

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAVID J. MITCHELL; ET AL.;

Appellants,

vs.

RUSSELL L. NYPE; REVENUE  
PLUS, LLC; AND SHELLEY D.  
KROHN,

Respondents.

Supreme Court Case No. 80693

District Court No. A-16-740689-B

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**APPELLANTS' APPENDIX – VOLUME X OF XXIX**

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Aquarius Owner, LLC, LVLP Holdings,  
LLC, and Live Works Tic Successor, LLC*

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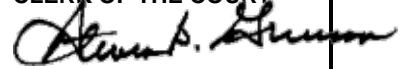
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1/7/20	<b>Trial Transcript - Day 6</b> [January 7, 2020]	XIV	AA 2304-2421



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

RUSSELL NYPE,

Plaintiff(s),

vs.

DAVID MITCHELL,

Defendant(s).

AND RELATED PARTIES

CASE NO. A-16-740689-B  
DEPT NO. XI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 31, 2019

**BENCH TRIAL - DAY 2**

APPEARANCES:

FOR THE PLAINTIFF/  
INTERVENOR PLAINTIFF:

JOHN W. MUIJE, ESQ.

FOR THE DEFENDANTS/  
INTERVENOR DEFENDANTS:

ELLIOT S. BLUT, ESQ.  
BRIAN W. BOSCHKEE, ESQ.  
JAMES L. EDWARDS, ESQ.  
H. STAN JOHNSON, ESQ.  
KEVIN M. JOHNSON, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

**I N D E X**  
**W I T N E S S E S**

**WITNESSES FOR THE PLAINTIFF:**

MARK RICH

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, DECEMBER 31, 2019, 9:20 A.M.**

2 \* \* \* \* \*

3 THE COURT: All right. Sir, if you could remain  
4 standing, we've got to swear you in since it's a new day.

5 THE MARSHAL: You all can have a seat.

6 THE COURT: Sorry.

7 **MARK RICH**

8 [having been called as a witness and being first duly sworn,  
9 testified as follows:]

10 THE CLERK: Thank you. Please be seated and please  
11 state and spell your name for the record.

12 THE WITNESS: Mark Rich. M-a-r-k, R-i-c-h.

13 THE COURT: Mr. Johnson, your cross-examination.

14 MR. H. JOHNSON: Yes. Your Honor, are we doing  
15 examination from the table here so we can see --

16 THE COURT: You can if you want.

17 MR. H. JOHNSON: -- for the exhibits that were --

18 THE COURT: It's up to you.

19 MR. H. JOHNSON: Okay. Because I don't think I can  
20 see it from there. So.

21 THE COURT: It's okay.

22 MR. H. JOHNSON: All right. I'll do it from here.

23 THE COURT: It's all right, Mr. Johnson.

24 MR. H. JOHNSON: Okay. Thank you.

25 THE COURT: If you want to use the podium, you can.

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1 We have flaps we can pull out for you and your books, but if  
2 you need to sit there, we're great.

3 MR. H. JOHNSON: Okay.

4 CROSS-EXAMINATION

5 BY MR. H. JOHNSON:

6 Q All right. Good morning, Mr. Rich. How are you?

7 A Good morning. Very good.

8 Q Good. Maybe just before I forget I wanted to clear  
9 up something. Yesterday you had mentioned that the documents  
10 for Mr. Spitz that you had not seen those; correct?

11 A I'm sorry?

12 Q The hard drive that had been copied of Mr. Spitz in  
13 the New Jersey action, did you indicate that you had not seen  
14 those?

15 A That's correct. There are parameters that are  
16 established of search words and various things like that that  
17 would preclude just looking on the hard drive.

18 Q Okay. So I just want to clarify, though, that you  
19 understood those had been produced around December 12th;  
20 correct?

21 A Subsequent to my supplement, yes.

22 Q Okay, I just wanted to clarify that.

23 Okay. Mr. Rich, I'm assuming you have some real  
24 estate development clients; is that accurate?

25 A That's accurate.

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1 Q And you advise these real estate development clients  
2 how to set up their entities and that type of service?

3 A Yes.

4 Q Okay. Is it unusual for a real estate developer to  
5 set up a number of LLCs in order to acquire property and in  
6 order to develop property?

7 A No, it's not.

8 Q In fact, it's probably the preferred method, is it  
9 not?

10 A I would agree.

11 Q And there's a number of reasons for doing that;  
12 correct?

13 A Correct.

14 Q And some of that could be privacy. You don't want  
15 people to know that you're acquiring certain parcels. Is that  
16 part of the reason?

17 A Yes.

18 Q And also for financing purposes; is that correct?

19 A Yes.

20 Q Sometimes bank required -- banks require a new entity  
21 to be formed to acquire real estate; is that true?

22 A I believe so.

23 Q And you've heard the term special-purpose entity,  
24 have you?

25 A A special --

1 THE COURT: Some of us call them single-purpose  
2 entities.

3 MR. H. JOHNSON: True.

4 BY MR. H. JOHNSON:

5 Q Either single-purpose entities or special-purpose  
6 entities.

7 A You mean a single-member entity or --

8 Q No. For example, a bank may set up what's also named  
9 as a bankruptcy remote entity. Are you familiar with that  
10 term?

11 A Yes.

12 Q And that's to safeguard the collateral from other  
13 types of claims or creditors; is that -- is that accurate?

14 A Yes.

15 Q And you've had that occur where clients have had to  
16 set up a number of entities to acquire and develop real estate;  
17 is that correct?

18 A That is correct.

19 Q And are those entities usually owned by one holding  
20 company?

21 A It depends. That could be the structure.

22 Q Okay. But you've seen that in your practice;  
23 correct?

24 A Yes.

25 Q And that wouldn't be unusual, would it?



1           A     That is correct.

2           Q     As far as operating entities, some entities are  
3 considered operating entities and some LLCs are considered  
4 nonoperating entities. Are you familiar with that?

5           A     Yes.

6           Q     Okay. How would you define a nonoperating entity?

7           A     A nonoperating would be an investment. It could be a  
8 nonoperating entity where it solely as a bank account, solely  
9 has investment properties or market securities.

10          Q     And have you seen it occur where a nonoperating  
11 entity does not have a bank account?

12          A     I've seen that, yes.

13          Q     And is that because there's a holding company above  
14 that entity?

15          A     It could be. Yes.

16          Q     Okay. So you've seen that in your practice?

17          A     I've seen that, yes.

18          Q     Okay. Let's go to your report. I think it's 537.

19               THE CLERK: I'm sorry. What exhibit?

20               THE COURT: 5037? 50037?

21               MR. H. JOHNSON: 50037.

22               THE COURT: 50037.

23 BY MR. H. JOHNSON:

24          Q     Can you see that?

25          A     Yes.

1           Q     All right. So let's look at page 2 of your  
2 supplemental report.

3                     Do you have that?

4           A     Yes.

5           Q     And under summary conclusions, it says, Valuable  
6 assets totaling at least \$13,168,259.85. Now, is that number  
7 from the accumulated note in interest that was incurred as part  
8 of the 305 transaction?

9           A     Yes.

10          Q     Okay. And then on the next page -- well, let's go  
11 down on that same page.

12                     The next paragraph it says, Distributions totaling at  
13 least \$15,148,339. Is that correct?

14          A     Yes.

15          Q     And then if we go to page 3, you have a total. It's  
16 in the second paragraph, and you have a total of thirty-five  
17 million, three hundred and six dollars, seven -- and seven  
18 dollars and forty cents; correct?

19          A     Correct.

20          Q     Now, what's that number comprised of?

21          A     That is comprised of the 13 million, the 15 million  
22 and the 6,900,000.

23          Q     Okay. Now, in the next section, it's called the  
24 defendant transfers. Do you see that?

25          A     Yes.

1 Q Okay. Now, on that section you identified the 305  
2 transaction with LiveWork; correct?

3 A Yes.

4 Q You identify the Casino Coolidge transaction with  
5 Leah Properties; correct?

6 A Later on, yes.

7 Q Yes. On page 4?

8 A Yes.

9 Q And then you discuss or identify distribution --  
10 distributions from LVLP Holdings to Liberman and Mitchell; is  
11 that correct?

12 A Yes.

13 Q On page 5?

14 A There seems to be a lag in the -- in your discussion  
15 versus the screen that I'm looking at.

16 Q Okay. Now, besides those, have you identified any  
17 other transfers?

18 A No -- or I have, but not as a part of these damages?

19 Q They're not contained -- this is all that's contained  
20 in your supplemental report; is that accurate?

21 A No. There are other transfers, such as the Wink  
22 transfer, the FCLW transfer, but they're not a part of the  
23 35 million that we had discussed initially.

24 Q Okay.

25 A These are.

1 Q And they're not part of the section that says  
2 defendant transfers. Is that accurate?

3 A Yes. That's correct.

4 Q And if you recall, when I took your deposition, I  
5 asked you about other -- any other transfers, and as I recall,  
6 you indicated these were the transfers that you had identified;  
7 correct?

8 A Well, just as we walked through this, that's my  
9 understanding as we went through the report that that's what  
10 you were talking about.

11 Q Okay. Now, let's go to the section that says  
12 distributions from LVLP Holdings to Liberman and Mitchell.

13 And you've identified a lump sum of \$15,148,339,  
14 which were distributions from 2007 to 2016; correct?

15 A That's correct.

16 Q And did you identify or can you identify any specific  
17 transfers in that group that you believe are fraudulent  
18 conveyances?

19 A Well, I believe that there are flags that are  
20 representative of what we would consider fraud, as I discussed  
21 in my deposition. That would be a situation where the  
22 distributions create a liquidity issue, and so beginning in  
23 2007, there are liquidity issues, and throughout 2017 the bank  
24 account at the start of 2007 was about almost \$9 million. And  
25 by 2017, it was zero. Certainly the distributions of this 15,

1 approximately 14 million was distributed in 2007.

2 Q Okay.

3 A So I think that that's a fraud, what we would call an  
4 element of fraud, as I discussed in my deposition.

5 Q Okay. My question was, have you identified any  
6 specific transactions, for example, in 2016, on a certain date  
7 there was a transfer from LVLP to Mr. Liberman or Mr. Mitchell.  
8 Have you identified any specific transactions that you're  
9 asserting was a fraudulent conveyance?

10 A Are you talking solely about the 15 million that we  
11 were just discussing --

12 Q Correct?

13 A -- or are you talking in general?

14 Q No. I'm talking about this specific part of your  
15 claim.

16 A I would say that --

17 Q Or your report.

18 A -- each of the distributions that created a liquidity  
19 issue or insolvency from 2007 to present are elements of fraud,  
20 yes.

21 Q Okay. But that's not my question. My question is  
22 have you identified any specific transactions by amount and  
23 date and to whom that you are alleging is a fraudulent  
24 conveyance?

25 A Yes.

1 Q Okay. Which specific transfers have you alleged?

2 A Well, I would have to have the list of distributions  
3 off of the general ledger.

4 But each one of those are an element of fraud.

5 Q Okay.

6 A And have a cumulative effect in terms of the  
7 insolvency of these entities.

8 Q Okay. But from your report and your exhibit, I  
9 cannot tell which specific transfer that you're alleging is a  
10 fraudulent conveyance. So that's what I'm asking you.

11 A Well, as a part of my workpapers I have all of the  
12 general ledgers, and that is the support for this 15 million as  
13 well as the tax returns that identify by year how much was paid  
14 to Mr. Liberman and Mr. Mitchell in total and individually  
15 within the general ledgers.

16 Q Okay.

17 THE COURT: Sir, do you have --

18 Wait.

19 Do you have your workpapers here with you?

20 THE WITNESS: They should be as --

21 MR. MUIJE: They've been marked as an exhibit, Your  
22 Honor.

23 THE COURT: All right. So if you need to refer to  
24 your workpapers to answer the questions, I would appreciate it  
25 because the reason Mr. Johnson is asking this question is

1 because he has a statute of limitations argument, and I've told  
2 him he has to address it on a transaction by transaction basis,  
3 which may mean your life is more difficult, and my life is more  
4 difficult, but that's the way I told him he has to address it.

5 So how do we get him to his workpapers?

6 MR. MUIJE: I will find them momentarily, Your Honor.

7 THE COURT: Was that helpful, Mr. Johnson?

8 MR. H. JOHNSON: I didn't hear that. What was the --

9 THE COURT: Nevermind.

10 Mr. Edwards, how was Department 9?

11 MR. EDWARDS: It was good.

12 THE COURT: Good. I'm glad you're back.

13 MR. EDWARDS: Thank you.

14 THE WITNESS: It may also be helpful that the  
15 Exhibit 10 lists what Mr. Spitz says those are.

16 THE COURT: Exhibit 10 to your report?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 THE WITNESS: And --

20 THE COURT: Well, why don't you start there since we  
21 have that accessible to us --

22 THE WITNESS: -- provides detail.

23 THE COURT: Do you have a copy of your report with  
24 you, or are you relying on the one on the screen?

25 THE WITNESS: I have a copy of my report. I don't

1 have all the exhibits though.

2 THE COURT: Do you have Exhibit 10?

3 THE WITNESS: No, I do not.

4 THE COURT: Okay. Then we'll put it up on the screen  
5 for you. And maybe that will help us.

6 THE WITNESS: That's -- that's in the original  
7 report.

8 (Pause in the proceedings.)

9 MR. MUIJE: The workpapers are located at 60053.

10 THE COURT: So I'm going to turn my monitor off.

11 MR. MUIJE: They did admit it, Your Honor.

12 THE COURT: Oh, they've been admitted. Okay.

13 And do you know where within your workpapers it is,  
14 sir?

15 THE WITNESS: It's in Exhibit RWCO 10.

16 THE COURT: Okay.

17 THE WITNESS: Or the workpapers?

18 THE COURT: Yes, in the workpapers.

19 UNIDENTIFIED SPEAKER: Workpapers.

20 THE WITNESS: Not offhand. I do not know what Bates  
21 those are.

22 THE COURT: So perhaps we can go to the original  
23 report, Exhibit 10, and see if that helps him answer the  
24 question Mr. Johnson has been asking him.

25 MR. MUIJE: 5037 on the screen does contain his

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1 original Exhibit 10. I just --

2 MR. BOSCHEE: 5037 has -- is Exhibit 10, and then I  
3 think --

4 MR. BLUT: Yeah. Page 124. I'm trying to move this  
5 along.

6 THE COURT: Appreciate that. My 11:45 conference  
7 call is going to tell me that we have next week available. So  
8 if we have to spill into next week we will.

9 UNIDENTIFIED SPEAKER: No, he's not.

10 THE COURT: Look at the gentleman sitting next to  
11 you. He's going to say that answer during the 11:45 conference  
12 call.

13 UNIDENTIFIED SPEAKER: I heard he's on the call.

14 THE COURT: It's not today?

15 MR. BOSCHEE: It's Thursday.

16 THE COURT: It's Thursday. Darn. On Thursday  
17 they're going to tell us next week is available.

18 THE WITNESS: I have the general ledgers with me.

19 THE COURT: Will that help you answer Mr. Johnson's  
20 question?

21 THE WITNESS: Yes. I could read those into the  
22 record.

23 THE COURT: Why don't you grab them.

24 MR. BOSCHEE: Just for purposes of all that, the  
25 general ledgers are the same as the documents that are in

1 evidence --

2 THE COURT: You are all welcome to look --

3 MR. BOSCHÉE: -- different --

4 THE COURT: -- at what he's going to use --

5 MR. BOSCHÉE: Okay.

6 THE COURT: -- to refresh his memory to answer  
7 Mr. Johnson's questions.

8 (Pause in the proceedings.)

9 BY MR. H. JOHNSON:

10 Q All right. We also have your Exhibit 10 in  
11 Exhibit 50028.

12 A Yes. Those are by year.

13 Q Correct.

14 A So it doesn't provide the detail that you're  
15 requesting, but I --

16 Q Okay. So Exhibit 10 doesn't have the detail. Is  
17 that --

18 A Yes.

19 Q Okay.

20 A It has a summary that Mr. Spitz had prepared.

21 Q Okay.

22 A The distributions that I'm talking about, beginning  
23 in 2007, Barnet Liberman,

24 On June 11th of 2007, 25,000;

25 June 21st, 6 million;

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1           July 3rd, \$782,643.10;  
2           September 4th, 2007, \$2,929,765;  
3           October 10th, \$650,000;  
4           December 10th, 150,000.

5           Q     And are those to both Mr. Liberman and Mr. Mitchell,  
6 or are they to --

7           A     No. That's Mr. Liberman.

8           Q     Okay.

9           A     Then Mr. Mitchell recorded distributions are:  
10          December 11th, 2007, of 150,000;  
11          January 9th, 25,000;  
12          June 25th of 2007, 3 million;  
13          July 3rd, \$313,730.90;  
14          September 4th, 2007, \$130,000;  
15          September 7th, \$25,000;  
16          October 10th, \$650,000.  
17          Those are off the general ledger for 2007.

18          Q     All right.

19          A     2008, David Mitchell,  
20          100,000 on January 1st;  
21          August 1st of 2008, 13,000;  
22          September 17th, 25,000;  
23          October 10th, 15,000;  
24          October 27th, 32,000;  
25          October 27th, 13,000 --

JD Reporting, Inc.

1 THE COURT: So, sir, before you leave Mr. Mitchell in  
2 the year 2008 distributions, it shows on the summary sheet that  
3 is up on the screen, which is an exhibit to your report,  
4 129,500 as the distributions in 2008 to Mitchell.

5 It sounds like the numbers you just gave me are more  
6 than that. Can you tell me why that is?

7 THE WITNESS: Because this schedule does not agree  
8 and I note that at my report, it doesn't agree to the  
9 distributions.

10 THE COURT: Okay. Thank you.

11 What he's reading from is his workpapers which are  
12 the general ledger which is an exhibit, but we don't know which  
13 one. I don't know which one.

14 MR. BLUT: Well, 2008, Your Honor, is 30031 is the  
15 2008 general ledger.

16 THE COURT: Lovely. Mr. Blut, you are amazing.

17 THE CLERK: Thank you.

18 (Pause in the proceedings.)

19 THE WITNESS: Those that I just read, I'm sorry, were  
20 Barnet Liberman's.

21 MR. H. JOHNSON: Oh, okay.

22 THE WITNESS: It's very small print.

23 THE COURT: Would you like my magnifying glass?

24 THE WITNESS: Possibly. Thank you.

25 THE COURT: It's what I used to read plans that

1 people shrink to 8 and a half by 11.

2 THE WITNESS: Yes. Those were Barnet Liberman.

3 THE COURT: Okay.

4 THE WITNESS: David Mitchell, in 2008,

5 9/17, 25,000;

6 9/26, 15,000;

7 10/16, 32,000;

8 10/24, 13,000;

9 5/14, 15,000;

10 6/9, 1500;

11 And 8/1, 13,000.

12 In 2009 there is a journal entry for 800,000 to  
13 Barnet Liberman.

14 BY MR. H. JOHNSON:

15 Q Does that have a date?

16 A Just December 31st, and that's typical of the  
17 records with LVLP and defendants.

18 Then David Mitchell, there is 2/9 for 13,000.

19 Then there's a journal entry for 13,000, and the  
20 total on the general ledger is 26,000.

21 Did I read in 2010? I can't recall.

22 Q No.

23 A There doesn't appear to be any in 2010 that are by  
24 check.

25 There do not appear to be any by check in 2011.

1           There is a check to Barnet Liberman in 2012 for 4700  
2 as a distribution.

3           Q     What was the date of the check?

4           A     I'm sorry?

5           Q     What was the date of the check for 4700?

6           A     It's 1/3 of '12.

7           Q     Thank you.

8           A     There do not appear to be any in '13.

9           2014 there is a journal entry for 250,000 related to  
10 David Mitchell, and that's dated December 31st of 2014.

11           And Barnet Liberman, there's a journal entry for  
12 91,000 on December 31st -- \$91,934.47 on December 31st of  
13 2014.

14           There does not appear to be any in 2015.

15           There does not appear to be any in '16.

16           And in '17, by a journal entry, on December 31st of  
17 2017, in both Barnet Liberman and David Mitchell is a debit for  
18 72,000 -- or a distribution listed for seventy-two thousand,  
19 five, twenty-seven, seventy-two for David Mitchell; and  
20 seventy-two, five, twenty-seven, seventy-one for Barnet  
21 Liberman.

22           Q     Okay. Now, of those specific transfers, which ones  
23 are you alleging are a fraudulent conveyance?

24           A     Which ones are -- I'm sorry?

25           Q     Which ones of those specific transactions that you

1 identified are you -- are you saying are a fraudulent  
2 conveyance?

3 A I would say all of them because a threat was known  
4 during that time period from 2007 to present.

5 Q Okay. When was it that Las Vegas Land Partners  
6 actually became a debtor, a judgment debtor?

7 MR. MUIJE: Objection. Irrelevant.

8 THE COURT: Overruled.

9 THE WITNESS: In April of 2015.

10 MR. H. JOHNSON: Okay.

11 THE WITNESS: On or about, I believe.

12 BY MR. H. JOHNSON:

13 Q Okay. So that's the first time when LVLP actually  
14 became a judgment debtor; is that correct?

15 A That's correct.

16 Q Now, these were termed distributions. Do you know  
17 whether these were repayment of debt?

18 A These distributions?

19 Q Yes. You've termed them distributions, but can you  
20 tell whether this was a repayment of debt to Mr. Mitchell or  
21 Mr. Liberman?

22 A By their nature, distributions are a distribution,  
23 not debt.

24 Q So you think these are all return of capital?

25 A Yes.

1           Q     Okay. And yesterday you did testify about the  
2 documents which you say indicated there was a time when there  
3 was certain distributions treated as return of capital, and  
4 there was some other documents that indicated those might be  
5 treated as debt.

6                     Do you remember that testimony?

7           A     Yes.

8           Q     And in your practice, when you've advised clients,  
9 have you ever had the occasion where you reclassified debt to  
10 capital or capital to debt?

11          A     Not after the year is closed. Once the funds are  
12 treated as a distribution or a contribution, that's it.

13          Q     Okay. But does that mean during the year you looked  
14 at whether something should be treated as debt or equity and  
15 made that determination?

16          A     Are you talking about those schedules, or are you --

17          Q     In general. I said in advising your clients, have  
18 there been occasions where you have reclassified or told the  
19 client to reclassify debt to equity or equity to debt?

20          A     If there -- if the formalities are maintained --  
21 meaning there is debt, there's evidence of debt -- then it's  
22 debt, and that means it was originally misclassified.

23                     If it was distributed, they posted it to  
24 distributions, then that's a distribution. If there is no  
25 evidence of it being debt, it's just a distribution in the case



1 of these types of entities, like an LLC.

2 Q Uh-huh. Yeah. And have you recalled circumstances  
3 where the client or the bookkeeper had classified something in  
4 the wrong category: They classified it as capital, and it  
5 should have been debt?

6 A Yes.

7 Q Okay. And when that occurs, then you've made that  
8 change to properly classify it. Is that accurate?

9 A If those are the circumstances, where the year has  
10 not closed, and -- yes, it would be -- of course, if there's a  
11 misclassification it would be warranted to reclassify, yes.

12 Q Okay. Have you ever seen a reclassification after  
13 the year had closed?

14 A I have.

15 Q And what was that? Explain when that happened. Or  
16 what was the circumstances of that?

17 A Well, as we've discussed, and it could be any number  
18 of things and any number of reasons, but what happens is then  
19 you amend the tax return, and, you know, you have those  
20 documents that formalize that transaction.

21 And so, yeah, that does happen, and what follows is  
22 an amended return. And those previously misclassified items  
23 are corrected in the returns themselves.

24 Q Okay. So the fact that there's misclassified items  
25 and that they're corrected doesn't indicate fraud by itself,

1 does it?

2 A I'd say it's an -- it could be an element of fraud  
3 depending upon the number of occurrences of those types of  
4 things happening. When it's recurring, I think it's -- it's  
5 not only a flag, which in this case these are fraud flags, but  
6 when you have recurring issues related to the accounting  
7 records and the people involved -- Mr. Spitz and  
8 Mr. Mitchell -- then I think that lends itself on a scorecard  
9 towards elements of fraud. Yes.

10 Q And when you say it's a flag of fraud, are you saying  
11 that a reclassification from debt to equity or equity to debt  
12 is always a flag of fraud?

13 A No.

14 Q In fact, you testified that you have had -- you've  
15 advised clients to make those corrections when appropriate; is  
16 that accurate?

17 A That's accurate.

18 Q And you weren't advising them to do anything  
19 fraudulent; correct?

20 A Of course not.

21 Q Okay. So if Mr. Liberman's CPA or attorney advised  
22 them to do something regarding reclassification of capital to  
23 debt or vice versa, if they're following the advice of their  
24 CPAs or lawyers, would that be fraud?

25 A It could be. Even following the advice of a

1 professional could lend itself to fraud, yes.

2 Q But it could also not be fraud; correct?

3 A There are cases where it's not fraud, yes.

4 Q Okay. And in order to determine that, you'd have to  
5 know exactly why it was being done and whether that was  
6 impacting a particular creditor; is that accurate?

7 A That's accurate.

8 Q Okay. Now, as I recall, we discussed this in your  
9 deposition. And as I recall, you were more concerned about the  
10 reclassification from capital to debt as that might affect  
11 Mr. Nype; is that accurate?

12 A That's accurate.

13 Q Okay. So your concern, when you're talking about  
14 this area in general is more of a situation where capital would  
15 be reclassified as debt, and you believe that would affect  
16 Mr. Nype?

17 A It could possibly, yes.

18 Q Or other creditors?

19 A Yes.

20 Q Is the reverse also true? If debt is reclassified as  
21 capital, would that affect Mr. Nype or other creditors?

22 A I think that that would be more advantageous in the  
23 claims that are being made in this case if they're  
24 distributions.

25 Q I'm not sure I understand. Do you want me to restate

1 the question? I didn't understand your answer.

2 A Okay. Repeat the question. Maybe I misunderstood  
3 you. I'm sorry.

4 Q You had indicated that the concern with  
5 recapitalizing -- or recasting capital as debt would be that  
6 that might affect a creditor such as Mr. Nype or other  
7 creditors; correct?

8 A Yes.

9 Q Okay. Is the reverse true? If someone reclassified  
10 debt as capital, would that negatively impact a creditor?

11 A Can I answer it this way, that I believe that the  
12 loans are more advantageous -- absent alter ego issues, it  
13 would be more advantageous to a creditor where you have the  
14 parent company owes the money because distributions ultimately  
15 flow back to the parent company. In theory they're supposed to  
16 flow back.

17 If a distribution is made and the formalities are  
18 kept, you would not distribute from an entity such as LiveWork  
19 directly to Mr. Mitchell and Mr. Liberman. It would go to the  
20 parent company who is the member. It would flow back to the  
21 member, then to Mr. Liberman and Mr. Mitchell.

22 What a loan enables a creditor to do is if you loan  
23 the money, you can pay it directly back to Mr. Liberman and  
24 Mr. Mitchell and bypass the parent company or holding company,  
25 whatever you want to call it.

1 Q Uh-huh.

2 A So loans are more advantageous in my opinion in this  
3 type of a case for two reasons. One is interest is accrued,  
4 obviously. And so there's additional amounts that could be  
5 paid out or justified as paid out to the lender.

6 And then in addition, the amounts are able to be paid  
7 directly to the individuals as opposed to any kind of flow.

8 Q Okay. So just in summary, a reclassification of the  
9 debt would favor the -- or would this favor the creditor?

10 A Absent alter ego issues --

11 Q Okay.

12 A -- I believe that it -- that it would.

13 Q Okay. All right. There was testimony regarding the  
14 tax returns and a list of disregarded entities. Do you recall  
15 that testimony?

16 A Yes.

17 Q And the list of disregarded entities was provided by  
18 Mr. Spitz. Is that accurate?

19 A One of the lists for sure was provided by Mr. Spitz.  
20 The other, I believe was provided by I want to say 305. There  
21 were two lists that were provided.

22 Q Okay. But it's your understanding that the tax  
23 return that's filed by LVLP or LVLP Holdings is filed on behalf  
24 of those entities; is that correct? Or they're included in the  
25 tax return?

1           A     Yes, they are collapsed into that entity in theory.

2           Q     Now, is a disregarded entity the same as a  
3 pass-through entity?

4           A     It can be, but, I mean, that's not really -- there's  
5 really not a connection. A disregarded entity can be a  
6 pass-through, but there's also pass-throughs that are not  
7 disregarded.

8           Q     Okay. Because I had noticed on the tax returns that  
9 there is a section that says pass-through entities, and then it  
10 lists several entities. It doesn't list all of the entities,  
11 but it lists some of them. Are you familiar with that?

12          A     Yes.

13          Q     Okay. So that's -- why are those classified as  
14 pass-through entities? Do you know?

15          A     Yes. Because those entities are actually spun off  
16 from that group, and a member of the group of defendant  
17 entities is an owner in one of those pass-through entities, and  
18 the entities that you saw there are the Forest City entities, I  
19 believe -- PQ, HQ and FCLW.

20          Q     Okay. All right. Now, I believe your counsel asked  
21 you whether this type of reporting on tax returns is allowable  
22 by the IRS, and I believe you indicated it was. Were you -- or  
23 do you agree with that?

24          A     It is allowable, and that -- to report single-member  
25 entities on one tax return is allowable.

1 Q And because they're classified as disregarded  
2 entities, that doesn't mean that they are not legally separate  
3 entities; is that correct?

4 A That is absolutely correct. That does not mean, if I  
5 understand you, it does not mean that they are not separate  
6 legal entities.

7 Q Correct.

8 A Yeah. In fact, they are separate legal entities as  
9 what I -- just to clarify my answer. Yes.

10 Q Correct. Okay.

11 (Indiscernible) apologize. I can't -- it kind of  
12 jumps around because the way the testimony was and the way my  
13 notes are.

14 But on, let's see, this would be Exhibit 40006.

15 MR. H. JOHNSON: Can we bring that up. Okay.

16 BY MR. H. JOHNSON:

17 Q All right. Can you see that?

18 A Yes.

19 Q Okay. This is the final settlement statement  
20 regarding the 305-LiveWork transaction; is that true?

21 A It appears to be correct, yes.

22 Q Okay. And then I wanted to draw your attention to on  
23 the far right side that says "Seller Credit," and there's an  
24 entry \$700,672.65. And that indicates that was received from  
25 Las Vegas Land Partners, LLC. Do you see that?

1           A     Yes.

2           Q     Does that mean that Las Vegas Land Partners  
3 contributed that money to the closing?

4           A     It's difficult to tell from this, but it's obviously  
5 a seller's credit.

6           Q     Because there's been some testimony about the fact  
7 that there was money paid immediately on the note of \$700,000.  
8 And I think you've indicated that there's some question about  
9 whether that occurred.

10          A     There is a question of whether that occurred in that  
11 LiveWork sued for 5 million plus interest, and the general  
12 ledgers show that there is a \$700,000 credit. So there is --  
13 you know, I don't know why LiveWork would sue for the full  
14 5 million if they acknowledged they received 700-.

15                The auditor's report acknowledges 700,000 was paid.  
16 It is my belief that the note after this transaction was 4.3  
17 based on an independent auditor's report that it was 4.3.

18          Q     And that's an audited report of 305?

19          A     That's correct.

20          Q     But as far as this Exhibit 40006, this indicates that  
21 it was actually a payment made into escrow of approximately  
22 \$700,000 by Las Vegas Land Partners; correct?

23          A     Well, this would be LiveWork.

24          Q     Well, it specifies --

25          A     Oh, yes. Yeah.



1 Q -- in the detail.

2 A Okay. I agree. I thought you meant the escrow  
3 itself. But, yes.

4 Q Okay. Let me direct your attention to 40002. Okay.  
5 This is the --

6 Do you have that in front of you?

7 A A closing on Aquarius Owner?

8 Q Yes. Yes. So this would have been the original  
9 acquisition of the property that relates to the 305-LiveWork  
10 transaction in 2006; is that correct?

11 A Yes.

12 Q And it indicates total consideration paid was  
13 10,500,000?

14 A Yes.

15 Q Okay. And do you know whether this particular  
16 acquisition included more parcels than were sold to 305?

17 A Well, based on the property description, I would say  
18 that it is the same parcels up above where it describes the  
19 parcels and/or actually the address is 320 and 300; that would  
20 be the Aquarius Plaza.

21 Q Okay. Well, we'll -- we can deal with that detail  
22 later, but you would agree that the original acquisition price  
23 was \$10 million -- \$10,500,000; correct?

24 A Yes. There's also a 4797 that was filed for this  
25 year that has all the precise acquisition costs as reported on

1 the tax return.

2 Q Okay. And that later in 2007, what was sold to 305  
3 for \$25 million is either the same property -- I actually  
4 believe its less parcels, but I won't argue with you about  
5 that. But at least part of those parcels or all of them were  
6 sold for \$25 million in 2007 to 305 Las Vegas, LLC; correct?

7 A That's my understanding, yes.

8 Q So based on the acquisition price and the sales  
9 price, would you say that LiveWork received fair consideration  
10 for that land?

11 A Well, absent an appraisal, I don't know that I can  
12 conclude that.

13 Q It did receive approximately \$10 million more for the  
14 land; correct?

15 A That's correct.

16 Q And an actual transaction in the marketplace is  
17 usually a good indication of the value of the property;  
18 correct?

19 A Well, this is not an arm's-length transaction.  
20 This --

21 Q I meant the acquisition price.

22 A The acquisition price, yes, I would agree.

23 Q Okay. All right. Now, let's go back to your expert  
24 report.

25 All right. Do you have that in front of you?

1 A Yes.

2 Q Okay. Let's go to page 3 of your report. And this  
3 is where you begin to discuss under defendant transfer the 305  
4 transaction with LiveWork; correct?

5 A Yes.

6 Q And part of what you indicated was an issue with this  
7 transaction was the note that was taken back by the seller for  
8 \$5 million; correct?

9 A Yes.

10 Q And you felt that the fact they took back a note and  
11 there were nonpayment, there was nonpayment and that it was not  
12 collected was a indication or a red flag, as you call it; is  
13 that -- is that accurate?

14 A It's an element of fraud. Yes.

15 Q Okay. And in your original report, you set forth the  
16 fact that there was a \$5 million note that apparently was not  
17 collected, and then you set forth the fact that there was a  
18 lease entered into between 305 and Charleston Casino; is that  
19 correct?

20 A That's correct.

21 Q And the other issue you had with this was that  
22 apparently lease payments were not made by Charleston Casino to  
23 305; is that also correct?

24 A That is correct.

25 Q And you were, and as I recall when we earlier

1 discussed this, you were indicating that you didn't understand  
2 or you thought it was extraordinary that those two items were  
3 not -- that payments were not made on the note or the lease; is  
4 that accurate?

5 A Well, I thought the entire transaction from a  
6 standpoint of not collecting the rent from Charleston Casino  
7 Partners and not making the payments to LiveWork for that  
8 period of time with no action being taken was -- it is  
9 extraordinary.

10 Q Okay. And because you classified it as  
11 extraordinary, you felt that was a red flag, as you put it?

12 A Yes. I don't believe any of that is arm's length,  
13 and I don't believe that any reasonable person would believe  
14 that that would take place absent ownership, which would be  
15 Mr. Liberman on the 305 side; Mr. Mitchell and Mr. Liberman on  
16 the casino, Charleston Casino Partners, and LiveWork side.  
17 Absent that relationship, I don't believe that that would not  
18 only go on that long but it would end up the way that it did.

19 Q Okay. So your conclusion was there was something  
20 wrong with that scenario; correct?

21 A Absolutely.

22 Q Okay. Now, you didn't mention in your report that  
23 the lease was guaranteed by Mr. Mitchell and Mr. Liberman to  
24 the bank. Did you mention that fact?

25 A No.

1 Q Okay. Did you know about that?

2 A I'm aware that there were guarantees related to this  
3 entire transaction.

4 Q But specifically regarding the lease?

5 A Yes.

6 Q You weren't aware of those?

7 A Yes.

8 Q Okay. Now, you did in your supplement mention that  
9 there was a settlement that involved the bank, the lender and  
10 basically all of the parties involved in this transaction; is  
11 that accurate?

12 A That's accurate, but that settlement did not involve  
13 LiveWork.

14 Q Okay.

15 A LiveWork I did not see was a party to that  
16 settlement.

17 Q Okay. But as far as the other parties -- Charleston  
18 Casino and 305, the guarantors of the lease -- those parties  
19 were all participants in that particular settlement; correct?

20 A Mr. Mitchell was a guarantor on the note.  
21 Mr. Liberman was a guarantor on the note. That brought  
22 Mr. Mitchell into this transaction. And the 305 Las Vegas, who  
23 was the maker of the note, all dealt with this Heartland  
24 situation.

25 Q Are you sure Mr. Mitchell was a guarantor of the

1 note?

2 A Yes.

3 Q On the \$5 million note?

4 A On the \$9 million note he was a guarantor.

5 Q Oh, to the bank?

6 A Yes.

7 Q Okay. I thought you were referring to the \$5 million  
8 note.

9 A No.

10 Q Okay. All right.

11 A Sorry.

12 Q Okay. Let's look at the -- this would be  
13 Exhibit 50040 or, yeah, 5040, which is the settlement  
14 agreement. Are you familiar -- well, let me -- we'll pull it  
15 up.

16 A Yes, I'm familiar with this.

17 Q Have you read this document?

18 A I have.

19 Q Okay. Now, this document involves Heartland Bank,  
20 305 Las Vegas, LLC, David Mitchell, Barnet Liberman and 305  
21 Second Avenue Associates; correct?

22 A Correct.

23 MR. MUIJE: Counsel, what's the number on that  
24 document?

25 MR. H. JOHNSON: It's 50040.

1 MR. MUIJE: 50040. Thank you.

2 BY MR. H. JOHNSON:

3 Q Now, in the recitals this goes through and explains  
4 the existing notes. There was a first note for 7 million and a  
5 second note for 4 million; correct?

6 A Yes.

7 Q For a total of 11 million?

8 A Yes.

9 Q And it also talks about that -- this is in Recital D.

10 A I'm sorry?

11 Q Recital D of that exhibit.

12 A Okay.

13 Q It talks about the personal guarantee of the lease by  
14 Mitchell and Liberman. Do you see that?

15 A Yes.

16 Q Okay. So would you agree that the lease was meant to  
17 have meaning to the bank because they required that  
18 Mr. Mitchell and Mr. Liberman personally guarantee that lease?

19 A I would agree with that.

20 Q And in Recital E it actually says that the notes, the  
21 deeds of trust, the lease guaranty -- or guaranty, yeah, and  
22 each other instrument, agreement and document executed by the  
23 borrower Mitchell, Liberman or 305 Second Avenue are all  
24 considered loan documents; correct?

25 A Yes.

1           Q     So all of those documents, the lease guaranty, and  
2 all of those were important to the bank. Those are something  
3 the bank insisted on in order to loan the part of the purchase  
4 proceeds to 305 to purchase the property. Is that correct?

5           A     Yes.

6           Q     Now, in paragraph G, it talks about the lender --  
7 that would be Heartland Bank -- instituted suit against the  
8 borrower Mitchell and Liberman in a suit filed in St. Louis  
9 County, Missouri. Do you see that?

10          A     Yes.

11          Q     Now, that wasn't mentioned in your report, was it?

12          A     No.

13          Q     Okay. So the bank was serious about getting paid and  
14 was serious about enforcing the lease guaranty; is that  
15 correct?

16          A     Yes.

17          Q     All right. There was also litigation filed in Clark  
18 County, Nevada, *305 Las Vegas, LLC, versus David Mitchell*. And  
19 also there was other litigation filed from LiveWork against 305  
20 in regards to the note. Is that correct?

21          A     That's correct.

22          Q     Okay. And I --

23          A     Can I see the -- I'm sorry.

24          Q     Oh.

25          A     Can I see the Bates on this?



1           In this agreement, the Bates are referenced in my  
2 report.

3           Q     In your supplement?

4           A     Yes.

5           Q     In your supplement?

6           A     It is. It is. So --

7           Q     But not in the original?

8           A     So when you say I haven't mentioned it, I actually  
9 referred to this agreement.

10          Q     Okay. All right. But I don't believe you explained  
11 in the supplement why the Nevada litigation went away, that it  
12 was directly related to the settlement agreement. You didn't  
13 explain that, did you?

14          A     Well, LiveWork is not a party to this. So somebody  
15 unilaterally agreed to make that note go away. I do not see a  
16 formality by LiveWork as a part of this agreement that would  
17 cause the note to go away other than these parties agreed with  
18 Heartland.

19          A     Okay.

20          Q     I do not see where LiveWork agreed with Heartland.

21          Q     Okay. They weren't directly part of this, but we'll  
22 get to some other documents and the reference in here to the  
23 note, but forgiving the note was a requirement of the  
24 settlement agreement; correct?

25          A     I'm sorry?

1 Q Forgiving the note was a requirement of the  
2 settlement agreement; correct?

3 A Well, they want clear title. So obviously they're  
4 going to give 305 the benefit of reducing the balance of the  
5 note by a substantial sum after David Mitchell pays. After the  
6 guarantors Barry Liberman -- or Barnet Liberman, I'm sorry,  
7 David Mitchell and the maker of the note kick in a substantial  
8 amount, then they'll in turn reduce that note substantially on  
9 behalf of 305 that --

10 Q And you're talking about the \$11 million; correct?

11 A Well, that was the original balance. That's not the  
12 actual balance of the note. The balance of the note at that  
13 time was nine million, one, fifty.

14 Q Yeah. I just wanted to make it clear though that  
15 you're not talking about the \$5 million note.

16 A I'm not.

17 Q Okay.

18 A That is correct.

19 Q Okay. Let me direct your attention to page 6 of that  
20 exhibit.

21 MR. H. JOHNSON: Go up or keep going. Down a little  
22 bit. Yeah, right there -- okay. There.

23 BY MR. H. JOHNSON:

24 Q So do you see page 6?

25 A Yes.

1 Q Okay. The last paragraph on that page?

2 A Yes.

3 Q It says, Borrower and Mitchell shall have at  
4 borrower's election and for the closing day, the first deed of  
5 trust would be released and a record -- as a record of an  
6 encumbrance on the property and the debt evidencing thereby  
7 would be fully satisfied and released. Do you see that?

8 A Yes.

9 Q And do you see where it also says that the litigation  
10 *LiveWork, LLC, versus 305 Las Vegas, LLC*, would be dismissed?

11 A Yes.

12 Q Okay. Does that explain -- because I know when we  
13 took your deposition you had major questions about why the  
14 litigation between LiveWork and 305 Las Vegas was dismissed.  
15 You said there was no settlement. There was nothing in the  
16 record that would indicate why that was dismissed, and you even  
17 characterized it as a sham litigation. Do you recall that?

18 A I believe that is the case, but I didn't have  
19 questions, sir. I had no questions. I'd read this agreement.

20 My point was LiveWork is not a party to this  
21 agreement. I see nothing on LiveWork's side as a formality or  
22 as anything that they agreed to this or had a basis for writing  
23 off the note other than Mr. Mitchell and Mr. Liberman decided  
24 we're going to make -- we're going to agree to this.

25 Q But doesn't this explain why the litigation was

1 dismissed?

2 A I would say obviously it had to be, or they couldn't  
3 have entered into this agreement, but there's no settlement  
4 agreement, and that's what I was talking about. There is no  
5 LiveWork document that discusses what they received in return.

6 Q And this would also explain why the note was written  
7 off on the accounting records; correct?

8 A Absolutely not. No, it does not.

9 Q When this says that the debt has to be shown as  
10 satisfied, this would not indicate why the accounting records  
11 would not carry that forward as a debt?

12 A Absolutely not. This is completely inconsistent with  
13 what the accounting records said. That is not the case  
14 whatsoever.

15 Q But as part of the settlement agreement, they had to  
16 write the note off; correct?

17 A If they would have done this in 2014, there would --  
18 it would be an entirely different story, but that's not what  
19 happened. And in writing off a note in and of itself is  
20 still -- that's an element of fraud between related parties and  
21 making a related party note just go away. Even with this  
22 document it doesn't explain what LiveWork received in exchange.

23 Q Well, indirectly LiveWork had an interest up to a  
24 certain point because of the fact that a related entity had a  
25 lease regarding the property; correct?

1 A Well, then you would concede alter ego in that case.

2 Q No. No, we're not conceding alter ego in that case.

3 A Well, I would -- if that argument concedes alter ego.

4 Q Well, it doesn't, but that's a different issue.

5 THE COURT: Let's not argue.

6 MR. H. JOHNSON: Okay.

7 THE COURT: Let's ask questions.

8 MR. H. JOHNSON: All right.

9 BY MR. H. JOHNSON:

10 Q But you would agree that this particular settlement  
11 agreement does require that the deed of trust would be  
12 released, and the obligation would be written off? It does  
13 require that; correct?

14 A Yes, I agree.

15 Q Let's look at 40043. Have you seen that document  
16 before?

17 A Yes.

18 Q Okay. So this document is between 305, Heartland  
19 Bank, David Mitchell and Barnet Liberman; correct?

20 A Yes.

21 Q Okay. And this spells out the fact that David  
22 Mitchell and Barnet Liberman guaranteed the lease not only to  
23 305 but to Heartland Bank; correct?

24 A Yes.

25 Q Okay. And then this is a release of that guaranty in

1 connection with the settlement agreement. Would you agree with  
2 that?

3 A Yes.

4 Q All right. And, in fact, if we look at 40046 --  
5 Do you see that?

6 A Yes.

7 Q Did you read the personal guaranty of lease before  
8 you did your expert report?

9 A It would either be at the supplement or -- I'm not  
10 sure if it was -- at what point in time I did. I believe by  
11 the time I did my supplement, yes.

12 Q Okay. And this is a guaranty of the lease from  
13 Charleston Casino to 305; correct?

14 A Yes.

15 Q And one of the parties is Heartland Bank; is that  
16 accurate?

17 A (No audible response.)

18 Q If you look at the top of the document, it identifies  
19 the parties.

20 A Yes. It's on the last line of the first paragraph?

21 Q Correct.

22 A Yes.

23 Q So Heartland Bank had an interest in seeing that the  
24 lease payments were made. In fact, they required a guarantee  
25 by Mr. Liberman and Mr. Mitchell; correct?

1           A     Sure.  Yes.

2           Q     Initially, initially you never mentioned that in your  
3 report; correct?

4           A     I'm not sure when we received this, but I have read  
5 that document.

6           Q     Okay.  At this point you're aware of it.  Is that --

7           A     Yes.

8           Q     At this point.

9                     And you believe that was after your expert report,  
10 but sometime during the time when you supplemented your expert  
11 report?

12          A     I'm not certain.

13          Q     Let's go to 40016.  Have you seen this document  
14 before?

15          A     What is the date of this document?

16          Q     Let's see.

17          A     It's in '07?

18          Q     Yeah, this would've been in '07.

19          A     Yeah.  Yes, I believe so.

20          Q     Okay.  In fact, it looks like it was signed February  
21 11th or something, 2007.  Now, did you, prior to preparing  
22 your expert report, did you -- did you read this document?

23          A     I believe so.

24          Q     Okay.  This mentions Leah Properties in this  
25 transaction.  Were you aware that Leah Properties was

1 originally involved in the 305 transaction?

2 A In '07, I don't recall.

3 Q Okay. And there is a first amendment which is  
4 page -- it's the Bates stamp -- I don't know if it's a Bates  
5 stamp, but it's the exhibit number, page 23, of that particular  
6 exhibit. 23.

7 (Pause in the proceedings.)

8 BY MR. H. JOHNSON:

9 Q On page 23, do you see that?

10 A I'm sorry?

11 Q Page 23, do you see that?

12 A Page 23, it looks like I'm --

13 Q I'm looking at the exhibit.

14 A -- on page 1.

15 Q Well, if you look at the exhibit number, it's 40016,  
16 dash, 0023.

17 A Okay. Yes.

18 Q So that's the page number, 23 of the exhibit.

19 A Yes.

20 Q Okay. And this is the first amendment to the  
21 purchase agreement involving 305 and LiveWork and initially  
22 Leah Properties. Did you read that document prior to doing  
23 your expert report?

24 A I believe I've seen this document. I don't recall  
25 when though.



1 Q Okay. And in that document, at this point actually  
2 Leah Properties is eliminated from the transaction. Were you  
3 aware of that?

4 A Not necessarily. I don't think that I really  
5 necessarily studied this document.

6 Q Okay. All right. But this would be the document  
7 that controlled the 305 transaction with LiveWork; correct?

8 A It would be on the original purchase, yes.

9 Q Correct. This would be the document that controlled  
10 that purchase; correct?

11 A It appears, yes.

12 Q Yes. Okay. But you don't know if you reviewed it?

13 A No. I believe I have. I don't know that I've  
14 studied it.

15 Q There's no mention of this in your original expert  
16 report, is there?

17 A I don't really necessarily see the relevance to put  
18 it in the report about the lack of payments on the 4.3 million.

19 Q No. You brought up the transfer. It's a key point  
20 of your expert report under defendant transfers where there was  
21 a sale of the property from LiveWork to 305; is that correct?

22 A Yes.

23 Q That's a key transfer in your expert report; correct?

24 A Yes.

25 Q Okay. So I'm asking you why didn't you put this in

1 the report and indicate that this was the document that  
2 controlled that transaction?

3 A Because I had sufficient information relative to the  
4 4.3 million from the audited report and the other agreements.

5 I don't commit to including every document or  
6 referring to every document related to a transaction.

7 Q Okay. But this would've also indicated and  
8 referenced the fact that there was a contemplated lease and  
9 that was not just something that was made up after the fact to  
10 try to hide assets from Mr. Nype; correct?

11 A No. I mentioned that there is a lease in my  
12 report --

13 Q Okay.

14 A -- absolutely.

15 Q Okay. But that wasn't just made up as a method to  
16 try to divert money. It was part of the transaction, and it  
17 was part of what Heartland Bank insisted on; is that correct?

18 A I point that out in my report that there was a lease  
19 between Casino Partners and 305.

20 Q You don't mention that it was part of the requirement  
21 that Heartland Bank had to do the financing involved with the  
22 acquisition. You don't point that out, do you?

23 A I don't think it's necessarily relevant.

24 Q Okay. But the answer is, correct, you didn't point  
25 it out; right?

1           A     I attached to the settlement agreement that has all  
2 the information related to the requirements.

3           Q     In the supplement?

4           A     Yes.

5           Q     Not in your original report.

6           A     In the supplement.

7           Q     And not at the time we took your deposition; correct?

8           A     At the time that you took my deposition?

9           Q     Correct.

10          A     I issued the supplement prior to my deposition.

11          Q     You're right. You're right. You did. Okay.

12          A     You had my supplement.

13          Q     That's correct.

14                Now, let's look at Exhibit 30096.

15                       (Pause in the proceedings.)

16 BY MR. H. JOHNSON:

17          Q     Have you seen that document before?

18          A     Yes, I have.

19          Q     Okay. Did you use this in your report in any manner?

20          A     I believe so. I believe it's in my supplement.

21          Q     And if you look at the first page, there's kind of a  
22 footnote. It says, The writeoff was effectuated in connection  
23 with the termination of the lease of the land and buildings at  
24 300 and 320 Charleston Boulevard, Las Vegas, Nevada?

25          A     Yes.

1 Q Okay. Did you reference that fact in your report?

2 A I think it's obvious, but I also included those Bates  
3 in with my report.

4 Q Okay. Well, that would help explain why the note was  
5 written off and the litigation was dismissed; correct?

6 A Well, not from the LiveWork side. From the 305 side,  
7 yes. But once again, there are no formalities related to  
8 LiveWork. It does not explain why LiveWork received nothing  
9 from 2007 to the date of this, which was in 2014. There is no  
10 explanation.

11 Q Well, doesn't this -- when this says this is part of  
12 the settlement and it's part of what's required by the  
13 settlement, that doesn't indicate why it was done?

14 A In 2014, but it doesn't explain why the issue is why  
15 would that note including accrued interest was not paid.  
16 That's the -- that is the issue.

17 Q I understand you have an issue with payments on the  
18 note. But you also had an issue with the fact that the  
19 litigation was mysteriously dismissed with prejudice, and you  
20 indicated there was nothing to indicate why that happened?

21 A Why they didn't receive any funds is the question.

22 Q No. No. We were talking about the dismissal of the  
23 litigation, and you said that there was nothing in the docket  
24 or the paperwork that you looked at regarding the litigation  
25 that would explain why the litigation was dismissed with

1 prejudice without obtaining some payment of money?

2 A I said there's no evidence of any payment, any  
3 settlement coming to LiveWork.

4 Q Okay.

5 A That's -- that's just a fact.

6 Q Yeah. But there was an explanation why that  
7 happened; correct?

8 A And I -- and I understand that when I issued my  
9 supplement, obviously, because I attached all those documents.

10 Q Okay. That wasn't in your original report and --

11 A I don't believe we had some of those documents in my  
12 initial report.

13 Q And there was a question in your mind why the  
14 litigation was dismissed; correct?

15 A Why it was dismissed with no remuneration going to  
16 LiveWork is my issue.

17 Q But you, as you sit here today, you understand now  
18 that it was dismissed because it had to do with the settlement  
19 agreement; correct?

20 A At the date of my supplement, yes, absolutely.

21 Q Okay. One of the elements of the \$35 million that  
22 you refer to in your report is the payments, the accrued note  
23 and interest, the accrued principal balance and interest on the  
24 \$5 million note; correct?

25 A The 4.7 plus interest to the date of my initial

1 report.

2 Q Right. And that amounted to -- I don't have the  
3 exact number. It was approximately \$13 million?

4 A That's correct.

5 Q All right. And you made a conclusion -- let's see.  
6 I'll refer to it. This is under your summary conclusion on  
7 page 2. I guess we have to go back to that exhibit. Okay.  
8 There.

9 Do you see that in front of you?

10 A Yes.

11 Q Okay. And it's the last part of that. It says,  
12 Defendants would have been successful in  
13 secreting, hiding and conveying away valuable  
14 assets totaling at least \$13,168,000 that  
15 were available to satisfy plaintiff's  
16 judgment against LVLP.

17 Do you see that?

18 A Yes.

19 Q Okay. Now, if the payments had been made under the  
20 note as scheduled, would that have assured that Mr. Nype --  
21 Mr. Nype's judgment would have been paid?

22 A I think that those payments could have been used,  
23 absolutely, to pay Mr. Nype.

24 Q Could've. Could've been used; correct?

25 A Yes.

1           Q     It doesn't assure that it would've been paid;  
2 correct?

3           A     Correct. And that's never the case with any amounts  
4 that are absconded with. You wouldn't necessarily indicate  
5 that it would've been used because maybe they would've gambled  
6 it, but it could've. And that is always the case in all of  
7 these types of cases where there is assets that have been  
8 transferred.

9           Q     So even if all the payments had been made to LiveWork  
10 and then those payments would have been -- they would've had to  
11 have been upstream to LVLP; correct?

12          A     That's correct.

13          Q     For there to be money in the bank account of LVLP on  
14 the date that Mr. Nype executed on the bank account and would  
15 have theoretically been paid as judgment; correct?

16          A     That's correct.

17          Q     Okay. But there's nothing to guarantee or indicate  
18 that that would have occurred. That's just a possibility;  
19 correct?

20          A     That's correct.

21               THE COURT: So, Counsel, administration has decided  
22 we are closing today at 1:00 o'clock. So we're going to break  
23 at 11:45 and come back on Thursday at 9:30.

24               But you have about 45 more minutes, Mr. Johnson,  
25 since you're still going.

1 MR. H. JOHNSON: Okay. All right.

2 THE COURT: I did have an option of having another  
3 clerk come and help, but I've declined that option. So.

4 MR. H. JOHNSON: Okay. That's fine, whatever the  
5 Court's pleasure.

6 THE COURT: Well, I just -- sticking somebody else in  
7 to try and deal with electronic exhibits would probably be a  
8 disaster. So we'll wait until Dulce is back on Thursday.

9 MR. H. JOHNSON: Okay.

10 (Pause in the proceedings.)

11 BY MR. H. JOHNSON:

12 Q Okay. While we're at -- we're on page 4, or let's go  
13 to page 4. Let's talk about Casino Coolidge, the Casino  
14 Coolidge transaction. Do you have that part of your report?

15 A Yes.

16 Q Okay. And this is the transaction where Casino  
17 Coolidge purchased certain property from Leah Properties, LLC,  
18 for the sum of \$1 million?

19 A Yes.

20 Q And you've indicated that was a defendant transfer?

21 A Yes, it is.

22 Q Okay. And do you have any indication, any data that  
23 would indicate that \$1 million was not a fair market price for  
24 that land?

25 A There's no evidence of an appraisal in this



1 transaction. It's not arm's-length in that it's to a related  
2 party. And an element of fraud is that when there's a transfer  
3 there's still control by, you know, a debtor. And so those are  
4 all elements that --

5 Q Would it change your opinion if you knew that the  
6 property had been listed for sale to the general public?

7 A No.

8 Q And would it change your mind if this was the highest  
9 price that was offered for the property?

10 A No.

11 Q That wouldn't change your mind?

12 A No. I think an appraisal would change my mind.

13 Q I thought earlier you testified that an actual sale  
14 is very good indication of fair market value?

15 A There wasn't an actual sale though. So comments or,  
16 you know, saying that we had an offer for this or that, I've  
17 seen that over and over.

18 Q Okay. Well, we'll get into that with other  
19 witnesses, but I was just curious if knowing that it had  
20 actually been listed on the open market would change your  
21 opinion.

22 A Not necessarily.

23 Q All right. Now, besides the fact that you believe  
24 that the property was originally purchased for \$3,239,637, do  
25 you know if that original purchase included more land than was

1 actually sold later?

2 A Well, that's the -- that's the book value that the  
3 accountant had is the 3.2 million. That's what we have to go  
4 on.

5 Q All right. But you didn't check to see whether the  
6 3,200,000 some odd purchase price included a larger parcel than  
7 was actually later then sold to Casino Coolidge?

8 A Well, if that's the case, then the recordation of the  
9 sale is incorrect, and they overstated the basis.

10 Q Okay. All right. Let's see. Now, is there anything  
11 else other than what you have in your report that you would say  
12 was an indication of a fraudulent conveyance or some sort of  
13 fraud involving that transaction?

14 A Well, I think it's notable from that standpoint as  
15 well as, you know, alter ego that Mr. Liberman, as I testified  
16 yesterday, and Mr. Mitchell received the funds personally  
17 through escrow.

18 Q There was a distribution from escrow?

19 A Yes, directly to the principals and not to the entity  
20 itself.

21 Q And do you know why those distributions were made?

22 A No, I don't.

23 Q Do you know if that was to pay down debt?

24 A Well, if so, they received it personally and they  
25 paid down debt. The formality should be that the proceeds go

1 to the entity in a bank account of that entity, and then the  
2 debt is paid or a distribution is paid.

3 Q Okay. But you don't know the reason behind why those  
4 distributions were made?

5 A No.

6 Q And is that -- my question was, were there any other  
7 reasons or facts that you based your opinion on why this was  
8 included in the section regarding defendant transfers?

9 A Just what's stated in my report as well as my  
10 supplement.

11 Q Okay. All right. Let's see. Oh, there was  
12 testimony about the engagement letters and the retention of  
13 documents yesterday. Do you recall that?

14 A Yes.

15 Q And we accessed SKE's website. Do you recall that?

16 A Yes.

17 Q And you recall there was a list of suggestions, and  
18 you pointed out that it said some should be kept forever; some  
19 should be kept for six years; some for three years; things of  
20 that nature? Do you recall that testimony?

21 A That's -- that's correct.

22 Q Okay. Now, wasn't that a suggestion from the  
23 accounting company SKE to clients or businesses? That was  
24 their suggestion as to retention of documents by the business;  
25 correct?

1           A     That's correct.

2           Q     Okay. So that didn't indicate that that was SKE's  
3 policies?

4           A     Well --

5           Q     Correct?

6           A     -- it's SKE's policies to the entities which --

7           Q     Well -- okay.

8           A     -- when those records are destroyed, according to the  
9 engagement letter, the point is that those records were  
10 destroyed. They should've come and got those records before  
11 they were destroyed, according to his own record retention  
12 policy. So it points to those entities. Mr. Spitz is  
13 informing those entities here they are. They ended up getting  
14 destroyed in the face of ongoing litigation.

15          Q     Well, your point yesterday was that the engagement  
16 letter was inconsistent with the website; correct?

17          A     Well, the engagement letter facilitated the  
18 destruction of records that, according to his own record  
19 retention policy, he's advising his clients not to do that.

20          Q     Correct. And the engagement letter only says that  
21 SKE will destroy records that it has after three years, but  
22 there is nothing to stop the business from saving -- businesses  
23 from saving those records for as long as they wanted; correct?

24                 In fact, that's what it advised the businesses to do.  
25 That was not SKE's policy. SKE's policy was that once it was

1 done with the tax returns, three years later those records  
2 would be destroyed; correct?

3 A That's correct.

4 Q The website was advising businesses, in fact,  
5 advising the general public. Anybody that had a business could  
6 have gone to that website and said, oh, according to these  
7 CPAs, I should keep these records for a certain period of time.  
8 That was advice to prospective clients; correct?

9 A Yes.

10 Q Okay.

11 A Yes.

12 Q Okay. So they were not -- they were not  
13 inconsistent; correct?

14 A No. I think it's inconsistent in that those two  
15 lines that were inserted in the engagement letter facilitates  
16 the destruction of those records. It's inconsistent that he  
17 would advise Mr. Mitchell not to advise them -- not to destroy  
18 them, but then turn around and destroy them without  
19 Mr. Mitchell coming to get those records before they were  
20 destroyed.

21 Q Well, if the business has copies of all those  
22 records, it doesn't matter that SKE destroys them; correct?

23 A They don't have all of his supporting workpapers.

24 Q Well, that is not something a business would normally  
25 retain on its own; correct? They wouldn't normally retain the

1 accountant's workpapers?

2 A Well, then that also reflects back on the business of  
3 Mr. Spitz.

4 Q But you would agree that that website, that advice  
5 was to the businesses, to potential clients or existing  
6 clients? That was a list of suggestions to them; correct?

7 A Correct.

8 Q All right. Would you agree that a transfer -- a  
9 transfer from LVLP to a creditor where debt was paid down that  
10 that would be consideration back to Las Vegas Land Partners?

11 A Say that again.

12 Q Do you understand the question?

13 When there's a transfer, when there's a payment of  
14 debt, there is consideration back to the company because the  
15 company has reduced its debt. So reduction of debt can be  
16 considered -- consideration. Are you familiar with that  
17 principle?

18 A Yes, I am.

19 Q Okay. So you would agree that a transfer to pay down  
20 debt would not be a fraudulent conveyance?

21 A I would have to think about that. I think you may  
22 have a situation where, like in this case, where it's capital  
23 contributed so that you're transferring something out to get  
24 credit for capital, I think that that could be an element.

25 Q Okay. That wasn't my question. It was a transfer to

1 pay down debt.

2 A It depends on the circumstances. I think that there  
3 could be circumstances where it's not and circumstances where  
4 it could be.

5 Q Okay. But in general you're familiar with that  
6 concept that the payment, that a transfer to pay down debt is a  
7 benefit to the company?

8 A Yes.

9 Q Okay. You mentioned yesterday that there was a  
10 accounting notation regarding the \$21 million in debt. Did you  
11 understand who that \$21 million was owed to?

12 A I believe it's owed to a Forest City entity.

13 Q Okay. Did you read anything regarding the  
14 restructuring of the transactions between the LVLV entities and  
15 Forest City? Did you read that document?

16 A Yes.

17 Q Okay. In that document is the \$21 million contained  
18 in there?

19 A I don't -- I don't believe so. I don't recall that  
20 it was.

21 Q Okay. So you don't know whether the source of the  
22 debt, the \$21 million, was from the restructuring agreement?

23 A It appeared to me that the \$21, it was still on the  
24 books, and the Wink properties are still on the books as of  
25 2017. It's apparent that it relates to Forest City, but the

1 records are somewhat nebulous as to where that arises.

2 Q Okay.

3 A And the note itself is one page that I've seen, and  
4 Forest City documents are not one page. So, you know, it  
5 doesn't really explain enough. It's just signed by, I believe,  
6 Mr. Mitchell, and it's a one-page document acknowledging  
7 there's 21 million that's owed.

8 Q Okay. I just thought there was some question  
9 yesterday from listening to your testimony about where that  
10 came from or the legitimacy of it, and so that's why I was  
11 asking whether you had read the restructuring agreement?

12 A I did read -- still there is questions about the  
13 legitimacy of that 21 million, in my opinion, and why it  
14 doesn't amortize, the balance stays the same, and why it's just  
15 a one-page document, things of that nature. Yes.

16 Q Okay. All right. But you understand it relates  
17 directly to the Forest City transactions and the restructuring?

18 A It's --

19 Q You understand that part?

20 A It's made to appear that way, yes.

21 Q Okay. In connection with your expert report, did you  
22 read the operating agreement of Las Vegas Land Partners?

23 A I believe that I did at some point.

24 Q Do you know what it provides for as far as  
25 contributing capital or loans to the company?



1           A     I don't recall.

2           Q     You -- you're familiar with the term disputed and  
3 unliquidated debt?

4           A     Yes.

5           Q     And what does that mean to you?

6           A     Well, that there's, I guess the best word it's  
7 disputed, and it's to be determined.

8           Q     Okay. So up to the point where the debt is  
9 liquidated, we don't know what the amount is; correct?

10          A     That's correct.

11          Q     Okay. And you would agree that Mr. Nype's claim for  
12 compensation was disputed and unliquidated prior to the  
13 judgment being rendered?

14          A     That's correct. I think that it was acknowledged in  
15 the closing that they owed Mr. Nype something, but the exact  
16 amount was disputed.

17          Q     Okay. And again, as we've said previously, Las Vegas  
18 Land Partners did not become a judgment debtor until the  
19 judgment was entered; correct?

20          A     That's correct.

21          Q     Now, the lease with Charleston Casino and 305, those  
22 payments would have been back to 305; correct?

23          A     I don't know what you mean.

24          Q     The lease between 305 and Charleston Casino required  
25 for those payments from Charleston Casino to go to 305;

1 correct?

2 A That is correct.

3 Q Okay. So those payments would not have been  
4 available directly to satisfy Mr. Nype's judgment; correct?

5 A To -- I guess you --

6 Q Well, if the payments would have been made to 305,  
7 305 would have had those payments; correct?

8 A Yes.

9 Q Potentially they could be in 305's bank account;  
10 correct?

11 A Correct.

12 Q But that had nothing to do with Mr. Nype's judgment.  
13 He couldn't have collected his judgment from those lease  
14 payments directly. Is that accurate?

15 A That's -- that's accurate.

16 MR. H. JOHNSON: Okay. I may be almost done, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. H. JOHNSON: I think that's all I have.

20 THE COURT: I have a couple of questions.

21 THE WITNESS: Yes.

22 THE COURT: So, sir, you've had clients, I'm certain,  
23 that renegotiated their lending arrangements with their banks  
24 as a result of the great recession?

25 THE WITNESS: That's correct.

1 THE COURT: And as a part of that work, how, in your  
2 experience, were write-offs that were related-party  
3 transactions get accounted for from an accounting perspective  
4 and from a business perspective?

5 THE WITNESS: Well, during that period of time, I was  
6 engaged by the FDIC to --

7 THE COURT: Okay. So you were on the other side.

8 THE WITNESS: Yes.

9 -- to pursue this exact situation on numerous issues,  
10 alter ego issues, fraud issues. And, you know, from internal,  
11 advising clients, don't commingle. Don't -- set up bank  
12 accounts. That's what was being said during that period of  
13 time because I also had knowledge through the FDIC that's what  
14 they were pursuing.

15 So any level of commingling opened the door.

16 Any of these elements, transfers to related parties,  
17 opened the door for fraud and fraud allegations from a civil  
18 standpoint of --

19 So from my standpoint, it's like do not commingle.  
20 Don't make transfers to third parties, all these different  
21 things we've been talking about. Internally I was telling  
22 clients don't do that.

23 Settle and negotiate individually by your entities,  
24 not as a group. In other words, if you have a lease, this  
25 entity has a lease, and this one has a note, and this is the

1 maker of the note, and these are guarantors, keep everything  
2 separate.

3 On the FDIC side, everything was an open door. I'd  
4 issue a report similar to this saying they commingled their  
5 records. This entity paid for this. This entity collected  
6 this. This asset was transferred to a related party. All of  
7 those are what we call elements of fraud.

8 THE COURT: We call them badges.

9 THE WITNESS: Okay. I call them elements of fraud  
10 and also elements of alter ego.

11 But that's what was going on during the great  
12 recession. It was tough. It's tough, but the FDIC and their  
13 position, a lot of what I'm saying in the report, this is what  
14 their positions would be.

15 Commingling, what's the evidence? You don't have  
16 bank accounts. You're not following, you know, corporate --  
17 what we call corporate formalities. There's no authorizations.  
18 There's no appraisals. All of that we would add up almost like  
19 a scorecard and go here's the results. And then they would  
20 take it from there. That's what was going on during the  
21 recession.

22 THE COURT: And then you're in litigation, and some  
23 Judge is deciding who the guarantors are and who's really going  
24 to have to pay and be obligated on the obligations.

25 THE WITNESS: Yes.

1 THE COURT: Okay. All right. Mr. Boschee.

2 MR. BOSCHEE: Okay. I don't know that I will finish,  
3 but I will try.

4 THE COURT: I'm certain you're not going to finish,  
5 but you're going to at least start for 20 minutes or so.

6 (Pause in the proceedings.)

7 MR. BOSCHEE: I'm going to come up here just because  
8 I like to stand up sometimes and, you know.

9 THE WITNESS: I can definitely hear better. I'm deaf  
10 in this ear.

11 MR. BOSCHEE: I know, and that's --

12 THE WITNESS: So that helps me.

13 MR. BOSCHEE: Well, and I'm loud, candidly.

14 CROSS-EXAMINATION

15 BY MR. BOSCHEE:

16 Q So I want to make sure -- I want to make sure that I  
17 understand what your understanding is of the 2014 settlement  
18 because, candidly, I don't think it's clear in your report, and  
19 you said something a little different in your testimony. I  
20 just want to make sure we're all on the same page.

21 So the 2014 settlement, there are three lawsuits;  
22 right? There's the Missouri litigation and the two Nevada  
23 litigations; correct?

24 A Yes. The two are the 305 with the bank, and the  
25 LiveWork.

1 Q Right.

2 A Is that --

3 Q Well, LiveWork and then there's also the Charleston  
4 Casino and Mitchell litigation that is also over here that you  
5 don't reference in your report, but that's okay.

6 And as part of the -- as part of the overall  
7 settlement --

8 And I don't need to go over these documents again  
9 because Mr. Johnson just went over them with you. I just want  
10 to make sure that were on the same page.

11 A Yes.

12 Q -- there is payments made by Mitchell Liberman and  
13 305 Second Avenue; correct? Cash.

14 A Which payments?

15 Q There are payments made, as part of the settlement,  
16 there is the one -- well, let's just go to Mitchell.

17 A Oh, yes. Okay.

18 Q Right.

19 A As guarantors.

20 Q Right.

21 A Yes.

22 Q 1.25 million and then the seven, fifty? Correct?

23 A That's correct.

24 Q Okay. And then Heartland Bank reduces the 305  
25 obligation from whatever was owed. I think it was a little bit

1 more than 9.1 because there was an interest payment coming due,  
2 but whatever it was to 4 and a half; right?

3 A Yes.

4 Q The LiveWork note goes away, correct, as part of the  
5 settlement agreement; right?

6 A That's not part of the settlement agreement though.

7 Q Well, it said, I mean, it said in the settlement  
8 agreement. LiveWork didn't sign off on it, but that was part  
9 of the settlement agreement; right?

10 A Yes, I agree with that.

11 Q And then as part of the other document you looked at  
12 as part of the loan forgiveness then the Charleston Casino  
13 Partners lease and obligation goes away, and then the lawsuit  
14 goes away; correct?

15 A That's correct.

16 Q Great. Putting aside the formalities and  
17 informalities of whatever, that was at that point the deal.  
18 Okay.

19 So I just want to make sure that I've got this  
20 straight in my head. You've opined that the whole basis of the  
21 reason that LiveWork needed to get paid was because that money  
22 was going to flow up to Las Vegas Land Partners and would've  
23 been available to pay Mr. Nype's judgment in 2015; correct?

24 A That's correct.

25 Q Okay.

1           A     That's part of it, yes.

2           Q     All right. I'm going to get to the other part of it  
3 too.

4                     And that had Charleston Casino partners paid on the  
5 lease, which at that -- in 2014 it was about 11 -- 11 million  
6 and change, about \$11.8 million, then that money would have  
7 been available to pay -- it should have gone to 305 which  
8 should have gone to LiveWork which should have gone to LVLP;  
9 correct?

10          A     Yes.

11          Q     Okay. Now, subsequent to the initial drafting of  
12 your report, you got documentation from me that showed that  
13 Charleston Casino Partners was actually owned by Las Vegas Land  
14 Partners which is Mr. Mitchell and Mr. Liberman; correct?

15          A     That's correct.

16          Q     Okay. So assuming, and I'm not -- I'm not going to  
17 concede alter ego, but assuming that Las Vegas Land Partners is  
18 the parent company of Charleston Casino Partners and the parent  
19 company of LiveWork, and putting aside the informality of that  
20 aside, if Las Vegas Land Partners owed \$11.8 million to 305,  
21 and 305 owed Las Vegas Land Partners through LiveWork  
22 \$6.9 million, then forgiving 11.8 million and forgiving  
23 6.9 million actually ended up being a benefit for Las Vegas  
24 Land Partners, didn't it, in that settlement?

25          A     Well, they stopped accruing interest. So the actual,



1 according to LiveWork, through 2014, the balance was  
2 11 million. So the two are pretty close to each other  
3 actually.

4 Q Okay. So it may not as much of a benefit, but it  
5 would've at least been a wash; correct?

6 A It would've been a wash.

7 Q Okay. And then after 2014, from the records that you  
8 looked at, and I would tend to agree with you on this, the  
9 lease is gone; the LiveWork note is gone. 305's records  
10 certainly kind of account for that, don't they?

11 A Say that again.

12 Q Well, after 2014 --

13 You talked about the audited financial records, and  
14 we looked at them.

15 -- the lease at that point is gone, and the  
16 obligation that is owed to 305 goes away, but then --

17 A That's correct.

18 Q -- the obligation to LiveWork goes away too, and  
19 that's consistent with 305's records. I'm not going to deal  
20 with LVLP's records, but with 305's audited accounting, that's  
21 what happens; right?

22 A That's correct.

23 Q Okay. Going to your report, your alter ego opinion,  
24 as I understand it and I think this is consistent with what you  
25 said in your deposition, is based on control of 305 by Liberman

1 and/or Mitchell; correct?

2 A The alter ego with regard to 305?

3 Q Yes.

4 A Yes, that's correct.

5 Q Assume when I'm asking you questions that I'm  
6 probably going to only be asking about 305.

7 A 305. Okay. Yes, sir.

8 Q All right. (Indiscernible.)

9 The 305 purchase from LiveWork occurred about six and  
10 a half weeks prior to the Forest City transactions in 2007. Is  
11 that --

12 A Say that again, the --

13 Q The 305 purchase of the Aquarius Plaza from LiveWork  
14 in 2007 occurred about six and a half weeks prior to the Forest  
15 City transaction, the other LVLTP that gave rise to Mr. Nype's  
16 lawsuit and claimed everything, the reason that we're here?

17 A That's correct.

18 Q Okay. So not quarreling with Mr. Muije or  
19 Judge Israel or anybody else, whatever commission Mr. Nype  
20 earned as part of, and I'm not even worried about the  
21 liquidated or unliquidated portion of it, whatever commission  
22 that he earned or would have earned as part of the Forest City  
23 transaction hadn't even happened yet when 305 did its deal with  
24 LiveWork, had it?

25 A From a closing standpoint, that's correct.

1 Q Okay. Might have known about it, but it hadn't been  
2 earned yet; correct?

3 A Yes.

4 Q Okay. 305 Second Avenue Associates, what -- help me  
5 out here. What homework, diligence, what documents did you  
6 review about that entity and its historical dealings?

7 Because I didn't see a lot in your report. That's  
8 why I'm asking.

9 A Primarily the tax returns. There wasn't a lot of  
10 information as to the historical dealings other than tax  
11 returns that I looked at that it -- Second Avenue had other  
12 things going on, and so it appeared to me some successful real  
13 estate developments.

14 Q Okay. Did you do any independent investigation of  
15 what other things 305 Second Avenue Associates was doing?

16 And I'll tell you I think most of the documents that  
17 you got were from 2007 forward. So did you look into any of  
18 the other deals that 305 Second Avenue Associates did other  
19 than the Aquarius deal?

20 A No. Only from the standpoint of the tax returns  
21 themselves.

22 Q Okay.

23 A And actually, the records appeared to me to start in  
24 2014, as far as detailed type accounting records, from '14 to  
25 '17. But the tax returns, you know, it's a window to the soul.

1 So I was able to see other activities through the tax returns.

2 Q Okay. But beyond the tax returns, you didn't kind of  
3 peel back the onion to see what other deals were going on with  
4 305 Second Avenue or what money they were making in New York or  
5 anywhere else, did you?

6 A No. I was not able to.

7 Q Okay. Do you have any independent knowledge one way  
8 or the other how long 305 Second Avenue Associates has been in  
9 business as a partnership in New York?

10 A No. But I think it goes back to the earliest tax  
11 returns that I was able to look at, like in '08, '09, somewhere  
12 in that area, so possibly further.

13 Q Would it surprise you to know that they've been in  
14 business since the '70s?

15 A No, it wouldn't surprise me.

16 Q Okay. Did you -- did you do any investigation as to  
17 who 305 Second Avenue Associates's other limited partners are?

18 A Yes.

19 Q Okay. Who are they?

20 A In terms of names?

21 Q Sure.

22 A Like a bunch of people.

23 Q Okay.

24 A Like maybe 60 different people.

25 Q Okay.

1           A     So I don't have all of them memorized yet. I'm  
2 working on that.

3           Q     You don't have to have them memorized for this  
4 proceeding.

5                     But you were familiar that aside from the two general  
6 partners there were a bunch of folks that are limited partners,  
7 and do you have a recollection as to one way or the other  
8 whether they were New York residents or Nevada residents?

9           A     I think they were primarily New York residents.

10          Q     Okay. None of those limited partners was named David  
11 Mitchell, were they?

12          A     I think David Mitchell and Barnet Liberman are  
13 limited partners as well as general partners, I believe --

14          Q     How?

15          A     -- they have some small amount in there.  
16 Just my recollection.

17          Q     Okay. David Mitchell isn't a general partner of 305  
18 Second Avenue Associates --

19          A     Oh, David Mitchell.

20          Q     Yeah.

21          A     I'm sorry. I'm sorry.

22                     No, David Mitchell has no ownership in 305.

23          Q     Okay. I just want to make sure because that seems  
24 probably like an important point in what we're covering.

25          A     Yeah, it is a very important point. Thanks for the

1 clarification.

2 Q Okay. The 305 purchase of the Aquarius Plaza, the  
3 property with the really nice parking lot, it was -- is it per  
4 your understanding it was \$7 million --

5 A That's the three.

6 Q Three, yeah.

7 -- \$7 million of cash and about \$18 million of paper;  
8 right? I mean, for lack of a better --

9 A On the purchase price?

10 Q Yeah.

11 A That they paid?

12 Q Yes.

13 A It was 20 million in notes and cash and a \$5 million  
14 note that was taken back to LiveWork.

15 Q Okay. Do you have a recollection independently one  
16 way or the other as to whether it was a 1031 exchange? Do you  
17 know?

18 A I don't recall.

19 Q Okay. You didn't -- I guess that wasn't part of your  
20 investigation. It wasn't part of what you looked at in terms  
21 of transaction?

22 A No. I don't believe it was on the LVLP defendants'  
23 side. It possibly on the 305 side, but I don't recall that  
24 being a part of the LVLP defendants' side.

25 Q Okay. And Mr. Johnson asked you a bunch of questions

1 about this. Your primary issue with that transaction, because  
2 it was involving related parties, was the \$5 million carryback  
3 note; correct?

4 A That's correct.

5 Q Okay. You didn't really take any issue with the  
6 purchase price being 20 million, 25 million, whatever it  
7 would've been. It was the carryback note between related  
8 parties that caused you -- a red flag, to use one of your  
9 terms; correct?

10 A Well, the, as I've testified, when there's not an  
11 appraisal and it's between a related party, and related parties  
12 involved, what we call, you know, that's not arm's-length,  
13 that's a concern. I haven't seen an appraisal related to the  
14 Aquarius Plaza in 2007, that transaction.

15 But the note is the primary issue. I agree.

16 Q Okay. Now, Mr. Nype, to the best of your  
17 investigation, wasn't involved at all with the 305 transaction,  
18 was he?

19 A I'm not aware that Mr. Nype was involved in the 305  
20 transaction.

21 Q He didn't have a commission agreement with 305 or  
22 LiveWork for that agreement, did he?

23 A Not that I'm aware of.

24 Q Okay. Now, right after the closing, you did -- and  
25 I'm not going to rehash everything that Mr. Johnson asked you

1 because I think it was pretty clear, but you are familiar that  
2 Charleston Casino Partners enters into this 49-year lease with  
3 305; correct?

4 A That's correct.

5 Q Okay. And now, I mean, this knocked out about 10  
6 minutes of my questioning, but you understand that that was a  
7 Heartland Bank requirement for 305 to do in order to get the  
8 financing?

9 A Yes.

10 Q Okay. And when you were talking about the promissory  
11 notes and the financing of the property, that was, aside from  
12 LiveWork, the \$5 million note, that was primarily from  
13 Heartland Bank; correct?

14 A Yes.

15 Q Okay. And do you have an understanding one way or  
16 another whether this purchase, whether Heartland Bank would  
17 have loaned the money without that lease based on the documents  
18 you just looked at?

19 A Well, both Mr. Liberman, you know, through the  
20 ownership in 305, I think has, you know, substantial net worth.

21 Q Okay. But the documents we looked at about 15  
22 minutes ago indicated that it was a condition of Heartland Bank  
23 financing that there was a lease, didn't it?

24 A Yes.

25 Q I mean, we can go back and look at it again, but I



1 don't think we need --

2 A Yes.

3 Q Fair enough.

4 Now, the Judge mentioned it, and we've talked about  
5 it kind of in passing, but right around this time the economy  
6 took a turn for the worse, didn't it?

7 A Yes.

8 Q And that was when, and again, I'm glad you brought it  
9 up, I remember that was when you started working with the FDIC  
10 in fact to investigate fraud and alter ego and things like  
11 that; correct?

12 A That's correct.

13 Q Okay. One of the principal elements when you were  
14 doing those investigations, I mean, you would look for red  
15 flags and indicia of fraud, but one of the -- the final thing  
16 that you would ultimately look for investigating is actual  
17 damage, wouldn't you? Like someone actually losing money?

18 A Yes.

19 Q Okay. Now, knowing -- Mr. Johnson asked you about 10  
20 questions about this. So I'm trying not to repeat him.

21 Charleston Casino Partners was I think you said in  
22 your report that you reviewed from the supplemental in your  
23 supplement was collecting rent money; correct?

24 A Yes, it was.

25 Q And I think you testified and I think you said in

1 your report millions of dollars in rent over a period of time?

2 A It should have been millions of dollars. The rents,  
3 the historical rents were in excess of 300,000 historically.

4 Q Okay.

5 A In 2012 the rents stopped. So there's evidence that  
6 Aquarius Plaza, that Aquarius Plaza was generating  
7 approximately 300,000 in rents per year.

8 Some years there was nothing posted in the books of  
9 LVLP. And then in some years there was maybe 50,000. And then  
10 by 2012 or the end of 2012, no amounts were being collected.

11 Q Right.

12 A So something else was going on there, but to the  
13 extent that it was deposited, it shows up in the LVLP records.

14 Q Okay. And end of 2012, and again I don't know how  
15 extensively you looked into the settlement, but at some point  
16 in 2013 305 stopped paying Heartland Bank, and that was what  
17 ultimately started all of this, the run of litigation that  
18 ultimately led to the settlement in 2014. Is that your  
19 understanding?

20 A Yes.

21 Q Which would coincide sort of slightly after the rent  
22 stopped being collected; right?

23 A By -- when I say LVLP, the defendant entities of  
24 LVLP, yes.

25 Q Yeah. Correct.

1 A That's correct.

2 Q And I'm not going to quarrel with you on that.

3 MR. BOSCHÉE: Can someone pull up -- I think I have  
4 it on my computer -- I think it's 8066, whatever the document  
5 is.

6 MR. BLUT: I can pull it up for you.

7 MR. BOSCHÉE: Okay.

8 THE COURT: Thank you.

9 THE CLERK: Wait. I'm sorry. Which exhibit number?

10 MR. BOSCHÉE: 80066.

11 BY MR. BOSCHÉE:

12 Q It's the tax return, one of the tax returns we looked  
13 at yesterday. I just want to get a little clarification on one  
14 issue that popped into my head last night after you testified  
15 about this.

16 THE CLERK: I'm sorry, Mr. Boschee. It's not  
17 admitted.

18 MR. BOSCHÉE: This tax return isn't --

19 THE COURT: Any objection?

20 MR. BOSCHÉE: The one we --

21 THE COURT: Any objection?

22 MR. BOSCHÉE: Oh, actually this is the wrong  
23 document. It's the tax return we looked at yesterday.

24 (Pause in the proceedings.)

25 MR. BOSCHÉE: 80044. Sorry.

1 THE CLERK: Yes. That's good. Thank you.

2 MR. BOSCHÉE: That's Mr. Boschee not being able to  
3 read his own handwriting in his notes.

4 THE COURT: Hmmm.

5 MR. BOSCHÉE: My four looked like a six.

6 Can you go down to -- what page am I on there?

7 MR. BLUT: It is 29.

8 MR. BOSCHÉE: Page 29.

9 BY MR. BOSCHÉE:

10 Q And we looked at this yesterday. I just want to get  
11 a little clarification on your opinion on this issue because  
12 it's in your supplement.

13 And I don't know if we can blow that up or not, but  
14 we talked about this yesterday when you were looking at the  
15 three years of tax returns, and you expressed an opinion in  
16 your supplement that these capital account notations on the tax  
17 return are evidence of commingling. Do you remember saying  
18 that?

19 A Are you talking about the due from Charleston Casino  
20 Partners?

21 Q Yep. Well, and also due from LiveWork.

22 A Well, due from LiveWork I did not say that that was  
23 evidence of commingling. That's just --

24 Q Okay. That's what I wasn't sure about. That's  
25 why --

1 A Yeah. That's just the --

2 Q That's why we're going there.

3 A -- accrual of rent.

4 Q Okay.

5 A The due from Charleston Casino Partners would be  
6 considered evidence of commingling.

7 Q And I guess my question from that would be how?

8 A Well, how those accounts arise is advances of either  
9 expenses or loans to an entity. That's a due from. So what  
10 that would mean from an accounting standpoint, forensic  
11 standpoint, this entity or its subsidiary 305 Las Vegas paid  
12 bills on behalf of Charleston Casino Partners. How I would  
13 view this from a forensic standpoint, if say that was 5,000,  
14 20,000, 40,000, it's more indicative of advances to an entity.

15 In this case where it's \$42,061, it would create a  
16 situation where these are bills being paid. That's what from a  
17 forensic standpoint you would look at that.

18 Q Okay. Now, another question I had on this, and you  
19 would know better about this than I would as a CPA, when a tax  
20 return is being prepared and an information is received from a  
21 tenant or a borrower or something, and it goes into a schedule  
22 like this, typically an entity like 305 is going to take that  
23 information directly from the entity, and it's going to go  
24 right with the schedule; right? It doesn't indicate that 305  
25 is keeping a capital account showing this, is it?

1           A     Well, this isn't a capital account. These are  
2 amounts due from. So this is indicative that something was  
3 paid out of the cash account --

4           Q     Okay.

5           A     -- of either 305 Second Avenue or 305 Las Vegas. If  
6 it's 305 Las Vegas, it collapsed into 305 Second Avenue, but  
7 this is indicative of actual amounts being paid on their behalf  
8 or advanced dollar amounts.

9           Q     Okay. So kind of walking through this then, if 305,  
10 if there are expenses that are owed on the property and  
11 Charleston Casino isn't paying rent and isn't paying -- doing  
12 development or whatever else is in that lease agreement, and  
13 305 has to advance it, I mean, someone fixes a street, someone  
14 does something with the pavement, some, you know, concrete  
15 company comes in, that would be an example of an expenditure  
16 that would show up in a notation like this on a tax schedule,  
17 wouldn't it?

18          A     Possibly.

19          Q     Okay. In fact, there are other explanations as to  
20 things that would have to be advanced too.

21                My question to that end is you don't, sitting here  
22 right now, have any idea what that expenditure or what that  
23 expense was, do you?

24          A     No.

25          Q     Okay.

1           A     There's no -- no evidence has been provided to  
2 determine that.

3           Q     Okay. And nothing that you saw in any of the backup  
4 documentation or the tax returns or anything you got from 305  
5 Second Avenue shed light on that?

6           A     From 305?

7           Q     From 305. Because I'll come into the next entity in  
8 a second.

9           A     Yeah. I don't believe so.

10          Q     Okay. And as has been pointed out at length by  
11 Mr. Muije, to the extent that there is any documentation in Las  
12 Vegas Land Partners' accounting records or whatever that might  
13 shed light on this, you haven't seen it; right?

14          A     I looked for it, and I could not find anything in Las  
15 Vegas Land Partners in terms of loans.

16          Q     Sure.

17          A     In other words, we gave you X amount of dollars that  
18 added up to forty-two, sixty-one. LVLP's records do not  
19 reflect a payable for that amount in that year.

20          Q     Right. So the only -- so again, where there's  
21 inconsistency, we've got a tax return and an audited accounting  
22 from 305, but LVLP's records don't necessarily reflect the same  
23 thing; correct?

24          A     That's correct.

25               MR. BOSCHEE: Okay. This is probably a good time to

1 break since we've already gone over my time limit.

2 THE COURT: All right. It's okay. I was --

3 MR. BOSCHÉE: I mean, your time limit actually,  
4 but...

5 THE COURT: My time limit actually starts in the next  
6 room at noon, but everybody else here gets to leave.

7 MR. BOSCHÉE: Okay.

8 THE COURT: Apparently I don't get to leave, and the  
9 mental health court people don't get to leave. So. Because we  
10 have mental health court this afternoon.

11 Alrighty. See you guys Thursday. Have a wonderful  
12 new year. Be safe.

13 MR. BOSCHÉE: One quick question I have --

14 THE COURT: Yes, sir.

15 MR. BOSCHÉE: -- since now I have concerns about  
16 finishing on Friday. I think we still may, but since we  
17 have -- well, I'm kind of thinking --

18 THE COURT: You're pretty funny.

19 MR. BOSCHÉE: You know, I amuse myself sometimes.

20 But we do have three people from New York that are  
21 planning to all fly back on Friday or Saturday.

22 THE COURT: Then let's make sure we take those people  
23 out of order.

24 MR. BOSCHÉE: That's what I was going to request.

25 Thank you, Your Honor.



1 MR. MUIJE: And we'll start at 9:45 on Thursday, Your  
2 Honor?

3 THE COURT: 9:30 or 9:45.

4 MR. MUIJE: Very good. Thank you, Your Honor.

5 THE COURT: Bye. Have a nice New Year's. Be safe.

6 (Proceedings recessed for the evening at 11:48 a.m.)

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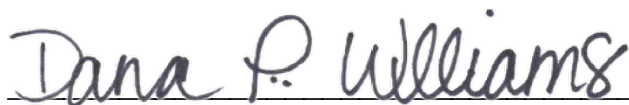
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**DANA L. WILLIAMS**  
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

01/07/2021

DATE