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 05:41 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 38
(Nos. 6553–6817)

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Docket 79355 Document 2020-20826

INDEX TO APPELLANTS' APPENDIX

DOCUMENT DESCRIPTION		LOCATION
Complaint (filed 12/17/2013)		Vol. 1, 1–17
Declaration of Salvatore Morabito in Support of Snowshoe Capital's Motion to Dismiss for Lack of Personal Jurisdiction (filed 05/12/2014)		Vol. 1, 18–21
Defendant Snowshoe Petroleum, Inc.'s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 05/12/2014)		Vol. 1, 22–30
JH, Inc., Jerry Herbst, and Berry Hinckley Industries Opposition to Motion to Dismiss (filed 05/29/2014)		Vol. 1, 31–43
Exhibits to Opposition to Motion to Dismiss		
Exhibit	**Document Description**	
1	Affidavit of John P. Desmond (filed 05/29/2014)	Vol. 1, 44–48
2	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 1, 49–88
3	Unanimous Written Consent of the Directors and Shareholders of CWC (dated 09/28/2010)	Vol. 1, 89–92
4	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper (dated 09/28/2010)	Vol. 1, 93–102
5	Plan of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 1, 103–107

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td>6</td><td>Articles of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/29/2010)</td><td>Vol. 1, 108–110</td></tr>
<tr><td>7</td><td>2009 Federal Income Tax Return for P. Morabito</td><td>Vol. 1, 111–153</td></tr>
<tr><td>8</td><td>May 21, 2014 printout from New York Secretary of State</td><td>Vol. 1, 154–156</td></tr>
<tr><td>9</td><td>May 9, 2008 Letter from Garrett Gordon to John Desmond</td><td>Vol. 1, 157–158</td></tr>
<tr><td>10</td><td>Shareholder Interest Purchase Agreement (dated 09/30/2010)</td><td>Vol. 1, 159–164</td></tr>
<tr><td>11</td><td>Relevant portions of the January 22, 2010 Deposition of Edward Bayuk</td><td>Vol. 1, 165–176</td></tr>
<tr><td>13</td><td>Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito</td><td>Vol. 1, 177–180</td></tr>
<tr><td>14</td><td>October 1, 2010 Grant, Bargain and Sale Deed</td><td>Vol. 1, 181–187</td></tr>
<tr><td>15</td><td>Order admitting Dennis Vacco (filed 02/16/2011)</td><td>Vol. 1, 188–190</td></tr>
<tr><td colspan="2">JH, Inc., Jerry Herbst, and Berry Hinckley Industries, Errata to Opposition to Motion to Dismiss (filed 05/30/2014)</td><td>Vol. 2, 191–194</td></tr>
<tr><td colspan="2">Exhibit to Errata to Opposition to Motion to Dismiss</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>12</td><td>Grant, Bargain and Sale Deed for APN: 040-620-09, dated November 10, 2005</td><td>Vol. 2, 195–198</td></tr>
<tr><td colspan="2">Answer to Complaint of P. Morabito, individually and as trustee of the Arcadia Living Trust (filed 06/02/2014)</td><td>Vol. 2, 199–208</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Defendant, Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/06/2014)</td><td>Vol. 2, 209–216</td></tr>
<tr><td colspan="2">Exhibit to Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction (filed 06/06/2014)</td><td>Vol. 2, 217–219</td></tr>
<tr><td colspan="2">Defendant, Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/19/2014)</td><td>Vol. 2, 220–231</td></tr>
<tr><td colspan="2">Exhibit to Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Superpumper, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction (filed 06/19/2014)</td><td>Vol. 2, 232–234</td></tr>
<tr><td colspan="2">JH, Inc., Jerry Herbst, and Berry Hinckley Industries, Opposition to Motion to Dismiss (filed 07/07/2014)</td><td>Vol. 2, 235–247</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Dismiss</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Affidavit of Brian R. Irvine (filed 07/07/2014)</td><td>Vol. 2, 248–252</td></tr>
</table>

	DOCUMENT DESCRIPTION	LOCATION
2	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 2, 253–292
3	BHI Electronic Funds Transfers, January 1, 2006 to December 31, 2006	Vol. 2, 293–294
4	Legal and accounting fees paid by BHI on behalf of Superpumper; JH78636-JH78639; JH78653-JH78662; JH78703-JH78719	Vol. 2, 295–328
5	Unanimous Written Consent of the Directors and Shareholders of CWC (dated 09/28/2010)	Vol. 2, 329–332
6	Unanimous Written Consent of the Board of Directors and Sole Shareholders of Superpumper (dated 09/28/2010)	Vol. 2, 333–336
7	Plan of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 2, 337–341
8	Articles of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/29/2010)	Vol. 2, 342–344
9	2009 Federal Income Tax Return for P. Morabito	Vol. 2, 345–388
10	Relevant portions of the January 22, 2010 Deposition of Edward Bayuk	Vol. 2, 389–400
11	Grant, Bargain and Sale Deed for APN: 040-620-09, dated November 10, 2005	Vol. 2, 401–404
12	Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito	Vol. 2, 405–408

DOCUMENT DESCRIPTION		LOCATION
13	Printout of Arizona Corporation Commission corporate listing for Superpumper, Inc.	Vol. 2, 409–414
Defendant, Superpumper, Inc.'s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/15/2014)		Vol. 3, 415–421
Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.'s (filed 07/17/2014)		Vol. 3, 422–431
Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.'s (filed 07/17/2014)		Vol. 3, 432–435
Exhibit to Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.'s		
Exhibit	**Document Description**	
1	Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.'s	Vol. 3, 436–446
Order Denying Superpumper, Inc.'s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)		Vol. 3, 447–457
Notice of Entry of Order Denying Superpumper, Inc.'s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)		Vol. 3, 458–461
Exhibit to Notice of Entry of Order Denying Superpumper, Inc.'s Motion to Dismiss Complaint		
Exhibit	**Document Description**	
1	Order Denying Superpumper, Inc.'s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)	Vol. 3, 462–473

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Answer to Complaint of Superpumper, Inc., and Snowshoe Petroleum, Inc. (filed 07/28/2014)</td><td>Vol. 3, 474–483</td></tr>
<tr><td colspan="2">Answer to Complaint of Defendants, Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito (filed 09/29/2014)</td><td>Vol. 3, 484–494</td></tr>
<tr><td colspan="2">Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 2/11/2015)</td><td>Vol. 3, 495–498</td></tr>
<tr><td colspan="2">Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 02/17/2015)</td><td>Vol. 3, 499–502</td></tr>
<tr><td colspan="2">Exhibits to Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Involuntary Petition; Case No. BK-N-13-51236 (filed 06/20/2013)</td><td>Vol. 3, 503–534</td></tr>
<tr><td>2</td><td>Involuntary Petition; Case No. BK-N-13-51237 (06/20/2013)</td><td>Vol. 3, 535–566</td></tr>
<tr><td>3</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/17/2014)</td><td>Vol. 3, 567–570</td></tr>
<tr><td>4</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51237 (filed 12/17/2014)</td><td>Vol. 3, 571–574</td></tr>
<tr><td colspan="2">Stipulation and Order to File Amended Complaint (filed 05/15/2015)</td><td>Vol. 4, 575–579</td></tr>
<tr><td colspan="2">Exhibit to Stipulation and Order to File Amended Complaint</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
1	First Amended Complaint	Vol. 4, 580–593
William A. Leonard, Trustee for the Bankruptcy Estate of P. Morabito, First Amended Complaint (filed 05/15/2015)		Vol. 4, 594–607
Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a) (filed 05/15/2015)		Vol. 4, 608–611
Substitution of Counsel (filed 05/26/2015)		Vol. 4, 612–615
Defendants' Answer to First Amended Complaint (filed 06/02/2015)		Vol. 4, 616–623
Amended Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a) (filed 06/16/2015)		Vol. 4, 624–627
Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 03/10/2016)		Vol. 4, 628–635
Exhibits to Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege		
Exhibit	**Document Description**	
1	March 9, 2016 Letter from Lippes	Vol. 4, 636–638
2	Affidavit of Frank C. Gilmore, Esq., (dated 03/10/2016)	Vol. 4, 639–641
3	Notice of Issuance of Subpoena to Dennis Vacco (dated 01/29/2015)	Vol. 4, 642–656
4	March 10, 2016 email chain	Vol. 4, 657–659

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Minutes of February 24, 2016 Pre-trial Conference (filed 03/17/2016)</td><td>Vol. 4, 660–661</td></tr>
<tr><td colspan="2">Transcript of February 24, 2016 Pre-trial Conference</td><td>Vol. 4, 662–725</td></tr>
<tr><td colspan="2">Plaintiff's (Leonard) Opposition to Defendants' Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 03/25/2016)</td><td>Vol. 5, 726–746</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Partially Quash or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege</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 Opposition to Defendants' Motion to Partially Quash (filed 03/25/2016)</td><td>Vol. 5, 747–750</td></tr>
<tr><td>2</td><td>Application for Commission to take Deposition of Dennis Vacco (filed 09/17/2015)</td><td>Vol. 5, 751–759</td></tr>
<tr><td>3</td><td>Commission to take Deposition of Dennis Vacco (filed 09/21/2015)</td><td>Vol. 5, 760–763</td></tr>
<tr><td>4</td><td>Subpoena/Subpoena Duces Tecum to Dennis Vacco (09/29/2015)</td><td>Vol. 5, 764–776</td></tr>
<tr><td>5</td><td>Notice of Issuance of Subpoena to Dennis Vacco (dated 09/29/2015)</td><td>Vol. 5, 777–791</td></tr>
<tr><td>6</td><td>Dennis C. Vacco and Lippes Mathias Wexler Friedman LLP, Response to Subpoena (dated 10/15/2015)</td><td>Vol. 5, 792–801</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
7	Condensed Transcript of October 21, 2015 Deposition of Dennis Vacco	Vol. 5, 802–851
8	Transcript of the Bankruptcy Court's December 22, 2015, oral ruling; Case No. BK-N-13-51237	Vol. 5, 852–897
9	Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 02/03/2016)	Vol. 5, 898–903
10	Notice of Continued Deposition of Dennis Vacco (filed 02/18/2016)	Vol. 5, 904–907
11	Debtor's Objection to Proposed Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 01/22/2016)	Vol. 5, 908–925
Reply in Support of Motion to Modify Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 04/06/2016)		Vol. 6, 926–932
Plaintiff's Motion to Compel Production of Documents (filed 04/08/2016)		Vol. 6, 933–944
Exhibits to Plaintiff's Motion to Compel Production of Documents		
Exhibit	**Document Description**	
1	Declaration of Teresa M. Pilatowicz in Support of Plaintiff's Motion to Compel (filed 04/08/2016)	Vol. 6, 945–948
2	Bill of Sale – 1254 Mary Fleming Circle (dated 10/01/2010)	Vol. 6, 949–953

	DOCUMENT DESCRIPTION	LOCATION
3	Bill of Sale – 371 El Camino Del Mar (dated 10/01/2010)	Vol. 6, 954–958
4	Bill of Sale – 370 Los Olivos (dated 10/01/2010)	Vol. 6, 959–963
5	Personal financial statement of P. Morabito as of May 5, 2009	Vol. 6, 964–965
6	Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk (dated 08/14/2015)	Vol. 6, 966–977
7	Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)	Vol. 6, 978–987
8	Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living Trust (dated 08/14/2015)	Vol. 6, 988–997
9	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)	Vol. 6, 998–1007
10	Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk (dated 01/29/2016)	Vol. 6, 1008–1015
11	Edward Bayuk's Responses to Plaintiff's Second Set of Requests for Production (dated 03/08/2016)	Vol. 6, 1016–1020

DOCUMENT DESCRIPTION		LOCATION
12	Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living Trust (dated 01/29/2016)	Vol. 6, 1021–1028
13	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's Second Set of Requests for Production (dated 03/08/2016)	Vol. 6, 1029–1033
14	Correspondences between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq. (dated 03/25/2016)	Vol. 6, 1034–1037
Opposition to Plaintiff's Motion to Compel Production of Documents (filed 04/25/2016)		Vol. 7, 1038–1044
Reply in Support of Plaintiff's Motion to Compel Production of Documents (filed 05/09/2016)		Vol. 7, 1045–1057
Exhibits to Reply in Support of Plaintiff's Motion to Compel Production of Documents		
Exhibit	**Document Description**	
1	Declaration of Gabrielle A. Hamm, Esq., in Support of Reply in Support of Plaintiff's Motion to Compel (filed 05/09/2016)	Vol. 7, 1058–1060
2	Amended Findings, of Fact and Conclusion of Law in Support of Order Granting Motion for Summary Judgment; Case No. BK-N-13-51237 (filed 12/22/2014)	Vol. 7, 1061–1070

	DOCUMENT DESCRIPTION	**LOCATION**
3	Order Compelling Deposition of P. Morabito dated March 13, 2014, in *Consolidated Nevada Corp., et al v. JH. et al*.; Case No. CV07-02764 (filed 03/13/2014)	Vol. 7, 1071–1074
4	Emergency Motion Under NRCP 27(e); Petition for Writ of Prohibition, *P. Morabito v. The Second Judicial District Court of the State of Nevada in and for the County of Washoe*; Case No. 65319 (filed 04/01/2014)	Vol. 7, 1075–1104
5	Order Denying Petition for Writ of Prohibition; Case No. 65319 (filed 04/18/2014)	Vol. 7, 1105–1108
6	Order Granting Summary Judgment; Case No. BK-N-13-51237 (filed 12/17/2014)	Vol. 7, 1109–1112
Recommendation for Order RE: *Defendants' Motion to Partially Quash,* filed on March 10, 2016 (filed 06/13/2016)		Vol. 7, 1113–1124
Confirming Recommendation Order from June 13, 2016 (filed 07/06/2016)		Vol. 7, 1125–1126
Recommendation for Order RE: *Plaintiff's Motion to Compel Production of Documents*, filed on April 8, 2016 (filed 09/01/2016)		Vol. 7, 1127–1133
Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)		Vol. 7, 1134–1135
Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)		Vol. 8, 1136–1145

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order		
Exhibit	**Document Description**	
1	Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)	Vol. 8, 1146–1148
2	Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)	Vol. 8, 1149–1151
3	Recommendation for Order RE: *Plaintiff's Motion to Compel Production of Documents*, filed on April 8, 2016 (filed 09/01/2016)	Vol. 8, 1152–1159
4	Plaintiff's Motion to Compel Production of Documents (filed 04/08/2016)	Vol. 8, 1160–1265
5	Opposition to Plaintiff's Motion to Compel Production of Documents (filed 04/25/2016)	Vol. 8, 1266–1273
6	Reply in Support of Plaintiff's Motion to Compel Production of Documents (filed 05/09/2016)	Vol. 8, 1274–1342
7	Correspondences between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq. (dated 09/22/2016)	Vol. 8, 1343–1346
8	Edward Bayuk's Supplemental Responses to Plaintiff's Second Set of Requests for Production (dated 10/25/2016)	Vol. 8, 1347–1352

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order (filed 12/19/2016</td><td>Vol. 9, 1353–1363</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Edward Bayuk in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1364–1367</td></tr>
<tr><td>2</td><td>Declaration of Frank C. Gilmore, Esq., in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1368–1370</td></tr>
<tr><td>3</td><td>Redacted copy of the September 6, 2016, correspondence of Frank C. Gilmore, Esq.</td><td>Vol. 9, 1371–1372</td></tr>
<tr><td colspan="2">Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 12/23/2016)</td><td>Vol. 9, 1373–1375</td></tr>
<tr><td colspan="2">Response: (1) to Opposition to Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order and (2) in Support of Order to Show Cause (filed 12/30/2016)</td><td>Vol. 9, 1376–1387</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 Deposition of Edward Bayuk in RE: insurance policies (filed 01/19/2017)</td><td>Vol. 9, 1388</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 hearing on Order to Show Cause (filed 01/30/2017)</td><td>Vol. 9, 1389</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/18/2017)		Vol. 9, 1390–1404
Exhibits to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP		
Exhibit	**Document Description**	
1	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016	Vol. 9, 1405–1406
2	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016, with attached redlined discovery extension stipulation	Vol. 9, 1407–1414
3	Jan. 3 – Jan. 4, 2017, email chain from Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq.	Vol. 9, 1415–1416
4	Declaration of Frank C. Gilmore, Esq., in Support of Motion to Quash (filed 07/18/2017)	Vol. 9, 1417–1420
5	January 24, 2017 email from Teresa M. Pilatowicz, Esq.,	Vol. 9, 1421–1422
6	Jones Vargas letter to HR and P. Morabito, dated August 16, 2010	Vol. 9, 1423–1425
7	Excerpted Transcript of July 26, 2011 Deposition of Sujata Yalamanchili, Esq.	Vol. 9, 1426–1431
8	Letter dated June 17, 2011, from Hodgson Russ ("HR") to John Desmond and Brian Irvine on Morabito related issues	Vol. 9, 1432–1434

DOCUMENT DESCRIPTION		LOCATION
9	August 9, 2013, transmitted letter to HR	Vol. 9, 1435–1436
10	Excerpted Transcript of July 23, 2014 Deposition of P. Morabito	Vol. 9, 1437–1441
11	Lippes Mathias Wexler Friedman LLP, April 3, 2015 letter	Vol. 9, 1442–1444
12	Lippes Mathias Wexler Friedman LLP, October 20, 2010 letter RE: Balance forward as of bill dated 09/19/2010 and 09/16/2010	Vol. 9, 1445–1454
13	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 9, 1455–1460
(1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP; and (2) Countermotion for Sanctions and to Compel Resetting of 30(b)(3) Deposition of Hodgson Russ LLP (filed 07/24/2017)		Vol. 10, 1461–1485
Exhibits to (1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP; and (2) Countermotion for Sanctions and to Compel Resetting of 30(b)(3) Deposition of Hodgson Russ LLP		

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Exhibit	**Document Description**	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of (1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/24/2017)	Vol. 10, 1486–1494
A-1	Defendants' NRCP Disclosure of Witnesses and Documents (dated 12/01/2014)	Vol. 10, 1495–1598
A-2	Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 02/03/2016)	Vol. 10, 1599–1604
A-3	Recommendation for Order RE: *Defendants' Motion to Partially Quash,* filed on March 10, 2016 (filed 06/13/2016)	Vol. 10, 1605–1617
A-4	Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)	Vol. 10, 1618–1620
A-5	Subpoena – Civil (dated 01/03/2017)	Vol. 10, 1621–1634
A-6	Notice of Deposition of Person Most Knowledgeable of Hodgson Russ LLP (filed 01/03/2017)	Vol. 10, 1635–1639
A-7	January 25, 2017 Letter to Hodgson Russ LLP	Vol. 10, 1640–1649
A-8	Stipulation Regarding Continued Discovery Dates (Sixth Request) (filed 01/30/2017)	Vol. 10, 1650–1659
A-9	Stipulation Regarding Continued Discovery Dates (Seventh Request) (filed 05/25/2017)	Vol. 10, 1660–1669

DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)</td><td>Vol. 18, 2727–2734</td></tr>
<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>
</table>

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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)</td><td>Vol. 20, 3312</td></tr>
<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>
</table>

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

	DOCUMENT DESCRIPTION	LOCATION
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898

	DOCUMENT DESCRIPTION	LOCATION
57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for $1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982

	DOCUMENT DESCRIPTION	LOCATION
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

	DOCUMENT DESCRIPTION	**LOCATION**
82	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4076–4077
83	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc.	Vol. 24, 4078–4080
84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
103	Superpumper Note in the amount of $1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of $492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of $939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

	DOCUMENT DESCRIPTION	**LOCATION**
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	*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 Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee*, Case 13-51237, ECF No. 22 (filed 07/01/2013)	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of $939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284

	DOCUMENT DESCRIPTION	LOCATION
117	Superpumper 2010 YTD Income Statement and Balance Sheets	Vol. 25, 4285–4299
118	March 12, 2010 Management Letter	Vol. 25, 4300–4302
119	Superpumper Unaudited August 2010 Balance Sheet	Vol. 25, 4303–4307
120	Superpumper Financial Statements (dated 12/31/2010)	Vol. 25, 4308–4322
121	Notes Receivable Balance as of September 30, 2010	Vol. 26, 4323
122	Salvatore Morabito Term Note $2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note $2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

	DOCUMENT DESCRIPTION	LOCATION
133	April 5, 2011 email from P. Morabito to Vacco	Vol. 26, 4353
134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
135	August 7, 2011 email exchange between Vacco and P. Morabito	Vol. 26, 4360
136	August 2011 Lovelace letter to Timothy Halves	Vol. 26, 4361–4365
137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
140	November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: $560,000 wire to Lippes Mathias	Vol. 26, 4369–4370
141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
144	April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail	Vol. 26, 4377–4378

	DOCUMENT DESCRIPTION	LOCATION
145	September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents	Vol. 26, 4379–4418
147	September 4, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4419–4422
148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
149	December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money	Vol. 26, 4427–4428
150	September 18, 2012 email chain between P. Morabito and Bayuk	Vol. 26, 4429–4432
151	October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC	Vol. 26, 4433–4434
152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

	DOCUMENT DESCRIPTION	LOCATION
159	September 14, 2012 email from Vacco to P. Morabito	Vol. 27, 4656–4657
160	October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian	Vol. 27, 4658
161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
162	April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust	Vol. 27, 4660
163	Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010)	Vol. 27, 4661–4665
164	Watch My Block organizational documents	Vol. 27, 4666–4669
174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman's Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
179	Gursey Schneider LLP Subpoena	Vol. 28, 4676–4697
180	Summary Appraisal of 570 Glenneyre	Vol. 28, 4698–4728
181	Appraisal of 1461 Glenneyre Street	Vol. 28, 4729–4777
182	Appraisal of 370 Los Olivos	Vol. 28, 4778–4804
183	Appraisal of 371 El Camino Del Mar	Vol. 28, 4805–4830
184	Appraisal of 1254 Mary Fleming Circle	Vol. 28, 4831–4859

DOCUMENT DESCRIPTION		LOCATION
185	Mortgage – Panorama	Vol. 28, 4860–4860
186	Mortgage – El Camino	Vol. 28, 4861
187	Mortgage – Los Olivos	Vol. 28, 4862
188	Mortgage – Glenneyre	Vol. 28, 4863
189	Mortgage – Mary Fleming	Vol. 28, 4864
190	Settlement Statement – 371 El Camino Del Mar	Vol. 28, 4865
191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
192	2010 Declaration of Value of 8355 Panorama Dr	Vol. 28, 4867–4868
193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants' SSOF in Support of Opposition to Plaintiff's MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879

	DOCUMENT DESCRIPTION	LOCATION
222	Kimmel – January 21, 2016, Comment on Alves Appraisal	Vol. 28, 4880–4883
223	September 20, 2010 email from Yalamanchili to Morabito	Vol. 28, 4884
224	March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC	Vol. 28, 4885–4886
225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006

	DOCUMENT DESCRIPTION	LOCATION
233	BMO Account Tracker Banking Report October 1 to October 31, 2010	Vol. 29, 5007–5013
235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076
244	Assignment Agreement for $939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102

	DOCUMENT DESCRIPTION	LOCATION
257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito $60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for $29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for $12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for $31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358

	DOCUMENT DESCRIPTION	LOCATION
272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home Caparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

	DOCUMENT DESCRIPTION	LOCATION
300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
Minutes of October 29, 2018, Non-Jury Trial, Day 1 (filed 11/08/2018)		Vol. 35, 5802–6041
Transcript of October 29, 2018, Non-Jury Trial, Day 1		Vol. 35, 6042–6045

DOCUMENT DESCRIPTION	LOCATION
Minutes of October 30, 2018, Non-Jury Trial, Day 2 (filed 11/08/2018)	Vol. 36, 6046–6283
Transcript of October 30, 2018, Non-Jury Trial, Day 2	Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)	Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3	Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)	Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4	Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5	Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)	Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6	Vol. 40, 7168–7169
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7	Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)	Vol. 43, 7475–7476
Transcript of November 7, 2018, Non-Jury Trial, Day 8	Vol. 43, 7477–7615

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Minutes of November 26, 2018, Non-Jury Trial, Day 9 (filed 11/26/2018)</td><td>Vol. 44, 7616</td></tr>
<tr><td colspan="2">Transcript of November 26, 2018, Non-Jury Trial – Closing Arguments, Day 9</td><td>Vol. 44, 7617–7666
Vol. 45, 7667–7893</td></tr>
<tr><td colspan="2">Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)</td><td>Vol. 46, 7894–7908</td></tr>
<tr><td colspan="2">Exhibits to Plaintiff's Motion to Reopen Evidence</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. in Support of Plaintiff's Motion to Reopen</td><td>Vol. 46, 7909–7913</td></tr>
<tr><td>1-A</td><td>September 21, 2017 Declaration of Salvatore Morabito</td><td>Vol. 46, 7914–7916</td></tr>
<tr><td>1-B</td><td>Defendants' Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)</td><td>Vol. 46, 7917–7957</td></tr>
<tr><td>1-C</td><td>Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)</td><td>Vol. 46, 7958–7962</td></tr>
<tr><td>1-D</td><td>Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs' First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)</td><td>Vol. 46, 7963–7994</td></tr>
<tr><td>1-E</td><td>Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)</td><td>Vol. 46, 7995–8035</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence		
Exhibit	**Document Description**	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)		Vol. 47, 8106–8110

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence		
Exhibit	**Document Description**	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
Defendants' Response to Motion to Reopen Evidence (02/06/2019)		Vol. 47, 8129–8135
Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)		Vol. 47, 8144
Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence		Vol. 47, 8145–8158
[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)		Vol. 47, 8159–8224
[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)		Vol. 47, 8269

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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>
</table>

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

<table>
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<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>
</table>

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<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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DOCUMENT DESCRIPTION		LOCATION
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito's Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk's Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
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)		Vol. 52, 8989–9003
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)		
Exhibit	**Document Description**	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

	DOCUMENT DESCRIPTION	LOCATION
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>
</table>

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>
</table>

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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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Jacqueline Bryant
Clerk of the Court
Transaction # 6969441

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
11/1/18 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Schonlau (Reporter)	**NON-JURY TRIAL – DAY FOUR** 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. Chris Kemper, Esq., counsel for the Herbst Family present in the gallery. 8:07 a.m. Court convened. **EXHIBITS 225, 283 and 284** ordered admitted into evidence based on stipulation of respective counsel. Discussion ensued regarding the schedule of witnesses for the day. Witness Salvatore Morabito, heretofore sworn, resumed the stand and was further re-examined by counsel Turner. **EXHIBIT 294** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence. Witness Morabito further re-examined by counsel Turner. **EXHIBIT 30** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence. Witness Morabito further re-examined by counsel Turner; re-examined by counsel Gilmore; excused. Edward Bayuk, heretofore sworn, recalled by counsel Turner and examined; excused. Discussion ensued regarding the procedure to be utilized during deposition testimony. Colton Loretz sworn to read the deposition testimony of Gary Graber, Sujata Yalamanchili and Gary Krausz into the record. ***Depositions of Gary Graber taken July 12, 2017 and May 1, 2018 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.	

11/1/18
J. Schonlau
(Reporter)

NON-JURY TRIAL – DAY FOUR

EXHIBIT 29 offered by counsel Pilatowicz; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

9:21 a.m. Court recessed.
9:35 a.m. Court reconvened with respective counsel and parties present.

***Deposition of Sujata Yalamanchili taken May 1, 2018 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

EXHIBIT 32 offered by counsel Pilatowicz; no objection by counsel Gilmore; ordered admitted into evidence.
EXHIBIT 300 (Exhibit 8 to the Deposition of Gary Graber) marked and offered by counsel Gilmore; stipulated by counsel Pilatowicz; ordered admitted into evidence.
Respective counsel advised the Court that Exhibit 15 to Sujata Yalamanchili's deposition needs to be located and marked as a trial exhibit at a later time.

James McGovern called by counsel Pilatowicz, sworn and testified.

***Witness McGovern deemed qualified to provide opinion testimony as to business valuation.

Witness McGovern further direct examined.

***Deposition of James McGovern dated March 28, 2018 opened and published.

Witness McGovern further direct examined.

Counsel Gilmore objected to testimony regarding matrix valuation.

Witness further direct examined.

Counsel Gilmore withdrew his objection to the testimony regarding matrix valuation.

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
11/1/18 J. Schonlau (Reporter)	**NON-JURY TRIAL – DAY FOUR** Witness McGovern further direct examined; examined by the Court; cross-examined by counsel Gilmore. 11:50 a.m. Court recessed for lunch until 1:00 p.m. 1:04 p.m. Court reconvened with respective counsel and parties present. **EXHIBIT 301** (Exhibit 15 to Sujata Yalamanchili's Deposition) marked and offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence. Witness McGovern, heretofore sworn, resumed stand and was further cross-examined; redirect examined; recross-examined; further examined by counsel Pilatowicz; excused. ***Deposition of Paul Morabito taken March 21, 2016 opened and published. Designated portions played via video. Transcript of the designated portions marked for the record as **EXHIBIT 302**. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits. Discussion ensued regarding the trial schedule for the remainder of the day and the next day. 2:33 p.m. Court recessed. 2:48 p.m. Court reconvened with respective counsel and parties present. Video deposition of Paul Morabito continued. 5:40 p.m. Court recessed. 4:51 p.m. Court reconvened with respective counsel and parties present. ***Deposition of Gary Krausz dated March 16, 2016 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits. Additional discussion ensued regarding the trial schedule for the next day. 5:54 p.m. Court recessed until 10:15 on November 2, 2018.	**11/2/18 10:15 a.m. Ongoing Non-Jury Trial – Day Five**

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,	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

THURSDAY, NOVEMBER 1, 2018, 8:00 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 M. 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
SALVATORE MORABITO			7	19
EDWARD BAYUK	24			
GARY GRABER	27	49		
SUJATA YALAMANCHILI	57	87		
JAMES L. McGOVERN	111	134	190	195
			198	
PAUL MORABITO	207			
GARY KRAUSZ	211			

EXHIBITS:	Marked for Identification	Admitted into Evidence
29		48
30		18
32		84
225	5	6
236	208	208
283		6
284		6
294		9
300	104	104
301	146	146
302	201	201

RENO, NEVADA; THURSDAY, NOVEMBER 1, 2018; 8:00

-oOo-

THE COURT: Good morning. Please be seated. Good morning.

MS. TURNER: Good morning.

MR. GILMORE: Good morning.

THE COURT: Do we we have some business to take care of? You marked an exhibit.

MS. TURNER: Your Honor, we did. There is a new exhibit, Exhibit 225 that by stipulated will be admitted.

THE CLERK: Exhibit 225 marked.

(Exhibit 225 marked for identification.)

MR. GILMORE: Yes, Your Honor. 225 has been stipulated to and to facilitate the examination of the experts. The live witnesses on the expert testimony, we stipulated to admission of their reports.

THE COURT: Do you have those marked?

MR. GILMORE: Yes, we do.

THE COURT: Tell me the numbers.

MS. PILATOWICZ: Plaintiff's are 53 and 55. 53 is the

report -- 53 which is the report of William Kimmel which was stipulated to admission prior. Exhibit 91 which is the expert report of James McGovern. That was already marked.

THE COURT: That was admitted already also. So you have 53 and Exhibit 91. Was there a 60?

MS. PILATOWICZ: No, Your Honor. I apologize.

THE COURT: Plaintiff's are already admitted. Then we just need this 255 is being marked by the Plaintiff's; is that correct?

MS. TURNER: Yes.

MR. GILMORE: Yes, Your Honor.

MR. GILMORE: Now Your Honor, the Defendants expert report of Michelle Salazar.

MS. TURNER: 284.

MR. GILMORE: I will get the number. That is her rebuttal. Oh, here it is. It is 283 and 284.

THE COURT: Expert witness report 283 and 284.

MS. PILATOWICZ: Is the rebuttal report. Are those the ones?

MR. GILMORE: That's it, Your Honor.

THE CLERK: That is stipulated.

MS. TURNER: Yes.

THE COURT: Those are admitted.

(Exhibits 225, 283 and 284 admitted in evidence.)

THE COURT: So today's schedule, tell me what you plan to do.

MS. TURNER: We still have Mr. Morabito on the stand to start with, then the one question I have of Mr. Bayuk just to put that aside, and then we have the reading in of the deposition and Mr. McGovern will be here at 1:00.

MS. PILATOWICZ: Unless we can get him on earlier.

THE COURT: Your planning on just getting him on and off today?

MS. PILATOWICZ: Correct. We'll fill in with the deposition so everything makes sense to make sure we get the most efficient use of time.

THE COURT: Okay. Mr. Morabito should go back on the stand. Your still under oath. You may continue your inquiry.

MS. TURNER: Thank you.

REDIRECT EXAMINATION CONTINUED

BY MS. TURNER:

Q Yesterday we looked at two documents from September of 2010 that were communications with Compass and/or their counsel. The e-mail from Paul Morabito to Sean at Compass. Do you recall that?

A Vaguely.

Q If we can go to Exhibit 33.

A Okay, yeah.

Q So Exhibit 33 is the e-mail, do you recall that, from yesterday?

A Yes, I do.

Q Where Paul Morabito e-mailed Sean Hollenbach to confirm a conversation. At the end it says there will be -- "There was confirmation they will work with us in good faith towards effecting those cures and putting the loan back into compliance." And the Compass representative said: "You're correct, that is our intention."that was September 24th, correct?

A Yes.

Q And then the next communication from Compass regarding any default or alleged default was September 30th the letter to their counsel, Quarles and Brady. Do you recall that?

A Yes, I recall that, yes.

Q September 30th was the day that the restructuring of Superpumper and the transfer from Paul Morabito to Snowshoe Petroleum, a New York corporation, that is when that transaction was finalized?

A That was the day Snowshoe became 100 percent owner of the merged entity.

Q So between September 24th and September 30th that is when the papers were being put together and you executed documents to effectuate the restructuring and ultimate transfer of Paul Morabito's interest to Snowshoe Petroleum, correct?

A That's when all the documents were being prepared by Lippes and they were executed at the Lippes office.

Q And before I go to the next exhibit, I want to make sure we are very clear. In September of 2010 you were a client of the Lippes law firm?

A Yes.

Q As was Paul Morabito?

A Yes.

Q If you would go to Exhibit 294.

A Okay.

Q Exhibit 294 are some redacted billing records from the Lippes firm in that September time frame. Have you seen these bills before?

A No.

Q Let's go to the entries. Before we do. I move for admission of 294. These are in the Defendants' books, so I don't anticipate there being an issue?

MR. GILMORE: No objection.

THE COURT: Exhibit 294 is admitted.

(Exhibit 294 admitted in evidence.)

BY MS. TURNER:

Q If we could go to the second page of the exhibit at the top of the page it says: Conference with attorney Vacco refects verdict. Do you see that?

A Yes.

Q Was that a conference with you?

A I don't believe so. This is Paul Morabito's bill. I don't believe-- Paul is getting billed for his legal work. This is not my legal work. I would say no, that isn't a conference with me. I don't believe so.

Q So there was nothing that was done in this bill set forth in Exhibit 294 that was for you? You had a separate bill?

A I believe I did, yeah.

Q Okay. And anything that was done in bills that were sent to Paul Morabito for September 2010, they were on behalf of Paul Morabito not you?

A Say that again.

Q The matters that were billed to Paul Morabito for September 2010, those were on behalf of Paul Morabito. You were separately billed for those things that were at your request or on your behalf?

A Correct. Paul pays his bills. I pay my bills, and

I pay Snowshoe bills. Snowshoe pays Snowshoe's bills. I sign the checks.

Q That is kind of a different answer to the question. Let me make sure I'm clear?

A Okay.

Q When the Lippes firm billed Paul Morabito for work done, that was for work done on his behalf alone?

A Yes.

Q And if the Lippes firm was doing work on your behalf or Snowshoe's, there would be a separate bill to you that you would be responsible for?

A That's correct.

Q At any point in time, did Paul Morabito say split this bill because there was work done on behalf of all of us?

A I don't believe so.

Q Okay. And that's true for September 2010 as well?

A To my best recollection.

Q And if there is reference in a bill to Paul Morabito, to client, that would be Paul Morabito's?

MR. GILMORE: Calls for speculation.

THE WITNESS: I am not sure how Lippes does the billing. I don't know. I'm not sure.

THE COURT: Okay. The answer is out there so we'll go ahead and let the answer stand.

BY MS. TURNER:

Q Now, you testified yesterday about the financial statement provided to the Gursey firm, the auditors of Snowshoe Petroleum and Superpumper that you certified as accurate. And I believe your testimony was something to the effect you did a quick calculation to make the auditor happy. Do you recall that testimony?

A Yes.

Q And now you knew that if it was going to be used by the auditor, the information was to be used by the auditor and, the auditor would be relying on your certified statement, correct?

A I mean, the problem is that it seems every year when we do accounting with whether it be Stan Bernstein or Darata we do our taxes, when the auditor is preparing the audit, it is always a fire drill. Everything always comes down to the last minute so it is always, can you get this ready, can you do this, can you do that. So I don't recall exactly, but I was actually surprised to see that net worth statement, but I know it was something he said. I believe it was Gary called me and said we just need this for our file to verify you and Ed have the wherewithal to pay the note. Just put together a quick statement of your net worth and send it to me so I can close the file. I don't think I was giving it as reliance to

show to anyone except for him. It wasn't for a bank. It wasn't for an appraisal. It was just one of those quick things you have to do to satisfy what do they say call it, a CYA, CYA document. He just required that for his file.

Q So the certified financial statement was a CYA document?

A On behalf -- In other words, he requires that.

Q And you didn't feel you had any obligation do verify the accuracy of the information provided before giving it to the auditors of Snowshoe Superpumper?

A He said give me the best of your knowledge. I need a fast statement of net worth for my books. I'm not sure what certified means. Does signing it mean it is certified? I don't know what that means. I wouldn't use the term certified.

Q Let's go to Exhibit 126.

A 126.

Q Yes, sir.

A I am doing this slowly. I don't want to have another ripped binder like we had yesterday. I am ruining it already. So, okay, here it is.

Q Can you read the sentence above the signature?

A I certify the attached to be true. I couldn't read the rest of it, to the best of my knowledge.

Q I certify the attached to be true?

A To the best of my knowledge, I guess I certified it to be true. That was the best of my knowledge at that point in time.

Q Superpumper -- strike that. You testified that you are not a financial person or something to that effect yesterday. You are not CFO of Superpumper?

A I am the President, no, Vice-President of Superpumper. President of Snowshoe.

Q And Superpumper. At least when you were President had a controller?

A Yes.

Q Did you go to the controller and ask the controller to help verify your statement of assets and liabilities before certifying it?

A Yes, I did. I asked him to pull the records from his internal accounting.

Q Now you understood that the auditors were asking for the information because they would be relying on it?

A I don't know what you mean by that. I mean, again, he asked me to get a quick statement of net worth. That's what I gave him. I am not sure why he needed it. I believe it was just to show I had the financial wherewithal to cover the notes he was putting in the audit. I think that is the reason.

Q You testified yesterday that it was a mistake to not

include the note payable to Snowshoe on the right-hand side of this statement of assets and liabilities. Do you recall that testimony?

A Yes. It was definitely an oversight on the part of, you know, myself to not include that.

Q If we go back to Exhibit 122.

A 122, 122. Where is 122?

Q It is in that same book.

A Yes.

Q Exhibit 122 is your note payable to Superpumper, correct?

A Correct.

Q That was the only note payable from you to Superpumper as of the date of your statement of assets that you did on February 2011, correct?

A Well, this is December 31, 2010. On February it was February 1, 2011.

Q Yes?

A I can't tell you what the balance was. It would have been similar. It would have been in that range. I am not exactly sure of the number. It definitely would have been in that range.

Q The only note executed by you in favor of Superpumper that was in place as of the date of your statement

of assets and liabilities was the one that is set forth at Exhibit 122, right?

A I don't know, because the note fluctuated with the interest charges and stuff. I don't know if this is the exact. It is basically this note. I don't know if that is the amount on February 1st.

Q It was the only note that you had executed in favor of Superpumper?

A I just had one note, yes.

Q Now yesterday when I was talking to you about this note, you indicated that it lacked consideration. Do you recall that?

A Yes.

Q I need to understand your testimony. Has that changed now? Have you recalled that you received consideration for the term note for $2,563,042?

A No, I didn't receive that money from Superpumper.

Q So you didn't receive the money, and the term note set forth at Exhibit 122 was ultimately cancelled, correct?

A Eventually, yes. Yeah.

Q And --

A Like five years later.

Q And you're still taking the position that it should have been included as an offset against your determination of

value for Superpumper as of February 1, 2011?

A Yes, because it is recorded as a, well, it's a liability on my side and asset on the Superpumper side.

Q September 20th -- Actually, at all points prior to September 30th, Paul Morabito was the President of Superpumper?

A Yes, I believe so.

Q And the director?

A He was the director.

Q And also Consolidated Western Corporation?

A Yes.

Q Now, September 21st, 2010, prior to the September 24th e-mail we saw from Compass, Paul Morabito was advising third parties that he was going to continue heading Superpumper, but there would be ownership by a combination of you and Edward Bayuk, correct?

A I don't know. Can you show me where he said that?

Q Do you know that independent of a document?

A I don't know that for a fact. I don't know that for an absolute fact, no.

Q If we could go to Exhibit 30 which is in, we can probably put aside the other one if you don't want to be overwhelmed with binders.

A But I have destroyed that one. I will put them

back. Don't worry, I will put them in a nice condition.

Q Exhibit 30, before we read the contents, if you could read it to yourself?

A Okay. Okay.

Q So certainly as of September 21st, 2010, Paul Morabito was advising third parties he was going to continue to head, but you were going to own Snowshoe Petroleum, correct?

A He seems to be indicating that.

MS. TURNER: I move for admission of Exhibit 30.

MR. GILMORE: No objection.

THE COURT: Exhibit 30 is admitted.

(Exhibit 30 admitted in evidence.)

BY MS. TURNER:

Q That Exhibit 30 we have Paul Morabito saying as of September 21st to Kevin Krausz he would no longer be actively seeking to accumulate assets in companies that I am a shareholder in, and instead will be acting as an advisor to amongst other entities, Snowshoe Petroleum, LLC, a company to be owned and operated by my brother, Sam, Edward Bayuk and Dennis Vacco. Do you see that?

A Yes.

Q And if you go further down to the fourth paragraph it says: " Spoke with Kevin Krausz and he's comfortable

making an equity commitment of 150 million to facilitate this acquisition. I advised him that a company to be head by me but owned by a combination of Edward Bayuk, Sam Morabito, John Richman as well as Petroski and his management team would be created to make this offer." Do you see that?

A Yes.

MS. TURNER: I will pass the witness.

THE COURT: Counsel.

RECROSS-EXAMINATION

BY MR. GILMORE:

Q Sam, please stay on Exhibit 30. You have got it there?

A Yes.

Q Yesterday we discussed this Ceberus California LLC, right?

A Yes.

Q This was associated, you testified yesterday on direct examination this was associated with that Nella Oil opportunity. We looked at an e-mail where Paul was discussing that. Do you remember that sixty-five million dollar Ceberus line and seventy-two million dollar sale lease-back from Getty?

A That was in 2011 or 2012 though, wasn't it?

Q Same players, right?

A Same players.

Q Here is that Ceberus again?

A Yes.

Q Let's, actually rather than characterizing it through statements of counsel, let's actually read the e-mail and see what it says.

MS. TURNER: Your Honor, I move to strike.

THE COURT: Sustained.

BY MR. GILMORE:

Q Now, it has been established that the oral ruling was September 13th, correct?

A Yes.

Q This is a week after the oral ruling, right?

A Yes.

Q Now he says he would no longer be actively seeking to accumulate assets in companies that I am a shareholder in. Do you see that right here?

A I will no longer be acting as an advisor to-- I am sorry what paragraph is this?

Q Second line of the first paragraph?

THE COURT: If you have a question for him great. You're just reading it into the record. I can read it.

MR. GILMORE: I do have a question.

THE COURT: Just ask the question.

THE WITNESS: Okay. Yes.

///

BY MR. GILMORE:

Q Did you ever have a conversation with Paul Morabito who is the Declarant of the e-mail why he was no longer seeking to accumulate assets in companies that he owned?

A No. I mean this is classic Paul just throwing out ideas and brainstorming. You know, I don't know what he's talking about here. Nothing ever came to pass of this. It is just what he does. It is a white board conversation. It is, you know, it is just the way he operates. So I don't know. Nothing ever came of any of this, but it is fun to dream, but, you know, it didn't happen.

Q Do you know what he's talking about in this seven hundred fifty million dollar number associated with Kevin Shay from Getty? Do you know what he's talking about?

A No. I have no idea.

Q Do you know who Ray Whiteman is?

A Vaguely.

Q Did you ever have any dealings with Walt Dwelle, the CEO of Nella?

A Not directly, but they purchased the Card Locks of Berry-Hinckley. They purchased the wholesale end of

Berry-Hinckley.

Q Can you turn back to 294 which was the Lippes Mathias billing statement? Did Snowshoe Petroleum receive its own bills from the Lippes Mathias firm in September, October 2010 going forward?

A Yes.

Q Exhibit 294, have you had a chance to look at it long enough to identify whether or not your name is mentioned in any of these pages?

A I had a quick scan of it. I don't see my name in here.

Q Would you turn to the last page of the first bill? Would you turn to page LMWF 536.

A They aren't marked like that.

Q Well, in the top right corner. This is the Lippes Mathias?

A 563?

Q Yeah?

A Okay.

Q Do you see the disbursements column?

A Yes.

Q Do you know who Alves Appraisal is?

A No, I don't.

Q You don't no why they would have been paid $2,500

from the Lippes firm?

A No.

Q Do you know who Mark Lehman is?

A I know he's an attorney in California, but I don't know him very well.

Q He never represented you, right?

A No, he never represented me.

Q Do you know why he was paid $2,500?

A No idea.

Q Do you know who Justmann and Associates is?

A No.

Q You don't know why two different disbursements of $4,000 each to Justmann?

A No. I never heard of these people. I know who United Parcel Service is.

Q Now, prior to September 30th, did Dennis Vacco represent Consolidated Western prior to the merger?

A I believe he did. I believe so. I can't say for sure, but I believe he did.

MR. GILMORE: No further questions.

THE WITNESS: Thank you.

THE COURT: Anything further?

MS. TURNER: No.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: Thank you very much.

THE COURT: Mr. Morabito, you don't have to worry about that.

THE WITNESS: Okay.

THE COURT: If we have a live witness, the clerk is happy to do that.

THE WITNESS: Sorry about that.

THE COURT: No, that's okay.

THE WITNESS: I didn't want to get into that mess we did yesterday. Everything was turned.

MS. TURNER: We are going to recall Mr. Bayuk for one follow-up.

THE COURT: I keep forgetting.

MS. TURNER: That is why I want to do it now. I will forget, too.

EDWARD BAYUK

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

DIRECT EXAMINATION

BY MS. TURNER:

Q Good morning?

A Good morning.

Q This morning we stipulated to a new Exhibit, 225. There is no tab associated with it.

MS. TURNER: If I could approach the witness just to help him find the exhibit.

THE WITNESS: I looked up stuff on the Internet last night. So last night on the Internet I looked up and found the Bank of America did record a Deed to 570, and I did indeed sign that document which I forgot. And two and a half months later I paid the bank $735,000 then they released the Deed from the property. So I did a Deed. I forgot, honestly forgot I signed that, so the answer is yes, I did sign it.

BY MS. TURNER:

Q You signed the Deed on September 5, 2012 the day after receiving the e-mail that we had with the drafts that we have previously discussed, correct?

A That Bank of America document?

Q Yes?

A They wanted that to record a Deed because money was owed.

Q That was part of the settlement on behalf of Paul Morabito, correct?

A Correct.

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

THE COURT: Okay. You may step down.

(Witness excused.)

MS. PILATOWICZ: Your Honor, just a couple of quick housekeeping matters on the deposition transcripts before we begin reading them. Mr. Gilmore and I have discussed and agreed that if a question was read by the Plaintiff, we will read in the question and the answer regardless of who designated it. And if a question was read or proposed by Defendants in the deposition, he will read in the question and answer regardless of who designated it so we can move things along. There are exhibits that are referenced in the depositions that are exhibits in the books. When those come up, I will read the number of the exhibit that is in the Court's record. There will be some referenced numbers that we are not seeking to admit. When that happens, we won't read a corresponding Court exhibit.

I would ask Mr. Gilmore, during a designation of Mr. Gilmore's there is an exhibit I don't reference the Court Exhibit, if you want it introduced, you just make sure to let me know. I think I marked them all.

MR. GILMORE: And I endeavored to mark all the exhibits I intended to offer pursuant to those deposition transcripts I already marked, and I expected they had done the same. Again, there may be some referenced that are not going

to be offered, but, obviously, either one of us as part of the stipulation reserve the right to offer it if we think it needs to be offered.

THE COURT: Who do you want to start with?

MS. PILATOWICZ: Your Honor, we'll start with Gary Graber dated July 12, 2017.

THE CLERK: Deposition of Gary Graber dated July 12, 2017 owned and published.

THE COURT: He will be sworn in.

(Whereupon the reader of the depositions, Mr. Loretz Was sworn by the clerk.)

MS. PILATOWICZ: The book of transcripts is on the shelf.

THE COURT: We need to start with the reader's name and affiliation.

THE READER: Colton Loretz, L-O-R-E-T-Z. I work for Woodburn and Wedge. I am an attorney.

THE COURT: You may proceed.

BY MR. PILATOWICZ:

Q Could you turn to page 14 of the first deposition, the first tab of the deposition of Gary Graber dated July 12, 2017?

A It says Gary L. Krausz is number one.

Q Can you turn to the deposition of Gary Graber dated

July 12, 2017?

A Okay.

Q Starting at page 14 line 13.

BY MS. PILATOWICZ:

"Q How are you currently employed?

A I am a partner in Hodgson Russ, LLP.

Q How long have you been employed in that capacity?

A Since -- as a partner?

Q A partner?

A Since 1986.

Q And before that were you an associate?

A I was."

Q Turning to page 16.

BY MS. PILATOWICZ:

"Q: When was the first time you met Paul Morabito?

A I can't give you the exact date without doing a little research, but it was shortly after the judgment that you just mentioned?

Q Okay. When was the --

A The entry of it.

Q Thank you. When was the first time you heard of Paul Morabito?

A Around that same time. I knew nothing about him before. I spoke to Sujata and/or him about the

judgment.

Q And, again, explain to me how you came to know Paul Morabito?

A I was introduced to him by Sujata.

Q And you mentioned it was in connection with the judgment that was entered?

A Yes, it was.

Q So explain to me, did Sujata come into your office and say, I need your help on something?

A Yes. I am one of those guys around here who engages in assisting clients who have issues that may require my area of expertise, including bankruptcy.

Q And what were you asked to do for Paul Morabito?

A I was asked to consider whether there were ways in which he could evade the judgment through bankruptcy, or I shouldn't say evade the judgment. That's not correct. If there are ways he could protect himself against -- protect his assets and/or escape liability on account of the judgment."

MS. PILATOWICZ: Your Honor, that is the conclusion of the deposition designation of Gary Graber from July 12, 2017.

Turn next to the deposition transcript of Gary Graber dated May 1st, 2018.

THE CLERK: Deposition of Gary Graber dated May 1,

2018 opened and published.

BY MS. PILATOWICZ:

Q Turn to page 8 of that deposition starting at line 12.

"Q: Now we went over the topics of the person most knowledgeable, so I am not going to do that again, and we talked last time, too, about what you had done to prepare for deposition since we were here last July. Did you do anything to prepare for the deposition?

A I had a discussion this morning with my partner, Sujata Yalamanchili, just to refresh my recollection.

Q What were those discussions?

A They consisted of the the discussions we had with Mr. Morabito.

Q Anything specific?

A Yes. What we discussed with him.

Q What --

A We only discussed one subject. I only discussed one subject with him.

Q Okay, and what was the subject you discussed with him?

A How he could protect his assets from the claims of a particular creditor.

Q When we broke last time, we had been discussing your retention or the work you were doing for Mr. Morabito

which I think you just indicated was to protect his assets from the judgment?

A Give him advice with respect to that, correct.

Q Okay. Do you recall how you became engaged in that manner?

A I was asked by my partner, Sujata Yalamanchili, to become involved.

Q Do your recall the first time you had a conversation with Paul Morabito regarding that matter?

A Yes.

Q What is -- What was the first conversation?

A You know, I can't tell you what happened on every call. I had about three calls, and that's all -- those are the only communications I had with Mr. Morabito.

Q Did you communicate with him by e-mail?

A I may have.

Q Okay.

A I don't know.

Q And I take your testimony to be that there was never an in-person meeting with Mr. Morabito?

A Never. Never met the man.

Q Now by way of background, there was a judgment that was entered in State court, or a judgment that was announced in the state court on approximately September 13th of 2010.

Do you recall how soon after that you were engaged?

A Nope.

Q Do you know specifically who you were retained by?

A No.

Q Do you know who paid the retainer for your firm?

A I do not.

Q Do you know if your firm ever got paid for the work it did with respect to the work that you performed for Mr. Morabito?

A I do not. Ms. Yalamanchili was the relationship partner, and she was responsible for the relationship, and it was she who asked me to get involved.

Q Can you describe for me generally what Mr. Morabito asked you to do and what your response was?

A Well, he never really asked me to do anything other than to consider his circumstances and give him advise that would create the possibility of him being able to protect his assets from a judgment creditor who I understood to have just gotten a judgment that was large, in the millions. That's all I remember, though. I don't remember the exact amount, nor do I remember the name of the Plaintiff. I never read the pleadings in the matter. I have just learned that he had a judgment.

Q Do you recall what assets he was seeking to protect?

A Well, I think he was seeking to protect them all.

Q Okay. Any specifically that come to mind?

A Well the -- I believe one of his principal assets which he expressed concerned was his stock and his equity interest in an entity that was in the auto service business, I believe, and I believe that was this Superpumper entity.

Q Do you recall specifically what he told you about Superpumper?

A No.

Q Do you recall what asset protection strategies you were looking at?

A Yes. I told him that, based on my learning and experience, which even then had been, I don't want to say substantial for fear of sounding like I am boasting, but told him that it's very difficult to protect assets after a judgment has been entered. Often, even after a lawsuit has been initiated. And that in my opinion, there were only, really, two things he could do. One was put assets offshore in countries that assist people in doing that, or invest them in assets, the possession of which nobody would know about such as precious metals or bearer bonds, works of art, collectible cards, and that kind of thing. And if, in the even of a bankruptcy or a lawsuit, to either talk about that and disclose what he did or commit perjury.

Q Let's talk about the first method you talked about which is putting money offshore. Did you have any specific discussion with Mr. Morabito about putting money offshore?

A I just told him that it was an option.

Q Did you tell him where he could put them offshore?

A I told him there were a number of places. I don't know which ones I may have mentioned. As far as I was concerned, it didn't matter, because, despite 40 years in this practice,I have yet to see anybody actually put their assets in irrevocable trusts in a Caribbean island or whatever. I just told him it was out there as a possibility. We never really went further into it.

Q Are you aware of who Sefton Trustees are?

A I'm sorry?

Q Have you ever heard the name Sefton Trustees?

A No. What is that? Is that the name of a trustee? You don't know. Okay. Whatever.

Q With respect to investing funds and assets, people wouldn't be generally able to locate like precious metals income, do you know if what-- or what was Mr. Morabito's response to that?

A I don't recall that he had a response. He listened.

Q Do you know if he ever put money in assets that couldn't be located?

A I don't know anything about anything he did ultimately with his assets. We had two or three conversations. He then terminated his relationship with us, and I never heard anything about him until I got the initial notice of deposition.

Q Do you know when the relationship was terminated?

A It was terminated within a week or two of my getting involved.

Q Do you have a specific recollection of why it was terminated?

A Yes, he didn't like the advice I was giving him.

Q What advice, specifically?

A The advice I couldn't give him even a degree of probability that he would have success.

Q Was there ever any discussion regarding a bankruptcy filing?

A Only in the sense that in the event of a bankruptcy filing, that would be the forum in which the issues involved would be vetted. That would be a context in which any transfer he made would be avoided, or one of the potential--the most likely place, in my opinion.

Q Do you know if Mr. Morabito ultimately ever transferred any assets?

A I know nothing except what I have read in the very

few papers that I have looked at in this lawsuit.

Q So beyond just providing initial advice, you never drafted documents?

A Never. We did nothing. Did nothing except give him cautious advice in the course of two or three telephone conversations and an e-mail that I my have sent him. But maybe you know differently, but I would be very surprised if I wrote him a treatise on all of this stuff.

Q Did you advise Mr. Morabito that transferring his assets would be considered a fraudulent transfer?

A Absolutely. Well, I can't say I advised him that it would, but I told him that it could likely be. Would imply some conclusion that I didn't even know enough to reach.

"Q Mr. Graber, I hand you what has been marked as Exhibit 3"-- which is Exhibit 25 in the court record. It has been admitted by stipulation.

THE COURT: Exhibit 25?

MS. PILATOWICZ: Correct.

BY MS. PILATOWICZ:

"Q it is identified on the bottom right-hand corner by Bates Nos. LMWF Supp. 082393 and 082394. It appears to be an e-mail chain, sorry between, Sujata and Paul Morabito and Dennis Vacco on which you are copied. Do you see that?

A I do.

Q I want to start with -- or do you have any recollection of receiving this e-mail?

A No.

Q Do you have any reason to believe you didn't receive this e-mail?

A No.

Q Do you recognize the e-mail address that's listed to be Sujata's e-mail address at Hodgson Russ?

A Yes.

Q At the bottom of the page, Sujata says, 'Garry had a number of additional ideas, including possible marital split between Paul and Edward pursuant to which Edward could retain some of Paul's assets.' Do you see that?

A I do.

Q Do you remember discussing a marital split?

A Yes.

Q What was your basis for the marital split?

A Well, in this particular circumstance, I can't, you know, give you my exact basis, but one way in which assets do get divided from time to time, that survive challenge is in the context of a divorce.

Q Do you know if there -- if Paul and Edward were a couple at this time?

A I understood they were.

Q Do you know if they had been intending to split up at this time?

A No.

Q No, you don't know, or no, they didn't?

A I don't know. I don't know.

Q Did you have any discussions with Paul regarding that?

A Nope.

Q You have been handed Exhibit 5 with a Bates-- or identified by Bates number on the bottom right-Hand corner as HR0000311."

MR. GILMORE: I'm sorry. I think you missed a spot, I believe.

MS. PILATOWICZ: This was the amended one.

MR. GILMORE: Was this one the portions I agreed to remove? I am sorry. Hang on.

THE COURT: Where are you in the transcript? You're on page 16; is that correct.

MS. PILATOWICZ: We moved on to page 19 line 16.

THE COURT: What you previously told me we were going to use that you didn't use.

MS. PILATOWICZ: It was page 17 line 22.

THE COURT: And all of 18?

MS. PILATOWICZ: Everything up to 19 had been

removed. Your Honor, I apologize. I didn't -- I thought we provided updated pages. And up to 179 in yellow or green.

We are starting on page 19 line 16 in green?

THE COURT: Thank you.

BY MS. PILATOWICZ:

Q Let's start back at page 19 line 16.

"Q you have been handed Exhibit 5 with a Bates-- or identified by Bates number on the bottom right-hand corner as HR0000311. It appears to be an e-mail from Sujata to you dated September 20, 2010 at 3:47 p.m. Do you see that?

A I do.

Q Do you have any recollection of receiving this e-mail?

A A vague recollection.

Q What is your--

THE COURT: I am going to stop you there. What exhibit is that?

MS. PILATOWICZ: It has not been marked as an exhibit, I do not believe. We did not mark it.

MR. GILMORE: I am still trying to catch up. We are on 19?

MS. PILATOWICZ: Exhibit 5.

MR. GILMORE: That is Exhibit 42.

MS. PILATOWICZ: My apologies, Your Honor.

Which has been admitted.

THE COURT: Go ahead. Thank you.

///

BY MS. PILATOWICZ:

"Q Do you have any recollection of receiving this e-mail?

A A vague recollection.

Q What is your recollection, or do you -- is there anything in there that triggered your recollection?

A My recollection is that Paul was interested in the consequences of bankruptcy and, therefore, before one can give him that advice, one needs to know what the assets are of the person contemplating bankruptcy.

Q Did you ever become aware of any other assets besides the ones listed on this e-mail?

A Not that I recall.

Q There is a reference in the second paragraph with a discussion of Superpumper and Consolidated Western Corporation which is identified later as -- insured as CoWest Co., and Sujata indicating-- I am looking at the third to last line, second paragraph under Subsection A. 'I would like to preserve this business and protect it from the Herbsts, since it pays salaries to Edward, Sam and Paul and it is a strong going business.' Did you ever have any specific discussions

with Sujata about protecting Superpumper or CoWest Co.?

A In a general sort of way.

Q Do you recall what those discussion were?

A Well, I believe-- and again this is based on eight year old recollection -- that Superpumper had shareholders in addition to Paul.

Q Do you recall who those were?

A I think Sam and his friend whose name I don't remember.

Q Edward Bayuk, does that sound --

A Edward Bayuk, yeah. Obviously, their welfare had to be considered in the entire planning process per Paul's insistence.

Q Do you recall anything else about the conversation regarding Superpumper?

A We talked about whether or not Superpumper could be conveyed to Paul and Ed, but I pointed out to Paul that that was fine, but any consideration that he got would be subject to the claims of his creditors, and that the transaction could be potentially voided if it was determined to have been for less than fair value or done to hinder, delay or defraud creditors.

Q Did you have any discussions with Paul about the consideration for the transfer?

A There was talk about him getting cash or notes or combination of those. I think, if I recall correctly, neither Paul nor-- excuse me -- neither Sam nor Ed nor the combination of them had enough cash to just buy him out, so the discussion revolved on how to structure the transaction.

Q What were those discussions?

A We never really got that far.

Q Did you have any discussions about the value of Superpumper?

A Only in the sense that I told him the value would need to be determined in advance of the conveyance so as to make sure that it was fair value and thereby create the least chance that it would be avoided in a bankruptcy on that basis.

Q As we sit here, you don't know what the value was or was determined to be?

A No, I don't. Never did."

MS. PILATOWICZ: Moving to page 32, Your Honor, I believe there was previously a designation at page 38 that was removed.

THE COURT: 23, 24, 25, 26.

MS. PILATOWICZ: Those were removed.

THE COURT: Okay. And 27 are all removed?

MS PILATOWICZ: Correct, Your Honor.

THE COURT: You're beginning on page 32?

MS. PILATOWICZ: Correct.

THE COURT: Thank you.

///

BY MS. PILATOWICZ:

Q Page 32, line 3.

"Q Now Exhibit 8 is identified, or you've been handed Exhibit 8. Its identified on the bottom right-hand corner Bate label HR0000373 through 381. It appears to be a second e-mail from Sujata to you on September 20, 2010 at 9:50?"

THE COURT: Do we have that one marked?

MS. PILATOWICZ: We do not, Your Honor. This moves on to refer to another exhibit.

THE COURT: Okay.

BY MS. PILATOWICZ:

"Q It appears, based on what we just read in Exhibit 7, that would be the second e-mail that was forwarded that she referenced she was going to forward. Do you remember receiving this e-mail?

A Vaguely, yeah.

Q What do recall about it?

A I recall, now that this has refreshed my recollection, I'm recalling that there was -- go ahead.

Q When you refer to 'this' you're talking about Exhibit 7"--

MS. PILATOWICZ: Which is Exhibit 29 in the exhibit binder which has not yet been admitted.

///

BY MS PILATOWICZ:

"Q When you refer to 'this' you're talking about Exhibit 7?

A I'm sorry, Exhibit 7. I do recall there were e-mails following the terminating of my call with him at the hotel where -- when my cell ran out of juice. I never spoke to him after that. I was just thinking that was the last time that I talk to him, and it was basically over, and I forgot this -- about this chain of e-mails. If you had shown them to me in advance of today, I would have a better memory on it.

Q On Exhibit 8 do you recall having any discussions with Sujata regarding these e-mails?

A Now I do, yeah.

Q What were those? What were those discussions?

A The fact that Paul wasn't, you know, liking the advice we were giving him.

Q Do you recall anything else?

A No, not really. I recall Sujata being concerned that he was going to fire us and not use us as his lawyers anymore. Frankly, I didn't care. I didn't like the guy.

Q Did Sujata have any other response to-- in your

discussions?"

MS. PILATOWICZ: Your Honor, there is an objection. It was by Mr. Graber's counsel at the deposition. I don't know if Mr. Gilmore has an objection?

MR. GILMORE: No, I don't.

"THE WITNESS: I don't know. Our communications were scant following that call.

Q Your communications with Paul or your communications with Sujata?

A Even with Sujata. You know, as far as I was concerned, I was done with it. He was upset during the conversation. It was clear to me that he didn't want -- he didn't like what I was telling him, and I didn't like the attitude he was conveying that I ought to be able to be more specific, because it's not a subject on which you can guarantee results. He didn't like that. And this e-mail from Sujata to him says it exactly. I don't think it simply says you can transfer assets for value. She's talking about what the law says. 'I think Gary was trying to say that fraud conveyance laws are complicated, and they look at a lot of factors including whether you have an intent to defraud your creditors.' And that says it all with respect to what our conversations were about.

Q And at that time, was it your understanding of

whether Paul had an intent to default his creditors?"

MR. GILMORE: There is an objection.

THE COURT: Do you want to make it?

MR. GILMORE: Yes, I do.

THE COURT: What is it.

MR. GILMORE: Calls for speculation.

THE COURT: Counsel.

MS. PILATOWICZ: Your Honor, it was asking Mr. Graber, Mr. Morabito's counsel's understanding what his intent was.

THE COURT: Overruled.

"THE WITNESS: I have no idea what his intent was. I think he had an intent to avoid paying the judgment, whether that's by winning on appeal or divesting himself of his assets."

MR. GILMORE: And I move to strike the answer. The witness testifies he has no idea what the intent was, and then goes and offers what he believes the intent was. That is why I objected.

THE COURT: Okay. Counsel.

MS. PILATOWICZ: Your Honor, clearly during the response he was able to respond to the question and recall that he did have some sort of intent -- or recollection or understanding of what his intent was at the time.

THE COURT: I am going to overrule the objection, I am not going to strike. I am going to admit it. It goes to the weight. The vacillating back and forth and the fact the witness gave two versions, that would be considered and may be considered.

MS. PILATOWICZ: Your Honor, there was further designations that have been removed in an attempt to streamline the testimony. That is the conclusion of the questions that Plaintiff posed in Mr. Graber's deposition.

Your Honor, I would move for admission of Exhibit 29.

THE COURT: Counsel, any objection?

MR. GILMORE: Yes. Exhibit 29 is a hearsay statement. The Declarant is Paul Morabito. The recipients are Dennis Vacco and Sujata Yalamanchili. And it's clear on Mr. Graber's testimony, this is a subject matter concerning the scope of their representation. Mr. Morabito did not testify to this document in his deposition, and for that matter neither did Mr. Vacco or Sujata Yalamanchili. This exhibit is being offered through the testimony of Gary Graber who was not a recipient of the Declarant's statement.

THE COURT: Counsel.

MS. PILATOWICZ: Your Honor, the statement of Mr. Gilmore indicated the Declarant is Mr. Morabito whose

intent is issue in this case. It is a present sense impression. That goes to the intent, plan or motive. It is an exception to hearsay under the presence sense impression.

MR. GILMORE: Present sense impression exception to hearsay refers to a situation where someone would say I just saw somebody shoot somebody. That is not what this is. This is an e-mail amongst many between Mr. Morabito and his counsel talking about things related to what Mr. Graber was discussing, but the Declarant is not here to be cross-examined. I don't get to offer him and say what did you mean when you said this? Why were you saying this? So it is hearsay. It lacks foundation. For that reason, pursuant to the Points and Authorities that I offered earlier in the week.

THE COURT: Counsel.

MS. PILATOWICZ: Your Honor, a present sense impression doesn't require it be an excited utterance. That is what counsel is referring to. It is describing the mindset as to plan, motive and intent, and Mr. Morabito's intent is directly relevant to the matters of this case.

THE COURT: Objection is overruled. Exhibit 29 is admitted.

(Exhibit 29 admitted in evidence.)

THE COURT: Mr. Gilmore, are you going to start on page 43 of the deposition?

MR. GILMORE: That is my intention.

THE COURT: You may proceed.

MR. GILMORE: For the record, I am sorry, Your Honor, I would like to identify the exception to the hearsay rule that was offered. Present sense impression, was that the correct one? Which one was it?

MS. PILATOWICZ: Under 51 --

MR. GILMORE: A statement describing or explaining an event or condition made while the Declarant was perceiving the event or condition or immediately thereafter.

THE COURT: You wanted the statute number in the record?

MS. PILATOWICZ: Yes, Your Honor, the statute was NRS 51.105.

MR. GILMORE: Yes, Your Honor, I will start at 43.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. GILMORE:

"Q Mr. Graber, my name is Frank Gilmore, and I am the attorney for the Defendants in the State court action which is pending in Washoe County presently carrying the caption as evidenced in Exhibit 2.

A So you represent all these Defendants?

Q My client is, correct, Superpumper, Edward Bayuk,

the Bayuk Living Trust, Salvador or Sam Morabito and Snowshoe Petroleum, Inc., okay?

A Yup.

Q Were you previously aware of that before I just made that representation?

A That you were Defendants -- the attorney for all these Defendants?

Q Correct?

A No, because I had never given it much thought.

Q Of those Defendants which I just identified, can you please tell me if you ever maintained an attorney-client relationship, based on your understanding of that term, with any of those Defendants?

A To the best of my knowledge, we had a relationship with Paul Morabito, and I don't know about any of the others.

Q Okay. So --

A I never felt that I had a relationship with anybody but Paul Morabito.

Q Thank you. So you don't have a memory of delivering any legal advice with any of the named Defendants?

A No.

Q Did you ever consult the possibility of ultimately arriving at an attorney-client relationship with any of the Defendants?

A No.

Q Okay. Do you recognize the name Snowshoe Petroleum?

A No.

Q Do you recognize or were you previously made aware of an Edward Bayuk Living Trust?

A No."

MR. GILMORE: I continue on page 45, line 21.

BY MR. GILMORE:

"Q Thank you. Have you -- has your practice emphasis been the same or been consistent throughout your career?

A Yes, I was hired by Hodgson Russ for the specific purpose of augmenting its bankruptcy practice in view of the passage in 1978 and the resulting increased use of the Bankruptcy Reform Act.

Q When you say "bankruptcy" do you refer to yourself as a bankruptcy attorney?

A Among other kinds of attorneys, yes.

Q Okay. What other kind of attorney would you consider yourself?

A Oh, I do a lot of things. You know, bankruptcy takes you into a lot of areas. I consider myself a litigator. I consider myself, sometimes, a transactional lawyer. Most of the work, however, is done in the context of troubled-- financially troubled business entities or business people.

Q Is it a fair characterization that your practice primarily represents debtor individuals or entities?

A No. My primarily focus has always been creditor work.

Q Okay. And --

A But there's a lot of players in a bankruptcy. I've represented committees, creditors' committees. I've represented lawyers. I've represented buyers of assets.

Q Is it possible to characterize generally what a bankruptcy attorney does in his every day practice?

A Yes. He advises clients with respect to the desirability of filing a bankruptcy and/or the consequences of doing so and represents parties in interest in actual bankruptcy proceedings. And there is also something we call 'workouts' which is a process by which financial difficulty between a debtor and its creditors are worked out without bankruptcy."

MR. GILMORE: Excuse me one second. I am continuing on page 48. Line 9.

BY MR. GILMORE:

"Q Thank you. I don't pretend to be an expert, but I just have some-- but the concept of the discharge, is that upon the completion of the bankruptcy, those obligations owed by the debtor to various creditors might be, for lack of a

better word, forgiven, true?

A That's the goal of a bankruptcy, of an individual who files bankruptcy. A corporation is a different situation. And by the way, corporate discharge is under Section 1141, I think.

Q Let's focus for the most part, unless I state otherwise, on the individual bankruptcies.

A And just so I can give you a complete answer, family farmers are governed by yet a different division. I didn't just say that for the humor of it. Individuals also sometimes seek relief under Chapter 13 which the goal is also a discharge.

Q Okay. The goal, ultimately of a discharge is to avoid having creditors seize upon their assets, right?

A Of course. So the process of bankruptcy is best described as the process of getting a discharge and keeping as many assets as are possible.

Q Now you provide advice to clients related to asset protection that doesn't necessarily involve bankruptcy; isn't that true?

A Well 'provide' is a-- yeah I suppose that's accurate. I've had many discussions with my people over the years who seek to protect substantial amounts of assets from their creditors more than the exemption statutes generally

allow. However, there are certain states like Florida, I believe Nevada might be one, Texas is another, there are several of them which gives an unlimited homestead exemption. And prior to the amendment of the bankruptcy law in 2005, it used to be a common tactic among debtors who had a lot of money, Bowie Kuhn, the former baseball commissioner, would be a good example, of buying a home in a place like Florida, using all their financial wherewithal to buy that home and being able to get a discharge and keep the home.

MR. GILMORE: Continuing on page 50 line 18.

BY MR. GILMORE:

"Q So when you are providing advice to various clients who might have the desire to move to Florida and take advantage of the unlimited homestead exemption, you don't believe that's a wrongful intent of the client, do you?"

MR. GILMORE: Then there was an objection by Mr. Graber's attorney. The question and answer continues on page 54, line 8. That would be you, sir.

"THE WITNESS: I don't believe there is anything immoral in people exercising their full and -- their full rights under the law, under what law you're talking about.

Q Thank you. In your should I say first volume of depositions, one of the first answers that you gave to a question asked by Ms. Polatowicz, the question was, 'what were

you asked to do for Paul Morabito?' Your response, verbatim, 'I was asked to consider whether there were ways in which he could evade the judgment through bankruptcy, or I shouldn't say 'evade the judgment' that is not correct. If there are ways he could protect himself against-- protect his assets and escape liability on account of the judgment.' I'll represent to you that quote has been reproduced in three or four filings ever since the statement was made. Emphasis --

A I'm famous.

Q Mr. Graber, emphasis on the word 'evade'.

A Ah.

Q As though 'evade' signifies or connotates something wrongful, immoral, illegal, okay? I will make that representation to you that that's how your words have been portrayed in the filings that have been made in this case. You understand?

A Are you asking me if I agree with you?

Q I'm asking if you understand?

A I understand.

Q And then I will ask you --

A I didn't say it is true.

Q -- do you believe, when you used the word 'evade' in our first session, did you intend to signify something wrongful, immoral, illegal, inappropriate?"

MR. GILMORE: There was an objection to form.

MS. PILATOWICZ: No objection.

"THE WITNESS: I was recently driving and a car coming from my right went through a stop sign. I successfully evaded a crash. I don't think there is any subjective connotation that necessarily has to be put on that word, and I certainly didn't mean for there to be one attached to it."

MR. GILMORE: I believe that concludes the reading of Mr. Graber.

THE COURT: Okay. So Mr. Graber is finished?

MS. PILATOWICZ: Mr. Graber is finished. The good news is the depositions are going much faster than the scheduled proposed witnesses.

THE COURT: Okay.

MS. PILATOWICZ: Sujata Yalamanchili.

THE COURT: How long is that deposition going to be?

MS. PILATOWICZ: It should probably take about the same amount of time, about a half hour.

THE COURT: We should probably take a recess now before we start into it. So we'll take our short recess now. And then are there any changes to the deposition as you previously marked?

MS. PILATOWICZ: Your Honor, I believe there are. I will mark those for the Court. Your Honor, so the record is

clear, my apologies, I had sent an amended designation to Mr. Gilmore I believe it was two weeks ago. Mr. Gilmore requested some of the ones we remove be added back in, remain in. The books as we are reading them reflect those changes. I will make sure the Court has copies of the changes.

THE COURT: Okay. That is great. So while we are taking our recess, you can just do Sujata Yalamanchili. We will be in recess.

(Short recess taken.)

MS. PILATOWICZ: Your Honor, the next witness is Sujata Yalamanchili.

THE CLERK: Deposition dated May 1, 2018 opened and published.

MS. PILATOWICZ: We are starting at page 11 line 3.

THE COURT: Sir, you are still under oath as you proceed with this deposition. Go ahead.

DIRECT EXAMINATION

BY MS. PILATOWICZ:

"Q Okay. Did you have any involvement or are you aware documents were requested to be produced as part of a subpoena?

A Yes.

Q Were you involved in the production of documents in response to the subpoena?

A Somewhat. Go ahead.
Q What was your involvement?
A I helped identify which files were involved and made information available, physical files.
Q Do you know who else was involved in the production of documents in response to the subpoena?
A I don't.
Q Who did you provide the information to?
A To our office's general counsel.
Q Is that Mr. Kearney?
A Actually, his assistant, Colleen Thomas.
Q And did you produce everything you had that was responsive to the documents --
A Yes.
Q -- or the document request? Other than identifying files and providing physical files, did you do anything else to obtain responsive documents to the subpoena request?
A No.
Q Did you check your e-mail folders?
A Yes. That was part of identifying which files were involved.
Q So did you look for communications? Do you use Microsoft Outlook or something similar?
A Yes.

Q Did you look for responsive e-mails in your Outlook folder?

A Yes.

Q And then did you provide those?

A Yes, or I directed Colleen where to find them.

Q Was there anywhere else on your system that you searched for electronic records?

A No.

Q Do you maintain all documents relative to a file in your physical files?

A Yes and no. Yes.

Q Well let me-- what I am trying to get at is, could there be documents that are responsive, in electronic form somewhere on a computer or system somewhere that haven't been produced?

A I don't know, but we responded to the best of our ability, so I don't think there are.

Q So you searched electronic information the best that you could?

A Correct."

MS. PILATOWICZ: Turning to page 14 line 6.

BY MS. PILATOWICZ:

"Q How are you currently employed?

A I am a partner at Hodgson Russ.

Q How long have you been a partner at Hodgson Russ?
A About 15 years.
Q Why don't you give me a brief overview of your employment history starting from when you graduated, I assume, law school.
Q Graduated law school in '93. Worked at three different firms in the Connecticut area, relocated to Buffalo in February '99, and I've been an employee and partner at HodgsonRuss since then.
Q And where did you go to law school?
A Cornell.
Q Where did you go to undergrad?
A State university of Buffalo.
Q Were you terminated from any of the three law firms in Connecticut?
A No.
Q What is your -- Do you have a specialty?
A I work in our real estate and finance practice area.
Q And describe to me generally what you do as part of your practice?
A Transactional real estate work, buying and selling property, leasing property, those sorts of transactions.
Q Has that been consistent throughout your career?
A Yes."

MS. PILATOWICZ: Moving to page 16 line 9.

BY MS. PILATOWICZ:

"A I don't actively practice in the state, so that was my -- I elected to take inactive status.

Q How long has it been inactive?

A Probably since 2000.

Q Is there a reason you did -- is there a specific reason you obtained your license in Pennsylvania?

A Yes, as a way to get into New York, to waive into New York.

Q Okay. And when were you licensed in New York?

A 1999.

Q When did you first meet Paul Morabito?

A Probably in the Summer of 2005.

Q Tell me about how you met Mr. Morabito?

A I was on a trip to Laguna Beach, California and met him there.

Q Was the purpose of your trip to meet him?

A I was doing work for his companies. I didn't know I would actually meet him, but I did meet him as part of that trip.

Q Okay. Let's back up to when you first talked to Mr. Paul Morabito?

A I couldn't recall, but probably somewhere in the

2004 or '5 time frame.

Q And how did that first communication come about?

A It was probably a phone call, and probably facilitated by his in-house counsel at the time with whom I was working closely."

MS. PILATOWICZ: Page 19 line 7.

BY MS. PILATOWICZ:

"Q Have you ever been retained by Salvatore 'Sam' Morabito?

A Possibly. We did represent him on certain transaction involving his brother.

Q When was the most recent one?

A I can't recall.

Q Do you know if he has remained or if Hodgson Russ has been retained by him since 2010?

A I don't think so, but I don't know for sure.

Q What about Edward Bayuk?

A Same answer. We did represent him in connection with some of the larger transactions with Paul.

Q What about Superpumper, Inc.? Other than what you've already testified to.

A I'm sorry, I don't understand the question.

Q I'm sorry. Has Hodgson Russ been retained by Superpumper, Inc?

A We were retained by them in that 2007, 2008 period.
Q Other than that transaction, has Hodgson Russ been retained by Superpumper?
A After the acquisition by the Morabito company, we did work on some lease-back transactions with Superpumper, but since 2010 we have not done any work for then.
Q What about Snowshoe Petroleum?
A I don't recall that property.
Q What about Snowshoe Properties?
A I don't recall that property.
Q Does Hodgson Russ still represent Paul Morabito?
A No.
Q When did that representation cease?
A Probably around 2010.
Q Do you recall when in 2010?
A No.
Q Do you recall the reason for the termination of the relationship?
A He engaged different counsel.
Q Do you know who he engaged?
A He engaged Dennis Vacco at the Lippes law firm, and he may have counsel in Nevada and Arizona. I don't know.
Q So Hodgson Russ has not performed any work for Paul Morabito after 2010?

A Not that I'm aware of.

Q Was there any specific event in 2010 that led to the termination of the relationship?

A No.

Q Was there any advice that Hodgson Russ provided to Paul Morabito that he refused to follow that lead to the termination?"

MR. GILMORE: No objection.

"THE WITNESS: Most of our clients object to our advice at some point or other, but, no, there was no specific termination related to advice.

BY MS. PILATOWICZ:

Q Was it Mr. Morabito that terminated the relationship or Hodgson Russ that terminated it?

A I can't recall, so I'll leave it at that.

Q Do you recall being specifically engaged following the entry of a judgment in September of 2010 against Paul Morabito to perform certain work?

A There was an extension of our exiting engagement. There was not a new engagement.

Q Okay. What was the purpose of the extension of the engagement?

A We were giving him advice in the aftermath of the judgment, and we had been involved in a lawsuit, as I said. I

gave deposition testimony, so it was sort of dealing with the aftermath of the judgment.

Q What specifically about the aftermath of the judgment?

A Developing strategy on an appeal, asset protection, that sort of thing.

Q Do you know who specifically retained Hodgson Russ? Was it Paul Morabito?

A As I said, it was an extension of our existing engagement, so we were representing a number of his different companies. I don't know -- I don't recall if we had a file open specifically for Paul, individually, but we were working on behalf of his companies.

Q What companies specifically?

A We represented a number of his companies that-- for example, real estate holding companies that may have only owned one piece of real estate, but certainly Superpumper, Inc, and I don't recall the company that was the subject of the lawsuit, but we would have been representing them as well.

Q Consolidated Western Corporation, does that sound like it?

A That could be.

Q Other than Superpumper and Consolidated Western Corporation, do you recall any other entities that Hodgson

Russ was representing?

A Are you talking about --

Q Specific to Paul Morabito?

A Specific to that September period?

Q Yes?

A I don't recall any other specific companies."

MS. PILATOWICZ: Moving to line 12 page 23.

BY MS. PILATOWICZ:

"Q You mentioned that one of the reasons for the extension of the engagement was as asset protection. Tell me about what specifically asset protection you were engaged to do.

A I guess to discuss, you know, what assets were subject to the lawsuit judgment, what assets were not subject to the asset -- or the lawsuit judgment, and, you know, how Mr. Morabito was going to either address the judgment or pay it, whether a personal bankruptcy might be in the offing, whether -- the whole range of topics related to the judgment.

Q Was Mr. Morabito seeking to protect his assets from collection on the judgment?

A Yes.

Q Any specific asset or all of his assets?

A All of his assets.

Q Are there any specific assets you recall discussing

with Mr. Morabito?

A We did talk about Superpumper and his ownership interest in that company.

Q Any other ones you recall as you sit here?

A No.

Q What were your discussions regarding Superpumper?

A What Paul's ownership interest was, who else was an owner of Superpumper, and what strategies might be involved to deal with the assets.

Q What was the extent of your involvement in the asset protection piece of the representation?

A Are you asking in terms of what specific things we did?

Q So let's speak first generally about what Hodgson Russ was engaged to do specifically with regard to the asset protection?

A We had probably two or three phone calls with Paul and Dennis and various other advisors to talk about what the law allows, what strategies there are under the bankruptcy code, that sort of thing.

Q What, specifically, was your involvement?

A I was on three or four phone calls subsequent to that period going into more of later September and then through December. I was providing information to Mr. Vacco.

So we had most of Paul's corporate records, so, you know, Bylaws, Certificates of Incorporation, things like that for various entities. So whatever requests he made, we would try to be responsive to them.

Q Did you draft any documents in response to the asset protection?

A I don't recall.

Q Did you provide any proposed transaction structure for the asset protection?

A We talked broadly about Superpumper and some strategies about how to perhaps sell Paul's interest in the company.

Q And what specifically was -- was there a structure you personally proposed?

A I don't recall if I personally proposed it, but there were structures discussed,.

Q What were the structures that were discussed?

A One structure was to sell Paul's interest to the company to the other shareholders for value, and whether that was a payment made in cash or through some sort of --

Q Before the break, we were discussing proposed strategies. You mentioned selling Paul's interest to other shareholders. Were there other proposed structures to that transaction?

A Not that I recall.

Q Who came up with that proposed structure?

A I don't recall.

Q Were you concerned about fraudulent transfers when discussing the asset protection for Paul Morabito?

A It was part of what we discussed with him, what the law provides around that.

Q What were your concerns regarding the fraudulent transfers?

A Well, I don't know if we had concerns around it, but we did explain to him -- because the other shareholders were relatives or close people, that we explained to him how the law would look at that or what the rules are pertaining to that.

Q What specific advice can you recall that you provided to Paul regarding the transfer of his assets?"

MS. PILATOWICZ: There was an objection.

MR. GILMORE: No objection.

MS. PILATOWICZ: By Ms. Yalamenchili's personal counsel. You're not adopting that?

MR. GILMORE: I am not.

"THE WITNESS: I think it was really around the Superpumper potential transfer that I just mentioned. I don't recall discussing any of his other assets.

Q Do you recall specifically what advice you provided?

A I think it was around how a transaction like that could be accomplished, what were the mechanics that were needed, as I said, what would be the fraudulent conveyance or preference laws be around that.

Q What was your advice in that regard?

A I think it was if he wanted to do that, he would need to get a business valuation of the company, determine -- I don't recall what his percentage ownership was -- but determine what percentage ownership made sense, and if they didn't pay in cash, if the other shareholders paid him with a Promissory Note, the Promissory Note would be an asset of Paul's that would be subject to the judgment.

Q Do you recall any specific response from Paul Morabito regarding that advice?

A Not specifically no.

Q You've been handed Exhibit 14"--

MS. PILATOWICZ: Which is Exhibit 28 in the court exhibit binders?

BY MS. PILATOWICZ:

--which is identified as Bates label on the bottom right-hand corner HR000220."

MS. PILATOWICZ: This has been admitted.

BY MS. PILATOWICZ:

"Q It purports to be an e-mail from you to Eileen Crotty?

A Yes.

Q Sent September 20, 2010 at 11:38. Do you see that?

A Yes.

Q Do you recall -- well do you recall sending this e-mail?

A Not specifically, no.

Q Is that your e-mail address listed in the firm line?

A Yes.

Q Do you have any belief that you didn't send this e-mail?

A I'm sorry, can you say that again?

Q Sorry. Do you have any reason to believe that you didn't send this e-mail?

A No.

Q Who is Eileen Crotty?

A She's the CFO of Hodgson Russ.

Q Okay. In the second paragraph of the e-mail you indicate, 'Paul has been waiting for resolution of this court case before making arrangements to pay us. With this unfavorable ruling, I'm not sure how this will play out. The good news is he may be -- he may now be motivated to get us paid, since, if he doesn't, the money will be taken by the

judgment creditor. The bad news is he may be motivated to move assets around to keep them away from the creditor. I have discussed this with Paul, and he wasn't committed either way what he intends to do.' Your reference there to this court case is that, and the unfavorable ruling, is that the September 2010 judgment we have been talking about?

A Yes.

Q When you say 'the bad news is he may be motivated to move assets around to keep them away from the creditor' what do you mean by that?

A I don't recall.

Q When you say you've discussed with Paul and he hasn't committed either way, what do you mean by that?

A I think I was talking about our fees, whether he was committing to pay our fees or not.

Q Do you know if Paul ever paid Hodgson Russ' fees?

A Other than the $20,000 retainer that was mentioned in here, I don't believe he paid any additional fees, but I don't recall.

MS. PILATOWICZ: Now on page 40 line 23.

BY MS. PILATOWICZ:

"Q Other than Gary Graber, Dennis Vacco, Paul Morabito, potentially Stan Bernstein, was there anyone else who was involved in discussions in September of 2010 regarding asset

protection strategies?

A I don't recall."

MS. PILATOWICZ: We are now on page 43 line 6.

BY MS. PILATOWICZ:

"Q Let's go to Exhibit 5 which is identified as HER0000311 on the bottom right-hand corner."

MS. PILATOWICZ: And I believe this was the same one that was identified in Mr. Graber's. It is Exhibit 42 in the binders.

BY MS. PILATOWICZ:

"Q Let's go to Exhibit 5 which is identified as HR0000311 on the bottom right-hand corner.

A Yup.

Q Appears to be an e-mail from you to Gary Graber dated September 20, 2010?

A Yes.

Q Do you recall sending this e-mail?

A No.

Q Do you have any reason to dispute that you sent the e-mail?

A No.

Q Do you know what this e-mail is referring to?

A It refers to Paul's assets.

Q Where did you obtain your information regarding

these assets?

A Probably a combination of personal knowledge and information that Mr. Morabito provided to me.

Q Are the assets listed in this e-mail all of the assets of which you were aware at the time?

A I don't know, but I assume so, because it seems to-- I said to Gary these were my big picture knowledge.

Q Did you ever gain an understanding whether any other assets were owned by Paul Morabito as of September 2010?

A Not that I recall.

Q Okay. There a reference in Subsection A to Superpumper and Consolidated Western Corporation" --

THE COURT: Slow it down, okay?

BY MS. PILATOWICZ:

"Q There's a note that says, 'at one point Paul owned $100 of this stock. Not sure if that is still the case.' Where did you obtain your understanding about Paul's ownership of this stock?

A Combination of my involvement in transactions and then information that was given to me by Paul.

Q Was there anybody else who provided information?

A Not that I recall, specifically.

Q There's also a reference to CoWest Co. Co-owned a hundred percent of the stock in Superpumper, Inc. Where did

you obtain that information?

A Must have been from minute books or other corporation records.

Q Did you ever obtain an understanding that the ownership was different than what's represented in this e-mail?

A Not that I recall.

Q Do you know what the ultimate transfer of Superpumper looked like?

A Not that I recall, no.

Q Okay. You indicated in that e-mail, the second to the last or the last sentence of Subsection A, 'I would like to preserve this business to protect it from the Herbsts. It pays salaries to Edward, Sam and Paul and is a strong going business.' What did you mean there?

A Well, as I said earlier this-- there were other shareholders involved and employees, and so we wanted to convert this to a note so that the underlying asset could remain with the other shareholders.

Q Do you know if Paul continued to be involved with Superpumper after transfer?

A I don't know."

MS. PILATOWICZ: Moving to page 47 line 14.

BY MS. PILATOWICZ:

"Q Equity interest. Do you know how it was determined that Paul would receive a note for Superpumper and the stock would go to the other shareholders?

A Well, I know what the discussions were. I don't know who decided what, but it was part of a strategy to preserve that asset for the other shareholders and convert Paul's interest into a Promissory Note.

Q Do you know if there was ever a discussion with Paul providing the consideration received from the transfer to the Herbsts to satisfy the judgment?"

MR. GILMORE: No objection.

"THE WITNESS: Yes, we did discus, but that would be an asset of Paul's that would be subject to the judgment.

Q What was Paul's response to that?

A I don't recall, specifically."

MS. PILATOWICZ: Moving to page 48 line 10.

BY MS. PILATOWICZ:

"Q Your have been handed what has been marked Exhibit 18"-- which is Exhibit 223 in the binder. It has been admitted.

THE COURT: Thank you.

"--which is identified by Bate number HR0000358 on the bottom right-hand corner. There's a-- I believe Mr. Kearney pointed earlier, this is a-- the attachment to this e-mail is

contained in another exhibit, so if you turn to Exhibit 11, I believe that's the attachment referenced in the bottom e-mail on this chain, so you can look at the two together just for clarification purposes.

THE COURT: Have you marked both sets as Exhibit 223?

MS. PILATOWICZ: I don't believe we have marked Exhibit 11, but I will confirm that during break.

THE COURT: Okay.

MS. PILATOWICZ:

"Q I think the e-mail was forwarded to two separate people, but the same thing applies, this has the attachment?"

There was a response from Ms. Yalamanchili's personal counsel.

BY MS. PILATOWICZ:

"Q Okay. So Exhibit 18 -- exhibit 223 -- is an e-mail from you or appears to be an e-mail from you to Paul Morabito dated September 20, 2010 at 9:27 p.m. in which you indicate, 'Thanks. Sorry the call earlier got testy. Hopefully, Gary has called you to clear the air.' Do you recall this e-mail?

A Yes.

Q What is your recollection of that e-mail?

A You are referring to my portion of the e-mail at the top?

Q Yes?
A Well, as it suggests, that -- it was just a follow-up with Paul regarding an earlier conversation in the evening.
Q What do you recall about that conversation?
A That it got testy.
Q Well, tell me --
A There may have been some curse words.
Q Let's start with who was on the call?
A I recall Paul, Gary Graber, Dennis Vacco and myself. There may have been others, but I don't remember.
Q What was the purpose of the call?
A It was part of overall discussions at this time about asset protection, understanding what the laws provide, that sort of thing.
Q Okay. And tell me everything that you can recollect about the call?
A I don't remember the specific substance. I know it did get testy, and Gary swore at Paul and was frustrated by the tone of the conversation. I think he was traveling and was very tired.
Q But was the tone, the conversation, the tone that was coming from Paul Morabito?
A I don't recall Paul in particular being the driver

of the conversation.

Q What specifically caused Gary to react and curse with Paul?

A I don't remember the specifics. It was something where Gary was-- I think Paul, rather, was expecting Morabito information from Gary, and Gary hadn't had time to look into every aspect of bankruptcy law. He said something like, you know, 'I can't deliver that,' but not in a nice way.

Q Do you recall specifically what information Paul was looking for?

A I don't remember.

Q Do you recall anything else about that call?

A No.

MS. PILATOWICZ: Page 51 line 16.

BY MS. PILATOWICZ:

"Q Turn to Exhibit 7" --

MS. PILATOWICZ: Which is Exhibit 29 in Your Honor's binder and which has now been admitted.

THE COURT: Okay.

BY MS. PILATOWICZ:

"--which is identified by Bates Labels HR0000376 through 377 on the bottom, and it appears to be an e-mail from you to Gary Graber dated September 20, 2010 at 9:48 p.m. It looks like you are forwarding an e-mail from Paul to you and Dennis

to Gary. You indicate at the top item, 'not sure if we should respond to this. I will send you another e-mail chain FYI' do you recall sending this e-mail?

A No.

Q Do you recall why you forwarded this e-mail or why this e-mail would have been forwarded to Gary?

A I don't recall.

Q As we sit here, you don't have an understanding of what kind of response may have been necessary that you were referring to?

A I can speculate. I don't have a specific recollection.

Q What is your -- what is your speculation based on looking at it today?

A Well, in the earlier e-mail to Dennis and me, Paul is commenting on different legal advice and legal strategy, and so my comment to my partner was I'm not sure if we should respond to the legal advice that Paul is stating in there.

Q Do you know if there was ever a response?

A I don't recall.

Q Were you concerned -- or based on looking at this today, do you believe you would have had a concern about what he was saying?

A Not about the specifics, but it seems to come on the

heals of the heated conversation, so I think I may have suggested to Gary that everybody needed to cool down.

Q Do you recall having internal discussions with Gary Graber regarding a phone call that got testy?

A I don't remember specific conversations, but I do recall he and I spoke about it.

Q What do you recall about those discussions?

A Me telling him I wasn't happy with his behavior on the call. You know, asking him why he behaved that way, that sort of thing.

Q Did he give you a response?

A Yes. I think he said, 'I was tired. I was traveling. I was in a hotel room, lost my temper.' That sort of thing.

Q Do you recall anything else about those conversations?

A Not specifically, no.

Q Turning to Exhibit 8 which is identified by Bate Labels HR0000378 through 381 on the bottom right-hand corner, it looks like a second e-mail from you to Gary on September 20, 2010 at 9:50 p.m. It appears to be, would you agree, the second e-mail that was forwarded based on your Exhibit 7?

A It could be, yes."

MS. PILATOWICZ: Your Honor, did you have this

marked? I didn't see it in the exhibits. Is it in your designation?

MR. GILMORE: Well, my records reflect there might have been some confusion on the Bates ranges. You say HR378. I have it identified as HR837 which would be Exhibit 33. But I'm not sure, so I will have to --

MS. PILATOWICZ: Let me take a look at Exhibit 33.

THE COURT: Okay. We are going to be off-the-record.

Well be back on the record. The Exhibit 8 from his deposition will be identified after the break.

MS. PILATOWICZ: Thank you, Your Honor. We are starting with the answer on page 53 line 19.

"A It could be, yes.

Q Do you have any recollect of why this e-mail was forwarded?

A Not specifically, no.

Q Okay. Looking down to paragraph-- or it looks like the third e-mail in the chain, it appears to be an e-mail from you to Paul Morabito. Do you recall sending that specific e-mail?

A No.

Q Do you have any reason to believe that you didn't send it?

A No.

Q You state in here, 'you need to be very clear on what the law says, Paul. I don't think it simply says you can transfer assets for value.' Do you know why you were saying that to Paul?

A Well, I appear to be reiterating what Gary said on our earlier phone call that evening.

Q Did you explain to Paul what other factors the court may look at?

A I don't recall anything beyond what was in that e-mail, no. But Gary, who is more of an expert in that area, would have been discussing that on the call.

Q Okay. You reference specifically that conveyance laws are complicated and they look at a lot of factors including whether you have an intent to frustrate your creditors. Were you concerned there was an intent to frustrate creditors?

A Not specifically. That was part of our overall advice on that area of law.

Q Do you recall any specific advice given in that regard?

A I don't."

MS PILATOWICZ: We are are now moving to page 58 line 13. Exhibit 20, which is exhibit 32 in the exhibit books.

BY MS. PILATOWICZ:

"Q Exhibit 20 is identified by Bates Labels HR0000837 through 839. In the bottom right-hand corner it appears to be an e-mail chain between you and Gary Graber including an e-mail forwarded from Gary that came from Paul dated September 23, 2010. Do you see that?

A Yes.

Q Do you recall this e-mail?

A No.

Q Do you have any reason to believe you didn't send or receive these e-mails?

A No."

MR. PILATOWICZ: Your Honor, I would move admission of Exhibit 32.

MR. GILMORE: No objection.

THE COURT: Exhibit 32 is admitted.

(Exhibit 32 admitted in evidence.)

BY MS. PILATOWICZ:

"Q There's-- in the last sentence or second to the last sentence of the e-mail you indicate, 'when I spoke to him'-- it appears to be referring to Paul Morabito -- 'he was still determined to sell Superpumper, and was still in a 'fighting mode.' When you indicate he was determined, he was still determined to sell Superpumper, was there ever a time when he

wasn't determined to sell Superpumper?

A I don't know. I don't know that you could say he was determined not to sell it, but I think we had discussions about whether selling it was a good idea or not, how that played in the bankruptcy law. I am assuming he, after hearing all that, was still determined to sell it.

Q What specifically were the discussions regarding whether it was a good idea or bad idea to sell it?

A I don't recall, but it surrounded sort of what are fraudulent conveyance laws, how does the law look at these sorts of transfers.

Q At the time of this e-mail, were you of the mindset that it should or shouldn't be sold?

A I don't recall.

Q Did you ever have an opinion whether it should or shouldn't be sold?

A I don't recall.

Q Okay. You also state there that he was still in a fighting mode. What did you mean by that?"

MR. GILMORE: I'm sorry, it is mood.

MS. PILATOWICZ: I'm sorry, mood.

MR. GILMORE: You said that twice.

MS. PILATOWICZ: I'm reading it incorrectly.

BY MS. PLATOWICZ:

--"mood what did you mean by that?

A That is Paul's demeanor. So I think he was, you know, unhappy about the Herbst judgment, wanting to appeal, not believing he had done anything wrong, a whole series of, you know, being angry of the situation he was in."

MS. PILATOWICZ: Page 61 line 24.

BY MS. PILATOWICZ:

"Q I believe that is all the questions I have. Actually, let me take that back. Let me ask a couple Morabito questions."

MS. PILATOWICZ: And Your Honor, so the record is clear, it looks like when the transcript was transcribed "more" in multiple places were changed to Morabito. So if I change "more" to "Morabito" I want to indicate that on the record.

BY MS. PILATOWICZ:

"Q Since September of-- since your employment -- since Hodgon Russ terminated its attorney-client relationship with Paul Morabito which I understand to be sometime in late 2010, have you had any conversations with Paul Morabito?

A Not that I recall.

Q Have you had any conversations since that time with Salvator or Sam Morabito?

A Not until just a few minutes ago.

Q What about Edward Bayuk?

A No.

Q Anybody else relating to Paul Morabito since you terminated -- or since Hodgson Russ and Paul Morabito's relationship terminated?

A I mean I have relationships with other people who used to work for Paul, but nobody that is part of Paul's current organization."

CROSS-EXAMINATION

BY MR. GILMORE:

"Q Your testified that you believed you represented Sam Morabito in some capacity?

A Yes.

Q Could you further elaborate on that for me?

A Sam was a shareholder of several entities that we were involved in, so a lot of these were real estate holding companies, may have only owned one asset. And so, you know, it is possible that I was representing Sam and Edward in their individual capacities as well as part of restructuring.

Q Do you know if you -- strike that. Did you believe that you maintained an attorney-client relationship with Sam Morabito with respect to this asset protection plan?

A I don't know.

Q None of the e-mails that were shown to you in the exhibits today were -- was Sam Morabito copied, cc'd, the author or the primary recipient. Do you agree with me?

A Yes.

Q So I will ask you the same question with respect to Mr. Bayuk. Do you believe that you have maintained an attorney-client relationship with Mr. Bayuk with respect to the asset protection plan?

A Same answer. I can't say.

Q Okay. Did you understand that they-- if not you, they might have been represented by somebody else?

A Yes.

Q What was your understanding in that regard?

A I had no knowledge of whether they had other counsel or not, but certainly given the nature of the transaction it is certainly possible they did.

Q Okay. In one of the initial questions that Ms. Pilatowicz asked, you used the phrase 'asset protection'?

A Correct.

Q Do you consider that phrase to be a term of art in your profession?

A I'm not sure what 'term of art' means. It is a term that's used in legal circles.

Q Okay. When you use that phrase, what does in

entail?

A It entails looking at a whole series of strategies provided under the law to protect assets. Everything from estate planning to a whole range of things.

Q Okay. I would like to draw a distinction, if I can, if it works for you. In your estimation, is there such a concept of a permissible asset protection as opposed to impermissible asset protection?

A Yes.

Q Could you help me? Explain the distinction in your mind?

A Yes. The laws allow for any number of ways to protect assets. You hold assets through an LLC to shield liability type claims and there are impermissible ones. I'm not an expert in this area, but you know, fraud or stealing, things like that are certainly not permissible.

Q Okay. At any point in time in this sequence of communications and events around September 2010, did Paul Morabito ever say to you something to the effect that he was asking your advice in undertaking an impermissible asset exchange?

A No.

Q Okay. What did you understand Mr. Morabito to be seeking from you?

A Advice on asset protection, a lawful permissible kind.

Q You would not have given him instruction as to how to conduct impermissible asset exchange, would you?

A Correct. I would not give him that advice.

Q Another way of saying that, you aren't in the business of facilitating fraud are you?

A Correct.

Q Will you please turn to Exhibit 3.

MR. GILMORE: I have it as 25 I believe it is.

MS. PILATOWICZ: Yes.

THE COURT: This will be Exhibit 25?

MR. GILMORE: Yes it is, Your Honor. Is it in already? Yes, I believe I already stipulated to that.

MS. TURNER: Yes, it is.

BY MR. GILMORE:

"Q Will you please turn to Exhibit 3" --

MR. GILMORE: Which for the record is Exhibit 25 in the trial binders.

BY MR. GILMORE:

--"there might have been some confusion as to the entities and structures and various things in the testimony, so perhaps we can clarify some of that to make sure that we understand exactly what you were talking about.

Are you familiar with an entity by the name of Consolidated Nevada Corporation?

A Yes.

Q Okay. And do you have any specific recollection as to where Consolidated Nevada fits in with Paul's holdings?

A Not at the moment, no.

Q If I told you that Consolidated Nevada was a successor entity to PAMCO which at some point in time held Berry-Hinckley assets, does that sound right to you?

A That's possible, yes.

Q And Consolidated Nevada as distinct from Consolidated Western. You follow me?

A Yes.

Q And there was an e-mail that you were asked questions about by Ms. Pilatowicz regarding CoWest Co., holding the shares of Superpumper, correct?

A Yes.

Q So has any of this helped refresh your recollection as to Consolidated Nevada's role in Paul Morabito's asset holdings in CoWest Co.?

A Some of the e-mail exhibits have refreshed my memory that CoWest Co., was involved in the ownership of Superpumper. I had not recalled that.

Q At some point in time, did you become aware after

that Consolidated Western was owned by more than one individual?

A Do you mean today or --

Q At any point in time?

A Yes, I think I knew that.

Q At some point in time prior today you came to the understanding Superpumper was held by more than one individual, controlling individual?

A Yes.

Q Okay. Who did you understand were the controlling individuals of Superpumper either individually or through CoWest Co.?

A Well I understood the equity owners to be Sam Morabito, Paul Morabito and Edward Bayuk. I don't recall who was the controlling owner.

Q Now do you have a recollection of how you became aware of that?

A No.

MR. GILMORE: Commencing at page 70 line 22.

BY MR. GILMORE:

"Q Okay. Would you please turn to Exhibit 3 which for the record today is Exhibit 25. Do you have it in front of you?

A Yes.

Q In the e-mail from Mr. Vacco to you at 10:03 p.m. on the 15th, he infers that the concept of Paul Morabito selling his interest in CoWest Co., to Ed Bayuk and Sam Morabito was a proposal of yours. Do you agree with that?

A I don't recall specifically, but that's possible.

Q I don't recall an e-mail -- this e-mail chain or in the subsequent e-mail change where you corrected Mr. Vacco and said 'You're attributing to me something that I don't deserve.' Correct?

A Correct.

Q All right. When -- at this time, September 15th, this proposal that is attributed to you, did you believe at the time that there was a permissive way in which this transaction could be done vis-a-vis Mr. Morabito's creditors?

A Yes. I wouldn't have suggested it if I didn't think that.

Q But would you agree with me that's not the same thing as saying there aren't potential risks, right?

A Correct.

Q So in some of the e-mails between you and Mr. Graber, I think, forgive my characterization, but you were explaining to Mr. Morabito your impression of what Mr. Graber was trying to tell Paul, true?

A Correct.

Q Okay. And was it -- we can look at the e-mail if you want to -- but was it your intent to simply tell Paul that this proposal can be done, but Mr. Graber wants you to be aware that any of these potential transactions could have risks?

A Are you talking about this Exhibit 3 e-mail or another e-mail?

Q Exhibit 8--"

MR. GILMORE: Which I believe is Exhibit 32. Is that accurate? Do you have that?

MS. TURNER: That is in.

" -- f you would so we can be on the same page?

A Exhibit 8?

Q Yes?"

THE COURT: So what is Exhibit 8?

MR. GILMORE: I'm not 100 percent certain. My notes suggest it is Exhibit 32, but I think --

THE COURT: Ms. Pilatowicz.

MR. GILMORE: It is not 32.

MS. TURNER: No.

THE COURT: Are you finding it?

MR. GILMORE: This is the testy call we talked about.

MS. TURNER: The 9:50 a.m. e-mail.

MR. GILMORE: I will figure that out on the break. I

apologize for that. So I am reading now from page 72 line 10.
BY MR. GILMORE:
"Q Yes. So to refresh where we are, this is the e-mail chain where there is a reference to a testy call. Do you remember that?
A Yes.
Q Okay. And then there's an e-mail subsequent to the testy call where Mr. Morabito e-mails you and says, essentially, Mr. Graber called but he didn't take it. That's at the bottom of page 379?
A Okay.
Q Paul says to you at 9:30, 'he called, but I didn't take it. I thought all I was doing was what you advised, follow the law and sell for value.' Do you see that?
A Yes.
Q Okay. And then your e-mail in response to that which probably was eight minutes later based on the time change, the second paragraph of your e-mail to Mr. Morabito says, 'I don't think Gary was implying you were doing anything wrong, but he wants you to know what kind of questions and scrutiny you can expect.' Do you see that?
A Yes.
Q So what were you -- What message were you trying to relay to Mr. Morabito about what your impressions of Gary

Graber's insight were?

A Well, as the e-mail states, I was trying to convey to him that there's no -- that there is a complexity around these sorts of asset protection laws, and there is not one formula to follow. There are other factors a court might look at in challenging these.

Q When you wrote that e-mail that you didn't believe Gary was implying that Mr. Morabito was doing anything wrong, did you believe it?

A Did I believe that Paul wasn't doing anything wrong?

Q Did you believe that Mr. Graber didn't believe Mr. Morabito was doing something wrong?"

THE COURT: Are you adopting that objection?

MS. PILATOWICZ: No objection.

THE COURT: Thank you.

"THE WITNESS: Yes I believe that Gary didn't believe that Paul was doing anything wrong.

Q It gets complicated, but what I am essentially trying to get at, you weren't just telling the client something that you thought he wanted to hear. You were telling him what you genuinely believed?

A Correct.

Q Okay. At this point in time, September 2010, did you believe that Paul was doing anything wrong?

A No.

Q If you could please go to Exhibit 15, please. Do you have that in front of you?

A Yes."

THE COURT: Which one is that?

MR. GILMORE: I don't have that either. I don't know. I'm not sure if that one has been offered or not. But, again I have got some work to do.

BY MR. GILMORE:

"Q Here's another reference similar to the reference we saw in Exhibit 3, that not only was the genesis of the proposed Superpumper sale something Mr. Vacco believed came from you, but now he's affirming it's your strong recommendation that Mr. Morabito sell CWC, true?

A Yes, that is what the e-mail says.

Q Did you believe at any point in time that the rationale of Mr. Morabito to sell Consolidated Western Corporation to Sam and Edward Bayuk was based on an intent to delay, hinder or defraud the judgment creditors?

A No."

THE COURT: Counsel.

MS. PILATOWICZ: I have no objection.

THE COURT: Thank you.

BY MR. GILMORE:

"Q why is it that you say that?"

MS. PILATOWICZ: No objection?

THE WITNESS: Because the nature of our discussions with him were how to properly protect assets. I don't recall him ever saying, 'I want to improperly protect assets.'"

MR. GILMORE: Continuing page 75 line 21.

BY MR. GILMORE:

"Q Okay. Were you involved in any conversations where Mr. Graber asked Mr. Morabito what his rationale was for undertaking any of these strategies?

A I don't recall.

Q Okay. And then in the very next line Mr. Morabito says, 'Judge Adams specifically and 'specifically' is underline, exonerated Edward and Sam.' Did you have an understanding at the time you first read this e-mail what Mr. Morabito was intending to mean?

A Yes.

Q What was your understanding?

A That in the Herbst judgment, I believe there was a specific reference to other shareholders not being involved in the actions that led to the judgment.

Q Okay. If I represented to you"--

MS. PILATOWICZ: Your Honor, this is discussing Exhibit 7 which I don't think we have determined what exhibit

that is. If it is going to be discussed, the e-mail, I have no problem admitted the e-mail. But I think we have to be clear it is admitted so the entire e-mail also is on the record? I know that we had marked it.

MR. GILMORE: This is 29 which you just got admitted against my objection.

THE COURT: Even though we have it read into the record, we are looking at Exhibit 7, that part wasn't part of what you were reading, this is all about the exhibit in the deposition which is Exhibit 29?

MR. GILMORE: That's correct.

THE COURT: The record will so reflect.

MR. GILMORE: Let me continue on page 76 line 7.

BY MR. GILMORE:

"A That in the Herbst judgment, I believe there was a specific reference to other shareholders not being involved in the actions that led to the judgment.

Q Okay. If I represented to you that the judgment which Judge Adams entered against Paul Morabito and Consolidated Nevada specifically dismissed all claims against Mr. Bayuk and Mr. Morabito, Sam Morabito, would that be consistent with your understanding?

A Yes.

Q Okay. So did you ever have a conversation with

Mr. Morabito where he explained this rationale to you?

A I don't recall.

Q Okay. So then in the third paragraph Mr. Morabito's e-mail to you, he said 'we agreed amongst ourselves that I was best standing alone with my assets, and on the advice of counsel we sought independent third party appraisers to do just that.' Did you ever advise Mr. Morabito to obtain third party appraisers as part of the asset protection plan?

A Yes.

Q Why did you believe that was important?

A Well, I think at the time I first gave him that advice, I had not yet brought Gary Graber into the discussion, but I said any transfer of assets would have to be done at fair value. That was my general understanding of asset protection laws.

Q Okay. Did Mr. Morabito ever discuss with you this idea that, as he says in the e-mail, 'I was best standing alone with my assets'?

A I don't remember that phrase specifically but, yes, a lot of our discusses were around, you know, isolating the assets or separating him from other people that he may have been involved with other businesses.

Q Did you ever have any conversations with Mr. Morabito to the extent that he was aware that the asset

strategies he was intending to undertake might have had the result of protecting Sam and Edward by exposing himself?

A I don't specifically remember that."

Continue on page 80 line 6.

BY MR. GILMORE:

"Q Will you please turn to Exhibit 14?"

MR. GILMORE: I believe that is 28. Yes.

MS. TURNER: It is stipulated.

MR. GILMORE: Yeah, it is in.

THE COURT: Exhibit 14 in the deposition is noted as Exhibit 28.

BY MR. GILMORE:

"Q Will you please turn to Exhibit 14. You have it in front of you?

A Yes.

Q Thank you. In the second paragraph of your e-mail to Eileen Crotty, you give her some good news and then you give her some bad news. I want to make sure I understand the context of the bad news. It says that 'the bad news is he may be motivated to move assets around to keep them away from the creditor.' Why would Eileen Crotty be in any way concerned what Mr. Morabito's motivations were with respect to his assets?

A Well, our discussion was around payment of our legal

fees. Past legal fees, not current legal fees.

Q So did this bad news have -- is it referring to it's bad news for you as Mr. Morabito's counsel that he may be fraudulently transferring assets in violation of the fraudulent transfer statute?

A No. It was bad news his assets may no longer be available to us to pay our legal fees.

Q Okay. So this bad news sentence, did it have any reference whatsoever to Paul's asset protection strategies as it related to the creditors?

A No.

Q And then I heard you testify to Ms. Pilatowicz the last sentence of that same paragraph, 'I discussed with Paul and he hasn't committed either way what he intends to do.' Did that sentence that you're relaying to Ms. Crotty have anything to do with Mr. Morabito's intention vis-à-vis the Herbsts?

A No. That was only related to payment of the legal fees.

MR. GILMORE: Continuing on page 84, line 5. It makes reference to Exhibit 8 which I believe is Exhibit 32. Do you concur?

THE COURT: I am sorry, was that a question?

MR. GILMORE: She's searching.

MS. PILATOWICZ: I am looking up the exhibit to

confirm it.

THE COURT: Previously, Mr. Gilmore, I show Exhibit 8 you didn't know what it was.

MR. GILMORE: That is probably still the case.

THE COURT: Okay. I will wait for you to identify it.

MR. GILMORE: Yeah. I have a set of binders with complete transcripts and exhibits in my office. Let me continue then page 84 line 5 with the corrections that will need to be made as reference to Exhibit 8.

BY MR. GILMORE:

"Q That is all I needed from you on that score. Would you look at Exhibit 8, please?

A Sure.

Q We've already looked at it, but I'm going in the order in which they were examined. When Ms. Pilatowicz was asking about Exhibit 8, the second time she asked you a question, you said you were not concerned with Mr. Morabito's intent but were concerned with giving advice. Do you remember generally that testimony?

A Yes.

Q What did you mean by that, you were not concerned with Mr. Morabito's intent?

A I didn't have any reason to feel he had bad intent.

We were just trying to make sure he understood what the law allowed and didn't allow."

MS. PILATOWICZ: Your Honor, same issue, we are reading into the record Exhibit 8, an exhibit we are not sure whether it has been admitted. We need to clarify what Exhibit 8 is before allowing it to be read into the record.

THE COURT: Okay. Off the record.

(Discussion off the record.)

THE COURT: We are back on the record.

MR. GILMORE: Yes.

THE COURT: We are on the record.

MR. GILMORE: Your Honor, there has been a stipulation that Exhibit 8, which was Exhibit 8 both in Mr. Graber's and Ms. Yalamancili's depositions had not been previously marked in the trial binders, and it was inadvertent. The Defendants have offered that exhibit which has the Bate range of HR378 through HR318. My expectation is it would be marked as Exhibit 300.

THE CLERK: Exhibit 300 will be marked as that document when I have a copy of it.

(Exhibit 300 marked for identification.)

THE COURT: Although it was marked during Mr. Graber's deposition, was it not discussed today?

MS. PILATOWICZ: It had been discussed in previous

questions by Mr. Gilmore, but the e-mail at that point hadn't been quoted which was what raised the objection from me.

MR. GILMORE: I believe what is probably accurate is that it was raised for the first time in my reading.

THE COURT: So it is Exhibit 300.

THE CLERK: It will be 300.

THE COURT: The record will reflect when Exhibit 8 was discussed in the Graber deposition, second deposition, it was referring to Exhibit 300 which has now been admitted.

(Exhibit 300 admitted in evidence.)

MR. GILMORE: Thank you. And I apologize for that.

THE COURT: That's fine.

THE COURT: Okay, counsel, you may proceed.

MR. GILMORE: Thank you, Your Honor.

I will continue on page 84 line 5.

BY MR. GILMORE:

"Q That's all I needed from you on that score. Would you look at Exhibit 8 -- which for purposes of today's record is Exhibit 300 in the trial binders -- please?

A Sure.

Q We've already looked at it, but I am going in the order in which they were examined. When Ms. Pilatowicz was asking you about Exhibit 8 the second time, you said that you were not concerned with Mr. Morabito's intent, but you were

concerned with giving advice. Do you remember generally that testimony?

A Yes.

Q What did you mean by that, you were not concerned with Mr. Morabito's intent?

A I didn't have any reason to feel he had bad intent. We were just trying to make sure he understood what the law allowed and didn't allow.

Q Okay. At the bottom of the second page of Exhibit 8 which is 379, I want to read a statement that Mr. Morabito made to you in an e-mail in which the subject, ironically, is attorney-client privilege communication. Mr. Morabito says to you, the third sentence, please, 'I end up with clearly defined assets that are just mine that they can attach and take worth the same amount had they tried to take assets jointly owned by Edward and myself.' Do you see that?

A Yes.

Q Do you believe that this was his intent when he sent you this e-mail on September 20th?

A I don't recall that date, but reading it now, that's the--, yeah, that's what I would infer.

Q Did you ever have any communication with Mr. Morabito in this time frame where you reached the conclusion that he was telling you one thing and intending

something different?

A No.

Q Did you believe at the time you received this e-mail that this e-mail from Mr. Morabito to you would ever be produced, Bate stamped, put up on a big screen projector and used at trial?

A No.

Q Okay. The next sentence Mr. Morabito says, 'I wasn't trying to avoid anything, just separate the assets so that they are easily identified.' Did you, when you read this for the first time, believe that Mr. Morabito genuinely believed that?

A I don't recall, but that is consistent with my general impression of Paul at the time.

Q Same question I asked you before, was there anything that Mr. Morabito said or did at this time period which led you to believe he was telling you one thing and believed or thought another thing?

A No.

Q And then last sentence Mr. Morabito says, 'He made it sound as if I was trying to defraud someone.' Did you ever believe that Mr. Morabito was intending to defraud someone in the course of the transactions?"

MS. PILATOWICZ: No objection?

"THE WITNESS: No?

MR. GILMORE: Last exhibit from me, Exhibit 30 I am sorry, 20 which is Exhibit 32 previously identified and marked.

THE COURT: Counsel, do you agree?

MS. PILATOWICZ: I agree Your Honor.

BY MR. GILMORE:

"Q When Ms. Pilatowicz asked you about this fighting mood reference, did you intend that to mean, when you said this to Mr. Graber, that it was -- strike that. Did you intend to relay to Mr. Graber that Morabito's mood was to do something which you and/or Mr. Graber perceived as impermissive?

A No.

Q Or something that was fraudulent?

A No.

Q The reference to fighting is a reference to what?

A It was a reference to the Herbst transaction and the outcome of that case. He was still very angry and disappointed with the verdict, so it was really a reference to that.

Q When you initially heard of the verdict, what was your response?

A Mixed emotion. I had been involved in the

transaction, so it was disappointing they reached the verdict they did. And just, you know, disappointment for Paul and what that was going to mean for him.

Q Your entire involvement -- Let me lay some foundation. You were involved as one of Paul's primary transactional counsel in the Herbst sale, correct?

A Correct.

Q In other words, Mr. Morabito selling the stock of Berry-HInckley to the Herbst' companies, yes?

A Yes.

Q At any time in your representation of Mr. Paul Morabito in that transaction, did you ever witness something that lead you to believe Mr. Morabito intended to default" -- It says 'default.' I'm sure it means defraud.

-- the Herbsts?

A No.

Q It was intended to defraud the Herbsts.

A No.

Q In your entire scope of your representation of Mr. Morabito, did you ever witness something that he did or said which led you to believe that that's his modus operandi is defrauding people?

A No."

MR. GILMORE: Continuing page 93 line 12.

BY MR. GILMORE:

"Q At any point in time when you were discussing with Mr. Morabito the Superpumper transaction, did you ever get the impression that he was -- the best I can give you is the phrase leaping before he looked? Do you understand this phrase?

A Yeah.

Q I mean, did you ever get the impression that he was just -- didn't know what he was getting himself into?

A Well those may be two different questions. I think a lot of clients, business people, jump before they know the full lay of the land. That is a common thing, and, certainly, Paul would have done that. But I don't -- I mean he was getting good advice. I don't think he would have -- he wasn't careless. Let's put it that way.

Q I think that answers my question."

THE COURT: We have a little housekeeping to do before we move on to another deposition. So, Mr. Gilmore, you still need to find out what Exhibit 15 of the deposition refers to.

MR. GILMORE: Yup.

THE COURT: Otherwise, the others are all 300.

MR. GILMORE: That is my notes as well. Thank you.

THE COURT: Counsel who are going to call?

MS. PILATOWICZ: We are going to move on to live testimony and call James McGovern.

THE COURT: Sir, you may step down. Thank you.

(Reader excused.)

THE COURT: You may proceed.

JAMES L. McGOVERN

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. Can you please state your name and spell it for the record?

A Sure. James L. McGovern. McGovern.

Q What is your profession?

A I am a CPA and a forensic accountant.

Q How long have you been engaged in that occupation?

A Since 1980 I want to say.

Q Can you give us a general description what your job entails?

A Sure. I am a partner at the firm of McGovern and Greene, so my job entails working on engagements for clients,

all sorts of forensic accounting engagements, investigating financial improprieties, calculating damages, valuing businesses, that sort of thing.

Q What is your educational background?

A I have a degree from Marquette University. I majored in accounting, and I am a Certified Public Accountant. And I, since graduating and since becoming a CPA, I take an average of 40 hours of continuing professional education.

Q Are there any special certifications available in your profession?

A There are.

Q Do you have any of them?

A I do.

Q Tell me which ones?

A Sure. In addition to being a Certified Public Accountant, I am certified in financial forensics and I am also certified in -- a certified valuation analyst.

Q Who is the certification for valuation analysts?

A Certification is through the National Association of Certified Valuation Analysts.

Q What licenses do you hold?

A I hold a public accounting license in both the State of Nevada and the State of Illinois.

Q When did you first become licensed in those states?

A In Illinois I believe I became licensed in late 80s, '87, '88 my recollection. Nevada was more recently, probably five or six years ago.

Q And the certification in business valuations, when did you obtain that certification?

A I am pretty sure that was in 2008.

Q How long have you been valuing businesses?

A Well, I have actually done business valuations for longer than since 2008, probably 20 years, but I didn't become certified until 2008.

Q How many businesses would you say you have valued?

A Oh, that's hard to say. Dozens.

Q Have you ever been offered as an expert in business valuations in any court?

A I have certainly been presented as an expert on valuation in other cases. I don't know if any of those cases actually went to trial, though, as I am sitting here. So I can't say with certainty that any of those made it to trial.

Q Have you been offered as an expert in court before?

A Many times.

Q Have you been accepted as an expert in court before?

A Yes.

Q What about the Second Judicial District?

A Yes, on one other occasion.

Q What were you retained to do in this case?

A In this case, I was retained to value a 100 percent ownership stake in Superpumper.

Q Did you ultimately offer an opinion?

A I did.

MS. PILATOWICZ: I would offer Mr. McGovern in the field of business valuations.

MR. GILMORE: No objection.

THE COURT: The new case, I am not supposed to accept him or not. I can refuse to allow his testimony to go forward if he is not qualified to make an opinion, but I am not supposed to give an opinion as to whether or not he's qualified, in the old term accept him, like we learned in law school. So I do deem him qualified to give an opinion in this case.

MS. PILATOWICZ: Thank you, Your Honor.

BY MS. PILATOWICZ:

Q What was your assignment in this case?

A My assignment was to value one hundred percent ownership stake in Superpumper as of September 3, 2010.

Q Tell me what you did to complete your valuation?

A Okay. Well, so as I would with any other business valuation, I start with identifying the appropriate standard of value and premise of value. And so in this case I

determined that fair market value was the proper standard, and the proper premise of value was that of a going concern, meaning that I expected the business would continue to operate. We weren't valuing the business for liquidation purposes.

Q What business were you valuing?

A I was valuing Superpumper.

Q What kind of business is Superpumper?

A Superpumper is a company that owns and operated, I believe it was eleven convenience stores and gas stations.

Q Do you need to have any special expertise in convenience stores to be able to compute a valuation of convenience stores?

A No.

Q Why is that?

A Well, as a certified valuation analyst, I am asked to value all sorts of different types of businesses. And the standards simply require that we gather enough information about the particular type of business in order to render an opinion.

Q Tell me about the approaches you used in this case to value Superpumper?

A I considered all three standard approaches to valuation that are required by the professional standards.

Those include a market approach, an asset approach and an income approach.

Q I will refer you to Exhibit 91 which in the binder behind you. It should be in book III.

A Here we go. Okay.

Q Do you recognize what is Exhibit 91?

A Yes. This is my report in this matter.

Q And Exhibit 91 which has been admitted into evidence in this case, if at any point during the discussion you want to refer to it, feel free to direct the Court to what you are referring to?

A Okay.

Q We were discussing you mentioned you used the three standard approaches. What are those three?

A Again, there is the asset approach, the market approach and the income approach.

Q Tell me about the asset approach?

A So the asset approach is essentially where we look at the individual assets and liabilities of the business and by valuing those individual assets and liabilities we arrive at a value for the company. That is typically not a reliable approach for valuing an ongoing business.

Q Did you ultimately then use that approach in this assignment?

A Well, again, I used it, I considered it, but I didn't rely upon it in the end in forming my opinion. I did not select that approach as the appropriate methodology.

Q Tell me next about the market approach?

A So the market approach is essentially where the valuation analyst looks at sales of comparable businesses or interests in comparable businesses to arrive at an indication of value for the subject business. It is -- The principle of substitution is at play in the market approach.

Q Did you use the market approach with respect to this assignment?

A Well, again, I used it in the sense I went through the approach. I did look at comparable companies, both public traded companies and some sale of private companies. I took that into consideration. But, again, ultimately I did not rely upon that approach for my final conclusion.

Q Tell me about the income approach?

A So the income approach is where the valuation analyst looks at the benefit stream that the company that is being valued is generating, and, more importantly, is expected to generate out into the future. And by looking at that benefit stream, we use that benefit stream to then translate that into value for the business.

Q Did you ultimately use the income approach with

respect to this assignment?

A I did.

Q And tell me how you did that?

A So under the income approach, I looked at two methods within that general approach. One approach is referred to as the capitalization of earnings method. More specifically the capitalization of a single period of earnings method. And the other specific method is the discounted cash flow method.

Q Between those two methods, was there one you chose over the other?

A Yes. I ultimately selected the discounted cash flow method.

Q And explain what the discounted cash flow method is?

A Sure. With the discounted cash flow method, we look at the future expected benefits. First, let me explain, we select a benefit stream. By that I mean what is the benefit to the owners of the company. And there are different measures of benefit streams, but I selected the cash flow to the investors or cash flow to the owners as the appropriate benefit stream.

So with the discounted cash flow method, we look at, as of the date of valuation, what are the future expected benefits going to be. So we look at a projection out into the

future, and then we discount that back to present value by applying a discount rate.

Q And what did you look at in this case to determine what the projected outlook in the future would be?

A I looked at a report that was provided by Superpumper's management that showed the budgets for five years out into the future. So it is looking out into the future. It went through 2015.

Q Do you recall how the gas sales were reported in that document you looked at to project the sales?

A Did you say the gas sales?

Q Yes?

A Yes. There was a projection of the revenue from gas sales shown in dollars.

Q Did it matter if it was in dollars or gallons, in your analysis?

A No.

Q Why did it not matter?

A Again, applying a discounted cash flow approach, we need the dollars to arrive at what is the bottom line of cash flow going to be to the owners.

Q After you looked at the future projections, what did you do next?

A Well, I looked at those projections. In the

discounted cash flow approach you lay out what the future forecast is, and you have a forecasting out through a certain period of time, and then you have to have a terminal year, essentially. You say okay, I have got the forecast out through 2015. Then I have to decide from that point what a reasonable degree of growth would be. In this case I assumed the growth going forward at that point would be one percent a year. Very low, low growth. I then applied the discount rate we had developed to those future expected cash flows and did the math and brought the value of those future benefit streams back to present value.

Q Let's talk about the discount rate. What is the discount rate you used to accomplish that?

A You have to think of it in terms of the fact that first of all a dollar today is worth more than a dollar in the future. So there is a time element to the analysis. But, essentially, what discount rate takes into account is the risk associated with an investment. So different investments have different risks. And what you can see, if you have a very safe investment, say a U.S. treasury bond, you would have a rate associated with that type of investment. And that is often called the risk free rate, because it is the lowest most safest type of investment. So you would start with that risk free rate, then you would look at, okay, are there risks

associated with investing in equity? Are there certain risks associated with the size of the company? Are there certain risks associated with the industry that the company is in? Are there certain risks associated with the specific, you know, company? And we try to take all that into account, add them all up and you come up with the discount rate to apply to those expected future benefits.

Q Are there any tools you utilize in determining how to get to the appropriate discount rate?

A Yes.

Q What are those tools?

A There are a number of tools available. The tool that I use is called the Duff & Phelps cost of capital calculator. It essentially mechanizes the process I just described.

Q So what is Duff & Phelps. Can you explain to the Court what you did have?

A Sure. Duff & Phelps is a very well-known company that provides advice on investment banking. And one of the things it does, it publishes the cost of capital calculator.

Q Did you ultimately determine a discount rate with respect to this assignment?

A Yes.

Q What was that discount rate?

A I will turn to that. I don't remember the exact number. So ultimately I arrived at a 14.2 percent discount rate.

Q What page are you looking at?

A I am on page 17 of my report.

Q How did you determine that was the appropriate discount rate in this assignment? What sort of things did you look at?

A Well, I looked at, like I described earlier, I looked at what was the appropriate risk free rate at the time. What was the, what we call equity risk premium at the time. There is also what we call the small company size premium. We were dealing with a relatively small company, so there was a premium associated with the size. And then we looked at the industry that Super Pumper operated in to see if there was an adjustment to the discount rate appropriate for that industry.

And so when I say the Duff & Phelps cost of equity calculator, it actually gives a number of models you can choose from. Looking at those models, I found there was a range of discount rates that range from about 13.3 up to 16.7 percent. I ultimately selected the what they call model two in the Duff & Phelps calculator and selected 14.2 as the appropriate rate.

Q And using the discounted cash flow method, what was

your conclusion as to value?

A My ultimate conclusion of value was that Superpumper was worth $13,050,000.

Q Explain to me how you got to that number?

A Sure. So, again, taking the projected future cash flow to the owners as the benefit stream, applying the 14.2 percent discount rate and also applying what we call capitalization rate to the terminal year, that gives you --

THE COURT: I'm sorry to the what?

THE WITNESS: Terminal year. So what I was trying to explain, in the discounted cash flow method you have a projection that goes out for a certain number of years. And then you have what we call the terminal year which at that point everything is going to stabilize. You will have the same amount of growth going forward. So in this case, I attributed one percent growth going forward.

THE COURT: What was your terminal year?

THE WITNESS: One second. I will take a look at that.

It would be 2015.

THE COURT: Go ahead.

THE WITNESS: What you do with the terminal year is you take the discount rate and you subtract the assumption for future growth to get the capitalization rate. Again, I had a

14.2 percent discount rate. One percent growth as to the capitalization rate was 13.2 percent.

///

BY MS. PILATOWICZ:

Q What type of assets did you consider in ultimately getting to that value?

A So I assumed one hundred percent of the company's assets. That included both the operating assets and the non-operating assets.

Q Explain to me what you mean by operating verus non-operating assets?

A Sure. Sometimes you will have a business that all of the assets that it owns are actually used in the day-to-day operation of a business. But often you will find that companies will own other assets that aren't being used in the day-to-day operation of the business. So you could have all your operating assets, then you can have non-operating assets.

Q Were there non-operating assets in this case?

A Yes.

Q What were those?

A Well, specifically I identified loans and notes payable to the corporation from the owners that were, in my opinion, excess -- represented excess asset to the company. And that a portion of those loans would be considered

non-operating.

Q Of the 13 million dollar valuation, how much was contributed to non-operating assets?

A Six and a half million.

Q How did you determine the value of the six and a half million dollars of non-operating assets?

A So I looked at the balance sheet and saw that there were about 9.1 million dollars, if I recall, in amounts listed as due from the owners of the company. And so I looked at the balance sheet as of September 30th. I had looked at the audited financial statement including the audited balance sheet from the prior year that was available and would have been available as of September 30th.

Q Why was it important for you to look at the 2009 audit statement?

A Because I was trying to determine whether or not the auditors had found those notes payable, amounts payable to be collectible.

Q And do you recall if there was a conclusion in the 2009 financial statement?

A Yes.

Q What was that conclusion?

A The auditors found that those notes were collectible.

Q Did you review the 2010 audited financial statements with respect to Superpumper?

A I did.

Q Were they relevant to your valuation?

A Well, they were -- I wouldn't say they were totally irrelevant, but the 2010 audited financial statements weren't issued until several months after the date of the valuation. The date of the valuation was September 30, 2010. The 2010 audit wouldn't have been conducted until after year end. My recollection is it was several months after year end.

When we value a business, we are only supposed to take into account information that is known or knowable as of the date of the valuation.

Q Based on the 2009 audited financial statements, what did you do know about the non-operating assets at the time you completed your valuation?

A Based on the 2009 audit, it led me to conclude that the notes were collectible.

Q Did you make a determination in your report as to whether the notes were current assets? Can you explain what a current asset is?

A Sure. The simplest way to think of a current asset is any asset that is expected or can be collected and used in the next 12 months. So cash, accounts receivable, notes

receivable that are due on demand are all considered to be current assets.

Q And did you make a determination in this case as to if the receivables were current assets?

A I did.

Q Explain to me what determination you made?

A Well, I determined that specifically the notes receivable from the owners and affiliates, they should be classified as current assets because they were indicated to be due on demand.

Q You discuss in your report marketability discount. Can you explain to me what that is?

A Sure. There are times when, in doing the valuation work, we have to consider whether or not the interest that is being valued is readily marketable. Because an interest that is not readily marketable is not worth as much as an interest that is readily marketable. So where you have a non-readily marketable interest, you typical apply a discount.

Q Did you ultimately apply a marketability discount in this case?

A No, I did.

Q Why not?

A Because I was valuing a one hundred percent ownership stake in the company, and I find no reason to think

that the one hundred percent stake in this company was not marketable.

Q Would your opinion change if you were valuing an 80 percent interest in this company?

A No.

Q Why not?

A Because 80 percent is still a controlling interest. Typically, where you see the discount for lack of marketability comes in is when you're dealing with a minority position.

Q And in your report, you also make mention of a three million dollars term loan you had I believe heard about but didn't show up on the books. Do you recall that?

A I do.

Q What do you know about that loan?

A I understand at some point the Defendants in this case say they took out a three million dollar loan. It was not recorded on the balance sheet as of September 30th, however.

Q If it existed as of September 30th, how should it have been treated on the books?

A Well, so if there had been a loan taken out for three million dollars before or as of September 30, 2010, I would expect it to have been shown on the balance sheet as a liability. I also expect the other side of the entry to be

reflected somehow on the financial statement.

Q What do you mean by that?

A Well, with accounting there is always two sides to the entry. For instance, if you take out a loan for three million dollars, you have a liability that would be shown on the balance sheet. But then the question is what happened to the three million dollars. Was it just taken out in cash and put into the checking account? Then you would have an asset for three million dollars. Was it loaned to somebody? In that case, there would be an asset on the balance sheet reflecting the loan amount coming due. If it was just distributed, then I would expect to see a distribution of capital reflected in the financial statement.

Q If that three million dollar loan was taken out was to be repaid back to the company, how would that show up on your business valuation?

A If it was expected to be repaid, then I would expect it be shown as a loan or a note receivable due back to the company. So it would be an asset. It would be an offsetting asset to the loan liability.

Q How would that ultimately affect the valuation?

A Assuming it was collectible, I don't think it would have any impact certainly from a balance sheet perspective. They would wipe each other out.

Q You have seen, in preparing your report, you have seen a valuation, Matrix valuation. Do you know what I am talking about?

A Yes.

Q How does your report, your valuation finding compare to the Matrix valuation finding?

MR. GILMORE: I object to this being beyond the scope of this witness' disclosed opinions. He was not disclose he had to provide any review opinion of Mr. Cavalier or his report. In fact, the report here doesn't mention the Matrix report at all.

THE COURT: Counsel.

MR. GILMORE: This is not a rebuttal witness.

MS. PILATOWICZ: Your Honor, I didn't ask him for analysis for rebuttal. I just asked him if he was aware, based on his review of the Matrix valuation, how his valuation compared to the Matrix valuation.

MR. GILMORE: That is beyond the scope of designation, and beyond the scope of his report. We are entitled to rely on his report to tell me what opinions he intends to offer at trial. There is no commentary on the Matrix report.

THE COURT: Is there any commentary?

MS. PILATOWICZ: Your Honor, there was commentary.

It is reflected that he viewed the Matrix valuation in his report. There was extensive discussion in his deposition about the Matrix report.

THE COURT: So this line of inquiry was gone into in the deposition?

MS. PILATOWICZ: It was.

THE COURT: Was it objected to at that time?

MS. PILATOWICZ: No, it wasn't. Questions were asked by Mr. Gilmore.

MR. GILMORE: My point is this: A deposition of an expert does not expand the scope of his opinions as set forth in the report. Expert disclosure requirement requires that he identify all of his opinions and the basis therefrom from his report.

THE COURT: Yes, I agree with you. However, if you expand on that in your questioning of an expert, you cannot exclude that testimony later at trial on the basis that the expert, when he was retained by the other side, didn't put it in their report. So if you inquired into the subject matter and he answered, you cannot preclude his answers from being presented in court.

MR. GILMORE: I agree with that. I don't think there has been any foundation suggesting my level of inquiry was to that extent. My personal recollection is my inquiry

was: Are you here to talk about the Cavalier report? So I don't know there has been any foundation laid I actually examined him with any of his opinions with respect--

THE COURT: Do you have his deposition?

MS. PILATOWICZ: Your Honor, I have a copy of his deposition.

THE COURT: Why don't you --

MR. GILMORE: I have it right here, Your Honor, there is one reference to Cavalier in the deposition.

MS. PILATOWICZ: It is as to, Matrix.

THE COURT: Since this issue is being raised based on the deposition I'd ask his deposition be opened and published. Then you all can point to the section.

MR. GILMORE: May I approach, Your Honor?

THE COURT: Certainly.

MR. GILMORE: There is a copy of the original and an errata sheet.

THE CLERK: Deposition of James McGovern March 28, 21016 opened and published.

MS. PILATOWICZ: Your Honor, in the interest of time to find the reference, I will move on from that question.

THE COURT: Then go back afterwards?

MS. PILATOWICZ: Yes, if necessary I will go back.

BY MS. PILATOWICZ:

Q You also mention in your report a marketing or multi-year agreement with Shell. Do you recall that?

A Yes.

Q How did that multi-year contract with Shell impact your valuation?

A It really didn't. I believe, if I recall correctly, my reference to that I noted it existed, and I assumed that agreement was ongoing, and I saw no reason to think that it would not be renewed and go on.

Q Were you aware that if was cancelled, if somebody terminated the contract, there was a large penalty potentially associated with it?

A No.

Q Would that impact your valuation?

A It would only impact my valuation if there was reason to think that it was going to be cancelled and the penalty was going to be applied. I saw no indication of that.

Q Is the valuation that you placed or the valuation, your conclusion, your opinion in your report the thirteen million dollars, is that what you believe that the shares of the company would sell for?

A Yes, the one hundred percent of the shares. The one hundred percent ownership.

MS. PILATOWICZ: Your honor, I have no further

questions at this time.

THE COURT: Do you want to reserve the issue --

MS. PILATOWICZ: Yes, Your Honor, I will reserve the issue on the comparison of the Matrix valuation.

THE COURT: So we can begin some cross-examination and then we'll recess.

MR. GILMORE: Right.

CROSS-EXAMINATION

BY MR. GILLMORE:

A Good morning, Mr. McGovern.

A Good morning.

Q This is our second time we have met. We met the first time in Las Vegas a couple years ago, didn't we?

A Yes. It was three years ago.

Q Was it now?

MR. GILMORE: Now, Ms. Pilatowicz, I will withdraw my objection to the line of questioning related to the Matrix report.

THE COURT: Okay. Why don't we have her finish that up?

DIRECT EXAMINATION CONTINUED

BY MS. PILATOWICZ:

Q Thank you, Your Honor. Mr. McGovern, you were

familiar with the valuation generally referred to as the Matrix valuation; is that correct?

A Yes.

Q What was Your understanding of the Matrix valuation?

A My understanding of the Matrix valuation was that the gentleman, I want to say his name was Stewart Cavalier, I know his last name was Cavalier, had valued the company as of August 30pth or 31, 2010, roughly a month prior to September 30th of 2010, and that he had concluded that the business was worth six and a half million dollars. But he did not include anything for the notes due from the affiliates

Q We'll get to that point in a second. Moving back, what were the differences? You said he determined a 6.5 million dollar determination. You were around 13 million. Explain to me what difference existed between your two reports, I am sorry, the Matrix report and your report?

A Okay. So ultimately the big difference was I included six and a half million dollars of value for the non-operating assets, and he did not, and so if you hold that aside, our conclusion of value was almost identical.

Q What were the similarities in your reports?

A Well, the similarities would be we arrived at the same value for the operating portion of the company. He also utilized several of the same approaches that I used, including

the income and market approach. I don't recall specifically if he used the asset approach. I think he at least considered it. He ended up taking, you know, the multiple approaches and doing like a weighed average in arriving at the six and a half million dollars. Although I considered the difference approaches, I don't do the weighted average thing. I end up picking the approach I think is most appropriate. So there is a similarity in we both considered the multiple approaches.

Q Moving on to the difference of the notes receivable or the receivables being included in the valuation, do you know why they were included in yours and not in Mr. Cavalier's?

A I don't recall specifically whether his report spoke to those notes or not. I just don't recall that.

Q Is that generally something that would be included in a report if a non-operating asset of that large is going to be considered or not considered?

A I would expect it to be, sure. You know, it is a major issue.

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

THE COURT: I have a question. When you were being questioned, what did you value the non-operating assets, what were the amount of loans that you utilized?

THE WITNESS: Give me one second, Your Honor. I can address that specifically.

It is approximately 9.1 million. To be clear, Your Honor, the amount of loans, 9.1 million, I concluded of that 9.1 million, six and a half million would be considered non-operating.

THE COURT: Okay. That is where I was trying to figure out what you were saying. So the remainder you did not consider non-operating assets?

THE WITNESS: Correct.

THE COURT: And why is that?

THE WITNESS: Because part of what we look at when we are doing valuation, we look at the company's working capital needs. So working capital is essential-- I don't know your level of business acumen. I hope I'm not --

THE COURT: I have been a judge for 26 years in general jurisdiction.

THE WITNESS: Very good. So I mean the simple explanation, working capital is current assets less current liabilities. The money the company would need to operate on a regular base.

THE COURT: You would not anticipate that to be repaid?

THE WITNESS: No. No. I didn't anticipate it to be

repaid.

THE COURT: But it couldn't have been repaid at that moment and still operate?

THE WITNESS: Right.

THE COURT: All right. Do you have any questions based on my questions?

MS. PILATOWICZ: I do. I have one followup.

BY MS. PILATOWICZ:

Q We talked about the value of the non-operating assets. Could you clarify what the value of the operating assets is that you determined for the valuation of the company?

A Well, so it gets -- I guess I would answer that if I exclude the non-operating assets, the value of the company only including the operating assets would be $6,550,000

Q Thank you.

THE COURT: Okay.

MR. GILMORE: Thank you, Your Honor.

THE COURT: Thank you.

MR. GILMORE: May I proceed, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION CONTINUED

BY MR. GILMORE:

Q Now, Mr. McGovern, this assignment that you were given is known in your industry as a retroactive appraisal, right.

A I am certainly valuing a business retroactively. I am not sure I have heard that term before.

Q Your assignment is not to get a contemporaneous value of a going concern, true?

A True.

Q You were hired in 2016, right? Never mind. I am not concerned when you were hired. That is note relevant. Your report was issued January 25, 2016?

A Yes.

Q In 2016 you were asked to go back and provide valuation of the Superpumper business as of the last day of September 2010, right?

A Yes.

Q You have to do a six year look-back period to determine the appraisal date, right?

A Yes.

Q Or the valuation date?

A Correct.

Q Okay. So you testified in the direct examination something to the effect that when you are doing a retroactive appraisal, my word but not yours, you don't consider events

that occurred after the valuation date for purposes of determining your valuation, because a contemporaneous appraiser would not have that information available to them. Do you recollect testifying to something to effect?

A Yes. I said we only consider information that's known or knowable as of the date of valuation.

Q And so if you were already, it would be 2016, you were considering events that actually occurred in 2013, that would improperly impair the valuation that you were giving as of the valuation date in 2010, right?

A That would depend on what information you were speaking of.

Q But it could, right?

A It could, sure.

Q And you agree with me that isn't something that you think generally would be a common practice in doing a retroactive appraisal of this type, right?

A It would not be.

Q Now were you tasked -- strike that. If I use the word review, to perform a review of someone else's work product, would that term mean anything to you?

A Yes. Although I have to caution the term "review" for an accountant can mean different things.

Q Understood. If I characterize it in this valuation

context that your job was not to review Mr. Cavalier's work in the Matrix report, was it and to comment and opine on it?

A I was not asked to opine upon Mr. Cavalier's work, although I did review his report in the context of performing my valuation.

Q Understood. But your task was to do a separate valuation based on all of the information you believed were necessary and relevant to reach the conclusions you were satisfied with, true?

A Yes.

Q Okay. So you testified that you applied the standard of value, you addressed the standard of value and addressed the premise of value. You applied the fair market value, right?

A Yes.

Q Fair market value is a pretty well understood term in your business; isn't it?

A Absolutely.

Q The idea of a fair market value can be found in the tax code, right?

A Yes.

Q It can be found in the business valuation literature, right?

A Yup.

Q And would you agree with me the definition of fair market value is pretty consistent amongst all of those authorities?

A Yes.

Q Would you agree with me fair market value in essence is the idea there is a hypothetical buyer in the market place and hypothetical seller in the market place who, if they were motivated by their own self-interest would do a business deal, right?

A Sure.

Q No compulsion to buy or sell on either party?

A Yes.

Q Right. And they're going to do a deal based on their reasonable understanding of all the material factors involved in the transaction, right?

A Yes.

Q Okay. Have I stated the general gist of fair market value fairly in your opinion?

A I think so, yeah.

Q What we are really talking about is a hypothetical buyer and hypothetical seller doing an arms-length transaction. Do you agree with that?

A Yes.

Q Now let's talk about the premise of value. So in

this case, you testified it would be a going concern, right?

A Yes.

Q That is because you knew that the assignment was not something like this business winds up and we need to figure out what the liquidation value would be, right?

A Yes.

Q Another example might be, well, this business was a storage unit. It burned to the ground. Now we're trying to find out what the insurance value might be to rebuild it. Those are the kinds of factors built into premise value, right?

A Sure.

Q We all agree going concern was the proper premise, right?

A Well, I believe it was.

Q I agree with you?

A Okay.

Q In performing your work and arriving at your opinions, did you have the opportunity to look at some of the contracts that were in place at Superpumper at the time of the valuation?

A If I could look at my list of data and information.

THE COURT: You may.

BY MR. GILMORE:

Q Please do.

THE COURT: Mr. Gilmore, if it helps you, we'll go about five more minutes before we take our lunch recess.

MR. GILMORE: Perfect. Thank you. I will probably have twenty minutes or so, half hour or so.

THE COURT: That is fine.

BY MR. GILMORE:

Q Sorry to make you go through the lunch hour?

A No problem. Looking at my Appendix B sources of information, I don't see contracts specifically referenced, although I do have a reference to some corporate documents with a Bate range. So with that caveat, unless they are included within that Bates range, I'm not seeing contracts specifically.

Q Okay. What you're looking at it Appendix B. It has a Bate stamp in my version called McGovern 42. Do you agree with me?

A Yes.

Q You endeavored to put all the sources of your opinions into this appendix, right?

A Yes.

Q Now you mentioned there are some Bate stamp documents referred to like the audited financial statements and those kinds of things, right?

A Yes.

Q Okay. Now do you remember when Ms. Pilatowicz asked you about what, I am trying to remember precisely the word she used, but whether or not there was some liability associated with a Shell contract that Superpumper perfected?

A I remember the line of questioning.

Q Okay. So that information would have only come from an agreement between Shell and Superpumper, right?

A Unless somebody described it to me.

Q And did you endeavor to interview any of the principals of Superpumper?

A No.

Q You didn't do any of your own independent research that wouldn't be found on Appendix B, right?

A Not unless it is mentioned in the report or it was discussed at my deposition.

Q Right. So if Superpumper were a public company and had publically available financial statements for example which identified contracts of material importance, those types of things, you would have included it in Appendix B, right?

A If I considered it, sure.

Q Is it your testimony you did or did not consider any of the contracts that were in place with Superpumper and Shell?

A Well, I believe in my report I mentioned that I understood there was a contract with Shell, and that I assumed that contract would be renewed and ongoing.

Q How do you know that if you never identified that contract as a source upon which you relied?

A Bear with me. Let me see if I can find the section in the report.

THE COURT: What we'll do, we'll take our noon recess now. You can look at your report, kind of go through this area and be ready to have more inquiry after lunch. We'll be in recess until 1:00 o'clock. So I will see you back then. Court's in recess.

(Whereupon the Court adjourned for the noon recess.)

THE COURT: Sir, you are still under oath. You may continue your inquiry

MR. GILMORE: Thank you, Your Honor. Before we get into the questioning of this witness for purposes of housekeeping, identified in what was referred to in the Yalamanchili deposition as Exhibit 15 the Bate number. It's a single page document, Bate number LMWF Supp. 102793 and I intend to offer that as Exhibit 301 to be supplemented into the trial binders. Copies have been provided to counsel.

THE COURT: Any objection?

MS. PILATOWICZ: No objection.

THE COURT: The clerk has marked it?

THE CLERK: I have not yet.

MR. GILMORE: I have three sets for you.

THE CLERK: I only need two.

MR. GILMORE: May I approach the clerk, Your Honor?

THE COURT: You may.

THE CLERK: Thank you.

MR. GILMORE: Thanks everybody for your --

THE CLERK: Exhibit 301 marked.

(Exhibit 301 marked for identification.)

MR. GILMORE: -- patience.

THE COURT: And admitted by stipulation.

(Exhibit 301 admitted in evidence.)

MR. GILMORE: May I continue inquiry, Your Honor?

THE COURT: You may.

BY MR. GILMORE:

Q Mr. McGovern, sorry for that. That had nothing to do with you?

A It is quite all right.

Q Something to do with what we were dealing with before you took the stand. So when we left for lunch, I had inquired about the testimony you had given in response to Ms. Pilatowicz' question with respect to what Superpumper folks referred to as an incentive agreement, gas incentive

rebate that carries a contingent liability. You remember that line of questioning?

A Yes.

Q You gave some opinions in the direct examination to the effect that you had not considered that to be a material element of the valuation process that you conducted, true?

A I'm not sure I used that terminology.

Q Okay. How did you describe it?

A I'd have to have the court reporter read it back to tell you exactly how I described it.

Q Have you had a chance to review your written report to identify in what context you made reference to these agreements between Superpumper and Shell?

A Yes.

Q Where can you find that in your written report?

A So in the Statement of Assumption and Limiting Conditions, I referenced that at number 11, so it is Bate McGovern 39. Item 11 speaks to the vendor rebate program with Shell. That is for purposes of my valuation. I assumed that the company would renew the agreement with Shell and/or enter into a comparable agreement with another gasoline supplier.

Q And so the limiting conditions and assumptions are intended to notify the reader that there are some things that you simply assumed for purposes of your work, right?

A Yes.

Q That you did not necessarily intend to or were asked to personally verify, true?

A Yes.

Q Okay. So you put this in your limiting conditions but you did not include this document as one of your sources that you considered in rendering your opinion, true?

A Which document are you speaking of now?

Q This vendor rebate program with Shell Oil Products?

A No, not the specific contract agreement. It was noted in the audit report or the financial statements speaking about it. That is how I learned of it.

Q My next question was: If it wasn't a source document what was the basis of your opinion, where did you become aware of it?

A In the audited financial statements.

Q Before the break I asked if you spoke to any of the Superpumper folks and you said no. I think we have that sorted out?

A Okay.

Q Did you ever read any agreements between Superpumper and Shell?

A No.

Q So you wouldn't be able to testify how a rebate for

incentive associated with Shell's gasoline that is being purchased by Superpumper would affect their business model, true?

A That's true.

Q Likewise, you wouldn't be able to testify how those agreements might impact the company's income?

A Other than those agreements are reflected in the historical financial results.

Q Isn't it true in the limiting conditions and assumptions, isn't it true that you acknowledge that, if these assumptions turn out to be faulty, that it would change -- could change some of the conclusions in your report, right?

A It could, depending on what that change was.

Q Right. Now in your deposition, you conceded that, prior to doing the Superpumper valuation, you didn't have any experience in valuing gas stations, right?

A That's correct.

Q Same with respect to convenience stores, right?

A I believe that's correct as well.

Q We might call them C-stores. If I say that, I am referring to, of course, a convenience store?

A Okay.

Q So you did not identify any liabilities associated with any of the contracts in place between Superpumper and any

of its vendors, true?

A Only those that were reflected on the financial statement.

Q Thank you. Now your final opinion of the fair market value of the equity in Superpumper as of September 30th was thirty million fifty thousand right?

A Yes.

Q You testified that you valued the equity of Superpumper in essentially two components, the operating assets and the non-operating assets; is that true?

A Yes.

Q We'll get to that in a minute. Do you know how far apart your valuation of the operating assets to the Matrix report's ultimate conclusion of value was?

A Well, again, if I take out the six and a half million for the non-operating assets, my conclusion of value was nearly identical to what Matrix arrived at.

Q Something like less than fifty thousand dollars was the difference, right?

A I don't recall the specific number, but it was very close.

Q I mean fractions of percentages, right?

A Yes.

Q Do you have a standard in your industry when two

professionals attempt to value a business enterprise and they come within $50,000 for an enterprise that might have a six million dollar valuation, would you consider your conclusion to be reasonably equivalent to the other reviewer's conclusion? That is too much.

A Okay.

Q Do you consider your conclusion of value as to the operating assets to be reasonably equivalent to the Matrix calculation of total value?

A Not if you put it that way. Because I don't know how Matrix handled the shareholder loss. All I could say is my conclusion of value excluding the non-operating assets is nearly identical to the total value that Matrix arrived at.

Q Fair enough. Will you turn to -- Do you have your report in front of you?

A I do.

Q At the top of page 7 you have a written opinion which is McGovern LL8?

A Okay.

Q The top of that page is what we'll discuss. You are identifying in this portion of the report some implications to the valuation as it concerns Superpumper's enterprise, right?

A Are you speaking of the very last or very first line on the top of that page?

Q I am talking about in general. 2.4 of your report which starts on page 6 and ends on page 7?

A Labelled implication for valuation, yes.

Q These are some specific factors you identified with respect to Superpumper and its industry, right?

A Yes.

Q Okay. So I would like to focus on the last sentence of that paragraph which you find on page 7. You said expect the level of growth long term not to exceed one percent annually. Do you see that?

A Yes.

Q Okay. Now you arrived at that conclusion by reviewing materials and other industry information related to gas stations and C-stores, right?

A Yes.

Q Now is it a fair characterization that this analysis is important when you are doing a discounted cash flow methodology?

A Sure.

Q In a discounted cash flow methodology, it is based in large part on future projections of income, right?

A Yes.

Q That is generally the emphasis of a DCF evaluation right?

A Yes. You're looking out into the expectation for the future.

Q So now you testified that you had received and reviewed Superpumper's budgets in preparation of your, if I say DCF, I say that in all caps, and I intend it to mean discounted cash flow, okay?

A Sure.

Q That is not an unusual acronym in your business?

A It is not.

Q So I would like you, you can turn to this in the binder if you have it available or we can look at it on the monitor if that works for you, sufficient for you to identify this document, do you recognize the document?

A I am sorry, there is a glare.

Q Why don't you grab your binder. This will be probably in Volume III behind you?

A I have Volume III. Is there an exhibit number?

Q 119. Let's start from the beginning. Exhibit 119 is a document that you recognize, right?

A These appear to be documents that I had available to me.

Q Right. You testified in the direct examination that at the time of the valuation date there were no audited financial statements of Superpumper available to you as of

2010, right?

A Correct.

Q You had to rely on the unaudited financials for the partial year 2010?

A Yes.

Q These financial statements we are looking at in Exhibit 119 were documents you reviewed that informed your opinion, true?

A I believe that's correct. I would just like to double check --

Q Take your time?

A -- the Bate numbers here.

Q I can help you. If we go back to your appendixing source of information?

A Right. That's where I am looking here.

Q Do you see the third bullet point, Superpumper budget 2010. Bate numbers 105, 106.

A Yes.

Q And then the last two pages of Exhibit 119 are Bates numbers 1005 and 1006, see that?

A Yes. That's right.

Q Now these are the budgets you relied on to create your discounted cash flow methodology, right?

A Yes.

Q So when you were evaluating this document, did it strike you as unusual that the years 2010 to 2015 with respect to these entries were to the dollar? Do you understand what I mean by that?

A I believe I do.

Q They aren't rounded numbers to the 10th or 100th. Do you follow me?

A Yes.

Q Did you find that to be unusual at all?

A Not that I recall.

Q And did you find it unusual that there was such wide fluctuation in things like gasoline sales?

A I wouldn't say I found it unusual, No.

Q Okay. Do you have an understanding as to how gas stations generate net income?

A I believe so, yes.

Q Give me the 101 of your understanding of that?

A They sell gas. They purchase the gas. They sell it for more than the buyer purchases it for.

Q The margin between what they bought it from the distributor for and sold it to the customer, net whatever fees are associated is their net income?

A Well, you have to consider all the other expenses of operating the business, but sure.

Q Generally, you agree that is how net margin is determined in selling gas, right?

A Sure.

Q In some respects, it doesn't really matter in order to impact your net income, when we are speaking about just gasoline sales, it doesn't necessarily matter how many gallons you sold that year, your net income could be the same? Let me have you follow me here: In 2010, if you sold 100 million gallons of gasoline but your margin was one cent a gallon, you with me? It is very easy to determine what your net income would be based on just that hypothetical, right?

A Well, again, you are not considering all the other expenses of operating the business.

Q I agree. I want to strictly, let's say pure gasoline, not even considering the other issues that might be associated with it, not considering expenses related to the terminal upkeep, all that, not asking you to consider that?

A Okay.

Q Just this hypothetical: If in 2010 you sell 100 million gallons of gasoline and you made one cent a gallon in margin, meaning you sell your gallon of gas for one cent more than you paid for it?

A Okay.

Q Easy to understand what your net income would be

from that calculation?

A We call that the gross margin.

Q Perfect. Thank you. What happens in 2011 if you sell fifty million gallons but your margin was two cents?

A Well, you would still have the same gross margin.

Q Your gross margin is identical irrespective of how many gallons you sold between those two years, true?

A Sure.

Q Would you agree with me, at least based on that hypothetical, a gas station's gross margin is more a factor of the margin, the difference between the price purchased for the gas and the price sold to the customer, that is the total amount of gallons sold in an annual year?

A Not necessarily, no. I think both are a factor.

Q So you don't agree that they are directly correlated in that way, do you?

A Directly correlated in what way?

Q In the way that -- I am not trying to fence with you. I want to understand what your opinion is on this. That simply looking at the total gallons sold in a gas station operation does not tell you what the gross margin is?

A I agree with that.

Q So let's look at this budget 2010. There is gasoline in terms of volume of gallons sold, is that how you

interpret this?

A The million dollars of the paying there is gasoline in gallons, sure, and diesel in gallons.

Q Do you have any understanding as to how Superpumper could have possibly predicted the number of gallons they might have sold in 2011, 2012, 2014 and 2015?

A I would expect, like every other business estimates, how much they are going to sell.

Q But you don't know how they did that, do you?

A No, I don't know specifically know how Superpumper did their forecasting.

Q Okay. Now going back to your testimony that you anticipated you had a one percent growth. Can you tell me whether or not this budget that we are looking at here is consistent or inconsistent with your assumption of one percent growth?

A Well to be clear, I considered a one percent growth after looking at the forecast.

Q Okay. There was testimony yesterday that this document that you relied on, Exhibit 119, these budgets were not projected budgets but were actual historical numbers, did you know that?

A No.

Q It wouldn't make sense to do a discounted cash flow

methodology appraisal with numbers that were actual instead of historical, right?

A I am not sure you said that the right way. Actual and historical are the same.

Q I said actual and historical instead of projected. You're right, I was wrong. Again, you talked about -- Earlier we looked at what is known or knowable at the date of the valuation. If you already knew the historical numbers of the company, that would be a different methodology, sorry, different approach under the income methodology wouldn't it?

A Well, it would be different, sure, because, again, when we are doing a discounted cash flow analysis, we are looking at projections.

Q So it is a different methodology when looking at the projections going forward. We are looking at the projection of historical data already received, right?

A I mean historical data is not a projection. They are historical data.

Q Let me read from your report. Ms. Pilatowicz asked you did you consider all kinds of valuation approaches and your testimony was yes. You considered applying the asset approach. Right?

A Right.

Q You considered the income approach, right?

A Yes.

Q Now within the income approach, there are varying methodologies that can be used and applied inside the income approach, true?

A Yes.

Q One is the discounted cash flow method, right?

A Yes.

Q Okay. There is another one that was, I am probably going to butcher the full name, essentially, capitalization if over a certain time period, right?

A Yes.

Q What do you call that?

A Capitalization of a single period earnings.

Q I was close. You did not use that approach. You instead used the discounted cash flow approach?

A Just to be clear, I did -- I did the work and applied the single period approach and came up with a result that was actually, actually higher than the discounted cash flow approach, but I ultimately selected the discounted cash flow approach.

Q That is what I meant. I meant to ask it that way. It was a bit of a clumsy question. You considered all of these methodologies within the income approach, right?

A Yes.

Q Ultimately, based on your judgment, you determined that the discounted cash flow methodology was going to give a more reliable indication of value, true?

A Yes.

Q Okay. Now let's address this idea of the operating assets versus non-operating assets. Let's digest where these numbers come from. Can you turn to page 8 of your report which is McGovern 009?

A Okay.

Q Okay. Now in performing valuation, it sort of goes without saying that you have to understand the nature of the company's assets and liabilities, right?

A Yes.

Q So on page McGovern 009, you were giving treatment to the company's assets, do you agree?

A Yes.

Q Okay. So for example on that page you're talking about things like cash and cash equivalence, right?

A Right.

Q Property and equipment, right?

A Yes.

Q Now there is this due from affiliates. There is some treatment to the due from affiliates on the asset side of the balance sheet. Can I say it that way?

A Sure.

Q So you acknowledge that the Superpumper balance sheet carries on it a receivable that is booked as a due from affiliates, true?

A Yes.

Q And you suggest here the aggregate balance of these due from affiliates increased from four million dollars in 2007 to seven million in 2007?

A 7.7 million.

Q And you saw that from the audited financial statements, right?

A Yes.

Q And so you acknowledge as of the date -- I said that backwards -- the date of the valuation, the balance of due from affiliates, the receivables on Superpumper's books is roughly nine million?

A Correct.

Q That number comes straight from the balance sheet?

A Correct.

Q Now you testified in direct examination that you simply assumed that those due from affiliates were collectible?

A I did assume they were collectible.

Q Now if the due from affiliates are not collectible,

you would agree with me it would not be appropriate to include them in the non-operating assets that went toward your ultimate conclusion of value, right?

A Yes, that's correct.

Q So what effort, if any, did you make to earnings and whether or not as of September 30th any of these due from affiliates were collectible?

A Well, couple of things. First I asked for copies of the actual notes that were in place. The second thing was I considered that the previous audit report had determined that the due from affiliates amounts were in fact collectible.

Q You asked for the note. You did that through counsel, right?

A Yes.

Q And no notes were produced, right?

A That's correct.

Q And are you aware, as you sit there today, that Mr. William Leonard in the blue blazer here is the Plaintiff in this case?

A I understand he's the Trustee.

Q Okay. Do you understand that Mr. Leonard purports to own all of the files that were kept by Superpumper's lawyers?

A I'm not aware of that.

Q You don't know that?
A I don't know.
Q So you don't know to what extent Mr. Leonard or his lawyers went to try to obtain copies of these notes if they existed?
A I do not.
Q And same question, did you ever inquire of the auditors as to whether or not they possessed copies of these notes?
A No.
Q You just -- You did not do any investigation through the auditors, did you?
A No, other than as I explained, I did review the 2009 and I believe 2008 audit reports.
Q Right. And so in the 2009 audit report, there is nothing explicitly written in the audit report that says the auditors believe these notes to be collectible? You believe it doesn't explicitly say that?
A It doesn't explicitly say that, but they would not have listed them as assets if they didn't believe they were collectible.
Q That is your understanding of the requirements doing an audit under AICPA or GAAP, true?
A It is -- It is my understanding that is the

auditors' testimony.

Q And you recognize in 2009 the auditors classified all the due from affiliates on the Superpumper's balance sheet as noncurrent, right?

A I do.

Q Noncurrent meaning they did not have reasonable expectation these receivables could be liquidated for value or for cash within a 12-month period, right?

A Well, I don't know why they considered them to be not current.

Q I am not asking if you understand why. I am simply getting you to acknowledge that you understood they had identified them as noncurrent in the audit report?

A Well, just not to get too technical, it is management's responsibility to prepare the financial statements. It is the auditor's duty to issue an audit opinion on the fairness of those statements. They were listed on the financial statements as noncurrent assets and the auditors accepted that classification.

Q And you recognize it would be the auditors' responsibility as part of the audit process to test management assumptions with respect to those, the collectability of those notes, right?

A Yes.

Q You agree with me that in the notes to the Superpumper financial statements -- I have got the wrong year. The auditors give commentary confirming that these are noncurrent assets, right?

A Could you point me to the section of audit report you are referring to?

Q I am looking at Exhibit 114?

A Okay.

Q And it is Superpumper 331 in the bottom right-hand corner. Are you with me?

A I am.

Q You testified just a few moments ago that you had reviewed these audited financials in order to obtain these numbers which is the sum total of the related party transactions or "due from affiliates," carried on the Superpumper balance sheet, right?

A Right as of the end of 2009.

Q You synthesized this number in your report along with 2008, 2009, true?

A Yes.

Q The very next identifies these numbers, these amounts have been classified as noncurrent in the accompanying balance sheet because repayment is not anticipated during the next year, right?

A You read that correctly, yes.
Q Thank you. This audit report is as of year end 2009 right?
A Yes.
Q Fast forward to September 30, 2010. We are still inside the same one year period from the date of the these audited financials, aren't we?
A Yes.
Q Yet in your opinion, I should say in your report, you simply made the decision to convert all of the due from affiliates from noncurrent to current, didn't you?
A Because that is the proper classification.
Q According to whom?
A According to the accounting standards.
Q Let me -- Help me understand that. The auditors determined on December 31, 2009 that these due from affiliates are noncurrent?
A And I believe they were wrong.
Q That is where we are at. Okay. What information did you have available to you to reach the conclusion that the auditors were wrong?
A The accounting standards.
Q So you take issue with the fact that the Gursey Schneider auditors classified these as noncurrent? You

disagree with their classification?

A I do. The accounting standards are due on demand notes should be treated as current.

Q So how are these due from affiliates broken down in the auditors work papers, do you know?

A I don't.

Q You have never seen them have you?

A No.

Q So you relied exclusively-- Let me back up. In making your conclusion that the auditors got it wrong in classifying these as noncurrent, you relied exclusively on the words of this particular line that says due on demand, true?

A Yes, and the accounting standards.

Q Fair enough. Will you turn to Exhibit 105?

A Okay.

Q This is a document that came from the auditors work papers, okay?

A Okay.

Q You see in the top Superpumper Inc., note receivable interest calculation year end 2009. Do you see that?

A I do.

Q Do you recognize this number 9.354 million.

A It doesn't really tie to the total at '08.

Q It is not identical is it?

A No.

Q It is within a couple hundred thousand, do you agree? Yes?

A Yes.

Q Let's look at these descriptions of these receivables. Your testimony is and your opinion is that, in order for these due from affiliates to be operating assets, they need to be collectible, right?

A No, that is not what I said.

Q Okay. Let's un-package that. When a note receivable is on the balance sheet of a company, it is an asset, true?

A Yes.

Q Now an asset could be an operating asset or a non-operating asset, true?

A Yes.

Q An operating asset is classified as an asset which a company utilizes in its daily operation, true?

A Or relies upon.

Q Or relies upon. An income stream or a tangible asset, something like that, right?

A Sure.

Q A non-operating asset would be something that the company owns, the business, not dependent on that asset to operate its business concern, right?

A Fair enough.

Q So let me give an example. Superpumper might have a million shares of Google stock that do nothing but generate dividends and sit in a brokerage account that they never touch. They never take. They don't use it at all in order to operate their business. Operating asset or non-operating?

A I'd say non-operating.

Q Okay. Right. But in order for it to be a non-operating asset, it has to be a viable asset susceptible to liquidation, right?

A Well, not necessarily. It has to be a legitimate asset.

Q Let's use your word, legitimate. It has to be a legitimate asset that the company could realize some value from, true?

A Sure.

Q Can we agree that is what you mean by legitimate?

A Yes.

Q Actually. It has some value to the enterprise?

A Right.

Q If it doesn't have any value, it is not going to belong on the asset side of the balance sheet?

A That's correct. If it doesn't have value, it shouldn't be on the balance sheet.

Q Got it. Now these are some of the notes receivable that were carried on the Superpumper balance sheet as of 12-31-09 okay?

THE COURT: What are you pointing to?

MR. GILMORE: I am pointing to these.

THE COURT: I see what you are pointing at. What exhibit?

MR. GILMORE: I am sorry. This is 115. I am still on 115.

BY MR. GILMORE:

Q Do you understand what an interest income calculation is?

A Sure.

Q The auditors have to test management's representations as to the amount of interest that they should be -- that should be booked to the company based on its outstanding notes receivable, true?

A Yes.

Q Okay. In order to do that, management would have to know what the outstanding balance is of those receivables are, right?

A Yes.

Q You would expect the auditors, in testing those management assertions, that these notes receivable are

actually as you called it, legitimate?

A I would expect that, yes.

Q That is something you would anticipate the auditors would do?

A Yes.

Q As part of their function?

A Yes.

Q So do you know what CWC is?

A Where are you pointing to?

Q I am looking at the first GL account 12-10-00 CWC-interest?

A I believe CWC stands for Consolidated Western Corporation or something to that effect.

Q What is Consolidated Western Corporation's affiliation to Superpumper?

A I'm not sure exactly.

Q I am not trying to trick you. I will tell you Consolidated Western Corporation was the parent corporation which owned 100 percent of the common equity of Superpumper?

A Okay.

Q Let's just call that parent and subsidiary. Would you agree that is a fair characterization?

A Sure.

Q CWC is the parent company. Superpumper the

qualified subsidiary?

A I will take your representation for that.

Q Do you know what PAMAZ is?

A No.

Q If I represented to you the testimony in this trial so far is PAMAZ was the name -- was a predecessor in name only of Consolidated Western Corporation, would you know anything about that?

A No.

Q Do you recognize this name, Paul Morabito?

A I do.

Q What did you understand his relation to Superpumper to valuation date -- strike that.

What did you understand Paul Morabito's relationship to Superpumper was as to year end 2009?

A I believe he was one of the owners.

Q And next is Due FR. Would you agree that appears to be due from? BWH, do you know what BWH is?

A I don't.

Q Last entry is CWC, do agree with me?

A I do.

Q If we add all the balances, we get a number around 7.3 million and change, do you agree?

A Yes.

Q Then if you go down to this handwriting?
A Okay.
Q We take 7.354, we add $329,000, we get a number recognized in a previous exhibit?
A Yes.
Q 7.6833 and change?
A Correct.
Q This number is reflected in the due from affiliates on the audited financial statement of 2009 year end, right?
A Yes.
Q So now we have tied those two numbers together haven't we?
A Yes.
Q Now your valuation date is September 30, 2010, right?
A Yes.
Q Did you know that there was, I don't want to use the term that would confuse, an equity event with Superpumper as it related to its parent corporation September 28, 2010?
A I am aware there was some equity transaction at that time.
Q Okay. Have you been made aware that September 28, 2010 there was a parent subsidiary merger?
A I don't recall the details of what the transaction

was.

Q Now if I asked you to assume that there was a parent-subsidiary merger let's say January 1st of 2010 so the day after these audited financial statements where the report on these audited financial statements was delivered, let's just say that, can you tell me, based on your training and education and experience what would happen if there was a merger between a parent and a subsidiary where the parent corporation owed the subsidiary money? Can you tell how that would be treated in a merger?

A No.

Q Will you turn to Exhibit 116?

A Okay.

MR. GILMORE: I don't know if this is admitted

MS. PILATOWICZ: It has been.

MR. GILMORE: 116.

THE COURT: It is admitted.

BY MR. GILMORE:

Q Now I imagine this is a document you have never seen before?

A I do not recall seeing this document.

Q So I will just represent to you this is the Superpumper Inc., Audit Conclusions Memo as of year end 2010, okay?

A Okay.

Q There is a statement in here I would like to read to you and like you to tell me if you think you would agree with this statement, yes or no?

I want you to assume that CWC was merged into Superpumper at September 28th. You see where I am placing my finger?

A Yes.

Q 2010, and the amounts payable and receivable from CWC to SPI at the merger date were netted against each other with the difference representing accrued interest written off against the equity of the post merger entity. Do you have an opinion as to whether or not that would be appropriate GAAP or AICPA treatment if a parent and subsidiary merged?

A I have no opinion on that.

Q Okay. Fair enough. Go to 115 for me?

A Okay.

Q Now if I gave the hypothetical BWH was an enterprise by the name Big Wheel Hospitality, okay?

A Okay.

Q If I told you that in September of 2010 all of the assets of Big Wheel Hospitality were foreclosed on by the secured lender and it lost all of its assets. I just want you to imagine that as a hypothetical. Would you anticipate, as

of your valuation date, that this due from Big Wheel Hospitality $443,000 would be as you put it, a legitimate note?

A It would depend on whether Big Wheel had any means to satisfy the note.

Q And maybe my hypothetical isn't entirely complete. But the suggestion is, if Big Wheel Hospitality had all its assets foreclosed and was out of business in September 2010, would you anticipate, based on your opinion of how those notes should be treated, that would be a legitimate note carried on the notes of Superpumper?

A It would certainly create a significant question as far as collectible if they go into bankruptcy later going to be distributed. It certainly would raise a question.

Q Right. You would have to know, wouldn't you, in order to be sure that this was a legitimate receivable on the books of Superpumper?

A Sure. You need -- If the assets are listed as assets, you want to know whether or not they are collectible.

Q Isn't it true your assumptions contained in your report as to the legitimacy of the due from affiliates depends entirely on whether or not all of these obligors are viable?

A It depends on whether or not the loans are collectible. I was very clear about that in my report. I am

trying to be very clear about it here.

Q I think you are being clear, and I appreciate your answer. You did not do any independent investigation as to whether or not the due from affiliates that were carried on Superpumper's balance sheets were legitimate?

A No, other than reviewing the prior audit reports.

Q So now the Court asked you how did you get to six and a half million in excess working capital, if we started with 9 million dollars and change of shareholder notes, do you remember that?

A Yes.

Q Let's go to your schedule on page 11 of your report.

A Which number was my report?

Q Yours was 91. Then I am looking at McGovern 12.

A Okay.

Q This is the table that breaks down how you came up with excess working capital that you added to the valuation you arrived at from the DCF, right?

A Yes.

Q So let's unbox this. You understood that there were current assets which adjusted to make them current because you disagreed with the auditors' assessment they were noncurrent, true?

A Not to quibble, but I adjusted them because I

thought that was the proper classification based on accounting standards.

Q Different way of saying the same thing, right?

A I think both statements are true.

Q And for 2010 this current asset-adjusted is a combination of at least two different entries on the balance sheet of Superpumper right? One is the 9 million dollars due from affiliates, right?

A Right.

Q And the remainder 2 million and the total value here are other current assets carried on the balance sheet of Superpumper, right?

A I'm not sure I am following.

Q This 11 million dollars is made up primarily of 9 million due from affiliates, right?

A Yes.

Q So there is 9 million dollars due from affiliates, and approximately two and a half million dollars of other current assets, true?

A Roughly.

Q In order to determine your working capital, you take the current assets, and these are, of course, all non-operating assets, right?

A No. Some of -- You don't get to the non-operating

assets at this point.

Q Fair enough. We'll get there in a second. So you have got eleven million dollars minus four million dollars initially which gives you seven million dollars in working capital, right?

A 7.1.

Q The idea being in 2010 Superpumper had roughly seven million dollars it could do with whatever it wanted, right?

A They could use it for working capital or they could use it to distribute to themselves.

Q Right. This number means this was liquid assets available to Superpumper or it could be liquidated within one year, right?

A Yes.

Q Then what you did is you applied an industry component to what you believed gas stations, by industry standards, maintain in terms of working capital to fund their operations, right?

A Yes.

Q So then you made a deduction to the seven million and you rounded it down actually to 6.5 million, right?

A Yes.

Q Okay. So what you essentially did is you took the discounted cash flow valuation of six and a half million and

added to it the excess working capital to six and a half million. That is where we got the thirteen million dollar total valuation, right?

A Yes.

Q Okay. Now this report was intended to reflect the value -- strike that -- intended to reflect the price that an arms-length informed buyer would pay for 100 percent of the common equity of Superpumper, right?

A Yes. The fair market value definition we talked about earlier.

Q So let's talk about that. You're suggesting that a fair market value buyer who is self-interested and intending to make a market transaction under fair market value standards would buy for real money Superpumper's six and a half million dollars in excess working capital, right?

Let's break that down. If a hypothetical buyer would come to the hypothetical seller, Superpumper, on the date of your valuation and say we want to buy your business, you would assume that the buyer would know it is a gas station operation, right?

A Sure.

Q Because the fair market value standard requires they be apprised of all of the relevant and material facts, right?

A Sure.

Q They would know it is eleven gas stations, right?
A Yes.
Q They would know there is no real property owned by the gas stations, right?
A Yes.
Q They would know the situation with the leases and how the leases figure into EBITA and all the other things?
A Sure.
Q The buyer would come to Superpumper and say I want to buy your gas station. Your opinion is that buyer would buy not only the stuff that is necessary to run the gas station, in other words the operating assets, but they would also buy at face value these notes that are carried on the Superpumper balance sheet, right?
A Yes, because my assignment was to value 100 percent of the equity of the company not just to value the operating assets.
Q But you cannot deny that, because the standard of value here is fair market value, you have to consider what a willing buyer would actually pay for the equity of Superpumper, right?
A Yes.
Q So let me ask you again: Your conclusion is that a willing, rational, fully informed buyer would go to

Superpumper and would say I want to buy all your gas stations, and I also want to buy these notes?

A Yes.

Q From Superpumper at face value?

A Yes, if they concluded that they were collectible.

Q You already concluded that in your valuation, didn't you?

A Yes.

Q You are telling this Court that a rational buyer would walk into Superpumper and say I want to buy all of these notes because I want these notes as income to my operation, right?

A Again, my assignment was to value 100 percent equity of the Corporation. That 100 percent includes the operating and non-operating assets. My assumption of the transaction is they are going to buy everything.

Q Do you believe, in your opinion, is it your opinion based on the fair market value standard of value that a gas station buyer would be interested in buying at face value a note from Paul Morabito as of September 28, 2010 in the face value of $623,000?

A Well, I think it is likely if somebody wanted to just buy the gas station, they would just buy the gas station. But that doesn't mean that the notes are not a valuable asset.

Q If somebody is in the business of buying gas stations, why are they buying six and a half million worth of Promissory Notes for six and a half million dollars?

A Perhaps they thought it was a good investment. Perhaps they said, you know, the collectible notes here that are four or five, six percent interest, maybe that is more than I could get at the time.

Q Let's talk about this idea that you suggested they may think it is a good investment. Is it your experience that fair market value transactions like that are done one of two ways. They are done with cash. They want to buy your business, pay cash on the spot, we'll close and we are done. That is one way of doing it?

A Sure.

Q Another way is financing?

A Sure.

Q It is not unusual in your experience for someone to say I want to buy your six million dollar business. I will give you a million up front and I will finance five million, right?

A It happens. Sure.

Q For transactions of the size that you are talking about, thirteen million dollars, you would anticipate it would be more likely than not they would acquire their financing and

not through a cash transaction, right?

A I can't say that.

Q Okay. Maybe you can't. Would you explain to me why a rational buyer would approach Superpumper and say I want to buy your operation for thirteen million dollars. I am going to finance half of it, and I am going to get cash for the other half. You with me?

A No, I am not.

Q Back up. Rational buyer comes to Superpumper on September 30, 2010 and says I want to by your gas station?

A Do they only want the gas station?

Q They want to buy the equity of Superpumper.

A Including the note?

Q Superpumper says the price tag is thirteen million. The buyer comes in and says I am going to give you six million up front, and I going to give you seven through a note. You follow me?

A That's possible sure.

Q In that hypothetical, if the buyer is financing the acquisition of notes they are purchasing at face value, do you follow me?

A I think so.

Q So they are buying Paul Morabito's note in the amount of $623,000, right, because that comes with, according

to your opinion, that comes with the 100 percent equity of Superpumper?

A Okay.

Q And they had to go to the bank to borrow money so they could buy Paul Morabito's note at face value?

A But they could turn around and call them, then they would get all the cash and pay back the financing.

Q What rational buyer would buy a note at value so they could simply call the note and pay back the bank they just borrowed the money from?

A I don't know.

Q Do you know if any of those notes were secured?

A I don't.

Q So hypothetically, if a willing buyer comes to Superpumper and says I want the whole thirteen million dollars in value, Superpumper sells it for thirteen million dollars in value, the buyer now carries, according to this number anyway, 7.6 million dollars worth of notes receivable, right?

A Okay.

Q That they purchased from Superpumper.

A Okay.

Q If they're not secured, and all of these obligors run off to Venezuela, the buyer is out 7.6 million dollars they just paid for those notes, right.

A Sure, if that happened, sure.

Q You don't know whether any of notes were secured by anything other than a signature due on demand?

A I don't.

Q You don't even know if there was a signature for any of these notes, because you never actually saw any of the physical notes by any of these obligors, right?

A I did not see the notes. I relied upon the audit.

Q A couple more and I will be done. You did not apply a discount to your total valuation of -- Back up. You did not apply a discount to the valuation you gave for the 100 hundred percent equity in Superpumper, right?

A That's correct.

Q You did that based on your professional experience and judgment, true?

A Yes.

Q Okay. So you weren't asked to consider any of the realtime, if I can use that word, realtime market forces that were pressing upon Superpumper's operation in September 2010, true?

A I don't know what you mean by that.

Q Well, okay. Let me say this: Had you been -- had you been -- Let me ask this example: Were you even asked to consider the application of a discount?

A I wasn't asked to consider it or not to consider it. I was asked to come up with my professional opinion of the fair market value, and I did consider whether there should be a specific company risk discount applied, and concluded that it wasn't appropriate.

Q Were you aware, when you made your report, of any defaults of Superpumper's lines of credit?

A No.

Q In your professional experience, if you were made aware the enterprise you were valuing was in default of the primary source of financing, would that be a consideration in determining whether or not to apply a discount?

A It could be, yes.

Q That would be one of the factors to consider?

A Could, sure.

Q In fact, there could be several depending how appropriate the application, right? Give me some of them aside from, you know, maybe they are already in default. What are the others you have run into in your professional experience, real world factors associated with the enterprise that would bear into a discount?

A You know, if the business itself was risky. You know, if the business say hadn't been operating for very long, I might consider a company a specific risk. If it was, you

know, when I compared the subject business to the industry average, I saw that business didn't fair well against the industry average, then I would probably consider a company specific discount, sure.

Q Competition? It's not very competitive. You can see that in the way that the performance compares to a like-kind business?

A Sure, that might be another consideration.

Q Any others that you can think of in your professional experience you might consider and determine whether a discount applies?

A Not beyond what I think we already mentioned.

Q I appreciate your time. Thank you for being here.

MR. GILMORE: I will pass the witness.

THE COURT: Okay. Redirect. You may examine.

MS. PILATOWICZ: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. PILATOWICZ:

Q There was some discussion about documents that have been provided to you, Exhibit 119. And I want to start with the document entitled Superpumper Budget. Do you remember looking at that?

A Yes.

Q When someone provides you, as a business valuator, documents to complete your valuation, and they indicate a budget, what does that mean to you?

A That means it is an amount they have projected for the coming year.

Q If somebody were to want to give you information as to what the profits and losses were, what would that be called?

A I am sorry, could you ask that again?

Q Sure. If somebody was to provide you a document that would convey profits and losses, would that be called something different than a budget?

A Some people would call it a forecast. Again, you're just saying, it could be a historical profit and loss statement, could be a budget, could be a forecast.

Q So when Superpumper provides a document called Superpumper Budget, what does that mean to you?

A That these were amounts that they were projecting to occur.

Q Now let's go back to Exhibit 115 which we have been discussing. Mr. Gilmore made a comment that you hadn't determined either viability or collectability of those notes. Do you remember that?

A Yes.

Q These are the notes dated as of 12-31-2009. Did you determine the collectability of these notes that were listed as of 12-31-2009?

A Well, the notes as of 12-31-2009 I included were collectible, because they were on the balance sheet and the auditors had audited that balance sheet and did not indicate they weren't collectible. If the auditors had determined they were not collectible or only partially collectible, I would expect there to be a reserve for bad debt on the balance sheet.

Q If we look at Exhibit 114 which is the 2009 financial statements that 7.6 million dollar number, is that the same note we were looking at in the 1239 list of notes?

A It is.

Q How did you determine what notes existed as of September 30, 2010?

A Well, I had the -- I had the interim balance sheet. The September 30, 2010 balance sheet. But that balance sheet didn't include notes and didn't have detail as to what the specific notes were.

Q Fair enough. So they listed the amounts due from affiliates?

A Yes.

Q Let's take a look at Exhibit 119. Are these the

balance sheets you were referring to that you reviewed?

A Yes.

Q If we look at the first page, August 2010, what is the balance of the notes receivable at the beginning of August of 2010?

A It is $7,683,918.

Q Where are -- Where have we seen that number before?

A I believe that is the same number we just saw on the 2009 audited balance sheet.

Q What do we see was the amount of ending balance of the August 2010 notes receivable?

A $8,925,708.

Q Turn to the next page. What is the beginning balance of the September 2010 notes receivable?

A $7,683,910.

Q What ws it at the time or as of the end of September 2010?

A $9,154,633.

Q How does that number relate to your report?

A That is the -- that's the number I included in my analysis.

Q And what was -- What did that tell you about the connection between the September 2003 notes and the notes that were listed on the 2009 audited financial statement?

A Well, the inference I took was that, since the beginning balance on the September 2015 balance sheet for the notes receivable is the exact same amount as was on the audited year end 2009 statement, that they were the same notes and that they had just added to those notes to get to the $9,154,000.

Q I want to go back to Exhibit 115 Mr. Gilmore discussed with you. Do you see a note on the bottom of Exhibit 115?

A Yes.

Q It says: "We obtained a personal financial statement from Paul Morabito to test the valuation of the receivables? "

A Yes.

Q What does that mean to you?

A Well, it is a indication that they sought a documentation or evidence, if you will, of the viability of the notes receivable.

Q How would that relate to how the notes receivable were reported on the 2009 audited financials?

A Well, again, you know, the fact the notes are on the 2009 audited balance sheet tells me the auditors were satisfied that those were in fact viable and collectible notes

MS. PILATOWICZ: Your Honor, if I may have just a

moment?

THE COURT: Yes.

MS. PILATOWICZ: I have no further questions.

THE COURT: Anything further?.

MR. GILMORE: Just one, Your Honor.

RECROSS-EXAMINATION

BY MR. GILMORE:

Q Will you turn to Exhibit 120?

A Okay.

Q Did you have available to you when you prepared your report the 2010 year end audited financial statement?

A I believe I did.

Q Would, in a retroactive appraisal, based on the way you and I described it when I first started asking questions of you, that was valuation date of the September 30, 2010, would events that occurred at year end or that I should say were reported at year end have any relevance or bearing on your conclusions of value?

A Only if they were known or noticeable at the time of valuation.

Q Now would you agree with me the audited financial statements year end -- Let me ask you: Is the audited financial statements of year end intended to be a snapshot

view of the company's financials?

A As of that date, sure.

Q The idea would be, this Superpumper balance sheet would be a snapshot of the financial condition of the company as of the last date of the year before New Years strikes at midnight, right?

A Yeah. The balance sheet in particular, yeah, this would be the balance sheet as of that date.

Q The point I am trying to make, it is a snapshot as to a point in time.

A Yes.

Q That is what a balance sheet is intended to reflect?

A Absolutely.

Q So this is only what, three months after the valuation date?

A Well, December 31st is definitely three months after September 30th.

Q With that context, did anything that the auditors say in the year end 2010 have any bearing on your opinions?

A I can't say that none -- nothing in the 2010 audit would be pertinent. I'm not sure I am following your question.

Q Right. The reason I am asking is when -- when -- when I review your report, I can't tell if you gave any consideration to anything that the auditors had reported in

the 2010 audited financial report?

A Well, you know I meant the first nine months of the year would be subsumed within the full year, you know, audit report.

Q So we are talking about an audit that is done in the fourth quarter of the year, and the audit report includes all four quarters, doesn't it?

A No. No. That is not accurate.

Q I said that wrong. I said that wrong. What I meant is the valuation date is done essentially on the last day of the third quarter, true?

A True. But the audit, itself, wouldn't have been done until probably the second or third month of the following year.

Q I agree with you, in terms of when it was actually prepared and all that, right?

A Right.

Q But it is intended to reflect December 31, right?

A Yes.

Q And also your valuation takes into account the first three quarters of 2010, doesn't it?

A Sure.

Q So I am still trying to understand. If you could for me explain what treatment you gave in your opinion to

the -- let's back up. What treatment you gave in your opinion to anything that the auditors included in the 2010 financial statement?

A Well, to the extent the September 30th financial statements I know were generally in line with what we saw at year end, I would give some credence to that.

Q Got it. I follow you. Can you think of anything else you might have done in giving treatment in your opinions to something that was included in the 2010 year end financial statements?

A I can't sit here and think of anything. It is certainly possible that, if there were notes to the 2010 year end statement that indicated something that was known or noticeable as of September 30th I would consider that. But nothing is jumping to my mind.

Q Got it. Last question: In the auditors' report for the 2010 financial statements, they acknowledge that the notes receivable -- I am sorry. I will wait for you to get there Superpumper 334?

A Okay, I am there.

Q They acknowledge the notes receivable from related parties comprise fifty-seven percent of total assets and 129 percent of stockholder equity. See that?

A Yes.

Q So at least year end these due from affiliates comprised the bulk of the total value of the assets of this entire enterprise, right?

A Well as it says, fifty-seven percent.

MR. GILMORE: No more questions.

THE COURT: Did you have something else?

MS. PILATOWICZ: Yes. We discussed a different exhibit in the recross. If I may?

THE COURT: Okay.

DIRECT EXAMINATION

BY MS. PILATOWICZ:

Q When you completed your report, you looked at the notes receivable as they existed on September 30, 2010?

A Yes.

Q If there were different notes that existed as of year end of December 2010, how would that impact your valuation?

A It wouldn't.

Q So let's take a look at Exhibit 120 which was or is the audited financial statement for 2010 that Mr. Gilmore just showed you. Turn to note 9, related party transactions?

A Okay.

Q I want to focus primarily on two of the notes. There

is a note there listed as borrower, Ed Bayuk. Do you see that?

A Yes.

Q Do you recall seeing that note in the valuation you completed?

A No.

Q If I told you there is evidence in this Court that note was signed on December 31, 2009 --

A No, '10.

Q 2010 -- would that impact your valuation completed December 30, 2010?

A No. If the note was entered three months later, then no.

Q Same with this note, borrower Sam Morabito, did you see that note on the 2009 audited financial statement?

A No.

Q Did you see it anywhere in your valuation as of September 2009?

A No.

Q Same thing, if I told there is evidence in this case that note wasn't executed until 12-31-2010, how would that impact your valuation for September of 2010?

A It wouldn't.

MS. PILATOWICZ: I have nothing further, Your Honor.

MR. GILMORE: Nothing from me, Your Honor.

THE COURT: Okay. Thank you. May this witness be excused?

MS. PILATOWICZ: He may.

THE COURT: You may step down.

THE WITNESS: Thank you.

(Witness excused.)

MS. PILATOWICZ: We are going to move on to Paul Morabito who will be testifying by video deposition.

THE COURT: You all were going to get some transcript.

THE CLERK: Deposition of Paul Morabito taken March 21, 2016 opened and published.

THE COURT: We also are going to mark as an exhibit that portion of the transcript that reflects what you are going to play, correct?

MS. PILATOWICZ: Correct.

THE COURT: Now you handed me something. Is that my copy or the one you want to mark as an exhibit?

THE CLERK: I can mark it.

MS. PILATOWICZ: I will defer to the Court. We have other copies.

THE CLERK: Oh, you do. Perfect. Great. This will be marked as Exhibit 302.

(Exhibit 302 marked for identification and admitted

in evidence.)

THE COURT: Although the video is going to be played for the Court, counsel has stipulated the transcript will come in of what was played.

MR. GILMORE: Will this be reported?

THE COURT: No. That is what would we were saying yesterday.

THE CLERK: That is Exhibit 302 marked showed designated what is being played up there.

MR. GILMORE: To the extent there are any objections sustained with respect to that testimony, how will that be handled?

THE COURT: I don't know. I thought you all had done that when you redacted the video.

MR. GILMORE: No. What we did was we made our designations and counter designations. Those were done in exchange pursuant to the Court's order. But I don't know what has been done, or how it would be done if there was a question and objection sustained. We haven't had an objection sustained on any of the deposition transcripts so far. I am not anticipating that is going to be an issue. I would like to address it before we get there. I don't know that has been considered.

MS. PILATOWICZ: We anticipated it would be handled

as the other depositions have been handled. If there was an objection, we would read it and we could pause the video.

MR. GILMORE: If it is not being -- The entire marked exhibit is already in the record. You might have to do some chop and change, right?

MS. PILATOWICZ: If we need to amend what has been provided to the Court and strike the testimony that is not allowed, if the Court would accept that following the testimony so that we can make sure anything that wasn't let in was taken off the version that is provided as an exhibit, we can certainly do.

MR. GILMORE: That would be acceptable to us. I can't think of another way to do it quite honestly.

THE COURT: I can think of lots of different ways to do it. First of all, I just have a question. You had all provided me with a deposition that you thought you were going to read into the record. Included in that was one of Paul Morabito.

MS. PILATOWICZ: That's correct, Your Honor.

THE COURT: Part of those depositions that you provided to me indicated which portions of the deposition was designated by which party.

MS. PILATOWICZ: Correct.

THE COURT: And you did that by color.

MS. PILATOWICZ: That is correct.

THE COURT: I think yellow was Plaintiff, orange was defendant and green both sides wanted it.

MS. PILATOWICZ: That's correct.

THE COURT: So now the new exhibit marked as 302, it has highlighting, but obviously all black and white, no color, does it match exactly what you have given me before or have you modified it again?

MS. PILATOWICZ: It has not been modified.

THE COURT: So it is an exact match, the colored one?

MS. PILATOWICZ: That's correct.

THE COURT: So it seems to me the color one really would be better to have as the original record, because it is easier to read. So we are going to have the color version will be the exhibit, and I will follow along with the original.

THE CLERK: Then give it back to me.

MS. PILATOWICZ: There is another copy as well that is in the binder that is up at the exhibit stand if we need to copy one more.

THE COURT: Is it in color?

MS. PILATOWICZ: It is.

THE COURT: Why don't you just retrieve that.

Then the next question is, Mr. Gilmore, you know what has been designated. Is there anything that you are going to object to.

MR. GILMORE: I don't have any anticipated objections at this time.

THE COURT: So if you do want to object, we will stop the video, we will hear argument and, depending on what happens, if I do strike it, we will strike it from the transcript that has been marked.

MR. GILMORE: Understood bearing in mind, of course these estimation were made some three weeks ago or so and you know lots of things can change in the way the trial has gone. I don't have any anticipated objections, but I can't say that I won't.

THE COURT: Okay. So since it is going to go two hours, it makes sense for us to take a short recess and then we'll be back on the record. Now we had talked about going until 6:00 o'clock today, so what else do you want to have? Who is going to be after Mr. Morabito.

MS. PILATOWICZ: In Plaintiff's case we have the depositions of Stanton Bernstein which should be less than have an hour. The deposition of Gary Krauze which I expect will be about half an hour. The deposition of Dennis Vacco which probably will run closer to an hour, maybe forty-five

minutes. And then the live testimony of Bill Kimmel and William Leonard who will be live we anticipate tomorrow. That will conclude the case-in-chief for the Plaintiff.

THE COURT: You thought Gary Krauze would be reduced to how long?

MS. PILATOWICZ: Half an hour I expect.

THE COURT: And Stanton Bernstein you thought that is down to half an hour?

MS. PILATOWICZ: I believe he'll be less than half a hour.

THE COURT: Mr. Vacco?

MS. PILATOWICZ: One hour.

THE COURT: Then who is calling Christian Lovelace?

MS. PILATOWICZ: The Plaintiff will not be calling Mr. Lovelace in its case-in- chief.

THE COURT: Now you have Mr. Kimmel live, and not that the other people aren't alive, but we are going to hear his testimony in the courtroom, and we have William Leonard right?

MS. PILATOWICZ: Correct.

THE COURT: Now we had talked about William Leonard going tomorrow and Mr. Kimmel going on Monday. Is that still what you have got?

MS. PILATOWICZ: Your Honor, we are going to try to

push forward and present Mr. Kimmel tomorrow, so the case in chief for the Plaintiff is finished tomorrow so the defendants can commence their case in chief starting Monday morning. That is the goal.

THE COURT: You did remember that I had a murder sentencing tomorrow?

MS. PILATOWICZ: Yes. We don't anticipate between Mr. Kimmel and Mr. Leonard we would use that fully from 2:00 to 6:00. We think we can get them both done in that time frame.

THE COURT: Let's take a short recess.

MS. PILATOWICZ: If I may before we break, get a clarification on presenting exhibits that will be referred to. It is one thing in the video, something else in the courtroom. I propose we just stop the video, announce what exhibit in the book it is.

THE COURT: That will be fine. We'll try to have a short recess.

(Short recess taken.)

THE COURT: Thank you. Please be seated. Okay. We are ready to go. We are going to dim the lights a little bit. It will be easier for me.

(Whereupon the video taped deposition of Paul Morabito was played.)

MS. PILATOWICZ: Exhibit three in the deposition in the depo is Exhibit 39 in the Court's exhibit which has been admitted.

THE COURT: The transcript will be so noted.

MS. PILATOWICZ: Exhibit 4 is Exhibit 43 in the Court's exhibit book.

MS. PILATOWICZ: Exhibit five is Exhibit 118 in the Court's exhibit book.

MS. PILATOWICZ: Exhibit 7 is Exhibit 45 in the Court's exhibit binder.

MS. PILATOWICZ: Exhibit 8 is Exhibit 46 in the Court's exhibit binder.

MS. PILATOWICZ: Exhibit 13 is Exhibit 61 in the Court's binder which has been admitted.

MS. PILATOWICZ: Exhibit 18 is Exhibit 81 in the Court's exhibit book admitted.

THE COURT: Is 81 admitted?

MS. TURNER: Yes.

THE COURT: Can we stop there? What exhibit are you talking about there?

MS. PILATOWICZ: I am sorry, Your Honor, I believe were on 17.

THE COURT: You were referring to Exhibit 16 in the deposition.

MR. GILMORE: Exhibit 80 in the trial binder is the document he's referring to right now.

MS. PILATOWICZ: Yes, Your Honor, Exhibit 80.

THE COURT: 16 is 80.

MS. PILATOWICZ: Exhibit 17 is Exhibit 236 in the Court's binder. Plaintiff will stipulate to its admission.

THE COURT: Exhibit 236 is admitted.

(Exhibit 236 admitted in evidence.)

MS. PILATOWICZ: Exhibit 18 is Exhibit 110 in the exhibit binder, Your Honor. It has been admitted.

THE COURT: Is it admitted, Marci?

THE CLERK: 110 has been admitted.

MS. PILATOWICZ: Your Honor, Exhibit 124 is Exhibit 107 in the Court's exhibit binder which has been admitted.

THE COURT: Thank you. That will be admitted.

MS. PILATOWICZ: Exhibit 25 is Exhibit 125 in the Court's exhibit binder. It has been admitted.

THE COURT: Thank you.

Several exhibits that I have missed the relationship to. Exhibit 3 in the deposition.

THE CLERK: 39.

THE COURT: You all agree?

MS. PILATOWICZ: Yes, Your Honor.

THE CLERK: It is admitted already.

THE COURT: Exhibit 4 in the deposition.

THE CLERK: 43.

MS. PILATOWICZ: Correct, Your Honor.

THE CLERK: It is admitted.

THE COURT: And Exhibit 6.

MS. PILATOWIC: Exhibit 6 was, we have the full Michelle Salazar report which has been admitted as an exhibit. I don't remember the number.

MS. TURNER: That is one we stipulated to.

MS. PILATOWICZ: The Salazar net worth deposition or report.

MR. GILMORE: I think yours is just the balance sheet, right?

MS. PILATOWICZ: What we used in the deposition was just the balance sheet.

THE CLERK: You are saying Salazar?

MS. PILATOWICZ: Yes.

MS. TURNER: I will find it real quick.

THE CLERK: Salazar net worth report dated March 15th is 44.

MS. PILATOWICZ: Exhibit 44.

THE COURT: So Exhibit 6 is part of Exhibit 44, right?

MS. PILATOWICZ: That's correct.

THE COURT: It is the balance sheet that is attached?

MS. PILATOWICZ: That's correct.

THE COURT: Any other issues with the deposition?

MR. GILMORE: No, Your Honor.

MS. PILATOWICZ: No, Your Honor.

THE COURT: You can turn the lights back on. Okay if we proceed with more reading, does anyone need a break?

MS. PILATOWICZ: No, Your Honor.

THE COURT: We can take five minutes.

MR. GILMORE: Yeah.

THE COURT: We'll try to do a five minute break.

(Short recess taken.).

THE COURT: Thank you. Please be seated. Okay. So I see we have Mr. Loretz back on the stand. Sir, you are still under oath. Which deposition are you going to use?

MS. PILATOWICZ: Your Honor, we will be reading the deposition of Gary Karusz.

THE CLERK: Deposition of Gary Krausz taken March 16, 2016 opened and published.

MS. PILATOWICZ: Starting at page 5 line 8.

BY MR. PILATOWICZ:

"Q Good morning. Can you please state and spell your name for the record.

A Gary Krausz. G-A-R-Y. K-R-A-U-S, as in Sam, Z as in zebra.

Q Where do you currently live Mr. Krausz?

A Where I currently live?

Q Yes?

A Los Angeles.

MS. PILATOWICZ: Moving to page 6 line 9.

BY MS. PILATOWICZ:

"Q Mr. Krausz, I have handed you what has been marked as Exhibit 2"--

MS. PILATOWICZ: Which, Your Honor, is Exhibit 179 in the exhibit book and it has been admitted.

THE COURT: Okay. I am catching up with you. I apologize. I am trying to find the tab for Mr. Krausz.

MS. PILATOWICZ: It should be tab number 5.

THE COURT: Somehow I thought it was 13.

Cheesy binders somebody bought.

Okay. Thank you, counsel. You may proceed.

THE COURT: I think you were about to tell me what something meant.

MS. PILATOWICZ: Yes, Your Honor. The question was:

"Q Mr. Krausz, I have handed you what has been marked as Exhibit 2. Exhibit 2 is Exhibit 179 in the Court's exhibit binder. It has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q Do you recognize Exhibit 2?

A Yes.

Q What is it?

A This is the notice for appearance and Subpoena for documents that I received."

MS. PILATOWICZ: Turning to page 9 line 16.

BY MS. PILATOWICZ:

"Q pursuant to the subpoena, were you also requested to produce documents?

A I did. I was.

Q Are those documents requested on pages seven and eight of the subpoena?

A Yes.

Q And did you produce all documents in Gursey Schneider's possession regarding these topics?

A Yes."

MS. PILATOWITCZ: Turning to page 17 line 25.

BY MS. PILATOWICZ:

"Q How are you currently employed?

A I am currently employed as a partner in a CPA firm.

A At Gursey Schneider?

A Gursey Schneider.

Q How long have you been a partner with Gursey Schneider?

A Since January 1st of 2012.

Q Were you employed by Gursey Schneider prior to January 1, 2012?

A Yes.

Q In what capacity?

A Senior manager.

Q What years were you a senior manager?

A I started employment February 4, 2004, so since February 4, 2004.

Q So you've worked at Gursey Schneider since February 4, 2004?

A Correct.

Q What did you do prior to becoming a senior manager at Gursey Schneider?

A I was a senior manager at another CPA firm.

Q What CPA firm is that?

A KPMG.

Q Why did you leave KPMG?

A Work-life balance.

Q What were your responsibilities as a Senior Manager at Gursey Schneider?

A I supervised all of the audit and accounting

services that we provided to our clients.

Q What were your duties in supervising all of the audits?

A Getting us engaged, determining the scope of work, planning the nature, timing and extent of our audit procedures; supervising the staff, evaluating the performance of staff, billing the clients, responding to client issues; executing a planned audit approach; assisting the clients to prepare financial statements; reviewing work papers provided by staff; issuing financial statement; and, responding to any other questions that came up.

Q Have those duties changed since you became a partner?

A No.

Q So you're still responsible for overseeing the audits?

A Yes.

Q Where did you go to college?

A I went to the University of California at San Diego, and then I got a Master's degree from the University of Southern California.

Q What was your degree in at UC San Diego?

A Economics.

Q And what was your Master's in at USC?

A Accounting.
Q Do you currently hold any licenses?
A I do.
Q What are those licenses?
A Driver's license and a CPA license.
Q When did you first obtain your CPA license?
A I believe it was January of 1998, plus or minus a month or two.
Q Is it currently in good standing?
A Yes.
Q Has it always been in good standing?
A Yes.
Q At some point you started representing Superpumper, Inc., is that correct?
A Yes.
Q When was that?
A The first year we were engaged to do the audit was for the year ended December 31, 2007. So I would estimate we started working with them in the Fall or Winter of 2007.
Q Do you still currently represent Superpumper?
A No.
Q When did you stop representing Superpumper?
A We don't represent Superpumper. They were a client of ours.

Q Okay. I'm sorry?
A Yeah.
Q That's an important distinction?
A It is a very important distinction.
Q Is Superpumper still a client of yours?
A No.
Q When did they cease being a client of yours?
A The last year we issued financial statements was for the year ended December 31, 2001, so probably--
Q You said 2001?
A 2011.
Q Okay.
A 2011. Shortly after August 2012.
Q And were they a client of yours from 2007 until 2012?
A Yes.
Q Why did they stop being a client in 2012?
A We were informed that our services to provide financial statements were no longer needed, or they no longer needed financial statements.
Q So, it was Superpumper that terminated the relationship?
A Yes.
Q Were there any complaints from Superpumper to you?

A Nope.

Q Do you know who they hired in 2012?

A Yes, Mr. Stan Bernstein.

Q How were you first retained by Superpumper in 2007? And let me clarify, I can see in your face. Did Superpumper come to you in 2007?

A Yes. Yes.

Q Who was it that came to you?

A My understanding was Paul Morabito knew Tracy Katz. Tracy Katz is a partner in our firm. Tracy introduced Paul to Marie Ambrosino. Marie Ambrosino informed us Superpumper may need an audit. As result of the relationship from Tracy to Marie and Marie to me, that's how we were engaged to do the audit.

Q Were you just hired to do a year-end audit?

A Yes.

Q Who were your primary contacts at Superpumper?

A Paul Morabito; Edward Bayuk; Don Whitehead; Gabby, who used to work for Don. Then there were two gentlemen that we worked with, Nick and Kevin. Nick Kapanicas, and Kevin -- I don't remember his last name. Those were all contacts of ours and then later on Mr. Sam Morabito.

Q Did Gursey Schneider do any work for Sam Morabito individually?

A No.

Q Did Gursey Schneider do any work for Edward Bayuk, individually?

A No.

Q You have been handed what has been marked as Exhibit 3."

MS. PILATOWICZ: Your Honor, Exhibit 3 is Exhibit 114 in the Court's binder which I believe has been admitted. Yes?

THE CLERK: It has.

THE COURT: Thank you.

BY MS PILATOWICZ:

"Q Do you recognize Exhibit 3?

A Yes.

Q What is it?

A These are the audited financial statements of Suuperpumper, Inc., for the year ended December 31, 2009.

Q Did you oversee the completion of these financial statements?

A Yes.

Q Now if you look at Exhibit 3."

MS. PILATOWICZ: I'm sorry, I moved on to page 28 line 15.

BY MS. PILATOWICZ:

"Q Now if you look at Exhibit 3, there is numbers on the

bottom right-hand corner that start with Superpumper and then a number. I'll refer to those numbers so that we can make sure that we're on the same page. Can you turn to page 321? If you look at the last paragraph of the letter, the Independent Auditor's Report, it starts with, 'In our opinion, the financial statements referred to above present fairly in all material respects the financial position of Superpumper, Inc., as of December 31st, 2009.' Do you see that?

A Yes.

Q What do you base that on?

A The completion of our audit.

Q What did you do to -- well, let's start with what you did to complete your audit. Who did you get information from?

A Management of Superpumper, Inc.

Q Were there any particular people?

A Paul Morabito, Don Whitehead, Gabby-- I don't know if Nick and Kevin were there, but the management team of Superpumper.

Q And what kind of information did they provide to you?

A Accounting records.

Q Can you explain in general terms how an audit is done?

A Sure. Short answer or long answer? It's my career.

Q Lets start with the short answer, and if I have any follow-up, we'll go from there?

A Normally you're engaged by a client to perform an audit so there has to be a reason why they're hiring you to do it. It is usually a contractual requirement, a regulatory requirement or a government requirement. So, some clients we're engaged because it's a government requirement. Some we're because it's a regulatory requirement. And some we're engaged because of a contractual requirement.

The client will hire us to audit the financial statements of a company. We initially -- We have to plan to do an audit before you can do an audit. Part of the planning involves getting an understanding of the business, getting an understanding of the management, formulating your planned audit approach, developing your planned audit procedures, considering the risks, and kind of the art to the audit is determining what the appropriate audit procedures to assess your understanding where the risks on your financial statements are and your understanding of the client. And so you'll have lots of planning meetings. There is a lot of collaboration, planning what specific audit steps you're going to perform. Then you go out and do the audit steps. You evaluate the results of the audit steps that you've performed.

And you go back and think about your plan and if the audit steps match to what your planned risk assessment was and what your planned audit procedures were and the results are consistent with what your expectations are, and then you can say you completed an audit.

When you complete an audit, you basically issue an opinion on the financial statements. The financial statements, themselves are the representation of management. So we assist in the drafting of financial statements, but management is ultimately responsible for the presentation of the financial statements. We are responsible to give an opinion on the overall presentation of it.

Q So is it fair to say you test the financial statements?

A We test the assertions in the financial statements, yes.

Q If you could turn to page 322 of Exhibit 3?

A Yes.

Q Is this the balance sheet that you got from management?

A This is a balance sheet that will represent the balance sheet that management provided us, yes.

Q Okay. And if you look down at the second sort of grouping, there's Other Assets, and there's Due from

Affliliates; do you see that?

A Yes.

Q What does that mean?

A These are loans and amounts that are due from people who are related to the organization by way of affiliation.

Q The amount listed is $7,683,918. Do you see that?

A Yes.

Q That is a number that would have been provided to you by management?

A Yes.

Q Please turn to page 331 of Exhibit 3. There's a Note 8 Related Party Transactions?

A Yes.

Q Do you see that?

A Yes.

Q Does that represent a breakdown of the numbers we just referred to due from affiliates?

A Yes.

Q The first number or the first line listed is note receivable, shareholder, five percent due December 31, 2009 in the amount $623,021?

A Yes.

Q Do you know what that note was?

A Other than a note, no. It was a note for $623,000

Q How did you determine it was a note?
A I believe we have a note agreement, or either we have it or we saw a note agreement.
Q Would you have to see a note agreement in order to list it as a due from on your audit statements?
A Generally, yes.
Q What are the circumstances where you wouldn't?
A I don't know.
Q So is it fair to say, as we sit here today, if there's a note receivable listed on these related party transactions, you saw the note?
A Yes.
Q Okay. Do you know who it's referring to when it says shareholder?
A I don't have our file open. But there was one shareholder Superpumper, and that was CWC, PAMAZ or CWC. I don't remember what name they were at that time.
Q Is it your understanding that PAMAZ became CWC at some point?
A Yes.
Q The next line listed is Advances to Shareholder 5.4 percent due on demand, and it's an amount of $6,617,790. Do you see that?
A Yes.

Q What is that?

A It's borrowings-- the company lent money to the shareholder, and so it is the receivable for the money that was lent to the shareholder.

Q Do you recall if there was a note for this?

A I do not recall. But I don't have it referenced as a note, so I don't recall if there was one or not.

Q Would the presence of a note make any difference as to whether it could be classified as a collectible amount?

A No.

Q On the next line it says advances to affiliates, unsecured, due on demand, $443,107. Do you see that?

A Yes.

Q Do you know what that is?

A It's money lent to an affiliate. I don't recall the affiliate, but it was someone other than the shareholder, because otherwise, it would have been included in the line above.

Q Do you recall if there is a note documenting that money?

A I don't recall.

Q Okay. Under these amounts, the audit says "these accounts have been classified as noncurrent in the accompanying balance sheet because repayment is not

anticipated during the next year." Can you explain to me what that means?

A You have a requirement under GAAP to classify your assets and liabilities based upon when they're going to be liquidated or turned into cash. The requirements tell you that you have to consider the contractual provisions of the item and whether you believe that they're going to be converted into cash or not. In this instance, these were all demand notes or they were due imminently or past due which ordinarily leads one to believe they should be classified as current. However, with that said, when you asked management about their plans to liquidate -- not liquidate -- collect on the notes, it became clear that they were going to be long term, and so we didn't want to misstate what the financial statements represented, and so we classified them as noncurrent so that any reader who picks up the balance sheet won't be misled by 7.7 million dollars as a current asset.

Q What did management tell you that led you to believe that there would be long-term notes?

A I don't know. I don't remember. But they had -- they probably had it classified as noncurrent in their internal record as well. And when you look at the practice of liquidating the notes or collecting on the notes, they weren't collecting on them, so we moved them to noncurrent."

MS. PILATOWICZ: Turning to page 38 starting at line 14.

///

BY MS PILATOWICZ:

"Q Okay. Did you do any analysis for these 2009 financial statements as to the collectability of the related party transactions.

A Yes.

Q What did you do?

A I don't have our work papers in front of me, but we -- what the standards tell you is to look beyond the amount and consider where the source of the payment would be coming from and evaluate the ability for them to borrow or repay the terms. So we would have looked beyond the agreement to what the financial statements of the borrower were to access the collectability of the debt.

Q Okay. When you say the standards, what are you referring to?

A The accounting standards. I don't have the reference to it, but the auditing standards will tell you look to the ultimate payor of the amounts to assess whether you think the receivables are collectible.

Q Did you do that in this case?

A Yes.

Q Is it your understanding that Paul Morabito was the ultimate person responsible for payment?

A Yes.

Q Let's mark this as Exhibit 5."

MS. PILATOWICZ: And Exhibit 5 is Exhibit 42 in the Court's exhibit binder. It has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q You have been handed what has been marked Exhibit 5. Do you recognize Exhibit 5?

A Yes.

Q What is Exhibit 5?

A Exhibit 5 is the statement of assets and liabilities Paul Morabito prepared as of May 5, 2009.

Q Do you know who prepared these?

A No.

Q Were they provided to you?

A Yes.

Q Who provided them to you?

A Paul Morabito or Paul Morabito through management, so somebody else.

Q Okay.

A The initials PBC means prepared by client.

Q That's helpful. I saw that a lot in your documents

and didn't know what it meant. Do you recall how these came to you?

A No.

Q Did you do anything to verify the amounts in the statement of assets and liabilities?

A My recollection is we met with Paul and he shared with us his bank statements, at least for his liquid assets, and we examined his liquid assets, financial statements. We obviously didn't pull title reports to his properties. We looked to his statements in support of the liquid assets.

Q Do you see under Investments and Miscellaneous, there's a valuation for 100 percent common shares in Consolidated Western Corporation and that's valued at $20,000,000?

A Yes.

Q Do you recall any conversation with Paul Morabito about that amount?

A No.

Q In order to accept these financial statements, would he have to verify that the amounts in here are correct as he believes them?

A Correct.

Q And there's a reference to Note 10 under the line I just read, and Note 10 says: 'Nevada corporation that owns

Superpumper, Inc., which operates 11 Shell franchised gas service stations and five car washes; gas stations under a jobber agreement with Shell Oil Products U.S.' is it your understanding that that is the company we're talking about in these financial statements?

A Yes.

Q Now there's a note at the top of Exhibit 5 and it says: 'May 5, 2009 is the most recent date at which Mr. Morabito had a personal financial statement prepared. As such, we will include a statement in the management rep letter that nothing has materially changed in his net worth between May 5, 2009 and the date of the audited SPI financial statement.' Do you see that?

A Yes.

Q Do you recall about when the financial statement would have been completed or the audited financial statement that you are referencing in that note?

A The 2009 financial statements were completed in March 2010.

Q So as of March 2010 you verified that the amounts in this financial statement were correct, with Mr. Morabito?

A The liquid amounts. We verified his statement for his liquid assets and obtained his management representation in our management representation letter.

Q Can you explain to me what a management representation letter is?

A Yes.

Q What is it?

A Financial statements that we issue an audit opinion on are really the representation of management, so they're not our financial statements. It's management that's representing the assertions in the financial statements, themselves, that all of the assets are there, all the liabilities are there, the disclosures are full and complete. We issue an opinion on the assertions that management makes, and so the representation is basically management taking responsibility for the statements from which we can then put our opinion on top of.

Q Okay. So is it fair to say a management representation agreement is from management verifying all the information they provided to you?

A Correct, asserting that they are responsible for the information in the financial statements.

Q Okay. There's a note on the bottom of Exhibit 5 and it says: 'As 7.2 million of the 7.7 million in notes receivable is due from Paul Morabito and his affiliate company CWC/PMZ-- that is suppose to be PAMAZ-- we obtained his personal financial statement to verify Mr. Morabito has

sufficient net worth to substantiate the value of the receivable on SPI's balance sheet. As his net worth at 5/5/09 is in excess of $64 million, there is no impairment issue of the receivable on SPI's books.' Do you see that?

A Yes.

Q What do you mean by that?

A We believe that the receivable on SPI's books was collectible.

Q Why is that important?

A Because if the receivable is not collectible, then we would be misreporting the balance sheet of Superpumper, Inc., by listing it as a receivable that wasn't collectible.

Q Do the note receivables impact the value of the company?

A That's an indirect question. If you could rephrase the question.

Q Does the presence of a note receivable on a balance sheet increase the value of a company?

A It increases the equity of the company.

Q Can you explain to me the difference between the equity and the value of the company?

A Well, value is a measure of what people are willing to pay for a company. Our financial statements don't purport to represent anything about value of the company.

Q Okay.

A Our financial statements purport to represent the equity as presented under generally-accepted accounting principals.

MS. PILATOWICZ: Turning to page 47 line 13.

BY MS. PILATOWICZ:

"Q You have been handed what has been marked as Exhibit 6"--

MS. PILATOWICZ: Your Honor, Exhibit 6 is Exhibit 115 in the Court's exhibit binder. It has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"--do you recognize Exhibit 6?

A I do.

Q What is Exhibit 6?

A Exhibit 6 is a calculation of interest income that we would have accrued and recorded as an adjusting journal entry into the 2009 financial statements.

Q And who prepared this document?

A We did.

Q Where did you obtain the information-- well, let me back up. Under description there are one, two, three, four, five, five different entries. What do those represent?

A Separate GL accounts. So Superpumper had a general

ledger. The general ledger had five different accounts that had notes receivable in them. So 1210-00 represents to be a note from CWC; 1210-03 represents to be a note from PAMAZ, etcetera.

Q And did you obtain this information from management?

A Yes.

Q Did they provide the interest rate as to those accounts?

A '5.4 percent intrinsic interest rate provided by Gursey Schneider. I don't know where the interest rates came from.

Q Do you know why Gursey Schneider would have put an interest rate of 5.4 percent?

A I don't want to speculate.

Q Under what circumstances would Gursey Schneider put in such an interest rate?

A When you have borrowings between related parties, you're supposed to assume that there's an applicable interest rate. Otherwise, for tax purposes the taxing authority can look and say, hey, the loan is not a loan, it is really income, or vice versa. And so the GAAP literature says assume that there's an interest rate for any borrowing. The tax rules say you better have a minimum interest rate; otherwise, it can be challenged as being a loan or not or compensation.

So your question is why was there an interest rate. It's to conform with the GAAP rules and probably to conform with tax rules. Why 5.4 percent, I don't recall?

Q Okay. Do you know if these amounts reflect amounts that were actually borrowed by either CWC, PAMAZ or Paul Morabito?

A Absolutely.

Q Absolutely they were borrowed?

A They were borrowed, yes.

Q What makes you say they absolutely were borrowed?

A Well, the data comes right out of the general ledger. The general ledger is the accumulation of accounting transactions that occurred during the course of a year or during the course of a long period of time. And so when the general ledger has amounts that are due, lists the name of the borrower, then we would assume the money was borrowed.

Q Down at the bottom there's a note that says 'We obtained a personal financial statement from Paul Morabito to test the valuation of the receivable. See C-4a.' Is it your understanding C-4a reflected the personal financial statement of Paul Morabito we discussed at Exhibit 5?

A Yes.

Q Okay. You've been handed what has been marked Exhibit 7?"

MS. PILATOWICZ: Your Honor, Exhibit 7 is Exhibit 118 in the Court's exhibit binder and it has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q do you recognize Exhibit 7?

A Yes.

Q What is Exhibit 7?

A Exhibit 7 is the management representation letter for the audit for the year ended December 31, 2009.

Q And is this the representation letter that we were discussing earlier where management verifies that the information they provided is true?

A Yes.

Q And who signed this management representation letter?

A Paul Morabito and Don Whitehead.

Q And at 19 there includes a specific representation, 'There have not been any material changes in the net worth of this of the company's President, Paul Morabito, since the date of his last prepared personal financial statement dated May 5, 2009.' Do you see that?

A Yes.

Q Is that because of the collectability of notes?

A Yes.

MS. PILATOWICZ: This will be 8."

Exhibit, 8, Your Honor is Exhibit 119 in the Court's exhibit binder and it has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q You have been handed what has been marked Exhibit 8. Do you recognize Exhibit 8?

A No.

Q It says that they are unaudited -- well, the first page says, 'Superpumper unaudited August 2012 balance sheet.' Do you see that?

A Yes."

THE COURT: I am going to stop you. I think you read it wrong. Would you reread line 19?

MS. PILATOWICZ: Yes, Your Honor.

BY MS. PILATOWICZ:

"Q It says that they are unaudited-- well first page says 'Superpumper Unaudited August 2010 balance sheet.' Do you see that?

A Yes.

Q Are these the types of balance sheets that you had received from Superpumper?

A Yes.

Q If I told you that these were balance sheets that

were provided by Superpumper, would that appear accurate to you?

A Yes.

Q Turn to page-- again we are looking at the numbers on the bottom right-hand corner -- 1003. And this is titled "Superpumper unaudited September 2010 balance sheet.' Do you see that?

A Yes.

Q Under other assets, about a little above halfway between the page there's a note receivable in the amount of $7,683,918. Do you see that?

A Yes.

Q Does that match up with the 2009 audit numbers that Gursey Schneider performed?

A Yes.

Q Would it be fair to say that that's likely the same loans that are referred to in the 2009 audit statement?

A Yes.

Q Now after that it shows a net change of $1,470,714. Do you see that?

A Yes.

Q Do you know what that is?

A No.

Q Would it appear to be additional notes receivable?

A Yes.

Q And there's an ending balance of $9,154,632. Do you see that?

A Yes.

Q Would it be fair to say that that appears to represent an ending balance of the notes receivable as of September 2010 of $9,154.632?

A Yes.

Q When you conducted an audit in 2010, are these the statements that you would look at?

A They were available to us to look at.

Q Would you do any sort of analysis of notes that were listed on the books mid-year but not at the end of the year?

A We would look at the year-end general ledger and look to see the activity during the year.

Q Would you do any sort of analysis of the collectability of the notes that existed in December 2010?

A No.

Q Just at year end?

A Yes.

Q Based on the personal financial statement of Paul Morabito that you had that had been verified as of March 2010 as to his ability to pay the 7.6 million approximately due under the notes receivable, would you expect that they could

still be paid in September of 2010?"

MS. PILATOWICZ: There is an objection.

" MR. GILMORE: Objection. Incomplete hypothetical."

MS. PILATOWICZ: The witness requested you repeat the question, so it was repeated. And then, Mr. Gilmore, you have changed your objection to speculation.

MR. GILMORE: That's correct.

MS. PILATOWICZ: Your Honor, the question was asked based on the auditors' review and the information the auditor had, based on all the information that had been provided to him by the company and whether he believed the statement to be true.

THE COURT: Objection goes to the weight. I am going to admit it. The objection is overruled.

THE READER: Is there an answer? I don't see one.

MS. PILATOWICZ: It is page 54 line 12.

"THE WITNESS: Very speculative, but yes."

MS. PILATOWICZ: Moving to page 56, line 6 it references Exhibit 9 which is Exhibit 120 in the Court's exhibit binder and that has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q What is Exhibit 9?

A Exhibit 9 are the financial statements of Superpumper, Inc., as of and for the year ended December 31, 2010.

Q Did you oversee the preparation of these financial statements?

A I oversaw the audited financial statements.

Q Can you turn to page 334 of the 2010 audit?

A Yeah.

Q Can you read the third paragraph of the independent auditor's report letter?

A 'In accordance with your instructions, the scope of our examination did not include any analysis of the valuation of notes receivable from related parties. (See Note 9) and we have not been able to otherwise satisfy ourselves as to their valuation at that date. The notes receivable from related parties comprise fifty-seven percent of the total assets and 129 percent of stockholders' equity at December 31, 2010. Interest earned from these notes comprise 24 percent of net income during the year end December 31, 2010.'

Can you explain what you mean by that.

A We are -- this is what is known as a qualified audit opinion. A qualified audit opinion is one in which we can issue an opinion on the financial statements, themselves, but otherwise qualify it, or, the easiest way is to list it and

carve out an aspect of the financial statement for which we're not giving opinion on.

Q Did you request information as to the collectability as to the notes receivable?

A I don't remember.

Q Is there a reason you wouldn't request that information?

A I don't remember the circumstances of why we issued a qualified opinion."

MS. PILATOWICZ: Turning to page, I am sorry, page 58 line 15.

BY MS. PILATOWICZ:

'Q Turning to page 355 of Exhibit 9 under other assets, it list notes receivable due from affiliates/related party. And there is a number $8,224,860. Do you see that?

A Yes.

Q Who provided that information to you?

A Management.

Q Do you know who was in management as of December 31, 2010?

A Don Whitehead, Gabby-- it was McClellan now that I think about it. It was Don, Gabby, Mr. Morabito and I don't know who else we worked with.

Q When you say Mr. Morabito, are you referring to Sam?

A Sam Morabito, yes.
Q If you can turn to page 345 of Exhibit 9?
A Uh-huh.
Q Under Note 9 there is Related Party Transactions. They list different notes receivable or due from affiliates/ related parties. Do you see that?
A Yes.
Q Starting with the first one at P. Morabito, do you understand that to be Paul Morabito?
A Yes.
Q Do you know what that note was?
A It was a note. It was a note.
Q Was that information on the note provided to you by management?
A Yes.
Q The next one, 'Big Wheel Hospitality Operating Company, LLC' do you see that?
A Yes.
Q Do you know who Big Wheel is?
A We were informed it was an entity related to Paul Morabito.
Q Did management provide the information about that note?
A Yes.

Q And the next one is 'Snowshoe Petroleum, Inc.'?
A Yes.
Q Do you know what Snowshoe Petroleum, Inc. Is?
A We were informed it is an entity affiliated with the current owners.
Q Did management provide you information regarding that note?
A Yes.
Q The next one is P. Morabito which you understand to be Paul Morabito, correct?
A Yes.
Q Who provided you information about that note?
A Management.
Q The next note listed is E. Bayuk?
A Yes.
Q Who do you understand that to be?
A Mr. Bayuk.
Q Who provided you information regarding that note?
A Management.
Q The next note is listed as S. Morabito. Who do you understand that to be?
A Sam Morabito.
Q Did management provide you information regarding that note?

A Yes.
Q The last entry is Paul Morabito on demand?
A Yes.
Q Do you see that?
A Yes.
Q What is that?
A Borrowings for which there is no note.
Q Do you know if any of these were carryovers from the 2009 financial statements?
A Yes, some were. I don't remember which ones.
Q If you look at the 2009 financial statements and 2010, can you determine which ones were carryovers?
A The one in the middle.
Q Is that the only one?
A I don't want to speculate, but the bottom one as well, the $443,107 is going to be the on demand or the $285,580.
MR. GILMORE: Mr. Krausz, when you say the one in the middle, can you identify that one more specifically?
THE WITNESS: Oh.
BY MS. PILATOWICZ:
Q You're referring to the P. Morabito five percent March 1, 2017 due date?
A Yeah, correct.

Q In the amount of 672,139?

A Correct.

Q Do you recall what happened with the balance of the notes that were outstanding as of 2009?

A Do I recall what happened? I don't recall. No, I don't recall.

Q Okay."

MS. PULATOWICZ: Turning to page 64 line 5 which references Exhibit number 11 which is Exhibit 116 in the Court's exhibit binder, and it has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q What is Exhibit 11?

A Exhibit 11 is what we call our Conclusions Memo which basically summarizes the results of our audit as the summary of what we identified as the risks, how we addressed the risks of our audit, significant representations made by management. It's the one memo that brings everything together with respect to our audit.

Q Is that done at the end of the audit?

A Yes.

Q Now it says under, 'Significant Current Year Activities, the following is a list of significant activities and changes that occurred during the nine-month period ended

December 31, 2010.' Why a nine-month period?

A I don't remember. It could be a typo.

Q Would it have anything to do with when the 2009 audit was completed?

A No.

Q As we sit here today, you don't know why it says nine months?

A Nope.

Q Under the first paragraph, 'Change in ownership,' can you take a moment and read that to yourself?

A Yes.

Q You're done reading it?

A Yes.

Q About the middle of that it says, 'CWC's net liability of $5.9 million assumed by SPI as part of the merger have been treated as distribution to its owners.' What does that mean?

Q CWC had net debt, so CWC had net liabilities of 5.9 million. When you merge CWC into Superpumper and put them together, you contribute debt to Superpumper's books. The offsetting entry, we treated is as distribution to the owners of Superpumper. The opposite would work if you put two companies together, and asset or cash or AR or any other assets went in, we would have treated it as a contribution

from the owners. So it is really a little counter intuitive to contribute debt. But when you contribute debt, it says that you made a distribution to the owners because you're saddling the company with liabilities. I used the word saddle, but you're merging liabilities of the company, so we treat it as a distribution to the owners.

Q What's the importance of doing it as a distribution to the owners?

A Well, you have to book it somehow. Every entry has two -- every transaction has two sides to a journal entry, so if you are going to put debt on the balance sheet of Superpumper, you have to put the debit -- that's the credit entry -- you have to put the debit entry somewhere. So you could have recorded an expense for 5.9 million. There's different ways to do it, but this was the correct way to do it.

Q Does the 5.9 million net liability have any correlation with the loans from Superpumper to CWC?

A No, I do not believe so.

Q So this wouldn't explain what happened to those loans?

A Let me take a step back. There's a work paper we have about this. And I don't have it in front of me. Part of that 5.9 million of liability of CWC were obligations that

were owed to Superpumper, so Superpumper had a corresponding receivable from CWC. So when you said did it relate to it, yes it did.

Q Would it be treated as a payoff of the loan?

A It would be treated as the settlement of the receivable, I believe. I can't visualize it in my head. I would have to see the work paper.

Q Okay. On the next paragraph of the 'Significant Current Year Activities Related Party Transactions,' it says 'SPI pays business expenses of and makes advances to its shareholders and affiliated entities. Amounts paid on behalf of the former parent company/owner are either reflected as a receivable from from CWC or Paul Morabito or as a distribution to shareholders.' What does that mean?

A It means exactly what it says.

Q Okay. Then does that statement relate to the 5.9 million discussed in the paragraph above?

A Yes.

Q How does it relate?

A It relates more to the receivables on Superpumper's, books and the 5.9 on CWC's books. The amounts paid on behalf of the former parent owner/company were reflected as a receivable from CWC. So what that means is when Superpumper paid an expense on behalf of CWC, it would send money out and

record a receivable back from CWC.

Q And is this information Superpumper management provided to you?

A Yes.

Q So they verified that there was payment of business expenses and advances, and that's what made up the receivable?

A Yes."

MS. PILATOWICZ: Moving to page 68 line 19.

BY MS. PILATOWICZ:

"Q We were talking about Exhibit 11 when we took the break. I'd like to go back. We started with the Related Party Transactions in the second paragraph on the Audit Conclusion Memo that's Exhibit 11.

Approximately halfway down in that paragraph there's a statement, 'At December 31, 2010, the amount due from Paul Morabito is $1,613,546."

THE COURT: Okay. I am going to stop you there. You may have read it wrong.

MS. PILATOWICZ: I'm sorry. Let me start again from the paragraph at page 68 line 24.

BY MS. PILATOWICZ:

"Q Approximately halfway down in that paragraph there's a statement, 'At December 31, 2010, the amount due from Paul Morabito is $1,613,546 which consists of two notes receivable

of $939,00 and $672,139 for which we obtained signed note agreements, plus total accrued interest of $20,407.' Do you see that?

A Yes.

Q Do you know what the two notes referenced were?

A They were the notes referenced in Exhibit 9 page 345.

Q Do you know when the money for those notes was borrowed by Paul Morabito?

A I don't recall.

Q Would it be unusual to have a note that's dated different than the date the funds are borrowed?"

MR. GILMORE: No objection.

THE COURT: Thank you.

"THE WITNESS: I don't know what unusual is. I've seen it before.

BY MS. PILATOWICZ:

Q Under what circumstances do you see it?

A When you have related party notes, the dating of the note isn't always determined when the amounts are borrowed.

Q Why are they sometimes dated differently?

A Error in drafting; not done contemporaneously. Many reasons.

Q But is it fair to say under an accounting standard,

that if money is borrowed as of a certain date, that's the date it becomes a receivable?"

MR. GILMORE: No objection.

"THE WITNESS: Yes.

MS. PILATOWICZ: Moving to page 71 one line 12.

BY MS. PILATOWICZ:

"Q Two down from that section, 'Line of Credit,' it references a revolving line of credit with Compass Bank that allows borrowings of up to three million. It says, 'The loan matured on November 4, 2010, and the company defaulted under the terms of the agreement for failing to pay the amount outstanding upon its maturity.' Were you aware of any defaults in the line of credit prior to November 4, 2010?

A No.

Q Is that something that you would look at in your audit?

A Yes.

Q The next section is 'Term loan.' It says, 'On August 13, 210, the company entered into a term loan agreement in the amount of three million dollars. They also entered into an interest rate swap on the three million term loan to pay interest at a fixed rate of 4.0 percent in exchange for receiving LIBOR plus 2.75 percent. Unrealized loss of $26,144 from cash flow hedges are reflected in net income. The company

defaulted under provisions of its terms loan agreement as a result of the CWC merger into SPI.'?

A Yes.

Q Are you aware of any defaults in the term loan prior to the merger?

A No.

Q Is that something that you would have looked at in your audit?

A We wouldn't have looked at the default, the timing of the default, no, but the default we would have looked at.

Q But based on this note, is it your understanding that default occurred as a result of the merger?

A Yes.

MS. PILATOWICZ: Page 74 starting at line 24.

BY MS. PILATOWICZ:

"Q Looking at the final page of Exhibit 11, the last paragraph says,'We met with Paul Morabito and Edward Bayuk regarding the status of SPI's financing with BBVA Compass. The client informed us the lender has an offer ready to refinance SPI's loan but is waiting to receive the audited financial statements.' Do you recall anything about that offer for a refinance?

A I remember the conversation. I remember we talked to Sean Hollenbach who pretty much told us the same thing.

Q Did Sean Hollenbach represent they were prepared to refinance once the financials were received?

A I mean our standard practice in instances like this, we call the banker to make sure everything is on the up and up, and we verify the representation management has told us and that's what we got.

Q Did you get a representation letter from management on the 2010 financial statements?

A Yes."

MS. PILATOWICZ: There is a reference to Exhibit 12 which is Exhibit 125 in the Court's exhibit binders which has been admitted.

THE COURT: Thank you.

BY MS. PILATOWICZ:

"Q You have been handed what has been marked Exhibit 12. Do you recognize Exhibit 12?

A Yes.

Q Is this the management representation agreement you received?

A Yes.

Q And under number 9 of the management recommendation agreement it indicates that, 'The following have been properly recorded or disclosed in the financial statements: Related party transactions and related accounts receivable or payable,

including sales, purchases, loans, transfers, leasing agreements and guarantees.' Do you see that?

A Yes.

Q Does this verify that all of the information regarding the notes receivable that you received was correct by management?

A Yes.

Q Is there any reason why you didn't write down any of the notes in the 2010 finance statements?"

MR. GILMORE: No objection.

"THE WITNESS: We didn't have a reason to."

BY MS. PILATOWICZ:

"Q What do you mean by that?

A We did not issue an opinion on the collectability of the notes. We disclaimed on issuing an opinion on that. So absent knowing that it is a note, no, we would have no reason to do that.

Q Do you recognize Exhibit 13?"

MS. PILATOWICZ: Which is exhibit 126 in the Court's binder and interest has been admitted.

THE COURT: Thank you.

"THE WITNESS: I do."

BY MS. PILATOWICZ:

"Q what is Exhibit 13?

A Exhibit 13 is our work papers from our file that purport to be the personal financial statements of Salvatore Morabito and Edward Bayuk.

Q When did you receive these?

A I don't recall.

Q Do you recall the purpose of receiving those?

A Auditing the valuation of the notes receivable.

Q Are these the financial statements you ultimately didn't audit?

A Correct.

Q Let's start with Sam Morabito. Did he verify to you these were accurate and correct when you received them?

A Yes.

Q Did he verify, based on these, he could repay the loans as of 2010?

A Yes.

Q What about Mr. Beyuk?

A Yes.

Q Yes, he verified that these were true and correct?

A He provided these to us. I have no reason to think that they weren't correct if he provided them to us.

Q Did he represent to you that, based on these documents, he could repay the loans that were due at the end of 2010?

A Yes."

MS. PILATOWICZ: Moving to page 80 line 20.

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BY MS. PILATOWICZ:

"Q There is a statement there that says, 'The company's value in 2010 was negatively impacted by the fact that the money Superpumper received up front from Shell would have to be repaid or amortized over the term of the contract. The unamortized portion is still today 2.5 million.' Do you know what that refers to?

A No.

Q Do you recall agreements with Shell during the audit?

A I recall agreements with Shell, yes.

MS. PILATOWICZ: Let me mark this Exhibit 15."

MS. PILATOWICZ: Your Honor I believe that is Exhibit 237 in the Court's exhibit binders, and it has been admitted. I am sorry?

THE CLERK: It has not.

MS. PILATOWICZ: I believe it is 226. My apologies, which has been admitted. The Shell agreement.

THE COURT: Okay.

BY MS. PILATOWICZ:

"Q Is this the agreement that you were referring to with

Shell?

A Yes.

Q Does this require any upfront payment of 2.5 million?

A If you want me to read the whole agreement, I will. I don't remember.

Q If there was a 2.5 million dollar liability in 2010, would that be reflected on your audit for 2010?

A I hope so.

Q Could you look at your audit and tell me if there is such a liability reflected?

A I don't believe there is. I am not aware of one, but let me see. No."

MS. PILATOWICZ: Moving to page 89. Your Honor, I apologize. In my notes there are documents referenced here, but I don't have the corresponding numbers written down. With the Court's indulgence I will get that information tonight and supply it in the record tomorrow.

THE COURT: Okay.

MR. GILMORE: My note shows Exhibit 18 is binder number 43.

THE COURT: You mean Exhibit 43?

MR. GILMORE: I should have said Exhibit 18 in the deposition appears to be Exhibit 43 in the binders.

THE CLERK: Is it the e-mail chain between Afshar and Takemoto dated 3/10/10?

MS. PILATOWICZ: It is.

THE CLERK: It is 43 and admitted.

MS. PILATOWICZ: Exhibit 19, I don't -- I believe that was one of your exhibits.

MR. GILMORE: I can't tell.

MS. PILATOWICZ: I understand why this is. Do you know what Exhibit 19 is?

MR. GILMORE: 18?

MS. PILATOWICZ: 19.

MR. GILMORE: I have it as 297.

THE COURT: Counsel, did you tell me that Gary Krausz' deposition was going to be a half hour?

MS. PILATOWICZ: Your Honor, it clearly was poor time planning. We still have quite a bit to go. I don't think we'll finish this one day.

THE COURT: It doesn't look that way.

MS. PILATOWICZ: I apologize.

THE COURT: Based on how everybody is kind of reacting to this, I think it is kind of time to take a break. Everyone is tired. There is a lot here. We are close to 6:00 o'clock.

MS. PILATOWICZ: Yes, Your Honor.

THE COURT: So tomorrow, do you want to interrupt this?

MS. PILATOWICZ: Your Honor, I believe we can continue with this tomorrow. We are going to take a review of the Vacco and Bernstein designation tonight based on testimony that has been provided throughout this week and see if we can streamline that. I think there is a lot of repeating. That might cut that down and then we intend to still continue with the live witnesses of William Leonard and --

THE COURT: You want to do those people tomorrow?

MR. PILATOWITCZ: -- Bill Kimmel. Yes, Your Honor.

THE COURT: Then we should stop your reading of the deposition and put those live witnesses on. We have a window from 10:15 or so. We'll see. The criminal case is supposed to only take two hours, but who knows. And then we'll break at the noon hour, but it is going to be a longer than normal noon hour until 2:00, then by 2:00 until we can get done. I would prefer to get those live witnesses finished up and then come back to the depositions if we can. If not, we'll find time next week. You may not be able to finish on Friday. But if we get finished by Wednesday night I would be happy if I can get to that conference on Thursday. If I can't, we'll still keep going because we want to get this case finished.

MS. PILATOWICZ: Your Honor, we are still on pace to

be done by Wednesday morning with at least the testimony.

THE COURT: We'll see how we're doing, but I appreciate everyone trying, but it is close enough to 6:00 we should take a break. So tomorrow you will bring the witness here, have him here by 10:15 to start. Can we do that?

MS. PILATOWICZ: Yes, Your Honor.

THE COURT: Okay. All right.

THE READER: You're expecting both witnesses to come?

THE COURT: That's what they are telling me. We may have some reading, too.

THE READER: From a logistical standpoint what time should I be here?

MS. PILATOWICZ: We'll discuss that.

THE COURT: Whatever time they tell you to be back. So thank you. Is there anything else before we recess for the evening?

MR. GILMORE: Not from our side, Your Honor.

MS. TURNER: No, Your Honor.

THE COURT: Thank you. Court's in recess.

(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 Thursday, November 1, 2018 at the hour of 8:00 a.m. of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of WILLIAM LEONARD, JR. TRUSTEE vs. SUPERPUMPER, INC., ET AL, Case Number CV13-02663.

That the foregoing transcript, consisting of pages numbered 1-262 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 12th day of October, 2018.

/s/ Judith Ann Schonlau
JUDITH ANN SCHONLAU CSR #18