

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 09:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX – VOLUME XIV 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, Liberian 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 [Liberian 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

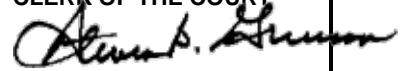
<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 40047 [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' Trial Exhibit 50001 [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' Trial Exhibit 50002 [Underlying First Amended 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

TUESDAY, JANUARY 7, 2020

BENCH TRIAL - DAY 6

APPEARANCES:

FOR THE PLAINTIFF/
INTERVENOR PLAINTIFF:

JOHN W. MUIJE, ESQ.

FOR THE DEFENDANTS/
INTERVENOR DEFENDANTS:

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

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

I N D E X

Closing argument for the Plaintiffs by Mr. Muije	4
Closing argument for the Defense by Mr. H. Johnson	50
Closing argument for the Defense by Mr. Blut	90
Rebuttal argument for the Plaintiffs by Mr. Muije	104

1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 7, 2020, 9:29 A.M.**

2 * * * * *

3 THE COURT: All right. Mr. Muije, are you ready for
4 your closing argument?

5 MR. MUIJE: I am, Your Honor, if I could have the
6 Court's indulgence for one minute just so I can have my
7 computer up.

8 THE COURT: Yes. And I have encouraged your IT guy
9 to make sure the PowerPoint runs smoothly so your argument will
10 be condensed and flow beautifully.

11 MR. MUIJE: Very good, Your Honor.

12 THE COURT: And he has guaranteed the PowerPoint is
13 going to go perfectly. So it is now all on you.

14 (Pause in the proceedings.)

15 THE COURT: So, Mr. Muije, I'm going to need a copy
16 of your PowerPoint. You don't have to give it to me right now,
17 but after you make it, Dulce will take it either on a drive or
18 a hard copy, either one. Because she has to mark it as a
19 court's exhibit.

20 MR. MUIJE: That'll be fine, Your Honor. We also
21 have a little flash drive with the extra exhibits we added
22 yesterday. Would the Court like one of those?

23 THE CLERK: I already have one.

24 MR. MUIJE: Well, we have the goal drive with you,
25 but I'm wondering if --

JD Reporting, Inc.

1 THE COURT: If I need anything, Dulce will give it to
2 me if I need to print anything.

3 MR. MUIJE: And I'm sorry. Without those ears, Your
4 Honor, I couldn't quite hear that.

5 THE COURT: I don't need it. Thank you.

6 MR. MUIJE: Very good. Thank you.

7 (Pause in the proceedings.)

8 MR. MUIJE: And may I make that argument from my
9 seat, Your Honor?

10 THE COURT: You can.

11 MR. MUIJE: Thank you.

12 (Pause in the proceedings.)

13 THE COURT: You ready?

14 MR. MUIJE: I am, Your Honor.

15 THE COURT: Great.

16 (Pause in the proceedings.)

17 **CLOSING ARGUMENT FOR THE PLAINTIFF AND PLAINTIFF INTERVENOR**

18 MR. MUIJE: May it please the Court.

19 The Court has listened to the evidence, the
20 representations, the arguments of counsel for the past week,
21 and I'm sure has much if not all of the evidence firmly in
22 mind. And there was a lot of it. I didn't count the admitted
23 exhibits, but I believe we're pushing 700 total exhibits of
24 which probably 500 to 600 were admitted into evidence.

25 And as the Court knows, the plaintiffs are pursuing

1 essentially at this point three specific claims, three viable
2 claims: The alter ego claim, the fraudulent conveyance claim
3 as well as a civil conspiracy claim.

4 And this comes at the tail end, as the Court knows,
5 of the better part of a decade of disputes. Mr. Nype had
6 ultimately prevailed before Judge Israel back in the spring of
7 2015 and obtained a judgment against Las Vegas Land Partners,
8 LLC, which is currently in bankruptcy. And at that point, as
9 Mr. Nype testified, he hired me to attempt to enforce and
10 collect his judgment.

11 And the Court heard his testimony that after the
12 better part of a year, not quite a year of effort, we concluded
13 from the discovery that we did get, which we served the
14 third-party witnesses we subpoenaed, that LVLP had effectively
15 divested itself of all liquid assets and had nothing that we
16 could really attach.

17 The discovery also showed, however, strong signs and
18 hints of evidence that led us to believe, among other things,
19 that LVLP was basically a shell and the front for a group of
20 nominal entities basically owned, operated and controlled and
21 run like a small fiefdom by David Mitchell and Barnet Liberman.
22 So let me look first at -- which of course led to the filing of
23 this lawsuit.

24 Let me look first at the elements of alter ego and
25 what we've been able to establish.

1 If we can look at the next slide, please.

2 This is one of multiple lists that we ultimately came
3 upon during the course of discovery. The next slide I believe
4 is an expansion of that. And as the Court will see, this
5 document actually derives from the internal papers of LVLP, and
6 it shows designated entities, many of which we've talked about
7 here today; the key ones, of course, being Wink and LiveWork.

8 In this case we have LiveWork managers. Well, we
9 have Leah, who in fact transferred the property subsequently to
10 Casino Coolidge. Zoe was a named plaintiff. And ultimately
11 casino -- Charleston Casino Partners was formed at the time,
12 and we had not actually seen any evidence regarding Charleston
13 Casino Partners, and that's why they weren't named in this
14 case. The Aquarius owner ultimately put the property into
15 LiveWork, which in turn put the property into 305, a
16 transaction that we've heard a lot about.

17 Let's look at the next slide if we can.

18 This is actually, if the Court looks at the bottom,
19 this was actually directly received from Mr. Spitz and is a
20 similar permutation of the company. In this case it actually
21 shows some of the properties held and acquired by some of the
22 affiliate and subsidiary entities, and there's substantial
23 overlap. I don't believe the two of those are identical, but
24 there's certainly substantial overlap.

25 Now, we have, and I will call this group the Mitchell

1 entities because we've also seen the evidence that subsequently
2 Casino Coolidge was formed primarily by Barnet Liberman,
3 although we know that David Mitchell took 250,000 cash out of
4 the closing.

5 We also know about the 305 transaction which brought
6 in some independent investors and Mr. Chamberlin, and the Court
7 has already ruled regarding that.

8 But what the substantial evidence that we accumulated
9 over time shows and it is very uniquely I think summarized in
10 Mark Rich's report, which is I think the supplemented version
11 is 13 or 14 pages, but we have numerous items of evidence
12 tending to establish elements and corroborate and support our
13 theories of alter ego.

14 The first eight exhibits include entity information.
15 Exhibits 9 through 11, 13 through 14, 34 through 37
16 deal with LiveWork and LiveWork Manager.

17 15 and 16 is entity information on Charleston Casino
18 Partners.

19 Similarly, 38, 40 and 42 is entity information on
20 Wink.

21 Exhibit 44 is on Meyer.

22 Exhibit 45 is on Leah regarding its property.

23 And then we get into the tax and accounting
24 documents. Exhibits 10001 through 10015 are the LVLP tax
25 returns over the relevant period.

1 Exhibits 20001 through 2046 (sic) are the bank
2 account statements for the entity.

3 Exhibits 30001 through -3, 30011 through -32, 30034,
4 30071, and these are all in evidence, Your Honor, 67, 76
5 through 79, and 86 through 88 are financial documents and
6 general ledgers. And part of the key here, of course, is that
7 those were not made available. We did not have access to them,
8 and we did not know the nitty-gritty, so to speak, during the
9 course of the first case and prior to the trial.

10 These documents in particular came out initially and
11 were subsequently supplemented at least two or three times that
12 I can remember once I commenced my postjudgment investigation
13 commencing in late August of 2015.

14 We then have a settlement statement on the LiveWork
15 sale to 305. That is located at Exhibit 40006.

16 We have tax returns for 305 at 10036 through -44.

17 We have their audited financials at 30094, 30095.

18 We have the writeoff analysis for the LiveWork note
19 at 30096.

20 And then we have Mark Rich's actual expert report at
21 a couple of locations, including his working papers. The
22 primary color version of his expert report is found at 70043; a
23 black and white version at 50028; and then working papers
24 supporting exhibits, et cetera, at 60053 through -69.

25 We have identified Mr. Mitchell's email chain from

JD Reporting, Inc.

1 August of -- August 1st, 2012, regarding switching over the
2 processing of money from the LVLP-LiveWork bank account to in
3 fact going directly and paying into a 305 account affiliated
4 and associated with Heartland Bank. That's at Exhibit 60005.

5 We have the various complaints that were filed in the
6 litigation involving Heartland Bank and LiveWork and 305 and
7 Charleston Casino. Those are located at 50003, 50004.

8 And additional litigation documents 40027 through
9 -30.

10 And the lease at 40046.

11 And then we have deeds.

12 And most importantly we have the Mitchell and
13 Liberman personal guarantee running in favor of LiveWork and
14 Heartland Bank. That is found at multiple locations in the
15 paperwork relevant to that. That's at 40046, specifically.

16 We have the First Wall Street agreement at 60001.

17 We have the excerpt from the original '07 case.
18 That's found at Exhibit 50040.

19 We have the settlement agreement between 305,
20 Heartland and Mitchell, notably not containing a signature or
21 consent from LiveWork. That's found at 60005.

22 We have a surrender and termination agreement at
23 90054.

24 The Mitchell affidavit of loss promissory note,
25 90063.

1 And then the release of Mitchell and Liberman's
2 personal guarantee by Heartland on 90069.

3 And, finally, the findings of fact and conclusions of
4 law in the '07 case is found at 50006.

5 So there's a wealth of evidence. Given the time
6 available, we did not necessarily look at every line, every
7 item, every page, but I think we hit most of the important
8 ones. And that was what led to the generation of Mr. Rich's
9 report, and that evidence shows in part that Mitchell and
10 Liberman managed and controlled all of the entities, all of the
11 Mitchell entities certainly; and Mr. Liberman himself
12 personally has functional control as well, and I know the Court
13 has ruled on 305, but on 305 as well as Casino Coolidge.

14 We also know that with the exception of 305 and
15 Casino Coolidge Mr. Mitchell nominally has a beneficial
16 50 percent interest in each entity, and we would respectfully
17 suggest that effectively there's unity of interest, unity of
18 control, and as the Court will see later in my argument and
19 through the evidence it has already heard, that recognizing
20 these as separate entities would operate as a fraud and an
21 injustice on not only Mr. Nype but on all the other creditors,
22 remembering that at this point we also represent Shelley Krohn,
23 the bankruptcy trustee, and her complaint in intervention which
24 mirrors Mr. Nype's complaint and that she is seeking to recover
25 for the benefit of all creditors the same quantum of money, the

1 same legal theories as against the various other defendants
2 herein.

3 Each of these entities, in fact, was treated by both
4 Mitchell and Liberman as disregarded entities.

5 Going further than that, not only were they
6 disregarded entities for the tax returns, but they were also
7 disregarded insofar as they couldn't be bothered to open a bank
8 account. They couldn't be bothered to maintain independent
9 books and records. They didn't, and not only as a disregarded
10 entity, they didn't file their own tax returns, but they didn't
11 do a lot of things that a normally independent, functional
12 entity would do.

13 Most of these were either not capitalized or very
14 thinly capitalized. Some of them were single-purpose real
15 estate entities, but didn't have operating capital and bank
16 accounts of their own.

17 As the Court knows, at the inception of the Forest
18 City transaction, which happened very shortly after the
19 Aquarius Plaza transaction, Mr. Mitchell and Mr. Liberman took
20 approximately \$15 million total over the course of '07 and
21 early '08. Instead of maintaining operating capital, they
22 basically took it and put it in their own pocket.

23 The result, as the Court saw, over the years was that
24 they couldn't meet capital calls. They couldn't honor their
25 obligations under the Forest City agreement. When creditors

1 needed to be paid, they had to dig into their own pockets.
2 Many of the evidentiary documents will, in fact, show that the
3 general ledgers, the capital contribution documents show that
4 Mr. Mitchell was using his credit card. Actually, as it turns
5 out, many of these were paid because he had both a business
6 platinum card as well as a personal green card, and they're
7 both used intermittently and throughout for purposes of paying
8 corporate debts. And basically it was one and the other. They
9 had personal bank accounts that funded a lot of this. They had
10 personal bank accounts that received a lot of this.

11 But in essence, these 14 allegedly distinct entities
12 operated as one and the same.

13 We have strings of checks on the ledgers, three,
14 four, five at a time paying Secretary of State fees for three,
15 four, five entities with sequentially numbered checks. We have
16 them paying real estate taxes out of LVLP, et cetera. And
17 basically it was one pocket, one pocketbook.

18 And what became even more important, as we heard
19 Mr. Rich testify, it was impossible from their own books and
20 records to distinguish the sources of the incoming money, what
21 entity, what deal, et cetera, and/or the uses of the funds on
22 an intermittent basis. Some of them had marked for, you know,
23 corporate tax or corporate filing fee or real estate tax. But
24 for which entity, that was rarely even marked on the records.

25 It even went so far that the corporation was paying

1 personal loans taken out by Mr. Mitchell and Mr. Liberman.

2 If we could look at the next slide.

3 These are two bank statements, two separate personal
4 loans that we've identified, and they've matched up, as
5 Mr. Rich showed, to entries on the general ledgers. And the
6 next page will show why they're personal or that they are
7 personal.

8 In the Heartland Bank statement we see that this is a
9 secured loan regarding a personal residence of Mr. Mitchell.
10 And on the Signature Bank statement, this is addressed not to
11 LVLP or any of the constituent entities, but to Mr. Mitchell
12 and Liberman personally showing substantial principal payments
13 back in 2013.

14 Ironically, we see that shortly after Mr. Nype
15 obtained his judgment in 2015, they even closed down the one
16 primary bank account that LVLP had.

17 If we could look at the next slide. This is a
18 multipage document I believe. Can we go down to the next
19 group.

20 So I believe it's five pages and these even predate
21 closing down the Signature Bank account and show infusions of
22 personal money. As Mr. Rich testified, they would put in money
23 needed to pay that week's bills or that group of bills.
24 Sometimes they paid them even directly and had adjusting
25 journal entries. But these are all Mitchell infusions in odd

1 dollar amounts.

2 Do we have this blown up or not? I don't believe we
3 do.

4 UNIDENTIFIED SPEAKER: No.

5 MR. MUIJE: But it is at Exhibit 3067 (sic), and it's
6 also attached as an exhibit to Mr. Rich's report.

7 If we go to the next slide, we see something even
8 more curious, and this one I do believe is expanded. And it's
9 entitled Unallocated Contributions From Partners. You get big
10 chunks of money in and don't specifically allocate it to
11 anybody anywhere, any purpose. It just shows pay downs,
12 unknown payment, unknown payment, pay down of loans and note
13 payment. And they're not put in any category. They're not
14 applied to any property. It's just, oh, we lost track of why
15 we put this money in or took this money out.

16 And that's at a minimum, Your Honor, respectfully a
17 failure to observe corporate formalities.

18 And as Mr. Rich indicated, these were capital
19 contributions, never allocated or assigned to a specific
20 entity. But even more importantly, the LVLV internal
21 accounting records are not consistent with their tax returns,
22 according to Mr. Rich. They are contradictory and inconsistent
23 with their own records internally, and they absolutely disagree
24 and don't show the same information as the audited financial
25 statements of 305 Second Avenue, nor is the bulk of it

JD Reporting, Inc.

1 supported by appropriate documentation.

2 Mr. Rich also indicated that he had been unable to
3 find and had never received, to the best of his knowledge, any
4 meaningful documentation spanning -- backup documentation
5 spanning 2007 into 2012 because of Mr. Spitz's and
6 Mr. Mitchell's efforts to withhold and hold those back.

7 In fact, it comes to a point where during
8 Mr. Liberman's deposition in October of 2018, I asked him a
9 question, and he had a very telling answer.

10 If we could see the next slide.

11 Here's the highlighted pages from the actual
12 deposition transcript which are attached as an exhibit to
13 Mr. Rich's report.

14 If we can go to the next slide.

15 There's the larger version. And in answer to my
16 question, Given that they all appear to run through one ledger
17 and one checkbook, how are you able to allocate income and
18 expenses between the entities?

19 His answer, I don't know why we would.

20 And again Mr. Hayes objects, and I suggest that he go
21 ahead and answer it, and Mr. Liberman's response:

22 Why would we? It was all part of --
23 they were all derivative from one entity, and
24 all the money came in, and all the money went
25 out. Did it matter that I took a cab from

JD Reporting, Inc.

1 one piece of property to another piece of
2 property? No. I don't see why it mattered.
3 That's for an accountant. I don't know.

4 I candidly was very surprised when I got that answer,
5 Your Honor. He's basically saying I don't know. I don't care.
6 It's all one pocket. And that is a classic hallmark of alter
7 ego, for sure.

8 And we see this mirrored even in Mr. Liberman's
9 allegedly separate entities.

10 If we could look at the next slide. No, that's the
11 excerpt from the report. It was on page 7 of Exhibit 70043.
12 Next slide. That's a quote from the report. Next slide.

13 And on this one, this is I believe a schedule off of
14 a 305 Associates tax return. But remembering that the rent is
15 being supposedly paid or due for casino Charleston, they're
16 defining as rent due from LiveWork. And they have trouble
17 keeping their own entities straight, respectfully. They
18 indicate one thing in their lease and their legal transactions
19 and in their financial statement notes, but on the actual
20 return it's money due from LiveWork.

21 If we can look at the next exhibit, this was actually
22 the closing statement I believe. No, I may have them out of
23 order. It's okay. Let me switch my argument.

24 This actually, and we looked at it when we were
25 discussing the testimony, and candidly I don't remember which

JD Reporting, Inc.

1 of the people we had, but this is the documented ongoing
2 billing and payments. Exhibit 80004 contains about 50, 60
3 pages. It has individual billing statements. It has summary
4 billing statements, and it covers basically the entire
5 relationship between Mr. Marquis and Mr. Liberman. If the
6 Court looks at more carefully at entries in the memo section on
7 the notes, we see, for example, that Check 1434 was for
8 Submatter 1, 2 and 13.

9 Check Number 1370 was for Submatters 1 and 9.

10 Submatter -- well, and Check Number 904 was
11 Submatter 1.

12 If we can go to the next page.

13 And these are all personal checks for Mr. Liberman.

14 We see that Check Number 1434 had Submatters 2, 1 and
15 13. Actually, that appears to be a blown-up version of the
16 first page.

17 Going down to the next one, and again, I went through
18 these in a little bit more detail, but there's about 14 or 15
19 submatters, a few involve tenants of 305, eviction matters it
20 would appear. A lot of them involve Casino Coolidge, which
21 appears to have two or three account numbers. But several of
22 them involved 305 business transactions. Several of them
23 involved the litigation. Because if one looks more carefully
24 at the billing entries, one sees that a lot of the billing is
25 for actual litigation.

JD Reporting, Inc.

1 If we could come down to the next one.

2 And we see Matter 2. We see Matter 2. We see
3 Matter 1. And I believe there's one more that has like five
4 matters, Matter 9.

5 I would also acknowledge that this same exhibit in
6 its entirety has some 305 checks. It has some Casino Coolidge
7 checks, but it would appear that the operating custom and
8 practice for Mr. Liberman was grab the first checkbook
9 available on his desk or in his desk drawer and write the
10 check. There's not a great deal of consistency other than he
11 does note the related Harry Marquis matter numbers.

12 We will also see, if we could see the next slide,
13 that at the very closing where LiveWork sold the property to
14 305 in 2007, they can't keep the matter straight here either.
15 I have a highlighted item on the escrow closing statement, but
16 they have money coming in from Las Vegas Land Partners or going
17 to Las Vegas Land Partners when the seller is actually
18 LiveWork.

19 And, in fact, as a result, the Court heard that the
20 combination of all these gyrations Mark Rich opined were
21 cobbled together to put cash money in LVLP's pocket totaling
22 approximately \$3.5 million. The escrow statement shows another
23 entry I believe for 2.8, and in Mr. Rich's opinion, that was a
24 primary purpose of, as it regards LVLP, wanting to do the
25 entity.

JD Reporting, Inc.

1 They are even suggesting to third parties, such as
2 First Wall Street and Mr. Nype, that this is all Las Vegas Land
3 Partners.

4 If we can look at the next slide.

5 This is the First Wall Street letter that we've seen
6 and heard testimony about, and it states and defines Las Vegas
7 Land Partners, LLC, together with its affiliates LV Land or the
8 company, and down below indicates owned five city blocks in
9 downtown Las Vegas. Well, as it turned out, one of those was
10 owned by LVLP, the Bonneville parcel on which the RTC was
11 actually built. The rest of them were owned by other entities,
12 and yet LVLP is handling the transaction for everybody.

13 Basically their domination, their influence, their
14 control over all of the LVLP entities and their own internal
15 failure to identify or segregate or maintain individuality and
16 separateness, it just doesn't exist. They ran it all like
17 Liberman says: It's all one pocket.

18 The evidence demonstrates they commingled funds,
19 actions, transactions, assets. But for the most part they were
20 woefully undercapitalized. They repeatedly diverted funds.
21 We've seen a couple of escrow statements where the funds go out
22 directly to the individual partners.

23 Basically they operated -- Mr. Mitchell and
24 Mr. Liberman -- as if all of the assets, all of the monies of
25 all of the entities were their own, and they patently ignored

1 corporate formalities, such as renewing their corporate
2 documents. Discovery brought out that this failed on multiple
3 occasions. They didn't have intercompany notes. They didn't
4 have adjusting entries from one company to the other. They
5 just operated as one big package, and they were totally under
6 the influence and control of Mr. Mitchell.

7 And to the extent that adhering to the fiction of
8 separate and independent entities would work a patent injustice
9 against all creditors, including Mr. Nype. We've seen that
10 they took repeated substantial distributions as funds were
11 available. They put them in their own pocket even knowing that
12 Mr. Nype's case was pending, even knowing that Mr. Nype
13 expected millions of dollars. They forced Mr. Nype to incur,
14 as the Court heard, literally millions in attorneys' fees
15 pursuing them, both over the original case and subsequently
16 herein.

17 And the case law in Nevada suggests that all of that
18 conduct is indicative of invoking a remedy, and as *Magliarditi*
19 tells us, a separate legal cause of action for alter ego on
20 behalf of Mr. Nype and the trustee as against LVLP, its
21 affiliates and its principles.

22 Basically it would just be inequitable and
23 inappropriate to give them the benefit of the corporate shield,
24 so to speak, when, in fact, they didn't even observe it. They
25 wanted all the benefits without any of the burdens or the

1 encumbrances. That would be perhaps an easy way to say it.

2 What's even more troubling, Your Honor, is that they
3 don't deny it, per se. They took no efforts to rebut
4 Mr. Rich's report. They don't have a competing expert.

5 They suggest, well, have you ever seen single-purpose
6 entities without a bank account? And Mr. Rich acknowledged he
7 had. But when I asked him on redirect if that is a recommended
8 course of action, he certainly told us that that is not
9 recommended or encouraged.

10 We've also seen that Mitchell Holdings per se had a
11 unity of interest, a unity of control. Its employees worked
12 for all of these entities, but still, you know, were not
13 allocated or charged back to those entities for the services
14 provided, et cetera. So it's -- I don't want to overkill it,
15 Your Honor. So, you know, I think the evidence is very clear
16 that we, in fact, have a circumstance where alter ego is
17 absolutely invoked, et cetera.

18 As we come down --

19 And may I see the next slide.

20 -- and again perhaps one of the best examples, and I
21 believe this is why I put it here, here is the six, oh, five
22 memorandum where Mr. Mitchell is suggesting that we discontinue
23 using the Signature Bank account and instead wire directly to
24 Heartland Bank for the benefit of 305, which is highlighted
25 down below.

1 And it's difficult to conceive of a legitimate reason
2 to do that other than convenience to LVLP, Mr. Mitchell and
3 Charleston Casino Partners.

4 Let me see the next slide if I can, please.

5 The Court I know has granted the directed verdict in
6 favor of 305, but as I understood it, that means 305 is not
7 liable. It doesn't necessarily insulate the Charleston Casino
8 and LiveWork from commingling, intermingling, et cetera. And
9 here we see a LiveWork lawsuit when it was filed in
10 paragraph 14 -- and I believe that's blown up on the next
11 page -- indicating that as of the date of the lawsuit
12 10,382,000 is owed to it in terms of monies owing, which in
13 theory were going to be a pass-through from Charleston Casino
14 partners to it through 305, but then we come down, and we see
15 if we can --

16 Next slide.

17 Ultimately we know the case was settled, and
18 ultimately the personal guarantees were released.

19 Now, they've argued strenuously, well, gee, we had to
20 pay additional money. We had to pay our own money, but that's
21 not new consideration, Your Honor. The original personal
22 guarantee of that lease obligation that was extinguished and
23 released was against Mr. Liberman, against Mr. Mitchell and in
24 favor of not only 305 but also the landlord, which was the
25 landlord, and Heartland Bank, the bank.

JD Reporting, Inc.

1 So Mr. Mitchell and Mr. Liberman were complaining
2 that, gee, we had to put money in to make this deal go. They
3 had to put money in any way because they had guaranteed all of
4 those obligations personally to the bank. So there was no new
5 consideration paid. That was just enforcement of, you know, a
6 severe write-down of their obligation, but an obligation that
7 preexisted -- the lawsuit preexisted the settlement of
8 arrangements, an obligation that ran to them personally.

9 And if we could come down further.

10 Let's talk about Casino Coolidge a little bit here
11 because again, the big argument has been, well, it did have a
12 separate bank account, and Mr. Mitchell didn't own part of it.
13 But when Leah sold the property, which it had originally
14 acquired for 3.2 million, sold it several years later to the
15 newly formed Casino Coolidge entity, here's a settlement
16 statement. And lo and behold it sold for a million dollars.

17 But what do we see in terms of money coming out of
18 the escrow? Going directly not through Leah, not through
19 another entity, going directly from escrow to David Mitchell
20 and to a lesser amount -- and I don't know how they allocated
21 the lesser amount -- going directly to Barnet Liberman, just
22 one of numerous reoccurring instances when cash is coming out
23 of the company, going into the credit -- the owners' pockets at
24 a time that they knew that monies were owed to Mr. Nype, in
25 particular. The lawsuit in fact, if I'm recalling correctly --

1 If we can go back one page. Is there any way to blow
2 that up? No, no. One page.

3 This is the closing statement, and I believe it
4 occurred -- the date there is blank, but my recollection is
5 that it was in 2014. I'm sure counsel will correct me if I'm
6 wrong. And the Court will recall the trial of Mr. Nype's
7 underlying case against LVLP occurred in 2014. So they're
8 spitting out money to the individuals at a time when the trial
9 is imminent, not just, you know, something that may occur in
10 the future, and they'll worry about it then.

11 And we also see again Mr. Liberman putting his own
12 personal money in and out of the Casino Coolidge.

13 May I see the next slide, please.

14 Which now brings us up to, and the Court had
15 indicated that it definitely was aware of these circumstances,
16 what Mr. Rich called the badges of fraud.

17 If we could see the next slide.

18 I've highlighted it in the statute. And as he
19 indicates and as the law indicates, you know, one or two
20 factors does not necessarily per se make -- establish the
21 intent to undertake or engage in a fraudulent transaction, but
22 the statute itself lists 11 separate factors that are
23 indicative.

24 And the case law suggests to the Court that neither
25 one is conclusive, but neither one is exclusive either. And

1 probably the more of these badges that exist the more likely it
2 is that the Court or a jury would, you know, find a fraudulent
3 conveyance. But the more of them you see there, the more
4 likely it is that there was a fraudulent intent, and the law
5 authorizes the trier of fact to consider these.

6 Well, let's look at a couple of the factors if we
7 can.

8 The first one, transfers or obligations to insiders.
9 We have that recurring and repeatedly on all of these
10 transactions we've looked at.

11 The debtor retained possession and control of any
12 transferred property. Well, we know effectively, even in the
13 case of 305, they had effective possession and control. They,
14 in fact, arrange the 305 transaction that the day they sold it
15 they immediately took it back via a lease. So that Badge B or
16 Factor B is satisfied.

17 The transfer or obligation was disclosed or
18 concealed, either positively or negatively here. Well, in the
19 case of 305, we first learned of this, despite having tax
20 returns, despite having ledgers, for years, the first time we
21 became aware of what had gone on behind the scenes with 305 and
22 Charleston Casino Partners was the week before Mr. Liberman's
23 deposition when Harry Marquis disclosed the audited financial
24 statement of Second Avenue Associates, and we found the details
25 of the internal transaction -- remembering that their

1 depositions had been done before; financial statements had been
2 produced; ledgers had been produced. But the nitty-gritty of
3 this significant transaction had never been disclosed, no
4 documents provided, et cetera, until literally the week before
5 Mr. Liberman's 2018 deposition. So I think Factor C is
6 satisfied.

7 Before transfers occurred, the debtor had been
8 threatened with suit. We know that as early as September '06,
9 before the 305 transaction ever took place, before the Forest
10 City transaction ever took place, LVLP, Mr. Mitchell and
11 Mr. Liberman were on notice. Yeah. We made a deal with
12 Mr. Nype. He expects to be paid according to the terms of the
13 First Wall Street deal. He's looking for millions, and yet
14 cavalierly they say, oh, we'll throw him a bone, 10 percent of
15 what he think he might be owed, and hopefully he'll take that.

16 So had they been threatened with suit? They at least
17 were consciously aware that they owed a lot of money that they
18 weren't going to pay, and, respectfully, the suit was filed in
19 December of '07, shortly after -- actually it was preemptively
20 filed by Mr. Liberman and Mr. Mitchell in November of '07 and
21 the counterclaim filed in December of '07.

22 The transfer was of substantially all of the debtors'
23 assets. I'm not sure that applies to each transaction, but it
24 certainly applies in the context of you get substantial
25 proceeds from Forest City, and you immediately spit out

1 millions of dollars. Again, in the Casino Coolidge, all of the
2 liquid cash goes out to the partners. They sucked out
3 approximately \$3.5 million out of the Aquarius Plaza
4 transaction. I think this one may be neutral because there
5 were usually assets or real estate or something left, but
6 there -- certainly substantial assets are transferred if and
7 when available.

8 F doesn't apply. The debtor didn't abscond.

9 G clearly applies as they removed and concealed
10 assets.

11 The value and consideration received was reasonably
12 equivalent to the value transferred. Probably the case in
13 Casino Coolidge. We don't have an appraisal to the contrary.
14 Certainly the case on its face with a promissory note going
15 back to LiveWork and 305, but as to the cash going out to the
16 individuals, no, nothing contemporaneous was received. It was
17 just a matter of gratuitously putting money in their pocket as
18 it was available. So again, that one may apply on some
19 transactions and not on others.

20 And we've got Mark Rich's testimony that effectively
21 these recurring distributions rendered LVLP functionally
22 insolvent as early as 2007 and 2008 when we see that Forest
23 City begins making capital calls, and LVLP can't make those
24 capital calls. In fact, the result, as shown in the evidence,
25 is that by February 2011, they renegotiate the tenancy in

1 common deal and change the equity ownership of LVLP and the
2 Forest City joint venture from 40 percent down to 10 in an
3 effort by Forest City to recoup all the money that they
4 necessarily had to advance, which in theory LVLP was obligated
5 to advance, but didn't because it couldn't. It didn't have the
6 working capital or available capitalization. It was
7 undercapitalized.

8 And the transfer occurred shortly before a
9 substantial debt was incurred. They knew that Mr. Nype -- we
10 see in a couple of instances, initially at the time of the
11 Forest City transaction, they knew Mr. Nype had a claim, and
12 nevertheless they put functionally the available liquid cash in
13 their pockets.

14 If we go to 2014 and fast-forward, we see that the
15 Casino Coolidge transaction occurs right before trial. We see
16 that functionally the settlement with Heartland Bank of 305
17 occurs right before trial at a time when they are facing a
18 trial which through discovery by that point they knew had the
19 potential to yield a multimillion dollar verdict, which, in
20 fact, it did.

21 And looking down then at the 11th factor, the
22 essential elements of the business to a lienor who transferred
23 it back to the -- who transferred the assets to an insider of
24 the debtor, and again it's a complex test, but we kind of see
25 the circular transaction coming in the instance of 305 where

1 you sell the primary asset to 305, but then in turn it
2 immediately leases it back to an affiliate entity of yourself,
3 an insider.

4 We also then, of course, see that LiveWork on its
5 books writes off the \$11 million obligation that 305 owed it.
6 So in the context of evaluating LVLP and its affiliates as
7 engaged in fraudulent transactions, certainly the transfer of a
8 valuable asset into writing it off, a transaction to the
9 detriment of \$11 million, no effort was made to pursue it. No
10 effort was made to collect it despite the fact that the
11 obligation still existed and could've been enforced personally
12 against Mr. Mitchell and Mr. Liberman.

13 Now, *Magliarditi* is very interesting. Mr. Johnson
14 excessively briefed the fraudulent conveyance theory saying,
15 hey, you can't have it transferred by a third party. It does
16 not fall under the fraudulent conveyance statute. But
17 *Magliarditi* tells us where you have alter ego and the
18 transferee Casino Coolidge, LiveWork, any of the affiliating
19 entities makes the transfer, it is still a fraudulent
20 conveyance even though your judgment runs against LVLP, not
21 against LiveWork, not against Casino Coolidge.

22 And, in fact, the law out there, in analyzing these
23 badges of fraud, gives the Court some discretion regarding
24 testimony, what it's heard, what it's heard about intent.
25 When, in fact, some of the case law suggests that when one or

1 more badges of fraud are present, generally fraudulent intent
2 can be inferred. That's a case called *McCain Foods USA versus*
3 *Central Processors* out of Kansas, 61 P.3d, page 68, at page 77,
4 a 2000 case.

5 And the case law is out there. I'd happy to brief
6 it. I think I did provide some cites in our proposed findings.

7 But again we got the insiders. We've got knowledge
8 regarding the monies owed to Mr. Nype. We've got lack of
9 consideration. We've got insolvency, both caused by many of
10 the transfers and/or existing at a time transfers are made.
11 We've got retention of possession and control of the properties
12 through the insider group. We've got the concealment. So I
13 would respectfully suggest that maybe not all 11 of these
14 badges are present --

15 THE COURT: F is not present.

16 MR. MUIJE: I'm sorry?

17 THE COURT: F is not present.

18 MR. MUIJE: Correct. And a couple are probably a
19 little wishy-washy or unsure, but when you've got seven, eight,
20 nine, relatively established by a substantial preponderance, if
21 not clear and convincing evidence, I think there's a pretty
22 good indication that we've got fraudulent conveyance intent
23 here. We've got the badges, and certainly that exists.

24 But that then moves on to the civil conspiracy
25 arguments and what these individuals through their affiliated

1 entities have undertaken to do with Mr. Nype. We know in total
2 that between '07 and 2016 Mr. Mark calculated -- Mr. Mark Rich
3 calculated this, over \$15 million went from the entities
4 directly into Mitchell and Liberman's pockets at a time they
5 knew and were aware of Mr. Nype's claims. We also know that
6 those transfers, the multiple transfers spanning years
7 effectively rendered LVLP insolvent.

8 We know from the accounting records that, as we were
9 digging into discovery they go back and they try to
10 recharacterize their capital contribution and distribution
11 lists as loan ledgers. That was in Mr. Rich's report, and the
12 backup was attached. So that's an effort to conceal as well.

13 These are joint acts that Mr. Mitchell and
14 Mr. Liberman and to a certain extent in conjunction with their
15 accountant are undertaking in an effort to hurt Mr. Nype,
16 conspiring to engage in activity to conceal, hide, divert
17 assets away.

18 We see that when they do have other creditors to pay,
19 not Mr. Nype, when they choose to pay other creditors, they'll
20 put the money in briefly to pay preferred creditors, or they'll
21 pay it on their own personal credit cards. So the creditors
22 they want to pay get paid. But Mr. Nype doesn't, again,
23 effectively colluding in an effort to deny an unpreferred
24 creditor the monies that he would otherwise be entitled to and
25 that he should have otherwise received.

1 Mr. Rich also testified to something very interesting
2 regarding the RTC and those payments. Again the money amounts
3 are large, but they net them against their loan payment
4 obligations and show \$55 a month approximately over a recurring
5 period of time as the income that LVLV recognizes on its books
6 from the RTC transaction, and he indicated that that was
7 improper from a tax and accounting purpose and materially
8 misrepresents or understates a kind of design to delude
9 creditors or the IRS into thinking that the scale of their
10 operations and the finances involved are much less significant
11 or not even worth pursuing because they're only earning \$55 a
12 month from their RTC deal.

13 Well, in essence, their gross income is maybe, I want
14 to say, a hundred thousand a month, maybe even more, but that's
15 offset by loan monies that they owe on the obligation. But
16 instead of reporting the gross revenue and then the interest or
17 the loan payment, they just report the net. They're getting
18 money from the RTC, and that's not how the accountants should
19 treat it.

20 But there's substantial additional evidence, as the
21 Court is aware, indicative of a guilty mind, so to speak,
22 things that you would not do if you were not per se recognizing
23 and knowing that you had engaged in misconduct.

24 Let's flip down to the next slide.

25 And this comes back to my spoliation argument, my

1 request that the Court, in fact, draw a negative inference for
2 all the missing financial records that should exist from '07
3 through 2012. We see in Exhibit 60032 through 60038 a chain of
4 emails and documents between Mr. Spitz, Mr.-- and I believe I
5 had this one blown up as a highlighted section, Judge, but
6 we'll get to in a moment -- between 60032, okay. And here it
7 is. We see that that document is an email sent on February
8 6th at 5:03 p.m. And it attaches an engagement letter for
9 you to sign. Well, this is in 2018, February 6, a few weeks
10 before Mr. Spitz's noticed and scheduled deposition.

11 And it attaches one letter dated January 15th,
12 2008. And as to this letter that's attached, the signature
13 line for Mr. Spitz is already signed, but it's blank as to LVLP
14 Holdings and David Mitchell, its managing member.

15 Now, we also heard testimony from Mr. Rich that the
16 form used and reviewed during the course of discovery had this
17 to the left side, this two line paragraph, three paragraphs
18 from the bottom of page 2, By your signature below, you
19 acknowledge and agree that upon the expiration of the
20 three-year period, SKE Group, LLC, shall be free to destroy our
21 records related to this engagement.

22 In the original form which was produced in
23 Mr. Hayes's first supplemental 16.1 production, it was an
24 unsigned blank form, and there was a gap of two lines on
25 page 3 where the word processing software pushed down the

1 paragraph because of the paragraph insert. That was Mr. Rich's
2 testimony. But now we see a blank letter being sent, Attached
3 for you to sign.

4 Now, let's go to the next slide if we can.
5 Exhibit 6034 (sic), which we will blow up in the second, is
6 literally that afternoon, same afternoon going from
7 Mr. Mitchell to his assistant Samantha at Mitchell Holdings
8 saying, Print. And below we see what he has forwarded, which
9 is, Attached is the engagement letter for you to sign.

10 Let's go to the next slide. This is where Ms. Gergan
11 returns the signed letter the next morning to Mr. Spitz's
12 office. We'll see this is the next morning, February 7th,
13 2018, at 10:44 a.m.: Please find attached signed letter. And
14 Mr. Mitchell has signed it, and he was uncertain as to whether
15 or not that date was inserted by him or inserted by Mr. Spitz.

16 Well, all of these occurred, Your Honor, on
17 February 6 and February 7th, and that took us through
18 Exhibits 32, 33, 34 and 35, I believe.

19 Let's look at 36, the next one. And again, this is
20 an email from Mr. Spitz. But if we look at the enlarged
21 version, it's two weeks later, February 22nd. And I will
22 represent I haven't checked the precise date. I believe
23 Mr. Spitz's deposition was actually taken on February -- on
24 March 8th after a continuance, a requested continuance.

25 But we're two weeks later. Why are we two weeks

1 later? Well, nobody would answer that obviously, but I would
2 respectfully suggest Mr. Spitz and Mr. Mitchell say, oh, well,
3 gee, we've got an engagement letter from '08, but we don't have
4 any from '13, '14, '15 and '16 that we should have. We've got
5 to get some more engagement letters signed. So his attachment
6 is labeled LVLP engagement letter 2017. It says, Please sign
7 page 3. Do not date, and send me four pages signed. Thank
8 you.

9 Now, ironically, the attachments still had the
10 January 15th, 2008, date. So he hadn't updated his form or
11 what he printed, but he did send a fully blank signature page,
12 which we've highlighted on the right.

13 And now if we can go to the next exhibit. This is
14 the transmittal back from Samantha at Mitchell Holdings to
15 Mr. Spitz with four different signature blocks. On its face it
16 appears the left one is marked -- signed with a magic marker.
17 They're similar, but we see a bigger one on the far right. We
18 see a smaller compressed one one from the right. And we see a
19 longer stretched out one from the left. So somebody is making
20 a conscious effort to make it appear that these four letters we
21 know are signed the same day and transmitted to Mr. Spitz the
22 same day were signed on different dates, different times using
23 different pens. Why do you do that?

24 THE COURT: And styles.

25 MR. MUIJE: Pardon?

1 THE COURT: And styles.

2 MR. MUIJE: And?

3 THE COURT: Signature styles.

4 MR. MUIJE: Right. Right.

5 So what do we see? What I've done is a comparison.
6 There was -- these are a blowup of the actual signatures. So
7 the Court can see we've got a blue pen here. We've got what
8 looks to be, again, the magic marker there and different. But
9 what I did, through discovery and attached to Mr. Rich's report
10 is a copy of the documents contained in Mr. Hayes's second
11 supplement which occurred two weeks after the first supplement,
12 but before the deposition, literally before the deposition. I
13 think we received them March 1st, one week before the
14 deposition. We received five signed engagement letters which
15 were not contained in the first supplement which was
16 represented to contain all of Mr. Spitz's records.

17 What I've done in the next five slides is I've taken
18 each signed letter that was produced in Mr. Spitz -- in
19 Mr. Hayes's second supplement and laid them next to the five
20 signed signature pages we have from these exhibits. And let's
21 look at them comparatively one by one.

22 Next slide.

23 This is a comparison of the letter that somebody had
24 dated 1/15/08. And here's the blown-up version. They look a
25 lot alike to me.

1 Let's look at the next one. They are side by side.
2 The Court will see Spitz's disclosure number on the bottom of
3 the left one. And where we found this email chain was in the
4 mass dump of November 4th where Mr. Mitchell basically just
5 instructed his IT people go pull everything off the cloud and
6 give it to them all. And we were fortunate to find it.

7 But coming down to the very next one, this is
8 dated -- somebody inserted the date 1/20/13, remembering that
9 Mr. Spitz's instruction was signed but don't date. So the one
10 we see sent from Mr. Mitchell to Mr. Spitz is signed, but not
11 dated. Respectfully, the one that they produced a few days
12 later in their discovery disclosures is dated. The signature
13 appears identical.

14 Coming down to the next one, we have what appears to
15 be something dated 2014, but the same modus operandi if we can
16 look closer and compare them. I'll let the Court draw its own
17 conclusions. This was the one dated for January 2014.

18 Let's go to the next one, and bring them up. Blow
19 them up closer.

20 Obviously we have blue ink on the right side, but
21 somebody scrawled in what appears to be 2015 and then the next
22 one.

23 And finally I think we get up to the one dated
24 January 2016, and there's that comparison. It would appear to
25 be a lighter color ink. It showed up a little darker on the

1 16.1 disclosure, but respectfully the signature is identical.

2 So if that is not a suggestion or evidence of
3 illegal, fraudulent misconduct and a conspiracy between the
4 insiders and their accountants to commit a fraud on the Court
5 and to commit a fraud on Mr. Nype, I really don't know what is,
6 Judge.

7 So we also have an ongoing strategy and working to
8 delay the case.

9 If you could flip to the next exhibit.

10 This is the two-page email chain which Mr. Mitchell
11 attached in his exhibit -- our Exhibit 50042 that was a
12 response regarding a bar fee dispute. And the operative
13 language and important language is contained there at the top
14 of page 2: In an effort to keep kicking the ball downfield to
15 delay trial and aggravate Nype, a thought occurred to me.
16 Let's go try for mediation, and basically it will almost
17 certainly result in a multi-month continuance, et cetera,
18 et cetera. He disparages Judge Israel. And, in fact,
19 ultimately a trial continuance did occur. And this was just a
20 recurring pattern. We see efforts to delay.

21 In this case we saw a successful effort to delay when
22 the attorneys withdrew, and all of a sudden he had to get new
23 counsel and had to get additional time to comply with
24 discovery. The Court will find and the Court will recall that
25 in its May 30th and subsequently in the September orders

1 regarding compelling discovery and sanctions, the Court made
2 express findings regarding wrongful conduct: Delay, failure to
3 comply with discovery obligations, et cetera, et cetera.

4 But respectfully I don't know that we had the
5 evidence that it was intentional at the time, but the
6 circumstantial evidence is strongly suggestive that this has
7 been the course and pattern of conduct. As the attorney said,
8 In an effort to keep kicking the ball downfield to delay trial
9 and to aggravate Nype. It seems like Mr. Mitchell and
10 Mr. Liberman adopted that hook, line and sinker and made that
11 their pattern, their strategy, their modus operandi.

12 But then again, working together, they delay. They
13 fabricate fraudulent evidence. They pull monies out of the
14 entity, put it in their own pocket as soon as cash is
15 available. They prepare tax returns which understate and
16 conceal the true size, nature and extent of their financial
17 dealings.

18 And the Court will recall the testimony, both
19 Mr. Mitchell's and Mr. Nype's about the \$432,000 or \$430,000
20 reserved in escrow. The interesting thing there is we have a
21 real dichotomy as to why, where and how for Mr. Mitchell
22 suggests that, gee, Forest City was really disenchanted and
23 wanted to get rid of Nype. So we worked with them, and they
24 suggested we put 400,000 in.

25 Mr. Nype's testimony about his conversation with

1 Forest City suggests the other, that Forest City was friendly
2 to him and was happy that the deal was done and, in fact,
3 alerted him that it had been done.

4 Mr. Mitchell says he told Mr. Nype the dollar amount.
5 Mr. Nype's testimony squarely refutes and contradicts that.

6 I think we see a recurring pattern, Your Honor, that
7 Mr. Mitchell's testimony and stories seem cobbled together to
8 justify what he thinks needs to be heard. Whereas I think in
9 weighing credibility, the Court will certainly consider the
10 items, and it just, to me, and again this is perhaps
11 subjective, but Mr. Nype's testimony seemed clear, coherent,
12 natural, whereas Mr. Mitchell's testimony seemed contrived,
13 stilted, et cetera. So respectfully I think in weighing
14 credibility the Court can certainly take into account how they
15 presented, and they are diametrically opposed and different
16 stories of how it went down.

17 But as the Court was aware, and despite
18 Mr. Mitchell's testimony as to -- Mr. Mitchell's testimony that
19 he thought 432,000 was generous and that Mr. Nype would be
20 extremely happy with it, the written evidence, the email chain
21 we have between them, suggests that he was aware that Mr. Nype
22 was looking for a lot more, and that even a year earlier he was
23 proposing a multimillion dollar arrangement slightly different
24 than the First Wall Street, but he was definitely proposing an
25 arrangement that would have resulted in many multiples of what

1 they ultimately reserved in the escrow. So we have that.

2 Now, I think we've explored the relevant evidence or
3 compared or analyzed the relevant evidence in the context of
4 the three legal theories that we're pursuing here.

5 As the Court is aware, we are definitely seeking
6 attorneys' fees.

7 MR. H. JOHNSON: Your Honor.

8 THE COURT: Yes?

9 MR. H. JOHNSON: Can we take a break?

10 THE COURT: We can.

11 While you figure out if you have another side, we're
12 going to take a biologic break for certain individuals.

13 MR. MUIJE: No objection.

14 THE COURT: I will get more coffee.

15 MR. H. JOHNSON: Thank you.

16 (Proceedings recessed at 10:41 a.m., until 10:46 a.m.)

17 (Pause in the proceedings.)

18 THE COURT: All right. Are we ready?

19 MR. MUIJE: We are, Your Honor.

20 THE COURT: Mr. Muije, did you find your next slide?

21 MR. MUIJE: We have two remaining slides, and then
22 I'll hopefully be done in less than 10 minutes.

23 THE COURT: You're good to go.

24 MR. MUIJE: Very good.

25 Getting back to a moment on the spoliation issues,

1 Your Honor, the importance there, particularly in addition to
2 it being part and parcel of the civil conspiracy is that what
3 we -- the evidence that was destroyed, concealed, hidden away
4 from us that we never got and we still don't have was the
5 working papers, the backup from Mr. Spitz that would have
6 allowed us to analyze and explain these millions of dollars in
7 unexplained adjusting journal entries. The Court will require
8 that Mr. Rich's report indicated it was not only impossible to
9 allocate between the various entities, but that there were
10 multiple, multiple entries involving as much as multiple
11 million dollars, in some cases hundreds of thousands, sometimes
12 less, that there was no explanation for, that wasn't allocated,
13 that wasn't properly accounted for, that was just there, you
14 know, unexplained journal entries.

15 If we had had the evidence we should have had,
16 Mr. Rich could've probably backtracked and figured out what
17 those were and where they came from. So that's why a negative
18 inference that the evidence -- that had the evidence not been
19 destroyed or concealed that it would have been adverse to the
20 defendants; I think that's particularly important.

21 Now, Your Honor, the Court will recall that yesterday
22 we had a couple of motions for a directed verdict, and the
23 Court concluded that we had adequately pled a request for
24 attorneys' fees as special damages. And to make the Court's
25 life a lot easier, we've done a little summary on that.

1 If I could ask my assistant.

2 We did not have time to add this to the PowerPoint,
3 Your Honor, but we can certainly make --

4 THE COURT: Would you like to mark it as a
5 demonstrative exhibit?

6 MR. MUIJE: We would like to do that, or we could do
7 it. I will --

8 THE COURT: You'll have to give Dulce a copy later
9 when you give her the PowerPoint. Okay?

10 MR. MUIJE: That'll be great.

11 THE COURT: All right.

12 MR. MUIJE: We'll add it to that same drive.

13 So if this could be demonstrative exhibit next --

14 THE COURT: Demonstrative 1.

15 MR. MUIJE: Demonstrative 1.

16 This is a summary of what the 70000 series -- I want
17 to say 70000, the numbers that we added yesterday afternoon.
18 Your clerk would probably have those numbers more readily
19 available than I am, but we submitted all of the itemized
20 billings for myself, Mr. Rich and Mr. Warns's firms, and those
21 are in evidence. And this is basically a summary of those.

22 Looking at the first page, you see Reisman Sorokac,
23 and as to this case through November 30th the total was just
24 under 194,000. There was an estimate for December. There was
25 a brief estimate for January, and we credited out the monies

1 that had been applied to the attorneys' fees through the
2 sanction judgment.

3 So for a net, but down below I'll pull out the
4 estimates because the Court had also indicated that current
5 time should be done with a posttrial motion that there was
6 appropriately a cutoff, but our best estimate --

7 THE COURT: You have to have a cut off.

8 MR. MUIJE: Pardon? I'm sorry?

9 THE COURT: You've got to. You've got to have a cut
10 off.

11 MR. MUIJE: You're right, Your Honor.

12 THE COURT: It makes sense.

13 MR. MUIJE: That makes sense.

14 So when we look at page 2 momentarily, the Court will
15 see that I backed out the estimated totals, less December and
16 January estimates. So the grand total is a number of the
17 verified documented.

18 But again going back up to page 1, then we have
19 Mr. Rich's billings through December 31st and credit again
20 for monies recovered in the sanction judgment totaling
21 approximately 388,000.

22 Then we have my time for services through December
23 30th with estimates for January time but backing out the
24 62,000 on the sanction judgment.

25 So the subtotals were 200,000 approximately for the

1 Reisman firm;

2 390,000 for Mr. Rich;

3 And six hundred and eighty-three, five, for myself.

4 Including the estimates and taking into account the
5 sanction money recovered, that would come to a total of
6 \$1,274,337.90.

7 Going to page 2, I added up the amount of those
8 estimates that were contained on page 1. Those estimated fees
9 for December and January total just under 107,000.

10 And so the verified total that's in evidence totals
11 one million, one hundred sixty-seven thousand, four, oh, one,
12 ninety.

13 We also heard testimony from Mr. Nype as to outside
14 fees that, you know, we did not have a specific itemized
15 detail. He indicated that he had paid Mr. Schwartzer \$35,000.
16 He indicated that he had paid to date New Jersey counsel and
17 the IT expert in New Jersey 75,000, remembering that New Jersey
18 is necessary because Spitz fabricated engagement letters and
19 concealed his working papers, and evidence, either concealed or
20 destroyed those.

21 And the grand total we would seek as attorneys' fees
22 and costs, subject again to the December and January time,
23 unverified, unbilled time would be one million, two,
24 seventy-two, four, oh, one, ninety, remembering that we have
25 two basis for those fees: One, our fee for special damages,

1 that this all derives from and is caused by the civil
2 conspiracy, the misconduct of the defendants and their
3 fraudulent conveyance activities to avoid paying the judgment.

4 Secondarily and respectfully, under NRS 18.010,
5 sub 2, sub B, I think there's ample evidence in the record and
6 from the Court's observation of these proceedings that
7 Mr. Mitchell and Mr. Liberman consciously made efforts to delay
8 the litigation, to drag it out, to cause expense to Mr. Nype.
9 So as an independent statutory basis, over and above the prayer
10 for special damages, I think the Court could award all these
11 fees under NRS 18.010, sub 2, sub B.

12 Which then brings up the also our prayer for punitive
13 damages. And as the Court observed on Day 1, I think, of the
14 trial, the Court concludes and finds there is a basis for
15 punitive damages. The Court will arrange an appropriate,
16 relatively prompt subsequent proceeding to evaluate, assess and
17 consider those punitive damages under either the fraudulent
18 conveyance statute or the civil conspiracy statute.

19 The final point that I would make, Your Honor, is
20 that the Court has observed and the defendants have vigorously
21 argued statutes of limitation, and what we see is affirmative
22 concealment going on throughout this. But even more
23 importantly, the information necessary to understand that these
24 are fraudulent claims, that they rendered LVLP insolvent, that
25 they left it undercapitalized, that there were alter egos that

1 were not maintaining their corporate formalities, none of that
2 came to light, none of that was known until at the earliest
3 August 2015, and this lawsuit was filed July 2016, less than a
4 year later.

5 It just comes down to, in the first case and, you
6 know, the Mitchell defendants made a big to do that, gee, you
7 have the tax returns, and they show distributions, but what it
8 they didn't show was that the company was insolvent. They
9 showed millions and millions of dollars of net worth. They
10 showed for that very year, with over \$10 million, in
11 distributions they showed \$37 million in profit and gain earned
12 by LVLP, as demonstrated under testimony.

13 The first case was focusing on Mr. Nype's
14 compensation earned from Forest City. It wasn't focusing on
15 the defendants' finances. The defendants' finances were only
16 relevant to the extent it came into play in determining
17 compensation. It was only as we actually try to collect a
18 judgment that we start seeing evidence of commingling, failure
19 to observe corporate formalities, putting personal money in to
20 pay bills, taking, you know, corporate funds out as rapidly as
21 it becomes available.

22 So the evidence for us to understand that fraudulent
23 conveyances were going on on a recurring basis first began to
24 come clear to us in -- as the postjudgment discovery ensued,
25 once we discovered that Mr. Spitz is engaged in fishy business,

1 and when Mr. Liberman finally produced his own backup evidence
2 on 305 showing the self-dealing with casino Charleston, showing
3 that they sucked \$3.5 million out from the original bank loan,
4 et cetera, et cetera. And the elements, the elements of fraud,
5 the 11 items that we walked through previously, those gradually
6 became apparent during discovery.

7 So it becomes clear, Your Honor, that we did not know
8 nor could we reasonably have known of all of this misconduct
9 back in 2011, 2012, 2013. Where it becomes manifestly
10 evidenced is when we actually try to take Judge Israel's
11 judgment awarded to Mr. Nype for unjust enrichment and enforce
12 it do we see the scope, the depth and the complexity of the
13 defendants' misconduct.

14 And we've talked about the special damages, but what
15 is the underlying actual damages? If we can look at the final
16 document here, this is in evidence, Your Honor. So we don't
17 need to make it a demonstrative exhibit. This is
18 Exhibit 70060, and this is a calculation of the amount due as
19 of it would appear to be September 2nd, 2019, and that total
20 as of September 2nd, 2019, was four million, four hundred
21 ninety-three thousand, one, seventy-six, point, ninety.

22 Interest has continued to accrue on the underlying
23 judgment, Your Honor, not on the 4 million and 400,000, but on
24 the underlying judgment since September 2nd. So we're
25 approximately four months later. Statutory interest changed

1 from 7.5 percent in December. It's now 6.75 percent just as an
2 aside, but it would be a relatively easy calculation for me to
3 put together, four months. In fact, I could probably do it
4 while Mr. Johnson is doing his argument if the Court needs a
5 more precise number, but --

6 THE COURT: I don't do interest calculations.

7 MR. MUIJE: I'll be --

8 THE COURT: Just so we're clear.

9 MR. MUIJE: I'll be happy to do that. I've done it
10 extensively through almost 40 years of legal practice.

11 So at this point I think it becomes very clear
12 Mr. Nype has been grievously wronged. The Court heard about
13 the devastating impact on himself, his family, his finances.
14 So we would at a minimum seek special damages as to the
15 approximate \$4.5 million shown in Exhibit 70060. That's the
16 money he should have recovered, but for the misconduct of the
17 defendants;

18 And we would also request an approximate 1.27 million
19 in attorneys' fees and costs;

20 Plus a postjudgment motion for an estimated hundred
21 thousand more for attorneys' fees as special damages.

22 Respectfully, I think the Court can and probably
23 should award some general damages to Mr. Nype for his
24 aggravation, his distress, his pain and suffering, but I will
25 leave that to the Court's discretion.

1 And, finally, I think there is ample evidence in the
2 record to suggest and demonstrate the conduct of the defendants
3 was malicious. It was intentional, and they had -- not only
4 didn't want to pay Mr. Nype, they affirmatively undertook steps
5 so that he couldn't involuntarily collect the money from them
6 knowing that they had a complex artifice and that they could
7 shuffle money back and forth and stay one step ahead of him.
8 So I think punitive damages are certainly warranted as well.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Johnson.

12 MR. H. JOHNSON: Yes. Is it okay if I --

13 THE COURT: You can.

14 MR. H. JOHNSON: -- stay here?

15 THE COURT: You may.

16 **CLOSING ARGUMENT FOR THE DEFENSE**

17 MR. H. JOHNSON: Well, initially I'd like to just
18 state in general that, of course, we see the evidence very
19 differently. I haven't really seen any evidence that really
20 relates directly to Mr. Nype in regards to any of the
21 transactions, the formation of the entities and basically all
22 of the things that went on in regards to the development of
23 this property were not done in any way to delay, defraud
24 Mr. Nype. They were all done in an effort to make money by
25 developing property.

1 Mr. Liberman, Mr. Mitchell and Forest City invested
2 millions and millions and millions of dollars to acquire this
3 property in hopes of developing it and making more money. None
4 of these transactions were done with the aim in mind to hide
5 assets from Mr. Nype. There just really is no evidence of
6 that, Your Honor, and I'll go through that in more detail.

7 But if you really look at this objectively from the
8 beginning of the process when Mr. Mitchell testified about how
9 he came out to Nevada, started looking at the opportunity that
10 might be there, thought it was a very good real estate market
11 and then going forward, and then at that time I'm sure the
12 Court remembers how hot the real estate market was at that
13 time. You couldn't throw a rock without hitting some project
14 that was going to build a high-rise condominium and make
15 hundreds of millions of dollars. And that was just the nature
16 of what was going on at that time. But as the Court also
17 knows, that changed rather quickly beginning in 2008.

18 And what occurred with these transactions, with the
19 adjustments and their deal with Forest City, with all these
20 things was still done in mind with trying to preserve what they
21 had invested to try to pay off their extensive debts and things
22 that they had obligated themselves to and if possible to
23 actually move forward, develop something and make money from
24 it. But none of it was done with the concept in mind that,
25 hey, we're going to do this because we're trying to move this

1 asset or do this or do that to defraud Mr. Nype. The evidence
2 is just not there, Your Honor, and I'll get into that in more
3 detail.

4 But I'd like to go to NRS 112.180. And I know the
5 Court is very familiar with that. So I'm not going to go
6 through all of it other than to point out that I think it's
7 important to note that there's two basic types of fraudulent
8 conveyance contained in our statute:

9 1A is with actual intent to hinder, delay or defraud
10 any creditor of the debtor, which is sometimes called actual
11 fraud or fraud in fact.

12 B, 1B is without receiving reasonably equivalent
13 value in exchange for the transfer or obligation, and the
14 debtor was engaged or was about to engage in a business or
15 transaction for which the remaining assets were unreasonably
16 small or intended to -- intended to incur or believed or
17 reasonably should have believed that the debtor would incur
18 debts beyond their ability to pay.

19 So those are the two tests. Under B you have to not
20 receive equivalent value, and you have to show those factors.
21 Under 1A, that's where you have to show actual intent, and, of
22 course, the badges of fraud, which we'll go through later.

23 But it's important to note that that figures into the
24 statute of limitations argument, which we believe is very
25 important.

1 Under 1A, and that's referring back to NRS 112.180,
2 but under 1A, for what we would call fraud in fact or actual
3 fraud, the statute is within four years after the transfer was
4 made or the obligation occurred or within one year after the
5 transfer or obligation was or could reasonably have been
6 discovered by the claimant.

7 Now, it's important to note that that talks about the
8 transfer. So the salient fact there is the discovery of the
9 transfer, and you have one year from the date of the discovery
10 of the transfer to bring your action, and that's very clear by
11 the statute. It's unambiguous. It's plain. If the
12 legislature had intended some other meaning or factor there,
13 they could have added it, but they chose not to. And it's very
14 clear just like the four-year statute is very clear that it
15 runs from the date of transfer, not from any other factors.

16 And you can even make the argument, Your Honor, that
17 this is a statute of repose, which does not really factor into
18 any issue about knowledge or other factors but runs from the
19 date of a certain occurrence. That hasn't really been briefed,
20 but we could brief that if the Court desires.

21 But I would argue that the way this is -- this is
22 worded, and there are other jurisdictions that have found that
23 this is a statute of repose because it is a firm cutoff date,
24 and but, of course, at a minimum it certainly is a statute of
25 limitations.

1 So only under 1A, which is the actual fraud type of
2 fraudulent conveyance do you have the one year kind of
3 discovery provision.

4 Under the other, constructive fraud, it explains that
5 you have four years, period from the date of transfer. So if
6 you're trying to prove it's constructive fraud and it's beyond
7 four years, you cannot bring the action. So that's I think an
8 important distinction when it comes to the fraudulent
9 conveyance statute of limitations.

10 And in this case there's only been three events or
11 transfers, whatever you want to call them that have been
12 identified by the plaintiffs. There's other things they talk
13 about, but as far as what they have actually identified in
14 their expert report, in their testimony, even Mr. Nype
15 testified that he knew of no other transactions or instances
16 that were fraudulent conveyances, but were limited to what was
17 identified in the expert report.

18 Now, in the expert report, the only three things that
19 are identified is the 305 transaction, the Casino Coolidge
20 transaction and disbursements that went to Mr. Mitchell and
21 Mr. Nype. Those are the three items that are identified, and
22 that's in the report. It's what he says constitutes the number
23 he uses, which was something like \$35 million that should have
24 been available. But those are the only three things, Your
25 Honor.

1 So if we look at -- if we look at those three
2 transactions in more detail, if I can find them, the first one,
3 the LiveWork transaction to 305 Las Vegas, first of all, we
4 would have to note that the threshold issue or the threshold
5 element is not met here. You do not have a transfer from the
6 debtor itself. You have a transfer from LiveWork to 305. This
7 property was never owned by Las Vegas Land Partners ever. The
8 title shows that it went to Aquarius and to a couple of other
9 entities and then to LiveWork, but LVLP never had title to it.

10 And while we're talking about debtor and what that
11 means, I think it's also important to note that under the act,
12 the definition of claim versus definition of debt, and it's
13 similar to the same definitions contained in the bankruptcy
14 code which is exactly where they got those definitions as set
15 forth in the notes of the act.

16 And a claim is defined, is just a -- just that. A
17 claim. It's a request. It's a demand. It's something of that
18 nature saying that I have some sort of claim, or I have some
19 sort of basis for saying you owe me money.

20 A debt is when there is a claim, and there's
21 liability, as defined in the act.

22 So until there's a judgment, you do not have a debt.
23 Until there's actual liability attached to that claim, you do
24 not have a debt under the act, and you do not have a debtor
25 under the act until there's a debt because, of course, the

1 debtor is who owes a debt, not the claim. So I think that's
2 important when it comes to intent and the analysis that the
3 Court would have to go through.

4 But getting back to the alleged fraudulent transfer
5 here with LiveWork to 305, and the Court has, you know,
6 dismissed 305. So I think that does have an impact on this
7 whole analysis.

8 But this of course occurred back in 2007. This is
9 the date of the alleged transfer from LiveWork to 305. So
10 that's the first issue. Besides the fact that it's not even
11 from the debtor, the second issue is the date of the transfer.
12 So under either statute, 1A or 1B, this would be barred by the
13 four-year statute of limitations because the complaint was not
14 brought until 2016. I believe -- what is it? Let's see.
15 July 2016. So that's the date the complaint was brought.

16 So for any of those types of transactions that were
17 under 1A or 1B that don't involve the one year sort of
18 discovery statute, those are barred up through at least 2012,
19 July of 2012. So any transaction that took place before that
20 is barred by that four-year statute of limitations.

21 Now, let's get to the part of this transaction that
22 they're alleging is fraudulent.

23 They haven't really alleged, and even Mr. Nype
24 conceded and Mr. Rich conceded that the transfer itself was for
25 valuable consideration, and it's \$25 million, which is not

1 insignificant. There's two appraisals that support that
2 valuation -- one by the bank, Heartland Bank which had an
3 independent vested interest in determining what the value of
4 that property would be because they were lending on it -- which
5 support that. So that factor is not really disputed; that's
6 basically conceded.

7 But the issue that Mr. Rich had with this transaction
8 was the note and the lease. Now, the Court made a finding
9 yesterday that the lease payments did not -- the nonpayment of
10 the lease did not affect the plaintiff, and so I think that's
11 absolutely true because those payments were to go to 305. They
12 weren't going to LiveWork, or they weren't going to Las Vegas
13 Land Partners or anything of that nature. So I think that was
14 obviously a correct finding.

15 Now, as far as the note is concerned, what's
16 interesting about this and why they identified this
17 transaction, because otherwise this transaction is a normal
18 business transaction, again, there is no basis to find that
19 this transaction was meant to defraud or hinder, delay
20 Mr. Nype. This was a upfront business transaction where one
21 party had a 1031 exchange for \$25 million. There was an issue
22 and a demand from the bank to get this paid off. That was
23 from -- not Oppenheimer. What's the other name?

24 (Pause in the proceedings.)

25 THE COURT: Guggenheim.

1 MR. H. JOHNSON: Excuse me, Guggenheim, and as the
2 escrow statements showed, over \$17 million went to Guggenheim
3 to pay down that debt. And this was at the time when the
4 Guggenheim debt, which was enormous was -- there was a lot of
5 pressure to pay that down. That's one of the reasons they
6 needed a joint venture partner. That's one of the reasons they
7 were looking for Forest City was because Guggenheim had lent in
8 excess of a hundred million dollars regarding all of these
9 properties and wanted to be paid off. So it wasn't just the
10 Forest City transaction, but it was also this transaction which
11 helped pay that down. So that was the basis for this
12 transaction.

13 It was an arm length -- I don't think it qualifies as
14 a transfer to an insider. I know there's been the argument
15 about Mr. Liberman being on both sides of the transaction, but
16 if you look at the definition of insider in the act, I don't
17 think that really meets the requirement because 305 definitely
18 was not a related entity to Las Vegas Land Partners. It was a
19 separate entity owned by a longtime partnership out of New York
20 that had been doing business for, you know, 40 years. So it
21 was not a related entity. So I think that also fails.

22 Now, in regards to the note, what's interesting, and
23 again, that's why this transaction is even identified. If it
24 wasn't for the note, which they thought was a hidden asset, and
25 that's what's in Mr. Rich's initial report, is he made a big

1 deal out of the fact that this was a hidden note, and they had
2 discovered it. And but for their discovery, \$13 million, over
3 \$13 million would have gone unaccounted for and unrecognized
4 and all of these things.

5 Mr. Rich indicated this was an extraordinary
6 transaction that he couldn't understand why it was done. He
7 couldn't understand the note, the lease, all these things, but
8 it became clear, and they downplayed it later when it became
9 clear that this was all part of this transaction with Heartland
10 Bank, and it made perfect business sense. It had really again
11 nothing to do with Mr. Nype. In fact, the note, one of the
12 complaints is, well, the note was not discovered and all these
13 types of things.

14 Well, Your Honor, the note was clearly not hidden.
15 It was connected to a third deed of trust which was recorded
16 with the county recorder for anyone to see. It referenced the
17 note. It disclosed what it was securing. So there is no way
18 that the note was hidden or fraudulent in any way. It was
19 there for anybody to see.

20 And then in connection with that --

21 Why don't we bring up the 2007 tax return because
22 we're going to talk about that.

23 -- the transaction itself, as we pointed out with
24 Mr. Nype and with Mr. Rich is contained on the 2007 tax return,
25 which is, you know, obviously if you're trying to hide a note

1 or hide this and think it's a hidden asset, you wouldn't put it
2 on your tax return, and it wasn't, but the transaction
3 itself --

4 Can you find the -- oh. Can you find the page where
5 it has A and B, the properties.

6 -- it's disclosed on the tax return. It shows the
7 sales price, shows the --

8 THE COURT: Good job, guys.

9 MR. H. JOHNSON: So you can see it, Your Honor.

10 In fact, both transactions are on there. The Forest
11 City transaction and the LiveWork transaction are both set
12 forth on the 2000 tax return. Purchase price, acquisition
13 price, profit, all these things are set forth. It doesn't
14 specifically reference the note, but again that would put
15 someone on notice that if they are contemplating suing LVLP for
16 fraudulent conveyance, or they're contemplating having a claim
17 or even a judgment down the road, that puts them on notice that
18 they should pay attention to those transactions. And obviously
19 Mr. Nype of course knew about the Forest City transaction. He
20 testified and Mr. Rich testified that there was nothing about
21 the Forest City transaction which was fraudulent or was meant
22 to, you know, defraud Mr. Nype. But at the same time this
23 transaction was also disclosed.

24 And as far as how that fits into the statute of
25 limitations, as the Court knows, yesterday we introduced into

1 evidence the Las Vegas Land Partners pretrial, which was April
2 25th, 2014, and the Nype pretrial, both of Nype's pretrial
3 disclosures, April 25th, 2014, and the October 14th, 2011,
4 disclosure.

5 Now, it's important because there are two things
6 disclosed, especially on the 2007 tax return which I think
7 meets the criteria of knew or reasonably should have known
8 about these transactions and would start the statute of
9 limitations running; first is the disclosure of the actual
10 transfer. The actual transfer is disclosed on the tax return,
11 the amount, the date, identifies the property.

12 Mr. Nype had knowledge of these tax returns as early
13 as 2011. In 2011 they disclosed the 2005 through 2008 tax
14 returns. Later they disclosed the 2005 in the 2014 disclosure.
15 They indicated 2005 through 2009, the LVLP disclosure covers
16 tax years from 2005 all the way through 2012. So we know that
17 in that litigation those tax returns were produced. They were
18 obviously produced even before 2011 because they were used in a
19 pretrial disclosure.

20 So I don't know the exact date of the disclosures,
21 but we know for sure that the latest would have been, as far as
22 knowledge, April 25th, 2014. But obviously it occurred
23 before that, and it included all the tax returns. So when
24 Mr. Mark -- or Mr. Rich indicated that they had struggled to
25 get the tax returns, and they thought they had a couple and all

1 of that, that's not accurate. In the prior litigation they had
2 all the tax returns, and they were produced early on, probably
3 by 2011.

4 So that, Your Honor, especially when you're involved
5 in litigation where you've counterclaimed for a judgment
6 regarding this transaction, and it put you on notice about the
7 sale of this property, that, at a minimum, if he didn't have
8 actual direct knowledge, which actually yesterday Mr. Nype
9 testified that he did because Mr. Kevin Johnson asked him
10 whether having that information would have meant he knew or
11 should have known, he answered yes. So we're not just
12 speculating. He actually answered, yes, that it would have put
13 him on notice. So I think that's an extremely important piece
14 of evidence, Your Honor.

15 Now, in addition to that, the 10th supplement was
16 entered into evidence. The 10th supplement was a supplemental
17 expert report by Exceleron Group. But attached to that as an
18 exhibit, they had attached a memorandum for Mr. Mark Rich, and
19 in that memorandum there was a section he looked -- it looked
20 at different transactions and things, but there was a section
21 where he indicated that, and his statement was despite the fact
22 that they owed money to Mr. Nype, they made disbursements in
23 2007, 2008 and 2009, and he listed those disbursements.

24 So again, the 10th supplement was in August of 2011.
25 So as early as August 2011, Mr. Nype had particular notice of

1 the disbursements as set forth by Mr. Mark Rich, who has been a
2 major, you know, witness in both cases -- well, excuse me. He
3 did not testify in the first case, but he worked on that case
4 with the experts, and we know that. But he did testify
5 obviously in the other case and in this case. So the
6 importance of that again is that put him on notice.

7 And while we're talking about that, if you'll scroll
8 down to the K-1.

9 (Pause in the proceedings.)

10 MR. H. JOHNSON: Okay. So this is the K-1 for Barnet
11 Liberman, and it does indicate that there was a capital
12 disbursement of over \$10 million in 2007. Now, specifically,
13 because I know the Court is interested in timing, specifically,
14 we had Mr. Rich go through those disbursements year by year.
15 There was a disbursement in June of 2007 of 3 million to
16 Mr. Liberman. And then there were some other disbursements --
17 I mean, excuse me, 6 million, and there were some other
18 disbursements, and that adds up to the 10 million. But the
19 important part about that is the fact that the tax return
20 revealed those distributions.

21 So he had knowledge, either direct knowledge or
22 should have known, reasonably should have known that there were
23 disbursements at that time from LVLP to Mr. Liberman. There
24 was also disbursements, if you show the other K-1, to
25 Mr. Mitchell of 4,293,000, and again there was a rather

1 substantial disbursement around the time of the Forest City
2 closing.

3 But as Mr. Muije asked his client yesterday, and they
4 looked at the tax return and they said, well, there's the
5 Forest City transaction. Here's the Aquarius transaction or
6 the 305 transaction. It shows they made a substantial profit,
7 well beyond what these distributions are, and he asked him, Is
8 there anything wrong with that? And he said no.

9 The same thing with Mr. Rich. Mr. Rich testified
10 that normally a distribution of a capital --

11 THE COURT: So can I stop you now and ask the
12 question?

13 MR. H. JOHNSON: Sure.

14 THE COURT: So we know there were substantial
15 distributions, and the tax returns show that there were still
16 substantial assets in the entities if you look at the 2007
17 returns. When do you believe Mr. Nype should have been on
18 notice that the distributions resulted in potential insolvency?
19 Because don't I have to link those two things; right?

20 MR. H. JOHNSON: Yeah. Yeah. Yeah.

21 Well, and that's important, Your Honor, because there
22 was no expert testimony that you normally would have in most
23 fraudulent conveyance cases regarding specific insolvency.
24 Normally someone would have done that analysis and not said,
25 well, they're undercapitalized and, you know, that's not a

1 specific finding of insolvency, which is normally required to
2 assist the Court in making that decision. Because we can look
3 at the balance sheet, and if you --

4 THE COURT: Well, even if you go back to the section
5 that Mr. Blut was kind enough to show before, which I think is
6 on page 15 of this exhibit which has the A and the B, you still
7 have substantial assets shown --

8 MR. H. JOHNSON: Yes.

9 THE COURT: -- in the entities.

10 MR. H. JOHNSON: Yes.

11 THE COURT: Or the partnership.

12 MR. H. JOHNSON: Yes.

13 THE COURT: Was I right?

14 MR. BLUT: I can point something out --

15 THE COURT: No. No. You can't argue yet.

16 MR. H. JOHNSON: Well, I would say, and I --

17 THE COURT: I am grilling Mr. Johnson now.

18 MR. H. JOHNSON: I have the numbers here, Your Honor.
19 In 2007 the tax return showed cash and current assets of over
20 \$6 million for that year.

21 Total assets of \$46 million and the capital accounts
22 of both Mr. Mitchell and Mr. Nype -- or Mr. Mitchell and
23 Mr. Liberman increased by \$10 million. So there was nothing in
24 2007 that would indicate that the company was really insolvent
25 as is required to find that as a factual finding under the act.

1 And there hasn't been any testimony of that in this case. The
2 only testimony we have is statements, general statements about
3 being undercapitalized and that kind of thing. So that's a --
4 I think that's a problem. But that would go to 1B, which
5 requires that showing basically.

6 1A again goes to the actual intent, and again I would
7 say there's no evidence showing that in 2007 there was any
8 intent to defraud or delay Mr. Nype because they left
9 substantial assets in the company. So if they were concerned
10 about some claim for a commission or a finder's fee or
11 whatever, they certainly didn't act like it. And I understand
12 the distribution is something, but when you leave over
13 \$6 million in current assets in the company, it certainly would
14 have paid anything that Mr. Nype was even asserting.

15 You know, he had an email, and we've looked at it.
16 It's in evidence, where he said I'd like to get \$2 million, and
17 it's interesting that the response to that, which has I think
18 been mischaracterized, was that Mr. Mitchell said, well, what
19 about 2 and a half percent of what we get for our land? And
20 again, that wasn't even a firm obligation or deal. In fact,
21 Mr. Nype testified there was never a meeting of the minds,
22 never. They were negotiating back and forth, but there was
23 never a meeting of the minds.

24 I know he likes to say he was operating under the
25 First Wall Street agreement, but there's no -- there's no

1 evidence or anything to base that on other than his subjective
2 wish that that was what he was going to get.

3 So the fact that, and again, I think it's been
4 mischaracterized, when Mr. Mitchell, and that's what he
5 testified to, when he said that, well, how about 2 and a half
6 percent, again he says this is just a thought, how about 2 and
7 a half percent of what we get for our land. Well, what they
8 got for their land was entirely different than what the
9 investment was by Forest City. Forest City initially invested
10 something like \$80 million. That's not what they got for their
11 land. They only got a small portion of that, which is
12 reflected in the tax return as some sort of profit that they
13 got from that sale, and it was a fraction of that. So if you
14 take --

15 THE COURT: Because they had to pay off the debt.

16 MR. H. JOHNSON: Correct. Correct.

17 THE COURT: Yeah.

18 MR. H. JOHNSON: And, you know, and even the
19 distribution, the testimony was even the distributions went to
20 pay back loans, debts, other things that they had. This wasn't
21 free money to them. They had to pay back a lot of things that
22 they had done and incurred in order to purchase this land and
23 move forward.

24 So if you look at the 2 and a half percent or the
25 4 percent and you look at what they actually got for their

1 land, which is how Mr. Mitchell and Mr. Liberman were looking
2 at it, the 430 some odd thousand dollars was not an
3 unreasonable amount of money. Because as Mr. Mitchell
4 testified, that was approximately 4 percent of what they
5 actually, you know, received, what they actually thought was
6 the profit portion of that.

7 They never agreed to pay 4 percent of the 80 million
8 because the result of that, and this is what Mr. Mitchell
9 testified to, was that if you took that and you looked at what
10 they got for their land, Mr. Nype would receive approximately
11 half of what they received for their land and all their efforts
12 and everything they had done to that point, which obviously
13 they did not agree with, which they obviously thought was not
14 proper remuneration for their work, and then on top of that he
15 wanted 1 percent of the debt which was brought in. But again
16 they didn't agree to that.

17 The contract with First Wall Street was canceled.
18 Everyone has testified to the fact that it was canceled, and it
19 was not in effect. So that really had nothing to do with it.

20 So their actions in taking that distribution in 2007
21 I think were very reasonable, and I don't think that can be
22 inferred that they were trying to defraud or delay Mr. Nype,
23 especially at a time over, let's see, eight years before it
24 actually became a debt. I mean, to argue that they had in mind
25 at that time eight years before there was ever a debt that

1 those distributions were done with the intent to defraud or
2 delay Mr. Nype I think is rather ridiculous. That just
3 couldn't have been in their minds and wasn't.

4 Because, again, if that was their intent, they would
5 have acted differently. They wouldn't have left all this money
6 in there. They wouldn't have done all these things and
7 continued to move forward. They continued to put money into
8 this project. They continued to work on it. They continued to
9 move forward. If their intent was to do all this to somehow
10 defraud Mr. Nype, it just makes absolutely no sense.

11 Now, in 2008, Your Honor, there was 114,500 in
12 capital distributions to David Mitchell. There was 198,000 to
13 Barnet Liberman in 2008, but there was still cash in current
14 assets of \$4,100,000, according to the tax return. There were
15 assets of \$43 million, and there were additional contributions
16 from David Mitchell of \$59,000 and from Barnet Liberman
17 \$2.8 million.

18 So they continued to put more money into these
19 transactions. And when money got scarce and when the economy
20 went to heck and all of these projects were struggling, they
21 didn't just walk away. They didn't take the assets and send
22 them to the Caribbean and put them in an offshore account or
23 something of that nature. They continued to try to work this
24 out. They continued to try to make it happen, which ultimately
25 would have benefited Mr. Nype at a time when he did get a

1 judgment.

2 But that wasn't what was in their minds clearly from
3 what they were doing. If you were trying to hide assets that
4 belonged to Las Vegas Land Partners, would you put more money
5 into the project? Would you continue to do that? Would you
6 only take out \$114,000 or 198,000 when you put more than that
7 in? That makes no sense as far as trying to defraud Mr. Nype.

8 The same with 2009. Distributions to Mr. Mitchell
9 were 117,882; Barnet Liberman, 800,000; cash in current assets,
10 over \$2,575,000; total assets 40 million. Again, additional
11 capital contributions of 412,000. David Mitchell 15,000.

12 Now, starting in 2010, there were no more
13 distributions to either Mr. Mitchell or Mr. Liberman from Las
14 Vegas Land Partners. So again, if their intent was to defraud
15 and move assets away from Mr. Nype, why in the world would they
16 stop taking distributions? They stopped taking distributions
17 because they were still trying to save the project. They were
18 still trying to move forward. They were still trying to make
19 this happen, but they -- they quit that even though there was,
20 in 2010 there was 1,960,000 in cash and current assets that was
21 in the Las Vegas Land Partners, and total assets of 39 million,
22 and they contributed an additional 81,000 -- that's Barnet
23 Liberman, and David Mitchell contributed 360,000. And you find
24 that kind of from that point forward Mr. Mitchell tended to
25 contribute more money going forward from that point on because

1 it was necessary. It was necessary to pay the bills and the
2 expenses and the creditors.

3 As Mr. Mitchell testified, everyone ended up being
4 paid as far as their lenders and as far as the people they were
5 doing business with, the attorneys. They were -- they were all
6 paid, and a lot of it did come out of their pockets. But that
7 I don't think shows commingling. I don't think that shows a
8 bad intent. That shows a good intent. They wanted to keep
9 going forward. They wanted to try to salvage this despite what
10 was going on.

11 THE COURT: But on alter ego intent isn't the
12 standard, Mr. Johnson.

13 MR. H. JOHNSON: Correct. But you have to show
14 fraud, or you have to show injustice. You have to show a bad
15 intent.

16 THE COURT: You have to show injustice. You don't
17 have to show fraud.

18 MR. H. JOHNSON: Well, it's either or. It says fraud
19 or injustice. But to kind of -- the intent is that there's an
20 alter ego there to prevent the creditor from getting to the
21 assets. That's -- that's what is necessary for alter ego.
22 It's not just commingling, and it's not just control. In fact,
23 there's some very interesting cases out of Delaware that, and
24 I'll get to a Nevada case here in a minute, that talk about the
25 fact, and this is a factor I think the Court should pay

1 attention to, is that these are LLCs. These are not
2 corporations, and there is a major distinction in how LLCs are
3 governed and what's expected from them under the statute versus
4 a corporation. Because under our laws, there are no specific
5 requirements for corporate governments. An operating agreement
6 is not even required. There's not a requirement for annual
7 meetings. There's not a requirement for stockholder meetings.
8 There's not a requirement to vote in a new board of directors.
9 All of those things are things that do with corporations.

10 In fact, what some of the Courts have looked at is
11 the fact that when you're dealing with parent and subsidiaries,
12 and you're dealing with LLCs, the control factor is obviously
13 there. When you have a parent and you have subsidiaries, or
14 even when you have members and a LLC, the control is there.
15 That's just the way it works. When you have a parent and
16 subsidiary, there is control. When you have members that are
17 the managing members, and they own the LLC, there is control.

18 But my argument, Your Honor, is not that that should
19 be considered as a factor to be held against the defendants
20 because those factors are there to show that it's being used
21 improperly. That's the whole basis of alter ego is that a
22 corporation or LLC or even a trust or something of that nature
23 is being used improperly to shield assets.

24 And what the situation usually is, is where someone
25 forms a corporation. They take a bunch of money. They send it

1 to the corporation so it's not any longer in their personal
2 name or in the original entity, but they still maintain control
3 of that, and it's not a parent subsidiary because that wouldn't
4 make any sense, frankly, but it's not a parent subsidiary, but
5 they still maintain control over that. So that factor I think
6 should not weigh against the defendants.

7 Yes, there was control because it's the parent
8 subsidiary. And as Mr. Rich testified, there was nothing wrong
9 with that, and that's a normal way to arrange a business that
10 engages in real estate development. Because as Mr. Mitchell
11 testified, banks almost always require a single asset entity,
12 special-purpose asset entity or some other new entity for the
13 loan. There's other reasons. They don't want people to know
14 they're buying up all this property, liability reasons, if
15 somebody falls down on the property or whatever. There's all
16 those legitimate business reasons why it's set up as a parent
17 subsidiary situation, and Mr. Rich testified to that. But
18 there's nothing wrong with that.

19 So that factor alone should not weigh against the
20 defendants.

21 Then as far as well, control, I think it's the same
22 argument is that, of course, there is control, and again, the
23 fact that they had one bank account. There's been a lot of
24 talk about the fact that there was one bank account.

25 Well, Mr. Rich testified that not every entity that's

1 formed needs to have a bank account. The majority of all these
2 entities were just formed to purchase and hold real estate.
3 They weren't conducting active business. So there was no
4 reason for them to have bank accounts. The fact that there was
5 one bank account, again, I don't think should indicate that
6 that was either commingling or a alter ego factor because sure,
7 did they pay the filing fees for these entities on a yearly
8 basis? Yes.

9 Did they pay the property taxes? Yes. But that only
10 makes business sense. Mr. Mitchell testified he would have had
11 to have somewhere between 40 and 60 bank accounts if every
12 single entity had one, and that would have been a financial and
13 accounting nightmare to do it that way, and most people don't.
14 In the real world, they don't do it. They do set up an
15 operating company, a holding company, and that pays the bills
16 for most of the subsidiaries.

17 Now, the case I was referring to is JSA, LLC, versus
18 Golden Gaming, Inc., (2013). Now, it is an unpublished case,
19 but I think it's helpful for what it talks about because it is
20 a situation where you have a parent company. You have a
21 subsidiary.

22 MR. MUIJE: Your Honor, I do have to object. This is
23 not allowable under the rules to cite unpublished cases in
24 argument. In briefs you have the ability to do it with limited
25 circumstances and specific designation. But in an oral

1 argument, an unpublished decision is not appropriate.

2 THE COURT: The objection is overruled.

3 MR. H. JOHNSON: I'll just briefly state that it is
4 helpful because it does involve a very similar situation where
5 a subsidiary is being sued, and they're trying to hook in the
6 parent as an alter ego. And they -- and the Court -- and there
7 was the same argument, that the parent was collecting the cash,
8 was paying the expenses for the subsidiary and doing all these
9 things, and that was their argument, and the Court ruled, and
10 it was based on some published cases out of the Second Circuit
11 and some other cases are cited in that.

12 I'll just cite the one: Weddell [phonetic] versus
13 H2O, Inc. And let's see -- oh, no. Excuse me. That's the
14 wrong case. Fletcher versus Atex, A-t-e-x, Inc., 68 F,3d 1451,
15 Second Circuit. And what those line of cases cite and what the
16 Court also found was that the fact that there is a unified cash
17 management system or banking system by itself is not enough to
18 find alter ego. That's a normal way of doing business for a
19 lot of companies, and so that factor does not indicate that
20 it's an alter ego. That's not enough.

21 In fact, I think the real issue when it comes to
22 alter ego is whether it's being used as a vehicle either to
23 commit fraud or upholding that would be unjust, which again
24 there would have to be a good reason to find that that was
25 unjust or fraudulent because the basic, you know, theory under

1 our law and other states' laws is that the entities and those
2 legal entities should be respected, that they're formed for a
3 reason, they're allowed for a reason, and absent some very
4 clear and convincing evidence, they should be upheld.

5 And while we're talking about alter ego, I'll just
6 quickly go through those elements. We've discussed them, but I
7 just want to make it clear. You know, under the *Loomis*
8 [phonetic] case, the requirements are the corporation is
9 influenced and governed by the stockholder, director or
10 officer. There's such unity of interest in ownership that the
11 corporation, stockholder, director and officer are inseparable
12 from each other, and adherence to the corporate fiction of a
13 separate entity would sanction fraud or promote a manifest
14 injustice.

15 So again, though, in looking at LLCs, it's a little
16 different, and the newer cases, especially out of Delaware are
17 saying you can't really hold those factors against an LLC or
18 against the parent subsidiary because that's the nature of that
19 relationship. So those are not things being done to promote
20 injustice, to promote fraud, to hide assets. That's just in
21 the very nature of that relationship. So I just wanted to make
22 that clear.

23 (Pause in the proceedings.)

24 MR. H. JOHNSON: I will address some of the issues
25 Mr. Muije raised, Your Honor, because I think, you know, there

1 is a definite disagreement on what the evidence showed.

2 We've addressed the one email regarding the
3 discussions between Mr. Nype and Mr. Mitchell. There's another
4 email which keeps coming up. It's 60005, which is an email
5 that they argue points out control of 305, that somehow
6 Mr. Mitchell or Las Vegas Land Partners had control of 305.

7 It's being totally mischaracterized, and Mr. Mitchell
8 testified about this very email, but I want to emphasize the
9 fact that what he explained and what he testified to was this
10 was an email that he was sending to the property manager that
11 was managing that property for 305, and this was after the
12 receiver was appointed, and he was told that the rent payments
13 had to go to the receiver, and that's what he is doing in this
14 email. He's saying to the property manager, that is there
15 collecting rents and whatever that, yeah, you have to send
16 those to 305 and to the receiver, and that's what that email is
17 about.

18 There's been some discussion about disregarded
19 entities. As Mr. Rich pointed out, there is nothing wrong with
20 having disregarded entities or pass-through entities on the tax
21 return. It's done all the time. That is not a factor that
22 indicates commingling or alter ego or those types of things,
23 especially when, and he testified to this too, when there's a
24 parent subsidiary structure that that is -- that's normal.
25 That's the way it's mostly done, not separate tax returns and

1 not separate bank accounts.

2 And if you look at the general ledgers, there is
3 enough detail in the general ledgers to show what expenses are
4 being paid and for what purpose. There are subcategories,
5 subaccounts where that is broken out. I've been through those
6 general ledgers, and it's there. You can -- they're in
7 evidence. You can see that this is not a big mishmash. They
8 do go ahead, and they set out, you know, subaccounts for legal
9 fees, for expenses related to the properties, to all these
10 things. It's all set forth in the general ledger accounts. So
11 I don't think that's any evidence of that.

12 Now, Mr. Muije referenced 40006, which was the
13 closing statement, and he said this was evidence of confusion,
14 commingling, not knowing what they're doing, where there's the
15 \$700,000 payment from Las Vegas Land Partners. Well, that's
16 not a mistake. That's not commingling. They actually did put
17 into escrow \$700,000 to help close this transaction. That is a
18 payment from Las Vegas Land Partners into this for purposes of
19 being able to close the transaction so they could pay down --
20 not Oppenheimer. I keep calling it Oppenheimer.

21 MR. EDWARDS: Guggenheim.

22 MR. H. JOHNSON: Guggenheim. So they could pay down
23 Guggenheim, and they could save this piece of property.
24 Remember, Heartland Bank already had a loan also on the
25 property, and it was replaced by the two loans that were

1 obtained by 305 to finance the purchase and be able to do this.
2 So they had to pay off the old Heartland Bank loan. They had
3 to pay off Guggenheim just to even salvage this property.
4 Heartland was pressing them, Mr. Mitchell testified, to do
5 that, and so was Guggenheim. So that's the reason for the
6 transaction. That's why they actually put in \$700,000.

7 If you were trying to hide assets, you know, you
8 wouldn't put in \$700,000 to make this transaction happen.
9 There was legitimate business reasons for that.

10 THE COURT: So, Mr. Johnson, it's almost noon. So my
11 question to you is how much longer do you have, and are we
12 going to get to a good breaking point? Because I have a
13 half-hour meeting I'm going to, and then we're going to resume
14 when everybody can get back here.

15 MR. H. JOHNSON: I probably have another 20 minutes
16 or something like that.

17 THE COURT: Okay. So are we at a good breaking
18 point?

19 MR. H. JOHNSON: Sure.

20 THE COURT: Okay. I'm going to go do mental health
21 court, and I'll see you guys back in a half-hour or so.

22 (Proceedings recessed at 12:00 p.m., until 12:36 p.m.)

23 (Pause in the proceedings.)

24 THE CLERK: Mr. Johnson, are you ready to continue
25 with your closing argument?

1 MR. H. JOHNSON: Yeah. Yeah.

2 THE COURT: Mr. Muije, do you need a new set of
3 headphones?

4 MR. MUIJE: Yeah. This one apparently has lost an
5 earpiece and doesn't appear to be working out of one ear.

6 THE COURT: Oops. Ramsey will see if he can get it
7 repaired by IT.

8 Good luck with that, Ramsey.

9 Mr. Johnson, you may continue your argument.

10 MR. H. JOHNSON: Thank you.

11 So at this point, Your Honor, I was going back
12 through some points that I wanted to address that Mr. Muije had
13 raised, and we've already done a few of them.

14 One of the elements Mr. Muije raised as evidence of
15 commingling was when he talked about the fact that employees
16 for Mitchell Holding had done work for LVLP or related
17 entities.

18 But what Mr. Mitchell testified to, which wasn't
19 mentioned, he testified to the fact that when Mitchell Holding
20 employees did do any work for LVLP, they were paid by LVLP. So
21 there was a differentiation in regards to that.

22 Let's see.

23 Oh, the other, while we're -- I wanted to go back to
24 305 and talk about one other factor of that that was kind of
25 debated back and forth extensively which was why there was no

1 action to collect the note and those issues. And again, what
2 Mr. Mitchell testified to, which was not mentioned, was that
3 the note was secured by a deed of trust, which was in third
4 position, and he testified that they did not disclose -- or did
5 not foreclose on the third deed of trust because that would
6 have meant that they would have had to have taken over the
7 payments on the first and the second, or they would've just
8 been foreclosed upon by the first and the second.

9 And then as far as suing on the note itself, they
10 would've been suing 305 Las Vegas, LLC, which was a single
11 asset entity. So the only thing they could have achieved with
12 that was to get a judgment against 305, which had no assets
13 other than a piece of property that was under water. And
14 eventually that's why that whole transaction was done was
15 because the land was worth less because of the recession, and
16 Heartland Bank was willing to basically, you know, do a
17 modification of the whole transaction, the notes and the loans,
18 and that took it down to approximately \$4 million.

19 So it wasn't a conspiracy not to collect the note.
20 That was the argument of Mr. Rich was that there was some
21 conspiracy not to collect the note so the judgment could not be
22 paid. That was obviously not what they were trying to do, and
23 there's no evidence of that, Your Honor.

24 Let's look at the 2007 tax return.

25 Your Honor, this is the 2000 tax return. This is the

1 balance sheet portion of that, and it's been mentioned numerous
2 times that Mr. Nype either didn't have a duty to inquire or
3 that there was no reason to inquire because he felt LVLP was in
4 fine financial shape, that there was a lot of assets. So he
5 was not worried about if he obtained a judgment later that he
6 would be able to collect it.

7 Well, that cuts both ways because also, you know, if
8 that's the situation, then that cuts against the fact that they
9 were doing things which made them insolvent or pointed to them
10 doing fraudulent transactions to remove those from the balance
11 sheet. But the point here that I wanted to point out, and
12 again I'm not conceding insolvency for purposes of fraudulent
13 conveyance issues, and as I pointed out, there's no direct
14 evidence of that because this is a balance sheet at book value.
15 So in order to have a true legal opinion, we would've had to
16 appraise the properties, all kinds of things.

17 But just looking at this, if you look at it, there's
18 40 --

19 Can you enlarge that just a little bit.

20 -- 46 million in assets, book value, but it indicates
21 loans of 48 million. So that removes that argument that
22 Mr. Nype, you know, wasn't on notice that there could be an
23 issue, that he had no duty to inquire or look into transactions
24 or disbursements that LVLP might have indicated on their tax
25 return. So I think that should be also considered.

1 There was some argument about and testimony about the
2 Forest City transaction and how that was modified or amended or
3 renegotiated because there were contributions made by Forest
4 City that were not matched by LVLP. And as Mr. Mitchell
5 testified, under the agreement they had an option -- it was
6 just a business decision -- to either put in additional money
7 or the agreement would have reduced their interest. So that
8 was argued to indicate that somehow the reduction from
9 40 percent down to 10 percent was again some sort of effort or
10 method to defraud or hinder Mr. Nype.

11 Again, just a business decision. They decided that
12 they either couldn't or didn't want to match those
13 contributions as they were allowed to do, and the result was
14 something that was part of the agreement. It wasn't something
15 cooked up by Mr. Liberman and Mr. Mitchell to somehow reduce
16 their interest in the TIC. And so I wanted to make that clear
17 too.

18 I'll just quickly address civil conspiracy. I think
19 that stands or falls with the fraudulent conveyance action
20 because there has to be an unlawful activity that would be the
21 subject of the conspiracy.

22 First of all, I think the problem is you can't have a
23 conspiracy with yourself, and you really can't have a
24 conspiracy with an agent. So I'm not sure who the conspiracy
25 is between because it's either with itself or a subsidiary or

1 with an agent. So I don't understand how that applies, but
2 again, I think they would have to argue that that is related to
3 the fraudulent conveyance. So that would have been the subject
4 of the conspiracy. So I think that rises and falls with the
5 fraudulent conveyance anyway.

6 Now, the issue of the engagement letters I'll address
7 quickly. And one of the things that they've argued is that
8 they are damaged, they are prejudiced and that there should be
9 an inference of wrongful activity because they're arguing that
10 documents were destroyed.

11 There's no evidence of exactly what documents they're
12 claiming were destroyed and how they were prejudiced or
13 damaged. What they've done is they said, well, we just don't
14 have everything. We don't have this. We don't have this, we
15 don't have that, but they're never specific about, okay, what
16 exactly is it that you're saying you don't have, and how did it
17 damage you, and how did it impact Mr. Nype. They have not
18 introduced any evidence of that.

19 And to just rehash the document issue, Your Honor,
20 what occurred was that the -- when we were ordered to produce
21 all those documents, we produced everything. There's one
22 point -- at least 1.3 million pages, hundreds of thousands of
23 documents. They have not gone through all of those, and I
24 understand why, and I actually offered if Mr. Muije needed more
25 time that I would not object to him asking for more time if he

1 wanted more time to go through those documents. But I would
2 submit that because of the huge production that was done and
3 the way it was done they're not missing anything. The problem
4 is they have not gone through all of it, and I understand the
5 late production is my client's fault, and I understand that,
6 and he was sanctioned for that, and he's paid the sanction, but
7 it's my belief that everything they possibly could have wanted
8 was produced. They just haven't gone through all of it.

9 They do have Mr. Nype's -- not Mr. Nype, Mr. Spitz's
10 hard drive. I understand they've only had it for a while, but
11 I don't believe that there's anything that they can point to
12 that would really change the facts of the case. I mean, they
13 know about all the transactions. They know about all of that.

14 What they're talking about is well, backup to
15 understand journal entries and some things like that, which a
16 lot of Mr. Rich's fault with the accounting is methodology. He
17 wouldn't have done it that way. He thinks it should be done
18 this way. Well, that's a matter of opinion, Your Honor.

19 There's no set way to do things in the accounting
20 world. I think that's pretty clear. Accountants have
21 different ideas about how things should be done -- should be done.
22 For example, the issue of the note; he made a big deal out of
23 the fact that the note was on the tax returns for a period of
24 time, then it was gone. Well, that's up to the individual
25 accountant to determine at what point that note became

1 worthless and should be either written off or not included in
2 the tax returns, and there's no evidence that it was done
3 improperly. He just said that it was there, and then it was
4 gone, and that didn't coincide with the 305 audit. Well,
5 that's because one's an audit and one's not.

6 There's a number of reasons why that's the case, Your
7 Honor. It wasn't that they were trying to hide it or make it
8 disappear or any of those types of things. So, but then -- oh,
9 and I'll finish up on the engagement letter.

10 What Mr. Mitchell testified to is that he did recall
11 signing engagement letters. He was asked to re-sign engagement
12 letters, and so that was his testimony, that that's what he was
13 doing.

14 And I understand the problems with what appears to be
15 the emails and those things, but how does that affect the
16 plaintiff? Again, the only way it could possibly affect the
17 plaintiff is if somehow they can point to specific documents
18 and things that they were prejudiced by. If there was an issue
19 with the engagement letters, again, that doesn't relate to
20 increasing the damages or anything specifically they've been
21 able to point to that prejudiced their case. So I'll just
22 leave that at that.

23 There's testimony about the email 50042, and that was
24 the email, Your Honor. I won't bring it up, but I'm sure that
25 the Court remembers it. That's the email they were talking

1 about having a mediation or something and that there would be a
2 delay and kicking the can down the road and that type of thing.
3 Again, that was from the attorney. That wasn't from
4 Mr. Mitchell. When he says our plan or whatever, that doesn't
5 mean that includes Mr. Mitchell. There's no evidence of that.
6 That could be the attorney. That could be his law firm. That
7 could be just their defense mentality, that they want to push
8 the can down the road. We don't know what that meant, but it
9 certainly shouldn't be evidence against Mr. Mitchell in that
10 regard, Your Honor.

11 The testimony regarding journal entries and the
12 argument that that somehow is evidence of commingling or other
13 wrongdoing, again, that's a issue of how accountants choose to
14 do things. Some accountants don't like journal entries. Some
15 accountants use them extensively. That's just methodology,
16 Your Honor. That shouldn't be a factor in indicating
17 commingling or intent to defraud or delay or anything of that
18 nature.

19 And let's see. That's everything on that book pad.

20 Oh, there was mention of the exhibit. I think it's
21 60002 which dealt with the issue of whether, and it's in
22 Mr. Rich's report where he makes an allegation that they were
23 trying to switch millions of dollars of capital contributions
24 to debt or vice versa.

25 There's no evidence that actually happened. On the

1 tax returns, the capital is treated as the capital. There's no
2 point in the history of those tax returns where all of a sudden
3 the capital disappears, and it was converted over to debt.

4 What Mr. Mitchell talked about was that there was a
5 consideration about whether they were considering doing that,
6 and that was a worksheet that Mr. Spitz had come up with to
7 show kind of what that would look like, but it was never done,
8 Your Honor. So they never did that. They never switched
9 anything, and as Mr. Rich testified, I asked him, I said, well,
10 what's the concern there? And he said the concern was going
11 from capital to debt, that that might impact a creditor. It
12 never happened. So that's a nonfactor.

13 In regards to the special damages, the attorneys'
14 fees, I'm certainly aware of what the Court ruled yesterday,
15 but I do think that should be revisited. I don't believe that
16 Mr. Muije did plead that with enough specificity under rule
17 NRCP 9G because the *Lua* (phonetic) *versus Christopher Holmes*
18 (phonetic) case makes it clear that just putting in the
19 standard, hey, we incurred attorneys' fees, and we should get
20 our attorneys' fees is not sufficient to plead special damages
21 relating to the attorneys' fees and that it must flow as a
22 natural consequence from the cause of action, and it has to be
23 related to a specific cause of action.

24 For example, many Courts have found that slander of
25 title is an appropriate type of action where special damages

1 for attorneys' fees are allowed because when the party slanders
2 the title, they must have -- they must realize that in order to
3 get that off it's going to require attorneys' fees. And so
4 every case is not appropriate for special damages, and I don't
5 think we have those factors here. I don't think it was pled
6 properly in the complaint.

7 Let's see. Let me just check my notes quickly.

8 Oh, I did want to mention, you know, as far as the
9 alter ego, the case that Mr. Muije referred to *Trans First*
10 (phonetic) also is an unpublished case. And, in fact, at the
11 beginning of the case, the Supreme Court says we are limited --
12 we are limited to the facts of this case, which also I think
13 limits the precedent of the case. They're saying we're limited
14 to the facts given to us, and that's what we're basing it on.
15 So I don't think it's a pronouncement in general that that is
16 their position for all cases, and again it is unpublished, and
17 they chose to not publish it.

18 But what the other case, the *MOU* case we cited, which
19 was decided just a month or two before that, did specifically
20 find that a transfer from a subsidiary was not a fraudulent
21 conveyance. Now, they didn't go into the issue of alter ego,
22 and I understand the logic behind it, but I'm just saying they
23 would have to prove that. The Court would have to find that
24 that particular entity was the alter ego of the other
25 particular entity of the debtor. There had to be a specific

1 finding that that entity was the alter ego of the debtor and
2 that then that transfer might fall under the statute. But
3 absent that, it still stands that a transfer from a subsidiary
4 does not fall under the fraudulent conveyance statute.

5 I think that's all I have, Your Honor. I thank you.

6 THE COURT: Thank you. Mr. Blut.

7 MR. BLUT: Thank you, Your Honor.

8 (Pause in the proceedings.)

9 **CLOSING ARGUMENT FOR THE DEFENSE**

10 MR. BLUT: Sure Mr. Johnson certainly hit many points
11 that would apply to my client as well as my client had a
12 similar ownership interest in many of the defendant entities,
13 and so I will do my best not to make the same arguments that
14 Mr. Johnson made, but maybe hit on some.

15 I think an overriding theme in the case is the market
16 forces and the collapse of the real estate market and the debt
17 and equities market is why we're here today. There were
18 grandiose plans. That was my word. I asked Mr. Liberman if he
19 had grandiose plans. The Forest City deal, Forest City, I
20 think the agreement shows they put in \$82 million. That's a
21 lot of money, even, as Dudley Moore said in Arthur back when
22 82 million was a lot of money. They had big plans.

23 What happened with that when the market collapsed,
24 Forest City, who was in control, sold them off and sold off
25 whatever they could to get whatever money they could get. No

JD Reporting, Inc.

1 one in this case claims that that was to defraud, hinder or
2 delay Mr. Nype. That was a business decision by Forest City.

3 Had the market not collapsed, there'd be an 1100 unit
4 residential complex where the -- what we call the Aquarius, the
5 former parking lot that's now a parking lot and sort of strip
6 mall with an 1100 unit residential building. There's a lot of
7 money that was going to change hands, and everyone was going to
8 do well.

9 And I'll probably hit this at the end, but even at a
10 minimum, on one of Mr. Rich's exhibits, Mr. Liberman lost
11 \$1.6 million just on that one aspect. And to say that he lost
12 1.6 million to hinder or delay or defraud Mr. Nype is not -- is
13 not a reasonable explanation.

14 To circle back, and I'm not sure if I misheard you,
15 you had asked Mr. Johnson something about the statute of
16 limitations. I heard it of, you know, when did the plaintiff
17 become aware of the facts that would trigger the one year where
18 knew or should have known standard under the fraudulent
19 conveyance, and I think for that it goes back to the August --
20 this is 90079, and so this is I think everyone's talked about
21 this, about the distributions in 2007 and 2008 and 2009, and
22 those figures come from the tax returns.

23 So if you also look at those tax returns, those tax
24 returns have balance sheets; right, and one of the issues
25 Mr. Rich had testified to to support his fraudulent conveyance

1 claim was that at the start of 2007 the balance sheet shows
2 that there's \$8 million in the account, and at the end of 2007,
3 it shows 2.3 million. And then later Mr. Muije showed him the
4 '15, '16 tax returns, which showed no cash, but the 16 million
5 of book value of the other assets.

6 But what did clearly have to put the plaintiff on
7 notice is looking at in the column D, that's sort of with the
8 cursor, at the end of 2007, it's 2.3 million, and then at the
9 end of 2008 it's \$46,000.

10 THE COURT: In cash?

11 MR. BLUT: In cash. But that was a point that
12 Mr. Rich testified to was there's no cash, and they took all
13 the cash out. So holding Mr. Rich to his own standard, they
14 went from 8 million in cash in two years to \$46,000. Clearly
15 that puts any person reasonable, I guess a reasonable person,
16 it has to put the plaintiffs on notice no later than August
17 of 2011 that there was some transfers which they list in the
18 report that was or could reasonably have been discovered by the
19 claimant because it was in the documents that they had.

20 And just to close the loop, they also had 2009, which
21 is contained in that report, and it shows about the same amount
22 of cash on hand. So by their own analysis, they were aware at
23 that time and are therefore time-barred on these disbursements.

24 I think that this was -- Mr. Rich testified to a lot
25 of things, Your Honor. One of them, and I'll kind of go

1 through some of the overreaching. One of them was Mr. Muije
2 said it today, that there was \$15 million from 2007 to 2015 --

3 I hit the wrong exhibit.

4 (Pause in the proceedings.)

5 MR. BLUT: There it is, that what Mr. Rich admitted
6 on cross-examination is there was overreaching by \$6 million
7 because 2005 and 2006 there was \$6 million of his 15 million
8 that came out.

9 Mr. Rich then also testified, while we're on
10 Mr. Rich, that he's never heard of retroactive appraisals in
11 cases like this, which was interesting because retroactive
12 appraisals are used in real property matters.

13 THE COURT: Retrospective.

14 MR. BLUT: Retrospective.

15 THE COURT: Yes.

16 MR. BLUT: Thank you, Your Honor. My notes were bad.

17 He was unaware of that in this type of case, and I
18 think that's just overreaching on his part. He also said that
19 receivership income gets -- it ends up on the entity's tax
20 return. I don't know where that came from.

21 And it was also interesting of Mr. Rich's when he
22 pointed out on the second -- 305 Second Avenue Associates, LLC,
23 audited financial statements that he testified to at length
24 about, and that's where it says that the rent was due from
25 LiveWork, which he had no problem with. He was asked about

1 that, and everyone knows Charleston Casino Partners, LLC, was
2 the tenant, but he had no problem with it, and I just think
3 that that was very telling.

4 And he said he had a problem with that there was a
5 due to from Charleston Casino Partners, and he opined that
6 probably Charleston Casino Partners, instead of one year the
7 amount went down by 4,000. He said this is probably Charleston
8 Casino Partners paying some of 305's debts. He had no basis
9 for it, but he felt the need to sit on the witness stand and
10 stretch. And if he stretched on those things, we have to
11 consider what else has he stretched on. I think that when you
12 look to --

13 Well, I guess getting back to something that I
14 brought up in my opening is that Las Vegas Land Partners is the
15 judgment debtor. In the underlying case, Mr. Nype and his
16 company were sued by not only Las Vegas Land Partners, but Zoe
17 Properties and LiveWork, LLC. So part of their case in the
18 alter ego is that there has to -- it's an injustice if you
19 don't find alter ego on the entity level. I'll get to the
20 individuals in a minute, but it's a situation where the
21 contract is with Las Vegas Land Partners. That does not
22 mention Mr. Nype. He's not in there. That's 6000 -- 60001.

23 60002 is now the -- everyone likes this email. It's
24 the one where Mr. Nype says I want -- I'm looking for 2 million
25 bucks, and Mr. Mitchell says, well, I was thinking something

1 else. And so I think a bit more fair recitation or
2 understanding or interpretation of the facts is that the two
3 gentlemen, Mr. Mitchell, Mr. Nype had -- did not have the same
4 understanding of what Mr. Nype would be entitled to. And one
5 of the key points that Mr. Nype admitted on the stand was his
6 deal for compensation was not with any of the defendants. It
7 was with First Wall Street, and I think that's important
8 because then Mr. Nype said, well, I was getting paid of what
9 the First Wall Street was, but that was hidden from Las Vegas
10 Land Partners.

11 But getting back to the parties, Your Honor, in 2007,
12 Mr. Nype was sued by LiveWork and Zoe Properties. Throughout
13 that litigation, it was understood who entered the deal.
14 There's no dispute. Mr. Nype didn't say I didn't know that
15 LiveWork and Zoe Properties had any involvement in this. He
16 was sued by them, and he was in a litigation that went on for
17 eight years or just short of eight years. So to not have at
18 any time added to his counterclaim the actual entities that
19 actually entered into the agreement with Forest City, that's
20 on -- that's on plaintiff. For him to come in and say there's
21 an injustice here. I didn't know I had to sue the entities who
22 entered the deal that I knew about for eight years. That just
23 doesn't make any sense, Your Honor. He was well aware of what
24 had happened.

25 So then you get to their issue of alter ego, and I

1 think Mr. Johnson spoke at length about the entity level. So
2 I'm going to address the individual level because I think
3 that's an important point is you heard -- the only testimony as
4 to what went to the individuals, Mr. Mitchell said we took
5 out -- we borrowed all kinds of our own money that we had to
6 pay back, which you can see on the exhibit that I have up on
7 the screen, 5028 (sic), page 124, which shows how much in
8 capital contribution. Mr. Liberman had put in \$12 million at
9 the start of this, before any of this happened, 2005 and 2006,
10 and Mr. Mitchell 4.4 million.

11 There was testimony that there was one capital call
12 that was made. So even if every dollar is left in, assuming
13 not \$1 comes out in 2007, Las Vegas Land Partners still, and
14 it's through LiveWork, can't make that -- can't make the
15 21 million in capital call. We know they owed 21 million.
16 It's in the Exhibit 12, which is the term sheet, which explains
17 the first 21 million, and there's a note that's on the tax
18 returns and the balance sheet of Las Vegas Land Partners for
19 that 21 million before the money starts coming down to them.

20 So under any circumstances they can't -- they can't
21 make it, and Mr. Rich, no one could testify what amount of
22 money did Las Vegas Land Partners have to leave in that
23 account? Like we didn't know, and there's no law, there's no
24 argument, there's no facts of what amount that is that they had
25 to keep forever. At some point they'd have to close business

1 because we can see they're basically waiting until 2026 or
2 2046, whatever the year is on that TIC that they're waiting
3 for. But under the plaintiffs' version of the events, they had
4 to have guessed how much it was because even though Nype says
5 I'm looking for at least \$2 million, he had no agreement with
6 Las Vegas Land Partners, LiveWork or Zoe Properties. He didn't
7 have one. He had one with First Wall Street.

8 He advanced a theory that he had an oral contract.
9 He lost on that. He got an unjust enrichment claim, in essence
10 what would be the appropriate amount. But that was an
11 unliquidated, disputed contingent claim until 2015.

12 So plaintiff put forth no evidence how much money or
13 how they would know that they had to set aside \$2.6 million
14 from 2007 and just let it sit there, not make a capital call,
15 not do any work to try to develop the Aquarius, not continue to
16 do any of the efforts they were doing.

17 No one disputes that there were ongoing business
18 efforts. They call them preferred creditors, but what they
19 mean is it wasn't Mr. Nype. That was the word. Mr. Rich, it's
20 in his report, and he testified that there was \$6.9 million
21 paid to preferred creditors. But that's his word. He's saying
22 Las Vegas Land Partners preferred to pay somebody else other
23 than Nype, but Nype's bill never came due until 2015. So we
24 still don't know how much were they supposed to keep in there.

25 We know the Wall Street -- First Wall Street contract

1 was canceled. We know no one had a meeting of minds. So what
2 were they supposed to do?

3 And that comes to what were the individuals; right?
4 What is the -- what is the evidence that Mitchell and Liberman
5 are the alter egos of this company?

6 And what did they -- what did they -- what did they
7 offer, Your Honor? They offer a signature loan that's in their
8 names that the testimony of David Mitchell was all that money
9 went into the land partners, and it's all in the general
10 ledger. Mr. Mitchell even testified that the money that came
11 out of the Casino Coolidge, the 250,000 went to pay it down.
12 It's directly in the general ledger, 2014 of the Las Vegas Land
13 Partners. There are no cars that were paid for, no cell
14 phones. You heard argument today about American Express bills,
15 but you didn't see one bill, and they didn't bother to ask
16 Mr. Mitchell or Mr. Liberman about it.

17 There's nothing that they tie to personal because we
18 know, yes, money was taken out. We know of the 10 million that
19 Mr. Liberman received; six of it was with preForest City money,
20 which I think is important at all -- or was important also
21 because part of it is there was money from the 305 deal, and
22 then cash came from the Forest City deal. But 6 million came
23 prior to any Forest City money, and that's in the 2007 general
24 ledger of Las Vegas Land Partners.

25 And so that actually makes up, from this exhibit,

1 that makes up 12 of the 15 million that Mr. Rich says shows
2 wrongful, fraudulent conveyance distributions. You're down to
3 3 million.

4 With regard to the amount that they should've left
5 in, we know undisputed three things: Mr. Liberman put in
6 2.8 million in early 2008. We know that. It's not disputed.
7 We know that Mr. Mitchell put in 6.9 million. That's Exhibit,
8 I think, 30067, which is right there. This is the exhibit, the
9 David Mitchell amounts paid from 12/1/08, which after the --
10 even after the lawsuit, going to 2015, he put in almost
11 \$7 million.

12 Plus, Mr. Muije pointed out today, and I think it's
13 important that there's 3.5 million of unidentified deposits.
14 Well, there's no one putting money into this besides
15 Mr. Liberman and Mr. Mitchell or from transactions that they
16 did. So if you add all that up, this is about 7 and 2.8 is 9.8
17 and 3.5 is over \$13 million, which is roughly the amount
18 Mr. Mitchell and Mr. Liberman took out in 2007.

19 They in essence put almost every single dollar back
20 in, and I don't -- there was a little argument on the Casino
21 Coolidge issue, but I can just highlight a couple points.
22 There's no evidence that reasonable equivalent value wasn't
23 paid, that it was a broker. The only evidence was that there
24 was three offers. One was from the owner of the other side of
25 the property.

1 There was no appraisal obtained by the plaintiff to
2 say that a million dollars wasn't accurate. There's nothing to
3 dispute what happened with that sale.

4 There's an argument that, oh, well, big deal Casino
5 Coolidge has a bank account, and sometimes money went to
6 Mr. Liberman, but Mr. Rich didn't argue with that. He doesn't
7 say any personal expenses of Casino Coolidge came out of that
8 account and went to Mr. Liberman. I thought he had, you might
9 remember, Your Honor, I thought he had. So I went through it,
10 and finally Mr. Rich said, no, I'm just saying the money went
11 to him. I'm not saying -- he didn't have any argument with it.

12 And as I had said before, the general ledger of the
13 Las Vegas Land Partners where everything was maintained show
14 that \$250,000 went, and then that paid the Signature loan off.

15 Mr. Muije earlier testified -- argued about some
16 payment of Mr. Marquis's bills. So I just wanted to show the
17 Court since no one had testified to it during trial, but
18 earlier he said, well, there's a couple of checks that 305
19 Second Avenue paid, and if you'll recall, Your Honor, it's
20 before my time in the case, but at one point Mr. Marquis
21 represented --

22 THE COURT: I remember Mr. Marquis was counsel of
23 record for a while.

24 MR. BLUT: Yes, for several entities. And so, and
25 Mr. Muije said, well, there's maybe a couple payments --

1 there's basically we'll just scroll through them. This is
2 80004, but starting on page 21 there's actually seven straight
3 checks. There's two. There's three. Oh, that was 7500.
4 There's four, another 7500. There's five, another 7500, and
5 then there's two more on the last page.

6 So to say, oh, there's one or two that are paid from
7 305, and then Mr. Liberman was personally paying, I'm here
8 today, Your Honor, because Mr. Liberman is personally a
9 defendant in the case. So the fact that Mr. Liberman was
10 paying legal fees for his defense in this case does not show
11 that anything about alter ego. It just says he was meeting his
12 obligations.

13 I think the ship has already sailed on it with the
14 ruling of 305 not being in, but just to reiterate that, if,
15 which is sort of a side issue, but if LiveWork and Zoe -- no.
16 I take it back. If the Aquarius doesn't sell to the 305 and
17 LiveWork and none of that happens, Guggenheim is still owed
18 18 million. No development happens on the property because
19 they couldn't do it; after the sale they still couldn't have
20 done it. And Mr. Chamberlin testified that property is still
21 worth a fraction of that. So to say that any part of that deal
22 was to somehow hinder, delay or defraud Mr. Nype is undercut by
23 the facts.

24 And as Mr. Rich admitted on cross-examination, at the
25 end of 2012, when they stopped accruing rent, the LiveWork side

1 was \$5 million to the good, which I believe, at least in part,
2 lead to the decision of the finding that nothing 305 did caused
3 any -- or not collecting the rent caused any damage because had
4 they collected the rent they would have had to pay it on, and
5 it follows that there's nothing with that transaction that's
6 improper.

7 One thing just to add with the conspiracy theory,
8 there's a case cited actually by Mr. Boschee, the *Cadle versus*
9 *Woods & Erickson* that more or less talked about the fraudulent
10 conveyance was the equitable as opposed to -- it's an equitable
11 relief and that civil conspiracies don't apply to an action for
12 fraudulent conveyance.

13 There was testimony today -- or I apologize --
14 argument regarding Mr. Rich's testimony and the adjusting
15 journal entries. And we looked at in his report there were
16 journal entries in 2012 and 2013 long after any of this
17 happened.

18 With regard to the fee request, I'm still confused of
19 what the authority is. I think, yes, the underlying matter
20 took many years, but as Your Honor probably recalls, there was
21 a summary judgment granted, and then an appeal. That actually
22 takes time. And even in this case we were going to go to trial
23 on an October stack, and there were some Jewish holidays there,
24 and Mr. Muije --

25 THE COURT: Technically, you're still on the October

1 stack according to my assistant Dan.

2 MR. BLUT: Excellent.

3 THE COURT: That's the report you will appear on,
4 yeah.

5 MR. BLUT: Well, it's been a long trial.

6 THE COURT: Yeah.

7 MR. BLUT: And, yes, there's an email from a lawyer,
8 and that speaks for itself. But to say that that, the email
9 from the lawyer finds Mr. Liberman and Mr. Liberman trying to
10 drag it out, obviously Mr. Liberman, they believe that Las
11 Vegas Land Partners didn't know anything.

12 With regard to fraudulent conduct, I don't believe
13 that the evidence by Mr. Liberman of efforts to defraud
14 Mr. Nype are there. I think we've gone through when
15 transactions happened, money in and out and where it went. And
16 in the end we really have a complicated set of real estate
17 transactions over, you know, over a hundred million dollars
18 changed hands with loans and purchases. And when that
19 collapsed, that collapsed the entities and the value that was
20 there because it was tied up in the land.

21 And I think really what we come down to is businesses
22 can fail all the time, Your Honor. And this -- these real
23 estate ventures didn't fail because of efforts to defraud
24 Mr. Nype. Had the efforts proven themselves out, like I said,
25 we wouldn't be here because everyone would have made a lot of,

JD Reporting, Inc.

1 a lot of, a lot of money.

2 And I think what's important to note, and I'll just
3 finish with this is that Mr. Muije stood up and said there's
4 nothing to attach, Your Honor, and there's two points to that.
5 One is his client intentionally sued the wrong entity. That's
6 an intentional act by Mr. Nype and his counsel.

7 And Number two, Las Vegas Land Partners owns, Wright
8 was the member of LiveWork that has an interest in the TIC. So
9 saying --

10 THE COURT: It's a charging order.

11 MR. BLUT: Yeah. Well, yeah. What I'm saying is
12 there's efforts that could be undertaken by Mr. Muije and his
13 client that should have been done to attach assets that could
14 be there, and none of that -- that doesn't mean there's fraud
15 or nothing to attach or that Mr. Liberman is the alter ego of
16 any of these entities.

17 So with that we'd submit, Your Honor.

18 THE COURT: Thank you.

19 Mr. Muije.

20 MR. MUIJE: Yes, Your Honor.

21 THE COURT: You get the last word for about 20
22 minutes.

23 MR. MUIJE: And that should suffice.

24 **REBUTTAL ARGUMENT FOR THE PLAINTIFF/PLAINTIFF INTERVENOR**

25 MR. MUIJE: First and foremost, whatever residual

JD Reporting, Inc.

1 interest may exist in a TIC are not held by LVLP. They're held
2 by Wink and possibly LiveWork, which are not judgment debtors.
3 Again, on the facts that Mr. Nype was proceeding when the
4 counterclaim was filed, the First Wall Street contract was with
5 LVLP, not with Zoe, not with LiveWork. And they had no reason
6 to believe that LVLP was insolvent. And that brings us to the
7 tax returns.

8 Mr. Blut made a point that, well, yeah, if we look at
9 2008, they've only got 46,000 in cash. Well, directly in that
10 same column, the next entry is, and I have it right here, Your
11 Honor, it is other current assets. Well, in 2008, that went up
12 to \$4 million. Current assets are generally what you think you
13 can liquidate, what you can spend, what's available on short
14 notice. So there was nothing there to suggest they were
15 insolvent, but it goes back to a telling point.

16 We have Mr. Johnson on behalf of the Mitchell
17 defendant saying, well, look these tax returns are showing
18 distributions. They should've put you on notice. The Court
19 said, well, when should he have known he was insolvent? We did
20 not know, and this is critical. We thought this was LVLP's tax
21 return.

22 We didn't know there were a dozen disregarded
23 entities. We didn't know that the assets were being held in
24 other affiliates and that that was all filtering through to the
25 return. When we see a return that says you're worth millions

1 and millions of dollars, that there's real estate there at book
2 value that is tens of millions of dollars, there's nothing
3 there to put you on notice.

4 We only became aware of the disregarded entities,
5 accounting morass, the confusion, the commingling, money back
6 and forth, failure to allocate once we commenced postjudgment
7 discovery. That was the first realistic opportunity to
8 understand the statement that Mr. Mitchell made to Mr. Nype at
9 lunch when he tried to stick him with a 10 percent of what the
10 expectation was commission.

11 And, remember, Judge Israel heard evidence on that
12 for days and days and days and determined that the reasonable
13 value of the compensation was multiple million, not 400,000.

14 But Mr. Mitchell told him, it's going to be very
15 difficult for you to collect, and it proved out to be correct.
16 They set things up.

17 But nothing based on the objective evidence known to
18 Mr. Nype at that time would put him on notice that they ignored
19 all corporate formalities. They dealt with money in, money
20 out, personal money and this one major bank account. He had no
21 reason to know that alter ego would be in play, and he surely
22 had no reason to know that they would convey all of the
23 valuable properties and assets out of LVLP into affiliated
24 entities and into their own pockets.

25 So pointing us at a LVLP tax return and saying you've

1 got millions of dollars in value there doesn't put him on
2 notice as to alter ego or fraudulent conveyance.

3 Now, there was another couple points that he made
4 that I think are worth talking about.

5 Let's talk about the engagement letters for a second,
6 which is -- Mr. Johnson says, well, they didn't tell us what
7 was destroyed or missing, and they couldn't have gone through
8 1.3 million.

9 Mr. Rich, I specifically asked on the stand a couple
10 questions. I asked, okay, you had a long laundry list of
11 various accounting papers you didn't have for that period of
12 time. I believe it's in evidence in the working papers, but
13 his testimony was from 2013 forward, the time period that
14 Mr. Spitz acknowledged he had maintained the records and had
15 complete records, all of these accounting workpapers, adjusting
16 journal entries, depreciation schedules, backup paperwork, all
17 of that was present from 2013 forward, and Mr. Rich testified
18 it was not present from before 2013 because of Mr. Spitz's
19 testimony that he destroyed records after three years.

20 I asked him when we received the 1.3 million papers
21 did you scan those with IT's help? Did you go back and search
22 for the accounting type workpapers, and he said yes. And I
23 said did you find any? He said no.

24 Again, I think at a minimum that shifts the burden to
25 the defendants to say okay, well, here's all of the accounting

1 workpapers in that \$1.4 million -- 1.4 million document group.
2 We made an effort to find them, and they weren't there. So I
3 think the reasonable conclusion is instead of some concocted
4 story about him re-signing an engagement letter from 10 years
5 ago is that it dovetails perfectly with we're creating a
6 smokescreen to justify not having to produce the detailed
7 financial records which would really cook our goose.

8 And I think that's exactly what happened. They go
9 back. They modified an engagement letter by inserting a record
10 destruction policy. They then send it over a couple of weeks
11 before the deposition telling him sign this one from '08. They
12 realize then they don't have them from '13, '14, '15 and '16.
13 So a week and a half later they send those over and say sign
14 for and don't date them. What other conclusion can reasonably
15 be reached on that?

16 Now, another point that comes up is that Mr. Johnson
17 wanted to explain away casino Charleston and LVLP directing
18 payments to the 305 bank account by saying, well, that was all
19 with the receivership. The problem is the timing doesn't work.

20 The email in question is 6002 (sic), if we can look
21 at that very briefly -- or no, 6005 (sic). My bad. My bad.

22 And is there any way to enlarge that or highlight a
23 portion. There we go.

24 August 2012. But if we look at the actual
25 receivership complaint where Heartland Bank sued these

1 entities, that document is 80050. And let's look at the case
2 number first. That is a 2013 case number, Your Honor. At a
3 minimum, filed six months after this Mitchell email, and, in
4 fact, the actual document is I believe in a second amended
5 petition filed -- let's go to the last -- well, go a few pages.

6 MR. H. JOHNSON: Your Honor, one slight objection.
7 That's the wrong state.

8 THE COURT: It's at the --

9 MR. MUIJE: The testimony was that Heartland sued in
10 Missouri.

11 MR. H. JOHNSON: And Nevada.

12 THE COURT: Well, no, this is the Missouri complaint.

13 MR. H. JOHNSON: I know. But the receiver, his
14 complaint was in Nevada. It was a Nevada receiver I believe.

15 MR. MUIJE: No. There was no Heartland suit
16 against --

17 THE COURT: Guys. So let's just go with what's on
18 this one, this document is a 2013 filing.

19 Okay. I don't know if I've seen the receivership
20 order in evidence. So I don't know what the date of that is.

21 MR. MUIJE: And I don't believe it is, Your Honor,
22 from my recollection.

23 THE COURT: Okay.

24 MR. MUIJE: And again Mr. Boschee emphasized there
25 were three suits, two in Nevada, one of which was LiveWork

1 versus 305 and one of which was versus casino Charleston.

2 There was no Heartland case in Nevada.

3 So that's a fundamental misstatement apparently by
4 Mr. Mitchell when he tried to find an excuse for directing
5 monies to another entity.

6 The statute of limitation becomes important too, Your
7 Honor, because it's relating to the actual fraudulent
8 transactions. And again, when could we discover those
9 transactions? We're not claiming the original 305 sale and
10 promissory note were fraudulent transactions. We're claiming
11 that putting together a side deal and conspiring then not to
12 pay the rent, not to pay the note and not doing anything about
13 it for seven years is the conduct which ultimately lead to the
14 writing off of a valuable asset -- actually, two valuable
15 assets, the promissory note that was owed to LiveWork and just
16 as importantly the personal guarantees signed by Mr. Mitchell
17 and Mr. Liberman whereby they personally guaranteed the
18 \$12 million obligations.

19 If this were truly independent entities, if this was
20 truly a business at arms length, no reasonable person, it's in
21 Mr. Mitchell's (indiscernible) -- in Mr. Rich's report. No
22 reasonable person would have even thought about waiting seven
23 years to enforce your rights to begin with.

24 Secondly, then putting together a sweetheart deal
25 where you pay 2 million in existing obligations to Heartland

1 Bank. We saw earlier today or I believe during the course of
2 the trial as well that the guarantee ran in favor of Heartland
3 Bank as well. So when they say Mr. Mitchell and Mr. Liberman
4 put in more money to effectuate that settlement, well, guess
5 what? They were obligated to put in that money anyway, and
6 what they did in order to their personal benefit by walking
7 away from personal guarantees that would have cost them an
8 aggregate of \$12.6 million. So the fraudulent transaction, the
9 transaction of which we are complaining was the write off in
10 2014 that occurred.

11 And just walking through everything they did which
12 shows intent more than anything, and there's a lot of overlap
13 between alter ego and fraudulent conveyance, but looking
14 specifically at what they did, just, and Mr. Johnson makes the
15 point well, gee, you would have known there was a promissory
16 note. Yeah, that could have been found. But what you don't
17 find in public records is the fact that it's a first payment
18 default and that they never make any payments. You don't find
19 a nonrecorded lease. You don't do those.

20 But we have, as an intentional act by Mr. Liberman
21 the sale to 305 coupled with a simultaneous lease whereby they
22 retained possession of the property and control of it. They
23 don't adequately capitalize 305 Casino Partners because we had
24 testimony from Mr. Chamberlin that no, we didn't have the
25 money. We had to, you know, get advances from our New York

1 properties just to pay the Heartland notes, let alone anything
2 else. We had the personal guarantees running in favor of
3 Heartland as well as running in favor of 305.

4 There was no effort to pursue eviction. There was no
5 effort to do anything affirmative to collect that rent.

6 We then have, when 305 ultimately decides, okay,
7 we've got to, you know, sue somebody, they sue Mr. Mitchell,
8 but not Mr. Liberman. I wonder why that happened?

9 And again, it is not commercially reasonable. It's
10 not appropriate, and the end result is Mr. Mitchell and
11 Mr. Liberman derive substantial personal benefit that would not
12 have otherwise occurred. They structured the transaction.
13 This was not something done in their sleep. This was
14 structured in advance between Mitchell and Liberman. They put
15 it together for their own benefit. And when push came to
16 shove, they wrote it all off and avoided having to pay on their
17 personal guarantees. So I think it's disingenuous to say,
18 well, gee, overall it made sense as an economic deal.

19 For Mr. Chamberlin it may have made sense. For 305,
20 it may have made sense, but the intentions going in and the
21 conduct during the operation of the transaction don't make
22 sense. There are certainly strong circumstantial evidence of
23 the misconduct by Mr. Liberman and Mr. Mitchell which we don't
24 discover until a week before Mr. Liberman's 2018 deposition
25 because Mr. Marquis is honest enough to say, oh, we've got

1 these 305 audited financial reports. We need to disclose them.
2 So we to our great surprise find evidence regarding
3 transactions that we never knew anything about.

4 Now, moving to again these arguments on alter ego, we
5 have Mr. Blut telling us well, yeah, but they put money back
6 in, and they miscounted these, you know, distributions. They
7 went back to '05 and '06.

8 No. If you look at that schedule, which I believe
9 was 5028 (sic), page 124, and if you add the totals of
10 distributions in the left-hand column, it's 7 million and
11 change to Mr. Mitchell and 15 million to Mr. Liberman. That's
12 22 million. If you subtract out the '05 and '06 entries, you
13 come up with 15 million and change, which is the monies that
14 Mr. Rich was talking about.

15 And again, to the extent that they put money back in,
16 they're treating it all as one bank account. They put money in
17 on almost a weekly basis. The ledgers show this. The
18 summaries show it. They pull money out whenever there's excess
19 funds available, and it doesn't matter which entity. It's one
20 thing to have an occasional partial allocation or statement
21 which entity is involved, but there are hundreds and hundreds
22 of entries here, and they are normally not allocated or broken
23 down by entity.

24 We also talked about solvency. The key question
25 again on the statute of limitations here I think comes down to

1 when were you aware that the bills weren't being regularly
2 paid? Well, the tax returns in the first case, we had no
3 indication they weren't paying all their bills on a timely
4 basis. We had no indication of financial distress, and most
5 importantly we had no indication of the commingling, the monies
6 in and out, of all of the affiliated entities being involved
7 back and forth. So that doesn't come out until we actually get
8 ledgers and accounting backup for the first time in the fall of
9 2015.

10 And we also heard a lot of arguments about the
11 reasonableness of the \$430,000 in escrow, and there not being
12 an oral agreement. The fact of the matter is there was an oral
13 agreement when everything was cushy, as testified to by
14 Mr. Nype in June of '06. It's only as they move along that
15 Mr. Mitchell gets a little greedy and starts chiseling on the
16 oral agreement to honor First Wall Street and tries to change
17 the terms, and Mr. Nype naturally responds and says, hey, I've
18 been in this from day one, and we had a deal, and this is how
19 it was supposed to be structured, and I'm expecting at least a
20 couple of million. So there's no question that LVLP is on
21 notice no later than June of '06 that Nype is expecting a lot
22 of money.

23 They are also talking about a lot of money put back
24 into deals. Those didn't go into the LVLP bank account. They
25 went into the affiliate properties. They went to pay affiliate

1 bills. And I stand corrected. They went into the LVLP bank
2 account. The contributions of Mitchell and Liberman were
3 making personally, but it wasn't used for LVLP. It was used
4 for the affiliates and the unrelated and for the related
5 entities. So there's a lot of overlap, and the fact that
6 you've got a bunch of alter egos, perhaps makes the analysis
7 more complicated than it would be if you were just one entity
8 transferring money to another or doing that.

9 But all of it comes back to these guys never intended
10 to pay Mr. Nype. They did everything they could to avoid
11 paying Mr. Nype, and once the judgment is obtained, and
12 remember that the 305 and the Casino Coolidge transactions
13 occurred just shortly before the judgment. They even closed
14 down their own bank account and just started funding everything
15 out of their personal pockets and out of their personal credit
16 cards. They no longer have a bank account starting in 2016.

17 But I think one of the things as to intention and, of
18 course, the special damages of attorneys' fees becomes
19 important. In addition to the 5042 (sic) memo, we have
20 specific findings by this Court as to the conduct of the
21 Mitchell defendants in the order that was entered on September
22 23rd. And a couple of those findings are as follows:

23 There has been clear and knowing violation of the
24 order granting the motion to compel;

25 The Mitchell defendants did not comply;

1 Mitchell defendants necessarily were copied on
2 hundreds of emails produced by 305 during the spring of 2019
3 but failed to produce any copies;

4 Failed to require -- produce the information required
5 in terms of certification.

6 And I think that's the context. It took us four
7 years to get his attention to make sure that he did comply with
8 his discovery obligations. Sub silentio in the background the
9 Court referred to all the emails that Mr. Boschee produced for
10 305. Those were very belated compliance, and many of them came
11 in after we filed our motion to compel in the spring of 2019,
12 discovery responses that were due in July of 2018. So there's
13 consciously delay there. And --

14 THE COURT: Okay. Wrap it up, please.

15 MR. MUIJE: The last thought, Your Honor, on the
16 special damages, I think Mr. Johnson backhandedly kind of
17 explained why attorneys' fees as special damages become
18 appropriate because what happens is just as in slander of
19 title, when you're committing fraudulent conveyances, you're
20 hiding assets. You're destroying and concealing accounting
21 records that are critical to your opponents' case. You know
22 that the consequence of that will probably be the necessity for
23 the plaintiff to hire counsel to come after you, just like in
24 slander of title.

25 We've pled the elements of fraudulent conveyance.

1 We've pled the elements of conspiracy. They clearly were
2 working together over an extended period of time in derogation
3 of all standards for corporate and accounting uniqueness or
4 separateness (phonetic) and, of course, I think special damages
5 are particularly appropriate in that kind of case.

6 So at this point we would ask for a judgment of the
7 unpaid judgment balance, and I have done the worksheet, and
8 I'll put that on the same disc that the Court requested.

9 We would ask for the attorneys' fees, and we would
10 ask for punitive damages.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Dulce, if you will put it on the chambers calendar
14 for Friday, I will try and have my decision done by Friday.

15 THE CLERK: Yes, Your Honor.

16 THE COURT: And the matter will stand submitted.

17 (Proceedings concluded at 1:46 p.m.)

18 / / /

19 / / /

20 / / /

21

22

23

24

25

1
2
3
4
5
6
7
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.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

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

DANA L. WILLIAMS, TRANSCRIBER

01/17/2021

DATE