

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 14**

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| Agreement and Consent to Proposed Action – Stanley Jaksick Buy in to Lake Tahoe Property - Trial Exhibit 23 | 11/13/2015 | 1 | WJ 0014 - 0018 |
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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 14** 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 can no longer be near your gun.
2 And then it says:
3 Or go hunting with your son.
4 A Yes.
5 Q And then why don't you go ahead and continue
6 reading.
7 A Slowly.
8 Q Slowly, please.
9 A Okay.
10 Similar to me without my horses, I
11 want to see crazy when your life is
12 taken like mine was.
13 Continue.
14 Q And you can go on, and you say:
15 You can't hunt ever again.
16 A Yes.
17 Q Okay. And:
18 That's what felony charges do to you.
19 A Yes.
20 Q Okay. So, and then you go on to say:
21 Todd, I am not threatening you.
22 Do you see that?
23 A Yes.
24 Q And then you go on to say:

1 I am telling you, I'm having you
2 removed as trustee along with your
3 biased sidekicks Mike and Stan. Your
4 control over the ranch in Tahoe is
5 gone.

6 A Yes.

7 Q Do you see that?

8 A I do.

9 Q And then you go on to say:

10 I'm not only suing the trust, but I'm
11 going after you personally for
12 damages.

13 Right?

14 A That's what it says, yes.

15 Q Okay. So you're threatening Todd?

16 A No, I said don't take this as a threat.

17 Q So you didn't intend that as a threat?

18 A No.

19 Q You go on to say:

20 Letting the jury decide how much I
21 should be awarded from you
22 personally, hundreds of millions of
23 dollars in similar cases.

24 Do you see that?

1 A Where does it say that?

2 Q Just continue reading.

3 A Yes.

4 Q Okay.

5 A I mean, obviously this is all exaggerated,
6 but --

7 THE COURT: Ladies and gentlemen, let's stand
8 and stretch for just a moment.

9 Our next break will be at 2:15. That will be a
10 30-minute break. You may be seated.

11 Counsel, you may continue.

12 MR. LATTIN: Thank you, your Honor.

13 BY MR. LATTIN:

14 Q Okay. Do you have Exhibit 23.45 in front of
15 you?

16 A I do.

17 Q We're looking at the last paragraph of the first
18 page.

19 A Correct.

20 Q And you say:

21 Although there are no simplistic
22 cases in any state ever that compare,
23 I am going after you criminally for
24 fraud and forgery.

1 Do you see that?

2 A Obviously I didn't understand the law.

3 Q Okay. Are you also saying that that's not a
4 threat against Todd?

5 A No.

6 Q No, it's not or yes, it is?

7 A No, it's not a threat against Todd.

8 Q Okay. And then you go on to say:

9 It's finally my time.

10 Do you see that?

11 A I do.

12 Q Let's go to page 2.

13 Did you have a chance to review page 2?

14 A Yes. Briefly, let's see.

15 Q Okay. Why don't you take a moment to review it?

16 A Thank you.

17 MR. LATTIN: Mark, while she's doing that, could
18 you enlarge the last full paragraph in that that starts out
19 "this is a good time".

20 THE WITNESS: Okay.

21 BY MR. LATTIN:

22 Q Have you had a chance to read that?

23 A I have.

24 Q Okay. And that you start out saying:

1 This is a good time to mention.

2 Meaning, again, you're talking to Todd, and you
3 want to mention something to him, correct?

4 A Yes.

5 Q And you say:

6 I assume you know this, but I'm
7 requiring a DNA test of you and your
8 children.

9 A Yes.

10 Q Okay. And you go on to say:

11 I've been contacted by several very
12 reliable sources, including close
13 friends and relatives, indicating
14 that there is very high probability
15 that you're not a Jaksick.

16 Is that correct?

17 A That's correct.

18 Q So you're making that accusation of Todd, you're
19 telling him that?

20 A I was very mad at Todd because he wouldn't let
21 us change our dates to go to Tahoe when Luke was playing in
22 the Texas State football game, so I was saying some mean
23 things, obviously, but I was told by several people that's
24 true.

1 Q Okay.

2 THE COURT: Ma'am, you have to slow down,
3 please.

4 THE WITNESS: Okay. All right. I'm sorry, your
5 Honor.

6 BY MR. LATTIN:

7 Q And then you are demanding, there's a sentence
8 that starts:

9 I am demanding that all three.

10 Do you see that?

11 A Let's see. I've read the email.

12 Q Okay.

13 Do you see the sentence that says:

14 I am demanding.

15 A I do.

16 Q You say:

17 I am demanding --

18 You're, again, talking to Todd?

19 A Yes.

20 Q (Reading.)

21 -- that all three of us, DNA is
22 tested to confirm our relationship
23 with Sam Jaksick.

24 Do you see that?

1 A Yes.

2 Q Can you see, and can you read to the jury what
3 you say in all caps down below.

4 A I said:

5 Wow, would that be a great ending to
6 this nightmare.

7 Q And what are you referring to, if Todd were not
8 by some chance Sam's child, is that what you're saying?

9 A I think just in general I was very upset with
10 Todd, and I was saying, I assume that to be.

11 Q Okay.

12 MR. LATTIN: I have no further questions of this
13 witness, your Honor.

14

15 CROSS-EXAMINATION

16

17 BY MR. HOSMER-HENNER:

18 Q Good afternoon.

19 Are you contesting the validity of the second
20 amendment of the Family Trust?

21 A No, I, I have questions about it.

22 Q Are you questioning the validity of the second
23 amendment of the Family Trust?

24 A I'm not questioning the validity. I'm

1 questioning the signatures. So if that means I'm
2 questioning the validity, then, yes, I am.

3 Q You've been here throughout this whole trial,
4 Ms. Jaksick?

5 A Yes.

6 Q And you've seen the other exhibits, the first
7 and the fifth amendment to the Family Trust?

8 A Not during the trial. I couldn't see them.

9 Q But you've seen them in the course of this case?

10 A Yes.

11 Q Are you claiming that any of those prior
12 documents are the real trust documents that the co-trustees
13 of the Family Trust should have been administered?

14 A Can you ask that again?

15 Q Any of the previous versions of the Family
16 Trust, are those something that you are contending that the
17 co-trustees of the Family Trust should have been treating
18 as the rule book, as the operative trust document?

19 A No.

20 Q So it is the second amendment that is the
21 operative trust document?

22 A That's what they've been operating under.

23 So I don't -- and I don't, the second amendment
24 helps me, too. I'm just saying that if it's not my dad's

1 signature on it, then I don't know if it's valid.

2 Q None of those other documents where we looked at
3 the margins, where we looked at the spacing, and the
4 signature pages, you are not claiming any of those are the
5 operative trust documents in this case?

6 MR. SPENCER: Objection, vague.

7 THE WITNESS: I understand --

8 THE COURT: Hold on. Overruled.

9 THE WITNESS: You're asking if I think the 2006
10 document should be the rule book?

11 BY MR. HOSMER-HENNER:

12 Q I'm asking is there any other trust document
13 that you have seen in this case that you think is the rule
14 book.

15 A The 2006 restated.

16 Q As amended by the second amendment?

17 A I don't know the answer to that. I'm confused.
18 I'm sorry.

19 Q I'm trying to figure out if you are not
20 challenging the second amendment, whether it was a colossal
21 waste of our time to go through all of the other versions
22 of the trust documents?

23 A I think it's important to know all the other
24 trust documents, what's out there.

1 Q But the second amendment controls?

2 A I have questions.

3 Q You said that a lot.

4 Do you think that a -- did you testify that Stan
5 never provided you with a copy of the second amendment?

6 A I don't know. I don't recall if he did or not.
7 When he made copies of the whole binder for me, I don't
8 know if it was in there or not. I don't recall seeing it.

9 Q Where did you obtain the second amendment for
10 the first time?

11 A That's a good question. I, I, I can't remember.
12 I really can't.

13 I don't know if Stan gave it to me or if it came
14 in the -- I think it was with, when the documents were sent
15 down from Maupin Cox LeGoy to David Wiggins, possibly. I'm
16 not sure.

17 Q So your earlier testimony that Stan never
18 provided you with a copy of the second amendment, that's
19 not correct?

20 A I'm saying that if it was in the binder then
21 he's the one that gave me the binder. But I never saw it
22 in there, but I don't remember it.

23 THE COURT: We're going to stand up while the
24 witness slows her cadence. Let's stand for a moment.

1 We're not racing. I tried to be very kind.

2 THE WITNESS: I'm sorry.

3 THE COURT: Don't apologize. But you will go
4 slow.

5 THE WITNESS: Okay.

6 THE COURT: Just pause.

7 THE WITNESS: Okay.

8 THE COURT: Breathe, slow.

9 We have a reporter. The next time I have to
10 check the cadence, we're going to take a break.

11 And is everybody satisfied? We'll be seated.

12 BY MR. HOSMER-HENNER:

13 Q You testified that Stan was loaning you money
14 after the Family Trust stopped making monthly payments to
15 you, is that correct?

16 A Yes.

17 Q And you never repaid him anything under those
18 loans, though?

19 A The 6,000, the 6250, is that what we're talking
20 about?

21 Q Sure.

22 A Those were loans.

23 Q Have you repaid them?

24 A No.

1 Q Has he ever asked you to repay them?

2 A No.

3 Q Has he ever sued you to recover the amounts that
4 have not been repaid?

5 A No.

6 Q He's given you a significant amount of money
7 from his own pocket, outside of the trust, is that correct?

8 A That was not my understanding.

9 Q You don't think he's given you any money from
10 his own financial resources?

11 A Oh, I'm sorry. Yes, he has.

12 Q Can you put Exhibit 79 --

13 MR. HOSMER-HENNER: Well, Exhibit 79 is
14 stipulated, and I would offer it, your Honor.

15 THE COURT: It is subject to a stipulation?

16 MR. HOSMER-HENNER: It is.

17 THE COURT: 79 is admitted.

18 (Exhibit Number 79 was
19 admitted into evidence.)

20 BY MR. HOSMER-HENNER:

21 Q Did you draft that email to Stan?

22 A Yes.

23 Q And was that amount paid to you by Stan?

24 A Yes.

1 Q Never been repaid?

2 A No.

3 Q Will you turn to 818, please.

4 This is another document you sent to Stan. It's
5 a form of promissory note from you to Stan?

6 A Yes.

7 Q Did Stan ask you to put an interest payment on
8 that?

9 A No, we were just taught that from my dad.

10 Q Did Stan ask you to document the money he gave
11 you as a loan?

12 A Right. I did that.

13 Q And here, he was providing you money so that you
14 could have attorneys review the trust documents so that you
15 could understand them, correct?

16 A Yes, that's correct.

17 Q He never told you to sue the trust?

18 A Did he tell me to sue the trust? No.

19 Q He never said take this money and sue me?

20 A No.

21 Q He said take this money and use it to review and
22 have an attorney to help you read the documents?

23 A Yes, I was very confused.

24 Q Did you use that money to hire an attorney?

1 A I did.

2 Q Has that money ever been repaid to Stan?

3 A I believe so.

4 Q The \$10,000, how has that been repaid to Stan?

5 A Well, when I got the documentation from the
6 breakdown of money that was to be charged against my
7 insurance note, that was, there was a, a, an amount to give
8 to Stan, to reimburse Stan for. And I believe that was
9 part of it. I'm not positive, but I believe it was.

10 Q But that would be an accounting of the Family
11 Trust, not actual money that you have repaid to Stan?

12 A Right. Correct.

13 MR. HOSMER-HENNER: Can you put Exhibit 80,
14 which is stipulated.

15 I offer that, your Honor.

16 THE COURT: 80 is admitted.

17 (Exhibit Number 80 was
18 admitted into evidence.)

19 BY MR. HOSMER-HENNER:

20 Q 656, this is another \$7500 that Stan gave you?

21 A Yes.

22 Q You drafted this document?

23 A Yes, I did.

24 Q Never paid it back?

1 A Independently?

2 Q From your own resources?

3 A No.

4 Q And in addition to what we've just seen, Stan
5 has given you in the past couple of years an additional
6 \$10,000 from his personal accounts.

7 Are you aware of that?

8 A I'm not sure where it came from, but Stan has
9 helped me, yes, definitely.

10 Q And what about the car that you're driving now;
11 is it an Audi?

12 A Yes.

13 Q And was there a time when that lease expired?

14 A Yeah, there was. It was in, the Audi was
15 actually through Lakeridge.

16 Q Which is an entity that Stan manages or managed?

17 A Correct.

18 Q And to be clear, he used to manage it, it's no
19 longer an entity, is that correct?

20 A That's correct.

21 Q And so that entity was paying the lease payments
22 for your car?

23 A Yes, they were.

24 Q That was about \$1200 per month?

1 A I'm not really sure. Stan got the lease, so I
2 don't know the exact amount.

3 Q But you never paid any amounts for that car?

4 A No. It came out of Lakeridge.

5 Q After that expired did you receive a request
6 from the Audi Financial Services to return the car?

7 A It was under Stan's name, or Lakeridge's name.
8 So Stan called me and said that we needed to return it.

9 Q Did you return the car?

10 A No. Stan and I discussed that we would look
11 into paying it off so that I could keep the car. And
12 that's when Todd suggested I take the Geo.

13 Q And how many times did Stan ask you to return
14 the car to the dealership so that you didn't violate the
15 lease?

16 A Several times.

17 Q And you refused each time?

18 A I wanted to have a car. I had to get around.

19 Q And if that car wasn't returned to the financial
20 services or the dealership it could have been repossessed,
21 right?

22 A He never told me that.

23 Q You're aware that that's true?

24 A Oh, yes.

1 Q And that would have been Stan, his entities,
2 their credit being hurt by your actions, not yours, because
3 you weren't on the lease?

4 A If Stan would have said get it back there right
5 now or it's going to hurt me, I would have taken it back
6 and not had a car or -- I mean, I would have . . .

7 Q And he ultimately, from Stan and his entities,
8 paid off the balance of that car so that you still have it
9 today?

10 A He told me that Montreux did.

11 Q You haven't paid anything for the car?

12 A No.

13 Q Have you paid him back or paid Montreux back for
14 the car?

15 A Stan said we would deal with it after this
16 lawsuit.

17 Q And even after this lawsuit started, you
18 referenced 6250.

19 Stan has provided you with that amount per
20 month?

21 A No, there's a break in it, but there have been
22 several times when he has, yes.

23 Q And you've asked for that repeatedly, made
24 repeated requests to him for money throughout the course of

1 this lawsuit?

2 A I have.

3 Q Even though you were suing him in his capacity
4 as co-trustee?

5 A As a co-trustee, yes.

6 Q And that money is not coming from, from your
7 understanding, from the Family Trust?

8 A He told me it was coming from the \$400,000 that
9 he had kept for me on the Bronco Billy sale, that that was
10 coming out of that.

11 Q And that's an action he took because he wanted
12 to protect you?

13 A Yes.

14 Q And of that amount he's transferred about
15 \$75,000 to you?

16 A I believe so, yes.

17 Q And you've never repaid him or the Family Trust
18 or the sub-trust?

19 A No, we didn't discuss it that way. We discussed
20 that it could come off the \$400,000 he was holding for me.

21 Q What is it that you think that Stan owes you in
22 this case?

23 A Well, Stan owes me a fiduciary duty, and I
24 believe Stan told me a lot of what he knew, but he should

1 have stopped Todd for the bad acts that I believe happened,
2 and that didn't happen.

3 I believe that Stan -- I have an ownership
4 through the trust in Montreux, Toiyabe, Jaksick Family,
5 that are entities that Stan is in control of.

6 May I just --

7 Q Okay. But the Family Trust hasn't provided any
8 money to Stan that you're aware of?

9 A I'm not aware of that.

10 Q You have no evidence of that?

11 A Well, I see the accounting.

12 Q Okay. And does that accounting indicate that
13 Stan is getting \$600,000 from the trust like you've gotten?

14 A It actually showed that he got a million -- I
15 think, well, several millions of dollars from Bronco
16 Billy's. The accounting shows that.

17 Q All that money was transferred back in the
18 Family Trust except for the \$400,000 that he kept out for
19 you?

20 A I don't know that.

21 Q Where do you think that money is?

22 A I don't know.

23 MR. HOSMER-HENNER: Can you put -- Exhibit 32 is
24 admitted, so I'd like to put that on the screen, your

1 Honor.

2 THE COURT: Yes.

3 MR. HOSMER-HENNER: Blow up the first
4 paragraph -- I'm sorry, the first part of the text.

5 BY MR. HOSMER-HENNER:

6 Q And you understand this to be an email from Stan
7 to the other co-trustees?

8 A I'm sorry. I didn't -- what is the exhibit?

9 THE COURT: Let's take a moment to let the
10 witness review it.

11 THE WITNESS: Okay.

12 THE COURT: Would you approach with the binder
13 so she can take a moment and review it, please.

14 THE WITNESS: I just didn't see --

15 THE COURT: Hold on, ma'am. Go ahead and review
16 it, please.

17 THE WITNESS: Okay.

18 BY MR. HOSMER-HENNER:

19 Q Do you understand this to be Stan objecting to
20 Todd's indemnification agreement?

21 A Yes.

22 Q Do you understand it to be him saying he wasn't
23 aware of his own indemnification agreement?

24 A I do.

1 Q Would you turn to Exhibit 38, which is admitted,
2 please.

3 And the first three paragraphs.

4 Exhibit 38 should be in your binder, too.

5 A Okay.

6 Q And you understand this to be Stan objecting to
7 the use of trust funds to pay for anyone else's capital
8 calls, but agreeing that they should be used for your
9 capital calls.

10 A Capital calls?

11 Q The percentages of the Jackrabbit --

12 A Oh, I see.

13 Q Would you agree that this is an indication that
14 Stan was objecting to the use of trust funds to pay for
15 anyone else's capital calls but agreeing that they should
16 be paid for yours?

17 A Yes.

18 Q And Exhibit 81, which is also admitted. 525.

19 The bottom paragraph.

20 A Yeah, I see it.

21 Q And this is an email where Stan is objecting to
22 providing the Geo to you as a workable car?

23 A That's correct.

24 Q Exhibit 242, please.

1 MR. HOSMER-HENNER: We just stipulated and
2 offered it into admission.

3 THE COURT: I thought you said it has been
4 stipulated.

5 MR. HOSMER-HENNER: Exhibit 81 is admitted. And
6 I'm now talking about Exhibit 242, which is stipulated and
7 offered.

8 THE COURT: I misunderstood you. 242 is
9 admitted.

10 (Exhibit Number 242 was
11 admitted into evidence.)

12 THE WITNESS: Can you blow that up?

13 BY MR. HOSMER-HENNER:

14 Q The bottom paragraph?

15 A Yes.

16 Q You understand this is an email from Stan to
17 Todd objecting to your use of the, the limitations of your
18 use of the Tahoe house?

19 A Yes, it was regarding the document that
20 Mr. Lattin showed me.

21 MR. HOSMER-HENNER: Exhibit 244 is stipulated,
22 and I offer its admission, your Honor.

23 THE COURT: It is admitted, Ms. Clerk.

24 ///

1 (Exhibit Number 244 was
2 admitted into evidence.)

3 BY MR. HOSMER-HENNER:

4 Q 561. I believe it's the top of the page.

5 Do you understand that Stan had some agreements
6 about the sale of cattle from White Pine?

7 A I do.

8 Q And do you understand that Stan objected to the
9 plan for the sale of cattle from White Pine?

10 A I do.

11 MR. HOSMER-HENNER: Turn to Exhibit 246, which
12 is stipulated, your Honor, and I move for its admission.

13 THE COURT: It is admitted.

14 (Exhibit Number 246 was
15 admitted into evidence.)

16 BY MR. HOSMER-HENNER:

17 Q It's TJ 1973. And it's the first email from
18 Stan.

19 Do you understand that there was a concern about
20 the transfer of the plane to a different entity of the
21 Family Trust?

22 A I do.

23 Q And do you understand this to be Stan objecting
24 to the use of that plane to transfer internally, rather

1 than to sell to pay off external creditors?

2 A Yes.

3 Q And you also know that Stan objected to the
4 distributions from Bronco Billy's because he kept the
5 \$400,000 in a separate account which he was protecting for
6 you, correct?

7 A I'm not sure why he objected, but, yes, I do
8 remember that.

9 Q And you are suing Stan only in his capacity as
10 co-trustee of the Family Trust, is that correct?

11 A Yes.

12 Q And Stan throughout, since your dad's death has
13 taken care of you?

14 A Stan has definitely helped me.

15 Q And he stood up for you where your interests are
16 concerned?

17 A He did. There was a couple of, I don't know if
18 it's Jackrabbit or White Pine Lumber Company that somehow
19 my percentage of them ended up in Stan's sub-trust, and
20 that was concerning to me.

21 Q But you understand that those are not currently
22 in Stan's sub-trust?

23 A Now they're not. That's correct.

24 Q They're back in the Family Trust?

1 A Yes.

2 Q So you don't think that Stan did anything wrong
3 with respect to those two transactions, you have no damage
4 because they are in the Family Trust now?

5 A I have concerns, of course.

6 Q Yeah.

7 MR. HOSMER-HENNER: My last document is
8 Exhibit 72, which is admitted, your Honor. I'd like to go
9 to JSK 001120.

10 Can you blow up the top half of the page,
11 please. I'm sorry.

12 Also the very top, please.

13 BY MR. HOSMER-HENNER:

14 Q This is the accounting for the first period of
15 the Family Trust after your dad died.

16 Do you recognize that?

17 A I see that.

18 Q Can you see that well enough?

19 A I can see.

20 Q And these are the assets, the liquid assets of
21 the Family Trust at the time of your dad's death.

22 Do you see that?

23 A I see what's listed.

24 Q And it's about 50,000 in cash, and maybe an

1 additional 13,000 in marketable securities.

2 A I see that's listed on there, yes.

3 Q Do you have any reason to believe that's not
4 everything that the trust has liquid in April of 2013?

5 A Yes. I have reason to believe that's not
6 accurate.

7 Q Are you disputing this financial statement from
8 Kevin Riley about the Family Trust?

9 A I'm disputing all of them.

10 Q Every financial statement?

11 A From day one?

12 Q From day one of the Family Trust.

13 A Yes.

14 Q Every line and every financial statement?

15 A Not every line. I think there's some things in
16 there that are accurate.

17 Q Well, assume that that's accurate. It's showing
18 about, the assets of about 60 or 70,000.

19 You've received, you say, maybe not \$600,000,
20 but certainly in the hundreds of thousands of dollars of
21 cash from the Family Trust since 2013, haven't you?

22 A It's not been 600,000. The 300,000 or 300 and
23 whatever it is, the 25,000 was a creditor's claim.

24 Q Where was that creditor's claim paid from?

1 A It was paid to me monthly. It was paid for my
2 medical bills, it was paid for Luke's medical bills --

3 Q It was a creditor's claim against the Family
4 Trust?

5 A Oh, I'm sorry, yes.

6 Q So it was paid for by the Family Trust?

7 A I would assume it was.

8 Q So at least \$300,000 from the Family Trust.
9 That means that the co-trustees would have had to sell
10 assets -- land, property, real assets in order to pay that
11 money to you, is that right?

12 A No.

13 Q That's all there was in the Family Trust.

14 Where do you think the rest of the money came
15 from?

16 A Oh, well, the rest of mine came from -- there
17 was money from the Issue Trust that they were putting into
18 the Family Trust. There was money from Lakeridge that was
19 going into the Family Trust. There was several notes, I
20 believe Todd has number 1, 2, 3, 4, and 5, that he owed the
21 Family Trust, and I believe maybe one of those was paid.

22 Q Those are assets.

23 THE COURT: Ladies and gentlemen, during this
24 recess, please do not discuss this case amongst yourselves.

1 Please do not form or express any opinion about
2 this matter until it is submitted to you.

3 This is a 30-minute break. We will see you at
4 2:45.

5 We'll stand for our jury.

6 ((Whereupon a recess was taken.))

7 (Whereupon the following proceedings
8 were had in the presence of the jury.)

9 THE COURT: Thank you. The jury, please.
10 Please be seated.

11 Mr. Hosmer-Henner, do you now pass the witness?

12 MR. HOSMER-HENNER: Yes, your Honor.

13 THE COURT: Mr. Spencer, do you have any other
14 questions?

15 MR. SPENCER: Yes.

16 THE COURT: Please.

17 Would you slide just a little tiny bit away
18 from --

19 MR. SPENCER: Yes.

20 THE COURT: Perfect. Thank you.

21 ///

22 ///

23 ///

24 ///

REDIRECT EXAMINATION

BY MR. SPENCER:

Q Let's look back at Exhibit 151. It's the letter, \$5,000 check, and that's the last one you get until all trust matters have been resolved.

Do you remember that?

A Yes.

Q Do you feel like you were fully informed or sufficiently informed, I should say, to where you could have made a decision to fully resolve all issues at that time?

A No.

Q All right. I just want to make sure the record is clear. I think there may have been a mixup, unintentional, but I just want to make sure the record is clear about when your divorce from Mr. Smrt happened.

You mentioned that you got married in 1986 and divorced when?

A Ninety -- let's see. I think '95.

Q Okay. So that happened prior to Mr. Kreske's suicide?

A Yes.

Q I think earlier, unintentionally, 2005 was

1 mentioned, and I think you would agree, and I may be wrong,
2 but that's what I heard, so I just want to make sure it's
3 clear on the record that happened prior to Mr. Kreske's
4 suicide?

5 A Yes, it did. I'm, I'm sorry, if I misstated
6 that.

7 Q Okay. The ACPAs that contain that language, and
8 you said that -- Exhibit 14, if you would, please.

9 You said that it looks like your signature on
10 page 3, but you don't know if the pages before it were what
11 was attached when you signed it?

12 A That's correct.

13 Q And then you were shown this paragraph 3 on page
14 2. And that binding effect paragraph it says, on the
15 second line:

16 The primary beneficiaries, as the
17 sole adult beneficiaries of the Issue
18 Trust.

19 Do you see that?

20 A I do.

21 Q And then on page 3, the primary beneficiaries
22 include you, Todd, and Stan, right?

23 A Lexi should be on there.

24 Q Just answer my question.

1 A Yes.

2 Q You, Todd and Stan --

3 A Correct.

4 Q Lexi was 25 at this time, wasn't she, 2013?

5 A She's 30 now. So, yes, right around there.

6 Q So she was a adult beneficiary of the Issue
7 Trust on June 4th, June 5th of 2013, wasn't she?

8 A Yes, she was.

9 Q So the ones listed in that signature page right
10 there were not the sole primary beneficiaries, were they,
11 because it's missing Lexi?

12 A That's correct. Lexi should be on there, my
13 daughter. Yeah.

14 Q All right. And earlier you were asked why
15 didn't you ask for documents regarding the trust?

16 Do you remember that?

17 A Yes.

18 Q What would have been your expectation for your
19 trustees in relation to providing the documents related to
20 the trust?

21 A Well, I would have thought that they would give
22 me the documents, sit down with me, go over them, explain
23 the financial statements, so I had an idea of what, of how
24 it was going to benefit my children and I.

1 Q Okay. And so instead of you asking, would you
2 have expected your trustees to provide that information?

3 A Absolutely.

4 Q And instead, Mr. Hosmer-Henner showed the loan
5 emails.

6 Do you remember that?

7 A Yes, I do.

8 Q And those were with who, whom?

9 A Stan.

10 Q Not Todd?

11 A No, Todd refused to give me money.

12 Q And did you use that money to hire Ms. Dwiggin?

13 A \$10,000 of it.

14 MR. SPENCER: Your Honor, I offer Exhibit 418.
15 Stipulated.

16 THE COURT: 418 is admitted, Ms. Clerk.

17 (Exhibit Number 418 was
18 admitted into evidence.)

19 BY MR. SPENCER:

20 Q And you can see this is a letter from
21 Mrs. Dwiggin's letterhead?

22 A Right. Correct. She was my Las Vegas counsel.

23 Q Just note there, what was this date of that
24 letter?

1 A August 15th, 2016.

2 Q Do you see at the bottom a list?

3 A Yes.

4 Q And above that it says:

5 Wendy requests that the trustees
6 provide a copy of the following
7 documentation.

8 A I see that.

9 Q So, and you can see there Form 706, Federal tax
10 returns, etc., and then it goes on to the next page, that
11 laundry list?

12 A Yes. I see it.

13 Q Okay. And so if you had already had those
14 documents, would you have asked your attorney to request
15 them?

16 A No.

17 Q And then there was a time when you, I think
18 there was an email put up earlier, there was a time when
19 you wanted to use the Lake Tahoe property in December of
20 2017?

21 A That is correct. The dates, I needed a date
22 change.

23 Q And, and why did you need that?

24 A Because Luke was playing in the Texas State

1 championship. And it was going to happen on the 22nd of
2 December, or 23rd. So I couldn't get to Reno in time to go
3 to, to stay at the Tahoe house when I had originally
4 planned to earlier.

5 Q Okay. And those plans had been made quite a bit
6 beforehand?

7 A I believe it was May of that same year.

8 Q Let's pull up Exhibit 242, which is already
9 admitted.

10 And we'll put the third page of the document,
11 which is SJ 484, and the second full photograph there --
12 I'm sorry. Let's go all the way to the top. There we go.
13 Okay.

14 And so, sorry. Go to page 4. That's where you
15 can see this SJ 483.

16 Do you see the email there? It's from Todd to
17 you?

18 A That's correct.

19 Q November 30th of 2017?

20 A Yes.

21 Q And the next page he's talking about you using
22 the Lake Tahoe property.

23 Do you see there:

24 However, Tahoe is still available for

1 you and your family per our
2 discussion back in May. The dates we
3 agreed to were December 22nd to the
4 28th, 2017.

5 A Yes.

6 Q And then, if possible, if you'd like, I could
7 reevaluate switching your Tahoe dates to you arriving after
8 Christmas, like on December 28th and staying through
9 January 4th. This is not my preference because this late
10 in the game we have a better chance of renting for New
11 Year's and Christmas?

12 A I see that.

13 Q What was the issue here? The State championship
14 game was on what date?

15 A I believe it was on the 22nd or 23rd of
16 December.

17 Q And what did that do to the plans that were made
18 back in May?

19 What were you going to do?

20 A We were planning -- I didn't think that Luke
21 would be in the state championship football game so we were
22 planning on arriving then the 21st or 22nd and staying over
23 Christmas, spending our Christmas holiday in Tahoe.

24 Q What did your plans change to after Allen

1 football made the state championship?

2 A I wanted to come in a couple of days after and
3 stay, but then Todd said I had to leave -- I had to keep
4 those dates.

5 Q Okay.

6 A And that they couldn't be changed. But I could
7 change them to later in December.

8 Q And then the first page of Exhibit 242, SJ 482,
9 do you recall Stan writing an email in relation to that?

10 A I do.

11 Q There at the bottom. Can you read what he says
12 there on the first line.

13 A (Reading.)

14 Todd, I really can't believe you're
15 trying to screw with Wendy's plans.

16 Q And then it says:

17 She doesn't live in the area, and
18 told you back in June that she wanted
19 to come up for Christmas. Whether
20 it's the 22nd or the 24th, big deal.
21 This is not a high demand time
22 period, and if no one has made a
23 reservation at this point, I highly
24 doubt that will change. I would

1 suggest you reserve the time frame

2 Wendy has requested.

3 A I see that.

4 Q What did you understand in this email that Stan
5 was doing for you?

6 A He was sticking up for me and saying that it's
7 ridiculous that Todd won't let me stay there unless I
8 stayed with the original dates because I couldn't leave my
9 son nor would I ever leave my son in Texas to come and make
10 sure that they were those dates. We had no idea that Allen
11 High School was going to be in the state championship
12 football game.

13 Q The playoff system, right?

14 A Correct.

15 Q And you were going to fly in a day later than
16 originally planned?

17 A Correct.

18 Q And did Todd let you?

19 A No.

20 Q All right. Now, \$600,000 that you received,
21 right?

22 A Yes.

23 Q And you mentioned that there was a loan
24 outstanding that was owed to you of \$231,000, right?

1 A That was the -- that's what the origination of
2 it was, but there was many, many, many years of interest
3 and so forth, so it was closer to 300, 335.

4 Q Okay. So that's repayment of a loan rather than
5 a distribution from the trust?

6 A Yes, repayment of a loan owed to me.

7 Q What did you understand was the source of the
8 other money that was -- that was not part of that loan
9 agreement?

10 A Well, originally I thought it was what is stated
11 in the 2006 Family Trust, which says that my maintenance,
12 my care, my medical, my expenses are to be covered, and as
13 well as Luke's, and Luke's football and school.

14 Q Health, education, maintenance, and support?

15 A Thank you.

16 Q By the way, did Luke injure himself?

17 A Yes, he just had surgery.

18 Q He did. And on what?

19 A His shoulder.

20 Q And how was it paid for?

21 A Well, I'm going to have a bill. He doesn't have
22 insurance. So, but Allen High School has a percentage that
23 they cover for players that are hurt on their field. So
24 he, part of it will be paid by Allen High School, and part

1 of it will be billed to me.

2 Q And there was the implication that you were
3 getting distributions before all the debts were paid?

4 Do you remember that?

5 A Yes.

6 Q It's true, isn't it, that -- let me ask you, do
7 you recall seeing capital calls being paid from the trust?

8 A You have mean today?

9 Q No, throughout the trial.

10 A Oh, no. Oh, yes. I'm sorry. I thought you
11 meant what Mr. Hosmer-Henner showed me.

12 Q No, capital calls in relation to Jaksick.

13 A Yes.

14 MR. SPENCER: Exhibit 411, your Honor. It's
15 admitted.

16 THE COURT: Thank you.

17 BY MR. SPENCER:

18 Q We saw this already, but I just wanted to put it
19 up again.

20 These are capital calls being paid by the trust
21 on behalf of Todd, his trust, and Stan, is that right?

22 MR. LATTIN: Objection, leading.

23 THE COURT: Hold on. It is technically an
24 objection I should sustain. I'm trying to balance them.

1 I'm going to sustain it and allow you to continue.

2 MR. SPENCER: I'll rephrase it.

3 BY MR. SPENCER:

4 Q You can see here these are capital call requests
5 on that 411 that's been admitted into evidence?

6 A Yes. For Jackrabbit, LLC.

7 Q What do you see there regarding TBJ Investment
8 Trust, Todd B. Jaksick, LLC and Stan Jaksick, LLC?

9 A Well, TBJ Investment Trust is Todd. That's
10 28,692. Samuel S. Jaksick Trust, which was Dad's
11 percentage when he passed, 28,193.

12 Todd B. Jaksick, LLC is 4,000 and Stan Jaksick
13 2, LLC, is 3,114. So that shows me --

14 Q Well, let me show you, flip to TJ 1775 real
15 quick.

16 It's a check drawn on one account?

17 A My father's Family Trust account.

18 Q On behalf of who in the memo?

19 A Jackrabbit on behalf of Todd Jaksick, LLC.

20 Q All right. Next page.

21 That's the one for the Family Trust.

22 Next page. Check drawn on the Family Trust at
23 the top?

24 A I see that.

1 Q And on behalf of who in the memo line?

2 A On behalf of TBJ Investment Trust, which is
3 Todd.

4 Q And then last page, 1778. Check drawn on Family
5 Trust on behalf of whom in the memo line?

6 A On behalf of Stan Jaksick 2, LLC.

7 Q All right. The dates of those are what at the
8 top?

9 A 6/12/2017.

10 Q Was that before or after all the debts had been
11 paid, as far as you're aware?

12 A Before.

13 Q In relation to that cattle ACPA, what did you
14 understand was going to happen in that transaction?

15 A Well, we owned 700 head of cattle at our ranch
16 in Eagleville and --

17 MR. SPENCER: Hold on a second. Exhibit 18.

18 And go ahead.

19 THE WITNESS: Okay. We owned 700 head of
20 cattle, 715 maybe, head of cattle at our ranch. And Todd
21 said that the Family Trust needed money immediately to pay
22 tax, debt, whatever.

23 And so he said that the cattle were going to be
24 sold to generate that income because you can sell cattle

1 tomorrow, whether the price was right or not. But he said
2 that, and then I came to find out that he actually moved
3 the cattle down to his ranch instead of selling them.

4 Q When did you find that out?

5 A Stan found out and told me.

6 Q After the ACPA?

7 A Yes.

8 Q And what did you think in relation to whether
9 that complied with what the ACPA sets out?

10 A It didn't.

11 Q What did you understand happened with the
12 cattle?

13 A They were -- you mean what really happened?

14 Q What really happened.

15 A So Todd said that there -- we were going to have
16 a sale for the cattle, and then the cattle were moved down
17 to his ranch. And I believe they were rebranded with his
18 brand. And then he kept them down there and took our
19 equipment that was at the other ranch to his ranch as well
20 to cut the hay for them and also transplant their,
21 transported hay down there to feed the cattle.

22 Q And was that in the ACPA, Exhibit 18?

23 A No, I would not have been okay with that.

24 Q Okay. You mentioned you were really involved

1 with horses?

2 A Yes.

3 Q And was there a time when you had a serious
4 injury in relation to the horses?

5 A A couple of them. But yes, one very serious
6 one.

7 Q Why was it that you were not in Los Angeles at
8 the time your father was having surgery?

9 A Because I couldn't walk.

10 Q Why not?

11 A Because my ankle was shattered, and I had pins
12 coming out of it and was in traction at the time.

13 Q Okay. And did that prevent you from traveling?

14 A Yes, it did.

15 Q Would you have been there otherwise?

16 A I'd have been there, absolutely.

17 Q And in addition, did, did you have a
18 granddaughter around that time?

19 A I did.

20 Q Your daughter had a --

21 A My first granddaughter.

22 Q And when was she born?

23 A She was born in October, end of October, and I
24 couldn't walk at that time either. And her husband was

1 away, playing basketball. So I -- she was living with me,
2 and I was caring for, helping Lexi as much as I could with
3 one leg.

4 Q And that was prior to that surgery?

5 A Yes.

6 Q So that would have been 2012?

7 A Yes.

8 Q Did you call your father at all when he was down
9 in Los Angeles with his surgery?

10 A Of course I did.

11 Q And I need to ask you, in relation to the EMT
12 training, did you get that EMT training?

13 A I did.

14 Q How much did that program cost?

15 A \$887.

16 Q And that's here in Nevada, right?

17 A Yes.

18 Q What about in Texas, were you able to be an EMT
19 there?

20 A No. Well, I couldn't.

21 Q Why not?

22 A Because in Nevada there's two certifications.
23 One is a national certification, and the other is a state
24 certification. So that was taken care of when I was in Las

1 Vegas.

2 When I moved to Texas I was going to have to go
3 for re-school and be recertified, again, from Texas. And I
4 did not do that.

5 Q Did you have jobs in Texas to earn some money?

6 A I did.

7 Q Doing what?

8 A I was a nanny for a while with a little girl
9 that, I took care of her all the time, her mom worked in
10 Dallas full time, so I took care of her. And then I got
11 into the horse training, and had business there doing
12 lessons.

13 Q One thing I forgot to ask you, when your
14 granddaughter was born in October of 2012, were you able to
15 go to the hospital?

16 A I was able to go to the hospital, but I didn't
17 make it for the beginning because I had to have someone get
18 me there.

19 Q Because of your leg?

20 A Yes.

21 Q Do you consider it a colossal waste of time to
22 try to figure out which of these trust documents actually
23 applies?

24 A Yes.

1 Q And in relation to all of the documents?

2 A I don't think it's a waste of time for us to
3 understand them. But I mean it's a colossal waste of time
4 that I wasn't given the information on them.

5 Q I'm talking about in relation to this lawsuit
6 and going over them, and trying to figure out which one is
7 applicable.

8 A I'm sorry. I misunderstood your question.

9 Q Okay.

10 A No, I think it's extremely important.

11 Q And to figure out if, to go through them and
12 figure out if any fraud has occurred, do you believe that's
13 a waste of time?

14 A Absolutely not.

15 Q And your trustees filed to have their
16 accountings approved, didn't they?

17 A Yes, they did in October --

18 MR. HOSMER-HENNER: Objection, your Honor.
19 There's a motion in limine on that.

20 THE COURT: Yes. I trust you know where you're
21 going. That is a subject to be addressed at a later time.

22 MR. SPENCER: Your Honor, may we approach?

23 THE COURT: Let's have a sidebar.

24 Ladies and gentlemen, please stand, if you

1 would, please.

2 (Whereupon a discussion was had
3 at sidebar, not reported.)

4 THE COURT: Thank you, Counsel, for the
5 clarification.

6 And you may continue.

7 MR. SPENCER: Thank you, your Honor.

8 BY MR. SPENCER:

9 Q Ms. Jaksick, I asked you if the co-trustees
10 filed to have the accountings approved?

11 A Yes, they did.

12 Q Well, let's be clear about that.
13 Did Stan join in that application?

14 A No. He objected to it.

15 Q Okay. And so only two of the co-trustees
16 applied to have their accountings approved?

17 A That is correct. Mike Kimmel and Todd Jaksick.

18 Q And what happened after Stan objected, as far as
19 what you did?

20 Did you also object?

21 A Yes.

22 Q And then after that, what did you do?

23 A I filed a lawsuit against them.

24 Q Okay. One moment.

1 You were asked some questions about
2 Exhibit 23.45.

3 A Do you have that on the screen?

4 MR. SPENCER: Will you bring that up?

5 BY MR. SPENCER:

6 Q And about the middle to the bottom of the big
7 paragraph there, you were asked to read a portion of that.

8 Do you recall that?

9 A I do.

10 Q (Reading.)

11 Let me tell you where you screwed up.

12 That was where it started?

13 A Yes.

14 Q And then what did you say after that? That part
15 was not completed as far as what you iterated there.

16 A Do you want me to read it?

17 Q Yes, but read it slowly for the court reporter.

18 A I will. I will.

19 Okay.

20 Let me tell where you screwed up.

21 First and foremost, if you were
22 smart, you would have kept me happy,
23 the insurance money for a home like
24 dad wanted and given me 200K a year.

1 I would spend a month a year at the
2 ranch, continue to run the herd of
3 cattle, which I am the best, and you
4 know absolutely nothing, have family
5 brandings, and horse pack trips
6 yearly, spend a couple of weeks a
7 year at Tahoe, given my kids their
8 trusts, and I would never have opened
9 my mouth. You could have continued
10 to steal everything, and I would
11 never have known or checked. But you
12 didn't. You went crazy like a
13 cyclone of greed.

14 Q And we saw the next paragraph.
15 Why was it that you wrote all of those things?

16 A I was angry.

17 Q Why were you angry?

18 A Because of the way I was being treated.

19 Q All right. And, You went crazy like a cyclone
20 of greed, what did you mean by that?

21 A I meant that Todd went crazy, and basically
22 completely didn't look at what his job was as a trustee.
23 He only cared about himself and his family and didn't care
24 that dad wanted all of us to be treated fairly and given

1 what my dad wanted us to have.

2 Q What are your feelings about whether Todd is
3 greedy?

4 A He's very greedy.

5 MR. SPENCER: Your Honor, I offer Exhibit 215.
6 It's stipulated.

7 THE COURT: 215 is admitted, Ms. Clerk.

8 (Exhibit Number 215 was
9 admitted into evidence.)

10 BY MR. SPENCER:

11 Q Can you see that this is the hydrographic
12 abstract at the top?

13 A Yes, I can.

14 Q I want you to note if you look at the right-hand
15 corner, the date of this printout?

16 A 1/28/2019.

17 Q All right. And do you know where this
18 particular printout came from?

19 A I believe that one was produced by Todd.

20 Q All right. And had you ever received anything
21 like this from Todd before?

22 A Never.

23 Q And so January 28th of 2019 or thereafter, would
24 have been the first time, is that right?

1 A The first time?

2 Q Do you recall when after that you received this?

3 A I received it at, the night before his
4 deposition, I believe.

5 Q Okay.

6 MR. SPENCER: Your Honor, I pass the witness.

7 THE COURT: Thank you, Counsel.

8 MR. ROBISON: Thank you.

9

10 RECROSS-EXAMINATION

11

12 BY MR. ROBISON:

13 Q Ms. Jaksick, do you have any information to
14 substantiate this greed position you've taken, of the over
15 \$600,000 you've received, you know Todd hasn't received any
16 disbursements, correct?

17 A Not correct.

18 Q He hasn't even come close to over a half million
19 dollars that you've received, right?

20 A That is not correct.

21 Q So with your \$600,000, did you buy a car?

22 A Yes.

23 Q And was that the Audi that Stan provided for
24 you?

1 A No, it was a used car for my son Luke.

2 Q And with the \$600,000 did you pay the Gorman
3 tuition?

4 A Yes.

5 Q With the \$600,000 did you pay your rent?

6 A Yes.

7 Q With the \$600,000 did you pay Luke's insurance?

8 A No.

9 Q With the \$600,000 did you ride horses?

10 A No.

11 Q With the \$600,000 were you able to get by with
12 just \$600,000 over the past five years?

13 A I had extensive medical bills from my ankle.

14 Q Did you ever buy insurance?

15 A No.

16 Q With the \$600,000 did you look into what
17 insurance might cost for you?

18 A Yes.

19 Q And did you buy insurance for yourself?

20 A No, I, I was -- I actually did not buy. I had
21 a, what's it called, catastrophic policy for part of that
22 time that I have paid for.

23 Q Did you make a Workman's Compensation claim for
24 your injury?

1 A A Workman's Comp?

2 Q Yes, because, well, it was a horse incident,

3 wasn't it?

4 A Yeah, I was in a horse show.

5 Q Did you make a Workman's Comp claim?

6 A No.

7 Q Why?

8 A Because I wasn't working when it happened.

9 Q Okay. Did you ask your brothers to assist you

10 with those medical bills, because we have seen no emails to

11 that effect.

12 A They knew I had them.

13 Q No.

14 A Oh, I'm sorry.

15 Q Did you ask your brothers for assistance

16 financially for your injuries?

17 A Yes.

18 Q In 2012?

19 A Well, I didn't get most of the bills until 2013.

20 Q Well, you see your father was alive then.

21 Did you ask Sam for the money?

22 A I'm sure he paid something.

23 Q Oh, so you did get some of the medical bills

24 paid by Sam?

1 A I probably did.

2 Q And those injuries that you claim that you
3 sustained were prior to December of 2012?

4 A They were.

5 Q And Sam was alive 2012 through April 2013, and
6 he helped you pay those medical bills, didn't he?

7 A He helped me pay probably -- he probably paid
8 somewhere around \$5,000 of them, I would say.

9 Q And did he cut you off?

10 A My dad?

11 Q Yeah.

12 A No.

13 Q Why didn't he pay the rest of the medical bills?

14 A Because we didn't get all of them until probably
15 right around when he died. I had two surgeries, so.

16 Q When did that injury happen?

17 A It happened in August of 2012.

18 Q Okay. But you asked your father for the money
19 to assist for those medical bills?

20 A I'm sure he helped me, yes.

21 Q Okay. Now with respect to your position on the
22 second amendment that document is dated December 10th,
23 2012?

24 A Yes.

1 Q Are you aware that your two brothers are the
2 co-trustees that have administered that second amendment
3 since April 2013?

4 A Am I aware that the co-trustees have been using
5 it? Is that what you're asking?

6 Q No, have been administering it.

7 A I, that's a document they've been using, is that
8 what you're trying to say?

9 Q That's what I'm trying to say.

10 A That's what they told me.

11 Q And so for six years your brothers have been
12 administering as the operative document the 2012 Second
13 Amendment, correct?

14 A That's what they told me.

15 Q Do you have any reason to disbelieve that?

16 A I trusted them. That's what I'm told.

17 Q And so you say that document is unenforceable,
18 it's a bad document in this case, you're contesting it,
19 correct?

20 A I'm not.

21 Q You just told Mr. Hosmer-Henner that this
22 signature is bad so therefore you are contesting it.

23 A Well, I don't believe that is my father's
24 signature. Nor does my brother Stan.

1 Q Ma'am, if it's not your father's signature,
2 you're contesting the second amendment, correct?

3 A What is inside the second amendment were things
4 that my dad and I talked about.

5 There's certain parts of the second amendment
6 that I do not believe were in the second amendment, the
7 original one that should have been used as a document
8 versus the one that someone doctored.

9 Q We're entitled to know.

10 What portions of the second amendment are you
11 contesting, ma'am?

12 A Okay. The first section of it, I don't know if
13 it's number 1 or 2.

14 MR. SPENCER: Your Honor, can she see the
15 document if he's asking her to --

16 THE COURT: Of course.

17 BY MR. ROBISON:

18 Q I'm showing you Exhibit 12, ma'am.

19 A Okay.

20 Q Do you recognize that?

21 MR. SPENCER: Your Honor, I thought it was 13.

22 THE WITNESS: This is the indemnification.

23 BY MR. ROBISON:

24 Q I'm sorry. 13, please.

1 A Okay. Got it.

2 Q Do you recognize that as the second amendment?

3 A I do.

4 MR. ROBISON: Can you please show the witness
5 while that's being shown Exhibit 13.5, please.

6 THE WITNESS: Do I have 13.5 here?

7 BY MR. ROBISON:

8 Q No, ma'am.

9 A Oh.

10 Q All right. It will be on the screen.

11 THE CLERK: Counsel, 23.5?

12 MR. ROBISON: I'm sorry. 13C.

13 Could you blow that up?

14 MR. SPENCER: Hold on a second.

15 BY MR. ROBISON:

16 Q Were you aware that Todd was referring to Kevin
17 and Stan with respect to his distribution of the trust
18 documents to you?

19 A No.

20 Q Do you have any reason to believe that Kevin
21 Riley did not get this email?

22 A I have no idea.

23 Q What's the first time you've seen this?

24 A Saw the second amendment?

1 Q No, this email, ma'am.

2 MR. SPENCER: We'll stipulate, your Honor.

3 THE COURT: Now I'm confused. Is it 13C?

4 MR. ROBISON: Yes.

5 THE COURT: It is admitted.

6 MR. ROBISON: Thank you.

7 (Exhibit Number 13C was
8 admitted into evidence.)

9 BY MR. ROBISON:

10 Q In this email from Todd Jaksick and Kevin Riley,
11 do you know who is reflected by that second address?

12 A My brother Stan.

13 Q Here Todd says:

14 Hi, Guys. I made copies of all trust
15 documents and a binder for Stan,
16 Wendy, and myself. My question is
17 what should I do with Lexi? Should I
18 give her trust docs and the second
19 amendment and explain the process and
20 show her how she's a beneficiary of a
21 portion of Wendy's one third?

22 Do you see that, ma'am?

23 A I see that.

24 Q Does that refresh your recollection that you

1 were given the binder in June or July of 2013, in which the
2 second amendment was contained?

3 A It does not.

4 Q And is it still your position you didn't get a
5 copy of the second amendment until 2015?

6 A I don't recall that, but I don't remember seeing
7 it in the other documents for sure.

8 Q So now you have it in front of you, and it's
9 Exhibit 13 here, correct?

10 A Yes.

11 Q So what portions of that are you contesting in
12 this proceeding?

13 A I'm not contesting. I have questions.

14 Q The first paragraph, you had questions about it,
15 or --

16 A I'm glad we got the document. It's not the
17 first paragraph. It's the second paragraph.

18 Q In that second paragraph --

19 MR. ROBISON: Can we put up Exhibit 13, please.

20 THE WITNESS: So it, the next page.

21 BY MR. ROBISON:

22 Q Does that paragraph have a number?

23 A Hang on. Let me just make sure where it is.

24 Okay. I'm sorry. It's 3.1.

1 Q All right. And why are you contesting 3.1?

2 A I'm not contesting it. I have questions about
3 it.

4 MR. SPENCER: Your Honor, I would object to the
5 extent that it calls for a legal conclusion.

6 THE COURT: The word "contest" can have a
7 specific meaning. It can be a term of art.

8 I'm not hearing the question with respect to
9 that term of art. I'm hearing it as a way of eliciting
10 witness testimony about the trust that she disagrees with
11 or does not understand.

12 We will entertain the term of art at some other
13 time.

14 MR. SPENCER: Thank you, your Honor.

15 MR. ROBISON: Understood. Thank you, your
16 Honor.

17 BY MR. ROBISON:

18 Q So you have questions about various provisions
19 of the second amendment?

20 A Yes. Various things that my father never told
21 me about.

22 Q All right. So are you aware that your
23 daughter's sub-trust, Lexi's sub-trust had been fully
24 funded with the \$100,000?

1 A I am.

2 Q You're not disputing that, are you?

3 A I'm not disputing that. There's actually her
4 Shakey's stock in there as well.

5 Q You're not contesting that Lexi received the
6 benefit of the second amendment, are you?

7 A She had a -- okay, do you want me to answer yes
8 or no?

9 Q You can answer however you want, ma'am.

10 A She had a trust, her grandchildren's trust
11 document that was signed by my father in June 2012. And in
12 that trust document, which is what she received from Todd,
13 not the second amendment, she got the actual trust document
14 from June 2012 that was emailed to her from Todd.

15 Q Okay.

16 A And in that document it states the same.

17 Q All right. I appreciate that.

18 Her sub-trust got fully funded with the hundred
19 thousand dollars, correct?

20 A Yes, it did.

21 Q No intention to return that, correct?

22 A What?

23 Q In other words, you accept that part of the
24 second amendment?

1 A Well, I accept that part of her trust, her
2 grandchildren's trust that was signed in June.

3 Q And, likewise, the 20 percent interest that Luke
4 has, you're not contesting that, correct?

5 A My father told me that he wanted to give Luke a
6 percentage of mine.

7 Q All right. You don't dispute that the 20
8 percent of your share going to Luke was exactly what your
9 father intended?

10 A I'm not sure what he intended, but I know that
11 he didn't --

12 Q You're not sure what Sam intended, are you,
13 ma'am?

14 A I'm sure of what he told me.

15 Q No, you just said I'm not sure what Sam
16 intended?

17 A Oh, I'm sorry. I thought you meant the
18 percentages. The 20 and 80, which I'm fine with.

19 Q No, I meant his intent.

20 A His intent was to take care of Luke and I and
21 Lexi.

22 Q All right. But do you know why he put your
23 share just in a life estate?

24 A Yes. We discussed it.

1 Q All right. So you wouldn't -- your share would
2 not be subject to creditor's claims, correct?

3 A That's correct.

4 Q And when you received from the Family Trust, do
5 you understand that it's supposed to go into your
6 sub-trust?

7 A For my lifetime.

8 Q Just for your life, correct?

9 A Well, I hope that's a while, but yes.

10 Q I'm not suggesting you'll have a short life
11 span.

12 A Okay.

13 Q But you have two trustees who govern that
14 distribution to you for life, right?

15 A Yes.

16 Q Who are those two trustees?

17 A The ones that I trusted, Stan and Todd.

18 Q All right. So those two gentlemen, your
19 brothers, are the trustees of whatever you get from the
20 Family Trust, correct?

21 A Yes.

22 Q And you acknowledge that that was Sam's intent?

23 A It was Sam's intent.

24 Q You don't dispute that?

1 A I do not.

2 Q Okay. Just so I'm clear, one more time, the
3 chronology, your divorce with Mr. Smrt was '95, correct?

4 A I believe so, yes.

5 Q And then you had the unfortunate incident
6 that -- was it the suicide or Wickenburg have happened
7 next?

8 A I believe suicide.

9 Q And then rehab?

10 A Oh, it would have been suicide, yes, in '98, I
11 think.

12 Q So divorced in '95, suicide in '98, rehab '99,
13 and then six or seven judgments against you between that
14 time and 2005?

15 A That sounds about right.

16 Q Thank you.

17 MR. ROBISON: Pass the witness.

18 MR. LATTIN: No questions, your Honor.

19 THE COURT: Mr. Hosmer-Henner?

20 MR. HOSMER-HENNER: No questions, your Honor.

21 THE COURT: Thank you. You're free to stand
22 down.

23 THE WITNESS: Thank you.

24 (Whereupon the witness was excused.)

1 THE COURT: Mr. Spencer, your next witness,
2 please.

3 MR. SPENCER: Jim Smrt, your Honor.

4 (Whereupon the witness was sworn.)

5 THE COURT: Have a seat, please, and please
6 remember to speak into the microphone and to speak at a
7 pace that our court reporter can follow along.

8 THE WITNESS: Okay.

9 THE COURT: Thank you.

10

11 JIM SMRT,

12

13 called as a witness in said case,
14 having been first duly sworn, was
15 examined and testified as follows:

16

17 DIRECT EXAMINATION

18

19 BY MR. SPENCER:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Would you state your name, please?

23 A Jim Smrt.

24 Q And how do you spell your last name?

1 A S-M-R-T.

2 Q And you were familiar with Sam Jaksick?

3 A Yes.

4 Q How did you get to know him?

5 A I married his daughter.

6 Q And when did you meet -- his daughter Wendy?

7 A Yes.

8 Q When did you meet her?

9 A I met her in 1983. I believe 1983.

10 Q Where were you when you met?

11 A I was at Eastern New Mexico University, and she

12 was from Arizona State, and she, she was, she dated a buddy

13 of mine for a short period, and that's how I met her.

14 Q Okay. And did you and Wendy get married?

15 A We did.

16 Q When?

17 A In 1986, I believe.

18 Q And when did you -- and did you get divorced?

19 A We got divorced in 1993, I believe.

20 Q Okay. And you're currently married?

21 A Yes.

22 Q When did you marry your current wife?

23 A In 1998. August of 1998.

24 Q All right. And so you're -- it might seem a

1 little obvious, but I just want to ask -- your marriage to
2 Wendy would have ended before you married your current
3 wife, right?

4 A Yes, that would have been important.

5 Q So it was before 1998?

6 A Yes.

7 Q All right. And after you and Wendy got married,
8 where did you all live, where did you all live?

9 A We lived in, we lived in, I believe two
10 different houses, but I think we lived, most of the time we
11 lived in Pine Springs.

12 Q Where is that?

13 A That is in Reno by Lakeridge Golf Course.

14 Q Okay. And what did you do for a job at that
15 time?

16 A I was -- let me think about that. So at that
17 time I was doing a, this toy cash register in Taiwan, and
18 so I would go back and forth. And then right about that
19 time, 1988, I started doing construction for Sam. We would
20 build on the least desirable lots, and then it just turned
21 into that's what I'd do.

22 Q So did you work with Sam?

23 A I did.

24 Q What do you currently do?

1 A I'm a general contractor.

2 Q So you continued in that business?

3 A Yes.

4 Q And where do you build most of your houses now?

5 A South Reno. Mostly Montreux.

6 Q Okay. And so how long did you work for Sam, do
7 you recall?

8 A So I'm going to say about six or seven years, I
9 think.

10 Q Did you ever get to know him very well?

11 A Yes.

12 Q What did you think of him?

13 A Sam's a great guy.

14 Q Nice guy?

15 A Nice guy, yes.

16 Q Did you learn or come to understand that he was
17 a respected man?

18 A Yes.

19 Q And what did you witness yourself in relation to
20 how Sam felt about his family?

21 A Sam loved his family unconditionally. Loved his
22 children, you know, that was his life. And he didn't favor
23 one or the other. He loved his children unconditionally.

24 Q One of your children is one of his

1 grandchildren?

2 A Yes.

3 Q And who is that?

4 A That's Lexi.

5 Q Okay. And you were aware of some struggles that
6 Todd had back in high school?

7 A Yes.

8 Q And what did you know about that, just
9 generally?

10 A Right. Well, it was just kind of, you know,
11 normal stuff that kids do, yeah. So I, I, I -- Todd
12 actually lived with us, with Wendy and I for a period of
13 time. And, and I kind of don't remember like the bad
14 things, but everything turned out fine. So that's kind of
15 what I remember.

16 Q Todd lived with you and Wendy for a while?

17 A Yes, he did.

18 Q And did you get to see how Wendy treated Todd
19 during that period?

20 A Yes.

21 Q How did she treat him?

22 A She treated him like a brother that needed help
23 and loved him and all that normal.

24 Q And then after that struggle did you see Sam as,

1 witness Sam in his relationship with Todd?

2 A Yes.

3 Q Do you believe that Sam still loved Todd?

4 A One hundred percent, yes.

5 Q Did you know there was a period of time in
6 Wendy's life where she struggled as well?

7 A Of course.

8 Q And when would that have been in relation to
9 when your divorce happened?

10 A So that would have been approximately like 1991
11 to 1999 or something.

12 Q Okay. And, and so did the divorce have an
13 effect on Wendy that you saw?

14 A I mean, probably. I would say yeah. It would
15 always.

16 Q Did you know Mr. Kreske, Ron Kreske?

17 A I did.

18 Q Do you recall what happened to him?

19 A Yeah, he, he committed suicide.

20 Q And did you become aware of Lexi walking in and
21 finding him along with Wendy?

22 A No. Or if I did hear that, I have blocked it
23 out.

24 Q Okay.

1 A I don't remember that.

2 Q And so after the, the struggles that Wendy had,
3 did you -- let me ask you.

4 Do you recall whether Wendy went to rehab?

5 A She did.

6 Q And did Wendy have some issues with some
7 judgments against her, were you aware of that?

8 A No.

9 Q So you weren't aware of everything that was
10 going on with Wendy?

11 A No. No.

12 Q But did you get to witness Sam and Wendy and see
13 their relationship after that time?

14 A Yes.

15 Q And what did you notice about it, their
16 relationship?

17 A Their relationship was, you know, was -- it was
18 always the same. It was the same.

19 I mean, he loved his daughter, and, I mean,
20 that's all, that's the way it was.

21 Q Let me be clear. I haven't asked you about
22 Stan.

23 Did you see Sam and Stan's relationship as well?

24 A Yes.

1 Q What did you experience?

2 A Stan and Sam had a great relationship, that of
3 love and caring. Good father and son.

4 Q Did you ever see Sam treat any of his kids
5 differently?

6 A No.

7 Q Did he always treat them equally?

8 A In my mind, yes.

9 Q And that's from the experience that you had --

10 A My experience, yes.

11 Q And you maintained a, you've -- despite Lexi
12 moving to Texas, you have maintained and kept a
13 relationship with her?

14 A Yes.

15 Q Are you close to Lexi?

16 A Very.

17 Q And did you get to know Luke at all?

18 A Yes.

19 Q And how well would you say?

20 A I knew Luke like he was my son. I think I took
21 care of Luke like he was my son.

22 Q Did you attend events of Luke as far as sports
23 and things?

24 A Yes.

1 Q And when you would go to those, would you see
2 Sam there?

3 A Um-hum, yes.

4 Q And did you witness Sam and Luke's relationship?

5 A Yes.

6 Q What did you see; or how did you feel about
7 that?

8 A Sam loved Luke a lot. And I think like maybe he
9 didn't have the father figure and kind of wanted to, you
10 know, help with that. That's what I saw with Sam, how I
11 saw Sam.

12 Q Say that again? Wanted to help with what?

13 A With being a father figure in Luke's, Luke's
14 life.

15 Q Did you maintain a relationship with Sam all the
16 way through to his death?

17 A Yes.

18 Q So in your business in Montreux would you see
19 Sam around often?

20 A I, I would see him, I would see him at
21 Architectural Control Committee meetings. He'd go to the
22 meetings, and I was at the meeting.

23 Q Okay.

24 A I saw, that's the most of where I saw him.

1 Q Okay. And do you believe that -- or in your
2 experience, or within your personal knowledge, did you ever
3 see Sam and Wendy have any sort of quarrel or dispute or
4 falling out that would have changed Sam's feelings about
5 her?

6 A No. They had fallings out, but not to the point
7 of not loving his daughter.

8 Q Same would be for Todd and Stan?

9 A Yes.

10 Q Okay.

11 MR. SPENCER: Pass the witness, your Honor.

12 THE COURT: Thank you.

13

14 CROSS-EXAMINATION

15

16 BY MR. ROBISON:

17 Q Good afternoon, Mr. Smrt.

18 A Afternoon.

19 Q I have one question.

20 A Right. Yes, sir.

21 Q Have you ever told any member of the Jaksick
22 family that Wendy has serious credibility issues?

23 A Have I ever told -- I'm sure, yes.

24 MR. ROBISON: Thank you. I pass the witness.

1 THE COURT: Thank you.

2

3 CROSS-EXAMINATION

4

5 BY MR. LATTIN:

6 Q I just have a couple of questions.

7 My name is Don Lattin, and I represent the
8 trustees, Todd, Stan and Mike Kimmel. You do still work at
9 Montreux?

10 A Yes.

11 Q In that capacity do you know Stan as a
12 businessman as well?

13 A Yes.

14 Q Do you understand him to be a good businessman?

15 A Yes.

16 Q And that's been your experience with him, that
17 he is a good businessman?

18 A I haven't had much experience doing business
19 with Stan, but he's always been straightforward with me.

20 Q Fair and honest?

21 A Yes.

22 Q Have you had business dealings with Todd?

23 A Yes.

24 Q And do you feel like you know that he's a good

1 businessman?

2 A Yes.

3 Q And do you believe that he is fair and honest?

4 A So I had a situation where I purchased a lot,
5 and I had an agreement from Todd and Sam that if I needed
6 to get the money back when -- I purchased the lot from
7 Todd, if I needed to get the money back, I could do that.

8 And I showed that to Todd and he said well, that
9 was only for about 90 days, and, you know, some kind of
10 deal that I thought was kind of not right. But I wasn't
11 going to get an attorney and all that stuff. So, you know,
12 I just said okay. So I, I -- that was frustrating.

13 Q Was that a deal you did with Sam?

14 A It was really a deal I did with Todd more so.

15 Q When was that?

16 A I'm going to say -- oh, man. 2005-ish or
17 something like that.

18 Q Okay. And, and Sam was still alive at that
19 point?

20 A Yes.

21 Q And were you involved with Sam on that issue?

22 A No, I just, I took it to Todd, and he said what
23 he said, and I just dropped it. I didn't want to cause
24 issues.

1 Q Okay. All right.

2 MR. LATTIN: No further questions. Thank you.

3 MR. HOSMER-HENNER: None, your Honor.

4 THE COURT: Thank you.

5 Mr. Spencer.

6

7 REDIRECT EXAMINATION

8

9 BY MR. SPENCER:

10 Q As to credibility issues, was that -- what time
11 frame was that?

12 A That would have been like 1995 or something.

13 Q Okay. Way back when?

14 A Yeah. And I, I mean, yeah, I, I probably said
15 all kinds of stuff that was probably not very good.

16 Q What about now?

17 How do you feel about Wendy now?

18 A I think Wendy's done a huge, a remarkable
19 turnaround, and I think Wendy's learned a lot and has
20 changed considerably.

21 Q And do you like Wendy?

22 A Yes.

23 Q And do you have occasion to spend time with her
24 sometimes --

1 A Yes.

2 Q -- when Lexi is in town, and so on?

3 A Yes.

4 Q And you know a little bit about some of the
5 issues that Wendy had with money?

6 A Yes.

7 Q And what did you perceive her issues with money
8 to be?

9 A Okay. So she wasn't very good with money. And,
10 and probably her, her -- not probably, but her biggest
11 fault was she, she continually tried to do things for
12 people, you know, and it would be, it would get her in lots
13 of trouble because she was trying to help more than she
14 should have.

15 Q Too generous?

16 A Yes.

17 Q Okay. And so the money issues you saw stemmed
18 from her trying to help people?

19 A Yes.

20 MR. SPENCER: Pass the witness, your Honor.

21 MR. ROBISON: No questions.

22 MR. LATTIN: No questions.

23 THE COURT: Thank you. You are free to step
24 down.

1 (Whereupon the witness was excused.)

2 THE COURT: Ladies and gentlemen, let's stand
3 while we will call our next witness.

4 (Whereupon the witness was sworn.)

5

6 MICHAEL KIMMEL,

7

8 called as a witness in said case,
9 having been first duly sworn, was
10 examined and testified as follows:

11

12 DIRECT EXAMINATION

13

14 BY MR. CONNOT:

15 Q Good afternoon, Mr. Kimmel.

16 A Good afternoon, sir.

17 Q You became a trustee in approximately, was it
18 January of 2016?

19 A No, sir. January of 2017.

20 Q I'm sorry. Yes. I was off by a year.

21 And before you became trustee, did you review
22 any of the prior actions that had been taken by the
23 co-trustees?

24 Let me back up for a second. I want to clarify

1 and specify.

2 You became a co-trustee of the Family Trust and
3 the Family Trust only, isn't that correct?

4 A That is correct.

5 Q I just wanted to clarify that.

6 And when you became a co-trustee of the Family
7 Trust in January of 2017, prior to assuming that role, did
8 you undertake a review of any of the prior actions of the
9 trustees?

10 A No.

11 Q Since becoming a co-trustee in January of 2017,
12 have you undertaken a review of any of the actions that the
13 co-trustees took prior to the day you became trustee?

14 That's a little different question than the
15 prior question.

16 The prior question was did you do it before you
17 became a co-trustee. Now I want to know after you became a
18 co-trustee in January of 2017 did you look back at any
19 prior actions?

20 A So I think I understand your question.

21 There are certain times where the co-trustees,
22 prior to my involvement, had set in motion certain
23 transactions, or transactions that would ultimately result
24 in a tax consequence. And that tax consequence occurred

1 during my tenure as a trustee.

2 So in that type of a situation I would
3 necessarily have to look at what had happened before so I
4 would then understand why we were doing what we were doing
5 at that present time.

6 Q So other than those types of transactions did
7 you look at any of the prior actions of the co-trustees
8 that would have occurred prior to January of 2017 when you
9 became a co-trustee?

10 A No.

11 Q Okay. And when there are three trustees, the
12 trust document requires a majority vote, meaning two of the
13 three have to agree, is that accurate?

14 A That's correct.

15 Q Okay. Would you say on most occasions you would
16 have voted with Todd?

17 A I wouldn't cast it that way at all.

18 Q Okay. So were there ever occasions when the
19 three of you didn't agree -- and the three of you being
20 Todd, Stan, and yourself?

21 A Absolutely.

22 Q And on the majority of those occasions would
23 those be occasions when Stan would disagree with you and
24 Todd, or you and Stan would disagree with Todd?

1 A It completely depended on the subject matter and
2 what we were doing or discussing.

3 Q Did you ever question the scope of Todd's
4 indemnification agreement?

5 A Yes.

6 Q And you were aware that Stan had questioned the
7 scope of that?

8 A Absolutely.

9 Q In fact, even the validity of it?

10 A Correct.

11 Q Okay. And the scope of the indemnification
12 agreement in regards to how Todd was -- a certain issue to
13 be used, you questioned that?

14 A Yes, and in fact, I'm part of the reason that
15 there was no payments made under that indemnity agreement.

16 Q When did the payments under that indemnity
17 cease? Let me ask you this.

18 During the time period you've been co-trustee,
19 since January of 2017, have there been any payments made
20 pursuant to that indemnification agreement?

21 A The only payments that I'm aware of that are
22 made that could be shoehorned in to the indemnity agreement
23 might relate to capital calls, like were put up on the
24 screen earlier. But in terms of a direct reimbursement

1 where Mr. Jaksick or Todd has claimed that he spent X and
2 then comes back to the trust and, and says pay me X, I
3 don't believe that those have been paid.

4 Q So the capital calls, you're talking about the
5 Jackrabbit capital calls?

6 A Correct.

7 Q Did you ever question the use of the
8 indemnification agreement to make personal capital calls?

9 A I didn't understand it in that context. That's
10 why I said shoehorned in, because the issue there is that
11 the trust has an ownership interest in an entity, and the
12 entity has properties, and those properties have debt
13 service. Money has to be raised to pay for that debt
14 service.

15 If ultimately the trust is on the hook, if that
16 property is foreclosed upon, then it's a very bad thing for
17 all of the beneficiaries, and a bad thing for the trust.

18 As a trustee I can't let that happen, so I have
19 to look at the request for capital call and make a
20 determination as to whether it makes sense to pay that to
21 prevent a trust asset from being lost.

22 Q Would you have approved the payment of those
23 capital calls using trust assets?

24 A I think I would have.

1 Q Do you recall if you did?

2 A I don't recall if, exactly how we did them
3 without looking into the accounting, whether there was a
4 loan back; in other words, whether a note had to be signed
5 as a loan, or whether it was directly paid that way.

6 Q Did you ever have a discussion with Stan and
7 Todd about the fact that they should pay those capital
8 calls out of their own assets?

9 A Absolutely. We had multiple conversations as a
10 group, with the accountant, and even with trust counsel,
11 figuring out where the debts were, exactly what we could
12 pay and how, and what we were going to do with capital
13 calls.

14 Q So, for example, the Jackrabbit capital calls,
15 did you ever say to Stan and Todd you should pay these out
16 of your own pocket rather than using trust assets?

17 A I don't know that I said it in that way, you
18 should pay those out of your own pocket rather than paying
19 trust assets.

20 What I said was, okay, what's the history here,
21 what has been done, what have the trustees done in the past
22 and why, what is the risk here of loss if the capital call
23 is rejected. If it's not paid, what happens, what happens
24 to that asset of the trust.

1 Q And you -- do you recall Exhibit 151 -- that I
2 can have put back on the screen -- but it's the letter from
3 Mr. Lattin in mid 2017 in regard to telling Wendy that
4 here's \$5000, and I'm not trying to paraphrase, but kind of
5 the last payment?

6 A Yes, I recall that letter.

7 Q You were in agreement with that position, isn't
8 that true?

9 A I was.

10 Q Okay. And in regards to the, the Geo, and you
11 saw the pictures -- did you see a picture of that?

12 A I have not seen pictures of that.

13 Q You weren't here. Have you ever seen a picture
14 of that car?

15 A I have not.

16 Q And your position was that, in fact, if Wendy
17 wants to explain to the Court why she's too good to drive a
18 Geo, then she's certainly free to do so.

19 You had no idea what the Geo looked like or what
20 condition it was in at that time, did you?

21 A I didn't, and that email you're referencing is
22 part of a string of email conversation. And so Stan
23 responds to me and says that, actually, that Geo, the air
24 conditioning doesn't even work.

1 And I respond back to Stan within 20 minutes by
2 email, and I said, I appreciate that, okay, I didn't know
3 that. I appreciate that.

4 So this is over the course of months that we're
5 trying to figure out what to do with a car for Wendy. It
6 began in June or July of 2017 when Stan came to the
7 trustees and said look, there's a lease for an Audi that is
8 going to come up in December, and we have to figure out
9 what we're going to do.

10 As trustees, we asked Stan to go find out how
11 much it is to buy out the car at the end. Stan comes back,
12 and says it's going to be around \$40,000, and that's too
13 much. We can't go down that road. We have to figure out
14 something else.

15 Q So, and I just want to be clear, Mr. Kimmel.

16 When Stan responded to that email, you say that
17 you sent an email back to Stan?

18 A Within 20 minutes.

19 Q And just so you know, that email has not been
20 produced. I'm not saying it doesn't exist.

21 And then what decision was made with regards to
22 the Geo at that time?

23 A Again, that is email traffic going back and
24 forth. I like to call it a conversation. So each one us

1 steps in and has a comment in that conversation, and those
2 emails occur not exactly at the same time. They happen
3 over minutes, hours.

4 So what happened was the three of us decided we
5 needed to have a telephone conversation and talk about this
6 further.

7 And that's exactly what we did. And on that
8 telephone conversation I was actually online. I was online
9 looking at dealerships down in Texas, trying to look for
10 things like a very good quality Passat, a good quality
11 Jetta, cars that were not going to cost the trust \$40,000
12 to get.

13 Q And you also signed the verification for the,
14 the original petition in this matter?

15 A That's correct.

16 Q You and Todd signed that?

17 A That is correct.

18 Q And Stan had refused to join in that?

19 A That's correct.

20 Q And what's your understanding of why Stan
21 refused to join in that?

22 A My understanding of why Stan refused to join in
23 that is only because of one sole issue that was raised in
24 the petition, and that was the ACPA related to the

1 indemnification agreement.

2 My understanding is that but for that being
3 included that Stan would have signed the, that petition.

4 Q And that's based on conversations with Stan, or
5 just a, just a general assumption you took away from the
6 situation?

7 A It's based on conversations with Stan. And you
8 have to understand that at this point in time, for the
9 first time, and certainly myself, I am coming to an
10 understanding that Wendy is challenging the validity of a
11 whole variety of documents. At that point I can't move
12 forward in administering the trust without knowing that I'm
13 administering the correct documents.

14 Q And part of that petition in the verification
15 you have signed under oath, you were seeking to have all of
16 the actions that had been taken, undertaken by the
17 trustees, all of the actions, transactions, undertaken by
18 the trustees, since Sam's death in 2013 through the date of
19 petition, isn't that true?

20 A Correct. All of the accountings, up to the
21 point of, I believe, December of 2016, which predates me
22 being a trustee.

23 But all of the accountings and ACPAs, all of
24 that history that I wasn't involved in, I needed a

1 determination, as to whether it was going to be upheld or
2 not. That's what the petition does.

3 THE COURT: Excuse me. I announced yesterday
4 that we'd be taking a break at 4:00 o'clock.

5 Ladies and gentlemen, please do not discuss this
6 case amongst yourselves.

7 Please do not form or express any opinion on the
8 matter until it has been submitted to you.

9 This will be a 15-minute break.

10 (Whereupon a recess was taken.)

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

13 THE COURT: Counsel, you may continue.

14 MR. SPENCER: I'll pass the witness, your Honor.

15 THE COURT: Thank you. Mr. Lattin.

16

17 CROSS-EXAMINATION

18

19 BY MR. LATTIN:

20 Q Mr. Kimmel, what is your occupation?

21 A I am a lawyer and a father.

22 Q And I believe you testified earlier that you
23 became the trustee in January of 2017?

24 A That's correct.

1 Q Why did you become a trustee?

2 A In the fourth quarter of 2016, so that would
3 have been in like basically the last three months of 2016,
4 Todd Jaksick called my office and asked to meet with me. I
5 didn't know what it was about. I don't, professionally, as
6 a lawyer, work for him or his family. We met. He asked me
7 to become trustee.

8 I thought about it a lot. It's not something
9 that I usually do. I'm not a trustee by trade. I'm a
10 litigation lawyer.

11 I'm somebody who is, you know, born and raised
12 in Reno. I grew up in the house that my great-grandfather
13 built. My dad grew up in it. I grew up in it. My family
14 has been around here a long time. Same with the Jaksick
15 families. I knew him growing up. My brother knew
16 Ms. Jaksick. My dad knew Sam pretty well -- and I believe
17 his, Sam's parents, actually.

18 And I felt like I could be a problem solver and
19 that I could help this family. And that's why I agreed to
20 do it.

21 Q And when you first became involved as a trustee,
22 did you look at the trust documents that you would be
23 administering?

24 A Absolutely. I looked at those documents before

1 I agreed to become a trustee.

2 Q And do you recall what documents it was that you
3 looked at?

4 A What we're really calling the second amendment.
5 So I looked at the second amendment to the trust. I know
6 that would be the 2006 Trust.

7 I don't recall if I saw the indemnification
8 before I actually became a trustee, but I may have.

9 Q Now you were asked about counsel, about looking
10 into other things when you became a trustee. I want to
11 have you look at some provisions of the trust.

12 MR. LATTIN: And, Mark, if you could bring up
13 Exhibit Number 9, page 26 -- or 25. And if you could
14 enlarge Sections C and D, please.

15 BY MR. LATTIN:

16 Q Before we get there, Mr. Kimmel, did you
17 understand that the Family Trust expressed Sam Jaksick's
18 interests?

19 A That was absolutely my understanding.

20 Q And would that be the same understanding with
21 regard to the second amendment?

22 A Yes.

23 Q Now looking at the section that's been enlarged,
24 Section C, and that's titled Exculpation of Successor

1 Trustee, now you were going to be a successor trustee, is
2 that correct?

3 A That's correct.

4 Q Do you know who you were succeeding?

5 A I guess in theory Kevin Riley, because at one
6 point in time Kevin Riley was a third trustee.

7 It wasn't presented to me that way, that I was
8 stepping in and taking over somebody else's place.

9 Q And with regard to Section C, which is up on the
10 board, that exculpation provision, was that of particular
11 interest to you?

12 A Absolutely.

13 Q And why is that?

14 A Both of those provisions, but particularly with
15 respect to C. I've lived in Reno long enough to know that
16 this family owns many properties, many businesses.

17 There's no possible way that I could go back and
18 recreate everything that they've done and try to understand
19 it. It just wouldn't being possible for me to do that and
20 then hit the ground running as a trustee.

21 I understood this provision to be Sam's intent
22 that a successor trustee would not have to try and do that.

23 Q And so with regard to that, that language,
24 let's, let's just look at the body of it. It says:

1 No successor trustee --

2 Which would be you, is that correct?

3 A That's correct.

4 Q (Reading.)

5 -- is to be liable for any act,
6 omission, or default of a predecessor
7 trustee.

8 In other words, you would not being responsible
9 for actions of prior trustees, is that your understanding?

10 A Yes.

11 Q And then it says:

12 Unless requested in writing within
13 180 days of appointment by an adult
14 beneficiary.

15 Now you never received any written request, did
16 you?

17 A That's correct. I did not.

18 Q Would you read the next part, please, where it
19 starts out "no."

20 A (Reading.)

21 No successor trustee is to have any
22 duty to investigate or review any
23 action of a predecessor trustee and
24 may accept the accounting records of

1 the predecessor trustee showing
2 assets on hand without further
3 investigation, and without incurring
4 any liability to any person --

5 THE COURT: Slow down, please.

6 THE WITNESS: (Reading.)
7 -- claiming or having an interest in
8 the trust.

9 BY MR. LATTIN:

10 Q And what was the significance of what you just
11 read?

12 A The significance to me is it enables me to step
13 into the role as a successor trustee and work from that
14 point forward without having to look backwards in time and
15 being forced to try and historically recreate what has
16 already happened.

17 Q And was that an important factor in your
18 decision to become a trustee?

19 A It was crucial, and there was no way that I
20 could have or would have, but for that type of protection.

21 Q Okay. Let's look at Section D, which is
22 entitled Exculpation of Co-Trustees.

23 Was this also a section that you read?

24 A Yes.

1 Q And was this also important in your
2 decision-making process?

3 A It was important. It was not as important on
4 the front end as Section C was.

5 Q Did you read Section D to go in connection with
6 Section C?

7 A Yes.

8 Q Okay. And so both of these provisions were
9 crucial in your decision-making process?

10 A Absolutely.

11 Q And I think you said earlier -- and correct me
12 if I'm wrong, that you read these prior to the time that
13 you accepted?

14 A Yes. When Todd and myself met, in the fourth
15 quarter of 2016, he provided me the documents, and I said I
16 need to read these and digest them a little bit.

17 Q And after reading that, what was your decision?

18 A My decision was to accept Todd's request that I
19 be appointed as a co-trustee.

20 Q And what was the financial condition of the
21 trust in January of 2017 when you became the trustee?

22 A I couldn't tell you the specific dollar amounts.
23 What I can say is that very early on in January, we had a
24 meeting at my office with Todd and with Stan and with the

1 trust accountant, Kevin Riley, and we went through -- I
2 mean, there's so much history here that I didn't know. I
3 didn't have the historical background.

4 So we went through kind of the assets and
5 liabilities, the balance sheet, if you will. And we were
6 trying to figure out if we were going to be able to work to
7 a point where distributions could be made.

8 Q And in those discussions was the debt of the
9 Family Trust discussed?

10 A Absolutely.

11 Q And in what regard?

12 A As I understand it, there were creditor claims
13 that were made at the point of Sam Jaksick's passing.
14 Those creditor claims carry forward as debt.

15 There is also extensive property, real property
16 holdings to which there are loans attached or encumbrances.
17 And those debts need to be serviced.

18 My understanding is that the, in 2017 when I
19 started, was that the trust probably had a positive value
20 at that point, but not all of that value was in liquid
21 form.

22 Q And when you say liquid form, you're talking
23 like a lawyer.

24 What do you mean?

1 A My apologies. There wasn't a big bank account
2 filled with cash that represented the entire value of the
3 trust. Much of the value of the trust is in properties.

4 Q And what were the trustees doing to remedy that
5 and bring cash in to pay debt?

6 A So we were doing what I call kind of a triage of
7 the debts and the assets. And we would look at things that
8 were costing the trust money, and we would figure out are
9 these things that we think are going to go up in value so
10 hold on to them and service the debt.

11 Or we might look at them and say this isn't
12 doing anything for the trust. It's not making the trust
13 any money, in fact, it's got carrying costs; we have to pay
14 property taxes every year; can we get rid of it.

15 So we methodically, the group of us, went
16 through, looked through each of these, and we started
17 figuring out what we could get rid of with the goal of
18 ultimately being able to distribute pursuant to the
19 materials of the trust to all of the beneficiaries.

20 Q And with regard to debt as compared to
21 distributions to beneficiaries, what was your understanding
22 as to how that worked?

23 A My understanding was the debt was supposed to be
24 paid, creditors were supposed to be paid before there could

1 be distributions.

2 Q Okay. And so were the trustees going through
3 that process when you became the trustee?

4 A I believe they were going through that process
5 before I became a trustee, and they continued on with that
6 process once I became a trustee.

7 Q Okay. Can you give the jury an example of what
8 you would consider to be liquid or it would bring cash in
9 to the account of the Family Trust?

10 A Sure. The trust has interest in certain lots at
11 Montreux, either direct ownership or interest through an
12 interest that the trust has in the company that owns those
13 lots.

14 So we would look to see are these lots that can
15 be easily marketed, can we get this thing sold. And if we
16 get them sold, what's the effect on the balance sheet?
17 Sometimes selling something just means you get debt off the
18 books, you wipe it out. You're not going to have to pay
19 for it anymore. Sometimes it might mean you wipe out the
20 debt plus you get some money coming in.

21 So, you know, an example of something where we
22 think we're going to get money coming in is, is a Ferrari
23 that Sam had that's been sitting in a barn, essentially
24 rotting. We've got estimates on it. It looks like we have

1 an offer on it. That's money coming in. Pure cash.
2 Doesn't cost the trust anything.

3 An example of getting rid of something that has
4 an expense was what has been referred to as Sam's office
5 was actually a house right off this Mount Rose Highway.
6 The house has carrying costs. There's property taxes.
7 There's things that have to be paid. It is not something
8 that was rented, so the trustees looked at marketing it.
9 Stan actually came up with the idea of staging it, which we
10 did. We paid to have it staged. It seemed to help. We
11 sold it and wiped that one off.

12 It didn't result in a cash influx. What it
13 resulted in is preventing more money going out.

14 Q Took care of a debt and the carrying costs.

15 A Yes.

16 Q So you described this evaluation process that
17 the trustees were going through.

18 Was that an ongoing process?

19 A It was continuous.

20 Q It was not something that was just happening in
21 January of 2017.

22 It was an ongoing process?

23 A Absolutely, we had regularly-calendared and
24 scheduled telephonic calls for one Monday a month for a

1 certain period of time.

2 And then we would get to the point maybe once or
3 twice a month early on, a little bit more spread out after
4 that where we would actually have an in-person meeting
5 where Kevin Riley, the accountant, would come up to Reno.
6 We would all meet at my office and sit down and work out
7 these things.

8 Q In this process that you've described were there
9 ongoing discussions about how to get money to Wendy?

10 A Yes.

11 Q Tell us about some of those, please.

12 A So I am not a trustee of the Issue Trust. There
13 are many family matters that I don't have involvement in.
14 So there are certain times where we might meet related to
15 Family Trust matters, and then my involvement in the
16 meeting would stop and Stan and Todd or Stan and Todd and
17 Kevin, or whomever, would continue on talking.

18 I believe that some of that addressed getting
19 money to Wendy.

20 Specific conversations that I had, it was
21 probably the middle of 2017 so right around the first six
22 months after I had been a trustee that I really became
23 aware of money that was going to Wendy. And there were
24 conversations about rent, there were conversations about

1 the vehicle, like I've already talked about, that type of
2 thing.

3 Q Okay. And was it your understanding that all of
4 the trustees were making efforts to find ways to get Wendy
5 money?

6 A Absolutely.

7 Q And was the life insurance note one of those
8 vehicles?

9 A That was one of those vehicles. And I believe
10 that that's one of those vehicles that I spoke to where the
11 underlying idea is something that had been determined
12 before I became a trustee, and then had some mechanics that
13 carried on during the time that I was the trustee.

14 Q And was it your understanding that with regard
15 to the life insurance note, I -- so with regard to the life
16 insurance note, was it your understanding that all of the
17 beneficiaries have a life insurance note?

18 A Yes.

19 Q And that would be whom?

20 A Todd, Wendy, and Stan.

21 Q And did Todd and Stan receive any payments under
22 their life insurance note?

23 A I don't believe that they have received
24 payments. I believe that the books of the trust properly

1 show that those notes are still due and payable to Todd and
2 Stan.

3 Q With regard to the books of the trust, let's go
4 to Exhibit 9, page 26, please.

5 MR. LATTIN: And if you could enlarge Section J,
6 please.

7 BY MR. LATTIN:

8 Q So this is, again, this is the Family Trust.
9 And this is a section called accountings.
10 Did you read that section when you became a
11 trustee?

12 A I certainly read it when I became a trustee. I
13 can't, as I sit here today, say that I read it before I
14 accepted the appointment as a trustee.

15 Q Okay. And what is your understanding with
16 regard to that provision and how it pertains to the
17 trustees?

18 A Well, my understanding is that it sets forth
19 the, essentially there's disclosure requirements that Sam
20 wanted with respect to accountings that were going to be
21 given to the beneficiaries.

22 Q Okay. And was there a, a particular person in
23 the scope of the people that you have discussed who was to
24 prepare those accounts?

1 A Absolutely.

2 Q And who was that?

3 A Kevin Riley.

4 Q And did the trustees instruct him to prepare
5 accounts?

6 A Yes.

7 Q And has he done that?

8 A Yes.

9 Q Okay. And has he provided those to the
10 beneficiaries?

11 A Yes.

12 Q Do you know if he's had discussions with the
13 beneficiaries regarding those accounts?

14 A I have not personally been present during those
15 discussions, but it is my understanding through hearing the
16 testimony in this case that yes --

17 Q Okay.

18 A -- he had actual in-person meetings with
19 beneficiaries.

20 Q And what is your understanding as to the purpose
21 of those meetings?

22 A My understanding is that the purpose was so
23 Kevin could explain and answer any questions related to the
24 accountings; that he's actually prepared.

1 Q Okay. So would it be fair to say that Mr. Riley
2 was a CPA that was engaged by the Family Trust to prepare
3 the accounts?

4 A That is correct.

5 Q Okay. And you mentioned a disclosure
6 requirement.

7 What is your understanding as to that disclosure
8 requirement as it pertains to accountants?

9 A Well, my understanding would be what is
10 contained within J, coupled with relying on the
11 professionals who are engaged by the trust, meaning trust
12 counsel and also trust accountants, to make sure that the
13 disclosures, so to speak -- to make sure that whatever
14 information about the balance sheet of the trust, whatever
15 information is being given to the beneficiaries is the
16 appropriate information.

17 Q Okay. So with regard to a disclosure
18 requirement, what do the -- what type of information do the
19 accountings provide for the beneficiary?

20 A They, again, they would be what I would consider
21 to be a balance sheet, so assets, liabilities, and other
22 accounts that are out there that affect the worth of the
23 trust.

24 Q So would it be fair to say that those

1 accountings reflect the financial transactions of the
2 trust?

3 A Yes.

4 Q And they show the assets?

5 A Yes.

6 Q And they show the debt?

7 A Correct.

8 Q And they show the cash?

9 A Correct.

10 Q And how often were those accountings done?

11 A I'm trying to remember if they're done -- I
12 believe that it encompasses one year. What I don't recall,
13 without looking at them, is whether it's a calendar year or
14 whether it's a fiscal year that runs kind of June, July
15 type thing.

16 MR. LATTIN: Mark, if you could bring up Exhibit
17 Number 9 again?

18 BY MR. LATTIN:

19 Q Going back to that same section that discusses
20 accountings. If you look at the first couple of lines
21 there, do you see where it says:

22 The trustee of each trust.

23 The third line down?

24 A Yes.

1 Q Can you just read that to the jury?

2 A (Reading.)

3 The trustee of each trust must render
4 accountings at least annually to each
5 beneficiary of the trust who is
6 entitled to receive current
7 discretionary or mandatory
8 distributions from income or
9 principal.

10 Q So that requires an accounting on a yearly
11 basis?

12 A Yes.

13 Q And have the trustees done that?

14 A Yes.

15 Q Now there's been accusations against you in this
16 matter. And one of, of the accusations is that you have
17 committed fraud. And Wendy's making the accusation.

18 Do you believe in any fashion you have done
19 anything that has not in the best interest of the
20 beneficiaries?

21 A I do not believe that I have done anything
22 fraudulent, nor do I believe that I have done anything that
23 is not in the best interest of the beneficiaries.

24 Q And that has been your goal in administering

1 this trust as a co-trustee?

2 A Absolutely.

3 Q You've also been accused of aiding and abetting
4 a conspiracy with other trustees and the accountant.

5 Do you believe that you have in any form or
6 fashion aided or abetted any of the trustees or the
7 accountant in any wrongful activity?

8 A No, I don't believe that I have aided anybody in
9 any wrongful activities, nor do I understand what those
10 activities are alleged to be.

11 Q Do you think that you have done anything as a
12 trustee that is adverse to any of the beneficiaries?

13 A No.

14 Q Have the trustees attempted to get monies to
15 Wendy to the exclusion of the other beneficiaries?

16 A Yes.

17 Q And explain that.

18 A Well, we've talked about the vehicle. We've
19 talked about the amount of monies that have been paid to
20 Ms. Jaksick over several years, much of which is before I
21 became a trustee, but nonetheless, the amount of monies
22 that have been paid to Ms. Jaksick over several years. To
23 some degree, those are monies going to Ms. Jaksick that are
24 not also going to Todd, also going to Stan, also going to

1 Todd's kids, also going to Stan's kids.

2 Q Now Wendy Jaksick has also accused Todd of
3 committing fraud.

4 Have you in any form or fashion observed any
5 fraudulent activity by Todd while he's acting as a trustee?

6 A No, I have not.

7 Q Have you observed him commit fraud even when
8 he's not a trustee?

9 A No.

10 Q Do you believe that he's acting in the best
11 interest of all of the beneficiaries?

12 A I do.

13 Q Have you ever known Todd to say we shouldn't
14 provide any information to Wendy?

15 A No.

16 Q Have the trustees made available to Wendy for
17 her to ask questions of professionals that were related to
18 the trust?

19 A Right. Yes, they've made available Kevin Riley,
20 personally, and then also his accounting firm, as I
21 understand it, that's acted as the accountants for Jaksick
22 family for decades.

23 They've also made available trust counsel, your
24 office. And the trust lawyers who have been involved from

1 your office.

2 Q Let's talk about Mr. Riley for a moment.

3 THE COURT: Hold on. Hold on.

4 Let's all stand. I just want to attend to your
5 comfort.

6 Do you need a moment, and would you like to go
7 into the jury deliberation room?

8 THE JUROR: Yes.

9 THE COURT: During this recess please do not
10 discuss this case amongst yourselves, don't form or express
11 any opinions about this matter until this matter is
12 submitted to you.

13 Let's take five minutes. We're all going to
14 remain in the courtroom.

15 (Whereupon an off-the-record
16 discussion was had.)

17 MR. LATTIN: Thank you, your Honor. I'm close.

18 THE COURT: That's okay.

19 BY MR. LATTIN:

20 Q We were talking about Todd's activities as a
21 trustee and things that you observed.

22 Do you believe that the trustees have properly
23 managed the debt in this?

24 A I think they've done an amazing job.

1 Q Do you have an understanding as to what the debt
2 was at the time that Sam passed?

3 A I do.

4 Q What is your understanding?

5 A My basic understanding is that it was around \$30
6 million or more.

7 Q And do you have an understanding as to what the
8 third-party debt is as of this time?

9 A A few million dollars, I believe.

10 Q So the debt has been paid down from in excess of
11 30 million to a few million?

12 A Correct. And I can't take credit for that.
13 That wasn't all on my watch.

14 Q And, likewise, do you have an understanding as
15 to what has happened to the value of the assets within the
16 Family Trust?

17 A Yes.

18 Q And what is your understanding?

19 A My understanding is the value is, the values
20 have increased.

21 Q And how does that affect the beneficiaries?

22 A Well, ultimately it affects the beneficiaries to
23 the extent that those assets can be liquidated and be
24 distributed.

1 If it's just an interest in property, and the
2 interest gets distributed, then it's not the same kind of
3 in-the-pocket increase, if that makes sense.

4 Q When you talk about an increase say, for
5 example, in real estate that's within the Family Trust, how
6 does that affect the beneficiaries?

7 A Well, it can ultimately affect the beneficiary
8 in a lot of ways. For example, if the real estate was
9 mortgaged or encumbered by some sort of a loan, and it
10 increases in value, then there may be an opportunity to
11 refinance that real estate at a better rate on better
12 terms. That has the corresponding benefit to the trust by
13 lowering the debt level, which that positively impacts
14 cash.

15 If it's an asset that can be sold and it's
16 increased in value, then that has a direct cash benefit to
17 the beneficiaries.

18 Q So ultimately with an asset increasing in value,
19 when distributions are made to either a beneficiary or a
20 trust, that beneficiary would get more, is that correct?

21 A Absolutely.

22 Q And likewise when there's a paydown of debt, the
23 beneficiary gets the benefit of that as well?

24 A Correct.

1 Q Because there's no longer debt, and it's more
2 for the beneficiaries?

3 A Correct.

4 Q So in what you have observed and what you have
5 seen, do you believe that the trustees have fulfilled, at
6 least to date, their responsibilities under the Family
7 Trust and the second amendment?

8 A I do. I think they have done an amazing job of
9 righting a sinking ship.

10 Q And do you attribute that to all of the
11 trustees?

12 A I can't attribute it that much to myself, but
13 apart from that, I attribute it primarily to Todd since
14 most of the property that we're talking about is ranch land
15 where creative things were done to reduce debt such as get
16 conservation easements and get other partners.

17 And also Stan. Stan had to vote to approve that
18 stuff. There was two people signing checks that we saw on
19 the screen today, Stan and Todd. They were making those
20 decisions as co-trustees, and they get the benefit of that.

21 Q As you sit here today as a co-trustee, do you
22 have any understanding as to why Wendy has sued you?

23 A I have no understanding as to why Wendy has sued
24 me.

1 Q And do you believe that you should be here as a
2 defendant in this lawsuit?

3 A No, I do not.

4 MR. LATTIN: I will pass the witness, your
5 Honor.

6 MR. HOSMER-HENNER: No questions, your Honor.

7 MR. ROBISON: I have no questions, but I reserve
8 the right to maybe call him in our case in chief.

9 THE COURT: Thank you.

10 Mr. Connot.

11 MR. CONNOT: Thank you.

12

13 REDIRECT EXAMINATION

14

15 BY MR. CONNOT:

16 Q Mr. Kimmel, you have talked about the fact that
17 there is \$30 million in debt that's paid off.

18 19 million of that was the conservation
19 easements and you're aware of that, aren't you?

20 A I am aware of that.

21 Q And that was an asset that the trust had at the
22 time of Sam's death, \$19 million of conservation easements
23 existed at that time, and there had been conversations
24 prior to Sam's death about those conservation easements.

1 So that was an asset that the trust had in April of 2013.

2 So to say that somehow the trustees did
3 something amazing to bring down the debt they basically
4 liquidated an asset, isn't that true?

5 A I disagree.

6 Q Okay. Now 6 million of that was from the sale
7 of Bronco Billy's, which was also an asset of the trust at
8 the time of Sam's death?

9 A That's correct.

10 Q And that was something that the trustees had no
11 involvement in, really, because that was a decision that
12 was made by the company, whether the minority members,
13 which the trust had a membership interest of, wanted to
14 sell that Bronco Billy's stock or not, that was a decision
15 that was made by others, correct?

16 A I was not a trustee at that time, so I can't say
17 who made that decision and what went into it.

18 Q There was also a sale of Fly Geyser, isn't that
19 true, \$6 million?

20 A Again, that's correct. And that was a sale
21 before I was a trustee.

22 Q And those are all assets that existed at the
23 time of Sam's death, correct?

24 A Especially Fly Geyser real property, that would

1 have, again, carrying costs, taxes, property taxes, all
2 sorts of things that get associated with it.

3 Q Correct. And you have talked about the
4 exculpation, but at the same time, once again, back on the
5 verification of the petition that you signed, you were
6 requesting the Court to enter an order the trust
7 accountings are all settled, allowed, and approved as
8 filed, and all of the acts and transactions of the trustees
9 as disclosed in the trust accountings will be approved.

10 And that was from 2013 forward, correct?

11 A Correct.

12 Q So in order to make that verification, you would
13 have been duty bound to review all of those transactions,
14 isn't that true?

15 A No, I disagree with you.

16 Q So you're saying that you could come to Court,
17 sign an oath, a verification under oath, seek an approval
18 of all of those transactions, and say these should all be
19 approved and ratified by the Court, and you have no duty to
20 review those transactions?

21 A A verification, Counsel, is a verification that
22 the documents are attached to the pleading and that they
23 are what are claimed within the pleading as a description
24 of that document.

1 I did not verify that every single line of any
2 accounting, that I prepared it, or that it is absolutely
3 correct.

4 Q Sir, you're a co-trustee; you understand that
5 includes having a fiduciary duty, isn't that true?

6 A That is true.

7 Q And trust counsel can't take action without the
8 trustees, and a majority of the co-trustees, approving and
9 ratifying and directing counsel to take that action, isn't
10 that true?

11 A That's correct.

12 Q Okay. And you and Todd Jaksick were the two
13 that voted over the objection of Stan Jaksick to take that
14 action, isn't that true?

15 A To file the petition.

16 Q And in that petition you and Todd Jaksick as
17 co-trustees were specifically seeking that all the acts and
18 transactions from April of 2013 forward be approved and
19 ratified by the Court, isn't that true?

20 A That is.

21 Q Okay. You're also seeking an order that the
22 ACPAs be approved and ratified by the Court, isn't that
23 true?

24 A Yes.

1 Q From 2013 forward, even though that predated
2 your time as a trustee?

3 A Yes.

4 MR. CONNOT: No further questions.

5 THE COURT: Mr. Lattin.

6
7 RECROSS-EXAMINATION

8
9 BY MR. LATTIN:

10 Q Mr. Kimmel, what is the process for getting
11 approval of an accounting when there is a question of it?

12 A The process that I am afforded as a co-trustee,
13 or as a trustee, is to come to the court and seek approval
14 and confirmation of that accounting. In the absence of
15 that, there's not a way for me to move forward with the
16 administration of the trust.

17 I need to know that these things that have been
18 done are approved, and I can rely on them, or they're not
19 approved. And that was the purpose of the petition.

20 Q And that is what we were asking the Court to do?

21 A Absolutely.

22 MR. LATTIN: No further questions. Thank you.

23 THE COURT: Ladies and gentlemen, during this
24 evening recess you are admonished not to converse amongst

1 yourselves or with anyone else on any subject connected
2 with this trial.

3 You will not read, watch, or listen to any
4 report of or commentary on the trial by any person
5 connected with this case or by any medium of information,
6 including, without limitation, newspaper, television,
7 internet or radio.

8 You are admonished not to form or express any
9 opinion on any subject connected with this trial until the
10 case is submitted to you for deliberation. That includes
11 any form of electronic research or investigations.

12 Please be in the jury deliberation room for
13 entry into the courtroom at 8:45 in the morning. We will
14 stand for our jury.

15 MR. ROBISON: Before we go, can Mr. Kimmel be
16 dismissed?

17 THE COURT: Yes.

18 MR. ROBISON: Thank you.

19 (Whereupon the witness was excused.)

20 (Whereupon upon the jury was excused.)

21 (Whereupon the proceedings were
22 concluded.)

23
24 -oOo-

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

3
4 I, DEBORA L. CECERE, an Official Stenographic
5 Reporter of the State of Nevada, in and for Washoe County,
6 DO HEREBY CERTIFY:

7 That I was present at the times, dates, and
8 places herein set forth, and that I reported in shorthand
9 notes the proceedings had upon the matter captioned within,
10 and thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript, consisting of
13 pages 1 through 248, is a full, true and correct
14 transcription of my stenotype notes of said proceedings.

15 DATED: At Reno, Nevada, this 14th day of
16 February, 2021.

17
18
19 /s/ Debora Cecere

20 _____
21 DEBORA L. CECERE, CCR #324,
22 Certified Stenographic Court Reporter
23
24

1 Code #4185

2

3

4

5

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

7

IN AND FOR THE COUNTY OF WASHOE

8

HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9

-o0o-

10

WENDY JAKSICK,

Case No. PR17-00445

11

Petitioner,

Dept. 15

12

vs.

13

Case No. PR17-00446

14

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

Dept. 15

15

16

Respondents.

17

18

_____/

19

TRANSCRIPT OF PROCEEDINGS

20

JURY TRIAL - DAY 9

21

February 27, 2019

22

Reno, Nevada

23

24

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

25

Job No. 530646

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1 WEDNESDAY, FEBRUARY 27, 2019, RENO, NEVADA, 8:46 A.M.

2 -o0o-

3 HE COURT: Please be seated.

4 Good morning, ladies and gentlemen.

08:46AM 5 Mr. Connot, you may call your next witness.

6 MR. CONNOT: Thank you, Your Honor. Petitioner would
7 call Jessica Clayton.

8 THE BAILIFF: Step all the way up. Face the clerk,
9 please.

08:46AM 10 THE CLERK: Please raise your right hand.

11

12 JESSICA CLAYTON

13 called as a witness, having been duly sworn,
14 testified as follows:

08:47AM

15

16 THE CLERK: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. CONNOT:

08:47AM

20 Q Good morning, Ms. Clayton.

21 A Good morning.

22 Q What is your current employment?

23 A I work for several different entities owned by the
24 Jaksicks, the Jaksick family.

08:47AM

25 Q And primarily, Todd Jaksick. Would that be correct?

1 A I don't know if it's primarily him, but, I mean, he
2 manages most of them, but there are other partners, yes.

3 Q And you -- Todd Jaksick signs your paychecks; is that
4 correct?

08:47AM

5 A Yes.

6 Q How long have you worked for the Jaksick family?

7 A In March, it will be 16 years.

08:48AM

8 Q And so that would begin in about 2003, and you would
9 have worked both with Sam and Todd up until Sam's death. Would
10 that be correct?

11 A In 2003, I was hired as Sam's executive administrative
12 assistant, so he was my boss.

08:48AM

13 Q And -- but during the time between 2003 and 2013, you
14 would have worked for both Sam and Todd or at least taken
15 direction from both Sam and Todd. Would that be accurate?

16 A It wouldn't have been until about five years after I
17 started working that I would have started working more closely
18 with Todd.

08:48AM

19 Q Okay. Just so we get the date frame right, about 2008,
20 you started to work with Todd as well?

21 A As well, yes.

22 Q And that would have been continued through 2013 and the
23 date of Sam's death. Would that be accurate?

24 A Correct.

08:48AM

25 Q When did you first become a notary public?

1 A I believe it was in 2003, I was asked to be a notary by
2 Sam.

3 Q And you understood that there were certain requirements
4 of a notary at that time?

08:48AM 5 A I didn't -- I didn't -- I wasn't that familiar with what
6 I have learned to be some of the requirements.

7 Q Okay. And you applied to the Secretary of State to
8 become a notary public, correct?

08:49AM 9 A I applied online, so I think it was through the
10 Secretary of State.

11 Q And you were issued a notary commission by the Secretary
12 of State. Would that be accurate?

13 A I think so, yeah. I think that's who issues it.

08:49AM 14 Q And at that time, did you undertake a review at all as
15 to what your duties were as a notary public?

16 A Not really, I just -- I became -- Sam asked me to become
17 a notary, so I did what I needed to do to get the notary stamp or
18 commission. And then when he would ask me to notarize, I would
19 notarize.

08:49AM 20 Q Were you aware at that time that you were required to
21 keep a notary journal?

22 A Yes.

23 Q And in that notary journal, you were required to write
24 down each time that you notarized a document for someone?

08:50AM 25 A I didn't understand that to be the case, if you worked

1 for the person.

2 Q And where did that understanding come from, Ms. Clayton?

3 A I believe from some other girls that had the notary up
4 at Lakecrest Homes, because in the beginning, I tried to do
5 everything -- you know, I knew I had a book, but I don't know --
6 that all I ever really did notarize for was Sam and, in the
7 beginning, possibly Rob Nichols. But for the most part, he had
8 his own notaries.

9 Q Rob Nichols had his own notary?

10 A I believe so, yes.

11 MR. CONNOT: And, the book with Exhibit 197, Ms. Clerk,
12 do you have that one?

13 May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. CONNOT: Thank you. It's kind of a narrow ledge
16 there, so be a little careful.

17 THE WITNESS: Okay.

18 MR. CONNOT: If I could have you turn in that binder to
19 Tab 197.

20 And 197, Your Honor, has been stipulated, but is not
21 into evidence yet. I would move for its admission.

22 THE COURT: 197 is admitted, Ms. Clerk.

23 (Exhibit 197 admitted into evidence.)

24 MR. CONNOT: Can you put that up on the screen, please.

25 ///

1 BY MR. CONNOT:

2 Q Are you there yet, Ms. Clayton? Just let me know.

3 A Almost.

4 Q Let me know when you are there.

08:51AM 5 A Yes, I am.

6 Q Do you recognize this letter, Ms. Clayton?

7 A I do.

8 Q This was a letter that was sent from Zach Johnson to you
9 on July 20th of 2018 --

08:51AM 10 A Yes.

11 Q -- requesting, pursuant to Nevada statute, a certified
12 copy of your notary books from January 1 of 2006. Do you recall
13 that?

14 A I do.

08:51AM 15 Q And did you respond to that letter?

16 A I gave it to my attorney.

17 Q And that would be Mr. Robison, correct?

18 A Correct.

08:51AM 19 Q Mr. Robison is sitting here, who also represents
20 Todd Jaksick?

21 A Correct.

22 Q Do you know if Mr. Robison ever responded to that
23 letter?

24 A I don't know.

08:52AM 25 Q Okay. And if you go to the third page of Exhibit 197 --

1 actually, go to the second page of Exhibit 197. Do you see that
2 that's a copy of Nevada Statute NRS 240.120 that's referred to in
3 the letter and sets out what the duties of the notary public are?

08:52AM

4 A I do see this right here, but I don't recall seeing this
5 when I got the letter.

6 Q Okay. If we go to the third page of Exhibit 197 and if
7 you go down to Section 7.

8 A Okay.

9 Q Can you read what that says.

08:52AM

10 A "A notary public shall, upon request and payment of the
11 fee set forth in NRS 240.100, provide a certified copy of an entry
12 in his or her journal."

13 Q And Exhibit 197, the first page was the letter
14 requesting you to comply with that statute; isn't that correct?

08:53AM

15 A In the letter, it says 240.120?

16 Q Right. And that's the statute --

17 A Oh, okay.

18 Q -- that's attached on the next two pages.

19 A Okay. Yes.

08:53AM

20 Q So you were requested to comply with that statute and
21 you did not produce a copy --

22 MR. ROBISON: Your Honor, this is an objection to
23 discovery matters that we've covered and everything has been
24 produced. And this is getting into the discovery dispute.

08:53AM

25 THE COURT: Overruled. I believe that this witness can

1 testify about her production of records requested.

2 BY MR. CONNOT:

3 Q So did you ever provide a certified copy of the entries
4 in your journal as you were requested to in the letter?

08:53AM 5 A I lost my notary journal. The notary journal that I had
6 had, I lost it somewhere between 2011 and 2012, so I didn't have
7 anything to produce.

8 Q Okay. So if you go to, once again, the third page of
9 Exhibit 197.

08:54AM 10 A Okay.

11 Q And if you go down almost to the bottom of the page,
12 Subsection 10 of NRS 240.120, can you read what that says.

13 A Number 10?

14 Q Yes, please.

08:54AM 15 A "A notary public shall file a report with the Secretary
16 of State and the appropriate law enforcement agency if the journal
17 of the notary public is lost or stolen."

18 Q And you never did that, did you?

19 A I did not.

08:54AM 20 Q In fact, at no time since 2011 or 2012, when you claim
21 to have lost your journal, have you ever reported it, as required
22 by the statute; isn't that correct?

08:54AM 23 A When I lost it, it was while I was going through chemo
24 and a lot of cancer stuff. So a lot of things like this weren't
25 on my mind.

1 And I honestly didn't know that you had to report a book
2 stolen. It just -- I discovered it was stolen -- or, not stolen,
3 lost.

4 Q When did you discover it was lost?

08:55AM 5 A In the end of -- I think, around -- the end of 2012.

6 Q So around the end of 2012, you discovered it was lost.

7 And I don't want to pry too deeply, and I think you have testified
8 previous in your deposition that you were going through some
9 health issues and --

08:55AM 10 A Yes, I was going -- I had --

11 THE COURT: Hold on. Hold on. Just wait for the
12 question.

13 BY MR. CONNOT:

14 Q Just one at a time, because she can't take us both. I
08:55AM 15 realize you are nervous. No need to apologize.

16 So you were going through some treatment for some -- and
17 I don't want to pry too deeply, Ms. Clayton, but I understand that
18 you had a bout of cancer.

08:55AM 19 So in late 2012 and early 2013, you were going through
20 chemo and radiation. Is that accurate?

21 A Yes.

08:55AM 22 Q Okay. But since that time -- and I hope you had a great
23 recovery and you are here today. But since that time, have you
24 ever complied with the statute by reporting your notary book was
25 lost?

1 A I have not.

2 Q So in 2012, particularly late 2012, you didn't have a
3 notary journal, did you?

4 A I didn't.

08:56AM 5 Q And at that time, you had realized that you had lost
6 your prior notary journal, correct?

7 A Correct.

8 Q And you did nothing to obtain another notary journal at
9 that time. Would that be correct?

08:56AM 10 A At that particular time, I don't think I did.

11 Q In fact, you didn't start another notary journal until
12 2015; is that correct?

13 A I believe that's the date.

08:56AM 14 Q Okay. And you notarized several documents for
15 Sam Jaksick in late 2012; isn't that true?

16 A That's true.

17 MR. CONNOT: And, in fact, if we go to Exhibit 200 --
18 hold on, don't put it up yet. It's stipulated, but not yet in.

08:56AM 19 Your Honor, I would move for the admission of
20 Exhibit 200.

21 THE COURT: 200 is admitted, Ms. Clerk.

22 THE CLERK: Thank you.

23 (Exhibit 200 admitted into evidence.)

24 ///

25 ///

1 BY MR. CONNOT:

2 Q Do you recognize this document, Ms. Clayton?

3 A I recognize my notary.

4 Q Okay. Which is on the second page?

08:57AM

5 A Correct.

6 Q Okay. And that notary doesn't reflect the specific
7 document that's being notarized, does it?

08:57AM

8 By that, I mean if you go to what we call the jurat or
9 acknowledgment here on that page, there's nothing on this page on
10 page 2 of Exhibit 200 that would indicate what document that
11 signature is affixed to. Is that accurate?

12 A Yes.

13 MR. CONNOT: And if we go to Exhibit 201 -- once again,
14 stipulated, but not yet in.

08:57AM

15 I would move for its admission.

16 THE COURT: 201 is admitted, Ms. Clerk.

17 THE CLERK: Thank you.

18 (Exhibit 201 admitted into evidence.)

19 BY MR. CONNOT:

08:58AM

20 Q Do you recognize this document, Ms. Clayton?

21 A As I look at it, I see that it's a grant, bargain and
22 sale deed.

23 Q And you notarized this document on page 3?

24 A Yes.

08:58AM

25 Q And like similar to Exhibit 200, there's nothing here

1 that designates what document this signature and notary is affixed
2 to, does it?

3 A That's correct.

4 Q Have you ever heard the term "orphan signature page"?

08:58AM

5 A I heard it in my deposition.

6 Q Okay. What's your understanding of that term?

7 A I'm not sure.

8 Q Okay. There's been a lot of talk of it, but basically,

08:58AM

9 a signature page that's a bare signature page without anything
10 affixing or referencing the document to which it's affixed.

11 A Okay.

12 Q So was it unusual when you would notarize documents to
13 have orphan signature pages like that?

08:59AM

14 A I just would notarize whatever Sam would ask me to. I
15 don't think I, in that moment, would notice that the name of the
16 document wasn't on the page.

17 Q In fact, you wouldn't even necessarily review the
18 document itself to know what the document was. You would simply
19 notarize the signature page, regardless of whether or not there's
20 any additional text on that page. Would that be accurate?

08:59AM

21 A That's accurate.

22 Q Okay. And if you weren't -- and if you had kept the
23 notary journal, you would have been required to record in the
24 notary journal the document -- at least the title or description
25 of the document, correct?

08:59AM

1 A Yes.

2 MR. CONNOT: In fact, if we could go to -- in --
3 Exhibit 198 is stipulated, but not yet in, and I would move for
4 its admission.

09:00AM 5 THE COURT: 198 is in, Ms. Clerk.

6 THE CLERK: Thank you.

7 (Exhibit 198 admitted into evidence.)

8 BY MR. CONNOT:

09:00AM 9 Q And 198 is the copy of the notary journal that you began
10 to keep in 2015, correct?

11 A That's correct.

12 Q And if we go to page 2 of the exhibit, if you look at
13 the upper left-hand corner, that is page 23 of the notary journal?

14 A Yes.

09:00AM 15 Q And, in fact, the first page in which you started to
16 record notary acts, you didn't record anything on pages 1 through
17 22, you began on page 23 in March of 2015?

18 A That's correct.

09:00AM 19 Q And if we can scroll on a little bit, you can see the
20 type of information that's required. And if we go to the fourth
21 column, it, in fact, says "Document kind or type," "Date."

22 That's where, if you had recorded these notaries that
23 you performed in your notary journal, there would be a description
24 of the document in that category, correct?

09:00AM 25 A Correct.

1 Q But because you didn't keep a notary journal, we don't
2 have that?

3 A That's correct.

09:01AM

4 Q So if we go to Exhibit 202, which is in evidence, and if
5 you can turn to that, please.

6 And the first page of this document is an email from you
7 to Pierre Hascheff and Todd Jaksick on December -- I believe it's
8 the 16th of 2012, or the 18th -- I believe it's the 18th.

9 Do you recall this email?

09:01AM

10 A I don't.

11 Q Okay. And if we go down to the lower right-hand corner,
12 you'll see what lawyers in litigation call a Bates stamp?

13 A Correct.

09:01AM

14 Q And you'll see where it says TJ 2567? "TJ" is
15 "Todd Jaksick." That refers to who produced this document.

16 A Okay.

17 Q So now, if we go to the second page of Exhibit 202, that
18 would be another of what we call an orphan signature page.

09:02AM

19 Do you see where there's no reference to what the
20 document is that was signed on that document?

21 A I don't see a reference.

22 Q Okay. And that is attached to, at least in this
23 production, an email that says "forward, second amendment to the
24 trust."

09:02AM

25 Do you know if this is a signature page for the second

1 amendment for the trust?

2 A I think the second page is, the second page of the
3 email.

09:02AM

4 Q Okay. So this particular page, do you know what this
5 document -- what the document was that was attached to this
6 signature page?

7 A I don't recall.

09:02AM

8 Q Okay. So if we go to the next page, which is TJ 2569,
9 the next page in the production, that one is a little different,
10 isn't it, where it says in the first sentence "The undersigned
11 settlor executed the second amendment to the Samuel S. Jaksick Jr.
12 Family Trust agreement."

13 There is a reference to the document, correct?

14 A Yes.

09:03AM

15 Q And it says on December 10 of 2012. But if you go down
16 to the jurat or the acknowledgment, it states "On this 10th day of
17 December, 2012, personally appeared before me, a notary public,
18 Samuel S. Jaksick Jr., known to me or proven to me to be the
19 person whose name is subscribed to the foregoing fourth

09:03AM

20 amendment."

21 Do you see that?

22 A Yes.

23 Q Okay. Did you make any reference when you looked at
24 this as to what Mr. Jaksick was actually executing that day?

09:03AM

25 A Unfortunately, I didn't catch that mistake.

1 Q So you don't know whether he was executing the second
2 amendment or the fourth amendment on December 10th of 2012, do
3 you?

4 A No.

09:03AM

5 Q And if we go to the next page, and that's Bates-stamped
6 TJ 2570, the next page in the production for Mr. Todd Jaksick,
7 that again says in the first sentence "the undersigned settlor
8 executed the second amendment," correct?

9 A Yes.

09:03AM

10 Q Right. But there, it says on April 27th, 2012.

11 A Yes.

12 Q Okay. That's different than the preceding one that said
13 it was December 10 of 2012, correct?

14 A Yes.

09:04AM

15 Q So there's a reference to the second amendment being
16 executed that day. And, once again, if we go down to the jurat or
17 the acknowledgment, that again refers to the fourth amendment,
18 correct?

19 A Yes.

09:04AM

20 Q And you don't know what you notarized for
21 Mr. Sam Jaksick on April 27th, 2012, do you?

22 A No.

23 Q In fact, you don't even know, in regards to the second
24 amendment to the trust, if Sam had even read that, do you?

09:04AM

25 A No.

1 Q Have you ever signed notary acknowledgments where you
2 stated that an oath was given, an oath was administered, like on
3 an affidavit?

4 A I did -- I realized I did during my deposition.

09:04AM

5 Q Okay. But you've never administered an oath in your
6 life?

7 A No.

8 Q Even though you've notarized documents that stated that
9 you administered an oath?

09:05AM

10 A Correct.

11 Q And, in fact, in this December of 2012 time frame, you
12 were, unfortunately, undergoing chemo and radiation, correct?

13 A Correct.

09:05AM

14 Q And there were issues with Sam getting ready to go to
15 Los Angeles for some medical procedures, correct?

16 A Correct.

17 Q And there were several documents that you were
18 notarizing in that time frame?

19 A Yes.

09:05AM

20 Q And you don't know what documents, as you sit here
21 today, what you would have notarized for Sam in that December
22 of 2012 time frame?

23 A Correct.

09:05AM

24 MR. CONNOT: We can go to -- Exhibit 190 is stipulated,
25 but it's not yet in, so I would move for its admission.

1 THE COURT: 190 is admitted, Ms. Clerk.

2 (Exhibit 190 admitted into evidence.)

3 MR. CONNOT: If we could pull up Exhibit 190, please.

4 BY MR. CONNOT:

09:06AM 5 Q Do you recognize that document?

6 A I do not.

7 Q Okay. If we go to the second page of that document, do
8 you recognize that?

09:06AM 9 A Yes, it looks like I am notarizing this document for
10 Sam.

11 Q And if we look at this document, is that Sam's
12 signature, or is that Sam's stamp?

13 A It looks like Sam's signature.

09:06AM 14 Q Okay. If we go down and scroll down the page a little
15 bit and highlight just below the signature line, do you see where
16 it kind of seems to come through a little bit, like the stamp
17 might have been wet and it got rolled through a copy machine or
18 otherwise?

19 A I'm not sure. I think it could do that with any ink.

09:06AM 20 Q Okay. You don't know whether or not this is Sam's
21 signature or stamp, do you?

22 A I don't.

09:07AM 23 Q Okay. And if it is a stamp, you would have been
24 notarizing a stamp stating that Sam actually appeared personally
25 before you, correct?

1 A If Sam stamped it, I would.

2 Q And if we go to -- back to Exhibit 198 -- and I'll give
3 you a second to get there, Ms. Clayton.

09:07AM

4 And this is a little bit cumbersome because you kind of
5 have to put them together, because the notary journal, as I
6 understand it, is fairly wide. So each of these pages where we
7 have the second page, which is Bates-stamped at the bottom,
8 JC 0002 -- do you see that on yours?

9 A Yes.

09:07AM

10 Q Which is Jessica Clayton?

11 A Yes.

12 Q But the first entry where you started your notary
13 journal in 2015 is an entry on March 16th of 2015, correct?

14 A Yes.

09:08AM

15 Q And that was a passport parental authorization for
16 Stan Jaksick?

17 A Yes, I believe, originally, the reason I put it in my
18 book is I thought Lisa, his wife at the time, was going to come.

09:08AM

19 Q But that would have been the first time that you have a
20 record of any notarial act in your possession, would be March 16th
21 of 2015?

22 A Correct.

09:08AM

23 Q And since then, you've got a handful of signatures
24 between May 29th of 2016 -- I think they are all on May 29th of
25 2016, if you go through those next few pages, correct?

1 A Yes.

2 Q And those were just for your son's -- parents of your
3 son's baseball team?

4 A Correct.

09:08AM 5 Q So other than those, you have not kept a record of any
6 other notarial acts that you performed?

7 A I did in the book that I lost.

8 Q Okay. And in the book that you lost, you didn't record
9 every notarial act, did you?

09:08AM 10 A That is correct.

11 Q And there was a time period, wasn't there, where there
12 were emails in which you were sending emails in regards to the
13 family trust after Sam's death, correct?

14 A Yes.

09:09AM 15 Q And you were sending emails to Todd Jaksick and
16 Kevin Riley, but Stan Jaksick wasn't copied on those emails, was
17 he?

09:09AM 18 A I think in the beginning I didn't know who to send
19 emails to. I was just kind of doing what I had always done for
20 all the years Sam was here with us.

21 So for 10 years, if I were to send emails, Sam would
22 have me copy Todd or Kevin, because they were in my daily emails
23 usually.

09:09AM 24 Q So after Sam's death in April of 2013, you were sending
25 emails to Todd Jaksick and Kevin Riley, some that were in regards

1 to the family trust issue, correct?

2 A I believe so.

3 Q And not all of those emails was Stan included on,
4 correct?

09:10AM

5 A That's correct.

6 Q And at no point in time did Todd Jaksick tell you, hey,
7 you need to copy Stan on these, did he?

8 A I don't think anyone told me that.

09:10AM

9 Q And Mr. Robison represents you here. Have you paid him
10 any fees to date?

11 A Not yet.

12 Q Do you know how those fees are going to be paid?

13 A I don't at this point.

14 Q Okay.

09:10AM

15 MR. CONNOT: I'll pass the witness, Your Honor.

16 THE COURT: Thank you.

17 Counsel.

18 MR. ROBISON: Thank you, Your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. ROBISON:

22 Q Ma'am, have you received a bill from my office?

23 A Not yet.

24 Q It's cash.

09:10AM

25 A Oh.

1 Q Let me ask you a question about some of the things
2 you've done.

3 Have you compiled a list of expenses that Stan and Todd
4 paid to Wendy?

09:10AM

5 A Yes.

6 MR. ROBISON: All right.

7 May I show the witness Exhibit 331, please?

8 THE COURT: What is its status? Is it stipulated?

9 MR. ROBISON: It's not in.

09:11AM

10 THE COURT: So showing it to the witness, yes.

11 MR. ROBISON: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. ROBISON: I'm going to trade books, Ms. Clayton.

14 BY MR. ROBISON:

09:11AM

15 Q If you look at Exhibit 331, please.

16 MR. CONNOT: Give us one second.

17 MR. ROBISON: Sure.

18 MR. CONNOT: Your Honor, we would object. This wasn't
19 produced. It's dated February 13th.

09:12AM

20 THE COURT: Let's wait and see what counsel does.

21 BY MR. ROBISON:

22 Q Did you compile that document?

23 A I did.

24 Q What's the information upon which you relied to prepare
25 that document?

09:12AM

1 A This document was prepared based off of checks written
2 from the Peachtree accounting system, and for the most part, they
3 were from Jaksick Family, LLC.

4 Q **What's Peachtree?**

09:12AM 5 A Peachtree is the accounting software that we use at the
6 Jaksick office.

7 Q **Does it log expenses and income?**

8 A It does.

09:12AM 9 Q **All right. And from that program, were you capable of
10 resurrecting the amounts of money advanced to Wendy?**

11 A Yes.

12 MR. ROBISON: I would ask that it be offered, Your
13 Honor.

09:13AM 14 MR. CONNOT: We'll object, Your Honor. It wasn't
15 produced.

16 THE COURT: Has it been produced?

17 MR. ROBISON: It was produced with our exhibits at our
18 16.1 pretrial disclosures.

09:13AM 19 MR. CONNOT: It's designated February 13th of 2019.
20 It's not even Bates-stamped, Your Honor.

21 MR. ROBISON: It's on Bates stamps, Your Honor. If you
22 look at the document -- are there Bates stamps numbers on the
23 bottom of that?

24 THE WITNESS: Not on this particular one, no.

09:13AM 25 MR. ROBISON: On any one of those?

1 THE WITNESS: No.

2 MR. ROBISON: Well, there is on my copy, Your Honor.

3 THE COURT: Will you please first show it to counsel.

4 MR. CONNOT: It's not even the same document. This has

09:13AM 5 estimated additions, June 12, 2018. This one is dated -- it's not
6 the same document.

7 MR. ROBISON: Well, then I ask that the one in the book
8 be replaced by the one that was produced.

9 THE COURT: That is appropriate.

09:13AM 10 MR. ROBISON: And I can maybe cover this -- well, I
11 don't know if I'm going to have enough time between now and
12 recess.

13 THE COURT: So the marked exhibit before the witness
14 shall not be admitted. But if the document in Mr. Connot's hand
09:14AM 15 is part of the discovery production and it's Bates stamped, it can
16 be replaced in the exhibit book. We can do that during the break.

17 MR. ROBISON: May I show this to the witness, Your
18 Honor?

19 THE COURT: Yes, you may.

09:14AM 20 BY MR. ROBISON:

21 Q Let me show you a copy of Exhibit 31 that was produced
22 during discovery in this case.

23 Is that your work product?

24 A It is.

09:14AM 25 Q Is that the information that you pulled from -- what is

1 it, Orange Tree?

2 A Peachtree.

3 Q Peachtree.

4 A Yes.

09:14AM 5 Q And does that accurately reflect, as a result of your
6 research, the monies advanced to Wendy by Todd and Stan and the
7 trust?

8 A That's correct.

9 Q How much?

09:14AM 10 MR. ROBISON: I would offer that document, Your Honor,
11 with the understanding that it has to be replaced with a clean
12 copy.

13 THE COURT: Is there an objection to that document?

14 MR. CONNOT: No, Your Honor, not that I have.

09:15AM 15 THE COURT: So did you say 31?

16 MR. ROBISON: 331.

17 THE COURT: 331 is admitted, Ms. Clerk, subject to the
18 reservation made.

19 (Exhibit 331 admitted into evidence.)

09:15AM 20 BY MR. ROBISON:

21 Q Did you get my question, ma'am?

22 A I did. You asked how much, but I'm not sure if the
23 totals page -- there's a last page that has the totals, but I
24 don't recall if there -- that there were additional totals.

09:15AM 25 But on this particular one in the first column, the

1 total is 354861.43. In the middle column, it's 592601.29, and in
2 the third column, 295601.14.

09:15AM 3 Q And is it your understanding, based upon your research
4 preparing that document, those sums that you just read off were
5 advanced to Wendy Jaksick?

6 A Yes.

7 Q Has she repaid any of that?

8 A I don't know.

9 Q I want to show you Exhibit 13, please.

09:16AM 10 MR. ROBISON: Mark, please put up 13. It's in evidence.

11 BY MR. ROBISON:

12 Q Have you seen the second amendment before, ma'am?

13 A I have during this, yes.

14 Q And let me turn your attention to the signature page.

09:16AM 15 Have you ever forged Sam's name?

16 A No.

17 Q You notarized Sam's signature on this document. Is it
18 your testimony under oath that Sam signed this document?

19 A It is.

09:16AM 20 Q And you notarized his signature?

21 A Yes.

22 Q Did you do so in his presence?

23 A Yes.

24 Q Was that before he left for Los Angeles for his surgery?

09:16AM 25 A Yes.

1 Q Did he indicate to you in any way that this was an
2 inappropriate or false document?

3 A No.

4 Q And this was done on December 10th?

09:16AM

5 A Yes.

6 Q All right. Now, if you look at the first sentence on
7 this signature page, it refers to a second amendment, correct?

8 A Correct.

9 Q Now, do you know that this is attached as part of
10 Exhibit 13 to the second amendment?

09:17AM

11 A I'm sorry, what was the question?

12 MR. ROBISON: Show us the first page, Mark.

13 BY MR. ROBISON:

14 Q And the caption on top of the document, can you tell us
15 what that says, please?

09:17AM

16 Blow that up for us, if you could, Mark.

17 A It's the second amendment to the Samuel S. Jaksick Jr.
18 Family Trust agreement restated pursuant to the third amendment
19 dated June 29.

09:17AM

20 Q That's a reference to it being the second amendment,
21 correct?

22 A Yes.

23 Q All right. If we look at the signature page, please,
24 and the top sentence blown up.

09:17AM

25 That's a reference to the second amendment?

1 A Yes.

2 Q Do you understand -- is it your understanding that
3 Sam Jaksick signed this as the second amendment to his trust?

4 A Yes.

09:17AM 5 Q And is that your notary?

6 A Yes.

7 Q All right. If you look at the notary, it refers to the
8 fourth amendment in the third line of the jurat.

9 MR. ROBISON: Would you highlight for us, please, Mark.

09:18AM 10 Thank you.

11 BY MR. ROBISON:

12 Q How come it has "second amendment" and "fourth
13 amendment" on the same page?

14 A I don't know. It was an error that I didn't catch.

09:18AM 15 Q All right. And is that the second amendment that he
16 signed, or is that the fourth amendment that he signed?

17 A It would have been the second amendment.

18 Q You are sure about that?

19 A I believe so.

09:18AM 20 Q And, in fact, during this period of time in December
21 of 2012, did you also notarize other signatures of Sam?

22 A Yes.

23 Q Did he appear before you and actually sign the document
24 when you would notarize those documents in December of 2012?

09:18AM 25 A Yes.

1 Q All right. Let me cover some documents that were
2 covered in your direct examination.

3 A Okay.

4 MR. ROBISON: I would like to show the witness
09:19AM 5 Exhibit 201 in evidence, please.

6 THE COURT: Yes.

7 BY MR. ROBISON:

8 Q Can you see this all right from the screen, or do you
9 need the hard copy?

09:19AM 10 A Oh, I see it.

11 MR. ROBISON: Would you blow up the recordation
12 information, please, up in the right-hand corner.

13 BY MR. ROBISON:

14 Q Do you know what that information imparts?

09:19AM 15 A That the document was recorded on June 18th of '13.

16 Q All right. And what does "record" mean, please?

17 MR. CONNOT: Object to the extent it calls for a legal
18 conclusion.

09:19AM 19 THE COURT: If the witness knows, she can answer the
20 question.

21 Please don't guess as to what the answer may be.

22 MR. ROBISON: Let me lay a foundation, if I may, Your
23 Honor.

24 BY MR. ROBISON:

09:19AM 25 Q Have you sent documents to Washoe County Recorder's

1 Office for the purposes of having them recorded?

2 A I have not personally.

3 Q All right. Do you know how one records a document with
4 the Washoe County Recorder's Office?

09:20AM

5 A No.

6 Q All right. Let's then move from that to the second
7 page. What does it say at the very top of the page with respect
8 to that information?

9 Please blow that up, Mark. Thank you.

09:20AM

10 A It says 4248955, page 2 of 3 on June 18th of '13 at
11 1:13:29 p.m.

12 Q And so if it's 2 of 3, one would expect a third page?

13 A Yes.

09:20AM

14 MR. ROBISON: Would you please go to the signature page
15 and blow up the top on that particular page.

16 BY MR. ROBISON:

17 Q What does that say?

18 A It says 4248955, page 3 of 3, June 18th of 2013, at
19 1:13:29 p.m.

09:21AM

20 Q Same document with sequential pages identified on each
21 page, correct?

22 A Yes.

23 Q What is orphan about the signature page if it's 3 of 3?

24 A I don't know.

09:21AM

25 Q Let me then now address your attention to Exhibit 202,

1 please.

2 Did you, during your period of work for the entities in
3 December 2012, have a need to send Pierre's office various
4 signature pages?

09:21AM

5 A Yes.

6 Q Do you recall why that was necessary?

7 A I believe Sam asked me to.

8 Q And did you cause this email to be transmitted to
9 Pierre's office?

09:21AM

10 Look at the address bar, please.

11 A Yes, I sent that email to Pierre's office.

12 Q When you do things like that, do you study the documents
13 that you email to the recipient?

14 A I do not.

09:22AM

15 Q Do you just basically do what you are told?

16 A Right. Yes.

17 Q And do you know why Sam asked you to send these
18 signature pages to Pierre's office?

09:22AM

19 A I believe they were working on several documents before
20 he went to LA and it was important for him to have these documents
21 done before he left.

22 Q Did you notarize Sam's signature on the second page of
23 this document, 202, which would be Bates 2568?

24 A Yes.

09:22AM

25 Q And what do you refer to that area that's your notary?

1 Please blow the notary up, Mark. Thank you.

2 Do you refer to that as a jurat? Have you heard that
3 term?

4 A I became more familiar with it recently.

09:23AM

5 Q In the context of this case?

6 A Yes.

7 Q All right. And then on the 17th, are you aware that Sam
8 signed a power of attorney giving Todd Jaksick a power of attorney
9 to handle --

09:23AM

10 MR. CONNOT: Object -- are you finished?

11 MR. ROBISON: Sorry. I'll stop.

12 THE COURT: No, go ahead.

13 BY MR. ROBISON:

14 Q Are you aware of the power of attorney?

09:23AM

15 A Yes.

16 Q How did you become familiar with the power of attorney?

17 A Well, I just know that they're -- in this case, that we
18 have one, and that was part of the documents that I notarized.

19 Q Did you discuss the power of attorney with Sam Jaksick?

09:23AM

20 A I did not.

21 Q Did you notarize his signature?

22 A Yes, if he asked me to, I did.

23 Q But there was no discussion with respect to its purpose
24 or function?

09:23AM

25 A That's correct.

1 Q Did you talk to Todd about it when it was done?

2 A No.

3 Q Do you know whether Todd asked that he be on the power?

4 A I don't know.

09:24AM 5 Q And with respect to the power of attorney, do you have a
6 recollection that Pierre's office needed a signature page of that
7 document that was signed in your office?

8 A I don't recall that exact date or conversation or
9 anything.

09:24AM 10 Q If the document is prepared at Pierre's office, how is
11 it effectuated so the signature of Sam gets on the document? Does
12 that happen in your office?

13 A Yes.

09:24AM 14 Q How do you get the signature, then, to the lawyer who
15 prepared the document?

16 A Either by email or Jim Carrico would do it.

17 Q All right. Thank you.

09:24AM 18 Then, again, with respect to the next page of
19 Exhibit 202, which would be Bates 2569, please take a look at the
20 reference to this document.

21 Is that Sam's signature?

22 A Yes.

23 Q Did Sam sign that in your presence?

24 A Yes.

09:25AM 25 Q And did you notarize it?

1 A I did.

2 Q Again, this has got that reference to the second
3 amendment on the top sentence, and in the jurat, it's got a
4 reference to the fourth amendment. Can you explain that?

09:25AM 5 A The only thing I can say is it was an error that I did
6 not catch.

7 Q All right. And if we could look at the next page of
8 202, which is Bates 2570, please. If you look at that first
9 sentence, it says "The undersigned settlor." Do you know if the
09:25AM 10 previous pages identified Sam Jaksick as a settlor?

11 A I don't know. I would have to look at it again.

12 Q Do you know what a settlor is?

13 A I don't.

14 Q All right. Fair enough.

09:25AM 15 Did you notarize Sam's signature on this document?

16 A I did.

17 Q Did Sam have a stamp, to your knowledge?

18 A Yes.

19 Q And did you use it?

09:26AM 20 A Yes.

21 Q For what purpose?

22 A To stamp checks, if he needed me to.

23 Q What do you mean, "stamp checks"?

24 A All of the checks would require, for the most part, his
09:26AM 25 signature. And if he was going to be late or he couldn't do that,

1 then I would -- he would either tell me it was okay to get the key
2 or Jim Carrico would give it to me, and then we had a stamp of
3 "SS Jaksick Jr." that I would stamp on the checks.

4 Q Did you do so with his authority --

09:26AM

5 A Yes.

6 Q -- and consent?

7 A Yes.

8 Q Have you ever notarized a document, to your knowledge,
9 that was signed by somebody other than Sam Jaksick where you

09:26AM

10 notarized it as Sam's signature?

11 A No.

12 Q Would you ever do that?

13 A No.

14 MR. ROBISON: Thank you.

09:27AM

15 Pass the witness, Your Honor.

16 MR. LATTIN: I have no questions, Your Honor.

17 MR. HOSMER-HENNER: No questions, Your Honor.

18 THE COURT: Mr. Connot.

19 MR. CONNOT: Thank you, Your Honor.

09:27AM

20

21 REDIRECT EXAMINATION

22 BY MR. CONNOT:

23 Q When you would notarize documents for Sam, you never
24 looked at the actual document, itself; correct?

09:27AM

25 A That's correct.

1 Q In fact, you would notarize the signature page and you
2 would have no idea what the document actually said?

3 A That's correct.

4 Q And you don't know whether or not the reference to the
5 fourth amendment or the second amendment referred to the fourth
6 amendment or the second amendment because you didn't look at the
7 actual document, correct?

8 A That's correct.

9 Q So it could have just as easily been the fourth
10 amendment that you were notarizing because that's what the jurat
11 or acknowledgment says, as it was the second amendment, correct?

12 A That's not what I believe because the second amendment
13 was on the top line.

14 Q But once again, you didn't look at the document
15 itself --

16 A That's right.

17 Q -- to which the signature page was attached, so you
18 don't know, correct?

19 A Correct.

20 Q And if we go to Exhibit 201 again, and if you could pull
21 that up, thank you.

22 Go to the third page of that exhibit, if you could. And
23 you notarized this document, correct?

24 A Yes.

25 Q What's the date that the signature states it was signed,

1 as well as the date that you notarized it?

2 A April 15th, 2013.

3 Q So this document would have been executed and notarized
4 on April 15th of 2013, correct?

09:28AM

5 A Yes.

6 Q And this page is an orphan signature page, correct?

7 A Well, Mr. Robison said it wasn't because of the numbers
8 on the top.

09:28AM

9 Q That's an excellent point. Let's look at that. Let's
10 go back to the first page of Exhibit 201, and let's remember, what
11 was the date this document was executed and notarized, April 15th,
12 correct?

13 A Yes.

09:29AM

14 Q And if we go to the upper right-hand corner, what's the
15 date -- where it says "Doc," number sign, 4248955, what's that
16 date there?

17 A June 18th, '13.

18 Q And at 1:13:29 p.m., correct?

19 A Correct.

09:29AM

20 Q And that's the stamp that the Recorder's Office puts on
21 it, so it was recorded on June 18th of 2013 at 1:13:29 p.m.

22 Let's go to page 2 of Exhibit 201. Let's look at this,
23 part of it where it was contended that there's no way it could be
24 an orphan signature page.

09:29AM

25 What's the date there, where it says page 2 of 3?

1 A June 18, '13.

2 Q So was there any way that that notation was on this
3 document on the day it was signed and notarized on April 15th of
4 2013?

09:29AM

5 A No.

6 Q And the same thing on page 3, same thing. The reference
7 is that's the date it was recorded. So by reference to just that
8 at the top of the page, there's no way to determine what this
9 signature page was attached to on the date it was signed and

09:30AM

10 notarized, is there?

11 A No.

12 MR. CONNOT: Thank you.

13 No further questions.

14

15 RECROSS-EXAMINATION

16 BY MR. ROBISON:

17 Q So the document was signed in your presence, April 15th,
18 2013, and recorded a couple of months later?

19 A Correct.

09:30AM

20 MR. ROBISON: Thank you.

21 THE COURT: You are free to step down. Thank you.

22 Ladies and gentlemen, let's stand for a moment.

23 Who is your next witness?

24 MR. CONNOT: Thank you, Your Honor. Petitioner

09:31AM

25 Wendy Jaksick will call Stan Jaksick, please.

1 THE CLERK: Please raise your right hand.

2

3

STAN JAKSICK

4

called as a witness, having been duly sworn,

5

testified as follows:

6

7

THE CLERK: Thank you.

8

9

DIRECT EXAMINATION

09:31AM

10 BY MR. CONNOT:

11 Q Good morning, Mr. Jaksick.

12 A Good morning.

13 Q Is it okay if I call you "Stan"?

14 A Yes.

09:31AM

15 Q Thank you.

16 So you are the oldest of the Jaksick children?

17 A I am.

18 Q So what's the age difference between you and Wendy?

19 A About two years.

09:31AM

20 Q What's the age difference between you and Todd?

21 A Seven, about seven years.

22 Q And growing up, were you all a relatively close family?

23 A Yes.

24 Q Okay. Were you all relatively close with your father?

09:32AM

25 A Yes.

1 Q And as the oldest, you probably saw more of what was
2 going on with the kids. But were you familiar with some of the
3 issues that Wendy had with judgment and some of her other issues
4 in the rehab?

09:32AM

5 A I was.

6 Q Familiar with Todd's issues that he encountered when he
7 was in high school and your dad wanted him to live with Wendy and
8 Mr. Smrt when they were married?

9 A Yes.

09:32AM

10 Q And despite those issues that Wendy and Todd had, was it
11 your understanding that your father still loved Todd and Wendy?

12 A Absolutely.

13 Q And what was your understanding as to what your father's
14 intent was with what he would do with his estate amongst the three
15 children?

09:32AM

16 A For the most part, you know, it was, in my opinion, you
17 know, going to be split into thirds.

18 Q Was there ever an occasion where you encountered Todd
19 threatening or arguing with your father?

09:33AM

20 A No. My dad had various meetings, ongoing meetings in
21 his office and the door was always shut. But that never precluded
22 me from, you know, just walking in, and he was okay with that.

23 So I -- one day, yes, I walked in and Todd was yelling
24 at my dad. They were having an argument.

09:33AM

25 Q And what was your take-away from that argument, sir?

1 A I was just kind of -- I was shocked by it.

2 Q Why were you shocked?

3 A I just -- you know, I mean, everyone has arguments, but
4 it just -- just didn't seem right at the time.

09:34AM 5 Q And did you feel that Todd was being overbearing towards
6 your father?

7 A Again, you know, they were -- it was obvious they were
8 having a disagreement, so I --

09:34AM 9 Q Was your father a strong personality during most of his
10 life?

11 A I would say so.

12 Q Did you get the sense that after that occasion, that
13 maybe he wasn't as strong and pushing back against Todd as much?

09:34AM 14 A My dad just didn't like conflict. He -- and I mean,
15 just any kind of conflict. So, you know, there was a point he
16 just -- you know, he didn't want to deal with that kind of stuff.

17 Q And what was your understanding of what your father was
18 doing in 2012 and early 2013 prior to his death in regards to his
19 estate, not that he was contemplating, you know, the death when it
09:35AM 20 occurred in April of 2013, but what was your understanding of what
21 he was doing in that time frame?

22 A You know, I really wasn't involved with my dad back then
23 in terms of any sort of trust matters. It makes sense to me that
24 he would have done certain things, you know, prior to going into
09:35AM 25 his surgery, because that was a major surgery. So -- but I really

1 was not involved in that.

2 Q Was -- did you -- were you involved in any discussions
3 with your father in 2012, early 2013 regarding the -- what's been
4 referred to as the Lake Tahoe house?

09:35AM

5 A Yes.

6 Q And what was your involvement in those discussions or
7 dealings in that time frame prior to your father's death in April
8 of 2013?

09:36AM

9 A You know, I did a lot of different things for my dad
10 regarding the Tahoe house over the years. And during that time
11 frame, he asked me to put together a rental contract with a couple
12 of different agencies up in Incline. And so I worked on that for
13 him.

09:36AM

14 He also had me, you know, basically, touring around the
15 lake and looking at various properties, you know, because we were
16 talking about the possibility of maybe selling the Tahoe house and
17 he wanted to try and find maybe a replacement house for it.

18 So I looked at various homes around the Tahoe area for
19 him.

09:36AM

20 Q Was there a discussion sometime in 2012 regarding
21 listing the Lake Tahoe house?

22 A Yes.

23 Q Were you involved in those discussions?

24 A Yes.

09:37AM

25 Q And what was the price that the Lake Tahoe house was

1 listed at that your father had agreed upon to list the Lake Tahoe
2 house in '12?

3 A I think it was 12,750,000.

4 MR. CONNOT: And you mentioned the rental management
5 agreement.

6 And I believe Exhibit 23.23 is in evidence; is that
7 correct?

8 THE CLERK: It is not in evidence.

9 MR. ROBISON: Stipulated.

10 MR. CONNOT: It's stipulated. I move for its admission.

11 THE COURT: It is admitted.

12 THE CLERK: Thank you.

13 (Exhibit 23.23 admitted into evidence.)

14 MR. CONNOT: May I approach the witness?

15 THE COURT: Yes.

16 BY MR. CONNOT:

17 Q Here you are, sir, Exhibit 23.23.

18 A I might need to see it up there. I forgot my glasses.

19 Q Oh, okay. We'll try to blow it up for you.

20 A Okay.

21 Q You referenced the rental management agreement. Does
22 this look like it's the rental management agreement that you would
23 have executed?

24 We can go to the signature page in a second as well.

25 A Yes.

1 Q And let's go to the signature page on that.

2 And if could blow that up, please, Keith.

3 Is that your signature?

4 A It is.

09:38AM 5 Q Okay. So let's go back to the first page of this rental
6 management agreement.

7 And this is a rental management agreement in regards to
8 the Lake Tahoe house that's been described throughout this trial,
9 correct?

09:38AM 10 A Correct.

11 Q And this was for what purpose, sir, do you recall?

12 A Yeah, you know, my dad -- we were, again, looking at
13 various options with regard to the Tahoe house. And one of the
14 options was to bring in some rental income.

09:39AM 15 My dad had a place, obviously, his ranch house up in
16 Northern Washoe he enjoyed spending a lot of time at.

17 And so, you know, he -- in fact, there was a point where
18 he got -- you know, got the house ready for renting it out, but
19 his room -- the master bedroom was locked off so that whoever
09:39AM 20 rented the house could not utilize his room, so he could come back
21 in between rentals and stay there.

22 Q So this rental management agreement was entered into, if
23 you look at paragraph 2, commencing on what date?

24 A 2/15/13.

09:39AM 25 Q Okay. So this would have been after the option

1 agreement was triggered in late 2012, correct?

2 A Yes.

3 Q And if we go up to the second line, "Exclusive Right to
4 Rent," begins on the first line, "This agreement is entered into
5 by and between Incline TSS Limited, owners, and Tahoe Luxury
6 Properties, agent."

09:40AM

7 Do you see that?

8 A Yes.

9 Q Were you aware of Incline TSS in February of 2013?

09:40AM

10 A Yes. I mean, we had discussed Incline TSS and --

11 Q And just if I could interrupt you. You say "we." Who's
12 the "we"?

13 A My dad and I and Todd.

14 Q Okay. So you discussed Incline TSS prior to this time
15 frame. Your father then had requested you -- I mean, so did your
16 father request you to do these negotiations and execute this
17 rental management agreement?

09:40AM

18 A He did.

19 Q Okay. And if we go to the last page, it says "Read,
20 accepted and approved in its entirety by owner." And that's your
21 signature under there, right?

09:41AM

22 A It is, yes.

23 Q Is it your understanding you were signing this on behalf
24 of Incline TSS?

09:41AM

25 A I mean, obviously, I was. Looking back on it now, I

1 just didn't recall Incline TSS being in existence at that time. I
2 still thought it was SSJ, but obviously, it was Incline TSS.

3 Q So what was your understanding as to the ownership of
4 the Lake Tahoe house in February of 13th?

09:41AM 5 A My understanding was I still thought my dad owned the
6 house.

7 Q Okay. You had no idea that Todd owned Incline TSS, and
8 Incline TSS at that time was claiming ownership of the house?

9 A Again, I was not involved in these discussions. So I --
09:41AM 10 we talked about transferring the house out for tax reasons and
11 creditor protection. That all took place. And so very, very
12 easily that could have occurred by the end of the year.

13 But I was just not involved in that, and I still thought
14 my dad had ownership.

09:42AM 15 Q And your father passes away untimely in April of 2013.
16 Do you recall any discussion shortly after his death in regards to
17 the Lake Tahoe house, amongst the family?

18 A With regard to what?

19 Q In regards to the Lake Tahoe house, what was going to
09:42AM 20 happen with the Lake Tahoe house shortly after your father's
21 death.

22 A Yes, Todd and I and Wendy met.

23 Q And when -- do you recall in relation to the date of
24 your father's death when that meeting occurred?

09:42AM 25 A The day after.

1 Q So the day after your father died, you and Todd and
2 Wendy meet to discuss the Lake Tahoe house. What was that
3 discussion, sir?

09:43AM

4 A Todd wanted or suggested that we use the insurance funds
5 to invest in the Tahoe house.

6 Q And when you say "use the insurance funds to invest in
7 the Tahoe house" --

8 A Life insurance.

09:43AM

9 Q What was your understanding as to who would own the
10 Lake Tahoe house -- or, who owned the Lake Tahoe house at that
11 time?

12 A You know, I still thought it was in my dad's name at
13 that time, in a different entity, but --

09:43AM

14 Q So in that discussion, was it your understanding that
15 Todd was advising you and Wendy that you could use the
16 \$6 million in life insurance proceeds that were in the issue trust
17 to, basically, pay off the indebtedness of the Lake Tahoe house?

18 A Yes.

09:44AM

19 Q And was it your understanding, then, that you and Wendy
20 and Todd would then have an equal interest in the Lake Tahoe
21 house?

22 A I mean, we didn't talk about that, but that's -- I left
23 there thinking that.

09:44AM

24 Q Did Todd ever disclose to you at that time, or -- well,
25 let's say, did Todd ever disclose to you at that time that he

1 owned 100 percent of Incline TSS and that Incline TSS was claiming
2 100 percent ownership of the property?

3 A No.

4 Q In your presence, did Todd ever disclose that same
5 information to Wendy?

6 A Not that I'm aware of.

7 Q Ultimately, there is an ACPA out there in regards to the
8 Lake Tahoe house that's been in evidence and up on the screen.

9 Do you recall executing that document, sir?

10 A I don't.

11 Q And if you did execute that document, what was your
12 understanding of what the impact of that document was?

13 A Again, I didn't review that document until later on when
14 it was filed with the Court, so --

15 Q So, years later?

16 A Yeah.

17 Q Okay. Do you think it's your signature on that
18 document?

19 A It is my signature on that signature page.

20 Q Okay. So how did it come about that you signed the
21 document? I mean, did you read the document before you signed it?

22 A I never read that document until later.

23 Q Do you recall being given just the signature page by
24 Todd, flipped over, and him requesting you that sign it?

25 A No.

1 Q Do you recall testifying in your deposition that you
2 believe that everything Todd has been involved in has been
3 manipulated?

4 A Possibly, yeah.

09:46AM 5 Q And there's also an ACPA out there in regards to the
6 cattle. Do you recall that ACPA?

7 A Yes, I do.

8 Q And did you have any concerns about how that ACPA was
9 carried out and what the ultimate result of that ACPA was?

09:46AM 10 A Yeah, I -- at the time, it made sense to me that we were
11 selling cattle to raise funds. And I wasn't aware that Todd was
12 actually going to buy some of the cattle himself.

13 But during the course of this litigation, I did find out
14 that -- you know, that Todd did acquire those cattle. But,
09:46AM 15 apparently, there was a note that -- between White Pine Ranch and
16 his entity that we owed that entity -- White Pine Ranch owed that
17 entity some money. So that's how he paid for the cattle.

18 Q So your understanding at the time was, you were agreeing
19 to this ACPA to sell cattle to generate cash for the trust,
09:47AM 20 correct?

21 A Yes.

22 Q Yeah. And the ACPA doesn't say anything about Todd
23 acquiring cattle in exchange for a note, does it?

24 A Well, I think some of the cattle were sold, for cash,
09:47AM 25 and Todd took some of the cattle himself.

1 Q And Todd gave a note back to the trust?

2 A That's what I recall.

3 Q Okay. So nowhere in the ACPA did it disclose that Todd
4 was going to acquire 150 head of the cattle and not directly
09:48AM 5 infuse cash into the trust, did it?

6 A No.

7 Q And, in fact, the understanding was, the entire -- I
8 believe it was -- was it 750 head of cattle or 700 -- were going
9 to be sold to generate cash for the trust, correct?

09:48AM 10 A Yes.

11 Q How did it make you feel when you found that out?

12 A Yeah, I mean at the time I was, you know, frustrated
13 with that.

14 Q And why is that?

09:48AM 15 A Well, I just -- you know, we had, you know, different
16 disagreements over things, but I -- that was something that's --
17 you know, I think I should have been told about.

18 Q And if the purpose was to generate cash for the trust so
19 it would have cash, Todd exchanging a note for the cattle that he
09:48AM 20 acquired did not generate cash for the trust, did it?

21 A My understanding is it did generate cash because 600 of
22 the cattle were sold to generate cash. And then the other 100
23 that Todd took, that portion was not.

09:49AM 24 THE COURT: Sir, I need you to either amplify your voice
25 above your comfort level, or speak into the microphone, one of the

1 two. But you are kind of wavering back and forth. We can't hear
2 you as well.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you.

09:49AM 5 BY MR. CONNOT:

6 Q It's okay to be nervous, but just -- it's helpful for
7 everyone.

8 But the understanding was the 700 head of cattle in the
9 ACPA, all of them were going to be sold to generate cash for the
09:49AM 10 trust; correct?

11 A That's correct.

12 Q But you found out later only 600 head of cattle were
13 sold for cash, the other 100 head of cattle, Todd acquired in
14 exchange for a note that didn't generate cash for the trust,
09:49AM 15 correct?

16 A Yes, and I don't recall the exact number.

17 Q There's also been a fair amount of discussion about
18 Todd's indemnification agreement. When did you first become aware
19 that Todd had an indemnification agreement?

09:50AM 20 A I would say it was sometime in 2014, '15, I actually
21 received a call from Kevin.

22 Q Kevin Riley?

23 A Yeah.

24 Q And what did that discussion consist of?

09:50AM 25 A Kevin said that, you know, he was going to send me a

1 copy of this and just wanted me to take a look at it.

2 Q So what did you -- take a look at it. What was your
3 impression when you first saw that?

4 A Well, you know, in reading through it, you know, Kevin
09:51AM 5 said that to me -- and it's difficult to understand, so he thought
6 I should get an attorney to review it.

7 I really didn't understand the complexity of it and what
8 it involved.

9 MR. CONNOT: Exhibit 32-A, is that in?

09:51AM 10 THE CLERK: 32-A, Counsel?

11 MR. CONNOT: Yes.

12 THE CLERK: I don't have a 32-A.

13 MR. CONNOT: I'm sorry 32. The A, apparently, my
14 cocounsel puts that on for "admitted."

09:51AM 15 THE COURT: So is 32 admitted, Ms. Clerk?

16 THE CLERK: It is.

17 THE COURT: All right. You may proceed.

18 BY MR. CONNOT:

19 Q Do you have the binder with 32 in front of you, sir? If
09:51AM 20 not, I'll get it for you.

21 A I don't.

22 MR. CONNOT: Okay. May I approach the witness, Your
23 Honor.

24 THE COURT: Yes, you may.

09:52AM 25 MR. CONNOT: Thank you.

1 Maybe I'll get some of these out of your way. I don't
2 want them to get knocked off here. Don't trip over it.

3 BY MR. CONNOT:

09:52AM

4 Q Exhibit 32. Let me know when you are there, sir, or is
5 it easier to read up there since you don't have your glasses?

6 A Yes, probably easier to do.

7 Q Okay. So if you look there, it's an email from you on
8 July 28th of 2017.

09:52AM

9 Could you maybe blow that up a little bit to make sure
10 he can see.

11 Can you read that from there?

12 A I can.

09:52AM

13 Q And that's an email that you sent to Brian McQuaid,
14 Michael Kimmel, Todd Jaksick, Kevin Riley, Don Lattin and
15 Bob LeGoy, correct, on July 28th of 2017?

16 A Yes.

17 Q And the first sentence says, "Like I said before, I was
18 never aware of or heard of the indemnification agreement until
19 2015."

09:53AM

20 Does that refresh your recollection as to when you
21 became aware that there was an indemnification agreement, sir?

22 A Yes.

09:53AM

23 Q And then if you go to the fourth line down, the sentence
24 begins, "I also worked closely with my dad on a daily basis from
25 the time I got out of college, 1988, other than when he was

1 hunting, and he never mentioned this to me."

2 Is that accurate, sir?

3 A Yes.

4 Q So your father never mentioned this indemnification

09:53AM 5 agreement to you during his lifetime, did he?

6 A He did not. I mean, you know, as we are aware, he put
7 together an indemnification agreement for me, but my dad was one
8 of those kind of guys that would do those things to protect us,
9 you know.

09:53AM 10 And so it's possible that he had done that for Todd and
11 I, and I just never was aware of it or knew what it -- you know,
12 how it would affect things.

13 Q And then if we go to the next sentence, you stated,
14 "Even worse, Kevin Riley, my dad's accountant for 10-plus years,
09:54AM 15 was unaware this agreement existed, which absolutely causes me
16 concern over its validity."

17 You wrote that, correct?

18 A Yes.

19 Q Do you still subscribe to that?

09:54AM 20 A Well, at the time I was, you know, concerned that Kevin
21 had no understanding of the indemnification agreement, how it
22 affected the trust.

23 Q And did you express a concern at one time that the
24 indemnification agreement itself could completely wipe out the
09:54AM 25 trust?

1 A Yes.

2 Q And, in fact, did you agree with the way in which Todd
3 was using the indemnification agreement to pay off some of his
4 personal debts or capital calls or otherwise?

09:54AM 5 A You know, I didn't agree with the exhibits page that I
6 later reviewed. But, you know, at the time I wasn't really aware
7 of anything that he had used or paid with the indemnification.

8 Q Had there been times where the indemnification agreement
9 has been used to pay off an indebtedness of an entity, that the
09:55AM 10 family trust has an interest in, that Todd and/or his personal
11 trust also had an interest in?

12 A Well, obviously, after I, you know, became more aware of
13 the indemnification agreement and had counsel help me understand
14 it better, you know, I was okay with some of the things on there.

09:55AM 15 I was okay with the, you know -- and Todd and I had
16 these discussions. We had disagreements about it, but we had
17 discussions.

18 And I was okay with the Ag Credit and MetLife one
19 because it did involve the ranch property. And there was no -- it
09:56AM 20 was an asset that we've heard discussed in here, owned by the
21 issue trust, that was going to remain in trust for 365 years. And
22 it was not something that could be sold. There was no way to get
23 any money out of it.

24 And so, you know, I understood that one. If my dad was
09:56AM 25 still alive he would, you know, be making those payments. So I

1 was okay with that part of it.

2 Q And was that ranch owned 100 percent by the issue trust?

3 A No, the ranch was owned, you know, by Todd's trust and,
4 you know, my father.

09:56AM 5 Q Okay. And that was what? Todd's trust has had a
6 51 percent interest and then the issue trust would have a
7 49 percent issue?

8 MR. HOSMER-HENNER: Objection, Your Honor. It misstates
9 the evidence. He's talking about the issue trust.

09:57AM 10 MR. CONNOT: Oh, I'm sorry.

11 THE COURT: Sustained.

12 BY MR. CONNOT:

13 Q So the family trust would have a 49 percent interest,
14 and Todd and/or his personal trust would have the 51 percent
09:57AM 15 interest in the ranch property you are describing?

16 A No. I mean, it was under the issue trust. However,
17 the ownership of that property was 51 percent Todd and 49 percent
18 my father.

19 Q Okay. And after your father's death, then, did Todd use
09:57AM 20 the indemnification agreement to pay off the Ag Credit note on
21 that property?

22 A I don't think he paid it off. I think he was making
23 payments.

24 Q Fair enough. Exactly.

09:57AM 25 So payments were made on the Ag Life -- or, the

1 Ag Credit loan in an entity that Todd owned 51 percent of,
2 correct?

3 A Correct.

4 Q And Todd didn't pay anything at that point to pay it
09:58AM 5 down; he gave a note back to the trust, correct?

6 A That's my understanding, yes.

7 Q What's your recollection of what the interest rate was
8 on that note?

9 A I don't recall.

09:58AM 10 Q Did you have concerns about the interest rate that Todd
11 would have on documents where he would have a note back to the
12 trust, versus the interest rate he would charge even between the
13 issue trust and the family trust, or in other circumstances?

14 A The only thing that's ringing a bell would be the two
09:58AM 15 ACPAs that we did regarding the -- a loan from the issue trust to
16 the family trust.

17 Q And that loan was at 6 percent interest?

18 A I think so.

19 Q Okay. And what was the interest rate that Todd would
09:59AM 20 pay on notes that he had?

21 A I don't recall.

22 MR. CONNOT: Exhibit, the binder 410, which I believe is
23 in evidence.

24 It's not?

09:59AM 25 If I could get the binder 410. Don't put it up yet,

1 please, Keith.

2 May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. CONNOT: Thank you. You are getting a lot of

09:59AM 5 binders up here, sir.

6 THE WITNESS: I'm not sure this is going to help.

7 BY MR. CONNOT:

8 Q Okay. Are you able to read enough of that without
9 glasses, sir?

10:00AM 10 A Possibly.

11 Q Do you at least recognize the document?

12 A What's the number?

13 Q 410. Fortunately, at least the top of it is in pretty
14 big font.

10:00AM 15 A Yeah. Okay. Yeah, I can see that.

16 Q Okay. And without describing much of the content,
17 would -- Mr. Robison has been gracious enough to offer to provide
18 his glasses if it helps.

19 A I'm good on this one.

10:01AM 20 MR. CONNOT: Thank you, Kent.

21 BY MR. CONNOT:

22 Q And without describing too much of the content of the
23 documents, is this a note payable between Todd B. Jaksick Family
24 Trust and the Samuel S. Jaksick Jr. Family Trust?

10:01AM 25 A Yes.

1 MR. CONNOT: Move for admission of Exhibit 410, Your
2 Honor.

3 MR. ROBISON: No objection.

4 THE COURT: 410 is admitted, Ms. Clerk.

10:01AM 5 THE CLERK: Thank you.

6 (Exhibit 410 admitted into evidence.)

7 BY MR. CONNOT:

8 Q And what's the date of that document?

9 A September 1st, 2013.

10:01AM 10 Q And this is a note between Todd's family trust and the
11 Sam Jaksick Family Trust, correct?

12 A Yes.

13 Q And that's for \$105,510.76. Do you see that?

14 A Yes.

10:01AM 15 Q So this is where Todd is giving a note back to the
16 family trust in regards to that Ag Credit payment you just
17 described?

18 A Yes.

10:01AM 19 Q And what's the interest rate that's reflected in
20 paragraph 2 of that note?

21 A 1.5 percent.

10:02AM 22 Q So Todd has a note back with the family trust that --
23 there's been testimony that the family trust was in desperate
24 financial situation in 2013, and he's executing a note, not even
25 paying the money, but at 1.5 percent interest?

1 A Yes.

2 Q Do you know if that note has ever been paid off to this
3 day?

4 A I don't know that.

10:02AM 5 Q Do you know if Wendy was ever provided a copy of the
6 indemnification agreement?

7 A No, because I provided her a copy of it.

8 Q And did you have any discussions with Kevin Riley around
9 the time that you provided Wendy with a copy of Todd's
10 indemnification agreement?

11 A I did.

12 Q Do you recall him being upset with you?

13 A I wouldn't say he was upset. I mean, he was -- he was
14 concerned that I had done that.

10:03AM 15 And I later, through this whole process, you know,
16 understand where Kevin was coming from at that time, because Kevin
17 doesn't like to give things out that he doesn't have authority.
18 He didn't have authority from Todd to do that, so he was
19 concerned.

10:03AM 20 MR. CONNOT: If we could pull up Exhibit 16, please,
21 which has been admitted.

22 BY MR. ROBISON:

23 Q And that's one of the agreement and consent to proposed
24 actions. Do you see that?

10:03AM 25 A Yes.

1 Q And paragraph B says "Todd B. Jaksick has exercised his
2 rights under the indemnification agreement." Do you see that
3 reference?

4 A I do.

10:04AM 5 Q Okay. And if we go to -- I don't think it's on the
6 first page.

7 Go to the second page. There's a date and a signature
8 line for two of the cotrustees at that time to sign, July 25th of
9 2013. Do you see that?

10:04AM 10 A I do.

11 Q So this is an ACPA in reference to the indemnification
12 agreement.

13 Had you received a copy of the indemnification agreement
14 at the time this ACPA was executed?

10:04AM 15 A No.

16 Q And when did you provide Wendy with a copy of the
17 indemnification agreement, do you recall? It would have been
18 after 2015?

10:04AM 19 A Yeah, it would have been that -- when Kevin sent it to
20 me.

21 Q Were you in agreement with Todd asserting a claim that
22 the mortgage on his house should be paid pursuant to the
23 indemnification agreement?

10:05AM 24 A No, that was one of the discussions that Todd and I had.
25 And so, I mean, we were trying to resolve our differences on the

1 indemnification after the fact, and he was willing to take that
2 off at a later date.

3 And through some of our settlement negotiations, during
4 mediation, when we --

10:06AM 5 MR. ROBISON: Objection, Your Honor. Move to strike.

6 THE COURT: Sustained.

7 If you'll rephrase the question.

8 BY MR. CONNOT:

9 Q Yeah, I'll just reframe it a little bit.

10:06AM 10 So at some point, there was a resolution of some issues
11 that you and Todd had, and he agreed to withdraw the
12 indemnification agreement in regards to the mortgage on his house?

13 A Yes.

14 MR. HOSMER-HENNER: Same objection, Your Honor.

10:06AM 15 MR. CONNOT: I'm sorry?

16 MR. HOSMER-HENNER: Same objection, Your Honor. Move to
17 strike. It still goes to the terms.

18 THE COURT: Overruled.

19 I believe that that information is in evidence.

10:06AM 20 BY MR. CONNOT:

21 Q And that has only been within the last month; isn't that
22 true?

23 A Yes.

24 MR. CONNOT: May we approach, Your Honor?

10:06AM 25 THE COURT: Ladies and gentlemen, please stand and enjoy

1 this quick conversation. We will take our first break at 10:15.

2 (Court and counsel left the courtroom.)

3 THE COURT: Ladies and gentlemen, during this recess,

4 please do not discuss this case amongst yourselves. Please do not

10:08AM 5 form or express any opinion about this matter until it's submitted

6 to you.

7 We'll be in recess until 10:30.

8 (The jury left the courtroom.)

9 THE COURT: If everyone will be seated, please.

10:08AM 10 Throughout this case, I have felt that I put a blindfold

11 on and then threw darts at the dartboard because I just don't know

12 the case in the way trial counsel do.

13 I indicated that the term, preliminary, subject to

14 in-trial modifications, that the details of the settlement between

10:09AM 15 Todd and Stan would not be presented to the jury, but the fact of

16 settlement could be presented to the jury.

17 And that was my way of striking some balance between

18 undoubted prejudice on both sides.

19 Todd testified about the disagreement he had with Stan

10:09AM 20 relating to his personal residence and that the disagreement was

21 resolved shortly before trial began.

22 Going back to the blindfold and the darts, I recited

23 general law as I understand it, that bias, motivation is a

24 critical element for the jury to weigh; and that if Stan has a

10:10AM 25 financial interest in the outcome of this trial, I would tilt in

1 favor of allowing exploration of that bias.

2 And counsel stand before this Court and tell me he
3 absolutely has an interest that fluctuates according to the jury
4 verdict, and on the other side, he has no biased interest in the
10:10AM 5 outcome of this verdict. And I don't know what the truth is.

6 And that's what our sidebar conversation was.

7 Judge, he's going to -- he's going to realize an
8 enhancement to his settlement if the jury rules against Wendy.

9 I'm summarizing, but that was the theme Mr. Connot
10:11AM 10 proposed.

11 So, Counsel, what do I do? You are both telling me it's
12 Monday and it's Wednesday.

13 MR. HOSMER-HENNER: Your Honor, on this specific issue,
14 I think the answer is at least clear with respect to the house.

10:11AM 15 They are attempting to show bias with respect to Stan's
16 settlement.

17 This is a \$2.4 million benefit that goes to the family
18 trust, which benefits Wendy, rather than Todd, that we obtained
19 through the resolution of our differences through settlement.

10:11AM 20 So they are trying to show that there's a bias against
21 Wendy through this settlement term that could only possibly favor
22 her.

23 MR. CONNOT: The issue --

24 THE COURT: I'll hear from you.

10:11AM 25 MR. CONNOT: Thank you.

1 The issue trust as described would stand to benefit, as
2 well as the family trust, from the withdrawal of that
3 indemnification agreement in regards to Mr. Todd Jaksick's
4 personal residence.

10:11AM 5 But once again, it's contingent -- that is contingent,
6 along with several other terms in that agreement that they
7 achieved, that is contingent upon either reaching a resolution
8 with Wendy Jaksick or defeating her at trial, defeating her claims
9 at trial.

10:12AM 10 And so they both have an interest -- both Stan and Todd
11 have an interest in what the outcome is.

12 And so, once again, also for Todd to say I have
13 withdrawn that indemnification agreement, which was elicited by
14 the respondents, they want to make a production out of that. A,
10:12AM 15 it was withdrawn in the last month; B, it's a contingent
16 withdrawal.

17 It's not an unfettered withdrawal. It's based on that
18 term. And that's what I think is important, is this -- this
19 withdrawal where he wants to wear the white hat and say, yes, I'm
10:12AM 20 withdrawing the indemnification agreement, look at me.

21 It's contingent. It's based on defeating Wendy's claim.
22 It goes both to bias, as well as the fact of it's not accurate to
23 say withdrawal. It's a conditional withdrawal, Your Honor.

24 MR. ROBISON: I can put right on the record, right now,
10:13AM 25 from Todd Jaksick, that it's not conditioned on anything, and he

1 will definitively withdraw his house from the indemnification
2 agreement, no conditions.

3 THE COURT: Is that different than the settlement
4 agreement that was reached in mediation?

10:13AM 5 MR. ROBISON: Oh, we -- I don't think so.

6 I was removed from that. These gentlemen were more
7 involved.

8 MR. LATTIN: No, that's the same as in the settlement
9 agreement.

10:13AM 10 THE COURT: Unconditional removal of the house --

11 MR. LATTIN: Yes.

12 THE COURT: -- regardless of the jury outcome?

13 MR. LATTIN: Yes. And that was also on the record prior
14 to the time of the settlement.

10:13AM 15 MR. HOSMER-HENNER: I have a different opinion from
16 that, Your Honor. But without going into that, the fact that it's
17 contingent doesn't matter.

18 They are trying to show a bias for Stan and Todd to
19 defeat Wendy in order to give her a benefit under the settlement
10:13AM 20 agreement. It doesn't make any sense.

21 There's no logical chain between the steps they are
22 doing and the narrow exception to the terms of the settlement
23 agreement in order to get that term in. They just want to use it
24 for its prejudicial purposes.

10:14AM 25 But regardless of whether it's contingent or not, the

1 cotrustees have reached an agreement to remove something that
2 creates a benefit for Wendy. So how could that possibly --
3 whether it's contingent, it's trying to argue that Stan has an
4 incentive to defeat Wendy in order to give her that benefit. It
10:14AM 5 just doesn't make sense, Your Honor.

6 THE COURT: I don't know what to do. I wish to avoid
7 harm in my evidentiary decisions, excepting harmless error,
8 throughout the trial.

9 I don't know what to do. I can't reconcile what's
10:14AM 10 before me. And I haven't read this settlement agreement. I'm a
11 finder of fact on both claims. I didn't want to.

12 MR. CONNOT: And I would disagree with their
13 interpretation.

14 THE COURT: I'm confident. Well, I'm confident there's
10:14AM 15 disagreements in the middle of this court and between the
16 siblings. That's why we're here.

17 MR. ROBISON: Your Honor, you have to look at it as
18 though did Stan or Todd fabricate or change their testimony or
19 presence in this trial because they agreed that that house is off
10:15AM 20 the indemnification agreement.

21 THE COURT: No, I think there's a much larger context
22 than that narrow -- because I don't want to substitute my role for
23 the jury, but I'll soon have a role. And I think that that
24 isolated argument doesn't encompass the scope of this
10:15AM 25 disagreement.

1 There's something much larger going on here.

2 MR. ROBISON: That's true, but that's the question
3 that's being asked. And you only get that house taken off the
4 indemnification agreement if you prevail against Wendy, therefore,
10:15AM 5 you are biased, that's not the case. That's just not the case.

6 THE COURT: But then is there other benefit to Stan if
7 Todd prevails against Wendy's claims?

8 MR. ROBISON: There is detriment to Stan if Wendy sets
9 aside the Tahoe transaction.

10:16AM 10 MR. CONNOT: There are a litany of other terms. I'm not
11 going to get into them. It's not just the indemnification
12 agreement, so that's part of it.

13 Todd Jaksick himself testified in his deposition, as
14 well as here at trial, that there are benefits to Wendy and there
10:16AM 15 are detriments to Wendy.

16 Some things benefit her. Some things are adverse to her
17 in the settlement agreement.

18 Once again, they are the ones who chose to make it
19 conditioned. Despite what they are stating here today, that's not
10:16AM 20 what the terms of the agreement say.

21 And more importantly, they opened the door. They want
22 to wear -- once again, they want to wear the white hat and say,
23 oh, yes, Todd is this great guy because he's now withdrawn his
24 claim. It's a conditional withdrawal.

10:16AM 25 THE COURT: Well, I don't know if it is. I have counsel

1 telling me it is not now, and I have counsel telling me it never
2 was.

3 MR. ROBISON: And I can put on the record that it's not,
4 right now.

10:16AM 5 THE COURT: I'm telling you, nobody is -- so what is
6 your request, Mr. Connot, as to this witness?

7 MR. CONNOT: At a minimum, that this withdrawal of the
8 indemnification agreement is conditional, and it is conditional
9 upon defeating Wendy's claims.

10:17AM 10 MR. ROBISON: Why would we lie to the jury? It's not
11 conditional. Why would you allow that false representation to be
12 in that jury box?

13 THE COURT: Do you know what, Mr. Robison, there are
14 mistruths -- untruths spoken to juries throughout the country and
10:17AM 15 throughout this county all of the time and maybe in this case
16 already.

17 MR. ROBISON: Well, Your Honor --

18 THE COURT: The jury is going to have to reconcile
19 competing perspectives. Whether they conclude there are
10:17AM 20 intentional mistruths or just different perspectives is for the
21 jury.

22 MR. ROBISON: The notion that it is conditional is
23 resolvable by putting a representation on the record under oath
24 that Todd says it's not conditional, it's withdrawn, period.

10:18AM 25 THE COURT: In front of the jury?

1 MR. ROBISON: Well, if necessary, yes, in front of you,
2 or otherwise.

3 MR. CONNOT: Your Honor, they are backed into a corner,
4 so now they want to change the terms of what they agreed to.

10:18AM 5 I mean, they are backed into a corner. And so now, they
6 want to say, in the midst of trial, oh, in order to take away the
7 sting of what we've already put out there, trying to wear the
8 white hat, we don't want to own up to that, to what the true facts
9 are. So now, we're going to shift the facts.

10:18AM 10 MR. ROBISON: We are going to testify to that anyway. I
11 I'll call him back in our case in chief and he's going to testify
12 to that, like it or not.

13 THE COURT: Now, hold on. Hold on. It seems to me that
14 Todd has testified that he always intended to remove his home from
10:19AM 15 the indemnification agreement, that -- regardless of the
16 settlement he reached with Stan. That's my memory of his
17 testimony.

18 Is that consistent or inconsistent with your --

19 MR. CONNOT: That's what he's testified to here, but
10:19AM 20 that doesn't coincide with the facts where it's continued to be
21 carried as an obligation of the trust throughout this. That's a
22 recent development, Your Honor.

23 MR. ROBISON: I don't think that's a fair
24 characterization.

10:19AM 25 Todd and Stan were talking about this, I think, from the

1 point in time that the dispute first arose. And now that it has
2 been crystalized and formalized doesn't mean that that wasn't the
3 deal, the representations made by Todd previously.

10:19AM

4 THE COURT: Did Stan know until the settlement agreement
5 that that was always Todd's intention?

10:20AM

6 MR. CONNOT: It's been carried on the accountings that
7 way, Your Honor. My understanding is, even in his deposition, he
8 had concerns about the scope of the indemnification agreement, how
9 it's being used. Even on the most recent accountings, it's
10 continued to be carried.

11 One thing -- I would just put this out there, Your
12 Honor. I realize, you know, because of the role that you are
13 playing here, you don't want to see the terms of it.

10:20AM

14 But I think specifically Section 3 of the settlement
15 agreement, just that, which doesn't describe the other terms of
16 the settlement, that's the provision that I would propose the
17 Court look at, just that paragraph, that specifically states that
18 it's conditional and contingent.

10:20AM

19 THE COURT: Would you all be seated for a moment. We're
20 going to break soon.

10:21AM

21 I would like you to elicit an evidentiary proffer from
22 this witness about the testimony he would provide regarding his
23 understanding or participation in a conditional versus
24 unconditional settlement agreement, because I hear counsel all the
25 time, but counsel don't replace facts, and let me just hear it.

1 MR. CONNOT: Okay.

2 BY MR. CONNOT:

3 Q Stan, what's your understanding of how the settlement
4 agreement reached between you and your brother Todd will be
10:21AM 5 impacted if Wendy were to receive a favorable verdict in her favor
6 here?

7 A I really don't see how it is impacted, because like we
8 just discussed, removing this home -- Todd's home off the
9 indemnification absolutely reduces that amount of his
10:22AM 10 indemnification agreement.

11 And so that is a good thing for the family trust and
12 Wendy.

13 With regard to the other things that Todd and I have
14 discussed, they are resolved. I don't see how those affect Wendy.

10:22AM 15 Q And I don't want to get into the specific details.

16 A Yeah.

17 Q So I want you to be cognizant of that, Stan.

18 There are terms in that settlement agreement that are
19 favorable to you, correct?

10:22AM 20 A I suppose you could say that. I mean --

21 Q You wouldn't have entered into it unless you felt that
22 you were receiving some benefit, correct?

23 A Well, I felt that I had that benefit already.

24 Q Then what was the purpose of entering into the
10:22AM 25 settlement agreement if you already had the benefit?

1 A To save time and attorney's fees and hope to come with a
2 global settlement of this whole matter.

3 Q And resolve differences and disagreements that you have
4 with your brother Todd?

10:23AM 5 A It's my understanding that the Court asked us to sit
6 down and mediate this thing at the beginning of January and try
7 and resolve our differences, and that's what we were doing.

8 Q And prior to that, had Todd ever said I'm withdrawing my
9 indemnification agreement in regards to my mortgage, prior to
10:23AM 10 these discussions in regards to potential settlement?

11 A Todd knew that was one of my issues. And he said that
12 at a point down the road, when he was -- got some additional debt
13 paid down, he would remove his house.

14 Q But that was one of the disputes for which you and your
10:23AM 15 brother were involved. In fact, you brought a claim. You sued
16 your brother, correct?

17 A Uh-huh.

18 Q And one of -- just a "yes" or "no."

19 A Yes.

10:23AM 20 Q And one of the reasons was because of the scope of the
21 indemnification agreement he was asserting at that time, including
22 the mortgage on his house?

23 A Yes, that's correct.

24 Q So that was -- that was part of the dispute for which
10:24AM 25 you filed the lawsuit against your brother?

1 A Correct.

2 Q And that is the lawsuit that was resolved, among other
3 things, between you and your brother with this recent settlement
4 agreement, correct?

10:24AM

5 A Yes.

6 Q And a specific part of that settlement agreement says
7 it's effective upon execution, but conditioned and contingent upon
8 either a settlement with Wendy that doesn't materially alter it or
9 a litigated resolution at trial that does not alter it, meaning
10 the trial involving Wendy, that this is contingent and conditioned
11 upon either achieving a settlement with Wendy that you can all
12 agree with, you and Todd, or achieving what you believe to be a
13 favorable result at trial for you and Todd that doesn't materially
14 alter the terms, correct?

10:24AM

15 A Well, again, I think that the house coming out of or off
16 the indemnification agreement --

17 THE COURT: Which house are you referring to?

18 THE WITNESS: Todd's house.

19 -- absolutely benefits Wendy.

10:25AM

20 BY MR. CONNOT:

21 Q But that's a provision of the settlement agreement
22 itself, correct?

23 A Yes. I mean, that's a big part of it.

24 Q And that settlement agreement, though, is contingent and
25 conditioned upon either achieving a resolution, meaning a

10:25AM

1 settlement with Wendy, or a result that Wendy achieves that
2 doesn't alter the terms of this agreement?

3 A I don't see how the house situation changes, regardless
4 of the outcome this trial.

10:25AM 5 Q So if the -- for example, the option agreement is undone
6 and the Lake Tahoe house is returned to the family trust, that
7 would impact the terms of the settlement reached between you and
8 Todd, correct?

9 A Yes, but it wouldn't affect the house being removed from
10:25AM 10 the indemnification.

11 Q Okay. But it would affect other terms of the agreement
12 reached, correct?

13 A Correct.

14 Q Okay. So there is outcome here whereby you wouldn't be
10:26AM 15 able to achieve the terms that you want, depending upon the
16 outcome of this case, if you are not able to reach a settlement
17 with Wendy, depending upon how the jury or the judge might rule
18 here, that might impact other terms of the settlement agreement,
19 correct?

10:26AM 20 A I suppose so.

21 THE COURT: Okay. We need to -- Mr. Hosmer-Henner,
22 would you have any follow-up?

23 MR. HOSMER-HENNER: No, Your Honor.

24 THE COURT: Mr. Robison?

10:26AM 25 MR. ROBISON: I just have one question.

1 Stan, did you enter into the negotiations with the
2 sincere belief that these would not be presented to the jury and
3 were settlement negotiations?

4 THE WITNESS: Yes.

10:26AM

5 MR. ROBISON: Thank you.

6 THE COURT: Ms. Clerk, please make a copy of the
7 settlement agreement with all provisions except paragraph 3
8 redacted and bring it in to chambers, please.

10:27AM

9 Deputy, please tell the jury that it's going to be
10 another 20 minutes at a minimum because we are going to break for
11 15 minutes for our reporter, and then I need time to go back into
12 closed session.

10:27AM

13 MR. CONNOT: It doesn't have to be on the record. I
14 believe it's Exhibit 457, I believe -- I believe -- it has not
15 been offered or admitted yet, but I believe it's in the binders.

16 THE COURT: Just confirm it.

17 Ms. Clerk, please bring it in.

18 THE CLERK: Yes.

19 (A recess was taken.)

10:38AM

20 THE COURT: Once I announce my decision, there will be
21 some fallout. And so I intend to leave the courtroom to allow
22 people to regroup a little bit.

23 Mr. Connot's proposed line of questioning is approved.

10:40AM

24 There will be no questions about the expressed terms of
25 the settlement agreement, except the removal of Todd's home from

1 the indemnification agreement.

2 That concept can be teased out by all attorneys, whether
3 on direct or cross, about whether it was going to happen, it did
4 happen before, it's happened now. The jury will just hear
10:40AM 5 anything that counsel want about the indemnification agreement and
6 Todd's personal house.

7 Mr. Connot may ask the witness if the complete agreement
8 between Todd and Stan is contingent or conditioned in any way upon
9 the outcome of this trial. Based upon Stan's answer, I may allow
10:41AM 10 you to impeach with paragraph 3, which is the only provision of
11 the agreement that I have read.

12 We'll reconvene in ten minutes -- or seven minutes, at
13 exactly 10:50.

14 (A recess was taken.)

10:48AM 15 THE COURT: Mr. Stan, if you'll return.
16 Get the jury, please.

17 (The jury entered the courtroom.)

18 THE COURT: Counsel, you may continue.

19 MR. CONNOT: Thank you, Your Honor.

10:50AM 20 Would it be better to pull up the exhibits there, rather
21 than give you the binder?

22 BY MR. CONNOT:

23 Q Stan, if we could pull up Exhibit 111, which has been
24 admitted.

10:51AM 25 A Yes.

1 Q And that's an email dialogue between you and Wendy. And
2 so as emails go, you kind of have to go to the bottom. So if we
3 go to the bottom of that first page, do you see that that's an
4 email, February 27th -- oh, a year ago today, now that I look at
10:51AM 5 that -- February 27th of 2018, from you to Mr. Hosmer-Henner?

6 A Yes.

7 Q Do you recall that email, sir?

8 A Yes.

9 Q Okay. And it says "Hey, Adam, I called Bob LeGoy today
10:51AM 10 to ask him how these notice of proposed actions came about, trying
11 to understand the process that took place, who initiated it, who
12 drafted it, et cetera.

13 "He mentioned their firm put together a couple of them
14 to deal with certain trust matters, which makes sense, and there
10:52AM 15 were certain documents that dealt specifically with trust issues.

16 "However, he said after that occurred, that Todd and
17 Jessica drafted most of the other ones, which now make total
18 sense. They would put these agreements together also with the
19 help of Nik Palmer."

10:52AM 20 And Nik Palmer is another attorney, correct?

21 A Yes.

22 Q The email continues, "I just assumed they came from
23 LeGoy's office. He would always get me to sign them in that hurry
24 rush time frame and then get them back to McQuaid to hold and file
10:52AM 25 at the appropriate time."

1 Continues on the next page, "So this is a perfect
2 example of how Todd and Jessica would forge fraudulent documents
3 for the benefit of Todd."

10:52AM

4 That's what you wrote in email to your attorney; isn't
5 that true?

6 A Yes.

7 Q It says "Whether it was me signing them or they were
8 forging my dad's signature, and all along, I assumed they came
9 from LeGoy's office."

10:53AM

10 "Definitely need to take McQuaid, LeGoy, Palmer, Todd
11 and Jessica depositions regarding this."

12 So you had concerns about potentially forging -- Todd
13 and Jessica potentially forging documents; isn't that true?

14 A I did.

10:53AM

15 Q And, in fact, you -- you sued your brother for breach of
16 fiduciary duty; isn't that true?

17 A I did.

18 Q And you and your brother recently reached a resolution
19 of that dispute?

10:53AM

20 A Yes.

21 Q And one of the terms of that resolution -- that was
22 achieved within the last month, correct?

23 A Yes.

10:53AM

24 Q -- was that Todd would agree at that time as part of
25 that resolution to remove his home from the indemnification

1 agreement, correct?

2 A That's correct.

3 Q But that indemnification agreement, or that agreement
4 for the resolution between you and your brother Todd, is expressly
10:54AM 5 contingent and conditioned upon the resolution of this case with
6 Wendy; isn't that correct?

7 A No.

8 Q Okay.

9 MR. CONNOT: Your Honor, I would offer that section of
10:54AM 10 Exhibit 457.

11 THE COURT: I think there are a few preliminary
12 questions you can ask by reference to the document before it is
13 formally admitted.

14 BY MR. CONNOT:

10:54AM 15 Q Okay. Did you and your brother enter into a written
16 agreement setting forth the terms of the resolution between you
17 and him?

18 A Yes.

19 Q And that agreement contains several terms, in addition
10:54AM 20 to this resolution of the -- him withdrawing his indemnification
21 agreement?

22 A Yes.

23 Q Okay. And has there been any formal document filed with
24 the Court, seeking Court approval or otherwise, by Todd, in
10:54AM 25 regards to this assertion that he's withdrawing his

1 indemnification agreement?

2 A Not that I'm aware.

3 Q So the agreement that you reached with your brother to
4 resolve the issues, has --

10:55AM 5 THE COURT: I think it's appropriate for you to approach
6 the witness and have him read the paragraph you are referring to
7 and have him read it quietly to himself.

8 MR. CONNOT: Do you have those reading glasses,
9 perchance?

10:55AM 10 MR. ROBISON: I do.
11 And I object, for the record.

12 MR. CONNOT: You object to the use of your reading
13 glasses?

14 MR. ROBISON: I just want them back.

10:55AM 15 THE WITNESS: Yes.

16 MR. SPENCER: Your Honor, I think it's appropriate to
17 ask for the witness's understanding, rather than try to impeach
18 him with this specific document.

10:55AM 19 THE COURT: I'll give you an opportunity, allow your
20 examination.

21 BY MR. CONNOT:

22 Q If you could read the bottom of that page, just read it
23 to yourself right now, please.

24 A Paragraph 3?

10:56AM 25 Q Where it starts with Section 3. Don't read it out loud,

1 just read it to yourself, please, sir.

2 A Okay.

3 Q So after having read that Section 3 of the agreement, is
4 it your understanding that the terms of the agreement for the
5 resolution reached between you and your brother, including Todd's
6 proposal to withdraw his personal residence from the -- payment of
7 the mortgage on his personal residence from the indemnification
8 agreement, is conditioned and contingent upon the outcome of this
9 trial?

10 A Well, I guess it depends.

11 Q Okay. Depends on what, sir?

12 A Regarding the house, that benefits Wendy.

13 By removing that debt from Todd's indemnification only
14 reduces the amount that, you know, the trust would have to pay.

15 So that certainly helps Wendy.

16 Q Okay. But that's not my question, though, sir.

17 A Okay.

18 Q Were you present at Todd Jaksick's deposition on
19 February 1st?

20 A I was.

21 Q And do you recall Todd testifying that there are terms
22 of the agreement for resolution reached between you and your
23 brother --

24 MR. HOSMER-HENNER: Your Honor, I'll object at this
25 point.

1 THE COURT: Let's have the question. I need to hear the
2 question before I rule on it.

3 BY MR. CONNOT:

10:58AM

4 Q -- that while some terms benefit Wendy, some terms are
5 detrimental to Wendy, do you recall that?

6 THE COURT: Okay. Stop.

7 MR. HOSMER-HENNER: Your Honor, that goes exactly to
8 your order about the terms of the settlement.

10:58AM

9 THE COURT: It's overruled.

10 You may answer the question.

11 THE WITNESS: I'm sorry, can you repeat that.

12 BY MR. CONNOT:

13 Q Okay. Do you recall at Todd's deposition recently on
14 February 1st of this year, just a few weeks ago --

10:58AM

15 A Yes.

16 Q -- where Todd testified that while there are terms in
17 that agreement reached between you and your brother to resolve
18 your disputes that may benefit Wendy, there are also other terms
19 that may be to Wendy's detriment? Do you recall that?

10:58AM

20 A Yes.

21 Q So while the removal of the indemnification agreement
22 may or may not benefit Wendy, once again, the terms of that
23 agreement reached between you and your brother, regardless of the
24 benefit or detriment, are conditioned and contingent upon the
25 outcome of this trial; isn't that true?

10:59AM

1 A Like I said, I think it's possible.

2 Q Okay. Is that a specific term of the agreement? The
3 specific term that you just read states that it's conditioned and
4 contingent; isn't that true?

10:59AM

5 A Yes.

6 MR. CONNOT: Okay. If I could approach --

7 THE COURT: Yes, please.

8 MR. CONNOT: And I would like you to hold on to
9 Mr. Robison's glasses so he can't read, but I think I better give
10 them back. Oh, he's got another pair.

10:59AM

11 MR. ROBISON: Seriously, if he needs them, they are
12 fine. I've got two.

13 MR. CONNOT: Let me know if you need them again.

14 THE WITNESS: Okay.

10:59AM

15 BY MR. CONNOT:

16 Q Now, the indemnification agreement, do you recall Todd
17 asserting a creditor claim back in 2013 against the estate or the
18 trust?

11:00AM

19 A I recall the -- I recall the creditor claims, and I
20 honestly don't recall the indemnification being part of that.

21 Q So you recall a creditor claim being asserted by Todd in
22 2013 and at least a reference to an indemnification agreement, or
23 do you recall anything about the indemnification agreement in
24 2013?

11:00AM

25 A I don't recall.

1 Q So once again, the first recollection you have of being
2 made aware of this indemnification agreement was in 2015?

3 A Yes.

4 Q And then you provided it to Wendy sometime after that?

5 A Yes.

6 Q And this indemnification agreement, was that utilized to
7 make -- or, to have the trust pay capital calls for Jackrabbit
8 interests that both Todd owned and you owned?

9 A Yes.

10 Q Okay. So -- and those were interests that you and Todd
11 held yourselves, correct, individually?

12 A Yes, but Wendy also had an interest in that through
13 the -- the family trust had an interest as well. And so it was
14 paying, you know, obviously, the family trust portion. And so she
15 benefitted from that.

16 Q Okay. So the -- but that was held through the family
17 trust. Wendy's interest was held through the family trust. So
18 the family trust was making the Jackrabbit capital calls for the
19 benefit of the family trust and, ultimately, the beneficiaries
20 thereof, of which Wendy is a beneficiary?

21 A Yes.

22 Q But the family trust was also making capital calls for
23 interest held by Todd and interest held by you outside of the
24 family trust, correct?

25 A Yes, but I, you know, later mentioned to Todd that I

1 thought that we should pay those ourselves.

2 Q Has Todd ever repaid those?

3 A Not at this time. I mean, I think he -- you know,
4 again, the indemnification agreement is -- we all just kind of
5 thought would be determined through this court proceeding, so --
6 whether it will be enforced or not.

7 Q Were you through? I didn't mean to interrupt you.

8 A Yeah.

9 Q But suffice it to state that the family trust has made
10 payments for capital calls for Jackrabbit interest held by you and
11 held by Todd outside of the trust, and those amounts haven't been
12 repaid yet to the family trust, have they?

13 A They have not, but both Todd and I have made payments
14 ourselves, individually.

15 Q Okay. So you've made -- you've made payments on your
16 own capital calls, your own individual interest capital calls from
17 your own pocket?

18 A Yes.

19 Q But you have also received -- or, the family trust has
20 also paid capital calls on your behalf and on Todd's behalf for
21 your individual interest held outside the trust?

22 A That's correct.

23 Q And those capital call payments were made prior to all
24 of the trust debts being paid; isn't that true?

25 A Yes.

1 Q And you've questioned whether or not that's your
2 father's signature on the second amendment; isn't that true?

3 A I did.

4 Q Would you have signed the Lake Tahoe ACPA, Exhibit 14,
5 had you known that Todd owned 100 percent of Incline and that
6 Incline owned the Lake Tahoe house at that time, or at least, the
7 deed was in its name?

8 A No.

9 Q Was it your understanding that by your father placing it
10 in SSJ, LLC, prior to his death, the Lake Tahoe house, that that
11 got it out of reach of creditors?

12 A Again, I'm not an attorney, so I don't -- I don't know.
13 I mean, I know there were discussions about, you know, trying to
14 get it out of my dad's name and, really, more for the creditor
15 protection situation, and -- but, yeah, I thought SSJ, LLC, would
16 have done that, I mean, but --

17 Q And, in fact, that's what you testified to in your
18 deposition, that you thought by virtue of Lake Tahoe being in SSJ,
19 LLC, that that put it out of reach of creditors?

20 A That was my opinion, yes.

21 Q Did you have some concerns about these ACPAs and the
22 fact that that resulted in self-dealing for Todd, including the
23 ACPA for the Lake Tahoe house, the indemnification agreement and
24 cattle land that we discussed?

25 MR. HOSMER-HENNER: Objection, calls for a legal

1 conclusion --

2 THE COURT: Overruled.

3 MR. HOSMER-HENNER: -- this is self-dealing.

4 THE COURT: Excuse me. I'm sorry to speak over you,

11:05AM 5 Counsel.

6 Overruled.

7 THE WITNESS: Yeah, I didn't understand, you know,

8 honestly, the -- at the time, the real purpose behind all of

9 these, I mean.

11:06AM 10 I did think that they were important, you know. My -- I
11 just didn't have a real understanding. We were getting a ton of
12 documents from Maupin, Cox & LeGoy, the law firm, and I just
13 thought, you know, some of these were things they needed us to
14 sign.

11:06AM 15 And I didn't, until later, realize their scope and what
16 they really involved.

17 BY MR. CONNOT:

11:06AM 18 Q And when you realized that later, you had concerns that
19 that was benefitting -- that that was a benefit more to Todd than
20 the trust or anyone else?

21 A I would say, not all of them, but yes.

22 Q Well, the cattle one, correct?

23 A Yes.

11:07AM 24 Q The Lake Tahoe house one, which was the first one that
25 was introduced here, Exhibit 14?

1 A I hadn't seen that one, but --

2 Q But you had concerns about what the outcome of that was.

3 In fact, you wouldn't have signed it, had you know what the

4 implications of that ACPA were, correct?

11:07AM 5 A I didn't sign it.

6 Q Okay. So you didn't sign -- you didn't sign Exhibit 14,

7 the ACPA?

8 A I did not.

9 MR. CONNOT: Okay. Could we pull up Exhibit 14, please.

11:07AM 10 And that's the one regards to Lake Tahoe, I believe --

11 is that 13? I think you've got --

12 MR. ROBISON: That's 14.

13 MR. CONNOT: That is 14. We need 14. You've got 13 up.

14 There you go. 14.

11:08AM 15 BY MR. CONNOT:

16 Q That's the ACPA for Incline TSS and the Lake Tahoe

17 house. Do you recognize that?

18 A Yes.

19 Q Okay. Let's go to the third page of that. Do you see

11:08AM 20 your signature there, Stan?

21 A Yes.

22 Q So did you sign the ACPA, which is Exhibit 14?

23 A Well, I never saw it, so I don't know how I signed it.

24 Q Okay. But is that your signature on this page, which

11:08AM 25 has been referred to as -- the ilk of these have been referred to

1 as "orphan signature pages."

2 Does that appear to be your signature on that signature
3 page?

4 A That's my signature, sure.

11:08AM 5 Q But you dispute that that signature page was attached to
6 Exhibit 14?

7 A Again, I never saw Exhibit 14, so I don't --

8 Q Would you -- I'm sorry to interrupt you.

9 A I don't know how I would have signed.

11:09AM 10 Q At some point in time after June of 2013, did you see
11 Exhibit 14, though?

12 A Yeah, I saw it when the petition was filed.

13 Q So prior to the time the petition was filed sometime in
14 2017, you had not seen Exhibit 14?

11:09AM 15 A No.

16 Q Did you ever know Jessica Clayton to switch out or
17 manipulate pages of documents?

18 A Not at the time, no.

11:09AM 19 Q When you say "not at the time," I mean, have you come to
20 an opinion any time between then and now?

21 A Well, yeah, I would say after the -- you know, this --
22 looking through documents and stuff, it seems as though there were
23 things that I don't recall taking place.

11:10AM 24 Q And what does that consist of, sir? What's changed your
25 opinion, or has your opinion changed?

1 A Well, again, I was not aware of the -- that they were
2 doing those ACPAs, that Todd and her were doing those.

3 Q And, in fact, your email that we looked at earlier, you
4 had concerns about them, you know, forging or having fraudulent
5 documents?

11:10AM

6 A Yeah, I just wasn't aware that -- you know, I was not in
7 the loop on that one, that we were doing that in-house.

8 Q And, in fact, some of the ACPAs say that they were
9 prepared by the cotrustees. Are you aware of that?

11:10AM

10 A Yes.

11 Q And you were a cotrustee, right?

12 A Yes.

13 Q In fact, you have been a cotrustee since your father
14 died in April of 2013, through today, correct, of the family
15 trust?

11:11AM

16 A Correct.

17 Q And so the ones that say that they were prepared by the
18 cotrustees, were you involved in the preparation of those ACPAs?

19 A Yes.

11:11AM

20 Q So that would be inaccurate to say that they were
21 prepared by the cotrustees?

22 A Correct.

23 Q And you also had concerns about an option regarding
24 Buckhorn. Can you describe for the jury what your concerns were
25 about Todd's actions in regard to the Buckhorn option.

11:11AM

1 A My dad had given both of us an option for an additional
2 interest in Buckhorn. And Todd -- we had a discussion. He was
3 going to put his option into effect. And when I asked him about
4 my situation, he said mine had expired, my option.

11:12AM 5 Q So your option had expired, is what Todd told you, and
6 apparently, his was still valid?

7 A Yeah. I didn't understand it.

8 Q Okay. So what did he do after that? Did he exercise
9 his option?

11:12AM 10 A Yes.

11 Q And how much of a percentage interest were you supposed
12 to acquire pursuant to the option that you held?

13 A I thought they were both 7 and a half percent. However,
14 apparently, I was wrong because Todd told me after the fact, no,
11:12AM 15 it was 15 percent option.

16 Q 15 percent each?

17 A Yes.

18 Q 15 percent -- you had an option to purchase 15 percent
19 of Buckhorn at a certain price, and Todd had an option to purchase
11:12AM 20 15 percent of Buckhorn at a certain price?

21 A Yes.

22 Q And then Todd told you that your option had expired?

23 A Yes.

24 Q And then did you subsequently find out what happened to
11:13AM 25 that 15 percent that you would have been receiving pursuant to

1 your option, had you exercised it?

2 A Well, the 15 percent that I had just stayed in the
3 family trust.

4 Q But Todd exercised his option after the date that he
5 told you yours had expired?

6 A Yes.

7 MR. CONNOT: 126, is that in?

8 THE CLERK: It's in.

9 MR. CONNOT: It is. Could you pull up 126, please,
10 Keith. If you go to page 4.

11 BY MR. CONNOT:

12 Q And this -- hold on, let's go back to page 1 -- I'm
13 sorry -- so we know what we're talking about.

14 This is titled the Samuel S. Jaksick, Jr. Family Trust
15 Financial Statements, April 1, 2016, to December 31 of 2017.

16 Is it your understanding that these are the most recent
17 financials in regards to the family trust that have been provided?

18 A Yes.

19 Q Okay. So if we go to page 4.

20 Yeah, it's page 4 of this at the bottom. I believe it's
21 page 4 of the document. It's entitled page 4.

22 And there are notes and other receivables listed. And
23 if we go down to the fourth one, it says "Note receivable,
24 Todd Jaksick Family Trust, Note Number 3."

25 And that's -- that's the advance that originated from

1 the payment to Ag Credit on behalf of Todd, correct?

2 A Looks like it, yeah.

3 Q And that's the amount of \$90,568?

4 A Yes.

11:15AM

5 Q And so that's where Todd had -- through the
6 indemnification agreement, had the family trust pay off a debt for
7 an interest that he held outside the trust, and then gave a note
8 back to the trust at 1.5 percent interest, correct?

9 A Yes.

11:15AM

10 Q Okay. The next one, on that same page, another note
11 receivable in the amount of \$105,510.75, once again, for the
12 benefit of Todd.

13 And that's another advance on the Ag Credit that paid
14 indebtedness that benefitted Todd outside of the trust, correct?

11:15AM

15 A Yes.

16 Q And that's another note that's at 1.5 percent interest
17 where Todd negotiates and issues a note where he's only paying
18 1.5 percent interest, sort of like an IOU to the trust, correct?

19 A Correct.

11:16AM

20 Q And the trust never saw any money as a result of this,
21 did they? The trust put out money. The trust had to pay out of
22 its assets, this trust that we have heard that's had financial
23 difficulties, and Todd Jaksick gets an interest paid for, for
24 himself, and just issues an IOU back to the trust for 1.5 percent,
25 correct?

11:16AM

1 A That's correct, but again, this is regarding the
2 Ag Credit loan, however. So --

3 Q Okay. But it involved the Ag Credit loan. But, once
4 again, Todd Jaksick got the benefit of that for his 51 percent
5 interest in the entity that the American Ag Credit loan -- that
6 the Ag Credit loan was held on, correct?

7 A That's correct.

8 Q Yeah. And that's something that he should have paid on
9 his own, and instead, the money comes out of the family trust and
10 he gives an IOU at a low interest rate back to the trust, correct?

11 A Yes.

12 Q And the trust doesn't have that money in its pocket
13 today, does it? It doesn't have that cash. We have heard about
14 liquid asset and unliquid assets. It's not a liquid asset, is it?

15 A No.

16 Q And if we go to page 16 of that same document, and we
17 see -- and I believe it's the same -- let me double-check.

18 So we have on that one, lines 3 and 4, which are the
19 ones we just talked about. They show up again on page 16.

20 But if we go down to the final entry on that page,
21 that's another Ag Credit one in the amount of 105,510.75 where
22 Todd Jaksick received a benefit personally and gave an IOU back to
23 the trust for 1.5 percent interest, correct?

24 A Correct.

25 Q And have those amounts ever been paid back?

1 A Again, I think that was going to be determined based on
2 this trial.

3 Q But they never have been paid back to this point, have
4 they?

11:18AM 5 A They have not, no.

6 Q When you say that's dependent on this trial, that's this
7 resolution that you and your brother reached that's conditioned
8 and contingent upon the outcome of this trial, correct?

9 A Not with regard to the Ag Credit stuff.

11:18AM 10 Q So not with regard to the Ag Credit stuff. But, once
11 again, there's an IOU out there, when we've heard all of this
12 testimony and assertion about the precarious financial position of
13 the trust. And we have, A, one of the trustees of the trust who
14 is getting a personal benefit and cash is being taken out of the
11:18AM 15 family trust, and that person, that trustee, who has a fiduciary
16 duty, is given an IOU back of 1.5 percent interest?

17 A Again, with the Ag Credit complex, my understanding is
18 that involves the property that is set up in the issue trust,
19 49 Mountain.

11:19AM 20 So that's -- when my dad and I -- when my dad and Todd
21 put that together, that's how they set that up. And it was one of
22 those -- again, this was -- I didn't have full understanding of
23 it, you know, way back when.

24 But now, I do believe that the family trust should be
11:19AM 25 paying those because it's not like he has an interest in a massive

1 that's worth any money.

2 He has, basically, you know, signed his name to these
3 obligations for the benefit of the -- you know, the family -- the
4 issue trust and the property that is involved in that.

11:20AM 5 Q But, once again, he controls 51 percent of the entity
6 that actually owns the ranch land, correct?

7 A That's correct.

8 Q And that interest, that ranch land and the entity that
9 owns it, that he owns 51 percent of, personally or through his
11:20AM 10 trust, if that property were sold, he would receive 51 percent of
11 the net proceeds, correct?

12 A That's my point, though. It can't be sold.

13 Q So it can't be sold?

14 A Cannot be sold.

11:20AM 15 Q And what's your understanding of why it can't be sold?

16 A Because it's the property that's set up in the issue
17 trust.

18 Q Are you aware that the issue trust says while they
19 encourage it not to be sold, that the trustee can make those
11:20AM 20 decisions, if necessary?

21 A Yeah, that's come out in this trial.

22 Q So to say it can't be sold is not 100 percent accurate.
23 It can be sold, correct?

24 A That, I don't know. I mean, there are certain areas
11:21AM 25 that my dad told me, told all of us, that, you know, he wanted to

1 keep forever. And so there might be areas within that property
2 that could be sold, you know, that aren't as important.

3 Q But if you assume -- and I just want you to make this
4 assumption for purposes of this question. I'm not asking you to
5 ascribe to it.

6 But if you assume that the issue trust under certain
7 circumstances would permit that property to be sold, in that
8 scenario, Todd Jaksick, himself or through his trust, would
9 receive 51 percent of the net proceeds, correct?

10 A I think that's true.

11 Q And actually, what -- the issue trust doesn't own the
12 ranch, does it? The issue trust holds a 49 percent interest in
13 the entity that owns the ranch, correct?

14 A That's correct.

15 Q Okay. And Todd himself and through -- and/or through
16 his trust, own the other 51 percent, which is the majority
17 interest in that entity, correct?

18 A Yes.

19 Q And that majority interest in that entity could make the
20 decision to sell the assets of the entity?

21 A Yes.

22 Q Right. And the issue trust would get its 49 -- would
23 get the proceeds from its 49 percent interest. It wouldn't be
24 able to stop that sale, would it?

25 A That's true.

1 Q And the sole trustee of the issue trust is Todd Jaksick,
2 correct?

3 A Yes.

4 Q So Todd controls 100 percent of that entity, correct?

11:22AM

5 A He does.

6 MR. CONNOT: Don't put it up yet, but Exhibit 414. It's
7 a little difficult for him to read. I can ask him to review it
8 quickly.

9 THE COURT: Yeah, I don't know what 414 is.

11:23AM

10 MR. CONNOT: If I may approach, Your Honor.

11 THE COURT: Yeah, have him look at it.

12 MR. CONNOT: Let me know if you want me to snag
13 Mr. Robison's glasses again.

14 THE WITNESS: Okay.

11:23AM

15 MR. CONNOT: 414, sir.

16 BY MR. CONNOT:

17 Q Do you recognize that document, sir, to the extent you
18 can read it? And let me know if you want me to bring up
19 Mr. Robison's glasses.

11:23AM

20 A So you can't put it up on --

21 Q Not yet because it's not admitted yet, unless you guys
22 want to stipulate to it.

23 Okay.

24 It's a curse of getting old.

11:24AM

25 A I guess.

1 Q I have the same issue.

2 Do you recognize the document, sir? You can take your
3 time.

4 A Yeah, I don't really recall it, but --

11:25AM 5 Q Well, if you look at the handwriting at the bottom of
6 the page -- and there are a couple of signatures -- does it
7 refresh your recollection at all, sir?

8 A I mean, yeah, that's my signature. I just don't
9 honestly remember this.

11:25AM 10 Q So your signature is at the bottom of this page with the
11 handwriting on page 1?

12 A It is.

13 MR. CONNOT: Okay. I would move for admission of
14 Exhibit 414, Your Honor.

11:25AM 15 MR. ROBISON: May we inquire?

16 THE COURT: Yes.

17

18 VOIR DIRE EXAMINATION

19 BY MR. ROBISON:

11:25AM 20 Q Do you know who prepared this?

21 A I don't.

22 Q Do you know when it was prepared?

23 A I don't.

24 Q Do you know what it is?

11:25AM 25 A I really don't.

1 MR. ROBISON: Objection, foundation.

2 THE COURT: All right. I need to see it, please.

3 MR. CONNOT: You can see this one, Your Honor. That's
4 easiest.

11:25AM 5 MR. SPENCER: Here is another one.

6 MR. CONNOT: That's okay.

7 THE COURT: These handwritten notes are yours?

8 MR. CONNOT: No. No. The highlighting is mine, Your
9 Honor. I can give you a clean copy without the highlighting,
11:26AM 10 but -- no, the notes, the handwritten notes on it were part of it
11 as produced.

12 THE COURT: And at the bottom, the witness testified
13 that those are his initials?

14 MR. CONNOT: Yes, he did, Your Honor.

11:26AM 15 THE COURT: Overruled. It is admitted, 414.

16 THE CLERK: Thank you.

17 (Exhibit 414 admitted into evidence.)

18 MR. CONNOT: Will you bring 414 up, please.

19 BY MR. CONNOT:

11:26AM 20 Q And this is an unsecured promissory note, dated
21 January 13th of 2011; the borrower, Todd Jaksick; the lender,
22 Samuel Jaksick.

23 Do you see that?

24 A I do.

11:26AM 25 Q Okay. And this is for a principal amount of \$75,000;

1 interest rate, 3 percent; default rate, 12 percent; annual payment
2 amount, interest only, meaning only interest at 3 percent had to
3 be paid as long as not in default, correct?

4 A Correct.

11:26AM 5 Q And what's the maturity date there?

6 A January 31st, 2015.

7 Q Okay. Now, if we scroll that down to the bottom -- if
8 you can move it over just a little bit, Keith, so you can see
9 where that arrow goes up -- you see the handwriting and then the

11:27AM 10 arrow that goes up to maturity date of January 31 of 2015.

11 Can you read what that handwriting says?

12 A "Todd Jaksick and Stan Jaksick on behalf of the above
13 parties agree to extend this note to June 30th, 2016. All other
14 terms remain the same."

11:27AM 15 Q So during a time period when the trust supposedly was in
16 desperate financial straits, Todd is not paying this note back.
17 Even though the maturity date is January 2015, it's actually being
18 extended by a year and a half almost, correct?

19 A Yes.

11:27AM 20 Q And that extension didn't result in any cash coming into
21 the trust during the term of that extension, did it?

22 A No.

23 Q Did you ever come to any understanding of how text
24 messages could be manipulated?

11:28AM 25 A I'm sorry?

1 Q Did you ever come to any understanding as to how it was
2 possible to potentially manipulate text messages and change them?

3 A I did, yeah.

4 Q How did you come about that knowledge?

11:28AM 5 A I received a text from Todd's wife Dawn. And on the
6 text, it was -- it said -- I don't remember who the -- who it was
7 from, but it said from so-and-so.

8 So -- and then it had the text that they -- so she was
9 forwarding me a text, but that she had written, you know, from
11:28AM 10 whoever on the top part of it.

11 So I was like, I didn't know that you could do that. I
12 was kind of shocked. So I asked her how did you do that, and she
13 explained to me how you did that.

14 Q And how did she explain that you could do that? How did
11:29AM 15 Todd's wife explain to you how a text message could be manipulated
16 in that fashion?

17 MR. ROBISON: Objection, hearsay.

18 MR. CONNOT: It's not --

19 THE COURT: I understand. Having had conversations, I
11:29AM 20 understand. Overruled.

21 THE WITNESS: She just explained to me the process on
22 how you do that on your phone.

23 BY MR. CONNOT:

24 Q And what is that process?

11:29AM 25 A You actually press down on the text, and it will give

1 you an option that will come up and it will say "more" or "copy."
2 And if you hit "more," then it allows you to go into that text and
3 add whatever. You can change the text if you want. But then you
4 could send it to whoever.

11:30AM

5 Q And then that text would appear as though it came from
6 someone whose name was changed to whoever you wanted it to be and
7 the text had been manipulated?

8 A It -- yes, you can definitely do whatever --

9 Q And that process was explained to you by Todd's wife?

11:30AM

10 A It was. As a matter of fact, when I was going through
11 my divorce, the judge that we were in front of, she even
12 mentioned --

13 MR. ROBISON: Object to hearsay.

14 THE COURT: Sustained.

11:30AM

15 MR. CONNOT: That's fair enough.

16 BY MR. ROBISON:

17 Q And throughout the litigation, did you -- were you
18 following the document disclosures that were being made?

19 A Pardon?

11:31AM

20 Q The parties exchanged documents or the request for
21 production of documents, and documents were exchanged. Were you
22 aware of that and followed that to a certain extent?

23 A Yes.

24 Q And is it your understanding that the first time any
25 information regarding water rights was produced by Todd?

11:31AM

1 MR. ROBISON: Objection, Your Honor. Goes to the order
2 in limine.

3 THE COURT: Sustained, unless --

11:31AM

4 MR. CONNOT: I'm just trying to get the time frame,
5 just -- it wasn't produced until a certain date.

6 MR. ROBISON: Your Honor, there is an order in limine
7 regarding discovery.

8 THE COURT: It is sustained.

9 MR. CONNOT: And you are aware -- let me back up a
10 second.

11 Let me make sure I've got the right document here.

12 Just -- the Court's indulgence for one second?

13 THE COURT: Yes.

14 MR. CONNOT: I want to make sure this exhibit --

11:32AM

15 THE COURT: Ladies and gentlemen, let's stand while
16 he -- and stretch.

17 Be seated, please.

18 MR. CONNOT: Do you have Exhibit 525 over there, or is
19 it with the binders he has? Do you know, Ms. Clerk?

11:33AM

20 Don't put it up yet, Keith, please.

21 May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. CONNOT: You say 5?

24 MR. JOHNSON: 525.

25 ///

1 BY MR. CONNOT:

2 Q You are just collecting binders here, sir.

3 If I could have you turn to Tab 525, please.

4 Do you see that document?

11:34AM

5 A I do.

6 Q If I can have you go to -- I believe it's the third page
7 of that document. Is it -- the lower right-hand corner, is it
8 Bates-stamped MCL 2854?

9 A 2854?

11:34AM

10 Q Yeah. Do you see that?

11 A Yes.

12 Q And the top of that page says it's a Samuel Jaksick
13 Family Trust profit and loss. This is part of financial
14 statements for the family trust, of which you are a cotrustee?

11:35AM

15 A Yes.

16 Q And the next page says Balance Sheet. Do you see that
17 page? It's Bates-stamped MCL 2855.

18 A I do.

19 Q And that continues on to the next page, which is
20 MCL 2856, which is the balance sheet, the financials of the family
21 trust as of March 31, 2017?

11:35AM

22 THE COURT: Slow down just a little.

23 MR. CONNOT: Thank you, Your Honor. I'm sorry.

24 THE WITNESS: Yes.

11:35AM

25 MR. CONNOT: Move for admission of Exhibit 525, Your

1 Honor.

2 MR. LATTIN: No objection.

3 THE COURT: 525 is admitted, Ms. Clerk.

4 THE CLERK: Thank you.

11:35AM 5 (Exhibit 525 admitted into evidence.)

6 BY MR. CONNOT:

7 Q So if we go to -- I believe it might be about the fourth

8 page of that exhibit, the MCL 2855. That's the balance sheet.

9 And if we go down about halfway, do you see the entry beginning

11:35AM 10 1467?

11 A Yes.

12 Q And that's a note receivable from Todd Jaksick for

13 \$79,993.15?

14 A Yes.

11:36AM 15 MR. CONNOT: So maybe if you scroll up just a little
16 bit, Keith, so you see the top of the columns.

17 BY MR. CONNOT:

18 Q So you see the top of the columns where it says -- the

19 left-hand column of numbers is March 31, '17. Do you see that?

11:36AM 20 A I do.

21 Q Okay. And the second -- the column immediately to the

22 right is March 31 of '16. Do you see that?

23 A Yeah.

24 Q Okay. So if we go down to 1467, the balance of that

11:36AM 25 note as of March 31 of '16 was \$79,993.15, correct?

1 A Yes.

2 Q And the balance on March 31 of 2017, which is the most
3 recent financials received for the family trust, show that not a
4 single payment has been made on that, correct?

11:36AM

5 A Correct.

6 Q Yeah, because the balance remains the same?

7 A That's right.

8 Q Okay. We go to the next one, 1468, that's a note
9 receivable for the TBJ SC trust. And is your understanding,

11:37AM

10 that's one of Todd's trusts?

11 A Yes.

12 Q Okay. And that's in the amount of \$103,659.16, shows
13 that was the balance on March 31 of '16. Not a single payment has
14 been made as of the most recent financials, correct?

11:37AM

15 A Correct.

16 Q And likewise, if you go to 1469, identical situation,
17 Todd Jaksick Family Trust, not a single payment has been made on
18 that note, it's carried the same way on the financials?

19 A Correct.

11:37AM

20 Q Go to the next one, 1470, \$105,510.75, not a single
21 penny paid on any of those notes, correct?

22 A Correct.

23 Q And if we scroll down to 1481, just a little bit further
24 down, that one has a zero balance on March 31 of '16 and has

11:38AM

25 \$105,510.75 on March 31 of '17, meaning that between March 31 of

1 '16, or at least April 1 of '16, and March 31 of 2017,

2 Todd Jaksick issued another note for \$105,510 and change to the
3 family trust, correct?

4 A Yes.

11:38AM

5 Q Do you have any idea today as to whether or not any of
6 those amounts have been paid since March 31 of 2017?

7 A Yeah, they have not. And, again, it's kind of the same
8 loan complex that we talked about before.

11:38AM

9 Q So if we go to MCL 2856, which is the next page, and if
10 we look at, under "Equity," 3251, "Funds received, Todd's sub
11 trust," what does that show, \$1,973,998?

12 THE COURT: You go really fast when you recite numbers.

13 MR. CONNOT: Thank you, Your Honor. I apologize.

14 BY MR. CONNOT:

11:39AM

15 Q \$1,973,998, funds received by Todd's sub trust, correct?

16 A Okay.

17 Q And that's as of March 31 of '17?

18 A Yes.

11:39AM

19 Q And then if we go to the next one, funds received,
20 Stan's sub trust, that shows as of March 31, 2017, received
21 \$1,821,390?

22 A Correct.

11:39AM

23 Q Okay. Scroll down to 3810, "Distributions." These are
24 distributions from the family trust. TJ trust, \$1,299,600 -- 832
25 dollars and 2 cents, correct?

1 A Correct.

2 Q And then a distribution to the Stan Jaksick trust,
3 \$1,299,832.03. Do you see that?

4 A Yes.

11:40AM 5 Q And a distribution to Wendy Jaksick trust of
6 \$135,450.02. Do you see that?

7 A I do.

8 Q Okay. So this one shows distributions from the family
9 trust to Wendy of 135,000, and significantly more distributions to
10 you and Todd, correct?

11 A Well, these distributions, we did not receive.

12 Q The financials show them as distributions, though. You
13 would agree?

14 A They went into the family trust.

11:40AM 15 Q That's not what it says on here. The financials that
16 have been --

17 A Oh, actually, I'm sorry. Those were -- those
18 distributions were made for taxes, tax -- paying taxes.

19 Q Okay. But --

11:40AM 20 A That's why Wendy's is 135,000.

21 Q But they show up as distributions on the family trust,
22 correct?

23 A I guess you can interpret it that way, yeah.

24 Q And that was to pay a tax obligation that you would have
11:41AM 25 incurred, that Wendy would have incurred and that Todd would have

1 incurred?

2 A Those were from the Bronco Billy's Pioneer Group, you
3 know, sale, and those funds went into that sub trust. Those taxes
4 had to be paid on those amounts.

11:41AM 5 Q And the reason more taxes were paid by you and Todd was
6 because you and Todd received more of those proceeds, correct?

7 A Because they went into our sub trust.

8 I don't recall the reason for why Wendy had taxes. That
9 would be a question for Kevin.

11:42AM 10 Q So you heard -- were you in the court yesterday when
11 Michael Kimmel testified?

12 A Yes.

13 Q And you heard him testify that your only dispute with
14 the petitions that were filed here by the cotrustees was in the
11:42AM 15 indemnity agreements. You had disputes beyond those, didn't you,
16 the ACPAs regarding the cattle, the ACPAs regarding the Lake Tahoe
17 house?

18 A No, Mike was not involved as a cotrustee during those
19 ones.

11:42AM 20 Q But the petitions that were filed to approve the
21 accountings, you didn't sign off on those, did you?

22 You heard the verifications yesterday where
23 Michael Kimmel and Todd had signed the verifications for those
24 petitions seeking approval of the accountings, and you disagreed
11:42AM 25 with those petitions; isn't that true?

1 A I did.

2 Q And your disagreement was more than just the indemnity
3 agreements. Was that true?

4 A Yes.

11:43AM 5 Q And, in fact, you felt that Michael Kimmel was involved
6 in pushing to squeeze Wendy to settle or bring a lawsuit against
7 the cotrustees?

8 A Yeah, I mean, by filing those petitions, you know, Wendy
9 had 30 days to object. So --

11:43AM 10 Q You felt that was unfair?

11 THE COURT: Hold on, hold on.

12 "So?"

13 THE WITNESS: So she had no choice but to file, you
14 know, a lawsuit.

11:43AM 15 BY MS. CONNOT:

16 Q And that's this lawsuit?

17 A Yes.

18 Q She had no choice but to file this lawsuit because of
19 the petitions that were filed by Todd and Michael Kimmel, two of
11:43AM 20 the three cotrustees?

21 A Yeah, either that or she had to agree with them, you
22 know.

23 Q And you've also testified that Todd didn't want Wendy to
24 get anything; is that true?

11:43AM 25 A I don't know that he didn't want her to get anything. I

1 just don't think that he agreed to the amount that she --

2 MR. CONNOT: Do we have his deposition there? And I
3 believe it's --

4 THE CLERK: Mr. --

11:44AM

5 MR. CONNOT: -- Stan's.

6 MR. ROBISON: Your Honor, may I?

7 THE COURT: Yes, please.

8 MR. CONNOT: Volume III of Mr. Stan Jaksick's
9 deposition.

11:44AM

10 THE CLERK: Deposition opened and published.

11 MR. CONNOT: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. CONNOT: Thank you.

14 BY MR. CONNOT:

11:45AM

15 Q So I'm handing you Volume III --

16 A Okay.

17 Q -- of your deposition.

18 If you could turn to page 562. Let me know when you are
19 there, sir.

11:45AM

20 A Okay.

21 Q And if we go to line 17.

22 Question: "Okay. So we talked about the Buckhorn
23 option and your belief that that's a breach of fiduciary duty by
24 Todd.

11:45AM

25 "Is there anything else that you can identify that you

1 believe is a breach of fiduciary duty by Todd?"

2 Your answer, "Yeah, I just think, you know, he really
3 did not want Wendy to get anything. I mean, he was not willing --
4 as you know, as your counsel is aware, wanted to settle for a few
5 hundred thousand dollars and get her to sign off on everything
6 that she was involved in.

7 "I don't think that's fair. I don't -- I don't think --
8 I think Wendy is entitled to more than that, and as I don't think
9 she's -- he's looking out for the best interest of the beneficiary
10 with that mindset."

11 That was your testimony just a few months ago, correct?

12 A Correct.

13 Q Do you still believe that today?

14 A Yes.

15 Q And you were concerned because Wendy didn't have the
16 same means of support that you and Todd have, correct?

17 A Correct.

18 Q And this issue with your father and the dispute with
19 Todd at the office, you were pretty upset with that?

20 A At the time, I was. I -- yeah.

21 Q And you felt that he was almost on the verge of
22 threatening your father?

23 A I'm not sure what the right word is. I wouldn't say
24 "threatening," just kind of putting him down.

25 Q Were you shocked by that behavior of Todd?

1 A I mean, you know, we all get into disagreements. I was
2 shocked at the time, yes, but -- you know, the day after that,
3 everything was fine. So, you know, it was just one of those
4 things. At the time, I was shocked by what I had witnessed.

11:48AM

5 Q And you witnessed your dad, though, not want to get into
6 confrontations and conflict, right?

7 A He didn't.

8 Q And as he got older, did you find that that was even
9 more of an issue, that he would avoid conflict when possible?

11:48AM

10 A Definitely.

11 MR. CONNOT: I pass the witness, Your Honor.

12 MR. ROBISON: Mr. Jaksick --

13 Are we going to flip?

14 THE COURT: Why don't we allow Mr. Hosmer-Henner to go
15 because this is his client, and then it will be you after that.

11:48AM

16 And Counsel, please correct me if I misspoke in front of
17 the jury as to who represents whom, individual trust capacities.
18 I know that there has been some fluidity along the way. If I've
19 misspoken, please let me know at any time.

11:49AM

20 MR. ROBISON: You did not misspeak.

21

22 CROSS-EXAMINATION

23 BY MR. HOSMER-HENNER:

24 Q You understand that I'm your attorney?

11:49AM

25 A Yes.

1 Q I'm your attorney in your capacity as the cotrustee of
2 the family trust?

3 A Correct, yes.

4 Q Mr. Robison, not your attorney?

11:49AM

5 A Correct.

6 Q Stan, you are the oldest child in the family; is that
7 correct?

8 A I am.

11:49AM

9 Q Is there an obligation that you feel as the oldest child
10 to try to keep the family together and make sure everyone gets
11 along?

12 A That would be nice. Yes.

13 Q And you want everyone to be fair with each other, you,
14 Todd and Wendy?

11:49AM

15 A Yes, I believe we should, yeah.

16 Q And earlier, Mr. Connot said it's okay to be nervous.
17 You are not nervous, are you?

18 A I'm not nervous.

11:50AM

19 Q It's just a little uncomfortable here, having your
20 family business presented in front of many, many, many strangers?

21 A Yes, absolutely.

22 Q And this is a case where everyone involved, it seems
23 like, has had some disagreement with each other at some period of
24 time, correct?

11:50AM

25 A Correct.

1 Q And you, Todd and Wendy have all had disagreements with
2 each other at various times?

3 A Yes.

4 Q You are not an accountant, though?

11:50AM

5 A No.

6 Q You are not a lawyer?

7 A No.

8 Q And you've relied upon the professional advisors in your
9 capacity as a cotrustee of the family trust?

11:50AM

10 A Yes, I have.

11 Q And those are the same advisors that Michael Kimmel and
12 Todd have relied upon?

13 A Yes.

14 Q And you work too; you are not a full-time cotrustee?

11:50AM

15 A That's correct.

16 Q So on a day-to-day basis, you are not coming in at 9:00,
17 8:00, and starting to work on trust matters, right?

18 A That is correct.

19 Q You manage other companies, other businesses?

11:50AM

20 A Yes.

21 Q And in the year 2012, the year before your dad passed
22 away, you were in the middle of a divorce?

23 A I was.

24 Q And that occupied a lot of your time too?

11:51AM

25 A It did.

1 Q And during that period, your dad wanted to protect you a
2 little bit during those divorce proceedings to make sure that all
3 of the other entities didn't get wrapped up into that divorce?

4 A Correct.

11:51AM 5 Q I want to talk a little bit about that argument that you
6 observed between Todd and Sam.

7 Even after you watched that argument -- first, do you
8 recall what year that was?

9 A I don't. I would be guessing.

11:51AM 10 Q But even after that argument, you saw Todd and your dad
11 work together, right?

12 A Oh, absolutely, yeah.

13 Q You saw them spend time together outside of work?

11:51AM 14 THE COURT: Either use the microphone or speak up
15 loudly, please. Thank you.

16 THE WITNESS: Yes.

17 BY MR. HOSMER-HENNER:

18 Q And after that argument, there was no change in their
19 relationship or how they treated each other?

11:51AM 20 A No.

21 Q Everyone in your family has had arguments from time to
22 time?

23 A Yes.

24 Q And did you ever see your dad and Wendy argue?

11:52AM 25 A Yes.

1 Q Did you see them yell at each other?

2 A Yes.

3 Q Did you ever see your dad get very upset with Wendy?

4 A Yes.

11:52AM 5 Q Even after that, though, everyone was still family?

6 A Yes.

7 Q And you, yourself, had a great relationship with your

8 dad?

9 A I did.

11:52AM 10 Q Throughout your entire life?

11 A Yes.

12 Q You worked with him on a daily basis?

13 A Pretty much.

14 Q And when your dad was going down to surgery in

11:52AM 15 Los Angeles, you were in constant communication with him?

16 A I was.

17 Q And he asked you to come visit at a certain period of

18 time; is that right?

19 A Yes. After --

11:52AM 20 MR. CONNOT: I'm sorry, I'm trying to be a little

21 indulgent --

22 THE COURT: The question is leading, I get that. We're

23 trying to push up against the noon hour.

24 MR. CONNOT: Understood.

11:52AM 25 THE COURT: This is your client.

1 MR. HOSMER-HENNER: This is my cross-examination.

2 THE COURT: I understand.

3 If you would like -- well --

4 Ladies and gentlemen, during this lunch recess, please

11:53AM 5 do not discuss this case amongst yourselves. Please do not form

6 or express any opinion about this matter until it has been

7 submitted to you.

8 We'll stand for our jury, subject to your return at

9 1:30.

11:53AM 10 (The jury left the courtroom.)

11 THE COURT: There have been leading questions throughout

12 this trial on all sides of the courtroom. And I've just kind of

13 allowed them because we want to be efficient, we want to get to

14 it.

11:53AM 15 I don't want to declare your client a hostile witness to

16 his attorney in the presence of the jury, so I chose not to

17 respond, but please be careful that you don't testify.

18 Counsel, just on procedural matters, where we are

19 moving, go ahead, but at some point, the witness has to answer the

11:54AM 20 questions.

21 MR. HOSMER-HENNER: This is the first time we're going

22 to do it. I'm happy to go slower, Your Honor. But that certainly

23 hasn't been the pattern for any other prior witness.

24 THE COURT: It has not, and I acknowledged that when I

11:54AM 25 began speaking.

1 Now, if everyone will be seated, please.

2 And sir, if you'll just -- from the witness stand.

3 I have a question as a finder of fact, and I won't do
4 this in front of the jury.

11:54AM 5 Nothing I say foreshadows any decision I might reach.

6 I just want to mark a spot and have my mind clear on
7 something.

8 There are document irregularities in this case. Now,
9 they might be inadvertent, harmless mistakes. They might be
11:55AM 10 nefarious. We don't know. Well, there is not a finding of fact.

11 And there are notarial irregularities by an in-house
12 notary who is presumptively aligned with Stan's memory and Todd.
13 Again, no findings of fact.

14 But I want to revisit that deed that was signed in April
11:55AM 15 and recorded in June. Can you just call out the exhibit number,
16 please. I just want a chance to take a note and look at that.

17 MR. SPENCER: 201, Your Honor.

18 THE COURT: So can you pull up 201 for me. And just
19 make it large so I can see it, please.

11:56AM 20 Right. I just want to see what the -- keep going, just
21 scroll down, if you would, please. Keep going, keep going next
22 page, next page, please. Okay. Hold on.

23 All right.

24 So it relates to Quail Rock Lane. And will you go down
11:56AM 25 to the signature page, please, April 15th.

1 And Counsel, will you just remind me date of death.
2 MR. CONNOT: April 23rd.
3 MR. SPENCER: April 23rd, 2013.
4 MR. CONNOT: So this would have been eight days prior.
11:56AM 5 THE COURT: So this deed is signed, then there is
6 surprise death, and then the recordation in June.
7 Okay. Thank you for that.
8 MR. CONNOT: No problem.
9 THE COURT: Counsel, anything before we break for lunch?
11:57AM 10 MR. ROBISON: Nothing.
11 MR. CONNOT: I missed it. You said 1:30?
12 THE COURT: Yes.
13 (The lunch recess was taken.)
14 THE COURT: Please be seated.
01:28PM 15 Counsel, you may continue.
16 BY MR. HOSMER-HENNER:
17 Q Do you recall a time when your dad went to the hospital
18 in Los Angeles in December of 2012?
19 A Yes.
01:28PM 20 Q Did you have conversations with your dad about visiting
21 him in or around that time?
22 A I did. I told my dad that we could make it down there
23 after his surgery, and I went down with my son and two daughters
24 on January 3rd.
01:29PM 25 Q And your dad died several months later in April 2013?

1 A Yes.

2 Q Was that unrelated to the surgery in December 2012?

3 A Yes.

4 Q After your dad's passing -- well, excuse me, prior to

01:29PM 5 his death, was your dad in charge of most of the family

6 businesses?

7 A Yes.

8 Q Was he calling the shots for most of the entities and

9 companies?

01:29PM 10 A He was.

11 Q And after his death, did that responsibility shift on to
12 Todd and yourself?

13 A It did.

14 Q And could you describe a little bit about the breakdown

01:29PM 15 or the division between you and -- between you and Todd with

16 respect to the family business.

17 A Well, I mean, Todd was obviously involved with all the
18 ranch entities, and there were a lot of those. I was involved
19 with Montreux Development Group, as well as Montreux Golf Club.

01:30PM 20 But in terms of kind of the day-to-day cotrustee stuff,
21 I would say that Todd was more in the lead on that. He was really
22 the one kind of having communications with the attorneys, you
23 know. Not that I wasn't, but he was more the point guy.

24 Q Would it be fair to say that of all the family business,

01:30PM 25 you were more on the golf side and Todd was more on the ranching

1 side?

2 A Oh, definitely.

3 Q And Todd wasn't very involved in the day-to-day
4 operations of the golf entities, and you weren't really involved
01:30PM 5 in the day-to-day operations of the ranching entities?

6 A That's correct.

7 Q And those ranching entities, just to clarify some of the
8 names, did that include Bright Holland?

9 A Yes.

01:30PM 10 Q Duck Lake Ranch?

11 A Yes.

12 Q And Jackrabbit?

13 A Correct.

14 Q And when you said that Todd was more of the point person
01:31PM 15 with respect to the cotrustee stuff --

16 A Yes.

17 Q -- were you referring to the family trust?

18 A Yes.

19 Q And you are a cotrustee and have been a cotrustee of the
01:31PM 20 family trust since April 2013?

21 A Correct.

22 Q Is that your only position as a trustee in any of the
23 trusts in this case?

24 A It is.

01:31PM 25 Q In the previous testimony, there was a discussion about

1 you reaching a resolution of your differences with Todd; is that
2 right?

3 A Yes.

4 Q Did that resolution include the removal of a house from
5 Todd's indemnification claims?

6 A It did.

7 Q How would you say that the removal of that house affects
8 Wendy's interest in the family trust?

9 A Well, you know, Todd had -- his house was on his
10 indemnification agreement at around \$2.4 million. So by him
11 removing that, that is a large amount of money that -- you know,
12 in the event of, you know, some recession again or whatever, you
13 know, that the family trust would not be obligated to pay.

14 And so really it puts another \$2.4 million into the
15 family trust.

16 Q And is it your understanding that that benefits Wendy?

17 A Well, it benefits all of us, but, yeah, benefits Wendy,
18 sure.

19 Q Is the resolution -- is it your understanding that the
20 resolution you reached with Todd is consistent with your dad's
21 testamentary intent?

22 A It is.

23 Q There was some discussion about text messages and how
24 you learned that text messages could potentially be altered. Do
25 you remember that?

1 A Yes.

2 Q Are you alleging that Dawn, Todd's wife, altered any
3 text messages that are relevant -- that are in this case?

4 A I am not.

01:33PM 5 Q Are you alleging that Todd has altered any text messages
6 that are in this case?

7 A I am not.

8 Q Are you aware of any evidence of Dawn or Todd altering
9 any of the text messages in this case?

01:33PM 10 A No.

11 Q Were you involved with Todd and your dad in discussions
12 on how to protect the Lake Tahoe house from creditors?

13 A Yes.

01:33PM 14 Q Were you involved in discussions with Todd and your dad
15 about how to minimize the tax burdens, state tax or otherwise,
16 with respect to that Lake Tahoe house?

17 A Yes, I was.

01:33PM 18 Q Do you recall any discussions where your dad indicated
19 that Wendy would be a part of any of the entities that had an
20 interest in the Lake Tahoe house?

21 A No. Wendy was not involved in the Incline TSS or the
22 Tahoe house.

23 Q Was she ever going to be involved in SSJ, LLC?

24 A No.

01:34PM 25 Q And at one point in time, SSJ, LLC, had an ownership

1 interest in the Tahoe house?

2 A Yes.

3 Q Was she ever going to be involved in Incline TSS?

4 A No.

01:34PM 5 Q Do you have an understanding of why your dad did not
6 want Wendy to be a member or involved in any of these entities
7 that had an ownership of the Lake Tahoe house?

8 A Yeah, we really didn't talk about it. I mean, I would
9 assume it was because of some of her past business dealings and
01:34PM 10 creditor issues.

11 You know, he just didn't want to expose Tahoe to that
12 kind of --

13 Q Was it your understanding that there was a risk of the
14 Tahoe house being attached by creditors if Wendy was involved?

01:34PM 15 A Possibly.

16 Q Did you know that to be a concern of your father's?

17 A Yes, he didn't mention that. But, yeah, you know, Wendy
18 was not going to be involved in the business or have an interest
19 in that home.

01:35PM 20 Q And there were life insurance proceeds that went to the
21 issue trust; is that right?

22 A Yes.

23 Q And then as the trustee of the issue trust, Todd entered
24 into a deal where there was -- life insurance proceeds would be
01:35PM 25 used to invest in Incline TSS, which then owned the Tahoe house.