

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 12**

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Dated this 14th day of June, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 12** 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 the paragraph 14 is gone, but the signature pages are
2 different, right?

3 A And that one has a date, one doesn't have a date.

4 Q One is handwritten with a date and the other one is
5 typed?

6 A Yeah. We inserted the date.

7 MR. SPENCER: Your Honor, I would like to show a
8 demonstrative slide.

9 THE COURT: Yes.

10 MR. ROBISON: Is it one we have seen before?

11 THE COURT: Yes.

12 MR. SPENCER: It's the signature pages.

13 MR. ROBISON: Thanks.

14 BY MR. SPENCER:

15 Q So just to kind of help out a little bit, you see
16 that there are different signature pages, right?

17 A When you say different signature pages, you mean one
18 has a date, one doesn't have a date?

19 Q Just blow it up.

20 And so the one down in the bottom left, that's
21 Exhibit 11, it's typewritten. The one up to its right, that's
22 the one handwritten, but with the date, that's 11A. And that
23 one is handwritten, but without the date, that's 11B?

24 A Right.

25 Q And then we have a duplicate of 11A right there of

1 173.

2 A Okay.

3 Q And you recall also that the signature on 11A and the
4 signature on 11B, those two pages are absolutely identical,
5 but for the completion of the dates?

6 A Which one are you comparing again, 11B and --

7 Q Yeah, that one, and the one, 11A and 11B, but they
8 are exactly the same except for the date that you wrote in?

9 A That's correct.

10 Q And so that's the same signature page used on two
11 different documents, isn't it?

12 A I don't agree with that.

13 Q Well, the first one is on 11A, which is the old
14 version?

15 A Correct.

16 Q And that's the one with the date written in?

17 A Correct.

18 Q And then 11B is the one with no date written in, but
19 otherwise -- can you show that slide where you cross --
20 otherwise they are the same, the signatures and everything are
21 identical?

22 A Right. And I think what happened is when they signed
23 the one without the date, without the handwritten date, I
24 didn't have the date of the trust. I just didn't have it. So
25 when I found out about it, then I inserted the June 29th date,

1 and then ultimately it looks kind of tacky and I think we made
2 some changes to 11, so we basically had it typed in, and then
3 Sam came in and signed it again.

4 Q And so this is going to be a little animation -- no,
5 this is the other slide, 11A and 11B. There we go. A little
6 animation of the signature pages are going to overlap here.
7 Do you see that they line up exactly?

8 A Which one are you comparing?

9 Q 11A and 11B.

10 A Yeah, I don't, I don't -- are they the same? I don't
11 know.

12 Q They are the same, except for the date there that you
13 wrote in.

14 A Okay. That would be 11B and 11C.

15 Q There is no 11C. It's 11A and --

16 A 11A and 11B, excuse me.

17 Q That's what this is.

18 A Okay.

19 Q And you acknowledged that in your deposition, right?

20 A I don't know if I did or didn't, but, again, as I
21 mentioned, when they came in and signed the one without the
22 date, I did not have the date of the trust. Then I learned
23 the date of the trust and then I inserted it. That's why they
24 are exactly the same, all right, 11B and 11, 11B and 11A,
25 because I just inserted the date.

1 Q And presumably --

2 A And then --

3 Q I'm sorry, go ahead.

4 A And then 11 comes along and we basically type in the

5 date. It looks more professional if the date is typed in.

6 Q Uh-huh. And the old one you mentioned is the one

7 that was signed first, right?

8 A It could have been.

9 Q Well, wouldn't that make sense, that the oldest one

10 would be the first one?

11 A But they are the same document.

12 Q The signature page --

13 A 11A and 11B are the same document.

14 Q Well, no, they are not. One is the old one that has

15 paragraph 14 and no C and then the other one has no paragraph

16 14 and has C?

17 A Correct.

18 Q So they are not the same document, but they are the

19 same signature page other than the date?

20 A Okay. It's still an Indemnity Agreement.

21 Q All right. And the 11, the old one would be the one

22 that was signed first and it had the date in it?

23 A I said just because it has old on it, it's the old

24 one that should be thrown away because 11 was the last one. I

25 don't know if it's older, A is older than B.

1 Q Or 11?

2 A No, because it was typed in, the date was typed in.

3 Q Well, according to the document no one can tell,
4 right, which one was the older and which ones were newer?

5 A Well, I can tell, because one didn't have a date, one
6 had a handwritten date, and then finally we just typed in the
7 date. That would have been the last one.

8 Q Well, but it's not --

9 A Why would I handwrite in a date when it is already
10 typed in?

11 Q It's not, the document -- and we have to look at the
12 document to determine which one controls and they are all
13 dated the same date. How do we determine that?

14 A Well, because I'm the one who drafted it and --

15 Q Oh, so we all have to come to you to --

16 MR. ROBISON: Your Honor, can the witness be
17 permitted to answer the question.

18 THE COURT: I agree. Sustained. Allow the witness
19 to answer the question, please.

20 THE WITNESS: We had multiple drafts and ultimately
21 that was the last one because it was typed in.

22 BY MR. SPENCER:

23 Q And even when you typed it in, you put the wrong date
24 in it, right?

25 A Right. We thought at the time the trust was 1996.

1 Q But I thought you said you got the information --

2 A I did, but I don't know what the timeline is.

3 Ultimately, June 2006 is the trust.

4 Q The trustee of the 1996 trust would be a different

5 capacity than the trustee of the 2006 trust because it

6 replaced it, right?

7 A I'm sorry, I don't understand your question.

8 Q The differences in the legal capacities, you have got

9 a trustee of a trust that was signed in 1996 and then you have

10 got a trustee of a trust that was signed in 2006?

11 A There was no 19, there was no 1996 trust.

12 Q Oh, there wasn't?

13 A I don't believe so.

14 Q Okay. But that's the capacity in which you put, that

15 you had Sam sign the document in?

16 A I could have been told that date or it was just a

17 typo on our part.

18 Q And you also may have made changes to the Indemnity

19 Agreement even as late as 2010, right?

20 A Could be.

21 Q And when you sent this one exhibit that has the

22 e-mail attached to the front of it, Exhibit 11B sent June 2nd

23 of 2010, you may have made a change and tweaked that document,

24 right?

25 A Maybe, maybe not. Maybe they needed a copy and I

1 resent it to them.

2 Q But it's possible that you changed it?

3 A It is possible, yeah.

4 Q All right. So in relation to the Second Amendment,
5 do you understand or do you recall, do you recall the Second
6 Amendment and the Fifth Amendment being signed on the same
7 day?

8 A Yes.

9 Q April 27th of 2012?

10 A Yes.

11 Q And why would Sam have signed two documents doing two
12 different things on the exact same day?

13 A Well, the, when it was signed in April, again, the
14 backdrop of this is we didn't have all of the documents. All
15 right. We just didn't. So I don't believe we knew, we had
16 not had all of the documents to actually piece this together.

17 All right. So I finally got my arms around this
18 anytime, sometime between April when these documents were
19 signed and then the final document in December. Then I had a
20 better picture of what really existed out there.

21 Q When you said you got the documents back, way back
22 before 2010, right?

23 A The what?

24 Q 2006?

25 A I don't know if I did or not.

1 Q Well, how would you have put it in the Option
2 Agreement if you didn't have it back then unless you did it
3 later, right?

4 A Say that again.

5 Q If you didn't get the 2006 document, trust documents,
6 there is no way it could have ended up in the Option Agreement
7 that was signed in 2008 if you didn't get it until 2010,
8 right?

9 A Now you are talking about the Option Agreement?

10 Q Yeah. You just said between April of '12 and
11 December of '12 you finally got the 2006 document, right?

12 A It could be. I just, all I know is I got my arms
13 around it finally so I knew exactly what the operative
14 documents were. That's why we did the Second Amendment in
15 December of 2012.

16 Q And if you didn't have it until 2012, how could you
17 have referenced it in a document that was supposedly done in
18 2008?

19 A What document was done in 2008?

20 Q The Option Agreement.

21 A Okay.

22 Q I'm sorry, the Indemnification Agreement.

23 A No wonder. Okay. So in the Indemnification --

24 Q Let me reask it. I didn't mean to confuse you. If
25 you didn't have the '06 trust until 2012, how could you have

1 referenced it in a document that was supposedly signed in
2 2008, which is the Indemnification Agreement?

3 A Okay. You are telling me that the Indemnification
4 Agreement referenced the 2006 revocable trust?

5 Q It does.

6 A Okay. Let's take a look.

7 Q Exhibit 11, the one that you say is the operative
8 document, right?

9 A Which document are you looking at?

10 Q Exhibit 11.

11 A Number 11.

12 Q Exhibit Number 11. We can pull it up, the very top
13 paragraph, Family Trust Agreement revised June 29, 2006. So
14 that must have been prepared sometime after April of 2012,
15 right?

16 A You know, we could have actually inserted the correct
17 date.

18 Q Okay. So still manipulating and changing documents
19 four years later; is that right?

20 A I don't call it manipulation. I'm just putting in a
21 correct date.

22 Q Well, if you change a document that's manipulating
23 it, isn't it?

24 A I don't agree.

25 Q Modifying?

1 A Modifying, okay.

2 Q Manipulating it would be to move, widen margins and

3 do things like that. Modifying it would be changing its

4 content, right?

5 A I don't agree with the manipulation, I just don't.

6 Q All right. But modifying it, you are still modifying

7 it four years later?

8 A It happens all the time where you figure out you have

9 a typo in a document, and the quickest way to correct it is

10 put the correct date, in this case on the front page.

11 Q Put it on the front page and swap the pages out,

12 right?

13 A The first page.

14 Q Uh-huh. Just as easy to swap out any other page,

15 too, isn't it?

16 A No.

17 Q Because the signature page landed on the same page

18 every time, so you could change any page you want, right?

19 A They did on 11A and 11B.

20 Q Okay. And so the Second Amendment, the Second

21 Amendment was signed on the same day as the Fifth Amendment,

22 and you recall that the Second Amendment does not even replace

23 or reference the Fifth Amendment, right?

24 A Like I mentioned in my deposition, the Fifth

25 Amendment was all messed up. It was just, it had the wrong

1 terms in it, so we just agreed to basically throw away the
2 Fifth and agreed the Fourth is the First to the 2006 and,
3 therefore, the Second would be amending the 2006 Trust
4 Agreement.

5 Q Despite it changing the dispositive provisions of
6 Sam's trust, right?

7 A The Fifth was almost identical to the Second.

8 Q But it's significantly not identical where it says
9 Wendy gets a trust that 100 percent goes to her for her
10 lifetime, help out her kids if needed. The other one, the
11 Second Amendment says 80/20 Wendy and Luke, those are
12 different?

13 A Yeah, because that's the changes he made.

14 Q On the same day?

15 A No, no, no, no. You are talking about the Second and
16 the Fifth.

17 Q So where is the first version of the Second Amendment
18 that was signed on April 27th of 2012?

19 A Like I mentioned to you, the Fifth was messed up. We
20 decided to get rid of the Fifth, and then the Fourth became
21 the First to the 2006 Trust and, therefore, the one I prepared
22 in December of 2012 became the Second.

23 Q And you all were just signing signature pages or is
24 there an April 27th, 2012 version of the Second Amendment?

25 A Is there one? I believe there is, right?

1 Q Yeah, and we are out of time.

2 THE COURT: We are. Ladies and gentlemen, during
3 this quick recess, please do not discuss this case amongst
4 yourselves. Please do not form or express any opinion about
5 this matter until it's been submitted to you. Please remain
6 in the jury deliberation room. I might call you back into the
7 courtroom. We will stand for our jury.

8

9 (Whereupon the following proceedings
10 were outside the presence of the jury.)

11 THE COURT: Counsel, you know the dilemma I'm facing.
12 I hate to end early today, and Mr. Hascheff is going to return
13 on Monday if we don't finish with him today. Despite the
14 challenges to his professional life he'll remain under
15 subpoena.

16 You also know what I told the jury based upon our
17 conversations and my decision. I have to go, but I'm also
18 willing to bring this jury back in, tell them that I might
19 change my mind, send them in the room to just have them write
20 a yes or no if they made commitments based upon, if they have
21 relied upon what I said and made commitments, then I'm going
22 to honor that.

23 But I also want to tell them we are pushing to finish
24 the trial and we might need them this afternoon. And I will
25 still have to send them away for a long time, because we just

1 have been going since 8:30. Thoughts?

2 MR. SPENCER: I agree with that.

3 MR. ROBISON: Speaking of commitments, I planned
4 something this afternoon on a different case.

5 THE COURT: Right. The easiest thing is to send them
6 home as we said, but, Counsel, you know and I'm prepared to
7 sign an order if necessary that kind of establishes my
8 authority to start pushing this case against your wishes.

9 MR. ROBISON: Your Honor, can we discuss that very
10 topic just for a moment?

11 THE COURT: Yes.

12 MR. ROBISON: The way I see this is 10 more witnesses
13 in three days. And that 10 consists of Stan, Wendy,
14 Mr. Riley, three experts, Bob LeGoy, Mike Kimmel, and our
15 expert. I just want to put that out there.

16 MR. SPENCER: We may not have three experts, if that
17 helps, but it doesn't help a whole lot.

18 THE COURT: Counsel, I'm truly not panicking. It is
19 a privilege to have all of you in the well of the court,
20 because you tried a lot of cases and I wanted to yield to you,
21 but I might be the only one in this room who doesn't have
22 confidence that this case is going to be submitted to the jury
23 on Thursday.

24 I never believed it would. I still don't believe it
25 will, unless I take some type of direct intervention. I'm

1 happy to wait another day or two and just trust counsel who
2 are experienced to roll it forward. I'm very uncomfortable
3 about bringing this jury in past next week.

4 MR. ROBISON: Well --

5 MR. SPENCER: We will work hard.

6 MR. ROBISON: We will work on it.

7 THE COURT: Thank you. So what do I do with the jury
8 this afternoon?

9 MR. SPENCER: I'm fine with what you offered. We are
10 available, but if they are not, then I understand.

11 THE COURT: Call it, Mr. Robison, because you --

12 MR. ROBISON: Call it.

13 THE COURT: -- made a conflict and I don't want you
14 to disclose what it is.

15 MR. ROBISON: Well, let me, Judge Hascheff, what --

16 JUDGE HASCHEFF: I understood we were going to be
17 done by 1:30 and I need to get back.

18 MR. ROBISON: Today?

19 JUDGE HASCHEFF: Yeah. And then ultimately I need to
20 tell our staff to get somebody in for me on Monday. I told
21 them Wednesday, so I got to have, if they can't get somebody
22 to cover for me, we have got to call a Senior Judge ASAP.

23 THE COURT: So do you have professional duties this
24 afternoon at 1:30 that you need to be back for?

25 JUDGE HASCHEFF: Oh, no, no. I just told staff I

1 would be back.

2 THE COURT: But you can accommodate your appearance
3 here Monday if you tell your staff and let them quickly work
4 up a Senior Judge?

5 JUDGE HASCHEFF: Right.

6 THE COURT: I might not be the Judge who takes the
7 verdict, which is permissible under Nevada law, and if the
8 jury is deliberating I'm authorized to leave and bring in a
9 successor. I have a flight on a business commitment Friday at
10 3:00 that was set long before. Are we done for the day, yes
11 or no?

12 MR. ROBISON: Yes.

13 THE COURT: Are we done for the day? You are okay
14 either way?

15 MR. SPENCER: We are okay either way.

16 THE COURT: We are done for the day. Bring the jury
17 in, if you would, please. Counsel, push it hard, please.

18 (Whereupon the following proceedings
19 were in the presence of the jury.)

20 THE COURT: I'm going to read the overnight
21 admonishment and then we will be done until Monday morning.
22 You are admonished not to converse amongst yourselves or with
23 anyone else on any subject connected with this trial.

24 You will not read, watch or listen to any report of
25 or commentary on the trial, by any person connected with this

1 case, or by any medium of information, including, without
2 limitation, newspaper, television, internet or radio.

3 You are also admonished against any form of
4 electronic or social media research, investigation or
5 experimentation. Please do not form or express any opinion
6 about this matter until it's submitted to you for
7 deliberations.

8 Ladies and gentlemen, good night. Enjoy your
9 weekend. We will see you at 8:45 Monday morning.

10

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

13 THE COURT: Counsel, I will be here at about 3:00 on
14 and I will be here Monday morning if you need anything. Good
15 night. Enjoy your weekend.

16 -o0o-

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

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

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

11 That I was present in Department No. 15 of the
12 above-entitled Court on February 22, 2019, and took verbatim
13 stenotype notes of the proceedings had upon the matter
14 captioned within, and thereafter transcribed them into
15 typewriting as herein appears;

16 That the foregoing transcript, consisting of pages
17 1 through 205, is a full, true and correct transcription of my
18 stenotype notes of said proceedings.

19 DATED: At Reno, Nevada, this 11th day of February,
20 2021.

21 /s/Corrie L. Wolden

22 _____
23 CORRIE L. WOLDEN
24 CSR #194, RPR, CP
25

In the Matter Of:

Department 15

JURY TRIAL - DAY 6

February 25, 2019

Job Number: 530642

1 4190

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9 ---o0o---

10

In the Matter of the)
Administration of the)
SSJ'S ISSUE TRUST,)

Case No. PR17-00445

12

_____)

Dept. No. 15
CONSOLIDATED

13

In the Matter of the)
Administration of the)
SAMUEL S. JAKSICK, JR.)
FAMILY TRUST.)

Case No. PR17-00446

14

15

_____)

TRANSCRIPT OF PROCEEDINGS

16

17

JURY TRIAL - DAY 6

18

FEBRUARY 25, 2019, RENO, NEVADA

19

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Job No.: 530642

Reported by:

JULIE ANN KERNAN, CCR #427, CP, RPR

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1	I N D E X	
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3	THE WITNESS: PIERRE HASCHEFF	
4	For the Petitioner:	
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7	THE WITNESS: TODD B. JAKSICK	
8	For the Petitioner:	
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1 RENO, NEVADA, MONDAY, FEBRUARY 25, 2019; 8:40 A.M.

2 ---o0o---

3

4 THE COURT: Nice to see you. Thank you for
5 returning. And we will continue our examination.

6 Mr. Spencer.

7 MR. SPENCER: Thank you, your Honor.

8 CONTINUATION OF DIRECT EXAMINATION

9 BY MR. SPENCER:

10 Q Good morning, Mr. Hascheff.

11 A Good morning.

12 Q I want to start with Exhibit 23.5.

13 Good morning, everyone.

14 A Your Honor, can I get the hard copy?

15 Q Oh, sure. Hard to see it.

16 A Okay, I have it.

17 Q Okay. And you can see on page 2 of Exhibit
18 23.5, TJ 1054 at the top, that top paragraph has the
19 terms that you testified to the other day as being the
20 operative terms, which is the note will include a
21 ten-year maturity, interest only payments, and 2.25
22 percent per annum.

23 A Correct.

24 Q Remember that?

1 A Yes.

2 Q And that's the document that applies. Right?

3 A Correct.

4 Q And then we talked about Exhibit 542. I
5 think that same paragraph of the real estate option
6 agreement, this one has a five-year maturity interest
7 only payments at six percent per annum.

8 A Correct.

9 Q And at the bottom of the page, Keith, this is
10 a Ticor document sent to Ticor?

11 A Correct.

12 Q And you mentioned that you thought maybe you
13 were out of town or out of the office, I should say, and
14 Ticor needed a copy, and your secretary must have sent
15 the wrong one; is that right?

16 A I believe that's what happened, yes.

17 Q Okay. Do you recall that or is that just
18 your best guess?

19 A Well, that wasn't the operating agreement, so
20 it happened from the perspective of I was out of the
21 office and somebody would call and say I need a document
22 and she would send it. And that typically could occur
23 because it was Ticor it was going to be a closing.

24 Q And the signature page on that document,

1 Keith, which is that page 5 at the bottom, that's
2 handwritten it over the page 4. See that?

3 A Right.

4 Q And then the signature page up above, that's
5 the same signature page that's on Exhibit 23.5.

6 A It looks like that would be, yes.

7 Q And so how would the signature page from 23.5
8 end up on the Ticor version that was the wrong version
9 that your secretary sent, if it was attached to 23.5 and
10 that was the operative document?

11 A The only explanation would be is we started
12 with the six percent five years. And that was the
13 initial draft of that signature page. And then
14 ultimately, if I remember correctly, they couldn't cash
15 flow the six percent five years, without seeing what
16 terms in there that could cause a default. So what they
17 could afford once they did there cash flow projections
18 was the 2.25 percent over ten years, so that change was
19 made in the document and the signature page didn't
20 change.

21 Q So the page with the terms was switched out.
22 Right?

23 A Yeah. You mean that page 2, whatever that
24 was?

1 Q **Yes, sir, with -- it's the five-year 2.25**
2 **terms?**

3 A Yeah, we deleted that on page 2, whatever
4 page that was, and put in the -- yeah, page 2, then we
5 put in the ten year 2.25 percent.

6 Q **Okay. And you don't have anything in writing**
7 **that indicated that that was what Sam wanted, do you?**
8 **That was based upon -- or do you?**

9 A Like I said, there could be a memo in the
10 file. I just don't know.

11 Q **That was based upon information you gathered**
12 **from Todd and his entities regarding their cash flow**
13 **analysis. Right?**

14 A No, it would have been Sam's estate.

15 Q **Sam's estate. Why is that?**

16 A Well, because this was in favor of this --
17 the option was between TSS and SSJ. And that was Sam's
18 LLC.

19 Q **Right. But the cash flow analysis depended**
20 **upon Incline TSS and the entities that owned this, their**
21 **ability to pay the option payments. Right?**

22 A Yeah. But he was involved in this because
23 ultimately he had to lease once he took the -- he still
24 was living there and he had to lease the property from

1 TSS, and the money that he used to pay the lease would
2 be used to basically to go to TSS and then they would be
3 able to service the debt, so he would have been involved
4 in this discussion.

5 Q And just the documents -- let me back up,
6 strike that. Only the documents that you prepared
7 reflect that that was the desired terms. Right?

8 A You mean the difference between this document
9 and the other one?

10 Q Yes, sir.

11 A Yeah, unless there's a memo in the file.

12 Q All right.

13 A But we sat down and we talked about it
14 because it wouldn't have changed but for the fact that
15 they came to me and said we can't make this -- we can't
16 cash flow five years.

17 Q And you don't know of any letter you wrote to
18 Sam saying hey, I just want to let you know that we've
19 changed the terms on page 2 and we're swapping the pages
20 out from the first version to the second, do you?

21 A There could be one. You know, typically when
22 I have a conversation with a client he knows what we're
23 doing, we all know what we're doing, and I get the -- I
24 get the approval, I get the permission and we made the

1 change. And then we forward that document to the
2 client.

3 Q That document, that permission that you would
4 have obtained separate and apart from the document
5 itself, that contains the change, wouldn't it?

6 A That could, maybe, maybe not. It just
7 depends.

8 Q You don't know of a document or a letter, I
9 should say, documenting that, do you, a letter to Sam?

10 A I'm not aware of one. I can't tell you if
11 one exists or not.

12 Q All right. So the version with the 23.5, the
13 version with the ten years, 2.25 is the real operative
14 document. Correct?

15 A Correct.

16 MR. SPENCER: Your Honor, I want to offer
17 Exhibit 542 which is the original version of the real
18 estate option agreement.

19 MR. ROBISON: No objection.

20 THE COURT: 542 is admitted, Ms. Clerk.

21 COURT CLERK: Thank you.

22 (Exhibit 542 is admitted into evidence.)

23 MR. SPENCER: May I approach?

24 THE COURT: Yes.

1 MR. ROBISON: Your Honor, I should interrupt,
2 excuse me, but this is the original, this is, again,
3 stipulated chain of custody.

4 And we should also put on the record that
5 there's been a formal waiver of the attorney/client
6 privilege with respect to Mr. Hascheff and the trustees.

7 THE COURT: Thank you, counsel.

8 MR. SPENCER: Stipulated.

9 BY MR. SPENCER:

10 Q So this is in a sleeve marked Exhibit 542,
11 it's the original. Okay?

12 A Okay.

13 Q It's backwards. The signature page is on top
14 because of the where it came from, but I'm going to the
15 swap that and put it in order. Okay?

16 A Okay.

17 Q Take a look at the signature page there and
18 you can see that's the original signature page, right,
19 on the last page?

20 A Yeah, it looks like it, yes.

21 Q It has a five written over the page 4 at the
22 bottom?

23 A Yes.

24 Q All right. And so that being the original

1 version of the real estate option agreement, tell the
2 jury what the terms are in Paragraph 2 on page -- I'm
3 sorry. The end of Paragraph 1 on page 2, lien 615.

4 A You mean the -- the continuation paragraph on
5 page 2?

6 Q Yes, sir. That same sentence where it says
7 "The note will include, that being the original
8 version."

9 A Says "Paid by delivery by buyer to seller
10 unsecured promissory note." Then it goes on to say
11 "Five-year maturity, interest-only payments, six percent
12 per annum." Is that what you're referring to?

13 Q Yes, sir.

14 A Okay.

15 Q So the original document that contains the
16 original signatures contains the five years, six percent
17 per annum, as opposed to the one that you said was
18 operative, which is -- I'm sorry -- which is ten years,
19 2.25 percent per annum, doesn't it?

20 A Yeah, until we changed it.

21 Q Well, no, that's the original.

22 A Correct.

23 Q Okay. So where's the page that has the
24 change that you talked about?

1 A It's on page 2 of 23.5.

2 Q Okay. That's the version we looked at
3 earlier?

4 A Correct.

5 Q All right. And so it's in some other
6 document somewhere that's not the original. Right?

7 A I guess I'm not following the question.

8 Q Well, that's the original that contains five
9 years, six percent per annum --

10 A Correct.

11 Q -- as the term. You say the operative
12 version has a page switched out which is 2.25 for ten
13 years.

14 A Correct.

15 Q And it's got to be in some other document
16 besides the original, doesn't it?

17 A This -- the one with the 2.25 percent became
18 the operative document.

19 Q Well, no, because the original is there and
20 the signature page with the five on the page 4 at the
21 bottom is connected to it.

22 A That's true, but then once we made the change
23 this is no longer operative.

24 Q Well, where's the operative version that has

1 **that signature page on it?**

2 A Same signature page.

3 **Q Right.**

4 A We go ahead and change page 2, so that they
5 can cash flow the amount, that's why it's 2.25 percent
6 ten years, so page 2 is inserted.

7 **Q Page 2 is inserted somewhere. But it's not**
8 **in that document which is the original. Correct?**

9 A Right, until we made the change.

10 **Q Well, when did you make the change?**

11 A I couldn't tell you when, but we did.

12 **Q If you made the change and that's the**
13 **original it would be in that version, wouldn't it?**

14 A I guess I'm still not following. We made the
15 change.

16 **Q Well, the original is right there in your**
17 **hand. Exhibit 542.**

18 A Okay.

19 **Q And it contains the five years six percent**
20 **per annum. And so if that's the original and you made**
21 **that change, then presumably the ten years 2.25 would be**
22 **in that second page. Right?**

23 A Unless there's another one. I mean, I don't
24 know.

1 Q Well, there can't be another one because the
2 signature pages are the same.

3 A Right, but like I said, we made the change on
4 page 2.

5 Q Who's we?

6 A Sam, I think Kevin was involved, and Todd,
7 because it had to cash flow.

8 Q And -- well, when the document got sent out
9 to a third party, Ticor, that version that you have,
10 Exhibit 542, was the one that got sent. Right?

11 A Yeah, it looks like it, yes.

12 Q And that was December of '12.

13 A Yes.

14 Q Okay. And the version that has the new terms
15 with the page swapped out has what signature page
16 attached to it?

17 A The one that went to Ticor?

18 Q No, the one that you say is operative.

19 A Okay. It's the same signature page.

20 Q Okay. Well, then, how is it possible,
21 logically, to have that version, 542 in your hand,
22 without the second page ten years, 2.25 percent terms in
23 it?

24 A Like I said, the only explanation I can think

1 of is that my secretary sent this one when she should
2 have sent the other one.

3 Q Okay. Where's the page that has ten years
4 2.25 percent?

5 A We turned over all the documents to you so
6 it's -- I don't know if it's this or not, but that's the
7 operative document.

8 Q Not to me, to Todd and his attorney, right.

9 MR. ROBISON: Objection, your Honor. We
10 turned the document over to Mr. Spencer and spent --

11 THE COURT: All right.

12 MR. ROBISON: -- two days.

13 THE COURT: I think we're talking about the
14 same thing. The documents went from Mr. Hascheff to
15 Todd and counsel and through Todd and counsel landed in
16 discovery with Mr. Spencer and counsel.

17 BY MR. SPENCER:

18 Q Yeah. I may not have been clear. You
19 physically did not turn them over to us, it went through
20 the process. Right?

21 A Well, that would be only way to do.

22 Q Right.

23 A Because there was no litigation at the time,
24 but I stopped closing my practice. I gave all my

1 clients the option to come pick up their files. And

2 Jaksick was just one of them.

3 Q Okay. And so you don't really have an
4 explanation for why page 2 is not there in that
5 original, do you, the one that you think is operative.

6 A Other than that, once I was told I can't cash
7 flow that five-year term at six percent, we made the
8 change on page 2 to reflect the new terms.

9 Q Right. And you said that and my question was
10 different. You don't -- you don't really have an
11 explanation for why that page 2 is not connected to the
12 original, do you?

13 A I don't know whether the fact that we maybe
14 changed page 2. I used the signature page for page 2.

15 Q And you understand that if you make a
16 modification to the agreement, that the terms, which
17 specifically Paragraph 15 which is on page 3, Keith,
18 requires that the document be resigned. It says "The
19 agreement may not be amended," Paragraph 15, "The
20 agreement may not be amended or modified unless such
21 amendment or modifications in writing and signed by both
22 parties hereto."

23 A That's a typical provision.

24 Q Right. That didn't happen here either, did

1 **it, once you modified the agreement?**

2 A Again, it's between family so they gave me
3 permission to do what I did. I would have never
4 inserted the new term unless they agreed to it.

5 Q **You're the drafter of this document.**

6 **Correct?**

7 A I am.

8 Q **And you could have easily put at the end of**
9 **that modification sentence, unless this is done between**
10 **family, then this provision does not apply.**

11 A I typically wouldn't put that in there.

12 Q **Well, there's no exception in there is what**
13 **I'm getting at, is there?**

14 A No, but --

15 Q **Okay.**

16 A -- they agreed to it. We made the change.

17 Q **So you modified the agreement in violations**
18 **of the terms --**

19 A Not if the client says waives it and says you
20 don't need to put it in writing, I don't want to do
21 another amendment to this document, just change it.

22 Q **You don't have a waiver of that, do you?**

23 A Again, it's family, so my client says go
24 ahead and change it out, that's what I'm gonna do. I'm

1 not gonna say well, wait a minute, we have to charge you
2 for a modification or we're going to have to take some
3 time to do a modification. It's very simple to just
4 change it out.

5 Q My question was you do not have a waiver from
6 Sam that says we do not have to abide by Paragraph 15,
7 do you?

8 A Unless it's in the file, I don't know if
9 there's one or not, I don't believe so.

10 Q You would not have prepared that, would you?
11 Because it's between family.

12 A Pardon me?

13 Q You would have not prepared a waiver like
14 that because, as you said, it's between family.

15 A That we're not going to be able to make those
16 terms so this is what we can live with.

17 Q So you agree this is a contract, right, this
18 option agreement?

19 A Yes, it is.

20 Q And so the terms of this contract in
21 particular are optional if -- or are optional because
22 it's between family members. Right?

23 A Well, when you say optional, it's an
24 agreement between TSS and SSJ, eventually SSJ.

1 Q And your testimony is that provisions can be
2 waived or they're optional because it's between family
3 members.

4 A Well, I'm just saying that it's between
5 family. And ultimately if I have two independent
6 parties, then I probably would have had something
7 modified in writing.

8 Q But because this was Incline TSS, which was
9 Todd and entities, and SSJ, LLC, which was --

10 A Sam.

11 Q -- owned by the family trust, but managed by
12 Todd and Sam, you could waive required paragraphs.
13 Right?

14 A Yeah, they didn't -- they said make the
15 change I made the change.

16 Q And so why wasn't this agreement between --
17 or signed by one of the managers of SSJ LLC?

18 A Well --

19 Q Was that -- was the transfer after that?

20 A Yeah, originally we set it up between Sam as
21 trustee of this trust. Then as I think I testified
22 before, I wanted to put another LLC in the middle, so it
23 was SSJ, and I thought -- remember correctly we
24 ultimately transferred the option agreement from Sam, he

1 assigned that agreement to SSJ, and then ultimately when
2 the option was exercised by TSS, then SSJ was the
3 operative party.

4 Q Okay. So this particular agreement at the
5 time that it was entered in November 1 of 2010, Lake
6 Tahoe was still in the family trust.

7 A I believe so.

8 Q You became aware that -- I'm sorry, on Friday
9 you testified that Todd's trusts were the only entities
10 that had the ability to make the option payments.
11 Right?

12 A I think that's why it was structured that
13 way.

14 Q And then you make a change, pretty
15 significant terms in the agreement that lower the
16 interest rate and make the payout longer because of the
17 cash flow issues they had. Right?

18 A Correct.

19 Q And so they were not as equipped with
20 liquidity as you thought regarding making the option
21 payments, were they, todd's entities, Todd's trust
22 entities?

23 A Okay, I guess I don't understand the
24 question.

1 Q Well, if they had money to pay the option in
2 the original agreement, then you would have had to make
3 the change that you made when you switched the pages
4 out. Right?

5 A Well, I think at the beginning they thought
6 they could make those payments, and then they ran some
7 more cash flow projections and they said we can not do
8 -- we can't make those payments. So as I explained to
9 them, we can not have a term in there as their cause of
10 default, you've got make sure you can afford what we're
11 going to put in the agreement.

12 Q So what you assumed about those trusts,
13 Todd's trusts' ability to pay the option agreements was
14 not true, was it?

15 A No, because they could afford the ten years
16 2.25 percent. And then again, like I said, Sam would
17 then be renting and paying whatever it was, 25,000
18 dollars, whatever the rental amount was, he would have
19 paid that in TSS and TSS would use that money to
20 basically make the payments.

21 Q On the 7.1 million dollar note.

22 A It was less than that --

23 MR. ROBISON: Objection, that misstates the
24 evidence. It was 6.3.

1 THE COURT: Do you agree, Mr. Spencer?

2 MR. SPENCER: No, he's talking about a
3 different note. I wish you wouldn't interrupt my
4 examination --

5 THE COURT: Hold on. What you wish isn't
6 important. It's overruled.

7 MR. SPENCER: Apologize.

8 BY MR. SPENCER:

9 Q I'm talking about the 7.25 million dollar
10 original note that ended up with -- ended up being 7.1
11 million that Incline owed to SSJ.

12 A Yeah, it wasn't 7.2 because there was option
13 payment in the meantime so the note, the issue was
14 something less than 7.2.

15 Q Right. And so the \$22,000 in lease payments,
16 the design was \$22,000 in lease payment would be paid
17 into Incline TSS.

18 A Right.

19 Q By Sam.

20 A Correct.

21 Q And then that would be used to pay the
22 payment on the 7.1 million dollar note to SSJ LLC.

23 A Plus whatever money that they needed to
24 service both.

1 Q Yeah. And then the 6.3 million dollar note,
2 mortgage note back to Bank of America was still owed so
3 that -- those payments would have to be used to pay that
4 down.

5 A Yeah, in addition to other money, I believe,
6 they had to make both payments. And it worked out, they
7 were able to basically refinance the debt with B of A so
8 it ultimately worked out.

9 Q And so you have any knowledge that -- of
10 whether Todd's trusts could have paid the payments on
11 the 7.1 million dollar note to SSJ, LLC without the
12 lease payments from Sam?

13 A They had done some cash flow projections.
14 Like I said, I told them whatever their term is you're
15 gonna be able to have to make the payment.

16 Q Right. My question was do you have any
17 knowledge of whether they had the ability?

18 A Well --

19 Q Todd's trusts.

20 A You've got Kevin Riley, you've got Todd
21 Jaksick, you've got Sam Jaksick. So they were going to
22 use the money from the trust as well as whatever other
23 sources of income, including sales of the Montreux lots,
24 they were just looking at a way to basically get this

1 short-term financing done until they could go out and
2 refinance the debt which ultimately they did do.

3 Q And did you find out that Todd's trusts ended
4 up having trouble making the option payments?

5 A If I remember right he asked for an
6 extension--

7 Q Yes, sir.

8 A -- to make a payment.

9 Q Show you Exhibit 23.9.

10 A Okay.

11 Q You recall this -- or have you seen this
12 document?

13 A I believe I have.

14 Q Where the option payment was due and then it
15 got extended to March 9th of 2012 and then paid on March
16 2nd of 2012.

17 A It was just extended until February 25th.
18 And then down at the bottom you're talking about the
19 3/9/12?

20 Q Yes, sir, you're right. In the letter
21 itself, it extended until February 25th of '12 and then
22 another extension to March 9th of '12.

23 A Yeah.

24 Q Right?

1 A I don't recall that -- that note down there,
2 but I drafted this document.

3 Q **The typewritten version.**

4 A Correct.

5 Q **Okay. And then you didn't know about the**
6 **handwriting with the arrow --**

7 A I could have -- I could have, but I just as
8 of today I just don't recall that additional change.

9 Q **So there were issues with making the option**
10 **payment that even under the terms that were changed,**
11 **supposedly. Right?**

12 A Yeah, there was -- it was very minor
13 extensions and they paid an additional \$5800 for that.

14 Q **Okay.**

15 A The extension, so there was consideration for
16 that. I think the way they got the 500 was because it
17 was basically an interest for that period of time. So
18 it wasn't a free extension, in other words.

19 Q **Okay. And then you became aware of the third**
20 **amendment to the trust?**

21 A Yeah, there was some amendment -- are we back
22 on the trust now?

23 Q **Yeah, I'm going to switch --**

24 A Okay.

1 Q -- topics.

2 A Okay.

3 Q Going back to the trust, the third amendment,
4 you became aware of that?

5 A Yeah, I think they -- what I mentioned to you
6 before they delivered piecemeal to me a variety of
7 different amendments so it was difficult getting the
8 arms around what the operative document was.

9 MR. SPENCER: Your Honor, Exhibit 153 A is
10 stipulated.

11 THE COURT: Thank you. 153 is admitted, Ms.
12 Clerk.

13 COURT CLERK: Thank you.

14 THE WITNESS: Can I see that one?

15 MR. SPENCER: Oh, yeah.

16 THE WITNESS: Okay. I have it.

17 BY MR. SPENCER:

18 Q All right. And this is the third amendment
19 to, and complete restatement of the Samuel S. Jaksick
20 Junior Family Trust Agreement. Right?

21 A Correct.

22 Q And flipping over to page 7, do you recall
23 that this trust version called for the creation of
24 Credit Shelter Trust with a minimum of 22.5 million

1 dollars put into it, Section 3.2 on page 7?

2 A Okay. I see page 7.

3 Q Do you see that, credit shelter was created
4 22.5 million dollars first?

5 A Correct.

6 Q And then the rest of it, of the estate or the
7 trust estate was to be put into the marital trust, down
8 below, Keith.

9 The entire remaining balance of settlor's
10 interest in the trust estate would be put into a marital
11 trust for Sam's wife. Right?

12 A Right. The question I have for you is why
13 are we even talking about this because this trust
14 basically was eliminated when they did the 2006 trust --

15 Q I understand.

16 A -- so it's not operative. It became
17 inoperative when they went and amended the trust in June
18 of 2006.

19 Q There was some estate planning done in this
20 trust is what I'm asking you.

21 A Yeah, but I didn't focus on this because it
22 was an inoperative document. The operative document was
23 June 29th, 2006, I believe.

24 Q You didn't know that when you first started

1 working on these matters, you thought this was the
2 operative. Right?

3 A When I first, yeah.

4 Q Yeah. And so it had estate planning
5 provisions in it, put some money aside into a credit
6 shelter, give the rest to my wife for her life. Right?

7 A Correct.

8 Q And everything that went to Sam's wife would
9 be passed to her tax free at his death to be tax loaded.
10 Right?

11 A Say that again, please?

12 Q Marital deduction.

13 A Correct.

14 Q And so whatever Sam's spouse received would
15 go into his marital trust and would pass to her tax
16 free, estate tax free. Right?

17 A Correct.

18 Q And then the distributions under this trust
19 included provisions for all of Sam's children; is that
20 right?

21 Page 10, Keith. Page 9.

22 Let's start on page 9. And so here at the
23 bottom "Upon settlor's death the trust shall be divided
24 as follows:" And the first provision creates an amount

1 equal to the maximum GST exemptions, generation
2 distribution trust exemption. 1.5 million to be
3 increased to two million dollars. Then the entire
4 remaining balance of the trust allocated Stan one third,
5 Todd one third, Wendy one third. Right?

6 A Correct.

7 Q Okay. And this was signed November 30th of
8 2005. Just page 25, Keith.

9 A It was signed -- I didn't prepare this
10 document, but it was signed, it looks like, on November
11 30th.

12 Q But you did prepare a document called a
13 Certificate of Trust Existence and Authority, didn't
14 you?

15 A You need to show it to me.

16 Q Okay. It may be in that binder you have, but
17 your Honor, offer Exhibit 190? Stipulated.

18 THE COURT: 190 is admitted as well.

19 MR. ROBISON: Thank you.

20 COURT CLERK: Thank you.

21 (Exhibit 190 is admitted into evidence.)

22 THE WITNESS: Need me to go back to it?

23 BY MR. SPENCER:

24 Q No. Do you recall that document, Exhibit

1 190?

2 A Did I prepare this document?

3 Q Do you recall it, yes.

4 A I don't recall preparing this document or
5 not.

6 Q Okay. Any idea who would have prepared it,
7 do you know?

8 A I mean, it could easily be me. I just don't
9 remember preparing it.

10 Q It looks a lot like the same formatting that
11 you used, 2, 2.1, 2.2, et cetera, numbering paragraphs
12 that way. Does that ring a bell?

13 A Yeah. Like I said, it could be me.

14 Q And in this document, and the reason we
15 looked at the third amendment is that in the recital
16 paragraph at the top, describing the trust agreement,
17 It cites to the family trust from December 4th, 2003,
18 and then a first amendment February of '04. Second
19 amendment, May of '04, and then a third amendment,
20 November 30th of 2005.

21 A Yeah, that's what it says.

22 Q All right. And the signature page on the
23 next page, Keith, shows that it was dated September 3rd
24 of 2008.

1 A It does.

2 Q Okay. So that was after the 2006, June 29th,
3 2006, restatement of the trust. Right?

4 A Yeah, it just depends when I got the '06
5 document.

6 Q Well, this is -- this would indicate you did
7 not have it as of September 3rd of 2008, wouldn't it?

8 A Correct.

9 Q And what was the purpose of the Certificate
10 of the Trust Existence and Authority?

11 A Well, was this document ever recorded?

12 Q I'm not sure, but what typically why do you
13 prepare this document?

14 A Because what you want to do is you do a
15 Certificate of Trust in Existence and Authority so that
16 you can record it so people know who the trustees are.
17 So, for example, if you're selling or buying real
18 estate, typically you can record this document and the
19 title company, everyone knows who the trustees are.

20 Q And so at this point in time you believed
21 that the trust amendment which we just looked at was the
22 operative trust agreement. Correct?

23 A The third amendment?

24 Q Yes, the third amendment.

1 A Yeah, the -- I think that's a fair statement,
2 yes.

3 Q And, in fact, in the Paragraph 2.4, the
4 powers and discretions are described on Exhibit A. You
5 see that?

6 A Yes.

7 Q The Exhibit A that's attached contains an
8 excerpt, turn to JSK 1841, from the powers that are
9 listed in the third amendment. Correct?

10 A I assume that's where it came from.

11 Q All right. You see how that's Article 8,
12 Section 8.1 A, B, et cetera?

13 A Right. I see it.

14 Q Okay. Let's turn back to Exhibit 153 A, page
15 MCL 1125. This is the third amendment, and there's that
16 Article 8 with the powers. Do you see that?

17 A Yes.

18 Q That so confirms that the powers you attach
19 to the Certificates of trust and Authority were the
20 powers from the third amendment. Right?

21 A Yeah. Are you telling me they're the same?

22 Q Yes.

23 A Okay. Then it would be true.

24 Q Okay. And flipping back to Exhibit 190,

1 Keith.

2 Looking at page JSK 1839, do you know who
3 prepared that signature page, Exhibit 190?

4 A Could have been us. It could have been
5 Jessica Clayton.

6 Q Can you blow it all the way up, Keith.
7 Do you see these no page number at the bottom
8 of it?

9 A Okay, no page numbers.

10 Q All right. And then back to the top. Do you
11 know whether that signature of Sam -- you said you're
12 familiar with his signature. Do you know whether that's
13 his?

14 A Like I said last time, I'm not a handwriting
15 expert, but it kind of looks like his.

16 Q Well, do you know whether that signature is a
17 stamp signature of Sam's?

18 A A stamp?

19 Q A stamp.

20 A Well, I represented him for a long time. I
21 don't ever recall him having a stamp.

22 Q Okay. You didn't know about him having a
23 stamp.

24 A Yeah, I never -- I have never seen him do a

1 stamp signature.

2 Q Okay. Pull that back up, Keith. Blow it up
3 just a touch.

4 What we do know if that's a stamp, then
5 Jessica Clayton notarized a stamp signature of Sam.
6 Right?

7 A I mean, is it a stamp?

8 Q Well, if you look below, right at the -- the
9 acknowledged, who acknowledged, there's another version
10 of the Jaksick up there. And then if you look down
11 below the signature line there's another version of it.
12 And then below that there's an even fainter, more faint
13 version of that. And so, you see how it's the same
14 signature in four different places on that document?

15 A Yeah, I've never even seen that before.

16 Q Right. And where it appears that it was
17 rolled through a fax or something, ink stamping wasn't
18 dry, and then every time it came around it stamped again
19 four times, doesn't it?

20 A I don't know that to be true or not true.

21 Q Well, it's the same J. in each of those
22 versions. Right?

23 A I don't know that either. I can hardly read
24 it.

1 Q Okay. So you just don't know how this
2 particular page got signed, do you, Exhibit, it would be
3 JSK 1839 of Exhibit 190, do you?

4 A Well, it's Jessica Clayton was in Sam's
5 office, so he probably signed it in his office.

6 Q Probably means you don't know, do you?

7 A Well, you asked me an opinion and I'm saying
8 it was notarized by her which she did quite a few times,
9 so it would have been -- she would not come to my office
10 and notarize it, she would be in Sam's office.

11 Q Actually wasn't asking your opinion, I was
12 asking if you had personal knowledge of it. Do you have
13 personal knowledge of how this particular page, JSK 1839
14 of Exhibit 190, got signed?

15 A No, because I wasn't there when he signed it.

16 Q And by the way, does -- do you know whether
17 Ms. Clayton keeps a notary book?

18 A I would assume she does.

19 Q Do you know whether Nanette Childers kept
20 one?

21 A Yes.

22 Q And does Ms. Childers keep one? Or did she?

23 A I believe she did, yes.

24 Q So if Sam signed this certificate of trust

1 existence, then that would indicate that he wasn't aware
2 or had forgotten or that there was some problem with him
3 knowing about the restated 2000, June 29th, 2006,
4 version of the trust. Correct?

5 A Like I mentioned before, they gave me a bunch
6 of documents. I didn't see the '06 one until much
7 later, I can't tell you when, but there was a period of
8 time that we believed, based on the documents that were
9 provided that the '03 trust was the operative trust and
10 followed by those amendments.

11 Q I understand. Let me ask the question
12 different way. So because this document purports to
13 have Sam's signature on it and if he signed this and it
14 doesn't mention the 2006 document after that document
15 was signed, either Sam did not read the document or did
16 not understand it. Correct?

17 A Or he just -- he just forgot there was an '06
18 trust. I don't know.

19 Q Or he went with your representation that this
20 was a document he just needed to sign. Right?

21 A Well, if I remember correctly, I asked him if
22 they had a Certificate of Trust Existence and was that
23 document recorded. And they probably said no. And so I
24 said you really need to have this trust certificate of

1 existence, but if it wasn't recorded, which is usually
2 -- what this purpose, then, then ultimately we figured
3 out obviously sometime after '08 that there was an '06
4 agreement. It was just maybe didn't remember it because
5 these were all prepared by the LeGoy law firm as well as
6 the '06.

7 MR. SPENCER: Well, the LeGoy law firm
8 prepared Exhibit 189, your Honor, and I offer it as
9 stipulated.

10 THE COURT: You say 189?

11 MR. SPENCER: Exhibit 189.

12 THE COURT: 189 is admitted.

13 COURT CLERK: Thank you.

14 (Exhibit 189 is admitted into evidence.)

15 THE WITNESS: I take that back. Maybe it
16 wasn't LeGoy that prepared it. Maybe it was Jaksick's
17 prior lawyer, Stanford.

18 BY MR. SPENCER:

19 Q Could have been.

20 A Yeah.

21 Q But there was -- this particular document is
22 a certificate of -- and I don't want to misstate it if
23 it was his prior firm and it wasn't Mr. LeGoy, that's --
24 I'm sorry, on the left side of the line there there's

1 some little type that says Maupin, Cox, LeGoy. Do you
2 see that?

3 A On 190?

4 Q 189, sir.

5 A And where are you pointing to?

6 Q Right here. See the line here?

7 A Yeah, that's what it says. Yes.

8 Q Okay. And so this is a certificate --
9 certification of the Samuel S. Jaksick Junior Family
10 Trust.

11 And just flip to the back, Keith, real quick
12 to the signature page which is MCL 878.

13 And this was signed August 23rd, 2006. Right?

14 A That's what it indicates, yes.

15 Q And so back to the first page, Keith, 1, MCL
16 870 of Exhibit 189.

17 Under first paragraph existence of trust, Sam,
18 a married man, formed the family trust pursuant to the
19 family trust agreement dated December 4th, 2003, and
20 restated it June 29th of 2006. Do you see that?

21 A That's what it says.

22 Q All right. So Maupin, Cox, LeGoy firm got it
23 right as far as the document that was operative at that
24 point in time, August 23rd of 2006. Correct?

1 A Well, they prepared the documents. Right?

2 Q Yes. They prepared them and they properly
3 described the trust in this particular certification.

4 A Right, because they prepared the trust and
5 did the certification.

6 Q And so Sam already had a certification that
7 he had signed back in 2006 at the time that you prepared
8 Exhibit 90 in 2008.

9 A Like I keep telling you, I didn't know about
10 this document. I did not know about the '06 trust until
11 well after.

12 Q Right. I'm just saying that there was a
13 certificate in place. You asked if there had been any
14 others, you said there was one in place.

15 A Right. I didn't see this one until after.

16 Q Did -- was this certificate Exhibit 190 that
17 you prepared ever revoked?

18 A I can't remember if it was or wasn't.

19 Q All right.

20 A Typically you don't revoke a certificate of
21 trust. It's just for recordation purposes.

22 Q You'd rather have two of them out there that
23 conflict with each other?

24 A No. What would happen is that ultimately you

1 would record another certificate of trust with the
2 updated information.

3 Q Okay. And go back to Ms. Childers and her
4 notary book. You mentioned she worked for you. Right?

5 A Correct.

6 Q Do you know that she did not record all
7 instances of her notarizing documents in her notary
8 journal as required by Nevada law?

9 A No, I did not know that.

10 Q Now, let's --

11 A Aren't there some exceptions? About a
12 six-month exception of --

13 Q Well --

14 A -- that a notation, if you know the person,
15 private piece, notarize their signature within six
16 months, they come back, then you don't have to put in
17 all the information in a notary book.

18 Q She was notarizing signatures over a fairly
19 long period, wasn't she?

20 A I don't know.

21 Q Well, she worked for you during the time --

22 A She did, but I mean, I didn't audit her
23 notary book.

24 Q So let's turn to Exhibit 13. And again, this

1 is a second amendment, this is one you prepared?

2 A Yeah. Can I have a copy of that?

3 Q Sure.

4 A Are you going to go back to this?

5 Q No.

6 A Okay.

7 Q So again at the top, you cite to in the title
8 "This is the second amendment the trust agreement
9 restated pursuant to the" -- and I'm in the title,
10 Keith. But even there, too.

11 Pursuant to the agreement dated June 29th,
12 2006.

13 A Correct.

14 Q So, this was December 10th of 2012. Right?

15 A Correct.

16 Q And you at this point in time knew about the
17 restated trust, June 29th, 2006.

18 A At this point I would have known about it.

19 Q And then --

20 A Maybe sooner.

21 Q Okay. And then you -- but you cite to the
22 third amendment which was signed back in 2000.

23 A Five.

24 Q 2005, November of 2005 as being the operative

1 document again. Right?

2 A No. When you say operative document the
3 filing recital indicates that the '06 trust now restated
4 and amended the trust in its entirety, which means that
5 everything that's listed before that is no longer
6 operating.

7 Q I was going to get to that, but I'm just
8 saying at the top in the title and in the introductory
9 paragraph you say that the -- on at least the
10 introductory paragraph, the third amendment dated June
11 29th, 2006, that was incorrect, wasn't it?

12 A Okay. What wasn't correct?

13 Q At the very top in the title.

14 A Right.

15 Q Third amendment dated June 29th, 2006.

16 A Yeah, it should not say third amendment, it
17 should just say restated and restated trust.

18 Q Which is what was -- what was said in the
19 opening paragraph there?

20 A Correct.

21 Q Trust agreement restated?

22 A Correct.

23 Q All right. And then going through the
24 recitals just real quick, the trust agreement, and I

1 won't read every date fully because it's right there,
2 but we have a trust agreement and Recital A in 2003.
3 See that?

4 A Yes. Right.

5 Q Another a first amendment February of 2004.
6 The second amendment in May, 2004?

7 A Right.

8 Q Third amendment, November 30th, 2005?

9 A Correct.

10 Q And then the restated version, 2006.

11 A Correct.

12 Q And then there's a Recital F where there's a
13 correction that the document entitled fourth amendment
14 dated May 14th, 2011, should have been called the first
15 amendment to the restated version?

16 A Correct.

17 Q And so then from that recital down you called
18 the fourth amendment the first amendment; is that
19 correct?

20 A Correct.

21 Q So down below where it says first amendment
22 you're not referring to the '04 version, you're
23 referring to the May, 2011, version.

24 A Correct.

1 Q Okay. Sam -- in Recital Second F down below
2 that one, Sam desires, now desires to terminate, replace
3 in its entirety the first amendment, and enter into this
4 second amendment to the restated family trust.

5 A Correct.

6 Q Nowhere in this document does it cite to or
7 replace the fifth amendment, does it?

8 A No, because the first amendment was
9 terminated in its entirety. So the second amendment was
10 going to be the operative document amending the 2006
11 trust.

12 Q Yes. But the fifth amendment is not
13 mentioned so it's not replaced, is it?

14 A Like I mentioned to you last time, when we
15 did this I prepared these amendments without the '06
16 document, all right? It wasn't provided to me until the
17 last minute. And as I explained to Sam, you know, we
18 just did a bunch of amendments that really are of no
19 consequence. Nobody basically wasted time trying to
20 prepare these documents. So what we decided to do is
21 just say forget about the fifth amendment, it's the
22 second amendment that's going to control because the
23 fifth amendment, although it was executed, made no
24 sense.

1 Q The fifth amendment was executed April 27th,
2 2012, which was after the fourth amendment. Right?

3 A It was.

4 Q And you cite to the fourth amendment and
5 replace it, but you don't recite to the fifth amendment.
6 How was Sam supposed to know how the fifth amendment
7 applied?

8 A Because we talked about it.

9 Q And how were the beneficiaries supposed to
10 know whether the fifth amendment applied?

11 A I can't speak for the beneficiaries, I'm just
12 -- the fifth amendment if you look at it doesn't make
13 sense so we decided it really wasn't the fifth
14 amendment, because the '06 document was the operative
15 document. Really amended trust is going to be ongoing
16 to be the '06 trust now and this is going to the second
17 amendment to the sixth trust.

18 Q Why doesn't the Fifth amendment make sense?

19 A Because there -- well, it should not be a
20 fifth amendment.

21 Q But content of the fifth amendment makes
22 sense. Right?

23 A It does, but it's primarily the same
24 provisions were in the fifth trust within the second

1 there's some differences, but there are a lot of same
2 provisions because we just were just moving basically
3 into the second amendment that has a lot of the same
4 provisions in the fifth.

5 Q Well, the big change in the second amendment
6 Wendy was getting -- in the prior versions Wendy was
7 getting a hundred percent of her one-third share, in
8 some of them she had a reduction, but in the second
9 amendment her share was divided 80/20 between 80 going
10 to her and 20 going to Luke.

11 A Correct. That's what's Sam wanted.

12 Q So that's a significant change in the
13 dispositive provisions that related to Wendy. Right?

14 A Right. But she also got an extra 1.5 million
15 dollars as well so, I mean, the way Sam looked at that
16 time he just wanted to make sure that Luke had some
17 money.

18 Q The 1.5 million dollar reduction was removed
19 in the second amendment.

20 A Correct, which means she wasn't gonna get a
21 deduction like she had in the previous.

22 Q Then let's look at TJ 4 of Exhibit 13, Keith.
23 So 3.22, 3.2.2 on page 4, Exhibit 13?

24 A Okay.

1 Q Let's back up, Keith, real quick, go to
2 the previous page, TJ 3.

3 3.2 is where the 20 percent is carved out for
4 Luke?

5 A 3.2?

6 Q Yes, sir. "Trustee shall distribute from
7 Wendy Jaksick Smrt's one-third share of the trust
8 estate, 20 percent to Luke and \$100,000 to Lexi.

9 A Correct.

10 Q And then down below the end of that page,
11 Keith.

12 That's where the 1.5 million dollar reduction
13 is reduced, the very last two lines?

14 A Correct.

15 Q And that was eliminated. And then on the
16 next page 4, TJ 4 of Exhibit 13, "Upon Wendy's death,
17 whatever's left in the trust would pass 70 percent to
18 Luke and 30 percent to Lexi."

19 A Lexi, yeah. That's what he wanted.

20 Q And then below that, there's an income
21 distribution paragraph and then there's 3.2.2.2, there's
22 -- and then this one says "When Lexi attains the age 35,
23 trustee shall distribute such beneficiary only one half
24 of Luke Jaksick's 70 percent share." Right?

1 A Correct.

2 Q And then down Subsection B, when Lexi attains
3 the age 35, trustee shall distribute one half of the
4 trust estate, and at age 40 the balance of her 20
5 percent share to the trust estate.

6 A Correct.

7 Q And so that only makes up 90 percent, doesn't
8 it?

9 A No. If I remember correctly, he was supposed
10 to get 70 percent and she was supposed to get -- let's
11 see.

12 Q It's a 70/30 split, you saw that above.

13 A Correct.

14 Q Then down below it only addresses 90 percent
15 of that 70/30 split, doesn't it?

16 A That's what it says.

17 Q And that's an error in the document. Right?

18 A Yeah. Hers should probably be 30 percent.

19 Q Yeah. Because the next paragraph says once
20 they're over 40, 70 percent to Luke, 30 percent to Lexi?

21 A Right. That's correct.

22 Q So that's an error that Sam obviously didn't
23 catch, but would have if he had read it. Right?

24 A If I remember right he was making changes on

1 these percentages back and forth, back and forth. And
2 -- I'm sure he read it, probably just didn't pick up on
3 it, just like I didn't pick up on it.

4 THE COURT: And with that, ladies and
5 gentlemen, we'll stand for a minute.

6 (Short pause.)

7 THE COURT: Counsel, you may continue.

8 BY MR. SPENCER:

9 Q Do you know if any payments were changed out
10 of this Exhibit 13, the second amendment?

11 A I don't believe so.

12 Q If any pages were updated or modified without
13 Sam's signature?

14 A I don't believe so.

15 Q Let's flip to Exhibit 202. You mentioned
16 that Sam was making changes -- this is TJ 2571. Making
17 changes here and there. Right?

18 A Yeah, that looks like his handwriting.

19 Q In this one he changed it not 70/30 but
20 75/25.

21 A Yeah, that's what it looks like he wanted at
22 that time.

23 Q But that's not what ended up in the trust, is
24 it?

1 A Well, that's because he changed it again.

2 Q 70/30.

3 A Correct.

4 Q And he communicated that to you.

5 A He did.

6 Q Was Todd involved with that?

7 A I don't believe so.

8 Q Todd was an intermediary between you and Sam,
9 though, wasn't he?

10 A I mean, he was at several of the meetings,
11 but typically when he's leaving, in this case Sam is
12 leaving or modifying his estate plan he would meet with
13 me, not necessarily with Todd.

14 Q There were times when you met with Todd alone
15 about Sam's estate plan. Correct?

16 A It could be.

17 Q Okay. And that particular document, Exhibit
18 202, you can see at the front of it Jessica Clayton
19 sending that to you December 18th of 2012?

20 A Correct.

21 Q And attached to it are multiple orphan
22 signature pages that are already signed. Right?

23 A Yeah, if that's what was attached to the
24 email.

1 Q And so why would you need to be receiving
2 multiple signature pages of Sam's that were not attached
3 to any other pages, do you know?

4 A Can I see that exhibit?

5 Q Yes, sir.

6 MR. SPENCER: May I approach, your Honor?

7 THE WITNESS: So --

8 BY MR. SPENCER:

9 Q Hold on, let me make sure to get a good
10 record. Exhibit 202, it's already admitted. Is that
11 what you're looking at?

12 A Correct.

13 Q Okay. And so now you can see that that email
14 contained numerous orphan signature pages that Sam had
15 already signed.

16 A Correct.

17 Q Do you know why -- back to my question. Do
18 you know why you would need to have multiple orphan
19 signature pages that weren't attached to other pages?

20 A Well, this didn't happen all the time, but it
21 did happen where we would send the documents by email to
22 them, Sam would sign the documents, obviously signature
23 page to the document, and then Jessica would either
24 email back. I said it didn't happen all the time, but

1 it was unusual for her just to email me the signature
2 pages, or curry them, they would have somebody curry the
3 actual original which included attached documents
4 sometimes and sometimes it didn't.

5 Q Right. And so why would you advise that all
6 the documents needed to stay connected to each other and
7 not be sent piecemeal?

8 A Well, I wouldn't advise that, but it
9 happened. Didn't -- not just with them, but with other
10 clients, too.

11 Q Okay.

12 A And they still -- they probably still had the
13 originals at this point.

14 Q Let me show you that Exhibit 164. It's
15 already admitted. That 70/30 -- well, let me -- do you
16 have it handy?

17 A Let me bring it up, let's see. Okay, I have
18 it.

19 Q So you can see this email from you to Jessica
20 February 19th, 2013? Do you see it?

21 A Yeah, I see it.

22 Q You write please have Sam -- "Jessica, please
23 have Sam sign the attached amendment and return the
24 original. The date is already on the notary. I believe

1 it was sent in December, but I don't think it was ever
2 signed. Thank you, and have a wonderful week. Nano."
3 That would be Nanette. Right?

4 A Correct.

5 Q You were aware of emails to Jessica were --
6 that was the procedure for sending an email to Sam.
7 Right?

8 A Right. That's what typically happened.

9 Q Sam and Todd's office.

10 A Yeah, because Sam didn't do email.

11 Q And so down below Todd's handwriting dad
12 already signed the one that was changed Luke, 70, Lexi,
13 30. Right?

14 A Right.

15 Q And so have any idea what this second
16 amendment that Nanette was sending to Jessica that said
17 this is the percentage?

18 A No, she just made a mistake.

19 Q But the date's already in the notary. That
20 means that she would have signed the jurat before Sam
21 signed his name. Right?

22 A Yeah, that would not be correct. I think it
23 was just confusion on her part because we'd already
24 received the December documents.

1 MR. SPENCER: Your Honor, this Exhibit 164, I
2 want to make sure it's admitted. I offer Exhibit 164.

3 COURT CLERK: It's in.

4 THE COURT: It's in already.

5 BY MR. SPENCER:

6 Q Okay. You just don't know -- do you recall
7 seeing this exchange at all?

8 A No. It may have been she just thought we
9 didn't have the documents and was sending them to
10 Jessica not realizing that we already had them.

11 Q Sounded like the 70/30 came from the Jaksick
12 office rather than yours, didn't it?

13 A Well, that's what he ultimately wanted was
14 the 70/30.

15 Q Contrary to that one note we saw.

16 A Yeah. But like I say, he kept changing it
17 back and forth. I believe there were other percentages.
18 He just -- like I said, he just kept thinking more for
19 Luke, less for Lexi, more for Lexi, less for Luke and
20 ultimately settled for 70/30.

21 MR. SPENCER: Your Honor, I'd like to admit
22 Exhibit 553 which is the original of Exhibit 13.

23 MR. ROBISON: No objection.

24 THE COURT: 533 did you say?

1 MR. SPENCER: 553.

2 THE COURT: 553 is admitted, Ms. Clerk.

3 COURT CLERK: Thank you.

4 (Exhibit 553 is admitted into evidence.)

5 THE WITNESS: So we back on 13?

6 BY MR. SPENCER:

7 Q Well, I'm going to show you a different
8 version of it. I'll get that binder.

9 That would be the original. Right?

10 A It looks like it.

11 Q And can you explain why there are so many
12 staple holes on the signature page as compared to the
13 other pages?

14 A It was probably pulled off.

15 Q Probably means you don't know?

16 A No. Does look like there's more at the -- on
17 the signature page than on the other ones.

18 MR. SPENCER: You Honor, I'm going to offer
19 Exhibit 221 in its entirety which is Mr. Green's file,
20 Todd's expert.

21 MR. ROBISON: Your Honor, it's about a
22 thousand pages and I object unless there is some
23 specific relevance with particular documents in that
24 exhibit. It's another thousand pages in the record.

1 THE COURT: I sustain the objection.

2 MR. SPENCER: May I offer the excerpted
3 portion regarding this original?

4 THE COURT: Yes, please.

5 MR. SPENCER: I offer -- from Exhibit 221 I'll
6 offer I guess as 221 A an excerpt from that report,
7 file.

8 THE COURT: Well, we will manage the
9 sequencing of the exhibits sometime during a break.

10 MR. SPENCER: Sorry.

11 THE COURT: No, no. And I invite your
12 suggestions at that time, but I don't to commit to it
13 right now. So what we're about to publish to the jury
14 will be admitted, I'm just not sure what number it will
15 be.

16 MR. ROBISON: May I see it before we --

17 THE COURT: Yes.

18 MR. ROBISON: -- can see?

19 THE COURT: Please.

20 MR. ROBISON: May I clarify, your Honor?

21 THE COURT: Yes, please.

22 In fact, ladies and gentlemen, we're 15
23 minutes early, this might be a good time to take our mid
24 morning recess.

1 During this recess please do not discuss this
2 case among yourselves. Please do not form or express
3 any opinion about this matter until it's been submitted
4 to you. We'll stand for our jury.

5 (Jury leaves courtroom.)

6 COURT CLERK: 221 A.

7 THE COURT: Then if you'll just take a moment
8 and confirm. Let's go off the record, Ms. Reporter.

9 (Short break.)

10 (Out of the presence of the jury.)

11 MR. SPENCER: Sir, I referred to 542 which is
12 a copy of the original which is 542 A and I didn't
13 distinguish. 542 A.

14 THE COURT: So what are you seeking?

15 MR. SPENCER: So I just want to -- I just want
16 clarify that earlier when I was referring to the
17 original it was 542, it's really marked as 542 A.

18 MR. ROBISON: 542 is a copy of 542 A which was
19 the original analyzed by our expert. So 542, a copy
20 that went to Ticor, 542 A is the original signature on
21 that document.

22 THE COURT: I got it. So 542 A is not
23 admitted and you wish to admit it?

24 MR. SPENCER: I thought it was admitted, we

1 just didn't I correctly identified it.

2 THE COURT: Well, you just clear that up with
3 the witness, then.

4 MR. SPENCER: Right.

5 THE COURT: Okay.

6 MR. ROBISON: And then your Honor, we've
7 looked at this idea of putting in three or four pages of
8 Exhibit 221, but it takes it out of context.

9 MR. SPENCER: This is it. This is the
10 exhibit.

11 MR. ROBISON: And though it's voluminous,
12 we've already stipulated it in together with the expert
13 report Exhibit 220, and then everything's in context.
14 We're more comfortable with that, your Honor.

15 THE COURT: Okay. So it is 523?

16 COURT CLERK: The big one?

17 THE COURT: In it's entirety?

18 COURT CLERK: It is 221.

19 THE COURT: Oh, my.

20 MR. SPENCER: Too many numbers.

21 THE COURT: 221 in its entirety is now the
22 stipulation.

23 MR. ROBISON: Correct.

24 THE COURT: Okay. Very well.

1 MR. ROBISON: And 220 is in.

2 THE COURT: 220 is.

3 MR. SPENCER: Not in yet.

4 MR. ROBISON: It's stipulated in.

5 COURT CLERK: 220 or 22?

6 MR. ROBISON: 220.

7 MR. SPENCER: There's two exhibits.

8 THE COURT: Okay.

9 MR. SPENCER: His report is 220, his file is
10 221, which is this big thing.

11 THE COURT: Got it. Ms. Clerk, by agreement
12 220 and all of 221 are admitted into evidence.

13 COURT CLERK: Thank you.

14 (Exhibits 220 and 221 are admitted into
15 evidence.)

16 THE COURT: All rise for the jury.

17 MR. SPENCER: May I approach, your Honor?

18 THE COURT: Yes.

19 MR. SPENCER: Ms. Clerk, 542 A.

20 BY MR. SPENCER:

21 Q Mr. Hascheff, earlier do you recall we were
22 looking at the original option agreement?

23 A Yes.

24 Q Okay. And I think that I've mistakenly

1 referred to it as 542, which is a copy, and I just

2 wanted you to confirm that we've now marked Exhibit 542

3 A as the original. Do you see that?

4 A Yeah. The signature page?

5 Q And the rest of the document.

6 A Is that the entire option agreement in here?

7 Q You can pull it out if you need to.

8 A I'll accept your representation.

9 Q It's just an identification --

10 A Understood.

11 Q -- I was referring to it as 542.

12 A Okay.

13 Q And it's really the original is marked now
14 marked 542 A.

15 A Okay.

16 Q So when we were talking earlier about the
17 original, you understand that Exhibit 542 A is now the
18 original?

19 A Yes.

20 MR. SPENCER: May I approach?

21 THE COURT: Yes.

22 THE WITNESS: Are you going to still ask
23 questions of this?

24 BY MR. SPENCER:

1 Q No. Oh, yeah I might.

2 A That's what I thought.

3 MR. SPENCER: As his Honor announced, Exhibit
4 220 and 221 were admitted and I'd like to approach, your
5 Honor, if I may?

6 THE COURT: Yes.

7 MR. SPENCER: And hand him.

8 BY MR. SPENCER:

9 Q This is Exhibit 221. It's a big file.

10 A Okay.

11 Q Remember we were talking about the second
12 amendment earlier before the break?

13 A Yes.

14 Q And this is the file of the Respondent's
15 expert, Mr. Jim Green, and I'm referring you to page 867
16 of that file.

17 A Yes.

18 Q And you see at the top a document that's been
19 identified as QSJ 1?

20 A Yes.

21 Q Okay. And so the identification of QSJ 1 is
22 in the report, Q being question document, J being Sam, 1
23 for identification. Do you understand that?

24 A Say that again, please?

1 Q Q being a questioned document as opposed to
2 known --

3 A Okay.

4 Q -- for Mr. Green's analysis. And then JS
5 being Sam.

6 A Okay.

7 Q 1 being marked for identification.

8 A Okay.

9 Q And this is the second amendment and it says
10 right under it "Refer to separate document with images
11 for observations made regarding nonconformity of staple
12 holes, paper, et cetera."

13 A Okay.

14 Q So flip over to page 869. This is what you
15 were referring to earlier that it appeared page 6, the
16 signature page had numerous and -- numerous and multiple
17 staple holes compared to the other pages. Right?

18 A Yeah, it looks like it has some more holes.

19 Q Okay. And turn to page Green 871. There's a
20 paper analysis on these pages here. Comparing page 1
21 through 6, and it's noted "The level of paper brightness
22 was consistent between pages 1 through 5. Page 6 had a
23 different level of optic brighteners" --

24 A Uh-hum.

1 Q -- "documents illuminated with ultraviolet
2 light." Do you see that?

3 A Yes.

4 Q That would indicate that page 6, the
5 signature page was different than the other five, wasn't
6 it?

7 A That's what it looks like.

8 Q And then on Green 872 of Exhibit 221, there's
9 an analysis here, this again, second amendment QSJ 1
10 this is in the left-hand box, the first five pages have
11 page numbers, page 6 did not. You see that up there in
12 the note?

13 A Yes.

14 Q And then in the right-handed box, it says
15 "The left margin on pages 1 through 5 were consistent.
16 Page 6 had a wider margin." You see that?

17 A Yes.

18 Q And there's a little red box there indicating
19 the difference in the width of the margin there.

20 A Okay.

21 Q Right?

22 A It's the red being compared to the black?

23 Q Well, you might look at the screen you see
24 the red a little better.

1 A Right.

2 Q And so in comparing the -- from the bottom
3 up, pages 1 through 5, margins are consistent, page 6,
4 the red box indicates that signature page margin is
5 different.

6 A Okay.

7 Q You see that?

8 A Yeah.

9 Q And any explanation for that?

10 A Well, if I remember right, Jessica Clayton,
11 the difference -- it could have come out of her printer
12 instead of ours on the signature page when she printed
13 it off and just sent back the signature page.

14 Q You just don't know?

15 A You asked me my opinion.

16 Q No, I asked you if you had personal knowledge
17 about the explanation for that.

18 A I gave you my explanation it probably came
19 out of a printer.

20 Q It probably means you don't have personal
21 knowledge. Right?

22 A Well, that would be logically would make
23 sense to me if it was, at least they the reason they
24 don't match is because it came out of her printer, not

1 mine.

2 Q That's one of the problems with printing the
3 signature pages separately, isn't it?

4 A Well, she could have printed the entire
5 document and just sent back the signature page --

6 Q Uh-hum.

7 A -- like she did in that one email.

8 Q And that's true, she could have done that.
9 But probably and could have means you don't really know
10 why the margin's different.

11 A That would be the only reasonable explanation
12 I could think of.

13 Q And you understand these findings are from
14 Todd's paid expert. Right?

15 A That I don't know. If you say it is, then I
16 assume it's correct.

17 Q And multiple staple holes in the signature
18 page different from the others, margins difference, page
19 number on every page, not on the signature page, that's
20 not the kind of work product you would want to put out,
21 is it?

22 A Well, it does happen.

23 Q It does happen so you're fine with that?

24 A Well, I prefer to have the pages numbered,

1 but sometimes it doesn't happen that way.

2 Q You'd prefer not to have any of these issues.

3 Right?

4 A Well, I draft thousands if not tens of
5 thousands of documents and sometimes there's going to be
6 mistakes, you know.

7 Q And Mr. Jaksick, Sam Jaksick was a big client
8 of yours. Right?

9 A He was one of them.

10 Q Yeah. And you also knew that he was worth
11 tens of millions if not hundreds of millions of dollars.
12 Right?

13 A That I don't know.

14 Q Well, you testified when all this -- when --
15 the other day regarding the assets that you were aware
16 of.

17 A But he had lots of property.

18 Q Yeah. And a taxable estate.

19 A If that's what Kevin said, yes.

20 Q Well, and you understood that it would be
21 taxable with --

22 A It probably would be. Just depends on what
23 the values are date of death.

24 Q And certainly you would have concentrated

1 harder on a big client that was worth millions of
2 dollars, wouldn't you?

3 A I gave all my clients my attention. And the
4 other perspective here or context to think about is we
5 were doing this at the last minute because he was going
6 in for surgery, so we didn't have much time, so it was a
7 -- it was basically an urgent situation to try to get
8 these documents out before he went into surgery which I
9 think was maybe what, a week later?

10 Q Well, it was certainly made urgent by that
11 fact, but you had been working on his documents since
12 way earlier than that and certainly March of '11 and
13 April of 2012 we saw documents you'd prepared. Right?

14 A That's true.

15 Q Okay. So it wasn't urgent from the
16 standpoint of the work you had been doing, it became
17 urgent in December of '12 because of his surgery.
18 Right?

19 A Right. This document, the second amendment
20 in particular.

21 Q And you profited from representing the
22 Jaksick family, haven't you?

23 A You mean was I made paid?

24 Q Yes.

1 A Yes.

2 Q And you also spent time at the Lake Tahoe
3 property, haven't you?

4 A Yes, but that was after he passed away.

5 Q Sure. And that's something that Todd allowed
6 you to do is spend time at the Lake Tahoe property.
7 Right?

8 A I understood it was a family.

9 Q Todd was the one in charge, he was the
10 manager at Incline. Right?

11 A Yeah, but again, Sam invited me up to his
12 place all the time while he was alive. I just was busy
13 and never had a chance to go up there.

14 Q And since his death you've been able to go up
15 there --

16 A That's true.

17 Q -- and use the property.

18 A That's true.

19 MR. SPENCER: Your Honor, pass the witness.

20 THE COURT: Thank you. You may begin your
21 redirect.

22 MR. ROBISON: Thank you, sir.

23 REDIRECT EXAMINATION

24 BY MR. ROBISON:

1 Q **Mr. Hascheff, will you please tell the jury**
2 **what a closing letter is?**

3 A Well, there's several. Is this a closing
4 letter for a real estate deal or is it a closing letter
5 for --

6 Q **It's for the estate from the IRS.**

7 A Well, typically you can not distribute assets
8 from an estate because you don't know what the taxes are
9 that are owed, so you basically file the 706.

10 Q **What's a 706?**

11 A That's the estate tax return.

12 Q **Okay. What does that reflect?**

13 A That's basically valuation of the assets
14 primarily at date of death. So you file it. You don't
15 want to distribute assets until you know the IRS accepts
16 the tax return as provided, so you wait for a closing
17 letter from the IRS that says we're satisfied with the
18 706 which means they're not going to send you a letter
19 after you distribute the assets to beneficiaries saying
20 you owe a bunch more taxes, so.

21 Q **So one would be entitled to rely on the IRS**
22 **closing letter to commence paying down the debt and, if**
23 **possible, making distributions.**

24 A Correct. Usually you don't want to make

1 distributions until you have a closing letter.

2 Q Do they look for gifts that would reduce the
3 value of the estate?

4 A Typically they do.

5 Q And in this case are you aware of the fact
6 that the closing letter from the IRS was received in the
7 fall of 2013?

8 A I understood they got a closing letter.

9 Q And that means what in terms of the
10 administration of Sam's family trust?

11 A Well, you said the administration. That
12 means they've accepted the tax return and, therefore,
13 you don't have to worry about a deficiency notice coming
14 back sometime later. So it's accepted as filed.

15 Q Now, let's go back to the exhibits that you
16 were just shown. Can we please start with Exhibit 202?
17 All right. That is a email dated December 18th, sir?

18 A Is this Jessica's?

19 Q It should be in the book at your feet.

20 A Okay.

21 Q What is that?

22 A What is it?

23 Q Yes.

24 A It's an email from Jessica to my office.

1 Q And is that the email to which she attaches
2 signature pages?

3 A Yes.

4 Q And the date of that is December 18th?

5 A That's correct.

6 Q And it's sent to your office?

7 A Yes.

8 Q And your office received the signature pages
9 for the second amendment on December 18th at least?

10 A It looks like that way, yes.

11 Q So this email that came from your office back
12 to the Jaksick office of February, how do you explain
13 the fact that your secretary Nano was seeking a
14 signature in February when Jessica sent you the
15 signatures in December?

16 A It was just a mistake because, obviously, we
17 had them.

18 Q On the second amendment, Exhibit 13, please,
19 signature page.

20 This is the second amendment, Exhibit 13.

21 A Okay.

22 Q Do you recognize Sam's signature there?

23 A It looks like a signature, yes.

24 Q Now, with respect to the work done by Mr.

1 Green, were you aware that he has opined that that is,
2 in fact, Samuel Jaksick's signature?

3 A Is Mr. Green your expert?

4 Q Yes, sir.

5 A I didn't know that.

6 Q Now, if Jessica sent you signatures from her
7 office, would that necessarily suggest to you that it
8 came from her printer?

9 A Yes.

10 Q And if she used different paper than your
11 office, would that not explain Mr. Green's finding
12 concerning the color of the paper that you were shown in
13 Exhibit 553?

14 A Like I said, that's to me is the only
15 reasonable explanation that had different bond.

16 Q She uses one bond in her printer, you use a
17 different bond?

18 A I would assume so. I mean, I don't know what
19 bond she uses, but that would be a reasonable
20 explanation because that's what typically would happen.
21 We email the documents, they print them off, Sam signs
22 them in the office and eventually I get either the
23 signature page or the full document back.

24 Q And then that would be part of your file once

1 you got the signature from Sam's office to attach to
2 your copy and then that's part of your file.

3 A Correct.

4 Q Now, looking at the second amendment, sir,
5 you worked with Sam Jaksick with respect to the
6 provision in that agreement?

7 A That's true.

8 Q Do you have any question in your mind that
9 that document articulates and expresses Sam Jaksick's
10 intent?

11 A Yes.

12 Q And did you and he discuss the reduction or
13 the elimination of the 1.5 million dollar reduction from
14 Wendy's share?

15 A That's correct. He wanted to provide her
16 with that benefit.

17 Q And did he say why?

18 A In part I think he was -- his rationale was
19 he's trying to equalize the estate. I mean, Todd
20 obviously got the majority of it, I don't know what the
21 percentage, then Stan was next and then Wendy. So he
22 thought that would be a fair adjustment.

23 Q Do you know why or can you tell us what Sam
24 said with respect to giving 20 percent of Wendy's share

1 to her son, Luke?

2 A He liked Luke.

3 Q What'd he say about that?

4 A He wanted to provide for his son -- his
5 grandkids.

6 Q But why out of Wendy's share and not the
7 other total of the estate?

8 A Well, I think I testified earlier he was
9 concerned that if she got it outright she might spend it
10 and the grandkids might not get anything so he wanted to
11 make sure that they were taken care of.

12 Q All right. And was there not also a
13 provision for Wendy's daughter to have a subtrust funded
14 to the tune of \$100,000?

15 A She was supposed to get the 100 -- whatever
16 the amount was, but she was going to get an amount.

17 Q Are you aware that she is the only grandchild
18 who's been funded in its entirety?

19 A Out of the others?

20 Q Yes.

21 A You mean like Todd's and Stan's kids?

22 Q Correct.

23 A I'm not aware of that or not.

24 Q That would have occurred, if you know, after

1 **Sam's passing?**

2 A Right. I was not representing them at the
3 time.

4 Q As you sit here, and as you've gone through
5 examination for several hours, Mr. Hascheff, are you --
6 any question in your mind that Sam Jaksick intended to
7 accomplish what he stated in the second amendment?

8 A That's what he wanted. We went through
9 several drafts and that's what he wanted. I mean, to me
10 just think about it because I'm not gonna send a
11 document back to a client that doesn't have what they
12 want in the document. Because if he tells me to do
13 something and I do something else, then he's surely not
14 going to be happy with me. So all the way went through
15 various draft and iterations of what he wanted to
16 accomplish at the end of the day this is what he wanted.

17 Q Did you believe that that would -- is what he
18 wanted administered should he pass away?

19 A Yeah, that was the operative document.

20 Q Did he express concern about his longevity
21 with respect to the upcoming heart surgery in your
22 presence?

23 A Well, like any client, if you're going into
24 that kind surgery, you may not come out, so there was a

1 sense of urgency that we tried to get this thing done
2 before he went into surgery.

3 Q And in addition to that you had concerns
4 about 2013 tax law. Would that be a fair statement?

5 A Okay. What context now?

6 Q In the excise tax on capital gains?

7 A You mean on the option agreement?

8 Q Yes.

9 A I know that was a Kevin concern.

10 Q Yeah. Now, you mentioned that you relied on
11 Kevin Riley with respect to some of the tax advice.
12 From the time you got your Masters, your LLM, did you
13 get an opportunity to utilize that very much in this
14 community?

15 A Well, obviously, when I went to law school
16 and got my Masters and I worked for a CPA firm it was my
17 intent to be a tax lawyer, but back in the day in the
18 early '80's when I got back, you really could not
19 practice tax law 100 percent, so I --

20 Q Is that because of the market, there just
21 wasn't that kind of clientele?

22 A Not that -- it's not like when I was in San
23 Francisco getting my Masters you had lawyers that
24 specialized in corporate tax, specialized in partnership

1 tax, pension, it's big markets, you could specialize in
2 a particular area, but that just wasn't an option here,
3 so I used my degree and my knowledge because it allowed
4 me to communicate with accountants. And most of my
5 bigger clients always had a CPA on board that they
6 relied on and I was able to communicate with them simply
7 because of my education.

8 Q And did you find that Kevin Riley was astute
9 from a tax standpoint with respect to this estate
10 planning?

11 A I thought Kevin did a really good job.

12 Q Was he influential in trying to negotiate the
13 transfer of the Lake Tahoe house to Incline TSS?

14 A Yeah, he was definitely -- he was part of the
15 team on board with what we were trying to accomplish.

16 Q Do you recall why he recommended the transfer
17 of the Lake Tahoe house to Incline TSS?

18 A Well, his issues were the potential excise
19 tax if there's gonna be a change in the tax law
20 effective 2013, as well as his concern of estate tax.
21 My primary -- primary focus was the creditor protection
22 aspect of the transaction.

23 Q Mr. Hascheff, with respect to the power of
24 attorney, what is Sam tell you with respect to his

1 **desire that Todd and only Todd have the power of**
2 **attorney to do financial transactions on his behalf with**
3 **that power?**

4 A Well, he wanted Todd to be his power of
5 attorney.

6 Q Well, did he say anything about Wendy being
7 his power of attorney?

8 A I can't recall if we discussed Wendy or not,
9 but he wanted Todd to be the power of attorney because
10 Todd, obviously, is smart, especially with finances, so
11 I don't recall him saying I'm not giving Todd to be my
12 power of attorney. I would assume it's simply like with
13 the joint venture, based on her history that he did not
14 want her handling any financial affairs.

15 Q And do you know why Sam did not want Stan to
16 be the person that possessed the power of attorney to do
17 financial matters for Sam?

18 A It could have been Stan. I really can't
19 recall, but I thought that there was a power of attorney
20 before the one I drafted and it was Todd, so.

21 Q Is it your recollection that its always been
22 Todd that was given the power of attorney by Sam?

23 A It could be, but client tells me this is what
24 I want as my power of attorney, then that's the way I'm

1 going to put the documents.

2 Q All right. Mr. Hascheff, we've seen
3 documents with respect to the memorandum of option
4 agreement. 1 23.2, please.

5 1 23.2 is the note. I want to focus on the
6 note in webs discussion about the memorandum.

7 A This is a deed.

8 Q I'm sorry. Did I say 23.2?

9 A It's 23.

10 Q I'm sorry, that is the note. All right.

11 A Okay.

12 Q All right. So a memorandum of option
13 agreement goes to Ticor. That refers to the six percent
14 interest rate and the five-year note. Correct?

15 A Yeah, it wasn't the memorandum, it was the
16 actual option agreement.

17 Q Very well. And then recorded, actually used
18 was the memorandum of option agreement that had the
19 ten-year term and the 2.25 percent interest rate.
20 Correct?

21 A Well, the operative option agreement was with
22 the 2.25 percent in ten years.

23 Q All right. But the memorandum of option
24 agreement simply refers to what is the note that is to

1 **be executed by Incline TSS. Correct?**

2 A What exhibit is that so I can look at it?

3 Q **What?**

4 A The mem -- excuse me, the memorandum of
5 option, that would have been the document that we
6 recorded, but I don't believe it included the option
7 agreement.

8 Q **Let me catch up. 23.5? You see 23.5, sir?**

9 A Yeah, that's the option agreement.

10 Q **All right. Is this what was sent to Ticor?**

11 A Is that the one that has the six percent
12 five-year?

13 Q **If you look at the second page, please. And**
14 **can you make that out?**

15 A No, that's the ten-year 2.25 percent.

16 Q **Was this the one that was ultimately agreed**
17 **to, the ten-year with 2.25 percent?**

18 A Right because they couldn't do the five-year
19 six percent.

20 Q **And from your work, the unsecured promissory**
21 **note was prepared for Incline TSS to pay for the house?**

22 A Correct.

23 Q **All right. Now, if I show you 20, what is**
24 **that 23.20, this is the unsecured note. Is there any**

1 other note in your file you're aware of that has a
2 five-year term at six percent interest?

3 A I don't know, but I don't think so, but who
4 knows. We're talking about something back.

5 Q Is it your understanding that this was
6 intended to be the operative promissory note regardless
7 what the drafts of the memorandum of option said?

8 A This was the note because when they ran the
9 cash flow projections they could not service a six
10 percent five-year note.

11 Q All right.

12 A They could do this one.

13 Q So let's take a look at this. You got a
14 five-year note referred to in the memorandum of option.
15 Correct?

16 A Okay. You keep saying memorandum of option.

17 Q Option agreement.

18 A Okay, better.

19 Q Thank you, sir.

20 A Okay. Yes.

21 Q Are you aware that the note was paid off in a
22 little more than a year?

23 A When was that?

24 Q In March of 2014.

1 A And that would have been after my time. I
2 know they refinanced B of A.

3 **Q And refinanced means what?**

4 A They basically got SSJ Issue Trust to come up
5 with several million dollars, went to B of A, bought
6 down the loan, and then did another loan for a lot less
7 money.

8 **Q And put the loan in the name of Incline TSS.**

9 A Is that what they did? Then yes.

10 **Q And are you aware of the fact that that**
11 **unsecured note was paid off at approximately 15 months**
12 **from the date it was signed?**

13 A I was not aware of that. All I could tell
14 you is is they were trying to buy some time until they
15 could refinance the B of A note, and ultimately complete
16 the transaction as we had drafted it.

17 **Q And were you an advocate, sir, of putting the**
18 **house into the name Incline TSS?**

19 A Well, it was structured because of credit
20 protection reasons, but we wanted the house to be
21 transferred away from Sam into another secured LLC,
22 which was TSS. That way he would not have any interest
23 in that property so creditors had nothing to attach.

24 **Q Would it also take it out of the estate for**

1 federal estate tax purposes?

2 A Yeah, that was Kevin's issue. It was
3 important to Kevin.

4 Q Was that what your understanding was based on
5 your discussions with Kevin that it would also help get
6 the house out of the estate, thereby making it not a
7 taxable situation from a federal and estate tax
8 standpoint?

9 A That would be the end result.

10 Q Is that what Kevin told you?

11 A That's what the team -- yeah, what's what
12 Kevin.

13 Q That would save this family millions of
14 dollars, would it not?

15 A I didn't do the calculation, so I don't know
16 what it would save, but it would save something.

17 Q All right. Fair enough. Going to the fifth
18 amendment that you -- did you draft the fifth amendment,
19 sir?

20 A Yes.

21 Q And that was in what period of time?

22 A I think it was 2012.

23 Q In the April time frame, April, May time
24 frame of 2012?

1 A I believe so.

2 Q All right. From what source did you get your
3 information to draft the fifth amendment and the second
4 amendment at the same approximate time in April of 2012?

5 A Again, really, it's -- I just did not have my
6 arms around all the documents. All I remember is when I
7 finally got the '06 amendment, because I didn't have it
8 when we were drafting all these documents, and I
9 actually had a chance to look at it. It was between
10 April of 2012 and December of 2012 when we did the
11 second amendment, I remember just telling Sam and Todd
12 you just wasted a bunch of time fooling around with
13 these amendments because the '06 document is the
14 operative document, that's the document we need to
15 amend, not the previous 2003 agreement.

16 And then there was a third amendment that was
17 a restated document and there was some confusion there
18 not until I had a chance to have all the documents in
19 front of me was I able to figure it out?

20 Q All right. Now, the 2006 restated amendment,
21 is it your testimony that's to be read in conjunction
22 with the second amendment that you drafted for Sam?

23 A Yes.

24 Q And to the extent the second amendment does

1 not change provisions of the 2006 restated trust, those
2 provisions that are not changed by the second amendment
3 still apply?

4 A They should be, yes, that's what's intended.

5 Q Is that what you intended?

6 A That's the way it's generally done, yes,
7 unless I specifically change was in the '06 trust with
8 my 2012 amendment, the '06 trust still is operative.

9 Q All right. So what changed between 2006 and
10 this second amendment is that Lake Tahoe is no longer in
11 the family trust at all. Correct?

12 A Correct.

13 Q And when was it that you first learned that
14 Sam did not want Wendy to have any part of that Lake
15 Tahoe house?

16 A I can't tell you exactly, you know, when it
17 was. I just know that she was not in any of the joint
18 ventures, the business entities before I got there. She
19 was not in any of the business entities after I started
20 representing them. And because of his concern about her
21 issues with creditors and financial matters, she was not
22 gonna be a member in the Lake Tahoe house.

23 Q Or an owner thereof?

24 A Pardon me?

1 Q **Or an owner thereof?**

2 A Correct. And the reality of it was that she
3 was gonna get to use the Lake Tahoe house. I mean, she
4 was never supposed to be excluded from the Lake Tahoe
5 house, but she would not be an owner in the Lake Tahoe
6 house.

7 Q **The benefits conferred by the second
8 amendment with respect to Todd, Stan and Wendy, did
9 Wendy benefit from Sam's intent to adopt a second
10 amendment as his estate plan?**

11 A Well, she got the 1.5 million dollar
12 additional amount which is not a reduction in her
13 estate. She would have to split money with Luke, her
14 son, Sam's grandson. So as pointed out earlier she
15 would get a little bit less than she otherwise got.

16 Q **She got 80 percent of a third instead of a
17 hundred percent of a third.**

18 A Correct.

19 Q **And Luke is to receive that 20 percent when
20 the estate is distributed. Correct, sir?**

21 A That would be when -- before her one third
22 share would be divided 80 percent for her and 20 percent
23 for her. And then, of course, Lexi got some money, too.

24 Q **You mentioned in your examination from**

1 **counsel something about this Ecco 2. Did you consider**
2 **that to be a flaky offer?**

3 A Well, you know, I practiced a long time and
4 you can see sometimes that the way they conduct
5 themselves, the documents they provide you, if it's
6 really on the up and up, you're gonna get certain
7 documents, all right? They're not gonna get a
8 projection of a billion dollars on the back of a
9 cocktail napkin based on sheet they provided, if that's
10 the one they provided. And just the way they handled
11 themselves and the way -- I don't think there was a
12 lawyer involved, and the way they were pitching it, it
13 just didn't feel right, and I advised them if I were you
14 I would not do it.

15 Q **As you sit here now do you know what became**
16 **of Ecco 2?**

17 A Last time I heard is that is Ashley Stot, I
18 think the FBI called me and wanted to know something
19 about the transaction because they were being
20 investigated for securities fraud. If I remember right
21 they took their -- I think their stock was publicly
22 traded at one point and they took it off the exchange
23 because of their dealings.

24 Q **And when you looked at that deal did you**

1 **advise the Jaksicks not to do it?**

2 A I did, yes.

3 Q **Just because of the odor of the entire deal?**

4 A It just didn't look good.

5 Q **Turning your attention now, Mr. Hascheff, to**
6 **the indemnification agreements. Is it your testimony**
7 **that Exhibit 11, and I'll be happy to show it to you if**
8 **you need it, is the operative document that Sam intended**
9 **to be in effect?**

10 A Know, you don't have to show it to me because
11 -- no, you don't have to show it to me --

12 Q **Oh, okay.**

13 A -- because we've been through this so many
14 times already.

15 Q **Yes, sir.**

16 A Yes, that's the operative document.

17 Q **But with respect to the three drafts that**
18 **you've discussed with counsel, is there any substantive**
19 **of difference between the three?**

20 A Well, one has one more recital than the
21 other.

22 Q **And that refers to that the kids might be**
23 **cash poor?**

24 A Correct.

1 **Q Important recital?**

2 A No, it's just a recital. And then the other
3 one was Section 14 which is the consent to jurisdiction,
4 so I -- I just -- you know, I didn't think it was
5 needed, so --

6 **Q Now, if that constituted a gift, would the**
7 **IRS, in your opinion, have picked up on that before they**
8 **issued the closing letter?**

9 A Again, I have a disagreement with the other
10 side. It's not a gift, in my opinion. I mean, if an
11 indemnity agreement somehow was a gift, that means any
12 time you execute an indemnity agreement which the bank
13 requires you to do.

14 **Q In fact, all insurance policies, all our cars**
15 **and ours lives would be a gift.**

16 MR. SPENCER: Judge, I'm going to object to
17 the leading question.

18 THE COURT: Sustained.

19 THE WITNESS: Okay. So anyway, I just
20 disagreed with them. I don't believe it's a gift.

21 BY MR. ROBISON:

22 **Q All right. Do you know what happened with**
23 **respect to the indemnification agreement since you were**
24 **last involved with Sam Jaksick in 2013, how the parties**

1 have handled it?

2 A No, I'm not familiar with that.

3 Q Do you know if it's even being effectuated at
4 this point in time, sir?

5 A You mean submit a claim against the trust?

6 Q Correct.

7 A I don't know that. I understood that it was
8 very low, but I don't know the exact number.

9 Q With respect to the documents you've worked
10 on this case, do you believe, sir, that under the
11 circumstances you did your best to effectuate the intent
12 of Samuel Jaksick with respect to protecting his sons
13 and providing for an estate plan?

14 A Yeah, like I do with my client I try to do
15 the best I can under the circumstances. If he had
16 unreasonable time lines or things are not going pretty
17 quick, you're gonna make mistakes. As I mentioned
18 earlier, I probably have drafted thousands if not tens
19 of thousands of documents and reviewed and corrected
20 documents and I'm not always perfect. But at the end of
21 the day that's what he wanted, otherwise, it wouldn't
22 have been signed.

23 As I mentioned earlier, if I sent him a
24 document that doesn't say what he wants, you're not

1 gonna keep very many clients if you're sending something
2 bad that he -- that's something completely different
3 than what he wanted.

4 Q I don't suspect that you're aware of the
5 findings of Mr. Green with respect to the authenticity
6 of Sam's signatures on these various documents.
7 Correct?

8 A I don't know what he said.

9 MR. ROBISON: All right. We'll take that up
10 with Exhibit 220. Thank you, sir. I pass the witness.

11 THE COURT: Thank you.

12 MR. LATTIN: No questions, your Honor.

13 THE COURT: All right. Counsel.

14 MR. SPENCER: Thank you, your Honor.

15 RECROSS EXAMINATION

16 BY MR. SPENCER:

17 Q You don't know of anything that's happened --
18 strike that. Let me back up.

19 You don't know of anything that happened
20 between Sam and Wendy from the time you started
21 representing the family through these documents you've
22 prepared that changed their relationship, do you?

23 A Okay. Say that again?

24 Q Yeah. You don't know of anything that

1 happened between Sam and Wendy that changed their
2 relationship, do you, during the time that you knew the
3 Jaksick family?

4 A I wasn't aware there was a change in
5 relationship.

6 Q Yeah.

7 A All I know is that what he told me.

8 Q Yeah. And the stuff that he told you
9 happened earlier, didn't it?

10 A Earlier and during the time I represented
11 him.

12 Q Well, majority of it happened before you knew
13 him, didn't it?

14 A I wouldn't say that.

15 Q Some of it as far back as the '90's. Right?

16 A I don't know the chronological order, but
17 during the time I represented him, it was very clear to
18 me that he did not want her in any of the joint
19 ventures, and we effectuated the Lake Tahoe transfer.

20 Q Will you answer my question, please. I'm
21 asking about your knowledge regarding their
22 relationship, not about what you've already testified
23 to, okay? The fact is you didn't really know anything
24 about their relationship, did you? That being Sam and

1 Wendy.

2 A I don't think it changed. I think it's the
3 same relationship.

4 Q Yeah. In fact, the documents you were
5 preparing left Wendy in, some of them equally with her
6 brothers and then later even improved by taking a
7 reduction out. Right?

8 A That helped Wendy.

9 Q Yeah. So during the time you were
10 representing Sam, the documents you're preparing
11 indicate that they had a good relationship; improving,
12 even.

13 A I don't -- I can't say whether improved or
14 not. All I know is we tried to help her out because
15 Todd was getting a majority of it, Stan was next, and he
16 wanted try to help Wendy out, too.

17 Q And so you don't know of anything in Sam and
18 Wendy's relationship that would have caused him to want
19 to take her out of the Incline -- I'm sorry, the Lake
20 Tahoe property, did you?

21 A I don't think we ever discussed whether that
22 had any relevance on the transaction. It was basically
23 better protection.

24 Q Right. And creditor protection by moving it

1 out of an entity that offered creditor protection into
2 another entity that offered creditor protection. Right?
3 SSJ to Incline.

4 A It would -- it had to be out of Sam's
5 ownership which was in his trust, and then like I said,
6 it took it into -- took it into TSS, and I put SSJ in
7 the middle for one more level of limited liability.

8 Q And so when it was in SSJ it had creditor
9 protection, didn't it?

10 A But he couldn't -- he owned SSJ.

11 Q Can you answer my question? When it was SSJ
12 it had creditor protection, didn't it?

13 A It did, but not as well as TSS.

14 Q Right. And the fact of the matter is the
15 team that you've described in making this decision and
16 Kevin Riley was the one who was spearheading it, the
17 result of what happened with the team's meeting is that
18 the lake house, Lake Tahoe lake house ended up going to
19 Todd. Right?

20 A And then eventually Stan.

21 Q Todd? It ended up going to Todd, didn't it?

22 A Right, until Stan's divorce, completed
23 divorce.

24 Q Stan didn't ever get any direct interest, did

1 he?

2 A Couldn't because he was still in the middle
3 of the divorce.

4 Q After his divorce do you know if he ever got
5 any direct interest through Stan?

6 A They were trying to get him to come in.

7 Q So the effect or the end result of this team
8 that you're describing that included you and Mr. Riley
9 and others was to move this very valuable property into
10 Todd's possession. Right?

11 A Into TSS.

12 Q And how would Incline TSS have paid all of
13 that seven-million-dollar note that it owed if Sam
14 hadn't died? Do you know?

15 A There was a lot of options that were kicked
16 around, you know, Montreux lots, um, they were selling
17 BLM land. They were doing conservation easements that
18 were generating millions of dollars. There were lots of
19 options that were kicked around so, I mean, I believe
20 the life insurance money that he had went to pay down
21 the loan so that presumably would have been the easiest
22 fix to pay down the loan, but there were other options
23 that were discussed.

24 Q Of course, the life insurance came in because

1 Sam died. Right?

2 A Correct.

3 Q My question was, how would they have paid it
4 if Sam hadn't died, do you know?

5 A I answered it. I said they were looking at
6 the sale of Montreux lots. They were looking at other
7 land sales to generate cash to basically conclude the
8 purchase.

9 Q Property that was owned by Stan, Wendy, or
10 the trust, other -- people other than Incline TSS.
11 Right?

12 A Right, but that would not be unusual.

13 Q And you, in fact, warned Sam and the family
14 that transferring the lake house property into Incline
15 could trigger the due on sales clause. Right?

16 A Right. That's why we got the bank's consent.

17 Q And you also advised them that doing what
18 they did with this option of granting the option would
19 trigger the due on sale clause. Right?

20 A Correct. That's why we got the bank's
21 consent.

22 Q You also advised that the option would be
23 considered a breach of the deed of trust, didn't you?

24 A Correct. That's why we got the bank's

1 consent.

2 Q And you were aware that the trustees were
3 considering bankruptcy prior to -- just prior to Sam's
4 death? Or shortly after?

5 A The trustees of? The family trust?

6 Q Uh-hum.

7 A There were some discussions with the
8 bankruptcy lawyer.

9 Q Yeah. And so -- and did you know about the
10 other risks of the option agreement that related to the
11 taxes and whether it would be recognized by the IRS as
12 being an arm's-length transaction?

13 A You always run that risk. I mean, whether
14 it's the IRS or it's a creditor, anybody could come in
15 and argue it's a sham transaction. But if you paper it
16 correctly you should be okay. If you document it
17 correctly, if you have the right terms you should be
18 okay.

19 Q Did you know that there was contemplation of
20 a qualified personal residence trust for the lake house?

21 A When you say contemplation.

22 Q That it -- that that was an idea that was
23 floated by Maupin, Cox, LeGoy.

24 A I wouldn't know what they were thinking.

1 Q You weren't aware of that.

2 A No.

3 Q And so if they're contemplating -- the trust
4 was contemplating bankruptcy and it's got to come up
5 with all these other creative ways to try and pay for
6 this note from entities or people that are not Incline
7 TSS, how did you figure Incline was ever gonna pay for
8 it?

9 A They were cash flow projections and we were
10 looking in generating money from other entities that
11 ultimately would be distributed to Todd and to Stan who
12 would then use that cash to infuse it into TSS to help
13 make the payments.

14 The other point I want to make here also is we
15 went and saw a bankruptcy lawyer, not so much to file
16 bankruptcy but to see what kind of protections we could
17 get in the event that creditors wanted to foreclose on
18 the property. It would delay that foreclosure until
19 they could put a plan in bankruptcy, if that was
20 necessary. So we were just looking at the options
21 because that was just one. It wasn't like they were
22 going bankrupt.

23 Q You put the Lake Tahoe house at risk by doing
24 this option agreement at a time when you knew it

1 couldn't pay for these notes itself, didn't you?

2 A No.

3 Q All of the other options you mentioned with
4 selling property, that's owned by a different entity,
5 going to the family trust, doing other things, as
6 opposed to if the due on sale clause had been triggered,
7 or if there had been a breach of the trust and a check
8 had to written for the full amount, it would have
9 exposed the house from foreclosure.

10 A That's why we got the bank's concept so we
11 avoided that.

12 Q And you didn't get that until December 12th,
13 did you?

14 A Right. That's why we didn't -- we didn't
15 exercise the option until we had the bank's consent.

16 Q And but my point is that that whole
17 transaction put the Lake Tahoe house at risk, didn't it?

18 A No, because we were talking to the bank about
19 it.

20 Q You wrote in a letter how it would -- could
21 trigger the due on sale clause and --

22 A What's the date of the letter?

23 Q I'll show you. Exhibit 23.4, Keith.

24 That's underlined in the middle of the first

1 paragraph "As a result an option would trigger the due
2 on sale clause."

3 A It could.

4 Q And then down below in the next paragraph
5 "Accordingly, an option would be considered a breach."

6 A Could be, yes.

7 Q No, you said would be.

8 A It could be a breach. It could be a breach,
9 yes.

10 Q But in both sentences you said that it would
11 violate the due on sale and it would be a breach of the
12 deed of trust.

13 A Right. It could be, yes. And it would if
14 the bank decided to call it, but it's the bank's option
15 to make the call. That's why we kept the bank advised
16 and ultimately they never did any of that because we got
17 their consent and they knew what we were doing.

18 Q When did you get the bank's consent?

19 A In late December, '12.

20 Q And all this -- all this -- the end result of
21 all this, it was designed to get Todd that house, wasn't
22 it?

23 A No.

24 Q That's what happened, isn't it?

1 A Well, like I told you, Stan was supposed to
2 commence as soon as his divorce was over.

3 Q **Supposed to is not actual. The actual end**
4 **result is that the house got moved over to Todd. Right?**

5 A I guess that's one way of looking at it, but
6 he wouldn't have done it unless Sam was on board with
7 this. So I told you the reason he was in this because
8 when you look at the cash flow projections with Kevin,
9 Todd was in the best position to fund the option
10 payments.

11 Q **But you didn't even know that, did you?**

12 A No, they looked at the cash flow positions.

13 Q **You had to have all these other creative ways**
14 **to get that money so that wasn't reality, was it?**

15 A No, it was. It turned out to be reality.

16 Q **In your mind it was, but you didn't have**
17 **personal knowledge of that.**

18 A We wouldn't have done this unless we thought
19 we had a pretty good chance of consummating the
20 transaction.

21 MR. SPENCER: Your Honor, I pass the witness.

22 THE COURT: Thank you. You're free to step
23 down and leave the courtroom.

24 Ladies and gentlemen, please stand and stretch

1 for a moment.

2 (Short pause.)

3 (Conference at side bar.)

4 THE COURT: Mr. Todd Jaksick, you may return
5 to the stand, please. You remain under oath and Mr.
6 Robison will continue his examination.

7 CONTINUATION OF CROSS EXAMINATION

8 BY MR. ROBISON:

9 Q Good morning, Mr. Jaksick.

10 A Good morning.

11 Q When we interrupted your testimony, thank you
12 for that, we were discussing Exhibit 327.

13 KEITH: Did you say 327?

14 MR. ROBINSON: I said that but I meant 316.
15 These are the charts, Mark?

16 MARK: Yeah.

17 BY MR. ROBISON:

18 Q Now 327. Thank you. When we broke and
19 interrupted your testimony, you were explaining to the
20 jury the role that each of these professionals had with
21 respect to helping you administer your father's estate.
22 Correct?

23 A Yes.

24 Q I think we left off on Roger Morris. Roger

1 **Morris again is whom, sir?**

2 A Roger Morris was hired because he was a
3 specialized attorney in Colorado that handled gaming
4 issues so he handled the getting the gaming license for
5 Stan and I.

6 Q All right. Now, we got into a discussion
7 about six percent of the company or the six percent of
8 his share. Do you recall being involved in those
9 discussions?

10 A I remember hearing about it, yes.

11 Q Do you recall that Mr. Morris was also
12 involved in those discussions?

13 A Yes.

14 Q And what was the consensus or the result of
15 those discussions, sir?

16 A That the intent by dad was to get us more
17 than five percent of the company so, so that's the
18 purposes of getting a gaming license.

19 Q Why would you need a gaming license?

20 A Because you have to have a gaming license in
21 the state of Colorado to be able to own stock in the
22 company of that degree. And dad was always concerned
23 that in the event that he passed away or something
24 happened to him and neither Stan or I weren't licensed,

1 or Wendy, at some point in time, the company has a
2 buy-back provision where they could buy stock back.

3 Q The company being whom, sir?

4 A Pioneer who's the company who owned the
5 casino in which dad was a 35 percent owner in the
6 company.

7 Q Stop right there. So if neither you nor Stan
8 were licensed, who then would own your father's stock in
9 the company?

10 A The company would get the ability to buy it
11 back for cents on the dollar.

12 Q Was there a buy/sell agreement that allowed
13 the company to buy back the interest if, in fact, it was
14 a nonlicensed person holding that interest?

15 A That was my understanding and that's what
16 happened to another owner in the company. And when dad
17 saw the results of that he almost panicked. He really,
18 really wanted us to move forward and try to get licensed
19 because it was a bad situation for one of the other
20 owners.

21 Q And was there consensus among everybody that
22 there be a determination that you and Stan were to get
23 six percent of the company as opposed to your father's
24 interest?

1 A Yes.

2 Q And did your sister sign an affidavit to that
3 effect?

4 A Yes, she did.

5 Q Agreeing to the fact that it would be six
6 percent of the company thereby necessitating licensing.

7 A Yeah. Her affidavit was that she had
8 discussions with dad that basically Wendy knew that dad
9 was trying to get us both licensed and we needed to have
10 a minimum of five percent to do that.

11 Q And as a person dealing with this and as a
12 cotrustee of your father's family trust, did you rely on
13 Mr. Morris?

14 A Yes, sir, we did.

15 Q Did you find anything about his presence and
16 his advice that was untrustworthy or unsavory?

17 A No, he was a very qualified individual.

18 Q And did you feel comfortable relying on his
19 advise?

20 A Yes, sir, we did.

21 Q The next gentleman on the chart is a
22 gentleman by the name of Paul Taggart. Please tell us
23 who he is.

24 A Paul Taggart is a water rights specialist

1 attorney, and he helped with analyzing a bunch of
2 different entities for us and helping us on water
3 rights.

4 Q And has Mr. Taggart assisted you in your
5 participation in administrating your father's estate?

6 A On some of the ranches, yes.

7 Q All right. And does he interact and deal
8 with state engineer's office?

9 A He does, yes. He's well-known water rights
10 attorney.

11 Q All right. Now, dealing with the state
12 engineer's office, you know what that's about, don't
13 you?

14 A I keep learning more, yes.

15 Q All right. Is it an easy experience to deal
16 with the state engineer's office with respect to water
17 rights?

18 A It's much more difficult than dad and I
19 originally had anticipated.

20 Q Are there different kind of water rights,
21 sir?

22 A Yes, there is.

23 Q Would you tell us what the different kind of
24 water rights your properties are involved with?

1 A Sure. There's a surface water rights that
2 come would from streams and ground water rights that you
3 dig a well and pull water out of the ground.

4 Q **State engineer treats those differently?**

5 A He does.

6 Q **All right. Is surface water pretty reliable**
7 **in Northern Nevada?**

8 A It's not.

9 Q **Why?**

10 A Just because we're subjected to drought and
11 things like that. They're having a wonderful this year
12 so the stream measurements would be much higher than
13 they normally are, but on drought years they're much
14 less and the state engineer relies on the drought years
15 because if you're trying to put water in a water system,
16 for example, to a housing development, he wants to be
17 able to rely on what he can count on being delivered to
18 the house every single year.

19 Q **Are the water rights that apply to these**
20 **various properties, are they sometimes subject to**
21 **protests?**

22 A Yes, sir, they are. They are subject to
23 protests.

24 Q **Tell the jury, please, what the protest**

1 **procedure's all about with respect to water rights that**
2 **your ranches might otherwise have an opportunity to use.**

3 A Yeah. A lot of times you will actually just
4 file for water rights on the ranch that may never been
5 filed for so you might see a stream system has that's
6 never filed for so you might actually file to claim
7 water rights of that stream, you might file an
8 application to try to perfect some additional ground
9 water rights.

10 And when you file for those water rights
11 there's a notice period that's in the paper of 60-plus
12 days or six months, or I'm not sure what the period is,
13 but that gives people an opportunity to protest what
14 you're filing for.

15 Q **What if you don't use your water, is there a**
16 **protest procedure about that?**

17 A If you don't use your water?.

18 Q **Put it to beneficial use.**

19 A If you don't use your water and put it to
20 beneficial use properly, then the state can actually
21 take your water rights away from you, which does happen.

22 Q **What's the difference between vested water**
23 **rights and certificate water rights?**

24 A Vested water rights predate state law. And

1 certificate water rights actually are water rights that
2 you go out in a field, you have a ranch, for example,
3 with a bunch of sagebrush there, you take some of your
4 surface water, you clear a field, put it an irrigation
5 system, start growing crops, then the state will
6 actually come out and determine whether those water
7 rights are actually being used and they can certificate
8 them, which means your water rights are in better shape
9 and there's also some instances where a lake bed, for
10 example, that's dry on most years, but if it gets
11 flooded and there is some grass that shows up the state
12 could also certificate those water rights, but it
13 doesn't mean that they're necessarily reliable on an
14 annual basis.

15 **Q All right. Now, with respect to piping water**
16 **to the developments, has that been considered with**
17 **respect to the administration of these properties?**

18 A Only when a couple of ranches that were
19 purchased up in Smoke Creek Desert --

20 **Q Where's Smoke Creek?**

21 A Smoke Creek Desert is north of Pyramid Lane.

22 **Q All right.**

23 A Quite a ways. About 50 miles north of
24 Pyramid Lake.

1 Q So just so we're clear, 49 miles, where is
2 that located?

3 A That's probably close to 80 to a hundred
4 miles north of Pyramid Lake.

5 Q In Washoe County.

6 A Yeah. All these ranches are in Northern
7 Washoe County.

8 Q Except --

9 A Except some are in -- yeah, some of them are
10 Northern Washoe County or just over the state line in
11 the state of California.

12 Q Now, the properties in Northern Nevada that
13 are being administrated by the cotrustees, is it
14 possible or feasible to pipe water down to Reno for
15 developers to use here locally?

16 A In some circumstances it has proven to be
17 reliable because there is a company called Fiddler Water
18 Company that did that do. They're much closer to Reno
19 than we are, but they did actually put in a pipeline to
20 pipe some of -- but we learned that their water rights
21 are significantly different than the water rights that
22 we have on our ranch.

23 Q And they piped water from Fish Springs?

24 A An area Fish Springs which is just west of

1 Pyramid lake. They pipe the --

2 Q Where did they bring the water to?

3 A To the North Valleys up here in the Stead,
4 Lemmon Valley area.

5 Q All right. Now, how close are you to the
6 Fiddler property in terms of this notion that you might
7 be able to pipe water down to the developers in the
8 Reno/Sparks community?

9 A Fiddler built a 38-mile pipeline. And we're
10 approximately another 40 miles north of Fiddler's
11 pipeline, at the closest resource that we have, and
12 everything else is significantly further than that.

13 Q Do you know whether or not the state engineer
14 would even approve that interbasin transfer of water?

15 MR. SPENCER: Objection, your Honor, calls for
16 speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I don't know.

19 BY MR. ROBISON:

20 Q Have you had any experience trying to
21 transfer water interbasin with properties that you
22 administer?

23 A It's a very difficult process when -- that
24 was kind of what dad was thinking with -- on one of the

1 ranches in 2006, that that could be a good concept to
2 utilize those water rights for, but as addition
3 information came about and compared to what Fiddler had
4 versus what we had, the majority of the water we have is
5 surface unreliable. For example, one of the water
6 rights is for 4800 acres of surface water and we haven't
7 -- we get five acres under cultivation so there's
8 examples like that.

9 Q If you even contemplated a pipeline to
10 transfer water, would you expect a protest?

11 A Well, there was applications at one point in
12 time that were filed. And there was a lot of protests
13 within the basin, as well as the Pyramid Lake Indian
14 Tribe protested the applications because their tribal
15 boundary comes into the same basin that we are, and they
16 said it would have a significant effect on their tribal
17 land. And Paul Taggart, the water attorney when
18 analyzing all that said that's a difficult situation to
19 overcome.

20 Q Now, these protests that we've talked about
21 those are like trials like this one in front of the
22 water state engineers?

23 A I haven't been to one yet so I don't know.

24 Q You don't want to be.

1 A Okay.

2 Q **All right. So then is a pipeline situation**
3 **pretty much out of the question?**

4 A I guess anything's possible, but I would say
5 yeah, I'd say we have not been continuing to analyze
6 that to the degree that when dad was around in the
7 earlier part of 2006 and 7 once we learned a lot more of
8 the facts we basically looked for other things to use
9 those water resources for.

10 Q **Like what?**

11 A Farming. Um, mainly farming ventures.

12 Q **As they sit up in Northern Washoe now do**
13 **those water rights have any value independent of the**
14 **role it has with value of the property itself?**

15 A At this point in time it's our opinion that
16 they're basically included with the value of the land
17 and there isn't any additional water values on those
18 properties beyond what the appraisers of the land had.

19 Q **You see that changing in the near future?**

20 A I don't. I mean, Fiddler Pipeline, I think
21 they put it in -- put their pipeline in -- I'm guessing
22 on this which I know I shouldn't do, but maybe seven to
23 eight years ago. And I don't think they've sold very
24 much water yet. And they've got the ability to bring in

1 first {1:05:40} 2re7 of 8,000 acre feet of ground water
2 rights and additional 5,000 acre feet of water rights
3 which could serve the community for a very, very, very
4 long time.

5 **Q Are you aware that this legislative session**
6 **is contemplating a complete rewrite of Nevada water law?**

7 MR. SPENCER: Objection, your Honor. There's
8 no foundation, lack of foundation.

9 MR. ROBISON: Well, let me ask --

10 THE COURT: Sustained. Yes.

11 BY MR. ROBISON:

12 **Q Are you aware of any bills that are going to**
13 **be introduced in the legislature concerning water?**

14 A I have heard that there is some bills in
15 legislature that are going to be produced. Like to
16 mention one thing, there's a gentleman by the name of
17 Bob Marshall who has a ranch that's closer even to Reno
18 than -- much closer to Reno than ours and even closer to
19 Fiddlers.

20 **Q I want you to slow down.**

21 A All right.

22 **Q Mr. Marshall owns some property with water in**
23 **Northern Washoe. Correct?**

24 A Correct. Closer to Reno than Fiddler or

1 ours.

2 **Q And has he attempted to get state engineer**
3 **approval to pipe?**

4 A He is a water rights attorney by trade for
5 his entire life is what he's done. And he worked on his
6 project for 20-plus years and the state engineer just
7 recently denied his project and terminated it.

8 **Q In fact, took his water away?**

9 A That's my understanding. I think he is
10 appealing it, but for the most part that gives you an
11 example of how hard it is to get something on when Bob
12 Marshall was working on it full time for 20 years.

13 **Q Got it. Let's move to Bill Peterson. Who is**
14 **Bill Peterson, please?**

15 A Bill Peterson is another attorney here in
16 attorney that very sharp guy that has represented Jack
17 Rabbit Properties which is known as the Smoke Creek
18 Ranch. Dad found him and hired him prior to him passing
19 away, and he has helped us continue to represent and
20 operate Jack Rabbit Properties, LLC.

21 **Q Who in terms of this trial and these parties**
22 **has an interest in Jack Rabbit?**

23 A Um, well, Wendy has ownership through her
24 subtrust in Jack Rabbit Properties.

1 **Q How much?**

2 A Approximately seven and a half percent. Luke
3 also is a -- has some of that ownership of Jack Rabbit
4 Properties in his subtrust of about two percent. Stan
5 has some ownership in that ranch as well. There's also
6 myself and my kids that have some ownership in that
7 ranch.

8 And we have partners in there as well.
9 There's a gentleman named George Brown and Mr. Douglas,
10 Mr. Bill Douglas, Mr. Dave Douglas, and Mr. John
11 Douglas, and we also just recently sold an interest to a
12 gentleman by the name of Mr. Phil Satre.

13 **Q And then Mr. Peterson, is he more or less**
14 **heard the catch with respect to making sure this**
15 **property is viable and feasible?**

16 A He does -- he does help us, absolutely, yes.

17 **Q And does that -- in that entity, Jack Rabbit,**
18 **does it necessitate capital calls from time to time?**

19 A It has. We've come a long ways. We've had a
20 few capital calls recently.

21 **Q Let me interrupt you. What's a capital call?**

22 A A capital call is where the investors need --
23 the owners in the property, the property is running at a
24 deficiency or negative and requires the partners to put

1 in some cash or capital to help fund the operation and
2 keep it moving forward.

3 Q All right. And then, finally, on the blue
4 circle there's an attorney there named Nick Palmer.
5 Please tell us about his role.

6 A Nick Palmer has helped out. He actually came
7 in as the attorney right when Pierre Hascheff retired
8 and Nick came in and started helping out dad with some
9 of the estate planning things that I think Nick was
10 working on, a few other -- not necessarily estate
11 planning but just some of the clean-up items that were
12 being handled at the time when Pierre turned over his
13 practice, some of the loose ends, the transactions they
14 we were working on, and Nick Palmer still represents to
15 this day two entities. He represents Incline TSS, which
16 is the Lake Tahoe house. He also represents Bright
17 Holland Corporation, which is one of the ranching
18 entities up around the Gerlach area. And Nick Palmer
19 has also helped out other miscellaneous things for Stan
20 and I, but for the most part he watches those two
21 companies, Bright Holland and Incline TSS.

22 Q And provides legal advice and consultation in
23 that respect?

24 A Oh, yes, absolutely.

1 Q And you found him to be a trustworthy
2 professional on whom you've relied for advice?

3 A Yes, sir.

4 Q Okay. Let's take in the orange and I will
5 want to abbreviate this and move it along. Tell us
6 about the individuals that are highlighted in orange on
7 this particular exhibit, 316.

8 A There's all individual names and/or a company
9 on the last one, Lightening Auction, but all the orange
10 folks are well known appraisers in and around the area
11 of Reno.

12 Q Why do you use appraisers?

13 A To get actual values of current values of
14 properties. And so after dad passed away we hired each
15 one of these individuals to go out and appraise various
16 different properties and assets of the estate to get
17 actual values.

18 Q Is that necessary for the tax filing with the
19 IRS?

20 A It was my understanding that's what we were
21 directed to do by the attorneys. And what we've done
22 prior to this was go out and find reputable appraisers
23 to get current values as of the date dad passed away.

24 Q On one on the bottom, Lightening Auctions,

1 **why do you characterize them as an appraiser?**

2 A There's one, I can't remember his name off
3 the top of my head, but there was one gentleman there
4 who owns a company called Lightning Auctions who does
5 sell a lot of different personal property and things
6 like that and so he was brought in to analyze dad's
7 personal property.

8 Q **That had to be disposed of in the estate?**

9 A Correct.

10 Q **And was that necessary as a result of the IRS**
11 **regulations?**

12 A That's what we were told by a counsel to do
13 is we need professional that was qualified in appraising
14 those types of items.

15 Q **What role did Mike Merkley?**

16 A Mike Merkley, he is an appraiser that is
17 familiar with ranch properties, cattle, equipment, so we
18 utilized him to specialize on those particular items.

19 Q **And how long have you utilized his services?**

20 A I'd say since 2013 range.

21 Q **Has he been a reliable appraiser as far as**
22 **you know?**

23 A Yes. He works for one of the banks around
24 town and is very well known, and qualified, and they

1 were kind enough to allow him to help us outside of the
2 banking world.

3 **Q How about Mr. Hardung, did I pronounce that**
4 **correctly?**

5 A Yes. Kurt Hardung is also an appraiser,
6 that's his primary job and that's what he does and he's
7 very familiar with ranch properties and water rights and
8 things in around the Nevada area.

9 **Q What properties has he appraised for your**
10 **assistance to administer this estate?**

11 A He appraised some of the White Pine lands and
12 he appraised -- he was an original appraiser of some of
13 the Home Camp land and livestock properties, as well as
14 the issue trusts, the TBJ Issue Trust, the SSJ Issue
15 Trust transactions. And I think there was a few other
16 small -- I shouldn't say small because they're nice size
17 properties, but individual parcels of maybe a 40 acre
18 here, 40 acres there, and he would go and appraise some
19 of those smaller ones for us as well.

20 **Q In your administration, coadministration of**
21 **this family trust, do you believe it's important and**
22 **necessary to use the services of appraisers?**

23 A I do, yes, because they have --

24 **Q How so?**

1 A Because they have the most up-to-date current
2 information with to other comps and sales in around the
3 region so they have the best understanding of valuing
4 properties like that.

5 **Q What about Bill Kimmel?**

6 A Bill Kimmel, he is an appraiser that's been
7 around this community for a very long time and he's done
8 a lot of additional appraisals I remember. Bill's
9 really specialized in some of the things that he
10 appraises, for example, casino operations. And Mr.
11 Kimmel appraised -- helped us appraise and value the
12 property known as Bronco Billy's Casino in Colorado.

13 **Q That's the casino owned by the Pioneer Group**
14 **in which your father had a 35 percent interest?**

15 A Correct.

16 **Q Thank you. Did Mr. Kimmel also do appraisals**
17 **on the Lake Tahoe house?**

18 A He did. He did some appraisals on the Lake
19 Tahoe house for dad when dad was alive, and then after
20 because of his familiarity with the property we just
21 hired him again to come in and continue to keep
22 analyzing it.

23 **Q I think there's a point in time where we did**
24 **an evolution of appraisals on the Lake Tahoe house. In**

1 2010 when the option was negotiated between your father
2 and Incline TSS, was the property appraised at about the
3 area of 2010?

4 A Yes.

5 Q And what was its value estimated to be

6 A 6.5 million.

7 Q In terms of your familiarity with the market
8 would you say that was during or getting close to the
9 end of the recession?

10 A I don't believe -- I think it was during,
11 yes.

12 Q All right.

13 A Because it -- there was only a couple of
14 properties that had sold up in Tahoe in and around that
15 time and they were to the wealthiest of the wealthiest
16 people that are in and around that area, but for the
17 most part the rest of the market still was not moving.

18 Q When in 2010 it's appraised at 6.5 million
19 dollars was that at the time when the B of A had a loan
20 on the property of 6.3?

21 A Yes.

22 Q Would that suggest there's only about 200,000
23 of equity in that property at that time?

24 A Yes. I think you could derive that from that

1 conclusion.

2 Q What's the next period of time, the next
3 appraisal on the Lake Tahoe property?

4 A August of 2013.

5 Q In August of 2013 why was Lake Tahoe
6 appraised?

7 A It was appraised because after Kevin Riley
8 and Bob LeGoy, the attorney who works at Maupin, Cox,
9 LeGoy, and after Stan and Wendy and I had agreed to use
10 the life insurance proceeds to buy into the Lake Tahoe
11 house in and through Incline TSS, it was determined that
12 a fair market value appraisal was needed to support that
13 buy in. So we hired Mr. Bill Kimmel to value the
14 property, and once he valued the property then Mr. Riley
15 was able to determine what the percentage ownership was
16 gonna be based off of what SSJ Issue Trust was going to
17 put in.

18 Q Would it be fair to say that before you could
19 put a value on the 54 percent interest that property had
20 to be appraised?

21 A Yes. That's why our ACPA said for an
22 interest to be determined because we hadn't had that
23 appraised value at that time. So once we got the
24 appraised value the interest to be determined was able

1 to be determined.

2 Q And the appraised value as of August, 2013,
3 sir, was what?

4 A 11.5 million.

5 Q And that's according to Bill Kimmel.

6 A Correct.

7 Q All right. Do you know how an appraisal
8 works, what they do to get that value?

9 A I believe, I mean, maybe not be exactly, but
10 for the most part, yes.

11 Q But you've read many appraisals.

12 A Yes.

13 Q How do they get to the value?

14 A They go out and do research on other comps in
15 the area.

16 Q What's a comp?

17 A A comp would be determine like what house
18 sold ten houses down or five miles away, but they try to
19 get properties in as close proximity as they can.

20 Q Does comp mean a comparable sale?

21 A Yes, a comparable sale. And then they
22 utilize those properties when they find comparable
23 sales, evaluate it against the property that's being
24 appraised, and come up with a determination of value.

1 Q Now, before your father's passing, though, he
2 was interested in listing the house for sale. Is that
3 true?

4 A Yes.

5 Q And --

6 A He actually did list it for sale.

7 Q That's correct. And with whom did he list
8 it?

9 A Tahoe Luxury Properties, I believe that's the
10 name of the listing company, but there's a gentleman
11 there who's a real specialist in that market named Bill
12 Dietz.

13 Q Do you recall what the property was listed
14 for in 2012?

15 A I do.

16 Q How much?

17 A Twelve million seven fifty. I believe that
18 sounds right.

19 Q Now, was that kind of a Hail Mary wish price?

20 A It was. Dad had heard, you know, from prior
21 discussions with Bill Dietz that -- you know, there's
22 handwritten notes somewhere.

23 Q 24.4, please. Is that 23? That doesn't
24 sound like. 23.4, I believe. That's not it. Maybe 24,

1 **please. 24.4.**

2 **What did your father believe it was worth in**
3 **2012?**

4 A Through his discussions --

5 MR. SPENCER: Your Honor, I'm going to object.
6 Calls for speculation, lack of foundation.

7 MR. ROBISON: Did you --

8 THE COURT: Overruled.

9 MR. ROBISON: -- want me to lay a foundation?

10 THE COURT: Well, yes, you may lay a
11 foundation. It is sustained subject to the foundation.

12 BY MR. ROBISON:

13 Q **You and your father talked about listing that**
14 **house for sale?**

15 A He was talking with Bill Dietz --

16 Q **Did you and your father talk about listing**
17 **that property for sale?**

18 A We had heard, yes, there was discussions that
19 were going on about listing the Tahoe house, yes. But
20 there is an exhibit, I know, where dad's handwritten
21 notes.

22 Q **That's what we're looking for.**

23 A Okay.

24 Q **Stay with the question for the time being.**

1 **Were there interested buyers that had property nearby?**

2 A Yes, there is in handwritten notes.

3 Q **Please look at 23.42.**

4 A Okay.

5 Q **That's a mess. What are those?**

6 A What does the note say?

7 Q **Well, what is it, first of all?**

8 A It's a -- these are handwritten notes of dad
9 based off of a discussion that he had with Mr. Bill
10 Dietz on 3-21 of '12.

11 MR. ROBISON: If you -- Mark, blow up that
12 first paragraph, maybe it would be a little bit more
13 legible.

14 THE COURT: Counsel, my clerk tells me that
15 23.42 is not formally admitted yet.

16 MR. ROBISON: Wow. Take it off the screen,
17 please. May I show --

18 MR. SPENCER: Yeah, your Honor, I thought we
19 had stipulated all the 23s would be, either .1 whatever
20 would be; is that right?

21 THE COURT: That's consistent with my memory,
22 though, entire subseries of 23. Let's just confirm that
23 23.42 is in. I want you to be able to publish it to the
24 jury as you are.

1 MR. ROBISON: Thank you.

2 MR. SPENCER: No objection.

3 THE COURT: Thank you.

4 BY MR. ROBISON:

5 Q So 23.42. All right. Let's blow up that
6 first paragraph.

7 Is it true, sir, that these are notes of your
8 father?

9 A Yes.

10 Q And if -- you see date up there, 3-21-12?

11 A Yes.

12 Q Is it your understanding that's the date your
13 father recorded these notes?

14 A Yes.

15 Q And he says what with respect to the value of
16 the house?

17 A "Meeting with Bill as to establish a price to
18 sell Tahoe house. Bill is more of the opinion it's
19 worth approximately 9.5 million."

20 Q And then so why was it listed at twelve
21 seven?

22 A There was another email from Bill Dietz a
23 little later on here that he said wow, the high end of
24 the thing could be in the 9. -- 11.9 million, but I

1 think dad just threw out 12.7 million hoping that he
2 could get an offer and it would be something -- he'd be
3 able to give several millions of dollars, but he wanted
4 a higher price to make it look like.

5 Q All right. Todd, we've talked about the
6 option opportunity that Incline TSS had to purchase the
7 property of 7.2. Where did that value come from and
8 when?

9 A The 7,250,000 came about at the time of the
10 option in 2010, in November of 2010, and it was a value
11 that was -- the appraised value of the house was 6.5
12 million, but dad wasn't willing to sell for 6.5 million
13 so he had the value he was willing to accept it for was
14 7,250,000.

15 Q If in 2010 that were a cash transaction at
16 7.25, your father would have taken the money and paid
17 off the bank at 6.3. Correct?

18 A Yes. To be able to get the property released
19 Bank of America would have to be paid in full.

20 Q And generated about a million dollars in
21 profit.

22 A Correct.

23 Q All right. So moving forward, has the
24 property been appraised since August of 2013, to your

1 **knowledge?**

2 A Could you ask that again? I'm sorry.

3 Q **Has the Lake Tahoe house been appraised since**
4 **you had it appraised by Bill Kimmel in August of 2013?**

5 A Yes, we did. We did do another appraisal.

6 Q **When was that, sir?**

7 A Not exactly sure on the exact date, but I'd
8 say it was about 2015 range when we were reappraising
9 the property for Stan to buy in as his part of his
10 buy-in we needed to set another value.

11 Q **And was that in an effort to fairly establish**
12 **the price for Stan's 17.02 percent?**

13 A Yes, for a fair value of the company to set a
14 price for Stan to buy in, that is correct.

15 Q **Correct. And what did that appraisal come in**
16 **at in 2015?**

17 A That was at 12 million even.

18 Q **All right. There's been suggestions since**
19 **then that the property, and this is in the examination**
20 **Mr. Spencer had with you where he alluded to Zillow, but**
21 **yours -- yours as a manager of Incline NTS you think**
22 **it's somewhere between 18 and 19 million now?**

23 A I think I guess it could be possible. You
24 just don't know until the house actually sells. We did

1 have a discussion with Mr. Bill Dietz not too long ago,
2 and I think he was more in line, as I remembered, in the
3 15 to 17 million range was obtainable, but it -- it just
4 all depends on who the buyer is and shows up and looks
5 at it and it's possible, you know, like I said, we would
6 ask more and see what happens.

7 **Q Have you done any substantial improvements to**
8 **Lake Tahoe house that would account for its appreciation**
9 **from, say, the eleven five in 2013 to this estimate of**
10 **18 million dollars in 2019?**

11 **A** Repairs, we did remodel the house -- put a
12 couple hundred thousand dollars in repairs in remodeling
13 the house and done some improvements in the yard, but I
14 don't think they. You know, amount to much more than
15 300,000 dollars. And when the -- this is an older house
16 that was built, I'd say, like in 1960 range. And so
17 when people that are coming to look at the house to buy
18 it, they're not really coming in. A lot of them won't
19 even walk inside the house because they're just gonna
20 tear it down. So, really, the improvements that we did
21 inside were just to help accommodate rental income.

22 **Q And if you as the trustee of the SSJ Issue**
23 **Trusts have been primarily responsible for allocating**
24 **the time and who uses the house when?**

1 A Yes.

2 Q And have you allowed Wendy to use it?

3 A Yes.

4 Q And how much time has she taken to be at that
5 house?

6 A I'd say since dad passed away, approximately
7 200 days. We've been able to accommodate Wendy when
8 she's requested except for sometimes when the house is
9 either rented, or if it's a prime date that we want to
10 generate some additional income, Stan, Wendy and I will
11 kind of move to the dates that aren't necessarily in the
12 prime time to try to increase our revenue.

13 Q And how about Stan?

14 A Yeah, Stan has had the opportunity to use the
15 house, sure.

16 Q Do you have an estimate of how much time he's
17 used at -- he's spent at the Lake Tahoe house?

18 A I'd say about 90 to a hundred days.

19 Q How about yourself and your family?

20 A I'd say approximately 50 days.

21 Q So Wendy is by far the majority user of the
22 house since your father passed?

23 A Yes.

24 Q Have you, in your opinion, improperly denied

1 her access?

2 A Not unless it was just what I just mentioned
3 for reasons why, the house was already booked.

4 Q Did you try to book the house paying renters
5 during peak times like July 4th?

6 A First couple years the family did use July
7 4th, but the rest of the time we've -- all the prime
8 time we've tried to find and accommodate for renters.

9 Q And in order to operate that house, what's
10 the -- what's the amount? How much does it cost to
11 operate that house annually?

12 A We got the annual bank payments, about 75,000
13 dollars. We've got property taxes close to 90,000
14 dollars. We've got other operating expenses with
15 maintenance and various other things.

16 Q Insurance?

17 A Oh, yeah, insurance and all that stuff, but
18 for the most part last year we were able to generate an
19 income approximately 250,000 dollars in rental income.

20 Q Did it carry itself?

21 A Not quite, but it was close.

22 Q So it's about 200 a year to sustain that
23 house with taxes, insurance, bank payments, et cetera?

24 A Yes. And then the rental company gets a

1 portion of the rental income that comes in that they
2 oversee the rental.

3 Q When you say last year. Are you referring to
4 2018?

5 A Yes.

6 Q Just about a wash between the income
7 expenses?

8 A We are probably about -- oh, maybe 30,000
9 dollars short, but then we've also been able to carry in
10 2019, so it was the closest we've had to having a wash
11 since we've been doing it.

12 Q There was mention in your examination from
13 Mr. Spencer a capital call. Has there been more than
14 one capital call where you've had to ask the owners of
15 Incline TSS to contribute money to the operation of the
16 house?

17 A Yeah, we've had to do those quite frequently,
18 especially depending on the time of year. For example,
19 last year we did a capital call at one point earlier in
20 the year and we left the money in the company. And then
21 we've done other capital calls where just because
22 January, February, March, April, May you don't get too
23 many rentals, we have to fund money into the company for
24 those earlier months. And then when June, July, August,

1 September comes about we're able to increase our rental
2 income, then we're able to pay back those loans to the
3 owners of the entity.

4 Q All right. So when SSJ Issue Trust invested
5 into the Lake Tahoe house, it got an ownership interest
6 in Incline TSS of 54 percent?

7 A Correct. Yes.

8 Q For how much, 4.9 million?

9 A Yes, that's true. Just say five million.

10 Q All right. And if it sold today for 18
11 gross, would the SSJ Issue Trust get 54 percent of the
12 18 million?

13 A Yes.

14 Q So there's been a substantial appreciation
15 for the SSJ Issue Trust by virtue of its ownership of 54
16 percent of Incline TSS.

17 A That is correct. The only thing you'd have
18 to take out of the sale itself would be paying Bank of
19 America the 2.4 million dollars that is currently owed
20 and any other miscellaneous expense for the taxes.

21 Q There's cap gains taxes.

22 A Yeah. I mean, there's gonna be taxes, but
23 the fact of the matter is is that it has really proven
24 to be a really good investment for SSJ Issue Trust, and

1 that was discussions that Stan and I, Wendy had early on
2 that at least if we put the insurance money in there
3 it's -- it's gonna be safe.

4 Q Got it.

5 A And so as opposed to trying to do risky -- or
6 things in the stock market or other things like that we
7 just knew that setting those funds in there are safe and
8 any time the house wants or needs to be sold, those
9 proceeds come back to the issue trust, it's not like
10 those funds have disappeared, they're just sitting there
11 increasing in value waiting to be put back into the
12 issue trust at some point in the future.

13 Q As trustee of the SSJ Issue Trust you have
14 the power to sell that house, don't you?

15 A Yes, we did give SSJ Issue Trust the
16 authorization to make the decision to sell the house.

17 Q All right. Does the SSJ Issue Trust, the 54
18 percent owner of Incline TSS, does it owe the Bank of
19 America any money?

20 A No. I --

21 Q Has it guaranteed the Bank of America loan?

22 A No. That was one of the things that was kind
23 of special for the issue trust is when we were doing the
24 operating agreements and such those types of documents,

1 we said that the issue trust would not have to guarantee
2 any of the debt and they would be able to make the
3 decision to sell the house at any time that they wanted
4 to. And I was the only one that went and guaranteed the
5 debt along with Incline TSS. So I put up all my
6 personal assets --

7 Q All right. Let's slow down. The amount of
8 the loan on the Incline house right now is how much?

9 A 2.4 million.

10 Q Have you personally guaranteed that?

11 A I have.

12 Q Has Wendy?

13 A No.

14 Q Has Stan?

15 A No.

16 Q Does the issue trust have any obligation
17 you're aware of on the bank loan?

18 A No.

19 Q Is that the way you structured it?

20 A Yes.

21 Q Why?

22 A Because that's the way -- I didn't want to
23 put any additional risk on SSJ Issue Trust, as well as
24 they should have gotten some benefits because they came

1 up with the significant amount of the cash on the front
2 end.

3 Q The 4.9?

4 A The 4.9, and so we wanted to reward them for
5 being able to do that.

6 Q But the 4.9, that's money that was paid for
7 54 percent of something you owned.

8 A Correct. I could have sold for example --
9 yes.

10 Q How much did you get of the 4.9 million
11 dollars that was paid for your 54 percent interest?

12 A I don't recall any -- there could have been a
13 few small notes, you know, in 30, 40,000 dollar range,
14 but for 99 percent of it went to pay the bank debt,
15 of the 6.3 million. It went to pay the debt on the note
16 that was owed for the remaining 7.1 million dollars on
17 the note that was due to the family trust.

18 Q All right. Now, there is an unsecured note
19 by which Incline TSS owed the seller, SSJ LLC, 7.25
20 million dollars. Correct?

21 A Correct.

22 Q How much does Incline TSS owe the seller
23 today?

24 A Zero.

1 **Q Have you paid that off?**

2 A Yeah. It was paid off in March of 2014 so
3 approximately a year and three months after dad passed
4 away it was paid in full.

5 **Q So please tell the court and jury how Incline**
6 **TSS paid the seller the entire 7.25 million dollar sales**
7 **price.**

8 A Okay, yes, sir. It was the original option
9 payments and some of the -- if you basically take the
10 7,250,000 and you start deducting things from it such as
11 the original option payments that were made, such as
12 some of the payments that were made to the bank, and
13 then we started to use the life insurance proceeds to
14 help pay down that debt as well, and then we went to
15 Bank of America to get a new loan for 2.4 million
16 dollars which effectively was able to cash out --

17 **Q When did you do that?**

18 A -- the family trust.

19 **Q When did you get the new loan?**

20 A March of 2014.

21 **Q So as of April of 2014, who owes the bank the**
22 **2.4?**

23 A Incline TSS, and then I'm the personal
24 guarantor.

1 Q Before you refinanced?

2 A This is when we refinanced.

3 Q I'm talking about before.

4 A Okay. Yeah, when -- oh, before. In 2013 --

5 Q Was SSJ still on the hook for the bank loan
6 to Bank of America in, say, February of 2014?

7 A They were until -- until March.

8 Q All right. So then you walk into the bank in
9 March. And who borrows the money to pay off the bank
10 loan?

11 A Incline TSS. And I was the personal
12 guarantor.

13 Q And what is the collateral for the bank loan
14 that you took out to pay off the seller the 2.4 debt it
15 owed?

16 A Incline TSS is the collateral, but they are
17 also going after personal assets of the guarantor.

18 Q Is that a deed of trust in favor of the bank
19 on the new loan?

20 A Yes.

21 Q And a deed of trust means what?

22 A That they hold the property as security.

23 Q And if you don't make the payments on the
24 loan they can foreclose. Correct?

1 A Correct.

2 Q So if they sell the house for 18 million
3 dollars, they just used 2.4 to pay off their loan.
4 Correct?

5 A That's one route that they could take if they
6 can't sell the property, or they still can't come after
7 the guarantor.

8 Q But the bank is adequately collateralized
9 with the value of the house. Correct, sir?

10 A Yes.

11 Q But nonetheless, they required that you
12 personally guarantee that loan?

13 A Yes, they did.

14 Q Do you know why they wanted your personal
15 guarantee in addition to the deed of trust that secures
16 their loan?

17 A I believe that's just was what the bank
18 required, and they actually wanted the issue trust to
19 guarantee, too.

20 Q What did you say?

21 A Absolutely not it wasn't gonna happen. We
22 would have to find a new lender if they wouldn't allow
23 us to do what we did.

24 Q And did you dissuade them from asking or

1 insisting that the issue trust guarantee that loan?

2 A Yes. Absolutely.

3 Q Before we break I just put Exhibit 306 back
4 up, please. I just want to finish the chart of
5 professionals and go to the green squares. Are those
6 the accountants that have assisted you with respect to
7 the administration of your father's family trust?

8 A For the most part it was Kevin Riley was the
9 main prior to dad passing away and still currently is
10 the family trust accountant that's handled the trust.

11 Q Are there many substantial financial matters
12 that you do as a cotrustee of the family trust that you
13 don't run by Kevin Riley?

14 A No. We would basically have, and still do
15 have, weekly calls.

16 Q How long have those been going on?

17 A Oh, we have weekly calls with Kevin Riley,
18 Bob LeGoy, who's an attorney at Maupin Cox, LeGoy, Brian
19 McQuaid, who's an attorney at Maupin Cox LeGoy, Stan and
20 I, we have those calls weekly, I'd say they probably
21 started in around May or June of 2013 and have run 2013,
22 2014, 2015, 2016 into 2017.

23 Q What's the purpose of the lawyers and the
24 accountant being on those telephone conferences with you

1 **and your brother, Stan?**

2 A Just because they're so many different
3 complicated issues that are there to -- for Stan and I
4 to ask questions and help assist us and help us make
5 these important decisions that we need to make on a
6 weekly or monthly basis and.

7 Q **Very briefly before the noon break, what is**
8 **the role of Mr. Huff and Mr. Venarachi, please?**

9 A Ken Huff is an accountant there in the --
10 that worked for dad for 20-plus years, very, very
11 intelligent man, and he helped out organizing a lot of
12 the things that we were working on prior to dad passing
13 away, not necessarily with the family trusts, but some
14 of the entities, the primary entities that dad and Stan
15 were working on, but Ken was always available in the
16 office for 20 years for any time dad and I had a
17 question to be able to ask Mr. Huff, as well as Mr.
18 Riley.

19 And Randy Venarachi's been a CPA here in town
20 for 30-plus years and we were able to get information
21 from him on some of these ranch structures.

22 Q **The professionals identified on this Exhibit**
23 **316, are there any professionals listed on that chart**
24 **that you don't believe -- that you believe gave you bad**

1 **advice?**

2 A No.

3 **Q Did you feel completely justified in relying**
4 **on their supervision and professional consultation and**
5 **advice?**

6 A Yes.

7 MR. ROBISON: Is this a good time?

8 THE COURT: This is a great time. Ladies and
9 gentlemen, during this noon recess please do not discuss
10 this case amongst yourselves. Please do not form or
11 express any opinion about this matter until it's been
12 submitted to you. We'll see you after the lunch recess
13 at 1:30. We'll stand for our jury.

14 (Lunch break.)

15 THE COURT: Counsel, you may continue.

16 BY MR. ROBISON:

17 **Q Todd, starting shortly after your father**
18 **passed, how was it set up that you and Mr. Riley and**
19 **your brother, Stanley, would communicate what was going**
20 **on with regard to the administration of the estate?**

21 A Communicate between the three of us or?

22 **Q Between the cotrustees and the beneficiaries.**

23 A Oh. So how did Stan, Kevin and myself
24 communicate with the beneficiaries.

1 Q **Correct.**

2 A Okay. Well, Wendy was still in town at that
3 point in time and so Stan and I would communicate with
4 Wendy quite on a frequent basis. I would say we had
5 meetings --

6 Q **Well, let me interrupt you. Was Wendy living**
7 **in Reno at the time?**

8 A Yes.

9 Q **All right. So she was accessible?**

10 A Yes, she was accessible.

11 Q **Do you recall where she was living?**

12 A Right when dad passed away, I don't really
13 recall. I believe it was out kind of in Double Diamond
14 somewhere area like that. And then I remember just
15 before dad passed away Stan and I helped her move Wendy.
16 I remember she was up in Galena, I think out to Double
17 Diamond for a while, and then Stan and I fixed up the
18 office that we were working out of on Quail Rock.

19 Q **Where's Quail Rock?**

20 A Quail Rock is up by Thomas Creek on Mount
21 Rose Highway.

22 Q **Saddlehorn area?**

23 A Saddlehorn, yes.

24 Q **Oh.**

1 A And so Stan and worked on getting that office
2 fixed and turned back into a house because it was
3 originally designed as a house, but dad used it as an
4 office.

5 Q For what period of time?

6 A Did he use the office?

7 Q Did he use the Quail Rock residence as an
8 office.

9 A I'd say probably around 2000 to 2013 and then
10 we probably used it for another year after that.

11 Q So let me -- so we're clear, the Quail Rock
12 house was the offices for the various businesses up
13 until approximately 2014?

14 A Yes.

15 Q For what time did Wendy live in the Quail
16 Rock residence?

17 A I'd say it was the first quarter in 2014
18 range where Stan and I were able to get it cleaned up
19 and remodeled a bit and some improvements done so that
20 it was livable again and then Wendy moved back into
21 there for period of time.

22 Q When she was living there did you house
23 corporate records at Quail Rock?

24 A Yes. We had storage areas in the garage,

1 yes.

2 Q Do you have any reason to believe that she
3 got possession of those records?

4 A No, we do know for -- that she was going
5 through all the records while she was there.

6 Q How do you know that she was going through
7 all the corporation records while she was living at
8 Quail Rock?

9 A Because she had produced a tremendous amount
10 of documents that were there at the office, as well as
11 there was still a copy machine there. And by the way
12 the copies were taken Jessica could tell that she was
13 taking files out of the filing cabinets making copies
14 and then taking and producing them. And Wendy had
15 mentioned that when she -- when we were helping to move
16 her to Vegas some of the boxes at the office actually
17 got thrown into her U-Haul on her way down there, but we
18 know that wasn't the case because most of the documents
19 came from within the filing cabinets.

20 Q Did you, after your father passed, put
21 together a three-ring binder of the operative documents
22 for your brother and sister?

23 A Yes.

24 Q Tell us what you believe was in that

1 **three-ring binder.**

2 A I don't remember them all exactly, but I know
3 that -- what I recall was is the -- the 2006 trust, the
4 2012 trust, which is the second amendment.

5 Q **Why would you put those two documents in a**
6 **binder for Wendy?**

7 A Because that's what dad and Pierre had both
8 told me were gonna be the controlling documents --

9 Q **All right.**

10 A -- to dad's trust. So once Pierre confirmed
11 that as well we made sure that we had those two
12 documents in there.

13 I believe there was some documents associated
14 with Bronco Billy's. The day that -- what I recall
15 anyways is the day that the binders went out on June 5th
16 of 2013 was the same day that we signed the ACPA which
17 allowed the use of the insurance proceeds to be utilized
18 to buy into Tahoe, what I recall was making a copy of it
19 that day and then putting that in the binder.

20 There was a bunch of other documents from what
21 I recall, I believe the indemnification was in there,
22 some operating documents with respect to Bronco Billy's,
23 and I can't remember them all right now but there was
24 quite a few documents in there.

1 Q Did you learn later that she lost or
2 misplaced the binder?

3 A Yes.

4 Q How so?

5 A We just heard that she had misplaced the
6 binder because she was looking for an additional copy.

7 Q And did you provide her with additional
8 documents as a result of her losing her binder?

9 A We did.

10 Q And would it be the same documents that you
11 had previously placed in the three-ring binder?

12 A I'm not sure about that, but at least the
13 trust documents would have been in there for sure.

14 Q So between April 21st, 2013, and the date of
15 the first ACPA June 5th, 2013, what kind of meetings did
16 you have where information was imparted to Wendy?

17 A Like i said she was still in downtown so Stan
18 and I would meet with her at the Quail Rock office when
19 it was still an office. And We would meet to discuss
20 circumstances and what we knew about the trust and
21 circumstances of the various different assets and things
22 like that.

23 Q Do you recall discussing with her the
24 magnitude of the debt with which you were confronted in

1 **administering this estate?**

2 A I do, but dad also did that on a relatively
3 regular basis. I remember one meeting we had in
4 February earlier in the year where dad was explaining at
5 a sit-down meeting with Sam, Wendy and I explaining the
6 magnitude of the debt and the circumstances we were in
7 so it was pretty much well known at that point in time.
8 But yes, we went into the details of some of the debt
9 obligations and some of the concerns that we had because
10 at that point in time the loan with Nevada State Bank
11 for the casino interest which was about -- I think it
12 had about eight or ten million dollar balance on it,
13 they were thinking about calling that loan because dad
14 had passed away, as well as American Ag Credit who had
15 about a seven million dollar balance, they were talking
16 about calling the loan. They may have actually called
17 the loan.

18 Q **What does that mean, call the loan?**

19 A Calling the loan they're say hey, you guys
20 owe seven million dollars, in that range, and we're
21 saying that it is gonna be all due and payable now, even
22 though your loan is structured to go out for 2022, 2024.

23 Q **What event would cause the bank or the lender**
24 **to say the loan's due now when they actually had a due**

1 **date maturity date further out in the future?**

2 A Their reasoning was solely based off the fact
3 that dad passed away.

4 Q **The actual Balward had passed away,**
5 **therefore, it accelerated the debt?**

6 A Yeah. And so we had to renegotiate those
7 debts with the bank and transfer from dad personally
8 into his family trust, and at least with respect to Ag
9 Credit, Stan and I had to do that.

10 Q **That period of time from April 21st to June**
11 **5th, were meetings attended by Kevin Riley and Wendy at**
12 **the same time?**

13 A I don't believe so, no.

14 Q **Was Kevin Riley then a trustee during that**
15 **period of time?**

16 A Yes.

17 Q **Okay. What was it about the Bronco Billy's**
18 **deal that prompted Kevin Riley to resign? As a trustee.**

19 A Kevin, the Division of Gaming Colorado
20 attorney Roger Morris had indicated to Kevin that if you
21 want to stay a trustee you're gonna have to get a gaming
22 license. And that's a very expensive process and
23 detailed process and Kevin Riley said that he did not
24 want to go through with that license process.

1 Q So what did he do?

2 A He decided to resign as a trustee.

3 Q So that's approximately the end of July,
4 2013?

5 A I'm not sure. Yeah, I'd say July, August,
6 somewhere in there.

7 Q So who were the cotrustees of the family
8 trust after Kevin resigned?

9 A Just Stan and I at that point in time. We
10 still had all of our meetings with Kevin as well, but he
11 just wasn't a cotrustee anymore.

12 Q He was still the accountant for the trust --

13 A Yes.

14 Q -- the family estate? So how much time went
15 by between the time Kevin resigned and a third cotrustee
16 was appointed?

17 A Approximately four years.

18 Q From July of 2013 until what, December of
19 2016?

20 A Yeah, maybe -- maybe three or four years.

21 Q And did you have any role in appointing Mr.
22 Kimmel as a cotrustee?

23 A I did, yes.

24 Q And what role was that?

1 A Well, first of all, um, since the casino had
2 sold, Stan and I talked about it and Stan and I wanted
3 to ask Kevin Riley to join us again. So Stan and I
4 asked Kevin would you be willing to come back on and be
5 a cotrustee with us again. And Kevin said no. So -- I
6 don't know if Stan was out looking for a potential other
7 trustee as well, I kept looking and it was difficult
8 find somebody that would be interested in taking a
9 cotrustee position. And I thought of Mike Kimmel. Mike
10 Kimmel, I did go to high school with him, but I've only
11 seen him at a couple of our reunions since high school,
12 but I just remember him from being in high school he's
13 just being an incredibly smart person and an attorney
14 that's really very well known and I asked him and he was
15 willing to accept so that's how we ended up with Mike
16 Kimmel.

17 Q And Mr. Kimmel was appointed approximately
18 when?

19 A Either the -- I think the end of 2016.
20 December, 2016.

21 Q So from that point forward to today who would
22 have been the cotrustees of your father's family trust?

23 A Stan, Mike Kimmel and myself.

24 Q All right. So Mr. Riley was a cotrustee from

1 April to the end of July?

2 A July, August range, yes.

3 Q And so what, as far as you know, did he do
4 during that period of time to breach fiduciary duties to
5 Wendy?

6 A I wouldn't be aware of anything.

7 Q Did he disclose?

8 A There wasn't much to disclose at that point
9 in time, but if he was asked to disclose, he would have.

10 Q All right. What did he do in terms of aiding
11 and abetting Stan in wrongdoing?

12 A Nothing.

13 Q What did Kevin Riley do in terms of aiding
14 and abetting you to do something harmful to Wendy?

15 A Nothing.

16 Q What was he doing during those four months?

17 A He was working very hard with us trying to
18 analyze the amount -- the assessment of the position of
19 dad's estate at that point in time and trying to put all
20 the pieces of the puzzle together and figure out what we
21 were going to do and how we were going to do it.

22 Q Wendy has accused you and Kevin Riley and
23 Stan of entering into a conspiracy to harm her during
24 that period of time.

1 A No, sir, that's absolutely not the case.

2 Q Did you guys get together and formulate a
3 plan to harm Wendy during that time?

4 A No, sir.

5 Q Well, was it during that period of time that
6 you actually considered putting the estate into
7 bankruptcy?

8 A That was something that we had to analyze
9 doing because we thought it could be potentially
10 necessary after Kevin was analyzing the numbers. And
11 then on top of it, like I mentioned to you, the concern
12 with American Ag Credit taking the position that they
13 may call the loan, as well as Nevada State taking the
14 position they may call the loan, and the resources to
15 continue to fund ongoing operations after we learned
16 that Pioneer Group, the owner of the casino in Colorado,
17 could no longer send monthly distributions that they
18 previously would do to the partners, they were no longer
19 able to distribute those funds so the cash flow that the
20 family trust would typically utilize funds for was not
21 available either so there was a lot of concerns at that
22 time.

23 Q But after the licensing process that income
24 stream started again. Correct?

1 A Yes. But I believe that wasn't until, like,
2 2015 range. It was a couple years before we were able
3 to get any of those funds back in the family trust.

4 Q Where did the money go with respect to the
5 income that wasn't paid for a period of time that then
6 was paid after you got licensed?

7 A The funds were, in my -- the best of my
8 recollection is that the funds were being held by the
9 company.

10 Q Right. And where did they go after you got
11 licensed?

12 A After we got licensed?

13 Q Yes, sir.

14 A Those funds there was a unique circumstance,
15 I don't recall what the circumstances were, but Kevin
16 Riley would be able to explain it to you. But those
17 first 800,000 dollars in funds that were being held were
18 able to go back to the family trust directly.

19 Q Was that desperately needed cash?

20 A Yes. There was a lot of people waiting for
21 funds in terms of accountants, attorneys, et cetera in
22 past due bills and things like that.

23 Q Was there an effort to fund the
24 grandchildren's trusts during this period of time, sir?

1 A There was discussions. I don't remember when
2 we actually started funding those, but I believe it was
3 towards the end of 2016 or into 2016, somewhere right in
4 that area in 2016 where we were able to fund Lexi's subs
5 -- Lexi's, grand children's trust completely, and Stan
6 and I took the position since funds were still short we
7 were going to wait a little bit and not fully fund our
8 kids.

9 Q So Stan has three kids. Correct?

10 A Yes.

11 Q And his children, his children, Sam's
12 grandchildren, those trusts have not yet been fully
13 funded, have they?

14 A Not fully, but I'd say approximately 50
15 percent.

16 Q And then Ben and Amanda, your kids, their
17 subtrusts have been funded to what extend as of today?

18 A I'd say maybe a little more, 50 percent,
19 maybe 60 percent.

20 Q And how about Lexi, Wendy's daughter?

21 A It's been fully funded a hundred percent.

22 Q Why did she get a hundred percent funding and
23 your kids and Stan's kids did not?

24 A It was just a decision that Stan and I made

1 at the time that we thought it was the right thing to do
2 if we were gonna fund one, somebody first, let's get
3 Wendy there, let's get Lexi's funded and then.

4 Q And then Luke's is not funded because he's a
5 20 percent participant?

6 A Yeah. Luke doesn't actually have a grand
7 children's trust associated with getting funds for
8 college, so to speak. He was supposed to get 20 percent
9 of Wendy's share.

10 Q Did Mike Kimmel participate in these
11 decisions to fund the grand children's trusts?

12 A Yes, he did.

13 Q All right. So Mr. Kimmel starts
14 approximately end of 2016?

15 A Yeah. Good point, yeah.

16 Q When was it that you started dealing with
17 Wendy's lawyers instead of her directly?

18 A Prior to Mike Kimmel coming on board.

19 Q So --

20 A So I -- mid 20, I think we got the first
21 letter --

22 Q You said mid 20. What do you really mean?

23 A Mid 2016, I would say.

24 Q So Wendy was represented by counsel from mid

1 **2016 to the present.**

2 A At least at that point in time, but also
3 Wendy had indicated even right after dad had passed away
4 within a few months that she had hired a counsel and
5 that she had counsel, repertation (sic) of the counsel
6 and accountant that were working for her in 2013, 2014
7 and 2015.

8 Q When Wendy hired, I guess, a second set of
9 counsel, 2016, were most of the communications then
10 between lawyers to lawyers?

11 A That's what was communicated to us was is
12 that's the way it should be handled from that point in
13 time.

14 Q In fact, your brother actually paid for some
15 of her attorney's fees. Isn't that true?

16 A Initially, yes.

17 Q And that would be the Wiggins firm down in
18 Las Vegas?

19 A Correct.

20 Q And did, as far as you know, you and your
21 trust lawyers cooperate with Ms. Wiggins, Wendy's lawyer
22 in 2016 and 2017?

23 A That's my recollection, yes, and got her the
24 information that she needed and for whatever reason they

1 decided no longer to be a part of Wendy or whatever.

2 I'm not sure what it was.

3 Q So now when Mr. Kimmel's involved, Wendy's
4 represented by counsel, what important decisions with
5 regard to the administration of the estate was Mike
6 Kimmel involved in in, say, 2017?

7 A I think you said that the grand kids' trust,
8 the -- we discussed those, but most of the -- if not all
9 of the issues that we had prior to -- I think all the
10 issues that we really have that currently were all prior
11 to Mike Kimmel coming on board.

12 Q Prior to the time that she retained counsel
13 in Las Vegas did you help Wendy with her budget?

14 A Could you say that again?

15 Q Prior to the time that Wendy hired counsel in
16 Las Vegas to assist her with these matters, did you help
17 Wendy with her financial budget?

18 A Yes.

19 Q Please explain.

20 A Okay. Actually, prior to dad passing away,
21 dad would all be working on a monthly budget with Wendy.
22 And he would have myself come in and help. He'd also
23 have Jim Careka come in and help

24 Q Who's Jim Careka?

1 A Jim Careka's dad's assistant who's been in
2 the office for 20-plus years. He would have Jessica
3 Clayton from time to time to help. There was -- dad's
4 had other accountants hired specifically for the fact to
5 help Wendy with her budgeting but, yes, I --

6 **Q Was she on an allowance, so to speak?**

7 A I'm not sure how I would really answer that,
8 but it would be more or less she would come in monthly
9 and say what her bills and obligations were from rent
10 to, you know, everything, cell phones --

11 **Q Who would pay those bills?**

12 A Dad would end up paying those bills.

13 **Q And did he sustain her for several years**
14 **prior to his death?**

15 A Yes. It was very, very stressful for my dad
16 that would -- he would -- only time I'd ever see his
17 face red would be when he was dealing with those budgets
18 on a monthly basis and so he would try to put somebody
19 else in between him and Wendy to do that and sometimes I
20 was the one that did that. And then after dad passed
21 away I continued on working with Wendy on her monthly
22 budgets and --

23 **Q Would you leave money for Wendy or give her**
24 **money for her monthly bills?**

1 A We did. We would go through the budgets with
2 Wendy and figure out what she needed to get by and
3 things like that, and then we would make payments to her
4 so that she could cover the expenses that she had.

5 Q Do you remember a time from, say, three years
6 before your father died through the time of these
7 proceedings where Wendy has been self-sufficient?

8 A No.

9 Q Has she always lived off her father or you
10 and your brother?

11 A I would say for the large part that is the
12 case. Dad would continually encourage her and, for
13 example, buy her a horse trailer and a truck so that she
14 could haul horses around to try to make some money. She
15 did work at a horse facility for a while where she was
16 making some money and so she had some things but not to
17 the point where she could be totally self-sufficient.

18 Q Fair enough. Do you remember the Galena
19 estate project that your sister got involved in?

20 A I do.

21 Q Tell us about that, please.

22 A I don't know a tremendous about it, a lot
23 about it, to tell you the truth. I just know where it
24 is and that Wendy had some folks that she got involved

1 with there to develop maybe 20 different units that were
2 three-plus acre type of units and those units -- I
3 believe that there was financial issues associated with
4 the project, but I don't know all the details of the
5 project.

6 Q And do --

7 MR. SPENCER: Your Honor?

8 THE COURT: Hold on.

9 MR. SPENCER: Your Honor, object based upon
10 lack of foundation, lack of personal knowledge.

11 THE COURT: Overruled. You may continue.

12 BY MR. ROBISON:

13 Q Okay. Did your father fund housing for Wendy
14 prior to his passing?

15 A He did.

16 Q How so?

17 A He would pay for her housing expenses. I
18 remember him trying to purchase a house for Wendy that
19 had a bunch of issues and he had to short sale it. I
20 just -- I remember there was at least -- I remember dad
21 having at least four house payments and three of those
22 one way or another were associated with Wendy and one
23 with himself.

24 Q And he paid the expenses for the three

1 houses?

2 A That's my recollection, yes.

3 Q Okay. Now, with regard to 2012 going into
4 the second amendment, did you meet with Pierre Hascheff
5 just you and he about what to put in the second
6 amendment?

7 A No.

8 Q Ever just talk to Pierre by yourself about
9 what should be in that document?

10 A No.

11 Q Were you involved in the negotiations between
12 Pierre and your father with respect to the contents of
13 the second amended trust?

14 A No.

15 Q How do you know about its contents?

16 A Because dad told me when he signed it in
17 December, he told me that that was the operable document
18 before he went down to L.A. He told me about it when we
19 went to L.A. and then he would continually tell me
20 things about especially things that he was doing taking
21 Luke in there and he wanted -- I don't know how much he
22 talked to Stan about that but he talked to me about it
23 because he was very concerned. He kept saying I know
24 that you and Stan can take care of your kids, but Wendy

1 can not take care of her kids so I remember dad saying
2 that was very important to him.

3 Q You mentioned that you went down to Los
4 Angeles. Are you referring to the time that your father
5 was down there for surgery?

6 A Yes.

7 Q How long were you down there with your
8 father?

9 A Approximately three days.

10 Q And was that preop period of time?

11 A Yeah, it was -- I was there with him the
12 night before the surgery. I was there the day of the
13 surgery, and probably one or two days after the surgery.

14 Q And did you have your wife with you?

15 A I did, yes.

16 Q Did you assist your father in his recovery
17 together with your step mom?

18 A I was at the hospital with him when he got
19 out of the surgery and for a day or so after that, but
20 for the most part after that then Jennien was with him
21 when he went from the hospital back to the hotel.

22 Q Was Wendy there?

23 A No.

24 Q Was Wendy calling?

1 A Wendy was calling dad, yes.

2 Q **For what?**

3 A She needed money. I remember dad being very
4 upset about that.

5 Q **After his surgery?**

6 A Yes.

7 Q **You mentioned some benefits that were
8 allocated to the three kids in the second amendment.
9 Can you quantify those benefits as set forth in the
10 second amendment for you and your brother and your
11 sister?**

12 A I could -- I could try, yeah.

13 Q **Please do.**

14 A Okay. So in the second amendment dad made
15 some additional provisions in gifts and took quite a few
16 different things into consideration, but I believe -- I
17 want to say, like, a benefit for each individual person,
18 is that what you're thinking?

19 Q **Yes.**

20 A So I think Pierre, as I mentioned earlier
21 today that Wendy had a 1.5 million dollar deduction
22 removed so that was a 1.5 million dollar benefit to
23 Wendy. Lexi, got a hundred thousand dollars associated
24 with her grand kid's trust. Luke would have got 20

1 percent of what Wendy was supposed to get which is
2 probably in that 500,000 dollar range. Stan would have
3 gotten a gift of 50 percent of Montreux in the second
4 amendment as well as a six -- six percent of Bronco
5 Billy's, combination of those I'm -- you know, I'm sure
6 it's three-plus million dollars. And I -- dad gave me
7 six percent of Bronco Billy's which was probably about
8 seven hundred plus thousand dollars. There was that
9 other note that -- from the TBJSC trust of a hundred
10 plus thousand dollars.

11 **Q Which you had to pay back.**

12 A That's my understanding. That I had to pay
13 it back, take it off from my share. But I guess there's
14 also an argument that it could be a benefit to the TBJSC
15 because they didn't to pay it. But, yes, I had to pay
16 it out of my share.

17 **Q So who got the biggest benefits from the**
18 **second amendment based on your analysis?**

19 A I would say Stan did because of the Montreux
20 50 percent of the -- of Toiyabe had a significant value.

21 **Q And then how about Wendy?**

22 A Yeah, I would say probably Wendy got more of
23 -- she got, that 1.5 dollar benefit. That was a
24 significant benefit as well.

1 **Q What was the effect of the marital trust**
2 **provisions insofar as the kids were concerned, sir?**

3 A The marital trust of dad's family trust
4 provision?

5 **Q Yes.**

6 A What I recall was there was discussions about
7 that with the attorneys and that there was -- it was
8 decided that there was no marital trust that was going
9 to be set up because the main reason for the marital
10 trust was in the event that there was assets or cash or
11 properties in the family trust that we didn't want to
12 have to pay estate taxes on, that was a vehicle, so to
13 speak, where you could take certain assets, put it into
14 the marital trust where you could defer paying taxes on
15 everything that was put into the marital trust until
16 Jennien passed away. But at the time the analysis was
17 done by Kevin and all of us, we made the decision right
18 away that because of the values of the estate were low,
19 the debts were high, that this was a good time to move
20 forward without having to pay -- or without having to
21 put anything in the marital trust, let's just -- let's
22 just -- right now let's go ahead and move forward and
23 pay whatever taxes are due.

24 **Q Okay. I want to move forward to the time**

1 after your father passed and you started administering
2 this estate. And want to direct your attention to
3 Exhibit 13. This is a -- excuse me, Exhibit 14, Mark.

4 This is one of those what we have referred to
5 as an ACPA. Correct, sir?

6 A Yes, it looks like that, yes. I'm not sure
7 which one it is, but.

8 Q If you could blow up the second recital,
9 please? Do you know?

10 A I see that.

11 Q Second, let's let the jury catch up, please.
12 All right. Who is the parties he referred to in
13 Paragraph 2?

14 A The trustee of the issue trust, so that would
15 have been myself as a trustee. The primary
16 beneficiaries we thought at the time were Wendy, Lexi
17 and -- I'm sorry, Wendy, Stan and I. And then the
18 company, the company would have been Incline TSS.

19 Q If you blow up that first paragraph, Mark, we
20 could take a better look at how that's reflected in the
21 document?

22 Now, this is a document prepared by the Maupin
23 Cox LeGoy firm?

24 A Yes.

1 Q Now, it says that the company that's in
2 quotes is -- what entity is the "company"?

3 A That would have been Incline TSS.

4 Q All right. By this time did you have an
5 understanding that both your brother and your sister
6 knew what a limited liability company was?

7 A Yes.

8 Q To your knowledge had they both been involved
9 in being managers and members of limited liability
10 companies in their endeavors?

11 A Yes.

12 Q And then so the other parties are the primary
13 beneficiaries in the issue trust. Correct?

14 A Correct.

15 Q All right. So the company, that's referred
16 to as a limited liability company. Correct?

17 A Yes.

18 Q All right. That would entail a manager and
19 members?

20 A Correct.

21 Q All right. Let's take a look at the
22 signature page, please. And if you could blow up the
23 company signatures at the bottom.

24 All right. What does that say?

1 A It's pretty clear that of Incline TSS that I
2 was the manager at the time. And Todd B. Jaksick was a
3 member and Todd B. -- or TBJSC Trust were the members,
4 and it doesn't list any other members so those are the
5 owners of the company.

6 Q And at this time who owned the Lake Tahoe
7 house?

8 A Those trusts that are associated with them,
9 like I said, it was -- at the time it was --

10 Q Who owned the Incline house?

11 A Incline TSS.

12 Q All right. Is that the company reflected on
13 that portion of Exhibit 14?

14 A Yes.

15 Q All right. So anybody reading that would
16 know that you were the manager --

17 A Correct.

18 Q -- of Incline TSS.

19 A Correct.

20 Q Correct?

21 A Yes.

22 Q And anybody that read that would read --
23 realize that Todd B. Jaksick is a member?

24 A Correct.

1 Q Member is synonymous with owner. Correct?

2 A Yes.

3 Q And anybody that read that document would see
4 that TBJSC trust member is also an owner?

5 A Correct.

6 Q So are the owners of Incline TSS LTD
7 reflected on that document?

8 A Yes, they are. My family trust is Todd B.
9 Jaksick as my family trust, yes.

10 Q And then if we go up to the same two lines
11 that are above that for the primary beneficiaries, you
12 sign on behalf of the SSJ Issue Trust. Correct?

13 A Yes, because I was the trustee and the sole
14 trustee of the issue trust, that's correct.

15 Q And you felt that you were required to sign
16 that document on behalf of the issue trust. Correct,
17 sir?

18 A Yes.

19 Q And then who signed for the primary
20 beneficiaries?

21 A The primary beneficiaries which was Todd,
22 Stan and Wendy.

23 Q Do you recognize Wendy's signature there?

24 A Yes, I do.

1 Q All right. Now, counsel has referred to this
2 as an orphan page. Where is SSJ Issue Trust referred
3 to?

4 A In the body of the document the first -- on
5 the first page where you were eluding to earlier.

6 Q So issue trust is a party as reflected on the
7 first page.

8 A Correct.

9 Q How about primary beneficiaries, are they
10 identified on the first page of this document?

11 A Yes, I believe so, yes.

12 Q And then with respect to the "company" is the
13 "company" referred to as Incline TSS on the first page?
14 Next line down, mark. Bottom three signatures.

15 A What was your question?

16 Q Well, Incline TSS is referred to on the first
17 page as what?

18 A The company.

19 Q So how can you look at that document as an
20 orphan and not know that each and every one of those
21 entities are referred to on the first page of the
22 document?

23 A Yeah. No, I think it's pretty
24 self-explanatory. I don't know if -- I'd have to look

1 at the first page to see if it specifically mentions

2 Todd, Stan and Wendy on the first page, but.

3 Q All right. Go to the first page. I think
4 it's the third or fourth recital, Mark.

5 A Okay.

6 Q What does that say?

7 A Yeah. Sorry, I just didn't recall that when
8 you asked me the question.

9 Q So there's no primary beneficiaries on the
10 first page are the same that are on the last signature
11 page?

12 A Yes. That is correct.

13 Q What's orphan about that?

14 A Nothing that I see. It's just how documents
15 are drafted by counsel.

16 Q Page 2, second paragraph, please.

17 Tell us what you understand that provision to
18 be and why it's in this document.

19 A That was a provision that was basically where
20 Stan, Wendy and myself were allowing the insurance
21 proceeds to be utilized to pay some or all of the debt
22 obligations associated with that 7.1 million dollar
23 note.

24 Q You see that reference to unsecured

1 promissory note, did you hear any objections about that?

2 A No, I did not.

3 Q Was that explained to the parties who signed
4 this document that there was an unsecured note signed by
5 Incline TSS to purchase the Incline house?

6 A Yes. And those -- yes, that dollar reference
7 was referenced as well.

8 Q Next paragraph, please. Would you read that
9 out loud so I can ask you some questions about it?

10 A Okay, sure. This agreement constitutes --

11 Q Slowly.

12 A Okay. Sorry. "This agreement constitutes
13 the written and binding consent of the parties to the
14 proposed action described herein. The primary
15 beneficiaries as the sole adult beneficiaries of the
16 issue trust acknowledge and agree and specifically
17 intend that by virtue of their written consent the
18 trustee shall have no liability to any present or future
19 beneficiary of the issue trust with respects to the
20 proposed action described herein.

21 "The parties acknowledge and agree that this
22 agreement is binding on all present and future
23 beneficiaries of the issue trust in accordance with NRS
24 164.038 and NRCS 164.725 and hereby waive any further

1 notice to proposed actions relating thereto."

2 Q That provision that says that the trustee
3 shall have know liability to any beneficiary, do you
4 find that a bit ironic in the light of the fact that
5 you're being sued for this transaction?

6 A Yes, sir.

7 Q Did you trust Wendy when she agreed not to
8 hold you liable for this?

9 A I did, yes.

10 Q Did you rely on that?

11 A Yes. I mean, that was one of the reasons why
12 counsel put this together was so that when everybody
13 agreed to make that decision that was the decision we
14 were making.

15 Q Was this document explained in Wendy's
16 presence?

17 A Yes.

18 Q Now, if we could put Exhibit 309, please.
19 This was the one we just showed the jury, Exhibit 14,
20 this was the first of ten ACPAs, correct, sir?

21 A Yes.

22 Q Did you receive legal advice that it's better
23 to be cautious with respect to getting the consent of
24 Stan and Wendy for these various transactions?

1 A We just thought it was important to document
2 the significant --

3 Q Blow that up please, Mark.

4 THE COURT: Is 309 in, counsel?

5 MR. ROBISON: Yes. It was marked for
6 demonstrative purposes.

7 THE COURT: Thank you.

8 MR. ROBISON: And used for that purpose.

9 THE COURT: It is broadcast to the jury for
10 that purpose, marked for demonstrative purposes.

11 BY MR. ROBISON:

12 Q We just covered Exhibit 14. Was a similar
13 ACPA entered into with respect to Bronco Billy's money?

14 A Yes.

15 Q And that's Exhibit 5. I'm not going to go
16 into the details, but Exhibit 15 has that same release
17 language wherein Wendy promises not to sue you over
18 Bronco Billy's. Correct?

19 A Correct.

20 Q And it's signed by Wendy?

21 A Yes.

22 Q Then the third ACPA we've was marked as
23 Exhibit 16, it will be in the jury room, tell us what
24 that one pertains to.

1 A That's the indemnification agreement
2 basically just letting -- there was payments that needed
3 to be made at that point in time and so this was an ACPA
4 drafted by Maupin, Cox and LeGoy, Bob LeGoy, basically
5 to allow us to be able to make payments under the
6 indemnification agreement to Ag Credit and Met Life and
7 so it was -- everybody was approving the fact that we
8 could utilize those funds for that purpose.

9 Q And that document dated July 24th, 2018, I
10 know the signatures may have been obtained actually a
11 little bit later, but that document refers to what
12 indemnification agreement, sir?

13 A That had to do with the indemnification
14 agreement that dad and Pierre prepared in 2007.

15 Q The one that Mr. Hascheff was examined about
16 yesterday and today in this courtroom.

17 A Yes.

18 Q All right. Now, the one highlighted in
19 yellow, do you know who they were prepared by?

20 A Those were prepared by Maupin, Cox and LeGoy.

21 Q And then the template that was used, those
22 are represented by Exhibit 17, 18 and 20?

23 A Yes.

24 Q They follow the same format?

1 A For the most part, yes, but there's different
2 language in there that says it's prepared by the
3 cotrustees.

4 Q Did anybody dispute or object to that?

5 A No.

6 Q And was Paragraph 4, for example, bring up
7 17, if you would, please, Mark.

8 The August 14th, 2013, if you go to the
9 signature page, that is signed by whom on the last page?

10 A Todd, Stan, Wendy and Lexi.

11 Q Do you recognize Wendy's signature?

12 A I do, yes.

13 Q Now, by this time there was a realization
14 that Lexi was actually a adult and should be signing
15 these. Correct?

16 A Yes.

17 Q Now, go down and show us the footer, Mark.
18 You've seen those on legal documents before,
19 sir?

20 A Yes.

21 Q What did you understand them to be?

22 A Sometimes like a reference as to -- it's
23 usually the -- to reference to be able to figure out
24 that page is tied to prior pages or a file.

1 Q Is that footer appear on page 2 at the
2 bottom, please?

3 A I'm not sure.

4 Q Well, I'll show you page 2, the bottom. See
5 in the lower right-hand corner?

6 A I don't think that's the footer, no.

7 Q All right. Do you know what that is?

8 A Um, I just kind of remember Bob LeGoy saying
9 sometimes they put footers on, sometimes they didn't.

10 Q With regard to the signatures on that
11 document, can you tell us why those signatures exist on
12 this document?

13 A I think on behalf of the family trust it was
14 myself, Stan and Kevin Riley, counsel felt that the
15 three cotrustees needed to sign the document as well.

16 Q All right. And with regard to the next to
17 the last paragraph on that same page, Mark, please bring
18 that up. Next to the last paragraph. Thank you.

19 And you see the same provision that they
20 agreed that you should bear no liability whatsoever for
21 entering into this transaction?

22 A Yes, I do recall that.

23 Q And that language where Wendy releases you
24 from any liability is in each and every ACPA, is it not,

1 **sir?**

2 A Yes, I believe that to be the case.

3 Q All right. I'd like to now turn to Exhibit
4 23, please. Would you enlarge the first paragraph?

5 What does this agreement -- you recall this
6 one pertaining to Stan's buy-in?

7 A I'm not sure.

8 Q You might want to go to the second paragraph,
9 Mark.

10 A Yes.

11 Q All right. Would you read that please so I
12 can ask you some questions about what it says.

13 A Okay. Says "The issue trust is the current
14 owner of 54 percent Class B membership interest in
15 Incline LTD, a Nevada limited liability company."

16 Q That is a result of the transaction that was
17 Exhibit 14, the first ACPA?

18 A Yes. That allowed the issue trust to buy 54
19 percent of Incline TSS which is the Tahoe house.

20 Q And the cotrustees and the primary
21 beneficiaries agreed to use the insurance company money
22 to buy into Incline TSS.

23 A That is correct.

24 Q So as a result of that who was the majority

1 owner of Incline TSS?

2 A The issue trust.

3 Q All right. And then please keep reading the
4 balance of that paragraph.

5 A "The company is the owner of the Jaksick
6 family real property commonly known as 101 Lakeshore
7 Boulevard, Incline Village."

8 Q All right. At that time was it considered
9 family property even though Incline TSS owned it?

10 A No, but that's just kind of a wording I think
11 Brian McQuaid used, but everybody's been using it so
12 it's kind of -- I mean Incline TSS owns it but it's
13 always kind of been considered that.

14 Q And the family is using that property
15 throughout this entire time as a vacation home.
16 Correct?

17 A Correct.

18 Q And then we go on starting with the sentence
19 "The other members of the company"?

20 A "The other members of the company consists of
21 Todd B. Jaksick Family Trust, as to a 23 percent Class A
22 membership interest, and the TBJSC trust as to a 23
23 percent Class A membership interest. Todd B. Jaksick is
24 the sole executive committee manager of the company."

1 **Q Why are there A memberships and B memberships**
2 **in Incline TSS?**

3 A The A memberships are the owners that are
4 obligated to guarantee the debt. or can -- are
5 obligated to guarantee the debt. I don't know if it's
6 obligated to guarantee the debt or just they're the ones
7 that guarantee the debt.

8 And Class B membership like the issue trust,
9 they have some special provisions, three of them that I
10 can think of. One is they don't have to guarantee the
11 debt. Two is they can make the decision to sell the
12 house. And three is they are ensured to get their money
13 back first. So in an example if the house was in a bad
14 time of the economy and the house had to be sold, the
15 issue trust gets their money that they put into this
16 transaction back first before I do, for example.
17 They're guaranteed to get their money back first.

18 **Q All right. Now, we marked these ACPAs but is**
19 **there correspondence that pertains to what was going on**
20 **with respect to these ACPAs while they were being**
21 **discussed?**

22 A Yes. I'm not sure -- yes, but like for this
23 one there was a lot of correspondence and documents and
24 signatures and -- there was a lot of correspondence,

1 yes. Emails, texts.

2 MR. ROBISON: May I have a moment, Judge?

3 THE COURT: Yes.

4 MR. ROBISON: May I show the witness an
5 exhibit book, your Honor?

6 THE COURT: Yes. Ladies and gentlemen, why
7 don't you stand for a moment.

8 (Short pause.)

9 THE COURT: All right. Be seated.

10 MR. ROBISON: Thank you, your Honor. Pursuant
11 to stipulation we ask for admission of Exhibit 15 A, B,
12 C, D, E, F and G.

13 THE COURT: Ms. Clerk, Exhibit 15 A through G
14 are admitted.

15 MR. ROBISON: Thank you.

16 (Exhibit 15 A-G is admitted into evidence.)

17 BY MR. ROBISON:

18 Q All right. With respect to what we refer to
19 as the Bronco Billy's ACPA, would you please turn to
20 Exhibit 15 A, and tell us basically what's going on
21 there.

22 You can show it to the jury. Please blow it
23 up.

24 A Am I supposed to be looking at something in

1 the binder?

2 Q I was hoping.

3 A Whereabouts is it?

4 Q You find 15 A?

5 A Okay.

6 Q Okay? All right. So tell the jury what's
7 going on with respect to correspondence with Stan and
8 Wendy relative to the Bronco Billy's ACPA Exhibit 15.

9 A I haven't read these for a long time so I'm
10 not sure, but it looks to me like I'm saying "Wendy,
11 have you filed a tax return in the past couple of years?
12 Wendy, do you have a recent credit report?" So this is
13 where we're trying to help figure out if we thought if
14 Wendy could possibly get licensed.

15 And Wendy says "No, I have not filed taxes
16 because several years back Thorpe & Drake filed them and
17 left over 7,000 to roll over into the next years. I
18 never made any money after that and probably could have
19 received refunds but didn't know how to do it. Dad
20 called Kevin and he said that the 7,000 would have been
21 paid, side if there were any deflicts I'm not sure and
22 he was checking to see if I could get any overpayment
23 back and it was too late. No, I did not have a recent
24 credit report," so.

1 Q Okay. Where did this discussion lead with
2 respect to Wendy trying to get licensed?

3 A I think this was one of the concerns that the
4 Division of Gaming -- not the Division of Gaming, but
5 Roger Morris in Colorado and others had that these are
6 real red flags if you're trying to get a gaming license.

7 Q What would be the difference, as it turns
8 out, between Wendy getting licensed and her not getting
9 licensed?

10 A We didn't really see it as any difference
11 because if she was able to get licensed, then she was
12 gonna be able to join us in Bronco Billy's. And even
13 then -- and if for some reason she couldn't get licensed
14 and we still owned the casino, we were gonna equalize
15 with her.

16 Q So your father owned about approximately 35
17 percent of Pioneer Group. Correct?

18 A Correct.

19 Q Gifted six percent and six percent of the
20 company to you and Stan respectfully. Correct?

21 A Correct.

22 Q That left 25.

23 A Correct.

24 Q So the 25 percent that ultimately got sold,

1 those proceeds for that 25 percent were to go into the
2 family trust?

3 A Yes.

4 Q And distributed in accordance with the trust
5 terms.

6 A Yes.

7 Q Was some of money ear marked for the grand
8 children's trusts?

9 A We did, yes.

10 Q How so?

11 A It was just discussions that we had when
12 those -- some of the last bit of funds that were gonna
13 come back in that we were going to fund the remaining
14 balance to grand kid's trusts.

15 Q So if you look at Exhibit 15 B now, this is
16 more correspondence between yourself and Wendy, here in
17 June of 2013 are you still trying to encourage Wendy to
18 proceed with the license application?

19 A Yeah, I basically just told Wendy I don't
20 really think you've got anything to lose, all they can
21 do is say no. So here's what I'm telling her, fill out
22 -- fill out the gaming application, pull detailed
23 background documents, see all that requests that go to
24 the Colorado Division of Gaming requests. I made Wendy

1 a binder, I put tabs in it to keep her organized so when
2 she got her application ready, she got her fingerprints
3 and various different things she could keep in the
4 binder so we could keep it organized for her, get your
5 fingerprint send in your background check for
6 discussion.

7 Q Did that happen?

8 A No, we never did get a completed application
9 from Wendy, no.

10 Q Then do you recall a bit of a dispute about
11 six percent of his share or six percent of the company?

12 A I do.

13 Q That had to be clarified with Wendy?

14 A Correct.

15 Q And did she sign an affidavit to the effect
16 that six percent of the company was the operative
17 phrase?

18 A Yes.

19 Q Please take a look at 15 D. Is that the
20 affidavit to which you referred? C, I'm sorry, 15 C.

21 A Yes, I was looking at Paragraph 3, I believe,
22 where Wendy was doing her affidavit.

23 Q Blow up the first part of Paragraph 3,
24 please. And what were you referring to?

1 A I just -- I just saw -- this affidavit, this
2 is written as though Wendy is the one speaking here so
3 it says "Prior to Sam's passing" who is dad, "I had
4 conversations with him, discussing concerning his wishes
5 in the event anything should happen due to his recent
6 health struggles. He expressed to me his intent to gift
7 each of my brothers Stan and Todd stock in PGI in the
8 amount of six percent of the entire company."

9 Q Now, turn to the next page if you would and
10 show that to the jury.

11 Do you see Wendy's signature on that page?

12 A Yes, I do.

13 Q Do you recognize that as your sister's
14 signature?

15 A Yes, I do.

16 Q And Ms. Clayton notarized that, but do you
17 understand she had to cut and paste a jurat?

18 A I'm not totally sure what that means, but I
19 would think almost documents would need to have that
20 done.

21 Q But in any event, do you have any reason to
22 believe that Wendy did not sign this affidavit?

23 A No.

24 Q Did you keep Wendy informed about the

1 progress being made with the Bronco Billy transaction?

2 A Yes, we did.

3 Q And would you look at Exhibit 15 D, please,
4 and blow that up, last paragraph, Mark.

5 Do you see that paragraph?

6 A I do, yes.

7 Q There is some reference by Wendy to some
8 judgments, particularly one with regard to Scott
9 Freeman, did you have discussions with Wendy about that?

10 A Yes, I -- yes, I had the -- well, this was
11 when we asking her about her application and she said
12 she did have it here with her. In this one she says
13 "There's nothing she can't get licensed about. I've
14 never been convicted of theft or anything like that.
15 There was charges with mom." I think she's talking
16 about when my mom was suing her. "But she was dead.
17 And they were dropped."

18 Q In other words, your mother died and the
19 lawsuit didn't go forward, is that how you read this?

20 A Yeah, that's -- yes.

21 A "Never been a felon. I was arrested for
22 bounced checks and judgments, but they were paid the
23 next day so no charges during the arrest. I had drugs
24 and we had the charges dropped if I went to rehab." Do

1 you want me keep read this?

2 Q No, I think you have done enough. But did
3 this add complications to the effort to get Wendy
4 licensed?

5 A A bunch of these things, yes, did have
6 complications why Wendy couldn't get licensed, that is
7 correct.

8 Q I'm going to skip ahead to 15 G, please.
9 This is an email May of 2014, Wendy to Kevin Riley,
10 Stan, yourself, and Lexi and Luke. Do you recall that
11 at this point in time Kevin was answering questions
12 propounded by Wendy about various matters?

13 A Yes. I wouldn't necessarily say it was this
14 time because we had given Wendy access to Kevin and Bob
15 LeGoy from -- from very early on she had the ability to
16 contact them directly to ask them questions if she
17 wanted to, but this is just one of the emails, it looks
18 like.

19 Q All right. And then on the second page, I'm
20 not going to put this on the screen, but can you tell us
21 generally Wendy's going through some serious questions
22 she has about what's going on in the estate. Do you see
23 that, sir?

24 A Yes. It looks like very lengthy discussions

1 and questions about the estate, yes.

2 Q And here she gets a little bit sideways with
3 Stan because of a guest relationship that Sawyer had or
4 Luke had. Do you remember that?

5 A Not really.

6 Q If you look at the fourth or fifth paragraph
7 on page 2 of this.

8 A What was your question?

9 Q Whether there was dissension growing at that
10 time between Wendy and Stan.

11 A There was always some communication arguments
12 and stuff going back, arguments between Stan and Wendy
13 here a little bit, so I don't really necessarily know
14 that it just started here.

15 Q On the last page she asks that she be brought
16 out of Montreux. What interest did she have in Montreux
17 at this period of time, sir?

18 A I don't see where it says that. Does it say
19 Montreux or Montreux Golf Club or?

20 Q It is the fourth paragraph down. "I think
21 Montreux can buy me out". TJ 1842.

22 A Yeah, I'm unsure if she's talking about
23 Montreux Development Group or Montreux Golf Club.

24 Q What's the difference?

1 A Montreux Golf Club has different owners than
2 Montreux Development Group. So I'm not too sure which
3 one she's talking about there.

4 Q Would you please turn to Exhibit 13? I want
5 to ask you some questions about the subexhibits that are
6 attached to Exhibit 13. Excuse me, 23.

7 A Okay. I'm on 23.

8 Q All right. The attachments to 23, do you
9 recall there being considerable email and text traffic
10 with respect to Stan's buy-in, which is Exhibit 23?

11 A Yes, I do.

12 Q And was Wendy in the loop on that?

13 A Yes.

14 Q Now, there is some references to her wanting
15 to buy in. Would you please tell us about that?

16 A Well, from very early on in 20 -- towards the
17 end of 2013 but very early on in this process and
18 throughout Wendy has mentioned that she would be
19 interested in buying into Tahoe similarly the way that
20 Stan did.

21 Q And then for a period of time were you
22 exchanging emails with Wendy about the progress being
23 made on Stan's buy-in?

24 A I -- yes, but I kind of feel that Stan was

1 doing most of the emailing or texting about that time,
2 but yes, there was definitely discussions between Wendy
3 and I.

4 Q Was there anything about the buy-in
5 transaction or the ownership configuration of Incline
6 TSS that you failed to disclose to Wendy in these series
7 of correspondence?

8 A Not that I'm aware of.

9 Q If you go to 23.33, please.

10 A Okay.

11 Q And read to -- could you blow up the mid
12 portion of that, please? Right about there. Yes, that
13 would be fine.

14 MR. SPENCER: Your Honor, I don't think this
15 has been offered yet.

16 THE COURT: 23.33.

17 MR. ROBISON: I offer it.

18 THE COURT: Will there be an objection?

19 MR. SPENCER: No objection.

20 THE COURT: Thank you. 23.33 is admitted.

21 MR. ROBISON: Thank you.

22 COURT CLERK: Thank you.

23 (Exhibit 23.33 is admitted into evidence.)

24 BY MR. ROBISON:

1 Q Do you recall this series of exchanges
2 between Stan and Wendy that also involved you to an
3 extent?

4 Would you please put it up again in the
5 middle, Mark.

6 A Vaguely, but not.

7 Q All right. So as of April 7th, 2014, the
8 date of this email, I want to focus on the comment that
9 she says because -- could you read that starting with
10 because?

11 A Wendy's saying because he --

12 Q Speak up, please.

13 A "Wendy is saying because he is the only owner
14 in Tahoe."

15 Q And that's a reference to you?

16 A Yes.

17 Q Well, you're accused of concealing that from
18 Wendy.

19 A Well --

20 Q Did she know that you were the only owner
21 before Incline Issue bought in?

22 A Yes, she knew that I was -- that those two
23 trusts were the only owner at the time of Incline TSS
24 selling the percentage to SSJ Issue Trust.

1 Q Did you and she also have dialogue,
2 discussions about that?

3 A Yes.

4 Q Moving to -- before you put it up look at
5 23.41, please. Incidentally, with regard to these texts
6 that are being exchanged, tell the jury how that was
7 going on, the text part.

8 A We communicated a lot through texts just back
9 and forth between Stan and Wendy and I.

10 Q Did you ever hack into Wendy's phone and
11 alter or modify texts?

12 A No, I have no clue how you would do that.

13 Q You were at her deposition.

14 A Yes.

15 Q She accused people of hacking into her phone
16 to change the content of these texts.

17 A Texts and her emails, yes.

18 Q With respect to the texts, do you know how
19 that could possibly be?

20 A No, sir, I do not.

21 Q With regard to hacking into her emails and
22 changing the contents of emails that she says happened,
23 do you know how that could have possibly be?

24 A No, I certainly do not.

1 Q Did you alter any emails authored by Wendy?

2 A No.

3 Q Did you alter or modify any texts that she
4 sent you and Stan?

5 A No.

6 Q As far as you know these are her words and
7 her thoughts?

8 A Yes.

9 Q Would you go to 23.41, you're there, are you
10 not? Don't put it up yet, please.

11 MR. SPENCER: Your Honor, I object to this
12 particular 23.41 exhibit --

13 THE COURT: Let me just put in front of me
14 real quick, please, if you have it.

15 Unless there's an evidentiary question, it
16 goes to the heart of authenticity or providence, I will
17 overrule the objection subject to any side bar
18 memorialization you wish to do, counsel.

19 MR. SPENCER: Your Honor, yes, in addition,
20 this does not include Todd, obviously, so he can't prove
21 this up, and it also appears to be incomplete. Those
22 are my objections.

23 THE COURT: Thank you. Do you seek its
24 admission, counsel?

1 MR. ROBISON: I was going to lay a little bit
2 of foundation --

3 THE COURT: Please do.

4 MR. ROBISON: -- before I respond. And I
5 apologize, your Honor.

6 BY MR. ROBISON:

7 Q How did you get a copy of these texts?

8 A I'm on the text stream.

9 MR. ROBISON: Thank you. Offer the document.

10 THE COURT: It is admitted over objection.

11 COURT CLERK: Thank you.

12 (Exhibit 23.41 is admitted into evidence.)

13 BY MR. ROBISON:

14 Q Would you please put it on the screen, 23.41?

15 We'll start with the first one. "Stan, WTH
16 really?" What did you know was being fought about at
17 this time, sir, with regard to Sawyer?

18 THE COURT: You might want to have your IT
19 person blow that up some more.

20 MR. ROBISON: IT person blow that up.

21 THE COURT: So we can all read it.

22 MR. ROBISON: First entry. I don't know if
23 that got bigger or smaller. Did it get bigger? Well,
24 that jury can't see that.

1 THE WITNESS: I think it's a pretty good size
2 right there.

3 BY MR. ROBISON:

4 Q All right. Jury evidently can read it so go
5 ahead and tell us what was going on with respect to this
6 dispute between Stan and Wendy.

7 A I'm not totally sure. It looks like there
8 was a break up or something and an ex-girlfriend or
9 something. I'm not totally sure.

10 Q So as we move our way down into the second
11 text from Wendy, she makes reference to Montreux in
12 bringing somebody down. Tell us what was going on at
13 this period of time with regard to discussions with
14 Wendy and some interest that she claims to have had in
15 Montreux.

16 A Yeah. It says that "now you're saying that
17 I'm a bad person and ruined the family finances to the
18 kids at school so Lisa is now" -- I don't know if I
19 should say all these words out loud but --

20 Q You should not.

21 A "Everyone I don't think Stan is the finest.
22 And Wendy's saying to Stan. Stan, I know what you're
23 saying, Stan. Stan, you spend one more dime at Montreux
24 and I will bring your" --

1 Q Down.

2 A -- blank "down. You're not going to spend
3 money like a king for absolutely no reason. You better
4 not be getting an executor fee for all this."

5 "Todd. Yes, I agree gets one, but you only
6 work for your benefit and spend until people Luke smoke
7 pot and I don't" -- do we have to that read all this?

8 MR. ROBISON: All right. Your Honor, can we
9 take this off the screen at this point in time?

10 THE COURT: Yes.

11 THE WITNESS: Yeah.

12 MR. ROBISON: And I'll ask later that it be
13 redacted in accordance with the Court's prior orders.

14 THE COURT: Thank you.

15 BY MR. ROBISON:

16 Q You were involved in any discussion with Stan
17 or Wendy about this dispute in this email Stan called
18 his sister a sociopath?

19 A I don't -- I don't recall, but I'm sure I
20 probably was.

21 Q And during this ordeal, in addition to being
22 accused of killing your father, were you also accused by
23 your sister of not being the biological son of Sam
24 Jaksick, your father?

1 A Yes, I was.

2 Q How'd that make you feel?

3 A Not very good.

4 Q I'd like to show you, not the jury yet,
5 Exhibit 23.45. I'm sorry, 46. Second page of 45, I'm
6 sorry. 23.45.

7 A Okay.

8 Q Did you get a copy of this message from Wendy
9 Jaksick as a part of your file?

10 A I did, yes.

11 Q And if you see on the first page, she
12 actually copied you with this email.

13 A Yes, she sent it to her daughter, Lexi, to
14 Stan and myself.

15 Q And do you recognize her email address?

16 A Yes, I do.

17 Q Is that the email address she used very
18 frequently communicating with you and your brother?

19 A Yes.

20 Q If you look at the second page, as far as you
21 know is this a true and accurate copy of an email?

22 MR. SPENCER: Stipulate.

23 MR. ROBISON: Thank you, sir. Going to
24 stipulate it into evidence.

1 THE COURT: Thank you. Then 45 in the series
2 is admitted, Ms. Clerk.

3 COURT CLERK: Thank you.

4 (Exhibit 23.45 is admitted into evidence.)

5 BY MR. ROBISON:

6 Q Now, she makes some very serious accusations
7 about you in this email. She had turned her attention
8 to you as opposed to Stan here. Did you respond to this
9 and try to explain to her why she was wrong with respect
10 to some of these accusations?

11 A I believe so but I'm not sure.

12 Q Now, by this time, December 1st, 2017, Wendy
13 had counsel, had attorneys. True?

14 A What was the date?

15 Q Says on my copy December 1st, 2017.

16 A Yes. Yes.

17 Q So now for the first time she says that she
18 gets a third of the house? First paragraph.

19 A Yes, I see that.

20 Q Do you know what hand, if any of her
21 attorneys had in drafting this?

22 A I don't.

23 Q If you turn to the second page and there's
24 accusation -- put the last paragraph up please, Mark,

1 and blow it up.

2 Do you recall the accusation made by your
3 sister to you and others that you somehow were not the
4 biological son of your father?

5 A Yes, I do recall all of Wendy's accusations,
6 yes.

7 Q And that she was going to demand some DNA
8 test or such some thing?

9 A Yeah, she was demanding that I got a DNA test
10 and so do my kids. And Wendy does this frequency --
11 frequently to--

12 MR. SPENCER: Objection. Nonresponsive, your
13 Honor.

14 THE COURT: Overruled.

15 BY MR. ROBISON:

16 Q Does this happen frequently?

17 A Yes.

18 Q These kind of accusations?

19 A Yes, they -- to other family members as well,
20 it just happened to be more sensitive because she was
21 telling a lot of other people around that she said that
22 I had killed dad as well as I wasn't dad's kid so that's
23 why it was very upsetting when she was telling people
24 around town all that.

1 Q And at the very end of that paragraph she
2 says in capital letters "Wow, that would be a great
3 ending to this nightmare." Do you know what she's
4 referring to?

5 Blow it up, please.

6 A I think what she is referring to is that
7 hoping that I wouldn't be -- hoping that my DNA test
8 wouldn't match the family's.

9 Q Did anything ever come of this with regard to
10 testing or anything of that nature?

11 A No, I never did do a test specifically
12 relating to this email, but it happens to be that my
13 family did the DNA test on.

14 Q Ancestry?

15 A Yeah, one of those. And so -- and Wendy had
16 done it as well.

17 Q Did Wendy ask for money in exchange for
18 cooperating with you as a trustee from time to time?

19 A Yes.

20 Q 23.46, would you look at that before I put it
21 on the screen, and tell us whether or not that's a
22 communication between yourself, your brother and your
23 sister. Third entry.

24 A Yes, this looks -- this looks like

1 communications around the time that Stan was trying to
2 get the signature pages back on his buy-in.

3 Q Why would she be entitled to an immediate
4 hundred thousand dollar distribution at that point in
5 time, sir.

6 A She wouldn't -- this is just kind of typical
7 if there was a document that needed signing, sometimes
8 she would demand like she's demanding here that we pay
9 her a hundred thousand dollars for her signature to, um,
10 buy -- so that she would sign on Stan's buy-in documents
11 and that has happened frequently on other transactions
12 as well.

13 Q Was that -- was that demand granted? Did you
14 yield to that type of demand?

15 A Oh, would we?

16 Q Yes.

17 A No. Stan and I have consistently said Wendy,
18 we can't operate that way.

19 Q All right. Now, meantime, did your father
20 expect her to pay back some of the funds that she had
21 taken from the family?

22 A Yes, but I'm not too sure what you mean by --
23 what time frame are you talking about or which?

24 Q Well, right now I'm getting back into the

1 period of time September, 2005, when the interaction
2 between your father and your sister about some of the
3 money that she had handled for him.

4 A Okay. I'm sorry, I don't understand the
5 question.

6 Q Let me ask you to look at Exhibit 27, it
7 should be in that book, Exhibit 27 F.

8 A I found 27.

9 Q Now you have to find F.

10 A Okay.

11 COURT CLERK: Counsel, I believe it's in here.

12 MR. ROBISON: I'm sorry? Oh. You found 27.
13 Let me show you another book, I apologize.

14 THE WITNESS: Thank you.

15 MR. SPENCER: Let me --

16 THE COURT: You think this some -- we're about
17 ten minutes from our mid afternoon break. I hope I
18 cancelled this and maybe I better make an in limine
19 decision.

20 Ms. Clerk, may I have 27 F, please.

21 THE WITNESS: Mr. Robison, did you say 27 S
22 or--

23 MR. ROBISON: F.

24 THE WITNESS: I apologize, but for some reason

1 I'm not seeing it. Okay. Sorry.

2 MR. ROBISON: Wait for a moment.

3 THE COURT: Counsel, would you please just
4 make inquiries without broadcasting this document and
5 then let's talk about it briefly during the break? But
6 I think the inquiries are appropriate.

7 MR. ROBISON: All right. Maybe I go to
8 another one and take it back up after we have a moment
9 to talk.

10 THE COURT: That would be great. Thank you.

11 MR. ROBISON: If it wasn't I ask to admit
12 Exhibit 23.46.

13 MR. SPENCER: Your Honor, again, I'm going to
14 object based upon the fact that it appears to be
15 incomplete and there's no back and forth and Mr. Todd
16 Jaksick is not a party to that text.

17 THE COURT: Thank you. It is overruled. The
18 exhibit is admitted.

19 COURT CLERK: Thank you.

20 (Exhibit 23.46 is admitted into evidence.)

21 BY MR. ROBISON:

22 Q With respect to Stan's buy-in, the effort
23 that you and he pursued to have him buy in to Incline
24 house, was it your understanding that that was always to

1 **be consistent with your father's intent that Stan**

2 **buy-in? To Lake Tahoe.**

3 A No.

4 Q **What's your understanding?**

5 A That Stan and I were each gonna be 50/50 when
6 dad wanted to start the option, it was.

7 Q **That's 2010.**

8 A 2010, yes, it was just --

9 Q **Then we have a divorce.**

10 A That would have set 50 percent Stan's family
11 trust and 50 percent my family trust.

12 Q **All right. But something precluded that from**
13 **happening.**

14 A That's correct. Stan's divorce. And dad
15 decided that he didn't want to throw that house into
16 that mess, so.

17 Q **So how did your father intend for Stan to buy**
18 **in ultimately once his divorce was completed?**

19 A One of the option that was looked at and
20 eventually moved forward with was to give Stan a bigger
21 ownership interest in Toiyabe, which Montreux Golf
22 Course which owns the lots out at the Montreux project
23 which would be giving Stan a gift of significant value
24 and then Stan could sell, what I recall the time dad was

1 saying, try to package like seven lots, sell them
2 quickly, try to generate about two million dollars, and
3 that would be part of the funds that would come back
4 into Tahoe, it would reduce the debt, and Stan would get
5 an ownership.

6 **Q All right. Does the family trust still have**
7 **an interest in the sales of Montreux lots?**

8 A Yes.

9 **Q How so?**

10 A Toiyabe is owned 50 percent by Stan and 50
11 percent by the family trust and, therefore, the family
12 trust owns approximately 45 percent of Montreux, a
13 development company which owns the lots, or there's a
14 tie between the two companies, Toiyabe and Montreux
15 Development Company so yes, the trust does still have a
16 significant value in Montreux lots.

17 **Q That may some day be actually obtained**
18 **depending on what the expenses are for operating**
19 **Montreux, things like that.**

20 A Yes.

21 MR. ROBISON: Your Honor, if this is a good
22 time to break.

23 THE COURT: Sure. That would be wonderful.
24 Ladies and gentlemen, during this recess please do not

1 discuss this case amongst yourselves. Please do not
2 form or express any opinion about this matter until it
3 has been submitted to you. We'll stand for our jury.
4 This will be a 20-minute recess.

5 (Jury leaves courtroom.)

6 THE COURT: Counsel, we can talk for five
7 minutes but the court and the reporter will be taking a
8 break.

9 MR. SPENCER: Well, this will be quick. We
10 consulted and we'll withdraw our limine as to 27 F, but
11 request your Honor's permission to say that in front of
12 the jury so they don't think that we're hiding something
13 now.

14 THE COURT: Sure.

15 MR. SPENCER: Okay.

16 THE COURT: All right. And let me just create
17 a quick record as some evidentiary rulings. I am
18 mindful of the voluminous materials that have been
19 marked into evidence mostly by stipulation. Despite the
20 potential prejudice that falls on the other side, I
21 began this trial by indicating I could not and would not
22 scrub the parties of their own personalities, their own
23 communications, their own positions, and some of these
24 emails that I've allowed in, I understand that they are

1 concerning to Wendy's counsel. But I've overruled the
2 objections.

3 MR. SPENCER: I understand.

4 THE COURT: Thank you. We'll be in recess for
5 15 minutes.

6 (Short break.)

7 THE COURT: Who do you anticipate calling your
8 next witness?

9 MR. SPENCER: Probably Wednesday morning.
10 We're going to call Wendy next, and then two short
11 witnesses which should be Mr. Kimmel and Mr. Smrt. And
12 then --

13 MR. CONNOT: Stan.

14 MR. SPENCER: Stan would be next so yeah, it
15 would be Wednesday afternoon.

16 THE COURT: So I have a jury waiting so for
17 the moment I'm going to exclude the witness. I might
18 revisit that. I'm going to look at the evidence code
19 during the next phase of trial, because I agree with
20 what Mr. Robison said and I also feel some inclination
21 to allow the witness to participate. I don't want to
22 make a decision now and I don't want any more argument
23 about it because we have a jury.

24 MR. SPENCER: Understood.

1 THE COURT: So we'll have you stand out, sir.

2 MR. WALLER: For the rest of the day.

3 THE COURT: Yes, for the rest of the day.

4 Please stand for the jury.

5 (Jury enters courtroom.)

6 THE COURT: Counsel, you may continue.

7 MR. ROBISON: Your Honor, I believe we have
8 entered into a stipulation for the admission of Exhibit
9 23.J.

10 MR. SPENCER: Yes, your Honor, that's
11 stipulated. We also withdraw our objection to 27 F, as
12 in Frank.

13 THE COURT: Thank you. Stipulated exhibit is
14 admitted and you may proceed, counsel.

15 COURT CLERK: 27 J in?

16 THE COURT: 27 J is what I heard.

17 BY MR. ROBISON:

18 Q Do you have you have Exhibit 27 J in front
19 you, Mr. Jaksick?

20 A Yes, I do.

21 Q And do you recall your -- that in 2005 your
22 father and sister entered into a letter of understanding
23 concern some debt?

24 A Yes, I do.

1 Q And we'll blow up the first paragraph,
2 please.

3 Do you know what your father is referring to
4 when he indicates that he's willing to go ahead and
5 purchase the house in Galena?

6 A I do.

7 Q Please explain.

8 A There was a house in this area called Galena
9 Canyon, and it was going up for auction. And Wendy had
10 asked dad to see if he would purchase this house for
11 her. And I remember it going at an auction sale for,
12 like, 1.5 million, I think this is what dad's talking
13 about, that he had to put up 350,000 dollars to
14 facilitate that purchase, as well as his payments were
15 going to be 7500 a month. And that's far in excess what
16 he intended to spend.

17 Q So then this letter of understanding was
18 entered into between your father and your sister
19 concerning that event?

20 A Yes.

21 Q So on number 2, he says "If and when I sell
22 this house to you, the following must happen. You will
23 pay the principal balance owed." That didn't happen,
24 did it?

1 A No.

2 Q What happened?

3 A It got too expensive and dad couldn't afford
4 it and he actually lost it as a short sale.

5 Q Number 2 B says that Wendy will pay six
6 percent annual interest. That didn't happen, did it?

7 A Not that I recall, no.

8 Q And it says that you will pay Helen back the
9 100,000 you owe her when you put the mortgage on her
10 Plumas Street house -- did I read that right? At Plumas
11 Street plus seven percent interest. That's -- explain
12 that 100,000 dollar situation, please.

13 A This is dad's -- our great aunt, but dad's
14 aunt that worked for dad for probably 30-plus years, but
15 Wendy had gotten a loan out on her house that Helen
16 didn't know about and dad didn't know about, and she
17 pulled a hundred thousand dollars in equity out of
18 Helen's house, and this is what dad's basically saying
19 is Wendy, you are going to pay that back.

20 Q And if you'll look at the second page,
21 Subparagraph D, that's a reference to a hundred thousand
22 dollars in other funds borrowed from Helen. Do you know
23 about those?

24 A Yes. It says "You will pay Helen or her

1 estate another 100,000 for other funds you borrowed from
2 her. As you know, this money eventually goes to the
3 kids. Yours, Todd's and Stan's."

4 Q Did your kids or Stan's kids ever get that
5 money?

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

7 Q And then do you recognize your father's
8 signature and your sister's signature on the bottom of
9 this document?

10 A I do. I recognize dad's signature, yes.

11 Q Now, would you please read to the jury and
12 the Court the last paragraph?

13 A Sure. I hope this is dad talking but "I hope
14 you'll appreciate what I had to go through to purchase
15 this home. It was not prudent for me to increase my
16 overall debt with local banks for another 1.4 million.
17 I now have four house payments, one of my own and three
18 associated with you."

19 Q Are you aware of any dispute or contest Wendy
20 ever expressed about that?

21 A No.

22 Q Please turn to Exhibit 23.24. And I'm
23 looking at the fourth entry. Blow up -- down there,
24 that paragraph.

1 **You're aware that Luke's motorcycle got**
2 **stolen?**

3 A Yes.

4 Q **And did you and Stan have to pay any money to**
5 **replace that motorcycle?**

6 A You know, actually I don't really recall the
7 motorcycle, and I don't really recall.

8 Q **Whether or not you had to repay for that?**

9 A Yeah. I don't recall that. Sorry.

10 Q **All right.**

11 THE COURT: Is this 23.24?

12 MR. ROBISON: It's stipulated in.

13 THE COURT: It's stipulated and it is now
14 admitted, Ms. Clerk.

15 COURT CLERK: Thank you.

16 (Exhibit 23.24 is admitted into evidence.)

17 BY MR. ROBISON:

18 Q **Mr. Jaksick, with respect to these various**
19 **issues that we've discussed in this case, have you still**
20 **done your best to honor your father's intent with**
21 **respect to providing Wendy that to which she's entitled?**

22 A Yes, I think that the trustees have done a
23 remarkable job getting the estate to where it is from
24 where it was.

1 Q Have you individually done so, sir?

2 A Yes, I've tried very hard.

3 Q To the best of your ability?

4 A I believe so.

5 Q Sincerely?

6 A Yes, sir.

7 MR. ROBISON: No further questions, your
8 Honor.

9 THE COURT: Thank you. Questions from
10 counsel. I was about to say I just want to go through
11 sequentially and then I'm about to call this redirect
12 which I think is the procedure of this particular trial
13 despite our party affirmation.

14 MR. LATTIN: Yes. And your Honor, Mr. Robison
15 and I have tried our best to combine our efforts so that
16 we don't keep the jury any longer than necessary. But I
17 do reserve my right on my case-in-chief to recall him,
18 if necessary.

19 THE COURT: Thank you. Mr. Spencer.

20 MR. SPENCER: Thank you, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SPENCER:

23 Q Do you know your father never would have
24 wanted Luke to be without health insurance. Right?

1 A Yes.

2 Q And the idea that he would be down in Texas
3 playing big-time high school football, maybe get some
4 scholarships and not have health insurance would be
5 upsetting to your father, wouldn't it?

6 A Yes.

7 Q Okay. And on Friday, I believe it was, you
8 testified regarding crediting some of the payments that
9 Wendy had received towards that note that she was owed.
10 Right? You recall that?

11 A Well, are we talking about the insurance
12 where Kevin Riley made the payment for Luke's insurance?

13 Q No, I'm not talking about insurance. I'm
14 talking about the -- I'm talking about the note -- or
15 you were talking about Wendy receiving payments and said
16 she got 500,000 dollars worth of -- or so worth of
17 payments. Do you recall that?

18 A Yes, I do.

19 Q And that she was owed a note and the payments
20 were credited against that note that she was owed.
21 Right?

22 A A portion of them were. There was -- yes, a
23 portion of those payments were credited towards the life
24 insurance note.

1 Q Right, the life insurance note. And what was
2 the balance of that?

3 A What time frame are you talking about?

4 Q When you were crediting Wendy's payments
5 against it.

6 A I believe it was in the neighborhood of about
7 231,000.

8 Q Right. So 231,000 of the payments that she
9 received she was owed anyway. Right?

10 A She was owed, but we were looking at her as a
11 priority payment as opposed to other life -- like there
12 was other life insurance notes we weren't paying, Stan
13 and myself, and we were paying her in advance of some of
14 the other creditors.

15 Q Why can't you just say yes to that question,
16 she was owed it anyway?

17 A Okay.

18 Q Right?

19 A Sure.

20 Q Okay. So that 500 and -- however much was
21 it, you remember don't you, how much was it? Do you
22 recall?

23 A In terms of recall what?

24 Q That how much in payments did Wendy receive

1 on a monthly basis over three and a half years?

2 A The total?

3 Q Yes.

4 A I remember somewhere seeing a figure of in
5 neighborhood about 591,000, but I believe that they were
6 missing some of the other payments that been paid, but I
7 -- that was the number I remember.

8 Q 591,000 dollars that she had received,
9 231,000 of which was owed to her. Correct?

10 A Yes.

11 Q And so -- and that was over what period of
12 time?

13 A I'd say from about 20 -- April of 2013 to
14 maybe 2017 or 2018, in there.

15 Q So towards the end of 2017 through to
16 possibly end of '18. Correct?

17 A I guess that could be the case. I'm not sure
18 I'm capturing everything in the 591, like I said, I
19 think there was more than that.

20 Q But it was after your father's death in April
21 of 2013. Correct?

22 A Yes. All that is after, correct.

23 Q All right. And so 2014, 2015, 2016, 2017,
24 that's four years, and then another seven months in

1 2013, and then potentially going into 2018. Right?

2 A Could be. I'm not exactly sure.

3 Q Okay. So we'll just take four years and
4 seven months worth of time. So four years would be 48
5 months. Right?

6 A Yes.

7 Q And then seven months on top of that would be
8 55?

9 A Okay.

10 Q So in 55 months she had received 360,000
11 dollars that would have been considered distributions
12 credited against her share.

13 A Yes, could be.

14 Q Okay. And that was all while you and Stan
15 were receiving benefits from being beneficiaries of the
16 trust. Right?

17 A Could you maybe explain a little bit more?
18 I'm not sure what you mean by that.

19 Q Well, you and Stan received benefits from the
20 Jaksick property, correct? The family property.

21 A Which Jaksick family property are you --

22 Q For various entities, family trusts, you're
23 the one in charge, you know the Jaksick family
24 properties, don't you?

1 A Yeah. I was just trying to see what you
2 meant by benefits. I didn't know you were talking about
3 trustee fees or.

4 Q You gonna tell everyone that you didn't
5 receive a benefit by being a trustee of the family
6 trust, a trustee of the issue trust, manager of all of
7 these various Jaksick entities, is that what you're
8 gonna testify to?

9 A I can't think of anything, but I -- I guess
10 it's possible.

11 Q You can't think of anything?

12 Your Honor, at this time I'd like to ask about
13 his property.

14 BY MR. SPENCER:

15 Q How large is your house, sir?

16 MR. ROBISON: Objection, your Honor,
17 relevance. If counsel asks specifically what he got?

18 THE COURT: Yeah.

19 MR. ROBISON: Then we'll go with it.

20 THE COURT: I'm actually thinking on for the
21 exchange that has been presented. I am not granting
22 leave to revisit my prior evidentiary decision.

23 BY MR. SPENCER:

24 Q Well, we know you got a three million dollar

1 construction loan, that's in the accountings. Correct?

2 A That is correct.

3 Q And that's construction loan was just to
4 build the house. Right?

5 A I think it rolled over to the same amount

6 Q Construction means to build. Right?

7 A Construction means to build. Dad wanted to
8 have a house out at the entrance of Montreux. He picked
9 a specific spot and he asked me to build a house there
10 to make a very nice in entrance into Montreux and that's
11 what I did.

12 Q And which address is that, the Rouge, Rouge
13 Drive?

14 A Yes.

15 Q All right. And then there was the other
16 property where the office was located. Right?

17 A Quail Rock?

18 Q Yes.

19 A Yes.

20 Q And that one was used as an office, but Wendy
21 lived in it for a time. Right?

22 A Yes, it was used as an office prior to dad
23 passing away. It was used as an office a year or so
24 after dad did pass away. And then we remodeled it and

1 had Wendy -- Wendy moved into it for a period of time.

2 Q Do you recall how long that was?

3 A I don't remember exactly when she went to
4 Vegas, but approximately a year or less, more or less.

5 Q Okay. And nothing wrong with Wendy using
6 some of the family property, is there?

7 A No, except for the only thing on that we were
8 happy to get her into there so she had a place to stay,
9 and then when she did move we did get that property sold
10 as quickly as we could.

11 Q Okay. And the -- earlier you testified that
12 Wendy got to use the Lake Tahoe property for 200 days as
13 compared to Stan's 150 and your 50 days.

14 A I think Stan's closer to between 90 and a
15 hundred.

16 Q I misstated, I apologize. Let me restate it.
17 Earlier you testified about Wendy stayed at Lake Tahoe
18 for 200 days and Stan about a hundred and you around 50
19 days.

20 A That sounds about accurate, yes.

21 Q But you recall after your father died Jennien
22 was living up at Lake Tahoe for a period of time.
23 Right?

24 A I do, yes.

1 Q And you and Stan were worried that she might
2 be taking things or destroying things at the house.

3 Correct?

4 A I don't believe that's the case on taking or
5 stealing things, though.

6 Q Okay. Destroying things is what I meant.

7 A I don't recall that either, no.

8 Q You sent Wendy up there to live at the house
9 with Jennien for five months, didn't you?

10 A I did not send Wendy up there.

11 Q Who did?

12 A It was a discussion that we all had. Jennien
13 was going back and forth between certain places and she
14 had her -- a gentleman that she had met that probably
15 towards, I'd say, November, December range periodically
16 stayed up there. And at the same time Wendy didn't have
17 any place to be so yes, Wendy, Luke, I believe Lexi was
18 staying up there, but Jennien wasn't frequenting there
19 that much.

20 Q All right. And five months is -- times 30
21 days, that's 150 days, isn't it?

22 A It is, but I don't believe that that initial
23 time frame was that much. I would say more in the two
24 to three months range is what I recall by max.

1 Q All right. But that was included in your
2 calculation, wasn't it?

3 A Those first couple of months, yes, are
4 included in my calculation of 200 days, yes.

5 Q All right. So Wendy and Luke were living up
6 there for a reason as opposed to just receiving the
7 benefit of living there. Right?

8 A I guess you could argue it was a combination
9 of both, but she didn't have any other place to be at
10 the time, so we had her staying up there as well. And
11 there was -- could be benefits to both sides.

12 Q Well, certainly, but you tried to make it
13 sound like she was getting all of this added extra
14 benefit that you and Stan did not receive, didn't you?

15 A Well, she did get to stay up there, I mean,
16 for that period of time for two-plus months during that
17 time frame.

18 Q At the request of your team. Right?

19 A I wouldn't say the request of our team, no,
20 it was a discussion between Stan and Wendy and I.

21 Q Okay. Not the team this time. All right.
22 So the -- and you testified, I believe you said that
23 Lake Tahoe is a tear down; is that right?

24 A My position on that is that most the people

1 that are looking for those expensive properties like
2 that, that's what they do. They buy those pieces of
3 property and they usually tear down these older homes
4 and build new homes. Yes, I would think that most --
5 most buyers if we had the house listed would be looking
6 to tear down the house.

7 Q You're speculating about what a potential
8 buyer might to. Right?

9 A I am, but just seeing what has happened up
10 there on the lakefront properties over the last 15 years
11 any time there's an older home like that, they usually
12 get torn down. And I think ours is probably one of the
13 last ones that hasn't been torn down. Sorry if I'm
14 looking at that wrong, but I just would estimate that
15 that's what probably somebody would do.

16 Q But the house is nice, isn't it?

17 A It's a beautiful home.

18 Q All right. And in relation to the capital
19 call that you testified to earlier with Incline TSS, do
20 you remember that?

21 A Yes.

22 Q And you said that there were times
23 periodically where capital calls needed to be made.
24 Right?

1 A Yes.

2 Q In Incline let me be clear, there's so many
3 entities. In the Incline entity. Right?

4 A Yes.

5 Q And you're the manager of Incline. Correct?

6 A Correct.

7 Q And that would mean that SSJ Issue Trust
8 would be one of the owners of Incline that would have
9 had to pay a capital call if it was required.

10 A Correct.

11 Q All right. And so that would have been you
12 putting one hat on, the manager of Incline TSS, and
13 negotiating with yourself by putting another hat on as
14 the trustee of the issue trust, and deciding well, let's
15 have a capital call. Right?

16 A Yes. If there's money needed we have to make
17 that decision.

18 Q So you negotiated a capital call as the
19 manager of Incline TSS with yourself as trustee of the
20 issue trust. Right?

21 A Based off of our operating budget, yes.

22 Q And you said that you'd received 250,000
23 dollars in rental income. And I believe you then said
24 you got about 200, was that the net number after paying

1 **the real estate fee and all expenses?**

2 A I apologize I don't have those numbers
3 memorized.

4 Q Well, you knew them a minute ago when Mr.
5 Robison was asking you questions.

6 A I was throwing out there, obviously, over
7 payments about 7,000 dollars a month. And so when you
8 add up that, plus the property taxes, plus some of the
9 operating expenses repairs in the house it approaches
10 200,000 dollars in expenses periodically.

11 Q Right. And that's not sufficient to cover
12 all the expenses, is it?

13 A It hasn't been, but we're getting closer and
14 closer to getting it where it is about covering the
15 expenses.

16 Q And you also testified that if the house,
17 Lake Tahoe house sold for 18 million dollars, then I
18 guess you'd have to deduct the 2.4 million with Bank of
19 America that's outstanding. Right?

20 A Yeah, they would get paid on the close,
21 correct.

22 Q All right. That would leave 15.7 million
23 dollars. Right?

24 A Yes.

1 Q And you said that boy, this was a really good
2 investment for the issue trust because of how much the
3 it would receive if that sale happened. Correct?

4 A Yes. I felt that the money has been safe
5 since we made the original investment, and yes, they
6 should be getting a decent return without a doubt.

7 Q Okay. But you didn't talk about the 46
8 percent that would be your trust that would likewise get
9 its share of that sales proceeds, did you?

10 A Correct.

11 Q So that would be of the 15.7 million dollars
12 if the house sold for 18 million, your trust, 46 percent
13 would receive 7,176,000 dollars of those proceeds.
14 Right?

15 A Under the current ownership structure, that
16 is correct.

17 Q And you pay -- not you, the trust paid
18 \$146,744.28. Right? Your trust did?

19 A Like I said, there's a lot more things that
20 are involved. That's what I -- my trust put in
21 initially as an initial option payments, and then we
22 assumed the debt obligation of the 7,250,000.

23 Q And we've seen that your trusts, at least in
24 relation to the purchase under the option, the amount

1 that it was sold was to be sold for, 7.25 million, was
2 reduced by the option payments. We saw that, right?

3 A Yes, the note was around 7.1, I think.

4 Q Making the note 7.1. And so notwithstanding
5 the need to figure out a way to pay for all of this debt
6 that had been assumed, out of your pocket you would have
7 gotten 7.176 million dollars for 150,000 dollar
8 investment. Right?

9 A Could you say that one again? I was really
10 confused on that.

11 Q The 46 percent of that 18 million dollar sale
12 after paying off the Bank of America --

13 A Okay.

14 Q -- loan would have netted 7.176 million on
15 146,000 dollar investment. Right?

16 A Yeah, I just don't look at it that way in
17 terms of the investment.

18 Q Well, we know what happened with the note.
19 Right? 7.1 million dollar note ended up in March of
20 2014 being paid out of the -- or at least 4.9 million
21 out of the insurance proceed received based upon your
22 father's death. Correct?

23 A Yes. I had a hundred percent of the company.
24 And I sold them 54 percent of the company, that is

1 correct.

2 Q Again, you were the buyer as you as the
3 manager Incline TSS were the seller, issue trust, you as
4 the trustee of the issue trust was the buyer, you were
5 dealing with yourself again. Correct?

6 A Companywise, entitywise, yes, but I involved
7 everybody else in the decisions.

8 Q The issue trust was your absolute and sole
9 discretion. You even testified you didn't need the
10 ACPA. Remember?

11 A That's what Bob LeGoy had indicated early on
12 that he didn't think we needed any documentation and I
13 thought that it was important to do so.

14 Q How were you gonna pay that 7.1 million
15 dollar note if Sam hadn't died and the proceeds hadn't
16 been available?

17 A Well, the main payment that we would had
18 starting year one in December was 159,000 dollar
19 interest-only payment. And that interest-only payment
20 was an obligation that went on for a period of ten
21 years. So dad had built in a lot of flexibility to make
22 the payments flexible for us so that we could cover the
23 payments and keep the purchase current, as well as the
24 fact as I've indicated before, the way that dad had laid