

Case No. 74275

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**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.

Electronically Filed  
Mar 05 2019 08:53 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**APPEAL**

from the Second Judicial District Court, Washoe County, Nevada

The Honorable N. PATRICK FLANAGAN, District Judge

The Honorable JEROME POLAHA

The Honorable EGAN WALKER

District Court Case No. CV16-00767

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**APPELLANT'S APPENDIX**

**VOLUME 9**

**PAGES 2001-2250**

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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 6, 2017, at the hour of  
8 1:30 p.m., and took verbatim stenotype notes of the  
9 proceedings had upon the trial in the matter of GEORGE S.  
10 YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al.,  
11 Defendants, 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 845, 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 10th day of October 2017.

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

47

47

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 VI

20 September 7, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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



1 APPEARANCES:

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17  
18  
19  
20  
21  
22  
23  
24

1 RENO, NEVADA, September 7, 2017, 9:00 a.m.

2  
3 --oOo--

4 MR. CAMPBELL: I have Mr. Tratner on the video  
5 screen.

6 THE COURT: All right. Mr. Tratner.

7 MR. CAMPBELL: Good morning.

8 THE COURT: Just a minute, we have to swear in the  
9 witness.

10 (One witness sworn at this time.)

11 KENNETH TRATNER

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

13 follows:

14 DIRECT EXAMINATION

15 BY MR. CAMPBELL:

16 Q. Morning, Mr. Tratner.

17 A. Good morning.

18 Q. Can you hear me okay?

19 A. I can.

20 Q. You're Mr. Yount's accountant, correct?

21 THE COURT: Can we get his name and spell the last  
22 name.

23 BY MR. CAMPBELL:

24 Q. Could you state your name for the record and spell

1 your last name?

2 A. Kenneth Tratner, T-r-a-t-n-e-r.

3 THE COURT: Thank you.

4 BY MR. CAMPBELL:

5 Q. You're Mr. Yount's accountant?

6 A. That's correct.

7 Q. And how long have you been his accountant?

8 A. For over 25 years.

9 Q. In July or August of 2015, did Mr. Yount contact  
10 you about an investment he was contemplating?

11 A. Yes, he did.

12 Q. And what investment did he say he was looking at?

13 A. A project that related to the Cal Neva Hotel.

14 Q. And did he ask you to do some investigation on  
15 that project?

16 A. Yes.

17 Q. What did he ask you to do?

18 A. He forwarded some of the offering documentation  
19 and asked that I take a look at it for overall  
20 reasonableness.

21 Q. When you say overall reasonableness, what were you  
22 understanding that to be?

23 A. Looking at the financial reports that were in the  
24 documentation for the investment opportunity and whether the

1 numbers made sense.

2 Q. And the numbers, are you talking about budget  
3 numbers or revenue numbers?

4 A. It was a combination of the project costs and  
5 profit and loss forecast for a period of time.

6 Q. And was specifically Mr. Yount asking for some  
7 conclusion as to some aspect of the project?

8 A. It was an overall sort of a, do the numbers make  
9 sense from an investment opportunity perspective.

10 Q. Investment opportunity, meaning return on  
11 investment?

12 A. Yes.

13 Q. Were you provided with -- strike that. At some  
14 point, did you have either a telephone conversation or an  
15 e-mail exchange with a Mr. Robert Radovan?

16 A. I believe I spoke to him.

17 Q. And did Mr. Radovan or one of his employees or  
18 associates send you certain documents?

19 A. They did. They sent some updated financial  
20 projections on the project.

21 Q. And when you say, updated financial projections,  
22 what did that entail?

23 A. It was basically a profit and loss for a ten-year  
24 time horizon.

1 Q. When you say profit and loss, that means the  
2 revenue stream versus the expenses and what profit might be  
3 shown at the end of that ten-year period?

4 A. That's correct. That's correct.

5 Q. Were you ever asked to specifically look at budget  
6 issues as related to cost overruns, timing of construction,  
7 those time of issues?

8 A. No.

9 Q. Do you remember any e-mail exchanges with  
10 Mr. Radovan?

11 A. There was -- well, I'm not sure if it was direct  
12 with Mr. Radovan. Actually, I think he sent me an e-mail  
13 acknowledging that he was going to send some additional  
14 financial information to us.

15 Q. Did you ever have a telephone call with  
16 Mr. Radovan?

17 A. I believe I did, yes.

18 Q. And do you remember what was discussed in that  
19 call?

20 A. Not all the details, but we were asking about the  
21 status of the project from a forecasting perspective.

22 Q. And what do you mean by forecasting perspective?

23 A. The numbers in the original documentation that we  
24 reviewed were from 2014. So we inquired about whether there

1 was current information available.

2 Q. Again, related to the pro formas on the revenue  
3 and income?

4 A. That's correct.

5 Q. Did Mr. Radovan mention to you anything about the  
6 current status of the project and the amount of change orders  
7 on the project?

8 A. No, he did not.

9 Q. Did Mr. Radovan mention anything to you about  
10 potential delays in the opening date of the project?

11 A. No, he did not.

12 Q. If Mr. Radovan had mentioned those issues to you,  
13 what would you have done?

14 A. I would have discussed them with Stuart Yount.

15 Q. Do you remember any such discussion?

16 A. No.

17 MR. CAMPBELL: That's all I have, your Honor.  
18 Thank you, Mr. Tratner.

19 THE COURT: Mr. Little.

20 MR. LITTLE: Thank you, your Honor.

21 CROSS EXAMINATION

22 BY MR. LITTLE:

23 Q. Good morning.

24 A. Good morning.

1 Q. My name is Marty Little and I represent the  
2 Criswell Radovan entities in this lawsuit. Just a couple of  
3 quick questions for you. I assume you don't have any of the  
4 exhibits in front of you?

5 A. I have some information.

6 Q. Do you have the information -- do you have your  
7 file, in other words, the communications that went back and  
8 forth between you and Mr. Yount or you and the Criswell  
9 Radovan side with respect to this investment?

10 A. I have some of them.

11 Q. Okay. So I'll represent to you that trial  
12 Exhibit 19 is a July 26th, 2015 e-mail to you from Mr. Yount.  
13 Do you have that e-mail accessible?

14 A. July 26th?

15 Q. Yes, sir.

16 A. Let me take a look. I don't believe I have that  
17 one in front of me.

18 Q. I'll represent to you that Mr. Yount indicated he  
19 provided you some information about the project, said his  
20 investment would be \$1 million of a 60 plus million dollar  
21 project for which he would have a three and a half percent  
22 ownership. Is that ringing some bells?

23 A. Yes.

24 Q. And then he also indicates that he's attaching the

1 offering for your review, which you talk about the those are  
2 the private placement documents that you reviewed on his  
3 behalf, right?

4 A. That's correct.

5 Q. And he also indicates in this e-mail that he's  
6 attaching notes that he's taken from conversations. Sir, we  
7 know from testimony in this case that those notes are trial  
8 Exhibit 21 and those are notes that he took as a result of  
9 conversations he had with Mr. Radovan and others. Do you  
10 recall receiving those notes?

11 A. Yes. I have those in front of me.

12 Q. And, sir, those notes provided updated  
13 information. In other words, it fast forwarded from where  
14 the pro formas and budgets were back in the 2014 documents  
15 and talked about cost overruns and financial -- or financing  
16 needs that they were seeking, correct?

17 A. There was comment regarding some refinancing.

18 Q. In other words, in the notes, he tells you that  
19 the project is slightly over \$60 million, right?

20 A. I'm not sure if it says that, no.

21 Q. It's at the top of his notes.

22 A. Okay. Yes. Project cost something slightly over  
23 \$60 million.

24 Q. So you have that document?



1           A.     Yes.

2           Q.     And you considered the additional information that  
3 he was presenting to you in your analysis, correct?

4           A.     My analysis was comprised primarily of looking at  
5 the pro forma documentation that was in the offering.

6           Q.     Okay. But you had that information available for  
7 you to review and ask questions, correct?

8           A.     Yes.

9           Q.     Now, sir, another document that was produced in  
10 this case is an August 10th e-mail from a gentleman named  
11 Pete Dordick at Criswell Radovan to yourself and Mr. Yount  
12 and he's basically indicating that Robert had asked him to  
13 forward some pro forma documents to you. And I think that's  
14 what you talked about you received, right?

15          A.     That's correct.

16          Q.     At the bottom of the e-mail, he says, please let  
17 me know if you have any questions. Sir, you would agree with  
18 me at no point in time did you go back to Mr. Dordick,  
19 Robert Radovan or anyone at Criswell Radovan to ask for more  
20 information, correct?

21          A.     I don't believe we did, no.

22                 MR. LITTLE: That's all I have.

23                 THE COURT: Thank you, Mr. Little. Mr. Wolf.

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

## 1 CROSS EXAMINATION

2 BY MR. WOLF:

3 Q. Mr. Tratner, my name is Andy Wolf. I represent  
4 David Marriner and Marriner LLC in this action, a couple of  
5 quick questions. Going to the same e-mail, July 25th, 2016,  
6 do you recall receiving a copy of a Cal Neva Lodge progress  
7 report dated July 2015 in conjunction with your due  
8 diligence?

9 A. I am not sure. It doesn't sound familiar, but I'm  
10 not positive. I'd have to look through what we have.

11 Q. If there's an e-mail from Mr. Yount to you listing  
12 various attachments, is it fair for all of us to conclude  
13 that you received those attachments?

14 A. Yes.

15 Q. In the course of your due diligence, did  
16 Mr. Radovan and his staff answer all of your questions?

17 A. Yes.

18 Q. Was there any information not provided that you  
19 had requested from Mr. Radovan or any of his staff?

20 A. No.

21 MR. WOLF: That's all I have. Thank you,  
22 Mr. Tratner.

23 THE COURT: Thank you. Mr. Campbell.

24 MR. CAMPBELL: No redirect.

1 THE COURT: Thank you, Mr. Tratner.

2 MR. LITTLE: Thank you, sir.

3 THE WITNESS: Okay. Thank you.

4 THE COURT: Can we bring in Mr. Chaney?

5 Mr. Chaney, you remain under oath. Mr. Campbell, your  
6 witness.

7 BY MR. CAMPBELL:

8 Q. Mr. Chaney, when we left off last night, we were  
9 talking about the Mosaic loan. I wanted to follow up with a  
10 couple more questions on that. Can you look at Exhibit  
11 Number 122?

12 A. Certainly. Okay. I have the exhibit in front of  
13 me.

14 Q. It's an e-mail from Mr. Jamieson to Mr. Yount. In  
15 the e-mail, Mr. Jamieson says, yes, it's approved. They may  
16 not be pleased about it, but they authorized such  
17 discussions. What makes it imperative is what we have heard  
18 from Mosaic about their opinion of CR. This meeting is  
19 critical for our benefit, and, frankly, for CR's benefit as  
20 well as they want us to consider such an expensive loan.

21 A couple statements I want to ask you about as to  
22 your knowledge. It says, what we have heard from Mosaic  
23 about their opinion of CR. Had you heard something from  
24 Mosaic about their opinions of CR?

1           A.     Well, when we met with Mosaic in Sacramento we,  
2 EC, Mosaic was, first of all, upset that they hadn't heard  
3 from Robert Radovan in three months. And then they heard the  
4 project was over budget and delayed. So they were concerned  
5 that the developer really knew what they were doing and they  
6 had big concerns.

7           Q.     And when it says the opinion of CR, do you know  
8 what Mr. Jamieson is referring to?

9           A.     Opinion?

10           MR. LITTLE: Objection, your Honor, foundation.

11           THE COURT: Sustained.

12 BY MR. CAMPBELL:

13           Q.     Did Mosaic express to you some opinion of CR?

14           A.     Some opinion --

15           MR. LITTLE: I'm going to object. It's improper  
16 opinion evidence. It's hearsay.

17           THE COURT: Overruled.

18           THE WITNESS: So opinion, you mean an opinion that  
19 CR --

20 BY MR. CAMPBELL:

21           Q.     That Mr. Jamieson's e-mail says, what makes it  
22 imperative is what we have heard from Mosaic about their  
23 opinion of CR. Had you heard anything from Mosaic?

24           A.     Yes. I did hear something from Mosaic about their

1 opinion of CR.

2 Q. Was it good or bad?

3 A. It was not good.

4 Q. And then later on, it says -- Mr. Jamieson says,  
5 this meeting is critical for our benefit, and, frankly, for  
6 CR's benefit as well if they want us to consider such an  
7 expensive loan. Do you know what Mr. Jamieson is talking  
8 about an expensive loan as related to Mosaic?

9 MR. LITTLE: Same objection, foundation.

10 THE COURT: Why don't you ask him if he knows  
11 about the Mosaic loan.

12 BY MR. CAMPBELL:

13 Q. What did you know about the Mosaic loan, as far as  
14 it's expensiveness.

15 A. Well, it was an extremely high interest rate with  
16 extremely high fees, and, frankly, it didn't appear to be  
17 enough money to even finish the project.

18 Q. Your understanding of the -- what was your  
19 understanding of the amount that they were going to loan?

20 A. I thought it was 19 million, if my memory serves  
21 me correct.

22 Q. Was it somehow conditioned?

23 A. It was conditioned upon an appraisal of the  
24 property.

1 Q. So after this time frame, the Mosaic meeting and  
2 then the e-mails we looked at yesterday about Mosaic sending  
3 the e-mail to Mr. Radovan, did CR, Mr. Radovan or any of the  
4 investors circle back around and talk to Mosaic?

5 A. No. The only time I talked to Mosaic was in that  
6 meeting. I didn't talk to them after that.

7 Q. Did Mr. Criswell or Mr. Radovan update the  
8 investor group about any follow-up conversations with Mosaic?

9 A. No. I think they kind of let it die and looked at  
10 other options, mainly because they wanted to stay in control  
11 of the project. And I think the only way Mosaic would do the  
12 loan is if they had someone that was managing it that knew  
13 what they were doing.

14 Q. Did Mosaic ultimately cease, you know, terminate  
15 all further discussions?

16 A. As far as I know, because I didn't hear really  
17 about it after that.

18 Q. Did you receive a letter through the course of  
19 your dealings with Mr. Radovan that was sent from Mosaic to  
20 Mr. Radovan about terminating the loan going forward?

21 A. Yes.

22 MR. CAMPBELL: Your Honor, I have a new exhibit.  
23 I believe it's an impeachment exhibit. It goes directly to  
24 the heart of the evidence that we've heard today from

1 Mr. Radovan as to the -- as to what happened with the Mosaic  
2 loan. Mr. Chaney provided it to me. I did not get it in  
3 discovery. It was not provided in the CR discovery. But I  
4 think it goes to the heart of the matter and it should be  
5 admitted as an impeachment witness.

6 THE COURT: Show it to counsel. You can provide  
7 it to the clerk.

8 THE CLERK: Exhibit 77 marked for identification.

9 THE COURT: Mr. Little.

10 MR. LITTLE: My response is the door is going to  
11 swing both ways on that. The rules of evidence are clear  
12 that you can bring in impeachment evidence if it's truly to  
13 impeach a witness. I guess I'd ask your Honor, you can  
14 separate the wheat from the chaff, we know that. I'm not  
15 going to object to this, but by the same token when I have  
16 impeachment evidence, I'll going to be relying on the same  
17 argument.

18 THE COURT: Mr. Wolf, anything to add?

19 MR. WOLF: I have no further comment on it.

20 THE COURT: All right. Thank you. 77 is  
21 admitted.

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

23 THE COURT: You may.

24 BY MR. CAMPBELL:

1           Q.     Mr. Chaney, I've handed you what has now been  
2 marked as Exhibit Number 77. Is this the letter that you  
3 said you just answered to my previous questions about the  
4 Mosaic letter to Mr. Radovan?

5           A.     That's correct.

6           Q.     Okay. As a member of the executive committee,  
7 were you involved with the refinancing or new financing for  
8 the project in this let's call it December through March of  
9 2016 time frame?

10          A.     Well, I think everyone on the executive committee  
11 wished they were more involved, because everything was kept  
12 very close to the vest of Radovan and Criswell.

13               MR. LITTLE: Your Honor, I would object and just  
14 ask that he talk about himself and not what other executive  
15 committee members may or may not be thinking.

16               THE COURT: Fair enough. Just narrow the  
17 question, Mr. Campbell.

18 BY MR. CAMPBELL:

19          Q.     You did have some knowledge of what was going on  
20 as far as new money coming into the project?

21          A.     Yes.

22          Q.     And you personally?

23          A.     Yes.

24          Q.     Personally, did you ever see Mr. Yount try to



1 sabotage the Mosaic loan?

2 A. Absolutely not.

3 Q. Did you ever see Mr. Yount ever try to sabotage  
4 any other lenders coming into the project?

5 A. Why would he do that?

6 Q. So the answer is no?

7 A. No.

8 Q. Let's backup to the December 2015 time frame after  
9 the December 12th party. I think yesterday you said there  
10 was some concern?

11 A. Uh-huh.

12 Q. Among the other investors that you were privy to  
13 and heard certain conversations, is that correct?

14 A. Yes.

15 Q. There are a lot of e-mails in the record back and  
16 forth, I'm not going to go through them with you, but do you  
17 remember e-mails going back and forth among the various  
18 investors talking about different options?

19 A. Yes.

20 Q. And what were those options to your understanding?

21 A. Options for the project going forward?

22 Q. Yes.

23 A. Yeah. The options were for us to sell the project  
24 is one option, try to recoup our monies the investors have

1 put in. Two is to find another developer to come in and take  
2 the place of Criswell Radovan so that the project could be  
3 brought to fruition and we could raise money.

4 Q. And some of the e-mails that you may see on cross  
5 examination talk about strategies of divide and conquer, or  
6 good cop, bad cop. Do you remember any of those discussions?

7 A. I do.

8 Q. What was that about?

9 A. Well, Robert and Bill were very defensive about  
10 their performance and they obviously wouldn't do what's best  
11 for the project. So we were trying to figure out a way to  
12 get them to do what's best for the project versus what's best  
13 for their own pocketbook.

14 Q. Did they view you as adversaries to them?

15 MR. LITTLE: Objection, calls for speculation.

16 THE COURT: Sustained.

17 BY MR. CAMPBELL:

18 Q. Did they ever tell you that they were your  
19 adversaries?

20 A. They never specifically told me that they were an  
21 adversary, but I would say they could definitely feel the  
22 heat from me holding them accountable for what they needed to  
23 do for the project.

24 Q. In the course of those conversations, did the IMC

1 group or yourself ever ask Mr. Radovan and Mr. Criswell to  
2 disgorge their equity in the project?

3 A. Their equity? Well, they had two pieces of  
4 equity. They supposedly had invested \$2 million, which I  
5 questioned, and I never got detail of, into the preferred  
6 \$20 million preferred equity piece. Then there was a  
7 20 percent common piece that was to participate in any equity  
8 in the project when it was sold down the line after everyone  
9 else was paid out.

10 And one of the options was if they would step  
11 aside and allow a credible manager and developer to come in,  
12 we wanted them to give that up and give it to someone else,  
13 because they were unable to perform.

14 Q. The 20 percent is a back end?

15 A. That's correct.

16 Q. And just to make clear, was that in the operating  
17 agreement?

18 A. That was in the operating agreement, yes.

19 Q. So that 20 percent was only paid after the  
20 other -- after the other equity investors were paid?

21 A. That's correct.

22 Q. Let's go to Exhibit 137.

23 A. Okay.

24 Q. And can you explain to the Court the purpose of

1 this letter that you sent to Mr. Radovan and Mr. Criswell?

2 A. Sure. Well, in November, I had sent them a breach  
3 letter and everything else we had talked about today about  
4 what was going on in November and December. And then I had  
5 sent them a notice to inspect the books and records per the  
6 operating agreement on December 30th.

7 And we hired an outside forensic accounting firm  
8 to take a look at the books, because we couldn't get  
9 financial information, we couldn't substantiate where the  
10 money had gone, what money they had taken out improperly.

11 So we engaged that firm per that notice on the  
12 30th and this was a letter and kind of follow-up of the  
13 sequence of those letters. Basically, telling the findings  
14 of that forensic accounting firm and then all of the  
15 continued breaches that were continuing by them as manager of  
16 the LLC.

17 Q. Let's backup a little bit. You said sometime in  
18 December, you sent them a letter asking for what?

19 A. For the books and records per -- inspection of the  
20 books and records.

21 Q. Was that allowed to your group under the operating  
22 agreement?

23 A. Yes, it is.

24 Q. Had you been provided access to those books and

1 records before?

2 A. No. We were not getting any financial information  
3 of substance from them. So we felt there was some improper  
4 things going on. We needed to look at the books and records.

5 Q. This exhibit references an attachment, is that  
6 correct?

7 A. That's correct.

8 MR. CAMPBELL: Your Honor, I have another new  
9 exhibit. Again, this is a document that was produced by  
10 Mr. Yount. It was not attached to this exhibit. I think for  
11 a full record, if Mr. Chaney can authenticate that this was  
12 the exhibit that was attached to this.

13 THE COURT: Just provide it to Mr. Little and  
14 Mr. Wolf.

15 MR. CAMPBELL: For the record, for foundation,  
16 your Honor, Mr. Criswell -- Mr. Radovan, I believe, testified  
17 as to a particular audit that exonerated him. I wanted to  
18 follow up, because I believe this is cogent to rebut or  
19 impeach that testimony.

20 THE COURT: All right. Mr. Little.

21 MR. LITTLE: Your Honor, first of all, it's  
22 hearsay. We've had no opportunity to depose Darcy Casey.  
23 More importantly, this letter is March 9th. It's two days  
24 before the breach letter that we're talking about in

1 March 11th where they're asking Criswell Radovan to produce  
2 records.

3 MR. CAMPBELL: Well, your Honor, this document, if  
4 you look at the Bates number, the document, the exhibit that  
5 was actually put into the binder of the defendants  
6 specifically refers to, please find attached to this letter a  
7 report of findings from Darcy Casey manager of the Casey  
8 Nelson.

9 If you look at the Bates on this letter and in  
10 this follow on report, they follow right on behind. So this  
11 obviously was produced as one document to the defendants. I  
12 don't know why they didn't attach it when it would have been  
13 a complete record. But I think it's important now to have a  
14 complete record and I think Mr. Chaney can authenticate it as  
15 the document that was attached to this e-mail.

16 MR. LITTLE: Outside of authentication, your  
17 Honor, it's hearsay. And more importantly, it's not  
18 relevant. This is not a mismanagement case. This is a case  
19 about what Mr. Yount knew or didn't know when he invested.

20 THE COURT: All right. I'll admit it.

21 MR. WOLF: I have an objection or at least a  
22 request that the Court limit. There's been no disclosure of  
23 expert witnesses. This is potentially an expert witness  
24 report that is now being brought into the matter through Mr.

1 Chaney as a witness and it should not be considered as an  
2 opinion as to anything stated in it. It might be admissible  
3 for its affect on parties to these transactions, but not for  
4 the substance of what's in the report.

5 THE COURT: Understood.

6 MR. LITTLE: Again, it precedes the breach letter  
7 that Mr. Chaney says he sent on March 11th saying presumably  
8 because of this letter that they needed more information.

9 THE COURT: All right.

10 MR. CAMPBELL: Obviously, it preceded it. If it  
11 was attached to it, it had to precede it in time. It  
12 wouldn't have existed. Your Honor, I just want to use it for  
13 impeachment purposes, because there was direct testimony from  
14 Mr. Radovan about an audit that somehow exonerated.

15 THE COURT: All right. Ms. Clerk, next in order.

16 THE CLERK: Exhibit number 78 marked for  
17 identification.

18 THE COURT: That will be admitted.

19 THE CLERK: Thank you.

20 BY MR. CAMPBELL:

21 Q. Mr. Chaney, you've seen Exhibit Number 78 now. Is  
22 that in fact the report of findings from Darcy Casey that you  
23 attached to the letter to Mr. Radovan?

24 A. It is.

1 Q. And in your letter to Mr. Radovan, Exhibit Number  
2 137, you say at the bottom of the first full paragraph, it  
3 says, the results of this investigation determine that the  
4 accounting records were not reconciled to supporting  
5 documentation on a routine basis and accounting requests by  
6 Casey Nelson were not supplied. Is that correct?

7 A. That's correct.

8 MR. LITTLE: Continuing objection on hearsay and  
9 the same objections I raised.

10 MR. WOLF: Likewise with respect to the use of an  
11 expert opinion by asking him if it's correct and adopting the  
12 opinions stated in this. I think that's improper.

13 MR. CAMPBELL: I didn't ask him if that's correct.  
14 I asked him if that's where he got the language.

15 THE COURT: All right. The objection is  
16 overruled.

17 BY MR. CAMPBELL:

18 Q. And, Mr. Chaney, if you go to the second page of  
19 exhibit, this letter, Exhibit 137, do you see the bullet  
20 points and check points in the second and third page?

21 A. I do.

22 Q. And what were you attempting to convey here?

23 A. I was conveying that, one, the books and records  
24 were not kept accurately and not reconciled. And that we had



1 not received information from them to even do a full -- to  
2 really even see the full picture.

3 Q. Was this the same issue that you testified to  
4 yesterday in the October 2015 time frame?

5 A. Yes.

6 Q. So this problem was, at least in your mind, was  
7 started in October and still hadn't been resolved by March?

8 A. It really started back in April. In February, in  
9 the first meetings, executive committee meetings in 2015,  
10 April of -- and February of 2015 when we weren't getting  
11 financial information.

12 Q. You weren't in court, but Mr. Radovan has  
13 testified that there were allegations of impropriety from  
14 some of the investors. Did you hear about those allegations  
15 of impropriety?

16 A. Impropriety?

17 Q. Financial?

18 A. By the managers?

19 Q. Yes.

20 A. Yes. Absolutely.

21 Q. And Mr. Radovan testified that there was some kind  
22 of an audit that was done and cleared them of any  
23 impropriety. Do you know of any such audit?

24 A. The only audit I know is the one that we conducted

1 with a third party that found that the records were in a  
2 mess.

3 Q. You never seen an additional audit performed by  
4 Criswell Radovan that somehow looked through all the books  
5 and records and made some conclusions?

6 A. No.

7 Q. I'd like you to flip back now to Exhibit Number  
8 64.

9 A. 64. Okay.

10 Q. Flip to what would be the very last page of the  
11 document and it's entitled, resolution of members of Cal Neva  
12 Lodge LLC?

13 A. Okay.

14 Q. In this document, it says that a special meeting  
15 of the members held on January 27th, 2016, the undersigned  
16 members holding at least 67 percent of the percentage  
17 interest approve the following resolution and it goes to the  
18 resolution. Was there any special meeting of the members of  
19 the Cal Neva Lodge on January 27th, 2016 to approve some type  
20 of a resolution?

21 A. There was a -- I believe on January 27th, an  
22 update meeting at the Hyatt, which was a very heated meeting.  
23 People were very upset and there was no resolution and I've  
24 never seen this before.

1 Q. Was there a discussion at the meeting regarding  
2 some kind of a resolution approving a sale of a CR share to  
3 Mr. Yount?

4 A. Absolutely not.

5 Q. Did you understand the operating agreement  
6 requirement about members transferring their shares?

7 A. Yes.

8 Q. What was your understanding of that agreement?

9 A. Well, you'd have to have the other members'  
10 approval to transfer your shares or sell your shares to  
11 someone else.

12 Q. Were the other members ever asked to render  
13 such -- or make such an approval?

14 A. No. Not that I -- the executive committee -- it  
15 was never presented to the executive committee and to my  
16 knowledge never presented to any body else.

17 Q. Would the IMC have voted to approve such a  
18 resolution to transfer the CR share to Mr. Yount?

19 A. Absolutely not. I mean, it was important to us  
20 that the person managing our money had skin in the game.

21 Q. But would the other members have approved such a  
22 resolution?

23 A. Absolutely not.

24 MR. LITTLE: Objection, your Honor, foundation.

1 THE COURT: That is speculation.

2 MR. CAMPBELL: Mr. Radovan gave an opinion, I  
3 believe, that the other members would have approved it.

4 THE COURT: The objection is sustained.

5 MR. CAMPBELL: Okay.

6 BY MR. CAMPBELL:

7 Q. Could you flip to Exhibit Number 51, Mr. Chaney.

8 A. Okay.

9 THE COURT: 51?

10 BY MR. CAMPBELL:

11 Q. 51, your Honor. Thank you. Mr. Chaney, this is  
12 an e-mail from Mr. Criswell to Mr. Yount. You're not on it,  
13 but I wanted to ask you about some language in there. It  
14 says in the last full paragraph, second, if we are unable to  
15 find a buyer for your share before we are reimbursed for the  
16 money we have loaned to the project, almost \$1 million, which  
17 should be reimbursed from the available funds for the new  
18 project capitalization. Had the Criswell Radovan group ever  
19 told you that they had loaned the project \$1 million?

20 A. No. That would be a huge surprise.

21 Q. Was there anything in the offering agreement that  
22 would have required some kind of disclosure of that?

23 A. I think disclosure and approval.

24 Q. Let's go to Exhibit Number 134.

1 A. Okay.

2 Q. This is an e-mail from Mr. Jamieson to him and  
3 then some of the other members of the executive committee, it  
4 looks like Mr. Criswell and Mr. Radovan. Do you see this?

5 A. I do.

6 Q. And this pertains to some kind of a financing.  
7 What was your understanding of both this letter and in the  
8 attach second page of the confidential not for distribution?

9 A. I'm sorry. Can you ask the question again?

10 Q. Just generally, what was your understanding as to  
11 what this was about?

12 A. This was about -- this was, you know, the end of  
13 February of 2016 and we were trying to figure out how to  
14 either sell the project or refinance it or do whatever to  
15 save our money.

16 Q. So what is the GBCI buyout that is referenced in  
17 here?

18 A. GBCI was a party that came forward through Robert  
19 Radovan that claimed they wanted to pay a large sum for the  
20 project.

21 Q. And then on the second page of this document, it  
22 says GBCI, Today Criswell Radovan signed a PSA for  
23 100 percent of the project that requires a \$5 million payment  
24 no later than next Thursday. And it goes on to talk about

1 some of the details of that. What was your understanding as  
2 to what Criswell Radovan had signed as far as a GBCI buyout?

3 A. My understanding was, I wasn't sure if they  
4 actually signed it or not, but we were signing a purchase  
5 sale agreement with GBCI to buy the project, and it was only  
6 binding if they actually put \$5 million down, which never  
7 happened.

8 Q. What happened with that project? Is that the  
9 answer?

10 A. The money never showed up.

11 Q. Did the IMC somehow try to sabotage this buyout?

12 A. Not at all. It would have been a good deal if it  
13 would have happened.

14 Q. Were there other financing options after this GBCI  
15 that were discussed amongst the group?

16 A. Yes.

17 Q. Do you remember any of those?

18 A. One was Colombia Pacific, which is another lender  
19 out of the Pacific Northwest. I remember they were given, I  
20 think, \$150,000 to try to get a deal done, and then they  
21 ended up backing out of the deal.

22 Q. What happened? Why did they back out of that  
23 deal, if you know?

24 A. I think they backed out because they didn't have

1 confidence in Criswell Radovan to do the project and I think  
2 they backed out because the financials were just such a  
3 disarray that I don't think they could get their hands around  
4 it.

5 Q. And were there any other deals, so to speak,  
6 brought to the table after this one?

7 A. I recall another one with a firm called Langham,  
8 who were going to buy out the project as well. And then at  
9 some point we hired a broker to market the project and so  
10 there were a series of others that had looked at the project.  
11 So there were probably ten people.

12 But in all cases, Criswell Radovan wanted to stay  
13 involved and it really scared away anybody who wanted to buy  
14 it or finance it.

15 Q. What happened with the Langham deal?

16 A. I think it fell apart because of lack of  
17 confidence that the deal was going to get done and that there  
18 wasn't skeletons in the closet with the project.

19 Q. Mr. Radovan in his testimony also upon questioning  
20 from his attorneys asked if he thought you had some kind of  
21 grudge or prejudice against him. Do you?

22 A. Well, I'm not happy with him at them at all.  
23 We've lost \$6 million because of them. They represented that  
24 they were experts in hospitality and building hotels. Turned

1 out most of their representations were false. I think they  
2 committed fraud. I lost my money, not only on this deal, but  
3 also in the winery. It was a complete disaster.

4 Q. Let's talk about the winery, because Mr. Radovan  
5 gave his version of what happened in his direct testimony.  
6 Can you tell the Court what happened from your perspective  
7 from the winery deal?

8 A. Absolutely. It's kind of another rerun of the Cal  
9 Neva story in a way. It was Q1 of 2015, Robert came to me  
10 and said that he had found a winery in Napa, that he didn't  
11 have any money, but he was an expert in the wine business and  
12 managing hospitality. If I would put up \$2 million, he would  
13 do the day-to-day management of the winery and we would  
14 comanage the project, as far as managers of the LLC.

15 And any money needed after that, because he  
16 presented a budget to me of how much money this thing was  
17 going to make, it was going to be wildly successful. I said,  
18 you have to put in every penny after \$2 million, because  
19 you're managing it. You're representing this is going to  
20 work. He said, I've got financing lined up. We're going to  
21 buy it for \$9.6 million. I put in 2 million, but I first put  
22 down a deposit of \$500,000 under representations we had a  
23 loan with Commercia Bank. After I put the money into escrow,  
24 turned out there wasn't a loan with Commercia Bank and I was



1 going to lose my half a million dollars.

2           So we went to an outside party and got a hard  
3 money loan for \$7 million, bought the property at just  
4 unbelievable interest rates and then worked for the next  
5 eight months to get it refinanced with Rabobank. Rabobank  
6 came in and only financed 6 million instead of the full  
7 seven. So now we left the hard money lender still owing them  
8 \$1 million.

9           Meanwhile, in the eight months, Robert was  
10 supposed to be managing the winery and the winery makes wine  
11 for other people as well. So we have about 30 or 40  
12 customers that we have to bill on a monthly basis. He didn't  
13 bill those customers at all. So we ended up not collecting  
14 any money.

15           By the time we were going to close this loan with  
16 Rabobank, I get a call from their office saying, first of  
17 all, we need \$225,000 in the bank account. We don't have it.  
18 I know we said we would put in all the money afterwards, but  
19 we don't have it. So they said we need to put 225 in and  
20 we'll give it back to you right after we close the Rabobank  
21 loan. So I put 225 --

22           Q. I want to interrupt. You when you say we have to  
23 put in 225, Mr. Radovan was telling you --

24           A. Telling me.

1 Q. -- that Rabobank wanted 225?

2 A. They wanted \$225,000 in the bank account. I put  
3 \$225,000 in the bank account. We closed the Rabo loan, still  
4 owing the hard money a million bucks. When I asked for my  
5 money back, they said, oh, sorry, we paid ourselves back the  
6 money we lent the project, so we can't pay you that 225.

7 At this point, I started getting pretty upset. I  
8 went to the office, demanded the books and records, found out  
9 they hadn't billed any customers, found out both of our loans  
10 were in default. And that if I didn't put in another  
11 \$234,000, that we were going to be foreclosed on.

12 So I put in another \$234,000. And said, Robert,  
13 I'm taking over. This is -- you're mismanaging this, just  
14 like you're mismanaging the Cal Neva.

15 So then it came to the end of the year, he said he  
16 needed another \$25,000. So I said, if I put this \$25,000, we  
17 have to sign a new operating agreement where all the money I  
18 put in is going to give me additional ownership in this  
19 asset. So he said, that's fine. I gave him the money. We  
20 signed a new operating agreement.

21 And then after the fact, when I showed him that I  
22 was actually going to exercise my ability to take a piece of  
23 the ownership away from him. He said, well, I don't -- I  
24 didn't read that document. I didn't know what it said. So

1 then I had to put in another probably half million dollars in  
2 this winery. So we got into a dispute and we settled it and  
3 I bought him out.

4 Q. You talked about a document you provided him. Did  
5 you try to hide anything in that document? What was the  
6 purpose of this new operating agreement that you sent to him?

7 A. The purpose was I wasn't going to continue to put  
8 money into this asset and have him take the money out, steal  
9 the money, or mismanage the money. I wasn't supposed to put  
10 in a penny more than \$2 million and I was already up to  
11 \$2.7 million. He was taking money out without my knowledge.

12 So I needed to have a new operating agreement  
13 saying that you can keep your ownership, but if you don't put  
14 in the money alongside of me, then you're going to lose some  
15 of your ownership.

16 Q. Did he sign that operating agreement?

17 A. He did sign it.

18 Q. Did you coerce him into signing it immediately,  
19 not giving him time to review it?

20 A. No, not at all. I sent him the document, came by  
21 the office, he signed it, I gave him another check to pay  
22 bills, and we moved on.

23 MR. CAMPBELL: That's all I have, Mr. Chaney.  
24 Thank you very much.

1 THE COURT: Thank you, Mr. Campbell. Mr. Little.

2 MR. LITTLE: Thank you, your Honor.

3 CROSS EXAMINATION

4 BY MR. LITTLE:

5 Q. Good morning, Mr. Chaney.

6 A. Good morning.

7 Q. You and I have not met and I have not had an  
8 opportunity to depose you, is that correct?

9 A. That's correct.

10 Q. Sir, would you agree you need to be completely  
11 honest and truthful whenever you're involved in a legal case  
12 such as the one you're involved in now?

13 A. Of course.

14 Q. In fact, you took an oath yesterday to tell the  
15 truth, correct?

16 A. I did.

17 Q. And you understand that oath carries with it  
18 penalties of perjury?

19 A. I do.

20 Q. You agree with me, sir, that obligation to be  
21 truthful to the Court would hold true whether you're a  
22 witness in a case like this, or whether you're a party in a  
23 lawsuit yourself?

24 A. Of course.

1 Q. Would you ever lie, stretch the truth, or do  
2 anything to undermine or subvert the search for the truth in  
3 a legal case or proceeding if you thought it would advance  
4 your cause?

5 A. No.

6 Q. Sir, you're the founder and CEO of a company  
7 called Teleconnex, correct?

8 A. Yes.

9 Q. Your company was sued in federal court in  
10 Washington in 2012 by a company called Straight Shot,  
11 correct?

12 A. That's correct.

13 Q. And Straight Shot was one of your competitors, was  
14 it not?

15 A. Yes. It was a competitor.

16 Q. And you were personally named in that lawsuit in  
17 addition to the company in which you were founder and CEO,  
18 correct?

19 A. I was.

20 Q. And you and your company were sued for among other  
21 things interfering with Straight Shot's contracts with its  
22 customers, correct?

23 A. That is correct.

24 Q. And, sir, isn't it true that a federal judge in

1 that case sanctioned your company over \$330,000 for bad faith  
2 spoliation of evidence, for intentional destruction of  
3 evidence, and intentional failure to produce evidence?

4 A. I don't believe they sanctioned the company, no.

5 MR. LITTLE: Your Honor, may I approach the  
6 witness?

7 THE COURT: You may. Just make sure you show it  
8 to Mr. Campbell.

9 THE CLERK: Do you want this marked?

10 MR. LITTLE: Yes, please.

11 THE CLERK: Exhibit 214 marked for identification.  
12 You want this whole document marked as one?

13 MR. LITTLE: Separate exhibits.

14 THE CLERK: Exhibit 214 marked for identification  
15 and Exhibit 215 marked for identification.

16 THE COURT: Mr. Campbell, any objections?

17 MR. CAMPBELL: I haven't looked at it. It looks  
18 like an official document. The Court can take judicial  
19 notice of it, so I have no objection.

20 THE COURT: Exhibits 214 and 215 are admitted.

21 BY MR. LITTLE:

22 Q. Have you seen this document before as CEO of the  
23 company?

24 A. I'm sure I have. I don't recall it, no.

1           Q.     And you remember that there was a legal proceeding  
2 where the Court was considering whether one of your employees  
3 and your company had intentionally destroyed evidence and  
4 intentionally failed to produce evidence in that case,  
5 correct?

6           A.     I do.

7           Q.     Can you turn to page 11 of the spoliation findings  
8 of fact and conclusions of law?

9           A.     Where is that? Which document is that?

10          Q.     The one that is called spoliation findings of fact  
11 and conclusions of law.

12          A.     All right.

13          Q.     I'm going to read paragraphs 25 to 27. First of  
14 all, you'll agree that Sommers was your employee, right?

15          A.     He was our employee. We hired him and he worked  
16 out of his home in Seattle.

17          Q.     Okay.

18          A.     At the time, I don't know if he was.

19          Q.     Well, paragraph 25 says, the Court finds that  
20 Sommers knew that he was in possession of the laptop and  
21 deliberately and in bad faith made substantial alterations  
22 and deletions to the laptop in violation of the February 13,  
23 2009 and February 18th, 2009 temporary restraining orders.  
24 Did I read that correctly?

1           A.     Yes.

2           Q.     Paragraph 26, the Court concludes that Sommers  
3 failed to timely deliver the Straight Shot laptop and  
4 intentionally violated the amended second TRO. Did I read  
5 that correctly?

6           A.     Yes.

7           Q.     Paragraph 27, the Court finds that at all times  
8 material between February 6th, 2009 and March 25, 2009,  
9 Sommers was an employee of Teleconnex and was engaged in the  
10 performance of duties required of him by Teleconnex. The  
11 Court finds that the use of the Straight Shot laptop and the  
12 deletion of files was conducted in furtherance of the  
13 business of Teleconnex. Did I read that correctly?

14          A.     Yeah, you read it.

15          Q.     Over on page -- paragraph 31, sir. Let's read  
16 paragraph 31 into the record. At all times Sommers used a  
17 laptop and deleted files between February 6th, 2009 and  
18 March 5, 2009, Sommers was an employee of Teleconnex and was  
19 acting within the scope of his employment. Accordingly,  
20 Straight Shot is entitled to sanctions under the doctrine of  
21 respondeat superior against Teleconnex and its successor IXC  
22 Holdings or Sommers destruction of evidence on the Straight  
23 Shot owned laptop computer and his failure to produce  
24 responsive documents. Did I read that correctly?



1 A. I believe so.

2 Q. Let's go over to the second document, the order.  
3 Let's go over to page five of that order, and I want to read  
4 lines 14 through page six, line two. The Court indicates,  
5 during the course of trial, the parties stipulated that  
6 various e-mails, which were recovered from the despoiled  
7 laptop that had been issued to and ultimately returned by  
8 Sommers were not produced in discovery by Teleconnex.  
9 Teleconnex' failure to disclose these e-mails, which were  
10 received or sent by individuals other than Sommers, who were  
11 associated with Teleconnex, undermines any claim that it was  
12 not complicit in or otherwise liable of Sommers' spoliation  
13 efforts. Did I read that correctly?

14 A. Yes.

15 Q. Let's go over to page ten, sir. And if you look  
16 at section C, lines 2 through 7, you'll see that the Court  
17 computed attorney's fees and costs for the spoliation at  
18 \$330,414.31, correct?

19 A. I see that.

20 Q. Let's go over to page 23. Let's go over line 8  
21 through 12. In it's conclusion, the Court says, the first  
22 supplemental judgment shall be in favor of plaintiffs  
23 Straight Shot Communications, Inc., and Straight Shot RC LLC  
24 against defendants Joshua and Julie Sommers, Teleconnex,

1 Inc., and IXC Holdings, Inc., jointly and severally in the  
2 amount of \$144,644.59 in attorney's fees and \$184,555.19 in  
3 costs, for a total of \$330,414.31 as spoliation sanctions  
4 together with interest, et cetera, et cetera. Did I read  
5 that correctly?

6 A. I believe so.

7 Q. So you now agree based on reading that, that your  
8 company was sanctioned over \$330,000 for intentional  
9 spoliation of evidence?

10 A. That's what happened in the Court, yes.

11 Q. And, sir, isn't it true that a jury in that case  
12 entered a verdict against you personally and your company for  
13 \$6,490,000 for tortious interference with a contract and for  
14 violations of that state's consumer protection laws?

15 A. Portions of that. There were different areas of  
16 that verdict, which, you know, I think was untrue, but that's  
17 what happened.

18 Q. But, ultimately, that jury returned a verdict in  
19 the amount of \$6.4 million against you personally and your  
20 company for tortious interference with a contract, correct?

21 A. That's correct.

22 Q. Sir, you're not here under any sort of subpoena  
23 where you're required to testify, right?

24 A. No.

1 Q. You're here to testify voluntarily on behalf of  
2 Mr. Yount?

3 A. Yes.

4 Q. In fact, he asked you to testify at this trial?

5 A. He didn't ask me, no.

6 Q. Did his attorney ask you to testify?

7 A. Yes.

8 Q. When was that?

9 A. I don't know. A few weeks ago.

10 Q. Have you met or spoken with either Mr. Yount or  
11 his attorney prior to giving your testimony yesterday and  
12 today?

13 A. I saw them in the hallway and I saw him at a  
14 restaurant, ran into him. And I met with Rich Campbell at  
15 his office.

16 Q. When did you meet with Mr. Campbell?

17 A. Tuesday.

18 Q. Last Tuesday?

19 A. Last week.

20 Q. How long was that meeting?

21 A. I'd say it was about 30 minutes.

22 Q. Was Mr. Yount present at that meeting?

23 A. He was not.

24 Q. Were you shown any documents during that meeting?

1           A.     Not that I recall.

2           Q.     And you'd agree with me that you discussed some of  
3 the anticipated testimony that he was going to ask you here  
4 in this trial?

5           A.     Yes.

6           Q.     Did you ever have a conversation with Mr. Yount or  
7 his wife about testifying on their behalf at trial?

8           A.     Not that I recall, no.

9           Q.     You'd agree that Mr. Yount shared his complaint.  
10 And if you don't know what a complaint is, it's the pleading  
11 that is filed to initiate a lawsuit. So he shared his  
12 complaint against these defendants with you when it was  
13 filed?

14          A.     Yes.

15          Q.     And, in fact, you gave a copy of that complaint to  
16 the mediator during a mediation with the Criswell Radovan  
17 folks in connection with the winery dispute?

18          A.     I don't -- I may have.

19          Q.     You don't recall doing that?

20          A.     I don't recall.

21          Q.     You don't dispute doing that?

22          A.     I don't dispute it, no.

23          Q.     Was the purpose to try to intimidate them?

24          A.     I don't think it was trying to intimidate them,

1 no.

2 Q. Sir, isn't it true that you called Dave Marriner a  
3 couple of weeks ago shortly before this trial began and  
4 demanded he return all of the commissions from IMC's  
5 \$6 million investment or bad things would happen to him?

6 A. That's not what I said at all. I said, this Cal  
7 Neva project, based on what you have done, don't you think it  
8 would be the right thing to return your commissions to the  
9 IMC? And he said, I don't like the way this conversation is  
10 going, and he hung up the phone.

11 Q. And, conveniently, this phone call happened a  
12 couple of weeks ago right before this trial is going to  
13 start, right?

14 A. That's when it happened, yes.

15 Q. But you knew the trial was coming up when you made  
16 that phone call, right?

17 A. I didn't know when the trial was.

18 Q. You knew a trial was forthcoming, though?

19 A. Well, I knew that there was a lawsuit and there  
20 could be a trial.

21 Q. And you hadn't reached out to Mr. Marriner, say,  
22 in the past year and a half?

23 A. Oh, yeah, I have.

24 Q. To talk about this matter?

1           A.     Absolutely.

2           Q.     Do you consider calling him a week or so before  
3 trial started and demanding that he return his commissions to  
4 be witness intimidation?

5           A.     Not at all.

6           Q.     What do you call it, then?

7           A.     I call it him trying to do the right thing for  
8 defrauding investors.

9           Q.     Sir, you and your group, and when I say your  
10 group, I'm referring to the IMC folks, you made similar  
11 threats against Mr. Marriner back in late of 2015, early 2016  
12 that either get on your side or bad things were going to  
13 happen to him, right?

14          A.     I don't recall that, no.

15          Q.     If he says that happened, are you saying he's  
16 lying?

17          A.     Is he saying that I said that to him?

18          Q.     That's been the testimony in the case. I don't  
19 know if it was specifically you, but your group made threats  
20 to him that he either get on their side and join your side of  
21 this matter or bad things are going to happen to him?

22          A.     No. I don't believe anybody would say bad things  
23 are going to happen to him.

24          Q.     Are you disputing that a call or in person

1 conversation was had between IMC and Mr. Marriner where it  
2 was suggested that he get on your side?

3 A. I think someone possibly could have told him, you  
4 need to open your eyes and realize that this project is a  
5 disaster. And, yeah, I mean, I think -- I think he obviously  
6 was motivated by the money more than his fiduciary duty. So  
7 I don't think it mattered, really.

8 Q. Sir, there's been some confusion on my part about  
9 your testifying about meetings in October, November,  
10 December, but then you said you were out of the country in  
11 Europe. My understanding is you weren't at the meetings in  
12 October, November and even that December meeting, is that  
13 accurate?

14 A. That's not accurate.

15 Q. Which meetings were you at and which ones were you  
16 out of the country?

17 A. I was just out of the country for the October 21st  
18 meeting at the IMC.

19 Q. Were you present at the meetings in November?

20 A. I was.

21 Q. And you were present at the December meeting at  
22 the Fairwinds?

23 A. There were multiple meetings in December. The  
24 only one I wasn't present for was the December 12th meeting.

1 Q. That's -- where all the shareholders --

2 A. Basically, the Christmas party. It wasn't really  
3 a meeting. It was a Christmas party.

4 Q. And the October meeting, that's the one where  
5 certain members of your investment group went on a tour with  
6 Dave Marriner and Stuart Yount?

7 A. When?

8 Q. In late October?

9 A. I was not on a tour with Stuart Yount, no.

10 Q. Sir, you've made a lot of accusatory allegations  
11 against CR Cal Neva, Criswell Radovan. A year and a half,  
12 we're a year and a half past when you sent that default  
13 letter, right? You sent it in March of 2016. We just looked  
14 at it.

15 A. Yes.

16 Q. It's been about a year and a half, right?

17 A. Yes.

18 Q. And we're almost two years since you claimed you  
19 learned all of these horrible things about the project that  
20 weren't disclosed to you, right?

21 A. I mean, I think the time line speaks for itself.

22 Q. CR Cal Neva is still the manager of Cal Neva  
23 Lodge, right?

24 A. That's correct.



1 Q. You're familiar with the operating agreement,  
2 right?

3 A. Yes.

4 Q. You understand that there are procedures to remove  
5 them. In fact, you're on the executive committee, and that's  
6 one of the executive committee's responsibilities, right?

7 A. The problem is the operating agreement.

8 Q. That's not my question, sir. My question is,  
9 you're aware there are procedures to remove them, right?

10 A. Of course. Of course.

11 Q. And that's the responsibility of the executive  
12 committee of which you sit, right?

13 A. No, it is not.

14 Q. It's not the responsibility of the executive  
15 committee?

16 A. It's something of the membership.

17 Q. Is it not a major decision that four of the five  
18 executive committee members need to approve?

19 A. If it is, Criswell Radovan had two seats.

20 Q. Well, sir, we're now two years later, have you or  
21 any of the other investors taken any steps to remove them as  
22 managers?

23 A. We started that process and they asked us to hold  
24 off, because they had this Langham deal and they were going

1 to get us paid off. So we stopped.

2 Q. So they haven't been removed?

3 A. They have not been removed. Well, it's in  
4 bankruptcy.

5 Q. But you understand that CR Cal Neva through  
6 Mr. Radovan, Mr. Criswell have still been actively trying to  
7 get financing and move this project forward the last year and  
8 a half on behalf of all the investors?

9 A. I don't think they're doing it on behalf of all  
10 the investors. I think they're doing it for their own  
11 pocketbooks.

12 Q. Nonetheless, even though the project is in  
13 bankruptcy, they're still out actively trying to market the  
14 property and either get it sold or financed. You don't  
15 dispute that, right?

16 A. I haven't seen any -- them bring anything to the  
17 table in the bankruptcy court.

18 Q. Sir, let's talk about the winery lawsuit. You  
19 said the purchase price was 9.6. Wasn't it \$8.7 million?

20 A. Well, I would factor in the cost of capital,  
21 because we had to get some hard money loans.

22 Q. Yes or no, Mr. Radovan had arranged a buyer to  
23 purchase that property for nearly double the purchase price?

24 A. It wasn't a real buyer.

1 Q. You had an executed letter of intent, correct?

2 A. Yeah, but he had no money.

3 Q. And you were working on -- you say that, but you  
4 were working on a purchase and sale agreement, correct?

5 A. Robert Radovan was marketing the property without  
6 my knowledge to sell the property in violation of our  
7 operating agreement.

8 Q. Okay. But you don't dispute that there was a  
9 letter of intent to sell the property for \$15.1 million?

10 A. There was a letter of intent, yes.

11 Q. And, sir, one of the initial investors in the  
12 project was an offshore company called BPB, right?

13 A. I don't know if BPB was the investor or not. It  
14 was -- that is one of my companies, though.

15 Q. Well, I can show you the operating agreement if  
16 you'd like. They're showing when the company was formed,  
17 they had a ten percent interest. Do you recall that?

18 A. I do, but then that was transferred back to the  
19 main LLC.

20 Q. That's because the lender on the project had a  
21 problem loaning money when there was an offshore company  
22 involved, correct?

23 A. I think we thought it would be cleaner to get a  
24 loan if there wasn't an offshore company, yes.

1 Q. And isn't it true, sir, that you took it upon  
2 yourself to amend the operating agreement to reflect the  
3 assignment of this ten percent that BPB held back to your  
4 entity?

5 A. No. I think that was prepared by Heather Hill in  
6 Radovan's office.

7 Q. It's your testimony that the operating agreement,  
8 the red lines through the operating agreement were prepared  
9 by Criswell Radovan and not yourself?

10 A. For BPB?

11 Q. Well, there came a point in time where there were  
12 amendments made to the operating agreement, correct?

13 A. Yes.

14 Q. And one of those amendments was to reflect this  
15 ownership change between BPB and basically pushing that ten  
16 percent back to you, correct?

17 A. It was just a house cleaning effort.

18 Q. And, ultimately, instead of having a 50 percent,  
19 you would now have a 60 percent interest and the Criswell  
20 Radovan folks would have a 40 percent interest, correct?

21 A. We already had a 60 percent interest. It was in  
22 two entities. So we were consolidating them.

23 Q. Isn't it true, sir, that you sent red lines back  
24 to either Heather Hill or Robert of the operating agreement?

1           A.     I don't know in reference to what.

2           Q.     This change that was made.

3           A.     Maybe on the schedule, taking BPB off. I don't  
4 recall if I sent it or if Heather Hill did it, but those  
5 changes were made, yes.

6           Q.     You don't recall sending red line changes over to  
7 Heather or Robert to the operating agreement?

8           A.     I'm not saying I didn't. I'm just saying that the  
9 change would be to update the list of entities that held  
10 membership, yes.

11          Q.     And isn't it true that the red line version you  
12 sent over to them contained red lines showing this change,  
13 this assignment, but you also made changes to sections 8.1  
14 and 12.1 without red lining them?

15          A.     I don't know. What time period?

16          Q.     Well, sir, do you remember getting a letter from  
17 Criswell Radovan's attorney telling them -- telling you that  
18 you had defrauded them by sending over red lines, making  
19 certain changes, but then making changes to the operating  
20 agreement and not red lining them. Do you recall receiving  
21 that letter?

22          A.     I do.

23          Q.     And, in fact, that letter accused you of fraud and  
24 said you better fix the situation or you were going to get

1 sued in a couple of days, right?

2 A. I don't recall the letter, no.

3 Q. Well, you don't recall receiving the letter?

4 A. No. I don't recall the specifics of the letter.

5 Q. Well, do you recall getting that letter and then  
6 rushing out and filing suit first?

7 A. No. I recall writing numerous checks to Robert  
8 Radovan and saying I'm only going to continue to write more  
9 checks if we change the operating agreement.

10 Q. The changes that were made to section 8.1 and 12.1  
11 of the operating agreement that weren't red lined, the  
12 purpose of those was to dilute their interest or squeeze them  
13 out eventually, basically, what you said when counsel was  
14 asking you questions?

15 A. No. It was for them to participate along with me  
16 per our agreement and put money in when I put money in, yes.

17 Q. But those provisions, in particular 12.2, reduced  
18 an approval for transfers of interest from 60 percent -- or  
19 from 90 percent in the original agreement down to 60 percent,  
20 right? So that now you would have the approval, because you  
21 now held 60 percent?

22 A. The approval for what? To dilute someone's  
23 interest?

24 Q. Yes.

1 A. Yes. That's correct.

2 Q. And after Mr. Radovan signed the operating  
3 agreement, you in fact tried to use those provisions against  
4 him to dilute his interests?

5 A. Yes, because I put in another \$125,000, and he  
6 refused to put money in.

7 Q. And you don't dispute that your lawsuit was  
8 settled, and I understand there may be confidentiality, but  
9 you paid them, right?

10 MR. CAMPBELL: Objection, I think he's trying to  
11 honor the terms of the confidentiality agreement.

12 MR. LITTLE: Your Honor, he's under oath here.

13 THE COURT: Overruled.

14 BY MR. LITTLE:

15 Q. I'm not asking the amount. You paid them, right?

16 A. I paid them a sum of money for their interest as a  
17 settlement.

18 Q. Sir, let's talk about the July 2015 investor  
19 meeting. And as I understood your testimony yesterday, you  
20 said this was really more of a social gathering, right?

21 A. July 2015?

22 Q. The July 2015 investor meeting?

23 A. Yes, I would characterize it as a social  
24 gathering. Yes.

1 Q. And you said there was only, I think your words  
2 were a brief impromptu executive committee meeting that same  
3 day?

4 A. Yeah. We stepped into a different room and sat  
5 down for a few minutes.

6 Q. And if I understood your testimony, correct me if  
7 I'm wrong, I wrote it down, that there was little to no  
8 discussions of changes on the project, the budget or  
9 financing, correct, at either of those meetings?

10 A. I said there was some discussion about refinancing  
11 a mezzanine in that and there was some discussions about the  
12 budget, but we had no numbers.

13 Q. In fact, I wrote down, you said that Robert only  
14 insinuated that Starwood might want to spend some more money  
15 to enhance the project and the affect on the budget would be  
16 somewhere in the neighborhood of 1 to \$2 million, correct?

17 A. That's correct.

18 Q. Sir, were you at the July meeting?

19 A. I was.

20 Q. Aren't you confusing what was discussed at that  
21 meeting with what was discussed back in the February and  
22 April meetings?

23 A. No. Absolutely not.

24 Q. So you're confident that in both the July



1 investigator meeting and subsequent impromptu executive  
2 committee, there was no detailed discussion about changes on  
3 the project, costs, budgeting, financing, anything of that  
4 nature?

5 A. At what time period?

6 Q. The July meeting.

7 A. There was nothing at the July?

8 Q. Yeah.

9 A. I think I testified that there was discussion  
10 about refinancing the mezzanine loan and some cost overruns  
11 and some additional costs that they might want to spend per  
12 Starwood.

13 Q. Your testimony is as of that meeting, you're only  
14 aware of 1 to \$2 million of cost effect on the budget,  
15 correct?

16 A. No. They had said that there was some cost  
17 overruns and they were trying to quantify them.

18 Q. Well, I thought you said that the discussion was a  
19 1 to \$2 million number?

20 A. That was for the upgrades.

21 Q. Okay. So it's your testimony that there was also  
22 a discussion that there were going to be other changes to the  
23 project, but they weren't quantified?

24 A. He had -- he had -- he, when I say he had, Robert

1 Radovan said there were some codes, some fire codes that  
2 required them to upgrade some fire stuff. There was some  
3 unforeseen things. I mean, there might have been kind of an  
4 Excel spreadsheet of some of those things. There was no  
5 detail to it. So he said, but it's not a big deal.

6 Q. Sir, as a majority member and a member, in fact,  
7 of the executive committee, you're familiar with the  
8 operating agreement, right?

9 A. Yes.

10 Q. In fact, you were the one that signed it on behalf  
11 of IMC, correct?

12 A. That's right.

13 Q. Can you go over to Exhibit 5 and I want to go to  
14 the section 8.2 and 8.3.

15 A. Exhibit 5?

16 Q. Yes, sir.

17 A. Okay.

18 Q. If you go to page 42, you signed this operating  
19 agreement on behalf of IMC?

20 A. I recall signing the operating agreement, yes.

21 Q. Let's look at sections 8.2 and 8.3 on page 22.

22 A. 8.3. Okay.

23 Q. Let's start with 8.2. It says, the members and  
24 manager have agreed to designate a committee, the executive

1 committee, to make major decisions, right?

2 A. That's correct.

3 Q. And under 8.3, it says, the following constitute  
4 major decisions, as such term is defined herein, requiring  
5 the approval of four of the five members of the executive  
6 committee, right?

7 A. That's correct.

8 Q. And we look at 8.3.5, it says, approving the  
9 amount, terms, conditions and provisions of the construction  
10 loan or any other financing of the property or any equity  
11 contributions to the company. Do you understand that was a  
12 major decision that required the approval of the executive  
13 committee?

14 A. Yes.

15 Q. And if we look down at 8.3.8, it says that the --  
16 it was also a major decision to be decided by the executive  
17 committee to approve the operating budget and any amendments  
18 thereto, right?

19 A. Which we never saw.

20 Q. You understood as an executive committee member  
21 that you were responsible for the budget?

22 A. We were responsible for decisions, approving the  
23 budget, not preparing the budget.

24 Q. And decisions regarding any sort of financing on

1 the project, correct?

2 A. That's correct.

3 Q. Let's go to trial Exhibit 10. This is a July 2015  
4 monthly status report prepared by two third-parties,  
5 Thannisch Development and Case Development. Are you familiar  
6 with those companies?

7 A. I am.

8 Q. Do you understand that they were construction  
9 managers on this project?

10 A. Yes.

11 Q. And the testimony in this case, sir, has been that  
12 this construction report was provided to all of the  
13 investors, obviously, members of the executive committee in  
14 July, and, in fact, it was even provided to Mr. Yount. Is it  
15 your testimony that you and the IMC never received this  
16 document?

17 A. No.

18 Q. So you did get it?

19 A. I recall seeing this document, yes.

20 Q. Do you recall getting it in July, right?

21 A. I don't know when I received it, but I remember  
22 getting it.

23 Q. Did you read the document when you got it?

24 A. I looked over it, yeah.

1           Q.     Well, as I understood your testimony yesterday,  
2     you really didn't seem to have much of a clue what was going  
3     on in the project in terms of changes. Is that a  
4     mischaracterization of what you testified?

5           A.     No. I would say we didn't have a good idea what  
6     the cost implication of the changes to the schedule, yes.

7           Q.     Sir, let's turn over to page 16 of this document,  
8     please.

9           A.     Uh-huh.

10          Q.     And if we look at the second paragraph, it says,  
11     the construction schedule is being compressed due to some  
12     delays caused by scope changes, many of which were the result  
13     of value engineering exercises, as well as unforeseen issues.

14                 Then two paragraphs down, it goes on to say, the  
15     original budget was has been adversely impacted due to such  
16     items as, and it lists 16 or more items there, correct?

17          A.     Correct.

18          Q.     And you'd agree that there were a host more of  
19     these budget impact items than had previously been known and  
20     discussed at the February and April 2015 executive committee  
21     meetings?

22          A.     I see no numbers here. All I see is a list of  
23     some things that say that were potential things to impact. I  
24     see it says that everything is on target for an opening in

1 December 12th and I see that there are some things here, but  
2 there's no dollar amounts attached to it.

3 Q. Sir, that's not my question. My question was,  
4 back in February and April, there was a discussion of some  
5 impacts to the budget because of unforeseen issues, code  
6 upgrades, things like that, but what was being presented here  
7 in July was much more substantial. Do you disagree with  
8 that?

9 A. I don't recall any discussions in February or  
10 April saying there were any material cost overruns on the  
11 project.

12 Q. What do you define as material? Are you  
13 suggesting that at the February and April executive committee  
14 meetings, there wasn't a discussion about some impacts, cost  
15 impacts that had occurred to the project?

16 A. What I recall on the April and the February  
17 meeting is Robert, Dave Marriner, Bill saying this project is  
18 going great, everything is on target, we're on budget.  
19 That's what I recall from those meetings.

20 Q. Do you disagree that far more budget cost impacts  
21 were presented through this report in July than had been  
22 previously discussed in February and April?

23 A. Well, keep in mind this report was e-mailed, but  
24 it was not discussed at the meeting. It was kind of just

1 sent over and then the voice over to the group was,  
2 everything is great.

3 Q. So your testimony is at this July meeting, there  
4 was no discussion by Robert or presentation where he went  
5 into detail about the cost impacts that are identified here  
6 on page 16 of this document?

7 A. There's no detail in Robert Radovan's presentation  
8 to the members.

9 Q. And you had no understanding at that point in time  
10 in July what those cost impacts were going to be?

11 A. No. We really did not know.

12 Q. And as a member of the executive committee, did  
13 you think that maybe you should ask questions?

14 A. We were asking questions, demanding answers.

15 Q. Did you go talk to the construction manager and  
16 asked them?

17 A. We actually went to the fire marshal and talked to  
18 the fire marshal and said, hey, Robert is telling us that  
19 there's all these code changes. And the fire marshal --  
20 first of all, he said there's a new fire marshal. Then we  
21 went to talk to the fire marshal, and the fire marshal said  
22 there's no changes. We haven't made one change. So then  
23 we're like scratching our head, what's going on here?

24 Q. Sir, that's not my question, and first of all, you

1 said something I want to clarify. If we look at Exhibit 10,  
2 page 16, these aren't Robert's comments. These are comments  
3 by the third party construction manager, right?

4 A. These are comments by managers of the project  
5 hired by Robert Radovan. He's responsible for it.

6 Q. Exhibit 10 was prepared by a third party  
7 construction manager, right?

8 A. The construction manager is Criswell Radovan.

9 Q. Okay. So I presume Criswell Radovan in your  
10 opinion owns Thannisch Development and Case Development  
11 Services?

12 A. No. They hired them to help them in their effort.

13 Q. And you don't dispute that on page 16 of Exhibit  
14 10, the construction manager is listing out all of these  
15 items that they understand and believe have impacted the  
16 budget. You don't dispute that's in here, right?

17 A. I'm not disputing there aren't a list of items on  
18 a project that are potential issues. There's no dollars  
19 attached to it.

20 Q. And nobody held a gun to your head and prevented  
21 you from going and talking to Penta about these impacts,  
22 right?

23 A. No. That's the job of Robert Radovan.

24 Q. And nobody held a gun to your head and prevented



1 you from going and talking to the architect about these  
2 changes, correct?

3 A. I don't even know the architect. I didn't have a  
4 contact at Penta. I mean, that was the job of Robert Radovan  
5 was to keep us informed, and that's why he was earning a  
6 20 percent back and carry on this project as the development  
7 manager.

8 Q. Sir, if you felt you weren't getting answers from  
9 Robert Radovan as you testified to yesterday and today,  
10 nothing stopped you from going and talking to the third  
11 parties like the construction manager, the architect, or  
12 Penta to get answers to your questions, right?

13 A. Eventually, down the line, we had called with  
14 Robert Radovan and Penta.

15 Q. That's not my question. My question was, nothing  
16 prevented you from going to these parties and asking  
17 questions if you felt you weren't getting sufficient answers  
18 from Mr. Radovan, yes or no?

19 A. Nothing prevented me, no.

20 Q. Sir, you said and keep saying you couldn't get  
21 answers from Mr. Radovan, he wasn't responding to you, he  
22 disappeared, right?

23 A. Right.

24 Q. Isn't it true in the summer of 2015, you had an

1 office in Criswell Radovan's office in St. Helena?

2 A. I went down there regularly.

3 Q. You had an office there. They gave you an office  
4 in their corporate offices, correct?

5 A. I did not have an office, no.

6 Q. You used their offices regularly during the summer  
7 of 2015, did you not?

8 A. I went down there to watch the winery project. It  
9 had nothing to do with the Cal Neva.

10 Q. During that period of time, you were regularly  
11 using Criswell Radovan's offices in St. Helena?

12 A. I was going there probably every other week for  
13 two or three days.

14 Q. And nothing prevented you from walking ten feet  
15 down the hall to talk to Mr. Radovan, did it?

16 A. I did all the time. I asked him tons of  
17 questions. And he had no answers.

18 Q. Sir, what was your understanding in July 2015 as  
19 to the costs associated with all of these adverse impacts  
20 that we saw on page 16 of Exhibit 10?

21 A. What I knew is that no one had a good handle on  
22 what these costs were.

23 Q. So you had no clue what they were going to cost?

24 A. I really didn't. I couldn't -- I didn't think

1 Robert really knew. I was concerned about it. And we were  
2 trying to get information out of him.

3 Q. Sir, can you turn over to Exhibit 14?

4 A. Sure.

5 Q. I want you to look at the bottom. This is  
6 July 15, 2015 e-mail that Mr. Yount sent to Robert and Dave  
7 Marriner. I'll represent to you that the testimony is  
8 unequivocal that this e-mail was sent before Mr. Yount had  
9 ever spoken to Mr. Radovan.

10 A. Okay.

11 Q. Down at the bottom, Mr. Yount is saying, as I  
12 understand it, you're over budget by more than \$5 million so  
13 far. Where will that and likely more funding needs come  
14 from? Did I read that correctly?

15 A. It looks like.

16 Q. Sir, can you explain how Mr. Yount knew the  
17 project was over budget by more than \$5 million so far and it  
18 was going to need more funding in July and you have as a  
19 member of the executive committee didn't know that?

20 A. That's a very good question.

21 Q. Can you explain how he knew this information  
22 without even having had the benefit of speaking to  
23 Mr. Radovan?

24 A. Because Dave Marriner and Robert Radovan are

1 attached at the hip. They were trying to raise money from  
2 Stuart Yount and they gave everyone a different story.

3 Q. You don't know that he got that information from  
4 Mr. Marriner, do you?

5 A. I'm sorry?

6 Q. You don't --

7 A. It says right here, it says Dave Marriner.

8 Q. No. It says, as I understand it, you're over  
9 budget by more than \$5 million so far. Where will that and  
10 likely more funding needs come from? It doesn't say where he  
11 got that from.

12 A. I'm just assuming based on that e-mail.

13 Q. Sir, is it really your testimony here today under  
14 oath that Mr. Yount knew more about the budget impacts than  
15 you did as a member of the executive committee?

16 A. Well, I think it's very possible, because he  
17 was -- they were trying to get money from Stuart Yount.

18 Q. Isn't it true as a member of the executive  
19 committee that you received copies of monthly reports from  
20 Mark Zakuvo approval?

21 A. I think we received a report from them, or two.

22 Q. And Mark Zakuvo was a third party firm that was  
23 acting on part of Hall, correct?

24 A. I believe so, yes.

1 Q. They had nothing to do with and they weren't hired  
2 by Criswell Radovan, right?

3 A. Well, I mean, I questioned. I think Hall and  
4 Criswell Radovan are very tight, because Bill Criswell's  
5 father was very tight with Hall's father, come to find out.

6 Q. Sir, turn over to Exhibit 13, please. This is an  
7 e-mail Mr. Yount sent to Peter Grove, who I assume you know  
8 is the project architect?

9 A. I believe so, yes.

10 Q. Have you ever spoken to Mr. Grove?

11 A. I don't think so, no.

12 Q. Mr. Yount is asking Mr. Grove what the project's  
13 chances of success are in mid July. And up at the top, you  
14 see that he responds, I'm going to say pretty good. Short  
15 term, they're in fund raising mode. Construction costs are  
16 exceeding the budget and they, we, are trying to get our arms  
17 around it and keep it in check. Did you have that similar  
18 understanding where the project was situated in mid July?

19 A. Like I said, there were some items that were going  
20 to be over budget, but they were positioned as not being  
21 material, especially not \$21 million.

22 Q. Sir, yesterday, I thought I understood you to  
23 testify that Criswell Radovan oversubscribed the founding  
24 shares somehow. Is that your testimony?

1           A.     Yes.

2           Q.     And I thought you said that they oversubscribed it  
3 when they sold a \$1.5 million founders share to Les Busick?

4           A.     It was either when they sold it -- probably when  
5 they sold the million dollar share to Stuart Yount.

6           Q.     Correct me if I'm wrong, you seemed yesterday to  
7 feign ignorance in the July to December time frame whether  
8 there was a million and a half founders share left under the  
9 subscription agreement?

10          A.     I knew there was some money left. I didn't really  
11 know how much. So when I heard that Les Busick had put more  
12 money in, I was like, okay. But the whole cap table and how  
13 much money was raised was very fuzzy. We got very -- not a  
14 clear picture from Robert Radovan.

15          Q.     You understood that CR Cal Neva had \$2 million of  
16 the \$20 million subscription?

17          A.     Yeah, and I really questioned that. We asked for  
18 backup and never got that.

19          Q.     Well, you signed the operating agreement that  
20 reflected that, did you not?

21          A.     We did.

22          Q.     And you also understood at the time that the Pay  
23 or Fairwinds and Mr. Marriner's commission of that \$2 million  
24 was not part of that subscription. You understood that,

1 right?

2 A. I didn't really understand that, no.

3 Q. You didn't understand one way or the other?

4 A. No. It wasn't clear.

5 Q. Well, everyone else has testified that they were  
6 not part of this subscription. Are you saying that's not  
7 true?

8 A. I'm sorry?

9 Q. Everyone else in this case has testified  
10 unequivocally that Pay and Marriner's piece, that collective  
11 \$2 million, was not part of the \$20 million subscription.  
12 Are you saying that's not true?

13 A. The \$21 million subscription?

14 Q. No. There's a \$20 million subscription, right?

15 A. Okay.

16 Q. And the testimony in this case has been that Pay,  
17 the Pays, their part, their capital contribution, so to  
18 speak, as well as Mr. Marriner's commission for that,  
19 \$2 million collectively, was not part of the \$20 million  
20 subscription. That's been the testimony. Are you saying  
21 that's not true?

22 A. I'm not saying that's not true.

23 Q. Sir, in your testimony yesterday and today that  
24 Criswell Radovan basically pushed Mosaic to the side and

1 didn't talk to them for a period of three months. Is that  
2 your testimony?

3 A. That's what Mosaic told me.

4 Q. Isn't it true, sir, at one of those November  
5 meetings, in fact, in the November 9th executive committee  
6 meeting, that the Mosaic term sheet was reviewed and  
7 discussed and Robert was told to tell Mosaic to halt all due  
8 diligence in drafting loan documents until the other  
9 executive committee members had the ability to explore other  
10 options.

11 A. No. What I recall was we did not want to have any  
12 kind of penalty or binding commitment with any lenders that  
13 would not allow us to look at other options.

14 Q. And wasn't Robert -- you disagree that there was a  
15 term sheet with Mosaic that was presented and discussed at  
16 the November 9th meeting?

17 A. I personally never saw the term sheet. I looked  
18 back to my e-mails and it was kind of buried into an e-mail,  
19 I believe, in November. But I don't -- I didn't recall  
20 getting it to be honest. And we --

21 Q. Do you dispute discussions during these meetings  
22 that Mosaic was prepared to close by the end of the year?

23 A. I don't recall that they were ready to close by  
24 the end of the year.



1           Q.     Do you dispute that the executive committee  
2 members told Robert to go tell Mosaic to halt any due  
3 diligence so you guys wouldn't be on the hook for this  
4 million dollar separation fee while the executive committee  
5 members looked at other financing?

6           A.     I recall saying we don't want to be bound to a  
7 million dollar -- any kind of a commitment to those guys.  
8 And we did not say, don't call him back for three months and  
9 piss them off. We said, you know, let's look at all of our  
10 options here. Let's not commit ourselves to one bank.

11          Q.     And isn't it true, sir, at the December 4th  
12 executive committee meeting that the executive committee told  
13 Robert to go back to Mosaic with a larger budget and that  
14 they were ready to close by January, mid January?

15          A.     I can make one thing clear is that the executive  
16 committee was never telling Robert Radovan what to do. He  
17 was doing what he wanted to do.

18          Q.     But you're saying it was never discussed at a  
19 December executive committee meeting that, Robert, go back to  
20 Mosaic and try to get more money under the loan?

21          A.     I do recall discussions that the Mosaic loan was  
22 not enough to finish the project, yes.

23          Q.     And you don't dispute that IMC was pursuing other  
24 lenders such as North Light?

1           A.     The IMC -- not the IMC.  There were, I'd say,  
2 multiple members that were trying to bring other parties to  
3 the table, yes.

4           Q.     Now, you testified that someone from Mosaic called  
5 you about a meeting, correct?

6           A.     That's correct.

7           Q.     And is it your testimony they wanted to meet with  
8 you, even though the executive committee had already approved  
9 and Robert had set up a meeting between Mosaic and the full  
10 executive committee?

11          A.     I got a call from Mosaic saying they would like to  
12 meet with the executive committee without Robert Radovan,  
13 because they hadn't heard from him.  Actually, they started  
14 out the call by saying, you know you're on the hook for a  
15 million dollar break-up fee?  I said that's not what I  
16 understand.

17          Q.     Who was this call with?

18          A.     It was with someone by the name of Howard.

19          Q.     What's Howard's last name?

20          A.     I don't recall.

21          Q.     What's his position with the company?

22          A.     I don't know.

23          Q.     You had never met or spoken with anyone at Mosaic  
24 before this call, correct?

1 A. No.

2 Q. Do you know how they got your name and number?

3 A. I do not.

4 Q. Sir, have you ever heard of a lender going around  
5 the manager and meeting with only a select number of  
6 investors?

7 A. I think they were trying to figure out why --

8 Q. I'm not asking what you thought. I'm asking you  
9 if you ever heard of that?

10 A. I don't know.

11 Q. Wouldn't that expose them to liability?

12 A. I don't know.

13 Q. You don't dispute that you didn't tell Robert and  
14 Bill about this meeting?

15 A. No, I don't dispute that.

16 Q. And you don't dispute that nobody in your group  
17 told Robert and Bill about this meeting?

18 A. No, anyone from the executive committee.

19 Q. And you all went to this meeting without them, you  
20 don't dispute that?

21 A. No, I don't dispute that.

22 Q. And the very same day as your meeting with Mosaic,  
23 Mosaic sent an e-mail to Robert tearing up the term sheet,  
24 you don't dispute that?

1           A.     No.   That was actually a good thing.

2           Q.     That's not my question.   You don't dispute that  
3 the same day as your meeting with them, they sent an e-mail  
4 to Robert saying, we don't need to have a meeting anymore,  
5 and they tour up the term sheet?   That happened, right?

6           A.     I don't know the specific dates, but it was close,  
7 I'm sure.

8           Q.     Well, your meeting was on February 1st, was it  
9 not?

10          A.     I believe so, yes.

11          Q.     So let's nip this one in the bud.   If you could  
12 turn over to Exhibit 124?   Let's go over to the third page of  
13 that exhibit.

14          A.     124?

15          Q.     Yes.   Third page.

16          A.     Okay.

17          Q.     This is an e-mail from Sterling Johnson of Mosaic  
18 to Robert, correct?

19          A.     That's correct.

20          Q.     And it's dated February 1st, the same day as your  
21 meeting, right?

22          A.     Yes.

23          Q.     And in the first paragraph, he explains that they  
24 told you guys how they issued the term sheet and how Robert

1     executed it, and then they go down to indicate that they're  
2     tearing it up, correct?

3           A.     So 124?

4           Q.     Yeah, the third page. All I'm asking is, Mosaic  
5     sends a letter to Robert on the same day as your meeting,  
6     question number one. You already said yes, right?

7           A.     Yes.

8           Q.     And in that e-mail or letter, they tell Robert  
9     they're tearing up the term sheet, yes or no?

10          A.     Yes. I don't know if they said saying they're  
11     tearing up the term sheet. Is that is what they said?

12          Q.     Let's look at the second paragraph. We are going  
13     to take a step back, tear up the executed term sheet, blah,  
14     blah, blah, that's what it says, right?

15          A.     What I see is, we also told them that for the  
16     better part of three months, we have not heard much from you  
17     or your team. Go on to explain a history of the deal, from  
18     our perspective, to tell you the truth, seems a little bit  
19     messy right now.

20          Q.     Just so we're clear on that point, is it your  
21     testimony that the executive committee did not instruct  
22     Robert Radovan to tell them to put on the brakes while you  
23     all considered other financing options, is that your  
24     testimony, in November and December?

1           A.     What we told Robert is we did not want to be  
2 committed to a single lender with a break-up fee. That's  
3 what we told Robert.

4           Q.     Can you go over to Exhibit 129, please, sir, the  
5 second page?

6           A.     Okay.

7           Q.     And this is Mr. Sterling sending an e-mail the  
8 next day. This time it's to Paul Jamieson, who is in your  
9 group, right?

10          A.     What page?

11          Q.     Second page. Paul is within your group, right?

12          A.     Paul is an executive committee member, yes.

13          Q.     And they indicate that they can't offer the loan  
14 and they cite as reasons, one, instability of the ownership  
15 group, two, absence of transparency, and, three, lack of  
16 faith in the budget and the management team. Do you see  
17 that?

18          A.     You said this was from Sterling or from Paul?

19          Q.     Up at the top, the reasons or impediments they  
20 cite for not approving the loan include, one, instability in  
21 the ownership group, two, absence of transparency, and,  
22 three, a lack of faith in the budget and the management team,  
23 correct?

24          A.     Yes, I see that.

1           Q.    You would agree those are the very same issues you  
2 had with Criswell Radovan, correct?

3           A.    Those are some of the issues.

4           Q.    Sir, isn't it true that the source of this  
5 information came from you and other members of the executive  
6 committee who attended this meeting?

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

8           Q.    You're saying it's pure coincidence that the day  
9 you meet with them, they send this letter cancelling the  
10 Mosaic loan for these reasons?

11          A.    I think they've heard from other sources, the  
12 lenders, the subs that weren't getting paid. I mean, it was,  
13 you know, the fact that it was supposed to open in December  
14 and it didn't. I mean, there was just a lot of chatter out  
15 there that made them nervous.

16          Q.    Sir, there's been thousands of e-mails produced in  
17 this case and there's not a single e-mail where you, anyone  
18 from IMC, or anyone else on the executive committee ever  
19 attempted to resurrect the Mosaic loan from the ashes. You  
20 don't dispute that, do you?

21          A.    I mean, I -- it's my belief that Mosaic would have  
22 done a loan if Criswell Radovan weren't the managers.

23          Q.    Well, that wasn't my question. You don't dispute  
24 that at no point in time after February 1st, did you, anyone

1 from the IMC, or anyone else on the executive committee try  
2 to resurrect the Mosaic loan?

3 A. We didn't have direct -- we did not manage  
4 directly the relationships with the lenders. That was  
5 something that we were only reacting. The only reason we  
6 were talking to Mosaic is because they reached out to us,  
7 because they couldn't get the answers from Robert, and we  
8 were a governing body that would approve major decisions like  
9 a financing.

10 Q. Sir, Paul and other members of your group were  
11 talking to other potential lenders, right?

12 A. Of the executive committee? Yes, the executive  
13 committee would introduce Robert to other lenders to take  
14 them through a diligence process. We didn't have access to  
15 the diligence information. We didn't have -- we didn't put  
16 together the budgets. We didn't do that. We were trying to  
17 help by introducing Robert to lenders that he could try to  
18 take through the process.

19 Q. So to answer my question, you don't dispute that  
20 you, IMC, or anyone else in the executive committee did not  
21 attempt to resurrect the Mosaic deal after February 1st,  
22 2016, yes or no?

23 A. I had no conversations with Mosaic after that, no.

24 MR. LITTLE: That's all I have. Thank you, your



1 Honor.

2 THE COURT: Thank you. Mr. Wolf.

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

4 CROSS EXAMINATION

5 BY MR. WOLF:

6 Q. Mr. Chaney, I represent Dave Marriner and Marriner  
7 Real Estate LLC in this lawsuit. I just have a few questions  
8 for you. What is the date, the calendar date on which you  
9 met Mr. Campbell prior to testifying in this case?

10 A. What was the calendar date?

11 Q. The date.

12 A. I don't know.

13 Q. Month, day and year in which you met Mr. Campbell  
14 at his office?

15 A. I met -- I'd have to look at a calendar, I guess.

16 Q. How long ago did it happen?

17 A. I met with him about being a witness last week.

18 Q. Last week. So you can't tell me what day last  
19 week you met Mr. Campbell?

20 A. I believe it was Tuesday.

21 Q. So Tuesday, August 29th, 2017?

22 A. That sounds right.

23 Q. Do you recall the date on which you scheduled that  
24 meeting to meet with Mr. Campbell?

1           A.     It was probably the week prior.

2           Q.     So would that be approximately August 22nd,  
3 August 21st, that week?

4           A.     That's possible, yeah.

5           Q.     Possible.  What's your best recollection of the  
6 day you arranged the meeting to meet with Mr. Campbell?

7           A.     It was probably a week prior to last Tuesday.

8           Q.     Now, you called David Marriner on August 26th,  
9 Saturday, 2017, is that correct?

10          A.     That's not when I talked with Dave Marriner.

11          Q.     What is the date on which you called Mr. Marriner?

12          A.     I would say it was probably late July, maybe  
13 July 26th.

14          Q.     So a month ago is when you called him?

15          A.     Yeah.

16          Q.     And asked him to do the right thing?

17          A.     Yeah.  He hung up on me.  And I tried to call him  
18 back and he blocked my phone number.

19          Q.     So it's your testimony under oath here today that  
20 the last day in which you contacted Mr. Marriner by telephone  
21 or participated in a telephone call with him was more than a  
22 month ago?

23          A.     Yes.

24          Q.     What was the purpose of your call?

1           A.     What was the purpose of my call?

2           Q.     To Mr. Marriner.

3           A.     The purpose of my call was to see if he would pay  
4 back the commissions he earned from our \$6 million.

5           Q.     And what were the exact words you stated to him  
6 during the phone call?

7           A.     To the best of my recollection, exactly what I  
8 said to him was, Dave, you know, it looks like this  
9 bankruptcy is a complete disaster. This project has been a  
10 complete disaster. I said, did you earn commissions? Did  
11 you earn commissions on our \$6 million dollars? And then he  
12 kind of went, he talked about, well, I was only supposed to  
13 raise 5 million and I ended up raising more. And I said, but  
14 did you make commission? And he said, yes, I did. I said,  
15 was it \$180,000? He said, yes. I said, don't you think it  
16 would be the right thing to do to pay that back? And he  
17 said, I don't have \$180,000. And he said, I don't like the  
18 way this conversation is going, and he hung up.

19          Q.     And that was in late July?

20          A.     That was in late July.

21          Q.     Was that the last time you called him?

22          A.     I tried to call him back, but it goes directly to  
23 voicemail. It appears that he's blocked me on his iPhone.

24          Q.     To your knowledge, did anybody else from the IMC

1 group contact Dave Marriner within the last two weeks?

2 A. Not to my knowledge, no.

3 Q. What telephone number did you use to call Mr.  
4 Marriner?

5 A. Probably my cell phone.

6 Q. What number is that?

7 A. (775) 800-8888.

8 Q. Why are you volunteering to testify on behalf of  
9 Mr. Yount in this lawsuit?

10 A. I volunteered to testify because I have a story to  
11 tell of what happened in this case. And I feel that Robert,  
12 Bill, Coleman's law firm and Dave Marriner defrauded Stuart  
13 and us. I believe that.

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

15 MR. LITTLE: Your Honor, I apologize, there were  
16 two brief areas that I overlooked.

17 THE COURT: All right.

18 CROSS EXAMINATION

19 BY MR. LITTLE:

20 Q. Can we look at Exhibit 78, which was the letter  
21 that was sent from Darcy Casey to members of the IMC group.  
22 It was the new one that counsel gave you, so it's not going  
23 to be in the book.

24 A. Okay.

1 Q. And in that letter, you agree that letter preceded  
2 the default letter you sent to Criswell Radovan?

3 A. The first letter sent was -- around this matter  
4 was on December 30th, saying we wanted the books and records  
5 and access to them. And we received this on March 9th and  
6 then I sent a breach letter on March 11th.

7 Q. Okay. And this letter says that the auditor has  
8 completed phase one of their engagement, right?

9 A. That's correct.

10 Q. And it says that they determined that the  
11 accounting records were not reconciled to supporting  
12 documentation on a routine basis, correct?

13 A. Correct.

14 Q. It doesn't say that improprieties were found in  
15 terms of spending. It just says that they needed more  
16 records, right?

17 A. Yes. Basically, what the report says -- well,  
18 there's some other stuff it says, as well, but it also says  
19 that they weren't given information.

20 Q. And, sir, did you engage them to complete phase  
21 two?

22 A. We didn't, because we couldn't get the information  
23 from Robert Radovan to do it.

24 Q. Sir, we've established you're on the executive

1 committee, right?

2 A. Yes.

3 Q. And it's been more than a year and a half since  
4 this letter, right?

5 A. That's correct.

6 Q. And isn't it true that there were audited  
7 financial statements completed for 2015?

8 A. I believe so, yes.

9 Q. And have you seen those?

10 A. I have.

11 Q. Did you send them to Darcy to review?

12 A. No. Because if you read that report, it says that  
13 they disclaim that the information -- they're representing  
14 the information that was given to them by Criswell Radovan is  
15 true information.

16 Q. Well, it's a third party audited report, correct?

17 A. I don't know the scope of their audit, no.

18 Q. And you didn't send it to Darcy to look at it,  
19 correct?

20 A. No. Because it was going to cost money and that  
21 is not detail information, that's a summary report.

22 Q. Sir, isn't it true after receiving the audited  
23 financials, that Paul Jamieson and Phil Busick switched sides  
24 and started supporting Mr. Radovan and Mr. Criswell and your

1 IMC group's continued tirade against them?

2 A. I wouldn't say that, no.

3 Q. You dispute that is true?

4 A. I don't think there are sides. I think everyone  
5 was trying to do what's best for the project.

6 Q. Sir, there was some discussion about transferring  
7 shares to Mr. Yount and you said you're familiar with the  
8 operating agreement and you're familiar with the transfer  
9 sections, right?

10 A. I mean, I guess from a cursory level, yes.

11 Q. Then you would know that the approval is to be  
12 obtained at the annual meeting of the shareholders, right?

13 A. I don't know.

14 Q. And the annual meeting is held in April, right?

15 A. I don't know.

16 Q. And, sir, is it really your testimony, despite it,  
17 and we can go through them if you want, all the e-mails about  
18 IMC playing good cop, bad cop with Mr. Yount in forming this  
19 cohesive unit, that you would not have approved him as a  
20 founding member of Cal Neva Lodge?

21 A. I would not have approved Robert Radovan and Bill  
22 Criswell selling their so-called shares for the equity to  
23 getting money out of this project.

24 Q. Sir, isn't it true they were only selling

1 Mr. Yount one of the two shares?

2 A. It doesn't matter.

3 Q. That's not my question. You don't dispute that,  
4 right, they were selling one of two shares?

5 A. That's correct.

6 Q. And you signed off on the operating agreement and  
7 the private placement memorandum and the subscription  
8 agreement, correct?

9 A. I signed off on it?

10 Q. Your company signed off on those. You  
11 acknowledged you received them and understood those  
12 documents?

13 A. I acknowledged that I received the private  
14 placement memorandum.

15 Q. Then you understood, sir, that Criswell Radovan or  
16 CR Cal Neva was only required to hold a \$1 million share in  
17 the company?

18 A. That wasn't my understanding.

19 Q. Sir, as a member of the executive committee, you  
20 reviewed and approved the Ladera loan, did you not?

21 A. I did not.

22 Q. You never saw that document?

23 A. I did not see that document. That was done prior  
24 to us investing.



1 Q. Were you aware that that document says they're  
2 only required to have a \$1 million skin in the game?

3 A. No. Because they never shared that document with  
4 us. Nor did they share that they had pledged our membership  
5 interest to Ladera. That was another issue.

6 MR. LITTLE: That's all I have. Thank you.

7 THE COURT: Thank you. Mr. Campbell, I'd like to  
8 finish this witness this morning.

9 MR. CAMPBELL: I'll do my best, your Honor. I  
10 think I can do it.

11 REDIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Mr. Chaney, let's go back to Mr. Little's cross  
14 examination about the Straight Shot lawsuit.

15 A. Yes.

16 Q. And if you read what he read through in those  
17 various documents, it appears that the spoliation was  
18 occasioned by an employee of yours, I'll get his name here,  
19 Sommers?

20 A. Yes.

21 Q. Tell me about Mr. Sommers. Did he -- I think you  
22 testified he worked in a remote office?

23 A. Yes. So we tried to buy Straight Shot in 2008.  
24 Sommers was an employee of Straight Shot. And that was

1 during the mortgage crisis. So in the middle of that  
2 transaction, Straight Shot went out of business, and they  
3 provided the life blood of a lot of customers that process  
4 credit card transaction.

5 So he worked for Straight Shot and then they laid  
6 off all of their employees, let them go, and we hired  
7 Mr. Sommers and he worked out of his home in Seattle and we  
8 were in San Francisco.

9 Q. So you didn't daily interact with him?

10 A. I did not daily interact with him, no.

11 Q. And what did you he do for you?

12 A. He was an engineer.

13 Q. And then the Court made a finding that he spoiled  
14 or deleted evidence on your company's laptop, correct?

15 A. When he came on board, we had sent him a  
16 Teleconnex laptop and he also had a Straight Shot laptop. So  
17 I don't recall. There was -- then he started using both  
18 laptops. So the spoliation was him deleting files in one or  
19 the other.

20 Q. Did you instruct him to delete files on the  
21 laptop?

22 A. Absolutely not. We actually instructed him to  
23 comply with any discovery orders.

24 Q. And did any of your subordinates, anybody working

1 under you tell him to delete the files?

2 A. No.

3 Q. And the reason that the Court held in holding the  
4 company liable is because under the theory of respondeat  
5 superior --

6 A. That's correct.

7 MR. LITTLE: Your Honor, lack of foundation. The  
8 document speaks for itself. It doesn't say that at all,  
9 actually.

10 THE COURT: Sustained. Go ahead.

11 BY MR. CAMPBELL:

12 Q. But you individually were never sanctioned for  
13 spoliation of evidence?

14 A. I was not.

15 Q. And, ultimately, the Court did enter a judgment on  
16 the underlying lawsuit?

17 A. It did.

18 Q. And individually and your company?

19 A. That's correct.

20 Q. And that was all related to the business  
21 transaction?

22 A. That's correct.

23 Q. Mr. Marriner's attorney asked you about the  
24 telephone call to Mr. Marriner.

1           A.     Yes.

2           Q.     Can you explain that? Was there a reason you were  
3 calling him at a certain point?

4           A.     Because I keep getting reports from the bankruptcy  
5 court of what's going on in this case. So it's tickling me  
6 all the time. And I think it was right after we learned that  
7 Larry Ellison was -- when they scheduled the auction of the  
8 Cal Neva and the stalking horse was Larry Ellison, so it was  
9 just a -- you know, it really was an emotional thing in the  
10 sense that once that finalization came, where it's very  
11 evident where the money is completely lost that we invested  
12 and really feel that Dave Marriner misled us. And so I  
13 called him up to say, hey, you should pay the money back.

14          Q.     Okay. And your testimony was that you asked him  
15 if he had received a commission. Did you know whether or not  
16 he had received a commission?

17          A.     We never saw any kind of commission with, you  
18 know, what Dave Marriner was receiving. I never saw any  
19 financials, even after the fact that. I don't know where  
20 that was buried, but it's my knowledge that Dave Marriner  
21 made hundreds of thousands of dollars and investors lost  
22 everything based upon his representations.

23          Q.     But just follow-up. You never saw that in any  
24 financials about the amount of the commission?

1           A.     I never saw anything, no.

2           Q.     And just to be clear, on your -- your testimony  
3 about when you called him, is that your best recollection?  
4 Did you review your phone logs? Did you review your call  
5 logs?

6           A.     I didn't. That's my best recollection.

7           Q.     Could it have been a different time?

8           A.     It could have been.

9           Q.     I'll talk a little bit about your testimony on the  
10 Fairwinds Winery, just so we're clear. BPB is the entity  
11 that Mr. Little was asking you about.

12          A.     That's correct.

13          Q.     And BPB is a company that you own?

14          A.     I do.

15          Q.     And you own it entirely?

16          A.     I own it with a partner.

17          Q.     And in the original deal with Fairwinds, BPB took  
18 an ownership interest?

19          A.     Yeah. We had two LLC's that we owned 100 percent  
20 of. One was IMC Investment Group, FE Winery, and the other  
21 one was BPB.

22          Q.     The IMC Investment Group, is that the same group  
23 that invested in the Cal Neva?

24          A.     Yeah. That was just the name of the entity.

1 Q. Was it primarily you and one partner?

2 A. It was just me and one partner, yes.

3 Q. And so in the original operating agreement, my  
4 understanding, BPB had a piece and IMC, this new IMC entity  
5 had a piece?

6 A. That's correct.

7 Q. So initially you controlled a certain percentage  
8 under the operating agreement?

9 A. That's correct.

10 Q. And what was that percentage?

11 A. 60 percent.

12 Q. And when the changes that were made to the  
13 agreement, it was my understanding that the change was just  
14 to transfer the BPB interest to the IMC?

15 A. That's correct.

16 Q. Effectively, you had the same percentage of  
17 control, it was just a consolidation?

18 A. That's correct.

19 Q. And then there were additional changes to the  
20 operating agreement later, right?

21 A. That was in January or late December or January,  
22 yes.

23 Q. Is that where the changes were made to give you  
24 the ability to dilute Mr. Radovan or CR?

1 A. That's correct.

2 Q. And that was because of cash you were infusing in  
3 the company?

4 A. Yes. When they were managing it, it was  
5 mismanaged and I kept having to write checks, even though I  
6 was assured I wouldn't have to. So at some point, I had to  
7 put a stop to it.

8 Q. And that's why you amended the operating  
9 agreement?

10 A. That's correct.

11 Q. Let's go to your July investor meeting. And I  
12 believe your testimony was yesterday that you were told that  
13 there were change orders or changes in the project that were  
14 going to cost the project money?

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. There was no quantification of dollars, these  
19 change orders are X million dollars?

20 A. Yeah. It wasn't detailed whatsoever.

21 Q. And I believe your testimony was also that the --  
22 it was going to be a refinance of the Ladera mezzanine loan,  
23 correct?

24 A. That's correct.

1           Q.     And that was going to be -- you understood it to  
2 be \$15 million?

3           A.     That's right.

4           Q.     And I think yesterday you said that 15 million  
5 would in fact pay off the Ladera loan?

6           A.     That's correct.

7           Q.     And your testimony, I think, yesterday was that it  
8 would be 7 or \$8 million?

9           A.     That's right, because there was fees and interest  
10 on top of it.

11          Q.     The loan was only six, right?

12          A.     Right.

13          Q.     And you knew there were fees and interest?

14          A.     Yes.

15          Q.     And you also said yesterday that Robert discussed  
16 what these loan proceeds were going to go forward with the  
17 condo development?

18          A.     Yes. I recall them having plans there for the  
19 condominiums, and actually Dave Marriner was showing those  
20 plans. And, you know, the lion's share of that money was  
21 going to move the condo project forward, so we could get that  
22 money in sooner.

23          Q.     And I think your testimony yesterday, he also  
24 talked about design upgrades?



1 A. Yes.

2 Q. Can you look at Exhibit 18?

3 A. Certainly. Okay.

4 Q. Do you see the middle paragraph under where it  
5 says total \$55.5 million?

6 A. Yes.

7 Q. Can you just read that, review that, read that to  
8 yourself?

9 A. Okay. You mean the paragraphs below?

10 Q. Just the one paragraph, we are refinancing.

11 A. Okay.

12 Q. Is this paragraph that Mr. Radovan is telling  
13 Mr. Yount similar to what you were told in that July meeting  
14 by Mr. Radovan?

15 A. Yes.

16 Q. And there's no numbers in this paragraph, right?

17 A. No.

18 Q. What was your understanding of the condo  
19 development cost?

20 A. Well, I don't really -- I don't recall. They were  
21 talking about bringing someone in to build it for four or  
22 \$500 a square foot, and they're 1,200 square foot units,  
23 duplexes, so 2,500 square foot per building, 14 buildings.  
24 So, I mean, what we didn't really know and I still frankly

1 don't know is what's really entitled? Do we really have  
2 approval to do it?

3 Q. And in both Exhibit 18 and in the discussion you  
4 had in the July meeting, that was never quantified how much  
5 that cost might be?

6 A. No, it was not quantified.

7 Q. Let's go back to the Mosaic, some questions that  
8 Mr. Little cross-examined you on.

9 A. Okay.

10 Q. Exhibit 129.

11 A. Okay.

12 Q. Mr. Little asked you about Mr. Johnson's follow-up  
13 e-mail, which would have been the day after he sent his first  
14 e-mail, which is February 1. That's also contained in this  
15 e-mail, right?

16 A. Yes.

17 Q. And in that follow-up e-mail from Mr. Johnson to  
18 Mr. Jamieson, he's going back to Mr. Jamieson in talking  
19 about the meeting that you were at?

20 A. Paul was?

21 Q. No. Mr. Johnson.

22 A. Okay. Yeah.

23 Q. And if you look at the top of the second page,  
24 without going through the detail in there, is that an

1 accurate conversation what transpired in that Mosaic meeting?

2 A. I think so.

3 Q. So in that meeting, did Mosaic have some  
4 information already and were asking you to corroborate  
5 things?

6 A. They did. I mean, they knew that this project was  
7 supposed to open and it didn't. They knew that the  
8 information that they had received from Robert Radovan and  
9 Bill Criswell did not look like a well managed project and  
10 they had concerns about it and they had concerns they weren't  
11 getting calls back.

12 I think they were very interested in doing a loan.  
13 They really liked the project. I mean, it's a very sexy  
14 project and they wanted to do something. I think -- I mean,  
15 the fact was it was mismanaged.

16 Q. But they were specifically asking you questions  
17 about what they had already heard, is that your impression?

18 A. Absolutely.

19 MR. LITTLE: Objection, calls for speculation.

20 THE COURT: Sustained.

21 BY MR. CAMPBELL:

22 Q. You earlier testified in response to a cross  
23 examination question that the tearing up the term sheet was a  
24 good thing. What do you mean by that?

1           A.     Because when they reached out to us, they said,  
2     you're on the hook for a million dollars bucks as a break-up  
3     fee.  You're obviously not doing a loan, because you're not  
4     calling us back.  And so the executive committee by no means  
5     wanted to torpedo the loan with Mosaic.  What we were trying  
6     to do is keep all our options open and keep Mosaic going.  If  
7     they're calling us, instead of the person that is supposed to  
8     be managing that, there's a problem.  In that meeting, we  
9     were selling the Cal Neva.

10          Q.     Your earlier testimony was that in December or I  
11     think it was November or December meeting, you remember  
12     discussions where you told Robert not to commit the project  
13     to a break-up fee?

14          A.     Right.

15          Q.     Was this news to you in this Mosaic meeting now  
16     there was a break-up fee?

17          A.     Yes, it was news to me.

18          Q.     So you had not been told that Mr. Radovan had  
19     committed the project to a break-up fee with Mosaic?

20          A.     He said that he had not committed the project to a  
21     break-up fee specifically when asked.

22          Q.     And Mr. Little asked you if after this  
23     February 2nd time frame, I guess up until the exhibit, the  
24     letter from Mosaic, which is, I think, Exhibit 77, that you

1 didn't have any evidence that or IMC didn't have any evidence  
2 that they went back and reached out to Mosaic, correct?

3 A. No. I didn't have any evidence one way or  
4 another.

5 Q. Do you have any evidence or have you seen any  
6 document in these numerous e-mails Mr. Little has asked you  
7 that Criswell Radovan went back and reached out to Mosaic?

8 A. No. Not to my knowledge, no.

9 Q. And then just one final area. You said something  
10 when Mr. Little asked you about the Ladera loan and you said  
11 you didn't know that Robert had pledged the membership  
12 interest to Ladera. What are you talking about?

13 A. So when the Ladera loan went into default, Ladera  
14 sent notice to have a sheriff's sale of the membership  
15 interest. And, frankly, we didn't even see that letter until  
16 it was like the day before it was going to sale by the  
17 sheriff.

18 And we were able to convince the Ladera folks not  
19 to harm us, because, you know, a lot of the people had  
20 invested in Tahoe or -- he didn't want to upset all the  
21 investors, right, in foreclosing on our membership interests.  
22 That's when we learned that our membership was pledged as  
23 collateral. And the Ladera loan was signed prior to us  
24 investing, but he didn't disclose those documents to us.

1 MR. CAMPBELL: Okay. That's all I have. Thank  
2 you.

3 MR. LITTLE: Your Honor, two brief questions.

4 THE COURT: All right.

5 RECROSS EXAMINATION

6 BY MR. LITTLE:

7 Q. Sir, counsel tried to infer that the bad faith  
8 spoliation sanctions came against your company because you  
9 were somehow a victim of a rogue employee. Can you turn over  
10 to the exhibit we entered, the one that is called order?

11 THE COURT: Which exhibit number?

12 MR. LITTLE: I don't remember which one.

13 THE WITNESS: That is correct. That is what  
14 happened.

15 BY MR. LITTLE:

16 Q. Sir, turn, over to page five of that document.

17 MR. CAMPBELL: The order or the spoliation?

18 THE CLERK: The order is Exhibit 215.

19 BY MR. LITTLE:

20 Q. Exhibit 215, page five, and I'm going to read,  
21 sir, lines 14 through page six, line two, and then we'll let  
22 the Court judge if you were a victim. The Court indicated,  
23 quote, during the course of trial, the parties stipulated  
24 that various e-mails, which were recovered from the despoiled

1 laptop that had been issued to and ultimately returned by  
2 Sommers were not produced in discovery by Teleconnex.  
3 Teleconnex' failure to disclose these e-mails, which were  
4 either received or sent by individuals other than Sommers,  
5 who are associated with Teleconnex undermines any claim that  
6 it was not complicit in or otherwise liable for Sommers'  
7 spoliation efforts, end quote. Did I read that correctly?

8 A. I'm sure you did.

9 Q. Sir, I have the original Fairwinds Winery  
10 operating agreement. And I have the red lined version you  
11 sent over. I'm happy to put these in front of you and make  
12 these exhibits. You'd agree with me that you sent over to  
13 Criswell Radovan, Heather, whoever, proposed red line changes  
14 to that agreement, right?

15 A. No, we didn't. I sent over a document and we also  
16 had a working copy in the office as well.

17 Q. But you sent over red lines to that operating  
18 agreement?

19 A. No. I sent over red lines and we printed it out  
20 and did it in the office.

21 Q. Okay. And in addition to sending over red line  
22 changes in section 8.1, you changed the document. That  
23 section talks about powers of members and it said that -- the  
24 original document said that major decisions need to be

1 approved by both FE, which was Criswell Radovan, right?

2 A. Right.

3 Q. IMC and BPB. That's what it says and I can show  
4 it to you. Do you recall that?

5 A. That's okay.

6 Q. In the document you sent over that had other red  
7 lines, that document now took out FE and BPB and it just said  
8 major decisions approved by only IMC. Do you recall making  
9 that change?

10 A. So there were changes that were made that were  
11 accepted and then there were additional changes made.

12 Q. That change wasn't red lined, was it?

13 A. No. Because it was done literally in the office  
14 sitting with him.

15 Q. Okay. And then over in section 12.1, in the  
16 original document, the agreement required a 90 percent  
17 approval and you changed it to 60 percent, but didn't red  
18 line that section, correct?

19 A. Again, that's because those were accepted changes  
20 prior to that red line.

21 Q. Or at least that's your testimony, right?

22 A. No. That's what happened, yes.

23 MR. LITTLE: Nothing further. Thank you, your  
24 Honor.



1 THE COURT: Mr. Wolf.

2 MR. WOLF: Nothing further, your Honor.

3 THE COURT: Thank you very much, Mr. Chaney.

4 Watch your step going down. Gentlemen, I have a brief status  
5 hearing scheduled for 1:30. So if you can be back here at  
6 1:30, it won't take too long, and we pick up there. Where do  
7 we go from here, Mr. Campbell?

8 MR. CAMPBELL: Plaintiff rests. There's no  
9 further witnesses to call.

10 THE COURT: I imagine you'll have some witnesses?

11 MR. LITTLE: Since they rest, yes, we intend to  
12 call back Robert Radovan very briefly, your Honor, maybe 15,  
13 20 minutes.

14 THE COURT: Mr. Wolf.

15 MR. WOLF: I'm not sure.

16 THE COURT: Why don't you think about it. But  
17 we'll carve out as much time as everybody needs to put on the  
18 case they feel is appropriate.

19 MR. LITTLE: I expect maybe 30 minutes or so, 30  
20 to 45 minutes for closing.

21 THE COURT: All right. Okay. Well, I appreciate  
22 that.

23 MR. LITTLE: Are we able to go past five today if  
24 we need to?

1           THE COURT: No, not today. Ms. Clerk, let's look  
2 at our calendar.

3           THE CLERK: Tomorrow, your Honor?

4           THE COURT: Tomorrow.

5           THE CLERK: We have a 10:00 and a 10:30.

6           THE COURT: Let's move those and we'll give you  
7 all morning.

8           MR. LITTLE: I hate to be in a situation where we  
9 start somebody and we don't get through it. Let's just do  
10 closing together.

11           THE COURT: What I would like to do, I prefer to  
12 do is get all the testimony in this afternoon, close up our  
13 testimony, give you the rest of the day to work on your  
14 closings, compile the exhibits you think are going to be  
15 important for the presentation. I don't know if there will  
16 be some Power Points. And then let's just start at 9:00  
17 tomorrow morning with closing arguments and we'll go as long  
18 as possible.

19           I've got a judge's meeting. I know when it will  
20 start. I don't know when it will end. But we could probably  
21 reconvene probably about 1:30. I'd like to give it some  
22 thought, but it was my intention to issue a ruling from the  
23 bench and it's still my desire to do that. But I want to  
24 hear from everybody before I make that decision.

1 MR. LITTLE: Thank you, your Honor. 1:45?

2 THE COURT: Let's go 1:45.

3 MR. LITTLE: Thank you, your Honor.

4 THE COURT: Court's in recess.

5 (A lunch break was taken.)

6 THE COURT: Mr. Little.

7 MR. LITTLE: Thank you, your Honor. I'm going to  
8 call Robert Radovan and I promise it will be brief.

9 THE COURT: Don't worry about it.

10 MR. LITTLE: We've beat these issues to death.

11 THE COURT: Yes, we have. Mr. Radovan, you remain  
12 under oath.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Little.

15 MR. LITTLE: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. LITTLE:

18 Q. Mr. Radovan, you heard Mr. Chaney say that you  
19 kept him in the dark about just about everything. Yet he  
20 claims you told him in October that you guys had recently  
21 taken \$480,000 in developer fees out of the project. First  
22 of all, did you ever tell Mr. Chaney that?

23 A. Absolutely not.

24 Q. More importantly, did that ever happen?

1           A.     No, it didn't.

2           Q.     And you recall that counsel showed you a budget or  
3 I don't know if he showed it to you or Mr. Criswell or  
4 anybody else, but there was a budget at the end of 2015 that  
5 showed a \$480,000 developer fee as due to you guys, which was  
6 then cleared out at the end of 2015? Do you recall that?

7           A.     Yes.

8           Q.     Can you explain to the Court what that was?

9           A.     Yes. That was a \$480,000 developer fee due to CR  
10 that was miscategorized. We did a journal entry. It was  
11 discovered by our accountant that had been fees that were  
12 drawn pre Canyon, during that period of the predevelopment  
13 Canyon period. Those funds were taken and spent on project  
14 expenses capitalized within the equity structure. So it was  
15 double counted between New Cal Neva Lodge and Cal Neva Lodge  
16 where the equity sat. So we did a journal entry to fix that  
17 issue.

18          Q.     Did you go back and get financial records within  
19 the last day or so to confirm this?

20          A.     Yes.

21                 MR. LITTLE: Your Honor, may I approach the  
22 witness?

23                 THE COURT: Yes, you may.

24 BY MR. LITTLE:

1           Q.     Sir, while counsel is looking at that, would a  
2 disbursement in the magnitude of \$480,000 have required any  
3 sort of approvals?

4           A.     Any disbursement at all had to go through a number  
5 of levels to be approved, because everything -- Hall had to  
6 approve everything, Mark Zakuvo had to approve everything.  
7 So every draw that was done, any one dollar that went through  
8 the accounts had to be approved by Hall and then Mark Zakuvo.

9                     So as a general rule, I would say probably at  
10 least 90 percent of each draw was paid directly from Hall out  
11 to everyone else, whether it would be Penta or the main subs  
12 and those type of folks. We actually kind of went through  
13 the Cal Neva accounts that we were writing checks out of. It  
14 was less than ten percent. It was about \$60,000 a month  
15 almost.

16          Q.     So if I'm understanding you, if you guys were  
17 going to take out a fee of that magnitude, Hall would have  
18 had to approve that?

19          A.     Certainly.

20          Q.     And in the September, October, November time  
21 period, I know this didn't happen, but do you think Hall  
22 would have approved a disbursement like that?

23          A.     Not without questioning it heavily. Every draw is  
24 shown.

1 MR. LITTLE: May I mark this?

2 THE COURT: Yes.

3 THE CLERK: Exhibit 216 marked for identification.

4 BY MR. LITTLE:

5 Q. Sir, I'm going to show you what has been premarked  
6 as trial Exhibit 216. Can you tell us what this document is  
7 and what it purports to show?

8 A. Yes. This is the journal entry taking it from  
9 a -- functionally a debit to CR Cal Neva to basically  
10 capitalizing it as equity that had been drawn previously two  
11 years earlier.

12 Q. If I'm understanding you, it's a journal entry on  
13 the books?

14 A. Correct.

15 Q. It's taking the \$480,000 that was shown as due and  
16 payable to you guys and moving it to a different column on  
17 the books, basically into your equity?

18 A. Correct. The funds had already been drawn two  
19 years earlier and it was just double counting.

20 MR. LITTLE: Your Honor, I move for the admission  
21 of Exhibit 216.

22 THE COURT: Mr. Campbell.

23 MR. CAMPBELL: I don't have any objection.

24 THE COURT: 216 is admitted.

1 BY MR. LITTLE:

2 Q. Sir, when was the last time you took a developer  
3 fee on this project?

4 A. I believe it was July of 2015.

5 Q. And how much was that?

6 A. It would have been \$60,000 for the entire company  
7 monthly.

8 Q. And, sir, contrary to taking out money, did you in  
9 fact put money back into the project in the October time  
10 frame?

11 A. October, November, we loaned, you know, 250,  
12 300,000 back to the project.

13 Q. And that was money that you got from the sale of  
14 your share to Mr. Yount?

15 A. Correct.

16 Q. Can you explain to the Court -- well, can you  
17 explain to the Court what you've been doing over the past two  
18 years on behalf of Cal Neva Lodge without pay?

19 A. Well, I'm trying to initially refinance. I went  
20 through, I would say three very strong contenders.  
21 Mr. Chaney talked about, obviously, Mosaic, Colombia Pacific,  
22 and Langham. Langham was a hotel company. And then those  
23 two ended up -- I'll come back to those in a second. But  
24 those two ended up in a situation where when the filing

1 happened, we were forced to do a Chapter 11 filing, they both  
2 kind of fizzled out.

3           Since then, I've been trying, Bill and I and the  
4 whole company has been trying to find a way to refinance,  
5 sell, any form or fashion, basically, save the project, save  
6 the equity in the project. I can tell you that every single  
7 scenario that we have gone through would not have included us  
8 being in the project, that being Criswell Radovan or CR.

9           Q.     What do you mean by that? Because you heard  
10 Mr. Chaney saying, well, you were just trying to advance your  
11 own interest?

12          A.     Not one scenario would have kept us in the project  
13 and we worked tirelessly to do that. Like I said, this has  
14 been going on two years now, a year and a half under the  
15 Chapter 11. And it's just -- it's a strange process, I'll  
16 put it that way.

17                I will say on the Langham situation, Langham got  
18 pretty far down the line, actually to the point where their  
19 issue was that they wouldn't go forward while having the IMC,  
20 Molly and Yount in there. So they actually signed option  
21 agreements with the IMC and with Molly, I don't believe they  
22 did it with you, Mr. Yount, but option agreements were signed  
23 by Langham and negotiated with the IMC and Molly to purchase  
24 their interests.



1           Q.     So on that point, Mr. Chaney kind of left the  
2 impression that the project would have got funded but for you  
3 guys, somehow you're the poison that is preventing people  
4 from investing. What is your response to that?

5           A.     That's certainly not the impression we had gotten.  
6 Like I said, Langham is a good example. This is a very, very  
7 large, well-funded international hotel company, probably 20  
8 properties around the world, all five star, owned by one of  
9 the wealthiest people in the world, a billionaire out of Hong  
10 Kong. And they always wanted to keep us in as an experienced  
11 developer.

12                     We had always said at each of the investor  
13 meetings that if the circumstance presents itself that is the  
14 best for the project, best for investors, we will exit. But  
15 nobody ever came up with one. But we always have maintained  
16 that and always said that.

17           Q.     What's your understanding of why Langham didn't go  
18 forward?

19           A.     It was first working through the IMC, Molly and  
20 that situation, they just saw them as being a troubling  
21 aspect to the project. So that took a while to get them  
22 under option. They negotiated that through JMBM, our  
23 attorneys. And at the end of the day, as when we -- it was  
24 interrupted by the Chapter 11 filing.

1           Q.     Sir, let's switch gears.  You heard Mr. Chaney  
2 testify that you guys pushed Mosaic to the side.  You guys  
3 did that, you ignored them for three months, and you were  
4 ultimately responsible for them backing out.  Is any of that  
5 true?

6           A.     Absolutely not.  We had -- we were told basically  
7 by the executive committee to do a couple of things.  This is  
8 in November, starting in November.  Basically, get more  
9 money, make sure we're not on the hook for the million dollar  
10 break-up fee.  Those are the two main ones.

11                  So I did go back, accomplished both of those  
12 things.  And really the whole holdup was the basically the  
13 executive committee approval of it.  And I was communicating  
14 with them.  That it wasn't some -- I was told to step down  
15 from due diligence, stop due diligence while they look at  
16 other prospects.  So I had to put them on hold, because that  
17 is what I was functionally ordered to do.

18           Q.     Now, you heard Mr. Chaney say that one of the  
19 reasons Mosaic backed out is because they didn't know about  
20 cost overruns.  How do you react to that?

21           A.     That's absurd.  That's the entire reason why we  
22 were doing the financing.  They knew -- I mean, that was the  
23 entire reason for the financing was the cost overruns.  To  
24 say they didn't know about cost overruns is that kind of

1 silly.

2 Q. Sir, in November of 2013, was Mosaic prepared  
3 close this loan by year's end?

4 A. Yes.

5 Q. Do you have any proof of that?

6 A. I do. I have a voicemail from Ethan Penner, the  
7 CEO of Mosaic, from November 19th saying that they're willing  
8 to close by the end of the year.

9 MR. LITTLE: Your Honor, I'd like the Court to  
10 listen to that voice message.

11 MR. CAMPBELL: Your Honor, I got to object.

12 THE COURT: Go ahead.

13 MR. CAMPBELL: This is totally unverified. If  
14 they wanted to have Mr. Penner here to testify, they should  
15 have had him testify. I never seen a voice message off a  
16 phone. It's so hard to authenticate something like that. I  
17 don't think it's right to allow him to do that.

18 THE COURT: It's his phone?

19 MR. LITTLE: Exactly, it's his phone. He can  
20 authenticate it. It's self-authenticating by the gentleman  
21 identifying himself and talking. It's impeachment evidence.  
22 We didn't know that Mr. Chaney was going to come in here and  
23 say that Mosaic wasn't going to close and we pushed them to  
24 the side and somehow we're to blame for it. So it's

1 impeachment evidence.

2 THE COURT: Have it marked and I'll admit it and  
3 we can play it. Let's have the clerk mark it.

4 MR. LITTLE: I don't have it, your Honor. I don't  
5 have a written transcript of it. I just have the message  
6 itself. I mean, I can have that transcribed, but I wanted to  
7 play it to the Court.

8 THE COURT: Okay. Well, I'd like to have some  
9 physical exhibit.

10 MR. LITTLE: Okay.

11 THE COURT: So let's go ahead and have it played  
12 and my court reporter will transcribe it and we'll print it  
13 out.

14 BY MR. LITTLE:

15 Q. Let's identify what date this is.

16 A. This is November 19th, 2015, at 2:55 p.m..

17 Q. And it's from who?

18 A. From Ethan Penner who is the CEO of Mosaic.

19 Q. What's the phone number?

20 A. (310) 926-4600, which is the Mosaic line.

21 Q. Let's go a head and play it.

22 (Hey, Robert, Ethan Penner. I'm calling because I  
23 heard that we haven't connected with you in more like than a  
24 week and I know that a lot of work has been expended on both

1 sides and a lot of enthusiasm exists on our side to get this  
2 deal done for you. So I don't want to -- I want to make sure  
3 we don't lose that window of opportunity to kind of get it  
4 done in the time frame that you need. We also need to kind  
5 of budget our resources, not just capital, but time, so  
6 because there are other deals that also are aiming for a  
7 year-end close. So please get back to me, either cell  
8 (310) 702-0135 or the office, and I look forward to our  
9 partnership.)

10 Q. Sir, did you or Mr. Criswell stand in the way of  
11 Mosaic not closing by year end or early January?

12 A. Absolutely not.

13 THE CLERK: Your Honor, that would be, after it's  
14 transcribed, it will be Exhibit 217. You said that's  
15 admitted?

16 THE COURT: Yes.

17 THE CLERK: Thank you.

18 BY MR. LITTLE:

19 Q. I want to move on to another topic. You heard  
20 Mr. Chaney say that there was no detailed discussion of cost  
21 overruns at the July 2015 meeting. Do you recall hearing  
22 that?

23 A. Yes.

24 Q. In fact, the Court can interpret his testimony for

1 himself, but his testimony changed between yesterday and  
2 today. What was discussed at that July 2015 meeting?

3 A. Basically, what the update was. You know, that  
4 was in the document. It was going through all the issues.

5 Q. Let's stop there. You say the document?

6 A. The update from Thannisch and Case.

7 Q. Exhibit 10?

8 A. And going through those issues, what they were,  
9 what we knew of the cost scenarios at that point, which was  
10 over five and definitely more coming. And that we were  
11 proposing to raise an additional nine, along with basically  
12 the 15 million mezzanine financing.

13 Q. Now, yesterday when Mr. Chaney was talking about  
14 only knowing 1 to \$2 million costs in this July meeting when  
15 he was talking about for Starwood upgrades, was he confused  
16 about which meeting?

17 A. We did have a meeting in April, which sounded --  
18 that's about the discussion we had at that point in time. We  
19 knew there were some scenarios out there and they were in the  
20 1 to \$2 million range that we were discussing at that point.

21 Q. You also heard him say many times that you kept  
22 him in the dark and you dodged his questions, is that true?

23 A. Absolutely not. He had an office ten feet away  
24 from my office in our office. He was there every other week

1 at least from July -- June, July through early February.

2 Q. Did he come to you and express all the concerns  
3 you heard him say in his testimony?

4 A. No.

5 Q. Now, one last topic. You heard Mr. Yount say  
6 yesterday that someone on the unsecured creditors committee  
7 in the bankruptcy raised some issue about some \$11.5 million.  
8 Are you involved in the bankruptcy?

9 A. Yes. I'm the debtor in possession.

10 Q. And do you have an attorney representing you?

11 A. Yes.

12 Q. Have you ever heard anything like that?

13 A. Absolutely not. And I actually after hearing that  
14 yesterday, I spoke to Peter Beneventi, who is our lead  
15 counsel, and asked if he's heard of anything of that type,  
16 and he confirmed he did not. And he actually sent me an  
17 e-mail confirming that as well with all the rest of the legal  
18 team that we've never seen or heard of anything of that type.

19 Q. Now, there was some discussion yesterday about not  
20 having audited financials until 2014 for some period of time.  
21 Do you have an explanation for that?

22 A. The 2014, it was a stub year, for lack of a better  
23 term. So we had the two entities, New Cal Neva Lodge and Cal  
24 Neva Lodge. Cal Neva Lodge came in as the equity holder.

1 New Cal Neva Lodge was actually owned by Canyon Capital. So  
2 when we took them out in September -- I'm sorry. It was two  
3 months prior, July, we had this stub year. So both of those  
4 entities were functioning as one as far as financial records  
5 went. So we were not able to do fully audited, because we  
6 didn't own the entity for that year. So there was not a  
7 fully audited financials for New Cal Neva Lodge until early  
8 2014 and that work had been done.

9 Q. Had there been audited financials performed by an  
10 outside auditor for 2015?

11 A. Yes.

12 Q. And had both of those years' financials been  
13 shared with investors?

14 A. Yes. Every single number they got us.

15 Q. And since those audited financials have been  
16 provided to investors, has there been any change in any of  
17 the way some of the investors have viewed or treated you?

18 A. Well, you know, I'd say after all of those issues  
19 kind of came out and went through that and then having Paul  
20 Jamieson, who is part of the IMC, and Phil Busick, they were  
21 very active. They actually sat in our offices, I think it  
22 was in March, for the better part of a week to ten days. And  
23 they took the attitude after that, they actually personally  
24 apologized to my entire staff for the way that they had been



1 treating them and really kind of gone on our side and  
2 basically we all started working for the best interests of  
3 the project and get it done.

4 Q. We've gone over this, there's procedures under the  
5 operating agreement to remove CR Cal Neva as managers?

6 A. Certainly. We can be removed for no reason at all  
7 at any point in time.

8 Q. And to your knowledge, has there ever been any  
9 sort of a vote to remove you as managers?

10 A. No. Not that I'm aware of.

11 Q. Sir, just so we're clear, why do you believe this  
12 project did not get funded and open?

13 A. Well, I think that the EC committee had approved  
14 the Mosaic loan, and if not for, honestly, the IMC, Molly and  
15 Mr. Yount, I think that loan would have closed. There was  
16 absolutely no reason to have a pre meeting with them. Never  
17 heard of a lender doing anything of that type or anyone  
18 trying to do that.

19 This hotel should have opened on Father's Day.  
20 Given the closing after the delays, it might have taken a  
21 little longer, but we should have been open for the better  
22 part of a year now.

23 MR. LITTLE: Thank you. No further questions.

24 THE COURT: Mr. Campbell.

## 1 CROSS EXAMINATION

2 BY MR. CAMPBELL:

3 Q. Mr. Radovan, you just said that the you believe  
4 the Mosaic loan would have closed. Do you have any documents  
5 at ally other than what we've seen in this trial where there  
6 was an indication that the Mosaic loan was going to close?

7 A. They wanted to move forward.

8 Q. Do you have any documents is the question?

9 A. No.

10 Q. And when you played the tape -- well, prior to  
11 playing the tape or the voicemail, you said that Mr. --

12 A. Penner.

13 Q. -- Penner. Your testimony was he had told you  
14 that it was going to close by year end?

15 A. Yes, sir.

16 Q. Could you play that tape again?

17 A. Uh-huh.

18 MR. CAMPBELL: Is that okay, your Honor?

19 (Voicemail played at this time.)

20 BY MR. CAMPBELL:

21 Q. Mr. Penner didn't say that your deal was going to  
22 close. He actually said that he has other deals that were  
23 going to close towards of end of the year, correct?

24 A. That is correct. He was referring to our deal in

1 that same time frame.

2 Q. We heard his testimony, he said other deals,  
3 didn't he?

4 A. Uh-huh.

5 Q. Exhibit 216 was the sheet that was provided that  
6 has the book entry between New Cal Neva and Cal Neva?

7 A. Correct.

8 Q. Who prepared that?

9 A. That was done by Lisa Pacey.

10 Q. At your direction last night?

11 A. No.

12 Q. This was a document that was --

13 A. This has been around since September.

14 Q. And so it's my understanding that it was a problem  
15 with New Cal Neva versus Cal Neva, right?

16 A. There was a double entry, as I understand. I'm  
17 not an accountant, so I'm not going to -- but as I  
18 understand, it was a double entry where it showed the  
19 \$480,000 in two different places.

20 Q. Isn't it true that the New Cal Neva and the Cal  
21 Neva, although separate entities, really kept a consolidated  
22 set of books, had one bank account?

23 A. Yes.

24 Q. There's no real separation on the money between

1 the two entities?

2 A. There was originally and then once we closed, we  
3 always treated them the same.

4 Q. I just want to make sure again. You understand  
5 you're under oath today and you testified under oath that  
6 there is absolutely no truth, you've never heard anything in  
7 the bankruptcy proceeding about 11.5 million shortfall?

8 A. I never heard that, never.

9 Q. If there's a document out there that says that,  
10 you haven't seen it?

11 A. I haven't seen it and our attorney says he has not  
12 seen nor heard of it.

13 Q. And you don't believe you've ever been asked?

14 A. No.

15 Q. And likewise under oath, you said that every one  
16 of the bankruptcy plans did not include you?

17 A. That's correct.

18 Q. So if I pull all of the bankruptcy plans, I can  
19 see that you would have no involvement whatsoever in the  
20 bankruptcy plan?

21 A. That is correct.

22 Q. But in the Langham deal, you were involved in  
23 that?

24 A. The Langham, we would have stayed in. That was

1 pre bankruptcy.

2 Q. But the Langham deal blew apart when the  
3 bankruptcy was filed?

4 A. Correct.

5 Q. One last area. I believe your testimony was that  
6 you were providing all the information to Brandon that they  
7 were requiring in the summary, fall of 2015?

8 A. Anything that he asked for, he would have gotten.

9 Q. You remember in the October time frame that there  
10 was an e-mail exchange between you and Troy Gillespie?

11 A. Yes.

12 Q. About request for documents?

13 A. Uh-huh. Yes.

14 Q. And didn't Mr. Gillespie request a litany of  
15 documents?

16 A. Yes.

17 Q. And didn't you admit in the e-mail that everything  
18 he asked for, you were at fault and had not provided those?

19 A. On -- I'm not sure which e-mail you're talking  
20 about. When he asked us for information, we got the  
21 information as quickly as we could.

22 Q. Okay. You're saying that in the summer when you  
23 met with Mr. Chaney, you were giving him all the information  
24 that he needed?

1 MR. LITTLE: I don't think that's what he said.

2 THE WITNESS: Anything he asked for.

3 MR. LITTLE: Exactly.

4 BY MR. CAMPBELL:

5 Q. And did you admit to Mr. Gillespie that in fact or  
6 to the IMC group that you had breached the operating  
7 agreement by not providing documents?

8 A. That there were some -- we failed on some of the  
9 reporting in September, October. Well, it was October, so  
10 September.

11 Q. And you agree that that failure to provide  
12 documents was a breach of the operating agreement? You admit  
13 that?

14 A. It was -- he admitted that, we failed to do that.

15 Q. Did you admit it?

16 A. Not that I recall. He was telling me.

17 MR. CAMPBELL: I just want to use this to refresh  
18 his recollection here.

19 THE CLERK: Did you want that marked? Exhibit 79  
20 marked for identification.

21 THE COURT: Mr. Little, any objection?

22 MR. LITTLE: No, your Honor.

23 THE COURT: 79 is admitted, Ms. Clerk.

24 BY MR. CAMPBELL:

1 Q. Mr. Radovan, this is an e-mail between you and  
2 Troy Gillespie. It starts out with some bullet points. Do  
3 you see those?

4 A. Yes.

5 Q. And then it says at the very last page, IMC group  
6 informed Robert verbally that there had been breaches of the  
7 OA to date and your verbally acknowledged. And then  
8 Mr. Gillespie later asked you in the e-mail, I want you to  
9 confirm all of these points. And what do you say?

10 A. Right here it says, thanks for doing this. I  
11 think it reflects our conversation. I'd like to discuss the  
12 financing with you as we've done an extensive search. Do you  
13 have time in the next week, next day or so to discuss?

14 Q. So you didn't dispute any of the bullet points  
15 that was in Mr. Gillespie's e-mail below?

16 A. No.

17 Q. You agreed with them?

18 A. I suppose so.

19 MR. CAMPBELL: That's all I have.

20 THE COURT: Go ahead.

21 REDIRECT EXAMINATION

22 BY MR. LITTLE:

23 Q. On page two of this document, this guys's name,  
24 Mr. Gillespie, he's telling you that as of late October that

1 the cost overruns are \$9 million so far, right, \$5 million  
2 for fire code requirements, 3 million for surprises and  
3 accelerated aspects, 1 million for Starwood, 9 million total,  
4 right?

5 A. I don't have the document in front of me, but that  
6 sounds about right.

7 Q. These are his words, not yours, right?

8 A. Right. Correct.

9 Q. That's what you forecasted to investors way back  
10 in July, right?

11 A. Correct.

12 MR. LITTLE: That's all I have, your Honor.

13 THE COURT: Thank you, Mr. Radovan. You may step  
14 down. Let me get my notes up-to-speed. Thank you.  
15 Mr. Little.

16 MR. LITTLE: Your Honor, we rest.

17 THE COURT: All right. Thank you. Counsel, we'll  
18 convene at 9:00 for closing arguments, but beforehand I'd  
19 like to make a couple of personal observations, if I may,  
20 with your permission.

21 MR. LITTLE: Yes, your Honor.

22 THE COURT: These types of cases present unique  
23 challenges. They involve complex financial transactions, in  
24 this case, an iconic landmark in our nation's history. When



1 I was a baby lawyer, I joined a large law firm and I was  
2 encouraged to meet one of the senior partners there by the  
3 name of Rex Jamieson. He was a legend in the Nevada Bar.  
4 And he had a few rules of practice that he wanted to impart  
5 upon the young lawyers under his tutelage, many of which I  
6 remember to this day.

7 And this was one of them. He said, in your  
8 career, you will handle cases in which there are thousands of  
9 dollars in dispute. Then as your career advances, you will  
10 handle cases in which tens of thousands of dollars and then  
11 hundreds of thousands of dollars and then millions of dollars  
12 will be in dispute. But never forget behind every one of  
13 these cases is a human being.

14 These cases present unique challenges to any trier  
15 of fact, because often times they involve very good people  
16 with the best of motives on all sides. It takes a very  
17 special kind of lawyer to handle these types of cases. We  
18 have about 11,000 licenses to practice law in the State of  
19 Nevada. Of those, probably 8,000 are in state. The largest  
20 law firm in our state is the Attorney General's Office. You  
21 add up the Clark County District Attorney's Office, the  
22 Washoe County District Attorney's Office, the Public  
23 Defender's Offices and all the other public offices, probably  
24 takes up about a third of all the licenses to practice law.

1           But most lawyers don't practice in a court of law.  
2 Many of them are transactional lawyers, never step in a  
3 courtroom. Many of them do trusts and estates, taxes.  
4 Personal injury cases are more likely than not to settle.

5           So that leaves a very discreet subset of lawyers  
6 they call trial lawyers, not litigators, trial lawyers.  
7 These are lawyers who have acquired the skill in taking  
8 complex cases, synthesizing them down in readily  
9 understandable units, and presenting them to any trier of  
10 fact, bench or jury. We rely upon these lawyers. Our whole  
11 system of justice relies upon these lawyers.

12           I don't know as I sit here now how this case is  
13 going to resolve itself, but I want all sides to know that in  
14 this Court's opinion, they have been represented by some of  
15 the finest lawyers to come before this Court. And I thank  
16 them for their hard work and dedication on behalf of their  
17 respective clients.

18           All right. With that, ladies and gentlemen, I'll  
19 see you at 9:00 tomorrow morning. Court's in recess.

20                           --oOo--  
21  
22  
23  
24

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 7, 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, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al.,  
11 Defendants, 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 977, 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 12th day of October 2017.

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

48

48

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 VII

20 September 8, 2017

21 9:00 a.m.

22 Reno, Nevada  
23

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

1 APPEARANCES:

2 For the Plaintiff:

3 DOWNY BRAND  
4 By: RICHARD CAMPBELL, ESQ.  
5 100 W. Liberty  
6 Reno, Nevada

7 For the Defendant:

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13 Attorney at law  
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16  
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18  
19  
20  
21  
22  
23  
24

1 RENO, NEVADA, September 8, 2017, 9:00 a.m.

2  
3 --oOo--

4 THE COURT: Good morning, ladies and gentlemen.  
5 Thank you for your indulgence. As I was reviewing the files  
6 and exhibits last night, I had some questions that I thought  
7 perhaps I'd start them off and it may assist counsel in  
8 narrowing its arguments to the Court. I'll start with  
9 Mr. Campbell. Is Cal Neva Lodge LLC in bankruptcy?

10 MR. CAMPBELL: Yes, it is, your Honor.

11 THE COURT: Is it subject to the automatic stay?

12 MR. CAMPBELL: Yes, your Honor.

13 THE COURT: So the charge against it should be  
14 dismissed?

15 MR. CAMPBELL: I don't know about dismissed. I  
16 think it probably or have to be litigated as a claim in the  
17 bankruptcy court.

18 THE COURT: I'm just talking about in this Court.

19 MR. CAMPBELL: Here this court, yeah.

20 THE COURT: Second question, the subscription  
21 agreement, is that between Cal Neva Lodge LLC and the  
22 plaintiff?

23 MR. CAMPBELL: That's correct, your Honor.

24 THE COURT: Would you concede, then, that CR Cal

1 Neva LLC, Criswell Radovan LLC are not parties to this  
2 contract?

3 MR. CAMPBELL: To the subscription agreement?

4 THE COURT: Yes.

5 MR. CAMPBELL: I believe its managers and members  
6 of the LLC, they are parties to the contract. They were the  
7 agents and operating on behalf of the Cal Neva. They were  
8 the managing entities.

9 THE COURT: Have you pled an alter ego theory in  
10 this case?

11 MR. CAMPBELL: I pled that the defendants have  
12 individual liability.

13 THE COURT: The next question I had dealt with the  
14 seventh cause of action, which is the securities fraud  
15 pursuant to NRS 90.570. Mr. Campbell, are these securities?

16 MR. CAMPBELL: Yes, they are, your Honor. If you  
17 look at Exhibit Number 3, which is the private placement  
18 memorandum.

19 THE COURT: I've looked at it.

20 MR. CAMPBELL: The very first page says it's a  
21 securities offering with the exception that applies under the  
22 statute as far as registration of the security with either  
23 the federal or state government, but it doesn't mean it's not  
24 a security. It is a security. That's what was being sold



1 under the PPM.

2 THE COURT: But isn't this one, don't those  
3 disclaimers state that this is essentially a real estate  
4 investment and securities?

5 MR. CAMPBELL: I don't think a person would get  
6 a -- beyond being on the deed or be entitled to a real  
7 property interest here. They're a member of an LLC and hold  
8 a share, so to speak, in that, in that LLC. If they were --  
9 if you were buying a piece of real estate, you would get, you  
10 know, it would be designated as an owner of that piece of  
11 real estate.

12 THE COURT: Doesn't this qualify as a private  
13 placement under section 482 of the Securities Act of 1933? I  
14 mean, we have less than 35 investors, because we have 20.  
15 These are sophisticated investors, as defined in the statute  
16 itself, and it's not for public solicitation.

17 MR. CAMPBELL: Your Honor, I don't think that  
18 means as far as registration statements, a security is a  
19 security under my understanding and that's what's represented  
20 in the PPM. This securities offering is what the language  
21 says.

22 THE COURT: Okay. Let me see if there's any other  
23 questions I have here before we begin. I think that answers  
24 some of the questions I have. Thank you. Mr. Campbell, you

1 have the floor.

2 MR. CAMPBELL: Thank you, your Honor. During the  
3 course of this trial, the defendants have really attempted to  
4 shift the focus of this case on what happened after  
5 October 13th of 2015. I think they've done that in an  
6 attempt to not have this Court focus on what happened to  
7 Mr. Yount.

8 What I see are the inexcusable acts of the  
9 defendants prior to or about the time that he made his  
10 investment. The real focus on this, your Honor, should be  
11 what happened prior to October 13th or at about that same  
12 time frame.

13 THE COURT: Just a minute here. Go ahead.

14 MR. CAMPBELL: They shifted that focus. What I  
15 believe the facts have shown in this case, I think, let's go  
16 back and focus on what really happened on the October 13th  
17 time frame. Let's start with the Powell Coleman law firm.  
18 Despite what Mr. Coleman said, he was acting as an escrow  
19 agent. You don't take money in a two party transaction, put  
20 it into your trust account as for no other reason, it's --  
21 it's an escrow. You're holding money in an escrow.

22 And even more in this case, he was holding it in  
23 his trust account. And as your Honor knows, there's sacred  
24 duties related to a trust account. You just don't have money

1 go into your trust account and willy-nilly send it out the  
2 next day. Those rules are pretty consistent both under the  
3 Texas Bar Rules, and in addition in our trial brief, I cited  
4 what the Texas rules consider an escrow holder.

5 THE COURT: How did he breach the instructions?  
6 He did exactly what he was instructed.

7 MR. CAMPBELL: There were no instructions. That's  
8 the problem. There was no writing whatsoever.

9 THE COURT: This is a new age, people write  
10 contracts in cyberspace instead of paper.

11 MR. CAMPBELL: I'm not talking about paper. I'm  
12 not talking about anything in cyberspace. There was no  
13 indication in there that Mr. Yount agreed to purchase a CR  
14 share.

15 THE COURT: That's true.

16 MR. CAMPBELL: So he gets money into his trust  
17 account. He's got no documentation as to what this money is  
18 for or whether there's any kind of an agreement. And then he  
19 just willy-nilly releases it the next day based on his  
20 client's word.

21 THE COURT: Instructions.

22 MR. CAMPBELL: His client's word, nothing else.  
23 We've got the approval. What's really important, though,  
24 your Honor, is that he was telling his clients before that

1 time that they needed to get some documentation regarding  
2 this. He was assuming it was a CR share, but he still said,  
3 you need to document this, you need to get the approval.

4 THE COURT: Well, it was a CR share.

5 MR. CAMPBELL: That's what purportedly they tried  
6 to sell. That's certainly not what Mr. Yount agreed to.

7 THE COURT: No. But that's what they sold. They  
8 sold a CR share.

9 MR. CAMPBELL: So he's got a duty to Mr. Yount.  
10 He's got a duty, I think, to the members of the LLC. He's  
11 representing the LLC, ostensibly, even though Mr. Yount is  
12 buying something different than what he thought he bought, he  
13 will become a member of the LLC, so he is owed duties both as  
14 a member and as an escrow holder and as someone who has  
15 deposited a million dollars into Mr. Coleman's trust account.

16 And I think that duty becomes even more evident,  
17 your Honor, when we look at what happened back in January and  
18 February of 2016 both. That's Exhibit Number 33, which is  
19 the -- well, first, if you go back to what he told his  
20 clients in Exhibit Number 33, which is the e-mail string with  
21 his clients about what needed to be done.

22 And if you fast forward to Exhibit Number 64,  
23 which are the documents that Mr. Coleman sent to Mr. Yount,  
24 and aside from the misrepresentations and the untruths in

1 these documents, it's very telling that when he drafted a  
2 purchase agreement, albeit in this case he was trying to  
3 paper the transaction back from CR -- from Mr. Yount back to  
4 CR, he drafts a purchase agreement. He knows that you --  
5 he's a sophisticated transactional attorney. He knows you do  
6 transactions with documents.

7 And he put in the purchase agreement, section  
8 four, the closing of this transaction described herein is  
9 contingent upon the agreement receiving the approval of the  
10 members who collectively own 67 percent. Such approval must  
11 be in writing and pursuant to the terms of the operating  
12 agreement. And he knows, and on his examination, when I  
13 questioned him, he understands what a closing is. You get  
14 the documents all signed, you get everybody signed up, then  
15 you release the funds.

16 That didn't happen here. He gets a million  
17 dollars into his trust account. He has no documentation. He  
18 has no corroboration at all as to what Mr. Yount has agreed  
19 to or not agreed to and he willy-nilly releases the funds. I  
20 don't think that could be a clearer breach of the duty he  
21 owed to Mr. Yount and the duty he owed to the other members  
22 of the Cal Neva Lodge LLC.

23 It's astounding to me to do something like that  
24 without some writing. And why in the first place, why would

1 the money ever go to the trust account if there was a side  
2 deal? There was no reason for that to go into his trust  
3 account. So he obviously gave him some kind of notice as, is  
4 there something going on. He tells his clients, you got to  
5 have documents to paper this deal. He doesn't. And then we  
6 know what documents he knows he thinks need to paper that  
7 deal, because he sends them.

8 THE COURT: His testimony is that this was a  
9 private transaction, an owner selling to a buyer, happens  
10 every day.

11 MR. CAMPBELL: Sure, it does, but not without  
12 notice to the other party, not without some agreement either  
13 oral, some kind of an agreement. He had no indication  
14 whatsoever that there was any agreement with Mr. Yount and  
15 CR, Criswell Radovan or any of those entities. And he's got  
16 a clear conflict of interest here. He's been representing CR  
17 or Mr. Criswell for a number of years and now he's  
18 representing the entity, which includes its members. Why  
19 isn't he looking out for those members?

20 Why isn't he -- why is he so adamant about just  
21 trusting his client's word to go ahead, we got approval, send  
22 me the money, and then he doesn't send it to CR. He sends it  
23 to CR's attorney when CR is buying the shares. The whole  
24 thing doesn't make any sense, your Honor. I think Mr.

1 Coleman's law firm has breached the duties, and under the  
2 breach of the fiduciary duty and the negligence claims we  
3 asserted, I think the facts in this case and the evidence are  
4 squarely on point to prove that he's guilty of those two  
5 counts.

6 THE COURT: All right.

7 MR. CAMPBELL: Moving to Mr. Marriner was merely a  
8 facilitator. I think the evidence shows otherwise. He was  
9 deeply involved in getting Mr. Yount to invest under the PPM,  
10 where are you, let me help you get a trust agent. Mr.  
11 Marriner was the feet on the ground, boots on the ground, and  
12 he was in charge of getting the investors into the fold. The  
13 evidence doesn't show that it was a handoff deal, here's  
14 Mr. Yount, I'm not going to have anything more to deal with  
15 him, it's yours, Mr. Radovan, you take care of it.

16 THE COURT: What about the e-mail from your  
17 client, I'm dealing now with Robert?

18 MR. CAMPBELL: He's dealing with him related to  
19 getting documents on the pro formas. That's what that  
20 related to.

21 THE COURT: What about the e-mail from Mr.  
22 Marriner, which says, if you have any -- after your client  
23 sends a list of questions, the e-mail from Mr. Marriner says,  
24 I'm sending these on to Robert for him to answer, and then

1 Mr. Radovan answers those questions.

2 MR. CAMPBELL: But that doesn't excuse or change  
3 Mr. Marriner's role in this function. I think a real telling  
4 indication of what he really was doing, despite his  
5 representations that he was merely a facilitator is, you  
6 know, Exhibit 8. He says, our signature pages, we would like  
7 to have you on our team is what he says in that exhibit.

8 Exhibit Number 11, he says, we expect the hotel to  
9 sell within seven years. We project that the net profit may  
10 be 100 million or more. He goes on, we project to have the  
11 hotel refinanced. He's representing himself as a member of  
12 the team. Even Exhibit 14, he goes on to say the same type  
13 of thing.

14 And then, importantly, in Exhibit 45, he's  
15 writing -- Mr. Marriner is writing to Mr. Radovan and Mr.  
16 Criswell, he says, please keep in mind these are my friends  
17 and neighbors and they look to me for advice and protection.  
18 Those are his own words. He's telling Mr. Radovan,  
19 Mr. Criswell as what he saw as his role in getting people  
20 into this project.

21 THE COURT: Isn't his role to find -- in  
22 Exhibit 1, he's a broker real, estate broker for this  
23 project.

24 MR. CAMPBELL: But Exhibit 1 also includes his



1 role as selling shares of the PPM and it says in that exhibit  
2 that he has full authority to do so. I mean, you've seen the  
3 language in it.

4 THE COURT: I agree. It said that he was and I  
5 think he testified that he had been asked to raise \$5 million  
6 for the PPM.

7 MR. CAMPBELL: And that he had full authority to  
8 do whatever is necessary. I don't have the exact quote.  
9 You've seen it. It's not limited to a handoff. And I think  
10 his testimony is just trying to walk away from the  
11 responsibilities he had under this, the duties he had, and  
12 what he actually did in the project.

13 So when you look at that Exhibit 45, Mr. Marriner  
14 says he's the advisor and protector.

15 THE COURT: Well, these were his friends. He's  
16 been involved in that community for, what did he testify, 20,  
17 25 years. And I'm sure he's imploring Mr. Radovan to make it  
18 right. He's got to live in that community. He's got to go  
19 to the grocery store. He sees the people at the post office.

20 MR. CAMPBELL: Sure. And I think he felt bad.  
21 Did he really protect his client when he knew the change  
22 orders were \$9 million and didn't tell Mr. Yount? Did he  
23 protect his clients when he was buying his share under the  
24 PPM and instead Mr. Radovan says, no, no, they both know the

1 PPM isn't full, with Mr. Busick's investment? Did he protect  
2 him when he failed to tell him?

3 And I believe Mr. Marriner's testimony on this  
4 point is that when Mr. Radovan said, don't tell him that, I  
5 believe he probably said that, because Mr. Radovan didn't  
6 want him to know. But that doesn't excuse not telling him.

7 As you heard Mr. Criswell's testimony, there was  
8 nothing in the nondisclosure agreement that would somehow  
9 limit Mr. Marriner from telling Mr. Yount, hey, just want to  
10 let you know, the PPM has been fully subscribed and Robert  
11 has a different deal for you, so you should talk to him. You  
12 know, that's a simple phone call, that's a simple e-mail, and  
13 we probably wouldn't even be here today. Because it was a  
14 material change and it was not what Mr. Yount had been  
15 negotiating with both Mr. Marriner and Mr. Radovan since  
16 July, mid July. So for all the chatter and all the  
17 correspondence that took place in that two and a half month  
18 time frame, we're selling you a PPM share, that's a material  
19 change when they're not selling him a PPM share.

20 THE COURT: One of CR's shares.

21 MR. CAMPBELL: So I really think that it's amazing  
22 that Mr. Marriner painted himself as the victim in this case  
23 at the end of his direct testimony. The victim here is  
24 Mr. Yount. He's the one that is out \$1 million. Mr.

1 Marriner is the one that his firm made half a million dollars  
2 from selling the shares under the PPM. Yeah, that simple  
3 phone call, and I don't think there would have been any  
4 prohibition from him doing that. I think it was a clear  
5 breach of his duty, it was fraud, it was fraud by omission.

6           You don't tell someone that they're going to buy  
7 something for a two-and-a-half-month-period and it comes to  
8 your attention that's not the case, and you walk away from  
9 it. That's a material -- that's an omission of a material  
10 fact that was very, very important.

11           THE COURT: I understand your argument.

12           MR. CAMPBELL: I think if Mr. Marriner had done  
13 what he should have done, like I say, we wouldn't be here.

14           I'll touch on the securities fraud issue, your  
15 Honor. My interpretation of NRS Chapter 90 is even if it is  
16 a private placement, the 90.570, about fraudulent or  
17 prohibited acts, 90.570, with the offer to sell a security a  
18 person shall not directly or indirectly make an untrue  
19 statement of a material fact or omit the material fact, not  
20 misleading in light of the circumstances.

21           THE COURT: What's misleading about the  
22 statements?

23           MR. CAMPBELL: It's a material omission.

24           THE COURT: What is material?

1           MR. CAMPBELL: That Les Busick filled out the PPM  
2 and the negotiations we've had for the last two and a half  
3 months, we don't have a -- we don't have a share of the PPM  
4 to sell you, so Mr. Radovan will sell you one of his shares.

5           THE COURT: Would you concede that CR held two  
6 founders shares?

7           MR. CAMPBELL: There's no doubt that they held two  
8 founders share.

9           THE COURT: Would you concede that CR sold one of  
10 those founders shares to Mr. Yount?

11          MR. CAMPBELL: In their mind. There was never a  
12 meeting of the minds.

13          THE COURT: Yes or no, did Mr. Yount acquire one  
14 of CR's founders shares, yes or no?

15          MR. CAMPBELL: That's a tough question to answer.  
16 What I learned in contract languages is both parties had to  
17 agree to a deal. This was a one-sided transaction.

18          THE COURT: Take a step back. Did Mr. Yount want  
19 to buy a founders share?

20          MR. CAMPBELL: He wanted to buy a founders share  
21 under the PPM.

22          THE COURT: That's fine. PPM covers 20 shares,  
23 million dollars a share. CR had two shares. The Ladera loan  
24 required CR to have at least 1 million invested, skin in the

1 game, as has been bantered about in this courtroom. They had  
2 2 million, 2 founders shares. When Mr. Yount was able to  
3 free up the cash from his IRA, his 401K and had the million  
4 dollars to invest, and he wanted a CR -- I mean, he wanted a  
5 founders share. Did he not pay \$1 million for a founders  
6 share? The answer is yes, that's what he wanted. Isn't one  
7 of CR's two shares a founders share?

8 MR. CAMPBELL: Yes, it is, your Honor.

9 THE COURT: Didn't he then acquire a founders  
10 share which he sought from the beginning?

11 MR. CAMPBELL: If you consider only one party  
12 agreeing to a transaction and making a contract, I guess he  
13 did, but it's --

14 THE COURT: This is not one party's agreement. He  
15 wanted a founders share -- let's just take CR out. Let's  
16 reverse this. Let's just say that Mr. Yount had two founders  
17 shares and the subscription had been sold out. And  
18 Mr. Criswell says, this Cal Neva Lodge is a beautiful  
19 project. It's going to launch the North Shore of Lake Tahoe  
20 internationally and whoever is on the ground floor is going  
21 to be making a lot of money. I want in. I want a founders  
22 share.

23 And Mr. Marriner says, I'd love to help you, but  
24 they're all sold out, however, I happen to have heard that

1 Mr. Yount has two shares, two founders shares. Let me ask  
2 him if he's willing to sell it to you. Goes to Mr. Yount,  
3 Mr. Yount says, for a million bucks, you bet.

4 So Mr. Criswell sends a million dollars to  
5 Mr. Yount's attorney's trust account and says, upon the  
6 execution of the transfer of the share, send the million  
7 dollars to Mr. Yount. That transaction occurred. Didn't  
8 Mr. Criswell acquire a founders share?

9 MR. CAMPBELL: Again, your Honor, if you have  
10 Mr. Criswell assuming he is buying under the PPM.

11 THE COURT: There's 20.

12 MR. CAMPBELL: Moneys go into the project when  
13 you're buying under the PPM, your money goes into the  
14 project. It isn't taken out of the project. You do a  
15 transaction like that, there's conditions to get it approved.

16 THE COURT: All right. At the next shareholder  
17 meeting or in writing?

18 MR. CAMPBELL: It's just a different situation.  
19 You can't tell someone you're selling them a Cadillac and  
20 then -- a new Cadillac and then without telling -- when you  
21 drive up in the car, it's a ten-year-old Cadillac. It's a  
22 different deal than what Mr. Yount assumed he was buying  
23 into.

24 THE COURT: But in this case, Mr. Yount has the

1 two brand-new Cadillacs. There's 18 brand-new Cadillacs out  
2 there. Mr. Yount says, I can only drive one at a time and  
3 I'll sell mine to Mr. Criswell. Doesn't Mr. Criswell get a  
4 brand-new Cadillac?

5 MR. CAMPBELL: Not if he wasn't delivered a  
6 brand-new Cadillac, not if he was delivered a ten-year-old  
7 Cadillac.

8 THE COURT: Tell me, and nobody has explained it  
9 to me, tell me if I laid that founders share from  
10 Mr. Criswell and Mr. Radovan right next to the founders share  
11 of Mr. Busick, what difference is there?

12 MR. CAMPBELL: Well, there's a big difference with  
13 it if there's no shareholder approval as we saw in the  
14 document.

15 THE COURT: I'm not talking about the process, the  
16 shareholder approval set out in the operating agreement.  
17 What's the difference between those two shares?

18 MR. CAMPBELL: Functionally, there is no  
19 difference.

20 THE COURT: So didn't Mr. Yount get what he  
21 wanted, which was a founders share?

22 MR. CAMPBELL: No. He wanted a founders share  
23 under the PPM, and that's the difference, and that's the  
24 material difference.

1 THE COURT: If there's 20 shares under the PPM and  
2 he gets one of them, where are the damages?

3 MR. CAMPBELL: Because Mr. Yount would have never  
4 invested \$1 million if he knew that he was buying a CR share.  
5 His testimony was pretty clear on that. He would not have --

6 THE COURT: But he wanted a founders share.

7 MR. CAMPBELL: But he would not have bought a  
8 share from CR that would indicate to him that CR was taking  
9 money out of the project instead of a million dollars going  
10 in to help the Cal Neva get to the finish line.

11 THE COURT: I understand that argument, but nobody  
12 as yet told me -- I guess you have. There is no difference  
13 between the CR share, founders share and Mr. Busick's  
14 founders share.

15 MR. CAMPBELL: Assuming you have shareholder  
16 approval.

17 THE COURT: Correct.

18 MR. CAMPBELL: Which never happened in this case.

19 THE COURT: Well, that's a matter of opinion. Go  
20 ahead. Next argument.

21 MR. CAMPBELL: Let's move to CR.

22 THE COURT: With respect to Mr. Criswell as to the  
23 causes of action three, six and seven, isn't it Mr. Yount's  
24 testimony that the first time he ever met William Criswell



1 was at the December 12th, 2015 meeting after he had already  
2 invested his money?

3 MR. CAMPBELL: That's correct, your Honor.

4 THE COURT: Okay. Thank you. Go ahead.

5 MR. CAMPBELL: But Mr. Criswell was a partner and  
6 knew about the sale of the CR share to Mr. Yount.

7 THE COURT: Okay.

8 MR. CAMPBELL: His testimony was pretty clear on  
9 that. So I think, your Honor, you've heard a bunch of  
10 different people talk about that December 12th meeting and I  
11 think there's only one conclusion, that if you link it  
12 altogether, that Mr. Yount was shocked and dismayed and upset  
13 and by then he didn't even know about the sale from CR to him  
14 instead of under the PPM.

15 THE COURT: I think Mr. Yount characterized it as  
16 rousing.

17 MR. CAMPBELL: That doesn't happen if all the  
18 members and Mr. Yount had already known what was conveyed to  
19 them. So I think the proof is in the pudding there as to  
20 what happened in that meeting and what was disclosed in that  
21 meeting and what had not been disclosed prior to that time.

22 I don't think there's any evidence that it was a  
23 staged revolt. It was a reaction to what they had heard both  
24 from Mr. Radovan and Mr. Criswell trying to smooth it over

1 when people were so upset.

2           They were rightly upset. These people together  
3 had a collective \$18 million into this project and the  
4 project was going forward without new financing. It was  
5 considerably over budget. The construction budget alone was  
6 probably, if you round it to 10 million out of a 17 million  
7 construction budget, that's a 60 percent increase, close to a  
8 60 percent increase in a budget that was in the documents  
9 that said was ironclad and we've vetted it.

10           THE COURT: That's the price.

11           MR. CAMPBELL: That's a big shock to me. It would  
12 be a big shock to anybody, I would believe.

13           Let's move to the fraud as to the CR's entity.  
14 You know, active omission of a material fact can be fraud.  
15 There's no doubt about that under the law. And I think in  
16 this instance, especially in light of the recommendations and  
17 assurances that were provided to Mr. Yount prior to making  
18 the investment and the change in circumstances or the  
19 information that Mr. Radovan knew, I think this was  
20 actionable fraud.

21           As we know about the change order in September, if  
22 you look at the actual change orders that were signed and the  
23 documents that show the change orders that have at least been  
24 approved by the construction manager, but had not been signed

1 off, there was close to over \$10 million in change orders  
2 that were approved or were in the works.

3 And Mr. Yount's testimony and I think it was clear  
4 and it was corroborated by the evidence is he never knew that  
5 there was that kind of change orders. That's a material  
6 omission. You know, what's the problem in calling Mr. Yount,  
7 there's a lot of chatter, a lot of e-mail going back and  
8 forth with Mr. Marriner and Mr. Radovan at this time, just  
9 want to let you know we confirm the change orders we talked  
10 about in July are now pushing up to \$10 million.

11 THE COURT: Wasn't he informed of that not only in  
12 the July construction report --

13 MR. CAMPBELL: No, your Honor. I'll address that.  
14 That's the argument that Mr. Marriner, he made that early on  
15 in the project. It's the argument that we've heard  
16 repeatedly through this that somehow Exhibit Number 18 tells  
17 Mr. Yount that the project is \$9 million over. And in  
18 exhibit -- we have all memorized Exhibit 18 pretty much, and,  
19 you know, surprisingly, Mr. Chaney had a very similar  
20 recollection of what happened in that July time frame in that  
21 investors meeting.

22 The exhibit says, okay, we're going to refinance  
23 this mezzanine for 15 million with a less costly loan. So  
24 the mezzanine is six, but we know there's interest on top of

1 that, so that's seven plus, who knows, it's not quantified,  
2 but it's not just \$6 million. He goes on, we have some code  
3 issues that we have to deal with, we have to use some of this  
4 15 million refinance for that. Doesn't quantify that.

5           So what are those code issues? Mr. Yount believed  
6 them to be \$5 million plus at that time. That's what was in  
7 his e-mails and that's what was told to him. So he whether  
8 it was told then or before, he knew that there was some  
9 change orders and it was going to be in his -- what he's  
10 documented as \$5 million plus.

11           We know that the same e-mail says, now we're going  
12 to release some funds for the condo development, not  
13 quantified, but --

14           THE COURT: They had it down to the square foot.

15           MR. CAMPBELL: It wasn't quantified from a dollar  
16 amount. What does that mean, the condo development? If you  
17 look at Exhibit 4, the condo development in the second box in  
18 Exhibit 4, where it says, once we get 20 million, we're going  
19 and start doing the condos.

20           THE COURT: Correct.

21           MR. CAMPBELL: That was a \$2 million number. How  
22 much was that condo development? So there's all these  
23 things, and then Mr. Radovan and Mr. Marriner tried to lump  
24 in Exhibit 10 as kind of the tandem notice that if you look

1 at 10 with all the litany of change orders, again, not  
2 quantified in dollars, and the Exhibit Number 18, which says  
3 we're going to refinance for 15 million, you can't just add 6  
4 million of the Ladera loan and assume that 9 million means  
5 there's a \$9 million change orders.

6 If that was the case, that e-mail should have said  
7 that. It should have said, we're going to have 8 or  
8 \$9 million and the entirety of the difference of paying  
9 Ladera off is going to the change orders. But it doesn't say  
10 that. It says we're going to do a bunch of things we're  
11 going to do and no one ever quantifies it. And what we know  
12 is that Mr. Yount was told it was 5 million plus.

13 And he also was told, well, Mr. Radovan said we'd  
14 like to have some cushion. Well, great, we'll have some  
15 cushion. We don't know what that is, but it's at least a  
16 little extra money if you consider all of the other things.

17 As we know, refinancing alone is not free. You  
18 have upfront costs. What was that 15 million going to go  
19 for? Certainly never in any document said that 15 million  
20 refinance -- nine of it was going to change orders that were  
21 never in existence. So that's a material change from that  
22 was told in July to what Mr. -- from what Mr. Marriner and  
23 Radovan knew come September, weeks before he invested in this  
24 project.

1           And, in addition, that refinance of the mezzanine  
2 loan, that was the only time that anybody told Mr. Yount  
3 about a refinance, those terms that we were going to get a  
4 better terms. But we know Mr. Radovan testified here and,  
5 again, in deposition that he knew in September, maybe even as  
6 early as August, that they needed to refinance the entire  
7 project. And if they didn't refinance that entire project,  
8 they were not going to finish this deal.

9           And he never told Mr. Yount that. Telling  
10 Mr. Yount that we're going to do a 15 million mezz refinance,  
11 which, six plus will go to payoff, and going to a total  
12 refinance of the project with substantial additional funds,  
13 somewhere between 16 million more than the budget, that's a  
14 material fact. I mean, if I was an investor, anybody who was  
15 an investor, they would want to know that the project was now  
16 going to have to be refinanced and it's not going to go  
17 forward.

18           THE COURT: But wasn't this discussed amongst the  
19 EC for months? I mean, they had been in negotiations with  
20 Mosaic in November. Those individuals were clearly aware  
21 that that was one of the options, the total refi was one of  
22 the options, the mezz was another, a capital call was a  
23 third. Would you argue that having all of those options on  
24 the table is a dereliction of the duty of the management,

1 that they would be deficient in their duty if they didn't  
2 explore all these options and lay it out.

3 As a matter of fact, I think the testimony from  
4 everybody was that the EC was actively involved and  
5 knowledgeable, particularly with the Mosaic loan, because  
6 they asked tough questions of Mr. Radovan. Asked him to go  
7 back, see if he couldn't negotiate a way that the bank would  
8 waive the fee, asked him to go back, tell Mosaic to hold off  
9 while they explore other options, asked him to go back to see  
10 if he couldn't raise the limit of the money. Doesn't seem to  
11 me that the EC was operating in the dark at all.

12 MR. CAMPBELL: I tend to agree with you somewhat.  
13 I know from some of the e-mails that one of the late exhibits  
14 we introduced yesterday, that the EC was asking for a lot of  
15 information.

16 THE COURT: And that's their duty.

17 MR. CAMPBELL: I don't have a problem with that.  
18 But Mr. Yount is not on the EC. He's not even an investor at  
19 that time. He's leading up to his investment. If that  
20 knowledge is out there, and certainly Mr. Radovan knew and,  
21 perhaps I don't know when the EC actually knew, the e-mail we  
22 looked at the late exhibit yesterday was late October 27th, I  
23 believe. Exhibit 78, I believe it was.

24 Yeah, they knew, but Mr. Yount never knew. He

1 wasn't privy to the EC communications. He wasn't  
2 negotiating. He didn't even know probably who was on the EC  
3 at that time. He was talking to Mr. Marriner and Mr. Radovan  
4 and those are the guys that tell him that -- that need to  
5 tell him, that have a duty to tell him in light of the  
6 previous representations that, hey, we're now -- we're  
7 closing in on 10 million in change orders. If we don't get a  
8 refinance, we're not going to go forward on this thing.

9           That just astounds me that you couldn't consider  
10 that as a material omission of fact before Mr. Yount puts a  
11 million dollars into this project, that an investor wouldn't  
12 want to know those kinds of facts and it wouldn't affect his  
13 decision. He testified it certainly would have affected his  
14 decision. He would not have gone forward or he would have  
15 figured out more.

16           The mere fact that you have a budget increase of  
17 that magnitude and a potential stop work unless you get some  
18 refinancing, those are things that Mr. Marriner, Mr. Radovan  
19 knew and were not disclosed to Mr. Yount. And those were  
20 important, important facts that would have been a very big  
21 part of his decision making.

22           So when you add that into the total lack of any  
23 communications regarding the switching of the sale, the PPM  
24 being full up, I mean, those are three pretty big facts that



1 would have factored into Mr. Yount's decision making process  
2 and which he testified he would not have gone forward with  
3 those facts in mind.

4           So I think it's very telling as to what Mr. Yount  
5 knew and didn't know. I mean, there's no mistake that when  
6 Mr. Yount was sent those documents in February by Mr.  
7 Coleman, that he had never agreed to any of this stuff.

8           Furthermore, I think, your Honor, I think there's  
9 a couple of different arguments that they've made that, the  
10 defendants have made through trial that I think are real  
11 important, too, is somehow the language in the PPM documents  
12 exonerates the reliance argument. And I think your Honor has  
13 already ruled on that issue in the Marriner order on summary  
14 judgment where you said that the Court does not find that the  
15 PPM and subscription agreement effectively disclaim reliance.  
16 Rather, that notice is limited to the disclosure with the  
17 risk associated with the investment.

18           You're right. Those risks set forth in the PPM  
19 are risks that once you're in the project, you could have a  
20 capital call, you could be diluted.

21           THE COURT: You could lose your entire investment.

22           MR. CAMPBELL: You could lose your entire  
23 investment, but that's not the same as fraudulent omission or  
24 misrepresentations. Those language does not excuse actions

1 of someone to sell a security to someone prior to that you  
2 can't rely on that kind of exculpatory language. Sure, if it  
3 was after the fact, that's a little different situation.

4 I think defendants also take the position that I  
5 think is untenable is that Mr. Yount could have done more due  
6 diligence on this project. First of all, Mr. Yount did due  
7 diligence. You saw that July e-mail string. There was a lot  
8 of due diligence. There were questions and there were  
9 questions answered.

10 THE COURT: He talked to his CPA, he took a tour  
11 of the site.

12 MR. CAMPBELL: Sure. He did a lot of due  
13 diligence. And he was told in that time frame, he was told  
14 we're about 5 million over budget. We're going to do a  
15 refinance of the mezz to cover some of these costs without  
16 any particularization of what they were. So he did do due  
17 diligence.

18 THE COURT: Talked to the architect.

19 MR. CAMPBELL: So when he gets those answers from  
20 the developer, I don't think he has a duty to follow up a  
21 couple of weeks before his investment and say, well, you  
22 know, have the change orders -- has the number of the change  
23 orders? Are we still on schedule? In fact, he did ask, are  
24 we still on schedule?

1           And according to Mr. Yount's contemporaneous  
2 documents, the schedule was going to be a soft opening, but  
3 the only schedule change was because of a light winter and  
4 the lack of revenue if they opened in December.

5           For all intents and purposes, he was told several  
6 times, yeah, we're ready to open. We can do it on the 12th.  
7 We're not going to, because of the bad winter that might  
8 occur that we've had in the past years and the lack of  
9 revenue. We'll do a soft opening and move on. But, you  
10 know, that's far different than what he's told.

11           So I don't think as an investor, he's made those  
12 representations, those representations are made to him, he  
13 relies on them, I don't think the day before he makes his  
14 investment he has a duty to follow up. I think the duty lays  
15 on the people that gave him the representations in the first  
16 place to follow up and say, hey, look, those things we told  
17 you back in July, it's not true anymore. Things have  
18 changed. And we want to let you know before you make your  
19 investment. That's the duty.

20           And, finally, as to due diligence, how do you do  
21 due diligence when someone switches what you bargained for to  
22 buy something under the PPM and instead you get a CR. I  
23 don't know how you do due diligence on something like that.  
24 By the way, is there room under the PPM? Can I still buy?

1 That's a duty to tell Mr. Yount that Busick closed out the  
2 PPM.

3 Again, we have Mr. Radovan painting himself as a  
4 victim in this case. While they were able to put a million,  
5 Mr. Radovan and Mr. Criswell, their entities were able to put  
6 a million dollars in that, Mr. Yount is that out a million  
7 dollars. I don't see how they are the victims.

8 Again, this would have been so easy to avoid this  
9 whole trial. Mr. Radovan picks up the phone and says, hey,  
10 Stuart, guess what, Busick just closed out the PPM, but if  
11 you still want a share, I can sell you one of my shares. Is  
12 that okay with you? Can we agree to that? You want to sign  
13 a document or I'll confirm it in an e-mail? That never  
14 happened, your Honor. That never happened. I find that  
15 inexcusable.

16 And then what makes it even worse is that they  
17 don't tell him at all.

18 THE COURT: Well, that's an interesting point that  
19 you bring up, Mr. Campbell, because the uncontroverted  
20 testimony is that Mr. Radovan thought Mr. Marriner told  
21 Mr. Yount, and Mr. Marriner thought Mr. Radovan told  
22 Mr. Yount. In fact, neither of them told Mr. Yount, but it  
23 doesn't seem to have any evidence in the record that either  
24 Mr. Marriner or Mr. Radovan got together and said, let's not

1 tell Mr. Yount.

2 MR. CAMPBELL: Well, Mr. Marriner testified that  
3 Mr. Radovan told him not to tell, not to discuss it. And I  
4 believe Mr. Marriner on that, because I think Mr. Radovan  
5 needed that million dollars and he saw an opportunity here to  
6 sell one of the shares.

7 THE COURT: I believe the testimony from Mr.  
8 Radovan is that he wanted Mr. Yount to participate, founder  
9 of Napa Valley, unquestioned pillar of the community, a  
10 sterling character.

11 MR. CAMPBELL: Sure.

12 THE COURT: Absolutely a gem and somebody you  
13 would want on your board or involved in your company no  
14 matter what the enterprise is, a board member of the TRPA.  
15 Who wouldn't bend over backwards to help Mr. Yount be part of  
16 the Cal Neva, an iconic project like that on the North Shore  
17 some 300 feet from his property?

18 MR. CAMPBELL: Wouldn't you ask? Wouldn't you ask  
19 that person?

20 THE COURT: Well, sure, you want to be part, you  
21 want a founders share?

22 MR. CAMPBELL: You want to buy one of my shares?

23 THE COURT: Do you want to buy a founders share?  
24 We diverge on that point. I respect that decision.

1           MR. CAMPBELL: I mean it would have been an easy  
2 fix.

3           THE COURT: Clearly.

4           MR. CAMPBELL: And it would have been the right  
5 thing to do and it would have been the easy thing to do. And  
6 as Mr. Criswell testified, he's been in a -- he's done a ton  
7 of deals in his day. And when you get an agreement,  
8 especially a million dollar transaction, you at least get a  
9 handshake. We don't have a handshake. We don't have a wink  
10 or a nod in this case, your Honor.

11          THE COURT: Didn't even go furniture shopping.

12          MR. CAMPBELL: Let's move to the conversion next,  
13 your Honor. I think what CR did in this fits all the  
14 elements of conversion also. They took the money. There was  
15 no agreement to take the money. Once this ruse was found  
16 out -- and it's interesting, I think that's an important  
17 point to make, your Honor, is that, you know, Mr. Yount took  
18 a tour with Mr. Radovan, I think they had breakfast together,  
19 a week or so after he closed. Does he tell him, hey, I'm  
20 going to confirm, you know, I'm going to send you a share, a  
21 certificate or confirmation that the deal has gone through.  
22 Doesn't tell him anything.

23               Doesn't tell him at all. In fact, Mr. Yount  
24 doesn't even know until if you look at Exhibit Number 60, at

1 page 172, Mr. Yount says, I'm looking at this cap table and  
2 the cap table has a footnote, Stuart Yount holds 1 million  
3 within the CR 2 million. Mr. Yount says, this is in error.  
4 If you look back of the communications up to the sale, as  
5 well as who my IRA check went to, I was buying 1 million of  
6 the original founding investment, which I was told out of the  
7 15.5 available out of the 20. Please correct the cap table  
8 and show my preferred interest as one of the original  
9 investors.

10 We know what Mr. Yount is thinking. This is the  
11 first time, we're talking about three or four months after  
12 his investment, that any indicia comes to him that he's told  
13 that he may have bought a CR share instead of one of the PPM.  
14 To me, that silence just proves to me what Mr. Radovan was  
15 doing was trying to hide the ball on this deal.

16 And when they got caught, when they had that  
17 meeting at the Hyatt on the 27th, they talked about, okay,  
18 we're going to buy back your share. We'll get some money to  
19 buy back your share.

20 THE COURT: Once we get reimbursed.

21 MR. CAMPBELL: We'll send you some documents to do  
22 that. What documents do they send him? They send him these  
23 documents that are totally inaccurate. There's no mistake.  
24 They're trying to get Mr. Yount to sign a document that he

1 was mistaken in his belief that he was buying a PPM or he  
2 mistakenly signed the subscription agreement and that the  
3 parties' real intent was to have him buy a CR share.

4           Why would you put something in that document so  
5 untrue and try to get Mr. Yount to sign a document like that  
6 other than to cover what you had done back in October.  
7 Because they knew, they knew they didn't have an agreement  
8 and they were trying to paper this transaction, trying to get  
9 another falsehood into the document, that we've had a  
10 shareholder meeting and all the shareholders have approved  
11 that.

12           That just didn't take place. That is egregious.  
13 And I think it goes to prove the point they were never going  
14 to tell him unless they got caught. And when once they got  
15 caught, they tried to paper the deal that Mr. Yount never  
16 agreed to get involved in.

17           Back to the conversion, your Honor. I think, your  
18 Honor, the tenor of the members, I don't think they would  
19 have ever approved this transaction that was supposed to be  
20 required, whether it be at a special meeting or the annual  
21 meeting. Mr. Chaney's block, I don't think -- he was  
22 certainly upset, and I think from the e-mail chatter we've  
23 seen, so were the other investors pretty upset over this  
24 whole thing.



1           You can't buy Mr. Radovan's testimony that the  
2 members would have approved this. They never did. Mr. Yount  
3 demanded his money back. There was no approval from the  
4 members. There was no contract. When they refused to give  
5 him his money back, that's conversion, plain and simple.  
6 Couldn't be any clearer, I think. So that's just to me, it's  
7 a classic case.

8           Your Honor asked earlier about the individual  
9 liability, and my understanding of the pleading rules is that  
10 piercing the veil is not an actual pleading requirement. But  
11 we did say that Criswell Radovan individually were liable  
12 under the case, and I think the facts in this case have  
13 demonstrated under Nevada law as far as piercing the  
14 corporate veil, we're there. These businesses were not  
15 capitalized. CR and Cal Neva -- CR Cal Neva, Criswell  
16 Radovan LLC, Mr. Criswell said these are really just shell  
17 entities.

18           THE COURT: To the projects, to the various  
19 projects.

20           MR. CAMPBELL: We don't have any employees. Your  
21 Honor knows the elements. They're pretty well spelled out in  
22 the McCleary Cattle Company case and I think the Lumos, the  
23 LLC Marketing versus Lumos. As your Honor knows, there's  
24 three or four things you had to do, and there's a whole

1 checklist that the courts have looked at to help them in  
2 making a determination.

3           The three elements are whether the corporation is  
4 influenced or governed by the stockholders, there's such a  
5 unity of interest that the company and the stockholders are  
6 the same, and adhere to a corporate fiction or separate  
7 entity to sanction fraud or promote a manifest injustice.

8           If your Honor renders a judgment against one of  
9 these entities here, he'll never be able to collect. These  
10 are not capitalized. They have no assets. And that's --  
11 there's a 14-part test that the courts have used kind of to  
12 help them in the determination, again, capitalization,  
13 non-observance of corporate formalities, insolvency of the  
14 corporation at the time of the litigation, intermingling of  
15 funds.

16           Here's a great example of intermingling of funds.  
17 If CR sells a share and their attorney sends it to Criswell  
18 Radovan, clearly ignoring corporate formality, the money back  
19 and forth, the bank accounts were intermingled. So, yeah, I  
20 think the use of the same address, employment of the same  
21 attorneys and employees for all different entities.

22           So I think in this case, what we've got here is  
23 that the Court should ignore the corporation and pierce the  
24 veil, if it's so inclined to enter a judgment and both Mr.

1 Criswell and Mr. Radovan are individually liable in this  
2 case.

3 I'm going to move to the Mosaic loan issue.

4 THE COURT: We want to make sure that we give the  
5 other side sometime as well.

6 MR. CAMPBELL: I can wrap this up pretty quick,  
7 your Honor.

8 THE COURT: Go ahead.

9 MR. CAMPBELL: I think the Mosaic loan issue is a  
10 red herring. That happened way after the fact. There was no  
11 counterclaim against Mr. Yount for somehow derailing that  
12 loan and there's no evidence that he was involved in any  
13 discussions with Mosaic. Obviously, all the investors were  
14 concerned. We've got the e-mails. They're trying to work  
15 out a strategy. Mr. Yount has no -- what incentive would he  
16 have to undermine the Mosaic loan? Mr. Criswell tells him in  
17 exhibit --

18 THE COURT: Clearly none.

19 MR. CAMPBELL: 51.

20 THE COURT: I think everybody testified that  
21 Mosaic was the best option. Mr. Chaney said it as well. It  
22 was the best option to rescue the project.

23 MR. CAMPBELL: We have the best evidence in this  
24 case as to what happened with Mosaic, their own words in the

1 e-mail, which are --

2 THE COURT: 124.

3 MR. CAMPBELL: The new one yesterday, the Mosaic  
4 termination letter that surprisingly wasn't produced.

5 THE COURT: February 24th.

6 MR. CAMPBELL: Very material to these facts. I  
7 think it is a sideshow. That doesn't apply to what happened  
8 in October 13th. There's no evidence that Mr. Yount  
9 interfered in that. Mr. Radovan says he thought he did and  
10 the loan would close. Even that tape recording yesterday or  
11 the message, Mr. Radovan tried to tell the Court that voice  
12 message said we can close at the end of the month. You heard  
13 it twice.

14 THE COURT: At the end of the year.

15 MR. CAMPBELL: You heard it twice. It didn't say  
16 that. It said, we've got other things to do and we've got  
17 other deals to close, where are we on this deal? We haven't  
18 heard from you for a while. So it's a sideshow. It  
19 shouldn't at all be considered as to whether Mr. Yount was  
20 defrauded, whether his money was converted from him, whether  
21 there was a breach of duties. A total sideshow that I don't  
22 think is relevant to this case.

23 Same with Mr. Chaney's credibility. We spent a  
24 lot of time yesterday on his credibility. He came here

1 forward, because he was mad, too, and rightly should be mad.  
2 I think he does have a prejudice. Who wouldn't? And so I  
3 think his testimony was helpful to the Court. It confirmed  
4 how the Mosaic meeting was set up. Certainly told the Court  
5 that Mr. Yount wasn't involved and corroborated the evidence  
6 as to what actually happened to the Mosaic loan.

7 I think also the July meeting was very  
8 informative, because the testimony Mr. Chaney gave and in  
9 comparison with Exhibit 18, almost identical, same thing.  
10 We're over budget, no quantification. We're going to get a  
11 mezz loan refinance, get better terms, and we'll have to pay  
12 off the original one. We're going to release some money for  
13 the condos. We've got some code issues that we've got to  
14 deal with. And we're going to have a little cushion. So,  
15 you know, very consistent. So, again, Mr. Chaney's  
16 credibility I don't think goes to the heart of this matter.

17 Again, I think the best evidence in this case is  
18 the e-mail exchange with Mosaic and Mr. Radovan and the other  
19 members of the EC.

20 Two more issues to briefly address. I think  
21 attorney's fees in this case are proper both under the  
22 operating agreement that provides for prevailing party  
23 attorney's fees and also under NRS Chapter 90 -- I think it's  
24 660, that provides prevailing party attorney's fees for

1 securities fraud, which I think fits this bill.

2 Finally, punitive damages. I think CR's actions  
3 to take Mr. Yount's money under false pretenses was proven by  
4 clear and convincing evidence and that those individuals were  
5 guilty of egregious conduct. Again, the best evidence here,  
6 I think, is, your Honor, Exhibit Number 34.

7 Exhibit 34 is that e-mail string that was -- where  
8 Mr. Little tried to point, where there was some confusion or  
9 some notice to Mr. Yount that he was buying a CR share. So  
10 we get some differing instructions. And what does Mr.  
11 Radovan do?

12 He sends a message to Mr. Yount, actually, the  
13 funds, and this is October 3rd, so the Busick deal is closed,  
14 he sends an e-mail to Mr. Yount, actually, the funds, your  
15 million dollars should be wired into our attorney's account  
16 which was, you know, which would have been evident from the  
17 subscription agreement that Mr. Yount says -- that Mr. Yount  
18 signed.

19 And he says, in accordance with the documents,  
20 those documents are the subscription agreement. He  
21 intentionally says, send the money in accordance with the  
22 subscription agreement, the subscription agreement to buy  
23 under the PPM. Why doesn't this say, here's a new set of  
24 documents for you to buy one of our shares. I think it was

1 an intentional, malicious act so they could hide this from  
2 Mr. Yount and keep that money for themselves.

3 And it's corroborated by the fact that they don't  
4 tell him at all until he finds out in late January and then  
5 they try to paper the transaction that they easily could have  
6 done in this e-mail by saying, here's the documents you  
7 really need to sign, because the PPM is filled up.

8 So I think punitive damages are -- should be  
9 awarded in this case to punish that kind of egregious  
10 activity. Again, simple fix, little teeny notice, just too  
11 bad it didn't happen.

12 In summary, your Honor, I want to conclude, I want  
13 to thank the Court for its patience, a lot of testimony, a  
14 lot of documents to look at. And as the Court well knows,  
15 the best evidence in a case is the contemporaneous documents  
16 that were made at or about the time of when events  
17 transpired.

18 And if you look to what the documents in this  
19 case, and especially Mr. Yount's documents, those documents  
20 were made at that time. I think they're very honest and  
21 forthright. It tells a very true and accurate story of what  
22 Mr. Yount was told, what he believed, what transpired at that  
23 time in that time frame.

24 On the flip side, the defendant's documents,

1 there's a paucity of documents to support their position.  
2 Mr. Radovan says, I told Ken Tratner in a telephone  
3 conversation about the amount of the change orders and the  
4 schedule change. Never happened. No documents to support  
5 that. Mr. Tratner totally contradicts that.

6 Marriner e-mails back and forth who told what,  
7 when like school kids in third grade. No documentation of  
8 that. In fact, the documents they do have, which I just went  
9 over, was Mr. Radovan telling Mr. Yount, sign the  
10 subscription agreement and send the money to our attorney as  
11 to what is set forth in the PPM.

12 I think the same with the Marriner documents.  
13 Those documents tell the story of what Marriner thought he  
14 was doing and what kind of a team he was on and what his  
15 responsibilities were at the time.

16 So I think even yesterday on the message, there's  
17 such a paucity of evidence from their side and such a strong  
18 story from the real documents, the best evidence in this case  
19 as to what happened. And I think if the Court focuses on  
20 this, it's an easy way to make a decision that what actually  
21 happened to Mr. Yount, how Mr. Yount was really defrauded out  
22 of his money and should not have been. Thank you, your  
23 Honor.

24 THE COURT: Thank you, Mr. Campbell. Let me get



1 my notes up-to-speed here. I think I've got everything down.  
2 Thank you. Mr. Little.

3 MR. LITTLE: Thank you, your Honor.

4 THE COURT: Hang on a second. Everybody, stand  
5 up. Those are tough chairs back there.

6 All right. Thank you very much, ladies and  
7 gentlemen. Mr. Little.

8 MR. LITTLE: Thank you, your Honor. This is a  
9 very serious case and there are some very serious allegations  
10 made or levied against my clients and because of that, I need  
11 to spend sometime going through their cause of action and  
12 the evidence, and I appreciate the Court's indulgence in  
13 advance for allowing me to do that.

14 Before we get into the weeds, I think it's  
15 important to step back and really wrap our arms around not  
16 only what happened at this trial, but what didn't happen. In  
17 fact, your Honor, I think it is absolutely critical to step  
18 back and look not only at who was called by Mr. Yount to  
19 support his claims, but who wasn't called.

20 Now, we know and I won't waste a lot of time on  
21 it, that the only witness that Mr. Yount put forward other  
22 than himself is Mr. Chaney. However, Mr. Chaney was not only  
23 shown to have a massive axe to grind, he was at the helm of a  
24 corporation that was found to have intentionally destroyed

1 evidence and intentionally withheld evidence.

2 Counsel tried to rehabilitate him by saying, wait  
3 a minute, they were just a victim of some rogue employee.  
4 But we went back through that. That federal judge  
5 meticulously went through the facts and went to great lengths  
6 to show his company's detailed involvement. Such  
7 involvement, your Honor, that they were sanctioned \$331,000,  
8 and as lawyers, we know that is a significant sanction.

9 Now, Mr. Chaney was also personally found liable  
10 for intentionally interfering with a contract. Your Honor,  
11 that is a eerily similar to what we heard and seen happen in  
12 this case with respect to the Mosaic loan.

13 Mr. Chaney aside, your Honor should be asking  
14 yourself, where was the unbiased members of the executive  
15 committee testifying at this trial on behalf of Mr. Yount  
16 saying they were defrauded, kept in the dark, duped, things  
17 of that nature? Where was Mr. Busick, a member of the  
18 executive committee, a man that Mr. Yount admittedly knew  
19 very well, a man with a construction background who invested  
20 another million and a half dollars into this project after  
21 going on the site with Penta and going through the change  
22 orders.

23 Mind you, this happened a couple of weeks before  
24 Mr. Yount invested his money. Where was Mr. Busick

1     testifying that he was mislead, duped, kept in the dark.

2             More importantly, where was Mr. Busick or any of  
3     the investors to support Mr. Yount's supposition that this  
4     project was failing when he made his investment? After all,  
5     your Honor, this supposition, this belief by Mr. Yount that  
6     the project was tanking is the one fact that is necessarily  
7     holding up his causes of action. If you take away that fact,  
8     they crumble.

9             You should also be asking yourself not only where  
10    was Mr. Busick and the other investors, where was Penta,  
11    where was Peter Grove the project architect? If this project  
12    was truly crumbling when he invested, where was the Penta or  
13    the architect here saying they weren't being paid, they were  
14    threatening to walk off the job, or they lacked confidence in  
15    the project.

16            Your Honor, none of those people were here and  
17    that should sound a massive red flag to this Court that the  
18    things in this case were not as Mr. Yount believed them to be  
19    with the benefit of hindsight and after drinking IMC's  
20    Kool-Aid.

21            Now, Mr. Campbell may come back in his redirect  
22    and say, why didn't you call these people? The answer is  
23    simple, your Honor, we did not need to. This is their case,  
24    not ours. It's their burden of proof, not ours. We knew

1 what these people were going to say. There is no evidence  
2 that this project was crumbling and I'll go through that.

3 Your Honor, as lawyers, we know that jurors are  
4 instructed to bring their common sense to evaluating the  
5 evidence and I would ask your Honor to do the same thing.  
6 Let's step back before I get into the weeds, let's look at  
7 the case from a 30,000-foot level.

8 Common sense, your Honor, says a sophisticated  
9 investor like Mr. Busick, who is on the executive committee,  
10 he's not going to put a million and a half into the project a  
11 mere week or so before Mr. Yount does if he believes, mind  
12 you after walking the project, not with Robert Radovan, after  
13 walking the job with Penta, he's not going to make that kind  
14 of investment if there's some belief out there that this  
15 project is failing.

16 Moreover, nobody in their right mind, your Honor,  
17 believes this project isn't going to get funded after hearing  
18 that phone message that we heard twice yesterday. That is a  
19 majorly deflating piece of evidence to Mr. Yount's case.  
20 That is the CEO of Mosaic saying, both sides, Mr. Radovan and  
21 them, had been working very hard on securing that loan. That  
22 didn't happen overnight. That happened over a period of  
23 time, your Honor.

24 That phone call was in mid November. They had

1 been working hard for some period of time. And he told you  
2 on the -- or he told us on the phone that Mosaic was very  
3 enthusiastic about closing that loan. Your Honor, that is a  
4 critical piece of evidence that shows you have to step back  
5 and put yourself in our minds and you're being asked to -- by  
6 the plaintiffs to say that they knew this project was  
7 tanking, this was a bait and switch. Put yourself back in  
8 that context. This is what is happening with the Mosaic  
9 loan. They didn't believe that. Common sense says that.

10 Common sense also says, my clients aren't going to  
11 be putting money back in the project in October as the  
12 evidence is undisputed that they did if they felt that the  
13 project was tanking.

14 Common sense also says, if my clients were a  
15 fraction as bad as Mr. Chaney and Mr. Yount would have you  
16 believe, they would have been removed as managers a long time  
17 ago. And guess what, we're two years forward and that hasn't  
18 happened and there's a simple procedure under the operating  
19 agreement to do that.

20 Your Honor, common sense also says that we're not  
21 going to keep offering to give this man tours, updated tours  
22 of this project, including a tour three days before he  
23 invested, so he could see with his own eyes and hear from his  
24 own ears how this project is going if we believe it's

1 tanking. Common sense doesn't support that, your Honor.

2 Common sense also says, why are we hiring a  
3 general manager and bringing him over from the Bahamas the  
4 same period he's investing if we think this project is going  
5 down the tubes? That's all evidence that you heard, your  
6 Honor. That evidence is undisputed and it does not support  
7 their theory that we knew this project was tanking, which,  
8 again, is the critical fact underlying their claims.

9 Now, before we talk about what this case is really  
10 about, I think we need to step back and talk about what it is  
11 not. This is not a fraud and punitive damage case, your  
12 Honor. Mr. Yount has not proven fraud elements by any  
13 standard much less the heightened clear and convincing  
14 evidence standard.

15 In fact, you'll recall whenever he was asked what  
16 evidence or proof he had to support his fraud claims, he  
17 uniformly admitted he had none. He just said, it's my own  
18 personal information and belief.

19 And just so your Honor knows, I'm not making that  
20 up. If you go to page 93, line 18 through 22 of his  
21 deposition, he was asked, question, do you have any evidence  
22 that Criswell Radovan sold you one of their shares because  
23 they knew the project was in trouble? Answer, no, it just  
24 seems obvious to me. Your Honor, supposition and belief is

1 not evidence. It's certainly not clear and convincing  
2 evidence.

3 Now, contrary to this belief, the evidence in his  
4 own case in chief clearly demonstrated that the true facts  
5 were not as he believed. He simply got caught up in a rumor  
6 mill that was intentionally being promulgated by the IMC  
7 folks to get rid of Criswell Radovan. And he rushed to  
8 judgment at a later point in time when the project was in  
9 trouble, but only because the Mosaic loan was being  
10 subverted.

11 Now, your Honor, Mr. Yount, again, from the  
12 30,000-foot level only has himself and IMC to blame for his  
13 plight in this case and that's where his fingers should be  
14 pointed.

15 Let's step back and let's talk about the evidence  
16 in connection with the fraud and punitive damage claims.  
17 And, you know, I don't want to waste too much time on it. I  
18 want to start with the seventh cause of action for securities  
19 fraud. Your Honor hit the nail on the head, this is not a  
20 securities case. Absolutely not.

21 NRS 90.530 provides a list of transactions that  
22 are exempt from the registration requirements; in other  
23 words, exempt from that statute from the Nevada's Uniform  
24 Securities Act 90.530, 10 provide, quote, an offer to sell or

1 the sale of a security to a financial or institutional  
2 investor is an exempt transaction. That regulation further  
3 specifies that an institutional investor includes, a, quote,  
4 accredited investor as defined under rule 501 of reg D.

5 Now, if we go to Exhibit 42, your Honor hit the  
6 nail on the head, the subscription agreement, it's very clear  
7 that this was a private offering, this was a real estate  
8 transaction, and it was only open to accredited investors.  
9 Now, the company paid some very expensive securities lawyers  
10 to make sure that founders shares were exempt from federal  
11 and state securities laws. They did it.

12 Mr. Yount admitted he signed those documents, he  
13 admitted he was an accredited investor when he made his  
14 investment, and that statute has no applicability to this  
15 case. So any claims under NRS 90, which is Nevada's  
16 securities fraud claim, need to be dismissed.

17 Let's talk about the common law fraud and punitive  
18 damages claims, which are the third and sixth causes of  
19 action. I think we have to start this analysis with several  
20 key pieces of evidence in mind, your Honor. First, although  
21 counsel has tried to downplay its significance, the legal  
22 disclaimers in the private placement memorandum and the  
23 subscription agreement, they are very important, your Honor.  
24 They're there for a reason and they gut his fraud claims.



1           Mr. Yount's is a sophisticated investor. He's a  
2 sophisticated man. He doesn't need the protections of this  
3 Court. He's not some unsuspecting, innocent person. He's a  
4 very sophisticated man. He admits to such. He's been on  
5 boards. You heard the testimony. He acknowledged having an  
6 opportunity to review these documents, to review the  
7 disclaimers, to have his CPA and legal counsel look at it and  
8 he told you that he understood and agreed to some very  
9 important facts. He knew this is a risky, speculative  
10 investment. He knew the project couldn't be analyzed in a  
11 vacuum based on some budget that was outdated and provided in  
12 2014.

13           Rather, he understood that circumstances could and  
14 in fact did change by the time he was getting involved and  
15 that costs could increase, the budget could increase, and  
16 that those things could affect his investment and the  
17 project's ultimate success.

18           He also understood and agreed that the project was  
19 seeking financing that may not be secured, and if they didn't  
20 get that financing, guess what, the project could fail and he  
21 could lose his investment. He understood that. He told you  
22 that under oath.

23           He also understood and agreed that he could only  
24 rely on his own due diligence and not representations made by

1 the defendants. And, you know, in fact, your Honor, we know  
2 that he didn't blindly rely on any of the defendants in this  
3 case. He went directly to the project's architect, his own  
4 personal architect, for guidance on cost overruns and the  
5 schedule.

6           Exhibits 13 and 28, I'm not going to go through  
7 them, but your Honor is very familiar with those. But he  
8 asked the architect, hey, what are the project's chances of  
9 success? And he was cautioned at that point in time that the  
10 costs were exceeding the budget, they were trying to get  
11 their arms around it and get it in check. He wasn't told  
12 that it was in check. He was told it wasn't in check, but  
13 they were trying to do that. He also was told by the  
14 architect they're in a fund raising mode, same thing he was  
15 told by Mr. Radovan.

16           Now, it's important, the architect told him, look,  
17 I have no problem keeping you informed of the progress of  
18 this job. And you heard me ask Mr. Yount, he couldn't  
19 remember conveniently whether he had further conversations  
20 with the architect, but one thing he did make clear is that  
21 there's nothing the architect told him that dissuaded him  
22 from investigating in this project.

23           Aside from the architect, we know he solicited the  
24 advice of his CFO, his chief financial officer, and his

1 Los Angeles based CPA. He asked them to evaluate the  
2 investment on his behalf. He sent them all the documents he  
3 got. We heard from his CPA, I think, time is getting foggy,  
4 I think it was yesterday, and you heard the CPA say he was  
5 given everything he asked for. There were no questions that  
6 he asked that went unanswered. And you know what, you didn't  
7 hear the CPA say there was anything misleading in any of the  
8 documents or information that had been provided to him.

9 We also know and I mentioned that Mr. Yount knew  
10 Les Busick very well. And, in fact, he was impressed by the  
11 fact that Mr. Busick was an investor on this project.  
12 Mr. Yount even asked Mr. Marriner for a list of the  
13 investors. Why do that unless you want to see who they are  
14 and possibly go talk to them? And that's a significant  
15 point, there's nothing that prevented Mr. Yount from going to  
16 talk to these people, Mr. Busick who is on the executive  
17 committee, and getting more information.

18 Now, we know from Exhibit 10, your Honor, he got  
19 that report, which detailed all these cost impacts that were  
20 adversely impacting the budget and the schedule. And his  
21 testimony was, I didn't ask anything specific about that.  
22 Well, whose fault is that, your Honor?

23 Although he conveniently left the fact out of his  
24 direct testimony, we know he walked the job for two hours

1 with a Penta representative in July. He had every  
2 opportunity to ask whatever questions he wanted about cost  
3 overruns, the schedule.

4           Importantly, your Honor, we know that Dave  
5 Marriner asked Mr. Yount a number of times in August,  
6 September, and even a few days before he made his investment,  
7 hey, do you want to come have a walk, walk the job with me  
8 and see the progress of it, again, so his own eyes and ears  
9 he could see where the project was, your Honor. Does that  
10 sound like we're trying to conceal facts from him? But yet  
11 we're somehow to blame because he was too busy to take Dave  
12 Marriner up on those offers.

13           We also know from his testimony that there was not  
14 a single thing he asked for that he wasn't provided. And, in  
15 fact, we know from the e-mails and the testimony that Dave  
16 Marriner and Robert Radovan asked him multiple times, hey,  
17 Mr. Yount, is there anything else you need from us? And he  
18 didn't respond. He didn't ask for anything.

19           In fact, the only thing he asked for between mid  
20 August and when he invested on October 13th was to ask Mr.  
21 Radovan one question, how is the project schedule holding up?  
22 And he was truthfully told that the soft opening was April  
23 and the grand opening was Father's Day.

24           Your Honor, nobody held a gun to his head and

1 prevented him from walking the job site and seeing the  
2 progress with his own eyes, from asking questions of us or  
3 the construction team, the architect, Penta, Mr. Busick. In  
4 fact, he was encouraged to do so and he didn't take anyone up  
5 on that offer.

6           So, your Honor, when you put all of these facts  
7 together, he cannot prove by any standard, much less a clear  
8 and convincing evidence standard, that he justifiably relied  
9 upon any representations made by the defendants. And your  
10 Honor knows very well that justifiable reliance is a  
11 necessary element of any fraud claim.

12           Now, your Honor, I would draw the Court's  
13 attention to the Nevada Supreme Court case of Blanchard  
14 versus Blanchard, which is 108 Nevada 908. The case says  
15 something very important. It says, if you're a plaintiff and  
16 you undertake an independent investigation, as we know  
17 Mr. Yount did, you will be charged with knowledge of all  
18 facts which reasonable diligence would have disclosed. Very  
19 important, your Honor.

20           Had Mr. Yount bothered to go on updated progress  
21 tours or asked more questions, he would have clearly seen  
22 that the facts were exactly as they had been represented to  
23 him by Mr. Marriner and Mr. Radovan.

24           The schedule, he would have seen that the soft

1 opening was April, the grand opening was back on Father's  
2 Day, June, whatever that is, and he would have been told that  
3 was done not only to accommodate weather or tourism, but  
4 because of all the added work that Penta was doing. Do you  
5 think that page 16, all that work, you don't think there's  
6 going to be more days associated with doing that? That's a  
7 significant amount of work. If he had gone on the tours,  
8 asked questions, he would have seen that financing had not  
9 been secured yet, but as you heard in the phone message  
10 yesterday, it was seemingly imminent and everybody had  
11 positive vibes that was coming through.

12 He would have also seen, your Honor, that the  
13 project costs were almost to the penny, to the penny what  
14 Robert Radovan had represented way back in July that he  
15 forecasted it would be. Robert said, they're five to \$6  
16 million and they're escalating, and that's why we're going  
17 out and getting an additional ten and a half million dollars,  
18 \$9 million debt, another million dollars in equity. We're  
19 right there when he invests, your Honor.

20 So, your Honor, he cannot prove justifiable  
21 reliance. He undertook an investigation and had he done  
22 more, he would have discovered -- I guess the point is, he  
23 would have discovered what was already the case and what he  
24 already knew. In other words, there were no

1 misrepresentations, but regardless, because of all this, he  
2 can't prove justifiable reliance.

3 I want to go through the specific allegations and  
4 show you that they're not supported by clear and convincing  
5 evidence. Before I do, I want to draw your attention to two  
6 points. One, your Honor hit the nail on the head. Bill  
7 Criswell fraud claims absolutely have to fail against him for  
8 the additional reason that Mr. Yount never met, spoke to or  
9 relied upon anything that Mr. Criswell did or said before  
10 investing.

11 Now, your Honor, it's a fundamental tenant of  
12 corporation law that members of an LLC like Mr. Criswell are  
13 not -- are shielded from personal liability unless you have  
14 proof of an independent claim against that person.

15 In other words, you can't impute any sort of bad  
16 acts by the company or another member to one member. And  
17 that's what they're trying to do here, your Honor. There's  
18 no evidence. Bill Criswell didn't get involved until after.  
19 Claims have to be dismissed against him.

20 I found it a bit troubling when I read counsel's  
21 findings of facts and conclusions of law based on claims in  
22 there that have never been plead. One of those claims is a  
23 fraud cause of action against Bruce Coleman's law firm. Your  
24 Honor, they never pled fraud against Bruce Coleman. We can

1 look at their third and seventh causes of action and there's  
2 nothing there. Obviously, Nevada doesn't allow trial by  
3 ambush. There is no fraud claim pled against Bruce Coleman  
4 and that should be dismissed.

5 Let's talk about the specific misrepresentation or  
6 omissions that were --

7 THE COURT: Just a minute, Mr. Little. As to  
8 Powell, Coleman and Arnold, we have three causes of action.  
9 We have the breach of fiduciary duty, we have negligence, and  
10 punitive damages.

11 MR. LITTLE: I think that's it.

12 THE COURT: I didn't see any fraud being pled.

13 MR. LITTLE: Correct.

14 THE COURT: In the second amended complaint.

15 MR. LITTLE: It's in their findings of fact and  
16 conclusions of law.

17 THE COURT: Understood.

18 MR. LITTLE: Interestingly, there's also a fraud  
19 finding against New Cal Neva Lodge LLC, which, of course, is  
20 in bankruptcy and counsel could be sanctioned for violating  
21 the automatic stay for that. I'm guessing those things were  
22 mistakes.

23 Stepping back to the specific allegations, let's  
24 talk about the budget or cost overrun first. Now, you heard



1 during testimony, Mr. Yount and Mr. Campbell were trying to  
2 split hairs, basically, over what Robert Radovan said in  
3 July, but what you heard him say he knew that those costs  
4 were at least 5 to \$6 million, they were going to be more,  
5 that there -- I think the words were there was more on the  
6 horizon, and that's why they were seeking \$9 million in debt  
7 and an additional million and a half in equity.

8           If you look at his owns notes, your Honor,  
9 Exhibit 21, he understood that the cost overruns were  
10 \$10 million. I pulled out his deposition, page 149. In the  
11 interest of time, I won't go through that, but he said, yes,  
12 I understood the project was over budget by \$10 million.

13           Your Honor, we know that he didn't bother to ask  
14 another question about costs of the budget before he  
15 invested. But the evidence again proves that Robert's  
16 forecast, and mind you, this was a forecast that Robert was  
17 relying on Penta to provide him with, that turned out to be  
18 pretty darn accurate, your Honor.

19           We went through the pay applications, Exhibit 153,  
20 end of July, change orders 2.5 million, end of August  
21 4.6 million, end of September, \$9.2 million. Right there.  
22 We went over the change orders, Exhibit 43, same thing.

23           We went over the Mark Zakuvo third party report,  
24 which is Exhibit 149, same thing. At the time that Mr. Yount

1 closed his investment, the project was over budget by  
2 \$9 million.

3 He's made a big fuss, even though Robert's  
4 representations were accurate, he's made a big fuss over the  
5 fact that we didn't tell him the cost had gone up from 5 or 6  
6 to 9. Let's not forget the fact that Mr. Yount was radio  
7 silent for the better part of two months. The testimony you  
8 heard, we had no faith that he was going to be able to close  
9 and that's why we turned our sights elsewhere, your Honor.

10 But during this two months, he was being asked if  
11 he had other questions. He was being asked by Dave Marriner  
12 to take progress tours, your Honor. So the reality is the  
13 costs were exactly as predicted. So there was no reason  
14 we're going to rush out and update them. They're right where  
15 Robert told them they would be.

16 Now, your Honor, they're trying to point that to  
17 December budget and try to allude to the fact that it was  
18 really \$20 million over budget. Your Honor, respectfully,  
19 that's a misleading argument. We went over the facts. The  
20 budget was over by \$9 million when he invested. That's the  
21 change orders, the pay application.

22 If you look at the \$70 million figure in that  
23 December budget that they used to say we're \$20 million over,  
24 of course you have to subtract the \$55 million in financing

1 that we had in place back in 2014.

2           So that means you're really only 15 to \$16 million  
3 over budget in December, and of that, he knew ten and a half  
4 million dollars of it. So we're really talking about 4 or  
5 \$5 million extra in December. And what did you hear about  
6 that, your Honor? You heard the executive committee wanted  
7 to increase the budget, that's their decision, to deal with  
8 new change orders that saw that came in in November,  
9 December. They wanted more money to do some elective things  
10 to make the project better. Not that we're required to do  
11 it, but it's better to do it now when the walls are open than  
12 two years from now.

13           THE COURT: The show kitchen.

14           MR. LITTLE: Yeah. They wanted some extra  
15 cushion. Look what we've been faced with. This was an old  
16 project.

17           THE COURT: It's a new project.

18           MR. LITTLE: It's a new project, but an old  
19 building and we faced some hurdles, clearly, and they wanted  
20 more cushion. So, your Honor, there was no evidence that  
21 there were any material misrepresentations about cost  
22 overruns, budget that he can show that we knew or believed  
23 were untrue and there certainly was no justifiable reliance.

24           Second, his big claim is we misrepresented the

1 schedule. Trying to understand his claim, he claims, yeah, I  
2 knew it was being pushed off into 2016, but I thought that  
3 was because of tourism.

4 Your Honor, respectfully, that argument is -- it  
5 almost borders on the absurd. The only evidence he's relying  
6 on is an e-mail he sent his own accountant, purportedly  
7 documenting a conversation he said he had with Robert. You  
8 heard Robert's testimony. Robert said, tourism was a factor,  
9 but construction costs were, too. That's common sense. We  
10 have all of these changes that is affecting the schedule.

11 I won't go into too much detail, but you remember  
12 in his cross, I think showed that argument made no sense.  
13 Specifically, he's claiming the premise for this belief was  
14 this conversation he had with Robert in August. But if you  
15 step back and look at the notes from July that he had, he  
16 knew that the project was already bumped out to April by then  
17 and he hadn't had this conversation with Robert. So how did  
18 that change? And then if it's really because of tourism, why  
19 is tourism moving it out even further? It doesn't make a lot  
20 of sense, your Honor.

21 The reality is he didn't -- that's another point,  
22 the reality is he didn't rely on anything that Robert said.  
23 We saw Exhibit 28, a week after he claims he and Robert had  
24 this call, he went to the architect and said, hey, what's the

1 deal with the schedule? And, conveniently, he doesn't  
2 remember what the architect said. But, again, whatever he  
3 told him didn't dissuade him from investing.

4 And, your Honor, most importantly, we have  
5 Exhibit 36, the October 10th e-mail from Robert where he  
6 asked him about the schedule and Robert says, soft opening in  
7 April and grand opening on Father's Day. It doesn't say  
8 anything about tourism or weather.

9 Again, your Honor, why would we misrepresent the  
10 reason for schedule changes at the same time we're inviting  
11 him to come walk the project where he's going to learn that  
12 information? It makes no sense, your Honor.

13 In short, no material misrepresentation about the  
14 schedule, no justified reliance, no proof that we knew or  
15 believed any such statement was false.

16 He says we misrepresented the status of financing,  
17 however, the evidence shows he knew from multiple sources,  
18 not just us, that the project was in fund raising mode,  
19 meaning we didn't have fund raising. He admitted he never  
20 asked a single question. He didn't ask who we were talking  
21 to. He didn't ask what the terms of the loan are. Nothing.  
22 He's a sophisticated businessman and investor, and obviously  
23 knows that financing on a project of this complication and  
24 this scale, there's no sure shots there.

1           In fact, if you go back to the agreements he  
2 signed, it says very clearly, you understand that we may seek  
3 financing and there's no certainties or guarantees there, and  
4 if it doesn't happen, you can lose your investment. He said  
5 he understood that.

6           Again, he was prompted throughout this process,  
7 even though he was radio silent, they kept getting back in  
8 touch with him, hey, how are things going? Do you need any  
9 information from us?

10           But, your Honor, you heard it from the horse's  
11 mouth yesterday in that phone message. Both sides, not only  
12 our side, but Mosaic, according to the CEO, had been working  
13 hard on that loan. They were enthusiastic about closing as  
14 they believed. This is the same time period. Now, there is  
15 no fraud about financing here. We believe that we have  
16 secured good long-term financing for the investment.

17           If you look at page 202 of his deposition, he  
18 admits he has no evidence that we misrepresented the status  
19 of financing. Rightly so, because we didn't.

20           Lastly, your Honor, in terms of fraud, he claims  
21 we misrepresented the financial health of the project, that  
22 we knew it was tanking when he invested, and this was a fire  
23 sale, and his so-called bait and switch theory. Of course,  
24 with 20, 20 hindsight, it's pretty easy to make an argument

1 that we must have known that the project was tanking when he  
2 invested, but that's not the standard by which we're to be  
3 judged.

4           You have to look at what did we reasonably believe  
5 back when he invested? And, again, all we have to do is put  
6 our common sense hats on and that question is easily  
7 answered, Les Busick investing. That doesn't happen if this  
8 project is believed by people to be tanking. The phone  
9 message about the status of the Mosaic loan, that's our  
10 mindset, your Honor. That doesn't support any sort of their  
11 theory that we know the project is tanking.

12           We know from Exhibit 13 the architect is  
13 optimistic about the project. We know there's plenty of  
14 money left on the Hall loan to pay contractors. In fact, we  
15 know that Penta and subs were current on all payments at the  
16 time that Mr. Yount invested. We know they were working  
17 hard. There were no threats that had been made for a slow  
18 down or a work stoppage at that point in time.

19           We know that CR Cal Neva put money back into the  
20 project. Why do that if it's tanking? And we know that the  
21 costs were in line with what Robert had projected they would  
22 be back in July.

23           So all of this evidence, your Honor, points to the  
24 fact that the project was believed to be on track when

1 Mr. Yount invested. And there's simply no evidence that the  
2 project was failing and this was any sort of a fire sale.

3 And, importantly, Mr. Yount admitted this on page  
4 93 of his deposition. I asked him, question, do you have any  
5 evidence that Criswell Radovan sold you one of their shares  
6 because they knew the project was in trouble? No, it just  
7 seems obvious to me. Your Honor, that's not clear and  
8 convincing evidence.

9 Now, you hit on a good point with Mr. Campbell,  
10 and that's with respect to the sale. The evidence is we only  
11 intended to have a million dollar skin in the game. I mean,  
12 that's in multiple places. It's in the private placement  
13 memorandum, it's in one of the cap tables, Exhibit 101, it's  
14 in the Ladera loan. Everybody had this information. They  
15 knew that we were going to have \$1 million skin in the game  
16 and at some point in time we were going to sell one of our  
17 shares. So there's no red flag in us selling Mr. Yount one  
18 of our shares.

19 You pointed out, he's a highly influential member  
20 of Lake Tahoe community. He lives right next door. He's  
21 prominent. Who wouldn't want him involved in the project?  
22 And the guy had just spent the better part of the four months  
23 trying to get funded.

24 For all of these reasons, your Honor, Mr. Yount's



1 fraud and punitive damage causes of action must fail. There  
2 there's no clear and convincing evidence of any material  
3 misrepresentations or omissions. There's no clear and  
4 convincing proof that we intended to deceive him. There's no  
5 clear and convincing proof that he justifiably relied.

6 Let's switch gears and talk about the two causes  
7 of action against Mr. Coleman. That's the seventh and the  
8 fourth claims for relief. And both of those claims, your  
9 Honor, assume a duty and a breach of duty, neither of which  
10 exist in this case, your Honor.

11 In fact, if you look at their trial statement and  
12 paragraph three of their proposed findings of fact, you'll  
13 see their entire claim against Mr. Coleman's firm is premised  
14 on an untrue fact. It's premised on the fact that he  
15 received a copy of Mr. Yount's subscription package and those  
16 escrow instructions and he disregarded them.

17 But that wasn't the evidence at trial, your Honor.  
18 The evidence was unequivocal that he never received this  
19 package on the escrow instructions. And they didn't have any  
20 evidence to controvert that.

21 In fact, the only thing that Mr. Coleman was told  
22 was that Mr. Yount was buying one of CR Cal Neva's shares and  
23 he had a good faith basis for that belief. We have  
24 Exhibit 33, which was the e-mails. This isn't something that

1 we're making up. There's an e-mail to him saying, CR Cal  
2 Neva is going to sell Mr. Yount one of its shares and we  
3 would like to use your trust account. This was a normal  
4 purchase and sale agreement. He's a transactional lawyer.  
5 This stuff happens all the time. He had no evidence to the  
6 contrary. And the facts played out exactly like this.  
7 There's no red flags whatsoever in this case that would lead  
8 his firm to believe that the transaction was anything  
9 different.

10 Now, let's talk about Mr. Yount's breach of  
11 contract claim. It's the first cause of action. It's  
12 against two bankrupt entities, which he doesn't have relief  
13 from stay, so there is a stay there. It's also against CR  
14 Cal Neva and Criswell Radovan LLC. Now, according to his  
15 testimony, and counsel agreed, he believed his contract was  
16 with Cal Neva Lodge, which obviously is in bankruptcy and  
17 subject to the stay. It's fundamental that you can't have a  
18 breach of contract against a person or entity that is not  
19 party to that contract, which necessarily means this cause of  
20 action doesn't fit as pled against the Criswell Radovan  
21 entities. He's basically trying to put a square peg in a  
22 round hole. It just doesn't fit.

23 THE COURT: Can you address the alter ego argument  
24 made by Mr. Campbell?

1           MR. LITTLE: Absolutely. This is the first time  
2 we're hearing about that. Alter ego is something that is  
3 required to be pled, your Honor. It's nowhere in his second  
4 amended complaint. There are no allegations. This is trial  
5 by ambush. You cannot bring up an alter ego theory at trial.  
6 If he wants to make some alter ego theory, he needs to get a  
7 judgment and then go file a lawsuit claiming that.

8           You can't spring that at somebody at trial.  
9 There's no expert testimony. No accountant came in and said  
10 they ignored corporate formalities. They had separate LLCs  
11 that were formed for each transaction, normal things that  
12 real estate companies do in the investment business. There's  
13 no evidence of that. And more importantly, it hasn't been  
14 pled. It's trial by ambush. You can't do that.

15           But counsel has argued that, well, what about the  
16 fact that Mr. Yount thought he was buying a different  
17 founders share? Your Honor, that doesn't give him recourse  
18 or the right to unwind his sale, because this had no material  
19 effect on the underlying exchange of performance. It's form  
20 over substance.

21           He wanted to buy a founders share in Cal Neva, and  
22 I think you backed counsel into agreeing, that's exactly what  
23 he got. There is no difference. Testimony was, they are  
24 equivalent. There's 20 shares, each of them have the same

1 rights and obligations. He got one of those founders shares,  
2 so he has no damages in this case to the extent that there is  
3 any rights under a cause of action, which we don't think  
4 there are. There are no damages, because he got everything  
5 that he wanted to. He's in the identical position he would  
6 have been had he beaten Mr. Busick to the punch and bought  
7 that share instead of one from CR Cal Neva.

8 And under the operating agreement, which he read  
9 and understood, paragraph 4.7, Exhibit 5, he knew he had no  
10 right to demand to be bought out. Once you buy a share,  
11 you're a shareholder, and you're in there. We think his  
12 breach of contract cause of action fails.

13 Which brings us to the last cause of action for  
14 conversion. That has been pled against CR Cal Neva, Criswell  
15 Radovan LLC and the two individuals. Of course, your Honor,  
16 this is an intentional tort that requires proof of a wrongful  
17 exercise of dominion and control of property, which cannot be  
18 justified or legally excused.

19 I'm going to talk about those elements in a  
20 minute, but before I do so, I want to point out and make  
21 clear that this cause of action has zero basis against the  
22 two individuals. The evidence at trial showed that CR Cal  
23 Neva had Mr. Yount's money wired to Criswell Radovan LLC to  
24 satisfy a loan and several hundred thousand dollars and were

1 put back into the project.

2 No evidence was presented in this trial that  
3 Robert or Bill got any part of that and irrespective of that,  
4 even if they did, that's not a legal basis to sue them for  
5 conversion over money that went to an entity Criswell Radovan  
6 LLC.

7 If they could be sued because money hypothetically  
8 flowed from the share to them, theoretically you could follow  
9 that change everywhere, and see whatever bills did Criswell  
10 Radovan pay with it. Did they pay for their land? You can't  
11 bring those people in. His cause of action for conversion is  
12 against the person who got the money, Criswell Radovan LLC.  
13 That's the law, your Honor.

14 Now, let's talk about the meat and bones of this  
15 cause of action. We've already shown that irrespective of  
16 the elements, he suffered no damages, because he got a  
17 founders share and that's exactly what he wanted. So I think  
18 right now there you win the analysis and the claim must be  
19 dismissed. But if you go past that, we've already disproved  
20 the bait and switch theory, which is the entire premise for  
21 this sale being wrongful and not justified.

22 And let's examine that for a moment, your Honor.  
23 You talked about it and you're right, the testimony was clear  
24 that Robert thought that David told him and Dave thought

1 Robert had told him. There's no evidence that there was any  
2 intent there to conspire and defraud Mr. Yount. Each just  
3 thought the other did it.

4 If we look at Exhibit 33, there's evidence in the  
5 record to support the fact that that was our good faith  
6 belief. Exhibit 33, the e-mail to -- from Criswell Radovan  
7 to Mr. Coleman, it shows that we genuinely believed we were  
8 selling him one of our shares. And it also asks, how do  
9 we -- asking the attorney, how do we paper the transaction?  
10 Obviously, common sense, we're not trying to defraud if we're  
11 asking our attorney how to paper it.

12 The reality is Mr. Coleman didn't get back to  
13 Criswell Radovan until after Mr. Yount had already closed and  
14 funded, by which point we knew that or were told that we had  
15 to get this approval, which you heard the testimony, we  
16 always in good faith believed that we had the approval and  
17 right to sell one of our shares. But our attorney tells us,  
18 well, you have to follow this formality.

19 We've gone through that, your Honor. Section 12.2  
20 of the operating agreement is clear that approval is not a  
21 prerequisite to closing the transaction. Just the opposite.  
22 To make sure he's an accredited investor, he has to sign  
23 the document, and then you get approval at the annual  
24 meeting.

1           And they argue that based on Mr. Chaney's evidence  
2 that there's no way that the members would have approved  
3 Mr. Yount. Common sense, your Honor, that is a ridiculous,  
4 preposterous argument. We've seen the e-mails. He is  
5 designated as the co -- what was the word they used --  
6 co-spokesperson. He was welcomed into this group of  
7 investors. There's absolutely no evidence that they wouldn't  
8 have approved Mr. Yount. And, regardless, Mr. Coleman told  
9 you the operating agreement is clear that even if he didn't  
10 get approval, he still holds all the economic benefits of the  
11 investment.

12           The reality and the other point is, your Honor,  
13 which I think is a significant point, Mr. Yount chose to  
14 rescind this transaction on a false assumption before -- in  
15 fact long before he even claims he knew that he bought a  
16 different founders share. He was trying to get out before  
17 then. So he's now coming to Court using this situation as an  
18 excuse to try to get out. But, your Honor, it's a red  
19 herring, because the sale wasn't wrongful and it certainly  
20 isn't something that is excused by law. And, again, he  
21 suffered no damages.

22           Which brings me back to my last point, which is at  
23 the beginning I said we need to talk about what the case  
24 isn't before we talk about what it is. We're at that point

1 now and this is a case where Mr. Yount got exactly what he  
2 bargained for. He wanted a founders share, he got a founders  
3 share. And if he has any damages, which we don't believe he  
4 has, he's caused the damages by getting in bed with the  
5 Mosaic people and --

6 THE COURT: The IMC.

7 MR. LITTLE: IMC. Thank you. It's nonsense. I'm  
8 not going to go through the e-mails. It's all in our  
9 defendant's exhibits. It's nonsense to believe he distanced  
10 himself from that and he didn't want any part of it. There's  
11 e-mails about a cohesive unit. He's acknowledging, not them,  
12 he's acknowledging that they're going to be good cop, bad  
13 cop. He's having one-on-one conversations with the IMC group  
14 in the days leading up to their secret meeting.

15 And they clearly know that about that secret  
16 meeting. There's alarm bells going off in his mind that  
17 doesn't seem like something that is probably good, it might  
18 be interference with a contract. It is interference with a  
19 contract and he didn't do anything to stop it. And that's  
20 because he testified and he knew that those people who he was  
21 listening to, the IMC people, weren't proponents of Mosaic.  
22 They wanted their own financing. They were looking at their  
23 own financing.

24 And that's why they stalled Mosaic and they went



1 to them. And they want to have you believe that it's lack of  
2 faith in Criswell Radovan. You heard the phone message.

3 Does that sound like they had lack of faith in us?

4 Absolutely not. Is it a mere coincidence that the very day  
5 that IMC meets with Mosaic, that they send a letter  
6 terminating the term sheet and completely backing out?

7 And if you want to believe their story that we  
8 love Mosaic, of course, why would we try to sink it? If  
9 Mosaic invited those people that they met with at IMC, let's  
10 go back and let's have more discussions. You heard the  
11 evidence. They didn't do that. They didn't want Mosaic.  
12 They wanted their own financing and they're responsible for  
13 where this project is, your Honor. And Mr. Yount was part of  
14 that. And to sit here and say he wasn't is disingenuous.  
15 It's in the documents.

16 And, your Honor, importantly, we pled -- we  
17 haven't sued him for a counterclaim, but we have pled  
18 affirmative defenses and whether you call it --

19 THE COURT: Unclean hands.

20 MR. LITTLE: Unclean hands, estoppel, waiver,  
21 contributory fault, it's all the same failure to mitigate  
22 damages, all roads lead to the same path. He put himself in  
23 the position he is now. He not only caused himself to lose  
24 potentially this \$1 million, he's cost CR Cal Neva over

1 \$2 million in damages. More importantly, he's caused all of  
2 these investors to be in the position they're at now. So  
3 unless your Honor has further questions.

4 THE COURT: No, I don't.

5 MR. LITTLE: Thank you.

6 THE COURT: Thank you. Mr. Wolf. Everybody,  
7 stand up.

8 MR. WOLF: We've had the technology cart here all  
9 week and so I'm going to use it just to say that I did.

10 THE COURT: Go ahead, Mr. Wolf.

11 MR. WOLF: Thank you, your Honor. I want to thank  
12 the Court and the staff for giving us much support and  
13 comfort as we need to prepare our cases and find the search  
14 for complete -- complete the search for truth. We appreciate  
15 you adjusting your schedule on the fly for us, because we  
16 didn't estimate our time so well.

17 THE COURT: That's all right.

18 MR. WOLF: I want to start before I delve into  
19 some of these prepared items, this case involves the  
20 intersection or the boundary between negligent tort and  
21 intentional tort. For this case to succeed against Marriner,  
22 against him only, claims for fraud and securities fraud are  
23 alleged in addition to punitive damages, the Court would have  
24 to go from finding some sort of inadvertent or negligence

1 which went over the line into intentional conduct. I don't  
2 think the evidence supports that and I think a good  
3 illustration might apply, because we're in this business  
4 transaction context.

5           It might be hard to discern that boundary. In a  
6 real simple case, an auto personal injury case, if someone is  
7 looking at their cell phone or for whatever inadvertence runs  
8 into a pedestrian, that is negligence, lack of due care. If  
9 someone sees the pedestrian and knows them and knows they  
10 have an ax to grind or whatever motive they have, and they  
11 turn the steering wheel and hit that person, now we've  
12 crossed the line into criminality and intentional tort.

13           This case doesn't present any of those contours.  
14 There's no evidence of that effort to turn the wheel and to  
15 hit somebody intentionally. Anything that is at fault here  
16 is humans doing things and maybe making mistakes, but there's  
17 certainly no evidence of malicious, wilful action to harm  
18 another person.

19           So, as I said, the claims we have against David  
20 Marriner individually and Marriner Real Estate LLC are  
21 limited to common law fraud, securities fraud and punitive  
22 damages.

23           The fraud elements are false statement of past or  
24 present fact. Our trial statement indicates opinions or

1 estimates of future things are not facts upon which a fraud  
2 claim can be premised. The stated fact must be known or  
3 believed by the defendant to be false. There must be  
4 scienter, s-c-i-e-n-t-e-r, there must be reliance and damages  
5 actually cause by the reliance.

6 Securities fraud is largely the same. There has  
7 to be an untrue statement of a material fact or failure to  
8 state a material fact necessary to make earlier statements  
9 not misleading in light of circumstances under which they  
10 were made.

11 There needs to be scienter, reliance, the purchase  
12 of the security and under the statutory framework a tender of  
13 the security back to the defendant or to the issuer.

14 The burden of proof is by clear and convincing  
15 evidence. That's each and every element. You know, the goal  
16 line for the plaintiff is to prove everything, both the  
17 damages, the causation of the damages, the reliance, the  
18 falsity, the knowledge of falsity, the guilty motive, all of  
19 those things must be proven by clear and convincing evidence.  
20 That applies to the substantive claims against Marriner and  
21 Marriner Real Estate, LLC as well as the punitive damages  
22 claim.

23 This is an example of a Ninth Circuit model civil  
24 jury instruction, what does clear and convincing evidence

1 mean? And when a party has the burden of proving by clear  
2 and convincing evidence, it means the party must present  
3 evidence that leaves you with a firm belief or conviction  
4 that it is highly probable that the factual contentions of  
5 the claim or defense are true. This is a higher standard, of  
6 course, than proof by preponderance of the evidence. And  
7 that's Ninth Circuit model instruction 1.7 and it cites cases  
8 from the Ninth Circuit and the United States Supreme Court.

9 Our own Supreme Court has used the following  
10 language most recently in 2015 to describe what the clear and  
11 convincing burden is, and this is Ferguson versus Las Vegas  
12 Municipal Police Department, 131 Nevada Advanced Opinion 94  
13 from 2015 and a prior case in re discipline of Drakulich.

14 So it starts with talking about the definition  
15 from the 1890s where the Court has held that clear and  
16 convincing evidence must be satisfactory proof that is so  
17 strong and cogent to satisfy the mind and conscience of a  
18 common man and to so convince him to act with that conviction  
19 in the matters of highest concern and importance to his own  
20 interest.

21 So that's a nice illustration. I think it helps  
22 clarify what it means to have evidence establishing every  
23 element to be highly probable. So preponderance is you just  
24 have to outweigh the other side a little bit. I mean,

1 preponderance, you have to have evidence of a prima facie  
2 case, and if there's countervailing evidence, you have to  
3 outweigh the other side. That's a balancing. Highly  
4 probable is a different, a conviction that it's highly  
5 probable that the events occurred, I think, is an extremely  
6 high burden and it doesn't allow as much latitude for a court  
7 or if there was a jury to connect dots where evidence doesn't  
8 exist in the record.

9           We talked about the motor vehicle accident. Let's  
10 go to the elements of fraud, must be proven that any  
11 information given by Mr. Marriner to Mr. Yount was false when  
12 it was given. We're not talking about knowledge, just  
13 falsity of information at the time that it was delivered by  
14 Marriner to Yount. Mr. Marriner provided July 15th status  
15 report. There's no evidence in the record that that  
16 statement was false.

17           There are statements about project completion and  
18 opening. Those statements came from others. There's no  
19 information that at the time any of that information was  
20 conveyed by Mr. Radovan or by Mr. Grove to Mr. Yount that  
21 that was false. And, again, the project opening is an  
22 estimation of a future event. It's typically not suitable  
23 for a fraud allegation. It's not a statement of a present or  
24 past fact.

1           The only substantive project documents that  
2 Mr. Yount received from Mr. Marriner are the July 2015  
3 monthly status report, the PPM, and the confidential offering  
4 memorandum. And Exhibit 8 is the e-mail under which those  
5 are transmitted. And Mr. Yount confirmed in his testimony  
6 that there were these few documents that Mr. Marriner  
7 provided him and he wasn't even sure if the offering  
8 memorandum came from Mr. Marriner or not.

9           All of these documents were prepared by others who  
10 happened to be experts operating at the request of Criswell  
11 Radovan. So we had the status report was prepared by the  
12 construction manager. The offering documents were prepared  
13 by securities lawyers. So Mr. Marriner delivered  
14 information, none of which has been shown to be false, in  
15 around July 2015.

16           And there's no knowledge of any false information,  
17 there's no proof that Mr. Marriner knew that anything was  
18 false in these documents that had no false information.  
19 Maybe that's chasing my tail a little bit.

20           THE COURT: Tautology.

21           MR. WOLF: Tautology, yes. None of the evidence  
22 presented has shown that Mr. Marriner knew or believed that  
23 information given by Marriner to Yount or by Radovan to Yount  
24 or by anyone else to Mr. Yount was false when it was given or

1 needed correction at a later time.

2           The July 2015 status report, the project budget  
3 completion opening e-mails that we looked at, there's just no  
4 direct proof that Mr. Marriner had a guilty state of mind  
5 that he knew something being provided to Mr. Yount was  
6 inaccurate, intending to swindle Mr. Yount.

7           There's also no indirect proof. There's no  
8 contemporaneous e-mails. There's no -- nothing that would  
9 connect the dots in a -- with clear and convincing evidence  
10 that Mr. Marriner knew anything was false in any of the  
11 information provided to Mr. Yount.

12           The notion of a bait and switch is really  
13 overplaying the issue. There was a decision at the last  
14 minute to sell the CR founders share when two investors  
15 funded almost simultaneously and the cap on the PPM, the  
16 offering was reached.

17           So the notion that a bait and switch was being  
18 perpetrated, they didn't know back in July or August or even  
19 through part of September that Mr. Busick might be investing.  
20 Nobody knew that Mr. Yount was investing until he signed and  
21 delivered his documents on October 13th of 2015.

22           So the idea that there was a bait and switch is  
23 really overselling the hand, overplaying the hand here of  
24 what the information is. There was a circumstance where the



1 cap had been reached and a decision was made, well, we could  
2 sell him one of our shares.

3 On the element, the claim element intent to induce  
4 reliance, your Honor, Yount has not proven that Marriner  
5 intended to induce Yount to invest by providing false  
6 information. He provided a project tour, accompanied by a  
7 Penta representative. He provided the progress report. And  
8 I won't recount the exhibit numbers. I'm confident that the  
9 Court is aware of what they are. Marriner had no reason to  
10 not believe that what Radovan provided to Mr. Yount was  
11 up-to-date and accurate.

12 We have the e-mail with the questions and answers,  
13 the one that talks about the increase in the mezzanine loan  
14 and several other questions answered by Mr. Radovan. There's  
15 nothing in there that suggests that Marriner knew it was  
16 false and there's no information suggesting that he doubted  
17 anything that Mr. Radovan was providing to Mr. Yount.

18 Importantly, Marriner and just about everyone  
19 else, but Mr. Tratner, was unaware of Mr. Yount's undisclosed  
20 to anyone else erroneous understanding that the intended use  
21 of the \$9 million that would result from increasing the  
22 mezzanine loan was for things other than change orders. So  
23 he -- throughout this trial, we've heard Mr. Yount say that,  
24 well, I thought it was really 5 million in change orders,

1 maybe 5 to 6 million at times, he said, and I thought the  
2 other four was a rainy day fund or was for other stuff. He  
3 didn't share that with Mr. Radovan, Mr. Criswell or Mr.  
4 Marriner. It was essentially this undisclosed belief that he  
5 had and nobody looking from the outside into this little fish  
6 bowl or globe would know that Mr. Yount had a misperception  
7 of the purpose of the \$9 million.

8           Just at about the same time as the 9 million  
9 figure is mentioned in that -- in Exhibit 18, I believe it  
10 is, he had just received the monthly status report that  
11 listed the items, certainly without numbers. But the  
12 delivery of the status report coincided, you know, within a  
13 few days of the e-mail with the questions and answers that  
14 talked about we need \$9 million to cover a variety of new  
15 expenses.

16           Likewise, Mr. Marriner and everyone else but Ken  
17 Tratner was unaware of Mr. Yount's undisclosed belief that  
18 the only reason for delaying opening was marketing reasons or  
19 sales considerations or concerns about the weather. The  
20 reason I -- the reason it's important to talk about what --  
21 about these things is if Mr. Yount has -- is harboring ideas  
22 or has undisclosed impressions of what the information is, we  
23 can't fault the defendants for not correcting those when  
24 they're in e-mails between Mr. Yount and the CPA. These came

1 to light later in discovery that this is what he was  
2 thinking.

3 But when you roll back to the date of the  
4 transaction, Mr. Yount was not sharing, and it wasn't evident  
5 to everyone else that he thought the delays were marketing  
6 based or sales based or that the \$9 million was to have half  
7 for now and half for a rainy day fund later.

8 The absence of any indication to the defendants in  
9 that regard negates the notion of intent to provide false  
10 information or intent to not correct false information.

11 Now, before he invested, Mr. Yount's understanding  
12 of the cost overruns and budget impacts, there's the listing  
13 in the July monthly status report. There's Mr. Groves'  
14 e-mail that Mr. Little mentioned a moment ago. We're trying  
15 to get our arms around the construction costs. Construction  
16 costs are exceeding the budget and they, we are trying to get  
17 our arms around it and keep it in check. So, you know,  
18 that's an important statement, that we're over budget and we  
19 don't know quite how deep we are over budget. We're trying  
20 to figure it out.

21 Mr. Yount's e-mail just two days later, as I  
22 understand it you're over budget by more than 5 million so  
23 far. Where will that and likely more funding needs come  
24 from? This is mentioned in Exhibit 14 and Exhibit 48.

1 Mr. Radovan's e-mail, July 25th, we're increasing the mezz  
2 loan by 9 million to cover the added cost of regulatory and  
3 code requirements, which changed or were added by the two  
4 counties and TRPA which we deal with. We've also added costs  
5 for predevelopment of the condo units is also included within  
6 this.

7 Now, I believe Mr. Radovan testified that the  
8 predevelopment costs referenced here was in the order of 2 to  
9 \$300,000. It was maybe conceptual site planning, you know,  
10 not going to construction documents or any kind of  
11 construction work.

12 The July 25th e-mail to Mr. Yount doesn't support  
13 the notion that we had about \$5 million of cost overruns and  
14 the rest was for a rain a day. The clear import of this is  
15 we've got added costs and it's 9 million bucks.

16 Mr. Yount's deposition testimony, which we've  
17 talked about before is that he agreed and that he understood  
18 the project was 10 million over budget in July 2015. And the  
19 quote at page 149 of his deposition, and this is Mr. Little  
20 questioning him comparing two of the documents that we  
21 compared during our trial, so it looks like as of this date,  
22 which was late July, it was your understanding the project  
23 was at least \$10 million over budget from what was  
24 represented back in 2014? Answer, I guess that's what that

1 would indicate.

2 Now, there's been various statements from  
3 Mr. Yount as to what he believed the change orders were, but  
4 during trial, I don't have the transcript in front of me, I  
5 would ask the Court to look back on August 31, 2017 at about  
6 2:40 p.m., according to that clock right there, that  
7 Mr. Yount said Robert told him there were no more than nine  
8 million in change orders, which is a different statement than  
9 there was only 5 to 6.

10 You know, other testimony we have from Mr. Yount  
11 was that he read and understood and agreed to all the legal  
12 boilerplate in all of these massive offering documents,  
13 Exhibits 3, 4, and 5. If I can, I will find --

14 THE COURT: Mr. Wolf, I'm going to have to recess  
15 right now. We'll pick it up at ten after 1:00. I have a  
16 judge's meeting at 12:00 that I have to preside over.

17 It's my desire to issue a ruling today. I don't  
18 want to cut off anybody's allocution. But I'm familiar with  
19 the testimony and I'm familiar with the transcripts. I'm  
20 familiar with the exhibits. It would assist me if you would  
21 focus on the elements of the causes of action and why they  
22 fail or why they should succeed. And it's my desire to issue  
23 a ruling at 2:00 this afternoon. So within that time period,  
24 try and focus your arguments on those causes of action. That

1 would be the best assistance to me.

2 MR. WOLF: Thank you, your Honor.

3 THE COURT: Mr. Little, you stand.

4 MR. LITTLE: No. Can we leave our stuff here?

5 THE COURT: Yes. That's fine. Court's in recess.

6 (A lunch break was taken.)

7 THE COURT: Mr. Wolf, you have the floor.

8 MR. WOLF: Thank you, your Honor. In order to  
9 speed up my presentation and following the Court's thoughts  
10 at the end of the morning session, I'll focus on elements of  
11 the claims, or the absence of evidence supporting elements of  
12 the claims, perhaps.

13 One of the claims -- both of the claims for fraud  
14 are premised on misrepresentation of fact and concealment or  
15 failure to provide additional information.

16 The private placement memorandum text that's on  
17 the screen that's part of the investment risks, disclosed  
18 that there could be affects on the business plan and the  
19 profitability and success of the entities due to budgetary  
20 and cost overruns.

21 So the very foundational documents, there's a  
22 disclosure that there could be cost overruns that could  
23 damage the company's prospects. That's on page nine of the  
24 private placement memorandum in this provision under risk

1 factors, insufficient funding and dilution.

2 Now, in order to establish that Marriner failed to  
3 disclose material information, Mr. Yount would have to show  
4 that there was material information that he had that was at  
5 variance with what Mr. Yount might have had and failed to  
6 disclose it. But if you look at what Marriner's  
7 understanding of the cost overruns was and what Mr. Yount  
8 knew at the time, there really was never any divergence in  
9 the two.

10 Marriner started at the same place with the  
11 July 2015 monthly status report. He had a copy of Radovan's  
12 e-mail, Exhibit 18, explaining the purpose of the mezzanine  
13 loan. Marriner, like Mr. Yount, did not receive further  
14 monthly status reports before Mr. Yount invested. Mr.  
15 Marriner toured the site with Mr. Busick in September 2015.

16 The upshot of that tour was that it confirmed that  
17 the work identified in the July status report was being  
18 performed and so the -- that put a positive view that the  
19 information they had back in July was consistent with the  
20 facts on the site in September.

21 Mr. Marriner, he saw nothing to suggest that what  
22 Yount had so far up to that point was different from the  
23 reality that he saw in September. And it's important  
24 throughout the e-mail strings, Mr. Marriner continued to

1 offer site tours to Mr. Yount, even within a few days of his  
2 investment. So there was no effort to conceal the status of  
3 construction or the progress at the site. And there's simply  
4 no evidence that Mr. Marriner had knowledge of project  
5 difficulties different, you know, in magnitude or character  
6 than what Mr. Yount already knew.

7           So I don't believe there's evidence to support  
8 that, the element of the wing, if you will, of the fraud  
9 claims that are based on failure to disclose material  
10 information that would have corrected previous information.

11           Now, it's important if we talk to causation, even  
12 if we assume, if the Court wasn't persuaded that there was --  
13 if the Court was persuaded there was false information and  
14 that it was withheld improperly, there's still not a causal  
15 nexus between anything Mr. Marriner did and the fate of  
16 Mr. Yount's money.

17           The testimony is undisputed that Mr. Marriner  
18 never handled the delivery of the investment documents or the  
19 funds. It's also undisputed that Marriner had no connection  
20 to the escrow itself. He wasn't a party to the  
21 correspondence where the funds or documents were delivered.  
22 He wasn't a party to the correspondence between Mr. Coleman's  
23 office and the Criswell Radovan staff. And Mr. Marriner had  
24 every right to assume that if some other formalities were



1 indeed required, that those were being handled by the  
2 attorney who was handling the funds and the documents.

3 Now, certainly, a large piece of Mr. Yount's claim  
4 against Marriner is the failure to indicate to Mr. Yount that  
5 Mr. Busick had invested. You heard testimony from all  
6 parties over the conversation, particularly from Mr. Marriner  
7 and Mr. Radovan, about their conversation about the so-called  
8 perfect storm and you saw some deposition testimony in that  
9 regard.

10 When Mr. Radovan told Mr. Marriner, hey, that's  
11 okay, we have another \$1 million founders share that we can  
12 sell, Marriner had no reason to doubt the validity of that  
13 statement. He had no reason to believe that a founders  
14 share, as the Court characterized it, a new Cadillac owned by  
15 Criswell Radovan was any different than a new Cadillac owned  
16 by the original issuer.

17 So Marriner had no reason to believe nor is there  
18 any evidence before the Court that a CR share, founders share  
19 to be delivered to Mr. Yount in this aftermath of the Busick  
20 investment would damage Mr. Yount in any way, would have any  
21 rights or value different than the shares that Mr. Busick  
22 purchased.

23 One observation I don't think has been made and  
24 I'd like to point it out is I think you can argue that

1 Mr. Yount was put in a better position acquiring a million  
2 dollar share from CR after Mr. Busick had put a million and a  
3 half dollars into the company by buying his shares before  
4 Mr. Yount. Why do I say that? If Mr. Yount put in a  
5 million, the company would have a million dollars. When  
6 Mr. Busick funded, he bought a million and a half, the  
7 company had the extra half a million dollars to work with or  
8 use for whatever purpose. So the transfer of the CR share to  
9 Mr. Yount, it didn't reduce the funds in the company and the  
10 company wound up with actually more money than it would have  
11 had Yount funded first.

12 Turning to the issue of damages, there is no  
13 evidence, including any expert witness opinion, that the CR  
14 founders share was of lesser value. The Court observed it's  
15 a new Cadillac versus a new Cadillac. There's no expert  
16 witness testimony. There's not even anything that is, you  
17 know, indirectly relied on by Mr. Yount.

18 Market information, for example, attempts to sell,  
19 there's simply nothing in the record to show that the share  
20 Mr. Yount received was of lesser value than that which he  
21 expected he was purchasing. That means there's no damages  
22 from the sequence. And the assertion that he wouldn't have  
23 bought it, the assertion that -- it's all just speculation,  
24 and speculation, the law is clear in Nevada, the Court cannot

1 award damages based on speculative evidence.

2 One of our defenses, and Mr. Little already  
3 covered this, is the independent investigation. And there's  
4 two different ways you can view the independent  
5 investigation. One is that it negates the fraud element of  
6 reliance. If someone is tire-kicking so carefully and  
7 independently evaluating facts so thoroughly to the point  
8 where they're not relying on the person that provided them  
9 the information, the Court can conclude as a factual matter  
10 that person didn't rely. That's a different -- so that's  
11 using the independent investigation to negate the reliance  
12 element.

13 The Blanchard case is talking about taking it a  
14 step further, if someone conducts the independent  
15 investigation, then they're going to be charged with  
16 everything they would have learned had they completed that  
17 investigation diligently.

18 In this case, in my brief cross examination of  
19 Mr. Yount, you know, he used the words in his -- he explained  
20 the defense in his own words when he said, trust but verify.  
21 He explained what that means. President Reagan didn't trust  
22 his counterparty in the arms negotiations. He wanted  
23 mechanisms by which we could verify what the Soviet Union was  
24 doing at the time.

1           That's exactly what he was doing here. He was  
2 talking to people he trusted, Peter Grove, his own CPA. He  
3 wasn't relying on Mr. Marriner for project information. He  
4 was going to Mr. Radovan. He was going to his own CFO to  
5 evaluate that information. So we believe all the elements to  
6 either negate reliance or to carry the defense under  
7 Blanchard are established through the facts of this case.

8           And I appreciate that the Court was familiar with  
9 that August 3rd e-mail. Mr. Marriner, I'm talking to Radovan  
10 directly now, I'm really not looking to you for information,  
11 thanks for calling me, in so many words.

12           So with that, there's been a lot of talk of the  
13 Mosaic deal and how it was torpedoed. I share the same view  
14 as Mr. Little that if there were damages from this  
15 investment, it's not from -- he got a Cadillac. He got a new  
16 Cadillac. There's no evidence of a difference in value. If  
17 it's because the project failed, the project failed in the  
18 aftermath, after the investment, after the Mosaic loan was  
19 interfered with.

20           I don't believe Mr. Yount conspired to interfere  
21 with that loan, however, he had an opportunity, he knew the  
22 meeting that was about to happen was probably not legit, in  
23 his words, and he had an opportunity to head off the CR  
24 people at the pass and maybe avoid what happened, which is

1 the Mosaic loan being --

2 THE COURT: The IMC people?

3 MR. WOLF: Yes.

4 THE COURT: Not the CR. You transposed.

5 MR. WOLF: Yes. Thank you. So that goes to  
6 causation of damage. It's Mr. Yount's own inaction in this  
7 case. He's pointing fingers at defendants for inaction and  
8 failing to inform. He was aware of a very critical event  
9 about to happen that is probably spelled the doom of this  
10 project.

11 And in hindsight, I don't think he was calculating  
12 to hurt himself, in hindsight you can look back and say, wow,  
13 you knew this, you knew it was legit. You asked people if it  
14 was legit. You didn't step up and say anything. And since  
15 we're all here in hindsight looking back at what everybody  
16 did, I think that contributed to his own damage insofar as  
17 his damages relate to the failure and the bankruptcy of the  
18 project.

19 So in sum, your Honor, I don't believe any fraud  
20 elements have been established. I don't believe they've been  
21 established by clear and convincing evidence. Mr. Marriner  
22 did not handle Mr. Yount's funds. The funds were handled by  
23 others. And given the serious burden of proof, I believe  
24 there should be a defense judgment in favor of Marriner on

1 all the claims, including punitive damages. And I'll close  
2 with that. I'd be happy if there's any question that the  
3 Court has that I haven't covered relative to Mr. Marriner, I  
4 welcome the opportunity to answer it.

5 THE COURT: Mr. Wolf, I think you covered all the  
6 questions the Court has.

7 MR. WOLF: Thank you very much, your Honor.

8 THE COURT: Thank you, counsel. Mr. Campbell.

9 MR. CAMPBELL: Good afternoon, your Honor.

10 THE COURT: Good afternoon, counsel.

11 MR. CAMPBELL: I'm going to trial to stick to your  
12 admonition, but I think there were some things that were in  
13 the closing argument that I have to --

14 THE COURT: The field is wide open. Don't feel  
15 any constraints. We were able to resolve everything. Let me  
16 just say, I've said it before, and I'll say it again, the sun  
17 will not set today until everybody has had an opportunity to  
18 tell me everything they think is important for me to make a  
19 decision. So with that, wide open, Mr. Campbell.

20 MR. CAMPBELL: Let's talk about Mr. Marriner to  
21 start and the elements of fraud. We know the elements of  
22 fraud both under the statute and under the caselaw in Nevada  
23 are material omissions of a material fact can in fact be  
24 fraud.

1           The Blanchard case, both Mr. Little and Mr. Wolf  
2 didn't cite the entirety of the Blanchard case. We've argued  
3 this in our motions, your Honor. But as you probably well  
4 know, the Blanchard case also held that a plaintiff making an  
5 independent investigation will be charged with the knowledge  
6 of the fact which reasonable diligence would have disclosed,  
7 but an independent investigation will not preclude reliance  
8 where the falsity of the defendant's statement is not  
9 apparent from the inspection. The plaintiff is not competent  
10 to judge the facts without express expert assistance, or  
11 where the defendant has superior knowledge about the matter  
12 in this issue.

13           So the Blanchard case doesn't completely bar  
14 Mr. Yount just because he did some investigation in this case  
15 or failed to do any investigation. You know, the part about  
16 the site inspection is a big failure. Well, a site  
17 inspection clearly would not have indicated the amount of the  
18 project over budget or the fact that the Mosaic or another  
19 loan or capital infusion was not garnered that the project  
20 was not going to finish, if at all.

21           And it certainly wouldn't have -- any further  
22 inspection certainly would have not told Mr. Yount that the  
23 PPM was in fact full and he could no longer buy under the  
24 PPM, which was his understanding all along.

1           Let's talk about what the evidence showed in this  
2 case. Marriner knew the project was 9 to \$10 million over  
3 budget in September. He also knew in July Mr. Yount had been  
4 told and had put it in his documents that it was five plus  
5 million over budget. So there's a spread there. Mr.  
6 Marriner knew that and he never told Mr. Yount about that.

7           He also knew that without additional financing  
8 from Mosaic or a capital infusion, that this project was not  
9 going to move forward. It didn't have the funds to do so.  
10 And he knew that Mr. Yount had only been told in July about a  
11 possible refi. So Mr. Marriner had express knowledge of an  
12 important, material fact that we're switching now from a mezz  
13 refinance to a total refinance with a lot more additional  
14 debt taken on the project.

15           And, finally, the most important part, Marriner  
16 knew, he called it a perfect storm. And counsel's argument  
17 that he didn't know what -- if and when Yount was ever going  
18 to fund is totally belied by the evidence.

19           In his e-mail, in Exhibit Number 34, Mr. Marriner  
20 on October 1st says, thank you for working so hard on this  
21 funding. We are excited to have you on our team. He knew on  
22 October 1st that this was going to happen. And he also knew  
23 that Busick had funded. And he knew that it was a perfect  
24 storm. And he went to Radovan. Radovan told him, keep



1 quiet. He didn't say, I'm going to sell the CR share. He  
2 said, I'll call him. And told said, keep quiet, don't talk  
3 to them.

4 That's the fundamental misinformation or failure  
5 to tell Mr. Yount, because they're telling -- they're saying  
6 Mr. Yount hasn't proven his damages, there's no evidence that  
7 he was damaged, or there's no evidence that he wouldn't have  
8 investigated. He testified that if he found out this  
9 information, he would not have invested. That's the best  
10 proof there is as to whether or not he would have gone  
11 forward.

12 THE COURT: How do you reconcile that testimony  
13 with the e-mails sent by Mr. Yount on December 13th and  
14 several days later in which he demands his \$1 million back?  
15 However, he goes on to say in that very e-mail that once his  
16 confidence is restored in management, he'll reinvest.

17 MR. CAMPBELL: I think the e-mail said he would  
18 think about it if he was provided with documents.

19 THE COURT: He said that on at least two  
20 occasions.

21 MR. CAMPBELL: On that point, your Honor, he  
22 didn't know about the bait and switch. He did not know about  
23 that until the end of January. The record is pretty clear on  
24 that. So at this time, he thought he had been defrauded.

1 Mr. Criswell said, look, give us a couple of weeks to show  
2 you the documents. He said, no, I don't want a couple of  
3 weeks, I want my money back. Because at that point, he did  
4 not know about what was disclosed at that meeting.

5 So the real impetus of what irked him was when he  
6 later found out about the bait and switch. And that was  
7 not -- I mean, the record is clear, that happened at the end  
8 of January.

9 THE COURT: All right.

10 MR. CAMPBELL: So I think that the -- what  
11 Marriner knew, what he knew what Mr. Yount had been told of  
12 back in January and his complete failure to notify Mr. Yount  
13 is a material omission, I think both under general fraud and  
14 the securities fraud. And, again, I read the statute, I  
15 don't agree with Mr. Little, the NRS exemption applies to  
16 registration. It does not exempt fraudulent acts for sale of  
17 securities as well as a securities.

18 THE COURT: I think that we can all agree that  
19 nothing exempts fraudulent acts.

20 MR. CAMPBELL: That's correct, your Honor. Let's  
21 move to CR. I think Mr. Little is trying to deflect the  
22 Court's attention from what really matters here. Having  
23 Mr. Busick testify or having some other members of the  
24 investment group testify, what has that got to do with what

1 Mr. Yount was told on October 12th, 10th or any time before  
2 that time? We didn't need to bring those witnesses in to  
3 prove that they were defrauded. This case is about what  
4 Mr. Yount was told, what he was not told, what he would have  
5 done had he been told. And Busick's testimony or IMC or  
6 Molly Kingston testimony doesn't change that fact.

7 Again, it's an attempt to deflect the Court's  
8 attention from what really transpired here, what was told and  
9 not told to Mr. Yount. Again, that's another red herring.

10 Same with the Mosaic loan. You know, the  
11 supposition, Mr. Little talks about you can't have a case on  
12 supposition. The supposition that somehow Mr. Yount  
13 interfered or could have prevented this is nothing more than  
14 just supposition.

15 We know what happened with Mosaic through their  
16 own words and we know Mr. Yount wasn't in the meetings,  
17 wasn't involved in that. Again, it's an after-the-fact deal.  
18 Mr. Yount would have never invested in this project in the  
19 first place.

20 THE COURT: He never would have invested in the  
21 project in the first place?

22 MR. CAMPBELL: With the knowledge that was  
23 withheld from him.

24 THE COURT: That he was buying a CR share?

1           MR. CAMPBELL: That he was buying a CR share  
2 instead of a PPM, that the project was 9 to \$10 million over  
3 budget, or that it needed financing or it wasn't going to  
4 move forward.

5           THE COURT: All right.

6           MR. CAMPBELL: With those three things, his  
7 testimony was, I wouldn't have never invested. It couldn't  
8 be any clearer and that's pretty good proof of what he was  
9 thinking and what he was doing and it's documented by his  
10 later e-mails.

11           So what happened later, I mean he was damaged when  
12 he tendered his money under a false pretense. And to talk  
13 about -- and then the damages about what happened later on,  
14 well, one, Mr. Yount never got a share or a certificate or  
15 even a signature page for the PPM.

16           It's been two years since this transaction almost,  
17 October 13th of 2015. Has there ever been a call for a  
18 shareholder meeting to approve that transfer? No. So he  
19 doesn't have a full share. Under the operating agreement,  
20 that transaction is null and void. The operating agreement  
21 could not have been clearer.

22           THE COURT: But the operating agreement also  
23 requires Mr. Yount to execute the documents in order to  
24 consummate the deal. And the evidence here in front of the

1 Court is that he refused to do that.

2 MR. CAMPBELL: Refused to do what?

3 THE COURT: Sign the documents to -- that would be  
4 submitted to the other founders to approve the share.

5 MR. CAMPBELL: He refused to sign documents that  
6 were untrue, the documents saying that there was a mistake  
7 when he executed the subscription agreement, the documents  
8 saying that it was the parties' intent all along to have him  
9 buy a CR share. That's the documents that he refused to  
10 sign.

11 THE COURT: All right.

12 MR. CAMPBELL: If you look at Mr. Coleman's  
13 e-mail --

14 THE COURT: Let me go back and check that.

15 MR. CAMPBELL: Look at -- that was his testimony.  
16 He didn't -- he never refused. He said, I'm not signing  
17 these documents. This is not what transpired. This is not  
18 what was told to me. He said, I'm not going to sign  
19 documents that have false statements in them.

20 THE COURT: All right. I'll go back and check on  
21 it. I appreciate the correction.

22 MR. CAMPBELL: And I think that goes to the  
23 conversion claim also. I'll address the elements of that  
24 right now, your Honor, too. As you know, conversion is a

1 distinct and intentional act of dominion over, wrongfully  
2 exerted, an act committed in denial inconsistent with the  
3 rights of another, an act committed in derogation, exclusion  
4 or defiance of the owner's rights, and causation and damages.

5           As I said, Mr. Yount was damaged at best. Even if  
6 you assume that transfer took place, since it's never been  
7 approved, all he's got is a restricted share that somehow he  
8 would get economic benefits. But clearly, it's not the same  
9 as a full membership share under the operating agreement.  
10 It's limited. He can't participate in the management. It's  
11 all spelled out in section 12.3.

12           Even if you assume that there was a transfer and  
13 the other thing was null and void, he does have damages.  
14 One, he has damages because he never would have invested in  
15 the first place. Two, if you assume he had some kind of a  
16 share, it's a very restricted share, far different than what  
17 he bargained for.

18           Mr. Little said, well, conversion is an  
19 intentional tort and somehow there was a mistake up front and  
20 so Mr. Criswell and Mr. Radovan could not have intended to  
21 convert his money. Well, how about when there was never a  
22 vote, Mr. Yount never signed any documents, he refused to  
23 sign the false documents, and the deal is null and void, and  
24 then he demands his money back. Criswell Radovan

1 intentionally did not give it back to him. That's the intent  
2 in the conversion. They did not return it when they were not  
3 entitled to have it.

4           If they were under mistaken belief, which I don't  
5 believe they were, but even if you assume they were under  
6 some kind of a mistaken belief that he had agreed to purchase  
7 the share in the first place, this back end, there was -- it  
8 was obvious the deal was null and void, he wouldn't agree to  
9 it, and they never got shareholder approval.

10           So there's the intent you need for conversion.  
11 They got his money under false pretenses and they didn't give  
12 it back when they knew he didn't agree to this deal. So  
13 you've got your elements of conversion.

14           Mr. Little also says that Mr. Yount's deposition  
15 testimony proves somehow that he didn't prove his case.  
16 Well, Mr. Yount's deposition testimony isn't evidence in this  
17 case. The evidence in this case is what Mr. Yount testified  
18 to in Court and what Mr. Radovan testified and Mr. Marriner  
19 testified and to what the documents say.

20           And those documents are -- those documents and  
21 that testimony is that Mr. Yount was never told about the 10  
22 million plus budget overruns. He was never told about the  
23 Mosaic loan or any other loan and having to refinance before  
24 the project was going forward. And he was never told about

1 the switch in the CR share from the PPM.

2 All of those are material omissions or omissions  
3 of material fact and Mr. Yount has testified if he had known  
4 that, he would not have gone forward. That's the fraud  
5 claim, I think, is established by that testimony, not what  
6 Mr. Yount may have said at the end of a seven- or eight-hour  
7 deposition.

8 And the 10 million over budget, I think that's out  
9 of context. I think Mr. Yount cleared that up in his  
10 testimony in trial and the evidence. We've got \$5 million  
11 plus, which he put in his e-mail. We have a \$50 million  
12 budget. But if we raise 20 million, we add another 5 to  
13 that, so 50 plus 5 and 5, that's 60. Clearly that's where  
14 the 60 number was in his mind. If he said something in his  
15 deposition when shown the budget, I think it was a mistake  
16 and I think he fully clarified that in his deposition.

17 Finally, let's to the breach of duty against  
18 Powell, Coleman and Arnold. As you know in the complaint,  
19 I've alleged two different breaches, the negligence and the  
20 fiduciary duty. Excuse me, your Honor, if I lumped in the  
21 findings of fact, I probably did that because he was named in  
22 the punitive damage claim, too, for fraud.

23 THE COURT: All right.

24 MR. CAMPBELL: It was not intentional. These are



1 the only two causes of action that I'm going after him for.  
2 He's the designated escrow agent, Mr. Yount thought he was  
3 the designated escrow agent, and the money was transferred  
4 into his bank account.

5 As an escrow agent under the laws of Texas where  
6 he was, you know, the Powers versus United Services that we  
7 submitted in our brief, attorney acting as an escrow agent  
8 has a fiduciary duty both as an attorney and an escrow agent,  
9 and that fiduciary duty, everybody is familiar with what the  
10 fiduciary duty is.

11 Secondly, the duty he had as an attorney for the  
12 PPM and having money deposited into his trust account was a  
13 duty owed to Mr. Yount, a duty that he acknowledged in his  
14 documents where he sent to Mr. Yount the agreement, that as a  
15 condition of closing, you have to get, you know, you have to  
16 get preapproval. He didn't have any -- he didn't have that  
17 preapproval and he essentially closed that transaction on  
18 behalf of his clients when he, without any approval, without  
19 any documentation other than his client saying so, released  
20 Mr. Yount's money.

21 So I see a clear breach of both the negligence  
22 standard and the fiduciary duty standard that would have been  
23 imposed on Mr. Coleman. So, you know, by saying he didn't  
24 have any duty, I don't buy that whatsoever, your Honor. He

1 had some high duties as an attorney, a fiduciary, and having  
2 money in his trust account. So I don't think he can back  
3 away from that.

4 It's clear those duties should have run to  
5 Mr. Yount and it's clear that one of the proximate causes of  
6 Mr. Yount not having his money now or not having it in his  
7 IRA was Mr. Coleman releasing it to his client without the  
8 proper authority. The bar rules clearly state, when money  
9 goes into your trust account, you only release it when the  
10 party is entitled to receive it. That's the language of the  
11 bar rules. Criswell Radovan was not entitled to receive it  
12 at that point.

13 THE COURT: Why not? Wasn't it their share?

14 MR. CAMPBELL: Because there was no approval by  
15 the other members, there was no document evidencing the  
16 transaction, Mr. Yount had never agreed to it.

17 THE COURT: All right.

18 MR. CAMPBELL: It's like saying that, let's set up  
19 a real estate escrow, but there's no real estate documents,  
20 there's no purchase agreement, there's no -- nothing to  
21 document it. You've got to have some proof other than your  
22 client telling you it's okay.

23 THE COURT: Let's reverse the transaction. Let's  
24 just say that Criswell Radovan wanted to buy a founders share

1 and Mr. Yount had two shares and he has an LLC, Infinity  
2 Yount LLC. And he hires a very good Reno lawyer to handle  
3 the fiscal transaction. Mr. Criswell wires off a million  
4 dollars out of his account. Of course, just like here, where  
5 do you want to send it to? And they said, well, send it to  
6 my lawyer. And even though the share is held in the LLC,  
7 they send it to the lawyer.

8           The Reno lawyer then says to his client,  
9 Mr. Yount, where should I send that? And his client says,  
10 well, you know, that LLC owes me about a million bucks. It's  
11 going to have to pay me back anyway, so why don't you just  
12 send it to me? It's my share. And the lawyer, the Reno  
13 lawyer sends it to, according -- follows his client's  
14 instructions, sends it to his client.

15           Mr. Criswell then acquires a founders share. How  
16 has that Reno lawyer breached the fiduciary duty if he's  
17 followed the instructions of his client to send the money  
18 where the client wanted it to be sent.

19           MR. CAMPBELL: Because there's simply no evidence  
20 or no basis for Mr. Coleman to do that at that time. He's  
21 telling his clients that you have to -- you have to paper  
22 this transaction. He later attempts to paper the  
23 transaction. So he knows what needs to be done. And yet  
24 knowing what he needs to be done, knowing the duty he had, he

1 goes ahead and releases it anyway without any paper work.

2 THE COURT: The breach is the lack of paper work?

3 MR. CAMPBELL: Breach is the duty, the duty that  
4 he had as an escrow holder, as an attorney, and as a  
5 fiduciary. The duty that he had is to make sure that the  
6 underlying transaction is right.

7 THE COURT: Okay.

8 MR. CAMPBELL: You just can't suppose, make a  
9 supposition that it's right and it's been agreed to.  
10 Especially when you think, Mr. Yount -- I mean, all the money  
11 that Criswell Radovan had in any of these documents is from  
12 under the PPM. And so how does -- you know, just because CR  
13 told him it was not part of the PPM, does he ever confirm  
14 with Mr. Yount, do you want to confirm that you agreed to  
15 this? He knows who Mr. Yount is. What would have been so  
16 bad about confirming? I've been told that you agreed to this  
17 kind of a deal, I want to make sure before I release the  
18 money that everybody is signed off and we're in agreement.  
19 Never happened. It should have happened.

20 THE COURT: That's true.

21 MR. CAMPBELL: It should have happened. It  
22 didn't. He just willy-nilly did it without any confirmation,  
23 other than his client when he was on the other side of the  
24 representation in a conflict of interest representing the

1 members of the LLC, including Mr. Yount if he was going to  
2 buy in.

3 THE COURT: All right.

4 MR. CAMPBELL: Again, your Honor --

5 THE COURT: I understand.

6 MR. CAMPBELL: -- I think it's their breach.

7 Thank you.

8 THE COURT: Thank you, Mr. Campbell. All right.  
9 I'd like to take a few minutes to gather my thoughts and look  
10 at Blanchard again and go through a couple of the e-mails.  
11 So I'll do my best to get back here at quarter after. All  
12 right. Court's in recess.

13 (A break was taken.)

14 THE COURT: I apologize. Good lawyers give judges  
15 a lot to think about. This is an important case to all  
16 sides. So I wanted to make sure I viewed everything and  
17 pulled the Blanchard case, reviewed the cases cited by  
18 counsel, had an opportunity to listen to very good arguments  
19 by very good lawyers and the Court has listened to the  
20 testimony in this case.

21 Mr. Marriner testified first. He's a realtor and  
22 he met Mr. Radovan at the Fairwinds Estates sometime in  
23 February of 2014. He was hired on as a consultant to raise  
24 approximately \$5 million to fund the development of the Cal

1 Neva and that's Exhibit 1. He was not involved in the sale  
2 of securities. He invested in Cal Neva Lodge LLC. He never  
3 told any investor that he had investigated any representation  
4 in the operating agreement.

5 He met Mr. Yount in 1996 at a barbecue. He  
6 considered him a friend and that's not unusual up in a close  
7 community like Incline Village. They met at lunch sometime  
8 in June and Mr. Yount inquired, how is the project going?  
9 Mr. Marriner offered to take him on a tour of the Cal Neva  
10 site.

11 He had told Mr. Yount that they were looking to  
12 open on December 12th, which was the 100th anniversary of  
13 Frank Sinatra's birthday. And he sent Mr. Yount the latest  
14 executive committee reports. Told Mr. Yount at that time  
15 that the opening date was still 12/12/2015. And he also told  
16 that there was 1.5 million, the last tranche available for  
17 investment under the PPM.

18 He forwarded Exhibit 3, which was the PPM, to  
19 Mr. Yount. He also sent the latest construction report,  
20 which was July, and Exhibit 8 to Mr. Yount. Again, he stated  
21 they were looking at a target date for opening of  
22 December 12th. This is sometime in June that these  
23 discussions and e-mails took place.

24 He sent Mr. Yount the term sheets through an

1 e-mail, which is Exhibit 11. In those term sheets are  
2 disclaimers. Mr. Yount testified he read those. And on  
3 Exhibit 12, Mr. Marriner sent another e-mail to Mr. Yount  
4 asking if he had any questions. And Mr. Yount responded with  
5 some questions and they were directed to Mr. Radovan.

6 Exhibit 12 is the July status report, which  
7 contains the change orders and the impact those change orders  
8 had on the development of the project. Exhibit 14 is another  
9 e-mail from Mr. Marriner to Mr. Yount saying that Mr. Radovan  
10 will get back to Mr. Yount to answer all of those questions  
11 that he had raised. And Exhibit 18 is an e-mail from  
12 Mr. Radovan to Mr. Yount, which was cced to Mr. Marriner,  
13 which responded to the 11 questions asked by Mr. Yount. They  
14 discussed a \$15 million mezzanine loan to cover the change  
15 orders, as well as potential upgrades and expanding the scope  
16 of construction.

17 Mr. Marriner was never involved in the financing  
18 of this project. He was not involved with the executive  
19 committee, the construction committee, and he was not privy  
20 to the figures being bantered about amongst those entities.

21 Mr. Marriner never gave Mr. Yount any specific  
22 numbers on the change orders. Mr. Marriner was never  
23 involved with Hall or the business discussions regarding  
24 potential financing by Hall. Mr. Marriner has a background

1 in construction and clearly knows that unless you have  
2 capital, the project dies. Mr. Marriner never spoke to  
3 Mr. Yount regarding the destination of his \$1 million  
4 investment.

5 Exhibit 29, which is the e-mail string from  
6 August to September 28th, Mr. Marriner was trying to be  
7 helpful in assisting Mr. Yount in moving money around. He  
8 sent an e-mail, which is Exhibit 30, which states that Robert  
9 hopes to close out the funding very soon.

10 Mr. Marriner never spoke to Mr. Yount regarding  
11 the Mosaic loan. Mr. Marriner testified that Hall still had  
12 \$5 million to loan, that they were looking at a \$15 million  
13 mezzanine loan, and that Mosaic loan was still in the works,  
14 and he believed the project was still on schedule.

15 He talked about a perfect storm, that is,  
16 simultaneous investments of Mr. Yount and Mr. Busick.  
17 However, he was informed by Mr. Radovan that CR still had  
18 another funding membership available under the PPM.

19 Two weeks afterwards, Mr. Yount invested in Cal  
20 Neva Lodge LLC. Mr. Marriner testified that there is no  
21 difference between the two shares, that is, the shares of  
22 Mr. Busick and the shares of CR Cal Neva. But he was told by  
23 Mr. Radovan that he would take -- that Mr. Radovan would take  
24 care of the plaintiff's investment.



1           Mr. Marriner was clear in his testimony that this  
2 is not a security. This was a real estate investment. Mr.  
3 Marriner knew that through -- that Mr. Radovan had an  
4 additional founding membership available for Mr. Yount.

5           Mr. Marriner knew that the Mosaic \$50 million loan  
6 was the best solution for financing and taking this project  
7 to closure of construction.

8           After the December 12th meeting, Mr. Marriner  
9 testified that there was a general feeling among the  
10 investors for a need for more transparency and greater  
11 financial reports, more frequent financial reports. He knew  
12 that \$8.6 million in cost overruns were there for work that  
13 had already been done and was proposed in the future.

14           On cross examination by Mr. Wolf, Mr. Marriner  
15 reiterated in an e-mail dated August 3rd, 2015, that  
16 Mr. Yount was dealing directly with Mr. Radovan and it was a  
17 hand-off from -- by Mr. Marriner of Mr. Yount to Mr. Radovan.

18           Mr. Marriner testified that Mr. Yount conducted  
19 due diligence between July 25th and August 3rd, spoke to  
20 Peter Grove, the architect, who coincidentally is or was the  
21 architect for Mr. Yount's personal residence. Mr. Marriner  
22 testified that the information provided to Mr. Yount was fair  
23 and was accurate.

24           Mr. Marriner testified that Mr. Yount knew that