Q. And prior to that time, you'd already had a
6 meeting with Radovan and Criswell?

7 A. In the lobby of the Hyatt, yes.

8 Q. Where you would talk through what had happened?

9 A. What they said they had done, not what had
10 happened as far as I knew.

11 Q. Now, let's go to Exhibit 63.

12 A. Yes, sir.

13 Q. This is from Mr. Criswell to yourself and
14 Mr. Radovan and Mr. Coleman are on it and we've gone over
15 this document.

16 A. Yes.

17 Q. When it says we've -- Mr. Criswell tells you, it's
18 been a hectic time since we visited the Hyatt last week?

19 A. Yes.

20 Q. Is that the Hyatt meeting you were just testifying
21 to a couple of minutes ago?

22 A. I believe so.

23 Q. And that reference --

24 A. There might have been two Hyatt meetings in

1 January, but, yes. I believe this is the one talking about
2 the 27th, I believe.

3 Q. And do you remember at the Hyatt meeting last week
4 if you had discussed with Mr. Criswell about some documents?
5 It says in the e-mail, at the time I told you I would send
6 you the documents --

7 A. Yes.

8 Q. -- we discussed.

9 A. I understood that to mean he was going to send me
10 a draft of the a note he would sign.

11 Q. That's what I'm asking for. What was your
12 recollection of the discussion with Mr. Criswell at the
13 meeting at the Hyatt about documents?

14 A. We discussed the note possibility. I had no idea
15 he was going to try to paper back the transaction to
16 October 13th and change it.

17 Q. And that note discussion, that had been reflected
18 in some other conversations earlier in the month, right?

19 A. Yes, I believe so.

20 Q. That was the note that was talked about in the EC
21 meeting in early January?

22 A. Yes.

23 Q. And it looks like Exhibit Number 65, on
24 February 2nd, you actually got the documents that

1 Mr. Criswell was talking about?

2 A. Yes. Not the documents I expected.

3 Q. You got some documents?

4 A. I got documents.

5 Q. And did you review those documents?

6 A. Within, I believe an hour and a half I responded.

7 Q. And when you look at the first document, the
8 assignment of interest in the limited liability company.

9 A. It was dating it back to October 13th and here we
10 are in, what is it, February? February 2nd.

11 Q. Let me ask you this, under the whereas, did you
12 believe you had erroneously executed a subscription agreement
13 back in October?

14 A. No. I never erroneously did anything that I know
15 of.

16 Q. That was the only document you were ever sent to
17 sign, right?

18 A. Yes. There was no other documents to choose from.

19 Q. And Mr. Radovan had actually accepted that
20 document we saw on the record?

21 A. In writing, yes.

22 Q. And it goes on to say, it was the intent of the
23 parties that the assignee purchase such interest from the
24 assignor. Was it ever your intent to purchase a CR share?

1 A. I never knew of the concept until speaking with
2 Mr. Criswell in January and Mr. Radovan. How could that have
3 been my intent back in October?

4 Q. If you look at Exhibit Number 66, you responded
5 fairly promptly to Mr. Coleman?

6 A. Yes. Quickly and strongly.

7 Q. And those are your comments to Mr. Coleman. We
8 don't need to read those into the record. That's how you
9 felt when you got the documents?

10 A. Yes. Absolutely.

11 Q. And you weren't going to sign these documents,
12 right?

13 A. I did what?

14 Q. You weren't going to sign these documents?

15 A. Not a chance. They were total lies. They were
16 nothing I ever agreed to or signed. Why would I sign
17 something that was a total falsehood?

18 Q. Okay.

19 A. I took it that they were trying to cover their ass
20 for mistakes they had made.

21 Q. Mistakes they made, you mean back in October?

22 A. Back in October, either illegally over selling the
23 subscription of the 20 million, or not telling me and trying
24 to cover it with a sale of one of their shares. Which if it

1 was so darn valuable, why would they do that? Because I've
2 got a great name in the community? I'm sorry, I don't buy
3 that. They don't give up money for great names in the
4 community unless they have to.

5 Q. Mr. Yount, you've heard testimony from, I think,
6 Mr. Radovan, maybe Mr. Criswell, I can't remember, but
7 something along the lines that you were trying to play both
8 sides of the fence to get your money back and participate?

9 A. I did never wanted to participate. Ever since
10 December 13th when I said I wanted my money back, I never
11 changed from that one moment.

12 Q. But you did participate as far as talking with the
13 other members of the group about potentially getting a
14 refinance, right?

15 A. Yes. But that wasn't to my benefit except to get
16 them paid off so they would pay me. I was never looking for
17 a profit from them from that standpoint.

18 Q. Did you ever evidence an intent to anyone that you
19 were going to stay in, leave your money in the project?

20 A. No chance. I lost all faith in the developers and
21 therefore wanted out. I don't like doing business with
22 people I don't trust.

23 Q. So it was never your intent to play both sides of
24 the fence, so to speak?

1 A. No.

2 Q. And all your communications, let's look at
3 Exhibit 68. It looks like you're talking to Jamieson about
4 some issues related to payments being made, correct?

5 A. Yes. Len Savage is one of the principals in
6 Savage and Sons, the oldest contracting license in Nevada,
7 and they did the plumbing work in the -- yeah, plumbing work
8 in the Cal Neva towers, I believe.

9 Q. And Mr. Savage had told you prior to this time
10 that they hadn't been paid on their work at the Cal Neva over
11 a million dollars since October 1st?

12 A. Yes. Since October.

13 Q. Let's go to Exhibit Number 69.

14 A. Yes.

15 Q. This is an e-mail from you to Mr. Radovan and
16 Mr. Criswell and it references a March 17th meeting.

17 A. It was actually March 16th meeting.

18 Q. March 17th, it says yesterday's meeting?

19 A. Yes.

20 Q. You heard Mr. Criswell say he doesn't remember
21 that meeting in his testimony?

22 A. Yes. I believe he was there.

23 Q. And you sent this e-mail, correct?

24 A. Yes.

1 Q. What happened in that meeting?

2 A. It was a discussion about my share and where I
3 stood and I just -- this reiterated my position on things,
4 because it was still not being acknowledged and made clear.

5 Q. After the got the documents from Mr. Coleman in
6 early February up until this mid March time, had Mr. Radovan
7 or Mr. Criswell or even Mr. Coleman followed up with you
8 about your e-mail about I'm not signing these documents?

9 A. I don't remember any follow-up on that.

10 Q. And do you remember getting any e-mails where they
11 followed up and --

12 A. I do not recall any such e-mails.

13 Q. Kind of radio silence from them when you said I'm
14 not going to sign these documents?

15 A. I believe so.

16 Q. And then this meeting, was this an executive
17 committee or a membership meeting?

18 A. I believe so.

19 Q. Let me ask you this, so you're attending a meeting
20 in March of the organization, but you're still wanting your
21 money out. Why were you still attending the meetings, the
22 membership meetings?

23 A. To try to get my money out.

24 Q. That was your sole purpose?

1 A. I'm sorry?

2 Q. That was your sole purpose?

3 A. That was my sole purpose. Yeah, I just wanted my
4 money out.

5 Q. That's what you reiterated in this e-mail to
6 Mr. Criswell and Mr. Radovan?

7 A. I believe so. If I didn't stay close to it, I
8 wouldn't know if I was ever going to get money.

9 MR. CAMPBELL: I got another 15 or 20, your Honor.

10 THE COURT: I'd like to finish him.

11 MR. CAMPBELL: I'll try to get through.

12 THE COURT: Thank you.

13 BY MR. CAMPBELL:

14 Q. Let's just go to Exhibit number 70. You were in
15 the courtroom yesterday when I had Mr. Coleman on the screen,
16 so to speak, and so there's a series of four or five e-mails.
17 Since we've already gone through them, I won't go through
18 them in detail. Just generally tell me, why were you
19 communicating with Mr. Coleman in that March time frame,
20 which was -- it looks like would have been just a couple of
21 days after your meeting with Mr. Radovan and Mr. Criswell and
22 I guess the other members on March 16th.

23 The first one is March 17th, and so right after
24 that meeting, you start sending e-mails to Mr. Coleman,

1 correct?

2 A. Yes. I was trying to find out -- I could not find
3 my investment in the project and I was asking him how I could
4 find it. Where is it?

5 Q. So you had looked at the books and records of the
6 Cal Neva Lodge?

7 A. Yes.

8 Q. And you weren't aware of where the \$1 million went
9 to?

10 A. No, I was not.

11 Q. And then --

12 A. I was pretty sure -- I could not find it in the
13 books and records of Cal Neva LLC.

14 Q. Without going through the e-mail, you later found
15 out that Mr. Coleman told you that he had just gone ahead and
16 sent the money to Criswell Radovan, his clients?

17 A. Correct. And I asked him why, and he said because
18 they told him to.

19 Q. Then you asked for some kind of written
20 documentation?

21 A. Yes. I wanted a copy of the document he relied on
22 to change my escrow instructions.

23 Q. And --

24 A. That was the end of my discussions with Mr.

1 Coleman.

2 Q. And he never responded to you. He never responded
3 to the last e-mail. He didn't say, I don't have a document,
4 or never provided you a document?

5 A. Go talk to Criswell Radovan, don't talk to him.

6 Q. Is that about the point that you decided that --
7 to pull the plug?

8 A. That's when I decided to pull the plug and find
9 you.

10 Q. Okay. And the rest of the story. That's all I
11 have, Mr. Yount.

12 THE COURT: All right. Thank you very much.
13 Mr. Yount, you may step down. Watch your step going down.

14 THE WITNESS: Thank you.

15 THE COURT: All right, ladies and gentlemen, we'll
16 break for the evening and pick up tomorrow morning. You can
17 be seated, unless want to say anything.

18 MR. WOLF: No. I wanted to address the Court
19 about scheduling and identification of our rebuttal witnesses
20 and those sorts of things. So perhaps the Court was going to
21 address that.

22 THE COURT: Not as far as the -- we were able to
23 due to the great work of our clerk switch the trials around.
24 So that our criminal trial that was scheduled for next week

1 will begin on the 11th and that frees up next week for you.
2 So with that, you want to talk about the schedule?

3 MR. WOLF: My initial concern and inquiry, who are
4 the rebuttal witnesses that Mr. Campbell intends to call so
5 we can prepare and estimate our timing and potentially pose
6 objections to those witnesses, depending on who they are.

7 THE COURT: Why don't you deal with that outside
8 the courtroom. I don't need to be part of that discussion
9 here, and we'll pick it up tomorrow morning if you have any
10 objections. Mr. Little.

11 MR. LITTLE: That was the same comment.

12 THE COURT: Okay. Who is next? I mean, after we
13 have Mr. Yount through the cross examination.

14 MR. CAMPBELL: It will be Mr. Chaney.

15 MR. LITTLE: I don't see why we can't get through
16 tomorrow. Between us collectively, we may have a couple
17 hours with Mr. Yount. Then I can't imagine how much Brandon
18 Chaney has to say. He wasn't involved in anything before.

19 THE COURT: Well, we might be able to --

20 MR. LITTLE: That's the point, I think, we're
21 asking is, if there's going to be another rebuttal witness,
22 we don't want to be surprised with it tomorrow. Counsel had
23 only mentioned possibly the CPA. If there's somebody else,
24 we'd like to know who it is. We weren't aware of it

1 yesterday.

2 THE COURT: Do you have any witnesses?

3 MR. LITTLE: No.

4 MR. WOLF: No.

5 THE COURT: Okay.

6 MR. CAMPBELL: Yes, just as far as the schedule
7 change, and I'll disclose my rebuttal witness. I don't care.
8 Obviously, after today's testimony, Mr. Chaney is going to be
9 in somewhat of a rebuttal capacity from the maligning he took
10 under Mr. Radovan's questioning.

11 THE COURT: Okay.

12 MR. CAMPBELL: I can see his testimony expanding
13 somewhat from what I anticipated. I don't know. It's going
14 to take probably --

15 THE COURT: Let's see if we can finish him
16 tomorrow. I tend to agree.

17 MR. CAMPBELL: Mr. Tratner is going to be very
18 brief.

19 THE COURT: He's the CPA?

20 MR. CAMPBELL: I'd like to arrange him via Skype.

21 MR. LITTLE: Let's do it right after lunch. If
22 you're done with Mr. Yount, I don't see why we can't be done
23 with him by lunch.

24 THE CLERK: I need a set time.

1 THE COURT: Hang on a second. Can we do it at
2 1:30 tomorrow? I have an emergency come up and I have to
3 have a security meeting with the District Attorney's Office
4 over a murder trial and some sensitive matters. So I may not
5 be able to have anything in the afternoon. So I think we may
6 have to have Mr. Tratner and perhaps Mr. Chaney on Tuesday.
7 I think Friday afternoon, I'm going to have to --

8 MR. LITTLE: Your Honor, do we have Wednesday
9 available? I have another hearing.

10 THE COURT: Yes.

11 MR. LITTLE: It's actually here in Reno, but I
12 need to prepare for that.

13 THE CLERK: We have a criminal calendar, however,
14 on Wednesday.

15 THE COURT: We can start at 1:00.

16 THE CLERK: We have a criminal calendar and we
17 have another afternoon matter at 1:15.

18 THE COURT: We can get rid of that. Let's move
19 that. What about 1:30 on Wednesday?

20 MR. LITTLE: 1:30.

21 MR. WOLF: Is there any other rebuttal witness?

22 MR. CAMPBELL: I'm potentially going to call Pete
23 Dordick.

24 MR. LITTLE: Your Honor, we have a couple of

1 concerns. I don't even know if Pete Dordick is on the
2 witness list, Ken Tratner certainly is. He was identified
3 right before we filed the summary judgment. That's after the
4 discovery cut off. We don't have an opportunity to depose
5 him. I certainly am not going to depose him between now and
6 Tuesday. So where we have concerns about him being called at
7 all.

8 But certainly I want to make sure that the record
9 is clear, if your Honor allows it, this is a rebuttal witness
10 and we're not going to have him come in and start talking
11 about things that would be allowed in the case in chief as a
12 rebuttal witness.

13 MR. CAMPBELL: He would be specifically directed
14 to some of the testimony that Mr. Radovan and Mr. Criswell
15 presented about certain meetings.

16 MR. LITTLE: Is Mr. Dordick on the witness list?

17 MR. CAMPBELL: I don't believe he was. He's an
18 employee of the company, but he was an impeachment witness.

19 MR. LITTLE: There's a difference between
20 impeachment documents and witnesses.

21 THE COURT: There is significant and I'd like to
22 be able to sort them out. So if you could -- I'm not going
23 to listen to him on Friday. So if you could work with
24 Mr. Campbell, try to identify the areas he intends to

1 question these witnesses on, and get something in writing to
2 me Friday. I'll do my best to turn it around and e-mail a
3 decision to you Friday, might be evening by the time I get to
4 it. But you'll have it over the weekend before the weekend.

5 MR. LITTLE: Can we agree that tomorrow is just
6 going to be Mr. Yount and then Tuesday we'll do Brandon
7 Chaney?

8 MR. CAMPBELL: Wednesday?

9 MR. LITTLE: Wednesday, I'm sorry.

10 THE COURT: Yeah, Wednesday. We'll do the CPA.

11 MR. CAMPBELL: We can't do him tomorrow afternoon,
12 right?

13 THE COURT: No.

14 MR. CAMPBELL: We have to do him Wednesday if he's
15 available.

16 THE CLERK: 1:30.

17 MR. CAMPBELL: Wednesday 1:30 and then we have
18 Mr. Chaney that same afternoon.

19 THE CLERK: You can do it that afternoon, and if
20 your Honor says it's okay, you could actually come back on
21 Thursday morning.

22 THE COURT: And we have all day Thursday, so we
23 could do arguments on Thursday.

24 MR. LITTLE: Okay. My wife is going to love me.

1 THE COURT: Stephanie, we're off the record.

2 (Discussion off the record.)

3 THE COURT: Back on the record again. We'll
4 reconvene tomorrow at 9:00, we'll finish up the testimony of
5 Mr. Yount, then we'll recess at 11:30. And whatever we
6 haven't finished up, we'll reconvene at 1:30 on Wednesday,
7 get whatever business we have to get done on Wednesday
8 afternoon starting at 1:30. And then 9:00 arguments on
9 Thursday the 7th.

10 MR. CAMPBELL: Unless we spill over with testimony
11 from Wednesday?

12 THE COURT: Then the will be arguments will start
13 at 10:00.

14 MR. CAMPBELL: Arguments on Thursday?

15 THE COURT: Arguments on Thursday.

16 MR. CAMPBELL: Then we'll schedule Mr. Tratner
17 Wednesday.

18 THE CLERK: My understanding it's 1:30 on
19 Wednesday you're doing Mr. Tratner. He's your Skype witness?

20 MR. CAMPBELL: Yes.

21 THE CLERK: We'll need his information after that.

22 MR. CAMPBELL: Chaney would be the last witness on
23 Wednesday after Mr. Tratner. And I think Mr. Tratner is not
24 going to be more than ten minutes, I assume.

1 THE COURT: Counsel, just work it out in the
2 hallway.

3 MR. CAMPBELL: Thank you, your Honor.

4 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 31, 2017, at the hour of TIME,
8 and took verbatim stenotype notes of the proceedings had upon
9 the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs.
10 CRISWELL RADOVAN, et al, Defendant, Case No. CV16-00767, and
11 thereafter, by means of computer-aided transcription,
12 transcribed them into typewriting as herein appears;

13 That the foregoing transcript, consisting of pages 1
14 through 619, both inclusive, contains a full, true and
15 complete transcript of my said stenotype notes, and is a
16 full, true and correct record of the proceedings had at said
17 time and place.

18
19 DATED: At Reno, Nevada, this 28th day of September 2017.

20
21 S/s Stephanie Koetting
22 STEPHANIE KOETTING, CCR #207
23
24

45

45

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 IV

20 September 1, 2017

21 9:00 a.m.

22 Reno, Nevada
23

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

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1 RENO, NEVADA, September 1, 2017, 9:00 a.m.

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3 --oOo--

4 THE COURT: Come on up, Mr. Yount. You remain
5 under oath.

6 THE WITNESS: Good morning, your Honor.

7 THE COURT: Good morning. Mr. Little.

8 MR. LITTLE: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MR. LITTLE:

11 Q. Good morning, Mr. Yount.

12 A. Good morning, Mr. Little.

13 Q. You spent your working career running for the
14 Fortifiber Corporation and Stonewall Corporation?

15 A. Stanwall.

16 Q. Stanwall. I apologize. And Fortifiber
17 manufactures and supplies construction black paper that goes
18 behind stucco walls?

19 A. Correct, among other things.

20 Q. And Stanwall is a real estate company that builds
21 factories for Fortifiber, correct?

22 A. They own factories for Fortifiber. Sometimes they
23 build them. In my career, I think there's been two. And
24 there have been several others that have been purchased and

1 sold.

2 Q. But that company acts as a real estate investment
3 for the business of building factories for Fortifiber?

4 A. It acts as a landholder and building holder for
5 Fortifiber's use, yes.

6 Q. Those two companies do sales well into eight
7 figures?

8 A. Well into how many?

9 Q. Eight figures?

10 A. Stanwall doesn't, but Fortifiber goes into eight
11 figures.

12 Q. I think you testified you've been involved in the
13 development of two factories?

14 A. Correct.

15 Q. Isn't it true in your deposition that you
16 testified that you've been involved in the acquisition and
17 development of approximately ten factories?

18 A. That's probably about correct. Not development
19 of, but acquisition of.

20 Q. And some of those involved renovations and some
21 were new construction, correct?

22 A. They were never major renovations. They were
23 tweaking them to fit our particular needs. They were usually
24 acquired as part of the assets of another company that we

1 utilized in our manufacturing.

2 Q. But regardless of how you skin it, kind of those
3 kinds of companies, you've been in the acquisition and/or
4 development of at least ten factories?

5 A. I guess that's correct.

6 Q. You've also acquired and developed approximately
7 five large residential properties?

8 A. I've built two homes in my career.

9 Q. Have you experienced cost overruns and schedule
10 impacts firsthand developing your own construction projects,
11 is that fair?

12 A. Correct.

13 Q. In fact, on your main house, you experienced
14 significant cost overruns due to unforeseen site conditions,
15 fair?

16 A. More changing the composition of the home as we
17 were building it.

18 Q. And some of it was because of unexpected site
19 conditions?

20 A. Some, but not a major amount.

21 Q. That home -- was that the home that was featured
22 in the Wall Street Journal?

23 A. Yes. I don't think that has anything to do with
24 it, but yes.

1 Q. And your most recent project, the Lakeside
2 Cottage, experienced over a year's delay during construction
3 over what the contractor had told you?

4 A. Yes, about a year.

5 Q. So you're no stranger to the fact that there's
6 delays and cost overruns on large construction projects?

7 A. As well as good contractors and bad contractors.

8 Q. And you've also personally invested in other
9 businesses over your career?

10 A. Some.

11 Q. You've made other types of investments, stock and
12 otherwise?

13 A. Of course.

14 Q. And do you agree you consider yourself a
15 sophisticated investor?

16 A. Yes, sir.

17 Q. In fact, you had been qualified as such for a
18 number of your investment?

19 A. Including this one.

20 Q. And you understand how to analyze financial
21 statements?

22 A. I do.

23 Q. And, in fact, you've sat on several Board of
24 Directors where one of your roles is to review and understand

1 financial information?

2 A. Mostly nonprofits, but, yes.

3 Q. Didn't you also sit on the board of the TRPA?

4 A. Yes, I did.

5 Q. And how long did you do that?

6 A. Six and a half years.

7 Q. And can you tell us what the TRPA is?

8 A. Tahoe Regional Planning Agency, it controls
9 everything under the ridge top of surrounding Lake Tahoe.

10 And it was created by Ronald Reagan when he was Governor of
11 California and Paul Laxalt when he was Governor of Nevada and
12 Richard Nixon back in the '60s, I believe.

13 Q. They're essentially responsible for any
14 development in their jurisdiction?

15 A. Including the color of your house and the sign on
16 your building.

17 Q. And you understand the types of information you
18 want to know when making an assessment in a company or real
19 estate?

20 A. Yes.

21 Q. And you understand and appreciate the risk
22 inherent in different kinds of investments?

23 A. I believe so.

24 Q. You agree you surround yourself with a team of

1 advisors when you're an investment, including your CFO and
2 your CPA?

3 A. Those two, yes.

4 Q. At times, attorneys?

5 A. At times, but was not involved in this.

6 Q. Sir, can you turn over to Exhibit 3 in the trial
7 binder?

8 A. One second, please. Yes.

9 Q. This is the confidential private placement
10 memorandum, correct?

11 A. Correct.

12 Q. And you received this document back in June or
13 July of 2015?

14 A. Correct.

15 Q. And you reviewed and understood this document
16 before signing off on it?

17 A. Correct.

18 Q. And you had the opportunity to have your CPA or
19 legal counsel review it?

20 A. Correct.

21 Q. And so you read that the investment was -- that
22 the investment being offered on this project had not been
23 registered under federal and state securities laws and was
24 being sold in reliance on exemptions thereto?

1 A. It was disclosed on the first page that it was not
2 registered.

3 Q. And, in fact, on the first page, you read and
4 understood that this investment was speculative and contains
5 certain risks?

6 A. Yes.

7 Q. In fact, if we go over to page nine?

8 A. Yes.

9 Q. There's a page and a half dedicated to the risk
10 factors associated with this investment, correct?

11 A. Yes, sir.

12 Q. So going through these, you read and understood
13 that this was a new company subject, of course, to all the
14 risks that are inherent in the creation of any new business?

15 A. Correct.

16 Q. And you read and understood the fact that these
17 risks include the fact not only that this business may not
18 achieve its business objectives, but you could lose your
19 entire investment?

20 A. Correct.

21 Q. You understood that?

22 A. Yes.

23 Q. Can you look at the insufficient funding section?

24 A. Where is that, please?

1 Q. On page nine, about three-quarters of the way
2 down.

3 A. Yes, I see it.

4 Q. And it indicates that if the company is unable to
5 raise sufficient financing and/or equity funding to complete
6 the purchase and redevelopment of the property,
7 implementation of its business plan will be delayed and will
8 greatly reduce the company's possibility of success. Such
9 implementation may also be delayed or impeded by budgetary
10 and cost overruns, which may require additional capital. Did
11 I read that correctly?

12 A. I believe so.

13 Q. Did you understand that those were risks when you
14 entered into this investment?

15 A. Yes, sir.

16 Q. So you understood if the company was unable to
17 raise sufficient funding or equity, you could lose your
18 investment?

19 A. Yes, sir. Although I was assured that they had
20 adequate funds.

21 Q. And you also understood that implementation of the
22 company's plan could be delayed or impeded by budgetary or
23 cost overruns?

24 A. Of course.

1 Q. In fact, wasn't that the state of the project when
2 you were considering investing?

3 A. No, not that I knew of. I wasn't told that. I do
4 believe that existed then, yes. Well, now, in hindsight.

5 Q. Let's turn over quickly to Exhibit 13.

6 A. Exhibit 13. All right.

7 Q. This is an e-mail that you received from the
8 project's architect at the -- once you started getting
9 involved in the investment of this project, right?

10 A. Yes.

11 Q. We're going to go over this in a minute, but you
12 agree with me, the architect was telling me that they were in
13 fund raising mode and the construction costs were exceeding
14 the budget and they were trying to get their arms around it?

15 A. Correct. Mr. Radovan told me the same.

16 Q. Right. So stepping back to my question, doesn't
17 that tell you at the time you were looking at this
18 investment, the company was in a mode of being faced with
19 budgetary and cost overruns?

20 A. Yes.

21 Q. Let's go back to Exhibit 3 and I want to look at
22 the section on projections on page ten. It's three-quarters
23 of the way down.

24 A. Delays in implementing?

1 Q. Projections.

2 A. Sorry. I see it.

3 Q. It indicates, the projected financial information
4 contained herein or in the company's business plan, which you
5 understood to be the confidential offering memorandum,
6 correct?

7 A. Correct.

8 Q. Represents a projection of future events, which
9 may or may not occur. The projections are based on estimates
10 and assumptions set forth therein, which may or may not prove
11 to be accurate and should not be relied upon to indicate the
12 actual results, which may be obtained by the company. No
13 representation or warranty of any kind is given with respect
14 to the accuracy of the projections. You read and understood
15 that, correct, sir?

16 A. Yes, sir.

17 Q. And you sent all of this information to your CPA,
18 who ultimately gave you the go ahead that this was a
19 reasonable project to invest in?

20 MR. CAMPBELL: Objection, all this information,
21 are you referring to just the private placement memorandum
22 documents, counsel?

23 BY MR. LITTLE:

24 Q. No. All the information you received from Mr.

1 Marriner or Mr. Radovan, you sent to your CPA, correct?

2 A. I don't know whether it was all the information,
3 but I certainly sent the important information, including
4 this document.

5 Q. And you were looking for his guidance as to
6 whether this was an investment you may choose to invest in?

7 A. From the standpoint of looking at the pro formas
8 and the projections and whether they made sense. From that
9 standpoint, he didn't know anything about the project as
10 such.

11 Q. Ultimately, it's your decision, not his. He gave
12 you the green light, is that fair?

13 A. Yes. He did mention, though, that the fees for
14 the developers were on the high side of normal.

15 Q. Let's talk about that. On page 10 of Exhibit 3,
16 there's a section called, compensation to manager, correct?

17 A. Correct.

18 Q. And it refers you to a separate section where it
19 outlines the compensation of fees that the manager might be
20 entitled to receive under this project?

21 A. Yes.

22 Q. And you read and understood that before investing?

23 A. Yes.

24 Q. Let's turn over to page 11, please, sir, under

1 forward looking statements.

2 A. Yes, I see it.

3 Q. It indicates that certain statements contained in
4 this memorandum, including, without limitation, statements
5 concerning the words believes, anticipates, intends, expects,
6 and words of similar import, constitute forward looking
7 statements. Such forward looking statements involve known
8 and unknown risks, uncertainties and other factors that may
9 cause the actual results, performance or achievements of the
10 company or industry results to be materially different from
11 any future results, performance or achievements express or
12 implied by such forward looking statements. Did I read that
13 correctly?

14 A. Yes, you did.

15 Q. And it drops down and says, given these
16 uncertainties, prospective investors are cautioned not to
17 place undue reliance on such forward looking statements. The
18 company disclaims any obligation to update any such factors
19 or to publically announce the results of any revisions to any
20 of the forward looking statements contained herein to reflect
21 future events or developments?

22 A. Yes.

23 Q. Did you read and understand that before investing?

24 A. Yes, sir.

1 Q. Can you turn back to the third page in this
2 document. It has three little iii.

3 A. Yes, sir.

4 Q. Up at the top in bold, you were cautioned that
5 neither the delivery of this memoranda 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 memoranda. You understood
9 that, right?

10 A. Yes.

11 Q. And then down below in the second to last
12 paragraph and also in bold, it says, during the course of the
13 offering and prior to any sale, each prospective investor and
14 such investors, purchasers, representatives, if any, are
15 invited to ask questions of and obtain additional information
16 from the company concerning the terms and conditions of the
17 offering, the company, the business and any other relevant
18 matters, including, but not limited to, additional
19 information to verify the accuracy of the information set
20 forth in this memoranda.

21 The company will provide such additional
22 information to the extent it possesses it or can acquire it
23 without unreasonable effort or expenses. Prospective
24 investors are invited to ask questions and request additional

1 information by contacting manager at, and then it refers you
2 to Cal Neva Lodge, Robert Radovan. You read and understood
3 that?

4 A. Yes.

5 Q. Now, sir, please turn over to page 14,
6 subscription procedures?

7 A. Yes.

8 Q. You understood that each person wanting to
9 subscribe for the purchase of a founders unit would be
10 required to execute a subscription agreement, a founding
11 member signature page and a power of attorney and purchaser
12 questionnaire?

13 A. Yes.

14 Q. If you flip over to Exhibit 42, Trial Exhibit 42?

15 A. Just a moment. Okay.

16 Q. This is the subscription package that you executed
17 on behalf of your 401K or whatever investment vehicle you
18 were investing?

19 A. Yes.

20 Q. And you read and understood the terms of this
21 subscription agreement before you signed off on it?

22 A. Yes, sir.

23 Q. And you had the opportunity to have legal counsel
24 or your CPA look at it?

1 A. I didn't ask legal counsel, but, yes, the CPA.

2 Q. But you had the opportunity to have legal counsel
3 look at it?

4 A. Yes.

5 Q. So you understood that you were applying to
6 purchase a \$1 million founders share in Cal Neva Lodge?

7 A. From Cal Neva, yes.

8 Q. And you were representing like all of the other
9 founding members that you were an accredited investor within
10 the meaning of regulation D of the Securities Act of 1933?

11 A. I'm not real familiar with regulation D, but, yes.

12 Q. But you were representing you were an accredited
13 investor?

14 A. Yes.

15 Q. As all the other founding members had to do?

16 A. I suppose so. I don't know that.

17 Q. Over on page two of the document, sir, if you
18 could look at subsection B as in Bob?

19 A. I'm sorry. B as in boy?

20 Q. Yes, sir.

21 A. Okay.

22 Q. And you understood after reading this document
23 that the founders unit had not been registered under federal
24 or state security laws of any state?

1 A. Yes.

2 Q. And then looking at subsection F, you understood
3 by signing this document that you were acknowledging that you
4 believed by reason of your own business and financial
5 experience that you were capable of evaluating the merits and
6 the risks of this investment and protecting your interests?

7 A. Yes.

8 Q. And under G --

9 A. G?

10 Q. Yes. You acknowledged and understood that prior
11 to acquiring the founders units, you had been provided with
12 financial and other written information about the company and
13 the terms and conditions of the offering. That you had been
14 given the opportunity to obtain such information and ask such
15 questions concerning the company, the founders unit and your
16 investments as you felt necessary. And to the extent you
17 took such opportunity, you received satisfactory information
18 and answers?

19 A. I thought so at the time.

20 Q. And then you acknowledge that you had carefully
21 evaluated your financial resources and the investment and the
22 risk associated with investment, and you acknowledge that you
23 were able to bear the economic risks of this investment?

24 A. Yes. As I said, this was wasn't directly my

1 money.

2 Q. And, sir, let's turn over to page three. Under
3 section K, you acknowledge that you had fairly read the
4 memorandum and all documents attached thereto and you
5 understood the contents of those documents, correct?

6 A. Yes.

7 Q. And you were familiar of the company's business
8 objectives and financial arrangements in connection therewith
9 and you believed the founders unit that you were purchasing
10 was the kind of security you wished to hold, correct?

11 A. That I would hold, did you say?

12 Q. Yes.

13 A. Yes.

14 Q. And that no representations or warranties have
15 been made to you regarding the investment contrary to those
16 contained in the memorandum. And you agreed to inform the
17 company if you learned that any information made to you in
18 connection with the investment was untrue, correct?

19 A. I believe so.

20 Q. Did you ever inform the company or Robert or Mr.
21 Marriner of anything about your investment that you believed
22 to be untrue before you invested?

23 A. No. I did not think there was anything untrue
24 before I invested.

1 Q. And under section L, you acknowledge that you're
2 not entitled to cancel, terminate or revoke the subscription
3 agreement, correct?

4 A. Correct.

5 Q. And under M, section I, you understood that any
6 founders unit you acquired would be governed by the operating
7 agreement?

8 A. M, I see. I don't see section I.

9 Q. Subsection one.

10 A. Yes, I understand. Yes.

11 Q. You also read the escrow instructions that were
12 attached to this, right?

13 A. Yes.

14 Q. And you understood those?

15 A. I believe so.

16 Q. And you understood that the 14 million had already
17 been raised and we were past that April 30, 2014 deadline?

18 A. Correct.

19 Q. So money was no longer being held in that escrow
20 account?

21 A. Correct. But it still was to go to that escrow
22 account with that escrow holder.

23 Q. Sir, can you turn over to Trial Exhibit 4?

24 A. I'm sorry. Page four?

1 Q. Trial Exhibit 4. Let's look at 4 and 5
2 simultaneously. Four is the confidential operating
3 memorandum and five is the amended and restated operating
4 agreement?

5 A. Okay.

6 Q. You acknowledged you received these documents?

7 A. Yes.

8 Q. You reviewed them and understood them before you
9 entered into this investment?

10 A. Yes.

11 Q. And you had the opportunity to have your legal
12 counsel or CPA review them?

13 A. Yes.

14 Q. You chose not to have legal counsel, but you did
15 send them to your CPA, correct?

16 A. Correct.

17 Q. And you read these documents in connection with
18 all the disclosures we just talked about in the private
19 placement memorandum?

20 A. Yes. Would it help if I just acknowledged that
21 all the CYA language you lawyers put in things, I did read.

22 Q. On Exhibit 5, let's go over to schedule 4.2. Your
23 counsel brought this up yesterday.

24 A. On page three?

1 Q. It's towards the very end.

2 A. I'm sorry. It's a schedule, not the article.

3 Q. Yes. Schedule 4.3.

4 A. Okay. I'm there.

5 Q. Yesterday I believe your testimony was that you
6 felt that this schedule was important to you?

7 A. Yes.

8 Q. You'd agree with me, you didn't ask if this much
9 of additional development capital was available before you
10 made your investment?

11 A. It says that's what it was going to be used for.
12 I assumed they had the capital to do it. There was no
13 discussion that they didn't have the capital.

14 Q. But you didn't ask anyone on the development side,
15 Mr. Marriner, Mr. Radovan, if that much money was still
16 available?

17 A. I guess not directly.

18 Q. Let's go to Exhibit Number 4, section eight -- or,
19 excuse me, Exhibit 4, page eight.

20 A. Page eight. Okay.

21 Q. This is a time line that was contained in the
22 confidential operating memorandum, correct?

23 A. Yes.

24 Q. And according to this document, the hotel was

1 supposed to be open by May 2015, right?

2 A. Yes.

3 Q. That obviously wasn't the case and you knew that
4 wasn't the case, right?

5 A. It was before I invested, yes, I did know that.

6 Q. You understood that there was information in the
7 offering documents that were no longer accurate?

8 A. Yes. It had not been amended.

9 Q. We saw in the private placement memorandum and
10 talked about the fact that you were invited to ask questions
11 or request additional information, correct?

12 A. Correct.

13 Q. And at periods of time, you and your CPA did that,
14 right?

15 A. Yes.

16 Q. And you would agree with me before you invested,
17 that you did not ask for any information that you were not
18 provided?

19 A. I don't think so. No.

20 Q. Sir, you became interested in potentially
21 purchasing a 1 million founders share in that Cal Neva Lodge
22 in June or July of 2015?

23 A. Correct.

24 Q. And that property is relatively close to your

1 home, is it not?

2 A. Yes.

3 Q. How close?

4 A. 300 yards.

5 Q. And the Biltmore is near there as well?

6 A. Directly across the street from it.

7 Q. And you're close friends with Mr. Wittenberg?

8 A. Correct.

9 Q. In addition to the documents we just talked about,
10 the private placement memorandum, the confidential offering
11 memorandum, the operating agreement, subscription agreement,
12 you were also provided with a copy of the July 2015
13 construction progress report?

14 A. Which exhibit is that, sir?

15 Q. That's Exhibit 10.

16 A. Yes.

17 Q. And you read that document before deciding to
18 invest?

19 A. Yes.

20 Q. And you shared it with your CPA?

21 A. Yes.

22 Q. And, in fact, you were provided with more progress
23 reports after the July report, correct?

24 A. I don't recall that, but perhaps I did. Can you

1 show me?

2 Q. Let's look at your deposition.

3 MR. LITTLE: May I approach?

4 THE COURT: You may.

5 MR. LITTLE: May I publish?

6 THE CLERK: Deposition of George Stuart Yount
7 dated June 6th, 2017, opened and published.

8 MR. LITTLE: May I approach the witness, your
9 Honor?

10 THE COURT: You may.

11 BY MR. LITTLE:

12 Q. Sir, this is a copy of the deposition that you
13 gave on June 6th, 2017, about two months ago?

14 A. Okay.

15 Q. Do you recall giving that testimony?

16 A. I do.

17 Q. Of course you understood that you were under oath
18 then?

19 A. Yes. You want me to turn to a particular page?

20 Q. Give me one second, please. Page 62 of your
21 deposition, please. I'll read -- let's start at line 12.

22 A. Can you wait just a moment, please?

23 Q. Absolutely.

24 A. Line 12. Okay.

1 Q. I asked you, question, do you recall what specific
2 marketing or promotional materials you were provided
3 regarding this project?

4 A. Yes.

5 Q. Answer, as I recollect, it was more likely these
6 monthly reports like the July report, that kind of thing.

7 A. Yes.

8 Q. Question, were you provided more than one of those
9 progress reports? Answer, yes, along the way, yes.

10 A. Okay.

11 Q. And I asked, prior to making your investment or
12 giving your money? Answer, I believe I saw this. Was that
13 your testimony?

14 A. Yes.

15 Q. And you were also provided financial records
16 related to the Cal Neva project, correct?

17 A. Yes.

18 Q. And you personally reviewed the progress reports
19 and the financial records?

20 A. Yes.

21 Q. And, of course, you said you shared them with your
22 CPA, right?

23 A. The ones I received before the investment, yes.

24 Q. Let's look at Exhibit 10 now. Let's look at that

1 July progress report.

2 A. Hold on, please. Exhibit 10. Okay.

3 Q. Before we turn to a specific page, you see on the
4 first page that this was prepared by third party companies, a
5 company called Case Development Services and another
6 Thannisch Development Services?

7 A. Yes.

8 Q. Did you have an understanding that those were
9 construction managers on the project?

10 A. Yes.

11 Q. And you understood that there was a general
12 contractor, Penta?

13 A. Yes.

14 Q. And, of course, you knew that there was a project
15 architect, Peter Grove?

16 A. Yes.

17 Q. Sir, having done developments yourself, do you
18 think it's unreasonable for a developer to rely on
19 information that is provided to them by their construction
20 team, such as their architect, general contractor, their
21 third party construction manager?

22 A. With their own due diligence to make sure that
23 they're satisfied with it, yes.

24 Q. But you don't think there's anything -- it's not

1 unreasonable to rely on information that has been provided to
2 you by your contractor, unless it's so just crazy you
3 shouldn't understand it, right, would that be fair?

4 A. Unless you have reason to disbelieve it, yes.

5 Q. Do you have any reason to believe any of the
6 information that the architect, contractor, construction
7 manager provided to the developer in this case should not
8 have been relied on by the defendants?

9 A. No, sir.

10 Q. Turn over to page 16, please.

11 A. 16?

12 Q. Yes, sir.

13 A. All right.

14 Q. This is a construction summary that you read,
15 correct?

16 A. Yes.

17 Q. And it indicates that the renovation was on
18 schedule for the December 12th major event with the exception
19 of the specialty restaurant, which will not be 100 percent
20 completed at the time. Do you see that?

21 A. Yes.

22 Q. You understood at this point in time, at least the
23 specialty restaurant was being pushed past December?

24 A. Yes.

1 Q. And it goes on to indicate that the construction
2 schedule is being compressed due to some delays caused by
3 scope changes, many of which were the result of value
4 engineering exercises, as well as unforeseen issues. Do you
5 see that?

6 A. Yes.

7 Q. And it indicates that the original budget has been
8 adversely impacted due to such items as and it lists 16 or so
9 issues?

10 A. Yes.

11 Q. You understood that this is where the project was
12 at the time you were evaluating your investment?

13 A. Yes.

14 Q. And in your deposition, you testified that you
15 never asked any specifics about any of these items before
16 investing?

17 A. About which?

18 Q. Any of these items before investing.

19 A. It would explain to me the cost of them, yes.

20 Q. Well, did you ask any details about any of these
21 specific changes that are being indicated here that are
22 adversely impacting the job?

23 A. I don't believe so.

24 Q. Did you ask specifics about the cost of any of

1 those change items?

2 A. Not individually. I was told what they were to be
3 overall.

4 Q. You also did a tour -- well, yesterday you
5 testified you did a tour of the project with Mr. Marriner in
6 July, correct?

7 A. Yes.

8 Q. Isn't it true that a Penta representative was also
9 with you when you made that tour?

10 A. I believe so.

11 Q. And that was a couple of hour tour, right?

12 A. Yes.

13 Q. And Mr. Radovan and Mr. Criswell were not on that
14 tour with you?

15 A. No. I had never met Mr. Criswell.

16 Q. In fact, isn't it true that didn't -- well, you
17 had met Mr. Radovan once long before this project, correct?

18 A. Long before when he was at the Bonanza Newspaper,
19 our local newspaper used to have a weekly meeting, and he
20 showed up at that meeting. I happened to be there, not for
21 that purpose, but I met him at that meeting.

22 Q. That was before you had any interest in investing?

23 A. Correct.

24 Q. From the June to July 2015 time period until you

1 invested, you never met or spoke in person with either
2 Mr. Criswell or Mr. Radovan, correct?

3 A. Correct.

4 Q. In fact, you never communicated in any fashion
5 with Mr. Criswell before you invested, correct?

6 A. Correct.

7 Q. You weren't copied on any e-mails with him, you
8 had no phone calls, no letters, nothing like that?

9 A. I don't believe so.

10 Q. And over the course of the three to four months
11 that -- before you sought the approval to invest, you'd agree
12 with me you only had a few calls with Mr. Radovan and a few
13 e-mails?

14 A. Numerous e-mails, a few calls.

15 Q. How do you define numerous?

16 A. I don't know the number. You have them all.

17 Q. Are there any e-mails other than the ones we've
18 seen in the trial exhibits to date?

19 A. No. I don't believe so.

20 Q. Those will speak to themselves whether it's
21 numerous or not?

22 A. Yes.

23 Q. Sir, could you turn over to page 120 of your
24 deposition?

1 A. Of my deposition? Okay.

2 Q. Go to page 120 line 7 through 19. And I'm going
3 to read it for you.

4 A. Okay. I'm there.

5 Q. I asked you, so we can obviously go through the
6 e-mails and see the nature of the communications between you
7 two, but I don't want to go to trial and have you say that we
8 had this conversation. That's why I'm trying to make sure I
9 understand your testimony. As you sit here today, you can't
10 recall anything specific that Mr. Radovan told you on the
11 phone about the project? Answer, other than what's on the
12 e-mails and his testimony. Question, what about his
13 testimony do you recall him telling you? Answer, I don't
14 remember. Question -- I guess that was the end of it. Was
15 that your testimony back in June?

16 A. Yes.

17 Q. Outside of your e-mails, you don't recall any of
18 the specifics of any of the conversations you had with
19 Mr. Radovan?

20 A. Well, in these hearings, it has come out that he
21 did talk to me about the delay in the project over the phone.
22 That was not in an e-mail, except in my e-mail to I believe
23 it was my CPA.

24 Q. But when you gave your deposition, you couldn't

1 recall any specifics about your conversations with him other
2 than what was in the e-mails themselves?

3 A. That was in the e-mail, so I guess that's true.

4 Q. And, sir, on this July tour, isn't it true the
5 Penta representative pointed out some of the changes that
6 were happening on the project?

7 A. Absolutely.

8 Q. But you didn't take the opportunity during that
9 tour to ask the Penta representative about the cost or time
10 impacts associated with the changes that were listed on
11 Exhibit 10, correct?

12 A. Mr. Radovan had already told me that and I didn't
13 think it was appropriate for me to talk to him about costs.

14 Q. So it's your testimony, you had already spoken to
15 Mr. Radovan?

16 A. I had not spoken to him. Somewhere around that
17 time, but I don't remember exactly when.

18 Q. Isn't it true that the tour was before you spoke
19 with Mr. Radovan?

20 A. I believe so, yes.

21 Q. So with that understanding, you'd agree you didn't
22 take the opportunity during the tour to ask the Penta
23 representative about any of the costs or time impacts
24 associated with the changes he was showing you?

1 A. The Penta representative did not work for me and
2 it didn't seem appropriate for me to ask questions like that
3 of him.

4 Q. So the answer is, no, you did not?

5 A. No.

6 Q. You would agree with me that Mr. Marriner offered
7 to take you on additional tours to see the progress of the
8 job over the three months that you were trying to get funding
9 for this investment?

10 A. I was not trying to get funding for the
11 investment. That's not true.

12 Q. I'm not implying that you don't have funding, sir.
13 While you were going through the intricacies of trying to
14 facilitate your 401K?

15 A. To create the IRA.

16 Q. I certainly didn't mean to infer that you don't
17 have a million dollars in the bank. But you'd agree over the
18 three-month period, Mr. Marriner offered to take you on
19 additional tours to see the progress of the job?

20 A. Yes.

21 Q. And you did not take him up on that?

22 A. No.

23 Q. I'm not going to go through it with the Court, we
24 went through the exercise before. But you were in court the

1 other day, there were multiple times in August and September
2 that Mr. Marriner extended that gesture?

3 A. Yes. I wouldn't have known how to evaluate that
4 correctly.

5 Q. In fact, in October, days before you got the
6 funding or approval to fund, he offered to take you on
7 another progress tour?

8 A. Say that again?

9 Q. In early October, before you funded, Mr. Marriner
10 offered to take you on another tour, but you didn't take him
11 up on it?

12 A. Yes.

13 Q. During late August and September, Mr. Marriner and
14 Mr. Radovan also sent you e-mails from time to time asking if
15 you had other questions?

16 A. Yes.

17 Q. And during that time period, with the exception of
18 asking a couple of days before you funded about how the
19 schedule is going, you didn't tell them you had any other
20 questions, correct?

21 A. They might as well speak for themselves.

22 Q. As you sit here today, you don't recall asking
23 them any questions about the project in late August or
24 September, other than the one e-mail in October asking about

1 the schedule, is that fair?

2 A. I may have asked in other e-mails, but you would
3 have all of that information.

4 Q. So you don't have any independent knowledge
5 outside of what's in the e-mails?

6 A. No.

7 Q. And you'd agree with me that you didn't ask for
8 anything that Mr. Marriner or Mr. Radovan did not provide you
9 and your CPA?

10 A. I believe so.

11 Q. We talked about yesterday that you knew the
12 project architect, Peter Grove, very well, correct?

13 A. I knew him fairly well. I wasn't a close personal
14 friend.

15 Q. But he was the architect on your home?

16 A. No. He was the architect that took over from the
17 original architect to implement the plan and make minor
18 modifications.

19 Q. And with the background that you do have in
20 development and construction, you understand that the
21 architect has significant knowledge about the change orders
22 and timing and things like that that are going on in the
23 construction project?

24 A. He should.

1 Q. In fact, if we go through it and we look at the
2 pay applications and the change orders, Peter Grove is
3 signing off on those, right?

4 A. I believe so.

5 Q. And you sought out his counsel whether this
6 project would be successful, correct?

7 A. Yes.

8 Q. And let's go over to Exhibit 13.

9 A. 13. Yes, sir.

10 Q. Talked about this briefly, but this was his e-mail
11 response to you. I think you said yesterday you like to deal
12 with e-mails?

13 A. Yes.

14 Q. That's how you correspond is with e-mails?

15 A. Mostly.

16 Q. His response to you was, I'm going to say pretty
17 good. Short term, they're in fund raising mode. So he's
18 telling you they're actively trying to raise funds for the
19 project, correct?

20 A. Right. I knew that.

21 Q. He indicates, construction costs are exceeding the
22 budget and they slash we are trying to get our arms around it
23 and keep it in check, correct?

24 A. Yes.

1 Q. He's not telling you that the budget and the costs
2 are in check, right?

3 A. No.

4 Q. He's telling you, they're trying to get their arms
5 around it and get it in check?

6 A. Right.

7 Q. The natural implication from that is that it's not
8 in check at that point in time, is that a fair assessment?

9 A. I would assume so.

10 Q. He indicates that long range he's a believer in
11 Cal Neva and the vision and direction it's going, right?

12 A. Yes.

13 Q. He also told you he really liked the ownership
14 team, that they're quality guys?

15 A. Yes.

16 Q. He tells you that he's glad you got a tour. Then
17 he indicates that, I'll continue to keep you posted with
18 pictures as things progress, correct?

19 A. Yes.

20 Q. So he was obviously not put off by your request of
21 information from him, is that a fair assessment?

22 A. No. No.

23 Q. In fact, he seemed open to sharing information
24 with you, right?

1 A. Yes.

2 Q. And there's nothing by his response that prevented
3 you from asking him more questions about this project,
4 correct?

5 A. Yes.

6 Q. In your deposition, you testified that you may
7 have had a conversation with him where you talked more
8 details about the numbers associated with the cost impacts.
9 Do you recall that testimony?

10 A. The numbers of the -- related to the cost?

11 Q. Yeah. You want to go to your deposition?

12 A. I don't remember that.

13 Q. Let's go over to page 139 of your deposition.
14 Tell me when you're there.

15 A. I'm there.

16 Q. Page 139, let's start at line 15. I asked you,
17 but he told you in the prior exhibit that construction costs
18 were exceeding the budget, right? And you answered, yes.
19 And I asked, is it possible you had a conversation with him
20 and you talked more details with numbers associated with
21 that? Answer, it's possible.

22 A. Yes.

23 Q. Is that your testimony?

24 A. Yes, it is. But it's different than your previous

1 question or statement.

2 Q. You don't know that you didn't have more
3 conversations with him?

4 A. I did not know that.

5 Q. You may have had more conversations where you
6 asked him more details about the budget and costs?

7 A. I may have. I don't believe so.

8 Q. Let's go to Trial Exhibit 28.

9 A. Okay.

10 Q. This is an e-mail from you to Mr. Grove,
11 August 18, 2015, so about a month after you're first getting
12 involved at looking at this investment?

13 A. Yes.

14 Q. And you were asking Mr. Grove, if they decide,
15 will they really be able to -- really be ready for a full
16 opening in December on Sinatra's birthday, correct?

17 A. Yes.

18 Q. And you put really in all caps, right?

19 A. Yes.

20 Q. Now, if you flip to Exhibit 27?

21 A. Okay.

22 Q. A week earlier on August 12th, you had an internal
23 communication with your accountant where you were referring
24 to the fact that you were told that they were planning to do

1 a soft opening in March and a grand opening on Father's Day
2 and that was somehow related to weather and tourism?

3 A. Potential weather and tourism, yes.

4 Q. Why did you ask Peter Grove a week later if they
5 could be opened by December when you had been told a week
6 earlier that the schedule was going to be pushed out?

7 A. The schedule was not being pushed out because of
8 the opening. Those are two separate issues.

9 Q. Why did you ask Peter Grove this?

10 A. Because I was concerned from the pictures I was
11 being shown by Mr. Marriner, as I remember, that it seemed
12 like there was a lot left to do.

13 Q. And you recall your testimony yesterday, you said
14 you don't believe he responded, right?

15 A. Yes. I don't remember him responding.

16 Q. Let's go to page 160 of your deposition.

17 A. Yes, sir.

18 Q. Let's start at line 14.

19 A. Yes.

20 Q. I asked you, and you're asking that they decide
21 to, will they really be ready for a full opening in December
22 on Sinatra's birthday? Answer, correct. Question, why would
23 you be asking that if they told you a week earlier they
24 weren't going to do a soft opening until March and full

1 opening until June? Answer, there is a difference between
2 the plan to open for reasons of the snow pack and their
3 ability to open. Question, and what did Mr. Grove tell you?
4 Answer, I don't remember his answer, but there is a
5 difference there I'm trying to distinguish. Question, and
6 the difference is what? Being ready to open and deciding not
7 to open at that time, which is what I've told you, and not
8 being able to open are two distinct differences. Question,
9 you don't know what Mr. Grove told you? Answer, I don't
10 remember the details of it. Is that your testimony?

11 A. Yes. All still correct.

12 Q. You'd agree with me that Mr. Grove never told you
13 anything that caused you any pause or concern about
14 investing?

15 A. Correct.

16 Q. And you believe he's an honest person and provided
17 you with truthful and accurate information?

18 A. Yes.

19 Q. You knew Les Busick pretty well before investing?

20 A. A good acquaintance.

21 Q. And you understood at the time you were
22 considering this investment that he was an investor in the
23 project?

24 A. Absolutely.

1 Q. You understood he was on the executive committee?

2 A. I believe so. Yes.

3 Q. And, in fact, you asked Mr. Marriner at one point
4 in time for a list of the other investors?

5 A. Yes.

6 Q. And he gave that to you?

7 A. Yes.

8 Q. And isn't it true that you were impressed by the
9 fact that Mr. Busick was an investor in this project?

10 A. Absolutely.

11 Q. That meant something to you?

12 A. It did. He's a very successful and well-known
13 person in the area.

14 Q. Did you speak with him before investing in this
15 project?

16 A. I don't believe so.

17 Q. How about any of the other investors?

18 A. I don't believe so.

19 Q. Why ask for the list if you weren't going to talk
20 to any of them?

21 A. It wasn't for the purpose of talking to them. It
22 was the purpose to see who was involved and willing to put
23 money into the project.

24 Q. Knowing Mr. Busick fairly well, you'd agree that

1 there's nothing that stopped you from going and talking to
2 him and getting his take on the project, right?

3 A. No.

4 Q. Particularly the fact that you knew he was on the
5 executive committee?

6 A. Yes. I saw no reason to do so.

7 Q. You'd agree with me the due diligence you were
8 doing was mostly in July and into the first couple of weeks
9 in August and the rest of it was dealing with the 401K issue?

10 A. Into August, whether it was the first two weeks or
11 a little more than that, but, yes.

12 Q. But it took considerable amount of time to get the
13 401K --

14 A. That was the big delay.

15 Q. In your deposition, you acknowledged there wasn't
16 a lot of the communication between you and this side of the
17 table in the late August through October time period, is that
18 fair?

19 A. I don't think there was a month that went by that
20 didn't have ten or more e-mails of some sort.

21 Q. You think that's what the record shows, that
22 between late August and when you made the investment, there's
23 ten or more e-mails?

24 A. Between the month of August and my investment.

1 Q. But from September 1st until when you funded,
2 there was only one e-mail where you asked any substantive
3 question about the project, right, and that was, how is the
4 schedule holding up?

5 A. I don't remember. They would speak for
6 themselves, though.

7 Q. You've gone through those exhibits in preparation
8 for your testimony, obviously?

9 A. To some extent, yes.

10 Q. You're not saying that what I'm saying is not
11 accurate?

12 A. No. I'm not saying it's truthful or accurate.

13 Q. Let's talk about the cost overruns or the budget
14 issues.

15 A. Where am I going?

16 Q. Exhibit 14.

17 A. 14. I'm still having trouble hearing.

18 Q. I'll speak up.

19 A. You're doing fine. I want you to understand I'm
20 not trying to give you a hard time. I just can't hear well.
21 Okay. I'm in 14.

22 Q. This is July 19, 2015, and I believe this was the
23 day that you did your site visit.

24 A. I believe so.

1 Q. And down at the bottom, you say, as I understand
2 it, you're over budget by more than 5 million so far. Where
3 will that and likely more funding needs come from? Do you
4 see that?

5 A. I do.

6 Q. Yesterday I understood your testimony to be you
7 got that information from Mr. Radovan, correct?

8 A. I thought so, yes.

9 Q. You'd agree with me -- well, let's go look at it.
10 Are you sure about that testimony?

11 A. To the best of my recollection.

12 Q. Is it possible that this e-mail to Mr. Marriner
13 was before you ever spoke with Mr. Radovan?

14 A. I suppose it's possible.

15 Q. Let's look over at Exhibit 15 real quick.

16 A. 15?

17 Q. Yes, sir.

18 A. Okay.

19 Q. The middle of the page is a July 22nd e-mail to
20 you and your wife from Mr. Marriner, correct?

21 A. Yes.

22 Q. And it says, I understand you and Robert had a
23 chance to talk yesterday, which would be July 21st, right?

24 A. Yes.

1 Q. Let's go to your deposition now, page 138.

2 A. 138. Yes, sir.

3 Q. Let's go to line 22 and you'll see what I'm
4 talking about is your e-mail in Exhibit 14. So I asked the
5 question, and then you indicate at the bottom, quote, as I
6 understand it, you're over budget by more than \$5 million so
7 far? Answer, yes. Question, where will likely that and more
8 funding needs come from? Did I read that correctly?

9 A. Yes.

10 Q. That's what I asked in the question. And your
11 answer was, yes, you did. And I said, question, prior to
12 this point in time, had you had any conversations with Robert
13 Radovan? Answer, as of July 19th, I don't believe so, other
14 than that Bonanza meeting. Did I read it that correctly?

15 A. Yes.

16 Q. And the Bonanza meeting was long ago?

17 A. It was a year before.

18 Q. Where did the -- if you didn't have a conversation
19 with Mr. Radovan, where did you get the information on
20 July 19th that the project was over budget by more than
21 \$5 million so far and likely more?

22 A. I believe it was accurate what the source was. I
23 obviously don't remember.

24 Q. Could it have come from Peter Grove?

1 A. No. I don't believe so.

2 Q. But you'll acknowledge it didn't come from
3 Mr. Radovan?

4 A. I don't -- it said I spoke to him on the 21st, I
5 think so. I don't know the source, but it was accurate.

6 Q. Well, in your deposition you said that as of
7 July 19th, I don't believe so.

8 A. No. It was the 21st. Yes. Correct.

9 Q. Let's look at exhibits -- we're going between
10 Exhibits 18 and 21. We'll ultimately land on 21. You
11 acknowledge receiving Exhibit 18, which is a July 25th e-mail
12 to you from Mr. Radovan?

13 A. Yes.

14 Q. And this was his response to a number of questions
15 that you had posed to Mr. Marriner, correct?

16 A. Correct.

17 Q. And if we flip over to Exhibit 21?

18 A. Yes.

19 Q. These are notes that you prepared in large part
20 from the information that came from that Exhibit 18, is that
21 fair?

22 A. Yes.

23 Q. Now, yesterday, correct me if I'm wrong, your
24 testimony was that you were led to believe that the project

1 was only 5 to \$6 million over budget, correct?

2 A. Yes.

3 Q. And you felt that was only slightly over budget?

4 A. Yeah. It's roughly ten percent. Yes.

5 Q. And that if there had been a change before you
6 invested, that they should have told you?

7 A. Yes.

8 Q. That's your testimony, right?

9 A. Yes.

10 Q. Let's look at what you testified to a couple of
11 months ago.

12 A. All right.

13 Q. Let's go to page 149 in your deposition.

14 A. 149?

15 Q. Yes. Yes, sir.

16 A. Yes.

17 Q. I'm going to read lines 21 through 25. I asked
18 you, quote, so it looks like as of this date, which was late
19 July, it was your understanding that the project was at least
20 \$10 million over budget from what was represented back in
21 2014? Answer, I guess that's what that would indicate. Did
22 I read that correctly?

23 A. You read it correctly, but I don't believe it that
24 way.

1 Q. But that was your testimony two months ago?

2 A. Yes.

3 Q. And you understood going back to your notes in
4 Exhibit 21 that the developer had \$2 million of the
5 \$20 million founders shares?

6 A. Correct.

7 Q. And they were seeking to raise an additional
8 \$9 million in debt financing in July?

9 A. Yes. And that's the difference between the 9 or
10 10 million, which I believe partially was a contingency fund
11 that was being created.

12 Q. Well, in addition to the 9 million in debt
13 financing, you also understood that they were seeking to
14 raise the additional \$1.5 million in equity?

15 A. Yes. That had been offered, yes. It was
16 approaching 1 million of that.

17 Q. So your understanding was that the developer was
18 seeking to raise an additional \$10.5 million between debt and
19 equity?

20 A. Yes.

21 Q. Isn't it true, sir, that Mr. Radovan specifically
22 told you that there could be more changes on the horizon and
23 that's why they were seeking to raise this amount of
24 financing?

1 A. He told me that there could well be more changes
2 on the horizon, so he wanted me to get enough financing
3 without having to go back to the well, so to speak, and raise
4 a contingency fund of roughly \$3 million.

5 Q. You never asked any specific questions to
6 Mr. Radovan, Mr. Marriner about the changes or their cost
7 impacts before you invested, correct?

8 A. I was told what the cost impacts were, yes.

9 Q. But you never asked any specifics, is that fair?

10 A. That's fair. Why would I ask if I was told?

11 Q. Right. And your testimony is you were told that
12 it was 5 to \$6 million and more on the horizon?

13 A. 5 to \$6 million. You keep putting those words in
14 there. That's not what I said. 5 to \$6 million were change
15 orders that they were aware of, but they wanted to raise
16 enough money in case there were others that they would have
17 to deal with later so they had a \$3 million contingency fund
18 available.

19 Q. Well, we just saw in your deposition that two
20 months ago you thought the project was over budget by
21 \$10 million, right?

22 A. That was including the contingency fund.

23 Q. Mr. Radovan never told you that there wouldn't be
24 additional change orders, right?

1 A. Absolutely not.

2 Q. Let's go to page 145 of your deposition.

3 A. 145. Yes, sir.

4 Q. Line nine, question, did you ever ask any
5 specifics about any of these items prior to making your
6 investment? And it's talking about the costs. Your answer,
7 I don't believe specifics, no. Down on line 24, question,
8 you don't recall any specific conversations about any of
9 these scope changes? Answer, no, I don't. Question, or
10 costs associated with them? Answer, not specifically, no,
11 just in total. Is that your testimony?

12 A. Yes.

13 Q. And you didn't ask to see any copies of the change
14 orders?

15 A. No.

16 Q. You never asked to see copies of the pending
17 change orders?

18 A. No. I believed what I was told.

19 Q. Let's look at some more of your testimony. Go to
20 page 76 of your deposition.

21 A. 76. Yes, sir.

22 Q. Line one, question, do you have any information at
23 the time Mr. Radovan made these representations to you that
24 he knew the costs on the project would exceed this

1 \$9 million? Answer, no.

2 A. That's right.

3 Q. Go over to page 73 now, sir.

4 A. Okay.

5 Q. Line 11, as you sit here today knowing what you
6 know, was any of the information he provided you false or
7 inaccurate? Answer, or misleading, perhaps. I believe he
8 indicated to me that it was over budget 5 to \$6 million and
9 he was going to refinance the mezzanine loan for \$15 million,
10 which is less the 6 million that was already financed, a
11 \$9 million total, and I was told that was not spent but was a
12 cushion in case it was needed. Question, and you believed
13 that to be inaccurate? Answer, correct. Question, how so?
14 Answer, I believe he knew there was a lot more expenses
15 coming than he said at the time. Question, what do you base
16 that on? Answer, a feeling. Question, a feeling? Answer,
17 yeah, just looking at the results later. So now go over to
18 72?

19 A. 70 what?

20 Q. 72?

21 A. 72 go back.

22 Q. Line 11, question, do you have any information how
23 much more over budget the project was when you made your
24 investment than was represented to you? Answer, no.

1 Question, had you attempted to ascertain that number?

2 Answer, no. Question, do you have a ballpark? Answer, no.

3 It would be a strictly be a good guess and I guess I'm not
4 supposed to do guesses.

5 A. Okay.

6 Q. Let's go to page 88 of your testimony.

7 A. 88.

8 Q. Line 11, question, what information or evidence do
9 you have that the project was substantially over budget as of
10 the date you made your investment? Answer, no firm
11 knowledge.

12 Let's go to 89. Start at line four.

13 A. Okay.

14 Q. Question, but as of the date you made your
15 investment, October 13th, 2015, do you have any evidence or
16 information that the project was more than \$9 million over
17 budget? Answer, I have no firm knowledge. Did I read that
18 correctly?

19 A. You did.

20 Q. Let's turn over to Exhibit 43.

21 A. All right.

22 Q. Turn over to change order number 12.

23 A. Where on this page?

24 Q. There's unfortunately no Bates stamps on this.

1 I'd say it's two-thirds, three-quarters of the way through.

2 A. Where is the change order numbers?

3 MR. LITTLE: May I approach, your Honor?

4 THE COURT: Go ahead.

5 MR. LITTLE: Thank you, your Honor.

6 THE WITNESS: Thank you.

7 BY MR. LITTLE:

8 Q. This is a change order request, change order
9 number 12, right?

10 A. Yes.

11 Q. And down at the bottom it, looks like it's signed
12 off by Penta and New Cal Neva on October 9th, 2015?

13 A. Yes.

14 Q. Which was two or three days before you funded?

15 A. Four days, three, four.

16 Q. If we look above, it indicates that the prior --
17 you understand that contractors work traditionally in 30-day
18 periods?

19 A. Yes.

20 Q. So the prior period, the authorized change orders
21 were \$8.7 million and change, right?

22 A. Yes.

23 Q. And according to this, we're adding another
24 \$600,000?

1 A. Yes.

2 Q. So take it a little over \$9 million?

3 A. Yes. But I never saw this before.

4 Q. Let's go to Exhibit 153.

5 A. Okay.

6 Q. There are fortunately Bates number on these. See
7 the CR at the bottom?

8 A. Yes.

9 Q. Turn over to CR 609.

10 A. Yes, sir.

11 Q. So you'll see the date of this up at the top is
12 July 27, 2015?

13 A. Okay.

14 Q. Is the application date? And this would have been
15 after you and Mr. Radovan met, correct?

16 A. I believe so.

17 Q. Down at the bottom left hand corner it says, net
18 changes by this change order, and it says \$2.461 million?

19 A. I believe so.

20 Q. Just a little under \$2.5 million. So as of
21 July 27th, 2015, Penta was reporting that there were
22 \$2,461,471 in change orders on the project, correct?

23 A. That's what it says.

24 Q. That's under actually the 5 to \$6 million that

1 Mr. Radovan, you claim Mr. Radovan told you?

2 A. Yes.

3 Q. And let's go over to Bates number CR 617.

4 A. This is different, though. This is a payment, not
5 a change order approval.

6 Q. Well, it's talking about the change orders that
7 have been approved. Let's just clear it up for the record,
8 if you're unclear. Under that box, it says, change order
9 summary, right?

10 A. Okay.

11 Q. And the first box says total of changes -- total
12 changes approved in previous months by owner, and it says
13 \$2.435 million. Do you see that?

14 A. Yes.

15 Q. And it says total approved this month was \$25,855,
16 right?

17 A. Yes.

18 Q. So it says, net changes by change order, and it
19 basically adds those two numbers?

20 A. Yes.

21 Q. So this is the contractor's change order summary?

22 A. Okay.

23 Q. As of July 27th, 2015, there were \$2,461,471 of
24 approved change orders?

1 A. Okay. That's what it says.

2 Q. Let's go to Bates number CR 617.

3 A. Number which?

4 Q. CR 617.

5 A. Okay.

6 Q. And this application date you see is August 31st,
7 2015, so it's the next month?

8 A. All right.

9 Q. Again, confirming that Penta was working in month
10 increments?

11 A. Yes.

12 Q. And as of -- well, you'll see under the change
13 order summary, it says, total changes approved in previous
14 months by owner, and it starts with that \$2,461,000 number
15 that was the total in the prior one we talked about, right?

16 A. Yes.

17 Q. Then it says, total approved this month,
18 \$2,181,211, correct?

19 A. Correct.

20 Q. For a total of 4 million I think it's 644,000 and
21 change?

22 A. As best I can read it.

23 Q. Let's turn over to CR 623.

24 A. 623. Yes, sir.

1 Q. And this is an application date September 30th,
2 2015, right?

3 A. Yes.

4 Q. So this is a week and a few days before you
5 invested?

6 A. Okay.

7 Q. And under the change order summary it says, the
8 total changes approved in previous months, and it has the
9 \$4.64 million number we talked about from the prior one,
10 right, they carried it forward?

11 A. Okay.

12 Q. And it has changes approved this month of
13 4.742 million?

14 A. Yes.

15 Q. And the total is it looks like \$9.3 million?

16 A. Something like that. I've never seen this
17 document before.

18 Q. Sir, it turned out that Mr. Radovan's -- although
19 he doesn't have a crystal ball, his projections about where
20 the change orders were headed, this horizon you talked about,
21 turned out to be pretty accurate, correct?

22 A. I doubt that, no, because this is only through
23 September and he was projecting through the end of the
24 project. This would indicate to me that that wouldn't be

1 correct.

2 Q. Changes that had been approved by the contractor
3 as of the date you invested were a little over \$9 million
4 according to this document, correct?

5 A. Yes. That's kind of scary in itself and very
6 material.

7 Q. Is it somehow your contention that the developer
8 is responsible for the unforeseen site changes that were the
9 impetus or cause for these changes?

10 A. I never said that.

11 Q. And is it your testimony that they have a crystal
12 ball and should be able to predict what and how those change
13 orders are going to be priced?

14 A. To a certain extent and to the extent that they
15 are going out and getting financing to cover all the
16 contingencies that they can foresee.

17 Q. And according to your testimony, at least, Robert
18 was telling you that he foresaw that down the horizon they
19 were going to need ten and a half million dollars, right?

20 A. Yes. But not as of September 30th.

21 Q. Well, your counsel went over some changes that
22 went into November and December and those only went up to
23 about \$11 million, right?

24 A. I don't remember. That could be.

1 Q. Let's switch gears and talk about the schedule.
2 Please turn over to Exhibit 27.

3 A. This will take a minute. I'm sorry. Okay.

4 Q. We've talked about this. This is an internal
5 communication between you and your CPA, right?

6 A. Yes.

7 Q. And it's dated August 12th, 2015?

8 A. Yes.

9 Q. And it's you documenting what you believe to be a
10 conversation that occurred with Robert, it looks like that
11 day?

12 A. Yes.

13 Q. And just so we're clear, your testimony is that
14 you were led to believe and always understood that the only
15 reason the schedule was being pushed back was just because of
16 costs associated with the winter and little snow pack, in
17 other words --

18 A. Potential loss because of a light winter and light
19 tourism.

20 Q. So your testimony is construction had nothing to
21 do with the reason that costs were being pushed back?

22 A. That's my understanding from Mr. Radovan.

23 Q. Sir, turn over to trial Exhibit 21, please?

24 A. I'm sorry? 21?

1 Q. Yes, sir.

2 A. Okay.

3 Q. You prepared this document the end of July,
4 correct?

5 A. Yes. That sounds right.

6 Q. Let's just make sure we're clear. Let's go to
7 page 151 of your deposition.

8 A. A lot of paper to move. Okay.

9 Q. We're talking about these notes in this
10 deposition. So on line 13, the question was asked,
11 Exhibit 56 shows that he sent these notes to his accountant
12 on July 26th, 2015, correct?

13 A. Yes.

14 Q. Answer, correct. That's when I think I prepared
15 this, just in anticipation of that. Did I read that
16 correctly?

17 A. Yes.

18 Q. So that suggests that you prepared these notes on
19 or before July 26th?

20 A. Right.

21 Q. Sir, let's go to the second page of Exhibit 21.

22 A. Second page of 21?

23 Q. Yes. You're saying here before the call we had
24 talked about with Mr. Radovan that prompted you to create

1 Exhibit 27, that the soft opening was in December for the
2 party, but the full opening was being pushed back to April,
3 correct?

4 A. Yes.

5 Q. And it doesn't say anything about snow or tourism
6 in your notes here, right?

7 A. Okay. I said it elsewhere, but, yes.

8 Q. Sir, if your testimony about snow pack in
9 Exhibit 27 is accurate, help me understand why the schedule
10 is being pushed back in Exhibit 27 even further?

11 A. I don't understand this further. I'm sorry.

12 Q. Let's compare the dates. Exhibit 21, you're
13 saying that they're going to do a soft opening on
14 December 12th and a full opening in April, correct?

15 A. Yes.

16 Q. And it doesn't say anything about tourism or
17 winter conditions, right?

18 A. No.

19 Q. And then over on Exhibit 27, you're now being told
20 that the soft opening is not December, it's March 1st, and
21 the grand opening is no longer April, it's Father's Day,
22 which is June?

23 A. June 17th.

24 Q. Correct?

1 A. Yes.

2 Q. So if your understanding was always that the only
3 reason the schedule was being pushed because of tourism and
4 winter, my question is, why are they pushing these opening
5 dates back again?

6 A. I don't think they're pushing them back again. I
7 don't understand it. I guess I'm not understanding your
8 question, because until I wrote that August 12th memo, I had
9 not talked to Mr. Radovan and had that explained to me that
10 it was being pushed back.

11 Q. Well, as of late July when you prepared
12 Exhibit 21, the notes --

13 A. Yes.

14 Q. -- you documented and your understanding was that
15 they were going to do a soft opening in December?

16 A. Yes.

17 Q. And a full opening in April?

18 A. Yes. That was always the schedule.

19 Q. Is it your testimony that that full opening was
20 also because -- that they were pushed back then because of
21 tourism and winter?

22 A. No. It was just the normal way to open a hotel
23 would be to have a soft opening, get the kinks out, and then
24 do a full opening. That's just a normal procedure, as I

1 understood it. I don't believe that's off of the original
2 plan.

3 Q. Well, if construction is not related, then, sir,
4 how do you explain in Exhibit 27 why they're pushing it out
5 even further?

6 A. 27 is the one where I found out -- why they were
7 telling me it was going to be delayed and why it was going to
8 be delayed. 21 is the original plan of opening on
9 December 12th, but it -- opening means the soft opening.
10 That's just normal procedure. I don't understand your
11 concern.

12 Q. Well, we talked about earlier, you didn't trust
13 the information that Robert had given you in Exhibit 27, so
14 you went to Peter Grove to get confirmation, correct?

15 A. I wouldn't say it that way. As Ronald Reagan
16 would say, you trust but verify.

17 Q. You wanted to independently verify that through
18 the architect?

19 A. It doesn't hurt to ask.

20 Q. And we've established today that yesterday you
21 testified you didn't speak with him or he didn't respond.
22 And we went through depositions today and established that he
23 did, you just don't know what he told you?

24 A. Correct. To the best of my recollection.

1 Q. Sir, did you ever ask to see a copy of the project
2 schedule?

3 A. No.

4 Q. And you didn't take Mr. Marriner up on his offers
5 to go walk the job and see the progress?

6 A. No. There was no need that I knew of.

7 Q. Let's turn to Exhibit 36, please.

8 A. I'm there.

9 Q. This is an e-mail exchange between you and
10 Mr. Radovan October 10th, 2015, three days before you funded,
11 right?

12 A. Yes.

13 Q. This was the e-mail that I was telling you about
14 is the only one where you're asking substantive information
15 about the project between September and October. And in your
16 e-mail, you asked, how is the Cal Neva schedule holding up?
17 And Robert's response is, looking good, soft opening in
18 spring with grand opening on Father's Day weekend, just
19 brought in our general manager and chef. Did I read that
20 correctly?

21 A. Yes.

22 Q. It doesn't say anything about tourism and winter,
23 does it?

24 A. It doesn't say any reason whatsoever. He told me

1 that in the previous discussion.

2 Q. Sir, you can't point to any correspondence or
3 e-mail from Mr. Marriner or Mr. Radovan that says weather or
4 tourism is the only reason the schedule is getting bumped,
5 correct?

6 A. Except that I documented it when I had that
7 conversation.

8 Q. Let's shift gears and talk about financing.
9 Yesterday you testified you weren't told that at some point
10 the executive committee had decided to switch from a
11 mezzanine refinance to a full refinance, correct?

12 A. Correct.

13 Q. You recall testifying in your deposition that you
14 couldn't remember if such a conversation occurred?

15 A. I can't remember that, but they've verified that
16 in their testimony.

17 Q. Well, you could have had conversations with other
18 people, correct, not just Robert or Dave?

19 A. Like who?

20 Q. The architect?

21 A. I don't believe I -- I don't know if the architect
22 would know about the financing anyway. I don't remember
23 asking him about financing.

24 Q. You'd agree, and we went through it, and we won't

1 go through it again, Peter Grove told you that it was in fund
2 raising mode, right?

3 A. Yes, I knew that.

4 Q. You knew from Robert that he was actively trying
5 to get financing?

6 A. Yes, on the mezzanine loan.

7 Q. He never gave you a date that any sort of
8 refinancing was supposed to close, did he?

9 A. No. He just told me it was in process.

10 Q. And you never asked which lender or lenders he was
11 talking to?

12 A. No.

13 Q. You never asked to review any term sheets,
14 commitment letters, other terms of any proposed financing?

15 A. No. That would be the manager of the project to
16 do that.

17 THE COURT: Mr. Little, it's my preference to push
18 through and finish up here, but do you want to take a morning
19 break? If we do, I want to keep it real short.

20 MR. LITTLE: Real short, maybe five minutes.

21 THE COURT: That's fine. Court's in recess.

22 (A short break was taken.)

23 THE COURT: Mr. Yount, you remain under oath.

24 Mr. Little, your witness.

1 MR. LITTLE: Thank you, your Honor.

2 BY MR. LITTLE:

3 Q. Mr. Yount, I want to talk about your bait and
4 switch argument.

5 A. Talk about what, sir?

6 Q. The bait and switch argument. I think you called
7 it bait and switch, right?

8 A. Yes.

9 Q. As I understood your testimony, you wouldn't have
10 invested had you known you were buying one of CR Cal Neva's
11 founding shares, because that signals to you that the project
12 was failing, right?

13 A. Absolutely.

14 Q. And you also said yesterday that developers don't
15 sell if it's a good investment, right?

16 A. Yes. Why would they throw away money?

17 Q. Sir, you're a sophisticated man, but you're not a
18 commercial real estate developer?

19 A. Absolutely not.

20 Q. If I told you that commercial real estate
21 developers rarely have their own money in projects, you
22 wouldn't have the foundation or basis to challenge me on
23 that?

24 A. No, sir.

1 Q. Have you sat through testimony when we walked
2 through the Ladera loan, the private placement memorandum and
3 some of the cap table or the cap table that showed that the
4 developer always intended to only hold a \$1 million piece on
5 this project, right?

6 A. I saw those two footnotes, if that's what you're
7 referring to.

8 Q. You don't have any evidence to dispute that it
9 was -- always the developer's intent to always hold no more
10 than \$1 million founders share in this business?

11 A. I just don't see developers giving away money.

12 Q. You don't have any evidence to dispute that that
13 was their intent all along?

14 A. I don't know one way or the other.

15 Q. And the documents we were looking at that
16 reflected them holding a \$1 million piece dated back to 2014,
17 correct?

18 A. Yes. But that was an option they had. It wasn't
19 saying that was for sure happening.

20 Q. Sir, you also testified that you never received
21 any information prior to investing that suggested or raised
22 any red flags that you might be buying one of the developer's
23 founders share, correct?

24 A. Absolutely, positively none.

1 Q. Let's turn over to Exhibit 107.

2 A. Exhibit 107?

3 Q. Excuse me. 106. Hold on. 106.

4 A. 106. I'm there.

5 Q. Give me one second. Sir, at the bottom, you'll
6 see that Mr. Marriner wrote you an e-mail on October 1st?

7 A. I'm not on that correct page. Where am I? The
8 next page, page two?

9 Q. Yeah. So it's Bates number GSY 2334.
10 October 1st, it says, hi Stuart, some pleasantries, I believe
11 Robert will want to use the following address and he gives
12 you an address for Criswell Radovan LLC, correct?

13 A. Yes.

14 Q. And if we turn over to Exhibit 108?

15 A. Yes.

16 Q. There's some wiring instructions for Criswell
17 Radovan LLC, do you see that?

18 A. No, sir, I don't. Where on 108?

19 Q. I'm sorry. 107.

20 A. Okay.

21 Q. Now, let's go to your deposition, page 168.

22 A. 168. Okay.

23 Q. Line 12, I asked you, I'll show you Exhibit 71.
24 This document came from your production. It's wiring

1 instructions to Criswell Radovan LLC's bank account, correct?

2 A. Yes.

3 Q. I'm just going to read it. You can follow along.

4 Answer, I believe so, yeah, I don't know if it's my document.

5 Question, the Bates number below GSY 2513 I'll represent came

6 from your production. Answer, yes. That doesn't mean it's

7 my document. Question, well, it was your in your file,

8 correct? Answer, correct. Question, at some point in time

9 someone sent you wiring instructions to Criswell Radovan LLC,

10 correct? Answer, I believe the previous document showed that

11 coming from Dave originally. Question, and it says on here,

12 quote, for credit to the account of Criswell Radovan LLC, end

13 quote, do you see that?

14 A. Yes.

15 Q. Answer, yes. If you were buying one of the

16 founders shares and not from Criswell Radovan, why would they

17 be sending you a document suggesting that they be getting

18 credit for your \$1 million? Answer, maybe because they

19 wanted to take the money more directly than going through

20 their attorney. Did I read that correctly?

21 A. Yes.

22 Q. Let's go over to Exhibit 38 now.

23 A. Okay.

24 Q. It's an October 12th, 2015 e-mail between Heather

001847

1 Hill and a Sherrie Montgomery from Premiere Trust. First of
2 all, that was a day before you closed, right?

3 A. Yes.

4 Q. Premier Trust was the agent that you hired to
5 handle the transaction on your behalf?

6 A. Trust agent, yes.

7 Q. And you'll see on the -- under the bullets, one of
8 them is wiring instructions to our corporate account for
9 Criswell Radovan LLC. Do you see that?

10 A. Yes.

11 Q. It doesn't say Cal Neva Lodge, right?

12 A. Correct.

13 Q. Let's look at Exhibit 33.

14 A. 33.

15 Q. We saw this and talked about this October 2nd,
16 2015 e-mail between Heather Hill and Bruce Coleman, ccing
17 Robert Radovan, correct?

18 A. Yes.

19 Q. Do you remember seeing this?

20 A. Yes.

21 Q. Essentially, Heather is asking Bruce how to
22 properly paper a transaction between CR Cal Neva selling a
23 founders share to you. Do you see that?

24 A. Yes.

1 Q. Sir, you can't get into the mind of Ms. Hill,
2 obviously, but you do have common sense. Do people typically
3 correct these paper transactions if they're trying to do some
4 kind of bait or switch?

5 MR. CAMPBELL: Objection, I think that's
6 speculation.

7 THE COURT: It's argumentative. Sustained.
8 BY MR. LITTLE:

9 Q. Sir, let's go to your deposition, page 93.

10 A. Page 93.

11 Q. Down at the bottom, I'm going to read lines 18
12 through 21. Question, do you have any evidence that Criswell
13 Radovan sold you one of their shares because they knew their
14 project was in trouble? Answer, no, it just seems obvious to
15 me.

16 Let's go over now to page 105 in your deposition.

17 A. Yes, sir.

18 Q. The top, I asked you, is the value of those shares
19 any different? In other words, what you thought you were
20 buying and what they thought they sold you, is the value in
21 those shares any different? Your answer, to me, they're not
22 worth the same because of what I stated. It's not an initial
23 investor in the project, which is what I contemplated being,
24 and it shows that the developer is not to be trusted because

1 he's trying to take his money and run before the project
2 fails. Question, what information do you have that that was
3 their intent? Answer, I don't. That's my opinion, as I
4 stated before. Question, are the rights and obligations of
5 those two founding shares any different to your knowledge?
6 Answer, I don't know. I never saw documentation on that.

7 MR. CAMPBELL: That question was objected to for
8 the record.

9 THE WITNESS: Yes, so was the previous one.
10 You're not reading the entire thing.

11 BY MR. LITTLE:

12 Q. I only took out counsel's objection.

13 MR. CAMPBELL: I'm making an objection now as to
14 this one.

15 THE COURT: That objection is overruled. I think
16 it's an appropriate question. Next question.

17 MR. LITTLE: Thank you, your Honor.

18 THE WITNESS: I just don't know any other reason.

19 BY MR. LITTLE:

20 Q. Sir, go over to page 220 of your deposition.

21 A. Okay.

22 Q. Line ten, you were asked, question, in hindsight,
23 was there anything you would have done differently with
24 regard to your due diligence prior to funding your

1 investment? Is there any extra precaution or extra due
2 diligence that you didn't do or didn't perform? Answer, I
3 probably should have investigated his past projects more and
4 probably should have quizzed him about on what he knew or
5 didn't know about the current status of the project.

6 Question, when you say him, do you mean -- answer, we're
7 talking about Robert Radovan is what you asked, yeah.

8 Question, I asked you about -- answer, in general.

9 Question, generally, what other due diligence on all fronts
10 looking back, hindsight being 20, 20, that you wish you had
11 done? Answer, I wish I had asked Robert and Dave more about
12 the current status of the project and hopefully been able to
13 uncover more information than what I was given and I also
14 wish I had done more investigation into his past projects.
15 Did I read that correctly?

16 A. Yes.

17 Q. You agree with me, sir, the defendants didn't do
18 anything to stand in your way of doing more, doing a further
19 investigation, correct?

20 A. Correct.

21 Q. They provided you answers to everything you asked
22 for?

23 A. Yes.

24 Q. Every document you asked for, they provided, they

1 gave to you?

2 A. Yes.

3 Q. There's no questions or documents that you asked
4 for that you weren't given?

5 A. Yes. I had no reason to doubt them at the time.
6 Hindsight, as you say, is 20, 20.

7 Q. They invited you to see the progress of the job up
8 until a couple of days before you closed and you didn't take
9 him up on it, correct?

10 A. There was no need to.

11 Q. Sir, I think you testified yesterday that no one
12 told you they were looking at other investors or something to
13 that effect?

14 A. Yes.

15 Q. The reverse of that is true, they didn't tell you
16 that -- that you were the only investigator being solicited,
17 correct?

18 A. Correct.

19 Q. Do you think it's reasonable to assume after three
20 or four months that you would be the only one they would be
21 looking at?

22 A. No. I never assumed that.

23 Q. Your contract you signed you understood or
24 believed it was with Cal Neva Lodge?

1 A. Absolutely. That's what they said when I signed
2 it. Anything else would be fraudulent, wouldn't it?

3 Q. Sir, you heard Mr. Coleman testify that it was his
4 understanding that you were buying one of CR Cal Neva's
5 shares. Do you recall that being his testimony?

6 A. Yes.

7 Q. And you don't have any evidence that he had
8 knowledge to the contrary, do you?

9 A. Just the e-mails around that time. What time are
10 you talking? I don't know.

11 Q. At any time before he sent the money out of his
12 trust account, do you have any evidence that Mr. Coleman or
13 his firm knew anything other than they thought that a CR Cal
14 Neva founding share was being sold to you?

15 A. I assume so. I don't know. I wasn't involved
16 with him on that.

17 Q. Sir, let's go to Exhibit 154. This is your second
18 amended complaint, essentially the lawsuit that you filed
19 against Criswell Radovan.

20 A. Okay.

21 Q. You heard testimony yesterday that a copy of that
22 complaint was first delivered to the defendants in a
23 mediation by Brandon Chaney. Did you provide him a copy of
24 your complaint?

1 A. I did not say that.

2 Q. No. You heard testimony to that effect?

3 A. Yes.

4 Q. Did you provide a copy of the complaint to Brandon
5 Chaney?

6 A. Yes.

7 Q. Did you ask him to deliver it to them?

8 A. No.

9 Q. Turn over to page 15 of Exhibit 154, please, sir.

10 A. Yes.

11 Q. And this is called a verification and that's your
12 signature, right?

13 A. Yes, that's my signature.

14 Q. And you under this verification were
15 declaring under penalty of perjury under the laws of the
16 State of Nevada that you had read this complaint, right?

17 A. Yes.

18 Q. And except for matters that you stated were on
19 information and belief that the complaint was true and
20 accurate and you believed it to be true, correct?

21 A. Yes.

22 Q. In paragraph 15, you say --

23 A. Whoa. Whoa. Paragraph?

24 Q. Yes. Paragraph 15 on page four.

1 A. Page four of this exhibit?

2 Q. Yes.

3 A. All right.

4 Q. You indicate that during July, August, September,
5 October 2015, prior to October 12th when Younts sent
6 \$1 million to the escrow holder for shares in the offering
7 under the private placement memorandum, Marriner knew that
8 the general contractor and subcontractors on the job were not
9 being paid, but did not disclose this to Yount. Did I read
10 that correctly?

11 A. Yes.

12 Q. Sir, we've gone through the pay applications, we
13 went through the Mark Zakuvo report, there's no evidence that
14 the contractors had not been paid through your closing, and,
15 in fact, all the evidence shows that they were paid, correct?

16 A. I only had Mr. Marriner's statement to go from.

17 Q. Which was what?

18 A. That the contractors were about to pull off the
19 job. You have these e-mail to that effect, that they were
20 not being paid. It was much later that he wrote back, yes.

21 Q. So you're not disputing at this time that that's
22 an untrue statement? You're just saying that you relied on
23 Mr. Marriner for it?

24 A. I relied on Mr. Marriner. He's my protector,

1 remember.

2 Q. Paragraph 18, sir?

3 A. Okay.

4 Q. You indicate on July 25th, 2015, Radovan sent an
5 e-mail to plaintiff providing numerous documents and other
6 information related to the project and development of the Cal
7 Neva Lodge, including financial information showing the
8 project was on budget and on time with the intent to induce
9 you to purchase a founders unit for a million dollars, right?

10 A. That's what it says. That's what I believe.

11 Q. Sir, the July progress report, the e-mail you got
12 from Peter Grove, Mr. Radovan's letter to you, shows that the
13 project was over budget.

14 A. As of that date? I don't remember for sure, but,
15 yeah.

16 Q. In fact, if we go back to the testimony you
17 changed, but you admitted in your deposition back two months
18 ago in June, at that time, you felt that the project was
19 \$10 million over budget at this time?

20 A. No --

21 MR. CAMPBELL: I'm going to object to this at this
22 point. I believe the complaint says this was information
23 sent to him by Radovan. I think they're expanding --
24 Mr. Little is expanding the scope of this universe of

1 information.

2 THE COURT: I'll let you clear that up, but I
3 think it's a fair line of cross examination.

4 THE WITNESS: Would you repeat the question?

5 BY MR. LITTLE:

6 Q. On page 20 -- excuse me -- paragraph 20, lines 9
7 and 10, you say, on October 13th, 2015, Criswell as president
8 of CR signed the acceptance of subscription --

9 A. I'm sorry.

10 Q. Lines 8 and 9 on page five?

11 A. Okay.

12 Q. Paragraph 20. On October 13, 2015, Criswell as
13 president of CR signed the acceptance of subscription as
14 manager of CR?

15 A. That was mistake. I could not read his signature
16 and I misunderstood. It was Mr. Radovan verified, but if you
17 could read his signature, more power to you.

18 Q. Paragraph 21, you indicate that at the meeting in
19 December, you learned for the first time matters that had not
20 been disclosed or were incorrectly represented to you prior
21 to making your investment, primarily that the project was
22 substantially over budget, Penta had not been paid, and Cal
23 Neva Lodge was not going to open as scheduled. Did I read
24 that correctly?

1 A. Yes.

2 Q. And do you how define substantially over budget?

3 A. The document you showed me with Penta saying that
4 they were \$10 million in -- of approved change orders as of
5 the end of September.

6 Q. It was \$9.3 million?

7 A. 9.3.

8 Q. And do we need to go back through the records to
9 show that Penta had been paid through September?

10 A. No.

11 Q. Or do you agree that's true?

12 A. That's just my understanding from Mr. Marriner, so
13 that's where I got that.

14 Q. And your statement that Cal Neva Lodge was not
15 going to open as scheduled, you knew it was pushed back to
16 April and May?

17 A. That's what I call a schedule.

18 Q. You're sticking --

19 A. You're talking about two different schedules. The
20 schedule I understood at the time I invested was it was going
21 to open -- soft opening in spring and hard in June.

22 Q. Let's talk about one last issue, and that's your
23 involvement post December 2015. And I want to make sure I
24 understand your testimony from yesterday.

1 A. Okay.

2 Q. I understood you first to say that you never
3 wanted to participate in the project after December 2015,
4 correct?

5 A. December, yes, 13th.

6 Q. At no point did you hold yourself out as an
7 investor?

8 A. Oh, I did until I was told later that I was not an
9 investor.

10 Q. So after January, you didn't hold yourself out as
11 an investor?

12 A. No.

13 Q. You don't dispute, though, that you were treated
14 as such by the developers and members of the executive
15 committee?

16 A. Correct.

17 Q. And you filed a proof of claim in Cal Neva Lodge's
18 bankruptcy, correct?

19 A. Yes. I believe so.

20 Q. You had bankruptcy counsel and in fact you sit on
21 the creditors committee?

22 A. Unsecured creditors committee.

23 Q. Well, any founder member in Cal Neva Lodge would
24 be an unsecured creditor, right?

1 A. You asked which committee I served on and that's
2 the committee I'm on.

3 Q. You also testified yesterday that you never tried
4 to play both sides of the fence?

5 A. Absolutely not.

6 Q. You never tried to bring any lenders or financing?

7 A. That has nothing to with playing both sides of the
8 fence.

9 Q. I'm just establishing the points you said
10 yesterday.

11 A. Okay. These two are not related.

12 Q. You never tried to bring any lenders or financing?

13 MR. CAMPBELL: Objection. I think that
14 mischaracterizes his testimony.

15 THE WITNESS: I did mention it, as I said, to
16 Mr. Wittenberg and that was my only action towards
17 refinancing.

18 THE COURT: Sustained.

19 BY MR. LITTLE:

20 Q. Let's turn over to page 52 of your deposition.

21 A. Page 52. Yes, sir.

22 Q. Line six, I asked you, have you ever tried to
23 bring any banks, lending institutions or investors to the
24 this project to help resurrect it? Your answer was, no,

1 correct?

2 A. Yes.

3 Q. And you also, as I understood your testimony
4 yesterday never participated in any discussions with any
5 potential lenders or new investors?

6 A. Correct.

7 Q. But you did know and understand that the IMC folks
8 were looking at other financing?

9 A. Yes.

10 Q. But you didn't have any involvement with that?

11 A. I heard some of it, but I never -- I wasn't
12 involved in it as in taking any action in it.

13 Q. And I understood you to say you played no role in
14 the efforts by IMC or Molly Kingston to undermine the Mosaic
15 loan or try to oust Criswell Radovan from management?

16 A. I was in the discussions about replacing Criswell
17 Radovan with -- every lender they talked to insisted upon it.

18 Q. Did you play any role in the efforts by IMC and
19 Molly Kingston to undermine the Mosaic loan?

20 A. Not a chance. I don't even know that they did.

21 Q. Well, you do know that Mosaic backed out the same
22 day, basically, that the members of the IMC group met with
23 them?

24 A. Yes, I've seen that. That does not mean that they

1 caused it, though.

2 Q. Let's go to Exhibit 50, sir.

3 A. I'm sorry?

4 Q. Trial Exhibit 50.

5 A. One more time.

6 Q. Exhibit 50.

7 A. Exhibit 50. Sorry. Yes, sir.

8 Q. Down on the bottom, there's basically an e-mail
9 exchange between you and Mr. Jamieson, correct?

10 A. Correct.

11 Q. December 17th and he's a member of the IMC group?

12 A. Yes.

13 Q. And he's referring to it being entirely your
14 decision to send it, of course, and from his perspective he
15 doesn't see any problem. What's he referring to?

16 A. A draft of an e-mail that I was sending
17 Mr. Criswell and probably copying Mr. Radovan.

18 Q. And why were you soliciting Mr. Jamison's advice?

19 A. Because we were in the same boat together from the
20 standpoint of very worried and upset about the condition of
21 the project and we were all trying to work together from the
22 standpoint of resurrecting it as best as could be done.

23 Q. And you responded to him above by saying, thanks,
24 will do. I'm trying to be very hard to be inclusive with our

1 team and not be the rogue player?

2 A. Yes.

3 Q. What were you referring to as our team?

4 A. The IMC, Molly, myself and other investors that
5 were concerned. I don't know of any investor that wasn't
6 concerned.

7 Q. Exhibit 55?

8 A. Yes, sir.

9 Q. This is an e-mail from Paul to you, right?

10 A. Yes.

11 Q. And then is that Roger, is that Roger Wittenberg?

12 A. Yes.

13 Q. He's thanking all of you for putting together a
14 meeting that occurred yesterday to discuss Cal Neva, right?

15 A. Yes.

16 Q. And he's asking Roger to basically relay back how
17 the conversations goes with North Light?

18 A. Yes. I was not in that meeting.

19 Q. North Light was a potential investor they were
20 looking at?

21 A. Financier, investor. I'm not sure which way they
22 were looking. I think they were looking to buy the project,
23 potentially. But I never spoke to North Light, so I don't
24 really know.

1 Q. Let's go over to Exhibit 58. This is
2 correspondence between you and Molly Kingston, right?

3 A. Yes.

4 Q. And she was communicating with the IMC people,
5 too, right?

6 A. Yes.

7 Q. And this was after you had learned of what you
8 describe as the bait and switch?

9 A. Yes.

10 Q. At the bottom, you write her and say, I'll be
11 cautious and listen before I declare a divorce and see how
12 they respond, but I think we're likely there. Thank you for
13 your support, Molly. We've got each other's backs, et
14 cetera, et cetera. What are you referring to by declaring a
15 divorce?

16 A. She was much more aggressive in the concept of
17 getting Mr. Radovan and Mr. Criswell removed and I was not
18 ready to say that yet. I just wanted to get the thing
19 funded, me paid off and out of there.

20 Q. It's your testimony this isn't an example of you
21 riding the fence, so to speak?

22 A. No.

23 Q. You're not referring to declaring a divorce from
24 removing yourself from your founders share?

1 A. No. That's not what I was talking about. I was
2 talking about one way to refinance would be to remove
3 Mr. Criswell and Mr. Radovan or put in someone who would
4 represent our group that we would entirely independent.
5 There's all kinds of ways to look at this.

6 Q. Let's look at the next exhibit, Exhibit 59.

7 A. Yes, sir.

8 Q. This is an e-mail exchange between you and
9 Mr. Jamieson of the IMC group, right, on January 25th?

10 A. 24th and 25th, yes.

11 Q. So it's before the January 27th meeting that
12 there's been a lot of testimony about?

13 A. Yes.

14 Q. And you're sending for comment to Paul a response
15 that you're proposing to send to Criswell Radovan?

16 A. Yes.

17 Q. And why are you doing that?

18 A. Same reason as before, we were trying to work
19 together to resolve the problem.

20 Q. And up at the top, he tells you that he's in
21 support of you sending the e-mail and it all rings true,
22 correct?

23 A. Yes.

24 Q. And then he says, we need to get more investors on

1 board with their removal, right?

2 A. That's what he says.

3 Q. So at least in his mind, he's looking at you as an
4 investor?

5 A. I don't know that it says that.

6 Q. Let's go to Exhibit 109.

7 A. Okay. I'm there.

8 Q. This is an e-mail that you're copied on with other
9 members of the IMC group, right, and Molly Kingston?

10 A. Yes.

11 Q. December. And it's from Brandon Chaney of IMC and
12 he's saying that he's created a drop box with information and
13 other documents that he says is for our eyes only, right?

14 A. That's what he says.

15 Q. And Mr. Criswell and Mr. Radovan are not copied on
16 this?

17 A. I don't believe so, no.

18 Q. What information was he sending that was for your
19 eyes only?

20 A. I do not remember. I'm not even sure I looked at
21 the drop box. I don't know.

22 Q. Let's look over at Exhibit 110.

23 A. Yes, sir.

24 Q. December 22nd e-mail from Paul Jamieson of IMC to

1 you, Molly, other members of IMC, correct?

2 A. As well as Phil Busick.

3 Q. But Mr. Radovan, Mr. Criswell are not copied on
4 this?

5 A. Correct.

6 Q. And it talks about attaching an Excel PDF file,
7 basically an action list for items we discussed as a divide
8 and conquer approach, right?

9 A. That's what he calls it.

10 Q. And he's indicated these are not to be shared with
11 Criswell Radovan?

12 A. Yes.

13 Q. And he's referring to all of you collectively as a
14 team, right?

15 A. All of us collectively, what, sir?

16 Q. As a team. It says team, comma?

17 A. I've told you, yes, all the shareholders that were
18 concerned. We referred to --

19 Q. You never responded to any of these people in the
20 IMC group and say, wait a minute, I'm not part of your team?

21 A. No. I never said I was. Well, I guess I implied
22 that.

23 Q. Let's go over to Exhibit 114.

24 A. All right.

1 Q. This is a January 22nd e-mail you're copied on
2 from IMC group to Robert and Bill?

3 A. It's from Paul Jamieson.

4 Q. Right. You're copied on it?

5 A. Yes.

6 Q. Calling for a meeting ahead of the EC meeting?

7 A. Yes.

8 Q. Were you present at that meeting?

9 A. I don't recall. I was present at the committee or
10 the EC meeting, excuse me.

11 Q. That's the meeting where they put a paper in front
12 of Mr. Criswell and Mr. Radovan and demanded that they give
13 back their interest?

14 A. I believe so.

15 Q. And, sir, isn't it true that they demanded not
16 that they give back their million dollar founders share to
17 the company, but they give it to the IMC people?

18 A. I don't remember that.

19 Q. Let's turn over to Exhibit 115, January 24th,
20 2016, same time period?

21 A. Yes.

22 Q. Between you and only Brandon Chaney, right?

23 A. Correct.

24 Q. Subject line is tomorrow, right?

1 A. Yes.

2 Q. And this would be that confrontation where they're
3 going to demand that not only Robert and Bill remove
4 themselves, but that they give back there their interest,
5 right?

6 MR. CAMPBELL: Objection as to foundation. He
7 said this is referring to the confrontation. It doesn't have
8 any reference to anything in this e-mail.

9 THE COURT: Just rephrase the question.

10 BY MR. LITTLE:

11 Q. Well, we saw in the prior exhibit that there was
12 an upcoming meeting that was being talked about?

13 A. Yes.

14 Q. And here two days later, it's talking about
15 tomorrow. Do you know if it's talking about tomorrow being
16 this meeting you're going to have with Robert and Bill?

17 A. I thought it was on the 27th. I don't know.

18 Q. Well --

19 A. But this is not referring to that meeting. He had
20 some things he wanted to discuss with me. And he wanted to
21 meet with me tomorrow.

22 Q. He said, I have something to discuss with you
23 about Robert, right?

24 A. Yes.

1 Q. What did he discuss with you?

2 A. I believe it was about the winery venture he was
3 in with that Robert, Fairwinds or Fairview or something of
4 that sort.

5 Q. Let's go to Exhibit 118.

6 A. 118. I'm there.

7 Q. This is an e-mail exchange only between you and
8 Mr. Jamieson of IMC, right?

9 A. Correct.

10 Q. And this is January 26th?

11 A. 26th, yes.

12 Q. Subject line, CR?

13 A. Yes.

14 Q. Now, this would be the day before the infamous
15 January 27th meeting, right?

16 A. I believe so.

17 Q. And down below, you're telling Mr. Jamison that we
18 need to be extra careful not to underestimate these two
19 tomorrow, right?

20 A. Yes.

21 Q. And you're indicating that the biggest weakness in
22 this, as you see it, is who will manage the project in the
23 interim and getting the CR guys to be fully cooperate and not
24 to try to surreptitiously make the project fail if they get

1 thrown out, right?

2 A. Yes.

3 Q. So you were part of a team, including the IMC and
4 Molly Kingston, to try to get them removed?

5 A. No. I was -- I was concerned about their approach
6 to getting them removed and was trying to caution them and
7 slow them down on it the way they were handling it, which is
8 what that says.

9 Q. Let's going to 119.

10 A. All right.

11 Q. E-mail communication amongst the IMC people, Molly
12 Kingston, yourself, right?

13 MR. CAMPBELL: Objection, that also includes Phil
14 Busick who is not in the IMC.

15 BY MR. LITTLE:

16 Q. This is January 27th.

17 THE COURT: What's the objection?

18 MR. CAMPBELL: Mr. Little classified the e-mail as
19 between the IMC with Molly Kingston, but it's actually to
20 Phil Busick, who is not in the IMC.

21 BY MR. LITTLE:

22 Q. Phil Busick, but you're copied on it as well,
23 right?

24 A. Correct.

1 Q. And down below, Paul Jamieson writes -- it's
2 basically an outline for the key points for how tomorrow's
3 meeting at the IMC with CR will go, right?

4 A. I see what you see.

5 Q. And there's 1, 2 and 3, and number three says, if
6 they're not willing to leave, then Stuart, which I assume is
7 you, right?

8 A. Yes.

9 Q. Urges CR to reread his e-mail. What's your
10 understanding of that?

11 A. They were trying to get me to play a part in that
12 and I did not do it.

13 Q. Exhibit 120.

14 A. Yes, sir.

15 Q. This is an e-mail exchange between you and
16 Mr. Jamieson afternoon the January 27th meeting, right?

17 A. Yes.

18 Q. And you're talking about different types of
19 financing, right?

20 A. I talked about Roger Wittenberg if that's what you
21 mean.

22 Q. And it looks like you're saying down there that
23 you prefer Roger over the Mosaic deal?

24 A. Yes. Roger Wittenberg has a lot more to offer in

1 the financing deal. If he bought the project, he would
2 combine the two entities and make a much better, bigger
3 project.

4 Q. And the IMC group felt the same way, right? They
5 were not in favor of Mosaic?

6 A. They were concerned about Mosaic, because Mosaic
7 was very expensive. We were all concerned about Mosaic. But
8 nobody tried to -- that I know of tried to stop Mosaic. I
9 certainly didn't.

10 Q. The next Exhibit 121, we talked about this one
11 yesterday. It's an e-mail exchange just between you and
12 Mr. Jamieson on January 30th.

13 A. Yes.

14 Q. And you're referencing the fact that you're aware
15 that three members of the executive committee are going to
16 have a meeting in Sacramento on Monday without Criswell
17 Radovan, right?

18 A. Yes.

19 Q. And those three are the IMC people?

20 MR. CAMPBELL: Objection, that misstates the
21 testimony.

22 THE WITNESS: They were executive committee
23 people.

24 BY MR. LITTLE:

1 Q. And do you know who they were?

2 A. I don't remember for sure, but I believe Paul
3 Jamieson was one of them.

4 THE COURT: Objection is overruled.

5 BY MR. LITTLE:

6 Q. But you understood on January 30th that they were
7 planning on meeting with Mosaic without Criswell Radovan,
8 right?

9 A. Yes.

10 Q. And you're questioning whether that's legit?

11 A. Yes.

12 Q. But you didn't go inform Mr. Radovan or
13 Mr. Criswell this was happening?

14 A. No. I was not taking any part in it, so I didn't
15 take either side of it, except to question it.

16 Q. The next Exhibit 122.

17 A. 122?

18 Q. Yeah.

19 A. Okay.

20 Q. Before the meeting, it's January 31st, again, just
21 an e-mail exchange between you and Mr. Jamieson, right?

22 A. Yes.

23 Q. It says at the top, but to be clear, they do not
24 know this particular meeting is happening, right?

1 A. Where are you reading, sir?

2 Q. At the very top, but to be clear, they do not know
3 this particular meeting is happening?

4 A. Yes.

5 Q. And then in the body, in the middle of the letter,
6 lastly, it looks like there's some discussion with you about
7 getting an LOI, a different form of financing?

8 A. They're talking about that, yes.

9 Q. Well, it's to you.

10 A. Yes.

11 Q. And this is an e-mail just between you and Paul
12 and he's saying, lastly, we should be getting an LOI from an
13 equity party before Wednesday, right?

14 A. Yes.

15 Q. He's not talking to other people, he's talking
16 with you?

17 A. Yes. I don't understand the question. Is there a
18 question?

19 Q. Well, my question was simply, Paul Jamieson is
20 talking to you about another form of financing here?

21 A. Yes.

22 Q. He's not discussing it with other people, just
23 you?

24 A. In this e-mail, but he's not discussing, he's just

1 informing me.

2 THE COURT: Mr. Little, how much time do you need?

3 MR. LITTLE: Not much, your Honor. I'll get
4 there.

5 THE COURT: I don't want to speed you up. Take as
6 much time as possible. But I've got a -- just a minute. Mr.
7 Campbell, it's my understanding that the Skype witness will
8 come on Thursday morning?

9 MR. CAMPBELL: Yes, your Honor, he had a
10 scheduling conflict on both days, but he did fix that around
11 for Thursday morning at 9:00 a.m. That really shouldn't last
12 more than half an hour at most.

13 THE COURT: All right. Thank you. Mr. Little,
14 let's pick up with Mr. Yount at 1:30 on Wednesday. Other
15 than that, Mr. Campbell, do we need to pick up anything else?

16 MR. CAMPBELL: I don't think so, your Honor. I
17 think we're on schedule. I don't think the redirect is going
18 to be too long. I think we're on schedule probably to do our
19 opening by Thursday afternoon.

20 MR. LITTLE: I do want to put on the record
21 something Mr. Campbell told us, that he does not intend to
22 call the second rebuttal witness.

23 THE COURT: That trims our sales quite a bit.
24 Thank you very much. I appreciate that. Attorneys are

1 working hard and it doesn't make it easier on the judge, but
2 it certainly is a pleasure having good lawyers in front of
3 us. All right. Ladies and gentlemen, enjoy the weekend.

4 MR. CAMPBELL: Thank you, your Honor.

5 MR. LITTLE: Thank you, your Honor.

6 MR. WOLF: Thank you, your Honor.

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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 September 1, 2017, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the trial in the matter of GEORGE S.
10 YOUNT, Plaintiff, vs. CRISWELL RADOVAN, et al., Defendant,
11 Case No. CV16-00767, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 722, 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 29th day of September 2017.

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

46

46

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 V

20 September 6, 2017

21 1:30 p.m.

22 Reno, Nevada
23

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

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1 RENO, NEVADA, September 6, 2017, 1:30 p.m.

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3 --oOo--

4 THE COURT: Mr. Yount, you remain under oath.
5 Mr. Little, your witness. I believe we were on Exhibit 122,
6 the e-mail to Paul Jamieson.

7 MR. LITTLE: Thank you, your Honor.

8 BY MR. LITTLE:

9 Q. Good afternoon, Mr. Yount.

10 A. Good afternoon, Mr. Little.

11 Q. Before we circle back to where we left off, I want
12 to talk about one issue. You can look at Exhibit 46, if you
13 want to refresh your memory, but would you agree with me that
14 you wanted to revoke your purchase before you even discovered
15 that you had bought one of CR Cal Neva's shares?

16 A. I was very upset on December 12th, when I heard
17 what disaster the project was.

18 Q. Right. And at that point in time, you wanted out?

19 A. Yes.

20 Q. So you wanted to revoke your purchase and get your
21 money back?

22 A. Revoke, I wanted my money back, because I thought
23 it was fraudulently sold to me under false pretenses.

24 Q. And that was based on revelations you say you

1 learned at the December meeting?

2 A. Correct.

3 Q. And that's the same meeting we talked about where
4 the IMC folks were stationed around the room?

5 A. I never saw that.

6 Q. They were there making accusations against --

7 A. I recall them making accusations, yes.

8 Q. They led that charge, right?

9 A. I don't know if they led it.

10 Q. Let's circle back to where we left off last week.
11 Before we do that, I want to summarize for everyone's benefit
12 what I understood to be your testimony. First, I understood
13 you to testify that since the end of January when you learned
14 that CR Cal Neva had sold you one of its shares, you haven't
15 held yourself out as an investor in the project, is that
16 correct?

17 A. Well, I was told I wasn't an investor in the
18 project.

19 Q. From that point forward, you didn't hold yourself
20 out as an investor?

21 A. I attended meetings until I filed lawsuit, and at
22 that point, I had given up on them buying out my share and I
23 no longer attended any meetings.

24 Q. Do you have your deposition in front of you?

1 A. I don't believe I do.

2 MR. LITTLE: May I approach, your Honor? Thank
3 you. May I approach the witness, your Honor?

4 THE COURT: You may.

5 BY MR. LITTLE:

6 Q. Let's go to page 53 of your deposition.

7 A. Yes, Mr. Little.

8 Q. I'm going to read from line 22 on 53 over to the
9 first line.

10 A. 22?

11 Q. Yes.

12 A. Okay.

13 Q. Sir, I asked you the question, and since the end
14 of January when you learned what Criswell Radovan or CR
15 Nevada intended to sell you, you haven't held yourself out as
16 an investor in the project? Next page, answer, correct. Did
17 I read that correctly?

18 A. Yes.

19 Q. I also understood from your testimony that you
20 distanced yourself from the IMC folks and played no role in
21 their effort to torpedo the loan?

22 MR. CAMPBELL: Objection, I think it
23 mischaracterizes the testimony.

24 THE COURT: Mr. Little.

1 MR. LITTLE: How does it mischaracterize his
2 testimony?

3 MR. CAMPBELL: There's no foundation that IMC
4 torpedoed this loan.

5 BY MR. LITTLE:

6 Q. Let's start with the first part, was it your
7 testimony that you distanced yourself from the IMC folks when
8 they talked about secretly meeting with Mosaic?

9 A. I suggested to them, was that a legitimate thing
10 to do?

11 Q. But do you feel you distanced yourself?

12 A. I distanced myself after the January 27th,
13 afternoon after the main meeting, where Jeremy Page got very
14 aggressive, and I think, as I said in my e-mail, it was
15 straight well off the reservation.

16 Q. I also understood you to testify that you had no
17 involvement in trying to get Mr. Criswell or Mr. Radovan
18 removed as managers or having them give back their equity?

19 A. I was not involved in it, except I was not against
20 it either.

21 Q. Let's turn over to Exhibit 119.

22 A. Yes, sir, I'm here.

23 Q. If you look at page one and the top of page two,
24 this is a series of e-mail correspondence that you're copied

1 on January 26th and January 27th before that meeting that was
2 supposed to occur?

3 A. Yes.

4 Q. And it includes people from the IMC group?

5 A. Yes.

6 Q. And Molly Kingston?

7 A. Yes. And Les Busick and I don't see Phil Busick.
8 Oh, yeah.

9 Q. It looks like there was an actual in-person
10 meeting before the January 27th meeting among the people
11 copied on this e-mail, correct?

12 A. I believe so.

13 Q. That meeting involved a discussion about ways to
14 oust Mr. Criswell and Mr. Radovan from the project, correct?

15 A. It involved hearing IMC's position on how to do
16 that, yes.

17 Q. And according to the bottom part of this e-mail,
18 there were talking, even talking points on how that meeting
19 was supposed to go, correct?

20 A. Yes.

21 Q. And at the top of the e-mail, it says, not to let
22 the other investors know, so Criswell Radovan can't get their
23 support prior to the January 27th meeting, right?

24 A. Yes.

1 Q. And then in the second paragraph of the top e-mail
2 from Mr. Jamieson, it says -- it talks about wanting to be in
3 person like the December 12th meeting at Fairwoods so they
4 could control the dialogue more effectively?

5 A. It's Fairwinds, but --

6 Q. It says that, correct?

7 A. Yes, that's what it says.

8 Q. Now, on page one it talks about using your e-mail
9 as leverage if Criswell Radovan refused to leave as managers,
10 correct?

11 A. It doesn't say my e-mail, it says this e-mail.

12 Q. Under number three, it says, if they are not
13 willing to leave, number one, Stuart urges CR to reread his
14 e-mail, correct?

15 A. Yes.

16 Q. Was it not discussed that they were going to use
17 your e-mail as leverage to get them to leave the project if
18 they weren't willing to voluntarily go?

19 A. As I said before, when you asked the same exact
20 different words question, I did not do that.

21 Q. Now, over on page two, in the second paragraph,
22 Mr. Jamieson is commenting to the group how impressive the
23 cohesiveness is among your group, correct?

24 A. In the second paragraph, in the event we keep it

1 simple.

2 Q. Yeah. And then he says, the cohesion we have is
3 impressive, correct?

4 A. Yes.

5 Q. And then he goes on to say, I appreciate
6 everyone's willingness to keep it brief and have Stuart and I
7 as spokespersons. Did I read that correctly?

8 A. That's what it says.

9 Q. So according to this e-mail, this cohesive group
10 had nominated you as a co-spokesperson along with
11 Mr. Jamieson to address --

12 A. That's what they wanted. That's not what
13 happened.

14 Q. Well, in fact, later you and the IMC group agreed
15 to do a good cop, bad cop routine with Criswell Radovan,
16 correct?

17 A. I don't believe I agreed to that. I believe they
18 talked about that type of approach.

19 Q. An approach where you acted as the good cop and
20 them as the bad cop?

21 A. I don't recall that being the case.

22 Q. Let's go over to Exhibit 21.

23 A. 21?

24 Q. 121. Sorry.

1 A. 121. Yes, sir.

2 Q. My only question is, who is the he being referred
3 to? Your e-mail to Paul says, he said three of the EC is
4 having the meeting with Mosaic in Sacramento on Monday
5 without CR. And you go on to ask if that's legitimate. Who
6 is the he you're referring to? Is that Brandon Chaney?

7 A. I don't recall.

8 Q. It could be Brandon Chaney?

9 A. It could have been you.

10 Q. Well, I'm not --

11 A. I don't recall, in other words.

12 Q. Well, Brandon Chaney was one of the three
13 members -- was one of the members of the executive committee
14 at the time, correct?

15 A. That is correct.

16 Q. He was one of the members who was also a member of
17 the IMC group?

18 A. Yes.

19 Q. Let's turn over to Exhibit 125.

20 A. 125. All right.

21 Q. This is an e-mail chain between you and Molly
22 Kingston on February 2nd, 2016, a day after the IMC group had
23 met with Mosaic, correct?

24 A. As far as I know. I don't know what date they

1 met.

2 Q. And in her e-mail, she says she was unaware of
3 that meeting.

4 A. I believe so.

5 Q. But you weren't, right?

6 A. No. I already commented on that.

7 Q. And she said she was unsupportive of the Mosaic
8 loan?

9 A. She was unsupportive of burdening the project with
10 additional debt.

11 Q. Which would be the Mosaic loan?

12 MR. CAMPBELL: Objection, lack of foundation.

13 BY MR. LITTLE:

14 Q. Did you understand that to be the Mosaic loan?

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry?

17 THE COURT: Overruled. You can answer the
18 question.

19 THE WITNESS: I believe it might well have been.

20 BY MR. LITTLE:

21 Q. And then the bottom e-mail, the second paragraph,
22 he says, she's reached out to Arthur by both voicemail and
23 text and mentioned our interest in meeting with him.
24 Apparently, she's referring to you and her having some

1 interest in meeting with Arthur?

2 A. He's one of the shareholders, I believe. I don't
3 remember his last name, but I believe he's an attorney, but
4 not acting as an attorney.

5 Q. Arthur wasn't a potential lending source?

6 A. I'm sorry, sir?

7 Q. Was Arthur a potential lending source?

8 A. A potential what, sir?

9 Q. Lending source, financing source.

10 A. Not -- I don't believe so. He might have known
11 people, but I don't believe he was a lending source.

12 Q. You say above, the disaster seems to not only to
13 continue, but also to escalate in severity and you have an
14 exclamation point. Do you see that?

15 A. Because of the January 27th meeting, the second
16 meeting that day that I thought was a disaster and not at all
17 pleased with.

18 Q. You weren't referring to the secret Mosaic torpedo
19 meeting?

20 A. As far as I know, there was no such meeting. You
21 keep trying to put things in my mouth about torpedoing
22 things, but it's just not what I know.

23 Q. Well, you were aware that they met behind Criswell
24 Radovan's back?

1 A. Yes. I already commented on that.

2 Q. Let's go over to Exhibit 126.

3 A. Yes.

4 Q. It's a February 2nd e-mail between you and Molly
5 Kingston, so it's the same day as the e-mails on Exhibit 125,
6 correct?

7 A. Yes.

8 Q. She references that she spoke with Paul, which
9 would be Paul Jamieson, correct?

10 A. I would assume so.

11 Q. And learned that the EC, she puts in parentheses,
12 minus Criswell Radovan, met with Mosaic and had a, quote,
13 good meeting, end quote?

14 A. Yes.

15 Q. Is that what she says?

16 A. That's what it says.

17 Q. And then she says, we remain aligned in terms of
18 our ultimate objective and she says saving our invested
19 capital, right?

20 A. Correct.

21 Q. Wasn't that objective also to get rid of the
22 Mosaic loan to pursue other means of financing this project?

23 A. Not that I'm aware of. I certainly was never in
24 favor of getting rid of the Mosaic loan.

1 Q. Did you have an understanding why she's referring
2 to this meeting with Mosaic and referencing it being without
3 CR as being a good meeting when by that time they had backed
4 out of the loan?

5 A. I don't know that I was aware that they backed out
6 of the loan at that time, nor do I know if she knew that.
7 But it was my understanding it was a good meeting, reports
8 that you've read before of e-mails from the EC or IMC.

9 Q. Down below, she's suggesting that Criswell Radovan
10 resign and cede their investment, in other words, give it
11 back, correct?

12 A. Where are you now, sir?

13 Q. The second to last paragraph of the e-mail.

14 A. That's what it says.

15 Q. And she recommends going so far as threatening
16 them with civil and criminal action if they don't do that?

17 A. Would you repeat that question, please?

18 Q. She goes so far as to recommend that they be
19 threatened with civil or criminal action if they don't do
20 that, right?

21 A. She says that's the alterative.

22 Q. Let's go over to Exhibit 127.

23 A. Yes.

24 Q. Now, this is a February 2nd e-mail between you and

1 Mr. Jamieson, correct?

2 A. Yes.

3 Q. And just so we have foundation, if we go over to
4 the last page of Exhibit 124, this is the e-mail between
5 Mosaic and Robert Radovan on February 1st where they tell
6 them that they're going to take a step back and tear up the
7 term sheet and back out of the loan, correct?

8 A. Are you on page three?

9 Q. Yes. And my only question for you, we're just
10 trying to establish a time line. February 1st, according to
11 this e-mail, is the date that Mosaic sent an e-mail to Robert
12 saying we're backing out of the loan?

13 A. Correct.

14 Q. So let's move forward now to Exhibit 127.

15 A. Okay.

16 Q. This is e-mail between you and Paul Jamieson of
17 IMC a day later, this is February 2nd, correct?

18 A. Correct.

19 Q. In this e-mail, you're seeking his consult and
20 guidance about how you're handling your issues with Criswell
21 Radovan?

22 A. Where are you in this e-mail, please?

23 Q. The second e-mail.

24 A. Yes.

1 Q. Let's go over to Exhibit 130.

2 A. Yes.

3 Q. This is February 5th, so you'd agree with me it's
4 four days after Mosaic backed out of the loan?

5 A. I believe so.

6 Q. And this is an e-mail solely between you and
7 Mr. Jamieson of IMC?

8 A. Yes.

9 Q. And you're discussing sharing information with
10 Roger Wittenberg?

11 A. Yes.

12 Q. And he was a potential investor that they were
13 looking at?

14 A. Who they?

15 Q. IMC?

16 A. I had mentioned it. I don't know if they -- yes,
17 I believe Mr. Jamieson had spoken to Roger.

18 Q. Now, in the second sentence of the first
19 paragraph, first sentence he's talking about Roger calling
20 him, and I assume it's Roger Wittenberg, right?

21 A. Yes.

22 Q. And the second sentence, he says, I'd like get
23 something over to the potential investor today, as they're
24 actively reviewing. Which investor were they talking about?

1 A. I believe that's North Light.

2 Q. Let's go over to Exhibit 31.

3 A. 131.

4 Q. Before we do, why would North Light want Roger
5 Wittenberg's bio?

6 A. Whether it be Roger or North Light, it would be
7 the same project. It's just that it's a project across the
8 street. Is that what you're asking?

9 Q. Yes. Let's go over to Exhibit 131?

10 A. Yes.

11 Q. This is another February 5th e-mail chain between
12 you and Mr. Jamieson?

13 A. Correct.

14 Q. Four days after Mosaic backed out?

15 A. As you've said, yes.

16 Q. And on page two of this e-mail --

17 A. Yes.

18 Q. -- Paul e-mails the group and says that they're
19 looking for developers to come in and finish the project,
20 correct?

21 A. Yes.

22 Q. So obviously by this time, they're contemplating
23 not only ousting Criswell Radovan, but bringing in another
24 developer?

1 A. Yes. I think that was probably a feeling of
2 anybody who was going to invest in the project.

3 Q. And then he indicates that -- well, he thanks you
4 for giving them Roger's name and information?

5 A. Yes, although Mr. Jamieson already knew
6 Mr. Wittenberg.

7 Q. And he says not to discuss this with anyone
8 outside of the e-mail chain, correct?

9 A. Where are you now, sir?

10 Q. Last paragraph, please do not discuss this with
11 others outside of this e-mail list?

12 A. Yes.

13 Q. And he's talking about not discussing bad acts,
14 potential remedies and their path forward, correct?

15 A. I'm sorry. Can you direct me to what you're
16 looking at?

17 Q. That same last paragraph when he's talking about
18 not discussing this with others outside the e-mail list?

19 A. Yes.

20 Q. He's talking about highly sensitive aspects of the
21 path forward, right?

22 A. Yes.

23 Q. That he doesn't want to discuss with other
24 investors at that point in time?

1 A. I would like to discuss with everyone at a later
2 date.

3 Q. But he's suggesting not to discuss with anyone
4 outside of this e-mail chain now, right?

5 A. That's what it says.

6 Q. Then if we go back to page one, the middle of the
7 page, you and Paul are talking about North Light as a source
8 of capital?

9 A. Yes.

10 Q. Let's go over to Exhibit 132 and turn over to page
11 two.

12 A. Yes.

13 Q. And this is an e-mail that you sent to Paul a
14 couple of weeks after Mosaic backed out where you're talking
15 about another potential investment group, Paramount
16 Investment or something to that effect?

17 A. Yes. Paramount IMB, whatever that is.

18 Q. And then we go back to the first page, Paul is
19 asking if you know anything about them, correct?

20 A. Yes.

21 Q. And he indicates that he's working with them for a
22 larger mezz loan?

23 A. I couldn't hear you.

24 Q. He says he's working with this company for a

1 larger mezzanine loan?

2 A. Yes. Roger -- Paul says that.

3 Q. And then you indicate that you've researched them
4 and you're asking what the real story is on their experience
5 and you put real in all caps?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes.

9 Q. Let's go over to Exhibit 133.

10 A. Yes.

11 Q. February e-mail between you and Mr. Jamieson,
12 correct?

13 A. Yes.

14 Q. About three weeks after we've established that
15 Mosaic backs out?

16 A. Approximately.

17 Q. And in this e-mail, he tells you that he's
18 finalized an agreement with some company and an attorney is
19 doing a final review, correct?

20 A. Yes.

21 Q. And that deal is the proposed sale of the entire
22 project to a company called GDCI, correct?

23 A. I believe so.

24 Q. And your understanding is that sales was for about

1 \$104 million?

2 A. I don't remember the number.

3 Q. It was more than a hundred million dollars, right?

4 A. As I remember.

5 Q. And your response to Paul on the first page is
6 that you're our hero, exclamation point, right?

7 A. Yes.

8 Q. So at this point, you were excited about a sale of
9 the project, correct?

10 A. Absolutely. I would get paid.

11 Q. Is it your testimony that if a sale went through,
12 you would have only taken your million dollars back and not
13 any premium?

14 A. Yes. That was always the case.

15 Q. Okay. So in \$104 million sale, you'd agree that
16 the investors would get a return on their investment,
17 correct?

18 A. I would assume they would, yes.

19 Q. Is it your testimony you would not have taken the
20 return, you would have just taken the million dollars?

21 A. I didn't own a share in the project, so I don't
22 know how I could take a return.

23 Q. So your answer is, no, you would not have taken a
24 premium on your investment?

1 A. You're assuming I would be offered a premium on my
2 investment.

3 Q. Well, all these other investors that you're
4 talking to in these e-mails considered you an investor,
5 right?

6 A. I don't think they did at this point. They knew
7 better as well, I believe.

8 Q. They considered you part of a cohesive unit,
9 cohesive group?

10 A. Well, we both had mutual needs, but different.

11 Q. And they were sharing information with you that
12 wasn't being shared to the other investors, right?

13 A. I don't know who they shared with, except for what
14 it says on these documents.

15 Q. Let's go over to Exhibit 136. This is a series of
16 e-mail chains between you and Molly Kingston, correct?

17 A. Yes. Which page are we on?

18 Q. We'll look at it all. We're looking at the March
19 time frame, right?

20 A. Yes.

21 Q. And if we look over at the bottom of page three
22 and it goes over to the top of page four, she's indicating
23 that there had been no word back from that -- she calls them
24 the Russian buyers, but they're talking about that company

1 GBCI?

2 A. I believe that's the company. But they were
3 reputed to be of Russian origin.

4 Q. And she's sending you in this e-mail an e-mail
5 that she sent to the executive committee, less Criswell
6 Radovan, to get them to take action against Criswell Radovan,
7 correct?

8 A. Yes. I guess Les Busick was on the executive
9 committee and Phil Busick. I'm not sure if they were both on
10 the executive committee, but, anyway, they were both named in
11 the e-mail.

12 Q. If we go to page three of this exhibit in the
13 middle of the page, under March 2nd, you sent an e-mail to
14 her saying you're very grateful that you're on her team,
15 correct?

16 A. That's the latter part of the sentence, yes. And
17 not the -- and not in your target sights. I think you were
18 taking it out of context.

19 Q. You said you were grateful you're on her team and
20 not in her target sights, correct?

21 A. Correct.

22 Q. And you tell her to keep it up?

23 A. Yes.

24 Q. Keep it up is referencing what she sent you below,

1 which was an e-mail she sent to the executive committee
2 asking them to take action against Criswell Radovan?

3 A. Yes. That was part of it.

4 Q. And then on the first page, you tell her you're
5 lucky to have her in so many ways. Were you lucky --

6 A. Where are you talking at?

7 Q. The bottom of the page. Actually, it's at the
8 top. I'm sorry.

9 A. Yeah, I'm confused.

10 Q. At the top, you say, I'm very lucky you both have
11 lots of spunk and are up for any challenge. I'm so grateful.
12 And she responses, look out, CR, here we come, correct?

13 A. Yes. Look out for CR, here we come. Look out,
14 CR, sorry, here we come.

15 Q. And let's go over to Exhibit 138.

16 A. Yes.

17 Q. This is March 14th, 2016.

18 A. Yes.

19 Q. Heather Hill is sending an e-mail advising
20 investors that there's an executive committee and member
21 meeting on Wednesday, March 6th, and you respond that you and
22 your wife will attend in person, correct?

23 A. Yes.

24 Q. Let's go over to Exhibit 141.

1 A. Yes.

2 Q. Let's first go over to page three. On March 14th,
3 2016, Molly e-mails you and the first word is confidentially,
4 correct?

5 A. Yes.

6 Q. And it says, Robert, obviously referring to Robert
7 Radovan, offered Paul a commission of \$1.4 million on the
8 GCBI deal. Do you see that?

9 A. Yes.

10 Q. And then if you flip over to page one, you
11 asked --

12 A. Page four?

13 Q. Page one of the same exhibit.

14 A. Page one. Sorry.

15 Q. You asked Phil Busick, which is Les Busick's son?

16 A. Correct.

17 Q. You asked Phil Busick if that was true or false,
18 right?

19 A. I said, so who did offer giving Paul a commission?

20 Q. And then he responds back that no one offered him
21 a commission. And then if you drop down to his last
22 paragraph, he says, CR had nothing to do with it, believe me,
23 correct?

24 A. Yes.

1 Q. So this is a situation where Molly Kingston was
2 going off of misinformation, making accusations, do you agree
3 with that?

4 A. Well, Mr. Busick says so.

5 Q. You don't have any information to the contrary, do
6 you?

7 A. I don't have information either way except for
8 these e-mails.

9 Q. Now, let's go over to Exhibit 140.

10 A. 140. Yes.

11 Q. This e-mail correspondence between you and Molly
12 in March, correct?

13 A. Which page are you on, sir?

14 Q. First page of Exhibit 140.

15 A. This is Molly and I?

16 Q. Yes.

17 A. Yes.

18 Q. And you send an e-mail to her in, the middle of
19 the page, saying, good, but I think we need to be more detail
20 by attaching a list on our accountant's letterhead
21 specifically listing what they requested that they have yet
22 to receive and on what dates they requested it and
23 rerequested it and whom they rerequested it from. Do you see
24 that?

1 A. Yes.

2 Q. And you were talking about a letter that Brandon
3 Chaney had sent to Criswell Radovan about an audit and
4 certain records that they believed they hadn't received?

5 A. I believe so.

6 Q. So you were making a recommendation that a
7 follow-up letter be sent by not any of the investors or the
8 executive committee, but by the accountant him or herself,
9 correct?

10 A. I believe so.

11 Q. And then at the top, you indicate, Molly, I really
12 "f"ed up and am so sorry. I accidentally and stupidly
13 responded to your confidential e-mail instead of your EC
14 e-mail, too rushed while at lunch. What were you referring
15 to there?

16 A. Who am I referring to?

17 Q. What are you referring to there?

18 A. I'm referring that one she said was confidential,
19 as you pointed out, that I accidentally responded to the EC
20 group, I believe it was.

21 Q. And we've already established that you're not
22 aware of any financial improprieties that came out of that
23 audit?

24 A. I'm not aware that the audit ever got completed,

1 because they never got the information they requested.

2 Q. Is that true or are you guessing?

3 A. That's what I understood. I don't know what's
4 true.

5 Q. You don't know one way or the other?

6 A. No. I just know what I've been told.

7 Q. You'd agree with me you're not aware of any
8 financial improprieties?

9 A. I'm aware there were questions about potential
10 improprieties. I'm not aware of establishing any.

11 Q. Let's go to Exhibit 142.

12 A. 142. I'm there.

13 Q. Now, this is an e-mail chain between you and Paul
14 Jamieson of IMC in the middle of March, correct?

15 A. Yes.

16 Q. So a month and a half after we established that
17 Mosaic backed out?

18 A. I believe so.

19 Q. And down at the bottom, there's an e-mail from
20 Mr. Jamieson that writes, see you tomorrow. I'm thinking we
21 have a pre-meeting at the IMC for us good cops, bad cops and
22 concerned citizens. Do you see that?

23 A. Yes.

24 Q. So he was talking about having some meeting before

1 the executive committee meeting?

2 A. Before the shareholder executive committee
3 meeting. It was both, I believe.

4 Q. And then down below that e-mail, you respond by
5 saying, I think the, quote, good cop slash bad cop, end
6 quote, routine will be fine. That's what you --

7 A. Where are you now?

8 Q. On the first page of Exhibit 142.

9 A. And where?

10 Q. The bottom e-mail. We've established at 8:42 a.m.
11 Paul sends you an e-mail asking for a pre-meeting at the IMC
12 for us good cops, bad cops?

13 A. Okay.

14 Q. And you respond on the same day and tell him,
15 quote, that I think the, quote, good cop slash bad cop, end
16 quote, routine will be fine. Did I read that correctly?

17 A. I believe so.

18 Q. Let's go to Exhibit 145.

19 A. Yes.

20 Q. This was about a week later, March 23rd, some
21 e-mails between you and Molly?

22 A. Yes.

23 Q. Correct?

24 A. Uh-huh.

1 Q. And she's asking you to talk to one of the
2 subcontractors about foreclosing on Criswell Radovan's
3 completion guarantee, correct?

4 A. Yes.

5 Q. And you respond that you had contacted that
6 contractor, whose name is Len Savage, correct?

7 A. Yes.

8 Q. You tell her, it's a good thought on foreclosing
9 on CR and you put an exclamation point, right?

10 A. Yes.

11 Q. Let's go over to Exhibit 146. Turn over to the
12 third page.

13 A. Yes.

14 Q. This is March 23rd, some e-mails between you and
15 Mr. Savage, correct?

16 A. Correct.

17 Q. And in this e-mail, you indicate to Len that
18 you're trying to help get Cal Neva funded or sold, correct?

19 A. Yes.

20 Q. And this was March 23rd, right?

21 A. Yes.

22 Q. And you filed this lawsuit a few weeks later on
23 April 6th, correct?

24 A. Sounds right.

1 Q. And after you filed this lawsuit, you have kept
2 IMC and Molly Kingston informed of the status of your
3 lawsuit?

4 A. I believe I did. I don't remember for sure.

5 Q. Have --

6 A. You probably fill in Les Busick, too.

7 Q. Have any of these individuals ever offered to pay
8 any part of your legal fees in this case?

9 A. For me?

10 Q. Yeah.

11 A. They didn't offer. I didn't ask. They weren't
12 involved in my case.

13 Q. But you gave Mr. Chaney a copy of your lawsuit
14 before it was served on any of the defendants in this case,
15 correct?

16 A. I don't know that it was before it was served.
17 Well, according to the prior testimony, it was before it was
18 served, but it was filed.

19 Q. If you had distanced yourself from them, sir, why
20 are you sharing your lawsuit with them?

21 A. For their information, I want them to be
22 successful as well.

23 Q. Successful in what?

24 A. In getting their funds back as best they can. I

1 think they were stolen from in a different way, but, yes.

2 Q. To your knowledge, they haven't filed any suit in
3 the past year and a half against any of the defendants in the
4 this case?

5 A. To my knowledge, no. Sorry. Yes, as far as I
6 know.

7 Q. Why are you calling Brandon Chaney as a witness in
8 your case?

9 A. Because he's knowledgeable on a lot of activity
10 with Criswell Radovan, as well as his own personal activity
11 with Criswell Radovan.

12 Q. You and your attorney have met with Mr. Chaney in
13 anticipation of him testifying at trial, right?

14 A. I didn't meet with him, no.

15 Q. Your attorney has?

16 A. You'd have to ask my attorney.

17 Q. You're not aware of Mr. Chaney meeting with your
18 attorney?

19 A. It's my understanding he did.

20 Q. To discuss his anticipated testimony?

21 A. I'm sorry, sir?

22 Q. To discuss his anticipated testimony?

23 A. I assumed to discuss what he knew, whether he was
24 worth calling as a witness or not.

1 Q. Was he here in Reno last week while we were in
2 trial?

3 A. I'm not sure. He may well have been. I didn't
4 see him or talk to him.

5 Q. What is it your understanding that he's going to
6 say to help your case?

7 MR. CAMPBELL: Objection, I think it's been asked
8 and answered.

9 THE COURT: Overruled on that ground, but I wonder
10 what the relevance is. We'll find out when or if he
11 testifies, won't we?

12 MR. LITTLE: I guess we will.

13 THE COURT: We don't need it from this witness.

14 MR. LITTLE: That's all I have, your Honor. Thank
15 you very much.

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

17 MR. WOLF: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MR. WOLF:

20 Q. Mr. Yount, in your testimony last week, you refer
21 to an often quoted phrase by former President Ronald Reagan?

22 A. Yes.

23 Q. To trust but verify?

24 A. Yes.

1 Q. What was the context in which you recall President
2 Reagan making that comment or that repeated comment?

3 A. He was, I believe, referring to negotiating with
4 the Russians, which would be considered to be a threat and
5 talking about making agreements with them. And I was
6 referring to, I believe at the time, the testimony regarding
7 my contacting the architect or other people on doing my due
8 diligence away from CR themselves.

9 Q. So why did you refer to trust but verify in
10 context of your due diligence?

11 A. That's what due diligence is all about is you
12 don't -- you verify the facts. I don't understand, I guess,
13 the question.

14 Q. Is the idea that you make an independent inquiry
15 into what the facts are so you can rely on those that you
16 trust rather than counterparty, which in the case of
17 President Reagan was Mikhail Gorbachev, is that the idea?

18 A. I guess so. It speaks for itself, I believe.

19 Q. I want to confirm the documents that you received
20 from David Marriner relative to the investment. If you'll
21 turn to Exhibit 3 in the first binder, please?

22 A. Yes, sir.

23 Q. Did you receive Exhibit 3, the confidential
24 private placement memorandum, from Mr. Marriner?

1 A. I believe so.

2 Q. Did you receive this in early 2014?

3 A. Quite possibly, but I don't believe I looked at
4 it, except to glance.

5 Q. And then did you -- the next exhibit is Exhibit 4,
6 confidential offering memorandum, did you receive that from
7 Mr. Marriner?

8 A. Yes, I believe so.

9 Q. And did you receive that in early 2014?

10 A. I don't recall, but it could well have been.

11 Q. At some point later, you received Exhibit 5, the
12 amended and restated operating agreement?

13 A. Yes.

14 Q. Dated May 2014?

15 A. May 1, 2014, yes.

16 Q. Do you recall from whom you received the amended
17 and restated operating agreement, Exhibit 5?

18 A. I assume it was Mr. Marriner.

19 Q. You're not sure?

20 A. I'm not positive if it was Mr. Marriner or
21 Mr. Radovan.

22 Q. Do you recall the time at which you received the
23 amended and restated operating agreement?

24 A. I would assume around early July of 2015, but I

1 may -- yeah. I may have received it in 2014 as well.

2 Q. If you turn in the same book to Exhibit 10?

3 A. Yes, sir.

4 Q. There's the July 15th Cal Neva renovation monthly
5 status report by Case Development Services and Thannisch
6 Development Services, do you see that?

7 A. Yes, I do.

8 Q. Did you receive this from Mr. Marriner?

9 A. I believe so.

10 Q. Did you receive it in July 2015?

11 A. Somewhere around that time.

12 Q. And in early 2014, you also received a
13 nondisclosure agreement, and I believe your testimony was you
14 reviewed it, but did not sign it?

15 A. I did not sign it.

16 Q. Other than those documents that we just discussed,
17 did you receive any other substantive documents relative to
18 the project or the investment from Mr. Marriner?

19 A. By documents, you're not including e-mails?

20 Q. Not including e-mails.

21 A. I believe this is about all there may have been
22 other than another report or something.

23 Q. Can you think of what it was?

24 A. No. I don't think I received a whole lot of these

1 monthly status reports.

2 Q. In your complaint, you allege or imply that
3 Criswell Radovan didn't have hotel development acumen or
4 experience and the extent of their experience was somehow
5 misrepresented to you. Are you familiar with those passages
6 in your complaint?

7 A. I'd rather have it pointed out in the complaint so
8 I can be sure of what it says.

9 Q. Do you have any information that Criswell Radovan
10 don't have ability and experience and acumen in hotel project
11 development?

12 A. I don't know for sure.

13 Q. You're suing the defendants in this case for fraud
14 based on alleged misrepresentations about the ability and
15 experience of Criswell and Radovan as hotel developers. Do
16 you have anything to substantiate that?

17 A. I can't think of what the evidence would be at the
18 moment, but I just don't trust what they've had to say.

19 Q. Did somebody tell you that they don't have
20 experience, other than your attorney?

21 A. I think some of the IMC group and maybe Molly had
22 alleged that there was concern over the accuracy of them
23 being successful developers on some of these other projects.

24 Q. Is that the extent of your information on this

1 subject?

2 A. I believe so.

3 Q. In your e-mails and in some of your testimony,
4 you've referenced the financial wheels of the project coming
5 off?

6 A. Yes.

7 Q. What information do you have that the financial
8 wheels of the project were coming off?

9 A. I believe that was on December the 12th or maybe
10 the next day I wrote that, but that was my impression from
11 the information that Mr. Criswell and Mr. Radovan expressed
12 at that December 12th meeting.

13 Q. That was your conclusion that the financial wheels
14 were coming off?

15 A. Coming off the bus, I believe I said.

16 Q. Did anybody at the meeting or any of the members
17 of the Cal Neva Lodge suggest to you that the, quote, wheels
18 were coming off?

19 A. They might not have used those terms, but I think
20 there were a number of us in that meeting that felt that the
21 wheels were coming off the financial train or bus or whatever
22 you want to call it. Which is why we were all shocked and
23 upset.

24 Q. Now, you said all of you were shocked and upset?

1 A. That's probably an exaggeration. A number of us
2 were would be a better way to say it.

3 Q. Is one of the reasons you were shocked and upset
4 the fact that financing was being sought at that time to
5 complete the project?

6 A. It wasn't the financing that I had been led to
7 believe, that just a refinance of the mezzanine loan, it was
8 supposedly imminent when I invested, it was now a refinance
9 of the entire project for substantially more than the
10 original mezzanine refi.

11 Q. Were the members of the executive committee of the
12 Cal Neva Lodge in attendance at the December meeting at the
13 Fairwinds?

14 A. I believe so.

15 Q. Did they appear to be shocked and upset that there
16 was discussion with Mosaic for the refinancing of the entire
17 project?

18 A. I didn't know who was the members of the EC or not
19 at that point. That's when we first started communicating.

20 Q. Changing gears a little bit to a different point
21 in time. Mr. Marriner was not involved in the transmission
22 or delivery of your investment documents to Mr. Coleman,
23 correct?

24 A. No.

1 Q. Nor to any other party, correct?

2 A. Well, not that I'm aware of. I don't know what he
3 did on his own. He certainly wasn't doing it on my behalf.

4 Q. Did you send your own investment documents to Mr.
5 Coleman?

6 A. I don't remember whether they went to Mr. Coleman
7 or to Criswell Radovan. I know the money went to Mr.
8 Coleman's trust account.

9 Q. As you sit here today, do you recall whether you
10 sent your signed private placement memorandum --

11 A. Yes.

12 Q. -- and subscription agreement --

13 A. Yes, I signed it.

14 Q. -- to Mr. Coleman or to Criswell Radovan?

15 A. I just told you, I don't remember which one it
16 went to.

17 Q. But you did not deliver those documents to Mr.
18 Marriner?

19 A. No, I did not.

20 Q. For handling and delivery to others, correct?

21 A. No.

22 Q. With regard to your invested money, your million
23 dollars --

24 A. Yes.

1 Q. -- Mr. Marriner did not handle that money?

2 A. Absolutely not. No one handled that money except
3 by direct wire to Mr. Coleman's trust account from my Premier
4 Trust representative.

5 Q. Now, later on, some months later, you received
6 documents that you indicated your objections to regarding the
7 assignment of Criswell Radovan's -- I might have the wrong
8 entity -- one of the CR entities shares to you, you objected
9 to that, right?

10 A. I objected to it the moment that Mr. Criswell told
11 me that.

12 Q. And included with that was a proposed purchase
13 agreement and an assignment and some other related documents,
14 correct?

15 A. Yes. Phony papering of the trail by Mr. Coleman.

16 Q. Mr. Marriner did not present those to you, did he?

17 A. No, he did not.

18 Q. He was not handling those documents?

19 A. Those came directly from Mr. Coleman to me.

20 Q. Yet Mr. Marriner, to your knowledge, had no
21 connection to presenting those documents to you?

22 A. I don't know of any connection he had to it.

23 Q. You funded your investment on October 12th or 13th
24 of 2015, correct?

1 A. Correct.

2 Q. Prior to funding, are you aware of any information
3 that work had stopped at the project?

4 A. I wasn't at the time. I was later informed by an
5 e-mail from Mr. Marriner that work was about to stop or it
6 was stopping, I believe in one of his e-mails that we talked
7 about.

8 Q. Before or after you invested?

9 A. I said after, months later.

10 Q. You're not aware of work coming to a halt or
11 slowing down prior to your funding your investment?

12 A. No, or I wouldn't have made the investment.

13 Q. Are you aware of any contractor or subcontractor
14 leaving the job prior to your investment?

15 A. No, I wasn't.

16 Q. When I say your investment, I'm talking
17 October 12th or 13, 2015?

18 A. Yes.

19 Q. Are you aware of any contractor not being paid in
20 a timely manner prior to funding your investment?

21 A. I wasn't aware of them not being paid, no.

22 Q. Now, would you agree that the Mosaic loan in
23 hindsight was the best opportunity for this project to be
24 completed and for you to be paid back your million dollars?

1 MR. CAMPBELL: Objection, lack of foundation for
2 that.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know whether it was the best
5 or not. I think it was the only. What time period are you
6 talking, sir?

7 BY MR. WOLF:

8 Q. At the end of January 2016 and early
9 February 2016, was the Mosaic loan your best shot at getting
10 paid off and exiting with your money?

11 A. May well have been, yes. I think it was the only
12 one on the table.

13 Q. You're not aware of any other exit strategy that
14 was going to pay you a million dollars and you can walk away
15 and go on with your life, right?

16 A. Well, the Russian deal potentially would have done
17 that, but that was pretty distant, so I don't know any
18 details. And there was others that were being talked to, but
19 Mosaic was the only one -- semi upfront offer -- upfront is
20 probably the wrong word -- the only one on the table that I
21 was aware of.

22 Q. I'm sorry to make you shift around the books.
23 Mr. Yount, if you could go to the exhibit book that has
24 Exhibit 120 in it, probably the third binder. We'll make

1 sure you get your workout today with all the binders.

2 A. You just have to be patient. There's four books
3 to go through. 120. I'm here.

4 Q. So in the middle of the Exhibit 120 is your
5 e-mail, I believe, to Paul Jamieson, correct?

6 A. Correct.

7 Q. January 28th, 2016 at 11:06 a.m., you wrote, I
8 believe any deal Roger or others propose that doesn't at
9 least make all investors whole will be rejected in favor of
10 the Mosaic deal, which is sounding better and better. Your
11 review, Paul?

12 A. Yes.

13 Q. At that point in time, just a couple of days
14 before the meeting at Mosaic, you were in favor of the Mosaic
15 deal?

16 A. I was in favor of any deal and that was the only
17 real deal I was aware of.

18 Q. In the same time frame, you became aware that a
19 group of the executive committee, three members of the
20 executive committee were going to have a pre-meeting with
21 Mosaic, right?

22 A. Pre-meeting?

23 Q. A meeting before a regularly scheduled meeting?

24 A. Yes.

1 Q. And you were concerned, your words, that is this
2 legit?

3 A. Yes.

4 Q. And so if you were concerned about the legitimacy
5 of that meeting, if you had formed the belief at this point
6 in time that this was your one and only shot to get your
7 money back, why didn't you tell Mr. Criswell or Mr. Radovan
8 that the meeting with Mosaic, the one that they were not part
9 of planning or attending, why didn't you tell them it was
10 happening?

11 A. Because I did not trust Mr. Criswell or
12 Mr. Radovan after December the 12th. So why would I tell
13 them anything?

14 Q. What did you believe was going to happen,
15 transpire in the meeting by the three executive committee
16 members in Sacramento with Mosaic prior to the meeting that
17 Mr. Radovan had scheduled?

18 A. I did not know what was going to happen. I
19 believe they were trying to put the deal together, though,
20 but that's just was my understanding.

21 Q. Now, you've suggested in your testimony today that
22 the loan was not torpedoed. What do you think happened after
23 that meeting other than the loan being tanked or rescinded?
24 Do you think there was some path forward with Mosaic after

1 the meeting?

2 A. Possibly not. I got the feeling that the Mosaic
3 meeting was a desperation move on Mosaic to possibly put the
4 deal together, because I don't think they were getting
5 communication, the documents now show, that they felt they
6 needed and were required. So they were potentially, I
7 assume, reaching out to the executive committee to assure
8 them that the communication was better than they were finding
9 out.

10 Q. Do you think it's a fair characterization in some
11 of the e-mails we've looked at today and previously that the
12 meeting with Mosaic on February 1, 2016 was a good meeting?

13 A. That's been represented in some of the documents.

14 Q. Do you believe that's a fair or accurate
15 characterization?

16 A. Well, if a good meeting results in the deal being
17 cancelled, it wasn't good enough to save it, evidently, so,
18 no.

19 Q. Now, you indicated that you had lost trust or
20 didn't trust Mr. Criswell and Mr. Radovan and that's why you
21 didn't share with them that there was going to be this
22 meeting behind their backs?

23 A. It wasn't my meeting. It wasn't my place to say.
24 And, no, I was not communicating.

1 Q. Why wasn't your place to say? To alert the
2 manager of the -- the managers of the development that an
3 unauthorized meeting was going to happen with the lender of
4 the loan that was your only hope to get paid off? Why didn't
5 you feel some obligation to inform them?

6 A. I trusted that the EC had enough reason on their
7 part to, and they wanted to, as far as I know, wanted to save
8 the deal, too, that they would -- they felt it was the best
9 route, and I trusted the EC a lot more than I trusted
10 Mr. Criswell and Mr. Radovan.

11 Q. But at the point in time of the meeting with
12 Mosaic, you already knew that the EC and the people you were
13 corresponding with, this so called team, were bent on
14 removing Criswell and Radovan as managers, potentially suing
15 them, potentially removing their membership interests. Why
16 were you concerned about sharing that with them, sharing the
17 meeting with them when you knew that was the motivation
18 behind this group that you were trying to distance yourself
19 from?

20 A. I disagree with your opening part of that question
21 where you said that they were bent on removing Mr. Criswell
22 or Mr. Radovan or CR. I think that was one of the options
23 they were considering. Any which way that made the deal is
24 what I wanted, a financing deal.

1 Q. Sitting here today and looking back with 20, 20
2 hindsight, you don't wish you had advised Mr. Criswell or
3 Mr. Radovan that this backdoor meeting was going to happen?

4 A. I suppose in hindsight it might have been better
5 to do that, but that would have broken the trust with the EC
6 that I had and I don't know that they would have done well
7 with it either. So it might have saved it. It might not
8 have. I don't know. The executive committee was there to
9 represent the shareholders.

10 Q. Well, the executive committee had a meeting
11 scheduled at 5:00. A group, a subset of the executive
12 committee went there prior to the 5:00 meeting and provided
13 information that caused Mosaic to cancel the 5:00 meeting,
14 correct, as you understand it?

15 A. I don't know if it caused that. It didn't
16 alleviate whatever reason they were having the meeting to
17 make -- and they decided to cancel it.

18 Q. Other than dissension in the investor group
19 mentioned in Mosaic's e-mail, are you aware of any other
20 specific information provided by the three members of the
21 executive committee to Mosaic in that pre-meeting that would
22 have led Mosaic to cancel the loan?

23 A. Provided by the executive committee, I don't
24 believe so, but they were also concerned about the lack of

1 communication that Mosaic was concerned, the lack of
2 communication with the developers over the last two or
3 three months.

4 Q. Did Mr. Marriner ever tell you project timing or
5 scheduling information -- strike that. We've looked at
6 Exhibit 36, which is an e-mail string between you and
7 Mr. Radovan about the opening date of the project. I'll let
8 you get that in front of you.

9 A. It's four books in every direction. Hold on.

10 Q. We need a lazy Susan there, I think.

11 A. I don't want you to say you have a lazy witness.
12 But I'm looking at it. Yes. I'm on 36 and what's your
13 question, sir?

14 Q. So my question is you received this report about
15 the soft opening in spring with grand opening on Father's Day
16 weekend, just brought in general manager and chef. That's
17 October 10, 2015?

18 A. Yes.

19 Q. In this time frame, early October, or before then,
20 did you receive any information about the opening date from
21 Mr. Marriner that was more rosy than this, that projected an
22 earlier opening than this?

23 A. Previous to -- very close to this date, he was
24 still believing or espousing December the 12th as a soft

1 opening.

2 Q. Okay. After you received this from Mr. Radovan,
3 did Mr. Marriner tell you anything otherwise, that it might
4 be opening sooner than this?

5 A. No. He never contradicted this. This doesn't say
6 why the opening was delayed, which I have in other e-mails
7 and conversations with Mr. Radovan.

8 Q. If you'll turn to Exhibit 22, please?

9 A. Yes, sir.

10 Q. We looked at this, like some of the other
11 exhibits, more than once during the trial. On August 3,
12 2015, 11:45 a.m., Mr. Marriner writes you, hope you're doing
13 well. And then he continues, do you have any more questions?
14 And then I won't read the rest of it. On the same day,
15 within an hour, August 3, 2015, you advise Mr. Marriner, I've
16 been dealing directly with Robert. Thanks. He will be
17 taking questions from my CPA early this week. More soon.

18 A. Yes.

19 Q. At this point, or from this point forward until
20 the date of your investment, did you seek specific project
21 information from Mr. Marriner?

22 A. I don't recall. The e-mails would show that. I
23 thought I, again, asked for -- anyway, no, I'm not sure.

24 Q. If we turn to Exhibit 31?

1 A. Yes, sir.

2 Q. This is an e-mail string on September 30th between
3 you and Doug Driver?

4 A. Yes.

5 Q. Who is Doug Driver?

6 A. We've been over this, but he was my chief
7 financial officer.

8 Q. And you ask Doug, you can answer. I'm okay to
9 proceed as you instructed?

10 A. Yes.

11 Q. And you reply, not waiting for an answer from Ken?

12 A. Yes.

13 Q. He still hasn't received an answer on the
14 valuation question as of yesterday afternoon, but I
15 understood you wanted to proceed regardless of the valuation
16 issue, question mark. I think I read those --

17 A. Yeah.

18 Q. Can you describe how the sequence is of these?

19 A. The first one you read, did Ken answer, that was
20 from me to Doug, and the second one was from Doug to me.

21 Q. Saying he still hasn't received an answer on the
22 valuation question as of yesterday afternoon?

23 A. Yes.

24 Q. Did you respond back, not waiting for an answer

1 from Ken or am I --

2 A. No. I don't think that's me responding back.

3 Q. It's just Doug responding?

4 A. That's Doug's e-mail, I believe.

5 Q. Got it. How did this exchange fit into your
6 decision making to proceed with investment?

7 A. I -- well, there was still 13 days left, so I
8 assume that it got answered. This was just putting it on
9 hold, in effect.

10 Q. So you returned your signed investment documents
11 on the 2nd or 3rd of October, correct?

12 A. I don't believe so. I thought it was simultaneous
13 with the 13th. I don't really know.

14 Q. You believe you sent them in simultaneous with the
15 funding?

16 A. As best as I know, but the documents would show
17 that.

18 Q. What was the valuation question you were inquiring
19 into with Doug Driver in these e-mails or in this e-mail
20 exchange on the 30th of September?

21 A. I don't recall.

22 Q. Can you turn to Exhibit 54, Mr. Yount?

23 A. 54. All right. Yes, sir.

24 Q. So 54 is an e-mail with some attachments dated

1 January 8th, 2016?

2 A. Yes.

3 Q. And you're included on the distribution list, do
4 you see?

5 A. Yes.

6 Q. Two of the attachments are proposed amendments and
7 the response from legal counsel. Do you recall who proposed
8 these amendments to the operating agreement? They're a few
9 pages into the exhibit. Do you happen to recall who in this
10 time frame was proposing amendment of the operating
11 agreement?

12 A. It's coming from Heather Hill, so I assume
13 Criswell Radovan, but I don't know that.

14 Q. You're not sure who was proposing them?

15 A. No.

16 Q. Were there any other Fortifiber or Stanwall
17 Corporation staff that assisted you with you due diligence
18 besides Mr. Driver?

19 A. No. I don't believe so.

20 Q. What was Mr. Driver's background? You said he was
21 your CFO?

22 A. Yes.

23 Q. What's his training?

24 A. His training is in financial education. I mean,

1 he's been educated as a financial person and that's what he's
2 always done for me primarily. And what did he do before
3 he worked for me? Or what is his question?

4 Q. You answered it. I was wondering if he was
5 trained in financial matters, accounting and bookkeeping?

6 A. Yes, I believe. He has a masters degree from USC.

7 Q. In accounting or finance?

8 A. I believe so. I'm not swearing to that.

9 MR. WOLF: That's all the questions I have. Thank
10 you, your Honor. Thank you, Mr. Yount.

11 THE COURT: Thank you, Mr. Wolf.

12 MR. CAMPBELL: Should I go into my redirect?

13 THE COURT: Yes. I've got a meeting in about half
14 an hour, so we'll take our break there if everybody can hold
15 it. Go ahead, Mr. Campbell.

16 REDIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Mr. Yount, I'll take you back to that
19 December 12th meeting.

20 A. Yes.

21 Q. You said that a number of -- you worded it
22 differently, but a number of the investors were at that
23 meeting, correct?

24 A. Oh, yes.

1 Q. And after the disclosure from either Mr. Radovan
2 or Mr. Criswell, they were very concerned?

3 A. Any number of them were very concerned, yes.

4 Q. Why were they concerned?

5 A. They were concerned because the project seemed to
6 be financially in trouble and many of us were not aware of
7 that.

8 Q. And you termed it as the wheels falling off the
9 bus, right?

10 A. Yes, I did.

11 Q. What did you mean by that?

12 A. I meant that the project appeared to be in severe
13 financial trouble and in jeopardy of survival.

14 Q. Can you look at Exhibit Number 111?

15 A. 111. Yes.

16 Q. It's an e-mail from Penta to Cal Neva a couple of
17 weeks after that meeting, right?

18 A. Yes.

19 Q. And this is kind of a pre-notice from Penta that
20 they've got some serious concerns about not being paid?

21 A. Yes.

22 MR. WOLF: Objection, foundation.

23 THE COURT: Lay a better foundation. Go ahead,
24 Mr. Campbell.

1 BY MR. CAMPBELL:

2 Q. It says in there, between September 5th and
3 September 14th, Penta and Cal Neva entered into 12 change
4 orders, increasing the contract sum to \$26,997,609 and the
5 sum has increased by 9.356. Then they say, currently, Penta
6 is owed more than 4.2 million and then they footnote under
7 number one, that is the change orders 12 and 13, correct?

8 A. Yes.

9 Q. Did this confirm your view that the wheels are in
10 fact falling off the bus?

11 MR. LITTLE: Objection, leading.

12 THE COURT: Overruled.

13 BY MR. CAMPBELL:

14 Q. Can you look at Exhibit 50?

15 A. 50?

16 Q. Yes. I'm sorry, Exhibit 49.

17 A. All right.

18 MR. LITTLE: You said 49?

19 MR. CAMPBELL: Yes.

20 BY MR. CAMPBELL:

21 Q. If you look to the Exhibit 49 in the like the
22 third page down, it's a budget. We've gone through this
23 before.

24 A. It's the black at the top that says Cal Neva

1 Hotel?

2 Q. Yes.

3 A. Okay.

4 Q. Do you see the budget comparisons at the bottom
5 line, it says total development costs?

6 A. Yes.

7 Q. And that shows a --

8 A. It's hard to read.

9 Q. That shows approximately \$21 million in new items
10 over budget?

11 A. Correct.

12 Q. That confirmed to you that in December there was
13 serious financial issues with the project?

14 A. The construction budget was originally 17 million
15 something and this is an overrun of 20 million more, 21
16 million more. So I think anybody in their right mind would
17 think this is -- the bus might be exploding. Maybe the
18 wheels coming off is not strong enough.

19 Q. And then let's go to Exhibit 54.

20 A. 54. Yes.

21 Q. If you go down to the third page of this exhibit,
22 it's the letter from Hall?

23 A. Correct.

24 Q. And this letter is January 5th, so just shortly

1 after the letter from Penta?

2 A. Yes.

3 Q. And it tells Hall the loan again is out of
4 balance?

5 A. Yes.

6 Q. Does that confirm your belief that the project was
7 in serious financial trouble?

8 A. Absolutely. It was further reenforcement of that.

9 Q. Let's go back to Exhibit Number 124.

10 A. Exhibit number?

11 Q. 124.

12 A. 124.

13 Q. And this is an e-mail string that relates to the
14 Mosaic loan once you get there.

15 A. Just one moment. Ready. I'm on 24. I'm sorry.

16 Q. 124?

17 A. Yeah, I know. I'm on the wrong one. I'm there.

18 Q. Mr. Little and Mr. Wolf asked you extensively
19 about this and asked you about your understanding of what
20 happened at the Mosaic meeting, right? Do you remember those
21 questions just a few minutes ago?

22 A. The Mosaic meeting with the EC?

23 Q. Yes.

24 A. Yes.

1 Q. I believe one of your answers was you're trying to
2 put words in my mouth, correct?

3 A. Yes.

4 Q. Was your understanding of what transpired at this
5 Mosaic meeting pretty much garnered from this Exhibit Number
6 124?

7 A. Yes.

8 Q. So if you look at the first in the string of
9 e-mails, which is at the back of the exhibit, it looks like
10 the first e-mail was actually from Mosaic, correct?

11 A. Yes.

12 Q. So these are Mosaic's words, not yours, not
13 members of the EC or anybody else?

14 A. Correct.

15 Q. And it starts out, they're interested in hearing
16 about the history of the Mosaic involvement in Cal Neva with
17 you and we explained our deal with them. We told them how we
18 met you. We told them that we issued a term sheet. And we
19 told them the day you executed. And he's sending this to
20 Robert Radovan, right?

21 A. Yes.

22 Q. Then he also goes on and says, we also told them
23 for better part of three months, we have not heard much from
24 you or your team. They went on a little bit to explain 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. We're going to take a step back, tear up the executive
4 term sheet, give you and the ownership time to figure things
5 out on your own. And at the right moment, if you desire,
6 reintroduce the deal to Mosaic. This was Mosaic speaking
7 right now?

8 A. Yes.

9 Q. Would you agree with Mosaic that as of
10 February 1st, 2016, that there was a little bit of a mess
11 with the project?

12 A. That would be an understatement. It was grand
13 magnitude.

14 Q. And then you were on the next e-mail string, which
15 looks like was sent from -- I think this was Paul Jamieson in
16 the middle of the second page. Your representatives on the
17 executive committee had an informative, constructive and very
18 positive meeting with Mosaic?

19 A. Yes.

20 Q. And who do you understand Phil Busick was?

21 A. Phil Busick is Les Busick's son and they work
22 together on their investment, their family investment in the
23 project.

24 Q. And the Busicks had how much money into this

1 project by this time?

2 A. Three and a half million, I believe.

3 Q. Two and a half? Does that sound right?

4 A. Two and a half, yeah, that's probably right.

5 Q. And the other two members of the EC, where did
6 they come from?

7 A. Where did who come from?

8 Q. The other two members of the EC that attended this
9 meeting?

10 A. Where did they come from?

11 Q. Were they investors? Were they part of a group?
12 Do you know? Do you know who the other two investors were on
13 the EC?

14 A. If you're talking about Brandon Chaney, yeah, he's
15 a member of the IMC and I believe a \$2 million investor. Is
16 that your question?

17 Q. Yeah. And who else was on the EC to your
18 knowledge?

19 A. I believe Paul Jamieson and perhaps Jeremy Page,
20 although I'm not sure he was at this point. At one point, he
21 was.

22 Q. And they were members of the Incline Men's Club?

23 A. Yes.

24 Q. How much did the Incline Men's Club have in the

1 project?

2 A. \$6 million, I believe.

3 Q. So between Mr. Busick's family and the Incline
4 Men's Club, they had eight and a half million dollars?

5 A. Yes.

6 Q. And in the middle of this second e-mail here, it
7 says, overall, yesterday's meeting was a step towards, rather
8 than away from a near term deal with Mosaic. Interim report
9 from EC. The mess they refer to is primarily CR's
10 unresponsiveness over the last few months. Do you see that?

11 A. Yes, I do.

12 Q. And then it says, Mosaic also raised concerns
13 about cost overruns, delays and lack of CR transparency,
14 correct?

15 A. Yes.

16 Q. It goes down a couple of other bullet points,
17 Mosaic seemed refreshed by the transparent focus and
18 productive discussion?

19 A. Yes.

20 Q. And, finally, they ripped up the term sheet and
21 waived the \$1 million fee Mosaic says it's currently owed?

22 A. Yes.

23 Q. Your information about what transpired in that
24 meeting?

1 A. Was all positive.

2 Q. Let's talk about the extensive cross examination
3 Mr. Little walked you through on the -- I'll call them the
4 post party e-mail string and discussion with the other
5 members of the EC. All right?

6 A. Yes, sir.

7 Q. You said that as of December 12th, you believe the
8 majority of the investors were pretty upset?

9 A. I thought so.

10 Q. Do you know why they were upset?

11 A. They were upset with what Mr. Criswell and
12 Mr. Radovan had to say at the so-called party.

13 Q. Was there a chance they may lose their investment?

14 A. I think so.

15 Q. And all the e-mails that Mr. Little went through,
16 these were all documents you had in your possession and
17 produced, right, in discovery?

18 A. Yes. All 5,000 pages.

19 Q. You weren't trying to hide anything about these
20 conversations with the other members, right?

21 A. Absolutely not.

22 Q. And --

23 A. I didn't think there was anything wrong with any
24 of the conversations I had. There was nothing to hide.

1 Q. You were concerned about getting your money back,
2 right?

3 A. That was my number one concern.

4 Q. And Mr. Criswell had told you that to get that
5 money back, they needed to get some kind of a refinance,
6 right?

7 A. They needed to be refinanced and then paid from
8 the project before they would buy my supposedly shares that I
9 supposedly had.

10 Q. And that was in an e-mail from Mr. Criswell?

11 A. I believe so.

12 Q. Were the other investors, did they seem concerned
13 about trying to get their money back?

14 A. They were -- I think they were in such a different
15 situation, they were trying to get the project saved so that
16 they would get their money back and make a success out of it.

17 Q. So if the project wasn't saved and it --

18 A. They're out.

19 Q. Then they're out \$18 million?

20 A. I believe so.

21 Q. Did you see anything wrong with the back and forth
22 among Mr. Jamieson, Ms. Kingston, members of the IMC, some of
23 the other investors about the concerns and strategies they
24 expressed in that lengthy e-mail string that Mr. Little

1 walked you through?

2 A. No. I don't believe so.

3 Q. Mr. Wolf asked you about the Mosaic loan as your
4 best option.

5 A. Yes.

6 Q. Do you remember that testimony? At that time, was
7 there any other financing on the table?

8 A. We're talking the end of January?

9 Q. Yes.

10 A. No. I don't believe so.

11 Q. It wasn't just it was the best, it was the only?

12 A. It was basically the only one. There was others
13 being tried to be created, but there was nothing at that
14 stage.

15 Q. Just to be clear, you didn't attend this meeting
16 with Mosaic, right?

17 A. (No audible response.)

18 Q. Did you take any actions whatsoever to try to
19 undermine that Mosaic loan?

20 A. I don't believe so, no.

21 Q. Would you do that?

22 A. No. It would make no sense. Why would I torpedo
23 myself?

24 Q. I'm going to go back to last Friday's cross

1 examination by Mr. Little --

2 A. Yes.

3 Q. -- and go through some of the points he made.

4 Let's go back. Mr. Little asked you about your initial site
5 tour back in I think July 13th of 2015?

6 A. Yes.

7 Q. Mr. Little asked you if you had asked -- first
8 off, he asked you, were there Penta reps on the job?

9 A. Yes. I believe there was one from the company.

10 Q. And Mr. Little asked you if you asked any
11 particular questions of the Penta reps on the job?

12 A. I'm sure I asked him questions about what I was
13 seeing and what was being done.

14 Q. What was the purpose of this site visit?

15 A. It was my first exposure to the site and the
16 project.

17 Q. And I believe your testimony was you think you may
18 have received some documents back in February of 2014?

19 A. Something like that, yes.

20 Q. Did you review those back in 2014?

21 A. No, I did not. I was not interested in the
22 investment.

23 Q. But when you did the site meeting on July 13th,
24 had you been provided with any investment documents that you

1 reviewed?

2 A. I don't believe I'd been provided with them yet.
3 I'm not sure of the exact date.

4 Q. If you look at exhibit -- I think if you look at
5 Exhibit Number 8?

6 A. Number eight. You're right, a lazy Susan would be
7 helpful. All right. Exhibit Number 8.

8 Q. Does this confirm for you, just take a look at
9 this, does this confirm for you kind of the time line of when
10 the initial site visit was and then when the documents were
11 actually provided to you?

12 A. It's basically, it was a pleasure showing you the
13 site by Mr. Marriner.

14 Q. So that would have been before the e-mail,
15 July 14th?

16 A. Yeah, the 13th, 14th.

17 Q. And then it says, as I mentioned, Robert's
18 released some additional .5 mill of equity. So you had that
19 discussion with Mr. Marriner at the meeting?

20 A. Yes.

21 Q. And then Mr. Marriner says, Robert asked me to
22 forward Cal Neva investment PPM, founders progress reports?

23 A. Yes. That would have been after my tour.

24 Q. Did you have any knowledge about the specific

1 details of the project when you were on that site tour?

2 A. Not in great detail. I mean, I knew what they
3 were trying to refurbish and restart the Cal Neva Resort.

4 Q. But you didn't know what the budget was. You
5 didn't --

6 A. I'm sorry?

7 Q. You didn't know what the budget was?

8 A. No. I don't believe so.

9 Q. Did Mr. Marriner seem pretty knowledgeable about
10 the project when you had that first meeting on site?

11 A. Very much so. I was impressed with what I thought
12 was his knowledge.

13 Q. So he went into pretty good detail on the project
14 when you were at the site visit?

15 A. Did we --

16 Q. Did he give a lot of detail about the project?

17 A. He pointed out what things were being done and
18 why, as did the Penta representative. He seemed very
19 knowledgeable -- both of them seemed very knowledgeable in
20 what was going on.

21 Q. Mr. Little asked you some questions about Exhibit
22 Number 10. Why don't you put that in front of you so we're
23 on the same page.

24 A. Yes.

1 Q. And you did receive this exhibit, correct?

2 A. Yes.

3 Q. From Mr. Marriner?

4 A. Yes, I did.

5 Q. And Mr. Little asked you, had you ever received
6 any similar reports, and I think he quoted your deposition
7 testimony that you may have, right?

8 A. I may have, but I don't recall any.

9 Q. When you put together all of your documents to
10 produce in this case, did you gather every single page you
11 could find?

12 A. I believe so.

13 Q. How many pages were there altogether?

14 A. A little over 5,000, I believe.

15 Q. Okay. If there were additional construction
16 reports similar to this July 2, 2015 one, would those have --
17 would those be something you would produce?

18 A. Absolutely.

19 Q. You didn't intentionally --

20 A. I didn't pick and choose on what I produced. I
21 took the entire file I had.

22 Q. You even produced documents such as an e-mail to
23 Ken Tratner that nobody else was copied on, right?

24 A. Correct.

1 Q. And Mr. Little never asked you any specific
2 questions and showed you an August, September or October
3 monthly status report, did he?

4 A. No, he did not. I presume if there were some, and
5 I didn't have them, they would have produced them in their
6 discovery and they would have been in these binders.

7 Q. Exhibit 10, again, we've gone through it a couple
8 of times. And Mr. Little pointed out to you that on page 16,
9 there was a litany of construction summary and change orders
10 or changes that needed to be on the project there on page 16,
11 correct?

12 A. Just one second. Yes.

13 Q. Okay. I believe my notes say that Mr. Little
14 asked you, did you ask questions about the specific costs
15 attributed to these bullet points on Exhibit 16? Do you
16 remember that question?

17 A. No, I did not, because I was already told by
18 Mr. Radovan how much those were. I don't see why I would
19 ask.

20 Q. And what had Mr. Radovan tell you?

21 A. He told me they were between 5 and \$6 million.

22 Q. So you already knew what, in your mind, what they
23 were talking about with the cost of these?

24 A. Absolutely.

1 Q. While we're on that point, let's go to Exhibit
2 Number 12.

3 A. Yes.

4 Q. This is an e-mail that you sent to Mr. Marriner?

5 A. Yes.

6 Q. And on bullet point number four, you're writing
7 Mr. Marriner, it says, it appears you're raising 20 million
8 and you said the entire investment is some 60 million?

9 A. Yes.

10 Q. Did you write this e-mail in close proximity to
11 the time that you actually had a conversation with Mr.
12 Marriner?

13 A. I believe so.

14 Q. And I think your earlier testimony was you don't
15 remember if it was Mr. Marriner or Mr. Radovan told you about
16 the 5 million plus cost overrun, but it could have been
17 either or both?

18 A. I believe --

19 MR. WOLF: Objection, compound.

20 MR. LITTLE: Objection to his testimony.

21 THE COURT: Hold it. Just rephrase. Just
22 rephrase.

23 BY MR. CAMPBELL:

24 Q. Did Mr. Marriner's 60 million entire investment

1 make sense in what Mr. Radovan told you about a 5 million
2 plus?

3 A. Absolutely. The original budget was some
4 \$51 million, plus once the project got subscribed to 20
5 million, they would raise the budget to some 55 million, plus
6 the 5 million that Mr. Radovan told me, that makes 60
7 million, made perfect sense.

8 Q. You're pulling those numbers from Exhibit Number
9 4?

10 A. I believe so, except for the 5 to 6 million, but
11 that listed items.

12 Q. Mr. Little showed you the private placement
13 memorandum?

14 A. Yes.

15 Q. And asked you a lot of questions about the
16 qualifications?

17 A. Yes.

18 Q. In there, the legal language, correct?

19 A. Yes.

20 Q. And he pointed you to one section that said about
21 the ability of investors, potential investors to ask
22 questions, right?

23 A. Yes.

24 Q. Did you ask questions in this project?

1 A. Yes, I did.

2 Q. And what questions did you ask?

3 A. They're in the e-mails. I had that list of about
4 ten questions I came up with. And we discussed the project
5 and was told what the budget was and why it was changing and
6 when it was going to open and all of those kinds of
7 questions.

8 Q. And so to your satisfaction, they answered those
9 questions that were important to you?

10 A. I now find they weren't answered correctly. They
11 were fraudulent. But, yes, I asked, and they answered.

12 Q. Why didn't you follow-up with more questions
13 prior -- just prior to funding?

14 A. Why did I do what?

15 Q. Why didn't you ask follow-up questions?

16 A. I had no reason to think there was more questions
17 that needed to be asked.

18 Q. Let's look at Exhibit Number 13, which Mr. Little
19 also asked you about, which the Peter Grove e-mail.

20 A. Yes.

21 Q. If Mr. Grove had either verbally communicated to
22 you or followed up in an e-mail and told you what the
23 construction costs exceeding budget were --

24 A. Dollar amount, no.

1 Q. -- what would you --

2 A. Dollar amount?

3 Q. Dollar amount.

4 A. No, he did not.

5 Q. If he would have told you, would you have somehow
6 done something if he would have quantified those numbers?

7 A. Depends on what he quantified. If he quantified 5
8 to 6, I would have been very happy. But if he quantified
9 more, I would be very concerned.

10 Q. If he had told you it was more, would you have
11 taken some action?

12 A. Absolutely. I would have started asking
13 Mr. Radovan more questions and why didn't you tell me and why
14 is it differing from what you have been telling me?

15 Q. And how would you communicated those to
16 Mr. Radovan?

17 A. Either an e-mail or a telephone call. Probably
18 all in caps.

19 Q. Have you talked to Mr. Grove since December 2015
20 about the Cal Neva project?

21 A. Yes, I have.

22 Q. And has he told you anything about the Cal Neva
23 project?

24 A. He told me that he was owed some \$180,000, as I

1 remember.

2 Q. Do you have your deposition in front of you,
3 Mr. Yount?

4 A. I can do that.

5 Q. Let's go to 145.

6 A. 145. All right.

7 Q. Mr. Little pointed to your deposition and read
8 part of the question and answer. Can you read into the
9 record the entire Q and A on page 145?

10 A. Starting at line four?

11 Q. Yes.

12 A. Correct. Question on five?

13 Q. Yes.

14 A. And it also says that the budget has been
15 adversely impacted due to a number of items and it lists
16 them, question mark? And I said, correct. Question, did you
17 ever ask any specifics about any of these items prior to
18 making your investment, question mark? Answer, I don't
19 believe specifics, no. Question, did you ask what the
20 anticipated costs were associated with these items? Answer,
21 I think that had been indicated to be 5 to \$6 million.
22 Question, do you know? Do you even know whether the
23 contractor had priced all of these items yet? Answer, I
24 don't know, but if it was -- if he was quoting a number, I

1 assume it would have been there. Question, you're making an
2 assumption? And I said, yes, otherwise he would have said
3 that it's 5 to \$6 million except for those items that are not
4 priced yet, wouldn't he?

5 Q. That's good. Let's go to Exhibit Number 153.

6 A. 153, was it? Which one?

7 Q. Exhibit 153 and I think Mr. Little had
8 cross-examined you on two particular pages, 609 and page 617,
9 so towards the back of those documents.

10 A. 609 and 617, I have them.

11 Q. You understand these are pay applications?

12 A. Correct.

13 Q. Mr. Little was asking you if you look at page 609,
14 which was a pay application for, I believe, the end of July
15 2015?

16 A. I believe so.

17 Q. And then if you look at page 617?

18 A. Yes.

19 Q. That goes up to the next pay application?

20 A. Yes.

21 Q. Which would have been the end of August and it
22 shows -- now shows a total of the last two -- shows a total
23 of 4.544 million, right?

24 A. Correct.

1 Q. And I think Mr. Little asked you, is that a number
2 close to what Mr. Radovan told you?

3 A. Yes. This is 4.544 and he said 5 to 6. So he
4 might have been aware of some other ones that would have
5 brought it to that total, but it was close.

6 Q. But Mr. Radovan also indicated to you when he told
7 you that five plus number that they think there were other
8 ones in the works, so to speak?

9 A. No. He indicated that they were trying to provide
10 a cushion in case there were others down the line, because
11 they didn't want to go back to the, quote, well, on
12 refinancing further.

13 Q. And you've been through this, you've sat here next
14 to me the whole time. You understand that as of September, I
15 don't think I need to go back to the change orders, everybody
16 knows the numbers now, as of September, as in exhibit -- as
17 the exhibit from Penta, that by September those change orders
18 were approximately 9.3 or 4 million?

19 A. Yes.

20 THE COURT: Mr. Campbell, is this a good time to
21 take a break?

22 MR. CAMPBELL: Let me finish this question.

23 THE COURT: Sure.

24 BY MR. CAMPBELL:

1 Q. Mr. Radovan never told you in August or September
2 that the change orders were now in the range of \$9.4 million?

3 A. Absolutely not.

4 MR. LITTLE: Asked and answered, all of these,
5 your Honor.

6 MR. CAMPBELL: That's all I have, your Honor,
7 right now.

8 MR. LITTLE: Are you done?

9 MR. CAMPBELL: I'm not done.

10 THE COURT: You can step down, Mr. Yount. Watch
11 your step going down.

12 MR. LITTLE: How much more do you have?

13 THE COURT: Just a minute, Mr. Little. If you
14 talk to anybody, speak to the bench.

15 MR. LITTLE: Sorry, your Honor.

16 THE COURT: Mr. Campbell, how much longer do you
17 have?

18 MR. CAMPBELL: I think I can do it in 10 or
19 15 minutes. I'll try to cut some stuff.

20 THE COURT: No. No. I don't want to crimp your
21 style. Take as much time as you want. And then after
22 Mr. Yount, who do we have?

23 MR. CAMPBELL: We have Mr. Chaney, but I assume
24 there could be some recross.

1 THE COURT: I assume there will be some recross.
2 Mr. Chaney. All right. And after him?

3 MR. CAMPBELL: Tomorrow morning we have Mr.
4 Tratner, a very short witness, 10 or 15 minutes. He was the
5 accountant in the due diligence process.

6 THE COURT: Do we have any other witnesses?

7 MR. LITTLE: No, your Honor.

8 MR. WOLF: No, your Honor.

9 THE COURT: Thank you very much. Court's in
10 recess.

11 (A short break was taken.)

12 THE COURT: Mr. Campbell, your direct.

13 BY MR. CAMPBELL:

14 Q. Exhibit 27, Mr. Yount.

15 A. 27.

16 Q. Mr. Little last Friday asked you a question about
17 Exhibit 27 and questions about the soft opening versus a hard
18 opening. Do you remember that line of questioning?

19 A. Yes, I do.

20 Q. And I don't want to get into that. I just want,
21 again, to ask you, this e-mail to Mr. Tratner was composed
22 when?

23 A. August the 12th.

24 Q. And when did you talk to Mr. Radovan?

1 A. Either that morning or the day before, I imagine.

2 Q. And the contents in this e-mail about the opening
3 dates came from a conversation with Mr. Radovan?

4 A. Yes, sir.

5 Q. Let's go to Exhibit 106 and 107.

6 A. Yes, sir.

7 Q. Mr. Little asked you some questions about this as
8 to whether or not the address at the bottom of the first page
9 of Exhibit 106, which says, Dave Marriner telling you I
10 believe Robert will want to use the following address and
11 they use the Criswell Radovan address. And Exhibit Number
12 107 looks like some wiring instructions to the Criswell
13 Radovan bank.

14 A. Yes.

15 Q. I believe the question he asked, did that indicate
16 to you that in fact you were buying a CR share?

17 A. Absolutely not. Where does it say that?

18 Q. Let's go to Exhibit Number 34. So if we pick up
19 on the e-mail string, Exhibit 34, we go back -- e-mail starts
20 about you're sending Mr. Radovan on October 1st?

21 A. Yes. I see that.

22 Q. About funding instructions, do you see that? And
23 then it goes on, on the second page, page 2323 on the bottom
24 of the page, this is for Mr. Marriner, same e-mail we looked

1 at before, I believe Robert will want to use the following
2 address and he goes on to state the address. And then the
3 next e-mail up says, this is from Mr. Radovan to you on
4 October 3rd, it says, actually, the funds should be wired
5 into our attorney's account in accordance with the documents.
6 Heather in my office will wire you the instructions first
7 thing on Monday.

8 A. Yes.

9 Q. So Mr. Radovan is clarifying where the money is
10 supposed to go, right?

11 A. Absolutely.

12 Q. And when he says, with the documents, what
13 documents had you been provided at that time?

14 A. The PPM and the operating agreement are the
15 documents I was to sign.

16 Q. The subscription agreement?

17 A. I'm sorry?

18 Q. The subscription agreement?

19 A. Yes, I believe so.

20 Q. Did Mr. Radovan send you other documents such as a
21 contract to purchase a CR share?

22 A. Absolutely not.

23 Q. Then if we finish out the e-mail, it looks like
24 you had a conversation with Mr. Driver and kind of cleared it

1 up that you were going to use what Mr. Radovan told you?

2 A. Yes.

3 Q. Mr. Little also asked you a question just
4 generally about your knowledge of the remaining 1.5 million
5 in the PPM. Do you remember that series of questions?

6 A. Yes.

7 Q. And I believe he asked you something to the effect
8 that you didn't assume that no one else was looking, right?

9 A. No. I had no reason to assume that.

10 Q. So for all you knew, someone else was in fact
11 looking?

12 A. Absolutely. I would expect there would be.

13 Q. If someone else was looking and closed out the
14 financing, would you assume that you would have been told?

15 A. I would assume that I would be told, we're sorry,
16 but there's no more offering to be had.

17 Q. All the documents that you were provided and all
18 the e-mails you were provided indicated how you were making
19 your investment?

20 A. Yes.

21 Q. How was that?

22 A. I was making the investment to Cal Neva LLC
23 through the trust account of the attorney Mr. Coleman in
24 Texas and that was acknowledged in writing.

1 Q. Mr. Little also asked you about some of the
2 allegations in your complaint, specifically, about cost
3 overruns and schedule changes. Do you remember those
4 questions?

5 A. Yes.

6 Q. And I believe your answer was, I remember getting
7 an e-mail from Mr. Marriner that detailed some of those
8 issues?

9 A. Yes.

10 Q. Is that correct? Let's look at Exhibit Number 60.

11 A. Yes, I'm there.

12 Q. Is that the e-mail that you're referring to about
13 some of the information from Mr. Marriner?

14 A. Yes.

15 Q. And if you look at page 168 at the bottom of the
16 page?

17 A. Yes.

18 Q. It says, an extended delay in Yount's ability to
19 set up a self-directed IRA and transfer funds in August or
20 September caused Robert to seek funding from Les Busick in
21 September to meet the immediate needs of the project to keep
22 Penta on the job.

23 A. Yes.

24 Q. Is that some of the information you were referring

1 to?

2 A. Yes.

3 Q. And then it goes on to talk about -- go to page
4 167, which is a string between Mr. Page and Mr. Marriner.

5 A. Yes.

6 Q. And at the bottom of the 167, next to the last --
7 third to the last paragraph says, according to your e-mail
8 below, you knew about the overruns in July. Why would you
9 have told the other 20 million investors this information
10 immediately or at a minimum compelled CR to do so. Last, but
11 not least, this also shows that Criswell Radovan had been
12 aware of the 9 million overrun for the past six months. Is
13 that another place where you got some of that information?

14 A. What about that information?

15 Q. Is that another place where you got some of the
16 information in your complaint?

17 A. Yes, it is.

18 MR. CAMPBELL: Your Honor, I have a new exhibit to
19 mark, which was not in the documents, which is a -- Mr. Yount
20 can lay a foundation for it.

21 THE COURT: Have you seen it, Mr. Little?

22 MR. LITTLE: If it's not part of the exhibit list,
23 and he's trying to introduce it on a redirect, I'm going to
24 object.

1 THE COURT: Why don't you lay a foundation. What
2 is it, Mr. Campbell?

3 MR. CAMPBELL: This comes from the cross
4 examination about the same issue about what Mr. Marriner
5 told -- this is what I believe was a continuation on Exhibit
6 Number 60 or a follow on e-mail to Exhibit Number 60 that
7 Mr. Yount received from Mr. Page regarding Mr. Marriner's
8 continued conversation about the conversation in Exhibit
9 Number 60.

10 THE COURT: Hang on a second. Let me pull up 60.
11 All right. Where does this fit in to 60?

12 MR. CAMPBELL: This would be the subsequent e-mail
13 to Exhibit Number 60.

14 THE COURT: Mr. Little.

15 MR. LITTLE: I'm going to object. It's an e-mail
16 between Dave Marriner and Jeremy Page. It has nothing to do
17 with Mr. Yount. It's not disclosed. It doesn't have -- it
18 doesn't even have Bates numbers on it, suggesting it hasn't
19 been produced to us in this litigation. This is the first
20 time we're seeing it here. It's not even being proffered for
21 direct. He's offering to do it on redirect. So I don't
22 think it's appropriate.

23 THE COURT: Well, Mr. Wolf, this is your client's
24 e-mail.

1 MR. CAMPBELL: I would represent for the record, I
2 did not see it in Mr. Wolf's production.

3 MR. WOLF: I guess I don't understand what the
4 point of it is on redirect.

5 THE COURT: Well, do you object?

6 MR. WOLF: I join in the objections from
7 Mr. Little.

8 THE COURT: Other than that it's untimely, do you
9 have any objection about authenticity?

10 MR. LITTLE: I don't know. I haven't seen it
11 before this afternoon, your Honor. Technically, it's
12 hearsay, too. It's not even copied to Mr. Yount. He's not
13 copied on the e-mail.

14 THE COURT: I'll sustain the objection. You can't
15 get it in through this witness.

16 THE WITNESS: It was directed to me.

17 THE COURT: Mr. Campbell, why don't you give the
18 clerk a copy.

19 MR. CAMPBELL: Sure.

20 BY MR. CAMPBELL:

21 Q. Mr. Yount, Mr. Little last Friday asked you some
22 questions about your involvement with the bankruptcy on the
23 committee. Do you remember that?

24 A. Yes.

1 Q. And he asked you if you were on the unsecured
2 creditors committee, the same as the other shareholders, I
3 believe was the question?

4 A. Not the same as the other shareholders. I'm on
5 the unsecured creditors committee, because I have a lawsuit
6 against Cal Neva LLC.

7 Q. And that's a claim you filed in bankruptcy court?

8 A. Yes.

9 Q. As a member of the committee, are you keeping tabs
10 on the bankruptcy?

11 A. I am indeed.

12 Q. Is there something that's on the near horizon in
13 the bankruptcy proceedings?

14 A. Yes. September 14th will be an election in the
15 bankruptcy court for the final payout, hopefully, of Cal
16 Neva, Cal Neva LLC.

17 Q. Do you know the terms, the amounts that are on the
18 table in that offer?

19 A. I believe there's an offer existing on the table
20 for \$38 million and there's other bidders that are expected
21 to be at that auction.

22 Q. Okay. Will that amount be enough to satisfy all
23 of the claims in the bankruptcy?

24 A. I don't believe it will be anything to the

1 shareholders and I don't believe it will cover all the claims
2 by the people claiming owed by the Cal Neva LLC.

3 Q. And, finally, Mr. Little just asked you, maybe it
4 was Mr. Wolf, just asked you a few minutes ago if you knew of
5 any improprieties by the Criswell Radovan team?

6 A. Yes.

7 Q. Through an audit or otherwise? Through the
8 bankruptcy, has any improprieties come to your attention?

9 A. The bankruptcy committee has asked CR to explain
10 11 and a half million dollars that they cannot identify where
11 it is and they've asked three times and not received a
12 response.

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

15 THE COURT: Mr. Little.

16 MR. LITTLE: Your Honor, I'll be brief, just a
17 couple of topics I want to cover.

18 THE WITNESS: Could you speak up just a little,
19 please?

20 RECROSS EXAMINATION

21 BY MR. LITTLE:

22 Q. Mr. Yount, you heard testimony that CR Cal Neva
23 had an executed term sheet with Mosaic for \$47 million loan
24 in late October with an expected closing in 30 or so days.

1 Are you aware of any evidence that is not true?

2 A. The one I've seen in the exhibits, I don't think
3 it was 47 million, but --

4 Q. Well, you heard testimony that CR Cal Neva had
5 obtained an executed term sheet with Mosaic?

6 A. Yes.

7 Q. For a loan?

8 A. Yes.

9 Q. Let's forget the amount, in late October, and
10 there was an expected closing in 30 or so days. Do you have
11 any evidence that's not true?

12 A. No.

13 Q. And late October would have been around the time
14 period that you invested, correct?

15 A. Yes, just after, but I assume the conversations
16 were going on well before I invested.

17 Q. And you heard testimony that the executive
18 committee wanted Mr. Radovan to go back to Mosaic and get
19 additional money, I think he said \$4 million, and a few other
20 conditions before they would approve that loan. Do you have
21 any evidence that's untrue?

22 A. No, I do not.

23 Q. And you heard Mr. Radovan testify that the delay
24 in concluding, I'll call it concluding the Mosaic loan was

1 because the executive committee was dragging their feet on
2 approving it and his hands were tied until the executive
3 committee approved it. Do you have any evidence that's
4 untrue?

5 A. I don't know one way or the other.

6 Q. You heard testimony that the Mosaic loan would
7 have allowed Penta to get paid and the project completed.
8 Are you aware of any evidence that is untrue?

9 A. Concern, as I understand it, it was contingent on
10 a certain appraisal level and the concern was whether the
11 project -- it was the lower of the number or the appraisal, a
12 percentage of the appraisal, and I think there was concern
13 over whether the project would appraise for that number.

14 Q. You don't have any evidence that they didn't get
15 the appropriate appraisal?

16 A. I have no evidence one way or the other.

17 Q. And my I question before was not the one you were
18 answering. My question was, you heard testimony that the
19 Mosaic loan would have allowed Penta to get paid to continue
20 working and complete this project. Do you have any evidence
21 that's not true?

22 A. No, I don't.

23 Q. Now, sir --

24 A. Other than what I just told you.

1 Q. Prior to this secretive February 1 meeting, you
2 were talking with the IMC folks, correct?

3 A. Yes.

4 Q. And you acknowledge they weren't a fan or
5 proponent of the Mosaic loan, correct?

6 A. No. They were concerned about the cost of the
7 Mosaic loan. They were not against the Mosaic loan.

8 Q. And they were talking to you about other means of
9 financing that they preferred, correct?

10 A. They preferred it. Are you talking about they
11 were looking into other means of financing? I don't think
12 anything was on the table to consider.

13 Q. You gave some testimony that I think you said you
14 didn't think they were trying to torpedo the Mosaic loan.
15 Let's go to Exhibit 129.

16 A. Exhibit 129?

17 Q. Yes, sir. Let's go over to page two of that
18 document.

19 A. Hold on just a moment. I have to move a couple of
20 books. Page two, yes, I'm there.

21 Q. The bottom of page two is an e-mail to Sterling
22 Johnson at Mosaic from Paul Jamieson and the e-mail speaks
23 for itself, but I'd classify it as a CYA letter, but that's
24 not my question. I want you to look above at Mosaic's

1 response. And he indicates that -- he's talking about the
2 meeting that they had and he concludes that Mosaic did not
3 offer a loan. And then he says, the impediments were well
4 covered in your e-mail, including instability in the
5 ownership group, an absence of transparency, and a lack of
6 faith in the budget and the management team. Sir, does that
7 sound like a group, in this case, the IMC group, that wanted
8 the Mosaic loan to go forward?

9 A. I can't say one way or the other. I've not heard
10 the surrounding conversation.

11 Q. Okay. We went over a lot of the e-mails after
12 this February 1 meeting, do you agree with that?

13 A. Yes.

14 Q. You and I went over a number and I think you
15 testified you produced some 5,000 pages of documents in this
16 case, right?

17 A. I believe so.

18 Q. Would you agree with me, sir, there is not a
19 single e-mail anywhere in those 5,000 documents that you
20 produced or the records that your counsel has used today
21 where you, anyone at IMC or Molly Kingston discussed
22 resurrecting the Mosaic loan and bringing it back from the
23 ashes?

24 A. After they pulled it?

1 Q. Correct.

2 A. I don't remember that from them or from Criswell
3 Radovan.

4 Q. Sir, Exhibit 49. Counsel showed you, we can go to
5 it, if you want to go to it, but do you remember counsel
6 showed you this December budget and there was the \$71 million
7 total development costs that he talked to you about? Do you
8 recall that?

9 A. Okay.

10 Q. And you said that's what caused you to believe
11 that the wheels were coming off the bus?

12 A. Yes.

13 Q. But, you know, we can go to it if you want to go
14 through the exercise, but when we looked at Exhibit 4, you
15 understood back in July that the funding was over
16 \$55 million, right?

17 A. Yes.

18 Q. So if we take 55 million from 71 million, you're
19 really talking about being over budget 15 to \$16 million?

20 A. 16.

21 Q. In December, right?

22 A. Instead of five.

23 Q. And of that, Robert had told you that they were
24 seeking to increase the mezzanine by \$9 million, we

1 established that, right?

2 A. Yes.

3 Q. And they were seeking to raise an additional one
4 and a half million dollars, correct?

5 A. Yes.

6 Q. And you also heard testimony that between when you
7 invested in December, there were several million dollars in
8 additional change orders that came in, right?

9 A. I didn't know that at the time, but, yes.

10 Q. Well, nobody knew that at the time, right? They
11 came in November and December.

12 A. They knew about some of them before I invested.

13 Q. But you'd agree that when we're talking about
14 being over budget, there were several million dollars in
15 change orders that came in in November and December, right?

16 A. The actual signing of the change orders, but they
17 were obviously discussed before then, that they were actually
18 signed and authorized, some of them, before I invested that I
19 was not told about.

20 Q. The records will speak for themselves on that.
21 I'm not going to waste the Court's time going back through
22 the documents. But you also understood that there were what
23 I'll call elective changes, changes that the executive
24 committee wanted to make to the project now given the fact

1 that they were seeking additional financing rather than
2 opening the project and having to do them later. You heard
3 that testimony, too, right?

4 A. They wanted change orders or they wanted to change
5 the financing?

6 Q. No. That there were things they wanted to do to
7 the project now since they were going to go get additional
8 financing that wasn't required, something they didn't have to
9 do, they would like to do it, but it wasn't a requirement, it
10 wasn't a code upgrade. It was something that was elective
11 that would make the project better. And they said, well, you
12 know, if we're going out and getting financing, we might as
13 well add those to the budget and do them now. You heard that
14 testimony, too, right?

15 A. I believe so.

16 Q. And you also understood that there were carrying
17 costs or finance costs associated with taking out Hall and
18 Ladera and replacing it with the Mosaic loan, correct?

19 A. I didn't understand the extent of that, but, yes.

20 Q. But the accumulation of those things are what
21 makes up this 15 to \$16 million that you're talking about,
22 right?

23 A. I thought that part of the changes were the
24 difference between the 51 and the 55 million, which was

1 already in consideration, because the project was selling out
2 at the 20 million, which was the trigger for that.

3 MR. LITTLE: I don't have anything further, your
4 Honor. Thank you, Mr. Yount.

5 THE COURT: Mr. Wolf.

6 MR. WOLF: Nothing further, your Honor.

7 THE COURT: Thank you, Mr. Yount. You're off.
8 Watch your step going down. Mr. Campbell.

9 MR. CAMPBELL: Mr. Chaney is out in the hall.
10 I'll go get him.

11 One witness sworn at this time.

12 THE COURT: Mr. Campbell.

13 BRANDON CHANEY

14 called as a witness and being duly sworn did testify as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Please state your name for the record.

19 A. My name is Brandon Chaney.

20 Q. Where are you currently employed?

21 A. Fairwinds Estate Winery.

22 Q. Just generally, can you tell the Court your
23 background?

24 A. Professional?

1 Q. Yes.

2 A. I spent a few years at General Electric working in
3 their GE nuclear and aircraft engines. And I was CEO of a
4 public utility company in Nevada and California for about
5 20 years.

6 Q. And can you explain to the Court what the IMC or
7 the Incline Men's Club is?

8 A. The Incline Men's Club is basically an office, a
9 shared office environment that myself and a few other folks
10 created back in 2014.

11 Q. And is it a legal entity?

12 A. It is a legal entity itself, but the office is
13 not.

14 Q. But is there a legal entity the Incline Men's Club
15 something or other?

16 A. It is.

17 Q. What's the full name of that?

18 A. It is IMC Investment Group, CNR, LLC.

19 Q. Is the IMC -- I'll call them the IMC for short.

20 A. Uh-huh.

21 Q. They're an investor in the Cal Neva Lodge LLC?

22 A. It is, yes.

23 Q. Tell me how that investment came about.

24 A. It was back in, I guess, the summer of 2014, some

1 of the IMC members were contacted or ran into Dave Marriner
2 at a cocktail party and mentioned about this opportunity that
3 was going on with the Cal Neva. And he connected us with
4 Robert Radovan and we had a meeting with Robert Radovan. And
5 then we had a tour by Dave Marriner and Robert Radovan and
6 then subsequent meetings and discussions about the
7 investment.

8 Q. And then, ultimately, did the IMC make an
9 investment?

10 A. The IMC did make an investment of \$6 million in
11 the project.

12 Q. Do you remember about when that was?

13 A. That happened in, I'd say, September of 2014.

14 Q. Now, prior to that investment, you just testified
15 that Mr. Marriner was involved in the lead-up to your
16 investing the money?

17 A. Yes, he was.

18 Q. Can you explain to the Court a little more what
19 his role was in ultimately the IMC's decision to invest?

20 A. Well, he acted as representative of the
21 investment, to present it to folks in the community,
22 specifically my group, and he answered questions about the
23 investment, he gave us materials, he gave us tours and
24 vouched for, you know, the manager, the ultimate developer

1 that was going to be running the project.

2 Q. Did he tell you about whether he had done any due
3 diligence on the investment?

4 A. He did. He said he -- that these guys check out,
5 that they have an amazing track record. They've had, you
6 know, sloughs of amazing projects and experience,
7 specifically in hospitality.

8 Q. How about the -- did he talk to you about the
9 construction budget, the construction schedule, things like
10 that?

11 A. He did. I mean, one of our concerns was whether
12 the project could be completed as stated, the budget they had
13 presented and in the time line. He as well as Mr. Radovan
14 and Criswell, Bill Criswell, said they had -- they had gone
15 over -- first of all, crawled around the project, underneath
16 the project, backwards and forwards, and they knew that thing
17 inside and out and the budget was absolutely ironclad.

18 Furthermore, they were hiring a general contractor
19 on a fixed bid basis, so there was really no way this thing
20 could ever go over budget.

21 Q. And it's my understanding that you as a member of
22 IMC are on the executive committee of the LLC?

23 A. Yes. Because we were the largest equity investor
24 in the project, the operating agreement stated that entity or

1 individual would hold a position on the executive committee.

2 Q. Tell me about the makeup of the rest of the
3 executive committee?

4 A. The makeup would have been Robert Radovan and Bill
5 Criswell, Les Busick, who is another large investor in the
6 project, myself, and originally Troy Gillespie, who is also a
7 member of the IMC as well.

8 Q. And that was the --

9 A. That was the executive committee, yes.

10 Q. What was your understanding what the executive
11 committee was supposed to do?

12 A. Well, the executive committee was to, you know,
13 help make major decisions in the project and be involved,
14 meet with the managers of the project on a monthly basis
15 during construction, review financials, act as a check and
16 balance, and help guide the project.

17 Q. Was the executive committee supposed to have
18 meetings on certain dates?

19 A. We were supposed to have meetings every month at
20 the beginning of construction until completion.

21 Q. And did that happen?

22 A. It did not.

23 MR. LITTLE: I'm going to object on relevance.

24 This isn't a mismanagement case. We're talking about

1 Mr. Yount's case and it sounds like we're here talking about
2 contentions that the IMC group has.

3 THE COURT: Overruled.

4 MR. CAMPBELL: I'll lay some foundation.

5 THE COURT: Overruled. Go ahead.

6 THE WITNESS: Can you repeat the question? Is
7 there a question?

8 THE COURT: Just restate the question.

9 MR. CAMPBELL: Okay.

10 BY MR. CAMPBELL:

11 Q. Were there regular meetings of the executive
12 committee?

13 A. They were not regular.

14 Q. So let's start back in -- let's start in the
15 spring of 2015, was there an executive committee meeting?

16 A. I recall we had a meeting in February and one in
17 April and then we didn't have one probably until October.

18 Q. Of 2015?

19 A. Yes.

20 Q. Was there an executive committee meeting at the
21 Fairwinds in July of 2015?

22 A. There was a meeting at the Fairwinds House that
23 sits on the water there, but it was more of a meet and greet
24 kind of meeting with all of the investors, kind of an update,

1 if you will, or, you know, warm and fuzzy meeting I guess I
2 would describe it.

3 Q. Were cocktails and hors d'oeuvres served?

4 A. Yes.

5 Q. Do you know if either Mr. -- do you remember if
6 either Mr. Criswell -- strike that. Did you attend that
7 meeting?

8 A. I believe so.

9 Q. Did either Mr. Criswell or Mr. Radovan make any
10 presentations to the members in that meeting?

11 A. I remember Robert Radovan standing up and just
12 kind of giving an overview that everything was looking great
13 and it was going to be a great project.

14 Q. Were there any budget discussions in that meeting?

15 A. After kind of the cocktail hour, some of the
16 members of the executive committee kind of went to another
17 room and just sat down for a few minutes. And I do recall
18 Robert Radovan talking about, you know, looking at some
19 refinancing options and specifically the mezzanine loan.
20 About, you know, so we could -- we could get the condo
21 projects going. And, you know, he was kind of insinuating
22 there might be some additional things that the Starwood folks
23 would want to do on the project that we might want to spend
24 more money on.

1 Q. Anything else you remember about that, talking
2 about the mezzanine?

3 A. I don't, clearly. Other than that the mezzanine
4 loan was really a way to expand to get a little more cushion
5 in the project and take advantage of the condos so we can
6 make money.

7 Q. Tell the Court about the condos. There's been
8 some testimony throughout this hearing. What was your
9 understanding of how the condos worked with the project?

10 A. The condos, there were 28 units that could be
11 built. We weren't really sure if they were entitled, I don't
12 know if they were approved. And it was kind of the next
13 phase of the project. So it wasn't really funded in the
14 initial phase of the project is my understanding. But there
15 was potential upside in that.

16 Q. So your recollection, though, those condos,
17 funding for those condos was in Mr. Radovan's discussion
18 about the refinance of the mezz?

19 A. Yes.

20 Q. Did Mr. Radovan give you any dollar quantification
21 as to where the money from the refinance was going to go?

22 A. He said that it would pay off the second mortgage,
23 if you will, of the project, which was with Ladera, and that
24 was probably 6 to \$8 million. And then some of it would go

1 to the condo development and some would go to enhancing the
2 project.

3 Q. Was there also discussion about change orders at
4 that time?

5 A. There was some grumblings about, you know, maybe a
6 million or two in change orders, potentially, based on code
7 changes we were talking about. But we couldn't get any
8 quantification or any details on that, that we could make
9 heads or tails of.

10 Q. Was Mr. Radovan providing at least the EC regular
11 updates on things like change orders?

12 A. No, he was not. And it was -- it was a serious
13 bone of contention, because we wanted information. We
14 couldn't get financials. We couldn't even get him on the
15 phone half the time.

16 Q. And when did that issue arise from your
17 perspective?

18 A. Started happening kind of after they got our
19 money, and then once he got it, he kind of disappeared.

20 Q. Was Mr. Radovan on the project every day?

21 MR. LITTLE: Objection, foundation.

22 THE COURT: Sustained.

23 BY MR. CAMPBELL:

24 Q. How often did you see Mr. Radovan on the project?

1 A. We never saw him on the project. I lived in town,
2 we would go by the project, he was never there.

3 Q. So did there come a point about getting documents
4 regarding the project, something came to a head?

5 A. Yeah, finally, we called a meeting with Robert in
6 October of 2015 and just told him that this has to stop.
7 You've got to start having regular meetings. You have to
8 stop breaching the operating agreement, basically.

9 And at that point, he had talked about there being
10 some serious costs overruns in October and we were just
11 floored by it and we were blind-sided by it.

12 Q. So what did he tell you about the cost overruns?

13 A. He said it could be \$9 million in October, but he
14 was still kind of going through the budget, he wasn't sure,
15 which kind of blew my mind, because he's supposed to be
16 managing the project. But -- so we literally, we called him
17 into our offices and sat him down and he promised information
18 by the 31st of October. He had it all, it was all going to
19 be there by October 31st.

20 Q. And what information were you looking for?

21 A. We wanted the audited financials from 2014, which
22 were required to be done within, you know, a certain period
23 of time at the end of the year. We wanted monthly financials
24 for 2015, which we hadn't seen. We wanted a detail, you

1 know, what aspects of the project were off on timing and why
2 and specifically what change orders, you know, were the
3 result of those. And he said, no problem, I'll get it to you
4 tomorrow.

5 Q. Prior to that meeting, had you ever seen a recap
6 of the change orders or a schedule of change orders?

7 A. Not that I recall. They would send over basically
8 information that was -- you couldn't even read. You had no
9 idea what it was. It looked like it was done on Excel.

10 Q. And then Mr. Radovan told you that he would get
11 you the documents, did he?

12 A. He did not. And that forced us to send him a
13 letter, you know, communicating these breaches to him in
14 early November.

15 Q. And what was in that letter?

16 A. Well, just that he had been breaching the
17 operating agreement. We weren't having meetings. We weren't
18 getting financials. There was no transparency. We would get
19 a different story from Bill versus Robert versus the ladies
20 working in his office. We felt like we couldn't trust him.

21 Q. Did you ever follow-up -- let me get it straight.
22 He promised you some financials, he didn't deliver, and then
23 you sent him a letter sometime in November of 2015?

24 A. Yes. I think it's November 4th we sent a letter.

1 Q. And did that spur any action by Mr. Radovan?

2 A. Not really. You know, we had an executive
3 committee meeting shortly thereafter and we all voiced our
4 concerns again. You know, I'd say by the beginning of
5 December, we started seeing some things. But we learned, you
6 know, even though he had represented that we had audited
7 financials in 2014, they weren't done. They weren't done.
8 We couldn't -- I don't think by March of 2016, we still
9 hadn't seen any monthly financials of the project for almost
10 two years.

11 Q. And in that November -- you said that was an
12 executive committee meeting?

13 A. Yes.

14 Q. And in that November executive committee meeting,
15 did you ask for more detail on the change orders?

16 A. We did. We did.

17 Q. And what detail was given to you?

18 A. I don't remember. It wasn't detailed. It was
19 basically high level buckets of things that he says caused
20 overages in the project. Totaling some maybe a million or
21 two were discretionary upgrades and then, you know, 7 million
22 were either code changes or unforeseen things that happened.

23 Q. Does this lack of transparency, were you concerned
24 about the lack of transparency in not getting these

1 documents?

2 A. I was very concerned. We invested \$6 million in
3 this project.

4 Q. Well, did that executive committee meeting spur
5 some kind of a follow-up meeting?

6 A. It did. There were a couple of meetings. I think
7 we had a telephonic conversation around Thanksgiving. And
8 then we had another executive committee meeting in December.
9 And, you know, one of the things we were pushing is you got
10 to tell other people what's going on here. He didn't want to
11 tell any of the other investors what was happening. And it
12 made everyone in the executive committee very uncomfortable.

13 Q. So was there a follow-up meeting with actual
14 investors other than the EC members?

15 A. There was a meeting on December 12th, which was
16 supposed to be a quasi Christmas party. And Robert wanted to
17 do it in Vegas, do a big shindig in Vegas and spend a bunch
18 of money. And the executive committee said, hey, this isn't
19 a time to spend money. This isn't a time to celebrate.
20 We've got some serious problems here. We should have it on
21 the property so we can really update everyone on what was
22 going on. And he didn't want to do that, but ultimately
23 agreed to do the party there.

24 Q. Were you at that December 12th meeting?

1 A. I was not. I was prescheduled to be out of town.

2 Q. Prior to that meeting, did the IMC meet and
3 somehow collaborate on disrupting or making a show in that
4 December 12th meeting?

5 A. Not to my knowledge, no.

6 Q. And you were --

7 A. I was out of town, so --

8 Q. You never saw any e-mails or asked to participate
9 in some kind of staged show at the December 12th meeting?

10 A. No, not at all. I mean, our concern was how that
11 party was going to go, because a lot of people didn't know,
12 the cat was just coming out of the bag that this project was
13 in deep trouble.

14 Q. And I think you said you weren't at the meeting,
15 right?

16 A. Yes, that's right.

17 Q. Did the other people in the investors group,
18 either your members in the IMC or other investors talk to you
19 after the meeting?

20 A. They did, yes.

21 Q. What did they tell you?

22 MR. LITTLE: Objection, hearsay.

23 MR. WOLF: Join.

24 THE COURT: Sustained.

1 BY MR. CAMPBELL:

2 Q. What was your impression as to what happened at
3 that meeting?

4 MR. LITTLE: Same objection, your Honor.

5 THE COURT: He wasn't present at the meeting.

6 BY MR. CAMPBELL:

7 Q. Did you have follow-up conversations with
8 Mr. Radovan and Mr. Criswell after the December 12th meeting?

9 A. Yes, I did.

10 Q. And what were those conversations centered on?

11 A. It was like, how did the meeting go? And they
12 said it was very difficult. People were very upset to learn
13 that the project was in deep trouble.

14 Q. By this time, was the IMC group concerned about
15 his investment?

16 A. We were very concerned.

17 Q. And why was that?

18 A. Well, it was represented to us that this was an
19 amazing opportunity, that was it was an ironclad budget, that
20 the developer and manager we had in place knew what they were
21 doing and had a lot of experience, and we weren't getting
22 information. The project was grossly over budget. We found
23 out it was over \$20 million over budget, starting with a
24 \$30 million budget to begin with, so almost, you know,

1 40 percent over budget, 50 percent over budget.

2 And we were just very concerned that this was just
3 heading down a downward spiral and we were going to lose our
4 money.

5 Q. Let's backup just a little bit in the time line.
6 You know Les Busick. He was on the EC with you, right?

7 A. Yes.

8 Q. In September of 2015, did you know how much money,
9 additional money could be raised under the private placement
10 memorandum?

11 A. I did not, because it was very confusing exactly
12 how much money came into the project. Robert Radovan and
13 Bill had represented they put \$2 million in, although one of
14 the things we were asking him for is, how did you put that
15 money in? Give us some details of that.

16 And we kept getting different cap tables from him
17 that he would present to the executive committee. So we
18 just -- it was just completely disorganized. We had no idea.

19 Q. Okay. Did Mr. Radovan ever tell you that in early
20 October, late September, that Les Busick had invested another
21 million and a half dollars into the project?

22 A. I actually heard that from Les Busick. I did not
23 hear it from Robert Radovan.

24 Q. So Radovan never told you about that?

1 A. No.

2 Q. Did Mr. Radovan ever tell you that he was going to
3 sell Stuart Yount one of the CR shares?

4 A. He had mentioned that there was someone else
5 potentially coming in, but there was some kind of an IRA
6 thing that was holding it up. But I didn't know. He
7 might -- if he mentioned Stuart's name, I didn't know Stuart,
8 so I don't remember.

9 Q. Did it later come to your attention that
10 Mr. Radovan purportedly claimed that he had sold a CR share
11 to Mr. Yount?

12 A. I learned about that in January. It was kind of
13 a --

14 Q. Let's backup. Did you understand that, I think
15 your testimony was that CR had some shares under the LLC,
16 correct?

17 A. Yes. They supposedly had put in \$2 million for
18 preferred shares, yes.

19 Q. And when you found out in January, what did you
20 find out what Mr. Radovan had done with Mr. Yount?

21 A. Well, I mean, I had learned that he had
22 oversubscribed the PPM. He took money from Les Busick and
23 offered him additional perks and benefits without disclosing
24 that to the EC or the IMC. He also had taken the money from

1 Stuart Yount.

2 At that point, you know, everyone started talking,
3 what's going on here? So I had a conversation with Stuart.
4 He said, I thought I was buying into this, but, you know, now
5 they're trying to say I'm going to buy their shares and I
6 was -- we were very alarmed to hear that, because something
7 that was very important to us from the beginning was that the
8 folks running the project actually had skin in the game. And
9 now when the ship is kind of getting very rocky, putting up
10 on the rocks, the first thing they do is they payout all of
11 their developer fees and then they sell -- supposedly sell
12 one of their shares to get money out of the project, kind of
13 leaving us hanging out to dry.

14 Q. When you say they sold their developer fees, what
15 do you mean?

16 A. When Les Busick put his money in, the 1.5 million,
17 one of the things that Les demanded, he told me, is that they
18 were not to be paid --

19 MR. LITTLE: Your Honor, I'm going to object.
20 It's hearsay.

21 THE COURT: Sustained. Rephrase the question,
22 Mr. Campbell.

23 BY MR. CAMPBELL:

24 Q. What was your understanding of Mr. Busick's --

1 what was your understanding of what the developer was
2 entitled, as far as development fees?

3 A. They were to be paid \$60,000 a month up to, I
4 think, \$1.5 million, \$2 million, something like that.

5 Q. Did it come to your attention that at some point
6 in the fall of 2015, they paid themselves a large chunk of
7 those development fees?

8 A. Yeah. At the moment the project started really
9 hurting and needed money, they wrote a large check to
10 themselves.

11 MR. LITTLE: I object, your Honor, lack of
12 foundation.

13 BY MR. CAMPBELL:

14 Q. How did you -- did you see that somewhere in the
15 books or how did that come to your attention?

16 A. I specifically asked Robert. He said, yes, we
17 paid ourselves.

18 THE COURT: Overruled.

19 BY MR. CAMPBELL:

20 Q. So let's move to maybe the latter part of
21 December -- strike that. Going back to July, the discussion
22 you had with Mr. Radovan or with Mr. Criswell centered around
23 a refinance of the mezz, right?

24 A. That's correct.

1 Q. At some point, did the refinance talk more about a
2 refinance of the entire project, not just the mezzanine
3 finance?

4 A. Yeah, it was after that. I think the attempts to
5 refinance the mezzanine wasn't coming to fruition. So they
6 were looking at other options to refinance the project. And
7 at some point, I think in October, they started talking about
8 an outfit called Mosaic.

9 Q. Was this conveyed to you sometime in one of these
10 October meetings?

11 A. I was -- the meeting that I had talked about
12 before where we called Robert in, that was around the time
13 this Mosaic thing was coming to the table. The reason I
14 remember it is I was out of the country and Robert called me
15 and I was in Europe.

16 Q. What was your understanding of the nature of the
17 Mosaic loan in that October time frame?

18 A. My understanding was that it was someone that
19 potentially could refinance the entire project, maybe provide
20 additional monies based upon whatever the appraisal was of
21 the project. And Robert was basically trying to negotiate
22 some terms to see if we could get something that would be
23 attractive for the project.

24 Q. And did he give you a term sheet or give you an

1 outline of what the terms were going to be?

2 A. He said that they had provided a term sheet and
3 that it was nonbinding. And at some point, I think he sent
4 it to us in -- he sent it to us in a packet with a bunch of
5 stuff. I never actually saw it when I came over in October.
6 But, yeah, it was very difficult to get information about the
7 conversations or what's happening with Mosaic. So we kind of
8 took it as we didn't know really what the terms were.

9 Q. And were there follow-up conversations in November
10 about the Mosaic loan?

11 A. You know, the Mosaic was there, but there was so
12 much else going on at that point with all this change order
13 business and the Mosaic thing was kind of pushed off to the
14 side. And they were scrambling to get information to the
15 membership, specifically the EC, because we were demanding
16 financials and change order reports and then we were in the
17 holidays as well.

18 Q. Did Mr. Radovan ever tell you or the EC that
19 without the Mosaic loan, the project was not going to move
20 forward?

21 A. Well, we learned that, you know, I'd say in Q1 of
22 2016 that if we didn't get a refinance or more money, the
23 project was doomed.

24 Q. Let's talk a little more about the Mosaic loan.

1 Were there conversations in the EC in that November meeting
2 about either go, no go with the Mosaic loan?

3 A. We told Robert we thought it was in the best
4 interests of the project to try to see what kind of terms we
5 could get out of Mosaic. And at that point, Troy Gillespie
6 had stepped off of the EC, he was so disgusted with Robert
7 and Bill managing it. So Paul Jamieson was added on to the
8 board.

9 Paul was kind of a whiz when it comes to analyzing
10 financial matters. We were very interested to see what terms
11 we could get and how it would affect the overall, you know,
12 performance of the project. We didn't want to go from the
13 frying pan into the fire, but we needed to figure out this
14 problem, because Robert and Bill couldn't do it on their own.

15 Q. So did you get some kind of follow-up on that from
16 Mr. Radovan and Mr. Criswell that outlined those?

17 A. In November, December and January, we really could
18 not get any information about it. It was like they kind of
19 pushed Mosaic to the side. We kept asking about it.

20 Q. Okay. And did there come a time when you met with
21 Mosaic?

22 A. Yes. The entire EC, other than Robert and Bill,
23 met with Mosaic I think in the beginning of February in
24 Sacramento.

1 Q. How did that meeting come about?

2 A. That meeting came about, I was contacted by
3 Mosaic, and Mosaic called me up and said, hey, we haven't
4 heard from Robert or Bill.

5 MR. LITTLE: Your Honor, I'm going to object.
6 It's hearsay.

7 THE COURT: Sustained. Rephrase the question.
8 BY MR. CAMPBELL:

9 Q. Did Mosaic ask you for the meeting?

10 A. Mosaic asked for the meeting with the EC, yes.

11 Q. You didn't reach out to try to set up the meeting?

12 A. No.

13 Q. And then you were in the meeting with Mosaic?

14 A. I was in the meeting with Mosaic, along with Phil
15 and Les Busick and Paul Jamieson.

16 Q. So both the Busicks were there?

17 A. The entire executive committee was there.

18 Q. With the exception of Robert and Bill?

19 A. Yes.

20 Q. Let's took to an exhibit here. It's Exhibit
21 Number 124, Mr. Chaney.

22 A. Okay.

23 Q. If you look at the first string in the e-mail,
24 which is from Sterling Johnson. It's the next to last page

1 in the e-mail string.

2 A. Yes.

3 Q. Okay. This was a letter from Mosaic to
4 Mr. Criswell and Radovan?

5 A. Yes.

6 Q. Did you get a copy of that letter at some point?

7 A. I did. I've seen this or something to that effect
8 before. I think it was forwarded to me.

9 Q. If you look to the next page?

10 A. Yeah. I see I was on the string later.

11 Q. And then in the middle of the page, it appears
12 that Les Busick sent an e-mail to the other members?

13 A. I see one from Paul. What is the subject line?

14 Q. Okay. Well, it says all.

15 A. Okay.

16 Q. So you're referring to the previous page, it looks
17 like Paul Jamieson sent an e-mail and then it was to Heather
18 Hill and a bunch of people on the list?

19 A. Yes.

20 Q. And then the body of that e-mail is starting with
21 all?

22 A. Yes.

23 Q. So it was Mr. Jamieson who sent the e-mail?

24 A. Yes.

1 Q. Mr. Jamieson was at the Mosaic meeting?

2 A. Yes, he was.

3 Q. And do you see the representations in the bullet
4 points as to what transpired in the meeting?

5 A. I do.

6 Q. And would you agree with what Mr. Jamieson says as
7 to what transpired and what he put in that document?

8 A. Can I read this?

9 Q. Sure.

10 A. I would agree with that.

11 Q. You were at the meeting?

12 A. I was at the meeting.

13 Q. So when Mr. Johnson wrote the letter to
14 Mr. Radovan, he also refers to a bit of a mess right now,
15 right?

16 A. Yeah. Yes.

17 Q. And the second bullet point that Mosaic expressed
18 some concerns about the cost overruns, delay and lack of CR
19 transparency?

20 A. Yes.

21 Q. Did you or either Mr. Busick or Mr. Jamieson go
22 into the meeting to somehow torpedo the Mosaic loan?

23 A. Absolutely not. We wanted this project to
24 succeed. So we were looking for any way -- I mean, our big

1 concern with Mosaic was nothing was moving forward and that
2 we had -- we were committed to a million dollar break-up fee
3 with them, which, you know, it was concerning. So when
4 Mosaic contacted me and they said, do you know you're on the
5 hook for a million dollars?

6 MR. LITTLE: Objection, your Honor, hearsay.

7 THE COURT: Sustained.

8 BY MR. CAMPBELL:

9 Q. What was your understanding of the break-up fee?

10 A. That if we didn't move forward with the project,
11 it would be a certain percentage of the maximum loan amount.

12 Q. And how much was that break-up fee?

13 A. I remember doing the math and it was a million
14 dollars.

15 Q. And at the bottom of those bullet points, it says,
16 the ripped up term sheet waives the 1 million fee from Mosaic
17 it says it is currently owed?

18 A. Yes.

19 Q. Is that accurate that transpired in that meeting?

20 A. Yes.

21 THE COURT: Mr. Campbell, we're going to have to
22 break now. Sir, you can step down. Watch your step going
23 down. We'll pick up tomorrow morning at 9:00 with the Skype.

24 MR. CAMPBELL: Yes.

1 THE COURT: Just work with the IT people and make
2 sure that it's working. Court's in recess.

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