

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

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Appeal from the Second Judicial
District Court, the Honorable Connie
J. Steinheimer Presiding

APPELLANTS' APPENDIX, VOLUME 41
(Nos. 7170–7272)

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
Exhibit to Objection to Recommendation for Order		
Exhibit	Document Description	
1	Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
Exhibit to Opposition to Objection to Recommendation for Order		
Exhibit	Document Description	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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 <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; 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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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	

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)		Vol. 20, 3312
Stipulated Facts (filed 10/29/2018)		Vol. 20, 3313–3321
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)		Vol. 20, 3322–3325
Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)		Vol. 20, 3326–3334
Clerk’s Trial Exhibit List (filed 02/28/2019)		Vol. 21, 3335–3413
Exhibits to Clerk’s Trial Exhibit List		
Exhibit	Document Description	
1	Certified copy of the Transcript of September 13, 2010 Judge’s Ruling; Case No. CV07-02764	Vol. 21, 3414–3438
2	Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)	Vol. 21, 3439–3454
3	Judgment; Case No. CV07-0767 (filed 08/23/2011)	Vol. 21, 3455–3456
4	Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)	Vol. 21, 3457–3481
5	November 30, 2011 Settlement Agreement and Mutual Release	Vol. 22, 3482–3613
6	March 1, 2013 Forbearance Agreement	Vol. 22, 3614–3622

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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
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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

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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
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105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

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106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>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)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
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110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
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112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
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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

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134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
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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
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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
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148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
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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

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161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
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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
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189	Mortgage – Mary Fleming	Vol. 28, 4864
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191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
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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

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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

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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

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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
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270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
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277	Assessor's Map/Home Comparisons 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

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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
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Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
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Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
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Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	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)	Vol. 46, 7963–7994
1-E	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)	Vol. 46, 7995–8035

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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		
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1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
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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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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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
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Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
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[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
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Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
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Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	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)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
Exhibits to Plaintiff's Opposition to Motion to Retax Costs		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

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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)		Vol. 49, 8638–8657
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)		Vol. 50, 8658–8676
Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60		
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
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)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	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)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

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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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Objection to Plaintiff's Proposed 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. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk's Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk's Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal		
Exhibit	Document Description	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 53, 9346–9349
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
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)		Vol. 57, 9894–9910
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)		Vol. 57, 9911–9914
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		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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)		Vol. 57, 9939–9951
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		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
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)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	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)	Vol. 57, 10039–10048
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)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	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)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

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**

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

11/6/18 **NON-JURY TRIAL – DAY SEVEN**
HONORABLE Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony
CONNIE Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and
STEINHEIMER Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as
DEPT. NO.4 representative for Edward William Bayuk Living Trust, Superpumper, Inc., and
M. Stone Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present,
(Clerk) individually and as representative for Superpumper, Inc., and Snowshoe
J. Kernan Petroleum, Inc., with counsel, Frank Gilmore, Esq.
(Reporter) Chris Kemper, Esq., counsel for the Herbst Family present in the gallery.
8:35 a.m. Court convened.

Dennis Banks called by counsel Gilmore, sworn and testified; excused.

Darryl Noble called by counsel Gilmore, sworn and testified.

EXHIBIT 277 offered by counsel Gilmore; no objection by counsel Hamm;
ordered admitted into evidence.

Witness Noble further direct examined.

EXHIBIT 281 offered by counsel Gilmore; no objection by counsel Hamm;
ordered admitted into evidence.

Witness Noble further direct examined.

EXHIBIT 222 ordered admitted into evidence based on stipulation of respective
counsel.

Witness Noble further direct examined; cross-examined by counsel Hamm.

10:26 a.m. Court recessed.

10:46 a.m. Court reconvened with respective counsel and parties present.

Witness Noble, heretofore sworn, resumed stand and was redirect examined;
excused.

Jennifer Prokop sworn to read the deposition testimony of Dennis Vacco.

***Depositions of Dennis Vacco taken July 10, 2017, July 11, 2017 and October

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

PAGE TWO

APPEARANCES-HEARING

CONT'D TO

11/6/18

NON-JURY TRIAL – DAY SEVEN

J. Kernan
(Reporter)

21, 2015, individually and as PMK of Snowshoe Petroleum, Inc., 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.

Discussion ensued regarding the reading of the depositions.

11:55 a.m. Court recessed for lunch until 1:15 p.m.

1:17 p.m. Court reconvened with respective counsel and parties present.

EXHIBITS 27, 36, 69, 76, 130, 133, 142, 149, 150, 152, 153, 154 and 160 offered by counsel Pilatowicz; standing objection by counsel Gilmore; ordered admitted into evidence over objection.

Sean Savoy sworn to read the remaining portions of the deposition testimony of Dennis Vacco, and the depositions of Christian Lovelace and Spencer Cavalier.

***Depositions of Dennis Vacca dated July 10, 2017, July 11, 2017 and October 21, 2015, individually and as PMK of Snowshoe Petroleum, Inc., designated portions continued. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

***Deposition of Christian Lovelace taken October 21, 2015 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.

***Depositions of Spencer Cavalier taken June 19, 2015 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.

***Deposition of Michael Sewitz taken March 22, 2016 opened and published.

Discussion ensued regarding the trial schedule for the following day. Counsel Gilmore advised the Court that the designated portions of the depositions of Michael Sewitz and Stanton Bernstein will complete the Defendants' case-in-chief.

Counsel Pilatowicz advised the Court that the Plaintiff does not intend to present any rebuttal evidence in this matter.

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**

PAGE THREE

APPEARANCES-HEARING

CONT'D TO

11/6/18

NON-JURY TRIAL – DAY SEVEN

J. Kernan
(Reporter)

Discussion ensued regarding the closing arguments. Closing arguments set.
In conjunction with the closing argument hearing, **COURT** directed respective
counsel to provide supplemental findings of fact, conclusions of law citing
specific testimony.

4:51 p.m. Court recessed until 9:00 a.m. on November 7, 2018.

**11/7/18
9:00 a.m.
Ongoing
Non-Jury
Trial – Day
Eight**

**11/26/18
9:00 a.m.
Ongoing
Non-Jury
Trial –
Closing
Arguments**

1 4185

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

9 ---o0o---

10

WILLIAM A. LEONARD, Trustee)

11 for the Bankruptcy Estate)

Of Paul Anthony Morabito,)

12)

Case No. CV13-02663

13)

Dept. No. 4

14)

Plaintiff,

15)

vs.

16)

TRANSCRIPT OF PROCEEDINGS

SUPERPUMPER, INC., et al.,)

17)

Defendant.)

18)

NONJURY TRIAL

NOVEMBER 6, 2018, RENO, NEVADA

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Reported by:

JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

23

24

Job Number:

506581

1 APPEARANCES:

2

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8 The Plaintiff: William A. Leonard, Trustee

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15 The Defendant: EDWARD BAYUK
SALVATORE MORABITO

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24		

1 RENO, NEVADA; TUESDAY, NOVEMBER 6, 2018; 8:25 A.M.

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3

4 THE COURT: Go ahead, counsel.

5 MR. GILMORE: Thank you, your Honor.

6 Defendant's next witness will be Dennis Banks.

7 BAILIFF: Sir, if you stand here, face the
8 clerk and raise your right hand, please.

9

10 DENNIS BANKS,
11 called as a witness herein, being first
12 duly sworn, was examined and testified
13 as follows:

14

15 COURT CLERK: Thank you. Please be seated at
16 the witness stand.

17 THE COURT: You may proceed.

18 MR. GILMORE: Thanks, your Honor.

19 DIRECT EXAMINATION

20 BY MR. GILMORE:

21 Q Good morning, Mr. Banks.

22 A Hello.

23 Q My name is Frank Gilmore and I'm counsel for
24 the defendants in this case. You and I have met on one

1 occasion at least. True?

2 A I -- yeah.

3 Q It would have been at your deposition. Do
4 you remember when you were deposed in this case?

5 A I don't, actually. I mean, a little bit,
6 but.

7 Q Okay. Would you please state your name and
8 spell your last name for the record?

9 A Dennis Banks, B-a-n-k-s.

10 Q How are you presently employed?

11 A I own a construction company and four
12 restaurants and some shopping centers.

13 Q What's the name of your construction company?

14 A Dennis Banks Construction.

15 Q What does Dennis Banks Construction do,
16 generally?

17 A Construction.

18 Q Does it do residential construction?

19 A Yes.

20 Q Does it do commercial construction?

21 A Yes.

22 Q What type of residential construction has
23 Dennis Banks done historically?

24 A Everything from redwood decks to 20-unit

1 condos, houses.

2 Q Does it do new build?

3 A Yes.

4 Q Residential?

5 A Yes. Remodels.

6 Q Renovations and remodels?

7 A Correct.

8 Q And how long -- and what's your at Dennis
9 Banks Construction?

10 A I'm the owner, supervisor.

11 Q How long have you been in that role?

12 A Thirty-five years as of March.

13 Q Do you hold any licenses from the State of
14 Nevada or elsewhere?

15 A Yes.

16 Q What licenses do you hold?

17 A Just Nevada right now.

18 Q What is your license?

19 A A B unlimited.

20 Q That's a contractor's license?

21 A Yes.

22 Q Have you had any -- has your company
23 performed any projects or services at 8335 Panorama in
24 Reno?

1 A Yes.

2 Q And how is it that you came to be involved at
3 that property?

4 A We worked with Paul Morabito and Edward to
5 reconstruct, remodel the home that they had purchased.

6 Q What did they ask you to do with respect to
7 the Panorama property?

8 A A lot.

9 Q Can you give us -- can you walk through what
10 Dennis Banks Construction did on the property?

11 A Pretty much redo the whole place. Add some
12 building, redo the windows, new theatre room, all floor
13 covering, paper, crown moldings, doors, pretty much
14 everything in the house.

15 Q Did Dennis Banks Construction do the
16 demolition?

17 A Some. Most, yeah.

18 Q Okay. What was -- how would you characterize
19 the condition of the house prior to Dennis Banks
20 Construction starting work?

21 A As far as?

22 Q How would you characterize it?

23 A It was -- I don't know. It was dated a
24 little bit, but.

1 Q Are you familiar with the condition of the
2 properties in the neighborhood of Panorama?

3 A Right now or then or?

4 Q I'm sorry, that was a good clarifier. At the
5 time that Dennis Banks started work on Panorama were you
6 familiar with the types of homes and the condition they
7 were in in the neighborhood?

8 A I don't know it. Probably.

9 Q And how would you compare the condition and
10 quality of the Panorama house before you started working
11 to the other houses in the neighborhood?

12 A Probably average or below a little bit.

13 Q Okay. And so is it your testimony your
14 company did the demolition on the house?

15 A Yes, we did some. I don't know if we did all
16 of it. Or subcontracted, I should say.

17 Q Okay. And you had trades people and
18 subcontractors working at your request. True?

19 A Yes.

20 Q Did your company do any of the masonry?

21 A I can't remember.

22 Q Did your company do the kitchen renovation?

23 A Yes, I'm pretty sure we did.

24 Q Did your company construct the dome ceilings

1 and the wood working that was installed to the ceilings
2 in the house?

3 A Yes, far as I can remember.

4 Q Did your company participate in the landscape
5 upgrade?

6 A That I can't remember a hundred percent.

7 Q I'd like to direct your attention to Exhibit
8 260, which is a document that we've used in this case
9 previously. If you look behind you, the bottom row,
10 third binder from the right, right there, that will have
11 Exhibit 260 in it and I'd ask you to turn there.

12 A Okay.

13 Q Do you recognize this document?

14 A It looks familiar, yes.

15 Q What's familiar about it?

16 A This looks like one of our documents.

17 Q Does this appear to be a budget summary that
18 was prepared by Dennis Banks internal recordkeeping?

19 A It appears to be.

20 Q Okay. This address up here, or this
21 reference, Panorama Drive and a job number, does that
22 have any significance to Dennis Banks Construction?

23 A Yeah, it should. But like I say, it's a long
24 time ago. But yeah.

1 Q And in reviewing this document, 260, does
2 this refresh your recollection as to the scope of work
3 that Dennis Banks Construction did for Paul Morabito and
4 Edward Bayuk on the Panorama property?

5 A Yes, it looks familiar.

6 Q Okay. For example, there was, according to
7 this budget -- well, explain this to us. We have this
8 first column that says Informal Budget, which is the
9 third column from the left, informal budget as of
10 8-10-06. You see that?

11 A Yes.

12 Q Then the next column to the right is total
13 committed costs in Prologue as of 9-19-06, and the
14 column just to the right of that, Adjusted Budget as of
15 9-20-2006. What is the correlation between those three
16 columns in this record?

17 A It appears the first one is the preliminary
18 budget. And then the original committed budget, and
19 then the -- as it went along the upgraded budget, I
20 guess.

21 Q Can you identify for us which of these
22 columns would represent the amount actually paid to
23 Dennis Banks for the work on each of these budget codes?

24 A Ah, I can't without -- I mean, it would take

1 more information. I don't know that 9-20 is
2 significant. I don't know when the actual hundred
3 percent finish and what not.

4 Q If I directed your attention to the top right
5 of this document that shows as of 1-7-2016, do you
6 recall that was the date you provided this document to
7 my clients?

8 A I don't recall.

9 Q Okay. In your standard recordkeeping would
10 this date be reflected of the date which this budget was
11 printed?

12 A I -- yeah, if this came from me. I don't
13 know where these dates came from.

14 Q You don't have a specific recollection of
15 providing this document to Mr. Bayuk at his request?

16 A No. I mean, I don't have it. We do a lot of
17 projects.

18 Q Okay. And do you have a recollection of the
19 time frame in which Dennis Banks was on this project?

20 A No, I don't off the top of my head.

21 Q Do you know how long your crew -- it took
22 your crew to finish all the projects that they were
23 tasked with?

24 A I do not.

1 Q Was it more or less than two years, do you
2 know?

3 A I hope less, but I can't -- I can't recall.
4 I mean, there were a lot of phases and a lot of work
5 there.

6 Q How much time did you personally spend at the
7 Panorama project during the course of this project?

8 A Quite a bit.

9 Q Can you give us a better estimate in terms of
10 how many hours weekly or days monthly or something like
11 that?

12 A Probably, I don't know, five to ten a week,
13 hours.

14 Q Okay. And do you have a recollection of how
15 many of your crew members would be working regularly at
16 the Panorama property during the course of this
17 construction?

18 A My actual payroll employees?

19 Q Correct.

20 A Two or three.

21 Q And can you give us a -- can you estimate for
22 us how many of the tradesmen would have been on the
23 property regularly throughout the course of this
24 construction?

1 A I can't.

2 Q I mean, was this a two-man project or was it
3 a ten-man project is what I'm getting at?

4 A Yeah, five to ten.

5 Q And these dates that we refer to in the
6 columns at the top refer to, essentially, August and
7 September of 2006. Does that sound right?

8 A Yes.

9 Q Okay. And does that refresh your
10 recollection as to the time frame in which Dennis Banks
11 Construction was doing this work?

12 A I -- 12 years? I don't know.

13 Q Okay.

14 A Probably somewhere in there.

15 Q And then if you turn to the last page, at the
16 bottom there are some subtotals and some grand totals
17 and a P&O. So P&O would be profit and overhead. Right?

18 A Correct.

19 Q So would that reflect, for example, if I
20 looked at this number, 255,000 on the adjusted budget
21 column, would that be the amount of profit on the job
22 that Dennis Banks Construction received?

23 A And overhead.

24 Q Okay. And then the grand total, would this

1 be reflective of the total amount paid by the homeowner
2 or Mr. Bayuk and Mr. Morabito to Dennis Banks
3 Construction?

4 A Yeah, if this is the correct final budget.

5 Q Now, when the work was completed did you have
6 an opinion as to the condition of the home upon
7 completion?

8 A Yeah. It was extremely expensive in quality
9 stuff.

10 Q All right. And can you give me a comparison
11 of this house with other homes that you might have
12 worked on in your entire career?

13 A Yeah. It was among the top.

14 Q Among the top, what would be some of the
15 other homes that you would compare it to that you've
16 worked on?

17 A Oh, the Hinckley residence out in Andrew
18 Lane. There really aren't any that quite had all the
19 different features of this house.

20 Q Okay. Any others that you can identify that
21 might be comparable in your experience?

22 A Not really.

23 MR. GILMORE: Pass the witness.

24 THE COURT: Cross-examination.

1 MS. HAMM: I have no questions for Mr. Banks,
2 your Honor.

3 THE COURT: Okay. Thank you, sir, you may
4 step down. You are excused.

5 THE WITNESS: Can I put this back? Should I--

6 THE COURT: No. Somebody else will do that
7 for you.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: Are you ready to call your next
10 witness?

11 MR. GILMORE: We are, your Honor. the
12 Defendants call their next witness, Darryl Noble.

13 BAILIFF: Sir, if you'll stand here, face the
14 clerk and raise your right hand, please.

15

16 DARRYL NOBLE,
17 called as a witness herein, being first
18 duly sworn, was examined and testified
19 as follows:
20

21 COURT CLERK: Thank you. Please be seated at
22 the witness stand.

23 THE COURT: You may proceed.

24 MR. GILMORE: Thank you, your Honor.

1 DIRECT EXAMINATION

2 BY MR. GILMORE:

3 Q Good morning, Mr. Noble.

4 A Good morning.

5 Q My name's Frank Gilmore and I am counsel for
6 the Defendants here, Mr. Sam Morabito and Mr. Edward
7 Bayuk.

8 A Uh-hum.

9 Q Do you know or could you recognize either of
10 the people --

11 THE COURT: Can he identify himself, sir?

12 MR. GILMORE: I'm sorry, your Honor.

13 BY MR. GILMORE:

14 Q Please identify yourself spelling your first
15 name and your last name for the record.

16 A My name is Darryl Noble. D-a-r-r-y-l, Noble,
17 N-o-b-l-e.

18 Q Mr. Noble, do you recognize or can you
19 identify any of the people that are seated at the table
20 to my left?

21 A No.

22 Q How about any of the people seated to my
23 right.

24 A No.

1 Q Mr. Noble, what is your profession or
2 occupation?

3 A I am a real state appraiser.

4 Q And how long have you been engaged in that
5 profession?

6 A Thirty-five years.

7 Q Do you hold any certifications or
8 classifications that entitle you to do your work?

9 A I do. I am a Nevada State Certified General
10 Appraiser.

11 Q Do you hold any other certificates issued by
12 State of Nevada or any other jurisdictions?

13 A No.

14 Q Okay. Have you received any formal training
15 or education that assists you in performing your work?

16 A I have.

17 Q And can you explain that for us?

18 A I took the original appraisal courses back in
19 1991 when they were required. And then taking
20 continuing education every two years.

21 Q So do you perform residential appraisals or
22 -- in addition to other types of appraisals?

23 A I do. I'm actually certified to appraise
24 residential, commercial, industrial land. And I have

1 appraised most of those, all of those.

2 Q And can you describe your education following
3 high school, if any?

4 A Yeah. I attended Reno Business College.

5 Q Did you obtain a degree?

6 A I have a diploma.

7 Q How long have you been doing residential
8 appraisals?

9 A I believe since 1985.

10 Q And how many appraisals in Washoe County
11 would you say you've done?

12 A Thirty-five years. Probably -- I have no
13 clue, 10,000, 15,000.

14 THE COURT: I'm going to stop you there. When
15 did you do your first appraisal? I'm sorry, I missed
16 that.

17 THE WITNESS: I believe it was 1985.

18 THE COURT: Okay. Thank you.

19 BY MR. GILMORE:

20 Q Have you been actively employed as an
21 appraiser since 1985?

22 A Yes.

23 Q Is that your primary profession?

24 A Yes.

1 Q Do you work on your own or are you a member
2 of a firm? Do you have partners? Explain how that
3 works.

4 A Currently I am self-employed. I work on my
5 own.

6 Q Are you familiar with the property at 8355
7 Panorama?

8 A Yes.

9 Q How is it that you came to be familiar with
10 this property?

11 A I was hired by Mr. Morabito to appraise the
12 property in 2010.

13 Q Did Mr. Morabito explain to you why he sought
14 an appraisal?

15 A I don't remember the exact details of it.
16 No. I -- and that's not uncommon. We get a lot of
17 phone calls and people just want to know the value of
18 their home and that's what I assumed this was.

19 Q Did Mr. Morabito explain to what his desired
20 result or outcome was with the respect to the appraisal?

21 A No.

22 Q Did Mr. Morabito or did anyone else say, for
23 example, I want you to give me the highest range of
24 value you could possibly give me?

1 A No.

2 Q Did you ever speak to Mr. Bayuk?

3 A I don't believe so.

4 Q Do you know what Mr. Bayuk's affiliation with
5 the Panorama property is?

6 A No.

7 Q Is there anything else you can remember about
8 conversations that you had with Mr. Morabito when you
9 were discussing potential assignment?

10 A What I do remember about it, it was -- it was
11 a rush. He just needed an appraisal quickly.

12 Q Did he tell you why?

13 A No.

14 Q And at some point in time did you agree, did
15 you and Mr. Morabito come to an agreement that you would
16 appraise the property?

17 A Yes.

18 Q And did you quote him a fee?

19 A Yes.

20 Q And was your fee standard or was it unusual?

21 A It was a standard fee it was 1500 dollars is
22 what I -- reading back in my notes it was 1500 dollars
23 and he said I will pay more if I can get it even
24 quicker. And I think we did a two-week turn time and he

1 said "I will pay you more if we can get it quicker than
2 that."

3 Q And what would be your typical turn-around
4 time for an appraisal of this nature?

5 A Probably two weeks at that time.

6 Q And do you recall the turn-around time for
7 this particular appraisal?

8 A I believe it was one week.

9 Q And explain to us in your experience what
10 would be done differently if you had a regular
11 turn-around time of two weeks as opposed to, as you say,
12 this one-week turn-around?

13 A It would just mean working nights and
14 weekends and possibly even putting other jobs that I
15 have in the cue off to get this one done.

16 Q Would you have performed any less work?

17 A No.

18 Q Would you have considered things differently
19 because of the shortened time frame?

20 A No.

21 Q So is it simply a function of having to make
22 this property a priority as opposed to changing the
23 scope of your work and your duties?

24 A That's correct.

1 Q Now, when you accepted the assignment for the
2 appraisal of this property what's the first thing that
3 you did?

4 A What would be the first thing. I would have
5 looked up the information from the county assessor's
6 records and then made an appointment to go out and take
7 a look at the property.

8 Q Now, what's the reference of the county
9 assessor's records?

10 A Typically it -- I say typically because this
11 house was different than what the county records were.
12 Typically it shows how big the house is. Certainly it
13 would show the land size. Shows the quality of the
14 property, bedroom, bath count, those kind of things.

15 Q In this case with respect to the Panorama
16 property do you remember doing a review of the
17 assessor's records?

18 A Yeah. That's common practice, yes.

19 Q Okay. You did do it in this case?

20 A Uh-hum.

21 Q Yes?

22 A Yes. Sorry.

23 Q And then you mentioned that your second
24 course of business would have been to inspect the

1 **property?**

2 A Correct.

3 **Q Tell us how that happened.**

4 A If I remember correctly, I made an
5 appointment with a -- I don't know the person was a
6 custodian or somebody of the property, and they met me
7 out there and immediately I realized that the house was
8 different than what the county records showed. The
9 county has a floor plan online, and immediately I could
10 tell that the house was different than what that floor
11 plan was.

12 **Q And what was it that you saw that caused you**
13 **to immediately recognize the difference?**

14 A It just looked larger, the angles of the
15 walls were different. It just did not look like the
16 floor plan.

17 **Q And what did that mean to you, if anything?**

18 A That meant a -- that I needed to measure the
19 property physically with a tape measure and come up with
20 what was really there as opposed to what the county
21 records showed.

22 **Q Okay. Now, do you recall the date that you**
23 **conducted the inspection of this property?**

24 A I do not.

1 Q Okay. If I were to show you a cover page of
2 your appraisal.

3 A Uh-hum.

4 Q That the date of this letter was September
5 24th, 2010. Okay? This is one of the doc -- this is
6 your appraisal record that's been admitted into
7 evidence?

8 THE COURT: What exhibit number is it?

9 MR. GILMORE: I'm sorry, your Honor. This is
10 276.

11 BY MR. GILMORE:

12 Q Do you recognize this letter?

13 A I do.

14 Q And if September 24th, 2010, was the day that
15 you issued this report, do you know approximately at
16 what point in time prior to this you would have
17 inspected the property?

18 A Within the week prior to that.

19 Q And how many different occasions did you
20 visit the property?

21 A Just the one time.

22 Q So your testimony is would be sometime
23 between maybe September 17th and September 24th?

24 A Correct. And it would actually be in the

1 appraisal. I just don't remember the exact day. It
2 would be the effective date of the appraisal. That
3 would have been the inspection date.

4 Q As you testified, once you saw the property
5 and you realized the appraiser's records were incorrect,
6 what would that require you to do in addition to what
7 you might normally do?

8 A That would mean, like I said, physically
9 measuring the property with a tape measure, drawing the
10 floor plan out, and then calculating the correct square
11 footage.

12 Q And did you do that?

13 A I did.

14 Q You pulled out a tape measure and --

15 A I did.

16 Q -- walked the footprint of the house?

17 A I did.

18 Q Did that require you to draw a new sketch of
19 the footprint of the house?

20 A Yes.

21 Q And did you prepare a sketch?

22 A Yes.

23 Q Did that sketch -- does that sketch appear in
24 your appraisal report?

1 A Yes, it does.

2 Q If I directed your attention to page 5 of the
3 report, "Subject: Floor Plan Sketch," do you see this?

4 A Yes.

5 Q Is this what you're referring to?

6 A That's correct.

7 Q And you prepared this yourself.

8 A Yes, I did.

9 Q With your calculations and measurements?

10 A Yes.

11 Q Okay. And is this how you came up with the
12 conclusion of the living area?

13 A That's correct.

14 Q And what did you conclude the living area was
15 based on your measurements?

16 A As it shows here. 6,331 square feet.

17 Q Do you know what the county assessor's
18 records shows?

19 A I believe it was 4,700 something.

20 Q Did you inquire of the owner as to why this
21 house had 6331 square feet by your measurement, but
22 county's assessor's records had some 2,000 square feet
23 less?

24 A I believe in our initial consultation or when

1 he first called me was he said that he had done some
2 remodeling and addition to the home.

3 Q And was it your understanding that that
4 remodeling addition was not showing up at the assessor's
5 records?

6 A That's correct.

7 Q Upon your initial inspection of the exterior
8 of the house what were you impressions?

9 A That it was a very good quality home that was
10 built very well.

11 Q Tell us what you saw about the facade and the
12 outside, if anything.

13 A I don't remember anything other than it being
14 -- I don't know. It was eight years ago. I don't
15 remember.

16 Q And same questions with respect to the
17 interior, did you inspect the interior of the house?

18 A I did, yes.

19 Q Okay. And were you given access to the
20 entire home?

21 A Yes.

22 Q Every room?

23 A Yes.

24 Q And what were your initial impressions as you

1 began your inspection of the interior of the home?

2 A Again, that it was a -- a very good quality
3 home that was very well built.

4 Q Is it common practice in your business to
5 inspect the homes that you appraise?

6 A Yes.

7 Q So if you have conducted several thousand
8 appraisals in your home -- in your career you've
9 inspected several thousand homes in your career?

10 A Correct. Yes.

11 Q Where would you place the condition and
12 quality of this home in relationship to the other
13 appraisals that you'd done in your career?

14 A In the top ten percent.

15 Q Okay. Can you give us a reference to any
16 other properties in your mind that might compare to the
17 quality that you viewed in the Panorama house?

18 A Yeah. Homes in Lake Tahoe, in Montreaux,
19 Arrow Creek.

20 Q Now, do you know who William Kimmel is?

21 A I do.

22 Q Have you ever worked with William Kimmel?

23 A No.

24 Q Do you recognize him to be an appraiser that

1 works in the Washoe County area?

2 A I do, yes.

3 Q If Mr. Kimmel issued a report that in his
4 opinion the Panorama property as of the appraisal date
5 was "Not in typical condition for the custom homes in
6 the area," and "substandard" condition, would you agree
7 with that?

8 A No, not based on my inspection, no.

9 Q All right. Tell us why you would disagree
10 with that assessment.

11 A Because, like I said, it was extremely nice
12 home in very good condition.

13 Q Let's take a look at your appraisal report.

14 A Okay.

15 Q Starting with page 6 and going through page
16 14, there are a number of pages that reflect the rooms
17 in the photographs. Do you see that?

18 A Yes.

19 Q Did you take these photographs yourself?

20 A I did.

21 Q Were they taken the same day you did the
22 inspection?

23 A They were.

24 Q On page 15 you address current market

1 conditions as they affected the appraisal report that
2 you were doing for this property. True?

3 A Correct.

4 Q Now, you identify in your report a "bubble".
5 Do you see that?

6 A Yes.

7 Q What were you referring to?

8 A To the increase in property values from 2004
9 through 2007, and then the subsequent decline.

10 Q So you would characterize it as the bubble
11 has since collapsed.

12 A Correct.

13 Q With property values declining.

14 A Correct.

15 Q Did you take into consideration the fact, in
16 your words, this bubble had collapsed? Did you take
17 that into consideration in giving your ultimate
18 conclusion of value on this home?

19 A I did, yes.

20 Q Okay. If we forward to page 17, you identify
21 continued current market conditions. I want to draw
22 your attention to the conclusory sentence of your
23 current market conditions paragraphs. You say here
24 "These factors are taken into account in the valuation

1 **process of this appraisal assignment." You see that?**

2 A Correct.

3 Q What does that mean?

4 A That means that all of those factors that I
5 considered involving the foreclosure rates at the time,
6 the declining property values, were all taken into
7 account as I analyzed this property.

8 Q And in your judgment you applied those market
9 conditions to this property in reaching your ultimate
10 conclusion of value?

11 A I did, yes.

12 Q Now, the next line on this same page
13 identifies methods of appraisal.

14 A Uh-hum.

15 Q You say that "There are three standard
16 approaches to value." Can you describe those for us as
17 they relate to residential property?

18 A To residential property. The sales
19 comparison approach compares a property to hopefully
20 comparable properties in their area that have sold. The
21 cost approach provides a value indication through the
22 land value, the current land value, plus the depreciated
23 cost to construct the property. And the income approach
24 is applied to rental properties where we determine what

1 the market rent is and then apply a factor to that to
2 come up with an indication of value.

3 Q Okay. In your experience and training in
4 what scenarios would you use a cost approach to
5 determine the fair market value of a residential
6 property?

7 A Most residential properties have a cost
8 approach applied. Where it becomes questionable is
9 older homes that have had significant depreciation that
10 it would be difficult to determine that depreciation
11 rate. So, basically, properties that have been built
12 within the last 15, 20 years or so, a cost approach is
13 very applicable.

14 Q Okay. And is there -- when talking about
15 this item of depreciation is there a mechanical way in
16 which that is done, or is that subjective?

17 A It is -- both. It's a -- the subjective
18 portion of that would be applying effective age to a
19 property. And so if a property was 50 years old and
20 everything had been completely redone. And I came up
21 and said this property has an effective age of ten
22 years, then it is a straight line depreciation of a home
23 has a expected life of 60 years and so it's only
24 depreciated by the ten years of the effective age.

1 Q With respect to this property did you
2 understand that it was income producing?

3 A No.

4 Q So did you attempt to calculate an income
5 approach valuation to this property?

6 A I did not.

7 Q Did you attempt a cost approach valuation?

8 A I did.

9 Q And did you attempt a sales comparison
10 approach?

11 A I did.

12 Q Now, you say here at the bottom of page 17 "A
13 search was made of the subjects Reno/Sparks area for
14 land and improvement data considered to have
15 comparability to the subject." What does that mean?

16 A That means I would have searched for land in
17 the area that is similar in size. This property is on
18 five acres so, typically, I would have searched for
19 properties, say, between one and ten acres.

20 Q And how you do that practically?

21 A Through MLS.

22 Q Okay. The Multiple Listing Service?

23 A Multiple Listing Service, yes.

24 Q And what does the Multiple Listing Service

1 provide?

2 A It providers sales and listings of most
3 properties in Northern Nevada.

4 Q Okay. And then you say "All comparable sales
5 have been inspected and verified with sources considered
6 to be reliable." What is that intended to mean?

7 A That means a drive-by -- I have since changed
8 that in my appraisal. That a drive-by inspection of the
9 property of the sales was performed, so an exterior
10 inspection only, a picture of the outside was taken.

11 Q Of the comparable properties?

12 A Correct.

13 Q Does that also include in review of the
14 assessor's records with respect to comparable
15 properties?

16 A Yes. Just courses is considered reliable
17 would be MLS and county records.

18 Q Thank you. Now, the next page, page 18 you
19 give us a breakdown of the cost approach.

20 A Right.

21 Q Tell us roughly how you go about doing that.

22 A So the first portion of that is the land
23 sales that I found to be similar to the subject
24 property. And that I came up with a price per square

1 foot on each of those. And then considered the
2 comparability of each of those and then applied what I
3 thought an accurate price per square foot for the
4 subject property would be.

5 Q When you say "land sales," what do you mean?

6 A Sales of similar vacant land.

7 Q Unimproved?

8 A Unimproved land, yes.

9 Q Got it. And did you consider these three
10 sales, Diamond J, Juniper Hill and Zoe Lane to be
11 comparable to the Panorama road?

12 A I did.

13 Q What kind of factors would you consider in
14 determining whether the land sales were comparable?

15 A Size, location, whether it's on gravel road
16 or not, those factors.

17 Q Okay. And did you reach a conclusion that
18 Panorama was in some way comparable to these three
19 examples?

20 A I did.

21 Q And in what way was it comparable?

22 A I don't remember the specifics of it.

23 Q Okay. Did you reach a conclusion as to the
24 square foot that you attributed to the Panorama land

1 without improvements?

2 A Can you repeat that?

3 Q Sure. Let me read this to you.

4 A Okay.

5 Q This is from your report, page 18. "Analysis
6 of the available single-family residential sales
7 provided a value estimate of \$4.25 per square foot, or
8 \$930,000 for the subject site's 5.0 plus/minus acre as
9 if vacant land."

10 So did you compare the square footage of these
11 other sale properties and reach a determination as to
12 what you thought the square footage would be for
13 Panorama property if it was vacant?

14 A Yes.

15 Q And what did you conclude?

16 A I believe it's -- it was \$4.35 a square foot.

17 Q This says 4.25. Does that --

18 A Yeah, I can't read that.

19 Q I know it's not real clear.

20 A It's not very clear.

21 Q What in your judgment made this property more
22 per square foot than Juniper Hill but -- and more than
23 Diamond J Place but less than Zoe, do you remember?

24 A I do not.

1 Q Would that have been something that you based
2 your own judgment upon or would it have been some
3 mechanical review you did with respect to calculations?

4 A It would have been an opinion, my opinion.

5 Q Are there any documents or calculations you
6 could direct us to that would explain how you got to
7 4.25 a square foot?

8 A No.

9 Q Now, in the last sentence of this same page
10 you explain "Depreciation in all forms of obsolescence
11 were estimated through observation of the building and
12 reference to national and local age life chart data."
13 What does that mean?

14 A That means, like I was explaining, age life
15 charts are estimating the respective age of the property
16 and the remaining life of the property, and determining
17 a depreciation rate based on those numbers.

18 Q It's your testimony when you conducted the
19 cost approach that you considered depreciation factors?

20 A Yes.

21 Q If you turn the page, this is self-identified
22 as the cost breakdown. Tell us what this chart consists
23 of.

24 A This is my reproduction of the results of

1 Marshall & Swift which is a national cost calculating
2 firm. So I put the information for the specific
3 property into Marshall & Swift and it produced a record,
4 and then I reproduced that just for the appraisal.

5 Q Okay. And what types of factors would be put
6 into the Marshall & Swift report with respect to the
7 particular elements of this house?

8 A So it would have been the square footage, the
9 --- any site improvements. I think on there is the
10 garages and the concrete work and things like that. And
11 then also the quality and condition are also two items
12 that are put in, so. Oh, and the age.

13 Q And when you assigned quality to this cost
14 rang do you recall what it was?

15 A It was the highest quality they had
16 available. I believe excellent is what they term it.

17 Q And so are these numbers in this far right
18 column, for example, the 2.8 million dollars assigned to
19 the single family residence with garage, is this a
20 calculation that is come from the Marshall & Swift
21 calculator?

22 A Correct.

23 Q And how, if at all, is depreciation factored
24 into that number?

1 A It's not until later in the -- later on the
2 chart.

3 Q Okay. So these were your inputs, right,
4 attached garage?

5 A Yes.

6 Q Concrete flat work?

7 A Correct.

8 Q Asphalt paving, swimming pool, those are the
9 inputs you put into the calculator and it gave you these
10 numbers. True?

11 A Yes, that's correct.

12 Q And then it gave us a total improvement cost
13 of 3.4 million and change?

14 A Right.

15 Q Then you added the indicated land value that
16 you had already described of 930,000?

17 A Right.

18 Q And that arrives at 4.360 million.

19 A That's correct.

20 Q Do you see that? In what way is depreciation
21 factored into this calculation?

22 A It must be included. I'm sorry, it must be
23 included. It's normally a line item. And I believe
24 that I included it in the -- in the -- under where it

1 says cost it's just already included in that. So
2 instead of being a line item at the bottom, that number
3 would have been the depreciated number through Marshall
4 & Swift, I'm sorry.

5 Q Understood.

6 A Uh-hum.

7 Q Now, you did not ultimately rely on the cost
8 approach to determine your final conclusion of value.
9 True?

10 A That's correct.

11 Q So if you turn the page -- and you could
12 follow along, this is in that same binder. It's Exhibit
13 276. If you want to follow along you can, or if you can
14 follow me on the screen.

15 A Yeah, I can see it okay up there.

16 Q Okay. So on page 20 of your report you
17 identify the sales comparison approach to value.
18 Agreed?

19 A Yes.

20 Q Now, before we discuss that I'd like to go
21 back to page 3. I'm sorry, page 2, bottom of page 2.
22 You indicate here that your purpose is to appraise the
23 current as-is market value of the subject for internal
24 decision making purposes. What does that mean?

1 A That means it was just provided to the owner
2 of the property for them to make decisions on what they
3 were going to do with the property. Or at that point it
4 was not my concern what they were doing with the
5 appraisal, they just wanted to know the value of their
6 property.

7 Q Okay. And when you say as-is market value,
8 what is that intended to mean?

9 A It means as the property was when I inspected
10 it.

11 Q Turn to the page. You give a definition of
12 market value. Where does this come from?

13 A It comes from -- hum. I believe it's the
14 dictionary of appraisal terms. I don't remember the
15 exact name of the book, but it's the dictionary of
16 appraisal terms.

17 Q Are these -- one, two, three, four, five, are
18 these assumptions that you make with respect to buyer
19 and potential seller that inform your judgment on your
20 ultimate conclusion of value?

21 A Yes.

22 Q Okay. Explain some of these for us. "The
23 buyer and seller are typically motivated."

24 A That typically means that the seller of the

1 property is not under duress, it's not a foreclosure,
2 it's not a short sale, things like that, and that the
3 seller is looking for this type of a home.

4 Q Okay. "Both parties are well informed and
5 acting in his own best interest." What does that mean?

6 A That means that the general public is not
7 typically -- what's the term, savvy when it comes to
8 real estate and so that hopefully they have an agent who
9 can inform them of the process.

10 Q Okay. And I'd like to spend some time on
11 number three. "A reasonable time is allowed for
12 exposure in the open market."

13 A Um-hum.

14 Q Can you in your education, training and
15 experience identify for us how exposure in the open
16 market or the time frame of certain properties exposure
17 in the open market vary depending on the specific
18 property that you're dealing with?

19 A It's very -- very time dependent, but most of
20 that information is available through MLS. It's a term
21 called days on market. And so this type of a property
22 in that time frame was taking between a year and two
23 years to market and sell.

24 Q And can you explain why this house, this

1 property might take one year to two years to sell and
2 another property in a different neighborhood might take
3 fewer days?

4 A Because of the size of the property and
5 because of the market as it was in 2010 as compared to,
6 say, a \$200,000 property that would have many more
7 buyers that may only take 60 days to sell.

8 Q Is it your experience that a house on the
9 lake-front Tahoe that's being listed for ten million
10 would be on the open market for sale longer than a
11 house, \$300,000 track home in Damonte Ranch?

12 A Correct.

13 Q Why is that?

14 A Mainly there are less buyers for that type of
15 a property.

16 Q You identify on the following page, the
17 bottom of page 4 "Through an analysis of custom luxury
18 residential properties in the Reno/Sparks area it is
19 estimated the subject's marketing time is 12 to 24
20 months?

21 A Uh-hum.

22 Q How did you reach that conclusion?

23 A Like I said, by using MLS data.

24 Q Did you make any adjustments to the MLS data

1 with respect to this particular property? Or did you
2 just pull that from the MLS anticipated days on market?

3 A That's just from MLS.

4 Q Okay.

5 A That's actually a comparison to larger homes
6 because they're all -- they're kind of all over the
7 place, but that was my estimate based on the information
8 that was through MLS.

9 Q Let's go back to page 20 of your report which
10 is a comparable sales. Now, you indicate in your report
11 that you're seeking comparables in regards to size,
12 type, quality, location, et cetera, for direct
13 comparison to the subject. You agree with that?

14 A Correct. Yes.

15 Q Did you endeavor to try to identify
16 comparable projects with regard to size, type, quality,
17 location?

18 A Yes.

19 Q And when you say et cetera, what are other
20 considerations that might bear on your comparable
21 designation?

22 A To a limited degree bedroom and bath count,
23 garage size, things like that, landscaping.

24 Q What about swimming pools?

1 A Yes, that.

2 Q Size of the pasture land?

3 A Correct. Yes.

4 Q Whether or not there's a pond?

5 A Yes.

6 Q Any other specific characterizations you can
7 think that might have informed your judgment on
8 comparables with respect to this subject property?

9 A No.

10 Q No?

11 A No, not really.

12 Q So these four -- these five comparable sales,
13 how did you identify these properties as being
14 comparable to the subject property?

15 A The main determining factors were the size of
16 the homes, the size of the land, and the location of
17 them.

18 Q Do you have a recollection as to what you
19 reviewed with respect to any of these five properties
20 that informed your judgment that they were comparable to
21 the subject property?

22 A Not specifically, no.

23 Q Okay. Have you reviewed your work papers
24 associated with this appraisal report in anticipation of

1 coming to testify today?

2 A Yes.

3 Q Do you recall being deposed back in spring of
4 2011?

5 A I do.

6 Q And do you recall what the purpose of that
7 deposition was?

8 A No.

9 Q If you'd grab the book Volume 7, bottom row,
10 third from the right, same one we looked at before, that
11 one right there. Now, if you'll turn to Exhibit 277,
12 I'd ask you to identify the documents in there if you
13 can.

14 A Yes.

15 Q Do you have any familiarity with these
16 documents?

17 A I do. This appears to be my work file.

18 Q Okay. I'll represent to you that on the
19 first page, Noble 741, that refers to --

20 THE COURT: Okay. That document is not
21 admitted.

22 MR. GILMORE: I know. I'm going to ask him
23 one more foundation and then I'm going to offer it.

24 THE COURT: Don't talk about the content.

1 BY MR. GILMORE:

2 Q There's a stamp on the bottom of this page,
3 Noble 741. I'll represent to you that that was an
4 exhibit that was marked in your April, 2011, deposition.
5 Are you aware of that?

6 A I believe so, yes.

7 Q Are you aware of providing this file to the
8 lawyers who took your deposition back in 2011?

9 A Yes.

10 MR. GILMORE: Your Honor, with that
11 identification I will offer Exhibit 277 into evidence.

12 MS. HAMM: No objection, your Honor.

13 THE COURT: Okay. Exhibit 277 is admitted.
14 (Exhibit 277 is admitted into evidence.)

15 THE COURT: And I'm sorry, what exhibit number
16 was it in the deposition?

17 MR. GILMORE: It was 741.

18 THE COURT: And do we have this witness's
19 deposition?

20 MR. GILMORE: We do.

21 THE COURT: Are you going to need it?

22 MR. GILMORE: I don't intend to offer it, no.

23 THE COURT: Okay.

24 MR. GILMORE: Although we have stipulated to

1 its use, if necessary.

2 BY MR. GILMORE:

3 Q And before we look any further to Exhibit
4 277, I'll direct your attention to Exhibit 281, in the
5 same binder.

6 Sir, do you recognize the documents that are
7 contained in Exhibit 281?

8 A I believe this is the information, excuse me,
9 taken from a CD that was also provided as part of my
10 work file.

11 Q When you say provided as part of your work
12 file what are you referring to?

13 A The actual physical file that was subpoenaed
14 when I -- when I gave that deposition.

15 Q Understood.

16 MR. GILMORE: Your Honor, I'll offer Exhibit
17 281 into evidence.

18 MS. HAMM: No objection.

19 THE COURT: Exhibit 281 is admitted.

20 (Exhibit 281 is admitted into evidence.)

21 MR. GILMORE: And for the record, Exhibit 281
22 was Exhibit 742 of your deposition back in 2011.

23 BY MR. GILMORE:

24 Q Do you see the designation at the bottom of

1 the first page?

2 A I do, yes.

3 Q Can you help us understand the contents of
4 277 and the contents of 281 as it relates to your work
5 file?

6 A So this is the information that I would have
7 used to select comparable sales for the appraisal, as
8 well as, I believe, the information that was used in the
9 cost approach.

10 Q And can you identify for us which of these
11 exhibits would have -- is there only one of these
12 exhibits that contains the comparable work file, the
13 comparable sales work file? Or do both of these
14 exhibits contain --

15 A I think they both do, but let me take a look
16 here. So Exhibit 277 includes the, I believe -- can you
17 put that back up?

18 Q I can.

19 A I believe this includes the comparables that
20 I selected and printed.

21 Q Okay.

22 A The other ones were just part of my
23 electronic work file.

24 Q Understood. Okay. So in your report you

1 considered not only comparable past sales, but also
2 comparable luxury home listings. Do you see that --

3 A Yes.

4 Q -- on page 20 of your report?

5 A Yes.

6 Q Explain to us why you would have considered
7 listings in your comparables.

8 A Typically listings are placed in an appraisal
9 to show the reader what else would be available for sale
10 as of the date of the appraisal.

11 Q And on these luxury home listing comparables
12 did you do drive-bys of these properties?

13 A I believe I drove by all of them, but just to
14 clarify, listings are only shown for illustrative
15 purposes. I don't know if it says it in this report,
16 but we do not rely on them because they're not closed
17 sales.

18 Q Understood.

19 A They're just shown for illustration.

20 Q Okay. So are you prepared today to testify
21 as to what way the subject property was compared to 425
22 Juniper Hill?

23 A Specifically? I don't.

24 Q Okay.

1 A I don't know it. I don't remember.

2 Q Now, your report appears to conclude that
3 pursuant to your investigation of this sale, the Juniper
4 sale that occurred approximately three months before
5 subject valuation date, the square footage was \$488 per
6 square foot. How do you arrive at that particular
7 number?

8 A That's a simple calculation of the sales
9 price divided by building square footage.

10 Q And then when you get the price paid per
11 square foot do you make adjustments upward or downward
12 in comparison to the subject property?

13 A Yes.

14 Q And, roughly speaking, how do you do that?

15 A Typically it's done on a graph or a grid.
16 That was not done in this case, mainly because of the
17 time constraints of getting the job done in a week.

18 Q Can you testify today as to whether you
19 adjusted upward the price per square footage of the
20 subject property relative to the sale number one or
21 whether you adjusted it downward?

22 A No, not specifically.

23 Q Okay.

24 THE COURT: I'm going to stop you there. I'm

1 a little confused.

2 THE WITNESS: Yeah.

3 THE COURT: You said when you appraised the
4 house you gave it a value based on its square footage,
5 and then add the square footage that you had found for
6 comparable vacant land sales. When you talk about these
7 comparables, you aren't adding the square footage of the
8 acreage, you're just taking a number that was the square
9 footage for the house and the acreage; is that correct?

10 THE WITNESS: That would be correct.

11 THE COURT: Okay. Thank you.

12 BY MR. GILMORE:

13 Q Your spread sheet here identifies the Juniper
14 Hill Road having 3.13 acres. Correct?

15 A Correct.

16 Q And did you understand what the acreage of
17 the subject property was?

18 A It was five acres.

19 Q Okay. And so your ultimate conclusion of
20 value identifies 6331 square feet, and you give it an
21 ultimate conclusion of value 4.3 million. Do you see
22 that?

23 A I do.

24 Q So it's a simple calculation to find out what

1 price per square footage you assessed the subject
2 property at. True?

3 A That's correct.

4 Q You could take 4.3 million, divide it by 6331
5 and you would get something in the range of \$680 a
6 square foot. Right?

7 A I believe so, yeah.

8 Q Okay. So --

9 A Is that not at the bottom of that page?

10 Q Well, the conclusion is not, but --

11 A Okay.

12 Q -- you do have in your comparable, you
13 identify the subject, right, Panorama? You identify
14 five acres. You give you the quality assessment?

15 A Uh-hum.

16 Q The date of the building. The square
17 footage, but then you don't complete necessarily the
18 value per square footage. I think that just comes from
19 doing the simple calculation you identify.

20 But if the math were to reflect that you gave
21 this home an ultimate conclusion of value at \$681 per
22 square foot, you would agree that of your comparable
23 sales only number five is in the same range as the
24 subject property. True?

1 A Correct.

2 Q Okay. Now, what, in your judgment, placed
3 the subject property in the same range per square foot
4 as the Boulder Glen Way property?

5 A As I believe it says on the next page, it is
6 -- my estimate was at the high end of the range. And
7 that range -- so that would be that last sale there.

8 Q Okay. Are there any specifics you can
9 identify today as to why you believed the subject
10 property was more comparable to Boulder Glen Way, for
11 example, than it was to 8000 Lakeside Drive?

12 A Not specifically, no.

13 Q If you go through your work papers, on
14 Exhibit 277, would that further inform those
15 comparables?

16 A It may. Let me look at it.

17 THE COURT: I don't have -- I haven't opened
18 that exhibit up, but can you tell me where Boulder Glen
19 Way is located?

20 THE WITNESS: It's in the same general
21 neighborhood. Old southwest suburban Reno.

22 THE COURT: You don't know where?

23 THE WITNESS: Off of Huffaker, I believe?

24 THE COURT: Boulder Glen Way is?

1 THE WITNESS: Uh-hum.

2 MR. GILMORE: Your Honor, there is a --

3 THE COURT: I know that there's a picture.

4 MR. GILMORE: Yeah.

5 THE COURT: I know there is. I just was --

6 MR. GILMORE: Oh, okay.

7 THE COURT: Didn't want to pull the binder out
8 right now, thought maybe I could get it from the
9 witness.

10 BY MR. GILMORE:

11 Q Let me show you what's page 26 of your
12 report. The subject property is the red flag. True?

13 A Correct.

14 Q Which is just off of Huffaker South Virginia,
15 just west of South Virginia. Is that true?

16 A That's correct.

17 Q And these are the various comparable sales --

18 A Correct.

19 Q -- that you referred to?

20 A Yes.

21 Q And their respective locations?

22 A Correct.

23 Q Now, going back to that question I asked you
24 just a moment ago. In reviewing Exhibit 277 can you

1 further identify what considerations you gave to these
2 other properties in determining that the subject
3 property commanded a higher price per square foot than
4 comparable sales one through four?

5 A I believe it was mainly based on my
6 experience in appraising luxury homes, and I placed it
7 at the high end of the market just based on the quality
8 and condition of the subject property.

9 Q Okay. Let's give some treatment to this
10 Boulder Glen Way which --

11 A Yes.

12 Q -- this is 5, which as we saw in the map, is
13 around in the same neighborhood as the subject property.
14 Right?

15 A Yes. Correct.

16 Q And you identified that it was sold April of
17 2009. Right?

18 A Correct.

19 Q That's about 18 months or so before the
20 valuation date of the subject property. True?

21 A Yes. Correct.

22 Q What consideration did you give to the fact
23 that there was some time lapse between the sale of that
24 property and the subject valuation?

1 A I would have considered that. I also would
2 have considered that that property, even though selling
3 a year earlier, or more, was not the same quality, it
4 was a lower quality and it had smaller land. And it was
5 also a smaller home and so those items would have been
6 adjusted and, basically, offset each other, so that the
7 number would have still come up to the number that I
8 concluded with.

9 Q Okay. So, for example, you've assigned
10 quality of HV 2 to the Boulder Glen Way.

11 A Correct.

12 Q What is that in comparison to the subject
13 property?

14 A The subject I estimated at an HV 4.

15 Q And what does that mean to the lay person not
16 understanding what these HV 2s and HV 4s are intended to
17 reflect?

18 A Those quality ratings are -- the ones on the
19 comparable sales and listings are directly from county
20 assessor records. Typically the quality used to run
21 from, basically, poor to excellent, and then the county
22 -- I'm not sure how they determined this, they now apply
23 HV, which stands for high value, 1 through, I believe it
24 goes all the way to 8 now. There are some homes in

1 Montreaux that are HV 8s. And so at the time of this
2 appraisal they only went to 4. That would be the
3 highest quality.

4 And so what I determined in my inspection was
5 the home on county records, the subject home on county
6 records was, I believe, it was either a good or an
7 excellent. But after the remodeling that was done, and
8 upon my inspection, I rated it as a high value 4, so at
9 the high end of the range.

10 Q So in your estimation the quality of the
11 subject property was at least two steps higher than the
12 Boulder Glen Way property?

13 A Correct.

14 Q And the Boulder Glen Way had two acres of
15 land, whereas, the subject property had five acres, what
16 was the -- how did that factor into your ultimate
17 conclusion of value?

18 A Like I just said, it would have been an
19 adjustment for time for that property selling a year and
20 a half earlier. And then an adjustment for -- these
21 adjustments are made to the price per square foot of the
22 building even though it's -- the acreage is different it
23 would be the adjustment to. And in my estimation I
24 figured that those items were what we call offsetting.

1 And so the appreciation that would have brought
2 depreciation that would have brought those that number
3 down, those other numbers would have brought it right
4 back up to where it was.

5 Q Now, are you aware that Mr. William Kimmel
6 has issued a letter opinion in which he addresses your
7 use of some of these subject properties?

8 A You mean the sales?

9 Q Sorry. The subject comparable sales?

10 A No.

11 Q You're not aware that Mr. Kimmel has done
12 that?

13 A That has reviewed my appraisal?

14 Q Correct.

15 A No.

16 Q There's another binder behind you. That will
17 have Exhibit 222 in it. I'd like to --

18 MS. HAMM: 22 is admitted by stipulation.

19 (Conference between attorneys.)

20 MS. HAMM: Your Honor, Mr. Gilmore is about to
21 refer to Exhibit 222. It has not been admitted into
22 evidence but we stipulate to its admission.

23 THE COURT: Okay. Thank you. 222 is
24 admitted.

1 (Exhibit 222 is admitted into evidence.)

2 BY MR. GILMORE:

3 Q Now, Mr. Noble, on page 3 of this Exhibit
4 222, Mr. Kimmel gives some treatment to your use of the
5 Boulder Glen Way property. And he says top of page 3 of
6 that exhibit --

7 A Okay.

8 Q -- starts "His last sale".

9 A Okay.

10 Q He indicates that your use of the Boulder
11 Glen Way property somewhat misrepresents the comparable
12 because this property also has 3300 square feet of
13 basement. Did you consider the fact that this property
14 had a basement when you evaluated it as a comparable to
15 the subject property?

16 A I don't remember doing that, no.

17 Q Okay. Now, Mr. Kimmel then says "It is noted
18 the basement areas do not contribute as much if they are
19 fully" he says "finished than ground floor, and the
20 second floor areas, but they certainly must be
21 considered as they were part of the purchase price."

22 Do you agree with his assessment that basement
23 areas even if finished do not contribute as much? I
24 assume he means as much to the factors in determining

1 the comparable.

2 A Correct. Yes, I do.

3 Q Okay. So if you had been made aware that the
4 Boulder Glen Way property had a 3300 square feet of
5 basement, is there any way you would have known at the
6 time whether it was a finished basement or an unfinished
7 basement?

8 A Let me look back at these other documents. I
9 believe I -- I probably did consider it, and if it's
10 unfinished basement like he said, it wouldn't have
11 contributed much. Let me see if the information that we
12 have here shows that. I don't remember. It does show
13 that it has a basement.

14 Q Now, you're referring to Exhibit 277, Bates
15 number Superpumper 1136. Right?

16 A 1136, that's correct.

17 THE COURT: And that was 277 did you say?

18 MR. GILMORE: That's correct.

19 BY MR. GILMORE:

20 Q What are we looking at here on Superpumper
21 1136, Exhibit 278?

22 A This is Washoe County Assessor's information.

23 Q Okay. And what does this tell us about a
24 basement, if any?

1 A It shows finished basement.

2 Q Where can I find that?

3 A On the right-hand side where it says click
4 here for building square footage, right there where
5 you're pointing.

6 Q Now, you had this record in your possession
7 when you did your comparable sales analysis. Right?

8 A Correct. Yes.

9 Q IN what way did that finished basement factor
10 into how Boulder Glen Way was comparable to Panorama?

11 A I don't remember.

12 MS. HAMM: Objection, your Honor, assumes
13 facts not in evidence and leading.

14 THE COURT: It's sustained. Plus he said he
15 didn't know. He answered you and he said he didn't know
16 --

17 THE WITNESS: I don't remember.

18 THE COURT: -- how it factored in, but I was
19 going to sustain the objection but we have the answer
20 already.

21 BY MR. GILMORE:

22 Q Ultimately you concluded that the price per
23 square foot of the Boulder Glen Way exceeded the price
24 per square foot of the subject property. True?

1 A Yes.

2 Q Even though the quality was -- quality of
3 Boulder Glen Way was less than the subject property.

4 A Right. Correct.

5 Q And even though it had three acres fewer of
6 acreage. True?

7 A Correct.

8 Q So can you help explain and reconcile why
9 Boulder Glen Way, in your opinion, was a superior
10 property to the subject property?

11 A As I stated before, what I -- what I
12 concluded in that was that I placed the specific
13 property at the high end of the price per square foot
14 range, more than specifically to this one property.

15 MR. GILMORE: Understood. No more questions
16 at this time.

17 THE COURT: Cross-examination. You may
18 proceed.

19 MS. HAMM: Thank you.

20 CROSS-EXAMINATION

21 BY MS. HAMM:

22 Q Good morning, Mr. Noble.

23 A Good morning.

24 Q When you conducted the appraisal of the

1 Panorama property, you were self-employed but working
2 out of the offices of Paul Alves; is that right?

3 A That is correct.

4 Q And you worked on a 50/50 commission split;
5 is that right?

6 A That's correct.

7 Q You're not a member of the Appraisal
8 Institute, are you?

9 A No.

10 Q And you weren't at the time you conducted the
11 appraisal of the Panorama property.

12 A No.

13 Q Now, the appraisal of the Panorama property
14 was signed by Mr. Alves; is that right?

15 A That's correct.

16 Q And that's because Paul Morabito said that it
17 had to be signed by an MEI appraiser; is that right?

18 A Yes. It was requested, yes.

19 Q And you spoke to Mr. Morabito for the first
20 time on approximately September 17th of 2010. Right?

21 A Approximately.

22 Q And Mr. Morabito did tell you that the
23 property had to be appraised because of some pending
24 legal proceedings; isn't that right?

1 A Yes.

2 Q Now, Mr. Morabito also indicated to you that
3 he paid approximately 2.9 million dollars for the
4 property; is that right?

5 A That's correct.

6 Q And he thought that at the height of the
7 market the property was worth approximately 7.7 million.

8 A I believe so.

9 Q Do you recall that?

10 A I believe so, yes.

11 Q And he told you that at the present time,
12 which is September of 2010, he thought it was worth
13 between three and five million dollars. Right?

14 A I believe he did, yes.

15 Q You requested plans for the property's
16 remodeling and renovation and did not receive them; is
17 that right?

18 A That's correct.

19 Q When you conducted your physical inspection
20 of the property, you determined that it had square
21 footage of about 6300 square feet; is that right?

22 A Correct.

23 Q And the county records indicated it was
24 something less. Right?

1 A Correct.

2 Q But you knew that in 2005 the property had a
3 little over 6,000 square feet; isn't that right?

4 I'm not trying to trick you. If you want --

5 A No.

6 Q -- to look at your work file, Exhibit 277?

7 A Okay.

8 Q And take a look at the document that's
9 stamped 00114 1114 at the bottom, to the next page
10 001115?

11 THE COURT: And that's Exhibit again 277?

12 MS. HAMM: Yes, ma'am.

13 BY MS. HAMM:

14 Q It actually continues on to 1116.

15 A Yes.

16 Q Do you recognize that to be the 2005 listing
17 for the property?

18 A That is, yes.

19 Q And on that listing, Mr. Noble, it indicates
20 6,254 square feet of total living space; isn't that
21 right?

22 A Correct.

23 Q So if an addition to the property had been
24 made after 2005 it was not a material amount of space.

1 Right?

2 A I don't know. Those numbers often are
3 different than what the assessor has that I don't -- and
4 it even says that they got it from the assessor, but if
5 you look at the assessor's records that's not the same
6 thing, so.

7 Q And earlier you indicated that you thought
8 the assessor's records and MLS data were reliable
9 sources of data. Right?

10 A Yes.

11 Q Now, you conducted both a cost approach and a
12 sales comparison approach. Correct?

13 A Correct.

14 Q And the cost approach is where you entered in
15 the information into the Marshall & Swift system for the
16 property --

17 A Correct.

18 Q -- multiplied it by the square footage and
19 received a total number. Correct?

20 A That's correct.

21 Q And in that same exhibit, Exhibit 277, do you
22 recognize that as your Marshall & Swift cost report?

23 A I do.

24 THE COURT: What page?

1 MS. HAMM: Your Honor, that is Bates stamped
2 Superpumper 001119 at the bottom of Exhibit 277.

3 THE COURT: Thank you.

4 BY MS. HAMM:

5 Q Now, in your appraisal, which is Exhibit 276
6 on page 19, I hate to make you flip back and forth like
7 that but I think I need to. You indicated that the
8 basic improvement costs were \$2,812,426; is that right?

9 A Correct.

10 Q Now, in your Marshall & Swift cost data, that
11 is not the number that we find in your subtotal, is it?

12 A It is not.

13 Q And when you entered data into the Marshall
14 & Swift system, you entered an equality of 6, excellent.
15 Right?

16 A That's the highest value that it allows in
17 that system, yes.

18 Q But in your appraisal you indicated that the
19 property had a high value of 4.

20 A Correct.

21 Q Is that right?

22 A That's correct.

23 Q Okay. So you entered in high value 6 into
24 the Marshall & Swift system?

1 A Uh-hum.

2 Q And you arrived at \$2,180,411 for the
3 structure; is that right?

4 A That would be correct, yes.

5 Q Okay. And then you upped it to approximately
6 2.8 million dollars in your report; is that right?

7 A That's correct. I adjusted for the fact that
8 the Marshall & Swift only allows for up to excellent, so
9 I applied an adjustment, because this is beyond
10 excellent. It was a high value 4 in my estimate.

11 Q Well, how does Marshall & Swift and their
12 value system compare to the assessor's or the county's
13 value system?

14 A I don't know.

15 Q Well, you indicated in your report that it
16 was a high value 4. Right?

17 A Correct.

18 Q And in Marshall & Swift you input a quality
19 of 6. Right?

20 A Correct.

21 Q And even with that increase in quality to 6,
22 you came to 2.18 for the structure itself. Right?

23 A The high value is above the 6.

24 Q Okay. So you --

1 A It would be the equivalent as of if Marshall
2 allowed me to put a 10. Does that clarify that?

3 Q **Not really.**

4 A Okay.

5 Q Because my question then is what is the --
6 does 6 mean high value 6?

7 A No.

8 Q Okay.

9 A Six means excellent.

10 Q Then how does Marshall & Swift compare to the
11 county's system?

12 A I don't know how the county does it, but I'm
13 -- I would assume that the 6 which is -- which is not a
14 -- is not applicable to the HV, 1, 2, 3, 4, 5, so that
15 -- so poor would be 1 and 6 would be excellent. And
16 then beyond that would be high value 1, high value 2,
17 high value 3.

18 Q Okay. So you just concluded that this
19 property was so nice that you would tack on
20 approximately 25 percent in value --

21 A Correct.

22 Q -- is that right?

23 A That's correct.

24 Q And you didn't do anything else to establish

1 the cost numbers with respect to this property, did you?

2 A No.

3 Q You didn't talk to any local builders?

4 A No.

5 Q And in your appraisal -- flip back to that
6 one for you. Can you go back to page 19 of your
7 appraisal for me?

8 A Yes.

9 THE COURT: Exhibit 276, page 19. Correct?

10 MS. HAMM: Yes, ma'am.

11 BY MS. HAMM:

12 Q The Bates stamp at the bottom is Superpumper
13 001095.

14 And that's just really tough to read, isn't
15 it? You added additional costs in here for the nonhome
16 aspects of the property like the paving, the swimming
17 pool, the barn with the in-law quarters; is that right?

18 A Correct. Yes.

19 Q Okay. And so you came to approximately 3.43
20 million for the property exclusive of the land cost.
21 Right?

22 A That was correct, yes.

23 Q You added in the land cost of \$930,000, and
24 you got to 4.36 million; is that right?

1 A That's correct.

2 Q Now, you indicate that you took into account
3 depreciation. Right?

4 A Correct.

5 Q And you discussed physical depreciation,
6 straight line depreciation for the property. Right?

7 A Correct.

8 Q Would you agree that there's generally three
9 types of depreciation when you're doing a cost approach;
10 is that right?

11 A That's correct.

12 Q Those are physical depreciation?

13 A Correct.

14 Q Functional depreciation?

15 A Correct.

16 Q And what they used to call economic
17 obsolescence but now they call it external obsolescence
18 or extreme outcrease. Right?

19 A Right.

20 Q And you would agree that functional
21 obsolescence is associated more with the characteristics
22 of property like its design, its finishes, and it's in
23 relation to what typical market tastes and standards
24 require.

1 A Correct.

2 Q So if you have a property that has 16-foot
3 ceilings when the rest of the neighborhood has 12-foot
4 ceilings, then the property might be considered -- might
5 require more depreciation as a component of functional
6 depreciation; is that right?

7 A Possibly.

8 Q That's just one example. Right?

9 A Correct. Right. I wouldn't consider ceiling
10 height as functionality, but functionality to me would
11 be more like a to get to the bathroom you have to go
12 through the bedroom. The only bathroom in the house
13 you'd have to go through a bedroom or something like
14 that, that's not functional.

15 Q Do you agree that overimprovement of a
16 property or underimprovement of a property fall within
17 functional obsolescence?

18 A Yes.

19 Q And you'd agree that the more unique or
20 special purpose the property is, the smaller pool of
21 potential users or buyers for it is. Right?

22 A That's correct, yes.

23 Q And so when you conduct an appraisal of a
24 piece of property you have to take into account what

1 typical buyers in the market would be looking for; is
2 that right?

3 A Correct. Yes.

4 Q And you agree that an owner may have specific
5 needs or wants with respect to a property that exceed
6 the norm and are willing to pay for it?

7 A Yes.

8 Q Yes. And but the market, the market basis
9 considers what other people in the market, potential
10 buyers, are actually looking for in a property and what
11 they're willing to pay for it; is that right?

12 A Correct. Yes.

13 Q And that's because the cost approach is a
14 tool to indicate what? Fill in the blank.

15 A Cost approach indicates if a buyer -- let's
16 do it this way. If there was no inventory of properties
17 for sale and they really wanted a certain property, what
18 would it cost them to buy the land and build it.

19 Q And it's a tool to indicate fair market value
20 of the property as of the effective date of the
21 appraisal; isn't that right?

22 A Yes.

23 Q And you talked earlier with Mr. Gilmore about
24 what fair market value means; willing buyer, willing

1 seller, no compulsion. Right?

2 A Correct.

3 Q So it doesn't really matter if the property
4 has solid brass, horse head door handles if nobody's
5 willing to pay for that; isn't that right?

6 A That is correct, yes.

7 Q ID doesn't matter if the home has a theatre
8 system that costs hundreds of thousands of dollars if
9 Reno buyers are not interested in a Los Angeles quality
10 theatre system; isn't that right?

11 A That would be correct, yeah.

12 Q And you agree that external obsolescence
13 results -- one component of the external obsolescence
14 can be market conditions; isn't that right?

15 A Correct. Yes.

16 Q And market conditions in September of 2010
17 were depressed; isn't that right?

18 A Correct. Yes.

19 Q And they actually have gone downward from
20 spring of 2009.

21 A Yes.

22 Q In your report you don't quantify the impact
23 of external obsolescence and the market conditions in
24 2010. Right?

1 A Correct. Yes.

2 Q Did you account for possible overimprovement
3 of the property?

4 A No. In my determination that was not an
5 overimprovement in that neighborhood.

6 Q You're aware that the home had a home theatre
7 system. Right?

8 A Yes.

9 Q Okay. And it had doors that had been
10 imported from Honduras or something; isn't that right?

11 A Right.

12 Q Okay.

13 A I don't know.

14 Q Not everybody wants their doors imported from
15 Honduras. Right?

16 A Correct.

17 Q Okay. The home was constructed in 2002,
18 wasn't it?

19 A I believe so.

20 Q Okay. And do you have an understanding of
21 when the renovations to the property occurred?

22 A No.

23 Q If they occurred in 2006 and 2007 would you
24 consider the home to have been dated at the time of

1 those renovations?

2 A No.

3 Q Can we take a look at your sales comps, Mr.
4 Noble? That's on page 20 of your report which, your
5 Honor, is Exhibit 276 at Superpumper 001096.

6 Before we get there, Mr. Noble, the county
7 designation for the Panorama property before any
8 remodeling was very good to excellent; isn't that right?

9 A I believe so, yes.

10 Q Okay. Now, looking at your comparables, are
11 you able to see that on the screen?

12 A I have it in front of me.

13 Q Okay. When you look at the first sale that
14 you consider, the Juniper Hill Road sale?

15 A Yes.

16 Q The sale price for that real estate was
17 actually 2,825,000, not 3,150,000; isn't that right?

18 A Where do you determine that?

19 Q Well, I'm looking at your work file, Mr.
20 Noble, Exhibit 277 at Superpumper 001124.

21 Do you see, Mr. Noble, it shows the sale on
22 July 23rd of 2010, 2,825,000?

23 A I do.

24 Q So that additional sum, could it have been

1 attributable to personal property, as Mr. Kimmel
2 indicated?

3 A That's possible. Yes, that is possible.

4 Q And if you were to put the sale price for the
5 real estate in there instead of 3,150,000, you'd get a
6 price per square foot of \$441 per square foot; is that
7 right?

8 A That sounds about right.

9 Q Okay.

10 A I was looking to see where the -- that number
11 came from. It probably came from the MLS.

12 Q You agree that your work file has the realty
13 sale price in there. Correct?

14 A Yes, I do.

15 Q The second sale, the property at 8000
16 Lakeside Drive, that property sold for 2.5 million on
17 March 19th of 2010, according to the MLS document; isn't
18 that right?

19 A That's correct, yes.

20 Q But it had been on the market for 325 days at
21 that point; is that correct?

22 A Yeah, I don't know. I'd have to look at it.

23 Q I hate to make you keep going back and forth
24 between your work file --

1 A Okay.

2 Q -- and your documents, but if you don't
3 remember I do want you to take a look at it.

4 A Okay.

5 Q Because I'm not trying to trick you here.

6 A Okay. I found it, yes.

7 Q Superpumper 001127 on Exhibit 276, this is
8 the MLS listing for the property. Right?

9 A That's correct.

10 Q Okay. And it shows it being on the market
11 for 325 days.

12 A It does, yes.

13 Q Well, and it also indicates that the original
14 asking price was 2.9 million. Right?

15 A That's correct.

16 Q And they ended up selling it for 2.5.

17 A Correct.

18 Q Now, the third property that you use in your
19 comparables, 19 Willow Bend, that one was sold in
20 September of 2009. Right?

21 A Yes, it was.

22 Q 3.35 million. Is that the right number?

23 A That is correct.

24 Q That was the highest selling property in the

1 Reno area in the preceding year when you conducted your
2 appraisal; isn't that right?

3 A I believe so, yes.

4 Q And you concluded that the Panorama property
5 had a value a year later of approximately a million
6 dollars more than the highest selling property in the
7 preceding year.

8 A I did, yes.

9 Q Now, the property that uses your fourth
10 comparable, 4245 Woodchuck Circle? Are you looking at
11 your work file, Mr. Noble?

12 A I am.

13 Q And I will get on the same page with you. I
14 believe that starts at Superpumper 00113 of Exhibit 277.
15 And it goes on from there.

16 A What was that number again?

17 Q The page I'm actually referring to is
18 Superpumper 001134.

19 A 34.

20 Q Maybe -- I've forgotten my question at this
21 point anyway. The MLS records, and I'm at Superpumper
22 001134 again, indicates a basement type of daylight. Do
23 you know what that means?

24 A Walk-out. And this is not the MLS data, this

1 is the county records.

2 Q Oh, okay. You don't have MLS data in this
3 work file for this property, do you?

4 A I can't find it. I -- but then they're not
5 in any kind of order, so.

6 Q What is a walk-out basement mean?

7 A Typically means that it's built on to the
8 side of a hill and you walk out into the back yard.

9 Q Okay. You did not -- in your sales
10 comparable grid, you didn't adjust the per square foot
11 price to account for a basement, did you?

12 A Apparently not, no.

13 Q And then on the final sale that you talked
14 about with Mr. Gilmore earlier, the 11180 Boulder Glen
15 Way property, that had a finish basement of about 3300
16 square feet. Right?

17 A Correct.

18 Q That was not incorporated into your analysis
19 on page 19 of your appraisal which, again, your Honor,
20 is Exhibit 276. That is not it. Just a moment. Excuse
21 me, page 20 of your report.

22 So basements -- basements don't get the same
23 treatment as a first floor of a property. Right?

24 A Typically no.

1 Q So you don't take the 3300 square foot
2 basement and tack it onto the 4367 square feet of the
3 main house and then do your calculation. Right?

4 A Typically no. The other -- let me point this
5 out, too. It also has basement type of multiple. And
6 that -- without having the data in front of me here,
7 that could also mean that a hundred square feet of it is
8 finished and 2300 or 3200 of it is storage or something
9 like that.

10 Q Well, did you investigate that at the time
11 you were doing your appraisal?

12 A I don't remember, but I just wanted to point
13 that or.

14 Q So if it had not been a finished basement,
15 even though you wouldn't consider that on a square foot
16 basis the same as the first floor, you would account for
17 it in some way because it address value; isn't that
18 right?

19 A Yeah. That's correct, yeah.

20 Q So if you were doing an adjustment grid,
21 which you didn't do in this case because you were -- you
22 had a very quick turn-around time on the appraisal, you
23 would take that 600 -- now I can't see the number in
24 that copy.

1 A 686.

2 Q You would take that 686 and you would adjust
3 it downward; isn't that right?

4 A Correct, yes.

5 Q So you would do the same thing as to the
6 Woodchuck Circle property if it had a finished basement.
7 Right?

8 A That's correct, yes.

9 Q And I know it's a little tough to see here,
10 but in your sales comp table here, you can see that that
11 the pattern is that even with respect to higher value
12 properties, as you go into 2010, you get a lower price
13 per square foot; isn't that right?

14 A Yes.

15 Q Now, you indicated that you accounted for the
16 18-month passage of time between the sale of Boulder
17 Glen and the sale -- or the valuation date of the
18 Panorama property. Right?

19 A Yes. Correct.

20 Q But in your appraisal there's no quantitative
21 statement as to that impact, is there?

22 A No.

23 Q And there isn't a quantitative statement when
24 you're looking at your cost approach, is there, as to

1 the market conditions in 2010?

2 A No.

3 Q Mr. Noble, do you mind turning to page 24 of
4 your report, Exhibit 276?

5 And that is not legible on this copy. All
6 right.

7 MS. PILATOWICZ: Which exhibit?

8 MS. HAMM: It's Exhibit 276 at Superpumper
9 001100.

10 BY MS. HAMM:

11 Q I'm just going to move to the next page,
12 001101. That's the subject property; isn't that right?

13 A That's correct.

14 Q And this along here (indicating) is Panorama.

15 A That is correct.

16 Q So the subject property has almost no
17 frontage; isn't that right?

18 A That's correct.

19 Q And this area here (indicating) is all
20 pasture until you get to the house.

21 A That's correct.

22 Q And then behind the house you have some -- a
23 barn or some out buildings. Right?

24 A Correct.

1 Q And because of that layout, I don't know the
2 right terminology in property when you're talking about
3 the footprint of the property, I say layout. I think
4 that's the right term. What term do you use?

5 A That would work, the layout of the property.

6 Q Thank you.

7 A Uh-huh.

8 Q Because of that, and because you have to go
9 down a lengthy driveway to get to the house, you can't
10 easily partition this property between the house itself
11 and the lot. Right?

12 A I'm not sure what you mean by partition.

13 Q If the house was not on that lot.

14 A Uh-hum.

15 Q How would you value that vacant land?

16 A As a five-acre property in that neighborhood.
17 It doesn't --

18 Q Would there be an impact by the lack of
19 frontage on Panorama Drive?

20 A No.

21 Q No?

22 A No. It has access to that paved road and it
23 doesn't need a lot of frontage. Frontage really goes
24 into account more on commercial property than --

1 especially in this neighborhood that that's adequate
2 frontage to that road.

3 Q Panorama property has a neighbor right here,
4 doesn't it?

5 A I believe so, yes.

6 Q Okay. And the neighbor has control of that
7 piece of land, don't they?

8 A Yes.

9 MS. HAMM: Court's indulgence one moment?

10 THE COURT: Yes.

11 BY MS. HAMM:

12 Q Well, there we go. Just for clarification,
13 that black smear that we looked at earlier, is that what
14 it should look like?

15 A Yes, that's what I have in front of me.

16 MS. HAMM: All right. Pass the witness, your
17 Honor.

18 THE COURT: Redirect. We need to take a
19 recess. So we'll be in recess for a few minutes for our
20 morning break. Thank you. Court's in recess.

21 (Short break.)

22 THE COURT: You may continue.

23 MR. GILMORE: Thank you.

24 REDIRECT EXAMINATION

1 BY MR. GILMORE:

2 Q Mr. Noble, your cross-examination you were
3 shown a photo of the satellite topography of the subject
4 property. Right?

5 A Right.

6 Q And you were asked a question relative to the
7 frontage.

8 A Yes.

9 Q In your experience, what relationship does
10 frontage on a ranch property like this in Reno bear on
11 the ultimate value of the land or the improvements?

12 A Very little.

13 Q Tell me why.

14 A There's no real need for frontage for a road
15 for a ranch-type property, as long as it has access to
16 that road.

17 Q In your experience would the absence of
18 frontage actually be a consideration in adding
19 desirability to a subject property? In a ranch.

20 A It's possible. It could provide more privacy
21 on a property scene.

22 Q Let's talk about the concept raised in your
23 cross-examination of functional depreciation.

24 A Okay.

1 Q I believe the question was, in essence, the
2 idea that something can be so nice that nobody
3 essentially will be willing to pay for how nice it is.
4 Is that consistent with your understanding of how
5 functional depreciation was presented to you in
6 cross-examination?

7 A Yes.

8 Q Okay. Now, in your direct examination when I
9 asked you questions the first time, I asked you how the
10 Panorama property compared in relationship to other
11 houses within Reno or Washoe County. Do you remember
12 that?

13 A Yes.

14 Q And you said that it was among the nicest
15 properties, but there were other properties with which
16 you compared it. Right?

17 A Correct.

18 Q Give us an example.

19 A Of other properties?

20 Q Of other properties that you believed were
21 comparable to the Panorama property in terms of
22 finishes, niceness, quality, that type of thing.

23 A So some homes in Arrow Creek, Montreaux, Lake
24 Tahoe even.

1 Q Homes that you've personally inspected?

2 A Correct.

3 Q Okay. Now, was it your opinion, based on
4 your professional training and education and experience
5 that those homes suffer from functional depreciation
6 because they're too nice for Reno?

7 A No.

8 Q What's your opinion? What's your experience?

9 A They do have a more limited number of buyers
10 for them, but they're -- they're not functionally
11 obsolescent just because they're nicer.

12 Q Did you believe Panorama property was too
13 nice for Reno?

14 A No.

15 Q Did you believe that there were aspects about
16 the home that you inspected that you concluded no buyer
17 in Reno would be desiring?

18 A No.

19 Q Are there other houses in Reno that you're
20 aware of that have elaborate theatre systems?

21 A Yes.

22 Q Can you give us examples where those might be
23 found?

24 A That I've personally seen, in Montreaux, in

1 Lakeridge Shores.

2 Q So did it strike you in reviewing the theatre
3 room of this property that that made the house less
4 desirable to a potential buyer in this market?

5 A No.

6 Q What was your opinion?

7 A No. Pools and theaters are not typically
8 expected, but they're certainly not uncommon in a home
9 of this nature.

10 Q So you didn't consider the theatre, the
11 condition, the quality of the theatre to be something
12 that potentially was functionally obsolete?

13 A No.

14 Q Now, Mr. Noble, are there standards that
15 govern the process upon which a residence appraisal is
16 to be conducted?

17 A Yes.

18 Q And do you study and learn these standards as
19 part of your certification process?

20 A Yes.

21 Q And do you conduct continuing education to be
22 updated and continually refreshed on these standards?

23 A Yes. Those standard are actually updated
24 every two years.

1 Q Is there a standard that requires as part of
2 a residential appraisal that the appraiser actually
3 physically view the property?

4 A No.

5 Q So what relationship does physical inspection
6 of the property bear on the appraiser's ultimate
7 judgment?

8 A Provides the appraiser with more knowledge
9 they would have than they would have if they didn't
10 inspect the property.

11 Q Okay. And so if we went to your comparables,
12 on page 20 of your appraisal, in your comparable grid
13 there's only six factors that you explicitly include in
14 the comparables. Right?

15 A Correct.

16 Q The acreage, do you consider the acreage to
17 be an important characteristic in comparable sales?

18 A Yes.

19 Q And then quality. You discussed at length in
20 your cross-examination issues related to the quality of
21 the Panorama house and the other comparable properties.
22 If you didn't physically inspect the Panorama property,
23 how would you know what quality characterization it
24 deserved in a comparable sales grid?

1 A I wouldn't. I would have relied on what the
2 county had, which was considerably less than these
3 properties.

4 Q **I'm sorry, say that again?**

5 A I said I would have relied on what the county
6 information showed as good to excellent rather than
7 under my own determination of what the quality of the
8 subject property was.

9 Q **And when you physically inspected the**
10 **property you reached a conclusion that the county's**
11 **assessment of the quality of the property was what?**

12 A Was not sufficient. Was less than what I
13 determined it would be.

14 Q **Aside from inspecting the property, what else**
15 **could you have done to be able to make that**
16 **determination on your own?**

17 A If I had been provided plans and
18 specifications of the materials used in the -- that sort
19 of information.

20 Q **But you inspected the property personally.**
21 **Right?**

22 A I did, yes.

23 Q **And you evaluated the fixtures and the**
24 **improvements?**

1 A Correct.

2 Q And that bore on your ultimate judgment as to
3 whether or not the county's assessment of quality was
4 consistent with your own personal judgment?

5 A Correct.

6 MR. GILMORE: No more questions.

7 THE COURT: Anything further?

8 MS. HAMM: No recross, your Honor.

9 THE COURT: Thank you. May this witness be
10 excused?

11 MR. GILMORE: Yes, your Honor.

12 THE COURT: You may step down, sir. You are
13 excused.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you. Are we ready to read
16 depositions. Is that where you want to go?

17 MR. GILMORE: We are. We are ready to move
18 into that phase. We have no more live witnesses and we
19 would start by offering depositions onto the record.

20 THE COURT: Okay. And who is your reader?

21 MR. GILMORE: My reader is Jennifer Procop.

22 THE COURT: Ma'am, you will be sworn.

23 COURT CLERK: That's fine. Right there.

24 Please raise your right hand.

1

2

JENNIFER PROCOP,

3

was duly sworn in to read correctly

4

to the best of her ability.

5

6

COURT CLERK: Thank you, please be seated at

7

the witness stand.

8

THE COURT: Ma'am, we'll start with you

9

stating your name and spelling your last name for the

10

reporter.

11

MS. PROCOP: Jennifer Procop, P-r-o-c-o-p.

12

MR. GILMORE: Ms. Procop, there's a binder on

13

the top shelf. You can remove those other exhibit

14

binders, close them and put them back on the shelves.

15

We won't be needing those.

16

THE COURT: And who are you going to start

17

with, counsel?

18

MR. GILMORE: Your Honor, we're starting with

19

the deposition of Dennis Vacco dated October 20, 2015,

20

at 10:09 a.m.

21

And your Honor, my understanding is that your

22

binder and the clerk's binder have been updated to

23

reflect revisions to the designations that plaintiff had

24

originally made. We've endeavored to ensure that

1 there's consistency in all the binders with respect to
2 the revisions.

3 COURT CLERK: I do not have any of the
4 depositions open and published.

5 THE COURT: Okay. So we have -- in the binder
6 that I was provided, we have Dennis Vacco, Volume 1,
7 Dennis Vacco, Person Most Knowledgeable of Snowshoe
8 Petroleum, Dennis Vacco, Volume 2 and Dennis Vacco,
9 Volume 3. None of those have been opened and published.
10 Those depositions need to be opened and published.

11 And then I have tabs currently for 6, 7, 8 and
12 9 were provided to me. In 6 I show only designations,
13 it looks like, from the defense.

14 MR. GILMORE: I'm sorry, mine are not numbered
15 in the same way yours are. But if you tell me who the
16 deponent is I can tell you --

17 THE COURT: I'm talking about Mr. Vacco.

18 MR. GILMORE: Same issue. Plaintiff's
19 prepared these binders, your Honor, not me. I have my
20 own versions. They are not numbered in the same way --

21 THE COURT: Okay.

22 MR. GILMORE: -- in which yours are numbered.

23 THE COURT: Are we going -- or I guess my
24 question is when you revise these, are we using all --

1 is there content in all of those depositions still?

2 MS. PILATOWICZ: There is.

3 MR. GILMORE: Yes.

4 MS. PILATOWICZ: Yes. And there are some
5 transcripts where there are designations only by the
6 defendant.

7 THE COURT: Okay. Or mostly by the defendant.

8 MS. PILATOWICZ: Correct.

9 THE COURT: Okay. So we will be starting with
10 the deposition taken did you say October 20th?

11 MR. GILMORE: October 20th, 2015, commencing
12 at 10:09 a.m. And the reason I make that distinction is
13 there were two volumes, one in the morning, in his
14 individual capacity, and one in the afternoon as a
15 person most knowledgeable for Defendants Snowshoe
16 Petroleum.

17 THE COURT: Okay. So I'm on the right page
18 with you. We need those depositions open and published.

19 MS. PILATOWICZ: And your Honor, for the
20 record, we have two copies that can be opened. When we
21 did the July depositions of Mr. Vacco, we were advised
22 by the court reporting service that they can no longer
23 seal depositions in New York. They provided us
24 certified copies. We've agreed that for our purposes

1 based on the objections they be used.

2 THE COURT: Okay.

3 MR. GILMORE: That's correct, your Honor.

4 COURT CLERK: Thank you.

5 Deposition of Dennis Vacco taken October 20th,
6 2015, open and published. Deposition of Dennis C. Vacco
7 taken October 20th, 2015, open and published.
8 Deposition of Dennis Vacco taken July 10th, 2017, open
9 and published. And deposition of Dennis Vacco taken
10 July 11th, 2017, open and published.

11 THE COURT: Okay. I want to remind the reader
12 that the court reporter is taking down what you're going
13 to be reading so kind of watch her. If she looks like
14 it's going too fast she'll let you know.

15 MS. PROCOP: Okay.

16 THE COURT: Counsel, you may proceed.

17 MR. GILMORE: Thank you, your Honor. Ms.
18 Procop, I am going to start with the Dennis Vacco
19 deposition transcript, October 20, 2015, commencing at
20 10:09 a.m. The reading begins on page 3. Are you with
21 me?

22 MS. PROCOP: Yes.

23 MR. GILMORE: Page 3, line 12. Can you please
24 state -- excuse me, back up. For the record, unlike how

1 we did it in plaintiff's case-in-chief, although these
2 questions were originally asked by Ms. Pilatowicz, we've
3 agreed that I'll just be the reader for purposes of
4 defense case-in-chief, so --

5 THE COURT: That's fine.

6 MR. GILMORE: I am effectively reading Ms.
7 Pilatowicz's questions and my own throughout the course
8 of these depositions.

9 EXAMINATION

10 BY MR. GILMORE:

11 Q Page 3, line 12, "Can you please state and
12 spell your name for the record?"

13 A Dennis C. Vacco, D-E-N-N-I-S, middle name C.,
14 last name V as in victory A-C-C-O."

15 Q The next entry I have is page 18, line 4.
16 "Let's talk a little bit about your background. Where
17 did you attend college?"

18 A Colgate University, BA Economics, 1974.

19 Q And after you graduated what did you do next?

20 A University of Buffalo Law School, JD, 1978.

21 Q Did you take time off between college and law
22 school?

23 A No.

24 Q When were you licensed to practice law?

1 A February, 2000 -- February, 1979.

2 Q Where do you currently hold licenses to
3 practice law?

4 A State of New York.

5 Q Is that it?

6 A Correct.

7 Q Have you ever held a license in any other
8 state?

9 A No.

10 Q Between 1979 and today have you always been a
11 practicing attorney?

12 A I've always been registered with the bar of
13 the state of New York, but there was a brief hiatus when
14 I didn't formally practice law.

15 Q When was that?

16 A '99 through 2013.

17 Q What were you doing during that time?

18 A I was regional vice-president of the New York
19 subsidiary of Waste Management, Inc., a publicly-traded
20 company based in Houston, Texas.

21 Q Why did you start doing that in 1999?

22 A I wanted a break from the law and it was a
23 great opportunity to run a company.

24 Q Was there any particular reason you wanted a

1 **break from the law?**

2 A I had just lost an election to the future
3 governor of the state of New York and decided that I was
4 going to take a break from public service and practicing
5 law."

6 Q Continuing on page 22, line 21. "Why did you
7 join your current law firm?

8 A Because I was tired of -- of practicing law
9 from my -- my home office of Albany was no longer
10 relevant to me and my practice, and this was a great
11 opportunity to grow my practice and the firm.

12 Q So at that time did you move from Albany to
13 Buffalo?

14 A I never physically moved out of the Western
15 New York.

16 Q Okay. Do you have any areas of concentration
17 in your law practice?

18 A I'm a litigator. We -- we do a lot of work.
19 We have a government investigations. Practice group
20 that I had up while we try to a vote representing white
21 collar defendants. I have the ability to pick and hire,
22 but mostly we represent entities that are corporate
23 entities that are subject of some type of governmental
24 investigation or regulatory compliance efforts.