

**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

Electronically Filed  
Mar 19 2021 09:18 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

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

---

COHEN JOHNSON

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

[sjohnson@cohenjohnson.com](mailto:sjohnson@cohenjohnson.com)

KEVIN M. JOHNSON, ESQ.

Nevada Bar No. 14551

[kjohnson@cohenjohnson.com](mailto:kjohnson@cohenjohnson.com)

375 E. Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

Telephone: (702) 823-3500

Facsimile: (702) 823-3400

*Attorney for Appellants David J. Mitchell,  
Meyer Property, Ltd., Zoe Property, LLC,  
Leah Property, LLC, Wink One, LLC,  
Aquarius Owner, LLC, LVLP Holdings,  
LLC, and Live Works Tic Successor, LLC*

**CHRONOLOGICAL TABLE OF CONTENTS TO**  
**APPELLANTS' APPENDIX**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
7/26/16	Complaint (Original)	I	AA 1-19
2/27/17	Proofs of Service	I	AA 20-48
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
7/18/17	Business Court Order	II	AA 293-297
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
2/20/18	Business Court Order [Amended]	III	AA 479-481
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
7/17/18	Amended Business Court Order	V	AA 879-882
7/30/18	Second Amended Business Court Order	V	AA 883-885
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
11/12/19	Receipt of Copy	VI	AA 992-993

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/12/19	Motion to Intervene	VI	AA 994-1036
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VIII	AA 1492-1500

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
<b><u>TRANSCRIPTS</u></b>			
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532
12/30/19	<b>Trial Transcript - Day 1</b> [December 30, 2019]	IX	AA 1533-1697
12/31/19	<b>Trial Transcript - Day 2</b> [December 31, 2019]	X	AA 1698-1785
1/2/20	<b>Trial Transcript - Day 3</b> [January 2, 2020]	XI	AA 1786-1987
1/3/20	<b>Trial Transcript - Day 4</b> [January 3, 2020]	XII	AA 1988-2163
1/6/20	<b>Trial Transcript - Day 5</b> [January 6, 2020]	XIII	AA 2164-2303
1/7/20	<b>Trial Transcript - Day 6</b> [January 7, 2020]	XIV	AA 2304-2421
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
<b><u>TRIAL EXHIBITS</u></b>			
Undated	Plaintiffs' <b>Trial Exhibit 1</b> [Ownerships Interests]	XV	AA 2457
Undated	Plaintiffs' <b>Trial Exhibit 3</b> [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' <b>Trial Exhibit 9</b> [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' <b>Trial Exhibit 10</b> [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' <b>Trial Exhibit 12</b> [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' <b>Trial Exhibit 17</b> [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' <b>Trial Exhibit 18</b> [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' <b>Trial Exhibit 19</b> [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' <b>Trial Exhibit 20</b> [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiff's <b>Trial Exhibit 21</b> [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 23</b> [List Managers - 305 Las Vegas]	XV	AA 2598
Undated	Plaintiffs' <b>Trial Exhibit 30</b> [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' <b>Trial Exhibit 34</b> [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' <b>Trial Exhibit 38</b> [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' <b>Trial Exhibit 43</b> [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' <b>Trial Exhibit 44</b> [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' <b>Trial Exhibit 45</b> [Leah Property - Consents]	XVI	AA 2678-2693
Undated	Plaintiffs' <b>Trial Exhibit 40001</b> [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' <b>Trial Exhibit 40002</b> [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' <b>Trial Exhibit 40006</b> [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' <b>Trial Exhibit 40007</b> [Final Settlement Statement - Forest City]	XVI	AA 2705-2707

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40040</b> [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' <b>Trial Exhibit 40041</b> [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' <b>Trial Exhibit 40042</b> [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' <b>Trial Exhibit 40046</b> [Personal Guaranty - Lease]	XVI	AA 2731-2739
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' <b>Trial Exhibit 50002</b> [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' <b>Trial Exhibit 50006</b> [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' <b>Trial Exhibit 50007</b> [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' <b>Trial Exhibit 50008</b> [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' <b>Trial Exhibit 50037</b> [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' <b>Trial Exhibit 50040</b> [Settlement Agreement - Heartland]	XVI	AA 2826-2878

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 50042</b> [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' <b>Trial Exhibit 60002</b> [Emails]	XVI	AA 2901
Undated	Plaintiffs' <b>Trial Exhibit 60005</b> [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' <b>Trial Exhibit 70003</b> [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' <b>Trial Exhibit 70023</b> [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' <b>Trial Exhibit 70030</b> [Underlying Action - Discovery Request]	XVII	AA 2908-2917
Undated	Plaintiffs' <b>Trial Exhibit 70036</b> [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' <b>Trial Exhibit 70037</b> [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' <b>Trial Exhibit 70038</b> [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' <b>Trial Exhibit 70042</b> [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' <b>Trial Exhibit 70045</b> [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' <b>Trial Exhibit 70052</b> [Document List - LVLP]	XVII	AA 3034-3037

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70053</b> [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' <b>Trial Exhibit 70054</b> [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' <b>Trial Exhibit 70055</b> [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' <b>Trial Exhibit 70056</b> [Muije Attorney's Fees]	XVIII	AA 3221-3228
Undated	Plaintiffs' <b>Trial Exhibit 70060</b> [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' <b>Trial Exhibit 70062</b> [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' <b>Trial Exhibit 70063</b> [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' <b>Trial Exhibit 70064</b> [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' <b>Trial Exhibit 70065</b> [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' <b>Trial Exhibit 70067</b> [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' <b>Trial Exhibit 70075</b> [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' <b>Trial Exhibit 70076</b> [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' <b>Trial Exhibit 70077</b> [Reisman Attorney's Fees]	XIX	AA 3376

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70078</b> [Rich's Fees]	XIX	AA 3377-3463
Undated	Plaintiffs' <b>Trial Exhibit 70079</b> [Muije Attorney's Fees]	XIX	AA 3464-3511
Undated	Mitchell's <b>Trial Exhibit 90054</b> [Surrender/Termination Agreement]	XX	AA 3512-3516
Undated	Mitchell's <b>Trial Exhibit 90069</b> [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's <b>Trial Exhibit 90075</b> [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's <b>Trial Exhibit 90079</b> [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543

## **CHRONOLOGICAL TABLE OF CONTENTS OF SEALED VOLUMES**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure [ <b>Sealed</b> ]	XXI	SAA 1-72
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [ <b>Sealed</b> ]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][ <b>Sealed</b> ]	XXIII	SAA 324-513
Undated	Plaintiffs' <b>Trial Exhibit 2</b> [Aquarius Owner/LVLP] [ <b>Sealed</b> ]	XXIII	SAA 514-547
Undated	Plaintiffs' <b>Trial Exhibit 27</b> [Meadows Bank Statement] [Partial Document Only] [ <b>Sealed</b> ]	XXIII	SAA 548
Undated	Plaintiffs' <b>Trial Exhibit 32</b> [Casino Coolidge Operating Agreement] [ <b>Sealed</b> ]	XXIV	SAA 549-578
Undated	Plaintiffs' <b>Trial Exhibit 35</b> [Live Work Manager Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 579-582
Undated	Plaintiffs' <b>Trial Exhibit 40</b> [Wink One Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 583-588
Undated	Plaintiffs' <b>Trial Exhibit 52</b> [FC Live Work Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 589-659
Undated	Plaintiffs' <b>Trial Exhibit 10002</b> [LVLP Holdings 2007 Tax Return] [ <b>Sealed</b> ]	XXIV	SAA 660-677

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs <b>Trial Exhibit 10003</b> [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' <b>Trial Exhibit 10004</b> [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' <b>Trial Exhibit 20024</b> [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' <b>Trial Exhibit 20026</b> [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' <b>Trial Exhibit 30002</b> [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' <b>Trial Exhibit 30031</b> [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' <b>Trial Exhibit 30062</b> [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' <b>Trial Exhibit 30063</b> [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' <b>Trial Exhibit 30066</b> [Unallocated Contributions] [Sealed]	XXIV	SAA 775
Undated	Plaintiffs' <b>Trial Exhibit 30067</b> [Mitchell Amounts Paid] [Sealed]	XXIV	SAA 776-780
Undated	Plaintiffs' <b>Trial Exhibit 30086</b> [Mitchell Loan Balances] [Sealed]	XXIV	SAA 781-783
Undated	Plaintiffs' <b>Trial Exhibit 30087</b> [Lieberman Loan Balances] [Sealed]	XXIV	SAA 784-786



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 40043</b> [Release of Lease Guaranty] <b>[Sealed]</b>	XXIV	SAA 787-789
Undated	Plaintiffs' <b>Trial Exhibit 50038</b> [Wall Street Settlement Agreement] <b>[Sealed]</b>	XXV	SAA 790-820
Undated	Plaintiffs' <b>Trial Exhibit 60001</b> [Wall Street Engagement Letter] <b>[Sealed]</b>	XXV	SAA 821-825
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] <b>[Sealed]</b>	XXV	SAA 826-1039
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued] <b>[Sealed]</b>	XXVI	SAA 1040-1289
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued] <b>[Sealed]</b>	XXVII	SAA 1290-1414
Undated	Plaintiffs' <b>Trial Exhibit 70009</b> [Lieberman Contributions] <b>[Sealed]</b>	XXVII	SAA 1415-1418
Undated	Plaintiffs' <b>Trial Exhibit 70015</b> [Mitchell Contributions] <b>[Sealed]</b>	XXVII	SAA 1419-1422
Undated	Plaintiffs' <b>Trial Exhibit 70021</b> [LVLP Balance Sheet - 2015] <b>[Sealed]</b>	XXVII	SAA 1423
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] <b>[Sealed]</b>	XXVIII	SAA 1424-1673
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] [Continued] <b>[Sealed]</b>	XXIX	SAA 1674-1704

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70072</b> [LVLP G/L 2011] <b>[Sealed]</b>	XXIX	SAA 1705-1712
Undated	Plaintiffs' <b>Trial Exhibit 70074</b> [LVLP Adjusted Entries 2012] <b>[Sealed]</b>	XXIX	SAA 1713-1714
Undated	Mitchell's <b>Trial Exhibit 90001</b> [Forest City Agreement] <b>[Sealed]</b>	XXIX	SAA 1715-1807
Undated	Mitchell's <b>Trial Exhibit 90052</b> [Casino Coolidge Title Documents] <b>[Sealed]</b>	XXIX	SAA 1808-1820

## **ALPHABETICAL TABLE OF CONTENTS TO APPELLANTS' APPENDIX**

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
7/17/18	Amended Business Court Order	V	AA 879-882
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
7/18/17	Business Court Order	II	AA 293-297
2/20/18	Business Court Order [Amended]	III	AA 479-481
7/26/16	Complaint (Original)	I	AA 1-19
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
Undated	Mitchell's <b>Trial Exhibit 90001</b> [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's <b>Trial Exhibit 90052</b> [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820
Undated	Mitchell's <b>Trial Exhibit 90054</b> [Surrender/Termination Agreement]	XX	AA 3512-3516

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Mitchell's <b>Trial Exhibit 90069</b> [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's <b>Trial Exhibit 90075</b> [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's <b>Trial Exhibit 90079</b> [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [ <b>Sealed</b> ]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][ <b>Sealed</b> ]	XXIII	SAA 324-513
11/12/19	Motion to Intervene	VI	AA 994-1036
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Liberman and Casino Coolidge]	VIII	AA 1492-1500
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure <b>[Sealed]</b>	XXI	SAA 1-72
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861
Undated	Plaintiffs' <b>Trial Exhibit 1</b> [Ownerships Interests]	XV	AA 2457

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 2</b> [Aquarius Owner/LVLP] [Sealed]	XXIII	SAA 514-547
Undated	Plaintiffs' <b>Trial Exhibit 3</b> [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' <b>Trial Exhibit 9</b> [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' <b>Trial Exhibit 10</b> [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' <b>Trial Exhibit 12</b> [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' <b>Trial Exhibit 17</b> [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' <b>Trial Exhibit 18</b> [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' <b>Trial Exhibit 19</b> [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' <b>Trial Exhibit 20</b> [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiffs' <b>Trial Exhibit 21</b> [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597
Undated	Plaintiffs' <b>Trial Exhibit 23</b> [List Managers - 305 Las Vegas]	XV	AA 2598

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 27</b> [Meadows Bank Statement] [Partial Document Only] [ <b>Sealed</b> ]	XXIII	SAA 548
Undated	Plaintiffs' <b>Trial Exhibit 30</b> [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' <b>Trial Exhibit 32</b> [Casino Coolidge Operating Agreement] [ <b>Sealed</b> ]	XXIV	SAA 549-578
Undated	Plaintiffs' <b>Trial Exhibit 34</b> [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' <b>Trial Exhibit 35</b> [Live Work Manager Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 579-582
Undated	Plaintiffs' <b>Trial Exhibit 38</b> [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' <b>Trial Exhibit 40</b> [Wink One Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 583-588
Undated	Plaintiffs' <b>Trial Exhibit 43</b> [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' <b>Trial Exhibit 44</b> [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' <b>Trial Exhibit 45</b> [Leah Property - Consents]	XVI	AA 2678-2693

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 52</b> [FC Live Work Company Documents] [Sealed]	XXIV	SAA 589-659
Undated	Plaintiffs' <b>Trial Exhibit 10002</b> [LVLP Holdings 2007 Tax Return] [Sealed]	XXIV	SAA 660-677
Undated	Plaintiffs' <b>Trial Exhibit 10003</b> [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' <b>Trial Exhibit 10004</b> [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' <b>Trial Exhibit 20024</b> [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' <b>Trial Exhibit 20026</b> [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' <b>Trial Exhibit 30002</b> [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' <b>Trial Exhibit 30031</b> [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' <b>Trial Exhibit 30062</b> [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' <b>Trial Exhibit 30063</b> [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' <b>Trial Exhibit 30066</b> [Unallocated Contributions] [Sealed]	XXIV	SAA 775

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 30067</b> [Mitchell Amounts Paid] <b>[Sealed]</b>	XXIV	SAA 776-780
Undated	Plaintiffs' <b>Trial Exhibit 30086</b> [Mitchell Loan Balances] <b>[Sealed]</b>	XXIV	SAA 781-783
Undated	Plaintiffs' <b>Trial Exhibit 30087</b> [Lieberman Loan Balances] <b>[Sealed]</b>	XXIV	SAA 784-786
Undated	Plaintiffs' <b>Trial Exhibit 40001</b> [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' <b>Trial Exhibit 40002</b> [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' <b>Trial Exhibit 40006</b> [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' <b>Trial Exhibit 40007</b> [Final Settlement Statement - Forest City]	XVI	AA 2705-2707
Undated	Plaintiffs' <b>Trial Exhibit 40040</b> [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' <b>Trial Exhibit 40041</b> [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' <b>Trial Exhibit 40042</b> [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' <b>Trial Exhibit 40043</b> [Release of Lease Guaranty] <b>[Sealed]</b>	XXIV	SAA 787-789
Undated	Plaintiffs' <b>Trial Exhibit 40046</b> [Personal Guaranty - Lease]	XVI	AA 2731-2739

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' <b>Trial Exhibit 50002</b> [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' <b>Trial Exhibit 50006</b> [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' <b>Trial Exhibit 50007</b> [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' <b>Trial Exhibit 50008</b> [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' <b>Trial Exhibit 50037</b> [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' <b>Trial Exhibit 50038</b> [Wall Street Settlement Agreement] [Sealed]	XXV	SAA 790-820
Undated	Plaintiffs' <b>Trial Exhibit 50040</b> [Settlement Agreement - Heartland]	XVI	AA 2826-2878
Undated	Plaintiffs' <b>Trial Exhibit 50042</b> [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' <b>Trial Exhibit 60001</b> [Wall Street Engagement Letter] [Sealed]	XXV	SAA 821-825

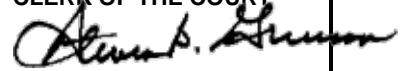
<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 60002</b> [Emails]	XVI	AA 2901
Undated	Plaintiffs' <b>Trial Exhibit 60005</b> [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [ <b>Sealed</b> ]	XXV	SAA 826-1039
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued][ <b>Sealed</b> ]	XXVI	SAA 1040-1289
Undated	Plaintiffs' <b>Trial Exhibit 60053</b> [Rich Working Papers] [Partial Document Only] [Continued][ <b>Sealed</b> ]	XXVII	SAA 1290-1414
Undated	Plaintiffs' <b>Trial Exhibit 70003</b> [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' <b>Trial Exhibit 70009</b> [Lieberman Contributions] [ <b>Sealed</b> ]	XXVII	SAA 1415-1418
Undated	Plaintiffs' <b>Trial Exhibit 70015</b> [Mitchell Contributions] [ <b>Sealed</b> ]	XXVII	SAA 1419-1422
Undated	Plaintiffs' <b>Trial Exhibit 70021</b> [LVLP Balance Sheet - 2015] [ <b>Sealed</b> ]	XXVII	SAA 1423
Undated	Plaintiffs' <b>Trial Exhibit 70023</b> [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' <b>Trial Exhibit 70030</b> [Underlying Action - Discovery Request]	XVII	AA 2908-2917

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70036</b> [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' <b>Trial Exhibit 70037</b> [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' <b>Trial Exhibit 70038</b> [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' <b>Trial Exhibit 70042</b> [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] <b>[Sealed]</b>	XXVIII	SAA 1424-1673
Undated	Plaintiffs' <b>Trial Exhibit 70043</b> [Rich Initial Expert Report] [Continued] <b>[Sealed]</b>	XXIX	SAA 1674-1704
Undated	Plaintiffs' <b>Trial Exhibit 70045</b> [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' <b>Trial Exhibit 70052</b> [Document List - LVLP]	XVII	AA 3034-3037
Undated	Plaintiffs' <b>Trial Exhibit 70053</b> [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' <b>Trial Exhibit 70054</b> [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' <b>Trial Exhibit 70055</b> [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' <b>Trial Exhibit 70056</b> [Muije Attorney's Fees]	XVIII	AA 3221-3228



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 70060</b> [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' <b>Trial Exhibit 70062</b> [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' <b>Trial Exhibit 70063</b> [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' <b>Trial Exhibit 70064</b> [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' <b>Trial Exhibit 70065</b> [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' <b>Trial Exhibit 70067</b> [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' <b>Trial Exhibit 70072</b> [LVLP G/L 2011] [Sealed]	XXIX	SAA 1705-1712
Undated	Plaintiffs' <b>Trial Exhibit 70074</b> [LVLP Adjusted Entries 2012] [Sealed]	XXIX	SAA 1713-1714
Undated	Plaintiffs' <b>Trial Exhibit 70075</b> [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' <b>Trial Exhibit 70076</b> [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' <b>Trial Exhibit 70077</b> [Reisman Attorney's Fees]	XIX	AA 3376
Undated	Plaintiffs' <b>Trial Exhibit 70078</b> [Rich's Fees]	XIX	AA 3377-3463

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 70079</b> [Muije Attorney's Fees]	XIX	AA 3464-3511
2/27/17	Proofs of Service	I	AA 20-48
11/12/19	Receipt of Copy	VI	AA 992-993
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182
7/30/18	Second Amended Business Court Order	V	AA 883-885
12/30/19	<b>Trial Transcript - Day 1</b> [December 30, 2019]	IX	AA 1533-1697
12/31/19	<b>Trial Transcript - Day 2</b> [December 31, 2019]	X	AA 1698-1785
1/2/20	<b>Trial Transcript - Day 3</b> [January 2, 2020]	XI	AA 1786-1987
1/3/20	<b>Trial Transcript - Day 4</b> [January 3, 2020]	XII	AA 1988-2163
1/6/20	<b>Trial Transcript - Day 5</b> [January 6, 2020]	XIII	AA 2164-2303
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

FRIDAY, JANUARY 3, 2020

**BENCH TRIAL - DAY 4**

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**

### **WITNESSES FOR THE DEFENSE:**

#### WINTHROP DAVIES CHAMBERLIN

Direct Examination by Mr. Boschee	5
Cross-Examination by Mr. Muije	23
Cross-Examination by Mr. Blut	57
Cross-Examination by Mr. H. Johnson	59
Redirect Examination by Mr. Boschee	63
Recross-Examination by Mr. Muije	65
Further Redirect Examination by Mr. Boschee	68
Further Recross-Examination by Mr. Muije	68

#### DAVID MITCHELL

Direct Examination by Mr. Edwards	70
Cross-Examination by Mr. Muije	111
Cross-Examination by Mr. Boschee	166
Redirect Examination by Mr. Edwards	167
Recross-Examination by Mr. Muije	171

## **E X H I B I T S**

### **PLAINTIFFS' EXHIBITS ADMITTED:**

60001	113
60002	119
60005	148
60014-60018	160
60032-60038	151

**EXHIBITS**

**DEFENSE EXHIBITS ADMITTED:**

80039

52

1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 3, 2020, 9:07 A.M.**

2 \* \* \* \* \*

3 THE COURT: Good morning.

4 ATTORNEYS: Good morning.

5 THE COURT: Who's our next witness?

6 MR. MUIJE: I think we'll call Mr. Chamberlin first,  
7 Your Honor, unless Mr. Blut wants to start with him on direct.

8 MR. BOSCHEE: Well, it would be me probably.

9 MR. MUIJE: Oh, Mr. Boschee. I apologize.

10 MR. BOSCHEE: I can. It doesn't -- whatever the  
11 Court's preference is. I'm happy to --

12 THE COURT: Mr. Boschee, it is up to you.

13 MR. BOSCHEE: Then I'll start with him; that's fine.

14 THE COURT: All right.

15 MR. MUIJE: Your Honor, may I get a pair of headsets,  
16 please.

17 THE COURT: You may.

18 Sir, if you'd come on up.

19 **WINTHROP DAVIES CHAMBERLIN**

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

22 THE CLERK: Please have a seat, and state and spell  
23 your name for the record.

24 THE WITNESS: Thank you. Winthrop Davies Chamberlin.

25 MR. BOSCHEE: Good morning, Mr. Chamberlin.

JD Reporting, Inc.

1 THE COURT: If you would spell that, please.

2 THE WITNESS: Okay. W-i-n-t-h-r-o-p, D-a-v-i-e-s,  
3 C-h-a-m-b-e-r-l-i-n.

4 THE COURT: Thank you, sir.

5 Now, Mr. Boschee.

6 THE WITNESS: You're welcome, Judge.

7 THE COURT: Sir, there's also water and M&Ms if you  
8 need them.

9 THE WITNESS: Thank you very much.

10 THE COURT: And if you need a break, you let us know.

11 THE WITNESS: Thank you.

12 THE COURT: All right.

13 MR. BOSCHEE: And I'm glad, Your Honor, asked because  
14 I have misspelled my own client's name at least once in  
15 pleadings in this case.

16 DIRECT EXAMINATION

17 BY MR. BOSCHEE:

18 Q Good morning, Win. Real briefly, I mean, how -- what  
19 is your position with 305 2nd Avenue Associates?

20 A I am one of two general partners. The other general  
21 partner is Barnet Liberman. Between the two of us, we own  
22 65 percent of the interest in 305 Second Avenue Associates,  
23 which is the principal entity of what I believe is called a  
24 disregarded entity, which is 305 Las Vegas, LLC. We have  
25 approximately 40 limited partners. And 305 Second Avenue

JD Reporting, Inc.

1 Associates was formed I believe in 1987.

2 Q Okay. We've talked -- you've been in the duration of  
3 the trial. We've talked a lot about yourself and Mr. Liberman.  
4 Can you give us a -- can you give the Court a flavor for who  
5 the 40 limited partners are in 305 Second Avenue Associates and  
6 what if any influence they have on what goes on with the  
7 company.

8 A The 40 limited partners are composed of primarily of  
9 attorneys and Wall Street broker investment banker types. They  
10 have been investors since 1987. Their original investment was  
11 to provide some additional equity financing for the building of  
12 305 Second Avenue, which had been the old Lying-In Hospital,  
13 and which we converted into apartments and medical office  
14 space.

15 Q Well, you kind of segued into my second -- my next  
16 question, Mr. Chamberlin, which is so starting in 1987 -- well,  
17 let me ask another question first. Strike that.

18 305 Second Avenue Associates has been in business  
19 since 1987. How long have you been in various dealings,  
20 partnerships, business, for lack of a better word, with  
21 Mr. Liberman?

22 A We bought our first building, a tenement building at  
23 57 Thompson Street in the fall of 1969.

24 Q Okay. And have been in primarily real estate and  
25 management since then?



1           A     Yes. And fitness. We owned and operated the  
2     Printing House Fitness Center for a number of years until we  
3     net leased it five or six years ago.

4           Q     Okay. Now, just specifically as to 305 Second Avenue  
5     Associates, you mentioned that it was formed in the late  
6     '80s. What other businesses besides the Aquarius Plaza is  
7     305 Second Avenue Associates involved in in New York City?

8           A     It owns the building at 305 Second Avenue, which  
9     formerly had been the old Lying-In Hospital, and within that  
10    building, it operates apartments and doctors' offices.

11          Q     Does it have -- does it own any other property in New  
12    York, or is it just that building with the related apartments?

13          A     Just that building.

14          Q     Okay. And, for lack of a better word, who -- day to  
15    day, who manages 305 Second Avenue Associates?

16          A     Barnet's role had been primarily the construction  
17    aspect. My area of responsibility was financing. And the two  
18    of us are owners of ORB Management which manages the building.

19          Q     Okay. Generally, you've been here, and you've heard  
20    that Mr. Mitchell and Mr. Liberman have been in Las Vegas  
21    longer than 305 has. Why did 305 Second Avenue Associates  
22    decide to get into the real estate game in Las Vegas?

23          A     305 Second Avenue sold in 2002, '3, '4 and  
24    '5 approximately 30 apartments at 305 Second Avenue. That  
25    money was assembled and was the basis for a 1031 exchange.

1           We looked first in New York for a comparable piece of  
2 property. We expanded the search to the Boston area and  
3 Washington, D.C., and we didn't find anything suitable. We  
4 looked in the Chicago area, and there wasn't anything there  
5 that seemed to match our needs.

6           And Barnet had been involved in Las Vegas, and at  
7 that point he had a piece of property which, you know, fit the  
8 definition of like-kind real estate, and it seemed to make  
9 sense after looking at a number of alternatives to be an  
10 appropriate investment. And at that particular time, the real  
11 estate market in Las Vegas appeared to be very strong.

12           Q     Can you -- we heard a lot about it yesterday, and I  
13 suspect Mr. Muije is going to ask you about it today. But  
14 Mr. Barnet Liberman was on both sides of the transaction. He's  
15 a general partner of 305 Second Avenue, and he was also a  
16 member of the LLC that owned the parcel. So can you explain to  
17 the Court how this transaction took place with Mr. Liberman  
18 being, you know, theoretically at least, involved on both  
19 sides.

20           A     Well, while we are both general partners and share  
21 responsibility overall, in this particular instance I basically  
22 felt that it was my responsibility to make this decision on  
23 behalf of 305 Second Avenue. And I did not look upon this as  
24 one of the best opportunities because Barnet was on both sides  
25 of the transaction, but I felt that we had done sufficient due

1 diligence and probably looked at 40 properties.

2 And for whatever reason, unfortunately, when you  
3 build something, you know, you think that it's prettier than  
4 all the other buildings on the block. So I think we might have  
5 been sort of part of that whatever it is, ailment, but we  
6 looked at a lot of buildings, and they didn't match up. And  
7 Vegas at the time was as strong a market as we'd seen.

8 Q How did 305 determine the purchase price for the  
9 Aquarius Plaza? How did you work that out with -- I mean, the  
10 owner of the parcel?

11 A Well, in round numbers, at the time, it was  
12 considered that the market in Las Vegas, if you take as a  
13 yardstick a value per door, so to speak, or per unit, it was  
14 considered to be roughly 30,000 a unit, and the property had an  
15 entitlement for I believe it was about 1100 units. So it  
16 seemed to pencil out at roughly \$30 million.

17 Q Okay. Who did -- who negotiated the price on behalf  
18 of 305?

19 A Well, you know, with a 1031 exchange, there's a  
20 certain pot of money which is available to be invested. And in  
21 this case, the pot of money was essentially \$25 million. So in  
22 some measure the price was fixed. So the object was to get the  
23 best value for that particular sum of money.

24 Q Okay. So again, to that point, you kind of in a  
25 roundabout way have answered my question.

1           Because a 1031 kind of fixed what you were going to  
2 pay, what 305 was going to pay, Mr. Liberman didn't have any  
3 role in negotiating the price that was paid for the Aquarius  
4 Plaza, did he?

5           A     Well, I mean, he had the same role that I did, which  
6 was the two of us were responsible for making the purchase. We  
7 owned 65 percent of the entity, and both of us had equal  
8 responsibility to our limited partners. So I think that the  
9 dialogue between us was sort of streamlined after 30 years or  
10 so, but, you know, a series of sort of grunts and uh-huh and,  
11 yeah, I see what you mean. It was a relatively short  
12 conversation, but we came to agree that this would be an  
13 appropriate investment.

14          Q     Okay. Now, you've been here, and you've heard a lot  
15 of testimony about Charleston Casino Partners. Do you recall  
16 that?

17          A     I do.

18          Q     Okay. Why did 305 have to enter into the lease  
19 development agreement with Charleston Casino Partners if you  
20 recall?

21          A     Well, we needed -- we needed some bank financing in  
22 addition to the monies that were involved in the transaction,  
23 and Barnet's partner David Mitchell knew the people at the  
24 Heartland Bank, which came out of St. Louis, but they were  
25 interested in these particular circumstances in making a loan

1 on the property at 300, 320 and 330 East Charleston Boulevard.

2 Q Okay. Was the lease development agreement a  
3 condition of that financing?

4 A Well, I mean, it gave it support. So, yes.

5 Q How so? I mean, can you explain that to the Court.  
6 I mean, when you say it gave the loan support, what do you mean  
7 by that?

8 A Well, I mean, we operate, and I manage the site  
9 today, and the site essentially has three pretty decrepit,  
10 nondescript office buildings, which to say that they get a  
11 grade of C would be kind of an overstatement. So other than  
12 that, the property was also a parking lot. And while parking  
13 spaces are valuable in Las Vegas, it didn't create the  
14 framework or the structure which could support the price. So  
15 we needed some strong financial partners and also some people  
16 who were regarded as capable of developing in Las Vegas.

17 Q Okay. And then that ended up being Charleston Casino  
18 Partners?

19 A That's correct.

20 Q What was the plan? What were they going to do with  
21 the Aquarius Plaza? What were they supposed to do?

22 A Well, at the time, the property was in, the word,  
23 it's "entitled" in Las Vegas. In New York it's called "as of  
24 right." But there was an entitlement to build 1100 units. So  
25 that basically provided the financial strength to warrant this

1 investment.

2 Q Okay. Was there an overall plan of development that  
3 was presented to 305? I mean, was there kind of like this is  
4 what we want this to end up being at the end of all this? If  
5 you recall.

6 A Well, I mean, at the time there was an endgame that  
7 was in sight here, and also at the time the, you know, downtown  
8 Vegas had a certain amount of cachet. It wasn't The Strip, but  
9 it was considered very promising. And this was looked upon as  
10 a development which would be pretty well suited to be in  
11 downtown Las Vegas.

12 Q Did the development happen?

13 A No.

14 Q Did Charleston Casino Partners ever pay 305 any rent  
15 pursuant to that agreement?

16 A No.

17 Q So the question that I'm going to ask you because I'm  
18 going to preempt the Judge asking you is why didn't 305 do  
19 anything to collect that rent? Why didn't you take any action  
20 against Charleston Casino Partners?

21 A Well, the ball was basically in my court. I didn't  
22 like the positioning, but that's the way it was. The parcel in  
23 Las Vegas was part of a bigger piece of pie in New York City.

24 And in my opinion if one of the partners, one of the  
25 two partners were to be -- have a -- be the subject of a

1 significant litigation to -- that could well have been a  
2 potential default in our loan agreements with the banks in  
3 New York and under our partnership agreements.

4 Q It could have had an adverse effect on the other  
5 limited partners of 305 Second Avenue?

6 A Yes.

7 Q Could it have had an adverse effect on in putting 305  
8 Second Avenue in default of all the loans and basically out of  
9 business?

10 A It could have.

11 Q Okay. Now, at the same time -- you've been here.  
12 You've heard a lot about this carryback note, the \$5 million  
13 note that was due back to LiveWork, but that was due to  
14 Mr. Liberman and Mr. Mitchell. Do you recall that testimony?

15 A I do.

16 Q Okay. At the same time you weren't collecting  
17 anything from Charleston Casino Partners, 305 didn't make any  
18 payments on that note; right?

19 A Correct.

20 Q Why not?

21 A Well, if we weren't -- we weren't collecting rent.  
22 So we didn't have the wherewithal to pay the note.

23 Q How was 305 paying its other bills? Because you had  
24 Heartland Bank's obligation. There's -- how much did it cost  
25 to keep -- strike that.

1                   How much did it cost to keep the center running every  
2 month?

3           A       Round numbers, it was about \$50,000 a month.

4           Q       Okay. And there was an obligation to Heartland Bank  
5 that had to be paid every month; right?

6           A       That's correct.

7           Q       How were those -- how were those obligations being  
8 paid by 305 with no money coming in?

9           A       That money came out of the operating account in New  
10 York City.

11          Q       Okay. Out of the other 305 Second Avenue Associates  
12 pool of money from the other things that they were doing?

13          A       That's correct.

14          Q       Okay. Did Mr. Liberman ever take in any personal  
15 funds to try to offset some of these obligations? That you  
16 recall?

17          A       Not that I know of.

18          Q       Okay. At the same time -- you heard the testimony,  
19 and I just want to confirm this. 305 actually wasn't  
20 collecting any rent from the tenants for a period of time  
21 either, was it -- were you?

22          A       That's correct.

23          Q       That was going to Charleston Casino Partners, wasn't  
24 it?

25          A       That's my understanding.



1 Q Okay. But during all of this, did Mr. Liberman ever  
2 explain any of this to you? I mean, you guys are general  
3 partners in 305. Did he ever tell you why they weren't making  
4 the payments? Did he ever give an explanation as to what was  
5 going on that was at all satisfactory to you?

6 A Well, you know, when you're in a good market,  
7 everybody does very well. And when the market in Vegas turned,  
8 it seemed to go up faster than any other market in the country,  
9 and when the tide turned, it dropped like a stone.

10 Q Okay.

11 A So it was my understanding that there just weren't  
12 the resources to meet the obligations.

13 Q Okay. So but at some point 305 stopped paying  
14 Heartland Bank; is that right?

15 A That's correct.

16 Q Why did you do that?

17 And let me ask you this question first. Was that  
18 your decision?

19 A Yes, it was.

20 Q Why?

21 A I had reached out to the Heartland Bank and attempted  
22 to reach some kind of a resolution with them to give us relief  
23 under the -- because the market that all of us had invested in  
24 was not the market that was the present market in Las Vegas,  
25 and I wanted the bank to recognize the change in the

1 circumstances and make some kind of an appropriate adjustment.

2 Q How did that go?

3 A Not very well.

4 Q What happened next?

5 A Well, at some point it became evident that we  
6 couldn't -- we couldn't continue to pay these obligations, or  
7 at least for better or for worse that was my decision that we  
8 couldn't be responsible to our entire partnership and continue  
9 to pay. So we stopped paying the bank.

10 Q Okay. At some point thereafter Heartland commenced  
11 litigation?

12 A That's correct.

13 Q And at some point shortly thereafter LiveWork  
14 commenced litigation, didn't they, on the \$5 million note?  
15 Here in Las Vegas?

16 A Yeah, I believe so.

17 Q Okay. And then right around that same time was when  
18 305 finally brought the claim against Charleston Casino  
19 Partners. Was that litigation a result of the other two  
20 litigations? Did you finally have to pull the trigger on that  
21 because Heartland was coming after you, or what was the  
22 thinking behind that?

23 A I mean, at some point we needed an effective  
24 response. We also needed effective representation on behalf of  
25 305 Las Vegas, LLC. We hired a man named Carl Schwartz of

1 Hunton & Williams in New York. And at the time Carl was  
2 considered to be one of the -- one of the best people around in  
3 negotiating with banks and restructuring the financing that was  
4 on the property.

5 Q Okay. And eventually all of the litigation and  
6 Mr. Schwartz's efforts resulted in a settlement agreement; is  
7 that right?

8 A That's correct.

9 Q We can pull it up. I believe it's 9033 (sic), but I  
10 could be wrong about that. Do you recall the settlement  
11 agreement, the global settlement that was entered into?

12 THE COURT: With Heartland Bank?

13 MR. BOSCHEE: With Heartland Bank, yes. Well, and  
14 other folks.

15 THE COURT: Right.

16 MR. BOSCHEE: But the Heartland Bank settlement.

17 THE WITNESS: I mean, I guess I remember the numbers  
18 more clearly than any other part of it because that was sort  
19 of -- it was either my job, or it was the most painful part of  
20 the deal.

21 BY MR. BOSCHEE:

22 Q Okay. Well, what is your recollection?

23 There it is. It's on the screen. Is that the  
24 settlement agreement that was ultimately entered into?

25 If you need to scroll down.

1           A     I mean, I believe so. I'm looking at it, and I  
2     assume that's the correct document.

3           MR. MUIJE: What number was that again, Brian? I  
4     must have --

5           MR. BOSCHEE: I think it's 9033.

6           THE CLERK: It may be --

7           ATTORNEYS: 80033.

8           MR. BOSCHEE: 80033.

9           THE COURT: 8-0-0-3-3.

10          MR. BOSCHEE: There you go.

11          MR. MUIJE: Thank you.

12          MR. BOSCHEE: I haven't had quite enough coffee yet  
13     this morning.

14     BY MR. BOSCHEE:

15           Q     What is your recollection? Because you -- were you  
16     the primary deal point for 305 in the negotiations of the  
17     settlement?

18           A     No. I think we really relied on Carl Schwartz to  
19     deal with their attorneys, the Heartland attorneys, and it just  
20     seemed -- it seemed best under the circumstances. I had been  
21     assigned a rather junior person to be my liaison between 305  
22     and Heartland Bank, and it didn't seem that that was an  
23     appropriate channel of communications.

24           Q     How long did it take to get the resolution from when  
25     you stopped paying Heartland ultimately to the 29th of August,

1 2014, to wrap this whole thing up?

2 A Well, it seemed to take the better part of two years.

3 Q Okay. So it wasn't something that just happened in  
4 the summer of 2014, and you wrapped it all up?

5 A No.

6 Q Okay.

7 A I went to two Christmas parties at Hunton & Williams  
8 during this process. So it was -- it took a while.

9 Q They were probably really nice Christmas parties  
10 though.

11 Do you -- and if you need to look at the agreement,  
12 let me know, but what is your recollection of ultimately what  
13 the resolution was between all of the parties to the settlement  
14 agreement?

15 A Well, I mean, the bottom line, to look at this  
16 globally and also very simply, in round numbers we had roughly  
17 \$18 million worth of financing. Of the 18, Heartland held  
18 about I think it was roughly 9, 6, as far as an original piece  
19 of paper. I mean, it was redone. I see this says 11. I think  
20 all in between principal and interest it was almost 11,  
21 someplace between 10, 6 and 11.

22 And at the end of the day, the final result was  
23 \$4 million in financing.

24 Q Did the lease with Charleston Casino Partners go away  
25 as part of this deal?

1           A     Yes.

2           Q     Did the rent obligation that they owed 305 go away as  
3 part of this deal?

4           A     Yes, I believe so. Yeah.

5           Q     Okay. And the obligation that 305 owed to LiveWork  
6 on the carryback note went away as part of this deal too,  
7 didn't it?

8           A     Correct.

9           Q     Okay. From 305's perspective, why did you do that?  
10 Why did you -- why did you decide to release the Charleston  
11 Casino Partners's debt and then get out of the six and a half  
12 or \$6.9 million obligation to LiveWork?

13          A     Well, you know, it's just as a judgment call for  
14 better or for worse, it seemed to be the cleanest way of  
15 wrapping this up with a global settlement which addressed all  
16 the issues. It certainly wasn't perfect. I'd say everybody  
17 was universally unhappy. But under the circumstances, it  
18 seemed to be in the best interest, at least of the -- of our  
19 partnership to do it that way.

20          Q     Okay. When you entered into the settlement agreement  
21 on the 29th day of August 2014, have you ever -- had you ever  
22 at that point heard the name Russell Nype?

23          A     No.

24          Q     Did you have any idea who he was?

25          A     No.

1 Q Did you have any idea he was in a dispute with Las  
2 Vegas Land Partners over a commission or fee?

3 A I do not recall knowing that. Sorry. But I --

4 Q When's the first time that you recall learning that  
5 Mr. Nype had an issue or at that point maybe a judgment against  
6 Las Vegas Land Partners?

7 A My sense is probably within the last three years at  
8 this point.

9 Q Prior to the start of this trial, have you personally  
10 ever met Mr. Nype before?

11 A No.

12 Out of fairness to Mr. Nype, he hadn't met me either.

13 Q When you entered into -- when 305 entered into this  
14 settlement agreement and ultimately a decision was made to do  
15 this deal with Heartland and everybody else, was concealing  
16 assets or hiding money from Las Vegas Land Partners any part of  
17 the decision-making process for you on behalf of 305?

18 A No.

19 Q Okay. Does 305 still own -- 305 still owns this  
20 property? It still owns Aquarius Plaza and the parking lot;  
21 right?

22 A It does.

23 Q Okay. Does it still cost \$50,000 a month to run it?

24 A No. The operating cost at this point is between 30  
25 and \$35,000 a month.

1 Q Okay. And how much revenue is it generating?

2 A Between 20 and 25.

3 Q So it loses money every month?

4 A That's correct.

5 Q Okay. And has it been like that for -- since 305  
6 took back over the property after the settlement?

7 A Yes.

8 Q Okay. 305 is currently marketing the property;  
9 right?

10 A That's correct.

11 Q Okay. To the best of your understanding, is 305  
12 marketing it for more or less than \$25 million?

13 A Less.

14 Q Considerably less?

15 A Yes.

16 Q Okay. So -- strike that.

17 Has 305 ever shared a bank account with Mr. Liberman  
18 personally?

19 A No.

20 Q Has it ever shared a bank account with Mr. Mitchell  
21 personally?

22 A No.

23 Q Okay. For --

24 MR. BOSCHEE: I have nothing further, Your Honor.

25 Thank you, Mr. Chamberlin. Mr. Muije and the Judge



1 are probably going to ask you some more questions.

2 THE WITNESS: You're welcome.

3 THE COURT: Mr. Muije.

4 MR. MUIJE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MUIJE:

7 Q Mr. Chamberlin, I didn't quite hear how much per  
8 month in rent was being collected or received after 305  
9 regained the property. Could you repeat that. I'm sorry. I  
10 just didn't hear it.

11 A 305 Second Avenue at this time collects between 20-  
12 and \$25,000 a month.

13 Q Does that go direct to 305 Second Avenue, or does it  
14 run through 305 Las Vegas?

15 A I believe that the account is at the Meadows Bank,  
16 and I believe the account name is 305 Las Vegas, LLC.

17 Q And who other than Mr. Liberman is authorized to sign  
18 checks or withdraw money from that account?

19 A I do.

20 Q Is there anyone else?

21 A No.

22 Q Does 305 Las Vegas utilize a management company or an  
23 on-site person to manage that property?

24 A Yes.

25 Q And who is that?

JD Reporting, Inc.

1 A A man named Keith Thompson at Keller Williams.

2 Q And how long has he had that role?

3 A About two months.

4 Q Who managed the property before him?

5 A A broker named Glenda Shaw, affiliated with Northcap.

6 Q And that was a longer-term arrangement; correct?

7 A Correct.

8 Q Let's look at if we could again at 8033 (sic). And  
9 it recites the parties in the first paragraph. Do you see  
10 that?

11 A Yes.

12 Q And can you point me to where it discusses or  
13 indicates that LiveWork is a party to this agreement.

14 A I don't see LiveWork as a part of the highlighted  
15 caption here.

16 Q Okay. Let's look at the signature blocks if we can.  
17 And I believe those start at page 19. Is that your signature,  
18 sir?

19 A Yes.

20 Q And do you recognize Mr. Liberman's signature?

21 A Yes.

22 Q Okay. Is it safe to say you've probably seen his  
23 signature dozens if not hundreds of times over 50 years?

24 A Yes.

25 Q Okay. On page 20 we come down for a counterpart

1 signature page. Would that appear to be Mr. Liberman's  
2 signature?

3 THE COURT: That looks like a notary.

4 THE WITNESS: I apologize. I don't see a signature  
5 here for Mr. Liberman.

6 BY MR. MUIJE:

7 Q And I may have misspoken. It's at the top of  
8 page 21. My bad. Because there were two notaries on the prior  
9 signature page.

10 A You know, sir, you're telling me this is at the top  
11 of page 21. I will take your word for it. I don't see page 21  
12 here, but if you tell me that's the case, I assume I can rely  
13 on that.

14 Q It's down below the screen. Right down there.

15 A Yes, that looks like Mr. Liberman's signature.

16 Q Okay. And it actually has the same notary as the  
17 individual who notarized both of your signatures on page 19;  
18 correct?

19 We can go back and look at page 19 to verify that.

20 A Would you mind highlighting the notary for me,  
21 please.

22 Okay.

23 Q And then if you want to go down, we can look at the  
24 similar notary paragraphs on page 21.

25 A Yes.

1 Q Okay. We can go to page 22, and there's a signature  
2 line that says David J. Mitchell, and it appears to have a  
3 notary acknowledgment below that. Are you familiar with  
4 Mr. Mitchell's signature?

5 A No.

6 Q Do you have any reason to doubt that this is a  
7 properly signed, properly acknowledged signature page  
8 undertaken by Mr. Mitchell in conjunction with this agreement?

9 MR. BOSCHEE: Objection. Foundation.

10 THE COURT: Overruled.

11 THE WITNESS: If Mr. Mitchell wants to tell me it's  
12 his signature, I'll believe him.

13 MR. MUIJE: Okay.

14 THE COURT: No. What he just asked you, sir, is do  
15 you have any reason to believe it's not a properly notarized  
16 and authenticated what the notary has done here?

17 THE WITNESS: Oh. I'm sorry. It, yes, it looks  
18 okay.

19 THE COURT: All right.

20 BY MR. MUIJE:

21 Q Okay. And then on page 23, we have two signatures.  
22 Do you recognize those, sir?

23 A Yes.

24 Q And who are those?

25 A Barnet Liberman and Winthrop Chamberlin.

1 Q And they're signing on behalf of what entity?

2 A 305 Second Avenue Associates.

3 Q Okay. So is it safe to call 305 Second Avenue  
4 Associates the parent company?

5 A Yes, I think that's the correct terminology, or it's  
6 good enough.

7 Q Okay. Now, going back to page 19, both of you are  
8 signing as partners of 305 Second Avenue Associates for what  
9 appears to be the subsidiary 305 Las Vegas; is that correct?  
10 As the borrower, defined as borrower above the signature  
11 blocks?

12 A Yes, I believe so.

13 Q Okay. And this was in August of 2014; correct?

14 A Correct.

15 Q And then there's what purports to be a signature of  
16 Heartland Bank on page 25. Do you have any reason to doubt  
17 that Heartland Bank authorized and approved this agreement?

18 A No.

19 Q After the signature pages, and I don't see another  
20 signature page there, we have a document entitled sixth amended  
21 and restated promissory note. Is that the substitute loan that  
22 you testified about earlier?

23 UNIDENTIFIED SPEAKER: John, what page is that?

24 MR. MUIJE: I'm sorry. That's page 27.

25 THE WITNESS: No -- yes, I recognize this. I mean, I

1 can't swear to the authenticity of it, but you've shown me the  
2 document, so I'll say it's the document.

3 BY MR. MUIJE:

4 Q And it indicates down in paragraph 2B that that loan  
5 matures in March 2016. Do you see that, sir?

6 A Yes. Thank you.

7 Q And did you, in fact, pay that loan off on or before  
8 the maturity date?

9 A You know, this loan was replaced by financing from  
10 Meadows Bank. Frankly, I can't attest to the dates without  
11 looking at the paperwork.

12 Q Sure.

13 A But this was -- the basic trail of the financing went  
14 from Heartland Bank, and in this instance you're showing it at  
15 four and a half million, and it was at the end of the process  
16 replaced by a first mortgage from Meadows Bank in the amount of  
17 \$2 million.

18 Q In the amount of 2 million?

19 A That's correct.

20 Q Had you paid down the principal that much by the time  
21 it was replaced?

22 A It's my belief is that the final principal amount of  
23 the Heartland loan was \$4 million and not four and a half  
24 million dollars.

25 Q Okay. And did you owe any other monies to Heartland

1 other than the \$4 million that you're recalling?

2 A Not to my knowledge.

3 Q Was there a senior loan in front of Heartland Bank at  
4 that time once the settlement went through?

5 A I am not aware of a senior loan because that would  
6 indicate that if there was a senior loan then the Heartland  
7 Bank was in a junior position to another financing institution  
8 on the property, and I don't believe that was the case.

9 Q Okay. Was there any subordinate financing that  
10 remained in effect after this restructuring that you've  
11 testified about?

12 A Not at the time.

13 Q Okay. And...

14 A That I know of.

15 Q And again, I've looked through this entire document  
16 now, and I do not see a signature block or a place where  
17 LiveWork, LLC, is agreeing to this, consenting to it, doing  
18 anything with it.

19 Have you seen such a document at any time?

20 A Not -- not to my knowledge. Or if I did, I don't  
21 recall.

22 Q Okay. Have you ever seen any documents where  
23 LiveWork released its note against 305?

24 A I don't recall having seen a document.

25 Q Subsequent to this deal, did -- were you ever

1 contacted, or was demand ever made by LiveWork that you  
2 continue to pay or resolve the loan obligation deriving from  
3 the original \$5 million note?

4 A Not that I recall.

5 Q And if you needed to deal with LiveWork in any  
6 capacity, who would you contact?

7 A I assume that would be Barnet Liberman.

8 Q Okay. And did you have an understanding with  
9 Mr. Liberman that that note would go away, quote, unquote?

10 A The short answer is no, but I think a more  
11 appropriate answer is that when the negotiations were completed  
12 with the Heartland Bank, there was the junior financing was all  
13 treated at one time as a global settlement that settled  
14 everything.

15 Q But you never saw formal documentation signed by  
16 LiveWork approving that on behalf of the entity LiveWork, did  
17 you?

18 A I don't believe so.

19 Q What kind of reports do you send to your limited  
20 partners, if any?

21 A Our limited partners are entitled to receive a  
22 financial statement, an annual financial statement.

23 Q And that goes out around tax time every year; is that  
24 a fair statement?

25 A No.



1 Q When does it go out?

2 A They're entitled to receive it. If they ask for it,  
3 they will receive it.

4 Q And if they don't ask for it, it's not sent?

5 A No.

6 Q And during the time that these lawsuits and these  
7 negotiations with Heartland were going on, did any limited  
8 partners inquire or request the financial statement?

9 A I'm sorry. I don't recall those. I just don't  
10 recall.

11 Q Okay. And you don't keep a record or a file with  
12 communications from limited partners?

13 A (No response.)

14 Q In other words, if they request a report, it goes  
15 into either the investor subfile or some kind of a  
16 correspondence file or some kind of a financial file?

17 A That's -- that's quite unstructured. There are --  
18 the managing agents have got files. So to the extent that  
19 limited partners have correspondence, the managing agents do  
20 keep track of that.

21 Q And who's the managing agent?

22 A The managing agents are our employees.

23 Q Of ORB or of Second Avenue?

24 A ORB.

25 Q Okay. So ORB would maintain records of

1 communications with limited partners; is that correct?

2 A Yes. I mean, the primary purpose of this is that  
3 most of our investors in 305 Second Avenue at this point are  
4 older by any yardstick. A number of them have died, and they  
5 have heirs, and we have a mechanism whereby that the shares can  
6 be assigned to their heirs. And that's the primary thrust of  
7 the recordkeeping that we do.

8 Q And on an annual basis, would the limited partners  
9 receive K-1s from your accountants?

10 A They would.

11 Q Now, when the original tax-free exchange land, for  
12 want of a better word, occurred, you had already made  
13 arrangements to enter into the lease with Charleston Casino  
14 Partners; correct?

15 A I don't know the chronology of that unless I reviewed  
16 it, which I have not.

17 Q I'll represent to you that closing and the lease are  
18 dated exactly the same.

19 A Okay.

20 Q And I'm assuming you don't enter into a development  
21 contract that's just handed to you without reading it over and  
22 negotiating some terms, discussing it, et cetera. Is that a  
23 correct statement?

24 A What development contract are you referring to?

25 Q I'm talking about what Mr. Boschee called the lease

1 and development contract. I call it a lease.

2 A Okay. Yes --

3 Q Would you like to look at that document?

4 A -- the lease was reviewed.

5 Q Okay. So it wasn't something that sprang up out of  
6 the ground on the closing date, May 2nd, 2007; correct? It  
7 was probably negotiated and drawn up and reviewed by both  
8 yourself and Mr. Liberman weeks before, if not months before  
9 while all of this was going on; is that correct?

10 A Weeks before is probably correct.

11 Q Okay. Now, as you enter into this transaction, the  
12 payments to Heartland are going to commence immediately;  
13 correct? Back in May 2007?

14 A I don't know that for a fact.

15 Q Okay. Do you recall there being a significant lag  
16 time or a grace period or a lead time before payment  
17 obligations to Heartland arose?

18 A No, I do not.

19 Q Okay. And do you recall the monthly payments on that  
20 Heartland note?

21 A No, not the specific amount to be paid to Heartland.

22 Q Okay. Is it safe to say that payments were made for  
23 a period of time prior to your deciding it needed to be  
24 renegotiated or prior to your stopping payments?

25 A That's correct.

1 Q And when the transaction -- when the transaction  
2 occurred, the properties were on East Charleston; correct, from  
3 305 -- or 300 to 320 East Charleston? Am I remembering the  
4 address correctly?

5 A The property addresses are 300, 320 and 330 East  
6 Charleston Boulevard.

7 Q Okay. I appreciate the clarification.

8 And what was located on those three addresses at that  
9 time?

10 A Three rather nondescript commercial buildings, which  
11 they're basic. They were office buildings. Two are office  
12 buildings, and one was -- had five storefronts on the ground  
13 floor. And the 320 building had five storefronts on the ground  
14 floor and five storefronts on the second floor.

15 Q Okay. And around the buildings was basically  
16 dedicated parking for those buildings; is that correct?

17 A That's correct.

18 Q And Mr. Boschee keeps referring to this property as a  
19 parking lot. It was never just a parking lot --

20 THE COURT: Well, that was me. Remember, that was me  
21 who started that.

22 MR. MUIJE: Was it you? I'm sorry, Your Honor.

23 THE COURT: Yeah, I started out about six months ago.

24 MR. MUIJE: I apologize. I thought it derived from  
25 Mr. Boschee.

1 THE COURT: He doesn't get credit for that one.

2 MR. BOSCHEE: No. Nor would I take it.

3 BY MR. MUIJE:

4 Q Now, Mr. Boschee elicited a lot of testimony about  
5 the plans and your intention to put 1100 apartments on there.  
6 Was it an entitlement, an easement? Was it some kind of a  
7 basis that you could convert to use from basically a strip mall  
8 or office buildings to residential apartments? Is that what  
9 you meant when you indicated that the property came with  
10 entitlements?

11 A Sir, as a point of fact, these were not my plans  
12 you're referring to.

13 Q Okay. That's what I'm trying to determine. Whose  
14 plans were they?

15 A The plans for the redevelopment of this property were  
16 the plans of Barnet Liberman and David Mitchell.

17 Q Okay. But as --

18 A To the best of my knowledge.

19 Q And you relied on your longtime friend and partner in  
20 deciding to go with this deal; correct?

21 A I did, coupled with my knowledge of the strength of  
22 the Las Vegas market at that time.

23 Q Okay. And now knowing that you've got an obligation  
24 to make substantial note payments on a recurring monthly basis,  
25 how long would it have taken to put 1100 apartments on that

1 property? You surely must have realized that it wasn't going  
2 to be built and complete within a week, a month, or even a  
3 year? How long did you anticipate it would take to see that  
4 development?

5 MR. BOSCHEE: Objection. I think that calls for  
6 speculation.

7 THE COURT: Overruled.

8 THE WITNESS: Well, I mean, construction is not my  
9 specialty, but my assumption would be that if the property were  
10 to be developed that the construction period once it was shovel  
11 ready would be about two years.

12 BY MR. MUIJE:

13 Q Okay. And how did 305 plan to deal with the  
14 liquidity issues and the necessary capital to service your  
15 financial obligations to Heartland during that period that the  
16 property was basically being developed and not generating  
17 income?

18 A The first source of revenue would be the development  
19 budget for the development of the property.

20 Q Okay. And was there a fund set up for that?

21 A Not to my knowledge.

22 Q Okay. So basically -- and were you aware of what the  
23 property was generating in terms of monthly rents when you  
24 acquired it in '07?

25 A No.

1           Q     You indicated I believe when I just asked you that  
2 currently it's generating 20- to 25,000 a month. We heard  
3 testimony yesterday, I think from Mr. Liberman and possibly  
4 from Mr. Rich, that it was running 300,000 a year, which would  
5 be 12 months times 25,000.

6           The property hasn't materially changed in the last  
7 15 years, has it, to your knowledge?

8           A     I was not managing the property at the time. So I  
9 cannot state with any great authority that the property has  
10 changed or it hasn't changed.

11          Q     Okay. But you chose to embark on this deal with  
12 adequate knowledge to know that it was going to have negative  
13 cash flow at least initially for an extended period of time,  
14 did you not?

15          A     You know, I've made a lot of extremely good business  
16 decisions in my career over the last 40 or 50 years. I would  
17 not hold out this business decision as one of my better  
18 decisions.

19          Q     No. And I appreciate that. Is it fair to say that  
20 you basically trusted and relied on your longtime friend and  
21 partner Mr. Liberman in choosing to enter into this deal?

22          A     I was influenced by his enthusiasm, which was very  
23 high at the time, and in 2006 this seemed to be a place which  
24 would -- it was a very hot market. Let's put it that way.

25          Q     Okay. Was there any intention to basically flip the

1 property?

2 A I didn't know of that intention.

3 Q Okay. You thought it would be developed and  
4 understood that there would likely be negative cash flow at  
5 least initially and told that that would occur; is that  
6 correct?

7 A In every construction project that I've been involved  
8 in, there's always negative cash flow for a couple of years  
9 until the project gets up and running. I didn't think that  
10 this project would be any different from any other project.

11 Q Okay. Did the fact that the cash flow and properties  
12 in New York and other operations of Second Avenue Associates  
13 would basically be subsidizing 305 Las Vegas, was that  
14 communicated to the limited partners?

15 A I believe on the financial statements that the  
16 obligations in Las Vegas or the activities were referenced.

17 Q Well, and we see that in 2012, 2013 and 2014. Was it  
18 also referenced every year prior to 2012, going back to '07?

19 A Between '07 and either '11 or '12, there was just the  
20 income or the lack of income from the lease.

21 Q Did you have an understanding with Mr. Liberman how  
22 that deficit was going to be cured?

23 A I took the responsibility to fund the losses or to  
24 fund the operating expenses of the Las Vegas property as part  
25 of my duties or part of my job as being a managing agent.



1 Q Okay. Was that decision discussed in any way with  
2 the limited partners? Other than the annual financial  
3 statements for those who cared to request them?

4 A To the extent the limited partners asked about the  
5 activities in Las Vegas, they were told.

6 Q But I believe you testified earlier you couldn't  
7 recall any limited partner asking.

8 A I don't recall all the conversations I've had, but  
9 from time to time people ask, you know, how are things in Las  
10 Vegas. It's a little like asking how's the weather. The  
11 weather in Las Vegas wasn't particularly good.

12 Q But you can't document or show any detailed report or  
13 written response about the ongoing losses in the Las Vegas  
14 entity other than the annual financial statements, can you?

15 A Correct.

16 Q And you were here in court yesterday when  
17 Mr. Liberman's testimony was that he does not think and does  
18 not recall advising the limited partners of the problems;  
19 correct?

20 A I believe that's correct.

21 Q Okay.

22 A I don't recall all of Mr. Liberman's testimony, but I  
23 think that's accurate.

24 Q Looking back at Exhibit 80033 and looking at  
25 page 3 of that document, paragraph 3, it makes a recitation of

1 approximately what the outstanding unpaid payments were down  
2 about five lines, eight hundred and one thousand, seven,  
3 twenty-five, seventy. Do you see that, sir?

4 A Yes.

5 Q Well, and it also recites on that same line that the  
6 interest accrual is nineteen, fifty-six, point, six, oh, a day,  
7 and that's just on the first month. Then there's a second note  
8 for 486,000 in past-due interest and principal, accruing  
9 interest at eleven, eighty-eight a day. Just on a rough math  
10 basis, that would suggest to me that at the time of this  
11 settlement agreement the loans are approximately 400 days in  
12 arrears. Does that sound about right?

13 A I'm sorry. Say that again.

14 Q If you look at the recitations in this agreement that  
15 you signed as to what's outstanding and owed.

16 A Right. And then you made a conclusion. What was --  
17 you said it's about --

18 Q My conclusion was if you look at the amount that they  
19 say is past due and owed, and the interest accrual a day and  
20 divide one into the other, it would suggest that payments  
21 stopped about 400 days prior to this settlement agreement.  
22 Does that sound right?

23 A You know, I don't know. I could certainly figure  
24 that out with my calculator. If you tell me that's correct,  
25 I'll take your word for it. Otherwise, I would need to do the

1 calculation myself.

2 Q Do you have a calculator with you, sir?

3 A I have a phone.

4 Q Why don't you crunch the numbers and tell me how many  
5 days, please.

6 THE COURT: So why don't we take a short break while  
7 he does that so we don't all have to watch him do math.

8 MR. MUIJE: Very good. Thank you, Judge.

9 (Proceedings recessed at 10:21 a.m., until 10:35 a.m.)

10 THE COURT: Sir, were you able to finish the math?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Thank you.

13 All right. Mr. Muije, we have an answer to your  
14 question.

15 Sir, what was your calculation?

16 THE WITNESS: It was good. For hundred days was very  
17 close.

18 THE COURT: Thank you.

19 BY MR. MUIJE:

20 Q And if you then backtrack from the recitation in that  
21 Heartland settlement agreement, and I believe we were looking  
22 at page 3 -- I want to make sure I have the right page in front  
23 of me -- paragraph 3, that would mean the default occurred and  
24 that you stopped paying on those notes in approximately June  
25 of 2013, 400 days prior to the date it recites, which was

1 August 6, 2014. Is that correct, sir?

2 A Sir, that's the math. I can't tell you with  
3 certainty that that's the day we stopped paying, but the 400  
4 days from this day seem to be correct, and the math is correct  
5 on the money.

6 Q So that if we're close with June 2013, the property  
7 was acquired in May '07, that means for six years Second Avenue  
8 Associates was subsidizing 305 Vegas to the tune of at least,  
9 at least 3,000 and some dollars per day in interest, which is  
10 over a million dollars a year in note payments. Is that  
11 correct, sir? And that doesn't even count any reduction of  
12 principal?

13 A No. I don't believe that that was the subsidy that  
14 was provided. I think that number is high.

15 Q What do you believe was the drain on Second Avenue  
16 Associates on either a monthly or an annual basis during '08,  
17 '09, '010?

18 A I believe it was in the order of 50- or \$60,000 a  
19 month.

20 Q And where were the other funds coming from to pay  
21 these notes?

22 A I don't know.

23 Q They weren't negative amortization notes, were they?

24 A I don't know.

25 Q When did it become clear to you that Mr. Liberman's

1 excitement and his grandiose plans were not panning out?

2 A It coincided with the market, and I believe that the  
3 market started to collapse in maybe 2008.

4 Q And still you hung in there and made note payments  
5 for another four or five years; correct?

6 A Yes.

7 Q Why didn't you find a third-party independent  
8 developer that could take the ball and run with it as opposed  
9 to just relying on your friend and your partner?

10 A Hmm. I don't know.

11 Q Did you ever think about that?

12 A At the time my responsibility was for our businesses  
13 in New York, and they were doing very well, and this was just,  
14 you know, it was part of the overall businesses that we were  
15 in. It was the part that wasn't doing well.

16 Q So in other words, my term the parent company  
17 subsidizing the subsidiary was pretty accurate; right? You had  
18 good business in New York and bad business in Vegas?

19 A That's correct.

20 Q And the reason you were in Vegas was because of the  
21 ambitions and friendly persuasion of Mr. Liberman; correct?

22 MR. BOSCHEE: Objection. Asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: Neither Mr. Liberman or I ever lacked  
25 for enthusiasm or expansive plans.

1 BY MR. MUIJE:

2 Q Okay. Now, you indicated that ultimately you just  
3 didn't have the wherewithal anymore to pay that LiveWork note,  
4 or actually the LiveWork note never got paid. So there wasn't  
5 the wherewithal to pay the LiveWork note on top of the  
6 Heartland note. Is that correct?

7 A Yes.

8 Q So there was an insufficient capital to cover the  
9 expenses of 305 Las Vegas, LLC?

10 A Yes.

11 Q Now, when Mr. Boschee was asking the questions, you  
12 suggested that trying to enforce the lease against Charleston  
13 Casino Partners would have a negative impact on your New York  
14 operations. How would a landlord enforcing a tenant's  
15 obligations in Las Vegas have a negative impact in New York?

16 A Within the businesses of 305 and the other  
17 businesses, that other operating entities we had in New York,  
18 we were governed by partnership agreements and loan operating  
19 agreements, and a default of a general partner was universally  
20 regarded as a possible event of default under loan documents or  
21 partnership agreements.

22 Q Okay. I understand that, but Charleston Casino  
23 Partners was not a partner. It was a tenant. It was allegedly  
24 a third party. How would enforcing your rights against  
25 Charleston Casino Partners impact those obligations under the

1 loan agreements?

2 A It's my understanding that Mr. Liberman was one of  
3 the owners of that entity.

4 Q And would that show up, per se, on a lawsuit if, for  
5 example, 305 sued to evict Charleston Casino Partners, one  
6 party versus one party, two business entities? You have them  
7 out in three days under or two weeks call it with court delays,  
8 and you have a new tenant in the next month? That should not  
9 impact your business arrangements and loans in New York;  
10 correct?

11 A I wouldn't care to speculate on that.

12 Q Okay. But nevertheless you never decided to  
13 undertake anything or even to twist arms to get the overdue  
14 rent monies; correct?

15 A I'd say as of August 6th of 2014, a decision was made  
16 not to proceed paying out these charges.

17 Q Okay. So seven years later you decided you're not  
18 going to pay the charges anymore, and you're going to  
19 renegotiate with the bank.

20 What happens -- I believe you indicated it was  
21 medical offices at 305 Second Avenue; is that correct?

22 A That's correct.

23 Q And there were some apartments?

24 A Yes.

25 Q Were you here when Mr. Liberman testified that

1 evicting someone in New York can be a lengthy, aggravating  
2 process?

3 A I was.

4 Q Have you ever evicted anybody from 305 Second Avenue?

5 A Yes.

6 Q And how far behind were they on the rent? When you  
7 started the eviction against them?

8 A Six months.

9 Q Okay. So six months is about your patience and  
10 tolerance level normally for an independent third-party; is  
11 that correct?

12 A That's fair to say.

13 Q Well, and again that's in New York where it's more  
14 expensive and more difficult and more time-consuming to get rid  
15 of a tenant. Did you hear Mr. Liberman say in Las Vegas you  
16 can probably get them out in 20 days or less?

17 A I don't recall his saying 20 days, but I'll take his  
18 word for it.

19 Q He did say it would be a lot cheaper and quicker.

20 A Okay.

21 Q Do you recall that?

22 A Sure. Yes.

23 Q So if your tolerance level is six months in New York,  
24 what would it be in Vegas? Forty days? Sixty days? Ninety  
25 days?



1           A     There are more factors that enter in that than what  
2 would happen in Las Vegas.

3           Q     Such as your friendship with Mr. Liberman; is that  
4 correct?

5           A     No. Such as putting business entities in New York at  
6 risk of being in default with their loan, with their bank  
7 loans.

8           Q     And I'm still asking you to explain or clarify to me  
9 how you were in default on a bank loan when you evict a tenant?

10           MR. BOSCHEE: Objection. Asked and answered.

11           THE COURT: Overruled.

12           THE WITNESS: I'm sorry. I just -- say that again.

13 BY MR. MUIJE:

14           Q     And I ask again. You've lost me because I don't -- I  
15 need you to explain to me how you're in default on a loan  
16 agreement in New York when you choose to evict a tenant of a  
17 property in Las Vegas that's not paying rent?

18           A     Because the one entity is a subsidiary entity of the  
19 other.

20           Q     Charleston Casino is a subsidiary of 305?

21           A     No. No. 305 Las Vegas, LLC, is I think to call it a  
22 subsidiary is perhaps not the right technical word. I believe  
23 it's a disregarded entity. But the partners in 305 Las Vegas  
24 are the same partners in 305 Second Avenue Associates.

25           Q     Well, and I understand that. And again if you were

1 sued in Las Vegas by LiveWork, that could constitute an event  
2 of default. You're getting sued for not paying 305 Las Vegas's  
3 bills. I understand that promissory notes and partnership  
4 agreements in New York might consider that financial  
5 responsibility a default under their agreements.

6 But you're exercising financial diligence in  
7 attempting to enforce and collect rent that is owed to you.  
8 How does that constitute a default under those agreements?

9 A Well, that was a decision that I made. And at the  
10 time it seemed advisable.

11 Q And I believe you testified that the ultimate  
12 decision probably 2013 leading to the settlement agreement in  
13 2014 was you couldn't keep throwing money into the black hole.  
14 Is that a fair acronym (sic) or a fair statement? You didn't  
15 have the wherewithal to sustain that anymore?

16 A It did not seem advisable or responsible.

17 Q Did you ever consider it a possibility --

18 A -- regardless of our wherewithal.

19 Q -- of filing a Chapter 11 bankruptcy to resolve those  
20 various?

21 A No.

22 Q -- cash flow issues?

23 And why not?

24 A Filing bankruptcies is not something as a general  
25 partner of any entity that I would consider.

1 Q Okay. Just a matter of personal principle? Because  
2 I see partnerships file Chapter 11 bankruptcy almost every day?

3 A That's fine for them.

4 Q Okay. You were aware though that that would be a  
5 potential legal option that you could have taken; correct?

6 A Yes.

7 Q And in exercising your fiduciary duty to the limited  
8 partners as well as the entity 305 Second Avenue, why did you  
9 agree to release personal guarantees by Mr. Mitchell and  
10 Mr. Liberman which had the potential to recover the full  
11 \$12.6 million owed at that time?

12 A That's an opinion that you're stating. That is -- my  
13 opinion could be different from that.

14 Q Okay. Is it true that you decided that you would  
15 release all rights at 305 Vegas, LLC, had against Mr. Liberman  
16 and Mr. Mitchell personally pursuant to those guarantees? Did  
17 you make that decision?

18 A Yes.

19 Q Okay. And did you do a financial analysis whether  
20 Mr. Liberman had sufficient net worth to pay the 12.6 million  
21 in past due rents that were owed?

22 A I knew what Mr. Liberman's financial capabilities  
23 were.

24 Q And if he really wanted to, he could have done it;  
25 right? He could've sold property in New York. He could've

1 raised 12.6 million. Correct?

2 MR. BLUT: Object. Calls for speculation.

3 THE COURT: Overruled.

4 THE WITNESS: In my view and judgment, that would not  
5 have been a wise or responsible thing to do.

6 BY MR. MUIJE:

7 Q To recover money for the benefit of your limited  
8 partners who have entrusted their investment funds with you,  
9 it's not wise to maximize their return?

10 A The goal of maximizing their returns might not have  
11 been achieved in doing what you're suggesting.

12 Q Okay. Now, you've suggested that a number of these  
13 limited partners were lawyers. What do you think their  
14 reaction would have been if you said we're owed \$12.6 million,  
15 and we're releasing it?

16 MR. BOSCHEE: Objection. Calls for speculation.

17 MR. BLUT: Join.

18 THE COURT: Overruled.

19 THE WITNESS: The people that invested in us invested  
20 in us because they felt that we were good enough at our  
21 business so that we could be counted on to do what was  
22 necessary to achieve some kind of responsible return.

23 BY MR. MUIJE:

24 Q Okay. But as a fiduciary, is a 2 percent per annum  
25 return adequate when you know you can make 7 percent?

1 MR. BLUT: Objection. Lacks foundation.

2 THE COURT: Overruled.

3 THE WITNESS: I -- in my opinion, you need to look at  
4 the 2 percent and the 7 percent, and there are times when only  
5 making a 2 percent return is a much smarter move.

6 BY MR. MUIJE:

7 Q Okay. But you didn't consult the limited partners  
8 about that, did you?

9 A Our partnership agreement is constructed so that this  
10 is not a consulting relationship.

11 Q But if any limited partner had asked, you would've  
12 told them, and they would have had an option of suggesting that  
13 management wasn't doing its job right; correct? That would've  
14 been a possibility?

15 A That's a possibility.

16 MR. MUIJE: Nothing -- oh, one more. One more. Yes,  
17 I do. If we could pull up document 80039. It's a one-page  
18 document.

19 And I better check to make sure that's admitted. I  
20 think it is.

21 It is not. So I'm sorry, Your Honor.

22 THE COURT: Anybody object? It looks like a  
23 Secretary of State filing, although I'm not looking at it.

24 MR. BOSCHEE: Yeah, looks like a Secretary of State  
25 filing to me. I have no objection.

1 THE COURT: Be admitted.

2 (Defense Exhibit Number(s) 80039 admitted.)

3 MR. MUIJE: Thank you, Your Honor.

4 BY MR. MUIJE:

5 Q Have you seen that document before, sir?

6 It's got your signature in the lower left.

7 A Well, I've signed it. So we'll assume that I've seen  
8 it before.

9 Q Okay. And in the right directly to the right of your  
10 signature, it says title, and you say managing member.

11 A Yes.

12 Q Is that your handwriting, sir?

13 A Not the managing member part.

14 Q Okay. Do you have any idea who might have filled  
15 this out and handed it to you for signature?

16 MR. BOSCHEE: I'm going to object to that. I believe  
17 that's going to call for attorney-client communication.

18 THE COURT: Overruled. The identification itself is  
19 not privileged.

20 Just the name, sir.

21 THE WITNESS: No. I don't -- I don't know whose  
22 writing that is or who might have given it to me.

23 BY MR. MUIJE:

24 Q Now, I notice an inconsistency between this document  
25 and the Heartland settlement agreement, which indicates that

1 it's being signed on behalf of 305 and that -- and let me pull  
2 up -- it's probably impossible to do it side-by-side, but  
3 let's --

4 A I hope you're not referring to my signature.

5 Q No. No. I'm not referring to your signature. I'm  
6 referring to this designation in the signature blocks, and I'm  
7 going to try to find a page where we have...

8 And it's on page 19 of 80033. We can pull that up  
9 separately. And we're on page 19.

10 And when you signed for 305 there, it indicates that  
11 it's the sole member of 305 Las Vegas is signing on its behalf.  
12 Do you see that, sir?

13 A I don't. But point it out to me.

14 Q Right at the top of the page it says borrower.

15 There we go.

16 A Okay. Where does that fit in within these two pieces  
17 of paper?

18 Q Well, and what I'm looking at is on behalf of 305 Las  
19 Vegas, Second Avenue Associates is signing by both general  
20 partners. That's how the signature block is set up. Would you  
21 agree with that?

22 A Okay. I agree.

23 Q Yet when we flip over to the official state filings  
24 with the State of Nevada --

25 A Right.

1           Q     -- you're designated as a managing member, not as a  
2 general partner, and there's no reference to Second Avenue  
3 Associates. Is there a reason that that was done that way?

4           A     I don't know.

5           Q     In other words, you just signed it?

6           A     Within our partnership agreement a single partner can  
7 bind the partnership. So whether both Mr. Liberman and I  
8 signed or whether I signed by myself, either is acceptable.

9           Q     I'm not debating the authority, sir. I recognize  
10 that either partner can sign.

11                     But you're designating yourself as a managing member,  
12 not as a general partner. That's a problem I have.

13           A     It is my understanding that in the -- 305  
14 Second Avenue Associates is a general partnership which came  
15 into being in about 1985.

16           Q     Okay.

17           A     And whatever this piece of paper refers to which has  
18 just my mangled single signature on it, to be referred to as a  
19 managing member, I think that that's appropriate to be a member  
20 in another corporate form. If you tell me that both of these  
21 are on behalf of 305 Second Avenue Associates, then you've  
22 clarified it for me, but I'm --

23           Q     Well, and I guess my real question is who's the  
24 member? Who owns the equity in 305 Las Vegas, LLC? Because  
25 member implies that you have an equity interest personally.



1           A     The owning entity in Las Vegas is 305 Las Vegas -- I  
2 think it's Associates, but it's something -- it's a  
3 corporate --

4           Q     It's LLC.

5           A     It's an LLC. Okay.

6           Q     305 Las Vegas, LLC.

7           A     Okay.

8           Q     And again you're indicating that you're a member not  
9 that you're just a manager?

10          A     I believe that's appropriate, but, you know...

11          Q     Okay. So you don't know who actually owns the equity  
12 in 305 Las Vegas, LLC?

13          A     The owners of the equity, and, yes, I do know. It's  
14 considered a disregarded entity, and it is the sole corporate  
15 entity of 305 Second Avenue Associates, and 305 Second Avenue  
16 Associates is the owner, and this --

17          Q     The sole member?

18          A     Pardon me?

19          Q     The sole member?

20          A     305 Las Vegas, LLC, I believe is a sole member of --

21          Q     The other way around, sir. I think you misspoke.

22          A     Okay.

23          Q     Second Avenue is the sole member of Las Vegas. Is  
24 that a correct statement?

25          A     Thank you. I'll take -- yes. If that's the way it's

1 supposed to be said.

2 Q So then this was either sloppy or inaccurate when you  
3 filed it with the Secretary of State; is that correct?

4 MR. BOSCHKE: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: You know, sir, I don't know what this  
7 is -- what the filing was here. So I really -- I mean, you're  
8 showing me a document, and I don't know what's behind it, and I  
9 would require verification, which I'm not --

10 THE COURT: Sir, it's an admitted document. It  
11 appears to be an annual list of managers and managing members  
12 and a state business license application of 305 Las Vegas, LLC,  
13 filed with the Nevada Secretary of State bearing your  
14 signature.

15 Do you need any more information than that?

16 THE WITNESS: Is this the corporate licensing that  
17 we're required to have in Las Vegas, Your Honor?

18 THE COURT: Sir, I'm not going to answer your  
19 question. Can you tell me what the document is? And if you  
20 don't know, that's okay. I'm sure your counsel will be happy  
21 to follow up with you.

22 THE WITNESS: I'm sorry. I'm not acquainted with the  
23 document.

24 THE COURT: Mr. Muije, could you move on, please.

25 MR. MUIJE: I have no further questions of the

1 witness at this time.

2 THE COURT: Sir, when did you first meet  
3 Mr. Mitchell?

4 THE WITNESS: I think around 2005 or '6 when  
5 Mr. Mitchell and Mr. Liberman were starting to do business  
6 together.

7 THE COURT: Okay. And had you done any business with  
8 him before this 1031 exchange?

9 THE WITNESS: With Mr. Mitchell?

10 THE COURT: Yes.

11 THE WITNESS: No.

12 THE COURT: Okay. So you knew he and Mr. Liberman  
13 were doing business together, but you didn't do any business  
14 with him prior to this transaction?

15 THE WITNESS: That's correct.

16 THE COURT: All right. Thank you, sir.

17 Mr. Blut.

18 MR. BLUT: Sure. Thank you.

19 THE COURT: And then Mr. Edwards and Mr. Johnson,  
20 you're up next.

21 CROSS-EXAMINATION

22 BY MR. BLUT:

23 Q Mr. Chamberlin, just to clarify, before taking a look  
24 at this Las Vegas property for the 1031 exchange, how many  
25 other properties had you looked at?

JD Reporting, Inc.

1           A     It would be a guess, but I would say we probably  
2 looked at 15 properties.

3           MR. BLUT: And I believe that, if the clerk could  
4 check, I believe 40027 was admitted. It was shown to  
5 Mr. Liberman yesterday and on the screen, but I just want to be  
6 sure.

7           THE WITNESS: 40027?

8           MR. BLUT: Oh, this is more for the clerk.

9           THE WITNESS: Oh.

10          THE CLERK: 40,000 what?

11          MR. BLUT: -27.

12          MR. MUIJE: Was that 40,000, Mr. Blut?

13          THE CLERK: Yes, it is admitted.

14          MR. BLUT: It is admitted.

15          THE COURT: Yes. You may demonstrate 40027.

16          MR. BLUT: Excellent. Thank you, Your Honor.

17          THE COURT: Let's display it.

18                   (Pause in the proceedings.)

19 BY MR. BLUT:

20          Q     And so this is the lease, Mr. Chamberlin, between  
21 Charleston Casino Partners, LLC, and 305 Las Vegas. And so I'm  
22 just going to take you to page 14. I just want to show you the  
23 first page there. There was some testimony about developing --

24                   (Pause in the proceedings.)

25          / / /

1 BY MR. BLUT:

2 Q And at the top of page 14, it says,

3 It was understood that lessee intends  
4 such alteration, tearing down and/or  
5 demolition for new construction as its  
6 purpose in this lease, and this provision is  
7 not intended to limit lessee's achievement of  
8 that purpose.

9 Is that what you were talking about when you said  
10 that the idea was for the lessee, Charleston Casino Partners,  
11 to develop this property?

12 A That's correct.

13 MR. BLUT: Okay. No further questions. Thank you.

14 THE COURT: Mr. Johnson and Mr. Edwards.

15 MR. H. JOHNSON: Yes.

16 CROSS-EXAMINATION

17 BY MR. H. JOHNSON:

18 Q Mr. Chamberlin, you talked about the process where  
19 you evaluated different properties, and then you decided to  
20 look at the -- what became the 305 purchase; correct?

21 A (No audible response.)

22 Q And you had some discussions with Mr. Liberman about  
23 the merits of that particular property; correct?

24 A Yes. Correct.

25 Q And in line with what's in the lease, you felt that

1 that was going to be a project that might develop as many as  
2 1100 units; is that correct?

3 A That's correct.

4 Q Now, during the course of discussion with  
5 Mr. Liberman about the project and the merits of the land and  
6 that type of thing, did you ever have any discussions with  
7 Mr. Liberman about Mr. Nype or any claim that Mr. Nype had?

8 A No.

9 Q Now, you mentioned that --

10 A Sir, I'm sorry. Will you give me an approximate  
11 time? I mean, yesterday we probably talked about Mr. Nype. So  
12 when are you referring to?

13 Q During the time period when you were evaluating  
14 whether 305 would purchase the property from Leah Properties.

15 A Yeah.

16 Q During that time period, you had no discussions?

17 MR. MUIJE: You misspoke, Mr. Johnson. They  
18 purchased it from LiveWork.

19 MR. H. JOHNSON: Oh, excuse me. Wrong project.

20 BY MR. H. JOHNSON:

21 Q Okay. When you decided to purchase the property from  
22 LiveWork and you had those discussions with Mr. Liberman about  
23 the merits of the project, were there any discussions about  
24 Mr. Nype or any claim that Mr. Nype had?

25 A Not to my knowledge.

1 Q Okay. You mentioned that the market in Las Vegas was  
2 very good at the time you were considering the purchase of this  
3 property; correct?

4 A Yes.

5 Q And that later changed in 2008?

6 A I believe that was about the time that there was a  
7 period of...

8 Q From your recollection of that time period, was that  
9 a rather sudden and dramatic change in the market here in Las  
10 Vegas?

11 A My sense is that the velocity of the market in Las  
12 Vegas, both up and down was -- that it was quite volatile.

13 Q And the change from 2007 to 2008 was quite  
14 significant as far as the market was concerned?

15 A You know, I don't know that the -- there was a  
16 significant erosion of value in, you know, in the ensuing  
17 years. I can't tell you the rate at which the market  
18 descended. I knew it was volatile, and we were losing value,  
19 but I can't tell you, well, this year we lost 3 million in  
20 value, and the next year we lost five. I just -- I don't know  
21 the increments, but I do know the direction.

22 Q And is it true in 2008 that there was a significant  
23 change in the capital markets as far as being able to obtain  
24 capital for a real estate development?

25 A I believe that's correct.

1 Q And would the same be true of finding investors for  
2 real estate projects beginning in 2008? Did that change  
3 significantly?

4 MR. MUIJE: Calls for speculation, Your Honor.  
5 Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Sir, it's -- I don't know. We were not  
8 in the market to find real estate investors, and so unless --  
9 without that personal knowledge, I can't say how well other  
10 people's deals were going.

11 BY MR. H. JOHNSON:

12 Q Okay. Now, in looking at the transaction between 305  
13 Las Vegas, LLC, and LiveWork, LLC, was there any consideration  
14 in structuring that deal that had to do with Mr. Nype or any  
15 claim that Mr. Nype had?

16 A Not that I know of.

17 Q And as far as you know, was there anything done to  
18 delay, hinder or defraud Mr. Nype in relation to that  
19 transaction?

20 MR. MUIJE: Objection. Calls for a legal conclusion.

21 THE COURT: Overruled.

22 THE WITNESS: Not that I know of.

23 BY MR. H. JOHNSON:

24 Q Now, Mr. Liberman was also a guarantor of the lease  
25 agreement; correct?



1 A That's correct.

2 Q And that was also with respect to Heartland Bank?

3 A Yes.

4 Q As well as to 305; correct?

5 A Yes.

6 Q If 305 had sued Mr. Liberman under the lease  
7 guarantee, would that have impacted your partnership and your  
8 holdings in New York?

9 A That was my belief.

10 MR. H. JOHNSON: Okay. That's all I have.

11 MR. BOSCHEE: Very briefly. But I am going to come  
12 up.

13 REDIRECT EXAMINATION

14 BY MR. BOSCHEE:

15 Q The document that Mr. Muije was just showing you, the  
16 Secretary of State document that the Judge was asking about and  
17 Mr. Muije was asking about, yes or no, do you have counsel that  
18 handles your Secretary of State filings in Nevada?

19 A Yes.

20 Q Okay. To the best of your understanding, does  
21 counsel prepare the documentation that is submitted to the  
22 Secretary of State, and you sign it?

23 A Yes.

24 Q Is that what happened here?

25 A I believe so.

JD Reporting, Inc.

1 Q Okay. I could ask you who that counsel is, but I'm  
2 not going to. Might share a building with me.

3 Does -- Mr. Muije asked you extensively about  
4 evicting tenants. Do you remember that?

5 A Yes.

6 Q Okay. The tenants you have in your New York  
7 properties are a little bit different than the tenancy that  
8 Charleston Casino Partners had here in Las Vegas, aren't they?

9 A Yes.

10 Q Okay. Charleston Casino Partners was more than just  
11 a regular personal tenant that you could just evict and collect  
12 rent from. They were actually -- there was, as Mr. Blut just  
13 showed you, there was the development component to that lease;  
14 right?

15 A Yes.

16 Q Okay.

17 A At the beginning, early on there was.

18 Q Okay. So in the early stages of the lease and  
19 whatever that Mr. Muije was asking you about, if you would have  
20 evicted Charleston Casino Partners, the development component  
21 of that arm goes away as well; right?

22 A That's correct.

23 Q Okay. And 305 actually did sue, at one point in the  
24 whole process, did sue David Mitchell on the guarantee, didn't  
25 they?

1           A     I believe so.

2           Q     Okay. But couldn't sue Mr. Liberman because of the  
3 obligations of the general partnership agreement for 305  
4 Second Avenue Associates; correct?

5           A     That's my understanding.

6           Q     Okay. Following up on the Judge's question --  
7 Judge's questions, is this the only deal that you have ever  
8 been involved in with David Mitchell?

9           A     Yes.

10          Q     Have you ever done anything subsequent to the  
11 Aquarius Plaza with Mr. Mitchell?

12          A     No.

13          Q     Okay. And did you ever discuss Mr. Nype with  
14 Mr. Mitchell at any point?

15          A     Not to my knowledge.

16                MR. BOSCHEE: Nothing further, Your Honor. Thank  
17 you.

18                MR. MUIJE: Just one on recross.

19                THE COURT: Okay.

20                                RE CROSS-EXAMINATION

21 BY MR. MUIJE:

22          Q     When you filed suit on the personal guarantee against  
23 Mr. Mitchell, did you recognize the possibility that  
24 Mr. Mitchell could have cross-claimed or filed a third-party  
25 complaint against Mr. Liberman since they were joint guarantors

1 and joint partners for casino Charleston in order to have  
2 Mr. Liberman pay his fair share?

3 A No. I was following the guidance of Carl Schwartz in  
4 New York and what our counsel was --

5 THE COURT: We don't want to know what your lawyers  
6 told you, sir.

7 MR. MUIJE: Pardon me? Sorry, Your Honor.

8 THE COURT: I told him we don't want to know what his  
9 lawyers told him to do.

10 MR. MUIJE: Understood. Thank you, Your Honor.

11 BY MR. MUIJE:

12 Q And I'm not asking what your lawyers told you to do.  
13 But were you aware of the possibility that by suing  
14 Mr. Mitchell on the guarantee he could have brought in  
15 Mr. Liberman?

16 MR. BOSCHEE: Well, objection. He's still trying to  
17 get around the privilege.

18 THE COURT: Well, no, this isn't -- was he aware.  
19 It's just him.

20 THE WITNESS: My assumption is you can always sue  
21 anybody. So there's no reason that David Mitchell couldn't  
22 have sued Barnet Liberman.

23 BY MR. MUIJE:

24 Q Okay. And would that have violated the various  
25 covenants and undertakings in the partnership agreements and

1 the loan agreements for Second Avenue if Mr. Liberman got sued  
2 as a consequence of your suing Mr. Mitchell?

3 A I don't know.

4 Q If you had been made aware of that possibility at  
5 that time, would you have chosen not to sue Mr. Mitchell?

6 A I don't know.

7 Q Okay. And am I correct in my understanding that 305  
8 Las Vegas recovered nothing as a direct consequence of the  
9 lawsuit against David Mitchell? No monies went into your  
10 pocket as a result of that, correct, from Mr. Mitchell?

11 A No, that's not correct.

12 Q He wrote you a check?

13 A No. Mr. --

14 Q Listen to the question: No monies came from David  
15 Mitchell to 305 directly?

16 MR. BOSCHÉE: Objection, Your Honor.

17 THE COURT: Overruled.

18 MR. BOSCHÉE: He has to be able to answer the  
19 question.

20 THE COURT: Overruled.

21 You can follow up if you want later.

22 THE WITNESS: No.

23 THE COURT: Did Mr. Mitchell write a check?

24 THE WITNESS: Not to 305.

25 THE COURT: Okay.

1 MR. MUIJE: Very good. Nothing further, Judge.

2 THE WITNESS: To my knowledge, it was not to 305.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. BOSCHEE:

5 Q Okay. Did 305 appreciate any benefit from the global  
6 settlement that involved the lawsuit against David Mitchell?

7 A Yes.

8 Q What was that benefit?

9 A The benefit was that we started with 18 million in  
10 financing, and we ended up with 4 million in financing.

11 MR. BOSCHEE: Thank you.

12 Nothing further, Your Honor.

13 THE COURT: Anything else?

14 (No audible response.)

15 THE COURT: Thank you, sir. We appreciate your time.  
16 You can return to your chair.

17 MR. MUIJE: I have one follow-up, Your Honor.

18 THE COURT: Okay.

19 FURTHER RECROSS-EXAMINATION

20 BY MR. MUIJE:

21 Q How much did Mr. Mitchell personally pay towards that  
22 global settlement? Do you recall?

23 A It's my understanding he paid \$1,250,000.

24 Q About 10 percent of what he would have had to pay  
25 under the guarantee; correct?

1           A       I guess that's the math, yes.

2           MR. MUIJE: Okay. Nothing further, Judge.

3           THE COURT: All right, sir, now you can return to  
4 your chair.

5           THE WITNESS: Thank you, Your Honor.

6           THE COURT: All right. Next witness.

7           We have about a half-hour before we break for lunch.

8           So are we going to start Mr. Mitchell or something else?

9           MR. MUIJE: Nope. Let's start Mr. Mitchell.

10          Because he is scheduled to leave this weekend;  
11 correct?

12          THE COURT: And Mr. Edwards is going to do his  
13 direct?

14          MR. MUIJE: That's fine. I -- that will  
15 (indiscernible).

16          THE COURT: I can tell Mr. Edwards is going to do his  
17 direct because Mr. Edwards has his book and is ready to go.

18          MR. MUIJE: He is chomping at the bit, Your Honor.

19          THE COURT: And now he has notes from Mr. Johnson.

20          MR. EDWARDS: Actually, they're my notes that fell  
21 out of my fancy binder.

22          THE COURT: It is a fancy binder. One of your kids  
23 get you that?

24          MR. EDWARDS: My daughter.

25                   **DAVID MITCHELL**

JD Reporting, Inc.

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

3 THE CLERK: Please have a seat and state and spell  
4 your name for the record.

5 THE WITNESS: David Mitchell. D-a-v-i-d,  
6 M-i-t-c-h-e, double L.

7 THE COURT: Thank you, sir. You know there's water  
8 and M&Ms there if you should you need them. And if when they  
9 display any of the exhibits for you you need to see it blown up  
10 or a different portion of it, please let them know, and they  
11 will do their best to help you.

12 THE WITNESS: Great.

13 THE COURT: And if you need a break, let us know.  
14 Mr. Edwards, you're up.

15 MR. EDWARDS: Okay.

16 DIRECT EXAMINATION

17 BY MR. EDWARDS:

18 Q Where do you live, Mr. Mitchell?

19 A In New York City.

20 Q And did you go to college?

21 A Yes.

22 Q Where did you go to college?

23 A NYU and to The New School.

24 Q Okay. And did your -- did you graduate from college?

25 A No.

JD Reporting, Inc.



1 Q What happened? What course load did your life take?

2 A I was working during the day. I was going to school  
3 at night. The work eclipsed the education part of it.

4 Q Okay. What is your profession?

5 A I am a real estate developer, investor.

6 Q And how long have you been involved in real estate  
7 investment?

8 A Since mid-1980s.

9 Q Could you just tell the Court a little bit of your  
10 background in the real estate development --

11 A Sure.

12 Q -- investment field.

13 A Well, I was in the brokerage business, investment  
14 brokerage business from 1979 until the end of 1990. I worked  
15 for a series of different investment banking brokerage firms  
16 really from the end of 1990. I was somewhere, an investor, an  
17 active investor, proactive investor in different enterprises.  
18 And I started converting loft buildings, industrial loft  
19 buildings into residential buildings.

20 Q Is that primarily in New York City?

21 A In New York City, yeah.

22 Q Okay. And when did that happen? When did that  
23 transition into developing -- industrial loft buildings into --

24 A I was doing both, but that was somewhere in the  
25 1980s.

1 Q How did you meet Mr. Liberman?

2 A We met in the Synagogue, the Young Israel, I think  
3 Fifth Avenue.

4 Q And you worked with him -- well, when did you first  
5 begin work with him?

6 A I had bought a piece of property in Las Vegas. I met  
7 the Mayor Goodman at the time and came back and told  
8 Mr. Liberman about what was going on in downtown Las Vegas. He  
9 came on one of my early trips to Las Vegas, and so that was in  
10 2004 maybe -- 2003, 2004.

11 Q And from the time you met Mr. Liberman till the  
12 present, approximately how many projects or developments have  
13 you guys worked on together or developed together?

14 A Eight, nine.

15 Q And were most of those projects here in Las Vegas?

16 A Yes.

17 Q Could you please tell the Court what projects you've  
18 developed here in Las Vegas.

19 A Well, we have been involved obviously in the, you've  
20 heard this over the last week, but in these five city blocks  
21 that we call the Civic Center project, which involves the  
22 Regional Transportation Center. It involves the City Hall  
23 project. There was different associated projects envisioned  
24 inside of that five city blocks Civic Center project.

25 And there was a parcel in Symphony Park that was

1 slated to become a hotel-casino.

2 We just finished discussing the Charleston project,  
3 which is 1100 units.

4 There was a project on Coolidge in casino at one  
5 point that was also going to be a residential project, but they  
6 built a parking facility.

7 At one point, you know, we've been in Las Vegas for  
8 quite a time working on a -- in a series of different municipal  
9 projects. Some we did not -- were successful. We were not  
10 successful in Metro, winning the bid for Metro. We were not  
11 successful in a series of different other municipal projects  
12 that we had worked on together.

13 Q Okay. And when you were in partnership with  
14 Mr. Liberman, what entity did you -- did you create an entity  
15 so that you would be able to do your business here in Las  
16 Vegas, the real estate business?

17 A Over a period of time, we created numerous entities.  
18 But the entity that was on the business cards was Las Vegas  
19 Land Partners.

20 Q Okay. We're going to talk about that in just a  
21 minute.

22 A named defendant in this matter is Mitchell  
23 Holdings. What is Mitchell Holdings?

24 A It's my entity in New York that makes investments.  
25 It also is involved in other real estate projects as a

1 consultant.

2 Q And those other real estate projects and the  
3 consulting and the investments, did they have any -- did  
4 Mitchell --

5 We'll let me ask it this way: Did Mitchell Holdings  
6 have anything to do with Las Vegas Land Partners?

7 A Nothing.

8 Q Did it have anything to do with the development of or  
9 part of the 305 transaction or the Casino Coolidge transaction  
10 or any of the other transactions we've talked about this week?

11 A No.

12 Q When you set up the Las Vegas Land Partners, do you  
13 remember what year approximately that you set up Las Vegas Land  
14 Partners?

15 A 2004, 2005.

16 Q And over the course of your time in doing the real  
17 estate development here in Las Vegas, you would refer to the  
18 fact that you also developed other or you created other  
19 entities; is that correct?

20 A Correct.

21 Q Why did you do that? Why were the other entities  
22 created?

23 A They were created for several reasons. You know, we  
24 acquired over the course of our time here probably 60 different  
25 parcels, plus or minus 60 different parcels of land. So one

1 reason is to shield Las Vegas Land Partners's interest in that  
2 land, and we'd form an entity just for the sole purpose of  
3 making an acquisition of a specific piece of land. The  
4 other --

5 Q Let me just interrupt you right there. When you say  
6 "shield Las Vegas Land Partners" --

7 A Shield --

8 Q -- can you explain that to the Court.

9 A Yeah, a shield entity.

10 Q Okay. Why was that important?

11 A Well, because you don't want to drive the price of  
12 the property that you're interested up, and so we'd form an  
13 entity just for the purpose of providing some discretion in the  
14 purchase.

15 Q Okay. Continue. I interrupted you. I'm sorry.

16 A You know, other reasons that entities were formed  
17 was, I mean, we were advised by counsel as far as our structure  
18 and also our financial advisors as well. And more often than  
19 not, banks required new entities to be formed.

20 Q Why was that the case?

21 A Well, the banks want a clear vision and a clear reach  
22 to underlying collateral. And so they would form -- they would  
23 ask us to form bankruptcy remote vehicles, special purpose  
24 entities, SPEs. And that would in essence be the new entity  
25 that would control the property, and it would also be the

1 borrower.

2           So we have done a number of different financings with  
3 a number of large sophisticated institutions, and each one of  
4 those financings would require several different entities.

5           And then the other is, the other is that at one point  
6 we also were contemplating owned the rights for gaming inside  
7 the Regional Transportation Center as part of the -- as part of  
8 that overall, and that required a separate special entity as  
9 well.

10          Q     Getting back to Las Vegas Land Partners, what was  
11 your split percentage between you and Mr. Liberman?

12          A     We each earned 50 percent.

13          Q     In talking about these special purpose entities that  
14 you just mentioned, have you seen the caption of the litigation  
15 in this case?

16          A     Yes.

17          Q     A number of them are defendants of related entities  
18 to Las Vegas Land Partners. Have you seen those entities as  
19 well?

20          A     Yes.

21          Q     Can you tell the Court, can you give an example of  
22 one that was -- that you were required to set up at the  
23 insistence of the bank?

24          A     Well, LiveWork manager is a good example.

25          Q     Okay.

1           A     I believe that was set up for the Guggenheim  
2 financing.

3           Q     Okay. Were any of the companies formed in response  
4 to the underlying case of this matter Las Vegas Land Partners  
5 versus Russell Nype or the counterclaims?

6           A     No.

7           Q     Were these companies, these related entities that are  
8 defendants, was there any other purpose other than legitimate  
9 real estate development purposes that these were set up?

10          A     Well, other than the financing, other than the SPEs,  
11 it was specifically set up for financing, but it's all related  
12 back to the real estate ownership management and development.

13          Q     And these companies that were set up, the related  
14 defendants and Las Vegas Land Partners, what corporate form is  
15 it, a limited liability company?

16          A     Yes.

17          Q     Are they all Delaware companies to the best of your  
18 recollection?

19          A     I believe they're all Delaware companies. The gaming  
20 one might be a Nevada entity.

21          Q     This structure -- and Mr. Rich talked about the fact  
22 that all of these companies have a similar tax return, they  
23 were all -- their tax returns were all under the Las Vegas Land  
24 Partners. Other factors that he -- he had mentioned, but in  
25 your experience as a land developer, you've developed projects

1 here in Las Vegas. We've talked about the ones in New York.

2 Have you developed property anywhere else besides New  
3 York and Nevada?

4 A Sure. South Florida; New Jersey; Long Island, New  
5 York. Those are the principal developments.

6 Q Okay. And this form of doing business where you set  
7 up where you've had all these related companies under the name  
8 of Las Vegas Land Partners, is that a similar model that you  
9 followed in other areas?

10 A Well, like I said before, I mean, this structure was  
11 set up, you know, probably in 2004 or 2005 with our first  
12 purchase. We used a real estate firm in New York, a law firm  
13 in New York called Katsky Korins. They put together the  
14 overall structure with our financial advisors and investment  
15 bank at the time Brenner's Capital [phonetic].

16 And it's not dissimilar from other real estate  
17 operators and developers. I would tell you that, you know, you  
18 know, in New York City we have a single asset that has like,  
19 believe it or not, maybe 20-some-odd entities because the  
20 nature of the financing and the nature of, you know, what the  
21 asset is.

22 But so it's quite common.

23 Q Okay. And that was my point.

24 A Yeah.

25 Q It's not an uncommon way to do real estate



1 transactions; is that correct?

2 A No. That's correct.

3 Q Let's talk about the City Hall project.

4 A Okay.

5 Q You mentioned coming in contact with Oscar Goodman  
6 after you had purchased the property in Las Vegas. How did you  
7 finance the purchase of that land?

8 A Which parcel?

9 Q Did you buy land from the City Hall project?

10 A Yes. I mean, it was part of five city block  
11 assemblage. Yes.

12 Q Okay.

13 A It was purchased with investment equity cash and  
14 debt.

15 Q Okay. And approximately how many parcels of land did  
16 you purchase as part of that project?

17 A Well, as part of the five city blocks, maybe it was  
18 40, 50 individual parcels.

19 Q And did you raise money for the purpose of developing  
20 that property?

21 A Yes.

22 Q About how much money did you raise or loan or borrow?

23 A Well, over the course of excluding -- you mean just  
24 on the five city blocks, probably 120- to \$130 million.

25 Q Okay. And how many of those parcels were used to

1 build City Hall? Do you remember?

2 A Probably 8 to 14 parcels. Some of them would be  
3 merged into unified lots.

4 Q And as you were doing this, developing this land, did  
5 you partner up with anybody else?

6 A Well, initially, no. And then we partnered up with  
7 Forest City Enterprises.

8 Q And how did you come in contact with Forest City?

9 A We came in contact with Forest City -- what we came  
10 in contact with somebody that was related to Forest City whose  
11 name was Jeff Eisenberg (phonetic), and we met Jeff Eisenberg  
12 through First Wall Street.

13 Q Okay. And when was that approximately?

14 A 2006.

15 Q And what was Forest City's role once you met up with  
16 them and --

17 A Well, we formed a joint development partnership. A  
18 partnership, I'm using a word just to describe what it was.

19 Q You signed an agreement with them as well?

20 A Yes.

21 Q And what were the terms of the agreement in general?

22 A Well, initially it was a tenant in common interest, a  
23 TIC. They became a TIC manager. They had 60 percent of the  
24 overall equity in the partnership, and we had a 40 percent  
25 interest.

1 Q And what was your contribution to this TIC? What was  
2 your consideration?

3 A We contributed 40 percent, the remaining 40 percent  
4 interest in the properties that were in the five city blocks.

5 Q Who contributed the land?

6 A Well, we contributed our -- they purchased 60 percent  
7 of our interest, and we still were at a remaining 40 percent.  
8 So we contributed our remaining 40 percent.

9 Q All right. Prior to this deal, did Las Vegas Land  
10 Partners own the land that was -- became the --

11 A Yeah. I mean, ultimately it did, I mean through a  
12 series of different entities, yes.

13 Q I think you've already testified to this, but is it  
14 common in large real estate deals for a number of different  
15 entities to be involved?

16 A Yes.

17 Q And that's what happened in this case?

18 A Yes.

19 Q When was the project completed?

20 A Well, there's several projects in that, but the City  
21 Hall project was I think completed in March of 2012.

22 Q Let's get to the RTC project. What was the RTC  
23 project?

24 A As part of the Civic Center project, the city  
25 wanted -- the city wanted to create a consolidated center for

1 all of its civic activities, and it would do a number of  
2 things. It would free the -- the then current City Hall, which  
3 was on 12 acres for redevelopment by others, and at the end of  
4 the day, it was I think it was leased or bought by Zappos. The  
5 transit center that was in another place in downtown, would  
6 move adjacent to the new City Hall that we were developing. So  
7 it would create a dynamic street life.

8           You know, one of the projects of the steering  
9 committee for downtown Las Vegas, which I was on the board of,  
10 and one of the trips I took with Mayor Goodman to New York when  
11 we really studied, you know -- when we were studying really,  
12 you know, how to cure what was downtown, which was a blighted  
13 situation, was downtown needed a dynamic pedestrian street  
14 life.

15           And the conclusion was working with the office of  
16 business development and Mayor Goodman's office was that we  
17 would try to create this kind of dynamic street life by  
18 locating the Regional Transportation Center adjacent or close  
19 by to the new City Hall. And so it would create retail. It  
20 would create people on the street and people that were going to  
21 work, coming from work and so on and so fourth. So the  
22 Regional Transportation Center was put where it is now on  
23 Bonneville.

24           And in essence, what it was the Regional  
25 Transportation Commission net leased the underlying land and

1 built their own facility on that land. And so there's a -- I  
2 think it was a 39-year lease which the TIC, the current TIC --  
3 then current TIC leased to the Regional Transportation  
4 Commission for this Intermodal Transportation Center. But it  
5 was part of a larger plan for this downtown Civic Center.

6 Q Right. Was Forest City part of this project, the  
7 development of the RTC?

8 A Well, the RTC at the end of the -- we worked with  
9 Forest City in doing the development for the Regional  
10 Transportation Commission. At the end of the day, they did  
11 their own development and built it themselves on the land. So  
12 it was actually fairly simple what we did. We owned the land,  
13 and we leased them the land, and they built their own facility.

14 Q And that's where the 39-year lease --

15 A Well, yeah.

16 Q -- came into play; right?

17 A Yeah.

18 Q Okay. What entity owned the land for this deal?

19 A It's a combination of a Forest City entity and an  
20 entity that is owned by Las Vegas Land Partners.

21 Q And did you make money from this project?

22 A No. No.

23 Q Is there the potential that you'll make money from  
24 this project?

25 A I mean, the remaining asset that we have is an

1 interest in the -- over in the land that we just spoke about in  
2 the -- underneath the intermodal, the RTC Intermodal. You  
3 know, I think there's 31, 32 years left on that lease, and so I  
4 can't tell you what's going to happen in 32 years.

5 But currently I would tell you that, you know, with  
6 the disposition of the properties that Forest City has taken  
7 and the write-downs that have been in place, you know, we're  
8 far behind the eightball.

9 Q Was the set up of the RTC deal and the lease, the  
10 39-year lease, was it set up that way in any way to hinder or  
11 delay or defraud Mr. Nype?

12 A No.

13 MR. EDWARDS: Your Honor, since there's no clock in  
14 here, I don't know what time it is.

15 THE COURT: It's 11:42. Are you ready for me to  
16 break for lunch?

17 MR. EDWARDS: That might be a good place, but I could  
18 go for --

19 THE COURT: All right. I'll see you guys at 1:00.

20 MR. EDWARDS: Thank you.

21 MR. BLUT: Thank you, Your Honor.

22 MR. BOSCHEE: Thank you, Your Honor.

23 (Proceedings recessed at 11:42 a.m., until 12:53 p.m.)

24 (Pause in the proceedings.)

25 THE COURT: You ready?

1 Mr. Edwards, you're up again.

2 MR. EDWARDS: Thank you.

3 THE COURT: And we have a 3:00 o'clock conference  
4 call. So we'll go till about then and take a short break.

5 MR. MUIJE: Your Honor, just from a housekeeping  
6 standpoint, am I correct in understanding that the Court's  
7 calendar freed up next weekend and that we don't have to try to  
8 cram this in by 5:00. We can finish it on Monday?

9 THE COURT: That is true.

10 MR. MUIJE: Very good.

11 THE COURT: And Mr. Boschee's other case declined to  
12 take me up on my offer to move them up a week.

13 MR. BOSCHEE: But we did have a really good 2.67  
14 conference over lunch. So life is good.

15 THE COURT: Typically, I would give you the entire  
16 week if you wanted it.

17 MR. MUIJE: I don't think we'll need it. We talked  
18 about some stipulations on exhibits and stuff along the way.  
19 So.

20 THE COURT: Right. Well, we'll finish up on Monday  
21 if we don't get done today. I doubt we'll get done today  
22 knowing what I know about you guys.

23 MR. MUIJE: Very good, Judge. Thank you.

24 Oh, let me get that headset.

25 THE COURT: But remember next week it's harder to get

1 in the building, and it's harder to park because a lot of  
2 people will be here working.

3 (Pause in the proceedings.)

4 THE COURT: Okay. Let's go (indiscernible).

5 MR. EDWARDS: We're ready? Okay.

6 BY MR. EDWARDS:

7 Q Mr. Mitchell, we've been talking about 305, the  
8 transaction. There's been some discussion about this  
9 transaction. Was there an appraisal on the land supporting the  
10 transaction, the 305 land transaction?

11 A There were actually two appraisals.

12 Q Where did the appraisals come from?

13 A One was done in connection with Guggenheim financing  
14 roughly at the time of the -- of when 305 had put down a  
15 deposit. I think it came from Cushman & Wakefield. If I'm not  
16 mistaken. I know I reviewed it.

17 And then the other one was done from 305's new lender  
18 Heartland. And so they did two appraisals, and they met at the  
19 same value.

20 Q Okay. And are you familiar with the parcels of land  
21 which supported a real part of the Las Vegas transaction?

22 A Which Las Vegas transaction?

23 Q Sorry. The 305 Las Vegas transaction?

24 A Yes, I am.

25 Q Were those parcels 300 and 320?



1 A On Charleston Boulevard, yes.

2 Q Did any of the related defendants own this land? I'm  
3 talking about on the caption the related defendants --

4 A Yes.

5 Q -- the Las Vegas Land Partners?

6 A Yes.

7 Q Which ones?

8 A Well, at different points there were a series of  
9 transfers. I think Leah. I think LiveWork Manager. I think  
10 LiveWork.

11 Q What was the plan for this property? How was the  
12 property going to be used?

13 A It was going to entitlements for 1100 condominium  
14 units, residential units and a large commercial plaza and  
15 ancillary parking.

16 Q And did this -- did it come to fruition? I think  
17 we've heard some testimony as to why, but go ahead. Did it  
18 come to fruition?

19 A It did not get built.

20 Q Okay. And why was that?

21 A The timing of the financial crisis and the plans to  
22 build it made that -- it did not make it possible to get the  
23 project financed.

24 Q How was the initial transaction financed?

25 A When we originally bought it?

1 Q Yes.

2 A We bought it with a roughly plus/minus \$2 million of  
3 equity, and the rest was in financing. We did a primary  
4 mortgage and a second deed of trust.

5 Q Was the property transferred from Aquarius owners to  
6 the other entities? Part of it?

7 A Which other entities?

8 Q Well, to Leah, LiveWork? Initially. Originally.

9 A Yes. It was originally a purchase from I think it  
10 was called -- I think it was called Aquarius Owner, yes. And  
11 it was purchased initially from Leah. And then I think it was  
12 LiveWork Manager and then to LiveWork.

13 Q Why was it transferred from LiveWork Manager to  
14 LiveWork, LLC?

15 A LiveWork Manager, as I mentioned before, was a  
16 special purpose entity that was set up as part of the  
17 Guggenheim financing. It was a bankruptcy remote vehicle and  
18 independent directors and then once the Guggenheim financing  
19 had taken place, it was then transferred to LiveWork.

20 Q And what was the time period for these? I'm talking  
21 about these transfers.

22 A Well, the initial purchase to the sale to the 305 Las  
23 Vegas, it was about a year.

24 Q Okay. And what year was that?

25 A We had bought the property in 2006, and we had sold

1 it in -- well, we come to an agreement in February, January or  
2 February of 2007. And then the property was consummated  
3 sometime in April, late April, May of 2007.

4 Q So let me ask you a question. Do you remember  
5 Mr. Rich talking about closings and big real estate  
6 developments? I think it was yesterday that he testified about  
7 it. Maybe it was -- I think it was Tuesday.

8 A Yes.

9 Q And he said that you pretty much know what's going to  
10 happen several weeks before the closing? Do you remember  
11 him --

12 A I remember him saying that.

13 Q Okay. In your experience as a real estate developer,  
14 is that -- is that true?

15 A No. It's far from true. I mean, I've had  
16 transactions that have cratered -- or not happened the day of,  
17 the afternoon of several times.

18 Q In fact, here in Nevada, is that -- have you faced  
19 the experience of a transaction not closing when it was  
20 expected to?

21 A Well, at least 10 times.

22 As an interesting side note, my initial transaction  
23 in Nevada and how it got to downtown with my own 1031, and I  
24 was originally buying a garden apartment complex, and I showed  
25 up at a closing, and the seller decided to sell to somebody

1 else. So it was in Las Vegas, and somebody pointed me in the  
2 direction of downtown, and that's how I ended up in downtown.  
3 But I came here for a closing that did not happen.

4 Q Okay. And let's talk about Forest City specifically.  
5 Had you had experience with Forest City on this transaction  
6 where it didn't close when you thought it was going to close?

7 A Well, we --

8 Q Or not walked away, but it was --

9 A We had come to a -- we were about to sign, not  
10 closing, but we were about to sign a letter of intent, and we  
11 negotiated for a period of time on a letter of intent, and  
12 between the hours of 4 and 6 in the afternoon, that letter of  
13 intent was no longer effective.

14 Q Okay.

15 A And that was 10 months before, or maybe a year before  
16 it actually closed. So they had walked away once before.

17 Q Okay. There's kind of a thing that's saying that  
18 says it ain't over till it's over does it kind of apply to the  
19 closings of land transactions?

20 A My mother used to say don't count your chickens  
21 before they hatch.

22 Q Okay. All right. Let's talk about the -- we're  
23 going to come back to that in just a moment, but let's talk  
24 about the transaction details.

25 Did 305 execute a note to LiveWork?

1           A     Yes.

2           Q     And how much was that note for?

3           A     \$5 million.

4           Q     And why was that set up that way? Why did they take  
5 the note back, the \$5 million?

6           A     They had a limited amount of cash to come to the  
7 closing table, call it \$20 million, and we took the note back  
8 as part of the overall financing the transaction.

9           Q     Was the decision to take the note back in any way  
10 meant to hinder, delay or defraud Mr. Nype?

11          A     No.

12          Q     Was that note ever paid off?

13          A     No.

14          Q     As the holder of the note, why weren't any issues  
15 taken or any actions taken to foreclose on that note?

16          A     Well, as we covered before a lot this week, there was  
17 a large financial crisis. And, you know, economically it did  
18 not make sense to foreclose on the note because we were the  
19 third deed of trust behind a Heartland first deed of trust, a  
20 Heartland second deed of trust. And candidly, the property  
21 didn't have enough value to support it, and we didn't have  
22 enough money to pay off Heartland.

23          Q     Okay. What did you do in an attempt to collect on  
24 the note? You didn't foreclose on it, but did you take any  
25 effort to try to collect on it?

1           A     We had sued 305 Las Vegas.

2           Q     And what was the disposition of that note and that  
3 lawsuit?

4           A     Well, we had sued for the note and its accrued  
5 interest. It was one of three actions that surrounded this  
6 transaction. And it was part of an overall settlement. That  
7 involved the bank since they really controlled the transaction  
8 since they had the first mortgage and the second mortgage, and  
9 the property was in foreclosure.

10                   The bank coordinated a settlement between  
11 305 Las Vegas, casino Charleston, myself and Barnet Liberman  
12 and the bank itself. And so as part of that overall  
13 settlement, the note, I won't say it was forgiven because it  
14 was not forgiven, but the note I guess was canceled.

15           Q     Okay. How did you pay for -- did you have to  
16 contribute to that settlement?

17           A     Yes, I did.

18           Q     And how did you pay for it?

19           A     Well, I didn't have all the cash at once, and so  
20 Heartland took some cash and then put a mortgage on my house  
21 for \$750,000. And so that was part of -- part of accomplishing  
22 the closing or my portion of the contribution -- contribution  
23 closing until I could get liquid and pay off that mortgage.

24           Q     And so that 700,000 --

25           A     750.

1 Q 750 was from the -- was it Heartland Bank, or was  
2 it --

3 A Yeah. It was -- all the monies went into Heartland  
4 Bank.

5 Q Okay.

6 A As part of the settlement since they were the first  
7 mortgage and the second mortgage on the property, and they  
8 basically controlled how the settlement was going to come up  
9 with, and I didn't have the amount of money, but they put a  
10 first mortgage on my house and, you know, the concept was until  
11 I could get liquid and pay it off, but, you know, it was done  
12 on behalf of myself and behalf of, honestly, casino Charleston.

13 Q You also paid the -- how much money did you  
14 contribute to the settlement?

15 A 1 million, 250.

16 Q And what did the other 400 -- let's see. I'm bad at  
17 math -- 500,000 come from?

18 A For what?

19 Q The 1.25. You had 700,000 from the --

20 A I had 750,000 from a mortgage, and I had \$500,000 in  
21 cash that I took out of my account.

22 Q Okay. We talked a little bit about the lease. Was  
23 that part of the settlement agreement? Was there a lease  
24 involvement, a component of the settlement?

25 A Well, I mean, you have to go back. And, I mean, it's

1 part of the overall transaction. Charleston Casino had leased  
2 the property for 49 years, and as part of that lease I and  
3 Mr. Liberman personally guaranteed the lease to 305.

4 Q Right.

5 A And to Heartland Savings Bank. That personal  
6 guarantee is what I was sued on. And so I -- once the overall  
7 settlement between all the parties was put together, that lease  
8 was terminated.

9 Q Okay. The guarantee on the lease?

10 A I was one of -- I was one of -- the guarantee for  
11 the -- I guaranteed the obligations of Charleston Casino along  
12 with Mr. Liberman.

13 Q Okay. Did that settlement benefit LiveWork?

14 A Yes. I mean, LiveWork is the hundred percent  
15 shareholder of Charleston Casino.

16 Q All right. And can you explain how it benefited  
17 LiveWork.

18 A Well, we've gone over the numbers this week of what  
19 the overall rent obligation was. And so that obligation was  
20 outstanding on behalf of -- I mean, the lease was to a LiveWork  
21 entity, Charleston Casino. So they no longer had that  
22 obligation.

23 Q Okay. Who owns the property currently?

24 A Well, I have money going through what I heard today.  
25 I don't really have any direct knowledge, but what I heard



1 today it's 305 Las Vegas.

2 Q Was there anything about the transaction -- we talked  
3 about the take back of the note. Was there anything about the  
4 transaction of the lease and as it relates to LiveWork or the  
5 other part of the Charleston Casino partner transaction that  
6 was done in any attempt to perpetuate, hinder or delay or  
7 defraud Mr. Nype?

8 A No.

9 Q Let's talk about Mr. Nype real quickly. Did you ever  
10 have an agreement with Mr. Nype?

11 A No.

12 Q You were asked, not you were asked, but there has  
13 been questions about the \$400,000 that was set aside for --  
14 \$420,000 set aside for Mr. Nype when there was a closing. Why  
15 was that done?

16 A Well, the number was 435,000.

17 Q 435.

18 A So after consulting with legal counsel, my legal  
19 counsel in New York and here in Las Vegas and also with my new  
20 joint venture partner Forest City and their in-house legal  
21 team, we had gone out to collectively to different real estate  
22 brokerage firms that we had experience with and had used before  
23 and had come up with this number of \$435,000 based upon a, you  
24 know, I guess a relationship with Mr. Nype, and Mr. Nype was  
25 around. And so it was kind of a finder's fee if you will.

1 I had taken Mr. Nype out to lunch about a week after  
2 the closing, and I explained the circumstances, and he was very  
3 grateful. He said that no one had ever done that before. And  
4 a few days after, a few weeks, a week after, we got a letter  
5 from a contingency famed New York real estate lawyer saying,  
6 oh, Mr. Nype is your real estate broker. You owe him a real  
7 estate brokerage commission on the whole and this and that.  
8 And anyway, I mean, it's a long story. I can go through the  
9 whole story if you want.

10 Q That led to the litigation and --

11 A No, but, no, it didn't. And so, I mean, you're  
12 asking about how the number was arrived. The number was  
13 arrived because after consulting with legal counsel at Forest  
14 City and also our own here in New York, you know, the net  
15 amount that we got back ultimately that we were going to get  
16 back, not initially, but we were going to get back was about  
17 \$10 million, which was below what we invested. And this was,  
18 you know, a percentage of that. You know, I think it was close  
19 to 11 million, \$10.8 million, and this was -- it represented  
20 4 percent of that number.

21 Q Okay. In your experience is a finder's fee of  
22 4 percent pretty consistent in the community or the profession?

23 A In my experience, and I come out of that business.  
24 So I would tell you it's on the generous side, not excessive,  
25 but it's not low. I mean, I've been paid finder's fees a lot

1 when I was in investment banking.

2 Q I'm going to ask that, and I believe this exhibit has  
3 been admitted, 10002.

4 And while they're pulling that up, let me ask you the  
5 question. Was the transaction, the sale and the distributions  
6 of 2007, would they be reflected -- strike that.

7 Would this transaction we've been talking about, 305,  
8 be reflected on the tax returns of 2007?

9 A Sure.

10 THE COURT: And for the record, all the tax returns  
11 were previously admitted pursuant to stipulation.

12 MR. EDWARDS: Okay. Thank you, Your Honor.

13 THE COURT: Does that make it easier, Nicole?

14 BY MR. EDWARDS:

15 Q Could you turn to --

16 A Okay. I have it in front of me.

17 Q So shown to you is the tax return 2007 for I believe  
18 it's --

19 A LVLP.

20 Q Yeah, Las Vegas Land Partners. We've talked about  
21 the distributions to you and Mr. Liberman.

22 Could I have you -- can you pull up page 15.

23 Do you recognize -- first of all, do you recognize  
24 these tax returns?

25 A Yes. I recognize it's a -- I'm reading what it is.

1 Yes, I recognize it as LVLP Holdings tax returns.

2 Q And this is page 15.

3 MR. EDWARDS: Your Honor, may I approach?

4 THE COURT: You may.

5 MR. EDWARDS: If I talk loud so I can --

6 THE COURT: If you talk loud and Jill doesn't yell at  
7 you, you may do it.

8 BY MR. EDWARDS:

9 Q This property B is Aquarius; is that correct?

10 A Yeah. Because the next box up, yeah.

11 Q And the Aquarius is who was the original owners of  
12 the land. Explain that.

13 A Aquarius is the property. We title all our  
14 properties just for our own internal reference, and Aquarius  
15 was the name of the actual shopping center at Charleston. So  
16 it was called Aquarius, and we bought it from the Aquarius  
17 Owner, and we just kept the name Aquarius. And on this tax  
18 return it looks like it was acquired on January 10th of '06.  
19 And then was later sold on May 1 of '07.

20 Q And on this page does it reflect the gain that Las  
21 Vegas Land Partners made from the sale of the Aquarius  
22 property?

23 A Yeah. It's the second column over where it says  
24 property B, yes.

25 Q And how much was that?

1           A     Well, if you go down to where it says the total gain,  
2 and you subtract line 23 from line 20, it's 13,000,200 --  
3 \$200,734.

4           Q     If you turn the page, can you go to page, I think  
5 it's page 4.

6                     MR. EDWARDS: Go up just a little bit. There we go.  
7 BY MR. EDWARDS:

8           Q     On this it has an analysis of partner's capital  
9 accounts. It's a distribution of cash of 14 million, eight,  
10 thirty-one. Do you see that?

11          A     Uh-huh.

12          Q     And then go down to six and seven.

13                     (Pause in the proceedings.)

14                     MR. MUIJE: What page is that?

15                     MR. EDWARDS: Page 8.

16                     MR. MUIJE: 8. Okay.

17 BY MR. EDWARDS:

18          Q     Do you recognize what's being shown on page --

19                     MR. EDWARDS: Go back up to page 6. I apologize.

20 BY MR. EDWARDS:

21          Q     Do you recognize what's being reported on page 6?

22          A     Yeah. Because it just -- I know what this is, but  
23 could I see whose K-1 it is. Please go to page 1 of that.

24                     (Pause in the proceedings.)

25                     THE WITNESS: Okay. So this is the K-1 of Barnet --

1 MR. EDWARDS: Okay. Yeah, that's right.

2 THE WITNESS: This is the K-1 of Barnet Liberman.

3 MR. EDWARDS: Right.

4 THE WITNESS: From 2007.

5 BY MR. EDWARDS:

6 Q Okay. And you and Barnet Liberman were 50-50  
7 partners; right?

8 A Correct.

9 Q And so if you go down to -- I've already mistaken the  
10 pages, but if you go down to the next K-1 there, it shows the  
11 K-1 for you; is that correct?

12 A Correct.

13 Q When you were involved in the litigation with  
14 Mr. Nype, do you know whether these tax returns were produced  
15 as part of that litigation?

16 A Which litigation? The initial litigation where we  
17 got the summary judgment or the litigation after Mr. Nype's  
18 appeal? Which litigation?

19 Q Let's talk about the initial litigation where you got  
20 summary judgment.

21 A So, I mean, just as way of background, you know, both  
22 the Forest City and counsel and our own counsel here in Las  
23 Vegas in Nevada told us, Barnet and myself that we have to --

24 THE COURT: Sir, we don't want you to tell us what  
25 your lawyers told you.

1 THE WITNESS: Okay.

2 BY MR. EDWARDS:

3 Q We're going to get to that point, but just on this?

4 A Oh. I thought you said you wanted me to tell you  
5 about the -- okay.

6 Q No. So this point is the point is that in the  
7 initial litigation where the 2007 tax returns and the schedules  
8 that have been attached, were they produced as part of the --  
9 not the 2007 litigation, but the initial litigation? Were the  
10 2007 tax returns produced?

11 A But which litigation?

12 Q The initial that you got summary judgment on.

13 A Not -- that was done in 2007. No, it was not. I  
14 don't believe it was produced in the 2007 litigation.

15 Q Okay. How about in the subsequent litigation after  
16 the Supreme Court?

17 A Yes.

18 Q And that was 2010, 2011 that that litigation --

19 A 2009, 2010 there was a discovery request that we  
20 fulfilled.

21 Q Okay. And so this information was available to  
22 Mr. Nype as early as 2010, 2011 --

23 A Yes.

24 Q when this was produced?

25 Were these documents part of -- let me strike that.

1           Was the taxes of 2007 discussed in that trial that  
2 you remember? The depositions.

3           A     The trial?

4           Q     Yes.

5           A     Yes.

6           MR. MUIJE: Objection. The best evidence would be  
7 the transcript.

8           THE COURT: Overruled.

9           THE WITNESS: I believe that they were an exhibit.  
10 BY MR. EDWARDS:

11          Q     So the decision was made initially to sue Mr. Nype,  
12 and without saying what was said, what factors went into your  
13 mind to have Las Vegas Land Partners sue Mr. Nype?

14          A     Well, after, and just to repeat myself, after  
15 consulting with our new partner and their in-house legal  
16 counsel and our legal counsel out here and New York about the  
17 initial payment that was put into escrow and my subsequent  
18 lunch with Mr. Nype and the fact that it was there for 120 days  
19 or so and then the -- this famed contingency lawyer in New  
20 York, we were made aware that we had an obligation to protect  
21 the joint -- the new joint venture with Forest City. As part  
22 of our agreement, we had underwritten that protection through  
23 an indemnity.

24               And the course of action that was suggested by  
25 attorneys in New York Randy Amagwal [phonetic] and Nick Santoro



1 were that we had to protect the assets, and we had to protect  
2 the joint venture. And a suit was filed here I think in this  
3 Court, and it was won. We received a summary judgment. So  
4 their strategy and their thinking was correct. And so the  
5 summary judgment we thought put an end to this. You know, I  
6 don't want to say it's a -- put an end to this part of the  
7 chapter.

8 Q Okay. All right. Let's go back and talk a little  
9 bit about the Casino Coolidge transaction. Are you familiar  
10 with the eight land parcels located at or around 929 South  
11 Casino Center Boulevard and 922 South Third Street?

12 A Yes.

13 Q What are those parcels of land?

14 A They represent a half a block bordered by Coolidge,  
15 Casino Center and Third Street.

16 Q Did Las Vegas Land Partners ever purchase those land  
17 parcels?

18 A Las Vegas Land Partners, I mean, through one of its  
19 entities purchased those properties, yes.

20 Q Would those entities be Leah property, LiveWork  
21 Manager, LiveWork, LiveWork Manager?

22 A Yes.

23 Q Okay. Do you remember what the purchase price of  
24 those parcels of lands were?

25 A \$6.4 million.

1 Q Did there ever come a time when you sold part of  
2 those eight parcels?

3 A Yes. We sold the parcels at that faced, if you will,  
4 the Third Street side, Third and the Coolidge side.

5 Q And when was that initial sale?

6 A I think we bought the properties in 2005, and we sold  
7 them in 2006.

8 Q Was the market still going good in 2006 as far as you  
9 are concerned?

10 A It was very strong.

11 Q So what did you sell those for, parcels for?

12 A We sold half of the property basically for  
13 4.2 million.

14 Q And why were those four parcels sold?

15 A Well, it was a good return on investment. So we  
16 brought down our overall basis by \$4.2 million. We paid down  
17 debt. We sold it to a developer that we believed would develop  
18 them and symbiotically increase the value of our parcels which  
19 we thought were the better parcels facing Casino Center.

20 Q Who bought that, those first four parcels that sold?

21 A I think a Vancouver-based developer by the name of  
22 Solterra [phonetic].

23 Q And then did you have anything to do with either  
24 through Las Vegas Land Partners or any of the related entities,  
25 did you have anything to do with the ownership or management of

1 Solterra?

2 A No.

3 Q Let's talk about the remaining four parcels. Who  
4 owned those four parcels?

5 A Leah Properties.

6 Q And did there come a time when you sold the Leah  
7 property parcels? Or the Leah parcels, the four parcels?

8 A Leah Properties sold them, yes.

9 Q And what year was that? Approximately?

10 A 2014 and '15.

11 Q Can you tell the Court what the circumstances were --  
12 well, first of all, how much did you sell those parcels for?

13 A A million dollars.

14 Q And who did you sell them to?

15 A We sold them to an entity by the name of Casino  
16 Coolidge.

17 Q Did you know who Casino Coolidge was prior to the  
18 sale?

19 A I knew that Barnet Liberman had brought them to the  
20 table and that he had potentially some involvement, and I  
21 understand at this point we had sued each other, and our  
22 relationship was not as tight as it was previously.

23 Q Right.

24 A So we were speaking through a broker.

25 Q Okay. Was the property listed prior to the sale to

1 Casino Coolidge?

2 A Yes, for a long time, for a year plus.

3 Q And so it was publicly listed? I mean, it was the --  
4 who was the real estate agent or real estate broker?

5 A Northcap. Northcap.

6 Q Northcap. And did you get any offers on the property  
7 while it was listed at Northcap?

8 A Well, one offer we got through Northcap we -- was for  
9 \$800,000, and it was half in cash and half in a deed of trust.  
10 And the underlying bank rejected that.

11 And the other offer I got was actually -- I  
12 generated, which was from Solterra, the original purchaser of  
13 the Third Street facing part of this lot, and they had offered  
14 I think \$720,000. And they were probably the most  
15 knowledgeable buyer.

16 Q Okay. So they had an experience with, I won't say  
17 identical lots, but pretty similar lots with the four that they  
18 purchased several years before that; correct?

19 A Correct.

20 Q And the most that they were willing to pay for the  
21 additional four lots was 725,000?

22 A Well, I mean, yes. I mean --

23 Q Or 700,000, whatever it was?

24 A I think 720, 725, but the -- I mean, we discussed it  
25 a lot this week, but, you know, Las Vegas had gone through

1 boom, bust and depression. And, you know, this was in the, it  
2 was not in the bust, but it was the depression thereafter.

3 Q Right. You mentioned another interesting fact or  
4 whatever. When the first offer came in for the \$400,000 up  
5 front and then for the rest of it to be paid over time, the  
6 bank rejected that offer; is that right?

7 A Correct.

8 Q Did the bank reject the Solterra offer? Do you know?  
9 Or was it taken to them?

10 A Well, I mean, the bank, we were in discussions with  
11 the bank. The bank had done an appraisal of the property and  
12 made us aware of that appraisal. They had come up with a  
13 million dollars. And because they had an outstanding loan much  
14 greater than that, they asked us to sell the property, which we  
15 (indiscernible) to sell the property. And the -- the bank had  
16 suggested that if we did not sell the property it wanted to  
17 institute a consensual foreclosure. And we --

18 Q Well, what would have happened had you entered the  
19 consensual foreclosure?

20 A Well, in a consensual foreclosure, this property or  
21 any other property, you basically, quote, unquote, you know,  
22 hand over the property to them. I don't know what they would  
23 have done with it, but most banks move to sell it in the most  
24 expedient way possible. Clearly they knew about our efforts  
25 because we kept them updated. So they knew that the downtown

1 market was stale, and the property was on the market for a long  
2 time.

3 My guess, and it's only a guess is that they would've  
4 put it up for auction.

5 Q Yeah. When you -- so after the bank approached you  
6 about doing the consensual foreclosure, you got the million  
7 dollar offer from Casino Coolidge?

8 A Well, we had an offer from Solterra.

9 Q Right.

10 A And the bank had given us a period of time and needed  
11 to move forward with that or to do the consensual foreclosure.  
12 They had spoken to Mr. Liberman. Mr. Liberman said he was  
13 working with other parties, and through the broker we got the  
14 million dollar offer.

15 Q To the best of your knowledge and in your experience  
16 as a real estate developer, was the million dollars purchase  
17 price of those for parcels fair market value?

18 A Yeah. I mean, three things would indicate that.  
19 First, the bank had an appraisal.

20 Q Okay.

21 A That we relied upon.

22 Second, we had the market experience. You know,  
23 there was vacant and tumbleweed, I mean, as far as buyers.

24 Third, you know, we had a third party knowledgeable  
25 buyer in Solterra, and they were probably the most

1 knowledgeable buyer, and this was the better half of the eight  
2 lots, right, this is the Casino Center facing. And the most  
3 that they would come up with would be 720,000. So, yes, this  
4 was the best of all.

5 Q Was the sale of the four additional lots done in any  
6 fashion to hinder, delay or defraud Mr. Nype?

7 A No.

8 Q In your experience as a real estate developer -- I'm  
9 just going to ask you some general questions.

10 When you do a transaction and you seek to loan money  
11 or borrow money from a bank, what does -- what do the banks  
12 typically require you to provide them?

13 A They usually give you a fairly extensive due  
14 diligence list, and it covers all your internal accounting,  
15 paperwork, background, balance sheets, credit references. They  
16 usually do background checks. It's pretty extensive.

17 Q Do they ask for business ledgers and taxes and --

18 A Oh, the tax returns for sure.

19 Q Personal information?

20 A For sure.

21 Q In your experience -- you heard Mr. Rich talk about  
22 all of the reasons why he came to his opinion, and he  
23 referenced his time as assisting the FDIC in these  
24 investigations. In your experience working with banks, have  
25 you ever been questioned about the way you do your business?

1 A No.

2 Q Has any bank --

3 A Well, wait. I've been questioned, but how we  
4 develop, but --

5 Q Yeah.

6 A But I've never been questioned about a question of  
7 (indiscernible), no.

8 Q Okay. Has any bank to your knowledge reported you to  
9 the FDIC or tried to involve the FDIC in any investigations?

10 A No.

11 Q Let me ask you a general question as well. You  
12 have -- you had at this time a few employees working for you;  
13 is that correct?

14 A Correct.

15 Q And --

16 A Working for me.

17 Q Yes.

18 A Yeah. David Mitchell. Yeah.

19 Q And when -- did you ever have them do any work for  
20 Las Vegas Land Partners?

21 A Well, I would break that into two parts. To the  
22 point that they're supporting me as an investor in Las Vegas  
23 Land Partners, yes. And they also did work directly for Las  
24 Vegas Land Partners.

25 Q That's a good distinction. When they did work



1 directly for Las Vegas Land Partners, who would pay their  
2 salaries?

3 A Well, they would be paid by Las Vegas Land Partners.

4 MR. EDWARDS: Court's indulgence.

5 BY MR. EDWARDS:

6 Q There have been some questions and discussions of  
7 liquidity. From 2004 to 2016, were all the lenders, vendors  
8 with the exception of Nype and the lease paid?

9 A Yes, every one of them. We've never -- never been  
10 late, never received a late notice. Everybody has been paid.

11 MR. EDWARDS: Your Honor, I'll pass.

12 THE COURT: Mr. Muije.

13 MR. MUIJE: Very good, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MUIJE:

16 Q Let's go back, if we can, Mr. Nype -- pardon me,  
17 Mr. Mitchell, to the very inception of the relationship, and I  
18 believe you indicated you had met Mr. Eisenberg at First Wall  
19 Street; is that correct?

20 A No.

21 Q Who did you meet at First Wall Street that you dealt  
22 with?

23 A I met Mr. Nype.

24 Q Okay.

25 A He was an employee of First Wall Street. And then

1 there was a gentleman by the name of Mr. Gelb [phonetic], and  
2 there was a gentleman by the name of Mr. Myles. That's all I  
3 can recall, but they had a few other people working at First  
4 Wall Street.

5 Q And how -- who did you meet first? How did you  
6 become acquainted with First Wall Street?

7 A Through Mr. Nype.

8 Q Okay. And where had you met Mr. Nype?

9 A We had met him through an advisor of ours, a previous  
10 lender, Mr. Lodge.

11 Q Okay. And did those meetings and discussions lead to  
12 the signing of an agreement?

13 A An agreement with?

14 Q With First Wall Street.

15 A Yes.

16 MR. MUIJE: Your Honor, this has not been marked into  
17 evidence, but I believe it will be.

18 Will you guys stipulate?

19 MR. H. JOHNSON: We can't see it.

20 MR. BLUT: To?

21 MR. BOSCHEE: What?

22 MR. MUIJE: That's the First Wall Street agreement,  
23 6001. I'm sorry.

24 THE COURT: Well, first we've got to -- Mr. Muije,  
25 first you have to mark it for identification purposes so the

1 record is clear what you're asking for a stipulation on.

2 MR. MUIJE: And I forgot to state the number, Your  
3 Honor. My apologies.

4 It is 60001.

5 THE COURT: Thank you. 60001. Has anybody seen it  
6 before? Recently?

7 Some of you are looking for it now I can tell.

8 (Pause in the proceedings.)

9 MR. EDWARDS: I don't have an objection, Your Honor.

10 MR. BOSCHEE: Yeah, we're fine.

11 THE COURT: Be admitted.

12 (Plaintiffs' Exhibit Number(s) 60001 admitted.)

13 THE COURT: Now we can all look at it.

14 MR. MUIJE: Very good.

15 THE WITNESS: Can you blow it up. I can't -- it's  
16 fuzzy.

17 BY MR. MUIJE:

18 Q And looking at -- it's addressed to you; is that  
19 correct, Mr. Mitchell?

20 A It is.

21 Q And what's the date on that document?

22 A January 25, 2006.

23 Q And it indicates in a heading there, nonexclusive  
24 agent financing engagement letter; is that correct?

25 A Correct.

1 Q And it's got several pages of terms, but if we go to  
2 page 5 -- pardon me, page 4. Page 5 is just the disclosures.  
3 Is that your signature for Las Vegas Land Partners, LLC?

4 A It is my signature.

5 Q And --

6 A But the date is different at the top.

7 Q Okay. And what date did you sign it approximately?  
8 It shows February 7th. So --

9 A So this is --

10 Q So it seems like there was a couple weeks slippage  
11 between the draft and when it's signed?

12 A No. No. It seems like the first page and the last  
13 page are not in sync.

14 Q I didn't quite hear you, sir. You said --

15 A Well, go back to the first page, please.

16 Q Yeah. The first page I'm showing is January 25th.

17 A Correct. And then if you go to the last page.  
18 Because I don't think your document -- or this document is not  
19 consistent because this one says February. At the top it says  
20 February 7th, 2006.

21 Q And every other page except that first page. So  
22 other than the inconsistency of the date, was this signed the  
23 day you first saw it?

24 A I have no knowledge of that.

25 Q Okay. It is your signature on page 5; correct?

1           A     It looks -- yes. But now I question everything  
2 because the signature page and the letters seem to be very  
3 different.

4           Q     And I will indicate these were documents produced by  
5 Forest City, and they are sequential in number. Just checking  
6 the terms, it goes on page 1, Section 2, compensation AB, and  
7 then the very last sentence 250,000 in the event the identified  
8 part does not proceed for any reason, no money shall be owed to  
9 First Wall Street. So that seems consistent. And then the  
10 very next line on page --

11          A     It seems consistent with --

12          Q     -- page 2 is Section 3. So it runs from 2 to 3. So  
13 respectfully, it looks like somebody forgot to change the date  
14 on the front of the letter even though they changed the header  
15 on each page.

16          A     That's your assumptions. Okay.

17          Q     Okay. If you want to look through it, can you  
18 read --

19          A     Well, I -- I'm just -- just pointing out an  
20 inconsistency.

21          Q     And I appreciate that. I had not noticed it.

22          A     So I don't know -- so it seems like the first page is  
23 from a different agreement than what the last page is from.  
24 So --

25          Q     With that said and done, do you want to skim it and

1 basically refresh your memory as to the terms of that  
2 agreement?

3 A Do you have an agreement with the consistent dates?

4 Q I do not have an agreement with the consistent dates.

5 A Okay. Because there was an agreement earlier that  
6 was shown I think; right?

7 Q This was the one that I had shown, and then the Court  
8 ruled that we did not have sufficient foundation. This was  
9 shown to Mr. Liberman.

10 A Okay. Can you bring this up? Because it's fuzzy on  
11 my screen or just bring me the paper version.

12 THE COURT: Which part do you want?

13 No, sir.

14 THE WITNESS: I don't know. He wants me to review  
15 the letter. So I can't read it on the screen.

16 THE COURT: Does that help?

17 THE WITNESS: Better.

18 Okay. Go down.

19 (Pause in the proceedings.)

20 THE WITNESS: Okay. Okay. I've read the agreement.

21 BY MR. MUIJE:

22 Q Does that comport with your recollection, sir?

23 A Well, I know I signed an agreement with First Wall  
24 Street, and I couldn't tell you if this is the agreement, if  
25 this is the specific agreement.

1 Q And let's look at the first paragraph if we can.

2 A Sure.

3 Q And I quote, "This letter confirms our understanding  
4 that Las Vegas Land Partner, LLC, together with its  
5 affiliates," and then it defines that as LV Land, or the  
6 company, is engaging First Wall Street. And the purpose is to  
7 redevelop the properties into new commercial retail office  
8 condominium projects.

9 A Well, you're skipping down one.

10 Q I did skip a little bit.

11 A Okay.

12 Q And it does reflect the company owned five city  
13 blocks in downtown Las Vegas.

14 A Uh-huh.

15 Q Do you see that?

16 A Yeah.

17 Q The next paragraph, services to be rendered, defines  
18 Schedule A as individuals or identified parties to whom First  
19 Wall Street agrees to introduce you. Do you see that?

20 A Uh-huh.

21 Q If we go to page 5 or actually page 6, pardon me --  
22 actually at, somehow at the very last page, there's three  
23 identified parties.

24 A Uh-huh.

25 Q One was Forest City Enterprises; is that correct?

1           A     Correct.

2           Q     For equities did First Wall Street introduce you to  
3 Thor?

4           A     While Rusty Nype was employed at First Wall Street I  
5 met Thor, yes.

6           Q     Okay. And how about the Cayre, C-a-y-r-e, family?

7           A     I did not meet them.

8           Q     Okay. Does this refresh your recollection when you  
9 first approximately when you first entered into a relationship  
10 with First Wall Street?

11          A     Yeah. I don't dispute that we entered into a  
12 relationship with First Wall Street. I just can't tell you  
13 that this is the agreement because the difference in the dates  
14 has concern to me.

15          Q     Okay. There came a time when -- and maybe in your  
16 own words you can tell us what is your understanding of what  
17 happened in terms of a falling out between Mr. Nype and First  
18 Wall Street?

19          A     You know, I don't know. I've only seen what I've  
20 seen in discovery.

21          Q     Understood.

22          A     And so I was not present in any falling out between  
23 the two of them, and so it's only many, many years later into  
24 discovery did I realize, you know, the specifics of it.

25          Q     Well, perhaps we can have a look at a document.



1 MR. MUIJE: It has been marked. I don't believe it's  
2 been admitted yet 6002 (sic), the next in sequence.

3 THE COURT: Is anyone familiar with 6002?

4 (Pause in the proceedings.)

5 THE COURT: I've got lots of people saying, no, but  
6 that may be just no, we're not familiar.

7 MR. MUIJE: That would be my belief, Your Honor. It  
8 was one of our early document productions early on, and then we  
9 also attached it at the time of our opposition to the motion  
10 for summary judgment of 305.

11 MR. H. JOHNSON: No objection.

12 MR. EDWARDS: Yeah.

13 THE COURT: Be admitted.

14 (Plaintiffs' Exhibit Number(s) 60002 admitted.)

15 BY MR. MUIJE:

16 Q If you would look at that for a moment, Mr. Mitchell.  
17 It appears to be two sequential emails on or about September  
18 29th, '06. The way these work, you start with the lower one  
19 as earlier in time I would think.

20 A Go to -- okay. Which one do you want me to -- I only  
21 have the bottom one.

22 Q Yeah. That's what I -- have you read that, sir?

23 A Yeah, I've read it.

24 THE COURT: So this is September of 2006?

25 MR. MUIJE: That's correct, Judge.

1 THE COURT: Okay.

2 BY MR. MUIJE:

3 Q Go ahead, and let's look at the top one then for you.

4 A Uh-huh.

5 Q And that would appear to be actually your response to  
6 Rusty's lower email; is that correct?

7 A Correct.

8 Q Okay. By this time September of 006, was First Wall  
9 Street no longer active in the picture?

10 A I don't know when exactly they had -- when the  
11 separation between us and them, but, you know, I think it was  
12 in the summer of 2006, and this seems to be in the fall. So I  
13 would say maybe.

14 Q Okay. And looking at Rusty's initial email to you at  
15 8:24 a.m., he is setting forth his expectations that he  
16 anticipates making at least \$2 million in fees. Is that a  
17 correct paraphrase of what his paragraph is telling you?

18 A I'm reading his email. I don't recall it  
19 specifically, but that's what it says.

20 Q Okay. And it would appear that your response was  
21 slightly different and would propose to guarantee him a million  
22 dollars; is that correct?

23 A Well, it's a thought. It's --

24 Q Okay. And this was about nine months, actually,  
25 yeah, almost exactly nine months before the closing with Forest

1 City; is that correct?

2 A No. The closing for Forest City, let's think about  
3 it. October. November. December I think the Forest City  
4 closing was in June. Yeah, probably nine months. That's  
5 correct.

6 Q Okay. So as early as nine months previously, you are  
7 on notice that Rusty is expecting to make at least \$2 million.  
8 Is that a fair statement?

9 A Well, I mean, that's --

10 Q I'm not asking whether you agreed with it. I'm  
11 asking whether you're aware that that's Rusty's position?

12 A That's Rusty's -- that was his desire in this email;  
13 correct.

14 Q Okay. And ultimately the Forest City deal comes  
15 together. Approximately Mr. Edwards asked you about the money  
16 that was reserved in escrow.

17 A Uh-huh.

18 Q And I believe that escrow statement -- I'm trying to  
19 remember the number.

20 MR. MUIJE: Was it 4004?

21 MR. EDWARDS: I think so or 6. I think 40006.

22 MR. MUIJE: Okay. If we could pull that up, please.

23 (Pause in the proceedings.)

24 MR. MUIJE: Try 7. I think 7 is sticking in my mind  
25 right now.

1 THE WITNESS: This is not it.

2 MR. MUIJE: Yeah. Okay. Let's see if that's the  
3 correct one. It would appear to be. Okay.

4 UNIDENTIFIED SPEAKER: Which number is it, John?

5 MR. MUIJE: 4007 (sic).

6 This is in evidence, Your Honor.

7 BY MR. MUIJE:

8 Q And let's look at page 3 if we can. And if we could  
9 look at the third line from the bottom in the funds held block.  
10 Do you see that, Mr. Mitchell?

11 A Uh-huh.

12 Q It'll be easier for the court reporter if you answer.

13 A Yes, I do see it.

14 Q Okay.

15 A Sorry.

16 Q And it specifies the amount as \$430,068.

17 A Correct.

18 Q So Mr. Edwards was a little low, and you were a  
19 little high. Is that a fair statement?

20 A That is a fair statement, yes.

21 Q Okay. What does it mean, four months after close of  
22 escrow? How did you understand that, and how did that work  
23 out?

24 A Well, that's two questions. First, it was being held  
25 in escrow for four months. So the title company had the

1 obligation to hold it in escrow until Mr. Nype would pick it  
2 up.

3 Q Okay. And what happened after four months?

4 A He had not -- besides the fact he told me that he was  
5 going to pick it up, he did not pick it up.

6 Q Okay. And what happened to those funds?

7 A Those funds were returned to the seller, us, Las  
8 Vegas Land Partners.

9 Q So it was an additional 430,000 that you retained out  
10 of the purchase price; correct?

11 A It was returned. Yeah. It was returned to us as the  
12 seller; correct.

13 Q Okay. Let's go to that lunch meeting. Did you  
14 invite Rusty to lunch?

15 A I did.

16 Q And how long after the closing statement, this June  
17 22nd settlement date was that lunch in New York?

18 A Days after.

19 Q Okay. Within a week or two?

20 A Oh, for sure. Very closely thereafter.

21 Q Okay. And you told Rusty that there was money being  
22 held in escrow?

23 A Not only that. I gave him the name of the title  
24 officer and her contact information.

25 Q Did you tell Rusty how much --

1           A     Yes.

2           Q     -- you were holding for him in escrow?

3           A     I did.

4           Q     Okay. What was his response?

5           A     He was very grateful and thankful.

6           Q     Do you recall where that lunch occurred?

7           A     I don't think the restaurant has the same name, but  
8 there's still a restaurant there. I think it's -- it was in  
9 Manhattan on I think 55th Street between 5th and 6th.

10          Q     Okay. How soon after that? I believe you testified  
11 you heard from a contingent real estate lawyer. Do you recall  
12 his name?

13          A     Not off the top of my head, but, you know, we called  
14 him, I don't know how many days, but we called within a week  
15 after.

16          Q     I take it nothing was worked out with him, the real  
17 estate lawyer?

18          A     We had several meetings with the real estate, with my  
19 lawyer, my New York lawyer and this person and Mr. Nype and  
20 myself. We had several meetings.

21          Q     Okay.

22          A     To try to understand the source of where this went  
23 from being very grateful to being more, I don't want to  
24 disparage him, but more greedy.

25          Q     Okay. And ultimately approximately five months later

1 you made the decision, you and Mr. Liberman made the decision  
2 to file suit against Rusty; correct?

3 A Well, on the advice of counsel at Forest City and  
4 also New York and Las Vegas, yes, because we had taken on an  
5 obligation to protect the assets, not only our assets, but of  
6 the joint venture as well.

7 Q Okay. And that was your choice to file in Las Vegas?

8 A It was under advice of counsel.

9 Q Okay.

10 A And the Court found that that was correct.

11 Q Okay. Good.

12 THE COURT: Can we stop for a moment.

13 Turn on my white noise.

14 I need counsel to approach the bench.

15 THE WITNESS: Do you want me to leave?

16 (Conference at the bench begins.)

17 THE COURT: The words "advice of counsel" always send  
18 electric shocks through my body when they come out during a  
19 trial.

20 MR. EDWARDS: Okay.

21 THE COURT: Are you relying on advice of counsel, or  
22 was that just a blurt out?

23 MR. EDWARDS: Well...

24 THE COURT: Do you want a few minutes to consult?

25 MR. EDWARDS: Yes.

1 THE COURT: Okay.

2 (Conference at the bench ends.)

3 THE COURT: We'll be in recess until you finish your  
4 consultation.

5 (Proceedings recessed to 16:00 p.m., until 2:19 p.m.)

6 (Pause in the proceedings.)

7 THE COURT: All right. Counsel, the reason that I  
8 asked you to take a break and consult is because intent is a  
9 factor that I have to weigh in these proceedings as we all  
10 know. And in evaluating those claims, if advice of counsel is  
11 being used as a defense, I need somebody to affirmatively tell  
12 me that because there are then a lot of things we have to talk  
13 about.

14 So, Mr. Edwards and Mr. Johnson, did you have a  
15 chance to consult?

16 MR. H. JOHNSON: Yeah, we did. We will --

17 THE COURT: Are you relying on advice of counsel as a  
18 defense?

19 MR. H. JOHNSON: No.

20 MR. EDWARDS: No.

21 THE COURT: Okay. So, sir, we really don't want to  
22 know what your lawyers told you, please.

23 THE WITNESS: Okay.

24 THE COURT: Okay.

25 Mr. Muije, you can keep going.



1 MR. MUIJE: Thank you, Your Honor.

2 BY MR. MUIJE:

3 Q Now, Mr. Nype responded to the lawsuit that was filed  
4 against him by LVLP, Zoe and LiveWork with a counterclaim; is  
5 that correct?

6 A I believe so.

7 Q I'll represent it was --

8 A Okay.

9 Q -- filed on a timely basis in December '07.

10 That ultimately went through a lot of litigation, but  
11 it ended up with a resolution through the District Court; is  
12 that correct?

13 A Well, it was dismissed on a summary judgment.

14 Q Initially.

15 A And then it was appealed.

16 Q And Mr. Nype prevailed on appeal; correct?

17 A Correct.

18 Q And when it came back down to Judge Israel,  
19 ultimately a trial was held; correct?

20 A Correct.

21 Q And that trial occurred during October 2014; is that  
22 correct?

23 A October through I think January actually, 2015.

24 Q There were multiple trial dates in progress; correct?

25 A Yeah. But he, yeah. I think until January.

1 Q Okay. And you wouldn't disagree with whenever is in  
2 the official court dockets for that prior file. I know there  
3 were multiple days. I thought they ended a little sooner than  
4 that?

5 A Well, whatever the docket shows.

6 Q Okay. And ultimately after the trial was concluded  
7 and a little time passed and Judge Israel entered findings of  
8 fact and conclusions of law; is that correct?

9 A Correct.

10 Q And he disagreed with your characterizations which  
11 Mr. Edwards solicited as to what the deal was and who was  
12 supposed to get what percentages, et cetera, et cetera?

13 MR. EDWARDS: Objection. Mischaracterizes the  
14 testimony -- or the questioning.

15 THE COURT: Overruled.

16 THE WITNESS: No. He took a different tact.

17 MR. MUIJE: Okay.

18 THE WITNESS: He took a different point of view. He  
19 did not --

20 BY MR. MUIJE:

21 Q In other words, he didn't agree with your position or  
22 that of LVLP or the plaintiff's side in that case. He adopted  
23 and basically accepted Mr. Nype's position; is that correct?

24 A I think you're summarizing. He based Mr. Nype's  
25 position based upon quantum meruit as I understand it.

1 Q Okay. And he found in favor of Mr. Nype and entered  
2 a judgment for some 2.6 million; correct?

3 A Correct.

4 Q And, in fact, the very next document, 5007 (sic)  
5 reflects the actual judgment entered on those findings; is that  
6 correct?

7 And we'll pull it up real quick.

8 A I have no reason to say different. It looks  
9 official. It looks like the judgment.

10 Q Okay.

11 A I mean, I haven't seen the whole document.

12 Q Okay.

13 THE COURT: It even has a U.S. JR stamp on it.

14 THE WITNESS: Yes. It even has a Clerk of the Court  
15 at the top.

16 BY MR. MUIJE:

17 Q And would you agree this appears to be a copy of the  
18 judgment entered by Judge Israel in that case?

19 A Yeah, I would if -- I haven't seen the whole -- yeah,  
20 but I would. Yes.

21 Q And subsequently, you chose to appeal that, and it  
22 went to the Nevada Supreme Court; correct?

23 A Correct.

24 Q And after remand and after the case came back down,  
25 the next document is 5008 (sic), and do you see that, sir?

1           A     I do.

2           Q     And if you look at the signature page, we have our  
3     esteemed Honorable Judge Gonzalez that signed that. Do you see  
4     that?

5           A     I do.

6           Q     And it would appear to have all the official court  
7     stamps. Would you agree this would appear to be a true and  
8     correct copy of the amended and final judgment?

9           A     I believe so.

10          Q     On cost?

11          A     I believe so.

12                THE COURT: How did I get stuck signing that?

13                MR. MUIJE: We went through three or four judges on  
14     the way, Your Honor.

15     BY MR. MUIJE:

16          Q     Now, that actually occurred after this lawsuit was  
17     filed. Am I correct in my understanding here, sir?

18          A     I mean, I don't know when this lawsuit was filed. I  
19     don't have any documents in front of me. So I don't know when,  
20     but I'll take your word for it.

21          Q     Okay. And the case was actually filed in the summer  
22     of 2016. But before that, in the original case, we had  
23     undertaken a sworn examination of yourself called a judgment  
24     debtor examination. Do you recall that, sir?

25          A     I believe so, yes.

1                   What's the date? What year?

2           Q     I believe it was early September 2015, a few months  
3 after the judgment.

4           A     Okay.

5           Q     And looking for two relevant documents on that right  
6 now. I should have it in a second.

7                   If we could look at 70030, which has not been  
8 admitted yet.

9                   I would note that it does not bear the Court's  
10 official file stamp, but that it was E-served on counsel for  
11 LVLP at that time.

12           THE COURT: What's the case number of the underlying  
13 case, please.

14           MR. MUIJE: It's '07, Your Honor, 551073.

15           THE COURT: Just give me a second. And when do you  
16 think it was served?

17           MR. MUIJE: It was served according to the  
18 certificate of E-service on -- let me get to the page here. I  
19 signed it July 27th, 2016, and it almost -- it's pretty  
20 vague, but it looks like July 28th that it was served by my  
21 assistant Fern.

22           THE COURT: That document does not appear in the  
23 Court's record.

24           MR. MUIJE: Correct. But --

25           THE COURT: For that case number.

JD Reporting, Inc.

1 MR. MUIJE: But there is a stipulation that follows  
2 the service of request for production of documents whereby we  
3 agreed to treat it as a request for production of documents.

4 MR. EDWARDS: Objection, Your Honor. I'm not sure  
5 this witness has foundation. It's hearsay --

6 THE COURT: So you're welcome to ask him questions  
7 about the discovery you did as part of the judgment debtor  
8 exam, but I'm not going to admit it because it's not part of  
9 the record. If there is a dispute as to whether it was served,  
10 but you can certainly ask the witness about his responses to  
11 it. And given the history in this case.

12 MR. MUIJE: -- I understand.

13 THE COURT: The failure to produce documents in a  
14 timely fashion, I understand the issue, but given the  
15 objection, and since it's not part of the Court's record, I'm  
16 going to sustain the objection.

17 MR. MUIJE: Okay.

18 THE CLERK: Counsel, what exhibit number was that?

19 MR. MUIJE: That was 50008 -- no. I'm looking at the  
20 wrong one. Sorry, Ms. Clerk.

21 That's 70030.

22 But I think I can get back to where I need to be,  
23 Your Honor.

24 THE COURT: Okay.

25 / / /

1 BY MR. MUIJE:

2 Q If we look at 70071 -- no, wrong one. That one  
3 doesn't work. That's a subsequent debtor exam.

4 Would you agree, Mr. Mitchell, that prior to the  
5 debtor exam in September of 2015, shortly prior to that was the  
6 first time that LVLP produced general ledger and backup  
7 accounting documents to back up tax returns?

8 A I don't know.

9 Q Okay. Do you have any evidence to suggest that such  
10 accounting documents were ever served on Mr. Nype or his  
11 attorneys prior to August of 2015?

12 A You mean in the prior case?

13 Q In any fashion that we were provided copies of the  
14 general ledgers and the detailed accounting journals.

15 A If you could show me something, I'm happy to answer.  
16 I don't know.

17 Q I think we can probably do that. I can't show you  
18 something that wasn't served, but I can show you what was  
19 served I do believe. Let me make sure that I have it.

20 If you will look at proposed -- let's see if it's  
21 proposed or stipulated.

22 MR. MUIJE: It's actually in evidence, Your Honor,  
23 stipulated Exhibit 50031.

24 THE COURT: Okay. Great.

25 / / /

1 BY MR. MUIJE:

2 Q And if we look at that document, you'll see it comes  
3 from Mr. Hayes and that it was E-served in 2019. Do you see  
4 that at the top, sir?

5 A It says, Electronically served, yes.

6 Q And they designate Mr. Myles as a potential new  
7 witness, and then they also on page 2 indicate that there is an  
8 attached index for a comprehensive list of defendant's  
9 production. Do you see that?

10 A Well, I see -- I guess it's page 2. So I see  
11 Mitchell defendant's list of witnesses. And then I see  
12 Mitchell defendant's list of documents.

13 Q And then it says see attached index for comprehensive  
14 list. Do you see that?

15 A Where do you see -- I don't see, See attached. I see  
16 defense --

17 Q Okay. The attached comes on down, and --

18 A I don't have that.

19 Q And we'll scroll down to it, sir, on page 4.

20 A Okay.

21 Q And if we look at the very top of that page.

22 A Yes.

23 Q And you will see that there is a block of documents  
24 labeled LVLP Nype First Supplement.

25 A Well, I don't see where it says first supplement.



1 Q The second line.

2 A Oh. Okay. First sup. Okay. Yeah. I see it.

3 Q Okay. And the first block of documents is bank  
4 statements, 367 pages. Do you see that, sir?

5 A Yes.

6 Q And then there is multiple years tax returns.

7 A Yes.

8 Q Including the tax return that we just looked at, the  
9 2007 tax return. Do you see that, sir?

10 A Yes, I do.

11 Q And then below that we again have more bank  
12 statements.

13 A Can you go below.

14 Q It starts at Mitchell 0001 and goes through 32. Do  
15 you see that?

16 A Yeah.

17 Q And those are bank statements.

18 A Okay.

19 THE COURT: Can you see it now, sir?

20 THE WITNESS: Yes, I can.

21 THE COURT: Okay. Good. Because I wasn't able to.

22 So.

23 BY MR. MUIJE:

24 Q And then below that you see general ledgers and a  
25 couple of documents regarding the Leah transaction. Do you see

1 that, sir?

2 A I see Leah Properties at the top. ICC guarantee --  
3 oh, now I can't see anything.

4 Q Yeah. It's slightly above. You have general ledgers  
5 a couple of lines above the --

6 A Oh, starting with 620, yeah, I see them.

7 Q Okay. And the next category below, which I'll  
8 represent and I'll find it in a second, was served literally  
9 within a couple of days of that first block is dated in this  
10 index as 9115. Do you see that, sir?

11 A I do.

12 Q Okay. And --

13 MR. MUIJE: Court's indulgence for one second.

14 If we -- of record in the old case, Your Honor --

15 THE WITNESS: Where are you?

16 MR. MUIJE: This has not been marked in evidence.

17 THE WITNESS: Oh, sorry.

18 MR. MUIJE: I'm just advising the Court as to timing  
19 and dates that occurred in the old case.

20 -- is a file stamped stipulation and order dated  
21 August 18th, 2015, which provides for a sworn examination  
22 under oath of the debtor's most knowledgeable person,  
23 Mr. Mitchell, between September 9th and September 11th,  
24 2015. And that is signed by Judge Israel.

25 / / /

1 BY MR. MUIJE:

2 Q Does that refresh your recollection as to the timing  
3 of that --

4 A But is this on the list that you just sent me or  
5 the -- on my screen, what you just told me?

6 Q We had done that one, but the Court wouldn't allow  
7 into evidence because we didn't have proof that it was in the  
8 action that we had sent your attorneys in late July.

9 A Okay. Yeah.

10 Q And then we worked it out and provided a written  
11 agreement to the Court which provided that, A, the documents  
12 would be provided, and B, you would come testify.

13 Do you recall coming and testifying in approximately  
14 September of 2015?

15 A In a deposition.

16 Q A judgment debtor exam?

17 A Yeah. But I don't know exactly when it was, but,  
18 yes.

19 Q Okay. And let me find the actual disclosure document  
20 from Mr. Hayes which was served shortly thereafter.

21 I just want to make sure we have the timing right as  
22 to when these documents were received.

23 (Pause in the proceedings.)

24 THE COURT: How are we doing on time, Mr. Muije?  
25 Remember, we lose this witness at the end of the day.

1 MR. MUIJE: I think we're on track for me to be done  
2 by about 3:45 to 4:00, Your Honor, if I follow my notes  
3 correctly.

4 THE COURT: Will that accommodate all of the redirect  
5 and recross?

6 (No audible response.)

7 THE COURT: Okay.

8 MR. BOSCHEE: I don't know. It has to.

9 THE COURT: Okay. I'm glad you recognize that.

10 (Pause in the proceedings.)

11 BY MR. MUIJE:

12 Q I won't divert any more time. We'll find that  
13 during the break, Mr. Mitchell, but do you recall making  
14 available to Mr. Nype and either myself or his former attorneys  
15 those general ledgers and accounting statements prior to that  
16 August September time in September 2015?

17 A Well, I know that in the -- the Santoro Driggs firm  
18 we produced a lot of material. I mean, I don't know when that  
19 was, but Mr. Santoro -- the Santoro Driggs firm we produced a  
20 lot of documents in that period of time.

21 Q Okay. But you can't point at any general ledgers or  
22 detailed accounting backup, can you, that they served at that  
23 time?

24 A Oh, I thought you were at the tax forms.

25 Q No. I was talking about the detail behind the tax

1 forms.

2 A I couldn't tell you for certain. I know that we  
3 produced a lot of information at that point in time.

4 Q Okay.

5 Now, you had also talked about having a separate  
6 entity to preserve the gaming rights of Symphony Park. Do you  
7 recall that?

8 A No. It was not Symphony Park.

9 Q What --

10 A It was the gaming rights in the transit center.

11 Q Oh, okay. At the transit center.

12 And what entity was that that wanted to maintain the  
13 possibility of gaming at the RTC?

14 A It was a separate entity, and I could give you the --  
15 I could give you the name. It has a contract. It was in the  
16 documents that we gave you. There's a letter, a cover letter  
17 from the RTC. It names an entity of casino -- casino gaming or  
18 something like that.

19 Q Okay. It's not a defendant in this case, is it?

20 A It is not.

21 Q And it never did come to fruition, did it?

22 A It did not.

23 Q Now, as you are aware, I believe you testified  
24 earlier that the sole remaining asset of LVLP is the future  
25 expectancy to the reversionary rights in the land and

1 improvements where the RTC is currently located; is that  
2 correct?

3 A I believe that's the sole remaining asset; correct.

4 Q Okay. And when you say that's the sole remaining  
5 asset of LVLP, LVLP filed bankruptcy on or about August 19th,  
6 2019; is that correct?

7 A Correct. I mean, these rights are in something  
8 called Wink One.

9 Q Okay.

10 A It's another LLC.

11 Q Okay. And Wink One, LLC, is an entity wholly-owned  
12 by Las Vegas Land Partners; correct?

13 A Correct.

14 Q So those rights belong to the bankruptcy trustee at  
15 this point; is that correct?

16 A I don't know the hierarchy.

17 Q And you're aware, are you not, that the bankruptcy  
18 trustee has joined in and has filed a complaint and  
19 intervention and is pursuing the same theories and remedies  
20 here as Mr. Nype; correct?

21 A I don't know specifically.

22 Q Okay. And you -- we refer to those reversionary  
23 rights. Could you walk the Court through your understanding of  
24 what those reversionary rights that are currently held in Wink  
25 represent. Are they 10 percent of the land value in -- what

1 year would that lease have matured to the best of your  
2 knowledge?

3 A I don't know. I think I believe it was a 39-year  
4 lease that was executed in 2007. So I'm not -- you know, we  
5 are now, you know, in a 20 year -- 13 years into it; right?

6 Q Approximately.

7 A Approximately, give or take.

8 So the rights follow the original TIC, divided  
9 interest of 60-40, 60 percent to the Forest City TICs and  
10 40 percent to the LiveWork Las Vegas entities. So Wink One  
11 owns a 40 percent interest in the underlying land.

12 Q However, that's subject to reduction if there are  
13 still unpaid amounts advanced by Forest City; is that correct?

14 A I was getting to it, but, yes.

15 Q Okay.

16 A But thank you for helping.

17 So 50 percent of the interest is subject to, if you  
18 will, a loan payback to any advances that Forest City made, any  
19 returns on those advances. And there's a complex waterfall  
20 that you and I have discussed before.

21 And then the other 20, the other 50 percent of that  
22 interest is free of any subject to -- is free of any claim  
23 above and beyond that.

24 Q Well, okay. So worst-case scenario, Wink would be  
25 entitled to 20 percent of the value of that property in the

1 year of approximately 2046?

2 A If that's -- yeah, if you did the math correct,  
3 that's correct. Yes.

4 Q And in a best case scenario, it might be entitled to  
5 as much as 40 percent. Is that correct?

6 A That's correct.

7 Q Do you have any idea what the land improvements  
8 underneath the RTC are worth?

9 A Today?

10 Q Today.

11 A You know, as we've gone through this week, you know,  
12 it's -- we were at different points, and we were with different  
13 pieces. I mean, it's subject to a lease. So that would --  
14 that would either enhance or impair the value. And so one  
15 would have to take the value with or without the lease and do  
16 some analysis.

17 Q You had further testified that LiveWork benefited  
18 from the Heartland settlement regarding 305. Do you recall  
19 that?

20 A I do.

21 Q And refresh my memory: What was the benefit to  
22 LiveWork of foregoing an outstanding promissory note with  
23 almost \$10 million in outstanding debt on it?

24 A Well, as I explained before, and so excuse me if I'm  
25 repeating myself, the note was underneath two deeds of trust



1 totaling at the time \$9 million. The property was not worth  
2 \$9 million. It was probably worth \$6 million. So there was no  
3 financial value to the note at that point that you're talking  
4 about.

5 Q Well, there was no financial value regarding the  
6 collateral. The note can be independently enforced regardless  
7 of the collateral or deed of trust. Are you aware of that?

8 A The note was to the --

9 Q To LiveWork.

10 A -- 305 Las Vegas or the -- the maker of the note was  
11 305 Las Vegas.

12 Q Correct.

13 A And it was subject to, the note itself was subject to  
14 the other two deeds of trust.

15 Q Understood. But I'm representing to you that you  
16 don't have to rely on the security or the collateral.

17 But what prevented LiveWork from continuing its suit  
18 versus 305 Las Vegas to recover monies from 305?

19 A Well, we did sue under the note, and as part of a  
20 overall settlement, which we've discussed before, but I don't  
21 know if I'm answering the question. Please ask me the question  
22 again.

23 Q I understand the overall settlement provided that  
24 LiveWork would forgo or waive or cancel the note. But LiveWork  
25 didn't sign that settlement agreement, did it?

1           A     I know we've looked at it before, but can you put it  
2 up again.

3           Q     That would have been --

4                   MR. BLUT: 80033.

5                   MR. MUIJE: 8033.

6                   MR. BLUT: 833.

7                   THE COURT: 833?

8                   MR. BLUT: 80033.

9                   THE COURT: Oh. 80,033.

10                  MR. BOSCHEE: Yep.

11                  MR. MUIJE: Okay. Let me get that up.

12 BY MR. MUIJE:

13           Q     And do you need to see the signature line, sir?

14           A     Yeah. If you could just do me that favor, please.

15           Q     Okay. Looking at the first paragraph, do you see any  
16 mention of LiveWork in that first paragraph?

17           A     I do not.

18           Q     And were you present in the courtroom when I asked  
19 Mr. Churchill [phonetic] to look at all of the signatures to  
20 the agreement?

21           A     I was, yes.

22           Q     And there was no signature for LiveWork, was there?

23           A     I don't -- it's unfocused, but we could go to the  
24 signature page of this if we can.

25           Q     Okay. It's multiple signatures.

1           A     I'll take your word for it.

2           Q     No. I'll let you scroll through and look at the  
3 various signatures.

4           A     Could I just see the second paragraph of this.

5                     (Pause in the proceedings.)

6           THE WITNESS: The B paragraph. I'm sorry.

7 BY MR. MUIJE:

8           Q     Yeah, the first deed of trust was in favor of  
9 Heartland.

10          A     Right. I want to get to the second deed of trust.

11          Q     Okay.

12          A     Maybe it's the C. It's the C paragraph. I'm sorry.  
13 That one.

14          Q     But would you agree with the general proposition even  
15 if LiveWork were mentioned in this agreement, without its  
16 consent or signature, it can't be bound; correct?

17          A     I don't know that, but can I ask -- can I ask a  
18 question?

19                 THE COURT: Maybe.

20                 THE WITNESS: Well, maybe I'll ask you. The borrower  
21 in favor of the lender. Is the lender the casino -- I mean,  
22 the Charleston Casino -- the casino Charleston entity?

23                 MR. MUIJE: That's the lessee and a guarantor.

24                 THE COURT: Okay. So I have to take a short break to  
25 be able to deal with my next emergency. Hopefully I'll be done

1 soon. You are welcome to get up, walk around.

2 (Proceedings recessed at 2:58 p.m., until 3:11 p.m.)

3 (Pause in the proceedings.)

4 THE COURT: Sir, you're under oath. We're going to  
5 keep going.

6 Mr. Muije, if we could pick up the pace.

7 And Mr. Boschee is here now.

8 MR. MUIJE: Very good.

9 THE WITNESS: I found out my answer to my question.  
10 So.

11 BY MR. MUIJE:

12 Q And what was your question?

13 A My question was who the note was made out to, in  
14 essence who was the payee. So.

15 Q And am I correct in my understanding that the note  
16 ran from 305 to LiveWork?

17 A Correct.

18 Q And LiveWork did not sign that settlement agreement,  
19 did it?

20 A Well, to my recollection, Mr. Chamberlin's testimony,  
21 I don't believe so.

22 Q If we could look at admitted Exhibit 90054. Do you  
23 have that before you, sir?

24 A Yes.

25 Q And if you look down below at the very last page, is

1 that your signature on behalf of Charleston Casino Partners?

2 A It is.

3 Q And going back up to the first page, it indicates  
4 this is pursuant to a lease of May 2nd, '07. But this  
5 surrender and termination agreement is occurring on December  
6 18th, 2014; is that correct?

7 A Yes.

8 Q And if we go to page 2, paragraph 3, it acknowledges  
9 the unpaid rent as of September was 12 million, six,  
10 seventy-six; is that correct?

11 A I'm reading it. Yes. It says that.

12 Q Okay. And it was accruing at slightly less than  
13 7,000 per day. Do you see that?

14 A I see that.

15 Q And then would you read me the last sentence of that  
16 paragraph 3.

17 A In consideration of tenant's agreement to execute and  
18 deliver this agreement to landlord, landlord has agreed to  
19 waive the payment of such amounts by tenant.

20 Q Okay. And that's something you agreed to?

21 A I believe so because you showed me the signature  
22 page. Yes.

23 Q Okay. Let's pull up, if we might, Proposed  
24 Exhibit 60005?

25 THE COURT: Is that a proposed exhibit?

1 MR. MUIJE: It's a proposed exhibit, Your Honor.

2 THE COURT: I'm not going to look.

3 Is there a stipulation?

4 Jill turned me off.

5 (Pause in the proceedings.)

6 THE WITNESS: I see it. Oh, I'm not supposed to see  
7 it; right?

8 THE COURT: No, you can see it, just not me.

9 THE WITNESS: Oh, okay. Okay.

10 THE COURT: And my monitor got turned off.

11 (Pause in the proceedings.)

12 MR. MUIJE: I'll represent that it is an email chain,  
13 including Mr. Mitchell, on all of the individual emails.

14 MR. EDWARDS: No objection from the Mitchell  
15 defendants.

16 THE COURT: Any other --

17 Be admitted.

18 (Plaintiffs' Exhibit Number(s) 60005 admitted.)

19 MR. MUIJE: Very good.

20 BY MR. MUIJE:

21 Q Let's look at, if we could at the top of page 2.

22 And who is Doug Amado?

23 A He was my assistant.

24 Q Okay. And was he employed by Mitchell Holdings?

25 A He was.

1 Q And who is Bobbie at -- who he's communicating with,  
2 and I believe her longer email address is down below, Bobbie at  
3 Sierra NV.net.

4 A She is the property manager for this Aquarius  
5 property.

6 Q Okay. And would you read in Bobbie's question to  
7 Doug at the top of page 2.

8 A Doug, this is a new bank. I'm not to use signature  
9 any longer. On July 2nd I sent six K., \$6,000 to Signature.  
10 No more right now, but I will pay bills this week and send what  
11 I have left over. AC repairs have been huge this last couple  
12 of months.

13 Are you requesting wire confirmations from bank or  
14 just an email that I sent?

15 Thanks. Bobbie.

16 Q Okay. And right below that, Doug, your employee at  
17 Mitchell Holdings indicates to Bobbie that -- requesting that  
18 the monthly income be sent for -- I'm assuming this is casino  
19 Charleston, LLC; correct?

20 A Well, I mean, to be specific, it references that -- I  
21 mean, it is --

22 Q What's the monthly income that Bobbie's talking  
23 about?

24 A Yes, that's correct. Charleston Casino. Yes.

25 Q Okay. And you're requesting that that be sent to

1 Heartland in reference, a specific account, specific routing  
2 number, and the account is held in the name of 305 Las Vegas,  
3 LLC; is that correct?

4 A Yes. It's an account 305 Las Vegas, LLC, special  
5 instructions notify commercial loan servicing. Yes.

6 Q Okay. And then coming back up at the top of page 1,  
7 and the second entry, July 17th, 2012, at 9:40 a.m., Doug is  
8 saying; Correct, no longer wire to Signature Bank. Do you see  
9 that, sir?

10 A I do.

11 Q And right above that, two minutes later you respond,  
12 confirmed.

13 A Correct.

14 MR. MUIJE: Okay. The next group of documents that  
15 I'd like to look at Your Honor is multiple in succession. They  
16 are not admitted into evidence. They start at 60032 and run  
17 through 60038.

18 THE COURT: Any objection?

19 Hold on, sir. We've got some consultation going on.

20 (Pause in the proceedings.)

21 MR. EDWARDS: In the interest of -- I think Mr. Muije  
22 may have gotten the same information in through another  
23 exhibit, but in the interest of time we'll stipulate.

24 THE COURT: Any objection?

25 MR. BOSCHEE: No.



1 MR. BLUT: No, Your Honor.

2 THE COURT: Be admitted.

3 (Plaintiffs' Exhibit Number(s) 60032-60038 admitted.)

4 MR. MUIJE: Very good.

5 BY MR. MUIJE:

6 Q Looking at 6032, 60032, the first page of this  
7 document indicates it's from Sam Spitz. Who is Mr. Spitz?

8 A He's a -- he's the accountant for Las Vegas Land  
9 Partners.

10 Q And the date it's sent is February 6 at 5:03 p.m. Do  
11 you see that, sir?

12 A I do.

13 Q And the subject is engagement letter; is that  
14 correct?

15 A Yes, it says that.

16 Q And what does Mr. Spitz say in his email to you on  
17 page 1 here?

18 A Attached is the engagement letter you to sign.

19 Q Okay. Now, if we come down to page 2, we see the  
20 attachment. Do you see that, sir?

21 A I do.

22 Q And what is the date on that document?

23 A January 15th, 2008.

24 Q Okay. And if we come down to page 4, the document  
25 appears to be partially signed; is that correct?

1 A Mr. Spitz's signature is on it.

2 Q But your signature is blank; is that correct?

3 A That is correct.

4 Q Okay. Let's go to 63 if we can -- or 60033.

5 MR. MUIJE: I'm sorry, Your Honor. Fumble mouth  
6 here.

7 BY MR. MUIJE:

8 Q This is perhaps a half-hour later to Samantha Gergan  
9 [phonetic]. Who is Samantha?

10 A At this time she was my assistant.

11 Q Okay. And again it references the engagement letter  
12 and just has a signature. It doesn't say anything, but it has  
13 your logo underneath where you would normally type a comment or  
14 whatever?

15 A My signature block is there, yes.

16 Q Okay. And then it forwards that 5:03 email, and it  
17 forwards that same letter we just looked at; is that correct?

18 A That part I don't know. But -- I don't know if it's  
19 forwarding that email but, okay, yes.

20 Q Okay.

21 And let's go to 6034 (sic). And again this is  
22 actually a shade earlier it would appear because it looks like  
23 it came from you. It looks like you read Mr. Spitz's email and  
24 then immediately forwarded it, and this one says print. What  
25 did you mean by that, sir?

1           A     I guess I asked her to print the engagement letter.

2           Q     Okay. And then if we come down, it would appear to  
3 be that same '08 proposed engagement letter partially signed by  
4 Mr. Spitz. Is that correct? On the last page?

5           A     Yeah. I assume it's the same one. Yes.

6           Q     Okay. Let's go to 35, and this is Samantha. It  
7 would appear to be the next morning at 10:44 a.m. Does that  
8 look correct? From Samantha at Mitchell Holdings?

9           A     Yeah. I assume that the 7th is the next day. Yes.

10          Q     Okay. And it's addressed to Sam at SKE CPA.com. Is  
11 that Mr. Spitz?

12          A     Yes.

13          Q     With a cc back to yourself?

14          A     Yes.

15          Q     And it says, please find attached signed letter; is  
16 that correct?

17          A     Yes.

18          Q     If we come down and scroll down, looking at page 2,  
19 we have an engagement letter dated January 15th, 2008; is  
20 that correct?

21          A     Yes.

22          Q     And although it's not blue color scanned, it would  
23 appear to be the same signature of Mr. Spitz that we saw on the  
24 prior screen. Would you agree with that?

25          A     It's a signature. I don't know if it's the same

1 signature, but, yeah.

2 Q Okay. And it is signed by you. And what's the date  
3 you put under your name?

4 A Well, it's signed by me. I don't know if that's my  
5 date, but it's 1/15/08.

6 Q Okay. Let's go to 36. This is a couple weeks later.  
7 It looks like Ms. Gergan sent that back to Mr. Spitz on the 7th  
8 I believe, and now we're on the 22nd, two weeks later. And it  
9 says engagement letter 2017. Do you see that?

10 A Yeah.

11 Q It says, "Please sign page 3. Do not date. And send  
12 me four pages signed. Thank you."

13 Did I read that correctly?

14 A You did.

15 Q Okay. And it still shows that '08 letter this time  
16 unsigned by anybody.

17 MR. MUIJE: And the last page is a mis-scan by us,  
18 Your Honor. Page 5 has no relation to this case as far as I  
19 know. My apologies.

20 THE COURT: Okay.

21 BY MR. MUIJE:

22 Q But the first four pages, would that appear to be an  
23 email with the attachment from Mr. Spitz to the best of your  
24 knowledge, Mr. Mitchell?

25 A I mean, if that is the attachment, yes.

1           Q     We'll represent and counsel, your counsel produced it  
2 for us, and those were the attachments attached to their  
3 document.

4           A     Okay.

5           Q     Shortly later you in turn sent it to Ms. Gergan as a  
6 pure forward. Do you see this in Exhibit 37? At 3:14 p.m. on  
7 the 22nd from David to Samantha Gergan?

8           A     Yes.

9           Q     And if you come down and do you see Mr. Spitz's prior  
10 email of just a little bit earlier asking for four signed  
11 signature pages?

12          A     I don't have that in front of me, but --

13          Q     Okay. Let's look. Let's make sure we're the same.  
14 Now, that's at page 1 underneath your signature block. Begin  
15 forwarded message. Do you see that?

16          A     Yeah, I see that. I see that, yeah.

17          Q     Okay. And then if we come down to page, get through  
18 the logos, if we come down to page 5, we see the January 15th  
19 '08 letter. Page 6 is at page 2. And there's no signatures on  
20 page 7; is that correct?

21          A     Yeah.

22          Q     Now, look --

23          A     This doesn't have any logos on there, but, yeah.  
24 Yes.

25          Q     Okay.

1           A     I don't know if it's the same letter, but, yes, I see  
2 it.

3           Q     Okay. And every one of these letters, because again  
4 so far we've only seen two separate letters, but those letters,  
5 let's look at page 6 if we can. Three paragraphs from the  
6 bottom it says,

7                         By your signature below, you acknowledge  
8                         and agree that upon the expiration of the  
9                         three-year period SKE Group, LLC, shall be  
10                        free to destroy our records related to this  
11                        engagement.

12                   Do you see that, sir?

13          A     I do.

14          Q     Did Mr. Spitz call that to your attention in February  
15 of 2018 when he was asking you to sign these?

16          A     February, I don't recall.

17          Q     Okay. Let's look at 38. And it's from Samantha  
18 going to Mr. Spitz with a cc to yourself a little later that  
19 afternoon, almost right before 5:00 o'clock. Do you see that?

20          A     I do.

21          Q     And it says, please find four signature pages  
22 attached. Am I reading that correctly?

23          A     You are.

24          Q     Okay. And at page 2 we have a signature that looks  
25 like it's in magic marker. Is that your signature, sir?

1           A     It looks like it. It's a little different, but it  
2 is.

3           Q     Okay. Let's go to page 3.

4           A     Yeah.

5           Q     This one looks like it's in some form of pen and  
6 looks a little bit different from page 2.

7           A     That's my signature.

8           Q     That is your signature.

9                     Let's go to page 4. This one happens to be in blue  
10 ink and looks a little different still. Is that your  
11 signature?

12          A     Yes.

13          Q     And let's go to page 5. Larger, different pen, but  
14 is it your signature?

15          A     Yes. Some of these are from sign here now, but,  
16 yeah. Yes.

17          Q     Okay.

18          A     I believe so. I mean, yes, that's my signature.

19          Q     Whose idea was it to create these documents and sign  
20 them all in February of 2018?

21          A     Well, Mr. Spitz had asked me to reexecute his  
22 engagement letter. He said that he needed to complete his  
23 files. He told me it was the same engagement letter I had  
24 signed.

25          Q     Did you verify that?

1           A     Did I -- he's been my accountant for 20 some odd --

2           Q     Did you go back and look at the original engagement  
3 letters?

4           A     I don't have -- I don't believe I have the original.  
5 I didn't locate the original engagement letters. No.

6           Q     And were you aware of testimony in this case from  
7 every CPA who's testified, including Mr. Spitz and his former  
8 partner Mr. Eisenberg as well as Mark Rich that engagement  
9 letters change year to year? You were aware of that, sir?

10          A     I've read Mr. Spitz's testimony, and I've read  
11 Mr. Eisenberg's testimony. I'm not sure it says that. I  
12 think -- when it comes to tax engagement letters, I think one  
13 of them calls out specifically that it's been the same  
14 engagement letter for 10 plus years.

15          Q     Okay.

16          A     But if you have that testimony, we can go through it.

17          Q     We'll defer for now. We are a little tight on time.  
18                What I'd like to do next is look at several  
19 nonadmitted documents that start with 60014, -15, -16, -17 and  
20 -18.

21                THE COURT: Mr. Muije, are we moving on?

22                MR. MUIJE: We are.

23                THE COURT: Because we're almost out of time.

24                MR. MUIJE: I was waiting to see if they would  
25 stipulate to the admission of those five exhibits.



1 MR. H. JOHNSON: Well, some of them seem to be the  
2 same document. So I'm not sure what --

3 MR. MUIJE: I'll represent that they are different  
4 because these were produced by Mr. Spitz approximately 10 days  
5 before his deposition for the first time in a separate --  
6 Hayes's second supplemental document production.

7 MR. BOSCHEE: So they're the same documents, but  
8 disclosed by someone different?

9 MR. MUIJE: No. They were disclosed by Hayes on  
10 behalf of Spitz.

11 MR. BLUT: But that doesn't mean they're not the same  
12 documents.

13 MR. MUIJE: They are five engagement letters with  
14 different dates.

15 Your Honor, there's another way. And we also have  
16 those documents attached as an admitted exhibit under  
17 Mr. Rich's report which is at 7043 (sic).

18 THE COURT: Great.

19 MR. BLUT: Great.

20 THE COURT: And the witness has already testified  
21 about his knowledge about them. So.

22 MR. MUIJE: I understand.

23 MR. H. JOHNSON: We'll let them in Your Honor.

24 THE COURT: Okay. They'll be admitted.

25 (Plaintiffs' Exhibit Number(s) 60014-60018 admitted.)

1 BY MR. MUIJE:

2 Q And let's look at one page of those just so we're on  
3 the same page.

4 Am I recalling correctly that Mr. Spitz said don't  
5 date them?

6 A I mean, per the email?

7 Q Yeah. In the last email where he sent you -- send me  
8 four pages, don't date them.

9 A He said something to that affect. I don't think  
10 that's the exact words, but, yes.

11 Q Let's look at page 265 in Exhibit 70043.

12 Do you have that before you, sir?

13 A Yes, I do.

14 Q And if we can also pull up at the same time, I think  
15 it's 6038 (sic) and put those side by side. Okay. And on  
16 6038, look at the four signatures. So that's one. Now, come  
17 down a page. That would appear side by side. And what page is  
18 that? That is page 2 of 6038. And there was a blue one.  
19 Let's go to page 3 if we can.

20 There we go. That's actually page 4.

21 Do those signatures appear close?

22 MR. EDWARDS: Well, objection, Your Honor.

23 THE COURT: Overruled. They look close to me.

24 Okay. What else?

25 MR. MUIJE: And I'll represent to the Court that it

1 supports -- if the Court lays all four and five signature  
2 blocks of the 6032 series next to this exhibit to Mr. Rich's  
3 report, they're going to look close on all four, all four of  
4 which appear to be different.

5 THE COURT: All right. So.

6 MR. MUIJE: Okay. Moving on.

7 THE COURT: Do you have other stuff you wanted to do?  
8 Because we're going to break soon.

9 MR. MUIJE: Give me five more minutes, Judge. And  
10 I'll be happy to break at that time.

11 BY MR. MUIJE:

12 Q Looking at the settlement sheet for Casino Coolidge,  
13 which I believe was 6041 -- no, that was an invoice. My bad.

14 MR. BLUT: 33.

15 MR. MUIJE: Pardon me? I'm sorry.

16 MR. BLUT: 33.

17 MR. MUIJE: 33.

18 BY MR. MUIJE:

19 Q And Mr. Mitchell and I -- or Mr. Johnson and I agreed  
20 that that could be stipulated into evidence during the break.

21 THE COURT: Any objection? Be admitted.

22 MR. BLUT: Well, then maybe it's a different  
23 document. 33 has already been admitted. I thought he was --

24 MR. MUIJE: I didn't show it as admitted.

25 As long as it's admitted, that's all I care about.

1 MR. BLUT: 33 was admitted Monday.

2 MR. MUIJE: Okay. Very good. Let me check it off my  
3 list.

4 MR. H. JOHNSON: I was just saying we have no problem  
5 because it had been admitted.

6 (Pause in the proceedings.)

7 BY MR. MUIJE:

8 Q Let's look at page 1 of Exhibit 33 if we can, and  
9 let's look at the two bottom documents here or the two bottom  
10 lines of this document.

11 A Yeah.

12 Q Do you see, Net due, seller less seller's charges,  
13 345,000?

14 A I do.

15 Q And it indicates that those amounts are going  
16 \$91,934.47 to Mr. Liberman and \$250,000 to yourself; is that  
17 correct?

18 A Yes.

19 Q And would it surprise you that those dollar amounts  
20 are entered on the general ledgers of LVLP?

21 A It wouldn't surprise me, no. We kept accurate  
22 records.

23 Q Good. And if we can look at 3067 (sic), which  
24 Mr. Johnson indicated to me had been admitted, but I did not  
25 show that as the case.

1 MR. MUIJE: Ms. Clerk, was that admitted?

2 THE CLERK: 30067, was that the number?

3 MR. EDWARDS: Yeah.

4 THE CLERK: Yes.

5 MR. MUIJE: Let me pull it up real quick, and then we  
6 should be ready to break.

7 BY MR. MUIJE:

8 Q This is about a five-page document. Have you ever  
9 seen this before, Mr. Mitchell?

10 A Well, I have when I've reviewed all of your proposed  
11 exhibits.

12 Q Okay.

13 A And I've probably seen it before, before then as  
14 well, but --

15 Q So it suggests in the caption David Mitchell amounts  
16 paid. What does that mean to you?

17 A It means they're the amounts that I've received.

18 Q Okay. And these have various amounts including many  
19 dates and amounts that are covered here, and you don't dispute  
20 that these were financial entries relating to LVLP and yourself  
21 spanning a number of years in terms of millions of dollars of  
22 corporate and personal funds going back and forth?

23 A No. This is the amounts that I've paid.

24 Q Personal money that you put into the corporation?

25 A It seems that way, yes. I mean, unless you have the

1 complete ledger, it's hard to tell.

2 Q Okay. And you were here when Mr. Spitz --  
3 Mr. Spitz -- Mr. Rich went through the capital contribution  
4 ledgers and showed the amounts that were paid out to you;  
5 correct?

6 A Correct.

7 Q And you don't disagree with those?

8 A What am I agreeing to or disagreeing to?

9 Q No. You don't dispute that those amounts were paid  
10 out to you?

11 A No. If they came from my general ledger, I don't  
12 dispute them.

13 MR. MUIJE: Okay. And we're ready to break, Judge.

14 THE COURT: All right, sir. I have a couple of  
15 questions for you.

16 THE WITNESS: Sure.

17 THE COURT: You knew from your email conversations  
18 with Mr. Nype that he had a claim of at least seven figures.  
19 Can you tell me based upon that why you thought setting aside  
20 about \$400,000 in the escrow account was appropriate.

21 THE WITNESS: Sure. We knew from the email that we  
22 went through that he had an interest in receiving a minimum of  
23 I think it was in the language of \$2 million. In a time of  
24 September, nine months, ten months before the transaction  
25 closed, the transaction broke apart several times, and the

1 transaction was restructured several times. And the end  
2 transaction in June was very, very different than what was  
3 being discussed in September of 2006.

4 And the material parts of that are, you know, that we  
5 had to become liable for the debt portion of -- Las Vegas Land  
6 Partners became liable for the debt portion in the amount of  
7 net dollars that came to us because the bank -- they were the  
8 Forest City bank -- took enormous amount of reserves and so on  
9 and so forth. The net amount that came to us was substantially  
10 less, and the deal was substantially less in September of 2006.

11 And so in our corporate mind, if you will, after  
12 consulting our real estate professionals and am I allowed to  
13 say legal professionals, and accounting professionals and also  
14 with our partner, our new partner Forest City, that was the  
15 amount that was appropriate.

16 THE COURT: Okay. Knowing that Mr. Nype had a  
17 seven-figure demand regardless of whether you think the demand  
18 wasn't very well-founded within the changes and the nature of  
19 the deal, why did you think it was appropriate to take a  
20 distribution to yourself of \$3.9 million shortly thereafter?

21 THE WITNESS: I think myself and Mr. Liberman both  
22 took distributions --

23 THE COURT: Well, Mr. Liberman took about 10 million.  
24 You took 3.9.

25 THE WITNESS: Right. Which was to pay back loans and

1 friends and family money and original capital that we put into  
2 the company. I mean, over the four years prior to that, we  
3 assembled part of the land and took an inordinate amount of  
4 risk and borrowed money in order to do that.

5 THE COURT: All right. Thank you, sir.

6 Gentlemen.

7 MR. BOSCHÉE: I have -- I think I only have one  
8 question, or maybe two.

9 CROSS-EXAMINATION

10 BY MR. BOSCHÉE:

11 Q Mr. Mitchell, earlier you testified about some  
12 appraisals that were done on the 305 property?

13 A On both properties there were appraisals done.

14 Q Right. But appraisals on the 305 property. Do you  
15 recall that?

16 A Yes, I do.

17 Q The appraisal that -- well, let me ask you: Was one  
18 of the appraisals on the 305 property done in February of 2007?

19 A It was.

20 Q Okay. And do you recall approximately how much that  
21 appraisal came back at?

22 A It was very close plus, minus \$25 million.

23 Q Okay. \$2,428,000,000 sound about right?

24 A It could be, yes.

25 Q Okay. Was that appraisal shared with 305 prior to



1 the close of escrow on that property?

2 A Oh, for sure.

3 MR. BOSCHEE: Okay. Nothing further, Your Honor.

4 MR. BLUT: No questions, Your Honor.

5 THE COURT: Mr. Edwards?

6 MR. EDWARDS: Yes, Your Honor. Shortly.

7 REDIRECT EXAMINATION

8 BY MR. EDWARDS:

9 Q Pull up Exhibit 600 -- 60005. It's been admitted.

10 While we're waiting for that to come up, this is the  
11 email that you just looked at involving Mr.-- I forgot his  
12 name?

13 THE COURT: Spitz.

14 MR. EDWARDS: No. Gernard? The guy that works for  
15 you.

16 A Oh, Doug Aurnadan.

17 Q Yes.

18 (Pause in the proceedings.)

19 BY MR. EDWARDS:

20 Q Mr. Aurnadan, is that how you say his name?

21 A Aurnadan.

22 Q Aurnadan.

23 A A-u-r...

24 Q Okay. Mr. Aurnadan was your employee; correct?

25 A Yes.

1 Q And who was the other person involved in this email  
2 chain?

3 A She was not our employee, but she was our property  
4 manager for the Aquarius property. She worked for the previous  
5 owner, and she managed the property. She paid the bills. She  
6 arranged for repairs. She collected the rents. She forwarded  
7 the rents. She worked for --

8 Q Was she your employee?

9 A -- Charleston Casino under freelance -- or not a  
10 freelance, on a contractor basis.

11 Q Did she work with Charleston Casino?

12 A On a contractor basis, yes.

13 Q Okay.

14 A She was not an employee, but she was a contractor.

15 Q The change of the money, the direction of the money  
16 from Keynote -- was it from KeyBank or Signature Bank?

17 A No. The bank that they're referencing here is  
18 Signature Bank.

19 Q Okay. And why did you make different payments? Who  
20 told you to change the bank?

21 A There was a receiver appointed by the bank, and we  
22 got an order to direct all the funds to Heartland Bank.

23 Q You were also asked by Mr. Muije about your  
24 interaction with First Wall Street. And did there come a time  
25 when you paid First Wall Street a finder's fee?

1 A Yes.

2 Q Do you remember how much that finder's fee was?

3 A Well, for the services that they provided and the  
4 introductions that were provided, they got \$375,000.

5 Q Pretty similar to the 400,000 that you determined  
6 that Mr. Nype would be entitled to?

7 A Well, a \$50,000 difference.

8 Q There's been some discussion about the bank accounts  
9 involved in the transactions that we talked about today.  
10 Approximately how many bank accounts are there? That you can  
11 remember.

12 A From 2004 to current?

13 Q Yes.

14 A No. As I mentioned before, each lender had set  
15 separate arrangements up, and then there might have been over  
16 time 20 plus bank accounts.

17 MR. EDWARDS: Can you pull up 6032 -- 60032. These  
18 were the engagement letter.

19 No. No. Actually --

20 MR. MUIJE: 38.

21 (Pause in the proceedings.)

22 BY MR. EDWARDS:

23 Q As you were going through these engagement letters,  
24 did you see one that had your name plus your handwriting dating  
25 the engagement letter?

1           A     I saw one. I mentioned I don't know if it was --  
2 whether I dated it.

3           Q     Is it your testimony that you did sign engagement  
4 letters with Mr. Spitz from 2000 -- for the time that he's  
5 always done your taxes?

6           A     Yes. He has an engagement letter for all our  
7 entities.

8           Q     We'll look at --

9                     MR. EDWARDS: What number is this?

10                    UNIDENTIFIED SPEAKER: 6017 (sic).

11 BY MR. EDWARDS:

12           Q     -- 60017. Is that your signature?

13           A     It is.

14           Q     And is that your -- do you believe that handwriting  
15 is your date, or can you tell?

16           A     Can't tell.

17           Q     And after having been cross-examined by Mr. Muije,  
18 after having looked at all the documents, do you have -- was  
19 any of your actions at any time as it relates to Mr. Nype done  
20 to hinder or delay or defraud him?

21           A     No. Absolutely not.

22           Q     In fact, the actions that you've taken were supported  
23 by normal business practices?

24           A     Yeah. I mean, they were business decisions made  
25 because of the environment that we were in.

1 MR. EDWARDS: No further questions.

2 I do have a housekeeping matter, Your Honor.

3 THE COURT: Thank you. Hold on for a second.

4 Mr. Muije, anything left? You've got four minutes or  
5 less.

6 MR. MUIJE: Okay. I'll do it in four minutes.

7 RECROSS-EXAMINATION

8 BY MR. MUIJE:

9 Q First of all, if you look real quickly at 50039, that  
10 is the settlement agreement with First Wall Street that we  
11 couldn't authenticate with Mr. Liberman because he didn't sign  
12 it. But you did, did you not, sir?

13 MR. MUIJE: This has not been admitted, Your Honor.

14 MR. EDWARDS: Exceeds the scope of redirect.

15 THE COURT: Sustained.

16 MR. MUIJE: No. He asked about the First Wall Street  
17 agreement.

18 THE COURT: No, he didn't.

19 MR. MUIJE: He did not?

20 THE COURT: Nope. You did, but nobody has since you  
21 did.

22 MR. MUIJE: No. But he asked about the settlement  
23 amount, and this is the settlement agreement.

24 THE COURT: No. No. No.

25 MR. MUIJE: He asked --

JD Reporting, Inc.

1 THE COURT: No, Mr. Muije. No.

2 Anything else?

3 MR. MUIJE: There is indeed.

4 BY MR. MUIJE:

5 Q That engagement letter that Mr. Edwards just pointed  
6 you at that says you need to keep records because he's going to  
7 destroy his in three years, remember that paragraph, sir?

8 A I do not.

9 Q And you heard Mr. Rich's testimony that there are  
10 still missing accounting backup journals supporting papers that  
11 are missing pre2013 even after your 1.4 million pages. I asked  
12 him had he found those documents in the 1.4 million pages, and  
13 he said no.

14 A Two things. I don't think Mr. Spitz's letters said  
15 anything about us retaining records --

16 Q Let's look at that one that we just --

17 THE COURT: It was actually on his website, not on  
18 his letter.

19 THE WITNESS: Right. And it was a suggestion to  
20 potential clients and existing clients.

21 And as far as Mr. Rich's testimony, I don't seem to  
22 recall that he said he was missing any documents.

23 THE COURT: He did testify he was.

24 THE WITNESS: No. I think --

25 THE COURT: That's my recollection, but...

1 THE WITNESS: I believe he -- I believe he said that  
2 he has not received anything from Mr. Spitz, and then when  
3 Mr. Johnson mentioned that the server had been delivered, he  
4 said he had not had a chance to look at it.

5 BY MR. MUIJE:

6 Q Well, that's Mr. Spitz, but we're talking about your  
7 production. If we could look back to 60032, three paragraphs  
8 from the bottom -- actually, make it four paragraphs from the  
9 bottom. Do you see when records are returned to you it is your  
10 responsibility to retain and protect your records for possible  
11 future use?

12 A Yes. But it doesn't mention anything about six  
13 years. Yeah, it just says what my responsibility is.

14 Q And you knew during '07, '08, '09, 2010, 2011, 2012,  
15 that you were in a disputed litigation with Mr. Nype, and  
16 through 2010 with First Wall Street; correct?

17 A No. In '07, no, I was not in a --

18 Q You sued Mr. Nype in --

19 A Oh, excuse me. You're correct. I'm sorry, yes.

20 Q So at all those times you knew there was litigation  
21 going on; correct?

22 A Correct.

23 Q And yet at the third paragraph from the bottom,  
24 Mr. Spitz says that his firm will be free to destroy those  
25 records.

1           A     It just says his records, not my records.

2           Q     Right. But the paragraph above says you need to  
3 preserve them.

4                     Where are those missing accounting records from '07  
5 through 2012?

6           A     It just says our responsibility is to retain and  
7 protect. We've given you everything, and we've employed two  
8 outside forensic data specialists, and we have handed out  
9 everything to you. So what are you missing specifically?

10          Q     Accountant work papers.

11                     THE COURT: Sir, you don't get to ask questions.

12                     THE WITNESS: Oh, I'm sorry.

13                     THE COURT: All right. Anything else, Mr. Muije?

14                     MR. MUIJE: Not at this time, Judge.

15                     THE COURT: Mr. Edwards, you said you had a  
16 housekeeping matter.

17                     MR. EDWARDS: I do, Your Honor. Documents that were  
18 produced in the prior litigation as part of their disclosures  
19 and which were initially disclosed by Mr. Hayes, but filings  
20 from the prior action, how would you -- do you want to take --  
21 can you take judicial notice of those things, or?

22                     THE COURT: Arguably.

23                     MR. EDWARDS: Okay. Then we'll think about it this  
24 weekend how we're going to do that.

25                     THE COURT: Especially since I apparently signed the



1 judgment.

2 MR. EDWARDS: Yes. There is that.

3 THE COURT: And I still can't figure out how that  
4 happened.

5 Anything else?

6 MR. EDWARDS: No.

7 MR. BOSCHEE: No.

8 MR. EDWARDS: No. Thank you, Your Honor.

9 THE COURT: All right. We will see you on Monday.

10 Travel safely, sir.

11 MR. BLUT: What time would that be?

12 THE COURT: 10:30 on Monday after my business court  
13 calendar which isn't really long, but if I say anything earlier  
14 than 10:30, it will be all screwed up.

15 MR. BLUT: That is always the way it all goes.

16 THE COURT: Have a lovely weekend. Enjoy some time  
17 with your families.

18 (Proceedings recessed for the evening at 3:57 p.m.)

19 / / /

20 / / /

21 / / /

22

23

24

25

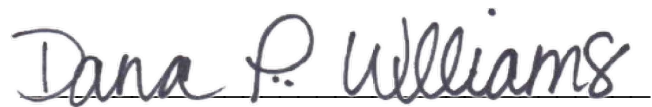
**CERTIFICATION**

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 that reads "Dana L. Williams". The signature is written in a cursive style and is positioned above a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

01/12/21

DATE