

Case No. 74275

In the Supreme Court of Nevada

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

Appellant,

vs.

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

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Second Judicial District Court, Washoe County, Nevada

The Honorable N. PATRICK FLANAGAN, District Judge

The Honorable JEROME POLAHA

The Honorable EGAN WALKER

District Court Case No. CV16-00767

APPELLANT'S APPENDIX

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DANIEL F. POLSENBERG (SBN 2376)

JOEL D. HENRIOD (SBN 8492)

ABRAHAM G. SMITH (SBN 13,250)

ADRIENNE BRANTLEY-LOMELI (SBN 14,486)

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

DPolsenberg@LRRC.com

RICHARD G. CAMPBELL, JR. (SBN 1832)

KAEMPFER CROWELL

50 W. Liberty Street, Suite 700

Reno, Nevada 89501

RCampbell@KCNVLaw.com

Attorneys for Appellant

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1 correct?

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

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

7 A. Yes.

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

10 A. No, I was not.

11 Q. And then --

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

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

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

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

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

23 Q. And --

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

1 Coleman.

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

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

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

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

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

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

14 THE WITNESS: Thank you.

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

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

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

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

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

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

11 MR. LITTLE: That was the same comment.

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

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

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

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

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

1 yesterday.

2 THE COURT: Do you have any witnesses?

3 MR. LITTLE: No.

4 MR. WOLF: No.

5 THE COURT: Okay.

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

11 THE COURT: Okay.

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

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

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

19 THE COURT: He's the CPA?

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

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

24 THE CLERK: I need a set time.

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

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

10 THE COURT: Yes.

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

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

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

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

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

20 MR. LITTLE: 1:30.

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

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

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

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

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

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

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

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

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

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

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

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

8 MR. CAMPBELL: Wednesday?

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

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

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

13 THE COURT: No.

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

16 THE CLERK: 1:30.

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

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

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

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

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

2 (Discussion off the record.)

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

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

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

14 MR. CAMPBELL: Arguments on Thursday?

15 THE COURT: Arguments on Thursday.

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

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

20 MR. CAMPBELL: Yes.

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

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

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

3 MR. CAMPBELL: Thank you, your Honor.

4 THE COURT: Court's in recess.

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

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

6 That I was present in Department No. 7 of the
7 above-entitled Court on August 31, 2017, at the hour of TIME,
8 and took verbatim stenotype notes of the proceedings had upon
9 the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs.
10 CRISWELL RADOVAN, et al, Defendant, Case No. CV16-00767, and
11 thereafter, by means of computer-aided transcription,
12 transcribed them into typewriting as herein appears;

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

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

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

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

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

10 --oOo--

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

17
 18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME V

20 September 6, 2017

21 1:30 p.m.

22 Reno, Nevada

23
 24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
 Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

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

7 For the Defendant:

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

12 ANDREW WOLF, ESQ.
13 Attorney at Law
14 264 Village Blvd.
15 Incline Village, Nevada
16
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19
20
21
22
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1 RENO, NEVADA, September 6, 2017, 1:30 p.m.

2
3 --oOo--

4 THE COURT: Mr. Yount, you remain under oath.
5 Mr. Little, your witness. I believe we were on Exhibit 122,
6 the e-mail to Paul Jamieson.

7 MR. LITTLE: Thank you, your Honor.

8 BY MR. LITTLE:

9 Q. Good afternoon, Mr. Yount.

10 A. Good afternoon, Mr. Little.

11 Q. Before we circle back to where we left off, I want
12 to talk about one issue. You can look at Exhibit 46, if you
13 want to refresh your memory, but would you agree with me that
14 you wanted to revoke your purchase before you even discovered
15 that you had bought one of CR Cal Neva's shares?

16 A. I was very upset on December 12th, when I heard
17 what disaster the project was.

18 Q. Right. And at that point in time, you wanted out?

19 A. Yes.

20 Q. So you wanted to revoke your purchase and get your
21 money back?

22 A. Revoke, I wanted my money back, because I thought
23 it was fraudulently sold to me under false pretenses.

24 Q. And that was based on revelations you say you

1 learned at the December meeting?

2 A. Correct.

3 Q. And that's the same meeting we talked about where
4 the IMC folks were stationed around the room?

5 A. I never saw that.

6 Q. They were there making accusations against --

7 A. I recall them making accusations, yes.

8 Q. They led that charge, right?

9 A. I don't know if they led it.

10 Q. Let's circle back to where we left off last week.
11 Before we do that, I want to summarize for everyone's benefit
12 what I understood to be your testimony. First, I understood
13 you to testify that since the end of January when you learned
14 that CR Cal Neva had sold you one of its shares, you haven't
15 held yourself out as an investor in the project, is that
16 correct?

17 A. Well, I was told I wasn't an investor in the
18 project.

19 Q. From that point forward, you didn't hold yourself
20 out as an investor?

21 A. I attended meetings until I filed lawsuit, and at
22 that point, I had given up on them buying out my share and I
23 no longer attended any meetings.

24 Q. Do you have your deposition in front of you?

1 A. I don't believe I do.

2 MR. LITTLE: May I approach, your Honor? Thank
3 you. May I approach the witness, your Honor?

4 THE COURT: You may.

5 BY MR. LITTLE:

6 Q. Let's go to page 53 of your deposition.

7 A. Yes, Mr. Little.

8 Q. I'm going to read from line 22 on 53 over to the
9 first line.

10 A. 22?

11 Q. Yes.

12 A. Okay.

13 Q. Sir, I asked you the question, and since the end
14 of January when you learned what Criswell Radovan or CR
15 Nevada intended to sell you, you haven't held yourself out as
16 an investor in the project? Next page, answer, correct. Did
17 I read that correctly?

18 A. Yes.

19 Q. I also understood from your testimony that you
20 distanced yourself from the IMC folks and played no role in
21 their effort to torpedo the loan?

22 MR. CAMPBELL: Objection, I think it
23 mischaracterizes the testimony.

24 THE COURT: Mr. Little.

1 MR. LITTLE: How does it mischaracterize his
2 testimony?

3 MR. CAMPBELL: There's no foundation that IMC
4 torpedoed this loan.

5 BY MR. LITTLE:

6 Q. Let's start with the first part, was it your
7 testimony that you distanced yourself from the IMC folks when
8 they talked about secretly meeting with Mosaic?

9 A. I suggested to them, was that a legitimate thing
10 to do?

11 Q. But do you feel you distanced yourself?

12 A. I distanced myself after the January 27th,
13 afternoon after the main meeting, where Jeremy Page got very
14 aggressive, and I think, as I said in my e-mail, it was
15 straight well off the reservation.

16 Q. I also understood you to testify that you had no
17 involvement in trying to get Mr. Criswell or Mr. Radovan
18 removed as managers or having them give back their equity?

19 A. I was not involved in it, except I was not against
20 it either.

21 Q. Let's turn over to Exhibit 119.

22 A. Yes, sir, I'm here.

23 Q. If you look at page one and the top of page two,
24 this is a series of e-mail correspondence that you're copied

1 on January 26th and January 27th before that meeting that was
2 supposed to occur?

3 A. Yes.

4 Q. And it includes people from the IMC group?

5 A. Yes.

6 Q. And Molly Kingston?

7 A. Yes. And Les Busick and I don't see Phil Busick.
8 Oh, yeah.

9 Q. It looks like there was an actual in-person
10 meeting before the January 27th meeting among the people
11 copied on this e-mail, correct?

12 A. I believe so.

13 Q. That meeting involved a discussion about ways to
14 oust Mr. Criswell and Mr. Radovan from the project, correct?

15 A. It involved hearing IMC's position on how to do
16 that, yes.

17 Q. And according to the bottom part of this e-mail,
18 there were talking, even talking points on how that meeting
19 was supposed to go, correct?

20 A. Yes.

21 Q. And at the top of the e-mail, it says, not to let
22 the other investors know, so Criswell Radovan can't get their
23 support prior to the January 27th meeting, right?

24 A. Yes.

1 Q. And then in the second paragraph of the top e-mail
2 from Mr. Jamieson, it says -- it talks about wanting to be in
3 person like the December 12th meeting at Fairwoods so they
4 could control the dialogue more effectively?

5 A. It's Fairwinds, but --

6 Q. It says that, correct?

7 A. Yes, that's what it says.

8 Q. Now, on page one it talks about using your e-mail
9 as leverage if Criswell Radovan refused to leave as managers,
10 correct?

11 A. It doesn't say my e-mail, it says this e-mail.

12 Q. Under number three, it says, if they are not
13 willing to leave, number one, Stuart urges CR to reread his
14 e-mail, correct?

15 A. Yes.

16 Q. Was it not discussed that they were going to use
17 your e-mail as leverage to get them to leave the project if
18 they weren't willing to voluntarily go?

19 A. As I said before, when you asked the same exact
20 different words question, I did not do that.

21 Q. Now, over on page two, in the second paragraph,
22 Mr. Jamieson is commenting to the group how impressive the
23 cohesiveness is among your group, correct?

24 A. In the second paragraph, in the event we keep it

1 simple.

2 Q. Yeah. And then he says, the cohesion we have is
3 impressive, correct?

4 A. Yes.

5 Q. And then he goes on to say, I appreciate
6 everyone's willingness to keep it brief and have Stuart and I
7 as spokespersons. Did I read that correctly?

8 A. That's what it says.

9 Q. So according to this e-mail, this cohesive group
10 had nominated you as a co-spokesperson along with
11 Mr. Jamieson to address --

12 A. That's what they wanted. That's not what
13 happened.

14 Q. Well, in fact, later you and the IMC group agreed
15 to do a good cop, bad cop routine with Criswell Radovan,
16 correct?

17 A. I don't believe I agreed to that. I believe they
18 talked about that type of approach.

19 Q. An approach where you acted as the good cop and
20 them as the bad cop?

21 A. I don't recall that being the case.

22 Q. Let's go over to Exhibit 21.

23 A. 21?

24 Q. 121. Sorry.

1 A. 121. Yes, sir.

2 Q. My only question is, who is the he being referred
3 to? Your e-mail to Paul says, he said three of the EC is
4 having the meeting with Mosaic in Sacramento on Monday
5 without CR. And you go on to ask if that's legitimate. Who
6 is the he you're referring to? Is that Brandon Chaney?

7 A. I don't recall.

8 Q. It could be Brandon Chaney?

9 A. It could have been you.

10 Q. Well, I'm not --

11 A. I don't recall, in other words.

12 Q. Well, Brandon Chaney was one of the three
13 members -- was one of the members of the executive committee
14 at the time, correct?

15 A. That is correct.

16 Q. He was one of the members who was also a member of
17 the IMC group?

18 A. Yes.

19 Q. Let's turn over to Exhibit 125.

20 A. 125. All right.

21 Q. This is an e-mail chain between you and Molly
22 Kingston on February 2nd, 2016, a day after the IMC group had
23 met with Mosaic, correct?

24 A. As far as I know. I don't know what date they

1 met.

2 Q. And in her e-mail, she says she was unaware of
3 that meeting.

4 A. I believe so.

5 Q. But you weren't, right?

6 A. No. I already commented on that.

7 Q. And she said she was unsupportive of the Mosaic
8 loan?

9 A. She was unsupportive of burdening the project with
10 additional debt.

11 Q. Which would be the Mosaic loan?

12 MR. CAMPBELL: Objection, lack of foundation.

13 BY MR. LITTLE:

14 Q. Did you understand that to be the Mosaic loan?

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry?

17 THE COURT: Overruled. You can answer the
18 question.

19 THE WITNESS: I believe it might well have been.

20 BY MR. LITTLE:

21 Q. And then the bottom e-mail, the second paragraph,
22 he says, she's reached out to Arthur by both voicemail and
23 text and mentioned our interest in meeting with him.
24 Apparently, she's referring to you and her having some

1 interest in meeting with Arthur?

2 A. He's one of the shareholders, I believe. I don't
3 remember his last name, but I believe he's an attorney, but
4 not acting as an attorney.

5 Q. Arthur wasn't a potential lending source?

6 A. I'm sorry, sir?

7 Q. Was Arthur a potential lending source?

8 A. A potential what, sir?

9 Q. Lending source, financing source.

10 A. Not -- I don't believe so. He might have known
11 people, but I don't believe he was a lending source.

12 Q. You say above, the disaster seems to not only to
13 continue, but also to escalate in severity and you have an
14 exclamation point. Do you see that?

15 A. Because of the January 27th meeting, the second
16 meeting that day that I thought was a disaster and not at all
17 pleased with.

18 Q. You weren't referring to the secret Mosaic torpedo
19 meeting?

20 A. As far as I know, there was no such meeting. You
21 keep trying to put things in my mouth about torpedoing
22 things, but it's just not what I know.

23 Q. Well, you were aware that they met behind Criswell
24 Radovan's back?

1 A. Yes. I already commented on that.

2 Q. Let's go over to Exhibit 126.

3 A. Yes.

4 Q. It's a February 2nd e-mail between you and Molly
5 Kingston, so it's the same day as the e-mails on Exhibit 125,
6 correct?

7 A. Yes.

8 Q. She references that she spoke with Paul, which
9 would be Paul Jamieson, correct?

10 A. I would assume so.

11 Q. And learned that the EC, she puts in parentheses,
12 minus Criswell Radovan, met with Mosaic and had a, quote,
13 good meeting, end quote?

14 A. Yes.

15 Q. Is that what she says?

16 A. That's what it says.

17 Q. And then she says, we remain aligned in terms of
18 our ultimate objective and she says saving our invested
19 capital, right?

20 A. Correct.

21 Q. Wasn't that objective also to get rid of the
22 Mosaic loan to pursue other means of financing this project?

23 A. Not that I'm aware of. I certainly was never in
24 favor of getting rid of the Mosaic loan.

1 Q. Did you have an understanding why she's referring
2 to this meeting with Mosaic and referencing it being without
3 CR as being a good meeting when by that time they had backed
4 out of the loan?

5 A. I don't know that I was aware that they backed out
6 of the loan at that time, nor do I know if she knew that.
7 But it was my understanding it was a good meeting, reports
8 that you've read before of e-mails from the EC or IMC.

9 Q. Down below, she's suggesting that Criswell Radovan
10 resign and cede their investment, in other words, give it
11 back, correct?

12 A. Where are you now, sir?

13 Q. The second to last paragraph of the e-mail.

14 A. That's what it says.

15 Q. And she recommends going so far as threatening
16 them with civil and criminal action if they don't do that?

17 A. Would you repeat that question, please?

18 Q. She goes so far as to recommend that they be
19 threatened with civil or criminal action if they don't do
20 that, right?

21 A. She says that's the alternative.

22 Q. Let's go over to Exhibit 127.

23 A. Yes.

24 Q. Now, this is a February 2nd e-mail between you and

1 Mr. Jamieson, correct?

2 A. Yes.

3 Q. And just so we have foundation, if we go over to
4 the last page of Exhibit 124, this is the e-mail between
5 Mosaic and Robert Radovan on February 1st where they tell
6 them that they're going to take a step back and tear up the
7 term sheet and back out of the loan, correct?

8 A. Are you on page three?

9 Q. Yes. And my only question for you, we're just
10 trying to establish a time line. February 1st, according to
11 this e-mail, is the date that Mosaic sent an e-mail to Robert
12 saying we're backing out of the loan?

13 A. Correct.

14 Q. So let's move forward now to Exhibit 127.

15 A. Okay.

16 Q. This is e-mail between you and Paul Jamieson of
17 IMC a day later, this is February 2nd, correct?

18 A. Correct.

19 Q. In this e-mail, you're seeking his consult and
20 guidance about how you're handling your issues with Criswell
21 Radovan?

22 A. Where are you in this e-mail, please?

23 Q. The second e-mail.

24 A. Yes.

1 Q. Let's go over to Exhibit 130.

2 A. Yes.

3 Q. This is February 5th, so you'd agree with me it's
4 four days after Mosaic backed out of the loan?

5 A. I believe so.

6 Q. And this is an e-mail solely between you and
7 Mr. Jamieson of IMC?

8 A. Yes.

9 Q. And you're discussing sharing information with
10 Roger Wittenberg?

11 A. Yes.

12 Q. And he was a potential investor that they were
13 looking at?

14 A. Who they?

15 Q. IMC?

16 A. I had mentioned it. I don't know if they -- yes,
17 I believe Mr. Jamieson had spoken to Roger.

18 Q. Now, in the second sentence of the first
19 paragraph, first sentence he's talking about Roger calling
20 him, and I assume it's Roger Wittenberg, right?

21 A. Yes.

22 Q. And the second sentence, he says, I'd like get
23 something over to the potential investor today, as they're
24 actively reviewing. Which investor were they talking about?

1 A. I believe that's North Light.

2 Q. Let's go over to Exhibit 31.

3 A. 131.

4 Q. Before we do, why would North Light want Roger
5 Wittenberg's bio?

6 A. Whether it be Roger or North Light, it would be
7 the same project. It's just that it's a project across the
8 street. Is that what you're asking?

9 Q. Yes. Let's go over to Exhibit 131?

10 A. Yes.

11 Q. This is another February 5th e-mail chain between
12 you and Mr. Jamieson?

13 A. Correct.

14 Q. Four days after Mosaic backed out?

15 A. As you've said, yes.

16 Q. And on page two of this e-mail --

17 A. Yes.

18 Q. -- Paul e-mails the group and says that they're
19 looking for developers to come in and finish the project,
20 correct?

21 A. Yes.

22 Q. So obviously by this time, they're contemplating
23 not only ousting Criswell Radovan, but bringing in another
24 developer?

1 A. Yes. I think that was probably a feeling of
2 anybody who was going to invest in the project.

3 Q. And then he indicates that -- well, he thanks you
4 for giving them Roger's name and information?

5 A. Yes, although Mr. Jamieson already knew
6 Mr. Wittenberg.

7 Q. And he says not to discuss this with anyone
8 outside of the e-mail chain, correct?

9 A. Where are you now, sir?

10 Q. Last paragraph, please do not discuss this with
11 others outside of this e-mail list?

12 A. Yes.

13 Q. And he's talking about not discussing bad acts,
14 potential remedies and their path forward, correct?

15 A. I'm sorry. Can you direct me to what you're
16 looking at?

17 Q. That same last paragraph when he's talking about
18 not discussing this with others outside the e-mail list?

19 A. Yes.

20 Q. He's talking about highly sensitive aspects of the
21 path forward, right?

22 A. Yes.

23 Q. That he doesn't want to discuss with other
24 investors at that point in time?

1 A. I would like to discuss with everyone at a later
2 date.

3 Q. But he's suggesting not to discuss with anyone
4 outside of this e-mail chain now, right?

5 A. That's what it says.

6 Q. Then if we go back to page one, the middle of the
7 page, you and Paul are talking about North Light as a source
8 of capital?

9 A. Yes.

10 Q. Let's go over to Exhibit 132 and turn over to page
11 two.

12 A. Yes.

13 Q. And this is an e-mail that you sent to Paul a
14 couple of weeks after Mosaic backed out where you're talking
15 about another potential investment group, Paramount
16 Investment or something to that effect?

17 A. Yes. Paramount IMB, whatever that is.

18 Q. And then we go back to the first page, Paul is
19 asking if you know anything about them, correct?

20 A. Yes.

21 Q. And he indicates that he's working with them for a
22 larger mezz loan?

23 A. I couldn't hear you.

24 Q. He says he's working with this company for a

1 larger mezzanine loan?

2 A. Yes. Roger -- Paul says that.

3 Q. And then you indicate that you've researched them
4 and you're asking what the real story is on their experience
5 and you put real in all caps?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes.

9 Q. Let's go over to Exhibit 133.

10 A. Yes.

11 Q. February e-mail between you and Mr. Jamieson,
12 correct?

13 A. Yes.

14 Q. About three weeks after we've established that
15 Mosaic backs out?

16 A. Approximately.

17 Q. And in this e-mail, he tells you that he's
18 finalized an agreement with some company and an attorney is
19 doing a final review, correct?

20 A. Yes.

21 Q. And that deal is the proposed sale of the entire
22 project to a company called GDCI, correct?

23 A. I believe so.

24 Q. And your understanding is that sales was for about

1 \$104 million?

2 A. I don't remember the number.

3 Q. It was more than a hundred million dollars, right?

4 A. As I remember.

5 Q. And your response to Paul on the first page is
6 that you're our hero, exclamation point, right?

7 A. Yes.

8 Q. So at this point, you were excited about a sale of
9 the project, correct?

10 A. Absolutely. I would get paid.

11 Q. Is it your testimony that if a sale went through,
12 you would have only taken your million dollars back and not
13 any premium?

14 A. Yes. That was always the case.

15 Q. Okay. So in \$104 million sale, you'd agree that
16 the investors would get a return on their investment,
17 correct?

18 A. I would assume they would, yes.

19 Q. Is it your testimony you would not have taken the
20 return, you would have just taken the million dollars?

21 A. I didn't own a share in the project, so I don't
22 know how I could take a return.

23 Q. So your answer is, no, you would not have taken a
24 premium on your investment?

1 A. You're assuming I would be offered a premium on my
2 investment.

3 Q. Well, all these other investors that you're
4 talking to in these e-mails considered you an investor,
5 right?

6 A. I don't think they did at this point. They knew
7 better as well, I believe.

8 Q. They considered you part of a cohesive unit,
9 cohesive group?

10 A. Well, we both had mutual needs, but different.

11 Q. And they were sharing information with you that
12 wasn't being shared to the other investors, right?

13 A. I don't know who they shared with, except for what
14 it says on these documents.

15 Q. Let's go over to Exhibit 136. This is a series of
16 e-mail chains between you and Molly Kingston, correct?

17 A. Yes. Which page are we on?

18 Q. We'll look at it all. We're looking at the March
19 time frame, right?

20 A. Yes.

21 Q. And if we look over at the bottom of page three
22 and it goes over to the top of page four, she's indicating
23 that there had been no word back from that -- she calls them
24 the Russian buyers, but they're talking about that company

1 GBCI?

2 A. I believe that's the company. But they were
3 reputed to be of Russian origin.

4 Q. And she's sending you in this e-mail an e-mail
5 that she sent to the executive committee, less Criswell
6 Radovan, to get them to take action against Criswell Radovan,
7 correct?

8 A. Yes. I guess Les Busick was on the executive
9 committee and Phil Busick. I'm not sure if they were both on
10 the executive committee, but, anyway, they were both named in
11 the e-mail.

12 Q. If we go to page three of this exhibit in the
13 middle of the page, under March 2nd, you sent an e-mail to
14 her saying you're very grateful that you're on her team,
15 correct?

16 A. That's the latter part of the sentence, yes. And
17 not the -- and not in your target sights. I think you were
18 taking it out of context.

19 Q. You said you were grateful you're on her team and
20 not in her target sights, correct?

21 A. Correct.

22 Q. And you tell her to keep it up?

23 A. Yes.

24 Q. Keep it up is referencing what she sent you below,

1 which was an e-mail she sent to the executive committee
2 asking them to take action against Criswell Radovan?

3 A. Yes. That was part of it.

4 Q. And then on the first page, you tell her you're
5 lucky to have her in so many ways. Were you lucky --

6 A. Where are you talking at?

7 Q. The bottom of the page. Actually, it's at the
8 top. I'm sorry.

9 A. Yeah, I'm confused.

10 Q. At the top, you say, I'm very lucky you both have
11 lots of spunk and are up for any challenge. I'm so grateful.
12 And she responses, look out, CR, here we come, correct?

13 A. Yes. Look out for CR, here we come. Look out,
14 CR, sorry, here we come.

15 Q. And let's go over to Exhibit 138.

16 A. Yes.

17 Q. This is March 14th, 2016.

18 A. Yes.

19 Q. Heather Hill is sending an e-mail advising
20 investors that there's an executive committee and member
21 meeting on Wednesday, March 6th, and you respond that you and
22 your wife will attend in person, correct?

23 A. Yes.

24 Q. Let's go over to Exhibit 141.

1 A. Yes.

2 Q. Let's first go over to page three. On March 14th,
3 2016, Molly e-mails you and the first word is confidentially,
4 correct?

5 A. Yes.

6 Q. And it says, Robert, obviously referring to Robert
7 Radovan, offered Paul a commission of \$1.4 million on the
8 GCBI deal. Do you see that?

9 A. Yes.

10 Q. And then if you flip over to page one, you
11 asked --

12 A. Page four?

13 Q. Page one of the same exhibit.

14 A. Page one. Sorry.

15 Q. You asked Phil Busick, which is Les Busick's son?

16 A. Correct.

17 Q. You asked Phil Busick if that was true or false,
18 right?

19 A. I said, so who did offer giving Paul a commission?

20 Q. And then he responds back that no one offered him
21 a commission. And then if you drop down to his last
22 paragraph, he says, CR had nothing to do with it, believe me,
23 correct?

24 A. Yes.

1 Q. So this is a situation where Molly Kingston was
2 going off of misinformation, making accusations, do you agree
3 with that?

4 A. Well, Mr. Busick says so.

5 Q. You don't have any information to the contrary, do
6 you?

7 A. I don't have information either way except for
8 these e-mails.

9 Q. Now, let's go over to Exhibit 140.

10 A. 140. Yes.

11 Q. This e-mail correspondence between you and Molly
12 in March, correct?

13 A. Which page are you on, sir?

14 Q. First page of Exhibit 140.

15 A. This is Molly and I?

16 Q. Yes.

17 A. Yes.

18 Q. And you send an e-mail to her in, the middle of
19 the page, saying, good, but I think we need to be more detail
20 by attaching a list on our accountant's letterhead
21 specifically listing what they requested that they have yet
22 to receive and on what dates they requested it and
23 rerequested it and whom they rerequested it from. Do you see
24 that?

1 A. Yes.

2 Q. And you were talking about a letter that Brandon
3 Chaney had sent to Criswell Radovan about an audit and
4 certain records that they believed they hadn't received?

5 A. I believe so.

6 Q. So you were making a recommendation that a
7 follow-up letter be sent by not any of the investors or the
8 executive committee, but by the accountant him or herself,
9 correct?

10 A. I believe so.

11 Q. And then at the top, you indicate, Molly, I really
12 "f"ed up and am so sorry. I accidentally and stupidly
13 responded to your confidential e-mail instead of your EC
14 e-mail, too rushed while at lunch. What were you referring
15 to there?

16 A. Who am I referring to?

17 Q. What are you referring to there?

18 A. I'm referring that one she said was confidential,
19 as you pointed out, that I accidentally responded to the EC
20 group, I believe it was.

21 Q. And we've already established that you're not
22 aware of any financial improprieties that came out of that
23 audit?

24 A. I'm not aware that the audit ever got completed,

1 because they never got the information they requested.

2 Q. Is that true or are you guessing?

3 A. That's what I understood. I don't know what's
4 true.

5 Q. You don't know one way or the other?

6 A. No. I just know what I've been told.

7 Q. You'd agree with me you're not aware of any
8 financial improprieties?

9 A. I'm aware there were questions about potential
10 improprieties. I'm not aware of establishing any.

11 Q. Let's go to Exhibit 142.

12 A. 142. I'm there.

13 Q. Now, this is an e-mail chain between you and Paul
14 Jamieson of IMC in the middle of March, correct?

15 A. Yes.

16 Q. So a month and a half after we established that
17 Mosaic backed out?

18 A. I believe so.

19 Q. And down at the bottom, there's an e-mail from
20 Mr. Jamieson that writes, see you tomorrow. I'm thinking we
21 have a pre-meeting at the IMC for us good cops, bad cops and
22 concerned citizens. Do you see that?

23 A. Yes.

24 Q. So he was talking about having some meeting before

1 the executive committee meeting?

2 A. Before the shareholder executive committee
3 meeting. It was both, I believe.

4 Q. And then down below that e-mail, you respond by
5 saying, I think the, quote, good cop slash bad cop, end
6 quote, routine will be fine. That's what you --

7 A. Where are you now?

8 Q. On the first page of Exhibit 142.

9 A. And where?

10 Q. The bottom e-mail. We've established at 8:42 a.m.
11 Paul sends you an e-mail asking for a pre-meeting at the IMC
12 for us good cops, bad cops?

13 A. Okay.

14 Q. And you respond on the same day and tell him,
15 quote, that I think the, quote, good cop slash bad cop, end
16 quote, routine will be fine. Did I read that correctly?

17 A. I believe so.

18 Q. Let's go to Exhibit 145.

19 A. Yes.

20 Q. This was about a week later, March 23rd, some
21 e-mails between you and Molly?

22 A. Yes.

23 Q. Correct?

24 A. Uh-huh.

1 Q. And she's asking you to talk to one of the
2 subcontractors about foreclosing on Criswell Radovan's
3 completion guarantee, correct?

4 A. Yes.

5 Q. And you respond that you had contacted that
6 contractor, whose name is Len Savage, correct?

7 A. Yes.

8 Q. You tell her, it's a good thought on foreclosing
9 on CR and you put an exclamation point, right?

10 A. Yes.

11 Q. Let's go over to Exhibit 146. Turn over to the
12 third page.

13 A. Yes.

14 Q. This is March 23rd, some e-mails between you and
15 Mr. Savage, correct?

16 A. Correct.

17 Q. And in this e-mail, you indicate to Len that
18 you're trying to help get Cal Neva funded or sold, correct?

19 A. Yes.

20 Q. And this was March 23rd, right?

21 A. Yes.

22 Q. And you filed this lawsuit a few weeks later on
23 April 6th, correct?

24 A. Sounds right.

1 Q. And after you filed this lawsuit, you have kept
2 IMC and Molly Kingston informed of the status of your
3 lawsuit?

4 A. I believe I did. I don't remember for sure.

5 Q. Have --

6 A. You probably fill in Les Busick, too.

7 Q. Have any of these individuals ever offered to pay
8 any part of your legal fees in this case?

9 A. For me?

10 Q. Yeah.

11 A. They didn't offer. I didn't ask. They weren't
12 involved in my case.

13 Q. But you gave Mr. Chaney a copy of your lawsuit
14 before it was served on any of the defendants in this case,
15 correct?

16 A. I don't know that it was before it was served.
17 Well, according to the prior testimony, it was before it was
18 served, but it was filed.

19 Q. If you had distanced yourself from them, sir, why
20 are you sharing your lawsuit with them?

21 A. For their information, I want them to be
22 successful as well.

23 Q. Successful in what?

24 A. In getting their funds back as best they can. I

1 think they were stolen from in a different way, but, yes.

2 Q. To your knowledge, they haven't filed any suit in
3 the past year and a half against any of the defendants in the
4 this case?

5 A. To my knowledge, no. Sorry. Yes, as far as I
6 know.

7 Q. Why are you calling Brandon Chaney as a witness in
8 your case?

9 A. Because he's knowledgeable on a lot of activity
10 with Criswell Radovan, as well as his own personal activity
11 with Criswell Radovan.

12 Q. You and your attorney have met with Mr. Chaney in
13 anticipation of him testifying at trial, right?

14 A. I didn't meet with him, no.

15 Q. Your attorney has?

16 A. You'd have to ask my attorney.

17 Q. You're not aware of Mr. Chaney meeting with your
18 attorney?

19 A. It's my understanding he did.

20 Q. To discuss his anticipated testimony?

21 A. I'm sorry, sir?

22 Q. To discuss his anticipated testimony?

23 A. I assumed to discuss what he knew, whether he was
24 worth calling as a witness or not.

1 Q. Was he here in Reno last week while we were in
2 trial?

3 A. I'm not sure. He may well have been. I didn't
4 see him or talk to him.

5 Q. What is it your understanding that he's going to
6 say to help your case?

7 MR. CAMPBELL: Objection, I think it's been asked
8 and answered.

9 THE COURT: Overruled on that ground, but I wonder
10 what the relevance is. We'll find out when or if he
11 testifies, won't we?

12 MR. LITTLE: I guess we will.

13 THE COURT: We don't need it from this witness.

14 MR. LITTLE: That's all I have, your Honor. Thank
15 you very much.

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

17 MR. WOLF: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MR. WOLF:

20 Q. Mr. Yount, in your testimony last week, you refer
21 to an often quoted phrase by former President Ronald Reagan?

22 A. Yes.

23 Q. To trust but verify?

24 A. Yes.

1 Q. What was the context in which you recall President
2 Reagan making that comment or that repeated comment?

3 A. He was, I believe, referring to negotiating with
4 the Russians, which would be considered to be a threat and
5 talking about making agreements with them. And I was
6 referring to, I believe at the time, the testimony regarding
7 my contacting the architect or other people on doing my due
8 diligence away from CR themselves.

9 Q. So why did you refer to trust but verify in
10 context of your due diligence?

11 A. That's what due diligence is all about is you
12 don't -- you verify the facts. I don't understand, I guess,
13 the question.

14 Q. Is the idea that you make an independent inquiry
15 into what the facts are so you can rely on those that you
16 trust rather than counterparty, which in the case of
17 President Reagan was Mikhail Gorbachev, is that the idea?

18 A. I guess so. It speaks for itself, I believe.

19 Q. I want to confirm the documents that you received
20 from David Marriner relative to the investment. If you'll
21 turn to Exhibit 3 in the first binder, please?

22 A. Yes, sir.

23 Q. Did you receive Exhibit 3, the confidential
24 private placement memorandum, from Mr. Marriner?

1 A. I believe so.

2 Q. Did you receive this in early 2014?

3 A. Quite possibly, but I don't believe I looked at
4 it, except to glance.

5 Q. And then did you -- the next exhibit is Exhibit 4,
6 confidential offering memorandum, did you receive that from
7 Mr. Marriner?

8 A. Yes, I believe so.

9 Q. And did you receive that in early 2014?

10 A. I don't recall, but it could well have been.

11 Q. At some point later, you received Exhibit 5, the
12 amended and restated operating agreement?

13 A. Yes.

14 Q. Dated May 2014?

15 A. May 1, 2014, yes.

16 Q. Do you recall from whom you received the amended
17 and restated operating agreement, Exhibit 5?

18 A. I assume it was Mr. Marriner.

19 Q. You're not sure?

20 A. I'm not positive if it was Mr. Marriner or
21 Mr. Radovan.

22 Q. Do you recall the time at which you received the
23 amended and restated operating agreement?

24 A. I would assume around early July of 2015, but I

1 may -- yeah. I may have received it in 2014 as well.

2 Q. If you turn in the same book to Exhibit 10?

3 A. Yes, sir.

4 Q. There's the July 15th Cal Neva renovation monthly
5 status report by Case Development Services and Thannisch
6 Development Services, do you see that?

7 A. Yes, I do.

8 Q. Did you receive this from Mr. Marriner?

9 A. I believe so.

10 Q. Did you receive it in July 2015?

11 A. Somewhere around that time.

12 Q. And in early 2014, you also received a
13 nondisclosure agreement, and I believe your testimony was you
14 reviewed it, but did not sign it?

15 A. I did not sign it.

16 Q. Other than those documents that we just discussed,
17 did you receive any other substantive documents relative to
18 the project or the investment from Mr. Marriner?

19 A. By documents, you're not including e-mails?

20 Q. Not including e-mails.

21 A. I believe this is about all there may have been
22 other than another report or something.

23 Q. Can you think of what it was?

24 A. No. I don't think I received a whole lot of these

1 monthly status reports.

2 Q. In your complaint, you allege or imply that
3 Criswell Radovan didn't have hotel development acumen or
4 experience and the extent of their experience was somehow
5 misrepresented to you. Are you familiar with those passages
6 in your complaint?

7 A. I'd rather have it pointed out in the complaint so
8 I can be sure of what it says.

9 Q. Do you have any information that Criswell Radovan
10 don't have ability and experience and acumen in hotel project
11 development?

12 A. I don't know for sure.

13 Q. You're suing the defendants in this case for fraud
14 based on alleged misrepresentations about the ability and
15 experience of Criswell and Radovan as hotel developers. Do
16 you have anything to substantiate that?

17 A. I can't think of what the evidence would be at the
18 moment, but I just don't trust what they've had to say.

19 Q. Did somebody tell you that they don't have
20 experience, other than your attorney?

21 A. I think some of the IMC group and maybe Molly had
22 alleged that there was concern over the accuracy of them
23 being successful developers on some of these other projects.

24 Q. Is that the extent of your information on this

1 subject?

2 A. I believe so.

3 Q. In your e-mails and in some of your testimony,
4 you've referenced the financial wheels of the project coming
5 off?

6 A. Yes.

7 Q. What information do you have that the financial
8 wheels of the project were coming off?

9 A. I believe that was on December the 12th or maybe
10 the next day I wrote that, but that was my impression from
11 the information that Mr. Criswell and Mr. Radovan expressed
12 at that December 12th meeting.

13 Q. That was your conclusion that the financial wheels
14 were coming off?

15 A. Coming off the bus, I believe I said.

16 Q. Did anybody at the meeting or any of the members
17 of the Cal Neva Lodge suggest to you that the, quote, wheels
18 were coming off?

19 A. They might not have used those terms, but I think
20 there were a number of us in that meeting that felt that the
21 wheels were coming off the financial train or bus or whatever
22 you want to call it. Which is why we were all shocked and
23 upset.

24 Q. Now, you said all of you were shocked and upset?

1 A. That's probably an exaggeration. A number of us
2 were would be a better way to say it.

3 Q. Is one of the reasons you were shocked and upset
4 the fact that financing was being sought at that time to
5 complete the project?

6 A. It wasn't the financing that I had been led to
7 believe, that just a refinance of the mezzanine loan, it was
8 supposedly imminent when I invested, it was now a refinance
9 of the entire project for substantially more than the
10 original mezzanine refi.

11 Q. Were the members of the executive committee of the
12 Cal Neva Lodge in attendance at the December meeting at the
13 Fairwinds?

14 A. I believe so.

15 Q. Did they appear to be shocked and upset that there
16 was discussion with Mosaic for the refinancing of the entire
17 project?

18 A. I didn't know who was the members of the EC or not
19 at that point. That's when we first started communicating.

20 Q. Changing gears a little bit to a different point
21 in time. Mr. Marriner was not involved in the transmission
22 or delivery of your investment documents to Mr. Coleman,
23 correct?

24 A. No.

1 Q. Nor to any other party, correct?

2 A. Well, not that I'm aware of. I don't know what he
3 did on his own. He certainly wasn't doing it on my behalf.

4 Q. Did you send your own investment documents to Mr.
5 Coleman?

6 A. I don't remember whether they went to Mr. Coleman
7 or to Criswell Radovan. I know the money went to Mr.
8 Coleman's trust account.

9 Q. As you sit here today, do you recall whether you
10 sent your signed private placement memorandum --

11 A. Yes.

12 Q. -- and subscription agreement --

13 A. Yes, I signed it.

14 Q. -- to Mr. Coleman or to Criswell Radovan?

15 A. I just told you, I don't remember which one it
16 went to.

17 Q. But you did not deliver those documents to Mr.
18 Marriner?

19 A. No, I did not.

20 Q. For handling and delivery to others, correct?

21 A. No.

22 Q. With regard to your invested money, your million
23 dollars --

24 A. Yes.

1 Q. -- Mr. Marriner did not handle that money?

2 A. Absolutely not. No one handled that money except
3 by direct wire to Mr. Coleman's trust account from my Premier
4 Trust representative.

5 Q. Now, later on, some months later, you received
6 documents that you indicated your objections to regarding the
7 assignment of Criswell Radovan's -- I might have the wrong
8 entity -- one of the CR entities shares to you, you objected
9 to that, right?

10 A. I objected to it the moment that Mr. Criswell told
11 me that.

12 Q. And included with that was a proposed purchase
13 agreement and an assignment and some other related documents,
14 correct?

15 A. Yes. Phony papering of the trail by Mr. Coleman.

16 Q. Mr. Marriner did not present those to you, did he?

17 A. No, he did not.

18 Q. He was not handling those documents?

19 A. Those came directly from Mr. Coleman to me.

20 Q. Yet Mr. Marriner, to your knowledge, had no
21 connection to presenting those documents to you?

22 A. I don't know of any connection he had to it.

23 Q. You funded your investment on October 12th or 13th
24 of 2015, correct?

1 A. Correct.

2 Q. Prior to funding, are you aware of any information
3 that work had stopped at the project?

4 A. I wasn't at the time. I was later informed by an
5 e-mail from Mr. Marriner that work was about to stop or it
6 was stopping, I believe in one of his e-mails that we talked
7 about.

8 Q. Before or after you invested?

9 A. I said after, months later.

10 Q. You're not aware of work coming to a halt or
11 slowing down prior to your funding your investment?

12 A. No, or I wouldn't have made the investment.

13 Q. Are you aware of any contractor or subcontractor
14 leaving the job prior to your investment?

15 A. No, I wasn't.

16 Q. When I say your investment, I'm talking
17 October 12th or 13, 2015?

18 A. Yes.

19 Q. Are you aware of any contractor not being paid in
20 a timely manner prior to funding your investment?

21 A. I wasn't aware of them not being paid, no.

22 Q. Now, would you agree that the Mosaic loan in
23 hindsight was the best opportunity for this project to be
24 completed and for you to be paid back your million dollars?

1 MR. CAMPBELL: Objection, lack of foundation for
2 that.

3 THE COURT: Overruled.

4 THE WITNESS: I don't know whether it was the best
5 or not. I think it was the only. What time period are you
6 talking, sir?

7 BY MR. WOLF:

8 Q. At the end of January 2016 and early
9 February 2016, was the Mosaic loan your best shot at getting
10 paid off and exiting with your money?

11 A. May well have been, yes. I think it was the only
12 one on the table.

13 Q. You're not aware of any other exit strategy that
14 was going to pay you a million dollars and you can walk away
15 and go on with your life, right?

16 A. Well, the Russian deal potentially would have done
17 that, but that was pretty distant, so I don't know any
18 details. And there was others that were being talked to, but
19 Mosaic was the only one -- semi upfront offer -- upfront is
20 probably the wrong word -- the only one on the table that I
21 was aware of.

22 Q. I'm sorry to make you shift around the books.
23 Mr. Yount, if you could go to the exhibit book that has
24 Exhibit 120 in it, probably the third binder. We'll make

1 sure you get your workout today with all the binders.

2 A. You just have to be patient. There's four books
3 to go through. 120. I'm here.

4 Q. So in the middle of the Exhibit 120 is your
5 e-mail, I believe, to Paul Jamieson, correct?

6 A. Correct.

7 Q. January 28th, 2016 at 11:06 a.m., you wrote, I
8 believe any deal Roger or others propose that doesn't at
9 least make all investors whole will be rejected in favor of
10 the Mosaic deal, which is sounding better and better. Your
11 review, Paul?

12 A. Yes.

13 Q. At that point in time, just a couple of days
14 before the meeting at Mosaic, you were in favor of the Mosaic
15 deal?

16 A. I was in favor of any deal and that was the only
17 real deal I was aware of.

18 Q. In the same time frame, you became aware that a
19 group of the executive committee, three members of the
20 executive committee were going to have a pre-meeting with
21 Mosaic, right?

22 A. Pre-meeting?

23 Q. A meeting before a regularly scheduled meeting?

24 A. Yes.

1 Q. And you were concerned, your words, that is this
2 legit?

3 A. Yes.

4 Q. And so if you were concerned about the legitimacy
5 of that meeting, if you had formed the belief at this point
6 in time that this was your one and only shot to get your
7 money back, why didn't you tell Mr. Criswell or Mr. Radovan
8 that the meeting with Mosaic, the one that they were not part
9 of planning or attending, why didn't you tell them it was
10 happening?

11 A. Because I did not trust Mr. Criswell or
12 Mr. Radovan after December the 12th. So why would I tell
13 them anything?

14 Q. What did you believe was going to happen,
15 transpire in the meeting by the three executive committee
16 members in Sacramento with Mosaic prior to the meeting that
17 Mr. Radovan had scheduled?

18 A. I did not know what was going to happen. I
19 believe they were trying to put the deal together, though,
20 but that's just was my understanding.

21 Q. Now, you've suggested in your testimony today that
22 the loan was not torpedoed. What do you think happened after
23 that meeting other than the loan being tanked or rescinded?
24 Do you think there was some path forward with Mosaic after

1 the meeting?

2 A. Possibly not. I got the feeling that the Mosaic
3 meeting was a desperation move on Mosaic to possibly put the
4 deal together, because I don't think they were getting
5 communication, the documents now show, that they felt they
6 needed and were required. So they were potentially, I
7 assume, reaching out to the executive committee to assure
8 them that the communication was better than they were finding
9 out.

10 Q. Do you think it's a fair characterization in some
11 of the e-mails we've looked at today and previously that the
12 meeting with Mosaic on February 1, 2016 was a good meeting?

13 A. That's been represented in some of the documents.

14 Q. Do you believe that's a fair or accurate
15 characterization?

16 A. Well, if a good meeting results in the deal being
17 cancelled, it wasn't good enough to save it, evidently, so,
18 no.

19 Q. Now, you indicated that you had lost trust or
20 didn't trust Mr. Criswell and Mr. Radovan and that's why you
21 didn't share with them that there was going to be this
22 meeting behind their backs?

23 A. It wasn't my meeting. It wasn't my place to say.
24 And, no, I was not communicating.

1 Q. Why wasn't your place to say? To alert the
2 manager of the -- the managers of the development that an
3 unauthorized meeting was going to happen with the lender of
4 the loan that was your only hope to get paid off? Why didn't
5 you feel some obligation to inform them?

6 A. I trusted that the EC had enough reason on their
7 part to, and they wanted to, as far as I know, wanted to save
8 the deal, too, that they would -- they felt it was the best
9 route, and I trusted the EC a lot more than I trusted
10 Mr. Criswell and Mr. Radovan.

11 Q. But at the point in time of the meeting with
12 Mosaic, you already knew that the EC and the people you were
13 corresponding with, this so called team, were bent on
14 removing Criswell and Radovan as managers, potentially suing
15 them, potentially removing their membership interests. Why
16 were you concerned about sharing that with them, sharing the
17 meeting with them when you knew that was the motivation
18 behind this group that you were trying to distance yourself
19 from?

20 A. I disagree with your opening part of that question
21 where you said that they were bent on removing Mr. Criswell
22 or Mr. Radovan or CR. I think that was one of the options
23 they were considering. Any which way that made the deal is
24 what I wanted, a financing deal.

1 Q. Sitting here today and looking back with 20, 20
2 hindsight, you don't wish you had advised Mr. Criswell or
3 Mr. Radovan that this backdoor meeting was going to happen?

4 A. I suppose in hindsight it might have been better
5 to do that, but that would have broken the trust with the EC
6 that I had and I don't know that they would have done well
7 with it either. So it might have saved it. It might not
8 have. I don't know. The executive committee was there to
9 represent the shareholders.

10 Q. Well, the executive committee had a meeting
11 scheduled at 5:00. A group, a subset of the executive
12 committee went there prior to the 5:00 meeting and provided
13 information that caused Mosaic to cancel the 5:00 meeting,
14 correct, as you understand it?

15 A. I don't know if it caused that. It didn't
16 alleviate whatever reason they were having the meeting to
17 make -- and they decided to cancel it.

18 Q. Other than dissension in the investor group
19 mentioned in Mosaic's e-mail, are you aware of any other
20 specific information provided by the three members of the
21 executive committee to Mosaic in that pre-meeting that would
22 have led Mosaic to cancel the loan?

23 A. Provided by the executive committee, I don't
24 believe so, but they were also concerned about the lack of

1 communication that Mosaic was concerned, the lack of
2 communication with the developers over the last two or
3 three months.

4 Q. Did Mr. Marriner ever tell you project timing or
5 scheduling information -- strike that. We've looked at
6 Exhibit 36, which is an e-mail string between you and
7 Mr. Radovan about the opening date of the project. I'll let
8 you get that in front of you.

9 A. It's four books in every direction. Hold on.

10 Q. We need a lazy Susan there, I think.

11 A. I don't want you to say you have a lazy witness.
12 But I'm looking at it. Yes. I'm on 36 and what's your
13 question, sir?

14 Q. So my question is you received this report about
15 the soft opening in spring with grand opening on Father's Day
16 weekend, just brought in general manager and chef. That's
17 October 10, 2015?

18 A. Yes.

19 Q. In this time frame, early October, or before then,
20 did you receive any information about the opening date from
21 Mr. Marriner that was more rosy than this, that projected an
22 earlier opening than this?

23 A. Previous to -- very close to this date, he was
24 still believing or espousing December the 12th as a soft

1 opening.

2 Q. Okay. After you received this from Mr. Radovan,
3 did Mr. Marriner tell you anything otherwise, that it might
4 be opening sooner than this?

5 A. No. He never contradicted this. This doesn't say
6 why the opening was delayed, which I have in other e-mails
7 and conversations with Mr. Radovan.

8 Q. If you'll turn to Exhibit 22, please?

9 A. Yes, sir.

10 Q. We looked at this, like some of the other
11 exhibits, more than once during the trial. On August 3,
12 2015, 11:45 a.m., Mr. Marriner writes you, hope you're doing
13 well. And then he continues, do you have any more questions?
14 And then I won't read the rest of it. On the same day,
15 within an hour, August 3, 2015, you advise Mr. Marriner, I've
16 been dealing directly with Robert. Thanks. He will be
17 taking questions from my CPA early this week. More soon.

18 A. Yes.

19 Q. At this point, or from this point forward until
20 the date of your investment, did you seek specific project
21 information from Mr. Marriner?

22 A. I don't recall. The e-mails would show that. I
23 thought I, again, asked for -- anyway, no, I'm not sure.

24 Q. If we turn to Exhibit 31?

1 A. Yes, sir.

2 Q. This is an e-mail string on September 30th between
3 you and Doug Driver?

4 A. Yes.

5 Q. Who is Doug Driver?

6 A. We've been over this, but he was my chief
7 financial officer.

8 Q. And you ask Doug, you can answer. I'm okay to
9 proceed as you instructed?

10 A. Yes.

11 Q. And you reply, not waiting for an answer from Ken?

12 A. Yes.

13 Q. He still hasn't received an answer on the
14 valuation question as of yesterday afternoon, but I
15 understood you wanted to proceed regardless of the valuation
16 issue, question mark. I think I read those --

17 A. Yeah.

18 Q. Can you describe how the sequence is of these?

19 A. The first one you read, did Ken answer, that was
20 from me to Doug, and the second one was from Doug to me.

21 Q. Saying he still hasn't received an answer on the
22 valuation question as of yesterday afternoon?

23 A. Yes.

24 Q. Did you respond back, not waiting for an answer

1 from Ken or am I --

2 A. No. I don't think that's me responding back.

3 Q. It's just Doug responding?

4 A. That's Doug's e-mail, I believe.

5 Q. Got it. How did this exchange fit into your
6 decision making to proceed with investment?

7 A. I -- well, there was still 13 days left, so I
8 assume that it got answered. This was just putting it on
9 hold, in effect.

10 Q. So you returned your signed investment documents
11 on the 2nd or 3rd of October, correct?

12 A. I don't believe so. I thought it was simultaneous
13 with the 13th. I don't really know.

14 Q. You believe you sent them in simultaneous with the
15 funding?

16 A. As best as I know, but the documents would show
17 that.

18 Q. What was the valuation question you were inquiring
19 into with Doug Driver in these e-mails or in this e-mail
20 exchange on the 30th of September?

21 A. I don't recall.

22 Q. Can you turn to Exhibit 54, Mr. Yount?

23 A. 54. All right. Yes, sir.

24 Q. So 54 is an e-mail with some attachments dated

1 January 8th, 2016?

2 A. Yes.

3 Q. And you're included on the distribution list, do
4 you see?

5 A. Yes.

6 Q. Two of the attachments are proposed amendments and
7 the response from legal counsel. Do you recall who proposed
8 these amendments to the operating agreement? They're a few
9 pages into the exhibit. Do you happen to recall who in this
10 time frame was proposing amendment of the operating
11 agreement?

12 A. It's coming from Heather Hill, so I assume
13 Criswell Radovan, but I don't know that.

14 Q. You're not sure who was proposing them?

15 A. No.

16 Q. Were there any other Fortifiber or Stanwall
17 Corporation staff that assisted you with you due diligence
18 besides Mr. Driver?

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

20 Q. What was Mr. Driver's background? You said he was
21 your CFO?

22 A. Yes.

23 Q. What's his training?

24 A. His training is in financial education. I mean,

1 he's been educated as a financial person and that's what he's
2 always done for me primarily. And what did he do before
3 he worked for me? Or what is his question?

4 Q. You answered it. I was wondering if he was
5 trained in financial matters, accounting and bookkeeping?

6 A. Yes, I believe. He has a masters degree from USC.

7 Q. In accounting or finance?

8 A. I believe so. I'm not swearing to that.

9 MR. WOLF: That's all the questions I have. Thank
10 you, your Honor. Thank you, Mr. Yount.

11 THE COURT: Thank you, Mr. Wolf.

12 MR. CAMPBELL: Should I go into my redirect?

13 THE COURT: Yes. I've got a meeting in about half
14 an hour, so we'll take our break there if everybody can hold
15 it. Go ahead, Mr. Campbell.

16 REDIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Mr. Yount, I'll take you back to that
19 December 12th meeting.

20 A. Yes.

21 Q. You said that a number of -- you worded it
22 differently, but a number of the investors were at that
23 meeting, correct?

24 A. Oh, yes.

1 Q. And after the disclosure from either Mr. Radovan
2 or Mr. Criswell, they were very concerned?

3 A. Any number of them were very concerned, yes.

4 Q. Why were they concerned?

5 A. They were concerned because the project seemed to
6 be financially in trouble and many of us were not aware of
7 that.

8 Q. And you termed it as the wheels falling off the
9 bus, right?

10 A. Yes, I did.

11 Q. What did you mean by that?

12 A. I meant that the project appeared to be in severe
13 financial trouble and in jeopardy of survival.

14 Q. Can you look at Exhibit Number 111?

15 A. 111. Yes.

16 Q. It's an e-mail from Penta to Cal Neva a couple of
17 weeks after that meeting, right?

18 A. Yes.

19 Q. And this is kind of a pre-notice from Penta that
20 they've got some serious concerns about not being paid?

21 A. Yes.

22 MR. WOLF: Objection, foundation.

23 THE COURT: Lay a better foundation. Go ahead,
24 Mr. Campbell.

1 BY MR. CAMPBELL:

2 Q. It says in there, between September 5th and
3 September 14th, Penta and Cal Neva entered into 12 change
4 orders, increasing the contract sum to \$26,997,609 and the
5 sum has increased by 9.356. Then they say, currently, Penta
6 is owed more than 4.2 million and then they footnote under
7 number one, that is the change orders 12 and 13, correct?

8 A. Yes.

9 Q. Did this confirm your view that the wheels are in
10 fact falling off the bus?

11 MR. LITTLE: Objection, leading.

12 THE COURT: Overruled.

13 BY MR. CAMPBELL:

14 Q. Can you look at Exhibit 50?

15 A. 50?

16 Q. Yes. I'm sorry, Exhibit 49.

17 A. All right.

18 MR. LITTLE: You said 49?

19 MR. CAMPBELL: Yes.

20 BY MR. CAMPBELL:

21 Q. If you look to the Exhibit 49 in the like the
22 third page down, it's a budget. We've gone through this
23 before.

24 A. It's the black at the top that says Cal Neva

1 Hotel?

2 Q. Yes.

3 A. Okay.

4 Q. Do you see the budget comparisons at the bottom
5 line, it says total development costs?

6 A. Yes.

7 Q. And that shows a --

8 A. It's hard to read.

9 Q. That shows approximately \$21 million in new items
10 over budget?

11 A. Correct.

12 Q. That confirmed to you that in December there was
13 serious financial issues with the project?

14 A. The construction budget was originally 17 million
15 something and this is an overrun of 20 million more, 21
16 million more. So I think anybody in their right mind would
17 think this is -- the bus might be exploding. Maybe the
18 wheels coming off is not strong enough.

19 Q. And then let's go to Exhibit 54.

20 A. 54. Yes.

21 Q. If you go down to the third page of this exhibit,
22 it's the letter from Hall?

23 A. Correct.

24 Q. And this letter is January 5th, so just shortly

1 after the letter from Penta?

2 A. Yes.

3 Q. And it tells Hall the loan again is out of
4 balance?

5 A. Yes.

6 Q. Does that confirm your belief that the project was
7 in serious financial trouble?

8 A. Absolutely. It was further reenforcement of that.

9 Q. Let's go back to Exhibit Number 124.

10 A. Exhibit number?

11 Q. 124.

12 A. 124.

13 Q. And this is an e-mail string that relates to the
14 Mosaic loan once you get there.

15 A. Just one moment. Ready. I'm on 24. I'm sorry.

16 Q. 124?

17 A. Yeah, I know. I'm on the wrong one. I'm there.

18 Q. Mr. Little and Mr. Wolf asked you extensively
19 about this and asked you about your understanding of what
20 happened at the Mosaic meeting, right? Do you remember those
21 questions just a few minutes ago?

22 A. The Mosaic meeting with the EC?

23 Q. Yes.

24 A. Yes.

1 Q. I believe one of your answers was you're trying to
2 put words in my mouth, correct?

3 A. Yes.

4 Q. Was your understanding of what transpired at this
5 Mosaic meeting pretty much garnered from this Exhibit Number
6 124?

7 A. Yes.

8 Q. So if you look at the first in the string of
9 e-mails, which is at the back of the exhibit, it looks like
10 the first e-mail was actually from Mosaic, correct?

11 A. Yes.

12 Q. So these are Mosaic's words, not yours, not
13 members of the EC or anybody else?

14 A. Correct.

15 Q. And it starts out, they're interested in hearing
16 about the history of the Mosaic involvement in Cal Neva with
17 you and we explained our deal with them. We told them how we
18 met you. We told them that we issued a term sheet. And we
19 told them the day you executed. And he's sending this to
20 Robert Radovan, right?

21 A. Yes.

22 Q. Then he also goes on and says, we also told them
23 for better part of three months, we have not heard much from
24 you or your team. They went on a little bit to explain the

1 history of the deal from their perspective, and to tell you
2 the truth, there seems to be a little bit of a mess right
3 now. We're going to take a step back, tear up the executive
4 term sheet, give you and the ownership time to figure things
5 out on your own. And at the right moment, if you desire,
6 reintroduce the deal to Mosaic. This was Mosaic speaking
7 right now?

8 A. Yes.

9 Q. Would you agree with Mosaic that as of
10 February 1st, 2016, that there was a little bit of a mess
11 with the project?

12 A. That would be an understatement. It was grand
13 magnitude.

14 Q. And then you were on the next e-mail string, which
15 looks like was sent from -- I think this was Paul Jamieson in
16 the middle of the second page. Your representatives on the
17 executive committee had an informative, constructive and very
18 positive meeting with Mosaic?

19 A. Yes.

20 Q. And who do you understand Phil Busick was?

21 A. Phil Busick is Les Busick's son and they work
22 together on their investment, their family investment in the
23 project.

24 Q. And the Busicks had how much money into this

1 project by this time?

2 A. Three and a half million, I believe.

3 Q. Two and a half? Does that sound right?

4 A. Two and a half, yeah, that's probably right.

5 Q. And the other two members of the EC, where did
6 they come from?

7 A. Where did who come from?

8 Q. The other two members of the EC that attended this
9 meeting?

10 A. Where did they come from?

11 Q. Were they investors? Were they part of a group?
12 Do you know? Do you know who the other two investors were on
13 the EC?

14 A. If you're talking about Brandon Chaney, yeah, he's
15 a member of the IMC and I believe a \$2 million investor. Is
16 that your question?

17 Q. Yeah. And who else was on the EC to your
18 knowledge?

19 A. I believe Paul Jamieson and perhaps Jeremy Page,
20 although I'm not sure he was at this point. At one point, he
21 was.

22 Q. And they were members of the Incline Men's Club?

23 A. Yes.

24 Q. How much did the Incline Men's Club have in the

1 project?

2 A. \$6 million, I believe.

3 Q. So between Mr. Busick's family and the Incline
4 Men's Club, they had eight and a half million dollars?

5 A. Yes.

6 Q. And in the middle of this second e-mail here, it
7 says, overall, yesterday's meeting was a step towards, rather
8 than away from a near term deal with Mosaic. Interim report
9 from EC. The mess they refer to is primarily CR's
10 unresponsiveness over the last few months. Do you see that?

11 A. Yes, I do.

12 Q. And then it says, Mosaic also raised concerns
13 about cost overruns, delays and lack of CR transparency,
14 correct?

15 A. Yes.

16 Q. It goes down a couple of other bullet points,
17 Mosaic seemed refreshed by the transparent focus and
18 productive discussion?

19 A. Yes.

20 Q. And, finally, they ripped up the term sheet and
21 waived the \$1 million fee Mosaic says it's currently owed?

22 A. Yes.

23 Q. Your information about what transpired in that
24 meeting?

1 A. Was all positive.

2 Q. Let's talk about the extensive cross examination
3 Mr. Little walked you through on the -- I'll call them the
4 post party e-mail string and discussion with the other
5 members of the EC. All right?

6 A. Yes, sir.

7 Q. You said that as of December 12th, you believe the
8 majority of the investors were pretty upset?

9 A. I thought so.

10 Q. Do you know why they were upset?

11 A. They were upset with what Mr. Criswell and
12 Mr. Radovan had to say at the so-called party.

13 Q. Was there a chance they may lose their investment?

14 A. I think so.

15 Q. And all the e-mails that Mr. Little went through,
16 these were all documents you had in your possession and
17 produced, right, in discovery?

18 A. Yes. All 5,000 pages.

19 Q. You weren't trying to hide anything about these
20 conversations with the other members, right?

21 A. Absolutely not.

22 Q. And --

23 A. I didn't think there was anything wrong with any
24 of the conversations I had. There was nothing to hide.

1 Q. You were concerned about getting your money back,
2 right?

3 A. That was my number one concern.

4 Q. And Mr. Criswell had told you that to get that
5 money back, they needed to get some kind of a refinance,
6 right?

7 A. They needed to be refinanced and then paid from
8 the project before they would buy my supposedly shares that I
9 supposedly had.

10 Q. And that was in an e-mail from Mr. Criswell?

11 A. I believe so.

12 Q. Were the other investors, did they seem concerned
13 about trying to get their money back?

14 A. They were -- I think they were in such a different
15 situation, they were trying to get the project saved so that
16 they would get their money back and make a success out of it.

17 Q. So if the project wasn't saved and it --

18 A. They're out.

19 Q. Then they're out \$18 million?

20 A. I believe so.

21 Q. Did you see anything wrong with the back and forth
22 among Mr. Jamieson, Ms. Kingston, members of the IMC, some of
23 the other investors about the concerns and strategies they
24 expressed in that lengthy e-mail string that Mr. Little

1 walked you through?

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

3 Q. Mr. Wolf asked you about the Mosaic loan as your
4 best option.

5 A. Yes.

6 Q. Do you remember that testimony? At that time, was
7 there any other financing on the table?

8 A. We're talking the end of January?

9 Q. Yes.

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

11 Q. It wasn't just it was the best, it was the only?

12 A. It was basically the only one. There was others
13 being tried to be created, but there was nothing at that
14 stage.

15 Q. Just to be clear, you didn't attend this meeting
16 with Mosaic, right?

17 A. (No audible response.)

18 Q. Did you take any actions whatsoever to try to
19 undermine that Mosaic loan?

20 A. I don't believe so, no.

21 Q. Would you do that?

22 A. No. It would make no sense. Why would I torpedo
23 myself?

24 Q. I'm going to go back to last Friday's cross

1 examination by Mr. Little --

2 A. Yes.

3 Q. -- and go through some of the points he made.

4 Let's go back. Mr. Little asked you about your initial site
5 tour back in I think July 13th of 2015?

6 A. Yes.

7 Q. Mr. Little asked you if you had asked -- first
8 off, he asked you, were there Penta reps on the job?

9 A. Yes. I believe there was one from the company.

10 Q. And Mr. Little asked you if you asked any
11 particular questions of the Penta reps on the job?

12 A. I'm sure I asked him questions about what I was
13 seeing and what was being done.

14 Q. What was the purpose of this site visit?

15 A. It was my first exposure to the site and the
16 project.

17 Q. And I believe your testimony was you think you may
18 have received some documents back in February of 2014?

19 A. Something like that, yes.

20 Q. Did you review those back in 2014?

21 A. No, I did not. I was not interested in the
22 investment.

23 Q. But when you did the site meeting on July 13th,
24 had you been provided with any investment documents that you

1 reviewed?

2 A. I don't believe I'd been provided with them yet.
3 I'm not sure of the exact date.

4 Q. If you look at exhibit -- I think if you look at
5 Exhibit Number 8?

6 A. Number eight. You're right, a lazy Susan would be
7 helpful. All right. Exhibit Number 8.

8 Q. Does this confirm for you, just take a look at
9 this, does this confirm for you kind of the time line of when
10 the initial site visit was and then when the documents were
11 actually provided to you?

12 A. It's basically, it was a pleasure showing you the
13 site by Mr. Marriner.

14 Q. So that would have been before the e-mail,
15 July 14th?

16 A. Yeah, the 13th, 14th.

17 Q. And then it says, as I mentioned, Robert's
18 released some additional .5 mill of equity. So you had that
19 discussion with Mr. Marriner at the meeting?

20 A. Yes.

21 Q. And then Mr. Marriner says, Robert asked me to
22 forward Cal Neva investment PPM, founders progress reports?

23 A. Yes. That would have been after my tour.

24 Q. Did you have any knowledge about the specific

1 details of the project when you were on that site tour?

2 A. Not in great detail. I mean, I knew what they
3 were trying to refurbish and restart the Cal Neva Resort.

4 Q. But you didn't know what the budget was. You
5 didn't --

6 A. I'm sorry?

7 Q. You didn't know what the budget was?

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

9 Q. Did Mr. Marriner seem pretty knowledgeable about
10 the project when you had that first meeting on site?

11 A. Very much so. I was impressed with what I thought
12 was his knowledge.

13 Q. So he went into pretty good detail on the project
14 when you were at the site visit?

15 A. Did we --

16 Q. Did he give a lot of detail about the project?

17 A. He pointed out what things were being done and
18 why, as did the Penta representative. He seemed very
19 knowledgeable -- both of them seemed very knowledgeable in
20 what was going on.

21 Q. Mr. Little asked you some questions about Exhibit
22 Number 10. Why don't you put that in front of you so we're
23 on the same page.

24 A. Yes.

1 Q. And you did receive this exhibit, correct?

2 A. Yes.

3 Q. From Mr. Marriner?

4 A. Yes, I did.

5 Q. And Mr. Little asked you, had you ever received
6 any similar reports, and I think he quoted your deposition
7 testimony that you may have, right?

8 A. I may have, but I don't recall any.

9 Q. When you put together all of your documents to
10 produce in this case, did you gather every single page you
11 could find?

12 A. I believe so.

13 Q. How many pages were there altogether?

14 A. A little over 5,000, I believe.

15 Q. Okay. If there were additional construction
16 reports similar to this July 2, 2015 one, would those have --
17 would those be something you would produce?

18 A. Absolutely.

19 Q. You didn't intentionally --

20 A. I didn't pick and choose on what I produced. I
21 took the entire file I had.

22 Q. You even produced documents such as an e-mail to
23 Ken Tratner that nobody else was copied on, right?

24 A. Correct.

1 Q. And Mr. Little never asked you any specific
2 questions and showed you an August, September or October
3 monthly status report, did he?

4 A. No, he did not. I presume if there were some, and
5 I didn't have them, they would have produced them in their
6 discovery and they would have been in these binders.

7 Q. Exhibit 10, again, we've gone through it a couple
8 of times. And Mr. Little pointed out to you that on page 16,
9 there was a litany of construction summary and change orders
10 or changes that needed to be on the project there on page 16,
11 correct?

12 A. Just one second. Yes.

13 Q. Okay. I believe my notes say that Mr. Little
14 asked you, did you ask questions about the specific costs
15 attributed to these bullet points on Exhibit 16? Do you
16 remember that question?

17 A. No, I did not, because I was already told by
18 Mr. Radovan how much those were. I don't see why I would
19 ask.

20 Q. And what had Mr. Radovan tell you?

21 A. He told me they were between 5 and \$6 million.

22 Q. So you already knew what, in your mind, what they
23 were talking about with the cost of these?

24 A. Absolutely.

1 Q. While we're on that point, let's go to Exhibit
2 Number 12.

3 A. Yes.

4 Q. This is an e-mail that you sent to Mr. Marriner?

5 A. Yes.

6 Q. And on bullet point number four, you're writing
7 Mr. Marriner, it says, it appears you're raising 20 million
8 and you said the entire investment is some 60 million?

9 A. Yes.

10 Q. Did you write this e-mail in close proximity to
11 the time that you actually had a conversation with Mr.
12 Marriner?

13 A. I believe so.

14 Q. And I think your earlier testimony was you don't
15 remember if it was Mr. Marriner or Mr. Radovan told you about
16 the 5 million plus cost overrun, but it could have been
17 either or both?

18 A. I believe --

19 MR. WOLF: Objection, compound.

20 MR. LITTLE: Objection to his testimony.

21 THE COURT: Hold it. Just rephrase. Just
22 rephrase.

23 BY MR. CAMPBELL:

24 Q. Did Mr. Marriner's 60 million entire investment

1 make sense in what Mr. Radovan told you about a 5 million
2 plus?

3 A. Absolutely. The original budget was some
4 \$51 million, plus once the project got subscribed to 20
5 million, they would raise the budget to some 55 million, plus
6 the 5 million that Mr. Radovan told me, that makes 60
7 million, made perfect sense.

8 Q. You're pulling those numbers from Exhibit Number
9 4?

10 A. I believe so, except for the 5 to 6 million, but
11 that listed items.

12 Q. Mr. Little showed you the private placement
13 memorandum?

14 A. Yes.

15 Q. And asked you a lot of questions about the
16 qualifications?

17 A. Yes.

18 Q. In there, the legal language, correct?

19 A. Yes.

20 Q. And he pointed you to one section that said about
21 the ability of investors, potential investors to ask
22 questions, right?

23 A. Yes.

24 Q. Did you ask questions in this project?

1 A. Yes, I did.

2 Q. And what questions did you ask?

3 A. They're in the e-mails. I had that list of about
4 ten questions I came up with. And we discussed the project
5 and was told what the budget was and why it was changing and
6 when it was going to open and all of those kinds of
7 questions.

8 Q. And so to your satisfaction, they answered those
9 questions that were important to you?

10 A. I now find they weren't answered correctly. They
11 were fraudulent. But, yes, I asked, and they answered.

12 Q. Why didn't you follow-up with more questions
13 prior -- just prior to funding?

14 A. Why did I do what?

15 Q. Why didn't you ask follow-up questions?

16 A. I had no reason to think there was more questions
17 that needed to be asked.

18 Q. Let's look at Exhibit Number 13, which Mr. Little
19 also asked you about, which the Peter Grove e-mail.

20 A. Yes.

21 Q. If Mr. Grove had either verbally communicated to
22 you or followed up in an e-mail and told you what the
23 construction costs exceeding budget were --

24 A. Dollar amount, no.

1 Q. -- what would you --

2 A. Dollar amount?

3 Q. Dollar amount.

4 A. No, he did not.

5 Q. If he would have told you, would you have somehow
6 done something if he would have quantified those numbers?

7 A. Depends on what he quantified. If he quantified 5
8 to 6, I would have been very happy. But if he quantified
9 more, I would be very concerned.

10 Q. If he had told you it was more, would you have
11 taken some action?

12 A. Absolutely. I would have started asking
13 Mr. Radovan more questions and why didn't you tell me and why
14 is it differing from what you have been telling me?

15 Q. And how would you communicated those to
16 Mr. Radovan?

17 A. Either an e-mail or a telephone call. Probably
18 all in caps.

19 Q. Have you talked to Mr. Grove since December 2015
20 about the Cal Neva project?

21 A. Yes, I have.

22 Q. And has he told you anything about the Cal Neva
23 project?

24 A. He told me that he was owed some \$180,000, as I

1 remember.

2 Q. Do you have your deposition in front of you,
3 Mr. Yount?

4 A. I can do that.

5 Q. Let's go to 145.

6 A. 145. All right.

7 Q. Mr. Little pointed to your deposition and read
8 part of the question and answer. Can you read into the
9 record the entire Q and A on page 145?

10 A. Starting at line four?

11 Q. Yes.

12 A. Correct. Question on five?

13 Q. Yes.

14 A. And it also says that the budget has been
15 adversely impacted due to a number of items and it lists
16 them, question mark? And I said, correct. Question, did you
17 ever ask any specifics about any of these items prior to
18 making your investment, question mark? Answer, I don't
19 believe specifics, no. Question, did you ask what the
20 anticipated costs were associated with these items? Answer,
21 I think that had been indicated to be 5 to \$6 million.
22 Question, do you know? Do you even know whether the
23 contractor had priced all of these items yet? Answer, I
24 don't know, but if it was -- if he was quoting a number, I

1 assume it would have been there. Question, you're making an
2 assumption? And I said, yes, otherwise he would have said
3 that it's 5 to \$6 million except for those items that are not
4 priced yet, wouldn't he?

5 Q. That's good. Let's go to Exhibit Number 153.

6 A. 153, was it? Which one?

7 Q. Exhibit 153 and I think Mr. Little had
8 cross-examined you on two particular pages, 609 and page 617,
9 so towards the back of those documents.

10 A. 609 and 617, I have them.

11 Q. You understand these are pay applications?

12 A. Correct.

13 Q. Mr. Little was asking you if you look at page 609,
14 which was a pay application for, I believe, the end of July
15 2015?

16 A. I believe so.

17 Q. And then if you look at page 617?

18 A. Yes.

19 Q. That goes up to the next pay application?

20 A. Yes.

21 Q. Which would have been the end of August and it
22 shows -- now shows a total of the last two -- shows a total
23 of 4.544 million, right?

24 A. Correct.

1 Q. And I think Mr. Little asked you, is that a number
2 close to what Mr. Radovan told you?

3 A. Yes. This is 4.544 and he said 5 to 6. So he
4 might have been aware of some other ones that would have
5 brought it to that total, but it was close.

6 Q. But Mr. Radovan also indicated to you when he told
7 you that five plus number that they think there were other
8 ones in the works, so to speak?

9 A. No. He indicated that they were trying to provide
10 a cushion in case there were others down the line, because
11 they didn't want to go back to the, quote, well, on
12 refinancing further.

13 Q. And you've been through this, you've sat here next
14 to me the whole time. You understand that as of September, I
15 don't think I need to go back to the change orders, everybody
16 knows the numbers now, as of September, as in exhibit -- as
17 the exhibit from Penta, that by September those change orders
18 were approximately 9.3 or 4 million?

19 A. Yes.

20 THE COURT: Mr. Campbell, is this a good time to
21 take a break?

22 MR. CAMPBELL: Let me finish this question.

23 THE COURT: Sure.

24 BY MR. CAMPBELL:

1 Q. Mr. Radovan never told you in August or September
2 that the change orders were now in the range of \$9.4 million?

3 A. Absolutely not.

4 MR. LITTLE: Asked and answered, all of these,
5 your Honor.

6 MR. CAMPBELL: That's all I have, your Honor,
7 right now.

8 MR. LITTLE: Are you done?

9 MR. CAMPBELL: I'm not done.

10 THE COURT: You can step down, Mr. Yount. Watch
11 your step going down.

12 MR. LITTLE: How much more do you have?

13 THE COURT: Just a minute, Mr. Little. If you
14 talk to anybody, speak to the bench.

15 MR. LITTLE: Sorry, your Honor.

16 THE COURT: Mr. Campbell, how much longer do you
17 have?

18 MR. CAMPBELL: I think I can do it in 10 or
19 15 minutes. I'll try to cut some stuff.

20 THE COURT: No. No. I don't want to crimp your
21 style. Take as much time as you want. And then after
22 Mr. Yount, who do we have?

23 MR. CAMPBELL: We have Mr. Chaney, but I assume
24 there could be some recross.

1 THE COURT: I assume there will be some recross.
2 Mr. Chaney. All right. And after him?

3 MR. CAMPBELL: Tomorrow morning we have Mr.
4 Tratner, a very short witness, 10 or 15 minutes. He was the
5 accountant in the due diligence process.

6 THE COURT: Do we have any other witnesses?

7 MR. LITTLE: No, your Honor.

8 MR. WOLF: No, your Honor.

9 THE COURT: Thank you very much. Court's in
10 recess.

11 (A short break was taken.)

12 THE COURT: Mr. Campbell, your direct.

13 BY MR. CAMPBELL:

14 Q. Exhibit 27, Mr. Yount.

15 A. 27.

16 Q. Mr. Little last Friday asked you a question about
17 Exhibit 27 and questions about the soft opening versus a hard
18 opening. Do you remember that line of questioning?

19 A. Yes, I do.

20 Q. And I don't want to get into that. I just want,
21 again, to ask you, this e-mail to Mr. Tratner was composed
22 when?

23 A. August the 12th.

24 Q. And when did you talk to Mr. Radovan?

1 A. Either that morning or the day before, I imagine.

2 Q. And the contents in this e-mail about the opening
3 dates came from a conversation with Mr. Radovan?

4 A. Yes, sir.

5 Q. Let's go to Exhibit 106 and 107.

6 A. Yes, sir.

7 Q. Mr. Little asked you some questions about this as
8 to whether or not the address at the bottom of the first page
9 of Exhibit 106, which says, Dave Marriner telling you I
10 believe Robert will want to use the following address and
11 they use the Criswell Radovan address. And Exhibit Number
12 107 looks like some wiring instructions to the Criswell
13 Radovan bank.

14 A. Yes.

15 Q. I believe the question he asked, did that indicate
16 to you that in fact you were buying a CR share?

17 A. Absolutely not. Where does it say that?

18 Q. Let's go to Exhibit Number 34. So if we pick up
19 on the e-mail string, Exhibit 34, we go back -- e-mail starts
20 about you're sending Mr. Radovan on October 1st?

21 A. Yes. I see that.

22 Q. About funding instructions, do you see that? And
23 then it goes on, on the second page, page 2323 on the bottom
24 of the page, this is for Mr. Marriner, same e-mail we looked

1 at before, I believe Robert will want to use the following
2 address and he goes on to state the address. And then the
3 next e-mail up says, this is from Mr. Radovan to you on
4 October 3rd, it says, actually, the funds should be wired
5 into our attorney's account in accordance with the documents.
6 Heather in my office will wire you the instructions first
7 thing on Monday.

8 A. Yes.

9 Q. So Mr. Radovan is clarifying where the money is
10 supposed to go, right?

11 A. Absolutely.

12 Q. And when he says, with the documents, what
13 documents had you been provided at that time?

14 A. The PPM and the operating agreement are the
15 documents I was to sign.

16 Q. The subscription agreement?

17 A. I'm sorry?

18 Q. The subscription agreement?

19 A. Yes, I believe so.

20 Q. Did Mr. Radovan send you other documents such as a
21 contract to purchase a CR share?

22 A. Absolutely not.

23 Q. Then if we finish out the e-mail, it looks like
24 you had a conversation with Mr. Driver and kind of cleared it

1 up that you were going to use what Mr. Radovan told you?

2 A. Yes.

3 Q. Mr. Little also asked you a question just
4 generally about your knowledge of the remaining 1.5 million
5 in the PPM. Do you remember that series of questions?

6 A. Yes.

7 Q. And I believe he asked you something to the effect
8 that you didn't assume that no one else was looking, right?

9 A. No. I had no reason to assume that.

10 Q. So for all you knew, someone else was in fact
11 looking?

12 A. Absolutely. I would expect there would be.

13 Q. If someone else was looking and closed out the
14 financing, would you assume that you would have been told?

15 A. I would assume that I would be told, we're sorry,
16 but there's no more offering to be had.

17 Q. All the documents that you were provided and all
18 the e-mails you were provided indicated how you were making
19 your investment?

20 A. Yes.

21 Q. How was that?

22 A. I was making the investment to Cal Neva LLC
23 through the trust account of the attorney Mr. Coleman in
24 Texas and that was acknowledged in writing.

1 Q. Mr. Little also asked you about some of the
2 allegations in your complaint, specifically, about cost
3 overruns and schedule changes. Do you remember those
4 questions?

5 A. Yes.

6 Q. And I believe your answer was, I remember getting
7 an e-mail from Mr. Marriner that detailed some of those
8 issues?

9 A. Yes.

10 Q. Is that correct? Let's look at Exhibit Number 60.

11 A. Yes, I'm there.

12 Q. Is that the e-mail that you're referring to about
13 some of the information from Mr. Marriner?

14 A. Yes.

15 Q. And if you look at page 168 at the bottom of the
16 page?

17 A. Yes.

18 Q. It says, an extended delay in Yount's ability to
19 set up a self-directed IRA and transfer funds in August or
20 September caused Robert to seek funding from Les Busick in
21 September to meet the immediate needs of the project to keep
22 Penta on the job.

23 A. Yes.

24 Q. Is that some of the information you were referring

1 to?

2 A. Yes.

3 Q. And then it goes on to talk about -- go to page
4 167, which is a string between Mr. Page and Mr. Marriner.

5 A. Yes.

6 Q. And at the bottom of the 167, next to the last --
7 third to the last paragraph says, according to your e-mail
8 below, you knew about the overruns in July. Why would you
9 have told the other 20 million investors this information
10 immediately or at a minimum compelled CR to do so. Last, but
11 not least, this also shows that Criswell Radovan had been
12 aware of the 9 million overrun for the past six months. Is
13 that another place where you got some of that information?

14 A. What about that information?

15 Q. Is that another place where you got some of the
16 information in your complaint?

17 A. Yes, it is.

18 MR. CAMPBELL: Your Honor, I have a new exhibit to
19 mark, which was not in the documents, which is a -- Mr. Yount
20 can lay a foundation for it.

21 THE COURT: Have you seen it, Mr. Little?

22 MR. LITTLE: If it's not part of the exhibit list,
23 and he's trying to introduce it on a redirect, I'm going to
24 object.

1 THE COURT: Why don't you lay a foundation. What
2 is it, Mr. Campbell?

3 MR. CAMPBELL: This comes from the cross
4 examination about the same issue about what Mr. Marriner
5 told -- this is what I believe was a continuation on Exhibit
6 Number 60 or a follow on e-mail to Exhibit Number 60 that
7 Mr. Yount received from Mr. Page regarding Mr. Marriner's
8 continued conversation about the conversation in Exhibit
9 Number 60.

10 THE COURT: Hang on a second. Let me pull up 60.
11 All right. Where does this fit in to 60?

12 MR. CAMPBELL: This would be the subsequent e-mail
13 to Exhibit Number 60.

14 THE COURT: Mr. Little.

15 MR. LITTLE: I'm going to object. It's an e-mail
16 between Dave Marriner and Jeremy Page. It has nothing to do
17 with Mr. Yount. It's not disclosed. It doesn't have -- it
18 doesn't even have Bates numbers on it, suggesting it hasn't
19 been produced to us in this litigation. This is the first
20 time we're seeing it here. It's not even being proffered for
21 direct. He's offering to do it on redirect. So I don't
22 think it's appropriate.

23 THE COURT: Well, Mr. Wolf, this is your client's
24 e-mail.

1 MR. CAMPBELL: I would represent for the record, I
2 did not see it in Mr. Wolf's production.

3 MR. WOLF: I guess I don't understand what the
4 point of it is on redirect.

5 THE COURT: Well, do you object?

6 MR. WOLF: I join in the objections from
7 Mr. Little.

8 THE COURT: Other than that it's untimely, do you
9 have any objection about authenticity?

10 MR. LITTLE: I don't know. I haven't seen it
11 before this afternoon, your Honor. Technically, it's
12 hearsay, too. It's not even copied to Mr. Yount. He's not
13 copied on the e-mail.

14 THE COURT: I'll sustain the objection. You can't
15 get it in through this witness.

16 THE WITNESS: It was directed to me.

17 THE COURT: Mr. Campbell, why don't you give the
18 clerk a copy.

19 MR. CAMPBELL: Sure.

20 BY MR. CAMPBELL:

21 Q. Mr. Yount, Mr. Little last Friday asked you some
22 questions about your involvement with the bankruptcy on the
23 committee. Do you remember that?

24 A. Yes.

1 Q. And he asked you if you were on the unsecured
2 creditors committee, the same as the other shareholders, I
3 believe was the question?

4 A. Not the same as the other shareholders. I'm on
5 the unsecured creditors committee, because I have a lawsuit
6 against Cal Neva LLC.

7 Q. And that's a claim you filed in bankruptcy court?

8 A. Yes.

9 Q. As a member of the committee, are you keeping tabs
10 on the bankruptcy?

11 A. I am indeed.

12 Q. Is there something that's on the near horizon in
13 the bankruptcy proceedings?

14 A. Yes. September 14th will be an election in the
15 bankruptcy court for the final payout, hopefully, of Cal
16 Neva, Cal Neva LLC.

17 Q. Do you know the terms, the amounts that are on the
18 table in that offer?

19 A. I believe there's an offer existing on the table
20 for \$38 million and there's other bidders that are expected
21 to be at that auction.

22 Q. Okay. Will that amount be enough to satisfy all
23 of the claims in the bankruptcy?

24 A. I don't believe it will be anything to the

1 shareholders and I don't believe it will cover all the claims
2 by the people claiming owed by the Cal Neva LLC.

3 Q. And, finally, Mr. Little just asked you, maybe it
4 was Mr. Wolf, just asked you a few minutes ago if you knew of
5 any improprieties by the Criswell Radovan team?

6 A. Yes.

7 Q. Through an audit or otherwise? Through the
8 bankruptcy, has any improprieties come to your attention?

9 A. The bankruptcy committee has asked CR to explain
10 11 and a half million dollars that they cannot identify where
11 it is and they've asked three times and not received a
12 response.

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

15 THE COURT: Mr. Little.

16 MR. LITTLE: Your Honor, I'll be brief, just a
17 couple of topics I want to cover.

18 THE WITNESS: Could you speak up just a little,
19 please?

20 RE CROSS EXAMINATION

21 BY MR. LITTLE:

22 Q. Mr. Yount, you heard testimony that CR Cal Neva
23 had an executed term sheet with Mosaic for \$47 million loan
24 in late October with an expected closing in 30 or so days.

1 Are you aware of any evidence that is not true?

2 A. The one I've seen in the exhibits, I don't think
3 it was 47 million, but --

4 Q. Well, you heard testimony that CR Cal Neva had
5 obtained an executed term sheet with Mosaic?

6 A. Yes.

7 Q. For a loan?

8 A. Yes.

9 Q. Let's forget the amount, in late October, and
10 there was an expected closing in 30 or so days. Do you have
11 any evidence that's not true?

12 A. No.

13 Q. And late October would have been around the time
14 period that you invested, correct?

15 A. Yes, just after, but I assume the conversations
16 were going on well before I invested.

17 Q. And you heard testimony that the executive
18 committee wanted Mr. Radovan to go back to Mosaic and get
19 additional money, I think he said \$4 million, and a few other
20 conditions before they would approve that loan. Do you have
21 any evidence that's untrue?

22 A. No, I do not.

23 Q. And you heard Mr. Radovan testify that the delay
24 in concluding, I'll call it concluding the Mosaic loan was

1 because the executive committee was dragging their feet on
2 approving it and his hands were tied until the executive
3 committee approved it. Do you have any evidence that's
4 untrue?

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

6 Q. You heard testimony that the Mosaic loan would
7 have allowed Penta to get paid and the project completed.
8 Are you aware of any evidence that is untrue?

9 A. Concern, as I understand it, it was contingent on
10 a certain appraisal level and the concern was whether the
11 project -- it was the lower of the number or the appraisal, a
12 percentage of the appraisal, and I think there was concern
13 over whether the project would appraise for that number.

14 Q. You don't have any evidence that they didn't get
15 the appropriate appraisal?

16 A. I have no evidence one way or the other.

17 Q. And my I question before was not the one you were
18 answering. My question was, you heard testimony that the
19 Mosaic loan would have allowed Penta to get paid to continue
20 working and complete this project. Do you have any evidence
21 that's not true?

22 A. No, I don't.

23 Q. Now, sir --

24 A. Other than what I just told you.

1 Q. Prior to this secretive February 1 meeting, you
2 were talking with the IMC folks, correct?

3 A. Yes.

4 Q. And you acknowledge they weren't a fan or
5 proponent of the Mosaic loan, correct?

6 A. No. They were concerned about the cost of the
7 Mosaic loan. They were not against the Mosaic loan.

8 Q. And they were talking to you about other means of
9 financing that they preferred, correct?

10 A. They preferred it. Are you talking about they
11 were looking into other means of financing? I don't think
12 anything was on the table to consider.

13 Q. You gave some testimony that I think you said you
14 didn't think they were trying to torpedo the Mosaic loan.
15 Let's go to Exhibit 129.

16 A. Exhibit 129?

17 Q. Yes, sir. Let's go over to page two of that
18 document.

19 A. Hold on just a moment. I have to move a couple of
20 books. Page two, yes, I'm there.

21 Q. The bottom of page two is an e-mail to Sterling
22 Johnson at Mosaic from Paul Jamieson and the e-mail speaks
23 for itself, but I'd classify it as a CYA letter, but that's
24 not my question. I want you to look above at Mosaic's

1 response. And he indicates that -- he's talking about the
2 meeting that they had and he concludes that Mosaic did not
3 offer a loan. And then he says, the impediments were well
4 covered in your e-mail, including instability in the
5 ownership group, an absence of transparency, and a lack of
6 faith in the budget and the management team. Sir, does that
7 sound like a group, in this case, the IMC group, that wanted
8 the Mosaic loan to go forward?

9 A. I can't say one way or the other. I've not heard
10 the surrounding conversation.

11 Q. Okay. We went over a lot of the e-mails after
12 this February 1 meeting, do you agree with that?

13 A. Yes.

14 Q. You and I went over a number and I think you
15 testified you produced some 5,000 pages of documents in this
16 case, right?

17 A. I believe so.

18 Q. Would you agree with me, sir, there is not a
19 single e-mail anywhere in those 5,000 documents that you
20 produced or the records that your counsel has used today
21 where you, anyone at IMC or Molly Kingston discussed
22 resurrecting the Mosaic loan and bringing it back from the
23 ashes?

24 A. After they pulled it?

1 Q. Correct.

2 A. I don't remember that from them or from Criswell
3 Radovan.

4 Q. Sir, Exhibit 49. Counsel showed you, we can go to
5 it, if you want to go to it, but do you remember counsel
6 showed you this December budget and there was the \$71 million
7 total development costs that he talked to you about? Do you
8 recall that?

9 A. Okay.

10 Q. And you said that's what caused you to believe
11 that the wheels were coming off the bus?

12 A. Yes.

13 Q. But, you know, we can go to it if you want to go
14 through the exercise, but when we looked at Exhibit 4, you
15 understood back in July that the funding was over
16 \$55 million, right?

17 A. Yes.

18 Q. So if we take 55 million from 71 million, you're
19 really talking about being over budget 15 to \$16 million?

20 A. 16.

21 Q. In December, right?

22 A. Instead of five.

23 Q. And of that, Robert had told you that they were
24 seeking to increase the mezzanine by \$9 million, we

1 established that, right?

2 A. Yes.

3 Q. And they were seeking to raise an additional one
4 and a half million dollars, correct?

5 A. Yes.

6 Q. And you also heard testimony that between when you
7 invested in December, there were several million dollars in
8 additional change orders that came in, right?

9 A. I didn't know that at the time, but, yes.

10 Q. Well, nobody knew that at the time, right? They
11 came in November and December.

12 A. They knew about some of them before I invested.

13 Q. But you'd agree that when we're talking about
14 being over budget, there were several million dollars in
15 change orders that came in in November and December, right?

16 A. The actual signing of the change orders, but they
17 were obviously discussed before then, that they were actually
18 signed and authorized, some of them, before I invested that I
19 was not told about.

20 Q. The records will speak for themselves on that.
21 I'm not going to waste the Court's time going back through
22 the documents. But you also understood that there were what
23 I'll call elective changes, changes that the executive
24 committee wanted to make to the project now given the fact

1 that they were seeking additional financing rather than
2 opening the project and having to do them later. You heard
3 that testimony, too, right?

4 A. They wanted change orders or they wanted to change
5 the financing?

6 Q. No. That there were things they wanted to do to
7 the project now since they were going to go get additional
8 financing that wasn't required, something they didn't have to
9 do, they would like to do it, but it wasn't a requirement, it
10 wasn't a code upgrade. It was something that was elective
11 that would make the project better. And they said, well, you
12 know, if we're going out and getting financing, we might as
13 well add those to the budget and do them now. You heard that
14 testimony, too, right?

15 A. I believe so.

16 Q. And you also understood that there were carrying
17 costs or finance costs associated with taking out Hall and
18 Ladera and replacing it with the Mosaic loan, correct?

19 A. I didn't understand the extent of that, but, yes.

20 Q. But the accumulation of those things are what
21 makes up this 15 to \$16 million that you're talking about,
22 right?

23 A. I thought that part of the changes were the
24 difference between the 51 and the 55 million, which was

1 already in consideration, because the project was selling out
2 at the 20 million, which was the trigger for that.

3 MR. LITTLE: I don't have anything further, your
4 Honor. Thank you, Mr. Yount.

5 THE COURT: Mr. Wolf.

6 MR. WOLF: Nothing further, your Honor.

7 THE COURT: Thank you, Mr. Yount. You're off.
8 Watch your step going down. Mr. Campbell.

9 MR. CAMPBELL: Mr. Chaney is out in the hall.
10 I'll go get him.

11 One witness sworn at this time.

12 THE COURT: Mr. Campbell.

13 BRANDON CHANEY

14 called as a witness and being duly sworn did testify as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Please state your name for the record.

19 A. My name is Brandon Chaney.

20 Q. Where are you currently employed?

21 A. Fairwinds Estate Winery.

22 Q. Just generally, can you tell the Court your
23 background?

24 A. Professional?

1 Q. Yes.

2 A. I spent a few years at General Electric working in
3 their GE nuclear and aircraft engines. And I was CEO of a
4 public utility company in Nevada and California for about
5 20 years.

6 Q. And can you explain to the Court what the IMC or
7 the Incline Men's Club is?

8 A. The Incline Men's Club is basically an office, a
9 shared office environment that myself and a few other folks
10 created back in 2014.

11 Q. And is it a legal entity?

12 A. It is a legal entity itself, but the office is
13 not.

14 Q. But is there a legal entity the Incline Men's Club
15 something or other?

16 A. It is.

17 Q. What's the full name of that?

18 A. It is IMC Investment Group, CNR, LLC.

19 Q. Is the IMC -- I'll call them the IMC for short.

20 A. Uh-huh.

21 Q. They're an investor in the Cal Neva Lodge LLC?

22 A. It is, yes.

23 Q. Tell me how that investment came about.

24 A. It was back in, I guess, the summer of 2014, some

1 of the IMC members were contacted or ran into Dave Marriner
2 at a cocktail party and mentioned about this opportunity that
3 was going on with the Cal Neva. And he connected us with
4 Robert Radovan and we had a meeting with Robert Radovan. And
5 then we had a tour by Dave Marriner and Robert Radovan and
6 then subsequent meetings and discussions about the
7 investment.

8 Q. And then, ultimately, did the IMC make an
9 investment?

10 A. The IMC did make an investment of \$6 million in
11 the project.

12 Q. Do you remember about when that was?

13 A. That happened in, I'd say, September of 2014.

14 Q. Now, prior to that investment, you just testified
15 that Mr. Marriner was involved in the lead-up to your
16 investing the money?

17 A. Yes, he was.

18 Q. Can you explain to the Court a little more what
19 his role was in ultimately the IMC's decision to invest?

20 A. Well, he acted as representative of the
21 investment, to present it to folks in the community,
22 specifically my group, and he answered questions about the
23 investment, he gave us materials, he gave us tours and
24 vouched for, you know, the manager, the ultimate developer

1 that was going to be running the project.

2 Q. Did he tell you about whether he had done any due
3 diligence on the investment?

4 A. He did. He said he -- that these guys check out,
5 that they have an amazing track record. They've had, you
6 know, sloughs of amazing projects and experience,
7 specifically in hospitality.

8 Q. How about the -- did he talk to you about the
9 construction budget, the construction schedule, things like
10 that?

11 A. He did. I mean, one of our concerns was whether
12 the project could be completed as stated, the budget they had
13 presented and in the time line. He as well as Mr. Radovan
14 and Criswell, Bill Criswell, said they had -- they had gone
15 over -- first of all, crawled around the project, underneath
16 the project, backwards and forwards, and they knew that thing
17 inside and out and the budget was absolutely ironclad.

18 Furthermore, they were hiring a general contractor
19 on a fixed bid basis, so there was really no way this thing
20 could ever go over budget.

21 Q. And it's my understanding that you as a member of
22 IMC are on the executive committee of the LLC?

23 A. Yes. Because we were the largest equity investor
24 in the project, the operating agreement stated that entity or

1 individual would hold a position on the executive committee.

2 Q. Tell me about the makeup of the rest of the
3 executive committee?

4 A. The makeup would have been Robert Radovan and Bill
5 Criswell, Les Busick, who is another large investor in the
6 project, myself, and originally Troy Gillespie, who is also a
7 member of the IMC as well.

8 Q. And that was the --

9 A. That was the executive committee, yes.

10 Q. What was your understanding what the executive
11 committee was supposed to do?

12 A. Well, the executive committee was to, you know,
13 help make major decisions in the project and be involved,
14 meet with the managers of the project on a monthly basis
15 during construction, review financials, act as a check and
16 balance, and help guide the project.

17 Q. Was the executive committee supposed to have
18 meetings on certain dates?

19 A. We were supposed to have meetings every month at
20 the beginning of construction until completion.

21 Q. And did that happen?

22 A. It did not.

23 MR. LITTLE: I'm going to object on relevance.

24 This isn't a mismanagement case. We're talking about

1 Mr. Yount's case and it sounds like we're here talking about
2 contentions that the IMC group has.

3 THE COURT: Overruled.

4 MR. CAMPBELL: I'll lay some foundation.

5 THE COURT: Overruled. Go ahead.

6 THE WITNESS: Can you repeat the question? Is
7 there a question?

8 THE COURT: Just restate the question.

9 MR. CAMPBELL: Okay.

10 BY MR. CAMPBELL:

11 Q. Were there regular meetings of the executive
12 committee?

13 A. They were not regular.

14 Q. So let's start back in -- let's start in the
15 spring of 2015, was there an executive committee meeting?

16 A. I recall we had a meeting in February and one in
17 April and then we didn't have one probably until October.

18 Q. Of 2015?

19 A. Yes.

20 Q. Was there an executive committee meeting at the
21 Fairwinds in July of 2015?

22 A. There was a meeting at the Fairwinds House that
23 sits on the water there, but it was more of a meet and greet
24 kind of meeting with all of the investors, kind of an update,

1 if you will, or, you know, warm and fuzzy meeting I guess I
2 would describe it.

3 Q. Were cocktails and hors d'oeuvres served?

4 A. Yes.

5 Q. Do you know if either Mr. -- do you remember if
6 either Mr. Criswell -- strike that. Did you attend that
7 meeting?

8 A. I believe so.

9 Q. Did either Mr. Criswell or Mr. Radovan make any
10 presentations to the members in that meeting?

11 A. I remember Robert Radovan standing up and just
12 kind of giving an overview that everything was looking great
13 and it was going to be a great project.

14 Q. Were there any budget discussions in that meeting?

15 A. After kind of the cocktail hour, some of the
16 members of the executive committee kind of went to another
17 room and just sat down for a few minutes. And I do recall
18 Robert Radovan talking about, you know, looking at some
19 refinancing options and specifically the mezzanine loan.
20 About, you know, so we could -- we could get the condo
21 projects going. And, you know, he was kind of insinuating
22 there might be some additional things that the Starwood folks
23 would want to do on the project that we might want to spend
24 more money on.

1 Q. Anything else you remember about that, talking
2 about the mezzanine?

3 A. I don't, clearly. Other than that the mezzanine
4 loan was really a way to expand to get a little more cushion
5 in the project and take advantage of the condos so we can
6 make money.

7 Q. Tell the Court about the condos. There's been
8 some testimony throughout this hearing. What was your
9 understanding of how the condos worked with the project?

10 A. The condos, there were 28 units that could be
11 built. We weren't really sure if they were entitled, I don't
12 know if they were approved. And it was kind of the next
13 phase of the project. So it wasn't really funded in the
14 initial phase of the project is my understanding. But there
15 was potential upside in that.

16 Q. So your recollection, though, those condos,
17 funding for those condos was in Mr. Radovan's discussion
18 about the refinance of the mezz?

19 A. Yes.

20 Q. Did Mr. Radovan give you any dollar quantification
21 as to where the money from the refinance was going to go?

22 A. He said that it would pay off the second mortgage,
23 if you will, of the project, which was with Ladera, and that
24 was probably 6 to \$8 million. And then some of it would go

1 to the condo development and some would go to enhancing the
2 project.

3 Q. Was there also discussion about change orders at
4 that time?

5 A. There was some grumblings about, you know, maybe a
6 million or two in change orders, potentially, based on code
7 changes we were talking about. But we couldn't get any
8 quantification or any details on that, that we could make
9 heads or tails of.

10 Q. Was Mr. Radovan providing at least the EC regular
11 updates on things like change orders?

12 A. No, he was not. And it was -- it was a serious
13 bone of contention, because we wanted information. We
14 couldn't get financials. We couldn't even get him on the
15 phone half the time.

16 Q. And when did that issue arise from your
17 perspective?

18 A. Started happening kind of after they got our
19 money, and then once he got it, he kind of disappeared.

20 Q. Was Mr. Radovan on the project every day?

21 MR. LITTLE: Objection, foundation.

22 THE COURT: Sustained.

23 BY MR. CAMPBELL:

24 Q. How often did you see Mr. Radovan on the project?

1 A. We never saw him on the project. I lived in town,
2 we would go by the project, he was never there.

3 Q. So did there come a point about getting documents
4 regarding the project, something came to a head?

5 A. Yeah, finally, we called a meeting with Robert in
6 October of 2015 and just told him that this has to stop.
7 You've got to start having regular meetings. You have to
8 stop breaching the operating agreement, basically.

9 And at that point, he had talked about there being
10 some serious costs overruns in October and we were just
11 floored by it and we were blind-sided by it.

12 Q. So what did he tell you about the cost overruns?

13 A. He said it could be \$9 million in October, but he
14 was still kind of going through the budget, he wasn't sure,
15 which kind of blew my mind, because he's supposed to be
16 managing the project. But -- so we literally, we called him
17 into our offices and sat him down and he promised information
18 by the 31st of October. He had it all, it was all going to
19 be there by October 31st.

20 Q. And what information were you looking for?

21 A. We wanted the audited financials from 2014, which
22 were required to be done within, you know, a certain period
23 of time at the end of the year. We wanted monthly financials
24 for 2015, which we hadn't seen. We wanted a detail, you

1 know, what aspects of the project were off on timing and why
2 and specifically what change orders, you know, were the
3 result of those. And he said, no problem, I'll get it to you
4 tomorrow.

5 Q. Prior to that meeting, had you ever seen a recap
6 of the change orders or a schedule of change orders?

7 A. Not that I recall. They would send over basically
8 information that was -- you couldn't even read. You had no
9 idea what it was. It looked like it was done on Excel.

10 Q. And then Mr. Radovan told you that he would get
11 you the documents, did he?

12 A. He did not. And that forced us to send him a
13 letter, you know, communicating these breaches to him in
14 early November.

15 Q. And what was in that letter?

16 A. Well, just that he had been breaching the
17 operating agreement. We weren't having meetings. We weren't
18 getting financials. There was no transparency. We would get
19 a different story from Bill versus Robert versus the ladies
20 working in his office. We felt like we couldn't trust him.

21 Q. Did you ever follow-up -- let me get it straight.
22 He promised you some financials, he didn't deliver, and then
23 you sent him a letter sometime in November of 2015?

24 A. Yes. I think it's November 4th we sent a letter.

1 Q. And did that spur any action by Mr. Radovan?

2 A. Not really. You know, we had an executive
3 committee meeting shortly thereafter and we all voiced our
4 concerns again. You know, I'd say by the beginning of
5 December, we started seeing some things. But we learned, you
6 know, even though he had represented that we had audited
7 financials in 2014, they weren't done. They weren't done.
8 We couldn't -- I don't think by March of 2016, we still
9 hadn't seen any monthly financials of the project for almost
10 two years.

11 Q. And in that November -- you said that was an
12 executive committee meeting?

13 A. Yes.

14 Q. And in that November executive committee meeting,
15 did you ask for more detail on the change orders?

16 A. We did. We did.

17 Q. And what detail was given to you?

18 A. I don't remember. It wasn't detailed. It was
19 basically high level buckets of things that he says caused
20 overages in the project. Totaling some maybe a million or
21 two were discretionary upgrades and then, you know, 7 million
22 were either code changes or unforeseen things that happened.

23 Q. Does this lack of transparency, were you concerned
24 about the lack of transparency in not getting these

1 documents?

2 A. I was very concerned. We invested \$6 million in
3 this project.

4 Q. Well, did that executive committee meeting spur
5 some kind of a follow-up meeting?

6 A. It did. There were a couple of meetings. I think
7 we had a telephonic conversation around Thanksgiving. And
8 then we had another executive committee meeting in December.
9 And, you know, one of the things we were pushing is you got
10 to tell other people what's going on here. He didn't want to
11 tell any of the other investors what was happening. And it
12 made everyone in the executive committee very uncomfortable.

13 Q. So was there a follow-up meeting with actual
14 investors other than the EC members?

15 A. There was a meeting on December 12th, which was
16 supposed to be a quasi Christmas party. And Robert wanted to
17 do it in Vegas, do a big shindig in Vegas and spend a bunch
18 of money. And the executive committee said, hey, this isn't
19 a time to spend money. This isn't a time to celebrate.
20 We've got some serious problems here. We should have it on
21 the property so we can really update everyone on what was
22 going on. And he didn't want to do that, but ultimately
23 agreed to do the party there.

24 Q. Were you at that December 12th meeting?

1 A. I was not. I was prescheduled to be out of town.

2 Q. Prior to that meeting, did the IMC meet and
3 somehow collaborate on disrupting or making a show in that
4 December 12th meeting?

5 A. Not to my knowledge, no.

6 Q. And you were --

7 A. I was out of town, so --

8 Q. You never saw any e-mails or asked to participate
9 in some kind of staged show at the December 12th meeting?

10 A. No, not at all. I mean, our concern was how that
11 party was going to go, because a lot of people didn't know,
12 the cat was just coming out of the bag that this project was
13 in deep trouble.

14 Q. And I think you said you weren't at the meeting,
15 right?

16 A. Yes, that's right.

17 Q. Did the other people in the investors group,
18 either your members in the IMC or other investors talk to you
19 after the meeting?

20 A. They did, yes.

21 Q. What did they tell you?

22 MR. LITTLE: Objection, hearsay.

23 MR. WOLF: Join.

24 THE COURT: Sustained.

1 BY MR. CAMPBELL:

2 Q. What was your impression as to what happened at
3 that meeting?

4 MR. LITTLE: Same objection, your Honor.

5 THE COURT: He wasn't present at the meeting.

6 BY MR. CAMPBELL:

7 Q. Did you have follow-up conversations with
8 Mr. Radovan and Mr. Criswell after the December 12th meeting?

9 A. Yes, I did.

10 Q. And what were those conversations centered on?

11 A. It was like, how did the meeting go? And they
12 said it was very difficult. People were very upset to learn
13 that the project was in deep trouble.

14 Q. By this time, was the IMC group concerned about
15 his investment?

16 A. We were very concerned.

17 Q. And why was that?

18 A. Well, it was represented to us that this was an
19 amazing opportunity, that was it was an ironclad budget, that
20 the developer and manager we had in place knew what they were
21 doing and had a lot of experience, and we weren't getting
22 information. The project was grossly over budget. We found
23 out it was over \$20 million over budget, starting with a
24 \$30 million budget to begin with, so almost, you know,

1 40 percent over budget, 50 percent over budget.

2 And we were just very concerned that this was just
3 heading down a downward spiral and we were going to lose our
4 money.

5 Q. Let's backup just a little bit in the time line.
6 You know Les Busick. He was on the EC with you, right?

7 A. Yes.

8 Q. In September of 2015, did you know how much money,
9 additional money could be raised under the private placement
10 memorandum?

11 A. I did not, because it was very confusing exactly
12 how much money came into the project. Robert Radovan and
13 Bill had represented they put \$2 million in, although one of
14 the things we were asking him for is, how did you put that
15 money in? Give us some details of that.

16 And we kept getting different cap tables from him
17 that he would present to the executive committee. So we
18 just -- it was just completely disorganized. We had no idea.

19 Q. Okay. Did Mr. Radovan ever tell you that in early
20 October, late September, that Les Busick had invested another
21 million and a half dollars into the project?

22 A. I actually heard that from Les Busick. I did not
23 hear it from Robert Radovan.

24 Q. So Radovan never told you about that?

1 A. No.

2 Q. Did Mr. Radovan ever tell you that he was going to
3 sell Stuart Yount one of the CR shares?

4 A. He had mentioned that there was someone else
5 potentially coming in, but there was some kind of an IRA
6 thing that was holding it up. But I didn't know. He
7 might -- if he mentioned Stuart's name, I didn't know Stuart,
8 so I don't remember.

9 Q. Did it later come to your attention that
10 Mr. Radovan purportedly claimed that he had sold a CR share
11 to Mr. Yount?

12 A. I learned about that in January. It was kind of
13 a --

14 Q. Let's backup. Did you understand that, I think
15 your testimony was that CR had some shares under the LLC,
16 correct?

17 A. Yes. They supposedly had put in \$2 million for
18 preferred shares, yes.

19 Q. And when you found out in January, what did you
20 find out what Mr. Radovan had done with Mr. Yount?

21 A. Well, I mean, I had learned that he had
22 oversubscribed the PPM. He took money from Les Busick and
23 offered him additional perks and benefits without disclosing
24 that to the EC or the IMC. He also had taken the money from

1 Stuart Yount.

2 At that point, you know, everyone started talking,
3 what's going on here? So I had a conversation with Stuart.
4 He said, I thought I was buying into this, but, you know, now
5 they're trying to say I'm going to buy their shares and I
6 was -- we were very alarmed to hear that, because something
7 that was very important to us from the beginning was that the
8 folks running the project actually had skin in the game. And
9 now when the ship is kind of getting very rocky, putting up
10 on the rocks, the first thing they do is they payout all of
11 their developer fees and then they sell -- supposedly sell
12 one of their shares to get money out of the project, kind of
13 leaving us hanging out to dry.

14 Q. When you say they sold their developer fees, what
15 do you mean?

16 A. When Les Busick put his money in, the 1.5 million,
17 one of the things that Les demanded, he told me, is that they
18 were not to be paid --

19 MR. LITTLE: Your Honor, I'm going to object.
20 It's hearsay.

21 THE COURT: Sustained. Rephrase the question,
22 Mr. Campbell.

23 BY MR. CAMPBELL:

24 Q. What was your understanding of Mr. Busick's --

1 what was your understanding of what the developer was
2 entitled, as far as development fees?

3 A. They were to be paid \$60,000 a month up to, I
4 think, \$1.5 million, \$2 million, something like that.

5 Q. Did it come to your attention that at some point
6 in the fall of 2015, they paid themselves a large chunk of
7 those development fees?

8 A. Yeah. At the moment the project started really
9 hurting and needed money, they wrote a large check to
10 themselves.

11 MR. LITTLE: I object, your Honor, lack of
12 foundation.

13 BY MR. CAMPBELL:

14 Q. How did you -- did you see that somewhere in the
15 books or how did that come to your attention?

16 A. I specifically asked Robert. He said, yes, we
17 paid ourselves.

18 THE COURT: Overruled.

19 BY MR. CAMPBELL:

20 Q. So let's move to maybe the latter part of
21 December -- strike that. Going back to July, the discussion
22 you had with Mr. Radovan or with Mr. Criswell centered around
23 a refinance of the mezz, right?

24 A. That's correct.

1 Q. At some point, did the refinance talk more about a
2 refinance of the entire project, not just the mezzanine
3 finance?

4 A. Yeah, it was after that. I think the attempts to
5 refinance the mezzanine wasn't coming to fruition. So they
6 were looking at other options to refinance the project. And
7 at some point, I think in October, they started talking about
8 an outfit called Mosaic.

9 Q. Was this conveyed to you sometime in one of these
10 October meetings?

11 A. I was -- the meeting that I had talked about
12 before where we called Robert in, that was around the time
13 this Mosaic thing was coming to the table. The reason I
14 remember it is I was out of the country and Robert called me
15 and I was in Europe.

16 Q. What was your understanding of the nature of the
17 Mosaic loan in that October time frame?

18 A. My understanding was that it was someone that
19 potentially could refinance the entire project, maybe provide
20 additional monies based upon whatever the appraisal was of
21 the project. And Robert was basically trying to negotiate
22 some terms to see if we could get something that would be
23 attractive for the project.

24 Q. And did he give you a term sheet or give you an

1 outline of what the terms were going to be?

2 A. He said that they had provided a term sheet and
3 that it was nonbinding. And at some point, I think he sent
4 it to us in -- he sent it to us in a packet with a bunch of
5 stuff. I never actually saw it when I came over in October.
6 But, yeah, it was very difficult to get information about the
7 conversations or what's happening with Mosaic. So we kind of
8 took it as we didn't know really what the terms were.

9 Q. And were there follow-up conversations in November
10 about the Mosaic loan?

11 A. You know, the Mosaic was there, but there was so
12 much else going on at that point with all this change order
13 business and the Mosaic thing was kind of pushed off to the
14 side. And they were scrambling to get information to the
15 membership, specifically the EC, because we were demanding
16 financials and change order reports and then we were in the
17 holidays as well.

18 Q. Did Mr. Radovan ever tell you or the EC that
19 without the Mosaic loan, the project was not going to move
20 forward?

21 A. Well, we learned that, you know, I'd say in Q1 of
22 2016 that if we didn't get a refinance or more money, the
23 project was doomed.

24 Q. Let's talk a little more about the Mosaic loan.

1 Were there conversations in the EC in that November meeting
2 about either go, no go with the Mosaic loan?

3 A. We told Robert we thought it was in the best
4 interests of the project to try to see what kind of terms we
5 could get out of Mosaic. And at that point, Troy Gillespie
6 had stepped off of the EC, he was so disgusted with Robert
7 and Bill managing it. So Paul Jamieson was added on to the
8 board.

9 Paul was kind of a whiz when it comes to analyzing
10 financial matters. We were very interested to see what terms
11 we could get and how it would affect the overall, you know,
12 performance of the project. We didn't want to go from the
13 frying pan into the fire, but we needed to figure out this
14 problem, because Robert and Bill couldn't do it on their own.

15 Q. So did you get some kind of follow-up on that from
16 Mr. Radovan and Mr. Criswell that outlined those?

17 A. In November, December and January, we really could
18 not get any information about it. It was like they kind of
19 pushed Mosaic to the side. We kept asking about it.

20 Q. Okay. And did there come a time when you met with
21 Mosaic?

22 A. Yes. The entire EC, other than Robert and Bill,
23 met with Mosaic I think in the beginning of February in
24 Sacramento.

1 Q. How did that meeting come about?

2 A. That meeting came about, I was contacted by
3 Mosaic, and Mosaic called me up and said, hey, we haven't
4 heard from Robert or Bill.

5 MR. LITTLE: Your Honor, I'm going to object.
6 It's hearsay.

7 THE COURT: Sustained. Rephrase the question.
8 BY MR. CAMPBELL:

9 Q. Did Mosaic ask you for the meeting?

10 A. Mosaic asked for the meeting with the EC, yes.

11 Q. You didn't reach out to try to set up the meeting?

12 A. No.

13 Q. And then you were in the meeting with Mosaic?

14 A. I was in the meeting with Mosaic, along with Phil
15 and Les Busick and Paul Jamieson.

16 Q. So both the Busicks were there?

17 A. The entire executive committee was there.

18 Q. With the exception of Robert and Bill?

19 A. Yes.

20 Q. Let's took to an exhibit here. It's Exhibit
21 Number 124, Mr. Chaney.

22 A. Okay.

23 Q. If you look at the first string in the e-mail,
24 which is from Sterling Johnson. It's the next to last page

1 in the e-mail string.

2 A. Yes.

3 Q. Okay. This was a letter from Mosaic to
4 Mr. Criswell and Radovan?

5 A. Yes.

6 Q. Did you get a copy of that letter at some point?

7 A. I did. I've seen this or something to that effect
8 before. I think it was forwarded to me.

9 Q. If you look to the next page?

10 A. Yeah. I see I was on the string later.

11 Q. And then in the middle of the page, it appears
12 that Les Busick sent an e-mail to the other members?

13 A. I see one from Paul. What is the subject line?

14 Q. Okay. Well, it says all.

15 A. Okay.

16 Q. So you're referring to the previous page, it looks
17 like Paul Jamieson sent an e-mail and then it was to Heather
18 Hill and a bunch of people on the list?

19 A. Yes.

20 Q. And then the body of that e-mail is starting with
21 all?

22 A. Yes.

23 Q. So it was Mr. Jamieson who sent the e-mail?

24 A. Yes.

1 Q. Mr. Jamieson was at the Mosaic meeting?

2 A. Yes, he was.

3 Q. And do you see the representations in the bullet
4 points as to what transpired in the meeting?

5 A. I do.

6 Q. And would you agree with what Mr. Jamieson says as
7 to what transpired and what he put in that document?

8 A. Can I read this?

9 Q. Sure.

10 A. I would agree with that.

11 Q. You were at the meeting?

12 A. I was at the meeting.

13 Q. So when Mr. Johnson wrote the letter to
14 Mr. Radovan, he also refers to a bit of a mess right now,
15 right?

16 A. Yeah. Yes.

17 Q. And the second bullet point that Mosaic expressed
18 some concerns about the cost overruns, delay and lack of CR
19 transparency?

20 A. Yes.

21 Q. Did you or either Mr. Busick or Mr. Jamieson go
22 into the meeting to somehow torpedo the Mosaic loan?

23 A. Absolutely not. We wanted this project to
24 succeed. So we were looking for any way -- I mean, our big

1 concern with Mosaic was nothing was moving forward and that
2 we had -- we were committed to a million dollar break-up fee
3 with them, which, you know, it was concerning. So when
4 Mosaic contacted me and they said, do you know you're on the
5 hook for a million dollars?

6 MR. LITTLE: Objection, your Honor, hearsay.

7 THE COURT: Sustained.

8 BY MR. CAMPBELL:

9 Q. What was your understanding of the break-up fee?

10 A. That if we didn't move forward with the project,
11 it would be a certain percentage of the maximum loan amount.

12 Q. And how much was that break-up fee?

13 A. I remember doing the math and it was a million
14 dollars.

15 Q. And at the bottom of those bullet points, it says,
16 the ripped up term sheet waives the 1 million fee from Mosaic
17 it says it is currently owed?

18 A. Yes.

19 Q. Is that accurate that transpired in that meeting?

20 A. Yes.

21 THE COURT: Mr. Campbell, we're going to have to
22 break now. Sir, you can step down. Watch your step going
23 down. We'll pick up tomorrow morning at 9:00 with the Skype.

24 MR. CAMPBELL: Yes.

1 THE COURT: Just work with the IT people and make
2 sure that it's working. Court's in recess.

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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

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:

2 For the Plaintiff:

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

7 For the Defendant:

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

12 ANDREW WOLF, ESQ.
13 Attorney at Law
14 264 Village Blvd.
15 Incline Village, Nevada
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1 RENO, NEVADA, September 7, 2017, 9:00 a.m.

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.

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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