

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 XIII OF XXIX

COHEN JOHNSON

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

sjohnson@cohenjohnson.com

KEVIN M. JOHNSON, ESQ.

Nevada Bar No. 14551

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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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
<u>TRANSCRIPTS</u>			
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532
12/30/19	Trial Transcript - Day 1 [December 30, 2019]	IX	AA 1533-1697
12/31/19	Trial Transcript - Day 2 [December 31, 2019]	X	AA 1698-1785
1/2/20	Trial Transcript - Day 3 [January 2, 2020]	XI	AA 1786-1987
1/3/20	Trial Transcript - Day 4 [January 3, 2020]	XII	AA 1988-2163
1/6/20	Trial Transcript - Day 5 [January 6, 2020]	XIII	AA 2164-2303
1/7/20	Trial Transcript - Day 6 [January 7, 2020]	XIV	AA 2304-2421
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456

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

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

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

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

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

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

CHRONOLOGICAL TABLE OF CONTENTS OF SEALED VOLUMES

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

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

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

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

ALPHABETICAL TABLE OF CONTENTS TO APPELLANTS' APPENDIX

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</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 Trial Exhibit 90001 [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's Trial Exhibit 90052 [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820
Undated	Mitchell's Trial Exhibit 90054 [Surrender/Termination Agreement]	XX	AA 3512-3516

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Mitchell's Trial Exhibit 90069 [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's Trial Exhibit 90075 [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's Trial Exhibit 90079 [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] [Sealed]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][Sealed]	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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
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 [Sealed]	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>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</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' Trial Exhibit 1 [Ownerships Interests]	XV	AA 2457

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

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

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

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

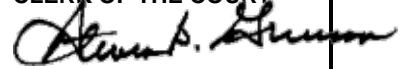
<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 40047 [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' Trial Exhibit 50001 [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' Trial Exhibit 50002 [Underlying First Amended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

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

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

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

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70079 [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	Trial Transcript - Day 1 [December 30, 2019]	IX	AA 1533-1697
12/31/19	Trial Transcript - Day 2 [December 31, 2019]	X	AA 1698-1785
1/2/20	Trial Transcript - Day 3 [January 2, 2020]	XI	AA 1786-1987
1/3/20	Trial Transcript - Day 4 [January 3, 2020]	XII	AA 1988-2163
1/6/20	Trial Transcript - Day 5 [January 6, 2020]	XIII	AA 2164-2303
1/7/20	Trial Transcript - Day 6 [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

MONDAY, JANUARY 6, 2020

BENCH TRIAL - DAY 5

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: KRIS SANTI, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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

WITNESSES FOR THE PLAINTIFF:

RUSSELL NYPE

Direct Examination by Mr. Muije	5
Cross-Examination by Mr. Boschee	50 I
Cross-Examination by Mr. K. Johnson	62
Cross-Examination by Mr. Blut	100
Redirect Examination by Mr. Muije	102
Recross-Examination by Mr. Boschee	115

E X H I B I T S

PLAINTIFFS' EXHIBITS ADMITTED:

30033	121
30063	121
50002	75
50039	71
70036-70038	41
70042	41
70045	41
70051-70056	41
70059-70060	124
70062-70065	41
70067	41
70075-70079	41

JD Reporting, Inc.

EXHIBITS

DEFENSE EXHIBITS ADMITTED:

80029	124
80050	124
90079	96

1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 6, 2020, 10:31 A.M.**

2 * * * * *

3 THE COURT: Good morning, Mr. Muije, how are you?

4 MR. MUIJE: Good morning, Your Honor.

5 THE COURT: Who's our next witness?

6 MR. MUIJE: Pardon? I'm sorry I didn't hear that?

7 THE COURT: Who's the next witness?

8 MR. MUIJE: The next witness will be Mr. Nype.

9 THE COURT: Mr. Nype, come on up.

10 I have a short conference call at 11:45 today, but
11 other than that I'm yours.

12 **RUSSELL NYPE**

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

15 THE CLERK: Thank you. Please be seated. Please
16 state and spell your name for the record.

17 THE WITNESS: My name is Russell Nype.
18 R-u-s-s-e-l-l, N-y-p-e.

19 THE CLERK: Thank you.

20 THE COURT: Mr. Nype, thank you for accommodating our
21 schedule and coming out of order. I know you have been sitting
22 here all last week and this week. Please remember there is
23 water in the pitcher. There are M&Ms in the dispenser. And
24 this time we're using electronic exhibits so if you need
25 somebody to blow up the exhibits as they show them to us, let

JD Reporting, Inc.

1 us know. And then if you need a break at any time, let us know
2 and we'll take one.

3 I'm still waiting for Mr. Muije to get all his stuff
4 down. I'm stalling.

5 MR. MUIJE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MUIJE:

8 Q Good morning, Mr. Nype.

9 A Good morning.

10 Q Would you please spell your name for the record so
11 that if we did end up having any question -- I don't know
12 whether the clerk already got that or not.

13 THE CLERK: I did. Thank you.

14 BY MR. MUIJE:

15 Q Okay. In that case tell us little bit about your
16 professional background, Mr. Nype.

17 A I have spent most of my professional life in the real
18 estate and marketing business. I've done a bit of work in the
19 financial service marketing, but I've been involved in the real
20 estate business since 1988 or '89 when I went to work for
21 Forest City Enterprises at that time and became the vice
22 president of marketing overseeing projects all across the
23 United States and worked directly for the Ratner family. The
24 Ratner family owned 60 percent of Forest City Enterprises which
25 last year sold for 14 a half billion dollars. So I worked for

JD Reporting, Inc.

1 Bruce in New York and Jimmy all over the country and Albert in
2 Chicago and all the different members of the family who run all
3 the projects around the country. I reported directly to them
4 regarding those projects.

5 Q Okay. And when did you leave Forest City?

6 A I left Forest City in the mid-90s, but I continued
7 with consulting contracts with Jim Ratner and with Bruce Ratner
8 until relatively close to when I met Mr. Liberman and
9 Mr. Mitchell.

10 Q When you met Mr. Liberman and Mr. Mitchell, who were
11 you working with or for?

12 A At that time I was still working on a project for
13 Bruce Ratner and I was working on my own, and I was working
14 for -- working with -- I had met a man named Cabot Lodge, and
15 we had worked together on a project for a group of hotels in
16 New England.

17 Q And was that under the auspices of any company, or
18 were you independent or working for yourself or?

19 A Well, I started -- I finished-- my prior company was
20 a company -- well, EBB --EPB communications, and I worked with
21 Bruce Ratner on the New York Times building in New York and two
22 hotel projects for him as part of that, and then I evolved away
23 from EPB to my own company. And that's when I met Mr. Lodge as
24 well as continued with Bruce, and then I met Mr. Liberman and
25 Mr. Mitchell.

1 Q Okay. What was the name of your own company?

2 A Revenue Plus.

3 Q And is that still a valid corporation in good
4 standing?

5 A It is. It's an LLC in the state of Florida.

6 Q Very good. How did you come to meet Mr. Mitchell, is
7 that true -- is his first name Henry Cabot Lodge or?

8 A Well, it's called -- he's called Cabot, he's got a
9 lot of Roman numerals after his name.

10 Q Okay.

11 A Cabot and I had done, as I said, a group of -- a deal
12 and financings for a group of hotels in New England, and Cabot
13 called me one day and he said would you do me a favor, he said
14 I Star, which is the company he worked for, had loaned
15 Mr. Mitchell and Mr. Liberman \$80 million to buy property out
16 in Las Vegas. And he said would you meet with them because
17 these guys don't have the capital to move that forward nor do
18 they have the development expertise of working with the public
19 sector and the private sector to develop the project, and you
20 could perhaps help them find a partner.

21 Q And did he personally introduce you, or did he just
22 refer you over and then you called them or they called you?

23 A No, Mr. Mitchell called me first.

24 Q Okay. And that was through Cabot's suggestion that
25 he contact you?

1 A Yes, he gave them my number.

2 Q Okay. And how did First Wall Street come to be
3 involved in this arrangement?

4 A Well, when I met with Mr. Mitchell, he told me that
5 they had talked for the last few years to a number of potential
6 partners and unfortunately it had not worked out. So he was
7 looking for someone or a group to come in and help him find a
8 partner again, with capital and development expertise, ideally
9 urban development expertise to help them. I knew a man named
10 Glenn Myles who was at First Wall Street, and he told me -- I
11 told him that what I could bring really was Forest City who I
12 had great contacts with and great depth of knowledge of how
13 they approach projects. He said that he had one or two clients
14 that he thought were potentially partners as well. So we
15 formed an alliance.

16 Q And we've seen already admitted into evidence
17 Exhibit 6001 (sic). I think Mr. Mitchell identified his
18 signature on that. I'll call it the First Wall Street
19 agreement, but perhaps we can pull up a copy just for you to
20 make sure we're talking about the same document here.

21 MR. MUIJE: Is that screen turned on, Your Honor?

22 THE WITNESS: Mine's not on.

23 THE COURT RECORDER: Oh, I'm sorry.

24 THE COURT: We're working on it.

25 THE COURT RECORDER: It's searching. I tried the

1 left one before we started, Your Honor, I don't know why the
2 right one's not working.

3 (Pause in the proceeding)

4 UNIDENTIFIED SPEAKER: I'm sorry, Your Honor, I'm not
5 sure --

6 THE COURT: It's all right.

7 UNIDENTIFIED SPEAKER: We tried the --

8 THE WITNESS: There it is.

9 MR. MUIJE: Right there.

10 THE WITNESS: Magic.

11 THE COURT: Okay.

12 UNIDENTIFIED SPEAKER: Sorry about that.

13 BY MR. MUIJE:

14 Q Do you have that right in front of you, Mr. Nype?

15 A I do.

16 Q Understanding that the document itself is probably
17 the best evidence, were you involved in negotiating the terms
18 of this arrangement between LVLP and its affiliates or
19 associates on the one hand and First Wall Street on the other?

20 A Yes, I was.

21 Q And who was the other gentlemen at First Wall Street
22 that actually signed this and was also involved?

23 A A man named Glenn Myles.

24 Q Okay. And were you and Mr. Myles in harmony as to
25 the terms and condition and who would do what, et cetera?

JD Reporting, Inc.

1 A When this was signed we certainly were. Things
2 occurred that made it less of a partnership.

3 Q Would you describe for the Court your basic
4 understanding of what the terms and conditions set forth in
5 this letter agreement are?

6 A Well, again, they're looking for a development
7 partner to help them develop I think it was five city blocks.
8 I think it was 12 and a half acres of property in downtown Las
9 Vegas. So they wanted capital, and they wanted development
10 expertise, and they recognized that it was an urban setting so
11 they wanted someone that was likely able to help them on the
12 public sector and private sector side. And for those services
13 we negotiated a fee of 4 percent of equity capital and
14 1 percent of debt capital actually continuing beyond the
15 initial closing throughout the transaction for all closings.

16 Mr. Liberman then added the concept of if they were
17 to enter into a letter, a LOI, and then they determined not to
18 go forward, that he very graciously suggested that the second
19 paragraph here under compensation or -- we would and then I
20 would receive \$250,000 if Mr. Mitchell and Mr. Liberman backed
21 away from that LOI.

22 Q And that was his suggestion not yours or Mr. Myles?

23 A That was Mr. Liberman's suggestion.

24 Q Okay.

25 A We felt strongly about the 4 percent and 1 percent.

1 Q And so is it safe to say that both Mr. Liberman and
2 Mr. Mitchell were involved in negotiating this arrangement?

3 A Certainly.

4 Q And from the standpoint of First Wall Street and
5 yourself, both you and First Wall Street were involved and
6 together on the same page?

7 A We were both involved, Glenn and I were both
8 involved.

9 Q Okay. Now, this contract is dated at the top January
10 25th, 2006. If you go down to the very bottom of the letter, I
11 believe there's a schedule -- not the bottom of the first page,
12 the bottom of the document, it should have multiple pages.

13 A That's the last page, yes.

14 Q Correct. That's the schedule of identified entities,
15 so to speak, that you and First Wall Street proposed or
16 suggested you would introduce to LVLP; is that correct?

17 A Yes, it is.

18 Q And we know that Forest City Enterprises was
19 contacted and that actually went somewhere. What about the
20 other two, Thor Equities?

21 A Yes, I worked with Thor before, and they not only
22 were -- I did not only introduce them, but we had a number of
23 meetings, and they actually came out to Las Vegas to tour the
24 property with David Mitchell and Mr. Liberman and me. They
25 were quite interested, and then they decided that they were not

1 going to move forward. But, yes, the Cayre family was
2 Mr. Myles group; I don't know anyone at the Cayre Group, Cayre
3 family. And unfortunately they were never introduced and
4 nothing ever happened with them.

5 Q Okay. Do you think that Thor Equities would have had
6 wherewithal of expertise to ultimately be in the same league or
7 comparison with Forest City or were they leagues apart?

8 MR. BOSCHEE: Objection. Calls for speculation.

9 THE COURT: Overruled.

10 THE WITNESS: Well, Forest City was a \$10 billion
11 company with \$4 billion of nonrecourse debt. They were a very,
12 very solid company, and I worked with them all over the
13 country, and they were specialists in urban redevelopment and
14 working with public-private sector partnerships. Thor also was
15 a very good company. They were smaller than Forest city. They
16 were about a \$6 billion company, but they were certainly a very
17 solid company and had done a lot of development in urban areas
18 around the country.

19 BY MR. MUIJE:

20 Q Okay. Very good. So would it be safe to assume that
21 the Thor Equities investigation or due diligence would have
22 occurred relatively soon after this letter?

23 A Within a few months. I can't tell -- it's just been
24 so long, but within a few months.

25 Q And then Forest City was running on a parallel track

1 simultaneously with Thor at that time?

2 A Well, Forest City I'd spoke -- I picked up the phone
3 and called -- I used to work for Jim Ratner as I said. Jim
4 Ratner was the president of Forest City Commercial Group.
5 Forest City Commercial Group was 8 billion of the \$10 billion.
6 And I called Jimmy. As soon as this contract was signed Jimmy
7 was very nice to me and said it sounds great; I'd love to work
8 with you again, and he introduced me to a man named Brian Jones
9 who ran the Western Region of the United States based in Los
10 Angeles. And Brian and I had met before when I worked with
11 Jimmy and Bruce, and he said I want you to call Brian, and I
12 want you to set up a meeting with Brian and a very nice guy
13 named Jeff Eisenstaff -- Eisendorff, I can't remember, who was
14 actually a family member of the Ratner family. And so we were
15 sort of on a parallel track, I'd say that's fair.

16 Q Okay.

17 A Eisenstadt, [phonetic] excuse me.

18 Q What ultimately became of First Wall Street to the
19 best of your knowledge?

20 A Well, unfortunately Mr. Myles was a great talker and
21 didn't desire to do much. So not only did he not bring the
22 Cayre family, but he really was unwilling to be involved at all
23 in this project. And he and I clashed over the first few
24 months because I was doing all the work and Mr. Myles wasn't
25 really doing anything.

JD Reporting, Inc.

1 Q Okay. And nonetheless even though joint venturers,
2 so to speak, may have conflict of personality or whatever, did
3 they remain in the deal despite that, or what happened?

4 A No. First of all there was a document that I had a
5 subset. I had a contract with Glenn Myles --

6 Q Okay.

7 A -- where I was being paid, I believe, 80 percent of
8 anything that came from Forest City and Thor Equities, and he
9 would be paid 80 percent of anything that came from Cayre
10 because that was the arrangement of the relationships. I --

11 Q Okay.

12 A -- oh, I'm sorry.

13 Q Yeah. So that was a subcontract, so to speak --

14 A Right.

15 Q -- was that subcontract disclosed to LVLP?

16 A Sure.

17 Q Okay. Did there come a time when you notified
18 Mr. Myles that you were terminating the contract?

19 A Well, frankly he notified me. He agreed at one point
20 that he really didn't have anything to bring and he was doing
21 other things, and he wrote me a letter saying, Rusty, I, you
22 know, this -- I'm done, we're done here.

23 Q Okay. When that occurred -- so it was his unilateral
24 decision to walk away from this First Wall Street agreement; is
25 that correct?

1 A He was the one that wrote me the initial e-mail, yes.

2 Q Okay. How did LVLP wishes factor in there? Were
3 they in harmony with him stepping back or discontinuing his
4 involvement or?

5 A LVLP did not like Mr. Myles, and I don't believe that
6 after this contract was signed in January they ever -- and as a
7 matter of fact I know, they never met with Mr. Myles in any of
8 the subsequent months. And David Mitchell said, you know,
9 we're happy to continue on with you because you clearly have
10 the relationships with Forest City and Thor.

11 MR. H. JOHNSON: Objection. Hearsay, Your Honor.

12 THE WITNESS: I'm sorry.

13 THE COURT: Overruled.

14 BY MR. MUIJE:

15 Q So when Mr. Myles and First Wall Street stepped back,
16 stepped away, can you remember approximately when that
17 occurred?

18 A I'm going to guess April. I would say March, April.

19 Q Okay. Did the efforts to create or to facilitate a
20 joint venture with Forest City continue after that date?

21 A Sure. I mean, they were -- you know, I knew them,
22 and I'd known them since I worked for them for many years as an
23 officer of the company, and we continued on, and Mr. Myles was
24 not relevant to our conversations with First -- with Forest
25 City.

1 Q What were the discussions regarding compensation for
2 your services after your First Wall Street backed out?

3 A Well, my very strong understanding was that David
4 Mitchell said to me we will continue on under the same terms.

5 Q Okay. And was it a one-time conversation? Was it
6 repeated? Is there a reason that you didn't sign a new
7 engagement letter or letter of intent?

8 A Well, we -- we did talk about doing that, and I
9 pushed very hard to do that, and we exchanged a lot of
10 correspondence starting in May. Forest City came out in May to
11 the shopping center convention that occurs out here every year,
12 and that's when we toured with Albert Ratner, Jimmy Ratner,
13 Chuck Ratner, everybody. We toured the site, and it went
14 extremely well, and we worked very hard to bring all the facts
15 that I knew they were looking for in a development. So they
16 left in May saying we wish to go back to Cleveland and we wish
17 to create a letter of intent and move forward with due
18 diligence.

19 Q And when you say toured the site, what particular
20 properties, what part of downtown Las Vegas were you guys
21 looking at?

22 A Well, the properties that Mr. Mitchell and
23 Mr. Liberman owned are the properties where the current City
24 Hall is, the current RTC center, the properties in between
25 where I gather you're building a new judicial center, and they

1 traded the property where the City Hall is for I believe
2 5 acres out in Symphony Park, I think you guys call it, with a
3 gaming license.

4 Q Okay. And then there were a couple of blocks of a
5 motel, a bookstore, a couple of other --

6 A Yeah, they were -- to me they were a part of that
7 area, but, yes.

8 Q Okay. So when Forest City comes out to tour, you
9 walked the blocks. You go back and forth. You maybe drive
10 around the downtown area to give you a perspective; is that a
11 fair statement?

12 A Yes. I mean, we had a meeting actually in the motel.
13 We had a meeting with all the people to discuss the site.

14 Q Okay.

15 A And Forest City had been turned down being a part of
16 the world financial center down here -- the world marketplace
17 where the furniture, they were very close to doing that deal.

18 Q Okay. While they're going back and putting
19 together -- crunching numbers, putting together a proposal or
20 whatever, what's going on between you and LVP -- LVLP?

21 A Well, David officially terminated First Wall Street
22 in May, I believe it was May, it could have been June 1st --
23 June 1st is all of a sudden in my head, but I think it was
24 May. As soon as Forest City left, in a positive way he said
25 well, I better take care of terminating First Wall Street.

1 Q Okay.

2 A So he did that.

3 Q Was there further discussion regarding your
4 compensation should the --

5 A Absolutely.

6 Q Okay. And how did that go?

7 A It went very well, I mean --

8 Q And looking at -- let's look at the plaintiff's
9 admitted Exhibit 6002 (sic) if we could. And this is a
10 one-page document of a two e-mail sequence. If we could look
11 at the bottom one first. Did you create this e-mail, Mr. Nype?

12 A Yes, I did.

13 Q And what was the context? Why were you feeling that
14 you needed to set forth this position?

15 A Well, I believe -- believed very strongly as we
16 argued in the first trial that I was acting under the contract
17 terms of First Wall Street, and David Mitchell kept negotiating
18 with me and getting up to saying, yes, yes, yes, and then when
19 we were to sign the agreement, he backed away.

20 So we had had discussions in June, July, August, and
21 I was frustrated and he wanted to -- he kept offering me
22 additional -- additional fee structures. So I thought that --
23 and I think there were a lot of e-mails throughout that summer
24 regarding him offering me different fee structures and my
25 saying, well, I don't think that that lives up to what my

1 expectations are based on the agreement that I believe we are
2 operating under.

3 Q Okay. And did he ever specifically say no, we're not
4 going to honor the original First Wall Street deal; we need to
5 renegotiate or this is done?

6 A No. No.

7 Q And he kept moving forward with Forest City; is that
8 correct?

9 A Absolutely. He kept accepting meetings. There were
10 a number of -- two instances when the letter of intent Forest
11 City said we don't think we're going to move forward. One time
12 they canceled it in June, and David called me and asked me to
13 call Jimmy directly and say there's been a misunderstanding
14 here; I will go forward with the terms that Forest City is
15 recommending, and I'm desperate to get that back on track. So
16 I handled that and got the letter of intent -- a new letter of
17 intent signed and we moved forward in June.

18 In August we had an unfortunate meeting with the RTC,
19 and Jim Ratner called me and said Rusty, I'm really unhappy
20 about this. There's a whole misunderstanding about what their
21 expectations are, the RTC, versus what we were told. And, you
22 know, I'm not feeling that I'm getting honest responses; my
23 team's not getting honest responses. So I stepped in again and
24 straightened that out in August.

25 Q Okay. And that would have been a few weeks before

1 this specific e-mail; is that correct?

2 A Yeah, I mean, in August, yeah.

3 Q Okay.

4 A Yes, excuse me.

5 Q And what is your understanding of Mr. Mitchell's
6 response about an hour later?

7 A (No audible response.)

8 Q Did he ever put it in context or explain to you what
9 his thinking was?

10 A I -- well, what he was trying to do is to take the
11 terms that I had negotiated under the First Wall Street
12 agreement which I believed I was operating under, and he was
13 trying to lower the value of those terms.

14 Q In other words he was chipping away at your proposed
15 compensation?

16 A That's what he was -- that's what I felt he was
17 trying to do.

18 Q And did you guys ever have a meeting of the minds?
19 Did you concede any lesser compensation? Did he sweeten his
20 counteroffer, so to speak?

21 A Honestly, I don't remember all the e-mails going
22 forward, but I would say ever since -- ever since June we were
23 having conversations regarding David trying to renegotiate the
24 terms of the First Wall Street agreement that I believe I was
25 operating under. And no, we never came to agreement, a meeting

1 of the minds. It was 4 percent of equity capital and 1 percent
2 of debt capital paid at each closing ongoing.

3 Q Okay. Moving forward because this is in the fall of
4 '06. And is there any doubt in your mind that you communicated
5 to LVLP your expectations regarding ultimate compensation?

6 A No.

7 Q No. So they knew what you were expecting?

8 A Yes. And they kept -- and they kept with that
9 knowledge asking me to do additional things for them.

10 Q Over and above what you had agreed to do under the
11 First Wall Street agreement?

12 A No. No. I feel it was under -- I mean, I was --

13 Q They moved forward --

14 A -- bringing together the partners, and with my
15 connections with Forest City I understood what they looked at
16 when they were trying to find a development site, and so I was
17 able to work with them within the language they -- that I
18 understood they needed.

19 Q Was there ultimately a falling out between yourself
20 and LVLP prior to the closing --the closing in late June
21 of 2007?

22 A Well, I would say that from this period of all the
23 way until the closing I was trying to, you know, make sure that
24 at the closing I was going to be recognized and paid as the
25 First Wall Street agreement requires the 4 percent and

1 1 percent factor.

2 Q Okay. But it sounds like you were not consciously
3 aware that Forest City and LVLP had closed the deal until you
4 and Mr. Mitchell subsequently met --

5 A No.

6 Q -- how did you happen to be out of the loop at that
7 stage in May, June of '07?

8 A Well, I was taken out -- during this entire process
9 David made it very clear, which was fine with me, that I was
10 not to be involved in the pricing or the structuring of the
11 deal. So when they got past the letter of intent, I believe it
12 was in October, and that was the letter of intent they moved
13 forward with -- could have been November, David really took
14 over with Forest City negotiating terms and negotiating price,
15 and I wasn't terribly involved after November of that year.

16 Q Okay. Now, you were in the courtroom, were you not,
17 when you heard Mr. Mitchell testify about the money he had
18 reserved in escrow and how he was generously offering you that
19 sum?

20 A I was here.

21 Q Why don't you tell us what really happened.

22 MR. H. JOHNSON: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: Well, what happened very simply is that
25 Jim Ratner who is today still a very close friend of mine

1 called me -- well, let me just set up. Forest City understood
2 during the first half of 2007 prior to closing, the
3 disagreement and the discussions that Mr. Mitchell and
4 Mr. Liberman and I were having regarding the compensation.

5 BY MR. MUIJE:

6 Q And how did they come to understand that?

7 A Because I picked up the phone and called him and
8 wrote memos to them and sent this contract actually to them.

9 Q Okay.

10 A What happened is I did not know a closing occurred.
11 And after the closing Jim Ratner called me, and he said we had
12 our closing, are you happy? And I said, Jimmy, I didn't even
13 know you had the closing. And he said, so you haven't been
14 paid?

15 MR. BLUT: Your Honor, I would just object on what
16 this Jimmy said on hearsay.

17 THE COURT: Sustained.

18 THE WITNESS: I'm sorry. I'm sorry.

19 BY MR. MUIJE:

20 Q Okay. You were contacted by Mr. Ratner and --

21 A I was contacted by Mr. Ratner --

22 Q -- as a result what happened?

23 A And I called Mr. Mitchell --

24 Q Okay.

25 A -- and said, Mr. Mitchell, David, I understand you

1 closed a transaction in June, and I was not invited to the
2 closing nor have I received any compensation; when are we going
3 to get together and, you know, accomplish that? And then he
4 invited me to lunch.

5 Q Where did you go to lunch?

6 A We went to lunch at a restaurant called The Beacon,
7 and The Beacon restaurant is on West 56th Street, I believe
8 it's Number 21, it was at that point --

9 Q Okay.

10 A -- I know that street very well.

11 Q And why do you know that street very well?

12 A My family has real estate on that street.

13 Q Okay.

14 A -- so I happen to know Fifth and Sixth Avenue on
15 56th Street rather well.

16 Q Okay.

17 A I knew that restaurant very well too.

18 Q So you're at The Beacon Restaurant, and how does the
19 conversation go down?

20 A Well, I walked into The Beacon restaurant and David
21 was sitting in a middle table in the back facing the door. I
22 sat across from him and really there were two things that
23 occurred at that lunch. One was that David informed me that it
24 was going to be very difficult for me to collect, that was the
25 first thing that he said to me which I thought was a very

1 strange thing to say. And the second thing towards the end of
2 the lunch was, I said, well, David, you know, can I have the
3 closing documents so we can figure out what the compensation's
4 going to be. And David said well, Barnet and I actually have
5 left an amount of money with a person, and he gave me the
6 person's name and telephone number.

7 Q Would that have been the title company or?

8 A I -- I'm not sure it this moment, but it was a piece
9 of paper with a woman's name and a telephone number. And he
10 said Barnet and I have left an amount of money for you and if
11 you call that person and you sign a release, that money will be
12 wired into your account.

13 Q Okay. And did he tell you how much money that was?

14 A No. I said to David -- I said well, David, how much
15 money did you and Barnet leave in this account? And he said
16 I'm not going to tell you --

17 Q And --

18 A -- and I said, what do you mean you're not going to
19 tell me. How much money did you leave in the account? He said
20 I'm not going to tell you. And I said, why? And he said,
21 because you're not going to be happy.

22 Q Okay.

23 A That was the conversation.

24 Q Then -- then you guys parted and you weren't
25 expressing gratitude or happiness or joy or anything, were you?

1 A I was surprised by the whole conversation. It seemed
2 very defensive, and all I wanted was and wanted for months was
3 the closing documents to calculate 4 percent and 1 percent
4 which was our agreed term.

5 Q And did Mr. Mitchell indicate how they'd come up with
6 a number albeit he wouldn't give you the number, how they came
7 up with the number that they thought was fair or claimed to be
8 fair?

9 A I never heard that until I was in court this week how
10 that number came up.

11 Q And to your knowledge did Forest City have a role in
12 generating that number or you just -- don't you just know?

13 A I have honestly no idea. I doubt it.

14 Q Did Forest City have any obligation to pay any
15 portion of the compensation with --

16 A No. It was very clear that my agreement was with
17 Mr. Liberman and Mr. Mitchell, Forest City was not. And then I
18 understood later that Forest City actually talked to
19 Mr. Mitchell and Mr. Liberman and had them sign whatever the
20 legal document is that they would have no liability regardless
21 of litigation or anything that came from that.

22 Q And that was Forest City would have no liability?

23 A Forest City; correct.

24 Q Okay. So that was the first time Mr. Mitchell
25 suggested that enforcing your rights under the agreement could

1 be difficult?

2 A Yes.

3 Q Okay. Did he go into any particulars or explain why
4 he felt that way?

5 A He did not.

6 Q Now let's -- if we could just go back to 6001 (sic)
7 at the top of the page and if you'd read that first paragraph,
8 Mr. Nype --

9 A Yep.

10 Q Let me pull it up here. Did Las Vegas Land Partners
11 indicate or describe who their affiliates were?

12 A No.

13 Q And then they go on to act for redevelopment of
14 company, company being defined as Las Vegas Land Partners and
15 its affiliates owns five city blocks. Do you see that, sir?

16 A Yes.

17 Q As it turns out from our analysis after the fact that
18 that time Las Vegas Land Partners actually only owned land on
19 which the RTC ultimately ended up; correct?

20 A I -- I really don't know all the different affiliates
21 and how they were using them to own different pieces of land.
22 Sitting here this --

23 Q But you wouldn't dispute the partial summary that
24 Mr. Rich testified about and that has been introduced into
25 evidence as his report 7047 (sic) sub Exhibit Rich 15; correct?

1 A No, I think in 2016 Mark Rich got involved and
2 analyzed all of the parcels and found all of the associations,
3 all of the companies and laid that out in a spreadsheet. That
4 was the first time anybody had done that.

5 Q Okay. And as it turns out in that spreadsheet
6 LiveWork owns property, Wink ultimately owned property, in
7 fact, I think Wink ended up owning the property on which the
8 RTC building was based, but then we had Leah, we had Zoe, we
9 had several others, and as per their representations for First
10 Wall Street and you when this letter was signed, you'd
11 understood you were dealing with a group of entities not just
12 something limited to LVLP; is that correct?

13 MR. BLUT: Just object on leading, Your Honor. It's
14 a narrative. The question's a narrative.

15 THE COURT: Can you rephrase your question, please,
16 Mr. Muije.

17 MR. MUIJE: Yes, certainly.

18 BY MR. MUIJE:

19 Q Did you have an understanding as to who you were
20 dealing with on the other side, what company, what individual,
21 what -- who were the people?

22 A My understanding was the Las Vegas Land Partners was,
23 this is purely -- we -- I never had a discussion with
24 Mr. Mitchell and Mr. Liberman. My understanding was Las Vegas
25 Land Partners was the controlling entity, and there were many

1 LLCs and affiliates that I didn't know the name of, but that
2 was their structure. I didn't -- we didn't -- I didn't know
3 anything specific about how they were conducting their business
4 and what structure they had.

5 Q Okay. But you understood they effectively
6 controlled -- or what was your understanding about their
7 control over the various parcels owned by all of these LLCs?

8 A My understanding is that they controlled all of them.

9 Q Okay. Now going back to the fee mechanism that was
10 contained in the First Wall Street agreement, did you
11 subsequently learn how much equity capital was part of the deal
12 with Forest City that was signed in late June 2007?

13 A Yes, we finally -- we finally did get the closing
14 documents, and I can't remember the exact number, but
15 \$82 million plus was at the initial closing, and then they
16 invested substantial additional capital at subsequent closings.

17 Q Based on just the 82 million and change in the first
18 closing or the initial closing which led to your meeting with
19 Mr. Mitchell, what would your fee had been based on that
20 equity?

21 A Well, four times 82 million which was the amount of
22 capital that Forest City used to buy their 60 percent share.
23 So to buy their equity position I would be compensated 4
24 percent of that value 3.6 million, I don't have a calculator,
25 but 82 times 4 percent.

1 Q Okay. So in a 3.2 to a 3.5 range most likely?

2 A Yeah, that's 82 million times 4 percent.

3 Q Okay. And as it turned out a --

4 A That's 36, isn't it --

5 Q -- subsequently in the course of a litigation that
6 calculation ended up being much higher; is that correct?

7 A Sure. Because Forest City ended up owning
8 90 percent. So the capital they used to buy the remaining
9 30 percent to make their share go from 60 to 90 percent in a
10 subsequent closing was also that \$30 million was a 4 percent
11 value.

12 Q And was there any new debt added to the deal? It was
13 my understanding there was also a percentage that you would be
14 entitled to as against new loan funds, new debt acquired?

15 A Yes, there was. We ended up in my first trial with
16 my expert witness and the Judge agreeing that based upon the
17 capital and debt equity that Forest City had invested, the full
18 compensation off of the First Wall Street contract was
19 \$5.2 million.

20 Q Okay. Now, as you are discovering these facts and
21 would that have occurred in -- when would that have occurred?
22 When would you be garnering the information and the facts to
23 indicate a more accurate number as to what you would be
24 entitled?

25 A Well, 2000 -- I'm sure the end of 2007 we started to

1 get -- I shouldn't say that. I can't remember when
2 Mr. Mitchell and Mr. Liberman filed against me, but obviously
3 subsequent to that over whatever number of months we had great
4 difficulty as we did in this case getting discovery --

5 Q Okay.

6 A -- and it was a war.

7 Q And when you say "war," did they comply with their
8 discovery obligations in that case to the best of your
9 knowledge?

10 A No, I think it was very parallel to our experience.

11 Q Okay. And let's pull up if we can admitted
12 Exhibit 5042 (sic). And let's go to page 5 if we could.
13 Actually, let's go to bottom of page 5. We see Mr. Mitchell
14 sending an e-mail to a gentleman named Zev Kaplan, but in that
15 he forwards the e-mail that Mr. Richard Haskin at the Gibbs Law
16 Firm had sent to him, and what does the first sentence on the
17 top of page 6 tell you, Mr. Nype?

18 A (No audible response.)

19 Q If you could read it into the record.

20 A In an effort to keep kicking the ball downfield to
21 delay trial and aggravate Nype, a thought occurred to me at
22 about 2:00 a.m. last night.

23 Q Okay. And he describes throwing out some mediation.
24 Let's look at the next to last two sentences in the second
25 paragraph.

1 A The next to last two sentences?

2 Q It starts with Judge Israels.

3 A Hold on. Hold on for one second. Oh. Knowing what
4 I've heard about our Judge, Judge Israels, (sic) he is fairly
5 lazy and would rather punt this case himself if he can. I
6 think we would have a great shot of getting -- at getting a
7 settlement conference set for the week of July 14th. We can
8 then attend the settlement conference which likely would not
9 result in a settlement, but it would likely result in the delay
10 of trial by a month or more.

11 Q Okay. And then that was the dialogue going that way,
12 but if you go up above to where Mr. Mitchell is forwarding that
13 e-mail, Mr. Mitchell is somehow suggesting that the gentleman
14 had said mediation was his idea, but then he says no, it
15 wasn't; look what he told me below; is that correct?

16 A Yeah, he said the mediation was my idea, well, not
17 true. See below.

18 Q Okay. What does that tell you in the context of
19 Mr. Mitchell's fee dispute against that law firm?

20 MR. BOSCHEE: Objection. The document speaks for
21 itself and it calls for speculation.

22 MR. MUIJE: Withdrawn, Your Honor.

23 THE COURT: Okay.

24 BY MR. MUIJE:

25 Q To your knowledge, did any of Mr. -- of LVLP's

1 attorneys withdraw prior to judgment in the first case?

2 A Oh, yes.

3 Q And what was the reason for that stated in the
4 paperwork?

5 A I believe it was for failure to pay.

6 Q Okay. And how many times did that occur prior to the
7 judgment or to the trial?

8 A I believe twice.

9 Q And in both cases was the trial date maintained or
10 was there delay caused by that?

11 A There was delay. There was significant less delay
12 than Mr. Mitchell desired, especially Judge Israel they had
13 desired I think a four-to-five-month delay, and Judge Israel
14 only gave them a one-or-two-month delay.

15 Q Okay. And in both cases contrary to the testimony of
16 Mr. Mitchell and Mr. Liberman that they always pay their bills,
17 to your knowledge the attorneys withdrew for nonpayment of
18 bills; correct?

19 A As they did in our action, yes.

20 Q Okay.

21 MR. MUIJE: Your Honor, we didn't have time to
22 address housekeeping before I made it to court and we started
23 testimony. We had discussed a possibility of stipulating to
24 allow various attorneys' fees billings in, and I supplied those
25 to Mr. Johnson, to all defense counsel yesterday. We could

1 probably save four or five hours maybe even longer if they'll
2 stipulate to the authenticity of the billings from Mr. Wright
3 [phonetic], Mr. Warns and Reisman [phonetic] firm and then my
4 own billings of course.

5 THE COURT: Was there a stipulation?

6 MR. BLUT: No.

7 THE COURT: They said no. They said there's no
8 stipulation.

9 MR. MUIJE: Okay.

10 MR. BOSCHEE: Stipulation as to -- I'm sorry, I'm
11 confused on the wrong things. Stipulation as to the
12 authenticity to the billing or as to, I mean, I was a little
13 confused as to what Mr. Muije was asking for.

14 MR. MUIJE: We're not asking them to stipulate that
15 they are reasonable or that the billings are accurate and
16 correct, we're just -- want them to stipulate that they can be
17 entered into evidence and then they can argue what they mean
18 and if they're appropriate or not all day.

19 MR. BOSCHEE: Yeah, I'm not going to challenge, I
20 mean, I won't speak for all your counsel. I'm not going to
21 challenge the billing statements of other counsel as long as I
22 have the right to argue that they're not reasonable or they
23 shouldn't be part of this case for example. I'm not sure why
24 Mr. Reisman's fees are part of this case, but as long as we
25 reserve our right to argue against the awarding of those fees

1 I'm not going to sit here and quarrel with every single
2 statement for every law firm that Mr. Muije says yesterday
3 that -- at least that I could tell then.

4 THE COURT: Well, remember we had the young lawyer
5 from Mr. Reisman's office come and testify during the sanctions
6 here.

7 MR. BOSCHEE: Other than -- I mean, other than that I
8 do -- I vaguely recall that, that was kind of a -- I kind of
9 try to block that part, but I do remember that.

10 But my understanding from the documents I saw from
11 Mr. Muije is that it looks like, and he can correct me if I'm
12 wrong, it looks like they are seeking all of that firm's fees
13 for the entirety of both cases as special damages. I would
14 certainly want to argue against that if we get to that point,
15 but I'm not going to sit here and go through Josh's and his
16 associates and Liz's, I mean, billing entries or Mr. Muije's
17 billing entries I'm not going to challenge that on terms of
18 authenticity. I'm sure they put in the computer and sent it to
19 Mr. Nype.

20 THE COURT: Okay. So is there a stipulation on the
21 authenticity of the bills that Mr. Muije sent you understanding
22 everybody's going to argue everything else about whether any of
23 the fees are recoverable, reasonable and necessary or related
24 to the actions that are pending before me?

25 MR. EDWARDS: Yeah, we'll stipulate to the

1 authenticity as well, but --

2 THE COURT: Okay. And then you guys argue about
3 everything else.

4 MR. BOSCHEE: Yep.

5 MR. EDWARDS: Okay.

6 MR. BOSCHEE: Yes, Your Honor.

7 THE COURT: What are the numbers, Mr. Muije?

8 MR. MUIJE: We have them on a supplemental drive
9 which I've had my IT person has done. My proposal would be --
10 I don't think we're going to finish Mr. Nype before lunch.
11 During lunch we've already sent --

12 THE COURT: Well, remember the IT folks have to come
13 over and review those. So I have --

14 MR. MUIJE: I understand.

15 THE COURT: -- some me time I need to have.

16 MR. MUIJE: I understand. And --

17 THE COURT: Okay. You have them here and I can have
18 the IT guys come and do it at the lunch break if they have
19 time?

20 MR. MUIJE: Absolutely, Your Honor.

21 THE COURT: I have to break at 11:45 for a conference
22 call. So we'll see if the IT guys can come over and do it
23 while I'm doing my -- whatever I got to do.

24 MR. MUIJE: That would be perfect. That involves --

25 THE COURT: Hey, Dulce, could you ask IT.

JD Reporting, Inc.

1 THE CLERK: Yes.

2 THE COURT: Okay.

3 MR. MUIJE: That involves basically the next wave of
4 exhibits, and there's probably about 10 of them. It involves
5 the new incremental fees primarily incurred since the end of
6 August of this year. We've also premarked in this litigation
7 already before the Court proposed exhibits and part of those
8 proposed exhibits was the various exhibits that were utilized
9 at the sanction hearing.

10 THE COURT: I just need all the exhibit numbers that
11 you've marked for purposes of the trial --

12 MR. MUIJE: And -- and --

13 THE COURT: -- including the ones on the new drive.

14 MR. MUIJE: Correct. Court's indulgence. One
15 moment. I want to pull up my list of the attorney fee exhibits
16 that were used which is already marked as proposed exhibits
17 here.

18 MR. BOSCHEE: And while John's looking for that, I
19 just want to make sure that those are -- that every document
20 that he's going to submit to the Court is something that we
21 have seen. He e-mailed a bunch of things yesterday. I just
22 want to confirm that everything you're going to present to the
23 Court is -- are documents that we've seen?

24 MR. MUIJE: Absolutely.

25 MR. BOSCHEE: Okay.

1 MR. MUIJE: So --

2 THE COURT: He said sure.

3 MR. BLUT: And sure and then I guess I can argue that
4 we saw it yesterday as opposed to if there's a claim for
5 special damages that there's cutoffs I thought.

6 THE COURT: Really? Are there cutoffs?

7 MR. MUIJE: In any event if we could start at 7029
8 (sic) that is an index it's not into evidence, but it is an
9 index from the -- your court clerk, Your Honor, of the items
10 that which were admitted and it would make it very easy to --

11 THE COURT: No, Mr. Muije, I need the numbers --

12 MR. MUIJE: Okay.

13 THE COURT: -- that are numbered for this hearing --

14 MR. MUIJE: Very good.

15 THE COURT: -- for this trial.

16 MR. MUIJE: We'll go exactly with that then, Judge.
17 There's 7036 (sic), 7037 (sic), 7038 (sic), 7042 (sic), 7045
18 (sic), 7051 (sid), 7052 (sic), 7053 (sic), 7054 (sic), 7055
19 (sic), 7056 (sic), 7057 (sic), 7058 (sic), 7062 (sic), 7063
20 (sic), 7064 (sic), 7065 (sic), 7067 (sic). And on the new
21 drive containing the updated billings that we submitted to
22 counsel yesterday --

23 Court's indulgence one moment. It's in a different
24 directory. I almost had it.

25 Do you have it, the list of the 7100 (sic)? I think

1 I know where they are.

2 It's almost [indiscernible], Your Honor.

3 THE COURT: Do you know what the numbers are yet?

4 MR. MUIJE: Yes, they are -- we've gone ahead and
5 marked them as next in sequence and they are --

6 To the left. To the left.

7 -- the 70075. 70076. 70077. 70078. And 70079,
8 which all deal with the attorneys' fees and costs that were
9 involved in the first hearing. And just so that they're better
10 understood, the Court expressly allowed only the fees and cost
11 relating from approximately April 20th or so through the date
12 of the hearing through the resolution of the sanction hearing.
13 The exhibits that were admitted contained time even before that
14 and time not related to the sanction hearings so the records
15 are all there.

16 MR. BOSCHEE: And I didn't --

17 THE COURT: All right. So --

18 Wait.

19 MR. BOSCHEE: Oh, sorry.

20 THE COURT: My understanding of the stipulation is
21 that the parties are stipulating to the authenticity only of
22 70036 through -38, -42, -45, -51 through -56, -62 through -65,
23 -67 and -75 through -79 understanding that there are a number
24 of arguments that the parties will be making related to whether
25 attorney fees are appropriate as special damages and if so the

1 amount.

2 MR. BOSCHÉE: The only question I would ask again
3 counsel and the Court, I didn't go through the documents and
4 see if the sanction amount that you were already awarded was
5 taken out of those records, I didn't cross-reference the
6 numbers.

7 THE COURT: It probably wouldn't be if they're
8 statements.

9 MR. BOSCHÉE: That's why -- that's why I'm asking. I
10 don't think they are so.

11 THE COURT: Somebody will have to do math.

12 MR. MUIJE: I will -- I will tell you that Mr. Rich's
13 expressly subtracts it --

14 MR. BOSCHÉE: Okay.

15 MR. MUIJE: -- we have gross numbers on mine and
16 Mr. Reisman's, but we also have acknowledged that they are
17 subtracted. And, in fact, 7055 (sic) shows the specific
18 amounts allowed on account of all three entities to Rich
19 Accounting Firm, my firm and Mr. Reisman's firm which makes it
20 a relatively easy mathematical transition to subtract those
21 amounts, which we have recovered now, Your Honor.

22 THE COURT: I saw the satisfaction of judgment.

23 MR. BOSCHÉE: And that was the document, Your Honor.
24 That was the document that I looked at; I just didn't
25 cross-reference the math. I just wanted to make sure that that

1 was correct.

2 THE COURT: Okay. So with that understanding they'll
3 be admitted understanding everybody has all the arguments you
4 would ever have related to whether those are appropriate to be
5 awarded by the Court.

6 Okay. Next.

7 (Plaintiff Exhibit Nos. 70036-70038, 70042, 70045, 70051-70056,
8 70062-70065, 70067, 70075-70079 admitted.)

9 MR. MUIJE: Great.

10 THE COURT: And -75 through -- what did I miss?

11 THE CLERK: 7029 (sic).

12 THE COURT: I did not admit 7029 (sic). That was the
13 summary sheet, and I'm not admitting your summary sheet.

14 MR. MUIJE: Actually, it was the clerk's summary
15 sheet of what exhibits were and were not admitted in a prior --

16 THE COURT: Yeah, no. I'm not admitting Dulce's
17 summary sheet into evidence in the trial.

18 MR. MUIJE: I'm just --

19 THE COURT: Nice try, but, no.

20 Next.

21 BY MR. MUIJE:

22 Q Now, Mr. Nype, we've just saved everybody a lot of
23 time and money in just walking through those. And again
24 counsel was suggesting his belief that, you know, any fees that
25 arose before we filed this lawsuit in July of 2016 wouldn't be

1 recoverable, and he may very well be right on that.

2 Nevertheless, the conduct or should I say the misconduct of
3 LVLP and the defendants in this case have caused you a lot of
4 anxiety and aggravation and Mitchell's -- Mr. Mitchell and --

5 MR. BLUT: Can we object to the form.

6 THE COURT: Sustained.

7 MR. MUIJE: We've refreshed it.

8 BY MR. MUIJE:

9 Q What has this cost you in total, Mr. Nype, from the
10 inception of this lawsuit, which I believe was November or
11 December 2007, the related lawsuit through including today?

12 A I recently went through all the numbers so I'm able
13 to answer that question.

14 Q Okay.

15 A The full amount of everything that I've spent in
16 lawyers and accountants and expert witness in the first trial
17 is \$3.444 million not including Mr. Rich's December amount
18 which has not been updated nor any court costs that I would
19 earn through this trial.

20 Q Okay. But now let's break it down -- well, let me
21 ask you this. What kind of a financial impact has that had on
22 you and your family?

23 MR. BLUT: I'll object on relevance, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: Well, I don't want to be -- I don't

1 want to be dramatic. Three and a half-million dollars is an
2 enormous amount of money to me. I thought about it last night
3 that's \$30,000 -- \$25,000 a month for 12 years. I don't know
4 how many people write those checks and just think that's casual
5 as they carry on their life. I don't think many. It's been a
6 severe economic strain. I have sold stocks. I have sold
7 everything that I have in that area. I sold my home in New
8 York City. I have in the last 18 months I have financed
9 \$1.3 million in mortgages on properties that I have. I am in
10 the process next week of putting my family's home in Long
11 Island up for sale because I want to get ahead of all this.

12 My largest client in the real estate business was a
13 firm called Forest City Enterprises. And Forest City
14 Enterprises informed me after the litigation was started, Jim
15 Ratner and Bruce Ratner called me and said, Rusty, you have to
16 understand and I don't know what to say, but I have to do this.
17 You are in a litigation with our partner, and consequently we
18 are not able to employ you and engage you anymore in any work
19 on our behalf until that's over. Now, that was the end of
20 2007.

21 Q And have you done any work for Forest City or it's --

22 A I've done none. I've done none.

23 Q Okay.

24 A On a personal level I've been to Bruce's house and
25 Jimmy's house and all those kinds of things, but they've said

1 to me, you know, they can't believe this is still going on --

2 Q Okay.

3 A In addition to that, you know, there's just a lot of
4 personal things. I've become divorced. I've become divorced
5 in one area because of the pressure that I was under during
6 this, and that's a very disturbing thing to me. I -- it's been
7 a -- it's -- it has changed my life because it has stopped me
8 professionally from being at the level that I was at where I
9 was earning -- well, if I had done and I had opportunities, but
10 if I had done more deals like this, been able to bring more
11 deals like this to Forest City, we're talking about millions
12 and millions of dollars of income that I have lost --

13 Q Okay.

14 A -- in addition to all the monies that I've spent. So
15 it's a -- it has been a really changing thing in my life over
16 the last 12 years -- over the last 15 years.

17 Q Based on your personal knowledge and your familiarity
18 with the finances and lifestyle that you've led over the years,
19 have they succeeded in their goal of delaying and dragging you
20 out?

21 A I believe what we have experienced in this trial
22 regarding delay and obfuscation and making discovery as
23 difficult and expensive as possible for me was absolutely true
24 if not more so of the first trial, and I believe that three and
25 a half-million dollars is a ridiculous number with no offense

1 to the lawyers in this and this Court.

2 Q Okay. Now let's break it down just a little bit
3 more. In this case, this specific case starting when we filed
4 the lawsuit here in July of 2016, what have your total
5 expenditures for attorneys' fees and costs --

6 A Just in the -- just in the matter that we're sitting
7 here today?

8 Q Yes, and including the New Jersey counsel, a New
9 Jersey expert, Mr. Schwartzner who has consulted in -- assisted
10 you in this case on the bankruptcy context, what's the grand
11 total in this case?

12 A Okay. Can I do it individually --

13 Q Please.

14 A -- because I can't add it in my head.

15 Q Please.

16 A John Muije has billed me \$725,000 to date. Mark Rich
17 has billed me \$399,000 in this matter. He billed me monies in
18 the prior matter, but \$399. Rob Warns has billed me \$197,000
19 for the Reisman Firm, and called me last night and said the
20 number for December -- that was through November, the number
21 for December is an additional \$62,000. So I look at that as
22 \$250,000 for the Reisman Firm.

23 Q And were there any other costs that you would
24 attribute to this action and trying to pursue --

25 A Yeah. So then you've got New Jersey counsel because

1 we've been pursuing Mr. Spitz even against Court orders, and he
2 did not come through and allow us to take his computer
3 information until a week before trial even though a Court
4 ordered on December 5th that he do that.

5 Q December 5th the prior year?

6 A Yeah, December 5th the prior year.

7 Q Correct.

8 A And that is a cost of \$75,000 in New Jersey for both,
9 that's both the computer expert as well as a man named
10 Mr. DeGroot who is my attorney there.

11 Q Okay.

12 A Then I have a bankruptcy attorney in Las Vegas Lenny,
13 and I apologize, Schwartzner -- Lenny Schwartzner.

14 Q That's correct.

15 A And we are at \$35,000 with his firm.

16 Q Did you happen to have an opportunity to add up those
17 numbers?

18 A It's on a piece of paper in my briefcase. I think
19 we're at about a million three fifty.

20 Q Okay. And is that before taking into account a
21 hundred and sixty thousand approximately that the Court awarded
22 in sanctions and that we have now recovered?

23 A I believe those numbers are -- I believe that Mark
24 and Rob and I believe you removed those numbers. So the
25 numbers I quoted are excluding those; I believed to be true.

1 Q Okay. Well, they would certainly operate as a
2 credit, but I guess what I'm saying is 1,000,350 is that a
3 gross number or a net number?

4 A I honestly believe -- I thought that each of the
5 three of you had taken out, I believe we got back \$162,000, had
6 taken out that number. So I don't want to misrepresent what
7 they are. You will know those numbers.

8 Q Okay. Those documents will -- we'll double check it
9 and make sure that they're accurate. But you've also testified
10 to the quantity of Mr. Schwartzer's fees and the New Jersey
11 fees and expenses; correct?

12 A Yeah. Yes.

13 Q Okay. And in terms of actually collecting, there's
14 an original judgment with prejudgment interest and cost was in
15 \$2.6, \$2.7 million range --

16 A That was back in 2015.

17 Q I understand. And we've already submitted to the
18 Court at the last hearing, and we can update it for here what
19 the interest accrual and cost accruals are of course. Other
20 than the \$162 discovery sanction which was not included in that
21 prior judgment, have you successfully collected any monies from
22 LVLP during the course of the litigation -- since the date of
23 judgment, let's just word it that way?

24 A Since the date of judgment we did send out a subpoena
25 to Signature Bank in New York, and we were successful at

1 getting an \$8,000 balance from them pulling that from the --
2 from their account.

3 Q Okay. Was that the only --

4 A That is all.

5 Q -- positive credit you ever collected?

6 A That is all.

7 Q Okay. And why did you hire my firm when the Reisman
8 job had just succeeded in getting you a multimillion dollar
9 judgment?

10 A I hired you because you're regarded as the best
11 collection attorney in Nevada.

12 Q That's kind of you to say. I'm not a hundred percent
13 sure --

14 A It's what I was told. It was actually what I was
15 told, that's why I did it.

16 Q And during -- after you hired me, what kind of
17 activities did we undertake to your knowledge?

18 A Well, for the first year and a half of you working in
19 collection, we pursued Las Vegas Land Partners and all of their
20 assets in trying to gain additional information about -- from
21 them of where there was -- there were assets that I could
22 attach and get my judgment.

23 Q And how much money because I'll represent to you this
24 lawsuit was filed in July I want to say 16 --

25 A Yeah.

1 Q -- but it might have been a couple days one way or
2 the other July of 2016 --

3 A Yeah.

4 Q -- you hired me more than a year earlier than that,
5 but --

6 A I hired you in May of 2015.

7 Q Okay. So in that 14 months approximately how much in
8 attorney's fees and cost did you incur with my office?

9 A About \$200,000.

10 Q Okay. And would you have spent \$200,000 doing that
11 if you had had any idea that LVLP had successfully conveyed
12 away all of their valuable attachable assets?

13 A No. No, absolutely not. It didn't even occur to me.
14 I thought that there were assets within LVLP and its affiliate
15 companies, whatever it is that were going to cover, you know,
16 my millions of dollars, but not, you know, I thought it'd
17 easily accommodate that.

18 Q And had you had any inkling that LVLP was insolvent
19 or didn't have the money to pay you prior to our filing the new
20 lawsuit?

21 A I did not. Or I wouldn't have spent \$200,000, John.

22 Q I understand.

23 MR. MUIJE: Court's indulgence. One moment.

24 THE COURT: Did IT say they could come at 11:45?

25 THE CLERK: Yes, ma'am.

1 THE COURT: All right.

2 MR. MUIJE: I'll pass the witness, Your Honor.

3 THE COURT: Cross-examination or do you want me to
4 break?

5 MR. BOSCHEE: I can finish mine in under the eight
6 minutes we have left.

7 THE COURT: Great. We will use our time wisely with
8 you.

9 CROSS-EXAMINATION

10 BY MR. BOSCHEE:

11 Q All right. Well, I just told the Court I would be
12 very efficient so I'm going to be.

13 Mr. Nype, I just want to clarify. The deal, the
14 agreement that you had with Mr. Mitchell and Mr. Liberman did
15 not include the 300 East Charleston properties, did it?

16 A To the best of my knowledge it didn't, but I did not
17 understand all the affiliates under LVLP so I don't know how to
18 answer that.

19 Q I understand. You never actually toured the 300 East
20 Charleston properties when you were looking at -- when you were
21 doing the tours of properties; right, it was the --

22 A Yes, we did.

23 Q Where -- how -- what did you do?

24 A I -- Jimmy Ratner ran the commercial side which was
25 25 million square feet of retail, 25 million square feet of

JD Reporting, Inc.

1 office. His brother and I cannot remember his -- his cousin, I
2 can't remember his name right now a Ratner ran the 40,000
3 apartments of Forest City, and Mr. Liberman and Mr. Mitchell
4 were trying to pitch Forest City into the idea of residential
5 housing, and we brought a man down from the Palazzo -- Palazzo
6 Hotel and brought him down and toured both that site as well as
7 a site that they did not own near the railroad tracks that they
8 had an option on or something, that they had an option on as
9 potential residential sites.

10 Q Okay. But that deal never came to fruition with
11 Forest City, did it?

12 A No. Forest City said no.

13 Q Okay. And as I understand it the 305 -- well, I'll
14 call them the 305 properties you'll know I'm talking about?

15 A Yes.

16 Q The parking lot corresponds --

17 A Yes.

18 Q Okay. That was not part of your underlying lawsuit,
19 was it, the one that I really know nothing about, the one where
20 you got a judgment?

21 A The only reason I'm hesitant in answering is I had
22 LVLP and all its affiliate companies; I don't know if that was
23 an affiliate company. I just -- we didn't know anything
24 about -- I didn't know anything about 305.

25 Q Fair enough. Was any testimony in that trial given

1 by yourself or any of your experts as to the 300 Charleston
2 properties?

3 A No.

4 Q Okay. And you never had anything in writing, I mean,
5 I think we just talked about, we saw the e-mails, but you never
6 had anything in writing with 305 2nd Avenue Associates with
7 respect to those properties, did you?

8 A No. Absolutely not.

9 Q Okay. I may be stepping on someone's toes, and I
10 don't mean to if I -- if the other lawyers wanted to ask you
11 this. But you had these e-mail exchanges with Mr. Mitchell
12 about your compensation, and there seemed to be as I was
13 reading the e-mails when you're going through them in court, a
14 disagreement as to what you were going to get compensated. You
15 never had any e-mails exchanges like that with anybody from 305
16 2nd Avenue Associates, did you? And specifically I'm thinking
17 of Mr. Liberman?

18 A I was going to say I think with Mr. Liberman I did
19 have some exchanges with, and I did have some conversations
20 with.

21 Q The compensation, did you have any e-mails, because I
22 haven't seen them in evidence; that's why I'm asking the
23 question, with Mr. Liberman specifically related to your
24 compensation for the Forest City deals that were closed?

25 A Oh, I think I probably do.

1 Q Okay.

2 A In the first trial -- the first trial was, you know,
3 enormous in discovery.

4 Q Okay. But they're not -- okay. Well, they're not --
5 you haven't seen them in any of the evidence we've got here,
6 have you --

7 A No.

8 Q -- because I haven't.

9 A No.

10 Q Okay. You testified earlier that you thought the
11 agreement that you had on compensation was with Mr. Mitchell
12 and Mr. Liberman. I just want to clarify, was it with them or
13 was it with Las Vegas Land Partners?

14 A Based on my filings it was Las Vegas Land Partners.

15 Q Okay.

16 A And its affiliates.

17 Q Okay. You talked a little bit about things haven't
18 gone well with Forest City. Have you affirmatively done
19 anything to pursue any deals with Forest City since the
20 conclusion of the prior litigation, the one where you got a
21 judgment? Have you taken any steps with Forest City and say,
22 hey, I got a judgment; we're done. We're going forward in this
23 other thing? Have you tried to get any other deals with them,
24 or has it just been a no go with them?

25 A I haven't really actively. They -- first of all they

1 sold the company last year --

2 Q Right.

3 A -- for 14 and a half billion dollars --

4 Q Well, that's why I asked.

5 A Yeah. They sold the company so, no, I -- the answer
6 is I have not actively since the thing because they told me
7 that until all the matters were solved and there is no dispute
8 they didn't feel that they could participate with me in
9 anything.

10 Q Okay. You were here when Mr. Chamberlin testified
11 that he doesn't recall ever meeting you.

12 A Right.

13 Q Do you recall ever meeting him --

14 A No.

15 Q -- I think there may have been on one occasion in New
16 York City maybe at a --

17 A I don't think there was.

18 Q Okay.

19 A I said that to you in the deposition, and I was
20 wrong. When I met him, it was not the gentleman that I thought
21 he was.

22 Q Okay. And you haven't had any other dealings with
23 any of 305 2nd Avenue Associates or their limited partners,
24 have you, to the best of your knowledge?

25 A No. None.

1 Q Don't know -- don't even know who they are, do you?

2 A No, I don't have any idea --

3 Q Okay.

4 A -- so I may have.

5 Q And --

6 A No, I don't know.

7 Q You probably didn't even know it. And also you
8 testified about the delay -- the continual delays that you
9 experienced in the prior litigation and the delays that you
10 experienced in this litigation; that was primarily with
11 Mr. Mitchell; right? That wasn't as a result of anything 305
12 Las Vegas did, was it?

13 A Not anything to do with 305. I would not take
14 Mr. Liberman off the hook because he was part of those delays.

15 Q I'm not taking Mr. Liberman off the hook. I'm
16 talking specifically about my client 305 Las Vegas; there was
17 nothing you could point to for that?

18 A I've had nothing to do with 305.

19 Q Okay.

20 MR. BOSCHKE: I have nothing further, Your Honor.

21 THE COURT: Thank you. So you did very well, its
22 11:43. I know nobody can do it in two minutes so we're going
23 to take a break until 1:00 o'clock. Have a nice lunch.

24 MR. MUIJE: Thank you, Your Honor.

25 THE COURT: And IT is here to check your drive.

1 Mr. Muije, if you would hand the gentleman from IT
2 the --

3 MR. MUIJE: If my IT guy could talk to your IT guy.

4 THE COURT: Yeah, the IT guys will talk and work it
5 out.

6 (Proceedings recessed 11:44 a.m. to 1:03 p.m.)

7 THE COURT: We were talking about how much longer,
8 Mr. Muije, and whether you're going to need another witness;
9 did you think about that over the lunch?

10 MR. MUIJE: I did indeed.

11 THE COURT: And what did you decide strategically?

12 MR. MUIJE: I decided that the only point that I need
13 to make is I need to supplement what I said yesterday with
14 January time, which I can estimate. And secondarily, Kevin
15 Johnson, Mr. Johnson's son, and a wonderful efficient associate
16 just sent me a document which I think is a Mark Rich expert
17 report from the prior litigation.

18 MR. K. JOHNSON: Correct.

19 MR. MUIJE: If he intends to use that, I will
20 stipulate to that, but I would reserve the right to call
21 Mr. Rich back --

22 THE COURT: In a rebuttal case?

23 MR. MUIJE: -- as a rebuttal witness.

24 THE COURT: I got it. I understand that. Okay.

25 MR. MUIJE: And that should be it.

JD Reporting, Inc.

1 THE COURT: So the question I asked Jim Edwards then
2 was whether you wanted to break up your closing arguments? I
3 need to break today about 4:00 which would mean we probably
4 wouldn't finish all of the closing arguments knowing how long
5 Mr. Muije talks, not you guys, Mr. Muije.

6 MR. BOSCHEE: But you're looking at me when you say
7 that so --

8 THE COURT: I am looking at you, Mr. Boschee.

9 So the question is do you want to do -- start the
10 closing arguments right before and then come back tomorrow at
11 9:30 or do you just want to come at 9:30 and pound them out and
12 be done by 2:00?

13 MR. H. JOHNSON: Your Honor, I've thought about it
14 over the lunch hour whether closing arguments briefs might be
15 helpful to the Court.

16 THE COURT: It might be helpful in this particular
17 case. I do not usually find them helpful, but given the
18 history of document issues in this case it might be a helpful
19 way to do it, but you'd have to do it on a not-forever basis --

20 MR. H. JOHNSON: All right.

21 THE COURT: -- like a short time frame.

22 MR. H. JOHNSON: Yeah.

23 THE COURT: You could talk me into that. I have not
24 done that in a long time because of the time constraints Judges
25 are under to make decisions, but if you kept yourself on a

1 short leash I might be talked into it.

2 MR. MUIJE: Your Honor, and if we were inclined to do
3 that, I've noted a couple of minor what I don't want to call
4 errors, but inconsistencies. The evidence has been slightly
5 different than our proposed findings of fact, conclusions of
6 law. I'd like to submit an amended correct --

7 THE COURT: If you said amended ones, I only want the
8 new ones not the old ones because I already have a working set,
9 and I am not going to look through your whole new one to find
10 the ones I started with. So, like, if you want to amend 57,
11 I'll take an amended 57, or if you want to add 67A through 67D,
12 I'll take them, but I don't want the whole --

13 MR. MUIJE: Okay. So not the whole shebang.

14 THE COURT: You got it.

15 MR. MUIJE: That would be fine.

16 THE COURT: Because I've only started working on
17 them, and I don't want to have to try and figure out your new
18 ones.

19 MR. MUIJE: I understand. And I don't know that
20 there's that much to add to what we've already put in terms of
21 case law into our findings and proposed conclusions. I don't
22 know that the briefing would be that helpful but if the Court
23 feels that it would be, obviously we'd be happy to cooperate.

24 THE COURT: The factual issues are a little -- I'm
25 not as worried about the legal issues because this one's

1 fairly -- the legal issue's fairly simple. It's a
2 interpretation except for maybe Mr. Boschee's client, except,
3 you know, the nuances of the different documents of what they
4 show and what they don't show.

5 UNIDENTIFIED SPEAKER: Uh-huh.

6 THE COURT: But as -- it's up to you guys whatever
7 agreement you reach I will go with. Usually I would discourage
8 people from doing it so you can get your case done faster,
9 but --

10 MR. H. JOHNSON: Right. Well, I wouldn't anticipate
11 that long. And I would normally say, you know, the plaintiff
12 would file their brief and then we would file our brief
13 following that. I don't know what time frame.

14 MR. MUIJE: Well, my problem is, Your Honor, is I
15 have to be up in Elko County on Friday because I have to file
16 for Judge up there, and it's a very short window of time. So
17 I'm going to be out of pocket Thursday and Friday. I do want
18 to --

19 MR. H. JOHNSON: Well, I don't mean that quick. I
20 mean, normally a minimum of two weeks, but maybe --

21 THE COURT: I've had people ask for 60 days, and I
22 always say no.

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: If you're telling me you need two weeks
25 or three weeks, I have no problem with that, but when you're

1 getting into the 60 -- 60, 30 I'm going, no, I won't even
2 remember the case by the time you show up to argue it.

3 MR. MUIJE: I think two weeks would be adequate, and
4 I agree with Your Honor; while it's fresh in your mind is the
5 time to do it not three weeks from now because I have 17 other
6 things that it'll interrupt me if I know I've got three weeks.

7 THE COURT: So I will leave it to you guys to
8 discuss. I am open to oral argument today or tomorrow or
9 closing briefs with short argument if you want or no argument
10 if you'll agree.

11 MR. MUIJE: I prefer oral arguments, Your Honor. We
12 spent a considerable amount of this weekend working it out and
13 charting it out. I mean, we have a Power Point presentation
14 ready for it.

15 THE COURT: It's up to you guys.

16 MR. BOSCHEE: Well, if we're going to do closing
17 arguments, I'm not inclined to do closing briefs as well
18 especially concerning I'm a little tied up next week.

19 THE COURT: Are you -- are you going to be here for
20 trial --

21 MR. BOSCHEE: You might have --

22 THE COURT: -- you know, Joe was here this morning
23 and I gave him a hard time saying you need to show up for trial
24 next week.

25 MR. BOSCHEE: Well, I'll be here. I don't know how

1 much I'm going to be doing. I hopefully -- Kim will -- Kim
2 Stein will be doing most of it, but, you know, I'll be here.
3 Probably will be awkward if I'm drafting a closing brief while
4 I'm sitting at trial in front of the jury, but I would be -- if
5 we're going to do closing arguments, then I would be inclined
6 not to do briefs, but I'll defer to these guys because my
7 issues are a little different.

8 THE COURT: Okay. So why don't you guys think about
9 it, and when we break today tell me. If everybody's agreeable,
10 we'll do closing brief. If we're not all agreeable, then we'll
11 do closing arguments.

12 MR. H. JOHNSON: Okay, Your Honor.

13 MR. MUIJE: May I get a set of headphones, Your
14 Honor.

15 THE COURT: You can.

16 And, Mr. Nype, we're going to go to the next
17 cross-examiner now.

18 THE WITNESS: Yes, ma'am.

19 MR. K. JOHNSON: If it's okay with Your Honor, I'm
20 going to stay here because I'm doing my tech as well and if I
21 try and move --

22 THE COURT: And you will keep your voice up because
23 you always have.

24 MR. K. JOHNSON: I will.

25 THE COURT: I have never had a problem with you

1 keeping your voice up.

2 MR. K. JOHNSON: Okay.

3 CROSS-EXAMINATION

4 BY MR. K. JOHNSON:

5 Q Mr. Nype, I'm just going to follow up on a few points
6 that we brought out in your direct examination here first. You
7 testified that you're the principal of Revenue Plus; is that
8 correct?

9 A That's correct.

10 Q Okay. And what exactly, this might have been covered
11 to a degree, but what exactly does Revenue Plus do?

12 A I'm really a consultant. We're consultants --

13 Q Okay.

14 A They -- that's what I've done in real estate and
15 industries outside of real estate.

16 Q Okay. And how long has Revenue Plus been
17 functioning?

18 A Since 2002.

19 Q 2002. And do you -- right now are you involved in
20 anything outside of Revenue Plus?

21 A No.

22 Q No.

23 A Well, I have a family business that I'm involved in
24 as well.

25 Q Okay. And what is that family business?

JD Reporting, Inc.

1 A Real estate.

2 Q Buying and selling real estate, developing real
3 estate, all of that?

4 A No. We own properties and I manage them for the
5 family with the help of two other family members.

6 Q Okay. And you testified earlier, I'll try and
7 remember what your phrase was, it was that you've spent most of
8 your life in real estate; is that correct?

9 A I think that's probably true, yeah.

10 Q Okay. So you're very familiar generally with how
11 real estate purchases and sales work; is that correct?

12 A Well, I've been more on the marketing and leasing
13 side.

14 Q Okay.

15 A I am -- I do have knowledge of sales of real estate.

16 Q Okay. Are you familiar with the concept that when a
17 property is sold a record of some kind depending on what
18 jurisdiction you're in, is recorded generally in the county's
19 recording office; is that correct?

20 A I believe that, yes.

21 Q Okay. So in theory if a property were sold here in
22 Las Vegas you would know to go to the Clark County Recorder's
23 Office to notify of that sale if you wanted to?

24 A Yeah, I wouldn't necessarily -- I've never done that,
25 but I guess the theory is, yes.

1 Q But you know that you could do that if you wanted to?

2 A I guess that's true.

3 Q That's true most people don't just, you know, keep
4 tabs on the recorder's office. But you know that if you wanted
5 to -- say you had toured a property that you believed was
6 somewhere in Las Vegas Land Partners, a number of entities, you
7 would know that you could go to the Clark County Recorder's
8 Office to see if that sale -- if that property has been sold at
9 any point?

10 A I've never done that, but I believe what you're
11 saying is true.

12 Q Okay. I'm going to -- I'm going to ask you a few
13 questions here about just to clarify some things that I was
14 unsure of about your relationship with First Wall Street. You
15 said something that was a little unique. You said that you
16 formed an alliance with First Wall Street, is that -- am I
17 recounting your testimony correctly?

18 A I don't know if there's a legal definition of
19 alliance because I don't know what that -- I mean, I may have
20 used that word I meant colloquially --

21 Q Okay.

22 A -- it was no formal relationship or partnership or
23 anything that was done.

24 Q So you never signed anything with First Wall Street
25 or anything like that?

1 A No, I didn't say that. There was a relationship that
2 I had that I was going to receive compensation --

3 Q Right.

4 A -- from First Wall Street if a transaction occurred
5 with Las Vegas partners --

6 Q Right.

7 A -- at different --

8 Q And was that --

9 A Yes? I'm sorry.

10 Q Excuse me. Sorry, go ahead.

11 A I was just saying a different compensation number if
12 it would -- whichever party became the inevitable person who
13 brought in the partnership.

14 Q Okay. And was that memorialized in writing anywhere?
15 I haven't seen it so I'm asking.

16 A Yeah. Yeah, I think it is absolutely.

17 Q Do you know to your knowledge was that produced in
18 this litigation?

19 A In the new litigation?

20 Q Either or?

21 A I believe it was produced in the first litigation.

22 Q Okay. But you haven't seen it -- you haven't seen it
23 as part of this record here?

24 A Not in -- I haven't thought about it in years.

25 Q Okay. I'm -- we're going to turn back to this is

1 Exhibit 60001, and it's been admitted and discussed at length.

2 THE COURT: And, sir, if you need a portion of it
3 blown up, let us know.

4 THE WITNESS: Thank you.

5 BY MR. K. JOHNSON:

6 Q Not as fancy as that tech guy, but I can zoom in if
7 you need me to.

8 So you stated in your prior testimony that it was
9 your very strong understanding that the terms of your
10 relationship with the defendants were governed by disagreement;
11 is that correct?

12 A I felt that. That's not evidently what the Court
13 determined.

14 Q Okay. I was asking if that was your understanding.
15 Correct?

16 A Yes.

17 Q Okay. I'm going to scroll down here to the bottom of
18 this document -- a little bit more. So you see there, there's
19 a signing block for the Glenn Myles individual you mentioned,
20 and there's where David Mitchell signed here. There's no place
21 for you to sign on this document; is that correct?

22 A Correct.

23 Q Okay. Does your name appear anywhere in this
24 contract?

25 A It does not.

1 Q Okay. So I want to make sure I understand your
2 testimony correctly from earlier. So this contract between
3 First Wall Street and David Mitchell was entered into, you
4 believed it governed your relationship as well. They moved
5 forward. First Wall Street cancels this agreement with David
6 Mitchell; correct?

7 A No.

8 Q Oh, okay. Could you --

9 A First Wall Street to my knowledge never canceled the
10 agreement.

11 Q Okay. I thought you testified earlier that this
12 Myles individual said --

13 A Canceled the relationship with me.

14 Q Okay. So you didn't testify earlier that they
15 basically told David Mitchell that weren't doing anything for
16 you and walked away from this agreement?

17 A No --

18 Q Okay.

19 A -- but they didn't memorialize it anywhere either.

20 Q Okay. That's way -- that's why I'm asking you these
21 follow-up questions here.

22 So you moved forward, eventually the deal closes, and
23 you're unaware of the closing when it occurs; is that correct?

24 A That's correct.

25 Q Okay. Afterwards you speak with -- well, you find

1 out that it closed; you speak with David Mitchell, and in your
2 testimony you said that he presumably through his e-mails and
3 other communications made you lots of offers about your
4 compensation; is that an accurate reflection of your testimony?

5 A I believe that he wanted to modify what I believed
6 were the terms of our relationship which is represented here.

7 Q Okay. I understand that's what -- but you testified
8 earlier that he made you lots of offers regarding your
9 compensation structure regarding this Forest City entity --

10 A I don't know what lots of means, I mean, there was --

11 Q Well, they're your words not mine.

12 A Well, lots is again colloquial to me --

13 Q Okay.

14 A -- I know what lots means more than 10, less than 10,
15 more than five. There were a number of communications in which
16 David offered different ways of approaching compensation.

17 Q Okay. So in your life in real estate as a consultant
18 now, have you ever seen a real estate deal, brokerage deal,
19 anything like that where the parties do not have a written
20 document; they engage in, this would be in my term not yours,
21 they engage in negotiations after the fact regarding a person's
22 compensation, and the person who is to be paid has really no
23 idea what's going on with the underlying transaction? Have you
24 ever seen that set of facts and then seen somebody push for
25 compensation after the fact?

1 A When you say after the fact --

2 Q Uh-huh.

3 A -- do you mean after the closing --

4 Q After the --

5 A -- what is the fact?

6 Q After the closing of these -- this Forest City deal.

7 A Have I ever seen anyone ask for compensation when
8 they did not receive it at closing? Yes --

9 Q Ask for compensation when --

10 A -- if they didn't receive it.

11 Q That wasn't my question. Asked for compensation when
12 they have no written agreement, are not involved in the day to
13 day of the decision-making, don't even know the deal closed,
14 have you ever seen somebody ask for compensation under those
15 facts?

16 A Sure. Me.

17 Q Besides yourself have you ever seen anybody else do
18 that?

19 A I don't think that's an unusual set of facts.

20 Q Okay.

21 A I think you're stating it incorrectly, but, you know,
22 I believe firmly that on June 1st of 2006, that David
23 Mitchell agreed with compensating me consistent with this
24 contract, and that is what my stance was throughout that year.

25 Q Okay.

1 A So I believe that I did have an understanding with
2 him.

3 Q Okay. And First Wall Street Capital, they eventually
4 had an issue with David Mitchell and Las Vegas Land Partners as
5 well; is that correct?

6 A I believe that they maintained that David Mitchell
7 did not legally sever their relationship with him.

8 Q Okay. And so -- and they were a party in the
9 underlying case for a time at least; is that correct?

10 A (No audible response.)

11 Q Do you remember them being a party in the 2007 case?

12 A I don't think they attached themselves to my
13 pleadings, I think they had their own --

14 Q Right.

15 A -- case in New York --

16 Q Okay.

17 A -- under the contract terms if I'm right.

18 Q Okay. So to your knowledge they were never party to
19 the underlying case?

20 A When you say the underlying, do you mean my case?

21 Q Right. Well, the case for Las Vegas Land Partners
22 sued you and you sued them back.

23 THE COURT: The case in front of Judge Israel.

24 THE WITNESS: Yes.

25 MR. K. JOHNSON: Correct.

1 THE WITNESS: I don't believe so.

2 BY MR. K. JOHNSON:

3 Q Okay. Let me pause this real quick. I'm showing you
4 what's already been admitted as Exhibit 50039. It appears
5 you're right; the case was filed in New York; I misremembered
6 that. But I'm going to scroll down here. I'm looking at
7 Paragraph 2.

8 THE CLERK: I'm sorry, Mr. Johnson --

9 MR. K. JOHNSON: Yes.

10 THE CLERK: When you show 50039, is that the
11 settlement agreement?

12 MR. K. JOHNSON: Right.

13 THE CLERK: When you put that -- was it admitted?

14 THE COURT: Any objection to 50039?

15 MR. K. JOHNSON: I apologize. It's Mr. Muije's
16 exhibit and we obviously have no objection to it.

17 THE COURT: I know. I'm asking any objection?

18 MR. BOSCHEE: No objection.

19 THE COURT: It'll be admitted.

20 (Plaintiff Exhibit No. 50039 admitted.)

21 MR. K. JOHNSON: I apologize.

22 THE COURT: If it wasn't admitted before, it is now.

23 MR. K. JOHNSON: There you go.

24 MR. MUIJE: Very good.

25 THE COURT: It's an easy fix when there's not a jury.

1 MR. K. JOHNSON: Sorry.

2 THE CLERK: Thank you.

3 THE COURT: Uh-huh.

4 BY MR. K. JOHNSON:

5 Q Okay. So I'm going to show you 50039. And I'm
6 zooming in here on Exhibit 2 where it says, In full and
7 complete settlement at the satisfaction of all of FW's claims
8 under their agreement and the FW action LVLP shall pay the sum
9 of \$375,000, et cetera, et cetera. Do you see where I'm
10 talking about there?

11 A I do.

12 Q Okay. And in your experience, were you -- did you --
13 you've testified earlier that you really didn't have much in
14 the way of conversations with First Wall Street after you guys
15 kind of separated --

16 A Not regarding -- not regarding this matter.

17 Q So you didn't discuss the settlement at all with --

18 A The \$375,000?

19 Q -- with First Wall Street?

20 A I don't think so. I don't think I --

21 Q Okay. I'm just asking.

22 A Yeah.

23 Q Just making sure. And so they presumably when they
24 entered into the settlement with Las Vegas Land Partners they
25 believed that those \$375,000 was a fair number for their work

1 in the underlying Forest City LVLP transaction; is that a fair
2 assumption?

3 A I don't happen to believe that --

4 Q Okay.

5 A -- but they settled for that.

6 Q Okay. So let's go back to the -- now, Las Vegas Land
7 Partners they sued you in 2007; is that correct?

8 A I believe that's the case, yes.

9 Q Okay.

10 MR. K. JOHNSON: And I'm correct that 50001 has been
11 admitted? I just want to make sure.

12 THE COURT: 50001?

13 MR. K. JOHNSON: Yes.

14 THE COURT: Yes.

15 MR. K. JOHNSON: Okay.

16 THE COURT: That's the engagement letter.

17 MR. K. JOHNSON: No, 50001 is the complaint in the
18 underlying case.

19 THE COURT: Oh, Dulce says, yes.

20 MR. K. JOHNSON: Okay.

21 BY MR. K. JOHNSON:

22 Q I know it's been a while, but do you remember this
23 document?

24 A (No audible response.)

25 Q Would you believe me if I told you that it was the

1 complaint that was filed against you by Las Vegas Land
2 Partners?

3 A I have no reason to believe you to be incorrect.

4 Q Okay. But Las Vegas Land Partners wasn't the only
5 party that sued you; is that correct?

6 A Again, I'm just naïve, Las Vegas Land Partners,
7 LiveWork and Zoe --

8 Q Correct. Perfect.

9 A -- is that what you mean?

10 Q Yep.

11 A Yes.

12 Q And then you moved forward and you filed a
13 counterclaim in this action; is that correct?

14 A I believe that to be true.

15 Q Okay. And do you remember what that counterclaim was
16 for?

17 THE COURT: You mean causes of action or damages?

18 THE WITNESS: I really don't.

19 MR. K. JOHNSON: Right.

20 THE WITNESS: I don't, to be --

21 MR. K. JOHNSON: The cause of action, I'm sorry.

22 THE WITNESS: I don't specifically to be honest.

23 BY MR. K. JOHNSON:

24 Q Okay. That's okay. I'm not going to show --

25 MR. K. JOHNSON: 50002 that's also been admitted; is

1 that correct?

2 THE CLERK: Yes.

3 MR. K. JOHNSON: Okay.

4 MR. MUIJE: Your Honor, from a -- I would have a
5 limited objection from a timing standpoint because it is the
6 amended answer and counterclaim, but the original
7 counterclaim -- answer and counterclaim was filed actually in
8 December '07. They tried considerably, but I don't want there
9 to be any confusion as to the timing.

10 MR. K. JOHNSON: Correct. This is the --

11 THE COURT: Okay.

12 MR. K. JOHNSON: -- amended answer and counterclaim.

13 THE COURT: I am not really concerned about whether
14 it's amended or not at this point. If it becomes an issue, I
15 will certainly accept anything you'd like to offer.

16 MR. MUIJE: Very good, Your Honor. But other than
17 that I'd stipulate to it if it hasn't been admitted.

18 THE COURT: All right. It'll be admitted.

19 (Plaintiff Exhibit No. 50002 admitted.)

20 BY MR. K. JOHNSON:

21 Q Okay. So I'm showing you -- let's see, it's page 10
22 of Exhibit 50002. It says, first cause of action, unjust
23 enrichment, quantum merit, do you see where I'm at here?

24 A Number 26?

25 THE COURT: No, the first cause of action in the

1 heading and then you have --

2 THE WITNESS: Yes. Yes.

3 THE COURT: -- and then you have parentheses under
4 it.

5 THE WITNESS: Yes, I do.

6 BY MR. K. JOHNSON:

7 Q Okay. Does that refresh your memory a little bit?

8 A It's been 12 years so --

9 Q I understand.

10 A -- no, it doesn't, but I -- I'm certainly I'm sure
11 this is right.

12 Q Okay. And it doesn't -- it doesn't list a party here
13 as a customary reward, and there's a second cause of action for
14 breach of contract; do you see where I'm at here now?

15 A I do.

16 Q More causes of action then as we scroll down here.

17 At the bottom here it says, Wherefore counterclaim Mr. Russell
18 Nype and Russell -- and Revenue Plus, LLC, pray for judgment
19 against Las Vegas Land Partners, LLC, as follows. Okay. Do
20 you remember, I know it's been a long time, but do you remember
21 reviewing this document before it was filed?

22 A I don't.

23 Q Okay. And in this document it states that you are
24 moving against Las Vegas Land Partners, LLC, and only Las Vegas
25 Land Partners, LLC; is that correct?

JD Reporting, Inc.

1 A I did not realize that, but if that's what the
2 document says, that's what the document says.

3 Q Okay. And you didn't bring -- at this point you
4 didn't bring any third-party claims against David Mitchell or
5 Barnet Liberman or anyone else; is that correct?

6 A Unfortunately I did not.

7 Q Okay. And you didn't bring a cause of action for
8 fraudulent conveyance in this action either?

9 A No, I had no reason to.

10 Q Okay. And eventually you get a judgment in this
11 matter; is that correct?

12 A Yes.

13 Q Okay. And after attempting to collect that judgment
14 you decide to file this matter -- sorry, this is Exhibit 50010
15 which is your amended complaint in this matter; is that
16 correct?

17 A I'm sure it is. I don't even know the date of this.
18 Is this the July filing that Mr. Muije made?

19 Q This looks like it -- well, this is the amended
20 complaint so he very well may have filed June or July, but it
21 looks like this was filed in August -- on August 21st, 2017.

22 A Okay. I mean, I have no reason to believe this is
23 not correct. I don't, you know, I don't know.

24 Q Okay.

25 MR. MUIJE: It is the amended complaint, but there

1 was an original complaint about a year earlier, Your Honor, in
2 July of 2016.

3 THE COURT: Okay.

4 BY MR. K. JOHNSON:

5 Q And did you review this complaint before it was
6 filed?

7 A I'm sure I read it. I don't remember, but I'm sure I
8 read it.

9 Q Okay. Did you assist your counsel, and I don't want
10 to know anything you told him; this is a yes or no question,
11 did you assist your counsel in preparing this document?

12 A I don't remember. I'm sure I read it and I might
13 have had an opinion about it. I don't -- I don't really
14 remember.

15 Q Okay. And I can give you time to review this
16 document if you would like. To your knowledge does this
17 complaint at any point request attorneys' fees and costs as
18 special damages?

19 A I don't believe so.

20 Q Do you remember having your deposition taken in this
21 matter?

22 A In the matter that --

23 Q Right now.

24 A -- we're sitting here?

25 Q A few weeks ago.

1 A Yes, I did. Your father took my deposition.

2 Q That's right. And in that deposition, correct me if
3 I'm wrong, you stated on a few occasions that you were relying
4 principally on your expert Mark Rich's report?

5 A I believe that's right.

6 Q Okay. And it -- specifically as it pertains to what
7 is and is not a fraudulent conveyance --

8 A Yeah.

9 Q -- and what is or is not alter ego; is that fair?

10 A Yes. I really don't have a basis of making that
11 judgment.

12 Q Okay. So if there were other transfers out there
13 that -- the only transfers that you're aware of are those that
14 are discussed by Mr. Rich in his expert report, is that --

15 A I believe that's true.

16 Q Okay. I'm going to talk briefly about some of these
17 transactions so I can kind of flush out the details and
18 understand your case here a little better.

19 Starting with this 305 transaction, you testified
20 earlier today that you toured these -- the -- it's 300, 320,
21 330 Charleston Avenue. Was that in 2004, 2005? Do have any
22 idea when that was?

23 A It would not be '4, it would not be '5, it might well
24 be '6.

25 Q Okay. So at that point you knew, you didn't know

1 where, of course, but you knew that that land was somewhere in
2 Las Vegas Land Partners; is that correct?

3 A I knew that that land was controlled by Barnet and
4 David.

5 Q Okay.

6 A I didn't understand the structure of any of it --

7 Q Right.

8 A -- to know who controlled it except those two
9 principals I thought -- I thought they did.

10 Q Okay.

11 A They represented they did.

12 Q Right. So from that point on and based on what you
13 testified earlier about your knowledge, common knowledge about
14 how land transactions work, at that point on at any time during
15 the underlying case, the collection and phase in between in
16 this case, you could have gone to the county recorder's office
17 to see what had happened with that land, that it had been sold
18 to 305 in 2007; is that a fair statement?

19 A I suppose so. I've never done that. So you're
20 telling me I can do that, and I have no reason to believe I
21 could not.

22 Q Okay. We're going to talk about some pieces of this
23 transaction a little more specifically here. In your
24 experience selling real estate, and you're not a real estate
25 agent, but you testified you have a little experience in the

1 area, how is the price of a parcel like that generally
2 determined?

3 A I think an appraisal.

4 Q Okay. So and is it common for a lender who's going
5 to lend on a property to get their own appraisal?

6 A I think virtually always.

7 Q Right. And so there's been a lot of testimony in
8 this case that there were -- there was this appraisal by
9 Heartland Bank, and then there was a second appraisal ordered
10 by David Mitchell; do you member that testimony?

11 A I certainly remember that there were appraisals on
12 this property.

13 Q Okay. And so if those appraisals, you testified that
14 that was the best way to come to an agreement about the value
15 of the land, and if those appraisals agreed, that would be
16 pretty good evidence that that is the fair market value of that
17 piece of land at that time; is that a fair statement?

18 A I believe that to be fair.

19 Q Okay. So if these two -- so if these two appraisals
20 agreed that the land was worth \$25 million and it was sold for
21 \$25 million to 305, then in your opinion that sale was a sale
22 with proper consideration?

23 A I believe that to be the case that normally is true.

24 Q Okay. And as part of that deal LiveWork took back a
25 \$5 million promissory note. Is that -- is that uncommon in

1 your experience?

2 A I -- I mean, it certainly can be done through a note.

3 Q Okay. And in this case the lender required a lease
4 and various personal guarantees, various requirements came from
5 Heartland Bank for this deal, is that unusual in your
6 experience as well?

7 A If they're uncomfortable with the value of the land
8 relative to their loan or they're uncomfortable with the
9 principals involved, I could see them asking for a personal
10 guarantee.

11 Q Okay. And -- and the lease as well?

12 A I don't know about the lease.

13 Q Okay.

14 A I can see them saying I want a personal guarantee.

15 Q Okay.

16 A I don't think that the lease to me is -- is -- I
17 don't know how that fits in to be honest with you.

18 Q Okay. And then we have the economic downturn which
19 I'm sure you and anyone who had anything to do with real estate
20 is familiar, and then all the parties eventually ended up suing
21 each other in court; is that correct based on --

22 A That's what I've heard this week.

23 Q Okay. So prior to this trial you didn't know about
24 any of that?

25 A I didn't know other than the scope of Mr. Rich's

1 letter --

2 Q Okay.

3 A -- I didn't have any knowledge of that.

4 Q And eventually the parties reached a global
5 settlement that was spearheaded by the bank; is that fair to
6 say?

7 A Again, and, you know, I don't want to play Perry
8 Mason. My understanding having been here for a week is that
9 LiveWork never was a part of that settlement.

10 Q Okay.

11 A So, I mean, I that's --

12 Q Okay. And so the \$5 million note that -- that's
13 taken back and anything relating to the initial sale, is there
14 anything in your opinion there that was done to hinder, delay
15 or defraud you in your opinion?

16 A The sale and the note --

17 Q Right.

18 A -- the note was a part -- I gather they agreed on
19 25 million; they only had 20 million in cash so they accepted a
20 \$5 million note --

21 Q Right.

22 A -- it can be structured that way.

23 Q So there is nothing in your opinion in that initial
24 transaction that was done to hinder, defraud or delay you in
25 collecting the judgment you would get eight years later?

1 A I don't believe so.

2 Q I'm going to move on to the Calvin Coolidge sale --
3 oh, Casino Coolidge, sorry. So in addition to appraisals, we
4 discussed that a little bit more, is what someone is willing to
5 pay for a parcel, is that a fair indication of that parcel's
6 worth?

7 A You know, I'm not trying to take issue with that, but
8 unless those offers are in writing and they are offers that are
9 legitimate real offers, there are times when people manipulate
10 offers, and they aren't --

11 Q Right.

12 A -- the marketplace. So I'm not -- I'm not -- I don't
13 know.

14 Q I understand. Okay.

15 A I don't know.

16 Q That's a fair point, but if -- if in this case there
17 were three offers --

18 A I don't know that.

19 Q Okay.

20 A I've never seen the offers.

21 THE COURT: He's asking you to hypothetically assume.

22 THE WITNESS: I'm sorry. Excuse me.

23 MR. K. JOHNSON: Okay. Right.

24 THE WITNESS: I will hypothetically assume there were
25 three offers. All right.

1 BY MR. K. JOHNSON:

2 Q Assuming there were three offers --

3 A Right.

4 Q -- that was the testimony that was given and the
5 party selling the property accepted the highest offer made for
6 that land, then is that generally in your experience a fair
7 indication of the value of that land, the highest offer
8 received?

9 A It's -- the answer is in a hypothetical sense with no
10 knowledge of the two principles and no knowledge of what I
11 believe they're capable of and have done for 12 years,
12 hypothetically, yes.

13 Q Okay. So what facts do you have as you sit here
14 today that prove or that indicate that that offer received, the
15 highest offer received and accepted was in any way improper
16 consideration or an improper price for that piece of land?

17 A In the week that I've been here I have heard people
18 tell me that -- tell the Court, excuse me, that they had offers
19 and they even talked about numbers of offers. I have not seen
20 one official offer sheet which is normally -- you count an
21 offer when a person actually gives you an offer, a written
22 offer. A casual conversation to me is not an offer. So I
23 don't know; I have not seen any proof of those offers.

24 Q Okay. That doesn't really answer my question.

25 A I'm sorry.

1 Q I asked what facts you have --

2 A Right.

3 Q -- that indicate that that million dollars was not a
4 fair price, fair consideration for that land at that time? Do
5 you have any facts to that effect?

6 A See, I -- I guess I have no actual facts. I have
7 reasons to question that. I'm going to answer it that way.

8 Q Okay. Next I'd like to look at Exhibit 10002 which I
9 believe has been admitted already.

10 THE CLERK: It has.

11 MR. K. JOHNSON: Perfect.

12 BY MR. K. JOHNSON:

13 Q Okay. It was Exhibit 10002. It is 2007 tax returns
14 for Las Vegas Land Partners; are you familiar with -- have
15 you -- these types of tax returns, and I know you're not an
16 accountant, but?

17 A I've seen tax returns, and I saw this last week, and
18 I can't remember, but I may have seen this a number of years
19 earlier. I just don't remember honestly.

20 Q Okay.

21 A I -- you know, I had Mark and other people looking at
22 all this stuff so personally it wasn't my area.

23 Q Okay. And that's fair. But I'm going to scroll down
24 here -- okay. And do you recognize what a Schedule K-1 is?

25 A Yes.

1 Q Okay. And what is a Schedule K-1 in your experience?

2 A I believe a K-1 is the income that an entity derives,
3 and I get a K-1 every year.

4 Q Get a K-1 from partnerships that you're a member of?

5 A Yeah, from LLC, yeah.

6 Q Okay. And so if you look here, whose K-1 is this?

7 A LVLP Holdings, Inc.

8 Q Right. That's the entity that --

9 THE COURT: Go to box F.

10 THE WITNESS: Box F.

11 MR. K. JOHNSON: Right.

12 THE WITNESS: Barnet Liberman, care of Orb
13 Management.

14 BY MR. K. JOHNSON:

15 Q Okay.

16 A Thank you.

17 Q So if you look here in box 19 this is distributions
18 \$10 million and change to Barnet Liberman; do you see where I'm
19 at there?

20 A I do.

21 Q Okay. And then I'm going to scroll down here. This
22 is another K-1.

23 A David J. Mitchell.

24 Q That's right. And his distributions right here
25 reflected are \$4 million and change; is that correct?

1 A Yes.

2 Q Okay. And so subsequent tax returns would reflect
3 similar distributions if they were made in a given year; is
4 that correct?

5 A I would assume so. Yeah.

6 Q Okay. Okay. And then I'm going to scroll up here.
7 I have to look at one more thing. Okay. And do you see the
8 section I'm looking at here, Part 3?

9 A Yes.

10 Q It says gained from disposition of property, and it
11 has Property A, A Glenn and Property B Aquarius?

12 A Yes.

13 Q Okay. And then over, if you go, there's the first
14 column that's the descriptions that is called from Property A,
15 and then you see the column for Property B; is that correct?

16 A Yes, I do.

17 Q Okay. And it says gross sales pricing reflects
18 \$25 million for the Aquarius property; is that fair?

19 A Yes, and that would be 305?

20 Q Right. That was the sale 305.

21 A Yes.

22 Q Okay. So this -- this tax return, if I understand
23 your testimony correctly, reflects the distributions made to
24 partners and also the sale of the 305 property; is that
25 correct?

1 A I believe that's correct.

2 Q Okay. Do you have any idea when you first saw this
3 tax return?

4 A I don't. It may have been during the first case. I
5 don't.

6 Q Okay. Let's see here.

7 MR. K. JOHNSON: I would like the Court to take
8 judicial notice of a couple things. There are entries on the
9 docket of the original case. They are facts that are capable,
10 accurate and ready to termination --

11 THE COURT: Well, you have to get a stipulation from
12 Mr. Muije or else you've got to make me an offer. And I
13 understand you're making an offer now so how about we ask for
14 the stipulation first.

15 MR. K. JOHNSON: Okay.

16 THE COURT: Tell him what you want to --

17 MR. MUIJE: What do you want to do?

18 MR. K. JOHNSON: Okay. There are two pretrial
19 disclosures that were made, one, in -- on October 14th, 2011,
20 and one on April 25th, 2014, and they both reflect these
21 exact tax returns by Bates number. They reflect that they were
22 produced in the underlying case and were disclosed as part of
23 those --

24 MR. MUIJE: You're showing October 20 --

25 MR. K. JOHNSON: October 14th, 2011, and then again

1 on April 25th, 2014.

2 MR. MUIJE: I've seen the 2014, and I have also
3 verified that there was a 2011 disclosure so I'll stipulate to
4 that, Your Honor.

5 THE COURT: All right. So you have a stipulation; we
6 don't need judicial notice.

7 MR. K. JOHNSON: Okay.

8 THE COURT: What is the case number again?

9 MR. K. JOHNSON: The case number is 07-A-551073.

10 THE COURT: 07?

11 MR. K. JOHNSON: 3.

12 THE COURT: Thank you.

13 MR. K. JOHNSON: No problem.

14 THE COURT: Unfortunately it's assigned to Department
15 11.

16 All right. Keep going.

17 BY MR. K. JOHNSON:

18 Q Okay. Are you familiar with the concept of what a
19 pretrial disclosure is?

20 A I would call that discovery I believe.

21 Q Okay.

22 A No? Is that not right?

23 UNIDENTIFIED SPEAKER: April of 2011.

24 MR. K. JOHNSON: Yeah. No, it's October --
25 October 14, 2011.

1 MR. BOSCHKE: October.

2 MR. K. JOHNSON: And then April 25th of 2014, yeah.
3 Okay.

4 BY MR. K. JOHNSON:

5 Q And I'm going to make representation to you that a
6 pretrial disclosure is what each side puts together that
7 contains their exhibits and the witnesses that they intend to
8 use at trial. Do you have a --

9 A Okay. Great.

10 Q -- any reason to disagree with that characterization?

11 A No. I just didn't know that.

12 Q Okay. And so if these -- if this tax return and
13 further tax returns from 2005 to 2010, 2011, 2012 were all
14 contained in these pretrial disclosures produced by your
15 counsel, then is it fair to say that you knew or should have
16 known about these tax returns in 2011 and at the very least by
17 2014; is that a fair assessment?

18 A So all of these tax returns you have within the
19 pretrial which you called it --

20 Q Disclosures.

21 A -- as having been given to us?

22 Q Correct. Produced by your counsel.

23 A If you have that, I have to agree with it, I mean,
24 yes, I have to agree with it.

25 Q Okay. You stated something in your earlier testimony

1 that I want to follow-up. You said Rich or Mark Rich billed me
2 a little bit in the underlying case as well or something to
3 that effect; is that fair?

4 A He did.

5 Q Okay. What did he bill you for in that case?

6 A I believe in the first case he billed me for
7 \$110,000.

8 Q Well, what work did he do? I should have been more
9 specific, I apologize.

10 A He worked -- he was not my expert witness in the
11 underlying case.

12 Q Right.

13 A He worked with the expert witness, and I -- with Josh
14 Reisman as well --

15 Q Okay.

16 A -- with the -- with my lawyer.

17 Q And do you remember who your expert was in the
18 underlying case?

19 A I can't remember his name. I've been trying -- he
20 was great. He was great.

21 Q That's okay. I'm showing you what we recently
22 stipulated to as Exhibit 90079. It's the exhibit that --

23 MR. MUIJE: No, you proposed we stipulate to it. I
24 told you I had to look at it and think about it.

25 MR. K. JOHNSON: I thought I --

1 THE COURT: While he's doing that --

2 MR. K. JOHNSON: Okay.

3 MR. MUIJE: I've -- I already have, Your Honor. We
4 do not find that document disclosed in the 16.1A3 disclosure so
5 we would object.

6 MR. K. JOHNSON: If I may, Your Honor, Gary Hayes
7 disclosed all the underlying case documents in his very first
8 disclosure in this case. It has been disclosed.

9 THE COURT: And you have to --

10 MR. MUIJE: It's different from the 16 --

11 THE COURT: -- show it to me.

12 MR. K. JOHNSON: Okay.

13 THE COURT: So what is the date of the pretrial
14 disclosure in Case Number A-551073 you want me to look at
15 because I'm trying, and it's not in my record. It doesn't mean
16 a pretrial disclosure wasn't done.

17 MR. K. JOHNSON: If you look at the docket on -- and
18 the docket has actually been admitted into this case as an
19 exhibit as well.

20 THE COURT: I know, but I'm looking on the computer.

21 MR. K. JOHNSON: Oh. The first disclosure was
22 October 14th, 2011.

23 THE COURT: And the second?

24 MR. K. JOHNSON: And the second was April 25th,
25 2014.

1 THE COURT: April. Okay. That's why I can't find
2 it. Thank you.

3 MR. K. JOHNSON: No problem.

4 THE COURT: So if you could show me the disclosure
5 that Mr. Hayes made that incorporated all of the documents.

6 THE CLERK: Mr. Johnson, I don't have 90017.

7 MR. K. JOHNSON: It's one that I just e-mailed after
8 lunch and we're discussing right now.

9 THE CLERK: Oh, I'm sorry.

10 MR. K. JOHNSON: No, that's, okay.

11 MR. H. JOHNSON: I emailed it to you.

12 MR. K. JOHNSON: You did, but I have to I have to
13 reconnect to the Clark guest.

14 THE COURT: Good luck reconnecting.

15 (Pause in the proceedings)

16 MR. K. JOHNSON: Your Honor, would you like me to
17 bring it up on the Wepresent or how would you like me to?

18 THE COURT: If you could show it to Mr. Muije the
19 entry that you are trying to do so you can attempt to gain a
20 stipulation, and then I will make a determination as to whether
21 it's adequate notice of the material to be used in this
22 litigation pursuant to Rule 16.

23 MR. MUIJE: I would acknowledge that the covered
24 disclosure was served in this case, Your Honor, but it was a
25 one-line statement that says, all documents in the prior case

1 and that was --

2 THE COURT: Okay. So your position is that that's
3 inadequate?

4 MR. MUIJE: Under NRCPl6.1A13 or A3 I think
5 they're -- they are required to designate pretrial what
6 documents they intend to rely on, and it wasn't in that group.

7 THE COURT: Okay. So I am going to permit it as it
8 has been readily recognized by both parties that the prior
9 litigation was the subject at least in part of this discussion
10 and since I have issues related to intent, notice and statute
11 of limitation that are impacted by events in that prior
12 litigation. Okay.

13 Keep going.

14 So the objection's overruled.

15 Please don't fall over.

16 THE WITNESS: Oh, I'm sorry. I just pulled my chair
17 up but I hit something. I'm sorry.

18 THE COURT: I know I'm just -- we've tried to have it
19 fixed, and we can't get it fixed. So we're stuck with the
20 width the way it is.

21 THE WITNESS: Sorry.

22 MR. K. JOHNSON: Okay. So just so I'm clear at this
23 point then Exhibit 90079 --

24 THE COURT: I overruled the objection which means
25 it's admitted.

1 (Defense Exhibit Number(s) 90079 admitted.)

2 MR. K. JOHNSON: Okay. It's fine.

3 THE COURT: If there had been other objections, I
4 would have gone to the next set of objections.

5 MR. K. JOHNSON: I apologize. I have to reconnect to
6 the inter-court network.

7 UNIDENTIFIED SPEAKER: Are you having problems or?

8 MR. K. JOHNSON: No.

9 UNIDENTIFIED SPEAKER: Okay.

10 MR. K. JOHNSON: It just takes a sec.

11 UNIDENTIFIED SPEAKER: Okay.

12 MR. H. JOHNSON: It just takes a little bit to do it.

13 UNIDENTIFIED SPEAKER: Let me know if I need to do
14 something on my end.

15 THE COURT: Okay.

16 BY MR. K. JOHNSON:

17 Q Okay. So I'm showing -- I'm showing you a document
18 that was produced by your counsel a long time ago in the
19 underlying case --

20 A Yep.

21 Q -- titled Defendants' Counterclaim into Revenue Plus
22 and Russell Nype's 10th supplement to the initial disclosure
23 pursuant to NRCP26E1. I'm sure you don't remember this
24 document; do you have any reason to doubt this document --

25 A I do not.

1 Q Okay. And this William L. Culthart [phonetic], I'm
2 butchering this I'm sure and David A Cayre --

3 THE COURT: Coulthard.

4 THE WITNESS: Bill Coulthard.

5 MR. K. JOHNSON: Coulthard.

6 BY MR. K. JOHNSON:

7 Q The captioned parties were your attorneys at the
8 time; is that correct?

9 A Yes, they were.

10 Q Okay. Let me scroll down here to Exhibit 1 where we
11 have a resume from Mark D. Rich and Exhibit 2 where we have a
12 letter --

13 A This was the gentleman, yeah.

14 Q -- from the Exceleron Group; was Exceleron Group your
15 expert in the underlying case?

16 A I believe so. Can you give me the gentleman's name?

17 Q Sure. Kenneth Wildes [phonetic].

18 A I think it was Kenneth Wildes, yes.

19 Q Okay. And so attached to Mr. Wildes' letter he
20 attached a memorandum to your attorney from Mr. Rich; do you
21 see where I'm at now?

22 A I do.

23 Q Okay. And this details a number of things. I'm
24 going to scroll down here to where it says, Despite amounts
25 owing to Nype, Mitchell and -- to Nype, Mitchell and Liberman

1 took distributions, and it lists distributions; is that
2 correct?

3 A Yes.

4 Q Okay. And I'm going to -- I'm going to zoom up here.
5 And the date of this memorandum is July 15th, 2011; do you
6 see that?

7 A Yes, sir.

8 Q Correct. So it's fair to say that as of at least
9 July 15, 2011, you knew or should have known about the
10 distributions made out of Las Vegas Land Partners to their
11 principals?

12 A I'm just going to ask you, is that pertaining to the
13 one transaction of 305 or is that -- I just?

14 Q Well, we can check. I believe -- I believe this was
15 lifted from the tax returns.

16 A Right.

17 Q But either, regardless of where --

18 A Okay. I mean --

19 Q -- Mr. Rich got his --

20 A -- there were distributions, yes. Distributions were
21 made.

22 Q Okay.

23 THE WITNESS: Can -- I guess I can't ask a question.

24 THE COURT: Nope.

25 THE WITNESS: Okay.

1 MR. K. JOHNSON: Generally not a good idea.

2 THE WITNESS: Okay.

3 UNIDENTIFIED SPEAKER: It's frowned upon.

4 BY MR. K. JOHNSON:

5 Q So just a few more things here. As you sit here
6 today do you have any facts or evidence other than what was
7 included in Mark Rich's report that the defendants are alter
8 egos of each other?

9 A No.

10 Q Okay.

11 A I thought they were alter egos (inaudible).

12 Q And you testified earlier that David Mitchell hasn't
13 paid his attorneys. What facts or evidence do you have here as
14 you sit here today that David Mitchell has not paid his
15 attorneys?

16 A I don't think I said that. I think I said that
17 attorneys had resigned, and when they resigned they used
18 nonpayment as a reason for their resignation. As of today he
19 may have well paid them --

20 Q Okay.

21 A -- so I made that distinction. I don't -- is that
22 what you were asking?

23 Q That's a clarification.

24 Does anyone other than yourself stand to gain
25 financially from your filing this lawsuit?

1 A No.

2 Q Okay. You motioned to your counsel there?

3 A Well, Mr. Muije has worked very hard and earned
4 significant money by my filing of this lawsuit he gained from.

5 Q And what is the nature of your fee arrangement with
6 Mr. Muije?

7 A I pay him his hourly rate that he has told me.

8 Q Okay. And is that the same arrangement you have
9 with, again, I'm going to butcher this Reisman --

10 THE COURT: Reisman.

11 BY MR. K. JOHNSON:

12 Q -- Reisman Sorokac?

13 A Yes, I pay them by their hourly amount.

14 Q Okay.

15 MR. K. JOHNSON: I have nothing further, Your Honor.

16 THE COURT: Mr. Blut?

17 MR. BLUT: Briefly, Your Honor.

18 Mr. Johnson took all my questions.

19 CROSS-EXAMINATION

20 BY MR. BLUT:

21 Q Mr. Nype, earlier when we were looking at
22 Exhibit 60001, this is e-mails between you and David
23 Mitchell -- it will be when I -- from September of 2006; right?

24 A Yes, sir.

25 Q And this is David Mitchell not agreeing with what

1 your interpretation was as to what your compensation was going
2 to be; right?

3 A I didn't think that's what this was. Now let me read
4 it again. I don't think he even referenced the contract that
5 we were under.

6 Q Okay. And I can show you. I'm not trying to -- I'm
7 just making it big so I can see it. Do you want me to slide
8 down to your e-mail?

9 A I thought you asked me if this was an indication of
10 him not agreeing?

11 Q Yeah, and I'm just saying to you that I'm not trying
12 to -- there's no trickery here. I can show you your e-mail
13 that led to this response if that's helpful?

14 A If your question is regarding this e-mail -- I don't
15 know if you want, I mean, I'll read anything you want me to
16 read.

17 Q No, you were saying you want to look at it. Do you
18 take David Mitchell's e-mail to mean that he is in full
19 agreement with your understanding of what you're going to be
20 paid?

21 A I don't think this references the agreement that I
22 felt we were under.

23 Q Right. So --

24 A This is his thought of potentially a new structure.

25 Q Okay. And nowhere in this e-mail does he say I agree

1 with paying you under the term of the now canceled First Wall
2 Street agreement?

3 A It does not say that.

4 Q Okay. And in the underlying Judge Israel trial you
5 pursued a breach of oral contract --

6 A Correct.

7 Q Okay. And, Judge Israel denied that claim; right?

8 A He gave me quantum meruit, that's correct.

9 Q But he denied he found that you did not prevail --

10 A Right.

11 Q -- for the breach of oral contract; right?

12 A Yes, sir. Yes, sir.

13 MR. BLUT: That's all. Thank you, Your Honor.

14 THE COURT: Anybody else on the defense side?

15 Mr. Muije?

16 MR. MUIJE: Yes, Your Honor.

17 THE COURT: That was fast, Mr. Blut. You could have
18 used the three-minutes I had before lunch.

19 REDIRECT EXAMINATION

20 BY MR. MUIJE:

21 Q Let's pull up 50010 again if we could, please.

22 THE COURT: That's the settlement agreement with
23 First Wall Street?

24 MR. MUIJE: No, Your Honor, that's the amended
25 complaint.

1 THE COURT: Okay.

2 BY MR. MUIJE:

3 Q And let's scroll down one -- got to wait for me get
4 it up on my screen. And I would refer to page 26, and if we
5 could highlight the claim for relief of lines 9 and 10. Are
6 you on page 26? Did I misstate I think --

7 A You're on 25.

8 Q Or 27. Oh, he's looking at --

9 A Now 26.

10 THE COURT: What paragraph number are we going to?

11 MR. MUIJE: I'm looking at the heading for this claim
12 for relief.

13 THE COURT: Which would say fraudulent conveyance.

14 BY MR. MUIJE:

15 Q Okay. And is it your understanding, Mr. Nype, that
16 in consultation with your counsel and your advisors that you
17 decided to pursue fraudulent complaints conveyance claims
18 against the defendants?

19 A Yes.

20 Q And is that what this says?

21 A Yes.

22 Q Okay. And if we go to the next page -- actually
23 let's go down to page 29 of the overall document, 28 of the
24 complaint. After setting forth various allegations and
25 affirmance and predicates for fraudulent conveyance basis would

1 you read into the record paragraph 135.

2 A It has been necessary for plaintiff to retain the
3 services of an attorney to prosecute this action, and plaintiff
4 is therefore entitled to reasonable attorneys' fees.

5 Q And has it been your understanding from day one and
6 your desire to pursue the defendants to recover the attorneys'
7 fees that they have cost you?

8 A Absolutely.

9 Q Let's -- on the same page right underneath what we
10 just highlighted there, there was a third claim mentioned. Can
11 you read what that claim seeks.

12 A So I'm reading 136?

13 Q No, the heading.

14 A The third claim for relief civil conspiracy.

15 Q Okay. And we come down several paragraphs onto the
16 next page, paragraph 143 -- actually make it 142 and 143.

17 A As alleged herein above upon information and belief
18 defendant's conduct was wilful, knowing, intentional and
19 malicious as a matter of law entitling plaintiff to recover
20 exemplary damages in the amount in excess of \$10,000.

21 Q Is it your understanding as a layman that you would
22 normally not be entitled to recover punitive damages unless
23 there was intentional malicious misconduct directed against
24 you?

25 MR. BOSCHEE: Objection. Calls for a legal

1 conclusion even as a layman.

2 THE COURT: Overruled.

3 You can answer.

4 THE WITNESS: I don't know that honestly.

5 MR. MUIJE: Okay.

6 THE WITNESS: I'm sorry.

7 BY MR. MUIJE:

8 Q Have you after consulting with counsel and advisors,
9 and I'm not asking what was said or the details, has it been
10 your express desire to seek punitive damages from the
11 defendants based on what they put you through and --

12 A Very much. Very much, yes.

13 Q Okay. And again in Paragraph 143 immediately below
14 that what does that say?

15 A That it has been necessary for plaintiff to retain
16 the services of an attorney to prosecute this action, and
17 plaintiff is entitled therefore entitled to reasonable
18 attorneys' fees.

19 Q Okay. So can a reasonable person having read this
20 document in your lay experience, your personal experience
21 conclude and say I didn't know he wanted attorneys' fees?

22 A No, I want attorneys' fees.

23 Q Okay. And that's on the face of the document;
24 correct?

25 A Yes.

1 Q Now, Mr. Johnson asked you further about the original
2 Aquarius Plaza transaction, the sale of the property from
3 LiveWork to 305 and in turn to taking back a note. On its face
4 looking at that escrow document and assuming there's appraisals
5 to back it up, that would appear to be a reasonable, fair, and
6 nonfraudulent transaction; correct?

7 A The 305 piece?

8 Q Correct.

9 A Yes.

10 Q Was there anywhere in the public records office or on
11 the recorder's office where you would have access that you
12 would see that simultaneously on the same day 305 in turn
13 leased it back to a newly created entity owned by Mr. Liberman
14 and Mr. Mitchell?

15 A No.

16 Q And when you ultimately discovered that not only had
17 that note arisen as part of the transaction, but there had
18 never been a payment made on that note --

19 A Right.

20 Q -- did that give you cause to be suspicious?

21 A Certainly.

22 Q And how about when you discovered that it was leased
23 back to a related party, in fact, related back to the seller
24 and that no lease payment had ever been made, would that give
25 raise to suspicion?

1 A Certainly.

2 Q Am I correct in stating that the first you ever heard
3 about that was approximately the time of Mr. Liberman's
4 October 2018 deposition when the auditor's financials of
5 Second Avenue Associates were first produced?

6 A That's when they were first produced.

7 Q And you had no inkling about a leaseback or default
8 on that note?

9 A No.

10 Q And even if you had gone down every week and examined
11 the records and looked at the records again the next week, you
12 would not have seen a foreclosure on that \$5 million LiveWork
13 note because LiveWork never foreclosed on that secured
14 promissory note, did they?

15 MR. BOSCHEE: Objection, Your Honor, leading.

16 THE COURT: Overruled.

17 THE WITNESS: I believe that they did not ever give
18 up their rights to that note.

19 BY MR. MUIJE:

20 Q So then absent our vigorous discovery efforts, can
21 you think of any other way you might have learned that the face
22 of the transaction was not an accurate depiction of what was
23 really going on?

24 A I don't think there's anything that I would have had
25 any knowledge of prior to just prior to Mr. Liberman's

1 deposition when you received that discovery.

2 Q Okay. You've never denied at any point that
3 belatedly in litigation, which started in 2007 tax returns were
4 ultimately produced by LVLP; correct?

5 A I gather that they were. I didn't -- I didn't spend
6 a great deal of time; it wasn't the focus of our first
7 litigation.

8 Q And I understand that it wasn't the focus, but in
9 asking you about it over the periods of time and in various
10 depositions it's come out that those were produced; you've
11 never denied that; correct?

12 A No, I don't.

13 Q But as I recall, your indication and testimony and
14 deposition and otherwise was a -- it was belatedly produced
15 after vigorous discovery efforts and I believe a motion to
16 compel; am I correct?

17 A All of that is true. The discovery was even more of
18 a disaster in the first case than the one we are currently in
19 with delays and things.

20 Q And when you had that, I believe that tax return --
21 let's put it up and let's look at it again 10002. And you said
22 that wasn't the focus of what you were doing in the first case;
23 what was the focus of the first case and why did you hire
24 Mr. Rich to assist in that?

25 A Well, the focus was twofold in the first case. First

1 it was to show that the actions that I had taken on behalf of
2 Las Vegas Land Partners were not the functions of a broker.
3 And the second was to prove that the contractual terms of
4 4 percent and 1 percent were indeed reflective of the market
5 for the services I provided and were judged to be fair and just
6 compensation.

7 Q Okay. So if I understand correctly, their lawsuit
8 against you was to have some kind of a judicial declaration
9 that since you didn't have a brokerage license they didn't have
10 to pay you; is that --

11 A Correct.

12 Q And your countersuit was, I'm definitely entitled to
13 be paid and this is the value of my services?

14 A Correct.

15 Q Okay. And Mr. Rich's report although it does
16 acknowledge and suggest that he has seen those tax returns,
17 doesn't draw major conclusions. The bulk of his report is an
18 analysis of the fee that you would have earned; correct?

19 A That was the purpose of Mr. Rich's involvement in the
20 first case.

21 Q Now, I believe Mr. Johnson had referred you to a
22 schedule in this document where they were talking about capital
23 gains or net gains, and I'm trying to find that page.

24 MR. MUIJE: Can you help me, Counsel?

25 MR. K. JOHNSON: We looked at page 15, and that

1 reflected the sale. And then we also looked at page, I believe
2 it's 5 and 7 after the K-1s.

3 MR. MUIJE: Okay. I think those were K-1s.

4 MR. K. JOHNSON: Those are -- I think how many pages
5 (inaudible).

6 MR. MUIJE: Okay.

7 BY MR. MUIJE:

8 Q Now let's pull up Number 15 and highlight the
9 analysis of those two major transactions that I'm assuming --
10 would you agree that Property A would appear to be the Forest
11 City transaction?

12 A Yes.

13 Q And Property B in turn is the Aquarius Plaza
14 transaction; correct?

15 A I believe that's correct.

16 Q Well, and the next line talks about the cost or the
17 basis; I'm not a tax expert, but I assume that's how much they
18 had into it. Is that your understanding as a layman?

19 A That would be a cross basis, yeah.

20 Q Okay. And there's some depreciation?

21 A Right.

22 Q Which would appear to reduce that basis somewhat.
23 And then there's a line, line 24 is very interesting if we
24 could highlight that. Showing calendar year 2007, as a
25 layperson reading this, it looks to me like LVLP had to its

1 good fortune 37 and a half million dollars in gains on the
2 property sells; does that appear correct?

3 A That's correct.

4 Q So if a company gains \$34 million and distributes
5 14 million or even 15 million to its owners, is that out of
6 line?

7 A No. Mr. Rich made that point continually.

8 Q Okay. And was there anything that you or Mr. Rich,
9 knew or that Mr. Rich communicated to you that suggested that
10 these distributions in 2007 and rendered the company insolvent
11 based on what you knew at that time?

12 A Absolutely not.

13 Q And Mr. Rich's report I think suggested that LiveWork
14 and -- was involved as a affiliated or subsidiary entity. Did
15 it talk about Wink?

16 A In this document?

17 Q In this document or the report we just looked at the
18 9789 (sic).

19 A I don't believe so.

20 Q Did it talk about Meyer Properties?

21 A I don't believe so.

22 Q Did you have any reason to believe that the dozen or
23 so affiliated companies of which we've named eight or nine were
24 filing under one tax return, disregarded entities and basically
25 were being operated without separate bank accounts or anything

1 like that?

2 A I had no idea of bank accounts or any of that.

3 Q Okay. So the concept of alter ego and the fact that
4 this might have all been just one big pot wasn't an issue in
5 the first case, was it?

6 A No, not at all.

7 Q And that was no evidence to you to suggest it was
8 because you didn't have a list of disregarded entities?

9 A Correct.

10 Q And you didn't have evidence that would suggest that
11 despite 37 and a half million dollars in real estate investment
12 gains that the company had knowingly rendered itself insolvent;
13 correct?

14 A No, I had no idea.

15 Q Okay. Moving on to the basic report then, and I
16 believe that's 70079, do you have that right in front of you?

17 A (No audible response.)

18 Q Oh, 90079. My bad. And then the newer one --

19 MR. MUIJE: Could you pull that up, Counsel, because
20 I don't think we have access to it yet.

21 MR. K. JOHNSON: Yeah. Not a problem.

22 BY MR. MUIJE:

23 Q Now, the first time you've -- is this the first time
24 today that you've seen that report since approximately it
25 appears to have been served in August of 2011? Was it used at

1 trial to your knowledge?

2 A I just have no idea.

3 Q Okay. And, Judge Israel, in fact, did not allow
4 Mr. Rich to testify in the underlying case; is that correct?

5 A That's correct.

6 Q And, in fact, the Supreme Court appeal overturned
7 Judge Israel's awarding you additional expert costs for
8 Mr. Rich's services; is that correct?

9 A That is correct.

10 Q So even though he did a report and even though it was
11 helpful as a basis for establishing fair compensation, it
12 wasn't, per se, part of the record to your knowledge; is that
13 correct?

14 A No, he never appeared in court.

15 Q Okay. And, in fact, even if he had, his testimony
16 would have been in line with this report that legitimately
17 looking at the market factors and the various components of the
18 transaction, your compensation value was determined at and
19 there's a multimillion dollar number in the report; I saw the
20 first time I passed through, and I believe your success beyond
21 the initial capital raise, and this is on page 10, he
22 calculates as \$3,294,302.99; do you see that?

23 MR. K. JOHNSON: Sorry. Just a sec.

24 THE WITNESS: Not yet, but I think I will.

25 MR. MUIJE: We've got to get to page 10 of the

1 document.

2 MR. K. JOHNSON: Sorry. It's not numbered.

3 MR. MUIJE: I'm sorry.

4 MR. BLUT: Your Honor, it may be belated asked and
5 answered. This is the exact figure that Mr. Nype this morning
6 testified to. I don't know why we're -- it seems like it's
7 asked and answered.

8 THE COURT: Overruled.

9 MR. MUIJE: Okay. Your -- are we on page 10 of this?

10 MR. K. JOHNSON: Yes, this is page 10, I think.

11 THE WITNESS: Right. You're talking about
12 4 percent --

13 BY MR. MUIJE:

14 Q Oh, there you go, right in the middle of the
15 paragraph.

16 A Right. I see it.

17 Q Yeah. Do you see this middle paragraph with the word
18 that says after a review of the relevant documents?

19 A Yes.

20 Q And his conclusion was pretty close to your rough
21 calculation based on your understanding of the original terms
22 that existed between LVLP on the one hand and you and First
23 Wall Street on the other; correct?

24 A Yes. I didn't have a calculator. It's 4 percent of
25 the 82 million figure.

1 Q And 1 percent for the debt capital raised, and you
2 did testify --

3 A Correct.

4 Q -- that subsequently there were additional
5 transactions which would have made that fee even higher;
6 correct?

7 A Yes, that fee, Judge Israel agreed for the full value
8 of the -- it was a \$5.2 million number.

9 Q Okay.

10 MR. K. JOHNSON: Do you want me to take this off now,
11 Counsel?

12 MR. MUIJE: And -- yeah, you can take it down. I'm
13 sorry.

14 And I have no further redirect.

15 THE COURT: Any more questions for Mr. Nype?

16 MR. BOSCHEE: I do.

17 THE COURT: Of course.

18 RECROSS-EXAMINATION

19 BY MR. BOSCHEE:

20 Q Mr. Nype, did you -- did I write this note correctly,
21 I think you just said that you don't believe LiveWork ever gave
22 up its rights in the promissory note; right?

23 A I say that having sat in the courtroom and that being
24 discussed over the last number of days.

25 Q Fair enough. And because you -- and you have been

1 here for the entire trial; right?

2 A Yes, I have.

3 Q Okay. You also recall the testimony that absent the
4 lease agreement there would have never been a Heartland loan,
5 and there would have never been a carryback note because there
6 would have been a sale; correct?

7 A I heard that point of view, and I heard other points
8 of view.

9 Q Okay. Is your belief that LiveWork never gave up its
10 rates in the note is based upon the fact that LiveWork never
11 signed the 2014 global settlement agreement; correct?

12 A I don't want to limit myself to that, but I believe
13 that that's what Mr. Rich suggested.

14 Q Okay. Remember earlier we looked at the First Wall
15 Street letter that you got that set forth your agreement with
16 First Wall Street?

17 A I do.

18 Q You didn't sign that, did you?

19 A No, I didn't sign it.

20 Q Okay. And Mr. Mitchell and Mr. Liberman didn't sign
21 that letter either, did they?

22 A Mr. Mitchell signed that letter.

23 Q Signed the -- your letter from --

24 A First Wall Street -- the First Wall Street.

25 Q -- from First Wall Street?

1 A Well, it's not my letter --

2 Q Okay.

3 A -- that's a letter from First Wall Street.

4 Q But you believe that you were bound -- that that
5 document memorialized your agreement with First Wall Street and
6 memorialized the terms of the deal even though you didn't sign
7 it; right?

8 A I believe that that letter represents what First Wall
9 Street believed to be fair and just compensation. I'm not
10 sure --

11 Q Right.

12 A -- I'm not trying to play a game with you, I promise.

13 Q No, and I'm not playing a game with you; I'm just
14 trying to get a little clarity here. You -- that was your deal
15 with First Wall Street for compensation on the sales of the
16 property even though you didn't sign the letter; right?

17 A That letter was not -- that letter that was signed by
18 Mr. Mitchell --

19 Q Yes.

20 A -- was not my deal, that was First Wall Street's
21 deal.

22 Q Okay. But it detailed what you're going to get paid,
23 didn't it?

24 A I believe it did --

25 Q Right.

1 A -- but not at the time of that document being signed.

2 Q Okay. But it memorialized that you were going to get
3 paid a commission, right, even though you didn't sign the
4 letter?

5 A I'm not trying to play --

6 Q I'm not either.

7 A -- that letter memorialized that First Wall Street
8 was going to be paid a commission --

9 Q Right.

10 A -- and that I through a different agreement was going
11 to be paid 80 percent of if it was for Forest City or for Four
12 Equities --

13 Q Okay.

14 A -- 80 percent of that compensation.

15 Q And the different agreement was based upon the --

16 A That agreement.

17 Q Right.

18 A That agreement.

19 Q Okay.

20 A Absolutely.

21 Q And then you never signed anything to that effect,
22 but that was your testimony as your agreement; correct?

23 A Glenn Myles and I did sign a document that said that.

24 Q But you didn't sign anything with Mr. Mitchell or
25 Mr. Liberman?

1 A No.

2 Q Okay.

3 MR. BOSCHEE: Nothing further.

4 MR. BLUT: Nothing further.

5 MR. K. JOHNSON: Nothing further.

6 MR. MUIJE: Nothing further for Mr. Nype.

7 THE COURT: Thank you, sir. You can step down.

8 Next witness.

9 MR. MUIJE: Your Honor, I would make an offer of
10 proof that just to suggest the estimated attorneys' fees or I'd
11 be willing to supplement that to the extent the Court by extra,
12 I mean, we compile the attorneys' fees up to the closest
13 reasonable date and mine was through December 31st and
14 Mr. Rich's was through December 31st.

15 THE COURT: Mr. Muije, we were in trial on December
16 31st. I am not going to make you put in evidence the cost of
17 the actual trial; that would seem to be onerous.

18 MR. MUIJE: Very good, Your Honor, I just didn't want
19 leave a loose end and then not have an opportunity to raise it.

20 THE COURT: I understand. At some point in time they
21 change from being a special damage to a posttrial issue.

22 MR. MUIJE: Understood, Your Honor. Very good.

23 THE COURT: Anybody else? Okay.

24 So do you have any additional evidence, Mr. Muije?

25 MR. MUIJE: I do not, Your Honor, I --

1 THE COURT: Before you tell me the next couple of
2 words, will you please come over to Dulce and make sure that
3 all of the exhibits that you believe are in evidence are in
4 fact in evidence and bring a representative from the defendants
5 to keep track on their side.

6 I'm going to take -- I'm going to sit here while you
7 do that. Come on up because I've got a conference call in nine
8 minutes.

9 MR. BOSCHEE: Can I ask a question that I already
10 probably know the answer to? Will Your Honor consider
11 directing a verdict motion if I bring it?

12 THE COURT: Well, that you have to wait until he uses
13 those two words.

14 MR. BOSCHEE: I thought he did already.

15 THE COURT: No.

16 MR. BOSCHEE: Okay.

17 THE COURT: Come on up. And the answer is I always
18 consider motions that are made.

19 MR. BOSCHEE: Well, I understand but.

20 MR. MUIJE: Your Honor, can we also use the break to
21 decide oral argument versus briefing?

22 THE COURT: Uh-huh.

23 (Colloquy off the record)

24 MR. MUIJE: Me and -- Mr. Johnson and I have
25 stipulated to get -33 in.

1 THE COURT: Is there any objection to -33?

2 MR. BOSCHEE: No.

3 THE COURT: It'll be admitted.

4 (Pause in the proceedings.)

5 THE CLERK: Your Honor, they're stipulating to 30033.

6 THE COURT: Any objection?

7 (No audible response.)

8 THE COURT: It'll be admitted.

9 (Plaintiffs' Exhibit Number(s) 30033 admitted.)

10 (Pause in the proceedings.)

11 THE CLERK: 3063 (sic).

12 THE COURT: It'll be admitted.

13 (Plaintiffs' Exhibit Number(s) 30063 admitted.)

14 (Pause in the proceedings.)

15 THE COURT: Which one?

16 THE CLERK: No, I need to crosscheck with you the --

17 THE COURT: I don't have a record. It was so screwed
18 up I stopped keeping track after the first day.

19 MR. MUIJE: I believe what happened and the
20 inconsistency because I think Dulce wasn't here when sides
21 started to use the black and white blurry copy of Mr. Rich's
22 report, and then I said well, I got a cleaner copy which was
23 7043 (sic) we stipulated to that being admitted.

24 THE COURT: Okay. I believe that to be the case
25 because I do remember that.

JD Reporting, Inc.

1 (Pause in the proceedings.)

2 THE COURT: Any objection to 5059 (sic)?

3 THE CLERK: 7059 (sic).

4 THE COURT: 7059.

5 Okay, Dulce, we've got to make the phone call or
6 they'll hang up on us.

7 MR. MUIJE: And how about the August 31 --

8 THE COURT: Mr. Muije, we're going to take a short
9 break and we're going to do my phone call.

10 MR. MUIJE: Very good, Judge.

11 (Proceedings recessed 2:38 p.m. to 2:45 p.m.)

12 (Pause in the proceedings.)

13 MR. MUIJE: I think we have all counsel here, Your
14 Honor. I'm just --

15 THE COURT: I've got to wait for Dulce.

16 MR. MUIJE: Not on the exhibits, but we've agreed
17 that it makes most sense given the timing that we start fresh
18 tomorrow morning at 9:30 and do our oral argument --

19 THE COURT: Okay.

20 MR. MUIJE: -- and no briefs.

21 THE COURT: Okay. And how long do you estimate you
22 need because at 2:00 o'clock I have to do mental health court.
23 So I'm trying to figure out if I'm going to go straight from
24 9:30 to 2:00 with a very short nutrition break and then let you
25 guys go at 2:00 or?

1 MR. MUIJE: I'm estimating 90 minutes for my closing,
2 Your Honor.

3 THE COURT: That's 9:30 to 11:00, how long have you
4 got, Stan?

5 MR. H. JOHNSON: Forty-five minutes to an hour.

6 THE COURT: So that's 12:00.

7 MR. BOSCHEE: I'll let you know in about 15 minutes,
8 but not short.

9 MR. BLUT: Probably -- I've got an hour of notes, but
10 probably a half hour --

11 THE COURT: You guys will fit. It will work.

12 MR. BLUT: -- half-hour by the time --

13 THE COURT: It will work. I just did the math, it's
14 okay.

15 MR. BLUT: Yep.

16 THE COURT: So we'll start at 9:30 and we'll plan to
17 take a short break for lunch if that's what we need to finish.

18 MR. BLUT: Okay.

19 THE COURT: Because the mental health court inmates
20 will show up at about 1:45 and you want to be out of here when
21 they show up.

22 UNIDENTIFIED SPEAKER: I've been there.

23 THE CLERK: Dan says (inaudible).

24 THE COURT: No. No. No. No, don't do that to me,
25 Dulce.

1 THE CLERK: I will not.

2 (Pause in the proceedings.)

3 THE CLERK: Your Honor, I'm sorry. They're
4 stipulating to 7059 (sic) and -60.

5 THE COURT: It'll be admitted.

6 (Plaintiffs' Exhibit Number(s) 70059-70060 admitted.)

7 (Pause in the proceedings.)

8 THE CLERK: Your Honor, 8029 (sic) stipulating to
9 admission.

10 THE COURT: So admitted.

11 (Defendant Exhibit No. 80029 admitted.)

12 THE CLERK: Thank you.

13 (Pause in the proceedings.)

14 THE CLERK: So you want 8050 (sic) in?

15 MR. BOSCHEE: Yeah.

16 THE CLERK: Your Honor, may we?

17 THE COURT: So admitted.

18 (Defendant Exhibit No. 80050 admitted.)

19 THE CLERK: Thank you.

20 (Pause in the proceedings.)

21 THE COURT: Counsel, have you finished your review of
22 the exhibits to determine if you believe all of the exhibits
23 you think are in evidence are in fact in evidence?

24 MR. MUIJE: Yes, we have, Your Honor, and I think all
25 counsel are in harmony that everything we think has been

1 admitted is admitted, and everything we think shouldn't be
2 admitted has not been admitted.

3 THE COURT: Are there any additional witnesses or
4 documents you have to present at this time, Mr. Muije?

5 MR. MUIJE: Not at this time, Your Honor. Plaintiff
6 rests.

7 THE COURT: The plaintiff has rested.

8 MR. BOSCHEE: Judge, would you entertain a motion for
9 a directed verdict on behalf of 305?

10 THE COURT: This would be the time that those motions
11 would be made.

12 MR. BOSCHEE: All right. Briefly. Your Honor, you
13 might recall about six or seven weeks ago I stood at this
14 podium on my motion for summary judgment, and the primary
15 thrust of losing that motion I think was Mr. Rich. So I've
16 turned back to Mr. Rich today. I looked at the evidence that
17 was presented by the plaintiff, and I look at what Mr. Rich
18 actually said, the evidence presented did not show, did not
19 prove certainly to the preponderance of the evidence that
20 needed to be shown, but did not prove that Barnet Liberman
21 exercised any control over the entities to claim alter ego
22 liability.

23 But more importantly than all that, Mr. Nype today
24 confirmed what his expert said that the 305 initial transaction
25 was not a fraudulent transfer in his mind and also Mr. Rich

1 confirmed, and I asked him a couple of times and he didn't want
2 to go there, but he had to, that Las Vegas Land Partners as a
3 result of both Charleston Casino Partners not paying rent and
4 the 2014 settlement agreement was rendered more solvent not
5 less solvent by the actions that were undertaken.

6 So Las Vegas Land Partners actually had more money
7 that would have been available to pay Mr. Nype's judgment in
8 2015 than it would have otherwise even if all the plaintiffs
9 other allegations are true. The alter ego, the conveyances,
10 everything Las Vegas Land Partners actually had more money
11 confirmed by Mr. Rich than it should have had had Charleston
12 Casino Partners paid the rent, and then the note payments had
13 been made. The loan forgiveness coupled with the note
14 forgiveness actually left Las Vegas Land Partners with more
15 money. Coupled with the fact that Las Vegas Land Partners
16 never actually paid rent and had money collected from the
17 tenants, that was money Las Vegas Land Partners had and it
18 would have had and should have had to pay Mr. Nype's judgment.

19 Now, what Las Vegas Land Partners did with that
20 money, what Mr. Liberman and Mr. Mitchell did in distributing
21 and everything else is not 305's problem. For purposes of
22 proving the claims that are at issue Mr. Muije had to establish
23 certain elements, and then the last one of all is damages, and
24 Las Vegas Land Partners was more solvent than less solvent, and
25 therefore, I believe at the close of evidence he has not proven

1 this case against 305, and the verdict should be directed in my
2 favor. Thank you.

3 THE COURT: Thank you.

4 Mr. Muije.

5 MR. MUIJE: Couple of points first of all, and I'd
6 like to show one item here that is in evidence. We didn't
7 argue it or go extensively, but I'd like to pull up if we could
8 briefly 8004 (sic).

9 THE COURT: Thank you.

10 MR. MUIJE: And 8004 (sic) is about a 50-page
11 exhibit, Your Honor, and what it constitute as Henry Marquise
12 billings over a span of several years including 2014 period as
13 well as subsequently. And one of the statements that
14 Mr. Boschee makes is well, gee, nobody showed that Barnet
15 Liberman had influence, control, somehow was the alter ego as
16 to 305.

17 Well, as we scroll down, and I've already got them in
18 my PowerPoint, there's about a dozen checks covering both
19 Casino Coolidge as well as 305 where Mr. Liberman is paying
20 personal checks for the attorneys' fees of those entities to
21 Mr. Marquis. So at a minimum I think we have a misstatement by
22 Mr. Boschee that Barnet Liberman was somehow an innocent third
23 party. And there are checks on 305 matters there that are
24 written personally by Mr. Liberman.

25 Now, the other major item, he makes a couple major

1 arguments, he says LVLP was more solvent at that time. The
2 evidence establishes that by 2014 we also have LVLP paying its
3 attorneys' fees with personal checks and credit cards from
4 Mr. Mitchell. If they were so solvent, where was the cash? It
5 wasn't. In fact, their tax returns demonstrate that they were
6 very cash poor at the end of 2014 when this settlement
7 occurred.

8 And why were they cash poor among other things?
9 Because even though they were playing this shell game and
10 defrauding their own investors, they walked away from
11 potentially 12 and a half-million dollars in assets personally
12 guaranteed by Mr. Mitchell and Mr. Liberman in favor not only
13 of 305, which could have collected that money and then used it
14 for the benefit of their investors, but also in order to the
15 benefit of LiveWork, Heartland Bank and ultimately LVLP.

16 They made a sweetheart deal to reduce the overall
17 indebtedness, but they take no consideration. It was a
18 transfer. It was a transfer that consummated when they wrote
19 off both obligations, both the note as well as the lease of the
20 back past due rents, and those were guaranteed by Mitchell and
21 Liberman.

22 Had they exercised ordinary common business judgment,
23 they could have recovered millions more, much of which would
24 have been available not only to satisfy Mr. Nype's claims, but
25 also to provide a much bigger rate of return for their own

1 limited partners who for better or worse are not getting the
2 data they're entitled to from their fiduciaries.

3 At this point we're not contending the original
4 transfer, the \$25 million sale in '07 was a fraudulent
5 conveyance. A fraudulent conveyance is a transfer that -- but
6 the transfer is to find under NRS 112 can include the
7 cancellation of debt which occurred in 2014. That's where the
8 major problem there is.

9 If one looks at Magliarditi the recent Nevada Supreme
10 Court decision which I attached to my opposition to
11 Mr. Boschee's motion for summary judgment, the Nevada Supreme
12 Court told us two and a half months ago a transfer from an
13 alter ego, a subsidiary to a third party can be a fraudulent
14 conveyance, and it is actionable by a harmed creditor.

15 So we go back to day one. These guys knew Mr. Nype
16 was looking for multiple millions for his services as early as
17 fall of 2006, and yet they structured everything that when the
18 smoke cleared LVLP, the entity, their purported entity was
19 insolvent and couldn't pay, couldn't pay the capital costs with
20 Forest City, couldn't pay the obligations that were necessary
21 to close things, and again this is only 305's motion.

22 But the fact of the matter is Mr. Nype's damages are
23 the assets conveyed away, including the forgiven note, and it
24 accrued interest thereon, which I think from their own
25 financial statements was 10.6 or \$10.9 million that they could

1 or should have recovered from their own affiliated entity 305
2 owed that to LiveWork and never paid it.

3 Your Honor, the facts don't support dismissal. In
4 fact, I would say preponderance of the evidence shows that 305
5 through Mr. Chamberlin kowtowing to his long-term friend Barnet
6 Liberman are in fact guilty. I wish I could direct a verdict
7 in favor of the plaintiff, but I think there is disputed
8 evidence, and I think the Court has to weigh it. So I would
9 move and urge denial of 305's motion for a directed verdict.

10 THE COURT: Mr. Boschee.

11 MR. BOSCHEE: Until the very end I don't disagree
12 with anything Mr. Muije said candidly. I don't think that -- I
13 don't know that Las Vegas -- I'm going to come to the podium,
14 sorry. I don't know that what Las Vegas Land Partners did or
15 did not do was not -- does not make them liable or actionable
16 in this case. I don't know that what Mr. Mitchell and
17 Mr. Liberman did in terms of their distributions makes them
18 liable to Mr. Nype on the claims.

19 What I do know is the actions of 305, just the
20 actions of 305 per Mr. Rich, who said it twice because I asked
21 him twice, left Las Vegas Land Partners more solvent than it
22 should have been. There was 11 and a half-million dollars
23 worth of rent owed to 305. There was a little over
24 \$6.9 million worth of note.

25 Las Vegas Land Partners came off \$5 million better in

1 the losing the note as -- or losing the note and losing their
2 lease than it should have been. And it made again per
3 Mr. Rich's testimony millions of dollars at least \$300,000 a
4 year for seven years collecting rent and not paying it to 305.

5 So there are -- at the end of the day fraudulent
6 conveyance whether Harry Marquis was getting paid by one of the
7 general partners or not, there's no damage that 305 caused that
8 Mr. Nype can prove, and, therefore, even if there is alter ego,
9 even if there -- there's fraudulent conveyances on other
10 aspects of this, the damages those support it and therefore 305
11 has to be dismissed. Thank you.

12 THE COURT: Thank you. The motion is granted because
13 305 Las Vegas, LLC's, failure to collect the rent that would
14 have been due from Las Vegas Land Partners does not cause any
15 damage to the plaintiff.

16 Anything else?

17 MR. BOSCHEE: No, Your Honor.

18 THE COURT: Mr. Edwards?

19 MR. EDWARDS: Yes, Your Honor. First of all, we have
20 a motion for a directed verdict or a motion for judgment on the
21 pleadings on the evidence for Mitchell Holdings. Mr. David
22 Mitchell testified that Mitchell Holdings had nothing to do
23 with any of the transactions that applied in this case. It's
24 not even on the same bank account. It was set up several years
25 before he even came to Las Vegas.

1 There has been no evidence produced by the plaintiffs
2 which would suggest that Mitchell Holdings was somehow part of
3 this grand asset protection scheme. Because there has been a
4 lack of evidence, we would ask that the Court grant a directed
5 verdict against Mitchell Holdings.

6 THE COURT: Mr. Muije.

7 MR. MUIJE: Your Honor, you find signature blocks and
8 signatures all over every document in this case just about
9 citing Mitchell Holding. We have testimony both from
10 Mr. Mitchell as well as from Mr. Rich that the employees of
11 Mitchell Holding who were providing gratuitous service for the
12 affiliated entities weren't being properly allocated, properly
13 charged, et cetera. And most important, if you look at the
14 fraudulent backdated engagement letters, two employees of
15 Mitchell Holdings got, I believe and I want to say Sarah,
16 Kirstin -- Samantha Gergan are forwarding and complicit in the
17 creation of documents intended to defraud the Court and lead to
18 spoliation of the evidence and concealment of the evidence,
19 evidence which we have never managed to obtain.

20 And, in fact, I'd like to make a counter motion under
21 Bass Davis that the Court find that the intentional misconduct
22 of the various defendants including LVLP, David Mitchell, and
23 Mitchell Holdings was complicit --

24 THE COURT: I can't do anything against LVLP,
25 remember?

1 MR. MUIJE: You're correct, Your Honor.

2 THE COURT: Okay.

3 MR. MUIJE: They were -- they were co-conspirator,
4 but they're stayed.

5 But nonetheless, how much worse can you get than
6 trying to commit a fraud on the Court. And we have two key
7 employees, in fact, the only two employees of Mitchell Holdings
8 other than David Mitchell participating in that conspiracy to
9 produce fraudulent documents and deceive the plaintiff and
10 deceive the Court.

11 We would urge that motion and for a directed verdict
12 Mitchell Holdings be denied.

13 And again, we would raise the countermotion at this
14 point that the Court recognize the intentional and wilful
15 spoliation of the evidence and draw a negative inference that
16 all of the evidence which should exist which has not been
17 produced would have been adverse to Mr. Mitchell, Mr. Liberman,
18 LV -- well, not LVLP, LVLP Holdings and the various affiliated
19 entities that benefited and participated by having their
20 finances concealed.

21 So we would urge that countermotion as well. And
22 certainly we would urge denial of Mitchell Holdings because
23 they're up into the misconduct and it's co-mingling and
24 administering these affairs totally and completely. And
25 Mr. Rich replied to that. He said, yeah, they're not a

1 property holding entity, but they're so interrelated and
2 intertwined with everything that they're definitely alter egos.
3 It's in his report, Judge.

4 THE COURT: Thank you.

5 Mr. Edwards?

6 MR. EDWARDS: Yes, Your Honor. I think -- I believe
7 that the signature blocks were Las Vegas Holdings not Mitchell
8 Holdings. Furthermore, Mr. Mitchell testified that whenever
9 his employees did work for Las Vegas Land Partners, the
10 payments came from Las Vegas Land Partners. There's been no
11 evidence to suggest otherwise. They knew that Mitchell
12 Holdings was a known defendant. They put on [indiscernible],
13 remember no evidence linking Mitchell Holdings in any way to
14 this -- the actions that happened in this case.

15 I don't believe that the elements of the Bass Davis
16 motion have been met. The --

17 THE COURT: We'll argue that and I'll weigh it at the
18 time of closing argument.

19 MR. EDWARDS: Okay.

20 THE COURT: Anything else on Mitchell Holdings?

21 MR. EDWARDS: No, Your Honor.

22 THE COURT: Because of the commonality of interest
23 and control the motion's denied.

24 MR. EDWARDS: Okay.

25 THE COURT: Next.

1 MR. EDWARDS: I have a motion for a directed verdict
2 on the claims, the attorneys' fees. According to the Pardee
3 Homes versus Wolfram 444 P 3d, 4/23/2019 case basically
4 attorneys' fees must be specifically pled if you're going to
5 allege and try to claim them as special damages. The Court, I
6 believe counsel's against awarding attorneys' fees when there's
7 just the uniform -- asks for attorneys' fees in the -- as a
8 summary as, you know, the parties needed to hire an attorney to
9 prosecute this action. I have the specific language, Your
10 Honor.

11 THE COURT: It's okay. I don't need it.

12 MR. EDWARDS: Okay.

13 THE COURT: I know it unfortunately.

14 MR. EDWARDS: All right. Your Honor, we don't
15 believe that the amended complaint has special pled the
16 attorneys' fees as special damages and therefore we ask
17 those -- that claim be dismissed.

18 MR. BLUT: We join that, Your Honor.

19 THE COURT: And Mr. Boschee doesn't talk anymore.
20 Mr. Muije.

21 MR. MUIJE: Response, Your Honor.

22 Again, during the course of the case what we have
23 established, and I point to Court at the documents, and again,
24 I actually was counsel for short time in that Wolfram matter.
25 I understand it's been heavily contended. I have not read that

1 new decision yet which would be interesting. But even if the
2 Court were to find under that holding that as special damages
3 the fees are not awardable, I would urge that any denial of
4 attorneys' fees as special damages be without prejudice to
5 raising the issue under NRS 18.010 sub 2, because we've
6 demonstrated by a document created by Mr. Mitchell that their
7 purpose and their goals in these proceedings was to delay and
8 run up Mr. Nype's costs, that's 5042 (sic) on page 6.

9 I don't know -- another damning declaration against
10 interest that, yeah, you know, we may owe this. We've known we
11 owed it from day one, but we're just going to wear the man down
12 and delay everything until he gives up.

13 And so if the Court is inclined to deny fees based on
14 our request for an award of fees as special damages, I would
15 ask that that be without prejudice to filing a posttrial motion
16 for fees under NRS 18.010 sub 2 -- B2.

17 THE COURT: Thank you.

18 Anything else, Mr. Edwards?

19 MR. EDWARDS: Yes, Your Honor. What -- what exhibit
20 was that?

21 MR. K. JOHNSON: Doesn't go up to --

22 MR. MUIJE: 5042 (sic).

23 MR. K. JOHNSON: Oh, -42.

24 THE COURT: The e-mail from the attorney who said
25 let's get Judge Israel who's lazy to delay it?

1 MR. EDWARDS: Exactly.

2 THE COURT: You know I read them.

3 MR. EDWARDS: Okay. My point is is that's -- that's
4 the language of the attorney; that's not Mr. Mitchell. And,
5 you know, whatever language he wanted to use, whatever
6 that's -- that's the case.

7 THE COURT: Anything else?

8 MR. EDWARDS: Mitchell said it wasn't his idea. So.

9 And secondly, the Supreme Court's clear, you know,
10 that they have to -- they have to allege special damages for
11 attorneys' fees.

12 THE COURT: So the allegations contained in the
13 amended complaint do contain sufficient allegations to permit
14 attorneys' fees. In addition, they specifically talk about the
15 intent to delay and a continuation of this action from the
16 prior action, which is Case Number A-551073 as part of the
17 claims. For that reason, the attorneys' fees are adequately
18 pled for purposes of the claims for relief that are presented
19 including civil conspiracy.

20 Next. Anymore? Okay.

21 So we've now rested and done the motion practice. Do
22 the defendants have any additional witnesses or evidence that
23 you would like to present at this time?

24 MR. BLUT: No, Your Honor.

25 MR. H. JOHNSON: No, Your Honor.

1 THE COURT: Okay. Do you think after reviewing the
2 evidence when you were up here with Mr. Muije that all the
3 exhibits you wanted in evidence are in fact in evidence?

4 MR. BLUT: Yes, Your Honor.

5 MR. H. JOHNSON: Yes.

6 THE COURT: Okay. So do you rest?

7 MR. BLUT: Yes, Your Honor.

8 MR. H. JOHNSON: Yes.

9 THE COURT: Okay. And since they rested without
10 calling any additional witnesses, I'm not going to ask you for
11 a rebuttal case.

12 MR. MUIJE: Understood, Your Honor.

13 THE COURT: You told me you wanted to break this
14 afternoon now and come back in the morning at 9:30 and then
15 work as much as we can except for Mr. Boschee, who's going to
16 now go to trial prep for Monday's trial to get ready for your
17 closing arguments; is that right?

18 MR. K. JOHNSON: Correct.

19 THE COURT: If you have any supplementing findings of
20 fact that you would like me to consider, e-mail the new ones
21 only to my office by 9:00 o'clock tomorrow morning in Word
22 format. Just the new ones. E-mail them to Dan, and he'll get
23 them to me.

24 MR. MUIJE: Very good, Judge.

25 THE COURT: Okay. Anything else?

1 MR. H. JOHNSON: No.

2 THE COURT: Thank you again.

3 MR. H. JOHNSON: Thank you, Your Honor.

4 MR. BOSCHEE: Thank you, Your Honor.

5 THE COURT: Have a nice evening.

6 MR. MUIJE: Thank you.

7 (Proceedings recessed for the evening 3:15 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

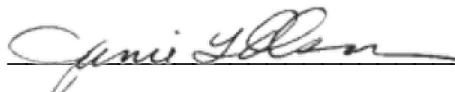
CERTIFICATION

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.

JANIE L. OLSEN
LAS VEGAS, NEVADA 89183

A handwritten signature in cursive script, appearing to read 'Janie L. Olsen', is written over a horizontal line.

JANIE L. OLSEN, TRANSCRIBER

01/15/2021

DATE