

**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 43**  
**(Nos. 7475–7615)**

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Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825

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

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

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

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

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



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

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

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

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
<b>Exhibit to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Opposition to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

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

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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Defendants’ Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
<b>Exhibits to Opposition to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Defendants' Reply in Support of Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Clerk’s Trial Exhibit List</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

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

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

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

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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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and <a href="mailto:jon@aim13.com">jon@aim13.com</a> 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

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284

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

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

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

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

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



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

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

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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
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358

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272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home 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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300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Transcript of October 30, 2018, Non-Jury Trial, Day 2	Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)	Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3	Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)	Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4	Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5	Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)	Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6	Vol. 40, 7168–7169
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7	Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)	Vol. 43, 7475–7476
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
<b>Exhibits to Plaintiff’s Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
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<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
Defendants' Response to Motion to Reopen Evidence (02/06/2019)		Vol. 47, 8129–8135
Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)		Vol. 47, 8144
Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence		Vol. 47, 8145–8158
[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)		Vol. 47, 8159–8224
[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)		Vol. 47, 8269

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8270–8333
Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8334–8340
Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
<b>Exhibit to Memorandum of Costs and Disbursements</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Plaintiff's Opposition to Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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 <a href="mailto:eturner@Gtg.legal">eturner@Gtg.legal</a> 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
<b>Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>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)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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 NRCF 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
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>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</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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
<b>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</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Bayuk's Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
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
<b>Exhibit to Notice of Entry of Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

CASE NO. CV13-02663

**TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy  
Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC.  
EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST,  
SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE  
OFFICERS OF

PAGE ONE

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/7/18 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Kernan (Reporter)	<b><u>NON-JURY TRIAL – DAY EIGHT</u></b> Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc., with counsel, Frank Gilmore, Esq. Chris Kemper, Esq., counsel for the Herbst Family present in the gallery. 9:05 a.m. Court convened.
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Jennifer Prokop, heretofore sworn, resumed stand to read the deposition testimony of Stanton Bernstein and Michael Sewitz.

\*\*\*Depositions of Stanton Bernstein dated May 17, 2017 opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

**EXHIBIT 296** offered by counsel Gilmore; stipulation by counsel Pilatowicz; ordered admitted into evidence.

Respective counsel stipulated regarding the Mark Justmann appraisal as follows: The date of Mr. Justman's appraisal is the date the appraisal was delivered; the date of valuation is the appraisal's effective date; and to the date of inspection. Those dates are reflected in trial exhibits 180 – 184.

\*\*\*Depositions of Michael Sewitz previously opened and published. Designated portions read into the record. Respective counsel advised the Court of the number of the trial exhibit that correlates with the deposition exhibits.

**EXHIBIT 261** (Exhibit 1 to deposition of Michael Sewitz) offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

**EXHIBIT 236** (Testimony of Dennis Vacco) offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

**EXHIBIT 247** (Testimony of Salvatore Morabito) offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

**EXHIBIT 295** (Testimony of Stanton Bernstein) offered by counsel Gilmore; no objection by counsel Pilatowicz; ordered admitted into evidence.

Defendants' rested.

CASE NO. CV13-02663	<b><u>TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC., EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.</u></b>
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DATE, JUDGE OFFICERS OF COURT PRESENT	PAGE TWO APPEARANCES-HEARING	CONT'D TO
11/7/18 J. Kernan (Reporter)	<b><u>NON-JURY TRIAL – DAY EIGHT</u></b> Plaintiff had no rebuttal evidence to present.  The Clerk reviewed the admitted exhibits for the record.  <b>EXHIBIT 148</b> re-offered by counsel Pilatowicz; standing objection by counsel Turner; ordered admitted into evidence over objection.  <b>COURT ENTERED ORDER</b> that all exhibits that were not offered during this trial shall be returned to the party that marked the exhibit.  10:57 a.m. Court recessed until 9:00 a.m. on November 26, 2018, wherein closing arguments will be presented.	11/26/18 9:00 a.m. Ongoing Non-Jury Trial – Closing Arguments

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

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WILLIAM A. LEONARD, Trustee)

11 for the Bankruptcy Estate )

of Paul Anthony Morabito, )

12 )

Case No. CV13-02663

13 )

Dept. No. 4

14 Plaintiff, )

vs. )

15 )

TRANSCRIPT OF PROCEEDINGS

16 SUPERPUMPER, INC., et al., )

17 )

Defendants. )

18 \_\_\_\_\_)

19 NONJURY TRIAL

20 NOVEMBER 7, 2018, RENO, NEVADA

21

APPEARANCES:

22 For the Plaintiff:

GARMAN, TURNER, GORDON, LLP  
Attorneys at Law

23 By: Erika Pike Turner, Esq.

24 By: Teresa Pilatowicz, Esq.

By: Gabrielle A. Hamm, Esq.

650 White Drive

Suite 100

Las Vegas, Nevada 89119

The Plaintiff:

WILLIAM A. LEONARD, Trustee

24 Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR

1 CONTINUATION OF APPEARANCES:

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5 The Defendant: EDWARD BAYUK  
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1 RENO, NEVADA; WEDNESDAY, NOVEMBER 7, 2018; 9:05 A.M.

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3

4 THE COURT: Good morning. I understand we had  
5 some elves come and remove some documents.

6 MR. GILMORE: It looks like.

7 THE COURT: Always thankful for that.

8 So are we ready to go forward?

9 MR. GILMORE: Your Honor, we are.

10 THE COURT: You may continue.

11 MR. GILMORE: The next reading will be Stanton  
12 Bernstein. We ask that the deposition transcript be  
13 open and published.

14 COURT CLERK: I have to open this one to get  
15 to it. Deposition of Stanton Bernstein dated May 17th,  
16 2017, opened and published.

17 THE COURT: Ma'am, I am going to remind you  
18 you're still under oath. Welcome back.

19 MS. PROKOP: Thank you.

20 THE COURT: And we'll start with her name on  
21 the record just so the record's clear.

22 MS. PROKOP: It's Jennifer Prokop,  
23 P-r-o-k-o-p.

24 THE COURT: You may proceed.

1 MR. GILMORE: Thank you. Ms. Prokop, if you  
2 would open to the Stan Bernstein deposition transcript  
3 dated May 17, 2017, commencing at 10:06 a.m. Are you  
4 there?

5 MS. PROKOP: Yes.

6 MR. GILMORE: We'll commence on page 5, line  
7 22.

8 BY MR. GILMORE:

9 Q "Mr. Bernstein, can you state and spell your  
10 name for the record?

11 A Stanton Bernstein, S-t-a-n-t-o-n; Bernstein,  
12 B-e-r-n-s-t-e-i-n.

13 Q Page 21, line 5. "What kind of work do you  
14 currently do?

15 A I do general accounting, tax work and general  
16 accounting. I do not do audits.

17 Q Have you ever done audits?

18 A Too many years ago.

19 Q Is there a reason you stopped?

20 A I don't like them.

21 Q How long ago did you stop?

22 A 16-ish years ago I'm going to say.

23 Q When were you first introduced to Paul  
24 Morabito?



1 A I'm going to say 1999, 2000.

2 Q How did you first meet?

3 A I acquired a practice and he was part of the  
4 acquisitions at the time.

5 Q Was it him individually or also entities he  
6 was affiliated with?

7 A It was both. He had some business  
8 enterprises, as well as him individually.

9 Q Do you recall what those business enterprises  
10 were at the time?

11 A I believe they were Jiffy Lube franchisees.

12 Q How long did you work for Paul Morabito?

13 A From that time, roughly '99/2000, to I think  
14 we terminated in October of '14.

15 Q Was there something that prompted the  
16 termination?

17 A Yes.

18 Q What was that?

19 A He gave me information to prepare his -- I  
20 can't remember if it was his '13 return; I don't  
21 remember the year so I could off a year.

22 Q Okay.

23 A But the information that I received, I didn't  
24 feel comfort preparing that return.

1           Q       What about the information you received made  
2   you feel uncomfortable?

3           A       I thought the expenses were too high.

4           Q       Were they expenses related to any specific  
5   company?

6           A       No, to him personally. He was operating as a  
7   sole proprietor.

8           Q       So I understand, he came to you, showed you  
9   his expenses, asked you to address them on the tax  
10   return, and you felt that they were too high and were  
11   they inappropriate?

12          A       I felt they were.

13          Q       Why?

14          A       I felt they were too high.

15          Q       Had you ever had that concern in the past  
16   with Mr. Morabito?

17          A       There were certain expenses on some of the  
18   returns -- I don't remember which ones -- but we always  
19   talked about that, yeah.

20          Q       When you discussed with Mr. Morabito that his  
21   expenses were too high in either 2013 or 2014, tell me  
22   about that conversation.

23          A       It was very short. He asked me to prepare  
24   the return. I told him I wouldn't and that was it. I

1 terminated services.

2 Q How did he respond to that?

3 A He moved on. I mean --

4 Q Did he say anything?

5 A He may have. I don't remember.

6 Q Do you recall if he was angry?

7 A Well, I'm sure he was not happy."

8 Q Page 35, line 13. Yeah. Do you know if Mr.  
9 Paul Morabito had any relationship with Snowshoe  
10 Properties?

11 A He did not."

12 Q Page 43, line 16. "To your knowledge, did  
13 Mr. Morabito have any involvement in Snowshoe  
14 Petroleum?"

15 Question by Mr. Bernstein's attorney.

16 "MR. WRIGHT: Which Morabito?

17 BY MR. GILMORE:

18 Q Oh, I'm sorry. Paul Morabito.

19 A No."

20 Q Page 55, line 16. "Mr. Bernstein, you've  
21 been handed what's been marked as Exhibit 6." Your  
22 Honor, my records reflect Exhibit 6 is Exhibit 62 in the  
23 trial binders.

24 MS. PILATOWICZ: Correct.

1 THE COURT: Thank you.

2 BY MR. GILMORE:

3 Q "Do you recognize Exhibit 6?

4 A Yes.

5 Q What is Exhibit 6?

6 A This is a Promissory Note from Mr. Bayuk to  
7 basically Mr. Paul Morabito.

8 Q Have you seen this document before?

9 A Yes.

10 Q When did you see it?

11 A This time right now, and when I prepared the  
12 2010 return.

13 Q Who provided it to you?

14 A I can't remember if it was Mr. Bayuk or Mr.  
15 Morabito or both.

16 Q Did you have any involvement in drafting the  
17 Promissory Note?

18 A No.

19 Q Did you give any tax advice related to the  
20 Promissory Note?

21 A No.

22 Q Did you track payments that were to be  
23 received on the Promissory Note?

24 A I did not it track payments, no.

1           Q       Was there somebody who did track payments  
2       that you're aware of?

3           A       I believe Mr. Bayuk tracked payments of this  
4       and then provided it to our office when we prepared  
5       subsequent returns in order to track this.

6           Q       Do you recall how that information was  
7       provided to you?

8           A       It was provided, I believe, by Mr. Bayuk  
9       himself, personally.

10          Q       Was it a chart of payments; was it a summary  
11       of payments, do you recall?

12          A       It was, from the best of my recollection, it  
13       was a month-by-month, the dollars he gave to Mr.  
14       Morabito."

15          Q       Continuing page 57, line 16.

16                 THE COURT: Okay. So I have -- oh, line 16  
17       is. I do not have lines 1 and 2.

18                 MR. GILMORE: Neither did I, your Honor.

19                 THE COURT: Okay. But they're read and they  
20       were still going on that page, correct?

21                 MR. GILMORE: Still on page 57, line 16.

22                 THE COURT: Okay.

23       BY MR. GILMORE:

24          Q       "Do you recall what years payments were

1     **received in?**

2           A       It's shortly after the inception of this  
3     November note there was -- I don't remember. I don't  
4     remember.

5           MR. WRIGHT: That's fine.

6           MS. PILATOWICZ. This is 7?

7           REPORTER: Yes."

8           MR. GILMORE: Exhibit 7 is marked for  
9     identification. My records reflect that's Exhibit 72 in  
10    the trial binders.

11          MS. PILATOWICZ: Correct.

12          THE COURT: Okay. Thank you.

13    BY MR. GILMORE:

14          Q       **"You've been handed Exhibit 7 which you**  
15    **indicate looks familiar. Can you tell me what it is?**

16          A       Yeah. It was a standard loan amortization  
17    schedule that our office prepared.

18          Q       **Why did you prepare this?**

19          A       So I could track -- hopefully track the  
20    patients paid by Mr. Bayuk to Mr. Morabito.

21          Q       **Do you know when you prepared this?**

22          A       I would say by the footer, October 13th,  
23    2011.

24          Q       **And you'll see on the first page there's**

1 handwriting that says, 'Paul,' and then, 'Follow up for  
2 2011. No payments received in 2010;' do you see that?

3 A Yes.

4 Q Do you know whose handwriting that is?

5 A Mine.

6 Q Does that refresh your recollection as to  
7 when payments may have been received?

8 A No.

9 Q Would that suggest to you that there were no  
10 payments received in 2010?

11 A Yes.

12 Q If you could turn to the final page of  
13 Exhibit 7?

14 A (Witness complies.)

15 Q Do you recognize what the final page is?

16 A Yes.

17 Q What is it?

18 A That would probably be the schedule payments  
19 that were provided and the dates that were provided, so,  
20 instead of using the original document that our office  
21 prepared, we used the subsequent document and we  
22 reflected the principal and interest payments in those  
23 years.

24 Q And who provided the information to create

1    **this chart?**

2           A       Mr. Bayuk.

3           Q       **Did you independently verify any of the**  
4    **information?**

5           A       No.

6           Q       **So fair to say that Mr. Bayuk handed you a**  
7    **chart and you just input the information in this chart?**

8           A       That's correct."

9                   MR. GILMORE:   Page 72, line 20.   Exhibit 10  
10   has been marked, which my records reflect is Exhibit 121  
11   in the trial binders.

12                  MS. PILATOWICZ:   Correct.

13                  THE COURT:   Okay.   Thank you.

14   BY MR. GILMORE:

15           Q       **"Mr. Bernstein, you've been handed what's**  
16   **been marked as Exhibit 10.   Do you recognize Exhibit 10?**

17           A       I know what it is, yes.

18           Q       **What is it?**

19           A       It looks like a printout of receivables that  
20   were on Superpumper Inc.'s books as of 9/30/2010.

21           Q       **Do you know who prepared this document?**

22           A       I would assume Don Whitehead.

23           Q       **Did you have any input regarding the notes**  
24   **receivable as of September 30th, 2010?**



1 A No.

2 Q Do you recognize these amounts, accounts  
3 receivable?

4 A I don't believe our office did any of this  
5 work for 2010.

6 Q Would you have used this information in  
7 completing the 2010 tax return for Consolidated Western  
8 Corporation?

9 A Yes.

10 Q How would you have used this information?

11 A The inter-company receivables and payables  
12 would merge together and some of these may or may not  
13 have gone away.

14 Q Can you explain -- let's start with  
15 inter-company receivables?

16 A Okay.

17 Q What inter-company receivables is it that  
18 you're referring to?

19 A The Snowshoe/CWC. When you merge the two  
20 together, if there's a receivable on one end, there's a  
21 payable on the other, so it should net out. I can only  
22 make the assumption that it did. Without having work  
23 papers in front of me, I can't answer the question.

24 Q Would that be reflected anywhere on the tax

1     **returns?**

2           A       On the CWC, yes.

3           **Q       Where would it be reflected?"**

4           A       Probably in -- I'm not sure if you have it --  
5     in the balance sheet.

6                   MR. GILMORE:  You misread that.  Please read  
7     line 8 again.

8           A       "Probably in -- I'm sure you have it -- in  
9     the balance sheet.

10          **Q       Would be easier for you to take other look at**  
11     **the 2010 tax return?**

12          A       It may be.  2432."

13                   MR. GILMORE:  Exhibit 11 was then marked.  
14     Exhibit 11, by my records, is trial binder 156.

15                   MS. PILATOWICZ:  Correct.

16                   THE COURT:  Okay.  11's actually 156.

17                   MR. GILMORE:  Correct.

18                   THE COURT:  Thank you.

19     BY MR. GILMORE:

20          **Q       "Let me start with you -- let me start with**  
21     **you've been handed what's been marked Exhibit 11.  Do**  
22     **you recognize Exhibit 11?**

23          A       Yes.

24          **Q       What is it?**

1           A       It's the Consolidated Western Corporation's  
2       2010 income tax return.

3           Q       Did you prepare this document?

4           A       Our office did prepare this document.

5           Q       Did you file this document?

6           A       We did.

7           Q       Okay. With we were discussing the  
8       reconciliation, I believe you referred to it as, of the  
9       inter-company receivables and the approximately \$5.5  
10      million note that's reflected on Exhibit 10 -- or  
11      account receivable, I'm sorry -- and you indicated that  
12      if you had the tax returns you might be able to locate  
13      where it's reflected. Have you located that?

14          A       Yes. It's not on there because, once again,  
15      if there's a is receivable on one end, the corresponding  
16      payable would be on the other and they would weigh each  
17      other out. So, for the due from CWC slash Snowshoe it's  
18      not going to appear.

19          Q       Okay. So what happens to that in the merger?

20          A       It goes away.

21          Q       And it's not reflected anywhere on the tax  
22      returns?

23          A       Correct.

24          Q       Is it reflected on any -- would it be

1 reflected -- Superpumper didn't file tax returns in  
2 2010?

3 A That is correct.

4 Q Okay. What about the other amounts listed  
5 for the notes receivables on about the 10 or the  
6 accounts receivable, the PAMAZ?

7 A Well, there is loans to shareholders of a  
8 1,814,000 and change. The composition, there's no  
9 breakdown. That is line 7 of the balance sheet.

10 Q And does line 7 match up with Exhibit 10?

11 A I'm sorry, this was 10 (indicating)?

12 Q Correct.

13 A Okay. No.

14 Q Should it?

15 A Not necessarily, no.

16 Q Why not?

17 MR. GILMORE: And then I climbed in "I'm  
18 sorry, I'm just going to look over your shoulder.

19 A Absolutely; absolutely; because, once again,  
20 there may have been some inter-company things that  
21 zeroed each other out. Without having the documents I  
22 can't answer the question."

23 Q Page 78, line 1. What does the loans to  
24 shareholders identified in line 7 of 2434 reflect?

1 A Loans to either Paul, Edward or Sam.

2 Q Where would a break down of those amounts be?

3 A In the work papers.

4 Q Nowhere in the tax return.

5 A Other than the line item, no.

6 Q Were those loans actual amounts due to the  
7 company?

8 A Yes.

9 Q Would they be reflected by notes?

10 A Probably.

11 Q Do you generally review the notes in order to  
12 complete the tax returns?

13 A Generally. Sometimes.

14 Q Now, there was no loans to shareholders at  
15 the beginning of the tax year, but then the 1.8 million  
16 at the end of the year.

17 Do you know what the increase was for?

18 A I'm assuming money was taken out of the  
19 company during the year."

20 MR. GILMORE: Your Honor, Exhibit 12 was  
21 marked the bottom of page 78. I think it's referred to  
22 on the following page, 81.

23 MS. PILATOWICZ: No, I don't have anything  
24 marked off to that.

1 MR. GILMORE: Oh, I've got Exhibit 12 is  
2 Exhibit 296 in the trial binders. And it's discussed in  
3 the following page on 81.

4 MS. PILATOWICZ: Oh. Okay, I see what you're  
5 doing.

6 MR. GILMORE: Are you with me?

7 MS. PILATOWICZ: Yeah.

8 MR. GILMORE: Yeah. So marked Exhibit 12,  
9 which is trial binder 296, and then a minute or so later  
10 there are some questions that are being asked about that  
11 document.

12 Do know if 296 is in evidence? Would you  
13 check these for me?

14 MS. PILATOWICZ: 296 is not in evidence.

15 COURT CLERK: 296 has not been submitted.

16 MS. PILATOWICZ: Yeah, what happened was 296  
17 was the page that was incorporated -- it was part of the  
18 2010 financials so we had previously just been referring  
19 to the 2010 off the financials.

20 MR. GILMORE: Oh, yes. But this is the  
21 versions that he has Stan's notes to --

22 MS. PILATOWICZ: We'll stipulate to its  
23 admission.

24 MR. GILMORE: I'll offer Exhibit 296 into

1 evidence.

2 THE COURT: Okay. And you're stipulating.

3 Correct?

4 MS. PILATOWICZ: Yes, your Honor.

5 THE COURT: Okay. Exhibit 296 is admitted.

6 (Exhibit 296 is admitted into evidence.)

7 MR. GILMORE: Madam Clerk, would you -- do we

8 know if Exhibit 121 which was referred to by Mr.

9 Bernstein, has that been admitted into evidence?

10 COURT CLERK: Let me look. She's faster than

11 --

12 MS. PILATOWICZ: Ms. Clerk, she has it as been

13 by stipulation, so.

14 MR. GILMORE: Thank you. My expectation, for

15 the record, that would be any of the documents that are

16 identified in Mr. Bernstein's, which have not been

17 offered, it will be my intention to offer.

18 BY MR. GILMORE:

19 Q We are continuing page 81, line 24. "Okay.

20 There's also notes here from Edward Bayuk and Sam

21 Morabito in the approximate amount of \$5 million. Do

22 you know what those notes were?

23 A I know how some of that note arose. There

24 was a requirement of, I believe, it was Spirit that they

1 have a certain amount of equity in the company, and I  
2 don't remember how much, but the lion's share of these  
3 notes were put on the books in order to create equity in  
4 the company so they would fit within Spirit's covenant.  
5 And I think that was on the 2010 return or financial.

6 Q But these notes would be notes that were  
7 actually due?

8 A That's a vague term.

9 Q Well, can you represent to Spirit that there  
10 are notes that are due in account receivables when  
11 there's not actually notes that are receivables?

12 A Well, if you sell the company and there's  
13 equity left in the company, you would get rid of the  
14 equity against the notes first. So, the notes would go  
15 away, which is what I'm assuming is going to happen when  
16 I prepare the 2016 income tax return.

17 Q But my question was could you represent to  
18 Spirit that these were notes that were due if you're  
19 saying that they were just put on the books for equity?"  
20 Note objection. "You can answer. If you understand the  
21 question you can answer.

22 THE WITNESS: Well, they were notes that were  
23 put on the books. I'm assume they satisfied Spirit  
24 because they were still paying on the leases and Spirit



1     seemed to be a happy camper.

2           **Q       Well, I'm not asking if that satisfied**  
3     **Spirit. I'm asking if that's proper." Note objection.**

4           A       "I don't know. Our office didn't prepare it  
5     so --

6           **Q       Who prepared it?**

7           A       Whoever did the financials for 2010.

8           **Q       So, this information would have been provided**  
9     **to you as notes receivable to the company?**

10          A       Correct.

11          **Q       And, I'm sorry, did you say who provided it?**

12          A       I forgot the name the film. I told you  
13     names. I'm not real good at names.

14          **Q       Well, would it have been management?**

15          A       Would have been management that provided the  
16     notes. I believe I got the notes from the prior CPA  
17     firm, copies of the notes."

18                   MR. GILMORE: Page 84. Exhibit 11 had been  
19     marked previously which I in my records reflect is  
20     Exhibit 156 in the trial binders.

21                   MS. PILATOWICZ: Correct.

22     BY MR. GILMORE:

23           **Q       Page 4, line 5. "Let's go back to Exhibit**  
24     **11, which is the 2010 tax return for Consolidated**

1 Western Corporation.

2 A Uh-huh.

3 Q I believe this is indicated as the final  
4 return?

5 A Yes.

6 Q And was there any amendments prepared after  
7 this return?

8 A No.

9 Q If you look at SBCPA2485 --

10 A Okay.

11 Q -- there's total assets of approximately  
12 \$9.8 million?

13 A Okay.

14 Q Should this have been zeroed out?

15 A Well, it sold, so the answer is yes. It  
16 should be zeroed out. It's the same answer that is here  
17 (indicating).

18 Q And when you say 'here,' what are you  
19 referring to?

20 A Balance sheet, 2432.

21 Q Okay.

22 A For all intents and purposes, CWC no longer  
23 exists. So, to answer your question it should go away,  
24 yes. It goes away on Paul's personal return and then he

1 is -- when the sale transaction goes down.

2 Q Okay. Why wasn't it done on this tax return?

3 A Well, in essence it is when it goes to Paul's  
4 personal return. In essence it does show a zero ball  
5 because he picks up whatever the equity ball of the this  
6 company was.

7 Q Can you point out to me in Paul Morabito's  
8 2010 tax return where that's reflected, which Exhibit 9  
9 is Paul Morabito's 2010 tax return?

10 A Capital gains" --

11 MR. GILMORE: Your Honor? Exhibit 9 -- I have  
12 it 156.

13 THE COURT: You showed 11, 156.

14 MS. PILATOWICZ: I have 295 is the 2010 tax  
15 returns.

16 MR. GILMORE: You're right. It is. I have  
17 295 as well.

18 THE COURT: So Exhibit 9 to the Bernstein  
19 deposition is trial Exhibit 295, correct?

20 MR. GILMORE: Correct.

21 THE COURT: Thank you.

22 MR. GILMORE: I'll ask that question again.

23 MR. PROKOP: Okay.

24 Q "Can you point out to me in Paul Morabito's

1 2010 tax return where that's reflected, which Exhibit 9  
2 is Paul Morabito's 2010 tax return?

3 A Capital gains, Schedule D, 126.

4 Q I'm sorry?

5 A Schedule D, Morabito, (341).000126. I called  
6 it Superpumper; it really should have been Consolidated  
7 Western Corp.

8 Q Can you explain to me how the essentially  
9 zeroing out of the \$9.8 million is shown on Schedule D?

10 A You've got to reduce it by the debt.

11 Q So, it's the two million that's reflected on  
12 the bottom of the balance sheet?

13 A It's basically the paid in capital plus  
14 retained earnings.

15 Q So if you could just explain to me how these  
16 numbers on SBCPA2485 transferred over to Schedule D, or  
17 can you explain it to me?

18 A Well, there's a basis scheduled that follows  
19 each individual taxpayer. So I'm assuming -- and that's  
20 what I looked for. I don't happen to see it here. But  
21 I'm assuming that's how the 2,852,250 was derived. The  
22 vast majority of that number is the retained earnings  
23 plus the capital stock. There's a small difference.  
24 Off the top of my head, I can't tell you what it is.

1 Q Do you have any idea what it would be?

2 A No.

3 Q Where would the tax basis sheets that you  
4 were referring to be?

5 A Good question. I'm looking for it. It's  
6 kind of like the history; it follows the return. So,  
7 it's just not here and I don't know why.

8 Q Are they generally attached to the tax  
9 return?

10 A No.

11 Q Then why are you surprised that it's not  
12 there?

13 A Because it came from my office and I'm  
14 surprised it's not here. What can I tell you.

15 Q Going back to Exhibit 11, which is  
16 Consolidated Western's 2010 tax return --

17 A Okay.

18 Q Can you turn to SBCPA2445?

19 A Okay.

20 Q There's a reference. Well, can you explain  
21 to me what is on page 2445?

22 A I believe Consolidated Western Corp had an  
23 interest in an insurance -- they had an insurance  
24 interest in insurance and they were receiving dividends

1 annually. I don't remember when it started or stopped.

2 Let me see if I can find that.

3 **Q Was it an asset of Consolidated Western**  
4 **Corporation?**

5 A I believe there was, if we look at the trial  
6 balance, there was an investment in Raffles on the books  
7 of 31,000.

8 **Q So is that an asset of Consolidated Western?**

9 A Yes."

10 MR. GILMORE: Question from me. "Can you tell  
11 me what you're referring to, 2048?

12 THE WITNESS: Yes, 2048. Sorry, Frank.

13 And that would also appear on the balance  
14 sheet, I'm assuming, probably under 'See Statement 9,'  
15 2432 -- that's probably it -- and 31,000 would have  
16 appeared there.

17 I don't know how it was valued, if that's your  
18 next question."

19 BY MR. GILMORE:

20 **Q Page 88, line 13. "Was it ever reflected on**  
21 **Paul Morabito's individual tax returns that you can**  
22 **recall?**

23 A Was what ever?

24 **Q Raffles.**

1           A       He was never the owner of Raffles, to my  
2       knowledge."

3                   MR. GILMORE:   Page 91, line 3.

4                   MS. PILATOWICZ:   This was removed.

5                   MR. GILMORE:   Right.   Oh, it was?

6                   MS. PILATOWICZ:   91 or 93.   I sent my amended  
7       ones that I sent you prior to the trial starting.

8                   MR. GILMORE:   One moment, your Honor.

9                   MS. PILATOWICZ:   The next one starts at page  
10      95.

11                  MR. GILMORE:   Was it removed in first?

12                  MS. PILATOWICZ:   Yes.   Page 95, line 13 is the  
13      next one.

14                  THE COURT:   And so page 91 you are not going  
15      to be reading?

16                  MS. PILATOWICZ:   Correct.

17                  THE COURT:   Okay.

18                  MR. GILMORE:   Should have been replaced.   My  
19      apologies.

20                  THE COURT:   And page 92 you will not be  
21      reading?

22                  MS. PILATOWICZ:   No, your Honor.   There's no  
23      reading until page 95.

24                  THE COURT:   Okay.   Thank you.

1 MR. GILMORE: Commencing on page 95, line 13.  
2 Exhibit 15 has just been marked which my records reflect  
3 is Exhibit 224; is that correct?

4 MS. PILATOWICZ: Correct.

5 MR. GILMORE: Which I believe has been  
6 admitted.

7 THE COURT: Okay. 15 is 224.

8 COURT CLERK: 224? It has been admitted by  
9 stipulation.

10 BY MR. GILMORE:

11 Q You've been handed Exhibit 15 which appears  
12 to be at the top an email from Naz Afshar to Darren  
13 Takemoto and Gary Krausz, but the second e-mail in the  
14 chain is an e-mail from you to Naz Afshar, CPA; do you  
15 see that?

16 A Yes.

17 Q And, again, stan@bernstein-cpabiz.com, that's  
18 your e-mail address?

19 A Yes.

20 Q Do you recall sending this e-mail?

21 A No.

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

24 A No.



1 Q And this appears to be a discussion -- well,  
2 let me back up.

3 Who is Naz Afshar?

4 A She's a partner at Gursey Schneider.

5 Q Okay. And this e-mail indicates an e-mail  
6 memorializing a conversation you had with Naz regarding  
7 the Superpumper financial statement as of December 31st,  
8 2010; do you see that?

9 A Yes.

10 Q The first line indicates that there was a  
11 note removed from the books that should have remained.

12 Do you recall what that note was?

13 A No. I think it was on the return from what I  
14 remember. Let me double-check.

15 This (indicating).

16 10; Exhibit 10?

17 THE WITNESS: 10.

18 Q So, Exhibit 10, the note as of September  
19 30th, 2010, still should remain on the books as of  
20 December 31st, 2010; is that what it says?

21 A Yes.

22 Q Do you know ultimately what happened with  
23 that note after 2010?

24 A A million six?

1           Q       Yes.

2           A       I don't remember what year, but it was  
3       written off against it was a receivable and a payable on  
4       Snowshoe and Superpumper, and I don't remember the net  
5       of the transaction.

6                   But I think your question refers back to this  
7       document, or at least some of it's looking that it  
8       refers back to this (indicating).

9           Q       Okay. Well, the e-mail discusses the  
10       financial statements as of 12/31/2010, and Exhibit 10  
11       reflects the notes receivable as of 9/30/2010.

12                   So, does that tell you that December 31st,  
13       2010 that a note that's on Exhibit 10 still existed as  
14       of the end of the year?

15          A       Yes."

16                   MR. GILMORE: Page 104, line 15. Exhibit 18  
17       has been marked. My records reflect that's trial binder  
18       Exhibit 108.

19                   MS. PILATOWICZ: Correct.

20       BY MR. GILMORE:

21          Q       "You've been handed Exhibit 18 which purports  
22       to be an e-mail from you to Paul Morabito on October  
23       12th, 2012. 'Subject, 2011 return;' do you see that?

24          A       Yes.

1 Q And that's your e-mail in the from line?

2 A Yes.

3 Q Do you recall sending this e-mail?

4 A No.

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

7 A No.

8 Q And do you know if your office produced this?

9 A Apparently it came from me, yes.

10 Q On the number 3 of your e-mail it says 'On  
11 the income statement provided by Virginia, there was  
12 \$100,000 received from Sam. I assumed that this was a  
13 repayment of a loan from you to him; is that correct?'

14 And is that your handwriting after it?

15 A Yes.

16 Q Does that say 'I am correct'?

17 A Yes."

18 Q Page 124, line 9. "Did you know what the  
19 parties' intent was with respect to the transfers that  
20 are reflected on Exhibit 5?

21 A Yes."

22 MR. GILMORE: Your Honor, my records reflect  
23 Exhibit 5 is trial Exhibit 257.

24 MS. PILATOWICZ: Correct.

1 THE COURT: Okay. Exhibit 5 is 257.

2 BY MR. GILMORE:

3 Q What did you understand the intent of the  
4 transferor and the transferee to be with respect to  
5 these transactions?

6 A That this would be a sale from let's call it  
7 Paul Morabito to Edward Bayuk.

8 Q Okay. Do you know where the parties wanted  
9 to effectuate that sale?

10 A No.

11 Q You've never had conversations with anybody  
12 with respect to why these transfers were occurring?

13 A We did receive some vague information as to  
14 why, but we were not apprised of the specifics.

15 Q Okay. Tell me what vague information you  
16 received that led you to make a conclusion one way or  
17 the other.

18 A That they were going to sell all this -- all  
19 these assets and Edward was going to end up owning it  
20 and Paul was not. And I didn't know if it was going to  
21 create a taxable event, wasn't going to create a taxable  
22 event; I had no way of knowing. And it happened like  
23 that (indicating)."

24 Q Page 133, line 1. In your experience does

1 the concept of cost basis have any relationship to fair  
2 market value?

3 A It may.

4 Q Okay. In what circumstances?

5 A I mean, if you're in an industry that's going  
6 nowhere, I mean, what's your fair market value could be  
7 less than your cost basis today. I mean, look, what's  
8 happen to all these retail stores. So, on the other  
9 hand, if you're loaded up with a ton of assets that are  
10 appreciating, you know, then your fair market value  
11 could be significantly liar than what's on your books.

12 Q Okay. Let me ask you a more pointed  
13 question. What does this number, \$2.8 million in cost  
14 basis, what relationship does that number have in it  
15 particular instance to fair market value of the quit of  
16 the company?

17 A Well, it's fairly close to what the equity of  
18 the company was worth.

19 Q Well, I'm asking you to take -- I'm asking  
20 you take a look only at that number, 2.8 million in cost  
21 basis.

22 A Okay.

23 Q If that's the only number you knew, would you  
24 be able to draw any conclusions from the cost basis as

1 to what the fair market value of those assets are?

2 A No.

3 Q That's not a concept that can be done in your  
4 practice, is it?

5 A No.

6 Q Okay. So if somebody said to you 'I want you  
7 to look at someone's cost basis in this asset,' at any  
8 particular point in time, that would not be an indicator  
9 in any way of the fair market value of those assets,  
10 would it?

11 A No.

12 Q Okay. Did you understand when the stock in  
13 Superpumper was sold by Mr. Morabito to the holding  
14 company that Mr. Sam Morabito and Mr. Bayuk created,  
15 that part of the consideration for that purchase was  
16 cash and note?

17 A I saw that, yes.

18 Q Okay. So, you understood at some point in  
19 time that part of the purchase transaction of the  
20 acquisition of the Superpumper stock included a cash  
21 component whereby Mr. Morabito, Paul Morabito, took  
22 cash; right?

23 A Yes.

24 Q And he took back a note?

1 A Correct.

2 Q Okay. Seller-carried financing?

3 A Correct.

4 Q Okay. So doesn't it then make sense to you  
5 that post-transfer, post-sale, Snowshoe Petroleum would  
6 be paying Paul Morabito money?

7 A Yes.

8 Q Why?

9 A Because they owed on the million-four, or  
10 whatever that note was. I don't remember what the note  
11 was.

12 Q Whatever the documents reflect with respect  
13 to the amount of the carryback note that Mr. Paul  
14 Morabito took back after the sale, you would anticipate  
15 seeing Snowshoe Petroleum paying that note over time;  
16 correct?

17 A Yes.

18 Q In other words, under that set of facts it  
19 wouldn't surprise you if the Snowshoe Petroleum bucks  
20 reflected payments from Snowshoe Petroleum to Paul  
21 Morabito in 2011 or '12, would it?

22 A Correct.

23 Q Because the books reflected that Paul  
24 Morabito carried a note from that transaction?

1 A Correct.

2 Q Okay. Please turn to Exhibit 11."

3 Which is Exhibit 156 in the trial binders.

4 "Actually, let's take a look at 10" which is  
5 Exhibit 121 in the trial binders. "And 11 at the same  
6 time.

7 A (Witness complies.)

8 Q I think this is where we are going to spend  
9 the bulk of our time --

10 A Okay.

11 Q -- because there are some concepts here I  
12 need you to clarify for us.

13 A Okay.

14 Q Prior to September 30, 2010 Superpumper was a  
15 subsidiary carried on the books of Consolidated Western;  
16 correct?

17 A Yes.

18 Q Okay. So help me diagram this for purposes  
19 of understanding.

20 CWC is what we call the parent company; right?

21 A Correct.

22 Q Because it owned all or substantially all of  
23 the common equity stock Superpumper; correct?

24 A Right.



1 Q Okay. Which I will refer to as SPI.

2 A Right.

3 Q Okay. Now we've talked a lot about -- you've  
4 talked a lot today about mergers, and you've heard this  
5 concept that CWC and SPI, there was a merger. Do you  
6 know what the terms of that merger were?

7 A No.

8 Q Okay. But did you understand that WCW and  
9 Superpumper ultimately were merged?

10 A I believe the answer is yes.

11 Q Okay. So, in other words, we have what you  
12 people might call a parent subsidiary merger?

13 A Yes.

14 Q Okay. Now, please take a look at Exhibit 10.

15 A Okay.

16 Q Are you with me?

17 A Yes.

18 Q Okay. Assuming that the numbers on this  
19 sheet are accurate, which I'm just going to ask you to  
20 assume that --

21 A Okay.

22 Q -- can you identify on these note receivable  
23 balance any notes receivable which are due to  
24 Superpumper from its parent company?

1 A Due to Superpumper, yes, the last one.

2 Q Okay. In what amount?

3 A 5,670,000 and change.

4 Q So, let's draw arrows here.

5 A Okay.

6 Q The beneficiary of those notes receivable is  
7 Superpumper, Inc. Right?

8 A Correct.

9 Q So SPI would be the beneficiary under a note  
10 or a combination of several notes?

11 A Uh-huh.

12 Q The obligor would be CWC, the parent; right?

13 A Correct.

14 Q Okay. 5.6 million and change?

15 A Yes.

16 Q Fair enough?

17 A Correct.

18 Q Okay. So, in the world of dual accounting,  
19 dual entry accounting, in other words, we have a  
20 receivable carried on the books of Superpumper, Inc., a  
21 subsidiary; right?

22 A Correct.

23 Q And we have \$5.6 million carried on the books  
24 of CWC as a payable?

1 A Correct.

2 Q Okay. Let's talk conceptually. What happens  
3 when the parent and the subsidiary merge?

4 A It goes away.

5 Q Tell me why.

6 A Because one party owes the other party and  
7 it's gone. The other party is gone. So, if CWC is  
8 gone, the note is gone.

9 Q Because, practically speaking, you are  
10 collapsing the obligor and the beneficiary into one?

11 A Right.

12 Q Okay. So the obligor, the beneficiary,  
13 parent subsidiary, they become one.

14 Tell me how you account for that for tax  
15 preparation.

16 A There's no tax benefit or tax advantage. The  
17 receivable and payable just merely disappear.

18 Q Okay. So, when Ms. Pilatowicz is sitting  
19 here looking through all these tax returns looking for  
20 where these receivables and payable go, your testimony  
21 is bye-bye.

22 A They go away.

23 Q Okay. So, we wouldn't find them on the tax  
24 return, would we?

1 A Correct.

2 Q And we wouldn't even nowhere to look because  
3 they are zeroed out?

4 A Correct.

5 Q Okay. Let's look at Exhibit 12.

6 A Exhibit 12?

7 MR. GILMORE: Which, your Honor, is trial  
8 Exhibit 296.

9 BY MR. GILMORE:

10 Q Yeah. Do you have it?

11 A Yes.

12 Q Okay. I will represent to you that these are  
13 the notes to the audited financial statements prepared  
14 by the Gurseley Schneider firm.

15 A Sounds reasonable.

16 Q Okay. You would recognize this as something  
17 that would be attached to the audited financial  
18 statement; right?

19 A Yes.

20 Q Which then would have been provided to you at  
21 some time.

22 A Correct.

23 Q Because it has your Bates stamp on it.

24 A Correct.

1 Q And it has some notations that you've made.

2 A Correct.

3 Q So, let's assume for purposes of this  
4 discussion that these are the related party transactions  
5 notes to the 2010 audited financial statement; okay?

6 A Yes.

7 Q Now, if I told you that Gursey Schneider  
8 issued a qualified opinion with respect to the 2010  
9 financial statements of Superpumper, Inc., what would  
10 that mean to you?

11 A That would mean that there was something that  
12 raised question as to something they couldn't wrap their  
13 hands around.

14 Q Okay. In other words, qualified opinion  
15 means that there is something in this audit report which  
16 they are not certifying to be fairly presented?

17 A Correct.

18 Q And what if I told you" --

19 MR. GILMORE: Mr. Bernstein's lawyer.

20 "Mr. Wright: Free of a material misstatement.

21 MR. GILMORE: Fair. That's fine. I don't  
22 mean to misstate what that means.

23 BY MR. GILMORE:

24 Q But what if I told you that in the 2010

1 financial statement the audit report issued by Gurse  
2 Schneider they said, and I'm referring to the  
3 independent auditor's report on the first page of the  
4 2010 audited financial statements. 'The scope of our  
5 examination did not include an analysis of the valuation  
6 of notes receivable from related parties, paren, see  
7 note nine,' (indicating).

8 A Okay.

9 Q -- 'and we have not been able to otherwise  
10 satisfy ourselves as to their valuation of that date.  
11 The notes receivable from related parties comprise 57  
12 percent of the total assets and 129 percent of  
13 stockholders' equity at December 31, 2010. The interest  
14 earned from these notes comprises 24 percent of net  
15 income during the year ended December 31, 2010'.

16 Am I going too fast for you?

17 THE REPORTER: No.

18 BY MR. GILMORE:

19 Q 'In our opinion, except for the effects of  
20 any adjustment that might have resulted had we been able  
21 to analyze the valuation of notes receivable from  
22 related parties as of December 2010, the financial  
23 statements referred to above present fairly in all  
24 material respects the financial position of Superpumper,

1 Inc.' Okay?

2 A Okay.

3 Q Please assume that I read that correctly from  
4 the audited financials report.

5 A Okay.

6 Q Tell me what that would mean to you with  
7 respect to the related party transactions note that  
8 Gursej Schneider prepared as Exhibit 12?

9 A Well, they didn't have any confidence in the  
10 numbers.

11 Q Okay. Did you ever have that problem when  
12 you were preparing the tax returns for Superpumper,  
13 Inc.?

14 And by that problem, I mean lack of confidence  
15 in either the valuation of these notes receivables or  
16 the probability that these notes were collectible?

17 A The answer is yes because we ended up writing  
18 up the Superpumper notes. And, once again, I can't  
19 remember if it was '14 or '15, the Paul  
20 Morabito/Superpumper notes.

21 Q When you say 'the Paul Morabito/Superpumper  
22 notes,' you're meaning the four -- or the three that  
23 I've highlighted here on Exhibit 12?

24 A Correct.

1 Q \$944,000, \$686,000, and 285,000?

2 A That's correct.

3 MR. GILMORE: Mr. Wright says "The ones with  
4 the checkmarks?

5 THE WITNESS: Yes.

6 BY MR. GILMORE:

7 Q Okay. Fair enough. So hold that thought and  
8 let's talk about some Economics 101 again. Do you have  
9 in front of you -- please pull Exhibit 11 which is the  
10 2010 Consolidated Western return.

11 A Okay.

12 Q And I'd like you to turn to page 2432, which  
13 is the CWC balance sheet.

14 A Okay.

15 Q There were some questions that were asked of  
16 you with respect to retained earnings and additional  
17 paid in capital; do you see that?

18 A Yes.

19 Q And there were questions about why the number  
20 retained earnings and additional paid in capital, which  
21 is in essence stockholder equity; right?

22 A Yes.

23 Q Okay. Why the number went from a little over  
24 5 million at the beginning of the year 2010 and at the



1 end of the year 2010 was 2.2 million; do you see that?

2 A Yes.

3 Q And you were asked some questions, and I  
4 think your answers were -- answer was you weren't sure  
5 why that occurred.

6 A Okay.

7 Q Give me some Accounting 101 on the kinds of  
8 things that could have happened, the events that could  
9 have occurred in 2010 that would have resulted in the  
10 reduction of those numbers.

11 A Let's go down to Schedule M-2 on the same  
12 page. You'll see beginning -- let's call it beginning  
13 equity accumulated of the \$5 million, which is very  
14 similar to the one right above it. You'll see a loss  
15 for the year of roughly a million dollars.

16 Q Which is reflective of the net income of the  
17 company?

18 A Yes.

19 Q Okay.

20 A You'll see the distributions made to the  
21 1,745,000.

22 Q Let me stop you there. In what way -- what  
23 events could occur that would require you to reflect  
24 distributions of 1 of 1.745?

1 A (No audible response.)

2 Q There's a couple of things that could have  
3 occurred; right?

4 A Cash would have left either Consolidated  
5 Western or Superpumper and gone to one of the  
6 principals, one or all of the principals, I should say.

7 Q In other words, there could be cash sitting  
8 in the account?

9 A Yep.

10 Q The partners say to themselves 'Hey, we've  
11 had a great year,' or whatever. 'Let's pay ourselves,'  
12 cash leaves the accounts of the company and then becomes  
13 reflected on line 7 of Schedule M-2?

14 A That's correct.

15 Q Now, there are other things that could occur  
16 during the year other than just the parties' principals,  
17 taking cash from the company; correct?

18 A Correct.

19 Q Give me some examples.

20 A But this is the line lion's what happened  
21 just so you're aware.

22 Well, there could be money infused by the  
23 principals. There could be.

24 Q What would assumption of a liability do with

1     respect to the number on line item 7 of M-2?

2             A       Assumption of liability.

3             Q       Let me give you one more fact to insert into  
4     that analysis.

5             A       Okay.

6             Q       You're aware that in 2010 there was a merger?

7             A       Yes.

8             Q       And you're aware that in 2010 CWC was  
9     carrying on its books a significant liability payable  
10    owed to Superpumper, Inc.; right?

11            A       Yeah. But it went away in merger so --

12            Q       Okay. And you're aware based on Exhibit 12  
13    that there were other liabilities that were being  
14    carried on the Superpumper books pre-merger. Right?

15            A       Correct.

16            Q       Is there any way that the merger could have  
17    impacted line item seven of Schedule M-2 other than the  
18    parties taking cash out of the business?

19            A       Possibly.

20            Q       Like what?

21            A       Like your example would make sense. If they  
22    assumed a liability, and the liability would be removed  
23    from CWC and either one or both of the principals that  
24    are coming in either paid it off of the books, you know,

1 they could have done something like that; I don't know.

2 Q Okay. If they assumed the note would reflect  
3 paid in capital? It could; right?

4 A Yes.

5 Q So, if they assumed a liability, for whatever  
6 reason they decided to, that could be booked as a paid  
7 in capital to the equity column of the shareholders;  
8 right?

9 A Correct.

10 Q Okay. Can you think of any reason why the  
11 new principals of Snowshoe Petroleum would want to  
12 assume a liability like that in order to show  
13 stockholder equity on the balance sheet?

14 A No.

15 Q Okay. So, for example, what if they had  
16 alone covenants or lease covenants?

17 A (No audible response.)

18 Q You're nodding. Do you know where I'm going  
19 go with this?

20 A Yes.

21 Q So, in a merger there may well be reasons why  
22 on Exhibit 12 -- do you have it in front of you --

23 A I do.

24 Q -- Mr. Bayuk and Mr. Morabito might be

1 willing to assume obligations through the merger; right?

2 A Yes.

3 Q Which would then do what to the stockholder  
4 equity number?

5 A Would increase the equity.

6 Q The stockholder equity number would go up if  
7 they assume those obligations, they assume those  
8 liabilities in a merger; correct?

9 A That's correct.

10 Q Okay. Can you think of any reason -- I think  
11 you've already testified to it -- why Mr. Bayuk or Mr.  
12 Morabito would assume liabilities in the amount in  
13 excess of \$5 million so that they could show on the  
14 company balance sheet a certain level of stockholder  
15 equity?

16 A Well, they had a covenant with Spirit, and I  
17 believe its my the audit report if you want to look at  
18 it, what the requirement was. And I believe it was \$6  
19 million of equity.

20 Q Okay. You know that because you remember  
21 that having read the Gursej Schneider notes to the  
22 audited financial statement; right?

23 A Correct.

24 Q Okay. I'm not going to mark it for today's

1 purposes, but I want you to look at it.

2 The document is what I referred to before, the  
3 financial statements of Superpumper, December 31, 2010,  
4 Bates stamped specifically page Superpumper 343."  
5 Which, your Honor, in this case is marked as Exhibit 121  
6 in trial binders.

7 COURT CLERK: I'm sorry, can you say that  
8 again?

9 MR. GILMORE: The document we're referring to  
10 in this section of the deposition was not marked in Mr.  
11 Bernstein's deposition, but Superpumper 343 is Trial  
12 Exhibit 120.

13 THE COURT: I'm sorry, you said 121. Did you  
14 mean 120?

15 MR. GILMORE: I meant 120. 120.

16 COURT CLERK: That's why.

17 THE COURT: That's why.

18 MR. GILMORE: If I misspoke that was me not  
19 paying attention.

20 THE COURT: And Superpumper 343 is Exhibit  
21 120?

22 MR. GILMORE: Correct.

23 THE COURT: Thank you.

24 BY MR. GILMORE:

1           Q       "Take a look at the highlight to note five of  
2       the audited financial statements. Read that out loud,  
3       would you?"

4           A       'Maintenance of a minimum \$6 million of book  
5       value of stockholder equity and provisions of changes to  
6       control of company or guarantors.'

7           Q       Okay. So, Gursej Schneider in doing their  
8       work recognized that a covenant in the master lease of  
9       Superpumper's leasehold require that Superpumper  
10      maintain a minimum of \$6 million of the book value of  
11      stockholder equity?"

12                   MS. PILATOWICZ: Note objection.

13           BY MR. GILMORE:

14           Q       Well, we just read that; right?

15           A       That's correct.

16           Q       In other words, we don't have to have the  
17      lease here, but you recognize that the auditors in  
18      giving their audit opinion indicated based on their  
19      notes that the leases required a maintenance of a  
20      minimum of \$6 million book value stockholder equity?"

21                   MS. PILATOWICZ: Note objection.

22                   "THE WITNESS: Yes.

23                   MR. GILMORE: Agreed; okay.

24           BY MR. GILMORE:

1 Q And that's consistent with your memory;  
2 right.

3 A Yes.

4 Q Your memory from the time you first heard of  
5 it until the time you're sitting here today was that the  
6 stockholders or whoever it was that were the principal  
7 owners of Superpumper, Inc. were required by covenants  
8 to maintain \$6 million book value of stockholder equity;  
9 right?

10 A Yes.

11 Q Okay. So back to my sheet.

12 When CWC and SPI merge, there's a reason why  
13 CWC is carrying \$5.6 receivable -- a payable on its  
14 books; right?

15 A Payable, yes.

16 Q It's carrying a payable?

17 A Yes.

18 Q The dual entry obviously means that SPI is  
19 carrying that as a receivable on its books?

20 A Yes.

21 Q And when SPI is carrying that receivable on  
22 its books, what does that do to the stockholder equity  
23 number?

24 A When SPI --



1 Q SPI.

2 A -- is carrying the receivable it increases  
3 the equity.

4 Q Increases the book value of the stockholder  
5 equity of Superpumper.

6 A Correct.

7 Q Okay. So then the decision to merge CWC and  
8 Superpumper together, as we've just discussed, results  
9 in that payable and receivable being zeroed out; agreed?

10 A Yes.

11 Q Then do the stockholders of the merge entity  
12 have to do in order to maintain the lease covenants that  
13 we just read about in the audit report?

14 A I think we're get back to number 12; they  
15 made notes.

16 Q They could do one of two things. I can think  
17 of maybe more but primarily there's two --

18 A That's what happened.

19 Q -- there's two things they could do.

20 A Right.

21 Q Number one, they could assume part of the  
22 existing liabilities of the parent company, even though  
23 there's not a lot of good reasons you'd want to do that.

24 A Right.

1 Q Most people don't want to assume liabilities  
2 that they don't otherwise have to have; agreed?

3 A Agreed.

4 Q Okay. But from a tax perspective, they could  
5 choose to do so; right?

6 A Uh-huh.

7 Q Yes?

8 A Yes.

9 Q Okay. Another way, of course, of increasing  
10 stockholder equity is to just infuse cash; right?

11 A Correct.

12 Q So, they could have, Mr. Bayuk and Mr. Sam  
13 Morabito could have taken \$5 million out of their  
14 pockets and put it into the company, and this would hit  
15 the cash account shall debit to cash; right?

16 A Yes.

17 Q And then it would credit to stockholder  
18 equity; yes?

19 A Paid in capital, yes.

20 Q The other way they could have done it, they  
21 could have assumed one of the one of the obligations of  
22 the parent company, even though they didn't have to;  
23 yes?

24 A Yes.

1 Q And in doing so, right, it becomes a  
2 receivable on the balance sheet of Superpumper; yes?

3 A Yes.

4 Q And increases the stockholder equity on the  
5 balance sheet.

6 A Assuming CWC is the owner; is that what  
7 you're saying?

8 Q No, assuming that the stockholders of  
9 Superpumper --

10 A Got it.

11 Q -- assume the liability --

12 A Which is what happened, yes.

13 Q -- then that would kick up the number of the  
14 stockholder equity on the balance sheet.

15 A Correct.

16 Q Which would then put the company in a  
17 position where it's not defaulted on its loan payments.

18 A Correct.

19 Q Okay. So have we just established to your  
20 satisfaction that the \$2.5 million from Mr. Bayuk  
21 reflected on Exhibit 12 and the \$2.56 million from Sam  
22 Morabito reflected on Exhibit 12, these were not cash  
23 transactions?

24 A That's correct.

1 Q What were they?

2 A If I had this Snowshoe Petroleum financials,  
3 you'd probably see the equity in Snowshoe Petroleum,  
4 Inc. that shows the corresponding number of equity or  
5 paid in capital, for lack of better words.

6 Q You happen to know that this was assumption  
7 of liability; right?

8 A Yes.

9 Q Instead of signing a promissory note in  
10 exchange for cash?

11 A Yes.

12 Q You have no doubt in your mind, do you?

13 A I have no doubt."

14 Q Page 178, line 19. Let's take a look at  
15 Exhibit 19 real quick."

16 MR. GILMORE: Your Honor, my records reflect  
17 that's Exhibit 272 in the binders.

18 THE COURT: Counsel, do you agree?

19 MS. PILATOWICZ: Yes. Sorry.

20 MR. GILMORE: And I believe it has been  
21 admitted.

22 COURT CLERK: It has.

23 BY MR. GILMORE:

24 Q "Let's take a look at Exhibit 19 real quick.

1 I'm just about done.

2 A (Witness complies.)

3 Q In this e-mail, Mr. Bayuk indicates that he  
4 knows the amount that should be the appropriate 1099 to  
5 Paul for the 2011 Snowshoe Petroleum tax return; yes?

6 A I believe so, yes.

7 Q And Edward Bayuk says that he knows the  
8 amount to be \$658,000 and change; right?

9 A Correct.

10 Q Didn't we already establish that you  
11 recognized that part of the Superpumper stock purchase  
12 included cash-and-carry note?

13 A Yes.

14 Q Okay. So, does it strike you as unreasonable  
15 that Snowshoe would be paying Mr. Morabito in 2011?

16 A No.

17 Q Okay. If I told you that the testimony  
18 elicited in this case so far was that the Raffles  
19 insurance asset and the dividends resulting therefrom  
20 were retained by Paul Morabito during the asset  
21 division. I want you to assume that that's been  
22 testified to previously; okay?

23 A Okay.

24 Q That the amount of dividend received by

1 Consolidated Western Corporation would then have been  
2 paid out to Paul Morabito; do you understand?

3 A This is '11 so it would have been Snowshoe.

4 Q Okay. I'm sorry.

5 A Okay.

6 Q You recognize because Ms. Pilatowicz showed  
7 you that Consolidated Western is carrying the Raffles  
8 asset on its books.

9 A It was, yes.

10 Q And you know that.

11 A Yes.

12 Q Okay. So, if Raffles is paying a dividend in  
13 2011, and the parties have already testified that Paul  
14 Morabito owns the rights to those dividends --

15 A Okay.

16 Q -- does it strike you as unusual that  
17 Snowshoe Petroleum would be writing checks to Paul  
18 Morabito in 2011?

19 A Assuming the 568,000 was the Raffles number  
20 and Paul had the rights to it, it would not be unusual.

21 Q Okay. So, we don't know just by looking at  
22 Exhibit 19 if the \$658,000 Mr. Bayuk is reflecting is a  
23 repayment of note, Raffles dividends, or anything else  
24 that Snowshoe Petroleum might have owed to Paul Morabito

1 as of that time; correct?

2 A That's correct."

3 MR. GILMORE: Page 194, line 13. This is Ms.  
4 Pilatowicz' redirect of Mr. Bernstein.

5 Q "First, you said at the beginning of your  
6 testimony when you were answering Mr. Gilmore's  
7 questions that you received vague information that  
8 through the transfers Edward Bayuk would own everything  
9 and Paul Morabito wouldn't; do you recall that?

10 A Are you talking about the personal assets.

11 Q We were looking at I believe it was Exhibit 5  
12 that had the summary of some of the transfers.

13 A Yes.

14 Q Yeah, Exhibit 5.

15 A Yes.

16 Q Do you recall that testimony?

17 A Yes.

18 Q Who provided you that information that you're  
19 referring to?

20 A I think it was a conversation in passing. I  
21 don't remember if it was Mr. Bayuk or Mr. Morabito.

22 Q But it would have been either Mr. Bayuk or  
23 Mr. Morabito?

24 A One or the other, yes."

1 MR. GILMORE: That concludes the deposition  
2 transcript of Stan Bernstein. Your Honor, we have --  
3 defendants have previously identified the deposition of  
4 Mark Jessman to be read onto the record. The parties  
5 have entered into a stipulation which will obviate the  
6 need for Mr. Jessman to be read in the record.

7 The terms of the stipulation are very  
8 straightforward. And that is that the dates reflected  
9 in the Jessman appraisals are stipulated to --  
10 stipulated facts.

11 MS. HAMM: Say that again.

12 MR. GILMORE: The dates that are contained in  
13 the Jessman appraisal reports with respect to the  
14 effective date and the inspection date are stipulated  
15 facts.

16 MS. HAMM: That's correct. And also that the  
17 date the reports were executed is the date that they  
18 were delivered.

19 MR. GILMORE: Thank you.

20 THE COURT: And do we have those marked as an  
21 exhibit?

22 MR. GILMORE: We do.

23 MS. HAMM: Yes, ma'am. They begin, I think,  
24 at Exhibit 180, 181, 182, 183, and 184, all of which



1 have been admitted by stipulation.

2 THE COURT: Okay. And so would you repeat  
3 what you're stipulating to? It was the dates that are  
4 reflected on the reports are the dates they were  
5 delivered.

6 MR. GILMORE: There are four dates in question  
7 that we're stipulating to.

8 THE COURT: Okay.

9 MR. GILMORE: The first is that the date of  
10 the report, in other words, the cover letter on the  
11 report that would say September 28, or whatever date it  
12 might reflect, that was the date that appraisal was  
13 delivered to the client, number one. And in --

14 MS. HAMM: And your Honor, I think, in four of  
15 the five we're referring to it might have been September  
16 28th and another one was September 27th.

17 MR. GILMORE: But we are stipulating that  
18 those dates speak for themselves and that they are  
19 stipulated facts.

20 THE COURT: Okay.

21 MR. GILMORE: Contained within each of the  
22 reports is the valuation date, or in some cases referred  
23 to as the effective date of the appraisal. The reports  
24 contain those dates, and the parties are stipulating

1 that those dates reflected in those reports are the  
2 dates -- are stipulated facts.

3 THE COURT: Who's going off?

4 MR. GILMORE: Somebody's phone's going off.  
5 Is it in here?

6 MS. PILATOWICZ: Yeah, it sounds like.

7 MS. HAMM: So, for example, your Honor, if an  
8 appraisal is an effective date as of September 24th of  
9 2010, then that was the date of the inspection, we  
10 stipulate to that.

11 THE COURT: Okay. So the valuation date,  
12 you're stipulating to the valuation date and the  
13 effective date of the appraisals. And you're also  
14 stipulating that that date, the effective date of the  
15 appraisal is the date of the inspection.

16 MR. GILMORE: Correct.

17 MS. HAMM: Yes, ma'am.

18 THE COURT: That's three.

19 MR. GILMORE: And the last is that the date of  
20 the -- the date of the inspection report is the day it  
21 was delivered to the client.

22 MS. HAMM: No. We already addressed the  
23 delivery date is the date of -- the date of the document  
24 --

1 MR. GILMORE: So you're right.

2 MS. HAMM: -- signed September 28th was  
3 delivered September 28.

4 THE COURT: The date of the report was the  
5 date the appraisal was delivered to the client?

6 MR. GILMORE: Yes.

7 THE COURT: Two, you're stipulating to the  
8 evaluation date of the effective date of the appraisal  
9 in the appraisal reports, those dates you're stipulating  
10 that that is the date it occurred.

11 MS. HAMM: Correct.

12 MR. GILMORE: That's correct.

13 THE COURT: You're further stipulating if it  
14 says effective date of appraisal that was the date of  
15 the inspection.

16 MR. GILMORE: Yes.

17 MS. HAMM: Yes, ma'am, that's --

18 THE COURT: So just three.

19 MR. GILMORE: I believe that encompasses all  
20 the stipulations we need.

21 THE COURT: Okay. And that's all relating to  
22 Exhibits 180, 181, 182, 183 and 184.

23 MR. GILMORE: That is correct.

24 MS. HAMM: Yes, your Honor.

1 MR. GILMORE: Generally characterized as the  
2 appraisals of the California properties.

3 THE COURT: Okay.

4 MR. GILMORE: That leaves us only with the  
5 transcript of Michael Sewitz, which is around about 30  
6 pages or so. At the very end, Ms. Prokop, it's been  
7 added to the binder at the very end.

8 MS. PROKOP: I see.

9 COURT CLERK: Whose deposition was opened and  
10 published yet.

11 MR. GILMORE: I believe it was, yes.

12 THE COURT: I see his name is spelled a couple  
13 of different ways. How is his name properly spelled?

14 MR. GILMORE: He reads it as Michael, common  
15 spelling, Sewitz, S-e-w-i-t-z.

16 THE COURT: That's his spelling.

17 MR. GILMORE: That's how he spells it in his  
18 deposition.

19 THE COURT: Okay. Thank you. You may  
20 proceed.

21 MR. GILMORE: Ms. Prokop, do you have in front  
22 you the deposition transcript of Michael Sewitz, March  
23 22, 2016?

24 MS. PROKOP: Yes.

1 MR. GILMORE: Please turn to page 5, line 10.

2 MS. PROKOP: Okay.

3 BY MR. GILMORE:

4 Q "Good afternoon.

5 A Hi.

6 Q My name is Frank Gilmore and I represent the  
7 defendants in the action that brings us here today.

8 Do you understand that?

9 A Yes.

10 Q Okay. You and I have spoken one time.

11 Is that correct?

12 A Correct.

13 Q And I called you and asked you if you would  
14 be willing to host us at your shop to discuss some work  
15 that you did for a client of mine; is that correct?

16 A Correct.

17 Q All right.

18 Would you please state your name and spell  
19 your last name for the record.

20 A Michael Sewitz. S-e-w-i-t-z.

21 Q And what is your current business address?

22 A 16616 Schoenborn Street, North Hills 91343.

23 Q Thank you. Can I call you Michael?

24 A Sure.

1 Q Michael, how are you employed?

2 A I don't understand what you mean.

3 Q What is your present occupation?

4 A I own a drapery manufacturing company.

5 Q Okay. And how long have you been in the  
6 drapery manufacturing business?

7 A Nearly 30 years.

8 Q All right. How long have you owned your own  
9 drapery company?

10 A The same amount.

11 Q Okay. And what is your day-to-day work life  
12 like?

13 Can you describe for us what you do on a  
14 day-to-day basis?

15 A Well, I go out on appointments and meet with  
16 decorators or their clients. That's half the day. And  
17 the rest of the day is running this business.

18 Q Okay. And what types of services does your  
19 company provide generally?

20 A Anything that goes on windows, beds, walls,  
21 upholstery, custom draperies.

22 Basically anything that covers a window.

23 Q Okay. And would you say in the drapery  
24 business that you have a specific specialty?

1           A       We cater to the high-end design trade, for  
2       the most part. We do very little retail, if at all.

3           Q       When you say 'high-end' do you mean high-end  
4       residential?

5           A       High-end residential. We do a little bit of  
6       commercial, but 90 percent is residential.

7           Q       Okay. And you, personally, what would you  
8       say is your specialty in the drapery business? Is it  
9       the design? Is it the manufacturing? Is it the  
10      salesmanship, or what?

11          A       I do a lot of things here and hopefully I do  
12      a things good because I've been around a long time. But  
13      I do sales and, basically, do the financials. I have a  
14      partner who does other things.

15          Q       Okay. Are you involved in any respect with  
16      the design elements of your business?

17          A       If called upon -- usually designers know what  
18      they want, but many times they don't know what they want  
19      and I give my opinion.

20          Q       Okay. Give us an example of a scenario where  
21      somebody would say to you 'Michael, we don't have good  
22      design ideas, we need design ideas Diaz.' How would you  
23      go about facilitating them?

24          A       Firstly, I would kind of get a fix of what

1 they wanted. Do they want drapes. Do they want shades.

2 Do they want Romans. Is it contemporary. Is it

3 traditional. Is it anything in between.

4 Do they want motorization. Because we

5 specialize in motorization as well.

6 And once I know, then I can go forward and

7 give my ideas.

8 Q Okay. And would you --

9 A Most designers know what they want to do.

10 Q Okay. In the scenario where they don't would

11 you have meetings with the clients and ask them

12 questions and have some sort of question-and answer

13 session so you can get an understanding of what they're

14 looking for?

15 A Definitely.

16 Q Okay. And then would you do an on-site

17 inspection of the property to get a good feel for the

18 dimensions?

19 A Yeah. I go out to -- the different people

20 here in sales; we each have our stable or group of

21 decorators that we work with.

22 So my decorators calls me. She's got a

23 project. I go and meet at the house. Sometimes the

24 clients are there. Sometimes they're not there. But



1 usually the decorator is.

2 We meet at the house. She'll either tell me  
3 what she wants or asks me what I think. I'll measure  
4 the house, measure the windows. Come back; give a  
5 quote. Tell them how much fabric they need.

6 And hopefully the quote becomes an order and  
7 we execute the order."

8 Q Top of page 12, line 1. "You mentioned that  
9 oftentimes price is not a consideration. Is that simply  
10 because the projects that you're working on the  
11 customers...the end users are typically not --

12 A Exactly.

13 Q -- price conscious?

14 A I mean, we're doing the top of the barrel of  
15 homeowners. That's what we've decided to be our  
16 specialty. And for that, we give good service and  
17 installations. IF there's a problem on Friday at 5:00  
18 the producer showing a movie at his house at 6:00 we  
19 manage to get somebody to fix the motor if it's not  
20 working.

21 It's a different business. And, with that,  
22 comes the extra price or cost or whatever to it.

23 Q The premium associated with --

24 A The premium, that's the word.

1           Q       -- associated with the delivery of that type  
2 of service?

3           A       Yes, exactly.

4           Q       Okay. And so would you agree with the  
5 characterization that you now primarily deal in only  
6 high-end, exclusively, clientele?

7           A       Pretty have most of all -- I mean, I would  
8 say that's what with are known for.

9           Q       All right. Very briefly, what's your  
10 background?

11          A       I came from South Africa. Went to school in  
12 Philadelphia. I have a degree in textiles. Came to  
13 California. I have an MBA from Pepperdine.

14                   I was recruited out of the college in  
15 Philadelphia to one of the department stores, May  
16 Company. Which was, in its heyday, a big chain. Did  
17 that for a while.

18                   A few years later my brother and I had a bit  
19 of money and we bought The Linen Tree.

20          Q       Okay. Where did you get your MBA? I'm  
21 sorry.

22          A       I got a MBA from Pepperdine.

23          Q       From Pepperdine. And did it have a  
24 specialty?

1 A No. Just a business.

2 Q Okay.

3 A But I have a degree in -- a BS degree in  
4 textiles.

5 Q Yes. Tell us about some of the places that  
6 you travel to employ your trade. Where do you go?

7 A I've been all over the world. I've been to  
8 India. I've done work in Istanbul. I've done work in  
9 London. I've done work on the Hawaiian Islands. And  
10 I've probably been to 20 states in the U.S. doing work.

11 Q Okay. What types of projects would you do  
12 inn Istanbul?

13 A A very Rich man's house.

14 Q Tell a little bit about it.

15 A The decorators were American -- they wanted  
16 an American decorator. I flew to Istanbul. On the  
17 plane with me was an audiovisual guy. They took us from  
18 the airport to the man's house. We sat down like this  
19 and he said 'my sister has the best sound system and  
20 drapes in Istanbul. I want better.' shook our hands and  
21 we never saw him again.

22 Q You went to his place?

23 A To his office. That's what he told us. And  
24 then we went and visited his house.

1           **Q       Tell us about the house.**

2           A       Well, for Istanbul standards, it was a very  
3       expensive how.

4                   He's a -- if you remember, um, the guy who got  
5       killed with Diana? Well, he's the Turkish version of  
6       that Dodi. They own the banks. They own the hotels.  
7       The family, they're extremely, extremely wealthy. And  
8       he just wanted the best that money could buy.

9           **Q       And...**

10          A       We measured the windows. We went back over  
11       there. We installed. We got paid. With was good.

12                   And that was...that was that.

13                   The other big, big project I was starting to  
14       tell you about was a Mumbai; largest house in the world.  
15       It was 600,000 square feet. My legacy to the drapery  
16       world.

17          **Q       And we can see the picture (indicating) of**  
18       **what loose to be about a 50-story skyscraper.**

19          A       It's close. It's...it's like a -- it's like  
20       a Manhattan Avenue Trump Tower, but for a family of  
21       five.

22          **Q       Surrounded in glass.**

23          A       Surrounded in glass.

24          **Q       With all kind of open decks.**

1           A       There is, in the middle of the sky, a  
2       one-acre garden built out, protruding in the middle of  
3       the sky.

4                   There is a zoo. There is everything and  
5       anything imaginable in that house.

6           Q       **Have you ever seen anything like it?**

7           A       No. And probably never will.

8           Q       **And tell us -- go on.**

9           A       An anomaly of a house. Everybody and anybody  
10       in our architecture knows this house. It's...it's  
11       extremely well-Googled. And information is available on  
12       this house.

13          Q       **What did you call it?**

14          A       The actual house is called Antilla.

15          Q       **Spell it?**

16          A       A-n-t-i-l-la.

17          Q       **And it's owned by some --**

18          A       It's owned by Mukesh Ambani, A-m-b-a-n-i.  
19       It's the largest residential house in the world.

20          Q       **And this gentleman is some Indian**  
21       **billionaire?**

22          A       He's the equivalent of Warren Buffet.

23          Q       **Okay.**

24          A       But things cost a lot less there. So he's

1 even way richer.

2 Q In comparison.

3 A In comparison.

4 Q How did you get that job?

5 A There's a very large American design firm  
6 that specializes in hotels and they do all the hotels in  
7 Dubai. They...they were hired by Ambani to do the  
8 house, Ambani's people came out to my little factory in  
9 Los Angeles and sat around like this, and asked us  
10 questions, and gave us a test on the bottom floor.  
11 Which was the theatre. And we did the theatre. And the  
12 rest was history.

13 Q They liked your work?

14 A Yes.

15 Q And so you did the window coverings and the  
16 wall coverings for the whole house?

17 A Yeah. Each...each floor was built -- each  
18 floor is 35,000 square foot. So each floor was built,  
19 done -- yeah. Each floor was 35,000. And that's how  
20 you get to 600,000. Each floor was built, decorated,  
21 completed and then sealed off. And so we did it floor  
22 by floor.

23 Q How long did that project take you?

24 A About three years.

1           Q       Is it permissible for you to give us an  
2 estimate of the size of the contract to your company?

3           A       I really don't want to. But it was very  
4 large.

5           Q       I imagine. Okay.

6           A       The whole house, they said, cost these  
7 billion.

8           Q       Okay. So you've seen what may be the most  
9 impressive house in the world. You've worked on it.  
10 You spent three years working on this amazing project.  
11 You've seen other projects in the world, that are of the  
12 top class.

13          A       We just completed probably the most expensive  
14 house in Los Angeles in Bel-Air. It was just valued at  
15 120 million. And we did all the window coverings for  
16 that house.

17          Q       And how you did you get that project?

18          A       Through a decorator.

19          Q       Okay. And that was a large contract for you?

20          A       Uh-huh.

21          Q       Yes?

22          A       Yeah.

23          Q       Okay. You've seen some of the most amazing  
24 houses in the middle east and places like that.

1           A       As I tell my wife, 'I went today and saw a  
2       more amazing house than I saw yesterday.' And I been  
3       doing it for a long time.

4           Q       All right. Now, for the reasons you're here,  
5       do you recognize this gentleman to my right?

6           A       Yep.

7           Q       And who do you recognize him to be?

8           A       (Indicating to Mr. Bayuk.) I forgot your  
9       first name."

10           MR. GILMORE: Mr. Bayuk says "Edward.

11           THE WITNESS: Edward. Of course. I met him  
12       through Mark Paul, who was a decorator I've known for  
13       literally 30 years.

14           Q       Is that Paul, Paul with the common spelling?

15           A       P-a-u-l.

16           Q       All right.

17           A       (Indicating to Mr. Bayuk.) And I've done a  
18       bunch of project for you guys, I think in Laguna and,  
19       um, Palm Springs, and I want to say one other place. I  
20       don't quite remember exactly. But I think this may have  
21       been the fourth house -- third or fourth house.

22           Q       When was the last time you saw Edward prior  
23       to today?

24           A       Probably at the time of the installation.



1           Q     Okay. Now, we are here today to talk about  
2     the house in Reno. When was the first time that you can  
3     recall a conversation or discussion about the design  
4     work that was going to happen at Edward's house in Reno?

5           A     It was probably when I flew up there. I'm  
6     trying to think if Mark Paul was there at the time with  
7     me. I can't remember. But either he was there or he  
8     had me -- he had laid the ground work of what we were  
9     doing. But I have to think that -- that has to be about  
10    maybe 2007 or '06.

11          Q     Okay.

12          A     I don't remember the exact date.

13          Q     And were you invited to Reno to view the  
14    house?

15          A     Yes. I went to view the house and to  
16    measure.

17          Q     Okay. And when you viewed the house what was  
18    the condition of the house? At the time, I mean, in  
19    terms of the construction, was it complete?

20          A     I don't think so. It wasn't fully complete.  
21    I know there was a lot of stuff going on, but a lot of  
22    it was complete because I can't really measure until all  
23    the areas that I'm measuring are complete.

24          Q     Okay.

1           A       Windows are in and...and moldings. And I  
2     think -- I think -- I think there what a lot -- a lot of  
3     stuff that had already been done.

4                   I remember a completed theatre, I think. And  
5     I think the kitchen area was done. But I think a lot of  
6     it was done. May not have been completely done. The  
7     outside; I don't know it had been done yet.

8           Q       Okay.

9           A       The backyard.

10          Q       All right. And what had you been asked to do  
11     in terms of the scope of your work?

12          A       If I remember correctly, somebody was  
13     providing the motorization, the actual motors, that got  
14     sent to me here out in Los. Angeles and I turned them  
15     into the finish product, drapes and shades and...Roman  
16     shades and stuff like that, I think.

17                   And then we went and installed all of that in  
18     Reno. I think we did all of the beds and the bedding as  
19     well. But certainly all of the drapes and the shades.

20          Q       Did you do the padded walls?

21          A       I don't remember. I could look at our notes.  
22     But I don't remember if my company did the padded walls.

23          Q       Okay.

24          A       They may have because we do that. But it's

1 possible that somebody locally that -- I don't know.

2 Q Okay.

3 A Would have to go to the folder.

4 Q If I were to show you some pictures that I  
5 brought with me today just to refresh your recollection  
6 here...

7 A I'll come closer.

8 Q And I'm not going to have you look at all  
9 these. Do you recognize (indicating) this?

10 A Yes.

11 Q Have you ever seen this house before.

12 A Yeah.

13 Q Is this the house we were talking about?

14 A Yes.

15 Q We all it the Panorama House.

16 A Okay.

17 Q And there are some pictures here of the  
18 curtilage and..the outside and the pastures. And then  
19 we're starting to get into the entry.

20 A Right.:

21 MR. GILMORE: Ms. Pilatowicz enters an  
22 objection.

23 MS. PILATOWICZ: The objection is noted.

24 MR. GILMORE: It's not on here, I'm sorry.

1 MS. PILATOWICZ: Sorry.

2 MR. GILMORE: Page 23, line 22.

3 BY MR. GILMORE:

4 Q "When you walked in the house --

5 A I remember the house having lots of intricate  
6 carving and paneling and...I remember (indicating) this  
7 kitchen with...here's all the -- (indicating). Here's  
8 all the paneling that I remember. So I've seen  
9 (indicating) this.

10 Q Have tell me about the aesthetic quality of  
11 the mill work of the house that you recall.

12 A I was amazed that somebody out in Reno would  
13 put a house together like this. Because I didn't think  
14 that anybody could ever buy it from them based on what  
15 the quality and the" experts that I assume a house like  
16 this must cost.

17 MS. HAMM: Your Honor?

18 MR. GILMORE: I think you misread that.

19 MS. PROKOP: Want me to repeat it?

20 MR. GILMORE: Read starting line 5, page 24,  
21 yeah.

22 A "I was amazed that somebody out in Reno would  
23 put a house together like this. Because I didn't think  
24 that anybody could ever buy it from them based on what

1 the quality and the expense that I assume a house like  
2 this must cost.

3 Q Okay. Did you make that statement in regard  
4 to the general market price of Reno property?

5 A Yes. Exactly.

6 Q Okay.

7 A Exactly. I mean, if I saw this house in Los  
8 Angeles I would say it's -- you know, it's  
9 top-of-the-line house. I see houses like this. I  
10 couldn't believe that I'd ever see a house like this in  
11 Reno.

12 Q Okay. And you wouldn't suspect to go out  
13 into the ranch properties in Reno and walk into a ranch  
14 house that has this type of finish work?

15 A I would be amazed.

16 Q Okay. Where do you see this type of finish  
17 work in your line of work?

18 A In, you know, in Bel-Air, in Beverly Hills,  
19 in maybe the Palisade. You know, one of our fancy Los  
20 Angeles communities.

21 Q Multi-million-dollar homes?

22 A Yeah, for sure.

23 Q Okay. And you can see some of the detail --

24 A I mean, I remember remarking that I couldn't

1 believe that they would be doing this.

2 Q All right. Did you ever say that to Edward?

3 Or...

4 A We went to lunch so we must have talked about  
5 the house. I don't know Edward to talk about anything  
6 else. So that anything we could have been talking  
7 about, is his house.

8 Q Do you recall remarking to Edward or anyone  
9 else who might have been in the house with you,  
10 something to the effect that you are amazed by the  
11 quality?

12 A You know what; we had to have come up with a  
13 discussion about this amazing house and they were  
14 building."

15 Q That?

16 A "That they were building. Eight years later  
17 it was, or nine years later, I can't exactly remember.  
18 I remember I...I go to four houses a day every day of my  
19 life and I can remember this house. I mean --

20 Q Okay.

21 A It's pretty --

22 Q Did the quality of the workmanship -- for  
23 example, take a look at the theatre, you mentioned.

24 A Yes.

1           **Q       So you've seen it.**

2           A       I mean, this -- I keep saying the same thing.  
3       It pretty much amazed me that somebody out in Reno were  
4       -- to me, I didn't feel like it was in -- I mean, I know  
5       why they were there. Because they were in business down  
6       there. And I am assuming that's where they were gonna  
7       stay. So this built whatever they wanted ask they could  
8       afford it. I couldn't believe that such a house was  
9       being built.

10          **Q       When you say that a room like (indicating)**  
11       **this theatre room would rival any of the houses that**  
12       **you've seen in the upscale neighborhoods in Los Angeles**  
13       **or Malibu?**

14          A       I would bet you a room like this, here in Los  
15       Angeles, is easily a 400,000 or 500,000-dollar home  
16       entertainment setup.

17          **Q       Okay.**

18          A       Now, I don't know what the equipment or all  
19       of the (indicating) that stuff. But this would be in  
20       any major theatre in Los Angeles.

21          **Q       Okay. And you're referring to the AV**  
22       **equipment, TVs, and all that. You're talking about**  
23       **furniture?**

24          A       Everything. I don't even -- like I say, I

1 don't know about the quality of the AV equipment. But  
2 the quality of (indicating) this room as a whole, you're  
3 not gonna find much difference in major home movie  
4 theaters."

5 Q Page 28, line 18. What do you call  
6 (indicating) this, the piping or whatever they call it?

7 A Welt. A double welt.

8 Q Okay. And that's standard way of finishing,  
9 to hide" --

10 MR. GILMORE: Sorry.

11 MS. PROKOP: That's okay.

12 A "And that's standard way of finishing, to  
13 hide the staples off of where it's stapled.

14 Q Okay. And you see the trim work --

15 A Yeah.

16 Q -- on the walls in the hallway. Did you  
17 happen to see the den?

18 A I don't remember. I don't remember that.

19 Q All right. I'm not going to belabor the  
20 point. Do you remember what the total amount of  
21 contract for this house was, on the draperies and the  
22 other upholstery, if you did it?

23 A I mean, I could tell you exactly if you  
24 needed it exactly. I would just have to pull the



1 folder.

2 To be honest, I never really looked at this  
3 folder since. I believe it was a \$50,000 range. That  
4 was my contract. And I don't provide the fabric. We  
5 just do the labor and installation, basically.

6 Q Okay.

7 A And the hardware.

8 Q Can we take a quick -- how long would it take  
9 you to pull your notes on this?

10 A Two minutes, I suppose --

11 Q Let's take a two-minute break.

12 A -- to see exactly what my contract is.

13 Q I'm basically done?

14 A Oh.

15 Q I would just like to have you check your  
16 notes and give me any feedback that you have.

17 A Let me find the folder.

18 MR. GILMORE: Let's go back on the record.

19 BY MR. GILMORE:

20 Q Michael, you've had a chance to look at your  
21 file. Can you tell us what you just said before we went  
22 back on the record, total amount of your contract?

23 A It looks like this adds up to about \$90,000.

24 Q Okay. And is there any way for you to

1 estimate, based on that, what the cost of the fabric

2 would have been that you installed?

3 A Okay. We don't provide the fabric.

4 Q I understand that. But what I'm saying is,  
5 is do you have any idea as to what the cost of the  
6 fabric might have been to the client, had you installed?  
7 Can you give me I an estimate?

8 A I'm trying to remember. Those walls were  
9 silk, I think, and silk, you know, anywhere from 70 to a  
10 hundred dollars a yard. Yeah. That is silk. I mean,  
11 that could be 75 to a hundred dollars a yard, depending  
12 on the way they got it there.

13 Q Do you know how much you installed of the  
14 silk?

15 A I'm trying to see if I can find the quotes.  
16 (indicating) this is all the folder of...of Reno. I  
17 mean, this is -- and Jim Thompson is a very expensive  
18 silk fabric. This was in the kitchen.

19 Q And how was that per yard?

20 A I have no idea. My pricing doesn't influence  
21 fabric.

22 Q Okay.

23 A So I have no idea what the actual cost is,  
24 but it's not cheap. Did we do the wall upholstery in

1 the master bedroom? Yeah, I see wall upholstery in the  
2 master bedroom. And the headboard, a ceiling. So that  
3 was -- so there's a picture of that. This was, like, 36  
4 yards of fabric. My cost to do the labor to that was  
5 \$5700 in the master.

6 Q Is there any way I can take a copy of that  
7 right (indicating) there?

8 A I mean, that's one of the invoices. I mean,  
9 I know there is a bunch of furniture. Let's see.

10 Q Can I ask you a question there, Mark? On  
11 this quote, these numbers; that's the amount --

12 A That's the yardage that the decorators would  
13 have bought.

14 Q Okay. And time frame for these installations  
15 looks to be about November of 2006 through early to mid  
16 2007?

17 A Well, the final check I got was the beginning  
18 of May, '07.

19 Q Well, the final check -- okay.

20 A And they were -- right.

21 Q Okay.

22 A And it...it started -- the first deposits  
23 came in around January of '07.

24 Q Okay. Mark, is there think way --

1 A Michael.

2 Q Michael?

3 A Yeah.

4 Q Is there any way for you to be able to  
5 estimate what the total upholstery project in a house  
6 like this would have cost, including your cost,  
7 including the cost of the material, including the  
8 possible cost of the designer? Is there any way for you  
9 estimate that?

10 A There isn't. But it's a lot. It's I am  
11 impossible nor me -- I'm trying to --

12 Q Is this a several-hundred-thousand-dollar  
13 project or --

14 A Probably. With the fabrics -- I mean, if I'm  
15 close to 80 and there is lots of yardage -- and this  
16 fabric can be close to a hundred dollars a yard it could  
17 easily be a couple hundred.

18 Q Okay. Well --

19 A I'm just trying to see if I did those walls.  
20 Because that...that may be separate (Indicating.) These  
21 are all silks. Let me just -- give me two minutes --

22 Q Sure.

23 A -- to see what -- if I really haven't --  
24 see, I'm wondering if someone else did the wall

1 upholstery if the passageway that's right by the  
2 theatre. Oh. But not necessarily because (indicating)  
3 here is a 23,000-dollar bill.

4 Q You mind if I look at it?

5 A Yeah. But without me, unfortunately, looking  
6 for what the backup is to that -- I'm trying to see --  
7 now (indicating) here's the master bedroom which we've  
8 talked about that.

9 Okay. Here we go. I did it (indicating).  
10 Here it is. So we did all of the upholstery in that den  
11 and my cost to Mark -- (indicating to Mr. Bayuk) which I  
12 have no eye key what his cost is to you, was 26,000, not  
13 including the fabric.

14 Q Does that invoice or purchase order indicate  
15 the amount of fabric that was needed for the  
16 installation?

17 A I should be able to find that because I would  
18 have told him what to buy.

19 So there's probably a packing slip in here  
20 with the yardage, but my labor was 26,000. Oh.  
21 (Indicating) here we go, 110 yards. Yep, 110 yards.  
22 And it's probably easy enough to get the price of this,  
23 if it still exists. It was -- it was from Pindler?

24 Q P-i-n-d-l-e-r. All right. What would you

1 estimate wide range for that?

2 A I have no idea. But it should be -- I mean,  
3 I could have my lady just give them a call and see if  
4 Pindler's still around.

5 Q I don't think it's important.

6 A Right.

7 Q I'm just trying to get a ballpark?

8 A Mark Paul would have this price because he  
9 would have bought it, you see.

10 Q Uh-huh.

11 A So I can't tell you.

12 Q Could that have been a hundred dollars a  
13 yard?

14 A Lots of fabric costs a hundred dollars a  
15 yard. I don't know. We actually bought 230 yards  
16 (indicating). Here we go. 230 yards. Because we used  
17 it, I think in the living room, dining room, gallery  
18 wall, main foyer, hall.

19 Q Okay. Michael, I don't have any other  
20 questions for you.

21 A Uh-huh.

22 Q But I would like --

23 A He has the other packing slips. So hundred  
24 twenty yards; hundred ten. (Indicating) Here's the

1 other. That's 230 yards.

2 Q Perfect. I would like, if possible, to make  
3 photocopies of these three?

4 A That's fine.

5 Q Is that possible?

6 A Yes.

7 Q Do you have a photocopy machine here?

8 A Uh-huh.

9 MR. GILMORE: So what I would like to do is  
10 mark (indicating) these three as Exhibit 1 to the  
11 deposition, once they're copied. Okay?"

12 Court reporter says "okay."

13 MR. GILMORE: And unless I have some follow-up  
14 questions after Ms. Pilatowicz asks you some questions  
15 --

16 THE WITNESS: Oh, okay.

17 MR. GILMORE: -- I don't have anything else  
18 for you, okay?"

19 Now, your Honor, Exhibit 1 is marked in our  
20 deposition binders, but I don't have --

21 THE COURT: Meaning your trial binders?

22 MS. PILATOWICZ: 261.

23 MR. GILMORE: 261. I'm being helped by  
24 counsel that Exhibit 1 of the Sewitz deposition is

1 Exhibit 261. And I would like to offer those in  
2 evidence.

3 MS. HAMM: No objection.

4 THE COURT: Exhibit 261 is admitted.

5 (Exhibit 261 is admitted into evidence.)

6 BY MR. GILMORE:

7 Q "By Ms. Pilatowicz: I have just a couple  
8 quick questions.

9 A Sure.

10 Q You mentioned earlier that you couldn't  
11 believe someone in Reno was doing this and you didn't  
12 think anyone else could buy it from him.

13 A Uh-hum.

14 Q Do you remember that? What did you mean by  
15 that?

16 A That I didn't think there were that many  
17 people who could buy a seven- or eight- or ten-million  
18 dollar house in Reno. When I drove through Reno and saw  
19 houses, you know, crappy apartments in Los Angeles cost  
20 more than -- you know -- a 3,000-square-foot house over  
21 there.

22 Q So the market in Reno is substantially less  
23 than the markets in L.A.

24 A Yes.



1           Q       And generally houses, no matter what they  
2 look like, tend to sell for a lot less. Is that right?

3           A       Houses in Reno.

4           Q       ...in Reno.

5           A       I would have to imagine that a house in  
6 Reno...the exact same house that's in Los Angeles would  
7 be way different prices. I mean, it's like -- I've been  
8 all over most of the country.

9           Q       Did you ever do any analysis -- or could you  
10 do any analysis of what value, on a market level, the  
11 work you do brings to a house?

12          A       I don't think so. I mean, I see ridiculous  
13 things. I -- you know, I see people spending incredible  
14 amounts of money on stuff that I find hard to imagine  
15 why anyone would. But you've got the money, and you  
16 want to do it, you do it.

17          Q       Uh-huh.

18          A       As far as value, the house itself; if someone  
19 picked that up house and that piece of land and put it  
20 in Malibu -- I don't know what that house cost, but if  
21 that house was in Malibu that would be a 15- or  
22 20-million dollar property. In Reno, I would have no  
23 idea. Other than I know that other than I know it had  
24 to have been an expensive house. But I don't know what

1 the value of the house and property are.

2 Q Okay. Thank you. That's all I have."

3 MR. GILMORE: Your Honor, that concludes the  
4 deposition readings. Before defendants rest their case  
5 I believe there are a few exhibits I would like to offer  
6 which were referred to in Mr. Vacco's deposition. They  
7 were discussed, but were not marked.

8 THE COURT: Were not marked or admitted?

9 MR. GILMORE: They were not marked in his  
10 deposition. They were simply discussed.

11 THE COURT: Are they marked in the trial?

12 MR. GILMORE: They are, yes.

13 THE COURT: Okay.

14 MR. GILMORE: So I'm getting those numbers.  
15 There might be only one, if I can remember. There are  
16 two exhibits I don't have identified as admitted yet  
17 that I would like to offer.

18 The first is Exhibit 236, which is the  
19 Christian Lovelace calculation of the Superpumper  
20 acquisition.

21 THE COURT: Okay. 236 was referred to as  
22 Exhibit 13 in the Vacco deposition.

23 MR. GILMORE: Right.

24 MS. PILATOWICZ: No objection, your Honor.

1 THE COURT: Exhibit 236 is admitted.

2 (Exhibit 236 is admitted into evidence.)

3 MR. GILMORE: During Sam Morabito's  
4 cross-examination he referred to the forbearance  
5 agreements between Superpumper and Compass Bank. I  
6 neglected to offer the third amendment to the  
7 forbearance agreement which has been marked as Exhibit  
8 247. And I would now offer 247.

9 MS. PILATOWICZ: No objection.

10 THE COURT: Okay. I don't have my note on  
11 Morabito right now. So what was it marked in his  
12 deposition?

13 MR. GILMORE: In Sam Morabito's live testimony  
14 --

15 THE COURT: Oh, we're talking about Sam.

16 MR. GILMORE: Correct.

17 THE COURT: I'm sorry.

18 MR. GILMORE: He made reference to it.

19 THE COURT: Yes.

20 MR. GILMORE: But I did not mark it. I did  
21 not offer it at that time. That is Exhibit 247, your  
22 Honor.

23 THE COURT: And you're saying no objection?

24 MS. PILATOWICZ: No objection, your Honor.

1 THE COURT: Okay, Exhibit 247 is admitted.

2 (Exhibit 247 is admitted into evidence.)

3 MR. GILMORE: Exhibit 295 was referenced in  
4 the Bernstein deposition.

5 COURT CLERK: I'm sorry, did you say 295?

6 MR. GILMORE: 295. I would offer that.

7 MS. PILATOWICZ: No objection to 295.

8 THE COURT: And what was it called in the  
9 Bernstein deposition?

10 MR. GILMORE: In the Bernstein deposition it  
11 was Paul Morabito's 2010 income tax return.

12 THE COURT: So it's 295.

13 MS. HAMM: It was Bernstein Exhibit 9, I  
14 believe.

15 THE COURT: Exhibit 9.

16 MR. GILMORE: Correct. It was Exhibit 9.

17 THE COURT: Thank you. That's admitted.

18 (Exhibit 9 is admitted into evidence.)

19 MR. GILMORE: Other than that, your Honor, the  
20 defendants rest.

21 THE COURT: Okay. And yesterday I think the  
22 plaintiff told me there would be no rebuttal.

23 MS. PILATOWICZ: There is no rebuttal, your  
24 Honor.

1 THE COURT: I understand the clerk is giving  
2 you an updated list of the exhibits that were admitted  
3 as of Monday. And I just thought it might make sense  
4 for us to make sure that everything you think has been  
5 admitted she has. She wanted to update her notes,  
6 though, with regard to what you just admitted.

7 COURT CLERK: Okay. Just let me know if you  
8 guys believe something is admitted that I haven't seen  
9 it. I'm just going to read the numbers and those  
10 numbers are admitted. 1, 2, 3, 4, 5, 6, 8, 19, 20, 21,  
11 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,  
12 37, 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,  
13 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67,  
14 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81,  
15 82, 83, 84, 85, 86, 87, 88, 90, 91, 92, 103, 104, 105,  
16 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116,  
17 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128,  
18 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139,  
19 140, 141, 142, 143, 144, 145, 147, 149, 150, 151, 152,  
20 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163,  
21 164, 174, 175, 179, 180, 181, 182, 183, 184, 185, 186,  
22 187, 188, 189, 190, 191, 192, 193, 194, 196, 197, 198,  
23 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232,  
24 233, 235, 236, 241.

1 THE COURT: Wait. 236?

2 COURT CLERK: Yes.

3 THE COURT: Okay.

4 COURT CLERK: 236 was done --

5 MR. GILMORE: Was done. Yes, ma'am.

6 COURT CLERK: -- just now. I'm sorry. 236,  
7 241, 244, 247, 248, 252, 254, 255, 256, 257, 258, 260,  
8 261, 262, 263, 265, 266, 268, 269, 270, 271, 272, 276,  
9 277, 278, 280, 281, 283, 284, 294, 295, 296, 297, 300,  
10 301, 302, 303, 304.

11 THE COURT: Any other exhibits anyone thinks  
12 that you've offered?

13 MR. GILMORE: Not here, your Honor.

14 MS. PILATOWICZ: Your Honor, it appears that  
15 Exhibit 148 was, I believe, offered during Mr. Bayuk's  
16 testimony. It is one of the Lippes Mathias  
17 communications. I don't believe we offered it.

18 COURT CLERK: I show that it was offered and  
19 the objection was sustained.

20 MS. PILATOWICZ: Right. I believe the  
21 objection was sustained because we were seeking  
22 initially to offer it through Mr. Bayuk. We should have  
23 read it again when we offered the group of  
24 communications as a business record of the trustees.

1 THE COURT: Okay. So you believe you need to  
2 offer it --

3 MS. PILATOWICZ: Yes, your Honor.

4 THE COURT: -- at this time?

5 COURT CLERK: That's 148. Correct?

6 THE COURT: 148. Counsel, do you stipulate to  
7 that, or do you want her to call a witness?

8 MR. GILMORE: No, your Honor. I would simply  
9 raise the same objections to the other Lippes Mathias  
10 supplemental bulk production that we talked about  
11 yesterday. So renew the same objection.

12 It's being offered, as I understand it, as  
13 part of the bulk production that was offered primarily  
14 through Ms. Pike Turner on Friday, and then again  
15 yesterday, so I don't believe there's a need for any  
16 further witnesses. I would just simply like to renew my  
17 objection on the same basis.

18 THE COURT: Counsel, did you want to reply?

19 MS. PILATOWICZ: Your Honor, Mr. Gilmore's  
20 correct. We are offering it through the bulk of the  
21 email -- the exhibits are offered in bulk through what  
22 would be the same testimony through Mr. Leonard as to  
23 his maintenance of the files and how he obtained the  
24 Lippes Mathias communications.

1 THE COURT: For the same reasons I overruled  
2 the objection previously, the objection's overruled.  
3 Because I understand that the defense is waiving making  
4 the record with Mr. Leonard, but not waiving as to the  
5 fact that it would come in even if Mr. Leonard  
6 testified; is that correct?

7 MR. GILMORE: Correct. Make sure I box that.  
8 I would expect that the testimony from Mr. Leonard that  
9 he offered previously would be consistent with respect  
10 to this particular exhibit, I would raise the same  
11 objection that I did to the entire bulk Lippes Mathias  
12 production. That objection was noted and then  
13 overruled. And so for that reason I think the same  
14 basis for it being offered and the same objections  
15 should be noted, but that if -- as the Court pointed out  
16 because the objection was previously overruled my  
17 expectation is that this objection would be similarly  
18 overruled, not needing any further testimony from any  
19 witness.

20 THE COURT: Okay. So based upon the  
21 stipulation that the witness would testify and support  
22 the admission under the theory of the plaintiff, the  
23 objection as to even with that on the record, an  
24 objection to the admissibility of the evidence is



1 overruled and 148 is admitted.

2 (Exhibit 148 is admitted into evidence.)

3 MS. PILATOWICZ: Thank you, your Honor.

4 THE COURT: Okay. Anything further?

5 MS. PILATOWICZ: Nothing from the plaintiff.

6 MR. GILMORE: Nothing further, your Honor.

7 THE COURT: Okay. So what I intend to do is  
8 direct the clerk to release all exhibits that have not  
9 been admitted to you, to the party who produced them,  
10 except those that were offered and objection was  
11 sustained. So the record of this trial will be all  
12 documents that have been offered and those that were  
13 offered and admitted. But all documents that have not  
14 been offered, not been ruled on will be returned to you  
15 by the clerk. Any objection?

16 MS. PILATOWICZ: No objection, your Honor.

17 MR. GILMORE: No, your Honor.

18 THE COURT: Then that will be that order. So  
19 I guess that's it for now.

20 You had to sit up there, but so patient. You  
21 may step down.

22 MS. PROKOP: Thank you.

23 THE COURT: Thank you. I kind of forgot about  
24 you you're so quiet.

1 MS. PROKOP: Didn't want to interrupt.

2 THE COURT: So I think our next hearing is set  
3 for the 26th of November, at nine a.m., so we'll see you  
4 back then.

5 In the interim you will provide at that  
6 hearing your updated findings of the fact, conclusions  
7 of law with cites to the transcript that will be  
8 provided to you by on or before the 19th.

9 So is there anything else we can do today?

10 MR. GILMORE: No, I think that's it from us,  
11 your Honor.

12 MS. PILATOWICZ: No, your Honor.

13 THE COURT: Okay. Then we'll see you back on  
14 the 26th. Thank you.

15 MS. PILATOWICZ: Thank you.

16 THE COURT: Court's now recess.

17 (Proceedings continued until November 7, 2018,  
18 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 Wednesday,  
9 November 7, 2018, at the hour of 9:05 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 103, 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 21st day of November, 2018.

23 /s/ Julie Ann Kernan

24 JULIE ANN KERNAN, CCR #427

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