

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

* * * *

SHELDON FREEDMAN MD, PANKAJ
BHATANAGAR MD, MATHEW NG
MD, and DANIEL BURKHEAD MD,

Petitioners,

vs.

THE HONORABLE JOSEPH HARDY,
District Court Judge, Eighth Judicial
District Court of the State of Nevada, in
and for County of Clark,

Respondent.

MARK J. GARDBERG, ESQ., in his
capacity as Receiver for and acting on
behalf of, FLAMINGO-PECOS
SURGERY CENTER, LLC a Nevada
limited liability company,

Real Party in Interest

Supreme Court Case No.:

**District Court Case No.
A-17-750926-B**

**APPELLANTS' APPENDIX
III of IV**

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on behalf of, Flamingo-Pecos Surgery
Center, LLC*

ALPHABETICAL ORDER

Filed / Hearing Date	Document	Vol	Pages
06/12/2017	Affidavit of Service Upon Daniel Burkhead, M.D.	I	AA000011- AA000012
06/12/2017	Affidavit of Service Upon Mathew Ng, M.D.	I	AA000013- AA000014
06/12/2017	Affidavit of Service Upon Pankaj Bhatanagar, M.D.	I	AA000015- 999916
06/12/2017	Affidavit of Service Upon Sheldon Freedman, M.D.	I	AA000009- AA000010
12/06/2017	Answer to Second Amended Complaint	I	AA000834- AA000855
02/10/2017	Complaint	I	AA000001- AA000008
06/26/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Complaint	I	AA000030- AA000115
10/25/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Second Amended Complaint	IV	AA000733- AA000744
11/21/2017	Defendant Daniel Burkhead M.D.'s Reply in Support of Motion to Dismiss Second Amended Complaint	IV	AA000811- AA000820
07/20/2017	Defendant Daniel Burkhead M.D.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	II	AA000334- AA000341

06/12/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	I	AA000017-AA000029
10/23/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss Second Amended Complaint	IV	AA000659-AA000675
08/25/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Reply in Support of Motion to Dismiss	II	AA000374-AA000383
12/15/2017	Defendant Sheldon J. Freedman's Motion for Stay	IV	AA000914-AA000926
06/27/2017	Defendant Sheldon J. Freedman's Motion to Dismiss Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorney's Fees Pursuant to NRS 18.020	I	AA000116-AA000236
08/16/2017	Defendant Sheldon J. Freedman's Reply to Opposition to Motion to Dismiss Pursuant to N.R.C.P. 12(b)(6) and 12(b)(6) and Reply to Opposition for Attorney's Fees Pursuant to NRS 18.020	II	AA000354-AA000373
11/20/2017	Defendant Sheldon J. Freedman's Reply to Plaintiffs Omnibus Supplemental Opposition to Defendants Various Motions to Dismiss and Associated Joinders	IV	AA000796-AA000796

10/24/2017	Defendant Sheldon J. Freedman's Supplement to Motion to Dismiss Complaint, First Amended Complaint and Second Amended Complaint Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorneys Fees Pursuant to NRS 18.020	IV	AA000676-AA000732
12/08/2017	Errata to Answer to Second Amended Complaint	IV	AA000868-AA00893
10/26/2017	Errata to Marjorie Belsky MD's Opposition to Motion to Extend Time and Counter-Motion to Dismiss	IV	AA000761-AA00783
07/14/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Defendant Daniel Burkhead M.D.'s Motion to Dismiss Complaint	II	AA000299-AA000310
07/17/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Defendant Sheldon J. Freedman's Motion to Dismiss Pursuant to NRCP 12(b)(5) and 12(b)(6) and for Attorney's Fees Pursuant to NRS 18.020	II	AA000311-AA000333
07/13/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	II	A000237-AA000298
10/25/2017	Marjorie Belsky, M.D.'s Opposition to Motion to Extend Time and Counter-Motion to Dismiss	IV	AA000745-AA000760

12/08/2017	Notice of Entry of Order regarding Consolidated Motions to Dismiss	IV	AA000861-AA000868
10/10/2017	Notice of Entry of Order Regarding Defendants Motions to Dismiss	II	AA000388-AA000394
07/24/2017	Notice of Errata to Defendant Daniel Burkhead M.D.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	II	AA000342-AA000353
12/07/2017	Order Regarding Consolidated Motions to Dismiss	IV	AA000856-AA000860
10/10/2017	Order Regarding Defendants' Motions to Dismiss	II	AA000384-AA000387
11/21/2017	Pankaj Bhatnagar, MD and Matthew Ng, MD's Reply in Support of Their Motion to Dismiss Second Amended Complaint	IV	AA000821-AA000833
12/12/2017	Pankaj Bhatnagar, MD and Matthew Ng, MD's Answer to Second Amended Complaint	IV	AA000894-AA000913
11/07/2017	Plaintiff's Omnibus Supplemental Opposition to Defendants' Various Motions to Dismiss and Associated Joinders	IV	AA000784-AA000795
10/10/2017	Second Amended Complaint	III	AA000395-AA000658

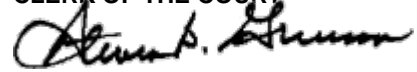
CHRONOLOGICAL ORDER

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10/10/2017	Notice of Entry of Order Regarding Defendants Motions to Dismiss	II	AA000388-AA000394
10/10/2017	Second Amended Complaint	III	AA000395-AA000658

10/23/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss Second Amended Complaint	IV	AA000659-AA000675
10/24/2017	Defendant Sheldon J. Freedman's Supplement to Motion to Dismiss Complaint, First Amended Complaint and Second Amended Complaint Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorneys Fees Pursuant to NRS 18.020	IV	AA000676-AA000732
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and acting on behalf of, Flamingo-Pecos Surgery Center LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARK J. GARDBERG, ESQ., in his capacity as Receiver for, and acting on behalf of, FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, Pankaj Bhatanagar MD, Marjorie Belsky MD, Sheldon Freedman MD, Mathew Ng MD, Daniel Burkhead MD, Manager MD, DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV SECOND AMENDED COMPLAINT (Exempt from Arbitration – exceeds \$50,000)
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COMES NOW Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting
on behalf of, Flamingo-Pecos Surgery Center, LLC (“Plaintiff”), and hereby alleges in this Second
Amended Complaint (“SAC”):

PROCEDURAL HISTORY

A. The Appointment of the Receiver by the Court in Case No. A-16-733627

1. On December 31, 2014, Flamingo-Pecos Surgery Center, LLC (“Flamingo”) filed a
petition for reorganization in the U.S. Bankruptcy Court for the District of Nevada 2014 (*In re:*
Flamingo-Pecos Surgery Center, LLC dba Surgery Center of Southern Nevada, Case No. BK-S-
18480-ABL).

2. Two months prior to filing its petition, Flamingo abandoned a leasehold consisting of an
ambulatory surgery center located in the Southwest area of Las Vegas – after accruing several

1 hundreds of thousands of dollars in unpaid rent, operating expenses, and other fees and costs, owed
2 to the landlord, Patriot-Reading Associates LLC, a Delaware limited liability company (“Patriot”).

3 3. In the bankruptcy case, the Trustee subsequently moved to dismiss, noting that Flamingo
4 filed merely to avoid being sued “and to burden the Trustee with protecting [Flamingo] assets and
5 records.” The Bankruptcy Court granted the Trustee’s motion and dismissed Flamingo’s
6 bankruptcy case on September 4, 2015.

7 4. Throughout its tenancy at Patriot’s property, and prior to, during, and after its failed
8 bankruptcy, Flamingo was under the control of certain officers, directors and managers, who are
9 now defendants in this instant action.

10 5. On March 23, 2016, Patriot sued Flamingo for breach of contract in case no. A-16-733627,
11 *Patriot-Reading Associates LLC v. Flamingo-Pecos Surgery Center LLC*. Flamingo made no
12 effort to satisfy its obligation to Patriot or to defend itself in the breach of contract action.

13 6. Flamingo, under the control of the defendants in this instant action, sold essentially all its
14 tangible assets at auction after Patriot’s complaint was filed in March of 2016 and before the Court
15 entered its Judgment (as defined in paragraph 8, *infra*) in May of 2016.

16 7. Default was entered against Flamingo on April 28, 2016.

17 8. A default judgment was entered on May 20, 2016 against Flamingo and in favor of Patriot,
18 in the amount \$706,631.17 (the “Judgment”).

19 9. Flamingo failed to appear in the breach of contract action despite service of process and
20 multiple notices.

21 10. Patriot moved for the appointment of a receiver over Flamingo to, among other things: (i)
22 secure its assets, including impending restitution from a related criminal matter; (ii) pursue such
23 other and further claims as may be warranted based on the embezzlement or any other improper
24 distribution or taking of Defendant’s assets; and (iii) pay Flamingo’s lawful debts, including the
25 Judgment owed to Patriot.

26 11. The Court granted Patriot’s Petition for the Appointment of Receiver following a hearing
27 held on August 10, 2016, and issued an Order Granting Patriot-Reading Associates LLC’s Petition
28

1 for the Appointment of Receiver (the “Receivership Order”), which was entered on or about
2 September 13, 2016. Timothy R. Mulliner was appointed as the receiver (the “Receiver” or “Initial
3 Receiver”).¹

4 12. Flamingo and the defendants to this instant action failed to appear, and failed to oppose
5 Patriot’s petition, move for reconsideration of Patriot’s petition, or appeal the Receivership Order.

6 13. The Receivership Order found, among other facts and legal conclusions, that: (i) Flamingo
7 “made no attempt to preserve its assets, pursue such claims and causes of action as may be
8 warranted, or pay any of its lawful debts, including the Judgment”; (ii) there was a material risk
9 that the value of Flamingo’s assets would be dissipated and/or lose further value; and (iii) pursuant
10 to NRS 32.010, appointment of a receiver was necessary to carry into effect and aid the execution
11 of the Judgment previously entered in favor of Patriot and against Flamingo.

12 14. The Receivership Order held that the Receiver *shall*:

13 (1) Take immediate possession of the Receivership Property (including, without
14 limitation, any accounts held in Flamingo’s name), to hold and manage the
15 Receivership Property to preserve it from loss, removal, material injury,
16 destruction, substantial waste, and loss of income;

17 (2) Determine, subject to the terms of this Order, which if any of Flamingo’s
18 accounts payable should be paid, in full or in part, so that there might be an orderly
19 liquidation of the Receivership Property and payment of claims of and debts against
20 Flamingo, including the Judgment;

21 (3) *Pursue Flamingo’s claims and causes of actions against third parties,*
22 *including but not limited to Flamingo’s directors and officers;* and

23 (4) Pursue Flamingo’s claims against personal property seized as part of criminal
24 forfeiture proceedings against Flamingo’s former employee/office manager Robert
25 W. Barnes. For the avoidance of doubt, the Receiver shall not be obligated to bring
26 any such claims or actions as contemplated by this Section A and/or the other
27 Sections of this Order, and the Receiver in his discretion may determine the extent
28 to which, if at all, any such claims or actions may be beneficial to the effectuation
of the terms of this Order.

Section A of the Receivership Order, pp. 2-3 of 14, ll. 20-26:2-11 (Emphasis
added).

¹ Where the reference is the position of “Receiver”, as appointed, empowered and
authorized by the Receivership Order, Mr. Mulliner is cited as the “Receiver”; where the reference
is to Mr. Mulliner’s specific tenure as the “Receiver”, he is cited as the “Initial Receiver”.

1 15. The Receiver is also “authorized and empowered” by the Receivership Order to, among
2 other things:

3 (5) Take any and all steps the Receiver deems necessary to receive and collect any
4 of Flamingo’s accounts, and, in connection therewith, issue demands and institute,
5 continue, or otherwise resolve all proper legal actions on behalf of and to preserve
the Receivership Property and the Receivership Estate;

6 [. . .]

7 (7) Bring and prosecute all proper actions for the collection of debts owed to
8 Flamingo, and for the protection and recovery of the Receivership Property.

9 Sections B(5) and B(7) of the Receivership Order, p. 4 of 13, ll. 7-10:15-16.

10 16. Among other actions, the Initial Receiver filed a complaint against the criminal office
11 manager for Flamingo, Robert J. Barnes (“Barnes”) on or about May 2, 2017, in case no. A-17-
12 754867.

13 17. The Initial Receiver also filed the initial complaint in this matter against defendants on or
14 about February 12, 2017.

15 18. Mark J. Gardberg (the “Receiver”) replaced the Initial Receiver pursuant to the Honorable
16 Nancy Allf’s order entered on or about July 21, 2017 in A-16-733627-B, which amended the
17 Receivership Order.

18 **B. The Proceedings in this Instant Action**

19 19. No answer has been filed in this matter; instead, three motions to dismiss were filed: Dr.
20 Matthew Ng and Dr. Pankaj Bhatnagar’s Motion to Dismiss, Defendant Daniel Burkhead’s Motion
21 to Dismiss Complaint, and Defendant Sheldon J. Freedman’s Motion to Dismiss Pursuant to NRC
22 12(b)(5) and 12(b)(6) and for Attorneys’ Fees Pursuant to NRS 18.020 (collectively, the “Motions
23 to Dismiss”).

24 20. The Receiver caused the First Amended Complaint to be filed on September 18, 2017. The
25 First Amended Complaint replaced in its entirety the original February 2017 complaint.

26 21. This SAC replaces in its entirety the First Amended Complaint.

22. On September 26, 2017, the Court held a hearing on the Motions to Dismiss, and found good cause to order supplemental briefing. The various defendants' supplemental motions to dismiss are due on October 24, 2017; Plaintiff's opposition is due on November 7, 2017; and the replies in support of the supplemental motions to dismiss are due on November 21, 2017.

23. A hearing based on the supplemental briefing is calendared for November 29, 2017.

THE PARTIES

24. Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting on behalf of, Flamingo-Pecos Surgery Center, LLC, a Nevada limited liability company, is a Nevada resident located and conducting business in Clark County, Nevada. Flamingo was organized and founded on or about January 9, 2002, subsequently merged with Hualapai Surgery Center LLC on or about October 12, 2011, and conducted business in Clark County, Nevada.

25. Defendant William Smith MD ("Defendant Smith") is an individual who resides and/or does business in Clark County, Nevada. At all times described herein, Defendant Smith was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

26. Defendant Pankaj Bhatnagar MD ("Defendant Bhatnagar") is an individual who resides and/or does business in Clark County, Nevada. At all times described herein, Defendant Bhatnagar was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

27. Defendant Marjorie Belsky MD ("Defendant Belsky") is an individual who resides and/or does business in Clark County, Nevada. At all times described herein, Defendant Belsky was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

28. Defendant Sheldon Freedman MD ("Defendant Freedman") is an individual who resides and/or does business in Clark County, Nevada. At all times described herein, Defendant Freedman was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

29. Defendant Mathew Ng MD ("Defendant Ng") is an individual who resides and/or does business in Clark County, Nevada. At all times described herein, Defendant Ng was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

1 30. Defendant Daniel Burkhead MD (“Defendant Burkhead”) is an individual who resides
2 and/or does business in Clark County, Nevada. At all times described herein, Defendant Burkhead
3 was a manager, director and/or officer of Flamingo and owed certain duties to Flamingo.

4 31. Defendants Smith, Bhatanagar, Belsky, Freedman, Ng, Burkhead, Manager MD, Doe
5 Defendants, and Roe Business Entities 1 through 100 are referenced individually and collectively
6 as the “Defendants.”

7 32. A certain Defendant Manager MD (“Defendant Manager MD”) is an individual who
8 resides and does business in Clark County, Nevada. At all times described herein, Defendant
9 Manager MD was a manager, director and/or officer of Flamingo and owed certain duties to
10 Flamingo; Defendant Manager MD is currently in bankruptcy and shall be named as a defendant
11 to this action once Defendant Manager MD’s bankruptcy is no longer pending.

12 33. Certain doe defendant managers, directors and officers (the “Doe D&O Defendants”) are
13 individuals who reside and do business in Clark County, Nevada. The true names of the Doe D&O
14 Defendants 1 through 25 are presently unknown to Plaintiff, who therefore sues said defendants
15 by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the
16 Doe D&O Defendants are legally responsible for the events referred to herein. This SAC will be
17 amended to include them when their true names and capacities become known.

18 34. The true names and capacities of defendants Roe Business Entities 1 through 100 are
19 presently unknown to Plaintiff, who therefore sues said defendants by such fictitious names.
20 Plaintiff is informed and believes, and therefore alleges, that each of the defendants designated as
21 Roe Business Entities 1 through 100 are legally responsible for the events referred to herein. This
22 SAC will be amended to include them when their true names and capacities become known.

23 **JURISDICTION & VENUE**

24 35. This Court has jurisdiction because the amount in controversy exceeds \$50,000, and
25 because the parties are residents of and/or conduct business in Clark County, Nevada.

26 36. Venue in Clark County is proper because the defendants are residents of and/or conduct
27 business in Clark County, and because the acts described herein occurred there.

SUMMARY OF ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

37. The Receiver, an individual, pursues Defendants on behalf of Flamingo because Defendants individually and collectively damaged Flamingo through a series of actions and inactions occurring over the course of several years. As such, this action was effectuated to preserve, protect, and recover Flamingo's assets and property from a group of individuals who irreparably harmed Flamingo: *i.e.*, Defendants – Flamingo's own directors, officers, and managers charged with running, overseeing and growing its business.

38. The Receiver is authorized, empowered, and specifically tasked with prosecuting this suit (*e.g.*, *see* Section B(7) of the Receivership Order, p. 4 of 13, ll. 15-17: "Bring and prosecute all proper actions for the collection of debts owed to Flamingo, and for the protection and recovery of the Receivership Property." As defined therein, Receivership Property includes: "Flamingo and its assets, including all accounts, books, records, ***contract rights, restitution rights, claims and causes*** of action, and such other further assets to which Flamingo might be entitled"; Receivership Order, p. 2 of 13, ll. 12-15 (emphasis added)).

39. As alleged in further and specific detail within this SAC, the injury to Flamingo and the damages sought from Defendants by this SAC are not *per se* the damages, actions and injury caused by the criminal office manager Barnes; rather, the injury to Flamingo and the damages sought from Defendants stem from Defendants' breaches of their fiduciary duties, breaches of the entity's operating agreement, and gross negligence, willful misconduct, and reckless/intentional disregard, in allowing and enabling Barnes to steal from Flamingo over a span of several years and to such an extent that Flamingo was rendered insolvent and went out of business.

40. The injury to Flamingo and the damages sought arise from Defendants' own misconduct and breaches—Defendants' own failures in hiring and supervising Barnes, Defendants' own failures to audit, review, or even check Flamingo's finances and accounts, Defendants' own failures to pursue or recover embezzled amounts, Defendants' own failures to pursue, preserve and collect Flamingo's receivables, and Defendants' own failures to assert Flamingo's interests and right to restitution when Barnes' criminal matter was adjudicated.

1 41. Defendants failed to exercise business judgment during Flamingo's demise and, moreover,
2 Defendants intentionally acted and failed to act in direct breach of their duties of loyalty and duties
3 of care to Flamingo and (when dissolution was inevitable) its creditors.

4 42. Indeed, Defendants perceived the deteriorating health of Flamingo, observed its deepening
5 insolvency and failures to pay creditors, and were cognizant of Flamingo's mounting debt and
6 financial troubles. Rather than adhering to their obligations to Flamingo, which would have
7 involved efforts to satisfy Flamingo's creditors, and because Defendants perceived no personal
8 benefit from meeting such obligations, they ignored those obligations, did nothing, committed
9 waste, and did not care, as Flamingo slid from a profitable enterprise employing 90 people and
10 treating scores of Nevada residents, to a gutted, insolvent shell that shuttered all three of its
11 locations.

12 43. Defendants' actions and inactions were not the product of careful evaluation, or reasonable
13 decisions, or even the thinnest guise of business judgment; instead, they were the product of glaring
14 omissions and ignorance, gross negligence, willful misconduct, and reckless/intentional disregard,
15 and staggering breaches of their fiduciary duties of care and of loyalty.

16 44. Defendants were part of 27 practicing surgeons constituting insiders of Flamingo – a small
17 limited liability company which was robbed over several years by an unsupervised, do-it-all office
18 manager Barnes. The office manager stole millions from Flamingo over several years and yet
19 Defendants were, apparently, too "busy" to notice.

20 45. Individually and collectively, Defendants, with gross negligence, willful misconduct, and
21 reckless/intentional disregard, and in breach of their respective fiduciary duties to Flamingo:

- 22 a. hired an embezzler, Barnes, into an unsupervised position with the power to destroy
23 Flamingo and shut down all of Flamingo's business at three locations;
- 24 b. chose not to put a system in place to monitor said embezzler, enabling him to engage
25 in criminal conduct with complete impunity for "at least three to five years";
- 26 c. failed to monitor and supervise that embezzler, who left obvious and brazen warning
27 signs (including, for example, middle-of-the-night withdrawals of \$25,000 and \$30,000
28 from Flamingo's corporate card to feed a gambling problem, forging documents, and
tying Flamingo to "economically unfeasible agreements"); and

- d. failed to terminate, seek recourse from, or pursue that embezzler or ***complicit banking institutions***, even after learning he stole millions from Flamingo while Defendants – who owed duties to Flamingo – ***did nothing***.

46. Not only did Defendants fail to supervise Barnes or timely uncover his multi-layered looting, Defendants failed to immediately fire Barnes upon discovery – instead, they ***allowed the criminal to remain in his position for up to a year after discovery***.

47. Defendants took none of the steps one would reasonably take after discovering a criminal enterprise threatening one's own business. Defendants failed to:

- a. ***block*** Barnes from Flamingo's finances, or even supervise him; Barnes maintained his unsupervised access to and dominance over Flamingo's financial accounts, receivables, physical files, and even computer systems; Barnes "sabotaged" Flamingo's computer systems when he eventually left, and absconded with Flamingo's computer system, emptied his office, and took all the files;
- b. conduct an audit or investigation into the extent of Barnes' criminal acts and Flamingo's damages, despite Barnes being the "poison pill" that destroyed Flamingo's business – ***years*** later, Defendants still had no clue how much Barnes stole;
- c. pursue a civil action against Barnes;
- d. attempt to recover Flamingo's funds and assets; or
- e. move with haste or urgency – indeed, it took Defendants six (6) months ***after Barnes absconded*** to approach the FBI.

48. Moreover, Defendants intentionally prevented others from satisfying their fiduciary duties to Flamingo: directors screamed at managing member Tadlock to leave Barnes alone when he attempted to get Barnes to attend meetings and discuss Barnes' embezzlement; hindered Tadlock's efforts to investigate Barnes; ignored the fact that Barnes did not show up to meetings; and engaged in extensive and widespread obstruction.

49. The federal government sought for Barnes, and Barnes was given, a prison sentence based on, among other things, Barnes' embezzlement and theft from Flamingo.

50. Defendants separately failed to protect, preserve or pursue millions of dollars in Flamingo's receivables. These receivables continued to wither away to nothing – a textbook example of waste.

51. This waste – of millions of dollars owed to Flamingo – is made even worse by the fact that Defendants were put on notice and knew they should have pursued the receivables.

1 52. Indeed, Defendant Smith was questioned by incredulous counsel during a Rule 341
2 meeting in February of 2015 as to why Defendants were not taking basic steps to collect on the
3 receivables, at no cost (by, for example, hiring a collections' agency that worked for a percentage
4 recovered). Defendants did nothing to save, preserve and protect Flamingo's assets, even after
5 such notice. Flamingo's millions in receivables withered to nothing.

6 53. That Rule 341 meeting was triggered by Defendants' ill-fated shove of Flamingo into a
7 bankruptcy that was eventually dismissed. Of course, prior to the bankruptcy filing, Defendants
8 had allowed Flamingo to be destroyed and rendered an insolvent shell by Barnes' criminality over
9 several years, and by Defendants' own acts and failures to act.

10 54. Separately, when Barnes' federal criminal proceeding came to the forfeiture and restitution
11 stage, Defendants failed to submit any claims on behalf of Flamingo, the actual victim of Barnes'
12 criminal acts, despite knowing of Flamingo's insolvency and rights to the funds, and that its
13 creditors remained unpaid.

14 55. Accordingly, Flamingo is not listed as a recipient of assets forfeited by its larcenous former
15 office manager – funds that it alone is entitled to.

16 56. *Even worse*, the Restitution List evidences Defendants' *naked self-interest*:

17 Dr. Daniel Burkhead/Burkhead Irrevocable Trust was awarded \$39,587.89
18 Defendant Bhatnagar/Bhatnagar Family Trust was awarded \$81,187.89
19 Defendant Ng was awarded \$31,787.89
20 Dr. William Smith was awarded \$126,687.89
21 Dr. Sheldon Freedman was awarded \$61,287.89

22 57. As such, Defendants not only ignored and grossly failed to protect Flamingo's interests,
23 Defendants intentionally usurped those interests in favor of their own, by allowing the substitution
24 of their own personal self-interest over Flamingo's.

25 58. Defendants were personally enriched by their disregard of their affirmative duties to
26 Flamingo.

27 59. As such, Defendants were grossly negligent, and acted with willful misconduct and
28 reckless/intentional disregard, and separately breached the fiduciary duties (including the duty of

care and duty of loyalty) Defendants each owed to Flamingo as managers, directors, and/or officers:

- a. before, during and after Barnes' criminal activity, in allowing Flamingo to be looted by Barnes' criminal operation over several years and doing nothing to protect Flamingo's interests upon discovery of Barnes' criminality;
- b. by failing to pursue or preserve millions in receivables – for work Flamingo had already completed and was entitled to – and failing to stop their utter waste; and
- c. by failing to protect and pursue, or even register, Flamingo's interests in Barnes' restitution action – resulting in the rightful victim (Flamingo) receiving no award, and Defendants receiving personal, ill-gotten awards.

60. Defendants also violated, *inter alia*, the Nevada law against distributions of LLC funds where the LLC is insolvent (NRS 86.343), and several other provisions of Chapter 86 enacted to protect an LLC's creditors.

61. Moreover, Defendants' improper distributions constituted fraudulent transfers of corporate assets under Chapter 112.

62. Defendants are also liable for constructive fraud under Nevada law.

63. Separately, Defendants breached the Operating Agreement with Flamingo, to Flamingo's detriment, and must face the consequences of, and cannot be indemnified for, such Defendants' gross negligence and willful misconduct.

64. Defendants were also unjustly enriched by Defendants' actions and failures to act.

65. The quantity and quality of the evidence meets the standards for each of Plaintiff's causes of action – including those requiring heightened pleading standards. Indeed, this SAC is supported by critical directors and/or managing members' party admissions – under oath – in multiple Rule 341 meetings and Rule 2004 Examinations, and by an amended judgement issued by the U.S. District Court for the District of Nevada.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: BARNES' HIRING AND THE UNSUPERVISED YEARS OF CRIME – DESPITE OBVIOUS WARNING SIGNS

66. Defendants hired Barnes on or about October 5, 2006 to be Flamingo's office manager.

67. Managing member Charles H. Tadlock testified under oath that Barnes' hiring was a majority decision by the surgeons. See attached hereto as **Exhibit 1** a relevant portion of the

1 January 19, 2016 Charles H. Tadlock Rule 2004 Examination Transcript in *In re Charles H.*
2 *Tadlock and Mary E. Tadlock*, 15-13135-abl, at p. 19, ll. 11-17; p. 24, ll. 6-8.

3 68. Tadlock testified under oath that the “entire group” talked to Barnes about coming to work
4 for them, and everyone had an equal say. *Id.* at p. 24, ll. 3-5.

5 69. Barnes’ functions and responsibilities as Flamingo’s office manager extended to
6 Flamingo’s full financial workings, accounts and books.

7 70. Defendants failed to conduct the necessary due diligence regarding Barnes and, with gross
8 negligence, willful misconduct and reckless/intentional disregard, and in breach of their fiduciary
9 duties to Flamingo, hired Barnes and placed a criminal in a position to easily steal from Flamingo.

10 71. Defendants hired Barnes into a position where his submissions, correspondence and
11 communications with, and representations to Flamingo’s (a) vendors and creditors, including
12 Flamingo’s landlords; (b) accountant(s), financial officers, and/or the board of directors; (c)
13 patients, Medicare and Medicaid entities, and insurance companies, on invoices, accounts
14 receivable, and reimbursements; and (d) lenders and financial institutions holding Flamingo’s
15 accounts, would be unreviewed, unsupervised, unmonitored, unaudited, and/or unreconciled.

16 72. Defendants hired Barnes into a position where Flamingo’s accounts and funds would not
17 be reviewed, supervised, monitored, audited, reconciled or safeguarded in any reasonable manner.

18 73. Defendants conducted no spot checks or audits of Barnes’ work and performance following
19 Barnes’ hiring.

20 74. Defendants implemented no probationary, or trainee, period when Barnes was hired.

21 75. Defendants failed to appropriately train Barnes or review his work or performance
22 following Barnes’ hiring.

23 76. Defendants failed to establish a procedure to review, supervise, monitor, audit, and/or
24 reconcile Barnes’ performance as Flamingo’s office manager.

25 77. Defendants failed to appropriately review, supervise, monitor, audit, and/or reconcile
26 Barnes’ performance as Flamingo’s office manager – even when things were clearly amiss.

1 78. Each of the following dozens of paragraphs, independently and collectively, evidence
2 Defendants' gross negligence and reckless disregard and willful/intentional misconduct, and
3 breaches of Defendants' duties of loyalty and duties of care to Flamingo.

4 79. Barnes would withdraw cash from Flamingo's corporate credit card(s) – in the middle of
5 the night – in amounts of \$25,000 and \$30,000 at a time. *See* attached hereto as **Exhibit 2** a
6 relevant portion of the February 5, 2015 Rule 341 Examination Transcript, Dr. William Smith and
7 Counsel testifying for debtor in *In re Flamingo-Pecos Surgery Center dba Surgery Center of*
8 *Southern Nevada*, 14-18480-ABL, at p. 7, ll. 13-21.

9 80. Barnes later admitted that he obtained approximately \$515,000 in casino cash advances
10 using Flamingo's credit cards, for personal gambling. *See* attached hereto as **Exhibit 3** the Plea
11 Agreement Under Fed. R. Crim. P. 11(c)(1)(A) and (B) in *U.S. v. Robert W. Barnes*, 2:16-cr-
12 00090-APG-GWF, Document 6, at pp. 5-6, ll. 15-23, 1-3.

13 81. Barnes admitted that he used Flamingo's credit card to purchase a diamond and platinum
14 ring for \$38,000 in February 2013. *Id.*

15 82. Barnes admitted that during one five-month period in 2013, he used Flamingo's credit card
16 for concert tickets, hotels and expenses at Disneyland, expensive meals, and other personal
17 entertainment. *Id.*

18 83. Barnes admitted to embezzling funds from related entities, including Epiphany Surgical
19 Solutions and VIP Surgical Centers. *Id.* at p. 6, ll. 3-8.

20 84. Defendants did not act to prevent these blatantly illegal and inappropriate charges on
21 Flamingo's corporate cards for several years.

22 85. Barnes forged documents.

23 86. Barnes illegally and without authorization entered Flamingo into promissory notes and
24 lines of credit totaling \$1.7 million dollars – and absconded with the funds for personal use, while
25 Flamingo was eventually sued by J.P. Morgan Chase in Case No. A-14-700424, JP Morgan Chase
26 Bank NA vs. Flamingo-Pecos Surgery Center LLC, Eighth Judicial District Court, Dept. 24
27 (currently closed). *See* attached hereto as **Exhibit 4** the January 8, 2015 Omnibus Declaration of
28

1 William Smith, M.D. in Support of Debtor’s Interim Emergency Motions and Related Relief, Dkt.
2 13 in *In re Flamingo-Pecos Surgery Center dba Surgery Center of Southern Nevada*, 14-18480-
3 ABL, at pp. 3-4, ¶ 12.

4 87. Barnes issued false reports. Exhibit 1 at pp. 53-54, ll. 23-25, 1-2. Indeed, actual reports
5 directly from Flamingo’s banks were different from the reports Barnes showed to Defendants and
6 Flamingo’s other officers, directors and members. *Id.* at p. 30, ll. 3-5.

7 88. Barnes wrote checks to draw funds from accounts on which he had no authority and was
8 not named. *Id.* at p. 64, ll. 4-13. Defendants either did not review the checks drawing down
9 Flamingo’s funds or did not bother to inform themselves about why they were being issued.

10 89. Barnes brought suspicion on others to cover his tracks – for example, asserting to other
11 directors, officers and managers, that managing member Tadlock was getting more than his fair-
12 share. Barnes did this while Tadlock was out of pocket with multiple surgeries and was unaware
13 of Barnes’ slander. Defendants, however, did nothing to investigate Barnes’ charges and to inform
14 themselves of the true state of Flamingos’ financial woes. *Id.* at p. 32, ll. 8-23.

15 90. Defendants were aware of Barnes failing to pay Flamingo’s creditors – including landlords
16 – large sums of money, for multiple years. Such creditors were eventually owed hundreds of
17 thousands of dollars, while Barnes lied to the creditors about checks being in the mail, failed to
18 communicate and respond to urgent correspondence, and generally gave Flamingo’s creditors the
19 run around for several years. Yet Defendants did nothing.

20 91. Barnes was “not forthcoming” with the [financial] reports for ***18 months to two years***.
21 Exhibit 1 at p. 27, ll. 17-20. Defendants did nothing.

22 92. Barnes cancelled board of directors’ meetings repeatedly. *See* attached hereto as **Exhibit**
23 **5** a relevant portion of the July 15, 2015 Rule 341 Examination Transcript, Dr. William Smith
24 testifying for debtor in *In re Flamingo-Pecos Surgery Center dba Surgery Center of Southern*
25 *Nevada*, 14-18480-ABL, at p. 4, ll. 5-12. Again, Defendants did nothing.

26 93. In addition to the immediate and massive midnight heists from Flamingo’s corporate card,
27 Barnes tied Flamingo to “economically unfeasible agreements” – criminal enterprises at every
28

level, including with dirty sheets. Exhibit 2 at p. 6, ll. 3-5. Barnes profited from the cleaning of Flamingo's dirty sheets. The scheme in sum: Flamingo got charged 3X or 4X the Las Vegas rate to have the surgery center's sheets washed in Utah, and Barnes got a kickback.

94. Barnes' dirty sheets arrangement wasn't his only scheme related to Flamingo's vendors. "There are lots of examples." *Id.* at p. 6, ll. 12-13.

95. Barnes reached similar illicit kick-back arrangements with various creditors of Flamingo, stealing for himself discounts and rebates that should have inured to the benefit of Flamingo. *Id.* at p. 6, l. 7. Defendants either failed to notice or failed to act, as they did nothing for several years.

96. Barnes hired multiple accounting firms during his tenure – as soon as the accountants started having questions, he would **replace** the firm and tell Defendants – "oh, they're not doing a good job. We needed to go to the next one." Barnes did this with at least three firms. *Id.* at p. 9, ll. 15-21. Defendants continued to do nothing despite such blatant warning signs.

97. Defendant Smith testified under oath that Barnes' crime spree lasted for at least three to five years (*Id.* at p. 9, ll. 13-14) – meaning that Defendants failed to check Flamingo's bank and credit card accounts and statements, bills, invoices, receivables and accounting and tax documents, for several years – an eternity, especially in the small business world, and among the small group of shareholders.

98. Barnes admitted in subsequent criminal proceedings that he embezzled at least **\$1.3 million** over many years. Defendant Smith testified to "millions" in stolen funds. Exhibit 2 at p. 9, l. 10. Managing member Tadlock estimated **\$3.5 million**. See attached hereto as **Exhibit 6** a relevant portion of the March 14, 2016 Charles H. Tadlock Rule 2004 Examination Transcript in *In re Charles H. Tadlock and Mary E. Tadlock*, 15-13135-abl, at p. 103, ll. 12-20. Separately, Barnes stole approximately \$300,000 to \$350,000 from Epiphany, the management company for Flamingo and owned in majority part by Flamingo's managing member Tadlock.

99. During the many years of Barnes' crime spree, Defendants failed to supervise or monitor Barnes' submissions, correspondence and communications with, and representations to Flamingo's (a) vendors and creditors, including Flamingo's landlords; (b) accountant(s), financial

1 officers, and/or the board of directors; (c) patients, Medicare and Medicaid entities, and insurance
2 companies, on invoices, accounts receivable, and reimbursements; and (d) lenders and financial
3 institutions holding Flamingo's accounts.

4 100. Defendants did not audit or reconcile Barnes' work, despite his position and power to
5 destroy Flamingo's entire business. In fact, Barnes' theft and Defendants' actions and inactions
6 directly led to Flamingo's downfall and ill-fated bankruptcy; at Flamingo's Rule 341 Meeting,
7 Barnes was labeled the "poison pill", and the impact of his crime on Flamingo's business was
8 readily and unambiguously admitted. "So the surgery center was always profitable if there wasn't
9 somebody who was stealing millions of dollars." Exhibit 2 at p. 16, ll. 21-23. Despite his central
10 role, Defendants did nothing.

11 101. Defendants did not conduct any performance reviews or rate or examine Barnes' work and
12 conduct in his critical business functions.

13 102. Defendants did not audit or even review, with even the slightest care or effort, Flamingo's
14 financial reports during the several years of Barnes' crime spree to determine why so much money
15 was missing. And why no one – including Defendants and Flamingo's creditors – was getting
16 paid from a busy surgery center.

17 103. Defendants did not check on Flamingo's funds, or even review Flamingo's accounts and
18 statements, or Flamingo's contracts with vendors, creditors and lenders, with even the slightest
19 care or effort – as Barnes robbed Flamingo blind via concurrent, brazen schemes.

20 104. Barnes' conduct, and Defendants' acts and failures to act to prevent and/or end such
21 conduct, crippled Flamingo – forcing the layoffs of 90 employees, leaving just five (5) persons
22 still employed. Exhibit 4 at p. 4, ¶ 13.

23 105. Despite the warning signs, and despite Barnes' failure to perform basic functions for well
24 over a year (including but not limited to issuing financial reports), Defendants did not investigate,
25 audit, examine or perhaps even bother about such failures.

1 106. In response to questions from the U.S. Trustee at Flamingo's ill-fated bankruptcy, Dr.
2 Smith's only defense was: "most of the surgeons here are extremely busy, and we trusted him to
3 do the day-to-day management." Exhibit 2 at p. 10, ll. 12-14.

4 107. Indeed, Defendants allowed Barnes to remain on the board "until he was fired." Exhibit 5
5 at pp. 3-4:24-25, 1-4.

6 108. Barnes employed schemes, misrepresentations and outright lies to hide Flamingo's true
7 financial condition and Defendants failed to detect any of them. Defendants exercised zero
8 diligence and zero urgency and failed to engage in efforts to save Flamingo—their own business.
9 In fact, Defendants did the opposite, as "two-thirds of the doctors gave up." Exhibit 2 at p. 7, ll.
10 13-21.

11 109. Individually and collectively, Defendants were grossly negligent and acted with reckless
12 disregard and willful/intentional misconduct, and breached their fiduciary duties of loyalty and
13 duties of care to Flamingo, in hiring and failing to supervise, oversee and/or monitor Barnes for
14 many years during Barnes' crime spree.

15 110. Defendants' actions and failures to act allowed and encouraged a criminal to effectuate and
16 conduct his embezzlement and theft from Flamingo and resulted in substantial damages to and
17 against Flamingo.

18 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: BARNES' NON-**
19 **TERMINATION AND LINGERING RETENTION – AND DEFENDANTS'**
20 **INACTIVITY AND INTENTIONAL MISCONDUCT – FOLLOWING DISCOVERY OF**
21 **BARNES' CRIMINALITY**

22 111. Upon the discovery of Barnes' embezzlement and theft, Defendants took none of the steps
23 one would expect to be taken in an existential emergency (one that caused all three of Flamingo's
24 locations to shut down based on Barnes' actions).

25 112. Defendants are wildly inconsistent as to basic facts about Barnes' crime spree. Dr. William
26 Smith under oath at a Rule 341 Meeting agreed with a puzzling and worrisome sequence of events:
27 Barnes' embezzlement was discovered in 2012, but he was not fired until 2013. Exhibit 5, at p. 5,
28 ll. 3-7. Separately, in a sworn declaration, Dr. Smith asserted that reports were received in June

1 or July of 2013 from Flamingo's landlords and vendors that debts were going unpaid, and this led
2 to the board confronting Barnes, who "immediately resigned." Exhibit 4, at p. 3, ¶ 9. In fact,
3 Flamingo's landlord raised unpaid rent issues well before June 2013—in 2011 itself, and
4 repeatedly throughout 2012—as evidenced by multiple written agreements.

5 113. Flamingo negotiated a certain Delinquent Rent Letter Agreement with said landlord
6 beginning in 2011, and managing member Tadlock executed this agreement on January 3, 2012.

7 114. Flamingo subsequently received a demand letter from said landlord on July 6, 2012, and
8 on July 24, 2012, managing member Tadlock guarantied Flamingo's performance via executing a
9 certain Amended Delinquent Rent Letter Agreement.

10 115. Tadlock, on behalf of Flamingo, also received an email on December 31, 2012 detailing
11 substantial past due rents and attaching a rent invoice.

12 116. Managing member Tadlock describes the discovery of Barnes's embezzlement completely
13 differently – his office manager Tammy Schaefer discovered theft from an Epiphany account at
14 Bank of America in 2013 or 2014. Exhibit 1, pp. 43-44, ll. 12-25, 1-6. Tadlock believes Barnes
15 simply left, and "disappeared." *Id.*, at p. 46, ll. 12-13. Barnes "took off" on a Saturday with "all
16 of the computers and all of the written stuff for Epiphany and [Flamingo]." *Id.*, at p. 49, ll. 11-18.

17 117. Defendants – Flamingo's officers, managers and directors who owed obligations and duties
18 to Flamingo – are completely inconsistent about the central events and central character (the
19 "poison pill") who destroyed their business and stole millions of dollars.

20 118. What is undisputed – is that Defendants were willfully blind to Barnes' criminality for
21 several years, and that Defendants failed upon discovery to immediately stop Barnes and protect
22 Flamingo.

23 119. Barnes admits to conducting his outrageous heists from 2010 to 2013 – meaning
24 Defendants completely failed and slept on their basic obligations for many years. This constitutes
25 grossly, willfully and intentionally negligent conduct and, separately, a breach of Defendants'
26 fiduciary duties to Flamingo, of care and of loyalty.

1 120. Upon discovering Barnes' embezzlement and theft, Defendants individually and
2 collectively failed – for an unreasonably lengthy period of time – to remove Barnes from his
3 position as office manager, and to block Barnes' access to Flamingo's funds and assets, thereby:
4 (a) allowing Barnes to continue his crime spree; (b) failing to limit Flamingo's potential losses;
5 and (c) exacerbating Flamingo's actual losses.

6 121. Upon discovering Barnes' embezzlement and theft, Defendants individually and
7 collectively failed to: (a) demand that Barnes return Flamingo's funds and assets; (b) pursue
8 Barnes; and (c) file a civil complaint against Barnes, with such failures resulting in substantial
9 damages against Flamingo.

10 122. Upon discovering Barnes' embezzlement and theft, Defendants individually and
11 collectively failed to appropriately audit, investigate, and determine the extent of Barnes' crimes,
12 resulting in substantial damages against Flamingo.

13 123. Defendants failed to address Barnes' continued control of Flamingo's finances for several
14 months.

15 124. Defendants failed to implement and/or enforce IT protections and record retention
16 policies after they discovered Barnes' crimes.

17 125. Defendants failed to investigate Barnes' finances. Exhibit 1, pp. 74-75, ll. 24-25, 1-7.

18 126. Defendants failed to hire accountants to conduct an internal investigation into Flamingo's
19 losses.

20 127. Defendants failed to pursue Barnes to retrieve Flamingo's funds and other entities' funds.

21 128. After discovering Barnes' embezzlement and theft and until Barnes left, Defendants
22 allowed Barnes to further harm Flamingo. Dr. Smith testified that Barnes either destroyed or took
23 a lot of documents, including those related to board meetings. Exhibit 5, at p. 4, ll. 15-19.
24 Managing member Tadlock confirms that "Barnes walked off with almost everything, the
25 computers . . . [a]ll the financial records for Epiphany and for [Flamingo]." Exhibit 6, at p. 50, ll.
26 17-21.

1 129. Speaking in July of 2015, Dr. Smith admitted that Barnes “sabotaged a couple of computers
2 that had some information on [sic], so we have a hard time getting some of that down.” Exhibit 5,
3 at p. 4, ll. 19-22. Barnes inflicted upon Flamingo extensive and long-lasting damage on his way
4 out of the company, and the harm he caused was exacerbated by Defendants’ failures to protect
5 Flamingo.

6 130. Defendants individually and collectively failed to protect and preserve Flamingo’s assets,
7 funding and interests from Barnes’s criminality, and failed to take basic steps to protect and
8 preserve Flamingo after Barnes left the company.

9 131. After Barnes left Flamingo, and for the *six months* that followed, Defendants did not hire
10 anyone to investigate Barnes’ misconduct, leaving Flamingo in the dark as to the full extent of the
11 damage. *Id.*, at p. 6, ll. 9-15.

12 132. Indeed, it took Defendants six (6) months *after Barnes absconded* to take even such basic
13 steps as reporting his crimes to the FBI.

14 133. Not only did Defendants fail to take any actions to protect Flamingo’s interests, but certain
15 Defendants on the Board of Directors intentionally interfered with managing member Tadlock’s
16 efforts to investigate Barnes’ embezzlement. Tadlock claimed that directors screamed at him when
17 he attempted to get Barnes to attend meetings and discuss Flamingo’s finances (Exhibit 1, at p. 28,
18 ll. 2-15), and they “were shouting at [Tadlock] to leave [Barnes] alone” when Tadlock raised the
19 issue of Barnes’ performance. *Id.*, at p. 28, ll. 12-15.

20 134. Defendants who were board members hindered Tadlock’s efforts to investigate Barnes,
21 ignored the fact that Barnes did not show up to meetings, and engaged in general obstruction that
22 lasted for more than 18 months. *Id.*, at p. 28, ll. 3-19.

23 135. According to managing member Tadlock, the banks where Flamingo’s funds were held
24 allowed Barnes to write checks on accounts for which he had no authorization, and failed to take
25 basic security precautions – negligence that potentially left the banks liable for Flamingo’s losses.
26 Yet Defendants failed to pursue or even file a civil complaint against such institutions to hold them
27 responsible for allowing Flamingo’s funds to be stolen.

1 136. Indeed, it appears that Defendants failed to even work with the banks and their internal
2 fraud and/or recovery teams to identify Flamingo's losses and retrieve Flamingo's funds in lieu of
3 initiating civil litigation. Defendants' intentional (and grossly negligent) inaction compounded the
4 already-substantial damages to Flamingo caused by their other failures.

5 137. These actions and failures to act reflect Defendants' reckless indifference and "want of
6 even scant care." Here, Defendants acted with no rational basis.

7 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: DEFENDANTS' GROSS**
8 **NEGLIGENCE, INTENTIONAL MISCONDUCT AND BREACHES OF FIDUCIARY**
9 **DUTY IN FAILING TO PURSUE MILLIONS OF DOLLARS IN RECEIVABLES OWED**
10 **TO FLAMINGO – RESULTED IN COMPLETE WASTE**

11 138. Defendants separately failed to protect, preserve or pursue, over several years, millions in
12 Flamingo's receivables for surgeries and medical treatment already provided by Flamingo.

13 139. Flamingo's receivables continued to wither away to nothing under Defendants' watch as
14 officers, directors and managers of Flamingo. Defendants' gross negligence, willful misconduct,
15 and reckless/intentional disregard for and breaches of their respective fiduciary duties to Flamingo
16 not only amounted to a textbook example of waste, but damaged Flamingo's ability to attract and
17 retain the qualified staff needed for Flamingo to remain viable.

18 140. This waste – of millions owed to Flamingo – was made even worse by the fact that
19 Defendants were put on notice and knew they should have pursued the receivables.

20 141. First, Defendants failed to pursue, preserve, and capture millions of dollars in receivables
21 when Barnes' criminality was discovered in 2012 or 2013.

22 142. Second, between the 2012/2013 discovery and Flamingo's Rule 341 Meeting on February
23 5, 2015 (after Defendants shoved Flamingo into its ill-fated bankruptcy) – a vast stretch of time
24 for a victimized small business – Defendants continued in their failure to pursue, preserve, and
25 capture the receivables.

26 143. Third, after the first Rule 341 Meeting (in February of 2015) and second Rule 341 Meeting
27 (in July of 2015) and despite being made aware of the importance of the receivables to Flamingo's
28

1 estate and creditors, Defendants continued in their failures to pursue, preserve, and capture the
2 receivables – until such amounts were rendered completely uncollectable.

3 144. The U.S. Trustee identified at Flamingo’s first Rule 341 Meeting on February 5, 2015, **\$2.9**
4 **million** listed as personal property; when she asked what made up this amount – receivables or
5 tangible cash, Dr. Smith testified that there was only a “small amount of money in the bank.”
6 Exhibit 2, at p. 15, ll. 2-7. Accordingly, a substantial portion of the \$2.9 million listed in the
7 schedules to Flamingo’s bankruptcy petition was comprised of Flamingo’s receivables.

8 145. As of that date in February 2015, Dr. Smith estimated that 20% of the receivables
9 (approximately \$500,000 to \$600,000) would be collectable with a “good collection team really
10 working it.” *Id.*, at ll. 15-19. Thus, Defendants’ failure to take any steps to preserve Flamingo’s
11 receivables between their 2012/2013 discovery of Barnes’ criminality and the February 5, 2015
12 questions under oath, resulted in a waste and abandonment of 80% of millions of dollars earned
13 and rightfully owed to Flamingo.

14 146. The U.S. Trustee further questioned Defendants’ collection efforts on Flamingo’s behalf:
15 “Has anyone started doing that or is that something you’re going to do?” Dr. Smith responded that
16 such efforts were “on hold” . . . “[u]ntil we get the funding.” *Id.*, at pp. 15-16, ll. 22-25, 1-2.

17 147. The U.S. Trustee then questioned whether Defendants had considered agencies that take a
18 percentage – and received a frank admission of Defendants’ gross negligence and breach of
19 fiduciary duty: “that is not our focus.” *Id.* at 17-18, ll. 22-25, 1-10.

20 148. Defendants’ ridiculous position that millions of dollars in receivables owed to Flamingo
21 were not the focus of Defendants, and that such efforts were on hold for cost reasons (***when***
22 ***collection models with zero upfront costs are readily available***), triggered another attorney to
23 jump in – counsel for one of Flamingo’s creditors (“Creditor’s counsel”). Creditor’s counsel
24 focused on Defendants, including but not limited to Defendant Smith, failing to take the simplest
25 steps to protect Flamingo’s (Debtor’s) estate:

26 Creditor’s counsel: [I]f there are assets out there, okay, a couple of million, that
27 could be worked by a ***collection company that might charge you X amount of***
28 ***dollars for what they collect, why wouldn’t you want to go ahead and start doing***
that now so that you can collect those assets –

Debtor's counsel: We're going to if we ever –
Creditor's counsel: But why should it be contingent? *Why can't you do that now*
is my question.
U.S. Trustee: *Yeah.*
Debtor's counsel: It's not contingent. It's just –
Creditor's counsel: Well, it is. Because what you're saying is is [sic] that it should
be contingent upon whether the success of your plan. I mean, why if there are assets
out there right not, *why wouldn't you want to marshall [sic] those for the benefit*
of the estate and the creditors --
Debtors' counsel: We're going to.
Creditor's counsel: -- *when it doesn't cost any money?*

Exhibit 2, at pp. 20-21, ll. 6-25, 1-3 (emphasis added)

149. Defendant Smith responded by referencing a billing company that was doing that – “and then because they were not get [sic] paid, they stopped doing that.” *Id.*, at p. 21, ll. 4-6. Defendant Smith's admission here constitutes additional, separate, evidence of yet further gross negligence, willful misconduct, and reckless/intentional disregard, and of Defendants' breaches of their respective fiduciary duties to Flamingo. Defendants failed even the simplest of obligations – and the immediate first step – *of hiring and maintaining* entities to preserve, pursue and collect receivables belonging to Flamingo. And this failure continued for several years.

150. At the very least, the February 5, 2015 Rule 341 Meeting put Defendants on notice regarding the pursuit of the remaining receivables, as both the U.S. Trustee and creditor's counsel focused on the receivables and urged Defendants to prevent further waste

151. Remarkably, even after the first Rule 341 Meeting, *Defendants still did nothing* regarding the remaining receivables—which withered away to nothing.

152. When asked six months later, during the July 15, 2015, second Rule 341 Meeting, what he had personally done since the end of 2014 to try and recover the accounts receivable, Defendant Smith admitted under oath: “I have personally done nothing.” Exhibit 5, at p. 8, ll. 6-10.

153. Despite notice and the urgings and the questioning from the U.S. Trustee and multiple creditors' counsel, Defendants failed to preserve, pursue, and collect on the remaining receivables.

154. Defendants' intentional actions and inactions resulted in the utter waste of millions of dollars of what Flamingo's assets—and independently constitute gross negligence, willful misconduct, and reckless/intentional disregard, and breaches of Defendants' fiduciary duties.

155. Defendants are directly responsible for and caused Flamingo's loss of millions of dollars in receivables.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION: DEFENDANTS'
INTENTIONAL FAILURE TO PROTECT FLAMINGO'S INTERESTS AND
DEFENDANTS' PERSONAL ENRICHMENT THROUGH BREACHES OF THEIR
FIDUCIARY DUTIES**

156. Barnes' criminal case in the U.S. District Court for the District of Nevada arrived at the restitution stage, where \$1.3 million dollars – which belonged to Flamingo and was stolen by Barnes – was subject to claims and would be apportioned into separate awards pursuant to court order. *See* attached hereto as **Exhibit 7** the March 28, 2017 Amended Judgment in a Criminal Case in *U.S. v. Robert W. Barnes*, 2:16-cr-00090-APG-GWF, Document 41, at pp. 14-15 (the "Restitution List").

157. Defendants failed to advocate for and protect Flamingo's interests at the restitution stage of Barnes' criminal case. Indeed, Flamingo appears nowhere on the Restitution List.

158. Despite having notice from the U.S. District Court for the District of Nevada of the Restitution List, Defendants failed to make any claims on behalf of Flamingo, even though Defendants knew Flamingo was the victim of Barnes' criminality, knew Flamingo was insolvent as a result, and knew that Flamingo's creditors remained unpaid.

159. Defendants' intentional actions and inactions here represent a failure to protect Flamingo's interests – but Defendants went even further, seeking to personally enrich themselves, their families, and their investments by further breaching of their fiduciary duties to Flamingo.

160. Defendants made claims (or at least allowed claims to be made) on their behalf, while taking no such steps on behalf of Flamingo. Accordingly, the Restitution List contains no claim for or even a mention of Flamingo – only Defendants' ***naked self-interest***:

Defendant Bhatnagar/Bhatnagar Family Trust was awarded \$81,187.89

Defendant Ng was awarded \$31,787.89

Dr. William Smith was awarded \$126,687.89

Dr. Sheldon Freedman was awarded \$61,287.89

Dr. Daniel Burkhead/Burkhead Irrevocable Trust was awarded \$39,587.89

Id. at 14-15.

1 161. The Restitution List identifies substantial sums awarded to, among others, the defendants
2 named in this action – at a time when Defendants knew such sums rightfully belonged to Flamingo
3 and that Flamingo was a gutted, post-failed-bankruptcy shell incapable of satisfying its obligations
4 to its creditors.

5 162. Not only did Defendants ignore and fail their obligations to pursue, protect and collect on
6 Flamingo's interests, Defendants *intentionally usurped those interests in favor of their own*
7 *personal interests*, by allowing the substitution of their own personal self-interest over Flamingo's.

8 163. Among other causes of action, Defendants' breaches of their duties of loyalty to Flamingo
9 are blatant and obvious here. Defendants' actions here also (a) justify, for the effectuation of
10 justice, a constructive trust cause of action; (b) constitute unjust enrichment under Nevada law;
11 and (c) separately breach multiple provisions of NRS Chapter 86, especially with respect to the
12 dissolution of a Nevada LLC and the protections afforded to creditors.

13 **FIRST CAUSE OF ACTION:**
14 **GROSSLY NEGLIGENT HIRING AGAINST ALL DEFENDANTS**

15 164. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 163 above, as if set
16 forth herein.

17 165. Defendants had a duty to Flamingo to: (a) conduct reasonable background check and due
18 diligence on Barnes prior to hiring Barnes; and (b) protect Flamingo from harm resulting from
19 Flamingo's employment of Barnes.

20 166. Defendants hired Barnes without conducting a reasonable background check and due
21 diligence to ensure he was fit for the position of Flamingo's office manager.

22 167. Defendants knew or should have known that Barnes had dangerous propensities and/or
23 would display, initiate and perpetuate criminality.

24 168. Defendants breached Defendants' duties to Flamingo with respect to hiring, including the
25 duty to protect Flamingo from the harm resulting from Flamingo's employment of Barnes.

26 169. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in
27 substantial damages to and against Flamingo, in an amount greater than \$50,000.

170. Defendants watched Flamingo sink into an insolvent death spiral and did nothing.

**SECOND CAUSE OF ACTION:
GROSSLY NEGLIGENT SUPERVISION AGAINST ALL DEFENDANTS**

171. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 170 above, as if set forth herein.

172. Defendants had a duty to Flamingo to supervise, train, and discipline Barnes during his employment as Flamingo's office manager, and to protect Flamingo from harm resulting from Flamingo's employment of Barnes.

173. Defendants failed to supervise, train or discipline Barnes during his employment, and failed to protect Flamingo from harm resulting from Flamingo's employment of Barnes – thereby breaching Defendants' duties to Flamingo.

174. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in substantial damages to and against Flamingo, in an amount greater than \$50,000.

**THIRD CAUSE OF ACTION:
GROSSLY NEGLIGENT RETENTION AGAINST ALL DEFENDANTS**

175. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 174 above, as if set forth herein.

176. Defendants had a duty to protect Flamingo regarding Barnes' continued employment as Flamingo's office manager, especially after Barnes' embezzlement and theft was discovered.

177. Defendants failed to remove Barnes and, with gross negligence, willful misconduct, and reckless/intentional disregard, retained Barnes as Flamingo's office manager, allowing Barnes to continue his embezzlement and theft – thereby breaching Defendants' duties to Flamingo and inflicting substantial harm upon Flamingo.

178. Defendants' breaches of Defendants' duties to Flamingo in this regard resulted in substantial damages to and against Flamingo, in an amount greater than \$50,000.

**FOURTH CAUSE OF ACTION:
DEFENDANTS' BREACHES OF DEFENDANTS' FIDUCIARY DUTY OF CARE TO
FLAMINGO**

1 179. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 178 above, as if set
2 forth herein.

3 180. As managers, directors and/or officers of Flamingo, Defendants had a fiduciary duty of
4 care to Flamingo.

5 181. As detailed in this SAC and evidenced by numerous and ongoing examples, for several
6 years, Defendants completely neglected this duty, before the discovery of Barnes' embezzlement
7 (when Defendants' failures allowed Barnes' theft to continue unabated), upon the discovery of
8 Barnes' embezzlement (when Defendants' failures exacerbated the harm inflicted upon Flamingo
9 by Barnes), and for multiple years following the discovery of Barnes' embezzlement (when
10 Defendants' failures resulted in lasting harm to Flamingo, which was ruined and went out of
11 business).

12 182. Defendants individually and collectively breached Defendants' fiduciary duty of care to
13 Flamingo by, among other things, failing to:

- 14 a. oversee, supervise, monitor and discipline Flamingo's office manager, who was
15 embezzling and stealing from Flamingo;
 - 16 b. supervise, care for, monitor or even review Flamingo's books, accounts, and finances
17 while Barnes was Flamingo's office manager;
 - 18 c. expeditiously remove Barnes from the position of Flamingo's office manager upon the
19 discovery of Barnes' embezzlement and theft;
 - 20 d. audit, investigate and/or determine the extent of Barnes' embezzlement and theft to
21 protect Flamingo's interests;
 - 22 e. pursue Barnes on behalf of Flamingo to recover Flamingo's assets, funding and
23 interests from Barnes;
 - 24 f. pursue third-parties, including banks holding Flamingo's funds, to recover Flamingo's
25 assets and funds;
 - 26 g. pursue and collect on millions of dollars in receivables owed to Flamingo;
- 27
28

- 1 h. take appropriate, reasonable and necessary steps to protect Flamingo's interests vis-à-
2 vis Barnes and certain Defendants; and
3 i. protect and pursue, or even register, Flamingo's interests in Barnes' restitution action
4 – resulting in the rightful victim (Flamingo) receiving no award, and Defendants
5 receiving personal, ill-gotten awards.

6 183. Defendants' breaches of the duty of care also included the failure to account for and
7 preserve Flamingo's funds and assets.

8 184. Defendants' individual and collective breaches of Defendants' fiduciary duty of care to
9 Flamingo resulted in substantial damages to and against Flamingo, in an amount greater than
10 \$50,000.

11 **FOURTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF DEFENDANTS'**
12 **FIDUCIARY DUTY OF LOYALTY TO FLAMINGO**

13 185. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 184 above, as if set
14 forth herein.

15 186. As managers, directors and/or officers of Flamingo, Defendants had a fiduciary duty of
16 loyalty to Flamingo.

17 187. As detailed in this SAC and evidenced by numerous and ongoing examples, for several
18 years, Defendants completely neglected this duty, before, upon, and well after the discovery of
19 Barnes' embezzlement.

20 188. Defendants individually and collectively breached Defendants' fiduciary duty of loyalty to
21 Flamingo by, among other things, failing to submit any claims on Flamingo's behalf in Barnes'
22 criminal case's restitution proceedings, and – instead – intentionally usurping Flamingo's interests
23 in favor of their own, by allowing the improper substitution of Defendants' own personal self-
24 interest over Flamingo's, and receiving awards of funds rightfully belonged to Flamingo.

25 189. Defendants' individual and collective breaches of Defendants' fiduciary duty of loyalty to
26 Flamingo resulted in substantial damages to and against Flamingo, in an amount greater than
27 \$50,000.

1 **FIFTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF THE OPERATING**
2 **AGREEMENT**

3 190. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 189 above, as if set
4 forth herein.

5 191. Defendants and Flamingo are parties to an existing, valid contract, the operating agreement.

6 192. Defendants breached the terms of the operating agreement.

7 193. Defendants' breaches of the operating agreement were unexcused.

8 194. All terms and conditions precedent to Defendants' duty to perform were fulfilled by
9 Flamingo or were excused.

10 195. As detailed in this SAC, Flamingo was severely and irrevocably damaged by Defendants'
11 breaches of the operating agreement, in an amount greater than \$50,000.

12 **SIXTH CAUSE OF ACTION: WASTE, AGAINST ALL DEFENDANTS**

13 196. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 195 above, as if
14 set forth herein.

15 197. As detailed in this SAC, among other things Defendants failed to pursue, preserve, and
16 collect on millions of dollars in receivables owed to Flamingo, and failed to protect other assets
17 and property of Flamingo.

18 198. In so doing, Defendants committed acts and permitted acts constituting waste of
19 Flamingo's property at a time when Defendants were rightfully in possession of Flamingo's
20 interests and property.

21 199. Defendants' acts caused permanent and lasting injury to the property and to Flamingo, to
22 the prejudice of Flamingo and Flamingo's creditors, in an amount greater than \$50,000.

23 200. Flamingo is entitled to treble damages under Nevada law, pursuant to NRS 40.150 and
24 *Price v. Ward*, 25 Nev. 203 (1899).

25 **SEVENTH CAUSE OF ACTION: DEFENDANTS' BREACHES OF NRS CHAPTER 86**

26 201. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 200 above, as if
27 set forth herein.

1 202. NRS Chapter 86 applies the formation, operation, and dissolution of Nevada limited
2 liability companies – and thus to Flamingo.

3 203. As detailed in this SAC, Defendants’ actions and inactions breached multiple provisions
4 of NRS Chapter 86, including without limitation: failure to maintain a registered agent (NRS
5 86.231), failure to hold in trust all the property and assets of a defaulting company (NRS 86.274),
6 failure to properly distribute profits and contributions, and making distributions improperly when
7 Flamingo was insolvent (NRS 86.343), and failure to properly dissolve Flamingo (NRS 86.521).

8 204. Defendants’ multiple breaches of NRS Chapter 86 caused substantial damages to Flamingo
9 and to Flamingo’s creditors, in an amount greater than \$50,000.

10 **EIGHTH CAUSE OF ACTION: IMPOSITION OF A CONSTRUCTIVE TRUST**
11 **AGAINST ALL DEFENDANTS**

12 205. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 204 above, as if
13 set forth herein.

14 206. A confidential, fiduciary relationship exists and existed between Flamingo and Defendants.

15 207. As detailed in this SAC, Defendants’ actions and inactions damaged Flamingo (e.g.,
16 Defendants ignored Flamingo’s rightful claims to the restitution amounts in Barnes’ criminal
17 proceeding and made claims (or allowed claims to be made on Defendants’ behalf) leading to
18 direct personal awards of funds, to the detriment of Flamingo.

19 208. Retention of legal title by Defendants to such personal awards and other property of
20 Flamingo, against Flamingo’s interests, would be inequitable under the circumstances.

21 209. The imposition and existence of a trust – where Defendants must submit all such personal
22 awards and property belonging to Flamingo – is essential to the effectuation of justice.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff demands and prays for relief as follows:

- 25 a. For an award of compensatory damages in an amount far in excess of \$50,000;
26 b. For pre- and post-judgment interest, as applicable;
27 c. For an award of costs and reasonable attorneys’ fees;

- 1 d. For treble damages;
2 e. For the imposition of a constructive trust; and
3 f. For such other and further relief as the Court deems just and proper.

4 Dated this 10th day of October 2017.

5 Respectfully Submitted,

6 By: /s/ Todd E. Kennedy
7 Todd E. Kennedy (NSB# 6014)
8 BLACK & LOBELLO

9 *Attorneys for Mark J. Gardberg, Esq., in his*
10 *capacity as Receiver for, and acting on behalf of,*
11 *Flamingo-Pecos Surgery Center LLC*

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY that I am an employee of BLACK & LOBELLO, and that on this
14 10th day of October 2017, I caused to be served a true and correct copy of the foregoing: **SECOND**
15 **AMENDED COMPLAINT** in the following manner:

16 **(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-
17 referenced document was electronically filed on the date hereof and served through the Notice of
18 Electronic Filing automatically generated by the Court's facilities to those parties listed on the
19 Court's Master Service List.

20 **For Mathew Ng:**

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22 Robert Cassity (bcassity@hollandhart.com)
23 Valerie Larsen (vllarsen@hollandhart.com)
24 Marie Twist (matwist@hollandhart.com)
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26 **For Pankaj Bhatnagar:**

27 Marie Twist (matwist@hollandhart.com)
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By: /s/ Todd E. Kennedy
An employee of BLACK & LOBELLO

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)
)
CHARLES H. TADLOCK and MARY E.) Case No.
TADLOCK,) 15-13135-ABL
)
Debtors-in-Possession.)
)

2004 EXAMINATION OF CHARLES TADLOCK, M.D.

Taken at the Offices of Iqbal Law PLLC
714 South Fourth Street
Las Vegas, Nevada

On Tuesday, January 19, 2016
At 1:01 p.m.



Reported by: Jane V. Efaw, CCR #601, RPR

1 Appearances:

2 For Creditor Patriot-Reading Associates LLC:

3 MOHAMED A. IQBAL, JR., ESQ.
4 Iqbal Law PLLC
5 714 South Fourth Street
6 Las Vegas, Nevada 89101
7 (702) 750-2950

8 For Debtors-in-possession:

9 THOMAS E. CROWE, ESQ.
10 Thomas E. Crowe Professional Law Corporation
11 2830 South Jones Boulevard
12 Suite 3
13 Las Vegas, Nevada 89146
14 (702) 794-0373

15 Also Present:

16 ABRAHAM WANG

17 * * * * *

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I N D E X

WITNESS	PAGE
CHARLES TADLOCK, M.D.	
Examination by Mr. Iqbal	4

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
Exhibit 1	Schedule C - Property Claimed as Exempt	41
Exhibit 2	First Amended Disclosure Statement	77

1 Thereupon --

2 CHARLES TADLOCK, M.D.

3 was called as a witness by the Creditor, and having
4 been first duly sworn, testified as follows:

5
6 MR. CROWE: Good afternoon. This is the
7 2004 Exam of Debtor Charles H. Tadlock in Case
8 15-13135-ABL. It's being conducted pursuant to an
9 Ex Parte Motion, Docket Number 230, and an Order from
10 the court, Docket Number 231. My name is Mohamed
11 Iqbal.

12

13 EXAMINATION

14 BY MR. IQBAL:

15 Q. Good afternoon, Dr. Tadlock. I represent
16 Creditor Patriot-Reading Associates, LLC. And I'd
17 like to pause here and get an appearance from your
18 counsel.

19 MR. CROWE: Tom Crowe appearing for
20 Dr. Tadlock.

21 BY MR. IQBAL:

22 Q. Dr. Tadlock, so the court reporter can have
23 a clean record, I will try not to talk too fast or
24 cut you off when you're answering, and I request the
25 same courtesy when I'm asking you questions. Does

1 that seem fair?

2 **A. Certainly.**

3 Q. As you just verbalized, we also need verbal
4 responses at all times because gestures or nods
5 cannot be captured outside of a video examination.

6 As I told you before we got on the record,
7 and I'll tell you now, we can take a break at any
8 time you'd like. Just please let me know and as long
9 as there isn't a question pending. If there is a
10 question pending, I request that you answer the
11 question, and then we can go off the record. Does
12 that seem fair?

13 **A. Certainly.**

14 Q. Is there anything preventing you today from
15 giving truthful testimony in this examination?

16 **A. No. I have to mention the fact that I'm on**
17 **multiple drugs, including Valium, a couple of**
18 **narcotics, and several other drugs. So my memory may**
19 **not be the best.**

20 Q. We'll just ask for what you can remember.
21 No one's a computer. I'm not looking for any
22 specific dates or anything like that. And if we're
23 looking for an approximation, I'll ask you for an
24 approximation.

25 Now, these medications that you mentioned,

1 you're taking them on a daily basis?

2 **A. Yes.**

3 Q. So this is not out of the ordinary for you
4 to take those every day?

5 **A. No. I've bumped up recently because of the**
6 **pain getting worse, but other than that, no.**

7 Q. Can you please spell your last name for the
8 record, sir?

9 **A. T, as in Tom, a-d-l-o-c-k.**

10 Q. Have you been deposed before, Dr. Tadlock?

11 **A. Yes, multiple times.**

12 Q. Could you give me a rough estimate of how
13 many times you've been deposed?

14 **A. Dozens.**

15 Q. How many of those dozens of times when
16 you've been deposed have you been a party to the
17 action?

18 **A. Relatively few.**

19 Q. If you can recall, can you tell us which
20 cases that you've been deposed in that you had been a
21 party?

22 **A. Primarily when I was rear-ended in an**
23 **automobile accident.**

24 Q. And when was that, sir?

25 **A. That was in 2008. November, roughly, 25th.**

1 Q. And that was when the accident occurred?

2 A. That's when the accident occurred, in which
3 I was injured.

4 Q. And then you filed a personal injury
5 complaint?

6 A. Yes.

7 Q. And what is the status of that action now?

8 A. As I'm aware, it's completely finished.

9 Q. And you received a settlement?

10 A. I received a settlement, correct.

11 Q. And do you recall the amount of that
12 settlement?

13 A. They tendered both policies. I don't
14 remember the exact sum. After you get done with
15 attorney's fees and specialists' fees and everything
16 else. They got me.

17 Q. And it will be in the schedules?

18 A. In the schedules. And you've already gone
19 over those and are aware of the number.

20 MR. IQBAL: I just want to put on the record
21 that Abraham Wang, who is the manager for
22 Patriot-Reading, LLC, the creditor, has just walked
23 into the room and will just be observing.

24 BY MR. IQBAL:

25 Q. Now, aside from your personal injury

1 litigation, have you been a named plaintiff or
2 defendant in any other actions?

3 **A. Not for many years.**

4 Q. When was the last time?

5 **A. I sued a surgery center for improperly**
6 **buying me out, I think was the last one.**

7 Q. And when was that approximately?

8 **A. 2004 maybe or '05. Somewhere in there.**

9 Q. And what was the result of that litigation?

10 **A. I won.**

11 Q. Can you recall roughly how much in damages
12 or what kind of award you won?

13 **A. Yes. But I'm not allowed under court order**
14 **to reveal it.**

15 Q. And then the other dozens of times that
16 you've been deposed but not a party to the action,
17 were you an expert witness in those?

18 **A. Usually it was on my own patients. I don't**
19 **generally do expert witnessing. I don't like doing**
20 **it. I had done it a couple of times but not very**
21 **often and not for years.**

22 Q. And we talked about the dozens of
23 depositions. How many times have you testified in
24 court?

25 **A. Only a couple.**

1 Q. And those were related to?

2 A. A lawsuit against one of my PA's. As a
3 treating physician twice on the same patient. I
4 think that's it.

5 Q. In a medical negligence context?

6 A. What was it about? You got me. I don't
7 remember. It's been too many years.

8 Q. Did you do anything to prepare for the exam
9 today?

10 A. No, except for looking at the sheets that
11 you sent over to my attorney. I read those fairly
12 quickly an hour or two ago.

13 Q. You motioned over. Just for the record, I
14 believe it's our objection to the disclosure
15 statement?

16 MR. CROWE: It's actually your opposition
17 and my reply.

18 MR. IQBAL: Okay.

19 THE WITNESS: I don't think I read the
20 reply. Just opposition.

21 BY MR. IQBAL:

22 Q. Now, just to get some foundational facts out
23 of the way. When were you born, sir?

24 A. 2/27/1958.

25 Q. And where did you grow up?

1 A. Guatemala until I was about 6 on and off. I
2 was actually born in San Francisco and went back to
3 Guatemala and back to the United States,
4 San Francisco, and then Modesto, and then Tucson,
5 Arizona, and then back to California for medical
6 school at Stanford for about nine years, including my
7 residency and everything else.

8 Q. And when did you finish your residency at
9 Stanford?

10 A. Oh, it was 1989. And I moved up to
11 Mendocino, California. I was recruited by a hospital
12 in 1989, '90. It was losing its Medicare
13 accreditation.

14 Q. And you worked at that hospital as an
15 employee?

16 A. No. I worked fee for service on top of
17 which I was paid a stipend as a chief of ICU,
18 anesthesia, and then eventually pain management.

19 Q. And did you have a separate practice,
20 separate from working at the hospital?

21 A. For pain management, yes. Everything else
22 was at the hospital.

23 Q. And so you started your own practice pretty
24 much out of residency, but you were also working at
25 the hospital?

1 A. Correct.

2 Q. When did you start -- when did you move to
3 Las Vegas?

4 A. I believe it was 1997.

5 Q. And did you join up with an existing
6 hospital? Did you start your own practice? What did
7 you do?

8 A. No. A group called ACI was the largest
9 anesthesia group in Nevada. They had been trying to
10 get me to move off of my 8 acres on the ocean in
11 Mendocino for many years. And when my daughter was
12 erroneously told and we were told that she had
13 learning disabilities, I finally decided that I had
14 to get in a bigger city. So I took them up on their
15 offer to come out here and work with them instead.

16 Q. So you started working with ACI in 1997.
17 And how long was that engagement?

18 A. Oh, it ended around 2000 or 2001, 2002.
19 Somewhere in there. When they realized that they
20 couldn't really bill correctly for pain management.
21 I think they said something to me about not having
22 correctly billed a pain pump in the three years I've
23 been doing them. It was a pleasant parting. They
24 went their way. I went my way.

25 Plus, I had been hospitalized with atrial

1 **fibrillation trying to do full-time practice plus**
2 **pain management on top of it.**

3 Q. And so you said it was an amicable
4 dissolution. And what did you do after ACI in 2001
5 or 2002?

6 A. Somewhere in there I started my own
7 practice, or actually continued it because I was
8 already doing it with ACI, in pain management.

9 Q. When you say your practice, you're referring
10 to Charles H. Tadlock, Ltd?

11 A. M.D., Ltd, yeah.

12 Q. And just for convenience sake, is it okay if
13 we just refer to that as the "ltd"?

14 A. That's fine with me.

15 Q. Has that been your main practice since 1987
16 when you started it after ACI?

17 A. No, because prior to that I was a member of
18 ACI. So they have their own everything. They're a
19 major group. So they did their own billing,
20 management, the whole nine yards.

21 Q. So the ltd came after that?

22 A. Came after that.

23 Q. So 2001, 2002?

24 A. Somewhere in there, yeah. It might have
25 been 2003. It was a long time ago.

1 Q. And the ltd, did you hire your wife right
2 away, or when did she start working?

3 A. Oh, my wife has been working with me since
4 back in Mendocino helping me in pain management. So
5 all the way back.

6 Q. So since that time, every business that
7 you've been involved, every pain management business,
8 she's been an employee of the business?

9 A. Yeah. Actually, we can go back all the way
10 to Stanford. She was an employee of Stanford when I
11 was doing OB/GYN. And she was chief on nights in
12 nursing obstetrics.

13 Q. So we have the ltd that started after ACI.
14 Was this your sole medical practice after ACI, or did
15 you join up with other groups?

16 A. No. I believe that's the sole medical
17 practice.

18 Q. So 100 percent of your revenue, net revenue,
19 came from the ltd after ACI?

20 A. Negative. I had income from surgery centers
21 as well.

22 Q. What surgery centers did you work with after
23 ACI?

24 A. I believe that's already on the record.
25 I've given the locations and everything. And I'm not

1 going to be able to do it from the top of my head.
2 There were several in Arizona. There's one in
3 Arizona. One in St. George, Utah. I had one in
4 Utah, one in Arizona, and two or three, depending on
5 how you look at it, in Las Vegas.

6 Q. Okay. That's helpful. The one in Arizona,
7 was that in Kingman?

8 A. Yes.

9 Q. And when roughly -- and, again, you're not a
10 computer. I'm not expecting precise answers here.
11 Roughly what time did you start working with the
12 surgery center in Kingman, Arizona?

13 A. Early 2000's.

14 Q. So kind of right after ACI, give or take a
15 few years?

16 A. Right after ACI.

17 Q. When did you stop working with the surgery
18 center in Kingman?

19 A. I had some problems with my retina. I had
20 missed a meeting. I can't recall if it was before or
21 after my accident. I'm going to say in 2010 maybe.
22 But that could be off a couple years.

23 Q. Not a problem. And the surgery center in
24 St. George, Utah?

25 A. I was only there a year. And what year it

1 **was I have no clue.**

2 Q. Did you find yourself at one point
3 practicing in Las Vegas, practicing in Arizona, and
4 also practicing in Utah?

5 **A. Yes.**

6 Q. And would you say the majority of revenue
7 came from your ltd in Las Vegas, or was it kind of
8 evenly split among the different practices in the
9 different states?

10 **A. Well, it depended on the month and the year.**
11 **I know there was one point we came within two weeks**
12 **of closing the Las Vegas practice due to lack of**
13 **malpractice coverage. That really depended on the**
14 **year. Some years one place was better. Some years**
15 **the other place was better. Medicine's been in the**
16 **thralls of gigantic changes.**

17 Q. So you mentioned -- we talked about Kingman.
18 We talked about St. George. You said you were only
19 at the St. George, Utah location for about a year.
20 Do you know if that was roughly around 2010 or before
21 your accident?

22 **A. I think it was before my accident.**
23 **Honestly, all those things have already been given to**
24 **you. The dates and things are all available to you**
25 **exactly.**

1 Q. Actually, the petition only goes back a
2 certain number of years. And so, unfortunately, this
3 information from the 2000's is not on the petition.

4 Now, with respect to the surgery centers
5 here, you worked with Flamingo Pecos?

6 A. Yes.

7 Q. What's the connection? Epiphany, Flamingo
8 Pecos. Was Flamingo Pecos a subsidiary of Epiphany?

9 A. No. Epiphany was the management portion of
10 Flamingo Pecos. It was the origination of Flamingo
11 Pecos. And it had taken over for another company,
12 Regent, from the surgery centers that we had across
13 the street and then moved it to Plaza Surgery Center.
14 And we took over Plaza and moved everything into
15 Plaza. We debated keeping both sides on the street,
16 but it's crazy to have surgery centers across the
17 street from each other. So we closed the one down.

18 Q. And then Plaza turned into --

19 A. Then Plaza was on one side of the town. All
20 the doctors were wanting to go to the other side of
21 the town, so we started considering doing one on the
22 outside of town.

23 Q. Okay. And that's when you put together
24 Flamingo Pecos?

25 A. No. Actually, it was primarily Barnes that

1 put together Flamingo Pecos. I primarily did the
2 Plaza surgery center. Flamingo Pecos was really
3 Barnes' baby.

4 Q. And I want to talk about Flamingo Pecos, and
5 you just mentioned Robert Barnes. So whose proposal
6 or whose idea was it to create Flamingo Pecos?
7 Barnes?

8 A. Barnes.

9 Q. Did he approach you?

10 A. Yes, and multiple other members.

11 Q. These other members, I'm assuming, other
12 surgeons, they worked with you at Regent and Plaza?

13 A. Some did, some didn't.

14 Q. And a few minutes ago you were talking about
15 Regent and then Plaza moving across the street and
16 having both across from each other and not being
17 plausible and shutting down. You kept mentioning
18 "we." I want to clarify. When you say "we" with
19 respect to Regent and Plaza, who are you talking
20 about, "we"?

21 A. Well, Regent -- I don't know what their
22 entire name is -- but Regent is a surgical center
23 management company whom we bought out.

24 Q. By "we" you mean the ltd?

25 A. Not, not the ltd. The surgical center

1 bought out that management; put in, it would be
2 Surgical Solutions, of which most of the members at
3 that time became partners to one extent or another.

4 Q. And when Regent bought out --

5 A. Yeah, we bought Regent out.

6 Q. Okay. Epiphany Surgical Centers, initially
7 how many surgeons were there?

8 A. I have no idea.

9 Q. And just a guess. Less than ten, more than
10 ten?

11 A. More than ten, less than 30. Something like
12 that. In the meantime, we had started, under Regent,
13 another surgery center at Goldring. 2020 Goldring.

14 Q. So when you're talking management, surgery
15 center management, say in the form of Regent, were
16 you deriving revenue from the surgical practice and
17 also the management practice?

18 A. No, not under Regent.

19 Q. Were you deriving revenue from the surgical
20 practice and the management practice under Epiphany?

21 A. Yes. Under Regent and Epiphany I was chief
22 of anesthesia and made sure that they got their JCAHO
23 accreditation or whichever accreditation they were
24 doing at the time.

25 I've been doing that for years, too.

1 **Actually, I've been chief somewhere pretty much my**
2 **entire career until about the last year when my**
3 **health has deteriorated too much.**

4 Q. So Robert Barnes suggested forming Epiphany
5 going to the west side?

6 A. **Correct. He was originally hired by Regent**
7 **for running.**

8 Q. And I'll get to Barnes specifically. Right
9 now I want to talk about Flamingo Pecos. But we'll
10 have a number of questions on Barnes.

11 So Barnes approached you and a few of the
12 other surgeons about joining and creating Epiphany.
13 Who ultimately said yes to him? More than ten
14 surgeons, as you had said?

15 A. **Pretty much -- I cannot recall the exact**
16 **number of people that voted for him, but it was a**
17 **majority.**

18 Q. And were there any minutes or memos from
19 those discussions that took place between Barnes and
20 you and several other surgeons? Did you guys have
21 formal meetings?

22 A. **Yeah. We had formal meetings, meetings**
23 **occasionally; however, the secretary for those**
24 **meetings was Barnes.**

25 Q. Okay. So he prepared those minutes?

1 **A. Correct.**

2 Q. Do you have any idea where those documents
3 are now?

4 **A. No.**

5 Q. How many times did you meet before the vote
6 was taken and everyone said yes to Barnes?

7 **A. I don't know that everyone said yes to**
8 **Barnes. There may have been some people that voted**
9 **against it. I don't recall the exact number. There**
10 **was relatively few against.**

11 Q. Was it a long process, or was it, you know,
12 one meeting and all the surgeons said yes?

13 **A. It was a period of years.**

14 Q. Where Barnes was recruiting you and a number
15 of surgeons to start Epiphany?

16 **A. Actually, I had the original idea doing of**
17 **Epiphany in Kingman. Barnes decided to bring**
18 **Epiphany in here, to Las Vegas, and to start the**
19 **surgery center over at Flamingo Pecos. In the**
20 **meantime, we had also done one -- it had to be voted**
21 **on by the existing membership at 2020 Goldring.**

22 Q. And Barnes was involved in that as well?

23 **A. Not very much. Somewhat. I believe they**
24 **hired another administrator for that one.**

25 Q. How did you meet Robert Barnes?

1 **A. He was brought in by Regent.**

2 Q. By Regent. Who specifically at Regent knew
3 him?

4 **A. I don't know.**

5 Q. Did you interview Robert Barnes when you
6 joined Regent?

7 **A. No, I interviewed Regent before we took**
8 **Regent.**

9 Q. And before you took Regent, did you
10 interview Barnes?

11 **A. No. I don't believe that he was -- that he**
12 **had been hired by Regent. There were several**
13 **administrators prior to Barnes.**

14 Q. So how was he hired?

15 **A. He was a Regent hire.**

16 Q. Who made the decisions at Regent regarding
17 HR and hiring?

18 **A. I don't really know.**

19 Q. Was there a CEO of Regent?

20 **A. Yes.**

21 Q. Do you recall who that was?

22 **A. I'm horrible at names. It's Tom something**
23 **or another. If you look on the website, I think it**
24 **pretty much stayed.**

25 Q. Regent still exists?

1 A. Still exists, and it's still with the same
2 general folks.

3 Q. So the CEO is Tom, and you don't know the
4 last name?

5 A. Tom somebody or another. I can't remember
6 Tom's last name.

7 Q. Would it, to the best of your recollection,
8 have been this Tom CEO figure who hired Barnes?

9 A. I don't know. I wasn't present at that
10 meeting, so...

11 Q. So when you purchased Regent -- I just want
12 to clarify. Barnes was or was not there at the time
13 you purchased Regent?

14 A. He was there at the time we purchased
15 Regent.

16 Q. Okay. And then he worked with Regent, and
17 you had purchased Regent. Did you at some point
18 start talking to Barnes about Epiphany?

19 A. Yes. The entire group did. Whether he was
20 going to come along with us or just go with Regent.
21 Regent wanted to keep him.

22 Q. And you just stated that Regent wanted to
23 keep him.

24 A. As far as I'm aware, yeah.

25 Q. When you started Epiphany, did you formally

1 offer him a job with Epiphany to pull him from
2 Regent?

3 A. I formally offered him to be able to buy in
4 shares in Epiphany as an incentive to get Epiphany
5 going.

6 Q. Do you recall the arrangement?

7 A. No. Not the exact arrangement.

8 Q. And when was the offer roughly made for him
9 to buy in shares in Epiphany? Was it during
10 Epiphany's formation in 2009 or 2010?

11 A. The first thing I did was cut the Kingman
12 contract, and then after that, we bought out Regent.
13 Which wasn't actually primarily my idea. It was the
14 other folks who were tired of it.

15 And then at that juncture, we decided to go
16 ahead and use the already existing management company
17 to go ahead and do it. And Mr. Barnes expressed
18 interest in staying and becoming the operating
19 officer for the company.

20 Q. For Epiphany?

21 A. Correct.

22 Q. Were there any other candidates, or it was
23 just Mr. Barnes for this position?

24 A. No. I did not have a lot of selection or
25 say in who we could get or who we couldn't get at

1 that juncture. It was basically up to the group of
2 surgeons who were doing cases to make the selection.

3 Q. So you did not have a say in Robert Barnes
4 being hired at Epiphany?

5 A. No more than any of the other folks did.

6 Q. Who would you say had the primary say in
7 hiring Robert Barnes?

8 A. It had to be a majority decision.

9 Q. Did you vote against hiring him?

10 A. No.

11 Q. And what was Barnes' official position with
12 Epiphany?

13 A. Well, with Epiphany, he was essentially the
14 operating officer. He did day-to-day tasks. I was
15 basically -- my major position with Epiphany was to
16 try to recruit the surgeons and try to get them to
17 actually do cases.

18 Q. I understand that you were recruiting
19 surgeons, but what was your official title with
20 Epiphany?

21 A. CEO.

22 Q. CEO, okay. You were CEO, but ultimately the
23 decision to hire Barnes was a group decision?

24 A. Yeah. He was the administrator of the
25 surgery centers. In order to become administrator of

1 the surgery centers, you have to have the vote of the
2 existing surgeons.

3 Q. As the operating officer, who did he report
4 to?

5 A. He reported to the entire group.

6 Q. The group, you mean all 10 to 20 to 30
7 surgeons?

8 A. He reported, actually, to more than that
9 because they would be the Kingman surgeons and the
10 Las Vegas surgeons and to me. And eventually the
11 Plaza surgeons.

12 Q. How often was his performance evaluated?

13 A. In the beginning I was meeting with him
14 weekly, and in the last couple of years he started
15 not showing up.

16 Q. So in the beginning you were meeting with
17 him weekly. What were your weekly meetings
18 consisting of?

19 A. I was going over how well the different
20 surgery centers are doing.

21 Q. And you'd look at account ledgers and
22 information, or would he just simply verbally tell
23 you?

24 A. Both.

25 Q. These weekly meetings and the records that

1 he presented you with, both in discussion and report
2 form, do you have any idea where those reports are
3 now?

4 A. No, and I think at this point I've got to
5 mention the fact that the FBI has told me to keep my
6 mouth shut on all the rest of it, so that I really
7 feel limited in discussing any further anything to do
8 with Robert Barnes.

9 Q. When did the FBI tell you to keep your mouth
10 shut?

11 A. Oh, gosh. It's been two years now. They
12 said I needed to not discuss it with anyone because
13 it's an ongoing investigation.

14 Q. Okay.

15 A. With regard to that and the banks.

16 Q. Right. Barnes, in terms of his HR record,
17 he didn't have any formal evaluations?

18 A. No, he was evaluated. Actually, even the
19 last year he was evaluated. Well, he had to do
20 formal reports to the boards of each of the surgery
21 centers, and he had to do meetings with me, and he
22 had to do -- go over all of the income with the
23 accountants, which -- because of the fact that I was
24 the largest surgeon with the most years with most of
25 the surgery centers, no one felt comfortable with me

1 **also using my accountant. That may have proved to be**
2 **an error, but I used a different accountant.**

3 Q. Now, the formal reports you just talked
4 about, do you still have access to those?

5 A. **No. They were in the office.**

6 Q. Did you read the reports?

7 A. **Certainly.**

8 Q. Anything stick out to you as inappropriate
9 or fishy or didn't add up mathematically?

10 A. **I contacted the FBI, that did.**

11 Q. Let's get back to that. Let's finish that
12 thought. When did you contact the FBI?

13 A. **Two or three years ago. I had five spine**
14 **surgeries, and Mr. Barnes was never forthcoming with**
15 **regard to information that he had previously been**
16 **forthcoming with, and then he disappeared.**

17 Q. So this period of not being forthcoming, how
18 long did that last?

19 A. **Worsening probably over 18 months or two**
20 **years.**

21 Q. When he wasn't forthcoming for months and
22 months and months, and then more than a year and up
23 to two years, did you do anything?

24 A. **Sure. I brought it to the board's**
25 **attention, and I was getting complaints from other**

1 **board members.**

2 Q. What did the board do?

3 A. When I told Barnes that he needed to come in
4 and discuss it, I would then get screamed at by the
5 board members that I was chasing him off. Even the
6 board members who had sent me texts saying that they
7 weren't happy with the fact that he was gone too long
8 and not answering questions would suddenly decide
9 that I was being too mean to Barnes.

10 Q. During this 18 months when he was not being
11 forthcoming and he wasn't showing up to meetings, you
12 were raising his performance with other board
13 members, and they were shouting at you to leave him
14 alone?

15 A. Correct.

16 Q. For 18 months?

17 A. Longer.

18 Q. Other than raise his recent behavior with
19 the board, did you do anything else?

20 A. No. I was busy having six -- I don't know
21 if it was five or six -- well, five major spinal
22 surgeries, so it wasn't my major focus at the time.
23 It was whether I was going to be able to walk or not.
24 So I pretty much turfed it to Dr. Smith, who was the
25 board chief and a member of Epiphany.

1 Q. Did you formally hand over the obligation of
2 overseeing Barnes to Dr. Smith, or was it informal?

3 A. It was informal. Dr. Smith had the second
4 most shares, and had been the chief of the board.

5 Q. When you were receiving the formal reports
6 from Barnes and they were okay, and then they were
7 not okay, what did you notice about them that was not
8 okay?

9 A. You have to realize that frequently Bank of
10 America were present at those meetings or
11 subsequently, Wells Fargo, and subsequently, I think,
12 Citibank. And I was being told by all of them that
13 we were doing extremely well.

14 Then I was out for surgery, had my last
15 surgery done and came back out of it. And suddenly I
16 was being told that the surgery center had to be
17 closed, meaning the west side one, which is the one
18 he's involved in, and we need to retract back just to
19 the east side one. And that made no sense to me.

20 Q. That was a whole lot. So I want to try and
21 split that up a little bit.

22 So you talked about your last surgery.
23 Before your last surgery, all the reports and
24 everything you were reviewing were okay? Or before
25 your series of five or six surgeries -- when did this

1 happen?

2 A. At the time I looked at them they looked
3 okay. Subsequently, when I got actual reports
4 directly from the bank as opposed to going through
5 Barnes, they weren't the same. And I'm shutting up
6 now because I don't want the FBI coming after me.

7 Q. I appreciate that, sir. But some of the
8 information on Barnes and Bank of America is in your
9 schedules, and that's why I'm asking that question.

10 A. I understand that, and you know, if you want
11 to get the FBI in here and ask them, then you can ask
12 them if they have all that information, and much
13 better than I have it because a lot of the stuff I
14 looked at, as far as I'm able to tell, was false.

15 Q. I'm just trying to get a year range because
16 we're squeezing a lot of years into these statements,
17 and I just want to clarify.

18 That really terrible year when you had the
19 five or six surgeries, when was that, sir?

20 A. I didn't have five or six in one year. I
21 had one in 2008. I had one in about 2010. And then
22 I had back surgery in there somewhere. And then I
23 started getting cauda equina syndrome and losing my
24 feeling in my legs, and couldn't lift my left leg, so
25 they did emergency surgery. Then they had to go back

1 three months later and do another emergency surgery
2 on the same spot.

3 Q. So that was 2012?

4 A. 2013, probably, I think. It's really kind
5 of jumbled because there was a lot going on. But I
6 think it was 2013.

7 Q. Thank you for that timeline. So prior to
8 2012, 2013, you were looking at reports from Barnes,
9 and they seemed okay, correct?

10 A. Correct.

11 Q. And then after your last surgery in 2013,
12 you came out, and that's when people told you, We're
13 going to have to shut down our west side office?

14 A. Well, actually, there were people yelling at
15 me that I was absconding with funds or doing
16 something bad. And three doctors were assigned by
17 the board to review me and the actions of the board,
18 and they reviewed me and said there was nothing wrong
19 with me. Then I got in an argument with them about
20 closing the west side and refused to have anything to
21 do with it, and Barnes disappeared.

22 Q. Okay. That's quite a lot. So who accused
23 you of absconding with funds?

24 A. It wasn't quite that gross. I'm summarizing
25 it. But you'll have to take a look at the board

1 minutes. I don't recall exactly who it was, but
2 three doctors wished to take a look at it, and they
3 found nothing wrong with either Barnes, the notes or
4 anything else. Then I had my surgery, and I came
5 back.

6 Q. So this was before your last surgery in
7 2013?

8 A. Yeah, I think so.

9 Q. Who raised the preliminary alarm that
10 something's not right which led to you being accused?

11 A. Barnes.

12 Q. Barnes raised the alarm that the accounts
13 were not right?

14 A. Barnes raised the alarm that I was somehow
15 getting more than my fair share. Something like
16 that.

17 Q. Oh, okay. Okay.

18 A. I didn't know it at the time.

19 Q. Okay.

20 A. I'm having the surgery. Realize, I'm not
21 able to walk, literally.

22 Q. Right, right. And this is in 2012 or 2013?

23 A. Somewhere around there.

24 Q. So until this point in time, the formal
25 reports that you'd been reading seem okay?

1 **A. Including when I had Bank of America there**
2 **with me looking at them.**

3 Q. Correct, right. So until that time --

4 **A. And then Wells Fargo.**

5 Q. Right. So from 2010, when Epiphany gets off
6 the ground, till 2012, 2013, you have formal
7 meetings. You're looking at formal reports from
8 Barnes. They look okay. Some of those meetings
9 include Bank of America and Wells Fargo and other
10 bank officers, and they're approving of the reports
11 that you're looking at, correct?

12 **A. Correct.**

13 Q. Then you have this series of terrible
14 surgeries. And focusing on 2012-2013, when you were
15 gone, Robert Barnes essentially accused you of taking
16 money, and you didn't know it at the time?

17 **A. Correct.**

18 Q. Any reason why he would just pick you out of
19 all of the surgeons to accuse of taking money?

20 MR. CROWE: Objection. It calls for
21 speculation on his part.

22 BY MR. IQBAL:

23 Q. Well, anything you can think of.

24 **A. I was half the income of the surgery**
25 **centers. I was the original -- it was my idea to**

1 start the first one. Okay? Many surgeons had looked
2 at it and said, No, it's not worth doing it when it
3 was at the midterm hospital. So I started the thing.
4 I was making everybody tons of money. People started
5 to get jealous. I think Barnes was deflecting
6 interest in him at that point, and I wasn't around to
7 defend myself.

8 Q. How long were you gone? How many corporate
9 board meetings did you miss?

10 A. Well, for one summer, pretty much all of
11 them. I mean, I had open back surgery with a two
12 centimeter disk. I don't know if you're aware what
13 that means. That means bigger than most people's
14 canals. So I should be paraplegic, but I have a, as
15 they put it, a congenital capacious canal. I have a
16 huge disk that the radiologist read as being
17 post-trauma, which is why they gave up on the
18 lawsuit.

19 And then I couldn't lift my leg. I couldn't
20 lift my foot. I still have no reflexes on the left
21 side. I fall down easily. So I was busy doing that.

22 After I had the one surgery, I got a little
23 bit better for about a month, and then I started
24 getting worse. I took another one, and I started
25 crying in the surgery center from the one over on

1 that side, because it looked just as bad as it did
2 before.

3 So then they took me back. Meanwhile,
4 they've taken a rib out, put two pedicle screws, and
5 then a X-Lift, which subsequently somebody died
6 having the same surgery. Then they brought me back
7 within three months, and one in the same spot, and
8 then put two pedicle screws on the other side.

9 At that juncture I was warned that I wasn't
10 going to be working for very much longer. Which I
11 had been warned in 2008 already. I already met the
12 definition for a hundred percent disability just on
13 my neck surgeries. And with the back, forget it. It
14 was over.

15 Q. So during this terrible time in 2012, 2013
16 when you're just out of it and getting multiple
17 surgeries, were you practicing at that time?

18 A. I tried to go back to work within a couple
19 of weeks, but my numbers were clearly much lower than
20 they had been before.

21 Q. And at that time Barnes was accusing you of
22 having taken money, but no one directly confronted
23 you?

24 A. Exactly what he was accusing me of, I'm not
25 sure. And I'm not sure you can get that out of the

1 other folks, either, because it was very nebulous.

2 But it was like, Charles is the bad guy and
3 taking over the place and won't let me run things the
4 way I want, and blah blah blah, when I wasn't doing
5 squat.

6 Q. And you weren't even aware of it because you
7 were out having surgery?

8 A. No. The first hint I had of it was when
9 Mr. Smith sent me a text saying that he thought
10 Barnes seemed to be taking a lot of time off. And I
11 texted Barnes, you know, We need to go over your time
12 off and what your contract says it should be.

13 I then got a call directly from Smith on the
14 phone saying, Why are you yelling at Barnes and
15 causing him to be ready to leave. I'm going, Wait a
16 second. You just sent me a text complaining about
17 him. And then I started getting that from a whole
18 lot of people.

19 Q. That was after your last surgery in 2013?

20 A. No. That was before it. That's in between
21 them. I had a rash of them there in one year. Like
22 three within a period of a little over a year.

23 Q. Okay. So he's taking time off, and when you
24 confronted him, Dr. Smith called you back. During
25 this time, did anyone from the board formally audit

1 you? I guess I'm referring to the three doctors.

2 **A. Yes, the three doctors.**

3 Q. Was this at that time or after that time
4 when they audited you?

5 **A. No, it was about the same time. It might**
6 **have been a month or two later. One was an ENT**
7 **surgeon. One was a new guy. I'd have to see the**
8 **names in order to be able to figure out who it was.**

9 Q. That's fine.

10 **A. Honestly.**

11 Q. It's no problem.

12 With his time off, then, and things he was
13 doing, was his salary ever reduced?

14 **A. No.**

15 Q. Was he ever given a low performance
16 evaluation or any demerits or anything like that?

17 **A. Let me back up on that last one. He made**
18 **1 percent of whatever we did in distributions. That**
19 **was, I think it was 1 percent. It might have been**
20 **1-1/2 or something. It's depending on the surgery**
21 **center. And he did get that, if we didn't get**
22 **distributions, which we were not. So yeah, his**
23 **income was tied to the performance.**

24 Q. Now in 2010, 2011, 2012, the reports seem
25 fine, but when you checked later and you looked at

1 the bank's reports, they were different than Barnes'
2 reports. Correct?

3 A. Yeah. I really don't want to have the FBI
4 throw my ass in jail. The FBI has looked at it and
5 has told me that clearly there was some collusion
6 with regard to the bank, a banker, one or more, and
7 Barnes that then transferred to another bank, which
8 Barnes then transferred to. And that's the most I'm
9 going to say.

10 Q. Let's talk about you and your integrity
11 being questioned. Were you hurt when -- you know,
12 you're working really hard. You're the one who's
13 made all these people money, and they're coming to
14 audit you. Did that bother you? I mean, it's a
15 rhetorical question.

16 A. Of course. Sure, it's a question. Of
17 course it bothered me, but I'm used to it.

18 Q. What do you mean, you're used to it?

19 A. Doctors get jealous when other doctors --
20 they think the other doctors are making more money
21 than they are or are doing better. You know, I've
22 had similar things happen before, so it didn't --
23 like automatically a light came on and go, Oh, it was
24 Barnes.

25 Q. So the other surgeons there, the immediate

1 inclination was to look towards you and blame you?

2 **A. Yeah, I'd say that's probably correct**
3 **because as I said, I was 50 percent of the income for**
4 **most of the surgery centers I went to. So when mine**
5 **dropped off, everybody got mad at me despite the fact**
6 **that I had really good reason for my numbers**
7 **dropping.**

8 Q. Right, right. That seems a bit heartless
9 when a guy has open back surgery to be upset about --

10 **A. The surgeons who performed the surgery were**
11 **getting mad at me.**

12 Q. Before this 2012-2013 period when you had
13 the surgeries and you had these accusations thrown at
14 you, how would you characterize the cooperation among
15 the Epiphany surgeons during that difficult time in
16 2012, 2013?

17 **A. I would say they reluctantly came along.**
18 **Primarily because I was making them so much money**
19 **that they just go, Holy shit, he's making us so much**
20 **money, we're going to have to go with him.**

21 Q. The board meetings, were they amicable, or
22 were there arguments, disagreements?

23 **A. When there are big checks, they were**
24 **amicable. But when there were no checks, they**
25 **weren't amicable.**

1 Q. Until this time in 2012, 2013 when you're
2 really laid up with the major surgery, were you
3 attending board meetings regularly during that time?

4 A. You're making it seem as if 2012-2013 that I
5 was incredibly worse off than I had been before. You
6 have to realize that in 2008, I actually fired your
7 next door neighbors because they weren't taking me
8 seriously when I said, Hey, my neck is bad. I'm
9 going to have to quit working because of this. And
10 they were pooh-poohing going, Oh, somebody thinks
11 he's going to make money from being rear ended
12 because of an accident.

13 I'm like, No, I have a spike going in my
14 neck. It hurts like hell, and I'm not going to be
15 able to work like this very much longer. Then it got
16 worse. And I was about to have the second neck
17 surgery, when the leg went. So I had to have them do
18 the leg; of course it took precedence.

19 So now I'm two years, three years down the
20 line, and we get to the second neck surgery a couple
21 years late, and that didn't go so well.

22 MR. IQBAL: Okay. Why don't we go off the
23 record and take a break.

24 (A brief recess was taken.)

25 MR. IQBAL: Okay we're back on the record.

1 I've just handed counsel and the examinee what we're
2 marking as **Exhibit 1** and handing a copy to the court
3 reporter.

4 (Thereupon **Exhibit 1** was
5 marked for identification.)

6 BY MR. IQBAL:

7 Q. Sir, I just handed you three pages. At the
8 top it references the case number, case 15-13135-ABL,
9 and it's denoted as Document 117. Do you recognize
10 what I've handed you?

11 **A. Yes.**

12 Q. And what is it, sir?

13 **A. It's the Schedule C, property claimed as**
14 **exempt.**

15 Q. And did you prepare this Schedule C?

16 **A. In combination with my attorneys.**

17 Q. Does this look like a fair representation of
18 what was filed?

19 **A. Yeah. And I haven't ready every single**
20 **line, but it looks correct.**

21 Q. I can represent we just went onto the docket
22 and printed out the three pages.

23 On the third page, sir, there is a Charles
24 and Mary Tadlock Family Trust, and a few lines down,
25 it states -- and I'm quoting here -- "Includes a

1 potential claim against Bank of America and Robert
2 Barnes valued at the discounted amount of \$150,000."

3 A. Do you have a question?

4 Q. Yes, I do. I just wanted to reference
5 exactly where my question's coming from.

6 Do you know how that \$150,000 amount was
7 calculated?

8 A. Well, probably based on the amount of money
9 that was taken out -- it's probably on the low
10 side -- directly out of the account for Epiphany
11 Surgical Centers. However, I have -- given my
12 condition, I believe the last I looked, I gave up on
13 going after that.

14 Q. And why did you give up going after it?

15 A. Because the FBI is taking so bloody long to
16 get its conclusion done, and I can't win without
17 their info or a shit load of money to investigate,
18 and I've already spent 5,000 and owe another 5,000 to
19 the forensic accountants that went over it. And no
20 attorney will take it for less than 10 or 15 thousand
21 upfront.

22 So given the fact that I'm at the point in
23 my life where I'm no longer going to be making money,
24 that just doesn't seem like a very good bet. I don't
25 think Barnes has anything left.

1 Q. And this 150,000 number --

2 A. I don't know who came up with that.

3 Q. Okay. Was it the forensic accountants?

4 A. As a discounted amount of 150,000? I doubt
5 it was the forensic accountants. I don't know who
6 came up with that. I honestly just don't know.

7 Q. Okay, that's fine. That's a perfectly good
8 answer. If you don't know, you don't know.

9 A. Yeah.

10 Q. You did mention the forensic accountants.
11 When did you hire the forensic accountants?

12 A. Right after I heard my office manager crying
13 when she opened up the Bank of America slips for the
14 surgery center, and she came down to my office
15 saying, this doesn't -- there's clearly stuff that
16 shouldn't be on here.

17 Q. And when was that?

18 A. That was in the summer, 2013, maybe.

19 Q. Okay. And so your --

20 A. It may have been 2014. I'm not sure.

21 Q. And your office manager was the one who
22 discovered Barnes' fraud?

23 A. Correct. She told me, and I told everybody
24 else.

25 Q. And her name?

1 **A. Tammy Schaefer.**

2 Q. And until Tammy Schaefer came to you crying
3 about the Bank of America account, there was no
4 indication that Robert Barnes had been taking any
5 money?

6 **A. No. I was depending on the accountant and**
7 **the three doctors who were supposed to have just**
8 **reviewed the entire thing just as I went into**
9 **surgery, and all of them said it was fine. I had met**
10 **a few months previously with -- the accountant's name**
11 **I don't recall at the moment -- but it's Marjorie**
12 **Belsky's accountant, not mine, because they didn't**
13 **want me to have too much power by having my**
14 **accountant.**

15 Q. Who's "they"?

16 **A. The board.**

17 Q. You were part of the board, correct?

18 **A. Correct. The board didn't want me to have**
19 **my accountant running it. They already thought I had**
20 **too much power.**

21 Q. So just in terms of timeline, Tammy Schaefer
22 discovers funds missing from the Bank of America
23 account and things on the Bank of America account --

24 **A. Sometime there, yeah.**

25 Q. -- things on the Bank of America account

1 that should not have been there. She informed you,
2 and you immediately informed the board?

3 **A. Correct.**

4 Q. And at that time -- it was either the summer
5 of 2013 or 2014 -- at that time you immediately told
6 the board, and they hired another accountant to --

7 **A. They hired --**

8 Q. They hired another accountant to look into
9 what happened with the Bank of America account?

10 **A. I think they hired an attorney to look into**
11 **the Bank of America account.**

12 Q. And you recommended using your accountant to
13 look at the Bank of America account, and they said
14 no?

15 **A. No. Actually, I took my accountant to look**
16 **at my account. It looked like it had been fudged**
17 **with. Because theoretically, shouldn't it have**
18 **been -- since I was being told we were making no**
19 **money, and since the money that goes into the account**
20 **is the money from the management fee, and even waving**
21 **that because we were supposedly making no money, and**
22 **I find out there was money being put in there, and**
23 **Barnes was withdrawing it, and Bank of America had**
24 **not been able to find any card or any other reason**
25 **that he should be able to withdraw money from that**

1 **account.**

2 Q. Who was telling you that there was no money
3 during this time?

4 A. Barnes was telling me there was no money,
5 and I was seeing Bank of America accounting
6 statements from Barnes that said there was no money
7 in it. At least it looked like it to me. I mean, it
8 looked like just the basic Bank of America statement.

9 Q. Right. And so Bank of America was the
10 primary institution where the accounts for Epiphany
11 were?

12 A. Correct. And then we were asked -- when
13 Barnes disappeared, I asked again over a period of a
14 couple months for Bank of America to actually give
15 me, directly from them, directly to my hand, copies
16 of the statements. That turned out to be very
17 difficult.

18 Q. And when you reviewed the statements --
19 ultimately you received them from Bank of America --
20 they were different than the statements that Barnes
21 had given you?

22 A. Well, I received statements from them with
23 amounts taken out, but not who the payers were --
24 payees, I guess it is -- and then I went back to
25 them, yelled at them some more, took another couple

1 months, so then I got the payees, and then I hit the
2 ceiling and got in the accountants.

3 Q. Okay. But this was several months after
4 Tammy Schaefer indicated to you that there was a
5 problem. That's why you started the process of
6 asking Bank of America?

7 A. Correct. Usually with Bank of America, I
8 can ask can I get the stuff done later that day, and
9 they were really dragging the feet.

10 Q. And during this time, you had also informed
11 the board?

12 A. Correct. I didn't call every single person,
13 but I called the board members and Dr. Smith, who was
14 the head of the board.

15 Q. What did the board do at this time?

16 A. The board hired an attorney to look into it,
17 and the board had the attorney go to the FBI and to
18 the police.

19 Q. During your 341 exam, you mentioned that
20 approximately three to five million was taken. Was
21 that three to five million from the Bank of America
22 account?

23 A. No, that's an estimate that their attorney
24 made. I'm not sure where he's getting that from.

25 Q. Did they do an audit that was released to

1 the board members and the members of Epiphany
2 slash --

3 A. I was having surgeries and physical therapy.
4 If they did, I don't know about it. He came up with
5 a number at one of the meetings I did go to. But
6 they were having meetings later and later in the day,
7 like at 7:00 and 7:30 at night. I got to the point
8 where I couldn't walk at 7:30 at night, so I gave up.
9 I was falling down a lot.

10 Q. So just to clarify, the 150 thousand figure
11 in your Schedule C, you don't know how that was
12 calculated?

13 A. No. I have no idea how it's calculated. I
14 can't remember anymore because it's been so long
15 exactly how much was stolen out of that account, but
16 I don't see any real hope of getting any of that
17 back.

18 Q. At these board meetings, the ones that you
19 did attend, was there a full attendance by the other
20 board members?

21 A. No.

22 Q. Were they monthly?

23 A. Sometimes they were more than monthly after
24 Barnes disappeared.

25 Q. Let's get the specifics. Now, when Tammy

1 came to you, was crying, and showed you the Bank of
2 America account and what had happened to it, was
3 Barnes already gone by that point, or was he still
4 working?

5 **A. I believe he was already gone by that point.**

6 Q. So by the time you discovered the fraud,
7 Barnes was already gone?

8 **A. Correct.**

9 Q. What do you mean by "gone"? He simply left,
10 and he did not come back again?

11 **A. On a Saturday he took off with all of the**
12 **computers and all of the written stuff for Epiphany**
13 **and the surgery center, and there was literally --**
14 **and a couple of the portable computers, everything**
15 **was gone. From what I'm told. I were wasn't there,**
16 **but I'm told that pretty much everything had**
17 **disappeared, and they were trying to get backups and**
18 **things to get some information.**

19 Q. And this was before Tammy discovered the
20 issues with the Bank of America account?

21 **A. Right. It was always under suspicion, but**
22 **when I saw the --**

23 Q. Okay. When you say "always under
24 suspicion," what do you mean by that? When did your
25 suspicion first start?

1 **A. When he left and said nothing.**

2 **Q. So until he left, there was no issues with**
3 **respect to Epiphany's finances, and then all of a**
4 **sudden he leaves, and then Tammy discovers later that**
5 **he had stolen money from the Bank of America account?**

6 **A. I think the way it really happened was that**
7 **I had a conniption fit that they were planning on**
8 **closing the east side -- excuse me -- the west side**
9 **in favor of the east side. That made no sense to me**
10 **because most of the surgeons were over there. And at**
11 **that juncture, I had enough pool to get enough people**
12 **who also agreed with me that it was clear it wasn't**
13 **going to occur without a fight, and at that point,**
14 **Barnes disappeared.**

15 **Q. Do you recall around what time -- this**
16 **dispute between keeping both locations and the one**
17 **location, do you recall when that happened?**

18 **A. Somewhere in the summer. I was in between**
19 **those surgeries.**

20 **Q. Somewhere in the summer, the same summer**
21 **when Tammy discovered the --**

22 **A. Yeah, it later in the summer. It was**
23 **actually almost fall by the time we actually got**
24 **anything from Bank of America. We requested it**
25 **immediately, but, you know, they were initially very**

1 **helpful, and suddenly it was like a light switch,**
2 **stopped.**

3 Q. Got it. So that summer was a critical
4 summer because Barnes disappears, there's a
5 discussion of which location we're going to keep, and
6 then after that, chronologically, is when you
7 discovered the problems with the Bank of America
8 account, correct?

9 A. **Correct. To the best of my memory, yeah.**

10 Q. When there was discord among Epiphany and
11 the surgeons wanting to change locations or move to
12 one location, you said there were a few surgeons with
13 you, keeping both locations open, and then there were
14 surgeons on the other side of the debate?

15 A. **Yes.**

16 Q. And this debate happened during that same
17 summer, either the summer of 2013 or 2014, and you
18 were in and out between surgeries, so it's not
19 exactly clear, correct?

20 A. **Yeah.**

21 Q. Okay. Did any members or surgeons --

22 A. **I think it was the summer 2013.**

23 Q. 2013?

24 A. **I think so. I'm not absolutely sure.**

25 Q. That's fine. Did any members or surgeons

1 leave Epiphany due to the discord or the disputes
2 about which location to go with?

3 **A. The ENT surgeon tried.**

4 Q. What do you mean, tried?

5 **A. I mean he started suing Epiphany to get his**
6 **money back from Epiphany, but he got thrown out.**

7 Q. And I want to clarify, "he got thrown out."
8 Do you mean his case got thrown out?

9 **A. The court, his case got thrown out.**

10 Q. Was he still a member of Epiphany, or did he
11 resign?

12 **A. No, he's still a member of Epiphany.**
13 **Whether he resigned or not, you're going to have to**
14 **ask him. But at this point, it's a moot issue**
15 **because Epiphany essentially no longer exists.**

16 Q. Right. And the name of this surgeon, sir?

17 **A. I don't remember the name. You can ask my**
18 **wife. She probably remembers it.**

19 Q. That's fine. That's fine.

20 **A. If you give me a list of doctors, I can**
21 **figure it out.**

22 Q. He sued Epiphany in court here in Clark
23 County, and did Epiphany hire counsel?

24 **A. Yes.**

25 Q. Do you recall --

1 **A. No. I've had so many attorneys over the**
2 **years, I can't remember who handled that one,**
3 **honestly.**

4 Q. Got it. But it was ultimately successful
5 for Epiphany?

6 **A. Yeah. Within a very short time.**

7 Q. Okay. Now, how is your relationship with
8 Dr. Smith?

9 **A. I mean, reasonably good, given the fact**
10 **that, you know, at least I can walk.**

11 Q. And he did the surgery on your back?

12 **A. All three of them.**

13 Q. I want to talk about Flamingo Pecos. Is it
14 true to say that Flamingo Pecos was the majority of
15 your revenue or income after 2010 until the problems?

16 **A. No.**

17 Q. The majority of your income and revenue was
18 from the ltd?

19 **A. Oh, yeah, definitely.**

20 Q. Do you have a rough approximation of what
21 revenue or profit you took from Flamingo
22 Pecos/Epiphany?

23 **A. Well, Flamingo Pecos and Epiphany are two**
24 **different things. Flamingo Pecos is a surgery**
25 **center. Epiphany is the management company.**

1 The amount they took out of the management
2 company was small because we weren't taking
3 distributions based on Barnes telling us we weren't
4 making any money. The money from the Plaza Surgery
5 Center was being poured into the new surgery center
6 on the west side. So we weren't taking any
7 distributions. I think there was one distribution of
8 \$50,000 total in December of 2012, to the best of my
9 recollection. And that was it. And I got -- I don't
10 know -- 15 percent of that or something, and that was
11 it.

12 So, no, I was not getting very much money at
13 that point.

14 Q. Out of Epiphany?

15 A. Out of Epiphany.

16 Q. Got it. I appreciate you clarifying. And
17 Flamingo Pecos, which was the new center on the west
18 side, you were performing surgeries there?

19 A. Correct. I moved all mine over there to
20 allow one of the orthopedic surgeons to have the
21 entire operating rooms at the east side.

22 Q. Now, did the draws and revenue you received
23 from Flamingo Pecos, did that come directly to you,
24 or did that go to the ltd?

25 A. It would have gone to Epiphany Surgical

1 **Centers. We weren't getting any of it because all of**
2 **the money was going, according to Barnes, into the**
3 **east side.**

4 Q. Right, right. No, I understand that.

5 A. **This isn't the west side. The new side.**

6 Q. I understand that the management portion of
7 it you weren't receiving --

8 A. **Any portion of it. We weren't getting**
9 **distributions. We weren't getting management. We**
10 **weren't getting anything.**

11 Q. Right. But strictly speaking about your
12 individual personal practice of medicine in Flamingo
13 Pecos, you were being paid by Flamingo Pecos;
14 correct, for doing surgeries there?

15 A. **No. Only if we made a profit.**

16 Q. And did Flamingo Pecos ever make a profit?

17 A. **No.**

18 Q. Did anyone ask questions why Flamingo Pecos
19 wasn't making a profit?

20 A. **Yeah.**

21 Q. Who asked those questions?

22 A. **I did.**

23 MR. IQBAL: Just so the record reflects that
24 the examinee pointed to himself.

25 BY MR IQBAL:

1 Q. So who did you ask these questions to?

2 A. Robert Barnes.

3 Q. And what did he say to you?

4 A. He said that the expenses were much higher
5 than he thought that they would be. The amount that
6 we were paying was much higher. And he gave a whole
7 litany of excuses and kept saying that the next month
8 it would be better.

9 Q. How long did he say this for?

10 A. Months.

11 Q. Did you ever ask for supporting documents or
12 accounts to see that what he was saying was true?

13 A. Yes. With the help of Marjorie Belsky.

14 Q. And was this accountant echoing what Barnes
15 was saying and saying, the expenses are too much, and
16 next month we'll be better?

17 A. Bank of America was echoing it. And Wells
18 Fargo was echoing it. And even when we switched over
19 to -- Lord, what's the other bank's name. They all
20 echoed it. But they were looking at -- that's why
21 it's a federal case. They were not looking at
22 correct information, it was my belief.

23 Q. So Barnes was issuing false reports, and the
24 banks were echoing it and parodying his line that,
25 Next month will be better, and our expenses are too

1 high right now?

2 A. Yeah. I'd say that's a fair assessment.

3 Q. And this accountant -- and you identified as
4 the accountant for Marjorie Belsky -- this accountant
5 was also echoing the same line?

6 A. Back at that point she was -- he was. Later
7 he said that there were things that were raising red
8 flags, but he never went over them with me. He said
9 he went over them with Barnes.

10 Q. And what did Barnes tell him, if you know?

11 A. Well, he says later that he had been told by
12 Barnes that everybody knew about it, and there was no
13 problem with it. Even though the money apparently
14 was going to Barnes.

15 Q. I think you'll be thankful for this. Let's
16 move away from Barnes for a bit, okay, and talk about
17 Flamingo Pecos.

18 A. Well, I was going to say, that's about all I
19 can say anyway.

20 Q. I appreciate that.

21 The Flamingo Pecos operation, how many
22 people at its peak were employed by Flamingo Pecos?

23 A. Not a clue. As I've told you before, by the
24 point in time that Flamingo Pecos was up and running,
25 my primary drive was to figure out how to get myself

1 **better. And I was never the primary person on**
2 **Flamingo Pecos.**

3 Q. Who was the primary person?

4 A. Barnes.

5 Q. Okay.

6 A. And actually the neurosurgeons, too, because
7 they wanted a big place where they could put their
8 neurosurgical cases.

9 Q. So the decision to get the west side
10 facility and move in, was that a board decision?

11 A. Yes.

12 Q. Did you vote in favor of moving to the west
13 side?

14 A. Yes.

15 Q. How was it decided that you would sign the
16 guarantee on the west side location?

17 A. Bill Smith had done the east side, and the
18 vote had been taken that the others would guarantee
19 whoever actually signed it, because the banks didn't
20 want to have a bunch of signers. They needed to have
21 one or two or something, and that's how I ended up
22 doing it. But I was supposed to be backed up by
23 everybody else.

24 Q. Did they back you up?

25 A. No.

1 Q. Did you ask for them to back you up when you
2 were sued?

3 A. Yup.

4 Q. Yes?

5 A. Yes.

6 Q. And what was their response?

7 A. Your problem.

8 Q. Is it fair to say that every surgeon who was
9 part of Flamingo Pecos did surgeries out of that west
10 side location?

11 A. No. There were a couple who stayed on the
12 east side. I would have stayed on the east side. I
13 would have stayed there except one of the orthopods
14 kept having conniption fits about my interfering with
15 his cases, even though he was doing his piddling
16 three or four, and I'm doing, even when I was bad,
17 five.

18 So I moved over there just to -- it's not in
19 the right location for me.

20 Q. Right. When you moved over to the west side
21 location, it had already been running?

22 A. Yeah. When I moved there, it had already
23 been running for a couple months, several months.

24 MR. IQBAL: Let's go off the record.

25 (A brief recess was taken)

1 BY MR. IQBAL:

2 Q. So back on the record.

3 So Flamingo Pecos -- you had just indicated
4 that not all of the members of Flamingo Pecos did
5 surgeries on the west side, and you just told us
6 about how you actually moved your practice from the
7 east side because another practitioner on the east
8 side was saying you're crowding his practice.

9 A. Correct.

10 Q. So when you went over to the west side
11 location where Flamingo Pecos is right next to
12 Summerlin, was that facility already running when you
13 did your first surgery at the Flamingo Pecos?

14 A. Yes.

15 Q. And how were the economics; how was Flamingo
16 Pecos doing, or at least what was Barnes telling you
17 when you were getting the year-end reports?

18 A. It was doing very poorly.

19 Q. Did the board ever discuss why it was doing
20 very poorly or do an investigation before Tammy
21 found --

22 A. Yes. That's why we appointed the three
23 doctors to go over and see what was going on.

24 Q. Okay. So these three doctors were appointed
25 before Tammy found out what was happening at Bank of

1 America and before Barnes disappeared?

2 **A. Correct.**

3 Q. Okay.

4 **A. Like several months.**

5 Q. When did these three doctors approach you?

6 And you're in and out of surgeries, you know, as we
7 talked about --

8 **A. They didn't really approach me because by**
9 **the time they actually got their shit together, I was**
10 **flat on my back trying to recover. And then I only**
11 **got up for about a month, and then I was flat on my**
12 **back getting another one done. So they never really**
13 **talked to me. And one of them was the guy that tried**
14 **to sue me, who knew better than to try to talk to me.**

15 Q. And who was that individual?

16 **A. The ENT surgeon. I don't remember his name.**
17 **If you want to take a break, I'll go ask my wife.**

18 MR. CROWE: We can provide that for you
19 later if you want.

20 MR. IQBAL: That's fine.

21 BY MR. IQBAL:

22 Q. So the same ENT surgeon who sued Epiphany
23 also sued you personally?

24 **A. No, he just sued Epiphany.**

25 Q. He just sued Epiphany.

1 **A. Yeah. He was trying to say that he never**
2 **really bought shares, or some such baloney. It was**
3 **so ridiculous. It got thrown out of court.**

4 Q. When these three doctors were assigned to
5 look into your finances, and you were flat on your
6 back, and as you just said, by the time they got to
7 you you were out, how long was their investigation,
8 if you can recall?

9 **A. Okay, correction. They weren't really**
10 **looking into my finances, they were looking in the**
11 **finances of the surgery center to see if anybody was**
12 **getting some unfair amount or whatever. Or had, you**
13 **know, indiscriminately done something.**

14 Q. Okay. Got it. And they came back with a
15 verdict of, Everything's fine?

16 **A. Yeah.**

17 Q. And at that time was Barnes still there, or
18 had he disappeared by this time?

19 **A. No, he was still there.**

20 Q. He was still there, okay. Do you know how
21 long their investigation was or what they looked
22 into?

23 **A. No. I had bigger fish to fry.**

24 Q. And you stated that Flamingo Pecos was not
25 profitable during any year of its existence?

1 A. I was told it wasn't profit in any year of
2 its existence.

3 Q. And you were told this by Barnes?

4 A. Correct.

5 Q. Did you take any of the year-end reports or
6 any of the formal reports that he gave you during the
7 weekly meetings, and did you ever take them to your
8 accountant and say, Hey, look at these?

9 A. No. I went over them with the banks.
10 You've got to realize that the banks had multiple
11 people that had signed on loans. So they were
12 following this very closely and requiring multiple of
13 us to do annual income statements and all this other
14 stuff. And it was up to me to get the doctors to
15 actually give them the income information, which they
16 would never do, so they turned to me to get it, okay?

17 Q. Okay.

18 A. Which I did, eventually. But usually it's
19 by the end of the year that they got the stuff from
20 six months before.

21 So, yeah, they got it. The other thing that
22 drove me nuts is, how did Bank of America miss this?
23 How did Wells Fargo miss this? I mean, Bank of
24 America particularly. They have all my accounts.
25 Right? They have all of Epiphany's accounts, and

1 they have all the surgery center's accounts. How
2 could they be missing it?

3 Q. What was their answer?

4 A. Originally their answer was that it looked
5 like somebody was doing something with the accounts
6 that was changing them from what they really were,
7 and then they shut up. They said they were going to
8 give me my money back for the Epiphany account,
9 because the checks that were written on the Epiphany
10 and what was drawn out were drawn out by someone that
11 did not have the right to do it.

12 Q. Right.

13 A. It wasn't me.

14 Q. Right. So this Epiphany account that they
15 initially said they were going to give you your money
16 back, how much was that amount that they were going
17 to give you back?

18 A. They said that they would be able to -- I
19 forget what they call it. It wasn't a cram. It was
20 something. Clawback. That was it. That it would be
21 a clawback. That was the guy who was doing my
22 accounts at the time. And then he disappeared, and
23 they put somebody else in charge of my account who
24 wouldn't say anything to me.

25 Q. But that initial individual who ultimately

1 disappeared, he said you would be able to claw back
2 the money that was taken out of the Epiphany account?

3 A. Right. Correct. Because he looked at it
4 and he saw that is wasn't -- I was the only signatory
5 to that account. It's not actually correct. It was
6 set up so that it -- we went eventually to a two --
7 two people could sign it. And it was, I think Bill
8 Smith and me and Barnes. Maybe it was just me and
9 Barnes. But at one point, my office manager and I
10 both recall that we had changed it.

11 That -- all that paperwork had disappeared.
12 The only thing that was there was my original
13 signature on opening the account, and they could find
14 nothing that showed that anybody else had a right to
15 get any money out of that account. Yet they let
16 money go out of the account.

17 They also told me that anything over 6,000,
18 by their own regulations, had to be checked by a
19 higher-up at Bank of America. That clearly was not
20 done, either.

21 And the FBI -- and this is where I'll step
22 with the FBI discussion -- told me that this is the
23 worst they had seen in years.

24 Q. So when this initial Bank of America
25 individual said, We're going to try and claw back the

1 money taken from the Epiphany account, did he give
2 you an approximate number?

3 A. No. He didn't give me an approximate
4 number. He said he would take a look at it and see.
5 But the approximate number would have been the entire
6 amount in the account. I looked at the account, and
7 it should have been at zero for the entire time.
8 When I look back at it, there's been a lot of money
9 going through that account, and none of it went to
10 me.

11 Q. So when you say -- when you looked at the
12 account and there had been a lot of money going out
13 of that account, can you approximate "a lot of
14 money"?

15 A. In the order of a quarter of a million,
16 300,000, 350. I can't remember the exact amount. It
17 was a lot.

18 Honestly -- I know this sounds crazy to
19 you -- but when you can't walk and you're having
20 trouble peeing, it's not really the biggest thing on
21 your mind.

22 Q. That's understandable, sir, because you're
23 just focused on living and making sure --

24 A. Being alive.

25 Q. -- you're going to get better. Yeah.

1 **A. Yeah.**

2 **Q. Yeah. Absolutely.**

3 So that 300 or \$350,000 number, that was
4 your money, or that was Epiphany's money?

5 **A. That was Epiphany's money, but I'm 68 or 69**
6 **percent owner of Epiphany Surgical Solutions. There**
7 **are a couple Epiphany's. One where I just keep my**
8 **private stuff, and then Epiphany Surgical Solutions,**
9 **which was the management company. That was Epiphany**
10 **Surgical Solutions' money. That should have been**
11 **distributed and was not.**

12 **Q. Okay, a couple more questions there. The 69**
13 **percent ownership of Epiphany Surgical Solutions, who**
14 **are the other owners of Epiphany Surgical Solutions?**

15 **A. I think we've already turned that over to**
16 **you guys.**

17 **Q. Right.**

18 **A. But I can't remember all of them. Smith**
19 **owns about 20 percent. And then --**

20 **Q. A Michael Phillip --**

21 **A. Yeah, and he owns about 1 percent or less.**
22 **There are a bunch of small owners because they just**
23 **got a small percent as being owners in the original**
24 **thing. Some people bought up, most did not.**

25 **Q. Okay, that's helpful. Then you just**

1 mentioned there were other private or personal
2 Epiphany entities. This Epiphany Surgical Solutions,
3 that was what a couple of surgeons or a number of
4 surgeons had ownership interest. You mentioned a
5 private Epiphany?

6 A. No, no. What I said was, my own shares I
7 kept in Epiphany Surgical Centers, okay?

8 Q. Okay.

9 A. Although for a while, Smith screwed up and
10 was supposed to be doing his own, and he was supposed
11 to have his attorney draw one up. I had mine drawn
12 up, and he didn't get around to it for Kingman. And
13 the checks came to me, and I just forwarded it to
14 him. It essentially was my account. It had nothing
15 to do with anything else, and it's also defunct.

16 Q. Did that entity file for bankruptcy?

17 A. Did that entity file for bankruptcy? No.
18 It hasn't filed for bankruptcy. It has no assets.

19 Q. Any creditors or liabilities?

20 A. I believe not. There was really nothing
21 there but shares.

22 Q. So all the members, all the surgeons who
23 were involved in Flamingo Pecos, they never made any
24 money during the two or three or four years of its
25 existence before it filed for bankruptcy?

1 A. No. Prior to starting the west side, we
2 were doing quite well.

3 Q. How long was Flamingo Pecos on the east
4 side?

5 A. All totaled, I think it was maybe 2000 -- or
6 we started, I think, to try to open in 2002 or 2003,
7 and it was slowed down by the trouble of getting
8 malpractice, and then most of the people who started
9 had left town. And then we got it started up
10 somewhat after that. So maybe 2004, something like
11 that.

12 Q. So there was a history of Flamingo Pecos
13 being successful --

14 A. Doing very well.

15 Q. -- and profitable for years?

16 A. Yes.

17 Q. Then through Regent, Robert Barnes gets
18 involved, and then you folks move over to the west
19 side, correct?

20 A. Correct.

21 Q. And Robert Barnes, I believe, was the one
22 who negotiated the lease with the west side location?

23 MR. CROWE: I have to interject. You've
24 asked this question five times.

25 MR. IQBAL: Which question?

1 MR. CROWE: It's asked and answered. About
2 Barnes and the sequence of events, and you've covered
3 it five different times.

4 MR. IQBAL: Well, there's a number of facts
5 that are coming out. I'm just trying to --

6 MR. CROWE: I'm just entering an objection
7 for the record.

8 BY MR. IQBAL:

9 Q. Okay. Did Barnes join you before Flamingo
10 moved to the west side?

11 A. Yes. Flamingo didn't move to the west side,
12 Flamingo was always on the west side.

13 Q. What was the entity that was successfully
14 running on the east side since 2004, 2005?

15 A. What was the name of the entity? At that
16 point it was -- was it Flamingo Pecos, LLC? I think
17 it was Flamingo Pecos. I have to go look.

18 Q. That's fine. So it was essentially the same
19 entity that went over to the west side?

20 A. Eventually, yeah.

21 Q. Okay.

22 A. It was started by a different entity, and
23 then Flamingo Pecos decided to join it.

24 Q. So here's just a new question: When
25 decisions were made in Flamingo Pecos whether to pay

1 rent or not or make major financial decisions, were
2 you consulted because you were on the board?

3 **A. If I happened to be there, yeah.**

4 Q. If you were not there, you were not
5 consulted?

6 **A. No. All actions with regard to that had to**
7 **be board actions.**

8 Q. So the board was deciding on a given basis
9 this month, whenever they were meeting, We have
10 enough money to pay rent or We don't have enough
11 money to pay rent, correct?

12 **A. As far as I know, yeah.**

13 Q. When Flamingo Pecos was in arrears by
14 hundreds of thousands of dollars, were you notified?

15 **A. Eventually, yeah, but we weren't really**
16 **notified to the extent -- it shouldn't have been in**
17 **arrears because the money was coming in sufficient to**
18 **have paid it. It went out in the wrong direction,**
19 **which we didn't know.**

20 Q. And at the time you thought it wasn't making
21 money because that's what you were told?

22 **A. Yes, and I was being told that with several**
23 **bankers present, who also were telling me, Don't**
24 **worry about it. It's doing really well. It will**
25 **come back as soon as it catches up.**

1 Q. Were you involved in the decision to abandon
2 the west side location for Flamingo Pecos?

3 A. Was I involved in the...

4 Q. When Flamingo Pecos abandoned the property,
5 and very soon after it declared for bankruptcy, were
6 you involved in that decision?

7 A. Actually, I was against abandoning either
8 side.

9 Q. And the board voted on it?

10 A. The board voted on it, and then I can't
11 remember what I voted on it after they had the
12 debate. I may have voted for it just because I
13 didn't want to piss everybody off. But I was against
14 closing either side.

15 Q. Now, because Barnes had already left by that
16 time -- and this was November of 2014 -- those
17 minutes are still --

18 A. Yeah. Presumably Smith has them, yeah. I
19 quit in there fairly quickly because I couldn't -- I
20 mean, like now, I really need to go lay down, get a
21 heating pad on me. I can't go on for long periods of
22 time. And they were doing it at the end of the day.
23 I've done nothing else today except this, and it's
24 already going too long.

25 So I was pretty much out of it by the time

1 they made the decision to actually close everything
2 down. I believe, to the best of my knowledge, I had
3 already resigned from the board.

4 Q. Before the west side location was abandoned?

5 A. It was actually abandoned. I think I had
6 already resigned from the board, yeah. I think so.
7 It was in that neighborhood.

8 Q. So you weren't involved in the decision for
9 Flamingo to file for bankruptcy?

10 A. No. I was just being told that it was.
11 That was long after I was no longer on the board.

12 Q. Did you approach the FBI, or did the board
13 approach the FBI, or did the attorney for the company
14 approach the FBI?

15 A. The board and the attorney approached the
16 FBI, and I was there.

17 Q. And you were interviewed?

18 A. Yes.

19 Q. Once or multiple times?

20 A. Once. Although I think they called me a
21 couple times.

22 Q. And as far as you're aware, is that
23 investigation still continuing?

24 A. The last that I heard -- it may have been as
25 long as a year ago -- it was still continuing, and I

1 was told to cool my jets, and that they'd go after
2 Bank of America for the money that was lost in my
3 personal account. The FBI turned very slowly, but
4 it'd get there.

5 Q. Get where? I'm sorry.

6 A. It would get around to it eventually.

7 Q. Okay.

8 A. And it would take quite a while.

9 Q. Did you sue Bank of America for the \$350,000
10 that was taken out of your account?

11 A. No. The accountants keep telling me to do
12 that, but in order to be able to do that, I would
13 have to spend a fortune on discovery. Barnes, if
14 you've seen what he was spending money on, I doubt
15 has any of the money left.

16 Hence there's very little reason to do it
17 because you're not going to get anything back from
18 Barnes, so now you have to go after Bank of America
19 directly. And I don't have any stuff from me to
20 them. Personally I don't how I can prove that B of A
21 was involved. But that's what the FBI says. So I'm
22 waiting for them to actually come back with
23 something.

24 Q. Did you folks, you or the board or anyone,
25 do an investigation into Barnes' finances, or just

1 assumed that he doesn't have any money left?

2 A. No, I don't have the cash or -- look, at
3 this juncture, my finances are such that I'm going
4 negative every month. So there is no way I'm going
5 to start a large battle. I've been through large
6 battles. Never lost one. But I know how much they
7 cost.

8 Q. I'm not talking about now. I should
9 clarify. After you found out about the fraud, did
10 you investigate Barnes or do an audit or hire a PI or
11 anything to go after Barnes?

12 A. The only thing I did was get a forensic
13 accountant to go over the Epiphany Surgical Solutions
14 account since the rest of it would require board
15 action, not me unilaterally.

16 And I actually called the other members of
17 Epiphany, at least enough of them to get several more
18 votes besides mine. Although theoretically I have
19 enough votes to pretty much do it anyway, to go over
20 it. I personally paid for it without getting
21 anything from anybody else. But the others have made
22 it quite clear that they do not want to -- if I'm
23 willing to go after it, fine, but they're not going
24 to be willing to help.

25 Q. So they made it clear to you that they don't

1 want to chase Barnes or any of the money that he
2 took?

3 **A. I wouldn't go that far. They're waiting for**
4 **the FBI to get back and tell them because their**
5 **attorneys said the same thing, because I was there,**
6 **which was, let the FBI do the heavy lifting.**

7 Q. During this time, 2012, 2013, 2014, until --
8 before the eviction from the west side location, you
9 were on the board of Flamingo Pecos?

10 **A. I don't know if -- I can't remember if I was**
11 **on the board during the eviction or not, honestly. I**
12 **think by then I may have been already -- I was either**
13 **out or on the way out.**

14 Q. Okay, that's fine. And when you say you
15 quit the board, do you mean the Epiphany board or the
16 Flamingo Pecos board? Is it one in the same?

17 **A. The Epiphany board is theoretically**
18 **different. Our board, or the Epiphany board**
19 **meetings, nobody shows up, so they really end up**
20 **being the same thing.**

21 Q. All right. Let's talk about the ltd. Have
22 you been taking monthly draws from the ltd?

23 **A. No.**

24 Q. When was the last time you took a monthly
25 draw from the ltd?

1 **A. December.**

2 MR. IQBAL: Now I'm handing the court
3 reporter what's been marked as **Exhibit 2** and handing
4 it to counsel. This is the amended disclosure
5 statement.

6 (Thereupon **Exhibit 2** was
7 marked for identification.)

8 BY MR. IQBAL:

9 Q. Sir, I just handed you something that we did
10 two to a page just to save some paper, but it's
11 identified at the top as Document 235 in the same
12 case that we're having this proceeding on. Case
13 15-13135-ABL. It states page 1 of 81 at the front.
14 Do you recognize what I've given you?

15 **A. Yes.**

16 Q. And what is it?

17 **A. Exactly what you said it was. I just read**
18 **across the top of the headline as you were reading**
19 **it.**

20 Q. Is this the disclosure statement that was
21 filed by your counsel, to the best of your
22 recollection? You don't have to read every page.

23 **A. Yeah, it looks like it is.**

24 Q. And again, the only change we made was to
25 put two pages on one to save a little bit of paper.

1 If you turn to page 16. Now, that's going
2 to be 16 in the document, not the actual 16th page of
3 the document.

4 **A. Correct.**

5 Q. And you see on the left side, which is
6 page 15, "Liquidation Value," and on the right side
7 on page 16 you have a chart. Correct?

8 **A. Yes.**

9 Q. Where you have two asterisk points, "Charles
10 H. Tadlock M.D., ltd," it says "Current value,
11 50,000"?

12 **A. Yeah. They did that against my will.**

13 Q. Against your will?

14 **A. Yeah. I don't think it's worth 50,000. I**
15 **don't think it's worth anything.**

16 Q. Who told you to put 50,000?

17 **A. They had to come up with some number, and**
18 **that was a number that was tossed around. But**
19 **honestly, there are so many problems with it that --**
20 **first there's nobody willing to buy it. I tried to**
21 **sell it. Secondly, right at this moment we don't**
22 **even have a PA. I can only work a few hours a month.**

23

24 I've checked with everyone in town that I
25 know of. No one successfully sold a pain practice

1 for any amount of money, and certainly not one that
2 doesn't even have a PA as of the 29th, when my PA
3 quits. So I don't think it's worth 50.

4 Q. Do you know how that number was calculated
5 or it was kicked around? I'm just trying to
6 understand the process?

7 A. Yeah, I understand that basically on the
8 basis of the fact that I can work and make up to
9 about that amount of money before it starts affecting
10 my disability. If I make more than that amount, then
11 I'm actually losing money because it affects my
12 disability. So I'm certainly not going to make more
13 than that, and honestly, I haven't been making that
14 over the last year.

15 Q. So there's no accounting calculation or
16 principals how you came up with this current value?
17 You came up with the current value based on what you
18 potentially could make?

19 A. In the old days, you could get somewhere
20 between 0.5 and one times the net amount that you're
21 making out of a practice.

22 Q. Right.

23 A. So that would be about one times the net out
24 of the practice.

25 Q. Okay.

1 A. So that's why they went with 50. That's
2 what I thought the net would be at that time, I mean,
3 when we came up with the 50. It turns out I was
4 wrong.

5 Q. So when you turn to page 25 --

6 A. Uh-huh.

7 Q. -- and you look at -- and it says "Schedule
8 of monthly cash flows for five future years." And if
9 you look at number 1, "Salary." So that's
10 Mrs. Tadlock, and that's coming from the ltd.
11 Correct?

12 A. Right, but something's happened since that
13 period of time, which is, I'm told Mrs. Tadlock is
14 probably eligible for disability also, so she will
15 probably be going on disability after she sees her
16 doc.

17 Q. I'm just talking about at the time that this
18 was written.

19 A. Right. At the time that this was written,
20 that's about what we thought it was going to go.

21 Q. So at the time this was filed -- and that
22 was about a month ago, right? It was entered
23 December 21st. At that time she had a salary of
24 4,400 per month, and you had an income from the same
25 ltd of 5,350, correct?

1 **A.** This says "maximum amount of income." There
2 may have been a month that I made 5,350, but I think
3 last year I only made -- I don't know -- 7 or 8
4 thousand from direct payments to me.

5 Q. When you add up the two, it comes out to
6 \$9,750 a month. And at the time that this was
7 entered into the docket, the projected cash flow from
8 the ltd was 9,750 or about 10,000 a month, correct?

9 **A.** Yeah. If I were getting that much, which I
10 haven't been, yeah.

11 Q. Right. I'm basing it on your wife's
12 salary -- and I understand that circumstances have
13 changed.

14 **A.** Correct.

15 Q. But for the purpose of my next few
16 questions, we're just going to focus on the
17 disclosure statement, as if it's December 21st.

18 So at the time that the disclosure statement
19 is entered, it is 4,400 for her salary, and that's
20 coming out of the ltd, and the maximum amount of
21 income from the ltd of 5,350 for you. So that comes
22 out to 9,750, correct?

23 **A.** Correct.

24 Q. And here it says "maximum amount," but on
25 page 16 -- I'm sorry -- on page 18, if you turn to

1 page 18, at the last full paragraph, it says -- and
2 I'm quoting here -- "Dr. Tadlock believes that the
3 medical practice can produce at least \$5,350 on a
4 monthly basis from treatment of patients by
5 personnel. Charles H. Tadlock M.D. ltd."

6 **A. Yeah, that was my best estimate at the time.**

7 Q. So I'm a little bit unclear because on page
8 18 it says "at least \$5,350," but on page 25 it says
9 "maximum of \$5,350."

10 **A. Well, like I said, I can't really go over**
11 **that amount because if I do, then I've got to**
12 **decrease the 20,750 because it was a disability**
13 **payment. Furthermore, I'm getting worse, and it's**
14 **quite likely that I'm not going to be able to work as**
15 **much as I thought I was going to be, because even in**
16 **the last month I've worsened.**

17 Q. Are there other medical professionals doing
18 surgeries at the ltd besides you that would be
19 bringing in revenue?

20 **A. No. I had a PA who was doing -- mostly**
21 **seeing patients, but he quit as of the 29th.**

22 Q. So outside of you, there's nobody, no other
23 source of revenue for the ltd?

24 **A. Correct.**

25 Q. As of right now?

1 **A. Well, as of the 29th.**

2 Q. As of the 29th, okay. You had a payroll --
3 if we look at page 79, you had a payroll -- and this
4 only goes to the first 11 months of 2015 -- you had a
5 payroll -- if you look on, I'm sorry, page 80 -- of
6 \$406,000?

7 **A. Yes. That was including the first nine**
8 **months when I had a contract for Ealy, and it was**
9 **bringing in approximately \$50,000 a month for Ealy.**
10 **And that doesn't exist anymore. They fired me as of**
11 **August.**

12 Q. Do you know why they fired you?

13 **A. Yeah, they got somebody else that would do**
14 **it cheaper.**

15 Q. This payroll of 400 some thousand over 11
16 months, how many employees did the ltd have until
17 2015? And I understand that it's changing now, but
18 in 2015 with this payroll, how many employees did it
19 have?

20 **A. About a dozen.**

21 Q. Are you including yourself?

22 **A. It's about a dozen. Whether I'm in there or**
23 **not, it's about a dozen. It might be a baker's**
24 **dozen.**

25 Q. With your wife and then office staff?

1 A. Yes.

2 Q. And the PA?

3 A. And the PA, maybe 13 or 14. There's not
4 very many. Several people have resigned or have been
5 fired in the last couple of weeks.

6 Q. Okay. In the last couple of weeks you just
7 said several people have resigned, and we talked
8 about the PA. And you also said several people had
9 been fired. Who's been fired?

10 A. Well, one person's been fired. I never even
11 got to know his name because he was there for such a
12 short time. One of the front office people. And two
13 of the people who had been there with me a long time
14 were told that they should start looking for jobs
15 somewhere else because I was deteriorating.

16 Q. For this revenue, 800 some thousand in 2015,
17 how many surgeries were you doing a month to generate
18 that revenue?

19 A. Okay. What you have to understand is it
20 wasn't the surgeries, per se, that was generating the
21 revenue with Ealy, where you can't do very many
22 surgeries.

23 Q. Okay.

24 A. Back in the day I was able to do 50 or 60 in
25 a day of shots, basically, and a few larger

1 surgeries. Now I'm down, I never -- I shouldn't say
2 never -- probably 15 is my max. I may have gotten 16
3 at one time or something.

4 Ealy was a pleasure because Ealy couldn't
5 move as fast as I could, despite the fact that I'm a
6 cripple. However, the surgery centers, for the most
7 part, can, and I'm never going to get up to those
8 numbers again.

9 So if it comes to some agreement with this,
10 and I try to save the practice, and if not, then I
11 close it. Because I'm done.

12 Q. Now, you mentioned the Ealy contract. That
13 was a big component of revenue?

14 A. Half a million, 800,000.

15 Q. And the rest of it was from patients that
16 you personally saw?

17 A. No.

18 Q. The PA?

19 A. The PA was probably the majority of the rest
20 of it. I don't know how much of it was my doing, my
21 few patients. You know, obviously I think I did one
22 day, in September I did two or three days. And I
23 haven't done really more than five or six half days
24 in any month. And frankly, I regret doing those.

25 Q. When you look at the profit and loss sheet

1 for the ltd, there's no receivables. Do you have
2 receivables, or do you have any kind of receivables?

3 **A. There's no receivables?**

4 MR. CROWE: Receivables don't go on the P&L.
5 You're talking about a balance sheet?

6 MR. IQBAL: Yes. I'm asking about
7 the -- well, let me take a step back.

8 BY MR. IQBAL:

9 Q. Do you have receivables? Do you have an
10 estimate for how much is owed to you for services
11 that you performed in 2015?

12 **A. No. I actually forgot to ask Tammy that. I**
13 **was going to. But I did ask her how long it would**
14 **last, and she said two or three months with the**
15 **current outgo. So it will be gone before -- when I**
16 **say the practice really is worth nothing, I include**
17 **the receivables because you have to do several things**
18 **in order to shut down a practice. One, you have to**
19 **have somebody there still answering the phone in case**
20 **somebody wants their records. You have to have**
21 **somebody still actually trying to get the insurance**
22 **companies to pay them, which gets harder and harder,**
23 **and you have to keep the records available to people**
24 **for seven years.**

25 So the amount that's in the receivables I

1 guarantee you is not going to be able to do all that.

2 Q. And that's something Tammy would know, but
3 you don't know off the top of your head?

4 A. Yeah, I have no idea, and Tammy would
5 probably have to look.

6 Q. That's fine, that's fine. So just to be
7 clear, circumstances have changed from when this
8 disclosure statement was filed because of your wife's
9 unfortunate injury, and she may be on disability, and
10 your condition has worsened, correct?

11 A. Correct. Yeah, I sent a text today to
12 Smith, who was telling me to go get another MRI. But
13 I really don't want you to because if I get one, it's
14 going to tell me I need to go have another surgery,
15 and I don't want another surgery. And I'm not sure
16 another surgery would help me.

17 Q. I hear you. So would you put the
18 liquidation value of the business at zero then?

19 A. Yeah, pretty close. I think they put \$4,000
20 for the car. The car has got 227,000 miles or
21 something like that on it. It's worthless. The
22 practice is pretty much worthless. The only way it
23 can be saved, in my opinion, is if we spend the next
24 year to trying to break even while we bring somebody
25 else in new.

1 Q. Okay.

2 A. And so far we've been having no success with
3 that at all.

4 Q. You're still trying to bring on somebody?

5 A. I'm trying as of this minute.

6 Q. That's fair enough. Now, with you saying
7 the \$50,000 number on page 16, it's close to zero,
8 then would that affect -- what we're talking about
9 today currently with the prospects for your wife and
10 your worsening condition, would you say that the
11 schedule of monthly cash flows for the five future
12 years is also off?

13 A. Unless I can find somebody else to come in,
14 it's going to be zero because I'm going to close. My
15 office manager warned people last week they were
16 probably going to close. I've given two months worth
17 of prescriptions to most of the patients with a "do
18 not fill" under the assumption that next month, I'm
19 going to be sending them a letter saying, Sorry,
20 we're closed.

21 I'm trying not to close. I'll make that
22 very clear to you, in case I don't, and you say, Ah,
23 you're a liar. I'm trying to find a way to keep it
24 open.

25 But as of right now, it isn't. And even if

1 I were to find somebody, what you have to realize is,
2 whoever I find is going to suck up all the money for
3 at least the next couple of years because I'm down to
4 maybe ten or fifteen percent of what I was doing
5 before. Before I had literally operations in three
6 to four states, depending on the year, and I was
7 generating two and a half million dollars a year just
8 by myself.

9 That's going to be very difficult for
10 anybody coming into the practice to do under the
11 current situation. And not even mentioning all the
12 crap going on about Obamacare. There may not be any
13 practices in a few months because Minnesota and
14 Wisconsin just cut reimbursement to pain practices by
15 Medicare by 75 percent. So guess what? There's no
16 more pain practices in Minnesota and Wisconsin.

17 I don't know if that's going to happen here
18 or not. If it does, that's definitely going to raise
19 a red flag.

20 Q. On page 79, if we go back to 79 and we look
21 at -- the ltd hasn't been involved in any litigation?

22 A. I don't know if the ltd -- if I got sued by
23 that idiot ENT by ltd or not. I'm going to say I
24 can't answer that, but I've had malpractice lawsuits
25 over the years. One was by my PA. But not any --

1 **no, I don't think so.**

2 Q. I'm talking about 2015.

3 **A. No.**

4 Q. Nothing? Nothing in 2015?

5 **A. No, I think that ENT was gone by then.**

6 Q. It says \$61,260.50 on page 79 of the
7 disclosure statement for legal fees. Why would the
8 ltd have \$61,000 in legal fees?

9 **A. That would be you, and probably the tail end**
10 **of the ENT suing me.**

11 Q. But I believe we talked about the ENT being
12 a couple years ago and being resolved?

13 **A. Yeah. I still owe some money. I still owed**
14 **them some money, I think. As far as the other, I**
15 **also have Gordan Richardson who goes after people for**
16 **me who are in arrears. And Arizona is \$300,000 in**
17 **arrears with me for access. So I'm assuming some of**
18 **that is Gordon.**

19 Q. Just to be clear, then, the ltd is -- and
20 you mentioned "you" when we were talking about legal
21 fees. I presume you're talking about the action over
22 the guarantee, correct, where you were sued over the
23 \$400,000 guarantee?

24 **A. Well, I'm also being attacked for the fact**
25 **that I'm behind on the rents. So I had to spend**

1 money on a couple different attorneys for National
2 Bank, which just acquired the loan from Bank of
3 America.

4 Q. Right. They sued you in state court?

5 A. No. I was trying to get out of them taking
6 over the property and negotiating with them and to
7 get it down to a reasonable amount. But they're
8 pretty much like Bank of America. Take it, or pow
9 pow, no matter how little it's worth.

10 MR. CROWE: Just to speed this up, you did a
11 loan modification last year, right?

12 THE WITNESS: Right. There might be the
13 loan modification, yep.

14 BY MR. IQBAL:

15 Q. But the ltd is paying your personal legal
16 fees?

17 A. My personal legal fees?

18 Q. Yes. Because this is your bankruptcy,
19 right? The ltd is not in a bankruptcy --

20 A. No, but --

21 Q. -- so I'm just trying to figure out how the
22 61,260 came about.

23 A. Gordon Richardson and a different
24 attorney -- and I forget who the other one is --
25 tried to go after Arizona for \$300,000 in arrears and

1 access, and they're now telling me that it's
2 impossible to get anything back from access because
3 it's the state, and they don't have to pay you, even
4 though they agreed to it. The fact that they agreed
5 to it does not mean you're going to get paid.

6 So, actually, that's a fairly small amount.
7 My legal fees are usually twice or three times that
8 amount. It's on the low side.

9 Q. Just to be clear, this ltd, these legal
10 fees, are for legal work associated with the ltd?

11 A. I believe so, yeah. They should be.

12 Q. And you personally pay your legal fees
13 separate from the ltd?

14 A. Correct.

15 Q. When you look on page 80, you have plane
16 expenses. Why would the plane expenses be on the
17 ltd's profit and loss when the plane is owned by
18 Icarus LLC?

19 A. It's a lease. \$12,000 a month from my ltd.
20 It's been in existence for ages. It's like since the
21 early 2000s with a different plane. It got upgraded
22 when I went to the jet prop from the Saratoga for
23 \$12,000 a month, as per my accountants and attorneys.

24 Q. So the ltd is paying Icarus to lease the
25 plane?

1 A. Correct. And a hundred percent of the
2 Icarus use has been business. This year hasn't even
3 taken off, which means it really is a hundred percent
4 business.

5 But I was audited a few years back by the
6 federal government because I was putting down, I
7 think, 94 percent or 92 percent or something, and the
8 rest of it was private, and they gave me money back
9 because it's a hundred percent private. I only use
10 the damn thing to run around to do work. Okay?

11 Q. Okay. Is there an agreement between the ltd
12 --

13 A. Yes.

14 Q. -- and Icuras LLC? Okay. What other
15 businesses --

16 A. Excuse me. Can I interrupt? Green &
17 Robertson also had a bunch of attorney fees as well.

18 MR. CROWE: Do you want to take a break?

19 THE WITNESS: No, I'm okay. I'm good with
20 this. I'm just getting close. If we're going to go
21 much longer, we're going to have to put the rest of
22 it off for another day.

23 MR. IQBAL: Can we go off the record for a
24 second?

25 (Off the record.)

1 MR. IQBAL: On the record.

2 MR. CROWE: I am going to object to you
3 asking questions about things that are pointless.
4 Conversion doesn't matter. Dismissal doesn't really
5 matter, either, because that would be outside of
6 bankruptcy. We're in a bankruptcy case. This is a
7 Rule 2004 examination.

8 MR. IQBAL: Right.

9 MR. CROWE: Okay. And it has to relate to
10 the administration of this case.

11 MR. IQBAL: I understand, and I'm going to
12 be asking questions about businesses that are on the
13 docket. I'm going to be asking questions about
14 property that's on the docket, that's in the
15 disclosure statement, which would be relevant,
16 correct? If it's in the disclosure statement and it
17 either goes to the liquidation value or it goes to
18 the monthly cash flow, wouldn't that be relevant?

19 MR. CROWE: Mohamed, the only real
20 non-exempt assets here are the ltd, as you've phrased
21 it, and the jewelry, which we appraised. So I'm just
22 having -- I just want to let you know, I mean, I have
23 real difficulty spending hours going through exempt
24 assets.

25 MR. IQBAL: I'm not going over exempt

1 assets. I want to ask about the house in California.
2 I want to ask about the house here.

3 MR. CROWE: Except it's in a Cupert for more
4 than ten years.

5 MR. IQBAL: But if it's over-secured and it
6 is worth a million dollars more than what it's listed
7 as, then there could be some information --

8 MR. CROWE: Even your Zillow numbers didn't
9 come out to \$2 million more, right? Even if you're
10 going to do a million dollars with Zillow, if you
11 want to present Zillow to that judge, I guarantee
12 you, it's not going to work well.

13 MR. IQBAL: No. Okay, just to be clear,
14 we're not going to present Zillow numbers. We're
15 going to do a request -- we're going to do a notice
16 of request for an evidentiary hearing so we can get
17 an appraisal. And so --

18 MR. CROWE: It's an exempt asset. Under
19 Nevada law, it's in a trust. It's exempted. It
20 doesn't matter if it's worth \$10 million. It's
21 exempt.

22 THE WITNESS: Correct.

23 MR. CROWE: It's in a Cupert. It's more
24 than 10 years old. There's no possible way under the
25 bankruptcy code that you can go back beyond ten

1 years. The only reason the 10 year period flies in
2 the doctor's role where it is, that if it's within
3 ten years, then there's an argument that could be
4 made that could deny him his discharge. The time for
5 that has also expired.

6 I'm just telling you, we're going to put an
7 objection to every single question as it relates to a
8 non-relevant asset. But go ahead.

9 THE WITNESS: Why don't you go review the
10 law before you ask me questions on something that --

11 MR. IQBAL: I have reviewed the law, and
12 there's something called the absolute priority rule,
13 and --

14 MR. CROWE: Which doesn't apply in a case of
15 individual debtors.

16 MR. IQBAL: Actually it can.

17 MR. CROWE: I does not.

18 MR. IQBAL: There's a case law that says
19 that it can.

20 MR. CROWE: You tell Judge Landis that
21 tomorrow.

22 MR. IQBAR: Okay.

23 MR. CROWE: Every time he confirms a plan,
24 Judge Landis will go through every single element,
25 even if it's not even contested, all right? Every

1 time he relates back to the Schacht decision from
2 Judge Mark Hill, okay, he follows that religiously.
3 That's the one basically that says in the case of
4 individual debtors, that rule does not apply. That
5 will all be property of the state re-vested in the
6 debtor upon its operation.

7 I'm just telling you this: I think we
8 should continue it. The doctor is not feeling well.
9 It will probably be better to continue it. We'll
10 agree to continue it.

11 MR. IQBAL: Yes.

12 MR. CROWE: But I'm just alerting you that
13 we have.

14 MR. IQBAL: Well, I'm only going to ask
15 about --

16 MR. CROWE: -- tremendous reservations.

17 THE WITNESS: Just continue it. I'm already
18 on enough medications on board as well as that. I
19 shouldn't be testifying anyway. And frankly, you
20 need to go review the law.

21 MR. IQBAL: I have reviewed the law. I was
22 going to ask you --

23 THE WITNESS: I've had half a dozen
24 attorneys who have reviewed Cupers. Unless you're
25 right and all half a dozen of them are wrong, which I

1 really doubt, then that stuff is exempted.

2 MR. IQBAL: Well, I don't want to continue
3 when you're hurting, as a human being to human being.
4 So I don't want to continue to ask you questions.
5 And I don't want -- when we do continue, I'm not
6 going to ask you non-relevant questions. I'm going
7 to ask you stuff that's in the amended disclosure
8 statement about assets of the estate. Okay?

9 Non-exempt assets, I have questions on those, and I
10 want to ask you those. But as a human being, I'm not
11 going to ask you when you're hurting. Okay? And I'm
12 not going to --

13 THE WITNESS: Then you're never going to be
14 able to ask.

15 MR. CROWE: Here's the other thing --

16 THE WITNESS: Please review it before you do
17 that.

18 MR. CROWE: The supreme court has made it
19 clear that if an exemption is filed, no matter how
20 bizarre it might be, okay, and it's not objected to
21 within the time frame, it's exempt property.

22 MR. IQBAL: I'm not talking about the exempt
23 property. I'm talking about the RV --

24 MR. CROWE: In this case, property of art is
25 exempt, and if we -- it would be exempt.

1 MR. IQBAR: -- the RV and other things that
2 are not exempt. And those are the questions I have.

3 MR. CROWE: I know, but they have no equity.

4 MR. IQBAL: Okay, under the rules for 2004,
5 am I allowed to ask about the RV? Yes. Right?

6 MR. CROWE: Sure.

7 MR. IQBAL: That's what I want to ask.
8 Under the 2004 rules, can I ask about the plane?
9 That's what I was going to go to.

10 MR. CROWE: Absolutely, sure.

11 MR. IQBAL: So those will be what the topics
12 are when we continue.

13 THE WITNESS: Have fun with it because it's
14 a hundred percent used for --

15 MR. IQBAL: I'm not trying to go outside the
16 scope of the 2004. I'm telling you right now what
17 I'm going to be asking about; the RV and the plane,
18 when we come back.

19 THE WITNESS: Have fun with that. It's a
20 waste of time.

21 MR. CROWE: Well, you're within your rights
22 to ask about anything, honestly, but I'm just trying
23 to appeal to you that it really has no relevance.

24 MR. IQBAL: The non-exempt assets? I can't
25 ask about that?

1 MR. CROWE: They're upside down.

2 THE WITNESS: Yeah, they're negative.

3 MR. IQBAL: Okay. So I simply just have to
4 take what's written on its face? I can't ask
5 questions about the RV?

6 MR. CROWE: No, you can look in my motion
7 that was granted that set the value of the thing.

8 MR. IQBAL: Okay. I can't ask about the
9 house?

10 MR. CROWE: And they have an unsecured debt.
11 Look, you can ask about anything you want, I'm just
12 trying to explain to you that it's not really
13 relevant to anything that can be included in the
14 disclosure statement. Right? I mean, creditors want
15 to know, okay, what are the assets that I can get at,
16 right? I mean, isn't that the question?

17 MR. IQBAL: Right.

18 MR. CROWE: I'm just posing that.

19 MR. IQBAL: And I'm asking about stuff
20 that's not exempt.

21 THE WITNESS: Keep pushing it, and I'm going
22 to give up. Those salvaged are going to be ltds, and
23 fuck you. Okay? You don't get it. I'm this close
24 to completely surrendering. So if you want the RV,
25 go pick it up. You just make the payments on it.

1 MR. IQBAL: I don't want the RV.

2 THE WITNESS: The airplane also. Take it.

3 MR. IQBAL: I don't want to take it. I just
4 want to ask you questions about it.

5 MR. CROWE: When do you want to continue
6 with this?

7 MR. IQBAL: When are you available?

8 THE WITNESS: I'm not available until next
9 month.

10 MR. CROWE: Okay. Then we're in early
11 February then.

12 THE WITNESS: Probably toward the tail end.
13 I'll have to get back to you as to when I'm available
14 because I'm not even sure if I'm going to have a
15 practice then.

16 MR. CROWE: Why don't we set our sights on
17 early February. Maybe two weeks from now or
18 something. Do you want to try for that?

19 MR. IQBAL: Does that work for you?

20 THE WITNESS: I don't know. I have to go
21 ask my office manager, and I'll get back to you.

22 MR. CROWE: I'll call you. We'll talk and
23 set it up.

24 THE WITNESS: You're talking me -- this is
25 silly, what you're actually talking me into doing.

1 Because this is just fucking ridiculous. The law is
2 clear on Cupers. It's been clear since, you know, I
3 originally looked at it 25 years ago. You're asking
4 me crap. You can ask whatever you want. I'm in a
5 bad mood because I'm hurting. So if I wasn't
6 hurting, I wouldn't be so cranky, but the truth of
7 the matter is, all you're really going to do is drag
8 me back here and hurt me some more for no good
9 reason, so...

10 MR. IQBAL: Well, for the record, we're not
11 trying to hurt you. We're just trying to ask
12 questions about stuff we can ask in a 2004.

13 THE WITNESS: Yeah, I know. I get it, and
14 I'll come over here and --

15 MR. IQBAL: No, we'll pick a place where you
16 don't have to take the steps.

17 THE WITNESS: That would be nice. I called
18 your office and asked them to have it available to me
19 to have a wheelchair. And I notice it's not here. I
20 can't even get up the thing. So I really am finding
21 it rather bizarre that --

22 MR. IQBAL: Who did you call, sir? Because
23 I was not informed that you needed a --

24 THE WITNESS: I don't recall exactly who it
25 was I talked to, but I made it very clear that since

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CERTIFICATE OF DEPONENT

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* * * * *

I, CHARLES H. TADLOCK, M.D., deponent
herein, do hereby certify and declare the within and
foregoing transcription to be my 2004 Examination in
said action; that I have read, corrected and do
hereby affix my signature to said 2004 Examination.

CHARLES H. TADLOCK, M.D., Deponent

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Jane V. Efaw, CCR No. 601, do hereby certify:

5 That I reported the taking of the 2004
6 Examination of the witness, CHARLES H. TADLOCK, M.D.,
7 at the time and place aforesaid;

8 That prior to being examined, the witness was by
9 me duly sworn to testify to the truth, the whole
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand notes
12 into typewriting and that the typewritten transcript
13 of said 2004 Examination is a complete, true and
14 accurate transcription of said shorthand notes taken
15 down at said time, and that a request has been made
16 to review the transcript.

17 I further certify that I am not a relative or
18 employee of counsel of any party involved in said
19 action, nor a relative or employee of the parties
20 involved in said action, nor a person financially
21 interested in the action.

22 Dated at Las Vegas, Nevada, this ____ day of
23 _____, 2016.

24

25 _____
Jane V. Efaw, CCR #601

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)
)
Flamingo-Pedos Surgery)
Center, LLC dba Surgery)
Center of Southern) BK No. 15-13135-abl
Nevada) Chapter 11
)
Debtor-in-Possession,)

AUDIO TRANSCRIPTION

341 MEETING OF CREDITORS

HELD February 5, 2015

TRANSCRIBED BY: Kathy Hoffman

AA000534

APPEARANCES

For the U.S. Trustee's Office:

MICHAL J. BLOOM
300 S. Las Vegas Boulevard
Suite 4300
Las Vegas, Nevada 89101

For the Debtor:

ZACHARIAH LARSON
LARSON & ZIRZOW, LLC
850 E. Bonneville Avenue
Las Vegas, Nevada 89101

Also Present:

William D. Smith, M.D.
(Via telephone) Hyatt Collins
Lewis Garfinkle
Christina Weller
Simone Chadda
Richard Dryser
Matthew Johnson

1 P R O C E E D I N G S

2

3 MS. BLOOM: We are on the record. This
4 is the 341 meeting of the creditors. This is not
5 continued, is it? It's the original.

6 C'mon in. Are you for Flamingo Surgery?

7 UNKNOWN SPEAKER: Yes.

8 MS. BLOOM: Okay. There's a creditor's
9 sign-in sheet.

10 This is the Meeting of Creditors in the
11 case of Flamingo Pecos Surgery Center, LLC,
12 Bankruptcy No. 14-18480. Today is
13 February 5, 2015, and this is the Office of the
14 United States Trustee. I am Michal Bloom
15 representing the trustee, and we have a debtor's
16 representative here today.

17 And what's your name, sir?

18 DR. SMITH: William Douglas Smith, M.D.

19 MS. BLOOM: All right. And you're the
20 one that signed the schedules?

21 DR. SMITH: That is correct.

22 MS. BLOOM: Very good. And I'm going to
23 swear you in. Do I need to see identification? I
24 don't think so. All right. Tell me your last name
25 one more time.

1 DR. SMITH: Smith.

2 MS. BLOOM: That's why I forgot it. It's
3 too easy. Could you, Dr. Smith, raise your right
4 hand?

5 Whereupon,

6 WILLIAM DOUGLAS SMITH, M.D.,
7 having been duly sworn in, testified as follows:

8 MS. BLOOM: Thank you. Counsel?

9 MR. LARSON: Zach Larson on behalf of
10 Flamingo Pecos Surgery Center, LLC, doing business
11 as Surgery Center of Southern Nevada.

12 MS. BLOOM: Okay. So we're going to get
13 everyone's appearance on the record. First on the
14 telephone we have.

15 MR. COLLINS: This is Hyatt Collins,
16 (inaudible), and I am with Gullett Sanford Robinson
17 & Martin.

18 MS. BLOOM: Okay. We'll just go around
19 the room. Someone start.

20 MR. GARFINKLE: Sure, let me start.
21 Lewis Garfinkle of Levine Garfinkle & Eckersley on
22 behalf of Canyon Medical Building, LLC.

23 MS. WELLER: Christina Weller from Weller
24 Law on behalf of Christiansen Law Offices, Eglet
25 Law Group, LLP, and Sam Harvey Law Firm.

1 MS. CHADDA: Simone Chadda from Chadda
2 Demopolis (ph) on behalf of George Gluck, M.D.

3 MR. DRYSER: Richard Dryser from Wilson
4 Elser on behalf DesMed, LLC.

5 MR. JOHNSON: Matthew Johnson from
6 Johnson & Gubler on behalf of both the Elcore (ph)
7 Family Trusts.

8 MS. BLOOM: Okay. Could we have a
9 summary of what is going on in the case today and
10 anything else that you can think of?

11 MR. LARSON: The summary is is we're
12 raising funds to reopen a location. We originally
13 had three locations that closed in large part, or
14 some would say mostly, because of the actions of a
15 poison pill that was managing the place to the
16 extent where the FBI is investigating.

17 Was he indicted?

18 DR. SMITH: Not yes, no.

19 MR. LARSON: Not yet. But we have
20 indications he will be indicted.

21 MS. BLOOM: Okay. This was someone that
22 worked for --

23 MR. LARSON: Yes, for the surgery center.

24 MS. BLOOM: The officer manager, okay.

25 MR. LARSON: Correct. During his tenure,

1 not only did monies disappear, but we're informed
2 and believed that various contacts were made
3 wherein this individual either A, got a kickback or
4 B, deliberately entered into economically
5 unfeasible agreements.

6 MS. BLOOM: Contracts with whom?

7 MR. LARSON: Various creditors. One such
8 agreement, for example, would be the linens that
9 were to be cleaned for various surgery centers were
10 being shipped to Utah and paid at a three to four
11 times the normal contractual rate to clean each
12 linen for each surgery here in Las Vegas. There
13 are lots of examples. The FBI is investigating.

14 The surgery centers have shut down. We
15 are raising money through a variety of people to
16 basically put into a capitalization fund to reopen
17 one location only.

18 That one location in large part will be
19 funded, hopefully, still working out the finalized
20 details, by a party who owns approximately seven
21 nationwide surgery centers and has vast experience
22 in building and managing surgery centers as well as
23 the focus on getting the billables in and
24 converting the center to Medicare and Medicaid.
25 Right, Doctor?

1 DR. SMITH: And not just that but also
2 where the insurance is local, worker's comp.

3 MR. LARSON: Basically taking our account
4 receivable time from a 90- to 120-day lag time to,
5 in a case of Medicare, 32-day lag time. So the
6 goal is to get the bell curve up and running and
7 start collecting receivables.

8 The doctors can create a lot of
9 receivables for the center once it reopens in
10 relatively short periods of time because the
11 surgeries they perform are always insurance covered
12 that they do or paid for up front.

13 And the problem was is once we got the
14 poison pill in there, all the doctors that were
15 part of the group -- or I'll say two-thirds of the
16 doctors gave up because he had -- he played the
17 pyramid scheme allegedly with the doctors saying,
18 hey, this is what's going on and why you're not
19 getting paid and kept the information from the
20 vital parties as to the true financial condition of
21 the surgery center.

22 So once everything is in order, it should
23 be a successful reorganization. We're trying to
24 open up escrow now to place the funds in in order
25 to get a motion out of the Court to approve the

1 funding, the new capitalization structure as well
2 as budgetary issues in regards to this is what
3 month two, three and four are going to look like.

4 MS. BLOOM: Okay. And in terms of --

5 MR. LARSON: If the funds are not raised,
6 this will be a liquidating plan where the
7 receivables that are not owned by other third
8 parties will be collected and disbursed by an
9 agent, but that is not the goal and not the plan.

10 MS. BLOOM: Okay. So my question
11 initially is what motions are pending? Your firm's
12 been employed?

13 MR. LARSON: I don't think we've attended
14 that hearing yet.

15 MS. BLOOM: Okay. All right. It looks
16 like there's emergency -- oh, those are your first
17 day motions. That's right.

18 MR. LARSON: Did Matt attend those?

19 MS. BLOOM: Matt attended them. He did.
20 And I don't think we had any problem with any of
21 them. I assume -- I don't know if the order has
22 been entered. Nobody objected to any of them, did
23 they?

24 MR. LARSON: No.

25 MS. BLOOM: I didn't think so. Okay. It

1 seems like not a very contentious case.

2 MR. LARSON: There's lots of contentions.

3 MS. BLOOM: Are there? Lots of
4 contentions but no contentiousness. Okay.

5 MR. LARSON: It's just a matter of
6 getting the information to people as to how it
7 goes.

8 MS. BLOOM: Yeah. How much was stolen?
9 Do we know?

10 DR. SMITH: Millions.

11 MS. BLOOM: Millions? This went on for
12 years.

13 DR. SMITH: Probably at least for three
14 to five years.

15 MS. BLOOM: Now, was there an accounting
16 firm that was --

17 DR. SMITH: There was probably three
18 separate accounting firms that appear that he would
19 hire one, and as soon as the accountants starting
20 having questions, he would tell us, oh, they're not
21 doing a good job. We needed to go to the next one.

22 MS. BLOOM: Wow. And you all had a lot
23 of faith in him because?

24 DR. SMITH: He's been in the community
25 for probably 15 years doing similar type of work.

1 MS. BLOOM: He's never ripped anyone else
2 off?

3 DR. SMITH: Not that we know of.

4 MS. BLOOM: You guys were the lucky
5 firsts.

6 DR. SMITH: We were the first ones.

7 MS. BLOOM: Wow. So he was recommended
8 by other surgery centers?

9 DR. SMITH: He was employed by, I think,
10 Health South. So even -- you know, was doing work
11 directly for them for their centers. And, you
12 know, we have -- you know, most of the surgeons
13 here are extremely busy, and we trusted him to do
14 the day-to-day management.

15 MS. BLOOM: Those are the people one
16 trusts the most.

17 MR. LARSON: Well, there seems to be a
18 gambling issue too.

19 DR. SMITH: Yes. There's credit cards he
20 used for withdrawing cash from in the middle of the
21 night, 25, \$30,000 at a time.

22 MS. BLOOM: From the corporate credit
23 card?

24 DR. SMITH: Corporate credit card,
25 uhm-hm.

1 MS. BLOOM: Well, that's not his fault.
2 Gambling's a disease. What's the problem?

3 DR. SMITH: Yes, that's his story.

4 MS. BLOOM: Yeah, right. Okay.
5 (Inaudible).

6 Okay. So I assume everyone that's here
7 is pretty much up to speed. I'm the only one that
8 this is new to. Secured debt, there's a lot of
9 terminated employees, I guess. Do you know how
10 much is owed, approximately, in back salaries?

11 MR. LARSON: We don't believe there's
12 very many.

13 MS. BLOOM: Okay.

14 MR. LARSON: We put most of those
15 employees on notice so that if they had any issues
16 because (inaudible) was in disarray and we're
17 putting it together just to make sure. But we're
18 under the impression that most of everybody had
19 been paid.

20 DR. SMITH: Yeah. I think we currently
21 -- yeah. We have currently two part-time employees
22 and I think they may be -- I think everybody is
23 paid up to date. They may be behind a week or two,
24 but I think everybody is up to date.

25 MS. BLOOM: Okay. Because there's pages

1 and pages for this --

2 MR. LARSON: Yeah, but it was out of
3 abundance, and some of them were patients too as
4 well because of their --

5 MS. BLOOM: Oh, they were owed. Okay.

6 MR. LARSON: Well, because sometimes a
7 doctor would be sued and they would name the
8 surgery center because that's where it took place.

9 MS. BLOOM: I see.

10 MR. LARSON: So everybody we had issues
11 for whether they're employees or otherwise, we just
12 through the gamut, here's your notice and if you
13 have an issue, please come see us.

14 MS. BLOOM: Okay. Now, are there inside
15 creditors, insiders?

16 MR. LARSON: Yes.

17 MS. BLOOM: Okay. And they're listed
18 where?

19 MR. LARSON: How many doctors? 27?

20 DR. SMITH: Yes.

21 MS. BLOOM: There's 27? These would be
22 the doctors. So how many doctors were there all
23 together with ownership interest?

24 DR. SMITH: I want to say 27.

25 MS. BLOOM: Oh, 27. So you're all owed

1 money. And where are you listed? This would be in
2 Schedule F?

3 MR. LARSON: Uhm-hm.

4 MS. BLOOM: Any particular place? Too
5 much to look at. All right. So how much is --
6 let's just go in round numbers then. So the
7 secured debt is 1.5 million, which is -- we don't
8 know how much the current employees were owed. So
9 what's the 1.5 million comprised of?

10 MR. LARSON: They're probably owed about
11 zero, the employees.

12 MS. BLOOM: Okay. So then -- because I'm
13 --

14 MR. LARSON: The secured debt is almost
15 all equipment based.

16 MS. BLOOM: Oh, I see. I didn't turn the
17 page. Okay. It's all equipment. All right.
18 That's easy. And it's all been repossessed or
19 turned over?

20 MR. LARSON: Not really.

21 MS. BLOOM: No? You still have it.

22 DR. SMITH: It's still at the center
23 we're planning to reopen.

24 MS. BLOOM: Okay. So do you know -- have
25 you worked out agreements you're going to hold on

1 --

2 DR. SMITH: That's what we're working on
3 now.

4 MS. BLOOM: Good. Because that would be
5 -- yeah, okay. So that's fine. And then how much
6 of the unsecured debt is insider debt? 4.2?

7 MR. LARSON: Gosh, what all the doctors
8 put in over the years.

9 DR. SMITH: Oh, it's probably -- I would
10 think it's probably about 700,000, somewhere in
11 that range.

12 MS. BLOOM: That's it? And the rest of
13 it is what?

14 DR. SMITH: Vendor debt probably.

15 MS. BLOOM: Vendor debt mostly, okay.

16 MR. LARSON: A large part of that is
17 lease.

18 MS. BLOOM: Okay.

19 MR. LARSON: Those two buildings that
20 were given up.

21 MS. BLOOM: Now, I guess there's no
22 committee, so we would know by now because Jim's
23 pretty good about that. You haven't heard
24 anything.

25 MR. LARSON: Nothing. Zero.

1 MS. BLOOM: This is not my case, so.

2 All right. So basically -- wait, this
3 2.9 million listed as personal property. That's
4 receivables or is there actual money in the bank
5 somewhere?

6 DR. SMITH: I think there's a small
7 amount of money in the bank.

8 MS. BLOOM: And it's also receivables.
9 And how old are they? How much is collectible?

10 DR. SMITH: Good question. I think a
11 fair amount of them was around 120 days.

12 MS. BLOOM: Is it government, Medicare,
13 Medicaid, or mostly private?

14 DR. SMITH: A mix. A mix.

15 MS. BLOOM: All right. So your best
16 guesstimate, how much is collectible?

17 DR. SMITH: I would think if we had a
18 good collection team really working it, I would
19 think 20 percent.

20 MS. BLOOM: Okay. And that's optimistic.

21 DR. SMITH: Yes.

22 MS. BLOOM: Has anyone started doing that
23 or is that something you're going to do?

24 DR. SMITH: I believe that's on hold.

25 MS. BLOOM: It's on hold. Are you going

1 to employ somebody?

2 MR. LARSON: Until we get the funding.

3 DR. SMITH: Yeah.

4 MS. BLOOM: Oh, so -- okay.

5 MR. LARSON: Our plan is not -- our plan
6 does not plan on utilizing the current ARs --

7 MS. BLOOM: I see.

8 MR. LARSON: -- to fund the plan.

9 DR. SMITH: That's the cherry on top.

10 MS. BLOOM: Okay.

11 MR. LARSON: Let me give you a theory, a
12 theoretical.

13 MS. BLOOM: Sure.

14 MR. LARSON: Dr. Smith could operate
15 let's call it ten times per month, okay, and
16 generate \$400,000 for fees. Okay? Those would
17 generally be paid within 90 days. That's one
18 doctor out of a team of nine we're looking at
19 getting not including the national partner we're
20 trying to get to bring in others.

21 So the surgery center was always
22 profitable if there wasn't somebody who was
23 stealing millions of dollars. So it's not -- we're
24 not relying upon the plan to bring in those
25 receivables to pay for the plan. It's a matter of

1 basically re-investing new capital to get the
2 machine running again.

3 MS. BLOOM: Okay.

4 MR. LARSON: Which is expensive. Right?
5 I mean, we're talking a half a million dollars at
6 least.

7 MS. BLOOM: That's nothing. That's one
8 doctor's income in a month. Right?

9 MR. LARSON: Not income.

10 DR. SMITH: I wish.

11 MR. LARSON: Not income, we're talking
12 fees to -- you know, but the point is is that -- I
13 said theoretical, not actual. Right? The goal is
14 not to collect on the receivables --

15 MS. BLOOM: No, I understand it's not the
16 goal, but --

17 MR. LARSON: -- in order to do it because
18 it's a lot of time --

19 MS. BLOOM: No, I understand.

20 MR. LARSON: -- that is spent that
21 doesn't necessarily pan out to dollars.

22 MS. BLOOM: Okay. Let me just ask this,
23 though, because we all know the longer one waits,
24 the less collectible they are. And there's
25 agencies that will take a percentage and do it for

1 you. Is that worth -- I don't know if you
2 considered --

3 MR. LARSON: Yeah, one of our plans is to
4 try to sell some, right?

5 MS. BLOOM: Well, yeah, but whatever --

6 MR. LARSON: But that is not our focus.

7 MS. BLOOM: No, I understand. I'm just
8 asking because --

9 MR. LARSON: If we fail, the liquidating
10 agent will do that for us.

11 MS. BLOOM: Right. Okay. So --

12 MR. GARFINKLE: Can I ask a question?

13 MS. BLOOM: Sure, jump right in. Feel
14 free.

15 MR. GARFINKLE: I was going to ask this
16 question --

17 MS. BLOOM: Okay. But say who you are,
18 first.

19 MR. GARFINKLE: My name is
20 Lewis Garfinkle, and I did want to focus on the
21 accounts receivable. How old are these
22 receivables?

23 DR. SMITH: I'd say the last time I
24 looked, that would have been a couple months or two
25 ago, it was about 120 days.

1 MR. LARSON: So now you're at a hundred
2 and --

3 MR. GARFINKLE: The trustee is right.
4 The longer you wait, the less likely you're going
5 to be able to collect them. And I mean, it sounds
6 like you really do need to get a collection company
7 in place who -- I mean, they typically will do it
8 based on what they collect, a percentage of it, so
9 it's not going to cost the debtor any money as
10 such, I mean. So is that something that --

11 MR. LARSON: It's something we'll do if
12 we convert to a 7 or appoint a liquidating agent.
13 Right? If we -- if the plan comes together, right,
14 the surgery center will have a team in place that
15 bills. Right? So they will have -- they'll have
16 the time and now be employed to bill not only the
17 new current stuff, but focus on older stuff.

18 Could we sell it? Yes, perhaps. But
19 there's no need -- what I'm saying is the ARs will
20 not make or break the case. If the case transforms
21 into a liquidating 11 and/or 7, a liquidating agent
22 will be appointed to go sell that stuff.

23 MR. GARFINKLE: You know, I --

24 MR. LARSON: If your client wants to show
25 up and say, Dear Mr. Larson, right, we see what

1 your receivables are and we would like to pay X for
2 them if we can see them, I would be happy to
3 listen. But that's not part of our -- we're not
4 focused on that because that's not the success of
5 this case. Does that make sense?

6 MR. GARFINKLE: Well, I understand, but
7 why wouldn't you want to -- if there are assets out
8 there, okay, a couple of million, that could be
9 worked by a collection company that might charge
10 you X amount of dollars for what they collect, why
11 wouldn't you want to go ahead and start doing that
12 now so that you can collect those assets --

13 MR. LARSON: We're going to if we ever --

14 MR. GARFINKLE: But why should it be
15 contingent? Why can't you do that now is my
16 question.

17 MS. BLOOM: Yeah.

18 MR. LARSON: It's not contingent. It's
19 just --

20 MR. GARFINKLE: Well, it is. Because
21 what you're saying is is that it should be
22 contingent upon whether the success of your plan.
23 I mean, why if there are assets out there right
24 now, why wouldn't you want to marshall those for
25 the benefit of the estate and the creditors --

1 MR. LARSON: We're going to.

2 MR. GARFINKLE: -- when it doesn't cost
3 any money?

4 DR. SMITH: Well, we had a billing
5 company doing that, and then because they were not
6 get paid, they stopped doing that. And that would
7 happen about, I want to say, two or three months
8 ago. So the question would be if these people have
9 a contract, can we just then bring in (inaudible)
10 can buy those same accounts they were working, I'm
11 not sure that we can do that.

12 MR. GARFINKLE: Doctor, when you say
13 billing company, was it you guys had contracted
14 somebody to -- you know, Aargon or somebody --

15 DR. SMITH: (Inaudible) yes.

16 MR. GARFINKLE: Okay. And when you say
17 they weren't getting paid, they weren't getting
18 paid by --

19 DR. SMITH: By us because they had
20 initially a monthly agreement to work the accounts
21 as well as going on for our ongoing business. And
22 there was some concern about if they were truly
23 working the back accounts or not, which takes a lot
24 more work. And then they said they wanted more
25 money when they saw we were having problems, and

1 then snowball, snowball, snowball.

2 So, again, we had somebody doing that.

3 There's a disagreement with if they're still
4 working or not, which they are not. Again, I'm not
5 sure that legally we could then have somebody else
6 come in to try to work those same accounts right
7 now.

8 MS. BLOOM: Anything else?

9 MR. GARFINKLE: No.

10 MS. WELLER: I just have one quick
11 question.

12 MS. BLOOM: Sure.

13 MS. WELLER: Christina Weller just on
14 accounts receivable. Are you holding any of like
15 the personal injury loans yourself or did you sell
16 them all off?

17 DR. SMITH: I think that we were trying
18 to sell most of those off. I'm sure we have a
19 couple, but I would suspect that they're probably
20 not great cases. Because certainly we gave --
21 several different companies come look at our cases
22 and the ones we were left with were ones somebody
23 did not want to purchase.

24 MS. WELLER: Okay.

25 MR. GARFINKLE: I don't remember when my

1 clients stopped doing business with (inaudible),
2 but I think it was quite -- I think it was a while
3 ago. So I don't think that they would have
4 purchased anything --

5 MR. LARSON: Well, maybe somebody -- I
6 know there were two or three other companies the
7 center had worked with, and, again, Mr. Barnes,
8 maybe I shouldn't use his name, but the manager was
9 in charge of a lot of these things, and so we're
10 just still -- you know, still picking up the
11 pieces.

12 DR. SMITH: It all came to a head very,
13 very quickly.

14 MR. GARFINKLE: I'm familiar with
15 Mr. Barnes.

16 MS. BLOOM: Okay. Let's see. Oh, so can
17 you give us a status on -- so there were 27
18 doctors, there's nine that are still on board?

19 MR. LARSON: Well, we're trying to see
20 who's willing to be involved. We had some people
21 say yeah, but the proof will be when they put money
22 into an escrow account.

23 MS. BLOOM: Okay. Can you talk about
24 what you're anticipating? You're trying to get
25 other -- some national company and more doctors and

1 then you'll do some --

2 MR. LARSON: Yes. And we already found
3 -- the national company has already put money in
4 towards to help us get to a bankruptcy.

5 MS. BLOOM: Can you say what the company
6 is?

7 MR. LARSON: VIP Centers, I think his
8 name is Dr. Rabukata (ph). He's a managing
9 partner. Again, he's certainly got a lot more
10 experience than we ever had with Mr. Barnes. So I
11 think if we can keep this going, we feel very
12 confident he'll give us the expertise we need.

13 MS. BLOOM: Okay. So he put money in
14 when and where?

15 DR. SMITH: Well, he gave money to help
16 us continue our business --

17 MR. LARSON: Well, yes and no. From a
18 bankruptcy perspective, he bought a license for a
19 closed location in anticipation he could negotiate
20 with that particular landlord to open that
21 location. As it turned out, the license we sold
22 them, the landlord negotiations failed. But he did
23 purchase that license from us. It is listed on
24 SOFA.

25 MS. BLOOM: Okay.

1 MR. LARSON: That money we'd utilize to
2 help fund. He's also agreed to lease certain
3 equipment that he will need to open up the new land
4 or the new surgery center should it go forward.

5 And/or if he opens up another center with
6 that equipment, we'd have to get permission from
7 the Court to do that if it's really ours. But
8 that's the goal is to reopen the center.

9 MS. BLOOM: Okay. Here's the SOFA.
10 Okay. And where's that listed?

11 MR. LARSON: It would be, what, No. 10.

12 MS. BLOOM: Okay. Bill of sale for
13 license. All right.

14 MR. GARFINKLE: Sawyer and Collins. My
15 old firm.

16 MS. BLOOM: Oh, that's --

17 MR. LARSON: No comment.

18 MS. BLOOM: Yeah, no comment. We know
19 where that is.

20 MR. GARFINKLE: That was many years ago.

21 MS. BLOOM: Okay. It doesn't say -- does
22 anybody want to see that agreement? Because,
23 whatever, it doesn't say what -- that includes the
24 equipment, the equipment leases?

25 MR. LARSON: No, two separate agreements.

1 MS. BLOOM: Okay. So right now there was
2 only \$50,000 put in for the license.

3 MR. LARSON: Yes, correct.

4 MS. BLOOM: And that's it. All right.
5 But there will be another agreement. So there were
6 three surgery centers. So that's one of them
7 that's essentially taken care of. You're going to
8 try to get funding to open up the other two again.

9 DR. SMITH: Just the one.

10 MS. BLOOM: Oh, just for this one. So
11 which one is it?

12 DR. SMITH: It's the one on Burnham on
13 the east side.

14 MS. BLOOM: Okay.

15 DR. SMITH: Next to Desert Springs
16 Hospital.

17 MS. BLOOM: Oh, this one that's listed,
18 and so there still is an office there. Okay.

19 MR. LARSON: And the one on Twain, that's
20 closed down.

21 DR. SMITH: Correct.

22 (Off the record.)

23 MS. BLOOM: Okay. We are recording
24 again. You talked about -- yeah, we talked about
25 the licensing purchase. And go ahead. I'm sure

1 everybody wants to hear whatever you're willing to
2 say on the record about what the plans are, how far
3 you've gotten with bringing in more investors.

4 MR. LARSON: Well, I think the key is to
5 get the right doctors involved who are willing to
6 proceed. I mean, certainly with everything we've
7 been through the past three years what we
8 discovered as taken the heart and soul out of us.

9 Because, you know, to deliver, you know,
10 really a great product for lack of a better term
11 where people do well, do great surgery and then to
12 see it just ripped apart has been very hard for us.

13 So to try to get doctors to agree, well,
14 let's -- you know, let's do it all over again but
15 do it in a smarter fashion, a more efficient
16 fashion. So that's what we're getting up against.
17 And I think that, you know, with an eight to ten
18 surgeons who are putting up the money, I think that
19 it will be very, very successful.

20 MS. BLOOM: So you already have eight to
21 ten you said?

22 DR. SMITH: We've got 10 probably 15
23 doctors who voiced interest.

24 MS. BLOOM: Okay.

25 DR. SMITH: I assume, like anything else,

1 that if we get two-thirds of them to put up money,
2 I think we'll be very happy with.

3 MS. BLOOM: Okay. So what's your time
4 line? Do you have any idea?

5 DR. SMITH: I'm hoping to have it funded
6 within the next three to six weeks.

7 MS. BLOOM: Oh, excellent, okay.

8 MR. LARSON: Yeah, we're getting escrow
9 open so we can show people that, A, this is where
10 you put in so we can tell the Court this is what's
11 going on so we can -- the goal is we're already
12 working on the plan.

13 MS. BLOOM: Right.

14 MR. LARSON: Right. Because if this
15 happens, the plan and this (inaudible) are going to
16 be coming very fast.

17 MS. BLOOM: Right.

18 MR. LARSON: Because figuring out the
19 numbers isn't that difficult, but we can't do the
20 numbers unless we know there's money there, so.

21 MS. BLOOM: Is any of the stolen money
22 recoverable or is that also off the table?

23 DR. SMITH: Probably unlikely. He
24 doesn't have really any great assets thus far. We
25 can see he's got a home that's mortgaged up to the

1 hilt.

2 MS. BLOOM: Okay.

3 MR. LARSON: We're hoping he goes to
4 jail.

5 MS. BLOOM: Yeah, that would be nice, but
6 it won't help your business.

7 All right. Anyone have questions?

8 MR. GARFINKLE: They've been answered.

9 MS. BLOOM: All right. Hyatt, do you
10 have any questions?

11 MR. COLLINS: I do not. Thank you.

12 MS. BLOOM: Okay. Then we are concluded.
13 Thank you.

14 (Whereupon, the recording ended.)

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TRANSCRIBER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Kathy Hoffman, do hereby certify:
That I listened to the recording of a 341
Meeting of Creditors for Flamingos-Pecos Surgery Center
dba Surgery Center of Southern Nevada;;

That I thereafter transcribed said
recording into a typewritten transcript and that
the typewritten transcript of said proceedings are
a complete, true, and accurate transcription of
said recording to the best of my ability to hear
and understand the recording.

I further certify that I am not a
relative or employee of counsel involved in said
action, nor a person financially interested in said
action.

KATHY HOFFMAN, TRANSCRIBER

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and
(B)

AA000565

1 The Plea Agreement sets forth the parties' agreement regarding criminal
2 charges referenced in the Plea Agreement and applicable sentences, fines,
3 restitution and forfeiture. It does not control or prohibit the United States or any
4 agency or third party from seeking any other civil or administrative remedies
5 directly or indirectly against the defendant.

6 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

7 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead
8 guilty to the following charges set forth in the Criminal Information:

9 Count One: Embezzlement in Connection with Health Care, in violation of
10 Title 18, United States Code, Section 669.

11 The defendant also agrees to the forfeiture of the property, the imposition of
12 the forfeiture on the property, and the imposition of the in personam criminal
13 forfeiture money judgment as set forth in the Plea Agreement and the Forfeiture
14 Allegations of the Criminal Information.

15 B. Waiver of Trial Rights. The defendant acknowledges that he has been
16 advised and understands that by entering a plea of guilty he is waiving -- that is,
17 giving up certain rights guaranteed to all defendants by the laws and the
18 Constitution of the United States. Specifically, the defendant is giving up:

19 1. The right to proceed to trial by jury on all charges, or to a trial
20 by a judge if the defendant and the United States both agree;

21 2. The right to confront the witnesses against the defendant at
22 such a trial, and to cross-examine them;

1 3. The right to remain silent at such a trial, with assurance that
2 his silence could not be used against him in any way;

3 4. The right to testify in his own defense at such a trial if he so
4 chooses;

5 5. The right to compel witnesses to appear at such a trial and
6 testify in the defendant's behalf; and

7 6. The right to have the assistance of an attorney at all stages of
8 such proceedings.

9 7. The right to be indicted by a grand jury.

10 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw
11 his guilty pleas after he has entered them in court.

12 D. Additional Charges. The United States agrees not to bring any
13 additional charges against the defendant arising out of the investigation in the
14 District of Nevada which culminated in this Plea Agreement and based on conduct
15 known to the United States except that the United States reserves the right to
16 prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.

17 **III. ELEMENTS OF THE OFFENSES**

18 Counts One: The elements of Embezzlement in Connection with Health
19 Care, in violation of 18 U.S.C. § 669 are:

20 First, the defendant, without authority, embezzled money from the
21 Surgical Centers of Southern Nevada and related entities;

22 Second, the defendant acted knowingly and willfully;

1 Third, the Surgical Center of Southern Nevada was an entity that
2 provided health care benefits for which payment may be made under a health care
3 benefit program; and

4 Fourth, the amount embezzled exceeded \$100.
5 18 U.S.C. § 669; 18 U.S.C. § 24(b).

6 **IV. FACTS SUPPORTING GUILTY PLEA**

7 A. The defendant will plead guilty because he is, in fact and under the
8 law, guilty of the crimes charged.

9 B. The defendant acknowledges that if he elected to go to trial instead of
10 pleading guilty, the United States could prove his guilt beyond a reasonable doubt
11 and establish its right to forfeit the specified property by preponderance of the
12 evidence. The defendant further acknowledges that his admissions and
13 declarations of fact set forth below satisfy every element of the charged offenses.

14 C. The defendant waives any potential future claim that the facts he
15 admitted in this Plea Agreement were insufficient to satisfy the elements of the
16 charged offenses.

17 D. The defendant admits and declares under penalty of perjury that the
18 facts set forth below are true and correct:

19 Beginning on or about October 5, 2006, defendant Robert W. Barnes worked
20 as the Operating Manager / Office Administrator for Surgery Centers of Southern
21 Nevada ("SCSN"). SCSN is an outpatient ambulatory surgical center at which
22 surgical procedures not requiring an overnight hospital stay are performed.
23 Procedures performed at SCSN are reimbursed by public and private health

1 insurance companies on behalf of their beneficiaries. As the Operating Manager /
2 Office Administrator for SCSN, defendant Robert W. Barnes was responsible for
3 the management and finances of that entity, including vendor payments and
4 distributions to the physician investors who owned SCSN and performed surgical
5 procedures there. At all relevant times, SCSN had locations at Burnham Avenue
6 and W. Twain Avenue in Las Vegas. Defendant Robert W. Barnes' criminal
7 conduct took place in the District of Nevada.

8 In approximately 2010, SCSN began to struggle financially. Vendor
9 payments, including rent, were long overdue and physician-investors ceased
10 receiving distributions on their investments, despite the fact that SCSN continued
11 to receive reimbursement from the various public and private insurance companies
12 whose beneficiaries had procedures there. SCSN ultimately declared bankruptcy
13 as a result of the substantial amounts due to its various vendors, causing
14 significant losses to its physician investors.

15 Defendant Robert W. Barnes was responsible for the lack of payments to
16 vendors and lack of distributions to investors. Between approximately 2010 and
17 continuing through 2013, he embezzled at least \$1.3 million dollars from SCSN,
18 without authority to do so. Defendant Robert W. Barnes improperly used multiple
19 SCSN credit cards for personal purchases, including travel, jewelry, concerts and
20 dining. For example, defendant Robert W. Barnes obtained approximately
21 \$515,000 in casino cash advances using SCSN credit cards, which he used for
22 personal gambling. In February 2013, defendant Robert W. Barnes used an SCSN
23 credit card to purchase a diamond and platinum ring for \$38,000. During one five

1 month period in 2013, defendant Robert W. Barnes charged approximately \$45,000
2 on one SCSN credit card for concert tickets, hotels and expenses at Disneyland,
3 expensive meals, and other personal entertainment and expenses. Defendant
4 Robert W. Barnes also embezzled funds from entities related to SCSN, including
5 Epiphany Surgical Solutions (“ESS”), a management company that received fees
6 from SCSN for management services, and VIP Surgical Centers, a prospective
7 surgical center that defendant Robert W. Barnes was managing through ESS, in
8 which several physicians had made substantial cash investments.

9 At all relevant times, the defendant acted knowingly and willfully.

10 The parties agree that \$1.3 million is the correct measure of loss for
11 guideline calculation purposes.

12 The defendant admits that the property and the in personam criminal
13 forfeiture money judgment amount listed in Section X is any property, real or
14 personal, which constitutes or is derived from proceeds traceable to a violation of
15 Title 18, United States Code, Section 669, a specified unlawful activity as defined
16 in Title 18, United States Code, Section 1956(c)(7)(F), involving a Federal health
17 care offense as defined in Title 18, United States Code, Section 24, or a conspiracy
18 to commit such offense, and is property, real or personal, that constitutes or is
19 derived, directly or indirectly, from gross proceeds traceable to the commission of
20 Title 18, United States Code, Section 669, involving a Federal health care offense
21 as defined in Title 18, United States Code, Section 24, and is subject to forfeiture
22 pursuant to Title 18, United States Code, Section 981(a)(1)(C) with Title 28, United

1 States Code, Section 2461(c); Title 18, United States Code, Section 982(a)(7); and
2 Title 21, United States Code, Section 853(p).

3 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

4 The facts set forth in Section IV of this Plea Agreement shall be admissible
5 against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any
6 purpose. If the defendant does not plead guilty or withdraws his guilty pleas, the
7 facts set forth in Section IV of this Plea Agreement shall be admissible at any
8 proceeding, including a trial, for impeaching or rebutting any evidence, argument
9 or representation offered by or on the defendant's behalf. The defendant expressly
10 waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the
11 use of the facts set forth in Section IV of this Plea Agreement.

12 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

13 A. Discretionary Nature of Sentencing Guidelines. The defendant
14 acknowledges that the Court must consider the United States Sentencing
15 Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's
16 sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the
17 Court has discretion to impose any reasonable sentence up to the maximum term
18 of imprisonment permitted by statute.

19 B. Offense Level Calculations. The parties stipulate to the following
20 calculation of the defendant's offense level under the Sentencing Guidelines,
21 acknowledge that these stipulations do not bind the Court, and agree that they will
22 not seek to apply any other specific offense characteristics, enhancements or
23 reductions

Count One: 18 U.S.C. § 669

a. Base Offense Level USSG § 2B1.1: 6

b. Loss < \$1.5 million: +14

Adjusted Offense Level: 20

Less: Acceptance of Responsibility -3

Total Offense Level: 17

The defendant acknowledges that the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the defendant's sentence notwithstanding any applicable Sentencing Guidelines provisions.

C. Reduction of Offense Level for Acceptance of Responsibility. Under U.S.S.G. §3E1.1(a), the United States will recommend that the defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the conditions of pretrial release.

1 Under USSG §3E1.1(b), the United States will move for an additional one-
2 level downward adjustment for acceptance of responsibility before sentencing
3 because the Defendant communicated his decision to plead guilty in a timely
4 manner that enabled the United States to avoid preparing for trial and to
5 efficiently allocate its resources.

6 These Sentencing Guidelines provisions, if applied, will result in a total
7 offense level of either 18 (if two-level adjustment applies) or 17 (if two-level
8 adjustment and additional one-level adjustment both apply.)

9 D. Criminal History Category. The defendant acknowledges that the
10 Court may base his sentence in part on the defendant's criminal record or criminal
11 history. The Court will determine the defendant's Criminal History Category
12 under the Sentencing Guidelines.

13 E. Relevant Conduct. The Court may consider any counts dismissed
14 under this Plea Agreement and all other relevant conduct, whether charged or
15 uncharged, in determining the applicable Sentencing Guidelines range and
16 whether to depart from that range.

17 F. Additional Sentencing Information. The stipulated Sentencing
18 Guidelines calculations are based on information now known to the parties. The
19 parties may provide additional information to the United States Probation Office
20 and the Court regarding the nature, scope, and extent of the defendant's criminal
21 conduct and any aggravating or mitigating facts or circumstances. Good faith
22 efforts to provide truthful information or to correct factual misstatements shall not
23 be grounds for the defendant to withdraw his guilty plea.

1 The defendant acknowledges that the United States Probation Office may
2 calculate the Sentencing Guidelines differently and may rely on additional
3 information it obtains through its investigation. The defendant also acknowledges
4 that the Court may rely on this and other additional information as it calculates
5 the Sentencing Guidelines range and makes other sentencing determinations, and
6 the Court's reliance on such information shall not be grounds for the defendant to
7 withdraw his guilty plea.

8 VII. APPLICATION OF SENTENCING STATUTES

9 A. Maximum Penalty. The maximum penalty for Embezzlement in
10 Connection with Health Care under 18 U.S.C. § 669 is ten years imprisonment and
11 a fine of \$250,000, or both.

12 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors
13 set forth in 18 U.S.C. § 3553(a) in determining the defendant's sentence. However,
14 the statutory maximum sentence and any statutory minimum sentence limit the
15 Court's discretion in determining the defendant's sentence.

16 C. Parole Abolished. The defendant acknowledges that his prison
17 sentence cannot be shortened by early release or parole because parole has been
18 abolished.

19 D. Supervised Release. In addition to imprisonment and a fine, the
20 defendant will be subject to a term of supervised release of not more than three
21 years. Supervised release is a period of time after release from prison during
22 which the defendant will be subject to various restrictions and requirements. If
23 the defendant violates any condition of supervised release, the Court may order the

1 defendant's return to prison for all or part of the term of supervised release, which
2 could result in the defendant serving a total term of imprisonment equal to the
3 statutory maximum prison sentence of 10 years of imprisonment.

4 E. Special Assessment. The defendant will pay a \$100.00 special
5 assessment per count at the time of sentencing.

6 **VIII. POSITIONS REGARDING SENTENCE**

7 In light of mutual consideration, the United States will seek a sentence
8 within the applicable sentencing guideline range as determined by the Court,
9 unless the defendant commits any act that could result in a loss of the downward
10 adjustment for acceptance of responsibility, in which case the United States may
11 recommend any term up to the statutory maximum. The defendant acknowledges
12 that the Court does not have to follow that recommendation. The defendant
13 reserves the right to request a sentence below the Sentencing Guidelines range as
14 determined by the Court and may seek a downward adjustment pursuant to 18
15 U.S.C. § 3553 or USSG § 4A1.3(b)(1) from any sentence the Court may impose.

16 The Defendant acknowledges that the Court does not have to follow this
17 recommendation. The Defendant also acknowledges that the Court does not have
18 to grant a downward departure based on the Defendant's substantial assistance to
19 the United States, even if the United States chooses to file a motion pursuant to 18
20 U.S.C. § 3553(e)(1), USSG § 5K1.1, or Fed. R. Crim. P. 35. This Plea Agreement
21 does not require the United States to file any pre- or post-sentence downward
22 departure motion under USSG § 5K1.1 or Fed. R. Crim. P. 35. The United States
23

1 reserves its right to defend any lawfully imposed sentence on appeal or in any post-
2 conviction litigation.

3 The defendant agrees that he will not seek early termination or reduction of
4 his term of supervised release.

5 **IX. RESTITUTION**

6 In exchange for benefits received under this Plea Agreement, the defendant
7 agrees to pay restitution in an amount determined by the Court, to be applied
8 towards the losses the defendant caused by his participation in the offenses,
9 whether charged or uncharged, pled to or not, and by all of his relevant conduct. 18
10 U.S.C. § 3663(a)(3). The defendant cannot discharge his restitution obligation
11 through bankruptcy proceedings. The defendant acknowledges that restitution
12 payments and obligations cannot offset or reduce the amount of any forfeiture
13 judgment imposed in this case.

14 **X. FORFEITURE**

15 The defendant knowingly and voluntarily:

16 A. Agrees to the District Court imposing the civil judicial forfeiture or the
17 criminal forfeiture of:

- 18 1. 2007 Honda Accord EX Gray 4D Sedan, VIN 1HGCM56857A164507,
19 Nevada License Plate 452WVU;
- 20 2. 2011 EXP Limited 5.4L 4X4 Ford Expedition, Color: Sterling Gray
21 Metallic, VIN 1FMJU2A53BEF36389, Nevada License Plate 929VJR;
- 22 3. 14k white gold cluster stud earrings with four princess cut diamonds
23 surrounded by 16 round diamonds;

- 1 4. Ladies stainless steel Breitling Lady Colt A72345 Watch with blue
- 2 Mother of Pearl dial, diamond bezel (28 diamonds), Serial No. 386210;
- 3 5. Ladies 14k white gold ring centered with one rectangle blue Tourmaline
- 4 with 45 diamonds;
- 5 6. Ladies Tanzanite (approx. 40 carats) platinum ring with 152 brilliant
- 6 diamonds;
- 7 7. Ladies 14k white gold with violetish red Garnet surrounded by 74
- 8 brilliant diamonds;
- 9 8. Ladies platinum oval shaped bluish green Tourmaline with 92 brilliant
- 10 diamonds;
- 11 9. Ladies 14k white gold ring, pear shaped cabochon cut black opal with
- 12 blue play of color and 50 diamonds;
- 13 10. Movado Womans watch with black in color face;
- 14 11. Edge Watch with brown leather like wrist band;
- 15 12. Tag Heuer lady's Watch silver in color;
- 16 13. Gucci Watch gold in color;
- 17 14. Necklace, silver in color, with Tiffany pendant heart shaped;
- 18 15. Necklace, silver in color, with floral design pendant;
- 19 16. Bracelet gold in color with green in color stones;
- 20 17. Bracelet gold in color appeared to be broken at time of seizure;
- 21 18. Bracelet clear stone type;
- 22 19. Pair of Earrings with green in color stones;
- 23 20. Metal ring, yellow in color with green in color stones;

21. Pair of Earrings tear drop shaped;
22. Pair of Earrings heart shaped;
23. Braided necklace, yellow in color;
24. Ring, silver in color with clear stones;
25. Pair of Earrings flower shaped;
26. Ring, silver in color with clear stones;
27. Pair of Earrings hoop shaped yellow in color;
28. Pair of Earrings, yellow in color with round white in color stones;
29. Thick Bracelet yellow in color;
30. Two (2) necklace like coils of wooden type beads;
31. Pair of Earrings, yellow in color;
32. "L" shaped pendant yellow in color;
33. Three (3) rings, yellow in color: One (1) with clear type stones, Two (2)
with heart shaped designs;
34. Ring, white in color with clear stones;
35. Two (2) Rings yellow in color with blue in color stones;
36. Ring, yellow in color with green in color stone;
37. Ring, heart shaped with clear stones;
38. Two (2) Rings yellow in color with white in color stones;
39. Five Bracelets: Two (2) yellow in color; Two (2) yellow in color with name
plates on them "Lucas" and "Joshua"; One (1) yellow in color with green
stones;
40. Necklace, white in color;

1 41. Necklace, white in color with tear drop pendant;

2 42. One (1) Necklace, white in color with pink in color stone; One (1) pair of
3 earrings with pink in color stones;

4 43. One (1) Necklace, gold in color; and One (1) Bracelet gold in color;

5 44. One (1) pendant with picture; and One (1) round pendant yellow in color;
6 and

7 45. Pair of Earrings, orange in color

8 (all of which constitutes property);

9 B. Agrees to the District Court imposing an in personam criminal forfeiture
10 money judgment including, but not limited to, at least \$1,300,000, and that the
11 property will be applied toward the payment of the money judgment;

12 C. Agrees to the abandonment, the civil administrative forfeiture, the civil
13 judicial forfeiture, or the criminal forfeiture of the property;

14 D. Abandons or forfeits the property to the United States;

15 E. Relinquishes all right, title, and interest in the property;

16 F. Waives his right to any abandonment proceedings, any civil administrative
17 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal
18 forfeiture proceedings of the property and the in personam criminal forfeiture
19 money judgment (proceedings);

20 G. Waives service of process of any and all documents filed in this action or any
21 proceedings concerning the property and the in personam criminal forfeiture
22 money judgment arising from the facts and circumstances of this case;

1 H. Waives any further notice to him, his agents, or his attorney regarding the
2 abandonment or the forfeiture and disposition of the property;

3 I. Agrees not to file any claim, answer, petition, or other documents in any
4 proceedings concerning the property and the in personam criminal forfeiture
5 money judgment;

6 J. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.
7 7, 11, and 32.2, all constitutional requirements, including, but not limited to, the
8 constitutional due process requirements of any proceedings concerning the in
9 personam criminal forfeiture money judgment;

10 K. Waives his right to a jury trial on the forfeiture of the property;

11 L. Waives all constitutional, legal, and equitable defenses to the forfeiture or
12 abandonment of the property and the in personam criminal forfeiture money
13 judgment in any proceedings, including, but not limited to, (1) constitutional or
14 statutory double jeopardy defenses and (2) defenses under the Excessive Fines or
15 Cruel and Unusual Punishments Clauses of the Eighth Amendment to the United
16 States Constitution;

17 M. Agrees to the entry of an Order of Forfeiture of the property and the in
18 personam criminal forfeiture money judgment to the United States;

19 N. Waives the right to appeal any Order of Forfeiture;

20 O. Agrees the property is forfeited to the United States;

21 P. Agrees that the in personam criminal forfeiture money judgment is
22 immediately due and payable and is subject to immediate collection by the United
23 States;

1 Q. Agrees and understands the abandonment, the civil administrative
2 forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property and
3 the in personam criminal forfeiture money judgment shall not be treated as
4 satisfaction of any assessment, fine, restitution, cost of imprisonment, or any other
5 penalty the Court may impose upon the defendant in addition to the abandonment
6 or the forfeiture;

7 R. Acknowledges that the amount of the forfeiture may differ from, and may be
8 significantly greater than or less than, the amount of restitution; and

9 S. Agrees to take all steps as requested by the United States to pass clear title
10 of the property and of any forfeitable assets which may be used to satisfy the in
11 personam criminal forfeiture money judgment to the United States and to testify
12 truthfully in any judicial forfeiture proceedings. The defendant understands and
13 agrees that the property and the in personam criminal forfeiture money judgment
14 amount represent proceeds and/or facilitating property of illegal conduct and are
15 forfeitable. The defendant acknowledges that failing to cooperate in full in either
16 the forfeiture of the property or the disclosure of assets constitutes a breach of this
17 Plea Agreement.

18 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

19 Before or after sentencing, upon request by the Court, the United States, or
20 the Probation Office, the defendant will provide accurate and complete financial
21 information, submit sworn statements, and/or give depositions under oath
22 concerning his assets and his ability to pay. The defendant will surrender assets
23 he obtained directly or indirectly as a result of his crimes, and will release funds

1 and property under his control in order to pay any fine, forfeiture, or restitution in
2 the amount of \$19,146.00 ordered by the Court.

3 **XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

4 A. Plea Agreement and Decision to Plead Guilty. The defendant
5 acknowledges that:

6 (1) He has read this Plea Agreement and understands its terms
7 and conditions;

8 (2) He has had adequate time to discuss this case, the evidence,
9 and this Plea Agreement with his attorney;

10 (3) He has discussed the terms of this Plea Agreement with his
11 attorney;

12 (4) The representations contained in this Plea Agreement are true
13 and correct, including the facts set forth in Section IV; and

14 (5) He was not under the influence of any alcohol, drug, or
15 medicine that would impair his ability to understand the Agreement when he
16 considered signing this Plea Agreement and when he signed it.

17 The defendant understands that he alone decides whether to plead guilty or
18 go to trial, and acknowledges that he has decided to enter his guilty plea knowing
19 of the charges brought against him, his possible defenses, and the benefits and
20 possible detriments of proceeding to trial. The defendant also acknowledges that
21 he decided to plead guilty voluntarily and that no one coerced or threatened his to
22 enter into this Plea Agreement.

1 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant
2 knowingly and expressly waives: (a) the right to appeal any sentence imposed
3 within or below the applicable Sentencing Guideline range as determined by the
4 Court; (b) the right to appeal the manner in which the Court determined that
5 sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal
6 any other aspect of the conviction or sentence and any order of restitution or
7 forfeiture.

8 The defendant also knowingly and expressly waives all collateral challenges,
9 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the
10 procedure by which the Court adjudicated guilt and imposed sentence, except non-
11 waivable claims of ineffective assistance of counsel.

12 The defendant acknowledges that the United States is not obligated or
13 required to preserve any evidence obtained in the investigation of this case.

14 ...

15 ...

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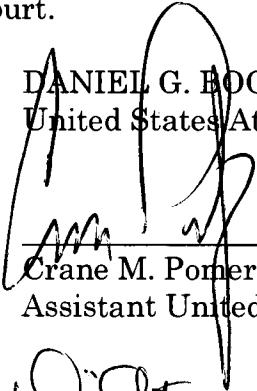
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4 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

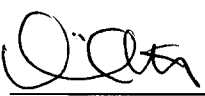
5 This Plea Agreement resulted from an arms-length negotiation in which
6 both parties bargained for and received valuable benefits in exchange for valuable
7 concessions. It constitutes the entire agreement negotiated and agreed to by the
8 parties. No promises, agreements or conditions other than those set forth in this
9 agreement have been made or implied by the defendant, the defendant's attorney,
10 or the United States, and no additional promises, agreements or conditions shall
11 have any force or effect unless set forth in writing and signed by all parties or
12 confirmed on the record before the Court.

13
14
15 DATE 3/17/16

DANIEL G. BOGDEN,
United States Attorney


Crane M. Pomerantz
Assistant United States Attorney

16
17 DATE 3/16/16


Daniel Albregts
Counsel for the Defendant

18
19
20 DATE 3/16/16

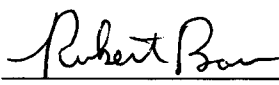

Robert W. Barnes
Defendant

EXHIBIT 4

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Proposed Attorneys for Debtor

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

FLAMINGO-PECOS SURGERY CENTER, LLC
 DBA SURGERY CENTER OF SOUTHERN
 NEVADA,

Debtor.

Case No.: BK-S-14-18480-ABL
 Chapter 11

Date: OST PENDING
 Time: OST PENDING

**OMNIBUS DECLARATION OF WILLIAM SMITH, M.D. IN SUPPORT
 OF DEBTOR'S INTERIM EMERGENCY MOTIONS AND RELATED RELIEF**

I, WILLIAM SMITH, M.D. hereby declare as follows:

1. I am over the age of 18 and am mentally competent. I make this declaration in support of the motions and applications requesting various types of immediate relief (collectively, the "Emergency Motions") filed by Flamingo-Pecos Surgery Center, LLC dba Surgery Center of Southern Nevada ("Debtor"), debtor and debtor-in-possession in the above-captioned bankruptcy case (the "Chapter 11 Case").

2. I am Board President of Debtor. In the foregoing capacity, I am familiar with the Debtor's daily business, operational, and financial affairs. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge of the Debtor's operations and

AA000586

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1 finances, information learned from my review of relevant documents, and information supplied to
 2 me by other members of the Debtor's management and its business and legal advisors. If called
 3 upon to testify as to the content of this declaration, I could and would do so consistent herewith.

4 3. This declaration is filed on the same date (the "Petition Date") that the Debtor filed
 5 its voluntary petition for relief under chapter 11, title 11 of the United States Code (the
 6 "Bankruptcy Code"). This declaration provides the Court with certain background information
 7 regarding the Debtor as well as the context for the initial relief sought by the Debtor. Accordingly,
 8 the Declaration is organized into two parts: an overview of the Debtor, its business, organizational
 9 structure, and the events leading to the Chapter 11 Case, and an explanation of the relief sought in
 10 the First Day Motions.¹ The relief sought in the First Day Motions is critical to the Debtor's
 11 business operations, will allow for a smooth transition into Chapter 11, and will help to ensure that
 12 the Debtor is provided the opportunity to reorganize successfully.

13 Background

14
 15 4. Debtor is a Nevada limited liability company established in 2002. Debtor has
 16 several shareholders that are listed on page 124 of the Debtor's Bankruptcy Petition. Debtor leases
 17 two surgery center locations which are located at 4275 Burnham Ave., Ste. 101, Las Vegas,
 18 Nevada 89119 and 10195 West Twain Ave, Las Vegas, Nevada 89147. These locations are not
 19 currently taking patients.

20 5. When the two locations were fully operational, Debtor, Flamingo Surgery Center,
 21 operated them as modern, family-oriented outpatient surgery centers. Debtor provided the highest
 22 quality of care in a friendly, personalized setting, for those patients whose surgical needs did not
 23 require an overnight hospital stay. Debtor's locations were Medicare approved facilities, licensed
 24 by the state of Nevada, and accredited by AAAHC (Accreditation Association of Ambulatory
 25 Health Care, Inc.).

26
 27 ¹ All capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the relevant
 28 Emergency Motions, all of which are being filed contemporaneously herewith.

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1 6. Patients were referred to the Debtor by 134 physicians who specialized in Urology,
2 Pain Management, Neurosurgery, ENT, Orthopedics, General Surgery, Hand Surgery and
3 Podiatry.

4 7. Debtor was forced to cease operations in October 2014 after significant wind down
5 over the previous months.

6 8. Throughout approximately 2004 through summer of 2013, the Debtor was
7 primarily managed by a sole individual. While the shareholders maintained a board in compliance
8 with the operating agreement, the former manager of the company was relied upon to handle the
9 business operations of the Debtor.

10 9. In or about June or July of 2013, Debtor began receiving reports from landlords and
11 vendors that debts were going unpaid and had been for significant amounts of time. The handling
12 of these debts was the responsibility of this former manager. When the former manager was
13 confronted by the board, the former manager immediately resigned. The board then sought the
14 advice of counsel to attempt to navigate through the myriad of issues that were presenting
15 themselves and to determine what had happened.

16 10. Throughout the late summer and fall of 2013, counsel worked to assess the situation
17 and determined that it appeared that significant breaches and embezzlement had occurred at the
18 hands of the former manager.

19 11. The conduct of the former manager was reported Las Vegas Metropolitan Police
20 and to the Federal Bureau of Investigation ("FBI"). After conducting an extensive investigation
21 over the past year, the FBI has recently sought direction and permission from the Washington
22 bureau office to proceed with a grand jury indictment of this former manager. The time frame for
23 when the FBI will proceed is unknown.

24 12. Debtor is also involved in a breach of contract litigation in the case commonly
25 known as JP Morgan Chase Bank NA v. Flamingo-Pecos Surgery Center LLC et al. / Case No. A-
26 14-700424-C in the Eighth Judicial District Court. This litigation is based on a breach of contract
27 for promissory notes/lines of credit in the approximate amount of \$1.7 Million. These agreements
28 were entered into by the same former manager and it is alleged that he misappropriated significant

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1 funds from these amounts from Debtor for the former manager's personal use and to the Debtor's
 2 detriment.

3 13. As a result of the conduct of the former manager, Debtor was forced to significantly
 4 reduce costs to cover the debts incurred as a result of the former manager's improper conduct.
 5 Debtor scaled back its operations, laying-off approximately ninety (90) employees and only has
 6 five (5) remaining employees. None of these employees are currently providing any patient care
 7 and serve in part-time administrative capacities.

8 14. It is the Debtor's intention to seek a capital infusion in order to get Debtor operating
 9 again.

10 15. The Debtor's transition into Chapter 11 must be effectively organized to ensure that
 11 it will be able to operate smoothly in bankruptcy and be afforded the opportunity to successfully
 12 emerge from this Chapter 11 Case. Accordingly, it is critical that the Debtor maintain strong
 13 relationships with its customers, employees, partners, vendors, creditors, and such other parties
 14 that enable Debtor to conduct its business. To maintain and foster these relationships, it is
 15 important to minimize the distractions to the Debtor's business operations that could result from
 16 the Debtor's petitioning for Chapter 11 relief.

17 16. I have reviewed and am generally familiar with the contents of each of the First
 18 Day Motions. Based on that familiarity and information supplied to me by other members of
 19 Debtor's staff and legal advisors, I believe that the relief sought in each of the First Day Motions
 20 is necessary to enable the Debtor to operate in this Chapter 11 Case with minimal disruption or
 21 loss of productivity or value. Absent granting the relief in the First Day Motions, immediate and
 22 irreparable harm will result to the Debtor and its business.

23 Employee Wage Motion

24 17. Debtor employs approximately five (5) employees (collectively, the "Employees"),
 25 in the ordinary course of its business. Continued service by the Employees is vital to Debtor's
 26 ongoing operations. As of the Petition Date, the Employees were owed or had accrued in their
 27 favor various sums from Debtor for wages and salaries incurred in the ordinary course of Debtor's
 28 business (collectively, the "Wage Obligations"). The total estimated amount of Wage Obligations

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1 that will have accrued, but remain unpaid, as of the Petition Date is approximately 4,541.55.
2 Debtor pays its Employees on a bi-weekly payroll cycle. Debtor's last payroll was made on
3 December 22, 2014 for the period of December 7, 2014 through December 19, 2014. The
4 upcoming payroll for the period of December 20, 2014 through January 3, 2015 is due to be
5 processed on or about January 9, 2015.

6 18. Debtor is required by law to withhold from certain Employees' wages amounts
7 related to federal, state, and local income taxes, as well as social security and Medicare taxes and
8 to remit the same to the appropriate taxing authorities. To the extent that Debtor has deducted
9 funds from the Employees' paychecks sufficient to pay prepetition taxes, withholding taxes and
10 FICA contributions attributable to Wage Obligations, which are due but have not been paid yet to
11 any governmental entity, Debtor seeks authorization to continue to deduct these funds and pay
12 them to such governmental entities in the ordinary course of business.

13 19. In addition, Debtor is required to make matching payments from its own funds on
14 account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll
15 (and subject to state-imposed limits), additional amounts to the taxing authorities for, among other
16 things, state and federal unemployment insurance. Debtor seeks authorization to continue to pay
17 these funds in the ordinary course of business.

18 20. Debtor's Wage Obligations to be paid to or for the benefit of each of the Employees
19 will not exceed \$11,725 per employee, consistent with the cap provided in Section 507(a)(4) of
20 the Bankruptcy Code.

21 21. If Debtor is unable to take the necessary steps to ensure that wages and taxes are
22 paid for the pay period commencing immediately prior to the Petition Date and concluding post-
23 petition, there is a significant risk that its Employees will resign and that those Employees that
24 remain will be discontented and demoralized.

25 22. Continued payment of Wage Obligations, the Employee Insurance, and
26 Reimbursable Business Expenses and maintaining its workers' compensation system are essential
27 to preserve the morale and to maintain positive relations between Debtor and its Employees. If
28 the relief requested in the Motion is not granted, the success of Debtor's reorganization will be

1 jeopardized. Thus, the relief request in this Motion is in the best interests of the Debtor, its estate,
2 and its creditors.

3 Utilities Motion

4 23. In the ordinary course of its business, Debtor incurs utility expenses for water,
5 sewer service, electricity, gas, telephone service, internet service, cable television, and waste
6 management. These utility services are provided by various utility companies (as such term is
7 used in section 366 of the Bankruptcy Code, collectively, the “Utility Providers”) including but
8 are not necessarily limited to NV Energy and Southwest Gas (the “Utility Service List”).

9 24. Although Debtor believes that the Utility Service List includes all of its Utility
10 Providers, Debtor reserves the right, without the need for further order of the Court, to supplement
11 the Utility Service List if any Utility Provider has been omitted. Additionally, the listing of an
12 entity on the Utility Service List is not an admission that such entity is a utility within the meaning
13 of section 366 of the Bankruptcy Code, and Debtor reserves the right to contest any such
14 characterization in the future. To the extent any of the Utility Providers identified on the Utility
15 Service List provide services to a non-debtor entity, Debtor does not anticipate that the procedures
16 set forth in this Motion would be applicable.

17 25. On average, Debtor expends approximately \$6,585.39 each month on utility costs.
18 As of the Petition Date, Debtor is substantially current on its utility obligations.

19 26. Preserving utility services on an uninterrupted basis is essential to Debtor’s ongoing
20 operations and, therefore, to the success of its reorganization. Any interruption of utility services,
21 even for a brief period of time, would disrupt Debtor’s ability to continue servicing its customers,
22 thereby negatively affecting customer relationships, revenues and profits. Such a result could
23 jeopardize Debtor’s reorganizations efforts and, ultimately, value and creditor recoveries. It is
24 therefore critical that utility services continue uninterrupted during the Chapter 11 Case.

25 27. Debtor intends to pay its post-petition utility obligations owed to the Utility
26 Providers in a timely manner. Debtor expects that it will have ample liquidity based upon cash
27 flow from operations to pay post-petition obligations to the Utility Providers.
28

28. To provide additional assurance of payment for future services to the Utility Providers that did not hold deposits from Debtor on the Petition Date (collectively, the “Other Utility Providers”), after entry of the order approving this Motion the Debtor will dedicate the sum of \$6,585.39, which is a sum equal to 100% of Debtor’s estimated cost of its monthly utility consumption (the “Proposed Adequate Assurance”), for payments of utilities expenses in a segregated account. This will provide still further assurance of future payment, over and above Debtor’s ability to pay for future utility services in the ordinary course of business based upon its cash flow from operations.

29. Debtor submits that the existing deposits and the Proposed Adequate Assurance provide protection well in excess of that required to grant sufficient adequate assurance to the Utility Providers.

Limit Notice

30. In the case at hand, there are in excess of 450 creditors and other parties-in-interest, and therefore the cost of full notices for each hearing would be burdensome and costly to the estate. As a result, Debtor request entry of an order limiting notice for motions, hearings and proceedings to the following: the Office of the United States Trustee; the Debtors’ proposed reorganization counsel, the law firm of Larson & Zirzow, LLC (Attn: Zachariah Larson, Esq.); the top twenty (20) unsecured creditors in the Debtors’ Chapter 11 Case; any official creditors’ committee of unsecured creditors if one is appointed pursuant to section 1102 of the Bankruptcy Code; the Internal Revenue Service; any entity that files with the Court and serves on Debtors’ counsel a request for special notice; and any party against whom direct relief is sought by motion, application or otherwise, including by way of example and not limitation, the non-debtor party to an executory contract being assumed or rejected, parties asserting an interest in property being sold, and the like.

...

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...

1 I declare under penalty of perjury of the laws of the United States that these facts are true
2 to the best of my knowledge and belief.

3 DATED: January 8, 2015.

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WILLIAM SMITH, M.D.

LARSON & ZIRZOW, LLC
810 S. Casino Center Blvd. #101
Las Vegas, Nevada 89101
Tel: (702) 382-1170 Fax: (702) 382-1169

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)
)
Flamingo-Pedos Surgery)
Center, LLC dba Surgery)
Center of Southern) BK No. 15-13135-abl
Nevada) Chapter 11
)
Debtors-in-Possession,)

AUDIO TRANSCRIPTION

341 MEETING OF CREDITORS

Unknown date

TRANSCRIBED BY: Kathy Hoffman

AA000595

APPEARANCES

TRUSTEE
300 S. Las Vegas Boulevard
Suite 4300
Las Vegas, Nevada 89101

For the Debtor:

ZACHARIAH LARSON
LARSON & ZIRZOW, LLC
850 E. Bonneville Avenue
Las Vegas, Nevada 89101

Also Present:

William D. Smith, M.D.
Mr. Works
Mohamed Iqbal
Mr. Limon
Ms. Ireland

1 PROCEEDINGS

2

3 TRUSTEE: All right. So we are back on
4 the record.

5 Dr. Smith, I'll remind you you are still
6 under oath.

7 DR. SMITH: Yes.

8 TRUSTEE: And we've added Mr. Works to
9 the mix for SI-BONE, Inc.

10 Mr. Iqbal, did you have more questions?

11 MR. IQBAL: A few more.

12 TRUSTEE: Okay. Go ahead.

13 MR. IQBAL: And I appreciate the time and
14 the extra questions that you've allowed usually at
15 341.

16 TRUSTEE: Well, we're on a timeline here.
17 We're going to have to bail at 2:30, 2:25 because I
18 have a hearing, and I think Mr. Shapiro has a
19 hearing. So let's see what we can get through.

20 MR. IQBAL: Yeah, I just have a few more.

21 Sir, you mentioned 30 shareholders. How
22 many people were on the board?

23 DR. SMITH: Probably six, seven.

24 MR. IQBAL: Okay. Could you tell us the
25 names of the individuals on the board?

1 DR. SMITH: Dr. Belsky, Dr. Ng (ph),
2 Dr. Freedman (ph), Dr. Tadlock. He was excused.
3 Mr. Barnes until he was fired, and there's probably
4 several others I'd have to look up.

5 MR. IQBAL: How often did the board meet?

6 DR. SMITH: It was supposed to meet once
7 a month.

8 MR. IQBAL: How often did it actually
9 meet?

10 DR. SMITH: Well, during the Barnes
11 tenure, it met very infrequently because he would
12 cancel meetings.

13 MR. IQBAL: So roughly two or three a
14 year or --

15 DR. SMITH: Perhaps. And then we've gone
16 back and we can't find any of the board meetings
17 actually that he was -- that he was at these
18 meetings, so a lot of documents were either
19 destroyed or taken away after he left. He
20 sabotaged a couple of computers that had some
21 information on, so we have a hard time getting some
22 of that down.

23 Over the past -- you know, over the last
24 year of operations, the board met on sort of an
25 ad hoc basis. You know, sometimes a couple times,

1 two or three times a month, sometimes not for one,
2 every other month to handle what just is going on.

3 MR. IQBAL: Okay. So you found out about
4 Barnes in 2012. He gets fired in 2013. You folks
5 filed for bankruptcy at the very end of 2014. Did
6 Flamingo Pecos bring suit against Mr. Barnes?

7 DR. SMITH: The FBI has all the
8 information. They're considering criminal charges
9 against him. So that's the last I heard.

10 MR. IQBAL: So no civil actions by
11 Flamingo Pecos?

12 DR. SMITH: We talked about it, but we've
13 had word that he's -- he's actually in bankruptcy,
14 has no -- anything of value to sue for.

15 MR. IQBAL: Okay. No civil action for
16 fraud?

17 DR. SMITH: I talked to Dr. Belsky and
18 she and I met three weeks ago, talked about it, you
19 know. Again, we're just not sure if it's worth
20 paying an attorney to go after things that aren't
21 there.

22 MR. IQBAL: Okay. But in 2013, once he
23 got fired, no civil action was brought against him?

24 DR. SMITH: Again, we went to the FBI
25 within six months.

1 MR. IQBAL: Okay. Six months after
2 finding out or six months after firing him?

3 DR. SMITH: After firing him.

4 MR. IQBAL: It took six months to uncover
5 what he did?

6 DR. SMITH: Well, I'm still finding stuff
7 out, you know, as of now. I mean, it's a very
8 tangled web, and I'm not an expert at this.

9 MR. IQBAL: Okay. After you fired him
10 and in that six-month interim before you went to
11 the FBI, did Flamingo Pecos hire anyone to look
12 into what Barnes did?

13 DR. SMITH: No. We didn't have money to
14 do it. We were trying to operate, operate the
15 center.

16 MR. IQBAL: So he gets fired. You guys
17 don't hire anyone to look into how much he took --

18 DR. SMITH: We couldn't hire anybody. We
19 didn't have the money.

20 MR. IQBAL: Okay. And then six months
21 later you went to the FBI. Did you give the FBI a
22 number?

23 DR. SMITH: A number?

24 MR. IQBAL: Of how much he --

25 DR. SMITH: No. We gave them all the

1 information we had, and they've done multiple
2 interviews and asked for more information.

3 MR. IQBAL: When was the last time you
4 talked to the FBI?

5 DR. SMITH: Me personally it's probably
6 six months ago, eight months ago.

7 MR. IQBAL: And to the best of your
8 knowledge that's still an active investigation with
9 the FBI?

10 DR. SMITH: I was told about two or three
11 weeks ago.

12 MR. IQBAL: Now, you mentioned draws or
13 distributions of 5,000 a year at that time. I'm
14 assuming you worked in other hospitals, with other
15 entities?

16 DR. SMITH: Yes.

17 MR. IQBAL: At that time how many other
18 entities or hospitals did you work with?

19 DR. SMITH: I'm the chief neurosurgeon at
20 the University Medical Center. That's probably
21 where I do 95 percent of my work.

22 MR. IQBAL: And the accounts receivable,
23 is it common practice to carry two, 2.2 million,
24 two and a half million in ARs for an entity that
25 size?

1 DR. SMITH: Yes.

2 MR. IQBAL: And so the last few years,
3 the accounts receivable have roughly been in the
4 same two million range?

5 DR. SMITH: I would think so, yes.

6 MR. IQBAL: Okay. What have you done
7 personally since the end of 2014 to try and recover
8 the accounts receivable?

9 DR. SMITH: I have personally done
10 nothing.

11 MR. IQBAL: Okay. What did you do in the
12 six months before the entity filed bankruptcy?

13 DR. SMITH: Again, I have done nothing
14 personally, but we have a billing team, a
15 collection team. We had an outside company come in
16 and try to work the accounts. And, again, from
17 what they've told us that in general medical
18 accounts receivable go stale very quickly, so. And
19 that 2 to \$3 million in accounts receivable,
20 there's probably very little that's actually
21 active.

22 MR. IQBAL: And how much of that did you
23 recover, do you think or guess?

24 DR. SMITH: I think very little. It's
25 been diminishing return. I'm sure we can go

1 through the bank accounts and see.

2 MR. IQBAL: Okay. And are you doing any
3 kind of new business with any of the 30
4 shareholders of Flamingo now? Are you joining or
5 creating any new groups, surgery groups or anything
6 like that?

7 DR. SMITH: No.

8 MR. IQBAL: So right now you're just
9 employed by UMC?

10 DR. SMITH: I'm not employed by UMC.

11 MR. IQBAL: Okay. You're an independent
12 contractor?

13 DR. SMITH: No.

14 MR. IQBAL: What are you --

15 DR. SMITH: I'm a physician, and I bring
16 my patients there. I don't have any type of
17 financial (inaudible) with UMC.

18 MR. IQBAL: Okay. That is all I have for
19 now. Thank you, sir.

20 DR. SMITH: Thank you.

21 TRUSTEE: All right. Mr. Limon?

22 MR. LIMON: Just a few questions
23 (inaudible).

24 Any of the medical equipment that was at
25 either the Twain location or the Burnham location,

1 is that being used any place else at that this time
2 to your knowledge?

3 DR. SMITH: I know that a small surgical
4 center on Flamingo -- I can't remember the name of
5 it, had borrowed some equipment or leased some
6 equipment. And I think I got an email a while
7 back, a month or two back, saying that they were
8 going to return it back to the Burnham location.

9 MR. LIMON: Okay. What type of equipment
10 is that?

11 DR. SMITH: Surgical instruments, a bed.
12 I don't know.

13 MR. LIMON: Do you know of any other
14 medical equipment from either the locations that's
15 being used someplace else?

16 DR. SMITH: Maybe. I don't know. I
17 don't recall.

18 MR. LIMON: Do you know the name of that
19 surgery center on Flamingo?

20 DR. SMITH: I should. VIP Surgical
21 Center.

22 MR. LIMON: Okay. That's all the
23 questions I have. Thank you.

24 TRUSTEE: Ms. Ireland.

25 MS. IRELAND: Yes. I'm actually

1 concerned with the property of Burnham when it
2 might be able to be vacated.

3 DR. SMITH: I guess whenever (inaudible)
4 takes whatever remaining equipment is there, I
5 suppose. I don't know.

6 MS. IRELAND: So you said to call Tiffany
7 (inaudible)?

8 DR. SMITH: I think so, yeah.

9 MS. IRELAND: (Inaudible).

10 DR. SMITH: I hope I can get them. I
11 just looked through my phone. The only contact I
12 have is her email for the (inaudible) center, which
13 I'm even sure is active anymore. But we can try.

14 MS. IRELAND: What was her position
15 there?

16 DR. SMITH: She was the accountant and
17 sort of the general manager for the office for a
18 while.

19 MS. IRELAND: So they did have an
20 in-house accountant?

21 DR. SMITH: For a while, yeah. She did
22 payroll and things like that.

23 MS. IRELAND: So what is the value of the
24 equipment that remains there? You have no idea?

25 DR. SMITH: I have no -- I don't even

1 know what's there. Like I said, I have not -- I
2 have personally not stepped foot in that place
3 since the day it closed.

4 MS. IRELAND: Who would be in a position
5 to know when (inaudible)? Are things going to be
6 put in storage or --

7 UNKNOWN SPEAKER: I think that's someone
8 you can work -- you can kind of work together with
9 the State, the Trustee. She's now in control of
10 the property.

11 MS. IRELAND: Yeah. Were there any other
12 finishings and fittings beyond --

13 DR. SMITH: No, I mean, we had -- the
14 center obviously built out the place, put a lot of
15 money to build out the place, but that's all chairs
16 and benches and things that I don't think are of
17 much value.

18 MS. IRELAND: And who were the guarantors
19 that you know that were not forged on the
20 (inaudible).

21 DR. SMITH: Again, I'm not certain about
22 that. My attorney -- I think it's my attorneys
23 saying that they're not -- they think that
24 Dr. Belsky and her husband's were not forged.
25 Although, you know, I'm not sure I would believe

1 that. I think they -- I think there was
2 discrepancy on all the signatures from what it
3 sounds like.

4 MS. IRELAND: So as far as you know, it's
5 just yourself and the Belskys.

6 DR. SMITH: And Dr. Garber, Jason Garber.

7 MS. IRELAND: Thank you.

8 TRUSTEE: Mr. Works, did you have any
9 questions?

10 MR. WORKS: No questions for me.

11 MR. IQBAL: If I can just follow up on a
12 few things. Regarding Mr. Barnes, at the time that
13 the allegations that he was stealing money took
14 place, did the debtor have any insurance for
15 malfeasance?

16 DR. SMITH: No. Malpracticing.

17 MR. IQBAL: I figured you had
18 malpractice, but.

19 DR. SMITH: Unfortunately, we did not.

20 MR. IQBAL: On the accounts receivables,
21 I believe you just testified that you hired perhaps
22 a third-party to try to collect. Do you recall the
23 name of that company that tried to collect?

24 DR. SMITH: I can go through my emails to
25 track them down, but, no, I don't recall the

1 company.

2 MR. IQBAL: Okay. If you can provide
3 that to Mr. Zirzow, I would appreciate it.

4 UNKNOWN SPEAKER: It wasn't Med HQ, was
5 it?

6 DR. SMITH: Yes.

7 UNKNOWN SPEAKER: Well, they were on
8 employed post-petition as well.

9 DR. SMITH: Yeah.

10 UNKNOWN SPEAKER: Were they employed
11 pre-petition?

12 DR. SMITH: I believe so, yeah.

13 MR. IQBAL: I'm sorry. It was med?

14 UNKNOWN SPEAKER: Med HQ. There's a
15 retention out for them on file.

16 MR. IQBAL: Do you know if the company
17 ever tried to sell the accounts receivable to a
18 third-party?

19 DR. SMITH: Well, the liens we were
20 selling to third parties to try to get some income
21 generation. And then as I recall we sold every one
22 that a lien company would buy.

23 MR. IQBAL: And that was done prior to
24 filing the bankruptcy, wasn't it?

25 DR. SMITH: Yes.

1 MR. IQBAL: You also indicated or
2 testified that the company was leasing some of its
3 equipment. One of them was to VIP Surgical
4 Centers. Do you know how much the leases -- how
5 much money you were getting on the lease?

6 DR. SMITH: I think it was a small amount
7 of money, but I don't recall.

8 MR. IQBAL: What would be a small amount?

9 DR. SMITH: A couple thousand dollars
10 maybe.

11 MR. IQBAL: A couple thousand a month.
12 Were they actually written agreements?

13 DR. SMITH: I would assume they were, but
14 I...

15 MR. IQBAL: And the surgical centers that
16 were the lessees, were their affiliated with any of
17 the physicians that were members or shareholders?

18 DR. SMITH: I don't think so. I did one
19 case there just hoping to get VIP to come buy us
20 out when we were thinking of going through
21 Chapter 7, but -- I mean, Chapter 11, but, you
22 know, it didn't work out.

23 MR. IQBAL: I don't have any other
24 questions.

25 TRUSTEE: Okay. I have nothing further.

1 I'm going to go ahead and conclude the meeting. If
2 you have any issues or questions, please reach out
3 to my counsel. Okay.

4 MR. LARSON: We'll do our best to
5 cooperate. Thank you.

6 TRUSTEE: Thank you. I appreciate it.

7 (Whereupon, the recording ended.)

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TRANSCRIBER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Kathy Hoffman, do hereby certify:
That I listened to the recording of a 341
Meeting of Creditors for Flamingos-Pecos Surgery Center
dba Surgery Center of Southern Nevada;

That I thereafter transcribed said
recording into a typewritten transcript and that
the typewritten transcript of said proceedings are
a complete, true, and accurate transcription of
said recording to the best of my ability to hear
and understand the recording.

I further certify that I am not a
relative or employee of counsel involved in said
action, nor a person financially interested in said
action.

KATHY HOFFMAN, TRANSCRIBER

EXHIBIT 6

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3)
4 IN RE:)
CHARLES H. TADLOCK and MARY)
5 E. TADLOCK,)
6) BK No. 15-13135-abl
Debtors-in-Possession.) Chapter 11
7 _____)

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9
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11
12 2004 EXAMINATION OF CHARLES TADLOCK, M.D.

13 VOLUME II

14 LAS VEGAS, NEVADA

15 MONDAY, MARCH 14, 2016
16
17
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24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 297685

AA000613

<p style="text-align: right;">Page 2</p> <p>1 CONTINUED 2004 EXAMINATION OF CHARLES TADLOCK, 2 M.D., held at Thomas E. Crowe Professional Law 3 Corporation, located at 2830 South Jones Boulevard, 4 Suite 3, Las Vegas, Nevada 89146, on Monday, March 14, 5 2016, at 1:02 p.m., before Brittany J. Castrejon, 6 Certified Court Reporter, in and for the State of 7 Nevada. 8 9 10 APPEARANCES: 11 For Charles Tadlock, M.D.: 12 13 THOMAS E. CROWE PROFESSIONAL 14 LAW CORPORATION 15 BY: THOMAS E. CROWE, ESQ. 16 2830 South Jones Boulevard 17 Suite 3 18 Las Vegas, Nevada 89146 19 702-794-0373 20 tcrowe@thomascrowelaw.com 21 For Creditor Patriot-Reading Associates, LLC 22 IQBAL LAW PLLC 23 BY: MOHAMED IQBAL, JR., ESQ. 24 714 South Fourth Street 25 Las Vegas, Nevada 89101 702-750-2950 mai@ilawlv.com</p>	<p style="text-align: right;">Page 4</p> <p>1 Las Vegas, Nevada; Monday, March 14, 2016 2 1:02 p.m. 3 -oOo- 4 Whereupon -- 5 (The court reporter requirements under Rule 6 30(b)(4) of the Nevada Rules of Civil 7 Procedure were waived.) 8 CHARLES TADLOCK, M.D., 9 having been first duly sworn by the court reporter to 10 testify to the truth, the whole truth, and nothing but 11 the truth, was examined and testified under oath as 12 follows: 13 EXAMINATION 14 BY MR. IQBAL: 15 Q. So we're here for the continued 2004 Exam of 16 Dr. Charles H. Tadlock in Bankruptcy Case Number 17 BK-S-15-13135-ABL. 18 My name is Mohamed Iqbal. I represent 19 Patriot-Reading Associates. 20 Dr. Tadlock, we're continuing the examination 21 from the first part of the 2004, and I just want to note 22 that your counsel is also here, for the record, Tom 23 Crowe. 24 MR. CROWE: Yes. 25 BY MR. IQBAL:</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X 2 WITNESS: CHARLES TADLOCK, M.D. 3 EXAMINATION 4 By Mr. Iqbal 5 6 7 8 E X H I B I T S 9 NUMBER DESCRIPTION 10 EXHIBIT A Third Amended Disclosure Statement 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 Q. And do we need to go over the ground rules, or 2 are you ready to go and you recall everything we talked 3 about in terms of you're under oath, and that I will try 4 and let you finish your answer if you let me finish my 5 question, so we can keep the transcript clean? 6 A. Certainly. 7 Q. Okay. All right. 8 Right off the bat just to make sure, I am handing 9 the court reporter what we can mark as Exhibit A to the 10 continued 2004 Exam, which is going to be the third 11 amended disclosure statement. And I have a copy of it 12 for you just for reference and a copy for your counsel 13 as well. 14 (Exhibit A was marked for identification.) 15 BY MR. IQBAL: 16 Q. It's two pages per sheet. And I give that to you 17 because some of my questions will go to specific things 18 in there, and it might make it faster if you have it 19 just to check what I'm saying or if you have to refresh 20 your recollection. 21 So your third amended disclosure statement claims 22 the building that houses your practice is likely to be 23 foreclosed on in March; is that correct? 24 A. It's already been foreclosed on. 25 Q. Who told you that?</p>

<p style="text-align: right;">Page 6</p> <p>1 A. They sent me a statement, and the statement was 2 put on the door. And they took possession. 3 Q. Okay. So you're no longer in that building? 4 A. Correct. 5 Q. What was the basis of that foreclosure? 6 A. I'm not sure what you mean. 7 Q. Why did they foreclose on it? Were you behind -- 8 Was the LTD behind on payments? 9 A. Yeah, they were massively behind on payments. 10 Q. Do you know when the LTD stopped making payments 11 on that building? 12 A. About a year ago, I think. It might have been 13 longer. It was with Bank of America at the time. 14 Q. At the time and now the foreclosure was actually 15 done by another bank; correct? 16 A. Correct. 17 Q. Do you recall the name of the bank? 18 A. Northwest something. 19 Q. Did they buy the note from Bank of America? 20 A. I have no idea what they did with Bank of 21 America. 22 Q. And the third amended disclosure statement states 23 the foreclosure will necessitate your firm's relocation. 24 You've already established that the foreclosure has 25 already happened.</p>	<p style="text-align: right;">Page 8</p> <p>1 patient health information, things covered under HIPAA 2 or what do you mean? 3 A. Things covered under HIPAA. 4 Q. And those charts and the patient information 5 where is that currently? 6 A. It's currently in my house in California except 7 for a little bit with security somebody or other who 8 has, I think, 550 boxes which I'm hoping are old so I 9 can just shred them, but I'm not sure. 10 Q. Of course all that stuff is protected under -- 11 A. Correct. 12 Q. -- a number of statutes, so you have to be very 13 careful, I'm sure. 14 A. Yes. Exactly. 15 Q. And when did you move the stuff to California? 16 A. We've been doing it since -- 17 Well, as far as the office material, we started 18 moving it the weekend of my birthday. So it would have 19 been -- I think my birthday was the 27th. So we started 20 loading it Thursday night, a little bit on a -- I think 21 Thursday night. Then over the weekend. 22 Q. Okay. Besides the patient files and the charts, 23 did you have any medical equipment in there that you 24 owned or the LTD owned? 25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 Have you relocated? 2 A. We've relocated the charts. We have not yet 3 started up a practice because at this juncture I'm 4 basically going to let this business run out and stop. 5 I've already notified the board that I'm retiring on 6 disability and have stopped my practice. 7 Q. When you say board, sir, who do you mean? 8 A. Nevada State Medical Board. 9 Q. Got it. 10 Because with respect to decisions with the LTD, 11 you're making them; correct? You're in charge? There 12 are no other members? 13 A. No, I don't believe there are any other members. 14 Q. Okay. All right. 15 So when did you actually stop your practice? 16 A. Seeing patients officially I think on the 25th, 17 though I think one or two wandered in as they were 18 trying to get the charts out of the building before it 19 was taken back. I probably wrote a couple prescriptions 20 to get people by, but certainly nothing after the 29th. 21 Q. 29th of February? 22 A. February. 23 Q. 2016, just to be clear? 24 A. 2016. 25 Q. All right. And when you mean charts, you mean</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. What happened to that? 2 A. Most of it's out of date. We didn't bother 3 moving it. We did move four medical beds, one portable 4 ultrasound and a weight scale, one of those nice doctor 5 weight scales, and blood pressure cuff on a stand, both 6 of which I donated to the school. 7 Q. You're talking about Boyd or Nevada School of 8 Medicine? 9 A. Ohio Valley School, so they could use it for 10 their students. 11 Q. And outside of the equipment you just mentioned, 12 everything else you left in the building? 13 A. Yeah. The computers if it had patient-sensitive 14 information were removed by the IT folks, and they're 15 waiting a judgment as to whether I destroy it or whether 16 I need to get access to it to get patient charts, which 17 I haven't made a determination yet whether I'm going to 18 need them or not. So they're holding on to them under 19 lock and key. 20 Q. In the same place that has the 550 files or 21 somewhere else? 22 A. No. The IT people are keeping it. I think it's 23 Reliable that's keeping it under lock and key until I 24 see what happens. 25 Q. Got it.</p>

<p style="text-align: right;">Page 10</p> <p>1 So outside of the computers you just talked 2 about, the equipment, some of which you donated, some of 3 which is out of date and then the patient files, there's 4 really nothing else left in that building? 5 A. No. There was some old desks and things which we 6 had neither the time nor any place to put it, so we just 7 left it. 8 Q. And you picked end of February because the bank 9 told you to move out by then, or you just picked that 10 time? 11 A. Well, it was actually a mixture of circumstances. 12 I started getting worse and my office manager started 13 getting worse and my wife started getting worse, and the 14 determination was made that between the three of us, we 15 did not have the capability of moving and reopening. 16 Q. Okay. So and your office manager is separate 17 than your wife. Your wife has a function at -- well, 18 had a function at the LTD. What was that function? 19 A. That function was basically -- well, recently has 20 been to drive me everywhere because I can't drive for 21 more than 20 or 30 minutes at a time. It's hard for me 22 to do that, but now she's unable to do that due to a 23 fracture of her ankle that has worsened. And she's also 24 on disability. 25 Q. And that determination has been made; she's on</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MR. IQBAL: 2 Q. Back on the record. 3 It's safe to say that your office manager can't 4 work anymore? 5 A. Yes. 6 Q. All right. That's fair. 7 Now you recently hired a PA. Have you let that 8 PA go? 9 A. Yes. 10 Q. So it was a short-term contract? 11 A. There was no contract. 12 Q. It was just at-will you hired them and then at 13 the end of the month, you decided to let them go? 14 A. Actually, what happened was my office manager 15 made him an offer, he didn't accept but made a 16 counteroffer and then quit at his old job before I had a 17 chance to look at the counteroffer. And so I let him 18 work until it became clear that I wasn't going to be 19 able to keep it up any longer and kept him on as long as 20 I could, but we have no contract because he took it upon 21 himself to kind of jump the gun. 22 Q. Okay, okay. 23 So as of this date, March 14, 2016, you have no 24 plans of practicing again? 25 A. Don't really know, but probably not.</p>
<p style="text-align: right;">Page 11</p> <p>1 disability now or applied or? 2 A. The determination was made by her physicians. 3 I've had no sign that the insurance company plans on 4 fighting it, and will lose if they do in my opinion. 5 Q. So you have the doctor saying that she should be 6 on disability, and so as far as -- 7 A. Three doctors. 8 Q. Okay. All right. 9 So until she -- 10 And very recently when your wife was driving you 11 around, what was her official role at your LTD? 12 A. Well, depends. She was my medical assistant, 13 though technically she's an R.N. She's not an R.N. in 14 this state, was an R.N. in California, never bothered to 15 get her R.N. transferred. But she was basically a 16 medical assistant of whatever I needed up in Ely. She 17 was the only person that went with me to Ely. 18 Q. Then your office manager is separate. I'm sorry 19 to hear about the circumstances. 20 What's going on with your office manager that she 21 can't work? 22 MR. CROWE: Can we go off record for a 23 minute? 24 MR. IQBAL: Sure. 25 (A brief discussion was held off the record.)</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. At least right now not practicing? 2 A. Well, certainly I told my *malpractice company I 3 don't practice. I've stopped. You know, if I can find 4 some job where I can work a couple half days, something 5 like that, then I would try that. Hard to do that. 6 Q. Right. 7 What's the process when you tell the board, 8 what's the process of getting reinstated because you were 9 active before? Would it just be a phone call, or would 10 you have to go through an application process? 11 A. I have no clue. I'm still trying to figure out 12 the retirement rules for charts and things. 13 Q. Right. 14 At this time you mentioned that you may look for 15 something part-time. You're not looking right now? 16 A. No, I'm not looking right now. 17 Q. Okay. All right. That's all I had on that. 18 Now, when we last sat down, you talked about a 19 \$300,000 arrearage with the State of Arizona. 20 A. Correct. 21 Q. And that was for Access? What did you mean by 22 Access? 23 A. Yes. Access is one or two or three companies 24 that provide Medicaid to the Arizona State's patients. 25 Q. And so the State of Arizona owes you 300,000 or</p>

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1 Access owes you 300,000? I'm not clear.
 2 A. Neither am I.
 3 Q. Okay. But who's owed the 300,000? The LTD?
 4 A. Yes.
 5 Q. And why is that 300,000 figure, why is that owed
 6 to you?
 7 A. It's owed to me because the State of Arizona
 8 decided they didn't have enough money to pay their
 9 bills, and I consulted counsel on it who told me that
 10 other than complaining to the insurance commissioner, I
 11 really had no recourse.
 12 Q. Okay.
 13 A. Except to stop taking patients, which I did.
 14 Q. Now, these patients you saw in Arizona and then
 15 you submitted the details to Access or Medicaid, and
 16 these amounts were supposed to be reimbursed by Arizona
 17 and they weren't?
 18 A. Well, most of your statement is correct, but I
 19 saw those patients both here in Nevada and Las Vegas,
 20 also at Laughlin until recently, and some of them came
 21 here because of the Arizona Strip. I don't know if you
 22 know about that. The Grand Canyon runs along there, and
 23 you can't really get to any other part of Arizona. So
 24 they would come here, and Access at one point was paying
 25 me for them.

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1 Q. Got it.
 2 So Arizona residents, but they also came to get
 3 medical treatment up here in Nevada?
 4 A. Yes. And years ago I had an office in Kingman.
 5 Q. When did you stop seeing people at that office?
 6 A. I don't know the exact date. Two or three years
 7 ago. Might be longer.
 8 Q. That's fine.
 9 And you were providing the same services that you
 10 provided to your other patients to these residents of
 11 Arizona that is part of this 300,000 that you're owed;
 12 correct?
 13 A. Correct. Including getting preauthorization for
 14 pretty much everything because they required it at that
 15 time. But that doesn't mean that authorization is
 16 not -- not a surety of being paid. It's worded somewhat
 17 differently in the contract.
 18 Q. Why did the arrearage get so large? Did -- let
 19 me ask that before I go on to other questions.
 20 A. Well, at the time I had one or two PAs and an
 21 anesthesiologist and me when I was at max, and I worked
 22 my -- put that in a polite way. I worked very hard for
 23 a very long time.
 24 Q. And so the arrearage got to 300,000 before you
 25 folks tried to collect on it, or were there problems

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1 before that time, before it got to 300,000?
 2 A. Access has been a problem for everyone forever.
 3 Q. So you weren't getting paid and then it got to
 4 300,000 and you said enough and you stopped?
 5 A. Correct.
 6 Q. And I know you mentioned in your transcript
 7 previously Gordon Richardson -- I'm sorry -- Gordon
 8 Richards tried to go over the 300,000.
 9 What exactly did you folks try to do? Did you
 10 send demand letters, or did you sue the state? What did
 11 you do?
 12 A. Supposedly I can't really sue the State of
 13 Arizona. My office manager made numerous attempts to
 14 get paid. We made attempts both I and her, and the both
 15 of us together had a meeting with the person in charge
 16 for that area, and they didn't show up for the meetings.
 17 And we put demand letters into Phoenix and to the
 18 insurance commissioner, and then I asked Gordon and he
 19 said there's really not much that you can do.
 20 Q. So there's no litigation?
 21 A. No.
 22 Q. Did Gordon send any letters or anything, or was
 23 it just you and your office manager?
 24 A. Too long ago for me to remember if Gordon
 25 really -- it probably would have been her and he talking

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1 about it, not me anyway.
 2 Q. And you said it was too long ago. Was it a
 3 couple years ago when you stopped with the --
 4 When did this 300,000 --
 5 When did it come to 300,000 and you said enough?
 6 A. More than a year ago.
 7 Q. Did you have a contract with the state?
 8 A. Yes.
 9 Q. And in your opinion, I know you're not a lawyer,
 10 they breached that contract?
 11 A. Yes, in my interpretation they breached that
 12 contract. Dr. Valbeoni (phonetic spelling) one time
 13 worked with me, stopped taking Access a couple months
 14 ago and started taking it again. Don't know what's
 15 going on with that. But obviously -- it appears obvious
 16 to me that they're preferentially treating some
 17 providers over others.
 18 Q. And the contract was with the State of Arizona or
 19 with Access?
 20 A. I don't know.
 21 Q. Do you have a copy somewhere of the contract?
 22 A. Possibly.
 23 Q. And I guess on that point, you talked about your
 24 patients' files and records with the LTD. The LTD's
 25 business records and operating statements and things,

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1 some of which have been filed in this action, but the
2 other stuff, all the administrative stuff, do you have
3 that?

4 A. I have some of it, the part that isn't on a
5 computer, in cartons. I literally have hundreds of
6 cartons full of mostly patient records, some records of
7 insurance contracts, etc.

8 Q. And business records?

9 A. Yeah, business records.

10 Q. Okay. And the accountant that you used for the
11 LTD would have some records?

12 A. Correct.

13 Q. Do you know the name of that accountant?

14 A. Chris Wilcox.

15 Q. Chris Wilcox, okay.

16 And then presumably Gordon would have some legal
17 files associated with the LTD?

18 A. I'm sure he has records of his dealings with us,
19 and Kent Greene would have some records dealing with us,
20 more than Gordon would have.

21 Q. Who's Kent Greene?

22 A. Kent Greene is another attorney that worked with
23 me for many years.

24 Q. Is he based in Nevada or Arizona?

25 A. Las Vegas.

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1 Q. And he also tried to help with the State of
2 Arizona and this 300,000?

3 A. No.

4 Q. That one was just Gordon?

5 A. Yes.

6 Q. And Gordon said it's going to be impossible to
7 get it back from them?

8 A. Correct.

9 Q. And they don't have to pay you, I believe, just
10 quoting what you said last time "Because it's the State,
11 and they don't have to pay you even though they agreed
12 to pay"?

13 A. Correct. And that's actually true for insurance
14 companies too. They don't necessarily pay you what they
15 agree to pay you.

16 Q. I know that person didn't show up when they were
17 supposed to be from Phoenix, but did anybody from the
18 state or Access give you any kind of explanation why
19 they weren't paying you?

20 A. Not to me personally, no.

21 Q. To anybody that worked for you, like, your office
22 manager?

23 A. Well, I'm sure she talked about it because she
24 told me about communications she'd had with them, but
25 they just basically said they were bankrupt and did not

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1 have the money to pay.

2 Q. Were they in fact bankrupt, or did they go
3 bankrupt?

4 A. I don't know if they did or not.

5 Q. So you haven't personally and your LTD hasn't
6 filed a claim for that 300,000?

7 A. No. Recommendations of my attorney it would be a
8 waste of money.

9 Q. And when we say entity, I mean any entity that
10 you're associated with?

11 A. Any entity of any sort whatsoever.

12 Q. Okay, okay.

13 And you didn't assign this potential claim, you
14 didn't assign an interest or transfer the claim to any
15 other entity; correct?

16 A. No.

17 Q. Because your attorney said it's worthless; we
18 can't go after it?

19 A. Never even occurred to me.

20 Q. Okay. Have you or any entity that you have an
21 interest in, including the LTD, written off the
22 receivable or used it in any kind of tax return as an
23 uncollectible debt or anything?

24 A. Don't know.

25 Q. Don't know, okay.

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1 But Chris Wilcox would know because he did the
2 tax returns?

3 A. Presumably, yeah.

4 Q. Do you recall having a discussion with him about
5 the taxes and how to do the taxes involving this --

6 A. Not on that particular issue, no.

7 Q. And when you did the LTD's taxes, I know that
8 it's no longer practicing, but when you did do them, you
9 would sit down with Chris and go through the year, and
10 he would show you a return and then you would sign it?
11 How was that process?

12 A. Basically that process was he did all the --

13 Well, he did all the work, and I'd look at it and
14 sign it.

15 Q. But you'd kind of verify it or you trusted him?

16 A. A, I trusted him, and B, he would go over
17 everything monthly with my office manager.

18 Q. Okay, okay.

19 So your office manager really handled the
20 financial side, and it sounds like from her
21 communications with Arizona, she worked on receivables
22 and sort of all of that for you?

23 A. Correct. Since about '97 or '98.

24 Q. And her name?

25 A. Tammy Shaffer.

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1 Q. Now, did Tammy work just for the LTD, or did she
2 do work for Epiphany and other entities that you were
3 associated with?

4 A. She was actually a partial owner, one percent of
5 Epiphany through me because you have to have -- you
6 know, you can do it, but it has to be through a doctor.
7 She did -- long time ago when I was setting up Epiphany
8 do some work for Epiphany. Unfortunately, she didn't
9 continue doing it with Epiphany, or we wouldn't have
10 gotten into trouble that we did with the person that we
11 did.

12 At this juncture I doubt very much that she would
13 be of very much help in recalling anything back then.

14 Q. And just for your assistance, just like I've
15 given you the third amended disclosure sheet, I have
16 copies of your transcript from the first time just in
17 case you want to reference because I'll be asking
18 specific questions.

19 A. Okay.

20 Q. I'm going to represent what's actually on there
21 and be truthful, but obviously you can, you know, trust
22 but verify. You can verify anything that I'm saying.
23 Okay?

24 A. Sure.

25 Q. So it's right here. I don't think we need to put

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1 these as an exhibit, Tom, because they were just part of
2 the prior transcript. But this is just for your
3 assistance, and if you want to verify any question that
4 I'm asking you. Okay? Is that fair?

5 A. Okay.

6 Q. So in the transcript page 64, 65 and then a small
7 portion of 67, you testified that Bank of America at
8 first told you that they would claw back money taken
9 from Epiphany Surgical Solutions' account?

10 A. Yes.

11 Q. Did they claw any of the money back?

12 A. No.

13 Q. Why not?

14 A. They said that time to of told them had gone
15 past.

16 Q. Do you believe that's true?

17 A. No.

18 Q. You told them as soon as you found out; correct?

19 A. Yes.

20 Q. And how long did they take to respond to you?

21 A. Months.

22 Q. Months, okay.

23 Did you have people in the office following up
24 with them?

25 A. I was following up with them.

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1 Q. And when they told you that there was no time
2 left to pursue the claim, you did or didn't believe
3 them?

4 A. Well, I did believe them that they -- let's put
5 it this way: I don't know whether they did or not. I
6 received guidance from the FBI agent saying to try to be
7 nice to Bank of America and see if they were nice, and
8 if not, to wait until after the FBI made their
9 investigation and then make a decision as to whether to
10 do anything or not.

11 Q. So then a number of months go by and they come
12 back to you and they say too much time has elapsed?

13 A. (Nods head.)

14 Q. What did you do after that?

15 A. I called them up and yell at them, and other than
16 that, there really wasn't much I could do.

17 Q. Did you get an attorney to look into a claim
18 against Bank of America?

19 A. As I said last time, I believe I had an
20 accounting firm do -- what's the name of the accounting
21 you do when you're looking for fraud?

22 Q. Forensic accounting?

23 A. Forensic accounting. And the forensic accounting
24 agreed that fraud had taken place, but I didn't have the
25 cash to go after them given the amount of expense that

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1 would be required to do so.

2 Q. Got it.

3 So you had a forensic accountant go through the
4 Bank of America mess --

5 A. Yes.

6 Q. -- with Epiphany Surgical Solutions?

7 A. Just the Epiphany Surgical Solutions part of it,
8 not the entire mess.

9 Q. And you just didn't have the money to pursue?

10 A. Yeah. I still owe them -- or at least he says I
11 owe him \$10,000 in addition to the 5, which I was -- my
12 idea of all I was going to pay for the accounting.

13 Q. When did he do the forensic accounting?

14 A. I don't recall the exact date, but shortly after
15 I found out about --

16 Q. The mess?

17 A. -- the mess within three or four months, and that
18 was because Bank of America stalled, in my opinion, not
19 giving us any records of where the checks went. They
20 would give me a record of the number of checks and
21 dollar amounts, but no check --

22 Q. Actual checks?

23 A. Actual checks, copies of the checks, saying where
24 it went, which of course they can't do forensic
25 accounting without that.

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1 Q. You said you were the one following up with them.
 2 How often were you following up with them?
 3 A. They came to my office weekly for a few weeks,
 4 and then the guy disappeared and somebody else took his
 5 place.
 6 Q. And I know you don't remember the exact date and
 7 that's fine. I'm just trying to get a ballpark. You
 8 filed for BK in mid-2015. Do we have a ballpark, just
 9 even a year, when this Bank of America nonsense was
 10 happening?
 11 A. I hate to hazard a guess honestly. I just really
 12 don't know.
 13 Q. Was it a couple years before?
 14 A. Couple years.
 15 Q. Like 2013?
 16 A. Maybe, yeah. Maybe. I'm not really sure.
 17 That's all easily looked up.
 18 Q. Do you have the copy of the forensic accounting
 19 report that this gentleman did?
 20 A. I may have an email copy of it. If not, Wilcox's
 21 partner has it.
 22 Q. And the forensic accountant was associated with
 23 Chris Wilcox or someone separate?
 24 A. They were associated at the time. I don't think
 25 they are anymore.

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1 Q. Got it.
 2 And the name of this individual?
 3 A. Don't remember.
 4 Q. Okay. But if we get the forensic accounting
 5 report, that will lay out what time all of this stuff
 6 happened; correct?
 7 A. Yes, it should.
 8 Q. Okay. All right.
 9 So I have a question here that did Epiphany make
 10 any claims against B of A; I'm guessing your answer would
 11 be no because you didn't have the money to pursue B of A?
 12 A. Correct.
 13 Q. And Epiphany didn't have the money to pursue B of
 14 A, and the LTD also didn't have the money to pursue B of
 15 A; correct?
 16 A. Correct.
 17 Q. Okay. Who controls Epiphany Surgical Solutions
 18 now?
 19 A. Epiphany Surgical Solutions, I believe, does not
 20 exist anymore.
 21 Q. When did it stop existing?
 22 A. I think within the last year.
 23 Q. And during the last phase of Epiphany Surgical
 24 Solutions' existence, who were the officers?
 25 A. I was.

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1 Q. And any others?
 2 A. Bill Smith -- no, yeah, Bill Smith I think was,
 3 and I don't know if we had any other officers or not,
 4 but you never get anybody to answer emails or anything
 5 else with regard to it. I did get them to answer emails
 6 with regard to firing Barnes.
 7 Q. Okay. All right.
 8 Now you've said that Epiphany Surgical Solutions
 9 right now has no assets?
 10 A. No, it doesn't have any assets, and I'm pretty
 11 sure it's not even in existence. I think I decided not
 12 to pay another 550 or \$600 to keep it going. I'm not
 13 absolutely sure of that, but I think I stopped.
 14 Q. And at that point, did you talk to Bill Smith
 15 about that, or did you just not pay it? You decided
 16 yourself not to pay it?
 17 A. I've been talking with Bill Smith about it for
 18 years, so it was not as if he didn't know it was coming.
 19 (Cell phone interruption.)
 20 THE WITNESS: Excuse me. I'm turning it
 21 off.
 22 MR. IQBAL: No problem.
 23 BY MR. IQBAL:
 24 Q. So do you think Epiphany, at this point, it's not
 25 in existence, but it was entitled to recover some money

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1 from B of A for mishandling Epiphany's accounts;
 2 correct?
 3 A. I believe so, but B of A doesn't.
 4 Q. And no claim or demand letter or complaint was
 5 filed or sent to B of A; correct?
 6 A. No. I sent a letter asking if they would
 7 reimburse me for the amount in question.
 8 Q. Okay.
 9 A. And then I received a letter back saying, no,
 10 it's too late.
 11 Q. Got it.
 12 Do you have that correspondence somewhere?
 13 A. Doubt it.
 14 Q. Those kinds of business records you kept for a
 15 little bit of time and dumped them or?
 16 A. They may be in -- office manager generally kept
 17 stuff like that, and they may be in one of the 50,000
 18 boxes I have in my garage. But I don't know if it still
 19 exists, and I wouldn't know where it was if it still
 20 does exist.
 21 Q. And when you say garage, you mean the garage in
 22 Oxnard?
 23 A. In Oxnard; correct. Takes about the area of this
 24 room for the boxes.
 25 Q. Okay, okay.

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1 And that includes some business records, but also
2 patient files, or the are the patient files here in
3 Nevada?

4 A. No, there are still patient files here which I'm
5 moving over after making a determination whether or not
6 they're still relevant or not.

7 Q. At this point in your petition, you didn't list
8 it as a -- the B of A claim as an asset because you
9 didn't think it was recoverable?

10 A. Correct. I didn't think it was recoverable.

11 Q. But you didn't have a formal legal determination;
12 it was just your assessment of the situation, and based
13 on what Tammy and what you had found out from your
14 letters with B of A?

15 A. I sat down with a couple of different attorneys.
16 Told me it would be somewhere around 20,000 plus just as
17 a down payment to start the litigation. And with
18 nothing from the FBI yet to corroborate it, I didn't
19 think that it was going to be within my abilities given
20 the state of my health.

21 Q. And I know that Chris Wilcox did the accounting
22 for the LTD. Did he also do the books for Epiphany
23 Surgical Solutions?

24 A. No, he did not. The officers and managers,
25 owners of the surgery center thought I had too much

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1 power, and therefore, and literally had, I think, the
2 last one was Dr. Belsky's accountant do the accounting
3 for the two years prior to a determination being made
4 that possibly Barnes was embezzling.

5 Q. So the accountant was Belsky's accountant?

6 A. Correct.

7 Q. Who was asleep at the wheel?

8 A. I don't want to get myself sued by Belsky's
9 accountant, but you can make your own judgment on that.

10 Q. Do you know the name of the accountant?

11 A. Not off the top of my head.

12 Q. But it was an accountant who worked for
13 Dr. Belsky?

14 A. And for the surgical center, yeah.

15 Q. And the surgery center?

16 A. Yes.

17 Q. So whichever accountant was doing the books for
18 Epiphany Surgical Solutions was also doing the books for
19 the surgery center on the Flamingo/Pecos surgery center?

20 A. If I said that, I misspoke. The books for the
21 surgery center were being done by -- by Belsky's
22 attorney -- not attorney -- accountant. The books for e
23 Epiphany were being done by Wilcox, but based on false
24 information sent to him from the surgery center.

25 Q. Got it. Got it.

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1 And how did he finally determine that that
2 information was false?

3 A. No, he didn't actually. Tammy opened the box
4 from Bank of America when it finally sent it with the
5 checks on it and started crying and came down to my
6 office and said that she thought embezzlement was going
7 on in a big way.

8 Q. And this is a dramatic event. Do you remember or
9 recall when that was?

10 A. It's a dramatic event when you're not having
11 spinal surgery and can't walk.

12 Q. Fair point. Fair point. So you can't remember?

13 A. I'm correct. I'm also on medications. Right now
14 they're making my memory not particularly good.

15 Q. Okay. Does the surgery center or Epiphany
16 Surgical Solutions -- I know Epiphany is not an existing
17 entity, but the surgery center did they continue to use
18 Bank of America after the mess with B of A?

19 A. They moved actually to Wells Fargo. The previous
20 person had been working with them at B of A had moved to
21 Wells Fargo. Barnes recommended that we move to Wells
22 Fargo. There's some question with regard to what was
23 going on between the two, and then subsequently, we went
24 to Chase.

25 So I don't believe that Bank of America was being

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1 used by them at that time. I think Chase had bought out
2 the contracts. At that time B of A was telling us that
3 we were making money hand over fist and our credit was
4 excellent. Based on what I saw and meetings I had with
5 Bank of America, it looked like it was.

6 Q. Got it.

7 And that's the information that was given to
8 Chris. He did the returns, and then afterwards you guys
9 found out, oh, no?

10 A. Right, and contacted the FBI and metropolitan
11 police.

12 Q. Now, on page 67 of this transcript from the first
13 time, you testified that there was an Epiphany entity
14 where you kept your, quote, "private stuff"?

15 A. Yeah, Epiphany Surgery Centers I just had shares,
16 my own personal shares, and the one share that belonged
17 to Tammy and at some point we had shares of Smith too
18 because he never got around to formally making his own
19 corporation. So we would just cut him a check for his
20 portion of Kingman ASC.

21 Q. Was that a separate entity then?

22 A. Yes.

23 Q. And what was the name of that entity?

24 A. Epiphany Surgery Centers. Dates way back before
25 Solutions.

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1 Q. Got it. Got it.
2 So Solutions is the one that's no longer a valid
3 entity?
4 A. Yeah. Neither of them are open anymore.
5 Q. But Surgery Centers is the one where you kept the
6 private stuff, and you just explained that private stuff
7 were your own shares from Surgery Solutions and Tammy's
8 share and Bill Smith's share?
9 A. Yeah -- well, part of Bill's share for Kingman
10 and my shares of all the ASCs was five or six at one
11 point or another.
12 Q. You had shares in five or six ASCs, we're talking
13 ambulatory surgery centers.
14 How many of the ASCs do you have shares in now?
15 A. None.
16 Q. What happened to those shares?
17 A. I was bought out at one under protest and
18 actually got a bit higher price after I sued them
19 because it was ridiculously and ludicrously low priced
20 for the shares. Recovered some of that. Kingman --
21 Q. So that was the first one. Hold on. And what
22 was the name of that one where you engaged in all the
23 litigation, and they low balled you and you sued them?
24 A. The one at Gold Ring. 3030 Gold Ring, I think it
25 is.

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1 Prior to that I was bought out without any
2 litigation, Corral Desert. I forget where Corral Desert
3 was.
4 Q. California?
5 A. No. I think it's over in Utah. Out on the
6 border.
7 Q. Okay.
8 A. And then --
9 Q. So you talked about Corral Desert, and that was
10 amicable?
11 A. That was amicable.
12 Q. Gold Ring 3030 was not amicable?
13 A. Not amicable.
14 Q. And then you were about to mention Kingman?
15 A. Right. Kingman basically went out of business
16 when two things occurred. One, the State of Arizona cut
17 payments to ASCs, about two-thirds. From my perception
18 and viewpoint the owners there overreacted because they
19 had to pull back from that position shortly thereafter,
20 but blamed Epiphany Surgical Solutions for the State of
21 Arizona changing what they were paying for, and
22 therefore, fired me despite, as a management person in
23 Epiphany Surgical Solutions as a managing company
24 despite the fact that I was making roughly half of their
25 income per month. So they died within a year.

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1 Q. That doesn't make a lot of sense. What they were
2 saying?
3 A. They're doctors.
4 Q. Did you fight back when they said this is your
5 fault?
6 A. Sure. I pulled all my cases out. I didn't have
7 to do anything else.
8 Q. Did they actually take the shares from you, or
9 the shares just were worthless at that point?
10 A. I have no idea what they did afterwards. They
11 thought they were going to sell to the hospital, but I
12 had talked to the hospital administrator who was Mormon
13 as were the doctors who were being sent different
14 messages about the hospital buying them out. And the
15 hospital did exactly what they told me what they were
16 going to do, which was not buy them out.
17 Q. So was that litigious? Was there any litigation
18 associated with the Kingman ASC?
19 A. No.
20 Q. You just pulled your --
21 A. Pulled my cases out. There would be nothing to
22 go after.
23 Q. All right. And then so that's three, and then
24 there were two or three more?
25 A. Just two more, I believe. Well, actually I take

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1 it back. Three more. It's one surgery center that
2 moved across the street from the long-term care hospital
3 on Flamingo to the surgery center owned by Desert
4 Springs Hospital. I killed it. Then I took it over and
5 ran it for a few years. We made a profit and opened up
6 the surgery center that your client owns the building
7 of.
8 Q. Got it.
9 Now when you say you killed it and then took it
10 over, can you explain?
11 A. I took all their surgeons away from them pretty
12 much and all their cases, and then they shut it down.
13 And they tried to do a GI office, and I was making
14 repeated offers to them to rent it or lease it or
15 something, and I got a really good deal on it. So we
16 moved.
17 We were going to try to keep both of them opened,
18 but two across the street from each other just didn't
19 work out.
20 Q. So at some point you acquired shares in that ASC?
21 A. Right. And in all these ASCs except for the one
22 at 3030 Gold Ring, or is it 2020 Gold Ring? Meds really
23 do make you a little hazy. At any rate, whichever one
24 the address is, except for that one where I was doing
25 maybe 10 percent of the work and owned 4.6 or something

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1 percent. I take it back, 6.8 percent.
 2 So I was even there doing more than the
 3 percentage I owned, but not enough to make them happy
 4 because I was doing so much more at the other surgery
 5 center which they had to get permission from to open.
 6 So they then threw me out despite the fact that
 7 that was the agreement that had been made. They threw
 8 me out because I was on the board and according to them
 9 not doing everything I could for the surgery center.

10 Q. Okay.

11 A. So that's one, two, moved across the street to
 12 the one behind Desert Springs and opened up the one on
 13 the west side of town. That's it.

14 Q. That's it, okay. So that's five.

15 And this one that was owned by Desert SPRINGS
 16 that was sort of a hostile take over?

17 A. It wasn't hostile.

18 Q. You kept making offers and at some point they let
 19 you into the business?

20 A. The hospital didn't want to do it. There's a
 21 management company that owns the real estate for the
 22 hospital, and they wanted to do it. The hospital wasn't
 23 too happy about it, but their parent corporation was or
 24 sister corporation. I don't know which.

25 Q. So when you referenced private stuff, it was the

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1 shares from these five ASCs --

2 A. Five or six.

3 Q. Five or six, and then it was Tammy's share of --

4 A. She had one share of the original.

5 Q. -- solutions.

6 A. Opening it because -- yeah, Solutions -- she
 7 didn't own in Solutions, actually. She owned the
 8 original share in -- when we initially opened the first
 9 one in Las Vegas.

10 Q. Okay. Okay. What was that original one?

11 A. At the Kindred Hospital.

12 Q. What was the name of that entity?

13 A. I don't remember. Sorry. I'm on meds. The
 14 names kind of go.

15 Q. That's fine.

16 Now, this private Epiphany Surgical Centers, did
 17 Wilcox do the books for this private entity?

18 A. Yes.

19 Q. And he did the tax returns?

20 A. Yes.

21 Q. And what's the address or the --

22 Does this private epiphany entity have a physical
 23 address?

24 A. Sure. It was the second unit of the two units
 25 that were repossessed.

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1 Q. Just recently?

2 A. Correct.

3 Q. By the --

4 During the foreclosure?

5 A. Correct.

6 Q. Okay, okay.

7 Now that foreclosure sale took place, you got a
 8 notice of default and election to -- you got all the
 9 foreclosure documents; right, on that before they did the
 10 foreclosure?

11 A. Yes. We've been in negotiations with Bank of
 12 America and later with them as to amending the
 13 agreement, made one amendment with a gun held to my
 14 head, essentially. And at that point when my health
 15 further deteriorated, I gave up.

16 Q. Was that Gordon who negotiated?

17 A. Which?

18 Q. The amendment involving the foreclosure?

19 A. No. I pretty much had no choice. They were
 20 either going to foreclose on me, or I agreed to what
 21 they said. I had no choice whatsoever.

22 Q. Did they tell you --

23 Do you know what the deficiency is or how much
 24 you still owe them?

25 A. No. My best guess is that they were asking about

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1 a quarter million more than it was worth.

2 Q. Did you know what the total amount that was owed
 3 because there weren't payments made for a year, did you
 4 know what --

5 A. No, I don't know. But the original place cost me
 6 originally over 1.2 million. The loan was, like, 700
 7 and something thousand. And it was the best of the
 8 best, and I couldn't figure out -- talking to real
 9 estate professionals it was worth maybe 550 at most.

10 Q. The place, the actual property?

11 A. Right.

12 Q. So they were under water about 200,000, give or
 13 take?

14 A. Bank of America was. I think that the new place
 15 probably they're not under water. They probably bought
 16 it cheap is my guess.

17 Q. Got it.

18 Now, your private Epiphany entity that you
 19 keep -- where you kept the shares, is that still
 20 operating?

21 A. No.

22 Q. You closed that as well?

23 A. There's no reason to keep it open. If it's open,
 24 it won't be open any longer. I think it's been closed
 25 for a while.

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1 Q. Considering all the shares that you did have, you
2 no longer have those shares and the ASCs in there, so
3 you really don't have anything in that private entity
4 anymore?

5 A. No.

6 Q. Besides your shares, did it have any other assets
7 in there?

8 A. No.

9 Q. Okay.

10 A. It had Bill's shares. I already discussed that.

11 Q. Right.

12 A. And in Kingman for a while.

13 Q. Did it have a bank account?

14 A. Yes.

15 Q. Okay.

16 A. Kept everything separate.

17 Q. Is that bank account still operating or you don't
18 know?

19 A. I don't believe that that one is open although I
20 was told that I had to close a couple, but I think that
21 was on the list. No, it's closed.

22 Q. And when that was closed, where was the money
23 transferred to?

24 A. At that point there really wasn't any significant
25 amount of money in it.

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1 Q. You would have just --
2 It would have come to you?

3 A. Epiphany Surgery Centers?

4 Q. Yes.

5 A. Yeah, I was the sole owner of Epiphany Surgery
6 Centers except for the 1 percent that I pretty much gave
7 Tammy. There was no money left.

8 Q. Did you pay her some percentage every year
9 because she owned the 1 percent?

10 A. Correct. And it varied as to 1 percent because
11 it would vary depending on how many shares there was.

12 Q. When was the last year that you took money out of
13 the private Epiphany entity?

14 A. Many years ago. Don't know how many.

15 Q. So it hasn't been active for years?

16 A. Yeah, it hasn't been active for years.

17 Q. Now, asking about Regent. You testified that
18 Regent still existed, and the CEO is Tom something. But
19 did you ever discuss what happened with Epiphany with
20 Tom?

21 A. No.

22 Q. Why not?

23 A. What for?

24 Q. Was it different businesses, so he wouldn't
25 have --

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1 A. No, we bought him out of the original -- okay,
2 the original Kindred Surgery Center occurred because I
3 was asked by Kindred Hospital to be their medical
4 director and move my practice into their building, which
5 I did, though I didn't become -- I was their medical
6 director for a while. They wanted to reopen their two
7 operating rooms. I told them there was no way that even
8 I could keep two operating rooms open in Las Vegas; that
9 what they should do is blow out a wall, make an entryway
10 and make it into a surgery center and get a bunch of
11 other doctors in there.

12 Kindred originally was going to keep, like, 17
13 percent something like that. Then at the last minute,
14 their attorneys because they were in trouble with other
15 things, the government said, no, you better not go in
16 with the doctors on anything. It might look like an
17 illegal inducement, which it wasn't. According to my
18 attorneys, there was no way it would be.

19 So they decided just to be the lessors. It was a
20 big mistake on their part because it made a lot of
21 money. Then they got plaza and moved over there.

22 Q. That's when you started Regent?

23 A. That's when we bought out -- actually, we bought
24 out Regent before we moved. Regent was trying to get
25 the office space over there even before I was, in the

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1 surgery center space at plaza surgery center, which is
2 behind Desert Springs.

3 Q. So you bought that property from Kindred?

4 A. No. We didn't buy the property. We bought
5 the --

6 Q. The practice?

7 A. The business of doing the management from -- and
8 their percentage of ownership in from Regent as a group.

9 Q. Got it. Got it. Got it.

10 So Regent is Kindred?

11 A. No. Okay. Regent was one of three surgery
12 center management companies that were brought in by the
13 person that asked me to come and look at the building.
14 Turned out I was last of many pain doctors they asked to
15 do this. None of whom had the idea of doing the surgery
16 center.

17 Q. Okay.

18 A. It turns out that the person they hired who found
19 me had made another agreement with Tom Allen, which none
20 of us knew about, to make him the vice president of
21 Regent. So he recommended it, and we took his
22 recommendation since he was the person whom Kindred had
23 hired to make a determination of what to do with the
24 building and who to do it with. That Regent be brought
25 in. This made many people very unhappy when they found

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1 out about it.

2 **Q. And this person was?**

3 A. I don't remember his name right now.

4 **Q. So you bought out Regent for practice?**

5 A. No. It was we that -- doctors that were there
6 that bought out Regent in mass including the contract.

7 **Q. And when you say we, you mean Epiphany Surgical
8 Solutions?**

9 A. No. We I mean the doctors involved at the
10 surgery center. They had to vote for it. I forget
11 whether it's two-thirds or something like that, and then
12 negotiate with Regent to get bought out.

13 **Q. So we're talking the same doctors involved with
14 the surgery center on the west side?**

15 A. Right. On the east side, actually. And some of
16 which we went on to the west side.

17 **Q. Got it.**

18 So the group of doctors who got together and
19 bought out Regent, that was one group and then some of
20 those doctors were involved in the east side practice --

21 A. Most.

22 **Q. Most of those doctors were involved in the east
23 side practice, and then some of those doctors were
24 involved in the west side practice as well?**

25 A. Well, we actually merged the two so they ended up

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1 -- you know, they were running one institution for all
2 intents and purposes. It made it too difficult
3 otherwise because who would do their cases or where?

4 **Q. That makes sense. That makes sense. Okay.**

5 **And Barnes worked at Regent?**

6 A. Correct. Barnes was originally hired by Regent.

7 **Q. Before he came over with the group?**

8 A. Right.

9 **Q. Got it. Got it.**

10 A. He was not my choice.

11 **Q. It was the surgeons involved with the --**

12 A. Correct.

13 **Q. -- the east side and the west side, they voted?**

14 A. They voted to keep Barnes.

15 **Q. Did you vote against?**

16 A. No.

17 **Q. You just abstained?**

18 A. I didn't abstain. I basically had no choice in
19 the matter. It was kind of the deal, was one package to
20 go for it or not.

21 **Q. So he came with the package?**

22 A. Correct.

23 **Q. And so you voted for it because you had no
24 choice?**

25 A. Yeah, basically not, no.

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1 **Q. Okay. Okay. Now after the mess, did you go and
2 talk to Tom and Regent and see if it had happened there
3 with him?**

4 A. I received so many emails praising him to the
5 skies from Regent that I didn't think that it would do
6 any good.

7 **Q. So the forensic accountant did he go to Regent
8 and see if anything had happened back there with Barnes?**

9 A. Not that I'm aware of. The FBI basically told us
10 to stay out of it until they finished their
11 investigation.

12 **Q. And they haven't told you that investigation is
13 finished?**

14 A. Correct. I tried calling them twice.

15 **Q. Recently?**

16 A. I think the last time was a year or more ago. I
17 take it back. Probably less than a year ago. A little
18 over a year ago I talked to Agent Burris who told me
19 that these things take a long time.

20 **Q. Okay.**

21 A. But they were actively working the case.

22 **Q. Did they affirmatively tell you don't file a
23 civil action or don't investigate what happened?**

24 A. Well, she was actually on the case. She didn't
25 say anything about it afterwards. I called her, and she

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1 had been promoted and was in New Orleans or in the
2 Midwest or somewhere. Then she told me try to get Bank
3 of America peacefully to resolve it, and if not,
4 probably should wait to see what evidence we get before
5 you proceed with anything. That's been a long time ago
6 now.

7 **Q. Are there any other business entities in which
8 you or Mary have any interest direct or indirect that
9 isn't in your disclosure statement?**

10 A. Everything is in disclosure statement. It was
11 Shadow Mountain, which is -- I'm pretty sure I covered
12 it. We were set up in order to attempt to take over
13 Shadow Mountain Surgery Center. That failed. And then
14 since it failed, nobody had any money in it but me, I
15 used it as a holding company for my electronic health
16 records since it was my belief that they wouldn't work,
17 and they haven't pretty much across the country.

18 So I think it still has maybe \$100 in the
19 account. It's one of the ones I was told to go close.
20 And I forget what the other one was I was told to go
21 close. But essentially everything is defunct.

22 **Q. So everything is in your disclosure statement?**

23 A. Everything that I can remember, yeah.

24 **Q. Got it.**

25 One last question on Regent before we go to

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1 assets.
 2 When you acquired Regent or when the surgeons
 3 acquired Regent --
 4 A. We didn't acquire Regent.
 5 Q. Bought out Regent?
 6 A. Just the portion of Regent that owned the
 7 management contract and their shares of the one surgery
 8 center.
 9 Q. Okay. Did the surgeons then get possession of
 10 the financial records associated with that portion of
 11 Regent?
 12 A. Yeah, they did.
 13 Q. And those records you don't have them?
 14 A. No.
 15 Q. Dr. Belsky's accountant would have them since the
 16 accountant was doing the taxes for the surgery center?
 17 A. The more recent stuff, but Barnes walked off with
 18 almost everything, the computers.
 19 Q. Okay. He took all the financial records?
 20 A. All the financial records for Epiphany and for
 21 the surgery center.
 22 Q. How were the surgeons --
 23 How were you able to do your taxes without any of
 24 that financial information?
 25 A. You're going to have to ask --

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1 Q. Wilcox?
 2 A. Well, actually Wilcox, it's easy enough to do
 3 ours because we didn't get anything. So it was a loss.
 4 He actually put money in there and took it out
 5 illegally.
 6 Q. Got it. Got it.
 7 And so Dr. Belsky's accountant is going to have
 8 to explain how they did taxes without any financial
 9 information?
 10 A. I'd like to know because he had a couple meetings
 11 with me and never mentioned any impropriety.
 12 Q. So your motor home where -- and if you want to
 13 take a break, I know --
 14 MR. CROWE: Let's keep going. Can we keep
 15 going, Doctor?
 16 THE WITNESS: Let's keep going.
 17 MR. CROWE: We're reviewing everything we
 18 did last time anyway. I don't know.
 19 Are you ready to move on at all.
 20 MR. IQBAL: Yeah, yeah. I'm ready --
 21 talking about the motor home and the different assets
 22 that I didn't ask about last time.
 23 MR. CROWE: I'm hearing exactly what I heard
 24 last time to be honest.
 25 MR. IQBAL: Okay.

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1 BY MR. IQBAL:
 2 Q. Where is your motor home currently?
 3 A. It's over at the Oasis RV Resort.
 4 Q. Which state is it registered in?
 5 A. Nevada.
 6 Q. And it's in driving condition and you go back and
 7 forth between California and Nevada?
 8 A. No. It's sitting at the Oasis. It's not in
 9 drivable condition. The wheels and tire -- not wheels,
 10 but the tires need to be replaced, and the thing hasn't
 11 had anything done to it in quite a while. So just
 12 little things need fixing.
 13 Q. The tires and what do you mean little things?
 14 A. The tires. I've replaced some of the batteries
 15 because I had to, but I haven't replaced the other
 16 batteries. They're quite expensive. And then there are
 17 leaks in the toilet. There's a leak in the ice maker.
 18 There's little things that need to be fixed.
 19 Q. Do you have a range or an understanding of how
 20 much it would cost to fix it?
 21 A. No, I don't.
 22 Q. Have you had someone look at it and give you an
 23 estimate?
 24 A. No.
 25 Q. So some undetermined amount of work will get it

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1 back to running shape, but you don't know how much work
 2 or how much that would cost; correct?
 3 A. Correct. But we had, I believe, somebody come
 4 over and make an assessment of it last year. So they
 5 had an assessor come and assess the value.
 6 Q. Right.
 7 But not how much it would take to get it started
 8 again?
 9 A. Right. And things continue to deteriorate. So
 10 it will cost more than it would have then, yes.
 11 Q. Got it.
 12 You just don't have an estimate right now?
 13 A. No.
 14 Q. When was the last time it was driven?
 15 A. When it was moved to the Oasis. About the time
 16 that bankruptcy started, I think.
 17 Q. In your statement of financial affairs, you list
 18 that as your primary residence.
 19 You're living there?
 20 A. Correct. I'm living there.
 21 Q. And that's your full-time residence?
 22 A. No. It's more than half, less than full-time.
 23 Q. Okay.
 24 A. I have my mail delivered there.
 25 Q. Your mail is delivered there?

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1 A. Some of it. My personal, yeah.
 2 **Q. Where else is your mail delivered?**
 3 A. Some of it is delivered to the house at 1531
 4 Mandalay Beach. Some of it that was going to the office
 5 is now going to a P.O. box.
 6 **Q. Where is the P.O. box? Somewhere in Vegas?**
 7 A. Yeah, it's somewhere within a couple of blocks.
 8 **Q. And your wife goes and collects the mail from**
 9 **there?**
 10 A. Correct.
 11 **Q. Got it, okay.**
 12 **Now, how much do you pay for the -- the rent or**
 13 **the connections at the Oasis for the RV?**
 14 A. Right around 875.
 15 **Q. Per month?**
 16 A. Yeah.
 17 **Q. And is that in the disclosure statement?**
 18 A. I have no idea if it is or not.
 19 **Q. So when we talk about 875, that includes the**
 20 **utility hook-ups, that includes the rent for the pad and**
 21 **all that?**
 22 A. Yeah, the utilities vary. That's close.
 23 **Q. Got it.**
 24 **So you'd say that's the cost to maintain your**
 25 **more than half, less than 100 percent residence is 875,**

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1 900 a month, something like that?
 2 A. Yes. Now in the summer it's in the 900s.
 3 **Q. And we're talking all in, just the expenses**
 4 **monthly because it's an RV, it's not going to be too**
 5 **much?**
 6 A. Yeah, I had to spend, I think, \$1,000, something
 7 like that, on replacing some of the batteries.
 8 **Q. Got it. Okay.**
 9 **And you testified just now that you haven't had**
 10 **any maintenance done on it in some time?**
 11 A. Other than the batteries and some work on -- what
 12 do you call it -- the urine --
 13 **Q. The bathroom facilities. We'll just call it**
 14 **that.**
 15 A. Right.
 16 **Q. Air conditioner still works?**
 17 A. Yes, the air conditioner, thank God, still works.
 18 **Q. Now, you testified that it is more than 50**
 19 **percent your residence but less than 100 percent.**
 20 **Where else do you reside?**
 21 A. I go over and see my children a lot in
 22 California.
 23 **Q. Where do you stay when you're in California?**
 24 A. At Mandalay Beach usually.
 25 **Q. And do you use the property in Lake Las Vegas?**

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1 A. Storing still a few things at Lake Las Vegas, but
 2 very little.
 3 **Q. When was the last time you spent a night in the**
 4 **Lake Las Vegas residence?**
 5 A. A few weeks ago we spent a night there. We were
 6 there for most of the night but not the entire night,
 7 trying to move stuff.
 8 **Q. So just to get your living situation really**
 9 **clear, so I don't have to ask a million questions about**
 10 **it, you spend most of your time at the RV at Oasis, but**
 11 **you also spend some time in the Oxnard beach house?**
 12 A. Correct.
 13 **Q. And you spend some time in the Lake Las Vegas**
 14 **house?**
 15 A. Not really since the summer because the air
 16 conditioners went out. So it became uninhabitable
 17 during the summer.
 18 **Q. I think we all understand that.**
 19 A. Yeah.
 20 **Q. You didn't get the air conditioners fixed?**
 21 A. Too expensive.
 22 **Q. Did you get a quote?**
 23 A. The last people that fixed it gave me quotes, but
 24 that was quite a while ago. I'm not up to date. The
 25 bigger ones are close to 10,000, and the smaller ones ar

Page 57

1 6 or 7,000.
 2 **Q. So we're talking over 20,000 to fix the air**
 3 **conditioners?**
 4 A. Yeah, that's my best guess.
 5 **Q. When did you --**
 6 **When did you acquire the motor home?**
 7 A. Do we have the motor home disclosure somewhere
 8 because I don't remember?
 9 MR. CROWE: It's in the schedule somewhere.
 10 THE WITNESS: More than ten years ago.
 11 Maybe 2003 maybe. Yeah, I think it was 2003.
 12 MR. IQBAL: That's more than enough in terms
 13 of my question. No need to be exact there.
 14 BY MR. IQBAL:
 15 **Q. Do you have the maintenance and service records**
 16 **for the motor home, or are they in the motor home?**
 17 A. We haven't really been keeping them that long.
 18 **Q. Okay.**
 19 A. The motor home was used exclusively for business,
 20 and it's technically in the name of one of my partners
 21 that was my employee/partner for a few months and got
 22 indicted by the Feds, went to jail because he didn't
 23 listen to my wife and I when we told him he really
 24 needed to do blood pressures on patients before you exam
 25 them and charge the federal government.

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1 Q. So that was a partner?

2 A. Yeah, well, he would have become a partner had he
3 stayed, but I bought him out of his contract because he
4 was doing things -- and we were not in agreement how
5 patients were to be treated, and he thought I was
6 running up the expenses too high by doing urine tests on
7 them to make sure they were taking the drugs and doing
8 blood pressures and slowing down things and apparently
9 not having sex with patients. So he's been spent a few
10 years in federal penitentiary.

11 Q. So he --

12 Both of you purchased the RV for business 10
13 years ago or 15, however long ago it was?

14 A. 2003. Yeah, his name was on it, but he
15 relinquished it. He didn't want to pay for it anymore
16 and hasn't.

17 Q. How were you using it for business? You were
18 using it to go to different locations, or you actually
19 had patients in the motor home?

20 A. Oh, No, we didn't have patients in the motor
21 home. We used it instead of having to pay for hotel
22 rooms in Kingman mostly. Once in awhile we would drive
23 it somewhere else, but rarely. Too expensive to move
24 it. Much more pleasant than a hotel.

25 Q. So then up until about a year ago, it was being

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1 used to move about, and then you just put it at Oasis,
2 and basically it's not drivable right now, it's just
3 sitting at Oasis?

4 A. I wouldn't go as far to say it's not drivable. I
5 don't want to drive it too far. It needs tires, and I'd
6 be afraid the batteries might die on me, things like
7 that.

8 So it needs some work on it before I go very far.

9 Q. Understood, understood.

10 When was the last drive you took in it?

11 A. When we moved it to Oasis. I actually had
12 somebody drive it for me, the person who came over to
13 repair the batteries, because I didn't feel up to being
14 able to drive it.

15 Q. Class C; right? It's the big one. I'm sorry
16 class A is the big one.

17 A. It's a class A, diesel pusher.

18 Q. So let's talk about the airplane.

19 Are you a pilot?

20 A. I was.

21 Q. You were.

22 What years were you a pilot?

23 A. I took my first lesson in '96 or '97 opinion; is
24 that right? Yeah, '96 or '97. It took a couple years to
25 get my pilot's license because I was doing it mostly for

Page 60

1 business. I'm not sure when I officially became a
2 pilot. But I since gained my IFR rating and went up
3 from a regular prop airplane to a turbo prop airplane
4 because I was using it so much for business, and it's
5 safer.

6 Q. So you --

7 At some point after '97, you got your pilot's
8 license, and you were using the Piper?

9 A. The Saratoga.

10 Q. The Saratoga?

11 A. Correct.

12 Q. Is Ms. Tadlock a pilot?

13 A. No, but she's had the short course for, you know,
14 making an emergency landing.

15 Q. Does it need a copilot or is it just the one
16 person?

17 A. No, it's not big enough. It's a weight thing. I
18 think over 13,500 pounds or 12, 5000 pounds. Then you
19 have to -- it's a determination made by the FAA whether
20 it's single pilot or two pilot.

21 Q. Are there two --

22 A. Two seats in the front.

23 Q. Would she join you when you went for business
24 trips?

25 A. Frequently, yes.

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1 Q. So you use the Saratoga, which is in your
2 disclosure statements, you use that to go between what?
3 Vegas and Kingman?

4 A. Kingman.

5 Q. And Vegas and Oxnard or just Vegas and Kingman?

6 A. Vegas and Kingman, Vegas and Laughlin, Vegas and
7 Ely and sometimes a round trip all the way around going
8 back and forth.

9 Q. Got it. Got it. Okay. Okay.

10 Did you --

11 What kind of ratings do you hold now? What can
12 you fly right now?

13 A. Nothing. I'm on too many medications.

14 Q. Right.

15 So as far as the FAA is concerned, do you have
16 your pilot's license and certification?

17 A. No. I haven't passed a physical in years.

18 Q. Got it. Okay.

19 So is it --

20 I guess that makes sense. You have to pass
21 routine physicals to maintain your pilot's license?

22 A. Correct.

23 Q. And when was the last time you were a pilot?

24 A. Several years.

25 I transitioned from being a pilot to being a

Page 62

1 pilot some of the time with another safety pilot to not
2 being a pilot at all as I got worse.

3 Q. So you haven't actually flown the Saratoga in
4 awhile?

5 A. Oh, No. The Saratoga was sold back in 2005 or
6 2006.

7 Q. Okay.

8 A. And I acquired the --

9 Q. The Piper?

10 A. Piper turbo prop.

11 Q. Right.

12 So I'm talking about the Piper because that's the
13 one that's in this BK. The Piper --

14 When was the last time you flew the Piper?

15 A. A couple years. It's been on the ground so...

16 Q. Did you have your license last year in 2015?

17 A. No. Nor in 2014.

18 Q. Got it.

19 So you didn't renew it, or you didn't pass the --

20 A. With the amount of medications I'm on, the FAA
21 would not let me fly. It would be the equivalent of
22 flying drunk. So there's no way I would fly by myself.

23 Q. Okay. According to the third amended disclosure
24 statement on page 20, you had income from leasing the
25 plane in 2014?

Page 63

1 A. Yeah, I leased the -- okay. Icarus is the
2 holding company for the airplane, for the previous
3 airplane, and I was paying Icarus I think it was 7 or
4 8,000 for the Saratoga, I think 10,000, and went up to
5 12,000 something like that for the jet prop. But I'm
6 not paying anything now because I don't have it. It's
7 taken apart and sitting in Washington State.

8 On one of the annuals, the engineers at Salt Lake
9 over-temp'd it three times. I could prove it because
10 there's a little card that -- there's a machine that
11 keeps tabs of the location and the temperatures and a
12 little card that takes record. I have two cards, so I
13 could pull one out, put the other one in and continually
14 run it, because I was at basically almost 100 percent
15 business. The IRS audited me, and they gave me money
16 back, a lot back, 5 or 6,000. So they agreed that it
17 was used almost entirely for business, and it was.

18 So when I got over-temp'd, we only flew it that
19 year for 50 hours. My normal is 250 hours when I could
20 do it, but I couldn't do it. And paying a pilot added
21 to my stress on the aircraft. At about 50 hours he
22 landed, which was good, because according to Pratt &
23 Whitney, after you over-temp that engine, you're going
24 to have an engine failure sometime between zero hours
25 and 50 and crash landing if you're lucky.

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1 Q. Jeez. So there was a lot there. I want to break
2 that down a little bit.

3 So when you say you leased it or you paid Icarus,
4 by you, you mean the LTD?

5 A. Yeah. Charles H. Tadlock, M.D., LTD is where my
6 attorneys and accountants recommend I hold it.

7 Q. And paid Icarus to lease the plane?

8 A. For business purposes.

9 Q. And up through 2014.

10 A. I don't know if it's 2014. It might be 2013,
11 2014, somewhere in there.

12 Q. The disclosure statement says there was income
13 from leasing in 2014.

14 A. Okay.

15 Q. And around that time a few years ago, you stopped
16 actually flying it, and you hired a pilot?

17 A. Yeah. One of my former instructors for the most
18 part, yeah.

19 Q. Then the LTD was paying the pilot or was it
20 Icarus that was paying the pilot?

21 A. Don't know. Don't remember. I think it was
22 going through -- I think paying the pilot ended up going
23 through Tammy simply because it was easier for the pilot
24 to do it.

25 Q. Right.

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1 It looks like from the --

2 A. Charged off -- charged off somehow or another to
3 Icarus or about taxes or something. I don't know. You
4 have to look at the taxes to figure that one out.

5 Q. Okay. And when did you get the Piper?

6 A. I said already. 2006 roughly.

7 Q. Okay. What was the purchase price?

8 A. I think they were asking 690, and I got 10,000
9 off for letting them have the radar. So somewhere
10 around 680.

11 Q. Did you individually purchase it, or did the LTD
12 purchase it?

13 A. I don't remember who purchased it. Icarus, I
14 think, purchased it.

15 You know, you have all this stuff in -- my memory
16 isn't that good. So you have all the stuff in the
17 disclosures as to who bought what when.

18 Q. Okay. And the plane in 2015, last year, was not
19 operable?

20 A. No.

21 Q. Because you said the engineers in Salt Lake they
22 screwed it up?

23 A. They over-temp'd it, and they paid for having it
24 flown over to Arizona, somewhere Phoenix I think, and
25 taken completely apart and x-rayed and all this over

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1 stuff and all the parts replaced back in and shipped the
2 engine back. But I have not had the money to pay for
3 the engine repairs and the other stuff. So I got an
4 annual, if I was able to use the plane because I
5 couldn't fly it. And now it's out of annual again. So
6 it needs another annual for another 35,000.

7 **Q. So when you say annual, you mean annual**
8 **inspection?**

9 A. Annual inspection. You can't fly an airplane
10 unless it's at the minimum looked at once a year,
11 depending on what part of the FAA and FARs you're flying
12 under.

13 **Q. And an annual inspection costs 35,000?**

14 A. Uh-huh, pretty much for a turbo prop.

15 **Q. And how much would it cost to fix the plane?**

16 A. Unanswerable question. To make a determination
17 of what you want fixed on it and what level of fixing
18 you want. I owe them, I think, about 35,000, and I
19 think it would be about another 35 to get it through an
20 annual, possibly more because I know last time -- well,
21 they thought that they should have overhauled the prop.
22 That's 11,000 by itself.

23 **Q. Overhaul the propeller?**

24 A. The propeller, and then the side windows -- I
25 already replaced the front windows, but I haven't

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1 replaced the side windows. That's another actually
2 unknowable amount because they don't make them anymore.
3 So you have to find them and replace them.

4 **Q. So you don't have an actual --**

5 You didn't get a specific estimate of how much it
6 would cost to make the plane operable?

7 A. No, I haven't.

8 **Q. And your best guess is somewhere in the range of**
9 **70,000?**

10 A. No, I'm not --

11 MR. CROWE: If you look at the Schedule C,
12 he owed 35,000 for last year's work when he filed.

13 MR. IQBAL: Okay.

14 MR. CROWE: So he's talking about another
15 35,000 for this year basically.

16 THE WITNESS: Yeah, every calendar year you
17 have to do it.

18 MR. IQBAL: Right.

19 BY MR. IQBAL:

20 **Q. And that's the annual inspection. I'm just**
21 **trying to find out how much money it would take to make**
22 **the plane operable to the point where it could, say, be**
23 **leased out or it could provide value. That's the**
24 **question I'm asking.**

25 A. Leased out, I don't think you could get it leased

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1 out for a number of reasons. To get it operable a
2 minimum of 35, 40,000.

3 **Q. Now, you said just now that you don't think it**
4 **could be leased out for a number of reasons.**

5 **What are those reasons?**

6 A. Well, there are very few people who are rated in
7 that plane. Generally they buy them. They don't lease
8 them. They may lease them to run their corporation, but
9 mainly these people, you know, they have their
10 corporation buy it for the deduction and that. And
11 there just aren't that many people who are rated on that
12 airplane.

13 **Q. So 35 to 40K to make it operable, best guess?**

14 A. Yeah, at a minimum. Most buyers would want more
15 done to it than that.

16 **Q. And you haven't gotten a -- you know, had a**
17 **mechanic give you an exact detailed sheet of what needs**
18 **to be fixed?**

19 A. They can't until they pull it apart.

20 **Q. And that would take 35,000 for the annual**
21 **inspection?**

22 A. My guess is it's going to cost more than 35,000,
23 but, yeah, about what it cost last time. And there's
24 even more things that need to be fixed this time that
25 they said should have been fixed last time but were

Page 69

1 going to give pass on because they couldn't find the
2 parts.

3 **Q. Got it. Okay. All right.**

4 So you didn't make any use of the airplane, the
5 Piper, in 2015?

6 A. No.

7 **Q. Okay. All right.**

8 **What are your plans with the Piper?**

9 A. I haven't made any since everything is in such a
10 state of transition.

11 **Q. And right now you don't want to make the payments**
12 **because you said in the disclosure statement, quote,**
13 **"required repairs have not been paid for." You made**
14 **that decisions not to make the repairs at this time;**
15 **correct?**

16 A. Correct.

17 **Q. And the reason for that?**

18 A. One, the practice was going downhill, my health
19 was going downhill and the insurance company that should
20 have been covering the costs associated with my having
21 the plane down, which was a lot because I lost a day
22 going up or a day coming back, have not paid me a cent.

23 **Q. Did someone have to tell you that it wasn't**
24 **operable, or you just knew in your own experience that**
25 **it's not able to fly right now?**

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1 A. I just told you that under FAA regulations I
2 forget which FAR it is, I think it's flying under FAR 90
3 now. You have to have an annual inspection every year;
4 therefore, you cannot fly the airplane right now unless
5 you get a special dispensation from the gods at the FAA
6 to move it from there to another place to have it looked
7 at, torn apart, fixed, and they give you a statement
8 that the plane is in flyable condition.

9 Q. And where is it now?

10 A. In Washington State.

11 Q. Are you paying hanger fees to have it stored up
12 there?

13 A. I'm paying the insurance as per the judge's
14 instructions to me.

15 Q. So you're paying the insurance on the plane
16 still?

17 A. Correct.

18 Q. And are you paying hanger fees in Washington?

19 A. They haven't sent me a bill for hanger fees.

20 Q. And when was it transported to Washington?

21 A. August or September a couple years ago.

22 Q. In 2014?

23 A. Probably, yeah.

24 Q. Because that's the last year that there was
25 leasing income from --

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1 A. Probably would have been September. Either
2 August or September.

3 Q. They haven't --

4 A. Sometime in September that they over-temp'd it
5 three times.

6 Q. So they haven't sent you a bill for the hanger
7 for over a year and a half?

8 A. No. They know what my condition is.

9 Q. Will they send you a bill later?

10 A. I assume I'm going to get a bill for a lot at
11 some point.

12 Q. Typically how much does it cost?

13 A. I already told you.

14 Q. No, no. Hanger? How much does it cost to keep a
15 plane at --

16 A. I doubt that they're hangaring it. It's probably
17 outside. Last time I heard they didn't put the prop on.
18 So a little place like that in the middle of nowhere,
19 \$50 a month, \$100 a month.

20 Q. All right. Now in 2014 when it was leased to the
21 LTD, was there a formal lease or it was just -- was
22 there a written lease?

23 A. Yeah, it was a written lease.

24 Q. Okay. You signed for both parties? You signed
25 for Icarus --

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1 A. I don't remember.

2 Q. But you ultimately control the LTD and Icarus;
3 right?

4 A. Well, Icarus is actually owned by -- you're going
5 to have to discuss that with my attorneys. Icarus is
6 actually owned by my family trust. So theoretically, I
7 guess, Kent Greene has the final judgment on it.

8 Q. Was it leased at the standard rates that anybody
9 would lease a turbo prop?

10 A. Yeah.

11 Q. Like, it was just standard across the board?

12 A. I guess airplanes, you know, keep up with the
13 King Air, half the price.

14 Q. Okay.

15 A. It would be hard to find anything that would more
16 effectively or cheaply transport you.

17 Q. So hypothetically, if the repairs are done and
18 someone pays the annual inspection fee, it would be
19 operable?

20 A. Right. If they pay the arrears and have it
21 fixed, it would be operable.

22 Q. Besides the LTD which leased the plane in 2014,
23 did any other businesses lease it?

24 A. No.

25 Q. It's just been your own internal businesses?

Page 73

1 A. Correct.

2 Q. Did you make use of the plane for any personal
3 trips in 2014?

4 A. No. I'm not absolutely certain that I might not
5 have stopped somewhere, but I don't think I made any
6 personal trips anywhere at all actually. I think under
7 the IRS regs everything that I did on it was deductible.

8 Q. As a business trip?

9 A. Right. You have to go out and practice every
10 once in awhile too. So I had so few hours on it.
11 Anything that was on it above business would have been
12 practice because you have to stay current.

13 Q. Got it.

14 The third amended disclosure statement on page 21
15 says the hanger that houses the plane was, quote,
16 "disposed of in 2014"? You sold a hanger here?

17 A. I don't know what year it was, but, yeah, I sold
18 the hanger when I was unable to work.

19 Q. Okay. Okay.

20 A. So I had three emergency back surgeries, one a
21 year before and two within three months of each other.

22 Q. And you made that decision to sell the hanger?

23 A. Yeah, because I had no -- you know, no income. I
24 was lucky to be able to sell it. It's a bad market for
25 hangers for airplanes.

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1 Q. Who did you sell it to?

2 A. Nice people that live up in Oregon or Washington.

3 I don't remember their names. That's all in the

4 disclosures.

5 Q. But it says that it was disposed of, but I don't

6 know if the buyers are listed. So just curious on that.

7 So you've listed two creditors as having an interest in

8 the plane, Jet Prop, LLC, and Citizens Bank.

9 What is Jet Prop, LLC?

10 A. That's the place where they did the most recent

11 annual.

12 Q. And that's when you mentioned previously that you

13 still owe them for --

14 A. Correct.

15 Q. You owe them for the annual that they did?

16 A. Yeah, my part of the annual. I think the

17 insurance company has already paid 120,000 or something

18 for the damage that they did, but they haven't

19 reimbursed me at all for the damage that they did to me

20 or my practice.

21 Q. Who's they?

22 A. The insurance company for the Salt Lake.

23 Q. And when did they damage it? They damaged it in

24 2014?

25 A. When they over-temp'd it. I think it was 2014,

Page 75

1 yeah.

2 Q. And so you have a claim against them?

3 A. Yeah, I've been attempting to pursue it nicely by

4 sending them letters.

5 Q. And recently you've sent them letters as well?

6 A. I haven't sent them anything recently. It's been

7 months.

8 Q. This claim what's -- they damaged the plane. How

9 much do you think they owe you?

10 A. They damaged the plane, but they, quote, "fixed

11 the engine," and they admit that they owe me something

12 for my time, but apparently, I've sent them the bill,

13 I've had my accountant check and recheck the bill, and

14 sent it to them and Gordon is aware of it, but I haven't

15 had enough money to be wasting it on attorneys on a

16 small possibility that I'm going to get anywhere near

17 what it cost me back.

18 Q. How much do you think they owe you?

19 A. Over \$100,000.

20 Q. And is this claim listed in your schedules?

21 A. I have no idea if it is or not because I'm

22 probably never going to get paid it honestly. They're

23 going to argue it. That's -- they would argue it any

24 way, which is why -- under the policy, they were

25 supposed to get me an airplane equivalent, but the only

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1 way they would do it is if I went out and rented the

2 airplane myself and paid for it, and then they would

3 have supposedly pay me back. The supposedly is the bad

4 part because to rent one and not get paid, there's no

5 way I could afford that at that time.

6 Q. When you say they, you're talking about the

7 insurance company?

8 A. Insurance company.

9 Q. And that's separate from the engineers that

10 screwed it in up in Salt Lake by over-tempting it?

11 MR. CROWE: No, that's their insurance

12 company.

13 THE WITNESS: That's their insurance

14 company.

15 MR. IQBAL: Got it. That makes sense.

16 Thank you.

17 BY MR. IQBAL:

18 Q. So you sent letters, but haven't filed suit or

19 anything?

20 A. Sent letters, I had accountants and my staff draw

21 up every hour that I lost, every day that I lost, the

22 amount of income I would have generated. The

23 accountants verified the amount of money I would have

24 generated, and I have heard nothing back from them for

25 months. So I don't think they'll do anything unless

Page 77

1 legal action is taken at this point.

2 Q. And right now you're not going to take legal?

3 A. No. I'm paying enough attorneys enough money as

4 it is.

5 Q. Who is Peter Terrault, T-E-R-R-A-U-L-T?

6 A. No idea.

7 Q. He's listed of Ely, listed as the manager of Jet

8 Prop, LLC?

9 A. In Ely or in Spokane?

10 Q. He's listed of Ely, listed as the manager of Jet

11 Prop, LLC?

12 A. Really. I didn't know he was from Ely. Then it

13 must be him. I don't know.

14 Q. He's the individual associated with Jet Prop, not

15 their insurance?

16 A. Not the person that I was dealing with. The

17 person I dealt with died last year when he was taking a

18 jet prop up. They lost control and crashed and he died.

19 Q. The name of this individual deceased?

20 A. Give me a sec.

21 MR. CROWE: I'm just objecting to the

22 relevance. I have no clue what this is about.

23 MR. IQBAL: I'm just asking about the plane.

24 It's a significant asset.

25 THE WITNESS: But the person who died?

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1 MR. CROWE: The manager of Jet Prop, LLC, I
2 don't understand what that has --

3 MR. IQBAL: They may owe the estate
4 \$100,000.

5 THE WITNESS: No.

6 MR. CROWE: Jet Prop, LLC, is where the
7 plane is now. They did the annual after it was
8 supposedly repaired; right?

9 THE WITNESS: Correct. They did the annual
10 after Salt Lake City did the over-tempering. I've said
11 that multiple times.

12 BY MR. IQBAL:

13 Q. And the name of the insurance company?

14 A. Oh, I don't remember that.

15 Q. Okay. All right.

16 So Exhibit Z to the third amended disclosure
17 statement lists plane expense 6630 and then plane
18 insurance 2,281.

19 Is that insurance to the plane, \$2,281?

20 A. I don't know. You'll have to look.

21 Q. It's not clear from Exhibit Z, so that's why I'm
22 asking you.

23 A. Okay. The insurance for the plane.

24 MR. CROWE: Exhibit Z is your profit and
25 loss from LTD. So you have some insurance listed here

Page 79

1 somewhere.

2 THE WITNESS: I can tell you approximately.

3 MR. CROWE: It says plane insurance 2281.

4 BY MR. IQBAL:

5 Q. Is that yearly or is that monthly?

6 A. Yeah, that would be about right. 6,000 --
7 originally it was 21,000 a year. Then it dropped down
8 to about 6600. But since it's not in flight, it's a
9 little bit less now.

10 Q. So when the plane is active and working,
11 insurance is about 21,000 a year?

12 A. Was. Now it's dropped because I have so many
13 hours in it now. But they wouldn't insure me now
14 because I'm uninsurable in it.

15 Q. You're currently paying just the 2281 on a
16 three-month basis or a yearly basis?

17 A. I'm not sure where they get the 2281. Honestly
18 I'm not.

19 Q. Do you have other expenses associated with the
20 plane right now besides insurance?

21 A. I'm sure they're charging me for the hanger and
22 the 35,000 and interest on it and that, but the -- that
23 may include the payments on it.

24 MR. CROWE: The only plane expense on here
25 is the plane insurance.

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1 THE WITNESS: Okay. Let me take a look.

2 Okay. So an agreement that plane insurance
3 is \$2,281. October, December, 2015. Yeah, that sounds
4 about right.

5 BY MR. IQBAL:

6 Q. So every three months it's a check for 2200?

7 A. No. It's about \$64,000 a year in flight, and not
8 in flight it's about 2281.

9 Q. So yearly you're paying -- because it's grounded
10 you're paying 2281 yearly?

11 A. Yeah, something like that or 3,000. I'm not sure
12 of the exact amount. It's less because it's grounded.

13 Q. I get that.

14 The money is paid to your insurance company
15 that's covering the plane?

16 A. Correct.

17 Q. And so they, obviously, have different levels
18 depending on --

19 A. How much experience.

20 Q. How much experience, how many hours the plane has
21 and then obviously whether it's operable or not. And
22 since you're not operating it's the lowest level
23 insurance?

24 A. Yeah, it's the lowest level of insurance it would
25 be. I have a lot of hours in it, and I kept more

Page 81

1 insurance on it than minimum.

2 Q. Okay. Any other expenses that you have besides
3 the insurance? And I'm not talking about the annual
4 inspection that you have to pay for, I'm not talking
5 about the hanger fees because they haven't charged you
6 for the hanger fees yet. Any other expenses that you
7 have on the plane?

8 A. Not that I'm aware of, no.

9 Q. And you've paid taxes to the Clark County
10 assessor on the plane?

11 A. Annually?

12 Q. Yeah.

13 A. Yeah, I think so. I think so. Isn't it personal
14 property taxes or something? Yeah. Yeah, personal
15 property taxes, which -- and I think that's being paid
16 too. So that would be an expense that's ongoing.

17 Q. And that's in Exhibit BB. I'm just trying to get
18 a gauge of the expenses associated with the assets.

19 So it says Clark County assessor, 3633, does that
20 ring a bell?

21 A. Not really, but that's probably about right.

22 Q. And --

23 MR. CROWE: I just want to again, objection,
24 for the record. You're asking questions about expenses
25 of Charles H. Tadlock, M.D., Limited, and we've been

<p style="text-align: right;">Page 82</p> <p>1 doing this now for two days in these depositions. I 2 don't understand where you're going with it. 3 MR. IQBAL: Well, these expenses are 4 associated with the income that he's going to get -- 5 MR. CROWE: The exhibit you're talking about 6 -- 7 MR. IQBAL: Right, it's in the disclosure 8 statement; right? 9 MR. CROWE: -- is for Charles H. Tadlock, 10 M.D., Limited. 11 MR. IQBAL: Which is going to contribute a 12 significant portion of the disposable income that's 13 going to pay the creditors; right? 14 MR. CROWE: Probably not anymore. 15 MR. IQBAL: Right, but because it's in the 16 disclosure statement, I'm allowed to ask questions about 17 it; right? 18 THE WITNESS: Can I go pee while you guys 19 argue? 20 MR. IQBAL: Off the record. 21 (A brief discussion was held off the record.) 22 BY MR. IQBAL: 23 Q. So we're back on the record. 24 When you look at the profit and loss, it looks 25 like there was some money coming in for plane pilot of</p>	<p style="text-align: right;">Page 84</p> <p>1 clear, so that item is under expenses, but it's a 2 negative which means it's actually an income item. I 3 don't have any explanation for exactly that -- 4 THE WITNESS: Okay. Which one -- 5 MR. IQBAL: That's what I was asking. 6 MR. CROWE: It's under expense, but it's a 7 negative. 8 THE WITNESS: For what year? 9 MR. CROWE: 2015. 10 THE WITNESS: Oh. Oh, yeah. 11 MR. IQBAL: You see why I'm asking that 12 because it looks like you got paid for 45,000 for the 13 plane pilot. That's my question. 14 THE WITNESS: For the six -- I had an 15 employment contract with Ely Hospital that paid for my 16 expenses going back and forth for a plane and pilot. 17 MR. IQBAL: Okay. 18 THE WITNESS: Okay. That's what that was 19 from. 20 BY MR. IQBAL: 21 Q. So they paid you 45,000 for going back and forth? 22 A. Didn't matter whether it was a car or plane or 23 pilot or what. They were paying me a certain amount per 24 month to get back and forth. 25 Q. And you didn't have to show invoices or anything</p>
<p style="text-align: right;">Page 83</p> <p>1 45,600. 2 MR. CROWE: It's a negative item. Please 3 read it carefully. 4 MR. IQBAL: What do you mean negative item? 5 MR. CROWE: It's negative. Are you talking 6 about Exhibit BB? 7 MR. IQBAL: Yes. 8 MR. CROWE: Okay. You see the negative 9 there before the item? 10 BY MR. IQBAL: 11 Q. So that's an expense that LTD paid? 12 A. Yeah. I had to have a pilot. 13 Q. In 2014? 14 A. Correct. 15 Q. And were any amounts paid for a pilot in 2015? 16 A. In 2015? Yeah. 17 Q. The plane was not in use, were you still paying a 18 pilot? 19 A. In 2015? I may have been paying back some from 20 2014, when I was behind in 2014. 21 Q. But after the plane was no longer in use, you 22 stopped paying for the pilot obviously? 23 A. Yeah, but I was behind for a while in 2014, so I 24 don't know. 25 MR. CROWE: Just for the record, so it's</p>	<p style="text-align: right;">Page 85</p> <p>1 because obviously the plane wasn't in use at that time; 2 they were still just paying you? 3 A. The contract was for a set amount. 4 MR. CROWE: So when they booked it, instead 5 of booking it under income, they booked it as an 6 adjustment to the expense. 7 MR. IQBAL: Got it. Now we're clear. Thank 8 you. 9 BY MR. IQBAL: 10 Q. This contract that you had with Ely that was what 11 this 45,000 is from, did you have the same contract in 12 2013 and 2014 and years prior after 2006? 13 A. They changed slightly but not a lot. 14 Q. So they're paying the LTD for your travel? 15 A. Previously some years ago they used to do it and 16 take the actual pilot and plane expense and pay it as a 17 separate item. They decided they didn't want to do that 18 anymore, so they just did a lump sum. Because if it 19 wasn't a plane or pilot, then I was spending a day 20 getting to Ely and a day getting back. So it didn't 21 really matter one way or the other how they paid it. 22 Does to me because I made less money, but... 23 Q. Got it. 24 And that contract is over now? 25 A. Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. When did it end?</p> <p>2 A. You have this already. I don't remember. Middle</p> <p>3 of 2015. Middle of 2014. I don't remember.</p> <p>4 MR. CROWE: I think he previously testified</p> <p>5 it was October?</p> <p>6 THE WITNESS: No. It was August. I think</p> <p>7 it was early August.</p> <p>8 MR. IQBAL: That's fine. That's fine.</p> <p>9 2015?</p> <p>10 THE WITNESS: I'm not sure if it was 2015.</p> <p>11 Honestly, I don't remember if it was 2015.</p> <p>12 MR. IQBAL: That's fine.</p> <p>13 THE WITNESS: Hold on a second. Let me</p> <p>14 think. I don't remember.</p> <p>15 MR. IQBAL: That's fine.</p> <p>16 BY MR. IQBAL:</p> <p>17 Q. You've listed a house in California in the third</p> <p>18 amended disclosure statement.</p> <p>19 Do you own any other property in California?</p> <p>20 A. No.</p> <p>21 Q. Do you own any other property that's not listed</p> <p>22 in your disclosure statement?</p> <p>23 A. No.</p> <p>24 Q. Okay. Is your house in California occupied by</p> <p>25 anyone?</p>	<p style="text-align: right;">Page 88</p> <p>1 helps bring the patients back. She -- kind of like the</p> <p>2 other assistants. She generally helps me travel. She</p> <p>3 does medical records primarily and with scheduling</p> <p>4 patients.</p> <p>5 Q. Was she doing this from California?</p> <p>6 A. No. At the time she was living here. She's</p> <p>7 living there now.</p> <p>8 Q. Right.</p> <p>9 A. Before she was living here.</p> <p>10 Q. When did she move out to California?</p> <p>11 A. She moved out to California when my charts moved</p> <p>12 to California, but she was here as short a time ago as</p> <p>13 last week.</p> <p>14 Q. Got it.</p> <p>15 So until your charts moved to California, which</p> <p>16 was very recently, no one was occupying the house in</p> <p>17 Oxnard?</p> <p>18 A. No. We were there part-time.</p> <p>19 Q. Right.</p> <p>20 You mentioned that before, but nobody else?</p> <p>21 A. No. I haven't rented it out or leased it or</p> <p>22 anything else, no.</p> <p>23 Q. Okay. Is it listed with anyone as a rental</p> <p>24 property or is it for sale?</p> <p>25 A. No. Neither.</p>
<p style="text-align: right;">Page 87</p> <p>1 A. My daughter pretty much full-time since she</p> <p>2 finished the University of Hawaii. My wife and I once</p> <p>3 in awhile. My children when they're out of school.</p> <p>4 Q. Is your daughter paying rent?</p> <p>5 A. Is my daughter paying rent? No, I'm paying her</p> <p>6 because she's taking care of all the charts for me.</p> <p>7 Q. Got it.</p> <p>8 How much are you paying her?</p> <p>9 A. You have to look at the amounts. It's, like,</p> <p>10 \$800 twice a month or something like that.</p> <p>11 Q. And since you just moved the charts over, you</p> <p>12 just started paying her for the charts?</p> <p>13 A. No. Before that she was actually helping me by</p> <p>14 driving me to work or working at the office.</p> <p>15 MR. CROWE: Dr. Tadlock, we're trying to</p> <p>16 move this along, but be careful when you're asking these</p> <p>17 questions. Are you paying it or is the LTD paying it?</p> <p>18 THE WITNESS: Okay. The LTD is paying it.</p> <p>19 BY MR. IQBAL:</p> <p>20 Q. So is she an employee of the LTD?</p> <p>21 A. Yeah, she has been for years.</p> <p>22 Q. Your daughter?</p> <p>23 A. Yeah.</p> <p>24 Q. And what's her formal job title?</p> <p>25 A. Basically like my other medical assistants. She</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Neither of those things, okay.</p> <p>2 When did you acquire the house?</p> <p>3 A. That's in there. More than ten years ago.</p> <p>4 Q. Okay. Okay.</p> <p>5 And --</p> <p>6 A. And it wasn't me. It was actually Charles H.</p> <p>7 Tadlock, Mary Tadlock Qualified Residency Trust or</p> <p>8 whoever bought it. It's been in the trust for more than</p> <p>9 ten years. Never been moved out.</p> <p>10 Q. So it's never been leased or rented out in the</p> <p>11 time since you bought it?</p> <p>12 A. Not once.</p> <p>13 Q. Okay. And your daughter recently moved out</p> <p>14 there, and the plan is for her to stay in the house</p> <p>15 full-time?</p> <p>16 A. We haven't really decided yet. She hasn't</p> <p>17 decided yet, but I expect not. She's planning on going</p> <p>18 on to grad school.</p> <p>19 Q. Has anyone appraised the house in the last three</p> <p>20 years?</p> <p>21 A. I don't think so, no.</p> <p>22 Q. So there have been no appraisals, no sale value</p> <p>23 or no appraisal of rental value or anything like that?</p> <p>24 A. No.</p> <p>25 Q. You've never put it up for listing?</p>

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1 A. Never.

2 Q. And what you said in your statement of financial
3 affairs that your primary residence is the motor home,
4 that's still correct?

5 A. That's still correct.

6 Q. Do your neighbors in California lease or rent
7 their homes?

8 A. I would have no way of knowing. But actually I
9 think it's against -- to get back, I think it's against
10 the regs that you do it for more than a couple weeks a
11 year. You have to do it all of the time or none of the
12 time almost.

13 Q. Okay. The house in Lake Las Vegas, is it
14 currently occupied by anyone outside of your infrequent
15 visits?

16 A. No.

17 Q. So it's basically empty?

18 A. Yeah, it's -- it's uninhabitable most of the
19 year.

20 Q. Because of the air conditioning?

21 A. Correct.

22 Q. Outside of the air conditioning, which we talked
23 about, would be approximately 20,000 or more to fix, are
24 there any other problems with the house?

25 A. Yeah, it needs to be repainted, the refrigerator

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1 and the freezer aren't working, the microwave isn't
2 working. There's a lot of stuff that it needs done.

3 Q. Okay. When was the last time it was occupied on
4 a regular basis? When did you last live there?

5 A. Previous to last summer. I can't tell you the
6 exact date. It's been awhile because it became
7 uninhabitable over the summer.

8 Q. Is that when you made the decision to move
9 everything primarily over to the RV in Oasis?

10 A. Well, Yeah. Primarily, everything in the house?
11 No. But primarily us? Yes.

12 Q. And have you --

13 So you haven't leased or rented your home in
14 Nevada to anyone?

15 A. No. It's also in a qualified personal residency
16 trust for more than ten years. In that case a lot more
17 than ten.

18 Q. And have you ever leased that house?

19 A. No, never.

20 Q. Have you ever put it for sale?

21 A. No, I never have.

22 Q. When did you acquire that house?

23 A. I'm guessing 2002, 2003, but it's a guess. It's
24 well more than ten years.

25 Q. Got it. Okay.

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1 So how often do you actually go to that house? I
2 know you mentioned once in awhile you'll go there. Last
3 time you stayed most of the night, but you didn't stay
4 the whole night. How often do you actually go in and
5 check the house? Do you have plants? Do you have other
6 things that you need to take care of there?

7 A. Yes. My wife goes there frequently especially
8 because of the plants because it needs a new irrigation
9 system. We have an aboveground one that doesn't work
10 very well. We get in frequent arguments with
11 homeowners' association about it.

12 Q. Do you have a boat there?

13 A. No, I have a dock that's there.

14 Q. And you're paying a slippage fee?

15 A. Yeah. I think \$200 a month or something like
16 that.

17 Q. Why are you still paying the fee if you don't
18 have a boat?

19 A. Because it's part of the homeowners' association.
20 Otherwise, they come after me and the house.

21 Q. Oh, so you have to pay that fee even if you don't
22 have a boat?

23 A. Correct. It's the way it is. You have the dock,
24 you have to pay the fee.

25 MR. CROWE: I think that's true down there.

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1 THE WITNESS: It is.

2 BY MR. IQBAL:

3 Q. And have you had the house appraised, sale value
4 or leasing value, rental value, anything like that?

5 A. Yeah. We did have somebody assess that one,
6 didn't we?

7 MR. CROWE: Yeah, it was appraised for
8 purposes of the plan.

9 MR. IQBAL: No, that's fine. That's fine.
10 I was just -- I understand that there was an appraisal
11 by Bank of America with respect to the plan. I'm asking
12 did you separately outside of that before filing the
13 petition?

14 THE WITNESS: No.

15 MR. IQBAL: You haven't, okay.

16 THE WITNESS: Nothing.

17 BY MR. IQBAL:

18 Q. All right. Okay.

19 Is there any other real estate that you or Mary
20 have any interest direct or indirect that's not listed?

21 A. No. Nothing.

22 Q. Any other properties, any other, like, IP or
23 shares in any companies or any other kind of assets that
24 aren't listed in the --

25 A. Everything is pretty much defunct at this

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1 juncture.
2 **Q. But everything you have is listed in the --**
3 A. To the best of my knowledge, everything is
4 listed.
5 **Q. In the schedules?**
6 A. In the schedules.
7 **Q. And any claims, anything that you would have**
8 **against anyone are listed in there?**
9 A. I've discussed everything with you that is
10 possible to discuss.
11 **Q. And they're all listed in the schedules?**
12 A. I don't know if they're all listed in the
13 schedules or not. Some of it I've determined is
14 uncollectible.
15 **Q. Okay. And that stuff isn't listed?**
16 A. I don't know if it's listed or not honestly.
17 It's been so long since we listed it, but you have
18 knowledge of it.
19 **Q. Okay. On page 17 of the third amended disclosure**
20 **statement, you list a lien of \$23,048.29 against the**
21 **Charles And Mary Tadlock Family Trust. What's.**
22 **The nature of the lien? Here, I can give you**
23 **page 17, so you can look at it.**
24 MR. CROWE: Do you have a copy of the
25 schedules?

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1 MR. IQBAL: Here you go. I'm just curious.
2 It's on there.
3 THE WITNESS: Where on here?
4 MR. IQBAL: Page 17.
5 THE WITNESS: I'm having trouble seeing it
6 since it's so small.
7 MR. IQBAL: I got you. Let me...
8 MR. CROWE: It should actually be on
9 schedule D.
10 MR. IQBAL: Here we go. It's the second --
11 I'm pointing to the second column under
12 liens, right here.
13 THE WITNESS: Charles And Mary Family Trust.
14 I'm assuming that was money that was taken out of the
15 trust because I couldn't work for four months at all.
16 BY MR. IQBAL:
17 **Q. Who would hold the lien?**
18 MR. CROWE: Let me get the schedules so that
19 the witness can look at it. It's on schedule D.
20 (A brief discussion was held off the record.)
21 BY MR. IQBAL:
22 **Q. Back on the record.**
23 **We're trying to figure out the lien for**
24 **\$23,048.29 cents on page 17 of the third amended**
25 **disclosure statement.**

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1 MR. CROWE: I'm just trying to help the
2 witness recollect what it was. Charles And Mary Tadlock
3 Family Trust includes Palma, Flamingo Pecos Surgery
4 Center, which is zeroed out, Epiphany Surgery Center
5 which is nothing, Speed Demon owns some vehicles; is
6 that right?
7 THE WITNESS: True. It might be the sum
8 total of expenses for the cars, or it may be the money
9 that we paid to the county because that sounds about
10 right for the money we had to pay for the county in
11 order to even be able to sell the hanger. It's very
12 close anyway.
13 BY MR. IQBAL:
14 **Q. So somebody's got a lien. We just don't know who**
15 **holds the lien?**
16 A. I'm not sure if --
17 MR. CROWE: I really can't find what it was,
18 but it was deducted on the schedule B when we put it on
19 Schedule C.
20 THE WITNESS: That sounds like the amount
21 for having paid the county.
22 MR. IQBAL: I don't want to waste time. I
23 appreciate you looking into it. If you want to talk
24 about it later or have the accountant look into it.
25 MR. CROWE: Sure.

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1 MR. IQBAL: Don't want to hold you here.
2 I just have a few more questions. Then
3 we'll be done. Okay. Is that fair?
4 THE WITNESS: No, but go ahead.
5 BY MR. IQBAL:
6 **Q. Okay. All right.**
7 **I just wanted to clarify a couple of things from**
8 **the first portion of the transcript, and again, pages are**
9 **here just in case you want to take a look.**
10 A. Sure.
11 **Q. You previously said that you formally offered**
12 **Barnes shares in Epiphany as an incentive to get**
13 **Epiphany going?**
14 A. Actually, what occurred was: The group wanted to
15 keep Barnes, and most of the group decided to buy into
16 Epiphany and thought it was a good idea if we offered
17 him in addition to I think a one percent bonus for
18 being -- for being the manager, a percentage of Epiphany
19 to give him positive incentive to find and acquire other
20 surgery centers.
21 **Q. And that wasn't your idea; that was the other**
22 **surgeons?**
23 A. I don't know whose idea it was. Became
24 everybody's idea at some point.
25 **Q. But you weren't totally thrilled with bringing**

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1 him on board?
 2 A. No, I wasn't totally thrilled. My office manager
 3 didn't like him, and I trust my office manager.
 4 Q. Why didn't she like him?
 5 A. She just didn't.
 6 Q. Okay. Now, you previously said when you told
 7 Barnes he needed to come in and discuss the company's
 8 finances, you got screamed at by the other board members
 9 that you were chasing him off?
 10 A. Actually, there's several instances of that, but
 11 I'll give you one example.
 12 Dr. Smith texted or emailed me or something that
 13 he was upset that he was taking so much time off. So I
 14 asked Barnes politely to come in and bring in his
 15 contract so we could go over how much time he was
 16 entitled to and so we could make sure he wasn't taking
 17 more or less than he was supposed to. That same surgeon
 18 called me back an hour later by phone and yelled at me
 19 because I was being mean to him by asking him how much
 20 time he was entitled to take off.
 21 Q. Dr. Smith?
 22 A. (Nods head.)
 23 Q. That seems weird.
 24 A. Yeah, doesn't it.
 25 Q. Now, previously you said Barnes claimed to the

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1 other doctors that you were getting more than your fair
 2 share, but you didn't know at the time that he was
 3 making these claims?
 4 A. No, I found out later that he was involved or the
 5 extent at least to which he was making the claims, but
 6 the other three surgeons reviewed everything and missed
 7 everything. This was the time when I was having all the
 8 surgeries. I just had a neck surgery and facing two
 9 more in my back. And so three of them including Becker
 10 was one.
 11 Q. Becker?
 12 A. I don't know the other two.
 13 Q. Smith?
 14 A. No, it wasn't Smith. Becker and a couple of the
 15 others reviewed it and couldn't find anything.
 16 Q. And Barnes claim doesn't make sense; right,
 17 because he held the checkbook?
 18 A. Correct. I made certain that I did not have it
 19 because I knew that people would try to say I was making
 20 too much. I realized that there was no place that I've
 21 ever been at that I didn't make more for them than I
 22 got.
 23 Q. Right.
 24 Did you ever individually confront Barnes or the
 25 other --

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1 A. Barnes took off. Individually confront him? He
 2 ran. At the last meeting that I can remember him
 3 attending, he was arguing that we should close the east
 4 side and keep the west side -- no, am I getting this
 5 right?
 6 Yeah, close the west side and keep the east side
 7 going, and that made no sense to me because almost all
 8 the surgeons migrated to the west side. And I pointed
 9 that out to him. And very shortly thereafter on a
 10 Saturday he disappeared.
 11 Q. So you didn't get a chance to confront him
 12 yourself personally?
 13 A. No. He was there. He was arguing to the group,
 14 and I was arguing the opposite to the group. I think he
 15 wanted to close it because if he closed it, no one would
 16 have figured out that he was taking money.
 17 Q. So his last board meeting when this argument was
 18 going on, people didn't realize that he had taken it?
 19 A. Correct.
 20 Q. So he took off before his --
 21 A. Anybody figured it all out.
 22 Q. -- criminal activity essentially?
 23 A. Well, I'm supposed to keep my mouth shut about
 24 whether it's critical activity or whether he did it.
 25 Q. Let's just call it activity.

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1 A. Activity.
 2 Q. Okay. All right.
 3 Now, at the time when that was happening, did you
 4 know that he was making these acquisitions against you?
 5 A. No.
 6 Q. I know Tammy found out about the activity, but
 7 how did you find out that Barnes was behind your back
 8 making all these statements and --
 9 A. When the activity came to light, several of the
 10 surgeons apologized, and I heard from them that several
 11 others had said things as well.
 12 Q. Okay. You said previously that you thought
 13 Barnes was accusing you to deflect interest in his own
 14 activities?
 15 A. Correct. That's what my guess is. Pretty sure
 16 that's what -- I don't remember who said what, but I
 17 think the investigators would concur with that.
 18 Q. By investigators you mean the FBI?
 19 A. Yeah.
 20 Q. Did your forensic accountant have a chance to
 21 talk to Barnes?
 22 A. No.
 23 Q. He had already gone?
 24 A. Yeah. I don't know where he is.
 25 Q. To your knowledge did anyone else on the board do

<p style="text-align: right;">Page 102</p> <p>1 any kind of investigation or audit?</p> <p>2 A. Three of them. Remember I talked three of them</p> <p>3 about six months before it all came to light did an</p> <p>4 investigation, but I suspect it was focused mostly on</p> <p>5 me, but that's just a suspicion.</p> <p>6 Q. And they found that everything was okay?</p> <p>7 A. With me, yeah.</p> <p>8 Q. I'm saying after Barnes?</p> <p>9 A. I assumed they looked at Barnes too. They should</p> <p>10 have.</p> <p>11 Q. But you're not aware of any investigation they</p> <p>12 did?</p> <p>13 A. I'm aware they investigated. I don't know who</p> <p>14 they investigated. They were supposed to be</p> <p>15 investigating. They told the group they were going to</p> <p>16 investigate all the goings on at the surgery center</p> <p>17 because they felt it could be better run or whatever.</p> <p>18 Q. Right, right.</p> <p>19 And they came back with everything is okay?</p> <p>20 A. Correct.</p> <p>21 Q. And that was about six months before --</p> <p>22 A. To the best of my memory. It was right before I</p> <p>23 went for surgery.</p> <p>24 Q. Right.</p> <p>25 And when everything went down -- and look we're</p>	<p style="text-align: right;">Page 104</p> <p>1 THE WITNESS: Somebody at B of A who then</p> <p>2 moved to -- I'm going to say it because the FBI told me</p> <p>3 they moved from Bank of America to Wells Fargo. I don't</p> <p>4 know if they moved to Chase. I can tell you that Bank</p> <p>5 of America did mess around with mine and took 7,000 out</p> <p>6 of one of my accounts and went to Palma to pay the</p> <p>7 office building, and it suddenly disappeared one day and</p> <p>8 appeared in the Surgery Center of Southern Nevada</p> <p>9 accounts. And Barnes came to me and said so and so did</p> <p>10 that and they're, you know, blah, blah, blah.</p> <p>11 So I think there may have been a falling out</p> <p>12 between the partners at one point. I call up B of A and</p> <p>13 screamed and they put the money back.</p> <p>14 BY MR. IQBAL:</p> <p>15 Q. This was before you found out all of --</p> <p>16 A. Yeah. You have to realize I was going from one</p> <p>17 surgery to another.</p> <p>18 Q. I get that.</p> <p>19 Prior to him accusing you and casting aspersions</p> <p>20 when you were in and out and going through the</p> <p>21 surgeries, did you have a good relationship with Barnes?</p> <p>22 A. Yeah, I thought it was okay.</p> <p>23 Q. Were you friends or just business --</p> <p>24 A. Business only.</p> <p>25 Q. Okay. Did you feel like you knew him well?</p>
<p style="text-align: right;">Page 103</p> <p>1 almost done.</p> <p>2 When everything went down, after that did the</p> <p>3 board do a formal audit? I know that they retained</p> <p>4 Marquis Aurbach and Jack -- his first name is Jack?</p> <p>5 A. Jack Wong (phonetic spelling).</p> <p>6 Q. Yeah.</p> <p>7 A. I was still on the board for all that.</p> <p>8 Q. After the Barnes mess comes to light, did they do</p> <p>9 any formal audit or report?</p> <p>10 A. Not at the time that I was with the board, but</p> <p>11 Jack did, you know, looked through the books.</p> <p>12 Q. His own investigation?</p> <p>13 A. Yeah. He told us to go to the FBI and Las Vegas</p> <p>14 Metropolitan Police.</p> <p>15 Q. Did Jack figure out how much was stolen?</p> <p>16 A. I think he estimated it pretty closely.</p> <p>17 Q. What was the estimate?</p> <p>18 A. Three million, three and a half million.</p> <p>19 Q. Wow.</p> <p>20 MR. CROWE: Wow.</p> <p>21 MR. IQBAL: Three and a half million stolen</p> <p>22 by the office manager.</p> <p>23 THE WITNESS: Yeah. With collusion by</p> <p>24 presumably the bank.</p> <p>25 MR. CROWE: Somebody at B of A.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I'm surprised that he did this. I've gone over</p> <p>2 it with the police, and they say this is the classic</p> <p>3 pattern. They steal a little bit. Then they steal a</p> <p>4 little bit more. That's when I was still feeling good.</p> <p>5 He got away with a little bit. Then when I really went</p> <p>6 down, he put pedal do the metal.</p> <p>7 Q. And just took off?</p> <p>8 A. (Nods head.)</p> <p>9 Q. Okay. And you testified before that you don't</p> <p>10 think he has any of that money left?</p> <p>11 A. Given the fact that he has an emperor's package</p> <p>12 at one of the casinos we know about from an email that</p> <p>13 came to us, which wasn't supposed to come to us, I</p> <p>14 think, no, I don't think he does.</p> <p>15 Q. And what percentage of the money, the three</p> <p>16 million that Barnes took, what percentage do you think</p> <p>17 is owed to you just roughly?</p> <p>18 A. 17 to 21 percent depending on the time. That's</p> <p>19 how much I owned.</p> <p>20 Q. So it would be Epiphany Surgical --</p> <p>21 A. In addition to that, another 350,000 for the</p> <p>22 money he took directly out of Epiphany, but I don't know</p> <p>23 if that would be included in the other amount. I don't</p> <p>24 really know. I'm not an accountant. Some of it would</p> <p>25 have been due to Epiphany.</p>

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1 Q. Right.
2 So it would be your Epiphany Surgical
3 Solutions --
4 A. Right. 69 percent of Epiphany Surgical Solutions
5 money would have been mine, and then about 20 percent
6 call it, it fluctuated a lot, of the other money that
7 was stolen.
8 Q. Of Flamingo Pecos?
9 A. Flamingo Pecos.
10 Q. Got it. Appreciate that. That makes sense.
11 Just a couple more things.
12 Now, I just want to be --
13 Do you have --
14 Do you have any knowledge or reason to think that
15 Barnes was angry at you for any reason?
16 A. No.
17 Q. We're you angry with him for any reason before
18 you found out?
19 A. No.
20 Q. Were you curious why this Flamingo Pecos wasn't
21 making money?
22 A. Yeah. But he had, you know, came up with, you
23 know, pretty good reasons as to why and bank statements
24 that looked real because they were real. They were
25 on -- it was like, you know, one of those fake emails

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1 that you get from Bank of America, Bank of America
2 statement with Bank of America there.
3 Q. Wow.
4 A. Okay. It wasn't like I was sleeping at the
5 wheel. Even when I was having surgery, I was still
6 having meetings and yelling at surgeons to get their
7 crap from Bank of America. And I had a Bank of America
8 representative at my side going over the bank records.
9 Q. The last thing is the relationship with the other
10 surgeons. And I want to focus just Tammy opens up the
11 statements from Bank of America, is crying, she tells
12 you, what did you do right after that?
13 A. I don't know what order, but I called Bank of
14 America to ask for the stuff, talked to one of them,
15 called Smith because he was the president of the board.
16 And I mostly left it in Smith's hands to call everybody
17 else because I was having my own problems, as Smith
18 knew, since he was taking care of my back.
19 Q. Before and after that event, did your
20 relationship with the surgeons change?
21 A. Yeah. They weren't happy that we got all the
22 money stolen.
23 Q. Did they blame you?
24 A. Some of them do.
25 Q. Who do you think is ultimately responsible for

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1 that three million getting stolen?
2 MR. CROWE: Objection. Calls for
3 speculation.
4 THE WITNESS: You know, I would say the
5 person who took it or people, more likely it's more than
6 one. It wasn't me. I couldn't even write checks.
7 Didn't want to because then I definitely would be on the
8 suspect list.
9 MR. IQBAL: All right. Last question.
10 BY MR. IQBAL:
11 Q. Was it an inside job, in that was someone working
12 with Barnes at Epiphany or at Flamingo Pecos?
13 A. In my opinion?
14 Q. In your opinion.
15 A. I think there was somebody working with him at
16 the bank and somebody working -- one or more somebodies
17 who at least looked the other way at the surgery center.
18 Q. A surgeon or are we talking about a PA?
19 A. No. We're talking about the people who worked at
20 the office because there were -- he should not have been
21 able to do the checks without somebody noticing it.
22 I mean, who agreed that he can write a check out
23 for an emperor's package, who said buying baseball
24 memorabilia was okay?
25 Q. Did he have authority to write checks?

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1 A. I don't remember at this point if he could do it
2 by himself. From my stuff he couldn't by himself.
3 That's one of the reasons that Bank of America I was so
4 pissed at because they don't have any records of him
5 doing anything. There are all these signed check at
6 Epiphany, which he did not have signing ability.
7 Now what he had since I was missing working,
8 maybe they gave him more power at the surgery center
9 than I was aware of, but certainly not at Epiphany. I
10 would have known about that because I had majority
11 voting power.
12 Q. You were the only one who signed the checks at
13 Epiphany?
14 A. Yeah. I was the only one that was entitled to
15 sign checks according to Bank of America.
16 Q. And then Bill Smith had authority with respect to
17 Flamingo Pecos, and you had authority with respect to
18 Flamingo Pecos?
19 A. No. Actually, perhaps after we found out about
20 Barnes, but I don't think I ever signed any checks from
21 Flamingo Pecos. If I do, I don't remember, and it would
22 have been after this was discovered. Before the fact I
23 never wrote out any checks for anything because I didn't
24 want to take the responsibility. If I wrote something,
25 somebody would be questioning that I was somehow

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1 involved with the other entity.
2 Q. Okay.
3 MR. CROWE: Is that it?
4 MR. IQBAL: That's it. Thank you, Dr.
5 Tadlock.
6 THE WITNESS: You're very welcome.
7 MR. IQBAL: Off the record.
8 (The proceedings concluded at 3:29 p.m.)
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Page 111

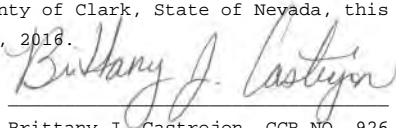
1 STATE OF NEVADA)
2) SS:
3 COUNTY OF CLARK)
4 CERTIFICATE OF REPORTER
5 I, Brittany J. Castrejon, a Certified Court
6 Reporter licensed by the State of Nevada, do hereby
7 certify: That I reported the CONTINUED 2004 EXAM OF
8 CHARLES TADLOCK, M.D., on Monday, March 14, 2016, at
9 1:02 p.m.;
10 That prior to being deposed, the witness was duly
11 sworn by me to testify to the truth. That I thereafter
12 transcribed my said stenographic notes into written
13 form, and that the typewritten transcript is a complete,
14 true and accurate transcription of my said stenographic
15 notes. That the reading and signing of the transcript
16 was not requested.
17 I further certify that I am not a relative,
18 employee or independent contractor of counsel or of any
19 of the parties involved in the proceeding; nor a person
20 financially interested in the proceeding; nor do I have
21 any other relationship that may reasonably cause my
22 impartiality to be question.
23 IN WITNESS WHEREOF, I have set my hand in my
24 office in the County of Clark, State of Nevada, this
25 27th day of March, 2016.

Brittany J. Castrejon, CCR NO. 926

EXHIBIT 7

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

ROBERT W. BARNES

Date of Original Judgment: December 28, 2016
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-cr-00090-APG-GWF-1

USM Number: 53822-048

Daniel Albregts

Defendant's Attorney

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Information
☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 669	Embezzlement in Connection with Health Care	2013	1

--	--	--	--

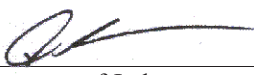
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 28, 2016

Date of Imposition of Judgment


Signature of Judge

ANDREW P. GORDON, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

March 28, 2017

Date

AA000643

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

18 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Due to the proximity of family, the court recommends the defendant be permitted to serve his term of incarceration at a facility in Victorville.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ by 12 p.m. on June 30, 2017 .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AA000644

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

SUPERVISED RELEASEUpon release from imprisonment, you will be on supervised release for a term of : 3 years**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AA000645

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AA000646

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

SPECIAL CONDITIONS OF SUPERVISION

1. Gambling Addiction Treatment - You shall refrain from any form of gambling and shall participate in a program for the treatment of gambling addiction, at your own expense, as approved and directed by the probation officer, based upon your ability to pay.
2. Debt Obligations - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
3. Access to Financial Information - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
4. Gambling Prohibition - You shall not enter, frequent, or be involved with any legal or illegal gambling establishment or activity, except for the purpose of employment, as approved and directed by the probation officer.
5. Warrantless Search - You shall submit your person, property, residence, place of business and vehicle under your control to a search, conducted by the United States probation officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

AA000647

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$	\$ 1,500,000.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
(see attached restitution list)		\$1,500,000.00	

TOTALS \$ _____ 0.00 \$ _____ 1,500,000.00

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AA000648

DEFENDANT: ROBERT W. BARNES

CASE NUMBER: 2:16-cr-00090-APG-GWF-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 1,500,100.00 due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

(see attached final order of forfeiture)

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

AA000649

FILED

DEC 28 2016

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY _____ DEPUTY

UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT W. BARNES,

Defendant.

2:16-CR-090-APG-(GWF)

Final Order of Forfeiture

The United States District Court for the District of Nevada entered a Preliminary Order of Forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2); Title 18, United States Code, Section 981(a)(1)(C) with Title 28, United States Code, Section 2461(c); Title 18, United States Code, Section 982(a)(7); and Title 21, United States Code, Section 853(p) based upon the plea of guilty by defendant Robert W. Barnes to the criminal offense, forfeiting the property and imposing an in personam criminal forfeiture money judgment set forth in the Plea Agreement and the Forfeiture Allegations of the Criminal Information and shown by the United States to have the requisite nexus to the offense to which defendant Robert W. Barnes pled guilty. Criminal Information, ECF No. 4; Plea Agreement, ECF No. 6; Arraignment and Plea, ECF No. 9; Preliminary Order of Forfeiture, ECF No. 12.

This Court finds the United States of America published the notice of forfeiture in accordance with the law via the official government internet forfeiture site, www.forfeiture.gov, consecutively from June 20, 2016, through July 19, 2016, notifying all potential third parties; and notified known third parties by personal service or by regular mail and certified mail return

AA000650

1 receipt requested, of their right to petition the Court. Notice of Filing Proof of Publication, ECF
2 No. 16.

3 On July 8, 2016, the United States Marshals Service personally served Hutchison &
4 Steffen, LLC, as Registered Agent for Epiphany Surgical Solutions, LLC, with copies of the
5 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal
6 Service, ECF No. 14.

7 On July 6, 2016, the United States Marshals Service personally served William D. Smith,
8 M.D., as Managing Member for Epiphany Surgical Solutions, LLC, with copies of the
9 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal
10 Service, ECF No. 14.

11 On July 6, 2016, the United States Marshals Service personally served William D. Smith,
12 M.D., as Managing Member for Flamingo-Pecos Surgery Center, LLC, with copies of the
13 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal
14 Service, ECF No. 14.

15 On July 6, 2016, the United States Marshals Service personally served Charles H.
16 Tadlock, M.D., as Managing Member for Epiphany Surgical Solutions, LLC, with copies of the
17 Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal
18 Service, ECF No. 14.

19 On July 6, 2016, the United States Marshals Service personally served Charles H.
20 Tadlock, M.D., as Managing Member for Flamingo-Pecos Surgery Center, LLC, with copies of
21 the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of Process –
22 Personal Service, ECF No. 14.

23 On July 12, 2016, the United States Marshals Service personally served Gregory J.
24 Morris, Ltd., as Registered Agent for VIP Surgery Center LLC, with copies of the Preliminary
25 Order of Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF
26 No. 14.

1 On July 6, 2016, the United States Marshals Service personally served Eddy H. Luh, as
2 Managing Member for VIP Surgery Center LLC., with copies of the Preliminary Order of
3 Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF No. 14.

4 On July 6, 2016, the United States Marshals Service personally served Thomas C. Yee, as
5 Managing Member for VIP Surgery Center LLC., with copies of the Preliminary Order of
6 Forfeiture and the Notice. Notice of Filing Service of Process – Personal Service, ECF No. 14.

7 On July 12, 2016, the United States Marshals Service personally served Lottie Barnes,
8 with copies of the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of
9 Process – Personal Service, ECF No. 14.

10 On July 8, 2016, the United States Marshals Service personally served Michelle Barnes
11 with copies of the Preliminary Order of Forfeiture and the Notice. Notice of Filing Service of
12 Process – Personal Service, ECF No. 14.

13 On June 28, 2016, the United States Attorney's Office served Charles Tadlock, M.D., as
14 Managing Member for Flamingo-Pecos Surgery Center, LLC and Epiphany Surgical Solutions,
15 LLC, with copies of the Preliminary Order of Forfeiture and the Notice through regular mail and
16 certified mail, return receipt requested. Notice of Filing Service of Process – Mailing, ECF No.
17 13.

18 This Court finds no petition was filed herein by or on behalf of any person or entity and
19 the time for filing such petitions and claims has expired.

20 This Court finds no petitions are pending with regard to the property named herein and
21 the time for presenting such petitions has expired.

22 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all
23 right, title, and interest in the property hereinafter described is condemned, forfeited, and vested
24 in the United States of America:

- 25 1. 2007 Honda Accord EX Gray 4D Sedan, VIN 1HGCM56857A164507, Nevada
26 License Plate 452WVU;

2. 2011 EXP Limited 5.4L 4X4 Ford Expedition, Color: Sterling Gray Metallic, VIN 1FMJU2A53BEF36389, Nevada License Plate 929VJR;
3. 14k white gold cluster stud earrings with four princess cut diamonds surrounded by 16 round diamonds;
4. Ladies stainless steel Breitling Lady Colt A72345 Watch with blue Mother of Pearl dial, diamond bezel (28 diamonds), Serial No. 386210;
5. Ladies 14k white gold ring centered with one rectangle blue Tourmaline with 45 diamonds;
6. Ladies Tanzanite (approx. 40 carats) platinum ring with 152 brilliant diamonds;
7. Ladies 14k white gold with violetish red Garnet surrounded by 74 brilliant diamonds;
8. Ladies platinum oval shaped bluish green Tourmaline with 92 brilliant diamonds;
9. Ladies 14k white gold ring, pear shaped cabochon cut black opal with blue play of color and 50 diamonds;
10. Movado Womans watch with black in color face;
11. Tag Heuer lady's Watch silver in color;
12. Gucci Watch gold in color;
13. Necklace, silver in color, with Tiffany pendant heart shaped;
14. Necklace, silver in color, with floral design pendant;
15. Bracelet gold in color with green in color stones;
16. Bracelet gold in color appeared to be broken at time of seizure;
17. Bracelet clear stone type;
18. Pair of Earrings with green in color stones;
19. Metal ring, yellow in color with green in color stones;
20. Pair of Earrings tear drop shaped;
21. Pair of Earrings heart shaped;

22. Braided necklace, yellow in color;
23. Ring, silver in color with clear stones;
24. Pair of Earrings flower shaped;
25. Ring, silver in color with clear stones;
26. Pair of Earrings hoop shaped yellow in color;
27. Pair of Earrings, yellow in color with round white in color stones;
28. Thick Bracelet yellow in color;
29. Pair of Earrings, yellow in color;
30. Three (3) rings, yellow in color: One (1) with clear type stones, Two (2) with heart shaped designs;
31. Ring, white in color with clear stones;
32. Two (2) Rings yellow in color with blue in color stones;
33. Ring, yellow in color with green in color stone;
34. Ring, heart shaped with clear stones;
35. One (1) Ring yellow in color with white in color stones;
36. Five Bracelets: Two (2) yellow in color; Two (2) yellow in color with name plates on them "Lucas" and "Joshua"; One (1) yellow in color with green stones;
37. Necklace, white in color;
38. Necklace, white in color with tear drop pendant;
39. One (1) Necklace, white in color with pink in color stone; One (1) pair of earrings with pink in color stones;
40. One (1) round pendant yellow in color; and
41. Pair of Earrings, orange in color

(all of which constitutes property); and

that the United States recover from Robert W. Barnes the in personam criminal forfeiture money judgment of \$1,300,000, not to be held jointly and severally liable with any codefendants,

1 and that the property will be applied toward the payment of the money judgment; and the
2 forfeiture of the money judgment and the property is imposed pursuant to Fed. R. Crim.
3 P. 32.2(b)(4)(A) and (B); Fed. R. Crim. P. 32.2(c)(2); Title 18, United States Code, Section
4 981(a)(1)(C) with Title 28, United States Code, Section 2461(c); Title 18, United States Code,
5 Section 982(a)(7); Title 21, United States Code, Section 853(p); and Title 21, United States
6 Code, Section 853(n)(7); that the money judgment shall be collected; and that the property and
7 the collected amount shall be disposed of according to law.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited
9 funds, including but not limited to, currency, currency equivalents, certificates of deposit, as well
10 as any income derived as a result of the United States of America's management of any property
11 forfeited herein, and the proceeds from the sale of any forfeited property shall be disposed of
12 according to law.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send copies
14 of this Order to all counsel of record and three certified copies to the United States Attorney's
15 Office, Attention Asset Forfeiture Unit.

16 DATED this 28th day of December, 2016.

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19 UNITED STATES DISTRICT JUDGE
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U.S. v ROBERT W. BARNES
 2:16-CR-00090-APG-GWF
Restitution List

Bhatnagar Family Trust Pankaj Bhatnagar, MD	\$81,187.89
Burkhead Irrevocable Trust Daniel Burkhead, MD	\$39,587.89
Cubs Win, LLC Randall Weingarten, MD Dodd Hyer, MD	\$70,787.89
Epiphany Surgery Centers Charles Tadlock, MD	\$309,787.52
Grabow Family Trust Ryan Grabow, MD	\$22,687.89
Luong Estate Major LLC Minh Luong, DDS	\$52,587.89
Mercury Group, LLC Andrew Cash, MD	\$61,287.89
SAS Consulting LLC Scott Slavis, MD	\$31,787.89
The Julian Trust David Biesinger, DPM	\$12,287.89
Douglas Seip, MD	\$12,287.89
Fred Redfern, MD	\$12,287.89
George Gluck, MD	\$17,487.89
Howard Hack, MD	\$42,187.89
James Vahey, MD	\$61,287.89
Jason Garber, MD	\$64,287.89
John Anson, MD	\$49,987.89
Marjorie Belsky, MD	\$70,787.89
Matthew Ng, MD	\$31,787.89
Michael Valpiani, MD	\$42,187.89

Laurie Larson, MD	\$31,787.89
Larry Goldstein, MD	\$22,687.89
Ming Wei Wu, DO	\$9,687.89
Noah Levine, MD	\$22,687.89
R. Allen Byrd, PC	\$5,787.89
Sheldon Freedman, MD	\$61,287.89
Steve Becker, MD	\$42,187.89
Stuart Kaplan, MD	\$12,287.89
Terrance Kwiatkowski, MD	\$12,287.89
Timothy Wilson, DDS	\$5,787.89
T.J. O-Lee, MD	\$22,687.89
Thomas Vater, MD	\$25,287.89
William Muir, MD	\$12,287.89
William Smith, MD	\$126,687.89
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TOTAL:	\$1,500,000.00

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	2:16-cr-0090-APG-GWF
)	
Plaintiff,)	
)	
v.)	
)	
ROBERT W. BARNES,)	<u>ORDER CONTINUING</u>
)	<u>SELF-SURRENDER DATE</u>
Defendant.)	
_____)	

The District Court having considered the Stipulation of the parties and the circumstances surrounding this case,

IT IS HEREBY ORDERED that the self-surrender date for defendant BARNES currently scheduled for Friday, March 31, 2017 is vacated and same is continued to Friday, June 30, 2017, by 12:00 noon.

DATED this 28th day of March, 2017.



UNITED STATES DISTRICT JUDGE