

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No. 79355

Electronically Filed
Jun 02 2020 06:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANTS' APPENDIX, VOLUME 55
(Nos. 9530–9765)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 6

IN THE SECOND DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CONSOLIDATED NEVADA CORP., et al,
Plaintiffs,

VS.

No. CV07-02764

JH, INC., et al.,
Defendants.

VIDEOTAPE DEPOSITION OF PAUL A. MORABITO
LOS ANGELES, CALIFORNIA
THURSDAY, MARCH 3, 2011

REPORTED BY:
Mary Jo Saul
CSR No. 8820, RPR, CLR

FOR ATTORNEYS EYE'S ONLY * CONFIDENTIAL*

1 VIDEOTAPE DEPOSITION of PAUL A. MORABITO, taken on
2 behalf of the Defendants/Counterclaimants JH, INC., at
3 5757 West Century Boulevard, 7th Floor, Los Angeles,
4 California, on Thursday, March 3, 2011, at 9:03 A.M.,
5 before Mary Jo Saul, CSR No. 8820, RPR, CLR, pursuant
6 to Notice.

7

8

9 APPEARANCES:

10

11 FOR THE PLAINTIFFS:

12 ROBISON, BELAUSTEGUI, SHARP & LOW
13 BY: Barry L. Breslow, Esq.
14 71 Washington Street
Reno, Nevada 89503

15 LIPPES, MATHIAS, WEXLER, FRIEDMAN, LLP
16 BY: Dennis Vacco, Esq.
17 665 Main Street, Suite 300
Buffalo, New York 14203
(716) 853-5100

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1 APPEARANCES (Continued):
2 FOR THE DEFENDANTS AND COUNTERCLAIMANTS JH, INC.:
3 JONES VARGAS
4 BY: John P. Desmond, Esq.
5 Brian R. Irvine, Esq.
6 100 West Liberty Street
7 12th Floor
8 Reno, Nevada 89504
9 (775) 786-5000
10
11 ALSO PRESENT:
12
13 CRAIG SCHUMACHER, Videographer
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I N D E X

WITNESS	EXAMINATION	PAGE
PAUL A. MORABITO	BY MR. DESMOND	6

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E X H I B I T S

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2	Paul A. Morabito's Third Supplemental Response	164
3	Paul A. Morabito's Sixth Supplemental Response	206
4	Paul A. Morabito's Fifth Supplemental Response	212
5	Plaintiff's answers to defendants' interrogatories	214
6	List of assets, one page	218

1 LOS ANGELES, CALIFORNIA; THURSDAY, MARCH 3, 2011

2 9:03 A.M.

3

4 P R O C E E D I N G S

5

6

7 THE VIDEOGRAPHER: Good morning. We are on
8 the record at 9:06 a.m., March 3, 2011 for the
9 videotape deposition of Paul Morabito. We are
10 taping this deposition at 5757 West Century
11 Boulevard in Los Angeles, California in the action
12 entitled Consolidated Nevada Corporation versus JH,
13 Inc., Case No. CV 0702764.

14 My name is Craig Schumacher. I'm the video
15 production specialist from L.A. Reporters located in
16 Century City, California. This is DVD No. 1 of
17 volume 1.

18 Would counsel and all present please
19 identify yourselves for the record.

20 MR. DESMOND: John Desmond from Jones
21 Vargas for Defendants and Counter-claimant JH.

22 MR. IRVINE: I'm Brian Irvine with Jones
23 Vargas, also on behalf of JH.

24 MR. BRESLOW: Barry Breslow on behalf of
25 the Plaintiff, Counter-defendants.

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1 MR. VACCO: Dennis Vacco, Lippes, Mathias,
2 Wexler, Friedman on behalf of the Plaintiffs.

3 THE WITNESS: Paul Morabito.

4

5 PAUL A. MORABITO,
6 having first been duly sworn, was
7 examined and testified as follows:

8

9 EXAMINATION

10 BY MR. DESMOND:

11 Q Good morning, sir. Would you please state
12 your full name and spell your last name for the
13 record.

14 A Paul Anthony Morabito, M-o-r-a-b-i-t-o.

15 Q Mr. Morabito, I know you have been deposed
16 before. But just so we are on the same page with
17 respect to this deposition, I do want to run through
18 some of the ground rules.

19 You have been given an oath by the court
20 reporter. It's the same oath as if you were
21 testifying in a court of law.

22 Do you understand that?

23 A Yes.

24 Q So we can get a clear record of everything
25 that is being said here today, I will ask that you

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1 wait for me to finish my question, and I will try
2 not to talk over you, and I ask that you do the same
3 for me.

4 Do you understand that?

5 A Yes.

6 Q If you do not understand my question for
7 any reason, please ask me to rephrase it or to say
8 it in better detail. If you do answer the question,
9 I will assume that you understood it.

10 Do you understand that?

11 A Yes.

12 Q The court reporter will take down
13 everything we say here today in transcript form,
14 which you will have the opportunity to review and
15 make corrections. If you do make any corrections,
16 either side can comment on those at the time of our
17 next hearing or court proceeding.

18 Do you understand that?

19 A Yes.

20 Q If at any time you need to take a break
21 during the deposition, please let me know. I'm
22 happy to accommodate that. The only time we can't
23 take a break is if there is actually a question
24 pending.

25 Do you understand that?

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1 A Yes.

2 Q Is there any reason that we can't go
3 forward with the deposition here today?

4 A No.

5 Q Did you bring any documents with you today
6 to the deposition today?

7 A No.

8 Q Have you provided documents to your counsel
9 that you believe have been responsive to some
10 discovery requests we propounded?

11 A Yes.

12 Q In gathering those documents, did you,
13 yourself, perform that task?

14 A Yes.

15 Q Did anyone assist you with that?

16 A Yes.

17 Q Who assisted you with gathering some of
18 those records?

19 A The people at the banks that I called.

20 Q Those were people either at the banks, or
21 was there anyone from your end of the equation who
22 assisted you in trying to search for or locate
23 records?

24 A Just to photocopy things.

25 Q Where do you house or store most of your

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1 financial records or records relating to different
2 corporate entities in which you have an interest?

3 A With my accountants.

4 Q Who would those be?

5 A Stan Bernstein.

6 Q Did most of the records that you provided
7 to your counsel come from Mr. Bernstein's files?

8 A No.

9 Q You maintain copies of those files?

10 A No. I got them to give to you.

11 Q But you got them from Mr. Bernstein?

12 A No. I went on line to credit card
13 companies and the banks and things and printed them.

14 Q You are the individual who accesses those
15 records yourself?

16 A I can, yes.

17 Q Do you have any bookkeeper or assistant who
18 helps you manage your financial records or corporate
19 records?

20 A Manage them? No. I have a secretary at
21 the office who helps me assemble things and puts
22 things together.

23 Q Who is that?

24 A Virginia Salizar.

25 Q Does she work for you down here in Southern

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1 California?

2 A Yes.

3 Q With respect to the corporate records that
4 you produced -- and by that I mean some of the
5 operating agreements or amendments to operating
6 agreements, amendments to trust agreements -- where
7 are those stored?

8 A With my lawyers.

9 Q In providing copies of those to your
10 counsel, did you get copies from your lawyer, or did
11 you have copies yourself?

12 A I believe the lawyer provided them
13 directly.

14 Q The reason I'm asking, for instance, on the
15 Arcadia Trust, there are some amendments to the
16 trust which we don't have, and I'm trying to get a
17 sense of whether those are records that might be in
18 your possession or whether they would be in your
19 lawyer's or somebody else's possession.

20 A I don't have them.

21 Q Who prepared the original trust documents
22 for the Arcadia Trust?

23 MR. BRESLOW: Let me interject. I think we
24 had a short, off-the-record discussion before the
25 deposition to the effect that the entire transcript

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10

1 and the video recording will be deemed confidential
2 pursuant to the stipulated protective order.

3 Is that acceptable?

4 MR. BRESLOW: That's acceptable subject to
5 our right to use portions of the deposition and the
6 video deposition in conformance with the stipulated
7 protective order. If there is portions of it which
8 we want to challenge the confidentiality of, we
9 reserve the right to do so.

10 MR. DESMOND: Understood.

11 BY MR. DESMOND:

12 Q The question was who prepared the original
13 documents creating and settling the Arcadia Living
14 Trust?

15 A I don't remember who did the 1998 trust. I
16 don't remember the attorney.

17 Q How about with respect to the latest
18 amendment? I believe it was the fifth amendment
19 that was prepared last September. Do you know who
20 did that?

21 A All the amendments would have been done by
22 me.

23 Q You would have done the drafting yourself?

24 A Yes.

25 Q In doing that, did you rely on any forms,

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1 or did you -- what guided you in the drafting of
2 those documents?

3 A I would have the last version just updated
4 and save it as the new version.

5 Q Did you have anyone review any of the
6 language of the trust documents before you went
7 ahead and put it in final form and signed it?

8 A No.

9 Q What about with respect to some of the
10 amendments or changes that were made to different
11 corporate entities in which you have an interest?
12 Such as amendments to an operating agreement or
13 changing ownership interest in certain entities,
14 there are some documents that were produced related
15 to that? Are you familiar with that?

16 A I think so.

17 Q Do you know who prepared those corporate
18 documents?

19 A It would be my attorneys.

20 Q Who principally would that be?

21 A Dennis Vacco.

22 Q Previously we had deposed Ms. Yalamanchili,
23 and I know she had done some work for you in the
24 past. Did she do any of the work with respect to
25 changes you made to some of the corporate entities

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1 in 2010?

2 A I don't believe so.

3 Q In the last deposition we reviewed your
4 educational background. I won't go through that
5 again, but since you answered that you prepared some
6 trust documents, have you received any formal
7 training in trust law or in the preparation of trust
8 documents?

9 A No.

10 Q Have you taken any courses or seminars on
11 trust law, either under the state law of California
12 or any other trust laws that may govern?

13 A No.

14 Q So your education on this was based solely
15 on versions of prior documents that you may have
16 had?

17 A Yes.

18 Q What do you consider to be your primary
19 residence as of today?

20 A My apartment at 9255 Doheny Road.

21 Q Could you spell the name?

22 A D-o-h-e-n-y.

23 Q And where is that located?

24 A In West Hollywood.

25 Q How long has that been your primary

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1 residence?

2 A I rented it in August of 2010.

3 Q What's the term of that lease?

4 A One year.

5 Q What's the monthly rent?

6 A I think it's \$8,200.

7 Q Are there any other residences where you

8 currently reside?

9 A No.

10 Q I know you previously resided in residences

11 for instance in Laguna Beach. Do you no longer

12 reside at those residences?

13 A As a full-time resident?

14 Q Or even part time?

15 A Part time I visit my boyfriend in Laguna

16 and at the house in Palm Springs.

17 Q Just for the record --

18 A Bayuk, B-a-y-u-k.

19 Q Does Mr. Bayuk reside with you at the

20 Doheny Road address, or is he principally at the

21 Laguna Beach property?

22 A Principally at the Laguna properties.

23 Q To clarify, when you say you reside part

24 time at the Laguna properties, could you identify

25 the addresses of those?

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14

1 A The Laguna Beach property is 371 El Camino
2 Del Mar, and the Palm Springs residence is 1254 Mary
3 Flemming Circle.

4 Q Are any of the residences in which you have
5 had an interest currently up for sale?

6 A Would you ask that again?

7 Q Sure. Are any of the residential
8 properties in which you have had an interest
9 currently up for sale?

10 A I don't believe so.

11 Q What about the Panorama Drive property in
12 Reno? Is that currently up for sale?

13 A No.

14 Q But you previously had an ownership
15 interest in that?

16 A I own Panorama Drive.

17 Q You own it today?

18 A Within the trust, yes.

19 Q That's a property that's currently owned
20 100 percent by the Arcadia Living Trust?

21 A Yes.

22 Q Was that property transferred in the last
23 year to the Arcadia Living Trust?

24 A I believe it was -- my portion was always
25 in the Arcadia Living Trust, I believe.

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15

1 Q When you say your portion of it, is it a
2 shared ownership?

3 A At one point in time it was, yes, when we
4 originally bought it.

5 Q What was your percentage share of the
6 ownership?

7 A I don't recall.

8 Q But now it's owned 100 percent by Arcadia?

9 A Yes.

10 Q When was ownership of that property
11 transferred to Arcadia?

12 A In September of 2010.

13 Q What was the purpose of that transfer?

14 MR. BRESLOW: I object to the form.

15 This requires you to divulge confidential
16 communications of legal advice, so you don't testify
17 to that. If you have an understanding separate and
18 apart from that.

19 BY MR. DESMOND:

20 Q I'm not asking for any advice that you have
21 had with your attorneys, but if you can answer the
22 question as to why you transferred that property
23 without divulging those communications, I would ask
24 you do so.

25 MR. BRESLOW: I just want to make sure your

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1 answer doesn't begin with "my lawyer said" or "on
2 the advice of my lawyer." If you did it for a
3 purpose other than lawyers, or if you can explain
4 the context, I encourage you to do so.

5 THE WITNESS: Edward and I had joint
6 ownership of two or three residential properties.
7 With the resulting ruling that occurred in September
8 he asked that he be either taken out, or we separate
9 our interest in what we have, so we arranged to have
10 all of the properties appraised at market value and
11 traded value so he would own something, and I would
12 own something at the same value.

13 BY MR. DESMOND:

14 Q Did he have a discussion with you why he
15 wanted that to be done?

16 A He didn't want to be involved. The judge
17 had found him innocent in this case, and he didn't
18 want to be involved with me owning things anymore.

19 Q Were you attempting to separate your
20 interest in property from Mr. Bayuk's?

21 A Yes.

22 Q And tell me other than the Panorama
23 property what other properties that was done with?

24 A The Laguna Beach and the Palm Springs
25 residence.

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1 Q To clarify, with Laguna are we talking
2 about two different properties? Is there also -- I
3 think they are adjoining, but there is also one in
4 Los Olivos?

5 A They are adjoining properties.

6 Q But two separate residences?

7 A It was a guest house and a main house.

8 Q And both of those, what was the original
9 ownership of or the ownership of those prior to
10 September of 2010?

11 A With both of us.

12 Q After September 2010 who are those
13 properties transferred to?

14 A I own the Panorama house in the trust, and
15 Edward, I don't know how he titled the properties.

16 Q Did you pay Mr. Bayuk for his interest in
17 the Panorama property before it was transferred to
18 Arcadia?

19 A I think we had everything valued, and then
20 whatever the value was traded so they would be the
21 same values but individual properties.

22 Q Did any actual money change hands?

23 A I don't remember.

24 Q The Panorama property, do you recall what
25 the appraisal amount was on that property?

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1 A It was about \$4 million.

2 Q Then public records for that property

3 indicate that it was transferred to the Arcadia

4 trust for approximately \$900,000. Does that sound

5 familiar?

6 A I don't know.

7 Q Do you recall there being a transaction

8 where that property was sold to Arcadia for

9 \$900,000?

10 A I don't recall selling it to Arcadia.

11 Q Then you said the Palm Springs property,

12 was that the -- I think it's Mary Claire?

13 A Mary Flemming.

14 Q -- the Mary Flemming address?

15 A Yes.

16 Q How was that property held prior to

17 September of 2010? What was the ownership of the

18 property?

19 A Joint.

20 Q Joint, you and Mr. Bayuk?

21 A Yes. I think my trust is. I don't

22 remember.

23 Q Do you know if your percentage was equal or

24 one of you had a higher percentage of ownership?

25 A I am guessing at percentages.

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19

1 Q Who or what entity was the property
2 transferred to?
3 A Mr. Bayuk's trust.
4 Q Okay.
5 A We went from owning something together to
6 owning it individually but with the same values.
7 Q Are you a beneficiary of Mr. Bayuk's trust?
8 A I don't know. I don't believe so.
9 Q Have you ever seen the trust documents for
10 Mr. Bayuk's trust?
11 A Yes.
12 Q Do you know who prepared those documents?
13 A No.
14 Q You have no idea whether you are a
15 beneficiary on that?
16 A No. I doubt it, but no.
17 Q Why do you doubt that?
18 A Because I presume it would go to his
19 family.
20 Q But Mr. Bayuk is a beneficiary of the
21 Arcadia Trust?
22 A Yes.
23 Q As is your brother, Sam?
24 A Yes.
25 Q Have their respective interests as

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1 beneficiaries changed since the fifth amendment, I
2 believe it was 70 percent to Mr. Bayuk and 30
3 percent to your brother, Sam?

4 A That's what it is, yes.

5 Q And that hasn't changed since the fifth
6 amendment?

7 A No.

8 Q In that fifth amendment to the Arcadia
9 Trust, you state that you are a resident of West
10 Hollywood, California?

11 A Yes.

12 Q How long have you been a resident of West
13 Hollywood?

14 MR. BRESLOW: If you are asking for a legal
15 opinion or conclusion, I object to the form. If you
16 are asking for an understanding.

17 BY MR. DESMOND:

18 Q What's your understanding of how long you
19 have been a resident of West Hollywood?

20 A Since the fall of 2010.

21 Q The residency is your original -- the
22 original document creating the Arcadia Trust, which
23 I believe was 1998, indicated you were a residence
24 of West Hollywood as well?

25 A I went from living in 1998 in California,

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1 moved to Florida, went back to California, moved to
2 Nevada and back to California over the course of
3 this several years.

4 Q Do you consider yourself to still be a
5 Nevada resident?

6 A No.

7 Q Because I believe you testified at trial --
8 I can't recall the dates specifically, but sometime
9 last summer that you did consider yourself to be a
10 Nevada resident?

11 A At the time, yes.

12 Q When did that change?

13 A In the fall of 2010.

14 Q Was that after the judge's ruling in the
15 case?

16 A Yes.

17 Q What prompted you to make that change?

18 A I decided to move to California.

19 Q Did the judge's ruling have anything to do
20 with that decision?

21 A I already signed the lease for this
22 apartment in August prior to the judge's ruling.

23 Q Do you still maintain a Nevada driver's
24 license?

25 A No.

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1 Q I believe, again, sometime around the time
2 of trial you testified you had a Nevada driver's
3 license?
4 A I did.
5 Q When did you give that up?
6 A In the fall of 2010.
7 Q Around the time that you became a resident
8 of California?
9 A Yes. You only have so many days to give up
10 your license.
11 Q At that time did you obtain a California
12 driver's license?
13 A Yes.
14 Q Do you still currently consider yourself to
15 be a California resident?
16 A Yes.
17 Q Do you consider yourself to be a resident
18 of any other states?
19 A No.
20 Q Other than the change in driver's license
21 from Nevada to California, did you change any other
22 personal identification or contacts that you had
23 with the State of Nevada?
24 A I have no contacts now in the State of
25 Nevada other than...

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1 Q You no longer have an interest in any
2 Nevada corporate entities such as --
3 A I'm sorry?
4 Q -- such as limited liability companies?
5 A I have a property company in Nevada which
6 owns three car lots up in Elko. I still have the
7 interest in the house. So I have assets in Nevada.
8 I no longer vote in Nevada. I'm registered to vote
9 in California.
10 Q Have you continued to visit Nevada, visit
11 the property?
12 A No.
13 Q When was the last time that you were in
14 Nevada?
15 A September 13th.
16 Q You haven't been back since then?
17 A No.
18 Q Has all your time since then been spent in
19 California?
20 A Principally, yes.
21 Q Your current address is the 9255 Doheny
22 Road?
23 A Yes.
24 Q What's a current telephone number?
25 A 310-339-0475.

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1 Q How about an e-mail address?
2 A Pagm88@gmail.com.
3 Q Pagm88?
4 A At gmail.
5 Q What's your Social Security number, sir?
6 A 603 -- I don't remember. I forget. I can
7 get it to you.
8 Q What I can do is we can leave a blank in
9 the deposition and you can fill it in.
10 (Information to be supplied: _____
11 _____
12 _____.)
13 BY MR. DESMOND:
14 Q Other than that, have you ever used any
15 other Social Security numbers other than the 603 one
16 with the other digits which you will fill in?
17 A My Canadian.
18 Q Do you recall what that is?
19 A No.
20 Q Do you still maintain an active Social
21 Security number in Canada?
22 A I believe I have one. I assume it's active
23 since I was born there.
24 Q Have you used that, though, on bank
25 accounts or other matters?

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1 A No.

2 Q Have you used it to open accounts or

3 conduct business since the time you have been in the

4 U.S.?

5 A The Canadian Social Security number?

6 Q Yes.

7 A I don't recall. I don't think so.

8 Q Just to clarify, I think I recall from the

9 last deposition that you have been in the United

10 States since 1992?

11 A Approximately.

12 Q And you no longer consider yourself to be a

13 citizen of Canada?

14 A I'm a Canadian citizen, absolutely.

15 Q You have maintained your Canadian

16 citizenship since 1992?

17 A I was born Canadian, so I still have it.

18 Q There are some statements made in the fifth

19 amendment to the trust about your family history,

20 and I just want to make sure those are still

21 accurate. It states your father is still alive and

22 resides in St. Catharines in Ontario?

23 A Yes.

24 Q You have a brother and two sisters?

25 A Yes.

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1 Q What are their names and ages?

2 A My brother's name is Sam. And he is -- I
3 think he is 49. And my sister Gloria and Cathy, and
4 they would be -- Gloria is 54 and I think Cathy is
5 56. I'm guessing. If I'm too high, don't tell
6 them.

7 Q Your brother, Sam, his formal name is
8 Salvator?

9 A Salvator, yes.

10 Q Where do they currently reside?

11 A My brother lives in Phoenix, Arizona. My
12 sister Goldy, Gloria, lives in -- south of San
13 Francisco and my sister Cathy lives in
14 St. Catharines.

15 MR. BRESLOW: Are you picking this up? The
16 witness is rather soft spoken.

17 BY MR. DESMOND:

18 Q I think your relationship with Mr. Bayuk in
19 the fifth amendment to the trust is described as
20 your long-time companion. Is that still accurate?

21 A Yes.

22 Q What's your current employment?

23 A I'm not employed.

24 Q You don't have any current employment?

25 A No.

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1 MR. BRESLOW: That's what nonemployed
2 means.

3 MR. DESMOND: I am clarifying.

4 BY MR. DESMOND:

5 Q How long have you been unemployed?

6 A Since September.

7 Q Prior to September -- and just for the
8 record, we are talking September of 2010?

9 A Yes.

10 Q Prior to September of 2010, where were you
11 employed?

12 A Consolidated Western Corporation.

13 Q What was your position there?

14 A President.

15 Q What was the business of Consolidated
16 Western Corporation?

17 A A wholly-owned company that operated gas
18 stations in Scottsdale, Arizona.

19 Q Was that Superpumper?

20 A Yes, Inc.

21 Q If I call this CWC, will you understand
22 what I'm referring to?

23 A Yes.

24 Q Did CWC operate any other businesses
25 besides Superpumper?

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1 A Active operating businesses, no.
2 Q What other holdings did CWC have?
3 A It was looking into making investments into
4 insurance and other things but doesn't actually do
5 anything.
6 Q And how many locations did Superpumper
7 have?
8 A 11.
9 Q For the last calendar year I guess would be
10 2009, do you recall what the gross sales of
11 Superpumper were?
12 A No.
13 Q Do you recall what the assets held by CWC
14 were?
15 A Superpumper.
16 Q Do you recall the value of those assets?
17 MR. BRESLOW: As of what time?
18 MR. DESMOND: 2009.
19 THE WITNESS: No. Like the book value?
20 BY MR. DESMOND:
21 Q Yes. We can start with book value.
22 A No.
23 Q You said in September of 2010 you no longer
24 were employed by CWC?
25 A Correct.

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1 Q How does that come about?

2 A I resigned my position with the company.

3 Q Again, is that after the court's

4 pronouncement of the judgment?

5 A Yes.

6 Q What prompted you to resign your position

7 with Consolidated Western Corporation?

8 A Because its existence was terminated with

9 the merger with Superpumper.

10 Q So CWC merged with Superpumper?

11 A Yes.

12 Q So the surviving entity was Superpumper,

13 Inc.?

14 A Yes.

15 Q Do you still have an interest in

16 Superpumper, Inc. as of today?

17 A No.

18 Q So take me through that transaction. CWC

19 was merged into Superpumper?

20 A Yes.

21 Q At that time did you still have your

22 interest in CWC transferred to Superpumper?

23 A No. I lost my interest in CWC, or I sold

24 my interest in CWC.

25 Q To whom did you sell your interest in CWC?

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1 A To Snowshoe Petroleum, Inc.
2 Q And for what consideration or what value?
3 A The appraised value of the company.
4 Q Which was what?
5 A I don't recall exactly.
6 Q Do you recall roughly?
7 A No.
8 Q Do you know who did the appraisal?
9 A That was an appraisal company, a gas
10 station appraisal company in I think Maryland.
11 Q You sold it for whatever figure that
12 appraisal company came up with?
13 A With an adjustment for debt and value and
14 whatnot.
15 Q Prior to the time of you selling your
16 interest in CWC to Superpumper, were you the 100
17 percent owner of CWC?
18 A No. I am not sure exactly how it was
19 structured. I have an 80 percent and my brother and
20 Bayuk each owned 10.
21 Q You were the majority owner?
22 A Yes.
23 Q You owned 80 percent of CWC, and then that
24 interest merged into Superpumper, and then your
25 interest was subsequently sold to Mr. Bayuk?

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1 A I am not sure if it was subsequently or
2 before. I am not sure how the legal structure
3 worked.

4 Q Who prepared that legal structure?

5 A Mr. Vacco's firm.

6 Q The sale of the -- was it a stock transfer?
7 A stock sale?

8 A I don't recall.

9 Q You don't recall how it was structured?

10 A I don't know if it was asset or stock.

11 Q The entity, the surviving entity or entity
12 that currently holds Superpumper I believe you said
13 is Snowshoe Petroleum?

14 A Yes.

15 Q Is that an LLC?

16 A I think so. I'm not sure.

17 Q Who are the owners of Snowshoe Petroleum?

18 A I believe the trust of my brother and
19 Edward Bayuk.

20 Q And that would be Sam?

21 A Yes.

22 Q And Mr. Bayuk?

23 A Yes.

24 Q Do you know whether they have 50/50
25 ownership in that entity?

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1 A I believe so, but I'm not 100 percent sure.
2 Q Do you have any interest in Snowshoe
3 Petroleum?
4 A No.
5 Q When was Snowshoe Petroleum created?
6 A I don't know.
7 Q Why did you sell your interest in
8 Superpumper?
9 A We had received a default from the bank,
10 and I couldn't cure the default.
11 Q And gave your -- Mr. Bayuk?
12 A Gave them the option to cure it, and they
13 did.
14 Q Gave Mr. Bayuk and Sam the option to cure
15 the default?
16 A Yes.
17 Q What bank was it that sent you the notice
18 of default?
19 A BBVA Compus; C-o-m-p-u-s.
20 Q What debt did that default relate to?
21 A We had an operating line of credit term
22 that was done with them.
23 Q Do you recall approximately what amount was
24 owed to BBVA Compus at the time they declared the
25 default?

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1 A Approximately?
2 Q Yes.
3 A Several million dollars.
4 Q \$10 million?
5 A Several, like six, seven.
6 Q Single-digit numbers?
7 A Yes.
8 Q To your knowledge did Mr. Bayuk and your
9 brother cure the default?
10 A Yes. The companies reached an agreement
11 with the bank.
12 MR. BRESLOW: Not to mince words but cure
13 as in pay or cure as in work it out?
14 BY MR. DESMOND:
15 Q Did they pay the outstanding debt?
16 A They paid it down, worked out the terms
17 with the bank.
18 Q Did you pay any portion of that debt to
19 BBVA?
20 A No.
21 Q When you sold your interest in Superpumper
22 or CWC, to -- which is the transaction that occurred
23 first to Snowshoe, you received money for that?
24 A Yes.
25 Q You don't recall the approximate amount of

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1 money you received from that transaction?
2 A No. Approximate, no.
3 Q Millions of dollars?
4 A Yes.
5 Q Single millions? Tens of millions?
6 A No. Single millions.
7 Q Again, five, six, seven? Something like
8 that?
9 A One or two, three.
10 Q Where did that money go?
11 A Into my bank account.
12 Q Which bank account?
13 A I presume Bank of America or CoAmerica.
14 Q Just so we are clear, when you say "my bank
15 account," do you consider accounts held in the name
16 of the Arcadia Trust to be your bank account as
17 well?
18 A The Arcadia Bank accounts benefit the
19 trust, and it's the operating trust, and I can call
20 upon that as opposed to the trust that holds the
21 assets.
22 Q Is the account with CoAmerica in the name
23 of Arcadia?
24 A I believe so, yes.
25 Q Is the account with Bank of America in the

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1 name of Arcadia?
2 A Yes.
3 Q You also have an account there
4 individually?
5 A No. An individual bank account?
6 Q In your name?
7 A No.
8 Q Everything with Bank of America is in the
9 name of Arcadia?
10 A Everything -- as far as I'm aware, all of
11 my bank accounts are in the name of the trust.
12 Q What are your current sources of income?
13 A Superpumper Properties has rental income.
14 Q You still receive income from that?
15 A Yes.
16 Q How is that if you sold your interest in
17 Superpumper that you still receive rental income?
18 A Superpumper Properties is a separate
19 company from Superpumper, Inc.
20 Q Okay. Let's talk about that for a minute.
21 A It's the same name.
22 Q The name of the entity is Superpumper
23 Properties?
24 A Yes, LLC.
25 Q Is that an Arizona LLC?

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1 A I don't know.
2 Q Are you the sole owner of that entity?
3 A Yes.
4 Q And that entity receives rental income on a
5 monthly basis?
6 A Yes.
7 Q Do you know approximately what amount?
8 A No.
9 Q Is it \$100,000?
10 A No, like \$15 or \$20,000 a month.
11 Q What's the source of that rental income?
12 Is it from the actual locations in Arizona?
13 A No. There are three car lot locations in
14 Nevada.
15 Q Those are the ones in Elko?
16 A Yes.
17 Q So Superpumper Properties has the three car
18 lot locations in Nevada from which it receives
19 income?
20 A Yes.
21 Q Which you believe is approximately \$15 or
22 \$20,000 a month?
23 A Yes.
24 Q Does Superpumper Properties have any other
25 assets?

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1 A No.

2 Q Do you know what your net worth is as of
3 today?

4 A Actual, no.

5 Q Do you know what your net worth was in --
6 MR. BRESLOW: Let's go back. Because -- I
7 mean, are you asking for a mathematical certainty to
8 the dollar?

9 MR. DESMOND: A fair estimate.

10 MR. BRESLOW: I think you should give an
11 estimate, if you have one.

12 BY MR. DESMOND:

13 Q If you have one. I'm not holding you to
14 the penny, but if you have some -- I mean, you seem
15 like someone who knows his business pretty well and
16 has a very good understanding of finances, so,
17 again, just rough numbers.

18 If you know or believe you know what an
19 estimate is of your net worth as of today?

20 A \$3 to \$5 million.

21 Q And what do you base that figure on? Is
22 that your own review and analysis of your net worth?

23 A Part of the process of assembling all of
24 this has forced me to look at all the documents and
25 see bank accounts and appraisals and all those sorts

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1 of things, so...

2 Q What about in 2010? Do you have, again, a
3 rough or general idea of what your net worth was in
4 2010?

5 MR. BRESLOW: Can you be more specific?
6 January 1 or December 31, because that may be a
7 different number.

8 BY MR. DESMOND:

9 Q Let's start January 1, 2010.

10 A Probably \$15 million, \$20 million.

11 Q \$15 to 20, and then what about as of
12 December 2010?

13 A Closer to \$3 to \$5 million.

14 Q What caused the decline in your net worth
15 during calendar year 2010?

16 A My loss and the original number actually
17 may be a bit higher. Probably is higher. I lost
18 several assets post September 13.

19 Q Such as?

20 A My interest in the Fernley truck stop, the
21 default occurred, and I lost interest in that.

22 Q Let's talk about Fernley for a minute.
23 That's the loan or line of credit you had with the
24 Ilves entity? I'm not sure if I'm pronouncing it
25 right.

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1 A The company did, yes.

2 Q Okay. And that -- the Fernley property,

3 just so we are clear, we are talking about the

4 proposed truck stop and casino in Fernley?

5 A It was built.

6 Q It is built?

7 A It is fully built.

8 Q And that was owned by Big Wheel?

9 A There was a series of companies. A

10 property company. There was a gaming company.

11 There was a series entities. There is a ground

12 lease with Spirit, and then the building was built

13 as an improvement, and Ilves had a loan against the

14 building.

15 Q Okay. I was mispronouncing it.

16 A It was spelled I-l-v-e-s. I'm not sure of

17 the pronunciation.

18 MR. IRVINE: I think you are right,

19 I-l-v-e-s.

20 BY MR. DESMOND:

21 Q You say the ownership of Fernley was under

22 different entities. Just so I'm clear, all of those

23 were Big Wheel entities?

24 A Yes. There may have been one called

25 Friendly Truck Stop or something, but I owned 51

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1 percent or myself and a group that I was involved
2 with owned 51 percent of the lease of every company.

3 Q How many Big Wheel entities were there, to
4 your knowledge?

5 A At least two or three.

6 Q I have seen Big Wheel Nevada. Does that
7 sound right?

8 A Yes, Big Wheel Properties, Big Wheel Gaming
9 and Big Wheel Hospitalities are the ones that I
10 recall because the idea was they were going to build
11 a hotel on the site, and it was divvied up to make
12 sure it was done properly.

13 Q Were you the majority owner of all of these
14 Big Wheel entities?

15 A Myself and a group that I was involved
16 with, yes, through my trust.

17 Q Through Arcadia?

18 A Yes.

19 Q When you say you lost your interest or
20 investment in that, what actual dollar amount, if
21 any, had you or your trust put into the project
22 through the various Big Wheel entities?

23 MR. BRESLOW: As of time he lost his
24 interest?

25 MR. DESMOND: Correct.

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1 THE WITNESS: It would be a guess. I don't
2 recall.

3 BY MR. DESMOND:

4 Q A million dollars? Less than that?

5 A It was more than that.

6 Q More than a million?

7 A Yes.

8 Q That you actually put in in cash?

9 A I believe so, absolutely.

10 Q Do you know where that might be documented?

11 A I would presume my bank accounts would show
12 over the years money going into the company. We
13 paid the rent on the company and the ground lease
14 for years, and the loan was several hundred thousand
15 dollars a year.

16 Q When you say you lost your interest in that
17 entity, describe what happened.

18 A There was a default on the loan to Ilves
19 wherein they required a certain date for the
20 certificate of occupancy. The date wasn't achieved,
21 but the certificate of occupancy was issued, and
22 they brought it to court and defaulted the loan and
23 succeeded on the courthouse steps and took it back.

24 Q So there was an actual trust deed sale of
25 the property?

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1 A Yes.

2 Q Do you know who purchased it at auction?

3 A Ilves.

4 Q So they are now the owner of the property?

5 A Yes, or some entity that they are involved

6 with.

7 Q Did you or anyone on your behalf bid at the

8 auction?

9 A No.

10 Q Do you know what the principal amount of

11 the loan or line of credit to Ilves was in which

12 they declared an event of default?

13 A No. The actual note? No.

14 Q Who was the party who was actually making

15 payments on the Ilves loan?

16 A A lot of entities. I believe it was -- I

17 believe the loan was an accrual. I don't believe

18 there was a payment, actually.

19 Q So was the event of the default declared by

20 Ilves a nonmonetary default in that the occupancy

21 hadn't been achieved by a certain date?

22 A I don't know if that was the only event of

23 default that they declared, but that particular one

24 was, and there was no mechanism to cure it.

25 Q Why?

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1 A I don't think the agreement provided for
2 it. You made the date or you didn't make the date.
3 Q Do you know if anyone on your behalf or Big
4 Wheels' behalf sought an extension of that date?
5 A Absolutely.
6 Q You weren't able to get that?
7 A They were completely unwilling to be
8 reasonable on any of it.
9 Q Who did you deal with on behalf of Ilves?
10 A Did I deal with?
11 Q Yes.
12 A One of two principals.
13 Q Who were those?
14 A Rick and Sandy Haller.
15 Q And the Haller family is a family you had
16 had a relationship with for some time?
17 A No.
18 Q Did you know their son, Alex Haller,
19 Alexander Haller?
20 A Sandy, yes.
21 Q He goes by the name Sandy?
22 A Yes.
23 Q Was that your principal point of contact
24 with the family?
25 A And their father, Ray.

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1 Q Were you the one who originally arranged
2 for the finances through Ilves?
3 A No.
4 Q Who did?
5 A That was through Drew Sobel, who was a
6 partner with --
7 Q Brentwood Capital?
8 A Brentwood Capital.
9 Q So Brent -- Drew Sobel. Excuse me. Drew
10 Sobel from Brentwood brought the Haller family to
11 your attention?
12 A Yes.
13 Q Did you know Sandy Haller prior to that?
14 A No.
15 Q Did you ever know him when he was living in
16 Los Angeles working at J.P. Morgan?
17 A No.
18 Q The Haller family resides in England?
19 A Yes.
20 Q Did you ever meet with them in England to
21 arrange for financing?
22 A Not to arrange for financing, but I met
23 with them in England.
24 Q Do you have any other investments with the
25 Haller family?

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1 A No.

2 Q I want to go back for a minute to your net
3 worth. Have you ever had an outside professional do
4 an analysis of your net worth?

5 A There is one doing one now for this case.

6 Q Right. I mean, notwithstanding the work
7 Ms. Salizar is doing, have you ever had your
8 accountant or any other outside professional at any
9 point in time do an analysis of your net worth?

10 A No.

11 Q Have you ever had to provide an estimate of
12 your net worth on any financial statements or loan
13 applications?

14 A Yes. In the past, yes.

15 Q When was that?

16 A I don't recall the last time.

17 Q Do you recall what the figures were?

18 A No.

19 Q But was it substantially higher than what
20 your net worth was as of January 2010?

21 A And in prior years, yes.

22 Q Roughly what do you recall the highest
23 amount your net worth ever was?

24 MR. BRESLOW: I am going to object to the
25 form of the question. I think that's a little vague

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1 and ambiguous both as to time and context, but go
2 ahead and answer, if you can, sir.

3 THE WITNESS: I don't recall.

4 BY MR. DESMOND:

5 Q But significantly higher than \$15 to \$20
6 million?

7 A Define "significantly."

8 Q By \$5 or \$10 million?

9 A Oh, yes.

10 Q By tens of millions of dollars?

11 A Yes.

12 Q So at one time your net worth was tens of
13 millions of dollars?

14 A Yes.

15 Q Was it ever \$100 million?

16 A No.

17 Q What are your current corporate holdings,
18 and by that I mean corporate entities in which you
19 have an interest?

20 A Myself or the trust?

21 Q Both. Let's start with you individually
22 and then we can do it with the trust.

23 A I don't think individually I have anything.
24 I believe the trust owns the interest in the
25 Superpumper Properties.

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1 I don't think I have any other companies.
2 Q That's it, Superpumper Properties? Do you
3 still have an interest in Super Nevada Corporation?
4 A Yes, I own 100 percent in that. Thank you.
5 Q Again, is that through you or Arcadia?
6 A I believe it's through Arcadia.
7 Q So just to clarify, you don't recall
8 yourself having any interest in any corporation, and
9 your recollection is as of today Arcadia has an
10 interest in Superpumper Properties and Consolidated
11 Nevada Corporation?
12 A Yes, and there are several dormant
13 companies that I had owned over the years to look at
14 doing things, but they are not active.
15 Q When you say dormant, do these companies
16 currently hold any assets?
17 A No.
18 Q Did they file tax returns on an annual
19 basis?
20 A I assume my accountant does whatever he is
21 supposed to do with a dormant company.
22 Q When you use the term "dormant," can you
23 describe for me what you mean by that? Dormant
24 meaning it holds no assets?
25 A Yes, it is not active. There is nothing

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1 going on in there.

2 Q But are you maintaining those companies as
3 active entities with the Secretary of State or the
4 appropriate state regulatory state agency?

5 A I assume we were through this year, but I
6 don't know.

7 Q Do you have an intention to keep those
8 companies current or active?

9 A No.

10 Q Why not?

11 A I don't have the resources to do anything
12 with them.

13 Q You have identified I believe all the
14 corporate assets of Superpumper and the leases on
15 the three car lots. What are the current corporate
16 assets of Consolidated Nevada Corporation?

17 A Nothing.

18 Q Nothing?

19 A Nothing that I know of.

20 MR. BRESLOW: You mean other than the claim
21 that was advanced in the lawsuit?

22 MR. DESMOND: Yes.

23 BY MR. DESMOND:

24 Q They are a party to the lawsuit, and we
25 will get into them, but the accounting records

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1 certainly through 2009 and 2010 show significant
2 financial activity through Consolidated Nevada
3 Corporation.

4 A Consolidated Nevada after the sale of --
5 Barry Hinkley didn't actively do anything. I
6 figured it had assets it had to write down, and I
7 think there is a stepping process or something I
8 don't understand, but I know that. But in terms of
9 actively conducting business or buying something or
10 selling something or whatnot, not that I recall. I
11 believe once we sold the company, that was it.

12 Q So would you be surprised if the bank's
13 statements for CNC showed significant activities,
14 checks, wire transfers going on?

15 A No, because we were paying the lawyer and
16 whatnot, and we did that through CNC and the
17 lawsuit, so we are funding the account to pay
18 professionals and whatnot.

19 Q Did CNC continue to have income in 2009 and
20 2010?

21 A I don't believe so. I doubt it. I don't
22 know. Deferred income maybe like where it took an
23 amount and deferred putting it through its books or
24 something like that maybe, but in terms of actively
25 holding a license and running something somewhere, I

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1 don't believe we did that.

2 Q Does CNC still have an interest in the
3 Raffles Insurance program?

4 A No.

5 Q When did CNC sell or divest itself of that
6 interest?

7 A When we sold -- there was an excluded asset
8 when we sold the company in 2007.

9 Q Do you know why, then, Consolidated Nevada
10 Corporation continued to show income from Raffles in
11 subsequent years?

12 A It took a while to transfer because
13 Consolidated Nevada had the insurance asset. It
14 took several months if not longer to go through all
15 the paperwork and transfer everything.

16 Q So is it your testimony that as of today
17 CNC has no interest in the Raffles Insurance
18 program?

19 A That's correct.

20 Q What is Raffles?

21 A Do you understand what a captive is?

22 Q Uh-huh.

23 A It's a captive insurance company.

24 Q Did you have the original relationship with
25 Raffles?

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1 A No.
2 Q Who did?
3 A Art Hinkley.
4 Q And as I understand it the Raffles program
5 was administered through the Kensington Management
6 Group?
7 A I don't know the name.
8 Q Did you have any contact with anyone from
9 Raffles?
10 A I never really interacted with any of it.
11 Q Did you have any contact with anyone from
12 Kensington Management?
13 A I may have spoke with someone over the
14 years but not actively involved with it.
15 Q Do you have any current corporate
16 affiliations, and by affiliations maybe companies in
17 which you don't have an actual ownership interest
18 but which you are affiliated?
19 A Describe what you mean.
20 Q Sure. And were you providing services as a
21 consultant, or the actual corporate interest could
22 be held by Mr. Bayuk or your brother, Sam, but you
23 have a corporate interest in the entity?
24 A I don't have a corporate interest in
25 anything.

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1 Q You don't?
2 A No. In terms of ownership or payment?
3 Q Yes.
4 A No.
5 Q Have you ever met an asset protection
6 specialist?
7 A No.
8 Q Have you ever employed one?
9 A No.
10 Q Do you currently hold a passport?
11 A Yes.
12 Q From what country?
13 A Canada and the United States.
14 Q And how long have you held those?
15 A I don't recall when I got them issued. I
16 can look at them.
17 Q But you hold one? Just so I understand it,
18 one passport from Canada and one from the United
19 States?
20 A Yes.
21 Q I assume you have had the Canadian passport
22 from -- longer than the U.S. passport?
23 A I was born Canadian and American. I have a
24 dual citizen by birth.
25 Q You maintained both those passports as

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1 active?
2 A Yes.
3 Q Have you traveled to England in the last
4 five years?
5 A Yes.
6 Q For what purpose?
7 A Pleasure and business.
8 Q What business have you had over there?
9 A I was a Shell dealer. Shell is located
10 there and interacted on probably a dozen trips with
11 executives from Shell.
12 Q Through what company did you have your
13 interest or did you hold your interest as a Shell
14 dealer?
15 A Superpumper is a Shell dealer.
16 Q Any other business interest that you
17 traveled to England for besides the Shell
18 connection?
19 A Insurance.
20 Q What insurance?
21 A We were looking at investments in the
22 insurance industry and made several trips to England
23 looking at opportunities and investments there.
24 Q When you say "we," who are you referring
25 to?

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1 A Myself. Mr. Bayuk came on occasion. Other
2 attorneys and whatnot that I knew in Canada and here
3 in the United States, who met me in England.

4 Q What different companies or representatives
5 did you meet with about -- in the insurance
6 industry?

7 A I met with any number of different
8 insurance companies and captives and whatnot in
9 England to get to know them to see what they were
10 doing to see what opportunities are elicited.

11 Q Have any of those consummated in any deals?

12 A No.

13 Q Are you still exploring any of them?

14 A No.

15 Q Did you ever do any dealings with the
16 insurance companies in England?

17 A No.

18 Q How were those investment opportunities
19 brought to your attention?

20 MR. BRESLOW: I object to the form.
21 Misstates his testimony. I am not sure he said he
22 was there looking into specific opportunities.

23 BY MR. DESMOND:

24 Q How did you become aware of them?

25 A I was meeting with people to see if there

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1 were opportunities, so there was no specific
2 opportunity in England that I looked at.

3 Q Have you traveled to France in the last
4 five years?

5 A Yes.

6 Q For what purpose?

7 A Pleasure.

8 Q No business?

9 A No.

10 Q How about Germany?

11 A Yes.

12 Q Any business?

13 A No.

14 Q How about Switzerland? Have you traveled
15 to Switzerland in the last five years?

16 A Yes.

17 Q For what purpose?

18 A Pleasure.

19 Q Any business activity connected there?

20 A No.

21 Q Luxembourg?

22 A Never been.

23 Q What about the Cayman Islands? Have you
24 traveled there?

25 A Never been.

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1 Q Canada?
2 A Yes. Home.
3 Q Home. Do you also have business interest
4 in Canada?
5 A Yes.
6 Q Describe for me the business interests you
7 have in Canada.
8 A I have an investment in a real estate
9 investment with my father in a company in my home
10 town.
11 Q Is that St. Catharines?
12 A Yes.
13 Q How long have you held that real estate
14 investment interest?
15 A For the last several months.
16 Q The last several months, so that was a
17 recent acquisition?
18 A Yes.
19 Q Describe for me what the real estate
20 investment is.
21 A It's a piece of property that they build a
22 mini-storage development site.
23 Q Through what name is that held?
24 A I don't recall.
25 Q Do you recall the approximate amount of the

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1 investment?

2 A No.

3 Q Over a million dollars?

4 A Yes.

5 Q Several million dollars?

6 A No.

7 Q How did that come about, the investment

8 opportunity with your father in Canada?

9 A My brother and sisters have all been

10 involved in it for years, and I got an option to be

11 involved in it, and now they are finally building it

12 and they are going forward and put things together,

13 and I was dragging my feet on doing anything, so I

14 finally just put it in.

15 Q Have you made any investment of capital in

16 the project?

17 A I acquired my interest in it.

18 Q What was the approximate value of your

19 interest?

20 A I would be guessing.

21 Q \$1 million?

22 A Over that. I'm not sure.

23 Q Over \$1 million. And you don't recall the

24 name of the entity in which that's held?

25 A No.

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1 Q Is that through Arcadia?

2 A I believe so.

3 Q Is Arcadia also a qualified trust under
4 Canadian law?

5 MR. BRESLOW: Object to the form. Lack of
6 foundation.

7 If you know the answer to that.

8 THE WITNESS: I don't know.

9 BY MR. DESMOND:

10 Q Are you aware of any trust documents
11 governing Arcadia doing business in Canada?

12 A I don't recall.

13 Q Have you consulted with anyone in Canada
14 about setting up Arcadia as a trust under Canadian
15 law?

16 A I have Canadian attorneys who speak to my
17 American attorneys. I presume that from the
18 documents that were put in front of me that's been
19 done, but I don't know.

20 Q Who are the Canadian attorneys that you
21 principally use?

22 A Miller, Thomson.

23 Q Do you know if that's T-h-o-m-p-s-o-n?

24 A Canadian there is no "p".

25 Q Are they in Ontario?

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1 A Toronto.
2 Q Toronto?
3 A They are across the country but their
4 primary office is in Toronto.
5 Q Who is the principal attorney who you have
6 dealt with at the Miller, Thomson firm?
7 A The principal, I have to think of his name.
8 I don't interact with him a lot.
9 Q Does this entity which you don't recall the
10 name of, the real estate investment in Canada, is
11 its only holding the mini-storage location?
12 A I don't know.
13 Q Has it had other holdings in the past?
14 A I wasn't involved in the past, so I don't
15 know.
16 Q When you say -- I think you said you
17 realized your option or something specific?
18 A No. I had the option years ago to be
19 involved and didn't.
20 MR. BRESLOW: Not a legal option, just an
21 opportunity?
22 THE WITNESS: Yes, an opportunity, small.
23 BY MR. DESMOND:
24 Q But when you say option, you had the
25 ability to pay some sum of money and became part of

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1 that investment with your father and siblings?
2 A Yes.
3 Q And last year you did that?
4 A Yes.
5 Q Any other investments that you have in
6 Canada?
7 A No.
8 Q Any other business dealings that you have
9 in Canada?
10 A No.
11 Q Your brother, Sam, his long-time companion
12 is a doctor in St. Catharines?
13 A Yes.
14 Q Do you have any business dealing with her?
15 A No.
16 Q Other than this real estate investment with
17 your father, do you have any other investments of
18 any kind with your father?
19 A No.
20 Q Are you a beneficiary of any trusts that
21 your father may have?
22 A No. Not that I'm aware of, no.
23 Q I want to go back to the travel. You
24 talked about Canada. Do you go there on a fairly
25 regular basis?

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1 A It depends when. When my mother died, I
2 didn't go for a couple of years, and then I started
3 going again regularly. Now I haven't gone for over
4 a year or thereabouts.

5 Q Have you ever traveled to the Cook Islands
6 in the past five years?

7 A No. I don't know where they are.

8 Q I want to talk for a minute about trust
9 interest. Do you have currently, or have you had
10 any beneficial ownership in any trust?

11 A The Arcadia Living Trust.

12 Q And just to be clear, I am talking about
13 both as an individual as an employee or throughout a
14 corporate entity, so in any form, not just Morabito
15 an individual, but if you have a corporate nominee
16 or designee. Are you aware of whether you are a
17 beneficiary of any trusts other than --

18 A Not that I'm aware of.

19 Q I think you said to your knowledge you have
20 never been a beneficiary of Mr. Bayuk's trust?

21 A I don't believe I am.

22 Q Do you know who did the paperwork or the
23 documentation for Mr. Bayuk's trust?

24 A No.

25 Q The fifth amendment to Arcadia's Trust,

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1 which is the one from September of 2010, first of
2 all, what prompted you to make the fifth amendment?

3 A I don't remember. I don't know what
4 prompted me.

5 MR. BRESLOW: I think he means why did you
6 do that?

7 BY MR. DESMOND:

8 Q I will represent to you it purports to be
9 signed as of September 30, 2010, so it was around a
10 couple of weeks after the court's pronouncement of
11 the judgment. What was the reason, if any, why you
12 amended the Arcadia Trust document at that time?

13 A The only thing I can recall, I know we
14 changed ownership on some of the assets to make them
15 clearly owned by me and the trust. Other than that,
16 nothing.

17 Q Because I don't have the benefit of the
18 first through four amendments, so I don't know what
19 changes were made from the original document created
20 and setting the trust in 1998 to the fifth
21 amendment, so which led me to my next question,
22 which I think you mentioned, what changes do you
23 recall were made to the Arcadia Trust through the
24 fifth amendment?

25 A It would have been what assets were

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1 involved.

2 Q And do you recall if there was a schedule
3 of assets owned by the trust in the fifth amendment?

4 A No.

5 Q Other than the residential properties.

6 THE VIDEOGRAPHER: Off the record.

7 (There was a recess taken.)

8 THE VIDEOGRAPHER: Back on the record

9 10:13.

10 BY MR. DESMOND:

11 Q Mr. Morabito, before we went off the record
12 briefly, we were talking about the fifth amendment
13 to the Arcadia Trust, and the -- the reason why that
14 was done, and I believe your testimony was there
15 were some other assets which are now being held by
16 the trust.

17 Other than the residences, the personal
18 residences, do you recall what other assets were
19 held in the name of the trust as of September 30,
20 2010?

21 A Just stock ownership of companies.

22 Q What stock interest does Arcadia have or at
23 the time have as of September 30?

24 A What we have discussed.

25 MR. BRESLOW: I think he is asking you to

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1 go through the list again, if you recall.

2 THE WITNESS: There was an ownership in
3 Consolidated Western.

4 BY MR. DESMOND:

5 Q Okay.

6 A And all the dormant companies, which I
7 presume are still dormant and still sitting there.

8 Q To your knowledge, those dormant companies
9 don't hold any assets?

10 A No.

11 Q Do you know the names of those dormant
12 companies offhand?

13 A Some of them.

14 Q Are there Tibarom entities in there?

15 A No. We don't own those anymore. Haven't
16 for several years.

17 Q Are there Big Wheel entities?

18 A No. No.

19 Q Are there Baruk Petroleum entities?

20 A I haven't owned those for several years.

21 Q What entities are you aware of which are
22 held in the name Arcadia but may be dormant?

23 A Cowestco Special Risk, which was set up to
24 look into an insurance investment. I can think
25 through some of the names. They don't come to me.

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1 Q Is Arcadia the only entity that held an
2 interest or holds an interest in Cowestco Special
3 Risk?

4 A I believe so.

5 Q The fifth amendment also designates two
6 alternative trustees. One is Robert Bertrum Burke
7 Who is Mr. Burke?

8 A A long-time friend.

9 Q And then James Ravencroft. Who is he?

10 A A long-time friend.

11 Q Do they reside in Southern California?

12 A Yes.

13 Q Are you affiliated with them in any
14 business?

15 A No.

16 Q Do you know what assets are held in
17 Mr. Bayuk's trust?

18 A No.

19 Q Do you know the employer identification
20 number to the Arcadia trust?

21 A No.

22 Q If I left a blank in the deposition, could
23 you fill that in?

24 A I don't think it would have one.

25 Q I believe it would for tax reporting

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1 purposes.

2 A Okay.

3 Q If it does I will leave a blank and you can
4 fill it in.

5 A Yes.

6 (Information to be supplied:

7

8

_.)

9 BY MR. DESMOND:

10 Q Could you do the same for Mr. Bayuk's
11 trust, if it has one?

12 A I will let him provide where he has to
13 provide.

14 Q What bank accounts does Arcadia have?

15 A The ones we provided copies to you of.

16 MR. BRESLOW: Give him a list to the best
17 of your memory.

18 THE WITNESS: Bank of America, CoAmerica
19 and Bank of Montreal.

20 BY MR. DESMOND:

21 Q When you say Bank of America, that also
22 covers the U.S. Trust portion of that?

23 A They are one and the same.

24 Q U.S. Trust being the private banking arm of
25 Bank of America?

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1 A Yes.

2 Q How long have you had a banking
3 relationship with Bank of America or has Arcadia had
4 one?

5 A Since the 1980s.

6 Q And you maintained it consistently since
7 that time?

8 A In various forms, yes.

9 Q Do you have a principal private banker at
10 Bank of America who you work with?

11 A No longer. They changed over the years.

12 Q Who is the last private banking contact
13 that you recall?

14 A His name will come to me. I haven't spoken
15 to him in several months. If you leave a blank, I
16 can think through that.

17 (Information to be supplied;

18

19 _.)

20 BY MR. DESMOND:

21 Q What about at Bank of Montreal? I think
22 the statement indicated that it was through Hasbank
23 or through a private banking arm of Bank of Montreal
24 that your account was held?

25 A Uh-huh.

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1 Q Is there an individual in the private bank,
2 Bank of Montreal, who is your principal point of
3 contact?

4 A I call the -- there are several different
5 private clerks that answer, and they all just bring
6 my screen up when I call.

7 Q You don't have a designated private banker?

8 A I am not at that level, no.

9 Q Have you ever been at that level?

10 A No.

11 Q So just for the record, you identified Bank
12 of America, Bank of Montreal and then CoAmerica.
13 How long has Arcadia had accounts with CoAmerica?

14 A Off and on for a couple of years.

15 Q Just a couple of years?

16 A Yes.

17 Q And do you use the different accounts for
18 different purposes, or does Arcadia, I should say,
19 meaning one account is designated for specific
20 business of Arcadia, and another account is used for
21 a different asset of Arcadia's business, or did you
22 use the accounts interchangeably?

23 A I'm not sure.

24 Q Who decides what assets or money is held
25 with what bank?

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1 A I do.

2 Q And you are the one who established the
3 bank relationships with these institutions?

4 A Yes.

5 Q Does anyone else handle any of the
6 financial records or dealings of Arcadia's business
7 with these banks?

8 A When I want something, I will call the
9 bank.

10 Q On Arcadia's end it's you?

11 A Yes.

12 Q And you would be the principal one actually
13 who calls the bank?

14 A If I need something, I will call and say
15 may I have.

16 Q Have you ever used the Arcadia accounts to
17 pay any debts incurred by you personally?

18 A I would assume so. The operating account.

19 Q For instance, do you use that to pay your
20 credit card statements?

21 A The Arcadia Living Trust is set up in two
22 trusts, and there is a trust to pay bills, and there
23 is a trust that holds assets. So the one that pays
24 bills pays bills on my behalf, and the one that
25 holds assets holds assets.

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1 Q Describe for me how that works and how it
2 was structured that way originally.

3 A My understanding of it was that there is a
4 spend thrift trust and this then has a spend thrift
5 operating or a living trust, and that the living
6 trust handles any change of monies in and out, and
7 the other one held the assets. That's how it was
8 explained to me.

9 Q Who explained that to you?

10 A My attorney.

11 Q And in the various amendments that have
12 been done over the years, has that arrangement ever
13 changed, to your knowledge?

14 A The spend thrift trust has never been
15 amended.

16 Q The living trust has?

17 A The living trust has.

18 Q Do you use the assets held by the living
19 trust to regularly pay debts and obligations that
20 you have?

21 A Yes.

22 Q Is that the principal account through which
23 you pay your debts and obligations?

24 A The accounts of bank?

25 MR. BRESLOW: He means accounts held by

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1 Arcadia as opposed to any accounts you have
2 individually.

3 THE WITNESS: To the best of my knowledge,
4 I never set up an individual account. It's always
5 been done through the trust documents.

6 BY MR. DESMOND:

7 Q How do you decide which account, Bank of
8 America, CoAmerica, Bank of Montreal, you use to pay
9 the different debts and obligations?

10 A I don't know. I never really thought about
11 that. Most of the bills in the United States are
12 paid by the American account.

13 Q Which is the Bank of America account?

14 A Right now it's CoAmerica.

15 Q Why did you switch that?

16 A Just more convenient. There was a branch
17 across the street from me.

18 Q What's the purpose of the account with Bank
19 of Montreal?

20 A I'm Canadian, and that's where we held our
21 trust assets.

22 Q Do you use that principally to pay debts
23 and obligations incurred in Canada?

24 A I don't have any debts or obligations in
25 Canada.

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1 Q Then what do you use that account for?
2 A It's just an open bank account.
3 Q Are you a check signer on the Arcadia
4 accounts?
5 A I am the check signer on the various active
6 accounts.
7 Q You're it? Nobody else?
8 A Yes.
9 Q Have you ever made ATM withdrawals on the
10 Arcadia accounts?
11 A In the past. I'm not a big ATM fan.
12 Q But you have used it for that purpose?
13 A Yes.
14 Q But to get cash, you might go into the
15 bank?
16 A To the teller.
17 Q And get cash?
18 A I like tellers. I like actually -- I don't
19 like ATM machines.
20 Q Do you have any current life insurance
21 holdings?
22 A No.
23 Q Have you in the past?
24 A I think so in a period of time, yes. I'm
25 not a big life insurance plan person.

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1 Q Do you know what happened to the policy you
2 had? Cashed it out?
3 A Cashed it out.
4 Q When was that?
5 A Ten years ago or more.
6 Q Are there any other insurance products,
7 fixed annuities, variable annuities, any annuities
8 that you had?
9 A No.
10 Q Have you ever had any annuities?
11 A I'm not exactly sure. I may have. I don't
12 know. At one point in time Bank of America had some
13 cash for me. I don't know what they invested it in,
14 but they may have had annuities in the mix. They
15 did.
16 Q But you don't recall actually going out and
17 purchasing annuities yourself?
18 A I have never done anything like that.
19 Q Are there any insurance products like that
20 of which you are a beneficiary?
21 A Not that I'm aware.
22 Q You described it for me, so you are
23 familiar with the concept of a captive insurance or
24 insurance management --
25 A Yes.

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1 Q -- type of service. Do you currently own
2 or operate any such vehicles?

3 A No.

4 Q Raffles was an insurance captive?

5 A Yes.

6 Q Other than Raffles, have you ever held an
7 interest in any insurance captive or insurance
8 management service?

9 A No.

10 Q On Raffles did you -- that was something
11 you said was originally set up by Art Hinkley.
12 Subsequent to the time that you purchased Barry
13 Hinkley from Art, did you make any additional
14 investments in the Raffles holdings?

15 A I believe what we did, we took the active
16 asset, stopped insuring ourselves on the sale so --
17 or maybe it had been before that, you know, and we
18 left it available so if Superpumper ever got big
19 enough, it would go and insure itself if it got to
20 be big enough. Beyond that I don't think we had
21 ever done anything with it.

22 Q At the time because your tax return
23 indicated that CNC held a certain number of shares
24 in Raffles?

25 A There was a transfer period.

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1 Q Do you recall what amount CNC received for
2 the Raffles shares over the period of time, the
3 transition period?

4 A The Raffles asset was secured by a letter
5 of credit, which I personally put up. So the risk
6 of the asset was with me from the day of the
7 closing. So the actual asset, whether it had any
8 value or not or to this day, whether it has any
9 value or not is offset against a letter of credit.
10 So the company didn't have the resources to post a
11 letter of credit, and the others didn't want to post
12 the letter of credit.

13 So I had to put up the money for the letter
14 of credit, so for the risk and hopefully the letter
15 of credit would come back to me. We couldn't just
16 end it.

17 Q I understand, but as I understand the
18 transaction -- and correct me if I'm wrong -- there
19 is a refund of that letter of credit prior to the
20 close of the -- the July 2, 2007 close?

21 A No.

22 Q Okay.

23 A The letter of credit is still there today.

24 Q The letter of credit with Raffles is still
25 there today?

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1 A Yes. It has a couple of years.
2 Q Okay.
3 A There is still a liability there.
4 Q What's your understanding of the amount of
5 the letter of credit that's still posted with
6 Raffles?
7 A It would be a guess, but it's around \$1.2
8 or \$1.1 million or whatever. It is still out there.
9 The liability is still out there.
10 Q When that expires or sunsets, which you
11 think in a couple of years, that letter of credit
12 will be refunded to you?
13 A Every year they review -- in a captive what
14 they do is a review of the assets every year, and
15 they do an increase or decrease every single year.
16 Q But when is the sunset or termination of
17 that letter of credit?
18 A A couple of years from now.
19 Q And at that time that amount will be
20 refunded to you?
21 A It will be a dollar for dollar.
22 Q Explain how that works.
23 A If I have a \$1.2 million letter of credit,
24 you put up \$1.2 to fund the letter of credit. So if
25 the letter of credit comes down the cash amount

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1 comes down.

2 Q What's your expectation as of today of what
3 cash you may receive when that letter of credit
4 terminates?

5 A I have no idea. It's based on the
6 performance of the insurance. It could be an amount
7 due. You could owe several hundred thousands of
8 dollars.

9 Q Have you had any contact with anyone from
10 Raffles about what amount you expect to receive, or
11 who would be out on that?

12 A They wouldn't guess. They will tell you
13 what the estimation of the letter of credit is, but
14 they give an annual statement, and you can
15 extrapolate from the statement whatever you want.

16 Q Do you pay the mortgages on residential
17 real estate that you have made in the past by way of
18 wire transfer?

19 MR. BRESLOW: Object to the form. That's
20 vague.

21 THE WITNESS: I don't know.

22 MR. BRESLOW: You mean has he ever?

23 THE WITNESS: I may have. I don't know. I
24 assume we pay by check, but I don't know.

25

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1 BY MR. DESMOND:
2 Q Let's take for instance the Panorama
3 property. At the time you own the Panorama
4 property?
5 A I don't own it now.
6 Q Prior? It is my understanding you had a
7 two-thirds interest, Mr. Bayuk had a one-third
8 interest?
9 A I don't know what the percentages were.
10 Q Okay. But you were jointly, you jointly
11 owned the property with Mr. Bayuk, and now the
12 property is owned 100 percent by Arcadia?
13 A By Arcadia.
14 Q Have you paid the mortgage on the Panorama
15 property by way of wire transfer?
16 A I don't know.
17 Q Who is responsible for payment of the
18 mortgage on that property?
19 A Now me.
20 Q You don't know how you pay that?
21 A I pay it by check.
22 Q But in the past by wire?
23 A I don't know if I paid it by wire, but I
24 know I signed the check recently for payment.
25 Q It's your testimony that you currently pay

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1 the mortgage on that amount by check?

2 A I just signed one. I think so, yes. I'm

3 99 percent sure I just signed the check. Now you've

4 got me thinking. I believe it's by check.

5 Q In the past you don't recall if those

6 payments were made by wire transfer?

7 A I don't remember.

8 Q What is the financial institution that you

9 use to pay your mortgage obligation? What account

10 do you principally use?

11 A Right now it would be CoAmerica.

12 Q How about in the past?

13 A Bank of America.

14 Q Who's currently paying the mortgage on the

15 Laguna Beach properties?

16 A It's not my house. Mr. Bayuk's.

17 Q What is Mr. Bayuk's source of income?

18 A You have to speak to Mr. Bayuk.

19 Q You have no idea?

20 A It's his business.

21 Q You never commingled your finances with

22 Mr. Bayuk?

23 A Never.

24 Q Have you ever paid debts on Mr. Bayuk's

25 behalf?

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1 A Dinner and we travel together.
2 Q But you never paid mortgages or loans on
3 his behalf?
4 A When we shared things I made my payment,
5 and he paid his. We have always been responsible.
6 He does his thing, and I do mine.
7 Q Do you know if Mr. Bayuk is currently
8 employed?
9 A Speak to Mr. Bayuk.
10 Q You have no idea of that arrangement?
11 A I stay out of his professional life.
12 Q You don't know what would be possible
13 sources of income for him?
14 A No.
15 Q In your latest 2009 income tax return you
16 listed an address of 8518 Santa Monica Boulevard.
17 A My mailing address.
18 Q That's a UPS or mail box you can drop?
19 A Yes.
20 Q Is that an address you still maintain as
21 your P.O. box or mail drop?
22 A Yes.
23 Q The 371 El Camino Del Mar property in
24 Laguna Beach, who originally purchased that
25 property?

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1 A My trust and Edward's.

2 Q Do you recall the approximate amount you

3 paid for that property when you purchased it?

4 A No.

5 Q And you don't have a recollection of when

6 you said there was an appraisal done in September of

7 2010 on that property?

8 A Yes.

9 Q And then ownership of that property was

10 transferred to Mr. Bayuk's trust?

11 A I believe so.

12 Q You don't recall if there was any

13 consideration or cash paid for transfers of that

14 asset to Mr. Bayuk?

15 A Whatever the appraisal is worth, the

16 numbers, whatever. I don't recall if I received

17 money or he received money on this particular

18 transaction, but it's whatever the appraisals were

19 on the percentages.

20 Q It's your testimony that pretty much

21 whatever the appraisal amounts were on the

22 properties you had either an exchange of cash or

23 corresponding offset with the property that you were

24 to receive?

25 A Not pretty much. It was what the appraisal

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1 was versus what the appraisal was.

2 Q You don't recall if cash changed hands on
3 the Laguna Beach property?

4 A No.

5 Q The same thing with the Los Olivos. Do you
6 know who originally purchased that property?

7 A Edward and his trust.

8 Q Do you recall what the original amount paid
9 for on that property was?

10 A No.

11 Q You don't recall what the appraised amount
12 was in September of 2010?

13 A No.

14 Q That would have been handled in the same
15 way. Some exchange of money or --

16 A Value.

17 Q -- value. What about the Palm Springs
18 property? Let's go back for a minute. The 8355
19 Panorama in Reno, there is a current mortgage on
20 that property?

21 A Yes.

22 Q In what amount?

23 A I just have a statement. It was around \$1
24 million.

25 Q And that property I think you said

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1 appraised in September for about \$4, \$4.5 million?
2 A Yes.
3 Q Has that property been up for sale in the
4 last year?
5 A No.
6 Q Do you have any intention of selling the
7 property?
8 A No.
9 Q But you said you no longer -- you haven't
10 set foot in Nevada since September 15. Does anyone
11 reside in the property?
12 A No.
13 Q Your intention is to let it sit vacant?
14 A Yes.
15 Q You have no intention of selling it or
16 otherwise disposing of it?
17 A No.
18 Q Who maintains that property?
19 A I get a gardening bill every month,
20 maintenance, and the windows are cleaned. I get all
21 the bills from all the maintenance. The house
22 should be in impeccable shape.
23 Q The 1254 Mary Flemming Circle property in
24 Palm Springs, have you ever had an ownership
25 interest in that property?

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1 A Yes.

2 Q Were you the original purchaser of the
3 property?

4 A With Edward. I believe so.

5 Q Do you remember the approximate purchase
6 price of the property at the time you bought it?

7 A Approximately.

8 Q What was it?

9 A Several hundred thousand dollars.

10 Q Less than a million?

11 A Oh, yes.

12 Q Tell me how ownership of that property has
13 changed since the time you and Mr. Bayuk originally
14 purchased it.

15 A Same thing as the appraisal as part of the
16 change of properties.

17 Q That property is now held by Mr. Bayuk's
18 trust?

19 A Yes.

20 Q What about do you know if there is a
21 mortgage currently on that property?

22 A I don't know.

23 Q What about -- there is another property,
24 1260 Verdugo Road in Palm Springs?

25 A That's my brother's.

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1 Q Did you own that property at one time?
2 A Yes.
3 Q Were you the original purchaser of the
4 property?
5 A My trust for my mother, yes. When she
6 died, I gave it to my brother. It was sold to my
7 brother.
8 Q When did you originally purchase that
9 property?
10 A My mother died in 2004. I think 2003 or
11 2002.
12 Q Were you a beneficiary of her trust?
13 A She didn't have a trust. After she died, I
14 didn't hear anything, so I don't think so.
15 Q Did you receive money or an inheritance
16 upon her death?
17 A No.
18 Q Who is Kittie Morabito?
19 A My cat.
20 Q And there is a Kittie in the trust?
21 A Yes.
22 Q What assets are held in the Kittie Morabito
23 Trust?
24 A Just the cat now.
25 Q Have any assets, any value been held in

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1 that trust?

2 A It owned a part of the Friendly Travel
3 Center.

4 Q What percentage of ownership interest did
5 it have in Friendly?

6 A I don't recall.

7 Q Who created the documents for that trust?

8 A One of my attorneys.

9 Q Have any assets been transferred into that
10 trust?

11 A No.

12 Q The Verdugo Road property, you said your
13 brother currently owns that?

14 A Yes.

15 Q You said you sold it to your brother?

16 A Yes.

17 Q When was that?

18 A After my mother died.

19 Q 2004, 2005?

20 A Yes.

21 Q Do you recall approximately what you sold
22 it to your brother for?

23 A Several hundred thousand dollars. What we
24 paid for it.

25 Q Do you still reside in either the Mary

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1 Flemming or Verdugo Road properties?

2 A I visit it on weekends or go down
3 occasionally, but I'm primarily in Los Angeles.

4 Q Do you ever stay in your brother Sam's
5 Verdugo house?

6 A I never have.

7 THE VIDEOGRAPHER: This is the end of
8 videotape No. 1. We are going off the record. The
9 time is 10:38.

10 (There was a recess taken.)

11 THE VIDEOGRAPHER: This is the start of DVD
12 No. 2. We are back on the record. The time is
13 11:03.

14 BY MR. DESMOND:

15 Q Mr. Morabito, before we took the break we
16 were talking about how you said your net worth
17 changed in 2010, and just for the record you
18 indicated that in January it was approximately \$15
19 to \$20 million you believed, and in December it was
20 I think you said \$3 to \$5 million?

21 A In January it was higher.

22 Q In identifying how it changed, you
23 identified Fernley, and this note from Ilves related
24 to that. In what other ways did your -- what other
25 transactions did you believe caused your net worth

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1 to change in 2010?

2 A That transaction was CWC.

3 Q And CWC. Just to clarify, CWC you are
4 talking about the sale of your interest in the
5 Superpumper Properties?

6 A Uh-huh.

7 Q Other than those two transactions, is there
8 anything else that caused your net worth to change?

9 A And Superpumper, Inc. no longer being an
10 asset I owned.

11 Q So other than Superpumper, Inc. no longer
12 being an asset and the Fernley truck stop, is there
13 anything else that you believe caused your net worth
14 to change in 2010?

15 A Maybe the \$5 million judgment.

16 Q Right. Did you show that on any financial
17 statements or anything that you issued after
18 September of 2010?

19 A Now, compared to now.

20 Q But other than the judgment in this matter
21 and the Superpumper transaction and the Fernley
22 truck stop, anything else?

23 A No.

24 Q What portion of your net worth loss do you
25 attribute to no longer holding the Superpumper

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1 interest?

2 A I got value for it, so it wasn't as much
3 this. Fernley was obviously big because Fernley was
4 ready to open and would have been worth a
5 significant amount of money as an open, operating
6 facility.

7 Q So you attribute more of your loss and net
8 worth to Fernley than to the Superpumper?

9 A Superpumper was a wash.

10 Q Because you received value?

11 A Yes. I was not forced. In the case of
12 Fernley, I didn't get anything for it. In fact, I
13 still have a debt. I still have a guarantee on the
14 ground lease.

15 Q Has anyone made a demand upon that
16 guarantee?

17 A No.

18 Q Do you know what the property sold for at
19 auction?

20 A No.

21 Q Do you know if there were any other bidders
22 besides Ilves?

23 A No.

24 Q On the Superpumper proceeds that you
25 received for the sale of that interest in this

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1 entity, I think you said they were in the single
2 million dollar range. What happened to the proceeds
3 from this sale? What accounts were they deposited?

4 A I don't recall a specific account.

5 Whatever cash I got I received.

6 Q And you put it into an account?

7 A Yes.

8 Q Has it been transferred out of that account
9 since that time?

10 A I don't know. I believe so. The balances
11 are -- you have all the records where things went.

12 Q I want to just clarify a little bit on
13 Arcadia. You talked about there is just two
14 different entities or two different accounts. There
15 is an Arcadia Living Trust, and then I think you
16 described it as the Arcadia operating account?

17 A No. There is a spend thrift trust and the
18 living trust, and they have gone through some name
19 changes and the litigations. The spend thrift trust
20 was set up in 2005 or 2006 by my attorney to hold
21 assets, and then we were told, or he advised us that
22 you had to have a separate living trust to be
23 active to pay our bills or whatnot. You couldn't do
24 that through the spend thrift trust.

25 Q Who was that attorney who originally set

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1 those up?

2 A Geoffrey Langan.

3 Q And Mr. Langan was somebody who worked for

4 Ilves for a period of time?

5 A Yes.

6 Q And worked with you for Jiffy Lube?

7 A Yes.

8 Q And I think the last known whereabouts of

9 Mr. Langan, he is in Dubai?

10 A I think he is in Las Vegas.

11 Q He is still in Las Vegas?

12 A Yes.

13 Q But you still use him as your attorney?

14 A No, but I know of him. I mean, he was our

15 general counsel for several years.

16 Q I want to talk about the spend thrift trust

17 for a minute. What assets are held by the spend

18 thrift trust?

19 A I am now sitting here, I'm not sure. All

20 the things that you see in trust are in the spend

21 thrift trust, I assume.

22 Q Everything?

23 A Yes.

24 Q Did you pay bills out of the spend thrift

25 trust?

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1 A No. The living trust.
2 Q How is the living trust funded?
3 A It already has funds in it.
4 Q But there is also bills going out, payments
5 going out. What is the source of funds or income
6 coming into, if you know, into the trust?
7 A There isn't.
8 Q There is nothing?
9 A No.
10 Q What was it in 2010?
11 A I had a salary which was paid to me
12 personally, and I deposited that into this living
13 trust bank and paid bills from that.
14 Q Was what salary in 2010 from Paul A.
15 Morabido in Arizona?
16 A The name was changed in 2007 to
17 Consolidated Western Corporation.
18 Q Up until September of 2010 you continued to
19 receive a salary from Consolidated Western
20 Corporation?
21 A CWC, yes.
22 Q What was this salary in September of 2010?
23 A Approximately \$500,000.
24 Q Let's go back to the original Arcadia spend
25 thrift trust. Do you know what is held by that

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1 trust, what the purpose of that trust is?

2 A I believe now the house in Reno and my
3 corporate, whatever shares we have left and cash.

4 Q How has that changed since that trust was
5 originally set up or created in 2005?

6 A I don't know.

7 Q You don't know what assets or corpus in
8 that trust has come out or diminished?

9 A It didn't diminish. It was a trade of
10 value done in the fall. Other than that.

11 Q Explain the trade of value.

12 A You appraise one thing, appraise another.
13 And if you own a percentage of one and a percentage
14 of another, you trade them so that you own some of
15 all and the other person owns all of the other, the
16 value for value.

17 Q So this value for value transaction, if
18 something came out of the spend thrift trust, the
19 equivalent asset was put back into the spend thrift
20 trust?

21 A The amount didn't change.

22 Q To your knowledge, the value of the Arcadia
23 spend thrift trust hasn't changed since it was
24 created?

25 A It no longer has Fernley in it. So that

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1 value has gone away.

2 Q Let's talk about the living trust for a
3 minute. You said that it currently receives no
4 income or funds on a monthly basis?

5 A Other than Superpumper Properties rental
6 income.

7 Q It's your testimony that's the only income
8 currently incoming into the Arcadia Living Trust?

9 A To the best of my knowledge, yes.

10 Q What are your monthly expenses?

11 A My rent and the mortgage on the house in
12 Reno and expenses on the house.

13 Q Did you ever do a budget of what your
14 monthly obligations or outflows of money were?

15 A No.

16 Q Have you ever had occasion to look at, in
17 2009, 2010, what your monthly obligations or outflow
18 of monies were?

19 A No.

20 Q So is it your testimony that -- do you know
21 what the mortgage amount is on the Panorama
22 property?

23 MR. BRESLOW: You mean monthly?

24 MR. DESMOND: Monthly.

25 THE WITNESS: \$6 or \$7,000.

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1 BY MR. DESMOND:
2 Q I think you stated the rent from West
3 Hollywood is \$8,000?
4 A Yes.
5 Q So you have \$14 or \$15,000 a month in
6 obligations related to residences?
7 A Yes.
8 Q Any other monthly operating expenses?
9 A My line of credit interest with Bank of
10 America.
11 Q That's interest income you receive?
12 A No. That's payment on the loan.
13 Q And what is this monthly payment?
14 A \$10 or \$12,000.
15 Q So that's roughly \$25, \$27,000 a month?
16 A Utilities and things like that.
17 Q How are you currently funding those monthly
18 expenses?
19 A From the savings.
20 Q Which savings?
21 A The ones that you have copies of.
22 Q The savings held by Arcadia?
23 A Yes, the living trust account.
24 Q Do you still have an interest in, or does
25 Arcadia still have an interest in Net Jets?

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1 A No.
2 Q Do you still use Net Jets?
3 A No.
4 Q Do you use any private plane contractual
5 ownership service?
6 A No.
7 Q Do you have access to any private plane
8 service?
9 A Yes.
10 Q Who is that through?
11 A I can go through American Express or any
12 service if I want to access it.
13 Q Do you continue to use private jets or
14 airplanes?
15 A No.
16 Q When was the last time you used one?
17 A September 13.
18 Q Flying back here?
19 A Yes.
20 Q That was the last time you used any private
21 jet service?
22 A Yes.
23 Q What about your vehicles currently? I
24 think in your supplement or the supplement to your
25 answers to interrogatories you indicated that you

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1 only have one vehicle for your own personal use, the
2 2010 Range Rover?
3 A Yes.
4 Q And that's owned by Mr. Bayuk?
5 A Yes.
6 Q What about the two Bentleys that you had?
7 Who has ownership of those now?
8 A They are all sold and gone.
9 Q When were those sold?
10 A Several months ago, like last spring.
11 Q Last spring they were sold?
12 A Yes.
13 Q Do your monthly Arcadia statements show
14 payments to Porsche Leasing?
15 A No.
16 Q Do you still have an interest in the
17 Porsches?
18 A No.
19 Q Where are those today?
20 A Returned to the dealership.
21 Q When were those returned?
22 A September 2010.
23 Q Why did you return those?
24 A No longer had the resources to pay for it.
25 Q That included a Porsche Panamera?

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1 A The Carrera.
2 Q A single "C" Carrera?
3 A Yes.
4 Q Did you own, at any time own a Porsche
5 Panamera or leased one?
6 A Leased one the prior year.
7 Q 2009. Early 2010, where is that today?
8 A I returned it to the dealer. When, I don't
9 know.
10 Q What about -- do you have a Range Rover
11 that you had, I believe this is in 2008 or 2009, the
12 Range Rover?
13 A I just have use of the one that Edward
14 bought in the fall.
15 Q You don't know who owns the other Range
16 Rovers?
17 A They are all gone.
18 Q When you say they are all gone?
19 A I don't own any of those. Back in the
20 spring I leased three cars and then got -- paid to
21 get rid of the leases in September.
22 Q You paid to get out of the lease. Let's
23 talk about what leases you got out of. You got out
24 of the lease for the Porsche Panamera?
25 A Yes.

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1 Q What other leases?
2 A Everything that was similar, a Range Rover
3 and a great Rolls Royce.
4 Q All of those were leased?
5 A Yes.
6 Q You turned those all back into the dealer?
7 A Yes.
8 Q What about the -- were there two or three
9 Bentleys --
10 A Two.
11 Q -- that you owned personally?
12 A I don't know if we owned them or leased
13 them, but they are long since traded in.
14 Q When did you trade those in?
15 A The spring or early year of 2010.
16 Q What, if any, value did you receive for
17 those traded in?
18 A Whatever value they gave on the trade.
19 Q You don't recall what that is?
20 A No.
21 Q What did you trade it for?
22 A I don't recall the specific timing of the
23 cars.
24 Q But when you say you traded it, I'm
25 assuming you received something. You traded the

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1 Bentleys in and received something in exchange for
2 it? A newer vehicle?
3 A Yes. The newer vehicle, if I leased it, I
4 got cash, and if I traded it for value and bought a
5 car, I traded a dollar amount. It depends.
6 Q So as of today, you or Arcadia do not own
7 or lease any vehicles?
8 A We have actually one, a 2010 Toyota
9 Corolla.
10 Q That's owned or leased?
11 A Leased.
12 Q When did you lease that?
13 A In the summer of 2010.
14 Q Is that a vehicle for your use?
15 A No. It was driven by our housekeeper.
16 Q Down here?
17 A Reno and here, so it was in Reno
18 originally.
19 Q Is that Mr. Real (phonetic spelling)?
20 A No. It's a gentleman named Philip Alex
21 Teener (phonetic spelling).
22 Q Is Mr. Real still employed by you?
23 A No.
24 Q When did Mr. Real cease being employed by
25 you?

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1 A The fall.
2 Q After September 13?
3 A Yes.
4 Q Do you employ any personal assistants at
5 this time?
6 A No.
7 Q Haven't had anyone since Mr. Real?
8 A No one who was not my personal assistant.
9 It was more of a travel companion, but he was
10 compulsively getting sick.
11 Q But he was paid for his services?
12 A Absolutely.
13 Q But you no longer have a traveling
14 companion of any kind?
15 A I don't travel.
16 Q Haven't had any travels since September 13?
17 A I have traveled down to New York.
18 Q Flown commercially?
19 A Yes.
20 Q ~~I want to go back to the assets held by the~~
21 ~~Arcadia Living Trust.~~ Because you said you're
22 ~~paying some of your obligations from Arcadia~~
23 ~~Savings.~~ Is that Arcadia Savings in the name of the
24 Arcadia Living Trust?
25 A Yes.

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1 Q What is the current savings of the Arcadia
2 Living Trust, to your knowledge?
3 A It's what we provided in the bank
4 statements.
5 Q Do you have a rough idea, though, of what
6 it is?
7 A A couple of hundred thousand dollars.
8 Q Other than the Superpumper Properties
9 rental income, you said there is no other source of
10 income for Arcadia?
11 A No.
12 Q Do you have any intention to look for a job
13 in the future?
14 A Yes.
15 Q In what areas?
16 A I haven't decided.
17 Q Are you currently actively pursuing
18 anything?
19 A No.
20 Q Why not?
21 A Just taking a break healthwise, whatnot,
22 and waiting to see what happens.
23 Q We were talking earlier about your interest
24 along with your father and siblings in some real
25 estate investments in Canada.

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1 A And there is probably 30 shareholders in
2 that investment, yes.

3 Q Your family and other folks?

4 A A bunch of people.

5 Q Is that through an entity named Woodland
6 Heights, Limited?

7 A It may be controlled by the other
8 management, but that's my dad's company. I don't
9 know if it is actually in the company. There are
10 30, 40 shareholders in it.

11 Q Okay. The reason I asked, some documents
12 were produced indicating ownership of some real
13 property in Canada, other Woodland Heights
14 Investments.

15 A Okay.

16 Q Are there other investments which you have
17 an interest in Canada under the name Woodland
18 Heights?

19 A No.

20 Q Do you personally have an interest in the
21 Woodland Heights entity?

22 A No.

23 Q Who owns that entity?

24 A As far as I know, my dad.

25 Q You don't recall the name of the real

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1 estate investment through which you hold the real
2 property interest in Canada?

3 A I don't know the specific name, but it
4 would be set up to hold this particular investment.

5 Q The real property in which the mini-storage
6 units --

7 A Are going to be built.

8 Q Snowshoe Properties, we talked about. It
9 has the Mary Flemming property in Palm Springs.
10 Holds the Superpumper assets. Do you know of any
11 other assets that are held by Snowshoe?

12 A I'm not aware. I don't believe it owns the
13 Superpumper assets. Snowshoe Properties?

14 Q Perhaps another Snowshoe entity. Is it
15 Snowshoe Petroleum?

16 A Yes.

17 Q Snowshoe Petroleum owns Superpumper, and
18 that's the one owned by Sam, your brother?

19 A No.

20 Q Snowshoe Properties, does it hold any
21 assets besides the Mary Flemming Circle property?

22 A I don't know. That's Edward's company. I
23 don't know.

24 Q You don't know the properties in Laguna
25 Beach, in what entity's names that they are held?

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1 A No.

2 Q Was it Mr. Bayuk's trust or something else?

3 A One or the other, I assume. I don't know.

4 Q Did you -- do you currently have an

5 ownership interest in any properties in the San

6 Francisco Bay area?

7 A No.

8 Q Did you at one time own a condominium on

9 Market Street?

10 A Yes.

11 Q When was that sold?

12 A 2008.

13 Q What are the proceeds from that

14 transaction?

15 A I think that apartment sold for around \$3

16 million.

17 Q What did you do with the proceeds from that

18 transaction?

19 A Put it in the bank.

20 Q When you say put in the bank, do you know

21 which account?

22 A Whatever living trust we had at the time.

23 Q Arcadia?

24 A Yes. There was a mortgage on the property.

25 MR. BRESLOW: Were the net proceeds

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1 \$3 million?

2 THE WITNESS: No, no, no. Several hundred
3 thousand dollars, but I don't remember the amount.

4 BY MR. DESMOND:

5 Q Your recollection of the proceeds, they are
6 several hundred thousand?

7 A The difference in the mortgage and
8 proceeds, commission.

9 Q Your testimony is they were put in the
10 Arcadia Trust account?

11 A Yes.

12 Q Do you pay all of your personal debt and
13 obligations out of the Arcadia Living Trust account?

14 A Yes. By personal we go through that, yes.

15 Q It's your testimony that you don't pay any
16 expenses through an account held by Paul Morabito
17 individually?

18 A No.

19 Q I want to talk for a minute about the Bank
20 of Montreal account.

21 A Yes.

22 Q Do you know when you established the
23 account with Bank of Montreal?

24 A I don't remember.

25 Q Several years ago?

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1 A Several years ago.

2 Q And that -- there was significant activity
3 on that account in 2010?

4 A Yes.

5 Q You're familiar with that?

6 A Yes.

7 Q What's the primary purpose of that account?

8 A It's a savings account, a money market
9 account.

10 Q Savings for the Arcadia Living Trust?

11 A Yes.

12 Q Your September statement for the account
13 showed an opening balance of in excess of \$6
14 million?

15 A Yes.

16 Q Do you recall that on September 15 you wire
17 transferred \$6 million out of this account?

18 A Yes.

19 Q Where did that wire transfer go to?

20 A A trust company in New Zealand.

21 Q What's the name of that trust?

22 A Sefton.

23 Q Can you spell that?

24 A S-e-f-t-o-n.

25 Q Why did you transfer money from that

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1 account to the trust company in New Zealand?

2 A The trustee requested a payment. The
3 arranging of payment of the debt.

4 Q Payment of debt through New Zealand?

5 A The owner was in New Zealand. That's in
6 Canada.

7 Q What debts are being paid?

8 A The trustee was making settlement on a
9 series of promissory notes and other things that I
10 had guaranteed over the years in Canada.

11 Q What promissory notes? I mean, who was the
12 notes in favor of?

13 A The notes were -- my recollection of it was
14 my prior boyfriend, James Marsland, died in April of
15 2010, and over the years I had co-made and
16 guaranteed several notes for him on business
17 ventures. And after he died, I had assumed over the
18 years that he would be more handling this than me.

19 And after he died and the trustee made
20 contact with me again saying we are no longer able
21 to satisfy through him, and that his estate wasn't
22 being settled, and he approached me on this
23 conversation. And I contacted him as I did many
24 more lawyers after the September 13 ruling.

25 And they asked for a payment, and I made it

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1 so we could pay down and settle the obligations and
2 clear the obligation.

3 Q Can you spell the name of your deceased
4 boyfriend's last name?

5 A Marsland, M-a-r-s-l-a-n-d.

6 Q And what was the nature of the notes on
7 which you cosigned were promissory notes?

8 A They are bank -- I believe they were all
9 security for loans they did either through private
10 lenders or private bankers in Canada.

11 Q What was the name of his company?

12 A Marsland Engineering.

13 Q Is there a reason why you made these
14 payments or this \$6 million wire transfer two days
15 after the judgment came down in this case?

16 A After the ruling I advised every bank and
17 lender that I had so I wouldn't be in any violation
18 of anything, because several of the provisions, that
19 if there is a ruling or a judgment, that is the end
20 of the default of payment. And I didn't want to be
21 in default with anybody, so I made sure that the
22 liberty spoke to every one of them to say you have
23 to be aware that this occurred.

24 Q What was the underlying obligation? Was
25 the \$6 million wire transfer payment in full of the

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1 obligation, or was there a --
2 A A settlement in full.
3 MR. BRESLOW: Let him finish his question.
4 THE WITNESS: Sorry.
5 BY MR. DESMOND:
6 Q What was the amount of the underlying
7 obligation?
8 A I don't know. I can only approximate but
9 for much higher than \$6 million.
10 Q About \$10 million?
11 A I think so. I don't know.
12 Q You negotiated essentially a settlement
13 amount of \$6 million?
14 A I told him that's all I had to give him.
15 If it wasn't good enough, they weren't going to get
16 anything.
17 Q You wired \$6 million to them that day?
18 A Or the trust in New Zealand.
19 Q I'm sorry. The name of the trustee again
20 was?
21 A Sefton.
22 Q S-e-f-t-i-n?
23 A I think it's "o-n".
24 Q The next month on the same account you have
25 several other wire transfers in significant amounts.

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1 What were those payments for?

2 A I think the property transfers that we have
3 been discussing.

4 Q The --

5 A The net amounts that are property
6 transferred for sale of companies and whatnot.

7 Q The residential properties?

8 A Yes. That would be several wires probably.

9 Q Because the net outflow from that account
10 in 2010 was roughly \$17 million?

11 A I don't think there was ever that much in
12 it.

13 Q Okay. You have reason to disagree that \$17
14 million went out of the account, then?

15 A I think there is probably triple accounting
16 going on.

17 MR. BRESLOW: You can say it seems likely.
18 That's all you have to say, but that's what it
19 shows.

20 THE WITNESS: I didn't at any time have a
21 \$17 million balance.

22 BY MR. DESMOND:

23 Q Were there any other obligors on the note
24 besides yourself? The note?

25 A Mr. Marsland.

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1 Q What about his estate? Did his estate have
2 any assets to pay the note?

3 A His estate had -- he died. When he died,
4 he wasn't found for several days. And, fairly
5 complicated, and they found his body and went
6 through the process of being a Canadian citizen, and
7 so I think his estate is in flux.

8 Q Do you know if there is a claim against the
9 estate?

10 A I think as part of the process.

11 Q Have you made a claim against his estate?

12 A No.

13 Q Why not?

14 A I'm still paying bills for moving furniture
15 or whatnot of his to be stored. Other things are
16 still very much in flux. Everyone knew he was quite
17 sick. No one expected him to die.

18 Q Have you had contact with family members
19 about any of his outstanding debts?

20 A His brother, who has no money, and the rest
21 of his family, they are dead.

22 Q Have you provided any of the documents
23 reflecting the underlying obligations to your
24 attorneys?

25 A James was an attorney, and he had all of

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1 the documents, which I can't access, and the
2 trustee, who I gave the original authority to, I'm
3 hoping at some point in time to physically go meet
4 the trustees and actually get the whole file on
5 this, but I have never done that to date.

6 Q But you made the \$6 million payment without
7 any underlying documents evidencing what the debt
8 was?

9 A James had all the documents prior to his
10 death.

11 Q But you, at the time you negotiated the
12 settlement amount and wired the \$6 million out of
13 your Bank of Montreal account, had you reviewed any
14 of the documents that show your obligations on the
15 note?

16 A I had seen it originally, and James had a
17 copy of them, and I knew of the existence of the
18 trustee.

19 Q Did you have any conversations with the
20 trustee between the time James died and prior to
21 September 13th?

22 A Yes.

23 Q Were there negotiations ongoing during that
24 time period?

25 A Just that I would acknowledge my obligation

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1 and tell him to continue trying their best to get
2 things done, and that I was in good faith trying to
3 settle out his estate and was going to let matters
4 take their own course but didn't. So I had pressure
5 over this, and I showed him that I had resources to
6 be able to satisfy things and try my best to see how
7 things went with him.

8 Q Is it your testimony you negotiated the
9 settlement amount?

10 A I didn't. The trustee did.

11 Q The trustee did on your behalf?

12 A Yes.

13 Q But the wire payment from the Bank of
14 Montreal account was on September 15?

15 A Yes.

16 Q The court's ruling from the court was early
17 in the evening of September 13?

18 A Yes.

19 Q When did the negotiations which arrived at
20 the \$6 million figure take place?

21 A I spoke to every bank and financial
22 institution literally the next day.

23 Q That was when the negotiations and ultimate
24 offer of \$6 million and acceptance was done?

25 A I told him that's what I had available. If

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1 the payment wasn't good enough, there is nothing I
2 could do.

3 Q Were there any documents reflecting
4 settlement of that debt or release or anything?

5 A The trustee had all that and had an
6 irrevocable power of attorney for me to go and
7 settle things on my behalf. I gave it to them years
8 ago.

9 Q But you have not personally seen any of
10 those documents?

11 A The release and whatnot? The trustees have
12 them. They assured me they have them, and I will
13 get them. They are a fairly huge trust company and
14 not a disreputable group.

15 Q I want to go back to Arcadia for a minute.
16 Arcadia maintains the Bank of America U.S. Trust
17 account which we talked about?

18 A Yes.

19 Q Do you recall approximately when that
20 account was created?

21 A No.

22 Q Do you recall what the initial balance was
23 in that account?

24 A No.

25 Q Or what the current balance is as of today?

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1 A The initial balance.

2 Q The balance as of today?

3 A The balance as of today. I think there is

4 \$1.3 million in it.

5 Q The statement -- and we don't have all the

6 monthly statements, but there is a December of 2008

7 statement, which indicates at the beginning of 2008

8 the account had a balance in excess of \$10 million?

9 A Right.

10 Q Are you familiar with that?

11 A Yes.

12 Q And it indicates that in 2008 you disbursed

13 approximately \$12 million in that account?

14 A Right.

15 Q Are you familiar with that?

16 A Vaguely.

17 Q Where was that amount disbursed to?

18 A I would have to see the individual items to

19 see.

20 Q I mean, you testified your net worth as of

21 today is \$3 to \$5 million. \$12 million went out of

22 this account in 2008.

23 A I'm sure a substantial portion was taxes

24 due to the transactions in 2007. And I don't know.

25 I would have to see the individual amounts to see.

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1 Q How much of that \$11.5 million did, you,
2 yourself receive?

3 A Of what \$11.5 million?

4 Q Was any portion of the \$12 million that was
5 disbursed from the Arcadia B of A account in 2008
6 disbursed to you?

7 A I assume so. I don't know. I would have
8 to see it.

9 Q What purpose would there be for disbursing
10 the Arcadia money to you individually?

11 A I don't know what was disbursed, so we have
12 to go through individually to see. I'm sure there
13 was checks that I got for every single dollar of it.

14 Q Let's focus on in February of 2009. There
15 was a single transaction in that month in which --

16 A You just said \$11.5 in 2008.

17 Q Now I'm going forward to 2009.

18 A I'm making sure I understand.

19 Q So in 2009, \$10.1 million was disbursed
20 from that account. What was that for?

21 A I don't know.

22 Q You don't know what?

23 A I am assuming it went into the investment
24 account.

25 Q Why would it have gone into the investment

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1 account?

2 A I believe we provided you with -- you asked
3 about annuities and municipal bonds that I believe
4 we put a bunch of money in municipal bonds and that
5 sort of thing.

6 Q This is, as I understand it, the Arcadia
7 operating account as you described it?

8 A I would have to see the individual file,
9 but I'm assuming they are managing money.

10 Q Who is responsible for management of money
11 in that account?

12 A U.S. Trust.

13 Q Who makes the decisions on when monies is
14 disbursed?

15 A Out of the living trust?

16 Q Let's start with that living trust.

17 A Me.

18 Q How about out of the operating account?

19 A The operating account would be me.

20 Q So U.S. Trust didn't make decisions on
21 money being disbursed out of that account without
22 directions from you?

23 A No. They only make decisions on the
24 investment.

25 Q Did you give them the power of attorney or

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1 something to make decisions, to make decisions with
2 respect to the investment account?

3 A I gave them an amount of money, and they
4 gave me a range of where it would go, and I let them
5 do whatever it did.

6 Q Okay. But you don't know -- the \$10
7 million that was disbursed in February of 2009 that
8 doesn't ring a bell as to where that would have
9 gone?

10 A It sounds like it went into the bond or
11 municipal bond. That's a lot of money.

12 Q Let's go back a minute. We talked a little
13 bit about some funds coming out of the Bank of
14 Montreal account. There were also fairly
15 significant inflows of money into that account in
16 2010.

17 For instance, in May there was \$5 million
18 wired into this account. In June there was \$8
19 million wired into this account.

20 Where did that money come from?

21 A I'm not sure. I presume the American
22 accounts, but I think there is money going back and
23 forth.

24 Q Why would there be money going back and
25 forth between those accounts?

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1 A We were at one point looking at deciding if
2 we are going to keep our money in Canadian funds or
3 American funds. At one point this was a
4 back-and-forth issue.

5 Q So you were putting money in Canadian funds
6 and then transferred them back into American funds?

7 A The Canadian money was going up, and the
8 American dollar was going down.

9 Q But you had a Canadian account, a Canadian
10 checking and U.S. savings and U.S. checking account
11 in the Bank of Montreal?

12 A Yes.

13 Q The amounts in your Canadian account
14 remained static through 2010, \$578,000. So the wire
15 transfers that were taking place were in the U.S.
16 savings account; correct?

17 A I don't know, but what they did was the
18 money was the question. I don't know what they are
19 doing necessarily with the money.

20 Q Why were all the transactions on the Bank
21 of Montreal account by wire transfer?

22 A I would presume because it was easier.

23 Q Were you the one who directed they be done
24 by wire transfer?

25 A I have to authorize wires.

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1 Q Let's go ahead and take a look at that
2 chart.

3 (The document referred to was marked by
4 the CSR as Exhibit 1 for identification
5 and made a part of this deposition.)

6 BY MR. DESMOND:

7 Q So what they have done, and I will
8 represent to you this is a summary of the statements
9 that we did receive on the Bank of Montreal account
10 in June of '09 to January of this year. The first
11 column shows the Canadian checking amounts with the
12 corresponding Bates number. The second column is
13 the U.S. savings account, again, the corresponding
14 Bates number, and the final column is the U.S.
15 checking account.

16 Do you see that?

17 A Yes.

18 Q And it shows really this starting in the
19 balance in the U.S. savings the end of 2009, the
20 last statement we have is October is \$924,000. May
21 of 2010, it's nearly \$6 million.

22 Do you see that?

23 A Yes.

24 Q That reflects an inflow into the savings
25 account of just under \$5 million in May of 2010.

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1 A Yes.

2 Q What was the source of the \$5 million
3 transferred into the U.S. Savings Bank of Montreal
4 account in May of 2010?

5 A The funds from Bank of America in
6 California.

7 Q The Bank of America Arcadia account?

8 A Yes.

9 Q So if I looked at the statement from Bank
10 of America Arcadia, I would see a corresponding
11 outflow of about \$5 million?

12 A Yes.

13 Q Why was this amount picked? Why is it just
14 about \$2.60 shy of \$5 million?

15 A It was probably affected by the wire
16 transfer fee.

17 Q And then on a pretty consistent basis in
18 the subsequent months, May, June, July, August,
19 September, there is in excess of \$10 million
20 transferred into the Bank of Montreal U.S. Savings.
21 Do you see that?

22 A I think it's the same money back and forth.

23 MR. BRESLOW: You are jumping ahead to a
24 question he hasn't asked yet or asked earlier. Hold
25 on. Let me say something else.

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1 For purposes of the line of questioning on
2 Exhibit 1, we are going to assume the accuracy of
3 the underlying summary.

4 MR. DESMOND: Certainly, and that's why I
5 put the corresponding Bates numbers. You can check
6 them.

7 MR. BRESLOW: Fair enough. But go ahead
8 and wait for the question.

9 BY MR. DESMOND:

10 Q There is roughly, between May and October
11 of 2010, there is nearly \$15 million wired into the
12 Bank of Montreal account. One, what's the source of
13 funds for that? First question.

14 A Bank of America.

15 Q The Bank of America Arcadia account?

16 A Yes.

17 Q And two, why? Why were you transferring
18 about \$15 million to the Bank of Montreal account?

19 A We didn't transfer \$15 million. We didn't
20 have \$15 million to transfer, and the amount of
21 money is the amount of money going back and forth,
22 and I believe at this point in time was being done,
23 I believe, for -- with the Canadian dollar and
24 American dollar. My memory was we went back and
25 forth, but there isn't a cumulative \$15 million.

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1 MR. BRESLOW: Hold on. Is the currency an
2 arbitrage? Is that sort of what's going on?

3 MR. DESMOND: He is testifying.

4 THE WITNESS: We were deciding whether we
5 kept Canadian, and in hindsight we shouldn't have
6 kept it in Canadian.

7 BY MR. DESMOND:

8 Q So you were directing Bank of America?

9 A Yes.

10 Q Did you direct Bank of Montreal when this
11 money came in to invest it in the Canadian dollar
12 account?

13 A They were actively looking at the
14 difference between keeping it in Canadian and
15 America. I know it was a hot topic over the whole
16 summer.

17 Q Okay.

18 A This was right after James died in April,
19 so part of the discussion I originally had with the
20 trustee.

21 Q What original discussions were those with
22 the trustee?

23 A After he died. Obviously, I said that he
24 died, and we made efforts to find out where things
25 were at, and he was aware of that. And I made known

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1 I have the resources to be able to satisfy the
2 obligations. He died April 14 or 15 in 2010.

3 Q Did you indicate to the trustee at the time
4 you would make an attempt to pay any outstanding
5 debts?

6 A I said I would certainly take a look at his
7 situation and get it settled, and I had the
8 resources to make an offer, and we would get to
9 things.

10 Q You are aware at the time he had claims
11 against you in this case?

12 A I had --

13 MR. BRESLOW: April, May of 2010?

14 MR. DESMOND: Right.

15 THE WITNESS: We were in the process of the
16 lawsuit.

17 BY MR. DESMOND:

18 Q But the \$6 million you transferred in
19 settlement, one of the obligations occurred two days
20 after the judgment came through in this case?

21 A Yes.

22 Q Okay. And you are aware that the judgment
23 that just had been handed down by the judge?

24 A It is what triggered the default on the
25 Bank of America and dba and everything else.

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1 Q But you didn't default on any obligations
2 related to the \$6 million?

3 A According to the trustee, I was, when I
4 told them what happened, that put you in default of
5 your guarantee.

6 Q Did you inform anyone, any representative
7 of my client or make any effort to tell us that you
8 were wiring the \$6 million in payment of another
9 obligation?

10 A I spoke -- I kept my counsel apprised.

11 Q But you don't know if they were ever
12 informed? When you say you kept your counsel, who
13 are you talking about?

14 A My prior counsel.

15 Q Did you direct them to tell anyone from my
16 side of the equation?

17 MR. BRESLOW: Hold on. I object to the
18 form of the question.

19 I don't think you have to answer that. You
20 are asking questions that are really argumentative
21 in the form of a question.

22 The fact is that payment was made two days
23 after the judge came out with his decision. You can
24 argue to the court at the appropriate time you think
25 that was an inappropriate use of the funds to settle

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1 the obligations.

2 MR. DESMOND: There is a pending question.

3 BY MR. DESMOND:

4 Q I just said did you make any effort to
5 inform my client or any representative of my client
6 that you were making this payment?

7 MR. BRESLOW: I think he answered. The
8 answer was no to that.

9 BY MR. DESMOND:

10 Q Who was the owner of the Bank of Montreal
11 account?

12 A I was. Arcadia Living Trust.

13 Q The reason I ask is on the statement it
14 indicates that it's held in the name of Paul A.
15 Morabito. The first time the Arcadia Living Trust
16 appears on the address is January of 2001?

17 A The mailing may have come directly through
18 me, but the account was I set up, I believe, with
19 the trust.

20 Q Do you know if it was set up with the EIN
21 with the trust as opposed to your Social Security
22 number?

23 A I don't know what the EIN is.

24 Q The employer identification number?

25 A I don't know. I don't know if they would

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1 recognize EIN or the Social Security number.
2 Q From the United States?
3 A Yes.
4 Q Who set up the original Bank of Montreal
5 account? Did you?
6 A I did.
7 Q Are you still a member of Bayuk Properties,
8 LLC?
9 A There is no such company.
10 Q There was at one time?
11 A Never been a company named Bayuk
12 Properties.
13 Q Okay. So if I saw a document in the name
14 of Bayuk Properties, LLC?
15 A It was a typographical error.
16 Q It is Baruk Properties?
17 A Yes.
18 Q Are you still a member of Baruk Properties?
19 A No.
20 Q When did you --
21 A No. I don't believe it existed. I know it
22 was settled and leased. I don't know. I have to
23 look. I don't believe so.
24 Q At one time you were a member of the Baruk
25 Properties?

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1 A You know, this was part of what we did in
2 exchange over the fall, so that company no longer
3 exists.

4 Q Okay. What -- do you recall prior to
5 September 13, what interest you held in Baruk
6 Properties?

7 A I believe I owned half, I think.

8 Q What assets did Baruk Properties hold prior
9 to September 13?

10 A It had the two office buildings in Laguna.

11 Q Two commercial buildings?

12 A Yes.

13 Q Do you recall the approximate value of
14 those buildings?

15 A No.

16 Q And then subsequent to September 13, did
17 you divest yourself of your interest in the Baruk
18 Properties?

19 A Yes. We had them appraised.

20 Q What was the approximate appraisal amount
21 of those two buildings?

22 A I don't recall. I know they were
23 appraised.

24 Q More than \$1 million?

25 A Each? Yes.

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1 Q Did you receive cash consideration for the
2 sale of your interest in Baruk Properties?
3 A I received a note.
4 Q What was the amount of the note?
5 A I don't remember the specific amount.
6 Q Roughly \$1.6 million?
7 A That sounds like the range.
8 Q Do you know what the terms of the note
9 were?
10 A No.
11 Q I saw that some documents. It indicated
12 that it was I believe a 25 or 30-year note payable
13 in monthly installments. Does that sound familiar?
14 A No.
15 Q Are you currently receiving payments on
16 that note?
17 A Myself? No.
18 Q Why not?
19 A I used that note to buy the interest in the
20 mini-storage property in Canada.
21 Q You pledged your interest in that note to
22 your father?
23 A I don't know if I did it to my dad or the
24 company, but I wanted to get other assets together.
25 Q So you have no expectation of receiving any

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1 payments from that note because you pledged 100
2 percent of it to your father or some other family
3 members to purchase the mini-storage interest in
4 Canada?

5 A For the company, yes.

6 Q But you don't know what the name of that
7 company was?

8 A I don't know specifically. It's Woodland
9 Heights Investment Company or something like that.

10 Q Do you have documents showing the pledge of
11 that note to Woodland Heights or whatever entity it
12 was?

13 A I believe we provided that.

14 Q Because I don't recall seeing anything like
15 that.

16 A If not, I can look for them.

17 Q ~~You stated earlier you have no interest in,~~
18 ~~no current interest in any of the Tibarom entities.~~
19 ~~When was the last time that you or Arcadia held any~~
20 ~~interest in any Tibarom entities?~~

21 A ~~2006 or '07.~~

22 Q To whom or what entity was your interest in
23 Tibarom transferred?

24 A We sold it to various parties over the
25 course of two or three years. There were several

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1 different operating companies.

2 Q You received consideration from each one of
3 those transactions?

4 A Yes.

5 Q Where were those funds deposited?

6 A On my bank accounts.

7 Q Were they in Tibarom accounts or were they
8 in the name of Arcadia?

9 A I don't recall, but there are individual
10 sales transactions, and the attorneys would have to
11 reflect each one.

12 Q My question is pretty broad, but do you
13 recall the approximate amount that you or Arcadia
14 received on your sale of the sale of your interest
15 in the Tibarom entities?

16 A It would have been nominal.

17 Q Why do you say that?

18 A The 2007 sale I think we made for a dollar.

19 Q Why?

20 A The last one. There is very little value
21 left in this company.

22 Q What about the sales from years prior? Do
23 you recall what about you made from the sale of the
24 various Tibarom entities?

25 A I think some of them we truly had to fund

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1 the companies to be able to buy them.

2 Q So it's your testimony that it was either a
3 nominal amount, or you actually lost on the sale of
4 those Tibarom entities?

5 A Yes.

6 Q You testified previously that when you
7 purchased Barry Hinkley from the Barry Hinkley
8 families, you arranged the bank financing for a
9 portion of the purchase?

10 A For a portion of the purchase? No.

11 Q That's not correct?

12 A The bank's financing?

13 Q That you had arranged for it. It's not
14 that you went through it, but that you had arranged?

15 A Okay.

16 Q What bank had you arranged financing with?

17 A We had a line of credit with Bank of
18 America.

19 Q Okay. And who was your contact with B of A
20 at that time?

21 A I don't know.

22 Q Was it B of A in Reno?

23 A I think it may have been Orange County, but
24 I don't recall.

25 Q At the time did you provide financial

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1 information to the bank, too?

2 A I don't recall. I don't know if I

3 guaranteed it or not.

4 Q Do you recall filling out a loan

5 application?

6 A No.

7 Q Do you recall what portion of the purchase

8 price was to be financed?

9 A I don't believe they mentioned it, but I

10 don't know we ever were going to use the bank for

11 any of it. I don't recall. I believe we weren't.

12 I may have.

13 Q Have you, since 2007, have you made any

14 loan applications?

15 A Personally? No, I don't think so.

16 Q Or in the name of Arcadia?

17 A I haven't bought anything. I would have to

18 think. I don't recall anything.

19 Q Have you provided financial statements to

20 anyone since 2007?

21 A I may have. I don't recall.

22 Q You don't recall having any financial

23 statements currently in your possession?

24 A No, I don't.

25 Q What about on the Fernley property when you

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1 were arranging financing from Ilvse or Ilves, the
2 note that we have talked about?

3 A I didn't arrange that note. I wasn't
4 involved in it. But it was in the name of
5 Mr. Sobel.

6 Q Through Brentwood?

7 A Yes.

8 Q But it was in the name of Big Wheel?

9 A Yes.

10 Q Which was an entity in which you had a
11 majority interest?

12 A But I didn't personally guarantee anything.

13 Q Did you provide any financial statements to
14 either Mr. Sobel, Brentwood or somebody at Ilves to
15 arrange that?

16 A I didn't personally guarantee it.

17 Q Did it require any personal financial
18 statement even if you didn't guarantee it?

19 A I don't think I would provide financial
20 statements if it didn't require a guarantee. It
21 wasn't pertinent to it. The company was borrowing
22 money, not me.

23 Q Big Wheel was?

24 A Yes.

25 Q But they didn't ask to see to peel the

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1 layers back? Let's see, a financial statement of
2 Big Wheel and a financial statement of all majority
3 owners of Big Wheel?

4 A I have never been asked that I recall
5 outside the context of giving personal guarantee,
6 anyone has ever gotten a financial statement.

7 Q Okay. Have you ever inherited any money
8 through family members?

9 A No.

10 Q Have you ever received any significant
11 assets as a gift from family members?

12 A No.

13 Q How do you -- we talked a little bit about
14 your monthly expenses. I think you said you are
15 covering them from savings now?

16 A Yes.

17 Q Do you know approximately what the deficit
18 is, what amount you are pulling from savings every
19 month covering your monthly expenses?

20 A No.

21 Q No idea?

22 A What we just added up.

23 Q Well, okay. I believe you said between the
24 West Hollywood apartment rent, the Panorama mortgage
25 monthly payment, and then the payment to B of A for

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1 the line of credit, those are in the neighborhood of
2 \$25 to \$27,000?
3 A Uh-huh.
4 Q And you had said there were other
5 utilities, other payments. So from that do you know
6 what the -- you believe the monthly deficit to be?
7 A I have the income coming from the
8 Superpumper, so \$15 or \$20,000, a debt.
9 Q Of a deficit?
10 A Uh-huh.
11 Q And you are currently funding that from
12 savings?
13 A Yes.
14 Q Solely from Arcadia?
15 A Yes.
16 Q Are you receiving any income on a monthly
17 basis from Mr. Bayuk?
18 A No.
19 Q Do you receive any income on a monthly
20 basis from your brother Sam?
21 A No.
22 Q From any other family members?
23 A No.
24 Q Other than the real property we have talked
25 about, do you own any unimproved real property?

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1 A No.

2 Q Other than the two commercial buildings in
3 Laguna which you talked about you transferred your
4 interest in Baruk property, do you own any other
5 commercial buildings?

6 A No.

7 Q Do you own any other rental property?

8 A The Superpumper Properties.

9 Q Do you own any other investment property?

10 A No.

11 Q Do you have an interest in any receipts?

12 A No.

13 Q Did you still receive any income from
14 Spirit Financial?

15 A No.

16 Q Do you receive any income from land
17 ventures?

18 A No.

19 Q Do you receive any income from the Flesher
20 family?

21 A No.

22 Q Do you still have any relationship with the
23 Flesher family?

24 A Yes.

25 Q Business relationship?

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1 A Purely social.
2 Q You haven't talked about doing any dealings
3 or anything?
4 A They say what they are doing, but there
5 isn't any out there right now.
6 Q Do you have any other types of real
7 property that we have not talked about?
8 A No.
9 Q And I think you testified that you are not
10 a beneficiary of any trust which you are aware of
11 other than --
12 MR. BRESLOW: Arcadia?
13 BY MR. DESMOND:
14 Q -- Arcadia?
15 A Yes.
16 Q You don't know who the beneficiaries are of
17 the Bayuk Trust?
18 A No.
19 Q You have never seen Bayuk Trust documents?
20 A No.
21 Q Are there any other beneficiaries of the
22 Arcadia Trust?
23 A Other than what's in it, no.
24 Q The Arcadia Trust, the fifth amendment to
25 it indicates that it's going to describe property

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1 being held by the trust, but then there are no
2 schedules attached?
3 A Yes.
4 Q You created the fifth amendment?
5 A Yes.
6 Q Were those schedules ever created?
7 A No.
8 Q So there is no document that show what
9 assets are being held in that trust?
10 A Outside of what you have, no.
11 Q Do you intend to do additional documents?
12 A No one told me that I have to or not.
13 Q Have you consulted anyone on that?
14 A No.
15 Q Did you currently own any stocks?
16 A No.
17 Q Mutual funds?
18 A No.
19 Q And when I say you, just so we are clear, I
20 mean you and/or Arcadia?
21 A No.
22 Q In this line of questioning, can you agree
23 with me you will answer it on behalf of Arcadia?
24 A Yes.
25 Q Have any interest in any hedge funds?

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1 A No.
2 Q Have any interest in any other equity
3 investments?
4 A No.
5 Q Own any bonds?
6 A No.
7 Q Any notes?
8 A No.
9 Q Any government securities?
10 A No.
11 Q Any CDs?
12 A No.
13 Q Do you have any treasury notes?
14 A No.
15 Q Do you have any other investments?
16 A No.
17 Q Do you have any investments in any
18 commodities?
19 A No.
20 Q Do you own any stock options?
21 A No.
22 Q Any futures?
23 A No.
24 Q Any other type of derivative investment?
25 A No.

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1 Q Any foreign currency?
2 A No.
3 Q Any other foreign types of investments?
4 A No.
5 Q Any gold?
6 A No.
7 Q Any silver?
8 A No.
9 Q Any precious metals?
10 A No.
11 Q Any art?
12 A Very little, nominal framed postcards.
13 Q Have you sold any art in the last five
14 years?
15 A No. Other than to Mr. Bayuk when
16 he took the proceeds of the house, what was on the
17 wall, but there was a nominal value.
18 Q So when you sold the -- or transferred the
19 interest in the property from Arcadia to Mr. Bayuk
20 or his trust, did that come with all the household
21 furnishings, fixtures and equipment?
22 A Yes.
23 Q Was there any appraisal done of those
24 items?
25 A I think Edward estimated what their partial

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1 value was, and he came up with the percentage, and
2 the attorney figured that up. It is all
3 ten-year-old furniture, so how do you value it?
4 Q Was it documented in any way?
5 A I believe so, yes. He did a summary and a
6 memo of it, yes.
7 Q Was the same thing done with the fixtures,
8 furnishings, equipment, art in the unit, the
9 property?
10 A Yes.
11 Q Again, was that done in a written document
12 of some sort?
13 A I believe so, yes.
14 Q You testified you have no interest in any
15 vehicles other than the RAV4?
16 A Yes.
17 Q And the loaner from Mr. Bayuk?
18 A Yes.
19 Q And is that just an informal agreement?
20 Does he require you to pay him for use of the Range
21 Rover?
22 A He gave me the key and told me I could
23 drive it whenever he wasn't driving it.
24 Q But you have access to it whenever you want
25 it?

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1 A Yes, as long as it is there.

2 Q Do you own any water rights?

3 A No. Well, I guess -- I think there is

4 water rights in the house in Reno. I think there

5 might be some water rights to the house in Reno. I

6 don't know what they are worth.

7 Q Those are separate from the interest in

8 that property?

9 A I don't know.

10 Q Any mineral rights?

11 A No.

12 Q Intellectual property, in the documents we

13 got yesterday, it indicated you had at least a

14 temporary patent that had been issued to Watch My

15 Block, LLC?

16 A Yes. We didn't pursue the patent.

17 Q Why not?

18 A It cost money.

19 Q Did you assign or sell the patent rights to

20 anyone before it was abandoned?

21 A No.

22 Q Was it abandoned?

23 A The U.S. Supreme Court ruled the business

24 patent -- I mean, in the interim of applying for it,

25 they changed the ruling of business patents, which

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1 my application was a redundant business procedure
2 patent.

3 Q What about your interest in Watch My Block,
4 LLC? I thought I saw in documents that that was,
5 again, another transfer that was done in the end of
6 September of 2010?

7 A I asked Edward to keep at least the name
8 alive. You know, the idea behind it, and we haven't
9 done anything with it.

10 Q Did you transfer your assets in Watch My
11 Block to Mr. Bayuk?

12 A Yes. Just the name. Nothing else in it.

13 Q Does the entity hold any assets?

14 A No.

15 Q Any other intellectual property rights
16 other than the patent that was abandoned?

17 A No.

18 Q Do you have any other type of investments
19 we haven't discussed?

20 A No.

21 Q Have you ever acted as a hard money lender?

22 A What is that?

23 Q Where you are making loans yourself to
24 other individuals or entities?

25 A No.

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1 Q Does anyone owe any money to you on the
2 promissory note?

3 A The ones we have discussed.

4 Q Let's be clear. The only one I'm aware of
5 is the promissory note related to your interest in
6 Baruk Properties, which you said you pledged to the
7 Canadian investment?

8 A I don't think I have, no.

9 Q Does anyone owe you money?

10 A No.

11 Q Do you -- are you a judgment creditor in
12 any lawsuits?

13 A No.

14 Q Are you a plaintiff creditor in any
15 lawsuits?

16 A I don't know. I don't think so.

17 Q Do you have any active claims out there?

18 A Against me, or if I am trying to capture
19 that?

20 MR. BRESLOW: You are pursuing.

21 BY MR. DESMOND:

22 Q That you are prosecuting?

23 A I don't think so, no.

24 Q I believe there was a lawsuit against a
25 contractor or builder on your Laguna Beach property?

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1 A That was settled by Edward. It was an
2 insurance claim.

3 Q Were you a party to that lawsuit?

4 A I believe so, yes, because I was a partial
5 owner.

6 Q Did you receive settlement of the proceeds?

7 A Edward did, but he had the finances to use.

8 Q Did you receive any portions of the
9 proceeds?

10 A No.

11 Q Do you know what amount it settled for?

12 A No.

13 THE VIDEOGRAPHER: Off the record, 12:08.

14 (There was a lunch recess taken.)

15 THE VIDEOGRAPHER: Back on the record,
16 1:01.

17 BY MR. DESMOND:

18 Q When do you anticipate filing your 2010 tax
19 return?

20 A I haven't spoken to my accountant, but I
21 don't know.

22 Q Have you met with him to go over documents
23 to prepare it?

24 A No.

25 Q Do you have a time scheduled to do that?

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1 A No.

2 Q Do you anticipate filing for an extension
3 this year?

4 A He usually does it every year. He files in
5 October.

6 Q October of this year, an extension?

7 A He usually files the actual tax returns in
8 October.

9 Q Do you know if he has filed for an
10 extension this year?

11 A I don't know.

12 Q Other than the trust documents that we
13 discussed, are there any other documents that would
14 detail the transaction that took place in the fall
15 of 2010 with Mr. Bayuk?

16 A I believe there is a -- I assume it's been
17 released to you.

18 Q But did you -- did you personally prepare
19 anything detailing the transactions, or did you rely
20 upon your attorneys?

21 A I rely upon the attorneys.

22 Q The same question with respect to the
23 Arcadia Trust. We talked a little bit before the
24 break about the fifth amendment references a
25 supplement or appendix that would describe the

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1 assets being held by the trust, and you indicated it
2 wasn't prepared, and you indicated it wasn't going
3 to be prepared.

4 Do you know if there is any schedule of
5 assets or descriptions of the corpus of the trust,
6 what assets are held in that trust?

7 A Not that I'm aware of.

8 Q In going through the various bank
9 statements and records that we have been provided, I
10 came up with three different banks. There is
11 obviously Bank of Montreal, which we discussed, and
12 there are two accounts there. There is I think they
13 call it an everyday business banking account and
14 then an investment account?

15 A Right.

16 Q Are you familiar with that?

17 A Vaguely.

18 Q CoAmerica, there is a single account. It
19 appeared it may have been different components, but
20 it was under a single account. Is that your
21 recollection?

22 A Yes.

23 Q And then Bank of America. The statements
24 seem to indicate there are three different accounts.
25 One that's called a master relationship account, the

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1 second a U.S. Trust account, and the third is a PIMA
2 account they call it.

3 A Okay.

4 Q And then there is also some statements
5 which describe a Platinum Circle Checking account,
6 and I can't identified the institution at which that
7 account is held.

8 A Would you like me to look at it?

9 Q No. Does the name ring a bell, though,
10 Platinum Circle Checking?

11 A No.

12 Q There is three B of A accounts, the single
13 CoAmerica account and then a couple of different
14 accounts at the Bank of Montreal. What are these
15 different accounts used for?

16 A I presume some of them are like money
17 market and some are like checking.

18 Q But how would you use them? Because you
19 said you were the primary point of contact with the
20 bank?

21 A I authorize a wire, but how they set the
22 accounts up would have been set up by them according
23 to what they have.

24 Q No. I understand, but in the movement of
25 money through the accounts, how would you decide I'm

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1 going to pay this bill or this obligation through
2 the account?

3 A I think most of them got paid with Bank of
4 America, and I got a bill, and I would issue a
5 check.

6 Q Would you consider the Bank of America
7 account to be your primary account from which you're
8 paying your expenses?

9 A Yes, at the time.

10 Q Well, what time are we talking about?

11 A 2010, 2009, 2008.

12 Q Okay. What was the purpose of opening up
13 the CoAmerica account?

14 A We are looking at potentially moving our
15 primary relationship at the time to CoAmerica. We
16 are seeing online checking and how their software
17 works, which no one has been a fan of.

18 Q Same question with respect to the Bank of
19 Montreal. What was in your mind as the holder of
20 that account or Arcadia being the owner of that
21 account, what was the primary purpose of the Bank of
22 Montreal account as you would use it?

23 A Arcadia and I wanted a Canadian bank
24 account.

25 Q Had you ever had a Canadian bank account

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1 prior to opening the Bank of Montreal account?
2 A Yes.
3 Q With what institution?
4 A CIBC.
5 Q When did you close that account?
6 A I don't remember.
7 Q Then the bank records indicate that you
8 closed a lot of these accounts in September of 2010.
9 Why?
10 A It became redundant.
11 Q What was redundant about it?
12 A I wasn't actively using them.
13 Q You closed the U.S. Trust account, the Bank
14 of America?
15 A Yes.
16 Q You said up to that point that had been
17 your primary bank account?
18 A Yes.
19 Q What changed that caused you to close it?
20 A I went into detail with my line of credit
21 with them, so it became all these various credit
22 facilities went into default, and it became very
23 complicated.
24 Q What credit facility did you go into
25 default with the Bank of America?

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1 A My line of credit.
2 Q Let's talk about that. How much was the
3 line of credit?
4 A \$1 million.
5 Q When did you first draw down upon that line
6 of credit?
7 A When it was first issued several years ago.
8 Q As I read them, some bank statements
9 indicated that it had been brought current at some
10 point in 2010.
11 A Current to zero?
12 Q Yes.
13 A The line of credit?
14 Q Yes.
15 A Not to my knowledge.
16 Q Okay. When did you go into default on the
17 line of credit?
18 A When I advised them of the ruling on
19 September 13 or September 14th.
20 Q Up until that time, had the bank said you
21 are not meeting your monthly obligations with
22 respect to payments on the loan?
23 A With Bank of America until then.
24 Q Do you have any intention of paying the
25 judgment against you?

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1 MR. BRESLOW: This is a net worth
2 examination -- hold on. Let me object to the form
3 of the question. This examination is to establish
4 net worth. I am not going to instruct him not to
5 answer, but I object to the form.

6 But, Mr. Morabito, go ahead and answer, if
7 you can.

8 THE WITNESS: Which judgment are you
9 referring to?

10 BY MR. DESMOND:

11 Q The judgment by JH against you and CNC?

12 A Of course we intend to honor it like any
13 other obligation.

14 Q In your mind, did you believe that when you
15 transferred the \$6 million to the trustee in New
16 Zealand, that you were giving a debt priority over
17 the judgment by my client?

18 A No.

19 MR. BRESLOW: Object to the form. This is
20 a deposition on a claim or potential claim that's
21 not currently pending. This was not a net worth
22 question. I guess one or two more questions on this
23 area, but I don't think -- I think we are far afield
24 of what we are here to do, but go ahead and answer
25 if you can.

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1 THE WITNESS: I was told and believed that
2 I was to go and satisfy any obligations I had, and
3 that I should go and fulfill my existing obligations
4 that were outstanding.

5 BY MR. DESMOND:

6 Q And I don't want to talk about
7 attorney-client privileged communications, but
8 outside of that who told you to do that?

9 A I can't respond based on what you just told
10 me.

11 Q It would be coming from attorneys?

12 A Yes.

13 Q Let's go back for a minute to Arcadia.
14 When the Arcadia Trust was first created in I
15 believe it was 1998, what in your mind was the
16 purpose behind that? Why were you interested in
17 creating a trust for yourself?

18 A I don't know what my intentions were at the
19 time. I received legal advice, so I did it.

20 Q Over the years we talked a little bit
21 before the break about at one point in time the
22 spend thrift portion of the trust had over \$20
23 million in assets. What's the highest asset value
24 that has ever been held in the name of the Arcadia
25 Trust?

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1 A I don't recall.

2 Q Was it higher than the \$20 million that was
3 there in the year 2008?

4 A In the trust? Probably. In terms of
5 value -- it depends on the value of things. It
6 depends, you know. You have certain obligations
7 certain things we had and certain assets are no
8 longer there. And what these assets are worth in
9 your eyes and my eyes, whether it be Fernley or
10 other things, but things were worth a different
11 amount in 2007, 2006 than they are today.

12 Q But what assets can you point to that had a
13 reduction in value from 2006, 2007 to today that
14 caused a net reduction in value of assets of the
15 trust?

16 A Since then, remember, I paid legal bills.
17 I have had living expenses. I paid off certain
18 debts and existing debts and obligations that I had
19 and which you're aware of and we are discussing. I
20 had Fernley go away, whatever, I forget what I
21 valued Fernley at, but Fernley, once it was opened,
22 would be a going concern, and, you know, obviously
23 prior to 2007 and the smoking ban in casinos had one
24 value, and their estimated value would be another
25 and was an opening concern and as a prospective

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1 concern would be a different value.

2 Q Let's talk a minute about Fernley. You
3 said the reduction in your net worth from -- I think
4 you said in January 2010 was probably in excess of
5 \$20 million, and by December of last year you
6 believe your net worth was a \$3 to \$5 million value,
7 and you attributed the majority of that to Fernley.
8 You said the Superpumper was sort of a wash?

9 A I think I said there were four things, and
10 we only discussed one. Fernley, obviously, was one.
11 The payment of the obligations I have been doing.

12 Several hundred thousands of dollars went
13 to my prior law firm. There have been a couple of
14 million dollars in legal fees. Taxes have been
15 paid. Living expenses that have been paid. We
16 settled obligations of several million dollars.

17 Q What obligations have been paid for several
18 million dollars?

19 A We just discussed the wire, the Sefton
20 settlement.

21 Q I want to be clear. Anything other than
22 the Sefton settlement?

23 A As I am sitting here today, I can't recall
24 anything specific, but I know we went and made sure
25 that anything, the existing debts. There is

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1 obviously the amount of money that's owed to Bank of
2 America on the line of credit.

3 Q How much currently is owed to Bank of
4 America on the line of credit?

5 A \$2 million.

6 Q You haven't paid down any of the principal?

7 A No.

8 Q The payment you are currently paying on
9 that I believe you said were \$10 to \$12,000 a month?

10 A Yes.

11 Q Those are interest-only payments?

12 A Yes.

13 Q What other -- you said there are four
14 things.

15 A There are taxes, living expenses.

16 Q What taxes did you pay in 2010?

17 A Are we talking reduction of my net worth?
18 You said from the \$20 million point.

19 Q Correct.

20 A Whatever that was.

21 Q I want to be clear on the time frame, here.

22 A Okay.

23 Q January 2010 to December 2010.

24 A Living expenses, legal fees and Fernley
25 would be the biggest swatches out of that. Legal

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1 fees were a couple of million dollars.

2 Q Okay. How much do you attribute to
3 Fernley? What was the amount of the note?

4 A The amount of the note I don't remember,
5 but whatever we valued it at is now virtually gone
6 off my net worth.

7 Q Right, but what was your equity interest in
8 Fernley?

9 A We had a combined 51 percent of the various
10 entities.

11 Q I understand, but what was your actual cash
12 investment in Fernley?

13 A I don't recall what my cash investment is,
14 but that's a different question of what it's worth.
15 That's what my assets were. I don't recall. You
16 asked that question before. I don't remember. I
17 mean, we paid the rent for a long time. Remember,
18 there was no income coming in, so I funded the rent
19 every single month, which was several hundred
20 thousand dollars a year in rent on the property and
21 other payments and other bills would have been
22 funded through me.

23 Q Was that property held through Spirit on
24 the ground lease?

25 A Spirit owned it and the ground and leased

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1 it to us. So for '07, '08, '09, '10, I would have
2 funded the ground lease on that, which was a couple
3 of million dollars, and any expenses separate from
4 the house money would have come from me. You asked
5 me for hard cash that would have gone in, that would
6 have been that.

7 Q What about living expenses in 2010, because
8 you had income in 2010 up until September, and I
9 think you said roughly about \$500,000 in annual
10 income from 2010. Were your living expenses higher
11 than what you are able to cover with your income?

12 A Yes.

13 Q Were they usually higher in 2010?

14 A No. My contribution of mortgages and
15 overhead and whatnot probably exceeded \$1 million a
16 year.

17 Q In what years?

18 A Every year.

19 Q Let's break that down a little bit.

20 Because you told me as of today your mortgage
21 obligations and your B of A interest obligations is
22 about \$25 to \$27,000, so...

23 A A month, and before that that would have
24 included my portion of the Laguna mortgages,
25 household staff, the overhead for the houses, the

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1 expense of the airplane, which is no longer there.

2 All those sorts of things.

3 Q Was the airplane, though, was that paid for
4 by you or Arcadia, or is that paid for by CNC or
5 CWC?

6 A That was originally owned by Barry Hinkley,
7 and it came out and was canceled and rebought. A
8 framework of other companies.

9 Q I want to talk about some transactions that
10 took place prior and some money that came to you,
11 where that may be today. You are familiar with the
12 transaction with Nella Oil --

13 A Yes.

14 Q -- while you were at BHI? Net of -- and
15 there was a \$58 million sale to Nella Oil?

16 A \$59.8.

17 Q \$59.

18 A I just looked that up. That's the one that
19 is familiar in my mind.

20 Q How much money did you receive from that
21 transaction as a shareholder?

22 A Several million dollars. Under 10, I
23 think.

24 Q You believe it was under \$10 million?

25 A Yes, I think.

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1 Q Where did that money go after it was
2 distributed to you?
3 A Into the bank.
4 Q Into your Arcadia account?
5 A Yes.
6 Q That's in 2007?
7 A Yes, January 2007.
8 Q Okay.
9 A Some of it went into the business. Barry
10 Hinkley got a good portion because we didn't have a
11 line of credit between January of 2007 and closing,
12 so we actually operated out of our own money, so a
13 large portion of the money stayed in the company.
14 Q I'm just talking about the distribution to
15 you as a shareholder.
16 A I think I put money back into the company
17 because we didn't have a line of credit and Barry
18 Hinkley after that, and we had to operate out of our
19 own funds.
20 Q How would you have put money back in the
21 account? In what form? Capital contributions?
22 A Yes or loan.
23 Q Do you have any documents showing that?
24 A I'm sure that bank records would show
25 whatever happened.

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1 Q Okay. Let's go ahead and look at your 2007
2 tax return. This is 225. I think you indicated you
3 have a copy. I don't know what production this is
4 in.

5 MR. VACCO: It looks like the third
6 supplement.

7 (The document referred to was marked by
8 the CSR as Exhibit 2 for identification
9 and made a part of this deposition.)

10 BY MR. DESMOND:

11 Q That's the entire supplement as it was
12 produced. I will direct you to the pages I want to
13 you look at, but the 2007 return is included in
14 there.

15 A Okay.

16 MR. BRESLOW: So just stand by for a
17 second.

18 MR. IRVINE: Is that CNC?

19 MR. VACCO: The Bates is RBSL.

20 MR. DESMOND: I don't know -- Barry, I
21 don't think you differentiated. I think it was a
22 supplemental production. I don't know that it was
23 designated on behalf of Morabito or CNC.

24 MR. BRESLOW: When we had time, we tried to
25 marry it up with specific requests and other times

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1 it was a supplement.
2 BY MR. DESMOND:
3 Q Actually, from the time line it indicates
4 Mr. Morabito's supplemental response.
5 MR. BRESLOW: Is there a Bates number you
6 want him to look at?
7 MR. DESMOND: 225.
8 THE WITNESS: Got it.
9 BY MR. DESMOND:
10 Q First of all, this is your 2007 tax return.
11 Did Mr. Bernstein prepare this?
12 A Yes.
13 Q How long has Mr. Bernstein been preparing
14 tax returns for you individually?
15 A Several years.
16 Q You mean more than ten?
17 A No. I forgot when he took over. We
18 already had an accountant before him. It could be
19 ten years.
20 Q Okay. The sheet you are looking at is the
21 federal income tax summary?
22 A Yes.
23 Q It indicates you earned \$630,306 in 2006?
24 A Yes.
25 Q What was the source of that income?

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1 A It says wages, salaries and tips, so I
2 assume wages from the companies.
3 Q I mean, do you recall receiving a W2?
4 A Obviously, I assume whatever legal
5 processes involved with getting paid taxes was
6 followed.
7 Q Okay. You don't recall a portion of this
8 was wages, tips, versus other income or W2 income?
9 A No.
10 Q The document also shows that you earned in
11 the line just below that just over \$1 million in
12 interest income in 2006?
13 A Yes.
14 Q What investments did you earn that interest
15 on?
16 A I don't know. I don't recall.
17 Q You also earned dividend income of \$35,000?
18 A Yes.
19 Q Do you recall what investments you earned
20 dividend income on?
21 A No. I think the 2006 would have come from
22 Barry Hinkley. Whatever we had out of Barry
23 Hinkley.
24 Q You don't think it was investments you had
25 personally or in the name of Arcadia?

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1 A No. I mean, I don't recall. We didn't
2 have that kind of cash to earn \$1 million. I
3 didn't.

4 Q You also claim capital gains in 2006 in the
5 line beneath that of \$11.3 million. Do you see
6 that?

7 A Yes.

8 Q Do you recall what you earned the capital
9 gains on?

10 A I'm assuming that was sales of properties
11 that we are buying and selling.

12 Q Sale and leasebacks?

13 A I don't know if that's long-term or
14 short-term capital gains. Does it say it in here?

15 Q I am just looking at that line.

16 A I don't know.

17 Q Okay. And then it's rent, royalties,
18 partnership, trust income of about \$2 million.
19 Do you see that?

20 A Yes.

21 Q Do you know what that income consisted of?

22 A I presume it's Barry Hinkley.

23 Q Other income, do you know what the source
24 of that is?

25 A No.

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1 Q Who would be the best person? Would
2 Mr. Bernstein be the best person to identify the
3 sources?
4 A It should be in this return. Isn't it?
5 Q Well, I'm just asking --
6 MR. BRESLOW: Let him finish.
7 BY MR. DESMOND:
8 Q Would you consider Mr. Bernstein to be the
9 best source as the author of this document, what the
10 source of the income would be?
11 A No. I would presume the document would be
12 the best source. It should be in here where the
13 money came from.
14 Q So it's your recollection, though, at this
15 time going back to the interest income, that you
16 didn't have assets that were sufficient to earn over
17 \$1 million in interest income?
18 A Personally? No.
19 Q Okay. If you could flip forward to RBSL
20 229, that is your Pennsylvania income tax summary?
21 A All right.
22 Q It indicates you had net profits from the
23 business of \$954,000?
24 A Yes.
25 Q What was the source of that net profit?

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1 A We had two pieces of storage in
2 Pennsylvania at the time.

3 Q Okay. And then let's roll forward to the
4 2007 return.

5 MR. BRESLOW: What's the Bates number?

6 MR. DESMOND: 234.

7 BY MR. DESMOND:

8 Q On line 7.

9 A 245?

10 Q Yes.

11 A Okay. All right.

12 Q This indicates that you had \$100,000 in
13 wages, salaries and tips for 2007?

14 A Yes.

15 Q Do you know what the source of this income
16 was?

17 A I would assume Barry Hinkley.

18 Q Actually, if we go to 267, it indicates
19 that it was wages from Big Wheel Hospitality?

20 A Okay.

21 Q What did you do for that entity?

22 A I was running all those and trying to get
23 them set up to open up Fernley.

24 Q So you were paid \$100,000 in income for
25 those services?

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1 A That's what it says, yes.

2 Q If we go back to 245 in line 8a, it

3 indicates you had taxable interest income of

4 \$257,555?

5 A Yes.

6 Q Then four pages back on 249, this indicates

7 that the source of that income -- I'm sorry. The

8 next page, 250?

9 A Yes.

10 Q So this indicates the source of that

11 income, and it indicates, if you go down to the

12 bottom two entries, that approximately \$227,000 of

13 that amount was interest income from Wells Fargo?

14 A Yes.

15 Q What amounts -- what accounts did you have

16 at Wells Fargo at that time which made up that

17 interest income?

18 A I believe I had personal accounts, Arcadia

19 trust accounts with Wells Fargo at the time because

20 we were banking with them.

21 Q Do you know what the principal amounts were

22 at the time to receive \$227,000 in interest?

23 A No. I would think \$3 or \$4 million.

24 Q When were the Arcadia accounts at Wells

25 Fargo terminated?

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1 A I believe with the sale of the business in
2 July of 2007, I think.

3 Q Okay. Does Arcadia currently have any
4 accounts at Wells Fargo?

5 A No.

6 Q Has it had any accounts at Wells Fargo
7 since you believe in 2007?

8 A No.

9 Q According to this schedule, if you go up
10 the third line down on that page 250 indicates you
11 received about \$3,500 in interest income from CNC?

12 A CWC.

13 Q CWC, excuse me.

14 A Yes.

15 Q Do you know what that was for?

16 A No.

17 Q Then it refers to this Rosemont, Solebury
18 Co-Investment Fund?

19 A Yes.

20 Q What is that fund?

21 A It's a stock investment or a portfolio that
22 invests in private and public companies. Today I
23 believe it's in default.

24 Q Well, I think today documents indicated
25 that you had an original investment of about \$1

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1 million in that fund?

2 A No. It was a commitment. The money
3 invested is a couple of hundred thousand dollars.

4 Q I think your initial payment of that
5 commitment was \$250,000. Does that sound about
6 right?

7 A It sounds high.

8 Q Do you know how much you have committed to
9 Rosemont, Solebury as of today?

10 A I think it's around \$300,000.

11 Q I think there is some correspondence from
12 Ms. Yalamanchili where she was requesting that you
13 get out of the fund --

14 A Yes.

15 Q -- and be refunded the portions that you
16 had funded?

17 A Yes.

18 Q Did that ever happen?

19 A No.

20 Q What's the current state of Rosemont,
21 Solebury as of today?

22 A It's been in default for over a year.

23 Q When you say it's been in default?

24 A I haven't funded them.

25 Q Are you continuing to receive interest

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1 income from them?

2 A No.

3 Q And under what terms can you get back your
4 commitment or principal investment in it?

5 MR. BRESLOW: Object to the form; lack of
6 foundation.

7 THE WITNESS: I don't know.

8 BY MR. DESMOND:

9 Q You haven't inquired?

10 A Oh, I have. I have gotten nowhere. I
11 don't believe I can.

12 Q There is income here on 250 of about \$8,000
13 from Watch My Block?

14 A Yes.

15 Q What was the interest in ordinary dividend
16 income from Watch My Block?

17 A I don't specifically recall. It may have
18 had some money in it at that time for some expenses,
19 and it may have accrued some interest.

20 Q But other than the patent application,
21 which was abandoned we talked about, do you recall
22 what other assets it held?

23 A Assets, no, but back in 2007 we were
24 actively trying to get it established, so there were
25 expenses in the company that year.

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1 Q Look down to the ordinary dividend section,
2 this same page?
3 A Yes.
4 Q You show, this is again on the '07 return,
5 \$104,226 from National Financial Services?
6 A Uh-huh.
7 Q What is National Financial Services?
8 A I have no idea.
9 Q You don't know what investment you had that
10 you were receiving over \$100,000 in interest earned
11 dividends?
12 A I assume it was something from the bank
13 that they put in municipal bonds. I don't
14 specifically know what Financial Services is.
15 Q You had another almost \$350,000 in dividend
16 interest from Wells Fargo. Do you know what that
17 investment was?
18 A Again, it sounds like it is something
19 either municipal bonds or something we had with them
20 at the time.
21 Q Do you know why your interest income
22 decreased from over \$1 million in 2006 to just over
23 \$250,000 in 2007?
24 A I presume because I had less money. Like
25 less principal.

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1 Q Do you know why?

2 A Apart from putting money in the business
3 and personal expenses, no.

4 Q Had money been transferred out from 2006 to
5 2007?

6 A Out from where to where?

7 Q Out from some of your other investments
8 from Wells Fargo? If we were to go back and look at
9 schedule B to the 2006, some of that income? Did
10 you change investments or accounts from 2006 to
11 2007; do you recall?

12 A It's five years ago. I really don't
13 remember. If we brought the records and looked at
14 them, I'm sure I could string it together.

15 Q If we go back to 245, it indicates you had
16 a capital gain in 2007 of about \$27.7 million?

17 A Yes.

18 Q You see that at line 13?

19 A Uh-huh.

20 Q And then at 251, details the capital gains
21 and losses.

22 MR. VACCO: I'm sorry to interrupt you,
23 John. What --

24 MR. DESMOND: 251.

25 MR. VACCO: Thank you.

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1 THE WITNESS: Yes.
2 BY MR. DESMOND:
3 Q This shows a number of in part one
4 short-term capital gains and losses of -- appears to
5 be -- are those the number of different municipal
6 bonds?
7 A Yes.
8 Q And where were those municipal bonds held?
9 A I presume with Wells Fargo.
10 Q You don't know?
11 A Well, based on the statement it says Wells
12 Fargo, so I think Wells Fargo.
13 Q Okay. And then this shows in line 12 net
14 long-term grain partnership S corporation estate
15 about \$17.7 million?
16 A Yes.
17 Q Was that from the purchase of Barry
18 Hinkley?
19 A Well, this was in 2007. It would have been
20 from the sale.
21 Q I'm sorry. From the sale of Barry Hinkley?
22 A Yes.
23 Q What about the -- at line 8 the termination
24 of Tibarom Holdco, LLC. It shows a gain of almost
25 \$800,000?

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1 A Yes.

2 Q What is Tibarom Holdco, LLC?

3 A That was the company that I believe owned

4 some of the Jiffy Lube operating companies.

5 Q And that entity, was its corporate

6 existence terminated in 2007?

7 A Yes.

8 Q It indicates it was sold December 22, 2007?

9 A Yes.

10 Q What was the reason for selling that at

11 that time or terminating it?

12 A The Holdco? Because of the operating

13 companies had been sold.

14 Q Of Tibarom?

15 A Yes. This is the holding company Holdco.

16 Q So the Tibarom assets had been sold as well

17 in 2007?

18 A Yes, or earlier.

19 Q How did you determine the cost basis for

20 Tibarom Holdco, if you know?

21 A I didn't do that. My accountant did.

22 Q Do you recall the individual Tibarom

23 locations were sold and then you terminated Holdco?

24 A Not locations, the operating companies.

25 Q New York, Pennsylvania, Nevada, California?

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1 A Yes.

2 Q Were all of those various Tibarom entities
3 sold as of the end of 2007?

4 A Yes, by the end of 2007 they were all gone.

5 Q Did all of those sales take place in 2006
6 and 2007?

7 A Or earlier, I think. It was over the
8 course of a couple of years.

9 Q What is GJM in the next line?

10 A A company we had set up. My sister was
11 thinking to buy something, and she didn't end up
12 buying it.

13 Q That's called GJ Morabito?

14 A Yes. Probably the cost of opening the
15 company and closing it.

16 Q Okay. And then line 11 of schedule D, you
17 show about a \$9 million capital gain?

18 A Yes.

19 Q Do you know what this was from?

20 A No. The sale of the company.

21 Q Well, the \$17.7 was from the sale of the
22 company. Is it your belief that the line 11 gain
23 was also from the sale of the company?

24 A I think part of it, yes. Part of it would
25 be the sale of stock. If you remember there was an

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1 asset and stock sale, so the Nella transaction was
2 in January, and the Herbs transaction was in July.

3 Q And then if we go back to 245, line 21, you
4 have got about \$2 million from Spirit Finance in
5 2007?

6 A Yes.

7 Q What was that for?

8 A They paid -- when they bought their
9 portfolio, they asked me to assist them. They
10 individually sold -- they brought the properties of
11 the portfolio, and they individually sold them, and
12 they asked us to assist them in the individual sales
13 and then Superpumper Properties exist because the
14 final three stores didn't sell. They actually made
15 me buy them back.

16 So the amount of money I made kind of
17 gotten eaten up by the amount of properties I had to
18 buy back, and by the time it was all said and done
19 they were unavailable or they were still there.

20 Q But after Spirit bought the portfolio and
21 you were assisting them in reselling those
22 individual properties, were you receiving a
23 commission or percentage for the sale of those?

24 A They would give us I think a per site
25 amount to assist them.

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1 Q And that was what this \$2 million is
2 comprised of?
3 A Yes.
4 Q Did you continue to do work for them in
5 2008?
6 A No. I didn't do work for them -- in 2007
7 was work I did specifically for the properties that
8 were in the company.
9 Q In 2006 and 2007?
10 A Yes.
11 Q The real estate taxes, do you recall is on
12 249?
13 A What line?
14 Q Do you know what you paid those on?
15 A What line?
16 Q It is line --
17 A I see it. 6?
18 Q Yes. No. It's --
19 A Real estate taxes.
20 Q Hold on. Yes. I'm sorry. Line 6.
21 A I presume that's on the house.
22 Q The Laguna, Panorama, Palm Springs --
23 A Yes.
24 Q -- homes?
25 A Yes.

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1 Q And at the time these were -- those taxes
2 were shown on your personal return rather than
3 Mr. Bayuk's?
4 A I'm sure he has his portion as well.
5 Q In line 16 it shows you made a gift of
6 \$191,000?
7 A Yes.
8 Q Do you recall what that was for?
9 A I am looking to see what the statement
10 says. AIDS Foundation of Orange County \$49,500.
11 Charitable contributions of \$141,216 and the Susan
12 Komen Foundation of -- so \$197,066.
13 Q You don't know what these charitable
14 contributions are?
15 A Probably Washington County Sheriffs and
16 others.
17 Q I want to roll forward to your 2008 return
18 and specifically page 353.
19 A 353? Okay.
20 Q U.S. Trust entry? Seems to indicate that
21 you purchased securities from U.S. Trust for
22 \$15,294,000?
23 A Yes.
24 Q Okay. Do you know what the source of funds
25 used was to purchase those securities in 2008?

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1 A Bank proceeds I put up from the bank
2 accounts.
3 Q From what accounts?
4 A My U.S. Trust account.
5 Q You took existing monies in the U.S. Trust
6 account and purchased securities?
7 A Yes.
8 Q Over \$15 million? So if I looked at
9 corresponding statements from 2008, it would show
10 balances in excess of \$15 million available to
11 purchase those securities?
12 A Yes.
13 Q Then it also indicates you sold the asset
14 at a loss for \$15,228,000?
15 A Yes.
16 Q What did you do with the funds upon the
17 sale?
18 A Probably bought more municipal bonds.
19 Q Do you have records of that, because I
20 didn't see where they went after that?
21 A At some point in time we stopped having
22 municipal bonds because I didn't feel all that
23 confident in the status of municipal bonds, so
24 whatever statement we have we provided you.
25 Q But you don't know after you sold --

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1 A The final sale?

2 Q No. Of that sale, it's your belief that
3 these went back into the purchase of municipal
4 bonds?

5 A I don't recall when the last time we
6 maintained any money in municipal bonds or whatever
7 things we had, but you have all the statements from
8 that account.

9 Q Was there a certain amount of money during
10 this time period, 2008, that you were keeping in
11 municipal bonds?

12 A I don't recall. The statements would show.

13 Q But from some other investments it appeared
14 as though you had most of your investments in either
15 fixed income or bonds rather than equities? Is that
16 fair?

17 A I don't believe I have ever invested in
18 equities.

19 Q So primarily it was invested in bonds or in
20 some other --

21 A Sold them. To my knowledge I have never
22 invested after that.

23 Q There is some T bills and some other
24 investments.

25 A In the equities. These have always been in

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1 bonds.

2 Q You don't recall purchasing some T bills at
3 some point?

4 A They probably had them in the account or
5 treasuries and bonds. Something that was safe.

6 Q But you don't know where -- I mean, it's
7 your belief that they went back into municipal
8 bonds, but you are not sure of that?

9 A Or treasuries as you said we have.

10 Q Then under-long term capital gains, U.S.
11 Trust is also listed. You have got that \$1,497,000
12 that was subsequently sold for \$1,424,000?

13 A Yes.

14 Q Do you know what that was for?

15 A No.

16 Q Do you know what you did with those funds?

17 A No.

18 Q Do you know what the --

19 A Wait. One says short, one says long? I
20 assume it's the same account based on the holding on
21 it. We may have had bonds for longer than 356 days.

22 Q What about the land of Nevada sales price
23 \$350,000? Do you know what that refers to?

24 A I don't recall where we sold of it. I
25 don't remember what that is, and sold a piece of

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1 land in Nevada.

2 Q Then the next entry was for the apartment
3 on Market Street that we talked about?

4 A Yes.

5 Q If you could flip forward to page 402.

6 A Yes.

7 Q This is from your 2009 return?

8 A Yes.

9 Q Schedule C, which we are looking at
10 identifies you as affiliated with Cowestco Special
11 Risk, LLC?

12 A Yes.

13 Q What's that entity?

14 A The company we briefly discussed was set up
15 to look at an insurance investment.

16 Q You received \$49,000 from that entity?

17 A Yes.

18 Q Why did you receive \$49,000?

19 A It would have been putting expenses during
20 that same amount that was allocated to personal.

21 Q Okay. As I recall your testimony earlier,
22 you said you looked at different insurance captives
23 or insurance vehicles but ultimately didn't purchase
24 any?

25 A I never made an investment.

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1 Q Did Cowestco Special Risk ever have any
2 ongoing business?
3 A Ongoing? No.
4 Q Any business at all?
5 A No.
6 Q It was just exploring the idea of
7 purchasing insurance investment products?
8 A Yes.
9 Q Schedule D?
10 A What page?
11 Q It's two forward I think, yes, 404?
12 A Yes.
13 Q There is a Treasury Bill that shows up. Do
14 you see that?
15 A Yes.
16 Q The July 31, 2008 shows U.S. Treasury Bill
17 of almost \$7 million, which was sold January 29,
18 2009. Do you see that?
19 A Yes.
20 Q Do you know what the source of funds was to
21 purchase that T bill in July of 2008?
22 A The prior \$10 or \$15-million account would
23 have bought that.
24 Q So you think that was a carryover from the
25 U.S. Trust account?

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1 A Yes, the investment account.

2 Q After you sold this asset roughly \$7
3 million sale, do you know where the money went after
4 that?

5 A Either into other treasuries or municipals
6 or back into the account.

7 MR. DESMOND: I think we need to change the
8 tape.

9 THE VIDEOGRAPHER: This is the end of DVD
10 No. 2. We are going off the record. The time is
11 1:48.

12 (There was a recess taken.)

13 THE VIDEOGRAPHER: This is the start of DVD
14 No. 3. We are back on the record. The time is
15 2:40.

16 BY MR. DESMOND:

17 Q Before we had a change of tape, we are
18 looking at the 2009 return, if you are still on page
19 404?

20 A Yes.

21 Q Beneath the T bill, there is a foreign
22 exchange gain sales price of \$16,121. Do you know
23 what that was for?

24 A No.

25 Q Then there is an -- under the long-term

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1 capital gains and losses, there is an entry for --
2 at line 8 for LLC Health Care. Do you see that?

3 A Yes.

4 Q It indicates the cost basis was \$511,000,
5 the sales price of \$447,500 for a loss of \$63,000?

6 A Yes.

7 Q Do you know what that refers to?

8 A To a municipal bond.

9 Q Then what about -- the same question, the
10 \$447,000 in proceeds from that sale, do you know
11 where that was reinvested or deposited?

12 A Going back into that main investment
13 account.

14 Q With Bank of America or U.S. Trust?

15 A Yes.

16 Q Let's go off the return for a second. We
17 talked a little bit about Baruk Properties.

18 Actually, I said go off, but let's go back
19 for one second. Let's go to page 270. This is from
20 the 2007 return. This is statement 9 of your
21 individual statement from 2007.

22 A Yes.

23 Q And this is for Baruk Properties. It
24 indicates that you invested in that year \$1,808,000
25 in the Baruk Properties. Do you see that?

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1 A Yes.

2 Q What were those funds used for?

3 A I believe we bought a building.

4 Q Do you know what the source of those funds

5 was to purchase the building or to make the

6 investment in Baruk?

7 A From my investment fund.

8 Q At U.S. Trust?

9 A Yes.

10 Q Do you know where Baruk bought a building?

11 A I believe it was one of the Laguna Beach

12 buildings.

13 Q The commercial buildings?

14 A Yes.

15 Q And then I think we talked about it

16 earlier, but then in October 1 of 2010, you, on

17 behalf of Arcadia, sold half of the interest in

18 Baruk to Mr. Bayuk's trust; correct?

19 A Yes.

20 Q That was in exchange for the \$1.6 million

21 note. Was there any other consideration or exchange

22 of value given for the sale of your interest?

23 A It was done based on the appraisal values.

24 Q I want to talk about the Big Wheel entities

25 just quickly again. The documents indicated that

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1 you were an 80 percent owner of Big Wheel Gaming
2 with 100 percent of the voting rights?

3 A Okay.

4 Q Does that sound familiar?

5 A No.

6 Q The source of the funds that you invested
7 in the various Big Wheel entities, where did those
8 come from?

9 A My investment account.

10 Q The U.S. Trust account?

11 A Yes.

12 Q Any other accounts that you invested in Big
13 Wheel?

14 A Not that I know of.

15 Q Then the parties to the loan agreement on
16 the Fernley property was the Big Wheel Properties?

17 A I believe so.

18 Q Is that the party that was the party to the
19 loan with Ilvse or Ilves?

20 A I don't recall. I believe it was the
21 Fernley Travel Center owned by -- I don't know how
22 it was structured.

23 Q Let's go back to the Superpumper for a
24 second. Your 2007 return indicated that you had
25 placed nonresidential property into service that

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1 year valued at 7 and a half million dollars.

2 A Somewhere in there.

3 Q That's a different production. I can pull

4 it. I didn't know if you are familiar with that?

5 A I don't know what you are talking about.

6 Q You don't recall your 2007 return placing

7 properties into service that year?

8 A What does placing properties into service

9 mean?

10 Q That's in your return.

11 A I don't know what that means.

12 Q Okay. We'll go back to it. The car lots

13 that Superpumper Properties owns, when did it

14 originally acquire those locations?

15 A We were -- as part of the sales to Hearst,

16 there was a guarantee on the Arizona properties with

17 Barry Hinkley that they wanted discharged, so they

18 wouldn't close on the acquisition of Barry Hinkley

19 because there was a discharge of guarantee to

20 Superpumper. And as part of the condition of the

21 part of stepping up and buying the property in

22 Arizona, they wanted the final properties sold out

23 of the Barry Hinkley portfolio, which ended up being

24 those three car lots.

25 Q You ended up purchasing those properties

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1 from Spirit?

2 A Yes.

3 Q Do you know what the cost basis was of the

4 properties at the time you purchased them?

5 A I think it was around \$1.5 or \$1.7 so for

6 the three of them.

7 Q There is one in Battle Mountain?

8 A Yes.

9 Q One in Nealy?

10 A Yes.

11 Q One in --

12 MR. BRESLOW: Elko.

13 BY MR. DESMOND:

14 Q -- Elko?

15 A Yes.

16 Q Other than these three assets or three

17 locations that you bought from Spirit, have the

18 assets of Superpumper Properties changed since its

19 creation?

20 A No.

21 Q It's always been the three properties?

22 A It was set up to buy those three

23 properties.

24 Q And those properties are all currently

25 under long-term ground leases?

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1 A Yes. Leases?
2 Q Leases, not ground leases?
3 A I believe they are leases.
4 Q Triple net leases?
5 A Yes.
6 Q Then we talked about on September 30, 2010
7 you sold 80 percent of Superpumper to Snowshoe
8 Petroleum?
9 A I sold 10 percent of CWC, which owned 80
10 percent of Superpumper, Inc., but, yes.
11 Q I don't know exactly the timing without
12 looking at the documents, but there was a transfer
13 or sale of the CWC assets to Superpumper and then a
14 sale of Superpumper to Snowshoe Petroleum?
15 A J Asset was Superpumper.
16 Q After the sale it was rolled into
17 Superpumper?
18 A Yes.
19 Q And that asset was rolled into Superpumper.
20 Do you recall the name of the entity that did the
21 appraisal of the Superpumper assets before it was
22 transferred to?
23 A No.
24 Q Do you have those documents?
25 A The appraisal?

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1 Q Yes.

2 A I don't have it, but I'm sure my counsel
3 could.

4 Q Is that something that you can produce in
5 this action?

6 A I don't know.

7 Q I just request that along with the
8 appraisals on the -- the only appraisal we have is
9 for the Reno property, so if there were appraisals
10 of the Superpumper interest, the commercial
11 buildings that Baruk held, the Laguna property,
12 residential properties which I understand appraisals
13 were done?

14 MR. IRVINE: You don't have those, John?

15 MR. DESMOND: I got an appraisal on
16 Panorama. That's the only one. I don't have the
17 others. So it would be the residential appraisal
18 for Laguna, the commercial Laguna appraisal.

19 THE WITNESS: Two commercial.

20 BY MR. DESMOND:

21 Q And two residences and Superpumper?

22 MR. IRVINE: Superpumper Properties?

23 MR. DESMOND: Correct.

24 BY MR. DESMOND:

25 Q What is Winters Property, LLC?

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1 A I don't know.

2 Q Have you ever had an interest in it?

3 A My attorneys set up companies contemplating
4 that transaction. That didn't occur. That's one I
5 never heard of.

6 Q The same question, Stanward Way Property,
7 LLC?

8 A That was to buy Stanward Way, which I don't
9 believe we bought.

10 Q That was a location in --

11 A Actually, the gas terminal opposite the
12 fuel terminal in Reno on Stanward Way.

13 Q It was in contemplation of owning the --

14 A I believe at the end that was sold to a
15 third party and subsequently went to --

16 Q Okay. The assets of Consolidated Western
17 Corporation, as I understand it at the time of the
18 sale of VHI to the Herbs, your interest in the
19 Superpumper Properties was held through CWC?

20 A No.

21 Q Through Consolidated Western Corporation?

22 A The different Superpumper LLC properties.

23 Q So I'm sorry. The Superpumper --

24 MR. BRESLOW: Inc.

25

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1 BY MR. DESMOND:
2 Q Inc. locations?
3 A The business?
4 Q Yes.
5 A Yes.
6 Q Has CWC ever held any assets other than the
7 Superpumper business?
8 A Active businesses, no. It looked at the
9 insurance and that kind of thing. We contemplated
10 using it as a holding company.
11 Q Was it ever used as a holding company?
12 A Didn't buy anything.
13 Q How many locations of Superpumper Arizona
14 were held by CWC?
15 A Superpumper, Inc. operates 11 locations.
16 Q Did that change from the time you sold VHI
17 up until the time you transferred your interest in
18 Superpumper to Petroleum?
19 A No.
20 Q It's always been those 11 locations?
21 A Yes.
22 Q Same question for Consolidated Nevada
23 Corporation. After the time that you sold VHI to my
24 clients in 2007, what assets were held by
25 Consolidated Nevada Corporation?

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1 MR. BRESLOW: Can I have the question read
2 back?

3 MR. DESMOND: I can rephrase it.

4 BY MR. DESMOND:

5 Q After the sale of VHI to my client in July
6 of 2007, what assets were held by Consolidated
7 Nevada Corporation?

8 A Other than the taxable effect of the sale,
9 I don't believe any.

10 Q No assets?

11 A No.

12 Q Okay.

13 A CNC, the sole purpose it was to own Barry
14 Hinkley.

15 Q Did CNC have any sources of revenue except
16 the sale of Barry Hinkley?

17 A I believe the revenue reported on the tax
18 return was revenue from the sale.

19 Q What was the source of funds -- and we can
20 see the CNC bank statements, but it shows payments
21 going out, I think you said for legal fees, other
22 fees perhaps related to litigation. What was the
23 source of funds into CNC's account subsequent to the
24 sale of VHI?

25 A The then shareholders who would fund the

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1 account to pay bills.

2 Q You being the primary shareholder?

3 A 54 percent, yes.

4 Q What was the source of your funds as a
5 shareholder to fund that CNC account to pay the
6 bills?

7 A My bank accounts of Arcadia Living Trust.

8 Q All that came from Arcadia?

9 A Yes.

10 Q Any particular account, B of A account?

11 A I don't recall.

12 Q The 2007 income tax statement indicates
13 that CNC paid you \$23.6 million?

14 A I will take your word for it.

15 Q Okay. What did you do with those funds?

16 A It may be a taxable amount. The cash
17 amount, whatever was shown on the closing statement
18 so as taxable and as you know whatever the amount
19 was the closing statement showed was distributed to
20 me would have gone into my bank accounts.

21 Q Which accounts?

22 A At that time either Wells Fargo or Bank of
23 America.

24 Q Your B of A account?

25 A Yes.

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1 Q If there are any distributions to you, cash
2 distributions to you as a shareholder of CNC, those
3 distributions would have gone into your Arcadia
4 account?

5 A No.

6 Q Any distributions to the shareholder?

7 A Yes.

8 Q Again, any capital distributions or funding
9 of CNC as a shareholder, the source of that would
10 have been your Arcadia account?

11 A Yes.

12 Q The 2008 return indicates --

13 A Unless CWC advanced CNC any money which I
14 don't recall any doing that, but it may have, but if
15 they would have paid it through me and gone through
16 or whatnot, but that may have occurred, but those
17 are the only two sources of cash we had. The
18 operating entity on my part, they are banks
19 accounts.

20 Q Who did the accounting and bookkeeping for
21 those transactions where there was capital
22 contributions made by shareholders or it might have
23 been advanced by CWC and gone through you, who
24 prepared the documentation for those transactions?

25 A At the end of every several months Stan

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1 Bernstein would come in and update the statements
2 and take records so he could do tax returns, and
3 whenever there was something that required
4 shareholders and the director, the attorneys would
5 give us documents to sign in advance of doing it.

6 Q Who made decisions as to whether, if there
7 were expenses of CNC that they were to be paid
8 through capital contributions from the shareholders?
9 Is that your decision?

10 A It wasn't a decision so much. There is a
11 bill, a copy of a bill for everyone and a percent,
12 and they would send it. It wasn't a call or a
13 meeting. Everyone knew how to multiply, and they
14 got a copy of the bill.

15 Q Subsequent to the closing the shareholders
16 of CNC were yourself, Mr. Bayuk, your brother Sam
17 and --

18 A Up until the last year when I took all the
19 stock back.

20 Q What was the nature of that transaction?

21 A They transferred the stock. There was no
22 value in the company. It was a negative \$80, \$90
23 value, so I have all the stock.

24 Q When did they transfer the stock to you?

25 A I don't recall specifically. In the last

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1 several months.

2 Q Was it after September 13?

3 A I don't recall. It may have been before

4 that. I don't remember.

5 Q Was that transaction documented in written

6 form?

7 A Yes.

8 Q Your return indicates that in 2008 you

9 loaned CNC \$1.7 million?

10 A Okay.

11 Q Do you recall what that was for? More

12 expenses?

13 A It could have been expenses, legal fees.

14 what year?

15 Q 2008.

16 A Legal fees.

17 Q Again, the source of those funds would have

18 been the Arcadia account?

19 A Yes.

20 Q The November and December 2010 statements

21 for CNC show virtually no activity in that account.

22 Why did it stop?

23 A There was no more bills.

24 Q The bills stopped?

25 A We paid in advance the legal fees of our

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1 prior firm, and we paid the fees, and now I'm
2 funding directly whatever is coming in the door.

3 Q And CNC, other than attorney bills or legal
4 fees, it's not incurring any expenses currently?

5 A It has environmental liability -- and to
6 the state and get reimbursed for it.

7 Q Does CNC currently have any active policies
8 of insurance?

9 A Itself?

10 Q Yes.

11 A Not that I'm aware of. The acquisition? I
12 don't think so. I think it's benefited from prior
13 policies that's been paid and for doing mediation
14 work.

15 Q Did CNC have any policies in place that
16 covered any of the acts or events that form a basis
17 of a lawsuit?

18 A I don't understand the question.

19 Q Was there any insurance policy under which
20 you made a claim on behalf of CNC for the claims
21 made in this lawsuit?

22 A No. For claims made? No.

23 Q Okay.

24 A Do we have insurance to cover --

25 Q Do you have insurance to cover any of the

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1 claims made?
2 A No.
3 Q Has any insurer paid some of the legal fees
4 in this case?
5 A Yes.
6 Q Has that been under a reservation of
7 rights?
8 A I don't know what that means.
9 Q Did the insurance company indicate to you
10 that it would cover a portion of fees but would be
11 reserving its rights to seek reimbursement for those
12 fees?
13 A I don't know what the terms were. I didn't
14 work the terms out.
15 Q Who made the claim to the insurance company
16 to have them pay for legal fees?
17 A Mr. Read.
18 Q He tendered it?
19 A Yes.
20 Q You didn't have any dealings with the
21 insurance company?
22 A I think I participated in one meeting once,
23 but I didn't get directly involved in the insurance
24 company.
25 Q Do you know if the insurer ever agreed to

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1 cover any of the acts or omissions giving rise to
2 the claims?

3 MR. BRESLOW: As opposed to paying the
4 defense costs?

5 THE WITNESS: Not that I'm aware.

6 BY MR. DESMOND:

7 Q So, no, you don't know?

8 A No, I don't know.

9 Q Do you know if a demand was ever made upon
10 the insurance company to have them cover the acts
11 and omissions giving rise to the claims?

12 A I don't know.

13 Q Who would be the best person from CNC to
14 know that?

15 A All the insurance negotiations were done by
16 Mr. Read that I was aware of that I recall. I
17 presume one of my attorneys would have the file.

18 Q I mean, there is no other CNC shareholder
19 employed or somebody else who is dealing with the
20 insurance company?

21 A No.

22 Q Have you had any discussions with the
23 insurance company subsequent to September 13th?

24 A No.

25 Q Have they indicated to you that they would

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1 no longer be providing any coverage in the action?

2 A I believe so. We settled with them several
3 months before the case went to trial, and they paid
4 the settlement amount left.

5 Q The insurance company?

6 A Yes.

7 Q When you say made the settlement, was it
8 your understanding that the settlement was with
9 respect to fees that they were covering?

10 A Yes, legal fees. That's all they covered.
11 They didn't cover anything else.

12 Q In 2008 CNC made -- 2007 CNC made a
13 property distribution of approximately \$44 million.
14 Are you familiar with that?

15 A What's that? I don't understand the
16 question.

17 Q Well, CNC made distributions, which
18 ultimately were shareholder distributions?

19 A What year?

20 Q I believe 2007. In 1505

21 A That would have been the sale of Nella?

22 Q Why don't we pull it.

23 A Do you have the number?

24 Q 1505.

25 (The document referred to was marked by

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1 the CSR as Exhibit 3 for identification
2 and made a part of this deposition.)

3 THE WITNESS: That would be the sale to
4 Nella.

5 BY MR. DESMOND:

6 Q Let's go to -- are you on page 1505?

7 A Yes.

8 Q So you see the line there --

9 A In fact, I believe that ties directly to
10 the balance sheet of CNC January, February, March
11 which shows the gain. If you recall in the trial we
12 were looking at all the balance sheets, and the CNC
13 balance sheet had a gain of \$44 million. I think
14 that's in the report.

15 Q Under schedule K there is a property
16 distribution.

17 A What page?

18 Q That was on 1505, still. If we go to 1570.
19 I believe this is for -- this is for Mr. Bayuk. You
20 can see on the bottom. He received approximately
21 \$11 million?

22 A That would have been from the sale of
23 Nella.

24 Q If we go back to 1556 it appears you
25 received approximately, under 16d, property

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1 distributions of approximately \$23.6 million?

2 A Yes. This would be directly tied to the
3 closing of Nella but not to the tax distribution but
4 the taxable amounts. That is what we paid tax on.

5 Q I think you said you received the cash
6 distribution of approximately \$13 million?

7 A Whatever it was that is in the closing
8 statement, my percentage.

9 Q Those are funds you would believe would
10 have been put into your Arcadia account?

11 A Yes.

12 Q Either at Bank of America --

13 A Wells Fargo.

14 Q -- or Wells Fargo?

15 A Maybe Wells Fargo and back to U.S. Trust
16 after that.

17 Q What about the distribution, and I don't
18 know the precise actual distribution amount to, but
19 do you know where that amount was deposited?

20 A It's his business. I have no idea.

21 Q Your 2009 return, which was actually in the
22 same document, 1632, and the subsequent pages of
23 that return indicates the sale of an airplane. Was
24 that just the fractional ownership?

25 A Yes.

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1 Q If you go to 1634, it indicates that CNC at
2 line 16b there, received tax exempt interest income
3 of approximately \$264,000. Do you know what the
4 source of that interest income was?

5 A Other than having money sitting acting as
6 the cash for the company during that period of time
7 between Nella and Herbs, no.

8 Q So you don't know where that would have
9 come from?

10 A Interest income on the cash balances.

11 Q This is in 2009.

12 A This is 2009? I don't know where that
13 would come from.

14 Q Was there a cash balance in the CNC account
15 in 2009?

16 A No.

17 Q So you don't know where that amount would
18 have come from?

19 A The only other tax exempt income from CNC
20 from the state to do the remediation. I don't know
21 if you have to show that as income.

22 Q Who would be the best person to know that,
23 Mr. Bernstein?

24 A Yes.

25 Q If we go to 1658?

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1 A If you go to --
2 Q This indicates it was a gross foreign
3 dividend previously taxed, and that it's from
4 Raffles. Do you see that?
5 A Yes.
6 Q It indicates the percentage end of Raffles
7 is .32 percent?
8 A Yes.
9 Q Was the source of this interest income the
10 interest in Raffles?
11 A It appears to be the Raffles interest.
12 Q Do you know why in 2009 CNC was still
13 receiving interest or dividend income from Raffles?
14 A The asset transfer took probably the better
15 part of 18 months to go through from the closing we
16 requested to actually getting it done.
17 Q It's your belief that's why it showed up in
18 the 2009 return?
19 A Yes. We still had to work through the
20 process with them, and I think it shows on the next
21 page as well. Insurance balance receivable and all
22 that kind of stuff.
23 Q Okay.
24 A Trading securities, \$261 million. That's a
25 lot of money.

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1 Q But it's your belief that at this point
2 this was just the winding up of the Raffles
3 transaction taking longer than anticipated?

4 A Yes. Actually it paid \$1,661. It
5 highlights it.

6 Q Did CNC invest any additional monies in
7 Raffles subsequent to the close of the VHI
8 transaction with my clients in July of '07?

9 A CNC had no money to invest.

10 Q So the investment with Raffles related
11 solely to what existed when CNC owned VHI or what
12 Pamco did?

13 A Yes.

14 Q If you go to 1635 under the buildings and
15 other depreciable assets.

16 A Yes.

17 Q \$780,788?

18 A Yes.

19 Q In 2008 it showed that there was
20 \$13,163,000 in buildings and other depreciable
21 assets?

22 A Okay.

23 Q Do you know what accounts for that
24 reduction from 2008, 2009?

25 A No.

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1 Q To your knowledge, did CNC have \$13 million
2 in buildings and other depreciable assets in 2008?

3 A CNC never owned any buildings.

4 Q What type of company was P.A. Morabito and
5 Company in Arizona? Corporate form? Was it a sole
6 proprietorship?

7 A I think it was an LLC, but I'm not sure.

8 Q Do you know when that company was formed?

9 A 2005, I think.

10 Q In some of the documents we received,
11 Consolidated Western Corporation consistently
12 transferred about \$13,000 every 14 days in Arcadia's
13 bank accounts noted as payroll, and then it says
14 Morabito. Do you know what the nature of those
15 transactions are?

16 A I presume that was my payroll.

17 Q From CPC?

18 A Yes.

19 Q They were paying it directly into the
20 Arcadia account?

21 A Yes.

22 Q Do you know if they were wages though why
23 they didn't appear in your personal tax returns?

24 A Stan ends up doing that.

25 Q But it's your belief that they were wages

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1 payable from CWC to you?

2 A At the end of the year that he may have
3 decided that it should go to profit or should go to
4 a distribution. I don't know how they ended up
5 doing that.

6 Q At any point in time has Arcadia funded any
7 payrolls?

8 A Of?

9 Q Of CWC or any other entity in which you
10 have an interest?

11 A It could have. Probably.

12 Q Let's go ahead and look at one.

13 (The document referred to was marked by
14 the CSR as Exhibit 4 for identification
15 and made a part of this deposition.)

16 THE WITNESS: All right.

17 BY MR. DESMOND:

18 Q This is from Arcadia statement. It's RBSL
19 1279. The same entry or similar entry appears on
20 1282 and 1284. If you see on those entries where it
21 indicates appears Paychex is deducting payroll,
22 taxes, invoice every two weeks. Is it your belief
23 that those were payments being made by Arcadia to
24 you or payments --

25 A I don't know who it's from. It doesn't

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1 say.

2 Q I am trying to make sense of it.

3 A I don't know. It just say Paychex and the
4 amount, but it doesn't say who it's from.

5 Q You would have been receiving payroll
6 income from any other entity besides CWC at this
7 point?

8 A Not that I'm aware of.

9 Q Let's go back to 402, 403. This is on
10 Cowestco again. Line 29. It shows a business loss
11 of \$178,641 for Cowestco Special Risk?

12 A Yes.

13 Q Do you know what that business loss is
14 attributable to?

15 A Expenses.

16 Q Strictly -- I mean we have the \$49,000, a
17 portion for legal and professional services. It
18 says carry over losses for expenses of the business?

19 A Yes.

20 Q Have you owned any other sole
21 proprietorships from 2007 until today?

22 A No. I don't think I have owned any sole
23 proprietorships.

24 Q PAMAZ was not a sole proprietorship. You
25 think it was an LLC?

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1 A Yes.

2 (The document referred to was marked by

3 the CSR as Exhibit 5 for identification

4 and made a part of this deposition.)

5 BY MR. DESMOND:

6 Q What we have marked as Exhibit 5, a

7 document titled "Plaintiff Paul Morabito Answers to

8 Defendants' Counter-claim." It's interrogatories

9 related to punitive damages phases of the action.

10 Do you see that?

11 A I do.

12 Q If you flip to -- I think it's the third to

13 the last page, page No. 27. Your verification. It

14 says: "I Paul Morabito declare under the penalty of

15 perjury I have read the foregoing. Plaintiff Paul

16 Morabito's answers related to the punitive damages

17 phase of the action and trial is true except as to

18 matters on the information and belief and the same

19 it is true."

20 Do you see that?

21 A Yes.

22 Q Is that your signature?

23 A Yes.

24 Q Do you recall reviewing and verifying these

25 interrogatories?

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

2 Q Fair enough. If we could go to page 15,

3 interrogatory 19?

4 A Yes.

5 Q Which asks: "State whether you have

6 presently or have had during the last three years

7 any personal savings or checking accounts"?

8 A Yes.

9 Q In response there is some objections, but

10 then at line 23 and 24 states: "Mr. Morabito

11 responds he does not maintain any personal savings

12 accounts or personal checking accounts."

13 Do you see that?

14 A Yes.

15 Q I just want to clarify because the

16 production we got, there appears to be a Bank of

17 America regular checking account in your name

18 individually, so do you consider that to be a

19 personal account or an account held by you?

20 A All my checking, every account I have to my

21 knowledge is in the name of the trust. The mailing

22 may say my name to send it to me, but I understand

23 every bank account that I have was in the trust. I

24 don't have any accounts in my personal name.

25 Q Did you originally set them up that way?

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1 A Yes. That's what I understand.

2 Q Have you ever maintained a bank account,
3 checking or savings account in your name
4 individually?

5 A I believe we provided the trust agreement
6 every time we set up a bank account. We were
7 supposed to and we always send the document out.

8 Q Since the trust was created?

9 A In 1998. You notice in this Bank of
10 America the date of the trust and some of the banks
11 do and some don't. It just depends how they do
12 their mailing address.

13 Q Let's flip back to page 9. This asks
14 whether you had payments due from any source and, if
15 so, where payments are due, the amount due and the
16 name and address from the party to whom the payment
17 is due.

18 Do you see that?

19 A Yes. Which, No. 11?

20 Q No. 10, line 9 and the response is at line
21 13.

22 A Yes.

23 Q There is an objection there and no
24 response. To your knowledge are you due payments
25 from any source currently?

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1 A Other than what we have discussed with the
2 notes and things that have been exchanged, no.

3 Q There is only the single note because there
4 is a note that Snowshoe Petroleum owes you for the
5 purchase of Superpumper. And, actually, in looking
6 back at it, I think that's a note receivable to be
7 paid over seven years at the 4 percent annual
8 interest rate.

9 Is that the note that you pledge to the
10 Canadian company for interest in the properties
11 where the storage units are being built?

12 A I don't believe so.

13 Q Is that a note that's still owed to you?

14 A I'm not sure. I think so.

15 Q Have you received any payments on the note?

16 A I'm not sure.

17 Q Do you know when payments were to begin?

18 A No.

19 Q Do you have a copy of that note?

20 A No. We have provided you with whatever. I
21 would be glad.

22 Q Could you provide us a copy of that?

23 A Sure.

24 MR. BRESLOW: Before you leave this
25 question, is that the only --

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1 MR. DESMOND: That's where I'm going next.

2 BY MR. DESMOND:

3 Q Are there any other obligations or notes?

4 A I know we are waiting for the final
5 accounting and audit to be done for Superpumper -- I
6 took withdrawals and things.

7 MR. BRESLOW: He is just asking if there
8 are other notes other than --

9 THE WITNESS: Not that I know of.

10 MR. BRESLOW: Other than the two you have
11 talked about now.

12 BY MR. DESMOND:

13 Q Who is doing that audit?

14 A The auditors of the company.

15 Q Of which company?

16 A Of Superpumper.

17 Q The auditors of Superpumper at the time it
18 was sold?

19 A I am confused by your question.

20 Q Are there new auditors that came in when
21 the owners of SP changed?

22 A No. It's been the same auditors for three
23 or four years.

24 (The document referred to was marked by
25 the CSR as Exhibit 6 for identification

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1 and made a part of this deposition.)
2 BY MR. DESMOND:
3 Q What we just marked as Exhibit 6 is
4 actually an Exhibit A to your answers to
5 interrogatories, which were marked as Exhibit 5. Do
6 you see that?
7 A Which one are you tying it to?
8 Q That's actually the same as Exhibit A to
9 answers to interrogatories we were just looking at.
10 A Oh, I see. Right there.
11 Q Do you know who prepared that document?
12 A I prepared these with the lawyers.
13 Q Where did you get the information, the
14 numbers contained in here?
15 A From statements and from the leases. From
16 the credit card statements.
17 Q Okay. When you say -- let's just go
18 through them. I don't want to just find the
19 interrogatory response where it's referenced. Page
20 20 of Exhibit 5, it's interrogatory 27?
21 A Yes.
22 Q Which for record reads state, whether you
23 at the present time have any creditors, and if so
24 for each creditor state the name and address of each
25 creditor, the amount of the debt owed, the date when

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1 the debt was incurred and the consideration you
2 received for the debt and a description of the
3 security given to secure the debt.

4 A Yes.

5 Q I want to go through each one of these.
6 The first one, there is a letter of credit which
7 indicates it's on behalf of Superpumper to Bank of
8 America for \$1.13 million.

9 A Yes.

10 Q Was that letter of credit, did that remain
11 with Superpumper after the transaction in which you
12 transferred your interest in Superpumper to
13 Snowshoe?

14 A That's the Raffles LC.

15 Q That is the Raffles LC?

16 A Yes.

17 Q That was held in Superpumper?

18 A CoAmerica had it and merged with
19 Superpumper.

20 Q Who has that obligation now? Does it
21 remain with Superpumper?

22 A The face name says Cowestco, but it got
23 merged and whenever went to renewal it got changed
24 to Superpumper.

25 Q But that's an obligation that still resides

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1 with Superpumper?

2 A Me putting up the --

3 Q After the transaction in which Superpumper

4 was transferred to Snowshoe, did the LLC go with it?

5 A Yes.

6 Q The next one, that is the line of credit in

7 your mind?

8 A Yes.

9 Q With B of A?

10 A Yes.

11 Q That's the one we are talk going about.

12 Did anyone make monthly payments?

13 A Yes.

14 Q Then it says term loan in the name of

15 Superpumper, BBA \$3 million?

16 A Yes.

17 Q What's that?

18 A That was Superpumper's term loan.

19 Q Is Superpumper in default of that entire

20 obligation?

21 A No longer.

22 Q This is the one that Mr. Bayuk and your

23 brother secured or worked out?

24 A Yes.

25 Q Same thing with the operating line of

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1 credit for Superpumper?

2 A Yes.

3 Q And the fuel line?

4 A Yes.

5 Q What about the leases?

6 A I wasn't released from the lease guarantee
7 with Spirit. I'm still on that.

8 Q Have they made demand upon you on the
9 guarantee?

10 A No.

11 Q Have they made a demand upon the
12 Superpumper?

13 A No.

14 Q When you show \$42.4 million liabilities, is
15 that based upon the difference between the operating
16 and capital portions of the lease?

17 A None of the Big Wheel capital leases, they
18 are operating leases, and that's the present value
19 of lease operation.

20 Q Superpumper has made no demand on you as
21 guarantors?

22 A No.

23 Q Mortgages BBA, again is that something that
24 transferred with the sale of Superpumper?

25 A That's the car lot.

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1 Q Again, that's the car lots?
2 A That's the mortgage on the car lots.
3 Q Again, is that an obligation of
4 Superpumper?
5 A No, it's Superpumper.
6 Q So that's the mortgages on the car lots in
7 northeastern Nevada?
8 A Yes.
9 Q Ground floors Big Wheel Gaming, is that
10 related to the Fernley property?
11 A Yes.
12 Q What's the status of that?
13 A The shareholders are keeping it current,
14 but they still have my guarantee.
15 Q Who are the shareholders?
16 A Uh-huh.
17 Q How about Superpumper, Queen, Inc.
18 Equipment?
19 A The car wash.
20 Q Did that go with Superpumper?
21 A Yes.
22 Q Any personal guarantee?
23 A Yes.
24 Q Visa signature. That's your credit balance
25 on the one credit card, and the other two have just

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1 credit cards?

2 A Yes.

3 Q Is this still accurate as of today?

4 A For the most part.

5 Q Anything you would want to add to or change

6 on it?

7 A I don't have the full list of things. I

8 have been trying to assemble and give them to you,

9 so I'm sure there are some ups and downs on this.

10 Q There is a settlement, a confidential

11 settlement agreement and release. This involved one

12 or more of the Big Wheel entities with Dan Bluheich

13 and Larry Willard and others in which there was an

14 assignment of 20 percent interest in I think the

15 various Big Wheel entities to CNC Properties, LLC?

16 A Yes.

17 Q Are you familiar with that?

18 A I vaguely remember it.

19 Q It relates to the Miller property.

20 A Okay.

21 Q Did you receive any compensation for the

22 transfer of the 20 percent interest, or was that in

23 settlement of a lawsuit or a claim that had been

24 made?

25 A That was just in settlement.

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1 Q There was no actual exchanges of money that
2 took place?
3 A No.
4 Q Then the assignment that we have is
5 unexecuted. Do you know if that assignment was ever
6 executed?
7 A Yes.
8 Q Do you have signed copies of it?
9 A Where?
10 MR. BRESLOW: You can't look at him.
11 THE WITNESS: I assume so.
12 BY MR. DESMOND:
13 Q Same thing. I mean, it was an assignment
14 as I understand it of the 20 percent interest in
15 each of the Big Wheel entities?
16 A So was it the actual stock or selling?
17 Q That's what I'm asking you.
18 A I know the settlement was signed. I don't
19 know if the settlement -- I think they had to do
20 something.
21 Q Did they do that?
22 A I don't know.
23 Q In Big Wheel?
24 A Big Wheel.
25 Q As I understand it, it states transfer of a

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1 20 percent interest to BMW into each of the Big
2 Wheel entities properties?
3 A They would be getting 20.
4 Q 20 percent of your interest?
5 A Yes.
6 Q Not of the interest of the entities?
7 A Yes.
8 Q The commercial buildings, are they the Glen
9 Air properties?
10 A Yes.
11 Q I want to talk for a minute about the
12 California Secretary of State Certificate of Merger
13 which merged Baruk Properties into Snowshoe
14 Properties. The documents, which were actually
15 RBSL -- it's 4, actually.
16 MR. BRESLOW: What's the Bates number?
17 MR. DESMOND: 1391 and 1392.
18 THE WITNESS: Okay.
19 BY MR. DESMOND:
20 Q As I understand it that the document has
21 been filed with the California Secretary of State
22 related to the merger of the Baruk Properties into
23 Snowshoe Properties?
24 A Yes.
25 Q So a couple of questions.

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1 As I read that, the appraised value was
2 \$9.3 or \$9.266 million?
3 A No. On the merger?
4 Q On the next page.
5 A Yes, but are you referring to the merger?
6 Q The appraised value of the properties?
7 A No.
8 Q What was the appraised value referred to?
9 A The property in Canada.
10 Q Which property?
11 A The one that the note was traded for.
12 Q Okay. So that is the property held by --
13 the name escapes me, but we were talking about
14 before?
15 A Yes.
16 Q Less the mortgage of \$1.44 million?
17 A Yes.
18 Q That's the mortgage on the Canadian
19 property?
20 A Yes.
21 Q So the net equity from this on the Canadian
22 property was \$7.8 million?
23 A Yes.
24 Q And then you had a 40 percent interest in
25 that, vendor's interest?

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1 A I believe that was the interest that my
2 father through -- passed, and I bought 56 percent of
3 his interest.

4 Q Which was \$1.6 million?

5 A Yes.

6 Q The sale to Morabito of \$182,950, how did
7 you arrive at 1.584 percent?

8 A I don't recall how that was allocated then.

9 Q But you transferred a 50 percent ownership
10 interest in that entity?

11 A In the 40 percent.

12 Q I'm sorry?

13 A It's 51 percent of the 40 percent.

14 Q Correct.

15 A Yes.

16 Q Okay. And you don't know how you came up
17 with that calculation to come up with \$182,590 as
18 .0584?

19 A No.

20 Q Do you know who prepared that document?

21 A No. The attorneys or the accountants.

22 Q You didn't?

23 A No.

24 MR. DESMOND: Let's take a quick break.

25 THE VIDEOGRAPHER: Off the record, 3:06.

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1 (There was a recess taken.)

2 THE VIDEOGRAPHER: Back on the record,

3 3:15.

4 BY MR. DESMOND:

5 Q Mr. Morabito, we talked earlier about your
6 real property interest. And I just want to clarify
7 couple of questions. Do you own any interest in
8 real property other than the residential real estate
9 that we have discussed?

10 A And Superpumper Properties.

11 Q Correct. That's not residential real
12 estate?

13 A No.

14 Q No rental property?

15 A No.

16 Q And the West Hollywood property, you said
17 that was a one-year lease?

18 A Yes.

19 Q Who is the landlord on the property?

20 A It's a trust. I don't remember the name.

21 Q Did you have to submit any financial
22 documents before you leased that property?

23 A No.

24 Q How did you lease that property? Through a
25 broker?

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1 A Through a friend. Someone knew the owners
2 and introduced them.

3 Q During the last two years, have you
4 participated in starting any other corporations or
5 new businesses?

6 A No, other than the names of the companies
7 that we have.

8 Q Do you have access to any safety deposit
9 box or some other place outside of your home or
10 business that you hold securities, cash or
11 valuables?

12 A No.

13 Q Do you have a safe deposit box or safe in
14 your home?

15 A No.

16 Q Do you have a personal computer?

17 A A laptop computer.

18 Q Do you maintain your business records on
19 it?

20 A No.

21 Q Where are your business records kept?

22 A Files. I mean, the copies that I have.

23 Q You don't have them stored electronically?

24 A No.

25 Q Did you use Quick Books or any other

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1 financial software to track your finances?

2 A No.

3 Q Does anyone do that for you?

4 A No. We use my check ledger on my checks.

5 Q The manual check ledger?

6 A Yes.

7 Q Do you track wires the same way?

8 A No. I don't track them at all. You can go

9 on line and look at the bank statements.

10 Q Have you received any loans in the past

11 three years?

12 A Proceeds?

13 Q Yes, proceeds from any loan?

14 A A line of credit.

15 Q The B of A line of credit?

16 A Yes.

17 Q Any other lines or the line?

18 A Not that I can recall, no.

19 Q Have you received any mortgage reductions

20 within the past three years?

21 A Not that I know of, no.

22 Q Have you applied for or received any new

23 credit cards within the last three years?

24 A No, not that I know of.

25 Q Do you have any type of retirement income

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1 plan or pension plan for benefits?
2 A No.
3 Q Hold any ROTH/IRAs?
4 A No.
5 Q Any tax shelter annuities?
6 A No.
7 Q Any defined benefit plans?
8 A No.
9 Q 401K account?
10 A No.
11 Q Do you have any retirement savings?
12 A No.
13 Q Do you know if you are the beneficiary of
14 any will or person now deceased?
15 A No.
16 Q Since 2007 have you conveyed or transferred
17 any property held in your name to somebody else
18 which is now being held by them on your behalf?
19 A No.
20 Q Do you have any arrangements with Mr. Bayuk
21 on the property transferred to him that at some
22 future date this property will be returned to you?
23 A No.
24 Q Other than what's identified in Exhibit 6,
25 do you owe any money to other creditors?

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1 A I believe this is a complete, correct,
2 complete summary.

3 Q Other than amounts owed in this case?

4 A Yes.

5 MR. BRESLOW: If I can for the record,
6 there is an issue with the prior counsel.

7 THE WITNESS: Yes.

8 BY MR. DESMOND:

9 Q How about amounts owed to them for legal
10 fees?

11 A And vice versa.

12 Q And legal fees owed to you?

13 A Amounts owed by them to me.

14 Q Do you own any assets more than \$1,000
15 other than what we have discussed?

16 A Not that I'm aware of.

17 Q Does CNC?

18 A No.

19 MR. DESMOND: I think that's all I have
20 subject to we are missing quite a few documents,
21 some of which I have alluded to today otherwise you
22 are compiling, so I would just reserve the right to
23 come back for a limited session with respect to
24 those documents once we are able to review them.

25 MR. BRESLOW: Okay. I'm not going to

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1 stipulate to that, but I certainly hear you.

2 MR. DESMOND: Okay, and obviously we would
3 limit it in scope to whatever documents we are
4 missing, and I will have the list to you hopefully
5 tomorrow or Monday of everything we are in the
6 process of filling in the gaps and compiling.

7 MR. IRVINE: You mentioned some here but I
8 didn't get all of them.

9 MR. DESMOND: I will try to send a
10 comprehensive list to Barry that includes
11 everything, so I should, like I said, in the next
12 day or two I hope to have it. Thank you for your
13 time. The original will be sent to Mr. Breslow
14 probably to be provided to the deponent and
15 Mr. Breslow notify us of any corrections.

16 MR. BRESLOW: Agreed, and we will take a
17 copy and a condensed copy.

18 THE VIDEOGRAPHER: This concludes today's
19 proceedings. The total number of DVDs used was
20 three. We are going off the record. The time is
21 3:22.

22 (The deposition was concluded at 3:22 p.m.)
23
24
25

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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) ss.
3
4

5 I, the witness herein, hereby certify
6 under Penalty of perjury under the laws of the State
7 of California that the foregoing is true and
8 correct.

9 Executed this 24 day of
10
11 MARCH, 2011, at LOS ANGELES,
12 California
13
14
15
16

17 _____
18 THE WITNESS
19
20
21
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