

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 11**

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Dated this 14th day of June, 2021.

MARQUIS AURBACH COFFING

By /s/ Chad F. Clement

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 11** 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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1 A Yes.

2 Q And so the indemnification agreement would apply to your
3 mortgage, your personal mortgage on your home in favor of
4 Wells Fargo, principal amount of \$1.435 million, correct?

5 A Under certain circumstances.

6 Q Well, in relation to the other ones, line of credit,
7 construction loan to First Independent, that was in the principal
8 amount of \$3 million. That's at number 14.

9 Number 13 is a line of credit for \$485,000. 15 is an
10 auto loan for \$26,000. 16 is a Suburban, another auto loan for
11 \$53,000. And then at 17 is a Cadillac loan for \$33,000.

12 Those were all obligations of yours, you personally,
13 right?

14 A For the most part, I would say, yes, that's accurate.

15 MR. SPENCER: And so go back to page 1 of Exhibit 11,
16 Keith.

17 THE WITNESS: Mr. Spencer, do you recall the
18 indemnification agreement that was filed as part of the creditor
19 claims where we wrote what was paid off?

20 BY MR. SPENCER:

21 Q Yeah, we're going to get to that.

22 I just want to ask you, Exhibit D references that
23 Exhibit -- or, I'm sorry, Recital D in Exhibit 11 references that
24 Exhibit A, doesn't it?

25 A Which one are you on? 11?

1 Q Exhibit 11, Recital D, "Any claims, liabilities,
2 obligations for any demand, threatened, pending or completed
3 action, suit or proceeding arising directly or indirectly pursuant
4 to and including, without limitation, obligations described on
5 Exhibit A and incorporated herein by references."

6 A Yes, I see that.

7 Q So those personal obligations that were listed in that
8 Exhibit A are included in the indemnity, is that right, according
9 to that?

10 A Yes.

11 Q That's not a benefit that Wendy received, is it, or her
12 personal obligations being indemnified?

13 A I'm not aware of Wendy having any obligations or loans
14 or guarantees that would have required her to have an indemnity
15 agreement.

16 Q So she did not have an indemnity agreement?

17 A That is correct.

18 Q And the indemnity agreement that Stan got did not have
19 an Exhibit A attached to it either, did it?

20 A I'm not sure.

21 Q Okay. And Exhibit 12, did it have an exhibit attached,
22 to the end, signature page?

23 Anything below that?

24 You can look in the book too, if you want.

25 A Okay. I don't see one.

1 Q Okay. So his -- Stan's indemnification didn't have that
2 long list that yours had attached to it, right?

3 A I don't see one.

4 Q And it was up to you -- the indemnity -- indemnification
5 agreement obligates the family trust, doesn't it?

6 A I believe so, yes.

7 Q And so it's up to the cotrustees to determine how the
8 indemnity will be applied, right?

9 A Yes.

10 Q And the scope of that indemnity has not been determined
11 fully yet, has it? The full scope of the indemnity has not yet
12 been determined, has it?

13 A I have my, you know, opinions, basically, from what Dad
14 had told me, we have Pierre's explanation, but we were going to
15 leave it up to Judge Hardy to make the final decision.

16 Q Well, your dad died about April 21st of 2013. And so
17 we're coming up on six years ago. And at some point, you have to
18 make the decision because you are one of the cotrustees, right?

19 A Yes, I am.

20 Q Okay. And you have to make -- you and the cotrustees
21 have to determine the scope, what is it that this indemnity is
22 going to cover, at some point, right?

23 A Yes, we believe that through the accountings, that the
24 accountings show the payments that have been made. And any of the
25 payments that were made on some of those ranch loans, we carried

1 them on the books as a loan up until this final determination is
2 made.

3 Q And so you would have the family trust pay your personal
4 obligations on these mortgages that were outstanding in the
5 entities, and then you would sign a note back to the family trust
6 to pay it back, right?

7 A On -- more specifically, instead of the entities, as you
8 broadly categorize that, it was more specific just to one or two.

9 Q Okay. And that, certainly, your obligation under those
10 mortgages would not fall into the indemnity, would it?

11 A Yes, it would.

12 Q Okay. So it's your position as the co- -- as one of the
13 cotrustees of the family trust, that you can own 51 percent of
14 entities that own ranches, that have these mortgages against them,
15 and that the family trust is obligated to pay 100 percent of those
16 mortgages.

17 That's how you understand the indemnity to work?

18 A Not on all of them. We've only claimed with respect to
19 one of the loans, with respect to that credit, and the Jackrabbit
20 loan associated with MetLife.

21 Q Well, the way it was set up, and you participated in it,
22 is that the family trust or your dad would own 49 percent and you
23 would own 51 percent, right?

24 A Which entity are you talking about?

25 Q Well, just name one. There were several that way,

1 weren't there?

2 A Yes.

3 Q All right. And you, as trustee, believe that the family
4 trust is obligated to pay your 51 percent of that note, in other
5 words, 100 percent of the outstanding mortgages, and you get to
6 keep 51 percent of the benefit; is that right?

7 A That's the way it was explained to me by Dad. And that
8 was the reason the indemnification was put into place, for loans
9 like the home camp loan, for example.

10 Q Put into place by Mr. Hascheff?

11 A Put in place by Dad.

12 Q And that's -- you could see the effect of that. That's
13 why this is such a significant thing.

14 The effect of that is to make Stan and Wendy pay
15 two-thirds of the debt or the mortgage on the ranch, and then you
16 get 51 percent of the benefit. How is that fair as a trustee
17 under any analysis?

18 A Under the home camp loan arrangement, Dad explained it
19 as though, because of the circumstances that he didn't think that
20 it was fair, that in that situation, that I was the only one
21 obligated for the debt on that situation, and that the other
22 beneficiaries would get the property free and clear.

23 So he -- the indemnification agreement in that respect,
24 with respects to that loan, made it where basically each
25 individual person was contributing towards paying that loan.

1 And the home camp loan, we had several different
2 opportunities to pay that loan off in full. And because Dad made
3 decisions that he wanted to keep the cash and/or donate some of
4 the land to various local agencies so that he could get a
5 write-off for tax purposes, some of those decisions that he made
6 allowed us not to have funds available to be able to pay that
7 particular loan off.

8 Q And so you are prefacing all of your answers now with
9 Dad told us so. With all due respect, he's not here to testify.
10 So I'm asking these questions of you as a cotrustee, Wendy's
11 cotrustee, who has to make the determination about how -- the
12 scope of this indemnity agreement.

13 And you've decided that the family trust is obligated to
14 pay 100 percent of the mortgage obligation on assets that you
15 contend you own 51 percent of and you get that much benefit from.

16 And my question is, you, as a cotrustee, how is that
17 fair under any -- by any standard?

18 A Well, that's why we have -- those payments that have
19 been made, notes have been made, and as of right now, it shows
20 that I owe those funds that have been paid back to the family
21 trust, until a final determination is made by the Court.

22 Q You are making a claim contending that the family trust
23 owes the money -- owes the money that was paid on your behalf back
24 to you. So it owes 100 percent of the obligation. That's your
25 claim?

1 A On a few of the loans, that was the case.

2 Q Yeah. And so you are making a decision, as the trustee,
3 to apply the indemnity agreement to benefit yourself personally.
4 Do you see the problem with that?

5 A Reason that's why we did the ACPA in August of 2013, to
6 make sure that Stan and Wendy and Lexi were aware of the fact that
7 those payments were being made under the family trust, from the
8 family trust, for a few of the payments, to get their consent to
9 approve those payments to be made.

10 Q Well, but -- and you are talking about the Exhibit 16
11 ACPA signed on July 24th of 2013, right?

12 A About that time.

13 Q Well, the problem is that you never told the
14 beneficiaries which indemnity agreement applies or the scope of
15 it, did you?

16 A Yes.

17 MR. SPENCER: Okay. Well, let's look at Exhibit 75.

18 I offer 75, Your Honor. It is stipulated.

19 THE COURT: 75 is admitted, Ms. Clerk.

20 THE CLERK: Thank you.

21 (Exhibit 75 admitted into evidence.)

22 BY MR. SPENCER:

23 Q August 12th, 2016, this is an email from Mr. Riley, at
24 the top, and he's writing to Wendy.

25 By the way, Mr. Riley is the trustee of Wendy's BHC

1 family trust, right?

2 A Yes, that's accurate.

3 Q Okay. So he owes her fiduciary duties, correct?

4 A Could very well be the case. Sounds correct.

5 Q All right. So he's writing to Wendy, "Todd filed the
6 claim against Sam's trust with the attorneys that represent Sam's
7 estate and trust on October 21st, 2013. The original agreement is
8 dated January 1st of 2008."

9 We don't know which of the four applies, but he makes
10 that reference.

11 "We did have a discussion about the agreement, but the
12 discussion was brief. The agreement is listed as a contingent
13 debt on the financial statements, on page 33 of the March 31st,
14 2015, accounting."

15 Then he says "I have a copy of the agreement, but I
16 would need Todd's permission to send it to you."

17 So you were keeping that from Wendy, weren't you?

18 A No, sir, I was not.

19 Q She did not -- clearly did not have it as of August 12th
20 of 2016, which postdates the Exhibit 16 ACPA by three years,
21 doesn't it?

22 A Yes, I believe that to be inaccurate.

23 Q It's inaccurate?

24 A Yes, Wendy had had a copy of the indemnification
25 agreement long before this email. The creditor claim itself was

1 filed in 10/21 of '13, and we -- Wendy was working with us as part
2 of those creditor claims, and she was filing creditor claims at
3 the same time, and so was Stan.

4 And everybody had an opportunity to review those
5 creditor claims being filed.

6 Q Well, if Wendy had the agreement, some or one of these
7 indemnity agreements, it doesn't make sense that she would be
8 asking for it, does it?

9 A Yes, it does.

10 Q Oh, it does? Okay. And it makes sense why?

11 A Because of the binder that we had given her with a whole
12 series of documents in, and all the trust documents. She actually
13 had those documents and had either lost them or misplaced them or
14 had them in an attorney's office or something that she couldn't
15 pay a bill.

16 I don't remember what exactly what it was, but we had to
17 continually give her documents. Wendy frequently lost documents.

18 Q Well -- and there's nothing wrong with that if she's a
19 beneficiary of the trust, is there?

20 A No.

21 Q And the binders that you speak of, you didn't have a
22 copy of that yourself, did you?

23 A Yes.

24 Q Why didn't you produce it to us?

25 A We did produce all the documents that were in the

1 binder.

2 Q Why didn't you provide the binder -- the documents in
3 the production as what was in the binder itself?

4 A I believe I did. I gave that binder to counsel.

5 Q If it's all mixed in, how are we supposed to know to
6 what was in the binder back in October of 2013?

7 A I would have to, I guess, talk to counsel about that,
8 but I gave them the binder.

9 Q Okay. You don't even know what was in the -- you don't
10 even remember, yourself, what was all in the binder back three
11 years ago, do you, or six years ago?

12 A What I remember was making copies of all the various
13 trust documents, putting those in there. I believe there was
14 documents associated with Bronco Billy's, the indemnity agreement,
15 the ACPA that we signed on June 5th, for the life insurance was
16 copied, and that was the first document that went into the binder
17 that day.

18 And then what we would do with Wendy is, as we continued
19 to sign other documents, she would bring her binder and we would
20 put holes in it and add documents to the binder.

21 So it depended on the time, but it kept getting
22 documents -- documents added to the binder.

23 Q And all of that was mixed in to the production as a
24 whole, rather than as this is the binder that was produced, right?

25 A Likely.

1 MR. SPENCER: And, Your Honor, offer Exhibit 449, Your
2 Honor. It's stipulated.

3 THE COURT: 449 is admitted, Ms. Clerk.

4 THE CLERK: Thank you.

5 (Exhibit 449 admitted into evidence.)

6 BY MR. SPENCER:

7 Q This is an email from Stan to you, September 7th of
8 2016, when he was demanding a distribution over a month ago before
9 all this crap started. "I told her we're working on trying to get
10 her some money and that you and I were redoing the indemnification
11 agreement so Kevin could finalize the trust debts.

12 "She said she can" -- "she said can you send me a copy
13 of that, and I didn't think much of it and I did forward it to
14 her, but I've never spoken to her about it."

15 And so even as late as September 7th of 2016, the
16 indemnification agreement is changing; is that right?

17 A No. I think what Stan and I were working on there is,
18 on focusing on Exhibit A as to what the obligations were under
19 Exhibit A and explaining as to the fact of when these -- when some
20 of these properties are used in that indemnification agreement,
21 we, basically, have gone to each entity and have sold the property
22 to cover the debt so that I didn't have to make any claim under a
23 bunch of these loans and indemnification, I remember.

24 And one of the concerns that Stan had, I think at this
25 time, was he wanted me to remove my house on Rouge Drive as part

1 of the Exhibit A. And that's what Stan was talking about here.

2 THE COURT: Ladies and gentlemen, let's stand for a
3 moment and stretch.

4 We'll take our mid afternoon break at 3 o'clock.

5 Please be seated.

6 BY MR. SPENCER:

7 Q And so you believe -- or, in relation to the
8 indemnification agreement, you all were trying to determine its
9 scope and what it would apply to?

10 A Like I said, Stan was interested in me removing my house
11 as part of Exhibit A, is what I recall.

12 Q And the Rouge Drive house is different than the one that
13 was listed on that Exhibit A we saw earlier attached to
14 Exhibit 11-A -- 11?

15 A I'm pretty sure it's on the same Exhibit A.

16 Q Exhibit A to Exhibit 11 references mortgage loan at
17 4505 Alpes Way.

18 A That was the house that we had, that we sold.

19 Q All right. And then the Rouge Drive property was
20 acquired when?

21 A I would say around -- it was maybe 2006 or '7 range.
22 I'm not sure.

23 Q And -- wait. The 2006 or '7 range, did you still own
24 Alpes Way at that -- in 2008?

25 A Yes, I don't know if it was -- I'm not too sure about

1 that, but we had to do a short sale on that particular house, and
2 there was a -- it took a while to get rid of that property.

3 Q So even though you bought Rouge Drive in 2006 or '7, it
4 was not on the Exhibit A to the -- Exhibit 11, was it?

5 A I have to look.

6 Yes, it was on there.

7 Q Okay. Which one is it?

8 A It started out as the construction loan on Number 14.

9 Q Okay. The address is not referenced there. So that's
10 the Number 14, mortgage construction loan in favor of
11 First Independent Bank?

12 A Correct.

13 Q So you had a mortgage outstanding on Alpes Way of
14 1.435 million, which is Number 12. This is Exhibit 11-E, TJ 868.

15 And then while you have that mortgage outstanding, you
16 take out a construction loan for 3,060,000 that you expect the
17 family trust to pay also, right?

18 A I didn't expect them to pay it, and they never have made
19 a payment on any of those at all.

20 Q Well, why was it on Exhibit A then? Why wasn't it
21 stricken?

22 A As I explained earlier today, in the event -- these
23 other loans in here, for example, the Jackrabbit example, in the
24 event that that loan foreclosed because we couldn't make the
25 payments and the bank comes after our personal guarantees, that

1 they would be able to go after all of these personal assets, which
2 would include the residence, primary residence.

3 Q But the way this is set up is, you have an
4 indemnification agreement that says family trust obligated to pay
5 for everything on Exhibit A, and that includes six personal
6 obligations of you.

7 And so how does that make sense with what you just said
8 about coming to get your assets?

9 A None of these personal obligations were paid on behalf
10 of the family trust. No funds came out of the family trust to pay
11 those.

12 I never made any claims for any reimbursement on any of
13 those.

14 Q You didn't?

15 A No. They were specific to the fact that in the event
16 Jackrabbit loan --

17 Q Go ahead.

18 A They were specific in the fact that in the event, like,
19 if Jackrabbit loan foreclosed and MetLife doesn't go after the
20 ranch, they go after our personal guarantees directly, because in
21 the MetLife documents, we were required to waive the one-action
22 rule or whatever that was, which I don't understand totally, but
23 they can go directly after your personal assets.

24 Q Okay. And so that -- did you have a mortgage with
25 Bank of America in relation to the Rouge Drive property?

1 A We did. And that's why I was asking you earlier if you
2 had a copy of the version that we filed as the creditor claim,
3 because this was the construction loan which rolled over into the
4 permanent -- which rolled over into the permanent financing of the
5 house.

6 MR. SPENCER: Okay. Your Honor, offer Exhibit 298.
7 It's stipulated.

8 THE COURT: 298 is admitted, Ms. Clerk.

9 THE CLERK: Thank you.

10 (Exhibit 298 admitted into evidence.)

11 BY MR. SPENCER:

12 Q So this is the creditors' claim that you were talking
13 about; is that right?

14 MR. ROBISON: Your Honor, this is one he'll have to see.
15 It's several pages long.

16 THE COURT: Yes.

17 MR. SPENCER: And it's also kind of a bad copy.

18 THE COURT: Thank you. So we'll accommodate this,
19 counsel.

20 THE WITNESS: Yeah, there was a much bigger package of
21 all the creditor claims. This looks to be just specific to --
22 pulled out of the creditor claims is just this specific one. Is
23 that --

24 BY MR. SPENCER:

25 Q Did that include other people besides you?

1 A When we did the creditor claims, there was a big package
2 with a bunch of loans for Stan, Wendy, and myself and others, I
3 believe, other companies.

4 Q All right. We'll track that down.

5 Is this a creditor claim that you completed October 21st
6 of 2013?

7 A I think so. But like you said, it is really hard to
8 read.

9 Q But looking at -- and the --

10 A I can see the first page pretty good, which you have on
11 the screen, but the ones after that --

12 Q It attaches the indemnification agreement, which has the
13 exhibit attached, right? And so when you get to the exhibit,
14 turning to page TJ 1732 at the bottom -- do you see that?

15 A Yes.

16 MR. ROBISON: Your Honor, excuse me for interrupting,
17 but can we determine whether or not this is the entire creditors'
18 claim submitted by this creditor.

19 THE COURT: I think it's appropriate that we invite the
20 jury to recess while we figure out the documents.

21 During this recess, please do not discuss this case
22 amongst yourselves. Please do not form or express any opinion
23 about this matter until it's submitted to you.

24 We'll stand for our jury.

25 (A recess was taken.)

1 THE COURT: Counsel, anything before I bring the jury
2 in?

3 MR. ROBISON: Yes.

4 MR. SPENCER: I don't have anything.

5 MR. ROBISON: Nothing.

6 THE COURT: Okay. The jury, please.

7 MR. SPENCER: There may be a sidebar issue at some point
8 and I'm holding because it may not come up, but I just want to
9 forewarn you about a limiting matter.

10 THE COURT: Okay.

11 (The jury entered the courtroom.)

12 THE COURT: Please be seated. The jury is present.

13 Counsel, you may begin. You may continue your
14 examination.

15 MR. SPENCER: Thank you, Your Honor.

16 BY MR. SPENCER:

17 Q Mr. Jaksick, we were talking about Exhibit 298.

18 A Yes.

19 Q And this is the document that is your creditor claim as
20 you submitted it, TJ 1719 through 1733.

21 And just kind of flip through the -- first of all,
22 creditor claim submitted -- at the top, Keith, if you can blow up
23 the first paragraph -- by Todd B. Jaksick, your family trust,
24 Dawn Jaksick -- that's your wife, right?

25 A Yes.

1 Q Okay. And TBJ SC trust and TBJ investment trust.

2 And then you mentioned -- in the first paragraph, the
3 indemnification agreement is mentioned. Then in the second
4 paragraph, certain obligations covered by the indemnification
5 agreement remain outstanding with a list of the current
6 obligations attached hereto, and the indemnity agreement therefore
7 remains in full force and effect, October 21st of 2013.

8 And just kind of flip through slowly. And you can see
9 this is not a great copy of the indemnification agreement, but we
10 have the other copy, Exhibit 11, to refer to. This is how it was
11 submitted.

12 MR. SPENCER: And then get to the signature page, Keith.

13 BY MR. SPENCER:

14 Q Very difficult to read, but you can see that that's the
15 version that has the typed-in reference under the signature,
16 right, as opposed to the handwritten version?

17 A Yes.

18 Q Okay. And then flipping over in the Exhibit A to
19 that -- to page TJ 1732.

20 MR. SPENCER: We need to blow it up so we can see it,
21 Keith, the line 14, if possible.

22 BY MR. SPENCER:

23 Q That's that construction loan that we talked about
24 earlier, the 3 -- a little bit over \$3 million?

25 A Yes.

1 Q Okay. And you said that was the loan connected to your
2 current house, at the Rouge Drive property?

3 A Correct.

4 Q And then there's a line -- or an arrow, I should say,
5 going down the margin to the bottom of the page. There's some
6 handwriting. Do you see that?

7 A Yes.

8 Q Whose handwriting is that?

9 A Jessica's.

10 Q And it references October 20th of 2008, that
11 construction loan was refinanced on the same property in favor of
12 Bank of America, principal amount \$2.85 million, and then there is
13 some detail about the payments.

14 A Yes, I see that.

15 Q Next to that, it says "paid off," right?

16 A Yes.

17 Q And then there's another handwritten note, "refinanced
18 again same property in favor of Bank of America, balance
19 2,350,000, and then some details about the payments.

20 A I see that, yes.

21 Q Okay. And so that's the most current mortgage that's on
22 the Rouge Drive property, correct?

23 A I believe it has been refinanced, possibly, since this
24 date as well.

25 Q But that's with Bank of America, right?

1 A It definitely is still with Bank of America, but it's
2 possible that the -- I think I did refinance it again since then.

3 Q With Bank of America?

4 A Same lender, yes.

5 MR. SPENCER: Okay. And so -- Your Honor, I'm going to
6 offer three exhibits, they are all stipulated, Exhibit 72, 73 and
7 74.

8 THE COURT: Thank you.

9 Ms. Clerk, they are each admitted.

10 THE CLERK: Thank you.

11 (Exhibits 72, 73 and 74 admitted into evidence.)

12 MR. SPENCER: So Exhibit 72, Keith.

13 BY MR. SPENCER:

14 Q Now, Todd, you see this is the financial statements
15 relating to the family trust, Samuel S. Jaksick Jr. Family Trust?

16 A Yes, I do.

17 Q From April 21st, 2013, the date of your dad's death
18 through March 31st, 2014.

19 A Okay.

20 Q All right. So this is what has been submitted as
21 accounting for that period for the family trust, right?

22 A I'm not sure, but it looks like.

23 Q But that's what you submitted as the accounting,
24 correct?

25 A I just see the front page, but I'm sure that it is.

1 Q And flipping over to page 23 of that document -- Keith,
2 JSK 1140, Exhibit 72 -- very bottom entry, right above the total
3 contingent trust obligations, you have an entry there, "Copy
4 Jaksick indemnification agreement, which substantively indicates
5 that Todd B. Jaksick and related entities are indemnified against
6 the trust from having to perform on obligations in excess of their
7 respective interests." And then that one, you say "value
8 unknown."

9 Do you see that?

10 A I do.

11 Q So as of March 31st, 2014, the value of indemnity you
12 were claiming was unknown, according to that?

13 A Correct.

14 MR. SPENCER: Exhibit 73, Keith.

15 BY MR. SPENCER:

16 Q Again, financial statements for the family trust, which
17 is the accounting from April 1, 2014, to March 31st, 2015, flip to
18 page 33 of the accounting, JSK 1201.

19 This would be the second entry under the first indented
20 paragraph. Again, that's referencing the indemnification
21 agreement and the obligations in excess of their respective
22 interests; value, unknown. Right?

23 A I see that, yes.

24 Q So through March 31st of 2015, the scope on the
25 indemnity had not been determined, as far as the cotrustees of the

1 family trust go, right?

2 A Really, the reason it's stated unknown is because we
3 don't know -- it's not really what the scope of the indemnity is,
4 it's what obligations may need to be performed under the
5 indemnity.

6 For example, like, the Buckhorn Land and Livestock loan
7 that's on Exhibit A for \$4 million -- is on the Exhibit A, but we
8 did a conservation easement and were able to pay it off with other
9 funds, and so that that balance goes from, you know, on Exhibit A,
10 what it was originally, down to, now, about \$297,000.

11 So that's why it's kind of unknown because they are
12 moving targets. But we're aggressively paying those off without
13 making a claim against the family trust.

14 Q But using a conservation easement that would be owned by
15 the family to do so?

16 A Owned by Buckhorn Land and Livestock, paid off
17 Buckhorn Land and Livestock's debt.

18 Q 39 percent of that was owned by three trusts that are
19 for you, Stan and Wendy, right?

20 A No.

21 Q Buckhorn? Buckhorn trust doesn't own -- each of you
22 don't own 13 percent of that?

23 A No.

24 Q Okay. Well, who owns Buckhorn then?

25 A It was a gentleman -- we have a partner there by the

1 name of Randy Venturacci who owns 25 percent, we have Dad's family
2 trust in there of 25 percent, and then Stan and I were the
3 remainder.

4 Q Okay. I'm going to come back to that.

5 A Okay.

6 Q Buckhorn.

7 Anyway, let's look at Exhibit 74. Again, financial
8 statements, accounting for the family trust, April 1st, 2015,
9 through March 31st of 2016.

10 And, by the way, these accountings were all required
11 accountings -- accountings that you are required to provide to
12 Wendy, correct?

13 A Yes, that is correct.

14 Q And required by statute, but also by the trust, right?

15 A Yes.

16 MR. SPENCER: And so flipping over to page 31 of
17 Exhibit 74 -- Keith, it's TJ -- I'm sorry, JSK 1259.

18 BY MR. SPENCER:

19 Q So on the prior accountings, there is no way for Wendy
20 to know what the scope of indemnification is based upon the
21 listing there that said "unknown," right?

22 A Yes, she wouldn't have known all the exact details of
23 which loans, the status of them at that time.

24 Q So this is as of March 31st, 2016 -- scroll up to the
25 top there, Keith, just to show that.

1 As of -- contingent trust obligations as of March 31st,
2 2016, and then scroll down, the indemnification and contribution
3 agreement explains that again.

4 "Total amount of the claim is yet to be determined."

5 So even then, the full scope of the indemnity is not
6 completely decided, right, as of March 31st, 2016?

7 A Same reasons as I mentioned before. We're paying those
8 debts down and haven't made a claim against the trust for -- some
9 of those, like, I'm seeing there, like Jackrabbit Properties, for
10 example, it's been a few capital calls.

11 But we -- I don't know how much detail you want me to go
12 into. But we sold an interest to another gentleman, which reduced
13 that from 403- to 223- and so on. We did various different things
14 to eliminate some of those.

15 Q Sir, I'm just asking you to comment on your statement in
16 your accounting, "the total amount of the claim is yet to be
17 determined."

18 So as of March 31st, 2016, the scope of the indemnity
19 had not been fully determined yet, had it?

20 A Okay. Yes.

21 Q You are reporting that to Wendy, so that's got to be an
22 accurate statement, right?

23 A Yes.

24 Q And then you listed and you mentioned the Jackrabbit and
25 the Winnemucca, but 4.305 million and then Winnemucca is 598,000,

1 but then there's a mortgage there by Todd in favor of
2 Bank of America for 2.35 million.

3 That's your mortgage on your home -- homestead, isn't
4 it?

5 A Yes.

6 Q Okay. You testified earlier that you weren't making a
7 claim for the mortgage on your homestead.

8 A And I'm not.

9 Q Okay. As of March 31st, 2016, you have that listed as
10 you doing that, right?

11 A Kevin Riley put that in there. But, yeah, it was on
12 this particular sheet that is right there.

13 Q Well, you can't -- you are not blaming this on
14 Kevin Riley. This is your accounting that you submitted to the
15 beneficiaries as being an accurate rendition of the administration
16 of the trust, right?

17 A Yes.

18 Q Okay. So as of March 31st, 2016, you are still listing
19 your personal mortgage as an obligation of the family trust under
20 the indemnity agreement, right?

21 A I see it there, yes.

22 MR. SPENCER: Your Honor, offer Exhibit 126, which is
23 stipulated.

24 THE COURT: 126 is admitted.

25 THE CLERK: Thank you.

1 (Exhibit 126 admitted into evidence.)

2 BY MR. SPENCER:

3 Q Again, financial statements, accounting for the family
4 trust from April 1st, 2016, through December 31st of 2017. And
5 that's the last accounting that would have been prepared, correct?

6 A I believe so.

7 Q The 2018 accounting has not been completed, has it?

8 A That sounds correct.

9 Q So the last word that -- well, let's look at page 33.

10 And the last word that the beneficiaries have gotten regarding the
11 indemnification agreement, again, as of December 31st, 2017 -- and
12 scroll down, Keith.

13 Again, your personal mortgage with Bank of America for
14 2,350,000 is being claimed under the indemnification agreement,
15 right?

16 A I see that there, yes.

17 Q Okay. And so according to the last accounting that the
18 beneficiaries would have received, all that they are aware of is
19 that you are still claiming that your personal mortgage should be
20 paid by the trust, right?

21 A Not necessarily should be paid by the trust, but it is
22 potentially a claim in the event of the catastrophic event that I
23 previously mentioned to you.

24 Q Uh-huh. The unpaid balances are \$5.487 million. Do you
25 see at the bottom?

1 A Well, the first loan on the Jackrabbit Properties are
2 the 2480-. That's an obligation that Dad's family trust was also
3 a guarantor on. That number has now been reduced further down
4 from that to 24- -- from 2480- to 1050-, approximately.

5 The Buckhorn one has been reduced down from that 297- to
6 about 75-.

7 And the mortgage for Todd in favor of Bank of America at
8 2 million 350 is zero now.

9 Q The mortgage with Bank of America at 2 million 350 is
10 zero. Why is that?

11 A Because I took it off.

12 MR. SPENCER: Okay. And, Your Honor, may we approach?

13 THE COURT: Yes, you certainly may.

14 Ladies and gentlemen, please stand in place.

15 (The Court and counsel left the courtroom.)

16 THE COURT: Ladies and gentlemen, during this recess,
17 please do not discuss this case amongst yourselves. Please do not
18 form or express any opinion about this matter until it's submitted
19 to you.

20 I don't know how long your recess will be. I know our
21 trial day ends no later than 4:15. I might send word that the
22 trial day has ended, I'm not sure.

23 Please, be excused.

24 (The jury left the courtroom.)

25 THE COURT: I just conducted a sidebar, which five

1 attorneys and the Court were cramped into the coffee room of the
2 jury deliberation room. And at some point, the conversation
3 evolved into argument between counsel without any engagement of
4 the Court.

5 I thought it appropriate that we capture those
6 arguments. Don't interrupt one another, but have at it.

7 Be seated, please.

8 Who wishes to go first?

9 MR. SPENCER: Your Honor, I acknowledge that, and I do
10 apologize for that happening.

11 The reason I asked for the sidebar relates to a limine
12 matter that involves the settlement agreement entered into between
13 Todd and Stan just prior to the --

14 THE COURT: Should we have -- I'm just thinking about
15 the witness, whether he should be sitting at the witness stand
16 during this time. Doesn't matter to me, but I want to make are we
17 about to say things -- he's a party and so it's okay. So go
18 ahead.

19 MR. SPENCER: Uh-huh.

20 THE COURT: I sometimes excuse witnesses who aren't
21 parties from these types of conversations. And I just kind of
22 reconfigured that he's a party, he can be here at any time.

23 Excuse the interruption.

24 MR. SPENCER: No problem.

25 And the limine regarding the settlement and getting into

1 the terms of the settlement, I think, has now become germane to
2 the testimony that's been given.

3 There -- Mr. Todd Jaksick has testified that he no
4 longer claims the mortgage on his homestead. And as far as the
5 beneficiaries knew, as of December 31st, 2017, he still was. And
6 so something has happened now that -- where he has decided not to
7 do that. And that thing that has happened is that he and Stan
8 have entered into a settlement agreement.

9 And so the reasons why he's entered into that settlement
10 agreement, we would ask Your Honor to allow us to go into at least
11 that term, certainly, the issues of the lawsuits against each
12 other, but then the settlement itself and the term relating to
13 whether he's going to claim this as part of his indemnity or not,
14 because it goes to the credibility of Mr. Jaksick. It goes to the
15 bias that he and Stan would have.

16 And we would ask, in light of Your Honor's limine order,
17 that we be allowed to do that.

18 THE COURT: And what's your best memory of this Court's
19 limine ruling? I regret that I -- I have a memory of it, it's
20 fairly distinct. I have notes from it, but I did not reduce it to
21 writing in the way I customarily would.

22 MR. SPENCER: Well, it mainly involved the document
23 itself, but I think, your -- and certainly would defer to the
24 record and Your Honor's ruling.

25 But what I remember is that we can talk about the

1 lawsuits against each other. We could talk about the fact that
2 they settled, but then, we couldn't get into the terms of it.

3 THE COURT: So why can't you -- you know, Counsel, I'm
4 balancing a lot of risks here, but each of the litigants, as -- I
5 don't ever want my words to be inferred in ways not intended.

6 Counsel here, and often elsewhere, are gladiators, and
7 this is the arena. And the work of the gladiator is to take one
8 on the chin occasionally and to put one on the chin occasionally.

9 I am aware that this is a very controversial ruling. I
10 did my best with the information before me.

11 There are risks attendant to both sides of the decision.

12 You just asked to go to the very terms of the settlement
13 agreement, which was something that I brought you to, but not
14 over.

15 MR. SPENCER: Correct.

16 THE COURT: Why can't you accomplish your same purpose
17 by asking him why that particular item is removed from the
18 controversy now and have him say I reached an agreement with my
19 brother Stan?

20 MR. SPENCER: Okay.

21 THE COURT: I mean, I'm trying to contemplate, you know,
22 the respective harms here.

23 MR. SPENCER: I get it.

24 THE COURT: And I'm trying to drive my way through the
25 middle a little bit. But instead of, all of a sudden, marking the

1 settlement agreement, as I indicated we weren't going to do, what
2 am I not seeing that would be accomplished?

3 Go ahead, Mr. Connot. Consult with him for a moment.

4 MR. SPENCER: I think Your Honor's point is a good one,
5 it's just that I -- I wanted to be careful about pushing the
6 envelope as far as your limine ruling. So I wanted to make
7 sure -- on cross-examination, I was going to say and you settled
8 with your brother and go into it that way, but I can ask him an
9 open-end question.

10 I think the other thing that's important in relation to
11 the settlement is the fact that it's contingent on them defeating
12 Wendy or at least defeating her to the point or in such a way that
13 it doesn't affect their agreement.

14 THE COURT: So if it truly were contingent and it
15 reflects bias, which is a different evidentiary analysis,
16 particularly with specific Supreme Court decisional authority, I
17 would say have at it.

18 But I keep hearing from counsel that it doesn't
19 implicate bias, that it's not contingent. And I don't know which
20 of the two is accurate.

21 MR. SPENCER: Well, it's my reading of the settlement
22 agreement that we got, said that it's contingent upon -- we
23 agreed, and that agreement is contingent upon either us entering
24 into a settlement with Wendy that does not alter the terms of our
25 agreement, or obtaining a trial verdict or result that does not

1 affect the terms of our agreement.

2 And I can certainly let them -- my opposing counsel
3 respond, but I didn't -- wasn't sure Your Honor wanted to know the
4 exact terms of the settlement. And I don't know --

5 THE COURT: I don't really want to, because I'm a finder
6 of fact as well.

7 MR. SPENCER: Okay. Well, I'll leave that there then.

8 THE COURT: So the question that I've asked, that you
9 answered, because I just wanted to segue to opposing counsel's
10 comments, is that the Bank of America obligation for Mr. Todd's
11 personal residence has been contentious between Todd and Stan, and
12 that Todd has now agreed to remove his personal residence from
13 this bundle of controversy.

14 And when you ask him why is it no longer there, he can
15 answer because my brother and I reached an agreement to remove it.

16 MR. SPENCER: All right.

17 THE COURT: Well, let me hear from opposing counsel.

18 MR. SPENCER: Uh-huh.

19 MR. ROBISON: First of all, Your Honor, the minutes
20 reflect that you took it under advisement, so we're back to square
21 one.

22 I apologize for what happened in the coffee room. I
23 should entertain the Court with this comment. Commissioner Ayres
24 invited us to argue like that so he could learn more, but that's
25 no excuse for what we did to you, Your Honor.

1 I think your proposal is acceptable, and that's exactly
2 what happened and exactly been the dispute since 2013.

3 THE COURT: Okay. Then Mr. -- yes.

4 MR. HOSMER-HENNER: Your Honor, may I be heard briefly
5 on those matters?

6 THE COURT: Yes, of course.

7 MR. HOSMER-HENNER: A few quick points.

8 The first is, I have a problem with the use of the word
9 "contingent" to describe the settlement agreement in terms of
10 nefarious reference.

11 It's not as if we're waiting to see if we can defeat
12 Wendy and then slash up her property and then divide it between
13 us. It's simply a function of the fact that if she prevails, some
14 of -- in terms of what she's seeking, some of the assets that are
15 going to be distributed or moved around wouldn't be there, so the
16 settlement agreement couldn't exist, depending on the outcome of
17 this case.

18 THE COURT: So does your client have a financial
19 incentive for Todd to prevail in this trial?

20 MR. HOSMER-HENNER: That is a complicated question and
21 not an easy one, but -- it's a very complicated question, and I
22 don't think there's a clear answer.

23 THE COURT: This is a complicated trial. I've got nine
24 attorneys busting my chops. I'm saying that with a smile, not
25 pejoratively. I shouldn't say that, because of the record.

1 I have nine attorneys staring me down in this courtroom,
2 and I've got a jury who is now -- looks like it's going to be 10
3 or 12 or 14 days of their time. It's a complicated case.

4 I need an answer, because it's going to help me. It's
5 going to inform my evidentiary decisions. If Stan has a financial
6 incentive for Todd to prevail, that's relevant to his testimony.

7 MR. HOSMER-HENNER: Your Honor, that question can't be
8 answered because the claims that have been raised by Wendy could
9 be -- depending on the settlement, the way she prevails against
10 Todd, could benefit Stan.

11 The only thing we can say for sure is that Stan's
12 ability to reduce his attorney's fees has been improved.

13 But other than that, there's simply too many balls in
14 play to know whether the settlement agreement is going to benefit
15 him, whether Wendy prevails on nothing, whether she's
16 disinherited, according to the motion filed by petitioners.

17 I couldn't tell -- we could bring in the accountant for
18 several days and try to put together the spreadsheets and not be
19 able to tell whether Stan is benefitting or not benefitting by
20 Todd prevailing.

21 THE COURT: Well, how do I make the evidentiary decision
22 then about what is presented to this jury? It's not just the
23 words spoken, it's the way in which it's spoken, and it's the
24 motive underlying this person.

25 MR. HOSMER-HENNER: That's what I wanted to raise

1 briefly, Your Honor, is that if you are allowed to say why are you
2 no longer contesting this specific provision between Todd and
3 Stan, then you are getting to the part of the motion in limine.

4 And I disagree with counsel at this table that you took
5 it under advisement. Your ruling was fairly clear that while the
6 negotiations would be excluded and the terms of the settlement
7 would be excluded, the fact of the settlement in the litigation
8 between them would not be.

9 THE COURT: That's my memory.

10 MR. HOSMER-HENNER: So maybe you reserved kind of it
11 globally under advisement. But if I'm allowed to query of Stan
12 and Todd, why are you no longer disputing this very specific term
13 with your brother, then that is, in effect, getting to the terms
14 of settlement. And I don't see any way around that, if we --
15 without violating that particular order in limine.

16 THE COURT: One of the arguments at sidebar was a return
17 to the argument which preceded my limine ruling, which was a point
18 inviolate.

19 We put public policy at risk when we order to settlement
20 conference, we settle the case, and then we're bludgeoned with the
21 fact that we settled the case. I'm very aware of that theme.

22 I don't know how to -- I don't know how to immunize any
23 party from the choice they make.

24 There was a choice here to settle with one and not all.

25 I'm -- I invite -- if there's a different remedy, I

1 don't know how to prevent that fact from coming in, because then
2 it restates the posture and the history between these parties.

3 So final word from either trustee, Todd's counsel or
4 Todd's individual counsel.

5 MR. LATTIN: The only thing that I would add to this is
6 the fact that the house was taken off -- was done before the
7 settlement. It's not -- it's not -- that would be done
8 regardless.

9 So it's not -- it can't be bias that he took it off
10 because of the settlement. He was going to take that off anyway,
11 and they had discussed that long before this.

12 Now, the fact that it's still on the accounting, the
13 accounting just hasn't been updated. So -- but that's not going
14 to be a claim, never has been a claim, and it's going to be
15 removed from that, regardless of anything that gets -- regardless
16 of the settlement agreement that's entered into between Stan and
17 Todd.

18 THE COURT: Do you agree with that?

19 MR. HOSMER-HENNER: Your Honor, I don't. He could have
20 filed a withdrawal of that claim. That never was.

21 There were discussions about taking it off and perhaps
22 an agreement of principle, but there was never a withdrawal of
23 creditors claim. There was never a formal document, there was
24 never a release, there was never an amendment to the
25 indemnification agreement.

1 That was something that we bargained for to get in
2 writing in the settlement agreement.

3 I agree with cocounsel -- yeah, cocounsel -- that that
4 likely was going to happen, and that perhaps Todd contemplated and
5 agreed in principle to that, but we never had that done in
6 anything, in a written form, that was enforceable.

7 THE COURT: So the question is appropriate, why is it
8 absent now when it was present before, and the answer, if
9 truthful, is because my brother and I reached a resolution, and
10 you don't get to gloss over the terms of the settlement agreement
11 yet, if ever.

12 MR. SPENCER: Okay. That helps me, Your Honor.

13 THE COURT: Stand for our jury.

14 MR. ROBISON: Has he been admonished? I don't know if
15 he -- just to make sure he's within the Court's order in response
16 to any questions. I just want to --

17 THE COURT: So what I would like to do, Mr. Robison,
18 it's very appropriate to admonish a witness. It often happens out
19 of my presence. Sometimes I'm the one who does it. I would like
20 you to take a moment and just confirm with your client.

21 MR. ROBISON: I welcome counsel to join me so it's not
22 coaching.

23 THE COURT: Yeah, let's go off the record.

24 (A discussion was held off the record.)

25 MR. ROBISON: Thank you, Your Honor.

1 THE COURT: All right. Bring the jury in.

2 (The jury entered the courtroom.)

3 THE COURT: As you arrive in your seats, you may please
4 be seated.

5 And Counsel may continue.

6 MR. SPENCER: Thank you, Your Honor.

7 BY MR. SPENCER:

8 Q Todd, before the break, we were looking at the
9 accountings. And we got to December 31st of 2017, and your
10 personal mortgage was still on that accounting.

11 And I believe now, you said that that personal mortgage
12 is no longer a claim that you are making against the family trust.
13 Is that right?

14 A That is correct.

15 Q Okay. And why is that?

16 A It's been a contested item between my brother and I over
17 the years, and we came to an agreement. And I told him that I
18 would remove it off the Exhibit A of the indemnification
19 agreement.

20 Q Uh-huh. And have you ever told Wendy that?

21 A Not yet.

22 Q All right. And the agreement to -- that you've reached
23 with Stan -- and you two are cotrustees of the family trust still,
24 right?

25 A Yes.

1 Q And the agreement that you have reached with Stan, when
2 was that reached?

3 A I'm not sure the exact date, but maybe 10 days,
4 two weeks ago.

5 Q Okay. And no disclosure to Wendy that --

6 MR. ROBISON: I object, Your Honor.

7 THE COURT: It is sustained. I believe there were
8 pretrial disclosures up to the -- up to the day of trial on this
9 issue.

10 MR. SPENCER: Thank you, Your Honor.

11 Let me now offer Exhibit 429.

12 THE COURT: Without objection, 429 --

13 MR. SPENCER: Yeah, it's stipulated. I apologize.

14 THE COURT: Thank you.

15 429 is admitted, Ms. Clerk.

16 THE CLERK: Thank you.

17 (Exhibit 429 admitted into evidence.)

18 BY MR. SPENCER:

19 Q And this was a -- this is a spreadsheet, amounts and
20 claims relating to the indemnity; is that correct?

21 MR. SPENCER: If you zoom in on the top row there,
22 Keith, it's a little easier to see.

23 THE WITNESS: Yes, that looks familiar.

24 BY MR. SPENCER:

25 Q Okay. And so do you know who prepared this spreadsheet?

1 A It was by myself working with Jessica Clayton in our
2 office.

3 Q Okay. And in the first column is "Ag Credit related
4 notes payable to Sam trust, Sam trust paid on behalf of Todd as of
5 January 31st of 2017," and then the total at the bottom of that
6 column, 316,532.26.

7 A I see that, yes.

8 Q The next column, "Ag Credit, MetLife related, et cetera,
9 amounts Todd paid personally," total at the bottom of the column,
10 \$530,453.16.

11 A Yes, I see that.

12 Q And then "Ag Credit related past due that needs to be
13 paid," \$134,026.76.

14 And then the next column is "To be claimed now." And
15 then there's an X next to certain of the balances that fall under
16 the category of "amounts paid by Todd personally."

17 Do you see that?

18 A I do.

19 Q And the total of that column, \$664,479.92.

20 A Okay.

21 Q And so the running balance of the indemnity claim is
22 \$981,012.18; is that correct?

23 A I would accept that math, yes.

24 Q All right. So these are amounts that -- some of which
25 that you paid that you want the trust to pay you back, right?

1 A Reimbursement on, yes, that second column.

2 Q And those amounts were paid -- were those amounts paid
3 by you in relation to your interest?

4 A That's what I recall, yes.

5 Q And so the trust is paying your share of that
6 outstanding obligation, and you are getting 100 percent of the
7 benefit, right?

8 A Because of the agreement, yes, that is correct.

9 Q So you can see how important and how significant this
10 agreement is, because for every dollar that's paid out of the
11 family trust to the benefit of you based on the indemnity
12 agreement, reduces by a dollar the inheritance that the three of
13 you all would get from the family trust, right?

14 A Yes.

15 Q And so the indemnification agreement actually changes
16 the dispositive plan of the family trust, and by that, I mean the
17 disposition provisions about what each of you will get or inherit.

18 A Yes.

19 Q And so, just hypothetically, if you have a million
20 dollars and you claim 400,000 on your indemnity, then the amount
21 left to distribute as an inheritance is 600,000, 200- each, right?

22 A If the document is determined to be held up by the
23 Court.

24 Q Uh-huh. And you don't believe that it's appropriate
25 that you pay for your own investments in those particular

1 entities; is that right?

2 A As I stated, if you look at each one of these loans,
3 they are specific to two loans; one loan that ends, Ag Credit,
4 that ends in 101.

5 And there was a lot of different things that happened
6 associated with Dad and entities, and that's really one of the
7 main reasons why the indemnification agreement was created to
8 begin with.

9 And like I said in my testimony earlier, there was cash
10 proceeds available through sales that I had put together to
11 generate to pay those debts. But at the time, because the economy
12 was so bad, Dad wanted to keep the cash to do other things with
13 it.

14 And now, there is no additional assets -- there's no
15 additional assets to be able to be sold to pay down that debt.

16 Q And so the indemnity agreement has caused the family
17 trust to be insolvent?

18 A I don't understand your question. I'm sorry, could you
19 clarify, please.

20 Q Payments based upon the indemnity agreement has caused
21 the family trust to have -- or, to have more obligation than
22 assets?

23 A Not that I'm aware of, no.

24 Q Okay. And so what else does it own over and above the
25 indemnity claims that you have, the family trust?

1 A What does the family trust own? Right now?

2 Q It has assets over and above your claims?

3 A Over and above that 900,000? Yes.

4 Q What about over and above the 5.4 million that are in
5 the accountings?

6 A Like I said, that \$4.4 million number has been reduced
7 down substantially, a much lesser number. If you want to go
8 through that, we could.

9 Q Is it now this number in this exhibit here?

10 A That looks pretty accurate.

11 There is one other item, which is the Jackrabbit loan
12 that on your previous exhibit was 2 million -- \$2.4 million, has
13 been now reduced down to 1 million and 50,000.

14 And we currently have about 4,500 acres of land for
15 sale, and we're going to add an additional approximately thousand
16 acres up for sale in the very near future to be able to be sold,
17 to pay off that remaining debt, so that the family trust won't
18 have to come up with that money.

19 Q And so have you disclosed that information to Wendy?

20 A Yes, Wendy is aware of those.

21 Q When?

22 A We started some of these sales back in, I would say,
23 2017 or so. She's not aware of the new actual listing of a
24 thousand acres because we haven't listed it yet, but that is
25 something that the Jackrabbit group has agreed to do.

1 Q That was the Jackrabbit obligation?

2 A That is a Jackrabbit obligation, which also was a family
3 trust obligation.

4 Q And do each of you and Stan and Wendy own some of
5 Jackrabbit outside the trust?

6 A Stan -- we've actually distributed the Jackrabbit
7 interest that is owned by the family trust to Stan's sub trust, to
8 Wendy's sub trust, and to my sub trust, at the time or about the
9 time we did a recent refinance with a bank called Rabobank. And I
10 recall Stan and I guaranteed Wendy's sub trust debt for her.

11 Q Okay. And you also recall that the family trust was
12 paying capital calls on behalf of you and Stan, right?

13 A For Jackrabbit. Like I said, there are the two entities
14 that we've made claims under, which is Jackrabbit and that
15 Ag Credit loan 101.

16 MR. SPENCER: Your Honor, I offer two exhibits, which
17 are Exhibit 411 and 412, both stipulated.

18 THE COURT: Thank you.

19 411 and 412 are admitted, Ms. Clerk.

20 THE CLERK: Thank you.

21 (Exhibits 411 and 412 admitted into evidence.)

22 BY MR. SPENCER:

23 Q So Exhibit 411 is a capital call request that includes
24 TBJ investment trust, 28.692 percent. It has its capital call
25 amount. And then the family trust, Samuel S. Jaksick Jr. trust --

1 I assume that's the family trust?

2 A Yes.

3 Q All right. And then the Todd B. Jaksick, LLC, and
4 Stan Jaksick II, LLC; Stan Jaksick II.

5 A Okay.

6 Q Those are being paid by the family trust, right?

7 A We did pay those -- we did pay those, I believe, on
8 behalf of the family trust. Yes, that does sound accurate.

9 Q Well, you paid the family trust on behalf of the family
10 trust, but the family trust paid yours and Stan's out of the
11 family trust also, didn't it?

12 A That's what I recall, yes.

13 MR. SPENCER: Flip over to the next page, Keith.

14 So deposit slips, go to the next page.

15 BY MR. SPENCER:

16 Q So there's a check drawn on the family trust for \$4,000
17 on behalf of Todd B. Jaksick, LLC.

18 A Yes, I see that.

19 Q The next page is the family trust's capital call amount.
20 28,193.80.

21 A Yes.

22 Q The next page, TJ 1777. This one is \$28,692 drawn on
23 the family trust account on behalf of TBJ investment trust.

24 A I see that.

25 Q And then the next one -- Keith, is thirty-one eleven

1 forty -- paid by the family trust on behalf of the Stan Jaksick
2 II, LLC.

3 Do you see that?

4 A I do, yes.

5 Q I don't see any checks there for Wendy's portion of the
6 capital call. Were there any?

7 A Yes.

8 Q Okay. Were those the ones that were guaranteed, or were
9 they paid?

10 A They were paid, in one of those first checks that you
11 showed earlier.

12 Q Which one, the family trust check?

13 A From the family trust portion, yes, when Wendy's
14 ownership interest is in there.

15 Q Doesn't Wendy own some interest outside of the family
16 trust?

17 A I believe this was prior to the distribution from the
18 family trust to the sub trusts.

19 Q When did that happen?

20 A I don't recall the exact date, but if I had to say, it
21 would probably be a little further towards the end of 2017 or the
22 first part of 2018 -- probably the first part of 2018. I'm not
23 sure.

24 MR. SPENCER: Exhibit 412.

25 THE WITNESS: What's that?

1 MR. SPENCER: Pull up Exhibit 412, Keith.

2 BY MR. SPENCER:

3 Q Again, this is a capital call, September 27th of '17,
4 paid by the family trust to Jackrabbit, Jackrabbit Properties.

5 MR. SPENCER: The next page, Keith, is the check.

6 BY MR. SPENCER:

7 Q 25,600. Do you see that?

8 A I do, yes.

9 Q So why is the family trust paying the personal
10 obligations on the capital calls of you and Stan?

11 A They are paying them for the family trust portion, as
12 well as for Jackrabbit Properties on behalf of Stan and I because
13 of the indemnification agreement that I have, and that it was an
14 agreement between the cotrustees to pay all of the Jackrabbit
15 capital calls to keep that -- to keep that entity current because
16 it has significant value, very significant value, and we didn't
17 want to take a chance for that to be jeopardized to benefit
18 everybody.

19 Q But why -- and that benefitted you and Stan both, right?

20 A It benefitted all the owners in the family.

21 Q Well -- and I'm not talking about the family trust
22 interest. I'm talking about your interests and Stan's interests
23 were the entities that you and Stan own alone. Okay?

24 A Yes, it did benefit that, yes.

25 Q All right. So the cotrustees got together and agreed

1 that the trust is going to pay your entities' capital call on the
2 Jackrabbit property because it's a valuable asset and we want to
3 make sure it stays current?

4 A Yes.

5 Q And Wendy is paying one-third of those obligations that
6 are paid on your behalf and Stan's behalf, right?

7 A That's possible.

8 Q Well, that's the effect of it, isn't it?

9 A It could be, yes.

10 Q All right. And that's a self-dealing transaction, isn't
11 it, where you take trust property and you pay it for something
12 that is your sole obligation?

13 A It just something -- it could be technically a
14 self-dealing. I'm not sure. We just -- all the attorneys and
15 accountants and everybody made the decision to make these payments
16 and keep them current.

17 Q Well, you need to be sure because you are trustee, and
18 you have to make the decisions about whether you should enter into
19 a transaction or not based upon your best interest analysis of the
20 beneficiaries, right?

21 A Yes. We do not want to lose this asset.

22 Q Well -- and the interest of yourself and of Stan, both
23 cotrustees, apparently outweighed that of Wendy; is that right?

24 A I don't believe so, no. Wendy's interest is in that
25 package as well. We're making sure that her capital call portions

1 are paid for, and I'm tracking those on the indemnification sheet.

2 Q I know you want to keep saying that, but you know that
3 I'm not talking about the family trust interest. I'm talking
4 about the TBJ investment interest, the Stan Jaksick, LLC, interest
5 that -- and the other Todd Jaksick entity, that were paid --
6 personal obligations of each of you and Stan or your entities that
7 were paid by the family trust.

8 And in relation to that, my question is, apparently your
9 own interests outweighed that of Wendy, correct?

10 A Well, this particular loan was associated with that
11 property, and the Jackrabbit Properties is on the Exhibit A of the
12 indemnification agreement.

13 Q Okay. So back to the indemnification then?

14 A Uh-huh.

15 Q Well, Stan -- is that a "yes"?

16 A Part of those payments are based off of the
17 indemnification agreement. That's why I put them on that sheet
18 that we had there.

19 Q You just said "uh-huh" and I wanted to make sure that
20 was a "yes."

21 But Stan's indemnification has not been applied in any
22 way, has it?

23 A It has not, no.

24 Q Because it doesn't have an Exhibit A attached to it, for
25 one reason, correct?

1 A I don't necessarily know that that would -- I'm not too
2 sure what the effect that that would have.

3 MR. SPENCER: Okay. Your Honor, I offer Exhibit 38.
4 It's stipulated.

5 THE COURT: Thank you.

6 38 is admitted.

7 THE CLERK: Thank you.

8 (Exhibit 38 admitted into evidence.)

9 BY MR. SPENCER:

10 Q Is there a note for the repayment of those capital call
11 amounts to the family trust?

12 A I would have to look. I don't recall off the top of my
13 head right now.

14 Q You don't recall sending Wendy a copy of a note on that,
15 in relation to those, do you?

16 A I do not.

17 MR. SPENCER: Keith, return to -- it would be the third
18 page in, TJ 1784.

19 BY MR. SPENCER:

20 Q Do you see this is an email -- blow up the top email --
21 from Todd.

22 Let me back up. This is an email from Stan -- I'm
23 sorry, to you, Todd, on December 14th of 2017. It says
24 He's okay with the trust loaning you" -- which would be Todd --
25 "you money for your payment, but you will need to have someone

1 draw up loan documents.

2 "Prefer that everyone pay their own percentage, like all
3 the other partners, with the exception of Wendy and Luke's
4 interest, which lists the trust as the responsible party under
5 your Option A and does make sense for the trust to pay.

6 "I do not agree with your indemnification agreement and
7 have filed an objection to it and will not agree to the trust
8 making your payments on a valuable asset that you have a very good
9 opportunity to profit from down the road."

10 So Stan was not happy about those payments being made,
11 was he?

12 A I think that -- that that was part of the disagreement
13 that Stan and I were having associated with the indemnification
14 agreement.

15 Q Well, does this relate to the Jackrabbit capital call,
16 as the subject indicates?

17 A Yes.

18 Q And so you just said a minute ago that you and Stan
19 agreed that it would be paid as those exhibits showed, right?

20 A This was -- we did agree to the payments that were prior
21 to this. And then when there was another payment that was coming
22 due in and around December '14 is when we were going to do a
23 refinance with the Rabobank. And so this would have been another
24 set of capital calls.

25 Q Okay. So the timing is that the previous ones we looked

1 at were earlier in the year?

2 A Yes.

3 Q And you all agreed to that, and this was a later
4 Jackrabbit capital call where there was a disagreement, right?

5 A That is correct.

6 Q And skipping back to the first page, TJ 1782 of
7 Exhibit 38, it's an email from Stan to Mr. LeGoy, copying
8 Mr. Kimmel, you, Todd Jaksick, Brian McQuaid, Don Lattin,
9 Kevin Riley.

10 And it says "Hey guys, sorry for involving you in these
11 issues.

12 "Bob, thank you for your efforts in trying to get us to
13 resolve these disputes, but Todd's indemnification agreement has a
14 far bigger impact on the trust than any lawsuit or attorney's fees
15 ever will.

16 "The only option is for Todd to pay for his percentage,
17 I'll pay for mine, and so on. This is a matter of principle and
18 never the intention of my father."

19 So you see that he's disagreeing with your application
20 of the indemnification agreement, isn't he? And that's Stan.

21 A Stan -- we did have disagreement associated with the
22 indemnification agreement, yes.

23 Q Disagreement regarding the mortgage on your house and a
24 disagreement regarding this -- at least this Jackrabbit capital
25 call?

1 A Yes, we did have disagreement on this.

2 Q And then, skipping down to the last paragraph of that
3 email, "I have filed an objection with the Court regarding this
4 matter, so until it is heard or until Todd changes his
5 indemnification agreement substantially, he knows where I'm coming
6 from. The trust is not going to make his payments. And the last
7 thing to do is hire another attorney to give us an opinion weeks
8 before we appear before the judge."

9 A Okay.

10 Q And so he's expressing his objection to the
11 application -- your application of the indemnification agreement.
12 Is that something that had gone on for some time?

13 A I don't believe so. I think it more started in or
14 around the 20- -- right about this time frame, I say in December,
15 to be -- what I recall.

16 But there was some discussions earlier about the house
17 being on the indemnification, what I recall.

18 Q And a little over a year ago, he's expressing that the
19 substantial -- a far bigger impact on the trust than any lawsuit
20 that your indemnity would have on the family trust, right?

21 A That was his statement, but I will say that it's
22 inaccurate.

23 Q It's inaccurate. You disagree with that?

24 A I do.

25 Q But he's a cotrustee, just as you are. And Mr. Kimmel

1 is the other -- Mike Kimmel is the other cotrustee, right?

2 A That is correct, yes.

3 Q So it takes two of the three of you all to decide
4 something, doesn't it?

5 A Yes.

6 Q And Mr. Kimmel and you can outvote Stan every time,
7 right?

8 A I guess that's possible.

9 Q Well, it just is a matter of numbers, two out of three
10 wins the vote every time, right?

11 A Some circumstances. We don't operate that way for the
12 most part. There has been a few items where we have done things
13 like that.

14 Q All right. And there have been numerous times where you
15 and Michael Kimmel have outvoted Stan in relation to the trust,
16 right?

17 A If you could be more specific.

18 Q Well, has that happened?

19 A I believe there's one instance that I can recall.

20 Q And Mike Kimmel is a good friend of yours from high
21 school?

22 A I wouldn't necessarily say "good friend," but I
23 certainly know him from high school.

24 Q So three decades now, right?

25 A That I've known the Kimmel family?

1 Q Yes.

2 A Yes.

3 Q And when the vacancy came up when Mr. Riley resigned
4 over the Colorado gaming license issue, some time passed where it
5 was just you and Stan were the cotrustees, but then Mr. Kimmel,
6 Mike Kimmel, was added later?

7 A Correct.

8 Q And you appointed him, didn't you?

9 A Yes, I did.

10 MR. SPENCER: Offer Exhibit 243, Your Honor. It's
11 stipulated.

12 THE COURT: 243 is admitted.

13 THE CLERK: Thank you.

14 (Exhibit 243 admitted into evidence.)

15 BY MR. SPENCER:

16 Q And here's another example, if you turn to the -- it's
17 an email thread. Turn to the second page of -- let's see.

18 MR. SPENCER: Third page of that, Keith. Second page,
19 I'm sorry. We'll start at the top.

20 BY MR. SPENCER:

21 Q This is from Stan to you. "I can understand if the
22 trust had an interest and it was an emergency loan similar to the
23 Montreux HOA situation, but why would the trust be paying for a
24 Bright Holland expense or Arlo's salary."

25 And then on the page before that, "Why would the trust

1 be paying this?"

2 There's another disagreement, September 22nd of 2017,
3 between you and Stan, right?

4 A I wouldn't necessarily say it was a disagreement. The
5 way it looks on the email there, it was, but it was more of an
6 informative fact than anything else, when I was able to explain to
7 him the circumstances.

8 MR. SPENCER: One moment, Your Honor.

9 Your Honor, offer Exhibits 207 and 447. They are both
10 stipulated.

11 THE COURT: 207 and 447 are admitted, Ms. Clerk.

12 THE CLERK: Thank you.

13 (Exhibit 207 and 447 admitted into evidence.)

14 BY MR. SPENCER:

15 Q And so this is -- can you see this up here, Mr. Jaksick?
16 The bottom -- we are going to start with 447. Sorry.

17 Down at the bottom, Kevin Riley writes an email, "You
18 requested a workup as to how it would look if we paid off
19 intercompany debts with Sam's receivables from family entities."

20 Do you know what that means or what that was about?

21 A I think we were trying to get Kevin to analyze the best
22 way to move around some of the internal family debts, as well as
23 figure out a way that we could try to distribute the entire trust,
24 was part of these discussions in here.

25 Q Okay. And then on the next page -- Keith, at the top --

1 after suggesting some things down at the bottom, Kevin writes, "I
2 don't think you'll be able to actually distribute remaining assets
3 of Sam's trust until Todd releases the trust from his indemnity
4 agreement.

5 "Todd, in theory, could sue the trust to call back all
6 the distributions to the grandchildren trust and both family
7 trusts if he needed to be reimbursed for the debt payments."

8 And skipping down to the last sentence, "I don't think
9 it will get that far. Nevertheless, I would recommend getting a
10 release from the indemnification agreement before distributing the
11 remaining assets to the beneficiaries."

12 A Okay.

13 Q Do you find that to be accurate, what he said there?

14 A I'm not sure. That was his opinion. I never looked at
15 it that way. And we had a lot of discussions around that, and I
16 was okay with funding the grandkids' trusts, and we did, to a
17 degree.

18 There was an additional set of funds we were waiting for
19 Stan to deposit back in to fund the remaining grandkids' trusts,
20 but I certainly never looked at taking the position or tried to
21 sue for clawback assets, as he's stating in there.

22 Q No, but it sounds like your indemnity agreement is the
23 holdup and the cause of distributions to beneficiaries receiving
24 anything?

25 A I don't think that to be the case, because in our

1 further discussions -- and you are certainly welcome to ask Kevin
2 that one when he comes and testifies.

3 As Kevin would explain, what we do is, it's based on how
4 you allocate the remaining assets, the remaining debts and things
5 like that. He thought it could be done in pretty short order.

6 Q Well -- but he's also saying that he can't make -- it's
7 not wise to make a distribution until you, Todd, release the
8 indemnification agreement obligations, right?

9 A And that's, you know, part of the discussions that we've
10 been having with Stan as well.

11 Q And you have not done that, have you?

12 A I said, yeah, I think that we did make decisions of what
13 was going to actually be outstanding in terms of the
14 indemnification agreement. We've substantially limited it to a
15 few key items.

16 Q We're talking about right now, you have not released the
17 family trust from the indemnification agreement obligations that
18 you consider it has?

19 A I am wanting to and wanting to move forward and get all
20 of these issues resolved and get all of this stuff behind us. I'm
21 willing to do that.

22 Q "Wanting to" means you haven't done it yet; is that
23 right?

24 A In a disagreement, an agreement and discussions that
25 Stan had, yes, we did put the details in, that we had talked

1 about, to exactly what the indemnification would be used for.

2 Q And you indicated that you would not sue to claw back
3 assets, right?

4 A Correct.

5 Q But isn't that what happened in the length between you
6 and Stan?

7 A Could you be more specific there.

8 Q You filed claims against Stan to claw back assets he was
9 holding, right?

10 A We filed a claim against Stan to bring family trust
11 money that was sitting in an account back into the family trust.

12 Q So you have filed at least one lawsuit to claw back
13 assets, right?

14 A Not to benefit the indemnification agreement, like it
15 states there, but to benefit the family trust, to get all the
16 money back in the family trust for all the beneficiaries.

17 Q But if it goes back into the family trust, it's subject
18 to the indemnification agreement, correct?

19 A Those particular funds were going to go to pay the
20 grandkids' trusts, which is what we had previously agreed to
21 between all the cotrustees and Kevin Riley.

22 Q The question was, if the money is put back into the
23 family trust, it's subject to the indemnification agreement,
24 correct?

25 A Yes, it could be.

1 Q All right. Exhibit 207.

2 So reading from the bottom up, the email at the bottom
3 from Brian McQuaid to Jessica Clayton, to you and Stan, Kevin and
4 Mr. LeGoy. And he was working on creditor claims, asking
5 questions about that.

6 And on the next page, he says, "I believed it was
7 decided that we would not submit claims against the trust for
8 monies that are owed by one entity to another without any personal
9 guarantee or other personal obligation of Sam attached to them,
10 and that if this is correct, the claim to be asserted by Duck Lake
11 against the trust is reduced 152,713. Would you please confirm
12 that that's correct."

13 Was it correct?

14 A I don't recall this.

15 Q And then up above on JC 54, Exhibit 207, from
16 Kevin Riley to Jessica, "I have a balance of 78,568. I think
17 Brian made it clear that to claim anything other than a direct
18 debt or personal guarantee of one of Sam's entities will open the
19 door for everyone else to do so as well."

20 Is that your understanding?

21 A I don't recall.

22 Q Mr. Riley believed that making claims against the trust
23 will allow everyone else to do the same thing, right?

24 A Everyone else did do the same thing.

25 I guess I'm a little confused, just because it was this

1 decision made, I think, at one week after this, October 14th,
2 October 21st, that all those creditor claims that I was talking
3 about -- that I was trying to find the stack of them, we were
4 talking about an hour or so ago -- it was agreed by Brian McQuaid
5 and the trustees that all those creditor claims would be filed, as
6 well as there was creditor claims filed on behalf of other lenders
7 as well.

8 THE COURT: Thank you.

9 Ladies and gentlemen, during this evening recess, you
10 are admonished not to converse among yourselves or with anyone
11 else on any subject connected with this trial.

12 You will not read, watch or listen to any report of or
13 commentary on the trial by any person connected with this case or
14 by any medium of information, including, without limitation, the
15 newspaper, television, Internet or radio.

16 Please be mindful of the Court's continuing
17 admonishment. No social media investigations or research.

18 You are further admonished not to form or express any
19 opinion on any subject connected with this trial until the case is
20 submitted to you for deliberations.

21 Good night, ladies and gentlemen. We'll see you, for
22 entry into the courtroom, at 9:45 tomorrow morning.

23 Stand for our jury.

24 (The proceedings concluded at 4:16 p.m.)

25 -o0o-

1 STATE OF NEVADA)
) ss.
2 WASHOE COUNTY)

3
4
5 I, CONSTANCE S. EISENBERG, an Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in and for
7 the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department 15 of the
9 above-entitled Court on February 20, 2019, and took verbatim
10 stenotype notes of the proceedings had upon the matter captioned
11 within, and thereafter transcribed them into typewriting as herein
12 appears;

13 That I am not a relative nor an employee of any of the
14 parties, nor am I financially or otherwise interested in this
15 action;

16 That the foregoing transcript, consisting of pages 1
17 through 192, is a full, true and correct transcription of my
18 stenotype notes of said proceedings.

19 DATED: At Reno, Nevada, this 11th day of May, 2019.
20
21

22 /s/Constance S. Eisenberg

23 _____
24 CONSTANCE S. EISENBERG
25 CCR #142, RMR, CRR

1 Code #4185
SUNSHINE LITIGATION SERVICES
2 151 County Estates Circle
Reno, Nevada 89511
3
4

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
10 In the Matter of the
Administration of the

Case No. PR17-00445
PR17-00446

11 SSJ's ISSUE TRUST

Dept No. 15

12 _____/
13 In the Matter of the
administration of the

14 SAMUEL S. JAKSICK, JR.,
FAMILY TRUST
15 _____/

16
17
18 TRANSCRIPT OF PROCEEDINGS

19 JURY TRIAL - DAY 6

20 FEBRUARY 22, 2019

21 RENO, NEVADA
22
23

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

25 JOB NO. 530283

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A P P E A R A N C E S
(Continued)

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
Exhibit 316	Financial Risk; Demonstrative Exhibit	--	32
Exhibit 318FF	Photograph	--	9
Exhibit 318GG	Photograph	--	10
Exhibit 327	Demonstrative Chart, Professionals Providing Advice to Todd	--	33
Exhibit 495	Correspondence Dated 8/16/14 from Wendy Jaksick to Todd Jaksick, Sam Jaksick, and Kevin Riley, Re: Wendy Jaksick 1995 Insurance Note	--	14

1 RENO, NEVADA, FRIDAY, FEBRUARY 22, 2019, 8:29 A.M.

2 -o0o-

3 (Whereupon the following proceedings
4 were outside the presence of the jury.)

5 THE COURT: Are we going to continue with Mr. Todd
6 until Mr. Hascheff appears?

7 MR. ROBISON: Yeah. He is scheduled to be here at
8 9:00.

9 THE COURT: 9:00. Okay. Great. Let's have our
10 jury, please.

11 (Whereupon the following proceedings
12 were in the presence of the jury.)

13 THE COURT: Good morning. Counsel, you may continue
14 your examination.

15

16 TODD JAKSICK,
17 called as a witness, having been previously sworn,
18 testified as follows:

19

20 CROSS EXAMINATION

21 BY MR. ROBISON:

22 Q Good morning, sir.

23 A Good morning.

24 Q Please tell the Court and jury how old you are.

25 A 48.

1 Q And are you married?

2 A Yes, sir.

3 Q To whom?

4 A My wife Dawn.

5 Q How long have you and Dawn been married?

6 A 21 years.

7 Q Do you have any children?

8 A Yes, I do.

9 Q Their names, please.

10 A Ben and Amanda.

11 Q And their ages?

12 A Ben is 18 and Amanda is 16.

13 Q How long have you resided in Washoe County?

14 A My whole life.

15 Q Where did you go to school?

16 A Elementary or --

17 Q Just tell us what your educational background is,

18 what schools you went to.

19 A Okay. I went to Jessie Beck here, and then I went to

20 Swope Middle School, and then went to Reno High School, and

21 went down to Chico Butte College for a year after I got out of

22 high school, and then I came back to UNR and TMCC.

23 Q Sir, you have testified about a considerable number

24 of transactions, loans, deals. Where did you learn all of

25 this?

1 A From my father and being around my father and doing
2 transactions and things with him and him explaining all of the
3 deals that he has done in the past, and then actually having
4 real life experiences with him and actually going out and
5 acquiring properties, as well as my dad had me take a real
6 estate class to go in and learn about land and water rights
7 transactions, some stuff like that, so I did that.

8 Q When was that?

9 A That was probably around '98. '97, '98.

10 Q And did you actually negotiate with, for example,
11 bankers and sellers of properties during your experiences with
12 your father?

13 A Yes.

14 Q Tell us a little bit about that, please.

15 A That's pretty much what we do on a daily basis.
16 That's how we make our living is being able to go out and
17 acquire pieces of property and make different transactions and
18 buy and sale land, and so we are constantly doing that with,
19 negotiating with people, the lenders.

20 Q All right. Your father died on April 21st, 2013?

21 A Correct.

22 Q Correct, sir? Prior to your father's death, who was
23 making the decisions and calling the shots?

24 A Dad.

25 Q Why is that?

1 A Just that's just the way it worked. I mean, I had
2 the utmost respect for dad and our relationship, and
3 everything we did together it was always dad was the one that
4 was making the decisions on the transactions and the business
5 things that we did, but he would send me out to work on deals
6 for him on his behalf and the family's behalf, and but when it
7 came down to real decisionmaking it was dad making those
8 decisions before he passed away.

9 Q Did you contest or dispute decisions your father made
10 prior to his passing?

11 A No.

12 Q Why?

13 A Because he, he always knew the right answer.

14 Q All right. Before you is a book of exhibits. I
15 would ask you to look at Exhibit 318FF. What is that, sir?

16 A 318FF? It's a picture.

17 Q Is it a true and accurate depiction of you and your
18 father?

19 A This, no. This is actually a picture of dad and Ben
20 and Amanda and dad's dog.

21 Q Did your father spend time with your kids?

22 A Absolutely, yes.

23 MR. ROBISON: I would ask that be admitted and shown
24 to the jury.

25 MR. SPENCER: No objection, Your Honor.

1 THE COURT: It is admitted. You may publish it to
2 the jury.

3 THE CLERK: Thank you.

4

5 (Exhibit Number 318FF was admitted into evidence.)

6

7 BY MR. ROBISON:

8 Q Can you tell us where that photograph was taken?

9 A That's up at Lake Tahoe at dad's house at the lake.

10 Q And based upon the size of your children, can you
11 tell us approximately when that photograph was taken?

12 A Oh, probably maybe 2008 or so.

13 Q And does that depict your children with your father?

14 A Yes. That's Amanda on the left and then Ben and
15 obviously dad and, and his dog.

16 Q What was his dog's name?

17 A This dog here is Binka, and his newer dog is the
18 same, it's Ghita.

19 Q Who took care of Ghita after your father's passing?

20 A My -- I still do have Ghita.

21 Q And what does photograph 318GG depict, please? It's
22 in the book, not on the screen yet.

23 A Okay. Yeah, it's another family photo of dad and
24 Dawn and my kids, myself, and then Dawn's dad.

25 Q True and accurate depiction of the family at that

1 point in time?

2 A Yes.

3 MR. ROBISON: I would ask it be admitted and
4 published to the jury.

5 MR. SPENCER: No objection.

6 THE COURT: 318GG is admitted, Ms. Clerk, and may be
7 published.

8 THE CLERK: Thank you.

9

10 (Exhibit Number 318GG was admitted into evidence.)

11

12 BY MR. ROBISON:

13 Q Identify the persons depicted in that photograph,
14 please.

15 A Starting on the left is myself, and then Ben, and
16 then Dawn's dad, and Amanda, and then my wife Dawn, and then
17 dad's in the close forefront picture.

18 Q And where is that photograph taken?

19 A At the roof, on top of the roof at the ranch.

20 Q And when you say the ranch, we have heard --

21 A In Eagleville.

22 Q I'm sorry?

23 A In Eagleville.

24 Q All right. Is that the ranch that has been
25 characterized as a special place for your father?

1 A Yes.

2 Q And why was that a special place?

3 A It's just his favorite place on earth. He just loves

4 Eagleville and 49 Mountain area and that. He just loves being

5 at the ranch and around --

6 Q Did you --

7 A -- that area.

8 Q I'm sorry, did you and your family spend a

9 considerable amount of time with your father at the ranch?

10 A Yes, absolutely. I would say that we would, you

11 know, spend at least from the time the kids were little, I

12 would say at least once a month we would spend the weekend up

13 there, and when it got towards hunting season it could be two

14 to three times a month we would go, two or three weekends of

15 the month we would all go up together.

16 Q Let me change topics, sir. After your father's

17 passing, you woke up and were charged with administering that

18 estate, your father's estate, with your brother, correct?

19 A Correct.

20 Q Did you see that coming?

21 A No.

22 Q Was your father's passing quite a shock and a

23 surprise?

24 A Yes. It was an accident.

25 Q Tell the jury, if you could, please, how you

1 acclimated to the fact that your father, the decisionmaker, is
2 gone and now it's on your shoulders and your brother's
3 shoulders.

4 A I mean, it absolutely has been very difficult
5 obviously trying to jump into the magnitude of all of the
6 things that dad had going on, but luckily Stan and I had a lot
7 of familiarity working with the companies and stuff with dad
8 and we were working with the family, so it wasn't like we were
9 starting from ground zero.

10 We had a tremendous amount of institutional knowledge
11 in each one of the companies and the entities, and then with
12 the support of Kevin Riley, the accountant, who has been
13 adamantly familiar with all of dad's and the family's finances
14 for, you know, 10, 15 years prior to dad passing, we made a
15 really good team, a really good team of being able to jump in
16 and do what we needed to do.

17 Q When was Mr. Riley appointed co-trustee of your
18 father's Family Trust?

19 A I think dad put Kevin Riley as co-trustee in December
20 of 2012. Dad had another partner he was working with at the
21 same law firm, both of them --

22 Q Accounting firm?

23 A Accounting firm.

24 Q Thank you.

25 A And that was Ray Benetti, but really Kevin had been

1 working on the family stuff for a lot longer, so Kevin was a
2 better fit.

3 Q And by that time Mr. Riley had been working on your
4 father's estate for many years, correct, sir?

5 A Yes, sir.

6 Q Do you know why Wendy was not designated in any way
7 as a trustee or co-trustee of the Family Trust?

8 A Dad just didn't want to have Wendy involved in the
9 businesses. On the weekends every once in awhile for horse
10 shows and baseball and stuff, Wendy and dad did things that
11 they enjoyed to do, but he did not involve her in any of the
12 business operations or want her to be a trustee because of her
13 past financial difficult situations and other concerns he had.

14 Q Did you after your father's passing help provide for
15 financial support for your sister?

16 A Yes.

17 Q Has she written you basically and acknowledged that?

18 A I'm sorry, I didn't understand the question.

19 Q Has she written, authored correspondence to you
20 basically acknowledging the fact that you have provided for
21 her support?

22 A It's possible.

23 MR. ROBISON: Your Honor, pursuant to stipulation I
24 would ask that 495 be admitted and displayed to the jury.

25 THE COURT: 495 is admitted.

1 THE CLERK: Thank you.

2

3 (Exhibit Number 495 was admitted into evidence.)

4

5 BY MR. ROBISON:

6 Q And can we blow up at least the third paragraph,

7 Mark. That would be the third. Do you recall this letter,

8 sir?

9 And, actually, I wanted the fourth paragraph, Mark, I
10 apologize. Thank you.

11 Would you read that to the jury, please?

12 A Sure. "Since dad's death, Todd has used this note as
13 a way to pay me monthly as well as pay for my rent at the
14 office, my utilities, and insurance. I am waiting on an exact
15 accounting, but roughly \$8,000 in medical insurance, \$8,100 in
16 rent for the office, \$2,500 in utilities, various
17 distributions of approximately \$10,000, and \$30,000 payout in
18 monthly payments of \$3,000. Today's approximate value of the
19 note is \$215,000."

20 Q Are you aware of the note to which your sister is
21 referring to in that letter that she sent?

22 A Yeah. I'm pretty sure she would be talking about a
23 life insurance note, that when dad had some life insurance
24 earlier on and he cashed it out, and I think he got about
25 \$700,000 in a cashout value and that dad gave Stan, Wendy, and

1 Todd each a note for one-third of that \$700,000.

2 Q Let me break that up a bit. That's a large bite.

3 A Okay. Sorry.

4 Q So your father had a life insurance policy on his
5 life?

6 A Previously, and he cashed it in.

7 Q So what did he do with the money that he got from
8 cashing in the life policy?

9 A I don't recall exactly what he did with it, but he
10 gave us notes in replacement.

11 Q But who were the beneficiaries of the life policy?

12 A Oh, okay. Stan, Wendy, and myself.

13 Q So when your father cashed it out, did you and Stan
14 and Wendy get the distribution?

15 A No.

16 Q What did he do, then? Did he take the money
17 elsewhere?

18 A Yes.

19 Q And what did he do to make up for the fact that you
20 did not get the proceeds from that life insurance policy?

21 A We didn't expect him to do anything, but he did a
22 note saying that I will owe you --

23 Q What is a note?

24 A A note is basically a document that says in, I will
25 pay you your one-third of that note in the future, and I think

1 he was going to pay it back in like 2017.

2 Q All right. Well, he passed away, so what became the
3 effect, then, of the promissory note that he made for you and
4 Stan and Wendy?

5 A It was suggested by counsel that we file a creditor's
6 claim on behalf of those notes.

7 Q And did you help Wendy with that creditor's claim
8 that she made?

9 A I did.

10 Q And is that the payments that she is receiving as a
11 result of you helping her process that creditor claim?

12 A Yes.

13 Q All right. Now, did you receive money from the
14 insurance note?

15 A Stan and I haven't received any money on the
16 insurance note, no.

17 Q Therefore, is Wendy the only recipient of this
18 \$200,000 that was designed by your father to make up for the
19 life insurance proceeds?

20 A Yes.

21 Q Why is that?

22 A I think I mentioned yesterday, we were trying to
23 figure out ways to continue to get money to Wendy, and this is
24 one of the ways that we figured out a way to get money to
25 Wendy on a monthly basis was to keep getting her cash so that,

1 and apply it towards this note so she would have funds to be
2 able to live and --

3 Q Was she gainfully employed at this time?

4 A I'm not exactly sure. At one point in time she was
5 doing some work at a horse training facility off and on, and
6 Stan and I mentioned that to her that, you know, what are you
7 thinking about doing for some employment? And one of the
8 things that interested her was becoming an EMT, so Stan and I
9 figured out a way to pay for EMT training so that she could
10 get certified and become an EMT.

11 Q To your knowledge, did she utilize those funds to
12 become certified?

13 A My understanding is, yes, that's what we heard from
14 the law firm down in Las Vegas that she did get certified.

15 Q Do you know whether thereafter she obtained any
16 employment as an EMT or a paramedic or anything of that
17 nature?

18 A Yeah. It's my understanding she was working at a
19 hospital or somewhere down in Texas doing that very thing.

20 Q All right. And in addition to her then receiving her
21 salary from the EMT employment, you continued to fund her
22 needs?

23 A Up until the point where we had a discussion on the
24 phone, which there was a letter shown yesterday that Mr. --
25 Maupin, Cox & LeGoy, Mr. Lattin had written, went to the point

1 where Kevin Riley, there was a phone call between --

2 Q Let me break that down. Excuse me for interrupting.

3 A Okay.

4 Q Are you referring to the letter Mr. Lattin wrote
5 which sent to Wendy a \$5,000 payment that suggested it might
6 be her last?

7 A Yes.

8 Q And that \$5,000, was that part of the insurance note
9 that Wendy was drawing down on from the Family Trust?

10 A I guess you could categorize it there, but there was,
11 there was -- this note paid in full of about the \$215,000,
12 plus we had paid approximately another \$250,000 on top of
13 that, so I don't know if it was applied towards the insurance
14 note or other payments.

15 Q After the insurance note is paid down, the proceeds
16 going to Wendy, did you and your brother continue to support
17 her?

18 A Yeah. We, over a period of time there has been about
19 another \$250,000 or more that's been given to her to keep
20 income coming in.

21 Q And were those disbursements from the Family Trust
22 even though the debt has not been paid off?

23 A A portion of it was. Then it was a recommendation by
24 counsel and the family accountant that we should find other
25 means to do that, so we found other avenues and places where

1 funds could come from so we could continue to keep funding
2 Wendy.

3 Q Other places and other avenues, do you mean by that
4 sources of money for Wendy other than the Family Trust?

5 A Yes.

6 Q For example, where?

7 A There is a company called Lakeridge Golf Course, and
8 Montreux Golf Club, and Jaksick Family, those three entities
9 Stan was able to figure out, it's an entity that we each own a
10 third of, but Stan was able to do some budgeting and allocate
11 some additional funds in and through those entities to be able
12 to get more funds to Wendy.

13 Q All right. And I showed in opening statement for
14 demonstrative purposes Exhibit 315. Are you familiar with
15 these disbursements that were made to Wendy over the last five
16 or six years? Please blow up the lower box.

17 A I'm assuming, yeah, that sounds right.

18 Q So was, as far as you know, was the insurance paid
19 for Luke?

20 A Luke's health insurance?

21 Q Yes, sir.

22 A Yes. What I recall is Luke had health insurance, and
23 then we got, I remember getting an e-mail from Wendy like an
24 emergency about Luke's health insurance, and Stan, Mike, and I
25 as the co-trustees talked about getting Luke health insurance.

1 We all agreed to doing that. We gave Kevin Riley the approval
2 to go ahead and get Luke's health insurance.

3 Kevin Riley, our understanding, he actually made that
4 payment and Luke did have health insurance and that it was a
5 reoccurring payment on the insurance, and I don't know whether
6 it has lapsed or not, but we had given approval to pay Luke's
7 health insurance, yes.

8 Q Has the trust paid your insurance?

9 A No.

10 Q Has the trust paid Stan's insurance?

11 A No.

12 Q Has the trust paid your kids' tuition or educational
13 expenses?

14 A No.

15 Q Has the trust paid the educational expenses for
16 Stan's kids?

17 A No.

18 Q Has the trust paid for vacations for you?

19 A No.

20 Q Has the trust paid, as far as you know, vacations for
21 Stan?

22 A No.

23 Q Has the trust paid your living expenses?

24 A No. Stan and I did get some fees associated with
25 being trustees for a period of time, so.

1 Q But your father provided for that, did he not?

2 A That's correct, yes.

3 Q And did anybody complain with respect to you and Stan

4 receiving trustee's fees for managing this very complicated

5 estate?

6 A Not that I'm aware of.

7 Q Did Luke get cash payments?

8 A Not directly like handed cash, but through Wendy we

9 were assuming Wendy was always taking care of Luke.

10 Q And was the rent paid, as far as you know, for Wendy

11 through these other sources of money?

12 A Up until a point of time that was our understanding

13 was that she was using funds to pay rent, and sometimes we

14 would pay rent directly for her, but, like I said yesterday,

15 when she went down to Texas and she had the additional

16 attorneys, we told Wendy's attorneys to make sure that Wendy's

17 rent was being paid out of those checks.

18 Q How much did you and Stan pay to get her the

19 paramedic, the EMT training?

20 A I don't recall.

21 Q But did you receive that kind of disbursements from

22 Lakeridge or any other source?

23 A No.

24 Q And as far as you know did your brother?

25 A Not that I'm aware of.

1 Q Why then does Wendy get 591 in disbursements and you
2 and your brother do not?

3 A Well, we were just trying to make sure that she was
4 taken care of, care of her and get her to a point where she
5 could get going on her own, and get a job, and eventually
6 these funds would be, Wendy had agreed that these funds would
7 be offset against future funds that she was going to be
8 entitled to until her attorney said that they wouldn't.

9 Q Well, was it your understanding prior to 2017 that
10 everybody would agree that this 591, and whatever else in
11 addition to that was distributed to Wendy, would be an offset
12 against her entitlement under the Family Trust?

13 A That was our, that was the discussions we had.

14 Q And did Wendy necessarily agree with that?

15 A Early on she did agree with that, yes.

16 Q And then something happened that changed it?

17 A We had received a letter from her counsel down in
18 Las Vegas, Dana Dwiggins, that said that any of the payments
19 that we had previously paid would not apply towards anything.

20 Q Is it your understanding, then, that she is
21 considering this just gifts out of your generosity now and not
22 an offset against her entitlement under the trust?

23 A I don't know the current status of that.

24 Q So when your father passed, you found your way into
25 the offices of Maupin, Cox & LeGoy, correct, sir?

1 A Yes.

2 Q For what purpose?

3 A The estate was so upside down and we needed obviously
4 legal advice and help, but it was Kevin Riley's recommendation
5 at the time that we should be looking at options for
6 bankruptcy.

7 Q You were considering putting the Family Trust into a
8 bankruptcy proceeding or in Bankruptcy Court?

9 A Kevin Riley thought that that might be inevitable,
10 because of the financial situation that the Family Trust was
11 in and the debt obligations that it had, plus Bronco Billy's,
12 the casino operation, which a lot of the income was coming
13 from, we weren't able to get any of the income because nobody
14 had a gaming license, so there was no additional cash flow
15 coming in.

16 Q Well, that was my question, what cash existed in the
17 bank account to pay these loan payments?

18 A We had to get creative to be able to work on
19 selling --

20 Q Answer my question, please. What cash was in the
21 bank account to pay these banks and these lenders? How much
22 cash was there?

23 A None.

24 Q None?

25 A Yeah.

1 Q So what did you do, Todd, to get cash into that
2 Family Trust so it could start paying its bills?

3 A I started working on -- we were already working on
4 prior transactions even before dad passed away. Some of those
5 transactions were starting to materialize.

6 Kevin had kind of come up with the game plan of being
7 able to utilize the life insurance proceeds to buy into Tahoe,
8 and so we were able to kind of start accessing some of those
9 funds. As I mentioned the other day, funds were able to come
10 from the life insurance proceeds through Incline TSS to be
11 able to --

12 Q Let's stop with the life insurance proceeds.

13 A Okay.

14 Q I believe the testimony has been that 4.9 was used
15 for the Issue Trust to purchase 54 percent of Incline TSS,
16 true?

17 A Yes.

18 Q All right. Well, that leaves another million one of
19 cash proceeds. What happened with that million one?

20 A It stayed in reserves in that account and we didn't
21 utilize that additional one at that time. There was a point
22 in time later that we did loan some of those funds to the
23 Family Trust to continue to keep getting them by until they
24 could get paid back.

25 Q Let's slow that down a little bit. So the Issue

1 Trust had approximately a million one over and above its
2 payment that went to the bank, and so the Family Trust had to
3 borrow money from the Issue Trust?

4 A Yes, there was times that the Family Trust did have
5 to do that.

6 Q And was the funds borrowed by the Family Trust from
7 the Issue Trust, were those used to pay down debt and keep the
8 Family Trust alive and well?

9 A Yes.

10 Q Was there anything to disburse to beneficiaries say
11 in the first six months of 2013?

12 A Not without funding of things like you are talking
13 about.

14 Q Where did you get the impression that you couldn't
15 disburse until the debts are paid down?

16 A From counsel, from the attorneys at Maupin, Cox &
17 LeGoy, and that's kind of written in the rule book as well.

18 Q And by the rule book are you referring to the
19 language of the trust?

20 A Yes.

21 Q Now, are you aware, sir, that the trust, the Family
22 Trust, gives the co-trustees immense power?

23 A Yes.

24 Q And you have the power to borrow money?

25 A Yes.

1 Q And your father gave the trustees that power?

2 A Yes.

3 Q Did your father give the co-trustees the power to

4 sell and buy?

5 A Yes.

6 Q Did your father's Family Trust give the co-trustees

7 the power to go out and try to maximize return of investments?

8 A Yes.

9 Q And did you, sir, together with your brother do your

10 best to implement those powers to save the Family Trust?

11 A Absolutely.

12 Q How so?

13 A Working full-time on this trying to figure out each

14 individual asset and how we could turn them into whether they

15 could generate some cash flow. Like I mentioned yesterday,

16 some of the easements we were working on, some land sales, the

17 sale of the Tahoe buy-in, working with the Colorado Division

18 of Gaming to get our gaming licenses so we could get those

19 funds released at some point in time.

20 Q What is involved in being investigated by a Gaming

21 Commission?

22 A It's quite complicated. They look at everything that

23 you have ever done to be able to -- it's very strict.

24 Q Did you have discussions with Wendy about whether she

25 should apply for a gaming license to facilitate the payment of

1 that money to the Family Trust?

2 A Yes.

3 Q Tell us about that, please.

4 A Well, we had discussions with Wendy early on about
5 she had concerns about not being able to get licensed.

6 Q Why?

7 A Well, she had -- she hadn't filed tax returns I think
8 it was like for five or seven years and that would be
9 something that the Colorado Division of Gaming would not look
10 favorably upon.

11 Q She did not file tax returns at all?

12 A Wendy had indicated that she hadn't filed tax returns
13 for five to seven years.

14 Q All right.

15 A As well as she had judgments out and actively against
16 her. For example, she had Judge Freeman who had a \$60,000
17 judgment that was actively pursuing her.

18 Q Was that discussed with Wendy with respect to the
19 decision that she apply or not apply for a gaming license?

20 A We discussed all of those things, and we still gave
21 Wendy an application, the fingerprint cards. I made her a
22 binder and put all of the different forms and everything, and
23 I said, Wendy, you have got nothing to lose by trying. You
24 might as well just fill out the forms and send them to the
25 Division or to the Colorado gaming attorney and he can give

1 you his opinion.

2 But it was basically to determine, just the one thing
3 alone, forgetting the other thing, that not filing those tax
4 returns would be really a red flag, so that's why we entered
5 into the ACPA to allow Wendy five years to kind of get her
6 stuff cleaned up.

7 Q So we fast forward to today. Is there still
8 \$33.5 million of debt owed by your father's Family Trust?

9 A No.

10 Q What is the approximate amount of debt that that
11 Family Trust now owns -- owes, excuse me?

12 A Okay. Yeah, we were at \$33 million in debt and then
13 we are now, I think you had a reference of like 3.5 was
14 remaining. I think it's less than that. It's probably in
15 that \$2 million range, but the asset values are quite
16 significant on the other side as well.

17 Q All right. Well, given the scope of everything that
18 you've done with your brother and the other co-trustees since
19 April of 2013, do you think that the Family Trust is getting
20 near to making its disbursements to the beneficiaries?

21 A Absolutely, yes. I think we already would have been
22 there. Had we not gone through this, we would have been
23 there.

24 Q The question is whether or not you are getting close
25 to being able to make disbursements under the Family Trust?

1 A Yes.

2 Q And with regard to Sam's entire estate plan, the
3 interest in Jackrabbit and these other entities, what is your
4 estimate that Wendy will receive as a result of Stan -- Sam's,
5 your father's testamentary devices?

6 A I would say it could approach \$4 million.

7 Q Can you give the jury your best estimate as to when
8 that might happen, disbursements being made?

9 A We would like to try to wrap up the estate as quickly
10 as we can, so it depends on probably the outcome of this, and
11 but we are shooting for the end of this year to be able to
12 disburse all of the assets in the trust.

13 Q By the way, did that \$4 million include Luke's share?

14 A Yeah, that includes Luke's share.

15 Q And then how is it that Luke is a direct beneficiary?

16 A In some of the disbursements, the way dad set things
17 up was in the Second Amendment Wendy's one-third share was
18 split up 80 percent for, 80 percent for Wendy and 20 percent
19 for Luke, so that's how Luke gets a portion, because Luke gets
20 20 percent of Wendy's share.

21 Q Was your share split up?

22 A No.

23 Q Was Stan's?

24 A No.

25 Q Just Wendy's?

1 A Correct.

2 Q All right. So through these last six years almost
3 that you and the co-trustees have been administering this
4 trust, could you have done it without the help of attorneys?

5 A No, definitely not.

6 Q Could you have done this, what you have done, without
7 the assistance of accountants?

8 A No, absolutely not.

9 Q How about without the assistance of appraisers?

10 A No. Yes, we would have absolutely needed the
11 appraisers' help, too.

12 Q I want to revisit Exhibit 316 that we talked about
13 earlier in my opening statement. You won't have it in front
14 of you. How did it come about that you, Todd, found yourself
15 guaranteeing \$20 million worth of debt?

16 A Through various transactions that we were working on
17 on behalf of the family, and ranches that dad and I were out
18 buying ourselves together, and the deals that dad and I were
19 doing together, some of that debt was not debt that I
20 personally had. It was just dad's debt.

21 Q Let me ask you this question. Some of this debt, did
22 it go to other enterprises; for example, some of the Montreux
23 interests?

24 A For example, if you look at that White Pine one on
25 the bottom.

1 Q Yes, sir.

2 A \$2.3 million, dad got that loan out because Montreux
3 needed money and he secured the ranch property up in
4 Eagleville.

5 THE COURT: I'm going to interrupt for just a moment,
6 please. You referred to this screen as Exhibit 316.

7 MR. ROBISON: Yeah. I think you got the wrong one
8 up, Mark.

9 THE COURT: I just want to make sure that whatever we
10 broadcast is formally admitted unless it's for demonstrative
11 purposes.

12 MR. ROBISON: This is for demonstrative purposes,
13 Your Honor, as I used in my opening statement.

14 THE COURT: Right. So I don't know, is it a marked
15 exhibit?

16 MR. ROBISON: Yes.

17 MR. SPENCER: It has not been admitted though,
18 Your Honor.

19 THE COURT: So I typically don't mark demonstrative
20 exhibits, so I just want to make sure we have a record of what
21 is being broadcast. My preference is to just have you seek
22 its admission and I'll --

23 MR. ROBISON: All right. Thank you.

24 THE COURT: -- bring it into the Court's record.

25 MR. ROBISON: I would ask 316 be admitted for

1 demonstrative purposes.

2 MR. SPENCER: For demonstrative purposes only. I
3 haven't seen any evidence that supports any of that yet.

4 THE COURT: Right.

5 MR. SPENCER: So it's not evidence.

6 THE COURT: So I just want what occurs within this
7 courtroom to be included within the court file. 316 is
8 admitted for the purposes described.

9 THE CLERK: Thank you.

10

11 (Exhibit Number 316 was admitted into evidence.)

12

13 BY MR. ROBISON:

14 Q And then with that in mind, we highlighted the bottom
15 debt that you guaranteed. Did that money find its way to your
16 pocket?

17 A No.

18 Q Where did it go?

19 A The majority of that went to Montreux Golf Club.

20 Q Do you have interest in Montreux Golf Club?

21 A No.

22 Q Does any of your trusts have interest in Montreux
23 Golf Club?

24 A No.

25 Q And that's operated primarily by your brother?

1 A I'm sorry, it went to Montreux Development Group, I
2 apologize.

3 Q All right. We talked about many deals that you and
4 your father were involved in. Did your father also involve
5 himself in business deals with your brother Stan?

6 A Yes.

7 Q And those were primarily golf course type activities?

8 A For the most part, yes, and the Montreux Development.

9 MR. ROBISON: And if we could show 357 -- 327, which
10 I would ask be admitted for demonstrative purposes,
11 Your Honor.

12 MR. SPENCER: Your Honor, again, for demonstrative
13 purposes. I object to it being admitted as evidence.

14 THE COURT: 327 is admitted for the purposes
15 described.

16 THE CLERK: Thank you.

17

18 (Exhibit Number 327 was admitted into evidence.)

19 (Phone ringing)

20 THE COURT: That's all right. We will attend to that
21 out of the jury's presence. Inadvertent events occur in the
22 courtroom all the time. Please don't hold it against anybody,
23 but we will continue.

24 BY MR. ROBISON:

25 Q Through the years, Todd, has it been necessary to

1 rely on the legal advice of Maupin, Cox & LeGoy?

2 A Yes.

3 Q Do you understand that that firm specializes
4 primarily in estate planning?

5 A I do.

6 Q Have you believed that their advice has been
7 wholesome and legitimate and worthy of being relied on?

8 A Yes.

9 Q How so?

10 A Because they have done a fantastic job. They worked
11 for dad. Prior to dad passing away, dad respected them. Dad
12 worked with them and we continued that relationship.

13 Q As co-trustee did you rely on their advice?

14 A Absolutely.

15 Q Would that be the same of the advice given by Brian
16 McQuaid?

17 A Yes.

18 Q Now, Bob Sader is depicted up there. What was his
19 role, sir?

20 A Bob Sader is an attorney in town and he helped us out
21 on one of the entities known as Buckhorn Land & Livestock, and
22 he was also helping out with Montreux Development Company, so
23 he helped out with a couple of the entities.

24 Q Roger Morris is identified as, on this particular
25 exhibit. What was his role, sir?

1 A Roger Morris was the Colorado gaming attorney.

2 Q What did he do?

3 A He basically held our hands through the entire
4 process of getting our, starting our applications all the way
5 through getting licensed in Colorado.

6 Q And that's with the Bronco Billy's transaction?

7 A Yes.

8 Q Did you rely on his advice?

9 A Yes.

10 Q Did you find it to be reasonable and prudent advice?

11 A Yes. He was an excellent attorney.

12 MR. ROBISON: Your Honor, I would ask permission to
13 interrupt the testimony at this time, because we have another
14 witness waiting.

15 THE COURT: Yes. Ladies and gentlemen, we expected
16 that we would have another witness at 9:00. Let's all stand
17 as we change out witnesses.

18 Deputy, Mr. Pierre Hascheff.

19 MR. SPENCER: Your Honor, I request that it be noted
20 that he is being called out of order as part of their case.

21 THE COURT: Yes.

22 THE CLERK: Please raise your right hand.

23

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PIERRE HASCHEFF,
called as a witness, having been duly sworn,
testified as follows:

THE COURT: Please be mindful of the microphone.

DIRECT EXAMINATION

BY MR. ROBISON:

Q Good morning.

A Good morning.

Q Would you please tell us your name.

A Pierre Hascheff.

Q Mr. Hascheff, would you please give the Court and jury a description of your educational background.

A Okay. So University of Nevada, accounting degree, then after that I worked for a CPA firm, and then went to law school.

Q Which CPA firm did you work for?

A That was a long time ago. It was Barbieri, Chancellor & DeWitt, I think. It was. Thereafter it was, I worked for a CPA firm in Sacramento where I went to law school, got my law degree. Then got a Master's.

Q What's a Master's?

A It was a Master's in tax law at San Francisco.

Q Does that require more education than just being a

1 lawyer like --

2 A Correct, another year.

3 Q All right. In that year did you specialize in any
4 particular area of the law to get your Master's?

5 A No. You basically take everything.

6 Q As part of your Master's course?

7 A Yeah. It could be corporations, partnership, estate
8 planning.

9 Q All right. And then after obtaining your -- what's
10 it called, a Master's of Law?

11 A It's called an LLM, Master's in Tax Law.

12 Q All right. After receiving your Master's in Tax Law,
13 what did you then do next?

14 A Once I got done with that, I came back here to
15 practice law.

16 Q Can you give us a history of your professional
17 background then?

18 A Sure. So I went to work for a firm, primarily
19 litigation, so I did that for about a year. Then I moved onto
20 in-house counsel for Sierra Pacific. I did that for about
21 three years, I think. Then thereafter I went to, back then it
22 was called Hill, Cassas, de Lipkau & Erwin and I worked for
23 them until I went out on my own.

24 Q And while working with Sierra Pacific, what type of
25 law did you involve yourself in?

1 A Primarily transactional and some rate work.

2 Q And then with Hill, Cassas, what type of work did you
3 pursue there?

4 A Same thing, transactional and estate planning and
5 probate.

6 Q When lawyers use the phrase estate planning and
7 probate, can you please tell the jury what is meant by that?

8 A Well, it would be trusts, wills, for example. Then
9 if the client passed away and there was a will, but no trust,
10 then you would have to probate the estate.

11 Q What does that mean?

12 A That means you have to file documents with the court.
13 You have to lodge the will with the court. You have to go
14 through a bunch of notice procedures to ultimately distribute
15 the property to beneficiaries.

16 Q All right. So if a trust is involved other than just
17 a will, how does that affect the probate proceeding in court?

18 A Well, you avoid the probate if you have a trust.

19 Q How so?

20 A That's just the way it works, because technically the
21 person, the decedent does not own the property. His trust
22 does. So when the decedent passes away, he doesn't have any
23 property to probate. It's all in his trust. Same vehicle to
24 get the property to the beneficiaries, but you save the cost
25 of the probate.

1 Q Well, who then takes care of distributing the assets
2 that are owned by the trust if not supervised by the court?

3 A It's just not supervised by the court.

4 Q Do the trustees then have the power and discretion to
5 follow the provisions of the particular trust agreement?

6 A Correct.

7 Q And in your career, Mr. Hascheff, did you draft
8 trusts so that you could assist your clients in avoiding a
9 probate process?

10 A Yes.

11 Q Is that intended to be a cost-saving device?

12 A It does save costs, yes.

13 Q How so, sir?

14 A Because you don't have to come to court and spend the
15 time doing the probate. It's basically done outside the
16 courtroom process or probate process, so it does save quite a
17 bit of fees.

18 Q All right. When you say you left Hill, Cassas and
19 went into practice for yourself, for what period of time are
20 we talking about, sir?

21 A Probably 1991. I mean, I'm not sure about that date,
22 1991 until I stopped in 2013.

23 Q From approximately that period of time, where did you
24 concentrate your practice of law?

25 A Again, it was primarily transactional and then some

1 estate planning.

2 Q Did you draft trusts?

3 A I did draft trusts.

4 Q Mr. Hascheff, our State Bar requires us to be
5 continuously educated, correct?

6 A Correct.

7 Q Did you pursue your CLE requirements?

8 A Yes.

9 Q CLE stands for continuing legal education?

10 A Correct.

11 Q Where did you pursue most of your CLE that's required
12 by the State Bar?

13 A Well, I don't know if it's still around, but the
14 Practicing Law Institute, which is nationally known lawyers
15 that basically teach those classes, the American Bar
16 Association, same thing, nationally recognized lawyers, and
17 then I did a lot through CEB, which is California Continuing
18 Education of the Bar. Again, very, very good lawyers.

19 Q And during that period of time where you were a
20 sole -- was it a sole practitioner?

21 A Yes.

22 Q Did you draft trusts?

23 A Yes.

24 Q For many clients?

25 A Yes.

1 Q How does one learn how to draft a trust and what to
2 provide for?

3 A Well, first of all, when you are a young lawyer you
4 work for a senior lawyer that knows how to draft trusts. He
5 has been doing it for a long time, right, so you learn through
6 that process. You learn through continuing legal education,
7 and that's basically how most lawyers learn.

8 They start young and then ultimately they are tutored
9 by lawyers that have been doing it for a long time, and then
10 ultimately between that and continuing education you become
11 proficient at what you are doing.

12 Q And during the period of time that you were a sole
13 practitioner, did you also run for public office?

14 A Yes.

15 Q Would you explain what you did in that regard to the
16 jury, please.

17 A Yeah. I was a councilman for 20 years.

18 Q A what?

19 A A councilman for 20 years, Reno councilman.

20 Q All right. What is involved in being a Reno City
21 Council person?

22 A Well, it's pretty much local level, so it's all about
23 services. Making sure we have enough police, fire, parks,
24 those sorts of things, because that's what the constituents
25 want is services.

1 Q During the 20 years of service for the City, how many
2 times were you elected?

3 A Five.

4 Q When were -- what's the period of time that you last
5 served as a City Council person?

6 A It was November of 2012.

7 Q During your tenure as a sole practitioner practicing
8 in the area of probate law did you become acquainted with a
9 gentleman by the name of Sam Jaksick?

10 A Yes.

11 Q Could you please give us an idea of how you became
12 acquainted with Sam?

13 A Typically what happens is I get a phone call and it's
14 a referral, so I can't remember who, but somebody had given
15 him my name. So they called my office, we made an
16 appointment, and I met with him.

17 Q All right. Using as a mark in time a placeholder, we
18 talked about some Indemnification Agreements. You are
19 familiar with those, sir?

20 A Yes.

21 Q I believe they are according to the testimony drafted
22 in 2007, effective 2008. Would that refresh your recollection
23 as to the period of time that you first met Sam?

24 A I think it was before then.

25 Q What did he come to you for?

1 A They had -- I'm just trying to recall what the
2 initial engagement was. They had some real property that they
3 were looking at to develop. If I recall correctly, that was
4 the initial assignment.

5 Q And how did you help with that?

6 A I went through their documents. For example, they
7 were acquiring, they were acquiring quite a few ranches, so I
8 did primarily all of that real estate work, negotiated with
9 the lenders, for example.

10 Q When we say real estate work, you and I know what we
11 are talking about, but what do you mean real estate work?
12 What is involved?

13 A Well, if you sell property, real property, then you
14 are going to have to help draft the documents.

15 Q The sale agreement?

16 A The sale agreement, for example, or if the other side
17 prepares those documents, you are going to review them. You
18 then have to negotiate with the lenders, right, because there
19 is going to be financing typically involved. So it's either
20 buying or selling or in some cases trying to get the required
21 permits for the property and there is also some water rights
22 that are involved as well.

23 Q Did Sam become an important client to you?

24 A Yeah. He was one of my better clients, yes.

25 Q And tell us about the evolution of your relationship

1 with Sam from the day he first walked into your office until
2 late 2012?

3 A First of all, very kind, very kind guy, gentleman.
4 Good man. Loved to hunt.

5 Q Did you develop an understanding or a belief about
6 his business acumen, his business expertise, so to speak?

7 A Yes.

8 Q Tell us about that.

9 A He was a sharp guy. I mean, he was a very sharp guy.
10 He had, he had kind of a rough history, if I remember
11 correctly. He was a boxer.

12 And he, basically, went to the bank, as he explained
13 to me, and actually convinced the bank to give him a loan, I
14 think it was like \$5,000, and I think that was his first, took
15 that \$5,000 and I think, if I remember correctly, he started
16 to develop Lakeridge.

17 Q Now, Lakeridge, just so we all know, is what?

18 A Lakeridge is that community that's in Reno.

19 Q A 900-acre PUD south of town at Lakeridge and
20 McCarran?

21 A Yeah. I wasn't involved in that, but I know he did,
22 he was instrumental, if my understanding is correct, he was
23 instrumental in developing that.

24 Q Golf course community?

25 A That's correct. Thereafter, I think he was involved

1 in the Caughlin Ranch, that was before my time as well, and
2 then I think he did some work at Arrowcreek, and then
3 obviously after that the prize jewel was Montreux.

4 Q Why is that the prize jewel?

5 A Because that's the, it has the PGA Tour there. I
6 wasn't there for that process, but I did help on some, some of
7 the issues with Montreux after it was, after it was developed.

8 Q Did you provide legal service for the development of
9 Saddlehorn?

10 A That I can't remember.

11 Q Did you provide legal services for the development of
12 the Caughlin Ranch area?

13 A No.

14 Q And I assume from what you just said you weren't
15 involved in providing legal services for the development of
16 the golf course communities?

17 A Correct.

18 Q Were you involved in Sam's development of ranch
19 properties?

20 A Yes.

21 Q And how did that go and please explain to us what you
22 did?

23 A Well, some had to do with water rights, and we had
24 water rights engineers that were on staff, so I had interfaced
25 with them in preparing those documents. They were buying

1 ranches as well as selling ranches, so I participated in that.

2 Q Did you notice whether Todd was involved in these
3 enterprises along the years?

4 A Yeah, he was involved.

5 Q How so?

6 A It was primarily him that worked with Sam in the
7 acquisition and sale of the ranches.

8 Q And when Todd would be involved in these deals did
9 you form an impression as to his business acumen?

10 A Yeah. He was pretty smart.

11 Q And kind of an apple that didn't fall far from the
12 trunk?

13 A Yeah. I guess you could say that, yes.

14 Q Over the years did you provide individual services
15 for Todd that were unrelated to what you did for Sam?

16 A Yes.

17 Q Did you understand that there was any kind of
18 conflicts of interest in doing that?

19 A I did not perceive a conflict. Typically what
20 happens is, I mean, Sam was the client. All right. I took my
21 direction from him. If he comes to me and says, hey, I want
22 you to do this for my kids, then I would do it.

23 I did that with all of my clients when it came to
24 family. If they wanted me to help their son or their
25 daughter, then I would prepare documents and assist.

1 Q And do you see in our community where probate
2 lawyers, estate planning lawyers do that frequently, represent
3 various family members in the development of their estates?

4 A Yes.

5 Q And when a probate lawyer represents the, I will call
6 him the patriarch, has it been your experience it would also
7 involve some representation for the kids?

8 A Yes. Amass to, yes.

9 Q And over the years did you provide independent legal
10 services for Stan?

11 A Yes.

12 Q And how about Wendy?

13 A Maybe one.

14 Q Was that to get her out of some trouble?

15 A Yeah. I think it was refreshed in my deposition. I
16 don't think I ever met Wendy, but apparently I did some work.
17 I think Sam had posted a cash bail for her and he wanted to
18 get the cash bail back once the case was concluded, and they
19 didn't know how to do that, so I wrote the DA and we were able
20 to get the money back.

21 Q Did Sam give you any admonishments or warnings not to
22 get involved with Wendy?

23 A Well, I remember when I first started working for
24 them she had called my office.

25 Q Yes, sir.

1 A So, of course, I called him up and said, you know,
2 Wendy called me. She set up an appointment to meet me, and he
3 said cancel it. In fact, he said, I don't remember, but he
4 said I will take care of it, but I don't want you doing any
5 work for her.

6 Q Did, then after that phone call with Sam did you ever
7 do work for Wendy?

8 A No, not unless he asked me to.

9 Q To your knowledge, Mr. Hascheff, was Wendy involved
10 in any of these ranch activities that Todd and Sam came to you
11 for legal advice about?

12 A No, she was not.

13 Q Did you have any discussions with Sam that to the
14 effect that she was not to be involved in ownership of the
15 ranches?

16 A Well, the way he structured it, she had no ownership.

17 Q Do you know why?

18 A Well, as I understood it, she was not a very good
19 money manager, and she was in trouble, and then typically if
20 you have creditor issues --

21 Q Creditors after her to collect money --

22 A Correct.

23 Q -- from her?

24 A Correct, and then they could potentially try to go
25 after a membership interest in a company, stockholder

1 interests, the membership interests in an LLC, so it just
2 could wreak havoc, so it's the prudent way to avoid all of
3 that just by simply keeping that individual out of the family
4 business.

5 Q How about her involvement in the golf communities and
6 the golf developments, was she involved in that at all in
7 terms of an ownership interest?

8 A As far as I know, no.

9 Q Did you and Sam talk about that as well?

10 A Well, they were structured by the time I got onboard
11 and she did not have an interest.

12 Q Do you recall, Mr. Hascheff, when you first started
13 discussing with Sam estate planning?

14 A Not exactly.

15 Q Okay. Do you recall a point in time where Sam
16 discussed with you the needs to protect his sons from creditor
17 exposure?

18 A Yes.

19 Q Do you recall when that first occurred, sir?

20 A It was during the crash, the market crash.

21 Q And what is your knowledge or opinion of when that
22 crash occurred? What period of time was it in effect?

23 A There is various opinions on that --

24 Q Right.

25 A -- but it would have been in that '06 range. So the

1 long and the short of it was they had a lot of property tied
2 up in real estate and they had a lot of debt service, a lot of
3 liability, because they had acquired these ranches in part
4 with the end game, because they were, they all were, all had
5 lots of water rights associated with them, and the end game
6 was with the economy, when the economy took off like it did,
7 that this community, just like Vegas, would run out of water.

8 And what you could do is you could buy up ranches,
9 water rights came with the ranches, and then convert those
10 water rights which were dedicated for rural use, you know,
11 watering farms, the ranches, et cetera, convert them to
12 municipal use and then pipe it to, in this case you could pipe
13 it to Reno. The Vidler project was the one that was the first
14 one, I think, to get off the ground.

15 Q That, however, requires the State Engineer's
16 involvement?

17 A Correct.

18 Q And the State Engineer is sometimes cooperative and
19 sometimes otherwise?

20 A Correct.

21 Q And then that also involves the protestation process,
22 does it not?

23 A Correct.

24 Q And what is the protestation process?

25 A Well, they notice it if there is going to be a

1 conversion of water rights to municipal, and that's just one
2 example, because pretty much everything is noticed. Anybody
3 that thinks they have some kind of interest can protest.

4 Q And then aren't you also required to demonstrate
5 beneficial use to even have water rights?

6 A Correct.

7 Q Is that a constant battle with the State Engineer's
8 office?

9 A Well, in this case it never got, that project never
10 got off the ground, but there was a lot of ranches with a lot
11 of debt service, but, yes, typically throughout the,
12 throughout the water rights entitlement process you are going
13 to have protests all the way through. Even if the State
14 Engineer approves your project or your change in use, for
15 example, or point of diversion, then they can always appeal
16 it.

17 Q And these disputes with the State Engineer are they
18 not like many lawsuits where there is hearings and
19 administrative proceedings?

20 A Correct.

21 Q Very expensive?

22 A Correct.

23 Q Now, getting back to Sam's discussions about
24 protecting his sons, would you tell us about how that came
25 about and what he said?

1 A Right. So when the market crashed, there was a real
2 concern that the property was a lot, was below market now and
3 was worth a lot less than what they paid for it.

4 Q What happened to the debt, did it go down with the
5 market?

6 A No, it did not go down, and then there was a concern
7 that there was not enough cash flow to pay those occurring,
8 reoccurring obligations, the payments to the bank. They had
9 gone out and borrowed money from other parties to make things
10 work, and there was an issue whether there was enough cash
11 flow to pay those people back. It was an issue of debt
12 becoming due and not having the money to pay it, so there had
13 to be extensions, so --

14 Q Did you help negotiate those?

15 A Todd pretty much did the negotiations with the bank
16 and then I would get involved at a certain point.

17 Q And he was trying to keep the creditors at bay so
18 that he could save some of these properties?

19 A Correct.

20 Q And how did he go about doing that?

21 A Well, to get back to your initial question, so what
22 Sam was concerned about is when he acquired all of these
23 properties, both Stan and Todd executed personal guarantees
24 along with him. All right. Todd more so than Stan, because
25 Todd was involved in more of those transactions.

1 So if, if they were not able to service the debt, pay
2 the bills, so to speak, then the bank would call the loan.
3 There would be a default, and then they would basically go
4 after each one of the personal guarantors.

5 Q Now, I'm sorry, we talked a little bit about the
6 One-Action Rule.

7 A Correct.

8 Q One-Action Rule means you don't have to go after the
9 property if you have got a personal guarantee in that respect,
10 right, sir?

11 A Maybe said a little different way is the One-Action
12 Rule requires the lender to foreclose on the property first.
13 So let's say you owe 10 million and the property is worth 8
14 million. So you foreclose on the property. The lender takes
15 the property back, and then there is another process, legal
16 process, but ultimately the lender can only recover the
17 difference, the 2 million, because they got the \$8 million
18 property back.

19 Q So the deficiency is where the guarantors are
20 extremely exposed?

21 A They are, but most lenders basically have a provision
22 in their documents that say they have the right to forego
23 going after the property and going after the personal
24 guarantor directly.

25 Q In other words, to get the loan the borrower waives

1 the One-Action Rule and puts his personal assets out in front?

2 A Correct, so the lender does not foreclose on the
3 property. In part, so, for example, if the lender finds out
4 the property might be contaminated, environmentally
5 contaminated, they are going to say we don't want the
6 property. We are going to come after you, the borrower.

7 And if the borrower has a house, the borrower has
8 money in the bank, if they think they can recover, you know,
9 the proceeds of the loan quicker going directly against the
10 guarantor instead of foreclosing on the property first, they
11 retain that right.

12 Q So, Mr. Hascheff, what did Sam do to protect his sons
13 from that kind of financial exposure on those personal
14 guarantees?

15 A Well, if I recall correctly, we sat down and
16 basically did like a chart, and then we looked at the total
17 debt. We looked at the exposure. We looked at cash flow
18 projections and took the worst case scenario, because a lot of
19 these loans they might be separate loans, but they will be
20 with the same lender, different properties, and they have what
21 they call cross-default provisions in them.

22 Q Is that also known as cross-collateralization?

23 A Correct. So let's say you are current on four loans,
24 but you default on one, then all four become due.

25 Q It can wipe out all four properties?

1 A Correct.

2 Q Even though there is only a default on a loan on a

3 single piece of property?

4 A Correct.

5 Q Is that because the borrower put up all four pieces

6 of property to secure a loan on the one piece of property?

7 A That could be. It could be. It could be that they

8 are just four separate properties, four separate loans, but in

9 each one of those loan documents for each one of those

10 properties it says if one goes in default, we are going to

11 treat all four of them in default.

12 Q That's the cross-default provision?

13 A Correct.

14 Q One default is a default of all?

15 A Correct.

16 Q And that exposes all of the properties that

17 collateralized the debt to be foreclosed upon?

18 A Correct.

19 Q And did you help Sam with that problem insofar as his

20 sons had guarantied these debts?

21 A So a lot of these, a fair amount of these loans were

22 before I came onboard.

23 Q Yes, sir.

24 A So we analyzed, I looked at all of the loan

25 documents, all right, to determine that they had waived the

1 One-Action Rule, determined that there could be cross-default
2 problems, et cetera, with total exposure.

3 And then we said, okay, one way to deal with this is
4 to do an Indemnity Agreement, which basically says, look, he
5 was concerned his sons would get wiped out and they would have
6 nothing, so the concept was an Indemnity Agreement to say,
7 look, if the notes -- There is a problem. All right. There
8 is a claim.

9 And it didn't have to be from a lender. Basically,
10 he tried to capture any type of claim that might result that
11 could wipe out the boys, that these trusts, Sam's estate would
12 basically step up and pick up that bill, basically.

13 Q Well, what did you and Sam talk about with respect to
14 this concept, this term indemnification?

15 A Well, what that means is and the discussions were if
16 you don't want to have the boys wiped out, you know, and wind
17 up having to run out and have their house basically foreclosed
18 on and all of their assets gone and then try and make a claim
19 against the trust, for example, that the trust could step up
20 first and take care of those obligations.

21 Q Okay.

22 A And that would basically insulate the boys from being
23 subject to potentially 35, \$40 million worth of debt.

24 Q All right. So step back and you say Sam is trying to
25 protect Stan and Todd, but there is also, doesn't that also

1 create exposure to Sam's family estate?

2 A Yes.

3 Q How so?

4 A Well, if they had to respond --

5 Q Who is they?

6 A Well, if the trust, the estate had to respond, then,
7 yes, they would be basically stepping up and paying those
8 obligations, which is going to reduce the value of the estate.

9 Q Is that what Sam wanted, as far as you know, with
10 your discussions with Sam?

11 A I mean, he would have preferred that it go a
12 different way. In other words, nobody ever thought that he
13 would be in such deep trouble, so this was a way, I mean, the
14 last thing he wanted to do was see his kids basically wiped
15 out, so he understood that by stepping up and providing that
16 indemnity, all right, that insulation, that his estate would
17 be affected.

18 Q Was it easy to draft documents for Sam?

19 A What do you mean by easy?

20 Q Well, were there multiple drafts?

21 A Well, that's with any client you are going to have
22 several drafts.

23 Q All right. And with respect to this term
24 Indemnification Agreement, did you and Sam work on several
25 different drafts?

1 A Yes.

2 Q And why was that?

3 A Well, just like when you draft documents, you are
4 going to exchange drafts back and forth. You are going to
5 have comments from the client. You have to think of things
6 you didn't think about when you first drafted the document.

7 You will have meetings with the client. The client
8 will tell you things that he probably didn't tell you at the
9 beginning, so it's going to be kind of a living, breathing
10 document until you get to the final one.

11 Q All right. Let's put up Exhibit 11, please. We are
12 going to show you what's been marked and admitted in evidence
13 as Exhibit 11 and I'm going to ask you if you recognize that
14 as one of the Indemnification Agreements?

15 A It is.

16 Q May I approach the witness?

17 A It does say Indemnification and Contribution
18 Agreement, yes.

19 Q Let me give you the hard copy. It might be easier.

20 A Okay.

21 Q Do you recognize that, sir, as a document that you
22 prepared for your client, Sam Jaksick?

23 A Yes, this is the one.

24 Q And is this document prepared almost exclusively as a
25 result of your discussions with Sam?

1 A When you say exclusively, yeah, I discussed this
2 document with him.

3 Q Did you do one for Todd and Dawn, which is
4 Exhibit 11? Dawn being Todd's wife.

5 A Yes, I listed her as well.

6 Q And did you also do one to benefit Stan?

7 A Yes.

8 Q Why?

9 A Because they are the ones that had the exposure.

10 Q Stan and Todd?

11 A Correct.

12 Q All right. With respect to Exhibit 11, there are
13 various recitals. Tell the jury, please, what a recital is
14 when we refer to those in a document like this.

15 A Well, you don't have to put recitals in the document.
16 Sometimes I didn't. Sometimes I did. Recitals just kind of
17 lay out what is trying to be accomplished by the parties.

18 Q Is that the lettered paragraphs on Exhibit 11?

19 A Correct.

20 Q And that's more or less a roadmap of what the
21 document is going to provide?

22 A Yes, for the most part.

23 Q And if we turn to the second page of Exhibit 11,
24 please. Was this a pretty detailed document, Mr. Hascheff?

25 A When you say detailed, I mean, it's, it's an

1 agreement that I have used, not exactly the same terms,
2 obviously, but I have drafted Indemnity Agreements before.

3 Q For other clients?

4 A For other clients.

5 Q All right. And in this respect Sam's estate is
6 required to do what?

7 A To basically indemnify Stan according to his
8 agreement and Todd according to his agreement any claims,
9 liabilities, basically any exposure that would result from the
10 personal guarantees and other liability.

11 Q Let's use Ag Credit for an example. Ag Credit was a
12 creditor, true?

13 A Correct.

14 Q Sizable loan?

15 A If I remember right, yes.

16 Q All right. So if Ag Credit came after Todd who
17 guaranteed the debt and Todd had to pay \$6 million, what would
18 be the effect of this agreement under that scenario?

19 A If there was a claim against him?

20 Q Yes.

21 A Then the estate would step up and pay that bill.

22 Q Even though part of that loan was taken on property
23 owned 51 percent by Todd's trusts?

24 A Correct.

25 Q Is that what Sam wanted?

1 A What he wanted was the boys to be held harmless. All
2 right. Because otherwise those two could get completely wiped
3 out, and then the estate, there would be a gross inequity if
4 they were wiped out, had no personal assets anymore, and then
5 the estate went one-third, one-third, one-third.

6 Q All right. Let's turn to the signature page, please.
7 Why is Todd required or why does Todd's signature appear on
8 Exhibit 11, the Indemnification Agreement in his favor?

9 A Okay. Could you ask that question again?

10 Q Why is Todd signing on the document?

11 A Because I want him to sign it.

12 Q Why is that, sir?

13 A To acknowledge that there is an Indemnity Agreement
14 and that he is bound by it. The estate is bound by it and, of
15 course, he is bound by it. He understands.

16 Q All right. And the entities that are signed by Todd
17 is the TBJ SC Trust and the TBJ Investment Trust. Did they
18 have exposure on these loans, sir?

19 A They had some exposure. I can't remember if it was
20 on, it was on specific loans.

21 Q And then, of course, Todd has to sign it as an
22 individual above that. Do you see that, sir?

23 A Correct.

24 Q Is that something that you required?

25 A Yes.

1 Q Todd had to understand it and agree to it?

2 A Yes.

3 Q Now, why is the document signed by Sam Jaksick, Jr.
4 and by Sam as Trustee of the Samuel S. Jaksick, Jr. Family
5 Trust?

6 A Well, typically, that's the way you do it, because
7 ultimately if there was an asset that was not in the trust
8 that was in his name, both he individually and in his capacity
9 as trustee were basically going to be the indemnitors.

10 Q Is there any question in your mind, Mr. Hascheff,
11 that Sam Jaksick wanted this document to be fully enforceable
12 to protect Todd and to protect Stan under his?

13 A Yes, because we went through this document a lot.

14 Q All right. Do you recall that there were different
15 drafts?

16 A Yes.

17 Q All right. Let's see 11A, please. And if you go to
18 the third page, Mark, please, paragraph 14.

19 A I'm sorry, paragraph 14.

20 Q Okay. Why?

21 A Why did I put 14 in?

22 Q Why did you take it out?

23 A Well, it's a typical provision that I have in
24 agreements, but when I first drafted the document -- let me
25 just see. This was an older one. Yeah, this was an older

1 one.

2 Q Correct.

3 A And so typically you do that if you think that you
4 are going to have one party in one jurisdiction and another
5 party in a different jurisdiction, so you are basically
6 agreeing to one jurisdiction, forum jurisdiction is what we
7 call it, which would be the State of Nevada, in this case
8 County of Washoe, so we won't have any jurisdictional battles
9 as to where this agreement is going to be enforced.

10 Q Everybody agrees that any dispute will be right here
11 in Washoe County?

12 A Right. But in my mind it didn't really apply to this
13 case, because the boys, both Todd and Stan, were here locally.
14 It didn't look like they were going to go anywhere, so I just
15 took it out.

16 Q All right. Let's take a look at the signature page
17 on the Exhibit 11A, please. Now, if you look at the second
18 signature on the right of Samuel Jaksick, do you see that,
19 sir?

20 A Where he signs as trustee?

21 Q Yes.

22 A Okay.

23 Q That's different than Exhibit 11 in that there is
24 handwriting with respect to the trustee position and the date.
25 Why is that?

1 A Well, if I recall correctly, what happened is this
2 is, this is kind of an ongoing thing. This is the same thing
3 that happened with the Second Amendment. Apparently, there
4 was another, there was a -- I didn't know which trust was
5 actually the operative trust, so I left it blank, because I
6 knew he had a trust, but I didn't really have my arms around
7 the, what that, the date of the trust, for example.

8 So when he came in, I basically wrote down, because I
9 thought it was June 29th, 1996. Actually, that should, that
10 was the wrong date. It should be 2006, I believe.

11 Q And you were intending to refer to 2006 Restated
12 Samuel S. Jaksick, Jr. Trust, correct?

13 A Yeah, it should have been 2006, and I can't remember
14 if Sam told me it's 1996, why I put 1996, but come to learn
15 later that it was really 2006.

16 Q Going to Exhibit 11A, which we have on the screen,
17 and Exhibit 11, which we previously showed the jury, in terms
18 of protecting Todd what is the difference?

19 A There should be, there should be no difference,
20 because the intent was to basically hold the boys harmless.

21 Q Regardless of that jurisdiction clause?

22 A Correct.

23 Q Whether it's in or out doesn't make any difference?

24 A Correct.

25 Q It's still intended to protect Todd from being wiped

1 out?

2 A Correct.

3 Q And then there is yet another draft, Mr. Hascheff,
4 and that's Exhibit 11B, and can we please see that? And let's
5 go to the signature page on that, please. All right. If you
6 look at the right hand signature of Mr. Jaksick, you will see
7 that it's handwritten, but there is not a date there. Can you
8 explain that for us, please?

9 A That's because I didn't know the, remember, I didn't
10 know the date. I wanted to honestly do the best I could to
11 make sure that I wanted him individually and him, and Sam in
12 his capacity as trustee to be responsible under the Indemnity
13 Agreement, and I don't believe I had a date at that point, so
14 I said I would just fill that date later.

15 Q Mr. Hascheff, do each and every one of these drafts,
16 11A and 11B, provide for the same protection for Todd
17 regardless of the changes on these handwritten dates?

18 A Yeah. The intent was basically to hold him harmless
19 in the event of a catastrophe.

20 Q Do you have any question in your mind that Sam signed
21 these documents?

22 A No, he signed them.

23 Q You know that?

24 A Well, he either signed them in my office or he signed
25 them in his office, but he signed a lot of documents in my

1 office, so presumably this one was also signed.

2 Q After these drafts were prepared and Exhibit 11 was
3 signed, did you and Sam continue to discuss the need to
4 protect the kids?

5 A Well, I think that the exposure even continued after
6 I stopped representing them, because it was a daily grind
7 basically doing the cash flow statements, getting extensions
8 from lenders, you know, just trying to hold off what could
9 otherwise be a catastrophe.

10 Q Now, if we put 11 back on the screen, please, you
11 have looked at these documents throughout these proceedings
12 particularly in light of the deposition that you have given,
13 true, sir?

14 A Yes.

15 Q Is Exhibit 11 the one that is intended to be valid,
16 binding, and effective in this case?

17 A Yes, because that was the one that ultimately had
18 retyped in the date of the trust. Again, it should be 2006,
19 not 1996.

20 Q And in your mind, based on your discussions with Sam,
21 is it your position that Sam intended Exhibit 11 to be valid,
22 binding, and effective and applicable in this case?

23 A Yes.

24 Q Have you so advised Todd over the years that this is
25 the effective, binding, valid one, Exhibit 11?

1 A Ultimately, there were three drafts, right?

2 Q Right.

3 A Signed agreements, but ultimately this, if I remember

4 correctly, this was the last one. This was the one that was

5 going to be operative.

6 Q All right. When you did this, again, were you, were

7 you concerned at all that if Sam passed and Todd and/or Stan

8 tried to protect themselves with this document it might

9 adversely affect the Family Trust, was that in your mind at

10 all?

11 A My mind?

12 Q Yes, sir.

13 A Yeah. It was a potential that the trust could be

14 depleted.

15 Q But, nonetheless, is this something your client Sam

16 Jaksick wanted to achieve?

17 A Yes, because we had discussions about it.

18 Q And did you fulfill your client's intent in having

19 this document signed by Sam and Todd?

20 A Yes.

21 Q And likewise with Stan?

22 A Yes.

23 Q Where did Exhibit A come from on Exhibit 11? Please

24 show the first page. There you go.

25 A Well, if I remember, one of my recitals said the

1 obligations was a nonexclusive list, so I typically like to
2 put a list of obligations and attach it as an Exhibit A so
3 there is no doubt what obligations would then be covered by
4 the agreement. It's nonexclusive. There might be a few out
5 there that we didn't capture, but we try to capture all of it,
6 as much as we could.

7 Q For the maximum protection of Todd Jaksick?

8 A Correct.

9 Q Were you aware of the fact that a debt used to
10 construct his home was on that exhibit?

11 A You mean his house?

12 Q Yes, sir.

13 A Yeah, his house was on there.

14 Q Why?

15 A Again, we were trying to capture every potential
16 claim or liability, so we just put the kitchen, we put
17 everything in there, just not to take any chances.

18 Q Did Sam agree to that?

19 A Yeah. This was an exhibit that was with the
20 Indemnity Agreement.

21 Q All right. So Sam intended to protect Todd's house
22 at the time?

23 A He wanted to protect the boys, period.

24 Q Did you argue or dispute the fact that any of these
25 debts should be on this exhibit when you were negotiating with

1 Sam Jaksick to create this document?

2 A I'm sorry?

3 Q Bad question, I apologize. Was there any debate,
4 dispute about what debts should be on Exhibit A when you were
5 negotiating this with Sam?

6 A Well, they helped prepare that exhibit, so, I mean, I
7 got, I didn't do all of this. I did, I did the ones I knew
8 about, the obligations I knew about, and then they basically
9 backfilled it with everything else.

10 Q Did you have any question that Sam intended to
11 indemnify Todd with those debts listed on Exhibit A to Exhibit
12 11 in evidence?

13 A Yeah. If there was a catastrophe, we were not going
14 to take any chances and leave something out.

15 Q Did you have any, formulate any thoughts about
16 whether or not that estate was headed towards insolvency and
17 perhaps bankruptcy?

18 A His trust?

19 Q Yes.

20 A His trust estate? If the loans got called and all of
21 these things that we thought could and might happen, yeah,
22 then there would be nothing left.

23 Q We evolve beyond 2008. Is the recession still in
24 full force and effect here in 2008, sir?

25 A I mean, I couldn't tell you. You could talk to two

1 different economists and one would say no and maybe another
2 one would say yes, but they obviously were still struggling.

3 Q All right.

4 A Like I said, even after I stopped representing them
5 then, they were still trying to negotiate loans, as I
6 understood it.

7 Q All right. With the presence of a recession and the
8 magnitude of the debt that Sam had, did that have any effect
9 in your involvement in developing an estate plan for Sam
10 Jaksick?

11 A Are you asking me whether the fact that he could be
12 insolvent had something to do with the estate planning?

13 Q No. I'm asking whether or not the existence of these
14 creditors had any involvement in your assistance in preparing
15 an estate plan for Sam?

16 A Well, you always take into consideration there is
17 creditors, right.

18 Q Were you involved in the creation of SSJ, LLC?

19 A Yes.

20 Q What is SSJ, LLC?

21 A If I remember correctly, it's a, it's a limited
22 liability company and it was a sole member limited liability
23 company. It was Sam's limited liability company.

24 Q The Family Trust was the member?

25 A Correct.

1 Q All right. Just so we can, a limited liability
2 company, is that a creature of statute here in Nevada?

3 A Yes.

4 Q And it's intended to do what for its owners?

5 A Shelter them from liability.

6 Q So who operates a limited liability company? Who is
7 the boss?

8 A It's the member or manager.

9 Q And the manager operates the company as though --

10 A It's like the president of a corporation.

11 Q All right. There we go. And then who owns a limited
12 liability company? What are the owners referred to as?

13 A Members.

14 Q So members are owners and the manager manages?

15 A Correct.

16 Q Sometimes they are the same?

17 A Correct.

18 Q All right. So SSJ, LLC was formed to take title to
19 the Lake Tahoe house?

20 A Yes.

21 Q All right. What did you know about the Lake Tahoe
22 house in 2011 when SSJ, LLC was formed?

23 A Well, there was a concern that the, obviously, the
24 lenders, there was still some issues. There were some other
25 third party lenders that were making a lot of noise about

1 suing Sam.

2 Q Do you recall their names?

3 A It was Dilts & Durham.

4 Q Dilts & Durham?

5 A Correct.

6 Q And when you say they were making noises, what do you

7 mean?

8 A Well, they had, Sam had borrowed money from them.

9 Q Right.

10 A And they wanted to get paid back, and if I remember

11 right it was the loan came due. He didn't have the money to

12 pay it back, so.

13 Q Did that put the Lake Tahoe house at risk?

14 A It did.

15 Q How so?

16 A He was worried about, I mean, obviously, it's a

17 beautiful home on the lake.

18 Q Right.

19 A And he didn't, he did not want to lose it, and the

20 concern was, and then, of course, he had a loan on that

21 property, too, of over \$6 million. He was worried about not

22 being able to service that debt. If I remember right, it was

23 an interest only debt.

24 Q With Bank of America?

25 A Yes, and it was going to mature and then, therefore,

1 the payments would be kicked up, and he did not have the cash
2 flow to make those payments, and the concern was that he
3 didn't have a heck of a lot of equity in the house, because of
4 the decline of the property values during the recession, so he
5 could very well lose the house to a variety of different
6 creditors. So what we wanted to do is shelter that house, so
7 one way to do that would be to get it into an LLC.

8 Q Is there anything wrong with that legally?

9 A To do creditor protection?

10 Q Yes, sir.

11 A No.

12 Q Exactly.

13 A No.

14 Q Many lawyers in this community specialize in that
15 area, do they not?

16 A Correct.

17 Q All right. So with regard to this creditor
18 protection plan, what was involved?

19 A So we sat down and had several meetings on this about
20 whether we could sell the house to a separate LLC. That
21 became too problematic. The other alternative was to do an
22 Option Agreement, in part because the Option Agreement meant
23 that we could have a family LLC. Basically put, it would be
24 an option between the family LLC and the owner of the house,
25 which was Sam.

1 Q And in that particular case did that, was that why
2 Incline TSS, Ltd was formed?

3 A Yes.

4 Q And did you do the work to effectuate an option for
5 Incline TSS to acquire the Lake Tahoe house?

6 A Yes.

7 Q Did you do so pursuant to your client's insistence?

8 A Yes, because obviously what clients do, they go to
9 their lawyer and say here is my problem. Here is my issue.
10 Here is my concerns. Help me figure out how to solve this
11 problem. So we kicked around alternatives and this turned out
12 to be the alternative to best fit this particular transaction.

13 Q Did you recommend them the creation of this limited
14 liability company that we referred to in this trial as Incline
15 TSS, Ltd?

16 A Yes.

17 Q And that was to be owned at the time by Todd's two
18 trusts?

19 A If I remember correctly, that was the only two
20 entities that had any money to make the option payments.

21 Q All right. But was Stan supposed to be involved at
22 that point in time back in 2010?

23 A He could have, but the problem was he was in the
24 middle of a divorce.

25 Q What effect did that have on Sam's estate plans?

1 A He didn't want to give him any property or have any
2 of the ventures until he got that finalized.

3 Q Why? What's the reason behind that?

4 A And I didn't handle his divorce, but as I understand
5 typically this is what occurs, is if there is a divorce, then
6 it's a community property state, so even though the husband
7 may own 100 percent of that LLC or that interest in a
8 corporation, or any other property for that matter, then the
9 wife is entitled to half of it. I mean, there are exceptions,
10 but simply put that's the rule.

11 So if you put him on a venture or put him in a deal
12 and then the divorce is ongoing, and then they finally get to
13 and they try to equalize the estate, that those potentially
14 would be up for division between the husband and wife.

15 Q So Sam could wake up one morning and find that his ex
16 daughter-in-law was his partner?

17 A Could be. You could draft around that, but for the
18 most part that was his concern, and the way it was explained
19 to me is we will worry about Stan, we will worry about Stan,
20 but once he gets his divorce final, then we are going to work
21 towards --

22 Q Was it your --

23 THE COURT: Ladies and gentlemen, during this
24 midmorning break, please do not discuss this case amongst
25 yourselves. Please do not form or express any opinion about

1 this matter until it's submitted to you. We will see you in
2 the courtroom at 10:30. I'm sorry, hold on, 10:15.

3

4 (Whereupon a break was taken from 10:00 a.m. to 10:15 a.m.)

5 (Whereupon the following proceedings
6 were in the presence of the jury.)

7 THE COURT: Please be seated.

8 Counsel, you may continue.

9 BY MR. ROBISON:

10 Q Before the recess, Mr. Hascheff, we were discussing
11 the creation of Incline TSS, Ltd. Was that a Nevada limited
12 liability company?

13 A Yes.

14 Q All right. And was Sam involved in the directives of
15 how to form that company?

16 A Well, said maybe a different way, I'm a lawyer. I'm
17 the one that's preparing the documents. I'm the one that's
18 filing with the Secretary of State. I'm the one making sure
19 it's legally formed, for example, has the provisions that it
20 needs to have on the documents, for example. But as far as
21 him knowing what the entire game plan was, the concept of what
22 we were trying to accomplish, yes.

23 Q Okay. So let's break this thing down. Incline TSS,
24 TSS is Todd, Stan, and Sam acronym, correct?

25 A It could be. I can't remember that, but --

1 Q All right. So Incline TSS, Ltd is a limited
2 liability company. It's managed by whom?

3 A Ultimately, it's managed by Todd.

4 Q Okay. Do you recall that when it was created and
5 filed with the Secretary of State, it showed that Stan was
6 also a manager?

7 A That is correct.

8 Q But that later went away because of the divorce?

9 A Correct.

10 Q All right. So now we know who manages. Who are the
11 owners of Incline TSS when it's created in 2010?

12 A I believe it was Todd's trusts.

13 Q All right. And Sam was aware of that?

14 A Yes.

15 Q Is it your testimony, sir, that Sam was aware that
16 only Todd's trusts were the owners of Incline TSS, Ltd?

17 A He is, was, yes.

18 Q That was his intent?

19 A Well, we structured it, yeah, and at the end of the
20 day he knew exactly what we were doing.

21 Q That's what he wanted?

22 A Well, we had to basically when we formed the company,
23 the LLC, we had to properly fund it, all right, and we still
24 had cash flow problems, if I remember. The only entities that
25 had any money to put in the companies that TSS could fund the

1 option payments were those two companies.

2 I mean, there could be some others, but we took, I
3 mean, it's a lot of moving pieces here. We had, we need to
4 conserve cash, continue to pay debt, keep creditors off, and
5 we needed to basically find some cash to basically put in this
6 company to structure the deal.

7 Q So in 2010 when Incline TSS is formed, the Family
8 Trust is the owner of the Lake Tahoe house, correct, sir?

9 A Yes, the Family Trust was the owner, yes.

10 Q All right. So did Sam want Incline to have an option
11 to purchase the Incline house?

12 A Yes.

13 Q Why?

14 A Well, there were a few reasons. One is, number one,
15 the creditor issue, so if it got out of, if he did not have
16 title anymore, then there would be nothing for the creditors
17 to attach.

18 Q Let me interrupt you. Sam had creditors at that
19 point in time in 2010, correct, sir?

20 A Yes.

21 Q But Incline TSS had just been formed. It did not
22 have creditors, did it?

23 A No.

24 Q So the house if transferred to Incline TSS would not
25 necessarily be subjected to creditor claims?

1 A No. They were not a personal guarantor. They were
2 not on any loans. They basically had zero exposure.

3 Q So could Sam's creditors then reach across and grab
4 an asset owned by Incline TSS?

5 A Well, that's why it wasn't involved.

6 Q That's why Sam wasn't involved?

7 A Correct, because as long as there is some kind of
8 tangential connection, even if it's remote, it just causes
9 problems, so and if I remember right, Todd's two trusts had
10 enough cash to do the funding and also were not, I don't
11 believe they had very much exposure either.

12 Q All right. So was it Sam's intent that Incline TSS
13 have an option to purchase the Incline house?

14 A Yes.

15 Q And was the price arrived at, the option price,
16 purchase price \$7,250,000?

17 A If I recall, yes.

18 Q All right.

19 A It was based on an appraisal.

20 Q All right. But that option was not exercised for
21 several years, correct, sir?

22 A I believe that's correct.

23 Q All right. So when you do an option, would you tell
24 the jury what an option is, please?

25 A All right. So instead of buying the property

1 outright, like you just go buy a house and get title, for
2 example, you have a loan on it, with an option it gives you a
3 right to buy the property, and then the terms of the option
4 basically set forth the conditions and the terms of which you
5 can exercise that option. And when you do exercise the
6 option, the sales price is already in the agreement. So you
7 exercise the option, that means in this case Sam through his
8 LLC now has to sell the property to TSS once the option is
9 exercised.

10 Q Got it.

11 A And people do that for a variety of different
12 reasons. We really didn't have the cash to buy the house
13 outright through this TSS, so the option was a pretty good fit
14 to basically keep making option payments to keep the right to
15 buy the house alive until we could go out and try to find
16 cash, you know.

17 We were hoping something would turn around. Houses
18 in Montreux could be sold. There could be a variety of
19 things. We just didn't have that crystal ball yet.

20 So it was basically a way to keep it alive and,
21 therefore, since he no longer owned the house outright,
22 somebody had an option to buy it, so the option encumbers,
23 right? You can't go sell it to anybody else. And if a
24 creditor comes, the option basically should take precedent
25 over a creditor trying to attach the house, so that was one

1 way to structure it.

2 Q What you just discussed with us was discussed between
3 yourself and Sam?

4 A Yes.

5 Q Can we please show the witness Exhibit 23.5. If you
6 need the hard copy, Mr. Hascheff, please let me know and I
7 will make sure I retrieve it.

8 A Yeah, I do want the hard copy.

9 Q Okay. I'm on it. 23.5, please. Oh, you have got it
10 in front you, sir.

11 A This says 1 through 13.

12 THE CLERK: It's not there.

13 MR. ROBISON: Thank you.

14 BY MR. ROBISON:

15 Q Would you blow up the first paragraph, please. Did
16 you prepare that document?

17 A Yes.

18 Q All right. Just generally tell us what was intended
19 to be accomplished by that particular document?

20 A Well, TSS would have the -- you said it's 23.5?

21 Q Yes, sir.

22 A TSS would be the buyer and then Samuel Jr. Family
23 Trust, which owned the home, was going to be the seller.

24 Q All right. Now, is that a document that gets
25 recorded with the Washoe County Recorder's Office or a

1 Memorandum of Option, anything like that?

2 A Well, you can typically do it both ways, but I always
3 prefer just to do a Memorandum of Option.

4 Q What is the effect of recording with the Washoe
5 County Recorder's Office a Memorandum of Option?

6 A You put all third parties on notice that this
7 property is encumbered.

8 Q So everybody in the world is put on notice that
9 Incline TSS can purchase that house?

10 A Correct.

11 Q All right. And if they do anything with the house,
12 they take it subject to that option?

13 A Correct. That's my opinion, yes.

14 Q And is that why you record those documents?

15 A Yes.

16 Q All right. Now, in this particular instance it
17 describes in the memorandum the terms of the deal that Incline
18 TSS gets with respect to the option, correct, sir?

19 A Correct.

20 Q What are the terms of the deal?

21 A Well, there was supposed to be a \$50,000 it looks
22 like initial payment. Purchase price was 72, excuse me,
23 \$7,250,000. If I remember right, the debt was \$6.3 million,
24 so it outlines the terms of these option payments. It would
25 have to occur on the 15th, January 15 of each month until the

1 option was exercised, and then once the option was exercised
2 there was going to be a promissory note that was going to be
3 given from TSS to Sam.

4 Q And the terms of that note, 10 years, 2.5 percent
5 interest?

6 A Correct.

7 Q Now, did you and Sam negotiate different terms that
8 might apply before you finalized this memorandum?

9 A When you say different terms --

10 Q Do you recall any discussions about a 6 percent
11 interest rate for a five year term?

12 A Right. So I believe in the initial draft, because
13 obviously when you do creditor protection work you are always
14 concerned that a creditor might come in and try to set aside
15 the transaction, so to make it bulletproof, so to speak, you
16 should have, try to make it as arm's length as possible. But
17 once we put those in, that was like an initial draft, that was
18 kind of my recommendation, if I remember correctly.

19 Q The 6 percent at five years?

20 A Yeah, because I thought that they could cash flow
21 that.

22 Q Right.

23 A But they couldn't.

24 Q Okay.

25 A So that's why we went to these relaxed terms, because

1 that would be something that they could afford, because the
2 last thing you want to do is set up terms that they can't
3 keep --

4 Q Sure.

5 A -- and then arguably they are in default and then the
6 whole transaction gets unraveled.

7 Q Do you recall that you might have sent the wrong
8 memorandum to Ticor Title?

9 A Yeah, that's what I have been -- yes, that's what
10 happened.

11 Q Let's see Exhibit 542, please. Can you tell the
12 jury, please, how it came about that you sent the wrong
13 memorandum to Ticor?

14 A Well, first of all, it shouldn't have happened,
15 because that was not the operative agreement. It looks like
16 that was a prior agreement that was ultimately changed to the
17 terms. And what I think may have happened is I could have
18 been out of the office and they needed a copy of the Option
19 Agreement and my secretary sent it.

20 Q They, Ticor?

21 A Ticor, yeah, because they would need a copy of it in
22 order to close the transaction, and it's happened before and I
23 have sent what I thought might be the correct document and it
24 really isn't. It should have been, but I think my secretary
25 just sent the old document.

1 Q But the valid, binding, effective one is the one that
2 refers to the 10 year note at 2 1/4 interest?

3 A That's correct.

4 Q All right. Why was the note to be unsecured,
5 Mr. Hascheff?

6 A Well, again, a lot of moving parts when you are
7 trying to do something like this, but --

8 Q Unsecured, just so we are clear, means what?

9 A Unsecured means that typically taking a house, you
10 buy a home, for example, you get title to the home when you
11 buy it. You had to finance it, right, with the lender, so the
12 lender secures your promise to pay the lender with the home.

13 Q A deed of trust?

14 A Correct. And so if you don't pay up your note
15 payment like you are supposed to, your lender will foreclose
16 on your house. So that note, that promise to pay is secured
17 by the home.

18 Q Okay. But in this instance the lender, which would
19 be SSJ?

20 A Right. So just to back up a little bit, initially,
21 if I remember correctly, the transaction was structured
22 between the trust and TSS, and then what I wanted to do is put
23 another limited liability company in the middle.

24 Q Is that another layer of protection?

25 A Correct.

1 Q How so?

2 A Because it's SSJ now, so the trust owned SSJ, which

3 was a single member LLC owned by the family, Sam's Family

4 Trust.

5 Q Let me mine into that a bit. 2010, the trust owns

6 the Lake Tahoe house?

7 A Correct.

8 Q If Sam dies, the Lake Tahoe house is disposed of in

9 accordance with the terms of the Family Trust document --

10 A Correct.

11 Q -- then in effect, right?

12 A Correct.

13 Q But then you with your client Sam transfer the house

14 from the trust to the new limited liability company called

15 SSJ, LLC?

16 A Correct, yes.

17 Q Now, who owned the member SSJ, LLC?

18 A His trust.

19 Q All right. So there is a different owner after you

20 accomplish that transfer in 2011, correct?

21 A Right. SSJ owned the house.

22 Q All right. So if Sam had died when the Lake Tahoe

23 house was owned by SSJ, LLC, how would it have been

24 distributed?

25 A Okay. So the, this assumes that Sam passes away and

1 SSJ still owns the house?

2 Q Yes, sir.

3 A All right. So the membership interest would be
4 subject to the trust.

5 Q Federal estate tax on the house?

6 A Yeah, if he meets the threshold.

7 Q Now, if SSJ owns the Family Trust and, excuse me,
8 Family Trust owns SSJ, creditors can still get to the house
9 through a charging order, correct?

10 A Well, maybe just backing up a little bit, I think
11 Nevada still does, but at the time had one of the most
12 favorable charging order statutes in the country, which means
13 that if a creditor comes after you, let's say because you
14 default on a personal loan, but your property is in an LLC,
15 the only thing they can attach is the membership interest in
16 the LLC. They can't get to the asset.

17 Q They don't get the asset, just the membership
18 interest?

19 A Just the membership interest, and in some states if
20 you are able to attach the membership interest as a creditor,
21 you can then in effect pierce the LLC and get to the property.

22 Q Okay.

23 A Nevada did not allow that. The Nevada statute
24 basically said that the only way, the only thing you get by
25 attaching the member's interest is basically any cash that's

1 distributed to the member. They can't get to, there is ways
2 you could, but typically you could bulletproof it by
3 structuring the transaction that way.

4 Q And in doing this transaction with SSJ, LLC, are you
5 doing your best to effectuate Sam's intent?

6 A And to protect the house.

7 Q All right. So let's move into 2012. Pretty busy
8 year for Sam Jaksick?

9 A Just as busy as ever, so, I mean, he had surgery, I
10 think, in 2012. If I remember right, I think we were selling
11 property.

12 Q Let's turn it back a little bit to April of 2012.

13 A Okay.

14 Q Do you remember working with Sam on a Second
15 Amendment and a Fifth Amendment to his estate plan?

16 A Yes.

17 Q Tell us about that, please.

18 A All right. So typically what happens is the client
19 comes to you and says, look, I want you to amend my trust. I
20 want to change the terms of my trust.

21 I hadn't drafted any of his trusts before, so I said
22 provide me with copies of all of your trust agreements, your
23 amendments, everything, so I can read them and see, you know,
24 the progression of what's the operative document.

25 So, if I remember correctly, they brought me some but

1 not all of the trust, and as I read through them I said we are
2 missing some documents. So it was kind of a give and take
3 saying you brought me another one. I still don't have all of
4 the documents.

5 Then when I thought we really had our arms around all
6 of the documents, I was drafting documents and amending the
7 trust documents that they had provided me, and ultimately I
8 can't remember the exact dates, but after we had drafted these
9 documents and they had signed them, they told me that there
10 was another document they thought that was out there, which
11 they ultimately provided me with.

12 Q Is that the 2006 restated trust agreement?

13 A Correct. That came in at the last minute.

14 Q Okay.

15 A So then when I read that document, I said, well, we
16 just wasted a bunch of time, because I'm amending documents
17 that are no longer the operative documents.

18 Q Back to the drawing board?

19 A Correct.

20 Q All right. So in April you have got a signed Fifth
21 Amendment and you have got a signed Second Amendment. How did
22 that happen?

23 A The only thing I can say about that is I thought the
24 Fifth Amendment was the operative document, and then we did
25 the Second Amendment on the heels of that document probably, I

1 don't know. I didn't know which one was the operative
2 document.

3 So I obviously did a Fifth and a Second, and then
4 come to find out, because all of this happened in April, so
5 between April and ultimately December when the Second
6 Amendment was actually prepared, I was able to get my arms
7 around exactly which documents were the operative documents.

8 Q All right. Got it. So we go through the summer
9 of 2012 into this period, say December of 2012. Were you
10 aware that Sam was scheduled for some heart surgery?

11 A Yeah, he was supposed to have heart surgery.

12 Q Okay. Did you draft the Second Amendment?

13 A Yes.

14 Q Did you do so with Sam's assistance?

15 A Yes.

16 Q Did Sam tell you what his intent was?

17 A Yeah. He told me where he wanted his property to go,
18 yes.

19 Q All right. Now, by this time was it clear to you,
20 based on what Sam had represented to you, whether or not Wendy
21 was to have any ownership in the Lake Tahoe house?

22 A She was not.

23 Q Sam made that absolutely clear to you?

24 A That it was structured that way, yes.

25 Q And did Sam give you an explanation as to why he did

1 not want Wendy to have an ownership in the Lake Tahoe house?

2 A It was the same reason she wasn't, had an ownership
3 in the other entities, because --

4 Q Creditor claims, things like that?

5 A Yeah, potential issues with problems.

6 Q Did you honor Sam's intent to make sure that she had
7 no interest in the Lake Tahoe house?

8 A Correct, I did.

9 Q All right. So when you did the Second Amendment, can
10 you tell us generally what the substantive changes were in
11 Sam's estate plan accomplished by the December 10th, 2012
12 Second Amendment to trust?

13 A I don't remember all of the provisions, but the Lake
14 Tahoe house was no longer in his estate, so he said that it's
15 no longer, that's not an asset that's going to be distributed.

16 Q Well, by that time had the TSS option actually been
17 exercised?

18 A I can't remember if it was exercised or not, but
19 there was a provision in there that said that, there was a
20 note in the Second Amendment saying the house is under option
21 and it's not, it's not available for distribution.

22 Q Even though at that time Todd's two trusts were the
23 sole members, the sole owners of Incline TSS, were you aware
24 of any intent that Stan be permitted to buy in notwithstanding
25 Todd's ownership?

1 A Yeah. It was, the details were not exactly worked
2 out, but it was, it was the intent that Stan would eventually,
3 once the divorce was final, that we would be able to sit down
4 and work through his buy-in. I --

5 Q How is -- I'm sorry, I interrupted you.

6 A Go ahead.

7 Q What was -- was Stan to utilize perhaps lots at
8 Montreux to fund the buy-in to the Incline house?

9 A That was one of the options, yes.

10 Q And was that --

11 A Because he was going to get, Sam was gifting him
12 stock in the company that owned Montreux.

13 Q Toiyabe?

14 A Toiyabe.

15 Q And Toiyabe owned what?

16 A It owned Montreux.

17 Q And then Sam gifted 80 percent of Toiyabe to Stan?

18 A I don't remember the exact percentage, but it was, it
19 was a healthy percentage.

20 Q And do you know why Sam intended to give that gift to
21 his son Stan Jaksick?

22 A Well, Stan was really the golf course expert, so he
23 wanted to make sure that Stan would basically own the majority
24 of the golf course.

25 Q Okay. And how was Stan to buy into the house then

1 during this divorce proceeding?

2 A He couldn't until the divorce was final.

3 Q Was that discussed at length with Sam?

4 A Yes.

5 Q And when the option was exercised by Incline TSS,
6 that transferred the house out of the Family Trust to Incline
7 TSS, correct?

8 A Well, what we did is we took the house from the
9 Family Trust, conveyed title to SSJ.

10 Q Right.

11 A And then SSJ sold it to TSS.

12 Q Knowing that Wendy had nothing to do with Incline
13 TSS?

14 A Correct.

15 Q Did Sam indicate to you in any way that he wanted
16 Wendy to ever have an ownership interest in Incline TSS?

17 A No, she was not supposed to have an ownership
18 interest.

19 Q Was Sam's intent clear that Wendy was not to have an
20 ownership interest in any assets because of creditor issues?

21 A I mean, the short answer is yes. I mean, if he came
22 to me and said, hey, I have got another venture and I think I
23 would like to put Wendy in it, we would do it, but he was
24 always concerned about creditor issues and other issues and he
25 did not want that to be disruptive to any of the entities,

1 therefore, she was not an owner.

2 Q All right. Are you aware that her share to be
3 received under the Family Trust is to be received by her
4 sub trust?

5 A Her share in the Family Trust?

6 Q Yes, sir.

7 A Right. She has, if I recall correctly, she has a
8 life estate earning interest.

9 Q What is a life estate?

10 A Well, what happens is he was concerned that if she
11 got the property or the money outright, she might spend it,
12 and he wanted to make sure his grand kids, her children, had
13 something. So he made some directives for them through the
14 children's trusts and then he made sure that she would be
15 taken care of, which means for life she would get
16 distributions so that she could be, she could live.

17 All right. And then whatever she didn't spend,
18 because the trustee would basically allocate the money to her
19 on a monthly basis, for example, whatever she didn't spend
20 would then go to the grand kids when she passed away.

21 Q And that's what Sam wanted?

22 A Yes.

23 Q Do you recall who the trustees of Wendy's sub trusts
24 were to be?

25 A I couldn't tell you.

1 Q Do you recall any involvement, Mr. Hascheff, in
2 preparation of durable power of attorney, healthcare provide
3 attorney, and a general power of attorney for Sam?

4 A Yeah. I believe I prepared those, yes.

5 Q What are those documents? What is the significance
6 of those documents?

7 A A healthcare power of attorney is when you, for
8 example, give someone, usually a family member, power of
9 attorney to make healthcare decisions for you. So let's say
10 you are incapacitated, you are hospitalized, whatever, that
11 person or doctor can rely on a power of attorney that says I
12 can make healthcare decisions for you.

13 A general power of attorney is the financial side,
14 which means I'm giving you my power of attorney, usually a
15 child, to sign off for me if I'm incapacitated, that you can
16 make my financial decisions for me.

17 Q And did he give that power of attorney to Todd?

18 A I believe he did, yes.

19 Q Why Todd and nobody else?

20 A Well, because that's what he wanted, so that's who he
21 wanted.

22 Q Did you form an impression that Todd was getting the
23 majority or more than his siblings as a result of Sam's estate
24 planning?

25 A Yeah, he was getting more.

1 Q Why?

2 A Well, the way as I understood it, based on my
3 conversations with him, it was Todd did quite a bit of work on
4 all of the --

5 Q When you say him, are you talking about Sam, the
6 conversations with Sam?

7 A My conversations with Sam, he obviously left all
8 three of his kids, but he wanted to reward them based on their
9 contribution to these assets that were ultimately generated,
10 and Todd worked on a lot of them, the majority of them.

11 Most of the deals, in fact, all of the deals that we
12 worked on, it was just Sam and Todd that worked on them. All
13 right. And then he wanted to make sure that Stan got a share
14 of the estate as well as Montreux, and I thought maybe there
15 might be one or two other entities.

16 But Todd worked on all of the ranch transactions, so
17 he, he thought it would be appropriate to reward Todd, by Todd
18 worked on these, Todd generated the value for those, and he
19 should get those.

20 Q All right. Do you recall that in the 2006 document
21 there was a deduction from Wendy's share of \$1.5 million?

22 A Yes.

23 Q Did you and Sam talk about that?

24 A Yes. So what happened is in the prior document he
25 had put in that, if I remember right, her one-third share,

1 when she got her one-third share after he passed away, that
2 they would deduct \$1.5 million from her one-third share, so
3 when we drafted the Second Amendment he did not want that
4 deduction to occur.

5 Q Did he explain why he wanted that deduction from
6 Wendy's share out of the Second Amendment?

7 A Well, in part because Todd was getting the majority
8 of the assets, Stan was going to be second, and that was the
9 way to equalize, provide her with some value so she wouldn't
10 have to take a \$1.5 million hit.

11 Q All right. Now, the house then is designed in
12 December of 2012 to be outside of the Family Trust?

13 A Correct.

14 Q And the reasons for that, sir, are what? You
15 mentioned creditor protection. Were there other reasons?

16 A Well, I think, and this was I think Kevin, the
17 accountant's concern that there potentially would be an estate
18 tax consequence if the house, it was worth about \$7 million,
19 whatever it was, so he was concerned. It had a lot of debt on
20 it, so it wasn't completely taxable, so but it was taxable.

21 And then the other thing was there was talk about
22 legislation being changed in 2013 that would create an excise
23 tax on capital gains, so Kevin was concerned that if we didn't
24 transfer it by 2012 and they eventually wanted to sell it,
25 then potentially that would be a problem.

1 Q Let's back up. You mentioned capital gains. Tell us
2 what a capital gains tax is.

3 A Well, it's the difference between what you sell your
4 house for, your property for, and what you paid for it,
5 basically.

6 Q So if you bought a house for \$100,000 and you sold it
7 for \$200,000, that profit of \$100,000 would be subjected to
8 capital gains tax?

9 A Correct.

10 Q And the capital gains tax in 2012 was a lesser amount
11 than anticipated to be in 2013?

12 A Correct.

13 Q Is that one of the reasons why this had to be done in
14 2012?

15 A That was pretty much Kevin's brainchild. I mean,
16 obviously, if he had a personal residence, there is an
17 exclusion.

18 Q Right.

19 A So there is some benefits when you sell a residence
20 versus a different piece of property, investment property, for
21 example, but he said those were two important issues from his
22 perspective.

23 Q It would save the Jaksick family thousands of dollars
24 if it closed in 2012, correct?

25 A Yeah. Kevin would be better, he thought there was

1 going to be a financial.

2 Q Was Kevin Riley recommending the transfer of the
3 house to Incline TSS?

4 A He was definitely onboard.

5 Q Was he one of the architects of that entire estate
6 plan with you?

7 A Yeah. He was probably the primary lead on that, yes.

8 Q And did he discuss with you the tax implications and
9 the various structures of how that would benefit the family?

10 A I can't remember all of the details. I just know
11 that those were two important issues to him. My, my primary
12 concern was creditor protection.

13 Q All right. So the option that was sold to Incline
14 TSS, was that exercised in December 2012?

15 A I believe it was.

16 Q And was there some problems with the dates?

17 A When you say problems with the dates --

18 Q On the notice of exercise of the option, do you
19 recall anything about that?

20 A Yeah. When I was reviewing the documents in
21 preparation I think for my deposition and today, the notice of
22 exercise was dated December 21st, all right, but I don't think
23 the option was exercised until after that date. Probably, we
24 were waiting for the B of A approval. Once we got B of A
25 approval --

1 Q Let me interrupt you. Why do you need the bank's
2 approval to do these transactions?

3 A Well, typically and in this, typically bank documents
4 say that if you transfer the property it triggers a default,
5 and now you are in trouble because they accelerate the entire
6 loan, which would have been \$6 million, so you cannot transfer
7 the property.

8 And the way they define transfer in the documents,
9 it's all encompassing. If you put an option on the property,
10 it could be considered a transfer, and, therefore, a default.
11 Therefore, the note is accelerated and now you owe the bank
12 \$6.3 million, whatever it is.

13 Q Now that Incline TSS is going to own the house and
14 Incline TSS is owned by two of Todd's trusts, do you know what
15 the plan was to raise money to sustain that house?

16 A Okay. Could you ask that --

17 Q Yeah. How was the house going to be sustained with
18 Incline owning it, do you know?

19 A Well, it was structured because it has got to be, it
20 has got to be arm's length, so the way it was structured is
21 once TSS owned the property, it would have to continually find
22 at least \$50,000 a year, okay, to basically -- excuse me, back
23 up a second.

24 Sam still wanted to live there, okay, even though TSS
25 owned it.

1 Q Now, is there a danger with that with regard to the
2 IRSS -- IRS?

3 A You say danger.

4 Q Could the IRS consider the transaction from SSJ, LLC
5 to Incline TSS a sham if Sam just continued to live there rent
6 free?

7 A That would be one issue. So would the creditors,
8 because if you are actually doing an arm's length transaction
9 with a third party, albeit a family entity owns the property,
10 you can't just let somebody live there for free. So we
11 structured that he would have to rent the house and pay fair
12 market value rent or something close to it and that would help
13 fund the option payments.

14 Q And also to validate the arm's length transaction
15 nature of the transfer?

16 A Yeah. We tried to make it as close to arm's length
17 as we could.

18 Q Even though it's an interfamily type of deal?

19 A Correct.

20 Q All right. Were you comfortable with that in terms
21 of the structure of that transfer to protect the Lake Tahoe
22 house from creditors?

23 A Well, when you say comfortable, anything can happen,
24 you know, but we did the best we could under the
25 circumstances.

1 Q Mr. Hascheff, was it Sam's intent to transfer that
2 house to Incline TSS?

3 A Yes.

4 Q No question about that?

5 A No question about it.

6 Q All right. So Incline TSS executes a note for the
7 purchase price. Is seller financing unusual in your role?

8 A No.

9 Q What is seller financing?

10 A Well, instead of you having to go, like TSS having to
11 go to the bank and borrow the money to purchase the Incline
12 house, that was not an option. All right. That was --

13 Q There was already a \$6.3 million loan on it?

14 A Correct. So given the cash flow issues that were
15 being experienced, the best option was to basically do an
16 unsecured note interest only and they would pay for it that
17 way, and then obviously the option, excuse me, the note would
18 finally sunset and then you would have to pay off the note.

19 Q Regardless of all of the ramifications, Incline TSS
20 still has to pay \$7.25 million?

21 A Correct.

22 Q And the option payments that it made were to be
23 credited against the purchase price?

24 A Correct.

25 Q All right. So if there were a deed of trust, and a

1 deed of trust again is what?

2 A It's basically a lien on the property.

3 Q Okay. So if SSJ, LLC had asked for a secured note,
4 that that \$7.25 million note be secured by a deed of trust,
5 that's behind the bank, isn't it?

6 A Correct.

7 Q In other words, the bank has priority for the 6.3,
8 correct?

9 A Yeah.

10 Q But the deed of trust then becomes an asset of the
11 Family Trust, correct?

12 A Well, it would have been SSJ.

13 Q Which was owned by the Family Trust?

14 A Right.

15 Q And, therefore, a deed of trust would have been an
16 asset. Creditors could have gone after it, correct, sir?

17 A Well, potentially, yes. So if it's unsecured and the
18 note goes into default, because TSS cannot make the payments,
19 then that's the only asset you have to worry about that
20 potentially creditors could attach.

21 All right. If there is a deed of trust and the
22 creditors attach the note, and now there is a lien that backs
23 up the note, we were concerned that the creditors could now
24 foreclose on the property.

25 Q Well, not only that, let's walk through this. Say in

1 March of 2013, assume there is a deed of trust in favor of
2 SSJ, LLC on the Lake Tahoe house and Incline defaults, SSJ
3 could foreclose on that second deed of trust, correct?

4 A Correct.

5 Q And when it does, it gives the property back subject
6 to the B of A loan, correct?

7 A That would be, that could be one option, yes.

8 Q And the creditors would then have a shot at the house
9 because it would then be owned by the Family Trust by virtue
10 of the foreclosure?

11 A Run that by me again.

12 Q The creditors would have access to the house because
13 of that foreclosure process?

14 THE COURT: Excuse me.

15 MR. SPENCER: Your Honor, I will object as leading
16 questions.

17 THE COURT: Sustained.

18 MR. ROBISON: I will rephrase.

19 BY MR. ROBISON:

20 Q What would happen, Mr. Hascheff, if there were a deed
21 of trust on the house and SSJ, LLC foreclosed on that deed of
22 trust? What is the consequence of that?

23 A Well, it's a little bit more detailed than that.

24 What happens is the bank is still there, correct?

25 Q Correct.

1 A All right. Well, if, if SSJ tries to foreclose on
2 the house, it's subject to the bank's loan and that means the
3 bank is going to also foreclose on the house. They are not
4 going to let SSJ take the house.

5 Q Who gets the house?

6 A The bank.

7 Q That's right. Is that what Sam wanted?

8 A No.

9 Q Is that why there is an unsecured promissory note?

10 A That would be one reason, yes.

11 Q So were you talking to Sam at all, Mr. Hascheff, when
12 he was hospitalized down in Los Angeles?

13 A I can't recall if I was talking to him or not.

14 Q Were you talking to Todd?

15 A Probably, yes.

16 Q Was Todd doing a lot of work in December to help
17 facilitate all of these loose ends that had to be done by the
18 end of the year?

19 A Yeah. I mean, that's pretty much the way it always
20 worked.

21 Q Okay. Do you recall that your office received
22 signature pages for the Second Amendment to trust on
23 December 18?

24 A Well, there is an e-mail basically where those
25 signature pages were sent to us, yes.

1 Q Okay. So to understand how this happened, you are
2 with Stan drafting --

3 A Sam.

4 Q I'm going to do this the rest of my life -- You are
5 with Sam drafting the Second Amendment?

6 A Correct.

7 Q Before he leaves for the hospital?

8 A Correct.

9 Q All right. And you are working at your office on the
10 draft?

11 A Correct.

12 Q You get it finalized. Does it go over to Sam's
13 office and then he signs it there?

14 A I can't recall if he did or if he signed it in my
15 office, but typically he would sign. Jessica would print out
16 the documents, and then she would give them to him. He would
17 sign them, and then they would get them back to us.

18 Q They would send the signature pages back over to your
19 office?

20 A It could be just the signature page or sometimes the
21 entire agreement. I've done it both ways.

22 Q Then to keep an accurate file you would put the
23 document together, signature page with the Second Amendment?

24 A Correct.

25 Q Do you believe that's what happened in this case?

1 A That's the way it generally happened, yes.

2 Q Do you believe that Sam's signature is forged on the

3 Second Amendment?

4 A No, it's not forged.

5 Q Do you have any reason to believe that Sam's

6 signature on the Option Agreement is forged?

7 A I don't think it's forged, no.

8 Q And you worked with Sam and you believe that's his

9 signature on that Option Agreement?

10 A I'm not a handwriting expert, but I have no reason to

11 believe it's not his signature.

12 Q You have probably seen Sam sign how many documents?

13 A A few, quite a few.

14 Q Do you have any reason to believe that any documents

15 that you negotiated and prepared for Sam Jaksick were forged

16 by somebody else?

17 A I have no reason to believe that.

18 Q Is it your belief that his signatures were put on the

19 documents that you prepared to make them valid, legal, and

20 effective?

21 A Well, typically what would happen is I would get the

22 signature page, or the document with the signature page back,

23 and then we would basically attach it to the document, and

24 then we would scan it and then e-mail it to him, so they would

25 always have a copy of what we considered to be the operative

1 draft, the operative final agreement.

2 Q Would it be fair to say that you were in the process
3 in December of 2012 and into January of 2013 of more or less
4 winding down your practice?

5 A January of 2013?

6 Q Yes, sir.

7 A For the most part, yes.

8 Q Why was that?

9 A Well, because, I mean, the short story was, yes, I
10 had gotten an opinion that said I could continue to practice
11 law.

12 Q From whom?

13 A It was from the judicial ethics.

14 Q Why judicial ethics?

15 A Well, that's who makes the determination, so they
16 said as long as I, my practice did not interfere with my
17 judicial duties, then I could continue to practice. Then, and
18 then I was told, no, you can't, you cannot practice law once
19 you take the bench.

20 Q When did you take the bench?

21 A I took the bench I think sometime early January '13.

22 Q When did you get that final opinion?

23 A It was later. I don't recall when, because the
24 Incline Justice of the Peace, he actually has a private
25 practice, so that's what they thought. It was finally sorted

1 out and I could not.

2 So the other opinion I got was as long as you wind
3 down your practice, you can still practice, because you have
4 to wind it down, and then I can't remember when that all
5 happened, but the ultimate decision was I could not.

6 So, in effect, I was winding it down, because I just
7 didn't have enough time, so that's when Nick Palmer came
8 onboard and he basically took over my responsibilities and
9 that was sometime in 2013, I think it is.

10 Q And is it your best recollection, Mr. Hascheff, that
11 the Second Amendment was signed before Sam went down for his
12 heart surgery?

13 A That's what he wanted to do.

14 Q He wanted to get it done?

15 A Correct.

16 MR. ROBISON: Very well. Your Honor, may I just
17 confer with my client?

18 THE COURT: Yes.

19 MR. ROBISON: I will pass the witness, Your Honor.
20 Thank you.

21 THE COURT: Let's all stand, ladies and gentlemen.

22 Mr. Lattin, you may begin.

23 MR. LATTIN: Thank you, Your Honor.

24

25

1 CROSS EXAMINATION

2 BY MR. LATTIN:

3 Q Mr. Hascheff, I represent the trustees of the Samuel
4 S. Jaksick Family Trust. Do you know who they are?

5 A I believe it's Stan, Todd, and then it should be
6 Kimmel.

7 Q Okay. And just going back to the point in time when
8 you are doing some estate planning for Sam and you are
9 drafting documents for him, did you find out at that point in
10 time who the trustees were of the Family Trust?

11 A You mean as they were listed in the Second Amendment?

12 Q Yeah. No, as they were listed in the Family Trust
13 document?

14 A You mean the 2006 document?

15 Q Yes.

16 A I can't, it was Todd, Stan, and I think a guy by the
17 name of Benetti --

18 Q Okay.

19 A -- that passed away, and so I couldn't tell you other
20 than those two.

21 Q Okay. And that's correct, it was Todd and Stan, and
22 then it ended up being Kevin Riley, who we will talk about in
23 a minute.

24 Do you know why Sam put in Stan and Todd as trustees
25 of his Family Trust?

1 A Well, typically that's what families do. It's going
2 to be your kids, usually the kids that have some financial
3 acumen that you trust to be able to manage the affairs of the
4 trust.

5 Q So was it your understanding, then, that Sam put in
6 Todd and Stan because they had this financial acumen that you
7 are speaking of?

8 A Yeah, because I think he trusted both of them, yes.

9 Q And they were also his business partners?

10 A Yes.

11 Q Okay. Now, was that also -- well, you represented
12 Sam for how many years? Do you know approximately how many
13 years it was?

14 A It was probably 10 --

15 Q Okay.

16 A -- or more.

17 Q And during that time frame, you already testified
18 that you were, you knew Sam to be involved with Stan and Todd
19 as well in various businesses?

20 A Correct.

21 Q Okay. Did you find out in your transactions with Sam
22 that he did trust Stan and Todd?

23 A Yeah, he did trust both of them.

24 Q And that would be one of the reasons why he put them
25 in as trustees; is that correct?

1 A Correct.

2 Q Now, you have mentioned the name Kevin Riley, and the
3 jury met him the first day, because he was here and was here
4 for opening statements. Who is your understanding as to who
5 Kevin is and what his relationship was with the Jaksick
6 families?

7 A Well, he worked with a firm out of Sacramento, and I
8 believe the initial person was a Ray Benetti. He was a
9 principal in that CPA firm. And then I believe Ray passed
10 away, so Kevin took over all of the Jaksick work. So when I
11 came onboard, I believe Kevin was already there and he was
12 already the, he was the CPA for Sam Jaksick. He did all of
13 their work.

14 Q And when you say all of their work, are you talking
15 about all of the various entities that Sam had?

16 A Yeah. He did all of their tax work.

17 Q Okay. And the real estate work that you did and the
18 other things that you did for Sam, did you work with Kevin?

19 A Oh, yes.

20 Q And did you get an understanding as to his actual
21 involvement with the family and the family entities?

22 A Yeah. We really didn't do anything without Kevin
23 being involved, because everything we did had some kind of a
24 tax consequence to it, and then he did all of the returns. He
25 was very familiar with the spreadsheets, the accounting, so we

1 didn't, we very seldom, if any, did anything without Kevin's
2 involvement.

3 Q And you talked about some of these transactions and
4 why they were being done and cash flows and cash flow analysis
5 and things like that. Was Kevin involved in those?

6 A I believe he was.

7 Q Okay. Would it be fair to say that Kevin was the one
8 that really truly had an understanding of the, all of the
9 financial aspects of the various Sam Jaksick entities?

10 A I think he did, yes.

11 Q Okay. And through your contact with Sam and Kevin,
12 did you come to an understanding that Sam also trusted Kevin?

13 A Oh, I believe he did, yes.

14 Q And is that your understanding as one of the reasons
15 as to why Kevin was also a trustee for a period of time?

16 A I believe so, yes.

17 Q Okay. So Sam put in people that he trusted --

18 A Correct.

19 Q -- to manage his estate?

20 A Yeah, and it's not unusual to have a trustee, as your
21 lawyer to be your trustee or your accountant, because they are
22 very familiar with your financial affairs.

23 Q Did you ever have any discussions with Sam about
24 putting Wendy in as a trustee?

25 A No, she was not going to be a trustee.

1 Q Okay. And in your interactions with Kevin Riley did
2 you gain an understanding that he did know the financial
3 aspects of the Jaksick entities?

4 A Oh, he did, because he would do, he did the financial
5 statements for all of the entities as well as the tax work.

6 Q Okay. And in your interactions with the Jaksick
7 family members, Todd, Stan, and Sam, is Kevin the one that you
8 would characterize as having the full understanding of all of
9 the finances?

10 A Yeah. He was, he was the lead when it came to that.

11 Q Okay. And you are a CPA as well, correct?

12 A Correct.

13 Q And you had an opportunity to look at Mr. Riley's
14 work. Did you find his work to be good financial work?

15 A When you say look at, I mean, he would provide the
16 accounting and the spreadsheets and, I mean, I didn't do an
17 audit on his work, but I trusted his, if I saw a financial
18 statement I believed it was accurate, because --

19 Q Okay.

20 A -- just based on my discussions with him he was very
21 knowledgeable about all of the Jaksick entities.

22 Q Okay.

23 A He knew what he was talking about.

24 Q Okay. He knew what he was talking about, so he would
25 be a logical person to be a trustee?

1 A Yes.

2 Q Okay. Now, in the process of estate planning, and
3 you have described the Second Amendment and what you did in
4 that regard, and you have talked generally about what the
5 Second Amendment did.

6 Why was it that Sam wanted to do that Second
7 Amendment and particularly at that period of time in December
8 of 2012 when he did that?

9 A Well, it's not, it's not unusual, but if dad or mom
10 are going in for surgery, they may not come out, they
11 typically take another fresh look at their estate planning and
12 their documents, and if they want to make changes, they want
13 to make the changes before they go into surgery.

14 And that was the intent here, he did want to make
15 some changes, and I think he believed he may not come out of
16 this surgery and that's why there was a push to try to get it
17 done before he went.

18 Q Okay. Would that be the same thing with regard to
19 the other transactions that you talked about with Mr. Robison
20 as far as transfer of the house and things like that as well?

21 A That would have a little bit to do with it, but
22 primarily it was creditor protection. We were trying to get
23 things insulated so he wouldn't lose the home, for example.

24 Q Okay. So when Sam is asking you to do the Second
25 Amendment, it's right before his surgery, and you find that is

1 something that typically happens with people who are going in
2 for medical treatment?

3 A Yeah. It's not unusual to have a client come to you
4 and say I'm having surgery. I may not come out, so I want to
5 make sure my planning is up to date.

6 Q Okay. And so when he is taking that fresh look at
7 things and making the changes that you have already outlined
8 for the jury, he wanted to keep Stan and Todd in as trustees;
9 is that correct?

10 A Correct.

11 Q And also Kevin Riley?

12 A Yeah. I put in the people he wanted me to put in.

13 Q Okay.

14 A Now, Stan and Todd, if I remember correctly, that my
15 trustee provision in the Second Amendment is virtually
16 identical as the 2006 trust that the LeGoy firm basically
17 drafted, so I basically mirrored that provision other than I
18 believe Kevin Riley.

19 Q Okay. And so in looking at that, it was Sam's intent
20 to keep Stan and Todd in as trustees?

21 A Correct.

22 Q Consistent with what he did in December of 2006 when
23 he did the Family Trust?

24 A Yeah. The June of 2006 trust?

25 Q Yes.

1 A Yes.

2 Q Now, with regard to the Family Trust and the Second
3 Amendment that you did, now, there has been a discussion
4 yesterday about Fourth, Second, Third, Fifth Amendments. At
5 the time that you did the Second Amendment and at the time of
6 Sam's death, what was your understanding as to what the
7 operative estate planning documents were?

8 A Well, like I said, initially I got the other
9 agreements piecemeal, so I was trying to put them together and
10 that took sometime, and then ultimately when I did the Fifth
11 Amendment, that's when I really, just after that, between
12 April and December of 2012 I finally got my arms around all of
13 the agreements. I finally figured out there were no more
14 agreements.

15 I finally figured out that the June 2006 Trust
16 Agreement is the operative document and that's the document
17 that should be amended, so there really shouldn't be a Fourth
18 and a Fifth Amendment.

19 There should be the 2006 Trust Agreement that was
20 done by the LeGoy firm and then there should be an amendment
21 to that agreement, so what I did is I took the Fourth
22 Amendment that I prepared and said really that was the First
23 Amendment to the 2006, because you got to piece this thing
24 together, and ultimately the draft that I'm doing in December
25 of 2012, that's really the Second Amendment.

1 Typically, when you do amendments, you basically say
2 the Second Amendment replaces the First Amendment or the Third
3 Amendment replaces the Second Amendment, so you really have
4 just a couple operative documents, so it makes it simple. I
5 have one, the main trust, which is the 2006 trust, and then
6 ultimately the changes that Sam intended and the changes he
7 wanted which were in the December Second Amendment.

8 Q Okay. So would it be fair to say, excuse me, that
9 the operative documents for the trustees to administer were
10 the Samuel S. Jaksick December 2006 Family Trust and then the
11 Second Amendment that you did?

12 A Yeah. It would be the June 2006 trust prepared by
13 the LeGoy firm and my Second Amendment.

14 Q Okay. And anything else in between was replaced and
15 done away with?

16 A Correct.

17 Q And that was the intent of your Second Amendment?

18 A Correct, and that was his intent.

19 Q Okay.

20 A Because that's what accomplished the objectives.

21 Q You have talked a lot both in response to
22 Mr. Robison's questions and to mine about Sam's intent, and
23 you are talking about his medical condition, and he is getting
24 surgery, and he is going to go in for surgery.

25 Did you believe that in, at the time that you are

1 looking at all of those documents and you are doing the Second
2 Amendment that he eventually signed, did you find that Sam had
3 a full understanding of the property that he owned?

4 A Yeah. He was competent.

5 Q Okay.

6 A I mean, we exchanged drafts, and he would change
7 percentages and then we would go back and forth. I mean, he
8 was in my office signing documents a lot. I never -- he was
9 competent. He never showed me any signs that he was not or he
10 didn't understand what he was doing.

11 Q So it was your belief that he fully understood what
12 he was doing when he signed not only the Second Amendment, but
13 the other documents that he was, you were preparing for him at
14 the end of 2012?

15 A Yeah. He understood what he was signing, yes.

16 Q Okay.

17 A He was competent and he understood what he was
18 signing.

19 MR. LATTIN: Okay. Thank you. That's all I have.

20 MR. KREITLEIN: Nothing for this witness, Your Honor.

21 THE COURT: All right. I'm not sure who it is,
22 Mr. Spencer, you?

23 MR. SPENCER: Yes.

24 THE COURT: You may begin. Let's just take one
25 minute and stand.

1

CROSS EXAMINATION

2 BY MR. SPENCER:

3 Q Mr. Hascheff, you were hired by Sam to dot I's and
4 cross T's; is that right?

5 A I was hired by him to prepare documents, yes.

6 Q Well, you testified that was one of your tasks was
7 that you were hired by Sam to dot I's and cross T's, correct?

8 A I don't remember testifying to that, but I was hired
9 to prepare documents, yes.

10 Q All right. And one second.

11 A Are you talking about in my deposition?

12 Q Yes, sir.

13 A Okay. I thought you meant this testimony.

14 Q Oh, I apologize, in your deposition do you remember
15 saying that?

16 A I could have possibly said that, yes.

17 Q Okay. And that was one of your tasks, right, to make
18 sure things were correct, right?

19 A Yeah. To the best of my ability, yes.

20 Q Not to, not to dot T's and cross I's, but to do
21 things accurately?

22 A That's the way a lawyer should be, yes.

23 Q Okay. And you were aware that Sam Jaksick had lots
24 of property, weren't you?

25 A Yeah. He did have lots of property, yes.

1 Q In fact, he had, you understood that he had hundreds
2 of thousands of acres of land, correct?

3 A Yeah, he had quite a bit.

4 Q And that at one point he was the largest landowner in
5 Northern Nevada, correct?

6 A That was my understanding, yes.

7 Q And that with that land comes water rights, right?

8 A It had water rights, correct.

9 Q And that those water rights were very valuable,
10 correct?

11 A They were at one point, yes.

12 Q Yes. And, in fact, there was a deal that was worked
13 with Eco2 that you worked on, right? Eco2 Systems I think it
14 was.

15 A Was Eco2 Systems, I'm sorry, was Eco2 Systems the
16 tree farm?

17 Q Yes, sir.

18 A Okay. Yeah, I was aware of it.

19 Q And that was projected, if it had worked out, and we
20 all know it didn't work out, but if that had worked out it was
21 projected to bring in \$1.4 billion, right?

22 A I don't recall it being that much, but it was going
23 to be some money.

24 Q Can we pull up Exhibit 167, please. You remember
25 seeing this projected revenue?

1 A Do you know who did this one? Was it Eco2?

2 Q You can show 166 to show that that's connected. Eco2
3 was the one where there were going to be 14,000 acres set
4 aside to build 1 point, or not to build, but to plant
5 \$1.3 million -- 1.3 million trees, convert that to carbon
6 credits, and then those credits sold on the market. Do you
7 remember that?

8 A Yeah, that's what Eco2 I think projected, yes.

9 Q Yes. And so then the next slide, 167, the income
10 that was projected, if all of that had worked out as planned,
11 \$1.414 billion, right?

12 A That's what it says.

13 Q All right. That deal fell apart, but there were
14 other deals that you worked on, too, right, in relation to the
15 water, I mean?

16 A Yeah. I mean, I dealt with the water rights, yes.

17 Q You remember the Spring Mountain deal, correct?

18 A Correct.

19 Q And that that was a very valuable conceptual --
20 Conceptually, that was a very valuable deal that if it had
21 worked out would have monetized a lot of money, right?

22 A Oh, yeah, but for the crash it could have been a, it
23 could have been a game changer, yes.

24 Q Yes, and but for the crash it would have, could have
25 been worth hundreds of millions of dollars, right?

1 A Could have been, yes.

2 Q And then you mentioned the Vidler project where you

3 talked about the water being rural, but if it could get into

4 the urban areas it could be worth a lot of money, right?

5 A Correct.

6 Q And Vidler was building a pipeline in order to send

7 money into the -- send water into the urban areas?

8 A Correct.

9 Q And presumably developers, other people that would

10 want to buy that water at the end of the pipe, right?

11 A Right, because you can't build a home unless you have

12 got the water rights.

13 Q Right. And so there were several different deals

14 that you were working with the Jaksick family on in relation

15 to the water rights that were worth hundreds of millions of

16 dollars or more, right?

17 A Yeah. If they could have come to fruition, yes.

18 Q And certainly the market has changed as we are here

19 now today, right, with the development that's going on in this

20 area?

21 A Yeah. There is an uptick, yes.

22 Q And Vidler is still working on water projects, to

23 your knowledge, right?

24 A That I wouldn't know, but I would think yes.

25 Q Okay.

1 A I don't know.

2 Q All right. And so Sam's assets were obviously over

3 the estate tax exemption amount, correct?

4 A Correct.

5 Q In 2013 when he passed away, suddenly the exemption

6 amount, estate tax exemption amount was \$5.25 million; do you

7 remember that?

8 A I don't recall what it was, but it was more than a

9 million.

10 Q Right. It had gone up. With the law changes, it was

11 increasing annually based upon inflation and other things,

12 right?

13 A I believe so, yes.

14 Q All right. And some of Sam's estate tax had been, or

15 let me ask you, did you know that some of Sam's estate tax

16 exemption had been used already?

17 A That was pretty much a Kevin Riley thing.

18 Q All right. And did you have a sense of what needed

19 to be done from an estate tax planning standpoint to benefit

20 Sam's estate or was it just creditor protection?

21 A You mean when we did the Lake Tahoe, for example?

22 Q Well, yes, that and the other things that you did.

23 A Well, again, Lake Tahoe was creditor protections.

24 Q What about the Second Amendment?

25 A The Second Amendment, when we say Second Amendment,

1 Kevin would have been able to do the calculations on what the
2 potential estate tax savings would be. The Second Amendment
3 was simple, basically Sam wanting to change the terms of his
4 2006 trust.

5 Q That Maupin, Cox had prepared, correct?

6 A Correct.

7 Q And you did not provide Sam any estate tax planning
8 advice then, did you?

9 A You mean what his potential tax would be?

10 Q What his potential tax was?

11 A No. I let Kevin do those calculations.

12 Q Well, and you did not do any estate tax planning in
13 relation to the estate planning that you were doing though,
14 did you?

15 A No, but I worked with Kevin. Kevin was familiar with
16 the Second Amendment, and then he would typically run the
17 numbers or tell me if I had to change a provision, because he
18 had, he was very close to that issue, much more personal
19 knowledge than I did, so he was always involved, and if he
20 said I don't want you to do this because it's going to create
21 a problem, then we wouldn't do it.

22 Q And Kevin Riley was right in the middle of all of
23 this as far as the decisions that were being made, right?

24 A Yeah. For the most part, yes.

25 Q And he was included, if there were meetings that

1 people would have to make decisions, Kevin Riley was right
2 there in those meetings making those decisions with everyone
3 else or participating, right?

4 A For the most part, yes. There were some that he was
5 not at, but ultimately he would see the final, and then if he
6 wanted to tweak it, he would change it, and then we would
7 change it.

8 Q He would either be there in the meetings where
9 everything was discussed and participate in them or he would
10 be consulted as the final word on whether the decision should
11 be made?

12 A Yeah. For the most part, yeah.

13 Q All right. And what about Mr. Kimmel, do you know
14 what his involvement was at the meetings?

15 A I don't remember having him in any meetings.

16 Q Not in any that you were involved in?

17 A Correct.

18 Q Okay. But you did not provide tax advice to
19 Sam Jaksick concerning the estate documents, did you?

20 A No. I think it was, Kevin did the calculations.

21 Q Well, I'm talking about estate planning documents,
22 you did not provide tax advice to Sam, did you?

23 A I mean, I'm trying to, when you say did I sit down
24 and run some numbers for him, no, I never did that. Did I sit
25 down and say irrespective of what Kevin thinks, I think there

1 is going to be a problem, I didn't do any of that. I just
2 relied on Kevin because he would do the calculations and he
3 was really responsible for the tax side of it.

4 Q All right. And so here you were doing estate
5 planning documents that affected Sam's dispositive plan and
6 knowing that he had these assets, hundreds of thousands of
7 acres, largest landowner in Northern Nevada, hundreds of
8 millions potentially worth of water rights, if not billions,
9 and no tax advice given to him; is that right?

10 A Kevin was the -- and you keep characterizing it this
11 way, but Eco2, if I remember correctly, they were investigated
12 for securities fraud. All right. So that deal, my advice to
13 Sam was don't do it.

14 Q We heard --

15 A Because I didn't believe in them, but they invested
16 their money, you know. They thought this was a good deal for
17 them. I didn't think it was, but they did it anyway. Then on
18 Vidler, I can't remember the exact, not Vidler, but Spring
19 Creek I mean --

20 Q Spring Mountain?

21 A Spring Mountain, these were numbers on a board if you
22 could get it permitted, if the economy kept going. It went
23 from a lot of money to nothing, basically, overnight with the
24 economy crashing.

25 All right. And the other transactions, that he had

1 lots of, he had lots of property, but when the economy
2 crashed, all of that, all of that value went down just like
3 everybody else's.

4 Q And that's why I used the word potentially, so my
5 question was the acreage was there, and you knew that there
6 was lots of acreage, largest landowner in Northern Nevada,
7 water rights, all of this value above the tax exempt amount
8 and you as the estate planner did not provide any estate
9 planning, estate tax planning advice; is that right?

10 A Yeah. I relied on Kevin. Kevin was the one who ran
11 the numbers.

12 Q Okay. But you were the one preparing the documents,
13 and so it would have been, and I think you went through your
14 credentials earlier, you have done estate planning and you
15 were just changing the dispositive plan without consideration
16 of how that affected Sam's estate taxes?

17 A Well, I wouldn't say without consideration, because
18 Kevin was the one that we met together and we decided that
19 this is what Sam wanted to do, and Kevin never said once that
20 based on everything else that is going on from a tax
21 perspective it's going to create a problem.

22 Q Well, except in relation to the house, Lake Tahoe,
23 right? It was Kevin's idea, his number one priority to get
24 the house out of Sam's estate, right?

25 A It was a priority, yes.

1 Q Okay. And so that was just part of the, the
2 decisionmaking. Kevin Riley said we got to get this house out
3 of the estate, right?

4 A He said there were two reasons, one was the excise
5 tax and the potential estate tax.

6 Q Well, the excise tax, it was a 3.8 percent net,
7 3.8 percent rate applied to a net investment income tax,
8 right?

9 A Yeah. I don't remember the details, but, again,
10 Kevin thought it might be about half a million dollars, if I
11 remember.

12 Q And do you know if that applies to your homestead as
13 opposed to stocks and bonds and that sort of thing?

14 A I couldn't tell you. I probably knew then, but I
15 couldn't tell you today, but it was Kevin, when his trust
16 accountant tells him these are two things that are important
17 to me, and we have to move the house anyway for creditor
18 protection, then now we have got more than just one reason to
19 do it.

20 Q Well, did you know in 2012 that the exercise of the
21 option triggered over a million dollars in capital gains
22 taxes?

23 A Yeah, we knew there was going to be a hit.

24 Q Okay. And if it hadn't been sold or the option had
25 not been exercised, that million and a half dollars or

1 million, something over a million dollars in capital gains tax
2 would not have been owed, would it?

3 A I mean, you would have to talk to Kevin about that.

4 Q Okay.

5 A My primary responsibility is he did not want to lose
6 his house, so that's why we did what we did.

7 Q Well, but it created other problems. Moving the
8 house out of Sam's name created other problems, the ones you
9 mentioned. He still wanted to live there, but as Mr. Robison
10 said, you didn't want it to look like a sham, so you had to
11 create lease agreements, remember?

12 A Yeah, true.

13 Q Okay. And a lease agreement of \$22,000 on top of the
14 20 something thousand, 21 or \$22,000 that he owed to Bank of
15 America, right? Were you aware of that?

16 A Well, he owed Bank of America \$6.3 million, right?

17 Q Yeah, and the payments, the monthly payments were at
18 least \$21,000 not counting the taxes and everything over that,
19 right?

20 A Yeah. I don't remember what the payment was, but
21 there was a payment.

22 Q So, and did you know Sam's cash position at that time
23 to make 40 plus thousand dollars a month in payments on Lake
24 Tahoe property?

25 A Well, I knew, I mean, I wasn't completely familiar

1 with all of his financial affairs, but there were cash flows
2 prepared, so we structured it so the payments could be made.
3 We did not want to structure the transaction within a few
4 months he would go into default, so the collective group
5 primarily with them doing their cash flow projections so we
6 can basically make these payments under these terms.

7 THE COURT: Counsel, ladies and gentlemen, during
8 this next recess please do not discuss this case amongst
9 yourselves. Please do not form or express an opinion about
10 the matter until it's submitted to you. This is our very
11 abbreviated noon recess, 30 minutes. We will see you in the
12 courtroom at 12:00 noon. Stand for the jury.

13 See you soon.

14 (Whereupon a break was taken from 11:30 a.m. to 11:58 a.m.)

15 THE COURT: Are we ready? All right. Bring in the
16 jury, please.

17 (Whereupon the following proceedings
18 were in the presence of the jury.)

19 THE COURT: Please be seated.

20 Counsel, you may continue.

21 BY MR. SPENCER:

22 Q Mr. Hascheff, your practice did not include complex
23 estate tax planning, did it?

24 A What do you mean by complex?

25 Q Well, you were, you were drafting documents for

1 clients as opposed to developing estate plans to deal with
2 estate taxes and avoid estate taxes, right?

3 A That would be a fair statement, yes.

4 Q All right. And I mentioned the estate tax exemption.
5 I just want to make sure everybody understands what that is.
6 The estate tax exemption is an amount of money or property
7 that can be passed or transferred to other people estate tax
8 free; is that correct?

9 A Correct.

10 Q And so if you give away a certain amount of money
11 during your lifetime, it could reduce that estate tax
12 exemption amount when you die, right?

13 A That's correct, it would reduce it.

14 Q As long as it's over, you can give away a certain
15 amount per year to different people, but if you go over that
16 then that triggers a transfer tax, right?

17 A Correct, and it's offset against that exemption.

18 Q Offset against that exemption, and so while someone
19 that doesn't have to pay a gift tax during their life may have
20 a full exemption, Sam used some of his exemption earlier,
21 didn't he, or do you know?

22 A I would assume he did, because I know he gave gifts
23 to his kids.

24 Q And assuming he did means you don't know if he did,
25 though, right?

1 A I know he gave gifts and then, again, this would have
2 been a Kevin issue, because he would have to do the gift tax
3 returns.

4 Q And you did not refer Sam to any other estate planner
5 that does complex estate planning, did you?

6 A No.

7 Q And he had actually previously retained Maupin, Cox &
8 LeGoy, Mr. LeGoy to do estate planning before, right?

9 A Yeah. He had done the 2006, correct.

10 Q Mr. LeGoy would be qualified to do estate tax
11 planning in your opinion; is that right?

12 A I believe he would be, yes.

13 Q All right. And you did not tell Sam to go back to
14 Mr. LeGoy because this may be over your head because you don't
15 do this complex type of tax planning work, right?

16 A Again, it's not unusual to have a team. Kevin Riley
17 was doing the tax work. I was basically preparing the
18 documents. You could even possibly have an insurance, the
19 insurance agent in the room when you basically do the estate
20 planning. All right. And if I recall correctly, if I recall
21 correctly, I mean, for whatever reason Sam wanted me to do it,
22 so I did it.

23 Q You don't know what that reason is, do you?

24 A I thought maybe it was because he wanted to try to
25 get this done because of his surgery, which was upcoming, and

1 I don't know if LeGoy could have met that timeline or not.

2 That may have had something to do with it.

3 Q Well, all of that is speculation. Do you know why
4 Sam had you do it versus Mr. LeGoy do it?

5 A I just recall that I thought it might be something to
6 do with his schedule, but, I mean, if a client asked me to do
7 it, I did it. I trusted Kevin. We were a team to basically
8 put this together.

9 Q And you did not contact Mr. LeGoy regarding Sam's
10 previous or prior estate planning, did you?

11 A I don't believe I did contact him.

12 Q And, therefore, you did not request that Mr. LeGoy
13 forward Sam's documents over to you so you would have a full
14 file, did you?

15 A I didn't know Mr. LeGoy had prepared the 2006
16 document.

17 Q Well, did you -- couldn't you just ask your client
18 Sam and say, hey, where are the documents? Does Mr. LeGoy
19 have them? You could have done that, right?

20 A I asked him to provide me with their estate planning
21 documents, the trusts and all of the amendments. And, like I
22 said before, they came in piecemeal, so as I started to piece
23 things together after all of the amendments were prepared,
24 here comes the 2006 document that changed everything.

25 Q Right. And you had already started working on estate

1 planning documents before you even knew that document existed,
2 right?

3 A Right.

4 Q And generally good practice would be to gather all of
5 the documents that you know you are going to have to be
6 dealing with and to find out all of the assets that the client
7 has so that you can make a proper assessment about the
8 representation, right?

9 A Well, it's impossible to know what documents are out
10 there when you didn't prepare them, so the only way you are
11 going to know what's out there is if your client brings them
12 to you.

13 Q And because of that impossibility, Mr. LeGoy would
14 have been a better person to be doing this estate planning
15 than you, because you didn't have the information, right?

16 A I don't know if I agree with that.

17 Q Okay. In relation to Mr. -- well, there is a lot of
18 Mr. Jaksicks. I will use first names. In relation to Sam's
19 representation, you have mentioned that you also represented
20 Todd and Stan, right?

21 A Correct.

22 Q And you thought you might have represented Wendy, but
23 you have never spoken to her and it ended up being about
24 something else, right?

25 A Yeah, I don't recall meeting with her.

1 Q Okay. And but at the time you were working on Sam's
2 estate planning, making these changes that benefited Todd --
3 well, let me back up. Did the changes that you made in Sam's
4 estate plan benefit Todd?

5 A And Stan.

6 Q And Stan?

7 A Yes.

8 Q All right. And so at the time you were representing
9 Sam and making these changes that benefited Todd and Stan,
10 they were also your clients, right?

11 A They were my clients, but I believe that's correct,
12 it was at the time.

13 Q And you don't have any engagement letters evidencing
14 when you were hired or the scope of your representation, do
15 you?

16 A I could have had an engagement letter.

17 Q Well, could have had and having are two different
18 things. You don't have one, do you?

19 A I mean, I could have one. I haven't seen it in
20 discovery.

21 Q So --

22 A But typically my practice was with a new client I
23 would do an engagement letter, but as time went on I did not
24 do a new engagement letter for every new transaction.

25 Q Right. And no engagement letter that outlined what

1 you would do for, what you were going to do for Sam even back
2 when you started representing him?

3 A There could have been one at the very beginning, yes.

4 Q That was back in '07 or something?

5 A Yeah, when I started.

6 Q Okay. Could have been, but you don't know for sure?

7 A Unless I see it.

8 Q All right.

9 A I typically would do an engagement letter. Sometimes
10 I wouldn't. It would just depend on the client.

11 Q All right. And you testified earlier you did not
12 perceive any conflict between representing Sam, Todd, and Stan
13 at the same time?

14 A Well, when you say -- no, I didn't perceive a
15 conflict, because typically when a father or mom, whoever is
16 my primary client, comes in and says I need you to do some
17 work for my kid, I would do it, and ultimately your clients
18 don't like to hear you say, well, I can't do the work because
19 I may have a conflict with your kid.

20 All right. They understand the dynamics of the
21 transaction. Both sides understand the dynamics of the
22 transaction. I know a lot of lawyers that are not going to
23 force clients to execute conflict waivers when they are family
24 members, because you do things between family.

25 But definitely I would do conflict letters and

1 waivers when I had, for example, the Jaksicks were doing
2 ventures with third parties, I did have an engagement letter
3 and I did have a conflict waiver.

4 Q You wouldn't violate ethics in relation to conflicts
5 because a client is begging you or saying, hey, you know, I
6 really don't need that or I don't want to do that, would you?

7 A Repeat the question, please.

8 Q Yeah. If you have a conflict that exists and a
9 client is saying, hey, I don't want to sign a conflicts
10 letter, I want you to represent everybody, you wouldn't in
11 light of that violate ethics and go forward with that conflict
12 just because they are asking you to, would you?

13 A Again, I didn't perceive that there was going to be a
14 major conflict between the boys and their dad.

15 Q I wasn't asking about that. I was talking in
16 general. If you perceive a conflict and the client says I
17 don't care about that, I want you to go forward anyway, and
18 the conflict exists, you wouldn't go forward anyway, would
19 you?

20 A If the client says I understand what the conflicts
21 are, let's move forward, then we are going to move forward.

22 Q You think all conflicts are waivable?

23 A I would have to go back and look at the rules.

24 Q Okay. So you don't know that?

25 A I mean, some conflicts are not waivable.

1 Q Right. And changing the dispositive plan of Sam,
2 which you knew before was essentially one-third, one-third,
3 one-third between his three children with the reduction of
4 1 1/2 million to Wendy, you remember that, right?

5 A Right.

6 Q And you didn't find out about that until later when
7 the '06 document was finally given to you, correct?

8 A I couldn't tell you the time frame, but he did not
9 want the \$1.5 million reduction for Wendy. He wanted that
10 out.

11 Q He wanted that out and that's this part of the Second
12 Amendment, right?

13 A Correct.

14 Q Okay. And do you recall what the Fifth Amendment
15 said in that regard?

16 A I would have to go back and look, but the Fifth was
17 very close to the Second.

18 Q Yeah. And so the Fifth Amendment, which is Exhibit
19 155, do you see that?

20 A Yeah. Can I have the hard copy?

21 Q Oh, sure. Let me get it for you.

22 A And what exhibit is it?

23 Q 155.

24 A Okay. I have it.

25 Q And you see this is the Fifth Amendment to the Family

1 Trust at the top?

2 A That's correct.

3 Q Restated Pursuant to the Third Amendment Dated
4 November 30th of 2005. This is your document, right, that you
5 prepared?

6 A Right, I prepared this.

7 Q All right. And, Keith, if you would flip to the last
8 page, signature page. And this shows it's the Fifth Amendment
9 at the top. The Fifth Amendment to the Family Trust was
10 executed on April 27th of 2012?

11 A Correct.

12 Q And that's typed in along with, the April 27th of
13 2012 is typed into the jurat down below?

14 A Correct.

15 Q And Nanette Childers is the notary. She worked for
16 you, right?

17 A Correct.

18 Q And looking on page 2, Keith, which is JSK 1828 of
19 Exhibit 155. Paragraph 3.2 indicates that Wendy would get a
20 trust for her lifetime 100 percent, right?

21 A You know, whatever her share was would be held in
22 trust.

23 Q Her share would be one-third, Todd's one-third, and
24 Stan one-third, right?

25 A Yeah, whatever the 2006 agreement provided.

1 Q And you mentioned that it would be held in trust,
2 correct?

3 A Let me see, yes.

4 Q For her lifetime, and then the provisions below
5 provide for some distributions for her children?

6 A Correct.

7 Q Okay. And you were talking earlier in your previous
8 testimony about Wendy having these financial issues and
9 potential creditor problems, right?

10 A Correct.

11 Q And you agree that these trusts that were created for
12 Wendy took care of that issue, didn't it?

13 A That was the intent.

14 Q And it cured the problem, didn't it?

15 A I don't know if it cured the problem.

16 Q Yes. If Wendy doesn't have ownership, it's owned by
17 a trust, it cured any of the issues, all of the issues that
18 you were talking about relating to Wendy, didn't it?

19 A No, it didn't.

20 Q All right.

21 A All it cures is that anything that's held in the
22 trust for her benefit it's going to be distributed by the
23 trustee to her, because I believe it had a spendthrift
24 provision in the 2006 trust that creditors could not attach
25 the money until possibly the trustee distributed it to her,

1 and if they were there at the right time they might be able to
2 attach that distribution.

3 Q So the issue about her being bad with money is solved
4 by creating this trust that you are talking about, right?

5 A No, it's not.

6 MR. SPENCER: Okay. Your Honor, I need to open and
7 publish Volume 2 of Mr. Hascheff's deposition --

8 THE COURT: Yes.

9 MR. SPENCER: -- taken November 17th of 2018.

10 THE COURT: Ladies and gentlemen, just stand for a
11 moment. Counsel, if you will see me at a quick sidebar.

12 (A sidebar discussion was held off the record.)

13 THE COURT: Ladies and gentlemen, we just talked
14 about some of the mechanics of introducing evidence to
15 streamline for your efficiency.

16 So with that, Counsel, you may proceed.

17 MR. SPENCER: May I approach?

18 THE COURT: Yes.

19 BY MR. SPENCER:

20 Q Mr. Hascheff, I'm handing you Volume 2 of your
21 deposition taken November 17th of 2018.

22 A Okay.

23 Q And turn to page 177, please.

24 A Okay.

25 Q And I'm referencing line 3 which was the question I

1 just posed to you, and I will reread it, "So the issue about
2 her," that would be Wendy, "her being bad with money is solved
3 by creating this trust that you are talking about?" Do you
4 see your answer there on line 6?

5 A And I think I said that. It said with respect to the
6 trust, this trust, because it's a life estate and she only
7 gets distributions when the trustee authorizes it and even
8 then a creditor can attach it. That did not solve any other
9 creditor problems that may exist.

10 Q Well, but if everything that Wendy is getting is in
11 trust, then that issue is solved as far as Wendy's creditors
12 and possible exposure there, right?

13 A Right, but it wouldn't solve the problem if she was a
14 member in one of the joint ventures, though.

15 Q Well, as far as you knew everything Wendy was going
16 to inherit was going to be in trust, right?

17 A I knew about this trust agreement, yes.

18 Q Yeah. And so her being bad with money would not have
19 been a reason to disinherit, that Sam would have disinherited
20 her, would it?

21 A I don't, I don't view that as disinheriting her.

22 Q I'm talking about in relation to the Lake Tahoe
23 property, you basically said that Sam wanted to disinherit
24 Wendy, right?

25 A No.

1 Q Well, he didn't want to include her in it, let me put
2 it that way?

3 A But in all honesty, she wasn't included in any other
4 joint venture, even the joint ventures before I got there.
5 That was, that was his intent, because I think you are asking
6 the question in a way that somehow with my assistance we
7 devised a plan to disinherit her and that was not the case.

8 Q Absolutely what happened in relation to Lake Tahoe.
9 She owned one-third of it through her trust when all of this
10 started and by the end of it she owned zero. That's what
11 happened, right?

12 MR. ROBISON: Your Honor, I object to the term
13 ownership. She doesn't own anything.

14 MR. SPENCER: Had an interest in.

15 MR. ROBISON: Beneficial interest.

16 THE COURT: So you are technically correct and I will
17 give you an opportunity, if necessary. You may proceed.

18 MR. SPENCER: I will clear that up.

19 BY MR. SPENCER:

20 Q When all of this started, Wendy had a one-third
21 beneficial ownership interest in the Family Trust that owned
22 Lake Tahoe, right?

23 A Well, if I recall correctly, the 2006 trust took the
24 residence, the Lake Tahoe house, and put it in some kind of a
25 personal residence trust.

1 Q Uh-huh.

2 A So, I mean, I would have to go back and look and see
3 if she owned a third of that document. Maybe she did and
4 maybe she didn't, but even if she did, he, we needed to get
5 the house out. He did not want to lose his house.

6 Q Are you saying that the Lake Tahoe property went into
7 a qualified personal residence trust?

8 A No. It was in his 2006 document.

9 Q Right. And was it a qualified personal residence
10 trust?

11 A I would have to go back and read it.

12 Q All right. We will check that. But the main reason
13 that Wendy was, I believe I understood the main reason that
14 Wendy was not being included in certain assets was because she
15 was bad with money?

16 A That's what he told me. I mean, that's what it was
17 before I became on board and became their attorney and that's
18 the way it was throughout the process.

19 Q And you do not know a thing about Wendy's past or
20 whether she is bad with money or not? And I'm talking about
21 you yourself.

22 A I know what Sam told me.

23 Q Right. That's hearsay. You yourself don't have any
24 personal knowledge of that, do you?

25 A Well, I had lawyers calling my office that

1 represented creditors, her creditors, asking me to produce
2 documents, so that would be one aspect that would confirm what
3 I was told.

4 Q Uh-huh. And that was that Freeman judgment?

5 A I believe it was.

6 Q Okay. And other than that, you did not know the
7 financial situation of Wendy yourself, did you?

8 A You mean did I know what her financial statement
9 looked like, no.

10 Q You didn't know what judgments she had against her,
11 if she did?

12 A I knew she had judgments against her.

13 Q She had one. You didn't know, you personally didn't
14 know what they were, did you?

15 A No. I didn't do an audit or investigation, no.

16 Q And you don't have a single note in your file
17 relating to what Sam said about disinheriting or if he wanted
18 to disinherit Wendy, do you?

19 A When you say disinherit, she just got less than
20 everybody else.

21 Q Uh-huh. So putting everything in trust curing the
22 issue of any financial problems she may have had was not a
23 reason Sam would have disinherited, would want to disinherit
24 her from having any interest in Tahoe, what else could there
25 be, do you know?

1 A I thought I answered that. I mean, he didn't, it
2 wasn't his intent to disinherit her. She was going to get
3 less and she was not going to be, she was not going to be in
4 any of the joint ventures, she was not going to be in any of
5 the LLCs, and she was not going to be in Lake Tahoe.

6 Q And that was based on your discussions with Sam,
7 right?

8 A Yes.

9 Q And you don't have anything that memorializes that
10 other than the documents you prepared, do you?

11 A Well, the client reads the document.

12 Q Sir, I'm asking --

13 A And --

14 Q I'm asking in your file.

15 THE COURT: Hold on.

16 MR. SPENCER: Sorry.

17 THE COURT: I just want to make sure we are one at a
18 time. Were you finished?

19 THE WITNESS: Yeah. No, I wasn't finished.

20 BY MR. SPENCER:

21 Q Okay.

22 A He would review the documents. He would sign it. He
23 signed it. He understood it. That's what he wanted. That
24 was his objectives.

25 Q Thank you for not answering my question. I asked a

1 different question.

2 A Okay. Sorry.

3 Q I said you don't have a single thing in your file
4 that memorializes that that was what Sam wanted, that Wendy
5 not be included in Lake Tahoe, other than the documents you
6 prepared, correct?

7 A I would have to go back and look at my files. Maybe
8 I do. I just, I know that's the end document was the one he
9 approved.

10 Q Do you recall testifying to that, sir, that you don't
11 have anything else in your file other than the documents?

12 A I possibly don't. I don't know.

13 Q I will refer you to page 178, which is the next page
14 in your deposition, Volume 2, taken November 17 of 2018.

15 A Okay.

16 Q Starting at line 7, and, Keith, we can bring page 178
17 up. "But that's the end result of the transaction. I'm
18 asking you about before the transactions when and how did Sam
19 convey that Wendy should be excluded from the Lake Tahoe
20 property?" And your answer at line 11 was what?

21 A "Just based on my discussions."

22 Q Yeah. And then my next question at line 13, "And so
23 you don't have anything that memorializes any of that, do you,
24 other than the documents?" And your answer was?

25 A "Correct, and my discussions with Sam and Kevin, who

1 were also involved."

2 But what you need to understand, and you didn't ask
3 this question, there could have been memos that went back and
4 forth between Kevin and I, between Kevin and I that said, hey,
5 this is what we are going to do for the Tahoe house. This is
6 why we are doing it, creditor protection. I believe there
7 were some memos in my file that went back and forth between
8 the team, so that would memorialize the discussions.

9 Q And that's totally contrary to your answer, right?

10 A I mean, you are asking me a third question. I just
11 gave you the answer.

12 Q Well, maybes and could have beens are all
13 speculation. It's all assumption. I asked you
14 specifically --

15 MR. LATTIN: Argumentative.

16 THE COURT: Overruled.

17 BY MR. SPENCER:

18 Q I asked you specifically about whether you had
19 anything that memorialized it and you don't have anything that
20 memorialized it other than the documents you prepared, and you
21 said correct, right?

22 A Right, and I said it was based on our discussions.

23 Q Based on the discussions, yeah.

24 A Right.

25 Q And as far as memorializing those discussions, you

1 didn't have anything else other than the documents you
2 prepared, and you said correct?

3 A Correct, with the understanding that there still may
4 be memos in my file, which they were.

5 Q All right.

6 A So maybe I didn't completely answer the question, I'm
7 sorry, but there were memos.

8 Q Maybe there were memos, right?

9 A I believe there were.

10 Q Okay. And so the Indemnification Agreement that
11 benefited Todd.

12 A Okay.

13 Q That clearly had an effect upon Sam and his property,
14 didn't it?

15 A Yeah. It would affect the trust.

16 Q Adversely, correct?

17 A Yeah. If bad things happened, yes.

18 Q Well, let's talk about that for a second. I think
19 your position has been that if there was something
20 catastrophic or if there was a total wipeout, Sam wanted to
21 protect his sons, right?

22 A Correct. That was the linchpin. That wasn't the
23 only reason.

24 Q Well, but that was how you expected the
25 Indemnification Agreement to be applied, right?

1 A Well, it wasn't drafted to just wait for a
2 catastrophic agreement -- I mean a catastrophic event. The
3 agreement was drafted so that if a lot of these obligations
4 became due piecemeal that they wouldn't have to respond, that
5 the trust would step up first.

6 Q Uh-huh. And so the catastrophic event or the wipeout
7 was one of the reasons then?

8 A Correct.

9 Q And but you did not intend for the Indemnification
10 Agreement to be a gift document, did you?

11 A You said a gift document?

12 Q Yes, sir. You know what a gift is, right?

13 A Yeah.

14 Q It's when someone gifts, delivers something to you
15 and says you can have it and then you accept it, right?

16 A Correct.

17 Q Okay. And if the trust is paying debts or
18 obligations of Todd, that's a gift, isn't it?

19 A I look at it as a transaction.

20 Q Oh, it's a transaction. A gift is a transaction
21 also, isn't it?

22 A It is.

23 Q Okay. And so this Indemnification Agreement
24 radically changed Sam's dispositive plan, didn't it?

25 A It could affect the trust, the Family Trust, yes.

1 Q Every dollar that's paid out based upon the Indemnity
2 Agreement reduces a dollar that could be distributed to the
3 beneficiaries, right?

4 A Potentially, yes.

5 Q Well, not potentially. It's true.

6 A It could be.

7 Q Well, if you spend a dollar based on the
8 Indemnification Agreement that's a dollar that's no longer in
9 the trust, right?

10 A Right, but then there is the other side. There is
11 the asset side which means if things get better, there is
12 going to be more assets in the trust, so, yeah, it would have
13 a dollar reduction, but if the values of the property
14 increased it could easily be an offset.

15 Q Well, then some of the property apparently was owned
16 by entities that Todd had an interest in, right?

17 A Correct.

18 Q And the indemnity, the way you saw it, was that the
19 trust would pay Todd's obligation on his share of the debt and
20 those entities, too, right?

21 A Because they were both, usually they were joint and
22 severally liable, both Sam and Todd, as well as --

23 Q So -- I'm sorry, I didn't mean to cut you off. Go
24 ahead.

25 A As well as Stan.

1 Q Okay. So the trust was paying 100 percent of the
2 obligation and Todd was getting 51 percent of the benefit,
3 right?

4 A That could potentially work out that way, yes.

5 Q Yeah. And all of those entities where that was the
6 setup that was the result, correct?

7 A When you say the result --

8 Q The result of the trust paying 100 percent of the
9 debt and Todd getting 51 percent of the benefit, right?

10 A That's true. The alternate, the converse could be
11 true. He could wind up responding to the entire debt and only
12 get one-third of the trust.

13 Q Not with the Indemnification Agreement.

14 A That's why it was drafted.

15 Q That was total protection for Todd so he wasn't
16 exposed to anything, was he?

17 A Well, he was exposed, but this was the way for the
18 trust to respond to that.

19 Q Exposed on paper, but not in reality, because the
20 Indemnity Agreement protected that, right?

21 A Yeah. To the extent there were assets to respond,
22 yes.

23 Q Okay. So to the extent that Todd has said, oh, my
24 gosh, I took over all of this risk and I was obligated on all
25 of this debt, the truth is that he wasn't because the

1 Indemnity Agreement covered it according to you, right?

2 A Yes, it eventually covered it, yeah, but that's what
3 Sam wanted.

4 Q All right. So there was no exposure to Todd in
5 relation to those debts as long as the trust could pay
6 whatever might come?

7 A As long as the trust had the money to pay it,
8 correct.

9 Q And the way Indemnity Agreements work generally is
10 that there is an agreement that says, hey, if somebody comes
11 knocking on your door for payment of some obligation, I agree
12 to pay it instead of you, right?

13 A Right, responding to somebody else's debt.

14 Q But if they don't come knocking on your door, it
15 never has any effect, right?

16 A Who is they?

17 Q It's a general, a general concept. If the debtor, if
18 the debtor comes to you and says, hey, you owe this money and
19 I have indemnified that and I say, wait a minute, I will pay
20 that, because I have indemnified it.

21 A You mean a creditor comes?

22 Q I'm sorry, a creditor, I apologize.

23 A That's why I was confused.

24 Q I didn't mean to confuse you and I sometimes speak
25 too fast. So if a creditor comes to the door and says, hey,

1 you owe this money and I said, no, wait a minute. I
2 indemnified that, I'm going to pay that, then I will pay it
3 under the Indemnity Agreement, but none of that ever happens
4 unless someone comes knocking, right?

5 A Well, you could have an actual claim filed. There
6 could be some exposure that has not ripened into a claim and
7 may have to step in with a lawyer and try to defend that, but
8 typically someone will come and say you owe something, but it
9 wasn't drafted with that in mind.

10 Q But that's the typical, what I'm getting at, that's
11 the typical way an indemnity works is you only have to perform
12 under your indemnity obligation if someone is demanding that
13 that amount be paid?

14 A When you say typically, you know, it doesn't have to
15 be that way. Sometimes it is. Sometimes it's not.

16 Q All right. Well, then explain an indemnity to the
17 jury, please.

18 A Like you just said.

19 Q All right. That's what I thought.

20 A No, no. So what happens is I owe the creditor money.
21 All right. Someone comes in and says, in the event that
22 creditor comes after me, then he is going to step in and he is
23 going to pay the bill for me.

24 All right. But it doesn't necessarily mean somebody
25 has to file a lawsuit against me. It could just be a

1 potential claim that was drafted basically to cover the gamut
2 of any exposure.

3 Q Okay. And that's the part I wasn't understanding, so
4 I appreciate that. So it doesn't have to be a lawsuit
5 necessarily. Someone could just say here is a demand letter,
6 you need to pay me the money?

7 A Right, or you default on a note.

8 THE COURT: Mr. Spencer, I'm just going to ask that
9 you slow your cadence just a little tiny bit for our reporter.
10 MR. SPENCER: I apologize. I will do that.

11 BY MR. SPENCER:

12 Q And so, all right, and so it doesn't have to be a
13 lawsuit. It just has to be someone asking for or demanding
14 money, right?

15 A There has got to be some kind of trigger.

16 Q Yeah. Otherwise, the indemnity is just there and
17 nothing ever happens, correct? If there is no trigger, then
18 it's just there in the event of a trigger?

19 A It could be, it could be a demand letter. It could
20 be a lawsuit. It could be a claim. It could be a potential
21 claim. It could be anything that could trigger an Indemnity
22 Agreement.

23 Q And you understand that there were debts on the
24 Exhibit A attached to Todd's indemnity that were his personal
25 debts?

1 A Yeah. His home was on there.

2 Q And it was not the intent that the trust pay his home

3 mortgage as a matter, just as a matter of course?

4 A The, I think I testified in my deposition that I

5 think the home was on it, Exhibit A.

6 Q Yes.

7 A But then they showed the financial statement, I think

8 someone showed me the financial statement and I believe I

9 testified that it probably shouldn't include the home. Is

10 that what I testified to?

11 Q It certainly is.

12 A Okay.

13 Q And that was not, you said that was not the intent of

14 the indemnity?

15 A Not with respect to the home.

16 Q But the problem is that the indemnity doesn't qualify

17 that. It says that everything on Exhibit A is covered, right?

18 A Correct, but as I explained in my deposition, the

19 concern was that he could lose his home, just like Stan could

20 if bad things happened, so that was one way to at least

21 protect his house.

22 Q And that would not happen until well after all other

23 property that was available from the Family Trust was

24 exhausted, right?

25 A It could happen both ways. I mean, they were jointly

1 and severally liable, which means the bank can go after both
2 of them or either of them, and the trust, I mean, Todd could
3 be fighting a lawsuit with a lender trying to foreclose on his
4 home, on his other assets, do that simultaneously with the
5 trust experiencing the same lawsuit, and then whoever is,
6 whoever has the money is the one who is going to wind up
7 paying the debts. Sam did not want Todd or Stan to be wiped
8 out.

9 Q And if the trust paid for Todd's house, that would be
10 a gift, wouldn't it?

11 A Again, I said it was just a typical Indemnity
12 Agreement between, you know, father and son.

13 Q All right. Let me rephrase. If the trust paid, the
14 Family Trust paid for Todd's house that would be a gift
15 transaction, wouldn't it?

16 A I don't agree with that.

17 Q Well, how could it not be?

18 A Well, typically when you draft an Indemnity
19 Agreement, the indemnitor says I'm going to pay somebody
20 else's bill. Nobody fills out a gift tax return.

21 Q Well, but that's one of the problems here, isn't it?
22 That could trigger a gift, correct?

23 A Kevin knew about this. He didn't say anything about
24 this being a potential gift.

25 Q Wait, you think Kevin knew about the Indemnity

1 Agreement back in, before 2014, let's say?

2 A I don't know when he knew, but he knew.

3 Q Well, he didn't know until 2014, so --

4 A Okay.

5 Q -- when the Indemnity Agreement was being prepared

6 and signed, you didn't, you did not consult with Kevin about

7 whether this created a gift problem, did you?

8 A I mean, I don't know if I did or didn't. Generally

9 Kevin was involved.

10 Q You don't know if you did or you didn't talk to Kevin

11 Riley about whether this triggered a gift?

12 A Typically, he was involved.

13 Q And you are a CPA, right?

14 A Correct.

15 Q And you know that gifts over and above that exclusion

16 amount that you can give annually are gift taxable?

17 A Yeah, if it's a gift transaction.

18 Q And it doesn't matter what the title of the document

19 is that may create the gift. If it's a gift, in the eyes of

20 the IRS it's a gift, isn't it?

21 A In the eyes of the IRS it is.

22 Q Yeah. And so without talking to Kevin Riley, who you

23 said was the, knew all about the finances and he was the tax

24 adviser, correct?

25 A Correct.

1 Q And without talking to him, this Indemnity Agreement
2 was entered by Sam, right?

3 A Yeah. Like I mentioned, he was usually involved in
4 all of the transactions. I mean, I don't know what he
5 testified to, but I talked to him pretty much on every deal.

6 Q Well, he testified he didn't know about the Indemnity
7 Agreement until at least 2014. That surprises you, doesn't
8 it?

9 A Yeah, it does.

10 Q Okay. And if --

11 A Maybe he was wrong, I don't know.

12 Q If he is part of the team, why wouldn't you have
13 forwarded the Indemnity Agreement to him before that?

14 A We typically did.

15 Q And but not in this case, correct?

16 A I don't know if we did or didn't.

17 Q He is the one preparing the estate tax return and he
18 doesn't know whether gifts have been made under the Indemnity
19 Agreement or not, does he?

20 A Assuming it's a gift and assuming we didn't tell him,
21 then maybe yes.

22 Q So let's go back to this conflict issue a minute. So
23 you are drafting a document that is detrimental to one of your
24 clients, or at least potentially detrimental to one of your
25 clients, Sam, that is beneficial to one of your other clients,

1 Todd, right?

2 A Todd and Stan, yes.

3 Q Well, hold on. Let's stop there. Stan's indemnity
4 was never completed because it didn't have an Exhibit A
5 attached, right?

6 A Well, they were supposed to complete the Exhibit A.

7 Q Okay. Well, it was not ever attached. The first
8 time Stan saw it, there was no Indemnity Agreement, no Exhibit
9 A to it, and that was recently.

10 A Okay. I don't know about that, but --

11 MR. ROBISON: Your Honor, I have to object to the
12 misstatement of the evidence and mischaracterization. There
13 was a creditor's claim filed in October of 2013 that laid it
14 out for everybody and he is misstating the evidence.

15 MR. SPENCER: Well --

16 THE COURT: I don't know how to respond.

17 MR. SPENCER: I will prove that up with Stan, so I
18 will move on to the next thing.

19 THE COURT: Please do.

20 THE WITNESS: May I ask a question? Just because it
21 doesn't have an Exhibit A doesn't mean it's valid.

22 BY MR. SPENCER:

23 Q Doesn't mean it's invalid?

24 A It's still valid even without an Exhibit A.

25 Q Okay. But you relied upon the parties, Todd and

1 Stan, to create their own Exhibit A, right?

2 A Yeah. That would be my preference, yes.

3 Q So you didn't have any idea of the scope or the

4 breadth of the Indemnification Agreement that you had

5 prepared, did you?

6 A For who?

7 Q For either one of them?

8 A It was an all inclusive Indemnity Agreement for both.

9 Q And covered everything, right?

10 A Yes.

11 Q And even if there was no one knocking on the door for

12 payment it covered it, right?

13 A Well, the intent was that if there was any potential

14 exposure, instead of the kids coming out-of-pocket that this

15 trust would basically respond.

16 Q Covered everything, even if someone was not knocking

17 on the door for payment, right?

18 A Yeah. I think it could, yes.

19 Q And what we also know is that Sam didn't know the

20 breadth of it either, because the Exhibit A's were going to be

21 prepared by Todd and Stan, right?

22 A Of course he knew.

23 Q I'm talking about the Exhibit A's that were going to

24 be attached. They were preparing them, not Sam, correct?

25 A Sam prepared the Exhibit A. Sam and Todd basically

1 prepared Exhibit A that went along with the Indemnity
2 Agreement.

3 Q That's your understanding?

4 A Yeah. I mean, I assisted, but I didn't know every
5 single debt. They were supposed to basically do that
6 in-house.

7 Q And just so that I'm clear, and I think it may be,
8 but I want to make sure, there are no waiver of conflict
9 letters that you know of between the Jaksick family members,
10 is there?

11 A I don't believe there is.

12 Q Okay. Let's pull up Exhibit 114.

13 A 114?

14 Q Yes, sir. Do you have it there or can I get it for
15 you?

16 A You need to get it for me.

17 Q Okay.

18 A Okay.

19 Q All right. So you see this is a letter dated
20 May 11th of 2007 on your letterhead?

21 A Yes.

22 Q When were the, when was the first Indemnification
23 Agreement signed, do you know?

24 A Let's see, so it could have been based on this letter
25 sometime in 2007.

1 Q Okay. Could have been, but you don't know, right?

2 A Well, I say enclosed the executed Todd B. Jaksick, so
3 it looks like he signed it sometime in May.

4 Q Signed of Todd's, but you enclosed a draft of Stan's?

5 A Let's see, "Please have Mr. Jaksick execute Stan
6 Jaksick's Indemnification Agreement and provide me with the
7 original," yes.

8 Q Okay. And so the big question I have got on this is
9 why would you have not dated the document sometime back in May
10 or prior to that 2007, May 11, 2007?

11 A I believe what happens, we came to the conclusion
12 that the effective date would be January 1st, 2008.

13 Q Well, that's what's all over the documents, but my
14 question was different. Why wouldn't you have signed it or
15 dated it back on the date that it was actually signed rather
16 than some date in the future?

17 A It could have been it was a subsequent draft. There
18 were several drafts of the Indemnity Agreement that were
19 revised.

20 Q Do you typically have your client sign drafts?

21 A No, but it does happen when, it does happen when you
22 do the document and then a few months later we figure out
23 there is probably some more that we need to change, so then
24 there will be another Indemnity Agreement and we will toss the
25 old one.

1 Q But that's different than a draft. That's signing a
2 valid binding document that you change your mind and you want
3 to change later, correct?

4 A Correct.

5 Q So you sign that document that's in effect until you
6 sign a new document that changes its terms?

7 A Correct.

8 Q That's not a draft. That's a binding document. You
9 don't typically have people sign drafts, do you?

10 A No, but frankly clients sign them. You send them a
11 draft document and it comes back signed.

12 Q Well, that's the problem with sending clients, or
13 sending documents that you prepare out to your clients for
14 signature, because they don't know the rules and what is
15 supposed to be done in that regard, do they, typically?

16 A They know. They know.

17 Q Oh, you tell them?

18 A Yeah. It's a draft.

19 Q You tell them to sign drafts?

20 A No.

21 Q Okay. And so in this case there were multiple
22 versions that you say were drafts, but they all were signed,
23 right?

24 A I don't believe a draft was signed.

25 Q Okay. So all of the versions that have signatures

1 attached were valid, binding, and binding documents?

2 A Until they were replaced.

3 Q Until they were replaced?

4 A Right.

5 Q All right. And if they are all dated the same date

6 and there is no other date on them anywhere, then how is

7 anyone to determine what, which one replaces which other one?

8 A Well, you mean the effective date of, was it

9 January 1st, 2008?

10 Q Yes. Click to Exhibit 11 real quick, we will come

11 back to that one, at the very top. Do you see that?

12 A Yeah, January 1st, 2008.

13 Q The Indemnity Agreement is made and entered into as

14 of the 1st day of January, 2008?

15 A Correct.

16 Q And that clearly would indicate that it was signed on

17 that date, right?

18 A It could have been.

19 Q Well, then which one was signed back in May, around

20 May 11th of 2017?

21 A I would have to see the copy that was attached to

22 this letter.

23 Q Well, we don't have that, so do you know what was

24 attached?

25 A Not without looking at it.

1 Q All right.

2 A I know we started this process in 2000, there were
3 additional drafts, and then we finally landed on the, I
4 believe it was 11, which was the final draft, the final
5 operative document.

6 Q And you also know there has got to be some earlier
7 version of this somewhere, because this one is dated
8 January 1st, 2008, and it doesn't say as, it doesn't say
9 effective. It says as of, made and entered into as of January
10 1 of 2008, right?

11 A That's what it says.

12 Q As opposed to effective on that date?

13 A Correct.

14 Q And there is nothing in this document, and flip to
15 the last page, Keith, to the signature page, that indicates
16 any other date on this document, right?

17 A Let's see the signature page. No, I think it said,
18 yeah, the date and year first written above, so that would
19 have been January 1st, 2008.

20 Q No, what it says, "In witness whereof, each party has
21 each signed --" strike that. "Each party has each executed as
22 of the day and year first written above."

23 A Right.

24 Q Okay. And so that would indicate it was signed on
25 January 1st, 2008, right?

1 A It would be, yeah.

2 Q Okay. But then you know that there are other

3 versions of this document with the exact same dates on them,

4 right?

5 A Yeah. There was I think 11A and B.

6 Q Uh-huh. So let's go back real quick, Keith, to

7 Exhibit 114, and so we don't know which of these versions we

8 have of Exhibit 11 was the one that you enclosed in the

9 May 11, 2017 letter, do we?

10 A Are you asking me if -- could you ask the question

11 again, please?

12 Q Do you know whether, do you know which of these

13 versions of Exhibit 11 of the Indemnity Agreement was enclosed

14 in this May 11, 2017, or 2007 letter?

15 A It could have been none of them.

16 Q Okay. And so if it was none of them, then what would

17 it have been?

18 A It could have been an earlier document that we

19 executed.

20 Q Okay. What happened to that document?

21 A I don't know. Everything was produced in discovery.

22 I don't know.

23 Q And in that regard, you had 33 or 34 boxes of

24 documents that related to Jaksick issues?

25 A Yeah, at least.

1 Q And you turned those over to Todd Jaksick around the
2 time that you were closing down your practice?

3 A Yes.

4 Q January of 2013, might have been a little after that?

5 A It would have been after, because I sold the
6 building. I had all of my client boxes in the basement of my
7 office, so when the building sold then I had to move the
8 boxes.

9 Q All right. And so sometime in early, earlier part of
10 2013?

11 A Probably later.

12 Q Later, but it was in 2013?

13 A That I basically started to phase out my practice?

14 Q That you turned over the Jaksick files and boxes to
15 Todd Jaksick?

16 A I don't know if it was 2013.

17 Q Well, when was it?

18 A I can't -- it was whenever my building sold.

19 Q When did it sell?

20 A I can't remember. I don't know, maybe 2014. I don't
21 know.

22 Q Okay. So back in that time frame, then, right?

23 A Correct.

24 Q It wasn't more recently like 2017 or 2016?

25 A We are in 2019 already. I think my building sold

1 before 2016.

2 Q Okay. And we have talked about the draft and the
3 executed version, but in the middle of that third paragraph
4 there is a sentence there that says, "As always --" And, by
5 the way, you see in that letter this is written to Jessica
6 Clayton, right?

7 A Correct.

8 Q And so, "As always he has the right to have
9 independent counsel review the Indemnification Agreement to
10 make sure his interests are protected." You are talking about
11 Sam there, right?

12 A Correct.

13 Q And the sentence above acknowledges that Sam when
14 executed, when he executed the Indemnification Agreement, he
15 agreed to accept substantial liability by indemnifying both
16 Todd and Stan for any of these obligations?

17 A Yeah, that's what I said.

18 Q So you are advising of the substantial liability he
19 is taking on and that he can go talk to some other lawyers
20 about it, right?

21 A Correct.

22 Q And so that, that would indicate that you are
23 representing someone besides him, wouldn't it?

24 A Besides Sam?

25 Q Yeah.

1 A His, like we talked about, his trust would have
2 substantial exposure.

3 Q Sure, but this letter the way it's written indicates
4 you were representing Todd and Stan, not Sam, right?

5 A Well, this was the Indemnity Agreement, I prepared
6 one for Todd and one for Stan, and for the trust to basically
7 indemnify the obligations.

8 Q Sure. And so Todd and Stan were your clients in
9 relation to this letter, correct?

10 A Probably Todd. I don't know about Stan.

11 Q All right.

12 A But either way, I mean, the conversations I had with
13 Sam saying you have substantial exposure, you can go see
14 another lawyer, you know, to double-check my work, see if it's
15 satisfactory, and he said, no, I don't need to go see somebody
16 else.

17 Q "I'm representing Todd in this transaction. You
18 should probably go talk to independent counsel about it."

19 A I'm representing both of you.

20 Q Okay. That's, that sentence indicates the conflict
21 that existed. You are acknowledging it in that sentence,
22 aren't you?

23 A Yeah, there was a potential conflict, which my client
24 knew about and chose not to go see another lawyer.

25 Q Well, this particular issue created a conflict that

1 you acknowledged in your May 11, 2007 letter and there is no
2 conflict letter that waives it, is there?

3 A Not that I recall, no.

4 Q Okay.

5 A It's family.

6 Q Yeah, and it's several of your clients, two of which
7 have diverging interests in this transaction, right?

8 A One has more so it substantially could be -- well,
9 excuse me, one has substantial exposure, yes.

10 Q Okay.

11 A Which was understood.

12 Q But as a lawyer it's your job to protect that client
13 who has the substantial liability from being, from entering
14 into it if it's not in his best interest or being taken
15 advantage of from someone, right?

16 A This was not the case.

17 Q Well, I'm just asking you, sir, in general as the
18 lawyer of someone, it's your job to protect them from people
19 overreaching them, right?

20 A Of course, you don't want to see harm come to your
21 client.

22 Q Of course. And you owe them fiduciary duties, too,
23 right?

24 A I have a duty to represent them, yes.

25 Q And you have a duty to make sure they are not being

1 unduly influenced by someone, correct?

2 A If that exists, yes.

3 Q All right. And if that, if those issues arise and
4 creates a problem where you cannot do that for a client, it
5 would be your obligation to send that client out to someone
6 else, correct?

7 A What's the circumstance?

8 Q Where you believe that, where you are representing
9 two people, one is getting something to the detriment of the
10 other and creates this conflict where you can't protect them,
11 you would send that person out to someone else, right?

12 A Unless both parties agreed to the deal, to the
13 transaction.

14 Q And there is no agreement, correct?

15 A When you say there is no agreement, there is an
16 Indemnity Agreement where he specifically knew that his trust
17 would be substantially affected.

18 Q And you know for a fact that to waive a conflict the
19 client has to consent to that in writing, correct?

20 A He may or may not, depends.

21 Q The client may or may not have to consent to it in
22 writing?

23 A Correct.

24 Q What does it depend on?

25 A Well, it's listed out in the conflict provisions

1 under the Nevada Supreme Court Rules.

2 Q Uh-huh. And your client who has hired you to advise
3 him about the legal issues would know that; is that correct?

4 A My client would know about the conflict of interest?

5 Q Yeah, that the Nevada, Federal Rules --

6 A No, typically not.

7 Q Okay. So that's something that you have to deal with
8 and it's up to you to get that written consent or that written
9 waiver of conflict?

10 A Not necessarily. I mean, the client can always waive
11 the conflict and it doesn't always have to be in writing.

12 Q So there is an exception where you don't have to get
13 it in writing?

14 A There are some exceptions.

15 Q Certainly a better practice to make sure that clients
16 waive conflict in writing, right?

17 A Maybe, maybe not.

18 Q Okay.

19 A I mean, I just take my direction from the client. I
20 actually memorialized this in writing just to confirm again in
21 writing that we had a discussion, there would be substantial
22 exposure to the trust, and he wanted to move forward.

23 Q And to go see some other lawyer to make sure that --

24 A If you want.

25 Q -- it's in his best interest?

1 A Absolutely.

2 Q Because you are representing Todd, right?

3 A Well, I was representing both.

4 Q All right. So let's look at --

5 A Remember, this is not something that Todd came up

6 with. This is something that Sam started this discussion

7 because he wanted to protect the kids that had the most

8 exposure.

9 Q Well, that's according to you without anything to

10 memorialize or corroborate that, right?

11 A It says right here in this letter there is

12 substantial exposure.

13 Q A document you prepared, the other documents that you

14 prepared are the only things you have that would indicate in

15 any way that Sam told you that, correct?

16 A Told me what now?

17 Q That he wanted an Indemnification Agreement?

18 A Right.

19 Q Okay.

20 A That's typically the way it works. The client comes

21 to you and says I have got concerns. How do you draft

22 documents? What do we need to do that to protect the

23 situation?

24 Q I get that and you said that. My point was that you

25 don't have anything in writing that corroborates that he told

1 you that other than what you prepared, right?

2 A Oh, that he's the one that came to me first?

3 Q Yeah.

4 A Maybe, maybe not. I don't know.

5 Q Maybe, maybe not. Okay. So let's turn to

6 Exhibit 11. Actually, Keith, I'm sorry, let's start with

7 Exhibit 11A.

8 A So I need that one, too. They took my binder.

9 Q Oh, did we take it? Sorry, I will get it for you.

10 A I don't have the 1 through 13.

11 Q That exception about the conflict waiver, is that a

12 Pierre Hascheff exception or is that one that is actually

13 written down, do you know?

14 A I would have to look it up.

15 Q Okay. So this is the one, let's make sure you have

16 it.

17 A 11A?

18 Q Yes, sir.

19 A Yes.

20 Q This is the one that has the mark at the top old?

21 A Right.

22 Q That's your handwriting?

23 A Yes.

24 Q And it has the January 1st, 2008 date in it at the

25 top?

1 A Yes.

2 Q And Sam individually and as trustee of the Family
3 Trust dated June 29, 1996, indemnifies Todd B. Jaksick,
4 Dawn Jaksick, TBJ SC Trust, and TBJ Investment Trust. Do you
5 see that in that paragraph?

6 A Yes.

7 Q And you were shown earlier the signature page, Keith,
8 which is page 6, TJ 1675. There we go. And that's the,
9 that's the signature page where the Sam Jaksick, Jr. Revocable
10 Trust dated June 29th, 1996, is handwritten in?

11 A That's correct.

12 Q I think you said that was your handwriting?

13 A It is.

14 Q All right. And so this was not a draft. It was a
15 signed, valid, and binding agreement, correct?

16 A They signed it, yes.

17 Q All right. And so if someone testifies or says that
18 they were signing drafts and this was it, that wouldn't be
19 correct, would it?

20 A No. I think this was the original, or not the
21 original, but one of the earlier ones and that's why I put old
22 on it, because we had replaced it with another document.

23 Q All right. And so we talked about that paragraph 14,
24 we are at page five, TJ 1674, that big three or four inch
25 paragraph there about the jurisdiction, choice of jurisdiction

1 and venue?

2 A Correct.

3 Q You determined that that paragraph was no longer
4 necessary because all of the parties were long-time residents
5 of Washoe County, right?

6 A Yeah. I just didn't think it was necessary.

7 Q It wasn't necessary when you put it in the first
8 version either, was it?

9 A Yeah, but I -- this is one of my form documents that
10 I use, so typically it has that provision in there, as well as
11 others, so I just didn't think it was relevant at this point.

12 Q All right. And then go back up to the first page,
13 Keith, please, TJ 1670, and you mentioned earlier the
14 recitals, and there is, just want to count through, there is
15 A, B, C, D, all the way down to the letter H?

16 A Correct.

17 Q No letter I, right?

18 A Let me see, I believe one of them had a letter I.

19 Q Right, but this one doesn't?

20 A It does not.

21 Q The old Exhibit 11A does not have a letter I, does
22 it?

23 A Correct.

24 Q Or letter I was silent to be more clear?

25 A It does not have a recital I.

1 Q So then let's go to Exhibit 11A, I'm sorry, 11B. Go
2 back to the top, Keith. So this was sent in an e-mail
3 June 2nd, 2010, Indemnification and Contribution Agreement
4 attached for your file, correct, on the first page?

5 A Yeah, I see it. Yeah, this is from my office to
6 Jessica Clayton.

7 Q Right. And when you say from your office, was that,
8 that wasn't necessarily you sending that, was it, or was it?

9 A No. It could have been my secretary. It was her
10 that sent the e-mails.

11 Q So this version that was sent was in 2010, or at
12 least sent by e-mail in 2010, and if we look at the recitals,
13 now we have, as you mentioned, A, B, C, D, and then we go all
14 the way down and there is a recital I on the next page, right?

15 A Correct.

16 Q So there is, a recital has been put into this one
17 that wasn't in the last one, correct?

18 A Correct.

19 Q And that recital is letter C?

20 A C.

21 Q So to differentiate it from the other ones, I call
22 this the cash flow recital, "Whereas, the indemnitor
23 acknowledges that indemnitees may not have sufficient cash
24 flow and/or financial means -- and/or financial means to make
25 those payments." Do you see all of that?

1 A Yeah. Let me, you said that's not in the other ones?

2 Q It's not in 11A.

3 A Okay.

4 Q The old version. It's in the other one.

5 A Yeah. It's in 11, correct?

6 Q It's in 11.

7 A Okay.

8 Q All right. So the old one did not have this recital

9 C, the cash flow recital?

10 A Let me see, that's correct.

11 Q All right. And, likewise, it does not contain that

12 three to four inch paragraph 14, does it?

13 A I don't believe so. I think we eliminated it.

14 Q Yes. And you would agree that that changes the

15 pagination of the document when you add a paragraph and then

16 you subtract one?

17 A It could.

18 Q Okay. Well, you add one that's about an inch thick

19 and then you remove one completely that's 3 inches thick,

20 that's going to change the pagination, right?

21 A It could, yeah.

22 Q Yeah.

23 A But sometimes it doesn't.

24 Q And then let's look at Exhibit 11A, I mean, I'm

25 sorry, let's look at Exhibit 11.

1 A Okay.

2 Q So here we have, and this one, again, is dated the
3 same date, January 1st, 2008, and you have that cash flow
4 recital exhibit, or recital C there. Do you see that?

5 A Yes, it's there.

6 Q And then it, also, Exhibit 11 is missing paragraph
7 14?

8 A That's correct.

9 Q But then this, as was mentioned earlier, it's
10 definitely a handwritten version. In the last page, Keith,
11 the signature page. Sorry, page 6, TJ 865. Instead of the
12 handwritten version, it's typed in?

13 A That's correct.

14 Q And 11A has the, or 11B has the handwritten version,
15 but with the date blank, right?

16 A I believe it does, yes.

17 Q Uh-huh. In all of these, all three of these
18 versions, the signature page even though there is paragraphs
19 added and paragraphs deleted, the signature page lands exactly
20 the same, doesn't it?

21 A Let me see.

22 Q It starts at the top with the fifth paragraph 15.3,
23 Entire Agreement, and then 15.4 and 15.5?

24 A Yeah. It appears that way, yes.

25 Q Sorry?

1 A It does appear that way, yes.

2 Q All right. Now, let me get you the, let me show you

3 Exhibit 173.

4 A But is there any signatures different?

5 Q They look very much the same, don't they?

6 Let me show you Exhibit 173 first.

7 MR. LATTIN: I think there is a question pending.

8 MR. SPENCER: Oh, is there?

9 THE COURT: Well, I don't know. The witness asked a

10 question and then the lawyer seemed to answer it, and so I'm

11 not sure where we are.

12 BY MR. SPENCER:

13 Q I'm going to ask you about the way the signature

14 looks in just a moment, but I want to show you 173.

15 A Yeah, they look different to me.

16 Q Okay. This is the Indemnity Agreement and it

17 contains -- well, can you blow that up, Keith? It contains

18 that cash flow recital?

19 A It has the cash flow.

20 Q And then the signature page, please. It lands at the

21 top -- go to the top -- and it lands at the same 15.3 and with

22 the date not included, correct?

23 A Yeah. Just like the other one, right? Just like the

24 other one?

25 Q Uh-huh, yes. Just like 11B?

1 A Yeah, whatever it was. There was one that did not
2 have a date in it.

3 Q Yeah. And so in looking at -- you will need to pull
4 the other binder out, the 11A and 11B.

5 A Okay.

6 Q Let me ask you first, it would, you would agree that
7 it would not be ethical for an attorney to take a signature
8 page off of or that was married to one document and then take
9 it and attach it to another document, right?

10 A We had this conversation at my depo, right?

11 Q We sure did.

12 A Okay. So I believe I answered, yeah, it would be
13 unethical if you were taking a signature page from one
14 completely different document, like a signature page from a,
15 let's say a trust and attaching it to a deed and then
16 effectuating the deed, but I don't believe it's unethical to
17 basically take the signature page and attach it to the same
18 document.

19 Q But if they are different documents, it would be
20 unethical, wouldn't it?

21 A I don't believe so.

22 Q It wouldn't be if you didn't have your client's
23 permission to do that?

24 A I had his permission.

25 Q Can you answer my question, sir?

1 THE COURT: Hold on. Slow down a little bit.

2 THE WITNESS: I had his permission.

3 BY MR. SPENCER:

4 Q If you didn't have your client's permission, it would
5 be unethical to take a signature page that was married to one
6 document, attached to one document, and then attach it to a
7 different document?

8 A I don't know if it would or wouldn't. I always had
9 permission, because we would then attach the signature page
10 and then send the document to the client and say throw out the
11 old ones. This is the replacement document.

12 Q Okay. And my question was it would be unethical to
13 do that, if the documents are different, to take one signature
14 page off of one of them and put it onto another?

15 A I don't know if it would or wouldn't be.

16 Q All right. You said you never did that in this case,
17 didn't you?

18 A No. I always had my client's permission.

19 Q No. My question is different.

20 A Okay.

21 Q It's the basic premise of taking a signature page off
22 of one document and putting it on another, you testified you
23 never did that, correct, in this case?

24 A No, I don't believe I did.

25 Q All right. Your Honor, may I? Let me refer you to

1 your deposition page 278, the one before you, Volume 2,
2 November 17th, 2018.

3 A I have, this is Volume 2. It should be it, right?
4 What page is it?

5 Q 278.

6 A 270?

7 Q 278.

8 A I have page 278.

9 Q And at the bottom, line 21, I was taking, I was
10 asking you questions in your deposition under oath and said,
11 "But what about the scenario --" Do you see where I'm at,
12 line 21?

13 A Okay.

14 Q "What about the scenario where you have a signature
15 page that is married to a document, this is the signature page
16 of that document and it's signed, and then to take that
17 signature page off of that document and then attach it to a
18 different document as that signature page?" Your answer is
19 what?

20 A "No." But, again --

21 Q No, read the full answer, please. It's line 3.

22 A "If that's the question, no, I never did that, nor do
23 I know of any Jaksicks that did the same thing."

24 Q Okay. So you did testify that you never did that in
25 this case?

1 A Again, there was some confusion with the question,
2 because you viewed my Indemnity Agreement just because it had
3 a couple of corrections being a completely different document
4 than the other document, which was the same Indemnity
5 Agreement minus some corrections. To me that's not a
6 different document.

7 And I just testified that I would not take a
8 signature page off of a trust agreement and attach it to a
9 deed, because they are two completely different documents.

10 Q That wasn't my question in the deposition. I didn't
11 refer to the Indemnity. I referred to the scenario --

12 A Right.

13 Q -- where you take a signature page off of one and put
14 it on another, and your answer was, "No, if that's the
15 question, no, I never did that, nor do I know of any Jaksicks
16 that did the same thing."

17 A Yeah, in reference to a completely different
18 document.

19 Q Oh, okay. So --

20 A I know you view it as the Indemnity Agreement with
21 some changes is a completely different document than the same
22 Indemnity Agreement that didn't have those changes.

23 Q And you don't have anything that memorializes or
24 corroborates that Sam told you to switch out the signature
25 pages, do you?

1 A I may or may not. I just don't know.

2 Q Uh-huh.

3 A But the ultimate, that document, the operative

4 document goes back to the client, so now he has the operative

5 document with the same signature page.

6 Q And you manipulated the margins on at least one of

7 these documents, didn't you?

8 A When you say the margins?

9 Q So that the signature page would land right starting

10 with 15.3 on every signature page, correct?

11 A I don't know.

12 Q All right. You don't recall testifying in your

13 deposition that the margins were changed so that the

14 pagination would land --

15 A Oh, it could be.

16 Q Okay. And you did do that here, didn't you? You

17 took out a big three-inch paragraph and added a one-inch

18 paragraph. The margins are all switched up, so you had to

19 widen the margins to push the pages down so it would land

20 right, correct?

21 A I can't remember, but it's possible.

22 Q All right. Why on earth would you do that?

23 A So you can attach the signature page.

24 Q Why don't you just print it out?

25 A And have him resign it?

1 Q Print out a whole new version, all of the margins
2 identical?

3 A I mean, that's an option.

4 Q Yeah, it's an option, particularly in this day and
5 age where we have computers and in a stroke of a keystroke you
6 can print a whole new document out, right?

7 A I mean, that's one option, but the other alternative
8 is, look, I'm going to make these changes. Are you okay if I
9 attach the signature page and I will scan it and e-mail it
10 back to you?

11 Q Uh-huh. And so you were changing and tweaking the
12 document all along, right?

13 A Well, I don't know if I would say that.

14 Q Well, there is at least three versions. There is one
15 with the signature page, dates blank, one with a signature
16 page, dates written in both in handwriting, and one with his
17 signature page that's typed in?

18 A Yeah, but aren't two of them the exact same thing
19 other than not having a date?

20 Q Well, the dates on them are the same and the, but the
21 signature pages are different. The old one you know is
22 different. It has got paragraphs in it that are not in the
23 other ones?

24 A Right.

25 Q And then the other two have the cash flow recital and