

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 42
(Nos. 7273–7474)

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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 NRCF 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

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

1 Q Do you have any special certifications?

2 A No. Besides my resume?

3 Q Any --- any sort of special state designation

4 or license --

5 A No.

6 Q -- other than a law degree.

7 A I don't. Other than a law degree? So

8 outside the practice of law?

9 Q Correct.

10 A No.

11 Q Do you know Paul Morabito?

12 A I do.

13 Q When did you first meet Mr. Morabito?

14 A Hum. Physically meet him? I don't recall

15 precisely, but I would say that representation of him or

16 some of his entities began in or around about August or

17 September, 2007. I did not immediately meet him in

18 person.

19 Q Okay. How did you first become acquainted

20 with Mr. Morabito?

21 A During the Reagan administration I was the

22 United States Attorney for the Western District of New

23 York. My then colleague from San Francisco called me

24 one day and asked if I was interested in representing a

1 friend of his, who had -- whose companies were subject
2 of a complaint in Federal District Court here in the
3 Western District."

4 Q Continuing page 46, line 5. "When did you
5 first meet Mr. Gilmore, Mr. Frank Gilmore?"

6 A I think that we -- I -- I engaged his law
7 firm in 2010. When precisely Frank and I personally met
8 would have been sometime after the engagement.
9 Precisely when, I don't remember.

10 Q Who made the decision to hire Mr. Gilmore's
11 law firm in 2010?

12 A Well, after the debacle of the trial in front
13 of Judge Adams, Mr. Morabito was dissatisfied with his
14 then Reno counsel. He turned to me for advice and
15 counsel on a successor counselor or counsel in Reno.
16 This law firm was referred to me by some other lawyer
17 whose name now escapes me. So then I vetted the law
18 firm, proposed the law firm to Mr. Morabito and,
19 obviously, he's the client. He made the decision."

20 Q Page 47, line 10. "Do you know -- and I'm
21 probably going to ask for your help on this one -- Sue--

22 A Sujata. Yalamanchili.

23 Q Okay.

24 A She is the attorney director here. I'm not

1 even going to try to spell Yalamanchili for you. I do
2 know her.

3 Q When did you meet her?

4 A In 2007.

5 Q How did you meet her?

6 A Well, after Joe Russoniello connected me to
7 Morabito the case here in the Western District and Mr.
8 Morabito and I had some preliminary discussions about
9 the background of that case, I was pleased to learn that
10 it was a Buffalo attorney, Sujata Yalamanchili, who was
11 presently involved in the underlying transactions. I
12 don't know her personally prior to then.

13 Q Did you work with her in the litigation that
14 was pending in the Federal Court of the Western District
15 of New York?

16 A She was an invaluable resource for this
17 matter, the Western District of New York case, both
18 Western District of New York cases, and she was also a
19 resource in the so-called Herbst litigation.

20 Q Have you worked with her in any other cases
21 that deal with Paul Morabito or any of his entities?

22 A Beyond the three that I just mentioned, I
23 don't believe so.

24 Q Have you worked with her on any transactional

1 matters related to Paul Morabito or his entities?

2 A No.

3 Q Now, we've been discussing a little bit the

4 Herbst litigation which is the litigation that was

5 pending in Reno, Nevada. There was an approximately

6 \$140 million judgment entered. Do you recall when that

7 judgment --

8 A Well, it was an \$85 million judgment. The

9 judgment that was entered was -- I could be wrong, but

10 that was the settlement amount.

11 Q Okay. There was a substantial judgment at

12 some point, though, entered.

13 A There was a substantial judgment, correct.

14 Q Do you recall when that was entered?

15 A September 1, 2010.

16 Q And how were you advised that the judgment

17 was entered?

18 A Phone call from Leif Reid.

19 Q And who is Leif Reid?

20 A Trial counsel on the case in Reno, Nevada.

21 Q What was your reaction to that judgment?

22 A Utter surprise.

23 Q Did you or your office start taking any

24 actions with respect to Morabito's assets?

1 A There came a point in time when, after having
2 analyzed the decision, so it was a written decision, we
3 -- we worked with Paul and the other owners of the
4 properties to get valuations on properties and to -- to
5 the -- the goal was very simple. The decision entered
6 by Judge Adams for as much as Herbst and their
7 litigation team wanted to wave that decision around as
8 it related to Paul Morabito. They were not willing to
9 wave it around as it related to Salvatore Morabito and
10 Edward Bayuk. Whom were ex" --

11 Q Exonerated.

12 A Thank you. "If you will, by Judge Adams.
13 Judge Adams found that they were not involved in any of
14 the alleged fraud that was the subject of the judgment.
15 And the -- the decision of Judge Adams dismissed the
16 claims, rejected the claims against Salvatore Morabito
17 and Edward Bayuk. The -- the effort was because they
18 owned -- all three of them, in many instances, owned
19 assets together, the goal, after researching Nevada law
20 and consulting with Nevada counsel, was to right-size
21 the investment so that everybody walked away with their
22 proportionate share of the investment, including Paul A.
23 Morabito.

24 For instance, the Panorama property, which was

1 located in Reno, my relocation -- my recollection serves
2 me that it was owned by a Morabito entity and an Edward
3 Bayuk entity, but not in equal proportions, if I recall
4 correctly. There were properties in California, Laguna
5 Beach, California that was jointly owned, again, not in
6 equal proportions.

7 And then there was Superpumper where all three
8 of them had ownership interest. So the goal was
9 essentially take all of those assets and to -- to
10 identify the value of Morabito's stake in those assets,
11 and to transfer the value exclusively to him, and then
12 separate the equity, if you will, to the extent it
13 existed, for Edward and Sam, because they were now
14 relieved of this lawsuit.

15 And in an effort to not embroil them,
16 ironically, as they are now, in litigation, the
17 properties were, again, valued and moved is that
18 everybody at the end of the day took, as you took the
19 whole and you took the percentage that each one of them
20 owned in the whole, the goal was to have Morabito walk
21 away with the same value he had in whole, while
22 separating from Morabito the interest that Edward and
23 Sam also owned.

24 Q When did you start that process?

1 A Mid -- mid to late September, 2010.

2 Q Who ultimately decided to commence this
3 separation of the assets?

4 A Well, the parties.

5 Q The parties being Paul Morabito, Sam
6 Morabito, and Edward Bayuk?

7 A Sure. Edward and Sam didn't want to be --
8 chased because they had had equity interest in
9 properties that were also attached to Paul.

10 Q So who raised the idea of separating the
11 assets?

12 A I don't recall.

13 Q Do you recall the first discussion regarding
14 separating the assets?

15 A No.

16 Q Do you recall any discussions regarding
17 separating the assets?

18 A Yes.

19 Q When was the first discussion that you can
20 remember?

21 A I don't recall.

22 Q Do you recall what that discussion was?

23 A No.

24 Q Do you recall who was present during any of

1 these discussions?

2 A Keep in mind, most of these discussions were
3 telephonic.

4 Q Okay.

5 A So, again, I don't remember.

6 Q Do you recall who was on any of the phone
7 calls?

8 A Well, certainly Paul and, from time to time,
9 Edward and Sam. I would say Sam less so than -- than
10 Edward. And the -- the Breslow, too. Belaustegui
11 people.

12 Q Do you recall whether you raised the idea of
13 separating assets or if it was raised to you?

14 A It might have come from me, mostly because I
15 was fixated on the fact that Edward and Sam had been
16 exonerated. So the Panorama property's a perfect
17 example. Again, I don't remember the two specific
18 entities that Edward and Paul controlled that were the
19 actual owners of the property. My recollection, and I
20 could stand corrected on this if you show me a document,
21 is that the split wasn't 50/50; it was either 60/40 or
22 70/30, including, you know, mortgage obligation.

23 We separated Edward's interest, ownership
24 interest, in that so the property located in Nevada

1 would be a ripe target for the Herbsts and their
2 collection efforts, minus the satisfaction of the
3 underlying mortgage, because they didn't have to deal
4 with Edward, and Edward was tired of the litigation and
5 Edward didn't want to be embroiled in any more
6 litigation with the Herbsts. Judge Adam exonerated him.
7 He wanted out.

8 And this effort was to, to maintain value,
9 maintain value -- maintain the value of the Morabito's
10 ownership interest while separating the ownership
11 interest of the two individuals that were exonerated by
12 Judge Adams.

13 So go back to the Panorama property just for
14 illustration purposes, if it was worth a million
15 dollars, just because Edward's ownership interest --
16 let's just say it was 30 percent as opposed to 50
17 percent. That means that the best that the Herbsts
18 could do free and clear of the mortgage was \$700,000 or
19 Paul's interest in the Panorama property. By virtue of
20 what we did, they now had access to the full million
21 dollar value.

22 Q Do you recall any of your discussions with
23 Paul Morabito regarding the separation of assets?

24 A There were many.

1 Q Do you recall any specific discussions?

2 A No.

3 Q Did you represent Edward Bayuk individually?

4 A Yes. At that time? Yes.

5 Q Did you have a retention agreement with Mr.
6 Bayuk?

7 A I don't believe so.

8 Q Is it your normal practice to have retention
9 agreements with clients that you represent?

10 A Usually.

11 Q Is there a reason why you didn't have one
12 with Mr. Bayuk?

13 A I don't recall.

14 Q Did you represent Sam Morabito during this
15 separation of assets?

16 A I -- I don't remember whether Sam had
17 independent counsel or not.

18 Q Do you recall if you had a retention
19 agreement with Mr. -- with Mr. Sam Morabito?

20 A No.

21 Q No, you don't recall or no, you do --

22 A Did not.

23 Q Did not have one?

24 A Correct. To the best of my knowledge.

1 Q Do you recall any of your discussions with
2 Edward -- with Sam Morabito regarding the separation of
3 assets?

4 A I don't recall particular conversations.

5 Q Do you recall the general sense of your
6 discussions?

7 A Again, it was -- so, you know, I have an
8 ownership interest in property X or an asset X. How am
9 I gonna get that out?

10 Q Other than Paul Morabito, Sam Morabito, and
11 Edward Bayuk, was there anyone else that you discussed
12 the separation of assets with?

13 A So I mentioned Belaustegui people, but maybe
14 even before then, Leif Reid."

15 Q Skipping down to page 56 line 20. We --
16 that's you.

17 A "We -- we were researching Nevada law on
18 these types of transfers. We were -- we were -- we were
19 spend -- obviously, we weren't Nevada attorneys, so we
20 were researching Nevada law and we wanted a better
21 understanding of what the -- the -- you know, body of
22 caselaw was out there. So it was more technical nature
23 with -- with whether it was Leif or with the Belaustegui
24 firm, although, eventually, the Belaustegui firm got

1 more involved with the mechanics, if you will.

2 We were very cognizant of the claims that were
3 made in this lawsuit now. And we went to great lengths
4 to avoid these claims, which is why -- eventually you'll
5 get to it because you asked for it -- why we went to
6 Matrix to get independent third-party appraisal of the
7 so-called Superpumper asset. We just didn't stick a
8 finger in the wind because Nevada law said that you can
9 make these transfers, as long as they're arm's length
10 and for fair market value. That was our understanding
11 of Nevada law.

12 And that's how we tried to arrange each one of
13 the separations, if you will, of the variation, equity
14 interest. "

15 Q Page 58, line 22.

16 A Would you mark this?

17 MR. GILMORE: No, that's me.

18 MS. PROCOP: Oh.

19 Q "Would you mark this as Exhibit 3, please?"

20 Your Honor, Exhibit 3, I understand, is Exhibit 45 in
21 the trial binders.

22 MS. PILATOWICZ: Correct.

23 THE COURT: Thank you.

24 MR. GILMORE: "The following was marked for

1 identification:" Purchase and sale agreement.

2 BY MR. GILMORE:

3 Q Mr. Vacco, you've been handed what's been

4 marked as Exhibit 3. Do you recognize Exhibit 3?

5 A Yes. Generally, I do.

6 Q And what is Exhibit 3?

7 A It's a purchase and sale agreement.

8 Q Did you prepare Exhibit 3?

9 A My law firm did.

10 Q Do you know who in your law firm did?

11 A I don't recall specifically.

12 Q Did you represent Paul Morabito with respect

13 to this purchase and sale agreement?

14 A Yes.

15 Q Did you represent the Arcadia Living Trust

16 dated April 14, 2006, with respect to this purchase and

17 sale agreement?

18 A Yes."

19 Q Page 61, line 13. "Now, this document

20 represents the transfer of multiple properties --

21 A Right.

22 Q -- one being 371 El Camino Del Mar, another

23 one being 370 Los Olivos, and the other one being 8355

24 Panorama Drive. Do you recognize those properties?

1 A I do.

2 Q What do you -- what was your recollection
3 about who owned the El Camino property?

4 A Well, I'm looking at the document, so it's
5 refreshed my recollection.

6 Q Okay.

7 A I mean, the property --

8 Q So who owned it?

9 A -- according to the document, all of these
10 -- so it appears as though the El Camino and Los Olivos
11 property was both owned in some proportion or some
12 percentage, by the Acadia Living Trust and the William
13 Bayuk Living Trust.

14 Q Okay. And how did -- how was it determined
15 who would receive which properties through this purchase
16 and sale agreement?

17 A Well, so earlier without this document in
18 front of me I gave you just a rough example of the
19 Panorama property in Nevada. So this document speaks
20 for itself. But it -- it lays out more particularly the
21 logic that I -- that I gave you in my -- my example
22 response a few minutes ago.

23 So as you could see, in the recitals, one --
24 one of the big problems here was that Paul and Edward,

1 if you will, through their trusts, did not own these
2 properties, even-steven. They did not own them equally.

3 So, for instance, the three, 371 El Camino in
4 Laguna Beach was owned 75/25 by -- 75 Morabito, 25 by
5 Bayuk Trust.

6 Then the next piece of property, the 370 Los
7 Olivos was owned 50/50 by the two of them but did not
8 have the same value, if you will, as the -- the El
9 Camino property.

10 And then the -- it appears from this
11 agreement that they then individually owned interest,
12 two-thirds and one-third as tenants in common in the
13 Panorama property.

14 So as you were trying to assess, what did the
15 Arcadia Living Trust own, it -- it was so that could be
16 segregated and -- and put in Morabito's name versus what
17 did the Bayuk Trust -- and Edward and -- again, was
18 exonerated in Judge Adams' decision, what portion of
19 these properties did he own so that his interest could
20 be separated. It -- it was just a matter of simple math
21 based upon independent third-party property valuations.

22 All of these properties, these three -- so
23 let's stick with these three -- all three had
24 independent third-party appraisals.

1 So we had a fair market value, if you will, as
2 determined by a third-party appraiser for each of the
3 properties. We then took the ownership interest of each
4 of them, each of the properties and each of the
5 entities, to come up with the proportionate value of --
6 in dollars of -- for both the trust -- the Morabito --
7 the Arcadia Living Trust and the Bayuk Trust.

8 Q Was there -- how was it determined that the
9 Arcadia Living Trust would get the Reno property and
10 Edward Bayuk's trust would get the California
11 properties?

12 A I -- I mentioned earlier that because Edward,
13 either individually or through his trust wanted to, my
14 words, shake the dust off Reno from his sandals as a
15 result of Judge Adams' decision and to get as far away
16 from the Herbsts as possible, it made perfect sense,
17 since the judgment was a Nevada judgment, that the --
18 the judgment debtor, Paul Morabito, should own the
19 Nevada property.

20 Why would we have given the Nevada property to
21 Edward who was looking to cut -- sever his ties with
22 Nevada and distance himself from the Herbst street
23 mitigation machine.

24 Q So the decision was made based on being a

1 Nevada judgment and Edward Bayuk not wanting to be
2 affiliated with Nevada anymore?

3 A And -- and the Herbsts. He had been
4 exonerated. He didn't want to continue to be embroiled.
5 If the property -- if the property had not -- had been
6 taken out of Edward's name, it was clear that, sooner or
7 later, through collection efforts of the judgment
8 against Paul that Edward was -- Edward's interest in
9 this property was going to be implicated.

10 So he made it easier for the Herbsts, if you
11 will --band I know you understand that by -- by saying
12 that the property in Nevada is most -- most reachable by
13 the Herbsts, belongs to the judgment debtor.

14 Q Who retained the appraisers to appraise the
15 properties?

16 A So do you mean who found them?

17 Q Yes. Who found them?

18 A I -- I don't recall. I want to say that --
19 that it strikes me that the then sheriff -- I don't know
20 if he is still or is not, but the sheriff, Washoe County
21 Sheriff Haley, recommended the appraiser from the Reno
22 property and I don't know who came up with the appraiser
23 for the California properties.

24 Q Did you have any conversations with the

1 appraisers?

2 A Yes, I did.

3 Q What was your conversation with -- let's
4 start with the appraiser for the Nevada property. Do
5 you recall specifically who that was?

6 A I don't.

7 Q Okay. Do you recall having any conversation
8 with the appraiser for the Reno property?

9 A I -- I would have had a conversation with
10 both appraisers just giving them the general outlines of
11 -- of what we were looking for and that was, you know, a
12 comparable fair market value for these properties.

13 Q Do you recall if it was somebody from your
14 office who retained the appraisers?

15 A I don't remember.

16 Q Okay. So you don't recall if it was Edward
17 Bayuk or Paul Morabito?

18 A I don't remember. I don't remember how --
19 how they were paid. I just -- I remember -- I do -- so
20 especially Reno appraiser, because I -- I seem to
21 remember a conversation with him about there was a -- an
22 auxiliary building that wasn't finished, and what sticks
23 out in my mind, a conversation with him about how the --
24 you know, he was coming in a little bit lower on the

1 value because of the unfinished nature of the -- the
2 auxiliary -- auxiliary building.

3 Q Was this an auxiliary building that was on
4 the Panorama property?

5 A Yeah. Yes."

6 Q Okay. Down on line 13. "Mr. Vacco, you've
7 been handed what's been marked as Exhibit 4. Do you
8 recognize Exhibit 4?

9 A So I" --

10 MR. GIMORE: I'm sorry, your Honor, for my
11 records that's Exhibit 46.

12 MR. GILMORE: Please proceed.

13 A "So I generally recognize it. I -- yes.

14 Q What is it?

15 A It's a first amendment to the purchase and
16 sale agreement, which is Exhibit 3 in this deposition.

17 Q Do you recall the reason for the first
18 amendment to the purchase agreement?

19 A I don't. But, I mean, it speaks for itself
20 as I'm reading it.

21 Q It indicates that there is a change in the
22 fair market value based on appraisals that were
23 conducted in Section B -- well, in Section 2? Do you
24 see that?

1 A I do.

2 Q Do you recall where these amounts came from
3 in number 2?

4 A Just -- I mean, reading paragraph 2 it says
5 MAI appraisals were conducted. So these, I'm assuming
6 -- I -- I don't know where they came from.

7 Q Do you know where the values in the original
8 purchase and sale agreement came from?

9 A I don't. I thought they were based on the
10 appraisals.

11 Q There's a reference in number 3 to the
12 deletion of a promissory note based on the new
13 appraisals. Do you see that?

14 A I do.

15 Q Do you know why there was supposed to be an
16 exchange of a promissory note as opposed to a cash
17 payment in the original purchase agreement?

18 A So I'm just referring back to Exhibit 3 to
19 help refresh my recollection here. So Exhibit 3, which
20 was the purchase and sale agreement, in paragraph D, it
21 references the theatre equipment that was "personally --

22 Q Personalty.

23 A -- "Personalty inside the Panorama Drive
24 property valued at approximately \$300,000.

1 So the promissory note that's referenced in
2 Paragraph 1 of \$500,000 represents the value of the
3 equipment of \$300,000, plus, without doing the math, the
4 differential of the value of the respective interests of
5 these three properties. So, in other words, when --
6 when we added up, you know, the property -- the total
7 amount of the properties, the value, the net value, so
8 it would have been net value, deducting the mortgage
9 liabilities. So the net equity value of each of the
10 three, and then you took each owner's respective
11 interest, whether it was one-third or two-thirds, 75/25,
12 50/50, you came up with Morabito's equity holdings in
13 the whole and Bayuk's equity interest in the whole.

14 And without doing the math, the note looked
15 like this was probably \$200,000 differential. In other
16 words, Bayuk was getting \$200,000 more in value than
17 Morabito was getting, and that's why Bayuk entered into
18 the note, which also then included the equipment.

19 Q Do you know why it was done through a note
20 instead of a cash payment?

21 A I don't recall.

22 Q Do you know if Mr. Bayuk had the funds to
23 make a cash payment?

24 A I don't -- I don't -- I don't know."

1 Q Page 71, line 17. "Do you recall that in
2 2012, the Panorama property was listed for sale?

3 A Yes. Pursuant to the settlement agreement.

4 Q What was your involvement in the listing of
5 the sale?

6 A So I might have misspoke earlier when " I
7 involved Sheriff Haley. It's possible" --

8 THE COURT: I'm going to ask you to make sure
9 you're reading it exactly. It didn't say I involved
10 Sheriff Haley, "I invoked." Line 24.

11 MS. PROCOP: I see what you're saying.

12 THE COURT: This is the only record we have of
13 the testimony, so.

14 MS. PROCOP: Let me try this.

15 A "So I might have misspoke earlier. When I
16 invoked Sheriff Haley, it's possible that it was Sheriff
17 Haley who recommended the realtor to sell the property
18 as opposed to the appraiser.

19 Q Okay.

20 A So my role was through the course of
21 settlement agreement. I mean, this was selling the
22 property, the Panorama property, that Morabito or his
23 trust now owned a hundred percent of, selling it was a
24 condition of the -- the settlement agreement. Herbst

1 wanted to monetize it."

2 Q Page 76, line 11. "Prior to the break, I
3 handed you what was marked as Exhibit 6", which, your
4 Honor, I have identified as Exhibit 61.

5 MS. PILATOWICZ: Correct.

6 BY MR. GILMORE:

7 Q "Do you recognize Exhibit 6?

8 A Generally, yes.

9 Q What is Exhibit 6?

10 A It's a membership interest transfer
11 agreement.

12 Q For Baruk Properties, LLC?

13 A Correct.

14 Q Did you prepare this membership interest
15 transfer agreement?

16 A Somebody in my law firm did.

17 Q Do you know who in your law firm did?

18 A No.

19 Q Did you represent Arcadia Living Trust with
20 respect to this membership interest transfer agreement?

21 A And/or Paul A. Morabito, yes."

22 Q Page 77, line 19. "Can you tell me what the
23 Baruk Properties, LLC, is?

24 A Well, this is refreshing my recollection. In

1 -- it was an LLC owned in equal membership interest by
2 the Bayuk Trust and the Arcadia Living Trust. And the
3 assets of the LLC, Baruk Properties, LLC, were
4 properties in California.

5 Q Do you know where you got that list of
6 properties that's in the fifth paragraph of the
7 membership interest transfer agreement?

8 A From Edward or Paul.

9 Q And that's your understanding of all of the
10 assets of Baruk Properties, LLC?

11 A I don't recall if it owned other assets
12 besides this, besides these three.

13 Q Do you know if there's a reason why other
14 properties owned by Baruk Properties, LLC, wouldn't be
15 in this list?

16 A There probably wouldn't be any reason to not
17 include them so, I mean, I -- I can't tell you
18 definitively, as I look at this document, whether there
19 were other properties. I don't believe there were."

20 Q Page 78, line 22. "1 point -- Section 1.1 of
21 the agreement has a -- a transfer of the property -- of
22 the interest in LLC in return for a promissory note in
23 the amount of \$1,617,050.

24 A Correct.

1 Q Do you see that?

2 Do you know how that number was arrived at?

3 A I believe, much like the other properties
4 that we've discussed, this was an appraisal of these
5 three, and because the membership interest was split
6 down the middle 50/50, it was easier to arrive at the
7 Arcadia Living Trust interest versus the Bayuk Trust
8 interest net of the encumbrances.

9 So the \$1.617 million would represent the
10 Arcadia Living Trust value in the collective, the -- the
11 three collective properties together.

12 Q When you say 'easier to arrive at the Arcadia
13 Trust interest than the Bayuk Trust interest,' what do
14 you mean?

15 A I -- I either misspoke or you misunderstood
16 me. So in the other properties that we talked about,
17 where you had a 75/25 split, a 50/50 split as
18 individuals as opposed to amongst the trust, and then I
19 think there was a two-thirds, one thirds, individually,
20 a 75/25 and a 50/50, just made the math more difficult
21 based upon the ownership percentages.

22 Here, the math was much easier. You had an
23 appraisal for all three properties and you netted out --
24 frankly, I don't recall. I don't see any reference here

1 to any debt.

2 So it -- it strikes me an just looking at this
3 document that this 1.617 million was a 50 percent
4 interest in the value of all three properties combined.

5 Q Okay. If were other properties with the
6 value not included -- other properties owned by Baruk
7 Properties, LLC, with value not included, would that
8 increase what should have been paid for the membership
9 interest? Object to form.

10 A Logically speaking, yes. So, earlier -- I
11 don't want to confuse you with my earlier answer. As I
12 sit here looking at this document, I see that these
13 properties are the sum total of the assets of the -- of
14 Baruk Properties, LLC. But I just don't recall that
15 with precise clarity.

16 Q Do you know why the interest in Baruk
17 Properties went to the Bayuk Living Trust as opposed to
18 the Arcadia Trust?

19 A No, I don't. Well, because as I think about
20 it the -- the ownership the properties wasn't going to
21 change the ownership of the properties was going to stay
22 in the name of Baruk Properties, LLC.

23 Q Okay. Do you know why the Baruk -- Bayuk
24 Trust obtained all the interest in Baruk Properties as

1 opposed to the Arcadia Trust obtaining the interest in
2 Baruk Properties?

3 A 'Cause pursuant to this agreement, the
4 Arcadia Living Trust is surrendering -- is transferring
5 its interest to the Bayuk Living Trust.

6 Q Do you know how it was decided the interest
7 would go to the Bayuk Living Trust?

8 A I don't."

9 Q "Continuing page 82, line 7. "Okay. In
10 Section 1.1 there's a reference to the 1.6 --
11 approximate \$1.6 million note. Do you know why there
12 was a note in consideration instead of a cash payment?

13 A I don't.

14 Q Did you discuss Mr. Bayuk's ability to make a
15 cash payment?

16 A I don't believe that we negotiated the terms,
17 so the -- whether he had the" withdrew --

18 Q Wherewithal.

19 A "Wherewithal to make a \$1.6 million cash
20 payment or not was unknown to me.

21 Q Negotiated the terms of the agreement or the
22 promissory note?

23 A The agreement.

24 Q Who negotiated the terms of the agreement?

1 A I didn't.

2 Q Did you know who did? Do you know who did?

3 A No.

4 Q Who gave you the information as to -- or do
5 you know who gave your office information as to what
6 terms should go in the membership interest transfer
7 agreement?

8 A My assumption is Paul and Edward both."

9 Q Page 84, line 2. "Mr. Vacco, you've been
10 handed what's been marked as Exhibit 7," which I
11 understand, your Honor, is Exhibit 62 in the binders.

12 THE COURT: Thank you.

13 BY MR. GILMORE:

14 Q "Do you recognize Exhibit 7?

15 A Yes.

16 Q What is Exhibit 7?

17 A It's the promissory note.

18 Q The promissory note?

19 A The promissory note that's referenced in
20 Exhibit 6.

21 Q Okay. So for the transfers of the interests
22 in Baruk Properties?

23 A Yes.

24 Q Did you draft this note?

1 A I believe our office did.

2 Q Do you know who in your office did?

3 A No.

4 Q Do you believe it may have been Christian

5 Lovelace?

6 A It -- it's -- it's possible."

7 Q "Page 85, line 2. "Did your office have any

8 involvement with respect to following up on payments on

9 the promissory note? No objection.

10 A I, I don't recall, I just don't recall any

11 specific follow-up regarding the monthly payments. I

12 don't recall it being brought to my attention that it

13 was not happening.

14 Q Okay. Are you aware of any names that were

15 made?

16 A That were made?

17 Q Yes.

18 A So my -- my recollection on this is fuzzy as

19 to whether or not there was a follow-up or my sense is

20 that payments were made, yes.

21 Q Who gave -- what give you a sense that

22 payments were made?

23 A Because Edward from time to time would ask me

24 about when the payment was due.

1 Q Did payments go through your office?

2 A No, certainly not."

3 Q Page 86, line 5. "Mr. Vacco, you've been
4 handed what's been marked as Exhibit 8," which, your
5 Honor, I have identified at Exhibit 163 in the trial
6 binders.

7 THE COURT: Thank you.

8 BY MR. GILMORE:

9 Q "Do you recognize Exhibit 8?

10 A Generally I recognize it, yes.

11 Q What is Exhibit 8?

12 A It is a membership interest purchase
13 agreement.

14 Q What is a membership interest purchase
15 agreement for?

16 A Watchmyblock LLC.

17 Q Do you know he what watchmyblock LLC is?

18 A I don't know if it's -- it still exists, but
19 it was a -- an LLC formed by Edward and Paul at some
20 point in time. I don't recall when.

21 I mean -- are you asking me what watchmyblock
22 is?

23 Q Yes. Do you know what it is?

24 A It was a concept.

1 Q What was the concept?

2 A I will do it disservice as I try to describe

3 it, but, essentially, it was going to be an interactive

4 social media connected, if you will. Neighborhood block

5 club, if you will.

6 So, you know, in the old days when -- I'm much

7 older than you, but when I was a kid, you know, people

8 watched out for themselves by, you know, kind of

9 shouting off the front porch, watched out for their

10 neighborhood. So the concept here was to protect the

11 neighborhood, protect the block, if you will, through

12 interactive social media.

13 Q Do you know if -- if watchmyblock LLC owned

14 anything?

15 A It owned zero other than the idea which, you

16 know, wasn't at that point in time just an idea.

17 Q Did you incorporate watchmyblock, LLC, in New

18 York?

19 A I don't know if we incorporated it. I don't

20 recall that. It may have been a preexisting entity. My

21 sense is that was a preexisting entity. In other words,

22 preceded our representation of the Morabito interest. I

23 do not believe it's a New York LLC.

24 Q Do you know if you were listed as the

1 resident agent for a New York LLC?

2 A I don't. But if you're looking at corporate
3 documents, and so if you're -- if you know that's been
4 incorporated in New York, then show me something to
5 refresh my recollection, but I just don't recall.

6 Q Okay. Do you know how you came up with the
7 value of the --

8 Well, let me back up. Did you draft this
9 agreement?

10 A Somebody in my office did.

11 Q Do you know who in your office?

12 A I don't.

13 Q Do you know who negotiated the terms of this
14 agreement?

15 A I do not.

16 Q Do you know how the purchase price of \$1,000
17 was arrived at?

18 A I don't. But what I do know is that this
19 wasn't -- the LLC owned an idea. It owned no assets.
20 It owned no trademarks. It owned no patent rights. It
21 owned an amorphous idea. Frankly, as you research Paul
22 A. Morabito, you'll find that there's a plethora of
23 LLCs, because every time he had a business idea, he
24 formed an LLC. Those LLCs, much like this one, were

1 hollow shells, virtually worthless.

2 Q Do you know why, if it was a hollow shell,
3 there was a purchase agreement to transfer the interest
4 in it?

5 A Because I believe it was at its nascent" --

6 Q Nascent.

7 A "Stage, where this some sense that, sooner or
8 later, it was going to be a robust social secured media
9 security business for neighborhoods.

10 Q Did you have that belief, or was that just
11 conveyed to you?

12 A Did I have a belief?

13 Q That this was on the verge of potentially
14 being something at some point? That that --

15 A Well, on the verge of being something at some
16 point is kind of contradictory. I -- I understood the
17 concept. It was an interesting concept. But even
18 though my -- my residence is Erie County, State of New
19 York, I'm intellectually from Missouri. Show me. So --
20 the Show Me State.

21 Q Mm-hmm.

22 A So there was a lot of ideas. A lot of
23 concepts. But most, 99.9 percent of the ideas and the
24 concepts never, ever came to fruition."

1 Q Page 99, line 10. "Was all -- all of the --
2 it -- it would appear, looking at the documents, that
3 September 30th was a target date to have all of the
4 properties transferred. Is that fair?

5 A It does look like everything's happening in,
6 you know, the 28th, 29th, 30th from the documents, sure.

7 Q Do you know why everything happened in that
8 time period?

9 A Edward wanted out. Edward wanted free and
10 clear, as far as he was concerned, from the Herbst
11 litigation, and he wanted out. Sam equally but not as
12 -- you know, Edward is a hand wringer. He's -- he
13 worried about, you know, whether the sun's going to come
14 up in the morning.

15 Sam is -- is -- is concerned, but Sam wasn't
16 calling me every day wondering how he's going to be free
17 and clear of the Herbsst. Edward was.

18 Q So the fast time line was based on Bayuk's
19 insistence?

20 A Yes. He was the primary motivator as far as
21 my recollection serves me.

22 Q Were there other motivators?

23 A That was the prime one. I don't -- if this
24 were secondary or" treasury.

1 Q Tertiary.

2 A "I don't recall what they were, but Edward

3 wanted out.

4 Q Do you know who Sefton, S-E-F-T-O-N, Trustees

5 is?

6 A Well, I came to -- to know it, yes.

7 Q What is your understanding of what Sefton

8 Trustees is?

9 A I'm glad you couched it in terms of my

10 understanding, because I don't know precisely. But my

11 understanding is that Sefton Trustees is an

12 international repository of -- of assets.

13 Q How did you become aware of Sefton Trustees?

14 A From Paul Morabito.

15 Q When did you become aware of it?

16 A Postjudgment and probably -- postjudgment in

17 the context of the enforcement action. So the net worth

18 -- the net worth deposition, in that context. So as now

19 Brian and John have the judgment at hand, and now they

20 begin enforcement actions, my recollection is that there

21 was an awful lot of discovery around that, and there was

22 a net worth deposition of Morabito, and it was in that

23 context that I became aware of it.

24 Q So the first time you heard of it was when

1 Morabito mentioned it at a deposition. Is that
2 accurate?

3 A It was in the context of the net worth either
4 discovery or deposition.

5 Q Do you recall when that deposition or
6 discovery was?

7 A I'm just going on a feel here. I would say
8 that it was early 2011. It was sometime in 2011. But
9 that's -- I just don't believe that it happened in 2010.

10 Q Okay. Do you know why Paul Morabito
11 transferred \$6 million to Sefton Trustees on September
12 15, 2010?

13 A No. On what date?

14 Q September 15th of 2010.

15 A No.

16 Q Do you know why Morabito transferred any
17 funds at that time to Sefton Trustees?

18 A I know what he testified to in the net worth
19 deposition.

20 Q But you don't have any independent knowledge.

21 A Not that would be independent of
22 communications directly with him.

23 Q Well, communications other than what he said
24 in his -- in the deposition? Let me back up.

1 Have you had conversations with Paul Morabito
2 about transfers to Sefton Trustees?

3 A I have.

4 Q When did you have those conversations?

5 A Generally in the context of sometime in the
6 time frame of the discovery or deposition around the net
7 worth.

8 Q Okay. But have you had conversations that
9 weren't --

10 A Privileged?

11 Q -- weren't on record in the deposition?

12 A Yes."

13 Q Continuing on page 105, line 3. "Correct?"

14 This is one of the -- 105, line 3.

15 "Okay. Did -- do you know what happened with
16 -- well, do you understand that \$6 million was
17 transferred from Paul Morabito to Sefton Trustees?

18 A I know that generally, yes.

19 Q Okay.

20 A I don't know it particularly."

21 Q Page 107, line 5. "So do you have any
22 understanding of what happened to the \$6 million that
23 was transferred to Sefton Trustees?

24 A I really don't.

1 Q Did any of that money come back through your
2 trust account?

3 A Well, so that's why I hesitated a moment ago.
4 The record doesn't reflect my hesitation, but
5 recognizing that money's fungible, and never having
6 access to Sefton's records, what I -- what I do know
7 with clarity is what was transferred into our trust
8 account from Sefton, or Lakud and Dash, which, you know,
9 I believe represented Sefton or had something to do with
10 the Sefton money."

11 Q Page 109, line 14. "Did your firm have any
12 contact with Sefton Trustees to have that money
13 transferred?

14 A No.

15 Q Okay.

16 A Other than, you know, receiving the wire
17 transfer.

18 Q When you saw it -- did you see the deposit
19 from Sefton Trustees come in?

20 A I was aware of it.

21 Q Okay. Did you question who Sefton -- Sefton
22 Trustees was?

23 A Well, by this time, I knew.

24 Q Okay. And you also mentioned that Liburd and

1 Dash was someone who you believed to represent?

2 A Yes. So excuse me for the mispronunciation
3 previously. It's L-I-B-U-R-D and Dash.

4 Q And there's a receipt of 1,999,950?

5 A Correct. Ten -- ten days after the receipt
6 of the half million. So the amounts that are received
7 are net of the wire transfer fees.

8 Q Okay.

9 A So the 449,975 is really 450,000 because you
10 add the 25,000 -- the \$2500, it becomes 500,000. I'm
11 sorry. 450,000.

12 Q And do you know what that money was for?

13 A The Liburd and Dash?

14 Q Yes.

15 A Well, sure you can see that -- just follow
16 the trust ledger down. So the amount -- the receipt
17 amounts and then -- so on the 18th is the 449. So just
18 before easy discussion, the 450 on November 18th from
19 Sefton and then on November 28th, ten days later, is the
20 Liburd and Dash, essentially \$2 million on that day.
21 And then a deposit from Sam Morabito of 559, so roughly
22 560.

23 But then on November 30th, a day before the
24 payment was due, 2.5 -- 2.564 million goes out to First

1 American, which was the escrow agent for the Herbsts.

2 So of the -- of the \$2,450,000 that came in
3 from Sefton and Liburd and Dash it formed the lion's
4 share of the money that went to the Herbsts for the
5 first payment.

6 Q Okay. Are you aware of other deposits from
7 Sefton Trustees into your firm's trust account?

8 A Well, in the interest of time can you point
9 me to where they exist?

10 Q I don't see them on this ledger.

11 A Oh, sure. So go to 5/11. So it would be
12 page Bates number 000481, and go down one, two, three,
13 four up from the bottom. And you can see a receipt on
14 May 11th, 2012, another \$2,274,389.53. So, again,
15 that's essentially \$2,275,000, once you net out the --
16 the transfer fee.

17 And that came from Liburd and Dash, and lo and
18 behold, 14 days later that, 2.274 forms the lion's share
19 of the next cash payment to the Herbsts of \$2.5 million.
20 So the Sefton moneys, the Herbst got."

21 MS. PILATOWICZ: Your Honor? I apologize.
22 This is referencing an exhibit that has been admitted.
23 I just wanted to make it clear to the Court in case the
24 Court chose to follow at long at some point. It's

1 Exhibit --

2 THE COURT: This is Bates number 000481?

3 MR. GILMORE: Correct.

4 MS. PILATOWICZ: And it is Exhibit 38 which
5 was admitted by stipulation.

6 THE COURT: Okay.

7 MR. GILMORE: I concur.

8 BY MR. GILMORE:

9 Q Ma'am, would you reread page 111, line 22 and
10 continue? I think there was a misstatement in your
11 reading.

12 A Yeah. "And that came from Liburd and Dash,
13 and lo and behold, 14 days later, that 2.274 forms the
14 lion's share of the next cash payment to the Herbsts of
15 \$2.5 million. So the Sefton moneys, the Herbsts got.

16 Q Do you know if there were any other deposits
17 beside the -- the 2.5 -- there -- there would appear to
18 be another million dollars that was transferred to
19 Sefton Trustees. Do you know what happened to that
20 money?

21 A I don't know how much was transferred into
22 Seftons. I never saw that.

23 Q Okay.

24 A All I know is what we received.

1 Q Do you -- are you aware of any other
2 receipts, from Sefton Trustees or Liburd and Dash, other
3 than the ones that we've just gone over?

4 A If they're not on this Exhibit 10, they
5 didn't happen."

6 THE COURT: Is Exhibit 10 38?

7 MR. GILMORE: Yes.

8 MS. PILATOWICZ: 38, yes.

9 MR. GILMORE: It is, your Honor.

10 THE COURT: Thank you.

11 BY MR. GILMORE:

12 Q "There is actually another Lippes trust
13 ledger which you know about. Right. That deals with
14 UCH -- USHFCC has one as well. It may have Liburd money
15 in it. Yeah. Let me be clear. I'm not trying to trick
16 you. I didn't pull that one because it --

17 A Well, okay. So let's be a little bit more
18 careful about this from my perspective.

19 Q Okay.

20 A So let's go back to page 1, or 478 of Bates
21 stamp of the trust ledger, Exhibit 10. So now as I look
22 at this document more thoroughly as opposed to
23 responding to your questions just now, analyzing it,
24 there is a Sefton transfer on November 18th of -- if we

1 -- if you don't mind, if we could just round it up to
2 the full amount minus the fee, or before the fee is
3 deducted, of \$450,000.

4 So for the record, that's the second entry on
5 this page 1.

6 Q Mm-hmm.

7 A Right? Do you see that?

8 Q Yes.

9 A Okay. Then we go down to November 28th. And
10 there's essentially a \$2 million transfer from Liburd
11 and Dash on November 28th.

12 And then we see the entry or the -- the
13 disbursement of \$2,564,667.21." Do you want me repeat
14 it?

15 Q Please do.

16 A 2,564,000 -- oh, my gosh. Two million 564 --
17 2,564 and 6 --

18 Q It's \$2,564,067.21.

19 A "On November 30th drawing down the Sefton and
20 Liburd deposits.

21 Then on December 13th is another \$750,000
22 receipt from Liburd and Dash. So on this page, you have
23 2.75 -- you have over" 3 million of -- you got close to
24 three, not two million -- "3.2 million on this page from

1 Sefton or Liburd and Dash. And that \$750,000, as you
2 could see, was then disbursed, for the most part, toward
3 settlement obligations.

4 And why I qualify 'for the most part,' because
5 as you go down and reconcile the trust agreements, so --
6 the trust ledger, there was a payment to my firm for
7 fees. But all the other entries, Berry-Hinckley Trust
8 of 53,000 on January 3rd, that's settlement payment.

9 The Marine Midland wire accounts, so that
10 disbursement on 1 -- January 31st, 2012, that's a
11 settlement payment. And when I say 'settlement' because
12 there were other obligations in the settlement besides
13 cash to the Herbsts. So there's -- the -- those are --
14 those monies are coming out of the \$750,000 that came
15 from Liburd and Dash on November 30th.

16 And we could just keep going here. You know,
17 Washoe County Treasurer is a settlement. That's tax
18 payments. Again, Midland wire account on 2/27.
19 Settlement payment. Straightline Merchant Capital. Off
20 the top of my head that doesn't ring a bell, but I
21 believe that also was a settlement payment, but I could
22 wrong about that.

23 But my point is, so between -- this trust
24 ledger receives over \$5 million, substantially more than

1 \$5 million coming from the Sefton and Liburd and Dash.

2 What happened to the rest of it, if it didn't hit here,

3 I don't know.

4 Q Okay.

5 A And by 'here' I mean Exhibit 10."

6 MR. GILMORE: That concludes the reading of

7 Dennis Vacco's October 20, 2015, deposition that

8 commenced at 10:09 a.m.

9 THE COURT: Okay. Just so that the record is

10 clear, I don't know what you've done with regard to the

11 depositions that you identified for the permanent record

12 or if you just gave them to me for my consideration?

13 MS. PILATOWICZ: We gave them just to you,

14 your Honor.

15 THE COURT: Okay.

16 MS. PILATOWICZ: We did discuss with the court

17 reporter that was here yesterday that she may have the

18 binder that reflects what the reader is reading.

19 THE COURT: To catch up.

20 MS. PILATOWICZ: For purposes of the record,

21 yes.

22 THE COURT: But on page 85 you read a couple

23 of lines that were not marked in mine, and that's fine,

24 I just want to make sure that was clear.

1 MS. PILATOWICZ: Your Honor, I do believe that
2 this was just an error in marking.

3 THE COURT: Okay.

4 MS. PILATOWICZ: If there is a situation where
5 something is read that we didn't mark, I'll be sure to
6 bring it to Court's attention, so. But I believe that
7 is just an error.

8 THE COURT: That was page 85, lines 2 through
9 10. Now, this is a good time to stop for lunch before
10 we go into the next deposition. We'll break until 1:15.
11 That works for everybody?

12 MR. GILMORE: It does.

13 THE COURT: Okay. So I'll see you back here
14 at 1:15. Court's in recess.

15 (Lunch break.)

16 THE COURT: We lost our reader.

17 MS. PILATOWICZ: We have a new reader.

18 THE COURT: Oh, a new reader. Okay.

19 MS. PILATOWICZ: But your Honor, before the
20 deposition reading there is one housekeeping matter that
21 relates to exhibits and the admission of exhibits in
22 this case.

23 THE COURT: Okay.

24 MS. PILATOWICZ: As your Honor may recall

1 during Mr. Leonard's testimony the Court admitted
2 certain categories of documents.

3 THE COURT: Yes.

4 MS. PILATOWICZ: Those being the Hodgson Russ
5 communications and Lippes Mathias communications. It
6 appears in going over our exhibit list that some of
7 those were inadvertently omitted in the reading.

8 Rather than bring Mr. Leonard back up, we
9 would request that that those documents be admitted.
10 They're the same category of documents at this time,
11 given that the Court's already ruled on the
12 admissibility of the categories of documents. We
13 provided the list to Mr. Gilmore, we've discussed it. I
14 understand that Mr. Gilmore doesn't have an objection to
15 the process, though he maintains objection that was
16 previously -- previously asserted when the categories
17 were sought to be admitted.

18 THE COURT: We'll see if I remember well
19 enough to where we're at. Which exhibit numbers are we
20 talking about?

21 MS. PILATOWICZ: The exhibit numbers that
22 we're seeking to admit are Exhibit 36, which was one of
23 the Hodgson Russ emails. And the rest came from the
24 subpoena and court order that directed Lippes Mathias to

1 provide documents to the trustee, which were number --
2 oh, I'm sorry, so that was 27 was the Hodgson Russ. And
3 the Lippes Mathias documents were Exhibit 36, 69, 76,
4 130, 133, 142, 149, 150, 152, 153, 154, and 160.

5 THE COURT: And none of these have been
6 offered before. Correct?

7 MS. PILATOWICZ: Your Honor, I don't know if
8 they were offered before and not admitted and that's why
9 it didn't make it on our list. They certainly haven't
10 been admitted.

11 THE COURT: I'm not seeing where any of these
12 were offered.

13 MS. PILATOWICZ: Then, your Honor, if they're
14 not on the list, they weren't previously offered, it was
15 certainly the intent to offer them through Mr. Leonard
16 when the other exhibits were read. And I don't know --
17 they were simply inadvertently omitted.

18 THE COURT: Okay. So we're talking about when
19 we admitted wholesale, whole bunch of exhibits.

20 MS. PILATOWICZ: Correct.

21 THE COURT: All right. So Mr. Gilmore, your
22 objection to the admission of these exhibits?

23 MR. GILMORE: Well, the way I understand it is
24 similar to Ms. Pilatowicz is had they recognized that

1 they were not included in the original bulk admission of
2 the Hodgson Russ and Lippes Mathias documents, my
3 understanding is they would have offered them had they
4 recognized they were not included. With that
5 understanding I would simply renew the same objections I
6 had to the previous bulk admission.

7 Of course, my objections were overruled and I
8 understand that and I can live with that. But -- so my
9 only response is I would -- to the extent they're being
10 offered in the same bulk offering that the previous
11 documents were to which this court admitted, I'll simply
12 renew my objections and I anticipate that they would be
13 admitted on the same basis as the Court's admission of
14 the prior bulk. That's my understanding.

15 THE COURT: Okay. And the testimony was that
16 these were all received during the regular course from
17 the custodians of record and that they had been received
18 electronically originally; is that correct?

19 MS. PILATOWICZ: That is correct, your Honor.

20 THE COURT: And you were offering them as
21 records of business regularly conducted --

22 MS. PILATOWICZ: Correct.

23 THE COURT: -- is that what you were doing?

24 MS. PILATOWICZ: Correct.

1 THE COURT: So the objection, then, is
2 overruled as I had previously ruled and we will admit
3 Exhibit 27, 36, 69, 76, 130, 133, 142, 149, 150, 152,
4 153, 154, and 160.

5 (Exhibits 36, 69, 76, 130, 133, 142, 149, 150,
6 152, 153, 154, and 160 are admitted into evidence.)

7 MS. PILATOWICZ: Thank you, your Honor.

8 THE COURT: And for the purpose of the clerk
9 and I, our notes, this is -- these were exhibits from
10 the -- identified during -- from the Lippes firm or the
11 Hodgson Russ firm. Right?

12 MS. PILATOWICZ: Exhibit 27 was admitted from
13 the Hodgson Russ firm. The reminder were the Lippes
14 documents.

15 THE COURT: Okay.

16 MS. PILATOWICZ: Thank you, Your Honor.

17 THE COURT: You're welcome. So counsel, did
18 you want to keep going? We stopped, I think, after the
19 first deposition of Mr. Vacco.

20 MR. GILMORE: That's correct. And it was
21 brought to my attention that we omitted the last three
22 lines of Mr. Vacco's -- the morning session of Mr.
23 Vacco's October 20, 2015, deposition. So what I'd like
24 to do is introduce the Court to my afternoon reader.

1 This morning's reader, which was a fill-in, Mr. Sean

2 Savoy is here to complete the project.

3 THE COURT: Okay. Sir, please come forward

4 and be sworn.

5 COURT CLERK: Please raise your right hand.

6

7 SEAN SAVOY,

8 was duly sworn in to read correctly

9 to the best of his ability.

10

11 COURT CLERK: Thank you. Please be seated at

12 the witness stand.

13 MR. SAVOY: Thank you.

14 THE COURT: You may proceed.

15 MR. GILMORE: Thank you. Mr. Savoy, you have

16 in front of you --

17 THE COURT: Let's have him spell his name

18 himself.

19 MR. SAVOY: Yes. My name is Sean, S-e-a-n,

20 last name S-a-v-o-y.

21 MR GILMORE: Mr. Savoy, you've got in front of

22 you a binder which contains deposition transcripts.

23 We'll be going through a few of these in order. But in

24 front of you I would first like to start with the Dennis

1 C. Vacco deposition at the top dated October 20, 2015.

2 If you would turn to page 115. And I will start on line

3 10.

4 BY MR. GILMORE:

5 Q "Are you aware of any offshore accounts that

6 Paul Morabito held?

7 A Other than this one, no."

8 MR. GILMORE: That concludes the October 20

9 morning deposition of Dennis C. Vacco.

10 Mr. Savoy, the next tab on that binder is

11 likely to be the deposition of Dennis Vacco, October 20,

12 2015, at 2:03 p.m., which is also referred to as the PMK

13 deposition. Let me know when you have that in front of

14 you.

15 MR. SAVOY: I have it.

16 THE COURT: Sorry. What time was that?

17 MR. GILMORE: 2:03 p.m. --

18 THE COURT: All right.

19 MR. GILMORE: -- on October 20, 2015.

20 THE COURT: Thank you.

21 MR. GILMORE: I'll start the questioning on

22 page 3, line 8. Let me know when you're there.

23 MR. SAVOY: I'm there.

24 EXAMINATION

1 BY MR. GILMORE:

2 Q "Can you please state and spell your name for
3 the record?

4 A Dennis, D-E-N-N-I-S, middle initial C.,
5 Vacco, V, as in victory, A-C-C-O."

6 MR. GILMORE: Page 10, line 14. Are you
7 there?

8 MY SAVOY: Yes.

9 BY MR. GILMORE:

10 Q "Okay. Let me -- let me back up. What is
11 your current role with Snowshoe Petroleum, Inc.?

12 A Snowshoe? We still represent Snowshoe.

13 Q So you represent them as counsel currently?

14 A Correct.

15 Q Are there any -- is there --

16 A Not in this litigation, obviously.

17 Q Understood. Is there any litigation outside
18 of this litigation that Snowshoe is involved in?

19 A No. Not that I'm aware of.

20 Q So in what capacity do you represent them?

21 In --in corporate governance matters or do you represent
22 them?

23 A Corporate governance. From time to time,
24 there will be some regulatory compliance issues with

1 the facilities in Arizona. Lease issues. The like.

2 Q Have you ever held a -- have you ever been an
3 officer of Snowshoe Petroleum?

4 A I don't believe so.

5 Q Have you ever had any involvement with the
6 Snowshoe Petroleum other than as counsel?

7 A No.

8 Q Okay. What makes you qualified to be the
9 person most knowledgeable of Snowshoe Petroleum on the
10 topics that we discuss?

11 A Because me and my firm were principally
12 responsible for the transaction documents and the
13 transitions -- excuse me, transaction."

14 Q Page 13, line 9. "Okay. Did you represent
15 Consolidated Nevada Corporation?

16 A Again, in the context of the underlying
17 Herbst litigation, the answer to that is yes. I argued
18 and appeared before the Nevada Supreme Court, which I
19 believe led to the settlement discussions in October of
20 2011. So I was not only representing CNC from a
21 business perspective, but also from a litigation
22 perspective.

23 There was an interlocutory appeal in that case
24 in the underlying case in front of Judge Adams. And the

1 appeal that was unfortunately argued at 12, 13 months
2 after the judgment went to a central issue in the case.
3 Central determination of Judge Adams in the case. And
4 that case was argued. Mr. Breslow from Mr. Gilmore's
5 firm was my sponsor, if you will, before the Nevada
6 Supreme Court. But after that argument, which did not
7 go very favorably for John Desmond, we started some
8 negotiations.

9 So, yes, I was involved in representing CNC in
10 both litigation and business matters at the time.

11 Q When did you start representing CWC in
12 business matters?

13 A About at the time that the hand off occurred
14 from Leif Reid's firm to my firm and the Belaustegui
15 firm. So September, October, November -- you know, Leif
16 might have been involved even as late as December of
17 2010. But I don't believe Leif was involved in the
18 business matters of CWC or CNC. He was -- he was
19 involved in the litigation.

20 Q Do you know what the ownership interest in
21 Consolidated Western Corporation were in 2010?
22 September of 2010?

23 A It was an 80/10/10 with Paul A. Morabito
24 owning 80 percent and Edward and Sam owning 10 each."

1 Q Page 15, line 13. "What did Consolidated
2 Western Corporation do in September -- what was its
3 business purpose in September of 2010?

4 A CWC owned -- CWC for sure owned Superpumper,
5 Inc. in Arizona.

6 Q Do you know if it owned anything else?

7 A There might have been a development project,
8 Big Wheel Hospitality. Big Wheel.

9 Q What makes you think that Consolidated
10 Western Corporation may have owned the Big Wheel
11 development project?

12 A I know that one of those entities -- what I'm
13 uncertain about is whether CWC -- whether CNC was the
14 same as CWC with a name change, or they were two
15 separate entities.

16 Q So it's your understanding that either CNC or
17 CWC had the ownership interest in the Big Wheel
18 development project?

19 A The Fernley -- the Fernley truck stop
20 project, correct.

21 Q And you're just unclear which one it was.

22 A Correct.

23 Q Now, in -- in -- on approximately September
24 29th, 2010, Consolidated Western Corporation was merged

1 into Superpumper, Inc.; is that correct?

2 A Correct.

3 Q What was the purpose of that?

4 A Superpumper, Inc. was a -- an Arizona entity.

5 The property, the leases, and the businesses were in

6 Arizona. And with an eye toward divesting Paul A.

7 Morabito of his interest in CW -- in Superpumper through

8 CWC, the companies were merged.

9 Q Who decided that the companies should be

10 merged?

11 A I believe the structure of the transaction

12 was devised in our law firm, the object of the merger

13 was driven by the clients.

14 Q And the clients being?

15 A Well, CWC, again, was -- the investors were

16 Paul, Sam, and Edward. And the same logic that applied

17 in this instance that I testified to in the earlier

18 deposition about wanting to get Sam and Edward out of

19 the litigation mill involving the Herbsts, the goal

20 again for this company was to pay off Morabito what he

21 was owed. So as the Herbsts were going to chase

22 Morabito, they would chase Morabito, Paul, and allow Sam

23 and Edward to walk away with their portion of the

24 company, plus importantly, the debt. The debt of the

1 company which was pretty substantial at the time.

2 So, you know, I know that John Desmond
3 believed that the company was worth, you know,
4 infinitely more than what it was in reality because he
5 was not cognizant of the debt.

6 Q Did you represent Superpumper, Inc., in
7 September of 2010?

8 A I'm sure we did.

9 Q Do you know for certain?

10 A I'm pretty sure we did."

11 Q Page 118, line 13. "Around the same time you
12 incorporated a new entity called Snowshoe Petroleum,
13 Inc.; is that correct?

14 A Correct.

15 Q Who directed you to form Snowshoe Petroleum,
16 Inc.?

17 A To the best of my knowledge, it was Edward
18 and Sam.

19 Q Do you recall having a conversation with
20 Edward and Sam about that?

21 A Yes.

22 Q When was that conversation?

23 A Contemporaneous with the actions that we
24 took.

1 Q What was the purpose of Snowshoe Petroleum,
2 Inc.?

3 A To be the holding company for Superpumper.

4 Q Was it your firm that incorporated Snowshoe
5 Petroleum, Inc.?

6 A Yes.

7 Q Why was it done in New York?

8 A At the time that this was going on, so Sam,
9 dual Canadian/U.S. citizenship, although I don't know if
10 he's got a Canadian citizen, but he lives in St.
11 Catharines, which is about a half-hour drive from here.

12 The accountant that we were working with at
13 the time -- one of the accountants that we were working
14 with for the business was -- is located here, and the
15 law firm is located here.

16 Q Who is the accountant that you were working
17 with?

18 A Dansa & D'Arata.

19 Q Dansa & D'Arata?

20 A Mm-hmm.

21 Q In what capacity were you working with them?

22 A Well, it was more Sam working with them than
23 me.

24 Q So it's your understanding that Sam was

1 working with them with respect to the Superpumper

2 transaction --

3 A Superpumper.

4 Q -- or just Superpumper business?

5 A Both.

6 Q Have you represented Snowshoe Petroleum since
7 it was formed?

8 A Yes. We formed it.

9 Q And do you still represent them today?

10 A Yes.

11 Q And there's been no break in that
12 representation?

13 A Well, I'm sure they have other counsel, but
14 we've had a continuing relationship, yes.

15 Q Do you receive any compensation for Snowshoe
16 other than through legal services that are provided
17 through your firm?

18 A No.

19 Q How is Snowshoe Petroleum, Inc., capitalized?

20 A Sam and Edward put money into the business.
21 They each put several hundreds of thousands of dollars
22 into the company.

23 Q Do you know exactly how much?

24 A Off of the top of my head, I don't."

1 Q Page 21, line 11. "Do you know what that
2 money was used for?"

3 A To run the company.

4 Q And by 'run the company', do you mean --

5 A Once --

6 Q -- do you mean operations?

7 A Correct.

8 Q Do you know if it was used to pay off debt?

9 A Some of it, yes.

10 Q Do you know how much of it?

11 A I don't remember. At the time of the
12 transaction, the merger and then the -- the acquisition
13 by Snowshoe Superpumper, Inc., was in default in its
14 covenants with Compass, BBVA Compass. Because there was
15 two -- there were two financial industries that were at
16 play. One was a line of credit and another was a loan.
17 And I don't recall, you know, the precise dollar amounts
18 as I sit here. I'm sure you have documents that be can
19 refresh my recollection. But I think at the time of the
20 transaction, the company was -- and they were roughly
21 the -- line of credit and the loan were roughly \$3
22 million each.

23 And while the line of credit wasn't totally
24 tapped out, there was a formula in the line of credit

1 that was tied to receivables or equity. There was some
2 formula, so that it prevented the company from tapping
3 out the full 3 million based upon a snapshot in time of
4 its financials, whether it was receivables, or I forgot
5 what it was.

6 So my -- my recollection is at about the time
7 of the transaction, the debt owed to BBVA Compass
8 between -- from these two financial instruments was
9 close to 5 and a half million dollars.

10 When Edward and Sam took over control of the
11 company by buying out Morabito's interest in CWC, or
12 buying out -- buying out in the company as a result of
13 the merger, they had to put money into the company to
14 satisfy this covenant about the differential, how much
15 of the line of credit was outstanding versus how much
16 money they had in the bank, just in a simple way.

17 So a portion of what they put in was designed
18 to satisfy the covenant. And while I don't know
19 precisely, because I didn't run the P&L of the company,
20 a portion of what they put in went to operations.

21 Q Did you have any involvement in obtaining
22 those -- that loan and line of credit from BBVA Compass?

23 A No, I did not. I had conversations with BBVA
24 Compass about the default in the covenant. And there

1 were multiple defaults in the loan covenant.

2 So while the loans were serviceable, they were
3 performing loans even before the Herbst judgment, there
4 was a covenant or two that had been in default.

5 Q Do you know who those liens were -- were
6 between? Meaning were they loans to Superpumper, Inc.?
7 Were they loans to Consolidated Western? Were they
8 loans to Superpumper Properties?

9 A No, not -- definitely not Superpumper
10 Properties. And my recollection is the -- the BBVA
11 Compass, both the term loans and the line of credit were
12 in the Superpumper, Inc., who were guarantors, and,
13 again, before the Herbst judgment, there was already a
14 notice of default. It might not have ripened into a
15 formal notice, but the bank was already concerned about
16 the violation of -- of covenants to the loan, as opposed
17 to the terms of the loan.

18 Q Did you know what covenants had been -- or
19 what covenants BBVA alleged had been violated?

20 A The L -- the line of credit was not to be
21 disbursed to officers or owners, and a portion of the
22 line of credit was.

23 Q Do you know why a portion of the line of
24 credit was disbursed to officers?

1 A No.

2 Q Do you know which officer it was disbursed
3 to?

4 A I believe all three.

5 Q Do you know when that occurred?

6 A Not precisely but before the Herbst judgment.

7 Q So after CWC was merged into Superpumper and
8 after Snowshoe Petroleum was formed, Snowshoe Petroleum
9 acquired Morabito's 80 percent interest in Superpumper,
10 correct?

11 A Correct."

12 Q Page 29, line 9. "You have been handed
13 what's marked as Exhibit 12.

14 A Yes."

15 MR. GILMORE: Your Honor, for the record,
16 Exhibit 12 is Exhibit 80 in the trial binders.

17 THE COURT: Thank you.

18 BY MR. GILMORE:

19 Q "Do you recognize Exhibit 12?

20 A I do.

21 Q What is Exhibit 12?

22 A That's the shareholder interest purchase
23 agreement whereby Paul Morabito sold his interest in
24 Superpumper, Inc., to Snowshoe Petroleum, Inc.

1 Q Did you draft this document?

2 A My office did.

3 Q Do you know who in your office drafted it?

4 A Probably Christian Lovelace.

5 Q In Article 1, Section 1, there's a listed a
6 purchase price of \$1,035,094, and it's referenced as a
7 preliminary appraisal of the seller's shares. Do you
8 know where that \$1,035,094 number came from?

9 A It was -- without seeing the actual numbers
10 in front of me, it was the Matrix valuation, minus the
11 BBVA debt, that was going to be no longer the
12 responsibility of Morabito, Paul A. Morabito. And that
13 was going to be assumed exclusively by Edward and Sam
14 through their ownership interest. So minus the debt.
15 And a discount. I forgot exactly what the discount
16 percentage was, but it resulted in this -- in this
17 million 35.

18 Q If I told you that at the time this agreement
19 was drafted, Matrix hadn't completed their valuation
20 yet, would that change your answer as to where this
21 number came from?

22 A No. It -- it doesn't because that's why this
23 was the initial purchase price, because Matrix had not
24 yet finalized their number. So we were going off of

1 their minimum number.

2 And while I didn't study them last week, I
3 know that we sent to you last week a couple of
4 iterations of the matrix valuation, or at least I think
5 we did. It seemed like there were several e-mails
6 exchanged between me and Spencer Cavalier as they were
7 working through the valuation process.

8 So the 'initial purchase price' as defined in
9 the exhibit, was in recognition of the fact that Matrix
10 was going to come back with -- with a final number."

11 Q Page 32, line 8. "You've been handed what's
12 marked as Exhibit 13."

13 Your Honor, for the record Exhibit 13 is 236
14 in the trial binders.

15 A "Yep. Yes."

16 THE COURT: Sorry. It's just a thank you.

17 BY MR. GILMORE:

18 Q Okay. "Do you recognize Exhibit 13?"

19 A Well, what I recognize is -- so it's a
20 two-page document, but it's really just one -- one page.

21 What I recognize is the portion on the first
22 page, so Superpumper Bates number 00097. But what I
23 recognize is the analysis portion.

24 So I don't recognize the email that was from

1 Sam Morabito to Mike Vanek, but I do recognize what
2 appears to be a cut and paste of the analysis of the
3 Superpumper acquisition. And, indeed, my partner's
4 signature line is on there and our firm name and number.

5 So a portion of the document I recognize.

6 Q Who do you understand to have completed the
7 analysis of Superpumper acquisition, the chart that's in
8 the middle of the first page of Exhibit 13?

9 A The best of -- the best of my recollection,
10 this -- this document would have been a collaboration
11 between me and Christian.

12 Q Okay. So let's go through the numbers on
13 that chart. The first number is the Matrix appraised
14 value. Is that the number that you received in the
15 final report from Matrix?

16 A I believe so.

17 Q Okay. And the Compass term loan, what is
18 that?

19 A That's -- that's the term loan. So I believe
20 that that's not the revolver. But that's the
21 outstanding -- remember, I told you this was two credit
22 facilities. There was a term loan and a line of credit.
23 This is the outstanding amount, I believe, although the
24 number seems low, as I look at it. So the number seems

1 low. But I think that that was at the time of the --
2 the value -- the math on this, that was the amount that
3 was outstanding on the term loan versus the line of
4 credit.

5 Q Was that loan a liability of Superpumper?

6 A Yes.

7 Q Was it a liability of Superpumper at the time
8 that Superpumper was appraised?

9 A Yes.

10 Q Okay. And it looks like subtracting the
11 appraised value or subtracting the term loan from the
12 appraised value gives a net value of approximately \$4.8
13 million?

14 A Correct.

15 Q And then there's an additional risk discount
16 of 35 percent?

17 A Yes.

18 Q What does that reflect?

19 A That's the discount that I mentioned a moment
20 ago, 35 percent. The risk discount was the -- the risk
21 discount in Edward and Sam acquiring the lion's share of
22 the company around the debt and, frankly, Herbst
23 litigation.

24 Q So let's go over each of those. The first --

1 the first element of the risk count is the acquisition
2 of the company around the debt?

3 A Correct.

4 Q What do you mean by that?

5 A Well, look -- again, I'm saying I think that
6 this 1.682 seems to be a low number because I mentioned
7 earlier that at a snapshot in time about -- you know, my
8 memory, a snapshot in time that what was owed to Compass
9 Bank was nearly 5 and a half million dollars. If my
10 recollection is correct, the term loan had been tapped
11 out, \$3 million. It was being paid, but it had been
12 totally drawn down.

13 And the revolver, which was up to \$3 million,
14 was in the 2 and a half million dollar range.

15 So I'm not sure as I sit here today the 1.6,
16 whether it's the -- because that 1.6 looks more like
17 what was left on the revolver, because the revolver goes
18 up and down, depending on their monthly receivables. So
19 that 1.6, it's possible that it mischaracterizes the
20 term loan because I -- I do believe that the term loan,
21 there was more owed than 1.6. I could be wrong, but
22 it's just my sense that when we were doing all this, the
23 total dealt to Compass Bank owed by Superpumper was in
24 the vicinity of \$5.5 million.

1 Q So that 1.68 number would be consistent with
2 the number that was the revolving line of credit?

3 A That's what I think, sitting here today.

4 Q Okay.

5 A And what I think, again without the documents
6 in front of me, Matrix -- so Matrix is aware of the
7 Compass debt. So however they treated it, I'll let the
8 document speak for itself.

9 But when we got down to the risk factor, and
10 -- and -- and here's this additional risk factor that is
11 just coming to mind. Paul was a guarantor. At the time
12 of the transaction, they were already in violation -- as
13 I've testified previously, they are already in violation
14 of covenants before the Herbst judgment.

15 Then I notified the bank of a Herbst judgment
16 that now put the guarantor, Paul A. Morabito, who
17 guaranteed the whole shebang, now puts the guarantee in
18 default.

19 So at the time this is going on Shawn
20 Hollenbach I think is the guy at the bank that I'm
21 dealing with, he's saying, you know, well, you know, I
22 got Paul as my guarantor. Now you tell me he's got, you
23 know, millions of dollars of judgment now against him.
24 These guys owe me all this money. And, oh, by the way,

1 they probably took a distribution that they shouldn't
2 have taken out of one these facilities."

3 THE COURT: I'm going to stop you. Show down
4 just a little. Okay?

5 A "You know, this is really upside down here,
6 Dennis. So that all went into the risk factor.

7 So it wasn't just the value of the money that
8 was owed, but it was the risk inherent in the documents.

9 I don't believe Edward and Sam were the
10 guarantors on these loan instruments with Compass.
11 Paul, the judgment debtor, was.

12 So the risk, the real risk here was that any
13 day that Shawn Hollenbach -- I believe it was Shawn
14 Hollenbach. Any day that Shawn Hollenbach decided to
15 get a promotion or move on to another bank and we got
16 now a new loan officer dealing with us, they're going to
17 pull the pin on all of this and foreclose on these --
18 these notes.

19 And I don't think -- I don't know. I mean,
20 these guys -- I wasn't sure that these guys were
21 prepared to step up to the plate and throw 5 and a half
22 million dollars into this company at that point in time
23 to satisfy the bank.

24 Q So the -- the risk discount consisted of the

1 potential that Compass would foreclose?

2 A Correct. The value of the debt -- the -- the
3 nature of the debt, okay? The dollar value of the debt,
4 most appropriately, the defaults that were already
5 existing and not cured, frankly, I don't remember how we
6 cured the guarantor default. I don't recall.

7 We tried to cure the -- the default around,
8 you know, the distance between money that they had in
9 the bank and the revolver, because they just couldn't
10 make -- take money out of that revolver. They had --
11 essentially, they were borrowing their own money. They
12 had to have a certain amount of asset in the bank to
13 cover the revolver.

14 So we tried to cure that default by Edward and
15 Sam putting more cash into the till of a company, so it
16 -- it -- it, you know, brought down the distance between
17 the money outstanding and the money that was on -- cash
18 on hand in the company.

19 That's what the bank was looking for. What --
20 what assets could they go and get in the event they
21 wanted to get their money back? So this was some ratio
22 in that loan document.

23 So we attempted to cure that default, the
24 ratio default, if you will, by Edward and Sam putting

1 more money into the company.

2 I don't recall how we solved the default. I

3 think there's a forbearance. Agreement, I just don't

4 remember the terms of it.

5 Q Were there any other factors that are

6 included in that 35 percent risk discount?

7 A Yeah. The -- the fact that we might be

8 sitting here today.

9 Q Other than the ones we've talked about,

10 anything else?

11 A No. I don't think so.

12 Q And then there's an amount of cash paid --

13 A Correct.

14 Q -- of \$1,035,094?

15 A Right. So" --

16 Q Go ahead.

17 A "So we saw that someplace. We saw that in

18 the purchase agreement, Exhibit 12. And that was cash.

19 Q That was cash from Sam and Edward?

20 A Correct.

21 Q Was that money that was -- was that the money

22 that you referenced earlier that went into the company

23 operations --

24 A No.

1 Q -- and the --

2 A That went to Paul.

3 Q Okay. So in addition to the 1.3 million,
4 they put in additional money?

5 A Absolutely. Yes. In addition to the cash
6 payment that they made to Paul they put money into the
7 company."

8 Q Page 40, line 11. "You've been handed what's
9 been marked as Exhibit 14."

10 And for the record, Exhibit 14 is Exhibit
11 103--

12 MS. PILATOWICZ: Through 105.

13 MR. GILMORE: In the trial binders.

14 THE COURT: I'm sorry, 103?

15 MR. GILMORE: I believe it's combined, Exhibit
16 14 in the deposition is combined and now consists of
17 Exhibits 103, 104 and 105 in the trial binders.

18 MS. PILATOWICZ: That's correct.

19 THE COURT: Okay. Thank you very much.

20 A "Correct.

21 BY MR. GILMORE:

22 Q Do you recognize Exhibit 14?

23 A It's two notes. One is dated November 1st,
24 2010. Actually, it's more than -- more than two. So

1 one note is dated November 1st, 2010, between Snowshoe,
2 a note from Snowshoe to Morabito owing Morabito \$1.462
3 million.

4 A successor promissory note dated February
5 1st, 2011, showing that Snowshoe now owes Paul A.
6 Morabito 492,937.

7 A successor promissory note dated February
8 1st, 2011, whereby Superpumper assumes a \$939,000
9 liability that was previously owed by Paul Morabito but
10 it was transferred to Paul. Again, Bates stamp number
11 00007 is the assignment agreement.

12 So there's a -- a lot of documents in this
13 exhibit.

14 Q Yes. Let's start with the --

15 A So --

16 Q -- first --

17 A Go ahead. I'm sorry.

18 Q Let's start with the first note --

19 A Yeah.

20 Q -- that's dated November 1st, 2010.

21 A Correct. So this note, the November 1st,
22 2010, Bates stamped number 1 and 2, 01, 02, would be
23 reflective of, going back to Exhibit 13, the analysis,
24 Superpumper acquisition, the cash of 1 million 35 that

1 was paid to Paul, leaving a balance owed to Paul of a
2 million 462.

3 This promissory note reflects the agreement to
4 the company to pay Paul A. Morabito back that \$1.462
5 million.

6 Q Do you know who was involved in the
7 negotiation of this note?

8 A It would have been, you know, certainly
9 Edward and Paul and maybe Edward, Paul, and Sam. I was
10 not involved in the negotiations around it.

11 Q Did you draft the promissory note?

12 A Yes. Well, I'm sorry. This one here? This
13 one here?

14 Q Yes.

15 A The -- the term would have been --

16 Q I think we then --

17 A Stop.

18 Q Pass to page 42, line 15.

19 A Okay.

20 Q "Do you know why Snowshoe provided a note
21 instead of paying Morabito in full for the interest?

22 A They didn't have the money. Snow -- don't
23 forget Snowshoe was just -- just formed. It was being
24 capitalized by Edward and Sam, as they were putting

1 money into the business and paying down the -- some of
2 the -- the loan instruments.

3 As we go to the successor, you'll see how that
4 happened. I mean, so the next page in the exhibit --
5 I'm preempting your question here, but Exhibit 3 and 4,
6 Bates stamp numbers 03 and 04.

7 So at some point in time, as I mentioned to
8 you earlier, I think it was the term loan, which is why
9 I come back to this Compass term loan on -- on 13 being
10 inaccurate. I think that should be the LLC, although
11 maybe Christian calls the LLC term, and I'm just -- you
12 know, I'm mixing and matching the characterizations of
13 these loans.

14 Because what happened here, earlier in 2010 --
15 precisely when, I don't recall. I had no role in it. I
16 did not negotiate the underlying loan documents, but --
17 and I think it is really kind of a -- an amendment to
18 re-upping of an even earlier loan document with Compass.

19 They had their own relationship with the
20 bankers. They didn't need me for -- they just needed me
21 to help clean some of it up. They didn't need me to
22 negotiate with the bankers.

23 But what happened is when they re-upped or
24 recharged, if you will, one of those loan instruments,

1 each one of them took \$939,000, which you'll see
2 reflected in the assignment. The successor promissory
3 note.

4 \$939,000 times three comes pretty darn close
5 to the \$3 million. It's just a click or two below the
6 \$3 million.

7 That was money that was owed to the bank. It
8 was owed to Compass. And that formed -- when the
9 officers or directors, as they were, pulled money out of
10 that loan instrument, it was in violation of the loan
11 covenant.

12 Sooner or later, it didn't take Shawn
13 Hollenbach and BBVA Compass long to kind of figure out
14 all of this out as, you know, we're talking about the
15 transaction, and we're talking about the Herbst judgment
16 and the diminished value of Morabito's guarantee. That
17 all of a sudden the bank's saying whoa. It's a white
18 knuckle ride for the bank at this point in time.

19 So I don't know how much Edward and Sam put
20 back into the bank to cover their portion of the 939
21 that they each took. But Morabito, after Morabito has
22 that 939 that is really owed to the bank. So -- and
23 he's now virtually judgment-proof, thanks to the Herbst
24 judgment, and he's not an owner of the company anymore.

1 So as we were trying to settle down Compass,
2 because Edward and Sam want to run this business, and
3 Compass is an important partner for them in running the
4 business, but they really, you know, have the keys to
5 the Kingdom.

6 I don't know. I don't think there was a
7 conversation where I suggested to Compass, here, I'm
8 going to give you the keys. I know I -- I offered to
9 John Desmond the keys to Superpumper at one point in
10 time. You think it's worth so much, John? Here are the
11 keys. You go run it. You assume all the debt and
12 liability. We'll give it to you.

13 So I'm trying to settle Compass down. And
14 part of the process of settling Compass down was
15 figuring out this \$939,000."

16 Q I think on line 3 you said "I don't think
17 there was a conversation where I suggested to Compass."

18 A Reread it.

19 Q Would you reread page 45, line 3?

20 A "I don't know. I think there was a
21 conversation where I suggested to Compass" --

22 Q Continue and we'll proceed.

23 A -- here, I'm going to give you the keys. I
24 know I offered to John Desmond the keys to Superpumper

1 at one point in time. You think it's worth so much,

2 John? Here are the keys. You go run it. You assume

3 all the debt and liability. We'll give it to you.

4 So I'm trying to settle Compass down and part

5 of the process of settling Compass down was figuring out

6 this \$939,000.

7 Q Okay. Let's --

8 A I know I gave you a lot there.

9 Q Let's go back to the first successor

10 promissory note --

11 A Right.

12 Q -- that's dated February 1, 2011, that's

13 amount of 400 -- approximately \$493,000.

14 A Right. But you can't look at that in a

15 vacuum because you have to look at it -- with all due

16 respect, you have to look at it in the successor

17 documents, 005, 006, 007, and so on and so forth, all

18 dated February 1st.

19 So we start off with the -- the 1.4 that was

20 owed to Paul. That was changed. So, frankly, the way

21 they're ordered here is a little -- what makes it a

22 little confusing, because what really happened first is

23 the -- the \$939,000, where Snowshoe promises to Paul to

24 Superpumper essentially the \$939,000 that Paul took out

1 a year earlier or months earlier. Okay?

2 But now because the company is taking on a
3 Morabito liability, the 1.4 that was originally owed is
4 diminished by the 939.

5 So I'm sure if you did the math, you took the
6 939 from 1 point -- 1.462, you would get the 492,937.

7 So that's how we got to that number.

8 Q Okay.

9 A Because now the company is, you know,
10 relieving Paul of that 939. But the company is, you
11 know, putting itself deeper in -- in the -- well, look
12 it. Compass didn't care where the money was going to
13 come from. When they -- when Morabito become a -- when
14 the guarantee become useless, they were focused on,
15 we're going to get our money out of the company, out of
16 the assets, out of the sales, the receivables, or out of
17 these guys. Because they knew Paul was now -- he was
18 judgment proof, notwithstanding his guarantee.

19 So all of this was designed to normalize the
20 relationships that -- the relationships that Superpumper
21 had with Compass.

22 Q Do you know if \$492,000 was paid from
23 Snowshoe to Paul Morabito? ,

24 A So when we went down your list there were,

1 you know -- I'm sorry. Let's go way back here. So
2 looking at Exhibit 11, when you asked, you know, whether
3 I'm the person of -- most knowledgeable regarding bullet
4 point 5 and 6, I said no.

5 So I don't know. Since my separation, I don't
6 know what happened to the debt, how -- how much of it's
7 been paid, whether it's been paid in total or whether
8 it's in default. I don't know."

9 MR. GILMORE: Your Honor, Exhibit 11 that's
10 identified on that page is the Notice of Deposition of
11 the Snowshoe person most knowledgeable which has not
12 been offered in evidence.

13 BY MR. GILMORE:

14 Q Page 48, line 2. "Okay. Who was involved in
15 determining that 35 percent risk adjustment?

16 A So I would say that it was -- and I don't
17 mean I would say' as a qualification, but my
18 recollection is that it was Christian Lovelace, who at
19 the time was an associate in our corporate group, and
20 Paul Mitchell, who was the corporate group practice --
21 practice group leader.

22 Q Is Paul Mitchell still with your firm?

23 A Yes.

24 Q And it's your understanding that they looked

1 at those risk factors, and do you know how they came up
2 with the exact number of 35 percent?

3 A I don't. Mitchell is -- you know, he's a
4 skilled practitioner, been at corporate work, M&A work
5 for a long time, been in-house at, you know, large
6 publicly traded companies. He's done a lot of M&A work.

7 Q Do you who know Superpumper Texas is?

8 A Well, so Superpumper Texas is a lot -- with
9 all due respect, Superpumper Texas is a lot like
10 watchmyblock, LLC.

11 It was a concept, an idea, that was more
12 robust in the planing stages than it ever would become
13 in the implementation stages.

14 We formed a Superpumper Texas at a time -- I
15 don't remember precisely when, but at a time that there
16 was the prospect of -- of some collaboration with -- so
17 I loosely define it as a collaboration because it kind
18 of was in the development stages with a Texas-based fuel
19 oil distribution company. And they had retail. So a
20 lot like Berry-Hinckley, Berry-Hinckley Industries. But
21 it was formed in -- in large measure it was formed just
22 so that the -- you know, we could keep track of it in
23 our office as to, you know, discussions, meetings with
24 the prospective partners. Never went anywhere.

1 Q Who were the prospective partners in
2 Superpumper Texas?

3 A Well, they owned a company, in Texas. They
4 owned a company. I don't remember who they were. So
5 they were -- they were not partners in Superpumper. So
6 when the entity was formed, they weren't partners, but
7 the entity was formed with an idea of -- of doing
8 business with these people, either acquiring them,
9 collaborating, but it never came to fruition.

10 I mean, frankly, they were as upside down
11 financially -- they were more upside down financially
12 than Superpumper, Inc., was.

13 Q Was there ever an asset purchase agreement
14 drafted with respect to Superpumper Texas?

15 A Maybe. I don't -- I don't recall with
16 clarity. I mean, I -- it's possible because it's --
17 it's possible that a draft -- a draft term sheet, a
18 draft agreement might have been sent to their Waco
19 lawyer. I seem to recall a lawyer in Waco, maybe. You
20 know, someplace down in the southwest. But it never --
21 it never came to fruition.

22 Q And the purpose of that asset purchase
23 agreement have been for Superpumper Texas to purchase
24 the assets of this other company in Texas you were

1 discussing?

2 A Yes, I believe so. But after -- through the
3 due diligence it became a nonstarter."

4 MR. GILMORE: That concludes Dennis Vacco's
5 October 20th, 2015, Person Most Knowledgeable
6 deposition.

7 Mr. Savoy, the next deposition will be the
8 Dennis Vacco, July 10, 2017, deposition, commencing at
9 9:16 a.m. This is also referred to it at the top as
10 Volume 2.

11 MR. SAVOY: I'm there.

12 MR. GILMORE: The first line, page 129, line

13 4. Are you there?

14 MR. SAVOY: Yes.

15 EXAMINATION

16 BY MR. GILMORE:

17 Q "Okay. At the last deposition one of the
18 questions that Mr. Gilmore asserted the privilege on was
19 relating to the termination of your attorney-client
20 representation of Paul Morabito. Do you recall that?

21 A Yes.

22 Q When was -- just so we can go back and make
23 sure we're on the same page, when did the
24 attorney-client -- the attorney-client relationship with

1 Paul Morabito terminate?

2 A I don't remember precisely.

3 Q Do you recall -- if I tell you last time you

4 testified it was in April or May of 2013, does that

5 sound correct?

6 A That sounds familiar.

7 Q Do you recall why it terminated?

8 A There was a combination of factors, but the

9 most important was the nonpayment of our fees.

10 Q Okay. And last time we were here, you

11 testified that you lost the dialogue with Paul Morabito.

12 Do you remember that?

13 A Yes.

14 Q I asked you at that time what makes you say

15 that you lost the dialogue, and your response was that's

16 -- that's just a conclusion, based upon many

17 conversations that I'm not going to get into about the

18 relationship, attorney-client relationship had been

19 frayed. And then you wouldn't provide any further

20 detail about those conversations.

21 Do you recall today what those conversations

22 were?

23 A Not -- not -- no. Not any better than I did

24 then.

1 Q Do you have any general idea what they were
2 about?

3 A It was primarily around the outstanding AR."

4 Q Page 137, line 12. "Do you know who Sefton
5 Trustees is?

6 A I just -- in general, I'm familiar with the
7 concept of, you know, the Sefton Trustees or the Sefton
8 Trust, whatever it is.

9 Q And I believe you testified last time that
10 you became aware of Sefton Trustees during a deposition
11 that Paul Morabito gave. Do you recall that?

12 A So I believe that what I was referring to at
13 that point in time, I think that there was a
14 postjudgment net worth deposition conducted by -- oh,
15 boy, I'm drawing a blank on --

16 Q Desmond?

17 A John Desmond and Brian --

18 Q Irvine?

19 A -- Irvine. Thank you. John -- how could I
20 forget John Desmond? Please don't tell him that I
21 forgot his name.

22 I don't remember where it was. Someplace in
23 Nevada. Maybe it was in Reno. Maybe it was in their
24 Vegas office. They are still with the law firm they

1 were with at the time. I forgot the name of the firm.

2 Gordon & Silver? Is that possible? Is that your law

3 firm?

4 Q No. My old law firm.

5 A Huh?

6 Q That's my old law firm.

7 A That's your law firm. Okay.

8 Q Old law firm.

9 A I knew -- I knew someone at Gordon & Silver.

10 So, you know, they had done extensive
11 discovery. They had a lot of documents, bank records,
12 et cetera, et cetera. I mean, those two guys were
13 pretty tenacious in those days and pretty thorough, in
14 my estimation.

15 And there was -- so if Mr. Breslow, so judge?
16 Is he now a judge? Judge Breslow and I were co-counsel
17 defending the net worth deposition. And we had some
18 idea of this money, my recollection, \$6 million
19 offshore. And, you know, John, Brian, the Herbst former
20 general counsel --

21 Q Sean Higgins?

22 A Sean Higgins. You see? So I -- you know,
23 it's -- I'm not making it up that I just -- I can't -- I
24 mean, these names are guys that I, you know, spent 24/7

1 with for a long time I should remember their names off
2 the top of my head.

3 But Sean Higgins believed there was, you know,
4 hundreds of millions of dollars, secreted offshore.
5 Sean Higgins and I had, you know, a couple of testy
6 exchanges over how, you know his math just didn't work.
7 He didn't understand, you know, prior transactions.

8 But the idea that there was hundreds of
9 millions -- I think his -- his target was, you know,
10 there's a hundred million dollars out there someplace.

11 And while John and Brian didn't necessarily
12 adopt the figure, they certainly adopted the idea that
13 there was money offshore.

14 So we were aware, through the course of their
15 leading up to the net worth postjudgment, leading up to
16 the net worth deposition, that they were looking, you
17 know, far and wide for offshore and, you know, accounts
18 in exotic island locations. Caymans, Nevis, you know,
19 so on and so forth.

20 So I think before we went into the deposition,
21 we were generally aware of their search, their inquiry
22 and, obviously, we talked to Morabito about it. And so
23 I would think -- I think that our knowledge of the
24 Sefton Trust money actually came prior to the actual

1 deposition.

2 But what was -- what was revealed in the
3 course of the deposition itself was the nature of the --
4 you know, how the money had been placed with this Sefton
5 Trust, if you will.

6 I forgot which island it was on, but it was,
7 you know, an offshore trust.

8 So it was really the first time, in my
9 recollection -- I mean, maybe I had heard of it
10 previously, but I -- I have a very sound recollection
11 of, during one of the breaks, being in a break room with
12 Barry and saying, you know, something to the effect
13 that, you know, this is the first time I've heard that,
14 which was the explanation around the -- how the money
15 got there.

16 Q Well, let me stop you right there. Can you
17 explain what you're referring to when you say 'how the
18 money got there'?

19 A Again, my recollection is that Mr. Morabito
20 was taking the position in the deposition that the money
21 belonged to a deceased friend of his. Former friend.
22 Deceased. And that he had made a commitment to the
23 decedent that he was going to -- that this money belongs
24 to the decedent.

1 And, again, so my recollection might not be
2 precise, but I've been giving you the best of my
3 recollection on this topic. That the money belonged to
4 decedent, that Mr. Morabito had made a commitment to
5 him. I want to say his last name was Marsland, Mr.
6 Marsland, that Paul had made a commitment to Jim
7 Marsland, maybe. Maybe that's Jim Marsland's brother,
8 but a Marsland, that upon his death he would utilize
9 that money to pay obligations that Marsland owed. And
10 that's the money that was in the trust. In the Sefton
11 Trust.

12 So the money was put by Marsland into the
13 Sefton trust for the benefit of somebody. Paul
14 characterized it as debtors, or I'm sorry, creditors at
15 the time, which was a surprising piece to me.

16 Q Why was that surprising to you?

17 A Because I had never heard that before.

18 Q Had you heard another description of how the
19 property got over to Sefton trustees?

20 A That it was Marsland's money.

21 Q Prior to the deposition, you heard that?

22 A Yes.

23 Q So what's different between what you heard
24 previous and at the deposition that made -- that was

1 surprising to you?

2 A Well, that post death, that Paul was then
3 obligated to pay off the Marsland creditors.

4 Q Okay. And then I stopped you when you were
5 testifying that you went into a break room --

6 A Right.

7 Q -- at some point during the deposition and
8 were talking to Mr. Breslow and indicated surprise that
9 you had never heard that.

10 What happened during that conversation?

11 A We just both kind of looked at each other and
12 said -- you know, as lawyers do, and said, this is a
13 surprise development to us and, frankly, didn't make any
14 sense to me.

15 Q Why didn't it make any sense to you?

16 A Why didn't Marsland -- you know, didn't make
17 sense that Marsland put money overseas for the purposes
18 of creditors after he died. That was the piece that
19 didn't make sense. Why -- why-- why was anybody paying
20 these creditors after Marsland died?

21 Q Did you talk to Paul Morabito about it?

22 A No, not before we -- not before we went back
23 in because he had already testified to it.

24 Q Did you talk to him at any time after --- any

1 time about it?

2 A Yeah. Afterwards, yes. Afterwards.

3 Q And what was that conversation?

4 A Very similar to his testimony.

5 Q You're telling him you were surprised and him
6 saying, that's the story?

7 A Yeah. Yes.

8 Q And did you have any further conversations
9 about whether -- did his story ever change?

10 A Well, I don't know if his story ever changed,
11 but, you know, I mean, why I find this whole process a
12 little tedious, as far as I'm concerned, is that you,
13 Mr. Murtha, John Irvine, and -- and Brian -- John
14 Desmond and Brian Irvine know that the Herbsts got the
15 \$6 million out of the Sefton trust.

16 Q Did you --

17 A So the money that was in the Sefton trust
18 were -- represented the -- the payments on the
19 settlement agreement. You know that, and Mr. Murtha
20 knows that.

21 So the Sefton trust money has -- is already in
22 the Herbsts' pockets.

23 Q Did you tell Paul Morabito that he needed to
24 get Sefton Trustee money back?

1 A No, I did not.

2 Q Do you know how the money -- how Paul
3 Morabito actually ultimately got the money transferred
4 back?

5 A When -- so after we executed the settlement
6 agreement -- and I don't remember the -- the -- you
7 know, the precise terms of the payout, but I have a
8 recollection that there was a 2 and a half million
9 dollar downstroke. The first payment was in the 2, 2
10 and a half million dollar range.

11 And I know, as you now know, because you have
12 our trust records, that Mr. Morabito had arranged for
13 that money to be wired from Dash and Liburd, or Dash and
14 whatever, which was essentially the Sefton trust.

15 So that the money came in 2, 2 and a half
16 million dollars. And, again, if you look at this firm's
17 trust records, you'll see that, over a period of time
18 during the discharging of the obligations under the
19 settlement agreement, \$6 million comes into this firm
20 and then out to the Herbsts from the Sefton trust."

21 MR. GILMORE: Page 153, line 16. And your
22 Honor, this portion of the testimony makes reference to
23 Exhibit 2, which is in the trial binders as Exhibit 76.

24 THE COURT: Thank you.

1 BY MR. GILMORE:

2 Q "You have been handed Exhibit 2, which
3 purports to be an email from Paul Morabito to
4 jon@aim13.com with a CC to Dennis Vacco dated March 10,
5 2010. Do you see that?

6 A Exhibit 2, yes, I'm reviewing it right now.

7 Okay. I reviewed it.

8 Q Do you know who jon@aim 13.com is?

9 A No.

10 Q Do you recall receiving this email?

11 A No.

12 Q Do you have any reason to believe that you
13 didn't receive it if you're listed on the CC line?

14 A No.

15 Q Do you know what this email refers to?

16 A It's only the date of the email that
17 refreshes -- that refreshes my recollection of -- of the
18 timing of this, and although I -- I'm not sure that this
19 -- that the timing of March 10th of 2010, that at some
20 point in time this is not an ongoing discussion.

21 But what was happening -- so this is
22 prejudgment by six months. What's happening at this
23 point in time is that my recollection is that ExxonMobil
24 was looking to divest stores in a variety of U.S.

1 markets.

2 How Mr. Morabito knew that, I don't recall,
3 but I do remember that there was a -- an interest on the
4 part of Mr. Morabito and other individuals that -- that
5 were in some of these markets, to try to acquire the
6 Mobil stores as Mobil was divesting them.

7 So that's what this email is about. It's
8 talking about prospect -- I mean, you can see the number
9 of stores, I mean, in the markets, in the southwest
10 market. It says Southwest, so I'm assuming that's the
11 Southwest of the United States, market 29 stores, and it
12 gives some metrics in terms of, you know, gallons and
13 gallons for fee stores. I don't know what that means.

14 But this was clearly -- so the summary is 193
15 stores. So this is clearly Paul trying to stroke the
16 whoever jon@aim13.com is, in working with Paul and --
17 and his interest to acquire these 193 stores.

18 Q Okay. On the -- starting at the end of the
19 second line of the email, it says 'my intention is to
20 contribute my existing Arizona (11 stores).' Do you
21 understand that to be the Superpumper, Inc., business?

22 A The Arizona stores would be Superpumper.

23 The following was marked for identification:

24 Exhibit 3." Which, your Honor, is Exhibit 77 in the

1 trial binders.

2 THE COURT: Okay.

3 BY MR. GILMORE:

4 Q "You've been handed Exhibit 3 which purports
5 to be an email from Paul Morabito to Dennis Vacco and
6 mpace@millerthompson.com dated May 20th, 2010. Do you
7 see that?

8 A Yes.

9 Q Do you recall receiving this email?

10 A No.

11 Q Do you have any reason to believe you didn't
12 receive it?

13 A I have no reason to believe I did not receive
14 it.

15 Q Okay. The third line -- well, do you know
16 what this email is or what it refers to?

17 A Well, this is -- so earlier in regard to
18 Exhibit 2, I said that, you know, the time frame of this
19 email, I thought that there was an elongated period of
20 time where Paul was interested in ExxonMobil assets that
21 were being divested. So this is almost to the day two
22 months later, and he's still talking about it.

23 So from this email I can see now that he's
24 talking about 88 stores in the Chicago market, which

1 were not referenced in Exhibit 2.

2 Q And is this email a directive to you to
3 complete certain tasks?

4 A I'm not sure.

5 Q Okay. Number 3 on the list of items in the
6 email says arrange paperwork for me to transfer into CWC
7 100 percent of the shares of Consolidated Western
8 Corporation, which owns 100 percent of Superpumper,
9 Inc., at a fair market value, or at a FMV of 30 million.
10 Do you know what FMV stands for?

11 A Well, typically it means fair market value.

12 Q Did you ever arrange paperwork for that
13 transfer?

14 A I don't think so."

15 Exhibit 4 was then marked.

16 MR. GILMORE: Your Honor, Exhibit 4 is trial
17 Exhibit 79.

18 THE COURT: Thank you.

19 BY MR. GILMORE:

20 Q "You've been handed Exhibit 4, which purports
21 to be an email from Paul Morabito to
22 george.r.garner@exxonmobil.com.

23 A Correct.

24 Q A CC to Dennis Vacco, among other parties,

1 dated June 29, 2010. Do you see that?

2 A Yes.

3 Q Do you know what this email refers to?

4 A Again, it's in reference to Paul considering
5 the acquisitions of a variety of ExxonMobil stores.

6 You can see in the fifth paragraph, you know,
7 he's talking about Dan Nelson, the former VP of
8 government relations for Exxon.

9 So I'm pretty confident that this email is
10 Paul's whiteboard strategy for the acquisition of a
11 variety of ExxonMobil stores, none of which occurred.

12 Q Can you explain to me what you mean by
13 whiteboard strategy?

14 A Paul's an idea guy. He's -- you know, he's a
15 big picture idea guy. Give him a whiteboard, and he
16 will fill it up with big ideas.

17 This whole acquisition of ExxonMobil stores
18 what perfect example of his whiteboard big idea
19 strategy. Whether it's 88 stores in Chicago, Illinois,
20 or 193 stores nationwide, we're going to bring in
21 Vice-President Dan Quayle. We're going to bring in the
22 VP of government relations from ExxonMobil. This is the
23 kind of big thinking that Paul typically did every day.
24 Every day.

1 The -- the disconnect, almost a hundred
2 percent of the time, was that the whiteboard ideas could
3 never be translated into reality.

4 And this -- so when you ask me in regard to
5 Exhibit 3, in many ways, the way I helped modulate
6 Paul's big ideas was to let time pass.

7 So I don't believe that the documents you
8 asked me about were ever generated. If they were, you
9 would have them. Okay? I don't believe we did that,
10 because in May of -- of 2000 -- May 20th of 2010, my way
11 of, again, modulating Paul's big whiteboard ideas
12 was to let time because with the passage of time, as you
13 can see from Exhibit 4, the plans change.

14 So in Exhibit 4, for instance, he references
15 the FMV of Superpumper to now -- or of his stores in
16 Arizona to now be 25 million and not 30 million in the
17 earlier email.

18 This is not atypical. This happened
19 regularly. Not every day but regularly. And I could --
20 and I could attest, without any reservation, that none
21 of these big ideas ever came to fruition.

22 Q Is Exhibit 4 an email Paul Morabito would
23 send out to other parties to try and get them on board
24 with his ideas?

1 A Well, you could see from the cc list, you
2 know, he's writing to two guys at ExxonMobil. Dan
3 Nelson, the former VP, is at, you know, Nelsoninsight.
4 Jeffrey Fleischer, you know, Fleischer is the guy who
5 helped -- who helped arrange for the financing for the
6 acquisition of Berry-Hinckley Industries. Tucker Quayle
7 I believe is the vice-president's son.

8 So yeah. I mean, he was -- he was trying to
9 stimulate -- and I haven't even looked at the chain
10 here. But he's definitely trying to stimulate interest
11 in the minds of -- of the distributees about the fact
12 that we can go and get this -- there's a massive
13 opportunity here in the form of the Exxon divestitures,
14 and it's a great opportunity for us.

15 But like I said, none of these, in my five
16 years with Mr. Morabito, ever came to fruition."

17 MR. GILMORE: Page 161, line 20. Your Honor,
18 there's reference to Exhibit 5 which neither party has
19 offered. But I do believe that I have it available if
20 the Court believes it needs to be offered and admitted.

21 THE COURT: Do you have -- do you want to put
22 on testimony about it?

23 MR. GILMORE: Well, I -- without looking at
24 this I'm not sure that the substance of the testimony

1 addresses the particular exhibit. Both parties have
2 marked this portion of the transcript so I don't want to
3 speak for plaintiff, but I had not intended when I
4 marked this to offer Exhibit 5. I can not tell you
5 today why I made that decision, but appears that we were
6 consistent at least.

7 MS. PILATOWICZ: Your Honor, I don't have an
8 objection to the section being read in without the
9 email. I think it does at one point read a line from
10 it, but I don't think it goes too much into the email.

11 THE COURT: So you all are stipulating to
12 Exhibit 5 of the deposition is not being admitted in the
13 trial and you're stipulating to the reading without the
14 exhibit --

15 MS. PILATOWICZ: Correct.

16 THE COURT: -- being admitted.

17 MS. PILATOWICZ: Correct. Yeah.

18 MR. GILMORE: I Agree with Ms. Pilatowicz
19 there's one line that they quote. There's nothing else
20 in the email that's germane to the issues.

21 THE COURT: Okay. You may proceed.

22 MR. GILMORE: Mr. Savoy, I'm at line 20 of
23 page 161.

24 MR. SAVOY: Yes.

1 BY MR. GILMORE:

2 Q "You've been handed what's been marked

3 Exhibit 5, which appears to be an email from Dennis

4 Vacco to Paul Morabito dated September 15th, 2010. Do

5 you see that?

6 A Yes.

7 Q Do you recall sending this email?

8 A No, I don't.

9 Q Do you have any reason to believe that you

10 did not send it?

11 A I have no reason to believe I did not send

12 it.

13 Q Can you take a -- some time to read the email

14 and let me know when you're done?

15 A Mm-hmm.

16 Q Yes, you're done?

17 A Yes.

18 Q Okay. The email's dated September 15th,

19 2010. What's significant about that date?

20 Well, let me ask you more directly. Was that

21 following the entry of the oral judgment in the state

22 court action?

23 A Yes.

24 Q In the approximate amount of 85 million?

1 A So even that significant event, I forgot
2 whether it was the -- I believe it was the 14th of
3 September.

4 Q Okay.

5 A Is that correct? Was it September 14th of
6 2010?

7 Q It was the 13th or the 14th.

8 A You don't even remember.

9 Q The -- the email says Sujata and I had a good
10 discussion. Who is Sujata?

11 A So Sujata Yalamanchili -- you know her -- was
12 the transaction counsel at the time of the acquisition
13 of Berry-Hinckley Industries. She's not in this firm.

14 Associate, been long-time transaction counsel
15 for a variety of -- of convenient store, fuel oil
16 enterprises that Mr. Morabito either controlled or
17 operated.

18 So as such, she is intimately familiar with
19 the purchase agreement between the Herbsts and whoever
20 was the control entity at the time that the Morabito
21 interest sold BHI to the Herbsts. Those transaction
22 documents were Sujata's.

23 Q Okay. And you reference, Sujata and I had a
24 good discussion. Do you know what you're referring to

1 there?

2 A Well, I would imagine that a day or two after
3 the judgment we -- you know, we weren't talking, about
4 you know, Italian restaurants in Buffalo. I would --
5 I'm just guessing, given the tenor of the email, that we
6 talked about the judgment.

7 Q Do you have any specific recollection of
8 discussions with -- specific discussions with Sujata
9 regarding the judgment?

10 A We had a variety of discussions, both, you
11 know, on this date and -- and subsequent to this date
12 with not only Sujata, but a dear friend of mine and
13 classmate of ours, Garry Graber, who is a bankruptcy
14 counsel, you know, bankruptcy specialist at Sujata's law
15 firm.

16 Q What was the nature of those discussions?

17 A Well, obviously, the impact on the judgment,
18 the impact of the judgment and how far reaching the
19 judgment was in terms of assets owned or controlled
20 jointly by Mr. Morabito and his brother and assets that
21 were independently owned by Sam and Ed.

22 Q Were there asset protection discussions?

23 A Yes.

24 Q What sort of assets protection -- protection

1 discussions were there?

2 A I don't recall. I just don't recall.

3 Q Did you discuss with Sujata specific ways to

4 -- to protect Mr. Morabito's assets?

5 A There was ongoing dialogue with Sujata, with

6 Garry Graber, with Leif Reid. It wasn't, you know, one

7 day, one discussion; it was an ongoing dialogue."

8 MR. GILMORE: 165, line 23. Do I have that

9 right?

10 THE COURT: It isn't marked on my.

11 MS. PILATOWICZ: 166, line 19 is the next one

12 I had.

13 MR. GILMORE: Okay. 166, line 91. This

14 references Exhibit 6, your Honor, which by my account

15 also was not offered by either party.

16 MS. PILATOWICZ: Your Honor, I don't have this

17 Bates number, 44162 through 44146 as a document that was

18 admitted. I think there is a discussion about a portion

19 of the email. That is included at Exhibit 25 which we

20 would have chains and pieces made into the exhibits. So

21 Exhibit 25 is what I show as matching up with this

22 document even though it a different Bates number just

23 because in chains they were produced multiple times.

24 THE COURT: So Exhibit 25 with different Bates

1 numbers is Exhibit 6.

2 MR. GILMORE: That sounds correct to me. I do
3 recognize --

4 MS. PILATOWICZ: I believe that it's correct.

5 THE COURT: So when the testimony is read is
6 it read by Bates stamp number?

7 MS. PILATOWICZ: It is not.

8 MR. GILMORE: No, it is not.

9 THE COURT: Thank you.

10 MR. GILMORE: There is Bates number reference
11 in the marking of this Exhibit 6, which is LMWF SUPP
12 044162 through 044164. And I concur based on my memory
13 that this particular email shows up in several sequences
14 in the LMWF SUPP production.

15 THE COURT: Okay. And so Exhibit 25 is
16 Exhibit 6, but the Bates stamps numbers are not the
17 same.

18 MR. GILMORE: I understand that to be the
19 case.

20 THE COURT: Okay. Thank you.

21 BY MR. GILMORE:

22 Q "You've been handed Exhibit 6, which purports
23 to be a string of emails between Paul Morabito. There's
24 an email address syalaman@hedgesonruss.com. Is that

1 Sujata?

2 A That's Hodgson Russ.

3 Q And also to Dennis Vacco and CC Garry Graber.

4 A Correct. Who I previously mentioned.

5 Q Right. Can you review this string of emails
6 and let me know when you're done?

7 A Okay. I've read it.

8 Q Okay. Starting with -- do you -- do you
9 recall what this email refers to?

10 A Well, so it does help me to remember -- in
11 the first note in the chain, at 4:40 on September 15,
12 2010, she talks about I caught up with Garry, who's back
13 in Buffalo, on our conversation from yesterday. Like I
14 said, there were several ongoing discussions.

15 So I don't remember whether I had yet
16 personally spoke to Barry -- I'm sorry, Garry or not.
17 But, obviously -- that is possible, because there were
18 many conference calls.

19 Q Okay. On that first --

20 A So Graber was consulted. Then later where
21 she talks about needing the retainer, I think there was
22 some issue because they were now, you know, moving into
23 another portion of the firm regarding -- the engagement.
24 So she wanted to make sure that she was getting

1 additional retain information Graber's advice.

2 So Graber's actively involved. He gets more
3 actively involved, I think, after this email of the
4 15th.

5 Q Okay. Starting with the first --

6 A But your question was what is this about, and
7 this is about the discussion that we -- an ongoing
8 dialogue about how do we -- as -- as I think previously
9 I testified to, the concern here, the overriding concern
10 was the fact that in the oral decision of the Court, and
11 then later, in the -- so I don't remember whether the
12 written decision or whether it was just a transcript,
13 but the document, the Court, Judge Adams, made it
14 abundantly clear that Sam Morabito and Edward Bayuk were
15 not part of the fraud that the Herbsts had alleged and
16 that Judge Adams had determined Mr. Morabito, Mr. Paul
17 Morabito, committed.

18 The complication from our perspective was that
19 they all owned a variety of assets together, not in, you
20 know, a nice neat mathematical formula. So not
21 one-third, one-third, one-third. The percentage of
22 ownerships were all over the place, so as you can see
23 here in this email. You can see that there's a
24 description of the percentage of the ownerships.

1 So the -- the objective that we immediately
2 were trying to pursue was not to protect Mr. Paul
3 Morabito's assets, but to protect the interests of the
4 two individuals that Judge Adams had exonerated.
5 Expressly exonerated from the fraud. And that was Sam
6 and Edward.

7 It was complicated because of the business
8 documents, the -- the corporate documents, and further
9 complicated by the ownership percentages. But that's
10 what we attempted to do.

11 So this is Paul -- you know, Paul talking
12 about -- so you can see, he chimes in with his response
13 here about the fair market value of the company.

14 Again, I'm not sure that I can tell from this
15 email which company we're talking about. So it -- it
16 looks like CoWestco. So I don't know. As I sit here, I
17 don't know whether CWC is CoWestco or CoWestco is a
18 separate entity, nor can I tell you exactly what
19 CoWestco owned at this moment. But it appears that
20 that's the company that's being discussed.

21 And, you know, we're looking for a way to
22 protect Ed and Sam's interest in CoWestco.

23 Q Okay. Well, let me ask you some specific
24 questions about the emails, starting with the first

1 email on the bottom of the page on the page that's Bates
2 -- Bates numbered LMWF SUPP 044163. That's the email
3 from Sujata to Paul Morabito and you. Correct?

4 MS. PILATOWICZ: And your Honor? I apologize,
5 it was a reference to the Bates number. I can give you
6 correct Bates numbers for reference in Exhibit 25.

7 THE COURT: Okay.

8 MS. PILATOWICZ: Which is 082393.

9 THE COURT: Thank you.

10 MS. PILATOWICZ: L&W SUPP 082393.

11 MR. GILMORE: Thank you.

12 THE COURT: Thank you.

13 BY MR. GILMORE:

14 Q "And it references in there, garry had a
15 number of additional ideas, including a possible marital
16 split between Paul and Edward pursuant to which Edward
17 could retain some of Paul's assets. Do you see that?

18 A Yes.

19 Q Do you know if a marital split was ever
20 completed?

21 A No, I -- I don't believe so because I don't
22 believe -- so we're talking about 2010. I don't believe
23 that under California -- well, look it. I just don't
24 remember the precise status of the New York -- I'm

1 sorry, the California Domestic Partner Law at the time.

2 But what I can tell you is that there was not -- at

3 least not engineered or directed by this law firm, a --

4 a split of assets based upon the California domestic

5 violations law.

6 Q Do you know if Edward and Paul were together

7 in September of 2000 -- on September 15th, 2010? And by

8 together, I mean in a romantic relationship.

9 A Well, I'm not. I don't think I can answer

10 that question. They were partners. They were, you

11 know, business partners; they were partners. I'm not

12 going to define their romantic relationship.

13 Q Okay. You're aware that at some point they

14 were romantic partners?

15 A They were business partners and they were

16 partners in -- in a sense that they were a couple.

17 Q Okay.

18 A Whether it was romantic or not, what the --

19 the sex was, I have no idea.

20 Q Fair enough.

21 A But they -- they were partners domestically

22 and from a business perspective.

23 Q Fair enough. Do you know when they ceased

24 being a couple?

1 A I don't.

2 Q Okay. Moving up to the next --

3 A Not -- not prior to this date.

4 Q Not prior to this date they --

5 A But --

6 Q I just want to understand that they did not
7 cease being a couple prior to September 15th, 2010?

8 A They did not.

9 Q Okay.

10 A They -- so put it another way. They were
11 domestic partners at this small D small P, because I
12 don't know the precise definitions under California law,
13 but they were domestic partners as of this date and for
14 a long time after this date, meaning September 15th of
15 2010."

16 MR. GILMORE: Page 174, line 7, your Honor,
17 there's another reference to Exhibit 6 which we've
18 previously identified.

19 THE COURT: Okay. And I do not have that
20 marked in my binder.

21 MR. GILMORE: Correct.

22 THE COURT: Which lines are you going to read?

23 MR. GILMORE: I'm referring to line 8 of page
24 174.

1 THE COURT: You're going to read starting on
2 line 7?

3 MR. GILMORE: Line 7.

4 MS. PILATOWICZ: That was the one that was in
5 route.

6 MR. GILMORE: Was it? That might be the case.

7 Excuse me, your Honor. I don't have it. I
8 don't have it having been removed in your binder or your
9 list.

10 MS. PILATOWICZ: I don't have it as marked.

11 So what's the section that you had marked?

12 MR. GILMORE: Page 174, line 7.

13 THE COURT: To?

14 MR. GILMORE: To 176, line 1, but let me
15 double check to make sure that that was correctly
16 identified. I don't see it on --

17 MS. PILATOWICZ: I don't see it.

18 MR. GILMORE: Was it on your amended
19 designation?

20 MS. PILATOWICZ: It was not on my amended
21 designation.

22 MR. GILMORE: Okay. Well, then, it's not on
23 there. I don't know why it was highlighted. So we'll
24 -- is the next section 176, line 5?

1 MS. PILATOWICZ: Yes.

2 MR. GILMORE: My apologies for that. Page

3 176, line 5. Are you with me?

4 MR. SAVOY: I am.

5 BY MR. GILMORE:

6 Q "Are you aware of any appraisal that ever
7 took into account -- any appraisal of Superpumper, Inc.,
8 or Consolidated Western Corporation that ever took into
9 account shareholder advances?

10 A Well, we hired a -- a bona fide, recognized
11 national appraisal firm.

12 Q That being Matrix Capital?

13 A Matrix. I forgot how I found them. But
14 totally independent. I mean the -- they were not in any
15 way, shape, or form connected to Morabito. And we hired
16 them precisely for the purpose of conducting a valuation
17 of Superpumper.

18 Whether the -- the so-called shareholder
19 advances, what role they made in that analysis, as I sit
20 here I don't recall.

21 The \$8 million does not ring a bell to me.
22 You know, it doesn't refresh my recollection. It
23 strikes me that the number was much less than that.
24 But, again, I'm just -- it's -- it's impressions that

1 I'm giving you now.

2 I don't remember precisely what the -- there
3 were advances. The role that those advances played in
4 Matrix's appraisal, I don't recall. But they were
5 advances because Superpumper -- you know, it's a
6 cyclical business, I mean, as your clients well know. I
7 mean, the -- the fuel oil business was more of a roller
8 coaster, perhaps, than it is today, but -- so the
9 Superpumper needed a constant infusion of cash."

10 Q 177, line 19 there's a reference to Exhibit 7
11 which in my notes refer to Exhibit 27 of the trial
12 exhibits.

13 THE COURT: Thank you.

14 BY MR. GILMORE:

15 Q "You've been handed Exhibit Number 7, which
16 purports to be an email from Dennis Vacco to Paul
17 Morabito and Sujata dated September 20th, 2010, with the
18 subject line Spirit. Do you see that?

19 A Yes.

20 Q Do you know what this email refers to?

21 A Let me read it, please.

22 Okay. I've read it.

23 Q Do you recognize what the email is?

24 A It would help if I could recall who Sean

1 Hufford was. I recognize the name. I just don't

2 remember who he represented.

3 Q If I represented to you that Sean Hufford was

4 with Spirit Realty --

5 A That makes sense.

6 Q Spirit Realty, does that --

7 A That makes sense.

8 Q Okay. Does that help you remember what this

9 email is about?

10 A Well, this is Paul doing what he -- he so

11 frequently did, and that was to get ahead of his

12 lawyers, calling Sean Hufford.

13 So Spirit, my recollection is for many of the

14 stores in Arizona -- I don't think all of them, but for

15 many of them this was -- I believe that Spirit owned the

16 leases. Maybe they owned the realty. Obviously, they

17 owned the realty if they owned the leases.

18 Spirit -- here's what I can definitely

19 recollect is that before any transaction could occur

20 involving the Superpumper stores, Spirit needed to

21 approve it.

22 It couldn't happen without Spirit's approval

23 because the documents, whether they were loan documents

24 or lease documents, I just don't recall. But there was

1 an obligation to Spirit, a financial obligation to
2 Spirit on behalf of Superpumper that, in order for any
3 interest in Superpumper to be changed, needed Spirit's
4 approval.

5 So that's what Paul is doing here on September
6 20th. He had a conversation with Sean Hufford, who must
7 have been, you know, the head honcho at this point in
8 time, at least in terms of these documents, this
9 arrangement with Superpumper, advising him that he was
10 going to get out.

11 Now, that's important because probably Paul --
12 most likely Paul personally guaranteed whatever the
13 underlying documents were. So that was another layer
14 that Sean Hufford would have been concerned about. Not
15 only do you need our permission, but, hey, you got this
16 PG out there that we're not so willing to give up to
17 let's transfer these stores.

18 Hopkins Appraisers, if there's a document with
19 Hopkins Appraisers' name on it, I'm unaware of it.

20 Q Okay. And Paul Morabito references that Sean
21 Hufford requested a letter be sent, addressed to him.
22 And then your reply is, I remember that the letter not
23 be from you.

24 A Correct.

1 Q Do you recall why you gave that advice?

2 A I don't."

3 MR. GILMORE: Exhibit 8 was marked," which is
4 Exhibit 33 in the trial binders.

5 THE COURT: Thank you.

6 BY MR. GILMORE:

7 Q "You have been handed Exhibit 8, which
8 purports to be an email from Paul Morabito to you dated
9 September 24, 2010. Do you see that?

10 A Yes.

11 Q Do you know what that email refers to?

12 A Well, as I said earlier, you know, Paul is a
13 strong-willed individual and he was, you know, getting
14 ahead of counsel. He's writing to Shawn Hollenbach,
15 who, as you could see from the -- the signature block at
16 the BBVA Compass Commercial Banking division.

17 Compass Bank had provided loans and a line of
18 credit to Superpumper, and for a variety of reasons, as
19 Mr. Morabito says in the first sentence of his note to
20 Shawn, that there are several loan covenants that are --
21 that the company is in violation of.

22 Q And Mr. Morabito's email indicates that Mr.
23 Morabito's email to Shawn Hollenbach indicates that --
24 indicates, we have advised that it is the intention of

1 myself and my fellow shareholders of Superpumper to cure
2 these defaults, and BBVA Compass has advised that they
3 will work with us in good faith towards effecting those
4 cures and putting the loans back in compliance. Do you
5 see that?

6 A Yes.

7 Q Is it your understanding that was BBVA's --
8 what Paul Morabito intended to cure the defaults?

9 A Well, that's what he intended. I'm not sure
10 that that's what happened."

11 Q Okay. Page 185, line 8. Exhibit 10 was
12 marked, which I believe is Exhibit 133 in the trial
13 binders.

14 THE COURT: You said 133?

15 MR. GILMORE: 133.

16 THE COURT: Okay. Thank you.

17 BY MR. GILMORE:

18 Q "You've been handed Exhibit 10, which
19 purports to be an email from Paul Morabito to Dennis
20 Vacco dated April 5th, 2011, with a subject line
21 attorney-client privileged communication. Can you read
22 the email and let me know when you're done?

23 A Okay. I've read it.

24 Q Do you know what this email refers to?

1 A I -- it -- I don't have a specific -- doesn't

2 jog my recollection specifically.

3 Q Do you have a general understanding?

4 A It's another whiteboard -- it's another

5 whiteboard conversation. You know. I mean, so now

6 we're talking Kevin Shea from Getty Realty. So it's --

7 this is another one of the whiteboard conversations

8 that, you know, often took place with a lot of people in

9 the room and a lot of energy and not a lot of substance.

10 So this is another whiteboard conversation that goes

11 nowhere.

12 Q There's a reference in the email to -- it

13 says it would appear that both pieces of finance will be

14 offered to Snowshoe by late this week in term sheet

15 form. Do you know what Snowshoe is referring to?

16 A I don't, but I could tell you, it didn't

17 happen. I mean, so that incredible \$150 million offer

18 can be made, I mean, that never happened.

19 This is -- you know, I mean, you can

20 characterize it any way you want. I mean, a less

21 charitable way of saying it, it's a pipe dream."

22 MR. GILMORE: Page 187, line 4. Your Honor,

23 it makes reference to Exhibit 11 which I have as Exhibit

24 132 in the trial binders.

1 THE COURT: Thank you.

2 BY MR. GILMORE:

3 Q "You've been handed Exhibit 11, which
4 purports to be an email from Paul Morabito to Christian
5 Lovelace, Gregory Ivancic, and Dennis Vacco.

6 A Ivancic.

7 Q Ivancic. Is he from your firm as well?

8 A Correct.

9 Q Dated April 15th, 2011.

10 A Yes. Let me read it, please.

11 Okay. I've read it.

12 Q Do you know what that email refers to?

13 A Well, given the date, February 15th, 2011,
14 and the -- there's some similarity between this email
15 and Exhibit 10 which you showed me, you know. You know,
16 I -- in Exhibit 10 I didn't recognize the attachments,
17 CalCo, AZco, RATIOS.pdf, but I see it's here again. I
18 still do not recognize this, but it's this email which
19 is Exhibit 11.

20 Cerberus is, you know, a real estate company.

21 Paul was still operating, you know -- I mean, he's still
22 thinking about -- so this is 2011. He's still thinking
23 about financing models that were, you know, out of vogue
24 for ten years. The sale leaseback concept. Okay.

1 So it seems to me that this is just a
2 continuation of the earlier whiteboard conversation that
3 I was referencing in regard to Exhibit 10. This gives
4 me a little bit more clarity. It appears as though this
5 is an attempt to acquire Nella Oil.

6 But, again, this is the classic whiteboard
7 discussion. An awful lot of action, you know, a lot of
8 -- a lot of energy, a lot of emails, documents pro
9 formas, a lot of wishful thinking that never came to
10 fruition. This is another example of it.

11 Q So another one of Paul Morabito's ideas?

12 A It was a Morabito idea that, again, frankly,
13 had very little connection to reality."

14 MR. GILMORE: Page 189, line 7. Exhibit 12
15 has been marked, which I believe to be Exhibit 131 in
16 the trial binders.

17 THE COURT: Okay. Exhibit 12 is 131?

18 MR. GILMORE: Correct.

19 THE COURT: Thank you.

20 BY MR. GILMORE:

21 Q "You've been handed what's been marked
22 Exhibit 12, which appears to be a letter of intent dated
23 April 21st, 2011, from Walt Dwelle -- Dwelle regarding
24 the proposed acquisition of Nella Oil Company."

1 A Did you --

2 MR. GILMORE: Mr. Fink chimes in. He was the
3 lawyer for Mr. Vacco. "Did you say this is a letter
4 from Walt Dwelle?"

5 A letter of intent.

6 MR. FINK: To.

7 MS. PILATOWICZ: I'm sorry, a letter from
8 Snowshoe Petroleum to Walt Dwelle?

9 THE WITNESS: Right.

10 MR. GILMORE: Thank you for that
11 clarification."

12 Mr. Fink says "No problem.

13 THE WITNESS: Yes.

14 BY MR. GILMORE:

15 Q Is this the same transaction that was
16 referenced in the previous two exhibits?

17 A It is. And this is what I was referring to
18 about a lot of documents being generated. So here we
19 generate a -- so April 21st, this is six days after the
20 Exhibit 11 email that you showed me.

21 Q And do you know if this was prepared at Paul
22 Morabito's direction?

23 A Yes. Well, we -- yes. We -- we -- as you
24 could see, I mean, of the -- for instance, Paragraph 4

1 on page 3, or Bates number 1459, you know, talks about,
2 you know, service and the \$65 million proposal which you
3 saw in earlier emails generated by Morabito,
4 Dwelle had another fuel oil business. Nella
5 Oil was -- actually acquired some assets of BHI along
6 the way. So it's not -- well, Dwelle was somebody who
7 was known to Paul, Ed and Sam."

8 MR. GILMORE: Continuing on page 192, line 18.
9 Exhibit 14 has been marked, which is Exhibit 137 in the
10 trial binders.

11 THE COURT: Exhibit 14 is 137?

12 MR. GILMORE: Correct.

13 THE COURT: Thank you.

14 BY MR. GILMORE:

15 Q "You've been handed Exhibit 14, which appears
16 to be an email from Dennis Vacco to Paul Morabito dated
17 August 24th, 2011, subject Tim Hayes.

18 Let me know when you had a chance to review
19 it.

20 A Okay. I recognize it. Well, I -- I've read
21 it. I don't have a specific recollection, but I don't
22 dispute that it came from me.

23 Q Do you know what it refers to?

24 A Tim Haves. Tim was a consultant in the fuel

1 oil business. He was a consultant. Precisely whether
2 it was fuel oil or just general convenience stores or
3 whatever, it's my sense that Tim was -- my recollection
4 is that Tim was a consultant.

5 He was being brought on to do. Something, I
6 don't remember what. But you can see, I make the point
7 that I did not want Tim Haves. So in other words, new
8 people brought to the Edward and Sam's business or
9 Paul's business, I didn't want them to be sucked up into
10 the Herbst dragnet.

11 So I was very careful to point out to Paul
12 that however Haves was going to be paid -- I didn't know
13 what the \$58,000 is for. Seems like a lot money for a
14 consultant. But I was -- I mean, the email speaks for
15 itself. I did not want Tim Haves to be subject to the
16 harassment of and Desmond and Irvine were engaged in on
17 behalf of your clients."

18 MR. GILMORE: Page 196, line 10, we miss
19 something?

20 MS. PILATOWICZ: I have 193 starting at 23.

21 MR. GILMORE: I thought that was included.
22 Did you not remove that section as well?

23 MS. PILATOWICZ: It is in my initial
24 designations.

1 MR. GILMORE: You pulled.

2 MS. PILATOWICZ: I pulled it.

3 MR. GILMORE: Can we go off the record, your
4 Honor?

5 THE COURT: Okay.

6 (Discussion held off the record.)

7 THE COURT: So we're removing page 193 line
8 23, through?

9 MR. GILMORE: Through -- we are removing line
10 192, line 18.

11 THE COURT: I'm sorry, 192.

12 MR. GILMORE: I'm sorry, I made a mistake.

13 MS. PILATOWICZ: 193, 22, 193, 23.

14 THE COURT: Okay. I can do that.

15 MS. PILATOWICZ: To 196, line 9 should be
16 removed.

17 THE COURT: I'm sorry, through what?

18 MS. PILATOWICZ: 196.

19 THE COURT: A little dyslexic there.

20 MS. PILATOWICZ: Yes. Let me try this again.
21 193.

22 THE COURT: Right.

23 MS. PILATOWICZ: Line 23.

24 THE COURT: Okay.

1 MS. PILATOWICZ: To 196, line 9 to be removed.

2 THE COURT: Okay.

3 MR. GILMORE: That's consistent with my
4 records as well.

5 MR. GILMORE: Pick up on my designation on
6 196, line 10.

7 MS. PILATOWICZ: Okay.

8 MR. GILMORE: Okay?

9 THE COURT: Okay. I'm with you.

10 MR. GILMORE: Mr. Savoy, I'm at page 196, line
11 10. Are you with me?

12 MR. SAVOY: I'm with you.

13 BY MR. GILMORE:

14 Q "Are you aware, in October 2011, of any
15 insurance policies that Paul Morabito had?

16 A No.

17 Q Are you aware --

18 A I'm not.

19 Q Are you aware of any values of insurance
20 policies that Paul Morabito was trying to protect from
21 creditors?

22 A No. I have no -- no recollection of
23 insurance policies.

24 Q So no, you don't know, not no, he wasn't

1 trying to?"

2 Mr. Fink interjects "Why don't you break that
3 down separately. That's a bit of a compound.

4 GILMORE: Fair enough.

5 BY MR. GILMORE:

6 Q I asked you if you were aware of any
7 insurance policies that Paul Morabito was trying to
8 protect from creditors in October of 20011.

9 A I am not aware of any insurance policies."

10 Q Page 197, line 13, Exhibit 16 has been marked
11 which I believe is Exhibit 70 in the trial binders.

12 THE COURT: Okay. Thank you.

13 BY MR. GILMORE:

14 Q "You've been handed Exhibit 16, which appears
15 to be a string of emails, the most recent of which is
16 from Dennis Vacco to Paul Morabito dated November 10th,
17 2011. Do you see that?

18 A Yes. 16, again, like I've answered before,
19 I'm not disputing that I received this. I have no
20 specific recollection of it.

21 Q Please review the email, and let me know when
22 you've had a chance to review it.

23 A Okay. What do you want to know?

24 Q Do you recognize what this email is?

1 A Well, I -- like I said, I have no specific
2 recollection of receiving it. I have a general
3 recollection of what it talks about.

4 Q What's the general recollection?

5 A Well, this is another example of shotty
6 recordkeeping. The asset that's being discussed is
7 really reflected in the first email in the chain from
8 Michele Assauag, who I want to say is a California
9 attorney. Oh, what do you know? Yeah. Costa Mesa,
10 California. She was representing Bank of America.

11 I will try to do this as best I can from my
12 recollection.

13 At the time of the acquisition of -- and I
14 stress for the record, this is the best of my
15 recollection.

16 So the following events I only know after the
17 fact from reviewing documents. But at the time of the
18 sale of Berry-Hinckley to the Herbst interest, there was
19 a self-insurance trust fund that Berry-Hinckley -- so,
20 you know, it's a form of Workers' Comp protection. It
21 was an excluded asset in the deal.

22 So whatever money had been previously
23 contributed by Berry-Hinckley Industries to this trust
24 fund that, you know, the upside or the downside of that

1 trust fund, as claims were paid out, were excluded from
2 -- so the Herbsts did not acquire an interest, positive
3 or negative, in the trust fund because at this point in
4 time, at the time of the sale I think in 2007, the --
5 again, I'm not involved; I'm only giving you my
6 recollection from after-the-fact documents.

7 So the trust was, you know, still in flux.
8 Payments in. Dividends were all determined on an annual
9 basis, depending upon the number of claims.

10 It must be that Paul anticipated, at the time
11 of the Herbst sale, that at the end, you know, when the
12 trust -- when the purpose of the trust was exhausted,
13 that this would be upside in it.

14 As it came out of Berry-Hinckley as a excluded
15 asset -- again, this is not a transition that predates
16 my representation. But, somehow, Bank of America --
17 it's not Bank of America. I believe that a guarantor
18 was bank of Montreal, perhaps. Bank of Montreal was
19 involved in this trust in some fashion.

20 Paul -- and again, this is just -- you know,
21 I'm reaching for recollection on this. Paul,
22 post-Herbst transaction, so 2007 vintage, secures a
23 personal loan from Bank of America.

24 My recollection, given this email from

1 Michele, talks about certain credit transactions between
2 the bank and entities associated with Morabito.

3 My recollection that the self-insurance trust
4 may have been used as -- there was some guarantees given
5 to the Bank of America for \$2 million personal loan. It
6 was a \$2 million personal loan to Paul A. Morabito. Had
7 nothing to do with the businesses, except I think, as
8 you can see from Michele's email, that there were --
9 that the -- this loan was backed up by this deed of
10 trust. Okay? You can see in her -- she talks about
11 1.75 million secured by a deed of trust of first
12 position on real property in Laguna. So there -- there
13 was properties and the trust that secured the \$2
14 million. This was a lawsuit. So now I'm involved, so
15 the documents that -- I was not involved -- this law
16 firm was not involved at the time that the trust was an
17 excluded asset. That would have been Sujata down the
18 street. She did those transaction documents.

19 I was not involved with the securing of the \$2
20 million personal line of credit from Bank of America to
21 Paul A. Morabito.

22 But at this juncture now, in 2011, Frank and I
23 are both involved with trying to unwind this mess
24 because Paul is in default on the personal loan.

1 So this is about how to -- to fix the default

2 on the Bank of America personal line of credit.

3 As I sit here, I can't give you chapter and

4 verse how exactly the trust funds were employed. But I

5 want to say that Bank of America had a bucket of money.

6 So I said Bank of Montreal. Somehow, the Bank of

7 America now has a letter of credit. How that happened,

8 I don't recall.

9 So you had -- Bank of America had two things

10 going on. Paul owed them \$2 million on the -- the

11 personal guarantee for the personal loan, and they were

12 sitting on 1.6, \$1.7 million in the form of a letter of

13 credit, so they had cash in the bank securing this --

14 this self-insurance trust fund.

15 They sued, and along the way, Frank and I

16 resolved the litigation around the personal loan, in

17 some fashion the trust money was implicated. Precisely

18 how, I don't recall.

19 Q Okay. I want to focus on the second most

20 recent email in the string, which is on the first page

21 of the exhibit which is Bates number LMWF SUPP 077068.

22 MS. PILATOWICZ: Which, your Honor, is Exhibit

23 70 in the exhibit binder.

24 MR. GILMORE: Correct.

1 THE COURT: Thank you.

2 BY MR. GILMORE:

3 Q "It's an email from Paul Morabito to you that
4 says on this, I have the -- sorry. Let me start over.

5 On this, I have the note that I sold my dad.

6 Do you know what that refers to?

7 A Generally. I'm not sure I could cite the
8 specifics to you at this moment.

9 Q Do you know if it's the \$1.6 million note
10 that was used to purchase an interest in an entity
11 called Woodland Heights, or something like that?

12 A Yes. Woodland Heights rings a bell. It was
13 in Canada.

14 Q Okay. And the next part of the email sales
15 cancel it, convert it back to a 50 percent share
16 interest in Snowshoe Properties, LLC, and give me the
17 right to trigger an option to split the assets and take
18 1461 Glenneyre and Edwards ends up with 570 Glenneyre.
19 Do you see that?

20 A Yes.

21 Q Do you know what that refers to?

22 A Again, it's -- it's way too convoluted for me
23 to recall the specifics here at this moment. But I
24 believe the \$1.6 million note that I sold my dad, I --

1 in exchange -- so as we, you know, tried to come up with
2 fair market value of Paul Morabito's interests and then
3 -- you know, for all of these entities, whether it's
4 real estate, Superpumper Properties, the homes being
5 Reno, Laguna, whatever, we -- we tried to be very
6 diligent.

7 You know, in hindsight now, you know, perhaps
8 we -- you know, I thought that we were answering all the
9 questions that you would be asking here today.

10 And I think that, ultimately, when you
11 understand the plan, you would -- you'll understand
12 exactly, you know, how we try to make sure that Edward
13 and Sam's interest in these various properties and
14 businesses were protected, but that Paul's interest was
15 left to you people. Left to the Herbsts. And I think
16 that's what we accomplished.

17 You might disagree with that. But that's just
18 a matter of numbers.

19 In that exchange, so as we were trying to get
20 everybody lined up in a 70/30 -- you know, 70/30 split
21 on this property and a -- you know, you saw in an
22 earlier email 42.5 to Sam, 15 to Ed, and the rest to
23 Paul, that was not atypical. The ownership interests
24 were -- you know, they were not consistent and they were

1 all over the place.

2 It's my recollection you -- you probably have
3 it in an exhibit that you're going to eventually show me
4 -- is that, eventually, there what a note, \$1.6 million
5 note. Help refresh my recollection. I believe that
6 this was money that Edward owed Paul. I could be the --
7 it could be the other way around.

8 But there was this one point -- out of all of
9 these transactions, there was, you know, not only a swap
10 of -- of ownership interest and deeds, but then there
11 was this resulting note that Edward was going to pay
12 Paul over time pursuant to the terms of the note.

13 Paul took that note, and in an exchange for
14 Woodland Heights, whatever this was, gave -- you know,
15 sold that note to his father, who's now deceased.
16 Therefore, the payments under the note would go to the
17 senior Morabito.

18 Frankly, I don't know if Edward ever made any
19 payments on it, because as I sit here, I don't know if
20 we ever -- so I -- I -- I think that the email on the
21 top of the page that you're referring to here, I was
22 about to say, I'm not sure that we consummated the
23 transaction, but apparently we did, with Mr. Senior
24 Morabito's attorney in Ontario.

1 And this is now Paul saying, unwind that deal.

2 Q Do you know if it was ever unwound?

3 A Why I'm having trouble with this is because

4 I'm not a hundred percent positive that we ever

5 consummated the deal with a document, because there's a

6 -- there's a piece of me that says -- and I don't mean

7 to sound pejorative here, but Senior Morabito's lawyer

8 was somewhat irascible. You know, he was a difficult

9 guy to deal with. He might have even had an interest in

10 Woodland -- Woodland Height Hills, himself.

11 I'm not convinced, as I sit here -- and

12 Christian would probably know this better than I do --

13 that we actually consummated the first part the deal.

14 So the unwinding of it would have been made

15 earlier if they had never consummated the first part of

16 the deal.

17 Q If there are documents, and I'll represent

18 that there are signed documents consummating the deal.

19 A Yeah. Okay.

20 Q If --

21 A I'm not disputing that.

22 Q If the deal was undone, would your office

23 have those documents?"

24 MR. SAVOY: I don't have the answer to that.

1 Marked."

2 MS. PILATOWICZ: It starts again at 207, 14.

3 BY MR. GILMORE:

4 Q Continuing 207, 14. "There are documents
5 that are signed.

6 A By whom?

7 Q By Paul Morabito, by Sam Morabito on behalf
8 of Woodland Heights." And then go down to line 22.

9 A But that was the father.

10 Q Right. The father.

11 And an allonge for the note that is signed.

12 A Mm-hmm.

13 Q Assuming that those consummated the
14 transaction, if there were documents that undid that
15 transaction, would your office have them?

16 A I don't know. I just don't know."

17 MR. GILMORE: Exhibit 17 was marked, which I
18 believe is Exhibit 138 in the trial binders.

19 THE COURT: Thank you.

20 BY MR. GILMORE.

21 Q "You've been handed Exhibit 17, which
22 purports to be a string of email between you and Paul
23 Morabito dated November 11 with the subject line of
24 attorney-client privileged communication. Do you

1 recognize this email?

2 A I don't, but I'm not disputing that I

3 received it.

4 Q Take a -- take some time to look at it and

5 let me know when you've had a chance to review it.

6 A Okay.

7 Q Do you know what this email is referring to?

8 A Well, we are -- we're settled. So we're

9 settled with the Herbsts now. We've settled the

10 judgment. There was a -- so Desmond wanted, as a part

11 of settlement, my recollection was a waiver of statute

12 of limitations for the very claim that you're bringing

13 -- that's my recollection -- against Edward and Sam and

14 Trevor, I believe his last name was Lloyd.

15 Again, you know, the guy who shows up in

16 documents as, you know, potential owner, I don't know if

17 you could if -- I've never seen a document that attests

18 to his ownership interest, you know, however de minimis

19 it was. Small ownership interest.

20 But John had the belief that Trevor had some

21 -- some stake in Berry-Hinckley Enterprise or

22 Superpumper. I forget which. So as part of the

23 settlement. John wanted Edward and Sam and Trevor to

24 execute statute of limitation waivers as part of a

1 settlement agreement.

2 So I'm not sure that we were yet consummated
3 because the -- the waivers hadn't been secured. So this
4 is Paul telling me how to go about getting Trevor's
5 signature.

6 Q Do you know why Paul is telling you to tell
7 Sam to wire you a million dollars?

8 A I don't. I don't know exactly. So by the
9 21st, so I take that to mean November 21st, since that's
10 the date of this email, November 10th, I don't know what
11 that -- this was a -- the original -- I'm sorry. The
12 initial payment under the settlement agreement I believe
13 was due on December 1st of 2011.

14 Q So you think that money was for the
15 settlement?

16 A Without looking at my trust ledger, I can't
17 tell you what it was for."

18 MR. GILMORE: Page 210, line 121. Your Honor,
19 it makes reference to Exhibit 18 which I believe to be
20 Exhibit 139 in the trial binders.

21 THE COURT: Okay. I think this is probably a
22 good time to take our afternoon recess. 18 is Exhibit
23 139. Correct?

24 MR. GILMORE: Correct.

1 THE COURT: Okay. We will be in recess.

2 (Short break.)

3 THE COURT: Counsel, you may proceed.

4 MR. GILMORE: Thank you.

5 MR. GILMORE: Mr. Savoy, before the break we
6 were about to start on page 210 line 21. Are you with
7 me?

8 MR. SAVOY: Yes.

9 BY MR. GILMORE:

10 Q "You've been handed Exhibit 18, which
11 purports to be an email from Paul Morabito to Dennis
12 Vacco dated November 16, 2011. Once you've had a chance
13 to review the email, let me know.

14 A Okay. I received -- I am not disputing that
15 I have received it and I have a vague recollection of
16 having received it.

17 Q Do you know what it refers to?

18 A Well, this is -- so when we first started the
19 deposition here again today, you pressed me on reasons
20 why I ended my relationship with Paul. This is -- I
21 told him that there were -- that there were many and
22 that, you know, it was over a period of time.

23 So this is an example. This email is an
24 example of, you know, why our relationship eventually

1 was frayed.

2 So he's essentially, you know, scolding me
3 because I had said something by virtue of the -- the
4 date, November 16th, so it comes on the heels of -- of
5 the - of the prior exhibit, 17, that you showed me
6 talking about, you know, getting Edward, Sam, and Trevor
7 to sign something.

8 Obviously, I sent a document to Edward. He
9 refers to it that you wrote in that litigation letter,
10 so I don't know -- you know, I'm assuming that you have
11 it. I don't remember precisely what the letter was, but
12 I think that it was me writing to Edward and Sam,
13 advising them, perhaps at their request, of an impact of
14 signing the waiver.

15 So, you know, this is Paul saying he came
16 home, and Edward has flipped out because he got this
17 letter from me, Edward, who's an extraordinarily bright
18 guy, is also a handwringer. You know, Edward is an
19 extraordinarily bright person, but he is also someone
20 who worries about every other little aspect of his life
21 no matter how consequential or inconsequential.

22 So, obviously, he -- instead of calling me to
23 ask me what does this letter really mean? And maybe he
24 did that -- he takes it automatic on Paul. So this is

1 Paul saying, you wrecked my day."

2 Q Paper 213, line 22. Do you have that?

3 MS. PILATOWICZ: I don't.

4 MR. GILMORE: Right. This was removed.

5 MS. PILATOWICZ: This was removed, yes.

6 MR. GILMORE: That should conclude the

7 deposition of Dennis Vacco dated July 10, 2017. Mr.

8 Savoy, would you please locate the deposition transcript

9 dated July 11, 2017?

10 MR. SAVOY: Yes.

11 MR. GILMORE: At the top it identifies itself

12 as a volume, Volume 3. Are you with me?

13 MR. SAVOY: I'm with you.

14 MR. GILMORE: Starting on page 229, your

15 Honor, there is a reference to Exhibit 20 which is

16 Exhibit 150 in the trial binders.

17 MS. PILATOWICZ: I have 151. It was 150,

18 you're correct.

19 THE COURT: Okay. So which one is it?

20 MR. GILMORE: It's Exhibit 150.

21 THE COURT: Okay. Thank you.

22 BY MR. GILMORE:

23 Q "You've been handed Exhibit 20 which appears

24 to be an email on which you were copied, an email chain

1 on which you're copied dated September 18, 2012. Do you
2 see that?

3 A Yes.

4 Q Do you recall receiving this email?

5 A Same -- same statement I've had, same
6 qualification. I'm not disputing that I received it. I
7 don't recall it specifically.

8 Q Thank you.

9 On the third page of the document about
10 halfway down there was a reference to a note where Ray
11 is lending Virsenet roughly \$2.4 million. Do you see
12 that?

13 A I do.

14 Q Do you know the Ray that's being referred to
15 there?

16 A Ray Whiteman.

17 Q Do you know what that \$2.4 million was?

18 A What do you mean by that?

19 Q Do you recall a \$2.4 million loan from Ray to
20 Virsenet?

21 A I believe that Ray Whiteman invested at lease
22 -- loaned at least -- or invested at least \$2.4 million.

23 Q In Virsenet?

24 A Yes.

1 MR. GILMORE: I believe that's all.

2 MS. PILATOWICZ: Yes.

3 MR. GILMORE: It is, isn't it?

4 MS. PILATOWICZ: Yes. Apologies. That is our

5 marking error. It should end at line 230.

6 THE COURT: Yes.

7 MS. PILATOWICZ: Or page 230, line 6 should be

8 the end of it.

9 THE COURT: It should be ended there?

10 MR. GILMORE: Correct.

11 THE COURT: Okay.

12 THE COURT: So nothing 7 through 23 on 230.

13 MR. GILMORE: No.

14 THE COURT: Not lines 7 through 23?

15 MR. GILMORE: Correct. That should not be

16 marked.

17 THE COURT: Okay.

18 MR. GILMORE: Page 230, line 7 through 232,

19 line 18 have been removed.

20 THE COURT: How about 233?

21 MR. GILMORE: Say that again, your Honor?

22 THE COURT: Page 233 I show lines 1 through

23 18.

24 MR. GILMORE: I don't have that.

1 MS. PILATOWICZ: I don't have that either,
2 your Honor. I apologize.

3 THE COURT: So I don't need it?

4 MR. GILMORE: We don't need it. I believe we
5 are done with Dennis Vacco entirely.

6 THE COURT: Okay.

7 MR. GILMORE: The next deposition will be
8 Christian Lovelace. This deposition was taken October
9 21st, 2015, commencing at 2:15 p.m.

10 MR. SAVOY: I'm not sure where that is.

11 THE COURT: I need to find Lovelace.

12 MR. GILMORE: If you would be -- if you look
13 at the cover page on the cover of the binder, Mr. Savoy,
14 it will tell you the witnesses and their ordering.

15 What number tab is that on your binder, sir?

16 MR. SAVOY: 8.

17 THE COURT: It's 12 on mine.

18 MR. GILMORE: Are you ready?

19 THE COURT: I am.

20 MR. GILMORE: I'm starting on page 3, line 5.

21 EXAMINATION

22 BY MR. GILMORE:

23 Q "Can you state your name one more time for
24 the record, please?

1 A Christian Mark Lovelace.

2 Q Where do you currently work, Mr. Lovelace?

3 A Lippes, Mathias, Wexler, Friedman.

4 Q What is your position there?

5 A Partner.

6 Q How long have you worked for -- is it okay if

7 I call it the Lippes law firm?

8 A Yes.

9 Q Do you understand that?

10 A Uh-hum.

11 Q How long have you worked for the Lippes law

12 firm?

13 A July of 2009.

14 Q How long have you been a partner with the

15 Lippes law firm?

16 A January 1, 2014."

17 Q Page 6, line 25. "Are you familiar with a

18 sale of Paul Morabito's interest in Superpumper to

19 Snowshoe Petroleum, Inc., that took place in September

20 of 2010?

21 A I am.

22 Q How are you aware of that?

23 A I communicated with Paul Morabito and/or the

24 other shareholders of Snowshoe Petroleum and assisted in

1 drafting documents for the transaction.

2 Q When did you become involved in helping with
3 that transaction?

4 A On or about maybe August of 2010.

5 Q Do you recall how you became involved in
6 working on the transaction?

7 A I don't exactly, but I would imagine email
8 and phone calls.

9 Q From who?

10 A From Dennis Vacco directing the client work.

11 Q You talked to Paul Morabito --

12 A I did.

13 Q -- you said? Did you talk to -- who else
14 did you talk to about the -- let me back up. I'm going
15 to refer to the actual sale of Superpumper to Snowshoe
16 as the Superpumper transaction. Do you understand that?

17 A Yes.

18 Q If I use that term in future questions you'll
19 understand what I mean?

20 A I do.

21 Q Who else did you talk to regarding the
22 Superpumper transaction?

23 A Aside from Paul Morabito?

24 Q Aside from Paul Morabito.

1 A Edward Bayuk and Sam Morabito and Dennis
2 Vacco.

3 Q Was there anyone else you talked to?

4 A Do you mean in -- through the entire history
5 of the transaction? Then I would have to include Stan
6 Bernstein, Matrix, and Dave D'Arata's office.

7 Q Who is Dave D'Arata?

8 A D'Arata is the accountant for Snowshoe
9 Petroleum.

10 Q Starting in 2010 or the first time that you
11 worked on the Superpumper transaction, what were your
12 tasks?

13 A Preparing documents at that point.

14 Q Do you recall --

15 A So I would -- I wasn't familiar with
16 Superpumper. It was a new file. So Superpumper had a
17 -- and at the time Consolidated Western Corporation as
18 its parent, had had a long history, so familiarizing
19 myself with the file, familiarizing myself with the
20 history of the shareholders.

21 Q Do you recall what documents you drafted?

22 A Stock purchase agreement, the merger
23 documents that were needed to merge CWC into
24 Superpumper, and documents related to the stock purchase

1 agreement. I don't know if I can go through the whole

2 list off the top of my head. Resolutions, et cetera.

3 Yeah, that's from the best of my knowledge what I

4 drafted.

5 Q Okay. Let me back up a little because I want

6 to understand your background in legal work. Where did

7 you go to college?

8 A Xavier University undergraduate; university

9 at Buffalo Law School.

10 Q What year did you graduate from University of

11 Buffalo?

12 A 2006.

13 Q What did you do after graduating from law

14 school?

15 A I immediately started practicing at -- I was

16 at -- a law clerk at one law firm during my law school,

17 and immediately after graduating I transitioned to a

18 pure merger acquisition corporate law firm for two

19 years, then went to another law firm for a year and a

20 half where I did business law and transactions, and then

21 I came to the Lippes firm in 2009 in July."

22 Q Page 11, line 9. "And when you started at

23 Lippes what were you doing?

24 A Large transactions primarily.

1 Q Has that changed since 2009 and today?

2 A Yes.

3 Q How has that changed?

4 A Still do large transactions, but I primarily
5 work for myself. I have a large book of clients.

6 Q Your law license active?

7 A Yes.

8 Q Have you ever had any complaints against your
9 license?

10 A No.

11 Q Do you have any certifications?

12 A No.

13 Q Do you consider yourself to specialize in any
14 area?

15 A A few.

16 Q What are those areas?

17 A Mergers, acquisitions, franchise, and I have
18 a large book of debt collection and debt buyer national
19 clients.

20 Q Were -- do you recall how the purchase price
21 of Paul Morabito's interest in Superpumper was
22 determined?

23 A The purchase price was a Matrix valuation. I
24 think we had rough estimates what the company was worth,

1 but we wanted to be assured with a third-party,
2 arm's-length valuation, so we engaged Matrix which gave
3 us some preliminary numbers. And we went with some
4 preliminary numbers to at least draft the stock purchase
5 agreement and do the transaction, close the transaction
6 with, obviously, the outlier that there would be an
7 uptick when the actual valuation was finalized by
8 Matrix. And then when we finally got the number, we
9 adjusted it with the debt and the risk discounts and the
10 current situation at the time with Compass Bank.

11 Q Okay. I'm going to hand you what has been
12 marked as Exhibit 13."

13 Your Honor, that's 236 in the trial binders.

14 THE COURT: Thank you.

15 BY MR. GILMORE:

16 Q "Do you recognize Exhibit 13?

17 A I do.

18 Q Did you prepare that chart in Exhibit 13?

19 A I drafted that chart.

20 Q And the chart that I'm referring to is the
21 analysis of Superpumper acquisition?

22 A Yes.

23 Q Okay. The first number, is that the number
24 that you received from Matrix?

1 A Yes.

2 Q Okay. I don't got my copy in front of me.

3 The Compass term loan, what does that refer to?

4 A The Compass term loan was a -- well, there's

5 two loans. And I think that term loan was a mistake

6 because I've looked at it since. I think that the

7 Compass term loan is supposed to be the line, the

8 Compass line, because that's about right, the 1.6 was

9 the line.

10 The term loan was, I think, a \$3 million loan

11 at the time -- that was fully drawn on at the time of

12 the acquisition so that's my recollection of that

13 number.

14 Q Do you know why the company Compass term loan

15 is noted separately in that chart?

16 A Because it wasn't taken into account by

17 Matrix from what I remember, and I don't know why.

18 Q You don't recall why it was taken?

19 A No, why it wasn't taken into account by

20 Matrix.

21 Q Okay. On the bottom of the first set of

22 numbers there is a risk discount of 35 percent. Do you

23 see that?

24 A I do.

1 Q What does that refer to?

2 A It's -- well, a risk discount is a
3 normalizing number traditionally used with valuations
4 and closely-held companies to come up with, you know,
5 what the parties feel the actual value is based on
6 outlying risks. You know, there's always some sort of
7 risk taken into account, whether it be a minority risk
8 or traditional ones.

9 At the time, the risk discount was a
10 combination of the defaults with a Compass credit
11 facilities, the term and the line, there's defaults on
12 both. Compass Bank was well aware of the defaults. It
13 was also a factor of the present situation with Paul
14 Morabito in October.

15 Q What do you mean by that?

16 A Well, that he had litigation and judgments
17 assessed against him, and the fact of buying the
18 percentage of the company at the time was a risk
19 assessment of, you know, do we want to separate? If we
20 separate ourselves from Paul Morabito, there's always
21 going to be risk.

22 Q I don't entirely understand what you mean by
23 that. Could you explain that further?

24 A Sure. Because of a judgment assessed against

1 Paul and because the company was already in default,
2 Paul had drawn on the term loan, right, and money was
3 with Paul. We're probably not going to get that back
4 because of the litigation. Sam and Edward would likely
5 have to capitalize the company in order to make the
6 company good on all of its defaults with Compass Bank.
7 The guarantees for Compass Bank, there's only one, Paul.
8 In order to do this the right way, where Compass would
9 put them in good graces, Edward and Sam would have to
10 sign on.

11 So all of that taken together, because of
12 Paul's his litigation, right, the litigation itself was
13 a massive default on Compass and the guaranty. So
14 Edward and Sam wouldn't have to take on a guaranty.

15 The risk was that Compass would pull
16 everything, that we wouldn't get the 939 back, and the
17 discount was appropriate to the -- to the risk of the
18 company failing and the -- because if that credit was
19 canceled, the way that the Superpumper operated, it
20 collapses, because you've got to have that bridge credit
21 facility.

22 Q So how did you come up with a 35 percent
23 discount rate?

24 A Yeah. And from what I recall, the 35 percent

1 was a number that we had discussed with different
2 accountants, including Matrix on a call. And, you know,
3 standard discount in the industry range from 10 -- 10 to
4 40 percent, depending on the combination of discounts
5 and what they are. And at the time, the 35 percent was,
6 I think, a group discussion in what everybody felt was
7 fair. And I think it lined up with what we felt Edward
8 and Sam were out because of the bank defaults.

9 Q What do you mean that they were out?

10 A Well, you know, Paul took out 939. You know,
11 if you lost the line of credit, we'd lose about 1.5 to
12 \$2 million. It was a big, big risk. If we lose that,
13 we lose the business, unless we get another bank. And
14 the likelihood of getting another bank after that is not
15 good. I mean, it was a very big risk. And then if we
16 do default because we lose the line, Edward and Sam are
17 now personally guaranteed on all of those leases, which
18 is huge -- huge, huge number.

19 Q Who was involved in the discussions to come
20 up with 35 percent discount?

21 A I don't know. I can't tell you with
22 certainty, but I can say that everybody that I
23 mentioned, including Edward, Sam, Paul, I think, but I'm
24 not certain, D'Arata's office, I'm pretty sure Matrix

1 and the point person from Matrix. And I can't recall
2 his name right now.

3 Q Was that Spencer Cavalier?

4 A Yeah. I think he was the one that I think
5 signed the letter for the appraisal. He was either
6 involved or whoever was working with him at the time was
7 on the call.

8 Q What about Bernstein?

9 A Stan would have been on calls, but I don't
10 think he was. I don't think that he -- this was his
11 area of expertise. I don't think he really weighed in
12 on that one, but I would imagine he was involved with at
13 least calls on it.

14 Q Was there any written communication that went
15 back between parties regarding --

16 A Not that I recall.

17 Q Just let me finish -- regarding the discount
18 rate?

19 A Not that I recall.

20 Q Was there any sort of formula used to
21 determine that 35 percent?

22 A No.

23 Q So if I understand it, it was people with
24 experience saying, based on what we've seen, we think 35

1 percent is fair?

2 A Yes.

3 Q Was there any negotiation about that rate?

4 A From what I remember, yes. I think Paul had

5 started with a 20 percent number and we had started with

6 a 40 percent number. And then when in October we found

7 out more about the defaults. It held at 35 percent.

8 Q When you say 'we started with a 40 percent'

9 were you talking --

10 A Snowshoe.

11 Q Are you talking about Snowshoe?

12 A Yes.

13 Q So did you represent Paul Morabito in this

14 matter?

15 A We represented Snowshoe Petroleum in the

16 matter and drafted the purchase agreement for Snowshoe.

17 Q Did you represent Superpumper?

18 A It was a shareholder to shareholder sale, so

19 no.

20 Q Do you know if there were any other counsel

21 involved -- outside of the Lippes law firm, involved in

22 this Superpumper transaction?

23 A There was not, from what I recall. I can't

24 remember if Paul's California counsel at the time was

1 involved. I can't remember.

2 Q Do you know who his California counsel was?

3 A I can't remember his name.

4 Q Was it Mark Lehman?

5 A Mark Lehman was an attorney, yeah. He was
6 counsel with Paul, yeah. I can't remember if he was
7 involved, but I know he was active in representation at
8 the time for Paul."

9 Whereupon, Exhibit 35 to deposition was
10 marked.

11 Your Honor, that was the First Amended
12 Complaint which I believe is the operative pleading in
13 this case.

14 THE COURT: Okay.

15 BY MR. GILMORE:

16 Q "Mr. Lovelace, you've been handed what's been
17 marked as Exhibit 35. I apologize. I can't find my
18 copy. It's a copy of the Amended Complaint. Can you
19 turn to paragraph 30?

20 Under paragraph 30 there are allegations
21 regarding Paul Morabito's interests in -- or Paul
22 Morabito's 80 percent interest in Superpumper. I
23 believe it's under H, I, J and K.

24 A Okay.

1 Q Do you see that?

2 A I do.

3 Q Do you see a reference to the stock basis of
4 Morabito's interest?

5 A Yes, in I.

6 Q What is that reference?

7 A It's the sentence that says, his stock basis
8 in the company 2009 under his tax return.

9 Q What is the value it gives it?

10 A \$5,588,661.

11 Q Did you have any involvement with coming up
12 with that stock basis?

13 A No.

14 Q Did you take that stock basis into account at
15 the time of the Superpumper transaction?

16 A Of course not.

17 Q Okay. What is -- how would that relate to
18 the sale of his -- of Mr. Morabito's equity interest in
19 Superpumper?

20 A It wouldn't.

21 Q Okay. Why do you say that it wouldn't?

22 A Because the stock basis doesn't have anything
23 to do with the value of stock in selling the company.

24 It -- it only has effect for tax purposes and to

1 identify a capital account for the stockholder.

2 If the stockholder put 5.5 million into a
3 company and then the following year it tanked because
4 the company, the business failed, the product wasn't
5 wanted anymore, the company is still not worth 5.5
6 million. It's only a tax basis.

7 Q Okay. Did you have any involvement in
8 drafting the notes for the Superpumper transaction?

9 A Yes.

10 Q And by notes, I refer to the note in the
11 Snowshoe or -- I'm sorry -- the note from Paul -- I'm
12 sorry. The note from Snowshoe to Paul Morabito.

13 A Yes.

14 Q Did you draft that?

15 A Yes.

16 Q Did you draft -- let me get the exhibit.
17 I've handed you what's been marked at Exhibit 14.

18 A Yes."

19 MR. GILMORE: Your Honor, I believe Exhibit 14
20 is Exhibit 103 through 105 of the trial binders.

21 THE COURT: Okay.

22 BY MR. GILMORE:

23 Q "Could you look through Exhibit 14 and tell
24 me what it is?

1 A Okay. The \$1.4 million note was the note
2 drafted following the final Matrix valuation to cover
3 the increase in value that Matrix determined above the
4 amount paid.

5 Q Okay. So is it fair to say that the cash
6 price of the purchase was initially based on the initial
7 valuation for Matrix and anything about that was
8 reflected in the note?

9 A Yes.

10 Q Okay.

11 A And I think the cash consideration was what
12 at the time, you know, Sam and Edward were willing to
13 put forward until this -- the valuation was final.

14 The -- let me go in order here -- assignment
15 agreement was entered into by Paul, Superpumper and
16 Snowshoe Petroleum as a function to offset amounts due
17 in owing between the parties in an effort to simplify
18 payments, so instead of having three or four payments
19 ongoing there would be less amount. So the successor
20 notes -- the two successor notes were a simplification
21 of what was due and outstanding.

22 Q And those are the two successor notes that
23 are included in Exhibit 14?

24 A Yes. One is the 493 roughly between Snowshoe

1 and Paul and the other 939 from Snowshoe to
2 Superpumper."

3 MR. GILMORE: That is the end of the Lovelace
4 deposition transcript. The next will be Spencer
5 Cavalier.

6 THE COURT: You didn't open and publish
7 Lovelace.

8 MR. GILMORE: Probably did not.

9 COURT CLERK: And I'm also going to need
10 Cavalier.

11 MR. GILMORE: I have mine. Might as well do
12 them all at once. This is Michael Sewitz. This is
13 Spencer Cavalier. I believe Christian Lovelace is in
14 possession of the plaintiffs.

15 COURT CLERK: As soon as it's provided to me I
16 will open and publish Christian Lovelace's deposition.
17 I'm not sure of the date of that. I'm opening and
18 publishing Spencer Cavalier's deposition that was dated
19 -- sorry. I can't see the date again -- June 19th. And
20 I am opening and publishing the deposition of Michael
21 Sewitz taken March 22nd, 2016.

22 MR. GILMORE: Should we proceed?

23 THE COURT: Let's find Lovelace's deposition.
24 Did you find that? Before we forget.

1 MS. PILATOWICZ: Here it is.

2 COURT CLERK: Thank you. The date of
3 Lovelace's is October 21st, 2015.

4 THE COURT: Now, you are going to move forward
5 with Spencer Cavalier?

6 MR. GILMORE: Right.

7 THE COURT: Okay. Thank you.

8 MR. GILMORE: Mr. Savoy, I am going to start
9 with Spencer Cavalier dated June 19, 2015, commencing at
10 1:12 p.m. Do you have that transcript in front of you?

11 MR. SAVOY: I do.

12 EXAMINATION

13 BY MR. GILMORE:

14 Q Please turn to page 5, line 14. "Mr.
15 Cavalier, my name is Frank Gilmore, and I am from the
16 Reno firm of Robison, Belaustegui, Sharp & Lowe, and I
17 represent all of the Defendants in the action that has
18 brought us here today. Do you understand that?

19 A Yes.

20 Q Have you and I ever spoken prior to your
21 arrival in this room today?

22 A No.

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

1 A Spencer Paul Cavalier, C-A-V-A-L-I-E-R.

2 Q Mr. Cavalier, where are you currently
3 employed?

4 A Matrix Capital Markets Group.

5 Q And how long have you been so employed?

6 A Since 1999 or '98. Late '90's. Sorry. '99
7 or '98. I can't give you the exact date, but...

8 Q That's fine. Will you please give us the
9 benefit of your educational and professional background?

10 A I have a Bachelor's in Administration and
11 Business from West Virginia University. I have a
12 Masters of -- an MBA from Baylor University. I'm a
13 Chartered Financial Analyst. I hold that designation.

14 And I'm a senior -- Accredited Senior
15 Appraiser with the American Society of Appraisers.

16 Q Other than any certification or professional
17 trade license that you've already mentioned, do you hold
18 any others?

19 A I do have a Series 7, Series 63. I'm
20 registered rep through FINRA.

21 Q Okay. Any others?

22 A Not that I recall.

23 Q Okay. How long have you -- what would you
24 consider to be your specialty?

1 A Investment in banking focused on mergers and
2 acquisitions.

3 Q Okay. And how long have you been employed or
4 have you considered to have a expertise in that field?

5 A Since I joined Matrix.

6 Q About 1999 or so?

7 A Yes.

8 Q Okay. And has that been your primary focus at
9 Matrix, is this expertise that you've explained?

10 A Correct."

11 Q Please turn to page 10, line 5. "Okay. This
12 is a Deposition Notice of what's called a 30(b)(6) video
13 conference deposition of Matrix Capital Markets, Inc.
14 Do you understand that?

15 A Yes.

16 Q Essentially, Mr. Cavalier, this is requesting
17 that Matrix Capital provide somebody who is most
18 knowledgeable as to the contents identified on page 2
19 which are, and I'll read them in order: 1, the
20 company's engagement by or on behalf of Superpumper,
21 Inc., in 2010.

22 Number 2, the analysis requested and
23 performed. And number 3, the result and report which
24 provided a valuation of 100 percent of the common equity

1 in Superpumper, Inc.

2 Do you see that?

3 A Yes.

4 Q Do you believe that you are the person most
5 knowledgeable from Capital Matrix -- from Matrix Capital
6 Market Group with respect to these three?

7 A Yes.

8 Q Thank you. And today you're appearing
9 pursuant to the subpoena that you received, correct?

10 A Yes."

11 Q Please turn to page 12, line 6. "What, if
12 anything, did you do to prepare for today's deposition?

13 A Not much because I really didn't understand
14 the purpose.

15 Q Okay.

16 A But I'm familiar with the report. I read the
17 report.

18 Q Do you know anything -- strike that.

19 What details do you know, if any, about the
20 dispute between the parties that has led to your
21 deposition?

22 A None.

23 Q Okay. Nobody's explained to you who
24 represents whom or what their various positions are in

1 any litigation; is that correct?

2 A The only thing I gathered from these
3 documents and a brief overview from Barry.

4 Q Okay.

5 A No details beyond that.

6 Q Could you tell me as verbatim as you can
7 remember what Mr. Breslow told you when he contacted you
8 the first time?

9 A He said there had been a -- there's a dispute
10 over the transfer of some stock post the valuation
11 assignment we had done. That was it. I mean, I don't
12 know when it occurred or we didn't -- he was very
13 succinct.

14 Q Okay. Has anybody prior to today attempted
15 to influence your testimony in any way?

16 A No.

17 Q Has anybody prior to today attempted to
18 influence your valuation report that came from Matrix
19 Capital on or about August 31, 2010?

20 A No.

21 Q Okay. In front of you I've got Exhibit
22 Number 3. Back up. One more question.

23 Have you reviewed any Pleadings or papers
24 filed whatsoever in the litigation that brings us here

1 today?

2 A No. The only thing I reviewed is what's been

3 -- was given to me.

4 Q Okay. You've not read the Complaint,

5 correct?

6 A No.

7 Q You've not read any of the Motions filed or

8 anything like that. Correct?

9 A No.

10 Q Okay. Let's go ahead and look at Exhibit 3."

11 MR. GILMORE: Your Honor, I've got that

12 identified as Exhibit 235 in the trial binders.

13 THE COURT: Counsel, you agree?

14 MS. PILATOWICZ: Yes, agree.

15 THE COURT: Okay. Exhibit 235. Thank you.

16 BY MR. GILMORE:

17 Q "Is this a document that you've seen before?

18 A Yes.

19 Q Okay. And please identify it.

20 A This is the valuation report we did for the

21 client in 2010.

22 Q Okay. And who was the client?

23 A Let me double-check. I want to make sure it

24 wasn't Dennis.

1 Q Sure.

2 A I'm pretty sure it was Superpumper, but I
3 want to make sure so I'll double-check. Yes,
4 Superpumper, Inc.

5 Q How was it that you came to be tasked with
6 preparing a valuation for Superpumper, Inc.?

7 A As I recall, we received a phone call from
8 Dennis Vacco and asked that we would -- would we prepare
9 a valuation of the common equity of the company. And we
10 agreed to do that, and we did it.

11 Q Thank you. Did Mr. Vacco tell you why he
12 needed it?

13 A He said that they had to do corporate
14 planning. There was some -- maybe some shareholder
15 gifting or transfers that may happen in the future but
16 it was just to be an equity valuation.

17 Q Okay. Did Mr. Vacco indicate or insinuate in
18 any way as to what he preferred the potential result of
19 the valuation would be?

20 A No.

21 Q No?

22 A No.

23 Q Okay. Did he indicate to you or insinuate to
24 you in any way whether he required a high evaluation or

1 low valuation?

2 A No.

3 Q Did he tell you anything whatsoever in that

4 regard?

5 A No.

6 Q Did Mr. Vacco or anybody from his office

7 attempt at any point to influence the methodologies or

8 analysis that went into this valuation --

9 A No.

10 Q -- report?

11 A No.

12 Q Okay. Same questions with regard to

13 Superpumper.

14 At any time prior to the final valuation as

15 shown in Exhibit 3, did anybody from Superpumper ever

16 attempt to influence your opinion as to the value of

17 Superpumper?

18 A No.

19 Q Did anyone at Superpumper ever tell you what

20 they anticipated or what they expected with respect to

21 your report?

22 A No.

23 Q Okay. At any time has anyone offered to pay

24 you for your testimony today?

1 A No.

2 Q Has anyone attempted to influence your
3 testimony in any way prior to today?

4 A No.

5 Q Okay. Did you at any point prior to
6 preparing the valuation here have conversations or
7 communications with any representatives of Superpumper?

8 A Yes.

9 Q And do you recall the names of the people you
10 would have worked with?

11 A Don Whitehead.

12 Q And Mr. Whitehead --

13 A CFO.

14 Q Okay. Mr. Whitehead was the CFO at the time?

15 A Yes.

16 Q Okay. And what type of communications would
17 you have had with him?

18 A About financial requests. You know,
19 operations about how the company works. General, you
20 know, typical valuation questions.

21 Q Okay. In your experience in providing this
22 type of a report, was there anything in your
23 communication with Mr. Whitehead that you considered to
24 be unusual?

1 A No.

2 Q Pretty standard?

3 A Yes.

4 Q Did Mr. Whitehead at any point make any
5 insinuations or statements to you that made you believe
6 that this was anything other than a standard valuation
7 that you had performed?

8 A No.

9 Q Prior to performing the Superpumper
10 valuation, how many valuations of this type have you
11 prepared in your career?

12 A I have no idea. Many. Many.

13 Q More than 20?

14 A Oh, yeah.

15 Q More than 50?

16 A Yes.

17 Q Okay. And would that be reports in which you
18 were either the lead evaluator or you were personally
19 involved in it in some degree?

20 A Both.

21 Q Okay. Would you say it could go more than
22 100?

23 A I have to ask a question. I mean, I
24 specialize in these types of companies and lots of times

1 we don't do formal reports.

2 Q Okay.

3 A I've valued hundreds of them.

4 Q Fair enough.

5 A Okay. So...

6 Q What are the scenarios whereby you would
7 prepare a formal report as opposed to giving an informal
8 report to the client?

9 A Um, sometimes they call -- clients call and
10 they want a -- some type of report, some type of a
11 letter. They may not be selling at that time. They
12 just want a -- for corporate planning purpose or other
13 estate planning purposes, things like that, they would
14 want a report."

15 Q Page 20, line 13. "Do you recall how much
16 Matrix Capital received from Superpumper in exchange for
17 preparation of this report?

18 A \$40,000.

19 Q Okay. Was that, in your estimation, typical
20 of a report like this?

21 A Yes.

22 Q Okay. Did you know Mr. Dennis Vacco prior to
23 him contacting you about this valuation?

24 A Did not know of -- I knew of him, but I

1 didn't know him.

2 Q And how -- sorry.

3 A Just he was in pol -- I knew his name through
4 politics, but I didn't know him as an in -- personally.

5 Q Okay. And you had never worked with him
6 professionally prior to him contacting you on the
7 Superpumper matter; is that right?

8 A Never have.

9 Q Okay. How about since?

10 A I haven't spoken with -- I haven't spoken
11 with him since.

12 Q Okay. Let's turn to page 2.

13 A I just emailed him when I got -- was
14 contacted by your office. I didn't know what was
15 happening. So I said should I be speaking with this
16 firm?

17 Q Okay. In any communications with Mr. Vacco
18 subsequent to October, 2010, have you discussed any of
19 the contact of this valuation?

20 A No.

21 Q Other than the fact that you had made him
22 aware you were going to be testifying?

23 A No.

24 Q Okay. If you please turn the page, there's a

1 correspondence here.

2 A Um-hum."

3 THE COURT: Let me ask you to stop for just a
4 second.

5 MR. GILMORE: Sure.

6 THE COURT: Thank you. You may proceed.

7 BY MR. GILMORE:

8 Q Continuing on page 21, line 22. "Okay. If
9 you please turn the page, there's a correspondence
10 here--

11 A Uh-hum.

12 Q -- addressed to Superpumper, Inc. in care of
13 Dennis Vacco in Buffalo indicated October 13, 2010.

14 Do you see that?

15 A Yes.

16 Q Is this a document you prepared?

17 A Yes.

18 Q And what is this letter, generally speaking?

19 A It's just an overview letter that lays out
20 the final results of the valuation, the as-of date, the
21 standard of value, our limitations, which are referenced
22 later in the report. And it gives a value.

23 Q Okay. Prior to today, in anticipation of
24 this deposition did you review this letter?

1 A I read this. Yeah, this -- yeah.

2 Q And as you sit here today was this letter

3 accurate as of October 13, 2010?

4 A Yes.

5 Q Okay. And do you believe it to be accurate

6 today in terms of what you were requested to do by

7 Superpumper at the time?

8 A Yes.

9 Q Okay. If we look at the first paragraph, it

10 indicates that Superpumper had requested a valuation to

11 determine the fair market value of 100 percent of the

12 common equity in Superpumper, Inc., on a controlling

13 marketable basis as of August 31st, 2010. Do you see

14 that?

15 A Yes.

16 Q Is that what you endeavored to do with

17 Matrix?

18 A Yes.

19 Q Okay. If you see at the bottom of the page

20 it indicates, this letter, that evaluation has the

21 following qualities. And then it lists 1, 2, 3 and 4.

22 Below that in the following paragraph on page 2 you

23 said: For our valuation we used standard valuation

24 approaches and methodologies. Do you see that?

1 A Uh-huh.

2 Q Is that accurate?

3 A Yes.

4 Q Okay. At the conclusion of that paragraph,
5 middle of the page, the last sentence says The
6 conclusion of value given is based on information
7 provided in part by the management of Superpumper.

8 Was that information provided you to by Mr.
9 Whitehead?

10 A Yes.

11 Q Did Superpumper fail to provide you anything
12 that you believed you needed in order to prepare the
13 valuation that you were asked to prepare?

14 A Not that I recall.

15 Q Okay. The next paragraph explains what I was
16 trying to explain earlier.

17 A Okay.

18 Q This report is a restricted-use report. And
19 it is an abridged version of the information would be
20 provided in a detailed valuation report.

21 Do you see that?

22 A Yes.

23 Q Do you anticipate, Mr. Cavalier, that had the
24 clients requested a detailed valuation report, the

1 ultimate assessment of value would have been the same?

2 A Yes.

3 Q Okay. The next paragraph, you indicate that

4 the fair market value of 100 percent of the common

5 equity in Superpumper on a controlling marketable basis

6 as of August 31, 2010 was \$6,484,514; is that correct?

7 A Yes.

8 Q Okay. The next paragraph, second line from

9 the bottom, you indicate that 'neither Matrix Capital

10 Markets Group, Inc. nor the individuals involved in

11 preparing this evaluation has any present or

12 contemplated future interest in Superpumper, Inc. or any

13 other interests that might tend to prevent making a fair

14 and unbiased valuation.

15 Do you see that?

16 A Yes.

17 Q Is that accurate?

18 A Yes.

19 Q Do you believe that this valuation you

20 prepared for Superpumper was indeed a fair and unbiased

21 valuation?

22 A Yes.

23 Q Okay. Not subject to any influence by the

24 client or by the client's counsel?

1 A Correct.

2 Q Okay. Couple more things. If you would,
3 turn the page then. Following the letter we have a
4 Table of Contents of the report.

5 Do you see that?

6 A Um-hum.

7 Q And then we have Introduction and Background.

8 A Okay.

9 Q Much of which was covered in your
10 correspondence, correct?

11 A Correct.

12 Q I'd like to look at just a couple of things
13 quick. On page 2, Paragraph B, Approaches and Methods
14 Considered, do you see that?

15 A Yes.

16 Q The paragraph says Three approaches and
17 several methods are available for valuing closely held
18 corporate interests in accordance with generally
19 accepted valuation principles.

20 The three generally accepted approaches are:
21 1, the Income Approach; 2, the market approach; and 3,
22 the Cost or Asset-Based Approach.

23 Do you see that?

24 A Yes.

1 Q Did you utilize your experience and expertise
2 in evaluating all three of these approaches in
3 determining a valuation of Superpumper?

4 A Yes.

5 Q Okay. On page 9 -- excuse me, page 9 of the
6 report is essentially a qualification of the preparer,
7 report preparers.

8 Do you see that?

9 A Yes.

10 Q Spencer P. Cavalier. That's you --

11 A Right.

12 Q -- correct?

13 A Uh-hum.

14 Q This little bit of a CV, if you will, was
15 this current as of the time you prepared the report?

16 A Yes.

17 Q Okay. Is there anything that you left out of
18 this background that would have provided additional
19 information to the report reviewer as to your
20 qualifications?

21 A I don't think so.

22 Q Okay. So it was complete and accurate?

23 A Yes.

24 Q Okay. That may be it. Let me look at my

1 notes here.

2 Since this report was prepared in October,
3 2010, have you had any conversations with any persons or
4 reviewed any materials or updated approaches or
5 methodologies which suggest that the valuation
6 methodology you used for this Superpumper report is no
7 longer accurate?

8 A No."

9 MR. GILMORE: Please turn to page 40, line 22.
10 Are you there?

11 MR. SAVOY: I am.

12 BY MR. GILMORE:

13 Q "Okay. And what capitalization rate did you
14 use in the capitalization method you did use?

15 A The weighted average cost of capital? Is
16 that what you're asking what we used?

17 Q Yes.

18 A Hold on just a second. 14.26 percent.

19 Q And why did you use that rate? Or how did
20 you come to that rate, I guess, is probably the best --

21 A On Exhibit 8 of the exhibits there's a
22 build-up approach. If you can look at that. Okay. So
23 at the top part there is a bold line in the middle.

24 Q Uh-hum.

1 A The top part as we use adjusted asset capital
2 pricing model where we build up using the risk-free
3 rate, plus this is the Ibbotson data, the market risk
4 premium and what we call a small company risk premium.
5 That's also an Ibbotson report. And then we add to that
6 specific company risks.

7 So you can -- this is, you know, factors that
8 are a little bit subjective, but you add them to build
9 up to what we -- you deem to be down below. You add
10 those up to be an equity, a discount rate of 25.7
11 percent, okay.

12 And then you take a growth weighted rate for
13 any potential growth of cash flow, and you come to 24.71
14 percent prior year discount rate.

15 Using that discount rate, you come down -- we
16 just rounded to 25, five. You go down beneath the bold
17 line.

18 We're trying to figure -- what we did here is
19 we make assumption if somebody were to buy the company,
20 what would be their -- what would be the capitalization
21 of the company buying them, what's normal capitalization
22 in the market at that time in the period of the market.

23 So you take into account the return, the 25
24 percent on the equity, and the cost of the debt that

1 somebody could potentially have to buy or refinance the
2 company.

3 You blend those together. We did a 50/50
4 blend here. And then we came to a weighted average cost
5 of capital of the 14.26 percent."

6 THE COURT: I'm going to stop you there. What
7 is Exhibit 8?

8 MS. PILATOWICZ: It was 2009.

9 MR. GILMORE: 150.

10 MS. PILATOWICZ: 2009 is 14.

11 THE COURT: We're talking about Exhibit 8
12 that's referenced on page 41, line 6.

13 MR. GILMORE: Correct.

14 THE COURT: In the deposition.

15 MS. PILATOWICZ: Yes.

16 MR. GILMORE: Exhibit 114?

17 MS. PILATOWICZ: I think was Exhibit 8 to his
18 report.

19 MR. GILMORE: Oh, okay.

20 THE COURT: So you think it's Exhibit 8 to his
21 report. And what is his report filed under?

22 MR. GILMORE: It was 223, I believe.

23 THE COURT: Mr. Cavalier's report.

24 MR. GILMORE: 235. Is that not the case?

1 MS. PILATOWICZ: 235, yes.

2 THE COURT: Okay. So we said earlier in this
3 deposition that Exhibit 3 was 235.

4 MR. GILMORE: Correct.

5 THE COURT: So it's 235 in its entirety.
6 Correct?

7 MR. GILMORE: Correct.

8 THE COURT: And Exhibit 8 is just an exhibit
9 to 235.

10 MR. GILMORE: I believe that's accurate.

11 THE COURT: Okay.

12 MR. GILMORE: He has a number of exhibits
13 attached to his report.

14 THE COURT: Thank you.

15 BY MR. GILMORE:

16 Q I'm continuing on page 42, line 15. "Okay.
17 So If I'm reading this correctly, when getting to the
18 capitalization rate, you took into account the
19 volatility of supply and wholesale price of fuel?

20 A Uh-hum.

21 Q And you took into account the risk of
22 declining motor fuels, motor fuels volumes?

23 A Yes.

24 Q And you took into account the risk of

1 concentration of geographical region?

2 A Yes.

3 Q And you took into account the unknown risk

4 related to unknown environmental remediation?

5 A Correct.

6 Q And you took into account the potential

7 threat of new competitor?

8 A Yes.

9 Q And you took into account credit card fee --

10 the risk of credit card fees?

11 A Yes.

12 Q And you took into account the risk of labor

13 turnover?

14 A Yes.

15 Q And you took into account the risk of

16 alternative fuels?

17 A Correct."

18 MR. GILMORE: Page 46, line 15. Your Honor, I

19 believe the reference to Exhibit 4, 14 is also an

20 attached exhibit to Mr. Cavalier's written report.

21 THE COURT: Which one? Is it Exhibit --

22 MR. GILMORE: 235.

23 THE COURT: It's Exhibit 235, but is the

24 attachment marked 14 or 4?

1 MR. GILMORE: Well, I think it's 14 of 14, 4
2 of 14. So If you look at --

3 THE COURT: Would that be page 4 of 14?

4 MR. GILMORE: He has a schedule of attached
5 exhibits to his report.

6 THE COURT: Okay.

7 MR. GILMORE: 1 of 14, 2 of 14, 3 of 14, so.

8 THE COURT: So we just looked at 8, 14 of 14?

9 MR. GILMORE: Yes.

10 THE COURT: All right. Thank you.

11 BY MR. GILMORE:

12 Q Line 15. "Let's look at the first -- it's
13 Exhibit 4 of 14. It's called Reconciliation of
14 Valuation Approaches. Can you tell me how you determine
15 the weight of each approach?

16 A Well, it is subjective, but we determine them
17 based on what we think is the most relevant to the
18 valuation under circumstances.

19 So I can walk down these. You know, I can't
20 remember exactly why we weighted them a certain way, but
21 the normalization of single period, historical cash
22 flow, the first one, we thought that was most
23 representative of -- that's the result they have been
24 having.

1 So gave them -- we gave that one a 50 percent

2 -- I'm sorry. That's normalized single period cash

3 flow.

4 This is what management thought -- this is the

5 farthest column on Exhibit 5 that you were asking about.

6 And so this is what management's viewpoint of the future

7 economic cash flow would be. This is what they thought.

8 Q And I'm sorry. When you say this is what

9 management thought, are you talking about the management

10 of Superpumper or --

11 A Superpumper.

12 Q Okay.

13 A Superpumper, yes.

14 Q Okay.

15 A So we weighted that more than the next one,

16 which was the Adjusted Historical Cash Flow Method. We

17 felt that if that's what management believes the trend

18 is going to be for the assets in place, then we should

19 give that one more weight. So those are top two.

20 Q So -- I'm sorry to interrupt you.

21 The weights for both of the income approaches

22 were used -- were determined based, in part, on

23 discussion with what management felt the future to be?

24 A Correct.

1 Q Okay.

2 A Uh-hum. Right. Down to the Guideline Public
3 Company Method. We thought that those two, the two
4 guidelines companies were -- are a lot bigger. They
5 were a lot different. A lot of them -- both of them
6 hold -- held fee simple real estate. They actually
7 owned property in addition to having leases.

8 They also did different things than
9 Superpumper. They did -- they held -- they also
10 wholesale fuel. So we didn't put a lot of weight, as
11 much weight on that Guideline Company Approach.

12 On the Adjusted Balance Sheet Method, we
13 looked at every -- the performance of every store and,
14 you know, individually valued each store in terms of
15 based on empirical data we had, based on what we thought
16 they would -- a range that would be valued in the market
17 and.

18 And that's where we -- how we adjusted the
19 balance sheet to market as you saw on the Cost Approach.
20 And so we had more confidence in that approach and we
21 weighted that more."

22 Q Page 50, line 2. "Let's look at what's
23 marked -- well, it's not marked. It's Exhibit 7 of 14
24 in Exhibit 1.

1 A Okay.

2 Q I'm looking under Current Liabilities,
3 there's listed Accounts Payable. Do you know what's
4 included in those accounts payable?

5 A I'm sure it's just money they owe the
6 vendors.

7 Q But this was information that was provided to
8 you by management as to what their accounts payable
9 were?

10 A We don't go into the general ledger and look
11 at specific who -- they owe the trash people, they owe
12 -- but that's what that typically is. We just --

13 Q But this is the information that --

14 A Yeah.

15 Q -- management provided?

16 A This balance sheet was provided by
17 management, correct.

18 Q So same with Accrued Liabilities, that would
19 have been the information that --

20 A Yes.

21 Q -- management provided you?

22 A Yes.

23 Q And the line of credit, that would also be
24 information management provided to you as to what --

1 A Yes.

2 Q -- they believe was owed?

3 A Um-hum.

4 Q Is it fair to say that you would expect a
5 purchaser to purchase the company around this time at
6 the value you put in the report?

7 A The equity of the company?

8 Q Yes, the equity.

9 A It would depend. Because -- if it -- I mean,
10 if the company was going to stay the same with a cer --
11 with everybody there and expense structure they had,
12 yeah, I would think this would be in the range.

13 Q Okay.

14 A Yes."

15 Q Page 55, line 19. "Okay. Since you prepared
16 the report for Superpumper in 2010, have they engaged
17 you for any purpose?

18 A No.

19 Q Okay. Thank you. Business Valuation
20 Agreement with" -- I'm sorry. I think that's you,
21 line--

22 A Yeah.

23 Q -- 24?

24 A "Business Valuation Agreement with

1 Superpumper, Exhibit 10.

2 THE COURT: Is that again Exhibit 235?

3 MR. GILMORE: No, I believe that that is trial

4 binder Exhibit 90 which is the major retention agreement

5 we reviewed previously.

6 BY MR. GILMORE:

7 Q "Okay. Now, Exhibit 10 indicates the total

8 fee that was paid to Matrix of \$40,000. Correct?

9 A Correct.

10 Q Was this be typical, above market, or below

11 market?

12 A Typical.

13 Q Okay. Exhibit 4 is information about the

14 leases for each of the sites." I read yours.

15 MR. SAVOY: I was wondering.

16 MR. GILMORE: Sorry.

17 A Exhibit --

18 THE COURT: You guys are losing me.

19 MR. GILMORE: Me, too.

20 MR. SAVOY: That wasn't me.

21 THE COURT: So we are at?

22 MR. GILMORE: Question 7 --

23 THE COURT: Line 7, question on page 56?

24 MR. GILMORE: Correct.

1 BY MR. GILMORE:

2 Q "Okay.

3 A Exhibit 4 is information about the leases for
4 each of the sites."

5 THE COURT: I'm going to ask you Exhibit 4,
6 290?

7 MR. GILMORE: This would be Exhibit 4 to the
8 Matrix report.

9 THE COURT: Which was 90?

10 MR. GILMORE: Which is 235.

11 THE COURT: Okay. I see. Yes. Okay.

12 MS. PILATOWICZ: I don't think that is
13 correct. Exhibit 4 on the report is the reconciliation
14 valuation report. I think this was a valuation analysis
15 that he provided.

16 MR. GILMORE: Yeah, but it's the back-up for
17 his. It's the same exhibit.

18 MS. PILATOWICZ: Right. But that wasn't an
19 exhibit to the report, that was the exhibit to the
20 deposition transcript. It wasn't listed as a report.

21 MR. GILMORE: It's the same exhibits. Go to
22 his report.

23 MS. PILATOWICZ: He's actually referring to
24 Exhibit 11 which goes to the lease valuations.

1 MR. GILMORE: Oh, I see. We haven't gotten
2 there yet. Judge is asking about Exhibit 4.

3 MS. PILATOWICZ: Okay. I'm sorry.

4 THE COURT: What's Exhibit 4?

5 MR. GILMORE: Exhibit 4 is -- Exhibit 4 of 14,
6 that's attached to his report.

7 THE COURT: To 235. Correct?

8 MR. GILMORE: Correct.

9 THE COURT: Okay. Thank you.

10 BY MR. GILMORE:

11 Q And then the question is "I think this is 11.

12 A I'm sorry. That's 11. Exhibit 11. I'm
13 sorry. And then Exhibit 12 is the -- one of the --
14 guideline company that we use in the Market Approach.
15 Exhibit 13 is another guideline company we used in the
16 Market Approach.

17 THE COURT: And I didn't hear what your
18 discussion was.

19 MR. GILMORE: Correct. And I believe that
20 Exhibit 11 he's referring to on line 11 is Exhibit 299
21 in the trial binders. Yes?

22 MS. PILATOWICZ: Yes.

23 MR. GILMORE: And its actually version in the
24 trial binders has the Cavalier Exhibit 11 sticker. Do

1 you agree?

2 MS. PILATOWICZ: That's correct.

3 THE COURT: So Exhibit 11 is Exhibit 299 in
4 the trial. And then do you want to do the other while
5 we're at it?

6 MR. GILMORE: I don't believe -- no. I don't
7 -- there's no further references to Exhibit 12 or 13.
8 Those have not been offered. He doesn't address them.

9 THE COURT: Okay. Thank you.

10 MR. GILMORE: Please continue, Mr. Savoy, page
11 56, line 11.

12 A "I'm sorry. That's 11. Exhibit 11. I'm
13 sorry. And then Exhibit 12 is the -- one of the --
14 guideline company that we used in the Market Approach.
15 Exhibit 13 is another guideline company we used in the
16 Market Approach.

17 Q One last question I have for you.

18 Do you have any intent, if you were asked, to
19 travel to Reno, Nevada to testify in open court?

20 A No.

21 MR. GILMORE: Okay. Thank you. I have no
22 more questions. Off the record."

23 That concludes, your Honor, deposition of
24 Spencer Cavalier.

1 THE COURT: Okay. We are getting close to
2 time to quit. You still have Sewitz and Bernstein.
3 Correct?

4 MR. GILMORE: That's correct.

5 THE COURT: So we have tomorrow morning. How
6 long are those going to take?

7 MR. GILMORE: Sewitz is less than 30 pages, so
8 I suspect that at this rate it might take us ten to 15
9 minutes to do Mr. Sewitz. Mr. Bernstein is probably an
10 hour or thereabouts.

11 THE COURT: Okay. So if we started at 9:00
12 tomorrow morning that would be plenty of time?

13 MR. GILMORE: My expectation if we started at
14 9:30 or 9:00 we could finish before the morning break.
15 That's my expectation.

16 THE COURT: Okay. Is there going to be any
17 rebuttal case after you rest?

18 MS. PILATOWICZ: No, your Honor.

19 MS. PIKE TURNER: No, your Honor. With the
20 stipulation on the additional exhibits, I think we're
21 all in.

22 THE COURT: Okay. So we're -- if we start at
23 9:00 we'll definitely get done before we have to recess
24 for lunch.

1 MR. GILMORE: Correct.

2 THE COURT: Barring any unforeseen
3 circumstances. So we could stop now. It's 20 to five.
4 We've had long days. I'm fine with stopping. Because
5 we'll -- we could get one of these done, but we still
6 have to come back tomorrow.

7 MR. GILMORE: Agreed.

8 THE COURT: So you can step down. I'll see
9 you back tomorrow, I think. Well start again at nine.

10 And then I've talked to the court reporter
11 who's been here most of the time. She has told me that
12 she can get the transcripts to you by the 19th. That's
13 the Monday before Thanksgiving.

14 MR. GILMORE: Okay.

15 THE COURT: I currently have a trial set to go
16 on the 26th. But the clerk and I are trying to figure
17 out if we can slip that -- starting a day later and you
18 can have the 26th for your closing which would give you
19 a week, albeit, the Thanksgiving holiday to prepare for
20 closing on the 26th. And I didn't know how much time
21 you needed. I know that plaintiffs really want to get
22 it over with quicker. And that Mr. Gilmore, you said
23 you were by yourself and you were feel ganged up on and
24 that you needed more time.

1 MR. GILMORE: Well, I don't think that's a
2 fair characterization of what I said.

3 THE COURT: I'm teasing. I know.

4 MR. GILMORE: Okay.

5 THE COURT: But that you could use more time.
6 So I'm just kind of trying to look at that. We can't do
7 it Thanksgiving week because she won't have the
8 transcript really read for you until the 19th, that's as
9 soon as she could do it. So that gives you three days
10 before closing. If you need more time, we can try for a
11 different date.

12 We're currently set for trial on Monday the
13 26th and jury trial's Monday the 3rd and jury trial
14 Monday the 10th.

15 MS. PIKE TURNER: Your Honor, on behalf of
16 plaintiffs the further we get out from these facts and
17 the witnesses, the harder I think it will be for the
18 Court and for the parties to be able to have effective
19 closing that will be helpful, so the soonest available
20 date is what the plaintiffs would like. And even if
21 that meant we do closing even if it's this week or early
22 next week, with a follow-up amended proposed findings of
23 fact and conclusions of law once we have the benefit of
24 the transcripts, perhaps that would be the most helpful

1 to the Court.

2 THE COURT: That's okay, too, with me.

3 MR. GILMORE: Your Honor, my recommendation is

4 that we take the 26th. I expect we'll need probably

5 more than a half day to complete it based on the size of

6 the -- length of the trial and the exhibits. I could be

7 ready by the 26th, that's fine. I don't think I could

8 be ready this week, certainly not this week.

9 THE COURT: Okay. Let me talk to the clerk

10 for just a minute.

11 Okay, counsel, we think based on what we've

12 got that the 26th will be the best date for us to slip

13 this to, either that or the 19th, the day that the

14 transcript would be ready. So it has to be one of those

15 days. But we think the 26th, then you have benefit of

16 the transcript.

17 MS. PIKE TURNER: Okay, your Honor.

18 MR. GILMORE: 26th will work for us.

19 THE COURT: So what we're looking at is

20 finishing up tomorrow, then doing closings on the 26th.

21 And then supplementing with the record your proposed

22 findings. And how much time are you going to need to do

23 that?

24 MS. PIKE TURNER: Your Honor, if we're going

1 to wait until the 26th to present our closing I would
2 say that our proposed findings should be in conjunction
3 therewith.

4 THE COURT: Okay. That's fine. That would be
5 perfect for me.

6 MR. GILMORE: I agree.

7 THE COURT: Okay. So when you do your
8 supplemental findings with notations to the transcript,
9 that's what I need, especially -- I mean, I don't need
10 it for your conclusions of law necessarily, but I need
11 it for your facts. And that would be very helpful.

12 MS. PIKE TURNER: Okay.

13 THE COURT: And then I'll have that in front
14 of me when you're doing your closing argument as well as
15 all the evidence.

16 MR. GILMORE: And your Honor, what time would
17 the closings be set for on the 26th?

18 THE COURT: We were thinking at nine. I know
19 you all travel from Las Vegas. Would you rather it be
20 9:30? It doesn't make a difference really to us.

21 MS. PIKE TURNER: Nine is fine, your Honor, if
22 we don't come in the night before there's a six a.m
23 flight.

24 THE COURT: Okay.

1 MS. PIKE TURNER: I don't mind the six a.m.

2 THE COURT: Some people live further away from
3 the airport.

4 MS. HAMM: Some of us don't.

5 THE COURT: So 9:00 on the 26th will be
6 closings. Tomorrow we'll finish up the trial, whatever
7 time it takes, but we'll finish it up tomorrow. And the
8 transcript will be ready on the 19th for you all.

9 Okay. Anything else for this evening?

10 MR. GILMORE: No, your Honor.

11 THE COURT: Okay. Thank you. Court's in
12 recess.

13 (Proceedings continued until November 7, 2018,
14 at 9:00 a.m.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 4 of the above court on Tuesday,
9 November 6, 2018, at the hour of 8:30 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Nonjury Trial of the case of WILLIAM A. LEONARD, Trustee
13 for the Bankruptcy Estate of Paul Anthony Morabito,
14 Plaintiff, vs. SUPERPUMPER, INC., at al., Defendants,
15 Case No. CV13-02663.

16 That the foregoing transcript, consisting of
17 pages numbered 1 through 301, both inclusive, is a full,
18 true and correct transcript of my said stenotype notes,
19 so taken as aforesaid, and is a full, true and correct
20 statement of the proceedings of the above-entitled
21 action to the best of my knowledge, skill and ability.
22 DATED: At Reno, Nevada, this 20th day of November, 2018.

23 /s/ Julie Ann Kernan

24 JULIE ANN KERNAN, CCR #427