

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 44
(Nos. 7616–7666)

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

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

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

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

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

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

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

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment		
Exhibit	Document Description	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

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

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

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

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

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCF 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff’s First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff’s First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
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75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

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84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
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105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

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106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
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110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
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112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
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122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

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134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
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137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
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141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
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148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
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152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

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161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
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174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman’s Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
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189	Mortgage – Mary Fleming	Vol. 28, 4864
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191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
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193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants’ SSOF in Support of Opposition to Plaintiff’s MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879

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

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

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257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
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270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
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277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

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301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
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Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
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Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
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Exhibit	Document Description	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
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Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
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[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
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Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
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Exhibit	Document Description	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

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

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Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)		Vol. 49, 8638–8657
Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)		Vol. 50, 8658–8676
Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60		
Exhibit	Document Description	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68		
Exhibit	Document Description	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution		
Exhibit	Document Description	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution		
Exhibit	Document Description	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

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

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

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

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
Exhibit to Notice of Entry of Order Denying Claim of Exemption		
Exhibit	Document Description	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration		
Exhibit	Document Description	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085		
Exhibit	Document Description	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs		
Exhibit	Document Description	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Bayuk's Notice of Appeal		
Exhibit	Document Description	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
Exhibit to Notice of Entry of Order		
Exhibit	Document Description	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

CASE NO. CV13-02663

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

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/26/18

NON-JURY TRIAL – DAY NINE

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

C. Amundson

(Reporter)

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., with counsel, Frank Gilmore, Esq., who also represented Defendant Salvatore Morabito, not present, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc.

9:15 a.m. Court convened.

Counsel Turner presented Plaintiff's opening closing argument.

10:50 a.m. Court recessed.

11:07 a.m. Court reconvened with respective counsel and parties present.

Counsel Turner further presented Plaintiff's opening closing argument.

12:12 p.m. Court recessed until 1:30 p.m.

1:37 p.m. Court reconvened with respective counsel and parties present.

Counsel Gilmore presented Defendants' answering closing argument.

3:03 p.m. Court recessed.

3:17 p.m. Court reconvened with respective counsel and parties present.

Counsel Gilmore further presented answering closing argument.

Counsel Turner presented Plaintiff's final closing argument.

COURT took matter under advisement.

4:48 p.m. Court recessed.

1 4185

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3 IN THE SECOND JUDICIAL DISTRICT COURT

4 STATE OF NEVADA, COUNTY OF WASHOE

5 THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

6

7 WM. LEONARD, TRUSTEE,

Dept. No. 4

8

Plaintiff,

Case CV13-02663

9 vs.

10 SUPERPUMPER, INC., ET AL.,

11 Defendants.

_____ /

12

Pages 1 to 201, inclusive.

13

TRANSCRIPT OF PROCEEDINGS

14

NON-JURY TRIAL - CLOSING ARGUMENTS

Monday, November 26, 2018

15

A P P E A R A N C E S:

16

FOR THE PLAINTIFF: ERICA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
650 White Drive, Ste. 100
Las Vegas, NV 89119

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FOR THE DEFENDANT: FRANK GILMORE, ESQ.
ROBISON, SHARP, SULLIVAN BRUST
71 Washington Street
Reno, NV 89503

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REPORTED BY: Christina Amundson, CCR #641
Litigation Services, 323.3411

23

24

1 RENO, NEVADA -- MONDAY, 11/26/18 -- 9:15 A.M.

2 -oOo-

3 THE COURT: Thank you. Please be seated.

4 Good morning. So we have everything set up and I
5 guess we're ready to go.

6 MS. TURNER: Yes.

7 THE COURT: Okay. Counsel.

8 MS. TURNER: Good morning.

9 THE COURT: Hope you had a nice
10 Thanksgiving --

11 MS. TURNER: Yes.

12 THE COURT: -- and were able to have a
13 Thanksgiving.

14 MS. TURNER: That day.

15 Your Honor, it's hard to go back. There
16 was a lot in this trial. There's a lot outlined in
17 the findings and conclusions we have emailed 63
18 pages of findings and conclusions to your Honor,
19 which is longer than normally a proposed order would
20 be, but here it's necessary due to the nature of the
21 claim and the defense at issue.

22 So September 13th, 2010, Judge Adams
23 described a travesty that could only be addressed --
24 could only be redressed due to the circumstances

1 including Paul Morabito's fraud by entry of an \$85
2 million judgment, in actual damages in favor of the
3 Herbst parties.

4 Before the time of the oral ruling was
5 reduced to writing, before October 12th, 2010,
6 Paul Morabito had transferred substantially all of
7 his assets. He transferred all of his assets, not
8 just the assets at issue in this case with respect
9 to the defendants, but substantially all of his
10 assets.

11 So the travesty continues and has been
12 exacerbated by the -- Paul Morabito's continued
13 fraudulent conduct directed to the Herbsts which was
14 facilitated in material part by the defendants. We
15 have Sam Morabito, who is not here today, but Sam
16 Morabito, Paul Morabito's brother, and Ed Bayuk, who
17 is here today, Sam Morabito's friend, but Paul
18 Morabito's business partner and then boyfriend.

19 There's only one claim of fraudulent
20 transfer. That's the only claim at issue. But the
21 burden on fraudulent transfer is clear and
22 convincing evidence of either constructive
23 fraudulent transfer or actual fraudulent transfer
24 and it is that clear and convincing evidence burden

1 that results in the 63 pages of findings and
2 conclusions and which makes me go through a lot of
3 information, more than the 20 minutes that I
4 generally try to keep a closing argument to.

5 We have asked for judgment on both
6 constructive fraud as well as actual fraud and met
7 the burden on both. Constructive fraud does not
8 require clear and convincing evidence. It doesn't
9 require a showing of actual fraud. It is a transfer
10 made while the debtor is insolvent, while Paul
11 Morabito is insolvent without exchange of reasonably
12 equivalent value. Those elements are also elements
13 of actual fraud in that they are badges of fraud to
14 be considered by the Court when making a
15 determination of actual fraudulent transfer.

16 Here we have met the burden of showing
17 actual fraud, which is when Paul Morabito had the
18 actual intent, when he made the transfers in
19 September of 2010 through October 4th, 2010, with
20 the actual intent to hinder, delay or defraud
21 collection. Now, with respect to actual fraud --
22 and I'll be talking mostly in the context of actual
23 fraud since constructive fraud is really a subset --
24 the Nevada Supreme Court as well as the NRS have

1 outlined non-exclusive badges of fraud or factors to
2 be considered by the court in determining whether or
3 not there was actual intent by Paul Morabito and
4 it's Paul Morabito's intent that we look at to
5 hinder, delay, or defraud the Herbst parties'
6 collection in September and October of 2010.

7 And the Nevada Supreme Court has not
8 provided as much as guidance as we would like on
9 this, this point, just because they haven't had that
10 many cases but NRS 112.150 directs this court and in
11 other states their courts to look to the cases that
12 have -- or the courts that have had to construe the
13 UFTA in other states so that there is uniform
14 application of the Uniform Fraudulent Transfer Act
15 that we have enacted at NRS Chapter 112 and other
16 states have enacted in their statutes.

17 The badges of fraud, the factors that
18 Nevada has pointed to and said these are those that
19 we think are appropriate to be considered, we can
20 find at NRS 112.180 as well as the SportsCo
21 Entertainment vs. Morris case. We have another list
22 of factors, some of which are different ways of
23 describing those at NRS 112, but others really
24 highlighting the fact that these are non-exclusive

1 factors.

2 And, your Honor, courts around the country
3 have said one factor is not enough. Some evidence
4 of one is certainly not enough, some evidence of
5 multiple factors could be enough. It's conclusive
6 evidence of fraud subject to defense. Here we have,
7 not only substantial evidence of multiple factors,
8 we have clear and convincing evidence of a majority
9 of the factors to be considered by the Court, at
10 least those identified at SportsCo Entertainment v.
11 Morris and 112.180. The transfer was to an insider
12 and here transfers were to insiders. I'll walk
13 through that.

14 The debtor retained possession or control
15 of the property transferred. The transfer
16 obligation was concealed. Before the transfer was
17 made the debtor had been sued and there had been an
18 actual determination of liability, actual damages of
19 \$85 million. The transfer was of substantially all
20 of the debtor's assets. The debtor removed or
21 concealed assets. The value of the consideration
22 received by the debtor was reasonably equivalent to
23 the value of the asset conferred. The debtor was
24 insolvent or became insolvent shortly after the

1 transfer was made. He was rendered insolvent as a
2 result of the transfers made such that he could not
3 satisfy the Herbst parties' eventual judgment. The
4 transfer occurred shortly before or after a
5 substantial debt was incurred. It was on the heels
6 of the oral ruling that Paul Morabito started
7 transferring his assets and the transfers were
8 complete before the entry of the judgment before any
9 actual collection could be had.

10 There was lack of consideration for
11 conveyances. The relationship between the
12 transferor and the transferee, if not statutory
13 insider, certainly they had such a relationship that
14 they could not be described as arm's length
15 negotiators for a sale that could not be described
16 in the context of arm's length from one another.
17 There was a threat of litigation and there was
18 actual litigation with a looming judgment. There
19 was secrecy in the transaction. The defendants
20 argued that there was no secrecy because there was
21 discovery in the post-judgment punitive damage phase
22 of the underlying Herbst litigation.

23 However, there was no evidence whatsoever
24 of any disclosure at the time of the transfers and,

1 in fact, there's no evidence of any disclosure prior
2 to March of 2011 when there was disclosure of
3 Ms. Salazar's report in the punitive damage phase.

4 To conceal doesn't mean forever conceal.
5 It means before or at the time of the transaction.
6 You have departure from the usual method of
7 business, the retention by the debtor of possession
8 of the property, and the reservation of benefit to
9 the transferor. I'll go through these in more
10 detail with reference to the evidence at trial, but
11 there is certainly the presence of a majority of
12 these factors here in this case.

13 And, your Honor, the reason we're here --
14 one of the reasons -- is that Paul Morabito was
15 advised by his counsel, Gary Graber, it's not enough
16 when you have a judgment looming to have a transfer
17 in exchange for some value. That's not enough to
18 avoid a fraudulent transfer to avoid an actual
19 fraud. And still Paul Morabito went forward and
20 said we're moving forward, we're going to go forward
21 with these transactions.

22 At Exhibit 300 we have the email exchange
23 with Gary Graber and Sujatha Yalamanchili where Ms.
24 Yalamanchili explains to Paul, "I don't think it

1 simply says you can transfer assets for value. I
2 think Gary was trying to say that." She goes on to
3 say, "They look at a lot of factors including
4 whether you have an intent to frustrate your
5 creditors." And there is no evidence except that
6 Paul Morabito started transferring the assets and
7 did the plan -- talked to counsel and planned for
8 the transfer of those assets only subsequent to the
9 oral ruling. There was no evidence in this case of
10 an email, a phone call, a discussion, contemplation
11 of any of the transfers at issue in this case prior
12 to the oral ruling on September 13th, 2010.

13 In fact, there's no dispute at any point
14 that the timing was September 13th, 2010, through
15 October -- first week of October prior to the
16 judgment being entered by Judge Adams. That time
17 frame is material. It goes to the badges of fraud
18 to be considered. And this position is that just
19 because there's a provision of some value in
20 exchange for a transfer, that the inquiry starts and
21 stops there, that is inconsistent with NRS Chapter
22 112.180, the SportsCo case or the legion of case law
23 applying the UFTA in other jurisdictions that have
24 adopted it.

1 Now, one of the badges of fraud at
2 112.180(a) is that the transfer was to an insider.
3 Well, who are the parties to be analyzed? Paul
4 Morabito is the debtor. He's the transferor, he and
5 his self-settled Arcadia trust. He commenced
6 transfers of his assets the day Judge Adams
7 announced the judgment against him. At Exhibit 38
8 we see the transfers of \$6 million out of his
9 account the very next day. And we don't bring the
10 issue of the \$6 million transfer because we're
11 seeking to avoid it in this action. It's evidence
12 of Paul Morabito's fraudulent intent, his intent to
13 remove assets from the Herbst parties' collection
14 efforts.

15 Edward Bayuk is the transferee both
16 individually and as trustee of his self-settled
17 trust. He at the time of the transfers was Paul
18 Morabito's boyfriend, longtime business partner, and
19 even subsequent to the oral ruling he was shown to
20 be the central person in Paul Morabito's life.
21 Salvatore Morabito was a transferee. It's Paul
22 Morabito's brother and business partner. And then
23 we have Snowshoe Petroleum, a transferee of Paul
24 Morabito's interest in Superpumper, and those are

1 the primary parties in this case.

2 Now, an insider is defined at NRS 112.150,
3 if the debtor is a natural person" -- which he is
4 here, Paul Morabito -- then his relative would be an
5 insider. Sam Morabito is as Paul Morabito's brother
6 a statutory insider. Now, an affiliate of the
7 debtor is considered the debtor for the purpose of
8 analyzing an insider relationship under NRS 112.150,
9 and an affiliate is a person who directly or
10 indirectly owns, controls, or holds the power to
11 vote 20 percent or more of the outstanding voting
12 securities of the debtor or is a fiduciary or agent
13 with sole discretionary power to vote the securities
14 or is a corporation 20 percent or more of whose
15 outstanding voting securities are directly or
16 indirectly owned, controlled, or held by the debtor,
17 or a person who directly or indirectly owns,
18 controls, or holds with power to vote 20 percent or
19 more of the outstanding voting securities of the
20 debtor.

21 Paul Morabito affiliates included at the
22 time of the transfers included Consolidated Western
23 Corporation. We've referred to it in this
24 proceeding as "CWC." That's a Nevada corporation.

1 Superpumper Inc., the Arizona corporation, and Baruk
2 Properties or Baruk Properties LLC, Nevada LLC and
3 an insider of those affiliates includes a director
4 or an officer under NRS 112.150. Again, here Ed
5 Bayuk testified that he was the director, an officer
6 of CWC and Superpumper prior to and after the
7 subsequent transfers, and we have Mr. Bayuk as a
8 co-manager with Paul Morabito in Baruk Properties
9 LLC as an officer, director and manager of those
10 affiliate entities to Paul Morabito and Ed Bayuk is
11 a statutory insider. In addition to being a
12 statutory insider, Ed Bayuk is a non-statutory
13 insider under the common law, which is still
14 applicable.

15 The test is whether the relationship is
16 arm's length. Certainly could never be described as
17 arm's length here if there was a transaction between
18 Ed Bayuk and Paul Morabito. And if we go to Exhibit
19 134 in evidence, we have Paul Morabito's description
20 of Ed Bayuk in April of 2012 where he is described,
21 "Edward is my former longtime companion but we have
22 a very strong personal relationship and he is my
23 family and will be the central person in my life for
24 the rest of my life." That's Exhibit 134.

1 We have an Exhibit 39, the Fifth Amended
2 Restatement of the Arcadia trust, the Arcadia trust
3 being a transferor. That's Paul Morabito's
4 affiliated self-settled trust where we have Ed Bayuk
5 actually being a beneficiary of the Arcadia trust.
6 So if there is any value conferred back to Paul
7 Morabito as a result of the transfer from the
8 Arcadia living trust, Ed Bayuk, and actually Sam
9 Morabito to a lesser extent, are the beneficiaries
10 of that value conferred. And Ed Bayuk is described
11 on September 30th, 2010, by Paul Morabito as his
12 boyfriend and longtime companion. And Ed Bayuk
13 received a 70 percent beneficial interest in the
14 Arcadia trust as of September 30th, 2010, Sam
15 Morabito received the remaining 30 percent
16 beneficial interest. That's Exhibit 39.

17 Now, there was argument and intimation that
18 Paul and Ed went their separate ways. They may have
19 at some point in time but they certainly had not by
20 the time of the subject transfers. On the heels of
21 the oral ruling, not only was there the restatement
22 of the Arcadia trust to make sure Ed Bayuk was the
23 70 percent beneficiary, but you have at Exhibit 32
24 and otherwise emails in September of 2010 prior to

1 the transfers where Paul Morabito communicates with
2 counsel about "Edward and I plan on changing our
3 primary residence from Reno to Laguna Beach," and
4 "Edward and I" are constantly referred to in the
5 collective. Not only did Paul decide that Edward
6 and he were going to change their primary residence
7 from Reno to Laguna Beach, they changed their DMV,
8 photo identification, and moved their burial plot.
9 They absconded from Nevada to California, absconding
10 being one of the badges of fraud under NRS 112.150.

11 Exhibit 35, the First Amendment to
12 Residential Lease, September 23rd, 2010,
13 consistent with Paul Morabito's plan that he and
14 Edward Bayuk would move from Reno to California.
15 You have an amendment to the lease adding Ed Bayuk
16 as a tenant. There's no question from the evidence
17 presented Sam Morabito is a statutory insider and Ed
18 Bayuk is a statutory insider by virtue of his
19 business relationship with Paul Morabito and a
20 non-statutory insider as a result of his personal
21 relationship with Paul Morabito.

22 Now, another badge of fraud is
23 NRS112,180(b) as well as those articulated in the
24 SportsCo Entertainment case, the debtor retained

1 possession or control of the property transferred.
2 At Exhibit 30 and otherwise there was a common theme
3 throughout the exhibits introduced in this case was
4 Paul Morabito communicating with his counsel in
5 third party as if he was still an owner of those
6 companies that he had transferred his interest in.
7 At Exhibit 30, September 21st, 2010, Paul Morabito
8 describes to his counsel, Dennis Vacco, who is also
9 concurrent counsel with the defendants, as well as
10 third-party Kevin Cross, informing that he would be
11 acting -- Paul Morabito would be acting as an
12 adviser to, amongst other entities, Snowshoe
13 Petroleum LLC, "a company to be owned and operated
14 by my brother, Sam, Ed Bayuk and Dennis Vacco." The
15 company had not even been formed at that point. It
16 was formed within a week of this email, Snowshoe
17 Petroleum.

18 And then we have further down one two --
19 four paragraphs down "I advised" -- and that's a
20 reference to third-party Kevin Cross -- "that the
21 company to be headed by me but owned by a
22 combination of Edward Bayuk, Sam Morabito, John
23 Richmond, as well as Petrowski and his management
24 team would be created to make this offer." He was

1 communicating how he intended to put his brother and
2 his boyfriend up front in the operation and
3 ownership of companies but he would be behind the
4 scenes pulling the strings. He would be behind the
5 scenes as an adviser. There was no selling to a
6 third party. This was not a sale of Paul Morabito's
7 interest to someone in order to obtain value that he
8 could use to resolve his obligation to the Herbst
9 parties. It was to hide his asset with the cover of
10 his insiders to take title to the ownership in the
11 companies that he had historically operated.

12 We have exhibits throughout the time period
13 following the transfers showing Paul Morabito acting
14 on behalf of Snowshoe Petroleum, Inc. at Exhibit
15 132. This is but an example. Paul Morabito is
16 communicating with his counsel about Nella and about
17 his proposal to Nella. He says, "Attached is an
18 initial \$65 million loan offer from Cerberus. They
19 made it out to CWC but I am having it changed to
20 Snowshoe Petroleum." We'll see later on Ed Bayuk
21 ultimately ended up in April of 2011 sending a
22 letter of intent to Nella and it was in the name of
23 Snowshoe Petroleum, Inc.

24 When there was a transfer of Paul

1 Morabito's interest in Baruk Properties LLC, a
2 Nevada LLC, Ed Bayuk then formed Snowshoe properties
3 LLC as a successor transferee and at Exhibit 142 we
4 have an email exchange that does not include Ed
5 Bayuk. It is counsel, a consultant, and Paul
6 Morabito discussing what to do with Snowshoe
7 Properties LLC. It shows -- and specifically the
8 1461 Glenneyre commercial property and you have
9 communications regarding leases, the sale of the
10 property, and Ed Bayuk is nowhere to be found.

11 Then we had extensive testimony and there
12 were a lot of exhibits about Paul Morabito's use of
13 the commercial properties to satisfy his obligation
14 to B of A. He used it in order to satisfy his
15 obligation and he did so as if he continued to own
16 and operate it. Exhibit 143 shows where Ed Bayuk
17 says, You know, I think I'll pay off this obligation
18 to Bank of America, the existing mortgage to Bank of
19 America on the 570 Glenneyre property and Paul
20 Morabito says, No, no, no in his typical
21 capitalization that we've seen throughout his
22 emails, again, exercising control over 570 Glenneyre
23 and Ed Bayuk's decision-making on whether or not to
24 pay off the mortgage.

1 Ed Bayuk denied that he executed the deed
2 of trust with Bank of America that was demanded by
3 Paul Morabito but we saw that he, in fact, did sign
4 and did finalize the use of Snowshoe Properties
5 LLC's property; that is, the Baruk Properties LLC
6 commercial properties that were then subsequently
7 transferred to Snowshoe Properties LLC. Those were
8 being used at the direction of Paul Morabito for the
9 benefit of Paul Morabito. That was Exhibit 225,
10 your Honor, that we saw the executed deed of trust.

11 Then we have Exhibit 150, September 18th,
12 2012, where Paul Morabito and counsel describe the
13 use of the Mary Fleming property in Palm Springs to
14 pay Paul Morabito's obligations and Ed Bayuk says,
15 Let's just make this simple. I think Paul wants to
16 put a second trustee in place on Mary Fleming's
17 house. If so, then just let me sign for the second
18 trust deed. Mary Fleming was ultimately transferred
19 and became housed with the Edward Bayuk trust.

20 So you have Paul Morabito directing the
21 placement of a second deed of trust on the Mary
22 Fleming house that had been transferred out of Baruk
23 Properties LLC, Nevada LLC to Snowshoe Properties
24 and then to the Edward Bayuk trust.

1 And then we have Exhibit 159, again, Paul
2 Morabito showing his control over the property he no
3 longer had a titled interest in, but he's talking
4 about what kind of loan terms to get, a second deed
5 of trust to be used as collateral on a Versanet
6 note, Versanet being a new company that he had
7 formed with Ed Bayuk. That testimony came out. And
8 he's using the transfer property in order to
9 facilitate those Versanet transactions. Edward
10 Bayuk's nowhere to be found on the communications.

11 Exhibit 151 we have the \$5 million loan
12 that ultimately was obtained, Paul Morabito
13 communicating with his counsel, concurrent counsel
14 with defendants, Dennis Vacco and Christian Lovelace
15 about putting a first on 1461 Glenneyre and a second
16 on 570 Glenneyre and he outlines the terms of the
17 loan to be placed, exercising control over Snowshoe
18 Properties. The evidence on control is substantial.
19 It is clear and convincing. The evidence on insider
20 is clear and convincing.

21 Finally, on the issue of control we have
22 Exhibit 153, which is a March 14th, 2013, email
23 exchange between Paul Morabito and Dennis Vacco
24 where Paul Morabito to use Superpumper to try to

1 settle. It says -- there's a dispute with BHI
2 Hinckley. "Why not offer them Superpumper. They
3 would make \$2 million a year and would borrow \$3
4 million against it." This is March of 2013 that
5 he's discussing the use of Superpumper to resolve a
6 dispute that he had.

7 On to the third factor, was the transfer
8 obligation concealed. As I indicated before, the
9 fact that there was ultimate discovery in the
10 punitive damage phase of the underlying Herbst
11 litigation does not relate to whether or not there
12 was an effort to conceal the transfer at the time.
13 The transfer was concealed in September of 2010,
14 October of 2010 in the material time frame prior to
15 the judgment being entered.

16 There is not one iota of evidence of Paul
17 Morabito or the defendants ever communicating to the
18 Herbst parties, Hey, we're trying to get you some
19 assets to satisfy this \$85 million obligation.
20 We're trying to isolate Paul Morabito's interest so
21 you can use it in collection. That's the story that
22 has been proffered in this case, is that the purpose
23 of these transactions at issue here were for the
24 purpose of separating Paul Morabito's interests so

1 that they could stand alone and be easily collected
2 by the Herbst parties. There's not one iota of
3 evidence of disclosure of the transfers to the
4 Herbsts at the time they were made or in close
5 proximity such that the assets could actually be
6 used to satisfy the judgment.

7 And as we'll see with respect to other
8 factors, not only was there no disclosure of the
9 transfers being made, but ultimately the Herbst
10 parties were denied the ability to collect on the
11 value or purported value provided back to Paul
12 Morabito because of subsequent shenanigans.

13 Now, the NRS 112.180, the Court should look
14 at the timing of the transfer with respect to a
15 claim being made against the debtor. It is
16 undisputed that the Herbst parties were creditors
17 under NRS Chapter 112's definition at the time of
18 the transfers. They had made a claim, a
19 counterclaim in the underlying Herbst litigation and
20 on September 13th, 2010, the liability on that claim
21 had been disclosed to Paul Morabito and the
22 defendants. So not only was there a pending claim,
23 there was liability fixed, actual damages fixed, and
24 even though it had not been reduced to a written

1 judgment, there was no question that that was
2 looming and would be entered.

3 The transfers, the timing of the transfers
4 were within days, within weeks of that oral ruling
5 and so that timing and the fact that the transfer is
6 made when the debtor has been sued and liability had
7 been fixed, that is a badge of fraud that has been
8 met by clear and convincing evidence. NRS 112.180,
9 the transfer was of substantially all of the
10 debtor's assets. There is no question there. If we
11 go to Exhibit 38, which is Paul Morabito's bank
12 account statement from September of 2010, you have
13 September 14th, a wire coming in from Consolidated
14 Western Corporation for \$933,000. That was the
15 proceeds of the Compass loan that went immediately
16 from CWC to Paul Morabito. On the heels of that,
17 receipt of that money, you had \$6 million going out,
18 a flat \$6 million, and there was testimony that that
19 money went offshore.

20 On September 21st you had \$420,250 going
21 to Sam Morabito. That was undone and then there was
22 a new transfer for \$355,000 to Sam Morabito and a
23 subsequent transfer for the \$420,250. The testimony
24 was that went to Ed Bayuk. There's no dispute that

1 went to Ed Bayuk. At the beginning of September --
2 actually, September 14th -- there was \$7,700,000
3 in Paul Morabito's bank account. By the end of the
4 month it was down to \$197,000. Substantially all of
5 the liquid cash was transferred out in
6 September 2010, inconsistent with the proposition
7 that the purpose of the subject transfers was to
8 help pay the creditors, the Herbst parties.

9 In addition to that, we have Paul
10 Morabito's financial statement. He certified to his
11 -- to the auditors of Superpumper what his assets
12 were in May of 2009. That's at Exhibit 78. There
13 was over \$90 million in assets in May of 2010 -- or,
14 pardon me, May of 2009, and then those assets were
15 confirmed in Exhibit 43 as applicable, not only in
16 2009 but 2010. I can't read the writing on this.
17 But Exhibit 78 is dated May 2010 -- pardon me --
18 certified to the auditors, Exhibit 43 is the 2009
19 and the email where Paul Morabito says, I can
20 represent that nothing has materially changed.
21 Nothing had materially changed with Paul Morabito's
22 assets, with his holdings until the oral ruling.

23 And as a result of the oral ruling and
24 nothing else -- there was no other superseding

1 event -- Paul Morabito's interests, his assets, went
2 from \$90 million with plenty that could have been
3 used to satisfy the Herbst parties to hardly
4 anything. And if we go to exhibit -- I believe it's
5 44. Ms. Salazar testified that she put together --
6 here it is -- Exhibit 44 -- she put together a
7 determination of Paul Morabito's statement of net
8 worth as of March 2nd, 2011, as part of the
9 punitive damages phase of the underlying case.

10 And we have what's left. And the network
11 is a negative 89 million, negative 89 million being
12 insolvent on a balance sheet basis and you have the
13 only assets, you have \$1 million in a bank account,
14 Raffles Insurance is valued at \$2,352,017. And you
15 have a 20 percent interest in Woodland Heights,
16 \$1,607,684. Those are -- and the real property at
17 Panorama, Reno, Nevada, at \$4.3 million.

18 I want to focus on those three material
19 assets that are listed at Exhibit 44 as the Raffles
20 Insurance Limited. The testimony in this case was
21 that as a result of the oral ruling there was a
22 determination that Paul Morabito would get the
23 Raffles asset and that the \$355,000 and the \$420,000
24 that was paid in September of 2010 to Sam Morabito

1 and Paul -- Sam Morabito and Ed Bayuk, that that was
2 in exchange for their interest in the Raffles asset.

3 That, of course, is belied -- that
4 explanation for those payments is belied by Exhibit
5 43 and Exhibit 78 because Paul Morabito had listed
6 the Raffles Insurance asset in May 2009 and May of
7 2010. He had listed that as one of his assets.
8 Beyond that, the Raffles Insurance asset was nothing
9 that the Herbst parties could collect against. As
10 Mr. Sam Morabito testified, it was an offshore
11 captive. It was an offshore captive that the Herbst
12 parties could not collect against. It was
13 certificated and remains certificated in the name of
14 CWC. There's some question of whether it went over
15 to Snowshoe Petroleum but we know for Superpumper it
16 was not certificated in the name of Paul Morabito.
17 Nobody advised the Herbsts parties when the
18 distribution was coming from the Raffles asset and
19 certainly no distribution was paid over.

20 The 20 percent interest in Woodland
21 Heights, we'll get into the detail of that, but
22 suffice it to say as set forth in Exhibit 68
23 Woodland Heights is a Canadian venture in which Paul
24 Morabito took the purported value paid to him in

1 exchange for his 50 percent interest in Baruk
2 Properties LLC and transferred it out of the U.S. to
3 Woodland Heights. Then you have the real property,
4 the value of Reno, Nevada, property at Panorama
5 Drive for 4.3 million. And, your Honor, you heard
6 Mr. Noble and Mr. Kimmel testify about the value of
7 the Reno home and the evidence was inconsistent with
8 an ultimate determination of value by Mr. Noble of
9 \$4.3 million; one, at the time of September 2010,
10 there had been no sales in Reno, Nevada, none, for
11 \$4.3 million. He testified -- Mr. Kimmel testified
12 that the Bennett home was subsequent to that for
13 8 million. Even though the cost was 25 million,
14 8 million was the price of that luxury home. Here
15 we have both Mr. Noble and Mr. Kimmel describing the
16 comparable sales. There was nothing within 18
17 months of the appraisal date of September 2010 for
18 over 3.35 million, \$3.35 million being the highest.

19 When you look at the 2010 time frame, Mr.
20 Kimmel described -- and I think the Court probably
21 has judicial notice of the fact from all the
22 deficiency actions that I'm sure you did -- that
23 2010 was not just the doldrums of the real estate
24 market. It was the bottom. 2009-2010 there was a

1 devastated real estate market and Mr. Noble did not
2 take that into account. He did not discuss or
3 acknowledge this external factor in determining a
4 \$4.3 million valuation.

5 Instead, what he did was he heavily relied
6 on a cost approach. Mr. Kimmel explained the cost
7 approach is not even applicable here because the
8 cost approach, that's used with replacement value.
9 If the building had burned, how much would it cost
10 to replace it. It's undisputed that the defendants
11 paid \$2.5 million for the property approximately
12 when they bought it and that they substantially
13 upgraded it to their taste. There were granite
14 floors and wood doors and fancy drapes. We're not
15 even questioning that. But in 2010 the Taj Mahal in
16 Reno could not sell for the amount of the cost of
17 the purchasing and improvements. There was no
18 example, not in 2009, 2010 or 2011, of a home
19 selling for \$4.3 million.

20 As Mr. Kimmel explained -- and Mr. Kimmel
21 has been doing this since 1968, as he testified,
22 here in Reno and is certainly the preeminent
23 appraiser from Reno -- he said, It wasn't my
24 preference that I not be able to do my assignment

1 until 2016 or that I was prevented access, but
2 ultimately you go back and you look at a sales
3 comparison approach and you can't ignore the market.
4 And people don't always get the amount of their cost
5 returned when they sell their property, as evidenced
6 by the sale of the ultimate sale of the Panorama
7 property in December of 2012 to Skip Avansino for
8 \$2.5 million. The property was book-ended, \$2.5
9 million when they bought it and \$2.5 million when
10 they sold it. And the upgrades, not only were those
11 costs not commensurate with the neighborhood or Reno
12 in general, but the costs were specific to the
13 defendants. And not everybody likes blue padded
14 walls and curtains a certain style and so to heavily
15 rely on the cost approach without acknowledging the
16 market is to do a disservice to the valuation and,
17 in fact, it undermines the integrity of the
18 evaluation.

19 Mr. Noble had a week to put together his
20 report, and if you review his report at Exhibit 276,
21 I think it's apparent that this was -- this was a
22 valuation that was backed into. There was a cost
23 approach that was done and then the sales comparison
24 was manufactured and manipulated in order to back

1 into that same number. It does not correspond.
2 There's no analysis that accompanies this sales
3 comparison approach, nor could there. Mr. Noble
4 couldn't testify in any detail with respect to how
5 he had taken properties at \$2.5 million, \$2 million
6 and had, as a result of his sales comparison,
7 analysis, concluded that you were over \$4 million at
8 the end of the day. He used listings to try to
9 bolster his conclusion of value but listings are
10 just that. It's hopes and dreams. It is not real
11 value.

12 So we ask that the Court rely on Mr. Kimmel
13 and his analysis, which is corroborated by the
14 common sense that in a market that we had in 2010
15 you could not sell this particular house for \$4.3
16 million. His determination of value was a more
17 appropriate \$2 million, which is right in line with
18 the bookends of the purchase and ultimate sale of
19 the property at \$2.5 million with 2009-2010 being at
20 the actual bottom of the market.

21 Mr. Kimmel testified he wasn't aware of the
22 barn. Mr. Noble gave a value of that barn of
23 \$77,000 in his cost approach. You heard Mr. Kimmel
24 say it wouldn't have changed his determination of

1 value. The most he would have changed his
2 determination after being questioned he was asked to
3 put amounts on was a couple hundred thousand
4 dollars, not material enough to change his ultimate
5 conclusion that it was still less than the bookended
6 purchase and ultimate sale of the property in 2005
7 and 2012.

8 Now, the appraisal from Mr. Noble was done
9 on September 21st, 2010. It provided the basis --
10 and this is why I submit to the Court that it was a
11 suggested price. \$4.3 million couldn't be
12 supported. It was a suggested price that Mr. Noble
13 backed into because it provided the basis, that
14 appraisal, for justifying the swap of the valuable
15 interest in the Laguna, California, property at El
16 Camino and Los Olivos. Incidentally, Mr. Bayuk
17 acknowledged in his testimony Paul Morabito lives in
18 the Los Olivos property today in 2018. Despite
19 purportedly transferring his interest to Ed Bayuk,
20 Paul Morabito lives there today and certainly has
21 otherwise been shown to control the property. But
22 there was a 50 percent interest in Los Olivos that
23 Paul Morabito held in September 2010, 75 percent in
24 El Camino. You have the sale agreement and the

1 first amendment to the purchase and sale agreement
2 at Exhibits 45 and 46 where you have a virtual swap,
3 Ed Bayuk's 30 percent interest in the Panorama
4 property here plus \$60,000. That was paid to Paul
5 Morabito -- or that value was provided to Paul
6 Morabito in exchange for 75 percent of the El Camino
7 property and 50 percent of the Los Olivos property.

8 Was that a reasonably equivalent value
9 exchange? It was not. In fact, when you look at
10 the interest before -- and we have stipulated values
11 on the California properties -- the Paul Morabito
12 75 percent interest in El Camino was worth \$427,000
13 net of any mortgage. Paul Morabito's 50 percent of
14 the Los Olivos property, mortgage was valued at
15 \$808,981. And Paul Morabito's 70 percent interest
16 in Panorama using Mr. Kimmel's valuation, \$679,795.
17 So after the transfers, Paul Morabito's interest was
18 \$971,136 with the 100 percent interest of Panorama,
19 plus he received cash of \$60,117. That was not an
20 equal swap. That was not an equal exchange.

21 Even if it had been an equal exchange, even
22 if your Honor disagrees with Mr. Kimmel and buys
23 into Mr. Noble's valuation, it doesn't mean that it
24 wasn't a fraudulent transfer. Whether or not there

1 was a reasonably equivalent exchange is one factor.
2 In order to be a defense against the transfer, not
3 only would there have to be an exchange for
4 reasonably equivalent value, but there would have to
5 be good faith in the transfer, and I'll get to the
6 lack of good faith in just a moment.

7 Now, with respect to the transfer of Baruk
8 Properties LLC, you had a Nevada LLC with Paul
9 Morabito having a 50 percent interest and right on
10 the heels of the oral ruling Paul Morabito
11 transferred his interest in Baruk Properties to Ed
12 Bayuk in exchange for a \$1,617,050 note.

13 Here I call it a sham note, and it was a
14 sham note because no value was actually provided
15 pursuant to that note. It was an illusory note.
16 When your Honor looks at value and whether or not
17 there was reasonably equivalent value outlying the
18 case law at length, your Honor must look at value to
19 a creditor. Is there value to a creditor as a
20 result of this value exchange. So if you have a
21 50 percent interest in a Nevada LLC and that
22 interest has been transferred to the Bayuk trust who
23 then transfers to Snowshoe Properties LLC, a Nevada
24 LLC who then subsequently transfers or encumbers the

1 property, you do not have a reasonable exchange of
2 value.

3 Now, if there had been a \$1,617,000 note to
4 which payments were actually made by Edward Bayuk to
5 pay Paul Morabito, then that could be subject to
6 execution, but that wasn't done here. What we had
7 was within a month of the transfer of Paul
8 Morabito's interest in Baruk Properties LLC you had
9 a conveyance and Ed Bayuk says, Well, I didn't know
10 about it but I certainly didn't pay on it. There
11 was a conveyance from Paul Morabito to Woodland
12 Heights Limited. It's an Ontario, Canada company,
13 Woodland Heights Limited, that took an assignment of
14 the \$1,617,050 note, took a complete assignment and
15 Paul Morabito executed an allonge -- Exhibit 68 --
16 an allonge acknowledged and accepted this 31st day
17 of October 2010 by Sam Morabito, President of
18 Woodland Heights Limited. And it was pursuant to
19 that allonge that then the Herbst parties were
20 prevented from collection. There was no value
21 conferred because there was no value to a creditor
22 that could be obtained.

23 Now, the particular difficulty in
24 collecting from a promissory note that had been

1 assigned to a Canadian company is, not only had it
2 been assigned and Paul Morabito had taken the
3 position that it had been assigned, but the payor
4 didn't know anything about it and, instead, said,
5 Oh, wait, I supported Paul Morabito's lifestyle. I
6 paid Paul Morabito's bills and I kept track of the
7 payments I've made and that satisfied the note
8 obligation. So there were no notes -- or no
9 payments, not one. There's not evidence of one
10 payment consistent with the terms of the note of the
11 \$1,617,000 note.

12 Instead, what we received was a payment
13 schedule and the backup, the backup being at Exhibit
14 270. And recall that we went through with Mr. Bayuk
15 and talked about the checks and the credit card
16 statements where he said that he had applied these
17 payments to the note obligation. Mr. Gilmore at the
18 beginning of this case said the quintessential
19 fraudulent transfer case is somebody buying a
20 Ferrari and putting it in the garage of the debtor
21 and letting him drive it because the creditor
22 doesn't have any ability to execute on that Ferrari,
23 yet the debtor enjoys it. That is precisely what Ed
24 Bayuk described, I support his lifestyle. It's not

1 anything for the creditor, but Paul Morabito's going
2 to travel, he's going to drive a fancy car, he's
3 going to live in a fancy house, and he's going to
4 have fancy ties and I'm going to support it. That
5 is delaying, hindering, and preventing collection
6 from the Herbst parties.

7 To add insult to injury, when we went
8 through the list of payments, we had payments that
9 preceded the date of the note, September 2010, prior
10 to the date of the note, and then we had payments to
11 contractors for the benefit of the Panorama property
12 that was conferred to Paul Morabito. That was
13 \$1,790. But we get to other contractors and you
14 might assume, Oh, that must have been for the
15 Panorama house as well. No. That was for the Los
16 Olivos house. The Laguna house, all paid subsequent
17 to Paul Morabito's sale of his interest in Baruk
18 Properties, sale, transfer to Ed Bayuk. So you had
19 Ed Bayuk improving the property that he owns and
20 attributing the cost paid to Paul Morabito. Then
21 you had the payments to Bank of America, to counsel
22 for Paul Morabito all for Paul Morabito. You had
23 the payment of the mortgage that had already been
24 deducted in a determination of value. That was

1 included in this list of payments. Comerica, it
2 says payments on behalf of Paul Morabito, Ed Bayuk
3 said, I don't even know what that is, it's a
4 mistake, in his testimony. Suffice it to say, other
5 than the ties from the credit card that Ed Bayuk
6 gives to Paul Morabito to pay for his expensive
7 clothes shopping, these payments were not actually
8 to the benefit of Paul in exchange for his
9 50 percent interest in Baruk Properties. That
10 value, this \$1,617,000 outlined in the note executed
11 at the time of the transfer did not result in value,
12 not in value to the creditors including the Herbst
13 parties and certainly not reasonably equivalent
14 value in exchange for the 50 percent interest.

15 Now, one of the transfer categories was
16 Superpumper. And this is complex because there was
17 a litany of transfers all within a couple of weeks.
18 First, at the time of the oral ruling you have Paul
19 Morabito owning 80 percent of Consolidated Western
20 Corporation, a Nevada corporation. What does that
21 mean? Well, when an order and judgment were finally
22 entered and Paul Morabito had retained his interest
23 in Consolidated Western Corporation, then the Herbst
24 parties could get a charging order and distributions

1 would be paid to satisfy the judgment. It would be
2 that easy to execute on Paul Morabito's interest in
3 Consolidated Western Corporation.

4 Ed Bayuk testified that he didn't want to
5 have the Herbst parties involved in his business and
6 the business of Superpumper. He didn't want them to
7 be involved in the business of Baruk Properties LLC,
8 that the Herbst parties don't have a right under the
9 law to interfere with the business. That
10 explanation is without merit. Under the law as well
11 as under the facts, there was not a separation of
12 Paul and Ed's interest because they wanted to make
13 things easier for the Herbst parties; otherwise,
14 they wouldn't have continued to be business partners
15 including regarding the Versanet property that we
16 heard testimony about in which Ed Bayuk came to own
17 a 20 percent interest of Versanet. They continued
18 to be business partners, but here the explanation is
19 we wanted to make it easier for the Herbst parties
20 and we didn't want the Herbst parties interfering
21 with our business, something they would never have
22 the right to do.

23 Now, the value of 80 percent of
24 Consolidated Western Corporation, the owner of

1 100 percent of Superpumper at the time of the
2 transfer in September of 2010, was \$10,440,000
3 excluding the Raffles asset and excluding the
4 Compass loan proceeds. \$10,440,000 is 80 percent of
5 the \$13,050,000 that was the valuation of James
6 McGovern. Now, first's let's talk about the
7 stripping of the equity prior to the transfer of
8 Paul Morabito's interest in Superpumper. If the
9 Raffles asset had not been -- or the beneficial
10 interest in the Raffles asset had not already been
11 conferred to Paul Morabito as outlined in his
12 financial statements, the value of the Raffles asset
13 as of September 30th, 2010, was undisputedly
14 \$2,234,175. That's Exhibit 2456. We heard
15 testimony that this summary of the Raffles asset as
16 of September 30th, 2010, had been ordered by the
17 defendants.

18 That asset, if it hadn't already been
19 removed, it was removed in September of 2010 prior
20 to the valuation of Superpumper. Nobody who valued
21 Superpumper in September of 2010 or Matrix in August
22 of 2010 included the Raffles asset as part of the
23 valuation. Again, the Raffles asset, an offshore
24 captive, was not something that could be executed

1 upon by the Herbst parties because it was not
2 certificated in the name of Paul Morabito and there
3 were no ready -- or the distributions were not
4 scheduled, and you heard testimony about that by
5 Mr. Bayuk and Mr. Morabito. There were no scheduled
6 distributions and certainly no turnover of
7 distributions to the Herbst parties, no evidence of
8 distributions to Paul Morabito either.

9 The one thing we know about the Raffles
10 asset is, though it was certificated in the name of
11 CWC and Snowshoe subsequent to September 2010, the
12 -- it was used at the whim of Paul Morabito and the
13 defendants to be an asset of CWC, of Paul Morabito
14 as they deemed fit. It depended on the use. So you
15 have an Exhibit 75 the use of the Raffles asset to
16 reduce the Paul Morabito letter of credit to the
17 benefit of his other creditor, Bank of America.
18 Exhibit 129 we have a discussion of January 2012,
19 Where should we put the Raffles asset? Should we
20 put it in Snowshoe or keep it in CWC?

21 One thing nobody ever discusses here is
22 that the asset be placed with Paul Morabito or in
23 Paul Morabito's name. At Exhibit 128 Dennis Vacco
24 says to Ed Bayuk, counsel, the accountant, Sam

1 Morabito, Paul Morabito, just asking the question,
2 "Are there any tax consequences associated with
3 placing Raffles in Snowshoe?" Nobody ever talking
4 about Paul Morabito. Yet Paul Morabito justifies
5 his payments of cash \$355,000 to Sam Morabito,
6 \$420,000, to Ed Bayuk in September 2010 as
7 consideration for that Raffles asset.

8 Now, the Compass loan. There was a \$3
9 million Compass loan from August of 2010. It was a
10 loan to CWC and the loan agreement is in the
11 exhibits. You have the oral rulings September 13th,
12 2010, and the very next day, September 14th, 2010,
13 you have distribution of substantially all of the
14 Compass loan proceeds from CWC to Paul Morabito, Sam
15 Morabito, and Ed Bayuk. \$933,000 apiece. They each
16 took the \$933,000.

17 By the time of the transfer of Paul
18 Morabito's interest in CWC and therefore
19 Superpumper, at the end of September Ed Bayuk and
20 Sam Morabito had repaid \$659,000 apiece of those
21 Compass loan proceeds back into Superpumper. Why is
22 this important? Because when value for Superpumper
23 was determined by the defendants, Paul Morabito, and
24 their joint counsel, they used the fact of the

1 Compass loan proceeds as a deduction. They said
2 there should be a deduction of \$3 million from any
3 valuation of Superpumper because that was value that
4 had been removed.

5 Well, not all the value was permanently
6 removed. It ignores the \$659,000 apiece that was
7 repaid by Ed and Sam before closing. It also
8 ignores the \$939,000 note executed by Paul Morabito
9 that was his promise to repay the Compass loan
10 proceeds. So Compass loan debt, there was a promise
11 to repay it. Again, the defendants, Paul Morabito,
12 they talk out of both ends of their mouth. It was
13 -- there was a note. There was a note for \$939,000,
14 so there was a promise to repay that portion of the
15 Compass loan from Paul Morabito.

16 At the same time that the defendants, Paul
17 Morabito, they all describe these notes as without
18 consideration and ultimately by orchestrating a
19 merger at the time of the closing where you had a
20 merger of CWC with Superpumper, they said, Well,
21 everything was wiped out as a result of the merger.
22 The merger was actually a separate transaction, a
23 separate transfer that was designed to strip the
24 value of Superpumper to, again, reduce the amount of

1 assets at least at the time of the transfer on that
2 particular day.

3 The Compass loan was not in real danger of
4 bringing down Superpumper. You had some histrionics
5 and Sam Morabito said that was the purpose he had
6 for buying Paul Morabito's interest in Superpumper,
7 was he wanted to resolve the Compass loan issue.
8 Well, if we look at the Compass loan communications
9 from the relevant time period of September 2010 to
10 October 2010, the very first time there was any
11 communication with Compass was September 24th,
12 2010, and you had an email from Paul Morabito
13 confirming a conversation where he advised Compass
14 of a default. And Sean Hollenbeck says it's his
15 intention to work with Superpumper and put the loans
16 back into compliance.

17 THE COURT: What exhibit were you just
18 looking at?

19 MS. TURNER: Can you find it?
20 September 24th.

21 MR. GILMORE: I think it's 33.

22 MS. TURNER: Thank you, counsel. 33.

23 You have the followup Exhibits 231 to 252
24 dated September 30th, 2010, from Compass and a

1 followup from counsel for Compass and both of them
2 describe what was self-reported default that they
3 were -- they weren't calling the loans. They
4 weren't threatening the lawsuit. They were
5 preserving the covenants being tripped and saying,
6 We're going to work with you. And ultimately they
7 did work with Superpumper. There was no action
8 adverse to the company, but for a reduction in the
9 line of credit from 3 million to \$2.5 million.

10 Now, as described in the letter of
11 October 15th, 2010, from counsel -- and I believe
12 it's also discussed in the September 30th -- there
13 was a line of credit for 3 million that actually
14 came due in November of 2010. The purpose of the
15 term loan for 3 million -- so you had the line of
16 credit for 3 million and then you had the term loan
17 from August 2010 for 3 million that was distributed
18 to the owners, what was the purpose of that
19 August 2010 term loan? The defendants never testify
20 about it, Paul Morabito never testifies about it.
21 But in the correspondence from Compass they describe
22 the line of credit came due November 2010 and there
23 was a failure to pay when it became due.

24 I submit that the \$3 million term loan

1 could have been used to resolve the issue with the
2 line of credit coming due, that that \$3 million
3 could have been applied and that was probably the
4 purpose of the term loan. But instead of satisfying
5 the term loan obligation -- or, I mean, the line of
6 credit obligation in November 2010, the term loan
7 proceeds were distributed out to the defendants and
8 Paul Morabito.

9 So if there was a default as a result of
10 the Compass loan proceeds being distributed and the
11 line of credit not being resolved, that was a
12 problem, a default created by the defendants and
13 Paul Morabito. It could have been avoided. It
14 should have been avoided. It certainly doesn't
15 justify a \$3 million reduction in the pricing or the
16 valuation of Superpumper's equity at the time of the
17 transfer.

18 Now, the value of Superpumper's equity, we
19 have testimony and documents indicating various
20 values from various sources. You have May of 2010
21 Paul Morabito's email of -- what's that number? I
22 didn't write it down. This is the -- I'll get you
23 the exhibit number -- May 20th, 2010, Paul
24 Morabito indicates to his counsel as well as third

1 parties that the value of his 100 percent interest
2 in CWC is \$30 million. And in response to that \$30
3 million valuation, which, by the way, is consistent
4 with the certified financial statements that Paul
5 Morabito provided the auditors that we already
6 looked at, he put a \$30 million valuation there as
7 well. And then he reduced it to \$20 million as it
8 suited him in March of 2010, but \$20 to \$30 million
9 from Paul Morabito in the spring of 2010. Your
10 Honor, that was Exhibit 77. No superseding events
11 from May of 2010 to September 2010 but for the oral
12 ruling and in \$20 to \$30 million range that we saw
13 in the spring of 2010, including the certified \$30
14 million to the auditors, that gets reduced to
15 \$6,485,000 as of August 30th, 2010, and that's by
16 Spencer Cavalier of Matrix.

17 And he values the Superpumper equity as of
18 September 30th, 2010, without valuing the notes or
19 accounts receivable called "due-froms" -- the
20 "insider receivables" might be the best way of
21 referring to it -- the insider receivables payable
22 from the owners to Superpumper and without
23 explanation. Spencer Cavalier just did not value
24 those -- did not value those insider receivables as

1 part of his \$6,485,000 valuation. You have
2 September 30, 2010. That's the date of the transfer
3 of Paul Morabito's interest in CWC and Mr. McGovern
4 provides a valuation of \$13,050,000.

5 Now, interesting, Spencer Cavalier of
6 Matrix and Mr. McGovern both come to roughly \$6.5
7 million as their value of the operating assets, the
8 value of Superpumper -- or the equity in
9 Superpumper, I should say -- as of this
10 August-September 2010 time frame. The difference
11 with Mr. McGovern's valuation from Spencer
12 Cavalier's is he also includes a value of \$6,550,000
13 for the insider receivables and other non-operating
14 assets, saying that a buyer would be interested in
15 those receivables so long as they're collectable.

16 And you can't ignore those -- that value if
17 they are collectable. So we have an analysis that
18 was done on whether or not they were collectable.
19 If you go back to the documents on the Superpumper
20 books, the Superpumper balance sheets, financial
21 statements, including the audited financial
22 statements, they provide color on whether the
23 insider receivables were indeed collectable as of
24 September 2010.

1 Exhibits 117 and 241 are the balance sheets
2 that show -- well, it's on balance sheet. This is
3 an unaudited balance sheet but it's on the balance
4 sheets that there are notes receivable and you see
5 the \$7,683,918 amount as of August 2010. When a
6 receivable is no longer deemed collectable, then
7 it's up to management to remove the receivable from
8 its balance sheet. We heard testimony on that.
9 Here the December 2010 balance sheet has the very
10 same notes receivable as we saw in August of 2010 as
11 well as September 2010. The notes receivable
12 remained on the books of Superpumper.

13 Now, Superpumper was audited as required by
14 Compass and at Exhibit 114 we have the audited
15 financial statements audited by Gursey Schneider and
16 we have other assets that match up. The due-from
17 affiliates is that same \$7,683,918 number and it's
18 included on the balance sheet for December 2009. So
19 all the way through 2009 it remained on the balance
20 sheet, same amount that we see in the 2010 unaudited
21 balance sheets. And we have Gursey Schneider
22 actually look at those particular receivables and
23 they provide a note, Note 8 "Related-party
24 transactions," and they describe over 6.6 million of

1 the advances to shareholders as due on demand.

2 So these are due on demand and you heard
3 testimony from Mr. McGovern that he categorized them
4 as current because they were due on demand. Gursey
5 Schneider said they're noncurrent because they
6 wouldn't be collected within that year. There's no
7 expectation that they would be collected within that
8 year. But it was a dispute without a difference
9 because whether they were current or noncurrent
10 doesn't resolve whether or not they were assets to
11 be considered. Whether they're assets to be
12 considered is whether or not they are recoverable,
13 whether or not they're actually recoverable. And
14 you had testimony from Mr. McGovern on that point as
15 well as Mr. Kraus from Gursey and there was a
16 determination at Exhibit 118 by Gursey Schneider
17 acknowledged by Paul Morabito that said the
18 financial statements included all significant terms
19 for the amounts due from affiliates. And this is on
20 the last page of the exhibit, your Honor, 118.

21 "We believe these amounts to be fully
22 recoverable," and that determination followed an
23 analysis of Paul Morabito's wherewithal at the time
24 and his ability to pay those obligations when due as

1 well as his willingness. In March of 2010, so six
2 months prior to the transfer, Paul Morabito is
3 acknowledging that the due-froms, the affiliate
4 receivables were fully recoverable. Paul Morabito
5 acknowledged that. If they weren't recoverable,
6 that was in the control of Paul Morabito up through
7 the date of transfer and you heard testimony it all
8 went away at the time of transfer. It all went away
9 by virtue of the merger, which is certainly the
10 purpose for the merger, it all went away. But they
11 didn't. To verify that these were real, that these
12 were real items on the books of Superpumper that
13 would provide value to an arm's length purchaser,
14 let alone these insiders, the obligations were
15 restated.

16 The very same obligations were restated in
17 the form of new promissory notes, written promissory
18 notes executed by Sam Morabito and Ed Bayuk as the
19 new equity owners for Superpumper. You have
20 Exhibits 123 and 124 where they executed new notes.
21 Sam Morabito said they weren't supported by any new
22 consideration. They were new notes to support the
23 affiliate receivables that had been on the books
24 prior to the time of transfer, and whether or not

1 the merger took them off the books for the day of
2 the transfer, they were put back on. They were
3 confirmed as due-from-affiliate obligations for
4 2010. If we go to Exhibit 120, which was the
5 financial statements from December 2010 and the page
6 13 of -- we have a description of the new notes
7 identifying the new Ed Bayuk and Sam Morabito notes.

8 In addition to the Sam and Ed notes, you
9 have Paul Morabito broken out and he has three
10 separate obligations outlined as of December 2010.
11 And I note that because one of the hallmarks of an
12 arm's-length transaction when someone comes in and
13 purchases a company or equity in a company such as
14 Paul Morabito, you would expect that he would
15 resolve his obligations to the company. Instead, we
16 have the Paul Morabito obligation of \$939,000 for
17 his distribution from the Compass loan proceeds as
18 well as two other loan obligations to Superpumper
19 remaining with Superpumper after he purportedly sold
20 his interest to Ed and Sam where you had --
21 Superpumper had the right to offset any payment to
22 Paul Morabito or, by an extension, Snowshoe would
23 have been able to offset these amounts so that Paul
24 Morabito, again, received no value. So -- and we