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Attorney for Respondents

Electronically Filed
Jun 24 2020 09:07 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY O. GARMONG,

Appellant,

Case No. 80376

v.

WESPAC; GREG CHRISTIAN,

Respondents.

_____ /

Appeal from the Second Judicial District Court

RESPONDENTS' APPENDIX VOLUME 1

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Second Judicial District Court
State of Nevada
Washoe County

Electronic Filing

Case Summary for Case: CV12-01271

GREGORY GARMONG VS WESPAC ET AL (D6)

Case Number CV12-01271

Case Type OTHER CIVIL MATTERS

Opened 05-09-2012

Status PENDINACTI

Plaintiff

GREGORY GARMONG

Defendant

WESPAC et al

Judge

HONORABLE LYNNE K. SIMONS - Division D6

Show/Hide Participants

File Date	Case History
03-09-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7782920 - Approved By: NOREVIEW : 03-09-2020:16:00:42
03-09-2020	Order... Filed Order ... HOLDING ISSUANCE OF ORDER ON DEFENDANTS' AMENDED MOTION FOR ATTORNEY'S FEES IN ABEYANCE - Transaction 7782911 - Approved By: NOREVIEW : 03-09-2020:15:59:23
01-13-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7682268 - Approved By: NOREVIEW : 01-13-2020:13:50:07
01-13-2020	Supreme Court Receipt for Doc Filed Supreme Court Receipt for Doc SUPREME COURT NO. 80376 / RECEIPT FOR DOCUMENTS - Transaction 7682254 - Approved By: NOREVIEW : 01-13-2020:13:48:08
01-07-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7673113 - Approved By: NOREVIEW : 01-07-2020:16:30:00
01-07-2020	Certificate of Clerk Filed Certificate of Clerk CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7673097 - Approved By: NOREVIEW : 01-07-2020:16:28:05
01-07-2020	Notice/Appeal Supreme Court Filed
01-07-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7671994 - Approved By: NOREVIEW : 01-07-2020:13:13:14
01-07-2020 Plaintiff	Notice/Appeal Supreme Court Filed by: CARL MARTIN HEBERT, ESQ. Notice of Appeal Supreme Court NOTICE OF APPEAL - Transaction 7671827 - Approved By: YVILORIA : 01-07-2020:13:12:13
01-07-2020	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7671944 - Approved By: NOREVIEW : 01-07-2020:12:58:46
01-07-2020 Plaintiff	Case Appeal Statement Filed by: CARL MARTIN HEBERT, ESQ. Case Appeal Statement CASE APPEAL STATEMENT - Transaction 7671937 - Approved By: NOREVIEW : 01-07-2020:12:57:30
12-23-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7652284 - Approved By: NOREVIEW : 12-23-2019:11:18:22
12-23-2019 Defendant	Request for Submission Filed by: THOMAS CHARLES BRADLEY, ESQ. Request for Submission Transaction 7652277 - Approved By: NOREVIEW : 12-23-2019:11:17:11 DOCUMENT TITLE: DEFT'S AMENDED MOTION FOR ATTORNEY'S FEES FIELD 12-9-19 PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 12-23-19 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE: - Exhibit 1 - Exhibit 2
12-09-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7627212 - Approved By: NOREVIEW : 12-09-2019:13:30:49

RA 0001

6/19/2020

Case Summary

12-09-2019
Defendant

Amended

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Amended ... DEFENDANTS' AMENDED MOTION FOR ATTORNEY'S FEES - Transaction 7627206 - Approved By: NOREVIEW : 12-09-2019:13:29:47

- Exhibit 1
- Exhibit 2
- Exhibit 3

12-09-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7626060 - Approved By: NOREVIEW : 12-09-2019:08:53:20

12-09-2019
Defendant

Notice of Entry of Ord

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Notice of Entry of Ord Transaction 7626059 - Approved By: NOREVIEW : 12-09-2019:08:52:26

12-06-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7625333 - Approved By: NOREVIEW : 12-06-2019:15:53:58

12-06-2019

Ord Denying Motion

Filed

Ord Denying Motion TO ALTER OR AMEND JUDGMENT - Transaction 7625279 - Approved By: NOREVIEW : 12-06-2019:15:46:55

09-25-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7503031 - Approved By: NOREVIEW : 09-25-2019:10:48:26

09-25-2019
Defendant

Request for Submission

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission Transaction 7503018 - Approved By: NOREVIEW : 09-25-2019:10:46:52 DOCUMENT TITLE: PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER RE MOTION ENTERED 8/8/19 PARTY SUBMITTING: THOMAS C BRADLEY, ESQ ATTY FOR DEFTS DATE SUBMITTED: 9/25/19 SUBMITTED BY: MDIONICI DATE RECEIVED JUDGE OFFICE:

09-25-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7502532 - Approved By: NOREVIEW : 09-25-2019:09:13:29

09-24-2019
Plaintiff

Reply

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ALTER OR AMEND "ORDER RE MOTIONS" ENTERED ON AUGUST 8, 2019 - Transaction 7502292 - Approved By: YVILORIA : 09-25-2019:09:12:30

09-12-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7480894 - Approved By: NOREVIEW : 09-12-2019:11:24:45

09-12-2019
Defendant

Opposition to Mtn

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND "ORDER RE MOTIONS" ENTERED AUGUST 8, 2019 - Transaction 7480788 - Approved By: CSULEZIC : 09-12-2019:11:23:38

09-05-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7468379 - Approved By: NOREVIEW : 09-05-2019:13:31:33

09-05-2019
Plaintiff

Mtn Alter or Amend Judgment

Filed by: CARL MARTIN HEBERT, ESQ.

Mtn Alter or Amend Judgment PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER RE MOTIONS ENTERED AUGUST 8, 2019 - Transaction 7468273 - Approved By: YVILORIA : 09-05-2019:13:30:34

08-27-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7453491 - Approved By: NOREVIEW : 08-27-2019:16:21:51

08-27-2019

Order...

Filed

Order ... Transaction 7453486 - Approved By: NOREVIEW : 08-27-2019:16:20:47

08-21-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7441965 - Approved By: NOREVIEW : 08-21-2019:12:20:17

08-21-2019
Defendant

Stipulation

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Stipulation ... Transaction 7441955 - Approved By: NOREVIEW : 08-21-2019:12:17:09

08-21-2019

Request for Submission

RA 0002

6/19/2020

Case Summary

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission Transaction 7441955 - Approved By: NOREVIEW : 08-21-2019:12:17:09 DOCUMENT TITLE: STIPULATION (ORDER ATTACHED AS EXHIBIT 1) PARTY SUBMITTING: THOMAS BRADLEY, ESQ DATE SUBMITTED: AUGUST 21, 2019
SUBMITTED BY: BBLOUGH DATE RECEIVED JUDGE OFFICE:
- EXHIBIT 1

Notice of Electronic Filing

08-16-2019

Filed

Proof of Electronic Service Transaction 7433078 - Approved By: NOREVIEW : 08-16-2019:12:27:07

Stip Extension of Time

08-16-2019

Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Document withheld. Document Security Level Exceeded
- Document

Notice of Electronic Filing

08-08-2019

Filed

Proof of Electronic Service Transaction 7419720 - Approved By: NOREVIEW : 08-08-2019:15:25:50

Mtn for Attorney's Fee

08-08-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Mtn for Attorney's Fee Transaction 7419708 - Approved By: NOREVIEW : 08-08-2019:15:24:18
- EXHIBIT 1
- EXHIBIT 2

Notice of Electronic Filing

08-08-2019

Filed

Proof of Electronic Service Transaction 7419107 - Approved By: NOREVIEW : 08-08-2019:13:06:24

Notice of Entry of Ord

08-08-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Notice of Entry of Ord Transaction 7419104 - Approved By: NOREVIEW : 08-08-2019:13:05:29

Notice of Electronic Filing

08-08-2019

Filed

Proof of Electronic Service Transaction 7418884 - Approved By: NOREVIEW : 08-08-2019:11:56:22

Ord Addressing Motions

08-08-2019

Filed

Ord Addressing Motions Transaction 7418877 - Approved By: NOREVIEW : 08-08-2019:11:55:15

Notice of Electronic Filing

06-14-2019

Filed

Proof of Electronic Service Transaction 7321673 - Approved By: NOREVIEW : 06-14-2019:10:36:10

Stipulation

06-14-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Stipulation ... DFX: CASE NUMBER ON DOCUMENT DOES NOT MATCH CASE FILING INTO.STIPULATION AND ORDER TO PERMIT TJ JESKY TO RESIGN AS CO-DERIVATIVE PLAINTIFF - Transaction 7321429 - Approved By: SWOLFE : 06-14-2019:10:33:03
- Exhibit 1

Request for Submission

06-14-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission DFX: CASE NUMBER ON DOCUMENT DOES NOT MATCH CASE FILING INTO. NO S1 BUILT - Transaction 7321429 - Approved By: SWOLFE : 06-14-2019:10:33:03

Notice of Electronic Filing

06-03-2019

Filed

Proof of Electronic Service Transaction 7300132 - Approved By: NOREVIEW : 06-03-2019:11:45:05

Notice of Electronic Filing

06-03-2019

Filed

Proof of Electronic Service Transaction 7300121 - Approved By: NOREVIEW : 06-03-2019:11:43:39

Reply to/in Opposition

06-03-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Reply to/in Opposition REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL - Transaction 7299943 - Approved By: YVILORIA : 06-03-2019:11:44:03
- Exhibit 1

Request for Submission

06-03-2019

Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission REQUEST FOR SUBMISSION - Transaction 7299943 - Approved By: YVILORIA : 06-03-2019:11:44:03
DOCUMENT TITLE: DEFENDANTS' MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL FILED 5-16-19, PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL, FILED 5-28-19; DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL FILED 6-3-19 PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 6-3-19 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

06-03-2019

RA 0003

6/19/2020

Case Summary

Defendant

Reply to/in Opposition

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Reply to/in Opposition REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL - Transaction 7299930 - Approved By: YVILORIA : 06-03-2019:11:41:01
- Exhibit 1

Notice of Electronic Filing

05-28-2019

Filed

Proof of Electronic Service Transaction 7290992 - Approved By: NOREVIEW : 05-28-2019:15:26:58

Opposition to

05-28-2019

Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Opposition to ... PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL - Transaction 7290594 - Approved By: YVILORIA : 05-28-2019:15:25:59

Notice of Electronic Filing

05-22-2019

Filed

Proof of Electronic Service Transaction 7283944 - Approved By: NOREVIEW : 05-22-2019:15:48:47

Notice of Electronic Filing

05-22-2019

Filed

Proof of Electronic Service Transaction 7283864 - Approved By: NOREVIEW : 05-22-2019:15:39:08

Notice of Electronic Filing

05-22-2019

Filed

Proof of Electronic Service Transaction 7283829 - Approved By: NOREVIEW : 05-22-2019:15:33:33

Request for Submission

Filed by: THOMAS CHARLES BRADLEY, ESQ.

05-22-2019

Defendant

Request for Submission REQUEST FOR SUBMISSION - Transaction 7283638 - Approved By: YVILORIA : 05-22-2019:15:38:07
DOCUMENT TITLE: PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S AWARD OF ATTORNEY'S FEES AND REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' PETITION FOR AN ORDER CONFIRMING ARBITRATOR'S FINAL AWARD AND REDUCE AWARD TO JUDGMENT, INCLUDING ATTORNEY'S FEES AND COSTS PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 5-22-19 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

Request for Submission

Filed by: THOMAS CHARLES BRADLEY, ESQ.

05-22-2019

Defendant

Request for Submission REQUEST FOR SUBMISSION - Transaction 7283621 - Approved By: YVILORIA : 05-22-2019:15:31:25
DOCUMENT TITLE: PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 5-22-19 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

Request for Submission

Filed by: THOMAS CHARLES BRADLEY, ESQ.

05-22-2019

Defendant

Request for Submission - Transaction 7283565 - Approved By: CSULEZIC : 05-22-2019:15:46:32 DOCUMENT TITLE: PLAINTIFFS MOTION TO VACATE ARBITRATORS FINAL AWARD FILED 5/22/19 PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 5/22/19 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

05-21-2019

Filed

Proof of Electronic Service Transaction 7280623 - Approved By: NOREVIEW : 05-21-2019:11:47:42

Stip and Order

05-21-2019

Filed

Stip and Order... Transaction 7280604 - Approved By: NOREVIEW : 05-21-2019:11:45:15

Notice of Electronic Filing

05-20-2019

Filed

Proof of Electronic Service Transaction 7279573 - Approved By: NOREVIEW : 05-20-2019:16:56:03

Request for Submission

Filed by: THOMAS CHARLES BRADLEY, ESQ.

05-20-2019

Defendant

Request for Submission PETITION FOR AN ORDER CONFIRMING ARBITRATORS FINAL AWARD AND REDUCE AWARD TO JUDGMENT, INCLUDING, ATTORNEYS FEES AND COSTS FILED 4/15/19 - Transaction 7279086 - Approved By: CSULEZIC : 05-20-2019:16:54:48 PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 5/20/19 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

05-20-2019

Filed

Proof of Electronic Service Transaction 7278193 - Approved By: NOREVIEW : 05-20-2019:11:30:03

Notice of Electronic Filing

05-20-2019

Filed

Proof of Electronic Service Transaction 7278102 - Approved By: NOREVIEW : 05-20-2019:11:16:12

Reply

05-20-2019

Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD -

RA 0004

6/19/2020

Case Summary

Transaction 7277660 - Approved By: CSULEZIC : 05-20-2019:11:28:46
- Exhibit 1

Notice of Electronic Filing

05-20-2019

Filed

Proof of Electronic Service Transaction 7277638 - Approved By: NOREVIEW : 05-20-2019:09:32:25

Reply

05-20-2019
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 7277573 - Approved By: CSULEZIC : 05-20-2019:11:14:56

Reply

05-20-2019
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S AWARD OF ATTORNEY'S FEES & REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' PETITION FOR AN ORDER CONFIRMING ARBITRATOR'S FINAL AWARD & REDUCE AWARD TO JUDGMENT - Transaction 7277526 - Approved By: SWOLFE : 05-20-2019:09:31:05

Notice of Electronic Filing

05-17-2019

Filed

Proof of Electronic Service Transaction 7275118 - Approved By: NOREVIEW : 05-17-2019:07:45:11

Motion

05-16-2019
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Motion ... MOTION FOR AN ORDER TO FILE EXHIBIT AS CONFIDENTIAL - Transaction 7274242 - Approved By: SWOLFE : 05-17-2019:07:44:22

- Exhibit 1
- Exhibit 2
- Exhibit 3

Notice of Electronic Filing

05-09-2019

Filed

Proof of Electronic Service Transaction 7263025 - Approved By: NOREVIEW : 05-09-2019:16:12:59

Opposition to Mtn

05-09-2019
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S AWARD OF ATTORNEY'S FEES AND REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' PETITION FOR AN ORDER CONFIRMING ARBITRATOR'S FINAL AWARD AND REDUCE AWARD TO JUDGMENT, INCLUDING, ATTORNEYS - Transaction 7262680 - Approved By: YVILORIA : 05-09-2019:16:11:47

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6

Notice of Electronic Filing

05-09-2019

Filed

Proof of Electronic Service Transaction 7261800 - Approved By: NOREVIEW : 05-09-2019:11:27:34

Opposition to Mtn

05-09-2019
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 7261736 - Approved By: YVILORIA : 05-09-2019:11:26:33

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5

Notice of Electronic Filing

05-09-2019

Filed

Proof of Electronic Service Transaction 7261643 - Approved By: NOREVIEW : 05-09-2019:10:36:46

Opposition to Mtn

05-09-2019
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD - Transaction 7261598 - Approved By: YVILORIA : 05-09-2019:10:35:50

Notice of Electronic Filing

05-07-2019

Filed

Proof of Electronic Service Transaction 7256064 - Approved By: NOREVIEW : 05-07-2019:08:21:58

05-06-2019
Defendant

Reply to/in Opposition

Filed by: THOMAS CHARLES BRADLEY, ESQ.

RA 0005

Case Summary

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Confidential Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7

04-26-2019

Proof of Electronic Service Transaction 7239706 - Approved By: NOREVIEW : 04-26-2019:09:10:29

Filed by: CARL MARTIN HEBERT, ESQ.

- Approved By: CSULEZIC : 04-26-2019:09:05:29

04-25-2019
Plaintiff

04-25-2019

Proof of Electronic Service Transaction 7239225 - Approved By: NOREVIEW : 04-25-2019:16:31:02

04-25-2019

Proof of Electronic Service Transaction 7238869 - Approved By: NOREVIEW : 04-25-2019:15:30:50

04-25-2019

Proof of Electronic Service Transaction 7238634 - Approved By: NOREVIEW : 04-25-2019:14:34:11

04-25-2019
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Notice ... DFX: SUB-EXHIBITS PRESENTED INCORRECTLY - NOTICE OF FILING OF EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT-PART 3- Transaction 7238629 - Approved By: YVILORIA : 04-25-2019:16:28:23

- Exhibit 1
- Exhibit 1
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- Exhibit 1
- Exhibit 1
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- Exhibit 1
- Exhibit 1
- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 3
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- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10
- Exhibit 11
- Exhibit 12
- Exhibit 13

<https://wcefex.washoecourts.com/notify/cmsFullHistory.html?pageAction=QueryCmsFullHist¬ifierCaseInfold=90362&caseNumber=CV12-01271&...> 6/17

- Exhibit 14
- Exhibit 15
- Exhibit 16
- Exhibit 17
- Exhibit 18

Notice

Filed by: CARL MARTIN HEBERT, ESQ.

Notice ... DFX: SUB-EXHIBITS ATTACHED INCORRECTLY - NOTICE OF FILING OF EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT- PART 2 - Transaction 7238461 -

Approved By: YVILORIA : 04-25-2019:15:26:13

- Exhibit 1
- Exhibit 1
- Exhibit 1
- Exhibit 1
- Exhibit 1
- Exhibit 1

04-25-2019
Plaintiff

Notice

Filed by: CARL MARTIN HEBERT, ESQ.

Notice ... DFX: SUB-EXHIBITS ATTACHED INCORRECTLY - NOTICE OF FILING OF EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT-PART 1 - Transaction 7238227 -

Approved By: YVILORIA : 04-25-2019:14:32:47

- Exhibit 1
- Exhibit 1
- Exhibit 1
- Exhibit 1
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- Exhibit 1
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- Exhibit 1
- Exhibit 1
- Exhibit 1

04-25-2019
Plaintiff

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7232978 - Approved By: NOREVIEW : 04-23-2019:10:27:25

04-23-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7232965 - Approved By: NOREVIEW : 04-23-2019:10:22:46

04-23-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7232946 - Approved By: NOREVIEW : 04-23-2019:10:18:50

04-23-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7232710 - Approved By: NOREVIEW : 04-23-2019:09:35:53

04-23-2019

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 7232702 - Approved By: NOREVIEW : 04-23-2019:09:35:07

04-23-2019

Motion

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... PLAINTIFF'S MOTIONS TO VACATE ARBITRATOR'S AWARD OF DENIAL OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND FOR THE COURT TO DECIDE AND GRANT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 7232457 - Approved By: CSULEZIC : 04-23-2019:09:34:30

04-22-2019
Plaintiff

Motion

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees - Transaction 7232452 - Approved By: CSULEZIC : 04-23-2019:09:33:45

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10

04-22-2019
Plaintiff

6/19/2020

Case Summary

04-22-2019
Plaintiff

Notice

Filed by: CARL MARTIN HEBERT, ESQ.

Notice ... SECOND NOTICE OF FILING OF CONTINUATION EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD - Transaction 7232448 - Approved By: CSULEZIC : 04-23-2019:10:26:15

- Confidential Exhibit 1 part 60
- Confidential Exhibit 2 part 1
- Confidential Exhibit 2 part 2
- Confidential Exhibit 2 part 3
- Confidential Exhibit 3 part 1
- Confidential Exhibit 3 part 2
- Exhibit 4

Notice

Filed by: CARL MARTIN HEBERT, ESQ.

Notice ... NOTICE OF FILING OF CONTINUATION EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD - Transaction 7232445 - Approved By: CSULEZIC : 04-23-2019:10:20:27

- Exhibit 1 part 37-1
- Exhibit 1 part 38
- Exhibit 1 part 39
- Exhibit 1 part 40
- Exhibit 1 part 41
- Exhibit 1 part 42
- Exhibit 1 part 43
- Exhibit 1 part 44
- Exhibit 1 part 45
- Exhibit 1 part 46
- Exhibit 1 part 47
- Exhibit 1 part 48
- Exhibit 1 part 49
- Exhibit 1 part 50
- Exhibit 1 part 51
- Exhibit 1 part 52
- Exhibit 1 part 53
- Exhibit 1 part 54
- Exhibit 1 part 55
- Exhibit 1 part 56
- Exhibit 1 part 57
- Confidential Exhibit 1 part 58
- Exhibit 1 part 59

04-22-2019
Plaintiff

04-22-2019
Plaintiff

Motion

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... PLAINTIFF'S MOTION TO VACATE ARBITRATOR'S FINAL AWARD - Transaction 7232416 - Approved By: CSULEZIC : 04-23-2019:10:16:07

- Exhibit 1 part 1
- Exhibit 1 part 2-1
- Exhibit 1 part 2-2
- Confidential Exhibit 1 part 3
- Exhibit 1 part 4
- Exhibit 1 part 5
- Exhibit 1 part 6
- Exhibit 1 part 7
- Exhibit 1 part 8
- Confidential Exhibit 1 part 9
- Exhibit 1 part 10
- Confidential Exhibit 1 part 11
- Confidential Exhibit 1 part 12
- Confidential Exhibit 1 part 13
- Confidential Exhibit 1 part 14
- Confidential Exhibit 1 part 15
- Exhibit 1 part 16
- Exhibit 1 part 17
- Exhibit 1 part 18
- Exhibit 1 part 19
- Confidential Exhibit 1 part 20
- Exhibit 1 part 21
- Confidential Exhibit 1 part 22
- Exhibit 1 part 23
- Confidential Exhibit 1 part 24
- Confidential Exhibit 1 part 24
- Exhibit 1 part 24-2
- Confidential Exhibit 1 part 25
- Exhibit 1 part 26
- Confidential Exhibit 1 part 27
- Confidential Exhibit 1 part 28
- Confidential Exhibit 1 part 29
- Confidential Exhibit 1 part 30
- Confidential Exhibit 1 part 31
- Confidential Exhibit 1 part 32

RA 0008

- Confidential Exhibit 1 part 33
- Confidential Exhibit 1 part 34
- Confidential Exhibit 1 part 35
- Exhibit 1 part 36
- Exhibit 1 part 36-1
- Exhibit 1 part 37

04-15-2019 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 7218514 - Approved By: NOREVIEW : 04-15-2019:11:40:00

04-15-2019 Defendant Petition
Filed by: THOMAS CHARLES BRADLEY, ESQ.
Petition ... DEFENDANTS' PETITION FOR AN ORDER CONFIRMING ARBITRATOR'S FINAL AWARD AND REDUCE AWARD TO JUDGMENT, INCLUDING, ATTORNEYS' FEES AND COSTS - Transaction 7218326 - Approved By: YVILORIA : 04-15-2019:11:38:50

- Exhibit 1
- Exhibit 2
- Exhibit 3

02-28-2019 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 7141226 - Approved By: NOREVIEW : 02-28-2019:12:29:42

02-28-2019 Defendant Notice of Change of Address
Filed by: THOMAS CHARLES BRADLEY, ESQ.
Notice of Change of Address Notice of Change of Address for Thomas C. Bradley, Esq. - Transaction 7141212 - Approved By: CSULEZIC : 02-28-2019:12:28:40

12-12-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 7020180 - Approved By: NOREVIEW : 12-12-2018:11:38:59

12-12-2018 Defendant Notice of Entry of Ord
Filed by: THOMAS CHARLES BRADLEY, ESQ.
Notice of Entry of Ord Notice of Entry of Order for Order Deny Plaintiff's Motion to Disqualify Arbitrator Pro; Order Deny Motion to Vacate Order Deny Motion for Summ Judgment; Order Deny Motion to Appoint New Arbitrator - Transaction 7020171 - Approved By: NOREVIEW : 12-12-2018:11:37:27

- Continuation

12-12-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 7020156 - Approved By: NOREVIEW : 12-12-2018:11:32:33

12-12-2018 Defendant Notice of Entry of Ord
Filed by: THOMAS CHARLES BRADLEY, ESQ.
Notice of Entry of Ord Notice of Entry of Order for Order for Order RE Defendants' Motion for Limited Relief from Stay to File Motion for Attorney's Fees and Sanctions - Transaction 7020152 - Approved By: NOREVIEW : 12-12-2018:11:31:33

- Continuation

12-10-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 7015072 - Approved By: NOREVIEW : 12-10-2018:09:58:40

12-10-2018 Order...
Filed
Order ... RE DEFENDANT - Transaction 7015067 - Approved By: NOREVIEW : 12-10-2018:09:57:38

11-29-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 6998028 - Approved By: NOREVIEW : 11-29-2018:12:00:52

11-29-2018 Ord Denying Motion
Filed
Ord Denying Motion PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO; DENYING MOTION TO VACATE ORDER DENYING MOTION FOR SJ; ORDER DENYING MOTIOON TO APPOINT NEW ARBITRATOR - Transaction 6998027 - Approved By: NOREVIEW : 11-29-2018:11:59:56

10-22-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 6939588 - Approved By: NOREVIEW : 10-22-2018:13:43:29

10-22-2018 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 6939553 - Approved By: NOREVIEW : 10-22-2018:13:34:58

10-22-2018 Defendant Request for Submission
Filed by: THOMAS CHARLES BRADLEY, ESQ.
Request for Submission Transaction 6939335 - Approved By: YVILORIA : 10-22-2018:13:42:35 DOCUMENT TITLE: NOTICE OF RA 0009

COMPLETION OF ARBITRATION HEARING PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: OCT 22, 2018
SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

Notice

10-22-2018
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Notice ... NOTICE OF COMPLETION OF ARBITRATION HEARING - Transaction 6939329 - Approved By: YVILORIA : 10-22-2018:13:34:05

Notice of Electronic Filing

10-03-2018

Filed

Proof of Electronic Service Transaction 6909323 - Approved By: NOREVIEW : 10-03-2018:12:03:15

Request for Submission

10-03-2018
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission Transaction 6909214 - Approved By: YVILORIA : 10-03-2018:12:01:46 DOCUMENT TITLE: DEFENDANT'S MOTION FOR LIMITED RELIEF FROM STAY TO FILE MOTION FOR ATTORNEY'S FEES AND SANCTIONS FILED 7-26-18 PARTY SUBMITTING: THOMAS CHARLES BRADLEY ESQ DATE SUBMITTED: OCT 3, 2018 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

09-17-2018

Filed

Proof of Electronic Service Transaction 6881801 - Approved By: NOREVIEW : 09-17-2018:08:40:25

Request for Submission

09-17-2018
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Request for Submission Transaction 6881758 - Approved By: YVILORIA : 09-17-2018:08:39:21 DOCUMENT TITLE: PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO VACATE ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND APPOINT NEW ARBITRATOR PARTY SUBMITTING: CARL HEBERT ESQ DATE SUBMITTED: SEPT 17, 2018 SUBMITTED BY: YV DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

08-30-2018

Filed

Proof of Electronic Service Transaction 6856241 - Approved By: NOREVIEW : 08-30-2018:08:54:02

Opposition to

08-30-2018
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Opposition to ... PLAINTIFF'S OPPOSITION TO DEFENDANTS' "MOTION FOR LIMITED RELIEF FROM STAY TO FILE MOTION FOR ATTORNEY'S FEES AND SANCTIONS" - Transaction 6856035 - Approved By: YVILORIA : 08-30-2018:08:53:01

Notice of Electronic Filing

08-28-2018

Filed

Proof of Electronic Service Transaction 6851464 - Approved By: NOREVIEW : 08-28-2018:09:06:44

Reply

08-28-2018
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO DISQUALIFY ARBITRATOR - Transaction 6851198 - Approved By: YVILORIA : 08-28-2018:09:05:41

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4

Notice of Electronic Filing

07-26-2018

Filed

Proof of Electronic Service Transaction 6798047 - Approved By: NOREVIEW : 07-26-2018:14:51:24

Opposition to Mtn

07-26-2018
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... OPPOSITION TO MOTION TO DISQUALIFY ARBITRATOR PRO, VACATE ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND APPOINT NET ARBITRATOR - Transaction 6797923 - Approved By: YVILORIA : 07-26-2018:14:50:06

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8

Motion

07-26-2018
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Motion ... MOTION FOR LIMITED RELIEF FROM STAY TO FILE MOTIO FOR ATTORNEY'S FEES AND SANCTIONS - Transaction 6797923 - Approved By: YVILORIA : 07-26-2018:14:50:06

- Exhibit A

Notice of Electronic Filing

07-23-2018

Filed

Proof of Electronic Service Transaction 6789404 - Approved By: NOREVIEW : 07-23-2018:08:39:25

RA 0010

6/19/2020

Case Summary

07-22-2018
Plaintiff

Motion

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO, VACATE ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND APPOINT NEW ARBITRATOR - Transaction 6789215 - Approved By: CSULEZIC : 07-23-2018:08:37:33

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10

05-31-2018

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6707196 - Approved By: NOREVIEW : 05-31-2018:16:18:24

Ord Denying Motion

Filed

05-31-2018

Ord Denying Motion PLAINTIFF'S MOTION FOR LEAVE TO RECONSIDER AND MOTION FOR RECONSIDERATION OF ORDER OF NOVEMBER 13, 2017 GRANTING "DEFENDANTS' MOTION TO STRIKE" - Transaction 6707193 - Approved By: NOREVIEW : 05-31-2018:16:17:39

04-09-2018

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6618180 - Approved By: NOREVIEW : 04-09-2018:10:43:22

Request for Submission

04-09-2018
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Request for Submission Transaction 6618133 - Approved By: CVERA : 04-09-2018:10:42:36 DOCUMENT TITLE: PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER OF 11/13/17 PARTY SUBMITTING: CARL MARTIN HEBERT, ESQ. DATE SUBMITTED: 04/09/18 SUBMITTED BY: CVERA DATE RECEIVED JUDGE OFFICE:

04-09-2018

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6618083 - Approved By: NOREVIEW : 04-09-2018:10:20:21

Reply

04-09-2018
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO RECONSIDER AND MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION TO STRIKE - Transaction 6618053 - Approved By: YVILORIA : 04-09-2018:10:19:29

12-29-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6458327 - Approved By: NOREVIEW : 12-29-2017:09:57:19

Opposition to Mtn

12-29-2017
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO RECONSIDER AND MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION TO STRIKE - Transaction 6458312 - Approved By: YVILORIA : 12-29-2017:09:56:20

- Exhibit 1
- Exhibit 2

12-04-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6422366 - Approved By: NOREVIEW : 12-04-2017:16:51:01

Mtn for Reconsideration

12-04-2017
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Mtn for Reconsideration PLAINTIFF'S MOTION FOR LEAVE TO RECONSIDER AND MOTION FOR RECONSIDERATION OF ORDER OF NOVEMBER 13, 2017 GRANTING "DEFENDANTS' MOTION TO STRIKE" - Transaction 6422162 - Approved By: YVILORIA : 12-04-2017:16:47:58

- Exhibit 1
- Exhibit 2

11-13-2017

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 6392834 - Approved By: NOREVIEW : 11-13-2017:17:10:07

Ord Granting Mtn

11-13-2017

Filed

Ord Granting Mtn ... DEFENDANTS' MOTION TO STRIKE - Transaction 6392831 - Approved By: NOREVIEW : 11-13-2017:17:09:07

11-06-2017

Notice of Electronic Filing

RA 0011

	Filed Proof of Electronic Service Transaction 6381540 - Approved By: NOREVIEW : 11-06-2017:14:19:28 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6381525 - Approved By: NOREVIEW : 11-06-2017:14:15:06 Request for Submission Filed by: THOMAS CHARLES BRADLEY, ESQ. Request for Submission MOTION TO STRIKE FILED 10/11/17 - Transaction 6381331 - Approved By: CSULEZIC : 11-06-2017:14:18:25 PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 11/06/17 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
11-06-2017	
11-06-2017 Defendant	Reply Filed by: THOMAS CHARLES BRADLEY, ESQ. Reply... DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE - Transaction 6381324 - Approved By: CSULEZIC : 11-06-2017:14:14:08 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6370848 - Approved By: NOREVIEW : 10-30-2017:16:45:58
10-30-2017	
10-30-2017 Plaintiff	Opposition to Mtn Filed by: CARL MARTIN HEBERT, ESQ. Opposition to Mtn ... PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE - Transaction 6370693 - Approved By: MPURDY : 10-30-2017:16:45:00 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6341582 - Approved By: NOREVIEW : 10-11-2017:11:19:46
10-11-2017	
10-11-2017 Defendant	Mtn to Strike Filed by: THOMAS CHARLES BRADLEY, ESQ. Mtn to Strike... Transaction 6341419 - Approved By: PMSEWELL : 10-11-2017:11:18:43 - Exhibit 1 - Exhibit 2 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6304731 - Approved By: NOREVIEW : 09-18-2017:15:20:52
09-18-2017	
09-18-2017 Plaintiff	Amended Complaint Filed by: CARL MARTIN HEBERT, ESQ. Amended Complaint Transaction 6304598 - Approved By: SWILLIAM : 09-18-2017:15:17:53 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6176450 - Approved By: NOREVIEW : 06-30-2017:15:56:53
06-30-2017	
06-30-2017	Order... Filed Order ... Transaction 6176446 - Approved By: NOREVIEW : 06-30-2017:15:56:03 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6136953 - Approved By: NOREVIEW : 06-07-2017:12:26:36
06-07-2017	
06-07-2017 Plaintiff	Request for Submission Filed by: CARL MARTIN HEBERT, ESQ. Request for Submission ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED FOR WANT OF PROSECUTION UNDER NRCP 41(E) FILED 5/24/17 - Transaction 6136674 - Approved By: CSULEZIC : 06-07-2017:12:25:49 PARTY SUBMITTING: CARL HEBERT ESQ DATE SUBMITTED: 6/07/17 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:
05-24-2017	
05-24-2017 Plaintiff	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6116241 - Approved By: NOREVIEW : 05-24-2017:13:03:30 Response Filed by: CARL MARTIN HEBERT, ESQ. Response... PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE DISMISSED FOR WANT OF PROSECUTION UNDER NRCP 41(e) - Transaction 6116178 - Approved By: TBRITTON : 05-24-2017:13:01:42 - Exhibit 1 - Exhibit 2 - Exhibit 3 Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6113146 - Approved By: NOREVIEW : 05-23-2017:09:30:03
05-23-2017	

6/19/2020

Case Summary

05-23-2017

Ord to Show Cause

Filed

Ord to Show Cause WHY ACTION SHOULD NOT BE DISMISSED FOR WANT OF PROSECUTION - Transaction 6113144 - Approved By: NOREVIEW : 05-23-2017:09:29:01

Notice of Electronic Filing

03-27-2017

Filed

Proof of Electronic Service Transaction 6018254 - Approved By: NOREVIEW : 03-27-2017:12:23:25

Objection to

03-27-2017
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Objection to ... PLAINTIFF'S OBJECTION PURSUANT TO NRS 38.231.(3) AND 38.241(1)(E) THAT THERE IS NO AGREEMENT TO ARBITRATE; NOTIFICATION OF OBJECTION TO THE COURT - Transaction 6018228 - Approved By: PMSEWELL : 03-27-2017:12:20:48

Notice of Electronic Filing

02-21-2017

Filed

Proof of Electronic Service Transaction 5960280 - Approved By: NOREVIEW : 02-21-2017:16:57:50

Order...

02-21-2017

Filed

Order ... APPOINTING ARBITRATOR - Transaction 5960277 - Approved By: NOREVIEW : 02-21-2017:16:57:00

Notice of Electronic Filing

02-08-2017

Filed

Proof of Electronic Service Transaction 5941538 - Approved By: NOREVIEW : 02-08-2017:14:47:13

Request for Submission

02-08-2017
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Request for Submission STIPULATION TO APPOINT ONE OF TWO REMAINING ARBITRATOR CANDIDATES - Transaction 5941184 - Approved By: CSULEZIC : 02-08-2017:14:46:06 PARTY SUBMITTING: CARL HEBERT ESQ DATE SUBMITTED: 2/08/17 SUBMITTED BY: CS DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

02-08-2017

Filed

Proof of Electronic Service Transaction 5941102 - Approved By: NOREVIEW : 02-08-2017:13:23:04

Stipulation

02-08-2017
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Stipulation ... STIPULATION TO APPOINT ONE OF TWO REMAINING ARBITRATOR CANDIDATES - Transaction 5940782 - Approved By: CSULEZIC : 02-08-2017:13:22:02

Notice of Electronic Filing

10-31-2016

Filed

Proof of Electronic Service Transaction 5781490 - Approved By: NOREVIEW : 10-31-2016:08:34:25

Ord Appointing

10-31-2016

Filed

Ord Appointing ... ARBITRATOR - Transaction 5781488 - Approved By: NOREVIEW : 10-31-2016:08:33:15

Notice of Electronic Filing

10-18-2016

Filed

Proof of Electronic Service Transaction 5761791 - Approved By: NOREVIEW : 10-18-2016:08:29:01

Notice of Electronic Filing

10-18-2016

Filed

Proof of Electronic Service Transaction 5761789 - Approved By: NOREVIEW : 10-18-2016:08:28:41

Request for Submission

10-17-2016
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Request for Submission Transaction 5761311 - Approved By: YLLOYD : 10-18-2016:08:28:08 DOCUMENT TITLE: STIPULATION TO SELECT ONE ARBITRATOR (NO PAPER ORDER) PARTY SUBMITTING: THOMAS BRADLEY ESQ DATE SUBMITTED: 10/17/16 SUBMITTED BY: YLLOYD DATE RECEIVED JUDGE OFFICE:

Stipulation

10-17-2016
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Stipulation ... STIPULATION TO SELECT ONE ARBITRATOR - Transaction 5761303 - Approved By: YLLOYD : 10-18-2016:08:27:39

Notice of Electronic Filing

09-13-2016

Filed

Proof of Electronic Service Transaction 5705066 - Approved By: NOREVIEW : 09-13-2016:15:25:22

Order...

09-13-2016

Filed

Order ... APPOINTING ARBITRATION PANEL - Transaction 5705056 - Approved By: NOREVIEW : 09-13-2016:15:24:00

09-02-2016

Notice of Electronic Filing

Filed

RA 0013

Proof of Electronic Service Transaction 5690906 - Approved By: NOREVIEW : 09-02-2016:11:10:07

09-02-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5690556 - Approved By: NOREVIEW : 09-02-2016:09:26:26

09-02-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5690415 - Approved By: NOREVIEW : 09-02-2016:08:44:30

09-01-2016 List of Stricken Arbitrators
Plaintiff Filed by: CARL MARTIN HEBERT, ESQ.
Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded
- Document withheld. Document Security Level Exceeded

09-01-2016 Request for Submission
Defendant Filed by: THOMAS CHARLES BRADLEY, ESQ.
Request for Submission DEFENDANT'S WESPAC AND GREG CHRISTIAN'S SUBMISSION OF POTENTIAL ARBITRATORS (PAPER ORDER NOT PROVIDED) - Transaction 5689701 - Approved By: TBRITTON : 09-02-2016:09:25:33 PARTY SUBMITTING: THOMAS C. BRADLEY, ESQ. DATE SUBMITTED: SEPTEMBER 1, 2016 SUBMITTED BY: TBRITTON DATE RECEIVED JUDGE OFFICE:

09-01-2016 Motion
Defendant Filed by: THOMAS CHARLES BRADLEY, ESQ.
Motion ... DEFENDANTS WESPAC AND GREG CHRISTIAN'S SUBMISSION OF POTENTIAL ARBITRATORS - Transaction 5689679 - Approved By: TBRITTON : 09-02-2016:08:43:43
- Exhibit 1
- Exhibit 2
- Exhibit 3

07-28-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5631155 - Approved By: NOREVIEW : 07-28-2016:08:52:19

07-27-2016 Clarification of Ord
Defendant Filed by: THOMAS CHARLES BRADLEY, ESQ.
Clarification of Ord STIPULATION REQUESTING CLARIFICATION - Transaction 5630799 - Approved By: TBRITTON : 07-28-2016:08:50:44

07-12-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5604784 - Approved By: NOREVIEW : 07-12-2016:15:43:13

07-12-2016 Order...
Filed
Order ... RE: ARBITRATION - Transaction 5604778 - Approved By: NOREVIEW : 07-12-2016:15:42:10

07-07-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5597872 - Approved By: NOREVIEW : 07-07-2016:13:43:06

07-07-2016 Request for Submission
Defendant Filed by: THOMAS CHARLES BRADLEY, ESQ.
Request for Submission Transaction 5597399 - Approved By: RKWATKIN : 07-07-2016:13:42:08 DOCUMENT TITLE: MOTION FOR A COURT-APPOINTED ARBITRATOR (NO ORDER) PARTY SUBMITTING: THOMAS BRADLEY, ESQ DATE SUBMITTED: 7/7/16 SUBMITTED BY: RKWATKIN DATE RECEIVED JUDGE OFFICE:

07-06-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5594480 - Approved By: NOREVIEW : 07-06-2016:11:05:10

07-05-2016 Reply
Plaintiff Filed by: CARL MARTIN HEBERT, ESQ.
Reply... PLAINTIFF'S REPLY TO "DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR A COURT-APPOINTED ARBITRATOR" - Transaction 5593653 - Approved By: RKWATKIN : 07-06-2016:11:04:07
- Exhibit 1
- Exhibit 2
- Exhibit 3

06-23-2016 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5576975 - Approved By: NOREVIEW : 06-23-2016:13:36:21

06-23-2016 Opposition to Mtn
Defendant Filed by: THOMAS CHARLES BRADLEY, ESQ.
Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR A COURT-APPOINTED ARBITRATOR - Transaction 5576662 - Approved By: CSULEZIC : 06-23-2016:13:35:18

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6

Notice of Electronic Filing

06-08-2016

Filed

Proof of Electronic Service Transaction 5552696 - Approved By: NOREVIEW : 06-08-2016:12:14:14

Motion

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... PLAINTIFF'S MOTION FOR A COURT-APPOINTED ARBITRATOR - Transaction 5552357 - Approved By: YVILORIA : 06-08-2016:12:13:20

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10
- Exhibit 11
- Exhibit 12

06-08-2016
Plaintiff

Notice of Electronic Filing

12-01-2015

Filed

Proof of Electronic Service Transaction 5257098 - Approved By: NOREVIEW : 12-01-2015:11:49:18

Notice

12-01-2015
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Notice ... NOTICE OF STATUS REPORT - Transaction 5256972 - Approved By: YVILORIA : 12-01-2015:11:48:19

Notice of Electronic Filing

11-17-2015

Filed

Proof of Electronic Service Transaction 5238580 - Approved By: NOREVIEW : 11-17-2015:10:37:46

Order...

11-17-2015

Filed

Order ... Transaction 5238561 - Approved By: NOREVIEW : 11-17-2015:10:36:38

Notice of Electronic Filing

05-21-2015

Filed

Proof of Electronic Service Transaction 4965001 - Approved By: NOREVIEW : 05-21-2015:14:24:42

Supreme Court Notice

05-21-2015

Filed

Supreme Court Notice SUPREME COURT NO. 65899/NOTICE IN LIEU OF REMITTITUR - Transaction 4964996 - Approved By: NOREVIEW : 05-21-2015:14:23:41

Notice of Electronic Filing

05-01-2015

Filed

Proof of Electronic Service Transaction 4932719 - Approved By: NOREVIEW : 05-01-2015:09:04:59

Supreme Court Order Denying

05-01-2015

Filed

Supreme Court Order Denying SUPREME COURT NO. 65899/ORDER DENYING EN BANC RECONSIDERATION - Transaction 4932705 - Approved By: NOREVIEW : 05-01-2015:09:03:20

Notice of Electronic Filing

03-18-2015

Filed

Proof of Electronic Service Transaction 4866332 - Approved By: NOREVIEW : 03-18-2015:11:37:04

Supreme Court Order Denying

03-18-2015

Filed

Supreme Court Order Denying SUPREME COURT NO. 65899/ORDER DENYING REHEARING - Transaction 4866324 - Approved By: NOREVIEW : 03-18-2015:11:36:00

Notice of Electronic Filing

12-18-2014

Filed

Proof of Electronic Service Transaction 4742324 - Approved By: NOREVIEW : 12-18-2014:10:20:52

12-18-2014

Supreme Court Order Denying

Filed

Supreme Court Order Denying SUPREME COURT NO. 65899/ORDER DENYING PETITION FOR WRIT OF MANDAMUS OR

RA 0015

6/19/2020

Case Summary

PROHIBITION - Transaction 4742321 - Approved By: NOREVIEW : 12-18-2014:10:19:51

Notice of Electronic Filing

07-16-2014

Filed

Proof of Electronic Service Transaction 4518975 - Approved By: NOREVIEW : 07-16-2014:10:29:25

Supreme Court Receipt for Doc

07-16-2014

Filed

Supreme Court Receipt for Doc SUPREME COURT NO. 65899/RECEIPT FOR DOCUMENTS - Transaction 4518972 - Approved By: NOREVIEW : 07-16-2014:10:28:24

Notice of Electronic Filing

04-02-2014

Filed

Proof of Electronic Service Transaction 4370205 - Approved By: NOREVIEW : 04-02-2014:13:37:33

Order...

04-02-2014

Filed

Order ... DENYING MOTION TO REHEAR AND REHEARING OF COURT'S 12/13/12 ORDER - Transaction 4370203 - Approved By: NOREVIEW : 04-02-2014:13:36:33

Notice of Electronic Filing

02-10-2014

Filed

Proof of Electronic Service Transaction 4298436 - Approved By: NOREVIEW : 02-10-2014:14:32:57

Notice of Electronic Filing

02-10-2014

Filed

Proof of Electronic Service Transaction 4298399 - Approved By: NOREVIEW : 02-10-2014:14:24:30

Response

02-10-2014
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Response... RESPONSE TO ORDER OF JANUARY 13, 2014 - Transaction 4298093 - Approved By: MELWOOD : 02-10-2014:14:21:23

Request for Submission

02-10-2014
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Request for Submission COMBINED MOTIONS FOR LEAVE TO REHEAR AND FOR REHEARING OF THE ORDER OF DECEMBER 13, 2012 COMPELLING ARBITRATION (NO PAPER ORDER PROVIDED) - Transaction 4298026 - Approved By: PDBROWN : 02-10-2014:14:31:51 PARTY SUBMITTING: CARL M. HEBERT, ESQ. DATE SUBMITTED: 02-10-14 SUBMITTED BY: PDBROWN DATE RECEIVED JUDGE OFFICE:

Notice of Electronic Filing

02-03-2014

Filed

Proof of Electronic Service Transaction 4287466 - Approved By: NOREVIEW : 02-03-2014:15:49:30

Reply

02-03-2014
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Reply... PLAINTIFF'S REPLY TO "DEFENDANT'S OPPOSITION TO PLAINTIFF'S COMBINED MOTION FOR LEAVE TO REHEAR AND FOR REHEARING OF THE ORDER OF DECEMBER 13, 2012, COMPELLING ARBITRATION AND REQUEST FOR ATTORNEY'S FEES" - Transaction 4287098 - Approved By: MELWOOD : 02-03-2014:15:46:45
- Exhibit 1
- Exhibit 2

Notice of Electronic Filing

01-13-2014

Filed

Proof of Electronic Service Transaction 4251998 - Approved By: NOREVIEW : 01-13-2014:10:26:18

Ord to Proceed

01-13-2014

Filed

Ord to Proceed ... Transaction 4251991 - Approved By: NOREVIEW : 01-13-2014:10:24:36

Notice of Electronic Filing

01-09-2013

Filed

Proof of Electronic Service Transaction 3452188 - Approved By: NOREVIEW : 01-09-2013:11:20:57

Opposition to Mtn

01-09-2013
Defendant

Filed by: THOMAS CHARLES BRADLEY, ESQ.

Opposition to Mtn ... DEFENDANTS' OPPOSITION TO PLAINTIFF'S COMBINED MOTIONS FOR LEAVE TO REHEAR AND FOR REHEARING OF THE ORDER OF DECEMBER 13, 2012 COMPELLING ARBITRATION AND REQUEST FOR ATTORNEY'S FEES - Transaction 3452039 - Approved By: JYOST : 01-09-2013:11:18:34
- Exhibit 1

Notice of Electronic Filing

01-02-2013

Filed

Proof of Electronic Service Transaction 3436070 - Approved By: NOREVIEW : 01-02-2013:08:22:33

Motion

12-31-2012
Plaintiff

Filed by: CARL MARTIN HEBERT, ESQ.

Motion ... COMBINED MOTIONS FOR LEAVE TO REHEAR AND FOR REHEARING OF THE ORDER OF DECEMBER 13, 2012 COMPELLING ARBITRATION - Transaction 3435926 - Approved By: MCHOLICO : 01-02-2013:08:20:50

RA 0016

6/19/2020

Case Summary

12-13-2012	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 3404841 - Approved By: NOREVIEW : 12-13-2012:11:36:50
12-13-2012	Order... Filed Order ... GRANTING MOTION TO COMPEL ARBITRATION AND DENYING MOTION TO DISMISS - Transaction 3404818 - Approved By: NOREVIEW : 12-13-2012:11:34:05
12-04-2012 Defendant	Request for Submission Filed by: THOMAS CHARLES BRADLEY, ESQ. Request for Submission DOCUMENT TITLE: DEFTS MOTION TO DISMISS AND TO COMPEL ARBITRATION (NO PAPER ORDER PROVIDED) PARTY SUBMITTING: BRADLEY, ESQ., THOMAS CHARLES DATE SUBMITTED: 12/4/12 SUBMITTED BY: ACROGHAN DATE RECEIVED JUDGE OFFICE:
12-03-2012 Defendant	Reply Filed by: THOMAS CHARLES BRADLEY, ESQ. Reply... DEFTS REPLY TO PLTFs OPPOSITION TO DEFTS MOTION TO DISMISS AND TO COMPEL ARBITRATION - Exhibit 1 - Exhibit 2 - Exhibit 3
10-29-2012	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 3309672 - Approved By: NOREVIEW : 10-29-2012:14:04:01
10-29-2012 Plaintiff	Opposition to Mtn Filed by: CARL MARTIN HEBERT, ESQ. Opposition to Mtn ... Transaction 3309632 - Approved By: APOMA : 10-29-2012:14:02:10 - Exhibit 1 - Exhibit 2 - Exhibit 3
09-19-2012 Defendant	Affidavit of Plaintiff Filed by: THOMAS CHARLES BRADLEY, ESQ. Affidavit of Plaintiff AFFIDAVIT OF GREG CHRISTIAN - Exhibit 1
09-19-2012 Defendant	Mtn to Compel Filed by: THOMAS CHARLES BRADLEY, ESQ. Mtn to Compel... MOTION TO DISMISS AND TO COMPEL ARBITRATION - Exhibit 1
09-10-2012	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 3203448 - Approved By: NOREVIEW : 09-10-2012:08:19:14
09-10-2012	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 3203446 - Approved By: NOREVIEW : 09-10-2012:08:18:42
09-08-2012 Plaintiff	Affidavit of Service Filed by: CARL MARTIN HEBERT, ESQ. Affidavit of Service GREG CHRISTIAN SERVED ON 9/6/12 - Transaction 3203349 - Approved By: MCHOLICO : 09-10-2012:08:16:24
09-08-2012 Plaintiff	Affidavit of Service Filed by: CARL MARTIN HEBERT, ESQ. Affidavit of Service WESPAC SERVED ON 9/4/12 - Transaction 3203348 - Approved By: MCHOLICO : 09-10-2012:08:17:11
08-29-2012 Plaintiff	Notice of Appearance Filed by: CARL MARTIN HEBERT, ESQ. Notice of Appearance
05-09-2012 Plaintiff	Complaint - Civil Filed by: GREGORY GARMONG \$Complaint - Civil
05-09-2012	** Summons Issued Filed

RA 0017

1 IN THE SECOND JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE
4 -o0o-
5
6 GREGORY GARMONG,
7 Plaintiff, Case No. CV12-01271
8 vs. Dept. No. 6
9 WESPAC, GREG CHRISTIAN, and
10 DOES 1-10,
11 Defendants. /
12 Pages 1 to 260, inclusive.
13
14
15 ARBITRATION
16
17 _____
18 Tuesday, October 16, 2018
19 Reno, Nevada
20
21 JOB NO: 503557
22 REPORTED BY: CHRISTINA AMUNDSON
23 CCR #641 (Nevada)
24 CSR #11883 (California)
25

Page 2	Page 3
<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR PLAINTIFF:</p> <p>4 LAW OFFICE OF CARL M. HEBERT</p> <p>5 Attorneys At Law</p> <p>6 202 California Avenue</p> <p>7 Reno, NV 89509</p> <p>8 775.323.5556</p> <p>9</p> <p>10 FOR DEFENDANTS GREG CHRISTIAN, WESPAC ADVISORS, LLC:</p> <p>11 LAW OFFICE OF THOMAS C. BRADLEY</p> <p>12 Attorneys At Law</p> <p>13 411 Hill Street</p> <p>14 Reno, NV 89501</p> <p>15 775.323.5178</p> <p>16</p> <p>17 ARBITRATOR:</p> <p>18 Hon. Philip M. Pro (Retired)</p> <p>19 Arbitrator/Mediator</p> <p>20 3800 Howard Hughes Parkway</p> <p>21 11th Floor</p> <p>22 Las Vegas, NV 89169</p> <p>23 ppro@jamsadr.com</p> <p>24 702.457.5267</p> <p>25</p> <p>19 ALSO PRESENT:</p> <p>20 Michael Hume, Greg Garmong</p> <p>21 -oOo-</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 ARBITRATION</p> <p>3</p> <p>4 EXAMINATION OF DIRECT CROSS</p> <p>5 Greg Garmong 30 162</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 EXH.</p> <p>9 NO. DESCRIPTION PAGE</p> <p>10 Exhibit 24-A Statement 12/1/07 to 12/31/07 168</p> <p>11 Account -5386</p> <p>12 Exhibit 24-B Statement for 12/1/07 to 12/31/07 173</p> <p>13 Account -4369</p> <p>14 Exhibit 24-C Schwab March statement 237</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1 BE IT REMEMBERED that on Tuesday October 16,</p> <p>2 2018, commencing at 9:00 a.m. of said day, at</p> <p>3 Sunshine Litigation Services, 151 Country Estates</p> <p>4 Circle, Reno, Nevada, before me, CHRISTINA M.</p> <p>5 AMUNDSON, a Certified Shorthand Reporter, the</p> <p>6 following proceedings were had:</p> <p>7 -----</p> <p>8 ARBITRATOR PRO: All right. We're convened</p> <p>9 in JAMS Case No. 12600003474, Garmong v. Wespac and</p> <p>10 Christian. This is the time set for arbitration.</p> <p>11 We have present in the arbitration hearing room --</p> <p>12 why don't we go around and let you introduce</p> <p>13 yourselves. I'm Philip Pro, the arbitrator in this</p> <p>14 case, and we'll go around.</p> <p>15 MR. HEBERT: My name's Carl Hebert, and I'm</p> <p>16 counsel for Plaintiff Greg Garmong.</p> <p>17 MR. GARMONG: And I'm Gregory Garmong.</p> <p>18 MR. BRADLEY: I'm Thomas Bradley and I</p> <p>19 represent the defendants, Mr. Christian and Wespac.</p> <p>20 MS. HUME: I'm Michael Hume. I work with</p> <p>21 Tom Bradley. H-u-m-e.</p> <p>22 MR. CHRISTIAN: And I'm Greg Christian.</p> <p>23 ARBITRATOR PRO: Great. Are we going to</p> <p>24 have anybody else regularly here in the hearing</p> <p>25 room? I know we have other witnesses.</p>	<p>1 MR. BRADLEY: Mr. Williams, the compliance</p> <p>2 officer from Wespac, I've asked to come tomorrow so</p> <p>3 we'll be here tomorrow and Mr. Cramer, our expert,</p> <p>4 is also coming tomorrow, but this will be it for</p> <p>5 today.</p> <p>6 ARBITRATOR PRO: But, counsel, I want to go</p> <p>7 ahead, then, and start -- you'd requested brief</p> <p>8 opportunity to do brief openings. If you wish to do</p> <p>9 so, you certainly may do so. I just want to make a</p> <p>10 brief record, since we do have a court reporter we</p> <p>11 won't have to recap it later, but I've gone through</p> <p>12 some of the history just to make sure we're all on</p> <p>13 the same page. I think it will be good to have it</p> <p>14 on the record.</p> <p>15 Going through the file and realizing, of</p> <p>16 course, that I didn't have any contact with the case</p> <p>17 until last year when I was appointed as the</p> <p>18 arbitrator in the matter, the original complaint was</p> <p>19 filed in the Second Judicial District Court here in</p> <p>20 Washoe County on May 9th, 2012. And it progressed</p> <p>21 slowly, I think, back and forth over a period of</p> <p>22 about five years until the district court referred</p> <p>23 the matter to arbitration on February 21st of</p> <p>24 2017.</p> <p>25 I got news of it sometime in March -- I</p>

<p style="text-align: right;">Page 6</p> <p>1 don't recall the exact date -- and immediately 2 scheduled a preliminary conference to develop a 3 discovery plan and scheduling order designed to get 4 the case to trial or, I should say, arbitration 5 hearing. 6 There have been a variety of issues that we 7 have addressed in the interim intervening several 8 months involving jurisdiction, discovery issues, 9 plenty partial summary judgment motion, and even now 10 we have a prehearing motion to address regarding Mr. 11 Cramer that I'll take up in a moment. 12 But we now are convened to conduct the 13 arbitration -- the evidentiary hearing on the merits 14 of the case involving the plaintiff, Mr. Garmon's 15 12 claims for relief in the case. The matter has 16 been fully briefed. The prehearing briefs have been 17 filed. I don't think there's anything left to 18 brief, certainly, in advance. 19 And I've received witness lists from the 20 parties indicating that you have some five witnesses 21 potentially who will be called to testify. Mr. 22 Garmon, Mr. Christian, Mr. John Williams, Mr. Bruce 23 Cramer, and an A. Dale Sharp listed on Plaintiff's 24 hearing list. Otherwise, you've got the same 25 witnesses listed, I think, on your respective</p>	<p style="text-align: right;">Page 7</p> <p>1 witness lists. 2 Has that changed at all? 3 MR. HEBERT: Yes. We, the plaintiff, are 4 not going to call Mr. Sharp. 5 ARBITRATOR PRO: Okay. 6 MR. BRADLEY: We're not. 7 ARBITRATOR PRO: Okay. So it will be the 8 four witnesses. And I think the parties already 9 outlined they plan to start, naturally, with the 10 plaintiff, Mr. Garmon, as the first witness. And 11 then I believe that's your only witness in your case 12 in chief but you may also call Mr. Christian in your 13 case as well. 14 MR. HEBERT: As a matter of housekeeping, 15 what I wanted to tell the Court when you're finished 16 is that the plaintiff will call Mr. Garmon first 17 and then cross-examination and then the plaintiff if 18 there's time left, will call Mr. Christian in their 19 case in chief as an adverse witness. And that 20 should take care of today and we don't have any 21 other witnesses today anyway. 22 ARBITRATOR PRO: I think that's the lineup 23 that we currently have. And you indicated Mr. 24 Williams after Mr. Christian is completed and Mr. 25 Cramer, you anticipate tomorrow.</p>
<p style="text-align: right;">Page 8</p> <p>1 MR. BRADLEY: Correct. 2 ARBITRATOR PRO: All right. Any other 3 scheduling issues? Various of you have mentioned 4 issues that may require you to take breaks or stand. 5 Feel free to stand up if you need to stand up, and 6 step out if you need to step out. We'll just take a 7 break. There's no jury. It really keeps it a lot 8 more flexible in terms of the presentation of 9 evidence. And you had a scheduling matter? 10 MR. HEBERT: I wanted to report to the 11 Court, the arbitrator, I don't have a scheduling 12 issue. You may recall at a management conference a 13 couple management conferences ago I mentioned my 14 wife was called to active duty, but we're okay. 15 ARBITRATOR PRO: And your son in school. 16 MR. HEBERT: But we found somebody to take 17 him home from school so I'm good all day long. I 18 just wanted you to know in case that was in the back 19 of your mind. 20 ARBITRATOR PRO: Well, I remember you'd 21 said that but I figured you would tell me when you 22 needed to break and, again, we have flexibility on 23 that. 24 But I want to get -- this is finally the 25 opportunity and, goodness, this case has been around</p>	<p style="text-align: right;">Page 9</p> <p>1 for over five years, six years, really, six long 2 years. And this is the opportunity for the parties 3 to provide their evidence, present their testimony, 4 provide their evidence, and I think it's important 5 that we get that in with as little interruption as 6 we can. 7 I know there are going to be legal issues 8 along the way, objections, which I will address on 9 the record but we have -- this is one of the virtues 10 of arbitration in terms of the actual trial 11 proceeding, in my view. 12 I draw an analogy to what I did for 35 13 years on the bench with court trials. There's no 14 jury and so we're not encumbered, and I used earlier 15 the patent metaphor. If you're doing a markman 16 hearing, construing claims in a patent trial, you 17 have to do that outside the presence of the jury and 18 you can't construe them in front of the jury. 19 And when you're having an arbitration or 20 court trial, there is no jury so you conduct your 21 claims construction, roll it into the actual trial. 22 And that kind of previews my view on the 23 situation with regard to Mr. Cramer. I understand 24 the legal arguments that you've advanced them in the 25 motion. Plaintiff had filed to exclude the</p>

<p style="text-align: right;">Page 10</p> <p>1 testimony and opinions of Mr. Cramer as an expert 2 witness concerning the net-out-of-pocket damages 3 method of calculation and the argument that under 4 Nevada law that -- which does apply in the case 5 under the arbitration clause of the investment 6 agreement -- that net-out-of-pocket method employed 7 in securities cases is not applicable to breach of 8 contract claims or tort claims, other claims that 9 are advanced in the case.</p> <p>10 And you all can argue that to me in 11 post-hearing and you've already briefed it, but I 12 think it's important to get the testimony in the 13 record and I will -- it's no different than I would 14 do if we were conducting a trial with a jury. I'd 15 hear that battle back and forth. I'd hear the 16 proffer of the witness and make a determination what 17 goes before the jury.</p> <p>18 Here I simply parse it as part of the final 19 decision-making process in making the award. Now, 20 there had been a back-and-forth between counsel 21 concerning the length of the prehearing briefs. My 22 recollection -- and you all were correct -- it 23 wasn't in any order that I issued, and that's on me. 24 I should have specified a page limit. I thought I 25 had said 20 or 25 pages, but the brief that</p>	<p style="text-align: right;">Page 11</p> <p>1 Plaintiff filed was some 60 pages long. It was 2 extensive.</p> <p>3 I'm not going to fret too much over that. 4 I will certainly allow in any post-hearing briefing 5 -- because I do think post-hearing briefing, 6 depending upon the testimony, may be important. I'd 7 hate to cause further delay or further expense. At 8 the same time I have to get it right. It will have 9 to be confirmed by the district court to confirm 10 whatever ruling I make, unless it's otherwise 11 resolved.</p> <p>12 So balance can be provided if additional 13 pages are needed by Wespac and Mr. Christian in 14 terms of the post-hearing briefing. You don't need 15 to repeat what you've already said in your 16 prehearing briefing. I mean, I'm familiar now with 17 the 12 claims and understand going into the case how 18 you view it. I'm going to be more interested in, 19 once we hear the evidence, how I view it now and how 20 you tell me you think it should come down.</p> <p>21 So those were just some preliminaries that 22 I wanted to address on the record. So I'm going to 23 deny without prejudice to renew post-hearing the 24 plaintiff's motion to exclude the testimony and 25 opinions of Mr. Cramer. That can be the subject of</p>
<p style="text-align: right;">Page 12</p> <p>1 post-hearing briefing and the attendant argument. 2 Are there any other preliminary matters 3 that either Plaintiff or Defendant have?</p> <p>4 MR. HEBERT: Yes. And Mr. Bradley can step 5 in if I'm inaccurate in any regard. But the first 6 thing I wanted to ask the Court is will there be any 7 deviation from the order of presentation outlined in 8 the Federal Rules or the Nevada Revised Statutes, 9 meaning, Plaintiff's direct, cross-examination, 10 redirect, recross. Will we have that opportunity 11 with each witness and how do you propose to do that?</p> <p>12 ARBITRATOR PRO: Yes, you would have that. 13 Although, since when you call Mr. Christian as an 14 adverse witness, you'll be engaged in, basically, 15 cross-examination.</p> <p>16 But when Mr. Bradley has the opportunity to 17 cross, quote, him, as a non-adverse witness, I will 18 allow him to expand his examination to cover what he 19 would cover in his case in chief. I don't want to 20 call people back and forth. Each time a witness is 21 on the stand, starting with Mr. Garmon, ask him 22 everything you want to about the case. You will and 23 certainly Mr. Bradley will and the same thing with 24 Mr. Christian. That will be the standard format.</p> <p>25 MR. HEBERT: That was the first thing.</p>	<p style="text-align: right;">Page 13</p> <p>1 The second and last thing is Mr. Bradley 2 and I have been talking about exhibits and we've 3 reached agreement that everything comes in for 4 authenticity but all objections otherwise are 5 reserved, like for relevance.</p> <p>6 ARBITRATOR PRO: Certainly. 7 MR. HEBERT: So is that accurate? 8 MR. BRADLEY: Yes. 9 MR. HEBERT: So they're all in. That way 10 we don't waste time.</p> <p>11 ARBITRATOR PRO: We don't need any 12 custodians. The investment agreement, things like 13 that, there's no question on relevance on those 14 either, obviously.</p> <p>15 MR. HEBERT: No, but there will be some 16 relevance objections, your Honor, and I can't 17 anticipate every objection, but we can make them. 18 It's just nobody's gonna say that's not authentic, 19 you need to bring the custodian.</p> <p>20 Am I right about that? 21 MR. BRADLEY: That's correct. 22 ARBITRATOR PRO: That's wise. I appreciate 23 it.</p> <p>24 MR. HEBERT: I'm out of prehearing stuff. 25 ARBITRATOR PRO: Mr. Bradley, anything</p>

<p style="text-align: right;">Page 14</p> <p>1 further?</p> <p>2 MR. BRADLEY: Nothing.</p> <p>3 ARBITRATOR PRO: Okay. Mr. Bradley wanted</p> <p>4 to make a brief opening statement, and I certainly</p> <p>5 will allow that, particularly since there was more</p> <p>6 in the plaintiff's prehearing brief, and I realize</p> <p>7 you may want to address some of that. But would</p> <p>8 Plaintiff care to make any kind of opening?</p> <p>9 MR. HEBERT: Just briefly, your Honor.</p> <p>10 Mr. Garmong, also Dr. Garmong, was a patent</p> <p>11 attorney for 27 years before he retired in 2007. In</p> <p>12 2005 he, in anticipation of retirement and needing</p> <p>13 to have his money wisely looked after, he went to</p> <p>14 Wespac on the suggestion of Charles Schwab, his</p> <p>15 stockbrokers. And when he initially got to Wespac,</p> <p>16 he had conservative financial goals. He could see</p> <p>17 retirement looming and didn't want to lose money but</p> <p>18 he was willing to be a little -- take a little bit</p> <p>19 more risk, moderately so.</p> <p>20 That changed in 2007. He retired on August</p> <p>21 31st, 2007, and in October of 2007 he advised</p> <p>22 Mr. Christian at Wespac, his investment adviser,</p> <p>23 that, I want to be very conservative now. I want to</p> <p>24 avoid the loss of capital. I don't want to lose</p> <p>25 what I have and I'm willing to forego gain to</p>	<p style="text-align: right;">Page 15</p> <p>1 preserve my capital, because I'm retired now. I've</p> <p>2 got a lot of other interests. This should be enough</p> <p>3 money to last me the rest of my life. I don't want</p> <p>4 to lose it.</p> <p>5 In short, though -- and at that time the</p> <p>6 stock market was quite volatile, if the Court</p> <p>7 remembers what we now call "The Great Depression" in</p> <p>8 2007 and forward. In any event, Mr. Garmong's</p> <p>9 position here is that instead of listening to his</p> <p>10 client, Mr. Christian simply allowed the retirement</p> <p>11 accounts to waste and that from 2007, particularly</p> <p>12 in 2008, these accounts lost \$648,000 until finally</p> <p>13 in November 6, 2008, Mr. Garmong, to preserve his</p> <p>14 capital, started making a few trades himself. The</p> <p>15 relationship formally ended in 2009, in March of</p> <p>16 2009.</p> <p>17 The Court's familiar with the 12 claims for</p> <p>18 relief, the largest being -- I should say the most</p> <p>19 prominent is the breach of contract, breach of the</p> <p>20 fiduciary duty that Mr. Christian had to follow Mr.</p> <p>21 Garmong's instructions, but not least are deceptive</p> <p>22 trade practices at the inception of the</p> <p>23 relationship.</p> <p>24 So there's the base amount of damages of</p> <p>25 six hundred and -- I think it's forty-eight thousand</p>
<p style="text-align: right;">Page 16</p> <p>1 dollars -- the exact number is in the exhibits --</p> <p>2 and because Mr. Garmong at the time under Nevada law</p> <p>3 was an elderly person, there was a potential to</p> <p>4 double damages for the exploitation of an elderly</p> <p>5 person in allowing the waste of the assets and in</p> <p>6 charging \$21,000 in adviser fees for doing,</p> <p>7 essentially, nothing except watching.</p> <p>8 And we've also alleged punitive damages for</p> <p>9 reckless disregard of the rights of Mr. Garmong, the</p> <p>10 conscious disregard of what was happening to his</p> <p>11 retirement savings. And this will all come out in</p> <p>12 the proof, your Honor.</p> <p>13 ARBITRATOR PRO: Let me ask one question</p> <p>14 and it relates to the last statement concerning</p> <p>15 punitive damages. The arbitration clause and</p> <p>16 investment agreement precludes punitive damages, as</p> <p>17 I recall. It's been a while since I digested it but</p> <p>18 I recall early on that that was something in the</p> <p>19 back of my mind.</p> <p>20 Is it your position that, while that may be</p> <p>21 as to certain claims, it's not as to other claims</p> <p>22 that you're advancing? How are you entitled to</p> <p>23 punitive damages?</p> <p>24 MR. HEBERT: Yes. I'm aware of paragraph</p> <p>25 16 --</p>	<p style="text-align: right;">Page 17</p> <p>1 ARBITRATOR PRO: 16, right.</p> <p>2 MR. HEBERT: -- of the Investment</p> <p>3 Management Agreement. But if the Court -- I'll</p> <p>4 direct the Court's attention to the claim for relief</p> <p>5 for deceptive trade practices. That statute allows</p> <p>6 punitive damages.</p> <p>7 ARBITRATOR PRO: Right.</p> <p>8 MR. HEBERT: And the argument made in the</p> <p>9 plaintiff's prehearing brief is that a clause like</p> <p>10 paragraph 16 that says no punitive damages -- and</p> <p>11 other one-sided statements that affect, you know, in</p> <p>12 Wespac's favor -- but you can't have a clause in an</p> <p>13 arbitration agreement or any contract that violates</p> <p>14 public policy of the state of Nevada. If someone</p> <p>15 engages in deceptive trade practices, punitive</p> <p>16 damages are available. It's that one claim for</p> <p>17 relief.</p> <p>18 If the Court believes that punitive damages</p> <p>19 are forbidden by the contract, the Investment</p> <p>20 Management Agreement, we contend that they're</p> <p>21 available as a matter of public policy as under</p> <p>22 deceptive trade practices, which is why I asked for</p> <p>23 them.</p> <p>24 ARBITRATOR PRO: Thank you. Mr. Bradley?</p> <p>25 MR. BRADLEY: Thank you, Judge. I</p>

<p style="text-align: right;">Page 18</p> <p>1 appreciate you pointing out that this is a very, 2 very old case in your opening remarks. It is 3 important to remember that he opened his account 13 4 years ago, 13 years ago, 2005. 5 And about 10 years ago there was a 6 worldwide financial crisis. I know it's been a 7 decade now, but the federal government had to bail 8 out America's largest corporations, banks, insurance 9 companies, brokerage firms to avoid a complete 10 meltdown of the world economy. 11 Bear Sterns, Lehman Brothers, both icons, 12 went out of business. It was the greatest economic 13 downturn and financial crisis since 1929. 9 million 14 jobs were lost. The Dow Jones and S&P 500 and other 15 major indexes lost half of their value from November 16 of '07 to March of '09. And it's interesting 17 because the November '07 to March '09 just happens 18 to be the period that Mr. Garmong chooses to 19 calculate damages, a very convenient period. 20 Most investors during that period of time 21 lost half of their investments because they were in 22 the stock markets like the Dow Jones and the S&P 23 500. But because Wespac was doing a good job for 24 Mr. Garmong and consistently sold equities and 25 raised cash in his accounts, his portfolio declined</p>	<p style="text-align: right;">Page 19</p> <p>1 much less than the major indexes. In fact, it's 2 interesting that in October of '07 there were no 3 leading experts in the financial world predicting 4 any sort of crisis. Remember Alan Greenspan -- we 5 haven't talked about him in years -- he thought 6 everything was fine. All of the leaders, the 7 Republican and Democratic parties thought everything 8 was fine. No one in Europe was raising a flag. You 9 have to keep that in mind that that's the period of 10 time that Mr. Garmong is complaining about. 11 ARBITRATOR PRO: Don't recall their names. 12 I think there were a few, kind of, contrarians. 13 MR. BRADLEY: They weren't being listened 14 to by any of the -- anybody that said that was out 15 of line with everyone else. Except there was one 16 man, at least on October 22nd, 2007, letter that 17 he alleges he mailed that mysteriously never was 18 received until we exchanged discovery in this case, 19 Mr. Garmong in October of '07 did predict a stock 20 market crash. And we're going to hear a lot of 21 testimony about that letter. It seemingly looks as 22 though it was written with 20/20 hindsight. 23 But the important point is over the life of 24 the Wespac accounts from the first day to the last 25 day, Mr. Garmong didn't lose any money. In fact,</p>
<p style="text-align: right;">Page 20</p> <p>1 our expert calculated he made a \$5,400 profit. And 2 that is just absolutely amazing, given the fact that 3 there was the crash, the Great Recession during this 4 period of time. I mean, it is absolutely amazing 5 that there was a profit -- a small profit but it was 6 absolutely amazing. Everybody else was losing half 7 of their accounts. 8 So Mr. Garmong in his damage calculations 9 asks you to ignore the \$550,000 from 2005 to 2007. 10 This \$5,400 profit, I want to stress, is after he 11 paid Mr. Christian and Wespac their fees. The 12 \$5,400 profit is after he paid for the 13 administrative charges and the trading costs of 14 Charles Schwab, so this is a net-net profit of 15 \$5,400. 16 Mr. Cramer, who will testify, has testified 17 across the United States over 70 times. He'll say 18 that he's worked on hundreds and hundreds of cases 19 over his 20-year career and he'll say that, had Mr. 20 Garmong just invested all of his monies with the 21 monies coming in and out, had he been in the S&P 22 500, which a lot of people are invested in, the 500 23 largest companies in the United States, he would 24 have lost for this period of time from '05 to '09, 25 he would have lost \$972,000. That is a phenomenal</p>	<p style="text-align: right;">Page 21</p> <p>1 amount of money, so it takes in all the gains from 2 '05 to '07 and then takes in that huge decline to 3 2009. 4 And even if you were invested in what we 5 call a balanced portfolio, which is commonly 6 60 percent stock and 40 percent bonds, he would have 7 lost \$432,000, massive amounts of money. And, yet, 8 because he was able to earn \$5,400, he is still 9 suing Wespac. It's remarkable. 10 One of the fundamental things that an 11 investment adviser must do is to know the customer. 12 Mr. Christian will testify and show you his broker 13 notes that when he first met with Mr. Garmong, he 14 learned he was 61 years old, he was divorced, he had 15 no kids, had a remarkable education, Ph.D in 16 engineering from MIT, had both a juris doctorate and 17 MBA, I think, from UCLA. He was making \$250,000 a 18 year and including his home he had a net worth of 19 \$10 million. 20 By anybody's standard, a very, wealthy, 21 wealthy man. He had \$5 million in just monies that 22 he wanted to directly invest. He had \$3 million in 23 muni bonds, short-term muni boards. They were 24 laddered, and you'll get an explanation exactly how 25 he laddered it. But Mr. Garmong was sophisticated</p>

<p style="text-align: right;">Page 22</p> <p>1 enough to manage that on his own. It's something 2 that Mr. Christian could have done for him but he 3 saw no reason, apparently, to pay Mr. Christian to 4 do something that Mr. Garmong was more than 5 competent to do.</p> <p>6 So you take into account there's \$3 million 7 in munis and then he had \$2 million invested in 8 stocks. So that's already a 60 percent bond 9 allocation and 40 percent stock, already a 10 conservative asset allocation.</p> <p>11 But the important point is that Wespac 12 Advisers was managing only the risk portion, the 13 securities portion of Mr. Garmong's portfolio and 14 the other 60 percent was in safe muni bonds. So 15 investment advisers also are able to take into 16 account other assets that a person has. He had \$5 17 million in real estate. He had zero debt, no 18 mortgage on any of it, so that's an important thing 19 to keep in mind.</p> <p>20 He also had extensive experience in stocks 21 and bonds. He told Mr. Christian that he was 22 invested in 1999 and 2000 during the Tech Wreck. 23 Although he may testify that he doesn't know what 24 the Tech Wreck was, he asked Mr. Christian about 25 advice about suing his former broker that he had</p>	<p style="text-align: right;">Page 23</p> <p>1 before Mr. Christian because the losses were 2 significant enough from the Tech Wreck.</p> <p>3 One other thing that Mr. Garmong indicated 4 in writing to Mr. Christian was that he had a long 5 time horizon. The reason that that is a significant 6 fact is the SEC recognizes an investor with a longer 7 time horizon may feel more comfortable taking on 8 riskier or more volatile investments because he or 9 she can wait out slow economic cycles and the 10 inevitable ups and downs of our markets. That's 11 from the SEC.</p> <p>12 Mr. Garmong testified in his deposition 13 that he's not aware of the basic principle that if 14 you invest in securities you can lose money. And so 15 fairly it's a remarkable statement. He'll argue 16 that he thought that Wespac could magically own 17 stocks and not have the potential of losing money if 18 the stock market declined, another amazing 19 statement.</p> <p>20 The SEC says in a Beginner's Guide to Asset 21 Allocation that "when it comes to investing, risk 22 and reward are inextricably intertwined. You 23 probably heard the phrase, 'No pain, no gain.' Those 24 words come close to summing up the relationship 25 between risk and reward. Don't let anyone tell you</p>
<p style="text-align: right;">Page 24</p> <p>1 otherwise.</p> <p>2 "All investments involve some degree of 3 risk. If you intend to purchase securities such as 4 stocks, bonds, or mutual funds, it's important for 5 you to understand before you invest that you could 6 lose some or all your money."</p> <p>7 So this is the SEC teaching people that 8 that's the basics of investing. So when Mr. Garmong 9 first met Mr. Christian, Mr. Christian had him fill 10 out what's called a Customer Profile and Investment 11 Management Questionnaire and the Investment 12 Management Agreement. He indicated he wanted 13 moderate growth and low-moderate risk.</p> <p>14 We'll be going through those forms in 15 detail, but he indicated that he would accept a 16 volatility range of plus 26 to minus 11 percent, 17 which is the second most aggressive choice he could 18 have picked, and so that's an important fact to keep 19 in mind.</p> <p>20 So in September '05 he transferred his four 21 accounts to Wespac's management. It was one 22 individual account and three retirement accounts 23 totaling about \$2 million. The combined allocation 24 was 83 percent equities. Over time the accounts 25 changed, but what's important to note is that</p>	<p style="text-align: right;">Page 25</p> <p>1 throughout the entire relationship the investment 2 selection and the asset allocation was entirely 3 consistent with Mr. Garmong's investment objective 4 of moderate growth and low-moderate risk.</p> <p>5 And I think, even, Mr. Garmong will 6 recognize and admit that they had frequent meetings, 7 virtually every quarter, if not more often. There 8 were phone calls there were faxes. There was a 9 great deal of communication and Mr. Christian kept 10 Mr. Garmong completely up to date and informed of 11 what all the investments were and what all the risks 12 were.</p> <p>13 At some point Mr. Garmong expressed 14 concerns about August '07 about the volatility in 15 the market, so they had a meeting and they got 16 together and they agreed that they would reduce the 17 volatility so the Wespac accounts went to 50 percent 18 cash, a fairly conservative move. But it's 19 something that they had agreed upon and that's 20 exactly what they did.</p> <p>21 So taking into account the \$3 million we've 22 talked about in muni bonds, he only had about 23 20 percent of his total investment in stocks, in 24 equities, because out of \$5 million total he had 25 1 million in cash and 3 million in bonds and that</p>

<p style="text-align: right;">Page 26</p> <p>1 left \$1 million in equity, so that's 20 percent. 2 And Mr. Cramer will tell you that a 20 percent stock 3 and 80 percent income portfolio is a conservative 4 portfolio, no question. 5 If you take into account Mr. Garmong's \$5 6 million in real estate, that means one out of his 7 \$10 million was invested in the stocks and so that's 8 10 percent. That's a very conservative portfolio. 9 But as the stock market continued to spiral 10 down in October '08, Mr. Garmong instructed Wespac 11 to cash out all the retirement accounts and go to 12 cash but he still wanted to keep his individual 13 account, his taxable account in stocks. 14 And then in March '09 he finally fired 15 Wespac and Mr. Christian, but he did something 16 interesting. He kept all those securities that 17 Wespac was managing. He kept them. And for a 18 couple of months until he moved from Schwab to 19 Fidelity he kept those same Wespac securities. 20 Then because of your Honor's subpoena, we 21 were able to get his records at Fidelity. He kept 22 those same Wespac securities until April of 2014. 23 He made over \$290,000 off those Wespac securities 24 that he's complaining never should have been in. He 25 kept them for five years.</p>	<p style="text-align: right;">Page 27</p> <p>1 So it's just remarkable. And we don't know 2 whether or not he kept them to today, but if he has, 3 he's made significantly more money off those Wespac 4 securities. But Mr. Garmong wants you to ignore the 5 \$550,000 in profits that he earned from '05 to '07 6 and he wants you to ignore the \$300,000 that he 7 continued to make on the Wespac securities. 8 And the evidence will show that Mr. Garmong 9 is just not a credible witness. In his deposition I 10 asked him to state the names of the opposing parties 11 that he sued and he said, I can't recall any. He's 12 sorry, just he was drawing a blank and he didn't 13 know that he would be asked about it. 14 So under oath he's saying he couldn't 15 recall suing individual members of the Nevada 16 Supreme Court. He couldn't recall suing the United 17 States Bankruptcy Trustee that was involved in his 18 wife's bankruptcy. He couldn't recall the names of 19 the lawyers that he used to have at the Maupin law 20 firm that he's suing. 21 MR. HEBERT: Your Honor, should I make the 22 relevancy objection now to this stuff? 23 ARBITRATOR PRO: Yes. You're going into an 24 area, anyway, that is argumentative. You can save 25 that for arguments, not opening.</p>
<p style="text-align: right;">Page 28</p> <p>1 MR. HEBERT: At the end of this arbitration 2 hearing the evidence will prove that Mr. Garmong's 3 claims are entirely without merit. He had no 4 losses. Wespac always followed his instructions. 5 The securities managed by Wespac were suitable, the 6 investment strategy was consistent with his 7 long-term objectives. 8 ARBITRATOR PRO: All right. Thank you, Mr. 9 Bradley. 10 We can go ahead and get started. Let me 11 say that while this is an informal proceeding and 12 everybody can get up and move around as you need to, 13 when we take breaks, while I was happy to introduce 14 myself and talk to you very briefly before we get 15 started, we're in trial mode, in essence. And 16 certainly I'll engage with counsel as necessary on 17 matters. 18 But, otherwise, I won't be sitting with you 19 and commiserating with you about different things 20 other than the weather, just so you understand I 21 need to keep separate, no ex parte contacts. I 22 don't mean to be offensive or unkind towards anyone. 23 Is your first witness going to be Mr. 24 Garmong? 25 MR. HEBERT: Yes, your Honor.</p>	<p style="text-align: right;">Page 29</p> <p>1 (Mr. Garmong sworn.) 2 ARBITRATOR PRO: Please state your full 3 name for the record. 4 THE WITNESS: Gregory Garmong, 5 G-a-r-m-o-n-g. 6 ARBITRATOR PRO: Thank you, Mr. Garmong. 7 Go ahead. 8 THE WITNESS: If I may ask for a point of 9 personal privilege? 10 ARBITRATOR PRO: Sure. 11 THE WITNESS: It's pronounced "Garmong" 12 with the accent on the first syllable. Mr. Bradley 13 was calling it "Garmong," and it grates on my ears a 14 little bit. 15 ARBITRATOR PRO: Oh, there was no offense 16 intended. 17 MR. BRADLEY: No offense. 18 MR. GARMONG: In fact, when we had the 19 depositions, we called each other by first name just 20 to avoid that problem, but I realize in the 21 formality here we want to -- 22 ARBITRATOR PRO: Too many "Gregs," so we 23 should avoid that kind of confusion. The court 24 reporter can see you. She knows who you are when 25 you're speaking, so she'll have that straight. Go</p>

<p style="text-align: right;">Page 30</p> <p>1 ahead, Mr. Hebert.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. HEBERT:</p> <p>4 Q Mr. Garmong, how old are you?</p> <p>5 A 61 -- I'm sorry. No. I'm 74. 61 was how</p> <p>6 old I was when I started with Wespac. I'm 74.</p> <p>7 MR. BRADLEY: Excuse me, Carl. Judge --</p> <p>8 MR. HEBERT: I got one question out.</p> <p>9 MR. BRADLEY: -- I would like to invite</p> <p>10 this as being an informal process myself, so</p> <p>11 normally would object to narrative answers but I'm</p> <p>12 not going to do that. So if you'd like him to</p> <p>13 explain in a narrative fashion at any point in your</p> <p>14 examination, feel free to do so.</p> <p>15 MR. HEBERT: Well, I appreciate the offer.</p> <p>16 And far be it for me to ever have a narrative</p> <p>17 answer, but I think I might avail myself this time.</p> <p>18 THE WITNESS: To be clear, I'm 74 years old</p> <p>19 and in two months I'll be 75.</p> <p>20 ARBITRATOR PRO: I'll be 72 on</p> <p>21 December 12th.</p> <p>22 MR. HEBERT: I'm just glad to be here.</p> <p>23 BY MR. HEBERT:</p> <p>24 Q Where do you live?</p> <p>25 A I have two homes, one at Lake Tahoe in</p>	<p style="text-align: right;">Page 31</p> <p>1 Zephyr Cove, Nevada, and the other in Smith, Nevada.</p> <p>2 Q Mr. Garmong, would you rather be "Mr.</p> <p>3 Garmong" or "Dr. Garmong" or "Greg"?</p> <p>4 Which one would you like to be?</p> <p>5 A You may choose. Anyone hear my choose.</p> <p>6 Q Thank you. Let's talk about your general</p> <p>7 background briefly. Where did you grow up?</p> <p>8 A Grew up in a rural area in Southern Indiana</p> <p>9 on a small -- well, on a farm.</p> <p>10 Q Do you have a college degree?</p> <p>11 A I do.</p> <p>12 Q In what?</p> <p>13 A Metallurgy and material science from</p> <p>14 Massachusetts Institute of Technology, abbreviated</p> <p>15 "MIT."</p> <p>16 Q Do you have more than a bachelor of</p> <p>17 science?</p> <p>18 A I do.</p> <p>19 Q What degrees do you hold?</p> <p>20 A I have -- in addition to the bachelor of</p> <p>21 science, I have a Ph.D also in metallurgy and</p> <p>22 material science. I have a juris doctor law degree</p> <p>23 from UCLA and an MBA, master of business</p> <p>24 administration, from UCLA.</p> <p>25 Q Is your Ph.D from MIT as well?</p>
<p style="text-align: right;">Page 32</p> <p>1 A It is.</p> <p>2 Q Let's talk about your professional</p> <p>3 experience for a brief moment.</p> <p>4 After you got your Ph.D from MIT, where</p> <p>5 were you employed?</p> <p>6 A I was employed at the Rocketdyne division</p> <p>7 of Rockwell International. That's in Canoga Park,</p> <p>8 California.</p> <p>9 Q Were you an actual rocket scientist?</p> <p>10 A I was.</p> <p>11 Q What were you doing for Rockwell?</p> <p>12 A I was working on the development of rocket</p> <p>13 engine technology. The most familiar one was the</p> <p>14 space shuttle-made engine but I spent more time on</p> <p>15 small engines.</p> <p>16 Q Were you internationally recognized and</p> <p>17 known in your field?</p> <p>18 A I was.</p> <p>19 Q Could you explain that, please.</p> <p>20 A In addition to my work on rocket engines, I</p> <p>21 did research in several different</p> <p>22 metallurgically-related fields, mostly a field</p> <p>23 called "composite materials."</p> <p>24 I participated in and shared numerous</p> <p>25 symposia, both in United States and abroad. I</p>	<p style="text-align: right;">Page 33</p> <p>1 published extensively in the metallurgical</p> <p>2 literature and in -- it was either 1974 and '75, I</p> <p>3 was awarded the Marcus Grossman award of the</p> <p>4 American Society for Metals as the outstanding</p> <p>5 metallurgist in the United States under the age of</p> <p>6 35.</p> <p>7 Q Now, when you were pursuing your profession</p> <p>8 as a metallurgist, can you estimate for the Court</p> <p>9 how many people with your qualifications existed</p> <p>10 back then? I mean, it couldn't have been too many</p> <p>11 could it?</p> <p>12 A Well, with a Ph.D in metallurgy, probably</p> <p>13 several hundred. I really don't know -- actually,</p> <p>14 probably more than that. Several thousand.</p> <p>15 Q So you went to work for Rockwell.</p> <p>16 After Rockwell, what did you do?</p> <p>17 A I went to work for a patent law firm in Los</p> <p>18 Angeles called the Fulwider Patton Rebur Lee &</p> <p>19 Utecht.</p> <p>20 Q Did you get your law degree and MBA from</p> <p>21 UCLA while you were working for Rocketdyne?</p> <p>22 A Yes. I was working full time and going to</p> <p>23 law school and business school full time.</p> <p>24 Q At some point you made a decision to use</p> <p>25 your law degree rather than your Ph.D in metallurgy?</p>

<p style="text-align: right;">Page 34</p> <p>1 A No. Actually, I became a patent attorney 2 and so I utilized both skills.</p> <p>3 ARBITRATOR PRO: Help me out, with dates, 4 rough time frames. When did you finish law school 5 and when did you depart Rocketdyne for the law firm?</p> <p>6 THE WITNESS: I'll give you a personal 7 chronology, your Honor.</p> <p>8 I graduated with my bachelor's degree from 9 MIT in 1966. I received my Ph.D in 1969. Went to 10 work for Rocketdyne in 1969. In 1973, while still 11 working for Rocketdyne, I entered UCLA law school. 12 They had an afternoon and evening program that they 13 were trying out for people who were otherwise 14 employed.</p> <p>15 And then a year or so into that, UCLA 16 announced a joint law and business program and so 17 being a glutton for punishment, I went into that. I 18 received both of those degrees in the spring of 19 1977. I stayed with Rockwell -- well, I took the 20 California Bar Exam in 1978 and passed that.</p> <p>21 I went to -- stayed with Rockwell until 22 June of 1979. Then I went to work for the Fulwider 23 law firm, became a partner there in January of 1984. 24 I stayed as a partner there for about two years. 25 Left at the end of 1985, became self-employed as a</p>	<p style="text-align: right;">Page 35</p> <p>1 patent attorney and stayed self-employed as a patent 2 attorney until I retired August 31st, 2007.</p> <p>3 ARBITRATOR PRO: Thank you, parenthetically 4 in the interest of full disclosure, I should tell 5 you I didn't know -- certainly Mr. Garmong didn't 6 recognize -- he was the only person here when we 7 walked in. And I mentioned that my father-in-law, 8 who died in 1987, had worked at Rocketdyne, not in 9 the same area and they didn't know each other. He's 10 been gone since 1987. He didn't work at Rocketdyne 11 after 1980.</p> <p>12 MR. HEBERT: Thank you, your Honor.</p> <p>13 BY MR. HEBERT:</p> <p>14 Q Was your patent practice limited to any 15 particular types of patents?</p> <p>16 A Well, first of all, I did not -- well, when 17 I started, the Fulwider firm wanted me to be a 18 litigator and I worked at a litigation in a 19 low-level capacity for several years. Found out 20 that I didn't particularly enjoy being a patent 21 litigator so I switched over and did primarily 22 patent application and prosecution.</p> <p>23 The term "patent prosecution" means that, 24 once the patent application is filed in the patent 25 office, that there's a period of time when you are</p>
<p style="text-align: right;">Page 36</p> <p>1 dealing with the patent examiner and that is what is 2 termed "prosecution."</p> <p>3 Might also mention that patent attorneys 4 normally specialize by a technical field, and 5 because of my background, I specialized in the 6 preparation and prosecution of metallurgical and 7 material science-oriented patents. To the best of 8 my knowledge.</p> <p>9 I was the only Ph.D metallurgist patent 10 attorney in the United States. Might not be true 11 but that was the best of my knowledge.</p> <p>12 Q So representative clients would include 13 Alcoa, Reynolds?</p> <p>14 A No. Representative clients would include 15 Kaiser Aluminum, Hughes Aircraft, Hughes Space and 16 Communication, Raytheon, Wyman Gordon, General 17 Electric Aircraft Engines. And then I also -- after 18 I became self-employed in 1986, I had some smaller 19 clients, a few individuals, several mid-sized 20 companies. The most notable one that everyone will 21 be familiar with is Buck Knives and I did patent 22 work for Buck Knives from 1988 until I retired.</p> <p>23 Q Did you do any patent work for that famous 24 inventor of Lake Tahoe, Lemelson?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Okay.</p> <p>2 A I knew the name but I didn't have anything 3 to do with him.</p> <p>4 Q If I have his name correct.</p> <p>5 Now, Mr. Garmong, when you left academia -- 6 I guess, let's call that when you got your Ph.D from 7 MIT, were you independently wealthy or subsisting on 8 student income?</p> <p>9 A The latter. I had a fellowship that 10 supported me in graduate school.</p> <p>11 Q So by the time you got to retirement, the 12 money that you had, which Mr. Bradley has talked 13 about, you earned that with your hands. Didn't you 14 earn that yourself?</p> <p>15 A More with my mind than with my hands.</p> <p>16 Q You know what I meant. You earned that 17 yourself.</p> <p>18 A Pretty much. Income from three sources. 19 One was -- I'm sure we'll get into it -- a windfall 20 that truly amazed me.</p> <p>21 Q We'll talk about that.</p> <p>22 A Most of it from my work and a small amount 23 -- I had an inheritance from my parents of -- it was 24 under a hundred thousand dollars, so a relatively 25 smaller amount.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q If I could summarize for the purpose of 2 this hearing, by and large, any money that you had 3 when you got to retirement on August 31st, 2007, 4 was money you made at an hourly rate as a patent 5 attorney. Is that correct? 6 A Correct. 7 Q Okay. During that time -- "that time" 8 meaning while you were a patent attorney -- what was 9 your investing experience? 10 A Have to split that up into two sub 11 questions. As far as securities goes, I had a 12 limited amount of experience with securities. I 13 owned some but the securities that I had purchased 14 were all recommended by people who were in the 15 business of securities. 16 The other part was bonds and I had a 17 windfall that brought in a good deal of money to me 18 on bonds -- that I invested in bonds and then I 19 managed my bond accounts -- account myself. I used 20 a technique called "laddering," which is very simple 21 and almost automatic. 22 Q Let me jump in and ask you a few questions. 23 So going into retirement, which we'll call 24 August 31st, 2007, were you an experienced 25 investor with stocks?</p>	<p style="text-align: right;">Page 39</p> <p>1 A No. 2 Q What experience did you have with stocks 3 coming into retirement? Had you been with an 4 investment adviser before Wespac? 5 A Yes. I had been with Morgan Stanley in San 6 Diego and that began somewhere in the mid-1990s when 7 I began to have some money to invest. I got with 8 Morgan Stanley because one of my neighbors was a 9 Morgan Stanley broker and I gave Morgan Stanley 10 money and they invested it for me. 11 Q Let me stop you here. How would you 12 characterize your experience with Morgan Stanley? 13 Were you happy with them? 14 A Yes. 15 Q Did you go to Morgan Stanley because you 16 were inexperienced with managing stocks and bonds, 17 or at least stocks? 18 A I had no experience at that time. My 19 parents had both graduated from high school in 1932, 20 the depth, or height, of The Depression, and they 21 were extraordinarily conservative and passed that 22 along to me. 23 I don't think my father and mother ever 24 owned any stocks other than what was in the United 25 States Steel retirement fund, their share of that.</p>
<p style="text-align: right;">Page 40</p> <p>1 Q Is that where you farther worked? 2 A My father worked for U.S. Steel from 1936 3 until he retired in 1976. As I say, I don't think 4 he owned any stocks. I remember him owning a few 5 shares of school bonds in our local high school and 6 they were financing a new school. 7 And that was all of that. I didn't own any 8 stocks other than what was in the Rockwell and 9 Fulwider retirement accounts, so I personally didn't 10 own any stocks until sometime in the 1990s. And 11 that's when I got with Morgan Stanley and began to 12 get involved in the stock market. 13 Q Okay. I'm going to skip around a little 14 bit but you've spoken about a bond ladder. 15 What took you into bonds in the first 16 place? 17 A I received -- well -- 18 Q Should we go to the windfall first? 19 A Well, no. I got into bonds with Morgan 20 Stanley in a very small way in the 1990s, the mid to 21 late 1990s. The stockbroker there suggested that 22 that would be a good idea to have some kind of a 23 balanced approach with some investment in stocks and 24 some investment in bonds. But then I got into bonds 25 in a bigger way when I received a windfall of about</p>	<p style="text-align: right;">Page 41</p> <p>1 -- I think it was a little under \$3 million. 2 Q Let's stop right here and talk about this 3 windfall. 4 Would you please tell the arbitrator about 5 how you got this money, how much it was, and educate 6 us a little bit about penny stocks. Tell a story. 7 A As I said, I had a fairly well known 8 reputation, both in the United States and abroad, 9 arising from the work that I had done in the 1970s. 10 When I became a patent attorney, oftentimes the 11 inventors that I worked with would know my 12 background very well, and indeed I had technical 13 capabilities on the same par as many of the 14 inventors. 15 So I actually did beyond what you might 16 think of a patent attorney as being a scribe of 17 somebody else's ideas. I often had discussions and 18 helped out with ideas, bouncing ideas around, and 19 trying to make sure that the inventions were in a 20 good form for doing a patent disclosure. 21 One of the clients that I dealt with in 22 those days was Dresser, D-r-e-s-s-e-r, Industries, 23 which is a major oil patch company. And within 24 Dresser there was a group of three scientists and 25 some technicians working on something called</p>

<p style="text-align: right;">Page 42</p> <p>1 "amorphous metal technology," a field I knew 2 something about apart from patent law. 3 So I worked with those inventors on the 4 development of their technology and on their patents 5 from, I believe it was 1981 until 1985 -- yeah, 6 1985. 7 Completely independent of each other, I was 8 leaving the Fulwider law firm at the end of 1985 to 9 become self-employed. They were leaving Dresser to 10 take their amorphous technology to develop it. 11 Dresser fully approved of that departure and 12 retained some kind of an interest in the technology. 13 I don't know exactly what, but I talked it over at 14 length with the patent counsel from Dresser and they 15 approved my continuing to do work for these three 16 inventors in their new venture. 17 Sometime around the middle of January 1986 18 -- if I said -- did I say '75? This was '85 I left 19 the law firm and we're now talking about 1986. 20 Sometime around the middle of 1986 I got a letter in 21 the mail, opened it up and it's a stock certificate 22 for this new company. So I called them -- called 23 the lead guy and I said, Dave, what's this? He 24 said, Well, you've been helping us at Dresser beyond 25 being a patent attorney and you've been really</p>	<p style="text-align: right;">Page 43</p> <p>1 helpful for us and you're going to be our patent 2 attorney with this new venture, so we wanted to make 3 you an equity participant. I said, Dave, I'll do a 4 good job for you. You don't need to give me an 5 equity position in the company. He said, Well, the 6 three of us talked it over and we want to. 7 So what they did was gave me a one-fourth 8 interest in this company, the same as each of them 9 had. The company did development work in this new 10 technology for 10, 12 years and I did their patent 11 work. And the company did not do anything from a 12 stock appreciation standpoint. This was basically 13 three guys working together with a couple of 14 technicians. 15 Q Was this a penny stock? 16 A Well, no. It wasn't a public stock at this 17 point. I'll get to penny stock in a minute. 18 Q All right. 19 A And we used to joke about this stock. When 20 we would get together for lunch, we'd say the value 21 of this stock is such that the best thing we could 22 do with our stock certificates is fold them over and 23 use them to plug the holes in our shoes, and that's 24 about how it stayed until somewhere around 1997, 25 '98.</p>
<p style="text-align: right;">Page 44</p> <p>1 At that point two Taiwanese brothers, the 2 Kaang, K-a-a-n-g, brothers, somehow got involved in 3 the company, and I think it's because they made an 4 investment. The Kaang brothers were very active in 5 attempting to take this company public and in the 6 early 2000s they did, and I still can't remember 7 whether it was 2002 or 2003. 8 But the reason that the events stick in my 9 mind was I was off doing something that I had always 10 wanted to do. I hired a Navajo guide and did a 11 four-week horse-packing trip in Monument Valley. 12 This was in the spring of whichever year it was, so 13 I was gone for about five weeks counting the 14 driving. 15 When I got back, there were four FedEx 16 packages that had been delivered to my office. I 17 put them in chronological order and the first one 18 says, It looks like we're going to be going public. 19 You need to sign this statement that you have 20 founder's shares and that you will not sell them 21 for -- I think it was a year. Of course, I was gone 22 with my trusty Navajo guide. 23 The second one said, We haven't heard back 24 from you, please sign. The third one said the same 25 thing, We haven't heard back from you, please sign.</p>	<p style="text-align: right;">Page 45</p> <p>1 And the fourth one was, The company has gone public. 2 So I missed that signing a founder's certificate or 3 agreement. 4 I asked an attorney I knew, a corporate 5 attorney, where this left me in terms of obligations 6 to the company. 7 MR. HEBERT: I'm going to temporarily waive 8 the attorney-client privilege between Mr. Garmon 9 and his corporate lawyer. 10 THE WITNESS: And he said, Well, you didn't 11 sign that, so you're free to sell. So I immediately 12 went to Morgan Stanley and said, I want to sell all 13 this stock. Oh, and it was, I want to sell all of 14 this stock. 15 What they told me was we can't sell it in 16 one day because it's -- there's not much trading in 17 it. If you were to try to sell all of your stock in 18 one day, it would force the market down. 19 So I asked them to sell it as quickly as 20 possible. So they sold it in blocks over a period 21 of about -- I think it was three or four weeks, 22 something like that. And it was a truly amazing 23 time in my life for a kid who had grown up on a farm 24 in Southern Indiana. I get a fax in the mail one 25 day that said, You now are \$300,000 richer. We sold</p>

<p style="text-align: right;">Page 46</p> <p>1 \$300,000 of your stock. Three days later I get 2 another one that would say, We sold \$200,000 of your 3 stock. 4 So when it was all over, it was somewhere, 5 I believe -- it was somewhere just a little short of 6 \$3 million. And it was in an account at Morgan 7 Stanley and I decided to invest that. And I 8 immediately invested it in tax-free municipal bonds, 9 double A- and triple A-rated investment-grade 10 tax-free municipal bonds that were fully insured. 11 Q Let me stop you right here. 12 What happened to the other guys with stock? 13 A Well, they couldn't sell. They had all 14 signed these lockup agreements and so they couldn't 15 sell for a while. They all advised me to -- we were 16 friends as well as professional colleagues. They 17 all advised me, This is going to go through the 18 roof. 19 I didn't believe that and I also was of the 20 conservative bird-in-the-hand philosophy. The stock 21 had gone public at \$15 a share, or thereabouts, 22 briefly went up to \$18, \$19 a share and from then on 23 fell pretty much straight down over a period of 24 time. So that became what Mr. Bradley has termed in 25 his opening brief "a penny stock"; that is, it sold</p>	<p style="text-align: right;">Page 47</p> <p>1 for less than a dollar, probably, down to 10, 12, 15 2 20 cents a share. 3 I didn't have anything ever more to do with 4 that company or with that stock. The attorney had 5 advised me stay away from it. You kind of got a 6 lucky break because you didn't sign this agreement, 7 so don't push your luck. Just stay away from that 8 stock. 9 So my point is that this is a good story -- 10 and I'm sorry I went on at length -- but this is a 11 good story to illustrate the nature of my 12 speculative view over absence of speculative view. 13 I never traded in the stock other than to sell it. 14 I got rid of it immediately and I turned it into 15 tax-free municipal bonds and that's the account that 16 Mr. Bradley was talking about that at that time was 17 around \$3 million. 18 Q One more followup question about your 19 adventures with amorphous metal technologies. 20 Based on your scientific experience as a 21 metallurgist, was it your conclusion that their 22 technology wasn't going to go anywhere? The short 23 answer on this one, if you can. 24 A I didn't think it was as promising as they 25 thought it was. So I couldn't say that it wouldn't</p>
<p style="text-align: right;">Page 48</p> <p>1 go anywhere. To be quite honest, I don't know where 2 it's gone. I've not tried to follow the company or 3 what's gone on. My three friends who were older 4 than me have all passed away, so I don't follow that 5 company at all. 6 By the way, you asked me earlier about bond 7 ladder. Do you still want me to answer that? 8 Q I was going to return to that. 9 A Oh, sorry. Okay. 10 Q So where we leave you after that narrative 11 answer -- and thank you, Mr. Bradley -- was they 12 went public, A.M.T., in 2000. You didn't have a 13 founder's agreement and you immediately sold your 14 stock and came away with almost \$3 million which you 15 termed "the windfall." 16 How would you characterize at that point in 17 2000 your investment experience? 18 A Very limited. 19 Q So if I could take a snapshot of your life 20 at that time in 2000 -- 21 A Actually, 2002. 22 Q 2002. You were making money at \$250 an 23 hour, was it? 24 A Yes. 25 Q You have a windfall because you were on</p>	<p style="text-align: right;">Page 49</p> <p>1 vacation and didn't sign a founder's agreement, and 2 your investment experience up to that point was a 3 bond ladder. Now, would you please describe what a 4 bond ladder is and how you knew about it. 5 A The broker at Morgan Stanley told me about 6 it and basically is -- I'll put some numbers on it 7 to make it simple to understand. 8 If we're talking about \$3 million, you take 9 some portion of it, and let's say we're talking 10 about a 10-year bond ladder. I believe mine was a 11 12-year, but to make the arithmetic simple, you take 12 \$300,000 of this money and invest it in these 13 high-grade bonds that mature next year. Then you 14 take another \$300,000 and invest it in high-grade 15 bonds that mature in two years and three years and 16 so on out to ten years. 17 So next year when my \$300,000 of bonds that 18 matured in one year, when that matures, I take that 19 money and roll it into bonds that mature ten years 20 out, so that's why it's called "a ladder." You're 21 stepping along in time. 22 What good does that do you? You get the 23 interest, the tax-free interest, and you then have a 24 ladder that goes on out into the future that will 25 provide you income into the indefinite future.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q So you have rolling maturity dates and 2 you're letting the money ride. 3 A Yes. 4 Q And this bond ladder that you had was in 5 tax-free municipal bonds? 6 A Yes. 7 Q Is that reflective of your conservative 8 investment strategy? 9 A Very much. 10 Q And at this time -- well, actually, in 11 going into your relationship with Wespac, had you 12 ever gone to a financial website to get market 13 results or predictions? 14 A Not only up to then, but never to now. 15 Q To now. Have you ever gone to a financial 16 website for any reason? Valuations, for example? 17 A No. I do not -- have never attempted to 18 access any of my accounts through a website. In 19 fact, I've asked both -- Fidelity at the present 20 time and Schwab earlier -- that my accounts not be 21 accessible through the Internet so that -- for 22 security reasons. 23 Q Now, you live out in Smith, Nevada, which 24 is rural Nevada, isn't it? 25 A Yes.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q And you've lived there since? 2 A Part time since 2004. 3 Q Did you have Internet service out there? 4 A No. 5 Q Before you went to Wespac for investment 6 advice, did you have any experience with investment 7 advisers? 8 A Yes. I dealt briefly with one in what Mr. 9 Bradley calls "the Tech Wreck period." 10 Q I call that that "Dot-com Bomb." 11 A Okay. I lost some money during that and 12 got out of it. 13 Q How would you characterize your experience 14 with that investment adviser? 15 A The experience in term of investing wasn't 16 good. The way I got with that investment adviser 17 ways that his father was a good friend of mine and 18 he recommended his son. I hired his son for a 19 period of time, found out that it wasn't what I 20 wanted and so I left them. 21 Q So going into your relationship with 22 Wespac, what was the state of your finances? You 23 had a bond ladder? 24 A Yes. 25 Q You had some retirement from Rockwell?</p>
<p style="text-align: right;">Page 52</p> <p>1 A No. 2 Q No? Tell us what you had. 3 A Right. I left Rockwell at nine years and 4 seven months. Vesting of retirement wasn't until 5 ten years. My father, having spent his entire life 6 with U.S. Steel, could not believe that I would have 7 left at that point, short -- 8 Q You couldn't wait five more months. 9 A -- short of the vesting. The offer that I 10 had to go with the Fulwider law firm was, basically, 11 you have to accept it now or it's going to go away. 12 Fulwider roughly doubled my pay at the time 13 and I could see that financially going to be a 14 patent attorney was much better than staying with 15 Rockwell. 16 So I had nothing from Fulwider -- I'm 17 sorry. I had nothing from Rockwell. When I left 18 Fulwider after six years, I had a small retirement 19 which was then rolled into an IRA. Then I began 20 when I was on my own putting money into a key owe 21 plans. There are two types of Keough plans, what 22 are called profit-sharing and money-purchase and I 23 had both of those. Oh, and then I also had a small 24 IRA that I contributed to each year. 25 And then my broker friend at Morgan Stanley</p>	<p style="text-align: right;">Page 53</p> <p>1 somewhere around 2000, maybe a little later -- I 2 can't remember the exact year -- recommended that I 3 look into something called a "defined benefit plan," 4 which I then started and I contributed to that. 5 So by the time I got to my relation with 6 Wespac, I had two Keough plans and a defined benefit 7 plan and then something happened to -- I pause. I 8 can't remember what happened to the IRA. It was 9 small but I just don't remember what happened to 10 that. 11 Q Well, Mr. Garmong, in Exhibit 27 is a table 12 you prepared showing what accounts you had and what 13 losses you suffered. There were five accounts, 14 weren't there, and three of them were IRS-sanctioned 15 retirement accounts? There were two others. One 16 was what we've been calling the -0713, which, what 17 would you call that account? 18 A A taxable investment account. 19 Q Was that where most of the losses were 20 suffered? 21 A No. Most of the losses were suffered in 22 the defined benefit plan, I believe. 23 Q And then there was one very small account, 24 wasn't there? 25 A Yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q What was that account for?</p> <p>2 A I had started a separate account when I was</p> <p>3 building my house out in Smith in 2003 and 2004 to</p> <p>4 handle the transactions in building a house.</p> <p>5 I built that out of savings and earnings.</p> <p>6 I did not take a mortgage on it, so what was left in</p> <p>7 that account was a few thousand dollars, not very</p> <p>8 much.</p> <p>9 Q It was a construction account?</p> <p>10 A A construction account.</p> <p>11 Q Okay.</p> <p>12 MR. HEBERT: Your Honor, I'm going to</p> <p>13 switch to Mr. Garmong's -- the start of his</p> <p>14 relationship with Wespac, if we could take a short</p> <p>15 break, I'd appreciate it.</p> <p>16 ARBITRATOR PRO: Okay. Let's take ten</p> <p>17 minutes.</p> <p>18 (Recess taken.)</p> <p>19 BY MR. HEBERT:</p> <p>20 Q Mr. Garmong, when we left off before the</p> <p>21 break, I had asked you a question about a prior</p> <p>22 investment adviser. I believe that your testimony</p> <p>23 was that you had hired or were taking advice from</p> <p>24 this individual during the Tech Wreck or the Dot-Com</p> <p>25 Bomb. Is that accurate?</p>	<p style="text-align: right;">Page 55</p> <p>1 A It was in that period of time.</p> <p>2 Q Were you comfortable --</p> <p>3 ARBITRATOR PRO: Still Morgan Stanley.</p> <p>4 MR. HEBERT: Morgan Stanley, yes.</p> <p>5 BY MR. HEBERT:</p> <p>6 Q Were you comfortable with investing it in</p> <p>7 stocks at that point?</p> <p>8 A If I had good advice, yes.</p> <p>9 Q Did you think that this gentleman gave you</p> <p>10 good advice?</p> <p>11 A No.</p> <p>12 Q Okay. And why not?</p> <p>13 A He was more aggressive in investing in</p> <p>14 stocks that seemed speculative to me, high-tech</p> <p>15 stocks.</p> <p>16 Q And we're going to explore this in much</p> <p>17 greater depth, but going into your relationship with</p> <p>18 Wespac did you want advice on how to conservatively</p> <p>19 manage your money?</p> <p>20 A Yes. That was the primary objective.</p> <p>21 Q Let's talk about how you got to Wespac.</p> <p>22 Were you referred to Wespac by someone?</p> <p>23 A Yes.</p> <p>24 Q Who?</p> <p>25 A It was by the contact person that I had at</p>
<p style="text-align: right;">Page 56</p> <p>1 Charles Schwab. I should mention that by this time</p> <p>2 I was living full time in Northern Nevada and I</p> <p>3 wanted to find a firm to deal with up in this area</p> <p>4 rather than the firm that I was dealing with, Morgan</p> <p>5 Stanley in San Diego, so I went to Charles Schwab in</p> <p>6 Reno in probably about 2003.</p> <p>7 Q Did you later learn that there was an</p> <p>8 affiliation between Charles Schwab and Wespac?</p> <p>9 A Not at the time that the referral happened</p> <p>10 but later I learned that, yes.</p> <p>11 Q How did you learn that?</p> <p>12 A It's in one of the disclosure documents</p> <p>13 that Wespac gave me. It's called a form ADV-2.</p> <p>14 Q Did this ADV-2 form advise you that Wespac</p> <p>15 was part of a network affiliation of investment</p> <p>16 advisers who received referrals from Schwab?</p> <p>17 A I don't know whether it mentioned a network</p> <p>18 but it certainly said that it received -- that</p> <p>19 Wespac received referrals from Schwab and paid money</p> <p>20 to Schwab for those referrals.</p> <p>21 Q Did you call Wespac or did they call you?</p> <p>22 A I can't recall.</p> <p>23 Q In the beginning of your relationship with</p> <p>24 Wespac, was there a movement between you and a</p> <p>25 Wespac representative?</p>	<p style="text-align: right;">Page 57</p> <p>1 A Yes, Mr. Christian.</p> <p>2 Q Did you receive brochures?</p> <p>3 A Yes.</p> <p>4 Q Okay. I direct your attention to Exhibits</p> <p>5 1 and 2 in the plaintiff's hearing exhibits.</p> <p>6 By the way -- off the record.</p> <p>7 (Discussion off the record.)</p> <p>8 BY MR. HEBERT:</p> <p>9 Q Are those the brochures you received from</p> <p>10 Wespac, Exhibits 1 and 2?</p> <p>11 A Yes.</p> <p>12 Q Looking at those exhibits, what was</p> <p>13 significant in those brochures to you?</p> <p>14 A Well, one of them said that Wespac has a</p> <p>15 conservative approach. And I'm looking at it and I</p> <p>16 cannot find that right at the moment. Let me look</p> <p>17 just a moment more.</p> <p>18 Q Sure.</p> <p>19 (Witness reviewing document.)</p> <p>20 BY MR. HEBERT:</p> <p>21 Q When you find it, please identify which</p> <p>22 exhibit it is and what page number it is.</p> <p>23 A On page GG 0341.</p> <p>24 Q Would that be Exhibit 1?</p> <p>25 A Yes. I'm sorry. It's Exhibit 1.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q And where on page GG 341 is it?</p> <p>2 A It's in the first column and it's a</p> <p>3 three-column document. It's in the first column and</p> <p>4 it's in the third paragraph of that first column.</p> <p>5 Q First column from the left or from the</p> <p>6 right?</p> <p>7 A From the left.</p> <p>8 Q Okay. So what does it say?</p> <p>9 A Quote, Through all these transitions Wespac</p> <p>10 Advisors's conservative long-term investment</p> <p>11 philosophy has remained consistent."</p> <p>12 Q Was the word "conservative" attractive to</p> <p>13 you?</p> <p>14 A That's what I focused on.</p> <p>15 Q Did you read the entire brochure?</p> <p>16 A I certainly read Exhibit 1 because it's</p> <p>17 fairly short. I think I read most of Exhibit 2.</p> <p>18 Q Were there any parts of Exhibit 2 which</p> <p>19 were significant to you?</p> <p>20 A Yes. Exhibit 2 page GG 0345 speaks of --</p> <p>21 and this is in the first column in the first</p> <p>22 paragraph, "Wespac's high-tech recordkeeping</p> <p>23 system."</p> <p>24 Q Why was that significant to you?</p> <p>25 A Well, that said to me that Wespac was</p>	<p style="text-align: right;">Page 59</p> <p>1 relying on a computer-based system that would allow</p> <p>2 them to examine my accounts and keep up to date with</p> <p>3 them on a very expeditious basis.</p> <p>4 Q Did you receive the impression or see an</p> <p>5 outright statement that Wespac was committed to the</p> <p>6 following client goals in each of these exhibits?</p> <p>7 And I direct your attention to Exhibit 1, page 341</p> <p>8 in the lower right-hand corner.</p> <p>9 A Yes. This is the third column, the last</p> <p>10 two paragraphs of the third column. It says, "A</p> <p>11 client-centered philosophy, Wespac's overriding</p> <p>12 philosophy - the one that uniquely defines the way</p> <p>13 we do business" -- and this is in quotations --</p> <p>14 'serve first.'.</p> <p>15 The next sentence says, "The essence of</p> <p>16 this philosophy is that in all client engagements,</p> <p>17 regardless of circumstances, we are committed to</p> <p>18 doing whatever is required to assist you in taking</p> <p>19 whatever actions are necessary to put your financial</p> <p>20 strategies in the best possible light."</p> <p>21 Q In summary, what did that tell you about</p> <p>22 what they intended to do for you?</p> <p>23 A That they intended to do what I wanted them</p> <p>24 to do. Throughout these brochures there's a sense</p> <p>25 that Wespac feels that it listens to what the client</p>
<p style="text-align: right;">Page 60</p> <p>1 wants and does that. On Exhibit 1 on page GG 0341</p> <p>2 there's a four-step investment process which seems</p> <p>3 to be their version of that attitude.</p> <p>4 Q All right. In summary, going into your</p> <p>5 initial meeting with Wespac, who was Mr. Christian,</p> <p>6 were your goals conservative?</p> <p>7 A Very much.</p> <p>8 Q And why were they very much conservative at</p> <p>9 this point in your life?</p> <p>10 A Well, I was 61 years old and I was in the</p> <p>11 process of divorcing. And I knew at the conclusion</p> <p>12 of that divorce process that I would know what my</p> <p>13 financial status was and I would be able to plan for</p> <p>14 the future. But I believed that I had enough money</p> <p>15 that would sustain me.</p> <p>16 I had a prenuptial agreement with my now</p> <p>17 former wife. The court didn't stick to that, but it</p> <p>18 did in a certain -- to a certain degree. And so I</p> <p>19 thought that I had a situation that, if I had a</p> <p>20 conservative approach, that I would be okay for the</p> <p>21 rest of my life.</p> <p>22 And that's to be contrasted with many</p> <p>23 people I know going into retirement are not in that</p> <p>24 position. They have to expand their money</p> <p>25 available. They have to take more risky</p>	<p style="text-align: right;">Page 61</p> <p>1 investments. They have to be willing to speculate</p> <p>2 to a degree and I was not in that position..</p> <p>3 Q And didn't want to, did you?</p> <p>4 A And I didn't want to be in that position.</p> <p>5 As I said, I've had a financially conservative life,</p> <p>6 worked hard, had a windfall that, in a sense, put me</p> <p>7 over the top in terms of what I thought I needed to</p> <p>8 retire.</p> <p>9 Q Made money with your own keyboard?</p> <p>10 A I made money with my own keyboard. At that</p> <p>11 point I was still making money with my own keyboard.</p> <p>12 What he's referring to is as a patent attorney</p> <p>13 writing patent applications, I sat at my keyboard</p> <p>14 and wrote patent applications. I was a very hard</p> <p>15 worker and I spent a lot of time doing that.</p> <p>16 Q So going into your relationship with</p> <p>17 Wespac, did you communicate the conservative nature</p> <p>18 of your investment goals? If you just say "yes" or</p> <p>19 "no," then I'll take you through.</p> <p>20 A Yes.</p> <p>21 Q All right. Good. So a succinct answer.</p> <p>22 Now, turn to Exhibit 3 here and I'll give you a</p> <p>23 chance to expand more here.</p> <p>24 Would you identify Plaintiff's Exhibit 3</p> <p>25 for the benefit of the arbitrator.</p>

<p style="text-align: right;">Page 62</p> <p>1 A This is a document entitled "Confidential 2 Client Profile." 3 Q Did you identify in the -- first of all, 4 did you fill out the Confidential Client Profile at 5 your initial visit? 6 A I don't recall that. It was in the first 7 or second visit at Wespac. This is a document that 8 Mr. Christian gave me to fill out. And we call it a 9 single document. I think in Wespac's exhibits they 10 say that this is, actually, two documents, so I'd 11 just point that out. 12 Q We're going to get into it and we'll get 13 into more detail. But does this document take the 14 temperature of your investment goals? 15 A To a degree. 16 Q Okay. What did you tell Wespac and 17 Mr. Christian in particular what your investment 18 goals were? Tell us what section. 19 A Well, yeah. The first two pages, Wespac 20 039 and 040, are basically just getting information. 21 And then that continues to the page of 042. And 22 then the document goes into something called "Risk 23 Tolerance Profile" and asks a series of questions 24 about what my goals are. 25 Q Let me ask you this: On Question No. 14,</p>	<p style="text-align: right;">Page 63</p> <p>1 page 040, you say that your net worth is \$9 million 2 and on page -- 3 A Wait a minute. 4 Q Plaintiff's Exhibit 3, Question No. 14, 5 "Investment objectives" on page 040 -- 6 A Oh, I found it. 7 Q -- you say your net worth is \$9 million 8 there and on page 042 your current assets are \$10 9 million. Is that because you've excluded your 10 primary residence from the first number? 11 A Yes. Again, I didn't go and get appraisals 12 of residences or anything like that. This was just 13 sitting at the table in Mr. Christian's conference 14 room putting down rough numbers. And so, yes, 15 excluding my primary residence, it was on the order 16 of \$9 million. Including my primary residence, on 17 the order of \$10 million. 18 Q What was the date of this document? 19 A August 18th, 2005. 20 Q Okay. Now, tell us where in this document 21 you told Wespac your investment objectives and risk 22 tolerance, for that matter. 23 A Yes. On page 042 there's on the bottom 24 third of the page a heading that says "No. 1 risk 25 factor." And so what I put, I handwrote in, not</p>
<p style="text-align: right;">Page 64</p> <p>1 adhering to their specific choices, I wrote in, 2 "Question 2, Answer B is my goal." 3 And if we turn over to the next page, 4 Wespac 043, Question 2, Choice B is, "Moderately 5 increasing my investment value while minimizing 6 potential for loss of principal." 7 Q Now, going back to page 42 under "Risk 8 Tolerance Profile," it looks like you created your 9 own Category E at the bottom. Is that accurate? 10 A Yes. 11 Q What did you say? 12 A I said, "Moderate growth, low-moderate 13 risk." 14 Q Why did you create an E box? Were you not 15 happy with A through D? 16 A Yes. 17 Q And why not? 18 A Most of the choices that are presented in 19 the rest of this questionnaire really didn't fit me 20 very well. And so I tried to indicate what I 21 thought was a better alternative than any of the 22 choices A through D under "Risk factor." 23 And I told Mr. Christian at the time. I 24 said, These don't fit me very well, and he says, 25 Well, you have to put something in. And I gather</p>	<p style="text-align: right;">Page 65</p> <p>1 that they had some kind of a scoring system. You 2 see these numbers to the left of the boxes under 3 Question 1. I simply couldn't stick to those. 4 Q You mean a grading system that says that, 5 if you're between 1 and 10, you're a sociopath? 6 A Please. 7 Q I'm sorry for the levity. 8 Anyway, so -- 9 A What I tried to say here, Mr. Hebert, was 10 that I wanted to be very conservative. I wanted to 11 minimize potential for loss of principal while 12 moderately increasing my investment value. That's 13 Choice 2-B. 14 Moderately increasing my investment value, 15 as I told Mr. Christian at the time, in my mind 16 meant staying up with inflation. I felt that I did 17 not need to increase my network beyond keeping up 18 with inflation. 19 Q And directing your attention to Section 3 20 on page 43 titled "Volatility," tell us why you 21 checked -- tell us what Box B says and why you 22 checked it. 23 A It says, "I would be concerned and may 24 consider selling my investment" and that's in 25 response to a question of what would I do if an</p>

<p style="text-align: right;">Page 66</p> <p>1 investment that I had committed to for ten years 2 lost 20 percent of its value during the first year. 3 Q And you said? 4 A "I'd be concerned and may consider selling 5 my investment." These questions to me really meant 6 very little without understanding the circumstances. 7 I mean, keep in mind I'm scientifically trained and 8 I think in terms of trying to be precise and these 9 questions meant little to me. 10 Q Okay. 11 A Let me give you another example. Down at 12 the bottom of that same page, "Investment 13 experience." And it lists four -- 14 Q Page 43. 15 A 43. It lists four choices. None of them 16 describe my investment experience. So I put the one 17 that was closest to what I felt was my experience. 18 "Mid to high-quality fixed income securities." 19 I hadn't had any experience at all with 20 corporate fixed income but that was the closest that 21 I could come within the constraints of their 22 questionnaire. 23 Q Well, you've told us that you had next to 24 no experience, but do you see that as an acceptable 25 alternative there?</p>	<p style="text-align: right;">Page 67</p> <p>1 A No. 2 Q Now, moving ahead to page 45 of Exhibit 3, 3 there's a Section 7, "Primary goal." 4 What did you put there in writing? 5 A My handwritten portion is, "Start 6 retirement, full reliance on investments for 7 retirement," and that is in relation to a box that 8 says, "Within one to five years." 9 Q What were you trying to tell Wespac and 10 Mr. Christian by this handwritten notation? 11 A I was planning to start retirement within 12 one to five years and then I would be relying on my 13 investments. I might mention parenthetically that I 14 had no corporate or governmental retirement benefits 15 other than Social Security, so I would be relying 16 on -- 17 Q Well, those are your precise words but were 18 the thrust of your words I have to rely on this 19 money to live, be conservative. 20 A Yes. 21 Q Now, is there anything else you think is 22 noteworthy in Exhibit 3 before we get to the 23 conclusion? 24 A That pages are missing. 25 Q Which page? We're going to get into this,</p>
<p style="text-align: right;">Page 68</p> <p>1 by the way. 2 A Ten and 11. I don't know what they did 3 with them. 4 Q Go to page nine, which is in the lower 5 right-hand corner 047. 6 A Yes. 7 Q You wrote into the comment section -- what 8 did you say? 9 A "My goal is providing for retirement. I'm 10 uncertain when I will fully retire. I expect in 11 2006 my income will be in the \$250,000 range but 12 almost certainly decreasing after that to about 13 \$100,000 range if I continue to work. Don't expect 14 to start drawing on retirement accounts for about 15 five years." 16 Q Okay. Now, you said, "I expect in 2006 my 17 income will be," but you retired in 2005. 18 A No, no, no. I retired August 31st, 2007, 19 so I was still working full bore -- 20 Q Sorry. 21 A -- in 2006. 22 Q Forgive me. I got that wrong. 23 Now, would probably be a good time to talk 24 about missing pages. At some point in the course of 25 the litigation in this case did you come to find out</p>	<p style="text-align: right;">Page 69</p> <p>1 that not all the pages of the Wespac Confidential 2 Client Profile were delivered? 3 A Yes. 4 Q Okay. Take us through that. 5 When did you first find out? 6 A Well, first of all, I never got copies of 7 any of these documents from Wespac at the time. 8 Indeed, there's a fax that I sent in September of 9 2008 asking Mr. Christian if there was an agreement 10 that governed our relation and could you provide me 11 a copy. He did not. 12 Q Point out that exhibit. There's an index 13 in the exhibits in the front. 14 A Yes. It's 16. 15 Q So Exhibit 16 is a request from you to 16 Wespac, specifically to Mr. Christian saying, 17 "Please send me a copy of the agreement"? 18 A If you contend that any -- let me be more 19 definite. This is a fax that I sent to 20 Mr. Christian on September 28th, 2008, and the 21 first sentence of it says, "If you contend that any 22 aspect of our relation is governed by a written 23 contract, bring me a copy of that contract when we 24 meet tomorrow." 25 Q And you anticipated meeting on September</p>

<p style="text-align: right;">Page 70</p> <p>1 29th, 2008?</p> <p>2 A Yes. That's what the subject says, is</p> <p>3 "Meeting on September 29th, 2008."</p> <p>4 Q Did you actually meet on that day?</p> <p>5 A I can't recall if it was that day but it</p> <p>6 was close.</p> <p>7 Q All right. To summarize, you asked for a</p> <p>8 copy of the Investment Management Agreement and all</p> <p>9 of its exhibits.</p> <p>10 A Yes.</p> <p>11 Q What did you get?</p> <p>12 A Nothing.</p> <p>13 Q When did you get the Investment Management</p> <p>14 Agreement or any portion thereof from Wespac?</p> <p>15 A As an exhibit to a declaration of</p> <p>16 Mr. Christian in September 2012, I believe it was.</p> <p>17 Q I direct your attention to Exhibit 42.</p> <p>18 Is that the declaration you're talking</p> <p>19 about?</p> <p>20 A Yes. It's actually an affidavit, not a</p> <p>21 declaration.</p> <p>22 Q For the sake of expediency, if it's all</p> <p>23 right with the arbitrator, we'll use "Declaration"</p> <p>24 and "Affidavit" interchangeably.</p> <p>25 ARBITRATOR PRO: Go ahead. That's fine.</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. HEBERT: Okay. Thank you, your Honor.</p> <p>2 BY MR. HEBERT:</p> <p>3 Q 42, is that an affidavit that you saw in</p> <p>4 the litigation in this case?</p> <p>5 A Yes.</p> <p>6 Q What does that affidavit say?</p> <p>7 A Paragraph 2 says, "Attached hereto is a</p> <p>8 true, correct and complete copy of the next</p> <p>9 Investment Management Agreement signed by me and</p> <p>10 Greg Garmong. See Exhibit 1."</p> <p>11 Q Exhibit 1 is Plaintiff's Exhibit 43, so was</p> <p>12 this the -- is this the Exhibit 1 to the affidavit</p> <p>13 of Mr. Christian where he says, "This is a true,</p> <p>14 correct and complete copy of the Investment</p> <p>15 Management Agreement"?</p> <p>16 A Yes.</p> <p>17 Q And is the Investment Management Agreement</p> <p>18 deficient in any way? Is it accurate? Complete?</p> <p>19 A It's certainly not complete.</p> <p>20 Q Tell us why you don't think it's complete.</p> <p>21 A Well, several reasons. One is it's -- the</p> <p>22 agreement itself, the document itself, Exhibit 1,</p> <p>23 says that it has an Exhibit A and Exhibit B --</p> <p>24 actually, two different Exhibits A and two different</p> <p>25 Exhibits B attached.</p>
<p style="text-align: right;">Page 72</p> <p>1 MR. BRADLEY: Excuse me Mr. Garmong. I'd</p> <p>2 like to object to this line of question. Judge</p> <p>3 Simons has already heard these arguments that</p> <p>4 somehow there's something missing or that it's</p> <p>5 somehow deficient.</p> <p>6 She's ruled, which I think is the law of</p> <p>7 the case already, that this is a valid and</p> <p>8 enforceable Investment Management Agreement. She</p> <p>9 ordered the parties to arbitrate based on this</p> <p>10 agreement and this whole line of questioning is</p> <p>11 completely irrelevant based on rule of the case.</p> <p>12 ARBITRATOR PRO: All right.</p> <p>13 MR. HEBERT: Your Honor, the law of the</p> <p>14 case is when a case goes up to an appellate court</p> <p>15 and comes back down with a holding that governs the</p> <p>16 lower court in further proceedings, not what the</p> <p>17 district court has to say.</p> <p>18 Second of all, the Court may recall when it</p> <p>19 denied Mr. Garmong's motion for summary judgment</p> <p>20 that it wanted to hear about the credibility of</p> <p>21 witnesses. Well, we're going to show you that, not</p> <p>22 once, but three times Mr. Christian said this is a</p> <p>23 true and correct copy of the Investment Management</p> <p>24 Agreement and its exhibits and each one of them was</p> <p>25 wrong.</p>	<p style="text-align: right;">Page 73</p> <p>1 So if the Court wants to hear about</p> <p>2 credibility, that's what we're talking about.</p> <p>3 ARBITRATOR PRO: I'll allow the line of</p> <p>4 inquiry. I think to the extent Judge Simons relied</p> <p>5 upon what is Exhibit 43 in referring the matter for</p> <p>6 arbitration, she did make the determination that the</p> <p>7 case was appropriate for arbitration.</p> <p>8 MR. HEBERT: Right. She made that</p> <p>9 determination but she made the determination on</p> <p>10 incomplete documents fed to them by the defendants.</p> <p>11 ARBITRATOR PRO: You're not going to be</p> <p>12 arguing that the arbitration before me is</p> <p>13 improvident to me again, are you?</p> <p>14 MR. HEBERT: No, your Honor. That truly is</p> <p>15 law of the case because it went to the Nevada</p> <p>16 Supreme Court and the Nevada Supreme Court said</p> <p>17 that's enforceable. We're not arguing about</p> <p>18 enforceability. We're arguing about credibility.</p> <p>19 ARBITRATOR PRO: Right. Go ahead. I'll</p> <p>20 allow you.</p> <p>21 MR. HEBERT: Thank you.</p> <p>22 BY MR. HEBERT:</p> <p>23 Q Exhibit 43, the purported first version of</p> <p>24 the Investment Management Agreement, why do you</p> <p>25 think it was incomplete?</p>

<p style="text-align: right;">Page 74</p> <p>1 A Well, because the absence of the Exhibits A 2 and B that --</p> <p>3 Q Which were, theoretically?</p> <p>4 A I don't know what they are.</p> <p>5 Q Does it say in the agreement what A and B 6 were?</p> <p>7 A Well, there's some referral.</p> <p>8 Q Looking at paragraph 2, it says, "Exhibit A 9 is the initial portfolio assets."</p> <p>10 A Oh, yes. There's no Exhibit A like that. 11 And then, strangely enough, paragraph 3 on the 12 second page says that "Portfolio assets separately 13 designated in Exhibit B."</p> <p>14 Q Are there two paragraph 3s, or am mistaken?</p> <p>15 A The one on the second page of the exhibit 16 is a subparagraph under paragraph 3, "Procedures."</p> <p>17 Q So subparagraph 3 on --</p> <p>18 A Three?</p> <p>19 Q -- page 13 of Exhibit 43 references an 20 Exhibit B, correct?</p> <p>21 A Yes.</p> <p>22 ARBITRATOR PRO: Titled "Brokerage."</p> <p>23 MR. HEBERT: Yes, your Honor.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q Any the other missing exhibits?</p>	<p style="text-align: right;">Page 75</p> <p>1 A Well, if I take a few moments here, I 2 believe there are two -- there's a reference to 3 another Exhibit A and another Exhibit B.</p> <p>4 Q Well, take your time. Find it.</p> <p>5 A Okay.</p> <p>6 (Witness reviewing document.)</p> <p>7 THE WITNESS: On page 14 numbered in the 8 lower right-hand corner, counting from the top -- 9 BY MR. HEBERT:</p> <p>10 Q "The fee schedule set forth in Exhibit B?"</p> <p>11 A Yeah. It's line 13, I think. It refers to 12 a fee schedule set forth in Exhibit B, which seems 13 to be something completely different than the 14 Exhibit B talked about on page 13. And I know 15 there's another Exhibit A someplace that, if I had a 16 little more time, I'd find it.</p> <p>17 Q And then in paragraph 3.2 on page 12 18 there's the attached Confidential Client Profile, 19 isn't there?</p> <p>20 A Even more pertinent than that, on page 17, 21 paragraph --</p> <p>22 Q Wait, wait. Are you going to answer the 23 question I asked or are you going to answer your own 24 question?</p> <p>25 A Well, I like my questions.</p>
<p style="text-align: right;">Page 76</p> <p>1 Q All right.</p> <p>2 A Go ahead and ask it again. Sorry.</p> <p>3 Q That's okay. We'll get to it.</p> <p>4 Page 12, "Procedures," paragraph 3.2, 5 "Custody of portfolio assets," does the agreement 6 refer to the attached Confidential Client Profile?</p> <p>7 A It does.</p> <p>8 Q Now to your question, page 17.</p> <p>9 A Paragraph 14, this states at the beginning, 10 "This agreement, including the Confidential Client 11 Profile and all exhibits attached thereto, 12 constitutes the entire agreement of the parties with 13 respect to the management of portfolio assets."</p> <p>14 Q The integration clause lawyers are familiar 15 with, is that what that is?</p> <p>16 A If you want to call it that. I'm not 17 familiar with that term.</p> <p>18 Q That's because you practiced patent law.</p> <p>19 Now, Mr. Garmon, turning to the first page 20 of Exhibit 43, what's the first page number?</p> <p>21 A It's page -- down in the lower right-hand 22 corner it says "Page 12."</p> <p>23 Q Would that lead you to believe there were 24 pages 1 through 11 somewhere?</p> <p>25 A Sure would.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Now, moving on to the next affidavit for 2 Mr. Christian, turn to Exhibit 44, please.</p> <p>3 Can you describe this exhibit, please.</p> <p>4 A This is an affidavit of Greg Christian.</p> <p>5 Q And in that affidavit -- well, what is the 6 date of the affidavit?</p> <p>7 A December 3rd, 2012.</p> <p>8 Q Directing your attention to paragraph 5 on 9 page 2, what is Mr. Christian saying to the court?</p> <p>10 A "The copy of the Investment Management 11 Agreement, which was attached as Exhibit 1 to my 12 affidavit filed September 19th, 2012, was a true, 13 correct and complete copy of the Investment 14 Management Agreement signed by me and Greg Garmon."</p> <p>15 Q And did Mr. Christian attempt to explain 16 why the true and correct agreement starts on page 17 12?</p> <p>18 A Yes.</p> <p>19 Q Where did he do that?</p> <p>20 A In the very next paragraph, paragraph 6, he 21 states, "I'm informed, believe and, therefore, 22 allege that the incorrect page numbering on the 23 Investment Management Agreement attached to my 24 September 19th, 2012, affidavit occurred solely as a 25 result of a word processing and/or computer error."</p>

<p style="text-align: right;">Page 78</p> <p>1 Q So we have so far an affidavit of 2 September 19th, 2012, attaching an Investment 3 Management Agreement. Starting on page 12 we have 4 an affidavit of December 3rd, 2012, where it's 5 assigned to a word processing error. And then was 6 there a third affidavit? Would that be Exhibit 45? 7 A Yes. 8 MR. HEBERT: Your Honor, the part of the 9 exhibit that we wanted we included the whole -- 10 ARBITRATOR PRO: Next to the last page, 11 "Attached hereto is a true and correct copy." 12 MR. HEBERT: Exactly. 13 ARBITRATOR PRO: Right. And that is 46, I 14 trust, that it references? 15 MR. HEBERT: Yes, your Honor. So page 46 16 is the Confidential Client Profile. 17 ARBITRATOR PRO: Yeah, Exhibit 46, right. 18 MR. HEBERT: In blank. 19 ARBITRATOR PRO: Right. Okay. 20 BY MR. HEBERT: 21 Q But at this point the affidavit of 22 January 8th, 2013, Exhibit 45, we still haven't -- 23 have you seen Exhibits A and B times two? 24 A No. 25 Q Have you seen a completed Confidential</p>	<p style="text-align: right;">Page 79</p> <p>1 Client Questionnaire? 2 A No. 3 Q At some point did you come to find out that 4 -- have you ever seen a page 10 or a page 11 to the 5 Investment Management Agreement? 6 A Yes. On this blank form one that's Exhibit 7 46, there's a page 10 and a page 11. In the one 8 that I actually signed and was given to us in 9 production later in the case in 2017, I believe -- 10 might have been 2016 -- in any event, that one does 11 not have a page 10 and 11. 12 Q I'm at a loss here, Mr. Garmong. You'll 13 have to straighten me out. 14 There's a Client Confidential Questionnaire 15 that they delivered to you -- to us that had a page 16 10 and a page 11 in blank? 17 A Yes. That's Exhibit 46. 18 Q When the defendants delivered their version 19 of the Confidential Client Questionnaire, did it 20 have those pages? 21 A The signed version or unsigned version? 22 Q Both. 23 A The unsigned version had pages 10 and 11. 24 Q Is that 46? 25 A That's 46. And it's also another exhibit.</p>
<p style="text-align: right;">Page 80</p> <p>1 Q How about the signed version? 2 A It did not have 10 and 11. 3 Q The signed -- let me get this straight for 4 the record. The signed version of the Confidential 5 Client Questionnaire that was delivered -- that was 6 attached -- 7 ARBITRATOR PRO: It's Exhibit 3, 8 Confidential Client Profile. 9 THE WITNESS: Yes. 10 ARBITRATOR PRO: It consists of nine pages 11 where it's signed by Mr. Garmong on 8/18/05. 12 MR. HEBERT: Thank you, your Honor. I 13 lapsed in calling it the wrong thing. 14 ARBITRATOR PRO: And the blank document, 15 Exhibit 46, has not nine, but it has 11 pages with 16 an identifier at the bottom "J Drive Agreement 17 8/12/05, 1400 hours." I'm assuming, without 18 knowing, that's a date and time that the document 19 generated on the computer but I'm not sure. 20 MR. BRADLEY: Can I ask for a point of 21 clarification? The document that's signed by Mr. 22 Garmong -- 23 ARBITRATOR PRO: Exhibit 3. 24 MR. BRADLEY: -- Exhibit 3 on pages 8 and 25 9, the very last item is "Income saving" -- I'm</p>	<p style="text-align: right;">Page 81</p> <p>1 sorry. No. 3. 2 ARBITRATOR PRO: 14. 3 MR. BRADLEY: 13 says "Household income," 4 which is the same as the alleged missing page 18. 5 And then 14 says "Income saving," which is on this 6 other page 10. 7 ARBITRATOR PRO: Then the next page 15. 8 MR. BRADLEY: Yeah. Then the future 9 earnings and the conclusion, they're all here. It's 10 just got different pagination than this blank 11 document that we supplied. So I don't really see 12 that anything's missing. They have all the same 13 information. 14 MR. HEBERT: Except for the page 11 that 15 got left out. 16 MR. BRADLEY: Okay. There appears to be 17 different forms but all this other information was 18 in this. 19 MR. HEBERT: Well, Mr. Bradley got in there 20 ahead of me a little bit. Did I let you finish, Mr. 21 Bradley? 22 MR. BRADLEY: Well, just for the record, I 23 think you're making -- I think it's irrelevant. 24 ARBITRATOR PRO: Well, I understand your 25 point, that the same data that is reflected when</p>

<p style="text-align: right;">Page 82</p> <p>1 completed on Exhibit 3 answers the same queries that 2 are contained on Exhibit 46.</p> <p>3 MR. HEBERT: Except, your Honor --</p> <p>4 ARBITRATOR PRO: Except that the final page 5 11 called "Confidential Client Profile Target 6 Portfolio Design" is not --</p> <p>7 MR. BRADLEY: If it was ever -- perhaps it 8 was not completed in Mr. Garmong's case. I guess we 9 can try and find out.</p> <p>10 ARBITRATOR PRO: Well, Mr. Garmong --</p> <p>11 MR. BRADLEY: That doesn't make it 12 something magically missing.</p> <p>13 ARBITRATOR PRO: All right.</p> <p>14 MR. HEBERT: You've been doing all the 15 testifying, so maybe we should ask him.</p> <p>16 MR. BRADLEY: I think you'll ask him. I 17 would just like to get to the facts.</p> <p>18 ARBITRATOR PRO: Yes. Did you see, Mr. 19 Garmong, back on August 18th, 2005, if you recall 20 when you filled out Exhibit 3, did you see the 21 additional page called "Confidential Client Profile 22 Target Portfolio Design"?</p> <p>23 THE WITNESS: I believe I did.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q Now, Mr. Garmong, you come from a</p>	<p style="text-align: right;">Page 83</p> <p>1 scientific background. It's apparent that you read 2 forms very closely, as you did the Confidential 3 Client Profile, which is Exhibit 3, if I've got the 4 terminology correct.</p> <p>5 Would it be consistent with your custom and 6 habit that, if you had been confronted with or 7 received page 11, you would have completed it?</p> <p>8 A Yes.</p> <p>9 Q And down here at the bottom it says in the 10 blank form, which is the last page of Exhibit 46, it 11 says, "Custom, to be completed only after 12 consultation with Wespac Advisors."</p> <p>13 You've previously testified that you didn't 14 neatly fit into any of the pigeon-holes. If you had 15 to complete "Custom" now, what would you have said?</p> <p>16 A I would have emphasized that I was looking 17 for a conservative approach consistent with the 18 statement that I made on the completed one about Box 19 2-B saying that I wanted to preserve my capital, and 20 let me find that again.</p> <p>21 Q Which exhibit are you looking at?</p> <p>22 A I just noticed something that I had never 23 noticed before. If we look on Exhibit 3 -- well, 24 no. I take that back.</p> <p>25 So I'm looking at Exhibit 3 where I said</p>
<p style="text-align: right;">Page 84</p> <p>1 that my goal in Box 2-B was "Moderately increasing 2 my investment value while minimizing potential for 3 loss of principal." If I had filled in --</p> <p>4 Q Last page of --</p> <p>5 A -- this last page of Exhibit 46, I 6 certainly would have emphasized that I wanted to 7 preserve my capital. That was the whole point of 8 this. And that's why I have some real concern that 9 exhibit -- I'm sorry -- that the page 11 is now 10 missing, because it would have clarified what I 11 really wanted to do.</p> <p>12 In depositions there's been questions 13 raised about trying to find inconsistencies in the 14 earlier part of the document and didn't you mean 15 this and didn't you mean that. Page 11 is the 16 summarizing page giving specific instructions and 17 it's been left out.</p> <p>18 Q Well, Mr. Garmong, do you find it 19 suspicious that the documents were dribbled out in 20 the course of the court proceedings with three 21 different affidavits saying it's true and correct 22 and three times the document changes?</p> <p>23 MR. BRADLEY: Objection, leading.</p> <p>24 ARBITRATOR PRO: Sustained.</p> <p>25 BY MR. HEBERT:</p>	<p style="text-align: right;">Page 85</p> <p>1 Q Do you find it suspicious?</p> <p>2 ARBITRATOR PRO: That's argumentative. You 3 all can argue to me what is suspicious.</p> <p>4 BY MR. HEBERT:</p> <p>5 Q All right. Do you find it puzzling?</p> <p>6 ARBITRATOR PRO: Well, instead of having 7 him characterize, he can tell us what the facts are.</p> <p>8 BY MR. HEBERT:</p> <p>9 Q All right. I think you've talked about it. 10 Is there anything else you'd like to say about this 11 particular course of events?</p> <p>12 A Yes. First of all, I do find it 13 suspicious, and I'll tell you there's more reasons 14 than we have talked about so far.</p> <p>15 Q Then please talk about them.</p> <p>16 A Remember we were discussing a little bit 17 ago that it seems that, if you look at the signed 18 version of the Confidential Client Profile, it's 19 missing pages 10 and 11 specifically and, most 20 notably, page 11.</p> <p>21 That was the issue that was raised and led 22 to Mr. Christian's second affidavit where he says, 23 Well, it was some kind of a computer numbering 24 error. But the exhibit that he then propounded or 25 attached to his declaration --</p>

<p style="text-align: right;">Page 86</p> <p>1 Q Please use exhibit numbers.</p> <p>2 A Yeah. Exhibit 46 is the attachment. And</p> <p>3 in blank that filled in the gap that was present in</p> <p>4 the signed versions of these documents. So</p> <p>5 magically in the Exhibit 1 attached to his third</p> <p>6 declaration --</p> <p>7 Q In the book?</p> <p>8 A -- which is Exhibit 46 in the exhibit list,</p> <p>9 10 and 11 are there. And it looks like, gee, the</p> <p>10 numbering goes 9, 10, 11 and then on to 12, which</p> <p>11 was the page of the Investment Management Agreement.</p> <p>12 It was also not completed. That's what initially</p> <p>13 made me suspicious.</p> <p>14 Q Is there anything else you'd like to add</p> <p>15 about the page numbering of these documents?</p> <p>16 A Only that I think the Exhibit 1 to</p> <p>17 Mr. Christian's third affidavit, Exhibit 46 here,</p> <p>18 was provided to give a false impression that there</p> <p>19 was continuity between the Confidential Client</p> <p>20 Profile and the Investment Management Agreement.</p> <p>21 Remember the Investment Management Agreement, we</p> <p>22 agreed, started on page 12. And the filled-in</p> <p>23 Confidential Client Profile did not have a page 11.</p> <p>24 to precede page 12.</p> <p>25 Now, what is provided as Exhibit 46</p>	<p style="text-align: right;">Page 87</p> <p>1 magically does have a page 11. If page 11 were just</p> <p>2 some form page or instructions, or something like</p> <p>3 that, I wouldn't be concerned. But it is, perhaps,</p> <p>4 the most critical page in all of this and its</p> <p>5 absence leaves open an argument that I was being</p> <p>6 less than clear in the Confidential Client Profile</p> <p>7 that I filled in. And I think the presence of page</p> <p>8 11 would have solved that problem completely and I</p> <p>9 think that's why it was left out.</p> <p>10 Q Let's move on to the Investment Management</p> <p>11 Agreement, which is Exhibit 4. We already discussed</p> <p>12 why it starts at page 12.</p> <p>13 On page 18, is that your signature?</p> <p>14 A Yes.</p> <p>15 Q What's the date?</p> <p>16 A August 31st, 2005.</p> <p>17 Q Now, let me direct you for the sake of time</p> <p>18 to several important provisions.</p> <p>19 Did Wespac acknowledge it was registered by</p> <p>20 the SEC?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 A On the very first paragraph, the very first</p> <p>24 page, which is Wespac 048.</p> <p>25 Q "This Investment Management Agreement is</p>
<p style="text-align: right;">Page 88</p> <p>1 entered into between Wespac Advisors, an investment</p> <p>2 adviser registered with the SEC."</p> <p>3 Is that what you're talking about?</p> <p>4 A Yes.</p> <p>5 Q What else was significant? Did Wespac</p> <p>6 appoint itself as your agent?</p> <p>7 A Yes.</p> <p>8 Q Where?</p> <p>9 A I believe it's paragraph 5 on page Wespac</p> <p>10 0050.</p> <p>11 Q Entitled "Discretionary authority"?</p> <p>12 A Yes.</p> <p>13 Q Did Wespac in this document commit itself</p> <p>14 to a fiduciary duty, apart from any statute that may</p> <p>15 apply?</p> <p>16 A Yes.</p> <p>17 Q Where?</p> <p>18 A The preceding page, Wespac 049, there's a</p> <p>19 paragraph that begins 3 and is entitled,</p> <p>20 "Brokerage," and look down to the last three lines</p> <p>21 of that -- or two lines. There's reference to, "in</p> <p>22 the manner that it considers to be equitable and</p> <p>23 consistent with its fiduciary obligations to client</p> <p>24 and its other clients."</p> <p>25 Q Now, in paragraph 5 Wespac states that it</p>	<p style="text-align: right;">Page 89</p> <p>1 will make investment decisions without prior</p> <p>2 consultation or consent from you.</p> <p>3 Did you intend that?</p> <p>4 A Yes.</p> <p>5 Q You intended to let them make investment</p> <p>6 decisions without prior consultation?</p> <p>7 A But with an important condition that's set</p> <p>8 forth in that paragraph.</p> <p>9 Q Please tell us.</p> <p>10 A May I read something verbatim from that</p> <p>11 paragraph?</p> <p>12 ARBITRATOR PRO: Do you have a paragraph</p> <p>13 number again?</p> <p>14 THE WITNESS: It's at the bottom of 050 and</p> <p>15 it's paragraph 45, "Discretionary authority."</p> <p>16 BY MR. HEBERT:</p> <p>17 Q Yes, you can read from it, unless you're</p> <p>18 stopped by the arbitrator.</p> <p>19 A Well, I think this paragraph is</p> <p>20 extraordinarily important to the relation between</p> <p>21 myself and Wespac, and that's why I'd like to quote</p> <p>22 from it.</p> <p>23 This is now six lines from the bottom of</p> <p>24 page 050, "WA" -- and that refers to Wespac Advisors</p> <p>25 -- "shall have designated full power and authority</p>

<p style="text-align: right;">Page 90</p> <p>1 to make all investment decisions on the 2 discretionary basis for portfolio assets including 3 decisions to buy and sell any domestic or foreign 4 security, except to the extent client provides 5 written instructions limiting such authority." 6 "Although WA may make investment decisions 7 without prior consultation with or further consent 8 from client, all such investment decisions shall be 9 made in accordance with the investment objectives of 10 which client has informed and may inform WA from 11 time to time in writing. 12 "Client appoints WA as agent and 13 attorney-in-fact to and expressly authorizes WA in 14 making investment decisions to, A, make order and 15 direct any and all transactions involving designated 16 portfolio assets in client's name and for client's 17 account and, B, sell, convert, or exchange 18 securities comprising part or all of the portfolio 19 assets, to otherwise acquire and dispose of such 20 securities, provided, however, that nothing herein 21 shall be construed to authorize WA to take custody 22 or possession of any fund securities or other 23 property of which client has any beneficial interest 24 in any manner whatsoever. 25 "All transactions in portfolio assets will</p>	<p style="text-align: right;">Page 91</p> <p>1 be done at WA's sole discretion and without 2 obligation to first notify or consult with client," 3 and the rest is not pertinent. 4 Q Tell us why paragraph 5, "Discretionary 5 authority," page 050 of Exhibit 4, is so 6 extraordinarily significant to you. 7 A Referring to the clause at the bottom of 8 050 and continuing to 051, "All such investment 9 decisions shall be made in accordance with the 10 investment objectives of which client has informed 11 and may inform WA from time to time in writing." 12 To my mind what this meant is there is a 13 division of labor spelled out by Wespac in this 14 agreement. The division of labor is this: The 15 client, myself, provides investment objectives. And 16 Wespac buys and sells securities, quote, may make 17 investment decisions without prior consultation with 18 or further consent from client, end of quote. 19 The division of labor is that I, the 20 client, provide objectives. Wespac responds to 21 those and is free in its discretion to do whatever 22 it has to do to meet those objectives. 23 Now, the reason that's important is that 24 later in this proceeding -- or earlier in this 25 proceeding Mr. Bradley has asked me questions like,</p>
<p style="text-align: right;">Page 92</p> <p>1 Well, why didn't you tell Wespac to sell securities 2 as the market was going down? That wasn't my job 3 under the agreement that Wespac itself wrote. And, 4 by the way, Wespac wrote this agreement. There were 5 some minor changes but I don't know whether this 6 paragraph, but it since did not change. 7 So it was not my job to try to figure out 8 how to achieve my objectives. It was my job to 9 provide those objectives and Wespac's job to figure 10 out how to achieve those objectives. 11 Now, what if I had said multiply my money 12 by a factor of 1,000 in one week, some kind of an 13 absolutely unrealizable objective. Wespac had 14 appointed itself as my agent. The next sentence 15 starts "Wespac" -- no. Start over. "Client points 16 WA as agent." 17 To my understanding there's a principle in 18 the law of agency that says that, if you tell an 19 agent to do something and he can't do it, he has to 20 tell you. He has to say, You've asked me to do 21 something impossible. I cannot do it. 22 So Wespac never came to me and said, We 23 cannot achieve the objectives you want to achieve. 24 I assume that they were doing what their agreement 25 says and they were achieving those objectives.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q By their silence did they lead you to 2 believe that they were willing to carry out your 3 objectives? 4 A Yes. 5 Q If I could rephrase what you just said, was 6 it your understanding of the agreement that you set 7 policy and they carried it out? 8 A I don't want to put it like that, Carl, 9 because I want to use the precise language that's in 10 the agreement. "Policy" could be construed in 11 different ways. 12 I set objectives and specifically 13 objectives -- investment objectives as stated -- the 14 very first two words of page 051. I set investment 15 objectives and WA then -- if we look back to the 16 last three lines on page 050, WA may make investment 17 decisions without prior consultation but those 18 investment decisions shall be made in accordance 19 with my investment objectives. 20 So in that Confidential Client Profile that 21 we discussed, I set investment objectives of -- I 22 can't remember the exact language -- minimizing 23 potential for loss of capital, something like that. 24 And then later when I retired, I set even more 25 restrictive objectives.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q We're going to get into the evolution of 2 your objectives. But as of August 31st, 2005, 3 which is Exhibit 4, your investment objectives were 4 stated in Exhibit 3 in the Confidential Client 5 Profile. Is that an accurate summation? 6 A Yes. Page 043. This is Exhibit 3, page 7 043, Question 2, "Investment approach. Moderately 8 increasing my investment value while minimizing 9 potential for loss of principal." 10 Within the confines of what they gave me, 11 that's as much as I could say to focus on loss of 12 principal and minimizing it there. 13 Q Except for whatever the missing "Custom" 14 section of page 11 might have been. 15 A Yes. And that's why that's so disturbing, 16 that an argument is made that something else in the 17 Confidential Client Profile is ambiguous or 18 confusing, I believe that page 11 would have -- the 19 missing page 11 would have clarified that. 20 Q Did you draft any of these documents? 21 A No. 22 Q Let's talk about a couple other things. 23 What is FINRA? What do those initials mean to you? 24 A It's the Financial Industry Organization 25 and it might be Financial Industry Regulatory</p>	<p style="text-align: right;">Page 95</p> <p>1 Authority, or something of that sort. 2 Q Is it a quasi governmental regulatory 3 authority? 4 A I don't know. I know it has something to 5 do with the securities industry. 6 Q Did you see a mention of FINRA anywhere in 7 this Investment Management Agreement? 8 A No. 9 Q Did you see anywhere in this Investment 10 Management Agreement where you agreed to a measure 11 of damages of net out-of-pocket in the event of a 12 dispute? 13 A No. I did, however, see a provision that 14 says that we have to use the law of Nevada. 15 Q Which we are using. 16 A I hope.. 17 Q That's what the arbitrator said. 18 So going back to Exhibit 4, the Investment 19 Management Agreement, what were Wespac's contractual 20 obligations to you? What did they agree to do for 21 you? 22 A Well, what I just finished making a speech 23 about out of paragraph 5. 24 Q All right. 25 A I agreed to provide objectives, they agreed</p>
<p style="text-align: right;">Page 96</p> <p>1 to -- with complete discretion to attempt to achieve 2 those objectives. 3 Q That may be the first unclear question I 4 ever asked. Kidding. 5 What I should have asked you was, Were 6 Wespac's duties to you fiduciary in nature? 7 A Yes. 8 Q What does "fiduciary" mean to you? 9 ARBITRATOR PRO: Let him answer the 10 question. 11 MR. HEBERT: Yes. 12 THE WITNESS: There's case authority on 13 that. But during the course of these proceedings, 14 Mr. Christian gave what I considered to be an 15 excellent working definition. This was in his 16 deposition. And he said that a fiduciary has to -- 17 now it slipped my mind. 18 BY MR. HEBERT: 19 Q Act in your best interest? 20 A Has to act -- yeah, has to act in the 21 client's best interest. And when I measure up what 22 actually happened to acting in my best interest, I 23 find a huge disparity. 24 Q What were the sources, if you can tell us, 25 of this fiduciary duty?</p>	<p style="text-align: right;">Page 97</p> <p>1 A Three kinds. 2 ARBITRATOR PRO: That really is legal 3 arguments. Let's leave it to you to brief. It's 4 referenced specifically in the agreements. 5 MR. HEBERT: Thank you, your Honor. Just 6 as an aside, it's proven difficult for me to stay 7 out of legal argument when my client's a lawyer. 8 ARBITRATOR PRO: I understand that but here 9 he is a plaintiff. 10 MR. HEBERT: I understand that. I keep 11 slipping into that and I'm sorry, your Honor. 12 BY MR. HEBERT: 13 Q Beyond contractual obligation -- well, let 14 me rephrase that. Did the Investment Management 15 Agreement, Plaintiff's Exhibit 4, establish a 16 principal agency relationship? 17 MR. BRADLEY: Same objection. 18 ARBITRATOR PRO: It would be the same 19 situation. The witness, I realize, is a lawyer, but 20 you're his lawyer and you'll make those arguments. 21 If he were pro se, maybe it would be different. 22 BY MR. HEBERT: 23 Q Did it establish a relationship where 24 Wespac was bound to carry out your investment 25 instructions?</p>

<p style="text-align: right;">Page 98</p> <p>1 MR. BRADLEY: Same objection.</p> <p>2 MR. HEBERT: That's not legal.</p> <p>3 ARBITRATOR PRO: It's not a legal -- now,</p> <p>4 you can ask for his understanding, did he understand</p> <p>5 or what was his impression or understanding did he</p> <p>6 expect.</p> <p>7 BY MR. HEBERT:</p> <p>8 Q What did you expect?</p> <p>9 A Well, we've already addressed that --</p> <p>10 ARBITRATOR PRO: I think we have.</p> <p>11 THE WITNESS: -- in the quote from</p> <p>12 paragraph 5 where it says "Client appoints WA as</p> <p>13 agent and attorney-in-fact."</p> <p>14 So, I mean, I knew generally what an agent</p> <p>15 was. As the arbitrator recognizes, I didn't ever</p> <p>16 practice general law, I was a patent lawyer, but I</p> <p>17 knew what agency was.</p> <p>18 BY MR. HEBERT:</p> <p>19 Q Okay. Let's move forward a little bit to</p> <p>20 August of 2007. What happened in August of 2007?</p> <p>21 A Relevant to this proceeding, Mr. Christian</p> <p>22 and I together developed a plan, an action, for</p> <p>23 adjusting my portfolio assets.</p> <p>24 Q Well, again, I asked a poor question.</p> <p>25 Did you retire in August of 2007?</p>	<p style="text-align: right;">Page 99</p> <p>1 A Two things happened in August of 2007.</p> <p>2 What I said happened and also I formally retired as</p> <p>3 of August 31st, 2007.</p> <p>4 Q Let's circle back just for a moment to the</p> <p>5 beginning of the relationship in August 2005.</p> <p>6 Please turn to exhibit -- I think it's in the second</p> <p>7 binder -- 52.</p> <p>8 MR. HEBERT: Your Honor, I'm referring to</p> <p>9 Plaintiff's Exhibit 52.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q Would you tell us what that is, Mr.</p> <p>12 Garmong.</p> <p>13 A It says, "Form U4, Uniform Application for</p> <p>14 Securities Industry Registration or Transfer."</p> <p>15 Q Is this some kind of a disclosure that</p> <p>16 Wespac or Mr. Christian had to make to some security</p> <p>17 industry body?</p> <p>18 MR. BRADLEY: Objection, lack of</p> <p>19 foundation.</p> <p>20 ARBITRATOR PRO: Sustained.</p> <p>21 BY MR. HEBERT:</p> <p>22 Q What is it?</p> <p>23 ARBITRATOR PRO: Well, what's your</p> <p>24 understanding of what it is?</p> <p>25 BY MR. HEBERT:</p>
<p style="text-align: right;">Page 100</p> <p>1 Q I mean, what's your understanding of what</p> <p>2 the document is?</p> <p>3 A It's a document submitted by someone. I'm</p> <p>4 not sure whether it's Wespac or Mr. Christian</p> <p>5 personally. I see at the top it says, "Jay</p> <p>6 Williams," so I think they're talking about</p> <p>7 Mr. Williams of Wespac, to the SEC making a</p> <p>8 disclosure of information.</p> <p>9 Q And what significant information does this</p> <p>10 document disclose? And I direct your attention to</p> <p>11 paragraph 14-C on page 853 of Exhibit 52.</p> <p>12 A The document answered "Yes" to three</p> <p>13 specific questions.</p> <p>14 Q What's the broad, overarching question,</p> <p>15 14-C?</p> <p>16 A "Has the U.S. Securities and Exchange</p> <p>17 Commission, or the commodity futures trading</p> <p>18 Commission ever," and then there are five questions</p> <p>19 to be answered.</p> <p>20 Q Was the place for "2" checked?</p> <p>21 A It was checked "Yes."</p> <p>22 Q And so was 4 and 5.</p> <p>23 What does 2 say?</p> <p>24 A "Found you to have been involved in a</p> <p>25 violation of its regulations or statutes."</p>	<p style="text-align: right;">Page 101</p> <p>1 Q What's 3?</p> <p>2 A Three is "No." Do you want --</p> <p>3 Q I'm sorry. 4.</p> <p>4 A "Entered an order against you in connection</p> <p>5 with investment-related activity." And 5 is,</p> <p>6 "Imposed a civil money penalty on you or ordered you</p> <p>7 to cease and desist from any activity."</p> <p>8 All three of those are answered "Yes."</p> <p>9 Q Did you ever come to learn the</p> <p>10 circumstances behind those three yeses?</p> <p>11 A Generally.</p> <p>12 Q Tell us your general understanding.</p> <p>13 A That sometime in the late 1980s or '90s</p> <p>14 Mr. Christian was disciplined by the SEC for having</p> <p>15 improperly dealt in unregistered securities.</p> <p>16 Q Would that be Exhibit 56 or 57?</p> <p>17 A Those exhibits do deal with that subject,</p> <p>18 yes.</p> <p>19 Q Okay. Directing your attention to Exhibit</p> <p>20 56, page 788 and 787 as well.</p> <p>21 A Yes. At the bottom of 787 is "Regulator</p> <p>22 statement," and that then continues over to the top</p> <p>23 third of page 788.</p> <p>24 Q On page 787 what was the resolution date</p> <p>25 down at the bottom?</p>

<p style="text-align: right;">Page 102</p> <p>1 A May 4th, 1992.</p> <p>2 Q And what was the infraction which would be</p> <p>3 on page --</p> <p>4 ARBITRATOR PRO: Well, we don't need the</p> <p>5 witness to read through the infraction. It's in</p> <p>6 evidence. You can argue.</p> <p>7 MR. HEBERT: Okay. Here's the point, your</p> <p>8 Honor.</p> <p>9 BY MR. HEBERT:</p> <p>10 Q When you formed your relationship with</p> <p>11 Wespac and Mr. Christian in August of 2005, did</p> <p>12 Mr. Christian inform you that he had been</p> <p>13 disciplined in 1992 by the SEC for an infraction?</p> <p>14 A No.</p> <p>15 Q When did you find out?</p> <p>16 A I found this out for the first time in the</p> <p>17 initial brief submitted by Wespac and Mr. Christian</p> <p>18 to the arbitrator -- I believe it was in 2017 -- no,</p> <p>19 not '17. Maybe it was 2016 or 2017. I had never</p> <p>20 known this before.</p> <p>21 ARBITRATOR PRO: Well, if it was disclosure</p> <p>22 to me, it couldn't have been in 2016 because I</p> <p>23 wasn't the arbitrator.</p> <p>24 THE WITNESS: Then I guess it was 2017.</p> <p>25 You ordered us to do what I call "the 10-page</p>	<p style="text-align: right;">Page 103</p> <p>1 brief." You said it can't be longer than that.</p> <p>2 Within the first few pages was a statement that said</p> <p>3 Mr. Christian has done a generally good job but is</p> <p>4 not completely blameworthy, or something like that,</p> <p>5 and that's when this disclosure was first made to</p> <p>6 me.</p> <p>7 BY MR. HEBERT:</p> <p>8 Q Let's move on to SEC law. Please turn to</p> <p>9 Exhibits 38 and 39. Now, Mr. Garmong, we've heard</p> <p>10 about ADV-1 and ADV-2. Can you tell us what those</p> <p>11 are, your understanding of that?</p> <p>12 A Well, ADV-1 and ADV-2 are reports that</p> <p>13 people in the financial industry -- and I don't --</p> <p>14 MR. BRADLEY: Excuse me, your Honor. I</p> <p>15 have to object again. He's testifying as an expert</p> <p>16 in SEC law. He's said he's not one.</p> <p>17 ARBITRATOR PRO: No. I'll save you some</p> <p>18 time. The Code of Federal Regulations citations and</p> <p>19 the legal citation and the document at 39, I'll</p> <p>20 receive those. You can make whatever argument that</p> <p>21 counsel wish to make concerning their application.</p> <p>22 You can certainly ask the witness if at the</p> <p>23 time of his investment activity with Wespac for</p> <p>24 2005, '06, '07, '08 he was aware of anything that's</p> <p>25 contained in those documents. That's fine. But</p>
<p style="text-align: right;">Page 104</p> <p>1 other than that, to have him characterize it, I just</p> <p>2 -- you can argue that. You can argue what it means.</p> <p>3 MR. HEBERT: Thank you, your Honor.</p> <p>4 BY MR. HEBERT:</p> <p>5 Q Mr. Garmong, back during your relationship</p> <p>6 with Wespac and Mr. Christian, did they ever advise</p> <p>7 you through the delivery of a Form ADV-2 that they</p> <p>8 had a code of ethics?</p> <p>9 A No.</p> <p>10 Q Was the code of ethics required by federal</p> <p>11 securities law?</p> <p>12 MR. BRADLEY: Same objection.</p> <p>13 ARBITRATOR PRO: Yeah. Sustained as to</p> <p>14 what federal security law required.</p> <p>15 MR. HEBERT: I think he's answered the</p> <p>16 question, your Honor?</p> <p>17 ARBITRATOR PRO: He did. He said he was</p> <p>18 never informed.</p> <p>19 MR. HEBERT: All right. And I'll move on.</p> <p>20 BY MR. HEBERT:</p> <p>21 Q Did Wespac tell you that they were not</p> <p>22 registered with the Nevada Secretary of State as a</p> <p>23 limited-liability company?</p> <p>24 A No.</p> <p>25 Q Did Wespac tell you that they were not --</p>	<p style="text-align: right;">Page 105</p> <p>1 when you first formed your relationship with them,</p> <p>2 that they were not registered as an investment</p> <p>3 adviser with the State of Nevada?</p> <p>4 A They did not.</p> <p>5 Q Has Wespac or Christian ever told you that</p> <p>6 they had insurance as required by Nevada law, NRS</p> <p>7 628A.040, that they had insurance?</p> <p>8 A No.</p> <p>9 Q Have you ever seen a document that shows</p> <p>10 that they've had insurance?</p> <p>11 A No.</p> <p>12 Q Have you asked for it?</p> <p>13 A I asked for it in document production for</p> <p>14 this case.</p> <p>15 Q Now, with all these things, they didn't</p> <p>16 tell you -- if I could summarize --</p> <p>17 MR. BRADLEY: I would object to leading, if</p> <p>18 that's what we're going to.</p> <p>19 ARBITRATOR PRO: Well, look, you don't need</p> <p>20 to summarize. The witness' testimony is clear. He</p> <p>21 was not advised of any of the things you've just</p> <p>22 enumerated.</p> <p>23 MR. HEBERT: I wanted to summarize and then</p> <p>24 ask him the rest of the question. The question is</p> <p>25 this --</p>

<p style="text-align: right;">Page 106</p> <p>1 THE WITNESS: I'll plug my ears.</p> <p>2 BY MR. HEBERT:</p> <p>3 Q If you had that knowledge -- and I've taken</p> <p>4 you through what they didn't tell you -- if you had</p> <p>5 that knowledge, would you have done business with</p> <p>6 them in August of 2005?</p> <p>7 A The answer is no, nor would I have done</p> <p>8 business with them at a later time.</p> <p>9 Q And why is that?</p> <p>10 A A couple of reasons. First of all, one of</p> <p>11 the big arguments made by Mr. Christian was that</p> <p>12 Wespac and Mr. Christian were worthy of trust. They</p> <p>13 were, after all, taking over the management of my</p> <p>14 life savings, what I expected to have in retirement.</p> <p>15 I had to trust them to do what they were</p> <p>16 supposed to do and honor the Investment Management</p> <p>17 Agreement. So if they didn't disclose important</p> <p>18 information like this to me, I think it would be</p> <p>19 reasonable for me to be suspicious about whether</p> <p>20 they were honest and would properly deal with me.</p> <p>21 Just the notion that all of this important</p> <p>22 information is concealed by someone who is asking</p> <p>23 for your trust is just alien to the granting of that</p> <p>24 trust, when -- let me put it this way: When I</p> <p>25 learned about these failures of disclosure and</p>	<p style="text-align: right;">Page 107</p> <p>1 violations of law much later in 2016 -- '16 or '17</p> <p>2 -- I was dumbfounded. I've been dumbfounded several</p> <p>3 times in this case and that was one of them.</p> <p>4 The other thing is -- the other part of my</p> <p>5 concern is, if someone will not obey the law of the</p> <p>6 SEC, the federal law governing their industry and</p> <p>7 will not obey the law of the State of Nevada</p> <p>8 governing their specific industry, why should I</p> <p>9 expect that they would agree to honor the terms of a</p> <p>10 private contract with an individual?</p> <p>11 Those two things together, the violation of</p> <p>12 trust and the willingness to scoff laws, if everyone</p> <p>13 knows that term, to me is just beyond the pale. I</p> <p>14 never, never, never would have remotely considered</p> <p>15 doing business with them if they had made any of</p> <p>16 those disclosures to me, particularly because, as I</p> <p>17 said, the matters at issue here were not whether</p> <p>18 they violated some traffic code or something like</p> <p>19 that. These issues went precisely to the nature of</p> <p>20 their dealings with the government and the failure</p> <p>21 to disclose went to their dealings with me.</p> <p>22 Q Let's isolate one instance. Putting aside</p> <p>23 the other things they didn't mention to you, would</p> <p>24 you have done business with them knowing they had no</p> <p>25 insurance to be accountable if something went wrong?</p>
<p style="text-align: right;">Page 108</p> <p>1 A If the question of insurance had come up, I</p> <p>2 would have asked them. And if the answer came back,</p> <p>3 We don't have insurance, then I would not. I had</p> <p>4 had professional liability insurance for the entire</p> <p>5 time when I was self-employed and the law firm did</p> <p>6 for all of its partners and associates.</p> <p>7 So I understood what errors and omissions</p> <p>8 insurance was, and if they had said, We don't have</p> <p>9 that, the absence of it would have raised one</p> <p>10 question.</p> <p>11 But the second question is, Did they have</p> <p>12 it earlier and it got taken away from them, they</p> <p>13 couldn't be underwritten for some reason? So that</p> <p>14 would have been a real concern to me.</p> <p>15 Q Would it have been a reason not to go to</p> <p>16 enter into contractual relations with them, that if</p> <p>17 something went wrong, they couldn't respond</p> <p>18 financially?</p> <p>19 A Yes.</p> <p>20 MR. HEBERT: Your Honor, I'm getting ready</p> <p>21 to shift into the next phase of the relationship and</p> <p>22 it's quarter to twelve. Can we take a break and</p> <p>23 maybe have lunch?</p> <p>24 ARBITRATOR PRO: I don't know when they</p> <p>25 have lunch served.</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. HEBERT: It's sitting out there.</p> <p>2 ARBITRATOR PRO: Any objection to taking a</p> <p>3 lunch break now?</p> <p>4 MR. BRADLEY: No.</p> <p>5 ARBITRATOR PRO: Let's try and be -- we</p> <p>6 don't need a full hour for lunch, I take it. You</p> <p>7 want to make it 30 minutes, or so?</p> <p>8 MR. HEBERT: That's fine.</p> <p>9 (Lunch recess taken at 11:45 a.m.)</p> <p>10 ARBITRATOR PRO: We'll go back on the</p> <p>11 record, then, and proceed with further direct</p> <p>12 examination. I meant to ask you before, you said</p> <p>13 you're going into a new area. How long do you think</p> <p>14 you have on direct?</p> <p>15 MR. HEBERT: Another hour, hour and a half.</p> <p>16 I'm told no. But let me ask you this question.</p> <p>17 Tom, you've been sitting here taking it on the chin</p> <p>18 this whole time. How long do you think we'll go</p> <p>19 today?</p> <p>20 MR. BRADLEY: I'd like to go until 5:00 and</p> <p>21 get this done. Mr. Christian has an appointment at</p> <p>22 5:15, but could we break at 5:00?</p> <p>23 ARBITRATOR PRO: That's good.</p> <p>24 THE WITNESS: I have the opposite problem.</p> <p>25 After we leave, I have a two-hour drive and I have</p>

<p style="text-align: right;">Page 110</p> <p>1 to be back here, presumably, at 9:00 in the morning. 2 I'd ask for some consideration on that. 3 ARBITRATOR PRO: Do you want to start 4 later? Let's go off record. 5 (Discussion off the record.) 6 BY MR. HEBERT: 7 Q We're back on the record. 8 Now, Mr. Garmong, when you first started 9 your relationship with Wespac in August of 2005, did 10 Mr. Christian ever advise you that he had other 11 business ventures to which he was devoting his time 12 besides investment adviser? 13 A No. 14 Q Did he ever tell you about -- I think it's 15 called "Fusion Asset Management" -- that was a 16 mutual fund? 17 A I first learned about that in his 18 deposition two or three weeks ago. 19 Q Okay. Let's talk about your relationship 20 from the period of time 2005 to 2007. Were you and 21 Mr. Christian working together cooperatively to make 22 investment decisions at that time? 23 A Yes. 24 Q Turn to Exhibit 9, please. Are you there? 25 A I am.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q What is Exhibit 9? 2 A Exhibit 9 is a fax from me to Mr. Christian 3 dated August 16th, 2007. It's a one-page fax, 4 Wespac 00553. 5 Q What is the substance of this fax, without 6 reading it? 7 A The substance is that I was calling a 8 problem to his attention and hoping for some kind of 9 action. The last sentence of the fax says, "What do 10 you recommend should be the strategy in my accounts 11 at this time," so that's what I was seeking. 12 Q Your investment objectives at that time 13 were still as stated in 2005 in the Confidential 14 Client Profile? 15 A Yes. 16 Q Okay. Mr. Christian testified in his 17 deposition that he wrote the note at the bottom. 18 What is he saying in the note? Just summarize it. 19 A He called -- in response to this fax he 20 called me and we discussed the issue raised in the 21 fax and we together decided to raise cash, which is 22 a securities industry euphemism for sell securities. 23 And he says that -- records what he did, sold 24 approximately 50 percent of the holdings in QRA, 25 qualified retirement account.</p>
<p style="text-align: right;">Page 112</p> <p>1 So this expresses the way we worked 2 together. I raise a problem, he contacts me, we 3 talk it over, and then he takes action based on what 4 we decide. 5 Q Now, let's move forward to your retirement 6 and the months that follow. 7 Did you retire August 31st, 2007? 8 A That was my formal retirement date. 9 Q Well, you qualify your answer. 10 Did you actually cease work that day? 11 A No. 12 Q What did you do? 13 A I ceased taking new work. Three of my 14 clients asked me to finish up work that was already 15 in progress. You recall I explained earlier about 16 patent prosecution, dealing with the patent office. 17 And a typical patent application, in those days 18 anyway, typically took two to three years of 19 prosecution. And that's not continuous. It might 20 be two years before the patent examiner ever reaches 21 the matter sitting on his stack of work. 22 And then maybe a year of patent examiner 23 issues an office action and the applicant responds 24 and it goes back and forth. And it's very difficult 25 sometimes to bring a new attorney in in the midst of</p>	<p style="text-align: right;">Page 113</p> <p>1 that. So my clients -- well, three of my clients 2 asked me to continue doing work to finish up that 3 kind of -- the patent prosecution. And these were 4 all long-term, good clients that I owed a lot to for 5 having provided me work for a lot of years. And, of 6 course, I agreed to do that so, yes, I continued 7 working but at a vastly diminished workload. 8 Q In the interest of saving time here in the 9 hearing, let me ask the following leading question: 10 Would it be correct to say that as of 11 August 31st, 2007, you were not taking on any new 12 clients and you were winding down the existing ones? 13 A Yes. 14 Q What else did you have going on at that 15 time in your life? 16 A I was in the process of finishing my 17 divorce. The final decree issued on October 3rd, 18 2007, and that didn't end it because there were a 19 lot of corrections that had to be made, factual 20 mistakes and typo mistakes and that sort of thing. 21 And Judge Gibbons gave us ten days, two 22 weeks, something like that, to get that done, but we 23 know knew the divorce was over so I then had to go 24 get my belongings from the house, and that was not 25 an easy process. It was not a gentle sort of</p>

<p style="text-align: right;">Page 114</p> <p>1 divorce.</p> <p>2 And so there was my divorce finishing up,</p> <p>3 there was -- going back to my workload, I had a very</p> <p>4 specialized practice, as I said, because of my</p> <p>5 doctorate in metallurgy and the jobs that I was --</p> <p>6 for other clients than the ones that asked me to</p> <p>7 finish work up, others clients had asked me to help</p> <p>8 transition my work to new attorneys.</p> <p>9 And that was not a simple process in some</p> <p>10 cases because with technology it was so complex</p> <p>11 that, first of all, I had to find new attorneys who</p> <p>12 would be willing to take on that kind of more</p> <p>13 complex technology than usual, and then I had to</p> <p>14 teach them about the technology, help them</p> <p>15 transition, if they got something from the patent</p> <p>16 office, help them understand it, that sorta thing.</p> <p>17 So although I expected that my workload or</p> <p>18 my life would become much more relaxed after</p> <p>19 August 31st, 2007, that's not the way it worked</p> <p>20 out. Going back to my other activities, my</p> <p>21 principle avocation over the years has been</p> <p>22 wilderness search and rescue in specialized context.</p> <p>23 I had gotten interested in wilderness medicine back</p> <p>24 in the 1990s; that is, caring for injured people out</p> <p>25 in the wilderness, which is a very different</p>	<p style="text-align: right;">Page 115</p> <p>1 proposition than caring for them in town and taking</p> <p>2 them to the hospital in an ambulance.</p> <p>3 And to do that you have to be certified. I</p> <p>4 was a certified wilderness medic. There's a lot of</p> <p>5 continuing education that's required on that. In</p> <p>6 terms of wilderness stuff, I also was a certified</p> <p>7 high-angle rescue specialist; that is, a</p> <p>8 mountain-climber. And at Tahoe I did not work on</p> <p>9 the -- I lived on the eastern side of the lake in</p> <p>10 Douglas County. I didn't work with that search and</p> <p>11 rescue. I worked with the search and rescue on the</p> <p>12 western side of the lake in El Dorado County, which</p> <p>13 was desolation wilderness.</p> <p>14 So my partner and I were sort of the go-to</p> <p>15 guys for people that got into serious rock-climbing</p> <p>16 accidents in desolation wilderness and other</p> <p>17 adjacent areas. So as you might imagine,</p> <p>18 maintaining certification as a rock-climber,</p> <p>19 maintaining certification as a wilderness medic was</p> <p>20 a lot of time, so I was spending a lot of time on</p> <p>21 that.</p> <p>22 I was also a certified EMT, emergency</p> <p>23 medical technician, at the Grade 2 level and that I</p> <p>24 did as a fire department medic there in Smith and so</p> <p>25 I was responding to probably about seven -- I was</p>
<p style="text-align: right;">Page 116</p> <p>1 also a volunteer fireman so I was responding to</p> <p>2 maybe 70 emergencies in the fire department and 40</p> <p>3 to 50 call-outs in the wilderness setting, so that</p> <p>4 was keeping me extraordinarily busy.</p> <p>5 And if I didn't have enough, I was also</p> <p>6 working with my German shepherd dog to train as a</p> <p>7 search dog team. I got through about a year of</p> <p>8 training and realized that I was just in over my</p> <p>9 head. I couldn't do it. So Gretchen and I had to</p> <p>10 give up that.</p> <p>11 And the last thing, I guess, that occupied</p> <p>12 a lot of my time was that I volunteered at our local</p> <p>13 animal shelter for roughly 20 hours a week. My</p> <p>14 partner and I were the only two single persons who</p> <p>15 were volunteering there, so we would work, not only</p> <p>16 on the weekends, but also on the holidays. So we</p> <p>17 ended up an average of about 20 hours a week.</p> <p>18 So I was just snowed under with work -- oh,</p> <p>19 and then there was one other point. The</p> <p>20 psychological effect of retirement on me was much</p> <p>21 greater than I had appreciated. Being</p> <p>22 self-employed, I didn't get any pre- or</p> <p>23 post-retirement counseling. Parenthetically, I note</p> <p>24 that when I worked at Rocketdyne, that was long</p> <p>25 before I ever thought about retiring, fellows who</p>	<p style="text-align: right;">Page 117</p> <p>1 retired -- or men and women who retired from there</p> <p>2 got end-of-service counseling which related to, you</p> <p>3 know, secrecy obligations and that sorta thing, but</p> <p>4 also they got into some counseling on, you know,</p> <p>5 what to expect in retirement, that sorta thing.</p> <p>6 The effect on me was much, much greater</p> <p>7 than I had realized. In that first month what I</p> <p>8 began to understand or began to hit me with full</p> <p>9 force was that I now cannot earn any more money.</p> <p>10 And what that means is, if I lose money out of this</p> <p>11 nest-egg retirement that I have, I don't have any</p> <p>12 way to make that up.</p> <p>13 So the psychological effect on</p> <p>14 retirement -- I know our judge here has gone on to</p> <p>15 other things. He retires from the judiciary and</p> <p>16 goes on to other things that are somewhat related.</p> <p>17 I wanted to walk away from patent law and get into</p> <p>18 something completely different, which would not earn</p> <p>19 me any money, so that had an enormous psychological</p> <p>20 effect on me. Again, if you say, Well, Greg, you</p> <p>21 should have thought of that in June and July before</p> <p>22 you retire in August, yeah, I should have, but it</p> <p>23 never struck me in the full force that it did after</p> <p>24 the retirement date.</p> <p>25 Q Is that a fairly comprehensive picture of</p>

<p style="text-align: right;">Page 118</p> <p>1 your status there in August, September of 2007?</p> <p>2 A I think so.</p> <p>3 Q When was your next meeting with</p> <p>4 Mr. Christian after retirement and with all that</p> <p>5 going on?</p> <p>6 A It was early October. I don't remember the</p> <p>7 exact date but it was somewhere around the 10th of</p> <p>8 October.</p> <p>9 Q Was this a regularly scheduled meeting to</p> <p>10 review the status of your investments or a specially</p> <p>11 called meeting?</p> <p>12 A I think it was a regular quarterly meeting,</p> <p>13 although we didn't always meet exactly on quarterly</p> <p>14 dates. But I think there were typically four</p> <p>15 meetings a year, maybe less, maybe more in some</p> <p>16 years.</p> <p>17 Q Was this meeting held at a restaurant in</p> <p>18 North Carson City?</p> <p>19 A Yes.</p> <p>20 Q Eagle Valley Inn, does that ring a bell?</p> <p>21 A I remember the word "Eagle" in the title</p> <p>22 but I don't remember the rest of it.</p> <p>23 Q Okay. Tell the arbitrator what got</p> <p>24 discussed at that meeting and by whom.</p> <p>25 A Well, first of all, I unburdened my soul</p>	<p style="text-align: right;">Page 119</p> <p>1 with the kinds of things that I was just talking</p> <p>2 about, what was pressuring me, what was affecting my</p> <p>3 thoughts so much -- and I won't repeat those but</p> <p>4 that's what we discussed. Oh, we discussed at the</p> <p>5 first the general status of my accounts.</p> <p>6 Then I discussed what I had just told you</p> <p>7 and then Mr. Christian gratuitously offered -- I</p> <p>8 didn't ask him, but an offer which was greatly</p> <p>9 appreciated at the time, he offered to take over my</p> <p>10 accounts completely. All I had to do was state the</p> <p>11 objectives and he would take over the accounts.</p> <p>12 And that's to be contrasted with this</p> <p>13 Exhibit 9 where we were working somewhat</p> <p>14 cooperatively. And so his offer was very much</p> <p>15 appreciated, but I was a little reluctant because</p> <p>16 this was, after all, my retirement and so I sort of</p> <p>17 tentatively accepted but at the same time I gave him</p> <p>18 a new objective.</p> <p>19 Q At the meeting?</p> <p>20 A At the meeting. And at the meeting I gave</p> <p>21 him the objective of, Don't lose capital. And</p> <p>22 that's to be contrasted with the objective that was</p> <p>23 given in the Confidential Client Profile, which was</p> <p>24 -- again, I can't remember the exact words -- but it</p> <p>25 was, Take care to minimize the potential for the</p>
<p style="text-align: right;">Page 120</p> <p>1 loss of capital. This was, Don't lose capital. It</p> <p>2 was an absolute bar to losing capital, and</p> <p>3 Mr. Christian said he would do that.</p> <p>4 Q And did you phrase it, I'll forego gain to</p> <p>5 avoid losing capital?</p> <p>6 A Well, no. That's separate. The</p> <p>7 instruction and objective was, Don't lose capital.</p> <p>8 The concern I had about possibly sacrificing -- or</p> <p>9 not possibly -- about sacrificing potential gains to</p> <p>10 avoid losses was this: If I tell an investment</p> <p>11 adviser orally, Don't lose capital, there can be a</p> <p>12 concern -- and the investment adviser structures my</p> <p>13 accounts with that in mind, well, suppose the market</p> <p>14 does really well. Am I going to come back to him</p> <p>15 and say, Boy, did you do a bad job because you</p> <p>16 didn't take advantage of these marvelous gains that</p> <p>17 could happen.</p> <p>18 My point was that I would not blame him if</p> <p>19 there were big gains as long as I don't have losses.</p> <p>20 So that was kind of meant as a reassurance to</p> <p>21 Mr. Christian and Wespac that, if the markets did</p> <p>22 well, I was worried that they might lose ground.</p> <p>23 They were doing fine at that point. But I was</p> <p>24 concerned about that, and given that now I'm</p> <p>25 retired, I can't replace any losses, a dollar lost</p>	<p style="text-align: right;">Page 121</p> <p>1 psychologically to me is a lot worse -- no. A</p> <p>2 dollar gained doesn't have as much psychological</p> <p>3 value as a dollar lost would.</p> <p>4 So I'm willing to sacrifice gains for</p> <p>5 losses. Oh, and I now know with my divorce decree</p> <p>6 what my obligations are going to be on alimony and</p> <p>7 any other financial matters -- and I have already</p> <p>8 made up my mind that I am never getting married</p> <p>9 again, one of my few promises that I've kept -- so I</p> <p>10 could pretty well foresee what my future was, the</p> <p>11 variables being my health and inflation, the</p> <p>12 financial condition of the country, that sorta</p> <p>13 thing.</p> <p>14 Q Did Mr. Christian understand that your</p> <p>15 circumstances had changed and that you had become</p> <p>16 much more conservative in the handling of your</p> <p>17 portfolio?</p> <p>18 A He didn't express any doubt. I can't say</p> <p>19 what he understands but he didn't say, I can't</p> <p>20 achieve that, I can't do that. He accepted that as</p> <p>21 my new circumstances.</p> <p>22 Q Now, consistent with -- turn to Exhibit 4,</p> <p>23 which is the Investment Management Agreement,</p> <p>24 paragraph 2, page 48. Do you see the sentence that</p> <p>25 starts out "In the event client's financial</p>

<p style="text-align: right;">Page 122</p> <p>1 situation changes" --</p> <p>2 A I see it.</p> <p>3 Q -- "client agrees to notify Wespac Advisors</p> <p>4 in writing."</p> <p>5 Did you write a letter to Mr. Christian</p> <p>6 advising him of your new investment objectives?</p> <p>7 A Yes, because --</p> <p>8 Q The answer's "yes." What --</p> <p>9 A Sorry.</p> <p>10 Q -- is that? Exhibit 11.</p> <p>11 A Yes.</p> <p>12 Q Is that the letter?</p> <p>13 A Yes.</p> <p>14 Q What were you telling Mr. Christian in that</p> <p>15 letter?</p> <p>16 A Well, the objectives of the letter was to</p> <p>17 basically restate what had happened at the meeting.</p> <p>18 The letter starts out, "When we met recently" and so</p> <p>19 I was trying to summarize -- more than summarize --</p> <p>20 repeat what had been discussed at that meeting ten</p> <p>21 days earlier or so and reemphasize the new</p> <p>22 objectives, the new more conservative objectives</p> <p>23 that I had.</p> <p>24 Q Did you prepare the letter?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 123</p> <p>1 Q Did you address and mail it to the</p> <p>2 indicated address on Exhibit 11?</p> <p>3 A Yes.</p> <p>4 Q In the past you had faxed letters to</p> <p>5 Mr. Christian. Why didn't you fax this letter?</p> <p>6 A Because it was longer. It's 20 pages, or</p> <p>7 something like that. I don't like to do long faxes.</p> <p>8 The reason it's longer -- the letter itself is only</p> <p>9 two pages -- but we had discussed the effect of the</p> <p>10 decline in the housing market on securities, so what</p> <p>11 was likely to happen.</p> <p>12 And I attached several articles that I had</p> <p>13 downloaded from the Internet and I wanted him to</p> <p>14 read that we had discussed at the meeting on</p> <p>15 October 10th or so, but I didn't have them with me</p> <p>16 so I wanted to provide them to him.</p> <p>17 Q Okay. You can quote from Exhibit 9, if you</p> <p>18 want, but particularly in paragraph 3, did you tell</p> <p>19 Mr. Christian exactly what you wanted done with your</p> <p>20 accounts?</p> <p>21 MR. BRADLEY: Excuse me. You mean in this</p> <p>22 letter?</p> <p>23 MR. HEBERT: Yes, Exhibit 11, paragraph 3.</p> <p>24 THE WITNESS: Not in paragraph 3. Maybe 4</p> <p>25 and 5. But by exactly --</p>
<p style="text-align: right;">Page 124</p> <p>1 BY MR. HEBERT:</p> <p>2 Q Okay. It's 4. "After having thought about</p> <p>3 it some more," did you tell him in that paragraph</p> <p>4 what you wanted?</p> <p>5 A What I emphasized was my instructions and</p> <p>6 objective. Again, bearing in mind what paragraph 5</p> <p>7 of the Investment Management Agreement says is</p> <p>8 there's a division of labor. It's up to me, the</p> <p>9 client, to set objectives. It's up to Mr. Christian</p> <p>10 and Wespac to take action to meet those objectives.</p> <p>11 So that's what I was trying to do. When</p> <p>12 you say, Did I tell him what to do, I set objectives</p> <p>13 but I did not say, I want you to achieve these</p> <p>14 objectives by doing the following actions.</p> <p>15 Q Did you say in a paragraph that starts,</p> <p>16 "After having thought about it some more," did you</p> <p>17 say, "It is important that my investment accounts be</p> <p>18 managed very conservatively and that they not lose</p> <p>19 money"?</p> <p>20 A Yes.</p> <p>21 MR. BRADLEY: The letter speaks for itself.</p> <p>22 ARBITRATOR PRO: We don't need to read it</p> <p>23 into the record.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q And what did you expect would happen after</p>	<p style="text-align: right;">Page 125</p> <p>1 you wrote that letter? What did you expect</p> <p>2 Mr. Christian to do?</p> <p>3 A If he could not meet the objectives, I</p> <p>4 expected that he would tell me that he could not</p> <p>5 meet the objectives -- actually, I say "objectives"</p> <p>6 plural. It was a single objective -- and that if he</p> <p>7 didn't express any reluctance to meet that</p> <p>8 objective, that he would tell me. I was still</p> <p>9 paying him about \$2,000 a month.</p> <p>10 Q Did he say to you, I can't follow those</p> <p>11 directions?</p> <p>12 A No.</p> <p>13 MR. BRADLEY: Objection, leading.</p> <p>14 ARBITRATOR PRO: Yes. Sustained.</p> <p>15 BY MR. HEBERT:</p> <p>16 Q Okay. Did he discuss with you a concept</p> <p>17 called "Stop loss" at that meeting?</p> <p>18 A He never discussed that concept of stop</p> <p>19 loss either at that meeting or any other time.</p> <p>20 Q At the meeting of October 10th, 2007, did</p> <p>21 he discuss with you that he would never take a</p> <p>22 client to an all-cash position?</p> <p>23 A No.</p> <p>24 Q Did he discuss with you any techniques to</p> <p>25 carry out your instructions?</p>

<p style="text-align: right;">Page 126</p> <p>1 A Not at either the meeting or any response 2 to this letter.</p> <p>3 Q Okay. What happened after October 22, 4 2007, through the beginning of 2008? What happened 5 then?</p> <p>6 A I think there was some correspondence and 7 there may have been a meeting, but there was really 8 no discussion that I recall of my objectives or 9 meeting my objectives.</p> <p>10 Q I'm struggling to find some faxes that you 11 sent in January of 2008. If the arbitrator will 12 indulge me for a moment.</p> <p>13 ARBITRATOR PRO: Yes. The very next one, 14 12, is on January 21st.</p> <p>15 THE WITNESS: That's the one.</p> <p>16 BY MR. HEBERT:</p> <p>17 Q Okay. So you wrote a letter, which you 18 faxed, in Exhibit 12. What was the date of that 19 letter?</p> <p>20 A January 21st, 2008.</p> <p>21 Q In general what were you saying to 22 Mr. Christian?</p> <p>23 A Well, I was talking about the results from 24 the retirement accounts that he was managing. 25 That's paragraph 1. And then paragraph 2, the</p>	<p style="text-align: right;">Page 127</p> <p>1 results for the taxable investment account. And 2 that was the primary purpose of the letter -- well, 3 and then at paragraph 4 is that we need to schedule 4 a meeting.</p> <p>5 And then in paragraph 3 I repeated in a 6 much abbreviated form the instructions that I had 7 given both at the October 10th meeting and the 8 October 22nd letter. It's not -- I didn't have 9 any indications that he would not follow my 10 objectives but it was something on my mind.</p> <p>11 Once again, I had managed my own finances 12 since I was in my late teens so the idea of turning 13 over a large part of my retirement finances, now 14 that I'm retired and can't replace losses, it was on 15 my mind. And so I put that into paragraph 3, "As I 16 told you, I'll sacrifice potential gains to ensure 17 that I don't have capital losses.</p> <p>18 "Now that I'm retired and won't be adding 19 to my accounts, I have to avoid capital losses. 20 I'll assume that everything is under control under 21 that guideline and will wait for the end-of-January 22 reports."</p> <p>23 Q Did Mr. Christian respond to this fax in 24 any way?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 128</p> <p>1 Q Okay. Then Plaintiff's Exhibit 13, what's 2 that?</p> <p>3 A That's a fax from me to Mr. Christian dated 4 March 17th, 2008.</p> <p>5 Q Did you again raise your investment 6 objectives in this letter?</p> <p>7 A No, I don't believe so. I think what I 8 confirmed here -- I have to scan through it quickly 9 -- but I think what I confirmed -- no, I did.</p> <p>10 Q Fourth paragraph.</p> <p>11 A "As I had said before, my big concern is 12 losing money on these accounts. The volatility is 13 driving me nuts and that mental security is what I 14 hope to avoid."</p> <p>15 Q Did you mean "insecurity"?</p> <p>16 A Yes.</p> <p>17 Q Did Mr. Christian respond to this telefax?</p> <p>18 A No.</p> <p>19 Q 14. What is 14?</p> <p>20 A 14 is a fax that I sent to Mr. Christian on 21 June 12th, 2008.</p> <p>22 Q Did you, again, in this fax of June 12th, 23 2008, express your concerns?</p> <p>24 A No. On this one, paragraph 2, I was --</p> <p>25 Q I'm talking about paragraph 4.</p>	<p style="text-align: right;">Page 129</p> <p>1 A Oh, well, yes, I did express my concerns.</p> <p>2 Q Did he call you or talk to you at all after 3 this fax here?</p> <p>4 A Not that I recall in response to this fax. 5 Of course we did talk later, much later.</p> <p>6 Q At this time -- and I mean June 12th, 7 2008 -- did he call you and say, What do you want me 8 to do here, Greg? I don't understand your 9 directions? Did he say that to you?</p> <p>10 A Never at any time until much, much later.</p> <p>11 Q Turn to 15. What's the date of this fax?</p> <p>12 A It's a fax from me to Mr. Christian on 13 September 26th, 2008.</p> <p>14 Q And this fax is rather lengthy and I don't 15 want you to read it word for word. But on the 16 bottom of page one, which is page 563, it sounds 17 like you're more than a little upset. Were you?</p> <p>18 A I was.</p> <p>19 Q And what were you saying in this letter?</p> <p>20 A I was summarizing the prior instructions. 21 That's the third paragraph of the letter. And in 22 the fourth paragraph I specifically instructed that 23 there could not be losses from my accounts in 2008 24 and they must be managed accordingly. "I instructed 25 you that I was willing to sacrifice potential gains</p>

<p style="text-align: right;">Page 130</p> <p>1 to avoid losses."</p> <p>2 And then in the paragraph that bridges that</p> <p>3 pages 1 and 2, I mentioned those earlier faxes that</p> <p>4 we have discussed that were in 2008.</p> <p>5 Q Well, did Mr. Christian get this somewhat</p> <p>6 angry letter of September 26th, 2008, and did he say</p> <p>7 to you, I can't do that, I can't keep you from</p> <p>8 losing money?</p> <p>9 MR. BRADLEY: Are you saying in writing did</p> <p>10 he respond or verbally?</p> <p>11 MR. HEBERT: I don't care. Either way.</p> <p>12 THE WITNESS: Well, he did respond in a</p> <p>13 letter that I suspect is Exhibit 17.</p> <p>14 BY MR. HEBERT:</p> <p>15 Q And it came four days later.</p> <p>16 A A few days later, yeah. In fact, I think</p> <p>17 we've learned that this letter that's Exhibit 17 was</p> <p>18 faxed, so it would have been received the very same</p> <p>19 day, and he addresses somewhat obliquely the issues</p> <p>20 that I raised.</p> <p>21 Q We're now talking about Plaintiff's Exhibit</p> <p>22 17. Directing your attention to paragraph 2, did he</p> <p>23 offer you in this letter -- did he say, I would have</p> <p>24 offered you two alternatives --</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 131</p> <p>1 Q -- to your instructions.</p> <p>2 And what were those alternatives?</p> <p>3 A They're given at the end of paragraph 2.</p> <p>4 One is, "Go to 100 percent cash" or, two, "To close</p> <p>5 your accounts."</p> <p>6 Q Up to this point, September 30th, 2008,</p> <p>7 did he ever tell you, It is my personal philosophy</p> <p>8 that I will never take a client to an all-cash</p> <p>9 position?</p> <p>10 A No.</p> <p>11 Q Did he tell you that, We can stop the</p> <p>12 bleeding, so to speak, by putting in a stop loss</p> <p>13 directive?</p> <p>14 A No.</p> <p>15 Q Now, what do you understand stop loss to</p> <p>16 be, for the sake of the arbitrator?</p> <p>17 A Well, I had never heard of that prior to</p> <p>18 Mr. Sharp's letter that is another exhibit here, so</p> <p>19 I had to go look it up on the Internet.</p> <p>20 And my understanding is that this is a</p> <p>21 technique available to investment professionals that</p> <p>22 says that you can avoid large losses by putting an</p> <p>23 order in that a stock will be sold if it goes down</p> <p>24 to or below a specific level.</p> <p>25 As an example, if a stock is selling at 50</p>
<p style="text-align: right;">Page 132</p> <p>1 and you put a stop loss order in at 48, that means</p> <p>2 that if the stock goes up, nothing happens -- the</p> <p>3 stock price goes up. If the stock price goes down</p> <p>4 to 49, nothing happens. If the stock price goes</p> <p>5 down to 48, it gets sold, so that places a limit on</p> <p>6 what the losses can be.</p> <p>7 Q And I think I've already asked you this</p> <p>8 question but I'll ask it again?</p> <p>9 MR. BRADLEY: Objection.</p> <p>10 MR. HEBERT: Sustained.</p> <p>11 ARBITRATOR PRO: What's the question?</p> <p>12 MR. BRADLEY: I'm sorry, your Honor.</p> <p>13 BY MR. HEBERT:</p> <p>14 Q The question is, At any time in the course</p> <p>15 of your relationship with Wespac Advisors and</p> <p>16 Mr. Christian, did he ever tell you about using stop</p> <p>17 loss as a way to keep you from losing money in your</p> <p>18 accounts?</p> <p>19 A No.</p> <p>20 MR. BRADLEY: Objection, asked and</p> <p>21 answered.</p> <p>22 ARBITRATOR PRO: It had been but he's</p> <p>23 already answered.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q And No. 17 in this response Mr. Christian</p>	<p style="text-align: right;">Page 133</p> <p>1 is saying, "I'm happy to meet with you and we'll map</p> <p>2 out a workable solution." That's in the bottom of</p> <p>3 the letter.</p> <p>4 What happened after this, after you got</p> <p>5 this response? We're now in September of '08.</p> <p>6 A Well, we're at the end of September, and I</p> <p>7 believe the next thing of significance was that I</p> <p>8 recognized that my accounts were losing disastrous</p> <p>9 amounts of money, \$300,000 in a month, if I recall</p> <p>10 correctly -- we can look that up later -- but</p> <p>11 \$300,000 in three months, I believe.</p> <p>12 And I reached a conclusion that Wespac and</p> <p>13 Mr. Christian had now breached the agreement and</p> <p>14 that I had to do something to stop the hemorrhaging</p> <p>15 of money from my accounts. So sometime in early</p> <p>16 October, perhaps between the 5th and the 10th,</p> <p>17 something like that, I contacted Mr. Christian and</p> <p>18 said, Sell out my retirement accounts -- that is the</p> <p>19 two Keough accounts and the defined benefit</p> <p>20 accounts. Those are the ones that had the most</p> <p>21 money in them -- and we got to stop this. So sell</p> <p>22 those securities, and he did.</p> <p>23 Q What about the -- we're going to set aside</p> <p>24 the construction account.</p> <p>25 A The construction account is so small that</p>

<p style="text-align: right;">Page 134</p> <p>1 it never amounted to anything significant.</p> <p>2 Q Right. But the other account, the</p> <p>3 non-IRA-sanction account, I'll call it.</p> <p>4 A The taxable account.</p> <p>5 Q -- 0713, what happened with that account at</p> <p>6 this time?</p> <p>7 A Well, he wrote me a letter that's, I'm</p> <p>8 sure, one of these exhibits and said he would manage</p> <p>9 the account -- that account according to my</p> <p>10 instructions.</p> <p>11 Q Would that be 19?</p> <p>12 A Yes. And he was basically saying that, if</p> <p>13 I insisted upon him doing his job, that I should go</p> <p>14 elsewhere to -- for investment advice.</p> <p>15 Q Did you consider the relationship at an end</p> <p>16 on October 29th, 2008, when you got No. 19?</p> <p>17 A Well, I considered it at an end when I told</p> <p>18 him to sell out the retirement accounts because that</p> <p>19 then was a -- I was in violation -- if the agreement</p> <p>20 was still in effect, I was violating the agreement</p> <p>21 because I was now invading the area that he was</p> <p>22 responsible for and, that is, how to meet my</p> <p>23 objectives. Again, my job was to provide</p> <p>24 objectives. His job was to meet those objectives or</p> <p>25 tell me that he couldn't.</p>	<p style="text-align: right;">Page 135</p> <p>1 So I considered the arrangement to be over</p> <p>2 at that point. However, I had forgotten, and I had</p> <p>3 forgotten until this case, that the Investment</p> <p>4 Management Agreement says that if you want to</p> <p>5 terminate, you have to do it with a written</p> <p>6 communication. And so I did that written</p> <p>7 communication later but that was my fault in having</p> <p>8 a hazy date for when the arrangement was over.</p> <p>9 Q Let's see if we can find that exhibit where</p> <p>10 you actually terminated.</p> <p>11 A No, I don't believe it's in here.</p> <p>12 Q Okay.</p> <p>13 A I did see it.</p> <p>14 Q All right. Mr. Christian, at least in</p> <p>15 Exhibit 19, thinks the relationship is still going</p> <p>16 on, doesn't he?</p> <p>17 A Yes.</p> <p>18 Q Look at the last sentence.</p> <p>19 A Yes.</p> <p>20 Q Okay. So to establish a framework for this</p> <p>21 case, the official end of the relationship was when?</p> <p>22 A I want to say March 9th, 2009, but I'm not</p> <p>23 sure if I have the date digit inverted. It might</p> <p>24 have been March 6th, 2018, but it was somewhere in</p> <p>25 the early part of March 2009.</p>
<p style="text-align: right;">Page 136</p> <p>1 Q Okay. So when do you think Wespac and</p> <p>2 Christian breached the contract, the Investment</p> <p>3 Management Agreement, Plaintiff's Exhibit No. 4?</p> <p>4 A Shortly after my revised instructions of</p> <p>5 the oral instruction and then the written</p> <p>6 instruction of my objectives in October 2007.</p> <p>7 Q And in your complaint -- in your amended</p> <p>8 complaint you've alleged you've been damaged by</p> <p>9 Mr. Christian and Wespac's actions and omissions.</p> <p>10 How did you calculate those damages? And I</p> <p>11 direct your attention to Exhibits 24 and 27 -- I</p> <p>12 direct your attention to 27. Did you prepare this</p> <p>13 exhibit?</p> <p>14 A I did.</p> <p>15 Q What data did you use to prepare the</p> <p>16 exhibit?</p> <p>17 A I used the data that is represented by the</p> <p>18 excerpt in Exhibit 24.</p> <p>19 Q Let me stop you here for the sake of Mr.</p> <p>20 Bradley and the arbitrator. The full 1,000 pages of</p> <p>21 the Schwab accounts are on the flash drive of the</p> <p>22 front of Volume I, if you want to look at the data</p> <p>23 that supports Exhibit 27.</p> <p>24 A It's also in here.</p> <p>25 Q Go ahead. But that's the source of your</p>	<p style="text-align: right;">Page 137</p> <p>1 calculations?</p> <p>2 A Well, what I did for the sake of the volume</p> <p>3 of these exhibits, the totality of Exhibit 24 is</p> <p>4 roughly two reams, so that's much.</p> <p>5 ARBITRATOR PRO: That's what on the flash</p> <p>6 drive, the contents of Exhibit 24, okay.</p> <p>7 THE WITNESS: Exactly, that entire Exhibit</p> <p>8 24. And what I asked my counsel to do was to</p> <p>9 excerpt a representative set of data from that so</p> <p>10 that you and the defendants could see where this</p> <p>11 data was derived from and then, if you wanted to</p> <p>12 explore it more completely, you could go to the</p> <p>13 flash drive.</p> <p>14 Q So the excerpts are behind Tab 24 in the</p> <p>15 binders. The full exhibit is on the flash drive.</p> <p>16 A Correct.</p> <p>17 Q Okay. Back to 27. You've told us where</p> <p>18 the data came from. Did you list the five accounts</p> <p>19 across the top?</p> <p>20 A Yes.</p> <p>21 Q "R" standing for what?</p> <p>22 A Retirement.</p> <p>23 Q And when did you start the calculation and</p> <p>24 when did you end it?</p> <p>25 A Well, I started it for November 2007, since</p>

<p style="text-align: right;">Page 138</p> <p>1 I gave the instruction in October -- orally in early 2 October and the instruction and objective written 3 form on October 22nd, I felt that it was not fair 4 to ask Wespac to be responsible for whatever 5 happened in October of '07.</p> <p>6 So I started in November of '07 and going 7 down the left-hand column it ends in February of 8 '09. I didn't try to go into March because I didn't 9 have any good way to interpolate the data in March 10 from the information I had, so I just included 11 through the end of February '09.</p> <p>12 Q And down at the bottom you show gains or 13 losses in each of the accounts over the period of 14 time stated?</p> <p>15 A Yes. And also in the rightmost column, the 16 rightmost column shows a monthly total. So if you 17 look, for example, at 11/07 and go across, the first 18 one is a loss of \$6,451.24. And then in the next 19 column the next account is zero. Then in the 5386 20 -- normally we talk about these in terms of the last 21 four digits, your Honor.</p> <p>22 So the 5386, which was one of the 23 retirement accounts, was a loss of \$15,000 and some. 24 In the 6376 there was a loss of \$2,172.35 and in the 25 4369 there was a loss of \$14,599.56. You add those</p>	<p style="text-align: right;">Page 139</p> <p>1 45 numbers across and you get the financial result 2 for the month of November '07.</p> <p>3 Then the other way to look at it is adding 4 down. Take any one of these columns. Take the 5386 5 "R" retirement account. There's a number for 6 November, December, adding on down to the bottom is 7 the account total, in this case a loss of \$264,523 8 out of that account during this period of time.</p> <p>9 Q And what is the big number, the total of 10 the losses?</p> <p>11 A Oh, I'm sorry. Over in the bottommost -- 12 the bottom result in the rightmost column is a loss 13 of 648,670.88 was for adding all the five accounts. 14 And then as a check my computer program -- I put 15 these in a table because it's easy to see but also 16 the computer program has something called "Quick 17 sum" and so I added them down the monthly totals and 18 that came to the same number, so everything seemed 19 to check.</p> <p>20 Q And that number is?</p> <p>21 A A loss of \$648,670.88.</p> <p>22 Q Now, you heard Mr. Bradley give his opening 23 today and you heard Mr. Cramer testify in his 24 deposition. Does it come as a surprise to you that 25 you've made \$5,000?</p>
<p style="text-align: right;">Page 140</p> <p>1 A Very much. Made \$5,000 by their reckoning. 2 Q Yes. 3 A Yes. 4 Q You actually profited from November of '07 5 to February of '09. 6 A That's their theory. 7 MR. BRADLEY: Actually, that misstates the 8 evidence. We looked at September '05 through March 9 '09. 10 MR. HEBERT: We have different views of the 11 case, and that hasn't been in evidence yet. 12 ARBITRATOR PRO: We'll find out when Mr. 13 Cramer testifies or Mr. Christian. 14 MR. HEBERT: But I understand you have a 15 different position. 16 MR. BRADLEY: I thought you just misstated 17 and said did we -- 18 ARBITRATOR PRO: I understood the 19 distinction. 20 MR. HEBERT: Okay. 21 MR. BRADLEY: We never said that. 22 ARBITRATOR PRO: Your question said, "Did 23 they," meaning Mr. Christian, and Mr. Cramer 24 conclude between November of 2007 and February of 25 2009.</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. HEBERT: I stand corrected. My overall 2 question was, Did it come as a surprise to you that 3 you made money during the time you were with Wespac. 4 ARBITRATOR PRO: Right. And the witness 5 answered that. Okay. 6 THE WITNESS: Can I ask my counsel a 7 question? 8 ARBITRATOR PRO: Go ahead. 9 THE WITNESS: Did you mean to ask me how I 10 got these numbers on Exhibit 27? 11 BY MR. HEBERT: 12 Q I thought you said you got the number from 13 the Wespac source documents, which are Exhibit 24. 14 Are there other sources? 15 A No. First of all, Exhibit 24 is not Wespac 16 documents. 17 Q Schwab documents? 18 A Those are documents produced by Schwab, the 19 primary source of information. Schwab was the 20 custodian of my accounts. It had the primary 21 responsibility for the accounting of my accounts. 22 And it might be instructive -- 23 Q Well, I'm asking you now, instruct us. 24 A -- if we look at Exhibit 24, that is for 25 one of the particular accounts in one of the</p>

<p style="text-align: right;">Page 142</p> <p>1 particular statement periods, October 1 to 31, 2008.</p> <p>2 Now, what's on this document from Schwab on</p> <p>3 the first page SCH-151 up at the top on the</p> <p>4 right-hand side of the page it says, "Your</p> <p>5 independent investment manager and/or adviser" and</p> <p>6 it identifies Wespac," so Wespac had access to my</p> <p>7 accounts.</p> <p>8 Then if we go to the next page, there's a</p> <p>9 bunch of numbers on here. But if we look on the top</p> <p>10 to the left, there's a major heading that says</p> <p>11 "Change in account value, starting value" and then</p> <p>12 several items and then near the bottom of that</p> <p>13 column it says "Change in value of investments."</p> <p>14 Now, what happens with these is money comes</p> <p>15 in in an accounting sense at the start of the</p> <p>16 period, starting value, and money can come in or out</p> <p>17 of the account during the month. Deposits and</p> <p>18 withdrawals I had -- this was a checking account of</p> <p>19 mine so I withdrew \$20,000 during the month and</p> <p>20 there were dividends of interest of \$2,142.08.</p> <p>21 Charges -- we'll get to those, but those</p> <p>22 are Wespac's investment management fees. Transfers,</p> <p>23 income reinvested from these investments, and then</p> <p>24 we get to change in value of the investments, a loss</p> <p>25 of \$45,665.98. And when you do the math it comes</p>	<p style="text-align: right;">Page 143</p> <p>1 out to an ending value at the end of the month of</p> <p>2 \$376,947.10.</p> <p>3 So what I did was I took the change in</p> <p>4 value of investments for this period, \$45,665.98, I</p> <p>5 went over to my summary document, Exhibit 25, and if</p> <p>6 you look for this account -- it's in the first</p> <p>7 column -- in this account, the -0713 account, for</p> <p>8 the month of 10/08, there's that loss of \$45,665.98.</p> <p>9 So if anyone wants to check these numbers,</p> <p>10 they can go -- any of the other numbers, they can go</p> <p>11 to the flash drive that has all of the monthly</p> <p>12 results during this entire period and check against</p> <p>13 these various values. I hope to heck they're all</p> <p>14 correct.</p> <p>15 One other point I wanted to mention here</p> <p>16 it's on -- it's on page SCH-0157.</p> <p>17 Q Of Exhibit 24?</p> <p>18 A Of Exhibit 24 page, so page 7 of 10 up at</p> <p>19 the top is "Transaction detail, fees and charges."</p> <p>20 And on 10/6/08 an adviser fee was paid of \$827.72 to</p> <p>21 Wespac. So the three things I had to do under --</p> <p>22 well, you can ask me.</p> <p>23 Q What were the three things you had to do?</p> <p>24 A Under the contract was I had to pay the</p> <p>25 adviser, this is evidence of that. I had to give</p>
<p style="text-align: right;">Page 144</p> <p>1 the adviser access to my accounts and back on the</p> <p>2 first page where it says --</p> <p>3 Q First page of which exhibit?</p> <p>4 A Same exhibit, 24.</p> <p>5 -- my independent investment manager and/or</p> <p>6 adviser is Wespac, so that they have access to these</p> <p>7 accounts. And the third thing was that I had to</p> <p>8 give my objectives -- we've been through that and</p> <p>9 I've given my objectives in the various documents</p> <p>10 that we've talked about, so I believe I've done</p> <p>11 everything that I was required to do under the</p> <p>12 contract.</p> <p>13 Q Now, going back to the calculation of your</p> <p>14 damages, which is Exhibit 27, tell us why you</p> <p>15 started your calculation in November of '07 and not</p> <p>16 September '05.</p> <p>17 A Because that was the period that covered</p> <p>18 the new investment instructions that I had given.</p> <p>19 It also was the point at which the damages occurred.</p> <p>20 My understanding of damages is that --</p> <p>21 MR. BRADLEY: Objection, he's stating his</p> <p>22 legal theory of damages.</p> <p>23 ARBITRATOR PRO: No. He's just explaining</p> <p>24 why he did the calculation the way he did. He can</p> <p>25 answer that. Go ahead.</p>	<p style="text-align: right;">Page 145</p> <p>1 THE WITNESS: My understanding of the</p> <p>2 definition of "damages" is an injury, money to be</p> <p>3 paid as a result of an injury.</p> <p>4 Prior to October there wasn't any injury.</p> <p>5 That was the whole point of Mr. Bradley's opening,</p> <p>6 is that prior to October that value of the accounts</p> <p>7 had been increasing. And that was also the period</p> <p>8 where Mr. Christian and I were working jointly on</p> <p>9 this. That's what that letter from October -- I'm</p> <p>10 sorry -- August of 2007 was about. We had been</p> <p>11 working jointly. So my view of the damages was</p> <p>12 after the injury occurred, which was in October --</p> <p>13 beginning in October.</p> <p>14 The other reason is that there are other</p> <p>15 claims in this case, for example, violation of</p> <p>16 fiduciary duty. If the -- again, my view of it.</p> <p>17 And the reason this is set up the way it is with</p> <p>18 these dates is that the violation of fiduciary duty</p> <p>19 started after October 2007, because that's when</p> <p>20 Wespac was not following my investment objective,</p> <p>21 which I thought was very clearly stated, and that</p> <p>22 was do not lose capital from my accounts.</p> <p>23 BY MR. HEBERT:</p> <p>24 Q Mr. Garmong, during the period of time</p> <p>25 under discussion, November of '07 to February of '09</p>

<p style="text-align: right;">Page 146</p> <p>1 as reflected in Exhibit 27, did Wespac and 2 Mr. Christian continue to charge you fees? 3 A Yes. 4 Q Are those reflected in Plaintiff's Exhibit 5 30? 6 A Yes. 7 Q And what was the total -- first of all, how 8 were Wespac's fees calculated? 9 A It's a percentage of the amount under 10 management. It's somewhere around 1 percent per 11 year, but I'm not sure I know the exact percentage. 12 It's -- and that is payable in four 13 quarterly installments. So Exhibit 30 reflects the 14 fact that -- well, going to the example we were just 15 talking about for the -0713 account, the first 16 column, down to October '08 they received a 17 management fee for that one account and that one 18 quarter of \$827.72. 19 Q And this data, the management fees, was 20 likewise taken by you from the Schwab documents at 21 Exhibit 24? 22 A Yes. I pointed that out when we were 23 discussing Exhibit 24, that the amount of the 24 management fee was found on that exhibit. And, 25 again, the other management fees can be found in the</p>	<p style="text-align: right;">Page 147</p> <p>1 other flash drive. 2 Q Directing your attention to Exhibit 21, 3 what is that? 4 A This is a letter of April 23rd, 2013, 5 from Greg Christian to Charles Schwab which was 6 produced by Wespac. 7 Q In summary what was Mr. Christian telling 8 Charles Schwab -- well, let me start over. 9 Did you send a written complaint on 10 September 26th? Is that the letter we've talked 11 about before? 12 A That is what -- 13 ARBITRATOR PRO: September 26th of what 14 year? You're not -- 15 MR. HEBERT: I'm sorry, your Honor. I will 16 find you the exhibit numbers. And it is Exhibit 15. 17 Exhibit 15 is a letter from Mr. Garmong to Wespac 18 Advisors and then now we're talking about Exhibit 19 21. 20 ARBITRATOR PRO: September 26th, 2008, is 21 Exhibit 15. 22 MR. HEBERT: Right. 23 BY MR. HEBERT: 24 Q Go ahead, Mr. Garmong. 25 A Well, it's a little hard to tell because</p>
<p style="text-align: right;">Page 148</p> <p>1 several of the items in here say something like 2 "Attached" or "See attached," and we didn't get any 3 of the attachments. But by inference, apparently, 4 Charles Schwab, the company, sent an inquiry to 5 Wespac saying, What's this about, and -- "this" 6 being the September 26th, 2008, letter -- what's 7 this about? 8 I have no way to know how Schwab got that 9 letter. I didn't send it to them, that is, the 10 September 26th, 2008. The way this is written, yes, 11 Mr. Garmong sent us a written complaint confirming, 12 apparently, something Schwab said. Again, I have no 13 idea how they got it. So reading -- 14 Q Well, did Wespac or Mr. Christian 15 categorically state, We have no plans of settling 16 with Mr. Garmong? 17 ARBITRATOR PRO: But this is in 2013. 18 What's that got to do with the claim that arises 19 from events in 2007 -- 20 THE WITNESS: Are you asking me? 21 ARBITRATOR PRO: No, no. I'm asking 22 counsel. Why are we asking the witness about this 23 letter in 2013 commenting on intention or no 24 intention? 25 MR. HEBERT: Your Honor's point is well</p>	<p style="text-align: right;">Page 149</p> <p>1 taken. 2 BY MR. HEBERT: 3 Q What's the meaning of this letter? What do 4 you see as a connection? 5 MR. BRADLEY: I think he just ruled that it 6 wasn't -- 7 ARBITRATOR PRO: I don't think this -- to 8 the extent it has historical references to the 2008 9 letters and so forth, fine. But the rest of it this 10 witness doesn't have comment on what the intent of 11 this letter is. I don't even know what relevance it 12 is, "We don't intend to settle in 2013," counsel. 13 MR. HEBERT: If I'm precluded from 14 questioning, I'll stop but, otherwise, I'll ask him 15 the relevance. 16 ARBITRATOR PRO: Well, no. 17 MR. BRADLEY: I think you have to. 18 ARBITRATOR PRO: You have to. 19 MR. HEBERT: All right. Then I'm done here 20 with this letter. After consulting with my client, 21 I may come back to it because -- but anyway -- 22 ARBITRATOR PRO: Go ahead, if you have 23 another question. 24 MR. HEBERT: Sure. I do. 25</p>

<p style="text-align: right;">Page 150</p> <p>1 BY MR. HEBERT:</p> <p>2 Q Did you see documents in this case -- I'm</p> <p>3 talking about Exhibit 20 now. Were documents</p> <p>4 produced in this case that show that Mr. Christian</p> <p>5 was quite familiar with the stop-loss doctrine at</p> <p>6 the time of events?</p> <p>7 A Yes.</p> <p>8 Q Okay. What were those documents?</p> <p>9 A Well, Exhibit 20 is a letter -- or,</p> <p>10 actually, it's several letters produced by Wespac</p> <p>11 and the sender of the letter is blacked out,</p> <p>12 redacted.</p> <p>13 MR. BRADLEY: I would object to the</p> <p>14 relevance of introducing Mr. Sharp's complaint.</p> <p>15 It's been indicated that he's not going to be called</p> <p>16 here as a witness and --</p> <p>17 MR. HEBERT: We can still --</p> <p>18 MR. BRADLEY: -- it was found to be a</p> <p>19 meritless claim and the JAMS arbitrator ruled in</p> <p>20 that fashion. I don't think that Mr. Garmong's</p> <p>21 interpretation of what Mr. Christian knew or didn't</p> <p>22 know based on somebody else's complaint letter is</p> <p>23 relevant.</p> <p>24 And if he wants to ask Mr. Christian about</p> <p>25 stop loss, I think the answer will be yes. It's not</p>	<p style="text-align: right;">Page 151</p> <p>1 like it's a secret sort of thing but introducing</p> <p>2 this letter is --</p> <p>3 ARBITRATOR PRO: Is that all this letter is</p> <p>4 being offered for, to show that Mr. Christian knew</p> <p>5 what the stop-loss doctrine or concept was.</p> <p>6 MR. HEBERT: Here's the purpose of the</p> <p>7 letter, your Honor. At the time when Mr. Garmong's</p> <p>8 accounts are particularly losing money in June and</p> <p>9 July of 2008, Mr. Sharp is complaining to</p> <p>10 Mr. Christian and saying that, when we first met</p> <p>11 with you in 2008 right around this time, you told us</p> <p>12 that on all equity accounts we could put a stop loss</p> <p>13 on there to preserve your capital and keep from</p> <p>14 losing a lot of money. This letter is introduced to</p> <p>15 show he had knowledge of the technique which Mr.</p> <p>16 Bradley just admitted --</p> <p>17 MR. BRADLEY: I think we'll stipulate that</p> <p>18 he knew what the stop loss was.</p> <p>19 MR. HEBERT: I'm not done yet.</p> <p>20 ARBITRATOR PRO: Go ahead and finish.</p> <p>21 BY MR. HEBERT:</p> <p>22 Q -- and that is that Mr. Christian never</p> <p>23 advised Mr. Garmong of using this technique to avoid</p> <p>24 the loss of capital?</p> <p>25 ARBITRATOR PRO: But Mr. Garmong so</p>
<p style="text-align: right;">Page 152</p> <p>1 testified.</p> <p>2 MR. HEBERT: I just want to reinforce the</p> <p>3 point, your Honor.</p> <p>4 ARBITRATOR PRO: We don't need 20 to</p> <p>5 establish either of those. It's stipulated that</p> <p>6 Mr. Christian knows what the stop-loss doctrine is</p> <p>7 and your client clearly testified that he was never</p> <p>8 advised of that approach.</p> <p>9 MR. HEBERT: And that the time period</p> <p>10 overlapped.</p> <p>11 ARBITRATOR PRO: Right.</p> <p>12 MR. HEBERT: Okay. My client would like to</p> <p>13 have a break to talk.</p> <p>14 ARBITRATOR PRO: Yes. I'd like to wrap up</p> <p>15 the direct. I don't know how much you've got.</p> <p>16 (Recess taken.)</p> <p>17 BY MR. HEBERT:</p> <p>18 Q Mr. Garmong, what emotional -- did this</p> <p>19 course of events -- now I'm talking about our</p> <p>20 claimed loss of \$648,000 over the period November of</p> <p>21 '07 to February of '09.</p> <p>22 Did this cause you any emotional distress?</p> <p>23 A A great deal of emotional distress.</p> <p>24 Q Will you please describe what emotional</p> <p>25 distress you suffered as a result of this loss in</p>	<p style="text-align: right;">Page 153</p> <p>1 your accounts?</p> <p>2 A Well, it's discussed in one of the faxes in</p> <p>3 some detail. But, in general, if you think back to</p> <p>4 my original purpose in having a relation with Wespac</p> <p>5 was I knew I was getting close to retirement and</p> <p>6 then in 2007 I entered retirement.</p> <p>7 I was looking for financial peace of mind</p> <p>8 to get a moderate increase in value of my</p> <p>9 investments and avoiding or minimizing -- first</p> <p>10 minimizing the potential for loss of capital and</p> <p>11 then in October of 2007 avoiding it.</p> <p>12 As I said, I had not really appreciated</p> <p>13 what emotional impact or psychological impact</p> <p>14 retirement would have on me. I can't make any more</p> <p>15 money. I've been working since I was 15 years old</p> <p>16 making money. Now I can't make any more money. I'm</p> <p>17 not going to go down and be a greeter at WalMart or</p> <p>18 anything of that kind.</p> <p>19 So just the simple fact of, in my view,</p> <p>20 being betrayed by the investment manager that I was</p> <p>21 paying good money to over this last year, \$21,000,</p> <p>22 and the investment manager allowed my accounts to go</p> <p>23 down by \$648,000, if I think in terms of fiduciary</p> <p>24 duty, Mr. Christian's own definition of do what's</p> <p>25 best for the client, perhaps when he's examined</p>

<p style="text-align: right;">Page 154</p> <p>1 he'll explain why he thinks \$648,000 was what was 2 best for me. But I certainly did see it as being in 3 my best interest.</p> <p>4 The second part of the emotional effect on 5 me was the sense of betrayal. Mr. Christian 6 indicated that he knew how to avoid these losses for 7 \$648,000. He said it in one of the exhibits there. 8 Go to 100 percent cash.</p> <p>9 And, in fact, as they will point out, he 10 did sell some of the investments and increase the 11 cash, but not enough. I mean, the plain fact of it 12 is it's not easy to lose \$648,000 if you're paying 13 attention to what's going on.</p> <p>14 And then what really drove that home for me 15 was -- can I talk about this last letter that you 16 guys had the discussion about, Mr. Sharp's letter? 17 I want to not describe the content but the effect on 18 me.</p> <p>19 ARBITRATOR PRO: And you became aware of it 20 in 2009?</p> <p>21 THE WITNESS: No, no. I became aware of it 22 during the course of this litigation three weeks ago 23 or something. Maybe it was a little more than three 24 weeks ago.</p> <p>25 ARBITRATOR PRO: All right. Go ahead.</p>	<p style="text-align: right;">Page 155</p> <p>1 MR. HEBERT: We call it "the redacted 2 letter," your Honor, if you remember that 3 conversation.</p> <p>4 ARBITRATOR PRO: No. I recall our 5 discussion of it. Go ahead.</p> <p>6 THE WITNESS: When I read that -- and with 7 all due attention to Mr. Christian sitting here and 8 his emotions -- I couldn't believe how I was 9 betrayed by these guys. That letter describes that 10 Mr. Sharp had a meeting with Mr. Christian in July 11 of 2008 and at that point Mr. Sharp and his wife and 12 his daughter that they were setting up a trust for 13 was not --</p> <p>14 ARBITRATOR PRO: Mr. Hebert, your client is 15 talking about emotional distress that's visited upon 16 him three or four weeks ago. As I understand the 17 testimony, that's what -- it couldn't have been 18 emotional distress he suffered at the time as a 19 result of the conduct. It's events he learned 20 later.</p> <p>21 MR. HEBERT: It's true.</p> <p>22 ARBITRATOR PRO: Then let's move on. I'll 23 go ahead and sue sponte --</p> <p>24 MR. HEBERT: Consistent with the 25 arbitrator's ruling, we want to talk about the</p>
<p style="text-align: right;">Page 156</p> <p>1 emotional distress?</p> <p>2 ARBITRATOR PRO: Litigation causes 3 emotional distress. There's a lot of emotional 4 distress over the litigation.</p> <p>5 THE WITNESS: That was the first part of 6 what I discussed. The reaction to this letter, just 7 in the middle of when I was losing so much money, 8 that's caused me further emotional distress during 9 this lawsuit.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q Have you talked about everything involving 12 your emotional distress?</p> <p>13 A Nothing else comes to mind.</p> <p>14 Q Let me clean up one or two items. I'm 15 getting close.</p> <p>16 Did Mr. Christian do any kind of trading in 17 your accounts after October of 2007 specifically? 18 Did he buy stocks and did they lose money?</p> <p>19 A Yes.</p> <p>20 Q Please explain.</p> <p>21 A There's an exhibit in here where --</p> <p>22 Q Look for it. Find it. Would it be what we 23 call one of the additional exhibits at the back?</p> <p>24 A I'll find it. It is -- there are two, 25 Exhibits 28 and 29.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q Why don't you go to 28 and tell us what 2 Mr. Christian did when he did buy stocks.</p> <p>3 A Exhibit 28 is specific to the -0713 4 account. It is not for all of the accounts. And 5 what it does is summarizes the results for stocks 6 that were bought -- there were two large groups of 7 purchases. One was on February 20th, '08, and 8 that's the portion of the table that is found on 9 pages one and two, and the very first entry on page 10 three.</p> <p>11 And then there was another group of stocks 12 bought on May 27th, '08, three months later, and 13 what I've done here is summarized across the top of 14 the table where it says "Buy" The number of shares 15 bought, the share price, they put in a column for 16 stop loss -- apparently, there wasn't any -- and the 17 amount paid.</p> <p>18 Then eventually the stock was sold and that 19 tells a number of shares, quantity, share price and 20 amount realized. So for the first one -- I'm sorry. 21 It's not just sold. At the end Baytex was not sold. 22 This was at the end of February '09. This stock 23 that was bought in February 20th, '08, a year 24 earlier, the total price paid for it for 1257 shares 25 was \$23,776.31. And then the amount realized -- or</p>

<p style="text-align: right;">Page 158</p> <p>1 at the end was the amount, the value of the stock, 2 was \$11,488.98.</p> <p>3 Q What is the sale date, Mr. Garmong? Do we 4 know?</p> <p>5 A No. On this one they held it and never 6 sold it. So at the end of the period, the end of 7 February its value was \$11,488. So roughly it lost, 8 what? \$12,000 in that 12 months.</p> <p>9 And we go down the table -- and I didn't 10 add up the subtotals -- but down at the middle of 11 page 3 of this Document 442, the purchase price was 12 358,000 and some. The sale price, or price at the 13 end of the period, was 194,000. So in the summary 14 the loss was in 12 months, because it was bought in 15 February and at the end of February, it lost 16 163,863.75, and so the second part was it lost 45.7 17 percent of the starting value of the stock.</p> <p>18 Avoiding this kind of loss was what I 19 expected out of Mr. Christian when I went to them 20 and hired them. Regardless of what the market was 21 doing, I expected that they would be watching over 22 my stocks to prevent this.</p> <p>23 Q And in Mr. Bradley's opening statement he 24 said that shockingly, surprisingly, remarkably 25 enough, when you stopped your relationship with</p>	<p style="text-align: right;">Page 159</p> <p>1 Wespac and went to Fidelity, you didn't sell your 2 shares. You let them continue on.</p> <p>3 Can you explain why you did that.</p> <p>4 A I know this sounds irrational by a person 5 with my scientific training and background, but I 6 think everyone is used to the fact that there's some 7 things in life that are so repugnant to think about 8 that you just don't.</p> <p>9 And that's how I felt about this whole 10 thing. I was so shocked at being treated in this 11 way, being deceived that, quite honestly, I just 12 couldn't face thinking about the stock market or 13 this kind of thing -- equities and so forth and so I 14 have basically let it slide for -- what is that now? 15 That's ten years. Am I right? Ten or nine years, 16 something like that.</p> <p>17 I was so depressed by that -- not in a 18 clinical sense but it depressed me to have to think 19 about this subject. And I still had enough money 20 that they hadn't wasted that I'm not on the 21 borderline of starvation.</p> <p>22 But why did I bring this lawsuit, then? 23 This is wrong. This kind of thing has to stop. So 24 that's basically it. What do I do when I get my 25 Fidelity statements every month? I open them up and</p>
<p style="text-align: right;">Page 160</p> <p>1 look at the front page to see what the total value 2 of my investments at Fidelity is. And as long as it 3 hasn't dropped 30 percent, or something, in that one 4 month, I don't look further.</p> <p>5 Q Did you hire an investment adviser to 6 succeed Mr. Christian?</p> <p>7 A The answer is no. And the reason is that 8 this soured me on the whole notion of investment 9 advisers. Fidelity has -- my contact at Fidelity 10 has said occasionally, Do you want to get involved 11 in advice or being advised on actions, and they 12 don't do it like Schwab did.</p> <p>13 They weren't sending us off to some outfit 14 on the outside, but they have people on staff that 15 do that kind of thing. And I've just told them 16 about this bad experience and I said, No, I don't 17 want to be involved with that kind of person 18 anymore.</p> <p>19 Q How do you respond to the basic argument 20 that you had a lot of money so what's the problem?</p> <p>21 ARBITRATOR PRO: I didn't hear that 22 argument.</p> <p>23 MR. HEBERT: I did in the opening argument.</p> <p>24 ARBITRATOR PRO: Well, that's not evidence 25 so, I mean, the issue is not whether somebody has</p>	<p style="text-align: right;">Page 161</p> <p>1 enough money.</p> <p>2 MR. HEBERT: Well, I agree, your Honor.</p> <p>3 ARBITRATOR PRO: Well, I don't think you'll 4 get an argument.</p> <p>5 MR. HEBERT: Let me look through my notes. 6 I think we're done.</p> <p>7 ARBITRATOR PRO: While counsel's doing 8 that, let me ask you do you plan to use the same 9 exhibit book? I'm assuming we've got duplication, 10 like two copies of each thing. We don't need to --</p> <p>11 MR. BRADLEY: Judge, there's a few exhibits 12 that they have in their binders that I don't have 13 and I plan to start with those. So if we could stay 14 with theirs just for a few questions and then ...</p> <p>15 ARBITRATOR PRO: I just meant we don't need 16 two copies of the same investment agreement.</p> <p>17 MR. BRADLEY: Unfortunately, they're in 18 both binders so it may be easier to go through my 19 binder because it will be consecutive even though 20 you've seen it as a different exhibit somewhere 21 else.</p> <p>22 MR. HEBERT: And I've noticed, your Honor, 23 that what we call the "Investment Management 24 Agreement" has been excerpted -- just illustration. 25 Some documents we have in our binder are excerpted</p>

<p style="text-align: right;">Page 162</p> <p>1 and they took the two pages they thought were 2 relevant and called it the same thing. But theirs 3 might have the full document. 4 ARBITRATOR PRO: I got it. That's fine. 5 MR. HEBERT: Okay. I'm talked out. 6 ARBITRATOR PRO: Okay. Let's have the 7 witness switch sides and sit next to the court 8 reporter over there so counsel can eyeball the 9 witness when he queries and asks him questions. 10 CROSS-EXAMINATION 11 BY MR. BRADLEY: 12 Q The first one I'll start off with is 28 in 13 your book. 14 MR. BRADLEY: Judge, to make this easier, I 15 plan to ask him a few questions out of his binder, 16 and then once we get to mine, we'll go through it. 17 ARBITRATOR PRO: Fine. 18 BY MR. BRADLEY: 19 Q So I'm asking about Exhibit 28, one of the 20 last things we talked. 21 Do you have that in front of you? 22 A I do. 23 Q So can we agree this analysis that you put 24 together does not include any income that was 25 received from the securities while you owned them at</p>	<p style="text-align: right;">Page 163</p> <p>1 Wespac? 2 A You are correct in that. 3 Q Okay. These were almost the same stocks 4 that Wespac managed that you continued to hold at 5 Fidelity, correct? 6 A The ones that were not sold. 7 Q And most of them were not sold, correct? 8 A Most were not. 9 Q And these are the ones that are, at least 10 our experts calculated, you made almost \$300,000 off 11 at Fidelity, right? 12 A You're telling me that. I haven't heard 13 that testimony but you're telling me that. 14 Q Okay. And I think you -- 15 A Could I, before you go on, before you go 16 on, this was only for the -0713 account. So your 17 point about \$300,000, I presume that applies to all 18 of the accounts. 19 Q No. 20 A No? So this account made \$300,000. 21 Q I'll represent that to you. 22 A Okay. 23 Q And you still own these same securities, 24 right? I think you just testified to that. 25 A I don't know. I don't look at my reports</p>
<p style="text-align: right;">Page 164</p> <p>1 anymore. I don't know if -- 2 Q You have no recollection of selling any 3 stocks that you owned in 2014. Do you have any 4 recollection of selling any stocks since 2014 -- 5 A No. 6 Q -- at Fidelity? 7 A No. 8 Q Okay. And then I'd like to ask you some 9 questions about your damage calculation in general. 10 A 27? 11 Q Yeah. Before we get there, actually, 25. 12 I think you testified -- 24 you testified about the 13 third page where you went through about the change 14 in account value, right? 15 A Probably the second page? 16 Q Second page, thank you. Do you have that 17 in front of you where it says "Change in account 18 value"? 19 A Actually, it says "Change in value of 20 investments." 21 ARBITRATOR PRO: I think the Bates stamp is 22 152. 23 THE WITNESS: Yes. 24 MR. BRADLEY: Yes. 25 ARBITRATOR PRO: "Change in account value"</p>	<p style="text-align: right;">Page 165</p> <p>1 at the top in bold. 2 THE WITNESS: Oh, I'm sorry. The major 3 heading, yes. 4 BY MR. BRADLEY: 5 Q So, basically, I want to ask you your 6 understanding. But you start with 441 beginning 7 equity value, right? 8 A Yes. 9 Q And then you also add in any sort of cash 10 deposits or transfers of stock in, right? 11 A Yes. 12 Q And you would also subtract out any 13 withdrawals or transfers of stocks out, right? 14 A Yes. 15 Q And so then you'd have this final number of 16 376, correct, approximately \$376,000, correct? 17 A There are other transfers in and out. 18 Q Right. 19 A But when you add them all up, it comes to 20 \$376,000. 21 Q So, basically, you start with the starting 22 value and then you, basically, look to see how much 23 was transferred in and how much was transferred out 24 and what your ending equity value is, right? 25 A And the difference is the change in value</p>

<p style="text-align: right;">Page 166</p> <p>1 of investments.</p> <p>2 Q And that's also known as the net</p> <p>3 out-of-pocket gain or net out-of-pocket loss, right?</p> <p>4 A No. There's a whole different theory of</p> <p>5 damages so, no, you can't put those words in my</p> <p>6 mouth.</p> <p>7 Q Isn't that exactly what your calculation of</p> <p>8 dollar change in account value is a net</p> <p>9 out-of-pocket calculation but you did it from</p> <p>10 November '07 to November '08? You looked at</p> <p>11 everything that came in, all your losses, right?</p> <p>12 Isn't that a net out-of-pocket, same thing?</p> <p>13 A As long as we agree that when I say "net</p> <p>14 out-of-pocket," or you're asking me net</p> <p>15 out-of-pocket you're talking about accounting</p> <p>16 changes in a single month.</p> <p>17 I don't want to be later quoted that I was</p> <p>18 somehow agreeing that the period that you want to</p> <p>19 use from September 2005 to February or March 2009 is</p> <p>20 a correct calculation.</p> <p>21 Q So we agree that net out-of-pocket losses</p> <p>22 is the correct calculation. We just disagree as to</p> <p>23 the relevant period of time, right?</p> <p>24 A Well, not necessarily. I don't know what</p> <p>25 Mr. Cramer did because when he testified he didn't</p>	<p style="text-align: right;">Page 167</p> <p>1 have his results complete. So I'm not sure what</p> <p>2 exactly he did, so I'm not sure how this relates to</p> <p>3 what he did.</p> <p>4 Q Exhibit 27, entitled "Change in investment</p> <p>5 value during period," and then the top line says</p> <p>6 "Dollar change in account value."?</p> <p>7 A Yes.</p> <p>8 Q So are you representing that this shows how</p> <p>9 much money you lost from 11/07 to 2/09?</p> <p>10 A What I'm representing is that those are the</p> <p>11 numbers that I took off the Schwab statements in</p> <p>12 that change in account value location, as I talked</p> <p>13 about before. That's what I'm representing.</p> <p>14 Q And you're saying this is an accurate</p> <p>15 measure of your losses for that period of time.</p> <p>16 A If I transferred the information from the</p> <p>17 account, from the Schwab statements to this table</p> <p>18 accurately, the answer is yes.</p> <p>19 Q Okay. And we can agree that it ignores the</p> <p>20 \$550,000 in gains that you had prior to</p> <p>21 November 2007, correct?</p> <p>22 A They're not shown on there, yes.</p> <p>23 Q So I'm looking at your entry for</p> <p>24 December 2007. It shows for -5215 and -5386 it</p> <p>25 shows a \$39,948.70 loss, correct?</p>
<p style="text-align: right;">Page 168</p> <p>1 A Yes.</p> <p>2 Q And for the account ending in -4369 it</p> <p>3 shows a \$28,865.60 loss, correct?</p> <p>4 A Yes.</p> <p>5 Q So that's some pretty big losses for</p> <p>6 December '07, correct?</p> <p>7 A Not nearly as big as they were later, but,</p> <p>8 yes, those are big losses.</p> <p>9 MR. BRADLEY: Judge, what I'd like to do is</p> <p>10 hand out the December Schwab monthly statement so we</p> <p>11 can look at the -- as I think Carl called them the</p> <p>12 "source documents" for Mr. Garmong's calculations.</p> <p>13 And they've been produced in discovery and they're</p> <p>14 actually on flash drive.</p> <p>15 ARBITRATOR PRO: Okay. So this is, really,</p> <p>16 contained in Exhibit 24. It's an expert from 24.</p> <p>17 Does it have Bates stamps on them? Starting Bates</p> <p>18 Stamp 798 through 801 of exhibit -- so we'll just</p> <p>19 note that as Exhibit 24, an excerpt from Exhibit 24.</p> <p>20 Make this 24-A.</p> <p>21 THE WITNESS: That's what this is.</p> <p>22 (Exhibit 24-A marked.)</p> <p>23 ARBITRATOR PRO: It's a portion of</p> <p>24 Plaintiff's Exhibit 24.</p> <p>25 MR. HEBERT: Yes.</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. BRADLEY:</p> <p>2 Q Mr. Garmong, up in the left-hand corner it</p> <p>3 says "Rollover IRA" and it has an account number</p> <p>4 ending in -5386, correct?</p> <p>5 A Yes.</p> <p>6 Q And it's the statement period of December 1</p> <p>7 '07 to December 31st '07, correct?</p> <p>8 A Yes.</p> <p>9 Q And you see over on the right column under</p> <p>10 "Change in account value" it says "Starting account</p> <p>11 value" -- and I apologize to the court reporter --</p> <p>12 but it's \$1,438,345.39, correct?</p> <p>13 A Yes.</p> <p>14 Q And then the ending value it shows - I'm</p> <p>15 sorry. Below the starting account value it has</p> <p>16 transaction and income of \$47,549.52, right?</p> <p>17 A Yes.</p> <p>18 Q And so the next line is "Change in value of</p> <p>19 investments." It's \$39,948.70.</p> <p>20 A Yes.</p> <p>21 Q So the ending account value is</p> <p>22 1,445,946.21, right?</p> <p>23 A Yes.</p> <p>24 Q So you have represented in your damage</p> <p>25 calculation that there was a loss of 39,000 when, in</p>

<p style="text-align: right;">Page 170</p> <p>1 fact, there was a gain, correct?</p> <p>2 A There was a gain in the account. There was</p> <p>3 not -- there was still a change in the value of</p> <p>4 investments of minus \$39,948.70.</p> <p>5 Q So you think it's fair to ignore the</p> <p>6 \$47,000 in income?</p> <p>7 A I think what's fair is to use the number</p> <p>8 that Schwab provided. We need to look. If we want</p> <p>9 to parse this through, we need to look and see where</p> <p>10 that \$47,000 came from.</p> <p>11 Q It's on that page and we're going to get to</p> <p>12 that?</p> <p>13 A Oh, okay.</p> <p>14 Q If you look down under "Income Summary," it</p> <p>15 shows money, funds, dividends of four thousand and</p> <p>16 change, correct?</p> <p>17 A Right.</p> <p>18 Q And then it shows cash dividends of about</p> <p>19 eight-seven hundred dollars and change, correct?</p> <p>20 A Yes.</p> <p>21 Q And then it shows total capital gains of</p> <p>22 thirty-four thousand and change, correct?</p> <p>23 A Yes.</p> <p>24 Q And it shows a total income of \$47,000,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 171</p> <p>1 A Yes.</p> <p>2 Q So instead of your chart accurately</p> <p>3 reflecting that in December you had a profit of</p> <p>4 \$7,600, it misrepresents that you had a loss of</p> <p>5 \$39,000, correct?</p> <p>6 A It does not misrepresent anything. What I</p> <p>7 was looking at was a change in investment value,</p> <p>8 which is exactly what is reported here as minus</p> <p>9 \$39,000. What I was concerned about was the change</p> <p>10 in the capital value of my investment, and that's</p> <p>11 what this reports.</p> <p>12 Q So you're entitled to ignore the \$47,000 of</p> <p>13 income under your theory of damages, right?</p> <p>14 A I'm entitled to use the number that Schwab</p> <p>15 reported and is what I was reporting on my chart</p> <p>16 0439 -- I'm sorry. Exhibit 27.</p> <p>17 Q So when you buy stocks, you hope to make</p> <p>18 money from an increase in principal, right?</p> <p>19 A Yes.</p> <p>20 Q And you also expect to make money from</p> <p>21 earnings and dividends and interest, correct?</p> <p>22 A It's possible, yes.</p> <p>23 Q So even though you expect to earn money</p> <p>24 from earnings, dividends and interest, by your</p> <p>25 damage calculation, they're irrelevant.</p>
<p style="text-align: right;">Page 172</p> <p>1 A No. They don't reflect the change in value</p> <p>2 of the investment.</p> <p>3 Q So in December this account did not lose</p> <p>4 any money. We can agree on that.</p> <p>5 A No. What we -- well, I can't agree on</p> <p>6 that, no.</p> <p>7 Q Ending account value is more than starting</p> <p>8 account value. How can you not understand that your</p> <p>9 account made \$7,600?</p> <p>10 A Well, the account did. That doesn't say</p> <p>11 that the investment, capital value of the investment</p> <p>12 either went up or down.</p> <p>13 Q Your chart says it's a dollar change in</p> <p>14 account value. That's misleading, isn't it?</p> <p>15 A Dollar change in account value.</p> <p>16 ARBITRATOR PRO: No. I think he's reading</p> <p>17 from Exhibit 27, the title, "Dollar change in</p> <p>18 account value."</p> <p>19 THE WITNESS: It may be. It, perhaps,</p> <p>20 should say "Dollar change in investment value,"</p> <p>21 because that's what the title is at the top.</p> <p>22 BY MR. BRADLEY:</p> <p>23 Q Okay. We can make this 24-B, if that's</p> <p>24 what --</p> <p>25 ARBITRATOR PRO: All right. If it's from</p>	<p style="text-align: right;">Page 173</p> <p>1 the same -- extracted from 24.</p> <p>2 MR. BRADLEY: It's for December.</p> <p>3 (Exhibit 24-B marked.)</p> <p>4 BY MR. BRADLEY:</p> <p>5 Q Sir, up on the upper left-hand chart do you</p> <p>6 see it's account number ending -4369?</p> <p>7 A I see that.</p> <p>8 Q And over on the right-hand column you see</p> <p>9 there's a section entitled "Change in account</p> <p>10 value"?</p> <p>11 A Yes.</p> <p>12 Q And the starting account value is four</p> <p>13 hundred sixty-eight thousand and change, correct?</p> <p>14 A Yes.</p> <p>15 Q And transaction and income is thirty</p> <p>16 thousand and change?</p> <p>17 A I see that.</p> <p>18 Q And you see change in investments,</p> <p>19 twenty-eight thousand and change?</p> <p>20 A Yes.</p> <p>21 Q So the ending account value is four hundred</p> <p>22 seventy thousand and change, right?</p> <p>23 A Yes.</p> <p>24 Q You represented that for that month there</p> <p>25 was a loss of twenty eight thousand and change in</p>

<p style="text-align: right;">Page 174</p> <p>1 your chart, which is Exhibit 27, correct?</p> <p>2 A Yes.</p> <p>3 Q So, again, your chart or your damage</p> <p>4 calculations intentionally omits the \$30,000 in</p> <p>5 income you received that month, correct?</p> <p>6 A All I was trying to do was represent the</p> <p>7 change in the value of the investments.</p> <p>8 Q So we can agree, though, that the account</p> <p>9 did not lose money? This account -4369 did not lose</p> <p>10 money in December 2007, correct?</p> <p>11 A If by that you mean the ending account</p> <p>12 value is greater than the starting account value,</p> <p>13 yes.</p> <p>14 Q And if you wanted to sell out this account</p> <p>15 and go to cash in December 31st, '07, you would</p> <p>16 have had more money than if you sold it on</p> <p>17 December 1st, right?</p> <p>18 A Yes.</p> <p>19 MR. BRADLEY: Judge, this would be a good</p> <p>20 time to switch binders.</p> <p>21 ARBITRATOR PRO: Okay. Turn to Tab 3.</p> <p>22 BY MR. BRADLEY:</p> <p>23 Q If you would turn to Tab 3. That's your</p> <p>24 handwriting, correct?</p> <p>25 A Well, it's a printed form and there's some</p>	<p style="text-align: right;">Page 175</p> <p>1 of my handwriting on that form, yes.</p> <p>2 Q And did you say you filled this out at</p> <p>3 Mr. Christian's office or did you take it home and</p> <p>4 fill it out?</p> <p>5 A At Mr. Christian's office.</p> <p>6 Q If you turn to Bates stamp 040, so am I</p> <p>7 correct that Wespac was only managing -- question</p> <p>8 one, only 40 percent of your investable assets?</p> <p>9 A I didn't have any reports in front of me.</p> <p>10 This was just an off-the-cuff estimate, so that's</p> <p>11 what I wrote down, yes.</p> <p>12 Q And you had approximately 3 million that</p> <p>13 you had in a muni bond ladder, correct?</p> <p>14 A Something like that, yes.</p> <p>15 Q Okay. And you held those short-term muni</p> <p>16 bonds to maturity, didn't you?</p> <p>17 A They weren't short term, necessarily. But</p> <p>18 every one of them I held -- every municipal bond I</p> <p>19 ever owned I held it to maturity or until it was</p> <p>20 called by the issuer.</p> <p>21 Q And that reduces the volatility of value in</p> <p>22 bonds by holding it to maturity, correct, or until</p> <p>23 it's called?</p> <p>24 A I don't know. That's something that is</p> <p>25 just beyond my knowledge.</p>
<p style="text-align: right;">Page 176</p> <p>1 Q Okay. So overall at this point you were --</p> <p>2 when you were transferring in the securities, you</p> <p>3 had about a 60 percent bond, 40 percent stock</p> <p>4 portfolio in general.</p> <p>5 A As a rough estimate, yes.</p> <p>6 Q Okay. And then if you turn to Tab 4,</p> <p>7 Exhibit 4?</p> <p>8 A You know, looking back, I'm not sure that</p> <p>9 that's --</p> <p>10 Q There's no question pending.</p> <p>11 A I'm trying to finish my -- I was thinking</p> <p>12 about your 60/40 split and I'm not sure that's an</p> <p>13 accurate number. But that's what we got down here</p> <p>14 on this paper.</p> <p>15 ARBITRATOR PRO: Go ahead. We're on</p> <p>16 Exhibit 4?</p> <p>17 MR. BRADLEY: Yes.</p> <p>18 BY MR. BRADLEY:</p> <p>19 Q On this front page 041, Wespac's telling</p> <p>20 you that this is an Investment Policy Questionnaire,</p> <p>21 correct?</p> <p>22 A Oh, yes, up in the title. Yes.</p> <p>23 Q Yeah. And it says, "The following series</p> <p>24 of questions is designed to develop a better</p> <p>25 understanding of your tolerance for risk," correct?</p>	<p style="text-align: right;">Page 177</p> <p>1 A Yes.</p> <p>2 Q And then "Understanding your tolerance for</p> <p>3 investment risk related to your investment return</p> <p>4 expectation is an important first step in designing</p> <p>5 a portfolio," correct.</p> <p>6 A That's what it says.</p> <p>7 Q Okay. And, then, where did you fill out</p> <p>8 this -- if you turn to the next page, and that's</p> <p>9 your handwriting, that's not printed.</p> <p>10 A Correct.</p> <p>11 Q And where did you fill this form out?</p> <p>12 A You have these separated and as two</p> <p>13 different forms, but I believe that Exhibit 3 and</p> <p>14 Exhibit 4 were presented to me as a single document.</p> <p>15 So Exhibit 3 and Exhibit 4 were done at the</p> <p>16 same time and at the same place; that is, at the</p> <p>17 Wespac office.</p> <p>18 Q Okay. If you look down to No. 1, "Risk</p> <p>19 factor," the question is, "Before you make a</p> <p>20 decision on any investment, you need to consider how</p> <p>21 you feel about the prospects of potential loss of</p> <p>22 principal. This is a basic principal investing.</p> <p>23 The higher return you seek, the more risk you face."</p> <p>24 Do you see that?</p> <p>25 A I see that.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q Now, can we agree that that is a true and 2 correct basic principal of investing, the higher 3 return you seek, the more risk you face? 4 A I can agree that that is a rule of thumb. 5 I don't know that it is always the case. I don't 6 know enough about investments to understand all 7 these things. 8 Q Do you agree or disagree that the higher 9 return you seek, the more risk you face? 10 A In some cases, perhaps. I don't know if 11 there are other cases that it would not be true. 12 Q Okay. And it goes on to say, "Based on 13 your feelings about risk and potential returns, your 14 goal is to" -- and you've got four choices, correct? 15 A You're talking about after my handwriting 16 part? 17 Q You're correct. 18 A Yeah, four choices. 19 Q Four choices without your handwritten 20 choice? 21 A Yes. 22 Q And if you look down at Subsection D, it 23 says -- the goal in D says, "the safety of my 24 investment principal," correct? 25 A That's what it says.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q And you chose not to mark that, correct? 2 A Correct. 3 Q And instead you wrote in "Moderate growth, 4 low moderate risk." Is that correct? 5 A Yes. 6 Q And we can agree that's a more risky choice 7 than D, "the safety of my investment principal," 8 correct? 9 A Well, I don't know. "The safety of my 10 investment principal," what does that mean in a 11 practical sense? 12 Q What does it mean? 13 A Does it mean stick it in the bank? 14 Q What does it mean to you? 15 A It means that it does not include the 16 concept of whether there's any growth or not. I 17 explained to Mr. Christian at the time what I was 18 basically trying to do was preserve my principal and 19 stay with inflation, not lose ground in respect to 20 inflation. 21 Q Okay. If you turn the page, under two, 22 "Investment approach, which of the statements best 23 describes your overall approach to investing as a 24 means to achieving your goals." 25 You did not mark "A," which says, "Having a</p>
<p style="text-align: right;">Page 180</p> <p>1 relative level of stability in my overall investment 2 portfolio," correct? 3 A That's correct. I did not. 4 Q And, instead, you picked a more risky 5 selection, which is "B, Moderately increasing my 6 investment value while minimizing potential for loss 7 of principal." Can we agree you chose a more risky 8 answer to No. 2? 9 A Cannot agree to that. I cannot agree to 10 that. Maybe you do. A relative -- and, again, keep 11 in mind my background is very technical and so a 12 relative level of stability is -- does not suggest 13 to me a potential for loss of principal or not, 14 okay? It could be stability with a lot of loss of 15 principal. 16 Q No. 3 under "Volatility," you chose -- it 17 says, "The value of most investments fluctuates from 18 year to year as well over the short term. How would 19 you feel if an investment you had committed to over 20 10 years lost 20 percent of its value during the 21 first year?" You chose "B, I would be concerned and 22 may consider selling my investment," right? 23 A Yes, that's what I wrote. That's the box I 24 checked. 25 Q And we can agree that "A" is more</p>	<p style="text-align: right;">Page 181</p> <p>1 conservative because it says, "I would be extremely 2 concerned and would sell my investment," correct? 3 A No. I have to understand why it lost 4 20 percent. 5 Q So it's your testimony that "B" is more 6 conservative than "A"? 7 A No. I cannot compare them as far as 8 conservatism. 9 Q You're unable to do so? 10 A Correct. 11 Q Four under "Variation" it says, "Realizing 12 any market-based investments may move up or down in 13 value over time, with which of the hypothetical 14 portfolios below would you feel the most 15 comfortable" and you marked the fourth box down. 16 A Yes. 17 Q And that shows a gain in the first year of 18 9 percent, a loss in Year 2 of 11 percent, increase 19 in Year 3 of 26 percent, right? 20 A That's what this shows. 21 Q We can agree that the three boxes above 22 that are less volatile, correct? 23 A No. We talked about this in my deposition. 24 Q He wasn't here (indicating). 25 A We talked about that in my deposition and I</p>

<p style="text-align: right;">Page 182</p> <p>1 told you I could not agree to that. I said I had 2 not done the statistics on this to calculate the 3 mean and variation. 4 So I can't say that that is a better -- 5 that 7 is a more risky result than 1 or 2 or 3. 6 Q I asked you whether it was volatile. 7 A Oh, sorry. Please ask the question again. 8 Maybe I didn't understand it. 9 Q You picked the one next to 7 and my 10 question is, That is much more volatile than, for 11 example, Box No. 1, the 3 percent, 3 percent, 12 3 percent, right? 13 A Definitely. 14 Q Okay. On 042 when you wrote in your own 15 box, your testimony, I think this morning, was that 16 you wanted to be very conservative. But those words 17 aren't anywhere written on your goals, correct, here 18 under "Risk factors"? You wrote "Moderate growth" 19 and "Low-moderate risk." You never wrote "Very 20 conservative," right? 21 A Well, if you ignore the handwritten portion 22 before the four choices, you're right, I didn't. 23 Q Okay. And I know we've complained about a 24 missing page, but if you felt entitled to or 25 authorized to write in your own, "E, Moderate growth</p>	<p style="text-align: right;">Page 183</p> <p>1 or low-moderate risk," there's nothing preventing 2 you from writing "Very conservative" there, was 3 there? 4 A Nothing prevented me from doing that. 5 Q All right. So if you turn to 044 now, this 6 is on time horizon, you wrote down that you have a 7 long time horizon, correct? You checked "B, five to 8 ten years." 9 A Yes. 10 Q Okay. So you knew and it describes it 11 above that example of a multistage time horizon 12 where there's an initial goal and then a primary 13 goal, so there's like a multistage time horizon, 14 right? 15 A Yes, I see that. 16 Q But you said you only had one time horizon, 17 correct? 18 A That's correct. I was thinking of 19 retirement and I hoped that I would live more than 20 ten years in retirement, and I have. 21 Q And on this next page 8 under "Secondary 22 goal" it says "Not applicable." It says "I only 23 have a single-stage time horizon," right? 24 A Yes. 25 Q And then if you turn a couple more pages to</p>
<p style="text-align: right;">Page 184</p> <p>1 047 under "Comments" -- 2 A This is the Page No. 9. 3 Q Yes. 047. 4 A Okay. 5 Q And nobody told you what to write in under 6 "Comments," right? That's your handwriting? 7 A That's correct. 8 Q Does it say anything there about wanting to 9 be very conservative, as you testified to in your 10 direct examination. 11 A Back under Box 2-B is what I wanted, so I 12 didn't repeat it. It does not say "I want to be 13 very conservative." 14 Q Okay. 15 A That's probably what I would have put on 16 the missing page 11. 17 Q Tab 5, if you turn to that, and it refers 18 to -- I'm sorry. It's Wespac 057 and this is a 19 document entitled "Investment Management Agreement," 20 correct? 21 A Yes. 22 Q Whose handwriting is all over Exhibit 5? 23 A Well, there's at least two. Up at the top 24 it says, "Wrong form, California," and then under 25 Paragraph 1 it says, "Joint MNWA" and the underlying</p>	<p style="text-align: right;">Page 185</p> <p>1 and further down the page, that's me. 2 The handwriting that's at an angle that 3 starts off "I'll have," that's not me. 4 Q Okay. And then the next page, is that your 5 handwriting to the right? 6 A Yes. 7 Q Okay. And then the page 059, is that your 8 handwriting and circling? 9 A To save you time, I believe all of the 10 handwriting in the rest of that document is me. 11 Q Okay. I appreciate that. 12 On the document Bates-stamped 060, to the 13 right it says, "No" and that's next to the sentence 14 "All transactions in the portfolio of assets will be 15 done at WA's sole discretion and without obligation 16 to first notify or consult with client," correct? 17 A That's correct. 18 Q Did that ever change in the subsequent 19 drafts that you -- 20 A They ignored my request on that. 21 Q So we'll get to this. But you always from 22 the Day 1 gave sole discretion to Wespac Advisors, 23 correct? 24 A We'd have to go over and check the final 25 version but I believe that is correct.</p>

<p style="text-align: right;">Page 186</p> <p>1 Q Okay. And then if you turn to Tab 6, this 2 is another document entitled "Investment Management 3 Agreement" and it starts with Wespac 065. 4 A I was going to try to save you a little 5 time, counsel. I believe all of the writing on this 6 document is me. 7 Q And can we agree -- 8 A I'm sorry. Up to page 071 on the final 9 exhibit, a fee schedule, down at the bottom that is 10 not me. 11 ARBITRATOR PRO: Mr. Garmong, can you 12 explain why there are multiple copies of the 13 agreement? We've got -- I'm sorry. We have five 14 and six now, which contain marginalia handwritten 15 entries and so forth. 16 Is it the same agreement, multiple copies 17 of the same agreement? 18 THE WITNESS: It's marked-up drafts. 19 ARBITRATOR PRO: Explain to me how these 20 came about, then. Was a blank form provided to you 21 by Wespac and then you had multiple copies and made 22 changes or would you make changes, send it back, 23 they'd redo it? 24 THE WITNESS: My recollection is that -- 25 speaking of, say, Exhibit 5, Wespac, Mr. Christian,</p>	<p style="text-align: right;">Page 187</p> <p>1 handed me that printed document and requested any 2 changes that I wanted. 3 ARBITRATOR PRO: Okay. 4 THE WITNESS: And No. 6 is the same, but 5 I'll tell you, your Honor, I'm puzzled. I don't 6 know if 5 came before 6 or 6 came before 5. Maybe 7 counsel knows but I looked at it and couldn't really 8 tell. But then eventually 7 was the one that got 9 signed. 10 ARBITRATOR PRO: Well, they do seem to be 11 changed. If you look at 5 under "Appointment 1, 12 client appoints WA's investment adviser the 13 portfolio assets," parens, "as hereinafter defined," 14 closed parens, "as the sole investment authority," 15 and there's a notation "Joint" below that. And then 16 you look at Exhibit 6 and there is a change under 17 that appointment designation and instead it says 18 "With designated investment authority." 19 So it looks like there were iterations of 20 the Investment Management Agreement accomplished. 21 I'm just trying to determine sequentially, are they 22 in the sequence that seems to be reflected in 5 and 23 then 6, or do you know. 24 THE WITNESS: As I said, when I saw it, two 25 drafts and a final, naturally I thought to myself</p>
<p style="text-align: right;">Page 188</p> <p>1 which of these drafts came first and it looked to me 2 as though -- let me say that over again. 3 I couldn't tell which came first and which 4 came second. I tend to think that 5 may have been 5 first because what it says at the top, "Wrong form, 6 California." Wespac has offices in California. 7 ARBITRATOR PRO: Let me stop you. I think 8 I answered my own question. When I look over at 7, 9 which is the executed copy, it has that change "with 10 designated investment authority," so that would 11 suggest to me they were sequential 5, 6 and 7. 12 MR. BRADLEY: Judge, if I could point out 13 on Tab 5 at the lower bottom in tiny little print it 14 has "Revision" and has a date of 7/21/04. 15 ARBITRATOR PRO: What page are you on on 16 that? 17 MR. BRADLEY: Page 1 on the Investment 18 Management Agreement in tiny little print at the 19 very bottom. 20 ARBITRATOR PRO: 7/21/04. Got it. 21 MR. BRADLEY: Yeah. And then if you look 22 at Tab 6 -- 23 ARBITRATOR PRO: You're right. 8/1/05. 24 MR. BRADLEY: You'll see a different day. 25 ARBITRATOR PRO: Whoa. Wait a minute.</p>	<p style="text-align: right;">Page 189</p> <p>1 That doesn't make sense. 2 MR. BRADLEY: I think it says "8/12." 3 ARBITRATOR PRO: Okay. 4 THE WITNESS: Is this important, which 5 comes first? 6 BY MR. BRADLEY: 7 MR. BRADLEY: I just wanted to clear it up? 8 ARBITRATOR PRO: I'm not sure it is, 9 because we have multiple copies of the same thing. 10 And it appears there was a progression to the point 11 of Exhibit 7, which is the operative Investment 12 Management Agreement agreed to. 13 THE WITNESS: Correct. 14 ARBITRATOR PRO: Okay. 15 BY MR. BRADLEY: 16 Q If you look at 051 in Tab 7, it's the 17 continuation of paragraph 55, "Discretionary 18 authority" but it does say towards the end "All 19 transactions in portfolio assets will be done at 20 WA's sole discretion without obligation to first 21 notify or consult client," correct? 22 A Correct. 23 Q So Mr. Christian had sole discretion and 24 you signed this agreement, correct? 25 A Yes.</p>

<p style="text-align: right;">Page 190</p> <p>1 Q Okay.</p> <p>2 A As long as we recognize he had to do it</p> <p>3 under my objectives.</p> <p>4 Q If you turn to Tab 8 it's a transaction</p> <p>5 ledger printed out by Wespac. Do you see that?</p> <p>6 A Yes.</p> <p>7 Q From 9/1/05 to 3/6/09.</p> <p>8 A I do see that.</p> <p>9 Q And then on that first page it shows</p> <p>10 "Receipt of securities" and it includes a bunch of</p> <p>11 different shares, Marathon Oil Corp, correct?</p> <p>12 A Yes.</p> <p>13 Q And those are stocks or mutual funds that</p> <p>14 you owned before you hired Wespac, correct?</p> <p>15 A I'm not sure what "Receipt of securities</p> <p>16 means, but I think that's what it means. I think it</p> <p>17 means that -- "Receipt of securities" means it came</p> <p>18 under Wespac Management, not from someplace outside</p> <p>19 Schwab. So these securities were already in Schwab,</p> <p>20 and when Wespac got permission to be my adviser,</p> <p>21 then it received the securities in that sense.</p> <p>22 Q Okay. And then turn to the next page.</p> <p>23 It's another transaction ledger report, Bates 0355.</p> <p>24 Again, on 9/14/05 it shows "Receipt of securities"</p> <p>25 for a number of other stocks, correct?</p>	<p style="text-align: right;">Page 191</p> <p>1 A Yes.</p> <p>2 Q And, again, those are the same as the last</p> <p>3 stocks, the ones that transferred into the</p> <p>4 management of Wespac, even though Charles Schwab was</p> <p>5 the custodian.</p> <p>6 A I think that's a good way of putting it,</p> <p>7 that it got transferred under the management of</p> <p>8 Wespac.</p> <p>9 Q And those are all stocks in equity</p> <p>10 investments, correct?</p> <p>11 A Well, I don't know. Down here it says</p> <p>12 "Open Market International Fund." Is that a stock?</p> <p>13 Q I think it's a mutual fund.</p> <p>14 A So your question included mutual funds?</p> <p>15 Q Yeah. Either stocks or mutual funds</p> <p>16 holding stocks.</p> <p>17 A I think the answer is yes but I can't be</p> <p>18 sure.</p> <p>19 Q And then turn to the next page 0448.</p> <p>20 Again, on 9/14 it shows "Receipt of securities" and</p> <p>21 these are either stocks or mutual funds.</p> <p>22 A Once again, if you represent they are, I'll</p> <p>23 agree with you. I don't have any basis for</p> <p>24 disputing it.</p> <p>25 Q Okay. If you'd turn to Tab 13, Exhibit 13,</p>
<p style="text-align: right;">Page 192</p> <p>1 is this a letter you wrote to Matt Saltz?</p> <p>2 A It is.</p> <p>3 Q And will you tell the judge who Matt Saltz</p> <p>4 was.</p> <p>5 A Or is.</p> <p>6 Q Is.</p> <p>7 A As I discussed below -- earlier today, when</p> <p>8 you do a defined benefit plan, the way the IRS has</p> <p>9 it set up, you have to hire an actuary to set it up</p> <p>10 and manage it.</p> <p>11 Matt Saltz was an actuary person at this</p> <p>12 company Tri-Ad in Escondido, California. So he was</p> <p>13 my contact for both the establishment and transfer</p> <p>14 of -- and termination of the defined benefit plan</p> <p>15 and also how much I could put in each year.</p> <p>16 Q In this letter you expressed concerns about</p> <p>17 the delays in your termination of your defined</p> <p>18 benefit plan, correct?</p> <p>19 A Yes.</p> <p>20 Q In fact, you said, "Delays in the</p> <p>21 termination of my defined benefit plan are very</p> <p>22 costly to me, on the order of \$10,000 to 20,000 per</p> <p>23 month in lost potential gains. With the stock</p> <p>24 market doing so well at the moment, it's hurting me</p> <p>25 badly that the plan gains are limited to the</p>	<p style="text-align: right;">Page 193</p> <p>1 maximum.</p> <p>2 "Right now about half the plan's assets are</p> <p>3 in cash to hold the gains down but I don't want that</p> <p>4 to continue any longer than necessary," correct?</p> <p>5 A Correct, that's what it says.</p> <p>6 Q And so what you wanted to do was transfer</p> <p>7 out of your defined benefit plan into an IRA so you</p> <p>8 could invest all of it into stocks, correct?</p> <p>9 A So I would be free to invest all of it into</p> <p>10 stocks. It's called a "rollover," not a "transfer,"</p> <p>11 but yes.</p> <p>12 Q Okay. And you knew that when you hold the</p> <p>13 plan's assets in cash, you're not losing any money</p> <p>14 but you're also not making any money, correct?</p> <p>15 A Yes. You don't have the opportunity to</p> <p>16 make money.</p> <p>17 Q All right. So when you hold cash, you</p> <p>18 don't lose money, you don't make a lot of money,</p> <p>19 correct?</p> <p>20 A As a general proposition, yes.</p> <p>21 Q Okay. And you knew that as of May 24th,</p> <p>22 2006, right?</p> <p>23 A Well, I knew what was in this letter as of</p> <p>24 that date.</p> <p>25 Q In May 2006 you knew that you didn't lose</p>

<p style="text-align: right;">Page 194</p> <p>1 any money with cash and you don't make any money 2 with cash, correct? 3 A No. You get some return but not a giant 4 return. 5 Q A minimal return. 6 A Depends on minimal but -- 7 ARBITRATOR PRO: Whatever the interest rate 8 is. 9 THE WITNESS: You make a minimal return and 10 in general you don't lose money. 11 BY MR. BRADLEY: 12 Q Are you saying you never lose money when 13 you hold it in cash? 14 A If inflation is high, yes. 15 Q Other than -- 16 ARBITRATOR PRO: Lose value versus lose 17 money. I mean, we're talking about a dollar is 18 still a dollar, it's just no longer worth still a 19 dollar. 20 THE WITNESS: Right. I wasn't being 21 sufficiently precise. What Judge Pro said is what I 22 wanted to say. Effectively, you can lose money if 23 you have your money in the form of cash. 24 BY MR. BRADLEY: 25 Q All right. If you'd turn to Tab 15 and,</p>	<p style="text-align: right;">Page 195</p> <p>1 again, the Judge wasn't here during your deposition, 2 but we established that the correct date was not 3 April 8th, 2006, but was actually April 8th, 4 2007, correct? 5 A Yes. I made a mistake when I wrote the 6 date in. Too early in the year. 7 Q And in this letter you made certain 8 calculations, correct? You reported certain 9 calculations that you had made. That's a better 10 question? 11 A When you say I made, I have to read this to 12 see whether I made them or I got the information 13 from Matt Saltz. 14 Q Please review it. 15 (Witness reviewing document.) 16 THE WITNESS: I believe most of these 17 calculations are from Matt Saltz. 18 BY MR. BRADLEY: 19 Q You see where it starts out in the fourth 20 paragraph, "For example, maximum permissible value 21 if I were to terminate the plan at the end of 2007" 22 -- 23 A Could you stop for a minute -- oh, I see 24 it. Sorry. 25 Q At the end of 2007 is \$1,517,626, correct?</p>
<p style="text-align: right;">Page 196</p> <p>1 A Yes. 2 Q So then your letter goes on to say, "The 3 Schwab statement that just arrived indicates a 4 balance in the account as of March 31st, 2007, is 5 \$1,252,122." So that's something that you're adding 6 to the Matt Saltz's calculations, right? 7 A Well, I'm reporting what Schwab said. 8 Q Okay. "Since then I made a contribution of 9 \$140,000 so now the total in the account, ignoring 10 any change in asset value in eight days, is" and 11 then you show in parens, adding those two figures, 12 correct? 13 A Yes. And that's my calculation, adding the 14 two figures. 15 Q Right. And then it goes on to explain what 16 the maximum investment gain would be, correct? You 17 make that calculation. 18 A Right. 19 Q So it would be fair to say you're pretty 20 good at reading account statements to figure out 21 what the different values are, correct? 22 A Some values on an account statement I can 23 read and understand. Others I can't. 24 Q Would you look to the second page of that 25 letter.</p>	<p style="text-align: right;">Page 197</p> <p>1 A Yes. 2 Q The last paragraph says, "The point being 3 on the face of it there appears to be a safety valve 4 in all of these calculations and projections, just 5 run the plan another year. But that option runs out 6 in 2010, and in any event, it wrinkles my soul to 7 potentially be in a position where I'm cursing," 8 open parens -- "figuratively speaking," closed 9 parens, "Wespac for being so damn successful in its 10 investments for me that I'm exceeding the plan 11 maximums." 12 So this is keeping you up at night worrying 13 about the fact that you're missing out on gains, 14 right? 15 A Well, it wasn't keeping me up at night but 16 it was a concern. What was going on here is that 17 Matt Saltz was supposed to accomplish this 18 conversion of the defined benefit plan to my IRA, 19 and that has to be done through the IRS. You have 20 to have approval of what you're doing from the IRS. 21 And Matt had not been moving quickly enough and I 22 was trying to encourage him to do that conversion. 23 Q Would you turn to the next page of your 24 letter, Bates 0547. That first paragraph says, "Of 25 course I'm making these projections under the</p>

<p style="text-align: right;">Page 198</p> <p>1 assumption that all continues to go well in the 2 market and in Wespac's investment model, which may 3 or may not be the case." 4 So you're recognizing that Wespac's 5 investment model projections may be wrong, correct? 6 A Oh, yes. 7 Q And then you say, "There could be a period 8 of time when things wouldn't go so good and we would 9 have no problem hitting the lower return targets," 10 right? 11 A Yes. To modify, what I was concerned about 12 in the prior answer was that Wespac's investment 13 model would not continue to do well, not whether 14 projected results, but yes. 15 Q And when you refer to a period of time 16 where things wouldn't go so good, that's a reference 17 to the fact that sometimes your portfolio goes up 18 and sometimes your portfolio goes down, correct? 19 A Yes. 20 Q And if you turn to Tab 16, was that a fax 21 from you to Mr. Christian dated May 24th, 2007? 22 A Yes. 23 Q Is this the letter where you're interested 24 in removing the caps on your transfer of the defined 25 benefit plan to roll it over into an IRA?</p>	<p style="text-align: right;">Page 199</p> <p>1 A That's what this letter is about, yes. 2 Q It says, "I know what you're thinking, but, 3 hey, I got good reasons to be paranoid with 4 everybody in the world except you against me," 5 right? 6 A That was a tongue-and-cheek comment but, 7 yes, that's what the words say. As I recall -- 8 Q There's no question pending Mr. Garmoning. 9 ARBITRATOR PRO: Go ahead and ask another 10 question. 11 BY MR. BRADLEY: 12 Q If you turn to Tab 19, Mr. Garmoning, you've 13 had your account now for almost two years. We can 14 agree that Charles Schwab had your correct mailing 15 address, can't we? 16 A Well, what's the date of this? 17 Q August 2007. 18 ARBITRATOR PRO: Exhibit 19? 19 MR. BRADLEY: I'm sorry. Exhibit 20. 20 THE WITNESS: This is that fax of 21 August 16th, 2007? 22 BY MR. BRADLEY: 23 Q Right. Before I start asking you questions 24 about that, I just wanted to establish that for the 25 almost two years before this fax was written you'd</p>
<p style="text-align: right;">Page 200</p> <p>1 been receiving regular monthly statements from 2 Schwab, whether it was at your Tahoe address or your 3 Smith Valley address, correct? 4 A Yes. At some point I changed over and then 5 also later at some point I got rid of the P.O. Box 6 and was just receiving mail at the 11 D Court 7 address. 8 Q So it would be fair to say that from the 9 time you opened your account through August of 2007 10 you received copies of all your monthly statements 11 from Schwab, correct? 12 A I can't say that for a fact. That is very 13 possible. 14 Q And isn't it true that Schwab also sends 15 you a separate letter containing a confirmation of 16 any sales of securities or any purchases of any 17 securities? 18 A I've seen some of those but, again, I can't 19 say that they exactly match up with what happened. 20 I don't sit there and compare the letters that I get 21 with the monthly account statements. 22 Q As you sit here today are you aware that 23 you failed to receive from Charles Schwab any of the 24 monthly statements during the time you had an 25 account at Wespac?</p>	<p style="text-align: right;">Page 201</p> <p>1 A No. 2 Q As you sit here today are you aware of any 3 confirmations of sales or purchases of securities 4 that occurred while you were at Wespac and you 5 failed to get those confirmations? 6 A I am not aware of any such. 7 Q Okay. In this first paragraph you say, 8 "Like many other investors, I am sure I'm concerned 9 with what appears to be a worldwide free-fall in the 10 stock markets resulting from loan scandals." 11 What are you referring to about a free-fall 12 in the stock markets? 13 A Well, I think I was exaggerating a little 14 bit that the stock markets were falling. I think at 15 that time -- at least that's what the letter 16 indicates. 17 Q Would it be more accurate to say there was 18 volatility in the markets as of August of 2007 as 19 opposed to a free fall? 20 A I don't know. I would have to see a chart 21 of stock indices over time. 22 Q So what is it you were reading or watching 23 that gave you these concerns? 24 A Good question. I think it was pretty much 25 just chitchat with friends and from what you would</p>

<p style="text-align: right;">Page 202</p> <p>1 generally hear, the housing market's going bad, the 2 stock market's going bad. And I'd say to 3 Mr. Christian, What should we be doing about that? 4 Q So you weren't reading newspaper articles 5 on financial news as of August 2007? 6 A I have never done that. 7 Q You've never read financial articles -- 8 A Oh -- 9 Q -- in 2006 or 2007? 10 A I've seen articles in the general press but 11 I don't take any, you know, specific financial 12 publications. I would not look at them on the 13 Internet. I would not go to Schwab to, you know, 14 investigate what they had to say or anybody else. I 15 wasn't interested. I wanted to turn all this over 16 to somebody else. 17 Q So you can read general circulation 18 newspapers like the Reno Gazette Journal or the Las 19 Vegas Review Journal, those sort of magazines. I'm 20 not saying those specific ones but that's an example 21 of a general circulation magazine. 22 A Not on a regular basis. I would 23 occasionally see a newspaper or I would be talking 24 with a friend and the friend would say, The markets 25 are going down, it's a panic, and that's what</p>	<p style="text-align: right;">Page 203</p> <p>1 prompted a letter like this. 2 Q So if you had these concerns, why didn't 3 you meet with Mr. Christian and suggest going to 4 cash? 5 A Because that was not part of my duties 6 under the Investment Management Agreement. My duty 7 was to provide an objective. Mr. Christian's duty 8 was to decide what to do to meet that objective or 9 to tell me that he could not meet that objective. 10 What this reflects -- are you going to come to the 11 note at the bottom? 12 Q Yes. So what I'd like to say is this talks 13 more about cash and it goes on to say before we get 14 to the bottom, "My defined benefit plan has a 15 46 percent cash position but the two Keough 16 accounts, the IRA account, and the taxable account 17 are heavily invested." 18 So when you say "heavily invested," you 19 mean heavily invested in the stock market, correct? 20 A Yes. 21 Q And you understand that by being heavily 22 invested in the stock market your portfolio is more 23 volatile. It can go up more and it can go down 24 more, correct? 25 A That seems likely, yes.</p>
<p style="text-align: right;">Page 204</p> <p>1 Q But when you talk about your defined 2 benefit plan having a 46 percent cash position, that 3 takes out the volatility, correct? 4 A Reduces the volatility -- 5 Q Reduces it? 6 A -- as compared to with 100 percent -- well, 7 a 0 percent cash position. A 46 percent cash 8 position will likely reduce the volatility as 9 compared with a 100 percent cash position. 10 Did I say that right? No. Let me start 11 over. 12 A 46 percent cash position is likely to be 13 more volatile than a 100 percent cash position. I 14 think that's right. 15 Q And you knew that as of August 2007, 16 correct? 17 A Yes. 18 Q Okay. And at the very bottom you're asking 19 Mr. Christian what do you recommend should be the 20 strategy in your accounts at this time, correct? 21 A Yes. 22 Q Okay. And as a result -- I realize the 23 handwriting on the bottom is not your handwriting, 24 correct? 25 A Correct.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q And it says "Called to discuss, decided to 2 raise cash, sold approximately 50 percent of 3 holdings in QRP's" -- and that's qualified 4 retirement plans, right -- 5 A That's how I understand it. 6 Q -- and individual account. Left IRA alone, 7 already at 50 percent cash," right? 8 A That's what it says. 9 Q So you send him this fax, you guys had a 10 phone call, and together you came up with a plan to 11 go to 50 percent cash to reduce volatility, correct? 12 A I got confused over percentages of cash, 13 but certainly we were trying to reduce the chances 14 of loss of principal, yes, loss of principal and 15 capital. 16 Q And it's a plan the two of you together 17 arrived at, correct? 18 A Yes. That's how we worked before October 19 of 2007. 20 Q And we can agree that Mr. Christian did 21 follow the plan and raised cash to approximately 22 50 percent in all your accounts, correct? 23 A We would have to see the numbers as to what 24 he did, but if he did what he wrote here, then he 25 followed the plan.</p>

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1 Q You're not aware that Mr. Christian failed
2 to follow the plan, are you?

3 A No. I just haven't followed through to
4 check the numbers.

5 Q Well, when you got your September 2007
6 Charles Schwab monthly statement, you would have
7 been able to confirm that those sales of securities
8 occurred, correct?

9 A The one that -- the Schwab report that
10 comes out at the beginning of September, which
11 covers the month of August I -- yes, I could have
12 confirmed what indeed happened.

13 Q And as you said, you're not aware that you
14 didn't receive confirmations so you would have also
15 gotten confirmations of the sales of securities,
16 correct?

17 A Yes.

18 MR. BRADLEY: Judge, could we take a break?
19 We're moving along. I definitely think I'll finish
20 today.

21 ARBITRATOR PRO: Let's take a 10-minute
22 break.

23 (Recess taken.)

24 BY MR. BRADLEY:

25 Q Mr. Garmong, if you would turn to Tab 23 in

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1 this letter, you said you can't lose capital, right?
2 (Witness review document.)

3 ARBITRATOR PRO: Direct the witness to
4 where you're --

5 BY MR. BRADLEY:

6 Q The second page, first full paragraph,
7 second sentence. "It's really important to me you
8 structure my accounts so they do not lose capital."
9 Do you see that.

10 A I do.

11 Q So that's one of the important points this
12 letter was trying to explain, correct?

13 A Yes.

14 Q And another thing was on page 1, third
15 paragraph, you were telling Mr. Christian in this
16 letter that he was going to manage it solely without
17 any input or attention from you, correct?

18 A Correct.

19 Q And then, basically, it's his
20 responsibility from this point forward. That's what
21 your letter was trying to say, correct?

22 A It was my responsibility to give objectives
23 and his responsibility to act in accordance with
24 those objectives, just like paragraph 5 of the
25 Investment Management Agreement says.

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1 the defendant's exhibit binder.

2 A Yes.

3 Q We refer to this as the infamous
4 October 22nd, 2007, letter.

5 A I'd prefer to call it "the October 22nd,
6 2007 letter." It's not infamous to me.

7 ARBITRATOR PRO: Right. That would be
8 argumentative. Let's go ahead and go with
9 "October 22nd, 2007, letter."

10 BY MR. BRADLEY:

11 Q Do you have any explanation why the
12 defendants never received this until we received it
13 in discovery this year?

14 A I'd say that's -- if I can make an
15 objection, that's assuming facts not in evidence. I
16 don't know that they had received it. I don't know
17 there's any evidence they didn't receive it. As I
18 testified, I wrote it and I mailed it.

19 Q To summarize this letter, we could call it
20 the I-can't-lose- --

21 A Capital.

22 Q -- -capital letter." Would that be fair?

23 A Why don't we just call it "the
24 October 22nd letter."

25 Q Well, one of the things you said in here in

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1 Q On paragraph 5 under the sentence I started
2 to read, "If the markets decline, as I believe they
3 may, and if the markets do decline, to sell out the
4 losers" I'm a little confused.

5 If one instruction is you can't lose
6 capital and the other instruction is sell the
7 losers, by definition, if the portfolio doesn't
8 include any stocks that are losing money, how do you
9 sell out the losers?

10 A A that seems to be redundant, I agree.

11 Q So at this point you're telling
12 Mr. Christian, Hey, I'm not going to review my
13 statements anymore. I'm not going to get involved
14 in the account, in the portfolio management,
15 correct?

16 A It doesn't say that. It says I'm not going
17 to get involved in doing your job, but it does not
18 say I'm not going to look at my statements, or
19 anything like that.

20 Q When you testified this morning didn't you
21 indicate that you were so busy with all these other
22 things that you wouldn't be able to contribute much
23 to the management of your accounts as you had in the
24 past?

25 A That's correct.

<p style="text-align: right;">Page 210</p> <p>1 Q And you attached a number of articles to 2 this letter, correct?</p> <p>3 A Yes.</p> <p>4 Q And from reviewing these articles, you 5 deduced that the housing market was falling and 6 because of that you concluded that it's, quote, Very 7 possible the stock market will fall as well, 8 correct?</p> <p>9 A Yes.</p> <p>10 Q These articles that you attached, you got 11 them off the Internet, correct?</p> <p>12 A Yes.</p> <p>13 Q So you were reviewing the Internet for 14 articles, financial articles concerning the value of 15 residential homes, correct?</p> <p>16 A I was noticing articles of this kind. I 17 wasn't reviewing the Internet for any particular 18 purpose.</p> <p>19 Q Most of these articles are approximately a 20 year old, aren't they?</p> <p>21 A As of the date I wrote the letter, 22 October 22nd, yes, they were about a year old.</p> <p>23 Q Okay. So you had these articles in a file 24 somewhere, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 211</p> <p>1 Q Okay. So in 2006 you downloaded these 2 articles and printed them out from the Internet, 3 correct?</p> <p>4 A Yes.</p> <p>5 Q And you put them in a file, correct?</p> <p>6 A Yes.</p> <p>7 Q And then it's your testimony that about a 8 year later you read these articles and concluded the 9 stock market was going to -- or it's very possible 10 the stock market will fall as well, correct.</p> <p>11 A Yes. What brought this up was we had a 12 discussion at the earlier meeting somewhere around 13 October 10th and the subject of the effect of 14 housing prices on the stock market came up. I sent 15 these because I happened to have them in a file for 16 Mr. Christian to read.</p> <p>17 Q Did Mr. Christian predict that the stock 18 market -- that it was very possible the stock market 19 will fall as of October 22nd, 2007?</p> <p>20 A I'm not sure I understand the question.</p> <p>21 As of October 22nd, had he made that 22 prediction?</p> <p>23 Q To you.</p> <p>24 A I don't recall that he ever did. I don't 25 think Mr. Christian made a lot of predictions. I</p>
<p style="text-align: right;">Page 212</p> <p>1 think it's dangerous in his business to make 2 predictions to clients of that kind. I can only 3 surmise that because I've never been in his 4 business, but that seems like that would be risky.</p> <p>5 Q That last sentence says, "I'm trusting you 6 to watch my accounts very, very carefully and act to 7 avoid losses even at the expense of potential 8 gains."</p> <p>9 Now, when you're telling him to act to 10 avoid losses, are you telling him to go to cash?</p> <p>11 A No. I'm telling him to act to avoid 12 losses.</p> <p>13 Q Did you understand --</p> <p>14 A Remember, my instructions are to -- or my 15 part of our contractual arrangement is to give 16 objectives. That was to avoid losses. I never 17 tried to tell him what to do in order to avoid 18 losses. That was up to him.</p> <p>19 Q You knew you were in stocks in 20 October 2007, right?</p> <p>21 A I had some, yes.</p> <p>22 Q But you were getting your monthly 23 statements and you were reviewing them, right?</p> <p>24 A Not very carefully but yes, I received 25 monthly statements.</p>	<p style="text-align: right;">Page 213</p> <p>1 Q And you know stocks go down, correct?</p> <p>2 A They can.</p> <p>3 Q And you know that Mr. Christian and Wespac 4 cannot predict whether stocks will go down in the 5 short term, correct?</p> <p>6 A Well, we've been through this. I don't 7 know what they can predict. To my understanding 8 there is very sophisticated math modeling of stock 9 markets. The people who make huge amounts of money 10 are watching the market very carefully.</p> <p>11 According to the Wespac brochures, Exhibits 12 1 and 2 from the our exhibits, from the plaintiff's 13 exhibits, Wespac said it had access to extremely 14 sophisticated market research. And I don't know if 15 it said "modeling" but extremely sophisticated 16 analysis of the stock market, and so I don't know 17 what they could do.</p> <p>18 Q You took from that that -- I mean, we can 19 agree that Mr. Christian never said, I have a 20 mathematical computerized model that can predict 21 short-term fluctuations in the stock market, 22 correct?</p> <p>23 A He never said that, yes.</p> <p>24 Q Okay. So you took sophisticated computer 25 modeling from an investment brochure and concluded</p>

<p style="text-align: right;">Page 214</p> <p>1 that Mr. Christian could, in fact, predict 2 short-term fluctuations in the stock market, 3 correct? 4 A No, I never said that. What I said was 5 their brochure that they used to sell me on hiring 6 Wespac said they had access to extremely 7 sophisticated research. We can go back to our 8 Exhibits 1 and 2, if you want to confirm that. 9 And I took that to mean that they have 10 access to, if there are computer models to predict 11 short- or long-term gains and losses, that's what I 12 understood. 13 During the deposition you wanted me to say 14 that I was taking the position that they could with 15 some degree of certainty. 16 Q The judge wasn't at the deposition so you 17 don't have to keep talking about it. You could just 18 answer my questions. So let me ask you this -- 19 A Okay. 20 Q -- you knew that the defendants had 21 computer models and it was your belief as of 22 October 2007 that these computer models were so 23 sophisticated that they could determine whether or 24 not stocks would go down in the short term, correct? 25 A I didn't say that. What I said was I</p>	<p style="text-align: right;">Page 215</p> <p>1 didn't know what they could do. I don't know this 2 field any more than he would know about some 3 sophisticated metallurgy field. 4 So I'm saying I don't know what capability 5 they had and Mr. Christian certainly never told me 6 they had any particular capabilities. 7 Q So as of October 2007, it would be fair to 8 say that you thought Mr. Christian could hold stocks 9 in your portfolio and at the same time avoid all 10 losses in those stocks, correct? 11 A To a first approximation, yes. 12 Q Do you want me to explain that or not? 13 Okay. I won't. 14 When you referred to selling out losers, do 15 you mean if a stock goes down during one day or if a 16 stock goes down over a period of a week or do you 17 mean if a stock goes down over a period of a month 18 or over a period of a year? 19 A I was setting objectives for him and trying 20 to give him guidelines as to what my instructions 21 were -- 22 Q How do you define "losers"? 23 MR. HEBERT: Let him finish his answer. 24 ARBITRATOR PRO: Go ahead and finish your 25 answer.</p>
<p style="text-align: right;">Page 216</p> <p>1 THE WITNESS: You know, I think there's a 2 certain principle or rule of reason here. Had 3 Wespac lost over -- from the period of 4 November 1st, 2007, till the end of February 2009, 5 if Wespac had lost \$100, \$500, \$1,000, we wouldn't 6 be here. But they lost \$648,000. 7 Stocks going down to half of their value 8 when Wespac knew techniques like stop loss to 9 prevent that, that's why we're here. So, you know, 10 if you're trying to get me to say that I'm being 11 foolish in talking about any losses, one cent of 12 loss, that's not what I'm talking about. 13 BY MR. BRADLEY: 14 Q I'm asking you to tell me what you mean by 15 "sell out the losers." 16 Losers over what period of time? 17 A I'm giving him permission to sell out the 18 losers if they adversely affecting the capital 19 value of the account. 20 Q Over what period of time? 21 A Whatever he chooses. That's his job to 22 decide questions like that. 23 Q You're giving him direction and telling him 24 sell out losers. What direction is it if there's no 25 sell losers after one day, one month or one year?</p>	<p style="text-align: right;">Page 217</p> <p>1 You have to tell us. 2 A I didn't -- well, what Mr. Christian should 3 have done, if it wasn't clear to him, his job as a 4 fiduciary and as an agent is to come back and ask 5 me, Greg Garmon, What did you have in mind there? 6 ARBITRATOR PRO: What would you have told 7 him if he did that? 8 THE WITNESS: I don't know. I think we 9 would have had to discuss it and find out what is a 10 reasonable approach. 11 ARBITRATOR PRO: All right. 12 BY MR. BRADLEY: 13 Q So if you turn to Exhibit 24, which is a 14 fax dated November 2nd, 2007, correct? 15 A Yes. 16 Q This wasn't part of your exhibits so this 17 is the first time the judge has seen it, correct. 18 A I don't recall. I don't think it was part 19 of our exhibits. 20 MR. HEBERT: It has a Wespac number at the 21 bottom. 22 THE WITNESS: It has a Wespac number but we 23 don't know if it was in our binder. 24 BY MR. BRADLEY: 25 Q We didn't discuss it earlier today, is my</p>

<p style="text-align: right;">Page 218</p> <p>1 point.</p> <p>2 So this is ten days after the date on your</p> <p>3 letter, October 22nd, right?</p> <p>4 A Yes, I think so.</p> <p>5 Q So this is right after you said that, I'm</p> <p>6 not going to be involved, you're managing this on</p> <p>7 your own, correct?</p> <p>8 A Correct.</p> <p>9 Q You're telling him now ten days after this</p> <p>10 letter, FYI, I'm making a few changes in my banking</p> <p>11 and Schwab accounts, right?</p> <p>12 A Yes.</p> <p>13 Q And then the paragraph 4 says, "So it's</p> <p>14 time to start thinking about changing account ending</p> <p>15 in -0713 over to the cash-flow generation model that</p> <p>16 you recommended," right?</p> <p>17 A Yes.</p> <p>18 Q So you're telling him that, you know, let's</p> <p>19 think about going to the cash flow generation model,</p> <p>20 right?</p> <p>21 A Yes.</p> <p>22 Q So this is right after you said you were</p> <p>23 not going to have any input and, yet, ten days later</p> <p>24 you're talking about we got to get together and</p> <p>25 discuss moving to the cash flow generation model.</p>	<p style="text-align: right;">Page 219</p> <p>1 A Is that a question?</p> <p>2 Q Yeah.</p> <p>3 A What is the question?</p> <p>4 Q Ten days after you said you weren't going</p> <p>5 to be involved, you sent him this fax that says,</p> <p>6 "Time to start thinking about changing the account</p> <p>7 over to the cash flow generation model," correct?</p> <p>8 A Yes. That's by way of addressing an</p> <p>9 objective. Are we going to have an objective of</p> <p>10 generating cash flow? We had talked about this and</p> <p>11 he recommended a strategy but we hadn't made my</p> <p>12 decisions and so I was giving him my thoughts on</p> <p>13 whether I wanted to change my objective to include</p> <p>14 cash flow.</p> <p>15 Q So this is isn't exactly what your</p> <p>16 October 22nd, 2007, letter said where you agree to</p> <p>17 turn over the management entirely, right? This is</p> <p>18 inconsistent, we can agree on that.</p> <p>19 A No. I think we're talking about an</p> <p>20 objective, at least that's how I thought of it.</p> <p>21 Maybe I wasn't precise enough. He could have called</p> <p>22 me and asked me, but the point was I wasn't trying</p> <p>23 to tell him how to generate cash flow. I was saying</p> <p>24 let's think about whether that's an objective.</p> <p>25 Q You knew that the cash flow generation</p>
<p style="text-align: right;">Page 220</p> <p>1 model was comprised of stocks, correct?</p> <p>2 A No, I don't know that. Could have had</p> <p>3 stocks, bonds. I think the missing page 11 from the</p> <p>4 client -- Confidential Client document got into</p> <p>5 stuff like that, about what kinds of investments can</p> <p>6 be used for various purposes, so I'm not sure what</p> <p>7 he would have done.</p> <p>8 Q So it's your testimony that Mr. Christian</p> <p>9 had a cash flow generation model that did not</p> <p>10 include stocks, correct?</p> <p>11 A No, I didn't say that at all.</p> <p>12 Q You were aware that cash doesn't make very</p> <p>13 much money. We already had that discussion, right?</p> <p>14 A Yes.</p> <p>15 Q And we know that the bonds are not making</p> <p>16 that much money to generate cash, don't we?</p> <p>17 Can we agree on that?</p> <p>18 A I don't know what his model included.</p> <p>19 Q Okay.?</p> <p>20 A So it might have included some</p> <p>21 sophisticated mix and it might have included selling</p> <p>22 short. It might have included all kinds of like</p> <p>23 buying at margin. It might have included all kinds</p> <p>24 things that I don't know about.</p> <p>25 Q We can agree that you knew that the cash</p>	<p style="text-align: right;">Page 221</p> <p>1 flow generation model would fluctuate in value,</p> <p>2 correct?</p> <p>3 A What do you mean by that? If you sold all</p> <p>4 the stocks today versus sold them all tomorrow, that</p> <p>5 there'd be a different amount realized?</p> <p>6 Q You understand that the cash flow</p> <p>7 generation model would vary and have varying</p> <p>8 volatility and have different prices one day to the</p> <p>9 next and one week to the next and one month to the</p> <p>10 next.</p> <p>11 A That's certainly possible, yes.</p> <p>12 Q I mean, Mr. Christian told you that there</p> <p>13 were no guaranteed returns in the cash flow</p> <p>14 generation model that was subject to what was going</p> <p>15 on in the subject market, correct?</p> <p>16 A I don't think he told me that.</p> <p>17 Q Did he ever tell you that the cash flow</p> <p>18 generation model would not lose money?</p> <p>19 A No.</p> <p>20 Q So wouldn't the cash flow generation model</p> <p>21 be inconsistent with your October 22nd letter where</p> <p>22 you instructed him not to lose capital?</p> <p>23 A No.</p> <p>24 Q So it would only be inconsistent --</p> <p>25 A Okay. They're perfectly consistent.</p>

<p style="text-align: right;">Page 222</p> <p>1 Q It would only be consistent if he could 2 guarantee that the cash flow generation model didn't 3 experience losses, right? 4 A I'm sorry. Could you repeat it? 5 Q If this letter really -- your 6 October 22nd, 2007, letter really did instruct 7 Mr. Christian, I can't have losses, then by 8 recommending a cash flow generation model that could 9 have losses, it was inconsistent, wasn't it? 10 A I didn't know that it could have losses. I 11 expected -- let me finish. I expected him to follow 12 my instructions. If he was coming up with a model 13 that resulted in capital losses, that would be in 14 violation of my objectives and my instructions. 15 ARBITRATOR PRO: Well, let me ask, The 16 paragraph 4 of Exhibit 24 says "So it's time to 17 start thinking about changing the -0713 account over 18 to the cash flow generation model that you 19 recommended," meaning Mr. Christian. 20 What specifically was it that Mr. Christian 21 recommended with respect to a cash flow generation 22 model? What did he say? 23 THE WITNESS: That he could structure the 24 investments in this -0713 account to generate cash 25 flow. I don't think he ever told me and I don't</p>	<p style="text-align: right;">Page 223</p> <p>1 think I ever saw, like, a listing of stocks or a 2 strategy. This was a very preliminary discussion. 3 ARBITRATOR PRO: He didn't explain exactly 4 how that operated? 5 THE WITNESS: Correct. 6 ARBITRATOR PRO: All right. And when did 7 he make this recommendation to you? 8 THE WITNESS: I think it was sometime 9 before the meeting that we had in early October. 10 But this was something that had just been generally 11 discussed. 12 The purpose of this was that I was retiring 13 and I wanted to have cash flow to support myself and 14 so we were talking about that as an additional 15 objective in the -0713 account. The reason that 16 account was that that was not the tax-deferred 17 account so I couldn't be taking money out of any of 18 the retirement accounts. It had to be out of that 19 account. 20 BY MR. BRADLEY: 21 Q Nowhere in this November 2nd letter does 22 it express continued concerns that it's, quote, very 23 possible the stock market will fall, correct? 24 A Correct. 25 Q Okay. Let's turn to Exhibit 25. So this</p>
<p style="text-align: right;">Page 224</p> <p>1 is now about five weeks after the date of the 2 October letter? 3 A Yes. 4 Q So it refers to a prior call and then it 5 talks about setting up a lunch for December 6th 6 for lunch, right? 7 A Yes. 8 Q And then the topics to be discussed, "I, Am 9 I properly positioned in my retirement accounts for 10 weathering a recession next year? If not, what 11 changes should we make? I'd like to hear your views 12 but I think the problems in the economy are so great 13 and Bush's prestige has sunk so far that the 14 government cannot avoid a recession even in an 15 election year, so I'd rather be protected on the 16 downside even if I risk missing gains on the 17 upside." 18 A A repeat of my earlier statement. 19 Q This is, again, where you're saying, I'm 20 not gonna have time to read the news, you're going 21 to have sole management, no input from me, and here 22 five weeks later you're reading the news, you're not 23 giving him sole management, and you're providing 24 input, correct? 25 A No, not at all. The last sentence of that</p>	<p style="text-align: right;">Page 225</p> <p>1 paragraph 1 repeats what I said in the 2 October 22nd letter. I'd rather be protected on 3 the downside, even if I risk missing gains on the 4 upside. 5 Q We can agree you're talking about problems 6 in the economy as of November 22nd, so five weeks 7 after the date of your letter, right? 8 A Yes. 9 Q So you're still watching the news, right? 10 A Yes. 11 Q And -- 12 A I'm getting the news from someplace. I 13 haven't had television since 1992, so I wasn't 14 watching the news. 15 Q So you're paying attention, correct? 16 A Yes. 17 Q "Are we positioned in the right way," 18 correct -- 19 A Correct. 20 Q You're asking him that. 21 And so after you sent him this 22 October 22nd letter, did you get the September or 23 October monthly statements from Charles Schwab? 24 A I don't have a specific recollection but I 25 probably did.</p>

<p style="text-align: right;">Page 226</p> <p>1 Q Do you recall whether or not you reviewed 2 your monthly statements for October -- September or 3 October 2007 after you just -- do you recall whether 4 or not you reviewed them? 5 A No, I have no recollection of that. 6 Q In the second paragraph, "My Schwab account 7 I understanding in -0713 is the account we discussed 8 investing to support me on a day-to-day basis over 9 the next several years," right? 10 A "In conjunction with Social Security." 11 Q Right. It says, "I had promised it would 12 be up to \$600,000 by the end of the year. Right now 13 it's at \$570,000. I'm not sure it will make the 14 goal but it's not too bad." 15 So this does indicate that you're looking 16 at your account statements, correct? 17 A Yes. 18 Q Okay. 19 A Mr. Christian had told me that to generate 20 the amount of income that we had been talking about, 21 we ought to have around \$600,000 in that -3713 22 account. And I was telling him that I'm getting 23 close and I'm trying to get to that. 24 Q You thought there would be sufficient gains 25 from stocks to get your account value up close to</p>	<p style="text-align: right;">Page 227</p> <p>1 4600,000, right? 2 A No. It just says to get the account value 3 to that. I'm not trying to tell him how to invest 4 it. 5 Q Okay. Turn to Exhibit 27. I don't think 6 we discussed this December 10th, 2007, fax, did 7 we? 8 A I don't think so. 9 Q So, again, this is, what? It's six weeks 10 or so after the date of your October 22nd letter. 11 A Yes. 12 Q So at first you're saying that you're gonna 13 send him a copy of your bond ladder, right? 14 A Well, not going to. It says under the 15 document heading that I'm sending him a two-page 16 summary of my bond ladder, so it was included with 17 this letter. It's not included with this exhibit 18 but it was included with the letter. 19 Q Toward the end of the second paragraph it 20 says, "Where there's a question mark, I still have 21 to go back to pre-Schwab records to find out what I 22 paid for the bond. I didn't keep as systemic a 23 record set in those days." 24 So what that's indicating is now you have a 25 more systemic record of your bonds.</p>
<p style="text-align: right;">Page 228</p> <p>1 Is that correct? 2 A Yes. That's what the bond ladder was, was 3 a systemic recording of when bonds were purchased 4 and for how much and what their maturity date was. 5 And then each time one of them matured, I'd put a 6 line through it. 7 Q And it goes on to say, "There's \$300,000 in 8 bonds maturing on 4/1/08. I'll have to decide 9 whether to reinvest the money in bonds or put it in 10 equities," right? 11 A Yes. 12 Q So, again, this is only six weeks after 13 your letter is predicting it's very possible there 14 will be a crash but you're still thinking about 15 investing in equities. 16 A Yes. But of course I didn't. Put it in 17 bonds. 18 Q At least in this letter, six weeks after 19 your letter predicting it's very possible the stock 20 market will crash, you're not quite convinced 21 because here in December you're thinking about 22 investing in the stock market, correct? 23 A That's always a possibility, yes. 24 Q It goes on to say, "The Alaska bond matured 25 in 2014 that I just bought with the proceeds of the</p>	<p style="text-align: right;">Page 229</p> <p>1 bond that matured on 12/1/07 has a rate of something 2 3.7 percent. Most likely the rates will be even 3 lower when we get to April." 4 How did you come up with that conclusion? 5 A Because the rates were trending downwardly 6 and I was hypothesizing that a bond that had matured 7 nine days earlier -- and I'm sorry -- a bond had 8 matured and then I bought a bond from something in 9 Alaska that matures in 2014, so it's six years out, 10 seven years out had a rate of 3.7 percent. That was 11 less than I had been getting on other bonds that I 12 had bought recently. 13 Q But it projects. It doesn't just say bond 14 prices have dropped this week but you're talking 15 about rates being even lower when you get to April. 16 How did you project out that many months? 17 A Well, it's only four months. I don't have 18 a specific recollection. What I think probably 19 happened was that I had bonds maturing earlier in 20 2007 and I was seeing that when I reinvested that 21 the rates would be even lower -- or had become even 22 lower over time. 23 Q Okay. If you turn to Tab 28, this is now 24 about three months after the date of your letter, 25 October 22nd, correct?</p>

<p style="text-align: right;">Page 230</p> <p>1 A Roughly.</p> <p>2 Q Okay. This is after you said that you're</p> <p>3 not going to be actively involved in the account,</p> <p>4 right?</p> <p>5 A Yes.</p> <p>6 Q So Paragraph 1 talks about the 2007 return</p> <p>7 for retirement plans DB, referring to a defined</p> <p>8 benefit, two Keoughs and two IRAs, right?</p> <p>9 A That's what it says, but I sure don't</p> <p>10 recall the two IRAs at that point, but that's what</p> <p>11 it says.</p> <p>12 Q It says, "I reviewed the summaries you sent</p> <p>13 me." So you're looking at what the different</p> <p>14 account values are for 2007, right?</p> <p>15 A Yes. This was year end, and my</p> <p>16 recollection was that Mr. Christian had sent me a</p> <p>17 computation of what are your percentage returns</p> <p>18 during the year of 2007. And I calculated that it</p> <p>19 was an 8.49 percent return and I say, "This doesn't</p> <p>20 square well with your returns and I'd like to</p> <p>21 discuss why we have significant differences."</p> <p>22 So I was just trying to find out why he was</p> <p>23 calculating a higher return than I was calculating.</p> <p>24 This was general information.</p> <p>25 Q So you were paying enough attention that</p>	<p style="text-align: right;">Page 231</p> <p>1 you were calculating your own returns and not</p> <p>2 relying on what Mr. Christian told you, correct?</p> <p>3 A On this particular matter, yes.</p> <p>4 Q And then Paragraph 2 you're referring to</p> <p>5 the taxable account -0713, right?</p> <p>6 A Yes.</p> <p>7 Q And you point out that Mr. Christian failed</p> <p>8 to send you a calculation so you made your own</p> <p>9 calculation again, right?</p> <p>10 A Yes.</p> <p>11 Q So you're paying attention to your annual</p> <p>12 returns as of January 2008, right?</p> <p>13 A Yes.</p> <p>14 Q And you're aware that you're invested in</p> <p>15 the stock market, correct?</p> <p>16 A Yes.</p> <p>17 Q Paragraph 3 starts, "I know you said not to</p> <p>18 worry about the stock indices, but I can't help but</p> <p>19 be worried as I listen to the reports."</p> <p>20 What reports are you listening to since you</p> <p>21 don't have a TV?</p> <p>22 A It must have been a radio. I listen to the</p> <p>23 radio a fair amount.</p> <p>24 Q Do you listen to financial shows on the</p> <p>25 radio?</p>
<p style="text-align: right;">Page 232</p> <p>1 A I purposefully stay away from those.</p> <p>2 Q And then it goes on to say you're going to</p> <p>3 wait for the end of January Schwab report. So here</p> <p>4 you're only ten days out of January but you're</p> <p>5 indicating that, as soon as it comes in, you'll</p> <p>6 evaluate it, correct?</p> <p>7 A To make sure that he has been following my</p> <p>8 objectives, yes.</p> <p>9 Q And you're asking to schedule an</p> <p>10 end-of-the-year meeting, right?</p> <p>11 A Yes.</p> <p>12 Q So when you're looking at your monthly</p> <p>13 statements, are you noticing that -- I'm sorry. In</p> <p>14 January 2008 are you aware from looking at your</p> <p>15 monthly statements that your Wespac account ending</p> <p>16 in -0713 was heavily invested in stocks?</p> <p>17 A I don't recall. We could look at the</p> <p>18 Schwab reports. I don't recall a specific account,</p> <p>19 what percentage was in stocks and, you know,</p> <p>20 non-stocks. That's something I can't sit here and</p> <p>21 recall.</p> <p>22 Q Earlier today we did look at your</p> <p>23 December 2007 monthly statement, didn't we?</p> <p>24 A Was that the one right at the beginning of</p> <p>25 your examination?</p>	<p style="text-align: right;">Page 233</p> <p>1 Q Yes.</p> <p>2 A Yes. We looked at two of them.</p> <p>3 Q And you pointed out there was a reduction</p> <p>4 in value, correct?</p> <p>5 A No. I think you pointed it out and you</p> <p>6 wanted me to agree with you.</p> <p>7 Q The valuation of --</p> <p>8 MR. HEBERT: 24.</p> <p>9 BY MR. BRADLEY:</p> <p>10 Q The valuation of the stock in -0713 went</p> <p>11 down and that's what you put in your calculations of</p> <p>12 damages, right?</p> <p>13 A Is this 24-A and B?</p> <p>14 ARBITRATOR PRO: He's referring to 24-A and</p> <p>15 juxtaposing against Exhibit 27.</p> <p>16 BY MR. BRADLEY:</p> <p>17 Q So my point is, if you reviewed your</p> <p>18 December 2007 statement, you saw the value of your</p> <p>19 stocks decrease and that's what you reported in your</p> <p>20 damages, right?</p> <p>21 A The change in account value number that was</p> <p>22 in the Schwab report, yes.</p> <p>23 Q So as of January '08, you knew that,</p> <p>24 despite your instruction not to lose money, that</p> <p>25 Mr. Christian was unable to meet that instruction,</p>

<p style="text-align: right;">Page 234</p> <p>1 correct?</p> <p>2 A Are we talking about for the month of</p> <p>3 January?</p> <p>4 Q We're talking about for December 2007, the</p> <p>5 valuation of the stocks went down significantly and</p> <p>6 you're saying that in January '08 you looked at it.</p> <p>7 So I'm saying as of January '08 you were</p> <p>8 aware of the fact that Mr. Christian did not meet</p> <p>9 your instruction of not losing money, correct?</p> <p>10 A Yes. Again, this has to be tempered with</p> <p>11 reason. He had just started on this new</p> <p>12 instruction. I didn't expect him to be able to</p> <p>13 change everything overnight.</p> <p>14 Q If you turn to Tab 29 it's a transaction</p> <p>15 ledger report. What I'd like you to do is direct</p> <p>16 your attention down to the bottom of the page under</p> <p>17 "Trade date." It starts at 2/20/2008 and then</p> <p>18 there's a list of buys. Do you see that? It starts</p> <p>19 out with "AMR Corp" and goes all the way down to the</p> <p>20 bottom entry of "Omega Healthcare Investors."</p> <p>21 A Yes, I see that.</p> <p>22 Q And then if you turn to the next page of</p> <p>23 the exhibit Bates-stamped 0123, at the top it's that</p> <p>24 same date of 2/20/08 and there's another long list</p> <p>25 of buys on that same date ending with ZV-CIT Group.</p>	<p style="text-align: right;">Page 235</p> <p>1 Do you see that?</p> <p>2 A I do.</p> <p>3 Q So did you get confirmations of these</p> <p>4 purchases in the mail from Charles Schwab in the</p> <p>5 days or weeks following 2/20/08?</p> <p>6 A You mean a separate letter confirmation or</p> <p>7 something reported on the February Schwab report?</p> <p>8 Q For now just the trade confirmations.</p> <p>9 A I have no recollection of that.</p> <p>10 Q And in the month following 2/20/08 that you</p> <p>11 received a monthly statement from Charles Schwab, it</p> <p>12 would have depicted all of these purchases of</p> <p>13 stocks, correct?</p> <p>14 A I suspect so. I mean, I have no way to</p> <p>15 know if this transaction ledger report reflects the</p> <p>16 Schwab report. This is something I assume Wespac</p> <p>17 produced, but if it properly reflects the Schwab</p> <p>18 report, then yes.</p> <p>19 Q I don't want to take the time, unless it's</p> <p>20 necessary, but we can agree that a Schwab monthly</p> <p>21 statement has under the investment detail a list of</p> <p>22 the different -- it has a section entitled</p> <p>23 "Investment activity" where it would show and list</p> <p>24 all of these purchases, correct?</p> <p>25 A All the purchases actually made should be</p>
<p style="text-align: right;">Page 236</p> <p>1 shown on there, yes.</p> <p>2 Q And if you elected to review it, you'd see</p> <p>3 what those purchases were, correct?</p> <p>4 A Same qualifier, yes.</p> <p>5 Q And do you have any recollection of</p> <p>6 reviewing your Schwab statement for the period of</p> <p>7 February 1 to February 29th, 2008, where there were</p> <p>8 significant number of stock and equity purchases</p> <p>9 made in your account?</p> <p>10 A No.</p> <p>11 Q Is it your testimony that you're unaware in</p> <p>12 March of 2008 that Mr. Christian had made</p> <p>13 significant amount of stock and equity purchases in</p> <p>14 your account?</p> <p>15 A I was aware in the sense that, if things</p> <p>16 happened in the normal course of the business, I</p> <p>17 would have received a report from Schwab and the</p> <p>18 report from Schwab should be correct. That's what I</p> <p>19 was aware of.</p> <p>20 Did I review all of those, you know,</p> <p>21 exactly what was purchased during the month of</p> <p>22 February? Probably not.</p> <p>23 Q Those purchases that we just looked at in</p> <p>24 Tab 29, those stock and equity purchases were what</p> <p>25 comprised the cash flow generation model, correct?</p>	<p style="text-align: right;">Page 237</p> <p>1 A I don't know that. So Mr. Christian was</p> <p>2 off doing what he was supposed to do and that was</p> <p>3 responding to my objectives and what we discussed.</p> <p>4 So, you know, that seems likely that that's</p> <p>5 what he was doing but I can't say for a fact that</p> <p>6 it's true.</p> <p>7 MR. BRADLEY: Can we make this 24-C?</p> <p>8 ARBITRATOR PRO: If it's from 24, sure.</p> <p>9 MR. BRADLEY: It's a copy of the Charles</p> <p>10 Schwab March statement.</p> <p>11 (Exhibit 24-C marked.)</p> <p>12 BY MR. BRADLEY:</p> <p>13 Q So the March statement, which is Exhibit</p> <p>14 24-C, shows on the right column of the first page</p> <p>15 with Bates stamp of 0115, a change in value of</p> <p>16 investments of thirty-one thousand and change,</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q And this is your taxable account ending in</p> <p>20 -0713, right?</p> <p>21 A Yes.</p> <p>22 Q So when you received the March statement,</p> <p>23 you were aware that Mr. Christian was, apparently,</p> <p>24 not following your October 22nd instruction where</p> <p>25 you said, you know, not to lose capital, correct?</p>

<p style="text-align: right;">Page 238</p> <p>1 You lost \$31,000.</p> <p>2 A Yes.</p> <p>3 Q And you were aware of that in April 2008,</p> <p>4 correct?</p> <p>5 A Yes.</p> <p>6 Q So you saw this loss. Did you call</p> <p>7 Mr. Christian and say, Hey, what's going on here? I</p> <p>8 told you you couldn't lose money and you lost</p> <p>9 \$31,000?</p> <p>10 A I don't recall that I called him. I began</p> <p>11 to understand from this and other reports that he</p> <p>12 was not doing what -- he was not responding to my</p> <p>13 objectives.</p> <p>14 So later on I started calling him, writing</p> <p>15 him, that sorta thing, trying to get him to do what</p> <p>16 he said he would do.</p> <p>17 Q You could have fired him as soon as you saw</p> <p>18 you lost \$31,000, correct?</p> <p>19 A I could have, yes, but he's a good</p> <p>20 salesman.</p> <p>21 Q And you could have called him up and said,</p> <p>22 I want to stop the bleeding and go to cash in this</p> <p>23 account, correct?</p> <p>24 A I probably did. But as I say, he's a good</p> <p>25 salesman and persuaded me to stay with Wespac.</p>	<p style="text-align: right;">Page 239</p> <p>1 Q So your testimony is you probably did call</p> <p>2 him and in April 2008 and tell him to go to cash,</p> <p>3 correct?</p> <p>4 A No, I did not tell him to go to cash.</p> <p>5 You're trying to get me to say that I was trying to</p> <p>6 do his job. His job was to follow my -- my job was</p> <p>7 to set objectives. His job was to follow those</p> <p>8 objectives.</p> <p>9 MR. BRADLEY: Your Honor, can I can ask for</p> <p>10 a reread from the prior -- the prior question and</p> <p>11 the prior answer, not the last question and answer,</p> <p>12 but the ones before that?</p> <p>13 (Record read.)</p> <p>14 MR. BRADLEY: I'll live with that question</p> <p>15 and answer.</p> <p>16 BY MR. BRADLEY:</p> <p>17 Q If you would turn to Tab 30.</p> <p>18 A Are we done with 24-C now?</p> <p>19 Q Yes. So the first page of Exhibit 30 is a</p> <p>20 fax that you sent to Mr. Christian asking for a</p> <p>21 listing of all Wespac charges for 2007 for your</p> <p>22 taxes, right?</p> <p>23 A Yes.</p> <p>24 Q If you would turn, then, to the next page.</p> <p>25 In the third paragraph it says, "I have just</p>
<p style="text-align: right;">Page 240</p> <p>1 reviewed my various retirement accounts and am, of</p> <p>2 course, very concerned. The total of my retirement</p> <p>3 accounts is down over a hundred thousand dollars for</p> <p>4 the year. If March is as bad as February, the</p> <p>5 result may be to wipe out all gains in those</p> <p>6 accounts for all of 2007," right?</p> <p>7 A Right, that's what it says.</p> <p>8 Q So as of March you're carefully reviewing</p> <p>9 your accounts, correct?</p> <p>10 A Yes. I'm looking at my accounts.</p> <p>11 Q And you're aware of the losses in your</p> <p>12 accounts, correct?</p> <p>13 A Yes.</p> <p>14 Q And so this is after you gave the</p> <p>15 instruction that you weren't going to be involved.</p> <p>16 You say, "I think we should discuss where we are and</p> <p>17 where we should go in terms of the volatility of the</p> <p>18 markets," right?</p> <p>19 A That's what it says.</p> <p>20 Q And it goes on to say, "As I had said</p> <p>21 before, my biggest concern is losing money on these</p> <p>22 accounts. The volatility is just driving me nuts</p> <p>23 and that mental insecurity is what I hope to avoid.</p> <p>24 Reading stuff like this Bear Sterns story, don't</p> <p>25 understand the details, but the point is for people</p>	<p style="text-align: right;">Page 241</p> <p>1 like me, I guess, is that the Fed is so worried</p> <p>2 about the financial system going to hell is bailing</p> <p>3 out what is the fifth largest investment bank.</p> <p>4 Actually, it's acquired to avoid a domino effect."</p> <p>5 So at this point did you tell</p> <p>6 Mr. Christian, Stop the bleeding, go to cash?</p> <p>7 A That's what I was driving at. I didn't say</p> <p>8 that in this letter but that's the general direction</p> <p>9 of things.</p> <p>10 Q And you understood that by going to cash</p> <p>11 you would stop the bleeding, you would stop the</p> <p>12 losses, correct?</p> <p>13 A I'm sorry. I may have missed the entirety</p> <p>14 of your question. Did you say in the prior anything</p> <p>15 about cash?</p> <p>16 Q No. Let me just ask another question.</p> <p>17 A Okay. I'm sorry. I'm getting tired. I've</p> <p>18 been up since 3:00 this morning.</p> <p>19 Q We're almost done.</p> <p>20 The next paragraph begins, "The only bright</p> <p>21 spot in all of my end of February reports from</p> <p>22 Schwab was the taxable account -0713."</p> <p>23 So that's your taxable account?</p> <p>24 A Yes.</p> <p>25 Q -- "and that you are working to generate</p>

<p style="text-align: right;">Page 242</p> <p>1 retirement income for me. Should we be using some 2 of that philosophy in the retirement accounts? 3 So this is the account that just lost money 4 and you're saying that that's the bright spot. 5 A It's the bright spot as far as achieving 6 one goal and that is cash flow. It is not a bright 7 spot in terms of achieving the overall objective of 8 not losing capital. 9 Q So it's fair to include in evaluating your 10 taxable account what sort of income you get each 11 month, correct? 12 A That was the idea in having cash flow from 13 the -0713 account, yes. 14 Q And so you're talking about using that 15 philosophy in the retirement accounts, right? 16 A The philosophy of following my 17 instructions, yes. 18 Q Well, philosophy of generating retirement 19 income, right? 20 A No. I didn't want to generate retirement 21 income from those accounts because I wasn't old 22 enough to take money out of the retirement accounts. 23 Q Okay. I guess I'm confused. 24 MR. HEBERT: You were 61, weren't you? 25 BY MR. BRADLEY:</p>	<p style="text-align: right;">Page 243</p> <p>1 Q What was the philosophy that you wanted to 2 use in the retirement accounts that was being used 3 in the taxable account? 4 A That one of the objectives seemed to be 5 met. The other objectives were not being met, and 6 so I wanted to prod Mr. Christian to follow the 7 objectives that I had set -- I keep saying 8 "objectives" plural. It's really one objective. 9 Q What was going on in the taxable account is 10 he was trying to invest to generate income. That 11 income could be added to the taxable account and 12 just not withdrawn, correct? 13 A Could be, yes. 14 Q Goes on to say, "I thought that with 15 interest rates going down the value of the 16 assortments of municipal bonds would go up." 17 So you're still asking him for advice in 18 March of 2008 about what to do with your muni bond 19 funds. Is that right? 20 A No. Because Wespac and Christian were not 21 involved at all with my funds. Mr. Christian -- the 22 purpose of a question like this was that 23 Mr. Christian, I thought, understood the financial 24 markets far, far better than I did. So I had a 25 general idea that with interest rates going down,</p>
<p style="text-align: right;">Page 244</p> <p>1 the value -- the capital value of bonds would go up. 2 To this day I don't know if that's true or 3 not. I'm just asking him a question -- because I'm 4 paying him 20-something thousand dollars a year, I'm 5 asking him a general question about municipal bonds. 6 Q So in March of 2008 it's fair to say you 7 knew that even safe assets like muni bonds are being 8 affected by the financial crisis. 9 A Yes. Value of the municipal bonds was 10 going down. 11 Q Turn to Tab 31. It's another transaction 12 ledger report. And I'll direct your attention to 13 the trade date column down to the 5/27 list of buys 14 where Nuvene is being purchased. Do you see that? 15 A Excuse me. From my understanding, does 16 this duplicate the earlier, in part, transaction 17 report? Because I noticed on the earlier one we 18 looked at that it mentioned the buy of Nuvene. 19 Q I'm not here to explain the reports, Mr. 20 Garmong. 21 A Well, I'm here to try to understand them. 22 Q I'm not asking you to compare and 23 understand them. I'm asking you, Were you aware 24 that in May of 2008 Mr. Christian was going to 25 purchase Nuvene?</p>	<p style="text-align: right;">Page 245</p> <p>1 A I was not aware that -- you say that he was 2 going to. 3 Q Right. 4 A I didn't know that. I didn't know that was 5 his intent. 6 Q Okay. And if you looked at your May 7 statement, you would have seen the purchases. 8 A The June statement. For the 1st of June, 9 that one? 10 Q Your June 1st statement you would have 11 seen those purchases were made. 12 Did you ever object to him purchasing 13 Nuvene? 14 A No. That was his job. 15 Q And you knew that Nuvene could lose money, 16 correct? 17 A Yes. 18 Q If you turn to Tab 32, it's a fax from you 19 to Mr. Christian dated June 12th, 2008. If you 20 would read the fifth paragraph starting -- or I'll 21 read it -- the fifth paragraph starting with 22 "Account -0713 that Wespac manages for retirement 23 cash flow is performing well. Right on target with 24 cash production projections you gave me. Good job, 25 as this fits with my retirement planning very well."</p>

<p style="text-align: right;">Page 246</p> <p>1 It says that, correct?</p> <p>2 A It says that.</p> <p>3 Q All right. So at this point in June 2008</p> <p>4 you're satisfied with Mr. Christian's actions and</p> <p>5 investments in the account ending in -0713, correct?</p> <p>6 A No. I was satisfied that it was meeting</p> <p>7 the cash flow projections. This does not address at</p> <p>8 all the change in capital value.</p> <p>9 Q You're correct. It says -- you do not</p> <p>10 complain at all about account value going down, do</p> <p>11 you?</p> <p>12 A I do not.</p> <p>13 Q And in the next paragraph it says,</p> <p>14 "Retirement accounts that Wespac managed, on the</p> <p>15 other hand, are being destroyed. Taken together</p> <p>16 they lost over \$141,000 the first six months of the</p> <p>17 year and incredibly lost \$86,000 in the month of</p> <p>18 June. Over \$86,000 in one month.</p> <p>19 "These losses occurred with the accounts</p> <p>20 collectively about 41 percent managed equity and</p> <p>21 59 percent cash. Imagine what would have happened</p> <p>22 if a higher percentage had been invested in managed</p> <p>23 equities." It says that, right?</p> <p>24 A It says that Wespac would have lost even</p> <p>25 more.</p>	<p style="text-align: right;">Page 247</p> <p>1 Q So you're recognizing the fact that the</p> <p>2 more cash you have, that reduces the potential for</p> <p>3 loss, correct?</p> <p>4 A What I'm recognizing is, if there had been</p> <p>5 more cash, the losses -- and the losses were</p> <p>6 proportionate in that hypothetical account, yes, the</p> <p>7 results would have been different.</p> <p>8 Q You understand that if you wanted a more</p> <p>9 conservative portfolio, you could have instructed</p> <p>10 Mr. Christian to increase the percentage of cash in</p> <p>11 your accounts, correct?</p> <p>12 A What I understood was that that was his</p> <p>13 job, to meet the objectives and the objectives I</p> <p>14 gave. If he did not meet or could not meet the</p> <p>15 objectives, it was his responsibility to tell me.</p> <p>16 I was not trying to tell him how to handle</p> <p>17 his side of the relation. He didn't try to tell me</p> <p>18 how to set objectives and I didn't try to tell him</p> <p>19 how to meet objectives.</p> <p>20 Q You knew the accounts had lost \$141,000,</p> <p>21 correct? You say that.</p> <p>22 A Yes.</p> <p>23 Q And so you know he wasn't meeting your</p> <p>24 instruction not to lose money, correct?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 248</p> <p>1 Q Could have fired him on June 12th, 2008,</p> <p>2 correct?</p> <p>3 A Could have, but he's a very effective</p> <p>4 salesman.</p> <p>5 Q You could have told him to go to cash,</p> <p>6 correct?</p> <p>7 A No.</p> <p>8 Q You couldn't?</p> <p>9 A No. Because that was his side of our</p> <p>10 relation.</p> <p>11 Q Later you told him he had to go to cash.</p> <p>12 How is this different?</p> <p>13 MR. HEBERT: Objection, argumentative.</p> <p>14 THE WITNESS: When?</p> <p>15 ARBITRATOR PRO: The last question, it's</p> <p>16 not argumentative. It was appropriate cross. Go</p> <p>17 ahead.</p> <p>18 BY MR. BRADLEY:</p> <p>19 Q In October 2008 didn't you instruct</p> <p>20 Mr. Christian to go to cash in some of the accounts?</p> <p>21 A To sell out securities in the retirement</p> <p>22 accounts, because then I had been pushed over the</p> <p>23 edge. I had lost over \$600,000 and he had done</p> <p>24 nothing to stop that. At some point I had to do</p> <p>25 something.</p>	<p style="text-align: right;">Page 249</p> <p>1 Q You could have given him that same</p> <p>2 instruction at any time earlier in 2008, correct?</p> <p>3 A I could have, yes.</p> <p>4 Q As soon as you were first aware of the</p> <p>5 losses, you could have instructed him to go to cash,</p> <p>6 correct?</p> <p>7 A Yes -- no, I couldn't have instructed him</p> <p>8 to go to cash. I could have instructed him to</p> <p>9 follow my objectives. You keep wanting to make me</p> <p>10 do his part of the job and I won't agree with you on</p> <p>11 that. I set objectives, he figures out how to</p> <p>12 achieve those objectives or tells me that he can't.</p> <p>13 Q Outside the realm of whose job it is, as a</p> <p>14 client you can give specific instructions to go to</p> <p>15 cash, correct?</p> <p>16 A No. Because I have a contractual relation</p> <p>17 with him. You want me to break my contract?</p> <p>18 MR. HEBERT: Is there an objection for</p> <p>19 belaboring a point?</p> <p>20 ARBITRATOR PRO: No, there's not. Go</p> <p>21 ahead. Continue.</p> <p>22 BY MR. BRADLEY:</p> <p>23 Q If you turn to the second page, it says,</p> <p>24 "Retirement accounts are now collectively within a</p> <p>25 few thousand dollars of where they were on</p>


<p style="text-align: right;">Page 250</p> <p>1 January 1, 2007. In 18 months I'm just about even. 2 "This situation has to change. This is 3 reminiscent of 1999 to 2000 when I lost amounts of 4 this magnitude under a different investment 5 manager." 6 So what was the magnitude that you're 7 referring to there? 8 A I'm just not sure. I think that was 9 probably loose terminology to try to get 10 Mr. Christian to take action. I don't recall at all 11 what the magnitudes were. 12 Q Do you recall asking Mr. Christian when you 13 first initially met him about whether or not you 14 could sue your prior investment manager? 15 A No. 16 Q No recollection of meeting with members of 17 the Loss Recovery Center that represents investors 18 who have lost money. 19 A I have no idea what the Loss Recovery 20 Center is. 21 Q Do you recall meeting with them in 22 Mr. Christian's office? 23 A No. 24 Q Did you know the Loss Recovery Center 25 shared office space with the Loss Recovery Center at</p>	<p style="text-align: right;">Page 251</p> <p>1 some point -- with Wespac? 2 A Did I know that the Loss Recovery Center, 3 whatever that is, shared office space with Wespac? 4 Q Correct. 5 A No. I never heard the words "Loss Recovery 6 Center" before your question. 7 Q What is your estimate of how much money you 8 lost in 1999 and 2000? 9 A I don't know. 10 Q More than a hundred thousand dollars? 11 A I don't know. I can't recall what happened 12 in those days. 13 Q Was it more than half a million dollars? 14 A I don't know. 15 Q Do you know an adviser by the name of Wayne 16 Wright? 17 A I know a company called "Wayne Wright." 18 Q Did you ever utilize the services of Wayne 19 Wright? 20 A Yes. 21 Q And who was the investment manager that you 22 utilized at Wayne Wright? 23 A Rob Walsh, W-a-l-s-h. 24 Q What period of time did you utilize Wayne 25 Wright and its brokers' services?</p>
<p style="text-align: right;">Page 252</p> <p>1 A I don't recall. I'm thinking it's probably 2 1999 to 2000, because that's what I referred to in 3 that paragraph. Mr. Walsh was the son of one of my 4 business associates and I patronized him as a favor 5 to my business associate. 6 Q Turn to Tab 35. This is another fax from 7 you to Mr. Christian dated September 26th, 2008, 8 correct? 9 A Yes. 10 Q And you're setting up a meeting on or about 11 September 29th in Carson City. 12 A It says it confirms it. Apparently, it had 13 been set up before that, but, yes, this confirms 14 there's such a meeting. 15 Q You tell them you're "deeply upset of what 16 you have done to me, not only destroyed so much of 17 my retirement funds, but in utterly ignoring my 18 instructions, right? 19 A That has been repeated to you time and time 20 again over the past year, yes. 21 Q It goes into the next paragraph at the 22 second sentence, "I carefully outlined for you my 23 cash flow projections and over the next few months 24 in early 2008 we established a plan for using my 25 non-retirement account that you managed to generate</p>	<p style="text-align: right;">Page 253</p> <p>1 cash for me," right? 2 A Yes. 3 Q So what that indicates is together you 4 agreed on a plan for your non-retirement account in 5 early 2008, correct? 6 A What it indicates to me is that 7 Mr. Christian made a proposal to me and then I 8 agreed on it. 9 Q And that plan was to use the cash flow 10 generation model, correct? 11 A Whatever that was, yes. 12 Q And then you go on to say, "I specifically 13 instructed you there could not be losses from my 14 accounts in 2008 and it must be managed accordingly. 15 I instructed you that I was willing to sacrifice 16 potential gains to avoid losses," right? 17 A Yes. 18 Q At the end of this letter 0565, in that 19 last paragraph you say, "The total value of the 20 accounts must cumulatively increase by at least 21 \$10,000 for the prior week. If the accounts don't 22 cumulatively increase by \$10,000 for the prior week, 23 Wespac must make up the difference by adding the 24 difference to my non-retirement account for which 25 you have responsibility." It says that, doesn't it?</p>

<p style="text-align: right;">Page 254</p> <p>1 A Yes.</p> <p>2 Q So the only way to generate \$10,000 a week</p> <p>3 is to stay in the stock market, correct?</p> <p>4 A I don't know.</p> <p>5 Q Is there any way to make \$10,000 a week</p> <p>6 investing in cash, to your knowledge?</p> <p>7 A Not to my knowledge.</p> <p>8 Q Are you aware that it's illegal for Wespac</p> <p>9 to agree to make up difference by contributing</p> <p>10 monies to your account if it's not earned?</p> <p>11 A No. I'm not sure what you're stating is</p> <p>12 correct. But in general no, I'm not aware of that.</p> <p>13 You understand what this letter was? This</p> <p>14 was when I had reached the end of my rope. It was</p> <p>15 about a week before I then had Mr. Christian sell</p> <p>16 out all of the equities in the retirement accounts.</p> <p>17 Q So was that a breach of your agreement, to</p> <p>18 tell him to go to cash?</p> <p>19 A No. Because he had already breached the</p> <p>20 agreement by not following my instructions.</p> <p>21 Q Wasn't the very first day that he lost</p> <p>22 money -- the very first month he lost money a breach</p> <p>23 of your agreement?</p> <p>24 A Yes.</p> <p>25 Q So you could have told him as soon as that</p>	<p style="text-align: right;">Page 255</p> <p>1 breach occurred that he's fired or go to cash,</p> <p>2 either one.</p> <p>3 A I could have fired him. I was still trying</p> <p>4 to adhere to the agreement as much as possible. But</p> <p>5 as I say, at some point you just reach the end of</p> <p>6 your rope. You lose over \$600,000 from a guy that's</p> <p>7 got a fiduciary responsibility to you. I was at the</p> <p>8 end of my rope.</p> <p>9 Q In all of the faxes we've seen I never have</p> <p>10 seen you reference your October 22nd, 2007, letter</p> <p>11 specifically. Is that correct?</p> <p>12 A I don't recall but -- I don't recall the</p> <p>13 reference to it.</p> <p>14 Q And are you aware if any of the</p> <p>15 correspondence from Wespac that Wespac ever</p> <p>16 acknowledges it received or was aware of the</p> <p>17 October 22nd, 2007, letter?</p> <p>18 A What I'm doing in trying to answer your</p> <p>19 question, I'm looking back at this letter, Exhibit</p> <p>20 35, and it refers to "I told you at our quarterly</p> <p>21 meeting" --</p> <p>22 Q Nothing specific about the October 22nd</p> <p>23 letter is my question.</p> <p>24 A No, I don't see a specific reference to</p> <p>25 that.</p>
<p style="text-align: right;">Page 256</p> <p>1 Q So if you would turn to Tab 36, this is the</p> <p>2 letter that Mr. Christian sent you in response to</p> <p>3 your September 26th fax, correct?</p> <p>4 A In response to two faxes but, yes, one of</p> <p>5 those is a September 26th fax.</p> <p>6 Q And it says, "Regarding the specific</p> <p>7 allegations in your letter, I respectfully disagree</p> <p>8 with your recollection of events. You never told me</p> <p>9 there could not be losses from my accounts in 2008.</p> <p>10 If any client had told me, I would have offered you</p> <p>11 two alternatives. One, go to 100 percent cash, or,</p> <p>12 two, close your accounts."</p> <p>13 Did you ever respond to that and say, Hey,</p> <p>14 here's the October 22nd, 2007, letter, you're</p> <p>15 wrong?</p> <p>16 A No. I responded by ordering him to sell</p> <p>17 out the retirement accounts in order to conserve --</p> <p>18 to prevent the further loss of my money. I know</p> <p>19 that also he had mentioned using stop losses in</p> <p>20 here, which he could have offered me that</p> <p>21 alternative too.</p> <p>22 Q Turn to tab 40. It's an October 24th,</p> <p>23 2008, fax. Third paragraph it starts out, "You</p> <p>24 remain under the express instruction of not losing</p> <p>25 money in that account as well as my other accounts</p>	<p style="text-align: right;">Page 257</p> <p>1 as long as you have any management responsibility</p> <p>2 for my accounts."</p> <p>3 So you're acknowledging that you did not</p> <p>4 previously terminate your relationship with Wespac,</p> <p>5 correct.</p> <p>6 A Well, I'm acknowledging that it appears to</p> <p>7 be uncertain. I mean, in my thinking the account --</p> <p>8 the relation was over but this left open that</p> <p>9 possibility, that to retain management</p> <p>10 responsibility.</p> <p>11 Q Turn to Tab 41. That's a letter -- another</p> <p>12 letter from Mr. Christian to you, correct?</p> <p>13 A Yes.</p> <p>14 Q And in the second sentence he says, "We've</p> <p>15 attempted to handle your investment accounts to the</p> <p>16 best of our ability based on our previous meetings.</p> <p>17 Unless we hear otherwise, I will assume that we</p> <p>18 should leave the retirement accounts in money market</p> <p>19 and continue to manage the -0713 account in the same</p> <p>20 fashion," correct?</p> <p>21 A That's what it says.</p> <p>22 Q So as of this date you're aware that Wespac</p> <p>23 is continuing in its management relationship with</p> <p>24 you, correct?</p> <p>25 A On the -0713 account, yes.</p>

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1 Q And you didn't really fire or terminate
2 Wespac until March '09, correct?
3 A I had forgotten that I had to send a formal
4 written termination letter and so I didn't send a
5 formal written termination until March '09. And I
6 believe that the Schwab documents showed that
7 actually it wasn't a letter to Wespac. It was a
8 handwritten note to Schwab.
9 Q You knew in October '09 that at least
10 Mr. Christian thought that he was continuing to
11 manage the -0713 account so you didn't take any
12 steps until March to terminate the relationship,
13 correct?
14 MR. HEBERT: Did you mean October '08?
15 MR. BRADLEY: I did mean October '08.
16 THE WITNESS: Now I don't know what the
17 question is.
18 BY MR. BRADLEY:
19 Q Sure. Once you received this letter dated
20 October 29th, 2008, indicating that Wespac was going
21 to continue to manage the -0713 account, you knew
22 that Wespac was continuing as your investment
23 adviser, correct?
24 A At least on the -0713 account. You have to
25 understand --

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4
5 I, CHRISTINA MARIE AMUNDSON, a Certified Court
6 Reporter in and for the states of Nevada and
7 California, do hereby certify:
8 That I was personally present for the purpose
9 of acting as Certified Court Reporter in the matter
10 entitled herein;
11 That said transcript which appears hereinbefore
12 was taken in verbatim stenotype notes by me and
13 thereafter transcribed into typewriting as herein
14 appears to the best of my knowledge, skill, and
15 ability and is a true record thereof.
16
17 DATED: At Reno, Nevada, this 27th day of October
18 2018.
19 
20 _____
21 Christina Marie Amundson, CCR #641
22 -o0o-
23
24
25

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1 Q There's not a question pending.
2 ARBITRATOR PRO: You don't need to explain.
3 Go ahead and ask another question. We're about at
4 4:30.
5 MR. HEBERT: Yeah, we're about at the time.
6 ARBITRATOR PRO: Hold on. Let him ask
7 another question.
8 Would it be better to break now and go
9 through your notes?
10 MR. BRADLEY: It would be better.
11 ARBITRATOR PRO: It's right about 4:30 so
12 we'll break at this point and reconvene tomorrow
13 morning at 9:00 and take Mr. Cramer out of order and
14 get him on his way. And then we can pick back up
15 with further cross-examination of Mr. Garmon and
16 then proceed from there.
17 MR. BRADLEY: Thank you, your Honor.
18 ARBITRATOR PRO: We'll go off the record.
19 (Proceedings adjourned at 4:27 p.m.)
20 -o0o-
21
22
23
24
25

Page 261

1 ERRATA SHEET
2
3
4
5 I declare under penalty of perjury that I have read the
6 foregoing _____ pages of my testimony, taken
7 on _____ (date) at
8 _____ (city), _____ (state),
9
10 and that the same is a true record of the testimony given
11 by me at the time and place herein
12 above set forth, with the following exceptions:
13
14 Page Line Should read: Reason for Change:
15
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____

1 IN THE SECOND JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE

4 ---oOo---

5
6
7 GREGORY GARMONG,)
)
8 Plaintiff,)
)
9 vs.) Case No. CV12-01271
)
10 WESPAC, GREG CHRISTIAN,) Dept. No. 6
 and DOES 1 through 10,)
11)
)
12 Defendants.)
)
13 _____

13

14

15

16

17 ARBITRATION

18 Wednesday, October 17, 2018
19 Reno, Nevada

19

20

21

22

23

24 REPORTED BY: JOHN MOLEZZO
 NV CCR #267, CA CSR #7791

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25 JOB No.: 503568

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2 For the Plaintiff: LAW OFFICE OF CARL M. HEBERT Attorneys at Law By: Carl M. Hebert, Esq. 202 California Avenue Reno, Nevada 89509</p> <p>3</p> <p>4 For the Defendants: LAW OFFICE OF THOMAS C. BRADLEY Attorneys at Law By: Thomas C. Bradley, Esq. 448 Hill Street Reno, Nevada 89501</p> <p>5</p> <p>6 ARBITRATOR: Hon. Philip M. Pro (Ret.) Arbitrator/Mediator 3800 Howard Hughes Parkway 11th Floor Las Vegas, Nevada 89169 ppro@jamsadr.com (702) 457-5267</p> <p>7</p> <p>8 Also present: Michael Hume, Greg Garmon, Greg Christian, John Williams.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1</p> <p>2 WITNESSES: Direct Cross Redirect Recross</p> <p>3</p> <p>4 FOR THE DEFENDANTS:</p> <p>5 BRUCE CRAMER 5 49</p> <p>6</p> <p>7 FOR THE DEFENDANTS:</p> <p>8 GREG GARMON 106</p> <p>9</p> <p>10 FOR THE DEFENDANTS:</p> <p>11 JOHN WILLIAMS 125/137 141</p> <p>12</p> <p>13 FOR THE DEFENDANTS:</p> <p>14 GREGORY CHRISTIAN 180</p> <p>15</p> <p>16</p> <p>17 * * *</p> <p>18 INDEX OF EXHIBITS</p> <p>19 EXHIBITS: PAGE</p> <p>20 (NONE MARKED.)</p> <p>21</p> <p>22 * * *</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 RENO, NEVADA, WEDNESDAY, OCTOBER 17th, 2018, 9:00 A.M.</p> <p>2</p> <p>3 --oOo--</p> <p>4</p> <p>5 BRUCE CRAMER,</p> <p>6 called as a witness by the defendants herein,</p> <p>7 being first duly sworn, was examined and</p> <p>8 testified as follows:</p> <p>9</p> <p>10 THE COURT: Please have a seat. If you would</p> <p>11 state your full name and spell your last name for the</p> <p>12 court reporter, please.</p> <p>13 THE WITNESS: Bruce, middle initial P as in</p> <p>14 Paul, last name Cramer. C-r-a-m-e-r.</p> <p>15 MR. HEBERT: Your Honor, before we get started,</p> <p>16 could I raise a housekeeping point?</p> <p>17 THE COURT: Sure.</p> <p>18 MR. HEBERT: We have a witness, Mr. Williams,</p> <p>19 sitting in here listening to the other witnesses. Can I</p> <p>20 invoke the rule of exclusion so that his testimony isn't</p> <p>21 affected by what he's hearing in here?</p> <p>22 MR. BRADLEY: He's actually the WESPAC</p> <p>23 representative. I think he has a right to be here.</p> <p>24 THE COURT: I think you had indicated yesterday</p> <p>25 he is. Mr. Christian is the individual defendant, and</p>	<p style="text-align: right;">Page 5</p> <p>1 WESPAC is entitled to have a corporate representative.</p> <p>2 I understand from Mr. Pas- -- (inaudible) -- that's who</p> <p>3 he is. So I'll allow Mr. Williams to remain.</p> <p>4 All right. Go ahead.</p> <p>5</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. BRADLEY:</p> <p>8 Q Mr. Cramer, what's your work address?</p> <p>9 A It's in Lake Oswego, Oregon.</p> <p>10 Q That's fine. And would you briefly summarize</p> <p>11 your educational background?</p> <p>12 A My education, yes. I graduated from high school</p> <p>13 in Portland and attended Oregon State University, majored</p> <p>14 in business with a concentration in finance. So I</p> <p>15 graduated from there. The last day of school was in</p> <p>16 December of 1976, and my degree, I think, was dated in</p> <p>17 1977, so I would say I graduated in 1976.</p> <p>18 Q And what did you do following graduation from</p> <p>19 college?</p> <p>20 A My first job was -- I also wanted to be a</p> <p>21 stockbroker, and so I became -- I got hired by Merrill</p> <p>22 Lynch in their training program. That was in June of</p> <p>23 1976. And from then on, from 1976 on --</p> <p>24 Was the question what did I do immediately or do</p> <p>25 you want the whole --</p>

<p style="text-align: right;">Page 6</p> <p>1 Q Yeah. Just summarize your work history 2 following college.</p> <p>3 A Okay. So I became a stockbroker with Merrill 4 Lynch, but got my production -- in that process, there's 5 a 12-week training program with Merrill Lynch, basically 6 just 12 weeks in the branch reading endless volumes about 7 securities' laws and --</p> <p>8 THE COURT: Let me save a little time. 9 We've got the C.V. as Exhibit 51. I don't 10 really think -- and you all had the opportunity to depose 11 the witness --</p> <p>12 MR. BRADLEY: Okay.</p> <p>13 THE COURT: So I think we just don't need to go 14 into that. I can --</p> <p>15 MR. BRADLEY: That's fine, Judge.</p> <p>16 THE COURT: -- read the C.V., unless there's 17 some issue that Mr. Hebert wishes to take up on 18 cross-examination regarding background.</p> <p>19 BY MR. BRADLEY:</p> <p>20 Q Skip to when did you go to work for The Bates 21 Group?</p> <p>22 A I went to The Bates Group in 2004. November 23 1st, 2004, was my start date with The Bates Group.</p> <p>24 Q And can you give us just a brief background of 25 what The Bates Group is?</p>	<p style="text-align: right;">Page 7</p> <p>1 A The Bates Group is a securities litigation 2 consulting firm. It was founded by Professor John Bates 3 in 1988. I knew Mr. Bates because he was my finance 4 professor at Oregon State. So I learned finance from 5 him.</p> <p>6 And he started this business eventually from 7 Oregon State up to Lewis & Clark, where there's a big law 8 school, and I think what happened is he got involved with 9 attorneys and said, "Oh, you have this great background 10 in finance."</p> <p>11 He had been the head of the municipal bond 12 department for Merrill Lynch back in the late '60s, and 13 when Merrill Lynch went public, he was a recipient of 14 some of the benefits of that, then he started his 15 professorial career at Oregon State.</p> <p>16 Ultimately, he went on to become the Chairman of 17 the Board of Trustees of Lewis & Clark College. But 18 he -- as he was teaching, he also started this litigation 19 consulting firm. What it -- what it was is he would 20 testify in arbitrations and they would provide financial 21 analysis of accounts, similar to what we're going to talk 22 about today, which was the Bates Standard Analysis.</p> <p>23 So they do financial analysis of accounts, 24 understand what went on in the accounts, and then do 25 testimony.</p>
<p style="text-align: right;">Page 8</p> <p>1 Well, that firm grew, and I became a part of 2 that firm in 2004, which really was in the aftermath of 3 the tech wreck, if you will. So business was expanding 4 very rapidly there and then --</p> <p>5 Q How large is The Bates Group now?</p> <p>6 A Right now we have about 50 full-time, 50 to 60 7 full-time employees. Most of those are involved in the 8 construction of our financial reporting products, our 9 Bates Standard Analysis and special schedules that may 10 come from that.</p> <p>11 Q What comprises the Bates Standard Analysis?</p> <p>12 A Well, that's a basic analysis of what it takes 13 from the start date of the account to the end, and we use 14 the monthly statement data as the basis for analysis.</p> <p>15 We then account for everything that occurred, we 16 then give a factual representation of what actually 17 occurred in an account or a group of accounts or in a 18 full relationship that might entail several accounts.</p> <p>19 Then we do the same analysis for each type of 20 account. It does not deviate. We do the same analysis, 21 whether it's used by a claimant or a respondent, a 22 plaintiff or -- you know, I'm used to arbitration, so... 23 And then -- and it's also been used throughout 24 this time frame, going back to the life of Bates, it's 25 analysis that has been used in state and federal court,</p>	<p style="text-align: right;">Page 9</p> <p>1 in enforcement actions by the SEC, by FINRA, by NESD, by 2 the New York Stock Exchange. So it's been accepted as 3 a -- in -- as a foundation of financial reporting in all 4 of those types of venues.</p> <p>5 Q Can you estimate the number of times the Bates 6 Standard Analysis Group -- the Bates Group Standard 7 Analysis has been admitted in state and federal courts 8 and arbitrations?</p> <p>9 A I can estimate roughly, I would say tens of 10 thousands of times. It's used by -- it's kind of a 11 standard in the industry.</p> <p>12 Q Okay. And did you perform a standard Bates 13 analysis in this case?</p> <p>14 A Yes, we did.</p> <p>15 Q Okay. Would you turn to Exhibit 52, and tell me 16 what that -- Did you prepare that exhibit and --</p> <p>17 A Yeah. Yeah, this is the cover -- this would be 18 the cover page of our Bates Standard Analysis, and it is 19 a summary of pertinent facts in the analysis.</p> <p>20 On the -- Briefly describing it in some detail, 21 the account numbers, those are the four different 22 accounts that we analyzed under account number, and then 23 account description.</p> <p>24 You'll notice under the third one down, there's 25 a -- there's actually two accounts. In this case, there</p>

<p style="text-align: right;">Page 10</p> <p>1 was a defined benefit plan with the assets of which were 2 rolled into an IRA rollover.</p> <p>3 THE COURT: That's the 0713?</p> <p>4 THE WITNESS: No. 0713 is the personal account.</p> <p>5 THE COURT: Okay.</p> <p>6 THE WITNESS: It's the -- On the very left, 7 there's four numbers. 1, 2, 3, 4. It's No. 3. So 8 there's two different -- there's actually two different 9 accounts, but one became another. So they -- somewhere 10 in 2007, they moved the defined benefit account into an 11 IRA rollover essentially.</p> <p>12 THE COURT: Okay.</p> <p>13 THE WITNESS: But pretty much the same asset. 14 There was a remnant in the defined benefit account of 15 \$1500 or \$2,000 that stayed there in that -- in the old 16 1746 account, but the large majority of it went to the 17 5386 account. So, anyway, that's -- that's the accounts 18 that we analyzed.</p> <p>19 And then the time period would be from the 20 opening of the account, and you can see that at 9-14, 21 9-14, 10-10, 9-14. So three of them were opened on 9-14, 22 and the defined benefit, ultimately IRA rollover, was 23 opened on 10-10 of '05.</p> <p>24 And then the time period we ran it through was 25 March 6th of 2009, which was the date of -- my</p>	<p style="text-align: right;">Page 11</p> <p>1 understanding was the date of termination of WESPAC by 2 Mr. Garmon.</p> <p>3 The next column, the out-of-pocket P&L, is the 4 sum total of whether the account made money or lost money 5 during the life of the account.</p> <p>6 And so, as you can see, there's those four 7 different accounts; the 0713, the No. 1 account, lost 8 \$147,865.06. The other three were profitable to the tune 9 that you see there. Then you add all those numbers 10 together, you end up, for the whole relationship during 11 this time frame, a net profit of \$5,403.88.</p> <p>12 Now, just to make sure we understand, at the end 13 of the account the -- three of the accounts ended up 14 going to cash and one account, 0713, -- actually one of 15 the -- basically the 0713 account is the one where most 16 of the securities were.</p> <p>17 They were not sold on 3-06 -- on 3-1 -- 3-6 of 18 '09. And we accounted for them just what the price was 19 at the end of 3-6-09 as if they -- so the price of that 20 date.</p> <p>21 So it doesn't necessarily say "Realized gains or 22 losses." It is what the value was at the beginning, what 23 the value was at the end, what happened in between, then 24 you have profit and loss.</p> <p>25 Now, if you go to the next column, the trading</p>
<p style="text-align: right;">Page 12</p> <p>1 P&L, and it's how -- so we're going to say -- like take, 2 for example, the first account, the \$147,000 loss. How 3 did we get to that number? These are the elements.</p> <p>4 The trading P&L would be if a security goes up 5 or down, it made or lost money. That's the trading P&L.</p> <p>6 Dividends and interest would be did that 7 security produce income in the form of dividends or 8 interest? So we would add the dividends and interest.</p> <p>9 And "fees and other," you would subtract that, 10 because it was what was paid out for the maintenance of 11 the account.</p> <p>12 So the out-of-pocket P&L, that first number, is 13 basically a summation of "fees and other," it's an 14 expense, dividend, interest, income. And trading P&L was 15 whether the securities went up or down in price.</p> <p>16 THE COURT: So even though, as to 0713, there's 17 a trading P&L of 188K -- thousand, the out-of-pocket -- 18 the net out-of-pocket loss was 147,8 --</p> <p>19 THE WITNESS: Uh-huh, yes.</p> <p>20 THE COURT: -- after you've factored in any 21 dividends or interest, fees paid?</p> <p>22 THE WITNESS: Correct.</p> <p>23 THE COURT: All right. Thank you.</p> <p>24 THE WITNESS: And then the average equity is 25 just what the -- it's a numerical average, a monthly</p>	<p style="text-align: right;">Page 13</p> <p>1 average over the lifespan of the account.</p> <p>2 BY MR. BRADLEY:</p> <p>3 Q Anything else you want to tell us about 52 or 4 should we go on?</p> <p>5 A I think that's sufficient.</p> <p>6 Q Okay. If you would turn to Tab 53 -- or Exhibit 7 53. Can you tell us what that document is?</p> <p>8 A Well, what Tab 53 is, is what we call an actual 9 versus hypothetical. What we've done is take the entire 10 relationship, the combination of all of those four 11 accounts notated on the first page and we have what -- 12 what was the actual P&L, that's under -- on the left 13 column there, they actually made \$5,404, and the internal 14 rate of return over the life of the account for that was 15 up one tenth of one percent.</p> <p>16 Now, we compared that with -- we asked the 17 question, "What would happen if this was invested in a 18 moderate, fully invested equity fund?"</p> <p>19 And so we used, as a proxy for that, the 20 Standard & Poor's 500 Total Return Index.</p> <p>21 So the hypothetical says, "Take all of the money 22 that came in to the relationship and as it comes in, put 23 it a hundred percent into the S&P," and we would value it 24 as what the S&P 500 Total Return Index was on the day 25 that money came in, say you bought it on that day, and</p>

<p style="text-align: right;">Page 14</p> <p>1 keep running that through. So all assets that were 2 available were invested in the S&P 500 Total Return 3 Index. 4 THE COURT: What is the utility of that 5 hypothetical when we know that three of the accounts at 6 least did not stay in stocks, equities, it went into 7 basically a cash position? 8 THE WITNESS: The utility is a couple of things. 9 If you go to the next page, and let me explain it in 10 terms of if -- if I am seeing were these assets managed, 11 it informs me of what kind of risk was actually taken in 12 these accounts. 13 I can -- I can -- you know, the risk, you can 14 say, "Well, there's a lot of risk, there's not a lot of 15 risk." 16 Now you can see how it was tested in real life 17 versus a real life example. What did the markets do? 18 What's the relative performance of the -- 19 THE COURT: So the same total investment in 20 those four accounts were placed in -- 21 THE WITNESS: In this -- 22 THE COURT: -- a mix of Standard & Poor's 500. 23 THE WITNESS: Yeah. 24 THE COURT: This is the result, the -- 25 THE WITNESS: Yeah.</p>	<p style="text-align: right;">Page 15</p> <p>1 THE COURT: -- the net -- 2 THE WITNESS: Yeah. 3 THE COURT: -- the 97 -- 4 THE WITNESS: Yeah, the Standard & Poor's -- 5 THE COURT: Okay. 6 THE REPORTER: Whoa, whoa. You guys are 7 speaking all over each -- 8 THE WITNESS: I'm very sorry. 9 THE REPORTER: It's all right. 10 THE WITNESS: I have a tendency to do that and I 11 apologize. 12 THE COURT: Go ahead. 13 THE WITNESS: The S&P 500 is a blue chip index. 14 It's the top 500 stocks. It's capitalization weighted, 15 which means the 50 biggest stocks bear most of the weight 16 of the index. So it's really kind of a blue chip index. 17 THE COURT: Okay. 18 THE WITNESS: And I use that just to get a sense 19 of what a fully invested moderate growth portfolio -- a 20 moderate growth portfolio. So the behavior says this is 21 the -- this is the neighborhood, if you will, this is the 22 environment, the investing environment of a blue chip 23 growth index during the time of -- 24 MR. BRADLEY: Excuse me -- 25 THE WITNESS: -- of this relationship.</p>
<p style="text-align: right;">Page 16</p> <p>1 BY MR. BRADLEY: 2 Q Excuse me. Are you looking at WESPAC 1346 now, 3 the second page of that exhibit? 4 A Yes. I'm sorry. I went to 1346. 5 Q Okay. 6 A Yes. 7 Q Okay. Now that we're on 1346, explain what this 8 chart depicts. 9 A So you could see that in the early years, up 10 until about July of '07, the portfolio pretty much moved 11 in lock step as the market went up. So it captured a 12 large majority of the gain. 13 Now, the blue dotted line is -- the blue dotted 14 line is the hypothetical; the black line is the actual. 15 So what that shows me is that starting in 2007 -- roughly 16 in October of 2007, the blue line really starts to 17 depreciate. That's the beginning, as we now know, of the 18 credit crisis decline. And the black line shows what the 19 cumulative profit and loss was on the actual relationship 20 accounts. 21 So when I look at this, I'm saying if -- if this 22 was a moderate growth account, what kind of -- is this 23 something that it looked like it was riskier or less 24 risky than a fully invested moderate growth account? And 25 I would come to the conclusion that it was substantially</p>	<p style="text-align: right;">Page 17</p> <p>1 less risky based on what I see here. 2 So using that as a -- as a proxy, I'd say it did 3 a lot better than a moderately -- a moderate growth 4 account. 5 Q So you're describing an equity account being 6 comprised of the S&P 500 to be a moderate risk? 7 A Yes. A fully invested moderate risk growth 8 account. 9 MR. BRADLEY: Any questions about that, Judge? 10 THE COURT: No. Go ahead. I'll ask them when 11 you're done. 12 BY MR. BRADLEY: 13 Q Okay. 54. Would you turn to 54 and tell us 14 what that exhibit is. 15 A This is a similar exercise, but instead of using 16 100 percent in equities, what we did is we took 60 17 percent in the S&P Total Return Index and 40 percent in 18 the Bloomberg Barclays U.S. Aggregate Index. 19 That index used to be called the Lehman 20 Aggregate Index, and then Lehman went bankrupt in the 21 credit crisis, Barclays bought them. Now it's called the 22 Barclays Ag. But it's the -- it is the index that 23 describes the investment -- It is designed to represent 24 the totality of the investment grade domestic bond 25 market.</p>

<p style="text-align: right;">Page 18</p> <p>1 And I think it's important to note that in 2008, 2 for instance, during the credit crisis, about 80 percent 3 of the Ag -- at that time the Lehman Ag -- was in Triple 4 A rated bonds. It is a very high quality index. 5 And that's largely because the biggest issuer of 6 debt, and this is taxable debt, it does not count 7 municipals, is the U.S. Government in the form of its 8 agencies, and also very much so in terms of the 9 mortgage-backed securities that Ginnie Mae guaranteed. 10 So it's a very high quality index. 11 So the purpose of that is to say, "Well, let's 12 assume it wasn't a moderate growth, let's say it was a -- 13 let's give it a more conservative bent into a very high 14 quality bond index. What would a mix of investments of a 15 balanced account look like that still had some growth 16 potential with the 60 percent equity?" 17 Going through that same exercise, we found that 18 that investment would've lost \$432,000 versus the \$5,404 19 that was actually made. 20 The other thing I would mention, in both of 21 these hypotheticals, the actual profit and loss is after 22 the reduction of fees. The hypothetical profit and loss, 23 we assume no fees. So it's just a direct index, so 24 there's no cost of fees in the hypothetical as there is 25 in the actual.</p>	<p style="text-align: right;">Page 19</p> <p>1 If you go to Page 2 of the exhibit, which would 2 be WESPAC 1348, again, the blue line represents the 3 hypothetical, the 60/40 mix. The black line is the 4 actual. So the black line looks the same as it did in 5 the previous exhibit. 6 Here the blue line, you can see the amplitude of 7 the ANSYS isn't as big as it was of the hundred percent 8 stocks; and the amplitude of the decline, although sharp, 9 was not as much. So it's a lower risk index. But even a 10 lower risk mix still outperforms -- well underperformed 11 what the account actually did, what the accounts actually 12 returned. 13 So, again, forming myself as if you take a 14 really much more conservative look at what you might -- 15 what might have been invested in, again, this would be -- 16 would evidence a substantially lower risk than a balanced 17 account invested in those two indexes. 18 BY MR. BRADLEY: 19 Q Is a 60/40, 60 percent bond, 40 percent -- I'm 20 sorry -- 60 percent stock, 40 percent bond mix; is that 21 -- what sort of risk level is that associated with? 22 A Well, I'll answer the general question and then 23 go to the specific. 60 percent stock and 40 percent 24 bonds would tend to be more conservative than a hundred 25 percent stocks, but also it depends on what index one</p>
<p style="text-align: right;">Page 20</p> <p>1 uses. 2 In this case, I have chosen the S&P 500 as a 3 proxy for blue chip stock index and not a high growth 4 index or biotech or some -- or maybe another popular one 5 would be the small stocks. 6 And in the case of the bond market, they use a 7 broader diversification, high quality index that would 8 represent taxable bonds. So does that -- does that get 9 to your question? 10 Q Yes. 11 A In this case, I would say this is a very 12 conservative mix of assets, as an example. 13 Q So when the market was favorable, the overall 14 market from '05 to '07, did the WESPAC accounts 15 outperform this balanced account? 16 A Yes, they did. 17 Q And when the market started to go down, did the 18 WESPAC account lose less money than this balanced 19 account? 20 A Yes, it did. 21 Q Could you turn to Tab 55. Tell us what that is. 22 A This is part of our base standard analysis. 23 It's a compilation using the -- using the -- essentially 24 it blends all of the relationship as if it was one 25 account.</p>	<p style="text-align: right;">Page 21</p> <p>1 And under Column A, you can see the month that 2 is -- each one of those rows is a month, what happened 3 during a month in a summation of all of the accounts. 4 So at the very beginning, it tells you under 5 Column B, was there any cash out? Well, we're just 6 starting. So there wasn't any. Cash in? It's \$14,767. 7 If securities were transferred out of this relationship, 8 it would be under Column D. 9 In Column E, there were securities that were 10 transferred in, so these -- so \$1,000,087 worth of 11 securities came in. And so there was a net-in in the 12 month of September 30 -- September of '05. There was a 13 net-in of 1.1 million dollars. 14 At the end of the month is the -- under Column I 15 is what the value of the equity in the account was as of 16 the statement date, as of the end of the month. 17 So the value of all the accounts we had that 18 WESPAC had at that time was 1.1 million. 1 point -- you 19 know, 1 million, 125 thousand. 20 And that is a difference of -- under J, you get 21 the monthly P&L. Did the value go up or down? And 22 that's a net. That would be a one month net 23 out-of-pocket calculation. 24 And the cumulative P&L is essentially going to 25 be under Column K, that will just be a summation, an</p>

<p style="text-align: right;">Page 22</p> <p>1 ongoing summation of what's under Column J. So it gives 2 you an idea of what the cumulative gain or loss is for 3 the entire relationship of those four accounts. 4 On the right-hand side, under Column L, what we 5 show there is the money market or cash balances in all -- 6 totally of all of the accounts. And so you can get it 7 -- it gives you a snapshot of how much of the accounts 8 were in -- actually just in the safety of cash on that 9 right column, Column L. 10 Q You refer to "safety of cash." Can you explain 11 that? 12 A Sure. There's sort of a risk continuum. 13 There's securities that fluctuate in value and there's 14 securities that are absolutely safe, that don't fluctuate 15 in value and provide some kind of return. The riskless 16 rate of return is what it's called. 17 So that would be like a money market fund or a 18 Treasury bills, something that's very, very safe and in 19 and of itself does not fluctuate in value. That's as 20 safe as one can get. There's -- You can turn it into 21 dollar bills pretty quickly. So there's no market risk 22 of any kind. That would be the safest. 23 Q If you -- 24 THE COURT: Take a look for me at the monthly 25 P&L on Exhibit 55, the monthly P&L column.</p>	<p style="text-align: right;">Page 23</p> <p>1 If you take it from September 30, '05, down to, 2 let's say, December 31, '07, not quite a year and a half, 3 you've got some fluctuation, but it largely suggests a 4 gain as compared to losses. There's some losses that 5 aren't insignificant that jump out, but then you see, 6 starting January 31, 2008, going forward, the losses pick 7 up significantly. 8 THE WITNESS: Yes. 9 THE COURT: Place this in context for me. Are 10 you able to assess or explain what was occurring at that 11 time that caused the -- 12 THE WITNESS: The decline in value? 13 THE COURT: -- significant decline -- 14 THE WITNESS: Sure. 15 THE COURT: -- in value, exactly. 16 THE WITNESS: Right. This is all part of the 17 credit crisis and up -- 18 THE COURT: Right. 19 THE WITNESS: -- until the early part of 2008, 20 it was sort of confined to the mortgage lenders and the 21 subprime lenders, and there was a lot of discussion 22 about, "Oh, this is just in the low end of the mortgage 23 market." And Bernanke and the powers that be were 24 basically saying, "We think it's going to be confined to 25 just that. No need to worry."</p>
<p style="text-align: right;">Page 24</p> <p>1 Then we started having -- then it sort of 2 cascaded from there, starting in roughly March of 2008, 3 in February and March of 2008. That was when Bear 4 Stearns was bought out by Morgan Stanley. Bear Stearns 5 essentially was bankrupt, and instead, the Feds said, 6 "Hear, Morgan Stanley, you take 'em, and then we avoid 7 bankruptcy." 8 So they made it. Lehman later on -- after 9 everybody started going in real deep trouble, Lehman did 10 go bankrupt, and that happened more towards the fall when 11 you really get into the really steep part of the dive. 12 But it was sort of like this slow realization, 13 like you're crawling toward a crack. As we look back, 14 more and more facts are coming out saying, "This doesn't 15 look good, this doesn't look good, this doesn't look 16 good." 17 Then you had, of course, later on the Fannie and 18 Freddie issues where they went into receivership and -- 19 THE COURT: And this is something, these 20 circumstances, while the general public may have been 21 somewhat oblivious or unaware, unless they were heavily 22 invested -- 23 THE WITNESS: Uh-huh. 24 THE COURT: -- those whose business it is to 25 engage in the brokering of stocks would be looking at</p>	<p style="text-align: right;">Page 25</p> <p>1 closely, am I right? 2 THE WITNESS: Yes. There would be -- there 3 would be a significant -- the markets -- when you look at 4 -- and I've seen a lot of P&L port- -- you know, these 5 types of imbalances for that period of time that, given 6 20/20 hindsight, most of the portfolio's peak out in May 7 of 2007. Then the market kind of went down, came back in 8 the fall, and then a respite, and there's another peak in 9 October of 2007. 10 So really, kind of the final peak, from October 11 of 2007 on, if you -- with perfect hindsight, you say, 12 "Where was the -- where did it really start, where did it 13 end?" You would say, October of 2007 to March 6th of 14 2009. So -- 15 THE COURT: I realize hindsight is -- 16 THE WITNESS: Yeah, we -- 17 THE COURT: -- we can all -- 18 THE WITNESS: Yeah -- 19 THE COURT: -- we can all see it now and -- 20 THE WITNESS: Yeah. 21 THE COURT: -- we can -- 22 THE WITNESS: -- I'm trying to be real careful 23 of saying it -- 24 THE COURT: Yes. 25 THE WITNESS: You asked me what was going on,</p>

<p style="text-align: right;">Page 26</p> <p>1 and I can tell you now what was going on. But at that 2 time, you would never really know what's going to happen 3 next, and that was the issue, was the -- 4 THE COURT: Okay. 5 THE WITNESS: -- but it was -- 6 THE COURT: Thank you. 7 BY MR. BRADLEY: 8 Q This actual fall that you're describing is 9 actually on the second page of Tab 53, the dotted line 10 which shows the market going down, correct? 11 A Yes. 12 Q So that's reflecting how sharply the market 13 dropped -- 14 A Yes. 15 Q -- this WESPAC 1346. And yet the account 16 values, although substantial, are not anywhere near as 17 great in magnitude as the market? 18 A Correct. 19 Q I think we are still back on 56. 20 THE COURT: Well, we were on 55, unless there's 21 something else on that. We can go to 56. 22 BY MR. BRADLEY: 23 Q 55. Would you just do two things. One is, 24 again, Column K, that's the cumulative P&L, so as you go 25 down, following that down, you can look at any month and</p>	<p style="text-align: right;">Page 27</p> <p>1 see what the cumulative P&L of all of the accounts were, 2 is that correct? 3 A Yes. 4 Q Okay. 5 A Yeah. 6 Q Why do you also have a Column L that keeps track 7 of how much cash is in the account? 8 A Well, to get a sense of how is this account -- 9 how is this invested? How is the funds invested? And so 10 here, like if -- let's go to October 31 of 2007, which we 11 now know was the -- was kind of the last peak, if you 12 will. 13 So under October 31st, 2007, the equity in the 14 account is 2.893 million. So roughly 2.9 million. 15 Of that 2.9 million, 1.478 million is in cash. 16 So at that point, you're at the peak of the market, again 17 with hindsight, the relationship is down now -- is now at 18 about 50 percent cash. So it's 50 percent no risk, 50 19 percent assets with some risk, or varying degrees of 20 risk. 21 Q How would you categorize that risk level? 22 A Conservative. 23 Q Okay. Tab 56. Can you explain that tab. 24 A Okay. This is a graphic representation of what 25 we just discussed on the previous chart. This just shows</p>
<p style="text-align: right;">Page 28</p> <p>1 a grab of what the total equity value of those four 2 accounts were and what percent of the assets were in 3 cash. 4 And as you look across the bottom there, the 5 green line going up just evidences larger and larger cash 6 positions. So although the equity component may be 7 growing, or the total account may be growing, the cash 8 position is growing, as well. 9 So more and more cash is accumulating in the 10 accounts, securities that are being sold are not -- 11 they're not necessarily being followed by the purchase of 12 additional securities, it goes back into the cash. 13 And then you'll see that there's a big jump in 14 cash about September 30 of '07. On this graph, you see 15 the cash gets up to almost a million five. And then 16 you'll see the cash level actually drop in February of 17 '08, which we now know is some investments that were made 18 in the 0713 account, and then cash from there on 19 continues to go higher. 20 And then you can see there was a liquidation of 21 the three retirement accounts that took place in October 22 of '08. And you can see where cash levels then got up 23 over 2 million. 24 Q Does the increasing cash in the WESPAC accounts 25 increase or decrease risk?</p>	<p style="text-align: right;">Page 29</p> <p>1 A That increases. Safety decreases risk. 2 Q And then the second page of 56. 3 A The second page is just another way to look at 4 the same data, rather than using raw dollar numbers, just 5 what percent of the accounts were in cash. And you can 6 see the graphs look similar, but each month adds up to a 7 hundred percent. So definitely a very strong trend 8 toward increasing cash throughout the life of the 9 relationship. 10 Q So basically from, say, August '07 on, except 11 for a small dip, they had at least 50 percent cash 12 after -- 13 A Yeah. Pretty much from the peak of the -- 14 As we look back, the peak was August of -- well, October 15 of '07. So just prior to that, accounts were pretty much 16 50 percent cash throughout. 17 Q Or more? 18 A 50 percent or more. 19 Q And you said 50 percent cash represents a 20 conservative portfolio? 21 A Well, it's half the portfolio. It's not 22 conservative. It's -- it's more than conservative. It's 23 absolute preservation of capital, in that there is 24 absolutely no risk in this. So I wouldn't even -- When 25 you look at -- in my business, you look at a lot of</p>

<p style="text-align: right;">Page 30</p> <p>1 different categorizations, new account forms from various 2 firms, you know, "What's your investment objectives?" 3 There's one that almost nobody ever checks, and 4 that's preservation of capital, because that's basically 5 a very finite universe of possible solutions. Basically 6 cash, CDs, Treasury bills, that sort of thing. 7 And that would be -- so this would be 50 percent 8 preservation of capital, not even -- so in the grade- -- 9 it is conservative, but in the gradient of conservative, 10 it's very, very, very conservative. 11 Q And then, are you aware, from looking at the new 12 account form, whether or not Mr. Garmong had invested 13 assets in muni bonds? 14 A Yes. 15 Q And do you recall approximately how much? 16 A It was about -- from the data that I saw, there 17 was about 3 million dollars earlier on, 3.1 million, 18 somewhere in that neighborhood, and then I think that 19 grew to 3.3 or 3.4 million by 2008. So roughly 3 20 million, a little over 3 million in the municipal bond 21 account. 22 Q When you look at asset allocation, do you look 23 at just the WESPAC or was it appropriate to also look at 24 the 3 million dollars that Mr. Garmong managed of his own 25 of muni bonds?</p>	<p style="text-align: right;">Page 31</p> <p>1 A Well, I think as a practical or even almost a 2 required matter, when an advisor takes on a client, they 3 are -- they do an inventory, get the client investor 4 profile, it's called. Where -- how much -- what income 5 do you need? What's your financial situation? What 6 other assets do you have? How would this program fit 7 into whatever else you have? 8 So from a relationship level, you would want to 9 have that data, what -- what's -- what kind of an 10 individual, what is the financial wherewithal of the 11 individual you're dealing with? 12 And then you would also say, given that, that's 13 the background, and now what is it that you want to 14 accomplish with your assets with this particular pool, 15 which would be the WESPAC relationship. 16 An advisor will usually incorporate data -- 17 actually is supposed to incorporate data they know about 18 a client into their investment policies and decisions. 19 But ultimately, it's the client that gets to decide 20 what -- what they want to do. 21 Q So in August of 2007, if Mr. Garmong had 1 22 million in equities, 1 million in cash and then 3 million 23 in muni bonds, would you consider that to be a 24 conservative or a moderate or an aggressive risk 25 portfolio?</p>
<p style="text-align: right;">Page 32</p> <p>1 A Given the totality of the portfolio? That would 2 be a conservative portfolio. 3 Q Is it also appropriate to take into account the 4 fact that he had real estate investments of approximately 5 5 million outside of his stocks and bonds and cash? 6 A In evaluating the wherewithal of the investor, 7 absolutely you would. 8 Q And would that make his 1 -- if he's worth 10 9 million dollars and he only has 1 million invested in 10 equities, would you describe that as a conservative 11 investment? 12 A Yes. That would be the -- that would be the 13 conservative end of the spectrum, yes. 14 Q Okay. Could you turn to Tab 57? And I don't 15 think you have to -- if you can briefly explain Tab 57, 16 we can go through the rest of these, I think, quicker 17 than the others. 18 A Okay. So this would be the -- now, we're 19 getting into specific account analysis. This one is for 20 the 0713 account, the individual account, the account 21 that lost money. 22 So on the left-hand column there's -- what 23 we're -- what we're looking at is basically there's two 24 columns on this page. On the left-hand column it 25 measures returns based on what I call "at the doorway,"</p>	<p style="text-align: right;">Page 33</p> <p>1 whatever comes -- it measures what went into the account 2 when it went in and measures what came out of the account 3 when it came out, and the difference between what went in 4 and what went out is your profit. 5 Now, in this particular case, the securities, 6 when they terminated the relationship in this particular 7 account, the securities were not all sold. So there were 8 securities that didn't actually go out on March 6th. 9 They just -- we just stopped accounting for them. So you 10 can see it. 11 So at the top you can see, at the beginning, 12 there was no securities along. We received -- WESPAC 13 received in 379 million -- 300 -- I'm very sorry -- I'm 14 talking too much money here -- \$379,000. \$379,000. Cash 15 came in for 237- -- or cash from other accounts, so that 16 would be part of the other three accounts. Cash was 17 transferred into this 0713 account for \$237,000. 18 Then cash came in from outside of the other 19 three accounts and is at \$108,000. So that accounts for 20 all the -- what all the assets that came in, where they 21 came from. 22 Then you look at going back out, the value of 23 the securities that were long in the account on March 6th 24 was \$178,000. There was a money market in the account 25 that had \$90,096. There was a cash balance at the</p>

<p style="text-align: right;">Page 34</p> <p>1 conclusion of the account of \$2,544.67. So that's a 2 debit. Then I think what that is, there was a trade that 3 hadn't settled or something. There's a settlement date 4 issue there why there's a debit and the cash hasn't been 5 -- hasn't -- anyway, that's the way it was. 6 And also what had gone out over the life of the 7 account was \$152,000, was cash that was transferred out 8 to other accounts, one of the other three accounts, and 9 cash sent out of the relationship, \$159,000. And then 10 there was a tax withheld. 11 So this essentially measured at the door, the 12 total amount out was \$577,000. So you can see if you 13 measure it at -- really at the gate going in and out, he 14 had a total gate of a minus \$147,865. 15 On the right-hand side, it just asked the 16 question differently. We don't really care what came in 17 and out, just when money was in there, how was it traded? 18 How did it -- Was it profitable or loss? 19 The first thing we look at was the trading 20 profit and loss that we talked about in the first -- and 21 then, what were the dividends and bonds interest? So 22 that's added, \$51,578.30 -- 23 Q Let me stop you there. 24 A Yes, sir. 25 Q Would it be appropriate to ignore the stock</p>	<p style="text-align: right;">Page 35</p> <p>1 dividends and bond interest that was paid into an account 2 in calculating net out-of-pocket damages? 3 A No. That's part of the investment return. So 4 it is -- If you buy securities for what their return is, 5 then the return would be a -- a total return basis, what 6 did you make after gains and income and losses? 7 Q Would you use -- Could you use an example of 8 somebody that buys a 10-year bond and explain that? 9 A Sure. If you bought say a 10-year Treasury 10 bond, a risk-free Treasury bond with, say, a hundred 11 thousand dollars at 10 percent interest, and you hold it 12 for 10 years, then you get back your hundred thousand 13 dollars, Treasury guaranteed, and you also got 10 percent 14 a year for 10 years, you got a hundred thousand dollars 15 of income. 16 The return to you as an investor, the profit to 17 you as an investor on your hundred thousand dollars would 18 be a hundred thousand dollars; your original return plus 19 the income that was generated from it, plus the return on 20 the investment. 21 Q Okay. 22 A So that's the -- There's two sources of gain: 23 Income and capital. 24 Q Great. And then I think you were going to 25 conclude -- oh, fees, yeah.</p>
<p style="text-align: right;">Page 36</p> <p>1 A Oh, if you measure -- One of the ways we check 2 our analysis to make sure it makes sense is does the way 3 we measure it at the gate equal the profit and loss that 4 we get in our internals? If they don't match, then 5 we've -- 6 THE COURT: It's not balanced. 7 THE WITNESS: -- we've got to figure something, 8 we did something wrong. 9 BY MR. BRADLEY: 10 Q And I skipped you before you got on to fees, 11 does that -- 12 A Yeah. That reduces the profit, the net 13 out-of-pocket profit or loss. That would accrue to the 14 loss column. 15 Q So this is -- 16 A That's a -- 17 Q -- this is a loss which also includes the 18 payment of fees? 19 A Yes. That includes the fees. 20 Q Okay. Tab 58 -- Exhibit 58. 21 A Exhibit 58, this is essentially that same equity 22 change analysis that we looked at in the total 23 relationship. 24 There is -- Again, this -- you can see that the 25 equity where there's -- there's not -- there's not --</p>	<p style="text-align: right;">Page 37</p> <p>1 there's a continual increase in the amount of cash that 2 gets built up over time. There's a change there in 3 4-30-07. So money comes out, then it comes back in the 4 next month -- or in -- in June. So there's money that 5 went out and comes in, but you're seeing a steady 6 build-up of cash, as well as a reasonably decent 7 improvement in profitability. 8 And then you notice it changes rather 9 dramatically in February of '08 under -- I'm under Column 10 L. When I say "it changes," I mean the cash balance. 11 You've gone from 404,000 down to 97,000. 12 And also, in the month of January of '08, there 13 was \$30,000 taken out. So you have a -- so there's 14 definitely a drop of about \$300,000 in cash, and that has 15 gone into -- that's gone into investments. So there was 16 cash invested. 17 Beyond that investment, the cash levels 18 generally continue to go higher, with the exception of 19 months in which cash was actually withdrawn out of the 20 account, just taken specifically out of the account. So 21 you get generally that same pattern of increasing levels 22 of cash. 23 Q Would you tell us what Exhibit 59 is. 24 A Exhibit 59, if you want to see what the trading 25 activity in the account was, this is the schedule to do</p>

<p style="text-align: right;">Page 38</p> <p>1 that and it is done chronologically.</p> <p>2 On Page 1 of 3, just starting 9-14-05, that says</p> <p>3 those securities on 9-14-05, there's seven or so of them,</p> <p>4 there's -- seven of them were received.</p> <p>5 Under Column E, you'll notice there's a</p> <p>6 footnote. All that is it tells you how we price the</p> <p>7 things, and the footnote would say we priced those</p> <p>8 usually Bloomberg. So one of the things that we do is,</p> <p>9 on that date, we go back and look up what was the value</p> <p>10 of that security at the close of business 9-14-05 and</p> <p>11 that's how we get the value from the Bloomberg.</p> <p>12 What is noteworthy here is if you go under</p> <p>13 Column G, you can see where purchases are made, and</p> <p>14 Column H, where sales are made. So the first batch of</p> <p>15 purchases are actually received and that's notated under</p> <p>16 Column D.</p> <p>17 Then there's a sale in 2005, December of '05, a</p> <p>18 purchase of several different securities. It looks like</p> <p>19 the proceeds of that sale were spent. And then there's</p> <p>20 another sale in June 17 of -- April 17 of '06.</p> <p>21 There's not -- The point I'm going to make here</p> <p>22 is there's a purchase in 5-11-06, but you don't see a lot</p> <p>23 of purchases in here. And this is consistent with -- And</p> <p>24 then there's some significant sales in May, June and</p> <p>25 January. You see a whole string of sales there with no</p>	<p style="text-align: right;">Page 39</p> <p>1 purchases.</p> <p>2 So cash -- and we saw that cash was building,</p> <p>3 got up to 400,000, then in February of '08, that cash,</p> <p>4 300,000 of it, was invested. And you'll see that that's</p> <p>5 all of these purchases here that start 2-25-08. So that</p> <p>6 gives you an idea of where the purchases were made.</p> <p>7 Then after the February 25 of '08 purchases,</p> <p>8 there was really one more purchase that came about, and</p> <p>9 it wasn't really taken from cash. There was a call on</p> <p>10 5-19 of '08. I'm now on Page 2 of 3.</p> <p>11 On 5-19-08, you can see one of the securities</p> <p>12 previously purchased, the Virginia Power Preferred, was</p> <p>13 redeemed. So it got called. So that cash was 23,600.</p> <p>14 And what was purchased was this mult- -- Nuveen</p> <p>15 Multi-Strategy Income & Growth Fund, with a little more</p> <p>16 than -- there's a little bit of cash that was already</p> <p>17 there used, but that's primarily from the redemption.</p> <p>18 So really, from 2-25-08 on, there weren't</p> <p>19 anymore purchases and there were some sales; no more net</p> <p>20 purchases, with the exception of the Nuveen.</p> <p>21 And then if you go to the next page, Page 3,</p> <p>22 you'll see on March 4th, the very top one, there was a</p> <p>23 CitiGroup Preferred that was sold on March 4th. And then</p> <p>24 the rest of the securities were held as of March 6th.</p> <p>25 That was the ending date of the account.</p>
<p style="text-align: right;">Page 40</p> <p>1 So they were priced, again under Footnote 4,</p> <p>2 what was the value of those securities on March 6th? We</p> <p>3 got that data from Bloomberg.</p> <p>4 Q And again, this is part of --</p> <p>5 A This is part of the Bates Standard Analysis.</p> <p>6 Q Right. Thank you. Tab 60 -- I'm sorry, Exhibit</p> <p>7 60.</p> <p>8 A Okay. Exhibit 60 is another schedule where you</p> <p>9 look at the net out-of-pocket P&L by security, so we're</p> <p>10 under Column C, and you can see the transaction P&L,</p> <p>11 whether it went up or down. It doesn't necessarily mean</p> <p>12 these securities were sold. They might've been ones that</p> <p>13 were -- you know, the clock stopped on March 6th.</p> <p>14 But so the trans- -- whether it went up or down</p> <p>15 is under Column C, the dividends or interest -- dividends</p> <p>16 and/or interest that were associated with security is</p> <p>17 under Column D. And then the actual net out of profit --</p> <p>18 pocket profit or loss on that security is under Column E.</p> <p>19 Q All right. Exhibit 60 -- Sorry, the next page.</p> <p>20 I'm sorry.</p> <p>21 A The next page, if you want a more granular</p> <p>22 approach to what --</p> <p>23 THE COURT: Well, you've done the same thing in</p> <p>24 Exhibit 61, 66, 69, as to the other accounts, right?</p> <p>25 THE WITNESS: Uh-huh.</p>	<p style="text-align: right;">Page 41</p> <p>1 THE COURT: To Account 6376, Account 4369 and</p> <p>2 5386?</p> <p>3 THE WITNESS: Correct.</p> <p>4 THE COURT: And then at 73, you pick up Account</p> <p>5 3557 and --</p> <p>6 THE WITNESS: Right.</p> <p>7 THE COURT: -- but systemically, it's the</p> <p>8 same --</p> <p>9 THE WITNESS: The same analysis all --</p> <p>10 THE COURT: -- same analysis and --</p> <p>11 THE WITNESS: -- the way through.</p> <p>12 THE COURT: So I can just look at those. Yeah.</p> <p>13 You don't need to go through each one of --</p> <p>14 MR. BRADLEY: I won't do that.</p> <p>15 THE COURT: Yeah.</p> <p>16 THE WITNESS: Just, I would like to, maybe</p> <p>17 looking at the trading activity, if you get into that,</p> <p>18 that would be -- there's no -- there's no dividend shown</p> <p>19 on this schedule, which would be 1324 and 1325. So it's</p> <p>20 just the -- it tells when you it was bought, when it was</p> <p>21 sold, and so on.</p> <p>22 THE COURT: Okay.</p> <p>23 BY MR. BRADLEY:</p> <p>24 Q Do you have an opinion about the quality of</p> <p>25 securities that were generally held in the account at</p>

<p style="text-align: right;">Page 42</p> <p>1 WESPAC?</p> <p>2 A Yeah. As long as we're on this account, these</p> <p>3 are the investments that were made --</p> <p>4 Q I'm sorry. Which tab are you on?</p> <p>5 A I'm sorry. We're still on 60.</p> <p>6 Q Okay.</p> <p>7 A I'm looking at 60. Yeah, these are primarily</p> <p>8 preferred and income securities; most of these purchased</p> <p>9 in 2008. And then some -- you know, some other</p> <p>10 securities.</p> <p>11 Generally, there's a broad -- there's a lot of</p> <p>12 earlier -- but what was -- excuse me. What was purchased</p> <p>13 in 2008 was generally income securities. What was</p> <p>14 resident prior to 2008 was sort of a diversified mix of</p> <p>15 different exchange traded funds or mutual funds.</p> <p>16 So it was a diversified portfolio. It looked</p> <p>17 like to me it was designed to get broader asset</p> <p>18 diversification. So it was a well-diversified portfolio.</p> <p>19 Now, clearly if you're selling stuff out and</p> <p>20 putting into cash, your diversifications may be a little</p> <p>21 bit less, but your overall safety net is much higher</p> <p>22 because it's in cash.</p> <p>23 Q Okay.</p> <p>24 A And I would say, too, in the -- in the other</p> <p>25 three accounts, you'll notice there were really no</p>	<p style="text-align: right;">Page 43</p> <p>1 purchases at all. It was -- there may be one or two</p> <p>2 exceptions. But it was basically a steady liquidation.</p> <p>3 Those accounts, those were generally investment</p> <p>4 -- you know, pretty high investment quality securities,</p> <p>5 blue chips and -- not necessarily blue chips, but name</p> <p>6 brands, telephone companies, that sort of thing.</p> <p>7 Q I'd like to direct your attention now to Tab 73,</p> <p>8 the Fidelity accounts.</p> <p>9 A Okay.</p> <p>10 Q Can you tell us what Bates did with regard to</p> <p>11 the Fidelity accounts?</p> <p>12 A Well, we went through the same process. All the</p> <p>13 data from this came from Fidelity statements. So we did</p> <p>14 a standard analysis on this Fidelity account, which was</p> <p>15 the recipient of the assets that were transferred from</p> <p>16 the 0713 account, so it's the individual account that was</p> <p>17 -- that we just left that was the individual 0713</p> <p>18 account.</p> <p>19 Q You didn't look at the retirement accounts with</p> <p>20 regard to Fidelity?</p> <p>21 A No. We did not.</p> <p>22 Q Okay. I just want to make that clear.</p> <p>23 A They were all cash when they ended. So we</p> <p>24 didn't.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 44</p> <p>1 A But this is where those assets -- those assets,</p> <p>2 if you look at -- so the assets that were in 0713 were</p> <p>3 transferred into this Fidelity account.</p> <p>4 Q So the stocks that Mr. Garmong held in his</p> <p>5 taxable account at WESPAC are the ones that got</p> <p>6 transferred to Fidelity and it's those stocks that you</p> <p>7 analyzed?</p> <p>8 A Correct. It was that portfolio that was</p> <p>9 analyzed that we had statements from July of '09 to April</p> <p>10 of 2014.</p> <p>11 Q And those stocks that were held at WESPAC, did</p> <p>12 they appreciate while they were held at Fidelity?</p> <p>13 A Yes. They did. And again, going through the</p> <p>14 analysis data, you can see the net out of pocket in that</p> <p>15 case was a \$290,400 profit.</p> <p>16 Q Okay.</p> <p>17 A And that profit was accounted for, again going</p> <p>18 to this trading and dividends and so forth, \$203,000 of</p> <p>19 that profit was the trading profit or appreciation value</p> <p>20 of the securities, and \$86,271 was the income produced.</p> <p>21 And "cash in lieu" just means there was a</p> <p>22 dividend, a stock dividend or something that was paid and</p> <p>23 was paid in cash in lieu of stock.</p> <p>24 THE COURT: That's over roughly a five-year</p> <p>25 period --</p>	<p style="text-align: right;">Page 45</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 THE COURT: -- July 2009 to April 30, '14,</p> <p>3 right?</p> <p>4 THE WITNESS: Correct.</p> <p>5 THE COURT: How was the market generally --</p> <p>6 THE WITNESS: Well, the --</p> <p>7 THE COURT: -- performing as compared to two or</p> <p>8 three years prior?</p> <p>9 THE WITNESS: In 2- -- much better. The market</p> <p>10 was much stronger. 2011 was kind of a tough year. And</p> <p>11 actually, depending on what you invested in 2014 and</p> <p>12 '15 -- yeah, 2014 was a very good year, maxed out in</p> <p>13 2015. But we're not in that. In that period of time,</p> <p>14 2014 was a pretty good year. 2011 was kind of a tough</p> <p>15 year.</p> <p>16 BY MR. BRADLEY:</p> <p>17 Q I would ask you to turn to -- I'm sorry, if</p> <p>18 you're done there --</p> <p>19 THE COURT: Yeah.</p> <p>20 MR. BRADLEY: I'd like to have Exhibit 74.</p> <p>21 BY MR. BRADLEY:</p> <p>22 Q Tell us what that is briefly and then I've got a</p> <p>23 specific question about a period of time.</p> <p>24 A Okay. So this is that -- the same analysis</p> <p>25 given to the Fidelity account. And again, what you --</p>

<p style="text-align: right;">Page 46</p> <p>1 what you are seeing is that you get a steady build-up of 2 cash. Now, that may be in the form of dividends or it 3 may be in the form of investment. But nothing -- there's 4 no money going out, so it's a pretty straightforward 5 analysis. 6 Q I'd like to direct your attention to the period 7 of April 2011 through September 2011. Can you tell us 8 what was going on generally in his Fidelity account? 9 MR. HEBERT: Your Honor, at this point I'm going 10 to object on the basis of relevance. This is long after 11 the relationship and -- 12 THE COURT: How is that -- 13 MR. HEBERT: -- that's -- 14 THE COURT: How is that relevant? 15 MR. BRADLEY: He complained about the volatility 16 in the WESPAC account, yet he rides out volatility in his 17 Fidelity account when he's managing it. So I just want 18 just a few questions about was there volatility -- 19 THE COURT: Well, no, we don't know what other 20 instructions were given or what motivated that. That's 21 not within the scope of the arbitration. So I think the 22 objection's well taken. I'll sustain it. 23 THE REPORTER: When you get to a stopping point, 24 can we take a quick restroom break? 25 MR. BRADLEY: The court reporter has a question.</p>	<p style="text-align: right;">Page 47</p> <p>1 THE COURT: Certainly. 2 THE REPORTER: Sorry. When you get to a 3 stopping point, could we take just a two-minute restroom 4 break? 5 THE COURT: Yes. We can take a break. 6 How much more longer do you have? 7 MR. BRADLEY: Five minutes. 8 THE COURT: Let's go five more minutes and then 9 take a break. 10 THE REPORTER: Thank you. 11 BY MR. BRADLEY: 12 Q Can you tell us the difference between realized 13 and unrealized losses? 14 A Well, a realized loss would be you bought 15 something and then you actually sold it at a loss. So 16 that fluctuated maybe, I don't know, went up or down, but 17 when you sold it, it was lower than when you bought it, 18 and you sold it. 19 An unrealized loss would be at this -- it would 20 be like at a snapshot in time. At this point it's either 21 higher or lower. If it's lower than where you bought it, 22 you have the unrealized loss, or what people call paper 23 loss or -- I don't know if that makes you feel any 24 better. So that's the difference. 25 And once that loss is realized, sold, then it's</p>
<p style="text-align: right;">Page 48</p> <p>1 taxable, you're out of the investment and it's done and 2 that was a loser. So that's the difference. 3 And where you get into markets is, the day 4 before, yesterday it was low, at the close of business 5 yesterday, the market was up five or six hundred points. 6 So maybe if you had an unrealized loss, now it's an 7 unrealized gain. It depends what you did. So... 8 Q Is there a relationship in your mind between 9 risk and reward? Are they inextricably intertwined? 10 A Yeah. There is a definite relationship that 11 typically the higher reward entails some form of higher 12 risk, and if you want higher rewards, you need to be 13 willing to take additional risk; and if you are risk 14 averse, you tend to go down the spectrum of reward. So 15 it's sort of like a teeter-totter, as one side goes up, 16 the other side goes down. 17 Q Can an investment advisor follow a client 18 instruction not to lose money while investing in stocks? 19 A Well, if they're lucky. But, no, not as -- I 20 mean, as a -- as a general rule, if you're not going to 21 lose money, you need to be in something that doesn't 22 fluctuate. So if the instruction is to not lose money, 23 that would not be the stock market. It probably would 24 not be the bond market, because bond prices fluctuate. 25 So if your instruction is "I want to lose no" --</p>	<p style="text-align: right;">Page 49</p> <p>1 "I don't want my capital at risk at all, dime one," then 2 you're confined to an area of rel- -- you know, as I said 3 earlier, there's relatively few investments that would 4 encapsulate what I would call a preservation of capital 5 mode, and that would be the cash loans or CDs or cash, 6 equivalents. 7 Q Those are all the questions I have. Thank you, 8 Judge. 9 THE COURT: All right. Let's go ahead and take 10 then a brief break, take five minutes, and then we can 11 pick up with cross-examination. 12 (Recess.) 13 THE COURT: Let's go back on the record then 14 with cross-examination by Mr. Hebert. 15 CROSS EXAMINATION 16 BY MR. HEBERT: 17 Q Mr. Cramer, my name is Carl Hebert, and I 18 represent Plaintiff Greg Garmong in this case. We met 19 before when I took your deposition. 20 Would you turn to -- just to start out your 21 cross-examination, turn to 55 in the Defense Exhibit Book 22 Volume II? 23 A Yes, sir. 24 Q Now, this is a chart or a table. What would you 25 call it?</p>

<p style="text-align: right;">Page 50</p> <p>1 A Table sounds good.</p> <p>2 Q You like that. Okay. Combined equity change</p> <p>3 analysis from September 14, '05, to March 6 of '09,</p> <p>4 Garmon accounts.</p> <p>5 Now, over in Column A, they start in September</p> <p>6 of '05 and they end March of '06 -- March of '09. Sorry.</p> <p>7 And a number is given at the bottom, in Column</p> <p>8 J, profit and loss, a profit of \$5,404?</p> <p>9 A Correct.</p> <p>10 Q Do you have a calculator with you?</p> <p>11 A No.</p> <p>12 Q You can use mine.</p> <p>13 A Oh, I can use my phone, yeah.</p> <p>14 Q You can use my phone, if you want.</p> <p>15 A No. I don't trust your phone. I have enough</p> <p>16 trouble with my own.</p> <p>17 Q All right.</p> <p>18 A I didn't mean that personally, by any means.</p> <p>19 Q No. If I can use a calculator, anybody can.</p> <p>20 A All right.</p> <p>21 Q Okay. Now, just have it handy in case you need,</p> <p>22 it. All right?</p> <p>23 A All right. It's going to shut off, but yes.</p> <p>24 Q I want you to focus on Exhibit 55, starting</p> <p>25 on -- there's a line here between September 30, '07, and</p>	<p style="text-align: right;">Page 51</p> <p>1 October 31, '07. Do you see that line? What would you</p> <p>2 call that?</p> <p>3 A October 30, '07? 10-31 -- hold on.</p> <p>4 Q Yeah.</p> <p>5 A 9-30 and 10-30?</p> <p>6 Q Right. 9-30-07 to 10 --</p> <p>7 A Okay. Got it, yeah.</p> <p>8 Q That line between there, what would you call</p> <p>9 that, October 1?</p> <p>10 A Well, the line just says that 9-30-07 is at the</p> <p>11 end of the month and the next number will be --</p> <p>12 Q All right.</p> <p>13 A -- at the end of October.</p> <p>14 Q But if you start there --</p> <p>15 A Okay.</p> <p>16 Q I'll call it October '07. If you start there</p> <p>17 and go over to the monthly profit and losses and start</p> <p>18 working your way down --</p> <p>19 A Uh-huh.</p> <p>20 Q -- down to March of '09 --</p> <p>21 A Uh-huh.</p> <p>22 Q -- what number do you get? Is that a profit</p> <p>23 number or a loss number?</p> <p>24 A That's --</p> <p>25 MR. BRADLEY: Counsel, are you talking J or K?</p>
<p style="text-align: right;">Page 52</p> <p>1 MR. HEBERT: I'm talking J.</p> <p>2 MR. BRADLEY: Okay.</p> <p>3 THE WITNESS: Well, if you -- the summation is</p> <p>4 actually already done under Column K, but --</p> <p>5 BY MR. HEBERT:</p> <p>6 Q No. That's all right. Column --</p> <p>7 A If you start --</p> <p>8 Q Column -- No, I don't want you to do any extra</p> <p>9 work, if Column K will show us what we need to show us.</p> <p>10 But I want to start it --</p> <p>11 A So you want to start 9-30-07?</p> <p>12 Q Yeah.</p> <p>13 A Okay.</p> <p>14 Q And see what the cumulative profit and loss was.</p> <p>15 A Okay. Well, if you go to Column K, you're</p> <p>16 starting with a cumulative profit of 524,114. That's</p> <p>17 under Column K for 9-30-07.</p> <p>18 Q Yes.</p> <p>19 A And you want me to run it till the end? When do</p> <p>20 you want me to end it?</p> <p>21 Q Yes. I just -- For instance, in your table,</p> <p>22 we've got a cumulative profit of \$5,404. I want to see</p> <p>23 what kind of cumulative profit or cumulative loss we get</p> <p>24 if we start the calculation in October --</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q -- of '07 --</p> <p>2 A Run it to the end, then?</p> <p>3 Q Right.</p> <p>4 A Okay. So we start with a -- so the balance is a</p> <p>5 profit of 524,114. Going to the end --</p> <p>6 Q Yes.</p> <p>7 A -- you have a profit of 5,404.</p> <p>8 Q No. I'm --</p> <p>9 A No, I'm looking at Column K for 30609.</p> <p>10 Q Yeah --</p> <p>11 A Go to the next page.</p> <p>12 Q What --</p> <p>13 A And the total, the loss during that period of</p> <p>14 time, the diminution of value during that period of time</p> <p>15 would be the difference between those two numbers.</p> <p>16 Q Okay.</p> <p>17 A Is that what you're asking?</p> <p>18 Q Well, what I'm trying to illustrate or get you</p> <p>19 to illustrate for me is, starting in October of '07, and</p> <p>20 just like, for instance, Column J, do you see where these</p> <p>21 numbers start to accumulate with parens around them?</p> <p>22 A Yes.</p> <p>23 Q And that indicates the losses, of course?</p> <p>24 A Yes, sir.</p> <p>25 Q So if you start calculating profits and losses</p>

<p style="text-align: right;">Page 54</p> <p>1 in October of '07 to March of '09, what do you get?</p> <p>2 A Well, I would start with a 524,114 and subtract</p> <p>3 54, so you end up with --</p> <p>4 THE COURT: 519.</p> <p>5 THE WITNESS: Yeah. That's what I get. The</p> <p>6 loss that you -- the value dropped by 500- -- the profit</p> <p>7 and loss total dropped by 509,000 from the end of</p> <p>8 September to March 6th of '09.</p> <p>9 BY MR. HEBERT:</p> <p>10 Q Thank you. That's what I was looking for.</p> <p>11 And that's with -- I think that's with you</p> <p>12 telling us that the portfolio is in a relatively</p> <p>13 conservative posture with approximately 50 percent cash</p> <p>14 and 50 percent securities?</p> <p>15 A Correct.</p> <p>16 Q By the way, because I'm not a stockbroker or an</p> <p>17 investor, securities equal stocks?</p> <p>18 A Could, not necessarily.</p> <p>19 Q What else?</p> <p>20 A Securities would be -- securities is hugely</p> <p>21 broad.</p> <p>22 Q Okay. Well, I don't know. So I'm asking you --</p> <p>23 A Okay. So in the context here, say, the</p> <p>24 securities that we're talking about would be mutual</p> <p>25 funds, stocks, common stock, preferred stock, bonds,</p>	<p style="text-align: right;">Page 55</p> <p>1 cash, money market funds.</p> <p>2 Q Because in my simple way of thinking, I see</p> <p>3 securities as mortgages.</p> <p>4 A Oh.</p> <p>5 Q As secured.</p> <p>6 A I see.</p> <p>7 Q This is different --</p> <p>8 A Yeah.</p> <p>9 Q We're talking about --</p> <p>10 A These are financial instruments --</p> <p>11 Q Right.</p> <p>12 A Yes.</p> <p>13 MR. HEBERT: And by the way, for the court</p> <p>14 reporter's benefit, are we going too fast or talking over</p> <p>15 each other too much?</p> <p>16 THE REPORTER: Well, both those, but it's all</p> <p>17 right.</p> <p>18 THE WITNESS: I did that before, I --</p> <p>19 MR. HEBERT: It's the way --</p> <p>20 THE WITNESS: -- apologize --</p> <p>21 MR. HEBERT: -- it's the way the two of us</p> <p>22 interact.</p> <p>23 BY MR. HEBERT:</p> <p>24 Q Now, I'm a little confused here. You're here to</p> <p>25 deliver an expert opinion on how much money Mr. Garmon</p>
<p style="text-align: right;">Page 56</p> <p>1 made or lost over the period of September of '05 to March</p> <p>2 of '09, is that accurate?</p> <p>3 A I'm here to report what the loss was, gain or</p> <p>4 loss, not only during that period of time, but, you know,</p> <p>5 each month.</p> <p>6 Q Okay.</p> <p>7 A Just to accurately reflect what happened in the</p> <p>8 account --</p> <p>9 Q And your --</p> <p>10 A -- in the life of the account.</p> <p>11 Q And your opinions are limited to that point?</p> <p>12 A And then also -- well, as far as the schedules</p> <p>13 go, yeah, that's that part, and then I was asked to form</p> <p>14 an opinion with the portfolios, what was the nature of</p> <p>15 those portfolios? Were they conservative? Aggressive</p> <p>16 or --</p> <p>17 Q Your opinion --</p> <p>18 A -- somewhere in between?</p> <p>19 Q Your opinion is how did the accounts perform?</p> <p>20 A Uh-huh.</p> <p>21 Q And the second part of your opinion is were they</p> <p>22 conservative? Were they risky? Is that it?</p> <p>23 A Yeah.</p> <p>24 Q Now, when you calculated the performance of the</p> <p>25 accounts, did you use a measure of damages called net out</p>	<p style="text-align: right;">Page 57</p> <p>1 of pocket?</p> <p>2 A We didn't use any measure of damages.</p> <p>3 Q You're not using a measure of damages?</p> <p>4 A No. I'm -- I can certainly tell you the net out</p> <p>5 of pocket from our measurements, but we measure -- what</p> <p>6 we measure is what happened in the account.</p> <p>7 Q Okay. So --</p> <p>8 A So it's not really the damages are reported.</p> <p>9 It's a report of what actually happened, a report of --</p> <p>10 Q So a --</p> <p>11 A -- financial facts --</p> <p>12 Q -- a net out of -- Sorry.</p> <p>13 Are you saying a net out of pocket has no</p> <p>14 application to anything you did?</p> <p>15 A It --</p> <p>16 MR. BRADLEY: Objection. Are you --</p> <p>17 THE WITNESS: No --</p> <p>18 MR. BRADLEY: Are you --</p> <p>19 THE WITNESS: No --</p> <p>20 MR. BRADLEY: If you're asking him does he have</p> <p>21 a legal opinion as to what damages should be in the State</p> <p>22 of Nevada --</p> <p>23 THE COURT: Well, we don't need --</p> <p>24 MR. BRADLEY: -- at all --</p> <p>25 THE COURT: -- to get into that --</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. BRADLEY: -- not being altered --</p> <p>2 THE COURT: -- because I'm not going to allow</p> <p>3 it.</p> <p>4 MR. BRADLEY: Right.</p> <p>5 THE COURT: Yeah.</p> <p>6 MR. BRADLEY: So --</p> <p>7 MR. HEBERT: I'm trying to understand the</p> <p>8 contours of his opinion, that's why we have</p> <p>9 cross-examination.</p> <p>10 MR. BRADLEY: He's --</p> <p>11 THE COURT: But he's testified to what he's</p> <p>12 testified to about the accounts. And he just answered</p> <p>13 your question. He didn't offer an opinion as to damages.</p> <p>14 MR. HEBERT: All right.</p> <p>15 THE COURT: A legal opinion as to damages. And</p> <p>16 he didn't give a net out of pocket for NOP --</p> <p>17 MR. HEBERT: Okay. So --</p> <p>18 THE COURT: -- analysis as --</p> <p>19 MR. BRADLEY: He's not offering --</p> <p>20 THE COURT: -- as I understand.</p> <p>21 MR. BRADLEY: He's not offering a legal opinion</p> <p>22 on Nevada damages, Carl.</p> <p>23 MR. HEBERT: Thank you. That's -- that's fine.</p> <p>24 THE WITNESS: Can I --</p> <p>25 THE COURT: Yeah.</p>	<p style="text-align: right;">Page 59</p> <p>1 THE WITNESS: You can get a net out of pocket --</p> <p>2 THE COURT: I understand, sure.</p> <p>3 THE WITNESS: -- number in this analysis.</p> <p>4 THE COURT: Right.</p> <p>5 MR. HEBERT: Well, Mr. Bradley clarified it for</p> <p>6 me.</p> <p>7 MR. BRADLEY: He's not offering a legal opinion.</p> <p>8 Judge Pro is --</p> <p>9 THE COURT: You guys are going to argue to me --</p> <p>10 MR. BRADLEY: -- that --</p> <p>11 THE COURT: -- based upon this --</p> <p>12 MR. BRADLEY: -- and that's --</p> <p>13 THE COURT: -- what the --</p> <p>14 THE REPORTER: Whoa, whoa, whoa, whoa.</p> <p>15 THE COURT: Yeah.</p> <p>16 THE REPORTER: One at a time.</p> <p>17 THE COURT: Hold on. Let's me talk and the rest</p> <p>18 of you wait.</p> <p>19 He's -- he's giving the opinion he's given on</p> <p>20 the documents he's presented, the exhibits he's</p> <p>21 presented. You can argue to me what that proves or</p> <p>22 doesn't prove with regard to damages. And Mr. Bradley</p> <p>23 can, too.</p> <p>24 It doesn't have, obviously, application when</p> <p>25 we're talking about a tort claim for emotional distress.</p>
<p style="text-align: right;">Page 60</p> <p>1 So he's offering no opinion about that. I don't really</p> <p>2 think it's confusing. I think it's just giving his</p> <p>3 analysis of the -- what occurred with regard to the</p> <p>4 account.</p> <p>5 MR. HEBERT: I appreciate that, your Honor, and</p> <p>6 I appreciate Mr. Bradley's clarification that net out of</p> <p>7 pocket has no place in his analysis.</p> <p>8 MR. BRADLEY: I did, Carl. Objection, he's --</p> <p>9 THE COURT: Yes.</p> <p>10 MR. BRADLEY: -- mischaracterizing what I said.</p> <p>11 But he's not offering a legal opinion on damages, and</p> <p>12 I've made that clear in my opposition to your motion, and</p> <p>13 I've made that clear again.</p> <p>14 THE COURT: Right.</p> <p>15 MR. BRADLEY: He's not a legal expert. Judge</p> <p>16 Pro will decide what the law is. He's telling you what</p> <p>17 the standard Bates analysis is. We went through it.</p> <p>18 MR. HEBERT: Well, your Honor, the</p> <p>19 characterization that it's a legal concept is, I think, a</p> <p>20 little bit --</p> <p>21 THE COURT: Well, let's save that for argument</p> <p>22 later on. Just ask a question of the witness. Let's get</p> <p>23 the witness on his way and finish the examination rather</p> <p>24 than talk about how we're going to interpret it, whether</p> <p>25 we're talking about 5275 or FRE 702. The language is</p>	<p style="text-align: right;">Page 61</p> <p>1 identical, the standards are the same.</p> <p>2 Go ahead and ask your question.</p> <p>3 MR. HEBERT: Thank you, your Honor. I think I</p> <p>4 understand what's going on here.</p> <p>5 BY MR. HEBERT:</p> <p>6 Q Please turn to Plaintiff's Exhibit Volume I,</p> <p>7 Exhibit 3.</p> <p>8 THE COURT: 3?</p> <p>9 MR. HEBERT: 3. This is Mr. Garmong's client --</p> <p>10 THE COURT: Right, profile.</p> <p>11 MR. HEBERT: -- confidential client profile.</p> <p>12 THE WITNESS: Uh-huh.</p> <p>13 BY MR. HEBERT:</p> <p>14 Q Now, the reason I'm going into this area is you</p> <p>15 had some things to say about, you know, client</p> <p>16 instructions and what should be done.</p> <p>17 So in this profile, would you have a look at</p> <p>18 risk tolerance profile on the lower right-hand corner,</p> <p>19 Page 42.</p> <p>20 Do you see the number?</p> <p>21 A Yes.</p> <p>22 Q And Mr. Garmong says on Page 42, Question 2,</p> <p>23 "Answer B is my goal."</p> <p>24 Do you see on the next page, Page 43, Question</p> <p>25 2, Answer B?</p>

<p style="text-align: right;">Page 62</p> <p>1 A Yes.</p> <p>2 Q What does it say?</p> <p>3 A "Moderately increasing my investment value while</p> <p>4 minimizing potential for loss of principal."</p> <p>5 Q Okay.</p> <p>6 A And then there's another notation here,</p> <p>7 "Moderate growth, low to moderate risk" that he wrote,</p> <p>8 right?</p> <p>9 Q Tell me that --</p> <p>10 A Well, I guess your --</p> <p>11 Q It is --</p> <p>12 A -- specific question is which box was -- Box 2</p> <p>13 was checked, I agree with that.</p> <p>14 Q And that's what I wanted you to read, Box --</p> <p>15 A Correct.</p> <p>16 Q -- 2 --</p> <p>17 A Okay, I'm sorry. I'm going to just limit it to</p> <p>18 whatever you ask.</p> <p>19 Q Were you aware that -- Well, how would you</p> <p>20 characterize that? Would you characterize that as</p> <p>21 conservative or what?</p> <p>22 A Well, it sounds moderate to me, but moderate to</p> <p>23 conservative --</p> <p>24 Q Okay.</p> <p>25 A -- could be in there. I mean, I think low to</p>	<p style="text-align: right;">Page 63</p> <p>1 moderate risk I think would be an accurate --</p> <p>2 Q And in --</p> <p>3 A -- so that would be conservative to moderate,</p> <p>4 yeah.</p> <p>5 Q In coming here to testify, did you read</p> <p>6 Mr. Garmong's profile?</p> <p>7 A This document?</p> <p>8 Q Yes.</p> <p>9 A Yes.</p> <p>10 Q Did you also read or understand that in October</p> <p>11 of 2007, he had a meeting with Mr. Christian and said</p> <p>12 that "I've retired, my goals have changed and I want you</p> <p>13 to avoid the loss of capital even if I, you know, have</p> <p>14 less returns"? Do you remember that?</p> <p>15 A I'm -- are you asking about the letter?</p> <p>16 Q The letter of October 22, 2007 --</p> <p>17 A Okay. I'm aware of the letter of October 22 and</p> <p>18 I am aware of that language.</p> <p>19 Q Would you agree with me that that language</p> <p>20 represents a change from the profile which is Exhibit 3</p> <p>21 in Plaintiff's Volume I here?</p> <p>22 A No, not as written, I would not. I mean, I</p> <p>23 think that was -- yeah, my opinion's informed in two</p> <p>24 ways: One, is that still moderately increasing my</p> <p>25 investment value by minimizing potential for loss of</p>
<p style="text-align: right;">Page 64</p> <p>1 principal? So that is still present. And so that's one</p> <p>2 way my opinion is informed.</p> <p>3 And my other opinion is informed by what</p> <p>4 actually happened up until that point, is your -- it's</p> <p>5 pretty obvious that's what his modus is, that he's</p> <p>6 getting lower and lower risk tolerance all through</p> <p>7 this -- the portfolio is taking on the appearance of</p> <p>8 lower and lower risk tolerance.</p> <p>9 Q Well --</p> <p>10 A And that doesn't mean, you know, if you want to</p> <p>11 say, "Is it conservative" or "Is it moderate?"</p> <p>12 The point I'm making is that, yes, it is. It's</p> <p>13 conservative or moderate, getting more conservative as</p> <p>14 time goes by.</p> <p>15 Q Well, you used the phrase on your direct</p> <p>16 examination "preservation of capital."</p> <p>17 A Correct.</p> <p>18 Q Would you agree with me that when Mr. Garmong</p> <p>19 says to Mr. Christian in October of 2007, "I don't want</p> <p>20 to lose any money, I don't want to lose any capital. I'm</p> <p>21 willing to take less reward to preserve my capital,"</p> <p>22 would you call that less than moderate to more</p> <p>23 conservative?</p> <p>24 A I would.</p> <p>25 Q Okay. And would you agree with me that if</p>	<p style="text-align: right;">Page 65</p> <p>1 Mr. Christian didn't understand exactly what Mr. Garmong</p> <p>2 was instructing him with that kind of language, that he</p> <p>3 should pick up the phone or write a letter and say,</p> <p>4 "Mr. Garmong, I don't really understand where you want me</p> <p>5 to go or what you want me to do"? Would that be</p> <p>6 something an investment advisor should do?</p> <p>7 A If an investment advisor does not understand --</p> <p>8 Q Yes.</p> <p>9 A -- what the client wants?</p> <p>10 Q Yes.</p> <p>11 A I would think there would be additional</p> <p>12 communication.</p> <p>13 Q An investment advisor has a fiduciary duty to</p> <p>14 his client, doesn't he?</p> <p>15 A A discretion advisor is generally considered --</p> <p>16 Q An investment advisor is a fiduciary, isn't he?</p> <p>17 A That's my understanding.</p> <p>18 Q And as a fiduciary, doesn't he act in the very</p> <p>19 best interests of his clients with the utmost duty of</p> <p>20 loyalty and fidelity?</p> <p>21 A I would believe that's what fiduciary is in that</p> <p>22 sense, yes.</p> <p>23 Q And if Mr. Christian wanted to do what's best</p> <p>24 for Mr. Garmong and he doesn't understand his</p> <p>25 instructions, then he would call and ask, wouldn't he?</p>

<p style="text-align: right;">Page 66</p> <p>1 A If there is -- Well, again, that's the same 2 question that -- 3 Q You're right. You answered it earlier, didn't 4 you? 5 A Asked and answered. 6 Q Okay. Sustained. 7 The point is that if there were no requests for 8 instructions, then can we say that Mr. Christian must 9 have understood what Mr. Garmon wanted, which was to 10 avoid losing his capital? 11 A I -- 12 MR. BRADLEY: Objection -- 13 THE COURT: Yeah, sustained. You're asking the 14 witness to interpret what Mr. Christian understood and he 15 can't do that. 16 MR. HEBERT: Okay, your Honor. I'll move on. 17 BY MR. HEBERT: 18 Q Now, I want you to look at -- and I'm going to 19 see if I can find it. Please turn to Plaintiff's Exhibit 20 7 in Volume I. 21 A (Witness complies.) 22 Q Are you there? 23 A I am, yes, sir. 24 Q Describe this page to the Court, please. 25 A It says, "Confidential client profile,</p>	<p style="text-align: right;">Page 67</p> <p>1 investment objective assessment engagement agreement," 2 it's from WESPAC. 3 Q And that's part of the client confidential 4 profile, correct? 5 A Bates number ending in 73. 6 Q Ending in 73? 7 A The Bates number. WESPAC 000073. 8 THE COURT: Right. That's the first page of the 9 exhibit. 10 MR. HEBERT: Okay. I'm sorry. I was looking at 11 Page 1185. 12 BY MR. HEBERT: 13 Q But Page 11 is part of the profile beginning 14 with Page 73, is that what you're saying? 15 A I haven't looked at Page 11. 16 Q Well, let's start over. 17 A I just identified the cover page. 18 Q Let's start over. 19 A Okay. 20 Q We should be looking at Plaintiff's Exhibit 7. 21 A Okay. 22 Q Are you there? 23 A Yes, sir. 24 Q And that is a profile starting on Page 73? 25 A Yes, sir.</p>
<p style="text-align: right;">Page 68</p> <p>1 Q Now, I want you to turn to Page 0085, which is 2 Page 11 of the profile. 3 A Okay. 4 Q Now, if Mr. Garmon, in completing his profile, 5 wanted to state that he wanted to preserve his capital, 6 that's not in one of these boxes that you checked up 7 here, is it? Do you see where it says "Aggressive 8 Growth, Growth"? Where is "Preservation of Capital"? 9 A I don't see it here. 10 Q I don't either. Now, if Mr. Garmon -- if he 11 wanted to tell Mr. Christian, "I'm pretty risk adverse 12 and I want to preserve my capital if at all possible," 13 that would be something he would fill in on the bottom 14 where it says, "Custom." Would you agree? 15 A I -- I don't know the rest of the form, if 16 there's another place for it or if it's already been 17 covered in the previous part of the form. 18 Q Well, I'll represent to you that -- 19 A So I -- Again, to answer your specific question, 20 would they put it there? I don't know. 21 Q Could it be put there? 22 A If it wasn't, yeah, I -- 23 Q This is -- 24 A -- assume -- 25 Q -- after --</p>	<p style="text-align: right;">Page 69</p> <p>1 A I don't know one way or the other. 2 THE REPORTER: Whoa, whoa. 3 THE WITNESS: I'm sorry. 4 THE REPORTER: That's all right. Go ahead. 5 BY MR. HEBERT: 6 Q Mr. Cramer, were you instructed to run your 7 calculations -- Let me ask it a different way. 8 Why did you run your calculations on damages 9 from September of '05 to March of '09? 10 A Well, September of '05, the calculation -- I -- 11 I'm uncomfortable, because I keep saying it's not a 12 calculation. 13 We started the analysis that I made in September 14 of '05 because that's when the relationship began and -- 15 in that first account, and so -- or the first accounts, 16 and then we ran it through March 6th of '09, because that 17 was the date, the termination date of the relationship 18 with WESPAC. So I would just say it encompasses the 19 WESPAC, period. 20 Q Were you instructed to use these beginning and 21 ending dates by Mr. Bradley? 22 A No. Well, the ending date, yes, March 6th. 23 That was the day of the letter. So we used March 6th. 24 The beginning dates we used were when the accounts 25 started.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q So if I could characterize your testimony, you</p> <p>2 looked at the totality of the relationship between</p> <p>3 Mr. Garmong and WESPAC Advisors?</p> <p>4 A Right. The accounts that were investment</p> <p>5 accounts, yes.</p> <p>6 Q Now, are you aware that the issue here is --</p> <p>7 Well, let me ask it a different way. And I've been</p> <p>8 trying to drive at this by taking you through the profile</p> <p>9 and the letter of October 22, 2007.</p> <p>10 Mr. Garmong's investment instructions changed.</p> <p>11 That's a statement. Why didn't you run the analysis from</p> <p>12 when they changed to preservation of capital in October</p> <p>13 of 2007 to March of 2009?</p> <p>14 MR. BRADLEY: Objection, it misstates the</p> <p>15 evidence that he changed his investment objectives.</p> <p>16 MR. HEBERT: It --</p> <p>17 THE COURT: Well, the record will reflect. You</p> <p>18 can characterize it and argue how to characterize the</p> <p>19 October letter and the instructions, but the question</p> <p>20 focuses on why didn't you use a different beginning time.</p> <p>21 Everybody knows the ending, March of 2009,</p> <p>22 because the relationship ended then. But in the interval</p> <p>23 between September of '05 and the end date, you're</p> <p>24 suggesting why didn't you use October 2007 as a start</p> <p>25 date for an analysis?</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. HEBERT: Yes.</p> <p>2 THE COURT: That's what I understood your</p> <p>3 question to be.</p> <p>4 MR. HEBERT: And that's what it was.</p> <p>5 THE COURT: Okay. Is there a reason why you</p> <p>6 didn't?</p> <p>7 THE WITNESS: No. Our standard analysis, which</p> <p>8 we provide all the time, has been -- is standard -- is</p> <p>9 from the beginning of the relationship to the end of the</p> <p>10 relationship.</p> <p>11 THE COURT: The life of the --</p> <p>12 THE WITNESS: Right.</p> <p>13 THE COURT: -- relationship between the --</p> <p>14 THE WITNESS: -- yes --</p> <p>15 THE COURT: -- plaintiff and the defendant?</p> <p>16 THE WITNESS: Well, yes. That's it.</p> <p>17 MR. HEBERT: Which sounds very much like net out</p> <p>18 of pocket.</p> <p>19 Now, the reason I bring that up, your Honor, is</p> <p>20 because yesterday, Mr. Bradley, when questioning</p> <p>21 Mr. Garmong, took him through one of his Charles Schwab</p> <p>22 statements and said, "That's really out of pocket what</p> <p>23 you just did there, wasn't it?"</p> <p>24 THE COURT: Okay. But that's examination of</p> <p>25 Mr. Garmong, and, Counsel, you're going to argue that --</p>
<p style="text-align: right;">Page 72</p> <p>1 MR. HEBERT: Uh-huh.</p> <p>2 THE COURT: This witness has not been asked</p> <p>3 that.</p> <p>4 MR. HEBERT: All right, your Honor.</p> <p>5 BY MR. HEBERT:</p> <p>6 Q So is there a reason why you couldn't do an</p> <p>7 analysis from the beginning of October 2007 to March of</p> <p>8 2009?</p> <p>9 A I -- well, we just did --</p> <p>10 Q That's --</p> <p>11 A -- with your question.</p> <p>12 Q You anticipated --</p> <p>13 A It's there. It's -- it's there and available.</p> <p>14 So the analysis actually was done from the period of time</p> <p>15 that you're asking for. It's there in black and white.</p> <p>16 So, yes, it's been done.</p> <p>17 Q That was a "Yes"?</p> <p>18 A It's already been done.</p> <p>19 Q Okay. And I asked you that earlier, and we sort</p> <p>20 of did it right here, didn't we? Because that's where</p> <p>21 the loss of \$509,000 comes from?</p> <p>22 A That's where the loss -- I don't want to be</p> <p>23 caught on your words, because if your math is like mine,</p> <p>24 it might be wrong. But, yes, that was the loss that we</p> <p>25 calculated.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q So, essentially, that's the analysis for October</p> <p>2 of '07 to March of '09, that \$509,000, Exhibit 55, that</p> <p>3 we talked about?</p> <p>4 A No. That's the -- that's the diminution of</p> <p>5 value from those two dates. The analysis is contained in</p> <p>6 all the pages and they have dates of transactions and</p> <p>7 dates of balances. So that's available in the analysis.</p> <p>8 So it wasn't -- it wasn't -- it by no means</p> <p>9 excludes that period of time that you're asking. It</p> <p>10 absolutely includes that period of time.</p> <p>11 THE COURT: Mr. Cramer, can't any of us in this</p> <p>12 room, with our respective math skills and calculators,</p> <p>13 sit down, pick whatever dates we want, using the charts</p> <p>14 that you've promulgated, and do our analysis whatever</p> <p>15 start date we want to use and the end date, am I right?</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 THE COURT: So, Counsel, you can call -- you can</p> <p>18 argue that and I can do it.</p> <p>19 MR. HEBERT: All right, your Honor.</p> <p>20 THE COURT: We don't need an expert to sit down</p> <p>21 here and calculate --</p> <p>22 MR. HEBERT: Well, that's my point. We don't</p> <p>23 need this expert.</p> <p>24 THE COURT: Okay. Well, if you have no further</p> <p>25 questions --</p>

<p style="text-align: right;">Page 74</p> <p>1 MR. HEBERT: No, no. I'll keep going.</p> <p>2 BY MR. HEBERT:</p> <p>3 Q Now, when you talk about preservation of</p> <p>4 capital, which you did in your direct examination, could</p> <p>5 I restate that to say that if an investment advisor</p> <p>6 wanted to preserve a client's capital, he would put them</p> <p>7 into cash equivalents, which would be T bills, CDs, bank</p> <p>8 accounts; anything else come to mind?</p> <p>9 A Well, you kind of did a slight change there.</p> <p>10 If preservation of capital is the sole</p> <p>11 investment objective as defined in "I don't want to lose</p> <p>12 any money at all," those would be the right -- the right</p> <p>13 answers.</p> <p>14 Q My question was --</p> <p>15 A If preservation of capital is, "I'm 60 and I've</p> <p>16 got all of this money and I want to have the same</p> <p>17 purchasing power, I want to have the same security at age</p> <p>18 85 that I have at age 60" or -- I'm using a hypothetical.</p> <p>19 Then you would say, "Well, I'm not so sure your</p> <p>20 capital will be preserved if you're going to spend it at</p> <p>21 the rate of 10 percent a year and you're only earning one</p> <p>22 percent a year."</p> <p>23 Q My question is --</p> <p>24 A So that's -- that fits into the -- if you're</p> <p>25 talking about investment objectives versus instruction,</p>	<p style="text-align: right;">Page 75</p> <p>1 that would be it.</p> <p>2 Q My question actually was directed toward</p> <p>3 techniques for preserving capital, not so much the</p> <p>4 calculations involved in preserving capital.</p> <p>5 So going to the techniques, if I wanted to</p> <p>6 preserve my capital, these are some of the things I could</p> <p>7 do, aren't they?</p> <p>8 A If you wanted to -- okay. The cash --</p> <p>9 Q If I wanted to preserve my capital --</p> <p>10 A Yes.</p> <p>11 Q -- I could buy T bills, I could buy CDs, I could</p> <p>12 put my money in the bank. I theoretically could put it</p> <p>13 in my mattress. Are there any other techniques --</p> <p>14 A The --</p> <p>15 Q -- for preserving capital? Any other places I</p> <p>16 could put my money where it wouldn't erode?</p> <p>17 A Erode? You mean where it didn't run the risk</p> <p>18 of --</p> <p>19 Q Yeah --</p> <p>20 A -- diminution of value?</p> <p>21 Q Preserved --</p> <p>22 A Yeah, it --</p> <p>23 Q -- we're talking about preserving --</p> <p>24 A Yeah. Right --</p> <p>25 Q -- capital --</p>
<p style="text-align: right;">Page 76</p> <p>1 A Right, right. No. I would say that pretty much</p> <p>2 covers it.</p> <p>3 THE COURT: And you would not need a stockbroker</p> <p>4 to do any of that, would you?</p> <p>5 THE WITNESS: No.</p> <p>6 THE COURT: Or you wouldn't pay fees to someone</p> <p>7 to do that?</p> <p>8 THE WITNESS: No. That would be silly.</p> <p>9 THE COURT: You could go to your bank and put it</p> <p>10 in a bank account?</p> <p>11 THE WITNESS: Correct.</p> <p>12 BY MR. HEBERT:</p> <p>13 Q Now, let me ask you this: If you're an</p> <p>14 investment advisor and someone comes to you and they're</p> <p>15 in the market and they've got investments they want</p> <p>16 managed and they say to you, "The stock market's behaving</p> <p>17 badly at the moment. Can we go to an all-cash position</p> <p>18 to preserve my capital temporarily," is there anything</p> <p>19 wrong with that method of, you know, advising?</p> <p>20 A Well, I would assume then if there's a question</p> <p>21 asked, the advisor would answer the question. And the</p> <p>22 way an advisor might answer that question would be,</p> <p>23 "Let's check it out. Here's the practical application of</p> <p>24 what you're doing and here's the practicality. Here's</p> <p>25 the potential risk and rewards of the method of</p>	<p style="text-align: right;">Page 77</p> <p>1 investment that you're asking about."</p> <p>2 Q An advisor wouldn't say, "Listen, if you want to</p> <p>3 go to all cash, that's the end of our relationship,</p> <p>4 there's nothing I can do for you. Just sell out and get</p> <p>5 out." An advisor wouldn't say that, would he?</p> <p>6 MR. BRADLEY: Objection, calls for speculation.</p> <p>7 THE COURT: No. It's overruled. If the witness</p> <p>8 can answer, he can answer.</p> <p>9 THE WITNESS: I would doubt it.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q In other words, what I'm driving at is</p> <p>12 temporarily going to a cash equivalence while you wait</p> <p>13 out rough weather in the markets, would that be an</p> <p>14 acceptable method of advising a client?</p> <p>15 A Well, it would be, but, again, when you talk</p> <p>16 about fiduciary duty and all of the duties that go along</p> <p>17 with advising is that you're saying, "Don't terminate the</p> <p>18 relationship, just go to cash for a while."</p> <p>19 Q Is that --</p> <p>20 A How long's "a while"? Who's going to decide</p> <p>21 when to get back in?</p> <p>22 My advice might be to, "Absolutely, let's get</p> <p>23 the heck out of Dodge," or it might be, "You know, nobody</p> <p>24 times the market well. I think we've already got it</p> <p>25 diversified."</p>

<p style="text-align: right;">Page 78</p> <p>1 There's a whole -- I'm sorry -- there's a whole</p> <p>2 slug of -- a pallet of answers that would be appropriate.</p> <p>3 Q But in the end, to quote Mr. Cramer, the client</p> <p>4 gets to decide?</p> <p>5 A If the client gives an instruction to do X; Y,</p> <p>6 Z, then the advisor would follow the instruction to do X,</p> <p>7 Y, Z.</p> <p>8 Q So if the client said, "I want to preserve my</p> <p>9 capital, at least for the short term, maybe six months,</p> <p>10 let's take it all, let's take everything we've got and</p> <p>11 put it over here in Treasury bills," that's a perfectly</p> <p>12 viable strategy, isn't it?</p> <p>13 A Well, there's two differences. It's a viable</p> <p>14 strategy, but it's not an instruction to do so.</p> <p>15 Q No. It's a viable strategy, and if the client</p> <p>16 instructs the investment advisor to do that, then it</p> <p>17 would be the investment advisor's obligation to follow</p> <p>18 the instructions, wouldn't it?</p> <p>19 A It is an investment advisor's duty to follow the</p> <p>20 instructions.</p> <p>21 Q Would there ever be a time when you would say to</p> <p>22 a client, "I don't ever put a client in an all-cash</p> <p>23 position"? Have you ever said that to somebody?</p> <p>24 MR. BRADLEY: Objection. What's the relevance</p> <p>25 of what he said to a client?</p>	<p style="text-align: right;">Page 79</p> <p>1 MR. HEBERT: Your Honor --</p> <p>2 THE COURT: Whether he's ever said it or not, I</p> <p>3 suppose. But I'll allow the question. Let's move it</p> <p>4 along.</p> <p>5 BY MR. HEBERT:</p> <p>6 Q Have you ever heard that advice from an</p> <p>7 investment advisor, "I would never put you into an</p> <p>8 all-cash position, I won't do that"?</p> <p>9 A Not in those words.</p> <p>10 Q Have you ever done that?</p> <p>11 A Put somebody in --</p> <p>12 Q Have you ever said to a client, "I'm not going</p> <p>13 to put you in an all-cash position, I just won't do it."</p> <p>14 A Not in those words.</p> <p>15 Q Have you said it at all, however you said it?</p> <p>16 A Well, if a client gives me instructions to go to</p> <p>17 cash, I'd go to cash.</p> <p>18 Q And you'd work it out --</p> <p>19 A If he said, "Sell me out, I don't want any part</p> <p>20 of this, get me out of the market. I'm done, for</p> <p>21 whatever length of time."</p> <p>22 Q And you'd sit down with the client and you would</p> <p>23 work with the client and say, "What are your goals? How</p> <p>24 much money do you have? How much money do you want to</p> <p>25 take out? Do you want to pay for college for your grand</p>
<p style="text-align: right;">Page 80</p> <p>1 kids? Let's figure out where we're -- we're going to</p> <p>2 take it all into cash and then we're going to figure out</p> <p>3 where we're going from there."</p> <p>4 And that's what an investment advisor does,</p> <p>5 isn't it?</p> <p>6 A Well, actually, I do most of that before the</p> <p>7 relationship ever begins.</p> <p>8 Q But things change, don't they, during the course</p> <p>9 of a relationship?</p> <p>10 A Well, and that's why there's -- the relationship</p> <p>11 is a continuum.</p> <p>12 Q In other words, you don't take a snapshot of</p> <p>13 what the client wants in Year 1 and Year 10 it's still</p> <p>14 good, do you?</p> <p>15 A Right. Nor necessarily would you take a</p> <p>16 snapshot of a statement uttered in frustration and extend</p> <p>17 that for 20 years or whatever, or anything in between.</p> <p>18 You know, there is a discussion.</p> <p>19 And my point is, the continuum of the</p> <p>20 relationship is the sum total of all of the</p> <p>21 conversations, all of the -- everything, the</p> <p>22 conversations, the correspondence, the interaction up</p> <p>23 until, you know, now.</p> <p>24 Q So --</p> <p>25 A At any one time --</p>	<p style="text-align: right;">Page 81</p> <p>1 Q A relationship has to be cultivated. The</p> <p>2 investment advisor checks in on what the client's doing,</p> <p>3 doesn't he?</p> <p>4 A Actually, could, could. I mean, the investment</p> <p>5 advisor is under certain instructions and I think has to</p> <p>6 respond to market conditions to look out for the best,</p> <p>7 you know, what's -- that's in the customer's interests.</p> <p>8 Q But as a --</p> <p>9 A But in terms of investment objective changes, is</p> <p>10 that what you're asking about?</p> <p>11 Q Yeah, well, all I'm trying to get from you is,</p> <p>12 during the course of a relationship with a client, the</p> <p>13 investment advisor would be -- it would be a good idea,</p> <p>14 wouldn't it, as a fiduciary to talk to the client and</p> <p>15 find out if things have changed with the client or</p> <p>16 perhaps call the client and say, "Things have changed in</p> <p>17 the markets and we need to rethink our strategy," is that</p> <p>18 something you would do?</p> <p>19 A Those are -- those are -- That would be part of</p> <p>20 a normal relationship, yeah.</p> <p>21 Q Is it part of an investment advisor</p> <p>22 relationship?</p> <p>23 A It -- Yeah. The way you've described it, you</p> <p>24 would have conversations with your client about, I would</p> <p>25 say, yes, that's my experience with investment advisors.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q And so Mr. Garmon is writing faxes to</p> <p>2 Mr. Christian saying, "Concern, we need to avoid losing</p> <p>3 capital and preserve capital," wouldn't that provoke</p> <p>4 conversations between Mr. Christian and Mr. Garmon about</p> <p>5 "What are we doing and how do you want to do it?"</p> <p>6 A I would assume it would. I -- that's -- if</p> <p>7 there's a change, if it represents a change, I would</p> <p>8 certainly think it would.</p> <p>9 Q And I thought I heard you say on direct</p> <p>10 examination that, "Cash increases safety and decreases</p> <p>11 risk." Did you say that?</p> <p>12 A Yeah. Net net. It decreases risk.</p> <p>13 Q All right. So if I'm risk averse, something I</p> <p>14 could do would be to put my investments into cash to</p> <p>15 decrease the risk, wouldn't it?</p> <p>16 A I think, yeah, that's absolutely true.</p> <p>17 Q Okay. Now, clients don't always use the same</p> <p>18 words investment advisors use, do they?</p> <p>19 Let me ask a better question. I can see you</p> <p>20 thinking.</p> <p>21 A I think I get your point. Anyway, go ahead.</p> <p>22 Q All right. There's -- Like any profession,</p> <p>23 investment advisors, I'm sure, develop terms for various</p> <p>24 things.</p> <p>25 If a client says not to lose money or not to</p>	<p style="text-align: right;">Page 83</p> <p>1 lose capital, what would you call that? Preservation of</p> <p>2 capital?</p> <p>3 A Not to lose capital?</p> <p>4 Q Yeah. In other words --</p> <p>5 A Well, I would call that vague in the sense that</p> <p>6 the client says not to lose capital. I mean, the first</p> <p>7 rule of successful investing for growth is don't lose</p> <p>8 capital. So --</p> <p>9 Q That's vague.</p> <p>10 A It's sort of like -- yeah, it's the other side</p> <p>11 of the coin. Nobody wants to lose capital. Everybody</p> <p>12 would rather have an increase in capital. So just the</p> <p>13 term "I don't want to lose capital" would actually apply</p> <p>14 to everyone.</p> <p>15 Q What I'm trying to -- I'm trying to establish</p> <p>16 the groundwork for a series of questions.</p> <p>17 A Yeah.</p> <p>18 Q And what I'm trying to say is sometimes, as an</p> <p>19 attorney, if I use the words of my profession, I'm going</p> <p>20 to have a communication problem with my client, having</p> <p>21 them understand what I'm saying. And what I'm driving at</p> <p>22 is there may be a little bit of a disconnect between the</p> <p>23 terminology used by investment advisors and what a client</p> <p>24 may say to the investment advisor.</p> <p>25 And my point is if "Don't lose money" is so</p>
<p style="text-align: right;">Page 84</p> <p>1 broad to be totally ambiguous, wouldn't an investment</p> <p>2 advisor call the client and say, "What do you mean?"</p> <p>3 A If it's a brand new issue, hypothetically, if</p> <p>4 it's a brand new client, you don't know your client, I</p> <p>5 would say you would really explore that avenue thoroughly</p> <p>6 at the beginning.</p> <p>7 And so, there again, there's sort of a</p> <p>8 progression of knowledge, and as you're talking to the</p> <p>9 client, you know, he says, "This isn't for me. I don't</p> <p>10 want to take any more risk. Get me out."</p> <p>11 There would certainly be a discussion, I would</p> <p>12 think.</p> <p>13 Q So then --</p> <p>14 A But again, that's more like a call for a</p> <p>15 discussion, not an instruction. And it may be at the end</p> <p>16 of the discussion --</p> <p>17 Q Right.</p> <p>18 A -- the end of the discussion or at some point</p> <p>19 just like, "I can't take it, whatever risk is going on,</p> <p>20 anymore." It's "Just get me out, I don't care. Sell it.</p> <p>21 I can't afford any more risk" --</p> <p>22 Q So the --</p> <p>23 A -- "or any more losses."</p> <p>24 Q So if a client calls -- if a client calls you up</p> <p>25 and says, "I don't want you to lose any more money," you</p>	<p style="text-align: right;">Page 85</p> <p>1 would call back and say, "That doesn't fit within any of</p> <p>2 the categories of investment modeling that I do. What do</p> <p>3 you mean 'If I don't lose any money'? Do you mean let's</p> <p>4 go temporarily to cash? Let's do this."</p> <p>5 Is that going to promote that kind of</p> <p>6 conversation?</p> <p>7 A Yeah, I think so.</p> <p>8 Q All right.</p> <p>9 A But if it's not an instruction, if it's an</p> <p>10 inquiry, "I don't want to lose any more money, what do I</p> <p>11 do?" That's what an advisor is in business for.</p> <p>12 "Here's what you do. Let's talk about the</p> <p>13 practical application of what you're saying, given your</p> <p>14 investment objectives that we've established." So, yes,</p> <p>15 it's within that context and within that continuum of the</p> <p>16 relationship.</p> <p>17 Q Thank you.</p> <p>18 Let's explore some other areas. Are you</p> <p>19 confident in your calculations that you used here in all</p> <p>20 of these charts?</p> <p>21 A Yes, sir.</p> <p>22 Q All right. Look at Exhibit 70, and I think it's</p> <p>23 the defense binder.</p> <p>24 A Oh, defense? We're the defense. Got it.</p> <p>25 Q Let me just help you out. What we've got here</p>

<p style="text-align: right;">Page 86</p> <p>1 is we've got a set of plaintiff's exhibits and a set of</p> <p>2 defendant's exhibits.</p> <p>3 A Uh-huh.</p> <p>4 Q Now, do you see Column J for the date January</p> <p>5 31, 2006?</p> <p>6 A January 31. So this is for the Defined Benefit</p> <p>7 Trust 5386?</p> <p>8 Q If that's Exhibit 70.</p> <p>9 A Yes, sir. And --</p> <p>10 Q Column J.</p> <p>11 A Column J.</p> <p>12 Q January 31, 2006.</p> <p>13 A Yes, sir.</p> <p>14 Q What were the source documents for these</p> <p>15 numbers?</p> <p>16 A January 31, 2006, this would have been from the</p> <p>17 data download from Up & Running, which is data from</p> <p>18 Schwab. So this was prior to the monthly statements --</p> <p>19 Q I think the name "Up & Running" is the first</p> <p>20 we've heard so far in this arbitration. Can you tell the</p> <p>21 arbitrator briefly what Up & Running's involvement was in</p> <p>22 this?</p> <p>23 A Yes. Schwab is the custodian of the assets. So</p> <p>24 the securities and everything is at Schwab. And they put</p> <p>25 out monthly statements, and Schwab, as custodian, tracks</p>	<p style="text-align: right;">Page 87</p> <p>1 the ins and outs.</p> <p>2 They also have a portfolio management system, is</p> <p>3 my understanding, and that portfolio management system is</p> <p>4 -- it takes the Schwab data and puts it in like we've</p> <p>5 done, into sort of a sortable format, so you can get</p> <p>6 different kinds of reports, bond maturities,</p> <p>7 diversification, whatever expected income. It's not</p> <p>8 typically done on a statement, but you have the data.</p> <p>9 Now, that data takes -- so to get it into</p> <p>10 reports, you put it into the portfolio management</p> <p>11 software that Schwab has, and it requires some</p> <p>12 reconciliation and maintenance.</p> <p>13 My understanding of the agreement is Up &</p> <p>14 Running was employed by WESPAC, I don't have the contract</p> <p>15 and I -- if it's different than you find afterwards, but</p> <p>16 Up & Running maintained the database that was put into</p> <p>17 the software, and the source of that data was Schwab data</p> <p>18 into the portfolio management software, and the</p> <p>19 maintenance of that software was Up & Running such that</p> <p>20 WESPAC could then turn on their machine, go to the</p> <p>21 portfolio software and be reasonably assured that</p> <p>22 everything they had was accurate.</p> <p>23 Q So Up & Running was keeping Schwab data for</p> <p>24 WESPAC, is that accurate?</p> <p>25 A Maintaining the database, yeah, is my</p>
<p style="text-align: right;">Page 88</p> <p>1 understanding.</p> <p>2 Q Okay. Do we have any -- and you can look</p> <p>3 through the index to the exhibits or the exhibits</p> <p>4 themselves. Do we have any of the Up & Running documents</p> <p>5 in the defense exhibits in front of us?</p> <p>6 A In the defendant's exhibits?</p> <p>7 Q Yes.</p> <p>8 A I don't know. You would know better than I.</p> <p>9 Q I haven't seen any.</p> <p>10 MR. BRADLEY: We provided in discovery copies of</p> <p>11 the Up & Running documents from which this was created.</p> <p>12 So if you want to test it, you certainly can. I didn't</p> <p>13 want to overload Judge Pro with a stack of, you know,</p> <p>14 10,000 pages of reports.</p> <p>15 MR. HEBERT: All right.</p> <p>16 MR. BRADLEY: But if you'd like me to supplement</p> <p>17 the record with Up & Running, I will.</p> <p>18 MR. HEBERT: Let's go on and we'll see if we</p> <p>19 need to do that.</p> <p>20 MR. BRADLEY: Okay.</p> <p>21 BY MR. HEBERT:</p> <p>22 Q Let's go to Exhibit 70 again, Column J for</p> <p>23 December 31, 2007.</p> <p>24 A December 31, '07?</p> <p>25 Q Yes. Column J.</p>	<p style="text-align: right;">Page 89</p> <p>1 A Yes, sir.</p> <p>2 Q Okay. This is the same information that's on</p> <p>3 Exhibit 24-C.</p> <p>4 A Am I supposed to look at 24-C?</p> <p>5 Q Hang on for a second. My notes are wrong. It</p> <p>6 should be 24-A. But my point to you is this --</p> <p>7 MR. BRADLEY: Oh, 24-A is not --</p> <p>8 THE COURT: Just ask the question.</p> <p>9 MR. HEBERT: Your Honor, I want to take him</p> <p>10 through the calculation to show that his number is wrong.</p> <p>11 THE COURT: Okay. Well, ask him a question.</p> <p>12 Don't make points. Just ask a question.</p> <p>13 MR. HEBERT: Okay.</p> <p>14 BY MR. HEBERT:</p> <p>15 Q Do you have 24-A somewhere in front of you,</p> <p>16 Mr. Cramer?</p> <p>17 MR. BRADLEY: I don't believe it got put into</p> <p>18 the binder.</p> <p>19 THE COURT: It's not in the binder. It's loose.</p> <p>20 We marked --</p> <p>21 THE WITNESS: Except --</p> <p>22 THE COURT: -- as --</p> <p>23 THE REPORTER: Whoa --</p> <p>24 BY MR. HEBERT:</p> <p>25 Q Now, you're looking at -- Here's a copy of 24-A.</p>

<p style="text-align: right;">Page 90</p> <p>1 You have one now?</p> <p>2 A I --</p> <p>3 MR. BRADLEY: We do.</p> <p>4 BY MR. HEBERT:</p> <p>5 Q Is that 24-A you're holding in your hand?</p> <p>6 A It's the statement period December 1, 2007, to</p> <p>7 December 31, 2007, from Schwab for the IRA rollover.</p> <p>8 Q All right. Now, what I want you to do is do the</p> <p>9 calculation and tell me how you got to 700 -- \$7,610.</p> <p>10 A This is 12 --</p> <p>11 Q 12-31-07, Column J, you have \$7,610.</p> <p>12 A Okay.</p> <p>13 Q And is that number accurate? Why don't you do</p> <p>14 the calculations.</p> <p>15 A No. It's not accurate because the ending value</p> <p>16 is different than this. So remember, there's -- this</p> <p>17 is -- as I testified earlier, this particular account</p> <p>18 was -- most of the money, almost all of the money, with</p> <p>19 the exception of a \$1500 or a \$2,000 increment, was</p> <p>20 transferred to the 5386.</p> <p>21 Q Mr. Cramer, that answer is nonresponsive.</p> <p>22 A Well, you're asking me to figure it out. So --</p> <p>23 Q Okay. I'll let you.</p> <p>24 A -- start now, is there's more to it in this</p> <p>25 number than just this account. It's a combination of</p>	<p style="text-align: right;">Page 91</p> <p>1 this account plus the residual of the other account, so I</p> <p>2 would need the statement from the other account to do a</p> <p>3 full reconciliation of what we've --</p> <p>4 Q I just want you to subtract the numbers and see</p> <p>5 if you've got the right number.</p> <p>6 A Oh, I see what happened. Yeah, these were</p> <p>7 dividend -- it looks like -- they were major dividend</p> <p>8 reinvestments in Oakmark/Julius Baer, the two mutual</p> <p>9 funds.</p> <p>10 Q Are you talking about Exhibit 24-A?</p> <p>11 A I'm looking at the statement, so that would be</p> <p>12 24 -- is that the December statement, 24-A?</p> <p>13 Q Yes.</p> <p>14 A Yes. If you go to Page 4, where it says,</p> <p>15 "Investment Activity." It looks to me like there's some</p> <p>16 dividend reinvestments that are done that would be income</p> <p>17 received.</p> <p>18 Hold on. Let me just check here.</p> <p>19 Yeah. So those dividends get -- the dividend</p> <p>20 gets reinvested, so it counts as money received, and</p> <p>21 since they get reinvested, the value of the actual shares</p> <p>22 drops by the equivalent amount.</p> <p>23 So, for instance, when a security goes X</p> <p>24 dividend, let's say it's worth \$20 a share, it goes X</p> <p>25 dividend by a dollar a share, the next day the price of</p>
<p style="text-align: right;">Page 92</p> <p>1 the security would open at \$19 a share and that one</p> <p>2 dollar would be accounted for as income. Then you would</p> <p>3 reinvest that one dollar into an additional share, so the</p> <p>4 value of the shares is dropped by the amount of the</p> <p>5 dividends.</p> <p>6 So when you do that process and you look at --</p> <p>7 in the case of the securities, that's why there's a</p> <p>8 difference, is you're showing some 30-some-odd-thousand</p> <p>9 dollars worth of reinvested dividends, which would</p> <p>10 decrease the price of the shares, but does show up as</p> <p>11 income. So you would have to take out that difference in</p> <p>12 how that's accounted for on the Schwab statement, which</p> <p>13 is what we do.</p> <p>14 Q Okay. Mr. Cramer, if you come across from on</p> <p>15 December 31, 2007, and you come down on Column J, you get</p> <p>16 \$7,610. Do you see that, \$7,610?</p> <p>17 A \$7,610 profit, yeah.</p> <p>18 Q Now, if you go over to Exhibit 24-A, and you</p> <p>19 subtract the change in value of investments on the front</p> <p>20 page, the part that's in parens, \$39,948.70, from the</p> <p>21 transactions and income, which is \$47,549.52; what number</p> <p>22 would you get?</p> <p>23 A I'm sorry. What am I subtracting from?</p> <p>24 Q You're subtracting change in value of</p> <p>25 investments from --</p>	<p style="text-align: right;">Page 93</p> <p>1 A Right.</p> <p>2 Q -- transactions and income, and what number do</p> <p>3 you get?</p> <p>4 A That's the \$7,610, I think.</p> <p>5 Q Are you sure? Why don't you use the calculator.</p> <p>6 Are you sure it's not a different number?</p> <p>7 A Let me look. I get \$7,600.82.</p> <p>8 Q So the number in the equity change analysis,</p> <p>9 this particular number, is not accurate, then, is it?</p> <p>10 A No, that's incorrect. Again, there's still --</p> <p>11 remember, there's another -- within this number is</p> <p>12 another account that's got \$1500 or \$2,000 in it that's</p> <p>13 sitting, as I recall, in a money market fund. And that's</p> <p>14 the original -- they're treating those two accounts as</p> <p>15 one. The assets -- the majority of the assets -- I don't</p> <p>16 how you type this when I'm doing this, but --</p> <p>17 Q The witness gesturing --</p> <p>18 A The majority of the assets go to this 5386</p> <p>19 account, but there's still a residual in that original</p> <p>20 account that's carried through in this calculation. So I</p> <p>21 would assume that extra \$10 may have accrued from that</p> <p>22 account.</p> <p>23 Q So these numbers aren't really -- I'm not sure</p> <p>24 what these numbers are measuring anymore then. I</p> <p>25 thought, you know, the profit and loss for that month</p>

<p style="text-align: right;">Page 94</p> <p>1 would be subtracting the change in value of investments 2 to transaction and income, but now you're telling me that 3 there are other factors involved and we can't really rely 4 on the numbers that we see here?</p> <p>5 A No. I'm saying there was income that was paid 6 in in excess of the diminution of value. So, you know, 7 in a perfectly ordered world, where nothing ever changes 8 in price, if I go -- I take one dollar out, I start with 9 20. I get a dollar of income, that comes out of the -- 10 they're -- I'm dead even.</p> <p>11 Here's what happened is money has come out, 12 price goes down, money comes back in, value gets 13 accounted for, and in fact the value is a little bit 14 higher by the tune of -- for the combination of those two 15 accounts is 7610. So it's extremely accurate.</p> <p>16 What I think what you're trying to do is say 17 that the value of the investments dropped in the income 18 received that was directly responsible for the drop in 19 that value don't count, which would make no sense, 20 because you're saying take the debit, but not the credit.</p> <p>21 Q I think you're ascribing to me much more 22 intelligence than I have. What I'm trying to say is your 23 numbers aren't accurate, and where else are there 24 inaccuracies? How would we know?</p> <p>25 MR. BRADLEY: Objection, mischaracterize his</p>	<p style="text-align: right;">Page 95</p> <p>1 testimony.</p> <p>2 THE COURT: Sustained. That hasn't been the 3 witness' testimony.</p> <p>4 BY MR. HEBERT:</p> <p>5 Q Some of your analysis, anyway, some of your 6 opinion here today is based on the confidential client 7 profile that Mr. Garmong executed back in August 31, 8 2005, isn't it?</p> <p>9 A Some of my -- some of it, yeah.</p> <p>10 Q Yeah.</p> <p>11 A I mean --</p> <p>12 Q Were you confident that you got complete 13 information from WESPAC Advisors when you got that 14 confidential client profile?</p> <p>15 A If there was others, I was unaware of it. So I 16 don't -- I have no reason to think I didn't, but based -- 17 if there were others, my opinions were based on what I 18 saw, not on something I had not seen.</p> <p>19 Q And what exactly did you see? Do you recall?</p> <p>20 A Yes. I saw all the exhibits that had all of the 21 Garmong -- again, I'm not sure if it's the same Bates 22 system that was done prior to my deposition, but all of 23 the exhibits that had GG on them, I looked at all of 24 those. And I looked at 680-some-odd pages of exhibits 25 that were zero through 680-something Bates numbers</p>
<p style="text-align: right;">Page 96</p> <p>1 provided by WESPAC --</p> <p>2 Q Do you remember our discussion earlier in your 3 cross-examination of Page 11 to the confidential client 4 profile?</p> <p>5 A Yes.</p> <p>6 Q Did you see that Page 11 when you started to 7 review documents?</p> <p>8 A Probably did, yeah.</p> <p>9 Q Do you know?</p> <p>10 MR. BRADLEY: I think you're misleading -- if 11 you want to show him something, Carl, that would be fine, 12 but asking him to memorize thousands of pages is an 13 unfair question. So I would ask you --</p> <p>14 MR. HEBERT: Well, it's unfair to test --</p> <p>15 THE WITNESS: Is this a new --</p> <p>16 MR. HEBERT: -- his memory?</p> <p>17 THE COURT: No --</p> <p>18 THE WITNESS: Is this a new --</p> <p>19 THE COURT: No. The witness looked -- the 20 witness looked at this exhibit a few minutes ago. I 21 don't remember the number. I think it was Exhibit 7, 22 Page 11. But take a look at Exhibit 7, Page 11.</p> <p>23 Do you have Exhibit 7 there?</p> <p>24 THE WITNESS: I do. Yeah, it's here.</p> <p>25 THE COURT: Turn to Page 11, the Bates --</p>	<p style="text-align: right;">Page 97</p> <p>1 THE WITNESS: I'm there. WESPAC 000085.</p> <p>2 THE COURT: That's it. Did you see that? Do 3 you remember looking at that?</p> <p>4 THE WITNESS: If this was the same numbering 5 system --</p> <p>6 THE COURT: I have no idea --</p> <p>7 THE WITNESS: -- that was evident, the Bates 8 numbers, I probably did see it.</p> <p>9 THE COURT: You don't --</p> <p>10 THE WITNESS: It doesn't --</p> <p>11 THE COURT: -- have a specific recollection --</p> <p>12 THE WITNESS: And then there's nothing checked 13 and there's nothing signed. So I figured that was --</p> <p>14 THE COURT: What you have is a blank form.</p> <p>15 THE WITNESS: Correct.</p> <p>16 THE COURT: Do you recall seeing one that was 17 not blank, of that form?</p> <p>18 THE WITNESS: Of that particular form?</p> <p>19 THE COURT: Yes.</p> <p>20 THE WITNESS: I do not.</p> <p>21 THE COURT: Okay. Thank you.</p> <p>22 THE WITNESS: To my recollection.</p> <p>23 THE COURT: Okay.</p> <p>24 THE WITNESS: That doesn't mean there wasn't one 25 but --</p>

<p style="text-align: right;">Page 98</p> <p>1 THE COURT: I understand. I'm just asking what 2 you recall. 3 BY MR. HEBERT: 4 Q Is this your first time testifying in Nevada? 5 A I believe so. 6 Q Is any part of your testimony based on Nevada 7 law? 8 A Not that I know of. 9 Q Let's talk for a moment about the contours of 10 the -- 11 A Mr. Chair, just as I look at this, I -- you 12 know, I'm asked to look at a page. I have seen a form 13 similar to this that was marked, whether or not that 14 actual page was in it, I don't recall. 15 THE COURT: That's fine. Thank you. 16 THE WITNESS: So I don't want to say, no, I 17 didn't see it. But as I look at the whole form, I've 18 seen this form with markings on it and so I -- 19 THE COURT: You've even looked at one during 20 your testimony here. I think the question was just as to 21 that particular page -- 22 THE WITNESS: Yeah. 23 THE COURT: -- whether you recall seeing that 24 filled out. And I understood your testimony is you do 25 not recall.</p>	<p style="text-align: right;">Page 99</p> <p>1 THE WITNESS: I do not recall. 2 THE COURT: All right. Thank you. 3 BY MR. HEBERT: 4 Q Please turn to Exhibit 4 in the plaintiff's 5 first volume of exhibits. 6 A (Witness complies.) 7 MR. BRADLEY: Sorry. I gave you the wrong one. 8 THE WITNESS: It's here. This is 4. 9 BY MR. HEBERT: 10 Q Let me know when you're there. 11 A I'm there. 12 Q Turn to Paragraph 5, please. 13 A (Witness complies.) 14 Q What's the title of page 050 at the bottom? 15 A "Discretionary Authority." 16 Q And further down into -- actually, it goes to 17 the next page, 51. You're going to see a sentence that 18 starts out -- actually, it's on the bottom of 50 and goes 19 on to 51. 20 Do you see at the very last line on Page 50, 21 Paragraph 5 of the investment management agreement, do 22 you see where it says, "All such investment decisions 23 shall be made in accordance with the investment 24 objectives to which the client has informed and may 25 inform WESPAC Advisors from time to time in writing"?</p>
<p style="text-align: right;">Page 100</p> <p>1 Do you see that? 2 A Yes, sir. 3 Q Does that paragraph obligate Mr. Christian and 4 WESPAC Advisors to follow the client's instructions? 5 A "Shall be made in accordance with the investment 6 objectives to which the client has informed and may 7 inform WESPAC Advisors from time to time in writing." 8 MR. BRADLEY: You're not asking for a legal 9 conclusion. You're asking for his opinion? 10 MR. HEBERT: Is that an objection? 11 THE COURT: Well, it is, because if it's a legal 12 conclusion, it would be sustained. So he can't offer an 13 opinion as to what it binds anybody. He can offer his 14 opinion -- 15 MR. HEBERT: I'm -- 16 THE COURT: -- and if you want his opinion, he's 17 here to offer opinions, let's get it, but let's move on. 18 BY MR. HEBERT: 19 Q Is it your opinion that that language in 20 Paragraph 5 of the investment management agreement binds 21 Mr. Christian to follow the instructions of Mr. Garmong 22 as he may state them in writing from time to time? 23 A And if his investment objectives change, all 24 such investments decisions shall be made in accordance 25 with whatever changes -- investment objectives have been</p>	<p style="text-align: right;">Page 101</p> <p>1 changed in writing. 2 Q Does that mean "Yes"? 3 A Well, it's a slightly different way than the 4 specific way that you asked the question. 5 Q Mr. Garmong has, in testimony yesterday, 6 described his role as, "I give the objectives and 7 Mr. Christian carries out my instructions." Is that an 8 accurate view of the investment advisor/client 9 relationship? 10 A No, not typically. 11 Q Why not? 12 A I mean, an investment advisor -- basically 13 you're saying, "Here's my objectives." I mean, it's kind 14 of got typically an investment advisor relationship 15 that's backwards. 16 The investor would say, "Here's the objectives I 17 want, here's what I want you to do, here's the goal. 18 Tell me how I can get there. What do you propose to me?" 19 That's part of the whole client profile thing. 20 "What do you propose to me to get there?" 21 In a discretionary account, typically the client 22 will say, "Okay. I want you to manage towards the 23 objective that I've told you." 24 My understanding from what I've read, and from 25 other documents I've seen that were marked up, is that</p>

<p style="text-align: right;">Page 102</p> <p>1 Mr. Garmong wanted to maintain a very active role in that 2 decision-making. So this would be a little bit different 3 than what I just previously described. 4 So that sort of throws a different spin on it, 5 if you will, and the securities' industry has a wonderful 6 term, it's called "facts and circumstances test," so it 7 gets tested by the facts and circumstances of each 8 particular case. 9 That line or any line that would say to a client 10 or a client would say, "I am instructing you to do 11 something actionable, specific, a specific instruction," 12 the client would answer that. I mean, excuse me, the 13 advisor would say, "Okay." 14 Q Well, is there anything wrong with the client 15 saying, "My objective is to preserve my capital. You 16 carry that out. You do what you do as the investment 17 advisor?" 18 Is there anything wrong with that -- 19 A Sure. 20 Q -- statement? 21 A Sure. 22 Is there anything wrong with it? No. I mean, 23 there's nothing wrong with it if that's the sum total of 24 all the discussion. That's why I'm -- whatever that 25 document we were just looking at is a questionnaire to</p>	<p style="text-align: right;">Page 103</p> <p>1 ferret out to help each of them organize what the 2 thoughts of the account are -- what the objectives of the 3 account and are part of the authorization papers to 4 proceed with the account. 5 Q Okay. We've talked about -- actually, we looked 6 at one of your graphs. Let me see if I can find where it 7 was. 8 MR. BRADLEY: Are you done with this binder? 9 MR. HEBERT: For the moment. 10 BY MR. HEBERT: 11 Q I'm looking for the exhibit where Mr. Garmong's 12 portfolio was compared to the Standard & Poor index. 13 A Yeah, that would be under Page 53. 14 Q I thought it was there. Okay. It was buried. 15 I'm holding in my hand the second page of 16 exhibit -- Defense Exhibit 53. It says WESPAC 1346 on 17 it. Can you see this page, Mr. Cramer? 18 A Yes, sir. 19 Q I've drawn these lines on it. This is November 20 14, 2007, which is as close as I can get on your graph to 21 October of '07. 22 A Uh-huh. 23 Q If we take that as the starting point, and 24 Mr. Garmong says to Mr. Christian, "Please preserve my 25 capital," perhaps using some of the techniques we've</p>
<p style="text-align: right;">Page 104</p> <p>1 talked about, Treasury bills, should Mr. Garmong's 2 account performance relatively flat-line like that? 3 A If it's a complete preservation of capital? 4 Q Yes. 5 A And no risk? 6 Q Yeah. 7 A Yeah. A T-bill line would be flat. 8 Q Thank you. 9 MR. HEBERT: Your Honor, let me have a moment to 10 speak with my client. Maybe it's a good time to take a 11 break. 12 THE COURT: Just step out if you need to. I 13 don't think we need to take another break. I want to 14 push on to lunch. 15 MR. HEBERT: I agree. 16 THE COURT: You can step out and talk to your 17 client, certainly. 18 MR. HEBERT: Okay. 19 (Recess.) 20 BY MR. HEBERT: 21 Q One final series of questions, Mr. Cramer. 22 Has The Bates Group method of analysis, as 23 illustrated by what you've done here, ever been accepted 24 by a Nevada court or a Nevada arbitrator before, to your 25 knowledge?</p>	<p style="text-align: right;">Page 105</p> <p>1 A I have no personal knowledge one way or the 2 other. 3 Q I have no further questions. 4 THE COURT: Thank you. Anything further? 5 MR. BRADLEY: Nothing further. 6 THE COURT: Thank you. Can the witness be 7 excused? 8 MR. HEBERT: Yes, your Honor. 9 THE COURT: Have a safe trip back to Oregon. 10 THE WITNESS: Thanks. 11 THE REPORTER: Are we still on? 12 THE COURT: Let's pick back up with where we 13 were. 14 Thank you, sir. 15 MR. BRADLEY: Thanks, Mr. Cramer. 16 THE WITNESS: Thank you. 17 THE COURT: When we recessed yesterday, we were 18 in the middle of cross-examin- -- not the middle, but we 19 were in cross examination of Mr. Garmong. 20 Outside of the room earlier, Mr. Bradley 21 mentioned to Mr. Hebert and me that he had no further 22 questions. But I just want to confirm on the record. 23 MR. BRADLEY: That is -- 24 THE COURT: No further cross of Mr. Garmong 25 then?</p>

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1 MR. BRADLEY: That is correct, your Honor.
2 THE COURT: All right. Then we can go to
3 redirect of Mr. Garmong, if you have redirect questions
4 at this point.
5 MR. HEBERT: I have a few, your Honor.
6 THE COURT: Okay. Mr. Garmong, maybe you want
7 to take a seat across from your attorney, Mr. Hebert.
8 REDIRECT EXAMINATION
9 BY MR. HEBERT:
10 Q Mr. Garmong, did it ever cross your mind perhaps
11 to fire Mr. Christian at some point before October of
12 2008? Let me ask it a different way. Strike that.
13 Mr. Bradley asked you a lot of questions
14 yesterday about you could've fired him here, you could've
15 fired him there. Why didn't you?
16 A I thought about it. He's a very persuasive
17 salesman. He talked me out of it.
18 Q When?
19 A Well, at several times during -- from early 2008
20 until October/November of 2008.
21 Q Are these quarterly meetings that you had with
22 him at restaurants?
23 A We had quarterly meetings, but we had other
24 telephone calls.
25 Q Well, how was it that he persuaded you? What

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1 to say.
2 THE COURT: Restate your question.
3 MR. HEBERT: If I can remember what it was now.
4 BY MR. HEBERT:
5 Q Mr. Garmong, were you relying on Mr. Christian
6 to carry out your instructions?
7 A Yes.
8 Q Even though you noticed that the accounts were
9 sinking in value?
10 A Yes. I wasn't playing close attention. I was
11 paying rather superficial attention because I expected
12 him to do what the agreement provided.
13 Q In Paragraph 5, where it says he would abide by
14 your instructions as written by you from time to time?
15 A Yes.
16 Q And your instructions throughout this period of
17 time -- and when I say "this period of time," I mean
18 early October of '07 to the end of the relationship --
19 your instructions were consistent throughout, weren't
20 they?
21 A Yes.
22 Q And what were they?
23 A Not to lose capital, and then that was the
24 instruction both at the -- excuse me. I need my water.
25 Q Okay.

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1 language did he use?
2 A That WESPAC would achieve my objectives, would
3 turn this all around, that is the declines that were
4 being experienced at the time, WESPAC would turn those
5 around and get me back to where I had been earlier.
6 Q Did you expect him to attempt to follow your
7 instructions?
8 A Absolutely.
9 Q Were you checking on the accounts on a regular
10 basis or were you relying on him?
11 A Well, I -- I was checking on them in --
12 MR. BRADLEY: Objection, your Honor.
13 What period of time? The question's vague and
14 ambiguous.
15 THE COURT: I understood early 2008 through
16 October 2008 from the earlier comments, but am I wrong?
17 THE WITNESS: No, that's correct.
18 THE COURT: All right.
19 THE WITNESS: At least that's what I'm thinking.
20 THE COURT: Well, that's what I care about. All
21 right.
22 THE WITNESS: And if counsel wants to change
23 that later --
24 THE COURT: No, no.
25 MR. HEBERT: No. I want to hear what you have

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1 A -- at the meeting in early October that I talked
2 about yesterday, and then in the confirming letter of
3 October 22nd, my instruction was not to lose capital.
4 And then I mentioned that again in the January
5 21st, 2008, fax as sort of an aside comment in a fax that
6 dealt with other subjects.
7 Then, as we had conversations, I would reinforce
8 that. And finally, when the worst of the declines hit in
9 June, July, August, September of 2008, I began to get
10 very upset. He clearly was not doing what I had
11 instructed.
12 Q Now, you instructed -- well, your objective as
13 communicated to Mr. Christian was to avoid the loss of
14 capital, wasn't it?
15 A Yes.
16 Q At any point did Mr. Christian call you up or
17 meet with you and say, "I'm having trouble understanding
18 what 'avoiding loss of capital' means. Could you explain
19 to me what you intend?"
20 A No. Never at any time.
21 Q But would you occasionally -- not occasionally,
22 you would send him from time to time telefaxes discussing
23 various aspects of your account and, again, instructing
24 him not to lose capital, didn't you?
25 A Yes.

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1 Q At some point, did you become concerned that he
2 wasn't understanding you? Or what do you think the
3 problem was?
4 A I -- I have no idea. Well, I have an idea what
5 I think the problem was, but it wasn't related to the
6 communications.
7 Q Okay. What do you think it was?
8 A I think Mr. Christian was concerned with other
9 issues and had his time taken with other matters.
10 He had started a new company called -- well, the
11 word fusion, f-u-s-i-o-n, was in it, and I can't remember
12 the other words. Fusion Asset Management, perhaps.
13 From his testimony in deposition a couple weeks
14 ago, he said that he had started that in 2005 and had run
15 it -- operated it the entire duration of our relation.
16 When WESPAC was acquired by another company in
17 2009, they saw that as a conflict of interest and
18 required him to -- my understanding is get out of that
19 company, and because he was key in it with a couple other
20 people, they closed it down. The reason I say that
21 bothers me -- I did not know that at the time, but
22 having --
23 MR. BRADLEY: Objection; relevance. If he
24 didn't know it at the time -- he's talking about his
25 understanding of litigation, I don't think this is

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1 A Yes.
2 Q Do you see that?
3 A I see it.
4 Q Okay. Did you assign that amount in your
5 Exhibit 47 when you -- Plaintiff's Exhibit 47 when you
6 talk about the losses caused by WESPAC Advisors and
7 Mr. Christian, is that the number you used?
8 A Yes.
9 Q Okay. And on 24-A, which I no longer have in
10 front of me, there's a number in parens, "Change in value
11 of investments, \$39,948.70."
12 Is that the number you used for losses in the
13 period December 1, '07, to December 31, '07?
14 A For that account, the 5386 account, yes.
15 Q And Mr. Bradley asked you, well, why would you
16 use that number when, if you take the number above it,
17 starting account value, and it's larger, it shows you
18 made a little bit of money that period of time. Would
19 you explain why you used the loss number that you did?
20 A Because that relates to the actions of the
21 defendants, WESPAC. The \$47,000 number immediately above
22 it, if we look down to the lower major heading that says,
23 "Income Summary," that's derived from money funds,
24 dividends, cash dividends and total capital gains. Those
25 all derive from property that I own, not property that

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1 relevant.
2 THE COURT: How would that be relevant if he's
3 not aware of it in 2005 through 2009?
4 MR. HEBERT: I'll move on to another topic, your
5 Honor.
6 THE COURT: All right.
7 BY MR. HEBERT:
8 Q Mr. Garmong, and I think the exhibits are loose,
9 but I want you to look at 24-A and 24-B. Do you have
10 them there in front of you? Defense 24-A and 24-B.
11 A I have 24-B and C. 24-A was being shown around
12 and I don't -- it never got back to me.
13 Q I'm going to hand the witness my copies of
14 Exhibits 24-A and 24-B.
15 A I have 24-B.
16 Q Then here's 24-A.
17 A Okay.
18 Q Now, yesterday during cross-examination you were
19 asked about how can you assign -- I'm looking at 24-B
20 now, your Honor.
21 THE COURT: All right.
22 BY MR. HEBERT:
23 Q You'll see over in "Change in Account Value," it
24 says "Change in Value of Investments" and then in parens
25 \$28,865.60?

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1 WESPAC owns.
2 In our society -- in our economy, the fact that
3 I own this property, the returns on that property accrue
4 to me, not to WESPAC, who is advising me about that
5 property. And I think that's an important distinction
6 here.
7 The analysis that Mr. Cramer did says that the
8 capital gains and income derived from my property can be
9 offset -- can be used to offset the damages done to me by
10 WESPAC in failing to preserve my capital value.
11 I had not appreciated this before Mr. Bradley's
12 questions yesterday, because the context of his question
13 was that he asked me, "Isn't this really net out of
14 pocket for a one-month period?"
15 And when I went and thought about it,
16 Mr. Cramer's net out of pocket does, in fact, give credit
17 to the defendant for capital gains and dividends that are
18 produced by the plaintiff's property. Then that put the
19 whole notion of what is net out of pocket about into
20 perspective.
21 Net out of pocket is a theory that is used --
22 widely used in the securities industry and they've talked
23 about this FINRA organization. I -- I can't remember
24 what the acronym means, Financial Industry something.
25 And that's an organization basically run by and funded by

<p style="text-align: right;">Page 114</p> <p>1 the securities industry.</p> <p>2 So does that seem -- that suggests to me that</p> <p>3 certainly a damages calculation that the securities</p> <p>4 industry endorses would like to take the gains that the</p> <p>5 plaintiff gets from his or her own property and attribute</p> <p>6 those to the actions of the securities companies,</p> <p>7 investment advisors and stockbrokers.</p> <p>8 I think that is an enormous distinction between</p> <p>9 the way I understand Nevada law, which addresses damages</p> <p>10 and does not -- does not provide for an offset of those</p> <p>11 damages with the results achieved by the owner of the</p> <p>12 property.</p> <p>13 The other way I looked at this, driving in here</p> <p>14 this morning thinking about it: Supposing I had taken</p> <p>15 these capital gains out of the account or -- or these</p> <p>16 money fund dividends, cash dividends and capital gains,</p> <p>17 the total \$47,000 and change.</p> <p>18 Supposing I had taken that out and put it in my</p> <p>19 pocket and the next day written a check back to Charles</p> <p>20 Schwab. Now, that would not be counted as a -- a benefit</p> <p>21 for WESPAC, the financial advisor.</p> <p>22 So what I'm seeing is that the fact that these</p> <p>23 -- that these three categories of income are related to</p> <p>24 reinvestments, that is, the money did not leave the</p> <p>25 control of Schwab and come to me and then come back. It</p>	<p style="text-align: right;">Page 115</p> <p>1 suggests that, because it stayed within the Schwab</p> <p>2 company, that those figures, those amounts of income and</p> <p>3 dividends and capital gains are being attributed -- in</p> <p>4 the net out-of-pocket approach, are being attributed to</p> <p>5 the financial advisor.</p> <p>6 Q You're --</p> <p>7 A I'm not done. The other thing that concerns me</p> <p>8 or raises a question in my mind on this is that if we</p> <p>9 look at this month of December 2007, there's not a single</p> <p>10 thing that happened in this account that's attributable</p> <p>11 to WESPAC. They didn't buy, they didn't sell. All of</p> <p>12 this is -- all of this money and income is attributed to</p> <p>13 my capital.</p> <p>14 And when I was thinking about this, Judge, what</p> <p>15 went through my mind is this sounds like a quasi-Marxian</p> <p>16 argument. It's something that Karl Marx would've said</p> <p>17 about who gets the benefits of capital; is it the</p> <p>18 capitalist or is it the workers? Not that I'm in that</p> <p>19 camp, but that's what went through my mind.</p> <p>20 To me, it seems that what WESPAC is suggesting</p> <p>21 and the net out-of-pocket analysis is suggesting is that</p> <p>22 the benefit of my -- the benefits realized by my capital</p> <p>23 should be attributed to the investment advisor.</p> <p>24 Q To continue in a somewhat dialectic vein here,</p> <p>25 was WESPAC trying to offset the fruits of your labor from</p>
<p style="text-align: right;">Page 116</p> <p>1 their losses?</p> <p>2 A They were trying to offset the fruits of my</p> <p>3 capital from the losses.</p> <p>4 Q That was just my attempt to analogize to Karl</p> <p>5 Marx and Engels. The point is, though, that they</p> <p>6 wanted to take --</p> <p>7 THE COURT: I'm the one that has to provide the</p> <p>8 synthesis when you all are done.</p> <p>9 MR. HEBERT: That is good.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q I just want to summarize here the best I can.</p> <p>12 The way you see it, did it look like WESPAC was trying to</p> <p>13 offset their losses with your gains?</p> <p>14 A Yes.</p> <p>15 Q And in Exhibit No. 47, what you were doing was</p> <p>16 using strictly what the losses they created or allowed to</p> <p>17 have happen during the time they managed your accounts</p> <p>18 from October of '07 to March of '08 or '09? I'm sorry.</p> <p>19 A Yes. Referring to this specific exhibit, the</p> <p>20 24-A, the difference in what I did and what Mr. Cramer</p> <p>21 did was Mr. Cramer added the transactions and income to</p> <p>22 change in value of investment and ended up with a number</p> <p>23 somewhere around -- \$6,000, was it?</p> <p>24 What I did was I used only the change in value</p> <p>25 of investments. That's what I thought I was having</p>	<p style="text-align: right;">Page 117</p> <p>1 WESPAC and Mr. Christian manage, not capital gains that I</p> <p>2 got, not dividends or interest that I got, but what</p> <p>3 happened specifically to the value of the securities.</p> <p>4 Q Let's move on to something else.</p> <p>5 A Okay.</p> <p>6 MR. HUME: Here, that's mine.</p> <p>7 MR. HEBERT: This is mine. It's got my</p> <p>8 handwriting on it.</p> <p>9 MR. HUME: My apologies.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q You were paying Mr. Christian and WESPAC</p> <p>12 Advisors to manage your investments, weren't you?</p> <p>13 A Yes.</p> <p>14 Q Contrary to what Mr. Bradley may have suggested</p> <p>15 yesterday during cross-examination, do you think you had</p> <p>16 a right to inquire what they were doing and how?</p> <p>17 A Yes, certainly.</p> <p>18 Q Is that what you were doing?</p> <p>19 A Yes. Mr. Bradley was suggesting that I was</p> <p>20 trying to --</p> <p>21 MR. BRADLEY: Objection --</p> <p>22 THE WITNESS: -- take over --</p> <p>23 MR. BRADLEY: -- mischaracterization as --</p> <p>24 THE COURT: Well, sustained as to trying to</p> <p>25 characterize what counsel was doing.</p>

<p style="text-align: right;">Page 118</p> <p>1 BY MR. HEBERT:</p> <p>2 Q All right.</p> <p>3 A Okay. My understanding of what Mr. Cramer --</p> <p>4 Mr. Bradley was doing --</p> <p>5 Q Okay.</p> <p>6 THE COURT: No. Ask it. Reask your question.</p> <p>7 BY MR. HEBERT:</p> <p>8 Q Let me ask it a different way so that we can</p> <p>9 keep moving and avoid objections.</p> <p>10 Were you attempting to control with day to day</p> <p>11 instructions what Mr. Christian was doing on your behalf?</p> <p>12 A Well, not in the period from around the 1st of</p> <p>13 November, 2007, until late September of 2008. I then</p> <p>14 wrote him a lengthy letter on September 26th, I believe</p> <p>15 it was, 2008, attempting to spur him into action to do</p> <p>16 what I had instructed him to do. And that basically ran</p> <p>17 into a stone wall.</p> <p>18 So in early October I -- I sold out most of my</p> <p>19 retirement accounts, those were bleeding very badly, and</p> <p>20 I had to do something to stop the hemorrhaging of my</p> <p>21 accounts.</p> <p>22 So that was in early October. And then a little</p> <p>23 bit later, Mr. Bradley said that he wanted to continue</p> <p>24 managing the 0713 account, which was not a retirement</p> <p>25 account, and he did.</p>	<p style="text-align: right;">Page 119</p> <p>1 MR. HEBERT: Let me check my notes for a moment,</p> <p>2 your Honor.</p> <p>3 THE COURT: All right.</p> <p>4 MR. HEBERT: I might be close to being done with</p> <p>5 redirect.</p> <p>6 BY MR. HEBERT:</p> <p>7 Q You were here for the hearing testimony of</p> <p>8 Mr. Cramer. Would you agree with his statement that cash</p> <p>9 increases safety?</p> <p>10 A Well, in a broad sense, yeah.</p> <p>11 Q That's what you were doing, wasn't it? You</p> <p>12 wanted to preserve your capital?</p> <p>13 A Yes.</p> <p>14 Q That was the whole point of your instructions in</p> <p>15 your letter of October 22, 2007, wasn't it?</p> <p>16 A Yes. And the discussion at the earlier meeting.</p> <p>17 THE COURT: Well, let me ask you, if your goal</p> <p>18 was solely to preserve capital, why did you not go from</p> <p>19 the date of your retirement to all cash, bank accounts,</p> <p>20 CDs, things that will not be diminished other than by</p> <p>21 inflation in value?</p> <p>22 THE WITNESS: Because you don't need to do that</p> <p>23 to get gains and preserve capital. For example, the</p> <p>24 thing I had in mind, if you remember I testified --</p> <p>25 THE COURT: What I'm driving at, your goal</p>
<p style="text-align: right;">Page 120</p> <p>1 wasn't simply to preserve capital; it was to preserve</p> <p>2 capital, but to generate gains --</p> <p>3 THE WITNESS: What --</p> <p>4 THE COURT: -- beyond simple interest?</p> <p>5 THE WITNESS: Yeah. What I was trying to do was</p> <p>6 stay even with inflation and not lose to -- not lose</p> <p>7 purchasing power to inflation.</p> <p>8 And what I had in mind was that -- I remembered</p> <p>9 -- I had remembered reading in the WESPAC brochures that</p> <p>10 Mr. Christian gave me to sell me on this company, that it</p> <p>11 said, "We have very sophisticated computer systems, we</p> <p>12 can update your accounts, give you information monthly,</p> <p>13 weekly, daily, presumably hourly."</p> <p>14 Now, I had in my mind a picture of Mr. Christian</p> <p>15 coming in every morning and pecking out on his computer,</p> <p>16 that -- you know, checking my accounts and "What's going</p> <p>17 on with his accounts?" And, if necessary, taking action.</p> <p>18 Now, what I have since learned is there is a</p> <p>19 technique called stop-loss that could have been applied.</p> <p>20 And the important distinction between stop-loss -- at</p> <p>21 least in my mind, the important distinction between</p> <p>22 stop-loss and sell all out to cash is that if you sell</p> <p>23 out to cash, you have no upside potential. If a stock is</p> <p>24 selling at \$50, you sell it -- the stock has a price of</p> <p>25 \$50, you sell it and now you've got cash and the best you</p>	<p style="text-align: right;">Page 121</p> <p>1 can get is bank or whatever.</p> <p>2 If you put a stop-loss on it and say, "If this</p> <p>3 stock falls below 48, sell it." Well, if the stock falls</p> <p>4 below 48, that will be your maximum loss. On the other</p> <p>5 hand, if the stock goes to a hundred, you can do really</p> <p>6 well.</p> <p>7 And I had never heard the term stop-loss before</p> <p>8 Mr. Sharpe's letters, the mystery client. But I had a</p> <p>9 vague concept that certainly you could sit at your</p> <p>10 computer and do the same thing. Stop-loss, as I</p> <p>11 understand it, is an automatic process in a computer</p> <p>12 either at WESPAC or at Schwab. So that seems to me like</p> <p>13 that would've been an ideal approach.</p> <p>14 BY MR. HEBERT:</p> <p>15 Q Let me follow up on --</p> <p>16 Your Honor, do you have further questions you</p> <p>17 wanted to ask?</p> <p>18 THE COURT: No.</p> <p>19 BY MR. HEBERT:</p> <p>20 Q Let me follow up a little bit on what the</p> <p>21 arbitrator asked. The question was: Back in '05, when</p> <p>22 you first started the relationship, why didn't you just</p> <p>23 go to all cash then?</p> <p>24 But didn't you have a different investment</p> <p>25 objective between '05 and '07?</p>

<p style="text-align: right;">Page 122</p> <p>1 A Very much. My objective in '05 was -- I can't</p> <p>2 remember. It's in the client confidential --</p> <p>3 Q Moderate --</p> <p>4 A -- profile.</p> <p>5 Q -- moderate growth, minimized risk.</p> <p>6 A Moderate growth while minimizing the potential</p> <p>7 for loss of capital or something like that. Anyway,</p> <p>8 that's --</p> <p>9 Q If you want to look at your profile, you can.</p> <p>10 A Well, everybody knows what it is by now.</p> <p>11 Q Okay.</p> <p>12 A What I said in the famous box 2-B.</p> <p>13 That was my idea. I mean, there's been attempts</p> <p>14 to paint me as a sophisticated investor. I was not then</p> <p>15 and I am not now. I wanted to keep up -- I had a nest</p> <p>16 egg. I was going into retirement. I was age 61 at the</p> <p>17 time. And I wanted to preserve that and try to have this</p> <p>18 slow to moderate growth, again trying to keep up with</p> <p>19 inflation, basically.</p> <p>20 A lot of retired people have to make their</p> <p>21 accounts grow. I didn't. I felt like I had enough. So</p> <p>22 I just wanted to preserve my status in a financial sense</p> <p>23 and not have the capital eroded.</p> <p>24 Q Well --</p> <p>25 A So that was my idea in 2005 when I did the</p>	<p style="text-align: right;">Page 123</p> <p>1 confidential client profile.</p> <p>2 Now we go forward two years, and as I -- I won't</p> <p>3 repeat it, your Honor -- but, as you recall, from what I</p> <p>4 testified yesterday, August 31st, 2005, I retired.</p> <p>5 September, the whole notion of retirement is</p> <p>6 beginning to hit me in a psychological sense, and I'm</p> <p>7 under -- well, I'm completing a divorce. I am under a</p> <p>8 lot of pressure on what I considered my third career. My</p> <p>9 first career, a metallurgist, second career, a patent</p> <p>10 attorney, and third career was going to be even more</p> <p>11 search and rescue and that kind of thing. So I was</p> <p>12 leaving the things I was primarily educated for.</p> <p>13 So at that point, that's when I decided I've got</p> <p>14 enough, I know now what my obligations are going to be to</p> <p>15 my ex-wife from the divorce agreement -- or the divorce</p> <p>16 order from Judge Gibbons, and all I got to do is sit on</p> <p>17 this nest egg.</p> <p>18 Now, I had no idea that the market was about to</p> <p>19 go through great falls. I didn't follow the investments</p> <p>20 and that sort of thing. So that's what I tried to convey</p> <p>21 to Mr. Christian and WESPAC, that now I don't even need</p> <p>22 to worry so much about keeping up with inflation, I just</p> <p>23 want to avoid a loss. But with the qualification that if</p> <p>24 some gains are possible, then that would be okay. But my</p> <p>25 -- my primary No. 1 objective was avoiding loss of</p>
<p style="text-align: right;">Page 124</p> <p>1 capital.</p> <p>2 MR. HEBERT: I have no further questions, your</p> <p>3 Honor.</p> <p>4 THE COURT: Thank you. Any re --</p> <p>5 MR. BRADLEY: No. No, sir.</p> <p>6 THE COURT: Thank you. We can go to</p> <p>7 Mr. Williams then, at least get started with him.</p> <p>8 Now, do you want to put Mr. Williams right</p> <p>9 across from you?</p> <p>10 MR. BRADLEY: That would be great.</p> <p>11 MR. HEBERT: What time are we going to break for</p> <p>12 lunch? It seems like a natural --</p> <p>13 THE COURT: It's not noon yet. There's no -- I</p> <p>14 don't know if there's any lunch here. Let me take a peek</p> <p>15 outside.</p> <p>16 (Whereupon Judge Pro briefly exited then</p> <p>17 reentered the depo conference room.)</p> <p>18 THE COURT: Lunch is here. Let's take a lunch</p> <p>19 break and reconvene at 20 minutes after the hour.</p> <p>20 MR. HEBERT: Thank you, your Honor.</p> <p>21 MR. BRADLEY: Thank you, your Honor.</p> <p>22</p> <p>23 (Luncheon Recess from 11:54 a.m. to 12:25 p.m.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 125</p> <p>1 JOHN WILLIAMS, III,</p> <p>2 called as a witness by the defendants herein,</p> <p>3 being first duly sworn, was examined and</p> <p>4 testified as follows:</p> <p>5 THE COURT: Please state your full name and</p> <p>6 spell your last name for the court reporter.</p> <p>7 THE WITNESS: John Cole Williams, III.</p> <p>8 W-i-l-l-i-a-m-s.</p> <p>9 THE COURT: Thank you. Go ahead.</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MR. BRADLEY:</p> <p>12 Q Mr. Williams, where are you employed?</p> <p>13 A WESPAC Advisors.</p> <p>14 Q And how long have you been employed with WESPAC?</p> <p>15 A Approximately 21 years.</p> <p>16 Q And briefly tell us what your post high school</p> <p>17 education was.</p> <p>18 A I have a bachelor's degree from the University</p> <p>19 of Florida, I received some language training in the Army</p> <p>20 and I have an MBA from Thunderbird School of Global</p> <p>21 Management.</p> <p>22 Q And have you also received training from FINRA</p> <p>23 or the SEC or some other governmental bodies?</p> <p>24 A I have a Series 65 credential, which is an</p> <p>25 investment advisory representative credential under</p>

<p style="text-align: right;">Page 126</p> <p>1 FINRA. And I've also, you know, attended a number of</p> <p>2 compliance courses, although I don't have any formal</p> <p>3 credential. There's not really a formal industry</p> <p>4 credential, as far as that goes.</p> <p>5 Q So you don't have to be specifically licensed to</p> <p>6 be a compliance officer?</p> <p>7 A No, sir.</p> <p>8 Q Are you familiar with the Schwab Advisor</p> <p>9 Network?</p> <p>10 A I am.</p> <p>11 Q Can you describe to the judge what that is?</p> <p>12 A Well, it's a referral system, a referral network</p> <p>13 that Schwab, they have with, you know, where -- for</p> <p>14 example, they may have clients with accounts at Schwab</p> <p>15 that require special attention above and beyond what</p> <p>16 maybe services Schwab offers, so if they have that,</p> <p>17 there's a network of advisors that they've, you know,</p> <p>18 approved, that they will refer the business out to.</p> <p>19 Q How does Schwab determine who's going to be in</p> <p>20 their advisor network?</p> <p>21 A Well, it's something you have to, you know, make</p> <p>22 known that you want to be on their network, obviously,</p> <p>23 but then you have to apply, and there's a fairly</p> <p>24 extensive due diligence that they conduct. They do</p> <p>25 background checks. There's a number of compliance</p>	<p style="text-align: right;">Page 127</p> <p>1 documentations that you have to submit, including proof</p> <p>2 of E&O insurance.</p> <p>3 Q So to get into the Schwab Advisor Network, you</p> <p>4 had to show proof of insurance?</p> <p>5 A Correct.</p> <p>6 Q And to get into the Schwab network, do they</p> <p>7 check whether or not you were properly licensed with the</p> <p>8 SEC?</p> <p>9 A That is correct. They would've -- we would've</p> <p>10 submitted all our ADV forms. You know, if we were going</p> <p>11 to be on the network, for example, on their Schwab</p> <p>12 Advisor Network matrix in the State of Nevada, we</p> <p>13 certainly would have had to have been registered with the</p> <p>14 State of Nevada through our SEC registration.</p> <p>15 Q You mentioned ADV. To your knowledge, does</p> <p>16 Schwab send the WESPAC ADV to any clients that are signed</p> <p>17 up through Schwab?</p> <p>18 A Well, if they were going to refer a client to</p> <p>19 WESPAC, there would be a disclosure document that they</p> <p>20 would sign under the solicitor's disclosure rules, and</p> <p>21 they would also provide that client with WESPAC's ADV</p> <p>22 form at the time, and WESPAC would also provide it at the</p> <p>23 outset of the engagement.</p> <p>24 Q And would Schwab also check to see that you were</p> <p>25 properly licensed within each state that you were working</p>
<p style="text-align: right;">Page 128</p> <p>1 from?</p> <p>2 A Yes, sir.</p> <p>3 THE COURT: How many states is WESPAC operating</p> <p>4 in?</p> <p>5 THE WITNESS: Well, I think currently we may be</p> <p>6 operating in about 14 or 15 states, but we're only notice</p> <p>7 filed in, I believe, nine. Most states, aside from</p> <p>8 Louisiana, you don't have to be notice filed until you</p> <p>9 have more than five clients in that case.</p> <p>10 THE COURT: And "notice filed," explain what</p> <p>11 that entails.</p> <p>12 THE WITNESS: So once you submit your ADV</p> <p>13 disclosure to the SEC, if you have more than five clients</p> <p>14 in a state or if you have at least one in Louisiana, you</p> <p>15 will mark that on your ADV disclosure they do online.</p> <p>16 The SEC will, in turn, send an electronic notice</p> <p>17 to those states' advisory authorities saying that "This</p> <p>18 advisor is doing business in your state."</p> <p>19 THE COURT: And WESPAC in Nevada has more than</p> <p>20 five --</p> <p>21 THE WITNESS: Yes, sir.</p> <p>22 THE COURT: -- clients, I trust?</p> <p>23 THE WITNESS: Yes, sir.</p> <p>24 THE COURT: A has for several --</p> <p>25 THE WITNESS: As long as I can remember,</p>	<p style="text-align: right;">Page 129</p> <p>1 actually.</p> <p>2 THE COURT: Prior to 2000?</p> <p>3 THE WITNESS: Going back to '97, as far as I</p> <p>4 know.</p> <p>5 THE COURT: All right. And so the financial</p> <p>6 advisors affiliated with WESPAC here in Nevada, that</p> <p>7 would include or at least at the operative times we're</p> <p>8 dealing with Mr. Christian?</p> <p>9 THE WITNESS: Yes, sir.</p> <p>10 THE COURT: And would Mr. Christian be employed</p> <p>11 by WESPAC? An independent contractor? What is the</p> <p>12 nature of that relationship?</p> <p>13 THE WITNESS: So, I believe Greg, Mr. Christian,</p> <p>14 formerly joined WESPAC in 2004, I believe, which is when</p> <p>15 we opened the Reno WESPAC office.</p> <p>16 THE COURT: Okay.</p> <p>17 THE WITNESS: And I believe it was somewhere</p> <p>18 right around that time, but we also were admitted to the</p> <p>19 Schwab Advisor Network. I don't believe, however --</p> <p>20 and -- and during that early time, Greg was, in fact,</p> <p>21 working as an independent contractor.</p> <p>22 At some particular point after we were acquired</p> <p>23 by Focus Financial Partners in 2008, they told us that</p> <p>24 they wanted him to become a W-2 employee. I don't recall</p> <p>25 exactly when that was.</p>

<p style="text-align: right;">Page 130</p> <p>1 THE COURT: All right. Thank you.</p> <p>2 BY MR. BRADLEY:</p> <p>3 Q So as part of the discovery process, did I ask</p> <p>4 you to try to locate any insurance documents applicable</p> <p>5 in 2005 to 2009?</p> <p>6 A Yes.</p> <p>7 Q And were you able to locate any insurance</p> <p>8 documents?</p> <p>9 A I believe we did provide that, yes.</p> <p>10 Q I don't -- I believe we didn't provide any</p> <p>11 insurance documents, so --</p> <p>12 A I believe --</p> <p>13 Q -- I apologize.</p> <p>14 A I believe that we did not provide any prior to</p> <p>15 2008.</p> <p>16 Q Oh, okay.</p> <p>17 A Starting in 2008, we would've been owned -- like</p> <p>18 the summer of 2008, owned by Focus Financial, and I</p> <p>19 believe we do have evidence of documentation from</p> <p>20 thereon.</p> <p>21 THE COURT: Explain Focus Financial, and</p> <p>22 assuming -- Focus Financial is not WESPAC?</p> <p>23 THE WITNESS: They're our parent company.</p> <p>24 THE COURT: Your parent company. And so Focus</p> <p>25 Financial was operating in Nevada as WESPAC at least</p>	<p style="text-align: right;">Page 131</p> <p>1 since 1997, as I understood you?</p> <p>2 THE WITNESS: No, sir. They didn't acquire us</p> <p>3 until June -- July 1 of 2008, I believe.</p> <p>4 THE COURT: Okay. So let's go back to 2005,</p> <p>5 when the relationship between Mr. Christian and WESPAC</p> <p>6 occurred with respect to Mr. Garmon. Who -- WESPAC was</p> <p>7 operating in Nevada.</p> <p>8 THE WITNESS: Correct.</p> <p>9 THE COURT: But it was not -- the parent company</p> <p>10 was not Focus.</p> <p>11 THE WITNESS: Well, I don't know the exact</p> <p>12 dates, but we did have a previous parent company prior to</p> <p>13 Focus which was --</p> <p>14 THE COURT: What was that?</p> <p>15 THE WITNESS: -- Benefit Street Corporation.</p> <p>16 THE COURT: Say that again.</p> <p>17 THE WITNESS: Benefit Street Corporation.</p> <p>18 THE COURT: Benefit Street Corporation. All</p> <p>19 right. So going back to 2005, maybe that's what we're</p> <p>20 driving at in terms of insurance.</p> <p>21 THE WITNESS: I know that there was a time --</p> <p>22 there was -- the first part of Mr. Garmon's relationship</p> <p>23 with WESPAC, I know we could not find any documents</p> <p>24 evidencing E&O insurance at that time, say, 2005, '06,</p> <p>25 and '07, that's when we were owned by Benefit Street</p>
<p style="text-align: right;">Page 132</p> <p>1 Corporation, that's when they were handling all of the</p> <p>2 E&O coverage and we could not locate any of those</p> <p>3 documents.</p> <p>4 THE COURT: And so you found insurance</p> <p>5 documentation once you were acquired by Focus starting</p> <p>6 approximately when in 2008?</p> <p>7 THE WITNESS: 2000- --</p> <p>8 MR. BRADLEY: Excuse me, your Honor. I -- I</p> <p>9 think the witness is incorrect. I don't believe he</p> <p>10 provided me, so I could provide the plaintiff with --</p> <p>11 THE COURT: Okay.</p> <p>12 MR. BRADLEY: -- any insurance documents, and at</p> <p>13 least to --</p> <p>14 THE COURT: Yeah.</p> <p>15 MR. BRADLEY: -- my knowledge of discovery.</p> <p>16 So --</p> <p>17 THE COURT: No. I was just asking if he found</p> <p>18 any, whether he -- then I'll ask whether he provided it.</p> <p>19 MR. BRADLEY: Okay.</p> <p>20 THE COURT: I understand he didn't.</p> <p>21 But do you recall finding some insurance --</p> <p>22 THE WITNESS: Yes.</p> <p>23 THE COURT: -- information after Focus takes</p> <p>24 over -- when in 2008?</p> <p>25 THE WITNESS: Summer, middle of the summer of</p>	<p style="text-align: right;">Page 133</p> <p>1 2008.</p> <p>2 THE COURT: Okay. And when did you locate that?</p> <p>3 When do you recall locating that?</p> <p>4 THE WITNESS: That was approximately a month</p> <p>5 ago, whenever this last-minute document production order</p> <p>6 was.</p> <p>7 THE COURT: Okay. But did you provide that to</p> <p>8 Mr. Bradley or --</p> <p>9 THE WITNESS: I provided everything that I found</p> <p>10 to --</p> <p>11 MR. BRADLEY: Your Honor --</p> <p>12 THE WITNESS: I --</p> <p>13 MR. BRADLEY: -- I'll --</p> <p>14 THE REPORTER: Whoa, whoa, whoa. One at a time.</p> <p>15 MR. BRADLEY: Excuse me.</p> <p>16 Your Honor, my apologies. I will go back and</p> <p>17 check, but I am fairly confident that I was not provided</p> <p>18 any --</p> <p>19 THE COURT: Sure.</p> <p>20 MR. BRADLEY: -- 2008 documents. And so I'm</p> <p>21 more than happy tonight to go back and check, and if</p> <p>22 there were any, I will immediately provide them to</p> <p>23 Mr. Hebert. And I do apologize if I missed it, but</p> <p>24 I don't think I --</p> <p>25 THE COURT: No need to apologize at this point,</p>

<p style="text-align: right;">Page 134</p> <p>1 because we don't know.</p> <p>2 MR. BRADLEY: Okay.</p> <p>3 THE COURT: I'll let the two of you then work on</p> <p>4 where it might be and what happened. That's fine.</p> <p>5 MR. HEBERT: At this point, your Honor, could I</p> <p>6 take the witness on voir dire, if that's the correct</p> <p>7 phrase, and just examine him on this point just to</p> <p>8 clarify a few things?</p> <p>9 THE COURT: Sure.</p> <p>10 MR. HEBERT: Is that all right?</p> <p>11 THE COURT: Go ahead.</p> <p>12</p> <p>13 VOIR DIRE EXAMINATION</p> <p>14 BY MR. HEBERT:</p> <p>15 Q Mr. Williams, we've met. My name is Carl Hebert</p> <p>16 and I'm counsel for Mr. Garmong.</p> <p>17 As I understand your testimony so far, you went</p> <p>18 and looked for insurance documents from 2005 to 2007 when</p> <p>19 WESPAC was owned by Benefit Street, is that correct?</p> <p>20 A Correct.</p> <p>21 Q And you couldn't find anything?</p> <p>22 A That's correct.</p> <p>23 Q Why were you looking for 2005 through 2007?</p> <p>24 A Because I had been asked to produce them.</p> <p>25 Q Do you understand the difference between an</p>	<p style="text-align: right;">Page 135</p> <p>1 occurrence policy and a claims-made policy?</p> <p>2 A No.</p> <p>3 Q Okay. An occurrence policy is a policy that is</p> <p>4 purchased in, say, 2005, and that ten years later, if the</p> <p>5 event happens, it triggers the policy, you go back to</p> <p>6 that policy. That's the occurrence that triggers the</p> <p>7 policy.</p> <p>8 A claims-made policy is the day Mr. Garmong</p> <p>9 files his complaint, whatever policy is in effect on that</p> <p>10 date, the day the claim is made, is the one that matters.</p> <p>11 Did you look for policies from 2007 to the</p> <p>12 present?</p> <p>13 A I did.</p> <p>14 Q And did you locate any?</p> <p>15 MR. BRADLEY: I can maybe short-circuit this.</p> <p>16 No insurance policy claim has been made for either</p> <p>17 occurrence or a claims-made policy.</p> <p>18 This case is being entirely -- all the defense</p> <p>19 costs, and if there is a judgment, are paid by WESPAC and</p> <p>20 Mr. Christian. So there has been no claim, whether or</p> <p>21 not there was an applicable policy or not, Mr. Hebert.</p> <p>22 MR. HEBERT: But it also matters -- thank you --</p> <p>23 it also matters, though, that there is a requirement</p> <p>24 that -- under NRS 628A.040, the financial planning</p> <p>25 statutes, that they have to have insurance, and that's</p>
<p style="text-align: right;">Page 136</p> <p>1 why we're looking for it. So it goes beyond whether did</p> <p>2 you make a claim to "did you have any."</p> <p>3 THE COURT: Yeah. I was not focusing on who's</p> <p>4 on the hook or who's tendering a defense and so forth. I</p> <p>5 was focused otherwise here.</p> <p>6 Look, go ahead and pin this down.</p> <p>7 THE WITNESS: We have to submit our insurance</p> <p>8 every single year at Schwab as part of our advisor</p> <p>9 network membership. So we've had insurance every single</p> <p>10 year.</p> <p>11 THE COURT: But since you've been owned by</p> <p>12 Focus?</p> <p>13 THE WITNESS: Since we've been in the Schwab</p> <p>14 Advisor Network starting in 2004. We've had it, E&O</p> <p>15 insurance, ever since I started working at WESPAC in</p> <p>16 1997.</p> <p>17 THE COURT: You just couldn't find the policy --</p> <p>18 THE WITNESS: We're not required to keep</p> <p>19 documentation past five years --</p> <p>20 THE COURT: Okay.</p> <p>21 THE WITNESS: -- compliance documentation, under</p> <p>22 federal rules.</p> <p>23 THE COURT: All right. Go ahead. Let's move</p> <p>24 on. I don't want to get off on a tangent here.</p> <p>25</p>	<p style="text-align: right;">Page 137</p> <p>1 DIRECT EXAMINATION RESUMED</p> <p>2 BY MR. BRADLEY:</p> <p>3 Q So what are your duties as a -- I'm sorry.</p> <p>4 When did you formally become appointed as a</p> <p>5 compliance officer for WESPAC?</p> <p>6 A Well, I was not formally appointed as the chief</p> <p>7 compliance officer until some point in late August, I</p> <p>8 believe, 2008 or 2009. There was a formal directive by</p> <p>9 the SEC that all IRA firms had to appoint a chief</p> <p>10 compliance officer. Whenever that directive came down,</p> <p>11 that's when I was appointed chief compliance officer.</p> <p>12 Again, I don't recall, you know, exactly which year that</p> <p>13 was.</p> <p>14 Q And did you informally work in the compliance</p> <p>15 department in 2005 to 2008, when you were formally</p> <p>16 appointed?</p> <p>17 A I did.</p> <p>18 Q And who else did you work with in the compliance</p> <p>19 department of WESPAC?</p> <p>20 A Nelson Chia.</p> <p>21 Q And who is Nelson Chia?</p> <p>22 A He was the founder and president of WESPAC.</p> <p>23 Q So would it be correct to say that you assisted</p> <p>24 Mr. Nelson Chia in compliance?</p> <p>25 A Yes, sir.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q Okay. And did you assist Mr. Chia in</p> <p>2 supervising Mr. Christian?</p> <p>3 A Yes, I did.</p> <p>4 Q And what sort of things would you do to check</p> <p>5 whether or not Mr. Christian was in compliance with both</p> <p>6 WESPAC rules and the laws and rules of the SEC?</p> <p>7 A Well, among other things, we would do site</p> <p>8 visits to the Reno office. There was a number of</p> <p>9 compliance-related documentation that associated persons</p> <p>10 were required to read and sign off an acknowledgment.</p> <p>11 There's various types of compliance trainings that we</p> <p>12 conducted over the years. You know, he has to sign a</p> <p>13 code of ethics, that type of thing.</p> <p>14 There's a number of testing types of daily, you</p> <p>15 know, periodic duties that I do. For example, you know,</p> <p>16 you might look at client investment questionnaires,</p> <p>17 whatever their stated investment objectives are, and go,</p> <p>18 you know, randomly check that against how the client's</p> <p>19 accounts are actually invested, make sure trades are</p> <p>20 being allocated fairly across the client base, so on and</p> <p>21 so forth.</p> <p>22 Q So you do that both from your office and in</p> <p>23 visiting the Reno WESPAC office?</p> <p>24 A Correct. I don't actually have to visit the</p> <p>25 office to do the testing, but yes, yeah.</p>	<p style="text-align: right;">Page 139</p> <p>1 THE COURT: Where is your office?</p> <p>2 THE WITNESS: It's in Oakland, California.</p> <p>3 THE COURT: Okay.</p> <p>4 BY MR. BRADLEY:</p> <p>5 Q In your review of Mr. Christian's work as an</p> <p>6 advisor at WESPAC, did you ever see Mr. Christian violate</p> <p>7 any security laws or regulations?</p> <p>8 A Absolutely not.</p> <p>9 Q Did you ever see Mr. Christian take any -- or</p> <p>10 make any inappropriate investment in client portfolios?</p> <p>11 A No, sir.</p> <p>12 Q Did you ever discover any conflicts of interest</p> <p>13 with Mr. Christian and other business activities?</p> <p>14 A No, sir.</p> <p>15 Q Anything at all as a compliance officer, both</p> <p>16 officially and as an assistant to Mr. Chia, did you ever</p> <p>17 see anything that concerned you about Mr. Christian's</p> <p>18 work?</p> <p>19 A No, sir.</p> <p>20 Q Has WESPAC, to your knowledge, ever censured,</p> <p>21 fined or disciplined Mr. Christian?</p> <p>22 A No.</p> <p>23 Q Are you aware if there were any prior complaints</p> <p>24 against Mr. Christian besides Mr. Garmong?</p> <p>25 A Well, there's the one that we've discussed.</p>
<p style="text-align: right;">Page 140</p> <p>1 Q The Sharpe --</p> <p>2 A Mr. Sharpe.</p> <p>3 Q And what was the result of the Sharpe complaint?</p> <p>4 A It was found in favor of WESPAC.</p> <p>5 Q And was Sharpe awarded any damages, attorney's</p> <p>6 fees or cost of suit?</p> <p>7 A No, sir.</p> <p>8 Q Other than this case, does Mr. Christian have</p> <p>9 any other pending complaints?</p> <p>10 A No, sir.</p> <p>11 Q Knowing what you know today, do you believe</p> <p>12 there were any violations of security laws or regulations</p> <p>13 in Mr. Garmong's accounts?</p> <p>14 MR. HEBERT: Objection, that asks for a legal</p> <p>15 opinion.</p> <p>16 THE COURT: Sustained.</p> <p>17 MR. BRADLEY: In his opinion --</p> <p>18 THE COURT: Well --</p> <p>19 MR. BRADLEY: -- as a compliance officer.</p> <p>20 THE COURT: Okay. I'll let him offer his</p> <p>21 compliance as used in this --</p> <p>22 THE WITNESS: No, I don't believe so.</p> <p>23 MR. BRADLEY: Those are all the questions I</p> <p>24 have.</p> <p>25 THE COURT: Thank you.</p>	<p style="text-align: right;">Page 141</p> <p>1 Do you want to examine the witness from there?</p> <p>2 MR. HEBERT: Actually, do you mind going over</p> <p>3 there?</p> <p>4 THE COURT: Sure. Switch locations.</p> <p>5 CROSS EXAMINATION</p> <p>6 BY MR. HEBERT:</p> <p>7 Q Let me get my exhibit binders up here.</p> <p>8 Mr. Williams, you're the chief compliance</p> <p>9 officer for WESPAC, correct?</p> <p>10 A Yes.</p> <p>11 Q How long have you been the chief compliance</p> <p>12 officer?</p> <p>13 A As I just previously stated, I don't remember</p> <p>14 the exact year that I became chief compliance officer,</p> <p>15 2008 or 2009, so since then.</p> <p>16 Q Before 2008 or 2009, did you function in that</p> <p>17 capacity without the title?</p> <p>18 A Pretty much, yes.</p> <p>19 Q From what period of time?</p> <p>20 A I would say probably from the early aughts.</p> <p>21 Q From 2001?</p> <p>22 A 2002.</p> <p>23 Q During the period of time, 2002 to 2009, was</p> <p>24 anybody else besides you handling the functions of chief</p> <p>25 compliance officer?</p>

<p style="text-align: right;">Page 142</p> <p>1 A I mean I --</p> <p>2 Q Was that Mr. Chia?</p> <p>3 A Mr. Chia was helping me with compliance.</p> <p>4 Q Okay. And you would agree with me, wouldn't</p> <p>5 you, that it's absolutely essential that WESPAC Advisors</p> <p>6 comply with all of the applicable laws in the regulation</p> <p>7 of their business?</p> <p>8 A Yes.</p> <p>9 Q Now, I would like to direct your attention to</p> <p>10 Exhibit 52. It's in Volume II of the plaintiff's</p> <p>11 exhibits. Let me get myself organized here, as well.</p> <p>12 A Okay.</p> <p>13 Q I take that back. Let's go to 48 first,</p> <p>14 wherever it went.</p> <p>15 MR. BRADLEY: Are you saying --</p> <p>16 MR. HEBERT: 48 in Plaintiff's Volume I.</p> <p>17 MR. BRADLEY: It's this one.</p> <p>18 MR. HEBERT: That one.</p> <p>19 THE COURT: The ADV form?</p> <p>20 MR. HEBERT: Yes.</p> <p>21 BY MR. HEBERT:</p> <p>22 Q Mr. Williams, looking at Plaintiff's Exhibit 48,</p> <p>23 what is that?</p> <p>24 A It looks like Form ADV, Part 1 at the time.</p> <p>25 Q Well, what is Form ADV? Who requires it and</p>	<p style="text-align: right;">Page 143</p> <p>1 what is it exactly?</p> <p>2 A The SEC requires it. The Form ADV 1, Part 1 is</p> <p>3 something that you file online with the SEC. The Form</p> <p>4 ADV, Part 2 is the disclosure document that you're</p> <p>5 required to give the clients.</p> <p>6 Q So Form ADV 1 is a registration application with</p> <p>7 the SEC, isn't it?</p> <p>8 A Yes.</p> <p>9 Q And Form ADV 2, to summarize your testimony, are</p> <p>10 disclosures made to the client?</p> <p>11 A Yes.</p> <p>12 Q Are those disclosures required to be given to</p> <p>13 the client at the start of the relationship?</p> <p>14 A Yes.</p> <p>15 Q And every year after that or just the first</p> <p>16 time?</p> <p>17 A Well, you're only required to give the entire</p> <p>18 document the first -- at the outset, and you have to</p> <p>19 offer to give it from there on out.</p> <p>20 Q Do you see here up at the top of Exhibit 48,</p> <p>21 Page WESPAC 1015, it says "Warning"? Do you see that</p> <p>22 part?</p> <p>23 A I'm sorry. Where?</p> <p>24 Q The first page of Exhibit 48. It says "Warning"</p> <p>25 up near the top?</p>
<p style="text-align: right;">Page 144</p> <p>1 A Yes.</p> <p>2 Q What does that say? What's that first sentence</p> <p>3 say?</p> <p>4 A "Complete this form truthfully."</p> <p>5 Q All right. Now, let's go to Item 11.</p> <p>6 A (Witness complies.)</p> <p>7 Q Item 11 is on Page 1027. Do you see it?</p> <p>8 THE COURT: Actually, it's 1028, unless I'm --</p> <p>9 MR. HEBERT: Well, Item 11 is disclosure</p> <p>10 information and 11-C is on --</p> <p>11 THE WITNESS: All right.</p> <p>12 THE COURT: Oh, it's on both pages. All right.</p> <p>13 I see it.</p> <p>14 BY MR. HEBERT:</p> <p>15 Q Okay. Now I'm directing your attention to 11.</p> <p>16 And do you see where it outlines instructions, what you</p> <p>17 have to disclose and that your disclosures are limited?</p> <p>18 A Yes.</p> <p>19 Q Now, go to Page 1028 where it says "11-C." Are</p> <p>20 you there?</p> <p>21 A Yes.</p> <p>22 Q Okay. It says, "Has the SEC or the Commodity</p> <p>23 Futures Trading Commission ever" -- and then, "2, found</p> <p>24 you or any advisory affiliates to have been involved in a</p> <p>25 violation of SEC or CFTC regulations or statutes.</p>	<p style="text-align: right;">Page 145</p> <p>1 "4, entered an order against you.</p> <p>2 "5, imposed a civil penalty."</p> <p>3 Do you see those?</p> <p>4 A Uh-huh.</p> <p>5 Q 11-C, 2, 4 and 5. What were the answers given</p> <p>6 by WESPAC in response to that question, to those</p> <p>7 questions?</p> <p>8 A It says "No."</p> <p>9 Q Should it have been "No"?</p> <p>10 A Yes.</p> <p>11 Q And why?</p> <p>12 A Because we didn't have anything to disclose.</p> <p>13 Q You didn't find it necessary to disclose the</p> <p>14 fact that Mr. Christian had been disciplined by the SEC?</p> <p>15 A We're only required to keep those disclosures on</p> <p>16 for a certain period of time, 10 years.</p> <p>17 Q Why don't we go back to Page 1027.</p> <p>18 A (Witness complies.)</p> <p>19 Q It says, "You may limit your disclosure of any</p> <p>20 events stated and listed in Item 11 to 10 years following</p> <p>21 the date of the event."</p> <p>22 Is that what you're relying on?</p> <p>23 A You know, we retained counsel to help us, you</p> <p>24 know. We were actually advised by counsel to remove the</p> <p>25 disclosure of Mr. Christian after a certain period of</p>

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1 time.

2 Q Well, you're the chief compliance officer and

3 you just rendered a chief compliance officer opinion

4 earlier in your direct testimony, but now you can't?

5 MR. BRADLEY: He's saying he's relying on advice

6 of counsel.

7 THE COURT: Yeah, he said relied on counsel.

8 BY MR. HEBERT:

9 Q Okay. What did your attorney say?

10 A He said that we were no longer required to

11 disclose Mr. Christian's infractions.

12 Q What else did he say?

13 MR. BRADLEY: I would like to just say that

14 he'll waive the attorney/client privilege with regard to

15 whoever this other lawyer is. I'm not waiving --

16 MR. HEBERT: I wasn't asking about --

17 MR. BRADLEY: -- any privilege with regard to --

18 THE COURT: Hold on. He has to -- he does -- he

19 holds it and he has to waive it to give the answer he

20 already gave, that he relied on counsel. I mean, he's

21 already just --

22 MR. BRADLEY: Right. I just don't want any -- I

23 don't want it being a broader waiver on his part to -- to

24 waive --

25 THE COURT: He's the one that holds it. You'll

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1 about 11-C, 2, 4 and 5, I believe. And if you look at a

2 paragraph on Page 1027, Item 11. It says, "If you are

3 registering" -- "if you are registered" -- past tense --

4 "or registering with the SEC, you may limit your

5 disclosure of any event listed in Item 11 to 10 years

6 following the date of the event."

7 Is that what this attorney or compliance

8 consultant told you?

9 MR. BRADLEY: Objection, calls for speculation.

10 MR. HEBERT: Speculation on what he was told?

11 MR. BRADLEY: Of what he was thinking.

12 THE COURT: Not -- yeah, not what he was --

13 MR. HEBERT: I asked what he was told.

14 THE COURT: Yeah, what he was told.

15 MR. BRADLEY: Okay. I'm sorry. I

16 misunderstood.

17 BY MR. HEBERT:

18 Q Were you told that you're limited to 10 years?

19 You don't have to answer for anything earlier than 10

20 years ago.

21 A That was what I was told.

22 Q Okay. Now, you're -- as a chief compliance

23 officer, you're charged with completing this form, right?

24 A Yes.

25 Q Okay. Now, back to our quotation.

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1 have to decide, but --

2 MR. HEBERT: Let me just say this, I didn't

3 intend to --

4 THE COURT: Yeah.

5 MR. HEBERT: -- inquire about Mr. Bradley --

6 MR. BRADLEY: Okay. Thank you.

7 MR. HEBERT: -- but if he's going to assert

8 advice of counsel, that is a waiver of the

9 attorney/client privilege with respect to this issue and

10 the --

11 MR. BRADLEY: Go ahead --

12 THE COURT: Right.

13 MR. BRADLEY: Go ahead and ask about that.

14 THE COURT: Right.

15 MR. BRADLEY: I'm fine with that.

16 BY MR. HEBERT:

17 Q Who was this attorney?

18 A I don't specifically recall if it was an

19 attorney or an actual compliance consultant that we hired

20 to help us with this issue, and we were going through and

21 they -- you know, we had the disclosure on there and they

22 started asking us about it.

23 And then they said, "We know you're no longer

24 required to have that on there."

25 Q Well, let's talk about that. We're talking

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1 "If you are registered or registering with the

2 State, you must respond to the questions as posed. You

3 may, therefore, limit your disclosures to 10 years

4 following" -- (inaudible) --

5 THE REPORTER: Whoa, whoa. You're going so

6 fast.

7 MR. HEBERT: I'm sorry.

8 THE REPORTER: I don't even know what you're

9 saying. "You must limit your disclosures to 10 years" --

10 MR. HEBERT: Neither do I sometimes. I'm sorry,

11 John. I'll try not to do that.

12 THE REPORTER: That's all right.

13 MR. HEBERT: Let me start over.

14 BY MR. HEBERT:

15 Q "If you are registered or registering with the

16 State, you must respond to the questions as posed. You

17 may, therefore, limit your disclosures to 10 years

18 following the date of an event only in responding to

19 items" -- and then it lists the items.

20 Do you see that list of items?

21 A I see it.

22 Q Do you see 11-C in there anywhere?

23 A I don't.

24 Q Does that mean to you that 11-C should've been

25 responded in the affirmative even though it was 10 years

<p style="text-align: right;">Page 150</p> <p>1 ago?</p> <p>2 A It appears that way from here, but I'm not sure</p> <p>3 that that's entirely correct in all situations.</p> <p>4 Q Now, do you see any qualifying language in here</p> <p>5 that says there are exceptions?</p> <p>6 A I don't.</p> <p>7 Q So you relied on some now unknown or</p> <p>8 unidentified attorney or compliance consultant to tell</p> <p>9 you that you don't need to follow the exact letter of the</p> <p>10 SEC questionnaire?</p> <p>11 A Well, for example, if it was somebody that</p> <p>12 worked -- that had worked for the SEC.</p> <p>13 Q You take their word for it over this form?</p> <p>14 A If they worked, for example, in enforcement for</p> <p>15 the SEC.</p> <p>16 Q Did they work --</p> <p>17 A I don't know.</p> <p>18 Q Did they? You don't remember?</p> <p>19 A I don't remember.</p> <p>20 Q Okay.</p> <p>21 THE COURT: Just so I'm clear, what would you</p> <p>22 have disclosed had you made the disclosure? What would</p> <p>23 the disclosure have been?</p> <p>24 THE WITNESS: Well, it seems like, just based on</p> <p>25 this, yes, we should've --</p>	<p style="text-align: right;">Page 151</p> <p>1 THE COURT: If you had made a disclosure, what</p> <p>2 would the disclosure have said? In other words, what</p> <p>3 would you have said concerning Mr. Christian?</p> <p>4 THE WITNESS: That we would've answered "Yes" to</p> <p>5 11-C, too.</p> <p>6 THE COURT: Okay. So you would not have gone</p> <p>7 into detail as to what the --</p> <p>8 THE WITNESS: Well, I think if you're required</p> <p>9 -- if you do answer, then there's a schedule where you're</p> <p>10 required to elaborate on what the infraction was.</p> <p>11 THE COURT: And how would you have elaborated?</p> <p>12 What would you have said?</p> <p>13 THE WITNESS: About Mr. Christian?</p> <p>14 THE COURT: Yes.</p> <p>15 THE WITNESS: Well, I believe that he -- when he</p> <p>16 was working at Wedbush Morgan back in the late '80s,</p> <p>17 there was -- they were found to have -- their branch sold</p> <p>18 some unregistered securities, I believe was what the gist</p> <p>19 of the infraction was.</p> <p>20 THE COURT: All right. And so that's what was</p> <p>21 omitted after you had the communication with the attorney</p> <p>22 or someone as compliance consultant?</p> <p>23 THE WITNESS: Correct.</p> <p>24 THE COURT: Okay. All right. Thank you.</p> <p>25 BY MR. HEBERT:</p>
<p style="text-align: right;">Page 152</p> <p>1 Q Let me follow up on that a little bit. We have</p> <p>2 a -- Mr. Williams, we have an exhibit here, 52, it's in</p> <p>3 Plaintiff's Volume II.</p> <p>4 Let me know when you're at 52, please.</p> <p>5 A I'm at 52.</p> <p>6 Q If you'll turn to 859 in 52. Let me know when</p> <p>7 you're there.</p> <p>8 A I'm here.</p> <p>9 Q Do you see where it says, "12. Resolution</p> <p>10 Detail"?</p> <p>11 A Yes.</p> <p>12 Q And did you check the box for "Cease and desist</p> <p>13 injunction"?</p> <p>14 A Yes.</p> <p>15 Q Well, maybe you didn't check the box. Did</p> <p>16 someone check the box --</p> <p>17 A It looks like it's checked.</p> <p>18 Q No. Did you do it?</p> <p>19 A I don't recall.</p> <p>20 Q Well, up at the top of the document, it says,</p> <p>21 "Used for historical filing, "J. Williams 33."</p> <p>22 Would that be you?</p> <p>23 A That would be me.</p> <p>24 Q Okay. Then did you fill out this form?</p> <p>25 A It appears I did, yes.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q Okay. And Section 11 says the day of the</p> <p>2 infraction or the date of the order was May 4, 1992?</p> <p>3 A Yes.</p> <p>4 Q And you checked the box "Suspended"?</p> <p>5 A Yes.</p> <p>6 Q Okay. And down in 12-C, under "Resolution</p> <p>7 Detail" in capital letters, what was the sanction?</p> <p>8 A It says he was suspended for a period of 90 days</p> <p>9 from associating with any investment company or</p> <p>10 broker/dealer.</p> <p>11 Q So 52 shows that you had the facts about what</p> <p>12 happened to -- or what the SEC did with Mr. Christian,</p> <p>13 but you -- when you went to fill out your ADV 1 in 2005,</p> <p>14 you didn't put down this information, did you, as we've</p> <p>15 discussed?</p> <p>16 A Right. It doesn't look like I did.</p> <p>17 Q Okay. And that's -- on 48, Page 1043, that's</p> <p>18 your name and your title of vice president the day of</p> <p>19 February 11, 2005? Do you see that?</p> <p>20 A Well, I don't have that open right now.</p> <p>21 Q I can wait. Page 48 -- sorry. Exhibit 48.</p> <p>22 A 1043? Yes.</p> <p>23 Q Okay. Now, what I want you to do, if you can</p> <p>24 get both binders going in front of you, is open Exhibit</p> <p>25 48 to Question 11-C and open Exhibit 52 to Question 14-C,</p>

<p style="text-align: right;">Page 154</p> <p>1 and I can wait. It's going to take a little while here.</p> <p>2 A (Witness complies.)</p> <p>3 MR. HUME: Do you have Bates numbers?</p> <p>4 MR. HEBERT: I do.</p> <p>5 In Exhibit 48 we're looking at 1028, and in</p> <p>6 Exhibit 52 we're looking for Page 853.</p> <p>7 THE COURT: 14-C?</p> <p>8 MR. HEBERT: Yes, your Honor.</p> <p>9 BY MR. HEBERT:</p> <p>10 Q And let me know when you're there, Mr. Williams.</p> <p>11 A I'm here.</p> <p>12 Q Okay. Would you agree with me that Question</p> <p>13 11-C 2, 4, 5 and question 14-C in Exhibit 52 of 2, 4, 5</p> <p>14 are identical?</p> <p>15 A They look pretty much identical.</p> <p>16 Q And in one you answered "Yes" and in one you</p> <p>17 answered "No," didn't you?</p> <p>18 A Yes.</p> <p>19 Q And did your answers continue to be "No"? I</p> <p>20 want you to go to Exhibit 50.</p> <p>21 A (Witness complies.)</p> <p>22 Q And let me know when you're there. It's Page</p> <p>23 997.</p> <p>24 Are you there?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 155</p> <p>1 Q Was this the 2006 ADV? It says right there</p> <p>2 above Item 11 on Page 997.</p> <p>3 A Yes. It appears so.</p> <p>4 Q In order to speed things up, I've got the ADVs</p> <p>5 from 6-8-2018. Did you ever answer this question "Yes"?</p> <p>6 A 6-8?</p> <p>7 Q I'm sorry.</p> <p>8 MR. BRADLEY: What years?</p> <p>9 MR. HEBERT: Let me start over.</p> <p>10 BY MR. HEBERT:</p> <p>11 Q To speed this thing up, we're now looking at</p> <p>12 Exhibit 50, but I have in this binder Exhibits 53, 54 and</p> <p>13 55, ADVs for May of '08, that's 53; March of '18, that's</p> <p>14 54; and June of '18, that's 55. And you continued to</p> <p>15 answer "No" to 11-C throughout, did you not?</p> <p>16 MR. BRADLEY: Objection, any period of time</p> <p>17 after March of '09 is irrelevant to this case.</p> <p>18 THE COURT: Yeah, I will sustain the objection</p> <p>19 as to what's on there today or last year, but let's go to</p> <p>20 -- as you said, the 2008, that would be appropriate.</p> <p>21 Do you know? Did you continue to check "No"</p> <p>22 on --</p> <p>23 THE WITNESS: I don't recall.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q Then let's look at 53.</p>
<p style="text-align: right;">Page 156</p> <p>1 A (Witness complies.)</p> <p>2 Q Just a second. I'm trying to find a date on 53.</p> <p>3 A moment, your Honor.</p> <p>4 THE COURT: All right. Ask the witness. He's</p> <p>5 the one that signed it.</p> <p>6 MR. HEBERT: We're looking for the one signed by</p> <p>7 you, Mr. Williams. There it is.</p> <p>8 BY MR. HEBERT:</p> <p>9 Q I direct your attention to Page 836. What date</p> <p>10 did you sign that disclosure form?</p> <p>11 A 8-20-2008.</p> <p>12 Q Thank you.</p> <p>13 Now I direct your attention to Page 816. Is</p> <p>14 that the start of Item 11?</p> <p>15 I'm sorry. Go to Page 815. Do you see Item 11</p> <p>16 there?</p> <p>17 A Yes.</p> <p>18 Q And did you answer question C-2, 4 and 5 the</p> <p>19 same way?</p> <p>20 A Yes.</p> <p>21 Q "No"? Is that accurate?</p> <p>22 A Yes.</p> <p>23 THE COURT: Mr. Williams, clarify for me, the</p> <p>24 forms for 2005 and 2008, the responses are in the</p> <p>25 negative for those three questions. But in the 2007</p>	<p style="text-align: right;">Page 157</p> <p>1 form, 5-31-07, which is Exhibit 52, to 14-C you answered</p> <p>2 in the affirmative to sub questions 14-C 2, 4 and 5.</p> <p>3 Why did you answer "yes" in that year and "no"</p> <p>4 on the years on either side of it?</p> <p>5 THE WITNESS: Well, they weren't the same form,</p> <p>6 actually, and I -- I don't recall honestly why I didn't</p> <p>7 answer it uniformly.</p> <p>8 THE COURT: You say they're not the same form --</p> <p>9 THE WITNESS: I think one's a U4 and --</p> <p>10 THE COURT: Right. The --</p> <p>11 THE WITNESS: -- I can't --</p> <p>12 THE COURT: -- the one I'm talking about --</p> <p>13 THE WITNESS: -- I know it's the same question,</p> <p>14 so --</p> <p>15 THE COURT: Yes.</p> <p>16 THE WITNESS: -- yeah, I can't explain why I</p> <p>17 didn't answer it.</p> <p>18 MR. BRADLEY: And, Judge, may I have the Court's</p> <p>19 indulgence for just --</p> <p>20 THE COURT: Yeah.</p> <p>21 MR. BRADLEY: -- a moment?</p> <p>22 I just went to the SEC website and there's a</p> <p>23 frequently asked questions sent out to advisors about how</p> <p>24 to answer questions, and it has a question about</p> <p>25 frequently asked questions regarding Item 11.</p>

<p style="text-align: right;">Page 158</p> <p>1 And it says, "Our SEC registered advisors 2 required to report arbitration claims" -- I'm sorry. 3 Skip that one. 4 "Does any question in Item 11 require me to 5 disclose an event that occurred more than 10 years ago?" 6 "Answer: If you're an advisor registered or 7 registering with the SEC or filing reports with the SEC, 8 you may limit your disclosure in any event, Item 2 -- in 9 Item 11 to ten years, even if the question is phrased 10 'have you ever.'" 11 MR. HEBERT: Your Honor, since Mr. Bradley is 12 going to be testifying himself -- 13 MR. BRADLEY: No, I just thought that rather 14 than wasting a bunch of time on this -- 15 MR. HEBERT: No -- 16 MR. BRADLEY: -- we can -- 17 MR. HEBERT: No, we're not wasting a bunch of 18 time, because tell me, the frequently asked questions, 19 effective when? 20 THE COURT: Well, look, I don't want to get off 21 on a tangent about what the SEC's FAQs say. That's not 22 evidence. What the witness is able to testify to is the 23 evidence. That's what we've got. 24 MR. BRADLEY: I'm sorry. 25 THE COURT: And the witness doesn't -- indicates</p>	<p style="text-align: right;">Page 159</p> <p>1 he can't recall why he answered "Yes" on the Form U4 for 2 2007. Is the function of a U4 different than the other 3 forms we've been talking about? 4 THE WITNESS: Well, it's the -- basically the 5 form for an individual advisory representative to fill 6 out to affiliate with an advisor firm that's already 7 registered. 8 THE COURT: Okay. 9 MR. HEBERT: May I continue, your Honor? 10 THE COURT: Yes. 11 BY MR. HEBERT: 12 Q Now, early on in my cross-examination, 13 Mr. Williams, I asked you if it was important to obey the 14 regulatory laws relating to the investment advising 15 business, and you said yes. 16 A (Witness nods head.) 17 Q Was -- At the critical times, and you've sat 18 here and listened to those times, which was '05 to '09, 19 was WESPAC Advisors registered with the State of Nevada 20 as an investment advisory firm? 21 A Yes. 22 Q It was? 23 A I believe it was. 24 Q For the entire time? 25 A Well, the thing is, at the time I was not -- I</p>
<p style="text-align: right;">Page 160</p> <p>1 know it was notice filed, which I believe we've already 2 provided documentation for -- it's in the same ADV Form 3 Part 1 that you're referring to about the 11-C. There's 4 a section that has all the states your notice is filed 5 in, I'm pretty sure "NV" is checked "Yes." 6 As far as, you know, registra- -- I don't know 7 what you're referring to as the registration; if you're 8 talking about just registered as a business entity, at 9 the time that would have been the responsibility of our 10 parent company. 11 BY MR. HEBERT: 12 Q Let me ask you this. Turn to Exhibit 40, the 13 Plaintiff's Volume I. 14 THE COURT: Four zero? 15 MR. HEBERT: Four zero, your Honor. 16 THE COURT: And while you're doing that, I have 17 to ask a preliminary question. 18 The notice file that you make is with the 19 Securities and Exchange Commission, am I correct? 20 THE WITNESS: Yes, sir. 21 MR. BRADLEY: Listen to him. 22 THE COURT: Yes. The notice file that you were 23 talking about, the registrations you make is with the 24 SEC, the Securities and Exchange Commission. 25 THE WITNESS: Yes, sir.</p>	<p style="text-align: right;">Page 161</p> <p>1 THE COURT: Federal Securities and Exchange 2 Commission? 3 THE WITNESS: Yes, sir. 4 THE COURT: What registration does WESPAC do in 5 the State of Nevada and with whom? Is there something -- 6 besides a business license, is there something with the 7 Secretary of State? Is there some other entity that you 8 register with in the State of Nevada? 9 THE WITNESS: I believe that you have to 10 register as a foreign entity with the Secretary of State. 11 THE COURT: Okay. 12 THE WITNESS: Yes. 13 THE COURT: And so WESPAC would do that since 14 it's been operating in Nevada? 15 THE WITNESS: Yes. 16 THE COURT: Okay. Is there any other filing 17 that you make with the State, any regulatory body that 18 oversees the -- 19 THE WITNESS: No -- 20 THE COURT: -- financial advisors in the State 21 of Nevada? 22 THE WITNESS: None that I'm aware of. 23 THE COURT: All right. 24 BY MR. HEBERT: 25 Q Please turn to Exhibit 40. Do you see it?</p>

<p style="text-align: right;">Page 162</p> <p>1 A Yes.</p> <p>2 Q The document is entitled what?</p> <p>3 A "Notice Filing Status."</p> <p>4 Q And it has columns, "Jurisdiction, Notice Filing</p> <p>5 Status, Status Effective Date."</p> <p>6 What is the status effective date for Nevada?</p> <p>7 A 9-24-2008.</p> <p>8 Q And this was the registration as an investment</p> <p>9 advisory firm under NRS 90.330?</p> <p>10 A Well, I'm not sure what the regulation is, but</p> <p>11 yes.</p> <p>12 Q Okay. So --</p> <p>13 A The reason why this is saying effective, because</p> <p>14 I know where you're going with this --</p> <p>15 Q You do?</p> <p>16 A So at the time, we were -- just previous to</p> <p>17 this, we were acquired by Focus Financial Partners; that</p> <p>18 whole process involved us doing a withdrawal of our</p> <p>19 previous advisory registration with the SEC and a</p> <p>20 refiling incorporated in the state of Delaware, as a</p> <p>21 different entity. We received a different CRD number, a</p> <p>22 different SEC number. So it looks like, you know, it's a</p> <p>23 new entity filing.</p> <p>24 Q Back in 2005, it was Benefit Street that owned</p> <p>25 WESPAC, wasn't it?</p>	<p style="text-align: right;">Page 163</p> <p>1 A I believe. I don't recall. I think they</p> <p>2 possibly bought us in 2005. I don't remember.</p> <p>3 Q Then in 2007 it changed to Focus Financial?</p> <p>4 A Well, at some point Nelson Chia bought the firm</p> <p>5 back and then turned around and sold it back to Focus.</p> <p>6 Q It looks like, wouldn't you agree, from Exhibit</p> <p>7 40 that you weren't a licensed investment advisory firm</p> <p>8 in Nevada until 9-24-08?</p> <p>9 A That we weren't?</p> <p>10 Q Wouldn't you agree that the date of registration</p> <p>11 was 9-24-08 for Nevada on this form?</p> <p>12 A I would agree for this particular numerical</p> <p>13 entity.</p> <p>14 Q Let me ask you this: WESPAC Advisors has always</p> <p>15 been called WESPAC Advisors, even if it was owned by</p> <p>16 Benefit Street or Focus Financial, wasn't it?</p> <p>17 A Yes.</p> <p>18 Q Then why wouldn't WESPAC Advisors be registering</p> <p>19 in the name of WESPAC Advisors?</p> <p>20 A Well, if you want to look at this 2005 --</p> <p>21 Q Look at what? What exhibit number?</p> <p>22 A Well, this is Exhibit 53. If you go to Page</p> <p>23 806, you'll see the list of states, and if you look next</p> <p>24 to "NV," it's checked. And that means when we uploaded</p> <p>25 this form electronically to the SEC, they would've sent a</p>
<p style="text-align: right;">Page 164</p> <p>1 notice filing form to -- wait. This is --</p> <p>2 THE COURT: That's 2008.</p> <p>3 THE WITNESS: Yeah, I'm sorry.</p> <p>4 MR. BRADLEY: Look at 48.</p> <p>5 THE WITNESS: Okay. 48. Well, okay. If you go</p> <p>6 to 48, Page 1019. As you can see, the box next to "NV"</p> <p>7 is checked.</p> <p>8 BY MR. HEBERT:</p> <p>9 Q This is an ADV form which is a Federal SEC form.</p> <p>10 What was going on with the State of Nevada? Don't you</p> <p>11 have to register with the State of Nevada under NRS</p> <p>12 90.330?</p> <p>13 A No.</p> <p>14 Q You don't?</p> <p>15 A No. If you're an SEC-registered investment</p> <p>16 advisor, all you have to do is notice file.</p> <p>17 Q What does notice filing mean?</p> <p>18 A It means that -- Well, you send your</p> <p>19 registration documentation, they'll send an electronic</p> <p>20 notice to the state authorities saying that this advisor</p> <p>21 is going to be doing business in your state, this</p> <p>22 SEC-registered investment advisor.</p> <p>23 Q So what's this form here, Exhibit 40 then? Is</p> <p>24 this the SEC form --</p> <p>25 A I've never seen that form before.</p>	<p style="text-align: right;">Page 165</p> <p>1 Q It says at the bottom "FINRA." Financial</p> <p>2 Industry Regulatory Authority, Inc.</p> <p>3 A So if you look, our CRD number is different over</p> <p>4 here. It's 109915. Over here, for the one you're</p> <p>5 looking at, it's 148242. So it's different entities.</p> <p>6 Q Is the organization SEC number on Exhibit 40,</p> <p>7 801-69552, the same?</p> <p>8 A I think that's different, too. But I'm not sure</p> <p>9 of the relevance.</p> <p>10 Q I mean, it's not your job to judge the relevance</p> <p>11 as the witness.</p> <p>12 You know, you were earlier referring to Exhibit</p> <p>13 53, and I'm talking about Exhibit 40. But do they bear</p> <p>14 the same organization SEC --</p> <p>15 A It's not the same organization. I told you --</p> <p>16 Q You're not listening to my question.</p> <p>17 THE COURT: Ask it again.</p> <p>18 BY MR. HEBERT:</p> <p>19 Q On Exhibit 40, this one-page exhibit, "Notice</p> <p>20 filing status," in the upper left-hand corner it says --</p> <p>21 you made a point that the CRD number is different between</p> <p>22 40 and 53.</p> <p>23 My question is directed to the number right</p> <p>24 below it. It says, "Organization SEC No. 80169552" --</p> <p>25 A That number is different, too.</p>

<p style="text-align: right;">Page 166</p> <p>1 Q That's my question. So that number is different 2 on 53 then? 3 A I believe it is. 4 Q Well, let's check. 5 THE COURT: The CRD number is the same. 6 MR. HEBERT: Yes, it is, isn't it. 7 THE COURT: On 53 and 40. 14 -- 8 THE WITNESS: Well, is that the -- the one from 9 53 is 2008. So that's not the right one. It was 48 we 10 were looking at. 11 THE COURT: All right. 12 THE WITNESS: And I wasn't seeing that they had 13 the SEC number on it, but I'm almost certain that the SEC 14 numbers are different. 15 MR. BRADLEY: Look at 53. 16 BY MR. HEBERT: 17 Q If I can understand your somewhat confusing 18 testimony, Mr. Williams -- 19 MR. BRADLEY: Would you give him a chance to 20 look at this number? 21 MR. HEBERT: Yes. I'm sorry. 22 MR. BRADLEY: Thank you. 23 THE WITNESS: What am I doing? 24 MR. BRADLEY: He's asking you -- 53 and 48, look 25 at the CRD numbers and explain if they're the same, if</p>	<p style="text-align: right;">Page 167</p> <p>1 you were asked that. 2 THE WITNESS: So this is the ADV form before we 3 were required by Focus Financial Partners, and we 4 withdrew our old advisory registration and we had to 5 re-file as a new entity incorporated in the State of 6 Delaware. We received a new CRD number. We received, I 7 believe, a new SEC number. I don't see where the SEC 8 number is. But it's why we are not showing up as being 9 notice filed under the old entity under this Exhibit 40 10 that is showing the notice filing status. 11 BY MR. HEBERT: 12 Q You say "this." What exhibit are you referring 13 to? 14 A The Exhibit 40, where you're saying that -- or 15 we weren't effective until 9-24-2008. That was the new 16 entity. Once the SEC approved the new entity, that was 17 when we became effective, notice filed in the State of 18 Nevada under the new entity. It doesn't have any bearing 19 on whether we were filed under the old entity, which we 20 were. 21 Q So if I understand all of that, the name in 48 22 and 40 is still WESPAC Advisors, LLC, but because there 23 was a change in ownership upstream from WESPAC Advisors, 24 WESPAC Advisors was required to reregister and re-notice 25 file and that resulted in somehow the form, Exhibit 40,</p>
<p style="text-align: right;">Page 168</p> <p>1 being reset to September 24, 2008. Is that your 2 explanation? 3 A That's correct. 4 Q Okay. Got any proof of that? 5 A No. 6 THE COURT: Counsel, it's his testimony. 7 MR. HEBERT: Your Honor, you're right. 8 BY MR. HEBERT: 9 Q Now, what about registering with the Nevada 10 Secretary of State as an LLC, was that done during the 11 period of time that WESPAC was working for Mr. Garmong? 12 A At the time we had a parent company, Benefit 13 Street; you know, I wasn't involved in those kind of 14 housekeeping operation stuff. 15 Q By the way, I'm looking at Exhibit 41. Now I'm 16 talking about WESPAC Advisors, LLC. And when does it 17 show that WESPAC Advisors was registered as an LLC with 18 the State of Nevada under NRS 86.544? 19 A File date 10-15-2008. 20 Q Is that when WESPAC Advisors, LLC, first 21 registered itself as a foreign corporation, a foreign LLC 22 with the Nevada Secretary of State? 23 A I don't know, but I highly doubt it, because 24 this is -- again, this is the new entity. This is done 25 after -- you know, when we were acquired by Focus, it's</p>	<p style="text-align: right;">Page 169</p> <p>1 when we were doing all our things we were doing then to 2 make sure that we were good to go compliance-wise, you 3 know. 4 Prior to this, you know, there was the change of 5 ownership, you know, a couple of different times, Benefit 6 Street, back to WESPAC. As far as what was going on 7 throughout that period, that was being handled by people 8 other than me. 9 Q But I direct your attention to Page G0339 on 10 Exhibit 41. Do you see that page, the last page? 11 A Yes. 12 Q Do you see up at the top there where it says 13 "File date" and the first file date is October 15, 2008? 14 A Yes, I see that. 15 Q Now, WESPAC Advisors never changed its name. It 16 just changed parent -- 17 MR. BRADLEY: Objection, asked and answered. 18 We've been through this. 19 MR. HEBERT: No, we haven't. 20 MR. BRADLEY: We've been through this five 21 times. I object, it's asked and answered. 22 He explained that they got a different number so 23 that's why it wasn't -- 24 THE COURT: All right. 25 MR. BRADLEY: -- this document --</p>

<p style="text-align: right;">Page 170</p> <p>1 THE COURT: Sustained.</p> <p>2 MR. HEBERT: A different number?</p> <p>3 BY MR. HEBERT:</p> <p>4 Q Let's move on to a different topic, as much as I</p> <p>5 would like to stay with the last one.</p> <p>6 Was WESPAC Advisors required by the SEC to have</p> <p>7 a code of ethics?</p> <p>8 A I believe so, yes.</p> <p>9 Q Do you know the effective date of when the SEC</p> <p>10 required a code of ethics?</p> <p>11 A No, I don't.</p> <p>12 Q Let me direct your attention to Exhibit No. 38,</p> <p>13 Plaintiff's Book Volume I.</p> <p>14 Do you see it?</p> <p>15 A Yes.</p> <p>16 Q In the middle of the page it says -- well, at</p> <p>17 the top it says, "Investment advisor code of ethics."</p> <p>18 In the middle of the page it says, "Dates,</p> <p>19 effective date." Do you see that?</p> <p>20 A Uh-huh.</p> <p>21 Q What's the effective date?</p> <p>22 A August 31, 2004.</p> <p>23 Q Do you know when WESPAC Advisors first</p> <p>24 formulated a code of ethics and distributed it to its</p> <p>25 clients under the ADV2 given to them?</p>	<p style="text-align: right;">Page 171</p> <p>1 A I don't recall.</p> <p>2 Q Well, would you disagree with Mr. Garmong if he</p> <p>3 testified that he didn't get one when he signed up in</p> <p>4 August 31 of 2005?</p> <p>5 A I don't know that we're required to give clients</p> <p>6 a code of ethics.</p> <p>7 Q You're not?</p> <p>8 A It just says we're required to have one. It</p> <p>9 doesn't -- we're not required to disclose it to clients.</p> <p>10 Q Just a moment, your Honor. Let us find the</p> <p>11 right exhibit.</p> <p>12 A Besides, there was a very specific format for</p> <p>13 the Form ADV Part 2, it used to be a lot more regimented.</p> <p>14 You're required to disclose -- I mean, if it said you had</p> <p>15 to provide a code of ethics, I believe we would have done</p> <p>16 so.</p> <p>17 Q Thank you.</p> <p>18 Let's go to Page --</p> <p>19 A It says, "Furnish a copy upon request."</p> <p>20 MR. BRADLEY: What are you reading from, the</p> <p>21 exhibit number?</p> <p>22 THE WITNESS: It's Exhibit --</p> <p>23 THE COURT: 38.</p> <p>24 THE WITNESS: Exhibit 38. "GG 0389, see Form</p> <p>25 ADV."</p>
<p style="text-align: right;">Page 172</p> <p>1 BY MR. HEBERT:</p> <p>2 Q How does the client know to request a code of</p> <p>3 ethics? Just have to guess?</p> <p>4 A It says --</p> <p>5 THE COURT: It doesn't say --</p> <p>6 THE WITNESS: -- it says --</p> <p>7 THE COURT: It doesn't say how. It says, "Upon</p> <p>8 request, to be provided." It doesn't say --</p> <p>9 THE WITNESS: It requires us to describe our</p> <p>10 code of ethics and then furnish a copy upon request.</p> <p>11 BY MR. HEBERT:</p> <p>12 Q Go to Exhibit 4.</p> <p>13 MR. BRADLEY: 4?</p> <p>14 MR. HEBERT: 4.</p> <p>15 THE COURT: What page?</p> <p>16 BY MR. HEBERT:</p> <p>17 Q The first page. Page 48. Paragraph 2,</p> <p>18 Mr. Williams. Are you there?</p> <p>19 A I'm here.</p> <p>20 Q Okay. Do you see a sentence that starts out,</p> <p>21 "Client acknowledges that client has reviewed the</p> <p>22 investment policies of WESPAC Advisors as set forth in</p> <p>23 WESPAC Advisors Form ADV Part 2"?</p> <p>24 A Yes.</p> <p>25 Q Would the -- would the investment policies of</p>	<p style="text-align: right;">Page 173</p> <p>1 WESPAC Advisors include a code of ethics?</p> <p>2 A No.</p> <p>3 Q So how would the client ever learn of WESPAC's</p> <p>4 code of ethics?</p> <p>5 A I think it's -- Starting 2005, we were required</p> <p>6 to describe our code of ethics in ADV Form Part 2.</p> <p>7 According to the rule, it's a very regimented format back</p> <p>8 then, you would've been required in the way the form was</p> <p>9 set up to describe it. So if Mr. Garmong had -- I'm</p> <p>10 assuming he read the Form ADV Part 2 where it would</p> <p>11 describe our code of ethics. If he wanted one, he could</p> <p>12 have requested one.</p> <p>13 Q Let me direct your attention to 49, which is the</p> <p>14 -- I'll represent to you is the Form ADV Part 2 given to</p> <p>15 Mr. Garmong. Take your time on this. Can you point out</p> <p>16 in there where it talks about the WESPAC code of ethics</p> <p>17 and its availability upon request?</p> <p>18 MR. BRADLEY: Take your time.</p> <p>19 BY MR. HEBERT:</p> <p>20 Q Don't rush. I mean, I want you to give an</p> <p>21 informed answer.</p> <p>22 A Well, I mean, I don't know -- I do know that GG</p> <p>23 0370, the first half of this entire page would be in</p> <p>24 language similar to what's --</p> <p>25 Q Say the number again, please, Mr. Williams.</p>

<p style="text-align: right;">Page 174</p> <p>1 A 0370. The first half of that page is language 2 very similar to language that's in our current code of 3 ethics. I don't see -- I haven't seen the term "code of 4 ethics" yet. 5 Q Mr. Williams, let me ask you this: What's the 6 effective date in the upper right-hand corner of this 7 form? 8 A 3-22-2005. 9 Q And would you acknowledge that that's about five 10 months before Mr. Garmong became a customer -- 11 A Yes. 12 Q -- of WESPAC Advisors? 13 A Yes. 14 Q So is there any place he could go to in that 15 form that he must've gotten from WESPAC to tell him that 16 he could ask for a code of ethics? 17 A I'm not seeing it yet. 18 MR. HEBERT: All right. Your Honor, I have a 19 suggestion. Since I could use a short break, maybe I 20 could take that short break while -- 21 THE COURT: No. Let's wrap this up. Let's -- 22 THE WITNESS: I don't see it -- 23 THE COURT: All right. 24 THE WITNESS: -- the reference to it. 25 MR. HEBERT: I was going to say this would be my</p>	<p style="text-align: right;">Page 175</p> <p>1 last question. I just wanted to give him a chance -- 2 THE COURT: Go ahead. 3 MR. HEBERT: I'm done. 4 THE COURT: Oh, okay. 5 MR. HEBERT: I just wanted to give him a chance 6 to look while -- 7 THE COURT: He said he hasn't seen it, so he's 8 not aware of it in there. 9 MR. HEBERT: And I'm done with my questions. 10 THE COURT: Okay. Thank you. 11 MR. BRADLEY: No redirect. 12 THE COURT: Can Mr. Williams be excused? 13 MR. BRADLEY: Yes, your Honor. 14 THE COURT: Well, he doesn't have to be excused. 15 He's the representative of the client, so he can be here 16 obviously. 17 MR. BRADLEY: I think he would like to get on 18 the road if it wouldn't upset -- 19 THE COURT: No, no. That's -- 20 MR. BRADLEY: -- your Honor -- 21 THE COURT: Look. That's your call. 22 MR. BRADLEY: Thank you. 23 THE COURT: Okay. 24 MR. BRADLEY: He just didn't want to show you 25 any disrespect by --</p>
<p style="text-align: right;">Page 176</p> <p>1 THE COURT: No, no. Let's go ahead and do what 2 was suggested by Mr. Hebert. We'll take a break for 10 3 minutes and then we'll reconvene. 4 And Mr. Christian will be your next witness? Or 5 your next witness? 6 MR. HEBERT: Well, we're going to sort that out 7 here in a moment, your Honor. 8 THE COURT: Who's going to call him -- 9 MR. HEBERT: Yes. 10 THE COURT: But Mr. Christian will be the next 11 witness. 12 MR. HEBERT: Yes. 13 THE COURT: And he's the only remaining witness. 14 MR. HEBERT: Correct. That's true. 15 THE COURT: Okay. Well, let's get started with 16 him then and go as far as we can. 17 (Recess.) 18 THE COURT: All right. 19 20 GREGORY CHRISTIAN, 21 called as a witness by the defendants herein, 22 being first duly sworn, was examined and 23 testified as follows: 24 THE COURT: Please have a seat, and if you would 25 state your full name for the record and spell your last</p>	<p style="text-align: right;">Page 177</p> <p>1 name. 2 THE WITNESS: Gregory J. Christian, 3 C-h-r-i-s-t-i-a-n. 4 THE COURT: Thank you. 5 MR. BRADLEY: Judge, did you want to put on the 6 record -- 7 THE COURT: Yes, our discussion. I discussed 8 with counsel and should put on the record, counsel have 9 agreed that since a transcript is being ordered, the 10 post-hearing briefs will be filed simultaneously by the 11 parties within three weeks of the date of the receipt of 12 the transcript of the arbitration. The page limitation 13 will be 20 pages for each side and the parties will waive 14 closing oral argument because they're filing written 15 argument in the form of the post-hearing briefs. 16 Counsel, you'll simply check with our court 17 reporter when we recess to get an idea as to 18 approximately when you'll receive the transcript, because 19 I've really got two folks that are working on it, and 20 they'll have to coordinate that. But whenever that's 21 done, then you can use that as your operative date to 22 start your three weeks. 23 MR. HEBERT: As a corollary to that ruling -- 24 THE COURT: No. Simultaneous, just one brief. 25 MR. HEBERT: -- as a corollary to that ruling, I</p>

<p style="text-align: right;">Page 178</p> <p>1 believe that JAMS Rule 22K requires that the party 2 ordering the transcript, which was the plaintiff in this 3 case, provide the other party with a copy for free. So 4 we'll do what the rule says to do. 5 MR. BRADLEY: Thank you, Mr. Hebert. 6 THE COURT: And a copy goes to the arbitrator, 7 as well. 8 MR. BRADLEY: A full copy goes to the 9 arbitrator. 10 THE COURT: Right, right. 11 And I've got all of your exhibits, and you're 12 going to handle sending the five volumes of exhibits, 13 just package those here and they'll send them to Las 14 Vegas to my office. 15 MR. HEBERT: To JAMS. 16 THE COURT: To JAMS. And I gave the lady, I 17 forget her name, the person up front, my business card. 18 She knows JAMS' address anyway. 19 MR. HEBERT: Yeah, and if you could, if you 20 don't mind, your Honor, keeping your binders with your 21 notes in them segregated so we -- 22 THE COURT: Yes. 23 MR. HEBERT: Yesterday we had a lot of confusion 24 on that. 25 THE COURT: I'll put them on that dolly right</p>	<p style="text-align: right;">Page 179</p> <p>1 there and with a copy of my card. 2 MR. HEBERT: There we go. We were all running 3 around yesterday trying to find out who had whose 4 exhibits. 5 THE COURT: All right. 6 MR. HUME: I have a question, too. On the 7 simultaneous exchange, is there going to be a date set 8 then? 9 THE COURT: Three weeks from the date -- 10 MR. HUME: How do we know when we're going to 11 get the transcript? 12 THE COURT: We don't. 13 MR. BRADLEY: We'll agree by e-mail what the due 14 date is. 15 MR. HUME: Okay. 16 MR. HEBERT: It's really easy to figure out once 17 we get that transcript. 18 MR. HUME: I didn't know if the parties were 19 getting the transcript simultaneously, too. 20 THE COURT: They should. 21 MR. BRADLEY: Okay. 22 THE COURT: Okay. Let's go ahead and proceed 23 then with Mr. Christian's examination. 24 25</p>
<p style="text-align: right;">Page 180</p> <p>1 DIRECT EXAMINATION 2 BY MR. BRADLEY: 3 Q Mr. Christian, could you briefly describe your 4 educational background? 5 A I graduated from Rutgers University in 1984 with 6 a Bachelor of Science in Economics, Finance and Labor 7 Relations. 8 Q And what did you do following your graduation 9 from college? 10 A I owned a business on Cape Cod and then I moved 11 out to Lake Tahoe to ski for a year, had various jobs 12 around here, and then I got into the financial services 13 business in 1987. 14 Q And who did you go to work for in '87? 15 A Wedbush Morgan Securities. 16 Q And what were your duties at Wedbush? 17 A I was a retail stockbroker. 18 Q And can you explain to the judge exactly what 19 that entails? 20 A Finding new clients, managing their money, 21 placing trade orders on a -- on what was typically called 22 a retail level. 23 Q And how long did you remain with Wedbush 24 approximately? 25 A I was with Wedbush Morgan until about 1990.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q And then did you leave Wedbush and go to another 2 financial company? 3 A I went to A.G. Edwards, because Wedbush Morgan 4 Securities sold the -- excuse me, closed the Reno branch. 5 Q And what's the next company? I'm sorry. 6 A A.G. Edwards. 7 Q And how long were you with A.G. Edwards, 8 approximately? 9 A I was with A.G. Edwards approximately two years. 10 Q And where did you work after A.G. Edwards? 11 A I went to work for Valley Bank of Nevada. 12 Q And how long did you remain with Valley Bank? 13 A Approximately four years. And then I went to 14 work for Truckee River Bank, which was bought by Sierra 15 West Bank until -- I was there about until 2000. And 16 then in 2000, they were bought out by Bank of the West. 17 And I then kept my own Raymond James branch and ran my 18 independent Raymond James office. 19 Q And then how long did you stay as a Raymond 20 James broker? 21 A Until 2004, when I joined WESPAC full time. 22 Q We've heard some testimony about people being 23 licensed with FINRA and other people being licensed with 24 SEC. Can you explain to the judge why there's different 25 licensing jurisdictions?</p>

<p style="text-align: right;">Page 182</p> <p>1 A The Securities and Exchange Commission oversees 2 registered investment advisors and FINRA is more in the 3 broker/dealer world. 4 Q And what's the difference between the two, 5 between a registered investment advisor and a licensed -- 6 A A registered -- sorry. Registered investment 7 advisors work on a fee basis, whereas FINRA 8 representatives or your traditional brokers work on a 9 commission basis and/or both. 10 Q And at WESPAC, you do not receive any 11 commissions, correct? 12 A No, I do not. 13 Q And you charge a fee based -- based on the 14 amount of money under management? 15 A Correct. 16 Q And does it matter whether the money under 17 management's in cash or in stock or in bonds? 18 A No. 19 Q So if somebody had a hundred percent of their 20 account in cash, you get paid the same as if they had a 21 hundred percent of their money in stocks? 22 A Correct. 23 Q And as far as if there's a trade of stocks, you 24 don't get paid any more money or any less money? 25 A Correct.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q And does Charles Schwab charge a small amount 2 for the actual trade? 3 A Yes, depending on the security. 4 Q And you don't receive part of Charles Schwab's 5 charge for doing a trade? 6 A No, I do not. 7 Q Okay. We've already heard some testimony, but 8 could you explain the Schwab Advisor Network briefly to 9 the judge? 10 A Schwab has a group of independent advisors that 11 they have partnered with to refer their clients to for 12 needs that Schwab does not take care of themselves. 13 Q And does Schwab do any due diligence to decide 14 who qualifies to be part of their advisor network? 15 A Yes. 16 Q And to your knowledge, what due diligence does 17 Schwab undertake? 18 A They do complete background checks on the firms, 19 the individuals, they look at our investment performance, 20 various accounts, you know, you have to have had a 21 longstanding relationship already with Schwab, so they 22 have a comfortable level with you. WESPAC was a 23 independent advisor with Schwab long before getting on 24 the Schwab Advisor Network. 25 Q To your knowledge, does Schwab, before you</p>
<p style="text-align: right;">Page 184</p> <p>1 become -- I'm sorry. Start over. 2 Did Schwab investigate your background before 3 they allowed you to become an advisor? 4 A I believe so. 5 Q And to your knowledge, did they check to see 6 whether you had proper E&O insurance? 7 A Yes. 8 Q And did they check to see whether you were 9 properly licensed? 10 A Yes. 11 THE COURT: And date-wise, approximately when 12 did this affiliation with the network occur, to your 13 recollection? 14 THE WITNESS: It occurred in 2004. 15 THE COURT: And prior to that, you were at 16 WESPAC prior to 2004? 17 THE WITNESS: I joined WESPAC late 2003, early 18 2004, so -- 19 THE COURT: So about that time. 20 THE WITNESS: Right. 21 THE COURT: And when you joined, they were not 22 yet part of the network with Schwab, they were an 23 independent advisor that did work with Schwab? 24 THE WITNESS: Correct. We had been working with 25 Schwab since -- boy, the late '70s, early '80s, I</p>	<p style="text-align: right;">Page 185</p> <p>1 believe. 2 THE COURT: Okay. 3 THE WITNESS: But more on the 401K 4 recordkeeping, pension administration side of the 5 business. And then Schwab -- or WESPAC grew into the 6 advisory business and then eventually got approved to be 7 on the SAN Network, the Schwab Advisory Network. 8 THE COURT: Thank you. 9 BY MR. BRADLEY: 10 Q I know there's been a lot of questions this 11 afternoon about whether or not the ADVs were correctly 12 filled out. To your knowledge, whose responsibility was 13 it to fill out the ADV? Was it yours or was it somebody 14 at WESPAC home office? 15 A John Williams. 16 Q Can you tell us how you first met Mr. Garmong? 17 A I first met Mr. Garmong in the Schwab office in 18 Reno. He was referred to us by a financial consultant 19 there named J.J. Cavanaugh and he arranged a meeting and 20 I met with him in the conference room at Schwab. 21 Q And at that point, did you hand him any forms or 22 any brochures or was it just a conversation? 23 A I would've typically given him our, you know, 24 firm welcome kit and given him some information he could 25 look at.</p>

<p style="text-align: right;">Page 186</p> <p>1 Q So I think he described it as --</p> <p>2 A I believe --</p> <p>3 Q -- as information --</p> <p>4 A -- I believe some of those --</p> <p>5 THE REPORTER: Whoa. I know it's hard, I just</p> <p>6 can't take two people talking at the same time.</p> <p>7 THE WITNESS: Sorry.</p> <p>8 THE WITNESS: "So I think he described it as"...</p> <p>9 BY MR. BRADLEY.</p> <p>10 Q Marketing brochures.</p> <p>11 A Yes. I believe those are some of the exhibits</p> <p>12 we've seen today.</p> <p>13 Q All right. And did he contact you later and</p> <p>14 agree to meet with you about becoming a client?</p> <p>15 A Yes. I don't know if he contacted me or I</p> <p>16 contacted him. We got together.</p> <p>17 Q And where was this next meeting?</p> <p>18 A The second meeting was in the Schwab office and</p> <p>19 then we had subsequent meetings in my office.</p> <p>20 Q Let's get to the meetings in your office. Did</p> <p>21 you undertake a process called "know your client" where</p> <p>22 you would take down information and find out about his</p> <p>23 background?</p> <p>24 A Yes, we did.</p> <p>25 Q Could you turn to Tab 1 of Defendants' Volume I?</p>	<p style="text-align: right;">Page 187</p> <p>1 A Uh-huh.</p> <p>2 Q And can you identify what that document is?</p> <p>3 A These are my notes from that initial meeting.</p> <p>4 Q And can you summarize the important parts of</p> <p>5 what's included in this two-page document?</p> <p>6 A His -- Well, we started out with just, you know,</p> <p>7 getting to know the client, so I have his phone number,</p> <p>8 address, name, age, and then we go through his various</p> <p>9 wants and needs, just get a little more background asking</p> <p>10 pertinent questions of what's going on in his life and</p> <p>11 then I get his financial asset detail.</p> <p>12 Q What did he tell you about his financial assets?</p> <p>13 A Well, he told me he had 2.8 million dollars that</p> <p>14 he had got in a windfall from a small stock. I don't</p> <p>15 recall the exact story about it. Five million dollars at</p> <p>16 Schwab and five million in real estate. Zero debt.</p> <p>17 \$900,000 in defined benefit plan. \$400,000 is</p> <p>18 profit-sharing. \$400,000 is money purchase plan, and</p> <p>19 \$350,000 in a personal account. And then I asked -- you</p> <p>20 know, I ask a lot of pertinent questions.</p> <p>21 I know he needs \$3,000 a month to live on,</p> <p>22 \$3,000 in taxes and insurance, working on 40 percent of</p> <p>23 his -- he thought he would be working at 40 percent of</p> <p>24 his old workload, but he was going to continue to work</p> <p>25 for a few years.</p>
<p style="text-align: right;">Page 188</p> <p>1 Q Okay. And then on the next page, what else is</p> <p>2 pertinent?</p> <p>3 A We had discussed and started a conversation</p> <p>4 about whether he wanted to sell his Zephyr Cove house.</p> <p>5 He had a home down on Stephanie Court in the</p> <p>6 Minden/Gardnerville area he was selling. I believe that</p> <p>7 had something to do with his ex-wife was living at that</p> <p>8 house at the time, I believe. He also had some land on</p> <p>9 Johnson Lane.</p> <p>10 He was entering into a divorce agreement or was</p> <p>11 about done, and he was going to have to pay \$2500 a</p> <p>12 month. His approximate income was \$250,000 per year,</p> <p>13 \$20,000 a month. He was going to fully fund his DEB at</p> <p>14 \$194,000. He had an AMT issue.</p> <p>15 And then he had two brothers -- I forget --</p> <p>16 somewhere in the Midwest, I believe they lived. I'm not</p> <p>17 exactly sure. He wanted to take care of his brothers, or</p> <p>18 one of them, I believe. He was a mechanic, I think. And</p> <p>19 at that time, he was coming to Reno every Wednesday, I</p> <p>20 believe, to do something with dog training. That was</p> <p>21 about it for the initial meeting.</p> <p>22 Q What's that bottom line, what does it say?</p> <p>23 A I think that was some insurance policy he had,</p> <p>24 property and casualty insurance, 'cause he was talking</p> <p>25 about getting an umbrella policy and some asset</p>	<p style="text-align: right;">Page 189</p> <p>1 protection from insurance.</p> <p>2 Q Okay. Would you turn to Tab 2?</p> <p>3 A Uh-huh.</p> <p>4 Q Can you describe what Tab 2 is?</p> <p>5 A That was our client confidential profile we used</p> <p>6 at that time.</p> <p>7 Q Were there various format changes that were</p> <p>8 occurring during this 2005 time period?</p> <p>9 A Yes.</p> <p>10 Q We've heard a lot about this missing Page 11.</p> <p>11 Can you describe why Page 11 is not part of Mr. Garmong's</p> <p>12 confidential client profile?</p> <p>13 A When Mr. Garmong and I originally met, I gave</p> <p>14 him a client confidential profile which included our</p> <p>15 investment management agreement, so there was basically</p> <p>16 two agreements in one document.</p> <p>17 He filled that risk tolerance portion out and</p> <p>18 the information portion, and took the management</p> <p>19 agreement with him and then made numerous strikes and</p> <p>20 changes and requested changes, which we went back and</p> <p>21 forth --</p> <p>22 Q We're going to go through that.</p> <p>23 A Okay.</p> <p>24 Q I'm just wondering if you could address, was</p> <p>25 there even a Page 11 in the form that you gave him to</p>

<p style="text-align: right;">Page 190</p> <p>1 fill out?</p> <p>2 A The original set of documents?</p> <p>3 Q Right.</p> <p>4 A I have no idea honestly. I don't know which set</p> <p>5 we gave him at that time.</p> <p>6 Q Okay. Well, then let's go to Tab 3.</p> <p>7 A (Witness complies.)</p> <p>8 Q Is this a form that Mr. Garmong handwrote in?</p> <p>9 A Yes, it is.</p> <p>10 Q And again, turn to the second page and summarize</p> <p>11 the significant or pertinent facts that you learned from</p> <p>12 what he wrote down.</p> <p>13 A He was currently earning \$250,000.</p> <p>14 Q Start at the top.</p> <p>15 A Oh, okay. What percentage of your total</p> <p>16 investable assets will WESPAC Advisors --</p> <p>17 (unintelligible) --</p> <p>18 THE REPORTER: I'm not even sure what you're</p> <p>19 saying. Go ahead.</p> <p>20 THE WITNESS: What percentage of your total</p> <p>21 investable assets will WESPAC Advisor be managing? EG</p> <p>22 stocks and bonds, 40 percent.</p> <p>23 BY MR. BRADLEY:</p> <p>24 Q Okay. Where was the other 60 percent?</p> <p>25 A The other 60 percent was comprised of municipal</p>	<p style="text-align: right;">Page 191</p> <p>1 bonds and real estate.</p> <p>2 Q And did he ask you to -- I'm sorry.</p> <p>3 How much was the municipal bonds?</p> <p>4 A Roughly 3 million.</p> <p>5 Q Okay. So that's the other 60 percent; was that</p> <p>6 3 million?</p> <p>7 A Correct.</p> <p>8 Q And then there's real estate in addition to</p> <p>9 that, correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. So did you -- were you managing any of</p> <p>12 his 3 million in his bond portfolio?</p> <p>13 A No, we did not manage that money.</p> <p>14 Q Okay. Then the second question is, how long</p> <p>15 will the funds be committed for the stated purpose? What</p> <p>16 box did he mark?</p> <p>17 A "10 years or more."</p> <p>18 Q Why is it significant in your mind, when you're</p> <p>19 trying to develop an appropriate investment strategy, if</p> <p>20 the funds are committed for 10 years or more?</p> <p>21 A Because it goes to the risk tolerance of a</p> <p>22 portfolio. So regardless of whether you're moderate,</p> <p>23 conservative or aggressive, if your time frame is shorter</p> <p>24 than 10 years, you would adjust your risk tolerance</p> <p>25 accordingly.</p>
<p style="text-align: right;">Page 192</p> <p>1 Q I think in the opening statement I read</p> <p>2 something that the SEC had said that when you have a</p> <p>3 longer time horizon, you can have a portfolio that has</p> <p>4 more volatility. Would that be true?</p> <p>5 A Typically, yes.</p> <p>6 Q Tell me whether or not you agree with this</p> <p>7 statement. "An investor with a longer time horizon may</p> <p>8 feel more comfortable taking on riskier or more volatile</p> <p>9 investments, because he can wait out the economic cycles</p> <p>10 and the inevitable ups and downs."</p> <p>11 Would you agree with that?</p> <p>12 A I would. Yes, I agree with that.</p> <p>13 Q Okay. I think you already said he makes</p> <p>14 \$250,000, that's right?</p> <p>15 A He said he's made \$250,000 the current, last and</p> <p>16 year before. So the previous three years, \$250,000.</p> <p>17 Q What was his net worth excluding primary</p> <p>18 residence?</p> <p>19 A This document, 9 million.</p> <p>20 Q And then if you turn to Exhibit 4, what is this</p> <p>21 part of the new client packet that you give clients?</p> <p>22 A This is our investment policy questionnaire.</p> <p>23 Q And why is this important?</p> <p>24 A It goes through and helps us get a feel for what</p> <p>25 the client's objectives are and ability to tolerate risk</p>	<p style="text-align: right;">Page 193</p> <p>1 and what they're trying to do over time.</p> <p>2 Q Is this part of what you rely on in determining</p> <p>3 the appropriate investment strategy?</p> <p>4 A Yes, it is.</p> <p>5 Q Do you also rely on conversations that you have</p> <p>6 with the client?</p> <p>7 A Yes, we do.</p> <p>8 Q If you would turn to the second page, Bates 042</p> <p>9 of Exhibit 4.</p> <p>10 A WESPAC 043?</p> <p>11 Q 042.</p> <p>12 A Okay.</p> <p>13 Q And under "Risk Factor," what is selection D?</p> <p>14 What does "Safety of my investment principal" mean?</p> <p>15 A It means that somebody wants their investment to</p> <p>16 be a relatively conservative, safe portfolio.</p> <p>17 Q Is that the most conservative choice that an</p> <p>18 investor can select under Question 1?</p> <p>19 A Yes.</p> <p>20 Q Okay. And he handwrote in E, "moderate growth,</p> <p>21 low moderate risk." Is that right?</p> <p>22 A Correct.</p> <p>23 Q Would you consider that more conservative or</p> <p>24 more risky than D?</p> <p>25 A More risky than D.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q And then he also refers to "Question 2, Answer B</p> <p>2 as my goal."</p> <p>3 Would you flip to the next page.</p> <p>4 A (Witness complies.)</p> <p>5 Q So he checked B, which says, "Moderately</p> <p>6 increasing my investment value, while minimizing my</p> <p>7 potential for loss of principal."</p> <p>8 A Yes.</p> <p>9 Q Now, is that the most conservative choice that</p> <p>10 he had under No. 2?</p> <p>11 A No.</p> <p>12 Q What's the most conservative choice?</p> <p>13 A "Having a relative level of stability in my</p> <p>14 overall investment portfolio."</p> <p>15 Q Okay. And then under "Volatility," he checked</p> <p>16 -- this is if an investment was committed for 10 years</p> <p>17 and lost 20 percent of its value during the first year;</p> <p>18 he selected B, "I would be concerned and may consider</p> <p>19 selling my investment."</p> <p>20 Is that the most conservative choice?</p> <p>21 A No.</p> <p>22 Q Which one is?</p> <p>23 A No. 1. It says, "I would be extremely concerned</p> <p>24 and would sell my investment."</p> <p>25 Q And then under 4, "Variation," it says, "With</p>	<p style="text-align: right;">Page 195</p> <p>1 which of the hypothetical portfolios below would you feel</p> <p>2 most comfortable?" Did he pick the most conservative</p> <p>3 choice?</p> <p>4 A No, he did not.</p> <p>5 Q Which choices are more conservative? And just</p> <p>6 refer to the numbers on the left.</p> <p>7 A 3, 5. 1, 3 and 5 are more conservative than the</p> <p>8 one he picked.</p> <p>9 Q Okay. And then if you'd turn the page, WESPAC</p> <p>10 044 under "Time Horizon," he marked "Long, five to ten</p> <p>11 years." Is that right?</p> <p>12 A Yes.</p> <p>13 Q Did he say anything about a multi-stage time</p> <p>14 horizon?</p> <p>15 A No.</p> <p>16 THE COURT: The numbers to the left of each of</p> <p>17 these boxes, that's some kind of scoring system?</p> <p>18 THE WITNESS: Yes. So what we do is we ask</p> <p>19 people to fill out a questionnaire. It comes up with a</p> <p>20 score, which we look at as a starting point of a</p> <p>21 conversation with a client. So if a client walks in and</p> <p>22 fills out as a very conservative number --</p> <p>23 THE COURT: A lot of 1s and 2s and --</p> <p>24 THE WITNESS: A lot of 1s and 2s and 3s. We go</p> <p>25 in that direction. Then if a lot of people come in and</p>
<p style="text-align: right;">Page 196</p> <p>1 go the other way, because we get -- sometimes people come</p> <p>2 in and they say -- they fill it out like they're</p> <p>3 aggressive, but then they tell us something completely</p> <p>4 different, and we're like, "Time out, let's go back."</p> <p>5 THE COURT: Okay.</p> <p>6 THE WITNESS: So we just use this as basically a</p> <p>7 starting point for the relationship.</p> <p>8 THE COURT: Okay.</p> <p>9 BY MR. BRADLEY:</p> <p>10 Q Turn the page to 045, No. 8.</p> <p>11 A (Witness complies.)</p> <p>12 Q The question asks if there's a secondary goal.</p> <p>13 What did he say?</p> <p>14 A He checked "Not applicable" only on a single</p> <p>15 time horizon.</p> <p>16 Q And then if you turn the page to 046.</p> <p>17 A (Witness complies.)</p> <p>18 Q And what did he indicate on 046?</p> <p>19 A He indicated that he had more than a million</p> <p>20 dollars as his investment value; living expenses, he has</p> <p>21 more than 12 months, not a concern; his household income</p> <p>22 was more than 200,000; and he was saving greater than 12</p> <p>23 percent of his earnings.</p> <p>24 Q Okay. And then turn the page on WESPAC 047.</p> <p>25 What does he say under the "Comment" section?</p>	<p style="text-align: right;">Page 197</p> <p>1 A He wrote, "My goal is providing for retirement.</p> <p>2 I'm uncertain when I will fully retire. I expect in 2006</p> <p>3 my income will be in the \$250,000 range, but almost</p> <p>4 certain decreasing after that, that to about 100,000.</p> <p>5 Maybe if I continue to work. Don't expect to start</p> <p>6 drawing on retirement accounts for about five years."</p> <p>7 Q Did Mr. Garmong ever ask to fill out an amended</p> <p>8 investment policy questionnaire?</p> <p>9 A No, he did not.</p> <p>10 Q If you would turn to Tab 5.</p> <p>11 A (Witness complies.)</p> <p>12 Q We've already heard a lot of testimony about</p> <p>13 this, but whose handwriting is in the upper left-hand</p> <p>14 corner kind of at an angle?</p> <p>15 A "I'll have a near final update to you."</p> <p>16 That's Nelson Chia, the previous owner of</p> <p>17 WESPAC.</p> <p>18 Q Okay. I believe Mr. Garmong has indicated that</p> <p>19 most of this writing was his handwriting, is that right?</p> <p>20 A I believe so, yes.</p> <p>21 Q And can you tell us how this -- how the changes</p> <p>22 came to be on this investment management agreement?</p> <p>23 A Mr. Garmong took the investment management</p> <p>24 agreement home to review after one of our early meetings</p> <p>25 and then had some changes that he wanted to make to it.</p>

<p style="text-align: right;">Page 198</p> <p>1 And at the time we were happy to have an 2 ex-attorney or a current attorney, retiring attorney, 3 review these documents for us, and we took his suggested 4 changes to our counsel and they reviewed them and I 5 believe adopted the changes or some of them. 6 Q So there's a reference to an Exhibit B, which 7 was not completed. Can you explain what Exhibit B to 8 this agreement was? 9 A Let me look at it. Exhibit B is a list of all 10 the assets that we would be managing and we usually use 11 the Charles Schwab statements, so if we have a client who 12 has an account at Schwab, we use the brokerage statements 13 as Exhibit B because that's -- once we get linked up, we 14 have it all there, or review the statements prior. 15 That Exhibit B existed earlier, because we are 16 in the retirement plan business and we do a lot of 17 pension administration, things like that, so a lot of 18 money purchase plans have outside assets. 19 So if we're going to take over and advise on 20 coin collections, whatever, you name it, that's not 21 listed on a typical broker statement, we'll itemize other 22 exhibits on Exhibit B. 23 Q So Exhibit B was not required to be part of this 24 agreement because you already had the information from 25 Charles Schwab?</p>	<p style="text-align: right;">Page 199</p> <p>1 A Correct. 2 Q How long did it take, if you recall, after you 3 gave the investment management agreement to Mr. Garmong 4 to take home did you get it back from him? 5 A I don't recall exactly. I think the whole 6 process took a couple weeks maybe. I don't recall 7 exactly. 8 Q Okay. And I think you said you sent this down 9 to the former owner, Nelson Chia? 10 A Yes. He was in charge of the firm at that time, 11 making all of these types of decisions. 12 Q Would you turn to Tab 6. Were at least some of 13 those changes requested by Mr. Garmong included in this 14 next draft? 15 A Uh-huh. 16 Q Is that a "Yes"? 17 A Yes. 18 Q Did Mr. Garmong have additional requests from 19 this draft? 20 A Yes, he did. 21 Q And did you send it back to Oakland for more 22 changes? 23 A Yes, we did. 24 Q Would you turn to Tab 7. 25 A (Witness complies.)</p>
<p style="text-align: right;">Page 200</p> <p>1 Q And is this the form that Mr. Garmong finally 2 executed? 3 A Yes. This is the one we both signed in August. 4 Q All right. And if you would turn to WESPAC 5 Bates stamp 050 under 5, "Discretionary authority." 6 A 050. Okay. 7 Q I'm not going to have you read it, but you were 8 granted full power and authority from this day on to make 9 all investment decisions on a discretionary basis? 10 A Yes. 11 Q So nothing changed legally, there were no other 12 agreements signed changing your authority to make 13 decisions in 2007 and -- 14 MR. HEBERT: Objection, your Honor. 15 That question says nothing changed legally. 16 That questions requires a legal opinion. 17 THE COURT: Sustained. 18 MR. BRADLEY: I withdraw it. Thank you. 19 BY MR. BRADLEY: 20 Q He didn't execute any additional investment 21 management agreements after this, did he? 22 A No. 23 Q That was a better question. 24 Was it your understanding that Mr. Garmong 25 understood the terms of the investment management</p>	<p style="text-align: right;">Page 201</p> <p>1 agreement? 2 A Yes. 3 MR. HEBERT: Your Honor, I object to that last 4 question. It -- 5 THE COURT: Sustained as to what Mr. Garmong 6 understood. 7 BY MR. BRADLEY: 8 Q Did Mr. Garmong ever express any confusion or 9 ask you to explain the terms of this investment 10 management agreement? 11 A No. I believe he was explaining them to me. 12 Q Would you turn to the last page of the document, 13 055. 14 A Okay. 15 Q And whose initials are next to "Growth and 16 income" at No. 3? 17 A Mr. Garmong's. 18 Q Okay. And I hate to do this to you, but can you 19 look at infamous Page 11 from Exhibit 2? 20 A Exhibit 2? 21 Q It's Bates stamped 085. And keep your finger on 22 this other 055. 23 A Okay. 24 Q So he signed next to "growth and income," 25 correct?</p>

<p style="text-align: right;">Page 202</p> <p>1 A Correct.</p> <p>2 Q Is "growth and income" also a choice on this</p> <p>3 Page 11, 085?</p> <p>4 A Yes.</p> <p>5 Q And is the difference that "growth and income"</p> <p>6 is defined on 085 but not on 055?</p> <p>7 A I'm sorry. Can you say that again?</p> <p>8 Q "Growth and income" is defined or at least</p> <p>9 explained on 085, but it's not articulated on 055?</p> <p>10 A Correct.</p> <p>11 Q But it's the same choice, correct?</p> <p>12 A Yes, it is.</p> <p>13 Q Okay.</p> <p>14 MR. HEBERT: Objection, leading.</p> <p>15 THE COURT: Sorry, what?</p> <p>16 MR. HEBERT: Objection, leading.</p> <p>17 THE COURT: It was leading, the last question.</p> <p>18 But I'll allow it. You can look at them and see what</p> <p>19 they are in terms of content.</p> <p>20 BY MR. BRADLEY:</p> <p>21 Q Can you explain on -- we're back to Tab 7,</p> <p>22 WESPAC 055. It looks like something, "one percent" is</p> <p>23 crossed out. Can you explain what the handwriting is to</p> <p>24 the side?</p> <p>25 A That's my handwriting. And we were discounting</p>	<p style="text-align: right;">Page 203</p> <p>1 our fees at that time, so we charged him three-quarters</p> <p>2 of one percent. And that says "retro to dollar one." So</p> <p>3 we have a tier schedule there, so we were charging him</p> <p>4 three-quarters of one percent down to the first dollar.</p> <p>5 Q Why did you give Mr. Garmoning a discount?</p> <p>6 A At that time we were offering a discount from</p> <p>7 our stated fees to all Schwab referrals.</p> <p>8 Q So it wasn't anything specific to Mr. Garmoning,</p> <p>9 just to Schwab referrals?</p> <p>10 A Correct.</p> <p>11 Q On this "growth and income" section that he</p> <p>12 initialed, what did you explain to Mr. Garmoning about</p> <p>13 growth and income?</p> <p>14 A Well, we went over a lot of things, but at the</p> <p>15 end we had decided to use a growth and income orientation</p> <p>16 to his portfolio where he would get a combination of</p> <p>17 growth and securities that have dividends in them. So</p> <p>18 overall, his objective was to have growth and income at</p> <p>19 that time.</p> <p>20 Q Did you tell Mr. Garmoning what would be included</p> <p>21 in a portfolio for growth and income?</p> <p>22 A Well, yeah, we had very in depth conversations</p> <p>23 and he knew that they were primarily a portfolio of</p> <p>24 stocks over time.</p> <p>25 Q And did you tell him that with stocks -- what</p>
<p style="text-align: right;">Page 204</p> <p>1 did you tell him with regard to the risks involved in</p> <p>2 investing in stocks?</p> <p>3 A Well, I told him what I tell everybody, that,</p> <p>4 you know, stocks go up and down in value and obviously</p> <p>5 there's risk and volatility involved and that's dependent</p> <p>6 upon the portfolio mix in which we engage.</p> <p>7 Q Would you turn to Exhibit 8.</p> <p>8 A (Witness complies.)</p> <p>9 Q Can you tell us what Exhibit 8 is?</p> <p>10 A Exhibit 8 is a transaction ledger report that we</p> <p>11 can pull off a portfolio center, which is a software</p> <p>12 package that we get from Schwab, which allows us to see</p> <p>13 all the detail in an account, and this gives us a ledger</p> <p>14 reading of every transaction that took place in that</p> <p>15 account.</p> <p>16 Q So it refers to a receipt of securities. What</p> <p>17 does that mean?</p> <p>18 A When we link up to an account, if there's</p> <p>19 existing securities in there when it comes into our</p> <p>20 system that we track, it comes in as a receipt of</p> <p>21 securities.</p> <p>22 Q But there's no actual transfer out of Schwab</p> <p>23 custody?</p> <p>24 A No. We maintain the exact client number. So</p> <p>25 you see that 49350713; that was an existing account, I</p>	<p style="text-align: right;">Page 205</p> <p>1 believe, unless this is the IRA.</p> <p>2 So, yeah, that was his existing individual</p> <p>3 account. So when that links up to us, the number stays</p> <p>4 the same. Nothing changes for the client. It just</p> <p>5 allows us to have access and data to that account.</p> <p>6 Q What was the asset allocation as far as stocks</p> <p>7 and bonds and cash when it transferred into WESPAC?</p> <p>8 A It was primarily stocks.</p> <p>9 Q Would stocks include mutual funds, holdings --</p> <p>10 A Correct. I'm sorry. When I -- Sometimes I use</p> <p>11 the business vernacular. Yeah, so mutual funds, ETFs,</p> <p>12 let's just call it -- it was primarily equities.</p> <p>13 Q What is ETF?</p> <p>14 A It's an exchange traded fund.</p> <p>15 Q And what is that?</p> <p>16 A It's like a mutual fund but trades like a stock.</p> <p>17 So it's a diversified basket of securities, whether it's</p> <p>18 an underlying indices, a specified sector. Now there's</p> <p>19 smart ETFs that are designed with computer models behind</p> <p>20 them. But it gives you broad diversification on one</p> <p>21 trade, one ticker symbol.</p> <p>22 Q You were not managing the muni bonds, correct?</p> <p>23 A Correct.</p> <p>24 Q So you were basically the equity manager for the</p> <p>25 risk portion of the portfolio?</p>

<p style="text-align: right;">Page 206</p> <p>1 A Correct.</p> <p>2 Q And did you think that the portfolio when it</p> <p>3 transferred in was fairly diversified?</p> <p>4 A I did.</p> <p>5 Q Okay. And then if you would, turn to Tab 9.</p> <p>6 A (Witness complies.)</p> <p>7 Q And again, does this show more securities coming</p> <p>8 in under the management of WESPAC?</p> <p>9 A Yes.</p> <p>10 Q Were there any bonds that came into this</p> <p>11 account?</p> <p>12 A Yes.</p> <p>13 Q What percentage, if you recall?</p> <p>14 A I don't recall the exact percent at that time.</p> <p>15 But I can see them right here.</p> <p>16 Q Which ones are the bonds?</p> <p>17 A The Federal Home Loan Banks, the Federal Home</p> <p>18 Loan Mortgage, the Federal Home Loan Mortgage and the</p> <p>19 Federal National Mortgage Association.</p> <p>20 Q At this time were these bonds high quality?</p> <p>21 A Yes. Triple A rated.</p> <p>22 Q So they're almost like cash?</p> <p>23 A Other than their maturities, yes. So they're</p> <p>24 going to fluctuate in value based on the length of</p> <p>25 maturity with a given change in interest rates. And the</p>	<p style="text-align: right;">Page 207</p> <p>1 longer that maturity, the more fluctuation you're going</p> <p>2 to have in the price of the bond.</p> <p>3 Q Okay. If you would turn to tab -- if you would</p> <p>4 turn to Exhibit 11.</p> <p>5 A Okay.</p> <p>6 Q If you'd look down under "activity" to the first</p> <p>7 sell. It's about halfway down on 12-29-05.</p> <p>8 Do you see that?</p> <p>9 A Uh-huh.</p> <p>10 Q What is an SPDR -- SPDRS?</p> <p>11 A That's an iShare that is the S&P 500.</p> <p>12 Q What is an iShare --</p> <p>13 A It's --</p> <p>14 Q -- S&P 500?</p> <p>15 A It's an exchange-traded fund that represents the</p> <p>16 S&P 500, the Standard & Poor's 500.</p> <p>17 Q Why did you want to sell that SPDR?</p> <p>18 A We sold that after initial review of the</p> <p>19 account, and after speaking with Mr. Garmong, you can see</p> <p>20 that we went into Vanguard Utilities, we went to Vanguard</p> <p>21 Re. (Phonetically.) We gave the portfolio a little bit</p> <p>22 more diversification.</p> <p>23 We actually sold the S&P 500 SPDR, which is a</p> <p>24 cap-weighted index. And I believe in this account --</p> <p>25 I'll have to look. Yeah, we bought the RIDEK S&P Equal</p>
<p style="text-align: right;">Page 208</p> <p>1 Weight, S&P 500.</p> <p>2 Q I don't -- Could you explain what the difference</p> <p>3 is between the SPDR, and the RIDEK SP Equal Weight?</p> <p>4 A So the -- I believe, actually, Mr. Cramer this</p> <p>5 morning talked about it. So the S&P 500 is a</p> <p>6 capitalization weighted index. So oftentimes -- well,</p> <p>7 not often times, all the time the stocks in there that</p> <p>8 have the greatest market cap move that index around the</p> <p>9 most and have the most impact on it.</p> <p>10 And we constantly look at relevant strength, and</p> <p>11 if the Equal Weight S&P 500 is outperforming the standard</p> <p>12 S&P 500 or cap weighted S&P 500, we will own the Equal</p> <p>13 Weighted S&P 500 as part of our modeling process.</p> <p>14 Q Did you think this better fit Mr. Garmong's</p> <p>15 goal?</p> <p>16 A Well, that and the fact that we gave him more</p> <p>17 diversification. So we sold \$163,000 worth of S&P 500</p> <p>18 and then brought -- bought a broader basket of giving him</p> <p>19 more diversification.</p> <p>20 Q Do you utilize something called a sector</p> <p>21 rotation model?</p> <p>22 A Yes, we do.</p> <p>23 Q Can you explain what a sector rotation model is?</p> <p>24 A Well, we have a variety of models. A sector</p> <p>25 rotation is one of our models. And that gives us the</p>	<p style="text-align: right;">Page 209</p> <p>1 ability to own -- the way the model is stated, it owns</p> <p>2 the five sectors with the greatest relevant strength at</p> <p>3 any given period of time.</p> <p>4 Q And did you explain this to Mr. Garmong?</p> <p>5 A Yes.</p> <p>6 Q And did you explain that this sector rotation</p> <p>7 model includes stocks or mutual funds holding stocks?</p> <p>8 A Correct. Well, the sector rotation model is</p> <p>9 always comprised of ETFs.</p> <p>10 Q And did you explain that the sector rotation</p> <p>11 model could experience volatility?</p> <p>12 A Yes.</p> <p>13 Q Did you explain that the sector rotation model</p> <p>14 carried more risk than holding cash or bonds?</p> <p>15 A Yes.</p> <p>16 Q Are the purchases here that we're looking at on</p> <p>17 Tab 11 part of this sector rotation model?</p> <p>18 A Yes, they are.</p> <p>19 Q And before you made these purchases, you cleared</p> <p>20 it with Mr. Garmong?</p> <p>21 A We discussed the strategy, and yes, we did. We</p> <p>22 provided him with all the performance numbers, portfolio</p> <p>23 holdings, all that stuff.</p> <p>24 And, actually, I believe yesterday in his</p> <p>25 testimony he made a comment that he looked at our</p>

<p style="text-align: right;">Page 210</p> <p>1 portfolios and weren't very impressed with the numbers.</p> <p>2 Q And then if you turn to Tab 12.</p> <p>3 A (Witness complies.)</p> <p>4 Q Tell us what Tab 12 is.</p> <p>5 A That's another transaction ledger from '05 to</p> <p>6 '09 for his individual account.</p> <p>7 Q Okay. And was this part of -- The various sells</p> <p>8 that are indicated, is this still part of this sector</p> <p>9 rotation model?</p> <p>10 A Some of the sells and buys were part of the</p> <p>11 sector rotation model and some of it was actually selling</p> <p>12 previous securities that we didn't -- that he transferred</p> <p>13 in that we no longer wanted to hold.</p> <p>14 Q So you were taking a look at what was</p> <p>15 transferred in and as time went on deciding which ones to</p> <p>16 sell?</p> <p>17 A Correct.</p> <p>18 Q And how were you identifying which ones you</p> <p>19 wanted to sell?</p> <p>20 A We do everything on a relative strength basis.</p> <p>21 Q What does that mean?</p> <p>22 A So we compare an individual's security or an</p> <p>23 index to each other or an individual's security to an</p> <p>24 underlying index, and decide which stocks or indices have</p> <p>25 the greatest chance of success over time, in our opinion,</p>	<p style="text-align: right;">Page 211</p> <p>1 and that's the way our models work.</p> <p>2 Q Speaking of models, did you ever tell</p> <p>3 Mr. Garmong that your models were able to predict</p> <p>4 short-term movements in the stock market?</p> <p>5 A No.</p> <p>6 Q Did you ever tell any client you could predict</p> <p>7 the stock market?</p> <p>8 A No. If I could, I would not be sitting here.</p> <p>9 Q Definitely not here.</p> <p>10 If you would turn to Tab 13.</p> <p>11 A Okay.</p> <p>12 Q How come this letter was -- it was sent by</p> <p>13 Mr. Garmong to Mr. Saltz (phonetically) at Triad. How</p> <p>14 come you got a copy of it?</p> <p>15 A Because through my conversations with</p> <p>16 Mr. Garmong, we had noticed that his defined benefit plan</p> <p>17 was going to push up against the statutory limit of how</p> <p>18 much money he could accumulate in that plan.</p> <p>19 Q Was he aware of that before you told him?</p> <p>20 A I don't believe so, no.</p> <p>21 Q Did he ultimately transfer his defined benefit</p> <p>22 account into -- roll it over into an IRA?</p> <p>23 A Yes, he did.</p> <p>24 Q And to your knowledge, did that likely save</p> <p>25 Mr. Garmong a great deal in taxes?</p>
<p style="text-align: right;">Page 212</p> <p>1 A That would depend on the future investment</p> <p>2 results, but that was the intent.</p> <p>3 Q If you would turn to Tab 14.</p> <p>4 A (Witness complies.)</p> <p>5 Q It looks like about a third way down the page</p> <p>6 under 6-2-2006, you sold iShares. What is it that you're</p> <p>7 selling there on 6-2-06?</p> <p>8 A iShares emerging markets and iShares Latin</p> <p>9 America.</p> <p>10 Q Do you know why you made that trade or that</p> <p>11 sale, I should say?</p> <p>12 A Well, we would've made that trade because those</p> <p>13 securities were, you know, exhibiting weakness compared</p> <p>14 to the overall marketplace, which in hindsight makes</p> <p>15 sense.</p> <p>16 Q Did you immediately buy something else with</p> <p>17 those proceeds?</p> <p>18 A No, we did not.</p> <p>19 Q Why not?</p> <p>20 A At that time, we were still trying to maintain</p> <p>21 some stability in the portfolio.</p> <p>22 Q Okay. If you would turn to Exhibit 15.</p> <p>23 A Okay.</p> <p>24 Q What was your impression of Mr. Garmong's</p> <p>25 ability to review and understand what's happening in his</p>	<p style="text-align: right;">Page 213</p> <p>1 accounts?</p> <p>2 A Better than most.</p> <p>3 Q Did it appear that he was making at least some</p> <p>4 of these calculations on his own from this April 8th</p> <p>5 letter?</p> <p>6 A Yes.</p> <p>7 Q Could you turn to, within that same exhibit,</p> <p>8 WESPAC 0547.</p> <p>9 A Okay.</p> <p>10 Q That first paragraph -- I'm sorry. The second</p> <p>11 line, the second sentence of the first full paragraph.</p> <p>12 "There could be period of times when things wouldn't go</p> <p>13 so good."</p> <p>14 So did you discuss with Mr. Garmong the fact</p> <p>15 that the stock market has cycles going up and cycles of</p> <p>16 going down?</p> <p>17 A Yes. We had numerous conversations and</p> <p>18 discussed the market in depth at all of our quarterly</p> <p>19 reports and meetings.</p> <p>20 Q Did you generally meet with Mr. Garmong in</p> <p>21 person or speak over the phone?</p> <p>22 A Both, but we met pretty religiously in person.</p> <p>23 Q And was it generally at least once a quarter?</p> <p>24 A I would say that's a general rule, yes.</p> <p>25 Q If you would turn to Exhibit 17.</p>

<p style="text-align: right;">Page 214</p> <p>1 A (Witness complies.)</p> <p>2 Q Are these more of your broker notes?</p> <p>3 A Yes.</p> <p>4 Q Can you give us -- tell us what the pertinent</p> <p>5 items are?</p> <p>6 A Based on these notes, I believe we were</p> <p>7 reviewing things as far as income needs and trying to</p> <p>8 look at building out a portfolio that would generate</p> <p>9 income for him.</p> <p>10 So we have January through February, it would</p> <p>11 start, Social Security, 1700 a month; needs, 5,500 a</p> <p>12 month; alimony's 2,500; April '09 stops, and then needs</p> <p>13 3,000 a month, '08. 3500 for Greg. 2,500, I believe</p> <p>14 that is for Allison. I guess that's his ex-wife. And</p> <p>15 1700 in Social Security. So I have 33 hundred for -- or</p> <p>16 43 hundred as grossed up there.</p> <p>17 "May add another hundred K by year end," this,</p> <p>18 we're referring to the individual account.</p> <p>19 It says, "Invest 160K in the personal account.</p> <p>20 Money link or checks." So right there we're deciding on</p> <p>21 how the money is going to get from this account into his</p> <p>22 other account. So Schwab has what's called a "money</p> <p>23 link" and that moves the dividend and interest payments</p> <p>24 over to a bank account automatically, or he could have a</p> <p>25 checkbook.</p>	<p style="text-align: right;">Page 215</p> <p>1 And then at that point he said he wanted an</p> <p>2 individual account to be structured, so all gains are</p> <p>3 long term; meaning capital gains would be long term, not</p> <p>4 short term.</p> <p>5 Q What's the difference between short-term capital</p> <p>6 gains and long-term capital gains?</p> <p>7 A If you hold a security for greater than 12</p> <p>8 months -- well, it was at that time -- if you hold a</p> <p>9 security for greater than 12 months and then you sell it,</p> <p>10 you're taxed at the capital gains rate, which is maxed</p> <p>11 out at 15 percent, whereas if you sell a security within</p> <p>12 the first year, it's taxed as ordinary income if you have</p> <p>13 gains.</p> <p>14 Q So is he telling you he wants to hold the stocks</p> <p>15 and mutual funds for at least one year so he pays -- if</p> <p>16 he gets a profit, he pays a lower tax rate?</p> <p>17 A Where applicable, yes.</p> <p>18 Do you want me to keep going down here?</p> <p>19 Q Down there is a reference to Bob Lew. Who is</p> <p>20 that?</p> <p>21 A Bob Lew was an estate planning individual that I</p> <p>22 referred Mr. Garmong to. And also Kelly Carroll there,</p> <p>23 it's referenced. He was another -- he was an estate</p> <p>24 planning attorney also.</p> <p>25 Q Do you get any referral fees for sending clients</p>
<p style="text-align: right;">Page 216</p> <p>1 to Mr. Lew?</p> <p>2 A No. We don't.</p> <p>3 Q Why did you send Mr. Garmong to see Mr. Lew?</p> <p>4 A Because he had estate planning needs that were</p> <p>5 outside of my scope of expertise, so I use people when</p> <p>6 I'm not capable of doing so.</p> <p>7 Q And then at the bottom, what does it say there?</p> <p>8 A It says, "Define benefit plan, roll over IRA</p> <p>9 account, wait on Triad."</p> <p>10 Q And then Tab 18. Does this reflect that</p> <p>11 rollover you just discussed?</p> <p>12 A I need to look at it for a second. I'm not</p> <p>13 sure.</p> <p>14 Q Do you see the transfer of securities at 7-16 at</p> <p>15 the bottom of the page?</p> <p>16 A Yes.</p> <p>17 Q So is this any change in investment philosophy</p> <p>18 or is this a change in the type of account?</p> <p>19 A Simply a change in the type of account. So if I</p> <p>20 recall, we rolled the defined benefit plan into the IRA</p> <p>21 after the plan document was redrafted to have what's</p> <p>22 called an in-service distribution so we could do it</p> <p>23 faster.</p> <p>24 Q Then turn to Tab 19. Does that just reflect the</p> <p>25 fact that the securities went into the IRA?</p>	<p style="text-align: right;">Page 217</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 A I believe if you had matched them up, there's</p> <p>4 corresponding receipts and transfers.</p> <p>5 Q Would you turn to Tab 20, and take a look at --</p> <p>6 read over that quickly.</p> <p>7 A Okay. Can I read it out loud?</p> <p>8 Q No. Just read it to yourself.</p> <p>9 A Okay.</p> <p>10 Q And whose handwriting is at the bottom?</p> <p>11 A That's mine.</p> <p>12 Q Okay.</p> <p>13 A If you can't tell by now.</p> <p>14 Q What does your handwriting say on that page?</p> <p>15 A It says "Called to discuss accounts. Decided to</p> <p>16 raise cash. Sold approximately 50 percent of holdings in</p> <p>17 QRP and individual accounts, left IRA alone, already at</p> <p>18 50 percent cash."</p> <p>19 Q Can you summarize the conversation you had with</p> <p>20 Mr. Garmong where you came to this conclusion to raise</p> <p>21 cash?</p> <p>22 A With specificity, no. But in general terms, we</p> <p>23 obviously discussed the account. He had sent me this</p> <p>24 fax. I called him back and discussed it, and we had</p> <p>25 decided to raise more cash and become a little more</p>

<p style="text-align: right;">Page 218</p> <p>1 conservative.</p> <p>2 Q And I think Mr. Cramer explained it, but did you</p> <p>3 tell Mr. Garmong that "raising your percentage of cash in</p> <p>4 the account reduced volatility"?</p> <p>5 A I don't know if I told him those exact words,</p> <p>6 but that was the discussion. Obviously we decided to</p> <p>7 make a move that makes the account more defensive.</p> <p>8 Q And by going to more cash, did it reduce the</p> <p>9 potential for loss?</p> <p>10 A Yes, it did.</p> <p>11 Q And to your knowledge, did it appear that</p> <p>12 Mr. Garmong understood that going to cash reduced</p> <p>13 volatility and reduced the potential for loss?</p> <p>14 A Yes, it did.</p> <p>15 Q If you would look at Tab 21.</p> <p>16 A (Witness complies.)</p> <p>17 Q This appears to be the same day as the fax.</p> <p>18 Does it reflect sales on 8-16-07?</p> <p>19 A Yes. We sold about \$120,000, \$125,000 in</p> <p>20 securities.</p> <p>21 Q That same day?</p> <p>22 A Correct.</p> <p>23 Q When you flip to the next page, about two-thirds</p> <p>24 of the way down, does it also reflect sales on 8-16?</p> <p>25 A Yes, it does.</p>	<p style="text-align: right;">Page 219</p> <p>1 Q What was sold on 8-16 on the page 0356?</p> <p>2 A Emerging market mutual fund, an international</p> <p>3 mutual fund -- two international mutual funds, actually.</p> <p>4 Q And without doing the exact math, approximately</p> <p>5 how much was sold as reflected on Page 0356?</p> <p>6 A About \$140,000.</p> <p>7 Q And then if you turn to the next page of the</p> <p>8 exhibit, 0450, at the very bottom, 8-16, does it reflect</p> <p>9 some more sales?</p> <p>10 A Yes, it does.</p> <p>11 Q And was it Landstar?</p> <p>12 A Landstar Systems.</p> <p>13 Q And I think that continues over to the next</p> <p>14 page?</p> <p>15 A Right. And Bornado Real Estate Trust.</p> <p>16 Q And again, all of this is in response to</p> <p>17 Mr. Garmong's request for less volatility and less risk?</p> <p>18 A Correct.</p> <p>19 Q Tab 22. Is this a fax to Mr. Christian dated</p> <p>20 September 21, 2007?</p> <p>21 A Yes.</p> <p>22 Q And, at least in this letter, there was no</p> <p>23 expressed concern about the stock market?</p> <p>24 A No. This was just discussing that he hired Bob</p> <p>25 Lew to develop his estate plan.</p>
<p style="text-align: right;">Page 220</p> <p>1 Q Okay.</p> <p>2 A And he was just keeping me informed of what was</p> <p>3 going on.</p> <p>4 Q Would you turn to Tab 23.</p> <p>5 A Okay.</p> <p>6 Q Did you receive this letter from Mr. Garmong at</p> <p>7 any time around October 22nd, 2007?</p> <p>8 A No, I did not.</p> <p>9 Q When was the first time you saw this letter?</p> <p>10 A In discovery.</p> <p>11 Q Earlier this year?</p> <p>12 A Earlier this year.</p> <p>13 Q Would you turn to Tab 24?</p> <p>14 A (Witness complies.)</p> <p>15 Q So this fax is ten days after the date of</p> <p>16 October 22nd. Do you see any mention of stock market</p> <p>17 concerns ten days later, or at least ten days after</p> <p>18 October 22nd?</p> <p>19 A No. He's just giving me a general update on</p> <p>20 what's going on and what we had discussed.</p> <p>21 Q On No. 4, it says, "So it's time to start</p> <p>22 thinking about changing Account 0713 over to the</p> <p>23 cash-flow generation model that you recommended."</p> <p>24 A Right.</p> <p>25 Q So how far before September -- I'm sorry.</p>	<p style="text-align: right;">Page 221</p> <p>1 How much prior to November 2nd, 2007, had you</p> <p>2 discussed with Mr. Garmong the cash-flow generation</p> <p>3 model?</p> <p>4 A I don't know the exact time frame, but it was</p> <p>5 part of an ongoing discussion. As you go back to my</p> <p>6 broker notes we alluded to earlier, we were calculating</p> <p>7 all the cash flow that he was going to need, and that's</p> <p>8 where we came up with the \$600,000 figure, would be the</p> <p>9 approximate amount of money that should go in that model</p> <p>10 to take care of his monthly cash-flow needs.</p> <p>11 Q As best as you can, can you tell us what you</p> <p>12 explained to Mr. Garmong was the cash-flow generation</p> <p>13 model?</p> <p>14 A Well, I don't know who termed it cash flow, but</p> <p>15 he did. The cash-flow generation model is actually our</p> <p>16 income and growth model.</p> <p>17 Q Okay.</p> <p>18 A And that's a portfolio that comprises real</p> <p>19 estate investment, trusts, sometimes bonds, business</p> <p>20 development corporations, high dividend paying stocks, a</p> <p>21 variety of investments in that sector that historically</p> <p>22 give us interest rates in the yield of -- I'll call it</p> <p>23 five-and-a-half to 6. That's what it's currently paying.</p> <p>24 I believe that's what it was paying back then. And</p> <p>25 historically we've been able to keep pace with the S&P</p>

<p style="text-align: right;">Page 222</p> <p>1 500 with those types of dividend yields.</p> <p>2 Q And did you tell him that -- did you tell him</p> <p>3 that this model could fluctuate in value?</p> <p>4 A Of course, yes.</p> <p>5 Q And did you tell him that there was a potential</p> <p>6 for loss?</p> <p>7 A Yes. And any time we explain a model to our</p> <p>8 clients, we have what's called a tear sheet or a fact</p> <p>9 sheet, and those are given to the client at that time for</p> <p>10 review because it helps me with my talking points and</p> <p>11 explain the process.</p> <p>12 Q Did you retain the tear sheet that you used back</p> <p>13 in '07?</p> <p>14 A The one I gave him? No, I don't have that.</p> <p>15 Q Okay. So does the -- Tell me what's on this</p> <p>16 tear sheet. What kind of information --</p> <p>17 A So the tear sheet gives us our top ten holdings</p> <p>18 in the portfolio. It tells us the historical rates of</p> <p>19 return annually that the portfolio has exhibited, up,</p> <p>20 down, sideways, whatever it was. It gives you a</p> <p>21 year-by-year performance number. And then it's usually a</p> <p>22 graph depicted on there and a sector breakdown on the</p> <p>23 sheet.</p> <p>24 Q And so the graph, does it show sometimes it goes</p> <p>25 up and sometimes it goes down in value?</p>	<p style="text-align: right;">Page 223</p> <p>1 A Yes. It's just a graph of the historical</p> <p>2 performance of that particular model.</p> <p>3 Q Does that particular model generally follow the</p> <p>4 S&P 500 or are they not correlated?</p> <p>5 A It has a negative correlation -- well, not</p> <p>6 negative. It has a lesser correlation to the S&P 500.</p> <p>7 Q What do you mean by that?</p> <p>8 A It means it doesn't move up and down as much as</p> <p>9 the S&P 500. It's a more stable investment, but it can</p> <p>10 obviously move up and down in certain periods of time</p> <p>11 depending on what sectors are moving, interest rate</p> <p>12 environment, et cetera.</p> <p>13 But that portfolio has a benchmark of 60 percent</p> <p>14 stocks, 40 percent fixed income. So that's the benchmark</p> <p>15 we're trying to manage that portfolio, too, from a</p> <p>16 volatility standpoint.</p> <p>17 THE COURT: Parenthetically, how is that</p> <p>18 achieved, that tempering of the range, the movement?</p> <p>19 THE WITNESS: How is that achieved?</p> <p>20 THE COURT: Yes.</p> <p>21 THE WITNESS: By the composite -- the portfolio</p> <p>22 makeup. So it's got real estate investment, trust,</p> <p>23 business development corporations. It does have some</p> <p>24 corporate bonds in there from time to time.</p> <p>25 And, again, we're going through a relative</p>
<p style="text-align: right;">Page 224</p> <p>1 strength strategy, and if real estate investment trusts</p> <p>2 are outperforming at that time, we'll be in more real</p> <p>3 estate investment trusts. If business development corps</p> <p>4 are outperforming, we'll tweak the portfolio over and</p> <p>5 have more business development companies in it. If none</p> <p>6 of those are outperforming the corporate bond market, we</p> <p>7 will have more corporate bonds in there. So it's</p> <p>8 constantly rotating and trying to generate enough income</p> <p>9 for the client, but yet keep the volatility as low as</p> <p>10 possible and the total return up.</p> <p>11 THE COURT: Is that the product of just</p> <p>12 continual analysis by you and others at WESPAC? Is it an</p> <p>13 algorithm or some kind of --</p> <p>14 THE WITNESS: It's not an algorithm, but it is a</p> <p>15 portfolio that we run at WESPAC, myself and my assistant.</p> <p>16 THE COURT: Okay. Thank you.</p> <p>17 BY MR. BRADLEY:</p> <p>18 Q So you determine whether something fits within</p> <p>19 the income generation model and sometimes things fall out</p> <p>20 of it and you replace it with other investments?</p> <p>21 A Correct. But the primary goal of that portfolio</p> <p>22 is to generate income.</p> <p>23 Q So if there's a change in this income generation</p> <p>24 model, do you have to -- did you discuss that in advance</p> <p>25 with Mr. Garmong that there was a change in what was</p>	<p style="text-align: right;">Page 225</p> <p>1 comprised in this model?</p> <p>2 A No.</p> <p>3 Q So as long as he approved the model, you felt</p> <p>4 free to make changes within the model?</p> <p>5 A Correct.</p> <p>6 Q Was that true how you treated other clients?</p> <p>7 A That's the way we treat all our clients.</p> <p>8 Q Okay.</p> <p>9 MR. BRADLEY: Is this a good time for a break?</p> <p>10 THE COURT: Sure. Let's take a 10-minute break</p> <p>11 and we'll reconvene at five minutes after the hour.</p> <p>12 (Recess.)</p> <p>13 MR. BRADLEY: I think we're on Exhibit 25.</p> <p>14 THE COURT: Right.</p> <p>15 BY MR. BRADLEY:</p> <p>16 Q So this is approximately five weeks after the</p> <p>17 date of October 22nd, right? It's a November 22nd, 2007,</p> <p>18 letter.</p> <p>19 A I'm sorry. I couldn't hear you.</p> <p>20 Q This is a fax letter of November 29, 2007.</p> <p>21 A Okay.</p> <p>22 Q Do you see that?</p> <p>23 A Yeah.</p> <p>24 Q Okay. And was this letter setting up a lunch</p> <p>25 meeting that you were going to have in the future?</p>

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1 A Yes.

2 Q And did you have lunch on or about December 6th?

3 A Yes. Sometime around there, we did.

4 Q Okay. It said, "The topics to discuss: One is

5 am I properly positioned in my retirement accounts for

6 weathering a recession next year? If not, what changes

7 should we make?"

8 Did you have a discussion at lunch on this

9 issue?

10 A Yeah, this and many others.

11 Q And what did you talk about in regard to "Am I

12 properly positioned"?

13 A We talked about the account allocations. I

14 would have had performance reports there and gone

15 over the investment accounts in detail with him.

16 Q And when you say "account," do you mean asset

17 allocations? I'm not sure what you --

18 A Yeah. So we go over them and we would, you

19 know, discuss how he's positioned, how much cash is in

20 the account, how much equity is in the account, how the

21 markets have been doing, and what we try to expect going

22 forward.

23 Q And did you discuss his concerns about the

24 economy and Bush's prestige and election-year issues?

25 A I'm sure we had long, lengthy conversations at

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1 J.J. Cavanaugh and discussed Schwab in general. We

2 discussed all types of things, but absolutely went over

3 his accounts in detail and talked about how, you know,

4 they may be impacted or could be impacted going forward.

5 Q Okay. And this is just five weeks after the

6 date of October 22nd?

7 A Correct.

8 Q Okay. Turn to Tab 26. Is this a document

9 created by Bob Lew?

10 A Yes.

11 Q And again, are you compensated for sending

12 clients to Lew?

13 A No. Not at all.

14 Q Why did you do it?

15 A We just do it as another service to our clients

16 just to try to help them out wherever we can.

17 Q Okay. Can you turn to Tab 27?

18 A Okay.

19 Q So is this six weeks after the date of October

20 22nd?

21 THE COURT: I can save a little time.

22 MR. BRADLEY: Okay.

23 THE COURT: Because we went through this

24 yesterday I think with Mr. Gamong, and it's --

25 MR. BRADLEY: Well, so --

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1 lunch about all of these topics.

2 Q So as of this December 6th, 2007, meeting, you

3 made him fully aware of the fact that he was still

4 invested in stocks?

5 A Uh-huh. Yes.

6 Q And that stocks -- this account may -- or the

7 accounts may go up and the accounts may fall in value?

8 MR. HEBERT: Your Honor, objection, leading. I

9 understand that we're trying to move it along, but --

10 MR. BRADLEY: Sure.

11 THE COURT: Sustained.

12 BY MR. BRADLEY:

13 Q Was there a discussion about whether or not the

14 accounts could go up?

15 A Yes. We had a discussion about how the accounts

16 were positioned.

17 Q Did that include volatility?

18 A Yes.

19 Q And what do you recall telling him about the

20 volatility?

21 A Actually from this, I do remember this lunch,

22 'cause he was having an issue with Charles Schwab and the

23 fact that they couldn't get his statements in the

24 envelopes.

25 So we had actually a lengthy lunch and discussed

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1 THE COURT: By now it's pellucid about --

2 MR. BRADLEY: Okay. I gotcha.

3 THE COURT: -- about the length between the --

4 MR. BRADLEY: Okay. I'll --

5 THE COURT: -- and the others.

6 MR. BRADLEY: I'll stop referencing it.

7 BY MR. BRADLEY:

8 Q So there's a comment in the letter about, "Have

9 to decide whether to reinvest the money in bonds or put

10 in equities."

11 Did you have a discussion after this December

12 10th, 2007, about whether or not to invest additional

13 monies into the stock market?

14 A Yes, we did.

15 Q And what did you two decide?

16 A We decided to put the money, put \$300,000 into

17 our income and growth model, or what he refers to as a

18 cash generation model.

19 Q And this is a model that you had described

20 previously in detail?

21 A Yes.

22 Q He didn't object to -- Did he ever suggest "We

23 should go to cash instead of putting it in the income

24 model"?

25 A No.

<p style="text-align: right;">Page 230</p> <p>1 Q And then Tab 28 is dated January 1, 2008. Did</p> <p>2 you schedule a year-end meeting soon after this fax?</p> <p>3 A Yes, we did.</p> <p>4 Q And what did you discuss at the year-end meeting</p> <p>5 for -- the year-end meeting in January 2008?</p> <p>6 A Well, we discussed the prior returns for 2007.</p> <p>7 We went over the account details there. As you can see,</p> <p>8 he did his own calculations, compared to our performance</p> <p>9 reporting software. And then we would sit down and do</p> <p>10 planning for 2008 going forward.</p> <p>11 Q And this time did he ask to move to cash to</p> <p>12 reduce volatility?</p> <p>13 A No. But that would be at the year-end meeting.</p> <p>14 This was the fax prior to the meeting that we had.</p> <p>15 Q Right. I'm talking about the meeting that</p> <p>16 followed the fax.</p> <p>17 A Right.</p> <p>18 Q Did he in January or February of 2008 suggest</p> <p>19 that "We should go to a safer portfolio"?</p> <p>20 A No.</p> <p>21 Q Was he aware that you were going to purchase</p> <p>22 securities in February 2008?</p> <p>23 A Yes.</p> <p>24 Q And would you turn to Tab 29. At the very</p> <p>25 bottom of Tab 29, does it reflect significant -- in the</p>	<p style="text-align: right;">Page 231</p> <p>1 top of the second page, so it's WESPAC 0122 and 0123.</p> <p>2 A Uh-huh.</p> <p>3 Q Does that reflect the purchase of significant</p> <p>4 amounts of stocks and mutual funds?</p> <p>5 A Yes.</p> <p>6 Q And would that have been reflected on his Schwab</p> <p>7 monthly statement?</p> <p>8 A What are the dates on here? Yes, it would've</p> <p>9 been in the March statement and he would've received</p> <p>10 confirmations of sale within a few days.</p> <p>11 Q So every time you would buy something or sell</p> <p>12 something in his Schwab account, Schwab would send out</p> <p>13 confirmation of the trades?</p> <p>14 A Yes.</p> <p>15 Q They did that for all Schwab clients?</p> <p>16 A Schwab gives you a choice: You can get them</p> <p>17 electronically, you can get them mailed as they occur, or</p> <p>18 you can actually have them consolidated and mailed to you</p> <p>19 on a monthly basis.</p> <p>20 Q One way or the other, they made sure that</p> <p>21 Mr. Garmon had the opportunity to become aware of these</p> <p>22 purchases?</p> <p>23 MR. HEBERT: Objection, leading.</p> <p>24 THE COURT: Sustained.</p> <p>25 BY MR. BRADLEY:</p>
<p style="text-align: right;">Page 232</p> <p>1 Q Turn to Tab 30.</p> <p>2 A (Witness complies.)</p> <p>3 Q So now this is a fax that you received on March</p> <p>4 17th, 2008.</p> <p>5 A Uh-huh.</p> <p>6 Q And it indicates that he had reviewed his</p> <p>7 accounts and he was, by his calculation, down a hundred</p> <p>8 thousand?</p> <p>9 A Yes, it does.</p> <p>10 Q So from this -- strike that.</p> <p>11 So this letter indicates that he's aware that</p> <p>12 his accounts are fluctuating in value?</p> <p>13 A Correct.</p> <p>14 Q And did you have a phone call or a meeting after</p> <p>15 you received this fax to discuss his concerns?</p> <p>16 A I don't know if I had a meeting, a phone call</p> <p>17 exactly right after this, but we were constantly</p> <p>18 discussing his accounts and what was going on in his</p> <p>19 accounts over the relationship. So, yes, if I get a fax</p> <p>20 of this nature, I am going to have a phone call with my</p> <p>21 client.</p> <p>22 Q And he's expressing concern about losing money.</p> <p>23 Did you ever recommend to him that he should go to a</p> <p>24 hundred percent cash as a result of these concerns?</p> <p>25 A No, I did not.</p>	<p style="text-align: right;">Page 233</p> <p>1 Q Why not?</p> <p>2 A Just because of the overall conversations that</p> <p>3 we would have and discussed what was going on with the</p> <p>4 economy, the stock market, the bond markets, et cetera,</p> <p>5 we had elected to stay the course and do what we were</p> <p>6 doing.</p> <p>7 Q He does say, "The only bright spot in my end of</p> <p>8 February reports from Schwab was a taxable investment</p> <p>9 account 0713."</p> <p>10 Was that the one with the cash generation model?</p> <p>11 A Yes, correct.</p> <p>12 Q And did you discuss whether or not you should</p> <p>13 utilize the cash generation model in his retirement</p> <p>14 account?</p> <p>15 A I don't recall if we discussed that or not. But</p> <p>16 I would have told him not to do it.</p> <p>17 Q Why not?</p> <p>18 A Because typically you don't need to shelter</p> <p>19 those types of securities into a qualified account.</p> <p>20 We can put up a different blend of stocks in</p> <p>21 individual securities and not run into UBTI and other</p> <p>22 issues that are contained in MLPs in the other model.</p> <p>23 MR. HEBERT: Could you say that in English?</p> <p>24 THE COURT: UBTI?</p> <p>25 THE WITNESS: UBTI.</p>

<p style="text-align: right;">Page 234</p> <p>1 THE COURT: Oh, UBTI?</p> <p>2 THE WITNESS: Yeah.</p> <p>3 BY MR. BRADLEY:</p> <p>4 Q What's that?</p> <p>5 A Unrelated Business Taxable Income that are</p> <p>6 kicked off by master limited partnerships and other</p> <p>7 things that generate KIs. We often hold those in our</p> <p>8 income portfolio. Actually, we have two versions. We</p> <p>9 have an XUBTI and an inclusive one. But typically we</p> <p>10 don't use that model on retirement accounts. We can get</p> <p>11 the volatility and returns we need without it.</p> <p>12 MR. HEBERT: And MOP means?</p> <p>13 THE WITNESS: Master of Limited Partnership.</p> <p>14 MR. HEBERT: Okay.</p> <p>15 BY MR. BRADLEY:</p> <p>16 Q Tab 31. Was there a purchase of Nuveen on 5-27?</p> <p>17 A Yes.</p> <p>18 Q And did you -- right above that, on 5-19, was</p> <p>19 there a sale of securities?</p> <p>20 A That says a sale, but I believe that security</p> <p>21 was redeemed.</p> <p>22 Q Okay.</p> <p>23 A It just doesn't say "redeemed." In our system</p> <p>24 it says "buy, sell, dividend," whatever. It's not going</p> <p>25 to say "called."</p>	<p style="text-align: right;">Page 235</p> <p>1 Q If you would turn to Tab 32, dated June 12,</p> <p>2 2008. Did you guys have a -- It indicates there's going</p> <p>3 to be a meeting on July 21st.</p> <p>4 Did you have a meeting around that time period?</p> <p>5 A Yes, we did, in my office.</p> <p>6 Q The fax indicates that "Your suggestion I left</p> <p>7 my accounts in the sole care of WESPAC for the first half</p> <p>8 of 2008, you advised me not to worry and let WESPAC</p> <p>9 handle the management. So I did."</p> <p>10 Did you ever have a discussion like that where</p> <p>11 you told him not to worry?</p> <p>12 A We had discussions about the accounts, their</p> <p>13 performance, about the stock markets, historical returns,</p> <p>14 the economy, everything else that goes with it. And I</p> <p>15 would obviously have had conversations with him about the</p> <p>16 marketplace, the odds of what can happen going forward,</p> <p>17 and whether we should stay or not, invest it as we were.</p> <p>18 Q And at least at this point he indicates that the</p> <p>19 0713 account is right on target. So was he pleased at</p> <p>20 this point with your --</p> <p>21 A I would say it was mixed. He was pleased with</p> <p>22 the one account and obviously concerned about his</p> <p>23 retirement accounts.</p> <p>24 Q Were you ever just making important changes in</p> <p>25 the account without discussing it with Mr. Garmong any</p>
<p style="text-align: right;">Page 236</p> <p>1 time in 2008?</p> <p>2 A No. Not -- overall asset allocation changes,</p> <p>3 no.</p> <p>4 Q So in 2008, you kept him fully apprised of what</p> <p>5 was going on?</p> <p>6 A Yes. And he was also keeping himself apprised.</p> <p>7 Q In the second page, it refers to a -- "This is a</p> <p>8 remnant of 1999-2000 when I lost amounts of this</p> <p>9 magnitude under a different investment manager."</p> <p>10 Just real quickly, did he ask to meet with</p> <p>11 anyone you knew who could help him decide whether or not</p> <p>12 to sue his former investment manager?</p> <p>13 A In one of our initial meetings in my office when</p> <p>14 we were first bringing the accounts over, he had a</p> <p>15 Wainwright broker in the past. So we had conversations.</p> <p>16 My office was actually leased from a gentleman</p> <p>17 named Ron Miller, who owned Loss Recovery Center, and I</p> <p>18 arranged a brief meeting with them, and they found that</p> <p>19 he was past the statute of limitations so he could no</p> <p>20 longer sue that broker.</p> <p>21 Q Turn to Tab 33. Are these your broker notes?</p> <p>22 A Yes.</p> <p>23 Q And could you read that first line after his</p> <p>24 name?</p> <p>25 A It says, "General practitioner."</p>	<p style="text-align: right;">Page 237</p> <p>1 Q Sorry. The next line below that.</p> <p>2 A "Individual account." Says, "It's doing great,</p> <p>3 glad, live the rest of his life on that" -- or "could</p> <p>4 live the rest of his life on that."</p> <p>5 Q And then down, skip the next two and then it</p> <p>6 looks like "Obama." Could you read that line?</p> <p>7 A It says, "Obama elected, should I be taking it</p> <p>8 out?"</p> <p>9 Q What are you referring to by "should I take it</p> <p>10 out?"</p> <p>11 A He was concerned that if Obama won the election,</p> <p>12 that the stock market might go down and he would</p> <p>13 potentially be removing his funds from the marketplace.</p> <p>14 And we had a discussion about it, and we decided not to</p> <p>15 at that time.</p> <p>16 Q Then the next line is Bob Lew. Skip that. And</p> <p>17 then what's the next line?</p> <p>18 A Says, "Manage more actively, lessen the</p> <p>19 volatility in the account."</p> <p>20 Q Okay. So what did you decide -- what does it</p> <p>21 mean by "manage more actively"?</p> <p>22 A You know, be more active with the account.</p> <p>23 Q Okay.</p> <p>24 A If the market starts weakening, we should raise</p> <p>25 more cash, do things like that to actively manage the</p>

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1 account.

2 Q And how do you lessen the volatility?

3 A How do I lessen the volatility? By selling

4 securities and raising more cash.

5 Q Then if you turn to Tab 34. Look at this sale

6 date, approximately a week after your meeting. Were

7 there securities that were sold?

8 A Yes.

9 Q And was this in response to his request to be

10 more conservative?

11 A Yes. It was in response to our meeting. And we

12 went through the portfolios again, found what we believe

13 were the weaker securities and sold the weaker holdings

14 at that time.

15 Q Was it a joint decision to do this?

16 A Well, as a result of our meeting, and then I

17 chose what securities to sell.

18 Q And did these transactions reduce the volatility

19 in the account?

20 A Yes.

21 Q And on the second page of that exhibit, are

22 there additional sales that are being made?

23 A Yes. On October 10th.

24 Q No. 7-28-2008?

25 A 7-28? Additional sales?

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1 Was that correct? Was it a joint decision to

2 manage it, to establish a plan?

3 A Yes.

4 Q And then the first sentence of the next

5 paragraph, "I specifically instructed you there could not

6 be losses from my accounts in 2008."

7 Did he ever give you that specific instruction?

8 A No, he did not.

9 Q Did he ask you in the last paragraph on WESPAC

10 0565 for you to give him \$10,000 out of WESPAC's own

11 monies if you weren't improving your performance by

12 \$10,000 a week?

13 A Yes, he did.

14 Q And is that illegal?

15 A Yes, it is.

16 THE COURT: Did you respond to the --

17 THE WITNESS: Well, we had a meeting --

18 THE COURT: -- September 26 --

19 THE WITNESS: -- we had an actual lunch in

20 Carson City at a restaurant and went over all this stuff.

21 BY MR. BRADLEY:

22 Q And then if you turn to Tab 36, did you have a

23 written response?

24 A Yes, I did.

25 Q And in the second paragraph, did you tell him,

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1 Q Yeah. I'm looking at WESPAC 0451.

2 A 0451. Oh, I got it.

3 MR. GARMONG: Which tab?

4 MR. BRADLEY: Tab 34.

5 BY MR. BRADLEY:

6 Q 7-28-2008.

7 A WESPAC 0451. Oh, yes. There are Constellation

8 Energy, General Electric and Travelers.

9 Q Okay. And that was the same day as those other

10 sales --

11 A Correct. We went into --

12 Q -- to reduce --

13 A -- all the accounts, reduce, try to -- try to

14 raise more cash.

15 Q Okay. And then if you turn to Tab 35.

16 A (Witness complies.)

17 Q Was this fax setting up a meeting that you were

18 going to have on or about September 29th, 2008?

19 A Yes.

20 Q And the beginning of -- sorry. The second

21 sentence in the third paragraph it says, "I carefully

22 outline for you my cash flow projections over the next

23 few months into early 2008. We established a plan for

24 using my non-retirement account that you manage to

25 generate cash for me."

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1 "You never told me there could not be losses for my

2 accounts in 2008?"

3 A I did tell him that.

4 Q And you offered him two alternatives. What were

5 those?

6 A I said I would've offered him two alternatives,

7 "Go 100 hundred percent to cash or close your accounts."

8 Q We heard some talk from Mr. Garmong today about

9 stop-loss would've been the right solution or an ideal

10 solution. Can you explain why you didn't recommend a

11 stop-loss?

12 A We don't use stop-losses in our client models in

13 our client accounts.

14 Q And why not?

15 A Because we don't believe that they're prudent.

16 Stop-losses are more for traders and speculators. We --

17 we don't -- we don't use them, because, you know, if you

18 want to guarantee yourself a loss, you put a stop-loss

19 in, you'll get a loss, I guarantee. That's the only

20 guarantee I can give you.

21 And we also don't use them for a variety of

22 reasons. You know, we have some significant holdings in

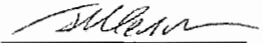
23 some of our client models. Sometimes you'll get -- you

24 know, you'll get hit on the market price and the stock

25 will fall through. You won't get filled for all your

<p style="text-align: right;">Page 242</p> <p>1 clients. You might get 2000 shares and the rest don't 2 get filled in a fast market. 3 So we have a lot of liquidity issues and things 4 like that that we have to manage around. 5 Oftentimes -- Look at the current market today. 6 You know, you're down 500 points last week, you're up 500 7 points today. You can get stopped out at the close on 8 Friday and Monday the stock's five percent higher. We 9 don't use them. 10 Q So your recommendation then is to ride out the 11 limited volatility? 12 A Again, it depends on the client and the 13 portfolio. But in general, yes. 14 Q And the stock portfolio that you had, the one 15 Mr. Garmong closed out, came back almost \$300,000 at 16 Fidelity, correct? 17 MR. HEBERT: Is that leading? 18 BY MR. BRADLEY: 19 Q Did it come back? Did the Fidelity -- did the 20 monies, the investments that he had at WESPAC, did it 21 come back at Fidelity? 22 A From the numbers I've seen, yes. 23 Q Following this letter of September 30th, 2008, 24 did Mr. Garmong immediately terminate you? 25 A No.</p>	<p style="text-align: right;">Page 243</p> <p>1 Q Would you turn to the forth page of that 2 exhibit, WESPAC 0570, and it's a fax cover sheet to John 3 Williams. Do you see that? 4 MR. HEBERT: Which exhibit? 5 MR. BRADLEY: Tab 36. 6 THE WITNESS: The fourth page you said? 7 BY MR. BRADLEY: 8 Q It's WESPAC 0570. 9 A 0570. Okay. 10 Q And does that appear to be a cover page of a 11 WESPAC fax? 12 A Yes, it is. 13 Q And it says there's five pages. Do you recall 14 what was sent to Mr. Williams on the same day that you 15 sent this letter out to Mr. Garmong? 16 A We would've taken copies of the response and 17 faxed that down to John. 18 Q And would you also have attached the three 19 page -- 20 A We -- 21 Q -- as well? 22 A Yes. We would've attached his complaint letter, 23 our response, and faxed it all down to John. 24 Q So that would be the five pages? 25 A Correct.</p>
<p style="text-align: right;">Page 244</p> <p>1 Q And then Tab 37, does it reflect sales on 2 10-7-2008 of Yum Yum Brands? 3 A Yes. It's Yum Brands. It's a restaurant. 4 Q Oh, sorry. 5 So if you turn to the next page, tell us what 6 the asset allocation is reflected on that page. 7 A On this page? 8 Q On -- 9 A We're at 95 percent in money market, 5 percent 10 in mutual funds. 11 Q Which account was this? 12 A That is account number -- last digit 4369, one 13 of the retirement plans. 14 Q Was it Mr. Garmong who ordered the sale of 15 equities in his retirement accounts? 16 A Yes. 17 Q And that happened -- we don't have to go through 18 all of the tabs. But that happened in all of his 19 retirement accounts? 20 A Correct. 21 Q If you would look at Tab 40. 22 Actually, he makes reference to the fact that 23 you are still managing the 0713, the taxable account, is 24 that right? 25 A Yes.</p>	<p style="text-align: right;">Page 245</p> <p>1 Q And so were you still managing that account? 2 A Yes, we were. 3 Q Tab 41, did you send another letter to 4 Mr. Garmong indicating that you were going to continue to 5 manage the 0713 account in the same fashion? 6 A Yes. 7 MR. BRADLEY: Those are all the questions I 8 have. Thank you, your Honor. 9 THE COURT: Thank you. Maybe we could have you 10 switch, Mr. Christian, and sit over on the other side so 11 that Mr. Hebert can look at you when he cross-examines 12 you. 13 MR. GARMONG: I'm absolutely exhausted. I can't 14 -- (inaudible) -- 15 THE REPORTER: Whoa, whoa. If you're going to 16 say something on the record, I need to hear you. 17 THE COURT: He needs to hear you. 18 MR. GARMONG: I am absolutely exhausted. I'm 19 the plaintiff in this case and I'm an integral part of 20 our case. I'm paying for half of it. I would ask that 21 this be put over until tomorrow because, while I'm very 22 interested in the case, I'm more interested in my health, 23 and I'm exhausted. 24 I think I told you, when I went home last night, 25 I had to stop roughly at the halfway point and take a</p>

<p style="text-align: right;">Page 246</p> <p>1 20-minute nap in the back seat. I -- I would ask you to 2 put this over until tomorrow.</p> <p>3 MR. BRADLEY: I would object. We scheduled this 4 to go until 5:00. Mr. Garmong could've made arrangements 5 for somebody else to take care of his animals and get a 6 hotel. We're almost done. It's only 3:35. Mr. Hebert 7 has indicated he doesn't have a long cross. I 8 respectfully request we get this done.</p> <p>9 THE COURT: Well, you know, I respect the 10 concern you expressed, both in terms of being tired, but 11 also that you are the plaintiff, you have a stake, a 12 significant stake. So does Mr. Christian. And I think 13 you both are bearing the costs equally. So I had 14 understood your cross certainly could be finished by five 15 o'clock. Let's push on until 5:00 then --</p> <p>16 MR. GARMONG: Well, I'm going to leave then, if 17 that's all right.</p> <p>18 THE COURT: You're not required to -- I don't 19 mean to say you're required to stay, but I think in 20 fairness to everybody, and I realize that you are tired, 21 but I think I'm going to have to exercise my judgment and 22 go until 5:00. We'll break at 5:00.</p> <p>23 So if you want to take a break now to catch a 24 little fresh air or something, certainly you can do that 25 and come back and --</p>	<p style="text-align: right;">Page 247</p> <p>1 MR. GARMONG: I'm exhausted. I was exhausted -- 2 THE COURT: I think everybody's tired and --</p> <p>3 MR. GARMONG: But I've driven a long way. I'm 4 the oldest person here by at least a few years.</p> <p>5 THE COURT: Yep.</p> <p>6 MR. GARMONG: I would ask for that 7 consideration. I know he wants to go to his daughter's 8 tennis tournament or whatever, but I think this case is 9 more important and my health is a more important 10 consideration to me than the case, although the case is 11 important.</p> <p>12 MR. HEBERT: And I'd like to add, your Honor, 13 that I'd like Mr. Garmong's assistance while I do my 14 cross-examination and I won't have it.</p> <p>15 MR. BRADLEY: He's voluntarily leaving. That's 16 his choice not to assist you, Carl. You can't blame that 17 on the fact that it's only 3:35 in the afternoon. This 18 was scheduled to go to 5:00.</p> <p>19 MR. HEBERT: And we scheduled it also, I guess, 20 tomorrow afternoon, as well.</p> <p>21 MR. BRADLEY: Let's finish today.</p> <p>22 THE COURT: Do you want to take a few minutes to 23 talk to your client and see if he can push on until 5:00?</p> <p>24 MR. HEBERT: I'll talk to him, your Honor, and 25 see what happens.</p>
<p style="text-align: right;">Page 248</p> <p>1 THE COURT: Just take a few minutes and step out 2 and come on back in and tell me.</p> <p>3 MR. GARMONG: Well, it seems like you made your 4 mind up that it's going until 5:00.</p> <p>5 THE COURT: Well, I want you to consider that 6 everybody involved in the case has got an interest in 7 getting it finished, as well. It's not just about a 8 tennis tournament.</p> <p>9 MR. HEBERT: Let me talk to my client.</p> <p>10 THE COURT: Go talk to him and see what you can 11 come up with and then we'll revisit it.</p> <p>12 MR. HEBERT: All right.</p> <p>13 THE COURT: And I'll wait until he comes back. 14 (Recess.)</p> <p>15 MR. HEBERT: Your Honor, Mr. Garmong is -- he's, 16 as he said, exhausted. He's leaving no matter what. And 17 we're all making sacrifices here. I mean, yesterday and 18 today I've got a minor son at home by himself, and I'm 19 trying to push through, too. And we had made 20 arrangements -- we had even talked about stopping early 21 because I had to take care of him.</p> <p>22 THE COURT: Right.</p> <p>23 MR. HEBERT: But I made some arrangements and 24 it's okay. But, truthfully, I'd like to have any client 25 with me. It is half his case.</p>	<p style="text-align: right;">Page 249</p> <p>1 THE COURT: You're right. You're right. Look, 2 I hate to do it to everybody that either has to come back 3 or not, but I think we're going to have to accede to the 4 wishes. He's not required to be here, but he's entitled 5 to be here. You need his assistance. It is important to 6 you.</p> <p>7 MR. HEBERT: Thank you.</p> <p>8 THE COURT: I know it's personally inconvenient 9 to counsel and I regret that. It's personally 10 inconvenient to me, as well. But I will be back from the 11 Gaming Commission meeting at 1 o'clock here. We'll start 12 at 1:00 and hopefully wrap up --</p> <p>13 MR. HEBERT: We will, we will.</p> <p>14 THE COURT: -- by 4:00 --</p> <p>15 MR. HEBERT: You know, I'm the one getting run 16 up against the 5 o'clock deadline, and I don't want to be 17 limited to --</p> <p>18 THE COURT: No.</p> <p>19 MR. HEBERT: -- whatever time is left. But I'm 20 not going to take --</p> <p>21 THE COURT: You have 1:00 to 4:00. That's three 22 hours.</p> <p>23 MR. HEBERT: I'm not going to take three hours, 24 your Honor. I'm not going to.</p> <p>25 Now, in deference to Mr. Bradley, I understand</p>

<p style="text-align: right;">Page 250</p> <p>1 what it's like to have a son that --</p> <p>2 MR. BRADLEY: Actually, it's twins. It's twins.</p> <p>3 It's twice as bad. My daughter and my son are first</p> <p>4 qualified for State tournament. So tell Mr. Garmong that</p> <p>5 I appreciate his deference, but we will be here at 1</p> <p>6 o'clock, because we're not going to whine about it.</p> <p>7 MR. HEBERT: I'm not whining about it.</p> <p>8 MR. BRADLEY: You are.</p> <p>9 MR. HEBERT: Well, is there some way that we can</p> <p>10 work around it so you can see some of the --</p> <p>11 MR. BRADLEY: No. No. Just we'll be here at</p> <p>12 1:00. That's all we need.</p> <p>13 THE COURT: Let me ask about 1 o'clock. Is</p> <p>14 there a time when you could make the tournament in the</p> <p>15 afternoon?</p> <p>16 MR. BRADLEY: I'm hoping to see the tournament</p> <p>17 in the morning and --</p> <p>18 THE COURT: Well, I understand that.</p> <p>19 MR. BRADLEY: I --</p> <p>20 THE COURT: Do you want to start later than</p> <p>21 1:00?</p> <p>22 MR. BRADLEY: No. 1:00 is fine.</p> <p>23 MR. HEBERT: I'm willing to start later than</p> <p>24 1:00 so you can see some of it.</p> <p>25 MR. BRADLEY: Want to start at 2:00? I could</p>	<p style="text-align: right;">Page 251</p> <p>1 see part of it.</p> <p>2 MR. HEBERT: Yeah. I don't want you missing --</p> <p>3 THE COURT: Let's -- let's start at 2 o'clock.</p> <p>4 MR. BRADLEY: Judge, thank you. And,</p> <p>5 Mr. Hebert, thank you.</p> <p>6 THE COURT: We'll start at 2:00 and try and</p> <p>7 finish by 4:00, if we can do that.</p> <p>8 MR. BRADLEY: Judge, I want to make sure we get</p> <p>9 finished. I want to make sure we get finished. Let's</p> <p>10 just go at 1:00.</p> <p>11 MR. HEBERT: No, let's --</p> <p>12 MR. BRADLEY: I would rather miss the tournament</p> <p>13 than have this get continued. Please, let's start at</p> <p>14 1:00. And they're sophomores, so hopefully they'll be</p> <p>15 there next year, seriously.</p> <p>16 THE COURT: Would 1:30 help you?</p> <p>17 MR. BRADLEY: 1:00 is fine.</p> <p>18 MR. HEBERT: Tom --</p> <p>19 MR. BRADLEY: Carl, 1 o'clock is fine. Let's</p> <p>20 get this case done.</p> <p>21 THE COURT: All right. I appreciate it.</p> <p>22 MR. HEBERT: Thank you, your Honor. Thanks,</p> <p>23 Tom.</p> <p>24 MR. BRADLEY: Yes. And thank you.</p> <p>25 THE COURT: So are you able to reach your</p>
<p style="text-align: right;">Page 252</p> <p>1 client?</p> <p>2 MR. HEBERT: He's still there.</p> <p>3 THE COURT: Tell him 1 o'clock and to drive</p> <p>4 safely.</p> <p>5 MR. HEBERT: Thank you, your Honor.</p> <p>6 THE COURT: All right. Off the record now.</p> <p>7 (Proceedings concluded at 3:45 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 253</p> <p>1 STATE OF NEVADA)</p> <p>2) ss.</p> <p>3 COUNTY OF WASHOE)</p> <p>4 I, JOHN MOLEZZO, a Certified Court Reporter in</p> <p>5 and for the County of Washoe, State of Nevada, do hereby</p> <p>6 certify: That on Wednesday, the 17th day of October,</p> <p>7 2018, at the hour of 9:00 a.m. of said day, at the</p> <p>8 offices of Sunshine Litigation Services, 151 Country</p> <p>9 Estates Circle, Reno, Nevada, personally appeared</p> <p>10 witnesses listed in the appearance page, who were sworn</p> <p>11 by Judge Pro to testify the truth, the whole truth, and</p> <p>12 nothing but the truth, and thereupon testified in the</p> <p>13 arbitration entitled herein;</p> <p>14 That said arbitration was taken in verbatim</p> <p>15 stenotype notes by me, a Certified Court Reporter, and</p> <p>16 thereafter transcribed into typewriting as herein</p> <p>17 appears;</p> <p>18 That the foregoing transcript, consisting of</p> <p>19 Pages 1 through 253, is a full, true and correct</p> <p>20 transcript of my stenotype notes of said deposition to</p> <p>21 the best of my knowledge, skill and ability.</p> <p>22 DATED: At Reno, Nevada, this 31st day of</p> <p>23 October, 2018.</p> <p>24 </p> <p>25 JOHN MOLEZZO NV CCR #267, CA CSR #7791</p>

JAMS ARBITRATION
LAS VEGAS, NEVADA
BEFORE THE HONORABLE PHILIP M. PRO (RETIRED)

-o0o-

GREGORY GARMONG,	:	
	:	
Plaintiff,	:	
	:	
vs	:	
	:	Case No. 1260003474
WESPAC, GREG CHRISTIAN	:	
and DOES 1 - 10,	:	
inclusive,	:	
	:	
Defendants.	:	

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TRANSCRIPT OF PROCEEDINGS

ARBITRATION

THURSDAY, OCTOBER 18TH, 2018

Reno, Nevada

Reported By:	ERIN T. FERRETTO, RPR, CCR #281
	JOB NO. 503569

- 10/18/2018

A P P E A R A N C E S	Page 2	I N D E X	Page 3
FOR THE PLAINTIFF:	LAW OFFICE OF CARL M. HEBERT By: CARL M. HEBERT, ESQ. 202 California Avenue Reno, Nevada 89509 775.323.5556	WITNESSES FOR THE DEFENDANTS: CHRISTIAN, Greg Cross-Examination by Mr. Hebert	 13
FOR THE DEFENDANTS:	LAW OFFICE OF THOMAS BRADLEY By: THOMAS BRADLEY 448 Hill Street Reno, Nevada 89501 775.323.5178	EXHIBITS: Ident	 EVID
THE ARBITRATOR:	HON. PHILIP M. PRO, Retired Arbitrator/Mediator 3800 Howard Hughes Parkway 11th Floor Las Vegas, Nevada ppro@jamsadr.com 702.457.5267	Exhibit Binders Pre-marked Exhibit 47 Arbitration Award Westpac/Sharp Exhibit 48 Certificate of Liability Insurance	 9 13
ALSO PRESENT:	Michael Hume Greg Garmong		
	Page 4		Page 5
<p>1 -oO-</p> <p>2 RENO, NEVADA, THURSDAY, OCTOBER 18TH, 2018, 1:00 P.M.</p> <p>3 -oO-</p> <p>4</p> <p>5</p> <p>6 ARBITRATOR PRO: All right. Our court reporter</p> <p>7 has given us the green light. Thank you. And we'll go</p> <p>8 ahead and reconvene for day three in the arbitration.</p> <p>9 I was just discussing with counsel a couple of</p> <p>10 matters clarifying briefing and transcript availability.</p> <p>11 We don't have a definitive date when the transcript will</p> <p>12 be available, we've had three excellent reporters</p> <p>13 conducting the proceeding with us, and so that may add a</p> <p>14 wrinkle in terms of the timing getting things done.</p> <p>15 Counsel estimated approximately ten days, but whatever it</p> <p>16 is, the agreement was -- and we'll put it on the record</p> <p>17 again to make it clear -- that the simultaneous briefs by</p> <p>18 plaintiff and defendant will be filed 21 days after</p> <p>19 receipt of the hearing transcript. When the hearing</p> <p>20 transcript is available, you all can communicate with</p> <p>21 each other, we've got it, we've got it, and that will be</p> <p>22 the start of the clock for the 21 days. That will</p> <p>23 obviously be on a weekday, which is important because</p> <p>24 you'll get the transcript on a weekday.</p> <p>25 We agreed to a 20-page length for the briefing.</p>		<p>1 It was raised by counsel that that should not involve any</p> <p>2 supplemental briefing, motions to strike, things of that</p> <p>3 sort; in other words, it will be your brief, your closing</p> <p>4 arguments. We don't want to have surreplies, things of</p> <p>5 that sort, that would not be permitted.</p> <p>6 I guess, if there's some emergency you can</p> <p>7 certainly raise that with me, but basically I want to</p> <p>8 close the briefing because then I will have to start my</p> <p>9 clock in terms of going to work on the award. And, as I</p> <p>10 indicated to counsel, I will endeavor to -- because we'll</p> <p>11 be right towards the end of the year, we'll be well into</p> <p>12 November, probably close to early December before the</p> <p>13 briefing is completed if the ten days is what's going to</p> <p>14 be taken, so I'm going to target the end of December 31.</p> <p>15 I don't know what date December 31 is or what day of the</p> <p>16 week, but I'm assuming it's a weekday, but that would be</p> <p>17 my target to get the award.</p> <p>18 I asked counsel to include in their briefing or at</p> <p>19 least address the issue of availability of attorney's</p> <p>20 fees and costs by the prevailing party, whether the</p> <p>21 contract actually provides for it or under statutory</p> <p>22 claims, whether that would be available.</p> <p>23 And I think that's everything we talked about</p> <p>24 about the briefing, but you all tell me if there was</p> <p>25 anything.</p>	

<p style="text-align: right;">Page 6</p> <p>1 MR. HEBERT: That covers it, your Honor.</p> <p>2 MR. BRADLEY: That covers it, your Honor.</p> <p>3 ARBITRATOR PRO: Okay. My copies of the exhibits,</p> <p>4 you all went through Litigation Services, will get</p> <p>5 shipped down to JAMS, but that will get there well before</p> <p>6 the transcript gets there.</p> <p>7 MR. BRADLEY: Judge, speaking of exhibits, I don't</p> <p>8 think Carl or I have moved for their admission but --</p> <p>9 ARBITRATOR PRO: I thought we took that up at the</p> <p>10 outset. The agreement was that they would be received</p> <p>11 without challenge to authenticity, then it was just a</p> <p>12 question of whether there were relevance objections or</p> <p>13 other objections to them. I don't think any have not</p> <p>14 been received, I think I've received each exhibit, but if</p> <p>15 we haven't, since we've had witnesses testifying to them,</p> <p>16 those already testified to will be received.</p> <p>17 What about there may be exhibits in the binders</p> <p>18 that nobody has talked to -- about, what's your thought</p> <p>19 on those? Are those something that are fair game for</p> <p>20 comment in your briefing if we haven't had testimony</p> <p>21 about them?</p> <p>22 MR. BRADLEY: I would move to admit all of</p> <p>23 plaintiff's exhibits and all of defendant's exhibits.</p> <p>24 MR. HEBERT: For whatever use could be made of</p> <p>25 them.</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. BRADLEY: Correct.</p> <p>2 ARBITRATOR PRO: In your arguments.</p> <p>3 MR. HEBERT: I'm all right with that.</p> <p>4 ARBITRATOR PRO: E-mails, you have correspondence.</p> <p>5 MR. HEBERT: Say it more formally, I agree, we can</p> <p>6 stipulate that all exhibits are in --</p> <p>7 ARBITRATOR PRO: Fine.</p> <p>8 MR. HEBERT: -- for whatever use the parties can</p> <p>9 make of them. And if we don't like something they're</p> <p>10 using, we can say it, so can they.</p> <p>11 The one thing I wanted to bring up, though, I</p> <p>12 don't know if 24A, B and C have been admitted.</p> <p>13 ARBITRATOR PRO: I thought I did receive those.</p> <p>14 MR. BRADLEY: I would agree.</p> <p>15 ARBITRATOR PRO: They should be. They were</p> <p>16 extracted from the database that provides the S24.</p> <p>17 MR. HEBERT: That's true.</p> <p>18 ARBITRATOR PRO: I think they're actually in</p> <p>19 anyway, but I think it was just more convenient to have</p> <p>20 the witnesses testify using 24A, B and C.</p> <p>21 MR. HEBERT: Right.</p> <p>22 MR. BRADLEY: As long as we're moving to admit,</p> <p>23 Judge, I don't think that we remembered to put into our</p> <p>24 defendant's briefs the copy of the actual arbitration</p> <p>25 award in favor of Westpac against Mr. Sharp, and I'd move</p>
<p style="text-align: right;">Page 8</p> <p>1 for its admission at this time.</p> <p>2 ARBITRATOR PRO: Any objection to that?</p> <p>3 MR. HEBERT: Hang on, your Honor.</p> <p>4 ARBITRATOR PRO: We had testimony about it, we</p> <p>5 didn't --</p> <p>6 MR. HUME: Could we see it?</p> <p>7 ARBITRATOR PRO: Oh, yeah. Certainly you should</p> <p>8 see it.</p> <p>9 MR. BRADLEY: It was provided in discovery.</p> <p>10 MR. HUME: I think it is in there.</p> <p>11 MR. HEBERT: I believe it's in there, too. I</p> <p>12 believe it's part of Exhibit 20.</p> <p>13 MR. HUME: I believe it isn't.</p> <p>14 MR. BRADLEY: Just to build in suspenders, if we</p> <p>15 could move to admit --</p> <p>16 ARBITRATOR PRO: Yeah. Well, if you think it's</p> <p>17 already in as Exhibit 20 --</p> <p>18 MR. HEBERT: There will be objections to</p> <p>19 relevance, that kind of thing, but --</p> <p>20 ARBITRATOR PRO: Oh, I see. Well, go ahead and</p> <p>21 give me your objection as to relevance while I find</p> <p>22 Exhibit 20.</p> <p>23 MR. HUME: It's not there.</p> <p>24 MR. HEBERT: All right. Your Honor, we're going</p> <p>25 to let it in, although we reserve the right to argue</p>	<p style="text-align: right;">Page 9</p> <p>1 this.</p> <p>2 MR. HUME: Erin?</p> <p>3 ARBITRATOR PRO: Well, the Sharp case -- was it</p> <p>4 Sharp? The Sharp case is the Sharp case, it's not this</p> <p>5 case.</p> <p>6 MR. HEBERT: It's a collateral case.</p> <p>7 ARBITRATOR PRO: Pardon me?</p> <p>8 MR. HEBERT: It's a collateral matter.</p> <p>9 ARBITRATOR PRO: Right. It's --</p> <p>10 MR. BRADLEY: It will be mentioned -- if it's at</p> <p>11 all mentioned. We'll call it Exhibit 47, because that</p> <p>12 was one of the exhibits we left blank in our defendant's</p> <p>13 list of --</p> <p>14 ARBITRATOR PRO: All right. That can be received</p> <p>15 as 47, and you all can argue the weight or the relevance</p> <p>16 of it to be --</p> <p>17 MR. HUME: Defense 47.</p> <p>18 ARBITRATOR PRO: Yes, defendant's 47.</p> <p>19 (Exhibit 47 was marked and admitted.)</p> <p>20 MR. BRADLEY: Judge, if I can address the court</p> <p>21 one more time?</p> <p>22 ARBITRATOR PRO: Sure.</p> <p>23 MR. BRADLEY: Yes. I was surprised at</p> <p>24 Mr. Williams' testimony that he had provided me a copy --</p> <p>25 ARBITRATOR PRO: The insurance.</p>

<p style="text-align: right;">Page 10</p> <p>1 MR. BRADLEY: -- some insurance. I did not recall 2 that occurring. I thought he was misspoken. He turned 3 out to be correct. 4 I went back to my office last night and found that 5 in early August he had sent me three pages of a 6 Certificate of Liability Insurance for 2008 to '9, '9 to 7 '10, another one from '9 to '10. I provided those by 8 e-mail to Mr. Hebert this morning, and it was my office's 9 failure to include these in one of our document 10 productions and, for that, I do apologize. And I would 11 ask to add this as Exhibit 48. 12 MR. HEBERT: Your Honor, this is an exhibit where 13 we're going to have to object. Let me explain. Maybe if 14 I had gotten these documents before the literally last 15 minute of this arbitration, I could have questioned 16 Mr. Williams, even yesterday I could have questioned 17 Mr. Williams but I cannot question him now, the chief 18 compliance officer. 19 One of the theories in our case is that Wespac was 20 engaged in deceptive trade practices by not having the 21 proper licensing and that's a license requirement for 22 investment advisors and financial planners to have 23 insurance that responds to clients when needed. 24 ARBITRATOR PRO: Well, he testified that they did 25 have the requisite insurance and he thought he had</p>	<p style="text-align: right;">Page 11</p> <p>1 produced the documents to counsel. 2 MR. HEBERT: He wasn't clear about it. He also 3 said I didn't produce anything before 2008. 4 MR. BRADLEY: The documents -- 5 ARBITRATOR PRO: That's true. 6 MR. BRADLEY: The documents we were unable to 7 locate because that was the prior owner, so I would agree 8 we were unable to locate because that was the prior 9 owner, so I would agree we were unable to produce -- 10 ARBITRATOR PRO: These don't go prior to 2008. 11 MR. BRADLEY: They started at 1/25/08. 12 ARBITRATOR PRO: Yeah, yeah. So it's consistent 13 with his testimony. 14 MR. HEBERT: Well, the truth is, they're 15 irrelevant because at the inception of the relationship 16 in 2005 they didn't have the insurance they should have 17 had. 18 ARBITRATOR PRO: Well, but wouldn't be relevant to 19 the extent your argument under the deceptive trade 20 practices is predicated on the failure of at least that 21 company as owned to have the requisite insurance if, in 22 fact, Williams said we did, yes, I found it and I 23 produced it, it was simply not produced in discovery? I 24 mean, we can't erase it. 25 MR. HEBERT: Well, here's the point, though, your</p>
<p style="text-align: right;">Page 12</p> <p>1 Honor. They are trying to produce insurance from '08 to 2 the present, but our argument is if Mr. Garmong had known 3 when he formed his relationship with Wespac in '05 they 4 had no insurance -- 5 ARBITRATOR PRO: You still have that insurance, 6 you haven't lost -- 7 MR. BRADLEY: They did have that insurance and 8 Mr. Williams testified to that and Mr. Christian 9 testified to that. 10 MR. HEBERT: Except -- 11 ARBITRATOR PRO: Don't have the document. 12 MR. HEBERT: Except for when we asked for it in 13 our request for production we didn't get anything back. 14 MR. BRADLEY: We didn't find documents that were 15 13 years old from a prior owner, that's not shocking, 16 Carl. 17 ARBITRATOR PRO: Hold on. I'm going to receive -- 18 I'll receive the three-page binder, or whatever it is, as 19 defendant's 48, you all can argue the -- 20 MR. HEBERT: We can argue -- we can argue that 21 despite what Mr. Williams says about what should have 22 happened, the fact is there is no evidence of insurance 23 for those years because they didn't get produced. 24 ARBITRATOR PRO: You can argue anything about the 25 evidence in the record, absolutely.</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. BRADLEY: Judge, we'll get copies. I assume 2 Carl has his copies. 3 (Exhibit 48 was marked and admitted.) 4 ARBITRATOR PRO: Anything else before we get 5 started with the cross-examination of Mr. Christian? 6 MR. BRADLEY: No. We're ready. 7 MR. HEBERT: We can go ahead. 8 ARBITRATOR PRO: Let's roll. 9 10 +++ CROSS-EXAMINATION +++ 11 BY MR. HEBERT: 12 Q Mr. Christian, you've been sworn already, I 13 assume? 14 ARBITRATOR PRO: Yes, it carries over. I swore 15 him in yesterday. 16 BY MR. HEBERT: 17 Q Mr. Christian, you've heard -- you've been sitting 18 here throughout this arbitration for the last two days; 19 have you not? 20 A Yes. 21 Q And you've heard the discussion about fiduciary 22 duties? 23 A Correct. 24 Q And you said in your deposition that you probably 25 gave us the best definition of fiduciary duty, and that</p>

<p style="text-align: right;">Page 14</p> <p>1 is to always act in the client's best interest; are you 2 staying with that? 3 A Correct. 4 Q Now, it's important as a fiduciary, wouldn't you 5 agree, to be open and honest and clear about what you're 6 doing to the client; isn't it? 7 A Yes. 8 Q So when you first met with Mr. Garmong, did you 9 tell him about your SEC discipline and suspension from 10 1992? 11 A I did not. 12 Q Did you tell him or did you hand him an ADV 2 that 13 included a code of ethics? 14 A I handed him an ADV 2, I assumed it had a code of 15 ethics. 16 Q Well, if -- what would you say if I told you that 17 we have the exhibits that you produced, you and Wespac 18 produced, and there's no code of ethics attached to it; 19 does that mean it didn't happen? 20 A No. That means I would have provided him the ADV 21 that we had in our new account packet, and if there's a 22 code of ethics in there or not, I don't know. 23 Q The answer is you don't know whether there was a 24 code of ethics attached to the -- 25 A Correct.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q -- ADV 2 that he got handed? 2 A Correct. 3 Q And the ADV that we've talked about throughout is 4 a form that the SEC requires the clients to receive from 5 investment advisors? 6 A Correct. 7 Q Are the ADV 2s ever updated? 8 A I believe they are, yes. 9 Q Do you know, do you have any memory or knowledge 10 that he ever got a code of ethics? 11 A I do not recall that. I don't know. 12 Q At the beginning of the relationship in August of 13 2005, do you recall whether you mentioned to Mr. Garmong 14 that Wespac Advisors was current on all its Nevada 15 licensure requirements? 16 A I would not have even thought to mention that, no. 17 Q If -- 18 MR. HUME: Sorry for the interruption. 19 ARBITRATOR PRO: All right. Exhibit 48 has now 20 been passed out to everybody. Go ahead, Mr. Hebert. 21 BY MR. HEBERT: 22 Q Let me represent to you, Mr. Christian, that 23 Nevada statutes on financial planning require -- and 24 Nevada Deceptive Trade Practices Act, both of which were 25 in effect at the time, require that --</p>
<p style="text-align: right;">Page 16</p> <p>1 MR. BRADLEY: Don't answer yet. 2 Finish your question. 3 MR. HEBERT: Do you want to object in advance? 4 MR. BRADLEY: I'm going to object because I think 5 you're misstating the law. 6 MR. HEBERT: Well, tell me now and I won't. 7 MR. BRADLEY: Well, I don't think -- 8 ARBITRATOR PRO: What's your objection? 9 MR. BRADLEY: I don't believe the statutes that 10 you're referring to are applicable to Mr. Christian, so 11 that is my objection is where you are misstating the law. 12 ARBITRATOR PRO: We don't need to state the law to 13 the witness, we need to get from him the facts, what he 14 did, what he didn't. You can argue how that applies to 15 whether it's Deceptive Trade Practices Act or anything 16 else. 17 MR. HEBERT: I'll do it, your Honor. I think I 18 asked him whether or not Wespac was current on its 19 licensure with the State of Nevada at the time. 20 BY MR. HEBERT: 21 Q And you responded I don't know; right? 22 A Correct. 23 Q Do you think that is something you should have 24 said something about? 25 A No. Not to my knowledge, no.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Did you even know -- I'm trying to draw a 2 difference between a duty to say something and whether 3 you knew. Did you even know at that point whether Wespac 4 was registered with the Nevada Secretary of State as a 5 foreign limited liability company? 6 A No, I would not have known that. 7 MR. HEBERT: By the way, Erin, am I going too 8 fast? Do you want me to slow it down? 9 THE REPORTER: Sure. 10 MR. HEBERT: All right. I have that problem. 11 BY MR. HEBERT: 12 Q Now, when you first met with Mr. Garmong, you 13 handed him an Investment Management Agreement to sign; 14 did you not? 15 A Yes. I handed him my -- our entire like New 16 Client Engagement Kit, and that would be part of it, yes. 17 Q The Investment Management Agreement itself 18 discusses -- internally in the document discusses 19 multiple exhibits, Exhibits A and B; do you know whether 20 those exhibits were attached or not? 21 A I do not know. 22 Q You just went over to the -- went over to the desk 23 and picked up an engagement packet and handed it over? 24 A I've heard about so many A and B's in the last two 25 days, I'm not sure which A and B you're referring to.</p>

<p style="text-align: right;">Page 18</p> <p>1 And, no, I do not know whether they were attached or not.</p> <p>2 Q Well, the A and B's that I'm referring to are the</p> <p>3 A and B's in the Investment Management Agreement itself</p> <p>4 in Plaintiff's Exhibit 4, which you can look at any time</p> <p>5 you want, but there they are and --</p> <p>6 ARBITRATOR PRO: Well, have him look it if you</p> <p>7 want him to answer a question about it.</p> <p>8 MR. HEBERT: All right. Let's do that.</p> <p>9 THE WITNESS: Yes, I see in Exhibit A on the one</p> <p>10 that Mr. Garmong signed.</p> <p>11 MR. HEBERT: That wasn't my question.</p> <p>12 THE WITNESS: Oh, okay. Sorry.</p> <p>13 MR. HEBERT: Yet.</p> <p>14 BY MR. HEBERT:</p> <p>15 Q Exhibit 4, Plaintiff's binder No. 1, do you see</p> <p>16 paragraph 2?</p> <p>17 A I do.</p> <p>18 Q Okay. So do you see Exhibit A in paragraph 2?</p> <p>19 A I do.</p> <p>20 Q Initial Portfolio Assets?</p> <p>21 A Correct.</p> <p>22 Q Are those part of the final agreement; do you</p> <p>23 know?</p> <p>24 A They are not part of this final agreement. I</p> <p>25 believe I previously stated that we often don't use that</p>	<p style="text-align: right;">Page 19</p> <p>1 when we have a Schwab relationship because it's simply a</p> <p>2 list of the assets that are on the broker's statement</p> <p>3 when we take over the account.</p> <p>4 Q Well, I remember on direct examination, I thought,</p> <p>5 there was some questioning about it's important to get</p> <p>6 the whole global picture of the client's assets,</p> <p>7 including his bonds and his real estate, you don't care</p> <p>8 about that part?</p> <p>9 A I do, but that would not be on any of these</p> <p>10 attachments because we're managing those monies. That</p> <p>11 would be disclosed in the client factfinding.</p> <p>12 Q The get-to-know-you meeting?</p> <p>13 A Yeah, which I believe we did.</p> <p>14 Q Okay. Then in that same paragraph:</p> <p>15 Client acknowledges that the client has</p> <p>16 reviewed the investment policies of</p> <p>17 Wespac Advisors as set forth in Wespac</p> <p>18 ADV Part II, a copy of which has been</p> <p>19 provided to the client.</p> <p>20 And that's what you've already talked about you</p> <p>21 provided?</p> <p>22 A Correct.</p> <p>23 Q Okay. Paragraph 3, let me know when you get</p> <p>24 there.</p> <p>25 A I'm there.</p>
<p style="text-align: right;">Page 20</p> <p>1 Q Okay. Quote:</p> <p>2 Clients may instruct Wespac Advisors to</p> <p>3 utilize the services of designated</p> <p>4 brokers and all transactions involving</p> <p>5 portfolio assets separately designated in</p> <p>6 Exhibit B.</p> <p>7 So have you ever seen an Exhibit B?</p> <p>8 MR. HUME: Carl, we're not with you on 3. It says</p> <p>9 "Procedures."</p> <p>10 MR. HEBERT: Mike, I understand that you're</p> <p>11 here --</p> <p>12 THE WITNESS: I'm not following you either.</p> <p>13 MR. BRADLEY: Excuse me.</p> <p>14 You can't interrupt.</p> <p>15 He won't interrupt again.</p> <p>16 MR. HEBERT: That's okay.</p> <p>17 ARBITRATOR PRO: Go back to your question. You</p> <p>18 quoted a part --</p> <p>19 THE WITNESS: I'm not even following the part</p> <p>20 where you're quoting. I'm sorry.</p> <p>21 MR. HEBERT: Let's back up for a second. I don't</p> <p>22 want to be discourteous.</p> <p>23 THE WITNESS: Am I looking at the same one?</p> <p>24 MR. HEBERT: I don't want to be discourteous to</p> <p>25 Mr. Hume, you know, but the --</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. HUME: My apologies.</p> <p>2 MR. HEBERT: It's okay.</p> <p>3 ARBITRATOR PRO: We've got Exhibit 4, counsel,</p> <p>4 we're in paragraph 3 titled "Procedures," where were you</p> <p>5 quoting from, sub 1, sub 2?</p> <p>6 MR. HEBERT: In Exhibit 4 -- I'm sorry, your</p> <p>7 Honor, this is my fault. You're way ahead of me -- it's</p> <p>8 part 3 of paragraph 3.</p> <p>9 That's my fault, Mr. Christian.</p> <p>10 ARBITRATOR PRO: Part 3 of paragraph 3 is on the</p> <p>11 next page --</p> <p>12 MR. HEBERT: 49.</p> <p>13 ARBITRATOR PRO: -- page 49, okay, titled</p> <p>14 "Brokerage." Go ahead.</p> <p>15 MR. HEBERT: I'm suffering from paragraph shock.</p> <p>16 BY MR. HEBERT:</p> <p>17 Q Do you see subpart 3 on the next page that it says</p> <p>18 "Brokerage"?</p> <p>19 A I do.</p> <p>20 Q Okay. That's -- do you see that first sentence?</p> <p>21 That's the Exhibit B I'm talking about; have you ever</p> <p>22 seen that Exhibit B?</p> <p>23 A No, because that's exactly what I was discussing</p> <p>24 with you a minute ago.</p> <p>25 Q So Exhibit B is Exhibit A?</p>

<p style="text-align: right;">Page 22</p> <p>1 A Well, obviously, yes. There's a typo or something</p> <p>2 in this document. I mean, we've changed this document to</p> <p>3 accommodate Mr. Garmong, and I'm sure whoever read it</p> <p>4 typed -- made a typo, didn't see it, transposed the data.</p> <p>5 Q Do you have any direct knowledge of that or are</p> <p>6 you just guessing?</p> <p>7 A I'm guessing on that one.</p> <p>8 Q Thank you.</p> <p>9 You've been hearing a lot about page 11 of the</p> <p>10 Investment Management Group -- actually, I'm sorry. I</p> <p>11 misspoke -- the Confidential Client Profile, if I've got</p> <p>12 my terminology correct?</p> <p>13 A Correct.</p> <p>14 Q Do you -- have you ever seen a completed page 11</p> <p>15 of the Confidential Client Profile?</p> <p>16 A That particular page that we've shown here, not to</p> <p>17 my knowledge, no.</p> <p>18 Q Would you say that Mr. Garmong was pretty faithful</p> <p>19 in communicating his position to you?</p> <p>20 A Absolutely.</p> <p>21 Q And that if he had had a page 11 which had several</p> <p>22 investment models to check, he would have checked it and</p> <p>23 given it to you?</p> <p>24 MR. BRADLEY: Objection; calls for speculation.</p> <p>25 ARBITRATOR PRO: No, the witness can answer that</p>	<p style="text-align: right;">Page 23</p> <p>1 about what he would have done.</p> <p>2 MR. BRADLEY: What Mr. Garmong would have done?</p> <p>3 ARBITRATOR PRO: For what Mr. Christian would have</p> <p>4 done.</p> <p>5 MR. HEBERT: I asked the question the opposite</p> <p>6 way.</p> <p>7 ARBITRATOR PRO: All right. Then sustained if</p> <p>8 you're asking the witness to opine what your client would</p> <p>9 have --</p> <p>10 MR. HEBERT: I asked Mr. Christian if Mr. Garmong</p> <p>11 was a very accurate historian and he said yes, and that's</p> <p>12 where I'll stop right there.</p> <p>13 BY MR. HEBERT:</p> <p>14 Q But you don't have a completed page 11; do you?</p> <p>15 A No.</p> <p>16 Q Okay. And page 11 asked for -- it was a form that</p> <p>17 essentially asked the client for what are your goals and</p> <p>18 objectives; wasn't it?</p> <p>19 A No.</p> <p>20 Q What was it? You tell me.</p> <p>21 A From recollection, unless you want me to look at</p> <p>22 it, I could explain it to you.</p> <p>23 MR. BRADLEY: Look at it.</p> <p>24 MR. HEBERT: It's Plaintiff's 46; is it not, Greg?</p> <p>25 ARBITRATOR PRO: It's the last page of Exhibit 46.</p>
<p style="text-align: right;">Page 24</p> <p>1 BY MR. HEBERT:</p> <p>2 Q Up at the top, Mr. Christian; are you there?</p> <p>3 A Yes.</p> <p>4 Q It says:</p> <p>5 Please select one management style --</p> <p>6 Which is a new term.</p> <p>7 -- describing the investment objective.</p> <p>8 So are these investment objectives, these five</p> <p>9 boxes to check, or are these management styles?</p> <p>10 MR. BRADLEY: I'm sorry, which page? Are we on</p> <p>11 page 11?</p> <p>12 ARBITRATOR PRO: Page 11. It's the last page of</p> <p>13 Exhibit 46.</p> <p>14 THE WITNESS: These are -- well, they're both</p> <p>15 actually. They're management styles that correspond to</p> <p>16 an objective.</p> <p>17 BY MR. HEBERT:</p> <p>18 Q Which ones are the objectives and which ones are</p> <p>19 management styles, or are they both?</p> <p>20 A Well, so aggressive growth would be an objective</p> <p>21 and then it describes the style underneath it. So on the</p> <p>22 other document, Mr. Garmong checked "Growth and Income"</p> <p>23 because we had changed -- obviously changed our client</p> <p>24 profile.</p> <p>25 Q You've talked about how the relationship between</p>	<p style="text-align: right;">Page 25</p> <p>1 the client and the investment manager is an evolving one;</p> <p>2 isn't it?</p> <p>3 A Correct.</p> <p>4 Q And at any time did you ever ask Mr. Garmong to</p> <p>5 complete an updated Confidential Client Profile to give</p> <p>6 you an accurate snapshot of where he was at that time?</p> <p>7 A No, because we had ongoing conversations and I had</p> <p>8 notes and didn't feel it was necessary.</p> <p>9 Q And, in fact, you testified that he met with you</p> <p>10 frequently and told you what he wanted and what he was</p> <p>11 doing; correct?</p> <p>12 A Correct.</p> <p>13 Q Now, down at the bottom it says "Custom," what's</p> <p>14 the point of that box?</p> <p>15 A That's for myself or another advisor to fill out</p> <p>16 after we've had a consultation with the client if we were</p> <p>17 going to do something that deviated from these top boxes.</p> <p>18 So if I was going to do a blend of two different</p> <p>19 portfolios, I'd write that down there so we can enter it</p> <p>20 into our trading system and get the models correct.</p> <p>21 Q So beneath that black line, it's for office use</p> <p>22 only?</p> <p>23 A What's that?</p> <p>24 Q So beneath that black line on page 11 of</p> <p>25 Exhibit 46, it's for office use only?</p>

<p style="text-align: right;">Page 26</p> <p>1 A Correct.</p> <p>2 Q And is that for client needs that don't fit neatly</p> <p>3 into the pigeon holes above?</p> <p>4 A Yeah.</p> <p>5 Q Do you maintain that Mr. Garmon fit into any of</p> <p>6 these -- by the time he got to 2008, do you think he fit</p> <p>7 into any of these five boxes above the line?</p> <p>8 A We had him categorized as a "Growth and Income"</p> <p>9 investor and we were taking -- making that account more</p> <p>10 conservative over time to accommodate the client and the</p> <p>11 marketplace.</p> <p>12 Q At any point -- let's go back to getting into the</p> <p>13 initial agreement, would you agree with me that that</p> <p>14 Investment Management Agreement -- first of all, have you</p> <p>15 ever read it?</p> <p>16 A Yeah.</p> <p>17 Q Does that Investment Management Agreement discuss</p> <p>18 a measure of damages if there's a dispute?</p> <p>19 MR. BRADLEY: Objection; the document speaks for</p> <p>20 itself.</p> <p>21 ARBITRATOR PRO: Yes, sustained. Sustained. We</p> <p>22 don't need to test the witness' recollection of it, if</p> <p>23 you want to refer him to it to get this information.</p> <p>24 BY MR. HEBERT:</p> <p>25 Q At any point in your relationship with</p>	<p style="text-align: right;">Page 27</p> <p>1 Mr. Garmon, did you ever discuss with him the technique</p> <p>2 that you've heard about in this arbitration called stop</p> <p>3 loss?</p> <p>4 A No.</p> <p>5 Q Is it something you would ever consider using?</p> <p>6 A No.</p> <p>7 Q Please turn --</p> <p>8 ARBITRATOR PRO: Can I ask the other side of that?</p> <p>9 Did Mr. Garmon ever mention to you the concept of stop</p> <p>10 loss?</p> <p>11 THE WITNESS: Not that I recall, no.</p> <p>12 BY MR. HEBERT:</p> <p>13 Q Mr. Garmon is the client, he's not required to</p> <p>14 know investment strategies; is he?</p> <p>15 A What's that?</p> <p>16 Q Mr. Garmon is the client, he's not required to</p> <p>17 come to you with investment strategies; is he?</p> <p>18 A No.</p> <p>19 Q Turn to Exhibit 20, please -- Plaintiff's</p> <p>20 Exhibit 20; do you see it?</p> <p>21 A I do.</p> <p>22 Q Now, there's a letter dated April 9, 2009, to</p> <p>23 Wespac Advisors from who we now know is Dale Sharp --</p> <p>24 A Correct.</p> <p>25 Q -- even though it's redacted out of the exhibits.</p>
<p style="text-align: right;">Page 28</p> <p>1 Now, Mr. Sharp, in that letter of April 9, 2009,</p> <p>2 mentions that you told him -- and this is right around</p> <p>3 the time of events, July of '08 -- do you see that second</p> <p>4 paragraph?</p> <p>5 A Do I see the second paragraph?</p> <p>6 Q Do you see the second paragraph of the letter?</p> <p>7 A Yes.</p> <p>8 Q It starts out, "At the Charles Schwab office in</p> <p>9 July of 2008"?</p> <p>10 A Uh-huh.</p> <p>11 Q He says that as part of the capital preservation</p> <p>12 strategy --</p> <p>13 A Uh-huh.</p> <p>14 Q -- stop losses are used on all equity purchases.</p> <p>15 Now, did he -- was he accurate when he said that?</p> <p>16 A No, he was not.</p> <p>17 Q Do you think he just made that up?</p> <p>18 A I think he got it wrong. If you read the brochure</p> <p>19 that he was handed, it talked about relative strength</p> <p>20 rotation, moving assets from one category to another as a</p> <p>21 form of stopping one security to buy another, that's what</p> <p>22 it said.</p> <p>23 Q So he came up with stop loss on his own?</p> <p>24 A Yeah -- I mean, it's a vernacular that a lot of</p> <p>25 people misconstrue. It's not that simple of a concept.</p>	<p style="text-align: right;">Page 29</p> <p>1 If I sat here and told you right now how I do relative</p> <p>2 strength rotation stops, you may not figure it out, you</p> <p>3 know, so I get why people misunderstand things.</p> <p>4 Q Couldn't stop loss also refer to selling a stock</p> <p>5 when it drops to a certain point?</p> <p>6 A Well, of course it does.</p> <p>7 Q But what you're talking about is it includes a lot</p> <p>8 more?</p> <p>9 A Well, the way we implement what you would consider</p> <p>10 a stop loss, yes, because we don't do a stop loss.</p> <p>11 Q If a client doesn't understand a concept, isn't</p> <p>12 that your obligation to explain it to him?</p> <p>13 A Uh-huh. And we did.</p> <p>14 Q He just didn't understand?</p> <p>15 A Correct -- evidently.</p> <p>16 MR. HEBERT: A moment, your Honor.</p> <p>17 ARBITRATOR PRO: All right.</p> <p>18 MR. HEBERT: I found it, your Honor.</p> <p>19 BY MR. HEBERT:</p> <p>20 Q In the same exhibit, Plaintiff's 20, please go to</p> <p>21 a Wespac letter dated May 14, 2009 --</p> <p>22 A Okay.</p> <p>23 Q -- with a Wespac page number of 97 below it.</p> <p>24 A Correct.</p> <p>25 Q Who wrote this letter?</p>

<p style="text-align: right;">Page 30</p> <p>1 A John Williams, I believe.</p> <p>2 Q You're not sure?</p> <p>3 A Well, he signed it. Yes, John Williams.</p> <p>4 Q John Williams was the Chief Compliance Officer at</p> <p>5 Wespac Advisors at the time?</p> <p>6 A Right.</p> <p>7 Q Okay. Do you see where he's responding to</p> <p>8 Mr. Sharp --</p> <p>9 A Correct.</p> <p>10 Q -- at the top in the first paragraph?</p> <p>11 A I do.</p> <p>12 Q And do you see where he says to Mr. Sharp that he,</p> <p>13 meaning you, discussed use of stop losses at length?</p> <p>14 A Hmm.</p> <p>15 Q Do you see that first paragraph?</p> <p>16 Let me start over and make it easier for you.</p> <p>17 Talking about the first paragraph, Exhibit 20,</p> <p>18 page 974, in the first paragraph Mr. Williams says:</p> <p>19 According to Mr. Christian, you are</p> <p>20 correct that in his presentation to you</p> <p>21 and your wife in July at a subsequent</p> <p>22 meeting -- and at a subsequent meeting</p> <p>23 with you and your daughter, he discussed</p> <p>24 the use of stop losses.</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q He said that; didn't he?</p> <p>2 A And it says, "and sector rotation at length." So</p> <p>3 I basically discussed with him how our model works and</p> <p>4 how we sell out one security based on relative strength</p> <p>5 and buy another one. We just don't say if emerging</p> <p>6 markets go from 22 to 19, it's out, that's not the way it</p> <p>7 works.</p> <p>8 Q I'm talking about stocks.</p> <p>9 A Correct, the same thing, ETFs.</p> <p>10 Q You're talking about sectors, I'm talking about</p> <p>11 stocks, the same thing?</p> <p>12 A Correct, the way we manage that process is exactly</p> <p>13 the same.</p> <p>14 Q Well, apparently Mr. Sharp didn't get the</p> <p>15 explanation very well; did he?</p> <p>16 A Do you want me tell you why Mr. Sharp didn't get</p> <p>17 the explanation correct?</p> <p>18 Q You know this as a matter of personal knowledge,</p> <p>19 not as a matter of speculation; don't you?</p> <p>20 A Yes, because I was there.</p> <p>21 Q Tell us.</p> <p>22 A After the market went down in '08, he came into my</p> <p>23 office and I reviewed the portfolios with him. I showed</p> <p>24 him how we were looking to change the portfolios going</p> <p>25 forward, which we did implement those changes.</p>
<p style="text-align: right;">Page 32</p> <p>1 He then went back to the Schwab FC and said I made</p> <p>2 trade errors because he misinterpreted our statements.</p> <p>3 It was decided in JAMS that we were right, we was wrong.</p> <p>4 Q You met with Mr. Garmong in the beginning and he</p> <p>5 filled out the Confidential Client Profile, and he</p> <p>6 selected -- although they didn't perfectly fit his</p> <p>7 situation, he selected one of the boxes?</p> <p>8 A Uh-huh.</p> <p>9 Q And, in fact, even customized it by saying, "My</p> <p>10 goal are to be"?</p> <p>11 A Correct.</p> <p>12 Q Did you ever inform him at any time at any point</p> <p>13 in your relationship with Mr. Garmong that you couldn't</p> <p>14 meet those objectives?</p> <p>15 A No.</p> <p>16 Q At any point, did you ever consider creating a new</p> <p>17 model -- let me start over with that question.</p> <p>18 Would you agree with me that Mr. Garmong's life</p> <p>19 situation changed when he retired on August 31, 2007?</p> <p>20 A I'd have to say it changed but I knew it was</p> <p>21 changing from the start. We had discussed that.</p> <p>22 Q From the beginning you knew he was going to</p> <p>23 retire?</p> <p>24 A I knew he had a time frame of retirement sometime</p> <p>25 in the next two to three years, income levels are going</p>	<p style="text-align: right;">Page 33</p> <p>1 to go from 250 to approximately 100, depending on his</p> <p>2 workload and what he finally decided to do.</p> <p>3 Q You know, you've got a phenomenal memory for what</p> <p>4 Mr. Garmong said and did during that time. Did that</p> <p>5 memory come from direct knowledge or did that come from</p> <p>6 having it refreshed here at the hearing?</p> <p>7 A No. It comes from direct knowledge and reviewing</p> <p>8 my notes once this whole issue came up.</p> <p>9 Q So Mr. Garmong retires, and he comes to you in</p> <p>10 early October and has a meeting with you and he says,</p> <p>11 there's been a much greater impact on me by retirement</p> <p>12 than I had expected, and I've got too much going on. And</p> <p>13 in that meeting you offered to him that you would take</p> <p>14 complete control of his investments; didn't you?</p> <p>15 A No, I did not.</p> <p>16 Q What did you say?</p> <p>17 A I don't recall exactly what I said but I've never</p> <p>18 told him that I would take complete control of anything.</p> <p>19 Q You told him that you would handle all the</p> <p>20 investing for him?</p> <p>21 A As I was already doing.</p> <p>22 Q So there was no change at all in the October 2007</p> <p>23 meeting?</p> <p>24 A No.</p> <p>25 Q It was more of the same?</p>

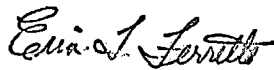
<p style="text-align: right;">Page 34</p> <p>1 A More of the same.</p> <p>2 Q What was the same?</p> <p>3 A Get together, talk about markets, talk about the</p> <p>4 accounts, talk about his life, talk about what was going</p> <p>5 on, politics and everything else. We'd have long,</p> <p>6 wonderful conversations most of the time.</p> <p>7 Q So that letter of October 22, 2007, that we've</p> <p>8 discussed here where he wrote to you and said, thank you</p> <p>9 for taking control of my -- let me get the letter out.</p> <p>10 Turn to Plaintiff's 11. Are you there?</p> <p>11 A Uh-huh.</p> <p>12 Q On page one -- let's clear up one thing. You say</p> <p>13 you never got this letter; don't you?</p> <p>14 A I never did.</p> <p>15 Q By the way, how does -- does Wespac keep records</p> <p>16 of correspondence?</p> <p>17 A Yes.</p> <p>18 Q Do you log them?</p> <p>19 A They're put into the client file and then there's</p> <p>20 a client correspondence file for all clients.</p> <p>21 Q But the mail doesn't come directly to you; does</p> <p>22 it?</p> <p>23 A No.</p> <p>24 Q It comes through an assistant?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q And the assistant puts it in the file?</p> <p>2 A No. The assistant opens up the mail and then</p> <p>3 gives it to me or whoever else in the office it's</p> <p>4 addressed to to read and review, then it goes in the</p> <p>5 file.</p> <p>6 Q Okay. No log is kept of incoming mail; that's</p> <p>7 correct, isn't it?</p> <p>8 A That is correct.</p> <p>9 Q Okay. Back then were letters being scanned? When</p> <p>10 I say "back then," I'm talking about October of 2007.</p> <p>11 A I don't know.</p> <p>12 Q Do you know, when this lawsuit came about, did you</p> <p>13 conduct a search for any correspondence file, any letters</p> <p>14 that might have been written?</p> <p>15 A I did.</p> <p>16 Q And you didn't see this letter; did you?</p> <p>17 A No.</p> <p>18 Q But we've talked about the fact that you didn't</p> <p>19 get the letter -- by the way, was your office address on</p> <p>20 October 22, 2007, 10425 Double R Boulevard?</p> <p>21 A Yes, it was.</p> <p>22 Q Despite the fact that you didn't get it, there's a</p> <p>23 sentence in this letter, "With all that in mind, you</p> <p>24 propose that you would take over sole management of my</p> <p>25 investment accounts without input or attention from me,"</p>
<p style="text-align: right;">Page 36</p> <p>1 end quote; do you see that?</p> <p>2 A I do.</p> <p>3 Q Whether you got the letter or not, is that an</p> <p>4 accurate statement about the conversation you had in</p> <p>5 early October 2007?</p> <p>6 A No.</p> <p>7 Q Are you claiming this is just kind of a</p> <p>8 fabrication that Mr. Garmong came up with?</p> <p>9 A If that's the way you want to put it.</p> <p>10 Q I'm asking you.</p> <p>11 A Yes, then.</p> <p>12 Q He says in the next paragraph that starts out,</p> <p>13 "After having thought," he says:</p> <p>14 I agree to turn over the management --</p> <p>15 Here's the part I'm concerned about.</p> <p>16 -- under the condition that you manage</p> <p>17 them very conservatively.</p> <p>18 Do you dispute that he wanted you to manage his</p> <p>19 assets very conservatively as of October 2007?</p> <p>20 A I dispute your possible definition of very</p> <p>21 conservatively because we have the accounts --</p> <p>22 Q The definition I haven't given you yet?</p> <p>23 A Go for it.</p> <p>24 Q What do you think very conservatively means?</p> <p>25 A A lower volatility portfolio.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Okay. What does lower volatility mean?</p> <p>2 A The standard deviation on the portfolio, what you</p> <p>3 can expect on the ups and downs of that portfolio given</p> <p>4 the current market conditions.</p> <p>5 Q Could very conservatively mean going all cash or</p> <p>6 cash equivalents temporarily?</p> <p>7 A That would be extremely conservative -- I mean,</p> <p>8 no.</p> <p>9 Q So we're now quibbling over adjectives, very</p> <p>10 versus extremely?</p> <p>11 A Yes. That, to me, would be no risk, is what</p> <p>12 you've just described.</p> <p>13 Q You did catch that I said the word temporarily?</p> <p>14 A I did catch that.</p> <p>15 Q So at this meeting in October of 2007, was it just</p> <p>16 more of the same meeting with Mr. Garmong, talking about</p> <p>17 life and him checking on his investments?</p> <p>18 A I believe so. And I think we were talking about</p> <p>19 some other just financial planning, estate planning</p> <p>20 issues, things like that.</p> <p>21 Q You never got the sense in that meeting that he</p> <p>22 was asking you to be very conservative with his assets?</p> <p>23 A I didn't get the feeling that there was any change</p> <p>24 to the investment objective, no.</p> <p>25 MR. BRADLEY: Going to another binder, Carl?</p>

<p style="text-align: right;">Page 38</p> <p>1 MR. HEBERT: Still in Plaintiff's 2.</p> <p>2 MR. BRADLEY: Oh, that's 2.</p> <p>3 MR. HEBERT: I'm sorry, we're now going on to 2.</p> <p>4 MR. BRADLEY: Okay. Thank you.</p> <p>5 MR. HEBERT: Here's the problem. I have the same</p> <p>6 index -- off the record for a moment, may I, your Honor?</p> <p>7 ARBITRATOR PRO: Yes.</p> <p>8 (Off the record.)</p> <p>9 BY MR. HEBERT:</p> <p>10 Q Turn to 12. Are you there?</p> <p>11 A I am.</p> <p>12 Q What is the date of this fax?</p> <p>13 A January 2008.</p> <p>14 Q Who wrote it to you?</p> <p>15 A Mr. Garmong.</p> <p>16 Q Look at paragraph 3. Do you see it?</p> <p>17 A Uh-huh.</p> <p>18 Q He says, quote:</p> <p>19 As I told you --</p> <p>20 Meaning, I've told you this before.</p> <p>21 -- I'll sacrifice potential gains to</p> <p>22 ensure that I don't have capital losses.</p> <p>23 Now that I'm retired and won't be adding</p> <p>24 to my accounts, I have to avoid capital</p> <p>25 losses.</p>	<p style="text-align: right;">Page 39</p> <p>1 Does that tell you that things had changed at all?</p> <p>2 A No, because we were managing the account along</p> <p>3 those guidelines.</p> <p>4 Q So you just take it as a given that we're always</p> <p>5 going to be avoiding capital losses?</p> <p>6 A Well, to the extent the portfolio is designed,</p> <p>7 yeah. I mean, we were raising cash, we were getting more</p> <p>8 defensive as the stock markets were breaking down,</p> <p>9 absolutely.</p> <p>10 Q So this -- this is not new information to you</p> <p>11 then, this tells you nothing new?</p> <p>12 A No. I mean, we had some conversations and I</p> <p>13 got -- obviously we raised some more cash. So after his</p> <p>14 conversation, we did make some changes to the portfolio</p> <p>15 and made it more conservative.</p> <p>16 Q Is raising cash investment advisor speak for we're</p> <p>17 getting more conservative?</p> <p>18 A Correct.</p> <p>19 Q And raising cash means we're going to a cash</p> <p>20 position because, as Mr. Cramer said, cash is less risky?</p> <p>21 A Correct.</p> <p>22 Q So you were doing this raising cash because you</p> <p>23 said the stock market was starting to fall off a cliff,</p> <p>24 my words?</p> <p>25 A Your words.</p>
<p style="text-align: right;">Page 40</p> <p>1 Q Tell me what your words are.</p> <p>2 A We are raising the cash because the marketplace</p> <p>3 was starting to exhibit more volatility, we had</p> <p>4 conversations with Mr. Garmong and we decided to raise</p> <p>5 more cash.</p> <p>6 Q He says here, "I have to avoid capital losses";</p> <p>7 what does that tell you?</p> <p>8 A It means he prefers his account doesn't take large</p> <p>9 drawdowns.</p> <p>10 Q At any point do you believe it was your obligation</p> <p>11 that if you didn't understand what he had to say to you,</p> <p>12 that you would call him up and clarify it?</p> <p>13 A Yeah.</p> <p>14 Q And you felt no need to clarify this?</p> <p>15 A We got together quite frequently and I felt like I</p> <p>16 had a good grasp on what Mr. Garmong's objectives were</p> <p>17 and how we were managing the account.</p> <p>18 Q 13 -- 13; are you there?</p> <p>19 A Uh-huh.</p> <p>20 Q For the sake of moving along, I'll represent to</p> <p>21 you, if it's permissible, this is a fax dated March 17,</p> <p>22 2008, from Mr. Garmong to you.</p> <p>23 Do you see a paragraph that starts out, "I think</p> <p>24 we should"?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q Quote:</p> <p>2 As I had said before, my big concern is</p> <p>3 losing money on these accounts. The</p> <p>4 volatility is just driving me nuts.</p> <p>5 Did you take that as any particular instruction</p> <p>6 from Mr. Garmong or a change in the way he wanted his</p> <p>7 investments handled?</p> <p>8 A No, because that's the way we were handling them.</p> <p>9 Q 14.</p> <p>10 A Pardon me?</p> <p>11 Q 14. This is a fax dated June 12, 2008, to you,</p> <p>12 and it says in the middle of the page:</p> <p>13 The results are mixed --</p> <p>14 What is he referring to?</p> <p>15 A The performance of the accounts.</p> <p>16 Q</p> <p>17 -- and, in one respect, very disturbing</p> <p>18 in light of my direction to Wespac that I</p> <p>19 expected the stock market to decline in</p> <p>20 2008 and wanted to sacrifice potential</p> <p>21 gains to avoid loss.</p> <p>22 Mr. Garmong is -- looks like he's becoming</p> <p>23 increasingly concerned. Did this cause you to talk to</p> <p>24 him about maybe modifying his portfolio at all?</p> <p>25 A We had those conversations, and we continued --</p>

<p style="text-align: right;">Page 42</p> <p>1 agreed to continue along with our current stature. I</p> <p>2 mean, in the previous fax, it says right there, you told</p> <p>3 me to not worry about the indices and he agreed. We had</p> <p>4 these conversations over and over and over.</p> <p>5 Q And pursuing this strategy, you produced the</p> <p>6 results of losing \$86,000 in one month down there at the</p> <p>7 bottom?</p> <p>8 A Correct.</p> <p>9 Q Looking at a fax dated September 26, 2008 --</p> <p>10 ARBITRATOR PRO: Exhibit 15 now?</p> <p>11 MR. HEBERT: I'm sorry, your Honor. Yes, 15.</p> <p>12 THE WITNESS: Okay.</p> <p>13 BY MR. HEBERT:</p> <p>14 Q Do you see here where he's saying at the bottom,</p> <p>15 "I specifically" -- quote, "I specifically instructed</p> <p>16 there could not be any losses from my accounts. They</p> <p>17 must be managed accordingly"?</p> <p>18 A I see that.</p> <p>19 Q You see that. What did that say to you?</p> <p>20 A It said that he was upset and that he was</p> <p>21 misspeaking here because he absolutely never told me</p> <p>22 that.</p> <p>23 Q This is another instance where his correspondence</p> <p>24 doesn't match what he's telling you; right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 43</p> <p>1 Q Mr. Christian, if a client is saying things that</p> <p>2 you don't remember him saying, is there any letter back</p> <p>3 to him saying, "You never said that to me"?</p> <p>4 A I believe there is one later, yes.</p> <p>5 Q But not in January, not in March?</p> <p>6 A No, because we were having face-to-face</p> <p>7 conversations and moving along with the account process.</p> <p>8 Q So when you -- you're having face-to-face</p> <p>9 conversations with him and then you get these faxes, I'm</p> <p>10 talking about January and March, that don't match up with</p> <p>11 the conversations you're having, did you write back to</p> <p>12 him and say, "That's not what I said"?</p> <p>13 A No, I did not because, again, we had</p> <p>14 conversations, he agreed to proceed, as he has said</p> <p>15 himself many times, and if the market didn't tank the way</p> <p>16 it did, we probably wouldn't be sitting here.</p> <p>17 Q So the whole reason we're here, as I hear it from</p> <p>18 you, is because market conditions, nothing to do with</p> <p>19 you?</p> <p>20 A Correct.</p> <p>21 Q Now, there were techniques, and you've heard them</p> <p>22 here in this arbitration, to avoid losses like he</p> <p>23 suffered; weren't there?</p> <p>24 A Yeah.</p> <p>25 Q Those losses -- I mean, I'm sorry, those</p>
<p style="text-align: right;">Page 44</p> <p>1 techniques would include buying cash equivalents?</p> <p>2 A Correct.</p> <p>3 Q Treasury bills?</p> <p>4 A Correct.</p> <p>5 Q CDs, bank accounts?</p> <p>6 A Correct.</p> <p>7 Q Did you ever think about calling up Mr. Garmon</p> <p>8 and saying, you know, "In light of what you want from me,</p> <p>9 we should go to an all cash position until the market</p> <p>10 stabilizes"?</p> <p>11 A I did not, because we were conversing all the time</p> <p>12 about these accounts, and he knew exactly where he stood,</p> <p>13 exactly how he was invested. He was looking at</p> <p>14 performance reports, he was calculating his own</p> <p>15 performance. He was in the driver's seat with me, he</p> <p>16 knew what was going on.</p> <p>17 Q So if he suffered losses, it was his fault; right?</p> <p>18 A Yeah.</p> <p>19 Q Then why did he need an investment advisor?</p> <p>20 A Because we deliver a lot of good services,</p> <p>21 actually. At the end of the day, his accounts did</p> <p>22 extraordinarily well over the lifetime of our</p> <p>23 relationship. Had he stayed with us, they would be doing</p> <p>24 extraordinarily well now.</p> <p>25 Q Extraordinarily well over the lifetime of the</p>	<p style="text-align: right;">Page 45</p> <p>1 relationship?</p> <p>2 A Uh-huh.</p> <p>3 Q Now, you've heard Mr. Garmon say that, my</p> <p>4 objectives, my life circumstances changed in October of</p> <p>5 2007, so why wouldn't we be focused on October '07</p> <p>6 through March of '09?</p> <p>7 A Because his objectives did not change. When</p> <p>8 someone's income goes from 250,000 to 100,000, but yet</p> <p>9 you have a \$9 million net worth, plenty of income being</p> <p>10 distributed from municipal bonds, I have no reason to</p> <p>11 dramatically change the equity portfolio in his accounts.</p> <p>12 Q All right. So he had money, so it was all right</p> <p>13 to lose some of it?</p> <p>14 A No, I did not say that.</p> <p>15 Q Look at Defense Exhibit --</p> <p>16 A Do I have that?</p> <p>17 Q You have it somewhere?</p> <p>18 MR. HEBERT: Your Honor, I need to find it first.</p> <p>19 MR. BRADLEY: Which number, Carl?</p> <p>20 MR. HEBERT: 55.</p> <p>21 ARBITRATOR PRO: 55, volume?</p> <p>22 MR. HEBERT: Volume 2.</p> <p>23 BY MR. HEBERT:</p> <p>24 Q Are you there on 55?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q What you see in 55, Defense Exhibit 55, Wespac</p> <p>2 pages 1302 and 1303, is a Combined Equity Change Analysis</p> <p>3 produced by Mr. Cramer, your own expert; is that what you</p> <p>4 see?</p> <p>5 A Yes.</p> <p>6 Q Do you see where -- do you recall Mr. Cramer's</p> <p>7 testimony that from basically the end of September 2007</p> <p>8 to March 6th of 2009, Mr. Garmong's accounts lost</p> <p>9 \$509,000; do you remember that testimony?</p> <p>10 A I don't remember the exact number but I do</p> <p>11 remember it being somewhere in that neighborhood.</p> <p>12 Q And is this the product of your nothing needs to</p> <p>13 change investment strategy?</p> <p>14 A The strategy did not change; the execution did</p> <p>15 change. We started raising more money as the markets got</p> <p>16 more volatile.</p> <p>17 Q So it could have been worse?</p> <p>18 A It could have been a lot worse.</p> <p>19 Q So you're going to take credit for it not being as</p> <p>20 bad as it could have been?</p> <p>21 A Sadly to say, yes.</p> <p>22 MR. BRADLEY: Any more out of the defense</p> <p>23 exhibits?</p> <p>24 MR. HEBERT: Leave it there in case I need to go</p> <p>25 back to it.</p>	<p style="text-align: right;">Page 47</p> <p>1 BY MR. HEBERT:</p> <p>2 Q When Mr. Garmong said to you in multiple faxes, "I</p> <p>3 don't lose capital," did that represent an unrealistic</p> <p>4 objective to you?</p> <p>5 A No.</p> <p>6 Q And what you did was designed to keep him from</p> <p>7 losing capital?</p> <p>8 A To minimize the capital losses, yes. Based on the</p> <p>9 allocations that we had, correct.</p> <p>10 MR. HEBERT: Your Honor, may I take a quick break?</p> <p>11 I have to -- I would like to talk to my client, please.</p> <p>12 ARBITRATOR PRO: All right. We'll take a</p> <p>13 five-minute break, and I'm going to see if I can get this</p> <p>14 air adjusted a bit, too. It's a little bit warm in here.</p> <p>15 (Off the record.)</p> <p>16 BY MR. HEBERT:</p> <p>17 Q I think we started out this cross-examination,</p> <p>18 Mr. Christian, by talking about how the relationship</p> <p>19 between a client and an investment advisor evolves as the</p> <p>20 client's life circumstances change?</p> <p>21 A Uh-huh.</p> <p>22 Q Is that a yes?</p> <p>23 A That's a yes.</p> <p>24 Q And the markets change, too -- I mean, it's -- the</p> <p>25 client just doesn't give you the objectives one time and</p>
<p style="text-align: right;">Page 48</p> <p>1 then you run with that for the rest of the relationship;</p> <p>2 do you?</p> <p>3 A Unless they specifically change them.</p> <p>4 Q What I'm getting at is this. You selected an</p> <p>5 investment model for Mr. Garmong; didn't you?</p> <p>6 A We selected an overall investment strategy and/or</p> <p>7 objective, yes.</p> <p>8 Q Wespac has models, investment models; doesn't it?</p> <p>9 A Yes.</p> <p>10 Q Now, did you see a need to change Mr. Garmong's</p> <p>11 investment model as you started to get these faxes in</p> <p>12 early '08 saying, "I must avoid the loss of capital," did</p> <p>13 that trigger a change in the investment model for you?</p> <p>14 A It did, and we raised cash.</p> <p>15 Q At any point, did you ever consider -- in any</p> <p>16 point in early 2008, late 2007, did you ever consider</p> <p>17 resigning because you simply couldn't meet Mr. Garmong's</p> <p>18 objectives?</p> <p>19 A No.</p> <p>20 ARBITRATOR PRO: I have one question. We're</p> <p>21 getting in the direction of the ending of the</p> <p>22 relationship between Westpac and Garmong, certainly by</p> <p>23 October of 2008 and prior to that, but there were some</p> <p>24 strong correspondence from Mr. Garmong and criticism by</p> <p>25 Mr. Garmong through the date in March of 2009, or maybe</p>	<p style="text-align: right;">Page 49</p> <p>1 it was early April, but when the relationship was</p> <p>2 terminated in written form, during that six-month period,</p> <p>3 five- or six-month period, was the contact between the</p> <p>4 two of you, you and Mr. Garmong, the same as it had been;</p> <p>5 in other words, was it frequent?</p> <p>6 THE WITNESS: No.</p> <p>7 ARBITRATOR PRO: Less frequent?</p> <p>8 THE WITNESS: Zero.</p> <p>9 ARBITRATOR PRO: It was -- other than whatever</p> <p>10 letters we have or faxes?</p> <p>11 THE WITNESS: Correct.</p> <p>12 ARBITRATOR PRO: No more lunches?</p> <p>13 THE WITNESS: No.</p> <p>14 ARBITRATOR PRO: Or phone calls.</p> <p>15 THE WITNESS: Correct. We had sent him a letter</p> <p>16 and said, you know, let us continue to manage that --</p> <p>17 ARBITRATOR PRO: You did, I saw the letter.</p> <p>18 THE WITNESS: -- income and growth model, and</p> <p>19 basically stop threatening us, let us do our job, is what</p> <p>20 we did.</p> <p>21 ARBITRATOR PRO: And so it's your -- you didn't</p> <p>22 thereafter reach out to him and he didn't reach out to</p> <p>23 you --</p> <p>24 THE WITNESS: Correct.</p> <p>25 ARBITRATOR PRO: -- to discuss further the status</p>

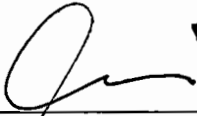
<p style="text-align: right;">Page 50</p> <p>1 of his accounts?</p> <p>2 THE WITNESS: Correct.</p> <p>3 ARBITRATOR PRO: Okay. Okay.</p> <p>4 MR. HEBERT: Let me follow up on that for a</p> <p>5 moment.</p> <p>6 BY MR. HEBERT:</p> <p>7 Q When the relationship deteriorated -- would that</p> <p>8 be an accurate description?</p> <p>9 A Yes.</p> <p>10 Q When the relationship deteriorated, Wespac and you</p> <p>11 continued to manage the investments until he formally</p> <p>12 ended the relationship in March of '09; didn't you?</p> <p>13 A Yes.</p> <p>14 Q You weren't having any contact with Mr. Garmon</p> <p>15 and you weren't getting updates from him, so were you</p> <p>16 just managing on auto pilot?</p> <p>17 A No. We were managing according to the last letter</p> <p>18 we sent. The retirement accounts were in cash, so they</p> <p>19 had no risk in them. I think they were 96 or 97 percent</p> <p>20 cash. And the other model was our income and growth</p> <p>21 model and we were managing that according to the model</p> <p>22 with our discretion.</p> <p>23 MR. HEBERT: Tom, I have no further questions.</p> <p>24 ARBITRATOR PRO: One question on that.</p> <p>25 There was no contact or correspondence, were there</p>	<p style="text-align: right;">Page 51</p> <p>1 still routine either monthly or quarterly statements,</p> <p>2 status of the account sent to the client?</p> <p>3 THE WITNESS: Yes. He would always get statements</p> <p>4 from Charles Schwab on a monthly basis and quarterly</p> <p>5 performance reports from us.</p> <p>6 ARBITRATOR PRO: So that didn't change during that</p> <p>7 final period?</p> <p>8 THE WITNESS: No. It was just -- yeah. No.</p> <p>9 ARBITRATOR PRO: Was that something you actually</p> <p>10 had a hand in preparing, the quarterly statements?</p> <p>11 THE WITNESS: Performance reports was our -- made</p> <p>12 by Up and Running Office Solutions, an outside company we</p> <p>13 engaged to generate performance reports to send to the</p> <p>14 client, and then Schwab would just send statements</p> <p>15 automatically every month.</p> <p>16 ARBITRATOR PRO: And would you see either of</p> <p>17 those, would a copy come you?</p> <p>18 THE WITNESS: Well, yeah.</p> <p>19 ARBITRATOR PRO: So you could see those, would you</p> <p>20 review those monthly or quarterly, the quarterly</p> <p>21 performance report?</p> <p>22 THE WITNESS: Oh, yeah.</p> <p>23 ARBITRATOR PRO: All right. Anything else on that</p> <p>24 that I asked?</p> <p>25 / / /</p>
<p style="text-align: right;">Page 52</p> <p>1 +++ FURTHER CROSS-EXAMINATION +++</p> <p>2 BY MR. HEBERT:</p> <p>3 Q How -- yes. How -- during the course of this</p> <p>4 relationship, how often would you look at Mr. Garmon's</p> <p>5 accounts and -- to see how they were doing?</p> <p>6 A No less than monthly.</p> <p>7 Q Were there times when it was monthly?</p> <p>8 A Oh, yeah.</p> <p>9 Q Okay. You weren't looking at them weekly or</p> <p>10 daily?</p> <p>11 A Not all the time, no; sometimes yes, though.</p> <p>12 Q What would cause you to look at accounts daily?</p> <p>13 A Daily?</p> <p>14 Q Or weekly.</p> <p>15 A Market activity.</p> <p>16 Q Significant changes?</p> <p>17 A Significant changes, talking to clients, that kind</p> <p>18 of thing, yeah.</p> <p>19 Q So back in -- back in the first six months of 2008</p> <p>20 when the markets were demonstrating a tremendous amount</p> <p>21 of volatility, were you looking at the accounts</p> <p>22 regularly?</p> <p>23 A Yes.</p> <p>24 Q How often was that?</p> <p>25 A Monthly probably, would be my guess.</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. HEBERT: I'm done.</p> <p>2 ARBITRATOR PRO: Okay. Thank you.</p> <p>3 Any redirect?</p> <p>4 MR. BRADLEY: No, sir.</p> <p>5 ARBITRATOR PRO: All right. Then you've completed</p> <p>6 your examination of this witness, is there any other</p> <p>7 witnesses? I don't have any on my list, I want to make</p> <p>8 sure.</p> <p>9 MR. BRADLEY: I don't have any other witnesses.</p> <p>10 MR. HEBERT: Mr. Hume could testify, if he likes.</p> <p>11 ARBITRATOR PRO: All right. Then we'll close the</p> <p>12 record on the evidence at this point. We stated at the</p> <p>13 beginning of the hearing the details on the briefing and,</p> <p>14 again, it's a bit amorphous in that we don't know the</p> <p>15 date of the transcript, but that will key the deadlines</p> <p>16 for the briefing.</p> <p>17 If you all have something, an emergency comes up</p> <p>18 and you need an extra day or two or week whatever, you</p> <p>19 know, you can obviously still reach out and deal with</p> <p>20 that. I don't ever foreclose that.</p> <p>21 I will target, once I get them, depending on when</p> <p>22 I get them, my rough expectation is to shoot for the end</p> <p>23 of December. If things get elongated and I'm jammed up,</p> <p>24 I'll contact you both by e-mail and let me know if it has</p> <p>25 to be a week or ten days after that.</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. HEBERT: I have a request that I don't think 2 anybody will have a problem with -- really. 3 THE WITNESS: I know him. 4 ARBITRATOR PRO: Well, if that 21st day is 5 Thanksgiving -- 6 MR. HEBERT: That's exactly where I was going. 7 ARBITRATOR PRO: I thought about that. 8 MR. HEBERT: That happened last year, I was 9 writing a brief the Thanksgiving weekend. 10 ARBITRATOR PRO: Holidays and weekends don't 11 count. 12 MR. HEBERT: Here's what I'm saying, if you take 13 31 days, 10 days to do the transcript, 21 days to do the 14 briefing, I bet you that falls on Thanksgiving, and so 15 what I'd like -- 16 THE WITNESS: Darn close. 17 MR. HEBERT: What? 18 THE WITNESS: Darn close. 19 MR. HEBERT: Yeah, and I don't want to be working 20 that weekend unless Tom wants to. 21 MR. BRADLEY: Judge, I made the biggest mistake in 22 my married life and volunteered to have everybody's 23 family over to my house and I'm cooking three turkeys, so 24 I guarantee you I will not object if it falls on that 25 day.</p>	<p style="text-align: right;">Page 55</p> <p>1 MR. HEBERT: Here's what I want to do. I want to 2 look at a calendar and if the deadline falls in 3 Thanksgiving weekend, I'm talking Wednesday to Sunday, 4 let's move it a few days past that. 5 ARBITRATOR PRO: Hold that thought. I'm going to 6 get a calendar. 7 (Off the record.) 8 ARBITRATOR PRO: Thanksgiving is on the 22nd, so 9 it would be -- actually, if it was 31 days from today, it 10 would be the 19th, which would be Monday of Thanksgiving 11 week. Do you want to just agree that the briefing would 12 be due then the following week? 13 MR. HUME: That's fine. 14 MR. HEBERT: Yes, I would. 15 MR. BRADLEY: That's fine with me. 16 ARBITRATOR PRO: So we'll have a date certain. It 17 can only be scuttled if the transcript doesn't get 18 prepared. 19 MR. HEBERT: Right. 20 ARBITRATOR PRO: The 26th is a Monday, 27th is a 21 Tuesday, you tell me what day of the week. 22 MR. HEBERT: The 29th is fine. 23 ARBITRATOR PRO: The 29th is Thursday. 24 MR. HEBERT: Yeah, because my birthday is the next 25 day and I don't want to work that day either.</p>
<p style="text-align: right;">Page 56</p> <p>1 ARBITRATOR PRO: All right. Ms. Reporter, we can 2 go back on the record if we haven't been on the record, 3 November 29th will be the date for the filing of 4 simultaneous briefs, and I will still endeavor for the 5 31st, although it could trickle over. I'll let you know. 6 MR. HEBERT: Thank you, Judge. 7 MR. BRADLEY: Judge, absent an emergency, there's 8 no motions to strike or supplemental surreplies or 9 anything like that? 10 ARBITRATOR PRO: Right, right. Look, obviously if 11 there is something emergent, you have to be able to deal 12 with it. 13 Gents, I'm going to leave the exhibits on the 14 dolly. 15 MR. BRADLEY: We're going to talk to Litigation 16 Services. 17 ARBITRATOR PRO: Thank you, Erin. 18 (At 2:15 p.m., the proceedings concluded.) 19 * * * 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 57</p> <p>1 STATE OF NEVADA) 2) ss. 3 COUNTY OF WASHOE) 4 5 I, ERIN T. FERRETTO, Certified Court 6 Reporter of the State of Nevada, in and for the County of 7 Washoe, DO HEREBY CERTIFY: 8 That I was present for the above-entitled 9 proceedings on THURSDAY, OCTOBER 18TH, 2018, and took 10 verbatim stenotype notes of the proceedings had upon the 11 matter captioned within, and thereafter transcribed them 12 into typewriting as herein appears; 13 That the foregoing transcription is a full, 14 true and correct transcription of my stenotype notes of 15 said proceedings. 16 DATED: This 2nd day of November, 2018. 17 18  19 ERIN T. FERRETTO, CCR #281 20 21 22 23 24 25</p>

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that I am an employee of the LAW OFFICE OF THOMAS C. BRADLEY, and that on the 23rd day of June, 2020, I did serve by way of electronic filing, a true and correct copy of the above and foregoing **RESPONDENTS' APPENDIX VOLUME 1** on the following:

Carl M. Hebert, Esq.
202 California Avenue
Reno, NV 89509
Counsel for Appellant



An employee of
THOMAS C. BRADLEY, ESQ.