IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation, Appellants, vs. WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, Respondent.	Case No. 79355 Electronically Filed Jun 02 2020 05:37 p.m. Elizabeth A. Brown Clerk of Supreme Court Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 35
(Nos. 5802–6045)

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A-10	Defendants' Sixteenth Supplement to NRCP Disclosure of Witnesses and Documents (dated 05/03/2017)	Vol. 10, 1670–1682
A-11	Rough Draft Transcript of Garry M. Graber, Dated July 12, 2017 (Job Number 394849)	Vol. 10, 1683–1719
A-12	Sept. 15-Sept. 23, 2010 emails by and between Hodgson Russ LLP and Other Parties	Vol. 10, 1720–1723
Reply in Support of Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/03/2017)		Vol. 11, 1724–1734
Reply in Support of Countermotion for Sanctions and to Compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP (filed 08/09/2017)		Vol. 11, 1735–1740
Minutes of August 10, 2017 hearing on Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/11/2017)		Vol. 11, 1741–1742
Recommendation for Order RE: *Defendants' Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP*, filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1754–1796
Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment		
Exhibit	**Document Description**	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867

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10	September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication	Vol. 12, 1868–1870
11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995

	DOCUMENT DESCRIPTION	LOCATION
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Answer to Plaintiff's First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216

	DOCUMENT DESCRIPTION	LOCATION
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust ("Borrower") promises to pay Arcadia Living Trust ("Lender") the principal sum of $1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited ("Vendor") and Arcadia Living Trust ("Purchaser")	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300

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40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341

	DOCUMENT DESCRIPTION	LOCATION
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

	DOCUMENT DESCRIPTION	LOCATION
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of $1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. ("Maker") promises to pay Compass Bank (the "Bank" and/or "Holder") the principal sum of $3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk's Answers to Plaintiff's First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.'s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

	DOCUMENT DESCRIPTION	LOCATION
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: $65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: $2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614

	DOCUMENT DESCRIPTION	LOCATION
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor's commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring $560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726

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<tr><td colspan="2">Exhibit to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement</td><td>Vol. 18, 2735–2736</td></tr>
<tr><td colspan="2">Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)</td><td>Vol. 18, 2737–2748</td></tr>
<tr><td colspan="2">Exhibit to Opposition to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)</td><td>Vol. 18, 2749–2752</td></tr>
<tr><td colspan="2">Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)</td><td>Vol. 18, 2753–2758</td></tr>
<tr><td colspan="2">Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2759–2774</td></tr>
<tr><td colspan="2">Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2775–2790</td></tr>
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DOCUMENT DESCRIPTION		LOCATION
Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment		
Exhibit	**Document Description**	
1	Judgment in *Consolidated Nevada Corp., et al v. JH. et al.*; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

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11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of $146,127.00; and a wire transfer from P. Morabito to Lippes for $25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929
17	PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of $1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito ("Borrower") promises to pay Consolidated Western Corp. ("Lender") the principal sum of $939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of $492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937

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20	Edward Bayuk's wire transfer to Lippes in the amount of $517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of $659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling $500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with $750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981

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Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants' Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
Exhibits to Defendants' Motions in Limine		
Exhibit	**Document Description**	
1	Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst's Responses to Defendant Snowshoe Petroleum, Inc.'s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst's Responses to Defendant, Salvatore Morabito's Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056
Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich		
Exhibit	**Document Description**	
1	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086

DOCUMENT DESCRIPTION		LOCATION
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
Exhibits to Opposition to Defendants' Motions in Limine		
Exhibit	**Document Description**	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217
Exhibit to Defendants' Reply in Support of Motions in Limine		
Exhibit	**Document Description**	

DOCUMENT DESCRIPTION		LOCATION
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich		
Exhibit	**Document Description**	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

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<tr><td colspan="2">Stipulated Facts (filed 10/29/2018)</td><td>Vol. 20, 3313–3321</td></tr>
<tr><td colspan="2">Defendants' Points and Authorities RE: Objection to Admission of Documents in Conjunction with the Depositions of P. Morabito and Dennis Vacco (filed 10/30/2018)</td><td>Vol. 20, 3322–3325</td></tr>
<tr><td colspan="2">Plaintiff's Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)</td><td>Vol. 20, 3326–3334</td></tr>
<tr><td colspan="2">Clerk's Trial Exhibit List (filed 02/28/2019)</td><td>Vol. 21, 3335–3413</td></tr>
<tr><td colspan="2">Exhibits to Clerk's Trial Exhibit List</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Certified copy of the Transcript of September 13, 2010 Judge's Ruling; Case No. CV07-02764</td><td>Vol. 21, 3414–3438</td></tr>
<tr><td>2</td><td>Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)</td><td>Vol. 21, 3439–3454</td></tr>
<tr><td>3</td><td>Judgment; Case No. CV07-0767 (filed 08/23/2011)</td><td>Vol. 21, 3455–3456</td></tr>
<tr><td>4</td><td>Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)</td><td>Vol. 21, 3457–3481</td></tr>
<tr><td>5</td><td>November 30, 2011 Settlement Agreement and Mutual Release</td><td>Vol. 22, 3482–3613</td></tr>
<tr><td>6</td><td>March 1, 2013 Forbearance Agreement</td><td>Vol. 22, 3614–3622</td></tr>
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8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687

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29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
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<tr><td colspan="2">Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 48, 8270–8333</td></tr>
<tr><td colspan="2">Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 48, 8334–8340</td></tr>
<tr><td colspan="2">Memorandum of Costs and Disbursements (filed 04/11/2019)</td><td>Vol. 48, 8341–8347</td></tr>
<tr><td colspan="2">Exhibit to Memorandum of Costs and Disbursements</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Ledger of Costs</td><td>Vol. 48, 8348–8370</td></tr>
<tr><td colspan="2">Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)</td><td>Vol. 48, 8371–8384</td></tr>
<tr><td colspan="2">Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)</td><td>Vol. 48, 8385–8390</td></tr>
<tr><td>2</td><td>Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)</td><td>Vol. 48, 8391–8397</td></tr>
<tr><td>3</td><td>Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)</td><td>Vol. 48, 8398–8399</td></tr>
<tr><td>4</td><td>Log of time entries from June 1, 2016 to March 28, 2019</td><td>Vol. 48, 8400–8456</td></tr>
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DOCUMENT DESCRIPTION		**LOCATION**
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
Exhibits to Plaintiff's Opposition to Motion to Retax Costs		
Exhibit	**Document Description**	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	**Document Description**	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)</td><td>Vol. 49, 8638–8657</td></tr>
<tr><td colspan="2">Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)</td><td>Vol. 50, 8658–8676</td></tr>
<tr><td colspan="2">Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>February 27, 2019 email with attachments</td><td>Vol. 50, 8677–8768</td></tr>
<tr><td>2</td><td>Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)</td><td>Vol. 50, 8769–8771</td></tr>
<tr><td>3</td><td>February 27, 2019 email from Marcy Trabert</td><td>Vol. 50, 8772–8775</td></tr>
<tr><td>4</td><td>February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial</td><td>Vol. 50, 8776–8777</td></tr>
<tr><td colspan="2">Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)</td><td>Vol. 50, 8778–8790</td></tr>
<tr><td colspan="2">Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321</td><td>Vol. 50, 8791–8835</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)</td><td>Vol. 51, 8836–8858</td></tr>
<tr><td colspan="2">Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 05/14/2019)</td><td>Vol. 51, 8859–8864</td></tr>
<tr><td colspan="2">Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8865–8870</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Copy of June 22, 2019 Notice of Execution and two Write of Executions</td><td>Vol. 51, 8871–8896</td></tr>
<tr><td>2</td><td>Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)</td><td>Vol. 51, 8897–8942</td></tr>
<tr><td colspan="2">Notice of Claim of Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8943–8949</td></tr>
<tr><td colspan="2">Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)</td><td>Vol. 51, 8950–8954</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Las Vegas June 22, 2019 letter</td><td>Vol. 51, 8955–8956</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td>2</td><td>Writs of execution and the notice of execution</td><td>Vol. 51, 8957–8970</td></tr>
<tr><td colspan="2">Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)</td><td>Vol. 51, 8971–8972</td></tr>
<tr><td colspan="2">Salvatore Morabito's Notice of Claim of Exemption from Execution (filed 07/02/2019)</td><td>Vol. 51, 8973–8976</td></tr>
<tr><td colspan="2">Edward Bayuk's Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)</td><td>Vol. 51, 8977–8982</td></tr>
<tr><td colspan="2">Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)</td><td>Vol. 51, 8983–8985</td></tr>
<tr><td colspan="2">Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)</td><td>Vol. 51, 8986–8988</td></tr>
<tr><td colspan="2">Plaintiff's Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)</td><td>Vol. 52, 8989–9003</td></tr>
<tr><td colspan="2">Exhibits to Plaintiff's Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Gabrielle A. Hamm, Esq.</td><td>Vol. 52, 9004–9007</td></tr>
<tr><td>2</td><td>11/30/2011 Tolling Agreement – Edward Bayuk</td><td>Vol. 52, 9008–9023</td></tr>
<tr><td>3</td><td>11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust</td><td>Vol. 52, 9024–9035</td></tr>
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4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 ($1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

DOCUMENT DESCRIPTION		LOCATION
Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment		
Exhibit	**Document Description**	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	**Document Description**	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs		
Exhibit	**Document Description**	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141

DOCUMENT DESCRIPTION		LOCATION
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162
Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon		
Exhibit	**Document Description**	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk's September 23, 2014 responses to Plaintiff's first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim		
Exhibit	**Document Description**	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204

	DOCUMENT DESCRIPTION	LOCATION
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240

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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9241–9245</td></tr>
<tr><td>2</td><td>Defendant's comments on Findings of Fact</td><td>Vol. 53, 9246–9247</td></tr>
<tr><td>3</td><td>Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9248–9252</td></tr>
<tr><td colspan="2">Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)</td><td>Vol. 53, 9253</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption (filed 08/02/2019)</td><td>Vol. 53, 9254–9255</td></tr>
<tr><td colspan="2">Bayuk's Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9256–9260</td></tr>
<tr><td colspan="2">Bayuk's Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9261–9263</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9264–9269</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9270–9273</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 53, 9274–9338</td></tr>
<tr><td>2</td><td>Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)</td><td>Vol. 53, 9339–9341</td></tr>
<tr><td>3</td><td>Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)</td><td>Vol. 53, 9342–9345</td></tr>
<tr><td>4</td><td>Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)</td><td>Vol. 53, 9346–9349</td></tr>
<tr><td colspan="2">Plaintiff’s Reply to Defendants’ Objection to Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9350–9356</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9357–9360</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)</td><td>Vol. 53, 9361–9364</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9365–9369</td></tr>
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DOCUMENT DESCRIPTION		LOCATION
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	**Document Description**	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	**Document Description**	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

	DOCUMENT DESCRIPTION	LOCATION
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito’s Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890

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<tr><th colspan="2">DOCUMENT DESCRIPTION</th><th>LOCATION</th></tr>
<tr><td colspan="2">Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)</td><td>Vol. 57, 9891–9893</td></tr>
<tr><td colspan="2">Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)</td><td>Vol. 57, 9894–9910</td></tr>
<tr><td colspan="2">Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)</td><td>Vol. 57, 9911–9914</td></tr>
<tr><td colspan="2">Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Gabrielle A. Hamm, Esq.</td><td>Vol. 57, 9915–9918</td></tr>
<tr><td>2</td><td>Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)</td><td>Vol. 57, 9919–9926</td></tr>
<tr><td>3</td><td>Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)</td><td>Vol. 57, 9927–9930</td></tr>
<tr><td>4</td><td>Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)</td><td>Vol. 57, 9931–9934</td></tr>
<tr><td>5</td><td>Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)</td><td>Vol. 57, 9935–9938</td></tr>
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<tr><td colspan="2">Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)</td><td>Vol. 57, 9939–9951</td></tr>
<tr><td colspan="2">Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>19</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9952–9993</td></tr>
<tr><td>20</td><td>Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)</td><td>Vol. 57, 9994–10010</td></tr>
<tr><td colspan="2">Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)</td><td>Vol. 57, 10011–10019</td></tr>
<tr><td colspan="2">Bayuk’s Case Appeal Statement (filed 12/06/2019)</td><td>Vol. 57, 10020–10026</td></tr>
<tr><td colspan="2">Bayuk’s Notice of Appeal (filed 12/06/2019)</td><td>Vol. 57, 10027–10030</td></tr>
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<tr><td colspan="2">Exhibits to Bayuk’s Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying [Morabito’s] Claim of Exemption (filed 08/02/19)</td><td>Vol. 57, 10031–10033</td></tr>
<tr><td>2</td><td>Order Denying [Bayuk’s] Claim of Exemption and Third Party Claim (filed 08/09/19)</td><td>Vol. 57, 10034–10038</td></tr>
<tr><td>3</td><td>Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)</td><td>Vol. 57, 10039–10048</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)</td><td>Vol. 57, 10049–10052</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)</td><td>Vol. 57, 10053–10062</td></tr>
<tr><td colspan="2">Docket Case No. CV13-02663</td><td>Vol. 57, 10063–10111</td></tr>
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Clerk of the Court
Transaction # 6969420

CASE NO. CV13-02663 **TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE OFFICERS OF COURT PRESENT	**APPEARANCES-HEARING**	**CONT'D TO**
10/29/18 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Schonlau (Reporter)	**NON-JURY TRIAL – DAY ONE** Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc., with counsel, Frank Gilmore, Esq. 9:12 a.m. Court convened. Appearances made for the record, including Chris Kemper, Esq., counsel for the Herbst Family present in the gallery. Court noted that respective counsel have provided the Court with a set of stipulated findings of fact in this case. Court directed respective counsel to identify the remaining facts in their originally provided Findings of Fact, Conclusions of Law that remain at dispute after the noon recessed. Defendant's Motion in Limine by counsel Gilmore; presented argument; objection and argument by counsel Pilatowicz; reply argument by counsel Gilmore. **COURT ENTERED ORDER** denying Motion with leave to renew if testimony supports renewal of such Motion. Plaintiff's Motion in Limine to Exclude Testimony of Jan Friederich by counsel Pilatowicz; presented argument; objection and argument by counsel Gilmore; reply argument by counsel Pilatowicz. **COURT ENTERED ORDER** holding ruling in abeyance pending testimony of Mr. Friederich. Testimony may not go beyond the testimony presented in his deposition. Should the Plaintiff believe his testimony is going beyond, an objection must be raised. Court further directed respective counsel to provide Mr. Friederich's deposition to the Court for review and utilization during testimony. Counsel Turner presented opening statement Counsel Gilmore presented opening statement. **EXHIBITS 1 – 299** previously marked. **EXHIBITS 1 – 3, 8, 20, 25, 28, 38, 39, 42 – 58, 60 – 67, 71 – 73, 80 – 87, 90 – 92, 103 – 106, 108 – 123 125 – 127, 131, 137, 155 – 158, 163, 164, 174, 179 – 194, 196 – 198, 223, 224, 229, 241, 244, 258, 263 and 278** ordered admitted into evidence based on stipulation of respective counsel. Respective counsel advised the Court that redactions to Exhibits 42, 72, 126,	

10/29/18
J. Schonlau
(Reporter)

NON-JURY TRIAL – DAY ONE

156 and 185 – 189 have been provided to the Clerk.

Respective counsel further stipulated that all testimony will be elicited from each witness at one time so that certain witnesses will not have to be called multiple times.

10:35 p.m. Court recessed.

10:53 p.m. Court reconvened with respective counsel and parties present.

***Deposition of Jan Friederich taken March 29, 2016 opened and published.

Rule of Exclusion invoked by counsel Gilmore.

Timothy Herbst called by counsel Pilatowicz, sworn and testified.

EXHIBIT 5 offered by counsel Pilatowicz; objection by counsel Gilmore; ordered admitted into evidence with caveat should it be deemed irrelevant based on additional testimony.

Witness Herbst further direct examined.

EXHIBIT 6 offered by counsel Pilatowicz; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

Witness Herbst further direct examined.

EXHIBIT 7 offered by counsel Pilatowicz; limited objection by counsel Gilmore; objection sustained with stipulation of counsel that an involuntary bankruptcy petition was filed by Herbst.

Witness Herbst further direct examined.

EXHIBITS 21, 22 and 23 offered by counsel Pilatowicz; objection by counsel Gilmore; objection overruled and ordered admitted into evidence based on the documents being Orders entered by the Bankruptcy Court and judicial notice can be taken.

Witness Herbst further direct examined.

10/29/18
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(Reporter)

NON-JURY TRIAL – DAY ONE

Witness Herbst further direct examined; cross-examined.

EXHIBIT 280 offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

Witness Herbst further cross-examined.

EXHIBIT 279 offered by counsel Gilmore; objection by counsel Pilatowicz; objection sustained.

Witness Herbst further cross-examined; redirect examined; recross-examined; excused.

12:01 p.m. Court recessed until 1:15 p.m.
1:18 p.m. Court reconvened with respective counsel and parties present.

Edward Bayuk called by counsel Turner, sworn and testified.

EXHIBIT 35 offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

EXHIBIT 88 offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

3:04 p.m. Court recessed.
3:25 p.m. Court reconvened with respective counsel and parties present.

EXHIBIT 77 offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

Witness Bayuk, heretofore sworn, resumed stand and was further examined by

CASE NO. CV13-02663 **TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
10/29/18 J. Schonlau (Reporter)	**NON-JURY TRIAL – DAY ONE** counsel Turner. **EXHIBIT 79** offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence with the caveat that William Leonard establishes its authenticity during his testimony. Witness Bayuk further examined by counsel Turner. **EXHIBIT 128** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence. Witness Bayuk further examined by counsel Turner. **EXHIBIT 136** offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence not for the truth of the matter asserted by as to the state of mind at the time. Witness Bayuk further examined by counsel Turner. **EXHIBIT 144** offered by counsel Turner; objection by counsel Gilmore; objection sustained. Witness Bayuk further examined by counsel Turner. **EXHIBIT 144** re-offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence with the caveat that William Leonard establishes its authenticity during his testimony. Witness Bayuk further examined by counsel Turner. Discussion ensued regarding the Court's request of counsel regarding the Stipulated Findings of Facts. **COURT** directed counsel to highlight in color the stipulated portions of each one of their Findings of Facts and Conclusions of Law. 5:25 p.m. Court recessed until 9:45 a.m. on October 30, 2018.	**10/30/18 9:45 a.m. Ongoing Non-Jury Trial – Day Two**

4185

JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

WILLIAM A. LEONARD, JR. TRUSTEE OF THE ESTATE OF PAUL A. MORABITO,	)	
Plaintiff,	)	CASE NO. CV13-02663
	)	DEPARTMENT NO. 4
vs.	)	
SUPERPUMPER, INC. ET AL,	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

MONDAY, OCTOBER 29, 2018, 9:00 A.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

A P P E A R A N C E S

FOR THE PLAINTIFF: GARMAN TURNER GORDON
BY: ERIKA PIKE TURNER, ESQ.
TERESA Mr. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
650 WHITE DRIVE, SUITE 100
LAS VEGAS, NEVADA 89119

FOR THE DEFENDANT: ROBISON SHARP SULLIVAN & BRUST
BY: FRANK GILMORE, ESQ.
71 WASHINGTON STREET
RENO, NEVADA 89503

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
TIMOTHY HERBST	55	79	99	102
EDWARD BAYUK	106			

EXHIBITS:	Marked for Identification	Admitted into Evidence
Exhibits 1-299 marked prior to trial		
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2		48
3		48
4		69
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23	263	48
24	278	48

RENO, NEVADA; MONDAY, OCTOBER 29, 2018; 9:00 A.M.

-oOo-

THE COURT: Thank you. Please be seated. Good morning. This is the time set for William Leonard Trustee versus Superpumper, et al. We are ready to set this trial and begin. The record should reflect who is present. I would like you to go ahead and make your appearance.

MS. TURNER: Good morning, Your Honor. Erika Pike Turner together with Teresa Pilatowicz. We call her Teresa P., and Gabrielle Hamm from the law firm of Garman, Turner Gordon. We are here on behalf of the Plaintiff who is here, William Leonard, the Trustee appointed by the Bankruptcy Court for the bankruptcy estate of Paul Morabito. In the courtroom is Timothy Herbsts and the Herbst counsel, Chris Kemper.

MR. GILMORE: Good morning Frank Gilmore on behalf of all of the defendants. To my left is Sam Morabito, formally Salvatore, but he goes by Sam, the brother of Paul Morabito. This is Edward Bayuk. They are the principals of Snowshoe Petroleum, the defendant and also the principals of Superpumper. Edward Bayk is the Trustee and Grantor of the Edward Bayuk Living Trust.

THE COURT: Okay. Thank you. So we have a set of stipulated facts which have not been admitted yet, but I do

have them, so the clerk tells me they are pending being approved. So you all have agreed to those facts?

MR. GILBERT: That is correct. We were expecting a file-stamped copy at some point this morning.

THE CLERK: They were e-mailed at 8:58 this morning. They have now been approved.

THE COURT: Okay. So, Plaintiff, you are in agreement?

MS. PILATOWICZ: Correct, Your Honor.

THE COURT: Okay. Thank you. Based upon your stipulation, you all have given me proposed Findings that included factual findings. I would like you to identify, you don't have to do it right now, maybe after the noon hour, those facts that you have not agreed to that you have provided to me previously. That would help to me to know which things are factual issues that are still in contention. We'll do that after lunch.

MS. TURNER: Understood, Your Honor.

THE COURT: That brings us to the Motions in Limine. We have Motions in Limine that were filed and the Motion to exclude Mr. Friederich shall we start with defendants' Motion in Limine?

MR. GILMORE: That will be acceptable to us, Your Honor.

THE COURT: Okay. You may proceed.

MR. GILMORE: Based on the Court's Instruction in the Pretrial conference, I will limit my argument. I know the briefs well cover this issue. I will address what I believe to be the most pertinent issues with respect to the defendants' motion.

THE COURT: Okay.

MR. GILMORE:. Limited argument and we can get going with this trial. Defendants' Motion in Limine raises a singular issue. The Complaint, the operative pleading in this case raises a number of accusations, some of which are directly leveled at my clients and some which don't have anything to do with my clients. But all assert an exchange of assets between Paul and some other person. Some cases, Paul, my client -- I will say for the record there are two Morabitos that will be discussed at length. One, Paul Morabito, the Chapter 7 debtor and his brother, Sam. I will probably refer to them as Paul and Sam. No disrespect Sam Morabito. Sam prefers it, if that is acceptable to the Court. It is easier than having to say it every time. I would appreciate that latitude.

THE COURT: That's fine.

MR. GILMORE: In the operative Complaint, as I said, there is a paragraph which sets forth a number of alleged

allegations some of which address my clients, some which do not. We had several years of discovery that you know involved, as this Court has seen, dozens of depositions. 125,000 pages of e-mails just between the lawyers and Paul Morabito. That doesn't even include my clients' e-mails. And tens of thousands of other pieces of documents including documents that were involved in the original 2007 Herbst litigation with Paul Morabito in which my clients had a very limited roll.

The point is the discovery in this case was expansive. The claims that were originally pled in this case were expansive, and the rules require understand 16.1, it is very definitive, a Plaintiff asserting damages against defendants has an obligation to break down and identify and explain the computation of any category of damages which the Plaintiffs intend to come to trial and attempt to prove against my clients. The Plaintiffs did not do that. The rule requires it and they did not do it. The Plaintiffs' disclosures with respect to damages on a few of but not all of their supplemental 16.1 production, there were five in total from the Plaintiff, the only thing they identified in those disclosures with respect to damages was they intended to come to trial and prove damages not to exceed -- or not to be under 8.5 million dollars. That's it. So when we performed the discovery, the only thing the Defendants know about everything

that was alleged in the Complaint, everything that was done in the discovery, everything that had any bearing on this case related to the 2007 Herbst case. All of those things put together, we are supposed to ascertain the computation of their category of damages as well, we'll prove it at trial but it is going to be more than eight and a half million dollars.

In the last couple of years the Supreme Court has addressed this issue and made it very clear. If you want to come into trial and try to prove damages against Defendants, they are entitled to know how you computed those damages and what those damages are. In fact, the allegations that are alleged in the Complaint, only a fraction of those are going to be tried today or this week. Many of those were abandoned, had no bearing on this case to begin with. The point is the 16.1 requirement is an affirmative obligation to tell my clients exactly what they are intending to be defending in this trial. The Supreme Court says why they are required to do that is because the Defendants need to know for purposes of exposure, for purposes of settlement, for purposes of understanding the breadth of the case exactly what their facing at trial. That wasn't done. The Plaintiffs can't dispute that it wasn't done. Instead, the Plaintiffs oppose the Motion in Limine and say, well, we hired experts to appraise these properties. Well, that is by and large

irrelevant now because the Plaintiff isn't bring anybody here to challenge the valuation. In fact, in their stipulated facts, the values are basically stipulated with respect to all but two properties. So that is an irrelevant point. But more importantly, the Plaintiffs say there were only three sets of transfers that they are pursuing in this case. Only three. They break it down very clearly not only in their Opposition but they refer the Court to the Motion for Summary Judgment. The transfers involve three discreet sets of transfer and not anything else. So my Reply said, fine, we grant you that you hired experts that appraised these property values. And I understand the Supreme Court Juris Prudence, if you hire experts and we hire experts, and they have competing valuations, we can reasonably expect to have to face those valuation issues for purposes of trial.

But what about all the other allegations in the Complaint that are not addressed by the expert valuation? Why are we defending those? The primary thrust of my motion, Your Honor is to require-- is to enter an Order in Limine preventing the Plaintiff from putting in evidence of any damages which were not disclosed pursuant to 16.1. That is my request. But I also recognize for purposes of the property valuations, I recognize, and I won't argue today, that those property valuations caught us by surprise. But there are other

transfers for which there are no valuation. There is no valuation with respect to the card lock properties in eastern Nevada. No discussion. They don't break down any form of damages under 16.1 telling us what they think those values should be or why those damages are included. So we are here to guess as to all of those exchanges which were not part of the property valuations or the appraisals. We are here to guess exactly what the damages model is. That is the basis for the Motion in Limine.

If the Court has any questions for me on that issue, I reserve a minute in case it is necessary to respond.

THE COURT: All right. Thank you.

MS. PILATOWICZ: Good mornning, Your Honor.

THE COURT: Good morning.

MS. PILATOWICZ: Your Honor, the Plaintiff made clear in his Complaint and initial disclosure what the Plaintiff was seeking in this case. He's continued to make it clear throughout the discovery, throughout pleadings, throughout expert testimony. The only transfers identified in the Complaint that aren't part of trial are a six million dollars transfer that went offshore to an entity called Seth and Trustees that is part and parcel of the fraud we are not seeking to recover that from the Defendants. And they are aware of that. The only other issue is a $600,000 note that

now has become part of the Bankruptcy Court and is being dealt with in that case. What were seeking are limited to what the Defendants have identified. There is one asset I will get into a little more, that is part and parcel of the Superpumper transaction that I think is the only place where the Defendants are contending there might still be an issue.

So first, Your Honor, I want to start with this is a fraudulent transfer case. And typical in these cases what the Trustee is seeking is to undo the transfers, recovery of the fraudulently transferred properties. If that can't be done or if the equities provide, a judgment can be granted, a judgment in the amount of the value of the transfers. So that is where we get to an issue of damages in this case. What was clear in the 16.1 initial disclosures, what has been clear throughout discovery and what was clear in the Complaint is what the transfers were. And we were seeking to recover them. We go to expert testimony when it becomes necessary on values and things like that to get to the amount of what the Judgment should be. And as the Defendants have acknowledged, there has been expert testimony. There has been expert disclosures. There have been depositions. You will hear from multiple experts. And, initially, we believe that amount exceeded 8.5 million dollars. That was our best guess when we did the 16.1 disclosure. That has now be refined to be more than that, but

that information has been provided. This isn't a case like the cases that Defendants cite in their pleadings, a personal injury case where we are talking about medical bills or a lost profits case where we are talking about business information that is being held by the Plaintiff that the Defendants don't have access to. This is a case where have been fraudulent transfers. This is a case where the Defendants participated in the fraudulent transfers. This is a case where the Defendants are the gatekeepers of the information and the gatekeepers of the damages information. We had to pry it from them and we filed a Motion to Compel. There have been Motions to Compel that have been granted, and all that information has been disclosed. All of that information is in the hands of both parties. There is no secret what it is that we seek today. We set forth to undo the transfers to Bayuk and Salvatore Morabito as laid out in the Complaint. The transfers of the real properties, the Los Olivos property, the El Camino property and the Panorama property. The transfers of the property through the Bayuk equity interest and the transfer of the Superpumper equity interest which includes transfer of an asset you will hear about called Raffles which in the transfer of that asset, there was $420,000 that was distributed to Sam or to, I am sorry, I believe to Bayuk and $350,000 transferred to Sam within a week of the Judgment.

There is no secret what the amount of damages we are seeking to recover in that is. There is $750,000 that went out. We are trying to undo the transfer and get the $750,000 back. I believe that that is the only, only asset based on the argument and the Reply that the Defendants have any issue with today. And as set forth in our proposed Findings and Conclusions of law and I mentioned earlier, that is part and parcel of the Superpumper transaction. Again, there is no secret as to what we are seeking.

Your Honor, I do want to address two cases cited in the Reply because we didn't have a chance to address those. The holdings or what they are represented to hold isn't entirely accurate and supports the Plaintiff's position in this case. The first case is Darbin Enterprises v. Travelers Casualty Insurance which is available at 2018 West Law 1448240 an unpublished Nevada case. The Defendants contend that it says if Plaintiff didn't comply with the 16.1 obligation, which we don't have here. Plaintiff did comply. Even if he didn't, they contend that case says you can grant sanctions that they request. That is not what that case says. What happened in that case was there was no 16.1 disclosures in a business dispute case and there was no expert disclosed. So the court granted summary judgment prior to trial. The Court looked at the Plaintiff and said you don't have anyway to

prove your damages at trial. That was the basis for upholding the Summary Judgment. The actual case had more of a nuance. It dealt with whether surprise in terminating a deposition would allow for Rule 60B relief. But when it came to discussing the initial disclosures, how that played into the Summary Judgment the finding was, because there were no expert disclosures, the Plaintiff couldn't prove the case, therefore, Summary Judgment was granted. That certainly is not what we have here. We have multiple experts you will be hear that have been disclosed, and multiple experts that have been disposed.

In the case of Freeman very Fisher, again, that was a case based on a business dispute, a loss profits case. There wasn't an issue with the 16.1 disclosures. What happened in that case was the Defendants filed a Motion in Limine, and after the Motion in Limine was filed, the Defendants filed -- or the Plaintiff filed their expert report disclosure, expert report. That was another case where the issue was the Defendant had no information as to what the damages being sought were. There were never any expert disclosures. That is not the case here. There has been, as Defendants conceded years of discovery, multiple pages, multiple depositions, multiple expert reports. The damages are, what the Plaintiff is seeking including damages since the fraudulent transfers

can't be undone have been disclosed in the Complaint, have been disclosed in the 16.1 disclosures and have been disclosed over and over and over in discovery and in the pleadings that have been filed in this case.

Your Honor, if you have any questions, I am happy to answer them.

THE COURT: Okay. No questions.

MR. GILMORE: Your Honor, everything she just explained about her case was available to her at the close of discovery. Everything. There is nothing that she's learned after discovery closed in this case for which she hadn't filed a supplemental 16.1 disclosure which could not have been explained. Everything that she just said. She didn't give any excuse why they didn't do it. She could have given the excuse well, we didn't know the rule. We missed that. In all the things we could have done to prepare for trial that is one of the things we forgot. The excuse you got was we should have been able to figure it out because we did four years of discovery, disclosed, and this is not an exaggeration, hundreds of thousands of pages of discovery, hundreds of thousands. And the hours and hours and hours of depositions. And after all of that was done, discovery closed, and right when discovery closes, the obligation is to produce a 16.1 report that says now we have done everything we know,

everything we need to know for trial, here is what case we plan on putting against your Defendants. They didn't do it. They can't deny they didn't.

In the Opposition to the Motion in Limine, I would like to read from page 5 because this is the essence of my claim. Page 5 of the Opposition to my motion says: To be clear, and as previously disclosed, Plaintiff seeks to void and recover three sets of transfers. One, it says first the Laguna real properties. The Laguna real properties are residences, two residences that have an adjoining backyard. That is first. And the Opposition identifies the value at this point in time. My expectation was they still were challenging the values of these property. That is why they entered the numbers. That is not going to happen at trial. The point is, they say the first series of challenges that they are making is the Laguna real property. Second in bold italics they say debtor had a 50 percent interest in Baruk properties. Baruk like the mine Barrick. That is two commercial properties in Laguna Beach. Those values were exchanged through experts. And, third, Defendant had an 80 percent in Superpumper. Superpumper was the Arizona gas stations. Then the Opposition says Plaintiff's Motion for Partial Summary Judgment specifically identified these different sets of transfers. Those are the transfers we are

going to trial on today. That is their filing and response to my Motion in Limine. This should have been in the 16.1. This Opposition is a mea culpa, well, maybe we did, maybe we didn't, but here now you have it. Take a look at their proposed Findings of Fact. It doesn't challenge only these three sets of transfers. There are lots more, ones that could have come from the discovery, could have come from the 2007 Herbst trial could have come from anywhere. Could have come from any of the hundreds of thousands of pages we did in discovery. Their Opposition says be prepared for three sets of transfers. Then the trial prep materials introduce dozens and dozens of exhibits that have nothing to do with those three sets of transfers.

So what are we trying in this case? Are we trying just these three? To be clear in previously disclosed, Plaintiff seeks to void three sets of transfer. They are going ask you for damages on more than three. And they are going to infer, because of all the things Paul did, nobody is going to dispute my clients had nothing to do with, that those should be talked about and discussed in this case. That is why the Motion in Limine was filed.

Lastly, we served Interrogatories in this case as you would expect. We said please set forth and describe all the damages you have incurred as a result of the alleged

transfers. The first response was objection, we can't answer that. Then once the Trustee got involved, their response was the Trustee has been damaged in the amount at least in the total fraudulent transfer up to eighty-five million plus attorney's fees and costs. No supplement. To be determined at trial. No supplement. So we are supposed to come to trial with Interrogatories that say you are going to guess. It is going to be a bunch of transfers, at least eighty-five million dollars and no 16.1 supplement.

So my request is and the cases I cited, the Freeman case, are not for the facts. They are for the remedy. Rule 37 says if you don't disclose 16.1 damages, you don't get to offer it at trial. They admit there is three sets of transfers. Now they going to come into trial and try to offer damages on all kinds of damages in addition to the three. My request under the Freeman case, Rule 37 and others, is this Court should not permit presentation of evidence for damages purposes which does not fall within those three sets of transfers. Thank you.

THE COURT: Thank you. The Court has reviewed the Motion in Limine, Opposition and Reply. I have also taken into consideration your arguments today. Because I think that the remedy that is being requested by the defense is the most strenuous remedy available, and because I believe this could

have been raised sooner rather than in a Motion in Limine, I am going to deny your request. If, as we go, if something specific hits you, the defense, and you say wait a minute, Judge, there is no discovery on this before, please bring that to my attention and I will consider excluding the testimony on a case by case basis.

Then we also have the Motion to Exclude Jan Friederich as an expert.

MS. PILATOWICZ: Thank you, Your Honor. There are multiple deficiencies that relate to the Jan Friederich disclosure as an expert. Each deficiency on its own is sufficient to grant the motion. It is incredibly obvious how wrong the disclosure is and why Friederich must be excluded. What happened, Defendants ultimately are seeking to use a purported expert without following the requirement of the rules disclosing any expert report which prejudices Plaintiff. First, Friederich is not a non-retained expert. The classic example of a non-retained expert is a treating physician, someone who is testifying as to the facts of the case, their own personal perception but has the expert credentials. This is not what we have here. Friederich was specifically contacted and retained to provide a rebuttal to the McGovern report. The McGovern report is Plaintiff's expert report on the value of Superpumper. This is not a situation where

Friederich prepared a valuation during his time of employment with Superpumper and is here to testify to it. He wasn't disclosed with initial expert disclosure. He wasn't disclosed with valuation non-retained expert then. He was retained to provide expert opinion on why he believes McGovern's expert report is wrong. It was made clear in the case of Parks v. Blanchett cited in our moving papers, that even in the case of a classic non-retained expert, a treating physician, the treating physician may not include information obtained from other sources nor can the doctor opine on any medical reports or opinions received from other doctors. That is exactly what Defendants are seek to use Friederich for here.

Let's look a little closer at what Friederich seeks to offer expert opinions on. One, how fuel sales should be measured. Two, the industry standard for EBITA. Three, what a buyer will or will not want to acquire in a sale. Fourth, impact of contingent liability on valuation in 2010. When you look at the Opposition we see it has been expanded more. We hear Friederich is supposed to be testifying to things such as "industry and market specific factors that bear on any potential arms length transaction between a buyer and seller." And, "ow gas stations are valued by industry experts." These are not percipient testimony related to the facts of this case. These are general conclusions you would typically see

in an expert report from an expert who is opining on what the industry standards are. The reason why it is important how an expert is disclosed as a retained expert or non-retained is because of the requirement a report be produced, and that report is required to include information such as opinions, the basis therefore, data and information considered and exhibits to be used to support the testimony. That wasn't done here. And that prejudices the Plaintiff.

Further more Friederich simply does not have the expertise for what he's purported to testify to. Again, he was not named as an expert to opine on valuation in the initial disclosures because he hadn't completed a valuation. He's been names as a rebuttal expert to rebut McGovern's report. James McGovern is a qualified certified public accountant, certified valuation analyst for the National Association of Certified Valuation Analysts. Friederich has none of those qualifications. While he may have some industry experience, there is nothing in his background that can suggest whether James McGovern, a certified business analyst expert qualified in many courts including this one, properly valued the business using the generally accepted methodology. The only conclusion is Friederich is not a proper expert, and to the extent he's a proper expert at all, he hasn't been properly disclosed. Based on that, we request Friederich be excluded

as an expert and the motion be granted.

THE COURT: Okay. Thank you.

MR. GILMORE: In my Opposition -- I am sorry. In my Opposition to the Plaintiff's Motion in Limine on Jan Friederich, I established how exceedingly qualified this man is. This man, it will be definitively established, this man knows more about gas stations, how they operate, how they are actually evaluated, arms length transactions than anybody this Court will hear from including my clients. That is point number one. Mr. Friederich, the depth of his experience in the actual market place cannot be questioned. In fact, in the motion in the Reply they didn't really attempt to challenge his qualifications because they knew how qualified he was. They have taken his deposition. They know the extent of education. They know he has an advanced economics degree. They know he worked in the gas station and C-store business his entire life. He is a man of advanced age. That is undisputed. The only question is not really whether he's experienced enough. The question is whether or not he should have been identified as a non-retained expert or as a retained expert. The evidence is undisputed that Mr. Friederich was hired by Superpumper in 2009 a year or more before these alleged transfers, a year or more before the Herbst judgment, and he was hired specifically to oversee and direct operations

of Superpumper. He was the de facto operations manager. So what does the rule say about retained expert versus non-retained expert? Well, Plaintiff doesn't focus on the rule. They just explain their interpretation of what a non-retained expert should be. But the rule is very clear and supports our designation. 16.1(a)(2)(b) requires a witness who is "retained or specially employed to provide expert testimony," to be a non-retain expert-- a retained expert with a report. Jan Friederich doesn't fall under that category. He was in not retained or specially employed. He works for Superpumper. He's one of their managers. He understands and deals with the operations. How can he be any different than the treating physician? The treating physician is somebody who is not involved in the dispute but has underlying personal knowledge of the facts. Jan Friederich has underlying personal knowledge of the facts that predate this dispute by several years. On the other hand, James McGovern, he's a hired gun, doesn't have any personal knowledge of anything that happened in this case. He learned everything he knows about this case from reading the file. He's a retained expert retained specifically for the purpose of giving testimony. Jan Friederich was already working for Superpumper. His position is, wait a minute, James McGovern says all these things about gas stations. He doesn't know anything about gas stations. If

he did, he would have talked about the impact of fuel price period gallon on valuation, how EBITA really works. He would have talked about buyers in fair market transactions only acquire operating assets. They don't buy all of these balance sheet assets. So he was not specifically retained to value the company. He was already retained by Superpumper and he was asked to provide his personal knowledge of these facts. He has personal knowledge of the financial condition and performance of this company that predates this lawsuit and supposed to offer his informed opinions which are informed not only by his expertise but his personal knowledge.

His opinions and observations are informed by his expertise and his personal, personal exposure to these facts. In a situation understand 16.1(a)(2)(b) where the witness is testifying based on their personal experience and will offer opinions based on their personal experience and expertise, the are the classic quintessential non-retained expert.

The secondary point they raise, well, he's going to come into court and argue and testify to all kind of things that are beyond his summary of his opinions that are shown in the disclosure. That is yet to be seen. Mr. Friederich can sit here and this Court can understand exactly what he's testifying. If the Court believes he's going beyond the scope of his testimony that was identified in the disclosure, the

Court can say I am not going to hear that. But that is not a basis to exclude it just because the Plaintiff think he might be talking about things they don't want him talk about. The classically non-retained expert is that person who has sufficient expertise to assist the Court in complicated factual matters but also is informed by personal knowledge. And he has personal knowledge. That was borne out by the papers. Any questions?

THE COURT: No. Thank you. Counsel.

MS. PILATOWICZ: Thank you, Your Honor. Just briefly. I want to make sure the record is clear. Friederich is not a current employee of Superpumper. He was retained back years ago. In this case, what happened was after McGovern produced his report, Defendants I presume contacted him. He was certainly provided with McGovern's report, and he's being presented to provide rebuttal opinions on an expert valuation. You heard Defendants acknowledge that what he did when he was with Superpumper, he oversaw the operation. He didn't perform valuations. He's not here to testify to any facts regarding the operation. He's here to provide a rebuttal report to a valuation expert. That requires disclosure consistent with Rule 16.1, then an expert report be produced. That wasn't done. That is why he needs to be excluded. Thank you, Your Honor.

THE COURT: Thank you. It is my understanding that Mr. Friederich's deposition was taken, and you have that; is that correct?

MS. PILATOWICZ: That is correct, Your Honor.

MR. GILMORE: Right.

THE COURT: I think this is a little closer call for me with regard to whether or not he was properly disclosed. I have not reviewed his entire deposition, so I don't know anything more than the excerpts both counsel have provided to me in the pleadings. However, in spite of the fact he does appear to be giving expert opinions that may be beyond his employment as a non-retained expert, I am going to withhold ruling on that until his testimony.

In addition I will order, however, that his testimony may not go beyond his deposition. So we have no report, but at least we have a deposition that Plaintiff has been in receipt of for some time. And so the testimony can't go beyond that deposition. No other opinions. And then if there is an opinion that you believe is improper, you may raise that as we go. Who has Mr. Friederich's deposition?

MR. GILMORE: We both do. I believe it is not in the binders.

MS. PILATOWICZ: It is not in the binder. It was contemplated he would testify live. We have the originals and

copies.

THE COURT: I would like you to lodge the originals with the Court so I will have them. I might even review them before his testimony so I have an opportunity to kind of be familiar with all of his appraisals as we move into the testimony.

MS. PILATOWICZ: We will, Your Honor.

THE COURT: Thank you. That gets us to opening statements of the Plaintiff. Ms. Turner

MS. TURNER: Good morning again. So this case goes back to Judge Adams' oral rulings September 13, 2010 when he declared his Findings and Conclusion adverse to Paul Morabito. At the same time, he dismissed Ed Bayuk and Sam Morabito as liable to the Herbsts. At the same time, he said Paul Morabito engaged in fraudulent conduct, he's going to owe or be liable to the Herbsts in excess of eighty million dollars with additional proceedings to occur on punitive damages.

He said there is nothing here that gives me the ability to put Ed Bayuk and Sam Morabito on that same Judgment. That is important. We are here today fast forward September 13th of 2010 until October 1 of 2010. That is really the time period that most of the testimony and the evidence is going to focus on, because Paul Morabito continued his fraud. And on the eve receiving Judge Adams' oral ruling,

he took aggressive and intentional actions to move his assets away from any place that could be easily attached by the Herbsts, and he knew from the oral ruling that Ed Bayuk and Sam Morabito was a good place to make these transfers. They weren't going to be on the Judgment, so that was a quick place to send his assets. Now we have three gather categories of transfer, but they weren't simple. It wasn't just Paul Morabito giving a dollar to his brother. Nothing was that simple. Now to quote Brent Adams from his oral ruling, he actually aptly quoted President Reagan who said there is simplicity which lies beyond complexity. This is a fraud case. It is rare anybody stands up and says I am a fraudster. So this case is one that is built on circumstantial evidence.

We thank you in advantage for your patience. Any time you put on a circumstantial evidence case, it is pieces that relate to one another. Sometimes that can be laborious. There are little pieces. It might not be known why that piece is relevant until we see that second piece and we build this picture of the continued fraud, and the purpose, the intent that Paul Morabito started in the underlying case and continued forward after receiving that oral ruling is I want to deny value to the Herbsts. I want to deny value. If I am liable, I am going to deny funds, the ability for the Herbsts to actually execute on their judgment. That was after the

September 13, 2010 oral ruling from Judge Adams. That is Exhibit 1 in the books. It is stipulated. It took until October 11th to have a written Findings of Fact and Conclusions of law. It was then August 23 of 2011 when the final Judgment was entered that incorporated the punitive damages, attorney's fees and costs. The final Judgment in August 2011 was for over 140 million dollars grounded in fraud. As a result of that fraud in the Judgment it was nondischargeable. It was nondischargeable in bankruptcy. That same Judgment we are here today because Paul Morabito won't take responsibility for his actions. He breached his contract and defrauded the Herbsts in the underlying case as the result of the 2007 purchase of Berry-Hinckly. He's played games to such an extent Mr. Herbst will describe he's been completely frustrated in his collection attempts.

The Plaintiff in this case is now Mr. Leonard who is a U.S. Trustee. He was appointed by the Bankruptcy Court to chase the assets of Paul Morabito, bring them back in the bankruptcy estate for the benefit of the creditors. He will testify about that standing.

Within two days of the oral ruling, Paul Morabito hired counsel to "protect his assets and/or escape liability on account of the Judgment." There is going to be a lot of testimony to describe the transactions and those categories of

transactions to Your Honor.

At the end of the day, there will be no real dispute that the Plaintiff has a claim, that Herbsts had a claim at the time of the transfers. The Herbsts are creditors. Now the Plaintiff is standing in the shoes of Paul Morabito's estate for the benefit of the creditors. There won't really be a dispute that the subject transfers occurred. The real matter to be discerned, the facts to be resolved, is whether those transfer were for the purpose of hindering, delaying or preventing collection. There is no question the Herbsts were prevented, hindered and delayed from collection. We have to look at the intent. We have look to Paul Morabito. We looked at Paul Morabito, the debtor, for the answer, and it is a resounding yes. Mr. Gilmore, in his argument a few moments ago used an interesting word, "exchanges." This is about exchanges for estates. Exchange is a word that implies a quality in transfers. When you say exchange, the dollar's worth. A Snicker bar is worth a dollar. That is what that implies. That is not we have here. In these three categories of transfers, we are going to see there was no quality in exchange. In fact there was a mad scramble after the oral ruling with transfers made to Mr. Bayuk and Sam Morabito where values were affixed after the transfers sometimes changed. And in exchange for the transfers of real assets, shares in

companies, real property, personal property, you had a sham note transferred to Canada so the Herbsts couldn't attach the debt payments.

You have further exchanges, and we are going to go through all of these so that Your Honor can see at the end of the day the simplicity lies beyond the complexity. We have roughly a three month period of time where virtually all, all of Paul Morabito's assets were transferred from Nevada outside. The sole exception was the Reno house, not too easy to transfer that interest, and that home was retained by Paul Morabito as a purported exchange for much more valuable property in California.

Now what we are going to have at the end of this trial is a lot of facts that support a determination from this Court there has been travesty of justice. Now the Motion in Limine that was just resolved on what do we want at the end of the day, what are we seeking at the end of the day, unfortunately, it has been a moving target. I will use one category of transfers that is at issue, that is Superpumper. Superpumper is the eleven gas stations in Arizona. There was a holding company, and that holding company was consolidated with Apco, and you had a new company created out of New York and had transfers of interest in exchange for notes, and you had cash being provided to Sam and to Paul. At the end of the

day, there is no asset to be unwound, no transfers to be unwound which will make us whole. And, of course, these details are discovered over the course of the case. Superpumper is not even in the name of the Defendants or their affiliate anymore. They transferred the interest to Jan Friederich after the fact. It is now being held by Jan Friederich constantly getting further and further away from us. That is why we now have no remedy but for money damages.

Your Honor, we'll make it perfectly clear at the conclusion of the evidence how these three categories of transfers should be unwound. Or, if they can't be unwound, how damages should affix.

We appreciate your patience going through this process. We really aren't interested in wasting anybody's time. We'll only focus on what is relevant. Thank you.

THE COURT: Thank you.

THE COURT: Counsel.

MR. GILMORE: Thank you, Your Honor. What Plaintiff makes clear in their opening statement is that this is a case against Paul Morabito. Paul Morabito is on trial here, but Paul Morabito is not a Defendant. Paul Morabito has no seat here. Paul Morabito would not come into this state to testify. He's not the Defendant. My clients are. Plaintiff didn't suggest there is going to be evidence that address what

my clients intent was. This whole case should be about what my clients intent was. What was their knowledge? What was their value? What were they desiring to achieve? We could be in this Court for weeks of the Plaintiff and their team of lawyers and witnesses can come in and talk how bad of a guy Paul Morabito is. Aside from establishing the fact there was a Judgment, none of that quite honestly is relevant. If the Plaintiff's theme of this case is that the facts present the quintessential fraudulant transfer, all they have to do is lump Paul Morabito with anybody else and there is guilt by association. That is not what the statute permits. Rather, the Plaintiff has to establish by clear and convincing evidence. If this is is actually the quintessential fraudulent transfer, they won't be able to do that against my clients because these transfers were legitimate, done for reasonable and fair value. There was an actual exchange. It was not secret. It was wide open.

So the complexity of this case quite honestly is going to be understanding how my clients if it into the big picture of the Herbsts versus Paul Morabito grudge match that has now been going on for over eleven years.

If Plaintiff suggests that is the quintessential transfer, the first thing they should be able to provide is evidence Paul Morabito intended to remove assets from, as the

statute says or the cases say, beyond the reach of the creditor. The facts of the case will not support that theory. In fact, it is undisputed the assets which Paul Morabito owned were going to be the subject of these three categories of transfers were already protected by Nevada law to which the Herbsts were not going to have access. They were held either in limited liability companies protected by Nevada law which well predated the Herbst dispute. They were held in an S corporation in Nevada which provides protection against execution by creditors, or they were held individually as tenants in common with Mr. Bayuk who was Paul Morabito's partner. So the irony of this fact pattern is that the primary premise of the facts that Plaintiff will attempt to assert is that Paul Morabito took actions to remove these assets from the reach of his creditors, whereas the undisputed fact is that they were never within the reach of the creditor to begin with. The best the Herbsts could have done was obtain a charging order against assets my clients took which were negative cash flow. Losing money. Those are the undisputed facts.

Second, if the Plaintiff wants to prove the classic fraudulent transfer, they would have to introduce evidence where the transfer or receive some elicit benefit after the transfer. The classic transfer is, hey, I have got a Ferrari

in my garage and a judgment creditor is breathing down my neck, will you take my Ferrari and title it in your name. I will keep it in my garage, drive it, still be the one to show it off. That is the quintessential fraudulent transfer. Plaintiff can't make that case with evidence, because the assets that my clients received, the transfers that we are talking about my clients received were negative cash flow commercial operations, number one; or, two, they were personal residences that don't provide any income at all. There is no evidence that Paul Morabito ever received a dime from the entities that he sold to my clients. Quite honestly, it is impossible he could have because those entities did not spit out any net positive income until after this case had already started. So this is not and the facts do not support allegation that the properties that my clients received, not the big picture, not the big picture that Paul is a bad guy, he did a bunch of bad things, but the facts surrounding what my clients did. The business operations were not profitable in the way they could have been diverted illicitly back to Paul so he received the benefit. So the facts don't meet that quintessential element of the transfer.

The third element of the quintessential fraudulent transfer is the situation where the transfers were clearly intended to divest himself of an asset to somebody who has no

reasonable explanation or rationale for receiving it. Those facts can't be made out in this case either, Your Honor, because the evidence is undisputed. Much of this evidence is undisputed. It is simply a matter of being able to organize it and understand it.

The undisputed evidence this case will show that Paul Morabiot and Ed Bayuk have been business partners over 20 years over a number of different enterprises. These were not a situation where the transfers are given to somebody who doesn't have an explanation for why they have taken it. With respect to the Superpumper, Sam was the operator. He was the boots on the ground operator. It did make sense with him when Paul has this death sentence of a Judgment against him, Sam would say I'd like to take and buy my baby of Superpumper, so I can own and operate it. This is not a situation Paul said to somebody I need to you hold this asset for me, and the recipient said I can't really explain why I have it, but, okay, I will participate in the fraud. Those elements are not present here, and those facts are not present here.

Fourth, the singular badge of fraud that can prove a fraudulent transfer has to do with whether or not value was exchanged. Nevada law is very clear. Does the value exchange between the parties shock the conscience to such an extent you really cannot objectively believe that this ws a fair or

legitimate transfer. Well, we did three years of discovery. There were lots of experts hired. The facts are none of these valuations are going to be disputed. The facts will show the properties were appraised. They were valued. They were transferred. There were deeds. There were contracts. And the Plaintiff isn't going to come in here and argue those values. Those values are stipulated with two exceptions, and I will address that in a minute. So this is not the situation where I buy my Ferrari for a dollar and try to pass it off as a legitimate exchange. Plaintiff is not going to come in here and challenge the values my client assigned to their assets that they bought and sold.

Fifth, the classic fraudulent transfer involves a backroom deal, underhanded agreements, under the cover secrecy and subterfuge. There are no facts suggesting that occurred in case. The transfers were done with MAI appraisers. There were contracts created by lawyers, and everything that was transferred was done by way of public record and filing. The Deeds were all recorded. We are not talking about unrecorded transfers of title. We are not talking about secret Deeds of Trust. They were reported in the books of the County Recorder of Washoe County where it mattered, in Oregon county where it mattered and Arizona where it mattered. Anybody with a computer anywhere in the world could have discovered these

transfers in five minutes of searching. This was not done under the cover of secrecy and subterfuge. So that doesn't support the classic fraudulent transfer.

Lastly, the class fraudulent transfer involves a transfer to divest himself of his assets in order to make him Judgment proof. That is probably the primary thrust of the Plaintiffs' case. Certainly it was with their opening statement. Well, Paul was never judgment proof, at least not according to the Plaintiffs. At least not according to the Herbsts. The facts are undisputed in this case. We will show even after oral Judgment, even after alleged transfers, all of them, not just the ones that involve my clients, but allegedly all of them, the Herbsts filed a mega report, multiple, multiple number of pages report in Judge Adams court. Their profession forensic opinion was, that even after transfers, Paul Morabito's net worth was over ninety million dollars. That was the Herbsts filing that resulted months later in a fifteen million dollar punitive damages award -- fifteen million dollar punitive damages award. Fifteen million dollars exceeds the value of all the transfers my client received or participated in for that matter. That is the Plaintiff's own report supported by literally dozens of pages of analysis. So how is it that the Plaintiffs can now come in stand in the shoes of the Herbsts and contend even though

their own expert opined he had a net worth of ninety million dollars after the transfers, that now he's judgment proof and they can't -- there is nowhere to look. I don't know what exactly the Plaintiff will introduce to explain why a fifteen million dollar punitive damage aware is appropriate for somebody who is allegedly judgment proof or had zero assets even after exchange. Even so, notwithstanding the obviously inconsistent position the Plaintiff will have to take in this case, the fact is that the consideration that Paul received for any assets in which he sold were a net neutral consideration. The values aren't in dispute. So what are we talking about? Well, because they can't challenge the values, they are going to say, well, the exchange for those situations where it wasn't cash, although the bulk of the exchange was either cash or an undisputed fair value exchange for the real estate positions, their position will be well, you, Paul Morabito, received things we could not or did not collect upon. Well maybe in 2017 they did or didn't, but that is not relevant to this case. What is relevant is did the exchange render Mr. Morabito able to pay his debts; or, the second characterization, did it render him with fewer assets than he had before which were subject to collection. Because it was a fair exchange, at the worst case, the evidence will suggest, that Paul Morabito received at least as much as he transferred

to my clients.

Your Honor, the evidence that will be presented will not support a finding of fraudulent transfer.

The evidence will show that Paul, Sam and Mr. Bayuk had a twenty year business relationship.

The evidence will show that amongst the three of them, they each had their own role in those base operations. It will become very clear to this Court what Paul's role was. He's the big picture, the white board guy, big picture guy, a million ideas a day guy. His lawyers will admit even in documents which were previously attorney-client privilege some of Paul's ideas are not based in reality. Some of those ideas were not practical. My clients will admit the same, but also acknowledge if he hits one in a hundred they made a lot of money. That is what happened historically in this relationship. They will testify when the Judgment was rendered, they had two options: They could do nothing and remain co-owned with all of these assets with Paul Morabito. The bulk of them were not subject to execution. But they will testify they knew what would happen if they did nothing. That is they would be deeply embroiled in the morass which is the Paul Morabito versus Herbsts lawsuit. Anybody with any tangential connection to that dispute gets brought in as evidenced by the size of the adversary actions in the

Bankruptcy Court. When Mr. Bayuk and Mr. Sam Morabito decided their options were to do nothing or do something, doing nothing was not the better option. The better option was to disassemble their statutory protections that were already available to them, take their fair share of their co-owned assets the bulk of which they co-owned for years and in some cases decades and leave Paul on an island as his lawyer said ripe for the plucking so that Paul Morabito's assets could be acquired by the Herbst, where before the transfer, they could not have been. And Edward Bayuk and Sam Morabito, with the possibility they would be able to extricate themselves from the mess they were never supposed to be in in the first place.

The facts that the Plaintiff offered with respect to the Judgment is not true. Judge Adams did not say what the opening statement from the Plaintiff said. Judge Adams said there are no facts suggesting there is any basis for liability against these Defendants and they are dismissed. They were not Plaintiffs. They were Counter-Defendants. They didn't have a role in the fight to begin with. They had no role in the trial. They were not supposed to be in the case, and they were rightfully dismissed. So why should they continue to be involved in the Herbsts morass simply because they co-owned properties with Mr. Paul Morabito, and that is their position.

So the simpler version is there was a Judgment. The day

after Judgment there was a whole bunch of activity, and they separated their assets so there is a fraudulent transfer. With all due respect, the case is a lot more complicated than that. We are not here to talk about Paul. We are here to talk about these Defendants, what they owned, what they did, what they wanted and what they asked for and what they knew. At the end of this evidence, it will be established they had good reasons for doing what they did. That they were advised by counsel to do it in such a way as to avoid the appearance of impropriety. They will testify they can't entirely separate themselves from Paul Morabito nor would they want to for reasons that led to the fact that they were business partners and life partners. So this isn't a throw Paul Morabito under the bus trial, but it is understanding that Edward Bayuk and Sam Morabito had their own reasons for doing what they did and it had nothing to do with the Herbsts. It had everything to do with themselves.

The evidence will not challenge the values of the properties with two exceptions. One of th exceptions is the Reno house. There is a two million, 2.3 million dollar disparity in the value of the Panorama house. The evidence will show that Mr. Bayuk and Paul Morabito appraised that property contemporaneously with the exchange. The appraiser who will take the stand and testify went into the house,

evaluated it, appraised it, drew the comps and made a determination. Six years later the Plaintiff hired an expert who had no access to the property, did not ever view the inside of the property, took hearsay statements from non parties, non witnesses in determining the quality of the property and then, despite the fact Dennis Banks and Darryl Noble and a world renown interior designer will come in here and say this house was amongst the nicest houses and finest houses they had ever seen. The Plaintiff's appraiser will come in and say it was sub standard quality. He says that because he never saw the house. It was six years after the fact. That will be the evidence on the Panorama house.

The evidence on the Superpumper property, the only other property disputed in value, the original contemporaneous expert, a gas station and C-store appraiser from Baltimore, Maryland gave a valuation that is really close to Mr. McGovern's valuation in terms of the value of the operating assets. In fact, the value Mr. McGovern puts on the asset is actually higher than the contemporary asset by The matrix folks in Baltimore. The difference and the evidence will show that Mr. McGovern inexplicitly added six and a half million dollars to that value which he calls excess working capital which are based from, and this is confusing, but it is simple once the facts are understood, that there were shareholder

loans carried on the books of Superpumper. And those shareholder loans represented advances that had been made over the previous six or seven years to the shareholders of the company. And although the evidence will show that the auditors who provided audits of the Superpumper books deem those assets to be non-current, Mr. McGovern simply switched them from non-current to current to add them to the Superpumper. Why does that matter? It matters when it comes to the base value of the Superpumper assets. The valuations are the same. They won't dispute that. But that wouldn't have been good enough for the Plaintiff, so he assumed that these non-current assets should be current. He added six and a half million chunk value to the asset, and that is why we are six and a half million dollars apart on the valuation because of the shareholder note. The testimony will be from the expert and the people with personal knowledge that no arms length buyer would ever acquire a company where half of the appraised value is non-operating assets in the form of prior shareholder notes. The testimony will be which buyer in the gas station industry would come in and say I will buy six and a half million dollars worth of operating assets and six and a half million dollars worth of your notes which are not secured I guess I am supposed to buy at face value. The testimony will be that valuation from Mr. McGovern including that six

and a half million dollars is patently absurd. Other than that there is no dispute on the value.

The testimony will be that none of the quintessential elements of the fraudulent transfers will be proven in this trial. We don't get just to make suggestions and inferences with respect to fraudulent transfers. We are talking about fraud, clear and convincing evidence. The evidence in this case, despite the Plaintiff's best effort to characterize everything Paul Morabito has imputed to my clients won't meet that standard.

At the end of the trial, my clients will ask the Court to render a verdict in favor of the Defendants.

THE COURT: Thank you.

THE CLERK: Exhibits 1-299 marked previously prior to trial.

THE COURT: Counsel, the clerk has notified me that you have stipulated to many of the exhibits being admitted, so I would like to get the stipulation on the record. Do you know which ones you are stipulating to?

MS. TURNER: I have a list. We can follow along and if there is any discrepancy, Mr. Gilmore would certainly interrupt me. Is that fair?

MR. GILBERT: Yeah, sure.

MS. TURNER: We have Exhibits 1, 2, 3, 8, 20, 25, 28,

38, 39, 42 through 58, 60 through 67.

THE COURT: Just a minute. I have to catch up with you.

MS. TURNER: Sorry. 71 through 73. 80 through 87. 90 through 92. 104 through 106.

THE COURT: What about 103?

THE CLERK: Did I forget to mark that?

THE COURT: I show 103 being stipulated to.

MS. TURNER: Yes. 103 to 106. 108 through 123.

THE COURT: Okay.

MS. TURNER: 125 through 127. 131, 137, 155 through 158. 163, 164, 174, then 179 through 194. 196 through 198. 223 through 224. And Mr. Gilmore's Exhibit 244 we would stipulate to that as well.

THE CLERK: On Friday it was indicated the Plaintiffs would stipulate to 229. And 241.

THE COURT: Is that still valid?

MR. GILMORE: I'm sorry 229 and 241.

THE CLERK: Mrs. Turner, what number did you add today?

MS. TURNER: 244. Pardon me. That was an oversight.

THE CLERK: I have 244 as well marked on Friday.

THE COURT: What about 258?

MS. TURNER: Sorry. There were late additions 258,

263 and 278.

THE CLERK: I did not have 278 on Thursday.

THE COURT: Any others? Mr. Gilmore, did you have any others you thought were stipulated to?

MR. GILMORE: No, Your Honor.

THE COURT: So those exhibits that we just noted are all admitted.

(Exhibits 1,2,3,8,20,25,28,38,39,42- 8, 60-67,71-73,80-87,90-92,103,104-106,108-123,125-127,131,137, 155-158,163,164,174,179-194,196-198,223-224,229,241,244,258, 263,278 admitted in evidence.)

MS. TURNER: Thank you, Your Honor.

THE CLERK: Couple of other things we should put on the record about the exhibits. Number 74, I have just received a new number 74 which is just the Declaration of Edward Bayuk instead of the whole opposition. And Declaration so that will be switched out if everybody is in agreement.

MR. GILMORE: Correct.

MS. PILATOWICZ: Yes.

THE CLERK: And Mr. Gilmore also provided via e-mail, I have not been able to print them, get them into the computer, I mean in the binders, Exhibit 42. There was an attachment that the bottom was cut off. He's given me the same document with everything on it and I will switch those

out today. Also Exhibit 126 has been blown up for easier reading and Exhibit 185 through 189 as well.

THE COURT: As to the blowups, they were which numbers?

THE CLERK: They are not real blowups. They are actual pieces of paper you couldn't read. They just made it bigger.

THE COURT: And substituted --

THE CLERK: They will be substituted. I have not had time.

THE COURT: What are the numbers?

THE CLERK: The attachment to number 42, Exhibit 26 and Exhibit 185 through 189.

THE COURT: So, counsel, you anticipate those have been provided to the Court and those will be substituted?

MR. GILMORE: That is our expectation.

MS. PILATOWICZ: Yes.

THE COURT: That will be the order.

MS. PILATOWICZ: Your Honor, there is one other exhibit, Exhibit 156 which I realized after it was marked contained a Social Security number. We are providing a redacted document to be replace in the exhibit book.

THE COURT: Is that the only one, 156?

MS. PILATOWICZ: That is the only one.

THE COURT: So, counsel, we will substitute out a redacted version.

MR. GILMORE: That was my request, yes, Your Honor.

THE COURT: The redacted version will be provided to the clerk. She'll return the one that has a Social Security number. The redacted version will become 156 admitted.

THE COURT: Okay. Anything else? So, counsel, we frequently give you a new exhibit list every day, but this one is 70 pages long so keep your original, kind of mark on it. I am not going to direct the clerk to print a new one every day. By the end of the week she'll print a new one. Probably Friday morning you will have a new one so you can make a record if there are some issues.

MR. GILMORE: That is acceptable.

THE COURT: That is a lot of printing, a lot of trees.

THE CLERK: We all had the same work copy on Thursday except for some redactions. As soon as I can mark those, they will all be admitted in the system now it is been put on the record. I will provide you guys, I hope you don't mind one set a side, then you can work from that set.

MR. GILMORE: If you just want to e-mail it to us we'll take care of the print job. You don't have to print three copies of 70 pages. I don't need a physical copy, just

an e-mail of today's update will be fine with me, if it is okay with the Court.

MS. TURNER: That is fine.

THE COURT: Thank you. Okay. We are ready for testimony; is that correct?

MS. TURNER: We are, Your Honor.

THE COURT: We should probably take a very short recess before we begin that testimony.

MS. TURNER: Your Honor, one housekeeping matter that I do want to make sure we are on the same page, I believe there has been discussion with Mr. Gilmore, because this is a bench trial, the idea is to promote efficiency. We intend to put on our case in chief. I will use the example Mr. Bayuk will be our witness. The Defendants can then go beyond the scope in order to make things simpler where they present their defense at the same time that they address our direct.

THE COURT: That was my understanding.

MS. TURNER: I just wanted to make sure the record was clear that is what we would be doing.

THE COURT: With all witnesses?

MS. TURNER: All witnesses.

MR. GILMORE: I would agree with that. The one limited, limited, limited exception would be in the situation I might need to recall one of these witnesses as a rebuttal

witness in my case in chief. I don't quite frankly expect having to do that. I don't really ever have done that to be hones. But I want to make sure that reservation is included in the stipulation.

THE COURT: Okay. All right. Let's take a short recess then we'll be back on the record. Court's in recess.

(Short recess taken.)

MS. TURNER: Your Honor, before the break you asked for the deposition of Jan Friederich. We found it during the break if I could approach the clerk.

THE COURT: Yes.

MS. TURNER: Thank you.

THE CLERK: Deposition of Jan Friederich dated March 20, 2016 opened and published.

THE COURT: Okay. Thank you. Go ahead and call your first witness counsel.

MR. GILMORE:: I am sorry, the Defendants invoke the Rule of Exclusion.

THE COURT: The Rule of Exclusion has been invoked. The bailiff will handle it if you have told him who your witnesses are, otherwise you're each responsible for notifying the witnesses of their obligation under the Rule of Exclusion.

MR. GILMORE: Thank you.

MS. PILATOWICZ: The Plaintiff calls Tim Herbst.

THE COURT: You may proceed.

TIMOTHY HERBST

Called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MS. PILATOWICZ:

Q Good morning, Mr. Herbst. Can you please state your name for the record?

A Timothy Herbst.

Q How are you currently employed, Mr. Herbst?

A President of Terrible Herbst Oil Company.

Q How long have you been in that position?

A About six, seven years. And before that I was Executive Vice-President since '85.

Q Could you explain to the Court what the Terrible Herbst Companies are?

A It is a chain of service stations, convenience stores, car washes, ten minute lube facilities based in Nevada, California, Arizona and a few in Utah.

Q How long has it been in existence?

A Oh, my grandfather started his business in 1938. It has transformed into what it is today.

Q Where did your grandfather start the business?
A Chicago, Illinois.
Q Are you familiar with a gentleman named Paul Morabito?
A Yes.
Q How are you familiar with him?
A We entered into an agreement to buy certain assets up in Reno, the BHI Industries. I met him like 2006 or so.
Q After that initial meeting, when is the next time you met him?
A Various times discussing a possible -- He was looking for a company when I first met him, then afterwards he wanted to know if we had an interest in looking at his company.
Q Did the Herbsts have any interest in that?
A Yes, we did. We had an interest in the BHI assets. Mr. Art Hinckley owned them and his family prior to Mr. Morabito buying those assets.
Q At some point there was a sales transaction between the Herbst company and Paul Morabito relating to BHI?
A That's correct.
Q Can you tell me about that?
A I believe we signed a Purchase and Sale Agreement, I am not sure what they called it, in June and closed on it in

July.

Q What happened with that sale?

A Nothing good. Within, you know, days, Paul Morabito made up the working capital and defrauded us out of millions of dollars.

MR. GILMORE: It has been stipulated. Why are we talking about the substance of the transaction if we stipulated there was a Judgment that formed the basis of this case?

THE COURT: Counsel, what is the relevance of this inquiry?

MS. PILATOWICZ: Your Honor, the evidence of a person's character can be admissible to prove intent and motive under NRS 48.045. The underlying facts of the case relate to Paul Morabito's fraud. Just establishing the background of the Judgment.

MR. GILMORE: Let me get this straight. A person who is not a party to this case, his character assassination, he's not going to be able to defend himself in order to prove a Judgment we ultimately stipulated to. I am failing to understand the relevance.

THE COURT: Counsel, you know you're being a little argumentative. You are not really giving me a believable basis when you talk the way you just argued that. It is my

understanding Mr. Morabito was at one point a party to this case before everyone stipulated to his removal from the case, so your argument implied he's being precluded from participating, and I don't think that was really the circumstances. Now beyond that, his character and his motivation could be relevant to show what your client's motivations were. It is not definitive proof of your client's motivation, but it could be part of the circumstances of evidence, so I am going to allow some inquiry, however the Judgment is the Judgment. We are all aware what Judge Adams found including the fifteen million in punitive damages. I think that is very clear how Judge Adams in this lawsuit felt about Mr. Morabito's behavior and his character, so I don't want to spend a lot of time rehashing that case.

MR. GILMORE: May I address one quick thing?

THE COURT: Yes.

MR. GILMORE: When the Trustee substituted in place of the Herbsts, Mr. Morabito could not have been a party to this case. So it wasn't as though we all voluntarily decided to dismiss him. The Trustee cannot sue the debtor in an adversary case.

THE COURT: By the way, I know this, I am digressing, but I did want to ask you all what is the status of the Department 6 case? I know it was appealed. Is it

still on appeal?

MR. GILMORE: No.

THE COURT: That was resolved by the Supreme Court?

MR. GILMORE: The appeal was voluntarily dismissed pursuant to the settlement between Mr. Paul Morabito and Herbsts.

THE COURT: That's right. I do remember that.

MR. GILMORE: There are no pending issues in Department 6.

THE COURT: The bankruptcy is still open?

MR. GILMORE: Correct, it is.

THE COURT: Thank you.

MS. PILATOWICZ: Your Honor, if I can clarify the record, a Trustee can sue a debtor. Mr. Morabito has been named in other actions. The stipulation to dismiss was a stipulation to dismiss. It wasn't a mandatory dismissal.

THE COURT: Okay. We'll move on, but I will allow some inquiry. Again, I do not want to retry that case. You can answer the question.

THE WITNESS: Can we go back and find out what it was?

THE COURT: You can re-ask the question.

BY MS. PILATOWICZ:

Q The question what happened after the sale involving

Barry Hinckley?

A We found out that there was definitely error in Paul's calculation of working capital to the tune of millions of dollars. We obviously found he made up the numbers, committed fraud on that. He also breached our Purchase and Sale Agreement with certain other areas. It was just a mess, absolute mess.

Q And if you could look behind you and pull Volume I. It looks like it is the one closer to you on the first shelf. Turn to Exhibit 2 in Volume I. Let me have you first turn to Exhibit 1. Exhibit 1 is the transcript of the oral ruling September 13, 2010 which has been admitted in evidence. Were you in court the day the oral ruling was read?

A I believe we were.

Q Do you recall what was to happen after the oral Judgment was read, what the next steps were?

A I believe once the oral judgment was read regarding this, then there was a punitive damage portion of it.

Q Did you understand there would be Findings of Fact entered and a Judgment?

A Yes.

Q If you can turn to Exhibit 2 which is titled Findings of Fact, Conclusions of Law and Judgment which has also been admitted, stipulated, admitted into evidence. Do

you recall seeing the Findings of Fact and Conclusions of Law and Judgment?

A I'm sure I did.

Q Can you turn to page 10 of Exhibit 2? On page 10 there is a description or subheading for fraud in the inducement. Are those the actions that you were discussing before that related to the fraud and the purchase?

A That's correct.

Q And then if you could turn to Exhibit 3 which is titled Judgment which has also been stipulated, admitted into evidence. Did you see this Judgment before?

A Yes.

Q Before this Judgment was entered, did you come to an understanding of what assets Mr. Paul Morabito had?

A I can't remember if I personally did, but we had a well established law firm handling this case, and I'm sure they did.

Q Did you have any understanding as to what the assets were?

A I knew the house. I knew the Laguna stuff. I knew certain -- there was Superpumper assets. I knew there had been some bank accounts that had a significant amount of cash in them. But to list them all out, I probably would leave that up to the attorneys.

Q Did you learn at some point there were transfers of assets?

A Yes.

Q When did you learn that?

A Probably when there was a forensic accountant, somebody that looked into his net worth, it showed they had been transferred.

Q Do you recall if that was after the Findings of Fact?

A It was very, very close to the Judgment and all of those dates. I believe they did it immediately.

Q You are referring to the transfers being close to the--

A The date of the Judgment, absolutely.

Q I want to be clear. You didn't find out about them close to the time of the Judgment?

A I didn't, no.

Q Did Mr. Morabito ever tell you assets were being transferred?

A Absolutely not. He was pretty deceptive of anything he said. He wouldn't say anything.

MR. GILMORE: Objection. Move to strike.

THE COURT: The comment about Mr. Morabito, that really is not necessary.

THE WITNESS: I apologize.

THE COURT: I will strike that part of the answer.

BY MS. PILATOWICZ:

Q Did Mr. Bayuk ever tell you the assets were being transferred?

A No.

Q Did Mr. Morabito ever tell you assets were being transferred?

A No.

Q Were the Herbsts every advised Promissory Notes were going to be assigned to them?

A No.

Q At some point after the Judgment, Exhibit 3, there were settlement discussions; is that right?

A Absolutely.

Q Tell me about those?

A Paul and us wanted to settle this case and move on our way. We already lost millions and millions and millions of dollars. All we wanted to do was put a cap on it, get out of it, finish off taking care of all the landlords that Paul in this unfortunate purchase and sale got us into. We wanted to take care of them and move on and get everybody out as best we could.

Q Was there ultimately a settlement?

A There was a settlement in principle, yes.

Q Was that settlement eventually documented?

A Yes.

Q Do you recall seeing that settlement?

A Yes.

Q Would you turn to Exhibit 5 in the binder in front of you? I recognize it is a large document. Can you look through it and tell me if that is the Settlement Agreement that was entered into that we just discussed?

A Yeah, I believe it is.

MS. PILATOWICZ: Your Honor, I move for admission of Exhibit 5.

THE COURT: Counsel.

MR. GILMORE: Object on the basis of relevance.

THE COURT: Counsel.

MS. PILATOWICZ: Your Honor, this goes to again the continuing pattern of an intent by Paul Morabito to defraud the Herbsts and delay collection of it.

THE COURT: I am going to admit it with the caveat if it does not appear to be relevant based on evidence you present connecting the named Defendants to Mr. Morabito's actions, it could be stricken or not considered by the court.

MS. PILATOWICZ: Thank you, Your Honor.

(Exhibit 5 admitted in evidence.)

BY MR. PILATOWICZ:

Q Why did the Herbsts enter into a Settlement Agreement?

A We wanted to settle the case. We wanted to -- We already lost like I said millions and millions of dollars. We still had a significant amount of more obligations to take care of. This would have done it and put this thing behind us.

Q Did the Herbsts have concerns about difficulties to collect?

A It sounded like it would be a better option here for us to collect it if we could get this. Like I said, we felt we needed to go on our way and move down the road and finish off handling all the obligations this unfortunate situation put us into.

Q If you turn to page 2 of the Settlement Agreement. Section I and J refer to certain fraudulent conveyance claims. Do you have an understanding of what those were?

A Yeah.

Q What is your understanding?

A They were the fraudulent transfers we believe were transferred. The transfer happened right after Judgment regarding Superpumper and some of our assets that they moved out of Paul's name into the Defendants' names.

Q The Herbsts intended in the Settlement Agreement to preserve those claims?

A We felt that Paul was going to live up to his obligations in the Settlement Agreement and thought he would meet his obligations. He wanted to do it as much as we did.

Q Turn to page 3 of the Settlement Agreement and the subsequent pages. It looks like there are certain obligations and payments that are to be made by Paul Morabito, is that your understanding of the Settlement Agreement?

A That's correct.

Q Were those obligations completed?

A No, they were not completed.

Q Tell me what happened?

MR. GILMORE: Sorry. We stipulate Mr. Morabito defaulted under the Settlement Agreement. It is a stipulated fact so we wouldn't have to go through this.

THE COURT: Do you need more evidence than what is in the stipulation?

MS. PILATOWICZ: Your Honor, we do, because there were other discussions outside the documents that led the Herbsts to take the actions they took and rely on Mr. Morabito and getting Mr. Morabito's intent and continuing pattern.

THE COURT: With the same caveat, the objection is overruled.

BY MS. PILATOWICZ:

Q Mr. Herbst, the question was: Were the obligations ultimately satisfied in the Settlement Agreement?

A No, they weren't.

Q What happened after the Settlement Agreement was entered?

A He made good on certain payments and then it fell apart.

Q What happened after that?

A He asked for forbearance.

Q Did the Herbsts agree to a forbearance?

A Absolutely, trying to get the thing back on track.

Q Do you know if the forbearance was documented?

A I believe it was.

Q Can you turn to page, I am sorry Exhibit 6 in Volume I in front of you? Do you recognize Exhibit 6?

A Yeah, the Forberance Agreement.

MS. PILATOWICZ: Your Honor, move for admission of the Forbearance Agreement, Exhibit 6.

THE COURT: Any objection?

MR. GILMORE: Yes. The existence of the Forbearance Agreement is a stipulated fact, but the Forbearance Agreement contains a whole bunch of statements and other concessions Mr. Morabito makes and has nothing to do with this case, so it

is irrelevant.

MS. PILATOWICZ: Your Honor, again the representations and obligations that Mr. Morabito indicated he would agree to in the Forberance Agreement and defaulted on and what the Herbsts' view of that was and reliance on it is directly relevant to Mr. Morabito's intent and continued to follow a pattern.

THE COURT: Objection overruled. Exhibit 6 is admitted.

(Exhibit 6 admitted in evidence.)

BY MS. PILATOWICZ:

Q Now after Herbst had obtained a Judgment for fraud and after Herbst had entered into a Settlement Agreement, Mr. Morabito defrauded, on why did the Herbsts enter into a Forbearance Agreement with Mr. Morabito?

A We wanted to give him time to get his house in order to get us paid.

Q Can you turn to this document, it doesn't have a page number, I am going to refer to the bate stamp that appears at the bottom right-hand corner. Starting at WL003105, do you see that?

A Yeah.

Q Does that again set forth the obligations and the payments Mr. Morabito agreed to undertake?

A I believe so. Did I get to the right one?
Q Are you at WL003105?
A Yeah.
Q Starting --
A I got it.
Q Did Mr. Morabito ultimately honor those obligations?
A No.
Q Tell me what happened?
A He just didn't fulfill any of the payments at all.
Q What steps did the Herbsts take next?
A Figured -- I believe we tried to push him into an involuntary bankruptcy.
Q Was there a Confession of Judgment filed?
A Yes. We had the Confession of Judgment as part of the Settlement Agreement.
Q Why did the Herbsts have a Confession of Judgment as part of the settlement?
A It was just to keep him from -- keep his feet to the fire in a dischargeable bankruptcy so his obligations would survive because of the games he could possibly play after, you know, the Settlement Agreement if it wasn't fulfilled.
Q Let me have you turn to Exhibit 4 in the book in front of you. Going back a couple of exhibits. Is Exhibit 4 the Confession of Judgment the Herbsts parties had with the

court?

A Yes it is.

MS. PILATOWICZ: Move for admission of Exhibit 4.

MR. GILMORE: My only issue with Exhibit 4, Your Honor, is that -- never mind. No objection on 4.

THE COURT: Okay. Exhibit 4 is admitted.

(Exhibit 4 admitted in evidence.)

BY MS. PILATOWICZ:

Q Mr. Herbst, I will ask you to take a look at page 13 of 15 of the Confession of Judgment and particularly allegations 73 through 75. Can you read those for me? You can read them out loud.

A In December 2006, CNC and Morabito told JH that BHI was losing about $600,000 a year. The company was losing approximately $1,000,000 a month.

These material misrepresentations were made to fraudulently induce JH to purchase BHI.

It is established Morabito fraudulently induced JH to purchase BHI.

Q Did the -- Was it important to the Herbsts that Morabito acknowledge his fraud in the Confession of Judgment?

A Absolutely.

Q Why was that important?

A Just that he admitted to it. He actually did what

was found -- he was found guilty of.

Q After the Confession of Judgment was filed, I think you referenced it was an involuntary Petition?

A U-huh.

Q What was your involvement in the involuntary Petition?

A We gave counsel information and they provided the Complaint.

Q Do you recall who the Petitioner and creditors? Do you know what I mean?

A The three creditors?

Q Correct. Do you recall who the three creditors were?

A The main three, yeah.

Q Who were the main three?

A I believe BHI, JH and maybe Jerry Herbst.

Q What is your connection with each of those creditors?

A I am an officer of all three. Two.

Q Who is Jerry Herbst?

A Jerry Herbst is my father.

Q Did you have an understanding at the time of the filing of the involuntary Petition that was being filed?

A I did.

Q An understanding it was being filed?

A Yes.

Q Can you turn to Exhibit 7 in the book in front of you? Do you recognize Exhibit 7?

A Yup.

Q Could you explain what it is?

A It is the involuntary petition to try to enter Mr. Morabito into an involuntary bankruptcy.

MS. PILATOWICZ: Your Honor, I move for admission of Exhibit 7.

MR. GILMORE: We stipulate there was a bankruptcy. The content of the Petition are not relevant to this case.

MS. PILATOWICZ: Your Honor, again the involuntary Petition lays out the history, the fraud, the continuing pattern of fraud that led the Herbsts to how we got to this point.

MR. GILMORE: It is also a hearsay statement. These are statements made by the Herbst lawyers which are filed out of the court. They are offering their own hearsay statements as the truth of the matters asserted therein.

THE COURT: Is that what your offering it for?

MS. PILATOWICZ: We are offering it for the fact it was filed.

THE COURT: I am going to sustain the objection. We

have a stipulation acknowledging the Petition was filed.

BY MS. PILATOWICZ:

Q Why did the Herbsts file the involuntary bankruptcy?

A To help us, help the estate collect.

Q Have the Herbsts taken any actions with respect to collection in the bankruptcy?

A I don't understand the question.

Q Did the Herbsts file a proof of claim?

A I am sure we did, yes.

Q Were you involved in the filing of the claim?

A Indirectly.

Q What was the basis for the proof of claim?

A I am not exactly sure how that all intertwines in the proof of claim. I guess we would show what we were entitled to.

Q Is it your understanding it was based on the Judgment?

A The Confession of Judgment.

THE COURT: Just a second. You are interrupting your attorney sometimes when she kind of gives you an idea.

THE WITNESS: I'm sorry.

THE COURT: Just like you just did me.

THE WITNESS: My wife is right.

THE COURT: Your wife's right. The court reporter

can only take one person at a time, okay? Don't say a word until your lawyer has completely stopped talking and then give the lawyer on the other side, Mr. Gilmore, a chance to speak.

Now you can rephrase your question. We'll see where we go.

BY MS. PILATOWICZ:

Q Did you have an understanding as to what the underlying basis for the proof of claim was?

A Yes.

Q What is your understanding?

A It was to bring back the fraudulent -- the Confession of Judgment in there with the $85,000,000 nondischargeable act.

Q Did the Herbsts take any other actions in the bankruptcy with respect to collecting the $85,000,000 Judgment?

A I don't believe so.

Q Did the Herbsts file any adversary actions?

A That I don't know.

Q Did the Herbsts seek to have the Judgment be nondischargeable?

A It already was nondischargeable. If we had to do something like that, I am sure the attorneys did.

Q Do you recall testifying in a trial earlier this

year?

A I haven't been in trial this year I don't believe.

Q Do you recall testifying in the bankruptcy court with respect to whether the Confession of Judgment would be dischargeable?

MR. GILMORE: Leading question.

THE COURT: Overruled.

THE WITNESS: I apologize. I don't-- I am not sure. I don't remember if I was in bankruptcy testifying in bankruptcy court or not.

BY MS. PILATOWICZ:

Q Do you know if the Herbsts have sought to have the underlying Judgment deemed nondischargeable?

A I would say our attorneys would do everything possible to keep that nondischargeable out there.

Q Do you recall seeing a Judgment in April of this year regarding nondischargeability?

A Yes.

Q Would you turn to Exhibit 21 in the binder number one in front of you, Volume I. I will ask you to look at Exhibits 21, 22, 23 together, because they are related. Let me know if you have seen those documents before?

A Yes, I believe I have.

Q When did you see these documents?

A Through our attorneys when they were filed.

Q Do you have an understanding of what the ultimate determination of these documents was?

A I believe undischargeable finding of the $85,000,000.

Q Is it your your understanding the Herbsts now have a nondischargeable?

A I believe so, yes.

MS. PILATOWICZ: Your Honor, move for Exhibits 21, 22, 23 which are the Judgment on the first and second causes of action; the memorandum decision regarding Morabitos' motion for revision of the interlocutory order granting partial summary Judgment pursuant to Rule 54 of the Federal Rules of Civil Procedure; the denial of Plaintiff's fourth cause of action; and the amended Findings of fact, Conclusions of Law in support of the Judgment regarding Plaintiff's first and second cause of action.

THE COURT: Counsel.

MR. GILMORE: Paragraph 14 of our stipulated facts we stipulate there was a challenge to the nondischargeability. There was a nondischargeability order and it has been appealed. So with that, I don't understand the relevance of these documents other than to include things that Judge Zive said which have no bearing on this case.

MS. PILATOWICZ: And, Your Honor, this Court can take judicial notice of the relevant cases of related cases as set forth in Mack vs. Estate of Mack, 125 Nev. 805. The document in the other case establishes a relevant fact. Here again we are talking about the continuing pattern of fraud of Paul Morabito in an attempt to hinder, delay or defraud the Herbsts which now, as the findings by Judge Zive established continued as late as through April of 2018.

THE COURT: With regard to Exhibits 21, 22, 23, I will take judicial notice of those documents entered in the bankruptcy court. Whether or not there is relevant information that relates to this case will be determined by me once I have had an opportunity to review these documents. So if there is no relevant information in those documents, then they will not be considered. It is a little different, counsel, because you have a Judge trying the case, we are not worrying about a jury being led down the wrong path. With that said, Exhibits 21, 22, 23 are admitted.

(Exhibits 21, 22, 23 admitted in evidence.)

MR. GILMORE: Well may I then, if that is the Court's order, may I add another objection for the record which is now these documents have been offered by this witness who has not testified he has any specific knowledge regarding the content therein. They are just back dooring these

exhibits through a witness who doesn't really know their content and can't speak to it.

THE COURT: I'm taking judicial notice. Unless they are not accurate, you don't need a witness to authenticate them. Are these document not accurate?

MR. GILMORE: I am not making an authentication objection. It is a foundation objection.

THE COURT: You don't need to have a foundation. You don't have to show any foundation. I am taking judicial notice they are legitimate court documents. So is there any issue with regard to the legitimacy of the exhibits?

MR. GILMORE: No, Your Honor. It was just for the record.

THE COURT: Exhibits 21, 22, 23 are admitted.

BY MS. PILATOWICZ:

Q Mr. Herbst, do the Herbsts still have an outstanding Judgement against Paul Morabito?

A Yes.

Q What is the status of that Judgment?

A It was, I believe it was -- it had been, what do you call it, non-discharged.

Q Are the Herbsts seeking to collect on that Judgment?

A Absolutely.

Q Have they been able to collect on the Judgment?

A No.

Q Do you know the current outstanding amount of the Judgment?

A I would say, the way I believe it was written, $85,000,000 minus anything that Paul had prior paid or made good on.

Q Do you know approximately the amount the Herbsts are trying to collect today on?

A It is probably south of 85,000,000, but not much.

MS. PILATOWICZ: Your Honor, if I could have a brief moment.

THE COURT: Yes.

MS. PILATOWICZ: Your Honor, I have no further questions.

THE COURT: Okay. Cross-examination. Are you doing direct of this witness also or just cross?

MR. GILMORE: I didn't name him as a witness so it would just be cross.

THE COURT: Okay. Thank you.

CROSS-EXAMINATION

BY MR. GILMORE:

Q Mr. Herbst, you testified that the Herbsts' lawyers filed an involuntary petition to collect the debt against

Mr. Morabito, right?

A That's correct.

Q Have you ever spoken to Sam Morabito in your life?

A No.

Q So did it surprise you that Sam Morabito didn't call you in September of 2010 and say hey, Mr. Herbst, let me introduce myself, I want to tell you I am about to buy some assets from my brother? Did that surprise you?

A No.

Q You didn't speak to Mr. Bayuk any time after the commencement of the lawsuit, have you?

A No, I have not.

THE COURT: I am sorry, which lawsuit?

BY MR. GILMORE:

Q Good question. After the commencement of the 2007 Herbst-Morabito lawsuit?

A No, I have not.

Q In 2007, who were the parties to the lawsuit?

A It was BHI. JH. Jerry Herbst versus -- they were the Defendants -- and Paul Morabito's company Consolidated something or other.

Q Do you know who the Plaintiff was?

A The Plaintiff was Paul Morabito.

Q And in that lawsuit, the Herbst parties, and I an

just going to refer to JH, all those jointly if that is okay?

A That's fine.

Q The Herbst parties counter-sued Mr. Bayuk and Sam Morabito, correct?

A That's correct.

Q What were the claims the Herbsts made against them?

A It was claims against all of them. I believe it was inducement of fraud, breach of contract and various other things.

Q So it is your testimony today the Herbsts sued Edward Bayuk and Sam Morabito for fraud in that original case?

A I believe they would have been involved in it, yes.

Q I don't have a copy of that Complaint with me. Are you aware, sir, today that pursuant to Paragraph 104 of the counterclaim that the Herbsts filed against Sam Morabito and Edward Bayuk the only claim was unjust enrichment? Are you aware of that?

A No.

Q Do you know what unjust enrichment is?

A Not technically.

Q And the Plaintiff's lawyer asked you to turn and examine Exhibit 1. You testified you were in the courtroom when Judge Adams entered his oral ruling, right?

A Yes.

Q Will you turn to page 5 starting on line 20 Judge Adams cited from the bench: There has been no evidence that I recall of any kind creating any personal liability on the part of the Plaintiffs, Edward Bayuk, Salvatore Morabito or Trevor Lloyd and, therefore, any claims against them are hereby dismissed?

A Yes.

Q Do you agree with me Judge Adams made a mistake when he called Salvatore Morabito and Ed Bayuk were the Plaintiffs?

A No.

Q Is it your testimony Sam Morabito and Ed Bayuk were the original Plaintiffs in the case or Counter-Defendants?

A I believe they were part of Paul's enterprise.

Q With all due respect, that wasn't my question. My question is: Is it your understanding sitting here today as the Herbsts representative testifying that Mr. Bayuk and Mr. Morabito were original Plaintiffs in the 2007 litigation?

A Yes, I believe, they were.

Q And you don't dispute that Mr. -- or that Judge Adams dismissed Mr. Bayuk and Sam Morabito from the 2007 case?

A I have a lot of respect for the Judge, but I disagree with that personally.

Q And then you testified that approximately a month later on October 12, 2010 the Herbsts received a Judgment in

their favor from Judge Adams, correct?

A That's correct.

Q After that Judgment, between that and the date that the Settlement Agreement was signed, what effort did the Herbsts undertake to collect their Judgment against Mr. Morabito?

A That we had very good lawyers. We had -- I believe they probably did everything in their power to do whatever was necessary to collect at the time.

Q In other words, you don't know?

A I don't know.

Q When you testify that you believed that the Herbsts had engaged in collection efforts, you can't give me any specifics?

A I can't. I believe our attorneys, we had very good attorneys, I believe they probably did everything in their power to do something.

Q We are talking over each other. Please let me finish, then I will let you finish. Okay. My question was: You testified to Ms. Pilatowicz' question it was your belief the Herbsts had, at the same time, had to collect their debt right?

A That's correct.

Q But you can't tell me today anything the Herbsts

specifically did to collect that debt between the time of the written Judgment and the settlement can you?

A I personally can't.

Q In fact, will you please turn to Exhibit 278 which is in volume, probably Volume VII in your binder. You have to turn back.

A Oh, I am sorry.

Q You can leave that one there. Just go grab Volume VII off the shelf.

MR. GILMORE: Your Honor, this might be a good time to turn on the E.L.M.O. and at the TVs.

THE COURT: Okay. Do you need the clerk to do that?

MR. GILMORE: I think we have got that. It is a matter of turning the TV's on. We could have done this during the break. I'm sorry.

BY MR. GILMORE:

Q Showing you what has been marked and admitted as Exhibit 278, will you turn to 278 in that binder? Now you have already testified that the Judgment which I believe is Exhibit 4 or 5 was entered on October 12, 2010, right?

A I agree.

Q Okay. Can you direct me -- Sorry. Let me lay some foundation. This has been offered and admitted as the docket in the 2007 Herbst litigation. Okay. I'll just represent to

you the docket is a reflection of all of the filings between the parties, either side, that go to the Court file. Do you have a general understanding of that?

A Not really.

Q So I will represent to you this is the complete docket, the docket of the relevant time period with respect to the 2007 Herbst litigation. Are you aware you of any filings that the Herbsts made after their Judgment in an effort to try to collect or execute their Judgment upon Mr. Paul Morabito?

A No, I do not know what our attorneys did.

Q You don't know and can't testify if the Herbsts ever attempted to domesticate their Judgment in the State of California, do you?

A Not in California.

Q You testified earlier that you had a general understanding that there were some properties that were transferred, right?

A Uh-huh.

Q Yes?

A Yes, sir.

Q Did you understand that some of those transfers were properties that were located in the State of California?

A That's correct.

Q Can you testify as to any effort the Herbsts made to

try to domesticate that Judgment in California to execute upon these properties?

A I believe they tried to file in California on those. I believe they did further down. I'm not sure on the date, but I believe they did. They may have.

Q What do you have to testify to that informs your belief other than your supposition?

A Conversation with counsel.

Q Anything else?

A No.

Q After the Judgment was rendered in October but before the settlement, do you know if your lawyers ever obtained a Writ of Attachment?

A I do not.

Q Do you know if they obtained a Writ of Execution?

A I'm not sure.

Q Do you know if they ever served any debtor Interrogatories?

A I'm not sure.

Q Do you know if they attempted to perform any garnishment of Mr. Morabito's income?

A I'm not sure.

Q Are you aware that, pursuant to Nevada law, immediately upon entry of Judgment the Herbsts had certain

rights under state law to attempt to collect the Judgment against Mr. Morabito?

A Do I personally know the rights? I am note sure. I don't remember.

Q You don't know?

A No.

Q You testified that you knew in early 2011 these transfers had occurred, right?

A That's correct.

Q Do you know if your lawyers or anyone else on the Herbsts' behalf ever attempted to seek some type of Writ of Attachment with respect to any assets?

A I believe we were entering into a Settlement Agreement to take care of Paul's obligation to us, and we thought Paul would, you know, come through with it.

Q Let's talk about the year between the Judgment, when the Judgment was entered, and the time of the settlement, okay? So the first written Judgment was October 12, 2010. Do you agree with me?

A Uh-huh.

Q Yes?

A I believe so.

Q The settlement was executed the first week of December 2012, right? I am sorry, 2011.

A '11.

Q Your right. We had a little over a year between the Judgment and the settlement, right?

A Yup.

Q So my question is: In that one year time period, did the Herbsts ever attempt to seek a Writ of Attachment?

A We had great counsel. I'm sure they tried to do whatever they could do. Do I remember, no.

Q You don't have any personal knowledge to testify today?

A No.

Q Do you know whether the law permitted the Herbsts to seize any of the assets that Paul had received in these transfers?

A I do not know that.

Q Will you please turn to Exhibit 280. Let me know when you're there.

A I'm there.

Q You testified earlier it was your understanding there was a punitive damages award that was --

A That's correct.

Q -- entered against Mr. Morabito?

A That's correct.

Q Do you know the amount of the award?

A Roughly fifteen million dollars or somewhere around there.

Q Do you understand the legal factors and factual factors that go to determining what the appropriate amount of punitive damages is?

A Not the math of it, no.

Q If I can direct your attention to Paragraph 5 of Exhibit 280. Let me know when you're there.

A I believe I am there.

Q Are you aware that the Herbsts engaged Craig Greene to do a net worth review of Mr. Paul Morabito pursuant to this punitive damages issue?

A I remember the name, what he was supposed to do.

Q Are you aware Mr. Craig Greene's report was attached as an exhibit to this stipulation Exhibit 280?

A That I'm not sure.

MR. GILMORE: Your Honor, I would offer Exhibit 280 into evidence.

THE COURT: Counsel.

MS. PILATOWICZ: Your Honor, I have no objection. I just want to be clear what is being entered is what is in the exhibit book. The attachments aren't included; is that correct?

MR. GILMORE: Just what is included in 280 is being

offered at this time.

MS. PILATOWICZ: No objection.

THE COURT: Exhibit 280 is admitted.

(Exhibit 280 admitted in evidence.)

BY MR. GILMORE:

Q Now would you please to turn to 279. Let me know when you're there.

A I am there.

Q Do you see the name at the top left of that document Craig Greene?

A Yup.

Q When you testified earlier the Herbsts had hired a forensic accountant to review Paul Morabito's net worth, you were referring to Craig Greene, right?

A I believe so, yes.

Q Now I have handed you what is the exhibit to the stipulation that is filed as Exhibit 280, okay? We have the docket that can reflect that if you have any confusion about that. Do you disagree with me?

A No.

Q You agree the Herbsts hired Craig Greene to examine Paul Morabito's net worth in 2011, right?

A That's correct.

Q It was done pursuant to the punitive damages award

Judge Adams indicated he was willing to issue against Paul, correct?

A That's correct.

Q So take a look at the cover page of 279 and let me know if this refreshes your recollection with respect to the status of the parties in this case. Do you see how Consolidated Nevada --

A Yeah.

Q --and Paul Morabito are Plaintiffs?

A Uh-huh.

Q The Herbsts entities are the Defendants?

A That's correct.

Q At the bottom you see some new names, Edward Bayuk, Salvatore Morabito and Trevor Lloyd, they are Counter-Defendants, right?

A That's correct.

Q They weren't Plaintiffs, were they?

A No, they weren't.

Q So will you turn to page 37 of this report. I'm sorry, before we talk about that page number, do you know what Mr. Greene's ultimate conclusions were about the net worth of Paul Morabito?

A Somewhere around 90 million dollars.

Q Would it surprise you if he said he believed Paul's

net worth was in excess of 90 million?

A Yeah.

Q Is that consistent with your understanding?

A Absolutely.

Q This report was signed by Mr. Greene. I am looking for the page number.

MS. PILATOWICZ: Your Honor, I object to the use of the exhibit until -- There has been no request to admit it into evidence. We would object on the basis it is hearsay?

THE COURT: Okay.

MR. GILMORE: Your Honor, I am still laying the foundation. This is a report that was prepared by an expert retained by the Herbsts, so the objection that it is hearsay, this is a statement of a party opponent. The Herbsts originally filed this case against my clients. So in part on the basis of what they had found from Mr. Greene, Mr. Greene's report resulted in the ultimate finding of the punitive damages. So I would argue not only is it pertinent and adequate foundation, it is not hearsay. This is a report prepared by an agent of a party opponent which is an exception to the hearsay rule.

MS. PILATOWICZ: It is an out of court statement offered to prove the matter asserted. It is an expert report. The characterization of it that it was what led to the

findings of punitive damages is incorrect. It doesn't change it is hearsay.

THE COURT: Why do you think a statement made by a party opponent is hearsay?

MS. PILATOWICZ: Well, it is not a statement of a party opponent. The party in this case is the bankruptcy estate of Paul Morabito. Mr. Leonard is the Plaintiff.

THE COURT: Okay. You are saying it was a statement of the Herbsts, may be adopted by the Herbsts parties but not of the Plaintiff in this case?

MS. PILATOWICZ: Your Honor, I think an expert's report analyzing factors, that information provided by the expert are inherently hearsay.

THE COURT: I am going to sustain the object.

MR. GILMORE: May I respond to the issue on the hearsay? This is -- The Herbst parties as the original Plaintiffs in this case are in privity, direct privity with the Plaintiff in this case. In fact, the Plaintiff in this case is trying to prove the exact same claim.

THE COURT: I am ruling on the fact it is an expert report. The hearsay quality of an expert report. I am not ruling on the fact it is not a party in this case.

MR. GILMORE: I am sorry. Can you help me understand the ruling?

THE COURT: An expert report is not an adopted admission. You may have another way of getting this in, but not by claiming it is an adoptive admission.

MR. GILMORE: Understood.

THE COURT: The objection was to the testimony regarding 279. He was testifying to the content without it being admitted, therefore, the discussion kind of morphed into the admissibility of it. And I sustained the objection.

BY MR. GILMORE:

Q Is it consistent with your memory, Mr. Herbst, that the Greene report was submitted to your lawyers on or about May 12, 2011?

A If that is what it says, I am sure it was.

Q You don't have any evidence --

A No.

Q -- to dispute that, do you? Do you know whether Mr. Greene was aware of these transfers that have been alleged in this case when he prepared this report in May of 2011?

MS. PILATOWICZ: Objection. Calls for hearsay and speculation.

MR. GILMORE: I am asking if he knows. He's the Herbsts' representative testifying.

THE COURT: Okay. If he knows what Mr. Greene knew at the time?

MR. GILMORE: Correct.

THE COURT: Do you know what Mr. Greene knew?

THE WITNESS: What he was thinking, no, I don't.

BY MR. GILMORE:

Q Are you aware that Brian Irvine-- Do you recognize Mr. Irvine back in the gallery?

A Sure do.

Q He was one of the Herbsts lawyers in the 2007 case?

A That's correct.

Q Do you know if Brian Irvine took the deposition of Darryl Noble in April of 2011?

A I can't remember.

Q Do you know who Darryl Noble is?

A No, I don't.

Q You did testify on direct examination that the Herbsts were aware of these transfers at some point in time in 2011, right?

A That's correct.

Q In fact, you testified to the effect that my client signed tolling agreements with respect to these alleged transfers in the Paul Morabito settlement, right?

A I believe so.

Q Do you know whether the properties -- Let's focus on the Laguna Beach properties. What is your understanding of

what properties in Laguna Beach were part of these transfers?

A There is a residence in Laguna Beach. It was a compound of some sort. I don't know exactly what it was. I have never been there.

Q Do you know whether the transfers that reflect these alleged fraudulent transfers, whether they were recorded by Deed or otherwise?

A No, I do not.

Q You don't know. Do you know if the Herbsts or anyone on their behalf ever attempted to do a search of the property records in Washoe County to determine whether any transfers had been made?

A I would assume they did.

Q You don't know?

A I don't personally know.

Q So you are not here to testify as to whether they did or didn't are you?

A No, I am not.

Q You are not here to testify whether these properties were transferred by of way of Deed or otherwise, are you?

A No.

Q Are you here to testify as to whether or not the Herbsts recorded their Judgment in any county records?

A I can't honestly tell you where the Judgment was

entered into. I believe Nevada, obviously, but California, I'm not sure.

Q Mine is a more specific question. You don't know if the Herbsts ever recorded their Judgment at the County Recorders office, do you?

A You know, we have very, very good attorneys. I'm sure they did whatever is in the best interest of the parties.

Q You don't know that?

A No.

Q You can't testify to that today, can you?

A No.

Q You don't know whether the Judgment was ever domesticated in a foreign state, do you?

A No.

Q So you cannot today give me a specific example of anything the Herbsts did to collect their Judgment between October 2010 and the date of the Judgment, can you?

A No.

Q You don't deny Paul Morabito made payments pursuant to the Settlement Agreement, do you?

A A few.

Q Do you know what the total amount of the payments were?

A No.

Q So you're not here to testify as to the specifics of those payments?

A Not the specifics.

Q You have heard the word Superpumper before?

A Yes, I have.

Q What does that mean?

A A group of service stations I believe in Scottsdale, Arizona.

Q Do you know one of the allegations in this case is that Superpumper was an asset that was fraudulently transferred.

A Yes.

Q Do you know what the consideration that was exchanged pursuant to that transfer was?

A No.

Q Are you here to testify today whether or not the consideration that was exchanged for that transfer was collectible under Nevada law?

A No.

Q You don't know that, do you?

A No.

Q Do you know what Nevada law permits a Judgment creditor to execute upon with respect to a limited liability company?

A No.

MS. PILATOWICZ: Objection. Calls for a legal conclusion.

THE COURT: Sustained, but he doesn't know.

MR. GILMORE: I have nothing further.

THE COURT: Okay. Redirect.

REDIRECT EXAMINATION

BY MS. PILATOWICZ:

Q Did the Herbsts want to collect on the Judgment they obtained in 2010?

A Absolutely.

Q Did they want to collect in 2011?

A Absolutely.

Q Do they want to collect today?

A Absolutely.

Q Would they accept a check from Paul Morabito today if he wrote one today?

MR. GILMORE: Objection.

THE COURT: What was the objection?

MR. GILMORE: Relevance.

THE COURT: What is the the relevance?

MS. PILATOWICZ: Your Honor, there has been ample indications the Herbsts were sitting on their rights not

wanting to collect. The evidence will show otherwise. The Herbsts certainly would be willing to collect today if there was a payment here.

THE COURT: I am going to sustain the objection.

BY MS. PILATOWICZ:

Q If the Herbsts were aware of the transfers at the time they entered into the Settlement Agreement, why did the Herbsts enter into the Settlement Agreement?

A We thought Paul was going to be good on his obligations to the Settlement Agreement. We wanted to be a party of it. He negotiated it. We thought he was going to pay.

Q Did the Herbsts have a desire to spend more litigation funds?

A We wanted it over, everything over. This is going on eleven years. Enough is enough.

Q When the Herbsts entered into the punitive damages stipulation, what assets did the Herbsts take into account? Did the Herbsts make a distinction between other assets that had been transferred and assets not transfered in determining what assets they believed Paul Morabito had?

MR. GILMORE: Objection, foundation.

THE WITNESS: To determining what we were negotiating the Settlement Agreement?

MR. GILMORE: Objection.

THE COURT: Okay. The witness doesn't understand the question. I will let you rephrase the question then I will see if there is an objection.

BY MS. PILATOWICZ:

Q Did the Herbsts consider the transferred assets at the time of the Settlement Agreement, assets that were ultimately Paul Morabito's assets?

MR. GILMORE: Objection, foundation.

THE WITNESS: We considered --

THE COURT: Wait. I don't understand. I am sorry. I don't understand the question.

MS. PILATOWICZ: Fair enough, Your Honor. Let me lay a little more foundation.

THE COURT: Okay. Thank you.

BY MS. PILATOWICZ:

Q In the Settlement Agreement there was a reference to assets that the Herbst parties believed had been transferred. Do you recall that?

A Yes.

Q Did the Herbsts consider those assets assets of Paul Morabito after they were transferred?

A Yes.

Q Was that -- Did the Herbsts take those assets into

consideration when determining the amount of money they believed Paul Morabito had to pay on the Judgment?

A Yes.

Q Why did the Herbsts enter into a stipulation for punitive damages?

A We wanted to be compensated for the gross negligence that Paul and Consolidated, the company did to us.

Q Did the Herbsts wish to pursue another trial on punitive damages?

A No.

Q How much money would you estimate the Herbsts have spent trying to collect the money that was taken by Paul Morabito from 2007 through today?

MR. GILMORE: Objection. Objection. Relevance

THE WITNESS: Close to ten million dollars.

THE COURT: Wait a minute. I have to rule on it.

MS. PILATOWICZ: Your Honor, it again goes to the issue of the extreme effort the Herbsts have taken to collect on the Judgment.

THE COURT: Based on the cross-examination, I will allow the question. I have overruled it. You can answer it.

THE WITNESS: I'd say close to ten million, somewhere in that neighborhood.

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BY MS. PILATOWICZ:

Q And those efforts are continuing today?

A They are going to continue until we collect.

MS. PILATOWICZ: Nothing further, Your Honor.

THE COURT: Okay. Mr. Gilmore, did you have anything else?

RECROSS-EXAMINATION

BY MR. GILMORE:

Q Just two questions. Turn to Exhibit 280, paragraph 5. The parties -- This is the Herbsts' lawyers' stipulation. "The parties have conducted certain discovery concerning the net worth of Plaintiffs." You are aware that your lawyers had conducted discovery in anticipation of a punitive damages trial, right?

A Rephrase.

Q You are aware that your lawyers, the Herbsts lawyers, conducted punitive damages discovery in anticipation of a punitive damages trial?

A Correct. I apologize. Yes.

Q Do you dispute the veracity of this statement: The parties, meaning Paul Morabito and the Herbsts, based upon the discovery as to the net worth of Plaintiffs, the Findings of Fact, Conclusions of Law contained in Exhibit 1, that punitive

damages would be awarded by this Court after a hearing? Do you dispute that?

A No.

Q Then there is a subsequent paragraph, then I will conclude: That the parties have vastly different views as to the net worth of the Plaintiffs. Plaintiffs retained Michelle Salazar. Do you know anything about that?

A No.

Q And then: Defendants, meaning the Herbsts, retained Craig Greene as their expert witness as to the net worth. Do you dispute that?

A No.

Q Do you dispute: The parties recognize there are disparate views of the Plaintiff that may impact the amount of of punitive damages awarded by the court? Is that consistent with your understanding?

A Yes.

Q Are you aware, that pursuant to these stipulations, the parties entered into the stipulated amount of punitive damages as fifteen million dollars?

A I understand.

Q Is it your opinion, Mr. Herbst, is it your belief, Mr. Herbst, that that fifteen million dollars was arrived at in part because of what Mr. Greene had reported in his report?

A I'm not sure how the math works, how the Judge determines it.

Q I am not asking about the math. I am asking: Is it your opinion one of the reasons why this stipulation occurred is because of what Mr. Greene had put in his report?

A Could be.

MR. GILMORE: Nothing further.

THE COURT: Okay. May this witness be excused?

MS. PILATOWICZ: Yes, Your Honor.

THE COURT: You may step down. You are excused.

(Witness excused.)

THE COURT: It is my understanding Mr. Bayuk will be our next witness, is that correct?

MS. TURNER: Yes, Your Honor.

THE COURT: Let's be in recess until 1:15.

(Whereupon the Court adjourned for the noon recess.)

THE COURT: Thank you. Please be seated. Go ahead and call your next witness.

MS. TURNER: Yes, Your Honor. Mr. Bayuk.

THE COURT: You may proceed.

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EDWARD BAYUK

called as a witness, having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

MS. TURNER:

Q Good morning or good afternoon.

A Good afternoon.

Q If you could introduce yourself to the Court reporter spelling your last name?

A Sure. Edward Bayuk. B-A-Y-U-K.

Q You are a named defendant in this case, yes?

A Yes.

Q And you lived here in Reno for many years?

A Yes. From 2005 to 2010.

Q And you left Reno in or about September 2010?

A About that.

Q And you changed your residence to California?

A Correct.

Q And you still reside in California?

A Yes.

Q What is your residential address?

A 371 El Camino Del Mar, Laguna Beach, California, 92651.

Q Now that property is at issue in this case. Is it correct that the El Camino Del Mar home is actually adjacent to another home where there is a shared extended residence?

A No. It is a separate APN. So in 2000 I moved from Los Angeles to Laguna Beach, California and purchased with Paul Morabito 371 El Camino Del Mar. So that is a separate APN. And then 370 Los Olivos that you're speaking about is another separate APN in Laguna Beach 926751 that was purchased in 2005. I am sorry, 2006.

Q And when the Los Olivos home was purchased in 2006, that is adjacent to your El Camino Del Mar home?

A 371 El Camino Del Mar is one street. Then there is an alley called Golf and 370 faces, 370 Los Olivos is another street. So when I purchased 370 Los Olivos in 2006 separate APN, I took down the fence, and I did a major construction on the house and all, so it is still separate today. I could put up a fence and sell either one separately.

Q Before taking down the fence, so there are co-joined backyards if you will?

A Yeah, you could say, yeah, it looks like a compound. It is a block. It goes from one block to another block.

Q And does anybody else reside in the Los Olivos home?

A Presently Mr. Morabito and his boyfriend are there. They spent last year, most of this year and last year in

London, England. His boyfriend, he got his Masters at King's in London.

Q Because there is a couple of Morabitos we are going to be referring to, when you are referring to Mr. Morabito, do you mean Paul Morabito?

A Yes. Sorry.

Q How long has Paul Morabito been living in the Los Olivos house?

A Like I said, this past year and the year before he was in London a lot, so I don't know how many months or days.

Q Prior to going to London, did Paul Morabito reside in the Palm Springs home?

A No. He resided -- well, he resided -- He had a condo in Los Angeles, the Doheny building. He was there for three years I think. Then he moved over to Kings. It is a street above Sunset Boulevard. He lived there for about three years, and then he went out-- I think he lost his house there. Yeah, he lost the lease or whatever, and he moved. He was in Palm Springs for about six months or so I think.

Q When was that in Palm Springs?

A I forget what year. I'd have to go check, look at a calendar.

Q Does 2016 sound about right?

A Yeah. I think he moved out of the L.A. house in

'16, yeah.

Q When I refer to the Palm Springs home, that is the Mary Fleming address?

A Correct.

Q Mary Fleming is another property that is going to be at issue in this case. Now the El Camino Del Mar, Los Olivos homes in Laguna Beach, California as well as the Mary Fleming Palm Springs home, those are held in the name of the Edward William Bayuk Living Trust, correct?

A Correct.

Q And is it your testimony that you reside in the El Camino Del Mar home currently? You do not reside with Paul Morabito who lives in the Los Olivos property that is also in Laguna Beach?

A I haven't lived with Paul Morabito since around 2010. I see him a lot and I have dinner with him, but I, you know, don't live with him.

Q Does Paul Morabito pay rent to you for the use of the Los Olivos home?

A Him and his boyfriend did sign a lease with me.

Q When did they sign a lease?

A Good question. Probably around the time they were there part time. I can get that for you.

Q So Mr. Morabito is your tenant and neighbor in

Laguna Beach, that's fair, right?

A Today right now, yeah.

Q Now let's go back in time a bit. You met Paul Morabito in the '90's?

A I met Mr. Morabito, Paul Morabito in 1997.

Q And he became your business partner?

A No, not at the time. We were friends and started dating, and then at some point in time I started doing some work for him.

Q When you met Paul Morabito, you worked at GE, is that correct?

A No. I started my career at General Electric in Connecticut after graduating undergrad. I got hired into their executive marketing program and actually interviewed with a lot of companies while I was there. I actually got vetted because I had gone through the process previously with the CIA, and I got offered a job, got vetted by them. I didn't take the job. They were a little pissed at me, but I stayed with GE, and I was with GE for about seven years, and then unexpectedly GE moved from Connecticut to California, then I went to work for Rupp Schneider which is a competitor of General Electric in power distribution products. So I stayed in the industry, and those people moved me to California. So I stayed in the industry. Both jobs I was in sales and

marketing other than the first two years with GE I was going through their executive marketing program.

Q When you met Paul, you were employed with Schneider?

A I probably was finishing, yeah.

Q Now at some point in time you moved in with Paul Morabito?

A Yes.

Q And lived with him. And that was a point in time when gays couldn't get married, but did you have a domestic partnership?

A No, we never had a domestic partnership.

Q So you lived with Paul Morabito and he was your boyfriend?

A Correct.

Q And then in September 2010 you go and changed your residency from Nevada where you lived with Paul?

A Correct.

Q Here in Reno, and you changed it to California?

A Correct. And, previously, it was California.

Q And it is your position that at that point in time, September 2010, you no longer lived with Paul Morabito?

A Yeah. I mean he was moving. He was planning -- He had found a place in Los Angeles, and I was moving back to Laguna Beach to use those residences there. And I did go -- I

mean I went to see him a lot in Los Angeles. We are still to this day good friends.

Q If you would go to Exhibit 35. That is the second book from the right. Do you see it right there. That's it. Exhibit 35. Now if you look at Exhibit 35?

A Yes.

Q You see the e-mail on the first page?

A Yes, I do.

Q And from Mark Lehman to you and others, and there is an amendment to a residential lease attached. Do you see that?

A Yes.

Q Do you recognize the e-mail and the attached amendment to the residential lease set forth at Exhibit 35?

A Yup.

Q And that is your signature on the third page of the exhibit, correct?

A This is the first amendment. There was one previous to this.

Q Okay.

A So there were two leases. The original lease didn't have my name on it, and I asked my name to be put on it due to Paul in 2009 had a surgery, and he had a medical condition that he was in the hospital, actually had one percent

survival, and he was in ICU in one hospital for two weeks, and then I had him transferred to Cedars Sinai where he was there for about six, eight weeks in ICU. So he was not medically well through 2009. So from July 2009 until December, his first car ride was December 13th, 2009. And he was very lucky to get through what he went through, because he had two emergency surgeries and all. So through this process, I asked to be put on the second lease, because I wanted to have access to the apartment. I actually -- yeah. And so I wanted to make sure he was going to the doctors. I took him to the doctors, went to a lot of medical appointments with him and all. So that is why my name is on the lease.

Q Okay. If we can look here at this Exhibit 35. That is your signature on the third page of the exhibit?

A Yes.

Q And that is dated September 27, 2010?

A Right.

Q As the tenant?

A Correct.

Q Your testimony is that it was your desire to be added to the lease of this residence?

A Yes.

Q And if we go to the second page of this exhibit, the residence is 9255 Doheny Road in West Hollywood, California,

is that accurate?

A Yes.

Q The purpose of the first amendment to the residential lease, if you look down further on the second page, it was to add Edward Bayuk as a tenant. That is consistent with your testimony, correct?

A Yes.

MS. PILATOWICZ: Your Honor, I move to admit Exhibit 35.

THE COURT: Any objection?

THE WITNESS: I think the date of the first lease is mentioned in that as well, too, just so you know, July 31st, 2010.

MR. GILMORE: No objection.

THE COURT: Exhibit 35 is admitted.

(Exhibit 35 admitted in evidence.)

BY MS. TURNER:

Q Now once you started dating Paul Morabito, you left your employment with Schneider and started to work in conjunction with Paul Morabito, correct?

A I did some projects for him, yes.

Q And eventually you went on the payroll of Superpumper?

A Well, no.

Q I think I know why you're hesitating. The holding company?

A The time period is wrong.

Q Okay.

A You are talking 1997, '98.

Q I am going too fast forward.

A You're a decade off.

Q So for -- Well, what period of time did you cease working at Schneider?

A I left Schneider in 1997.

Q And you became an investor in conjunction with Paul Morabito after that point in time?

A Well, I didn't invest with Mr. Morabito in 1997.

Q After that point in time?

A I became an owner in a company of Paul Morabito's I think the year was 1999. But you'd have to get some documents. I am going from memory.

Q Well in the years following 1997, you invested in real estate and stock in companies, equity in companies in conjunction with Paul Morabito?

A You just said 1997?

Q I said subsequent to 1997. In the years following?

A '99 and beyond.

Q Yeah. Okay.

A Okay.
Q That would be subsequent. After, right?
A Sorry. Sorry. Little slow sometimes.
Q There were many properties that you invested in with Paul Morabito?
A Yes.
Q And there were many companies that you invested in with Paul Morabito?
A Yes.
Q And at some point you lived with Paul Morabito in Florida?
A Yes.
Q In L.A.?
A Yes.
Q Palm Springs?
A Palm Springs was a winter house. It was actually purchased because we were wanting to develop that market, the Palm Springs market. That is why we purchased the house. We used it as an office.
Q Los Angeles?
A I lived -- I moved to Los Angeles from Connecticut, so actually had quite a few places there.
Q Laguna Beach, we discussed that?
A Yes.

Q And Reno?

A Yes.

Q And when you moved to Reno, that was from Florida, correct?

A No. I was living in Laguna Beach, California. I was living at 371 El Camino Del Mar, and I was using Mary Fleming in the wintertime.

Q What brought you to Reno?

A We had been doing business in Reno since 1999. We, in 1999, Q Lube was purchased by Penzoil, and there was a problem, because we had a market in Austin, Texas. We had a market in Colorado Springs. And Penzoil wanted to -- There was a couple of franchisees that were in conflict. We were one of the biggest ones in conflict. So they were trying to -- I got with Penzoil and Paul Morabito and they were trying to cut a deal where they would give us a market and we would give up Austin, Texas and Colorado Springs, Q Lube in Colorado Springs. So they gave us Reno, and they awarded us market rights to the Coachella Valley in the desert, Palm Springs area.

Q Now you became a salaried employee with that venture?

A No. I became a-- At some point I was on salary, then at some point I became a shareholder and then an officer.

Q So you started out a salaried employee and eventually became an owner?
A Right.
Q And there was a company called PAMCO, a company owned by Paul Morabito?
A Correct.
Q It changed its name to Consolidated Nevada Corp.?
A Correct.
Q And that entity acquired Berry-Hinckley?
A Correct.
Q In 2005?
A Correct.
Q And you had some ownership with Consolidated Nevada Corp.?
A Correct.
Q As did Salvatore or Sam Morabito?
A Correct.
Q If I use Sam, are we understanding each other we are referring to the gentleman here?
A Yes.
Q Okay. Sam Morabito is Paul's brother?
A Yes.
Q Just to avoid confusion, Salvatore Morabito, that is Paul's father, correct?

A Yes.

Q Now you would describe your business at least since you moved to Reno with those as an investor, correct?

A I was an owner.

Q And Paul and Sam are investors and owners as well?

A Which business?

Q With various businesses that you have had in common with them?

A Okay. Well, you want to be specific, because we were talking about Jiffy Lubes, Q Lubes and Berry-Hinckley. There is more than one business.

Q There has not been any business that you have had co-ownership with Paul Morabito where you weren't both officers and owners, correct?

MR. GILMORE: Objection. Foundation.

THE WITNESS: Best to give me a document.

THE COURT: Overruled.

THE WITNESS: I am trying to help you, because it is obvious that you don't know all the history of everything, and I am trying to be helpful to you. So it is easier if you give me documents then, because I don't want to get caught saying something that is wrong and I stated it.

MS. TURNER:

Q So to your best recollection, has there ever been a

situation where Paul Morabito was just an employee and you were an owner of that company?

A An employee and he was an owner?

Q No. You were an owner. Where you were an owner and he was just an employee?

A I have had companies where he was an employee, so that is one point. That he wasn't an owner, yes, there was.

Q So you have been Paul Morabito's superior in the past where he reported to you as an owner and officer, and he was something less than that?

A Yes.

Q And you have had the reverse where you have reported to Paul Morabito as an employee and he was an owner?

A Well, most of the time in partnerships you all work together, so.

Q Paul Morabito was your partner?

A Business partner in a number of businesses, yes.

Q He was your business partner as well as your domestic partner?

A Not domestic partner. He was a boyfriend. We were boyfriends. We were not domestic partners in California or in Nevada. Gays didn't have rights until I think June 2015 or '16, the Supreme Court decision, so we were not domestic partners. We were boyfriends.

Q Are you married to anyone currently?
A I have never been married.
Q Are you a registered domestic partner with anyone currently?
A No, I am not.
Q Have you ever been?
A No, I have not.
Q Now Berry-Hinckley was in the gas business, correct?
A Yes.
Q And you held the title of Executive Vice-President; is that right?
A If the document says that, yes.
Q And you are paid a lot of money?
A Yes.
Q Now you didn't -- You held the title of Vice-President and you did receive compensation. You didn't have direct responsibility of the day-to-day operations, correct? You weren't a manager in the stores?
A No, but I could do anything I wanted.
Q Now when Berry-Hinckley was sold to the Herbsts in 2007, PAMCO and Consolidated Nevada Corp., they had no further business, correct?
A When CNC got sold?
Q To the Herbsts?

A Yes. What was the question? I'm sorry.

Q There was no further business beyond the ownership with Berry-Hinckley?

A Correct.

Q Now since the sale of Berry-Hinckley in 2007, you have collected a salary. I shouldn't say "since." Following the sale of Berry-Hinckley in 2007, you started collecting a salary from Superpumper or its related company?

A Yes.

Q Did you receive the salary from Consolidated Western Corporation or Superpumper?

A Probably my W-2 would show you that or actually cooperate documents would show you that.

Q And so we are on the same page, Superpumper is an operating company that had eleven gas stations and C-stores in Scottsdale, Arizona?

A Yes.

Q We saw on the news somebody bought a Mega Millions ticket. It was within the last week anyway?

MR. GILMORE: At Superpumper?

THE WITNESS: No, I didn't hear that. Good.

MS. TURNER:

Q Now you collected a salary from Superpumper or CWC. CWC or Consolidated Western Corporation was the holding

company where the ownership or the equity was held by the owners of Superpumper, correct?

A Yes.

Q And up until September 2010 you were a ten percent owner in CWC?

A Whatever the documents show.

Q Is that consistent with your recollection?

A Yes. And refer to documents.

Q Do you recall Paul Morabito owned an 80 percent interest in CWC until September 2010?

A Whatever the documents show.

Q You don't have an independent recollection?

A Of the years, no. I just know I own 10 percent.

Q And Sam Morabito owned another ten percent?

A Yes.

Q And then up through September 2010, you -- Paul Morabito was the CEO of Superpumper, correct?

A If he gave himself that title, that is probably correct.

Q And you were an officer and director as well as Paul?

A If he gave me a title, that's probably correct. I mean there is an analogy. I have got to tell you a side story. You know, I worked at two big corporations. One of the things

Jack Olsta was really frustrated with, one year he gave all the sales people who had sales people the title Vice-President, and all those people worked for GE Capitol were able to get in all the Fortune 500 companies. Just because of the title of Vice-President doesn't necessarily mean you are Vice-President in a corporate document that is filed with the state. So I just want to clarify that with you. A lot of people don't understand that, but that's why I refer to corporate documents that are filed or signed.

Q So without a document in front of you, you can't testify whether you were an officer or director of CWC up to September 2010?

A I collected a salary from Superpumper. I own ten percent. And I don't know if I had a business card that said Vice-President. I don't think I did.

Q And do you understand what a director is and what they do for a corporation?

A Yeah.

Q Generally?

A I have been on four boards, Board of Directors, so yes.

Q You, Paul and Sam were on the Board of Directors for Superpumper up through September 2010, correct?

A Yes, if the documents say that.

Q Well, you know that to be the case, right?

A Right. But you have documents, too, that show if I was an officer and director.

Q So I am asking you --

A Yeah.

Q -- for truthful testimony. Do you recall that you were on the Board of Directors for Superpumper with Paul and Sam up through September 2010?

A My understanding I was an owner, 10 percent owner in Superpumper. So being a director or Vice-President, it would be helpful if you would just show me.

Q If we can go to Exhibit 83.

A Leave this one out?

Q Sure. I am sure we'll be going back to it. Okay Exhibit 83. If you could take a look, we have a consensus of the Board of Directors and shareholders of Superpumper. Do you see that?

A Yes.

Q This is really to refresh your recollection. You see the listed names of the Board of Directors for Superpumper as of the 28th day of September 2010? It is on the second page of Exhibit 83.

A Yes.

Q Do you see Edward Bayuk, Board of Directors. There

is a signature there?

A Yes.

Q And does that refresh your recollection that you were on the Board of Directors with Paul and Sam as of the 28th day of September 2010?

A Yes.

Q And this particular document --

MS. TURNER: Which I believe is in evidence, Your Honor?

THE COURT: Yes, it is.

MS. TURNER:

Q -- relates to the merger of the CWC or Consolidated Western Corporation with Superpumper, correct?

A Yes.

Q You consented to that merger on September 28, 2010, correct?

A Yes.

Q Now if you could go to the next exhibit which is Exhibit 84. If you could go to that second page. You see your signature?

A Yes.

Q As a shareholder and director. And then if you go to the first page, it will tell you this is the unanimous written consent of directors and shareholders of Consolidated

Western Corporation. Do you see that?

A Yes.

Q So does this refresh your recollection as of September 28, 2010, you were on a Board of Directors with Paul Morabito and Sam Morabito with respect to CWC?

A Yes.

Q And you were also an owner as you previously testified?

A Yes.

Q Now you testified you were a 10 percent owner. You recall that. Does this refresh your recollection that Paul Morabito held an 80 percent interest in Superpumper, pardon me, in CWC, the 100 percent owner of Superpumper?

A Yes.

Q In addition to being the Director of Superpumper you were also the President?

A Of Superpumper?

Q Of Superpumper, correct?

A When Sam and I organized Snowshoe Petroleum, I was President of Superpumper.

Q Then you were Vice-President and Secretary of Snowshoe Petroleum, Inc., correct?

A Yes.

Q And then Sam was the reverse, is that your

recollection?

A Correct. It is helpful with documents, but I am sure there is corporate documents.

Q If we go to Exhibit 101, do you remember signing Interrogatories during the case where the Defendants had to require answers to Interrogatories?

A Yeah. I know I have gotten a lot of Interrogatories for lots of stuff.

Q So let's see if this refreshes your recollection. Let's see which one. Interrogatory number two: Identify all current officers of Superpumper.

MR. GILMORE: Excuse me, Your Honor. Is this being used to refresh his recollection or is this being offered? If it is being used to refresh, he can read it and testify. It shouldn't be offered or read onto the record.

THE COURT: She was using it, as far as my notes, to refresh recollection.

MS. TURNER: That's right.

MR. GILMORE: She started to read the Interrogatory on the record. That is the only reason I stood up.

MS. TURNER: That is probably fair.

MS. TURNER:

Q If you could go to Interrogatory 2 and read it to yourself and look at the answer.

A Read number 2?

Q Number 2.

A Identify all current officers of Superpumper, Inc., including titles held by each officer. Edward Bayuk, Salvatore Morabito as Vice-President and Secretary.

Q Does that refresh your recollection?

A Yes.

MR. GILMORE: Objection withdrawn.

MS. TURNER:

Q Do people ever tell you you have a voice like Alec Baldwin?

A No, but I have been told other different people. I try to remember the guy they were telling me, but similar to Alec Baldwin.

Q Now, you were in court on September 13, 2010 in Department 6 which is Judge Brent Adams' department. You were there when he made his oral ruling, correct?

A I believe so. I missed most of the trial. I only spent probably, I am not sure how long the trial was, but probably a week's worth of days, so I was probably there that day.

Q So do you recall when Judge Adams made the oral ruling that you and Sam would be dismissed from the underlying case against the Herbsts?

A I was there. I do remember that.

Q And Paul Morabito would be liable to the Herbsts for at least $80,000,000?

A Correct.

Q And if you were there, Paul Morabito was there?

A Yes.

Q And Sam Morabito was there?

A Yes.

Q Now much of my questions will be related to the time period subsequent to that oral ruling just to make sure we are not ambiguous. If I am asking about something else, I will make sure I let you know. Now it was September 13, 2010 that started the conversation with Paul Morabito and Sam Morabito to transfer assets to you and to Sam, correct?

A Well, you know, let me, because I am listening to your knowledge of history and years and decades, I probably should make things clear with you. Whatever Paul's stuff is, it is Paul's stuff. Whatever my stuff is, it is my stuff. That includes money. That includes properties. That includes clothing. So, you know, the answer to your question is that if at some point in time I spoke to Paul and then we got layers involved, that I wanted to separate things because I realized things were going to become incredibly complicated for Paul, and I wanted not to be involved with it all.

Q When you say things were about to become incredibly complicated with Paul, you mean he was going to be responsible to the Herbsts for tens of millions of dollars?

A Yes.

Q And it was as a result of you sitting in court and listening to that oral ruling that you hired counsel for the purpose of effectuating a transfer from or transfers from Paul Morabito to you, Sam or to affiliated entities?

A No. We hired multiple certified MAI appraisers for the house, and we hired other appraisers, so that my ownership, i.e. the houses that were owned tenants in common, that I could have hundred percent owner of what I wanted, and he could have what he wanted. And I also realized at that point in time Mr. Morabito, Paul Morabito, would owe the Herbsts a lot of money, and it was not my responsibility to pay the Herbst family and it was his responsibility. And I could give you my opinion what the Herbsts should have done, but I was doing what I wanted to do. I wanted to go back to California. I was very disappointed. I am respectful to the Judge, but I was very disappointed to what happened to Paul. I was upset by it. But at the same time, I wanted to go live my life, go back to California. I was very upset selling my portion of the house in Reno, because I spent a lot of time and effort building the house. And you will hear about the

house later, I'm sure. But my intentions were to separate things so Paul Morabito could pay the Herbst family what he may owe them.

Q Let me back up and make sure we unpack that?

A Oh, yeah.

Q There is not one piece of paper or e-mail that reflects your intention to or stated intention to separate out the property from Paul Morabito prior to the oral ruling. That oral ruling was the impetus for your actions, correct?

A Well, the oral ruling was devastating to Paul Morabito, and I was released from the case, and I wanted to potentially go live my life without being bothered by the Herbsts family. And I can tell you some side stories the Judge would be horrified over, but I won't. Just, I just wanted to go live my life and do business and develop business ventures and all. So I mean --

MR. GILMORE: Your Honor, we stipulate that the impetus of the transfers was the oral Judgment. We stipulate to that.

THE COURT: Okay. Your attorney just stipulated to that.

THE WITNESS: Okay. I am just trying to explain why I did it.

MR. GILMORE: We haven't stipulated to that, but I

stipulated it was the oral Judgment that started the process.

MS. TURNER:

Q Now prior to that point in time, that oral ruling on September 13, 2010, we already talked about your joint ownership or common ownership with Superpumper and CWC, correct?

A Correct.

Q And then you had, you referenced the residence?

A Correct.

Q Through an entity called Baruk?

A Baruk like the gold mine, Baruk Properties, LLC.

Q That is spelled B-A-R-R-I-C-K. That is not the spelling here.

A No. It is B-A-R-U-K. The property company you are speaking of is Baruk Properties, B-A-R-U-K. The reason I make that comment, people don't pronounce it right. That is why I said that story.

Q Baruk Properties is something that you held ownership in that entity fifty/fifty with?

A Paul Morabito.

Q And then there was Superpumper Properties, LLC that you had common ownership with Sam and Paul Morabito, correct?

A Yes.

Q And Big Wheel Lodging, Big Wheel Gaming, Big Wheel

Hospitality, a casino and truck stop in Fernley where you had ownership, correct?

A I believe so, yes.

Q Then Watch My Block?

A Yes.

Q Then we talked about the Reno house. That was on Panorama, correct?

A Correct.

Q And that is out by Huffaker Lane?

A Yup. I was over there the other day taking pictures of the 36 Maple trees I planted.

THE COURT: They were pretty weren't they?

THE WITNESS: Beautiful. I took like ten pictures. I planted 36 Maple trees down the driveway. When you drive down this long driveway, it is just covered. This is like the perfect time of year. I love this time of year. So it was amazing.

MS. TURNER:

Q Now your attorney here today is Frank Gilmore, correct?

A Yes.

Q And he represented your interests, Sam Morabito's interest and Paul Morabito's interest in the underlying case against the Herbsts, correct?

A No.

Q His firm did?

A No.

THE COURT: He can answer the question without shaking your head, Mr. Gilmore. That may have been involuntary. You were shaking your head.

MR. GILMORE: If she is suggesting that was the case, I was shocked to hear it that's why.

THE COURT: Just try not to.

MR. GILMORE: I didn't mean to do it intentionally.

MS. TURNER:

Q It may have been subsequent to the Judgment being entered that Frank Gilmore was retained. He represents you, Sam and Paul, correct?

A Frank today represents myself and Sam, and he separately represents Paul Morabito.

Q When Paul Morabito was a party to this case, he represented Paul Morabito in conjunction with you and Sam?

MR. GILMORE: Objection to the relevance of this line of questioning.

THE COURT: What is the relevance?

MS. TURNER: Well, there is a common interest amongst Paul Morabito and the two Defendants here. When we are trying to meet our burden on the fraudulent transfer, we

have to show that Paul Morabito had an intent.

THE COURT: Because there is an issue with regard to the representation, if they did not have a common interest, they may have had a conflict, therefore, I am going to overrule the objection and the testimony is admissible and will be admitted.

MR. GILMORE: There has been no foundation this witness knows what Paul's representation was prior to Mr. Bayuk's involvement.

THE COURT: That may be. The witness can testify to that if he doesn't.

MS. TURNER:

Q Specific to this particular case, when Paul Morabito was a party, Frank Gilmore's firm represented you, Sam Morabito and Paul Morabito in joint representation, correct?

A Because I am not a lawyer and a layman in that regard, I will agree with you just because I just thought I am here today to defend my credibility. That is why I am here today and set the record straight. But I am here today because Sam and I are being sued. It is a fraudulent transfer case. I know Frank has been representing Paul for a number of different lawsuits and different things. So if you tell me Paul is listed in this lawsuit being sued, the three of us, I will say yes to that.

Q You at no point had special counsel that just represented your interests separate from Paul's when Paul was a party to this case?

A I have had separate counsel for other lawsuits from the Herbsts against me.

Q I am talking about this case when Paul Morabito was a co-defendant?

A No, I don't think so.

Q Have you ever--

A I have to think for a second, because I have had so many lawsuits served on me from the Herbsts, you have got to just give me a second. Yeah, I think that's correct.

Q Have you at any point executed a conflict of interest waiver with Frank Gilmore?

MR. GILMORE: What is the relevance of this, Your Honor?

THE COURT: Overruled.

MR. GILMORE: Your Honor, my office took representation of Mr. Bayuk only after these claims were filed and not before. The common interest privilege to the extent has anything to do with the transfers, my firm had no representation of Mr. Bayuk or Sam Morabito or anybody at the time the transfers occurred. I am only trial counsel for this case for Mr. Bayuk.

THE WITNESS: That's right.

MR. GILMORE: What she's invading or attempting to discuss are things regarding my representation in this case. I didn't represent Mr. Bayuk before this case. I want to make that very, very clear.

THE COURT: I don't understand. She asked a question if he had exercised a conflict statement with you. The answer is yes or no. Everything you just said has no relevance to his answer yes or no. Now if we are going to get into specific substantive information, that may go to your objection. But your objection is not timely. It is overruled. You can answer the question about the conflict.

THE WITNESS: I am sure I did. I'm guessing.

MS. TURNER:

Q You're sure you did or do you have a recollection of acknowledging a conflict of interest?

A I just assumed I did. I have signed a lot of documents and that's --

Q You don't have any independent recollection here?

A No. It was hard even doing the Interrogatories because I am running other businesses.

Q When Paul Morabito was a co-defendant with you and Sam Morabito, you didn't have any issue with Frank Gilmore representing all three of you because you had a common

interest against the Herbsts is how I am understanding your testimony?

A My --

MR. GILMORE: Objection on relevance. Objection on asked and the questions may invade the attorney-client privilege.

THE COURT: Overruled.

THE WITNESS: My anger is not to the Herbsts. So I have no axe to grind with the Herbst family. You know, I thought I was going to be able to go back to California and live my life. So if you are asking me the question -- I have spent millions and millions of dollars on litigation fees and a major disruption of my personal, family and business life. So if you are asking me the question I allowed Frank Gilmore to represent me in this case, Frank was not involved when I bought the portion of El Camino Del Mar and Los Olivos. He's not involved in that. That was two other attorneys. So if you are asking me about specific documents that I signed, I would only be guessing unless I can see them, because I have signed hundreds and hundreds of documents. And I have pretty good history, knowledge of years. But months go, weeks run into months. We are in 2018. I was standing in the hallway a few minutes ago and I asked Frank what year was it. 2018. I was trying to remember something that happened in 2016. I am

a busy guy and I am trying to be hugely helpful as much as I can. I apologize if I make a mistake.

MS. TURNER: I don't know if we got an answer to the question, Your Honor.

THE WITNESS: I don't know. I believe so, but I don't know.

MS. TURNER:

Q Okay. Now Frank Gilmore is not the only attorney you have had in common with Paul Morabito. You referenced two others prior to the transfers. Dennis Vacco represented your interests, correct?

A Dennis Vacco was an attorney for me as well.

Q He was an attorney for your interests as well as Paul Morabito's at the time of the transfers in September 2010?

A Well, transfers is plural. I had an attorney who was involved with the houses, and I think he was also involved with the commercial properties. Dennis' office was involved with the business and Dennis might have been copied or a little bit involved with the houses just so he knew what was going on.

Q Dennis Vacco was your counsel in September of 2010?

A If you have a document that I signed something with him, I am sure I was paying him. I am sure I was paying him,

yeah, so.

Q Dennis Vacco also represented Paul Morabito in that same time period?

A He had been representing Paul Morabito for a long time, way before that.

Q So the answer is yes?

A Yes. Sorry.

Q As well as Sam Morabito?

A Yes.

Q And you have also shared CPAs with Paul Morabito?

A Yes.

Q And Stan Bernstein represented your interests as well as Paul Morabito?

A Yes.

Q And Sam Morabito?

A Yes.

Q And Gursey Schneider, do you recognize that name?

A Yes.

Q They were your accountants?

A Yes.

Q As well as Paul Morabito's?

A They were auditors for Snowshoe Petroleum and Superpumper, Inc.

Q So your affiliated entities, they were auditors?

A Right.

Q They were the auditors when Paul had an ownership interest and was on the Board of Directors with those entities, correct, of Superpumper?

A There was another accountant, Dave Darata. So after Stan, there was Dave Darata and Gursey Schneider.

Q Gursey Schneider was the auditor for Superpumper while Paul was still involved?

A Paul was just probably -- To help you a little bit, Paul is a kind of odd type person. He's a visionary and he's not an operator. So that is why he works all the time. He works nonstop. And so he was involved with, as we divvied up things fairly, he was involved.

Q When you say he?

A Paul Morabito.

Q My question was whether or not Gursey Schneider was the auditor while Paul was on the Board of Directors with you at Superpumper?

A Gursey Schneider audited the company a couple of years, so I'm trying to remember what year Paul, you know, when Paul was out of the picture. So Paul's not the-- Once Snowshoe Petrolum owns Superpumper Inc., the auditors, Gursey Schneider is doing the audit, so Paul is not, he's not paying Gursey Schneider, I am. So the company is --

Q My question was whether or not Gursey Schneider was in place at the time that Paul was at Superpumper?

A They were auditors for a couple of years. So probably there is a document somewhere that says it. I am trying to remember, you know, the timing and stuff.

Q So I am trying to you let you finish your answers, but we are going to be here a long time. If you could answer my question and then your counsel can follow up.

Let's move on but we'll come back to Superpumper. But talking about the parties to this case, Edward William Bayuk Living Trust, that is your Trust, correct?

A Yes.

Q And that is a Trust you set up. You are the Trustee and the beneficiary of the Trust?

A Yes. Yes

Q It was an estate planning tool to avoid probate on assets in the Trust's name, correct?

A Yes.

Q And Paul had a living Trust in place as well where you are named as a beneficiary, correct?

MR. GILMORE: Objection. Foundation.

THE WITNESS: I am not privy to all his documents.

THE COURT: I will overrule the objection.

THE WITNESS: I am not privy, but I know he thought

highly of me, so I would not be surprised if I was in his Will or Trust.

BY MS. TURNER:

Q You have been advised that in September 2010, you're restated as the primary named beneficiary of Paul's Trust, correct?

MR. GILMORE: Objection. Foundation.

THE WITNESS: If you show me his Trust.

THE COURT: The objection is overruled. He can either answer he is or not.

THE WITNESS: I am sure you have a document. I am sure I am.

BY MR. TURNER:

Q Before we get to the document, let me just ask, I am asking you to testify truthfully?

A Right.

Q You know you are the primary beneficiary of his Trust, correct?

A No one knows who is the beneficiary of my Trust, but I believe I am. And I think I have seen documents with my name in it that I am the beneficiary. But he used to change his Trusts all the time. When I met him, he had a Trust. Two or three years later he had Trust. His lawyers would update it. So he would add things to it. When he's adding things to it,

he could change it. So I don't want to -- am probably in some the of Trust documents, more than one version.

Q Let's go to Exhibit 39. It is in evidence, Your Honor. If you could go to the page, the bottom right-hand corner 1875. 1875.

A Got it.

Q Okay. It is really hard to read on this E.L.M.O. but do you see where it says Family Information Section 1.1?

MR. GILMORE: Objection foundation. It has not been established this witness knows anything about this document just because it is in evidence?

THE COURT: If the document is admitted into evidence, the witness can testify that he knows nothing about it or he has no knowledge. Your continual objections giving him cues is not appropriate. I am overruling your objection. We need to get through the testimony. Either answer the question or not. If you have never seen the document, tell us that and move on.

THE WITNESS: No, I have not seen this document.

BY MS. TURNER:

Q Have you seen earlier versions of the Trust document?

A Well, this says Fifth, so at some point I probably did see one one day that had my name in it.

Q So the date of this Fifth Amendment that is in evidence is dated September 30, 2010. If you look at the top of this particular page that I directed your attention to September 30, 2010, does that refresh your recollection that there was a restatement of Mr. Morabito, Paul Morabito's Trust Agreement for the Arcadia Trust?

MR. GILMORE: I am sorry, I don't mean to keep objecting. I am definitely not trying to influence testimony, but this witness has not been asked first all if he knows this document when he did testify he doesn't know it. The questions related to this document are my client's knowledge of this document keep coming. I don't want to keep objecting, but the issue is--

THE COURT: Doesn't it sound a little like she didn't believe him, and this is a witness that she's taking him on, but she's cross examining him because he's a witness that has an adverse position to hers? The question sounded sounded like she did not believe his answer so she was giving him an opportunity to refresh his recollection. I don't know if that is what is happening. I am going to do at least one question. Overruled.

MR. GILMORE: All right.

THE WITNESS: So now I will follow some of this now. But to answer to your questions, I have not seen this

document. And your earlier question was I have probably seen one at some point in time but not this one. I have never seen this.

BY MS. TURNER:

Q In the document that is in evidence or I would have never done this, it says: I live part time with my boyfriend and long-ime companion Edward William Bayuk dated September 30, 2010?

A Note the part time.

Q That was an accurate statement then on that date?

A He was dating people that time period, and I was a boyfriend. I am not going to get into what people do in their personal life here, but, you know, if you want me to I will.

Q My question is: Is that a truthful statement of September 30, 2010 when Paul Morabito writes: I live part time with my boyfriend and long-ime companion Edward William Bayuk? Was that a truthful statement?

A We were living in Reno.

Q September 30, 2010?

A By then I moved back to California.

THE COURT: Sir, that is not the question. The question is is that truthful or not.

THE WITNESS: Yeah, that's true.

///

BY MS. TURNER:

Q In fact, you had executed the amendment to the lease to make sure that you had access to the apartment in West Hollywood, correct?

A I did that because for medical reasons.

Q Now Snowshoe Petroleum Inc., a Nevada company, a New York company, did not exist before September 2010, correct?

A Yes.

Q It was only after the oral ruling from Judge Adams that Dennis Vacco created Snowshoe Petroleum a New York corporation at your and Sam Morabito's direction?

A Dennis Vacco was the attorney.

Q Yes.

A For Snowshoe Petroleum Inc.

Q Somebody had to direct Dennis Vacco to create the entity?

A Yeah. He did all the corporate documents.

Q And it was after Judge Adams' oral ruling that that direction was made to Dennis Vacco to set it up?

A Yes, that was probably that time period.

Q And Snowshoe Petroleum was formed for the purpose of acquiring Paul's interest in CWC, Consolidated Western Corporation, correct?

A Yes.

Q And Consolidated Western Corporation was a Nevada company?

A Yes.

Q And now that 80 percent interest in CWC that was owned by Paul Morabito would be owned by Snowshoe Petroleum, a New York company?

A Yes.

Q Now prior to Snowshoe Petroleum's ownership of the Superpumper equity or shares, CWC, a Nevada corporation, owned 100 percent of Superpumper, correct?

A Yes.

Q Now, in September 2010, Paul didn't just hand you his shares in CWC. You had Paul transferring his interest from CWC to Snowshoe Petroleum, correct?

A We purchased his shares, then we formed Snowshoe Petroleum.

Q To hold the interest?

A Correct.

Q Now if Paul just wanted to sell his shares to you, you could have co-owned Superpumper in CWC. You were already an owner, a ten percent owner of CWC, correct?

A Right.

Q But there was a decision made to create a new company out of New York to hold that interest instead of CWC?

A Yes.

Q And that was your decision?

A I think what it was, the Snowshoe Petroleum was a holding company. It was going to own Superpumper Inc. And Snowshoe Petroleum was in search of other opportunities in New York, Chicago, Florida, and we chose New York because Dennis Vacco was the attorney.

Q CWC was the 100 percent holding company of Superpumper?

A Right.

Q It had no other purpose other than that business?

A Right.

Q And in September of 2010, Snowshoe Petroleum, a New York company, was formed?

A Right.

Q To hold the interest in Superpumper?

A Correct.

Q And that decision to change the holding company from CWC a Nevada corporation to Snowshoe Petroleum, a New York corporation, that was your decision?

A Well, the decision was made between Sam and I, and we didn't have any other Nevada attorneys anymore, so Dennis was hired to do the corporate paperwork from New York. That is why it became a New York LLC.

Q I want to make sure that by the response to the question that it is clear on the record. You and Sam made the decision to create Snowshoe Petroleum, a New York company, to be the holding company of the Superpumper equity?

A Right.

Q Now there was a shareholder interest purchase agreement, correct?

A Yes.

Q Now if you could go to Exhibit 103. Exhibit 103.

A Okay. Got it.

THE COURT: Exhibit 103 has been admitted.

MS. TURNER: Thank you.

BY MS. TURNER:

Q I wanted to clarify this. I think that was one of the later ones. That wasn't on my list. Exhibit 103, if you look on the second page, that has your signature, correct?

A Yes.

Q And it is a Promissory Note dated November 1, 2010, correct?

A Yes.

Q And this Promissory Note provides a promise from Snowshoe Petroleum Inc., to pay Paul Morabito $1,462,013.00 correct?

A Yes.

Q That was to be paid over time?
A Yes.
Q And this Promissory Note was to represent value conferred to Paul in exchange for his 80 percent interest in CWC, correct?
A Was there anymore notes with that? Oh, yes. Yes.
Q Was there any other purpose for this note set forth in Exhibit 103?
A Yes.
Q There was another purpose?
A No. No. The answer to your question is yes.
Q Now, subsequent to the execution of this Promissory Note for $1,462,013.00 there were Successor Notes, correct?
A I believe so, yes.
Q If you go to Exhibits 104 and 105 both. Those are in. These are Successor Notes?
A Yes.
Q And you executed the Successor Notes?
A Yes.
Q Exhibits 104 and 105?
A Yes. Yes.
Q Now at deposition you were asked were any of those notes paid by Snowshoe Petroleum to Paul Morabito, and you said you would defer to Gursey Schneider. Do you recall that?

A No, to be honest.
Q Well, have you, since the deposition, gone back to see if Snowshoe Petroleum paid Paul Morabito pursuant to any of the notes I just showed you, Exhibits 103, 104 and 105?
A I believe so.
Q And how much was paid from Snowshoe Petroleum to Paul Morabito pursuant to these notes?
A So I would defer these questions to Sam, but I believe everything was paid to Paul Morabito.
Q All amounts set forth in all three notes?
A I think Sam would be able to clarify that, because I don't know if there was -- Gursey Schneider made some slight change in the audit, but I don't remember what it was.
Q Let me make sure we are clear for the record, because there is a nuance here. If you look at Exhibit 104, Snowshoe Petroleum agreed to pay Paul Morabito $492,000, right?
A Yes.
Q If you go to Exhibit 105, that was Snowshoe promising to pay Superpumper $939,000. Do you see that?
A Yes.
Q Do you know why the Successor Promissory Notes dated February 1, 2011 were executed?
A I defer the question to Sam. Some of the notes were

for equity to show -- because we had a -- we had to keep certain balances for the bank as well as the landlord.

Q Do you recall there was a loan from Compass to Superpumper?

A Yes.

Q For about three million dollars?

A Yes.

Q And you, Sam and Paul each took $939,000 out of the Superpumper as distribution, correct?

A Yes.

Q You and Sam put certain amounts back in?

A Yes, a lot back in.

Q Subsequent to the transfer of Paul Morabito's interest, you and Sam put a good deal of that back into the company, correct?

A Yes.

Q Paul Morabito's $939,000 that was taken consistent with yours and Sam's distribution, that was receipted as a loan at some point in time, correct?

A I'm not sure.

Q Do you recall that Snowshoe agreed to assume Paul's obligation to repay the $939,000 to Superpumper that was distributed at the same time you and Sam got your distributions?

A Given to Paul. We assumed the debt, yes.

Q Now if we go to Exhibit 244. It is in evidence.

THE COURT: Volume VII.

BY MS. TURNER:

Q Sorry about that.

A That's all right. I was looking at the wrong book. Thank you.

A 247.

Q 244, pardon me. This is an Assignment Agreement?

A Yes.

Q Executed the same day as the Successor Notes, correct?

A Yes.

Q And it references Assignor is a holder under a certain Promissory Note dated November 1, 2010 in the principal amount $1,462,013.00. Do you see that?

A Wait a minute. You're on 244?

Q 244 the second paragraph of the recitals?

A Oh, yes.

Q Then it says: The assignor wishes to assign and assignee desires to assume payments in the principal amount of $939,000 do you see that?

A Yes.

Q Then you have reference to the Successors Notes in

Section 4?

A Yes.

Q Do you see that?

A Yes.

Q If you look above it, Section 3, it say there: There shall be discharge and forgiveness of obligation under the initial note, they call it the PAM note here, but it is the $1,462,000 note?

A Yes.

Q I am going through this to refresh your recollection. Remember I asked you if there had been payments from Snowshoe. There were no payments from Snowshoe on the first note for $1,462,013.00. That was discharged and forgiven in exchange for these Successor Notes, correct?

A Yes.

Q And with respect to whether or not there was any payment on the Successor Notes, to understand your testimony, I would be better off talking with Sam Morabito on that point?

A Yes.

Q Okay.

A I didn't handle the finances for the company. I was involved with human resource issues and TI stuff.

Q Now the decision to create Snowshoe Petroleum, the New York corporation, that was a quick decision between

September 13th and October 1st of 2010, correct?

A Well, as I said earlier in testimony, I was moving back to California, and so we had no more Nevada counsel, so Dennis was involved, and he was a New York lawyer doing the documents, that is why it became a New York LLC.

Q If we were -- Well, it wasn't a New York LLC. It was a New York corporation, right?

A Correct. Sorry.

Q If we fast forward to 2012, you realized there was a problem in that an S corporation can't own another S corporation, correct? Do you recall learning there was a problem with Snowshoe?

A I'm not an accountant so I don't recall a problem.

Q If we go to Exhibit 88.

A I have it.

Q Great. If you could take a look at the e-mail chain that is set forth in Exhibit 88, and confirm for me that we have your e-mail address as a recipient of these e-mails?

A Yes.

Q Okay. The date of the e-mail chain is April 26, 2012. If you could just take a note or a moment and see if this refreshes your recollection?

A Let me just read it.

Q Absolutely.

A I read the first e-mail.

Q Okay.

A I forgot about this.

Q Now do you recall?

A Yes.

Q Okay.

MS. TURNER: Your Honor, I will move to admit Exhibit 88 before I ask for questions on it.

THE COURT: Okay.

MR. GILMORE: My objection is that it is hearsay:

THE COURT: I haven't read the whole exhibit. This is an e-mail chain this witness was participating in?

MS. TURNER: Yes. The e-mail that the witness focused on was the first one to Mr. Gilmore's objection from Dennis Vacco to Ed Bayuk. And Mr. Vacco is the agent of the witness and as he earlier testified to was his counsel. That would be a statement of a party opponent's agent.

MR. GILMORE: Only if there is evidence he's adopted that statement. There is no evidence Mr. Bayuk delivered any of the commentary. Just because somebody is copied doesn't mean they have adopted the statement necessarily.

THE COURT: Is there anything in the document that says he did not adopt? Does he disagree with the comment? I am not reading the whole thing.

MR. GILMORE: I am trying to give the Court a characterization. The e-mail from Mr. Vacco to Bayuk, they are accountant/auditor and one of Vacco's partners where he makes various statements that don't address Edward Bayuk, no response like I agree or yes, you're right. Mr. Vacco has never testified to this document even though he was deposed and could have been. In addition to it being a hearsay statement, there is really no foundation to really understand exactly what Mr. Vacco is talking about. So I would contend it is not an admission of a party opponent through an adopted statement because there is no suggestion Mr. Bayuk had anything to do with the statement or adopted it. Just because he is cc'd doesn't mean he adopted it. That would be my objection.

MS. TURNER: Your Honor, I was going to ask the follow up questions, but the witness did say the statement with respect to whether it was created as an S corporation that did refresh his recollection. He did understand the subject matter as result of reading it and having his memory refreshed. I was going to ask him further about the statement to the document from his counsel, and he can either disagree or not as a result of that examination.

THE COURT: I am going to overrule the objection. I will admit Exhibit 88. You may inquire.

(Exhibit 88 admitted in evidence.)

BY MS. TURNER:

Q Mr. --

A I always thought it was a corporation, and I kind of did from school know that an S corporation can't own an S corporation.

Q Now if you could go to the third line of the document and I'll have you follow along Mr. Bayuk. It says: Last year Darata was an accountant for Superpumper, correct?

A For Snowshoe Petroleum and Superpumper Inc.

Q Thank you. Last year Darata, at the direction of Ed and Sam, converted Snowshoe to an S corporation. Since an S corporation can't own another S corporation, we worked with Darata to convert Ed's and Sam's interest in SPI. That is Snowshoe Petroleum?

A Correct.

Q SPI, you understand that is Snowshoe Petroleum Inc.?

A Yes.

Q So that Snowshoe owned retroactively day one 100 percent of SPI. This is where I am confused. We just need clarification for the record. Is SPI Snowshoe Petroleum, Inc., or Superpumper Inc. Because there is reference to Snowshoe and SPI?

A Sadly, I don't read all my e-mails when they are

sent to me. Sometimes I never read all my e-mails, so I always thought Snowshoe Petroleum Inc., was a corporation, never an LLC. So I didn't think it was set as a LLC. I know Superpumper Inc., is a-- so.

Q Let me ask a different question. Subsequent to Snowshoe Petroleum acquiring Paul Morabito's interest in CWC, was Snowshoe Petroleum eradicated so you and Sam became direct owners of Superumper, Inc.?

A Ask that question one more time.

Q Well, at any point in time, did you and Sam become direct owners of Superpumper Inc., as opposed to having your equity held in Snowshoe Petroleum?

A No. The equity was held in Snowshoe Petroleum Inc.

Q At all times?

A Yes.

Q It was transferred to Mr. Friederich, Jan Friederich?

A Well, yes, but it was sold to an LLC. I'm not sure who all the owners are.

Q You and Sam held your equity in Snowshoe Petroleum even after it was discovered that an S corporation could not own an S corporation?

A I wasn't really too involved with S Corp., Inc. I always thought that Snowshoe Petroleum, when we set it up,

owned Superpumper, Inc., until you brought this to my attention today. It refreshes some of my memory. I don't remember how it got solved, and I didn't even know there was a problem.

Q Sitting here today, your testimony is you don't know?

A I never thought there was a problem with anything. I thought everything was fine.

Q All right, now CWC's ownership of Superpumper in June, May, June 2010, did you have an understanding that had a fair market value of thirty million dollars?

A That number probably came from Paul Morabito, and, you know, he puts numbers on things that don't make sense sometimes.

Q Did you see the e-mail where Paul Morabito represented that the value of Superpumper was or CWC's ownership in Superpumper was worth thirty million dollars?

A I can say this: That Paul makes statements on values of things that made no sense to any type of business.

Q Did you follow up on any communication from Paul where he said the value was thirty million dollars to correct it and say that you disagreed and you thought the value was something different?

A The only thing was I encouraged Paul to work as hard

as he could to pay his debts back. I encouraged. I am not the type of person that abandons someone. So did I correct Paul all the time? No. I just let him do his thing. And there is testimony in deposition that show that Paul would make statements and numbers that made no sense. And he's a visionary. You have to understand the personality. It is kind of like people thought Thomas Edison and Ben Franklin was crazy. They were visionaries. They created things. You may not know this, Paul Morabito started the first Aids pharmacy in San Francisco when there was no pharmacies which lead to specialty pharmacies for Aids patients that led to specialty pharmacies for cancer patients. And so that company made like forty-seven million dollars. He's a visionary. He creates businesses and does things. I will probably tell you 100 times in my testimony today that he would make statements with numbers that made no sense. That is why you have got accountants and you have employees that do the work that is supposed to be properly done and accurate. I was never in the accounting department or the finance department that dealt with finances and stuff. So I will say yes to you, probably, but will clarify that he made numbers, made statements and numbers on things that made no sense.

Q If you could go to Exhibit 77. Exhibit 77 is an e-mail dated May 20, 2010 from Paul Morabito to Dennis Vacco

and it indicates you are a cc. Is that the e-mail that you -- Do you recall receiving this e-mail, I should say?

A I don't recall this. And I don't know this document. But I will read it if you'd like me to.

Q If you could. I am interested in point number three?

A Just point three?

Q You are free to read the whole thing but point three is going to be the focus.

A So the e-mail has to do with acquiring stores in Chicago. They were being financed by probably Silvercrest which is the largest hedge fund in the world. It looks like Paul's putting dollar values on things again.

Q And you are a recipient of his representation as Chairman of Consolidated Western Corporation and other entities as of May 20, 2010: The following process needs to happen ASAP. Arrange paperwork for me to transfer into CWC 100 percent of the shares of Consolidated Western Corporation which owns 100 percent of Superpumper Inc., at a fair market value of thirty million dollars.

My question to you is: Did you respond when Paul made statements such as this to say that is inaccurate or you believed it was inaccurate?

A No, I never respond. You will find no e-mails where

I make commentary.

Q And Paul Morabito was in fact the Chairman of the Board of Directors of Consolidated Western Corporation on May 20, 2010, correct?

A That's probably correct.

Q Now Exhibit 90, if you could fast forward in the same book?

A Yes, 90.

Q This is your signature on page 2 on behalf of Superpumper as the President?

A Yes.

Q And you hired Matrix to do a business valuation and that was entered September 30, 2010, correct?

A Yes.

Q When you hired Matrix to do a business valuation for Superpumper, you understood that in order for an expert to do their job correctly, they have to have all the information that is relevant to their assignment, otherwise you risk garbage in, garbage out, correct?

A Yes.

Q So it was important to you to make sure that Matrix had all information that was relevant to their assignment so they could discern what was important, what wasn't and come to a true value of Superpumper, correct?

A Yes.

Q Did you provide Matrix a copy of the e-mail from the Chairman of CWC saying in May of 2010 he believed the company was worth thirty million dollars?

A I don't think I --I think he got the information from the accountants and all, but nothing came from me.

Q Okay. Did you do any process to review what had been provided Matrix to ensure that everything was full, complete and accurate so that they could do their job?

A I think the only thing I did was sign their check to be paid.

Q Okay. Did you take any steps to advise Matrix regarding the Raffles self-insurance plan that was owned by CWC?

A To take that -- That was a-- I think that was put in CWC then into Snowshoe Petroleum as a QSub. It was a placement to hold it, because Raffles needed a like kind company to park those shares.

Q Describe for the Court what the Raffles self-insurance plan was?

A So Raffles is a self-insured insurance program, and it is -- you own shares in it with about 300 other companies. And it is for businesses, in our case it was gas stations, retail, high risk business where you would have accidents, if

there was an accident claim, the claim would be paid by the fund. So Berry-Hinckley was self-insured for obvious reasons because of the Petroleum business, wholesale business, distribution, tanker trucks and all that. Not only were they self-insured but reinsured. So they had multiple levels of insurance, dealt with insurances for all the companies. So I know all this. Anyway when we sold Berry-Hinckley retail operations to the Herbsts, the Raffles program wasn't part of the sale. So that had to be parked somewhere. So I worked with Kensington to park the ownership somewhere. It couldn't be in an insurance company. It couldn't be in a property company. You know, most people think just transfer it to a property company. You can't. It had to be a like-type business. So we parked it over in the petroleum business of Snowshoe Petroleum and Superpumper, Inc.

Q It was, Raffles self-insurance plan was to be -- was an asset of the company. It was on the books of CWC prior to it being merged into Superpumper, correct? You indicate parked?

A Yeah.

Q It was on the books. It had to be. That is your position?

A The scary part is, I think, and, again, I am going from my memory, you know, you're dating, it is 2018, but the

scary part is I think it was parked in limbo for a while. So I don't, I think it was parked for a while. So that is why, when I called the company Kensington, it had to be parked somewhere and we parked it in Snowshoe Petroleum. And I vaguely remember I did the paperwork for them and all. And I think on the tax return it is a separate line item.

Q Did you advise Matrix that Raffles' self-insurance program was an asset of Superpumper?

A The only thing I did for Matrix was sign the agreement and pay them. They interacted with the finance people to figure out values.

Q If you could go to Exhibit 128.

THE COURT: Is that a good place to take our afternoon recess?

MS. TURNER: That's fine.

THE COURT: Court's in recess.

(Short recess taken.)

THE COURT: Counsel, you may proceed.

MS. TURNER: Thank you, Your Honor.

Before we left, I was remiss in not offering Exhibit 77 as an exhibit, so I now offer that as an exhibit.

MR. GILMORE: I would object on the basis of hearsay and foundation.

THE COURT: My notes show the witness said he did

not recall getting this document. Was there more after that?

MS. PILATOWICZ: Yes, Your Honor. He also acknowledged Paul Morabito was sending the e-mail as the Chairman of Consolidated Western Corporation and other entities. Consolidated Western Corporation was merged to Superpumper. This would be the statement of a party opponent, as with respect to the foundation, and that he was an indicated recipient. Although he doesn't recall it, he didn't dispute receiving it.

THE COURT: Okay. Then I will overrule the objection and admit Exhibit 77.

(Exhibit 77 admitted in evidence.)

THE COURT: You may proceed.

MS. PILATOWICZ:

Q Mr. Bayuk, in June of 2010 Superpumper actually contemplated taking on debt of three million dollars in order to increase its book value, correct?

A I don't know that.

Q If you could go to Exhibit 79. It is an e-mail dated June 28, 2010 from Paul Morabito. It says: Paul Morabito as Chairman of Superpumper, Inc., and Consolidated Western Corporation. Do you see that?

A I don't know this document.

Q If you could go to the one, two, three, fourth

paragraph, where it talks about Superpumper and read that to yourself.

A Yes.

Q The statements made in that paragraph by Paul Morabito as Chairman, you agree those were true as of June 28, 2010?

A I will reiterate what I stated before. I don't agree and I said to you Paul would put numbers on things that made no sense.

Q The numbers, the numbers you reviewed in Exhibit 79, would you say those are numbers that don't make sense to you?

A I'm not familiar with the document. I am not copied on it at all. So as I said to you two minutes ago, he would put numbers on things that don't make sense. I don't know what more you want me to say. I don't agree with the number. Is that what you are saying?

Q That was my question to you.

A Sorry.

Q Did, at any point in time in the Summer of 2010 time period, did Paul Morabito tell you that he believed he was the one hundred percent owner of Superpumper?

A No.

Q Did he tell you he believed the fair market value exceeded twenty-five million?

A No.

Q And did you have a different understanding of annual cash flow of five million dollars? Did you have a different understanding?

A No.

MR. GILMORE: I am sorry. That was a compound answer. Which question was answered there?

BY MS. TURNER:

Q Did Paul Morabito advise you that he believed annual cash flow from Superpumper was five million dollars?

A No.

Q In June of 2010 there was no term debt?

A I don't know.

MS. TURNER: Your Honor, I move for the admission of Exhibit 79 as certainly a statement of an adverse party opponent, Paul Morabito as the chairman of Superpumper and Consolidated Western Corporation.

MR. GILMORE: Same objection, hearsay and foundation. Paul Morabito was not examined about what he was talking about here, any of the contents, where these statements came from. This witness testified to his knowledge of it, so my objection is hearsay and foundation.

THE COURT: Overruled as to hearsay. When was this disclosed?

MS. TURNER: Subsequent to all the depositions. Mr. Leonard can testify that they were disclosed subsequent to the depositions and that he owns the files, this particular document LMWF Supp. I represent to you, I think counsel will confirm, those bate numbers came from Dennis Vacco's law firm in response to a Motion to Compel, Order to Compel and supplemental production. And so LMWF is Dennis Vacco's law firm for the production. I am proffering that because -- I believe we can wait until Mr. Leonard comes in and he can lay the foundation how he obtained these documents and how he owns them and the privileges that may have previously attached thereto. But I think it is productive for this Court to hear about the documents or matters set forth in the documents from people who lived with the companies at that point in time. That is why I bringing it up now. I would like to follow up with questions with this witness regarding the statements. He can deny it as he just did, but I think it is important to know. I think it is relevant for the Court to know that there was Paul Morabito the debtor making certain representations and the witness knew they were false.

Later we will have the Matrix, the valuation at issue. The information he received or didn't receive or she, that is all relevant to the veracity of the the information.

THE COURT: Okay. But this document came out of the

files of Mr. Leonard as he got them from Mr. Morabito?

MS. TURNER: No. He received them from Dennis Vacco. LMWF is Dennis Vacco's law firms.

THE COURT: Did you have something?

MR. GILMORE: Yes. There was a misstatement. At the top right corner of this document is an exhibit stamp indicating this was used in fact in a deposition. So it was used in the deposition of Dennis Vacco, himself, which Dennis Vacco maybe answered questions about it, maybe did not. Mr. Vacco is not a Declarant, so the issue here is they could have deposed Mr. Morabito about it and they didn't, number one.

THE COURT: What difference does that make? If you are a party opponent, you make statements, there is no requirement to depose somebody about it.

MR. GILMORE: Because Paul Morabito is not a party to this action.

THE COURT: It doesn't matter whether he's a named party, if he's in association or connected to a named party and he makes statements in furtherance of his association with a named party. Their argument is he was President of Superpumper at the time he was making these statements and Superpumper is a named party. Then this is a statement against interest by Superpumper. They don't have to depose him

about it.

Now my concern is when did you get it, how did you know for your foundational questions. It sounds like you all are in agreement you have had it for some time.

MS. TURNER: Yes, Your Honor.

MR. GILMORE: And I don't think they are going to dispute this was used in a deposition. They did have the opportunity to take discovery on these documents.

MS. TURNER: Your Honor, to clarify, that exhibit stamp is for Dennis Vacco who is not somebody who will be here and who can testify about it live, because he's not willing to come. Mr. Morabito, Paul Morabito is not willing to come so, therefore, we have what we have, and that is a statement of Paul Morabito on behalf of Superpumper, a party.

THE COURT: Okay. Based upon your representation that Mr. Leonard can authenticate it --

MS. TURNER: Yes.

THE COURT: -- at some future time, I am going to take that, it still has to be done, but I will allow it to be admitted so you can inquire as to the content of this document.

(Exhibit 79 admitted in evidence.)

MS. TURNER: Thank you, Your Honor.

///

BY MS. TURNER:

Q I will follow up later. If we go to this paragraph that I have directed your attention to, it says: The Arizona company which I presently own 100 percent of has a fair market value exceeding twenty-five million dollars. You disagree with that statement, correct?

A Yes.

Q You said Paul Morabito would often just put numbers to paper and there was no truth to them; is that an accurate statement?

A Yes.

Q Did you advise Matrix Valuation that Paul Morabito had indicated that fair market value exceeded twenty-five million dollars and she or he on behalf of Matrix should follow-up with Paul Morabito?

A I signed the contract with them and I didn't interact with them.

Q Do you know anybody who interacted with Matrix who was an officer or a Director of Superpumper or Consolidated Western Corporation?

A No.

Q Now with respect to the valuation by Matrix, you hired Matrix to do that valuation, and you signed the contract after the transfer from Paul Morabito to Snowshoe, correct?

A The date of the signing, I think we were trying to get a fair reasonable value of the company so that things would be done correctly. That is why they were hired.

Q Now the date of the Valuation Agreement was September 30, 2010?

A Okay.

Q They didn't just turn around a valuation within a couple of days. It took some time, correct?

A Correct.

Q And in fact, Exhibit 90 that is already in evidence shows the invoice in October or an invoice in October of 2010. Do you recall that?

A No, but I am sure --

Q It is Exhibit 90, sir?

A Yes.

Q Go to the last page? We just went through it. See if that refreshes your recollection?

A Yup.

Q Now if we go to Exhibit 80 --

MR. GILMORE: I am sorry, counsel. Is Exhibit 90 only two pages or is it more?

THE WITNESS: A couple pages.

THE COURT: Looks like it should be four pages.

MS. TURNER: Yeah it's four pages.

MR. GILMORE: Exhibit 90?

MS. TURNER: That's four pages. It has the invoices.

THE COURT: The list says it is Matrix Retention Agreement LMWF 00001 through 00004.

MR. GILMORE: My fault. My apologies.

MS. TURNER: Counsel, it is just invoices.

MR. GILMORE: Okay.

BY MS. TURNER:

Q Are you at Exhibit 80, sir?

A Yes, I am.

Q Now this is the Shareholder Interest Purchase Agreement that resulted in Paul Morabito selling his interest in Superpumper to Snowshoe Petroleum. Do you see that?

A Yes.

Q It is dated the very same day that you executed the agreement with Matrix Valuation, correct?

A Yes.

Q And in this Shareholder Interest Purchase Agreement we have a sale price of one million thirty-five thousand ninety-four, correct?

A Yes.

Q Then that changed to a higher number subsequent to September 30th, 2010, correct?

A Yes.

Q I believe that was about a $400,000 swing, right?
A I think so.
Q And the purchase price for Paul Morabito's shares did not include consideration of the value of the Raffles asset, correct?
A I don't know.
Q Who would be the best person to ask that question?
A I would guess the accounting people.
Q Now when you executed the Shareholder Interest Purchase Agreement, if you go to page 80, we'll see --
THE COURT: You mean Exhibit 80?
BY MS. TURNER:
Q Exhibit 80. Last page. Pardon me.
A Got it.
Q That is your signature on behalf of Snowshoe, the purchaser, correct?
A Yes.
Q Nobody else signed this agreement on behalf of Snowshoe?
A Yes, that's correct.
Q When the purchase price was determined, you don't recall sitting here today whether the Raffles was included in the consideration of that purchase price?
A No, I don't recall.

Q Do you recall what was considered?

A No.

Q How was the price reached?

A I don't remember to be honest with you.

Q There was no offer to Paul Morabito from Snowshoe and then back and forth negotiations, correct?

A No.

Q If you could go to Exhibit 128. 128. The last page of Exhibit 128 is the first e-mail in an e-mail string. If you could go to that last page at the bottom of the page where it says: Hi, Catherine. Do you see that?

A I am on 128.

Q Last page of the exhibit?

A Got it.

Q It is an e-mail sent from you on behalf of Snowshoe Petroleum, correct?

A Yes.

Q It says: Can you call me sometime next week to discuss changing the form number 5471 to Snowshoe Petroleum Inc.? Consolidated Western Corporation was consolidated into Snowshoe Petroleum Inc., and would like to correct this form for 2011 tax year. Do you see that?

A Yes.

Q Do you recall sending that e-mail?

A Yes.

Q Now if we fast forward on the e-mail chain to the first page of Exhibit 128, there is a follow up from you January 6, 2012, and it says: Please have a discussion with Stan and Dave regarding what company name should actually be on these new share certificates, Snowshoe Petroleum or Superpumper, Inc., so we can finalize the tax form for 2011. See that?

A Which e-mail?

Q Bottom of the page, very first page of 128.

A January 6th to Christian and Dennis?

Q Yes?

A Yes, I see that.

Q So the Raffles Insurance share certificates were in the name of Consolidated Western Corporation, the predecessor to Snowshoe Petroleum Inc., the New York corporation, correct?

A It looks like that.

Q And if you go to the top of the page, there is Stan Bernstein responding. Stan was your accountant, correct?

A Yes.

Q And it says: Since CWC was merged into Superpumper, I believe that the Raffles asset belonged in this company.

A This is the e-mail from Stan Bernstein to Edward Bayuk?

Q Yes.

A I am out of the office, but Raffles had been previously owned by the holding company in the past. Either CNC or CWC owned the Raffles' interest?

Q That's right. The second paragraph: Since CWC was merged into Superpumper, I believe that the Raffles asset belonged in this company. Do you see that?

A Yes.

Q Then if you go to the last line, it says: But as of the December 31, 2010 audited statement, the asset never appeared in this company. Since the ownership of Superpumper and Snowshoe Petroleum are the same, I believe it would be best if the assets were to end up in Snowshoe Petroleum. Do you see that?

A Yes.

Q So as a result of this communication string you had CWC with the Raffles asset named as a CWC asset, CWC merged into Superpumper in December of 2010, correct?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And then you had Snowshoe Petroleum as the successor to CWC and the assets of CWC were then owned by Snowshoe Petroleum Inc., correct?

A Right. But if you start at the beginning of this exhibit where I am talking to the Raffles people and you read the e-mail to her and I am asking her about certificates and we couldn't find certificates, and you will read the two e-mails and you will see I don't have certificates. They can't find the copies, so they send me new certificates. And so you see the e-mail from Stan to me, it says: I am out of the the office. Raffles was previously owned by a holding company in the past. CNC and CWC owned the Raffles' interest. Raffles was originally at Berry-Hinckley because it was self-insured. I think Raffles sat in limbo because you didn't collect money on Raffles until the seven year point. So once it matured, you would start to get a payout. So I think what happened is it sat at Berry-Hinckley from talking to the woman down at Raffles at Kensington, and that when I went to look for the certificates and couldn't find them and couldn't find the BHI certificates, she said Edward, you know what matters, just park it in a Petroleum like operation. And so I filled out the new certificates and we parked them in Snowshoe Petroleum, Inc. And it is on a separate line item. So if they distributed money it would show.

Q Mr. Bayuk, if we go to the last page of Exhibit 128?

A Yeah. Right.

Q Catherine Murphy of Raffles, her response to you

was: We will also need share certificates 556 and 556A in the name of Consolidate Western Corporation returned to us?

A Right.

Q Raffles was in the name of Consolidated Western Corporation?

A Okay.

Q Right?

A I couldn't find the certificates.

Q It was communicated to you --

A Right.

Q -- from their standpoint it was in the name of Consolidated Western Corporation?

A Okay.

Q And you wanted it to be transferred to Snowshoe or Superpumper because Consolidated Western was no longer in business. It had been merged into Superpumper, right?

A Right.

MS. TURNER: Move for admission of Exhibit 128.

THE COURT: Any objection?

MR. GILMORE: No objection.

THE COURT: Exhibit 128 is admitted.

(Exhibit 128 admitted in evidence.)

BY MS. TURNER:

Q And the value of the Raffles asset, are you the best

person to talk to about that?

A Or if you want to talk to Kensington Trust.

Q That payout exceeded two million dollars; correct?

A Well, because I have to go by memory, but the downturn in the economy in 2007 and '8 caused the value to go down. So you got two statements a year. It was in June and in September. So June 30th -- I am sorry. I take that back. Statements were issued like the end of September, September 30th every year and they would tell you June, oh, they're going to be issued the end of September. So the values were erratic. And my prediction was it was probably going to go down even more after 2008, and I was right. It kept going down. So the payout was not two million, it was a lot less. A lot less.

Q What is your testimony of the value of Raffles in September of 2010?

A Well, we based it on a report. And you have to discount the report because it is not-- because they do all their calculations in June, then they issue the report in September. So you kind of have to take the number and say okay that's close. Then that is kind of what the value is potentially going to be. But that is not necessarily what you are going to get paid, because it changes. It changes monthly, but they report annually.

Q So the question was the value in September of 2010?

A Right. There is a document, there are documents that show something, but it is not exactly that. It is less. If you see the next report is even less.

THE COURT: Do you not have a value? The question was what did you value it in 2010?

THE WITNESS: Probably a million eight or something like that, approximately.

BY MS. TURNER:

Q Now you testified earlier that Snowshoe Petroleum was intended to look for other opportunities in addition to Superpumper. Do you recall something to that effect?

A Yes.

Q Snowshoe Petroleum never did conduct any other business other than being the holding company for Superpumper, correct?

A No. We did look at other opportunities in our markets, Florida, Chicago, New Mex-- southern -- north of Texas, New Mexico we looked at. We made offers. They weren't accepted.

Q Snowshoe Petroleum never had any other business where there were operations?

A That's correct.

Q Or investments?

A No. We tried to.

Q Now January 1, 2011 you and Sam transferred your interest in Superpumper to Snowshoe, correct?

A Yes. Part of the answer to your last question, I believe some of the deals didn't happen because of the outside litigation from the Herbsts point on didn't help. So you always continually had to explain it to people. So that was a deterrent in conducting business. That is why I said it has affected my personal life, business life and family life.

Q At issue in this case are certain fraudulent transfers?

A Absolutely. I understand.

Q There are other litigation addressing other transfers?

A Oh, I understand that. I am involved in some of those as well.

Q Versanet?

A That's right.

Q So we are going to focus on this litigation and these transfers. You understand those are separate cases that have separate transfers at issue?

A That's right.

Q Okay. Here --

A You're correct. Lawsuits I don't agree with you

but--

Q And you understand the purpose of those lawsuits -- How many are pending right now?

A I have no idea.

MR. GILMORE: Objection, relevance.

THE WITNESS: I have no idea. I don't keep track. I focus on business and conduct business.

THE COURT: When your attorney objects, it is probably a good idea for you to stop talking because he doesn't want you to answer the question, but you keep answering it.

THE WITNESS: I am trying to be helpful.

THE COURT: I am not sure he thinks you are. He answered it.

MR. GILMORE: Agree.

THE WITNESS: It is my personality.

BY MS. TURNER:

Q You have observed the Herbsts or the Trustee on behalf of the Paul Morabito's estate as a substituted Plaintiff for the Herbsts actively pursue litigation against you to collect against that Judgment entered against Paul Morabito, correct?

A Yes.

Q And its multiple cases. You can't testify how many?

A I can't.

THE COURT: Counsel, I have a question. When you said you have spent millions of dollars on defense, are you talking about all the cases as opposed to just this case?

THE WITNESS: Well, I have spent millions of dollars on this case. I am thinking four hundred thousand or more on the case that she just mentioned. I have spent roughly three million.

THE COURT: When you said millions of dollars, you meant this case only or all of the cases?

THE WITNESS: To be honest, I just keep a rough total what I spent on everything except for the original case.

THE COURT: Okay. Thank you.

THE WITNESS: Sorry.

THE COURT: That's okay. I just wanted to clarify.

THE WITNESS: Yes. It is big money.

THE COURT: You may continue, counsel.

BY MS. TURNER:

Q Just to follow up on counsel, pardon me, the Court's question: In addition to paying your attorneys representing your interest, you have also paid Paul Morabito's attorney's fees, correct?

A Yes. And I have loaned him money, too, as well which I keep a record of. But I also owed him money, too,

which I'm sure you are going to get to.

Q So far all we have talked about are the notes and the Successor Notes that were executed by you relative to Superpumper, and that was an obligation from Snowshoe Petroleum. Not you personally, you understand that?

A Yes.

Q You personally have paid Paul Morabito's attorney's fees?

A Yes. But I owed him money, too.

Q And the Trust, the William Bayuk or Edward William Bayuk Trust has paid Paul Morabito's attorney's fees?

A My checking account, yes. Not everything is in the Trust.

Q So you have Superpumper, pardon me, Snowshoe Petroleum. You don't know whether they have paid Paul Morabito's attorney's fees?

A No, they have not.

Q But you and your Trust have paid Paul Morabito's attorney's fees?

A Yeah, because I owed him money. I owed him money, probably.

Q And that was subsequent to September 2010?

A I owed him money, so I just deducted it from the money I owed him.

Q Prior to September 2010, you did not owe Paul Morabito any money?

A No.

Q So when we are talking about you testifying that you owed Paul money, that was subsequent to September 2010?

A After, right.

Q I keep using the word "subsequent." I will use after?

A Just use after. It is a little easier. Sorry. Sorry.

Q Now your involvement in the Superpumper business was to monitor the investment, your investment, right?

A Correct.

Q And you reviewed reports, occasionally visited the stores from time to time to be a secret shopper?

A Yes.

MR. GILMORE: I am sorry, counsel, is this before or after the transaction?

THE COURT: The objection is vagueness?

MR. GILMORE: Yeah. I don't want to stop the flow.

THE COURT: Would you clarify that, please?

BY MS. TURNER:

Q Before you acquired Paul Morabito's interest in Superpumper, that was primarily your involvement, correct?

A I did it before and after.
Q That was my next question?
A No. I was very involved with everything, trying to be helpful to people. Basically, you know, human resource issues or information and issues.
Q You didn't go to Arizona and oversee operations on a day-to-day basis, overseeing day-to-day operations before or after acquiring Paul Morabito's interest, correct?
A I went to Arizona periodically since 2007. '7, '8, '9, '10, '11, '12. So I would go to Arizona and stay there.
Q My question is: With respect to the day-to-day operations, you didn't oversee the day-to-day operations?
A No, not day-to-day. I interacted with the office staff which are the people that ran the operations, and I would sit in on store meetings.
Q And you did that as an owner, officer and director through the time that there was a transfer to Jan Friederich?
A Yes.
Q And when was that?
A I may need some help. It was April, April or May 2016 or '17. I am trying to remember. What year is it? '18. So '18, '17. I would say it was '16.
Q While this litigation was pending?
A Yes. It is hard to keep track, because I am running

a communications company at the same time. Sam ran things in Superpumper. He would call me, or the office staff would call me if they needed me. So I spent most of my time in Washington, D.C., or other places in the United States.

Q Despite the sale of Paul's interest in Superpumper or its holding company, CWC, in September 2010, he remained involved, correct?

A I always seeked his advice on things, and he was helpful to me in many things even on my trips to Washington, D.C., and all. So he was involved with things I was involved with, and I would seek his advice, because he's a visionary. He thinks outside the box, and he sees into the future of what possibility there could be. So I did seek his advice. And you will pull documents from these booklets and you will see I am copied on them. Some things I read and lots of them I didn't agree with. Some I did not read because I was very involved with another business. So, sadly, I won't be familiar with some of the e-mails.

Q So subsequent to September 2010, Paul ramained active with respect to the Superpumper business?

A He was helpful if there was a problem and I asked his advice on something.

Q And Paul remained a guarantor on the credit line, correct?

A Well, I think there is a bunch of documents. We were in forbearance quite a few times, like four times. If there was a law firm involved, Dennis Vacco, Christian Lovelace, a lawyer at his firm was involved in talking to that law firm that represented the bank. When Sam and I bought the company, just to put it in perspective, we bought the company and the company didn't make money in 2010. It didn't make money in 2011. It didn't make money in 2012. It didn't make money in 2013. And I paid myself a salary, but it wasn't-- The company didn't start making money until 2014. Actually, everything I bought was negative. Nothing was cash flow positive. It had equity value, but it didn't have cash flow. So the business did not-- It was actually a a bad investment. It was a bad investment since the time, effort, too. But anyway, we got through it and there was a couple years, I think it was 2012 and '13 it was really tough because it was so thin.

Q And your income from 2007 forward was from Superpumper's operations. You received a salary?

A Yes.

Q And that salary was hundreds of thousands of dollars a year?

A No. It was-- I think it was -- one year it was one hundred, like one twenty. One year it was one twenty. Another

year it was three hundred. Another year it was another number. But it wasn't consistent. So I think you are referring to one or two years or maybe from '13. I'm not sure.

Q What do you recall as your salary?

A In 2011 I recall -- I mean I would have to go look at my tax returns. I think it was one twenty. The following year I believe it was one twenty. Then it changed, and I don't know. But at the same time I was collecting a salary I was putting money into the company, hundreds and thousands of dollars I was putting into the company. Let's say you get paid one twenty a year and I put two fifty into the company, I would say that is negative. Let's say you put a half a million dollars into the company and put one twenty in income, it's a negative. So I had a negative basis in the company.

Q It is your testimony $300,000 was the highest salary you received from you Superpumper?

A Yes. That's correct.

Q Now in September of 2010 at the same time that Paul transferred his ownership interest in Superpumper through CWC, he paid you and he paid Sam. Do you recall receiving those payments or receiving that payment for September of 2010?

A Paid me what?

Q Do you recall receiving over $400,000 from Paul Morabito?

A Yes.

Q And --

A That was from the Raffles program. I sold my ownership.

Q As to the Raffles self-insured plan, that was in the name of CWC?

A Right.

Q That was merged into Superpumper. You sold your interest to Paul Morabito in September 2010?

A Right.

Q And in exchange for your 10 percent interest, correct?

A Well Raffles was owned, it was owned at Berry-Hinckley at twenty-five percent, twenty percent and whatever, forty-eight percent. That's how it was.

Q So you received $420,000 in September of 2010?

A Right.

Q And it is your testimony that when Paul wired you that money, $420,000 in September of 2010 that was for your interest in the Raffles self-insured plan?

A Right, because it was at Berry-Hinckley. It matured at Berry-Hinckley. So as I explained earlier, you have to wait 7 years. For 7 years it does nothing. It fluctuates. So -- so --

Q Berry-Hinckley was sold to whom?

A The Herbsts. The Raffles was not included in the sale to the Herbsts.

Q We already established it was in CWC then went to Snowshoe Petroleum?

A Correct.

Q I want to understand why Paul Morabito sent you $420,000 in September of 2010 and your testimony is you sold your interest in the Raffles asset to Paul at that time?

A Correct.

Q And there was a payment of $355,000 to Sam Morabito at the same time, correct?

A Correct.

Q That was for Sam Morabito's interest in the Raffles asset?

A Correct.

Q Okay. So Paul Morabito transferred his interest in CWC but kept the Raffles asset?

A The Raffles had to be parked in a petroleum company. So when the dividends were issued, Paul was given the money. He was 1099'd I believe for the money Paul also put up. And the reason for that, originally, when we bought Berry-Hinckley, a Letter of Credit was put up, and the money for the Letter of Credit was Paul's money. So Paul put up his

own money for the Letter of Credit that was required when we owned Berry-Hinckley. But the ownership of everything was twenty-five, twenty and forty-eight percent. So Paul received the dividends. I actually believe one of the dividends, I remember some of the numbers, one of them, one dollar figure he received was$658,000. Another number was, it was $380,000. They were big numbers. So he did get paid. When you refer to the two million dollar number, it doesn't get close to that number, but because of the value fluctuation of it. So he did receive a good mount of money. I would bet he probably received about a million six.

Q So he received a million six of distribution from the Raffles self-insured program?

A Right. And he spent it on lawyers.

Q That was in the name of CWC and then Snowshoe Petroleum. It was held there for the benefit of Paul Morabito?

A No. It was held there because Kensington had to have, it had to be parked in a petroleum business or else you would lose it. It would just get null and void.

Q When you were holding the company or holding Raffles in Snowshoe, it was for the benefit of Paul. He was taking the distributions as opposed to Snowshoe; is that accurate?

A He was getting the money from Raffles.

Q Paul Morabito was not getting the money directly from Raffles?

A Oh, yes he did. Yeah, the checks were from Raffles, and I forget what company name they were issued in, how they came in, but they were from Raffles.

Q They were from Raffles to Snowshoe?

A Right.

Q Then Snowshoe distributed the funds to Paul, correct?

A You know what --

Q Or was it Superpumper?

A -- I don't remember.

Q But certificates were never transferred to Paul Morabito's name?

A They couldn't be. They couldn't be. They had to be in a petroleum company.

Q If we go to Exhibit 75.

A Got it.

Q Okay. Exhibit 75 is an e-mail from Dennis Vacco, your counsel to you with a cc to Paul Morabito. Do you see that?

A Yes.

Q Mr. Vacco says: Edward, please review the attached letter. We need this letter to B of A so it can initiate a

request to Royal requesting a diminution of the security collateral Letter of Credit. Do you see that?

A Yes.

Q Now what Mr. Vacco is referring to there was a Letter of Credit from the Royal Bank of Canada correct?

A I think so, yes. Yes. Yes.

Q It says: Please put this letter on CWC letterhead. Snowshoe will do, but CWC is better. Do you see that?

A Yes.

Q Now CWC was no longer in existence in March 30, 2012, correct?

A Yes.

Q It says: Mail directly with enclosure to the address indicated.

Now if we go to the second page of Exhibit 75 we have the letter that you were to sign, correct?

A Second page?

Q Yes, second page of Exhibit 75?

A There is no second page.

Q There is no letter dated March 30, 2012?

THE COURT: Is it marked 76 maybe?

MR. GILMORE: No. It is just one page.

MS. TURNER: Do you have it? Is there a copy -- the attached letter is not in yours?

MR. GILMORE: It is not.

THE CLERK: When I marked the exhibit, the description only has one bate stamp on it.

MS. TURNER: We'll come back to that tomorrow.

THE WITNESS: That's okay.

BY MS. TURNER:

Q Let me ask you questions without the benefit of the attached letter. I apologize. I will try to put that together tomorrow.

Do you recall that in or about March of 2012 that the Raffles asset was presented to the Royal Bank of Canada to reduce the collateral requirement for the company, for Superpumper?

MR. GILMORE: Objection. Vague.

THE WITNESS: It was Paul's letter.

THE COURT: Did you remember what I said? If he objects you don't answer.

THE WITNESS: I am sorry. Okay.

THE COURT: But he answered.

MR. GILMORE: I don't think he substantively answered it.

THE COURT: He said it was Paul's letter is what he said.

///

BY MS. TURNER:

Q So why was the Raffles asset still -- strike that. Paul Morabito had a Letter of Credit that was still being used by Superpumper in March of 2012?

MR. GILMORE: Objection. Misstates the testimony.

THE WITNESS: No.

BY MS. TURNER:

Q Then why was Dennis Vacco asking you in March 2012 to send a letter to Paul's banker with respect to CWC?

A Probably helpful to see the letter. I guess possibly the Letter of Credit was in that company name.

Q Was in the CWC name?

A I'm guessing. It would be helpful to see the letter.

Q Fair enough. I can make a note to get to that tomorrow. Now we have Exhibit 112 I believe is in. Hopefully we have the whole thing here.

A Okay.

Q Got it?

A Got it.

Q Thank you. Sorry, you have to go back and forth between books. Exhibit 112 is a Consent Agreement dated December 28, 2010, correct?

A 112?

Q Yes?

A Yes.

Q Paul Morabito provided a guarantee of the original lease for Superpumper with Spirit, is that correct?

A Yes.

Q In December 28, 2010 he restated his guarantee. He reaffirmed it for the benefit of Superpumper, correct?

A Yeah. I am not sure why they wanted that.

Q But he did do it?

A Yes. Probably they wanted it because of experience, business experience, possibly.

Q If you go to the second from the last page of Exhibit 112 we have you signing on behalf of Superpumper and Paul Morabito, correct?

A Correct.

Q And even though Paul Morabito sold his interest, he restated and reaffirmed his guarantee of the lease for the benefit of Superpumper in December?

A Which didn't really mean much because of Paul's Judgment and they knew about it. I think they asked for it just because of business experience.

Q Go to Exhibit 136.

A Got it.

Q Do you recall in August of 2011 Superpumper hiring Grubb and Ellis to provide consulting?

A I know Tim, yes.
Q Tim Haves?
A Haves.
Q On behalf of Grubb and Ellis?
A Yeah, possibly. I vaguely remember.
Q And if you go to Exhibit 137, there is an e-mail from Dennis Vacco to Paul Morabito August 24, 2011, subject Tim Haves. This is a document produced by Dennis Vacco's office. I will make that representation. If you could review that.
A Yeah. I don't know about this.
Q Do you recall your counsel, Dennis Vacco or Paul Morabito, going to you with a recommendation that Tim Haves be hired by Superpumper in or about August of 2011?
A I don't know about this e-mail. I am not copied on it.
Q My question to you is: Independent of this e-mail, did Dennis Vacco, your counsel, or Paul Morabito go to you with a recommendation that the agreement with Tim Haves be with Superpumper, Inc.?
A Well, the e-mail says that, but I don't know.
Q You don't recall that?
A I recall working with Tim and him finding some gas stations for me to possibly purchase. But I don't recall, I

don't think he was ever paid to be honest with you. I think there was an agreement signed by Sam Morabito or someone. I don't think Tim ever made a nickel off anything if I recall correctly.

Q Let me unpack that a bit. Exhibit 136 you do recall Sam Morabito on behalf of Superpumper executed some kind of an agreement, consulting agreement retention with Tim Haves at Grubb and Ellis?

A Yes, because I --

Q Go ahead?

A Nothing. Go ahead.

Q And the reason that Tim Haves was hired on behalf of Superpumper, Inc., was to protect Tim Haves from being reached in an enforcement action by the Herbsts, correct?

A I honestly don't know a thing about this. I do know I met with Tim on a number of occasions, looked at gas stations to purchase. And I am almost 99.99 percent sure he was never paid, because we didn't close on anything. But I did interact with Tim in Arizona.

MS. TURNER: Your Honor, I would move to admit Exhibits 136 and 137?

THE COURT: 137 is already admitted. Any objection as to 136?

MR. GILMORE: Excuse me, Your Honor. Yes. Objection

to 136 on the basis of hearsay and foundation.

THE COURT: Counsel.

MS. TURNER: Well, Your Honor, it is an -- It was produced by Vacco's firm. It was a proposed agreement with Superpumper, Inc. The witness testified he met with Tim Haves and Grubb and Ellis, so it is a statement of a party opponent to have this proposed agreement with Grubb and Ellis in August of 2011. It correlates with the e-mail at Exhibit 137. Albeit it is not an exhibit to the e-mail, it certainly relates, so there is an indicia of reliability as well from whom it was produced through Vacco's law firm, and the substance itself.

THE COURT: Okay. Did you have something else?

MR. GILMORE: Only this is clearly a draft. There has been no testimony this did anything except in Dennis Vacco's file. So the suggestion which counsel made in her response this was actually prepared and sent and signed, there has been no representation of that, no testimony as to that. That is why I objected as to foundation.

THE COURT: There has been testimony that Paul entered into these discussions on behalf of Superpumper. This will be admitted not for the truth of the matter asserted, but to show the state of mind and of Superpumper a party at the time, August 2011.

(Exhibits 136 admitted in evidence.)

MS. TURNER: Thank you, Your Honor.

BY MS. TURNER:

Q Now subsequent to Paul Morabito selling his interest to you and Sam and really Snowshoe Petroleum, he had input on Snowshoe's financials for the time period subsequent to the sale, correct?

A You are referring to Paul?

Q Paul?

A Input on what?

Q On the Snowshoe financials?

A I said earlier Sam was in Arizona running the business, and we had accounting people there doing the accounting stuff. Paul was looking for opportunities for himself, and if he thought a big opportunity was coming along he would say, hey, would you be interested in participating? But Sam was very focused on running the business in Arizona, Superpumper, and so Paul would give his opinions and his advice. Like I said earlier, the e-mail on 137 between Dennis and Paul I know nothing about it. I don't even know -- It makes no sense, the e-mail. So Paul, you know, he did things. He wrote things. And sometimes it made no sense, but did he -- did he say he was the owner of Snowshoe Petroleum or the owner of Superpumper? No. Did he get money out of Snowshoe Petroleum or Superpumper? No. So did he look for all kinds of

opportunities? Yes.

Q He was privy to communications with the accountant for Snowshoe subsequent to --

A After the sale because --

Q Yes?

A Because there was a lot of complications with making sure everything was done correctly and all.

Q And not just with respect to 2010, but he was providing input in 2012. He was communicating with accountants regarding the financials for Snowshoe, correct?

A If you have e-mails with him and the accountant and the lawyers, you probably can answer that question.

Q Let me clarify.

A I am not copied on all these e-mails.

Q Let me clarify one thing: Paul Morabito never owned an interest in Snowshoe Petroleum?

A Correct.

Q If we go to Exhibit 144, do you see in the middle of the page there is an e-mail from Gary Krausz CPA. He's with Gursey, right?

A Yup.

Q He was the accountant for Superpumper and Snowshoe, right?

A Yes.

Q And do you see the e-mail sent to Paul Morabito@gmail.com as well as to you and Sam Morabito? Do you see that?

A Yes.

Q Okay. This was April 2012, correct?

A Yes.

Q And in response to Gary Krausz' e-mail, we'll go through it. Paul Morabito responded and you were sent a copy of his response where he directs you, Sam Bernstein and Dennis Vacco to please address each of these issues. He has "each these issues" capitalized. Do you see that?

A We are on the bottom of the page?

Q No. First page of Exhibit 144?

A Right.

Q There is a capitalization?

A Right.

Q Do you see that?

A Correct.

Q And if you go back down and you see there was a written response to Gary Krausz' e-mail with capitalization afterward. Do you see each one of the points?

A Yeah, I see.

Q Okay. Then go to the next page. I want to make sure we are on the same page. When there is capitalization after

the different points, it is a different type face, that was Paul Morabito's response to Gary Krausz' e-mail and you were directed to address each of these issues on the 12:30 call right?

MR. GILMORE: Objection. Compound.

THE WITNESS: Um, the e-mail is from Gary to Paul.

MR. GILMORE: Wait.

THE WITNESS: Sorry.

MR. GILMORE: Go ahead, answer the question.

THE ITNESS: I just said the e-mail is from Gary to Paul, and I don't know, I don't remember a call with Gary. I knew there was a note problem. And you had to keep a ratio because of the landlord and the banks, but I think there was forbearance going on, too, with the banks.

BY MS. TURNER:

Q You don't recall the phone call referenced here where it says: Address each of these issues in capitalization? You understood that to mean when there is capitalization below that was Paul Morabito's additions or comments to Gary Krausz' initial e-mail, correct?

A I'm not sure.

Q Okay.

A I am just --

Q You don't know if that is okay or if that is the

case?

A Well, I am not sure. I see the first e-mail, then the second and then Gary sending it to Paul. Where is the e-mail from Paul to Gary? I mean I am a little confused on the e-mail thing.

Q Paul responded to Gary with capitalized comments, correct?

A Yeah. Yes. The e-mail from Gary to Paul.

Q Well --

A I am a little confused.

Q Well maybe you can review with me and that will provide color. You don't dispute that Gary Krausz was the CPA for Superpumper and Snowshoe in April of 2012, right?

A Yes.

Q And you were a recipient along with Paul and Sam of Gary Krausz' e-mail on April 24, 2012. No dispute there, right?

A Yeah, looks like that.

Q Then Paul Morabito responded. Do you see that? And you are a recipient of that response as well as Stan Bernstein and Dennis Vacco. Do you see that?

A Yeah. This is weird. So the first e-mail is Paul and the e-mail is from Paul to Paul Mitchell and Dennis, and then the second e-mail is from Paul to me and Stan and Dennis.

And then you are talking -- Gary is talking to Paul with the capitals and all, correct?

Q Yes?

A So they are having a conversation about this.

Q And --

A I was probably on one of the calls.

Q And you were on these e-mails, but 41 at the top where Paul sends a follow-up to Dennis Vacco and Paul Mitchell saying: My position is below. Please make it happen. You were on the e-mail from Paul below where it says please address each of these issues?

A I think he was trying to put his two cents in, because they were trying to explain the notes for the landlord and the banks.

Q Now if we go to the first point in Gary Krausz' e-mail, ownership levels issue to address. Do you see that?

A Yes.

Q Stan informed us, Stan is --

MR. GILMORE: I'm sorry I am going to object on the basis she's reading what is essentially hearsay onto the record without offering it.

MS. TURNER: Move to admit Exhibit 144.

MR. GILMORE: And I will object on the basis of hearsay and foundation for all the reasons I have previously

stated, particularly that Gary Krausz, the author, and Paul Morabito, apparently the author, we don't know that. Neither one of which are here to testify.

THE COURT: Counsel.

MS. TURNER: Gary Krausz is the CPA for a party and he's communicating with two other parties to this action related to Superpumper and Snowshoe parties. This document was produced by Dennis Vacco. You can see the print in the upper left hand corner, Dennis Vacco. You can see the bate number down below that. This was produced in discovery. This is a statement of a party opponent as a result of the CPA for the company making the statement. Mr. Bayuk certainly answered he received the e-mail. He knows the contents. I want to talk more about the contents.

THE COURT: When you said it was between two parties to the suit, you kind of pointed towards Sam and Mr. Bayuk. Did you mean that or were you trying to say something different?

MS. TURNER: No. I meant that the e-mail from Gary Krausz was to Ed Bayuk and Sam Morabito, parties, and then the follow up from Paul Morabito was to Ed Bayuk, a party as well as Dennis Vacco, counsel for the parties.

THE COURT: Okay.

MR. GILMORE: Sorry. I have two issues, one being

copied on an e-mail, there is no authority for the idea being copied on an e-mail otherwise turns a hearsay document into a non-hearsay one. Two, Gary Krausz is not -- this is not an adoptive statement. An adoptive statement has to be made to a third party in which a party acknowledged or affirmed that it is true. So there are no third parties here.

THE COURT: I am sorry. Who are you talking about?

MR. GILMORE: I am talking --

THE COURT: Your client can make a statement to anybody.

MR. GILMORE: Correct.

THE COURT: To another party.

MR. GILMORE: I totally agree, correct. None of these statements are my clients' statement. This is Gary Krausz' statement which she's suggesting my clients affirmed or adopted.

THE COURT: She's suggesting your client, Superpumper, and Gary Krausz was working for Superpumper.

MR. GILMORE: Gary Krausz is an auditor. He's not an employee, not a manager, doesn't work for Superpumper. The fact Gary Krausz is making a statement to his client does not make it an adoptive statement by my client. It is still hearsay.

THE COURT: Counsel.

MS. TURNER: I am following up on the testimony of the witness where he said they were the accountant, they are doing auditing services for Superpumper, but they are the accountant, therefore an agent of the company.

THE COURT: Do you have any evidence they were the accountant, not just an outside auditor?

MS. TURNER: His testimony. And I believe it is in his deposition.

MR. GILMORE: Mr. Krauze was deposed, and they didn't take the opportunity to examine him as to his statement. That is another reason for the foundation objection.

MS. TURNER: If we go to Exhibit 14, sorry, the deposition of Edward Bayuk page 14. I don't believe these are in the books so we'll need to publish.

MR. GILMORE: Well is the point --

THE COURT: I'm sorry. Just a minute. Are you talking about Gary Krausz' deposition?

MS. TURNER: No, Mr. Bayuk's deposition.

THE COURT: Okay.

MS. TURNER: Where he testified that Gursey Schneider, they are the auditors for Superpumper, Snowshoe Petroleum, and his testimony just now they are an agent. He doesn't say they are independent. He says they are the

auditors.

THE COURT: You better find it. Auditor to me implies a third party, an independent. Usually an auditor is someone who is independent of the accounting world. So just the use of that word does not tell me he's not independent, Mr. Krausz.

MS. TURNER: I understand, Your Honor. And I think that the witness testified earlier that they were the accountant, can I lay some further foundation?

THE COURT: Certainly.

BY MS. TURNER:

Q You testified earlier that Gursey was the accountant for Superpumper and Snowshoe?

A The account was Dave Darata, and the auditors were Gursey Schneider. Sorry if I misspoke. So they worked together, Dave Darata and Gursey Schneider. So they helped each other. But they were the auditors. Gursey Schneider was required, because the banks wanted things audited as well as the landlord.

Q Did Gursey Schneider provide accounting services beyond auditing services to Superpumper or Snowshoe?

A I probably can't answer that. Probably their bills would reflect what their services were.

Q Who is Stan Bernstein?

A He's an accountant.

Q Stan Bernstein provided you advice, accounting services on behalf of Snowshoe Petroleum and Superpumper?

A No. Dave Darata was the accountant.

Q What was the service provided by Stan Bernstein?

A He did my personal tax return. And he was -- yeah. And he was the accountant. Well, he did my personal tax return and other -- he did accounting services for other businesses of people. Previous to what you are looking at, the answer is previous to 2010 he was the accountant for Superpumper, Inc. I think that is the answer you want.

MS. TURNER: Your Honor, with that clarification, then I think counsel has a valid point that it would not be a hearsay exception as a statement of a party opponent, and I apologize for the confusion, but with the witness' testimony it wasn't clear to me. We still have the document set forth at Exhibit 144 as a business record of Dennis Vacco, so I would proffer that. I will be offering it with the Trustee who owns the files from Dennis Vacco, and that he not only owns the files, but he's waived any privilege with respect to those files as a business file that is kept in the ordinary course and produced in the ordinary course pursuant to subpoenas in this action and others. And, frankly, I don't recall whether this was in one of the others or it was in the

bankruptcy, but the bate number indicates it was produced in the ordinary course of some proceeding. I can lay the foundation with Mr. Leonard. If we can make it conditional so I can ask follow up questions, I would proffer that to you.

THE COURT: So the business record exception would be admissible if you have Mr. Leonard testify.

MS. TURNER: That's right.

THE COURT: Because this is a bench trial, I think we can do that with the Court's caveat if you do not establish that through Mr. Leonard, the testimony would be stricken and will not be admitting.

MS. TURNER: I understand that.

THE COURT: Yes?

MR. GILMORE:. Now there has been a new basis upon which it is proffered. May I address that?

THE COURT: Certainly.

MR. GILMORE: Technically speaking, there is no business record exception in the State of Nevada. But the record section I am sure she's referring to is the record of regularly conducted activities which requires that it be a memorandum written by somebody in knowledge, with knowledge all in the course of a regularly conducted activity. If e-mails between auditors and their client maintained in a lawyer's file meet the business records exception, then every

e-mail practically ever sent between any business person would qualify as a business record.

THE COURT: It does unless you have a privilege and the person who owns it is willing to testify he's waived the privilege. So, yes, you should know that your e-mails in your files that are part of your regularly conducted activities as a lawyer are subject to that exception. There is case law on it in the State of Nevada and federally. If there is a privilege, though, you're safe.

MR. GILMORE: My question is whose regularly conducted activities is this? This is not Mr. Vacco's regularly conducted activity. This is Mr. Krausz. Mr. Krausz is giving advise to his client who happens to have a lawyer be copied. This is not Mr. Vacco's regularly conducted activity. He was the custodian. Mr. Leonard is now custodian,sure, because of the function of bankruptcy law. Mr. Leonard was never the original business custodian and neither was Mr. Vacco. The only business custodian of this statement would have been Mr. Krausz.

THE COURT: Why do you say that? Why not the person he sent it to?

MR. GILMORE: That is not the person who is being proffered.

THE COURT: Whose business record would it be if

you're being audited?

MR. GILMORE: This would be Superpumper or Gary Krausz.

THE COURT: Is Superpumper a party here?

MR. GILMORE: The rule requires it be shown by testimony or Affidavit of the custodian or other qualified person and Mr. Leonard perhaps owns Mr. Vacco's file. He doesn't own Superpumper's file.

THE COURT: I know, but in litigation with Superpumper being a party, you have to provide it. If Mr. Vacco hadn't provided it, Superpumper can't just say wait a minute, Mr. Vacco isn't the custodian, therefore, we are and we are not going to give it to you, therefore it can't be in. You can't argue that. If you were the custodian of Superpumper and you are party to this litigation you have an obligation to produce it.

MR. GILMORE: I will accept the Court's ruling.

THE COURT: But I don't have any of that right now. It would only be contingent upon Mr. Leonard testifying.

MS. TURNER: Your Honor, I understand my obligation to do that. Just for the record, to address counsel's comments, there are a legend of cases where the bankruptcy Trustee authenticates documents of the debtor because they were produced in the ordinary course of the debtor's business

and it is up to him to establish that, how it was produced, that it wasn't just picking up a piece of paper off the floor. We understand our obligation there. He's the qualified person that we are proffering to provide that testimony in regularly conducted activity. And we appreciate being able to conditionally have these admitted so we don't have to have prolonged proceedings where we then have Mr. Leonard take the stand and then have to have this witness come back. Thank you.

THE COURT: Okay. She might have been looking at the bailiffs. We have a trading of bailiffs. She's looking at you like what have I done.

MS. TURNER: Exactly.

THE COURT: Just so you know, when we go past 5:00 o'clock, they have a rule they can't be here by themselves. That is why we have two bailiffs here.

MS. TURNER: Thank you. With that I renew my request.

THE COURT: Conditionally it is admitted.

(Exhibit 144 admitted in evidence.)

MS. TURNER: Understood.

BY MS. TURNER:

Q Mr. Bayuk?

A Yes.

Q On the first page of Exhibit 144, it says: Ownership

level issues to address.

You are an owner of Superpumper and indirectly through your ownership in Snowshoe in April 2012, correct?

A Yes.

Q It says: Stan informed us that the notes receivable from Paul to SPI were written off, forgiven. Do you see that?

A Yes.

Q That was the notes receivable where Paul owed -- strike that -- where Superpumper owed Paul. That was written off.

MR. GILMORE: Objection. Misstates the testimony.

THE COURT: I don't understand your question. Sustain the objection.

MS. TURNER: I understand.

BY MS. TURNER:

Q There came a point in time when the obligation due to Paul Morabito was written off by Superpumper, correct?

A Probably.

Q And do you recall, and actually to be more specific, the obligation from Snowshoe to Paul was written off. Do you recall that?

A No, I don't. I mean this conversation probably should be happening with Mr. Krausz not me.

Q We would be better off --

A Talking to Gary.

Q -- addressing this with the accountant?

A Yeah. Gary or one of the accountants. You are asking someone who would be saying yes and not even knowing what I am saying. I don't want to misdirect you or misinform you. There were notes and notes were being issued and put on the books just so, we have to show certain covenants for the bank and for the landlord.

Q The bank and the landlord required there be less debt than what was being reflected on the books of Snowshoe, correct?

A Again, you should be talking to Gary or one of the accountants, but that is actually the landlord and the banks required there be certain dollars on the books to show equity, and so notes were put in place to show equity. It was basically, I don't know, I'm not sure of the term, so I think that is what conversation is going on. They are trying to figure out to make the banks happy and the landlord happy, because the bank is in a couple different forbearances, number one, number two, number three, a bunch of forbearances and the landlord is not happy. Obviously, the accountants are all talking here, because they are trying to make everyone happy. But I am not the person you probably should be asking these questions. I'm just trying to be helpful.

Q Do you see in the bold that statement, first section where it says: They were written off as part of my sale of my interest. But their question is when. I told them March 2011. Do you see that?

A Oh, yes, I see that. On December -- Wait a minute. Where are you?

Q That first section of Gary Krausz' e-mail where it says: They were written off as part of the sale of my interest. The question is when. I told them March 2011?

A Yes, I see that.

Q Why was Paul communicating regarding Snowshoe's or Superpumper's notes to the auditor?

A Okay just -- And I guess you are not happy with my answer. The reason why Paul was trying to help is that the banks were mad and the landlord was mad, so everyone was mad, and they were trying to make sure everything is correct. So you're having the conversation with the wrong person. I am just --

Q How did Sam know that there was an issue with the bank or the lease such that he became involved in March of 2012 if he had already sold his interest and as you said moved on?

MR. GILMORE: Calls for speculation.

THE COURT: I am not sure. Did you mean Sam or

Paul? I am having trouble following what your question is.
BY MS. TURNER:
Q I am sorry. Paul was communicating with the auditors of Snowshoe in April 2012?
A Correct.
Q Did you authorize Paul to communicate with the auditors or accountants of the company?
A Yes.
Q Was that a one-time permission or was Paul permitted to communicate with the auditors and accountants?
A He was trying to help me, because they had -- there were these letters from the banks. There was notices from the landlords. So everything was trying to be straightened out so the banks would be happy and the landlord. And we didn't want to default on the bank. We were in forbearances. It is in your documents somewhere here, a bunch of different forbearances from the law firm and probably some notes in here from the landlord as well. The landlord required certain equity on the books and so did the bank. And I think this is what this is all about.
Q My question is different?
A I said yes. You asked if Paul was involved with trying to straighten out things for the bank and the landlord.
Q Did Paul have general permission to communicate with

the accountants and auditors of Superpumper and Snowshoe in 2012?

A Yes. I probably told him, you know, this is, you know, I need help because the banks aren't happy and the landlord is not happy.

Q And you said that you relied on Paul Morabito, his advice subsequent to him selling. Did you believe that his continued involvement benefitted the company?

A Well his background. He worked for one the largest banks in Canada. He was noted as a whiz kid. He was in newspapers in Canada. He's a genus when it comes to understanding financing. His only downfall was when he was hospitalized, incapacitated for four or five months, he lost his edge then. My background is not finance. My background is engineering. And, you know, I understand some things in finance but this was a very complex matter, and it needed attention immediately. So that is why Paul was involved.

Q Given that Paul had a propensity for putting false information down, false numbers into e-mails and things, we already went through these e-mails.

A Oh, yeah, there will be more.

Q Did you --

A You will start laughing, and the other lawsuits, you will start laughing, too. My God.

Q Did you put a qualifier on his communication with the auditors and accountants of Snowshoe or Superpumper saying you can't believe what this guy is saying?

A Well, I think the landlord asked them to sign that document you showed me earlier, and I was the owner of Superpumper. The reason they wanted him to sign it is because he had the relationship with the landlord which was a public, New York public stock exchange RET. I did not have that relationship. They knew me, but also Paul's background is banking and he understands financing, and I don't. And I was in a really bad situation there. And they were trying to straighten everything out to make the banks happy, the bank happy and the landlord.

Q Did you at any point go to the auditors of Superpumper or the accountants of Superpumper or Snowshoe as the holding company and say he's not authorized to act on behalf of these companies?

A No. Paul was trying to help.

Q Okay. Thank you?

A To explain things.

Q Now back to the value of Superpumper. Do you recall putting value on Superpumper in late 2010, early 2011?

A Probably.

Q Do you recall when the Successor Notes were executed

related to the purchase of Paul Morabito's interest in Superpumper or CWC at the same time that you executed the Successor Notes that you attributed value to Superpumper?

A Probably.

Q If you go to Exhibit 126.

MS. TURNER: Your Honor, this is the only copy we have. I had to start buying readers. And this is one of those you may have a hard time reading. I apologize. It is not my typeface.

BY MS. TURNER:

Q So do you recognize Exhibit 126?

A Looks like Salvatore Morabito's financial net worth.

Q If you go to page 2?

A Two?

Q Yes?

A Edward.

Q Edward W. Bayuk?

A That's right.

Q That is your statement of assets and liabilities as of February 1, 2011?

A That's right.

Q You have seen this before?

A Oh, yeah. Yeah.

Q And it says Gursey in the bottom right hand. Do you

see that? You provided this statement to Gursey?

A Yeah.

Q Correct?

A Yes. Yes.

Q And you provided this statement to Gursey so they would rely on it, right?

A Yes.

Q All right. So as of February 1, 2011 you list your ownership in the El Camino Del Mar and Los Olivos homes, correct?

A Yes.

Q The Mary Fleming house, that is the Palm Springs house. These three homes you owned as tenants in common?

A No, not then. I owned them 100 percent.

Q They were held in your Trust by this point in time, February of 2011?

A Well, they were in my Trust and tenants in common. I was able to refinance the mortgage in June of 2011.

Q As of February 2011?

A But I paid the mortgages.

Q As of February 2011 you were or your Trust --

A Right.

Q We'll get to that -- owned those three residences set forth in the personal items, correct?

A Yes.

Q Those were formally owned in connection with Paul Morabito. We'll talk about that more?

A Yes.

Q Those are those properties, right?

A Yes.

Q And you have your personal effects, and then if you skip down, do you see where it says fifty percent Snowshoe Petroleum, Inc., a New York corporation?

A Yes.

Q You valued your fifty percent interest in Snowshoe was $4,514,869 February 1, 2011, correct?

A Right.

Q The same day those Successor Notes were executed, right?

A Right.

Q And you have no debt as of February 1, 2011 save and except the mortgages listed and B of A, correct? It looks like and American Express card?

A Probably. You know, this is, I think it is pretty accurate.

Q You owed nothing as a debt or an offset to Snowshoe or Superpumper in February of 2011?

A No. I probably did. You know-- Good question.

Q Well when you provided this information to Gursey --
A Right.
Q -- and you finalized this statement of assets and liabilities, you believed it to be true?
A I believe so, yeah.
Q If you had had a note payable to Superpumper or to Snowshoe --
A That's not reflected on this.
Q It should have been. It was not?
A Right. Hindsight.
Q That would tell you as of February 1, 2011 you did not have a note payable as of that time?
A Well, this is my document produced by me. And I mean net worth statement should probably be done by your accountant, so I probably didn't put Superpumper debts there and all.
Q I am not understanding. If you, when you produced this, you spent time providing information, is it your testimony that --
A They wanted to know what I owned. That is why they asked for it.
Q Yes. And there was no offset with respect to Superpumper reflected in this statement of assets and liabilities?

A Correct.

Q Okay. Bank of America and American Express, these were individual obligations that you had?

A My individual obligation.

Q That were due to Bank of America and American Express, not to anybody else?

A Correct.

Q Okay.

A Just so you know, in February 2011 I had not finished redoing the mortgages. So I didn't redo the mortgages until June of 2011.

Q Those were home mortgages?

A Correct. No, no. So just to make it clear, I was paying the mortgages, and so the properties, I forget what time period, I am just trying to remember the mortgages, but I redid the mortgages in June of 2011. So those B of A mortgages still had Paul's name on them, but I was paying them.

Q We'll get --

A No.

Q Those mortgages, you paid them for the benefit of Paul?

A No. I paid for the benefit of me because I owned the properties.

Q The proceeds of the loans went to Paul?

A Correct.

Q You paid the mortgages with the proceeds going to Paul?

A Correct.

Q I understand that. That was later after February 2011, right?

A No. I was paying the mortgages in 2010 too, so.

Q Now I am trying to understand why you're bringing this up?

A Because you were asking me about the debts and all. I agree with you, I didn't put debts down for the other stuff for Superpumper.

Q By this point in time, February 1, 2011, there was no Snowshoe or Superpumper debt that you owed them that had not been incorporated into the asset valuation, so there was no separate offset. If there was any debt owed, you incorporated it into the asset valuation.

MR. GILMORE: Objection. Vague and compound. I am not following.

THE COURT: It is compound. It was vague.

BY MS. TURNER:

Q There was no debt or loan due from you to Snowshoe or to Superpumper as of February 1, 2011. There was nothing?

A There were debts. I just told you I didn't put on

the other side, the debts for Superpumper. I am sure there were.

Q To the extent there were any debts that were due from you, that is loans?

A Right.

Q Debts that were due from you to Superpumper or to Snowshoe Petroleum, the fact they are not listed here under debts, you took those into consideration when valuing the asset, correct?

A No.

Q You included the deductions when coming up with$4,513,000 as the value of fifty percent of your interest. You took that into consideration there were debts?

A No. That number is what someone will pay you for a business, one number, and what market value is is another number. So when you go to sell a business, maybe the business is worth, you hope you can get four and a half million. Maybe someone will only offer two and a half million. So at the time, both Sam and I thought the business, that is the numbers we chose.

Q Those are the numbers you chose. They were good faith values?

A Yes.

Q Of your interest?

A Right.

Q Because if it wasn't, then you would be making a material misrepresentation to an auditor?

A Correct.

Q You weren't making a material misrepresentation to the auditor, right?

A No. The auditor wanted to know what I owned.

Q And that was your good faith statement of what the value of your fifty percent interest was as of February 1, 2011?

A Right.

Q With no offset indicated?

A By accident, yeah, I did not put those there.

Q So now here today you're saying that this was a false statement of your assets and liabilities and you had debt that you did not disclose?

A By accident. It looks like I missed the debt.

THE COURT: That's a good place to stop. We are going to stop the testimony now. It is 5:30. Anyway, we have some business to talk about. We are going to stop with your testimony now. Go ahead and retake the seat so I can visit with the lawyers. You can leave that there. We'll take care of it. Go ahead and step down.

You all were going to tell me which Findings of Fact

that you had proposed to me you had resolved through the stipulation and which ones you had left. Did you get a chance to do that or do you need to do it tomorrow?

MR. GILMORE: We both talked about it. We both made an attempt at it. We both kind of failed, because we weren't exactly sure in what way it was going to be useful to the Court to help us be most effective with it. The reason is the Court probably isn't -- Ms. Pilatowicz and I are all in agreement on this, but the stipulated facts are very, what is the word, black and white in the sense it is like, you know, on such and such a date a Deed was recorded on such and such a date. A certain value was arrived at. We were very careful to make sure there were no characterizations of any facts in here. And so the problem was when you take the Findings of Fact, Conclusions of Law, for both of us to try to unpack the black and white facts from the way in which they are characterized is really, really going to be impossible.

I am willing to take a crack at it tonight, but I think it would help if we understood more clearly how the Court would use that so that we can figure out the most effective way to do it. My suggestion was we could identify the paragraphs in our respective FFCLs that deal with these particular facts and just simply say, you know, in my FCCLs we don't deny for example on October 12th the State court entered

its finding. Then we don't deny, neither of the parties deny that, you know, they both owned a fifty percent interest in Baruk properties. The houses were valued at X and Y. There is nothing really beyond those black and white facts we really stipulated to here. We really want to do what we can to help, but finding an effective way to do it might be the challenge, so I am all ears.

THE COURT: So what would be helpful to me is if you perhaps just underline, a color would work, highlight in color those portions of of the Findings of Fact that you are stipulating to.

MR. GILMORE: We can do that. That is easy.

THE COURT: I can read it, okay, the first three sentences of that Finding you're free to make a decision on.

MR. GILMORE: Yeah, we can definitely do that.

THE COURT: You can provide it to me electronically.

MR. GILMORE: E-mail it to the clerk with the highlighted sections of the stipulated parts.

THE COURT: Right. That would be very helpful for me. I don't have to go back and forth between your stipulation, and I have already got two Findings of Fact I am dealing with.

MR. GILMORE: Of course. Then the suggestion would be anything not highlighted is something we are potentially --

THE COURT: Right.

MR. GILMORE: -- agreed 100 percent.

THE COURT: That is the way I would take it.

MR. GILMORE: Absolutely can do.

THE COURT: That is great. I appreciate you doing that. Tomorrow we have a 9:00 calendar. From 9;00 to 9:30 I am going to hear some criminal matters that we couldn't move off calendar. So then we'll take a short recess and start with the trial at 9:45. So it will be Mr. Bayuk still on the stand. And so then Mr. Bayuk will continue with his direct, then we'll get into the cross and redirect, however you want to call that. Tomorrow, after we get this criminal hearing done, the the rest of the day is up to you. I do take breaks every two hours, so we will probably, if we actually start at 9:45, we'll probably break a little early for lunch being a quarter to 12:00 then come back right at 1:00, something like that. I am trying to give you about an hour and fifteen minutes, not a full hour and a half because I am concerned. We are in our first day and it is slow moving. So we will see. I want to make sure you get plenty of time to get all of this to me whatever you all want to. So that will be our schedule for tomorrow. Wednesday we are able to start as early as 8:00 a.m. Wednesday morning. We talked about that. But we are not going to be able to go late Wednesday night. I

would like to recess no later than 5:00 o'clock, maybe a few minutes before 5:00. So we'll just see how tomorrow goes then talk about Wednesday. But just so you are thinking about witnesses, we can start as early as 8:00 a.m. on Wednesday.

MS. TURNER: Your Honor, just for a point of clarification, I understand you have a hearing at 9:00 tomorrow. Do we go from 8:00 to 9:00 or come at 9:45?

THE COURT: I decided it would probably be best to come at 9:45, because I didn't think we would really get very far by the time everyone gets here and you start talking, then we have only got about 40 minutes.

MS. TURNER: Thank you, Your Honor.

THE COURT: Anything else?

MR. GILMORE: This might not be a question for you so much as the clerk. What of this can we leave in the courtroom? What do we have to take if everything?

THE CLERK: Unfortunately, everything on the tables have to be moved out. Any of the other days it can be left. You can line them up against the wall. You guys can use the jury box.

THE COURT: We aren't going to be using the jury box at all during the criminal calendar, and you don't have to move anything here. We won't be using the E.L.M.O or the documents on that. We won't be moving anything off the book

shelf. So it is just your tables tomorrow, really. And I don't think, can they leave them on this side?

The deputy will kind of show you the way the criminal calendar runs, but this is the only day. We have gotten rid of all the other stuff.

Thank you. Court's in recess.

(Whereupon the Court adjourned until Tuesday, October, 30, 2018 at 9:45 a.m.)

(Whereupon, the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 4 of the above-entitled court on Monday, October 29, 2018 at the hour of 9:00 a.m. of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of WILLIAM A. LEONARD, JR., TRUSTEE vs. SUPERPUMPER INC. ET AL, Case Number CV13-02663.

That the foregoing transcript, consisting of pages numbered 1-240 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 6th day of November, 2018.

/s/ Judith Ann Schonlau
JUDITH ANN SCHONLAU CSR #18