

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADMINISTRATION OF
THE SSJ'S ISSUE TRUST,

IN THE MATTER OF THE ADMINISTRATION OF
THE SAMUEL S. JAKSICK, JR. FAMILY TRUST.

TODD B. JAKSICK, INDIVIDUALLY AND AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE SSJ'S
ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST; KEVIN
RILEY, INDIVIDUALLY AND AS A FORMER
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
WENDY A. JAKSICK 2012 BHC FAMILY TRUST;
AND STANLEY JAKSICK, INDIVIDUALLY AND AS
CO-TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST,

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

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Case No.: 81470

Appeal from the Second
Judicial District Court,
the Honorable David
Hardy Presiding

**RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S
APPENDIX, VOLUME 10**

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DOCUMENT	DATE	VOL. NO.	PAGE NO.
Indemnification and Contribution Agreement – Trial Exhibit 11	1/1/2008	1	WJ 0001 - 0010
Email - Kevin Riley to Todd Jaksick - Tahoe/Incline TSS -Trial Exhibit 441	10/28/2014	1	WJ 0011 - 0013
Agreement and Consent to Proposed Action – Stanley Jaksick Buy in to Lake Tahoe Property - Trial Exhibit 23	11/13/2015	1	WJ 0014 - 0018
Objection to Approval of Accountings and Other Trust Administration Matters Case No. PR17-00446	11/13/2015	1	WJ 0019 - 0021
Objection to Approval of Accountings and Other Trust Administration Matters Case No. PR17-00445	10/10/2017	1	WJ 0022 - 0024
Minutes of Court Appearances - Hearing	1/8/2018	1	WJ 0025 - 0026
Minutes from Scheduling Conference	3/12/2018	1	WJ 0026 - 0029
Amended Objection and Counter-Petition Re: Family Trust	3/23/2018	1	WJ 0030 - 0048
Petitioners' Status Report	6/1/2018	1	WJ 0049 - 0057
Todd B. Jaksick's, As an Individual, Offer of Judgement to Wendy Jaksick	8/29/2018	1	WJ 0058 - 0062
Motion for Summary Judgement - Michael Kimmel	10/23/2018	1	WJ 0090 - 0107
Order After Hearing	11/26/2018	1	WJ 0108 - 0110
Notice of Errata Regarding Wendy A. Jaksick's first Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgement and other Relief	12/26/2018	1	WJ 0111 - 0115

DOCUMENT	DATE	VOL. NO.	PAGE NO.
L. Robert Legoy, Jr. and Maupin, Cox & Legoy Custodian's Fourth Supplement to Their Objections and Responses to Subpoena Duces Tecum	12/26/2018	1	WJ 0115 - 0118
Order Granting in Part and Denying in Part Motion for Summary Judgment	1/15/2019	1	WJ 0119 - 0131
L. Robert Legoy, Jr. and Maupin, Cox & Legoy Custodian's Fifth Supplement to Their Objections and Responses to Subpoena Duces Tecum- Priv Log	1/29/2019	1	WJ 0132 - 0138
Settlement Agreement and Release – Exhibit 584	1/31/2019	1	WJ 0194 - 0201
Wendy Jaksick's Emergency Motion to Extend Discovery Deadlines and Trial for Cause and Alternatively Motion to Continue Trial Pursuant to NRS 16.010	2/1/2019	2	WJ 0202 - 0281
Notice of Withdrawal of And Objections & Counter-Petitions Re: Family Trust and Issue Trust	2/1/2019	2	WJ 0282 - 0284
Todd B. Jaksick's Notice of Withdrawal of Petition for Reconveyance of Trust Assets - Todd	2/1/2019	2	WJ 0285 - 0288
Transcript of Proceedings - Motion to Continue Jury Trial	2/4/2019	2	WJ 0289 - 0393
Minutes from Hearing	2/5/2019	2	WJ 0394 - 0418
Minutes from Hearing-Appearances-Hearing Settlement Conference/Oral Arguments	2/4/2019	2	WJ 0419 - 0420
MCL Production - 1987-3510		3-9	WJ 0421 - 2031

DOCUMENT	DATE	VOL. NO.	PAGE NO.
L. Robert Legoy, Jr. and Maupin, Cox & Legoy Custodian's Sixth Supplement to Their Objections and Responses to Subpoena Duces Tecum	2/8/2019	9	WJ 2032 - 2094
L. Robert Legoy, Jr. and Maupin, Cox & Legoy Custodian's Seventh Supplement to Their Objections and Responses to Subpoena Duces Tecum	2/8/2019	9	WJ 2095 - 2102
Supp Declaration of Mark J. Connot in Support of Wendy Jaksick's Emergency Motion to Extend Discovery Deadlines and Trial for Cause and Alternatively Motion to Continue Trial Pursuant to NRS 16.010	2/8/2019	9	WJ 2103 - 2128
Hearing Transcript- In the Second Judicial District Court of the State of Nevada in and for the County of Washoe	2/13/2019	10	WJ 2129 - 2239
Minutes from Oral Argument	2/13/2019	10	WJ 2240 - 2246
Appearance-Hearing Settlement Conference/ Oral Arguments	2/19/2021	10	WJ 2247 - 2248
Trial Transcript	2/20/2019	10-11	WJ 2249 - 2440
Trial Transcript	2/22/2019	11-12	WJ 2441 - 2645
Trial Transcript	2/25/2019	12-13	WJ 2646 - 2999
Trial Transcript	2/26/2019	13-14	WJ 3000 - 3247
Trial Transcript	2/27/2019	14-15	WJ 3248 - 3572
Trial Transcript	3/1/2019	16	WJ 3573 - 3713
Exhibit List – Jury Trial	3/1/2019	16	WJ 3714 - 3786
Trial Transcript – AM	3/4/2019	17	WJ 3787 - 3873
Trial Transcript – PM	3/4/2019	17-18	WJ 3874 - 4058
Trial Minutes	3/12/2019	18	WJ 4059 - 4161

DOCUMENT	DATE	VOL. NO.	PAGE NO.
Todd B Jaksick, Individually, Incline TSS, LTD., and Duck Lake Ranch, LLC's Memo of Costs and Disbursements Incurred in Case No. PR 17-00445	3/11/2019	18	WJ 4162 - 4178
Todd B Jaksick, Individually, incline TSS, LTD., and Duck Lake Ranch, LLC's Memo of Costs and Disbursements Incurred in Case No. PR 17-00445	3/11/2019	18	WJ 4179 - 4188
Todd B Jaksick, Individually, incline TSS, LTD., and Duck Lake Ranch, LLC's Memo of Costs and Disbursements Incurred in Case No. PR 17-00445	3/21/2019	18	WJ 4189 - 4196
Todd B Jaksick, Individually, Incline TSS, LTD., and Duck Lake Ranch, LLC's Notice of Withdrawal of Memos of Costs and Disbursements and Supplement	3/25/2019	18	WJ 4197 - 4200
Petitioner Wendy A. Jaksick's Opposition to Motion for Attorney's Fees	3/25/2019	18	WJ 4201 - 4216
Order Addressing Evidence at Equitable Trial	5/20/2019	19	WJ 4217 - 4288
Order Denying Wendy Jaksick's Costs	4/21/2020	19	WJ 4289 - 4290
Motion to Partially Enforce Settlement Agreement	8/13/2020	19	WJ 4291 - 4315
Order to Settlement	9/22/2020	19	WJ 4316 - 4324
Hearing Transcript	11/11/2020	19	WJ 4325 - 4414
Stipulation and Scheduling Order	2/1/2018	19	WJ 4415 - 4420

DOCUMENT	DATE	VOL. NO.	PAGE NO.
Email- Stan Jaksick to Bob Legoy – Trial Exhibit 38	5/18/2018	19	WJ 4421 - 4426
Wendy Jaksick’s Emergency Motion to Extend Discovery, Expert Designation Deadlines and Trial	9/21/2018	20-21	WJ 4427 - 4763
Trial Transcript	2/19/2019	21-22	WJ 4764 - 5015
Trial Transcript	2/21/2019	22-23	WJ 5016 - 5283
Trial Transcript	2/28/2019	23-24	WJ 5284 – 5673

Dated this 14th day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 10** was filed electronically with the Nevada Supreme Court on the 14th day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

9 In the Matter of the
Administration of the

Case No. PR17-00445
Case No. PR17-00446

10 SSJ's ISSUE TRUST,
_____ /

Dept No. 15

11 In the Matter of the
Administration of the

12 SAMUEL S. JAKSICK, JR.,
13 FAMILY TRUST,
_____ /

14 AND RELATED CROSS CLAIMS.
_____ /

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18 TRANSCRIPT OF PROCEEDINGS

19 ORAL ARGUMENTS

20 FEBRUARY 13, 2019

21 RENO, NEVADA
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24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

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A P P E A R A N C E S

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MICHAEL KIMMEL
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1 RENO, NEVADA, WEDNESDAY, FEBRUARY 13, 2019, 8:30 A.M.

2 -o0o-

3 THE COURT: If I have not said so already, I don't
4 say this in every case, but it's slightly uncomfortable for
5 people to stand when I enter the room. It just is. I
6 acknowledge that we all stand before the law. It's a
7 wonderful symbolic gesture. It is my honor to stand for our
8 fact-finding jurors when they are in session and you will
9 join me in standing for our juries as they enter and exit
10 the room.

11 This is the consolidated actions in PR17-00445 and
12 PR17-00446. Counsel, I intend to speak for sometime and I
13 am prepared with most of my notes, but is there anything
14 that is not of record that I am unaware of procedural or
15 developmental in the last seven days or can I just launch
16 into what I have prepared?

17 MR. ROBISON: There is some housecleaning issues
18 with exhibits.

19 THE COURT: We are going to get to that sometime
20 soon.

21 MR. ROBISON: Okay.

22 THE COURT: We will monitor our cadence and
23 amplify our voices, and we will break approximately every
24 hour to hour and 20 minutes so that we can use the
25 facilities, stand, consult as necessary. And although the

1 reporters don't like it when I blame them for the breaks,
2 it's not blame. It's simply honoring the hard work that
3 they do.

4 There is a renewed or supplemental declaration
5 seeking to continue this trial. I have reviewed it in
6 detail. I have reviewed the opposition, and trial will not
7 be continued. We will seat our jury tomorrow. We have
8 endeavored to create a fair trial. I did not see the
9 specificity that I needed to continue this trial again and I
10 should reveal a little of my discretionary pronouncements.

11 I hope that no attorney in the well of this court
12 at any time through the Court's comments infers an
13 unnecessary personal criticism, because it's not in my
14 heart, but as a Judge I am called upon to speak from time to
15 time, and, as you know, I have been somewhat troubled about
16 the discovery process.

17 It picked up with great energy it seems after this
18 Court first denied the continuance and insisted upon the
19 trial date, and some of my concerns go to both sides of the
20 courtroom, but I do believe that there can be a fair trial
21 in light of the voluminous file materials, pre-trial
22 efforts, and issues that will be presented.

23 Some of the discovery disputes may inform this
24 Court's evidentiary decisions. For example, the absence of
25 Stan and Todd's subtrusts may be relevant as to why they

1 were not prepared. There will undoubtedly be questions
2 about the effect of the absence upon Wendy's interest in
3 those trusts.

4 I may very well allow some questions to Maupin,
5 Cox & LeGoy that reflect some of the late production. I may
6 allow experts to exceed the scope of their written reports
7 and deposition testimony. I'm not sure. I just keep the
8 discovery process in mind as I rule on evidence.

9 Commissioner Ayres told me last night that in his
10 25 year career, he has never seen this type of voluminous, I
11 want to be careful that I don't misquote him, in his 25 year
12 career he has never seen such voluminous broad discovery
13 leading to the types of disputes that he has seen. I say
14 that not to impugn either side, but to contextualize my
15 decisions.

16 So let me go through each of the issues quickly
17 just to read them to make sure. The Wendy subtrust has now
18 been produced. The tax returns, Stan's tax returns have now
19 been produced. I will carefully follow Maupin, Cox &
20 LeGoy's attorney testimony in light of production concerns
21 that have been raised.

22 I don't believe that Todd's, that there is
23 persuasive and preponderate evidence that Todd continues to
24 maintain discoverable documents that he has concealed.
25 Cross-examination will flush out some of the absence of

1 documents, for example, water rights issues and
2 verification, water rights ownership, and things of that
3 nature. That's what we do in cross-examination.

4 The Jessica Clayton issue involving e-mails,
5 obligations is the buzz word or the identifying word, we
6 have production. I'm open to exceeding the scope of Wendy's
7 experts, if appropriate. I'm open to on several issues
8 curative instructions for the jury, but this case will begin
9 with our jury tomorrow.

10 Having said that, I want to summarize what I
11 believe the legal claims are, acknowledging there will be
12 some overlap of evidence that goes to equitable claims, but
13 are a natural part of the legal claims presentation.

14 With the withdrawal of Stanley's legal claims, it
15 appears to me that the only legal claims to be presented to
16 this jury presented by Wendy is breach of fiduciary duties
17 regarding the Issue and Family Trusts, civil conspiracy and
18 aiding and abetting regarding the Issue and Family Trusts,
19 aiding and abetting breaches of fiduciary duty regarding the
20 Issue and Family Trusts, and fraud.

21 I dispensed -- well, let me do this in order. I
22 found when I was in private practice and also as a Judge
23 that my very best courtroom statements are made as I go back
24 to the office or drive home in my car and have a chance to
25 reflect on what I should have said if I was smarter.

1 We should always engage in self-examination and I
2 have really struggled with my worst moments on the bench why
3 they happen and how I can avoid them, and I have learned
4 that a very short fuse for me is the way that we use our
5 jury's time. Those moments when I have just barked at
6 lawyers and embarrassed myself are often grounded in misuse
7 of the jury's time.

8 There is a time to talk and there is a time to
9 try, and the second that jury panel walks into this
10 courtroom is the time to try the case, and I have become
11 ever more impatient as we go to sidebar or we delay the
12 entry of the jury into the courtroom because lawyers just
13 want to talk.

14 You can expect that at some point I will unfairly
15 and embarrassingly strike out at you and I just want you to
16 know that in advance, not to apologize and not to prevent
17 it, but inviting you to join me in being very efficient with
18 the jury's time.

19 I have also found there is a disconnect between
20 what I expect as a Trial Judge during jury selection and
21 what attorneys want during jury selection. Some of my worst
22 moments have occurred in the presence of a panel.

23 It is for that reason that I have begun entering
24 this pre-trial order regarding jury selection. We have
25 different rules of jury selection, counsel. I'm speaking

1 generally metaphorically, but trial counsel want to deselect
2 jurors.

3 You have a profile of what you want, and I'm just
4 making this up, but you want a juror who writes with their
5 left hand and reads the New York Times and has never watched
6 Gilligan's Island, and none of those things are important to
7 me. I review before every jury trial the standards for
8 cause as announced by our Nevada Supreme Court and I
9 carefully manage those for-cause motions.

10 I think that it is important to inform your
11 peremptory challenges so we get into it a little bit more so
12 you can see personalities and try and project who your
13 jurors are, but it has troubled me over the years when I
14 engage in the primary voir dire and then counsel stand up as
15 if I did not speak at all and go for hours and hours.

16 And they follow a formulated script, if a tree
17 falls in the woods and nobody is there, but there are three
18 witnesses who heard it from somebody else, does that
19 constitute beyond a reasonable doubt or preponderance and so
20 I put an end to all of that.

21 I know that you want to appear affable. You want
22 to develop affinity. You may even want to, some may begin
23 to work on advocacy during jury selection. I no longer in
24 this department will allow that to occur, so I will very
25 strictly constrain how you will conduct your supplemental

1 examination.

2 Now, the last sentence of my pre-trial order has
3 great meaning and that's with leave this Court will broaden
4 its tight pre-trial order as justice requires. But we are
5 not going to get into standards of proof and hypotheticals
6 and legal instructions. I expect that your jury selection
7 will follow what I have done and be brief.

8 I dispensed with trial statements and I now regret
9 it, because I do want your proposed voir dire questions so
10 that I can initiate some of the subject areas. I have begun
11 developing case specific voir dire, but as I read some of
12 the moving papers I learned, for example, that it's
13 appropriate to examine who knows Judge Hascheff, who has
14 been a client, who might have been at one of his public
15 events.

16 And so from that simple suggestion, I learned I
17 need more suggestions, so by 8:00 tomorrow morning I need
18 proposed voir dire subject questions tucked underneath the
19 door in chambers and I will follow the general outline.

20 My approach in jury selection is I elicit with
21 general questions specific responses and then counsel can
22 drill down into those specific panelists who identify
23 themselves, but I very much want some guidance from you on
24 how you think voir dire should go, what subject areas should
25 be gone into.

1 Okay. I was going to order that by 5:00 today,
2 but I just thought that would be too much on all of you. I
3 really do mean 8:00 tomorrow morning. And so the building
4 opens at 7:00. Our door will be open sometime shortly after
5 7:00. Either push it under the door or come in and say
6 hello to somebody, but I will need those before I take the
7 bench.

8 And I will finally note that Rule 5(1)(g)
9 contemplates a list of special questions to be propounded to
10 prospective jurors. I'm just asking that you adhere to that
11 rule even though I dispensed with trial statements.

12 I will speak for a moment about motions in limine
13 and then we will get into each of the motions. Does anybody
14 have anything so far?

15 MR. ROBISON: Your Honor, on the jury questions
16 can we submit topics? We have a list of 40 topics given the
17 nature of this case and we just would like to see the topics
18 that you voir dire on and we follow up on.

19 THE COURT: Perfect.

20 MR. ROBISON: Thank you.

21 THE COURT: I don't want 180 specific questions.

22 MR. CONNOT: Well, I might suggest, that I would
23 just ask, I mean, so we don't give you, both sides, the same
24 list of 80 questions or 40, or whatever, and double it, I
25 mean, would you be amenable, Kent, to sharing that with us,

1 at least the topics, and we can then add to those or not,
2 just so we are not duplicative for the Court? It's just a
3 question. You can say no and I understand.

4 THE COURT: That is a civil question in the well
5 of the Court to opposing counsel and it is authorized,
6 because it was civil in nature and it was helpful.

7 MR. ROBISON: Anything I give the Court, I will
8 give to Wendy's counsel.

9 THE COURT: It's actually not going to matter much
10 to me, because I'm going to take a yellow highlighter and
11 I'm just going to in 3 minutes identify the topic areas.

12 MR. CONNOT: Okay. That's fine.

13 THE COURT: Okay. A few thoughts about pre-trial
14 in limine practice. Again, my thoughts predate this trial
15 and will continue beyond this trial and are not intended to
16 criticize any attorney within the well of the court this
17 morning.

18 The way I have learned to view in limine motion
19 practice is a very broad colloquial description. Judge,
20 please let me try my entire case as I want and don't let the
21 other side try their case at all. That's how I view a lot
22 of motion in limine practice.

23 And when litigants have chosen trial and I honor
24 their choice, they get a trial, and I will not conduct a
25 pre-trial before trial, and I have regretted at times my

1 in limine orders because the flow of trial has revealed that
2 I would have decided differently.

3 So I express caution before granting any, before
4 ruling on any in limine motions because they weigh against
5 my ability to consider evidence during trial. Trial is
6 where this Court is best situated to assess and evaluate the
7 evidence. I am reluctant to be bound in a pre-trial order
8 to evidentiary issues that will arise at trial. I'm citing
9 the Wilkins versus Kmart Corp. case, 487 F.Supp, which has
10 its own string cites.

11 A denial of the motion in limine is usually
12 without prejudice, because of the trial context, and so I
13 will try and give some guidance, but I am not going to put
14 rigid boundaries on my evidentiary rulings.

15 If there are inadvertent violations of the
16 pre-trial orders and they are technical, it's not caused
17 from this trial. It's not caused by the arguments. It just
18 means we are moving on because a trial is fair, but not
19 perfect.

20 And I typically will not scrub or cleanse in any
21 way the personalities of the witnesses who appear in front
22 of the jury. They come to that witness box with their own
23 set of circumstances.

24 Under 48.015, which you could drive two freight
25 trains through 48.015, does it have any tendency to make a

1 fact of consequence more or less probable, and it's hard for
2 me to imagine what doesn't have a tendency.

3 So I carefully consider 48.035 as the limitation,
4 but if objections are just time and again relevance, it will
5 be your choice about how often to stand and make that
6 objection in the presence of the jury. I am mindful of the
7 evidentiary standards for admissibility.

8 There are some things that are prejudicial in each
9 of your clients' pasts, each of your clients' theories, and
10 they are what they are and the jury will be able to make
11 credibility findings. The jury will be able to weigh the
12 motivations, influences, perceptions, and reliability of
13 witnesses by providing a holistic view of that witness.

14 If things are clearly irrelevant, I'm not going to
15 allow them, but generally I will not scrub for you your
16 clients' lives before you, and I'm mindful of NRS 50.085(3)
17 which is a broad rule for cross-examination.

18 And with that we will get into the in limine
19 rulings. These are my inclinations. Counsel, please follow
20 along. I will give you an opportunity to argue and try and
21 tilt my inclination, but here we go.

22 I begin with Todd's motion to exclude or strike
23 Frank Compagna, CPA, joined by Todd as trustee. It is I
24 understand -- well, let me say a few more things about
25 something else.

1 I have written notes about the participation of
2 expert witnesses as it relates to legal conclusions,
3 testimony on the state of the law invading the jury's
4 province. I actually have a written script and I want to
5 read it and I just need to find it.

6 Would everyone please remain seated. I'm just
7 going to -- I spent time writing it and it generally states
8 my analysis and the decisional authorities I rely upon and I
9 want the record to include my work. And I worked on it this
10 morning and reread it this morning and it's not in my hand.
11 Everyone remain seated, please.

12 (Whereupon a recess was taken.)

13 THE COURT: In your respective moving papers,
14 counsel seem to agree on what the standards of law are and
15 disagree about how each of the experts fall within that same
16 standard. I am familiar with the Hallmark decision and
17 NRS 50.275. I have also reviewed Williams versus District
18 Court, 127 Nevada, and Higgs versus State, 126 Nevada.

19 I have reviewed various decisions relating to
20 expert testimony at trial, including the Buzz Stew case,
21 131 Nevada; Blackburn, 129 Nevada; Las Vegas Sun versus
22 Franklin, 74 Nevada, and finally Powers versus United
23 Services Auto Association, 114 Nevada.

24 Nevada decisional authority on the issue of expert
25 testimony is more limited than the arguments I read from

1 counsel, that they appear to be more conclusory than
2 explanatory. A similar case cited by counsel in this case
3 is Specht versus Jensen, 853 F.2d 805. I have read that
4 case as well. They are the 10th Circuit.

5 They state that this Court must consider if the
6 expert encroached upon the trial court's authority to
7 instruct the jury for it is axiomatic that the judge is the
8 sole arbiter of law and its applicability.

9 Specht does refer to the advisory notes of Federal
10 Rule of Evidence 704, and I think that provides some helpful
11 guidance to the Court as to how an expert carefully
12 navigates testifying about ultimate issues while not
13 invading the Court and jury's province. In fact, there is
14 examples in that advisory note as to how a question may be
15 framed inappropriately and how the same question may be
16 framed appropriately.

17 It is not my intention pre-trial to exclude the
18 testimony or to strike Mr. Campagna. I understand that he
19 is a CPA. There are arguments relating to his ability to
20 testify about fiduciary duties of trustees and contrast
21 accounting standards. I am not going to allow Mr. Campagna
22 to state the law or invade the jury's province, but I do not
23 intend to grant the motion to exclude or strike him.

24 Wendy has filed a long omnibus motion in limine.
25 Some of it is formulaic and unnecessary because it just

1 reminds all of us what the standards of law are. In
2 opposition counsel seems to agree, we know what the rules
3 are. I'm going to go through them quickly.

4 Again, without prejudice, and I'm going to defer
5 some of these decisions, but the first is a reference to
6 pre-trial motions in limine and pre-trial orders. It's not
7 my intention to have a discovery dispute in front of the
8 jury. I will generally grant that motion, but with the
9 understanding there could be exceptions as trial reveals
10 itself.

11 Relating to Judge Pierre Hascheff, Wendy asks that
12 there be no reference to his status as a Judge fearing that
13 it may bolster -- I'm just going to say Todd, although I
14 know it referred to Todd individually and Todd as trustee
15 and in some respects Stan, but I'm just going to say Todd.
16 Please understand that I mean it in an expanded way, but
17 Wendy's concern to reference to the, excuse me, reference to
18 Judge Hascheff as Judge would bolster the prestige of
19 office.

20 And, again, I'm not going to scrub who
21 Pierre Hascheff is. If I get a sense that there is an undue
22 emphasis on the fact that he is a Judge and trying to borrow
23 credibility from that fact, I will begin limiting
24 references. Typically, we don't have any titles in this
25 courtroom except Judge Hardy.

1 So, for example, if a treating physician comes in,
2 there is an introduction that it is a doctor. Excuse me,
3 when a party is also a doctor in contrast to being a
4 treating physician, now if they want to be referred to as
5 doctor as they sit at counsel table, then I don't allow it.
6 I do allow it for treating physicians.

7 And we are not going to just repeatedly refer to
8 Judge Hascheff as Judge. He will be referred to as
9 Mr. Hascheff as the general rule, but I don't believe we can
10 eliminate who he is from this trial.

11 It's going to come up in voir dire, and I think
12 it's appropriate if Wendy's counsel choose to examine him to
13 cross-examination on the scope of his jurisdictional
14 responsibilities, if he is going to be presented as a Judge
15 that he does, I don't mean this pejoratively, but he does
16 traffic tickets and landlord/tenant, it may be something
17 that you want to examine, but there is going to be a balance
18 between the two.

19 Again, please refer to him generally as
20 Mr. Hascheff, but there is no restriction on examining, on
21 introducing the concept that he now serves as a Judge.

22 I intend to grant, and Todd seems to agree, that
23 this 1999 death or suicide by Ron Kreske, unless it becomes
24 relevant in ways I don't anticipate, it is granted.

25 Wendy's rehabilitation, my initial inclination was

1 to grant because it dates back 20 years, but as I read the
2 opposition it may become relevant as an explanation for why
3 the trust documents contain what they contain and so I'm
4 going to carefully manage it.

5 If it becomes prior bad act character
6 assassination, I'm going to disallow it, but if it becomes
7 part of her story that her father knew about and her
8 brothers knew about, then it is what it is and I won't
9 cleanse that from her past, so I am deferring and partially
10 granting and partially denying.

11 Wendy's accusations about how her father died, at
12 the outset I am denying that request. I will see how the
13 relevant evidence unfolds, particularly the reference to
14 50.085(3). My same ruling exists for Todd's DNA testing and
15 Sam's parentage of Todd. If it is relevant as the, as part
16 of the credibility and truthfulness, it may very well come
17 in.

18 Personal beliefs of counsel, counsel agrees and
19 you will abide by rich decisional authority from the Nevada
20 Supreme Court about what you can and cannot say.

21 I am not granting -- I'm uncomfortable about the
22 request to have no references to Spencer Law and Fox
23 Rothschild. I didn't really understand the request.

24 If it's going to, if the theme becomes they have
25 orchestrated and they are greedy attorneys and they are

1 manipulating their pocket client Wendy, then I'm going to
2 disallow it. It's inappropriate.

3 But if there are some references to Texas as part
4 of the file materials in any way, I'm not going to disallow
5 it, so I will see how trial unfolds. It's deferred.

6 The number of attorneys, generally denied, but
7 deferred until trial unfolds, although Todd generally
8 agrees. I grant the motion in limine regarding how Wendy's
9 counsel may be compensated. I don't believe that's relevant
10 and will not be allowed.

11 Undisclosed evidence or records, maybe. It's
12 deferred. Undisclosed lay witnesses and expert witnesses,
13 probably granted, but deferred.

14 Reference to unqualified experts, probably denied,
15 but deferred. No references to what objections might have
16 been, deferred, but probably denied. Self-serving evidence,
17 deferred, but probably denied.

18 Use of privileged information, I'm familiar with
19 the Wardleigh decision. I'm not sure how it's going to
20 unfold at trial. We will see what the flow of trial
21 evidence is. It's deferred.

22 Admitted or stipulated matters, deferred. Wendy's
23 request in limine regarding the legal conclusions of experts
24 is granted subject to what I've said in the trial flow.

25 General references to settlement will not be

1 admissible, although there was a supplement that I was just
2 handed this morning that is going to help me understand a
3 little bit more about Todd and Stan's settlement. And I see
4 there is an opposition and I haven't read it, but I will,
5 and so I'm going to postpone until I hear from counsel on
6 how the agreement between Todd and Stan will come before
7 this jury, if at all. I just don't have enough about that
8 right now.

9 References to superior or inferior technology,
10 generally granted, but deferred. Prior rulings or pre-trial
11 actions taken in this case, deferred. May be granted.
12 Inclination is to grant, but my decision will be based upon
13 the context of this case itself.

14 All right. Any questions about those before we
15 move on? Yes.

16 MR. ROBISON: Your Honor, as we stand at the
17 lectern and examine witnesses and we get close to one of
18 these that's been deferred, what is the protocol, stop and
19 ask for permission?

20 THE COURT: I regularly conduct sidebar
21 conversations on important evidentiary matters and I
22 regularly allow counsel to create their own appearance in
23 front of the jury as they choose, so some attorneys just
24 stand and object, stand and object, and stand and object,
25 and I think, all right, that's the impression you want to

1 make with the jury have at it. I don't know exactly.

2 If it's important and it's going to be lengthy and
3 you need that speaking argument, let's begin with sidebars
4 until I begin to feel that we are using too much time at
5 sidebar, and then I'm going to have you make your objections
6 right in front of the jury and I will make the decisions.

7 MR. ROBISON: What we don't want to do is violate
8 an in limine order and some of these are deferred. For
9 example, and it's just an example, Wendy's rehab, if we get
10 to that, I don't want to go there and incur the wrath of the
11 Court unless I have got a green light.

12 THE COURT: I hope wrath is not upper case, but
13 lower case. Some of this I can't make the decision until
14 trial, and so I'm not creating a, I'm not issuing prior
15 restraint.

16 MR. ROBISON: Okay.

17 THE COURT: Go where you go and we will see what
18 the objections are.

19 MR. ROBISON: Very well.

20 THE COURT: You understand my general framework.
21 We are not going to assassinate her character and say she is
22 a horrible person because. What we might say, this is what
23 Sam did because.

24 MR. ROBISON: All right. We will just --

25 THE COURT: We will just see how it goes.

1 MR. ROBISON: We will go with it.

2 THE COURT: Okay. Yes.

3 MR. CONNOT: Just a quick question, is it
4 appropriate that when we get to some of those areas to state
5 our objection as, and I certainly don't want to do a
6 speaking objection, but at the same time to simply say
7 object for the reasons previously raised to the Court,
8 basically referring to the motion in limine. If counsel
9 feels the need to have a sidebar, we can make that request
10 at the same time?

11 THE COURT: Yes.

12 MR. CONNOT: Thank you.

13 THE COURT: And that illustrates perfectly how I'm
14 uncomfortable saying there will be no references to
15 pre-trial decisions, because the jury is going to know and,
16 in fact, I tell them that we do a lot of work out of their
17 presence and before they arrive in the courthouse, and then
18 we will just, we will see where it goes.

19 I encourage counsel to object if you believe that
20 there is a harmful error that you wish to preserve
21 contemporaneously. And I'm going to make harmless errors
22 for the next 14 days, but some of my errors will be
23 important to you. Please stand and object. You need to do
24 that for judicial review. And sometimes I will allow out of
25 the jury's presence extensive arguments about why the Court

1 was wrong. We just have to see how it goes.

2 Next is Todd's omnibus motion in limine. I have
3 reviewed it along with Wendy's opposition. I don't have
4 anything else to say about expert Gary Stolbach. I
5 understand the concerns and I'm not disallowing his
6 participation at trial. The scope of his trial
7 participation may be limited as the evidence unfolds.

8 There was some energy to the objection, some
9 energy to the concern that he is going to try and testify
10 about intent and what was in Sam's mind. He will do so at
11 his own peril, I guess, because it will be a rich
12 cross-examination.

13 One of the instructions I will undoubtedly give to
14 the jury is the distinction between direct and indirect
15 evidence and how both are available to the jury to consider,
16 and there has to be some evidence presented that will allow
17 the jury to make indirect, to reach decisions based upon
18 indirect inferential evidence, and so Mr. Stolbach will be
19 allowed to testify.

20 To exclude, to exclude evidence of discovery
21 disputes, I generally intend to exclude evidence, but it's
22 deferred without prejudice as trial unfolds.

23 To exclude Sam's medical records, I intend to
24 grant that motion. It appears that Wendy doesn't intend to
25 introduce Sam's medical records, though they were the

1 subject of some discovery.

2 I'm willing to be persuaded otherwise as trial
3 unfolds, but at the moment I grant that. That will be one I
4 want you to seek relief before you introduce any evidence to
5 the jury about Sam's medical records.

6 MR. CONNOT: Would now be an appropriate time to
7 address the narrow issue or do you want to go through the
8 rest of them?

9 THE COURT: Well, on this one go ahead.

10 MR. CONNOT: The only, the only intent that we
11 have --

12 THE COURT: And let me interrupt just for a
13 moment. Thank you for your respect to the Court. If you
14 wish to remain just standing at the table as opposed to
15 approaching the lectern, you may do that during these
16 pre-trial motions.

17 MR. CONNOT: I remember a gray-haired senior
18 partner tell me when I first started that it's much better
19 to have the Judge tell you to sit down than have the Judge
20 tell you to stand up, so --

21 THE COURT: You will stand when you address the
22 Court and the jury, but you may stand at your desk, if you
23 wish.

24 MR. CONNOT: Okay. I appreciate that, Your Honor,
25 and so I will stand from there in the future, but the only

1 purpose that we would seek at this point, depending on how
2 trial unfolds that might change and we would address that
3 with the Court prior to bringing it up with the jury any
4 further in regards to the medical record, except for the
5 fact of certain dates he was, he was in Los Angeles or
6 Southern California for certain medical procedures in the
7 month of December of 2012 and that's critical because there
8 was a flurry of documents that were executed in that time
9 frame.

10 So without getting into the medical records
11 themselves, the fact that this was a major surgery that he
12 was undergoing and there were certain dates that he was over
13 there, we would like that opportunity to explore that, but I
14 just want to inquire as to whether or not you want us to
15 approach the Court with that prior to going into that.

16 THE COURT: Well, of course, I didn't hear from
17 opposing counsel, but I can tell you that if medical
18 treatment or mortality concerns are integral to estate
19 modifications, it's permitted.

20 MR. CONNOT: Okay.

21 THE COURT: But that he went into the hospital for
22 an aneurism or hemorrhoids is not admitted. It doesn't
23 matter to me. Okay. Mr. Robison.

24 MR. ROBISON: We agree with Wendy's counsel.

25 THE COURT: Okay.

1 MR. ROBISON: I think the jury should know when
2 Sam Jaksick was in Los Angeles for heart surgery and there
3 is a period of time that's crucial to all of us that's
4 covered by that time frame. We have examined all of the
5 witnesses on heart surgery and state of mind, and I just ask
6 the Court to allow us the flow of that one, because I think
7 we are on the same page.

8 THE COURT: Allowed.

9 MR. ROBISON: Thank you.

10 THE COURT: Perfect. Thank you for that
11 clarification.

12 MR. CONNOT: Thank you.

13 THE COURT: To exclude non-disclosed witnesses,
14 probably grant, but deferred. To exclude non-disclosed
15 documents, probably granted, but deferred, and that will be
16 something that we will need to take up out of the jury's
17 presence. If late disclosed documents somehow are affecting
18 a witness' testimony, I want to do that out of the jury's
19 presence, but generally granted.

20 To exclude use of the words theft or thief,
21 deferred, generally denied. If counsel is going to argue
22 with the words theft or thief, I will probably disallow it.
23 If one of the parties have made allegations of thievery, I
24 will probably allow it, so not sure, so it's deferred.

25 To exclude expert report and testimony of

1 Bruce Wallace, I do not intend, and Frank Campagna, I do not
2 intend to strike them. There is -- well, I have said
3 everything I need to say about that. It's a careful line
4 and I don't know when we are going to cross it and we might,
5 but we will just see how it goes.

6 Excluding any expert from testifying outside the
7 scope of their expert report, I might deny that with leave
8 in advance out of the jury's presence based upon the late
9 produced discovery.

10 Precluding any party from introducing evidence
11 pertaining solely to equitable claims, granted; except I
12 don't know where that boundary is going to be, where it is
13 at the moment. There is going to be facts that I listen to
14 when the jury is present that will guide me in my decision
15 about equitable claims. So I invite you to argue out of the
16 jury's presence if you think we are going solely to
17 equitable.

18 Exclusion of Wendy's and Stan's undisclosed
19 damages, I struggle with this one, because the rules do
20 require a computation of damages. And I want your
21 arguments. I have some thoughts and one of them is critical
22 and I want to avoid it, if I can. So, counsel, will you
23 please be heard on this. Yes.

24 MR. ROBISON: It's a pretty simple argument from
25 our standpoint. We got a 16.1 disclosure and there was

1 approximately 24 areas of damage identified. Only three of
2 them had a computation of damages.

3 We understood that. We cross-examined experts on
4 that. We cross-examined witnesses on that, and we have
5 never had a supplement under Rule 26 or 16.1 with respect to
6 the other computation of damages, and we ask that be
7 entirely eliminated because that would be trial by ambush.

8 THE COURT: Thank you.

9 MR. CONNOT: Your Honor, once again, we are
10 dealing with a significant amount. We did disclose way back
11 in March in our initial 16.1 disclosures a list of damages
12 categories, stated those that we could with some level of
13 certainty at the time, but, you know, as the Court is well
14 aware how discovery is played out is there is a significant
15 amount of that information that has been provided, you know,
16 to a certain extent still in the process of being digested.

17 We certainly don't have an issue with, you know,
18 to the extent we can supplementing at this point, but we
19 received document supplementation yesterday, as well as last
20 Friday, as well as on the eve of the last day of discovery.

21 THE COURT: So I read your opposition where you
22 wrote the same things you are arguing now, and I don't know
23 if that's just a technical argument that is unpersuasive.
24 I'm struggling to know how documents only recently received
25 affect your client's calculation of damages. I just -- Put

1 on your Kevlar, all right?

2 MR. CONNOT: Understood.

3 THE COURT: I -- no, I don't want to say that. Go
4 ahead.

5 MR. CONNOT: Well, for example, we received
6 information late in the day on January 31st in regards to a
7 significant amount of information concerning water rights,
8 for example, which, you know, there was nothing provided
9 prior to that.

10 We have continued to receive information about
11 certain categories of information that we requested in May
12 that would help support, you know, the damages analysis to
13 at least contemplate what that is.

14 We certainly know the general categories. There
15 certainly has been a lot of discovery or at least questions
16 asked during discovery, you know, of witnesses that we have
17 proffered in regards to what make up some of these
18 components.

19 But I think particularly given the way that the
20 documents have come out, to quantify the damages when, I
21 mean, for example, we didn't have the tax returns and how
22 those might impact the estate. We didn't have information
23 regarding the water rights. We didn't have information
24 regarding several categories until late January. I mean,
25 those didn't even begin until sometime in late January.

1 And so I think that, you know, within those
2 categories, you know, we could certainly quantify and we
3 have since last March in regards to things involving the
4 Lake Tahoe house.

5 And off the top of my head, I apologize, I don't
6 have the initial disclosure in front of me, but the various
7 categories of damages were listed in there where there was
8 some level of certainty. On some of the other ones, it's
9 certainly going to be up to the jury to determine, you know,
10 what is the remedy or what are the damages that might be
11 imposed if they find liability for breach of fiduciary duty
12 for failure to disclose and the like.

13 So, I mean, there is certain categories that are
14 quantifiable. There is other categories that, you know,
15 there is certainly going to be argument about that, but, you
16 know, the jury is going to make the final determination
17 because we can't point to it and say what is the amount of
18 damages for this specific breach of fiduciary duty with this
19 specific breach of duty to disclose.

20 There is not a specific number. That's going to
21 be a range within which the jury does, but we certainly
22 provided all of the categories since, well, almost a year
23 ago, 11 months ago.

24 THE COURT: Okay. Deferred. I can't make the
25 trial decision -- I can't make the pre-trial decision right

1 now. I will invite you to renew your objection as trial
2 unfolds.

3 There are two parts to my analysis. I agree that
4 we don't do trial by ambush. That's a term we all heard
5 long before this trial began.

6 I would like counsel to join me in the jury room
7 real quick, please, just the six of you who are in the well
8 of the court.

9
10 (Whereupon a break was taken from 9:22 a.m. to 9:25 a.m.)
11

12 THE COURT: To the clients in this courtroom, I
13 hope you know your attorneys are very zealous advocates and
14 would never publicly or privately say anything against your
15 interests. I just needed to talk a little bit about my
16 perceptions of the pre-trial events and I wanted not to say
17 it in front of the courtroom.

18 So with that do you wish to be heard, Mr. Robison?

19 MR. ROBISON: Yes, sir. Your Honor, this is sure
20 to be a weary argument. We have eight three-ring binders of
21 exhibits. Seven of those for the most part were marked in
22 depositions that preceded December.

23 We have got 10 ACPAs that address various issues
24 that they are now claiming damages on. The very first
25 witness that we deposed in this case was Wendy in June

1 of 2018 and we addressed every single one of those ACPA's.
2 We addressed damages issues, and she didn't know, she didn't
3 know, she didn't know.

4 We have not been given any information in this
5 case, Your Honor, as to what the damages are. They say that
6 they just got the information on water deeds. Well, what
7 they got and what they marked as exhibits was volumes and
8 volumes of records from the State Engineer's Office, and the
9 State Engineer's Office has a recordation of every water
10 deed owned by every entity in this entire matter, and if
11 they didn't get the State Engineer's records on water deeds
12 prior, then we shouldn't be blamed for that.

13 But that whole water deed and the value, whether
14 they are vested, certificated or permitted is all right
15 there public record, and we still don't have any idea
16 whatsoever about what she is going to claim as damages and
17 argue to the jury her damages are. We don't know how to
18 prepare to defeat that or cross-examine it. We don't know.

19 THE COURT: Well, without disclosing any details,
20 haven't you been to a settlement conference and haven't you
21 each made demands upon the other?

22 MR. ROBISON: Yes, and I can elaborate on that.

23 THE COURT: Not with any detail.

24 MR. ROBISON: Okay.

25 THE COURT: But I suspect that you know the value

1 of, their valuation of the case and how they arrive at that
2 valuation?

3 MR. ROBISON: That would be a fair statement.
4 Initially there were numbers without specificity. More
5 recently there has been some specificity with respect to why
6 these various things, but the settlement negotiations are
7 moving pieces around, not necessarily just a cash payment,
8 and they are moving interests around and they are involved
9 in a different context than saying I sustained damages
10 because of thus and such and the amount I sustained is this.

11 They don't have a damage expert, which is
12 troubling to me, because I can see three experts testify
13 about fiduciary duties, intent and the accountings, but we
14 have no idea from anybody what the number is, Your Honor.

15 THE COURT: It may be legitimate, counsel, but
16 that's my problem having a trial before the trial. I just
17 don't know the evidence as you do, and so I'm aware of the
18 issue and I can't strike any request for damages that Wendy
19 may make in front of the jury, so how do I fashion, how do I
20 respond to your concerns without disallowing Wendy to ask
21 for money damages?

22 MR. ROBISON: That is a question I have as well.
23 Let's take the Lake Tahoe house as an example, Your Honor.
24 The Lake Tahoe house was subject to an option for Todd's
25 company to purchase for \$7.25 million back in 2010. Then we

1 go to December 2012, that's the period of time where Sam had
2 his surgery, and the option was exercised the end of
3 December 2012 and thereafter the Issue Trust bought into
4 that company.

5 Now, they say they are entitled to damages on that
6 topic. The jury cannot set aside a sale, and we don't know
7 how they calculate damages with respect to the Issue Trust's
8 54 percent ownership of Incline TSS that owns the Lake Tahoe
9 house. How does that quantify into dollars?

10 And we have been waiting to see how that's
11 quantified in dollars. If they want to try to set aside the
12 sale for lack of consideration of this or the other thing
13 that their experts testified to, that's in the Court's
14 realm.

15 The jury can't set aside a sale. That's a
16 rescission argument or reformation argument over which the
17 Court has exclusive jurisdiction. But that's just one
18 example of us not knowing what the damages are.

19 You have recently entered an order allowing
20 Duck Lake to be joined as a party. There was a decision, an
21 ACPA to sell cattle so that they could raise some money to
22 pay some expenses.

23 Todd took some of the cattle, put them on
24 Duck Lake and reduced a promissory note that was owed. They
25 say they have damages from that. Well, the Family Trust

1 might have damages, and Wendy doesn't get disbursements
2 until the debts are paid, so how does that equate to
3 damages? No one has told us. How does she as a life estate
4 beneficiary quantify those actions into damages? We just
5 don't know.

6 THE COURT: How does your argument to me seeking
7 an evidentiary ruling differ from the arguments you are
8 going to make to the jury that they, that Wendy has failed
9 to prove she is damaged?

10 MR. ROBISON: Well, Your Honor, I'm terribly
11 concerned. This is a fairly complicated case. We have been
12 through this jury list backwards, forwards, and every
13 situation. This is going to be a very difficult case for
14 this jury to understand.

15 THE COURT: I agree.

16 MR. ROBISON: And, yes, I don't mind standing at
17 the lectern and trying to tell the jury what we think has
18 not been proved, but when they get into the jury room behind
19 closed doors, we don't know whether or not there is going to
20 be a formula argued by Wendy's counsel, whether there is
21 going to be specificity, whether there is going to be a
22 chart shown to this jury. We just don't know.

23 THE COURT: Let me hear from opposing counsel,
24 please.

25 MR. CONNOT: Your Honor, if I may, you know, maybe

1 part of it is I don't know if the Court has actually seen
2 the initial disclosures that have been provided since March.

3 THE COURT: If I have I can't remember, because of
4 the thousands of pages in this file.

5 MR. CONNOT: Understood, but, for example, the
6 initial disclosures as far back as March of last year stated
7 description, and this is on the damages calculation,
8 respondent's one-third interest in the Lake Tahoe property
9 located at 1011 Lakeshore Boulevard, Incline Village,
10 Nevada, 89451, amount estimated \$6,013,670.

11 Now, what I just heard from counsel was an
12 argument about whether or not she should be entitled to
13 that, how the Issue Trust plays into that, how the option
14 agreement plays into that.

15 Those are part of the facts that are going to be
16 part of trial, you know, whether it goes to the rescission
17 claim or not that's part of an equitable claim, but there is
18 going to be testimony about that and someone ultimately has
19 to decide that, and whether the Court ends up ultimately
20 doing it through a rescission claim, but they have been
21 given that information on damages.

22 Another example, the very next one, the repayment
23 of funds from the Family Trust benefiting Todd for the
24 indemnification agreement, unknown at this time. That has
25 been a subject of testimony even with Kevin Riley as to what

1 amounts those are, and now it appears that not only there
2 are claims being made, but pursuant to the settlement
3 agreement between Todd and Stan that is somewhat contingent,
4 that that is apparently being withdrawn as to certain
5 amounts, but certainly they are aware of what amounts have
6 been paid through that. I mean, there is certainly no
7 surprise there as to what the damages are.

8 THE COURT: What witnesses are going to establish
9 that interest?

10 MR. CONNOT: What's that?

11 THE COURT: How are you going to establish,
12 through what witness do you intend to establish that?

13 MR. CONNOT: Through Todd, Kevin Riley, and to the
14 extent of the other fact witnesses that come in is these
15 amounts were actually paid, what's the status now with the
16 pending, because there have been amounts paid pursuant to
17 the indemnification agreement, there are amounts that still
18 remain claimed against the Family Trust pursuant to the
19 indemnification agreement.

20 Some of them paid. Some have not. What amounts
21 have been paid, what is his intent in regards to the
22 remaining amounts under the Family Trust, the remaining
23 amounts that are claimed but not yet paid.

24 In addition, he has requested that his individual
25 attorney's fees be paid pursuant to the indemnification

1 agreement, and I believe that Stan has made a similar
2 request. I may be incorrect there, but that's my
3 recollection, which is an ongoing number as well, which
4 continues to increase, which, quite frankly, they are well
5 aware of. They are well aware of those amounts. There is
6 no trial by ambush. There is no surprise on that.

7 We listed specifically respondent's 13 percent
8 interest in the \$6.5 million of proceeds from the sale of
9 the Fly Ranch property sold by Bright Holland Company,
10 \$845,000. Respondent's one-third interest in the
11 \$5.4 million of proceeds from the sale of the Bronco Billy's
12 Casino.

13 THE COURT: Hold on. You are going way too fast.

14 MR. CONNOT: I'm sorry, I will slow down,
15 \$1.8 million. Respondent's one-third interest in the cattle
16 and hay sold or taken from White Pine Ranch, \$200,000.
17 Respondent's one-third interest in the airplane Todd Jaksick
18 took without paying for it, unknown at this time. I mean,
19 that's a calculation that I think the jury can say, or the
20 Court ultimately, one-third.

21 One-third interest in the sales proceeds from the
22 property located at 4005 Quail Rock, unknown at this time.
23 And we could easily supplement that, but they know what the
24 sales proceeds were from Quail Rock. She is making a
25 request for one-third of those sales proceeds.

1 There is no trial by ambush. There is no
2 surprise. This is information that they are all apprised
3 of. Respondent's interest in Montreux Golf & Country Club,
4 unknown at this time. They know what the percentage
5 interest is that ultimately flows down to Wendy.

6 The value of that, you know, some of these items
7 had been carried through on the trust accounting and not
8 necessarily new appraisals done or new updates done, but
9 there is a percentage interest that Wendy is certainly
10 entitled to.

11 They know far more about the valuations than what
12 Wendy even does or at least what property and assets it
13 holds and how the appreciation has gone on, and so down the
14 line we have actual and punitive damages for the various
15 breaches of fiduciary duties by the trustees.

16 Just like in a personal injury case, Your Honor,
17 you don't, I mean, we make an argument about what those are.
18 They make an argument about she is not entitled to them, but
19 if she is entitled to anything, it's far lower than what she
20 is requesting, and so that's what you have.

21 So to say that they have had no information about
22 damages, I mean, they know each of those categories where
23 Wendy has said either a specific number or a specific
24 percentage interest based on what that entity has.

25 THE COURT: Okay. The motion is deferred and my

1 inclination is to deny.

2 Exclusion of settlement between the parties. With
3 a slow cadence, counsel, do you wish to be heard?

4 MR. ROBISON: Yes.

5 THE COURT: I really need help on this one.

6 MR. ROBISON: Yes.

7 THE COURT: Okay.

8 MR. ROBISON: We would very much like to appear
9 before this jury and try the issues raised by Wendy with
10 respect to the accusations against Kevin Riley, Stan,
11 Mike Kimmel, and Todd. We would like to try that case to
12 this jury.

13 The problem with any reference to settlement
14 negotiations, which you just granted I think their motion in
15 limine saying no reference to settlement negotiations, it
16 gets worse with respect to our settlement with Stan.

17 We asked the Court to order us to mediation and we
18 spent a lot of time, Mr. Lattin has, and Mr. Hosmer-Henner
19 has spent a lot of time negotiating a settlement and we have
20 done so pursuant to the Court order.

21 For the jury to know that Stan brought a claim
22 against Todd and that Stan got any kind of compensation or
23 settlement is to say Wendy has a good case and we think it's
24 so highly prejudicial, Your Honor, that it should be
25 excluded, any reference whatsoever. It's just highly

1 prejudicial.

2 It dignifies Wendy's claim before any evidence of
3 her, the legitimacy of her claim goes to court. I mean,
4 theoretically if it comes in, counsel could argue, well,
5 Todd did a deal with Stan but he didn't do a deal with
6 Wendy; therefore, Wendy has a righteous, valid claim.

7 There is no reason to go to settlement if that's
8 what we are going to be confronted with at trial. If we go
9 to settlement, we exchange in confidence comments about our
10 case or the weakness of the other side's case.

11 The last thing we expect in a settlement
12 conference is to have that come back and hurt our client in
13 trial, because then we have done the very wrong thing for
14 our client even though we settled, so we would ask it to be
15 entirely excluded.

16 MR. LATTIN: Your Honor, may I be heard?

17 THE COURT: Yes.

18 MR. LATTIN: And just by way of a general comment,
19 Mr. Robison and I are trying to work it out so that we don't
20 duplicate efforts, so I adopt everything that he said, but
21 it seems also somewhat of a penalty.

22 If you go to a settlement conference, you attempt
23 to resolve all the issues in order to streamline the court
24 process when you get before the jury. To then allow it to
25 become an issue before the jury seems a penalty to the

1 parties that in good faith and pursuant to a Court order go
2 to a settlement agreement, to a settlement conference for
3 days.

4 This was not just a one-day event. This was over
5 several days. It seems a penalty to come back and then have
6 the other side use the settlement agreement to again try to
7 divide when what we are really trying to do is streamline
8 the efforts before the jury along the lines of what you
9 said.

10 We are cognizant of the complexity of this case,
11 we are cognizant of the length of time it's going to take,
12 and we should not be penalized for going and resolving some
13 of our differences. So for those reasons, I would request
14 that the settlement agreement be held as confidential.

15 MR. HOSMER-HENMER: Nothing further, Your Honor.

16 MR. SPENCER: Your Honor, in relation to this the
17 first thing that comes to mind and I think is extremely
18 important is Stan has already testified regarding the things
19 that he believes Todd had done wrong.

20 His testimony, he is not going to be able to go
21 back on that at this point. Todd ended up filing suit
22 against him. He filed suit against Todd. All of those
23 things, they are co-trustees, they are serving side-by-side
24 supposedly for Wendy's benefit, and they are fighting each
25 other. All of that is key evidence in this case.

1 So what they are really asking you is to not allow
2 them to even testify that they were opposed to each other in
3 this case, and when you get to the probative value of that,
4 that is extremely significant from Wendy's perspective.

5 But carrying it a step further, the rule protects
6 the negotiations. And we had a hearing with Commissioner
7 Ayres when I was trying, when I was taking the deposition,
8 the last deposition of Todd over this settlement, because we
9 had just found out about it. It happened the night before.

10 Todd didn't want to testify about it and wouldn't
11 give us the agreement and then didn't give us the agreement
12 until the following Monday after the deposition was
13 finished, so they didn't even want to tell us about it.

14 We then get the agreement. We find out there is
15 some property exchanged, and then there is a statement at
16 the end, or I guess it's an agreement, a term at the end
17 that says, well, this is only binding if we get a settlement
18 with Wendy or we get a trial verdict that does not affect
19 the terms of our agreement.

20 So it's a contingent agreement, first of all.
21 It's not resolving disputes. It's a we will do this if
22 these certain things happen. So to say that they are
23 totally settled and they are no longer adversarial, they
24 have got an agreement in principle and certainly Stan has
25 now dismissed his lawsuit, but they have got an agreement in

1 principle based upon whether certain things happen.

2 But most importantly in relation to the
3 settlement, it's a breach of their fiduciary duty to enter
4 into a settlement agreement that affects Wendy's rights.
5 They are talking about dividing up Lake Tahoe, the Lake
6 Tahoe property between themselves.

7 She has got an interest in that property, and they
8 don't want us to be able to talk about the two, her two
9 co-trustees getting together, coming to an agreement, and
10 essentially colluding on how they are going to team up
11 against Wendy in this trial, and that just can't stand from
12 the standpoint of Wendy being able to go all into that.

13 And if we can't talk about the settlement, then we
14 can't talk about the lawsuits they had against each other,
15 which completely essentially eliminates Stan's testimony
16 about what he thought Todd had done wrong and that is
17 significant when a co-trustee is not on the side of the
18 trustee that's being sued, but on the other side saying,
19 yeah, I agree with you, those were bad acts.

20 And so in relation to presenting the settlement,
21 it's probative and it goes to the very heart of our causes
22 of action for breaches of fiduciary duty. It also goes to
23 the biases that they are both going to have now against
24 Wendy that were different just two weeks ago where Stan was,
25 his biases would have been against Todd and now they are

1 against Wendy, and so we get to go into that and explore
2 that with him.

3 THE COURT: Is Stan's settlement with Todd
4 influenced by the jury's verdict or the Court's decisions
5 for or against Wendy?

6 MR. SPENCER: My understanding is that there is
7 two conditions. The first is that there is a settlement
8 with Wendy that will become binding or that if they, the
9 trustees, can reach a settlement with Wendy or that there is
10 a verdict in this court that does not affect, both of which
11 do not affect the terms of their settlement agreement.

12 And so that clause makes the settlement tentative
13 based upon whether they can settle with Wendy or whether
14 Your Honor and this jury grants them a verdict that doesn't
15 change or alter the terms of their agreement.

16 And so it's an agreement in principle is what I'm
17 calling it, because it basically says if these, one of these
18 two things happen, then we will have an agreement with each
19 other. So, yeah, it does affect their settlement.

20 THE COURT: What do you anticipate Stan's trial
21 participation to be in light of the settlement?

22 MR. SPENCER: We intend to call Stan and to ask
23 him questions that he was asked in his deposition when he
24 was, when he had a lawsuit filed against Todd and he
25 described the things that Todd did improperly or that he

1 considered to be improper or incorrect, the reason that he
2 didn't end up on that side of the V in this lawsuit and to
3 go into those with him.

4 And he, obviously, he testified to those under
5 oath. I don't see how he is going to change that testimony,
6 and that corroborates Wendy's position, so he is going to be
7 a key witness in this.

8 THE COURT: And do you want to be able to tell the
9 jury that Todd and Stan have settled their disagreement with
10 each other?

11 MR. SPENCER: Yes, because now why is Stan now,
12 when he testified against Todd before, why is he now
13 testifying presumably in his favor at some point, what are
14 the reasons that they are now working together against Wendy
15 when all of this started Stan was on Wendy's side of the
16 lawsuit.

17 All of those things go to the bias and the
18 prejudice or even hostility, I guess, of the co-trustees now
19 against Wendy, including Stan, where it didn't exist before.

20 THE COURT: I need to read the supplement, I need
21 to read and think about the offer and compromise rule which
22 doesn't speak to the dispute that is the question before me.
23 At the moment I'm having a difficult time because you each
24 said things to me that resonate as powerful, important, and
25 true.

1 The mere fact of the settlement will in someway
2 bolster Wendy's claims. The change of position on the eve
3 of trial will weaken Wendy's claims, and I have to think
4 about that and I will make a decision today, but I'm not
5 going to make a decision at this moment. It's very
6 important. You know, we talk about harmless and harmful,
7 this is important.

8 MR. SPENCER: It is. And, Your Honor, I know you
9 haven't had a chance to read those motions on this subject
10 yet, but we have listed out all of the reasons we believe
11 that this is admissible and shows the mutual bias of Stan
12 and Todd against Wendy now.

13 And the rule, the way I read the rule, as
14 Your Honor has indicated, it protects the process of getting
15 to that settlement, but not that end result that now
16 indicates or can prove a bias.

17 THE COURT: Well, I agree with that. For example,
18 I would be prepared to rule right now that any of the
19 details of the settlement, well, the terms and the processes
20 of settlement would be inadmissible before this jury, but
21 the fact of settlement I'm not sure. I need to think about
22 it. I just need to think about it.

23 Remember I said at the beginning I can't scrub
24 this case of its facts, and there is decisional authority in
25 the State of Nevada that we don't disallow evidence just

1 because it's prejudicial.

2 We can pretty much conclude that evidence is
3 prejudicial in some way to somebody and I just need to think
4 about it, because if Stan at some point had sued Todd and
5 said Todd has done all of these things wrong, to pretend
6 that that position was not taken seems difficult for me.

7 I know you want to be heard, Mr. Robison. Go
8 ahead.

9 MR. ROBISON: Thank you. Sorry to be so anxious.

10 THE COURT: No, you are okay.

11 MR. ROBISON: We are not going to get around
12 Stan's deposition testimony. He gave it, he gave it under
13 oath, he gave it in the presence of counsel, and we wear it
14 like a tattoo that can't be removed. We have it. It's
15 coming in. We know it.

16 And despite that, we chose to really dignify this
17 entire process. I don't think I have ever appeared in front
18 of a judge in any case that didn't want to see it settled,
19 and there is a reason for that because of the scarce
20 judicial resources, the need to get rid of litigation that
21 clog up the courtrooms. There is a need to do that.

22 And it sounds corny, maybe a little bit over the
23 top, but it is part of our role as officers of the court to
24 try and put away these cases, and that's what we did. And
25 now to be jeopardized and harmed by it is just

1 counterintuitive and highly prejudicial.

2 If you are saying Wendy, or the argument is Wendy
3 has a case because Todd settled with Stan who also had a
4 case, we are toast and it's highly prejudicial and I can't
5 say anything more on that.

6 On this fiduciary duty, that's not a breach of
7 their fiduciary duty, Your Honor.

8 THE COURT: So I didn't have a positive reaction
9 to that argument. I should just say that because we have
10 pleadings in place and I don't believe whatever happened two
11 weeks ago constitutes a new claim for relief.

12 MR. ROBISON: I just want to add this. The powers
13 given to the trustees, the Issue Trust and the co-trustees,
14 encourage, foster settlement of cases. The powers of the
15 trustees in those documents say get out of litigation and
16 settle litigation, and now following the powers clause of
17 those two trusts we get penalized by a claim supported by
18 nobody that that is a breach of fiduciary duty because Todd
19 settled with Stan. It just doesn't make sense.

20 THE COURT: Let me think out loud for a moment,
21 which is very dangerous. So when you say you are going to
22 wear Todd's initial position like a tattoo on your face --

23 MR. ROBISON: Stan's.

24 THE COURT: Excuse me, you are correct.

25 MR. ROBISON: I have got a Todd tattoo?

1 THE COURT: Stan's initial adversarial position
2 against Todd.

3 MR. ROBISON: The testimony he gave at his
4 deposition, and I'm sure they are going to use that
5 deposition, I'm sure Stan's accusations against Todd are
6 going to come into this case.

7 THE COURT: And how do you intend to neutralize
8 that evidence with the jury?

9 MR. ROBISON: That's work product.

10 THE COURT: Okay. Well, don't answer it,
11 seriously.

12 MR. ROBISON: I mean, I kind of know what I want
13 to do when Stan is on the stand. I'm not going to attack
14 him aggressively, because he is represented by my
15 co-counsel.

16 THE COURT: The reason I ask is that it seems
17 relevant, prejudicial, not overly prejudicial, but seems
18 relevant that at some point Stan disagreed with what Todd
19 did and that fact is inescapable and cannot be concealed
20 from the jury.

21 MR. ROBISON: That's the tattoo.

22 THE COURT: Right. And so the question is how is
23 that disagreement described by argument. Counsel, this
24 cannot be an either/or binary choice, because you both
25 present very legitimate concerns and some of those concerns

1 are just the risk of going to trial that you are going to
2 have a judge make a call.

3 Can we fashion how we describe the settlement
4 without using the word settlement? For example, is it true
5 that you and Todd have resolved your differences with each
6 other and that your claims are no longer pending? Can we
7 soften it somehow so that it's not just this hammer of
8 because Todd settled with Stan, therefore, inescapably it
9 implies that Wendy wins?

10 Can I provide a curative instruction to the jury,
11 the existence of a dispute that's not presented to the jury
12 shall not be considered by you for or against Wendy's claim,
13 you know, something like that? Can I modify the harmful
14 fact that we are in trial and it's harmful?

15 MR. ROBISON: Depending on what you let in, we
16 encourage you to try to unring the bell with a curative
17 instruction for sure, but kind of the better argument is
18 what comes in.

19 THE COURT: And I don't know, I just don't know.
20 I can't allow what occurred, I cannot erase what occurred to
21 assist Todd's defense and I can't allow what occurred to
22 unfairly bolster Wendy. Welcome to trial.

23 MR. LATTIN: May I be heard, Your Honor?

24 THE COURT: Yes.

25 MR. LATTIN: It is not uncommon for trustees to

1 disagree over decisions that were made and it is not
2 uncommon for some trustees depending upon their expertises
3 in cases to have certain knowledge that others don't and
4 that's what occurred here and there will be testimony to
5 that. Some had knowledge, some didn't, and there will be
6 testimony to that, which I think is fine, has to come out.
7 It's already in the depositions.

8 But to allow the settlement terms to come in I
9 think is a function that can be addressed by the Court once
10 the jury decides, so it's almost like --

11 THE COURT: I didn't follow that, Mr. Lattin.

12 MR. LATTIN: Okay.

13 THE COURT: Because I don't intend to allow any of
14 the terms of the settlement in.

15 MR. LATTIN: Okay. Then we may not have an issue,
16 but I guess my only comment would be that if there is any
17 impact, it can be considered by the Court after the jury
18 makes its decision.

19 THE COURT: So the fact that Todd and Stan
20 disagreed and maybe even had litigation between them, I
21 don't know that I can keep that out. Any of the details of
22 the settlement will not come in. Any of the efforts to
23 reach settlement will not come in.

24 And I'm not sure that I'm going to use the word
25 settlement. I might direct counsel to use do those disputes

1 still exist? No. Have they been resolved? Yes. Same
2 thing, but slightly less painful. I just don't know and I
3 will think about it. Final word.

4 MR. SPENCER: Can I be heard on that?

5 THE COURT: Yes.

6 MR. SPENCER: In relation to the terms themselves,
7 first of all, it shows the bias. They have got a mutual
8 interest in making sure that Wendy doesn't get a certain
9 amount because her settlement won't kick in if it does.

10 They both sued each other, by the way. Stan sued
11 Todd, and Todd in a separate suit sued Stan, and so it's not
12 just a disagreement. They were alleging breaches by each
13 other, but the bias that comes from them having a condition
14 that they have to defeat Wendy in order for this to apply is
15 as important as anything in this case.

16 And so it's not the fact that they settled that is
17 the big deal. It's the fact that they are trying to give
18 away some of Wendy's interest in Lake Tahoe, for instance,
19 and they have to get a certain result for that settlement to
20 apply.

21 THE COURT: So the bias and motivation is why I
22 asked the question does Stan's settlement, is Stan's
23 settlement affected by the jury verdict or this Court's
24 decision. That bias possibility is really relevant and
25 intriguing and I want to hear from Mr. Robison on that,

1 because I didn't hear your argument side. If Stan, if Stan
2 has an interest in the outcome of this case, it could affect
3 his approach to this case and that is very relevant.

4 MR. ROBISON: That is very easily solved. If
5 there is a sense that Stan is being biased toward Todd in
6 his testimony in this trial, they have five days of
7 testimony transcript to impeach him with. That is very
8 solvable. That bias situation goes away with just typical
9 standard cross-examination from Stan's prior testimony and
10 that's what we have to live with.

11 MR. HOSMER-HENNER: Your Honor, I don't speak with
12 regard to the merits, only to address that last point about
13 the bias. We worked in good faith over a period of many
14 days to reach a global settlement. When that couldn't be
15 done, we looked at ways to reach a settlement that would at
16 least streamline some of the issues in this case, reduce the
17 attorney's fees being charged to the trust, and tried to
18 minimize the expense and risk for the Family Trust and to
19 some extent the Issue Trust.

20 That clause in the settlement agreement related to
21 being contingent on the outcome of this litigation. Wendy
22 has filed a series of claims related to entities and
23 interests over which she has no ownership or interest in
24 with respect to the Family Trust or the Issue Trust.

25 And yet if she were to prevail on those claims,

1 she could potentially alter the current structure of the
2 Family Trust or Issue Trust in a way that changes the estate
3 plan of Sam Jaksick.

4 We don't, we didn't think we could enter into a
5 settlement without this Court's approval or without, or
6 pending litigation where the Tahoe house in its entirety
7 could change ownership, and so we were very careful to the
8 extent we absolutely could to structure a settlement that
9 did not affect Wendy's interests as they stood under the
10 existing Issue Trust and the Family Trust.

11 So her existing interest in the Issue Trust was
12 not altered. That remains according to the terms of the
13 ACPA pre and post settlement. They disagree because their
14 claims are so wide ranging, they could potentially affect
15 100 percent of the Issue Trust or 100 percent of the Family
16 Trust.

17 But to the extent that we could, we tailored it in
18 a way that only swapped Stan and Todd's interests and
19 reached a mutual resolution of their cross claims against
20 each other.

21 With respect to the fact of the settlement of,
22 with respect to the fact of the settlement, I leave that in
23 full discretion of the Court according to the arguments of
24 both Mr. Spencer and Mr. Robison.

25 THE COURT: I could see how my decision today

1 would change as testimony unfolds. For example,
2 hypothetically if counsel inquires of Stan as to why he no
3 longer disagrees with Todd's conduct, and Stan provides
4 testimony about uncertainties of litigation and expenses to
5 the trust, new foundations of goodwill between brothers,
6 then that opens the door a little wider to Wendy, and I just
7 don't know.

8 I mean, I respect that you said it's work product
9 and I'm not ready to be bound by my examination of Stan, and
10 I guess I'm not going to be bound by my ruling regarding
11 Stan either then.

12 MR. ROBISON: I don't know that Stan is going to
13 testify any different than his deposition. In fact, I don't
14 expect it to be different.

15 THE COURT: All right. So I'm better informed,
16 but I'm not going to orally pronounce that at the moment.

17 Let's all stand in place. In fact, let's take a
18 ten-minute break.

19

20 (Whereupon a break was taken from 10:02 a.m. to 10:13 a.m.)

21

22 THE COURT: All right. Counsel, I'm informed on
23 that issue. I will read more and orally pronounce this
24 afternoon. There was an additional motion in limine
25 regarding Sam's capacity. Is that an issue?

1 MR. CONNOT: No, Your Honor. In our response we
2 did not oppose that.

3 THE COURT: Thank you. All right. Counsel, I
4 turn now to Wendy's motion in limine to preclude references
5 to prior bad acts. I'm going to invite arguments on this
6 motion.

7 Excuse me, counsel, will you pause for just a
8 moment. I'm going to go to another motion before I do the
9 prior bad acts. This is Stan's omnibus motion. I'm not
10 sure if it's relevant given the change, given the
11 resolution, but I'm willing to go through each of the
12 issues. Mr. Hosmer-Henner.

13 MR. HOSMER-HENMER: I believe the remaining ones
14 are still relevant. If you will notice there is some
15 numbering where certain motions in limine were defeated as a
16 result of that settlement that day, but I think that these
17 three motions in limine are still submitted to the Court as
18 relevant.

19 THE COURT: So the reference to trustees should be
20 disaggregated or clarified, you want the Court's ruling on
21 that?

22 MR. HOSMER-HENMER: Yes, Your Honor.

23 THE COURT: And references to Stan's divorce,
24 which began in 2010 and ended somewhere around 2013?

25 MR. HOSMER-HENMER: Except for the fact of the

1 divorce and the date, and I think I agree with Mr. Robison
2 that to the extent there were allegations that affected
3 Sam's estate planning, those can come in.

4 THE COURT: All right. My inclination, counsel,
5 is that on the references to trustees, it can be confusing
6 and please be careful to delineate and not inadvertently or
7 intentionally combine multiple people under the single term
8 trustees.

9 MR. ROBISON: We can refer to the co-trustees as a
10 group?

11 THE COURT: Yes.

12 MR. HOSMER-HENMER: Your Honor, I do have an
13 objection to that, because they all served during different
14 periods, so this affects not just Stanley Jaksick, but also
15 Michael Kimmel and Kevin Riley.

16 THE COURT: You are right. Just be careful with
17 your references so it doesn't create confusion.

18 MR. HOSMER-HENMER: And what I'm extremely
19 concerned about are questions of the sort of saying did the
20 trustees do a good job in this? Didn't all of the trustees
21 approve of this action? Not only did they serve during
22 different time periods, but also they did not all agree on
23 certain courses of action.

24 THE COURT: I understand your concern and I'm
25 granting it. Counsel, please be careful to delineate who

1 you are referring to when using the trustee title.

2 The divorce appears relevant to me as it might
3 influence Sam's estate. It is not relevant as some
4 character statement that the marriage dissolved, so with
5 that boundary I have nothing else to add.

6 And finally the third is evidence related to
7 corporate entities. I understand that my late decisions on
8 necessary parties causes some concern. My inclination is to
9 deny. Defer, but my inclination is to deny. Do you want to
10 be heard on any of that?

11 MR. HOSMER-HENMER: With respect to the divorce,
12 Your Honor, I would say that our limiting instruction should
13 be not just that the marriage dissolved, but the allegations
14 made by Stan's ex-wife as well insofar as they were related
15 to Stan and not necessarily these other corporate entities.

16 THE COURT: Is his ex-wife listed? Is she going
17 to testify at trial?

18 MR. CONNOT: No, Your Honor. There is certainly
19 no intent to get into any of the allegations. The fact that
20 there was a divorce and how that might have affected Sam's,
21 you know, what actions that he took, but, no, there is
22 absolutely no intent or otherwise to get into anything
23 involving any of the allegations that might have been made
24 in that divorce proceeding or contentions.

25 MR. ROBISON: Specifically what I think we all

1 need to be given to the jury is the date of the divorce,
2 that it was filed back in 2010, the fact that Stan's ex-wife
3 named many Jaksick entities, which caused concern to Sam and
4 the Jaksick family, and the fact that it was resolved.
5 Well, the fact that Sam made various plans in light of that
6 divorce, and that it was over I think April 7, 2013.

7 THE COURT: I have no problem with any of that.
8 Beyond that I reserve until I see how trial unfolds.

9 References to Wendy's prior bad acts. I have
10 Wendy's motion in front of me and I'm on page 2 of 10. I'm
11 going to go through each of these specific items in turn.

12 Again, counsel, there is a balance, because I
13 cannot scrub Wendy of her own life story and I can't admit,
14 allow the admission of unfair character evidence that
15 creates some propensity momentum so that if she was a bad
16 person once she must be horrible now and that's a balance I
17 will attempt to strike.

18 One of the concerns I have is how remote some of
19 these specific acts are in time and to what extent did Sam
20 know the specificity. I think the idea that Wendy had some
21 life problems and Sam attempted to accommodate those
22 problems in his estate plan is fair for Todd and against
23 Wendy, but, for example, a docket summary for Case Number
24 427-F99 dating back to 1999, did Sam know about that? Did
25 he see it?

1 MR. ROBISON: The docket specifically or the
2 incidents? We believe the incidents, yes. The docket he
3 probably didn't have knowledge of it, but it's evidence of
4 what he did know of that caused various inclinations with
5 respect to estate planning that surfaced in 2006.

6 THE COURT: So seven years later he referred --
7 let me go through each of these before I say anything else.

8 MR. ROBISON: Sure.

9 THE COURT: What was the crime in Exhibit 27B?
10 It's a docket summary for a case filed against Wendy in 1999
11 and relates to a criminal proceeding against Wendy. What
12 was that criminal proceeding?

13 MR. ROBISON: It was I think reduced to failure to
14 appear and some form of theft. I can grab the book and be
15 more specific.

16 THE COURT: If you would, please.

17 MR. ROBISON: 27F?

18 THE COURT: 27B.

19 MR. ROBISON: It was drug related, Your Honor.
20 She was referred to diversion after a guilty plea.

21 THE COURT: Exhibit 27H is failure to pay a
22 traffic ticket. That's 27H. 27I is a Macy's credit card,
23 mom's Macy's credit card without permission, and Exhibit 27P
24 is failure to pay a traffic ticket.

25 I'm going to have, I'm going to have Wendy's

1 counsel argue first. I'm going to break this up into first
2 the specific instances of criminal conduct and then I will
3 hear from opposing counsel. And let me pre-empt maybe a
4 little bit of the argument.

5 MR. JOHNSON: Yes, Your Honor.

6 THE COURT: Hold on, let me pre-empt a little bit.

7 MR. JOHNSON: Okay.

8 THE COURT: When you think about the use of a
9 judgment of conviction for impeachment purposes, it cannot
10 be, it cannot be remote in time, older than 10 years, and
11 the details of the crime are not admitted to the jury, but
12 the mere fact of a felony conviction is.

13 And there are some guiding principles there. They
14 are not on all fours, but the spirit of that rule kind of
15 guides me here. I'm concerned about the risk of character
16 evidence because each of these instances would be
17 inadmissible for impeachment purposes based upon the
18 category of the crime and maybe for some the date of the
19 crime.

20 So the only way they could be relevant and
21 admissible and not overly prejudicial is if there is some
22 connection of these instances to Sam's estate plan. And the
23 idea that Wendy had criminal theft and irresponsible
24 patterns is admissible. It is relevant, even though it's
25 prejudicial to Wendy.

1 The question for me is going to be how much of the
2 detail is presented, and some of that would be determined by
3 what Wendy says on the stand, because there could be use of
4 these events for impeachment purposes depending upon what
5 she says. All right. Go ahead.

6 MR. JOHNSON: As an initial matter, I think
7 Your Honor hit the nail on the head. These are specific
8 events, and to the extent they relate to the estate plan, we
9 have no evidence that Sam knew about any of this stuff. All
10 we have from opposing counsel is we believe he knew about
11 these, but there is no evidence that he knew about these.

12 There will be evidence that people spoke to Sam
13 and he had concerns about Wendy's financial, you know,
14 handling her finances and that she had been in trouble with
15 some things in the past, but, again, none of these specific
16 instances can be connected to any of that.

17 THE COURT: What about from Wendy herself, did she
18 ever discuss any of these problems with her father?

19 MR. JOHNSON: She may have discussed some of these
20 things with her father. A lot of these things she didn't
21 even know about.

22 THE COURT: What is she going to say in her
23 witness examination as guided by whatever was said in her
24 deposition? Did she talk to her father in general or in
25 specific terms about her criminal problems or problems with

1 her mother and so forth?

2 MR. JOHNSON: Standing here today I can't tell
3 you. I don't recall specifically what she testified to in
4 her deposition. I think she probably discussed these things
5 generally with him and he was generally aware of it, but I
6 don't think her father was aware of these specific
7 incidents.

8 THE COURT: Okay. Anything else?

9 MR. JOHNSON: And, Your Honor, these are, again,
10 these are, most of these are over 10 years old like
11 Your Honor said. These aren't convictions. I don't think
12 there is any convictions here, and our position is they are
13 just going to use these to hit her over the head with and
14 make her look bad.

15 The other issue is, Your Honor, throughout this
16 process we requested documents, as you are aware, going back
17 to 2006 and we received objections that these aren't
18 relevant. All that's relevant is 2013.

19 THE COURT: Do you have any reason to believe that
20 Todd or Stan possessed at the time of your request the
21 docket sheet for her failure to appear ticket?

22 MR. JOHNSON: I'm not sure about that, Your Honor.

23 THE COURT: I doubt it. Remember the rule of
24 production is we produce what we have. I know there are
25 discovery disputes, but that cannot be the only reason we

1 use in these arguments.

2 MR. JOHNSON: And, Your Honor, I was only going
3 there to say that, you know, we would have requested things
4 similar to this and we would have gotten the response that,
5 no, we don't have these, and then now they have gone back to
6 1999 and pulled these specific documents, you know, and are
7 using them against us.

8 THE COURT: Ah, that's different.

9 MR. JOHNSON: That's where I was going with that.

10 THE COURT: I understand, and that's different
11 than my response.

12 MR. JOHNSON: And so when we requested documents
13 going back before a certain amount of time, they don't have
14 them, but they can go find these documents from 1999.

15 THE COURT: All right. So that's going to give
16 you a little bit of traction, but not a whole lot of
17 traction because I knew there were discovery problems in
18 this case.

19 The real question for me is how do we present to
20 the jury the fact that Wendy had some problems in life that
21 could have influenced Sam's assessment of how she would
22 receive her distributive share or how the estate would be
23 managed, which is very relevant and unfortunately
24 prejudicial to your client versus allowing non-felony,
25 stale-dated, non-judgment of convictions to come in. I

1 think that's the question.

2 MR. JOHNSON: And, Your Honor, I think that can
3 happen through witness testimony without putting these up on
4 the overheard saying look at this 1999 deferred adjudication
5 for some drug offense that we can't even really tell what
6 happened, so I think they can elicit that testimony from
7 witnesses without using these specific events.

8 THE COURT: All right. Let me hear from opposing
9 counsel on the crimes before we turn to the financial
10 matters. Counsel?

11 MR. ROBISON: Thank you, Your Honor. What is
12 relevant and only what is relevant about the prior bad acts
13 is what Sam did in reaction to her behavior. She has been
14 described by Mr. Hascheff as a problem child.

15 There is a lot of testimony about Pierre's
16 discussions with Sam about how to handle Wendy, because she
17 was stealing so much money from the family, and as a result
18 in 2006 Sam deducted Wendy's share by a million five to
19 level the playing field in terms of what she had stolen from
20 the family. That's testimony in this case.

21 THE COURT: Well, you just used the words stolen
22 which is an example of --

23 MR. JOHNSON: Exactly.

24 MR. ROBISON: That's not my word.

25 THE COURT: Okay.

1 MR. ROBISON: That's the witness' word.

2 THE COURT: All right.

3 MR. ROBISON: I'm not going to accuse Wendy is a
4 thief or anything like that, but what I am saying is that
5 there was a concern by the testator, by the settler that
6 this person had taken from the family those things she was
7 not entitled to.

8 He posted bail. He paid judgments for her -- he
9 is Sam -- and he tried to make it right by the other
10 beneficiaries by deducting her share by \$1.5 million.

11 THE COURT: When you say he posted bail and paid
12 judgments, how is that evidence, through which witness does
13 that evidence come in?

14 MR. ROBISON: Pierre Hascheff primarily and Todd
15 as well.

16 THE COURT: So I'm with you almost. I agree that
17 her life as an influence to Sam's estate decisions is
18 relevant and it's going to come in. The question is whether
19 specific instances of docket sheets, summary dockets, an
20 incident report, a bail receipt, whether that goes too far.

21 MR. ROBISON: It might, and I can see that, but
22 the nature of the cumulative effect of that behavior had a
23 definitive impact on Sam's testamentary intent.

24 THE COURT: I agree, and so I'm going to allow you
25 to -- yes.

1 MR. JOHNSON: Two brief points, Your Honor. One,
2 the \$1.5 million deduction was related to a house he
3 purchased for Wendy, not necessarily related to money she
4 stole.

5 THE COURT: We will let the jury figure those
6 facts out.

7 MR. ROBISON: That's Wendy's testimony
8 incidentally.

9 MR. JOHNSON: The second thing, Your Honor, is we
10 are not contesting the 2006 trust documents and all of these
11 events happened far before those. The issues we have are
12 related to the later documents and these events happened
13 before the 2006 documents which weren't in place and no one
14 is disputing.

15 THE COURT: So unless there is further order of
16 the Court, on page 2 of 10 and 3 of 10, 1, 2, 3, 4, Exhibits
17 27B, 27H, 27I, and 27P are not admitted without leave of
18 Court.

19 The theme is permissible and depending upon the
20 testimony these might become admissible. Questions related
21 to what these exhibits represent are admissible, but at the
22 moment those four documents are not admissible.

23 MR. ROBISON: Understood.

24 THE COURT: All right. Turning now -- Counsel,
25 I'm very, very sorry. I don't remember your last name and I

1 don't mean to disrespect you.

2 MR. JOHNSON: Johnson, Your Honor.

3 THE COURT: I thought it was Johnson. I should
4 have just said that, Johnson.

5 I now turn to exhibits related to judgments or
6 monetary debts owed by Wendy. I'm sorry, let me go back. I
7 just want to clarify. There are no restrictions on
8 questions related to these events that the documents
9 represent. It's just the documents themselves.

10 The following exhibits relate to judgments against
11 or monetary debts owed by Wendy. A 1996 letter from
12 William Sanford relating to the withdrawal of funds from the
13 Estate of Mildred Short. What is the amount of that
14 allegation? Is it \$110 or \$110,000?

15 MR. ROBISON: \$110,000.

16 THE COURT: So there is an allegation by
17 William Sanford that Wendy withdrew \$110,000 from the Estate
18 of Mildred Short?

19 MR. ROBISON: Correct. He is counsel for that
20 entity, that trust.

21 THE COURT: All right. And is there evidence that
22 Sam Jaksick paid that \$110,000?

23 MR. ROBISON: They tried to get it back and I
24 don't think they were successful. That's the testimony.

25 THE COURT: Whose testimony?

1 MR. ROBISON: Well, Todd was familiar with that
2 and I'm not sure whether Mr. Hascheff is.

3 THE COURT: So Sanford made an allegation that
4 Wendy removed \$110,000 from an estate that Sanford
5 represented?

6 MR. ROBISON: Correct.

7 THE COURT: And there was no payment to Sanford in
8 response to the allegation?

9 MR. ROBISON: He -- go ahead.

10 MR. LATTIN: There is just one additional factor.
11 Mr. Sanford was also Sam Jaksick's prior estate planning
12 lawyer, so he did an initial Family Trust prior to 2006. So
13 he -- that would be relevant from the standpoint of what Sam
14 knew and where this money is going and the reasons for the
15 2006 Family Trust.

16 THE COURT: So you are imputing knowledge to Sam,
17 because Sanford previously had an attorney-client
18 relationship with Sam, that Wendy took \$110,000 from one of
19 Sanford's trust estates, but there is no repayment of Sam,
20 by Sam of that alleged withdrawal of money. Have I got all
21 of that right?

22 MR. LATTIN: May I, Your Honor? It's the
23 cumulative effect of all of these issues relating to debt,
24 and there is some testimony, and Wendy disagrees, in the
25 2006 trust there are two specific references to a reduction

1 of \$1.5 million to Wendy's share.

2 Wendy has a different story, which Mr. Johnson
3 alluded to, but there has been testimony that he reduced
4 that because of money that Wendy had previously received by
5 virtue of all of these events that appeared over time.

6 THE COURT: I'm just trying to, I'm just trying to
7 decide -- that gets to come in. I'm trying to decide if I
8 admit Mr. Sanford's letter. That's what I'm looking at,
9 because there is a general cumulative sense that Sam
10 adjusted his estate because of who Wendy is. Whether right
11 or wrong, that evidence is going to come in, but does the
12 letter itself come in?

13 MR. ROBISON: Well, if we can allude to it without
14 introducing it, I wouldn't offer it.

15 MR. JOHNSON: Your Honor, this is over 22 years
16 old and there is no evidence at all that Sam knew about this
17 or was aware about this specific event.

18 MR. ROBISON: Ms. Short is Sam's sister whose
19 estate Wendy got into impermissibly and improperly.

20 MR. JOHNSON: And, Your Honor, the letter that
21 they have actually attached only references \$25,000 and,
22 again, there is no other evidence with that in support of
23 either of these issues.

24 THE COURT: A copy of the default judgment -- So
25 of all of the things I just heard, the fact that Short is

1 related to Sam actually tilts me in a certain direction, so
2 that's why these are very important conversations, because
3 the possibility of imputed knowledge because of family
4 increases, so I will ask some of the same questions with
5 these later exhibits.

6 Exhibit 27C, a copy of a default judgment 19 or
7 18 1/2 years ago in the amount of \$18,000 for a vehicle
8 Wendy leased and exceeded the mileage on.

9 Exhibit 27D, an abstract of judgment for \$2,138
10 that Wendy was unaware of. Who is the judgment creditor in
11 the case?

12 MR. ROBISON: 27D. Okay. It was a collection
13 bureau.

14 THE COURT: A judgment from 2001 in the amount of
15 \$400,000 from a business loan. Who are the transacting
16 parties to that loan?

17 MR. ROBISON: May I confer with my client?

18 She signed Stan and Sam's name to various
19 documents totaling a withdrawal of \$400,000. It was an
20 impermissible use of credit, credit cards?

21 May I, Your Honor?

22 THE COURT: Please.

23 MR. ROBISON: She got a loan using the names of
24 Stan and Sam and she kept the proceeds. She falsified the
25 name of the borrower.

1 THE COURT: An order from 2000 entering judgment
2 against Wendy for \$158,000 again arising from a business
3 loan. Who are the contracting parties to that loan?

4 MR. ROBISON: I have to see the document,
5 Your Honor. Oh, that's Dr. Dorostkar. He sued to collect
6 for a \$158,000 loan.

7 THE COURT: What was the nature of the loan? I'm
8 just trying to figure out its connection to the trust.

9 MR. ROBISON: Well, this was an investment and
10 this was one of the things that Sam had to help deal with
11 with the Dorostkar loan, that she took out the money.

12 And incidentally this does pertain to the house
13 situation that Mr. Johnson referred to that she got this
14 money and refused to pay it back and as a result was
15 subjected to the lawsuit and the judgment and Sam had to
16 take care of that.

17 MR. JOHNSON: Your Honor --

18 THE COURT: Hold on. One more thing. So is there
19 documentary evidence that Sam paid this \$158,000.

20 MR. ROBISON: Not documentary. There is
21 testimony.

22 MR. JOHNSON: Your Honor, it's our understanding
23 this is a business loan that was separate and apart from
24 Sam, and Sam didn't know about this and Sam didn't pay this.

25 THE COURT: How do we know that Sam did know about

1 it?

2 MR. ROBISON: Todd Jaksick will testify to that.
3 It was a family matter and it was discussed.

4 THE COURT: Did he talk to his father about this
5 particular \$158,000 loan?

6 MR. ROBISON: I believe so. You know, I used
7 these documents in Wendy's testimony, but nobody has asked
8 about these documents of any other witness during discovery.

9 THE COURT: 2004 default judgment, \$3,357. She
10 testified she was unaware of it. Who is the judgment
11 creditor for that default judgment?

12 MR. CONNOT: Here you go.

13 MR. ROBISON: This is Unifund CCR versus Wendy for
14 a default judgment. It's just more evidence, Your Honor, of
15 her responsibility with regard to financial affairs in the
16 family.

17 THE COURT: Anything else?

18 MR. JOHNSON: Same argument. There is no evidence
19 that Sam knew about this or was aware of this, Your Honor.

20 THE COURT: So the first four relate to Sam's
21 awareness of Wendy's criminal, drug, and financial problems,
22 and I said there will be illusions to that, but
23 preliminarily the first four documents, criminal documents
24 are inadmissible.

25 27A, the letter from William Sanford, there may be

1 an illusion, but it will not be admitted at the moment.

2 Exhibit 27C, a default judgment in the amount of
3 \$18,000, there may be an illusion, but it is not admitted
4 now.

5 27D, a collection default judgment, there may be
6 reference to, but it is not admitted. And I can see how
7 these documents would be admitted if Wendy presents to the
8 jury as a person without blemish.

9 However, 27E is going to be admitted. If that
10 \$400,000 relates to some conduct touching Sam Jaksick
11 personally, that's distinct from credit card type default
12 judgments or, I'm sorry, collection type default judgments.
13 I'm going to let 4 in.

14 27F is not admitted pre-trial. Neither are 6, 7,
15 and 8. Again, the reason why 4, 27E, is coming in is
16 because it does touch Sam Jaksick personally and the date is
17 2001, which is a few years, five years and something before
18 the estate documents.

19 That I think evidence of one is permitted.
20 Cumulative documentary evidence of multiple becomes unfair,
21 but there may be references to all of this financial
22 mismanagement.

23 Next, petitioners seeks to introduce the following
24 exhibits related to debts owed to Sam from Wendy: A secured
25 promissory note in the amount of \$100,000. Why is that not

1 admissible? I'm looking at page 4 of 10.

2 Just by description it looks like Wendy borrowed
3 \$100,000 from her father. There is a promissory note
4 memorializing the loan. It was secured and there is a UCC
5 financing statement.

6 MR. JOHNSON: Your Honor, we will withdraw that
7 one.

8 THE COURT: That is admissible, of course with
9 evidentiary foundation.

10 MR. ROBISON: Okay.

11 THE COURT: All right.

12 MR. ROBISON: Excuse me, Your Honor, the ones that
13 you ruled out is it your order that we not even try to
14 establish a foundation?

15 THE COURT: Yes.

16 MR. ROBISON: Okay.

17 THE COURT: That is my ruling, but I might change
18 my ruling depending on how Wendy testifies.

19 MR. ROBISON: All right. Got it.

20 THE COURT: So all of these documents, the one
21 that I know is going to come in with an evidentiary
22 foundation is going to be the \$400,000 and then we will just
23 see how Wendy testifies.

24 MR. ROBISON: Very well.

25 THE COURT: Generally as opposed to specifically.

1 Okay. I now have objections to pre-trial disclosures.

2 Everybody is arguing against each other's pre-trial
3 disclosures. Yes.

4 MR. SPENCER: Before you move on, Your Honor, can
5 I bring up one thing that goes back to a ruling you made
6 earlier about Wendy's rehab, and you said we can't use it to
7 character assassinate, but you are not going to scrub her
8 history and I totally get that.

9 There is one part of that, though, that I think
10 is, you can't unring the bell situation. They have said, I
11 don't know whether it was jokingly, but I don't think it
12 was, that she went to rehab for compulsive lying and that
13 just is not true. It's not a fact. There is no evidence
14 that supports that. She went for depression and alcoholism,
15 I think it was.

16 THE COURT: I saw that reference. Do you have --
17 why would you say she went to rehab for compulsive lying?

18 MR. ROBISON: Well, that's what I was informed by
19 my client when they had the discussions at the time that
20 that was part of it and that she received therapy for that
21 at that facility in Wickenburg.

22 THE COURT: Yeah, I'm not going to allow evidence
23 that she went into rehab to cure a compulsive lying pattern.

24 MR. SPENCER: Thank you, Your Honor.

25 THE COURT: Okay. Objections to pre-trial

1 disclosures. Todd objects to Wendy's pre-trial disclosures.
2 Wendy objects to Todd's and the trustee's pre-trial
3 disclosures. Stan objects to Wendy's pre-trial disclosures
4 and Stan objects to Todd's pre-trial disclosures. What do
5 you want me to do, counsel?

6 MR. ROBISON: I don't know. We have eight
7 binders. We have told them which ones we want in by
8 stipulation, which ones we want to withdraw, and which ones
9 we object to. Won't that process take care of it?

10 THE COURT: I think so. I have moving papers
11 here.

12 MR. ROBISON: Unless you file an objection, you
13 waive it, but this is all about exhibits getting in
14 evidence.

15 MR. CONNOT: I would agree, Your Honor. I think
16 that, you know, we will try to work together to continue to
17 work through those issues and the ones we can stipulate to,
18 and the ones that we can't agree on, you know, we will have
19 to go through the normal process and establish foundation
20 and subject to objections and see how the Court rules on
21 them.

22 THE COURT: Great. Deferred.

23 I want to return to this issue of inferior or
24 superior technology. My concern is that there not be an
25 opening statement that references orally or introduces

1 through PowerPoint or otherwise evidence that may or may not
2 be admitted. Do you, Wendy's counsel, what technology do
3 you intend to use during the opening statement, if any?

4 MR. SPENCER: Your Honor, this may be an issue
5 that's not really an issue. I don't know, until we see
6 everybody's setup, I don't know what it's going to look like
7 or whether we will be collaborating.

8 This one was designed because it happened to us in
9 the past where we had, you know, a pretty slick presentation
10 and the other side had an Elmo and they were fumbling
11 around, and they argued that, you know, we had an advantage
12 and it just -- I don't know that that's going to be the case
13 here. I don't know what the trustees are going to have
14 available. We have talked about putting a screen right
15 there.

16 THE COURT: So I granted that specific request,
17 but I'm moving past it, because it causes me to think about
18 an impermissible opening statement. I want to make sure
19 that no attorney references evidence that is disputed and
20 may not be admitted.

21 MR. SPENCER: I see what you are saying. I'm
22 sorry, I misunderstood.

23 THE COURT: So don't include in your opening
24 technology any of those documents for which there is not a
25 stipulated admission.

1 MR. SPENCER: Okay.

2 THE COURT: Because I get to make the admission
3 decision as the trial unfolds, and I don't want you to ring
4 the bell during opening statements with evidence you, with
5 evidence that might not be admitted.

6 MR. ROBISON: We need a list of what they
7 stipulate to, then. They have got our list.

8 THE COURT: Okay.

9 MR. ROBISON: So I don't get sideways.

10 MR. SPENCER: We will get it to you.

11 MR. ROBISON: But your ruling is on exhibits, not
12 necessarily graphics to explain our case, correct?

13 THE COURT: You are correct.

14 MR. ROBISON: Thank you.

15 THE COURT: I have, I have a few more papers I'm
16 prepared on. I do want to break for lunch and have some
17 extended time to think about this idea of settlement,
18 because it does appear to be risky to both sides of the
19 courtroom, so let me pause and invite you to bring to my
20 attention any other pre-trial matters that I haven't yet
21 addressed.

22 MR. CONNOT: Just a housekeeping matter,
23 Your Honor. I know that the rules require that Nevada
24 admitted counsel be present here during the proceedings,
25 during the court proceedings. I have a hearing in front of

1 Judge Zive on the 21st at 10:00 a.m.

2 We already have been through a fairly contested
3 part of it, and so I am hesitant in trying to bring another
4 attorney up to speed. I don't think that would satisfy my
5 client very well, so I wondered if there is some reprieve on
6 that date where if I was not present in the courtroom for a
7 couple hours if that would be permissible?

8 THE COURT: Yes, even without hearing from
9 opposing counsel. When pro hac vice counsel is admitted, my
10 experience unfortunately has been that sometimes sponsoring
11 Nevada counsel aren't involved at all, and I need someone I
12 have to sanction and yell at and drag into this courtroom,
13 but I think you exceeded the, by your presence I know how
14 involved you are in the case, so if you need to be absent,
15 it's just your call to decide how it looks and when you
16 should be absent.

17 MR. CONNOT: Understood. Thank you, Your Honor.

18 MR. ROBISON: Your Honor, we have raised this
19 before, but we would like imposed on both parties a 24 hour
20 notice of what witnesses will be called the next day.

21 THE COURT: Interesting. Tell me a little bit
22 more about that.

23 MR. ROBISON: Well, what we do typically is we say
24 I'm calling these witnesses tomorrow. Otherwise, you get a
25 little bit more delay than you bargain for because we are

1 caught by surprise and then we got to go find the exhibits
2 and we got to find the deposition.

3 It's just a little bit of notice. I'm not asking
4 for their whole scheme, just 24 hour notice so we know what
5 to expect the next day.

6 MR. CONNOT: And I'm fine with that if it's
7 reciprocal, Your Honor. The 24 hours might be 18 hours or
8 something like that, but we will strive by, you know, the
9 morning before we start to try and let them know the
10 witnesses that we anticipate calling the next day, but at
11 the same time trial is fluid, so we might be a little bit
12 overinclusive because you don't know how long you are going
13 to take.

14 But, yeah, we are not going to sandbag as long as
15 it's reciprocal. I mean, I have experienced the same thing
16 and I think it helps the trial move more efficiently.

17 THE COURT: It's fair, it's civil, and it's
18 approved. Make sure everybody knows the sequence of
19 witnesses as it unfolds with enough time to prepare, whether
20 you make that disclosure by noon or you just say these are
21 the five witnesses I'm going to call next in order, however
22 you are going to do it.

23 MR. LATTIN: Just one additional item with regard
24 to Mr. Riley and Mr. Kimmel. Kevin Riley is a CPA in
25 Sacramento and right in the middle of tax season, so he

1 wanted me to ask permission if there are some days that he
2 is not present in court in order to address those.

3 He will certainly be here tomorrow to pick the
4 jury and for opening statements, but he would like to
5 request of the Court some leeway as to the amount of time
6 that he has to be here, and I will certainly work with them
7 as to when he is going to be called.

8 THE COURT: I typically don't get involved in when
9 a client is present in the courtroom. I think that's a
10 strategic decision. It's balanced against the inconvenience
11 of being present. I have had an entire defense case tried
12 with a client in absentia and so I just don't, I don't have
13 any opinion.

14 MR. LATTIN: Okay. I'm just making the Court
15 aware, the same thing with Mr. Kimmel, he has got some
16 hearings and some things that he has to address during this
17 period of time as well.

18 THE COURT: Okay. Let's return to how long you
19 believe this jury is going to be in service. Any different
20 estimates? If we select this jury tomorrow and have opening
21 statements on Friday -- Ms. Clerk, is Monday a judicial
22 holiday?

23 THE CLERK: Correct.

24 THE COURT: How long do you think you are going to
25 be in your case-in-chief?

1 MR. CONNOT: I think six to seven full trial days
2 with what we anticipate will be cross-examination. We
3 anticipate calling some of the witnesses adversely that, you
4 know, is a strategic decision by opposing counsel as to how
5 they might want to handle that part of it, but even without
6 anticipating a full-blown presentation of that side of the
7 case, we anticipate probably six to seven full trial days.

8 THE COURT: And how many days will you add?

9 MR. ROBISON: Kind of depends on how much meat is
10 left on the bone, as we will probably cross after they have
11 taken an adverse witness, and some we may reserve the right
12 to call back in our case-in-chief and that decision is kind
13 of made on the fly, Your Honor, depending on what happens,
14 but half as much time as theirs I would suspect.

15 THE COURT: And you anticipate there will be
16 direct examination, cross-examination, cross-examination,
17 and some involvement?

18 MR. HOSMER-HENMER: Your Honor, Mr. Lattin and I
19 and Mr. Kreitlein are going to work to our very utmost to
20 minimize and only comment where necessary that affect our
21 specific and respective clients.

22 THE COURT: And we have redirect, recross,
23 recross, and maybe?

24 MR. LATTIN: To the extent that Mr. Robison and I
25 can work together, we are going to attempt to do that.

1 There are some issues relative to both the SSJ Issue Trust
2 and the Family Trust that I will address that he will not on
3 cross and on what would be our direct, but we will make
4 every attempt to get the jury -- we don't want to get the
5 jury mad by redoing everything.

6 THE COURT: Well, they are going to be mad the
7 moment I tell them they are going to be paid \$40 a day for
8 the next two and a half weeks.

9 MR. LATTIN: We can't help you there.

10 THE COURT: My pattern is to typically take the
11 heat away from counsel and invite them to rule against me
12 and complain about me or something of that nature. We will
13 see how that goes, but I'm just pulling up my calendar,
14 because there are some disruptions to our trial date, and
15 then we are going to take about a two-hour break.

16 So we have full days scheduled Thursday and Friday
17 of this week. I really hope to avoid bringing panelists
18 back for additional voir dire Friday and I really hope to
19 avoid that. I anticipate we are going to send everybody
20 away for lunch and have everybody come back after lunch.

21 And then Tuesday we have a full day. Wednesday we
22 have a full day, though I have a hard stop during the noon
23 hour to attend to court business.

24 Thursday, we will probably start -- And by a full
25 day, jury in the courtroom at 9:00 a.m. Mid morning break

1 of 15 minutes or so. Standing breaks between witnesses.
2 Breaks upon request for personal needs. Usually an hour and
3 a half lunch, and the same drill for the afternoon, ending
4 our trial date about 4:30. Those are very long days for our
5 jury.

6 So we have Friday, Tuesday, Wednesday, I will
7 probably bring the jury in at 10:30 Thursday morning. Tell
8 them in advance and invite them to bring a lunch that day
9 and then limit lunch to an hour and probably take it a
10 little bit later in the day.

11 Friday we have all day, except I am giving a brief
12 speech across the street at the swearing in of a judicial
13 officer at 2:00, so we will be in recess from 1:45 to
14 probably 2:30, but I will still get a full day in there
15 somehow.

16 Depending upon how the jury looks, I could see
17 breaking early on Friday afternoon just to give everyone a
18 break, breaking at 3:00-ish or so. I could even see
19 bringing in the jury at 8:30 and going without lunch and
20 finishing at 2:00 for the weekend. We will just see how it
21 goes.

22 The following week beginning the 25th, all day.
23 Tuesday all day. Excuse me, I am making a presentation to
24 the Board of County Commissioners at 10:00 on Tuesday, the
25 26th, and I'm not sure what that means for the jury.

1 Counsel, that's not negotiable. So I'm just not sure
2 whether I bring the jury in early and break. I just don't
3 know.

4 Wednesday, the 27th, we have all day. Thursday,
5 the 28th, we have all day. Friday, the 1st, we have until
6 1:00. If for any reason the jury is deliberating, I will
7 bring a judge in to take the verdict. I really want to
8 avoid that, but I have a flight and business CLE to attend
9 to and I'm leaving. I think my flight is at 3:00 or
10 something of that nature.

11 If we happen to go into the next week, at the
12 moment I'm available all day Monday the 4th, I'm available
13 until 4:00 on Tuesday the 5th, and we should have, we should
14 have the jury case done by then, I think. And then we will
15 just talk about the equitable claims and how much more we
16 can do before we reconvene.

17 I do want to break. Are there any other matters
18 besides the settlement issue?

19 MR. CONNOT: I believe the non-retained expert
20 issue, Your Honor.

21 THE COURT: That's right. I have that. We will
22 take this, I have it in front of me. We will take it after
23 the lunch hour. What else?

24 MR. CONNOT: I believe that's it.

25 THE COURT: Counsel, I know it's a long break, but

1 you can work on your voir dire subjects, if you don't have
2 anything else to do. I presume you have things to do. We
3 will be in recess until 1:00.

4 In fact, we will be in recess until 2:00, because
5 we are not going to spend the rest of the afternoon in
6 court. I'm going to announce my decision on the settlement
7 issue, take up non-retained experts, and then anything else
8 that I might have missed. See you at 2:00.

9
10 (Whereupon a break was taken from 11:04 a.m. to 2:01 p.m.)
11

12 THE COURT: Counsel, I begin with a topic that is
13 not part of the non-retained experts or settlement issue. I
14 have a sense from everything I have read that the jury
15 instructions will be, settling jury instructions will be
16 interesting and difficult, and Todd seeks to bind Wendy's
17 experts into statutory law as opposed to restatements of
18 trust and the work of the American Law Institute.

19 And I'm not going to make a decision, but I want
20 to better understand each of your perspectives, because I
21 don't want to be surprised at trial. The Nevada Supreme
22 Court regularly, it is not unusual for the Nevada Supreme
23 Court to cite and rely upon restatements, including
24 restatements of trusts, and it is not this Court's
25 prerogative to add to the legislative code. Can you talk

1 for a moment about this tension that I'm sensing?

2 MR. ROBISON: There is not a whole lot of tension.
3 First of all, the Family Trust refers to the Restatement
4 Trust, so to that extent it's relevant. Mr. Wallace,
5 however, came in here as an expert, and I deposed him and he
6 said the restatement provisions are guidelines, not laws, so
7 I said fine.

8 And we said are you going to then tell the jury
9 that the provisions you have cited in your report are the
10 law? He said, no, I'm going to say that they are
11 guidelines, and they are.

12 THE COURT: That makes it much simpler than I
13 feared.

14 MR. ROBISON: Yeah.

15 THE COURT: Anything to add, Mr. Spencer?

16 MR. SPENCER: Your Honor, I would add that under
17 NRS .4167 it makes clear that --

18 THE COURT: I'm sorry, what .4167?

19 MR. SPENCER: Yeah, I'm sorry, I apologize,
20 NRS 163.4167 makes it clear that the provisions of
21 NRS 163.414 through 419, inclusive, do not abrogate or limit
22 any principle or rule of the common law, unless the common
23 law principle is inconsistent with those provisions.

24 And then also at NRS 163.115, which is breach of
25 trust by a trustee, subsection 5, the provisions, it says

1 the provisions of remedies in this section does not preclude
2 resort to any other appropriate remedy provided by statute
3 or common law.

4 And the restatement would fall under that
5 category, but also Bruce Wallace's testimony in relation to
6 that would, in supplement to what already has been said,
7 would trigger those provisions, which allows him to apply
8 that here in Nevada, so we believe that he is more than
9 experienced, his qualifications have not been challenged to
10 testify regarding the common law and its application in that
11 regard.

12 THE COURT: And both of you have assumed that the
13 restatements are under the common law.

14 MR. ROBISON: Well, the restatements are the
15 restatements and we know the American Law Institute drafts
16 things from common law decisions that it believes uniformly
17 apply to various other circumstances as applicable law. No
18 question. We get that. Mr. Wallace's comment is that he is
19 not using the restatement as law to opine on the trustee's
20 conduct, on Todd's conduct.

21 THE COURT: Okay. Turning to Wendy's motion to
22 exclude non-retained experts from testifying as experts, we
23 have Hascheff, Riley, McQuaid, LeGoy, and Kimmel. Each of
24 these five witnesses have been deposed; is that correct?

25 MR. ROBISON: Yes.

1 MR. SPENCER: Yes.

2 MR. ROBISON: Well, Kimmel has been deposed, yes.

3 I deposed him. Yeah, I deposed him. No, Mike Kimmel, not
4 Bill Kimmel. Bill Kimmel has not been deposed. Mike Kimmel
5 has been deposed.

6 THE COURT: Okay.

7 MR. ROBISON: You are thinking Bill Kimmel. He is
8 also listed as a percipient, Michael Kimmel.

9 THE COURT: And each of these non-retained experts
10 present as fact witnesses, too; is that correct? I know
11 there is some question on McQuaid and his relationship with
12 Sam, but he might have a relationship with trust
13 administration after Sam's death that I'm unfamiliar with.
14 But each one of these five also present as fact witnesses,
15 correct?

16 MR. ROBISON: Correct.

17 MR. SPENCER: Correct.

18 THE COURT: And they have been deposed. So to
19 Wendy's counsel, the spirit, the purpose underlying the
20 non-retained witness, expert witness rules is to prevent an
21 unfair surprise of fact testimony or expert opinion
22 testimony. How will you be surprised unfairly by anything
23 that any of these five witnesses testify to?

24 MR. CONNOT: I think it's more on the description
25 and the summary of the facts that are there, but I think

1 specifically and even more critical are Mr. LeGoy and
2 Mr. McQuaid.

3 As you recall, there was significant delay in
4 obtaining the Maupin, Cox & LeGoy documents and then we had
5 the issue with the privilege log that Commissioner Ayres
6 ruled on last Friday afternoon.

7 At 4:43 p.m. last Friday, we received I believe it
8 was about a thousand plus pages, 1,400 pages from the files,
9 including a significant number of pages of handwritten notes
10 of Mr. LeGoy that we are still having trouble deciphering.
11 And some of it would appear to, if not directly, contradict,
12 certainly undercut some of the positions that have been
13 taken in the litigation, and we just received those last
14 Friday evening and they were deposed last month.

15 And so I think that's another challenge
16 specifically with those two witnesses, is we were not able
17 to explore and probe on those types of opinions that they
18 have been proffered under under the designation as
19 non-retained experts having only received those documents a
20 few days ago.

21 MR. ROBISON: Your Honor, we name percipient
22 non-retained expert witnesses pursuant to Nevada Supreme
23 Court authority that addresses primarily treating physicians
24 being designated as fact witnesses, but not limited facts,
25 because obviously they can express opinions about diagnosis,

1 prognosis. The Supreme Court has said you don't even have
2 to put those in your disclosures even though they are going
3 to express opinions concerning their actual involvement in
4 the percipient facts.

5 That's where we are here with regard to a CPA,
6 Kevin Riley, with Pierre Hascheff, who has a Master's Degree
7 in tax law, who is a CPA, who is extremely well qualified to
8 give sound advice. We are not really going outside of the
9 parameters of what they did in this case factually, but what
10 we have tried to avoid by designating them is objection,
11 calls for an expert opinion, even though it involves
12 percipient facts in their involvement with Mr. Jaksick.

13 So I can't address the Mr. LeGoy issue. I do know
14 that unless they call Mr. LeGoy, Mr. LeGoy is not going to
15 be on the stand until the last week of February, and if they
16 have two more weeks to look at what he has produced, they
17 should be ready to cross-examine him.

18 THE COURT: Well, I really am just concerned. I
19 began with McQuaid and I think I'm also concerned about
20 Mr. LeGoy only because there was a Request for Production I
21 believe in September.

22 MR. CONNOT: August.

23 THE COURT: August. There was a resistance to
24 that production and then production was made, and if that
25 production occurred weeks after the deposition and by

1 representation you are telling me there are a lot of
2 handwritten notes Mr. LeGoy made, then the question is
3 how -- I'm not going to strike LeGoy, but, Mr. Lattin, is
4 there cause to create a fair and balanced pre-trial
5 preparation? Should I make LeGoy available, for example,
6 for four hours on President's Weekend Monday or something of
7 that nature?

8 MR. LATTIN: Well, I would like to put a little
9 perspective in this, because the subpoena was served in
10 August. Within the time frame allowed, we filed our
11 objections. There was nothing done on that until December,
12 but regardless of that, and I know you don't want to go back
13 and rehash that.

14 THE COURT: I know, and I actually have a note in
15 the margin that reminds me of that, because I teased it a
16 little bit this morning, but there was some, there was a,
17 there is a different discovery energy before the continuance
18 was denied and after the continuance was denied, and it's
19 almost like see the mess we have, we can't possibly try the
20 case, but some of that I understand could have been pushed
21 earlier, but it exists on both sides here.

22 MR. LATTIN: Well, the other thing that the
23 Discovery Commissioner indicated when we had our hearing on
24 Friday was he has never seen an issue like this, and it has
25 to do with specific language in the trust that creates an

1 attorney/client privilege, which is different than most
2 trusts that don't have that.

3 And he said that, you know, in all of his years he
4 had never seen that issue before, so we had a good faith
5 objection based upon issues that have not been decided
6 before.

7 THE COURT: So I don't use critical words, I don't
8 impose sanctions, I don't impose fees, but I now have
9 documents being produced that appear to be handwritten
10 reflections upon the file a month after a deposition.
11 Should I attempt to remedy that?

12 MR. LATTIN: Well, if you feel it necessary, but
13 the whole purpose for this is to allow a person who has
14 expertise, a CPA, a doctor, a tax lawyer who does stuff
15 using their expertise to be able to explain why they did
16 something. If they have something that undercuts anything
17 he said, they certainly can use that in cross-examination is
18 what I would say.

19 THE COURT: What if they can't read his
20 handwriting?

21 MR. LATTIN: Well, if that's the case, then they
22 just need to tell us and they can come and examine the
23 originals, but --

24 THE COURT: Hold on. You are interrupting. Hold
25 on. That might cost you \$100.

1 MR. CONNOT: I was going to make a suggestion.

2 THE COURT: Is it a civil friendly suggestion?

3 MR. CONNOT: Yes. It's a potential compromise.

4 THE COURT: Would you allow the friendly

5 interruption?

6 MR. LATTIN: Certainly.

7 THE COURT: Go ahead.

8 MR. CONNOT: What I would propose is we can go

9 through, because I think some of it is not just the

10 legibility. I mean, I would say Maupin Cox was gracious

11 enough with those that they appear most all of them to be

12 color scanned, so it's a legal pad. Some of it's more the

13 handwriting itself, and maybe what we could do is provide

14 specific page numbers of those.

15 And I don't know what is the easiest way, I don't

16 know if Mr. LeGoy dictates or otherwise, describe what is

17 the text on that page on selective pages. It might be

18 several of them, but, I mean, I think that might be a more

19 efficient use of resources and I would be open to other

20 potential compromises on that as well.

21 MR. LATTIN: Yeah. And may I address the civil --

22 THE COURT: Yes.

23 MR. LATTIN: Thank you. I think just thinking

24 about it and listening to this, probably what could happen

25 is identify pages, as long as it's not 500 of them while we

1 are picking the jury, I could make Mr. LeGoy available to go
2 over the notes with you on the phone.

3 THE COURT: I would love that type of compromise.
4 I even thought about having the jury come an hour late just
5 so -- I don't want to conduct depositions on President's
6 weekend, but a chance to say what does this say I think is
7 fair.

8 MR. LATTIN: And he would not be the first person
9 that I have heard of that cannot read his notes, so but I
10 think that's a solution. We will make him -- you identify
11 some pages and we will have him go through them and then get
12 him on the phone and they can, one of them, not three of
13 them cross-examine him, but one of them.

14 THE COURT: Okay. Counsel is willing to make it
15 happen.

16 MR. CONNOT: Okay. Thank you, Your Honor. Thank
17 you, Don.

18 THE COURT: Based upon what appears to be the
19 primary fact participation of these non-retained experts,
20 the prophylactic intention of naming these fact witnesses as
21 non-retained experts, the availability of these non-retained
22 experts to deposition and the actual depositions occurring,
23 I am not inclined and will not strike them from testifying
24 as requested.

25 Counsel, I have a sense when I make decisions that

1 there is a slight ember and a raging inferno. I get that
2 sense from counsel and from some familiarity with files, and
3 I think this next issue is a raging inferno and it is going
4 to have some impact upon the trial. I will attempt to
5 explain why I have decided what I have decided.

6 I began the session this morning by expressing my
7 reluctance and inability to cleanse any party of their
8 pre-trial life. When a trial is chosen, it comes with risks
9 and it is a fact of record not created by this Court that
10 Stan sued Todd and that Todd sued Stan, each alleging
11 misconduct against the other.

12 It is a fact of record not created by this Court
13 that Stan and Todd have now settled their differences and
14 they strategically accepted piecemeal settlement as opposed
15 to a global settlement and with that comes some risks.

16 Todd has asked that this Court exclude any and all
17 references directly or indirectly to, one, any and all
18 settlement negotiations; two, the settlement itself entered
19 into between Todd and Stan; and, three, the fact that Stan
20 brought an action against Todd at all.

21 And counsel cite NRS 48.105 and eloquently argue
22 the chilling disincentive of having settlements presented to
23 the jury, though I find that the purposes underlying
24 NRS 48.105 don't neatly fit into the question presented to
25 the Court.

1 NRS 48.105 provides that an offer to settle, or
2 conduct and statements made in furtherance of settlement,
3 cannot be used as evidence of liability, and that's not what
4 is happening here. That rule contemplates A sues B, B
5 offers money to A, A declines the offer and then tells the
6 jury B must be liable because he offered money to me, and
7 that is not this fact pattern.

8 So I turn to NRS 48.015 and the fact of dispute
9 between Todd and Stan is relevant, the fact of alleged
10 misconduct is relevant, and the fact of settlement does fall
11 within any tendency to make a material fact more or less
12 probable. It is relevant. The question then turns to
13 NRS 48.035.

14 And let me just restate verbatim that language.
15 Even though relevant, evidence may be inadmissible if its
16 probative value is "substantially outweighed" by the danger
17 of "unfair prejudice."

18 So I have "substantially" modifying outweighed and
19 I have "unfair" modifying prejudice. It appears highly
20 probable to me that evidence of a settlement between Todd
21 and Stan will be prejudicial, could be prejudicial. The
22 question is whether the danger of unfair prejudice
23 substantially outweighs the probative value.

24 To the three specific requests, exclude any and
25 all references directly or indirectly to any and all

1 settlement negotiations, it is this Court's ruling that
2 settlement negotiations themselves, what was said, the
3 progression of statements said in furtherance of negotiation
4 and procedural steps of settlement should be excluded under
5 48.035.

6 However, the fact of settlement will not be
7 excluded from the jury. I am not opposed to reframing the
8 word settlement into they have resolved their differences,
9 but they have resolved their differences.

10 It is my experience as a factfinder, and, counsel,
11 ladies and gentlemen, I mean this descriptively, not
12 pejoratively, you can imagine within the probate court there
13 are family feuds, and there is power and truth in the
14 alliances of siblings in family feuds and something that a
15 factfinder regularly considers.

16 Is it 4 against 2? Is it 3 against 3? Is it
17 1 against 7? That tends to have some effect. And to
18 present to this jury that it is two brothers against a
19 sister and no more questions asked, I think would be unfair
20 to Wendy.

21 Now, Wendy wants me to go a little farther than
22 I'm willing to go. Wendy would like me to order to allow
23 questions into every aspect of the negotiation and the
24 settlement agreement. I'm not willing to go that far and
25 I'm not sure where this testimony is going to go. I will

1 try and set some boundaries to it.

2 The existence of a pre-trial resolution between
3 Todd and Stan is relevant and not inadmissible pursuant to
4 NRS 48.035. Questions about why a settlement, a resolution
5 was reached are appropriate, and the unknown for me is the
6 effect of the settlement upon Wendy's interests, and I have
7 a disagreement in the well of the court.

8 But what I believe is that if Stan's interest in
9 the settlement changes according to the outcome of this
10 trial, that is a relevant inquiry. Incentive and bias have
11 their own evidentiary category.

12 Although a criminal, although a criminal case,
13 Nevada Supreme Court in the Lobato versus State decision
14 examined how a witness can be cross-examined for bias and
15 observed that although the district courts generally have
16 wide discretion to control cross-examination that attacks a
17 witness' general credibility, a trial court's discretion is
18 narrowed, meaning I have less discretion when bias is the
19 object to be shown, and a cross-examiner must be permitted
20 to elicit any facts that might color a witness' testimony.
21 There is a similar decision in Robles v. State in 2008.

22 So I don't know how this trial is going to unfold,
23 but if Stan testifies in a way that inures to his interest,
24 I think it's fair to examine how it inures to his interest.

25 So my preliminary ruling is that the details of

1 the settlement will not come in and only upon leave of Court
2 out of the jury's presence might I change that based upon
3 the evidence that I hear. It's a big deal. Any questions?

4 MR. SPENCER: I have one, Your Honor. One of the
5 key pieces of testimony from Todd at his deposition most
6 recently was that he testified that the settlement with
7 Stan, is it beneficial to Wendy or does it harm Wendy, and
8 he testified both ways. It's both beneficial and harmful to
9 her interests.

10 And so I understand your ruling, the details will
11 not come in, but can we ask a general question such as does
12 that settlement harm Wendy's interest? I'm certain he is
13 going to say it's beneficial, but we want to have the
14 ability to say does that settlement have, any part of it
15 effect adversely Wendy's interest and he testified in his
16 deposition it did.

17 THE COURT: Counsel?

18 MR. ROBISON: Your Honor, a settlement is what it
19 is. We believe it benefits Wendy. There is provisions
20 entered into between Todd and Stan that get money to her,
21 more money to her quicker, faster, and the settlement allows
22 the Family Trust to make her capital calls in an ownership
23 entity in a related company.

24 Yeah, we believe that the settlement provisions do
25 help her. The fact that we settled without her, that's

1 maybe the harmful part, but actual dollars and cents I don't
2 know if it really negatively affects Wendy at all.

3 If either in the court of equity or the court of
4 law the Lake Tahoe transaction is set aside, well, then the
5 settlement can't be. It just is, it's impossible to
6 effectuate.

7 So to that extent if that's considered negative, I
8 don't know, but the fact that it is conditional on the
9 Court's approval and her not setting aside the transfer and
10 ownership of the Lake Tahoe house, that I don't believe goes
11 to bias at all, Your Honor. That's just a fact.

12 THE COURT: But my bias concern is based upon a
13 predicate I don't know, and that is that Stan's interest
14 somehow grows if Wendy loses, and I probably need to
15 examine, I'm a factfinder in equity, but I probably need to
16 examine that actual settlement agreement --

17 MR. ROBISON: Right.

18 THE COURT: -- to answer the question.

19 MR. ROBISON: And I think if you did you would
20 find the answer to be no. Stan does not advance his
21 interests in ownership of entities or exchange of interests
22 in companies at Wendy's expense.

23 THE COURT: So if the Court concludes that Stan
24 doesn't benefit from Wendy's defeat, I would disallow the
25 content of the settlement agreement then because it doesn't

1 show the bias.

2 MR. ROBISON: Almost begs the question, because if
3 Wendy loses at trial, then we don't have to worry about
4 certain things that would have made the settlement
5 impossible or impractical; for example, setting aside the
6 sale of the Incline house to Incline TSS, Ltd.

7 If this Court in the court of equity set that
8 aside, well, then, yes, Stan is at a detriment. So if you
9 say would he have bias because he wants the settlement,
10 because he wants the Lake Tahoe transaction not to be set
11 aside, yeah, that might be important to Stan that it not be
12 set aside and that is a predicate of the settlement.

13 MR. SPENCER: First of all, Your Honor, we believe
14 the settlement itself to be a self-dealing transaction,
15 because they are moving property around, that she, that she,
16 Wendy, has an interest in, amongst themselves and they are
17 not disclosing it to her, but, in addition, another example,
18 they are agreeing how their attorney's fees will be paid out
19 of the trust. She is paying a third of that if it comes out
20 of the Family Trust.

21 The SSJ Issue Trust interest in Lake Tahoe, if
22 Wendy were to lose, then Stan now can buy into the
23 Lake Tahoe property without watering down the Issue Trust's
24 interest, which Wendy has an interest in.

25 So I think Your Honor would be well served by

1 looking at that settlement agreement, because it has, there
2 may be some beneficial interests or beneficial effect. One,
3 Todd decides that he, or they decide, Todd and Stan decide
4 that Todd is not going to continue to make a claim for his
5 mortgage on his house that he lives in under the indemnity
6 agreement.

7 Well, that's a significant issue in this case, and
8 so there is all kinds of things like that that affect really
9 everyone's interest and certainly Wendy's. They have now
10 incentive to defeat Wendy so they can go and continue with
11 their settlement. The contingency is met and now they can
12 do their settlement, in other words.

13 So just that provision alone gives Stan a bias to
14 try and defeat Wendy so this settlement can go through and
15 Todd would have the same thing.

16 MR. ROBISON: Your Honor, realistically, we have
17 incentive to defeat Wendy. She is suing Stan and she is
18 suing Todd. Regardless of the settlement, there is a
19 tremendous incentive on this side of the courtroom to defeat
20 that side of the courtroom without any regard to the
21 settlement. Yes, we have incentive to defeat those claims
22 and we are going to try our very best to defeat those claims
23 regardless of the settlement.

24 But with regard to these things like the
25 indemnification agreement, that all benefits Wendy. It

1 doesn't harm her. The restrictions on Todd's use of the
2 indemnification agreement as provided in the settlement
3 agreement benefits Wendy.

4 He is not going to use that, that his father gave
5 to him and gave one to Stan, to the detriment of the Family
6 Trust except for one loan that is collateralized by family
7 business entities. That benefits Wendy.

8 So to characterize these as harming Wendy is
9 simply not true. We intend to do our best to defeat that
10 claim regardless of settlement and there is going to be bias
11 by people who have been sued by Wendy. There is going to be
12 bias for themselves and they are going to try to defeat her
13 testimony. There is not a party who has ever been sued that
14 has not taken a stand without some bias for their own self
15 protection and that's the facts of this trial.

16 THE COURT: I have 5/6 of my brain tied behind my
17 back because I don't know the evidence yet. I can't scrub
18 the resolution of the dispute, I can't scrub the existence
19 of the dispute and the fact that it is resolved from the
20 jury.

21 I am not willing to open up the settlement
22 agreement. Some questions about why a settlement was
23 reached are appropriate and some questions about the benefit
24 of the settlement agreement are permitted, but no specific
25 details of the settlement agreement without further order of

1 the Court, if at all. I just have to hear the evidence as
2 it comes in. I can't make an informed decision otherwise,
3 so that's as far as we go.

4 MR. ROBISON: When the questions are asked about
5 the settlement, we will probably be on our feet making
6 objections. Thank you.

7 THE COURT: All right. Anything else?

8 MR. SPENCER: Just before we leave that issue, I'm
9 still going back to my initial question, which was am I
10 going to be allowed to ask Todd does that settlement harm or
11 affect, adversely affect Wendy's interest in someway?

12 THE COURT: Yes.

13 MR. SPENCER: Okay.

14 THE COURT: But I don't know what your follow-up,
15 what follow-up questions are going to be allowed.

16 MR. SPENCER: I understand. Okay. I just want to
17 be, I don't want to violate the in limine. I just want to
18 be clear on that.

19 MR. ROBISON: Well, in deference to counsel, if he
20 says no, then that follow-up question is how so. If he says
21 yes, the follow-up question is how so. I mean, that's
22 rudimentary.

23 MR. SPENCER: Well, if he says no, then I will
24 have his deposition to impeach him because he testified in
25 his deposition that it does adversely affect her.

1 MR. ROBISON: And then I will stand up and I will
2 say how does it do that. Like you said, you are going to
3 have to see it in real time.

4 THE COURT: Yeah, I understand.

5 Are there any other major issues that I'm missing
6 before our panel comes up tomorrow morning?

7 MR. JOHNSON: Your Honor, I just want to put
8 everybody on notice, we do have some additional exhibits
9 from the additional documents we received on Friday that we
10 will be circulating and we will bring binders as well.

11 THE COURT: How many?

12 MR. JOHNSON: It looks like between 20 and 70
13 right now.

14 MR. ROBISON: 20, I'm sorry, 20 to --

15 THE COURT: 20 to 70 new exhibits based upon late
16 produced documents?

17 MR. JOHNSON: Yes.

18 MR. ROBISON: Are they just going to be marked
19 from 457 to --

20 MR. JOHNSON: We will just continue marking.

21 THE COURT: Marked in order.

22 THE CLERK: Will they provide me a Word document
23 exhibit list of the new ones?

24 THE COURT: Would you just go ahead and speak into
25 the well of the court, please?

1 THE CLERK: Will you provide me a Word document of
2 the new exhibits?

3 MR. JOHNSON: We will.

4 THE CLERK: Thank you.

5 THE COURT: What time is the panel coming up
6 tomorrow morning, Ms. Clerk?

7 THE CLERK: 9:00 a.m.

8 THE COURT: Counsel, I will see you at 8:30,
9 please. Please put those voir dire questions underneath my
10 door.

11 MR. ROBISON: Actually, Your Honor, you got ours.

12 THE COURT: Okay.

13 MR. CONNOT: I think Mr. Robison submitted theirs,
14 and the clerk advised that we can e-mail them, which would
15 facilitate getting them to you.

16 MR. SPENCER: We will go ahead and get them to you
17 today. We have already started them and are close to being
18 finished, so we will send them right away.

19 THE COURT: Okay. This will be a spirited few
20 weeks. I want to, I started harsh and I want to acknowledge
21 and express my gratitude for the way you conducted
22 yourselves since that first five minutes in court. We will
23 see you in the morning and we will do our best.

24 (Whereupon the proceedings concluded at 2:40 p.m.)

25 -o0o-

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STATE OF NEVADA)
) ss.
WASHOE COUNTY)

I, CORRIE L. WOLDEN, an Official Reporter of the
Second Judicial District Court of the State of Nevada, in
and for Washoe County, DO HEREBY CERTIFY;

That I am not a relative, employee or independent
contractor of counsel to any of the parties; or a relative,
employee or independent contractor of the parties involved
in the proceeding, or a person financially interested in the
proceeding;

That I was present in Department No. 15 of the
above-entitled Court on February 13, 2019, and took verbatim
stenotype notes of the proceedings had upon the matter
captioned within, and thereafter transcribed them into
typewriting as herein appears;

That the foregoing transcript, consisting of pages 1
through 111, is a full, true and correct transcription of my
stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 23rd day of February,
2021.

/s/Corrie L. Wolden

CORRIE L. WOLDEN
CSR #194, RPR, CP

CASE NO. PR17-00445

CONS: TRUST: SSJ'S ISSUE TRUST

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

2/13/19

ORAL ARGUMENTS

HONORABLE

DAVID A. HARDY

Dept. No. 15

A. Dick

(Clerk)

C. Wolden

(Reporter)

Donald Lattin, Esq. represented Todd Jaksick, in a co-trustee capacity, Michael Kimmel, and Kevin Riley who were present seated in the gallery. Kent Robison, Esq. and Therese Shanks, Esq. represented Todd Jaksick, individually, who was present seated in the gallery. Adam Hosmer-Henner, Esq. and Philip Kreitlein, Esq. represented Stanley Jaksick, individually, who was present seated in the gallery. Kevin Spencer, Esq, Zachary Johnson, Esq., and Mark Connot, Esq. represented Wendy Jaksick who was present seated in the gallery.

8:31 a.m. – Court convened with counsel and respective parties present.

COURT ORDERED: Wendy's supplemental declaration to continue trial DENIED; jury trial will proceed as scheduled tomorrow.

Court identified the remaining legal claims: 1. Breach of Fiduciary Duties; 2. Civil Conspiracy Aiding and Abetting; 3. Aiding and Abetting Breach of Fiduciary Duties; and 4. Fraud. Court described parameters for jury selection and voir dire examination as it relates to its pretrial Order.

COURT ORDERED: Counsel each, or collectively, shall provide (slip under chambers door) proposed voir dire examination questions/topics no later than 8:00 a.m. on February 14, 2019. Court requested counsel adhere to Rule 1G even though trial statements have been dispensed.

Counsel Connot addressed the Court requested opposing counsel share topics for voir dire examination - **GRANTED.**

Counsel Robison addressed the Court indicated he will share topics for voir dire examination with opposing counsel.

Court stated its MIL disclaimer, to include, it prefers to avoid rigid boundaries and any inadvertent violation does not automatically result in a mistrial. Court announced its inclinations as follows:

COURT ORDERED: Todd's motion to exclude CPA Frank Campagna DENIED WITHOUT PREJUDICE; Frank Campagna prohibited to invade the law and instruct the Jury.

Regarding Wendy's Omnibus MIL, Court stated its inclinations as follows:

Feb. 14, 2019
9:00 a.m.

Jury Trial
(2 weeks)
**Counsel and
Parties shall arrive
at 8:30 a.m.**

TBD
Non-Jury Trial
(2 weeks)

1. **COURT ORDERED:** Reference to motions in limine is generally granted with exception.
2. **COURT ORDERED:** Referring to Hascheff as Judge shall not be overused; counsel shall refer to Judge Hascheff as “Mr. Hascheff” but there is no restriction to introduce Mr. Hascheff as a judge. Court indicated it does not intend to scrub who Pierre Hascheff is.
3. **COURT ORDERED:** Reference to suicide of Ron Kreske GRANTED.
4. **COURT ORDERED:** Reference to Wendy’s rehab DENIED IN PART/GRANTED IN PART; Court indicated it does not intend to scrub Wendy’s life story but it will disallow testimony/evidence participation indicating her participation in rehab to become a PBA or character assassination. **COURT FURTHER ORDERED:** Evidence/testimony that Wendy was in rehab for compulsive lying is PROHIBITED.
5. **COURT ORDERED:** Accusations that Wendy murdered Sam DENIED.
6. **COURT ORDERED:** Reference to Wendy’s request that Todd submit to DNA testing or belief that Todd is not Sam’s biological child DENIED; Court indicated it does not intend to scrub Todd’s life story but it will disallow testimony/evidence to become character assassination.
7. **COURT ORDERED:** Personal beliefs or opinions of counsel DENIED.
8. **COURT ORDERED:** Derogatory statements about attorneys DEFERRED; reference to counsel from Texas is permitted but character assassination evidence, if any, will be prohibited.
9. **COURT ORDERED:** Reference to number of attorneys DEFERRED.
10. **COURT ORDERED:** Reference to Wendy’s fee agreement GRANTED.
11. **COURT ORDERED:** Introduction of undisclosed evidence or records DEFERRED.
12. **COURT ORDERED:** Testimony of undisclosed lay witnesses DEFERRED WITH INCLINATION TO GRANT.
13. **COURT ORDERED:** Testimony of undisclosed expert witnesses DEFERRED WITH INCLINATION TO GRANT.
14. **COURT ORDERED:** Testimony of unqualified expert witnesses DEFERRED WITH INCLINATION TO GRANT.
15. **COURT ORDERED:** Reference to objections DEFERRED WITH INCLINATION TO DENY.
16. **COURT ORDERED:** Introduction of self-serving evidence DEFERRED WITH INCLINATION TO DENY.

17. **COURT ORDERED:** Use of privileged information DEFERRED.

18. **COURT ORDERED:** Evidence that would contradict stipulated matters DEFERRED.

19. **COURT ORDERED:** Statements of legal conclusions GRANTED.

20. **COURT ORDERED:** Reference to settlement negotiations DEFERRED/UNDER ADVISEMENT.

21. **COURT ORDERED:** Statements of superiority/inferiority of technology, charts, or demonstrative evidence used by any party DEFERRED BUT GENERALLY GRANT.

22. **COURT ORDERED:** Reference to prior rulings in this matter DEFERRED WITH INCLINATION TO GRANT. Regarding Todd's Omnibus MIL, Court stated its inclinations as follows:

1. **COURT ORDERED:** Excluding testimony and report of Gary Stolbach DENIED; however scope may be limited. Court indicated cross examination may be rich should Gary Stolbach testify to Sam's thoughts.

2. **COURT ORDERED:** Excluding evidence of discovery disputes DEFERRED.

3. **COURT ORDERED:** Excluding Sam's medical record INCLINED TO GRANT; counsel shall seek leave before introducing said evidence.

Counsel Cannot addressed the Court argued in opposition of said motion as certain dates regarding medical treatment may be important; counsel Robison did not object.

COURT FURTHER ORDERED: Evidence regarding certain dates pertaining to medical treatment PERMITTED.

5. **COURT ORDERED:** Excluding witnesses not disclosed GENERALLY GRANTED.

6. **COURT ORDERED:** Excluding documents not disclosed GENERALLY GRANTED.

7. **COURT ORDERED:** Excluding use of words "theft" and "thief" DEFERRED WITH INCLINATION TO DENY.

8. **COURT ORDERED:** Excluding expert testimony of R. Bruce Wallace, Jr. UNLIKELY TO STRIKE.

9. **COURT ORDERED:** Excluding expert testimony of Frank Campagna UNLIKELY TO STRIKE.

10. **COURT ORDERED:** Excluding any expert from testifying outside the scope of their expert report INCLINED TO DENY; counsel shall seek leave outside the presence of the Jury.

11. **COURT ORDERED:** Precluding any party from introducing evidence relating solely to equitable claims to jury GRANTED; boundary to be determined during trial.

12. Counsel Robison argued in support of MIL excluding Wendy from evidence related to undisclosed damages.

Counsel Connot argued in opposition of said motion.

Sidebar conducted between Court and counsel, off the record.

Counsel Robison further argued in support.

Counsel Connot further argued in opposition.

COURT ORDERED: Excluding Wendy from evidence related to undisclosed damages DEFERRED.

13. Counsel Robison argued in support of MIL excluding evidence of settlements among the parties.

Counsel Lattin addressed the Court concurred with counsel Robison and requested the settlement conference be held as confidential.

Counsel Spencer argued in opposition of said motion.

Court inquired counsel Spencer.

Counsel Spencer answered the Court's questioning and further argued in opposition.

COURT ORDERED: MIL excluding evidence of settlements among the parties UNDER ADVISEMENT; details and process of settlement appear inadmissible; however, the fact of settlement is UNDER ADVISEMENT.

10:03 a.m. – Brief recess.

10:13 a.m. – Court reconvened with counsel and respective parties present.

Counsel Connot advised Todd's omnibus MIL #4 excluding evidence of Sam's alleged lack of capacity or competency is unopposed.

Regarding Stan's Omnibus MIL, Court stated its inclinations as follows:

1. **COURT ORDERED:** Reference to "trustees" GRANTED; counsel shall each be careful and deliberate to delineate among trustees.

2. Counsel Hosmer-Henner argued in support of MIL reference to filings, allegation, and substantive matters related to Stan's divorce.

Counsel Connot advised he does not intend to present allegations leading to Stan's divorce.

COURT ORDERED: Divorce as a fact itself is relevant as to how it effects the estate; presentation of any evidence beyond that aforementioned scope is RESERVED.

3. **COURT ORDERED:** Evidence related to Stan's corporate entities (Lakeridge, Toiyobe, etc) INCLINED TO DENY. Counsel Johnson addressed the Court argued in support Wendy's Motion in Limine to Preclude Reference to Prior Bad Acts as it relates to criminal activity.

Court inquired counsel Johnson.

Counsel Johnson answered the Court's questioning and further argued in support of said motion.

Counsel Robison argued in opposition of said motion.

Counsel Johnson further argued in support of said motion.

COURT ORDERED: Exhibits 27B, 27H, 27I, and 27P shall be inadmissible unless counsel seek leave and is otherwise ordered by this Court.

COURT FURTHER ORDERED: There is no restriction on questioning relating Wendy's criminal activity; however, the documents themselves, previously identified, are restricted until further order.

Counsel Lattin argued in opposition of Wendy's Motion in Limine to Preclude Reference to Prior Bad Acts as it relates to debt.

Court indicated it is the letter itself that is at issue.

Counsel Johnson argued in support of said motion.

COURT ORDERED: Exhibit 27C, Exhibit 27D, and Exhibit 27A shall be inadmissible unless counsel seek leave and is otherwise ordered by this Court.

COURT ORDERED: Upon execution of proper procedure and if presented during trial Exhibit 27E is admissible.

COURT ORDERED: Exhibit 27F, Exhibit 27G, Exhibit 27L, and Exhibit 27M are each NOT ADMITTED PRETRIAL.

Counsel Robison advised Todd filed a notice of clarification regarding exhibits and stated objections which may resolve Todd's objections to Wendy's pretrial disclosures.

Counsel Connot concurred with counsel Robison's representation and advised he will provide a list of Wendy's stipulated exhibits to opposing counsel.

COURT ORDERED: Pretrial disclosure objections DEFERRED.

COURT FURTHER ORDERED: Any reference to disputed evidence/exhibits shall be PROHIBITED DURING OPENING STATEMENTS.

Counsel Connot requested reprieve Thursday, February 21, 2019, around 10:00 a.m. as he is needed elsewhere – **GRANTED.**

Counsel Robison request opposing counsel provide witness sequencing 24 hours in advance of an individual testifying.

Counsel Connot did not object to counsel Robison's request so long as it is reciprocal.

COURT ORDERED: Stipulation to disclose witness sequencing 24 hours in advance GRANTED.

Counsel Lattin indicated Kevin Riley and Michael Kimmel may be absent during portions of the trial.

Court stated it does not have an opinion regarding parties' absence during trial.

Discussion ensued regarding length of trial.

11:03 a.m. – Lunch recess.

2:02 p.m. – Court reconvened with counsel and respective parties present.

Counsel Robison argued in support Todd and Kimmel's Motion in Limine to Exclude Expert Witnesses or, in the Alternative, Strike Expert Witness R. Bruce Wallace, Jr.

Counsel Spencer argued in opposition of said motion.

COURT ORDERED: Todd and Kimmel's Motion in Limine to Exclude Expert Witnesses or, in the Alternative, Strike Expert Witness R. Bruce Wallace, Jr. UNDER ADVISEMENT.

Counsel Connot argued in support of Wendy's Motion to Exclude Non-Retained Experts from Testifying as Experts identifying the importance of Robert Legoy and Brian McQuaid.

Counsel Robison argued in opposition of said motion and indicated Robert Legoy will testify the end of February 2019 thus allowing time for opposing counsel to obtain the information they are requesting.

Counsel Lattin advised there was a good faith objection lodged against Robert Legoy's subpoena which was not addressed until December 2018.

Counsel Connot presented a civil compromise, in that, he will provide opposing counsel specific page numbers containing Robert Legoy's difficult to read text/handwritten notes.

Counsel Lattin indicated he will make Robert Legoy available telephonically to answer/provide clarification opposing counsel's questions.

COURT ORDERED: Civil compromise regarding Robert Legoy's handwritten notes GRANTED.

COURT FURTHER ORDERED: Wendy's Motion to Exclude Non-Retained Experts from Testifying as Experts DENIED.

Regarding settlement; **COURT ORDERED:** Settlement negotiations, including statements, procedural steps, process, etc., between Todd and Stan shall be EXCLUDED. Further, the fact of settlement shall be PERMITTED.

Court indicated it is open to avoiding the use of the word "settlement" and possibly replacing it with "resolving differences."

Court further indicated it is not willing to go as far as Wendy requests in regards to settlement discussions but evidentiary/testimony boundaries will need to be defined; therefore, **COURT ORDERED:** Counsel shall seek leave outside the presence of the Jury to present evidence/questioning regarding details of Todd and Stan's settlement agreement, if deemed appropriate.

Counsel Spencer inquired for clarification if general questions such as the harm/benefit of said agreement as it relates to Wendy.

Counsel Robison advised said agreement may be both beneficial and harmful to Wendy, in that, settlement was conducted in her absence.

Counsel Connot argued that said settlement is self-dealing and harmful to Wendy. Counsel indicated this Court should review the agreement.

Counsel Robison conceded there is an incentive to defeat Wendy at trial.

Court stated it is not willing to open the actual agreement; however, some questioning about why Todd and Stan resolved their difference(s) and some questioning about the benefits/harms of said settlement may be appropriate and may be permitted at trial. However, Court reserved ruling further until the presentation of evidence.

COURT ORDERED: Counsel and parties shall arrive at 8:30 a.m. on Thursday, February 14, 2019.

COURT FURTHER ORDERED: Matter continued for trial by Jury. 2:40 p.m. – Court stood in recess.

CASE NO. PR17-00445

CONS: TRUST: SSJ'S ISSUE TRUST

DATE, JUDGE
OFFICERS OF

COURT PRESENT

2/4/19

HONORABLE

DAVID A. HARDY

Dept. No. 15

A. Dick

(Clerk)

J. Kernan

(Reporter)

APPEARANCES-HEARING

SETTLEMENT CONFERENCE/ORAL ARGUMENTS

Donald Lattin, Esq. represented Todd Jaksick, in a co-trustee capacity, Michael Kimmel, and Kevin Riley who were present seated in the gallery. Kent Robison represented Todd Jaksick, individually, who was present seated in the gallery. Adam Hosmer-Henner, Esq. and Philip Kreitlein, Esq. represented Stanley Jaksick, individually, who was present seated in the gallery. Kevin Spencer, Esq, Zachary Johnson, Esq., and Mark Connot, Esq. represented Wendy Jaksick who was present seated in the gallery.

1:01 p.m. – Court convened with counsel and respective parties present.

Court organized the seating arrangements within the well of the courtroom, given the recent settlement between Todd and Stanley Jaksick.

1:09 p.m. – Brief recess to mark exhibits.

2:38 p.m. – Court reconvened with counsel and respective parties present.

Court admonished counsel and respective parties; **COURT ORDERED:** Any counsel causing verbal interruption shall be sanctioned \$100 per occurrence.

Court provided comments upon discovery in this case indicating it is interested in specifically missing documents and production before and after December 2018.

Counsel Connot addressed the Court argued in support of Wendy Jaksick's emergency motion to extend discovery deadlines and alternatively motion to continue trial pursuant to NRS 16.010.

Court inquired counsel Connot.

Counsel Connot answered the Court's questioning.

Court inquired counsel Robison.

Counsel Robison addressed the Court answered its questioning and argued in opposition of said motion.

Court further inquired counsel Robison.

Counsel Robison answered the Court's questioning and further argued in opposition of said motion.

Counsel Lattin addressed the Court argued in opposition of said motion.

CONTINUED TO

Feb. 5, 2019

9:00 a.m.

Settlement
Conference/
Oral Arguments

Feb. 6, 2019

1:00 p.m.

Settlement
Conference/
Oral Arguments

Feb. 7, 2019

9:00 a.m.

Jury Trial/
Non-Jury Trial
(4 weeks)

Counsel Hosmer-Henner addressed the Court argued in opposition of said motion.

Counsel Connot argued in support of said motion.

Court inquired counsel Connot.

Counsel Connot answered the Court's questioning and further argued in support of said motion thereto.

4:26 p.m. – Brief recess.

4:35 p.m. – Court reconvened with counsel and respective parties present.

Counsel Robison advised documents have been produced in a supplement filing and argued in support that Todd Jaksick has complied with Commissioner Ayres' recommendation.

COURT ORDERED: Tomorrow's (2/5/19) hearing shall commence with "mission critical" issues.

Discussion ensued regarding most important issues to be addressed tomorrow.

COURT FURTHER ORDERED: Wendy Jaksick's emergency motion to extend discovery deadlines and alternatively motion to continue trial pursuant to NRS 16.010 UNDER ADVISEMENT.

Discussion ensued regarding trial length and logistics.

4:51 p.m. – Court stood in recess.

1 Code #4185

2 SUNSHINE REPORTING SERVICES
3 151 Country Estates Circle
4 Reno, Nevada 89511
5 775-323-3411

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9 -o0o-

10 WENDY JAKSICK,

Case No. PR17-00445

11 Petitioner,

Dept. 15

12 vs.

13 Case No. PR17-00446

14 TODD B. JAKSICK, Individually,
15 as Co-Trustee of the Samuel S.
16 Jaksick Jr. Family Trust, and
as Trustee of the SSJ's Issue
Trust; et al.,

Dept. 15

17 Defendants.

18 _____/

19 TRANSCRIPT OF PROCEEDINGS

20 JURY TRIAL - 4

21 February 20, 2019

22 Reno, Nevada

23
24 REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

25 Job No. 529102

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10 Also present:

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12 Courtroom Concepts
13 Houston, Texas
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I N D E X

WITNESS FOR THE PETITIONER:

PAGE

TODD JAKSICK

DIRECT EXAMINATION, RESUMED,
BY MR. SPENCER

11

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
11	1/1/08 Indemnification Agreement (Todd) (TJ0860-TJ0869)	2/4/19	101
11-A	Indemnification Agreement (Todd) (TJ1670-TJ1679)	2/4/19	105
11-B	6/2/10 email from Hascheff to Clayton	2/4/19	113
12	1/1/08 Indemnification Agreement (Stan)	2/4/19	109
16	7/24/13 Agreement and Consent to Proposed Action by Co-Trustees	2/4/19	127
23.37	1/11/16 email from Wendy to Todd, Stan	2/4/19	69
23.12	3/29/12 email from Dietz to Stan	2/4/19	92
23.13	4/25/12 Exclusive Authorization to Sell, Dietz Tahoe Luxury Properties	2/4/19	93

1	38	12/14/17 email string, Kimmel, Stan,	2/4/19	180
2		LeGoy, Todd, McQuaid, Lattin, Riley		
3	61	11/13/15 Secured Promissory Note	2/4/19	55
4	64	11/13/15 Contribution and Issuance	2/4/19	55
5		Agreement		
6	67	2/28/17 email from Todd to Stan	2/4/19	85
7	72	Samuel Jaksick Family Trust	2/4/19	150
8		Financial Statement 4/21/13 -		
		3/31/14		
9	73	Samuel Jaksick Family Trust	2/4/19	150
		Financial Statement 4/1/14 - 3/31/15		
10	74	Samuel Jaksick Family Trust	2/4/19	150
11		Financial Statement 4/1/15 - 3/31/16		
12	75	4/12/16 email string, Wendy, Riley,	2/4/19	137
13		Lexi		
14	114	9/16/10 Operating Agreement of	2/4/19	103
		Incline TSS, Ltd.		
15	126	Samuel Jaksick Jr. Family Trust	2/4/19	156
16		Financial Statements 4/1/16 -		
		12/31/17		
17	173	1/1/08 Indemnification Agreement	2/4/19	123
18		(Todd)		
19	207	10/14/13 email from McQuaid to	2/4/19	186
		Clayton, Todd, Stan, Riley		
20	243	Email correspondence, Todd Jaksick,	2/4/19	185
21		Stan Jaksick, Kevin Riley and		
22		Michael Kimmel, re: Christmas and		
		Tahoe, 12/1/17		
23	258	10/3/13 Bank of America Creditor's	2/4/19	89
		Claim		
24	298	10/21/13 Todd's Creditor Claim	2/4/19	145
25	411	Capital Call Request,	2/4/19	174
		Jackrabbit Properties, 6/27/17		

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412	Capital call, Jackrabbit Properties, 9/27/17	2/4/19	174
419	Incline TSS LTD, Capital call, 3/13/17	2/4/19	106
429	Indemnification Payments Worksheet	2/4/19	169
440	Email dated 9/26/14 Stan Jaksick to Todd Jaksick Re: Yesterday's Meeting	2/4/19	42
441	Email dated 10/28/14 from Riley to Todd and Stan Jaksick Re: Tahoe/Incline TSS	2/4/19	49
444	Email dated 1/12/16 from Wendy Jaksick to Todd Jaksick Re: Gorman	2/4/19	81
447	Email dated 7/20/16 from Riley to Todd Jaksick and Stan Jaksick Re: First draft, estate distribution	2/4/19	186
449	Email dated 9/7/16 from Stan Jaksick to Todd Jaksick re: Wendy, Misc	2/4/19	141
454	Email dated 2/14/17 from Todd Jaksick to Stan Jaksick re: Personal Guarantee	2/4/19	86
545	Kimmel Appraisal	2/20/19	94
547	Amendment to Secured Promissory Note	2/20/19	88

1 WEDNESDAY, FEBRUARY 20, 2019, RENO, NEVADA, 8:58 A.M.

2 -oOo-

3 THE COURT: Counsel, have you each received a copy of
4 the juror note?

5 MR. ROBISON: No.

6 MR. SPENCER: No.

7 THE COURT: In the universe of juror notes, that's not
8 bad.

9 MR. ROBISON: That's good, yeah.

10 MR. SPENCER: Yeah.

11 THE COURT: The heart always stops a little, every time
12 we get -- so I would like to -- Ms. Clerk.

13 (The Court conferred with the clerk.)

14 THE COURT: So Counsel, in answer to the question, I
15 would like to identify -- I would like to tell the jurors there
16 are no plaintiffs, there are no defendants. We have a petitioner
17 and multiple respondents.

18 And then I can leave it at that, or I can identify each
19 of the human parties by name. I don't want to go through the
20 corporate entities.

21 But with that, do you have any thoughts?

22 MR. ROBISON: Yeah, I think this is a completely
23 legitimate question because, obviously, most jurors are acclimated
24 to plaintiff and defendant, rather than petitioner and respondent.

25 And we would respectfully ask the Court tell the jury

1 that in this case, we're using "petitioner," which would be
2 synonymous, normally, with the word "plaintiff," and
3 "respondents," which would be synonymous with the word
4 "defendant."

5 THE COURT: Just leave it at that without individual
6 names?

7 MR. ROBISON: Well, I think that there's some confusion
8 as to who is being sued and I would ask the Court clarify that.

9 THE COURT: Okay.

10 MR. SPENCER: Your Honor, I kind of agree with that.

11 There is going to be an issue about who started this
12 whole thing. But, obviously, in this case, Wendy -- we all agree
13 Wendy is the plaintiff/petitioner. And I don't want that to
14 preclude the opportunity to argue that the accountings -- the
15 request for accounting people started it.

16 But, no, I agree, Wendy is the plaintiff and petitioner,
17 and they are the respondents. And I would leave it at that.

18 I don't know -- I mean, do we want to identify
19 everybody, or what is your preference?

20 MR. ROBISON: Well, to me, the jury is clearly wondering
21 who is getting sued, and I think they are entitled to know.

22 THE COURT: So I have Todd, Stan, Kevin Riley,
23 Mike Kimmel, and then some corporate entities.

24 MR. ROBISON: Three corporate entities, yes, Your Honor,
25 but each of the individuals is also being sued in different

1 capacities; Kevin, for example, as an individual, as a cotrustee
2 of Sam's family trust, and as a trustee of the BAC trust.

3 THE COURT: All right. So I'm not going to go that far,
4 I don't think, but I'm going to help out a little bit on that.

5 MR. ROBISON: And this will be put on the record, Your
6 Honor?

7 THE COURT: Yes.

8 MR. ROBISON: Thank you.

9 MR. SPENCER: Your Honor, I just wanted to bring it to
10 your attention that we have kind of a long list of stipulated
11 exhibits that we would, at some point, want to offer all of them
12 and get them into evidence. Whenever you want to do that, is
13 fine.

14 THE COURT: Sure. I don't want to do that at 9:03 when
15 the jury is waiting.

16 MR. SPENCER: I understand.

17 THE COURT: We'll attend to it during your next break.
18 We'll stand for the jury.

19 Oh, good call. One of the reasons it may be
20 confusing -- will you look at the placard in front of you,
21 Mr. Spencer, and if you pull up, Mr. Robison, the one of front of
22 you.

23 MR. SPENCER: There you go.

24 MR. ROBISON: Wait a minute. Wait a minute.

25 MR. SPENCER: Why I was trying to sit next to the jury

1 earlier.

2 THE COURT: All right. The jury, please.

3 (The jury entered the courtroom.)

4 THE COURT: Good morning. Everyone will be seated,
5 please. The jury is present.

6 Ladies and gentlemen, I would like to clarify
7 positioning of the parties.

8 It's probably been a little confusing, because on
9 counsel table, there are these placards that say "plaintiff" and
10 "defendant."

11 Given the type of case this is, there is no plaintiff,
12 there is no defendant. Ms. Wendy Jaksick is the petitioner, which
13 is synonymous with "plaintiff," essentially. It is she who brings
14 the action, she who bears the burden of proof.

15 The respondents, there are four individual respondents.
16 There are four human respondents, Todd Jaksick, Stan Jaksick,
17 Michael Kimmel and Kevin Riley. And they are sued in different
18 capacities, and that will come out in the trial, whether
19 individually or as a trustee or other representative of an entity.

20 And then there are three corporate entities you will
21 hear about in this trial.

22 And with that, you may resume your direct examination.

23 MR. SPENCER: Thank you.

24

25

1 TODD JAKSICK

2 called as a witness, having been previously
3 duly sworn, testified as follows:

4
5 DIRECT EXAMINATION, RESUMED,

6 BY MR. SPENCER:

7 Q Good morning. I want to ask one thing as we start. We
8 talked yesterday about the unsecured promissory note. Do you
9 remember that?

10 A I do.

11 Q And you mentioned your dad and your -- the Jaksick
12 family business is generally related to real estate, correct?

13 A For the most part, yes, I would say.

14 Q So you know what a foreclosure is, don't you?

15 A I do.

16 Q All right. And so foreclosure, when a property has a
17 lien against it, a foreclosure allows the person with the lien to
18 go and reclaim the property if the person that owes the money
19 isn't paying the loan, correct?

20 A Yes, that sounds correct.

21 Q And they can do that through the foreclosure process as
22 opposed to the court process; is that right?

23 A I haven't had much experience with that, but if you are
24 saying that, I'm assuming that's correct.

25 Q Okay. And so that would not have been an option for

1 your SS -- for your father or SSJ, LLC, if Incline TSS had stopped
2 making payments on the \$7.25 million loan -- or ended up being
3 7.1 million and some change. That would not have been an option
4 for SSJ, LLC, to reclaim the property, would it?

5 A I'm not sure.

6 Q You are not sure about that, as far as what the ability
7 for the SSJ, LLC, to reclaim the property via a lien versus having
8 to go to court to get a judgment?

9 A Yeah, I just don't have the exact legal terminology
10 right now.

11 Q So you don't know what "unsecured" meant; is that right?

12 A I knew that it was being unsecured for the purpose that
13 in the event that the creditors who were coming after Dad actually
14 got credit and judgment actions against him, that this further
15 protected the house, where they couldn't get to the house.

16 So that was a plan designed by Dad and Pierre to do it
17 that way.

18 Q I didn't ask you that question. My question was, you
19 did not know what "unsecured" meant when the promissory note was
20 signed, did you?

21 A No, I didn't believe I remember what "unsecured" was.

22 Q So in relation to that property being un- -- or, the
23 note being unsecured, SSJ, LLC, did not have the ability to
24 extrajudicially, outside of the court, go and reclaim the
25 property, did it?

1 A I'm not sure.

2 Q And so you don't know what "unsecured" means?

3 A I do know what "unsecured" means, at least the purposes
4 of why Dad and Pierre had the note unsecured.

5 Q I'm not asking you about the purpose of why it was
6 unsecured. I'm asking, generally, as a person who deals with real
7 estate and has since 1998 or before, if you know, explain what you
8 understand "unsecured" means.

9 A That, basically, the property wasn't used as collateral
10 for the loan.

11 Q Okay. And if it had been used as collateral for the
12 loan, SSJ, LLC, could have reclaimed the property without having
13 to go to court to get it, right?

14 A That sounds accurate.

15 Q And what I've heard you say is that you made it
16 unsecured so that if there were any creditors that pursued your
17 dad, the family trust or SSJ, LLC -- that if it was secured, they
18 could claim that as an asset of one of those entities?

19 A That was my understanding. And they were pursuing him
20 at the time.

21 Q So trying to get the Lake Tahoe house out of the -- out
22 of the -- your dad's estate, that was Kevin -- you mentioned that
23 was Kevin Riley's number one priority, right?

24 A That's what Kevin Riley, the family accountant, had
25 indicated to Dad and Pierre, that it was his number one priority

1 to get the Tahoe house out of the estate, based off of discussions
2 he had been having with Dad.

3 Q So that was Kevin Riley's number one priority and his
4 desire, not as much your father's, right?

5 A That was both of them. They both had a strong desire to
6 make that happen. It was just timing.

7 Q Your father didn't come up with that himself, that was
8 something Mr. Riley suggested to him, correct?

9 A No, Dad obviously came up with it originally when we
10 started in 2010 and got the option.

11 Q Okay.

12 A And then as we got further into 2012, then with further
13 discussions between Dad and Pierre and Kevin, is my understanding
14 it became much more priority.

15 And then with all the factors I mentioned yesterday, my
16 dad wanted to get it out before the end of 2012. A combination of
17 all of that is where I got the direction to exercise the option
18 and get the house out before the end of 2012.

19 Q And the reason for that -- we've talked about the excise
20 tax, but the two main reasons, the overriding reasons were for
21 estate planning, estate tax planning purposes, and creditor
22 protection, right?

23 A Could you say the first one again.

24 Q Yeah, it was an estate tax planning vehicle or mechanism
25 on the one side and then it was also for creditor protection.

1 A Those were a couple of the options, yes.

2 Q And putting the Lake Tahoe property into the SSJ, LLC,
3 afforded creditor protection, didn't it?

4 A My understanding that it did afford some creditor
5 protection, but that it still had the house, the ability for the
6 house to be exposed, because the SSJ, LLC, would have still been
7 owned by the family trust and Dad.

8 And, therefore, if somebody would have gotten a
9 judgment -- the creditors would have gotten a judgment against
10 Dad, they still could have attached the asset within the LLC.

11 Q And your understanding of that is because the family
12 trust owned the SSJ, LLC, 100 percent?

13 A That was my understanding, yes.

14 Q And you ended up owning the Incline TSS entity
15 100 percent also, didn't you?

16 A At that point in time, yes.

17 Q And the same would hold true for your creditors, right?

18 A It's possible. I didn't have the same creditors that
19 Dad had, though.

20 Q Well, you had many of the same creditors, didn't you?

21 A I had some of the same creditors for sure on the bank
22 loans with, like, American Ag Credit and Met Life. With the
23 aggressive creditors that were pursuing Dad, I didn't have those
24 as the same creditors.

25 Q And in relation to the Incline TSS entity, those bank

1 creditors that you mentioned, they could have pursued Incline TSS
2 just as easily as pursuing SSJ, LLC, couldn't they have?

3 A I would think. I guess that could be the case.

4 Q So that particular aspect of the creditor protection was
5 not -- or, was the same in either entity, wasn't it?

6 A It wasn't explained to me that way by Dad and Pierre
7 when we did the transaction. And, like I said, the two main
8 creditors that were aggressively pursuing Dad, I didn't have those
9 as creditors at the time.

10 Q And they are going to be on the list of creditors that
11 we're going to look at later. What -- we might as well just --
12 what were those two creditors that might have been pursuing your
13 father? What were their names?

14 A They were associated with the Buckhorn Land and
15 Livestock property, and their names were Ralph Durham and
16 Walter Dilts.

17 Q And later, after your father died, their claims were
18 resolved; is that right?

19 A After Dad passed away, we were able to put a
20 conservation easement on the Winnemucca ranch property known as
21 Buckhorn Land and Livestock where we generated about \$6 million in
22 the sales proceeds from the sale of a conservation easement.

23 And through that, we were able to pay down the debt
24 substantially, as well as pay off those two creditors, that's
25 correct.

1 Q And you mentioned the conservation easement yesterday,
2 but didn't get too much into it. I wanted to ask you, just really
3 for everybody's education --

4 A Sure.

5 Q -- what is a conservation easement?

6 A There's different types of conservation easements, but
7 the ones that we were dealing with were with the federal
8 government through the NRCS.

9 And, basically, what we were doing is, they were looking
10 for different soil types on the property for wetlands reserve
11 easements, and we took these properties to them as soils samples
12 and such things done.

13 And they were looking for hydric soils. And we were,
14 basically, to outline some of the hydric soils on the properties,
15 including the meadows. And then there was a matching rate for
16 hydric soils versus dry land area.

17 And then we were actually able to sell a conservation
18 easement, for example, on Buckhorn Land and Livestock, which is a
19 permanent conservation easement, which ties up whatever area was
20 in the conservation easement and all the water rights that were
21 associated with that, within the easement.

22 And the federal government basically pays you to acquire
23 that easement in perpetuity, which is forever, and there's -- you
24 are limited to what you can do with that property in the future.

25 Q Okay. And when you say "ties up," I heard -- we heard

1 the word "permanent" and "perpetuity." But when you say "ties it
2 up," what do you mean by that?

3 A Okay. You can't develop it. You are restricted to when
4 they decide to allow you to use the property for grazing.

5 So every year when it's grazing season, we have to go
6 and meet with the representatives of NRCS and get what's called a
7 compatible use agreement in the event that they are going to allow
8 us to graze.

9 Then, there are just people out monitoring the site and
10 determining whether grazing should be done this year, shouldn't be
11 done this year based off the precipitation and drought.

12 I could go on for a long time, but for the most part,
13 now, the property, we are restricted from developing it or using
14 it for certain things, as well as we are kind of at their mercy
15 every year as to how they want to allow us to use it for grazing
16 practices.

17 Q Pretty much have to ask for permission to use the
18 property that you previously owned outright?

19 A That is correct.

20 Q All right. And that certainly affects the value of the
21 property, doesn't it?

22 A It did affect the value of the property. But for the
23 most part, these meadows in Dad's original planning, with some
24 development concepts and things that he had out there in that
25 area, this was areas that we had already designated to be open

1 space anyways, and it wasn't intended to be developed.

2 So it was really a home-run opportunity that we were
3 just encumbering land that we intended to leave as open space
4 anyway.

5 And it affects the value to some degree for a future
6 buyer that would want to try to do the same thing for -- but for a
7 typical purchaser of a ranch, a gentleman type of a rancher, as
8 opposed to a cattleman, it really wouldn't affect him too much.

9 Q Well -- and you also said that the water rights were
10 included in that transfer or that grant?

11 A The water rights that were associated within the meadow
12 area that were the surface water rights, they were encumbered as
13 part of that easement.

14 Q Okay. And so, essentially, the government agency that
15 you mentioned or the State of Nevada -- and you can clarify --
16 owns the property, and you have a right to then use it under their
17 circumstance -- under their parameters, correct?

18 A I believe -- I'm sorry, I should know this. But I
19 believe that we still own the property, but there's just a
20 conservation easement on the property.

21 Q You own it in title, but you don't really own it in use,
22 you have to ask for permission?

23 A That's a good way to say it, yes.

24 Q So that was, essentially, a sale of Jaksick family
25 property that was then used -- that money was then used to pay off

1 Mr. Durham and his entities and the Dilts family?

2 A They -- Ralph and Walter, they had that property.

3 MetLife had a first priority on that, that particular piece of
4 property. It started out as a \$4 million loan back in 2005, and
5 it had been paid down to approximately 2 and a half million.

6 And then Ralph and Walter -- Dad had borrowed
7 approximately \$2 million from them as well. So the property was
8 heavily encumbered to a tune of about 4, 4 and a half million
9 dollars.

10 And the conservation easement proceeds that came in did
11 pay down the debt to about \$297,000 and paid Ralph and Walter off.

12 Q And so MetLife had made a loan and had a lien against
13 the property?

14 A Yes, they had the primary loan, and Ralph and Walter had
15 a second on the property.

16 Q So they had a first -- MetLife had a first lien, and
17 Ralph and Walter had a second lien against that property?

18 A Yes.

19 Q Okay.

20 A That's my understanding.

21 Q And Ralph and Walter -- Ralph Durham and Walter Dilts;
22 is that right?

23 A Correct.

24 Q They are creditors that you mentioned -- were creditors
25 over your father, but not of you?

1 A Correct. Dad and -- I think it was Dad, was the only
2 one that signed the loan documents and the guarantees with Ralph
3 and Walter.

4 And so Dad -- they had the security with his property,
5 but they had Dad as a personal guarantor as well, so they did not
6 have to go after the ranch land and really couldn't because of
7 MetLife having the first.

8 So they were basically able to go right after Dad and
9 pursue him and his personal assets.

10 Q But Lake Tahoe was the priority property, and so
11 Winnemucca Ranch would have been sacrificed if it had to be sold.
12 If some property had to be sold, it would have been
13 Winnemucca Ranch before Lake Tahoe, right?

14 A I can't really say that. We've got other partners in
15 that ranch, and there would be other people to have to make
16 decisions on that. I'm not sure.

17 Q Okay. There were other assets that the Jaksick family
18 owned that could have been either leveraged, a loan taken against
19 it, or sold to discharge Mr. Durham and Mr. Dilts, right?

20 A I'm not sure.

21 Q You are not sure? You didn't know what the property was
22 that you were managing?

23 A Could you be a little more specific, please.

24 Q You didn't know what the property -- you were helping
25 your father manage all the Jaksick family property, right?

1 A Yes.

2 Q And you're not sure what property was you were managing?

3 A I know what property we were managing.

4 Q Okay.

5 A I just don't believe it was necessarily that easy to go
6 out and get an additional loan to further encumber the properties
7 we had, because, for the most part, all the properties were
8 already heavily encumbered.

9 Q And so you later got another conservation easement on
10 some other property, didn't you?

11 A We did several of them on many different properties.

12 Q And one was for \$19 million, correct?

13 A No.

14 Q Okay. What were the amounts that was received for the
15 other conservation easements that have been obtained?

16 A I think when you bring up the \$19 million, that's a
17 combination of all of the easements on various different ranch
18 properties, including the improvements, that after the federal
19 government comes in and buys the easement, they come in and do
20 some restoration work, they call it, and do some improvements to
21 the habitat, gabions, you know, a bunch of different work to the
22 ditch systems, et cetera.

23 So it was a combination of all of that.

24 Q Thanks for the clarification.

25 So the 19 million was a combination of several

1 conservation easements?

2 A Correct.

3 And if you don't mind, I would like to clarify just one
4 other thing.

5 Q Sure.

6 A Because some of the easements were -- what we said were
7 permanent easements and some were 30-year easements.

8 Q I was going to ask you that.

9 A Okay.

10 Q So some of the ones that -- some of the conservation
11 easements that were -- or is it a grant or is it a sale? What is
12 it when you do a conservation easement? You grant an easement,
13 don't you?

14 A I believe you grant an easement, but for tax purposes,
15 it's effectively a sale.

16 Q Right. And so some of the conservation easements were
17 for a finite period, which was, I believe you said 30 years, and
18 then others, including the Winnemucca Ranch, was a permanent,
19 perpetual easement, conservation easement?

20 A That's correct.

21 Q And how many 30-year conservation easements are there
22 versus the permanent ones?

23 A Sorry for the delay in answering that.

24 Q That's all right.

25 A I would say four, 30 -- 30 years. That sounds right,

1 about four.

2 Q Okay. How many of the permanent ones?

3 A Three.

4 Q Okay. And so of all those seven conservation easements,
5 the Jaksick family entities, I'll say, received \$25 million; is
6 that right?

7 A No, I believe it was in the neighborhood of about 19- ,
8 which includes the improvements.

9 Q Does that include Winnemucca Ranch?

10 A I believe so.

11 Q Okay. I was trying to figure out if what -- the
12 6 million on Winnemucca was over and above the 19- or if it was
13 included in the 19-.

14 A No, it would be included in the 19-.

15 Q Okay. So total \$19 million has been received from
16 conservation easements that were granted and sold?

17 A Not totally all yet, because they haven't done all the
18 restoration work as of yet.

19 Q All right. How much is still owed? Or, let me ask you
20 a different way.

21 How much does the Jaksick family still expect to receive
22 on those easements?

23 A I don't believe we really expect to receive any cash,
24 but the land will get improvements on it.

25 So, for example, like at the Smoke Creek Ranch, your

1 example was, when you sell the conservation easement, that the
2 property is devalued and you had to sell family assets.

3 But at the same time, for example, at Smoke Creek Ranch,
4 they're coming in and just completed about \$4 million worth of
5 restoration work, which then thereby increases the value of the
6 property back up.

7 Q Is that a permanent easement -- is that on a permanent
8 easement land or a 30-year easement land?

9 A Both.

10 Q So it's a mix?

11 A Yeah. I know it's confusing, but if I had a map, I can
12 show you, break it out there.

13 Q What I'm trying to figure out there is, how much cash
14 was received or was expected to be received as a result of the
15 conservation easements?

16 A And I think that that \$19 million number is a good
17 reflection of that, but that includes the improvements, that we
18 don't actually get the cash. It actually improves the land.

19 Q All right. And so back to the -- sort of the original
20 topic of the creditors that your father had, the creditors that
21 your father had would have been the same creditors that you had,
22 except for Mr. Durham and Mr. Dilts; is that correct?

23 A Not necessarily, because Dad has other obligations and
24 loans and were more than just Ralph and Walter.

25 Q All right. But Ralph and Walter were the -- they were

1 the problem at the time that the concern over creditor protection
2 arose?

3 A They were part of that problem.

4 Q And their outstanding balances combined, amounted to how
5 much?

6 A A little over 2 million.

7 Q Okay. And you were able to obtain the conservation
8 easement on Winnemucca Ranch, and then Mr. Durham and Mr. Dilts,
9 those claims were discharged, paid, satisfied?

10 A They were paid.

11 Q Okay. And so the -- there was the ability to pay
12 Mr. Durham and Mr. Dilts outside of the Lake Tahoe property,
13 correct?

14 A I believe if that was the case, then they would have
15 been paid earlier.

16 Q Well, you paid -- you got the conservation easement and
17 paid them off after your father's death without the Lake Tahoe
18 property being exposed to any of it, right?

19 A Okay. I should have asked you about what time frame are
20 you talking about when -- in 2012, for example, or 2013? Is that
21 what you are thinking?

22 Q Well, there was other property that could have been
23 used, conservation easement that you all were talking about, to
24 discharge Mr. Durham and Mr. Dilts' claims, right?

25 A What time frame are you talking about?

1 Q Well, back at the time that everyone was trying to get
2 Lake Tahoe out of your dad's estate.

3 A I don't believe so, because at the time, if they could
4 have been paid off, then it would have been an easy process to do
5 that. Dad would have done it.

6 But the conservation easements were very long processes.
7 Some of them took three-plus years to work on and you couldn't
8 count on those closings.

9 And, like I said, almost all remaining assets were
10 heavily encumbered.

11 Q Well, you are saying that there wasn't a single property
12 anywhere else outside of Lake Tahoe that could have been
13 encumbered, conservation easement, take a lien on, to get loans to
14 discharge Mr. Durham and Mr. Dilts?

15 A I'm saying I can't recall any property right now that
16 could have gotten an additional loan on it.

17 The conservation easements did -- for example, one
18 conservation easement closed, which we were working on right there
19 at the same time at the end of December of 2012. We had a whole
20 magnitude of different transactions that we were working on.

21 It wasn't just the Tahoe closing transaction in the end
22 of December. We were working on closing easements and other
23 property arrangements. There were a substantial amount of
24 transactions going on.

25 And one of the conservation easements, for example, that

1 did close right there at the end of 2012, the partners of
2 Jackrabbit had agreed that the funds would go to pay down the
3 debt, because there was 6 and a half million dollars of debt on
4 that ranch at that time.

5 So when the income came in, it paid down debt, and there
6 wasn't a bunch of cash left over to do anything with.

7 Q And so -- that Winnemucca Ranch?

8 A That was at Jackrabbit when the easement closed at the
9 end of 2012.

10 Q Okay. And that was on which property?

11 A It's called Jackrabbit Properties, LLC.

12 Q What does it own?

13 A It owns what's known as the Smoke Creek Ranch.

14 Q Okay. And it owns a bunch of water rights as well,
15 doesn't it?

16 A There is a bunch of water rights associated with
17 Jackrabbit, yes.

18 Q All right. And by December of 2012, the value of
19 Lake Tahoe had risen quite a bit, hadn't it?

20 And I'm talking -- let me be fair to you.

21 By December of 2012, the value of Lake Tahoe had risen
22 quite a bit from where it was appraised back in 2010 when this
23 option agreement thing came up, right?

24 A We weren't totally sure what the value of the property
25 was in December of 2012. Dad actually had the property listed.

1 Dad had got recommendations from a realtor up there who is a
2 knowledgeable realtor, that the property -- he should list it for
3 about 9 million.

4 Dad decided to list it for 12.7 million. And throughout
5 that entire 2012, I don't remember exactly the date, but the best
6 offer that was received on the Tahoe house was \$6 million. And we
7 didn't do an updated valuation of the appraisal in 2012, for
8 example, in December.

9 The first valuation that we got on the property was when
10 the issue trust was going to buy in, in August of 2013, when we
11 knew that the value had increased.

12 Q What was the value then?

13 A The value at that point in time, Mr. Kimmel had an
14 appraised value of 11.5 million.

15 Q And you also had -- was that appraisal done in relation
16 to the estate tax situation or not? Was it related to Stan's
17 buy-in?

18 A No, the appraisal for the 11.5 million that was
19 completed by Mr. Kimmel was for the purpose of valuing the
20 property for the SSJ Issue Trust to buy in.

21 Q Okay. Yes. Okay. SSJ Issue Trust.

22 And that was the life insurance proceeds buy-in,
23 correct?

24 A Yes.

25 Q And then -- so then, three years, the value -- appraised

1 value went from 6.5 million to 11.2 million?

2 A 11.5 million.

3 Q I'm sorry, 11.5 million. So let me re-ask the question.

4 So from 2010 to 2013, three years, the value of
5 Lake Tahoe went up from 6.5 million to 11.5 million?

6 A That sounds accurate. We were coming out of the great
7 depression or great recession, I guess, as people call it, when
8 values were starting to increase.

9 Q Now, today, the value at Lake Tahoe is estimated to be
10 19 million, isn't it?

11 A I'm not sure. I mean, I know Zillow says numbers like
12 that, but I don't really know if that is the case or not. But
13 that's what Zillow shows.

14 MR. ROBISON: We're not going to stipulate to a Zillow
15 appraisal, Your Honor.

16 MR. SPENCER: Okay. Your Honor, then I'll prove it up.

17 THE COURT: Okay.

18 BY MR. SPENCER:

19 Q You just mentioned the Zillow appraisal, correct?

20 A I did --

21 MR. ROBISON: I'm sorry.

22 Your Honor, it's not an appraisal.

23 THE COURT: That is correct.

24 MR. SPENCER: I'll restate -- rephrase.

25 ///

1 BY MR. SPENCER:

2 Q You mentioned the Zillow estimate, correct?

3 A I did.

4 Q And you understand that Zillow is an online service that
5 estimates values of properties, correct, real estate properties?

6 A I do.

7 Q And you're familiar, obviously, with Zillow; is that
8 right?

9 A I am.

10 Q Okay. And have you checked Zillow recently?

11 A Probably in the last six months or something, yeah.

12 Q And so you are familiar that -- with the fact that
13 Zillow estimates the value of Lake Tahoe to be in the 18 to
14 \$19 million range?

15 A Yes, I am.

16 Q All right.

17 MR. SPENCER: Your Honor, may I approach the witness?

18 THE COURT: Yeah, I would like to see just Mr. Spencer
19 and one of the three of you at a quick sidebar. I don't want to
20 move everybody.

21 Ladies and gentlemen, feel free to stand and stretch for
22 a moment.

23 (The Court and counsel left the courtroom.)

24 THE COURT: Counsel, you may reference this -- you may
25 inquire of this witness as to his understanding of the property's

1 current value. You may even probe his reference to Zillow and
2 what that means.

3 But in terms of a document admitted into evidence as a
4 statement of value, I'm going to disallow it.

5 MR. SPENCER: Thank you, Your Honor.

6 BY MR. SPENCER:

7 Q So we talked about Zillow, what it is, generally, the
8 online service, and you are familiar with that.

9 Do you accept the Zillow valuation that you've
10 referenced earlier, 18 to 19 million?

11 A Yeah, I think that the only way we would know to be able
12 to prove that is actually try to sell the house and see what it
13 sells for. But I think it could very well be in that range of the
14 18 million.

15 There's a few things with the Tahoe house that are a
16 little bit different than some of the other Tahoe houses right in
17 the area, that are issues that we have on the piece of property,
18 versus some of the neighbors.

19 Q Okay. But as owner of the entity that owns the
20 Lake Tahoe property, you would generally agree the appraisal range
21 would be in the \$18 million range?

22 A I think it is certainly possible. And I think if we
23 were going to try to sell it, we would try more than that. It
24 just depends on what buyer we were able to find that would
25 actually come to acquire the house.

1 Ideally, I think a buyer of that magnitude would prefer
2 to purchase both houses, our house and our neighbor's house, and
3 that's really not an option at this point in time.

4 Q And they are -- I'm sorry, go ahead.

5 And there's really -- and there's some properties next
6 to the Lake Tahoe house that may be for sale or may be coming up
7 for sale soon; is that right?

8 A Like, the other people's homes and stuff?

9 Q Yes.

10 A Yeah, I would imagine so, sure.

11 Q And is there opportunity to utilize, potentially acquire
12 some of those properties next to the Lake Tahoe house to increase
13 the value of -- the overall value of the house?

14 A The way that the house is, there's apartments, an
15 apartment or a condo complex on the west side of our property.
16 Just to the east of our property is one other home. And then just
17 to the east of that, there are some really incredible homes.

18 So that's kind of why I was mentioning it. It might
19 take a significant buyer to want to buy two parcels.

20 One thing that we don't have, on the property that we
21 have, is we don't have a pier, and some of the folks that want to
22 purchase these types of properties want to have a pier.

23 But if you combine the property with the neighbor's
24 property, that would get them a pier. And, like I said, the
25 condos right on our west fence are a negative for people who look

1 at the property.

2 Q There's some significant -- as far as wealth, some
3 significantly wealthy owners around that property, aren't there?

4 A I would say just to the east, about as wealthy as they
5 get.

6 Q Mr. Ellison?

7 A Yes, sir.

8 Q Okay. And so has there been any effort to contact
9 Larry Ellison to see if he wants to buy the Lake Tahoe property?

10 A I would say back in 2012, there was some.

11 Q Okay.

12 A There hasn't been any -- around that time, 2012, but
13 there hasn't been any since then.

14 Q Okay. And who is Mr. Ellison, Larry Ellison?

15 A I don't know him personally, but I believe the company
16 that he started is a software company called Oracle.

17 Q And he's a billionaire, right?

18 A Many times over.

19 Q Multi billionaire?

20 A Yes.

21 Q Okay. And so the creditor protection issue, as opposed
22 the estate tax planning issue, the idea of putting the house into
23 an entity, I believe you understand, is that if a judgment is
24 obtained against that entity, then the property it owns is
25 protected and there's just a right to get a charging order.

1 Have you heard of that before?

2 A That sounds accurate.

3 Q Okay. As opposed to, if Sam owned it himself and a
4 judgment was obtained against him, then they could attempt to
5 attach the property itself?

6 A I'm not positive about that.

7 Q Okay. I just wanted --

8 A I'm sorry.

9 Q What do you understand a charging order to be?

10 A I don't know the exact terminology. I just know that my
11 best guess at that would be the fact that they have the ability to
12 attach the piece of property which is within the LLC.

13 Q That they -- "a creditor"?

14 A A creditor would have the ability to attach the asset
15 within the LLC, I believe.

16 Q That's what you understand?

17 A I'm not sure I understand. It would be guessing. I
18 just don't know right now.

19 Q That's all right.

20 And so whatever remedy a creditor might have against
21 SSJ, LLC, it would also have -- if it were a creditor of yours,
22 the same remedy against Incline TSS, right?

23 A I would think it's possible.

24 Q So that particular issue protecting the house from
25 creditors was not really solved in relation to putting the

1 property in Incline TSS, other than Mr. Durham and Mr. Dilts,
2 correct?

3 A Dad had other loans besides the creditors that I had,
4 for example, so that there was other ones out there besides just
5 Mr. Dilts and Mr. Durham.

6 Q Okay. And do you know how many other creditors there
7 were that your dad had that you did not have?

8 A I don't know off the top of my head, but if I had to
9 guess, I would say maybe in the neighborhood of five to ten maybe.

10 Q Uh-huh. Mr. Jamieson, is he one of them?

11 A Possibly.

12 Q Dave Jamieson, who is Dave Jamieson?

13 A Dave Jamieson is a school classmate of -- my dad's
14 friend that he had earlier on in his life and a gentleman that we
15 did some business with up in the Gerlach area. He bought some
16 properties from us.

17 Q And was Mr. Jamieson -- outside the people in the
18 Jaksick family, was Mr. Jamieson, in your opinion, your father's
19 best friend?

20 A Not necessarily, no, I wouldn't -- I think he was a
21 friend of Dad's early on, probably best friend early on. But Dad
22 didn't spend too much time with him in, I would say, the last 15
23 years or something.

24 Q So that means you would not be aware of your dad
25 spending much time with Mr. Jamieson in the last 15 years?

1 A No, because I spent most every day with Dad at the
2 office. And when -- we would usually go to lunch with Dave
3 together.

4 And it was a few times that they did a few things
5 outside of that, but most of the time, it was always Dad and I and
6 Dave going to lunch or going to Gerlach or working on the
7 properties or things like that.

8 Q But you don't know how much Mr. Jamieson and your father
9 spoke on the phone or may have spent time with each other outside
10 of your presence, do you?

11 A Oh, not totally, no.

12 Q So I want to go back to where we left off yesterday
13 afternoon. We were talking about the Lake Tahoe property, and we
14 were just about to start Stan's buy-in transaction.

15 Do you recall?

16 A I do.

17 Q Okay. And Stan's attempted buy-in, that -- sort of that
18 process started in -- towards the end of 2014; is that right?

19 A No, it started earlier than that.

20 Q Okay. About when did the discussions about Stan's
21 buy-in -- actual buy-in as opposed to a plan, but actually doing
22 it, when did that start?

23 A I would say maybe mid 2012 range.

24 Q All right. So prior to your father's death?

25 A Yes.

1 Q Well, that was back in the planning stage, wasn't it?

2 A Yes.

3 Q Because Stan's divorce was ongoing?

4 A Correct.

5 Q And his divorce ended in April of 2013, towards the end
6 of April of 2013, right?

7 A I believe it was towards the beginning.

8 Q Towards the beginning. Okay. I'm sorry.

9 Stan's divorce was ended towards the beginning of April,
10 2013, just a few weeks before your father died on April 21st of
11 2013?

12 A That sounds pretty close.

13 Q Okay. So the testimony you've given, prior to Stan's
14 divorce ending, there was no chance of Stan being a part owner of
15 the Tahoe property or Incline TSS that owned the Tahoe property?

16 A What was your time frame? I'm sorry.

17 Q Prior to Stan's divorce ending.

18 A Yeah. Dad did not want him to be involved in
19 Incline TSS during his divorce because of the fact that Stan's
20 wife was suing a bunch of the companies that Dad and Stan were
21 involved in.

22 Q Right. So I'm not talking about the plans going back in
23 to the middle of 2012. I'm not talking about the plans of Stan.
24 I'm talking about when it actually started to happen.

25 When did the discussion about Stan actually entering

1 into an agreement and starting to pay money to buy in to the Tahoe
2 house?

3 A I would say just right around the end of 2013.

4 Q Okay. And those discussions were between you and Stan
5 and who else?

6 A Stan and I, Kevin Riley, Wendy, Bob LeGoy, I believe, as
7 well.

8 Q When did Wendy attend a meeting that involved a
9 discussion about Stan buying in?

10 A Probably would have been several of them. I can't think
11 of when exactly, but the first one was -- actually, I do recall
12 the first one. The first one was June 5th of 2013.

13 And then there was some further discussions towards the
14 end of 2013.

15 And then in 2014 is when Kevin Riley kind of started
16 working up some worksheets as to how that arrangement might work,
17 based off of the value we had at the time. And it just continued
18 to keep progressing.

19 It was a long process. And I believe the ACPA was
20 drafted by Brian McQuaid in the first part of 2015. But I don't
21 believe it was signed by Stan and I until about the end of 2015.
22 And then --

23 Q Okay. And just -- to stop you, you are getting a little
24 ahead.

25 A Okay.

1 Q I want to go back to that June 5th, 2013, meeting.
2 That's the date we saw of the ACPA relating to the SSJ Issue Trust
3 investing in Incline TSS?

4 A Correct.

5 Q That was the date it was signed, and there was a meeting
6 that day, right?

7 A Yes.

8 Q And you are saying there was discussion had regarding
9 Stan buying in to Incline TSS sometime later?

10 A What was that part now again?

11 Q You are saying there was some discussion about Stan
12 buying in at the time that you were discussing the issue trust
13 buying in?

14 A We were -- we did discuss that, that that was a game
15 plan that was going to happen down the road when Stan was able to
16 sell some lots.

17 Q Did Wendy say she wanted to buy in also?

18 A At one point in time, she did. I don't remember if it
19 was that day, but there was several different times that Wendy
20 continued -- repeatedly kept saying that she wanted to figure out
21 a way to buy in.

22 Q Were you even open to that idea?

23 A What I basically said was, let's see how the estate and
24 the trust goes and let's see what kind of funds that you have at
25 the end of this and get it evaluated at that point in time, but

1 for the most part, we should be looking at trying to get you
2 involved in entities or income-producing type properties.

3 And so we were kind of tabling the discussion until we
4 knew Wendy's financial position as to the fact that she needed to
5 be in more income-producing properties, as opposed to entities
6 that would need to be fed.

7 Q And that would increase in value by \$13 million over
8 eight years, right?

9 A From the time the issue trust bought in, we had -- like
10 I said, we don't know the exact value to date, but it's certainly
11 possible that it could be in that range. I just don't know.

12 Q So you were talking her out of being involved with that
13 kind of an asset?

14 A No, I told her that we would evaluate it as you went
15 down the road and you can see what kind of assets you have and
16 that we needed to get you income-producing assets.

17 Q And so you were in charge of determining how much Wendy
18 would have in assets when all of the dust settled, right?

19 A Not just myself, no. I mean, there's a whole group of
20 people that were working on this family trust and selling
21 properties and paying debt and doing all the things that we do to
22 be able to get to a point where we can distribute all of these
23 assets.

24 Q And that would be the team that you've talked about,
25 correct?

1 A Ken Riley, the accountant; Brian McQuaid; Bob LeGoy;
2 myself and Stan and Mike Kimmel and other professionals that we
3 needed along the way.

4 Q And part of that debt scenario included your indemnity
5 agreement, correct?

6 A Some of it was associated with the indemnification
7 agreement, yes.

8 Q We're going to get into that after I go into this topic.

9 A Okay.

10 Q Let's stick with Lake Tahoe and Stan right now. But I
11 just wanted to bring it up right then.

12 A Okay.

13 MR. SPENCER: And so, Your Honor, I offer Exhibit 440.

14 MR. ROBISON: No objection.

15 THE COURT: 440 is admitted, Ms. Clerk.

16 THE CLERK: Thank you.

17 (Exhibit 440 was admitted into evidence.)

18 BY MR. SPENCER:

19 Q Okay. This is -- do you want to get the hard copy, or
20 can you see it on the screen there?

21 A I can't see it yet, but if you blow it up.

22 Q Can you see that?

23 A I can see that, yeah.

24 Q So Exhibit 440 is an email -- let's start at the bottom
25 there, Keith -- September 26th, 2014, email that's from you to

1 Stan. Do you see that?

2 A I do.

3 Q And you say "Stan, you mention in your email, 'we
4 need'" -- quote, "'we need to figure out is the structure of the
5 SSJ Issue Trust,'" closed quote. "Sam had already figured this
6 out and it's been in place since 2007. So there's really nothing
7 that needs to be figured out as you alluded to."

8 That's the first sentence of the email there.

9 And then up above is Stan's response, Friday,
10 September 26, 2014, at 5:36 p.m.

11 He says "Like you said, that was 2007, and I can
12 understand him" -- Keith, it's up at the top -- "not wanting to
13 change things between 2010 and the 17 days prior to him passing
14 away, the time it took for me to receive my divorce."

15 Then he says "The big thing that is also different today
16 is the Tahoe house and the 5 million that went into the Tahoe
17 house after Dad passed away."

18 He talks about I know you are taking a fee from the
19 trust, from the issue trust. And then he says "To me, it's about
20 being fair" -- down below. "To me, it's about being fair and how
21 you are benefitting personally from being the sole trustee."

22 And then, "Yes, I would appreciate discussing this
23 further."

24 And so did you agree with what Stan said there relating
25 to fairness?

1 A The choice of me being the trustee was certainly Dad's
2 choice. I didn't ask to be the trustee, but Dad put me in there
3 as the trustee.

4 So anyways, I was -- I don't know what Stan is talking
5 about, being fair. I don't know what wasn't where -- what he was
6 indicating in that sentence that I wasn't being fair about. You
7 would have to ask him that.

8 Q Well, I didn't ask you about you being the trustee, but
9 since you bring it up, you, as trustee, would have to analyze all
10 of this from a fairness standpoint, right?

11 A From a what standpoint?

12 Q Fairness.

13 A Sure.

14 Q And by that "all this," I mean the Lake Tahoe
15 transaction.

16 A Sure.

17 Q All right. And so you don't know what Stan was talking
18 about there when he said this is about being fair?

19 A I don't.

20 Q Okay. Did you ask him?

21 A I think we did have a conversation with him about this.
22 I don't remember all the details, but we did get together and
23 discuss.

24 Q And what did you resolve or tell Stan regarding whether
25 this transaction was fair, that -- the \$5 million being put into

1 the Lake Tahoe house?

2 A I don't think he was talking about the transaction
3 itself being fair.

4 I think he was -- needed to be a little educated on the
5 fact that -- how the issue trust was set up, when it was set up,
6 and the fact that the 5 million went into there, which he was
7 certainly aware of.

8 But I just don't know what he was talking about, about
9 not being fair.

10 Q "To me, it's about being fair and how you are
11 benefitting personally from being the sole trustee."

12 Did you understand that?

13 A I did not understand what he meant by that.

14 Q You don't believe that you benefitted personally from
15 being the sole trustee of the issue trust?

16 A I don't believe so.

17 Q Well, you got fees from it, didn't you?

18 A Dad did have, in his family -- or in the issue trust
19 document, that it was okay for the trustee to have -- take some
20 fees.

21 Q And you also got exclusive discretion to determine use
22 of the Lake Tahoe property?

23 A That was Dad's choice. It was language he put in his
24 trust document. And every time Stan and Wendy wanted to utilize
25 the property, we've accommodated the use that they wanted.

1 Q Can you answer my question, sir. I asked you -- I asked
2 you if you got exclusive discretion to determine the use of the
3 Lake Tahoe property. That's true, isn't it?

4 A That's what my dad wanted in the family trust.

5 Q Is that a "yes" or a "no"? Did you get exclusive
6 discretion or not?

7 A Yes.

8 Q Okay. And that's a benefit to you, isn't it?

9 A I don't really necessarily see it that way.

10 Q Well, theoretically -- you say it didn't happen. But
11 theoretically, you could say I'm living -- I'm going to move into
12 Lake Tahoe, I'm going to live there and no one else is going to
13 get to use it, correct?

14 A No, sir.

15 Q You could do that?

16 A I could not do that.

17 Q Okay. Well, then how is your discretion tainted in that
18 way? How is it not exclusive in that way?

19 A Because the house is owned by a company called
20 Incline TSS that is in business of renting the property to
21 generate income to cover its debts and its obligations on an
22 annual basis.

23 And there's no ability to move into that house;
24 otherwise, you wouldn't be able to afford to keep the house. You
25 need the rental income.

1 And just because I am the trustee and/or a part owner
2 doesn't give me the exclusive right to be able to move into that
3 house and consider that house to be my own.

4 Q Why not? You have that ability.

5 A I do not have that ability.

6 Q Okay. What is it that restrains you from doing that?

7 A Being fair, being a trustee, looking out for the best
8 interest of the rest of the beneficiaries, giving them usage
9 rights.

10 And I just don't believe that my powers that I have,
11 just because Dad placed me as a trustee, allows me to move into
12 the Tahoe house. I would never, ever look at it that way. I
13 would never do anything like that.

14 Q Well, Incline TSS is a manager managed entity, right?

15 A It is.

16 Q And you are the manager of it, right?

17 A Currently, I am the manager.

18 Q And so at this time, after the buy-in of the issue
19 trust, it owned 54 percent and you or your trust own the other
20 46 percent, right?

21 A Yes, when the issue trust came up with the money, they
22 bought a 54 percent interest, that is correct.

23 Q Okay. And then you or your entities own the other
24 46 percent?

25 A Yes, those trusts, that is correct.

1 Q And it doesn't matter what the SSJ Issue Trust voted or
2 what the other two Todd trusts voted, the manager controls the
3 entity, right?

4 A The manager does control the entity, Incline TSS.

5 Q And so as the sole trustee of the issue trust, it had
6 54 percent majority of interest in that property, but the manager
7 decides who gets to use it, correct?

8 A We didn't -- I didn't ever look at it that way, but
9 technically, that could be the case.

10 Q And there's no restraint on you deciding that you're
11 going to use the property exclusively, to the exclusion of Wendy
12 and Stan the entire time, is there?

13 A Documentwise, that could be the case, but that is
14 absolutely not what has happened or transpired.

15 Q So -- but documentwise, that's the case. What you are
16 saying is, you wouldn't do that, correct?

17 A Absolutely would not do that.

18 Q But when Stan says it's about being fair and how you are
19 benefitting personally from being the sole trustee, those would be
20 personal benefits that you acquired by becoming the manager of the
21 entity that owned Lake Tahoe, right?

22 A I really -- I'm really not sure what he meant by that
23 statement. You would have to ask him.

24 MR. SPENCER: All right. Your Honor, I offer
25 Exhibit 441.

1 MR. ROBISON: No objections.

2 THE COURT: 441 is admitted, Ms. Clerk.

3 THE CLERK: Thank you.

4 (Exhibit 441 admitted into evidence.)

5 BY MR. SPENCER:

6 Q That email chain that we just saw was September 26 of
7 '14.

8 This one is October 28th of '14.

9 I just want to make sure you can see that. If, at any
10 time, you want to see the hard copy, we'll get that for you.
11 Okay? Just let us know.

12 Can you see that?

13 A I can, yes.

14 Q Excuse me.

15 MR. ROBISON: Your Honor, may I have a moment?

16 THE COURT: Yes, sir.

17 MR. ROBISON: May I see that?

18 Your Honor, this is a string with an attachment. I
19 think that the witness should be entitled to see the entire
20 document.

21 THE COURT: If you'll -- is this thread within the same
22 441 that was just admitted?

23 MR. SPENCER: Yes, sir.

24 THE COURT: Will you give the witness just a moment to
25 flip through that, familiarize himself with the sequence.

1 MR. SPENCER: Yes.

2 THE COURT: Thank you.

3 MR. SPENCER: May I approach?

4 THE WITNESS: Thank you. What number was that? I can
5 get it. Thank you.

6 MR. SPENCER: I'm sorry, Todd. It's 441.

7 THE WITNESS: Okay.

8 Okay.

9 BY MR. SPENCER:

10 Q And so this email had attachment to it. And I want to
11 look at the email first, October 28th, 2014, 2:52 p.m., with email
12 from Kevin Riley to Todd, and then SSJ3232@aol.com. Who is that,
13 do you know?

14 A That's Stan's email.

15 Q All right. And that's the salutation there. "Todd and
16 Stan, I've worked up some numbers in two different worksheets."

17 And so Mr. Riley is working on trying to determine how
18 to -- what terms Stan's buy-in should be; is that right?

19 A Yes.

20 Q "The first worksheet is a hypothetical buy-in at
21 1.5 million. There are no discounts involved and Stan would get a
22 14.2 percent interest in the Tahoe house.

23 "And then the second worksheet is a reasonable option,
24 provided the property is properly appraised at 11.5 -- properly
25 appraised at 11.5 million.

1 "This involves the same buy-in at 1.5 million,
2 reasonable discount of 24 percent. Stan's interest would be
3 identical to Todd's percentage and the TBJ SC trust's percentage
4 at 18.7 percent."

5 And did you have discussions with Mr. Riley about those
6 scenarios, or is this the first you ever heard of it?

7 A No, we had a lot of discussions and there was
8 discussions prior to this, these discussions, as well as many
9 discussions after this.

10 Q And that references the appraisal you mentioned earlier,
11 11.5 million?

12 A That's what -- I think that's what Kevin must be talking
13 about right there, yes.

14 Q Okay. And I believe, based on what you said, that what
15 happened, that Stan's buy-in was the first option, instead of the
16 second; is that right?

17 A I lost you on that one. I'm sorry.

18 Q Yeah. Did it end up being 1.5 million with no discount,
19 or did it end up being at 14.12 percent, or did it end up being
20 1.5 million with the discount and getting 18.7?

21 A Neither one of those.

22 Q Yeah. Ended up being a 17.2 percent interest, right?

23 A 17.02.

24 Q .02. Okay.

25 MR. SPENCER: And the next page, Keith, is the first

1 worksheet.

2 BY MR. SPENCER:

3 Q And there -- in the bottom right corner, Keith -- it
4 shows the -- after all the accounting above, it shows that the
5 Todd B. Jaksick family trust would end up with 19.73 percent;
6 Stan, 14.2 percent; TBJ SC trust, 19.73 percent; and then the
7 SSJ Issue Trust, 46.33 percent.

8 A I see what you highlighted.

9 Q And so the SSJ Issue Trust, 54 percent would be -- would
10 drop, it would be diluted down to 46.33 percent, right?

11 A In that particular scenario that we did not use, that is
12 correct.

13 Q And then this scenario with Stan's buy-in would have --
14 as indicated in the email, would have made -- Stan would have
15 gotten 14.2 percent, right?

16 A I see that, yes.

17 Q But then the Todd Jaksick family trust and the TBJ SC
18 trust would have ended up owning more than Stan, right?

19 A In that scenario, yes.

20 Q And so the 54 percent issue trust and the 46 percent
21 Todd's trust would have changed to 46.33 percent for the issue
22 trust, 39.46 percent for Todd's trust, and then Stan would have
23 gotten the 14.2?

24 A Yes, sir. Everybody was being diluted equally.

25 Q Uh-huh. And what ended up happening was, you ended

1 up -- you mentioned that you ended up having an ACPA related to
2 this transaction with Stan?

3 A Yes, that is correct.

4 MR. SPENCER: Exhibit 23 is already in, Your Honor.
5 Pull up Exhibit 23.

6 THE COURT: Thank you.

7 BY MR. SPENCER:

8 Q And so the idea here is, Stan would buy in and get
9 17.02 percent, as you mentioned, of Class A membership interest in
10 the company, which is Incline TSS, for \$1.5 million. Is that
11 right?

12 A Would it be possible to see that whole document?

13 Q Oh, sure.

14 THE COURT: It's quite all right. Please ask that, if
15 you do -- if you would like to see the entire document, it's quite
16 all right. Counsel doesn't mind.

17 THE WITNESS: Thank you, Mr. Spencer.

18 BY MR. SPENCER:

19 Q Exhibit 23.

20 A Okay. I got it.

21 Q And so for the 1.5 million that Stan would invest --

22 MR. ROBISON: Excuse me, Your Honor.

23 Will you just wait until he gets there.

24 MR. SPENCER: I apologize.

25 MR. ROBISON: Thank you, Your Honor.

1 BY MR. SPENCER:

2 Q He could get 17.02 percent for the 1.5 million?

3 A Correct.

4 Q And in flipping over to -- it will be the third page,
5 Keith -- TJ 0127, there's a signature page. It was dated
6 November 13th of 2015.

7 A Yes.

8 Q And you, as trustee of the issue trust, signed it, this
9 particular page, and then you individually and Stanley as primary
10 beneficiary signed it?

11 A Correct.

12 Q And this one you actually included Lexi Smrt in as a
13 primary beneficiary, quote, unquote?

14 A Yes. I'm sorry, Brian McQuaid did. That is correct.

15 Q All right. And then the next page is a signature page
16 that has Alexi's signature. Do you know how long after
17 November 13th, 2015, Alexi signed that?

18 A I do.

19 Q How long?

20 A I think it was around January the 5th.

21 Q January the 5th in 2016?

22 A Yes, somewhere, give or take four or five days.

23 MR. SPENCER: All right. And then the next page, Keith.

24 BY MR. SPENCER:

25 Q And that indicates signature of Wendy. Do you know how

1 long after November 13th, 2015, that was obtained?

2 A Wendy's signature was closer to January the 15th to the
3 20th maybe. The 20th, possibly.

4 Q Okay.

5 MR. SPENCER: Your Honor, I offer Exhibit 61.

6 MR. ROBISON: No objections.

7 THE COURT: 61 is admitted, Ms. Clerk.

8 THE CLERK: Thank you.

9 (Exhibit 61 admitted into evidence.)

10 MR. SPENCER: Let me also offer Exhibit 64 also.

11 MR. ROBISON: No objection.

12 THE COURT: 64 is admitted.

13 THE CLERK: Thank you.

14 (Exhibit 64 admitted into evidence.)

15 BY MR. SPENCER:

16 Q Let's start with Exhibit 64.

17 MR. ROBISON: Your Honor, may I have a moment?

18 THE COURT: Yes, please.

19 MR. ROBISON: Thank you.

20 BY MR. SPENCER:

21 Q So this is entitled "Contribution and Issuance
22 Agreement, LLC Interest." Do you see that?

23 A Yes, I do.

24 Q Dated 11/13/2015?

25 A Yes, I see it.

1 MR. SPENCER: And flip to the last page, Keith.

2 BY MR. SPENCER:

3 Q And this indicates that it was executed as of
4 November 13th, 2015, correct?

5 A Okay.

6 Q And why does it say as of -- was it dated -- was it
7 executed some other date, or do you know?

8 A No, it was executed on the day that -- where Stan and I
9 wrote in the dates.

10 Q All right. And whose handwriting is that November 13th
11 part?

12 A I'm not sure, possibly Jessica's. It doesn't look like
13 Stan's or mine.

14 MR. SPENCER: Okay. So back to the first page, Keith.

15 BY MR. SPENCER:

16 Q This operating agreement -- or, I'm sorry, this
17 contribution and issuance agreement memorializes that \$1.5 million
18 buy-in for 17.02 units of Class A membership in Incline TSS?

19 A I see that it says that, yes.

20 Q And the company acknowledges -- at paragraph C, Keith --
21 the company acknowledges receipt of the 85 -- of \$85,000 by Stan?

22 A Correct.

23 Q And you -- that's a true statement, right?

24 A Yes.

25 Q And then Stan shall deliver a secured note to the

1 company for 1.415 million?

2 A Yes, I see that.

3 Q And then paragraph D indicates that that note that Stan
4 will provide shall accrue interest at simple rate of 3.45 percent
5 annually to the company?

6 A Yes, I see that.

7 Q And then -- Exhibit 61, Keith -- this was that
8 promissory note that ended up actually being signed on
9 November 13th of 2015?

10 A Okay.

11 MR. SPENCER: Show the signature page first, Keith, the
12 second to the last page.

13 BY MR. SPENCER:

14 Q There's the signature and then individually and as
15 trustee of the Stanley S. Jaksick 2013 revocable trust. Do you
16 see that?

17 A I do.

18 MR. SPENCER: Next page, Keith.

19 BY MR. SPENCER:

20 Q And November 13th of 2015?

21 A Would you mind going back to the note page real quick?

22 Q Yeah, I just wanted to show the signature page to show
23 that it was signed on November 13th of 2015.

24 A Okay. Very well.

25 MR. SPENCER: All right. Back to the first page, Keith.

1 BY MR. SPENCER:

2 Q And so is that the date of the note, November 13th,
3 2015, for 1.14 -- sorry, 1.415 million at 3.45 percent interest?

4 A Okay.

5 Q And you notice at the top, this one is actually a
6 secured promissory note, isn't it?

7 A It's secured, yes, by Stan's stock certificate.

8 Q Right. And so Incline TSS had a lien against the
9 17.02 units that Stan was acquiring. In the event that he didn't
10 pay, those units could be taken back, right, or could be
11 reclaimed?

12 A That's what I recall the attorney's example of that
13 being, yes.

14 Q So you had an unsecured note and then Stan had to have a
15 secured note, right?

16 A The way that the attorneys drafted these documents, that
17 was the appropriate way to secure the purchase of Stan's interest,
18 is my understanding.

19 Q My question simply is just a fact, you had an unsecured
20 note and Stan had a secured one?

21 A That's not a fact.

22 Q It's not a fact? How is that not a fact?

23 A Because, first of all, it wasn't me, it was Incline TSS
24 that had --

25 Q Okay. Let me restate it then.

1 Incline TSS had an unsecured note, Stan had to have a
2 secured note?

3 A That is correct.

4 Q Thanks for correcting that.

5 And so in addition, Stan had to pay 3.45 percent
6 interest, and according to one of the promissory notes that we
7 saw, you only paid 2.25 percent interest, right?

8 A On the original loan that had been paid in full by this
9 point in time, that original interest was 2.25 percent. And we
10 picked Stan's interest at the 3.45 percent because that was a
11 little bit higher than the bank loan that we had with Bank of
12 America.

13 So it was offsetting the interest that we were paying to
14 the bank based off of the loan that we had, the new loan that we
15 had with Bank of America.

16 Q Okay. You entered into a new loan on what date?

17 A We did two loans for the same amount. We did one loan
18 for 2.4 million in March of 2014.

19 Q Right.

20 A And then we refinanced it again in, I believe, October,
21 November range of 2016.

22 Q Okay. And so this interest rate in November of 2015
23 applied to the first note, right?

24 A That's my recollection. It was -- this was a little bit
25 higher than the -- what we were paying Bank of America. I don't

1 remember exactly what Bank of America, but it was 3.something.

2 Q And what was the rate of the mortgage with B of A that
3 SSJ, LLC, had, do you remember?

4 A It was -- I don't -- it was financed so many times, I
5 don't recall.

6 Q Okay. And then -- and then this Exhibit 61 outlines --
7 at the bottom, Keith -- the four payments on January 1 of '16 --
8 2016, '17, '18 and '19, right?

9 A Yes.

10 MR. SPENCER: Push it down, Keith. Push it down with
11 the list up above. There you go.

12 BY MR. SPENCER:

13 Q And so this was a very short term note that required
14 Stan to come up with a million and a half dollars within about a
15 four-year time frame?

16 A Correct.

17 Q And the unsecured promissory note that you ended up
18 taking out had a 2.25 percent at a 10-year maturity date, didn't
19 it?

20 A That sounds correct.

21 Q The other one that was signed and sent to Ticor had a
22 five-year maturity date at 6 percent, didn't it?

23 A The one we saw yesterday?

24 Q Yeah.

25 A Yeah.

1 Q And so the collateral right there, that was what we were
2 talking about, Stan's units, 17.02 units of Class A, were -- was
3 the collateral for the loan so that you could take it back if Stan
4 could not make the payments, right?

5 I'm sorry, I'm sorry. Incline TSS could take it back,
6 reclaim it, if Stan did not make the payments?

7 A Yes, sir, that's what I was going to say, Incline TSS.

8 Q Yes. I apologize.

9 And so Stan ended up not making the payments, right, all
10 of them?

11 A He did make some of the payments. I don't know how much
12 detail you want, but he did end up making a few of the payments.

13 Q How much did he pay -- Stan pay Incline TSS for this
14 transaction?

15 A For example, that first payment due on January 1st,
16 2016, the amounts were structured that they would tie with lot
17 sales that he would be doing at Montreux.

18 But, for example, that first payment, January 1st, 2016,
19 Wendy's signature and Lexi's signature weren't even obtained until
20 after this. And so we actually did an amended note to give Stan
21 more flexibility.

22 And I believe between 2014 and 20- -- beginning of 2017,
23 Stan had paid in 235,000, what I recall.

24 Q Between -- what were the dates again? I'm sorry.

25 A Do you remember at the beginning of the document where

1 it said that there was a deposit of approximately 85,000?

2 Whenever those -- that 85,000 was received, there was an
3 additional amount. The combination of the two equaled \$235,000
4 that he had paid up and to and prior to that January 1 of 2017.

5 Q And did he pay any more on top of that document that you
6 recall?

7 A What I recall is that 235-, but I could be off a bit.
8 But that's what I recall.

9 Q Do you recall Stan ever paying an amount approaching
10 \$300,000 for his buy-in, the 85,000 plus the 235-?

11 A No, the 85,000 was part of the 235-, I believe.

12 Q Okay. And you don't remember him making any other
13 payments above, over and above the 235,000?

14 A That's -- just sitting here, that's my recollection
15 right now.

16 Q All right. And then the payments ended up stopping; is
17 that right?

18 A Yes, there was a point in time where he could not make
19 his payment.

20 Q And were the units -- the 17.02 percent of units, were
21 those actually issued to Stan?

22 A I'm not sure, technically. But I know that what the
23 attorneys were working on the transaction had indicated was there
24 was just, basically, a piece of paper showing his ownership in the
25 17.02 percent and that issuance of that stock wasn't supposed to

1 be given to Stan until it was paid in full.

2 Q Okay. So then there wasn't any need to have collateral,
3 was there?

4 A I think that the stock certificates were the collateral.
5 There was no -- there was no additional collateral beyond this
6 one piece of paper that, basically, says Stan's family trust owns
7 17.02 percent.

8 Q But the possession of those certificates were not
9 delivered?

10 A That was -- that was what we were -- I was told by the
11 counsel, you don't deliver that certificate until the loan is paid
12 in full.

13 Q All right. And so did you ever pay Stan his money back
14 after he could not continue to make the payments?

15 A We're still working on that. It was -- the attorney's
16 analysis of these documents was that the funds were supposed to be
17 forfeited.

18 And we did -- we talked to Stan and asked him, when he
19 couldn't make his payment, Stan, could you come up with an
20 analysis for us of what kind of an option payment that you could
21 make, and what kind of payment you could make this year.

22 And we went down that road. And we're trying to give
23 him opportunities to figure out a payment schedule that would
24 work.

25 And as we went down that road for a period of time, it

1 became evident that he was not going to be able to make a payment
2 at that time, and -- I recall a discussion with Stan and I on the
3 phone about him paying smaller amounts, that he should try to
4 really work towards paying bigger amounts to get that note reduced
5 so it wasn't costing as much in interest.

6 And there was a point in time where that company
7 attorney had made the recommendation that we need to put that loan
8 in default and then work with Stan after, after the default, was
9 what I recall.

10 Q Okay. And so the answer to my question is, no, you did
11 not return Stan's money to him?

12 A Sorry for a lengthy answer, but that is the case. We
13 have not returned to him, but that is still something we would
14 like to work out with Stan.

15 Q Uh-huh.

16 So you got 100 percent -- you and your trust got
17 100 percent interest in Incline TSS for \$146 and 74 --
18 \$146,744.68.

19 And then Stan paid in 235,000, according to your memory,
20 and got zero; is that correct?

21 A I think your analysis, I only paid the 146- as we talked
22 about yesterday, was -- I had a lot of other obligations beyond
23 the 146-, assuming the debt.

24 We could go into that. I could -- for quite a while. I
25 won't guess, we'll go into that right now.

1 And what happened with Stan was, Stan was given a gift
2 by my father of 50 percent of Toiyabe, which is the Montreux lots,
3 which has a significant value of the fact, in my estimations, of
4 \$5 million.

5 Plus, Stan received that gift, and Stan was, basically,
6 taking the three gift assets that he got and was going to sell
7 lots to buy in.

8 So it was, basically, Dad giving Stan that value so Stan
9 could sell those lots and acquire back into that property.

10 And, yes, that was what Dad, Stan, myself, Pierre, Kevin
11 and all discussed would be the game plan back in 2012.

12 Q Yeah. And you have told us that story now a couple of
13 three times. That wasn't my question.

14 My question was, that you and your trusts paid
15 \$146,744.68 to get 100 percent of the interest in Incline TSS;
16 Stan paid \$235,000 and got zero. Is that correct?

17 A No.

18 Q Okay. How is that not correct?

19 A Because when the \$146,000 was paid, then there was the
20 assumption of the \$7.1 million note and debt that had to be paid,
21 additional obligations of interest of \$159,000 annually.

22 There was a significant additional exposure on top of
23 the \$146,000, but I don't -- I didn't get the interest unless that
24 note of \$7.2 million has to be paid in full.

25 Q No, sir, you got the interest because there was no

1 security. It was unsecured.

2 So you got 100 percent interest in the Lake Tahoe --
3 "you" being Incline TSS -- got 100 percent interest in Lake Tahoe
4 and there was no security. So you got the interest. You
5 understand that?

6 A Incline TSS got the interest.

7 Q Right. Incline TSS got the interest.

8 And all of those other things that you mentioned, the
9 note ended up being paid with someone else's money, the SSJ Issue
10 Trust, and other income that came in paid the other payments.

11 And what I'm talking about is money that came from you,
12 Todd Jaksick or your trust, was \$146,744.68. That's correct,
13 isn't it?

14 A From my trust, \$146,000, plus the assumption of the
15 debt, which is very typical to any transaction. You put up an
16 amount of money, you get debt and you get financed. Either the
17 lender can carry a loan or you get the loan from the bank.

18 Ideally, Dad would have asked us to or asked me to
19 exercise the option earlier in the year and would have given us
20 more time to get a full-blown loan on.

21 But, yes, there is ways that you can get various
22 different arrangements of debt.

23 Q And all of the assumptions of debt and obligations ended
24 up being paid by someone else or from some other source besides
25 you or your trust, correct?

1 A The issue trust, and for that, they got a 54 percent
2 interest. I sold 54 percent, I didn't get any of the funds, that
3 I recall, and those funds went to pay off the debt.

4 Q The family trust paid some -- some income from rentals.
5 Your dad owed \$22,000 a month that was paid. Other sources paid
6 all those other obligations you mentioned, right?

7 A Which is typical in the entity. Once you get into the
8 entity, you figure out ways within the entity to generate income
9 to pay the various different expenses. That's how it works.

10 Q Is that a "yes"?

11 A I don't understand.

12 Q Other sources of income, other sources of money paid all
13 those other obligations, not Todd or his trust, correct?

14 A Other source of income from the LLC, that is correct.

15 Q All right. Let me --

16 THE COURT: Hold on.

17 Before you ask the next question, ladies and gentlemen,
18 during this mid morning recess, please do not discuss this case
19 amongst yourselves. Please do not form or express any opinion
20 about this matter until it has been submitted to you.

21 We will stand for our jury. 15 minutes, ladies and
22 gentlemen.

23 (The jury left the courtroom.)

24 (A recess was taken.)

25 MR. ROBISON: Your Honor, may we address the Court?

1 THE COURT: Yes.

2 MR. ROBISON: Counsel and I looked at the note from the
3 juror, and we noticed that it said under her thank you, juror
4 question number 2. Is there a 1?

5 THE COURT: I have told you about all the questions I
6 have. She might be identifying herself as Juror Number 2.

7 MR. CONNOT: That's what we're trying to figure out.

8 THE COURT: Oh. Question number one was -- you already
9 know about it. It was during jury selection. The note came in,
10 hey, judge, and then there was a series of illiterate -- is
11 that -- I'm sorry, misspelled words, and we excused her.

12 MR. ROBISON: Got it. Thank you, Judge.

13 MR. LATTIN: Is that part of the record as well?

14 THE COURT: Yes.

15 MR. LATTIN: Okay. Thank you.

16 THE COURT: So, Counsel, when you move the admission of
17 exhibits, would you just move X, which is stipulated, so we can
18 check it off? Thank you.

19 (The jury entered the courtroom.)

20 THE COURT: Counsel, you may continue your examination.
21 We have a hard stop at 11: 53.

22 MR. SPENCER: All right. I want to offer Exhibit 23.37,
23 which is stipulated, Your Honor.

24 THE COURT: Thank you. It is admitted, Ms. Clerk.

25 THE CLERK: Thank you. Exhibit 23.37.

1 (Exhibit 23.37 was admitted into evidence.)

2 BY MR. SPENCER:

3 Q You see this is an email -- and we're going to start at
4 the bottom, Keith -- from Wendy, Monday, January 11th, 2016. And
5 you see there, it says "Todd, Stan has been hounding me to sign
6 the papers for his buy-in to Tahoe."

7 That would be the ACPA, which is Exhibit 23, wouldn't
8 it?

9 A Yes.

10 Q Okay.

11 A Well -- Exhibit 23. I'm not sure.

12 Q Take a look. Go ahead.

13 MR. ROBISON: What exhibit, please?

14 MR. SPENCER: Exhibit 23.37 is what is we've got up.

15 THE WITNESS: Yes.

16 BY MR. SPENCER:

17 Q Okay. "I read them carefully and was planning on
18 possibly putting some of my Bronco Billy's money into buying in as
19 well."

20 And so the first thing we gather from this email is that
21 by January 11th of 2016, Wendy had not signed the ACPA, had she?

22 A No.

23 Q And you mentioned that it was probably sometime around
24 January 15 or 16 of 2016?

25 A I was -- 15 to 20 range, I guess. I'm just guessing.

1 It was right in there.

2 Q Sometime after this January 11, 2016, email?

3 A Yes.

4 Q All right. And so that would mean that the agreement to
5 allow Stan's buy-in and the promissory note that supported Stan's
6 buy-in had already been entered in to by you and Stan prior to
7 Wendy signing the ACPA, correct?

8 A We signed back in -- on November the 13th.

9 Q Right.

10 A And then we scanned all of the documents that were
11 associated with this, and then we emailed them to Wendy and Lexi,
12 Stan, Kevin Riley, myself, so everybody had a copy of all of the
13 documents.

14 And then -- I am just trying to think this through. And
15 then, I remember we sent a hard copy, printed everything out, put
16 them in the mail around December 1st range and sent hard copies to
17 everybody.

18 And so I believe Stan and I had signed the documents,
19 but they weren't approved until Wendy and Lexi both signed.

20 Q Well, you and Stan had already entered into the
21 agreement, and Stan had paid consideration for it prior to the
22 ACPA, Exhibit 23, was signed?

23 A Stan had, basically, given some loans to the company,
24 and in the event that this was approved, then those loans were
25 going to be converted towards his buy-in. So this document had

1 not been approved, the ACPA, until Wendy and Lexi signed it.

2 Q Right. And you and Stan had already entered into the
3 agreement and paid some \$80,000 towards consummating it, right?

4 A We didn't look at it that way. Stan loaned money early
5 on, two different loans of 42,500 each, I believe, at various
6 different times, and they were loans. And we considered them
7 loans.

8 And then once we completed Stan's buy-in, then and only
9 until then was my understanding, is that's when we converted them
10 to his buy-in. But this whole transaction of Stan's buy-in was
11 not complete or approved until Wendy and Lexi signed the ACPA.

12 Q Well, the deal was done, right? November 13th, 2015,
13 the deal was done?

14 A No, it was signed by Stan and I, but it was not signed
15 by all the parties. It was immediately signed by Stan and I and a
16 date put on it. All the documents were scanned and emailed to
17 Wendy.

18 She could have signed them that next day if she wanted
19 to, but it took a couple of months or so for her to actually sign
20 them. And she saw in that last email, she took time to review
21 them and approve them.

22 Q Okay. I'm not talking about the ACPA, Exhibit 23. I'm
23 talking about Exhibit 64, which is the contract, and Exhibit 61,
24 which is the promissory note, the contract acknowledging that Stan
25 had already paid \$85,000, and you acknowledged that was -- that

1 was acknowledged as received, as of -- at least by you and Stan,
2 as of November 13th, 2015, in the ACPA.

3 The deal was done, wasn't it?

4 A No.

5 Q Okay. How could it not have been done?

6 A Because --

7 Q With all of the money, the money had been exchanged, the
8 contract had been signed, the promissory note had been signed, you
9 and Stan had signed the ACPA. Between -- as between you and Stan,
10 the deal was done, wasn't it?

11 A No, it was not complete until Wendy approved the
12 purchase through the ACPA.

13 And if you wouldn't mind, I wouldn't mind -- I believe,
14 what I recall was one of the signature lines, I think that I had,
15 as well as part of the issue trust or something, I didn't sign
16 until we got Wendy's approval as well.

17 Q Well, how does anybody know that?

18 A I would have to look at that.

19 Q How does anybody know that? I mean, did you just make
20 that up, or what's documented?

21 MR. ROBISON: Objection, Your Honor. That's
22 argumentative and unfair.

23 THE COURT: Well --

24 MR. SPENCER: I'll rephrase, Your Honor.

25 THE COURT: Yeah, I'm going to overrule, but invite you

1 to rephrase.

2 BY MR. SPENCER:

3 Q There's nothing that shows that you did that after the
4 fact. There's nothing that you signed some document after the
5 ACPA was signed by Wendy and Lexi, is there?

6 A Just off the top of my head, I believe that there is,
7 because I believe -- this is just a recollection I'm having at
8 this moment -- was when I scanned all of the documents, I hadn't
9 signed it yet on behalf of the issue trust.

10 Q Okay. Well, that was sent by email, right?

11 A Yeah.

12 Q With attachments?

13 A Correct.

14 Q That you haven't produced to us, right?

15 A No, we have.

16 Q You produced the email or the email and the attachments?

17 A I've given all -- every bit of correspondence to our
18 counsel, and I'm assuming it's all been produced.

19 Q Well, if that was produced, we missed it, the
20 attachments at least, showing that you waited until sometime later
21 to sign the ACPA until Wendy and Lexi signed it.

22 Is that what you are talking about?

23 A Oh, Wendy had all -- Wendy had the email with all the
24 attachments. Stan had the email with all the attachments, so did
25 Kevin Riley, so did myself. But regardless, we could not move

1 forward with that transaction until Wendy and Alexi approved it,
2 and we did not.

3 Q Well -- but you already had -- are you talking about the
4 signatures of you and Stan on November 13th of 2015, which is
5 Exhibit 23, that was signed some other -- sometime later after
6 Wendy and Lexi? Is that what you are saying?

7 A If you look on the last page where Wendy and Lexi
8 signed.

9 Q Exhibit 23, please.

10 Oh, I see. Okay.

11 A As you can see -- this is just kind of a recollection I
12 have, but when we sent the documents out on November the 13th,
13 that I hadn't signed on behalf of the issue trust.

14 So then Stan was working on getting Wendy's and Lexi's
15 signatures. And then once Wendy and Lexi had approved it, then
16 that allowed for me to sign it.

17 So what I recall was, is we sent it to everybody without
18 the signature. Once we had everybody's signatures, then I signed
19 it on behalf of the issue trust, is what I recall.

20 Q All right. So your testimony is that you did not sign
21 the ACPA until after Wendy and Lexi signed it. You would have had
22 their signatures, right?

23 A What I recall was, I signed it as a primary beneficiary,
24 but I didn't sign it as the trustee for the issue trust, is what I
25 recall.

1 Q Thanks for that clarification and that's what I meant.

2 So you did not sign -- your testimony is you did not
3 sign the ACPA as the trustee of the issue trust until after Wendy
4 and Lexi signed it?

5 A That's the best of my recollection at this point in
6 time.

7 MR. SPENCER: Please turn to page 3, Keith, of
8 Exhibit 23.

9 BY MR. SPENCER:

10 Q So how was it that your signature is on that page
11 without Wendy and Lexi's signature?

12 A Because Wendy and Lexi didn't sign that same signature
13 page. Wendy and Lexi had copies of the documents that we sent
14 them on email. And they also had copies of the documents that we
15 sent them in a package around December 1st range. And those
16 documents were signed by Wendy and Stan -- I'm sorry, by Wendy and
17 Lexi.

18 And, for example, Wendy took up -- she signed it, and
19 then she sent her signature to Stan. And Alexi signed it and sent
20 her signature to Stan. And then we just combined the signatures
21 from gathering all of the signatures together.

22 Q So you did not sign any of the signature pages that
23 contained Wendy or Lexi's signature?

24 A I don't remember that right now.

25 Q You went back and signed the one that had you and

1 Stan -- yours and Stan's signature as primary beneficiaries,
2 instead of those that Alexi and Wendy signed?

3 A Just the best of my recollection, I'm not sure why it
4 jumped out at me, but that's what I recall.

5 Q Okay. But you, as the manager of the entity,
6 Incline TSS, that owned Lake Tahoe and was entering into this deal
7 for Stan's buy-in, you and Stan had already entered into that deal
8 and you are saying that it was pending Wendy and Lexi's approval?

9 A That is correct.

10 Q Well, why was the money exchanged?

11 A Stan loaned some money early on to the entity.

12 Q I'm not asking about what was exchanged. I'm asking why
13 was money exchanged if it wasn't binding on November 13th of 2015,
14 when it was signed.

15 A Money -- I don't believe money was exchanged on this
16 particular day. It was -- Stan loaned some money to the company
17 prior to this and they were on the books -- were going to be on
18 the books, or however they handled it, as a loan.

19 And then if and only if this transaction was approved by
20 Wendy and Lexi, then those previously paid amounts would be
21 converted towards Stan's buy-in, is what I recall.

22 Q Well, Exhibit 64, "Recital," letter C, "November 15th,
23 2015, the Company acknowledges receipt of \$85,000 from Stan."

24 And you testified earlier that that was a true
25 statement?

1 A And those were the loans I was talking about, 42,5-
2 each.

3 Q Okay. And my question was why -- if you were waiting to
4 consummate the deal, why was money exchanged and contracts signed
5 and promissory notes signed if the deal wasn't binding prior to
6 Wendy and Lexi signing it?

7 A I guess to say it another way, in the event Wendy and
8 Lexi didn't sign it, Stan would have been refunded the \$85,000.

9 Q Well, how would they know that? How would Lexi and
10 Wendy know that?

11 A Because they knew that we were sending them the
12 documents to review and approve. They had heard all of our
13 discussions relating to Stan's buy-in prior to this, and they had
14 the documents for 60 days or so to review prior to signing them.

15 Q Why didn't you put that in the ACPA? Oh, because it was
16 done beforehand, right?

17 A I didn't understand that question.

18 Q Why didn't you put that information in the ACPA to
19 notify them that if you don't agree to this deal, we're going to
20 undo it? That's disclosure that should have been in the ACPA,
21 right?

22 A Because there was no need to undo it because it had
23 never been consummated until they approved it.

24 Q And you think that's what these documents that you sent,
25 that were all signed up and acknowledged receipt of money,

1 conveyed to them, is that what you believe?

2 A Everybody knew that we were not moving forward with
3 Stan's buy-in unless we had Wendy's and Lexi's approval.

4 Q Everybody knew how?

5 A Discussions, the documents, Wendy's email to the fact
6 that Stan is hounding me to sign these documents.

7 We just weren't moving forward with the transaction.
8 There was emails from Stan to Wendy and Lexi saying, hey, guys, we
9 sent you these documents a month and a half ago and can we move
10 forward with the transaction.

11 There was a lot of discussions back and forth right
12 there.

13 Q 23. Exhibit 23.37, again, please.

14 And down below in that larger paragraph, just to
15 summarize, I won't read the whole thing, but Wendy is inquiring
16 about a succession plan.

17 Who is going to take over if you were to pass away, and
18 she wanted to make sure that everybody was covered. It wouldn't
19 just go to your wife or down your family line. Do you see that?
20 Do you remember that?

21 A I remember something like that. I don't -- I would have
22 to read the whole thing.

23 Q Did you ever answer those questions for her?

24 MR. ROBISON: Your Honor, may he see the entire
25 document?

1 THE COURT: Yes.

2 MR. SPENCER: That's the entire document, but I'm happy
3 to give it to him.

4 THE COURT: Please do.

5 BY MR. SPENCER:

6 Q I think you have the binder with 23.37. Down there, it
7 says "In the event that you die, where does it say in there that
8 Stan will become the managing member, considering it was Dad's
9 house and you know he would never allow any of our spouses to be
10 involved in the event of his death.

11 "I'm assuming that Stan would replace you as the one in
12 charge. If not, he needs to be. Dad would agree 100 percent.
13 This is a very important subject.

14 "Who are the executors and trustees of your estate?
15 Would you want them in charge of this, in charge of Tahoe, or was
16 this just an oversight?"

17 Do you see all those questions she was asking?

18 My question is, did you ever answer those?

19 A I believe I did. I don't have a vivid recollection of
20 that, but the answer was pretty simple.

21 Q Which was?

22 A That the person making the decision after the fact would
23 be the new trustee or the successor trustee to the issue trust,
24 which had a controlling interest. And for my ownership
25 percentage, it would have been trustees that I had in my family

1 trust.

2 Q It would have been the successor of you as manager of
3 Incline TSS?

4 A The manager -- I believe that the documents talked about
5 that I was going to be the manager of Incline TSS. I believe that
6 was in one of the documents you showed earlier.

7 But it was my understanding that -- I don't know exactly
8 how that would have worked on Incline TSS being the next manager.
9 But if, obviously, something happened to me, it wouldn't have been
10 me.

11 Q Well, yeah, of course not. I mean, if something
12 happened to you, she's concerned about who it's going to be?

13 A Well, it would basically be the -- on the worst case to
14 look at, it would be the members of the company; the members of
15 the company, which would have been Stan and his family trust,
16 representatives of my estate, I guess, if I would have passed
17 away, and then the controlling decision-maker would have been the
18 issue trust.

19 Q Well, not after Stan's buy-in, because his 17.02 units
20 watered down or diluted or reduced everybody's shares. You saw
21 that earlier?

22 A It did dilute everybody's interest, but for -- even when
23 the interest was diluted, the issue trust still had
24 decision-making authority on key events, even with a diluted
25 percentage.

1 For example, the issue trust being 54 percent, they get
2 diluted to 44 percent, they still have the sole right to be able
3 to decide when to sell the property.

4 So the issue trust still has major benefits in that
5 operating agreement, not only limited to the sale of the property,
6 but as well as the issue trust was not obligated to guarantee any
7 of the debt.

8 Q Where would the issue trust have the right to make the
9 decision whether to sell the property? Where is that document?

10 A In the operating agreement.

11 Q Okay. Of Incline TSS?

12 A Yes.

13 MR. SPENCER: All right. Exhibit 444. Offer
14 Exhibit 444, Your Honor.

15 MR. ROBISON: No objections, Your Honor.

16 THE COURT: 444 is admitted.

17 THE CLERK: Thank you, Your Honor.

18 (Exhibit 444 admitted into evidence.)

19 BY MR. SPENCER:

20 Q This is an email sent from Wendy to Todd and Stan,
21 January 12th of 2016. And she's stressing that she told the lady
22 that she had money and would have it to her by 1:00 today.
23 "Please don't make me a liar to them. Please deposit the money
24 and I will give you a receipt showing it went to Gorman by 1:39
25 today."

1 Gorman is Bishop Gorman High School down in Las Vegas;
2 is that right?

3 A Correct.

4 Q And that's where Luke was going to school?

5 A Yes.

6 Q And this was the day after the email we just saw, at
7 Exhibit 23.37, January 11th. The next day, she's sending this
8 inquiry because she's promised to pay Luke's tuition and needs the
9 money to do it.

10 And she says "If I don't, then" -- but if then -- I
11 think it's send this email -- "if I don't, then this email is to
12 say that I will not get a payroll anymore. And then I will also
13 send the paperwork on the Tahoe house as soon as the money is
14 deposited. Todd doesn't have to change anything that I suggested
15 to benefit Stan."

16 And so did you make her signing the ACPA a condition to
17 paying Luke's tuition down in Las Vegas?

18 A No.

19 Q Okay. And that's the same time frame, that's the
20 Exhibit 23, Stan's buy-in, right?

21 A Yeah, looks like that's talking about Stan's money -- or
22 I'm sorry, Stan's buy-in for Tahoe, that once the money is
23 deposited -- and then I think what she's saying is Todd doesn't
24 have to change anything that she suggested in that email, which
25 was the questions you were just asking me about, who is your

1 successor trustees and is Stan going to be in charge and all that.

2 Q Right.

3 A And I'm just having a recollection. I don't know if
4 this is the first time that we were paying the Gorman tuition or
5 the second time we were paying the Gorman tuition, because one
6 time, Stan and I made the arrangements to send it down to Gorman
7 and get into a special account so that Gorman could draw out of
8 it, but Wendy took the money and used it for other purposes.

9 And so we were -- this could have been the second time
10 or the first time. I'm not sure.

11 Q Well, why wasn't -- the trust provides for the health,
12 education, maintenance and support for Luke, doesn't it, "the
13 trust" being the family trust?

14 A Our understanding was, is that the health, support and
15 maintenance didn't kick in until all the debts were paid.

16 Q Okay. So you were refusing to pay Luke's tuition
17 because all the debts had not been paid yet?

18 A Absolutely not the case, sir. We made the payments and
19 we were proud to make the payments so that Luke could go to
20 Gorman, and he went to Gorman. And there wasn't any issues that I
21 recall.

22 Q So why is Wendy having to beg to get the payment made or
23 negotiate with signing this ACPA to get the payment made?

24 A Like I said, there was -- I don't know if this is the
25 first time or the second time, but Stan and I made the

1 arrangements to get Luke's tuition put into account for Luke's
2 school, for Gorman.

3 Gorman was supposed to take the funds out of there to
4 pay Luke's tuition. However, Wendy took the funds out and used
5 them for other purposes and then demanded us to pay it a second
6 time, and we did.

7 Q So why did you say that same answer again when I asked
8 you why?

9 A Because you were saying that we refused to pay Luke's
10 tuition.

11 Q I asked why is Wendy having to beg for you to pay the
12 tuition or negotiate signing the ACPA to get the tuition paid.
13 Why?

14 A I don't know why Wendy put some of the wording the way
15 that she does, but Stan and I made sure that his Gorman -- Gorman
16 was paid.

17 Q After the fact, which is Exhibit 444, right?

18 A I don't recall if it was once before this or once after
19 this.

20 Q And part of Stan's buy-in included him personally
21 guaranteeing the mortgage -- the new refinanced mortgage with
22 B of A, right?

23 A That was part of what was contemplated, yes.

24 MR. SPENCER: Your Honor, I offer Exhibit 67, which was
25 stipulated.

1 THE COURT: 67 is admitted, Ms. Clerk.

2 THE CLERK: Thank you.

3 (Exhibit 67 admitted into evidence.)

4 BY MR. SPENCER:

5 Q And this is an email dated February 28th of 2017. It's
6 not the date in the right-hand corner, it's the one down there,
7 yeah.

8 And from -- it's from you, Todd, to Todd and Stan. And
9 then you indicate "Hi Stan. I sent you an email with the Tahoe
10 house personal guaranty document attached to the email on
11 February 14th of 2017 at 12:43 p.m.

12 "I haven't received a response, signed guaranty or
13 payment yet, so I wanted to make sure you didn't miss the email.
14 The \$300,000 payment to Incline TSS was due yesterday along with
15 the accrued interest to date."

16 So one issue there is, the personal guarantee was a
17 condition to Stan's buy-in, that he personally guarantee that
18 mortgage, right?

19 A There was -- under the issues, Stan was going to
20 guarantee the Bank of America loan, the full amount of the debt.
21 And for doing that and taking that risk, Stan was going to get a
22 discount.

23 And so one of the things -- I don't know how much detail
24 you want me to go into, but --

25 Q I've just asked a simple question. Stan had to

1 personally guarantee the mortgage, right?

2 A That was for -- to get the 17.02 percent, that's
3 correct.

4 Q So that calculation that Kevin Riley made in the
5 14 percentage range in that first scenario went up to 17 percent
6 because Stan guaranteed the mortgage?

7 A Something along those lines. At first, that first email
8 thing you had with Kevin Riley with that spreadsheet seemed to be
9 an older version, but something similar along those lines.

10 Q And then you were, essentially, making a demand for
11 payment of the \$300,000 that was due yesterday, according to this
12 email, February 28th, 2017?

13 A Yes, we were notifying that a payment was due, that's
14 correct.

15 Q And --

16 MR. ROBISON: No objection.

17 MR. SPENCER: Offer Exhibit 454, Your Honor.

18 THE COURT: 454 is admitted.

19 (Exhibit 454 admitted into evidence.)

20 BY MR. SPENCER:

21 Q And this is the email that you reference in that
22 Exhibit 67, dated February 14th of 2017, at 12:43 p.m., where you
23 attached the personal guaranty for Stan's signature.

24 And then you say "Pursuant to the agreement in which you
25 are receiving a discounted purchase price for your Incline

1 ownership interest, you are required to sign this guaranty."

2 So you made it a requirement that he guarantee that,
3 correct?

4 A It was part of the original documents, that
5 documentation, yes.

6 Q And so he was going to have to guarantee \$2.4 million
7 owed by Incline to Bank of America, right?

8 A Correct.

9 Q And then the guaranty document, personal guaranty
10 document is behind that, the attachment we just showed, the first
11 page. We won't go through that.

12 And then just to show that -- Recital C on that first
13 page 1 of 10 of the guaranty, it will be the second page,
14 Exhibit 454. Paragraph C shows the original price was
15 1.875 million.

16 And then the discount, 375,000, was that based on the
17 guaranty?

18 A I believe that is accurate, yes.

19 Q So that's how we got down to the 1.5 million, which is
20 reflected in paragraph E, Recital E?

21 A Yes, that sounds accurate.

22 MR. SPENCER: All right. And did Stan or Wendy ever --
23 hold on, before I ask that, let me offer Exhibit 547, Your Honor,
24 which is stipulated.

25 THE COURT: 547 is admitted.

1 THE CLERK: Thank you.

2 (Exhibit 547 admitted into evidence.)

3 BY MR. SPENCER:

4 Q This is the -- you mentioned that the secured promissory
5 note Stan had was amended. And this is the amendment; is that
6 right?

7 A It looks like it.

8 Q Signed March 15th of 2016 by Stanley as trustee and you
9 as manager of Incline TSS?

10 A Yes.

11 Q And that's Stan as trustee of the Stanley S. Jaksick
12 2013 revocable trust, not as trustee of the Sam Jaksick family
13 trust, correct? Do you see that at the top?

14 A I do, yes. I was just going to say I see that up there.

15 Q And then offer exhibit -- and then hold on one second
16 before I leave that.

17 And so those were the changes in the payment schedule
18 that are listed there?

19 A Correct.

20 Q To try and continue the arrangement so that Stan could
21 buy in, even though he was having difficulty doing so?

22 A Yes, we were trying to accommodate his needs, and it was
23 important for that, yes.

24 Q Did he make any of those newly scheduled payments, that
25 you recall?

1 A My recollection, just looking at that right now, is he
2 made the first three, but not the fourth one.

3 Q All right. And that's on top of the 235,000 you
4 mentioned earlier?

5 A No.

6 Q That's part of it?

7 A Correct.

8 Q Yeah, so 85-, added to the 105-, is 190-. And then add
9 20-, that's 210-. And then add 25-, that's 235-. That's the
10 total that you remember him paying?

11 A That sounds -- that's my recollection, yes.

12 MR. SPENCER: Your Honor, I offer Exhibit 258, which is
13 stipulated.

14 THE COURT: 258 is admitted.

15 THE CLERK: Thank you.

16 (Exhibit 258 admitted into evidence.)

17 BY MR. SPENCER:

18 Q And this is October 3rd of 2013. You mentioned that you
19 couldn't remember the rate on that B of A mortgage that was
20 pending at the time of your dad's death.

21 MR. SPENCER: So, if you would, Keith, flip to the
22 second to the last page, TJ 1263.

23 BY MR. SPENCER:

24 Q About middle of the page, it says "Interest" -- in the
25 sub paragraph, it says A, "Interest." And the interest will be

1 charged on unpaid principal. They'll pay an interest at a yearly
2 rate of 4.05 percent.

3 Do you see that?

4 A I do, yes.

5 Q And then below that, the interest rate. And there's a
6 Subsection B, "Interest Rate and Payment Changes," and making it
7 an adjustable interest rate that would never be higher than
8 7.05 percent, but never lower than 2.75 percent.

9 Do you see that?

10 A I do.

11 Q And that interest rate had adjusted by the time the
12 Bank of America mortgage was paid off, hadn't it?

13 A I don't recall. I remember there was a point right in
14 there where it was going to convert from interest-only to
15 principal and interest required payments. I just don't recall
16 that right now.

17 Q Okay. But nevertheless, the interest rate that -- in
18 the option agreement that you say is the one that applies, your
19 interest rate was below the lowest that would ever be charged on
20 that particular mortgage, wasn't it?

21 A Yes.

22 Q 2.75, and yours was 2.25?

23 A Correct.

24 Q And so the option agreement that we have talked about,
25 the purchase price was 7.25 million. Do you recall that?

1 A I do.

2 MR. SPENCER: And then, Keith, Exhibit 96, which is
3 admitted already.

4 BY MR. SPENCER:

5 Q That's the Incline -- I'm sorry, the SSJ, LLC, articles
6 of organization, JSK 806, the bottom Bates number.

7 And then there's a value there at the bottom of that
8 page. You see there, the Tahoe property at that time was
9 estimated at \$10 million. Do you see that?

10 A I do.

11 Q And that's November 15th of 2011.

12 MR. SPENCER: So go to the first page again, Keith.

13 BY MR. SPENCER:

14 Q Right there, do you see in the upper right-hand corner?

15 A I do, yes.

16 Q And that's just a year after the option agreement was
17 signed, November 1st of 2010, correct, a little bit over a year?

18 A That sounds accurate, yes.

19 Q All right. And so a little bit over a year, the value
20 of Lake Tahoe had gone up 2.75 million, at least as far as these
21 documents and estimates are?

22 A Yeah, I'm just going to say I don't know that to be the
23 case. It looks like a document that Pierre filled out, so that
24 would be a good question for Pierre.

25 Q But you don't deny the declaration that was submitted to

1 the Secretary of State, do you, about the value of the property?

2 A Well, it certainly wasn't on the low side.

3 Q You don't agree that that value of 10 million, a year
4 later, a little over a year later, that was declared to be the
5 value of the property was reasonable?

6 A It could be reasonable. Like I mentioned to you in --
7 earlier, I guess it would have been, oh, maybe three, four months
8 after this, Dad had a discussion with Bill Dietz, the realtor up
9 at Tahoe, on a listing agreement.

10 And it was a recommended purchase or recommended sales
11 price to be at 9 million. So that's pretty -- pretty close.

12 MR. SPENCER: Offer Exhibit 23.12, Your Honor, which is
13 stipulated.

14 THE COURT: It is admitted, Ms. Clerk, 23.12.

15 THE CLERK: Thank you, Your Honor.

16 (Exhibit 23.12 admitted into evidence.)

17 BY MR. SPENCER:

18 Q The first page, TJ 1081, the second paragraph, which
19 will be Number 1. First, let's look up above. It's an email from
20 Bill Dietz, which you just mentioned, March 29th of 2012.

21 And who was he again?

22 A He is a specialty realtor up in the Tahoe area.

23 Q All right. And so he's writing an email to Stan. And
24 in that paragraph marked 1, first sentence, "I made clear my
25 opinion of value and the high-end range of asking price at

1 11.9 million."

2 Do you see that?

3 A I do.

4 Q You don't dispute that, do you, as far as what his
5 opinion was on the high end?

6 A I do.

7 Q You do? Why?

8 A Because just a few days before this are handwritten
9 notes of my Dad's recapping the discussion between him and
10 Mr. Dietz. And it was Bill Dietz' recommendation to list the
11 property at 9 million.

12 So maybe that high-end range could be 11.9. I'm not --
13 I guess I should say I'm not sure. I just know they had that
14 discussion about a 9 million fact.

15 MR. SPENCER: That was March 29th of 2012.

16 Your Honor, I offer 23.13, which is stipulated.

17 THE COURT: It is admitted, Ms. Clerk.

18 THE CLERK: Thank you.

19 (Exhibit 23.13 admitted into evidence.)

20 BY MR. SPENCER:

21 Q This is the exclusive authorization to sell, which is a
22 listing agreement, with Mr. Dietz. He said -- he mentioned
23 9 million, but if you look at paragraph 2, the listing price was
24 12.75 million -- I'm sorry, 7. -- 12.735 million.

25 A Him and Dad had a discussion at the 9 million range.

1 Him and -- Bill Dietz, in his previous email, mentioned 11.9. And
2 this was Dad's decision here to list it at 12.735.

3 MR. SPENCER: Uh-huh. And then -- Your Honor, I offer
4 Exhibit -- I offer Exhibit 545.

5 THE COURT: Stipulated in?

6 MR. ROBISON: Yes.

7 THE COURT: Okay. Thank you.

8 545 is admitted, Ms. Clerk.

9 THE CLERK: Thank you.

10 (Exhibit 545 admitted into evidence.)

11 BY MR. SPENCER:

12 Q And do you see "William G. Kimmel" at the top? He's a
13 real estate appraiser and consultant.

14 A Yes. Could you blow that up a little bit?

15 Q Sure.

16 A Okay. Thank you.

17 Q Let's go up a little bit.

18 So this was a letter dated November 17th of 2016,
19 attaching his appraisal report.

20 And I want to make clear that the last sentence of this
21 first paragraph, he corrects the date, so we want to make sure to
22 note that. The date -- it says the date of value, though, was
23 incorrect, and that it should have been August 22nd, 2013, rather
24 than the indicated date of 2012.

25 MR. SPENCER: And so would you flip over two pages,

1 Keith.

2 BY MR. SPENCER:

3 Q The TJ 1202. And this is the letter, essentially,
4 summarizing his appraisal amount. The -- February 3rd of 2014,
5 the last sentence of the letter -- well, first, he says the date
6 of value is August 22nd, 2012. He corrected that to 2013, a
7 retrospective date.

8 And then he says, as a result of his investigation and
9 analysis, "It's my opinion that the market value of the subject
10 property as of August 22nd," that would be 2013, "was
11 \$11,500,000."

12 Do you see that?

13 A I do.

14 Q And so in just three years, the value of Lake Tahoe had
15 gone up 58 percent from what it was when the option was created,
16 correct?

17 A I'm not sure about your math, but it sounds about right.

18 Q That's fair.

19 And so 7.25 million up to 11.5 million three years
20 later, and your Dad had listed it higher at 7.375 million for
21 sale. So it had increased dramatically in just three years' time,
22 right?

23 A Yes, the market was coming back.

24 Q Okay. All right. And so we're talking about the Tahoe
25 transaction. I want to shift gears here now and talk about your

1 indemnity agreement.

2 A Okay.

3 Q You know what I'm talking about?

4 A I do.

5 Q All right. And so the indemnification agreement is a
6 significant document in this case, correct?

7 A I believe so, yes.

8 Q And that was an idea that Pierre Hascheff had spoken
9 with your dad about in relation to the transactions that had
10 occurred, correct?

11 A I think it was the opposite. Dad came to Pierre to
12 discuss how to protect Stan and I.

13 Q How do you know that?

14 A Because that's what Pierre's testimony was.

15 Q You don't know that part yourself, do you?

16 A I know he was trying to figure out a way to protect Stan
17 and I.

18 Q Uh-huh. But you don't know whether your dad contacted
19 Pierre or whether Pierre did, yourself, do you?

20 A Yes, I know my dad was contacting Pierre.

21 Q Well, you just said that you learned that through
22 Pierre's testimony, as opposed to you knowing that through your
23 personal knowledge, right?

24 A I recall it better from Pierre's testimony.

25 Q Okay. And so the idea was that these personal

1 guarantees that your dad has given, that you had given and Stan
2 had given, in some cases, that you and Stan and your property
3 would need to be protected in the event that someone came
4 knocking, wanting payment, right?

5 A Under certain circumstances, I believe that was Dad's
6 goal. He was very concerned of the debts that we had gotten into
7 with the economy the way that it was going and the crash. And he
8 was concerned that we could all get wiped out, yes.

9 Q And what's your understanding of what an indemnity
10 agreement is?

11 A Basically, what Dad was trying to do was to indemnify
12 Stan and I so in the event a bank loan got called, that what he
13 was trying to do was have some of the assets of his trust be
14 available to Stan and I to protect us in the event of situations
15 like that and/or to keep some of the ranch payments current in the
16 event we were unable to do so.

17 Q Okay. You answered the question what your dad was
18 trying to do, which is not what I asked you.

19 I asked you what you understood an indemnification
20 agreement to be, you yourself.

21 A I think that's -- I apologize if I didn't state it
22 properly, but that's what I was assuming right there when I
23 answered that question. That's what I thought the indemnification
24 did.

25 Q So your understanding is what your dad told you about an

1 indemnification?

2 A Dad and Pierre, as well as reading the document.

3 Q And your understanding would be that property of the
4 family trust would be available in the event that any of your
5 assets were exposed to these personal guarantees?

6 A That was a possible outcome.

7 Q And to keep the ranch payments current?

8 A That also would have been a possible outcome.

9 Q Anything else?

10 A In the event that there was -- the way that Dad had
11 explained it to me back then was, in the event -- he always would
12 use the Jackrabbit example.

13 Jackrabbit Properties was a ranch that owns the Smoke
14 Creek Ranch. When we initially purchased it, it was \$7.8 million
15 loan. Ranch values weren't what they were at one point in time.

16 And Dad used the example, in the event that MetLife
17 foreclosed on the property, that MetLife -- the way that the
18 documents were structured, the bank didn't necessarily have to go
19 after the collateral. They could go after all of us, in terms of
20 our personal guarantees.

21 And so Dad had us put on, what we called the Exhibit A
22 on the indemnification agreement, some of our personal loans as
23 well, because Dad said that in the event that the bank comes after
24 us and they don't go after the land, they could, basically, wipe
25 out every -- everything that you own, your house, your vehicles,

1 your whatever, your bank accounts. They can take everything.

2 That was kind of the explanation that Dad had given me
3 under that scenario.

4 So he put more things on that Exhibit A than just ranch
5 loans.

6 Q Some of your personal loans as well, you said?

7 A Yes, that is correct.

8 Q And that was, in the event that the banks come after you
9 on ranch loans, we're going to pay off your personal loans too,
10 correct?

11 A In that scenario that I just gave you, where, if MetLife
12 foreclosed, they do not have to go after the property, they can
13 go -- they can go directly after Dad's and my personal assets,
14 Stan's personal assets, and force you to sell your house,
15 vehicles, wipe out your bank accounts.

16 That was the example that he always used to me.

17 Q But you know that's not -- that's not the case when you
18 have a loan against, say, your house, that's already filed. That
19 would take precedence over that, wouldn't it?

20 A My understanding is that if there's equity in the home,
21 that they can force you to sell that house to get the equity out
22 of that home, was my understanding.

23 Q And so that was a document that pretty much just gave
24 you a blank check, didn't it?

25 A No.

1 Q Well, it's paid off, it's there and available. If
2 somebody comes knocking to pay -- for you to pay personal
3 guarantees, it's there to keep ranch payments current, it's there
4 to pay off your own personal loans. That's what you said, right?

5 A That document was originally put into place in 2007,
6 effective 1/1 of 2008. We did not use the document for anything
7 prior to Dad passing away.

8 After Dad passed away, that is what the document states
9 in the document that becomes particularly important to me after
10 Dad passes away.

11 And that document has been used, since Dad passed away,
12 for some ranch loans, but it hasn't paid any of the personal
13 assets that are on the Exhibit A. And it will not pay any of the
14 personal assets on Exhibit A.

15 Q And you haven't the -- have you provided -- you have not
16 produced any documents that evidence that, have you?

17 A That evidences what?

18 Q That family trust money or commonly owned money was
19 used -- was not used to pay your debts down, or, stated another
20 way, that only you paid them, instead of the family trust.

21 A I'm not sure.

22 Q Do you have any checks that show -- from your account
23 that show you paid these items on Exhibit A off?

24 A Typically, what happens is, the entity pays it. What we
25 would do with -- give me a specific, if you don't mind, because

1 I'm not sure.

2 Q We're going to get to Exhibit A in a minute, so I'll
3 skip over that for the moment, for the time being.

4 But we have a few more minutes.

5 And so let's pull up Exhibit A or offer Exhibit A, Your
6 Honor. It hasn't been admitted yet.

7 MR. ROBISON: Exhibit A?

8 MR. SPENCER: 11, I'm sorry, excuse me.

9 THE COURT: Excuse me. I'm sorry to speak over you.

10 MR. ROBISON: No objection.

11 THE COURT: 11 is admitted.

12 THE CLERK: Thank you.

13 (Exhibit 11 admitted into evidence.)

14 BY MR. SPENCER:

15 Q So this is the indemnification agreement that you
16 operate under; is that correct? And you may want to get the whole
17 document, I think would be helpful.

18 A Okay.

19 Q I'll get that for you, if I may have a second. 11.

20 And while you're looking -- if you'll flip, Keith, to
21 the signature page in back, which is TJ 865.

22 A Are we on Exhibit 11?

23 Q Yes.

24 A Okay.

25 Q So just seeing the signature page, you can see the

1 writing underneath Sam's signature on the right is typed,
2 typewritten. Do you see that?

3 A Okay, yes.

4 Q "Samuel S. Jaksick Jr., trustee of the Samuel S. Jaksick
5 Jr. Family trust, dated June 26, 1996." Do you see that?

6 A I do.

7 Q And then as you are flipping through that, this is
8 the -- Exhibit 11 is the document -- the indemnification agreement
9 and indemnification and contribution agreement that you contend is
10 the operative document; is that right?

11 A Yes.

12 Q And you had mentioned that the indemnification agreement
13 was signed in 2007, to be effective January 1 of 2008.

14 MR. SPENCER: Keith, if you go to the first paragraph at
15 the top of the document.

16 BY MR. SPENCER:

17 Q Agreement is made and entered into this first day of
18 January of 2008?

19 A That's what I recall the effective date being, yes.

20 Q And you said it was signed in 2007 to be effective in
21 January of '08?

22 A That's what I recall.

23 Q Do you recall why that was?

24 A I don't recall at this time, no.

25 MR. SPENCER: Your Honor, I offer Exhibit 114, which is

1 stipulated.

2 THE COURT: 114 is admitted, Ms. Clerk.

3 THE CLERK: Thank you.

4 (Exhibit 114 admitted into evidence.)

5 BY MR. SPENCER:

6 Q This is a letter dated May 11, 2007, from Mr. Hascheff
7 to -- email to Jessica Clayton, copy to Stan, Todd and Sam
8 Jaksick.

9 The first line, it encloses a draft copy of the
10 Samuel S. Jaksick Family Trust agreement, indemnification
11 agreement wherein Sam will indemnify Stanley.

12 So that's a draft, right?

13 A Okay. Yeah, looks like it.

14 Q And then a couple of lines down, "Please note, in
15 addition to the obligations mentioned in your email, I included
16 LSC."

17 What was LSC, do you know?

18 A It was an LLC that was associated with the
19 Jackrabbit Properties.

20 Q Okay. And then the next paragraph, the first line, "I
21 enclose the executed Todd B. Jaksick indemnification agreement
22 where Sam agreed to indemnify Todd for various family obligations.

23 "Please note, I made some changes to the -- Mr. Todd
24 Jaksick's agreement consistent with Stan Jaksick's changes and you
25 should throw away of the prior drafts."

1 And so in this particular enclosure, May of 11th, of
2 2007, there was a signed version of the indemnity agreement that
3 was in favor of you?

4 A There was a signed one. Dad and I did sign one prior to
5 Stan's.

6 Q Uh-huh. And then down below in the third paragraph,
7 "When Sam" -- "When Sam executed the Todd Jaksick indemnification
8 agreement by executing this document, he has agreed to accept
9 substantial liability by indemnifying Todd Jaksick and
10 Stan Jaksick for these obligations.

11 "As always, he has the right to have independent counsel
12 review the indemnification agreement to make sure his interests
13 are protected."

14 And so this was emailed to Jessica Clayton, not your
15 dad. We talked about that, right?

16 A That's basically the same thing.

17 Q And she would be required to deliver to Sam whatever it
18 was that she was emailed on his behalf, correct?

19 A Yes.

20 Q And you know what the enclosure -- I presume the
21 enclosure was the indemnification agreement?

22 A I think. I don't remember the circumstances back then.

23 MR. SPENCER: And, Your Honor, I offer Exhibit 11-A,
24 which is stipulated.

25 THE COURT: 11-A is admitted.

1 MR. SPENCER: 11-A.

2 THE COURT: Right.

3 MR. SPENCER: Yeah, okay.

4 (Exhibit 11-A admitted into evidence.)

5 BY MR. SPENCER:

6 Q And this one is -- it says Sam S. Jaksick Family Trust
7 agreement, dated June 29th, 1996, and indemnification and
8 contribution agreement, which is what we had heard in that letter,
9 right?

10 And this one says, next to it up there -- Keith, scroll
11 down a little bit -- it says "old." Do you see that?

12 A Yeah, that's Pierre's handwriting.

13 Q All right. And this title is what would be the title of
14 the document that was in Exhibit 114. So is this the enclosure
15 that was enclosed with this Exhibit 114?

16 A I'm not sure.

17 Q Were there prior versions of the indemnification
18 agreement that were signed before May 11th of 2007, when
19 Pierre Hascheff sent his letter?

20 A I don't recall. I remember there being, you know,
21 several drafts, as there is with most documents, but I -- I know
22 that I had -- Dad and I had worked on an indemnification agreement
23 and signed one prior to Stan's, and then Stan's followed.

24 Q Well, if he signed an indemnification agreement in or
25 about or prior to May 11th, 2007, do you know why there wouldn't

1 be a date on it that was in or around that date?

2 A I don't remember Dad and Pierre's reason why they just
3 decided to make it effective 1/1 of 2008, but that's what they
4 did.

5 THE COURT: Ladies and gentlemen, during this noon
6 recess, please do not discuss this case amongst yourselves.
7 Please do not form or express any opinion about this matter until
8 it has been submitted to you.

9 We will stand for our jury, inviting you back into the
10 courtroom at 1:30.

11 (A recess was taken.)

12 THE COURT: If counsel will be seated, please.

13 The entire jury is present, and counsel may continue
14 your examination.

15 MR. SPENCER: Thank you, Your Honor.

16 Your Honor, we offer Exhibit 419, which is stipulated.

17 THE COURT: Did you say 14 or 114?

18 MR. SPENCER: I apologize. 419.

19 THE COURT: Oh, 419.

20 419 is admitted, Ms. Clerk.

21 THE CLERK: Thank you.

22 (Exhibit 419 admitted into evidence.)

23 BY MR. SPENCER:

24 Q Mr. Jaksick, we were talking about the indemnification
25 agreements, but I want to go back one moment to the Incline Stan

1 buy-in issue. I forgot to talk to you about this exhibit.

2 This was a memo or resolution of Incline TSS, LTD; is
3 that right? Do you see that at the top? See at the top?

4 A Yes, I see that.

5 Q And the executive committee has established an operating
6 budget of 2017. And then next, it says "It was anticipated that
7 no funds would be needed for 2017. However, Stan Jaksick did not
8 follow through with finalizing buy-in obligation and make his
9 \$300,000 note payment due February 27th, 2017."

10 And then the last sentence in the corner there, "Stan's
11 buy-in is in default."

12 Was that the time when you or the executive committee of
13 Incline TSS declared Stan's buy-in to be in default, or was it --

14 A I don't remember the exact date.

15 Q Well, at least as of this date, March 13th of 2017, the
16 company had decided that Stan's buy-in was in default, right?

17 A Yes, that payment was not made.

18 Q And then it next calls for a capital contribution.
19 "Because the money was not paid in from Stan's buy-in, calls for a
20 capital contribution," the second line, "of \$20,000 will be made
21 March 13th, 2017." And then down below, it breaks up, according
22 to percentages, which entity will pay what.

23 A Okay.

24 Q 54 percent, and then 23 and 23; is that correct?

25 A Yes.

1 Q And so if Stan completed his buy-in for 2017 as noted
2 above, no funds would have been needed in '17, correct?

3 A That's -- yes, that sounds accurate.

4 Q And that would have meant that your entities would not
5 have had to pay anything on the capital call, right?

6 A Correct.

7 Q And do you know how that capital call was funded? Do
8 you remember?

9 A What do you mean by that?

10 Q Well, did the family trust or the issue trust or your
11 trust, or who, pay for those capital calls, or do you know?

12 A It should be similar to what it says right there, the
13 issue trust, the 10/8, TBJ SC 4600 and Todd B. family trust 4600,
14 is what I recall.

15 Q All right. So then after that, March 13th, 2017, no
16 more effort was made to get Sam to pay his buy-in; is that
17 correct?

18 A No, we continued our discussions throughout.

19 Q Continuing your discussions with Stan. I may have said
20 "Sam," I apologize. I meant Stan.

21 A Yeah.

22 Q But at least as far as the deal that had been made
23 before, that was kind of over, but you were discussing ways of
24 continuing the effort with Stan?

25 A One of the options that we had laid out was reinstating

1 this. The previous transaction was one of the contemplations, as
2 well as waiting for Stan to give us some other payment options of
3 what he thought he could make for the year, is what I recall.

4 Q All right. So back to the indemnification agreement.
5 We saw the letter from Exhibit 114 from May 11th, 2007, that
6 referenced a draft of Stan's indemnification, an executed copy of
7 your indemnification, right?

8 A Okay.

9 Q And we were looking at -- well, let me ask you this.
10 Were you aware of multiple copies of the indemnification agreement
11 for you?

12 A Yes.

13 Q Okay. And how many did you think that there were?

14 A I recall at least two.

15 MR. SPENCER: All right. And so 11-A, we looked at that
16 before the lunch break.

17 I would like to offer Exhibit 12, Your Honor,
18 stipulated.

19 THE COURT: 12 is admitted, Ms. Clerk.

20 THE CLERK: Thank you.

21 (Exhibit 12 admitted into evidence.)

22 BY MR. SPENCER:

23 Q And you can see at the top, there's a title, The Family
24 Trust Agreement, dated June 29th, 1996, Indemnification Agreement.
25 And then you have to look closely in the first paragraph -- second

1 to the last line, Keith -- it's for Stanley Jaksick. Do you see
2 that?

3 A Yes.

4 Q Okay. And this is the -- this one mirrors or matches up
5 with the Exhibit 11-A that we saw earlier; is that correct?

6 A I'm not sure.

7 Q Well, this is the one that's referenced in the May 11th
8 letter by title -- if you want to pull up Exhibit 114, again,
9 Keith, first line.

10 Do you see the title of this document, Exhibit 12, was
11 "Samuel S. Jaksick Jr. Family Trust Agreement Indemnification
12 Agreement."

13 A Okay.

14 Q Then back to Exhibit 12, which is the same as -- almost
15 the same. It doesn't have the date, but it's very similar to the
16 title on that document.

17 A I see that.

18 Q And do you know of any other indemnification agreements
19 for Stan besides Exhibit 12?

20 A I don't recall any right now.

21 Q Okay. So this would be -- based upon that, this would
22 be the draft that was sent with the May 11th, 2007, letter. Is
23 that a fair assumption?

24 A I'm not sure.

25 Q Do you recall receiving the enclosure that was in the

1 May 11th, 2007, letter?

2 A I don't.

3 Q But, again, this indemnification -- second line,
4 Keith -- is dated 1st day of January, 2008, just like yours was?

5 A Okay.

6 Q All right. And do you know if Stan had any idea whether
7 this indemnification agreement in his favor existed?

8 A He did. I know he knew at one point in time.

9 Q And what -- go ahead.

10 A Because he obviously signed it.

11 Q Okay. And when do you think it was that Stan would have
12 first known about this indemnification?

13 A I would say somewhere around this time frame, when
14 Pierre maybe sent that letter.

15 Q 2007?

16 A That's my guess, yeah.

17 Q Okay. Look to the TJ 1695 of Exhibit 12.

18 MR. SPENCER: Keith, it's the signature page.

19 BY MR. SPENCER:

20 Q So that's what you were referring to when you say he
21 signed it?

22 A Yes.

23 Q He, Stan, signed it?

24 A Yes.

25 Q And you can see underneath Sam's signature on the

1 right-hand side, "Trustee of the Samuel S. Jaksick Family Trust
2 agreement, dated June 29th, 1996," is typed in, typewritten?

3 A Yeah, that's obviously an error in that.

4 Q Well, but the point -- the first point is, it's typed
5 in, as opposed to being handwritten, correct, underneath?

6 A I do see where it's typed in right there, yes.

7 Q Okay. And then you noted that the date, June 29th,
8 1996, is incorrect?

9 A It looks like it, yes.

10 Q Okay. And then back to Exhibit 11-A, please, top
11 paragraph. That one references June 29th, 1996, as well, doesn't
12 it?

13 A I think so. Yes, it does. I see that there.

14 Q And go to the signature page --

15 A It should have been 2006.

16 Q Yes.

17 MR. SPENCER: Let's go to the signature page, Keith,
18 which is TJ 1675.

19 BY MR. SPENCER:

20 Q And you can see that one is written underneath the
21 signature on the right-hand side. It's written in handwriting
22 underneath, isn't it?

23 A Yes.

24 Q And whose handwriting is that?

25 A Pierre's.

1 Q And so this is the version that we saw earlier that has
2 "old" at the top of it. And so that was one that would have been
3 back in the '07 time frame or before?

4 A I believe so, yes.

5 Q And then were you aware that there was a third version
6 of the indemnification agreement?

7 A I heard that when you were asking Pierre some questions.

8 Q All right.

9 A Is that okay to say?

10 MR. SPENCER: And, Your Honor, I offer -- it has not
11 been admitted yet. I offer Exhibit 11-B as stipulated.

12 THE COURT: 11-B is admitted, Ms. Clerk.

13 THE CLERK: Thank you.

14 (Exhibit 11-B admitted into evidence.)

15 THE WITNESS: Mr. Spencer, do you have that binder with
16 all of these?

17 MR. SPENCER: Let me get it for you.

18 May I approach, Your Honor?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 BY MR. SPENCER:

22 Q Okay. And so we saw Exhibit 11, we saw then
23 Exhibit 11-A, and now, this is Exhibit 11-B.

24 MR. SPENCER: If you go back to the first page, Keith,
25 just for a second.

1 BY MR. SPENCER:

2 Q You see Exhibit 11-B, there's an email form attached to
3 the front of it.

4 That email is dated June 2nd, 2010; subject matter,
5 "Indemnification and contribution agreement attached for your
6 file."

7 A Okay.

8 Q Do you see that?

9 A Yes.

10 Q Okay. So this is -- this is about three years after
11 that letter that we saw Exhibit 114, correct?

12 A Correct.

13 Q And Mr. Hascheff is forwarding that to Jessica Clayton,
14 according to the email --

15 A Okay.

16 Q -- attaching this indemnification agreement.

17 MR. SPENCER: Keith, would you go to the next page.

18 BY MR. SPENCER:

19 Q All right. And so this is an indemnification
20 agreement -- if you flip, Keith, to the last, or the signature
21 page, which is TJ 1702 -- there's that handwriting again, but the
22 date is not included there, right?

23 A I don't see it, no.

24 Q Okay. And you are aware that this particular
25 indemnification agreement is different than the indemnification

1 agreement which is 11-A, right?

2 A I believe you pointed that out previously.

3 Q Yes, there's paragraphs missing; for instance,
4 paragraph C in this document, 11-B -- Keith, which is on the first
5 page -- and so, to see this, kindly look at the B first, "Whereas,
6 the indemnitor acknowledges that as a matter of course," and then
7 the D paragraph, "Whereas, indemnitor wishes to indemnify
8 indemnitees." Okay. So remember those phrases.

9 And then there's a C paragraph, "The indemnitor
10 acknowledges that indemnitee" -- "the indemnitees may not have
11 sufficient cash flow and/or financial means to make those payments
12 or incur said liability," et cetera.

13 Do you see that?

14 A Yes, I do.

15 Q All right. Let's look at 11-A.

16 So now, we look at paragraph B, "The indemnitor
17 acknowledges that as a matter of course." That was that paragraph
18 that we saw before, do you remember, the Exhibit B, that phrase?

19 And then the paragraph C now, "The indemnitor wishes to
20 indemnify indemnitees with respect to any claims," et cetera.

21 So that paragraph C that we saw before, "indemnitee
22 acknowledges that indemnitees may not have sufficient cash flow,"
23 isn't there, is it?

24 A I don't see it where it was in the other one, but maybe
25 it's somewhere else in the document. I'm not --

1 Q Well, it's not. So that's something that's different.

2 So then on 11 -- we're on 11-A still, Keith -- go to
3 page 5, which is TJ 1674.

4 I just want you to note that there's a big paragraph
5 that's numbered paragraph 14. Do you see that?

6 A Yes.

7 Q So it's numbered 11, 12, 13, and then there's that big
8 14 paragraph, and then 15 is "Miscellaneous."

9 All right? So let's just remember that in our head.

10 MR. SPENCER: And then go back to 11-B, Keith, if you
11 would.

12 BY MR. SPENCER:

13 Q Page 5, again, which is TJ 1701.

14 So now, we have 11, 12, 13 and then 15, and that big
15 paragraph 14 is not there, is it?

16 A I don't see it, no.

17 Q Right. And so that much of a three or four inches
18 worth' of a paragraph being pulled out of a document is going to
19 change how that pagination lands. Wouldn't you agree with that?

20 A Yes. Likely, I'm sure, yes.

21 Q Cut out three or four inches worth of a paragraph, it's
22 going to push everything below it up three or four inches, right?

23 A I guess it could. I don't do much of that myself. I'm
24 sure it would, yes.

25 Q Just logic, right?

1 A Yes.

2 Q All right. And let's look at the last page, signature
3 page, and just blow up the written part.

4 We saw this as the one that's -- no, up at the top, the
5 whole page.

6 And so you can see that the signature part lands on this
7 signature page of 15.3, 15.4, 15.5, right?

8 A Yes.

9 Q And 15.3 is titled The Entire Agreement; 15.4, Further
10 Assurance; 15.5, Governing Law, right?

11 A Yes.

12 Q And then there are the signatures below with the
13 handwriting we saw before that doesn't have the date.

14 MR. SPENCER: Okay. Keith, now, turn to -- or, flip
15 back to Exhibit 11-A.

16 BY MR. SPENCER:

17 Q And, again, it lands exactly right, paragraph 15.3,
18 Entire Agreement; paragraph 15.4, Further Assurances -- or Further
19 Assurance; and then 15.5, Governing Law.

20 And this one has the handwriting in it, but the
21 handwriting is the same other than that. But despite pulling out
22 the paragraphs and adding -- one being included in B and the other
23 one being deleted in A, the signature pages land exactly the same,
24 don't they?

25 A It looks like it.

1 Q We saw those same paragraphs.

2 MR. SPENCER: Now, Keith, pull up 11 -- paragraph -- I
3 mean Exhibit 11.

4 BY MR. SPENCER:

5 Q And that same paragraph C that was in 11-B is not in
6 this version either, "Indemnitor acknowledges that as a matter of
7 course," that's B, and then "Indemnitor acknowledges that
8 indemnitees may not have sufficient cash flow."

9 All right. The C is missing from this one as well. It
10 was in 11-B.

11 Now, go to page 5. It's TJ 864.

12 And again, paragraph 11, paragraph 12, 13 and then 15.
13 There's no 14, right?

14 A I can see that, yes.

15 Q Okay. Now, let's go to the signature page.

16 Signature page lands exactly correct, again, with the
17 same paragraph starting 5.3, Entire Agreement; 5.4 -- 15.4,
18 Further Assurance; 15.5, Governing Law; and then the signatures.

19 Now, this is the one that has the typewritten version
20 under Sam's name, right?

21 A Yes.

22 Q All right. And so the signature page, where it lands as
23 far as the paragraphs in the document, remain the same in all
24 three versions, despite them being different, correct?

25 A I'm not sure, but I guess what you are -- it's probably

1 accurate, yeah.

2 Q Okay. And so now, let's look at Exhibit 11-A and 11-B,
3 the signature page -- pages, together.

4 Well, first, let's look at 11-A again, the signature
5 page.

6 Oh, here we are. And so this is 11 and 11-A. And you
7 can see these are different because one on 11 is typewritten and
8 11-A has the handwriting, but with the date, right? Do you see
9 that?

10 A I can see that, yes.

11 Q All right. And then Exhibit 11-A, 11-B, other than the
12 date not being written in, those are exactly identical signature
13 pages, aren't they?

14 A Okay. Yeah, that's --

15 Q See how it's combined and they are overlaid?

16 A Yes.

17 Q And it's these same signature page, it's just one has
18 the blank date and the other one has the date filled in, right?

19 A Yes.

20 Q So clearly, signature page on one of the documents was
21 taken off and put on the other document, right?

22 A Very well could have been.

23 Q Well, it's the same signature pages, two different
24 documents, and it's on the same document -- it's the signature
25 page for both documents, right?

1 A It looks to be the case, yes.

2 Q Okay. So that's an example of where a signature page on
3 one document was taken off of it and then used and placed upon
4 another document, right?

5 A In this situation, it looks like that is the case.

6 Q Okay. And then did you know there was a fourth version
7 of the indemnity agreement?

8 A Like I say, I knew that there were several different
9 drafts, without a doubt.

10 Q Well, you don't sign drafts, do you?

11 A Sometimes we do, because we want to get things into
12 place, put into place.

13 Q That's something that you sign a draft version that's
14 not complete yet and you just sign it because it's there?

15 A Absolutely. I've done that before.

16 Q Hm. That's something a good businessman would do?

17 A These documents, I think, if you look at them in detail,
18 they are very similar. Pierre recommended that to Dad and I at
19 that time as well.

20 Q Oh, Pierre told all of you to sign drafts that were not
21 completed yet; is that right?

22 A Dad is actually the one that wanted to do it, get them
23 into place and get effective.

24 Q Doesn't show the good judgment that you knew your dad
25 had, does it?

1 A I can't really speak to that, but --

2 Q As a businessman?

3 A He was a very good businessman, but there were
4 definitely times where documents were signed that were drafts that
5 Pierre would still be working on, or somebody else would be
6 working on. He wanted to get things into effect.

7 Q Well -- and they were signed, apparently, in summer of
8 '07 to be effective in January -- January 1 of 2008. So there was
9 time to do drafts and go back and forth and make changes,
10 et cetera, right?

11 A Could very well be, yes.

12 Q Okay. And so it doesn't make sense that your dad would
13 sign drafts that were not the final version, does it?

14 A I can just tell you that when we got -- got the first
15 one, we signed it, and the second one came, signed it. So that
16 was -- that did happen on occasion.

17 Q Okay. All right. So now, let's look at Exhibit 173.
18 Before we do that, let me -- one second.

19 MR. SPENCER: Let's look back at 11-A Keith, I'm
20 sorry -- or 11-B, I apologize.

21 BY MR. SPENCER:

22 Q Okay. This one contains the -- that paragraph C and has
23 the lines in it, the one that was missing from the other
24 documents.

25 A Okay.

1 Q All right. And then we had the 11, which has the
2 typewritten version -- the version that was typed underneath the
3 signature, right? Do you remember that?

4 A Did you just say that --

5 Q 11.

6 A -- 11-B has C in it, but the other version doesn't?

7 Q Right.

8 A I was just looking at 11 and it looks like it has the
9 same one.

10 Q It has a C, but it's not the same one. It's not the
11 same C.

12 We can do it this way if you want.

13 A Oh. Okay.

14 Q Exhibit -- let's look at Exhibit -- okay. And so the
15 C -- paragraph C that was in Exhibit 11-B, that's not in the other
16 two.

17 MR. SPENCER: If we go to 11-B, Keith.

18 BY MR. SPENCER:

19 Q Look at 11-C. You can see this one says -- begins The
20 indemnitor acknowledges" -- let's see. Sorry.

21 It's in -- it's in Exhibit 11. I'm sorry.

22 So this has a paragraph C that -- so this one also says
23 "indemnitor acknowledges the fact that indemnitees may not have
24 sufficient cash flow," which is what Exhibit 11-A says -- I mean
25 11, by itself, says.

1 And then 11-A is the one -- 11-A ends with -- let's do
2 it this way. 11-A ends with paragraph H.

3 So there's A, B, C, D, E, F, G, H. Do you see that?

4 MR. SPENCER: Go to the next page, Keith.

5 BY MR. SPENCER:

6 Q So there's no I on that one.

7 And then Exhibit 11 goes A through I, as does
8 Exhibit 11-B, so that there's I, 11-A -- or 11-B, I'm sorry.

9 There's an I.

10 So there's a paragraph missing out of that one document,
11 right?

12 A I'm -- I'm really not sure, but --

13 Q All right. The documents are there.

14 A Okay.

15 MR. SPENCER: There's a -- if we look at Exhibit 173 --
16 Your Honor, I offer Exhibit 173 and it's stipulated.

17 THE COURT: 173 is admitted, Ms. Clerk.

18 THE CLERK: Thank you.

19 (Exhibit 173 admitted into evidence.)

20 BY MR. SPENCER:

21 Q And so if you look at the signature page of this one --
22 this is the document, it's Riley 1750. This is that signature
23 page that has the handwriting and no -- no date. Right?

24 A Yes, I do see that.

25 Q Okay. And that's the same signature page that was on

1 Exhibit 11-B, which we saw had the handwriting on it, and it
2 contained an extra paragraph.

3 So this was -- let me just ask you, this was the
4 indemnification agreement, Exhibit 173, that was provided to
5 Mr. Riley; is that right?

6 A It's possible.

7 Q Okay. And instead of providing him the one that you are
8 relying on, Exhibit 11, that has the typewriting -- typewritten
9 version under the signature, this one has the handwritten version
10 under the signature?

11 A I remember something about that around that time frame.

12 Q What do you remember about it?

13 A I remember that the one that -- I think this was given
14 to Mr. Riley, like, in May maybe or June, something like that.
15 And then further notes and analysis determined that the correct
16 version was the one that we filed for the creditor claim in
17 October, is what I recall.

18 Q And my question was, instead of giving Mr. Riley the
19 version that has the typewritten signature page, has the
20 typewriting underneath it, you gave him the one that -- gave him a
21 version that has the handwritten version underneath it?

22 A I don't recall that, but that sounds like -- if Kevin
23 produced that, then that sounds accurate. But when we did the
24 creditor claims, we used the other version.

25 Q And that's -- this was from Riley's file.

1 A Oh, okay.

2 Q Riley 1745. And so --

3 A Okay.

4 Q -- there's multiple versions of the indemnity agreement
5 and at least two versions that use the same signature page, right?

6 A That sounds correct.

7 Q Which one of those indemnification agreements is --
8 which one of those are the beneficiaries supposed to understand is
9 the one that's applicable?

10 A The one that Dad told me that was the one that I should
11 use, as well as the one that Pierre told me I should use, and the
12 same one that I filed as a creditor claim.

13 Q All right. And underscores the problem of having a
14 typewritten date in a document, various versions, signed at
15 different times or signature pages changed out, but the date
16 remains the same, right?

17 A Yeah, I apologize to defer, but you just have to ask
18 Pierre that. I don't know the answer.

19 Q Well, I'm just asking you, do you see the problem with
20 doing things this way and having pages that match up exactly on
21 three different versions with the same date typed in? You see the
22 problem with that, right?

23 A I just -- all I can tell you is there were some drafts,
24 and I really don't know the answer to that. All I can tell you is
25 I just used what Dad and Pierre told me was the operative

1 document.

2 Q Well, the effect is that there are four, now four,
3 versions of the indemnification agreement, all dated the same day,
4 January 1st, 2008.

5 A That would have been the effective date, correct.

6 Q And if any of the beneficiaries go to look at the
7 indemnification agreements to try and figure out which one
8 applies, they all have the same date and there would be no way to
9 know, would there?

10 A Except for the fact that there's only one that was filed
11 as part of the creditor claims in the end of 2013.

12 Q Okay. And so you got to decide which of the agreements
13 applied, correct?

14 A My dad and Pierre told me which one applied.

15 Q And it was one that you adopted in October of what year?

16 A 2013.

17 Q Okay. And so were any of the drafts before that
18 enforceable?

19 A I'm not sure how that works. I'm not sure.

20 Q Well -- but you are the trustee, sir, and you are the
21 one that is making the decision about how this indemnification
22 agreement is supposed to apply. And you don't know?

23 A I just know that the one version that I had was the one
24 that Dad and Pierre told me to use, and that's the one I used.

25 Q So any payment that was made on your indemnification

1 agreement prior to October of 2013 would not have been a valid
2 indemnification payment, right?

3 A I don't think there was any payments made prior to 20 --
4 what did you say, October 2013?

5 Q That's when you said you determined or decided which one
6 controlled, right?

7 A That's the one we had submitted at that point in time.
8 And then the creditor -- or, the same indemnification agreement
9 was used at the time of the ACPA for the indemnification
10 agreement.

11 Q Okay. And would that have been Exhibit -- would that
12 have been in relation to the Ag Credit and MetLife loans?

13 A That sounds correct, yes.

14 MR. SPENCER: Your Honor, offer Exhibit 16.

15 MR. ROBISON: It's in.

16 THE COURT: 16 is in, Ms. Clerk. It is admitted, if not
17 already.

18 THE CLERK: Thank you.

19 (Exhibit 16 admitted into evidence.)

20 BY MR. SPENCER:

21 Q So I'm looking in this Exhibit 16. Where do you attach
22 the indemnification agreement that's controlling?

23 A We didn't attach any documents to the indemnification
24 agreements.

25 Q All right. And --

1 A I'm sorry, we didn't attach any documents to the
2 agreements in consent to proposed action, except for
3 Brian McQuaid, I think, one time attached a note in an email.

4 Q And so where does this, Exhibit 16, disclose which of
5 the four versions that are dated January 1st, 2008, apply?

6 A I don't think it specifies which versions apply, because
7 in my mind, there was only one indemnification agreement that
8 applied.

9 Q Okay. And where does it -- Exhibit 16 state what was in
10 your mind about which indemnification agreement controlled?

11 A I don't believe it says anything like that in there.

12 Q And so how were the beneficiaries who were signing the
13 Exhibit 16 ACPA supposed to know which one of the indemnification
14 agreements controlled?

15 A Because I had shared the indemnification agreement
16 earlier in the year. I think it was in the binder that we
17 prepared for them on June 5th.

18 Q Uh-huh.

19 A That's kind of what I recall.

20 Q But you don't know that for sure?

21 A I do believe that to be the case, but I --

22 Q And there was an exhibit attached to the indemnification
23 agreement, listing out all of the debts that were supposed to fall
24 under that indemnity, right?

25 A Yes, there's an Exhibit A on the indemnification.

1 That's correct.

2 Q You prepared that document, didn't you?

3 A I did not.

4 Q Who prepared it?

5 A Pierre Hascheff's office.

6 Q And based upon what information? Information you
7 provided?

8 A It could have been some from myself and Dad, as well as
9 Pierre.

10 Q Well, "could have been." It could have been anything.
11 What I'm asking is what you remember.

12 A That's what I remember.

13 Q You remember it could have been any one of you all?

14 A I remember everybody was working on getting the accurate
15 information for what those loans entailed at that point in time --

16 Q Uh-huh.

17 A -- what the outstanding obligations were at that point
18 in time. Pierre had some of the information, and some of the
19 information came from our office, is what I recall.

20 Q And so looking at the Exhibit 11, which is the one you
21 say controls, going back to Exhibit 11, real quick.

22 Exhibit A, in TJ 866, no initials on this Exhibit A, is
23 there? There are no -- let me ask you a better question.

24 There are no initials on this Exhibit A of your father,
25 are there?

1 A Not that I recall, no.

2 Q All right. And nothing on -- about that Exhibit A
3 indicates that your father signed this -- signed this particular
4 Exhibit A or approved it, correct?

5 A It was attached to the document, but I don't -- there's
6 no initials there.

7 Q Well, no initials, no signature, no page numbers or
8 anything, right?

9 A I'm not sure about the page numbers.

10 Q Well -- and this Exhibit A, because it's -- there's no
11 page number attached, there's no -- nothing that identifies it to
12 relate to any of the particular indemnification agreements, could
13 have been changed, modified, page numbers changed out, or pages
14 changed out, or anything, couldn't it?

15 A It wasn't.

16 Q Possible, it's possible, right?

17 A No.

18 Q Why not?

19 A Because that's the original version that was prepared by
20 Pierre's office.

21 Q And so it includes -- Mr. Hascheff prepared that. Let's
22 be clear about that. Right?

23 A Correct.

24 Q And so it includes, on page TJ 868, numbers 12 through
25 17, personal obligations of yourself, doesn't it?