

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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Clerk of Supreme Court

Case No.: 81470

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

**RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S
APPENDIX, VOLUME 17**

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

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

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

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

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

Dated this 14th day of June, 2021.

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By /s/ Chad F. Clement

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT/CROSS-APPELLANT WENDY JAKSICK'S APPENDIX, VOLUME 17** 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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In the Matter Of:

Department 15

JURY TRIAL - DAY 12

March 04, 2019

Job Number: 532388

1 4185

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6 IN THE SECOND JUDICIAL DISTRICT COURT

7 STATE OF NEVADA, COUNTY OF WASHOE

8 THE HONORABLE DAVID HARDY, DISTRICT JUDGE

9

10

11 CONS.: TRUST:, Department No. 15

12 SSJ'S ISSUE TRUST Case No. PR17-00445

13 _____/

14 Pages 1 to 58, inclusive.

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18 TRANSCRIPT OF PROCEEDINGS
JURY TRIAL -- DAY 12
Monday, March 4, 2019

19

20

21 JOB NO: 532388

22 REPORTED BY: Christina Amundson, CCR #641
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1 RENO, NEVADA -- MON. 3/4/19 -- 8:15 A.M.

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3 (Out of jury presence.)

4 THE COURT: Counsel, I would like you to
5 each have available to you the First Amended
6 Counterpetition to Surcharge Trustees file-stamped
7 February 23rd, 2018. Tell me when you're ready.

8 I have felt some urgency to resolve
9 instructions but late last night I realized that I
10 needed to reduce my urgency to settle instructions
11 and increase the possibilities of accuracy, even
12 though we may be inefficient with the jury. I
13 encouraged jury instruction collaboration, entered
14 an order to that effect, and heard periodically that
15 you were collaborating on the jury instructions.

16 How grateful I am that you did for what I
17 received, if the product of collaboration frightens
18 me as to what the absence of collaboration would
19 have revealed.

20 Yesterday at noon we created an updated
21 matrix in which there were 98 proposed instructions.
22 Thirty-seven were stipulated and there were 35
23 objections. And it appears differentially there
24 were 26 where there was some stipulation or

1 concession to remove instructions. Instructions
2 continue to roll in, though a very small number, as
3 recently as yesterday. Please do not infer from my
4 words criticism or complaint. It is simply context
5 for a reviewing court.

6 We began working on jury instructions
7 yesterday at noon and at 11:15 last night we went
8 home dissatisfied with the status of our jury
9 instructions and verdict forms. It is a tremendous
10 effort on behalf of this department to manage this
11 case. I'm still dissatisfied with the instructions.
12 I find that there remain cumulative things. I'm not
13 confident in the sequencing of the instructions.
14 The volume and the organization in which they were
15 submitted was exceedingly difficult to navigate.

16 I attempted to create some consistency. We
17 modified and edited many. You will find in a moment
18 that I rejected many that were offered. And to
19 balance accuracy with urgency, I just have some
20 questions to ask because I couldn't finish the
21 packet last night with the questions that I have.

22 So, first before the jury comes to the
23 courtroom, you will each receive a packet of offered
24 and rejected instructions which I've divided them

1 between petitioner and respondents. You will also
2 have a matrix that lists all of the jury
3 instructions that we had as of noon yesterday with
4 our notations as we included the first few lines so
5 they could be identified by reference. We noted
6 whether they were admitted, admitted with evidence,
7 modifications or offered and rejected.

8 This morning we deleted the content of our
9 column notes and objections where I and the law
10 clerk went through the moving papers, essentially,
11 and the arguments for and against instructions and
12 decided to leave the Court's discretionary work.
13 But we left who the objecting party was so that's
14 something you will receive. This matrix will be
15 attached to the 98 instructions we had yesterday at
16 noon. We'll mark it and make it part of the Court's
17 records so your objections can be observed for
18 appellate review.

19 You will note in the verdict form I took
20 out references to probable cause and a no-contest
21 finding. I believe that those are embedded in the
22 more general -- those concepts are embedded in the
23 more generalized verdicts to my questions. Oh, I
24 should also say that I've read and reread the Moore

1 v. Bannon case, 106 Nevada. It was the case that
2 was identified very late in trial after the pivotal
3 evidentiary issue was resolved. I have not taken
4 the time to write my analysis of Moore v. Bannon. I
5 will simply note that was a case that one party sued
6 two medical doctors. Plaintiff settled with one
7 medical doctor before trial and the fact of the
8 settlement between plaintiff and one of the
9 defendant doctors was not admissible because it
10 allowed the jury verdict to be contaminated by
11 valuation speculation.

12 I could construct a different conclusion
13 based upon the unique procedural and positional
14 posture of this case. I simply acknowledge that I
15 read it, it came to me late, and I attempted to
16 honor it in one of the instructions where I added
17 some do-not-speculate language.

18 I am struggling with the allegations made
19 against trustees and individuals. I am intrigued by
20 the possibility and maybe necessity of cleaning up
21 the jury verdicts as it relates to the evidence and
22 underlying some of the individual claims. But I
23 want the verdict forms to be as complete as
24 possible, and at the moment they feel unwieldily to

1 me, so I want to go through each of the four claims.

2 And we -- I and my law clerk -- referenced
3 back to the pleading claims Wendy made. The first
4 claim is for breach of fiduciary duties and the
5 verdict form is styled against Kevin, Stan, Todd,
6 and Michael, all as trustees or cotrustees, so that
7 one doesn't implicate individual liability.

8 The second claim is civil conspiracy and
9 aiding and abetting. The petition alleges against
10 individuals and trustees, and I have attempted to
11 reflect that initial pleading allegation and so I've
12 got each of the individuals listed and then I have
13 them also listed within a trustee or cotrustee
14 status.

15 My understanding fell apart on the third
16 claim. Third claim is aiding and abetting breach of
17 fiduciary duty. It is not clear to me at all from
18 the petition whether there are allegations against
19 the individuals or whether the allegations are
20 confined to a trustee or cotrustee status. So, I'll
21 invite in a moment you to be heard on that.

22 The largest concern I had late last night
23 that caused me to slow down the completion of
24 instructions were the fraud allegations. Throughout

1 the instructions fraud is referenced against
2 multiple respondents. When I go to the petition, it
3 is limited solely -- and I'm looking at page 26 of
4 40, line 24 bolded, "Count 5 actual fraud." It
5 alleges fraud against Todd in his individual and
6 trustee capacity and makes no other reference to any
7 other respondents.

8 I know there was a quick oral reference to
9 amending the pleadings to conform to the evidence.
10 I saw one of the respondent's counsel want to jump
11 out of his shoes when that was made and I didn't
12 want to entertain arguments about it. But I'm
13 uncertain how to instruct the jury on the fraud
14 claim, which appears to begin with Todd only.

15 And then I have also taken the punitive
16 damage instruction and completely rewritten it to
17 follow 42.005, both elements and procedure. And
18 finally I note that there is an instruction
19 identifying all of the claims and within that
20 instruction is the assertion that Wendy has made
21 claims against Duck Lake and Sammy's Super Club, but
22 I do not have any Duck Lake or Sammy's Super Club
23 identified in verdict forms.

24 My understanding from an email through

1 clerk staff was that Wendy was essentially agreeing
2 to Todd's verdict forms with some suggestions both
3 to content and sequence.

4 So, I invite you to be heard. Let's turn
5 first to petitioner's counsel because of the Court's
6 biggest concern regarding the fraud instructions,
7 the fraud pleading and how the fraud verdict should
8 read.

9 MR. CONNOT: Any particular order, your
10 Honor?

11 THE COURT: Respond to whatever I've said
12 in any order you want.

13 MR. CONNOT: I think as to the fraud claim
14 that, you know, the more we've thought about it and
15 looked at it, I think that it be confined to just
16 Todd.

17 THE COURT: Thank you. And what that means
18 is that I'm going to need some significant time in
19 chambers reworking the instructions to reflect that.

20 MR. CONNOT: Understood.

21 THE COURT: That's okay. I just want to
22 get it right. Good.

23 What about the third claim, aiding and
24 abetting breach of fiduciary duty? I could not tell

1 if that was alleged individually or in --

2 MR. CONNOT: Our position is it goes both
3 ways, your Honor. You can aid and abet a breach of
4 fiduciary duty even if you don't necessarily have a
5 fiduciary duty at the time, so that goes to both
6 individual and trustee capacity has been our
7 position.

8 THE COURT: You agree that the breach of
9 fiduciary claim is limited to the trustee
10 capacities?

11 MR. CONNOT: Yes, your Honor.

12 THE COURT: And then civil conspiracy and
13 aiding and abetting in individual capacities.

14 MR. CONNOT: Yes.

15 THE COURT: What do I do with Duck Lake and
16 Sammy Supercub? It's not on the verdict forms, it's
17 not subject to the instructions except the
18 identification of the claim.

19 (To the Reporter) Am I speaking into my
20 microphone enough? I lean back and mumble
21 sometimes. I'm sorry.

22 MR. CONNOT: Your Honor, we had some
23 discussion about this over the weekend, your Honor,
24 as well. I think as to the Supercub, we will

1 withdraw that. But, you know, the question we sort
2 of struggled with too is the Duck Lake because I
3 think from a damages perspective, you know, there's
4 a claim to water rights and the transfer of those
5 that I don't know how we put it on for damages on
6 there other than, you know, it's a potentially
7 responsible party.

8 When we made the motion to join
9 indispensable parties the biggest thrust of our
10 concern was there were parties that we would
11 potentially seek relief from and those were the
12 various entities that weren't before the Court.

13 THE COURT: And that's the reason why I
14 granted the motion, was to simply cast the net in
15 the event that you prevail. Why can't the Duck Lake
16 claim just fold into one of the four claims for
17 relief generally?

18 MR. CONNOT: That, I think, would make the
19 most sense. I don't know why not.

20 THE COURT: Okay. Ms. Shanks?

21 MS. SHANKS: Yes. Part of the reason we
22 have it included there's also a claim TSS, another
23 entity. We didn't include them because there's no
24 claims asserted against them. When they were joined

1 there were no claims so we weren't certain what
2 they're being sued for.

3 Our position has been what they're really
4 being sued for or why they're brought in is because
5 they hold assets that Wendy claims she's entitled
6 to, but there's been no evidence at this trial of
7 damages that these entities have caused to Wendy.

8 Mr. Connot just brought up the water
9 rights, but Duck Lake was never mentioned as the one
10 getting those water rights. I sat in the back the
11 entire trial and that connection was not made, so I
12 think the jury will be very confused if we have
13 verdict form for these entities they're just now
14 hearing may hold assets.

15 And I also think there's a problem having a
16 verdict form for a damages claim against these
17 entities because, really, the harm is that they hold
18 the asset, not that they've caused damage causing
19 harm to Wendy. And that's a question for this
20 Court, should the assets be transferred back.
21 That's not a question for the jury.

22 THE COURT: Anything else?

23 MR. LATTIN: Yes, your Honor, on the aiding
24 and abetting and conspiracy claims. As you know, I

1 represent some individuals, Kevin Spencer and Mike
2 Kimmel, and with regard to -- what they're trying to
3 do is hook them in individually and I don't believe
4 that you can under the law be hooked into aiding and
5 abetting some sort of breach of fiduciary duty when
6 you don't have one, so I don't think the law
7 supports a claim against those people individually.

8 And the same would apply to Todd and Stan
9 as they're named individually in those claims as
10 well. So, I don't think that there should be an
11 instruction that goes to the jury on conspiracy or
12 aiding and abetting against an individual.

13 THE COURT: All right.

14 MR. LATTIN: Your Honor, just to follow up
15 on what Ms. Shanks said, with regard to Duck Lake
16 and those entities, you have to have a claim against
17 those people. You can't -- you don't just add
18 people because they might somewhere down the road
19 add to something. If you have a claim against them,
20 then you have to assert that.

21 You don't just, I believe, under the law
22 give an instruction that some entity should be
23 responsible without there being a claim against them
24 that you can defend against. Thank you.

1 THE COURT: Thank you.

2 MR. HOSMER-HENNER: Your Honor, on
3 August 24th, 2018, Stanley Jaksick was dismissed
4 in his individual capacity and so that fact is not
5 included in the original pleading to Wendy's
6 original pleadings.

7 So, to the extent any verdict forms or jury
8 instructions reference any claims against Stan in
9 his individual capacity, we would request those be
10 removed. And we've tried to continually remove
11 those records when everyone's lumped together, but
12 that's the one change we would insist on for all
13 verdict forms and jury instructions.

14 THE COURT: Finally, counsel, if you will
15 turn back to page 26 of 40, the first amended
16 counterpetition, that's the fraud claim.

17 Paragraphs 83 through 87 refer to a
18 fraudulent misrepresentation. In the instructions
19 there's an instruction about -- let me find it --
20 fraud based upon concealment and fraud based upon
21 nondisclosure.

22 I'd like to hear some arguments as to why
23 those instructions should be included as they could
24 be construed as distinct from the fraud and

1 misrepresentation.

2 MR. CONNOT: We would agree, your Honor, in
3 looking at the petition it is framed based upon the
4 intentional misrepresentation or the
5 misrepresentation elements and the various types of
6 actual fraud that you could have.

7 To the extent, I mean, there's been a lot
8 of evidence about all of those other issues and we
9 would move to amend and conform to the evidence
10 that's been presented on the other actual fraud that
11 we've included within the instructions.

12 But I would not disagree that the way the
13 petition is framed it is framed to intentional
14 misrepresentation, the way it's currently framed.

15 THE COURT: And it seems to me the
16 nondisclosure and concealment, if proven, lend
17 themselves to breach of fiduciary duty more than the
18 fraud, which was not pled.

19 MR. CONNOT: I wouldn't disagree it
20 probably is, to a certain extent, subsumed within
21 it--

22 THE COURT: Okay.

23 MR. CONNOT: -- because, you know, you have
24 the duties that you would have for a fraud claim

1 that would apply whether or not you had a fiduciary
2 duty. But we also have the elements of a fiduciary
3 duty and the duties that were entailed or subsumed
4 therein.

5 THE COURT: Right. Okay.

6 MS. SHANKS: This was one of our disputes
7 you saw in our briefing. We didn't think the false
8 promise instruction was necessary. All that's been
9 pled is intentional misrepresentation claim. We're
10 fine including that instruction.

11 In an effort to work with Wendy, we agreed
12 to do the other instructions, but we would oppose
13 the motion to conform to the evidence because we
14 don't think the evidence at trial would support a
15 finding on Todd or any of the respondents
16 fraudulently concealed or failed to disclose
17 information which they otherwise had an obligation
18 to do under their trustee capacity.

19 MR. LATTIN: Your Honor, with regard to the
20 fraud claims -- and I think you correctly pointed
21 out there are no fraud claims against Mr. Kimmel,
22 Mr. Riley, and they only are directed at Todd. And
23 so I would object to any instruction that includes
24 anyone other than Todd under the fraud claim.

1 With regard to the motion to amend -- and I
2 agree with Ms. Shanks there's been absolutely no
3 evidence with regard to Mr. Kimmel or Mr. Riley
4 making any sort of intentional misrepresentation to
5 Wendy, so I would request that there be no
6 instructions with regard to those individuals.

7 THE COURT: Okay. All right. So, I began
8 with prepared remarks. I attempted to recite them
9 dispassionately without criticism or complaint but
10 just disclosing why we called an end to our work
11 last night at 11:15, having been together for 11
12 hours.

13 I now have information I need. I have
14 everything I need except time with the jury's
15 presence. But accuracy must be equalized with
16 urgency and so I have substantial rewrites to do on
17 the fraud instructions and the verdict forms and
18 then there is just the mechanics of production.

19 So, Deputy Coss, if you'll be so kind as to
20 tell the jury they're free to leave until 10:30.

21 I'll have you here at 10:00, counsel.
22 Hopefully, I'll have the packet that you can then go
23 through. I hope the matrix will help you quickly
24 analyze what's been offered and rejected, what has

1 been admitted as submitted, what has been admitted
2 as modified. It will give you a chance to look at
3 the punitive damages instruction as modified and
4 adjust your arguments according to the instructions.
5 That's the best I can do.

6 MR. SPENCER: Your Honor, could I be heard
7 on a couple things that were said that we didn't get
8 a chance to answer just so we can have a record on
9 it?

10 The Duck Lake one is the first. You heard
11 that there was no evidence regarding Duck Lake and
12 that's just not true. Exhibits 123, 124, 125
13 include correction deeds that transferred from
14 Jaksick Family LLC to Duck Lake water rights and so
15 there's evidence in the record relating to that.

16 The issue becomes is that an enforcement
17 mechanism more than it is a jury decision, if
18 they've got something that should be returned and
19 that may be a question for the Court, and so I just
20 want to throw that out there.

21 The other is the very essence of an aiding
22 and abetting claim, you heard that, well, you can't
23 bring that against individuals if they don't have an
24 independent fiduciary duty to the beneficiary. And

1 that's just not how the law is applied. The very
2 essence of an aiding and abetting claim is to have
3 an individual help someone breach a fiduciary duty
4 that they owe. And to apply it in any other way
5 would allow a fiduciary to go and use --
6 quote/unquote use individuals as their extension or
7 their arm to go breach fiduciary duties and then
8 say, well, gosh, I didn't do anything, that person
9 did it, and then a claim can't be brought against
10 them, so we would disagree with that. Thank you.

11 THE COURT: Yes, Mr. Hosmer-Henner?

12 MR. HOSMER-HENNER: Your Honor, I don't
13 know if it's necessary in light of the Frieda vs.
14 Gilbert decision, but to the extent it is, I'll
15 renew my motion for a directed verdict at the
16 conclusion of all the evidence and I would orally
17 join in the written motion filed by Todd Jaksick
18 with respect to damages.

19 THE COURT: I'm 100 percent confident that
20 litigation will continue beyond the jury's verdict
21 to include the Court's visit of the Rule 15 motion
22 and all of the other things, legal concepts and
23 arguments, but we'll get these questions to the jury
24 today.

1 See you at 10:00. Maybe later.

2 (Recess taken at 8:48 a.m.)

3 ***

4 (Resume proceedings at 10:34 a.m.)

5 THE COURT: Counsel, you will each get a
6 packet. It has Wendy's offered and rejected, the
7 respondents' offered and rejected, verdict forms,
8 the instructions that will be given with the matrix
9 on the top.

10 I learned this morning after court the
11 first time that you had been working from a matrix
12 that we did not have yesterday. As we recreated our
13 own, there were 13 differences between the matrix I
14 received this morning and the one we worked from
15 yesterday.

16 I did my best to reflect the new
17 information, although some of the instructions had
18 already been offered. Some had been rejected and
19 many had been modified.

20 Deputy Coss, will you help, please. First
21 to Wendy's counsel. One to Ms. Shanks, one to Mr.
22 Lattin. Go ahead. One to Mr. Hosmer-Henner. I
23 want to give you a little bit of time. Tell me how
24 much time you need, counsel. I'm confident that

1 there will be objections in addition to what was
2 submitted in writing. I prefer to simply
3 acknowledge a placeholder for your objections,
4 allowing you to memorialize them, if you wish, when
5 the jury is not awaiting us.

6 But if you believe that there are arguments
7 that could be made that would change the packet we
8 have prepared, you should be given an opportunity as
9 well. It is 10:37. The jury has been here since
10 8:45 and then were released and returned at 10:30.

11 Counsel, do you need time to review? What
12 do you want to do?

13 MR. LATTIN: Fifteen minutes, your Honor.

14 MR. CONNOT: That's appropriate.

15 THE COURT: It is appropriate.

16 MR. ROBISON: Can we just submit a pleading
17 that says Todd and Todd's respondents' objections to
18 those given, submit a pleading saying it's proper
19 that we're not giving and simply file it.

20 THE COURT: I don't mind that.

21 MR. ROBISON: All the arguments have been
22 made and they just made a record of what we wanted
23 and didn't get --

24 THE COURT: The Court has now spent about

1 12 hours on instructions. I don't imagine I'll make
2 one change based upon arguments. I've also
3 paginated the packet and it's ready to go, but I
4 also want to give all of you the right to object and
5 to preserve your objections. So, if you want to
6 submit in writing, we'll set a deadline of 48 or 72
7 hours or something.

8 MR. LATTIN: That would be fine with us,
9 your Honor.

10 MR. CONNOT: That's fine from Petitioner's
11 perspective, your Honor.

12 THE COURT: All right. So, when I return
13 in 15 minutes, I'll read the instructions and then
14 begin with closing arguments, right?

15 MR. SPENCER: Sounds good.

16 THE COURT: Hold on, counsel. I have a
17 packet in front of me. Todd wants to ask that these
18 be marked and published to the jury for
19 demonstrative purposes only. These are documents
20 that have already been broadcast to the jury?

21 MR. ROBISON: Some.

22 THE COURT: Oh, so these are marked next in
23 order sequentially. Let me look. To Wendy's
24 counsel, have you had a chance to review these?

1 MR. SPENCER: Yes, your Honor. They're all
2 acceptable except for one, 569 at the bottom. Our
3 problem is missing witnesses. The No. 4 -- I guess
4 there will be argument that we should have called
5 all of these people. That's a matter of trial
6 strategy. But Paul Taggert, we don't even know who
7 that is.

8 THE COURT: He was referenced during trial
9 as a water rights person.

10 MR. SPENCER: But we wouldn't have called
11 him and he wouldn't have been on our witness list.
12 To imply we didn't call somebody we didn't designate
13 would be improper. And that goes to five, six, and
14 seven as well. The first three have been
15 designated.

16 THE COURT: You wish to respond?

17 MR. ROBISON: Yes. Mr. Taggert was
18 identified long ago as a water law expert that's
19 represented various entities with which Mr. Jaksick
20 is involved. And they want to use Wendy as an
21 expert when they had a list of people completely
22 competent enough to talk about the details of the
23 water transfers. They should have called somebody.
24 They failed to meet their burden by not calling a

1 water expert and relying instead on Wendy.

2 MR. SPENCER: We did not designate her as
3 an expert. She testified based upon her personal
4 knowledge and she's an owner of the asset, at least
5 a beneficial owner, and can opine about that.

6 THE COURT: Closing arguments in a moment,
7 counsel.

8 Do you have this available to you, Ms.
9 Shanks? Are you the brain behind all of these
10 written documents or shall I look past you to Mr.
11 Robison? If I had you adjust this, how long would
12 it take?

13 MR. ROBISON: How long for us to adjust
14 that if you objected to us using it?

15 THE COURT: Yes.

16 MR. ROBISON: Depends upon the adjustment
17 but it won't take long.

18 THE COURT: I would take out No. 4, Paul
19 Taggert, and allowing you to argue five, six, and
20 seven. But those will be new numbers four, five,
21 and six. Or take out "water law expert," one of the
22 two. Four is Paul Taggert.

23 MR. ROBISON: Take out Mr. Taggert and
24 we'll go with what's left.

1 THE COURT: All right. I think I included
2 an instruction that says the arguments of counsel
3 are not evidence.

4 MR. SPENCER: We have two demonstratives
5 that we provided to the other side, your Honor.

6 MR. LATTIN: No objection.

7 THE COURT: Deputy, it will be 10:57,
8 10:58.

9 (Recess taken at 10:43 a.m.)

10 THE COURT: One more thing, counsel. I
11 have a packet of 98 instructions that I had at noon
12 yesterday with a matrix that describes each. I
13 chose not to make a copy for all of you because it's
14 250-something pages.

15 It's going to be marked. It's going to be
16 filed, not admitted as evidence, and it will be
17 available for your review when you prepare your
18 written objections to instructions.

19 Off the record, please.

20 (Recess taken at 10:44 a.m.)

21 THE COURT: One more thing on the record
22 and then I'm out of here, I promise.

23 I've just been notified that in the final
24 version converting from PDF to Word and back to PDF

1 caused one or two first letters of words. We only
2 found two of them to be omitted. In front of the
3 jury I'll take responsibility for that and we'll
4 move on. I won't repaginate and reprint it, so just
5 overlook those, please.

6 (Proceedings adjourned at 11:44 a.m.)

7 (Out of presence of the jury.)

8 MR. ROBISON: We rested subject to putting
9 exhibits into evidence that have been stipulated to.
10 May I read that list off?

11 THE COURT: Please.

12 MR. ROBISON: 13E, 13F, 13G, 13H, 13J, 13K,
13 13L, 13M, 13N, 13P, 23, 23-11, 23-25, 23-22, 23-29,
14 23-30, 23-31, 23-32, 23-33, 23-34, 23-35, 23-36. I
15 withdraw 36 -- 23-36. 23-38, 23-39. That's not
16 stipulated, your Honor. Withdraw that one.

17 24, Exhibit 30, Exhibit 33, Exhibit 36,
18 Exhibit 50, Exhibit 54, Exhibit 55, 56, 57, 59, 60,
19 62, 63, 65, 66, 67, and 71. I believe those are all
20 stipulated, your Honor.

21 THE COURT: Without objection they are
22 admitted, Ms. Clerk.

23 THE CLERK: Thank you.

24 MR. CONNOT: We just want to double

1 confirm. We were trying to follow along. I think
2 you're accurate, Kent, but I'm not 100 percent
3 center so we reserve our right.

4 THE COURT: And I'm 100 percent certain
5 it's time to call the jury.

6 MR. CONNOT: I agree.

7 MR. ROBISON: Your Honor, one more matter.
8 The punitive damage instructions is improper because
9 the jury should be given a verdict form as to
10 whether or not they want to hear evidence on
11 punitive damages, and we'll submit that additional
12 objection.

13 THE COURT: Thank you.

14 The jury, please.

15 (Jury enters courtroom 11:13 a.m.)

16 THE COURT: Good morning, ladies and
17 gentlemen. You have now heard all of the evidence
18 in this case. I begin by reading the principles of
19 law that will govern your deliberations. We refer
20 to those principles as "jury instructions."

21 The attorneys and their parties and the
22 Court have worked very hard to prepare this packet
23 of instructions. As we converted formatting from
24 Word to PDF and back to Word, we noticed a glitch

1 that deleted some letters. I think we caught all
2 the errors. If there are minor typographical
3 errors, please overlook them. If you cannot, blame
4 the Court and not any of the attorneys or their
5 parties.

6 Let's just make sure we have that. They're
7 of such importance that I'm required to read them
8 aloud to you. Because we all learn differently, it
9 is appropriate that they be broadcast to you. A
10 lawyer who works in chambers will flip the page as I
11 read. You will have several copies of these written
12 instructions available in the jury deliberation room
13 to use as you will.

14 And with that, Ms. Reporter, you are not
15 required to write the instructions. You may rest.

16 (Jury instructions read at 11:15 a.m.)

17 THE COURT: Before any attorney begins
18 speaking, I want you to know that I might interrupt
19 the attorney, and it's not because of who that
20 attorney is or what that attorney is saying. It
21 will likely be for cadence. It will undoubtedly be
22 for our breaks as we stand in place as you've become
23 accustomed to observing and it will also be for
24 breaks into the jury deliberation room. I will

1 manage the time during closing arguments as I've
2 managed it in the past.

3 With that, ladies and gentlemen, let's just
4 stand for a moment.

5 Mr. Spencer.

6 MR. SPENCER: Thank you, your Honor.

7 May it please the Court. It's still
8 morning today. We're almost to noon, but first
9 thing I want is to just thank you all for your time
10 and attention and the hard work you've given to all
11 the parties for -- in relation to this trial and
12 helping us to resolve this dispute on behalf of my
13 team and Wendy. We can't tell you how much we
14 appreciate that.

15 This is a case about greed and a brother
16 that didn't want to share the inheritance from their
17 father and he put together a team of individuals to
18 help him in his endeavor to take as much of this
19 estate for himself as possible after he was put into
20 a position of trust by his father to make sure that
21 it ended up where it was supposed to go according to
22 his desires. And that's sort of the overriding
23 theme, sort of the umbrella that covers this entire
24 case, that this is a fiduciary case. It involves

1 fiduciaries, fiduciary relationships, and fiduciary
2 duties and obligations. It's the filter that
3 everything that happened in this case has to be run
4 through, because you've heard about all the various
5 capacities. There are individual capacities and
6 trustee capacities, and then individuals who
7 assisted trustees in their job or their endeavor in
8 some cases to divert assets away from the trust,
9 from the estates to benefit mainly Todd and others,
10 particular cotrustees.

11 Todd was a fiduciary for Wendy in many
12 capacities. This is just a few of them. But when
13 you look at the fiduciary duties, every one of these
14 positions were positions of trust, positions that
15 involved fiduciary duties and required Todd, as you
16 heard the evidence, to act in the best interest of
17 all the beneficiaries, to avoid looking at his own
18 interest and to avoid taking action that would
19 benefit himself to the harm or detriment of the
20 beneficiaries, the people that he was supposed to
21 put -- was put in charge and was supposed to take
22 care of.

23 Todd knew from the beginning, though, that
24 he probably shouldn't be in a position of trust for

1 Wendy because you heard me ask him, Do you like
2 Wendy? He couldn't answer that question. In fact,
3 he didn't answer it. His response was, Well, you
4 know, I have to treat all of this as a business
5 decision. I have to look at this from a business
6 standpoint. Do you like Wendy? We had to have the
7 question read back because he wouldn't answer the
8 question, and he still didn't answer the question.
9 I have to treat this as a business decision, as a
10 business matter.

11 Of course he does. But the question was,
12 Do you like Wendy, and he wouldn't answer it or say
13 he liked her. Certainly wouldn't say he loved her.
14 And so he knew that he shouldn't be the trustee over
15 Wendy's inheritance, over Wendy's right to receive
16 property from her father.

17 And then what did we hear from Stan? Stan
18 testified. So we talked about the Buckhorn option
19 and your belief that that's a breach of fiduciary
20 duty by Todd. Is there anything else you can
21 identify that you believe is a breach of fiduciary
22 duty by Todd? His answer was, Yeah, I just think,
23 you know, he really did not want Wendy to get
24 anything. Just think of that. The person put in

1 charge to take care of the assets, protect them, and
2 make sure that, once all the business and
3 administration of the trust is over, that the
4 inheritance goes to the right people, tells the
5 other cotrustee he really did not want Wendy to get
6 anything.

7 And while this umbrella that is the
8 fiduciary obligations and the fiduciary duties
9 overhangs everything that Todd did, that was the
10 underlying theme of his actions. He didn't want
11 Wendy to get anything and the result of that would
12 be he wanted himself to get as much as possible, if
13 not everything. Certainly when it came to Wendy's
14 share, he would want to get all of Wendy's, if he
15 could.

16 So, what did he set out to do? He set out
17 for that very purpose, and the first document we see
18 is dated January 1, 2008. Now, this is a document
19 we went over a bunch but we saw four versions of it.
20 Actually, there's just three and I'll get to Exhibit
21 173 in a minute. We have Exhibit 11, which is the
22 version that everyone on Todd's side of the equation
23 said is the operative document. And then we have
24 Exhibit 11-A, 11-B. And so 11-A is the one that is

1 marked "Old" at the top of it, and we saw how the
2 signature page to 11-A and 11-B was the same. We'll
3 look at that in a minute. But we then saw the
4 difference in the versions of the documents. The
5 old version, 11-A, did not have a paragraph C in it,
6 but the other three versions did.

7 Well, that addition of that paragraph
8 changes the pagination. We all know that's going to
9 add pagination and push the document down. And then
10 we also saw on the later pages Exhibit 14, which was
11 that 3- or 4-inch paragraph that was removed from
12 the other versions that wasn't 11-A. Well, that's
13 gonna push everything up and change the pagination,
14 right?

15 And so what did Mr. Hascheff do? Well,
16 first of all, he took the signature page from one
17 document and used it on another document. This is
18 the one we showed in trial, where if you overlay the
19 signatures, they're identical except for one thing,
20 which is that June 29th, 1996, entry at the bottom
21 of Exhibit 11-A. Now, that's supposed to be the old
22 document. So, doesn't make a whole lot of sense
23 that you would have a document without that date
24 that came after the date that they put it in unless

1 somebody wrote it in later. But if it's the same
2 signature page, you would expect it to be the same
3 on the old document with the old -- you'd expect it
4 to be on the later document. But what they did is
5 they just kept it blank so they could use it over
6 and over and over if they needed to. But there's no
7 question that it's the same signature page and they
8 took it from one version and put it on another
9 version that was different.

10 Now, there was testimony that, well, you
11 know, Sam knew about this. Not a single shred of
12 paper documenting that Sam knew about it. You'd
13 write him a letter, Hey, we made these changes, we
14 put paragraph C in and took paragraph 14 out. Just
15 want to make sure you understand this. Didn't see
16 any of that from Mr. Hascheff.

17 Instead, what we saw is that he manipulated
18 margins and this is the document that starts at
19 paragraph 15.3 and every one of the versions,
20 despite the changes in the pagination, starts at
21 paragraph 15.3. And the four signature pages are
22 there. And changing the pagination, adding
23 paragraphs, subtracting paragraphs is going to, by
24 definition, put the signature page -- paragraphs on

1 the signature page on a different page, but they had
2 to make it fit because they had the signature pages
3 and they needed to use it multiple times.

4 Now, the last version, Exhibit 11, the
5 signature page there, the date is typed in,
6 "June 29th, 1996." And that's not even the right
7 date of the trust. That's the wrong date. So Sam
8 is signing that as trustee of the family trust dated
9 June 29th, 1996, and we all know that it was 2006.
10 And so this is the first example of manipulation,
11 and misrepresentation. Why? Because they say
12 Exhibit 11 is the operative document and then they
13 say they're all the same, which they're not, and
14 then there's four different versions of the
15 document. Why do you need four versions if they're
16 all the same? You don't. Because they're
17 different.

18 What did we find out about exhibit 173?
19 Well, that's the version that was in Kevin Riley's
20 file and you'll see the "Riley" at the bottom of the
21 page for the Bates number. If Exhibit 11 is the
22 operative document, why are they sending Exhibit
23 11-B to Kevin Riley as the operative document?

24 No explanation for that, and it creates

1 nothing but confusion. And the beneficiaries of the
2 trust, they're supposed to try and decipher and
3 figure out which of these indemnity agreements
4 applies. No one has really said which one does
5 because they're all dated the same date. And then
6 there's Exhibit A attached. Well, Stan's didn't
7 have an Exhibit A so, clearly, it was up to Stan or
8 Todd to prepare an Exhibit A rather than what
9 purported to be Sam's attorney.

10 But there was an Exhibit A attached to
11 this, and what did it include? It included
12 obligations that Todd personally guaranteed but also
13 included a bunch of Todd's personal obligations
14 including his mortgage, the debt on his cars, and
15 other things which you'll see in Exhibit A. Well,
16 that's not how indemnity works. Indemnity works
17 when somebody comes knocking on the door and says,
18 Hey, you owe me this money, and the person who
19 indemnifies comes in and says, Wait, I said I'll pay
20 for that and I'll do so.

21 That's not how Todd and his team used it.
22 It was basically a blank check to pay all the
23 obligations of all the entities, particularly the
24 ones that Todd had an interest in, without him being

1 obligated pay any of his own debts, trying to pay
2 his own personal debts. And what did it become?
3 This became a huge massive gift. If you're paying
4 some obligation for another person and you don't get
5 anything back for it, then that's a gift.
6 Incredible implications on the estate tax situation
7 of Sam.

8 But even more so and more simply,
9 devastating or certainly metamorphic changes to
10 Sam's dispositive provisions and those provisions
11 being how he wants his property to pass once the
12 dust settles. Well, if all the money is spent
13 paying obligations and paying Todd's obligations,
14 well, then one person is getting everything and the
15 other two, Stan and Wendy, are getting nothing. Or
16 stated another way, Stan and Wendy are paying
17 two-thirds of all the debt and Todd's getting
18 100 percent of the benefit. That's how this
19 agreement was used. Nowhere is there an indication
20 that that was Sam's intent, to change his
21 testamentary desires and to change his dispositive
22 provisions.

23 The intent of this was to protect, if it
24 exists -- and we don't know which one exists -- but

1 the intent would have been to protect Todd from
2 having to pay an obligation that he had guaranteed
3 if someone came knocking, and we didn't see where
4 anybody came knocking. Of course debts were owed
5 and amounts needed to be paid, but there was no
6 situation where Todd had come forward with some of
7 his own assets to cover it.

8 Then we see the option agreement and in
9 relation to the option agreement we saw the first
10 document May 10th, 2010, which was Exhibit 23.4.
11 This was the document where Mr. Hascheff wrote to
12 Sam and said -- and warned -- that the option
13 agreement is going to trigger the due-on-sale cause.
14 The option agreement is going to be a breach of the
15 contract. We saw that in the middle of the
16 paragraph underlined there, "would trigger the
17 due-on-sale clause." And then we saw down at the
18 bottom that it's going to be a breach of the --
19 going to be a breach of the default of the deed of
20 trust.

21 But then he says, well, at the bottom an
22 option would be considered a breach, however, you
23 may be able to convince a court, removal of the
24 option cures the breach. So, bad news, bad news

1 but, hey, there's a possibility that we can make
2 this work. Then we saw Exhibit 465, which was from
3 Mr. LeGoy, June 17th, 2010, and in this document --
4 I'm going to summarize because it's a several-page
5 document. But he advised that the estate and gift
6 tax consequences were difficult to determine based
7 upon the option agreement and that effectuating the
8 agreement was very risky; essentially, advising
9 don't do it. We can't figure out how it's going to
10 affect the estate tax. It's a very risky
11 proposition. Don't do it. He'd been with Mr. LeGoy
12 for a while. That was 2010, several years to
13 implement his estate plan. Mr. LeGoy's telling him
14 don't do it. But Mr. Hascheff is saying in the
15 letter, well, maybe you can get away with it.

16 So, what do they do? They went and did the
17 option over Mr. LeGoy's advice. And so what did we
18 see with the option agreement? Well, we've heard
19 time and again that the correct option agreement is
20 the one that applies a five-year payoff -- I'm
21 sorry -- a 10-year payoff at 2.25 percent. Never
22 seen a complete document of that. We've seen copies
23 but we've never seen a complete document.

24 Then we see Exhibit 542, which is the

1 version that was sent to Ticor. You can see the
2 Bates number at the bottom of the page. Well, that
3 version was not 10 years, 2.25 percent. It was 5
4 years, 6 percent. Then we pulled out the original
5 that was sent to Mr. Green, Todd's paid handwriting
6 expert, and it contained the original pages. And if
7 that's the one -- if the original is the one that
8 controls, well, it also contained the terms 5 years
9 at 6 percent.

10 So we have the original 5 years at
11 6 percent. We have a copy that was sent to Ticor,
12 which they represented was 5 years, 6 percent. And
13 then what do we get to the beneficiaries? Oh, well,
14 no. It's 10 years, 2.5 percent. That's what they
15 heard. These documents were not produced until the
16 lawsuit started. So, the beneficiaries, Wendy, as
17 far as she knows, the terms were 10 years and 2.25
18 percent and she didn't know about that back in 2010
19 either.

20 So, what we know and what the evidence
21 shows is the document they sent out to a third party
22 Ticor Title and represented the terms was a 5-year,
23 6 percent. The original that they sent in this
24 lawsuit to Todd's handwriting expert, which contains

1 the original pages and the original signature page,
2 5 years, 6 percent, and then the beneficiaries hear
3 something different.

4 What's the effect of that? Well, Todd gets
5 a right to purchase the Lake Tahoe property on an
6 unsecured note at 7.25 percent at a 10-year maturity
7 at 2.25 per anum and interest-only payments till
8 then. Well, that's a pretty great deal,
9 particularly considering that Sam signed a lease
10 right after that that paid \$22,000 a month, which
11 was \$264,000 a year, more than the amount that Todd
12 was obligated pay on his note. When I say "Todd," I
13 mean Incline TSS was the entity. So, Incline owes
14 \$159,000 a year and is receiving \$264,000 in lease
15 payments a year. So, again, that's more than was
16 owed on the note, and we'll get to more regarding
17 the Tahoe property in a moment.

18 But the next thing is the second amendment,
19 Exhibit 13. By the way, the signature page on all
20 of those versions was the same, the versions of the
21 option agreement. So the second amendment, we've
22 seen that, Exhibit 13. This was a document prepared
23 by Mr. Hascheff at a time when he did not have
24 copies of any of the earlier documents, so he's

1 preparing an amendment to a trust that he doesn't
2 even have a copy of. And this is after he had said
3 -- after Mr. LeGoy said don't do the option, Mr.
4 Hascheff said, well, it'll violate these terms but
5 you can probably get away with it. Now Mr. Hascheff
6 is starting to prepare all the documents.

7 He prepares a second amendment and doesn't
8 talk to Mr. LeGoy directly about what Sam's plan is,
9 doesn't ask to get copies of the pertinent documents
10 and testifies that he really didn't get his arms
11 around the trust until April -- between April and
12 December of 2012. Stan and Wendy testified they did
13 not recognize Sam's signature on this document. It
14 references old, incorrect trust documents and does
15 not reference the fifth amendment.

16 Well, we find out later that their fifth
17 amendment was supposedly signed on April 27th, 2012.
18 At the same time a version of the second amendment
19 was apparently also signed -- or at least there's a
20 signature page to it, and no one's ever seen that
21 version of it, the April 27th, 2012, version. The
22 only thing to gather from that is that they just
23 needed a signature page. They hadn't prepared the
24 second amendment yet. They waited and waited, and

1 maybe they prepared it, who knows, but the
2 December 10th, 2012, signature page was the one
3 that was attached, and we all know that that's an
4 orphan signature page. It has a footer with no page
5 number at the bottom.

6 And it doesn't make any sense that you
7 would sign a second amendment and a fifth amendment
8 on the same day in April and then sign another
9 second amendment in December. Who knows what the
10 earlier version said, but what we found out about
11 this document is -- well, first let's look at the
12 form of it. Todd's paid expert looked at the
13 document itself, going back to slide 18, and he
14 found multiple problems with the document itself.
15 Staple holes on the last page didn't match, there's
16 the page that shows multiple staple holes on the
17 signature page, fewer ones on the earlier ones. The
18 brightness of the last page did not match. Pages
19 one through five were essentially the same but then
20 page six lit up.

21 And so that indicated to him that it was a
22 different page, different paper, and different than
23 the other five pages all of which, according to --
24 and this was part of his report. The other first

1 five pages have page numbers. The orphan signature
2 page has none. And then he reversed or flipped the
3 order and page one's at the bottom on the right side
4 and going up to show that the margins on pages one
5 through five matched, but then the margin on the
6 signature page didn't match.

7 Now, we heard, well, that might have been a
8 printer issue. Well, if you're printing the
9 document, then why wouldn't the same printer print
10 all the same pages exactly with the same margin?
11 It's because the signature page was from a different
12 document than the ones that were used there. This
13 is their expert that noted this.

14 So, we then get to Exhibit 202. This was
15 the exhibit that was Jessica Clayton's email that
16 contained all the signature pages and it also
17 contained a draft that had some of the changes
18 written in, or at least at the top. So there at the
19 top we see, oh, well, this is Sam's changing the
20 percentages and initialing each page. Well, those
21 initials don't end up in the -- those percentages do
22 not end up in the document.

23 And then we also saw at the bottom -- and
24 we showed this during the trial -- that that

1 paragraph there ended in the restated family trust
2 as provided in the restated family trust, and then
3 we go back to Exhibit 13 and find that paragraph.
4 There's a whole new sentence dropped into the
5 document. It says, "As provided in the restated
6 family trust," about three lines up in paragraph
7 3.3. That's where that draft ended.

8 But then this sentence was added, so we
9 have just a change in the percentages and then we
10 have a new sentence in there that forgives a note of
11 Todd that wasn't contained in the draft that Jessica
12 sent that Sam saw. So that was added. But then on
13 page TJ 003, page 3 of Exhibit 13, what was the
14 other most glaring thing that we saw here that
15 showed that this document had been changed well
16 after the fact?

17 Remember Mr. Hascheff said Well, I didn't
18 get all the documents until sometime between April
19 and December of 2012? Well, this takes care -- I'll
20 come back to this. So this takes care of an issue
21 that they did not find out about until 2015, which
22 is the specific gift of the Pioneer Group, which is
23 in the top paragraph. There was a declaration of
24 gift that was done and it only gave 6 percent of

1 his, which would have been Sam's percentage of the
2 Pioneer Group. Lawyer said, Well, you gotta have at
3 least 6 percent of the whole entity, not just
4 6 percent of his share, and that's something they
5 found out in 2015. And, lo and behold, this
6 document here, page 3, which was supposedly signed
7 December 10th, 2012, cures a problem they didn't
8 know about or find about until 2015. Clear evidence
9 that this was a change that was made -- well,
10 certainly without Sam's knowledge, but maybe even
11 after Sam's death, and solves this 6 percent problem
12 that they were not made aware of until Pioneer Group
13 was actually sold.

14 Going back to the indemnity agreement --
15 well, let me be clear. Exhibit 231, please. I said
16 "2015" and I meant 2013. We saw the declaration of
17 gift, which was signed, Exhibit 230, signed
18 April 15th, 2013. Next page. And then go up to the
19 previous. It says, "6 percent of his stock in
20 Pioneer Group," right? And then below that it says,
21 "Remainder of this page intentionally left blank,"
22 and then we have an orphan signature page attached
23 to this declaration of gift. Again, no page numbers
24 and that, clearly, could have fit in the face that

1 was intentionally left blank.

2 Then we see Exhibit 231, which going to
3 1084, at the top it says, "You need to own more than
4 5 percent of the total amount of stock issued in
5 order to get the Colorado gaming license." Down
6 below it says in the email below, "The earlier
7 assignment is a bit troubling because it does not
8 appear that Pioneer was aware of it and the stock to
9 this day appears to be in Sam Jaksick's name
10 individually."

11 So these issues arose in 2013 well after
12 the December 10th, 2012, second amendment to the
13 trust document, which solves this very problem.
14 That was done after the fact. We also know on the
15 indemnity agreement, Exhibit 11, which was signed in
16 2008 -- this is the point I was going to make
17 earlier. You remember Mr. Hascheff said, Well, I
18 didn't know about these trust documents until
19 between April and December of 2012 and then, lo and
20 behold, in 2008, according to this document, the
21 family trust revised June 29th, 2006.

22 The only way that could have been put into
23 that document would it would have been put there
24 sometime between April and December of 2012, so

1 these pages were clearly replaced. Then we saw
2 water rights deeds, slide 23. Exhibits 119, 120,
3 121, and 122. Those were deeds that were signed by
4 Todd, which he signed Sam's name to, if you want to
5 pull Exhibit 119 up. So this is one where Todd
6 signed Sam's name, and we had the discussion with
7 Todd about whether he'd ever done that before, and
8 this one is dated December 4th and that date's wrong
9 and so on.

10 But what we do know is that Nanette
11 Childers notarized Sam's signature that Todd had
12 signed for. It doesn't say, Sam Jaksick, Jr. by his
13 attorney-in-fact Todd Jaksick or Todd Jaksick as
14 attorney-in-fact for Sam. It says "Sam." So, as
15 far as the document that's filed in the deed
16 records, it appears that Sam signed it. Nanette
17 notarized his signature. That was on that first
18 wave of documents. Go back up to the previous page,
19 Keith.

20 In this one the grantor is Lakeridge Golf
21 Course and the grantee is the Jaksick Family LLC.
22 So, those were entities that came from Thelma's
23 estate and passed down and were to be divided
24 equally, so the water rights deed passed -- at least

1 these water rights -- within the family. Doesn't
2 change the dispositive scheme or plan of Thelma or
3 Sam, as far as that goes, treating, you know, all
4 the kids equally.

5 But then we saw in relation to the notary
6 -- well, first of all, in relation to a person
7 signing on behalf of another with their power of
8 attorney, they're supposed to designate, I'm doing
9 this as the agent for this person, not just sign
10 their name and make it appear that that person
11 appeared before this notary and signed it, which is
12 represented in the public record here. I'm signing
13 this for Sam as his agent. It's not Sam signing it,
14 it's me. And they misrepresented that to everybody
15 in Washoe County because they put it in the deed
16 records.

17 Then Exhibits 123, 124, and 125, what
18 happens with these water rights deeds that were
19 transferred from Lakeridge to the Jaksick Family
20 LLC? We heard, well, Mr. Riley said you're exposing
21 that to the creditors of the Jaksick Family LLC.
22 You don't want to do that, gotta get it out of the
23 name of that entity. Didn't hear who those
24 creditors were but that was the excuse.

1 So, what do we see in Exhibit 123, 134, and
2 125? We have another deed correction water rights
3 deed and now it goes from the Jaksick Family LLC --
4 next page -- Grantor, up above, Jaksick Family LLC
5 to -- and the Todd B. Jaksick Trust dated June
6 24th, 2006, Grantee.

7 So, this water rights deed, Jaksick Family
8 LLC, which the water rights went into, is
9 transferring it out now to Todd's family trust.
10 This one we see here is another orphan signature
11 page signed by Sam and doesn't have a page number
12 and notarized this time by Jessica Clayton and just
13 attached to the correction deed that we saw above.
14 Now, we heard, Well, gosh, this isn't an orphan
15 signature page because look at the top. There's
16 page numbers there. Well, the document was signed
17 supposedly February 28th, 2013, but at the top the
18 header there shows "April 9th, 2013."

19 Those pages were put on there. Those
20 stamps were put on those pages by the Washoe County
21 deed records clerk so that they could be counted.
22 There's a page number on each. That doesn't
23 eliminate the fact that that's an orphan signature
24 page. That's an orphan signature page attached to a

1 correction deed that transfers the water rights from
2 the Jaksick Family LLC into Todd's family trust.

3 How on earth did that become a thing?

4 Get it out of the Jaksick Family LLC
5 because of these creditor issues and put it in
6 Todd's trust, all designed to get property to Todd,
7 all a misrepresentation in the deed records of this
8 county and everybody else that lives here that Sam
9 was involved with this and that Sam wanted that
10 result. This was orchestrated by Todd to get those
11 water rights into his name.

12 Some of those deeds transferred to Duck
13 Lake Ranch as well. That's a Todd entity. So
14 remained in the trust -- in the family, divided
15 equally. Suddenly it's out and Todd gets all of it.
16 Stan and his family and Wendy and her family lose
17 because of it. That's the danger in these orphan
18 signature pages. Get Sam so sign an orphan
19 signature page and you can just slap it on anything
20 and it looks like Sam was involved in the
21 transaction. How many orphan signature pages did we
22 see? Exhibit 24. At least 33 different orphan
23 signature pages. Almost all of the ACPAs had orphan
24 signature pages. Exhibit 13 was the second

1 amendment, Exhibits 14 through 20 are ACPAs, so
2 Exhibit 21, 22, and 23 did not have orphan signature
3 pages but the other ones did.

4 And then the option agreement. Some of the
5 other important documents we saw with orphan
6 signature pages, the option agreement, which is
7 Exhibit 23.5 and then the Ticor versions were 542
8 and the original was 542-A. Exhibit 200, it's a
9 declaration of gift. The bank accounts, Exhibit
10 230, a giftee transferring 6 percent of shares,
11 Pioneer shares, and then we saw the water rights
12 deeds.

13 This is how they operated. This is how the
14 team operated. They would -- let's get a bunch of
15 signature pages. We saw Jessica Clayton send a
16 handful all at once and then the documents were
17 prepared later. Oh, Sam knew about it. No
18 documentation that he knew about it. Just them
19 saying that. And so at a time when Mr. LeGoy was
20 representing Sam and preparing his estate planning
21 documents and advising him, they get bad news from
22 him that says -- "they" being Incline TSS and Todd
23 and the others -- saying don't do this deal, this
24 option agreement, it's too risky and we can't

1 determine the estate taxes. Mr. Hascheff said,
2 Yeah, go ahead and do it, so everything switched to
3 him.

4 What did we hear from Mr. Hascheff? The
5 ethical rules don't apply to him. He doesn't care
6 about them. Conflicts, no problem for him. He had
7 all kinds of conflicts representing Todd and Stan
8 and Sam in various capacities, intermingling the
9 representation and moving property from one of them
10 to others. He claimed the orphan signature pages
11 were just fine, no big deal, switch out pages all
12 the time from documents.

13 And you think about that. Exactly why was
14 he hired? Why do people hire attorneys? To make
15 sure that those kinds of things don't happen. And
16 Mr. Hascheff gets up on the witness stand and says,
17 No problem for me. I'll switch out a page. No big
18 deal. Client gives me permission. No letter to
19 document it, nothing to say, Hey, I did this, but
20 for him those things didn't matter. What mattered
21 was making sure that the property got transferred
22 over to Todd.

23 We then see the Exhibit 114. This was the
24 letter where at the bottom of the page -- I just

1 wanted to show this. This is May 11th, 2007.
2 This is the letter Mr. Hascheff wrote about the
3 indemnity agreement, the one that, apparently, had
4 been signed or the one that closed the executed
5 version of Todd's eight months prior to the date on
6 the document.

7 Slide 30, Keith. And this was what was
8 written down in the lower paragraph. "By executing
9 these documents he" -- that will be Sam -- "has
10 agreed to accept the substantial liability by
11 indemnifying both Todd Jaksick and Mr. Stan Jaksick
12 for any of these obligations. As always, he has the
13 right to have an independent counsel review the
14 indemnification agreement to make sure his interests
15 are protected."

16 If we look up above at the addressee of the
17 letter -- may have to go back to the exhibit,
18 Keith -- that's sent to Jessica Clayton by email,
19 not Sam. He's telling Jessica that you can then
20 tell Sam that he can go find another lawyer to look
21 at these indemnities because it's creating
22 substantial liability.

23 Then we heard him testify from this witness
24 stand that in relation to this transaction he was

1 representing Todd. Preparing indemnity agreements
2 for his supposed client Sam to assume all of this
3 liability and he's representing the beneficiary of
4 that indemnity agreement. Just mind-boggling he
5 would allow this to happen on his letterhead and on
6 his reputation.

7 We all know who his client was. It was
8 Todd. That was confirmed as of June 1, 2012. He
9 writes an attorney-client privileged memo regarding
10 the Lake Tahoe home and the Bank of America
11 refinance addressed only to Todd Jaksick and Kevin
12 Riley. Attorney-client privileged memo that Sam was
13 not sent. He had chosen who his client was. He had
14 chosen it to be Todd and Kevin and they were
15 excluding Sam from these communications. Mr.
16 Hascheff was Todd's lawyer, not Sam's.

17 And Mr. Hascheff never bothered to define
18 the scope of the indemnity agreement. We've seen
19 all the mistakes in the trust amendments. We've
20 seen the references to the other documents that
21 we've never seen, which would be the second
22 amendment from April. He's chosen Todd.

23 And then it can kinda begs the question,
24 How hard is it to be honest about this stuff? Slide

1 32. In this day and age it's not that difficult to
2 be honest about it. You put footers on documents,
3 you put page numbers on documents, you put
4 identifiers on every page so the pages can't be
5 switched out. You might even have your client
6 initial them. If you want to make a change to a
7 document, we all know that all you gotta do is just
8 hit print again. Make the change, hit print again
9 and have your client come in or go to see them and
10 have them sign the document. It's not hard.

11 It's not like the old days where you had to
12 sit down at a Selectric typewriter, and if you
13 wanted to change the thing, you have to do it from
14 scratch. If you're making a change, why switch out
15 pages? Why expand margins? Why attach signature
16 pages without page numbers from a different
17 document? Just reprint the page so documents are
18 prepared and processed properly. That would be
19 honest. A notary that has proper signatures and
20 dates and keeps records in her notary book, changes
21 and amendments made to documents, which is reviewed
22 and signed by the client. No confusion, question
23 about the validity of the controlling documents.

24 Instead of doing the easy part and being

1 honest about it and keeping notary books, they chose
2 to be the misrepresentation side of things because
3 they knew they couldn't get it done with Sam or Mr.
4 LeGoy working with Sam. They knew they couldn't get
5 what they wanted to accomplish done without the help
6 of Mr. Hascheff and without the signature page,
7 orphan signature pages and replacement of other
8 pages and so on. So what do we get? We have
9 documents with mistakes, changes and omissions, a
10 notary that will fill in and complete anything she's
11 been told, a notary that fails to record her
12 transactions spellspell or reporter lost notary book
13 to the state as she's supposed to do.

14 Documents -- multiple different documents
15 with the same signature page and then having to
16 manipulate pages in order to make all the margins of
17 the pages fit.

18 Your Honor, it's a good stopping point.

19 THE COURT: Great stopping point. Thank
20 you, counsel.

21 (Whereupon, jury was admonished
22 and excused.)

23 (End of proceedings at 12:44 p.m.)

24

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

3 I, CHRISTINA MARIE AMUNDSON, official reporter
4 of the Second Judicial District Court of the State
5 of Nevada, in and for the County of Washoe, do
6 hereby certify:

7 That as such reporter, I was present in
8 Department No. 15 of the above court on March 4,
9 2019, at the hour of 8:15 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein in the
12 case of Cons: Trust, SSJ's Issue Trust, Case No.
13 PR17-00445.

14 That the foregoing transcript is a true and
15 correct transcript of my said stenotype notes so
16 taken as aforesaid, and is a true and correct
17 statement of the proceedings had and testimony given
18 in the above-entitled action to the best of my
19 knowledge, skill and ability.

20
21 DATED: At Reno, Nevada, on 12th day of June 2019.

22 /S/ Christina Marie Amundson, CCR #641

23 _____
24 Christina Marie Amundson, CCR #641

#	1084 47:3	119 48:2,5	13E 26:12	18 43:13
#641 1:22	10:00 17:21 20:1	11:13 27:15	13F 26:12	1980 2:18
\$	10:30 17:20 21:10	11:15 4:7 17:11 28:16	13G 26:12	1996 33:20 35:6,9
\$159,000 41:14	10:34 20:4	11:44 26:6	13H 26:12	2
\$22,000 41:10	10:37 21:9	11th 54:1	13J 26:12	2.25 39:21 40:3,17 41:7
\$264,000 41:11,14	10:43 25:9	12 1:18 22:1	13K 26:12	2.5 40:14
0	10:44 25:20	120 48:2	13L 26:13	20 52:1
003 45:13	10:57 25:7	121 48:3	13M 26:13	200 52:8
1	10:58 25:8	122 48:3	13N 26:13	2006 35:9 47:21 50:6
1 1:14 32:18 55:8	10th 2:10 38:10 43:2 46:7 47:12	123 18:12 49:17 50:1	13P 26:13	2007 54:1
10 40:3,14,17	11 17:11 32:21 35:4, 12,21 47:15	124 18:12 49:17	14 33:10 34:14 52:1	2008 32:18 47:16,20
10-year 39:21 41:6	11-A 32:24 33:2,5,12,21	125 18:12 49:17 50:2	15 1:11 19:21 22:13	2010 38:10 39:3,12 40:18
100 19:19 27:2,4 37:18	11-B 32:24 33:2 35:23	12:44 57:23	15.3 34:19,21	2012 42:12, 17,21 43:2 45:19 46:7 47:12,19,24 55:8
106 6:1	114 53:23	13 20:13 41:19,22 45:3,13 51:24	15th 46:18	2013 46:16,18
		134 50:1	173 32:21 35:18	
			17th 39:3	

47:11 50:17, 18	23-33 26:14	14:15	4	542 39:24 52:7
2015 45:21 46:5,8,16	23-34 26:14	27th 42:17,21	4 1:18 23:3 24:18	542-A 52:8
2018 3:7 14:3	23-35 26:14	28th 50:17	4-inch 33:11	55 26:18
2019 1:18	23-36 26:14, 15	29th 33:20 35:6,9 47:21	40 8:4 14:15	56 26:18
202 44:14	23-38 26:15	3	4185 1:1	569 23:2
21 52:2	23-39 26:15	3 45:13 46:6	42.005 8:17	57 26:18
2150 2:14	23.4 38:10	3- 33:11	465 39:2	58 1:14
22 52:2	23.5 52:7	3.3 45:7	4785 2:3	59 26:18
23 26:13 48:2 52:2	230 46:17 52:10	3/4/19 3:1	48 22:6	6
23-11 26:13	231 46:15 47:2	30 26:17 54:7	4th 48:8	6 40:4,9,11, 12,23 41:2 45:24 46:3,4, 11,19 52:10
23-22 26:13	23rd 3:7	32 56:1	5	60 26:18
23-25 26:13	24 8:4 26:17 51:22	323.3411 1:22	5 8:4 40:3,8, 10,12 41:2 47:4	62 26:19
23-29 26:13	24th 14:3 50:6	33 26:17 51:22	5-year 40:22	63 26:19
23-30 26:14	250- something 25:14	35 3:22	50 26:18	65 26:19
23-31 26:14	26 3:24 8:3	36 26:15,17	532388 1:21	66 26:19
23-32 26:14			54 26:18	67 26:19

7	9	accomplish 57:5	ADAM 2:9	admitted 5:6 18:1 25:16 26:22
7.25 41:6	98 3:21 5:15 25:11	according 18:4 29:21 43:23 47:20	add 13:17,19 33:9	admonished 57:21
700 2:18	9th 50:18	accounts 52:9	added 6:16 45:8,12	advice 39:17
71 2:6 26:19	A	accuracy 3:11 4:19 17:15	adding 34:22	advised 39:5
72 22:6	a.m. 3:1 20:2, 4 25:9,20 26:6 27:15 28:16	accurate 27:2	addition 21:1 33:7	advising 39:8 52:21
75201 2:15		accustomed 28:23	additional 27:11	affect 39:10
8	abet 10:3	acknowledge 6:14 21:3	addressed 55:11	after 6:2 20:10 29:19 33:24 41:10 42:2,3 45:16 46:11 47:11, 14
83 14:17	abetting 7:9, 16 9:24 10:13 12:24 13:5,12 18:22 19:2	ACPAS 51:23 52:1	addressee 54:16	again 39:19 41:15 46:23 56:8
87 14:17	able 38:23	act 30:16	adjourned 26:6	against 5:11 6:19 7:5,9,18 8:1,5,21 11:24 12:16 13:7,12,16, 19,23,24 14:8 16:21 18:23 19:9
89102 2:10	above 50:4, 13 54:16	action 30:18	adjust 18:4 24:11,13	
89135 2:19	absence 3:18	actions 32:10	adjustment 24:16	
89503 2:6	absolutely 17:2	actual 8:4 15:6,10	administratio n 32:3	
89519 2:3	accept 54:10	actually 32:20 46:13	admissible 6:9	age 56:1
8:15 3:1	acceptable 23:2			
8:45 21:10				
8:48 20:2				

agent 49:9,13	12:23 13:4,12 18:21 19:2	allow 19:5 55:5	amending 8:9	anyone 16:24
ago 23:18	Akard 2:14	allowed 6:10	amendment 41:18,21 42:1,7,15,17, 18,24 43:7,9 47:12 52:1 55:22	anything 12:22 19:8 31:20,24 32:6,11 37:5 51:19 57:10
agree 10:8 15:2 17:2 27:6	all 5:2 7:6,17 8:19 13:13 14:12 15:8 16:8 17:7 19:16,22 21:21 22:4,12 23:1,5 24:9 25:1,13 26:19 27:17 28:1,8 29:9,10 30:4, 17 31:4 32:2 33:8,16 35:9, 13,16 36:5, 22,23 37:12, 17 41:19 42:6 43:3,23 44:10,16 49:3,6 51:6,7, 15,23 52:16 53:7,11 55:2, 7,19 56:7 57:16	allowing 21:4 24:19	amendments 55:19 56:21	apart 7:15
agreed 16:11 54:10		almost 29:8 51:23	America 55:10	apparently 42:19 54:3
agreeing 9:1		along 27:1	amount 41:11 47:4	appear 47:8 49:10
agreement 37:19 38:8,9, 13,14 39:7,8, 18,19 41:21 46:14 47:15 52:4,6,24 54:3,14 55:4, 18		aloud 28:8	amounts 38:5	appeared 49:11
agreements 36:3 55:1		already 20:18 22:20	Amundson 1:22	appears 3:23 8:14 47:9 48:16
ahead 20:22 53:2	allegation 7:11	also 5:1,24 7:13 8:15 11:22 12:15 16:2 22:2,4 28:23 33:10 36:12 40:8 42:19 44:16, 23 47:14	analysis 6:4	appellate 5:18
ahosmerhenn er@ mcdonaldcar ano.com 2:11	allegations 6:18 7:18,19, 24	although 20:17	analyze 17:24	applied 19:1
aid 10:3	alleged 10:1	always 54:12	another 11:22 33:17 34:8 37:4,16 43:8 49:7 50:2,10 54:20	applies 36:4 39:20
aiding 7:9,16 9:23 10:13	alleges 7:9 8:5	amend 15:9 17:1	anum 41:7	apply 13:8 16:1 19:4 53:5
		amended 3:5 14:15	anybody 38:4	appreciate 29:14

appropriate 21:14,15 28:9	asset 12:18 24:4	attorneys 27:21 28:4 53:14	bank 52:9 55:10	30:23
April 42:11, 17,21 43:8 45:18 46:18 47:19,24 50:18 55:22	assets 12:5, 14,20 30:8 32:1 38:7	August 14:3	Bannon 6:1,4	begins 28:17
argue 24:19	assignment 47:7	available 3:5 24:8 25:17 28:12	based 6:13 14:20 15:3 22:2 24:3 39:6	begs 55:23
argument 23:4	assisted 30:7	avoid 30:17, 18	basically 36:22	behalf 4:10 29:12 49:7
arguments 5:11 8:12 14:22 18:4 19:23 21:6,21 22:2,14 24:6 25:2 29:1	assume 55:2	awaiting 21:5	Bates 35:21 40:2	behind 24:9
arm 19:7	attach 56:15	aware 46:12 47:8	became 37:3	being 12:2,4 13:23 36:24 37:11 52:22 56:24
arms 42:10	attached 5:15 36:6,10 43:3 46:22 50:13, 24	away 30:8 39:15 42:5	become 28:22 37:2 51:3	belief 31:19
arose 47:11	attempted 4:16 6:15 7:10 17:8	B	becomes 18:16	believe 5:21 13:3,21 21:6 26:19 31:21
around 42:11	attention 29:10	back 7:3 10:20 12:10, 20 14:15 25:24 27:24 31:7 37:5 40:18 43:13 45:3,20 46:14 48:18 54:17	before 4:22 6:7 11:12 28:17 48:7 49:11	below 46:20 47:6
assert 13:20	attorney 28:17,19,20 36:9 49:8	bad 38:24 52:21	began 4:6 17:7	beneficial 24:5
asserted 11:24	attorney- client 55:9,12	balance 4:19	begin 8:14 22:14 27:18	beneficiaries 30:17,20 36:1 40:13,16 41:2
assertion 8:20	attorney-in- fact 48:13,14		beginning	beneficiary

18:24 55:3	10:2,5 54:11	BRUST 2:5	cannot 28:3	12:7,18 26:1
benefit 30:9, 19 37:18	bothered 55:17	Buckhorn 31:18	capacities 10:10,13 30:5,6,12 53:8	causing 12:18
best 18:5 20:16 30:16	bottom 23:2 33:20 35:20 38:18,21 40:2 43:5 44:3,23 53:24	bunch 32:19 36:13 52:14	capacity 8:6 10:6 14:4,9 16:18	CCR 1:22
between 5:1 6:8 20:13 42:11 45:18 47:19,24	brain 24:9	burden 23:24	CARANO 2:8	center 27:3
beyond 19:20	breach 7:4,16 9:24 10:3,8 13:5 15:17 19:3,7 31:19, 21 38:14,18, 19,22,24	business 31:4,5,9,10 32:2	care 30:22 32:1 45:19,20 53:5	certain 12:1 15:20 27:4
big 53:11,17		C		certainly 31:13 32:13 37:9 46:10
biggest 9:6 11:9	breaks 28:22, 24	cadence 28:21	cars 36:14	chambers 9:19 28:10
bit 20:23 47:7	briefing 16:7	call 23:12 27:5	case 1:12 4:11 6:1,5,14 27:18 29:15, 24 30:3	chance 18:2, 8 22:24
blame 28:3	brightness 43:18	called 17:10 23:4,10,23	cases 30:8	change 14:12 21:7 22:2 33:13 37:20, 21 45:9 46:9 49:2 56:6,8, 13,14
blank 34:5 36:22 46:21 47:1	bring 18:23	calling 23:24	cast 11:14	changed 45:15
bolded 8:4	broadcast 22:20 28:9	came 6:15 32:13 33:24 38:3,4 48:22	Caughlin 2:3	changes 33:8 34:13,20 37:9 44:17 56:20 57:9
book 56:20 57:12	brother 29:15	can't 11:15 13:17 18:22 19:9 29:13 39:9 52:24 56:4	caught 28:1	changing
books 57:1	brought 12:4, 8 19:9		cause 5:20 38:13	
both 8:17 9:2			caused 7:23	

34:22 44:19	13:9 14:8 16:20,21	collaboration 3:13,17,18	14:20 15:16	36:1 56:22
charge 30:21 32:1	clause 38:17	Colorado 47:5	concepts 5:22 19:22	connection 12:11
check 36:22	Clayton 50:12 52:15 54:18	column 5:9	concern 7:22 9:6 11:10	Connot 2:17 9:9,13,20 10:2,11,14,22 11:18 12:8 15:2,19,23 21:14 22:10 26:24 27:6
Childers 48:11	Clayton's 44:15	come 38:6 45:20 56:9	concession 4:1	
chose 25:13 57:1	cleaning 6:20	comes 4:22 36:17,19	conclusion 6:12 19:16	
chosen 55:13,14,22	clear 7:17 46:8,15	communicati ons 55:15	confident 4:13 19:19 20:24	consequence s 39:6
Christina 1:22	clearly 36:7 46:24 48:1	competent 23:22	confined 7:20 9:15	considered 38:22
civil 7:8 10:12	clerk 5:10 7:2 9:1 26:22,23 50:21	complaint 4:4 17:9	confirm 27:1	considering 41:9
claim 7:4,8,16 8:14 9:13,23 10:9,18 11:4, 16,22 12:16 13:7,16,19,23 14:16 15:24 16:9,24 18:22 19:2,9	client 53:18 55:2,7,13 56:5,9,22	complete 6:23 39:22,23 57:10	confirmed 55:8	consistency 4:16
claimed 53:10	closed 54:4	completely 8:16 23:21	conflicts 53:6,7	conspiracy 7:8 10:12 12:24 13:11
claims 6:22 7:1,3 8:19,21 11:16,24 12:1,5,24	closing 22:14 24:6 29:1	completion 7:23	conform 8:9 15:9 16:13	construct 6:12
	Club 8:21,22	concealed 16:16	confused 12:12	construed 14:24
	collaborating 3:15	concealment	confusion	contained

40:6,8 44:16, 17 45:11	copies 28:11 39:22 41:24 42:9	50:21	cover 38:7	damage 8:16 12:18 27:8
contains 40:24	copy 25:13 40:11 42:2	counterpetitio n 3:6 14:16	covers 29:23	damages 11:3,5 12:7, 16 18:3 19:18 27:11
contaminated 6:10	correct 39:19	county 1:7 49:15 50:20 51:8	COX 2:2	danger 51:17
content 5:8 9:3	correction 18:13 50:2,13 51:1	couple 18:7	create 4:16	date 33:23,24 35:5,7 36:5 54:5
context 4:4	correctly 16:20	course 31:11 38:4 48:21	creates 35:24	date's 48:8
continually 14:10	Coss 17:19 20:20	court 1:6 3:4 4:5 9:11,17, 21 10:8,12,15 11:12,13,20 12:20,22 13:13 14:1,14 15:15,22 16:5 17:7 18:19 19:11,19 20:5,10 21:15,20,24 22:12,16,22 23:8,16 24:6, 15,18 25:1,7, 10,21 26:11, 21 27:4,13, 16,22 28:4,17 29:7 38:23 57:19	creating 54:21	dated 32:18 35:8 36:5 48:8 50:5
continue 4:2 19:20	cotrustee 7:13,20 32:5	creditor 51:5	creditors 49:21,24	dates 56:20
contract 38:15	cotrustees 7:6 30:10	criticism 4:4 17:9	cumulative 4:12	DAVID 1:8
controlling 56:23	counsel 3:4 8:10 9:5 14:14 17:21 20:5,21,24 21:11 22:16, 24 24:7 25:2, 10 54:13 57:20	cures 38:24 46:7	currently 15:14	day 1:18 43:8 47:9 56:1
controls 40:8	Count 8:4	Court's 5:12, 16 9:5 19:21	D	days 56:11
converted 27:23	counted	courtroom 4:23 27:15	Dallas 2:15	deadline 22:6
converting 25:24				deal 41:8 52:23 53:11, 18
convince 38:23				death 46:11

debt 36:14 37:17	defendant 6:9	49:8	3:23	37:10,21 49:2
debts 37:1,2 38:4	define 55:17	designated 23:15	differently 28:8	dispute 29:12
December 42:12 43:2,9 45:19 46:7 47:12,19,24 48:8	definition 34:24	designed 51:6	difficult 4:15 39:6 56:1	disputes 16:6
decided 5:12	deleted 5:8 28:1	desires 29:22 37:21	directed 16:22 19:15	dissatisfied 4:8,11
decipher 36:2	deliberation 28:12,24	despite 34:20	directly 42:8	distinct 14:24
decision 18:17 19:14 31:5,9	deliberations 27:19	details 23:22	disagree 15:12,19 19:10	DISTRICT 1:6,8
declaration 45:23 46:16, 23 52:9	demonstrative 22:19	determine 39:6 53:1	disclose 16:16	divert 30:8
deed 38:19 48:15,24 49:15 50:2,3, 7,13,21 51:1, 7	demonstratives 25:4	detriment 30:19	disclosing 17:10	divided 4:24 48:23 51:14
deeds 18:13 48:2,3 49:18 51:12 52:12	department 1:11 4:10	devastating 37:9	discretionary 5:12	do-not-speculate 6:17
default 38:19	Depends 24:16	difference 33:4	discussion 10:23 48:6	doctor 6:7
defend 13:24	Deputy 17:19 20:20 25:7	differences 20:13	dismissed 14:3	doctors 6:6,9
	describes 25:12	different 6:12 34:9 35:1,14, 17 41:3 43:22 44:11 51:22 56:16 57:14	dispassionate ly 17:9	document 32:17,18,23 33:9,17,22,23 34:3,4,18 35:12,15,22, 23 38:10,11 39:3,5,22,23 40:21 41:22 42:13 43:11, 13,14 44:9,
	designate 23:12 24:2	differentially	dispositive	

12,22 45:5,15 46:6 47:13, 20,23 48:15 50:16 53:19 54:6 56:7,10, 17	48:23 54:8 56:12	E	email 8:24 44:15 47:6 54:18	entities 11:12 12:7,13,17 13:16 23:19 36:23 48:22
documentation n 52:18	draft 44:17 45:7,11	each 3:5 4:23 7:1,12 20:5 25:12 44:20 50:22	embedded 5:21,22	entitled 12:5
documenting 34:12	Drive 2:18	earlier 41:24 43:10,17 47:6,17	encouraged 3:13	entity 11:23 13:22 41:13 46:3 49:23 51:13
documents 22:19 24:10 33:4 40:15 41:24 42:6,9, 14 45:18 47:18 48:18 52:5,16,21 53:12 54:9 55:20 56:2,3, 17,21,23 57:9,14	Duck 8:21,22 10:15 11:2,15 12:9 13:15 18:10,11,14 51:12	earth 51:3	end 17:10 44:21,22 57:23	entry 33:20
done 45:24 47:14 48:7 57:3,5	due-on-sale 38:13,17	easy 56:24	endeavor 29:18 30:7	equalized 17:15
door 36:17	during 23:8 29:1 44:24	edited 4:17	ended 29:21 45:1,7	equally 48:24 49:4 51:15
double 26:24	dust 37:12	effect 3:14 41:4	enforcement 18:16	equation 32:22
down 7:23 13:18 33:9 38:17 47:5	duties 7:4 15:24 16:3 19:7 30:2,13, 15 32:8	effectuating 39:7	enough 10:20 23:22	errors 28:2,3
	duty 7:17 9:24 10:4,5 13:5 15:17 16:2,3 18:24 19:3 31:20,22	effort 4:10 16:11	entailed 16:3	ESQ 2:2,5,9, 13,14,17
		eight 54:5	entered 3:13	essence 18:21 19:2
		either 40:19	enters 27:15	essentially 5:10 9:1 39:8 43:19
		elements 8:17 15:5 16:2	entertain 8:12	estate 29:19 37:6 39:5,10,
		eliminate 50:23	entire 12:11 29:23	

13 48:23 52:20 53:1 estates 30:9 ethical 53:5 even 3:11 10:4 23:6 35:6 37:8 42:2 46:10 56:5 event 11:15 every 30:13 34:19 42:20 56:4 everybody 49:14 51:8 everyone 32:22 everyone's 14:11 everything 17:14 30:3 32:9,13 33:13 37:14 53:2 evidence 5:6 6:21 8:9 12:6 15:8,9 16:13, 14 17:3	18:11,15 19:16 25:3,16 26:9 27:10,17 30:16 40:20 46:8 evidentiary 6:3 exactly 44:10 53:13 example 35:10 exceedingly 4:15 except 10:17 17:14 23:2 33:19 excluding 55:15 excuse 49:24 excused 57:22 executed 54:4 executing 54:8 exhibit 26:17,	18 32:20,21, 24 33:10,21 35:4,12,18, 21,22 36:6,7, 8,10,15 38:10 39:2,24 41:19,22 44:14,15 45:3,13 46:15,17 47:2,15 48:5 50:1 51:22,24 52:2,7,8,9 53:23 54:17 exhibits 18:12 26:9 48:2 49:17 52:1 exists 37:24 expand 56:15 expect 34:2,3 expert 23:18, 21 24:1,3,21 40:6,24 43:12 44:13 explanation 35:24 exposing 49:20 extension	19:6 extent 14:7 15:7,20 19:14 <hr/> F <hr/> face 46:24 fact 6:7 14:4 31:2 45:16 47:14 50:23 failed 16:16 23:24 fails 57:11 false 16:7 family 18:14 35:8 45:1,2,6 47:21 48:21 49:1,19,21 50:3,4,7,9 51:2,4,14,16 far 40:17 48:15 49:3 father 29:17, 20 31:16 February 3:7 50:17	feel 6:24 fell 7:15 felt 3:8 Festival 2:18 few 5:4 30:12 fewer 43:17 fiduciaries 30:1 fiduciary 7:4, 17 9:24 10:4, 5,9 13:5 15:17 16:1,2 18:24 19:3,5, 7 29:24 30:1, 11,13,15 31:19,21 32:8 Fifteen 21:13 fifth 42:15,16 43:7 figure 36:3 39:9 file 21:19 35:20 file-stamped
---	---	--	---	--

3:6	57:17	6:23 8:23 9:2 10:16 14:7,13 17:17 20:7	3:17	Gilbert 19:14
filed 19:17 25:16 48:15	five 23:13 24:19,20 43:19,23 44:1,5	forward 38:6	front 22:17 26:2	give 13:22 18:2 20:23 22:4
fill 57:10		found 26:2 43:10,14 46:5	G	given 20:8 21:8,18 27:9 29:10
filter 30:2	five-year 39:20	four 7:1 11:16 24:20,22 32:19 34:21 35:14,15	gaming 47:5	gives 53:18
final 25:23	flip 28:10	FOX 2:17	gather 42:22	giving 21:19
finally 8:18 14:14	flipped 44:2	framed 15:3, 13,14	gave 45:24	glaring 45:14
find 4:12,17 14:19 35:18 42:16 45:3,21 46:8 54:20	Floor 2:10	fraud 7:24 8:1,4,5,13 9:6,7,13 14:16,20,24 15:6,10,18,24 16:20,21,24 17:17	general 5:22	glitch 27:24
finding 5:21 16:15	follow 8:17 13:14 27:1	fraudulent 14:18	generalized 5:23	goes 10:2,5 13:11 23:13 32:4 49:3 50:3
fine 16:10 22:8,10 53:11	footer 43:4	fraudulently 16:16	generally 11:17	Golf 48:20
finish 4:20	footers 56:2	free 17:20	gentlemen 27:17 29:3	good 9:22 22:15 27:16 57:18
first 3:5 4:22 5:4 7:3 9:5 14:15 18:10 20:11,20 23:14 26:1 29:8 32:17 33:16 35:10 38:9 43:11,24 48:17 49:6	forgives 45:10	Frieda 19:13	get all 32:14 45:18	gosh 19:8 50:14
	form 5:19 7:5 12:13,16 27:9 43:12	frightens	getting 12:10 37:14,15,17	gotta 46:2 49:22 56:7
	formatting 27:23		gift 37:3,5 39:5 45:22,24 46:17,23 52:9	govern 27:19
fit 35:2 46:24	forms 4:9		giftee 52:10	

granted 11:14	happened 30:3	30:4,16 31:1 39:18 40:15 44:7 49:20 50:14 54:23	home 4:8 55:10	38:22
grantee 48:21 50:6	happens 49:18		honest 55:24 56:2,19 57:1	huge 37:3
grantor 48:20 50:4	hard 27:22 29:10 55:24 56:10	hearing 12:14		I
grateful 3:16	HARDY 1:8	help 17:23 19:3 20:20 29:18 57:5	honor 6:16 9:10 10:3,11, 22,23 12:23 13:14 14:2 15:2 16:19 18:6 19:12 21:13 22:9,11 23:1 25:5 26:16,20 27:7 29:6 57:18	identical 33:19
great 41:8 57:19	harm 12:17, 19 30:19	helping 29:12	HONORABLE 1:8	identification 10:18
greed 29:15	Hascheff 33:15 34:16 38:11 39:14 41:23 42:4,5 45:17 47:17 53:1,4,16 54:2 55:16,17 57:6	here 17:21 21:9 25:22 45:14 46:6 49:12 50:10 51:8		identified 5:5 6:2 8:23 23:18
Green 40:5		hey 34:13 36:18 39:1 53:19	hook 13:3	identifiers 56:4
Group 45:22 46:2,12,20	having 12:15 17:11 38:2 57:15	himself 29:19 30:19 32:12	hooked 13:4	identify 31:21
guaranteed 36:12 38:2	header 50:18	hire 53:14	hope 17:23	identifying 8:19
guess 23:3		hired 53:14	Hopefully 17:22	imagine 22:1
H	hear 14:22 27:10 31:17 41:2 49:23 53:4	hit 56:8	Hosmer- henner 2:9 14:2 19:11,12 20:22	implement 39:13
handful 52:16	heard 3:14 7:21 9:4 18:6, 10,22 27:17	hold 12:5,14, 17 22:16	hours 17:12 22:1,7	implicate 7:7
handwriting 40:5,24		holes 43:15, 16	however	implications 37:6
happen 53:15 55:5				imply 23:12

importance 28:7	indemnificati on 54:14	47:10	3:13 8:16,18, 20 13:11,22 14:19 16:8, 10,23 18:3 25:2	intermingling 53:8
important 52:5	indemnifies 36:19	individuals 6:19 7:10,12, 19 13:1 17:6 18:23 19:6 29:17 30:6	instructions 3:9,10,15,21 4:1,6,9,11,13, 24 5:3,11,15 6:16 7:24 8:1 9:6,19 10:17 14:8,13,18,23 15:11 16:12 17:6,17 18:4 20:8,17 22:1, 13 25:11,18 27:8,20,23 28:12,15,16	interrupt 28:18
improper 23:13 27:8	indemnifying 54:11	inefficient 3:12	into 10:19 11:16 13:4 26:9 28:24 29:19 45:4 47:22 50:8 51:2,11	
Incline 41:13 52:22	indemnities 54:21	infer 4:3	intrigued 6:19	
include 11:23 18:13 19:21 36:11	indemnity 36:3,16 46:14 47:15 54:3 55:1,4,18	information 16:17 17:13 20:17	invite 7:21 9:4	
included 5:4 11:22 14:5,23 15:11 25:1 36:11,13	independent 18:24 54:13	inheritance 29:16 31:15 32:4	involved 23:20 30:15 51:9,20	
includes 16:23	indicated 43:21	initial 7:11 56:6	intentional 15:4,13 16:9 17:4	involves 29:24
including 16:10 36:14	indication 37:19	initialing 44:20	intentionally 46:21 47:1	issue 1:12 6:3 18:16 44:8 45:20
inclusive 1:14	indispensable 11:9	initials 44:21	interest 30:16,18 36:24	issued 47:4
incorrect 42:14	individual 6:22 7:7 8:5 10:6,13 13:12 14:4,9 19:3 30:5	insist 14:12	interest-only 41:7	issues 15:8 47:11 51:5
increase 3:11		instead 24:1 34:17 56:24	interests 54:14	it-- 15:21
Incredible 37:6	individually 10:1 13:3,7,9	instruct 8:13		
		instruction		

J	jump 8:10	Kevin 2:3,13 7:5 13:1 35:19,23 55:11,14	2:7	12:23 13:14 16:19 20:22 21:13 22:8 25:6
Jaksick 2:2,5, 8,13,17 14:3 18:14 19:17 23:19 48:12, 13,21 49:19, 21 50:3,4,5,7 51:2,4 54:11 55:11	June 33:20 35:6,9 39:3 47:21 50:5 55:8	kevin@ dallasprobate .com 2:15	L	law 5:9 7:2 13:4,6,21 19:1 23:18 24:21 27:19
Jaksick's 47:9	jury 1:18 3:3, 12,13,15 4:6, 8,22 5:2 6:10, 21 8:13 12:12,21 13:11 14:7,13 17:20 18:17 19:23 21:5,9 22:18,20 26:3,7 27:5,9, 14,15,20 28:12,16,24 57:21	kids 49:4	ladies 27:16 29:3	lawsuit 40:16, 24
January 32:18	jury's 17:14 19:20	Kimmel 2:2 13:2 16:21 17:3	Lake 8:21,22 10:15 11:2,15 12:9 13:15 18:10,11,14 41:5 51:13 55:10	lawyer 28:10 46:2 54:20 55:16
Jessica 44:15 45:11 50:12 52:15 54:18, 19	K	kind 17:19	Lakeridge 48:20 49:19	lean 10:20
job 1:21 30:7	keeping 57:1	kinda 55:23	language 6:17	learn 28:8
JOHNSON 2:13,14	keeps 56:20	kinds 53:7,15	largest 7:22	learned 20:10
join 11:8 19:17	Keith 48:19 54:7,18	knew 30:23 31:14 34:11, 12 52:17,18 57:3,4	Las 2:19	lease 41:9,14
joined 11:24	knowing 36:17 38:3,4	knocking 36:17 38:3,4	last 3:9 4:7,21 7:22 17:11 35:4 43:15,18	least 24:4 42:19 44:18 46:3 48:24 51:22
Jr 48:12	knowledge 24:4 46:10	knows 40:17 43:1,9	late 3:9 6:2,15 7:22	leave 5:12 17:20
JUDGE 1:8	Kent 2:5 27:2	krobison@ rssblaw.com	later 20:1 33:10 34:1,4 42:16 52:17	left 5:13 24:24 46:21 47:1
JUDICIAL 1:6	kept 34:5		Lattin 2:2	legal 19:22

Legoy 2:2 39:3,11 42:3, 8 52:19 57:4	likely 28:21	24:11,13,17	29:20 32:2 33:22 34:15 35:2 39:1 43:6 47:16 49:10 53:14 54:14 56:6,8 57:16	34:18 44:4 56:15 57:16
Legoy's 39:13,17	limited 8:3 10:9	looked 9:15 43:12	mark 2:17 5:16	
lend 15:16	line 8:4	looking 8:3 15:3 30:17	marked 22:18,22 25:15 33:1	
let 14:19 22:23 46:15	lines 5:4 45:6	looks 51:20	makes 8:6	
letter 34:13 39:15 53:18, 24 54:2,17	list 23:11,21 26:10	lose 51:16	making 17:4 53:21 56:14	massive 37:3
letterhead 55:5	listed 7:12,13	lost 57:12	manage 4:10 29:1	match 43:15, 18 44:6
letters 26:1 28:1	lists 5:2	lot 15:7 33:22	managed 29:2	matched 44:5
liability 7:7 54:10,22 55:3	lit 43:20	loved 31:13	manipulate 57:16	matrix 3:21 5:2,14 17:23 20:8,11,13 25:12
Liberty 2:9	litigation 1:22 19:20	lower 54:8	manipulated 34:17	matter 23:5 27:7 31:10 53:20
license 47:5	little 20:23	lumped 14:11	manipulation 35:10	mattered 53:20
light 19:13	lives 51:8	M	many 4:17,18 20:19 30:11 51:21	maturity 41:6
like 3:4 14:22 31:1,6,12 51:20 56:11	LLC 18:14 48:21 49:20, 21 50:3,4,8 51:2,4	made 6:18 7:3 8:11,20 11:8 12:11 21:7,22 34:13 46:9,12 56:21	March 1:18	MAUPIN 2:2
liked 31:13	LLP 2:17	mainly 30:9	margin 44:5, 10	may 3:12 12:14 18:19 26:10 28:15 29:7 38:10,23
	lo 46:5 47:19	make 5:16 11:18 22:1 25:13 28:6	margins	
	long 23:18			

				N
54:1,17	12:9	57:2	9:14 15:17 18:17 25:10, 21 27:7 37:8 41:11,15,16 47:3	
maybe 6:20 20:1 39:15 43:1 46:10	metamorphic 37:9	misrepresent ed 49:14		name 47:9 48:4,6 49:10, 23 51:11
Mcdonald 2:8	Michael 7:6	missing 23:3	morning 5:8 20:10,14 27:16 29:8	named 13:9
mconnot@ foxrothschild. com 2:19	microphone 10:20	mistakes 55:19 57:9	mortgage 36:14	Nanette 48:10,16
	middle 38:15	modifications 5:7		navigate 4:15
mean 15:7 41:13	might 13:18 28:18 44:7 56:5	modified 4:17 18:2,3 20:19	most 11:19 45:14	necessarily 10:4
means 9:17			motion 11:8, 14 16:13 17:1 19:15,17,21	necessary 16:8 19:13
meant 46:16	Mike 2:2 13:1	moment 4:17 6:24 7:21 24:6 29:4 41:17	move 15:9 26:4	necessity 6:20
mechanics 17:18	mind 21:20	MON 3:1	moving 5:10 53:9	need 9:18 17:13,14 20:24 21:11 35:15 47:3
mechanism 18:17	mind- boggling 55:4	Monday 1:18	much 20:24 29:13,18 32:12	needed 3:10 34:6 35:3 38:5 42:23
medical 6:6,7	minor 28:2	money 36:18 37:12		net 11:14
meet 23:24	minute 32:21 33:3	month 41:10	multiple 8:2 35:3 43:14,16 57:14	Nevada 1:7 3:1 6:1 58:1
memo 55:9, 12	minutes 21:13 22:13	months 54:5	mumble 10:20	
memorialize 21:4	misrepresent ation 14:18 15:1,4,5,14 16:9 17:4 35:11 51:7	Moore 5:24 6:4	must 17:15	
mentioned		more 5:22,23		

never 12:9 39:21,23 55:17,21	note 5:19 6:5 8:18 41:6,12, 16 45:10	objected 24:14	23 5:7 17:24 20:6,7,18	52:3
new 20:16 24:20 45:4,10	noted 5:5 44:13	objecting 5:13	old 33:1,5,21 34:3 42:14 56:11	only 8:14 16:22 22:19 26:1 42:22 45:24 47:22 55:11
news 38:24 52:21	notes 5:9	objection 25:6 26:21 27:12	omissions 57:9	operated 52:13,14
next 22:22 41:18 46:18 50:4	nothing 36:1 37:15 53:19	objections 3:23 5:9,17 21:1,3,17 22:5 25:18	omitted 26:2	operative 32:23 35:12, 22,23
night 3:9 4:7, 21 7:22 17:11	noticed 27:24	obligated 37:1 41:12	once 32:2 37:11 52:16	opine 24:5
no-contest 5:20	notified 25:23	obligation 16:17 37:4 38:2	one 6:5,6,8, 16 7:7 8:10 11:16 12:9 13:6 14:12 16:6 18:10 20:14,21,22 22:2 23:2 24:21 25:10, 21 26:1,16 27:7 30:13 32:24 33:16, 18,19 34:8,19 36:4 37:14,24 39:20 40:7 43:2,19 44:4 48:5,8,20 50:10 53:9 54:3,4	opportunity 21:8
nondisclosure 14:21 15:16	Nowhere 37:19	obligations 30:2 32:8 36:12,13,23 37:13 54:12	one's 42:20 44:3	oppose 16:12
none 44:2	number 4:2 35:21 40:2 43:5 50:11,22	observed 5:17	ones 36:24 43:17 44:12	option 31:18 38:8,9,12,14, 22,24 39:7, 17,18,19 41:21 42:3 52:4,6,24
noon 3:20 4:7 5:3,16 25:11 29:8	numbers 24:20 44:1 46:23 50:16 56:3,16	observing 28:23		oral 8:8
notarized 48:11,17 50:12	NV 2:3,6,10, 19	off 25:19 26:10		orally 19:16
notary 49:5, 11 56:19,20 57:1,10,11,12	O	offered 4:18,		orchestrated 51:10
notations 5:4	object 16:23 22:4			order 3:14

9:9,12 22:23 44:3 47:5 57:16	overriding 29:22	57:7,8,16,17	36:23 41:9	17,18 23:5,21 30:20 32:4 53:14
organization 4:14	owe 19:4 36:18	paginated 22:3	parties 11:9, 10 27:21 28:5 29:11	percent 19:19 27:2,4 37:18 39:21 40:3,4, 9,11,12,14, 18,23 41:2,6 45:24 46:3,4, 11,19 47:4 52:10
original 14:5, 6 40:4,6,7,10, 23 41:1 52:8	owed 38:4 41:16	pagination 33:8,9,13 34:20,22	party 5:13 6:5 11:7 40:21	
orphan 43:4 44:1 46:22 50:10,14,23, 24 51:17,18, 21,22,23 52:2,5 53:10 57:7	owes 41:13	paid 38:5 40:5 41:10 43:12	pass 37:11	
	own 20:13 30:17 37:1,2 38:7 47:3	paper 34:12 43:22	passed 48:23,24	percentage 46:1
	owner 24:4,5	papers 5:10	past 24:10 29:2	percentages 44:20,21 45:9
	P		Paul 23:6 24:18,22	periodically 3:14
others 30:9 52:23 53:10	p.m. 57:23	paragraph 33:5,7,11 34:14,19,21 38:16 45:1,3, 6,23 54:8	pay 36:19,22 37:1 38:2 41:12	permission 53:18
otherwise 16:17	packet 4:21, 23 17:22 20:6 21:7 22:3,17 25:11 27:22	paragraphs 14:17 34:23, 24	paying 37:3, 13,16	person 19:8 23:9 31:24 36:18 37:4,14 49:6,9,10
over 10:23 31:14,15 32:3,19 34:5, 6 39:17 53:22	pages 1:14 25:14 33:10 34:21 35:2 40:6 41:1 43:18,23 44:1,4,10,16 48:1 50:19,20 51:18,21,23, 24 52:3,6,15 53:10,11 56:4,15,16	Parkway 2:3	payments 41:7,15	personal 24:3 36:13 37:2
overhangs 32:9		part 5:16 11:21 43:24 56:24	payoff 39:20, 21	personally 36:12
overlay 33:18		particular 9:9 30:10	PDF 25:24 27:24	perspective 11:3 22:11
overlook 26:5 28:3		particularly	people 13:7,	

pertinent 42:9	pleadings 8:9 14:6	power 49:7 PR17-00445 1:12	46:19 48:18	proceedings 1:17 20:4 26:6 57:23
petition 7:9, 18 8:2 15:3, 13	pled 15:18 16:9	prefer 21:2	principles 27:18,20	processed 56:18
petitioner 5:1	PLLC 2:13	prepare 25:17 27:22 36:8 42:6	print 44:9 56:8	produced 40:15
petitioner's 9:5 22:10	point 47:16 57:18,19	prepared 17:8 21:8 41:22 42:23 43:1 52:17 56:18	printer 44:8,9	product 3:17
Pioneer 45:22 46:2,12,20 47:8 52:11	pointed 16:20	prepares 42:7	printing 44:8	production 17:18
pivotal 6:2	position 10:2, 7 12:3 29:20 30:24	preparing 42:1 52:20 55:1	prior 54:5	promise 16:8 25:22
place 28:22	positional 6:13	presence 3:3 17:15 26:7	probable 5:20	proper 21:18 56:19
placeholder 21:3	positions 30:14	presented 15:10	probably 15:20 30:24 42:5	properly 56:18
plaintiff 6:6,8	possibilities 3:11	preserve 22:5	problem 12:15 23:3 46:7,11 47:13 53:6,17	property 31:16 37:11 41:5,17 51:6 53:9,21
plan 39:13 42:8 49:2	possibility 6:20 39:1	pretty 41:8	problems 43:14	proposed 3:21
planning 52:20	possible 6:24 29:19 32:12	prevail 11:15	procedural 6:13	proposition 39:11
Plaza 2:18	posture 6:14	previous	procedure 8:17	protect 32:1 37:23 38:1
pleading 7:3, 11 9:7 14:5 21:16,18	potentially 11:6,11			

protected 54:15	put 11:5 29:17,19 30:21 31:24 33:24 34:8, 14,24 47:22, 23 49:15 50:19,20 51:5 56:2,3	read 5:24 6:15 9:8 22:13 26:10 28:7,11,16 31:7	42:13	15 16:19 17:1,3,6
proven 15:16			record 18:8, 15 21:22 25:19,21 49:12 57:11	regarding 9:6 18:11 41:16 55:9
provided 25:5 45:2,5		reading 27:18		
provisions 37:10,22	putting 26:8	ready 3:7 22:3	records 5:17 14:11 48:16 49:16 50:21 51:7 56:20	rejected 4:18, 24 5:7 17:24 20:6,7,18
public 49:12	Q	realized 3:9	recreated 20:12	relates 6:21
published 22:18	question 11:1 12:19,21 18:19 31:2,7, 8,11 34:7 55:23 56:22	really 12:3,17 31:23 32:5 36:4 42:10	reduce 3:10	relating 18:15
pull 48:5		reason 11:13, 21	refer 14:17 27:19	relation 29:11 38:9 49:5,6 54:24
pulled 40:4	questions 4:20,21 5:23 19:23	receive 4:23 5:14 31:15	reference 5:5 8:6,8 14:8 42:15	relationships 30:1
punitive 8:15 18:3 27:8,11	quick 8:8	received 3:17 20:14	referenced 7:2 8:1 23:8	released 21:10
purchase 41:5	quickly 17:23	receiving 41:14	references 5:20 42:14 55:20	relief 11:11, 17
purported 36:9	quote/ unquote 19:6	recently 4:3		relying 24:1
purpose 32:17	R	recess 20:2 25:9,20	refinance 55:11	remain 4:12
purposes 22:19	Ranch 51:13	recite 17:8	reflect 7:11 9:19 20:16	Remainder 46:21
push 33:9,13	rather 36:8	recognize	regard 13:2,	remained

51:14	57:12	respect 19:18	returned 18:18 21:10	Riley's 35:19
remarks 17:8	represent 13:1	respond 9:11 23:16	revealed 3:19	risky 39:8,10 52:24
remember 45:17 47:17	representatio n 53:9	respondent's 8:10	reversed 44:2	road 13:18
removal 38:23	represented 23:19 40:12, 22 49:12	respondents 5:1 8:2,7 16:15	review 5:18 21:11 22:24 25:17 54:13	Robison 2:5 21:16,21 22:21 23:17 24:11,13,16, 23 26:8,12 27:7
remove 4:1 14:10	representing 52:20 53:7 55:1,3	respondents' 20:7 21:17	reviewed 56:21	roll 4:2
removed 14:10 33:11		response 31:3	reviewing 4:5	room 28:12, 24
renew 19:15	reprint 26:4 56:17	responsibility 26:3	revised 47:21	ROTHSCHILD 2:17
Reno 2:3,6,10 3:1	reputation 55:6	responsible 11:7 13:23	reworking 9:19	Rule 19:21
repaginate 26:4	request 14:9 17:5	rest 28:15	rewrites 17:16	rules 53:5
replaced 48:1	required 28:7,15 30:15	restated 45:1, 2,5	rewritten 8:16	run 30:3
replacement 57:7	reread 5:24	rested 26:8	rights 11:4 12:9,10 18:14 23:9 48:2,24 49:1,18 50:2, 7,8 51:1,11 52:11	<hr/> S <hr/>
report 43:24	reserve 27:3	result 32:11 51:10	Riley 2:3 16:22 17:3 35:20,23 49:20 55:12	said 9:11 13:15 18:7 32:23 36:4,19 38:12 42:2,3, 4 43:10 45:17 46:2,15 47:17
REPORTED 1:22	resolve 3:8 29:12	resume 20:4		
reporter 10:19 28:14	resolved 6:3	return 22:12		

49:20 53:1	39:2 44:23 45:12,14 46:16 48:1 49:5 50:13 52:5,11,15	seen 39:22,23 41:22 42:20 55:18,20,21	settled 6:6	27:9
Sam 34:11,12 35:7 37:7 38:12 41:9 45:12 47:9 48:12,14,16 49:3,13 50:11 51:8,9,18,20 52:17,20 53:8 54:9,19,20 55:2,12,15 57:3,4	say 5:24 19:8 31:12,13 35:11,13 41:12 48:12 53:19	Selectric 56:12	settlement 6:8	shouldn't 30:24 31:14
Sam's 36:9 37:10,20 42:8,13 44:19 46:1,10,11 48:4,6,11 55:16	saying 21:18 28:20 39:14 52:19,23	send 52:15	settles 37:12	show 44:4 54:1
same 13:8 33:2 34:1,2,7 35:13,16 36:5 41:20 42:18 43:8,19 44:9, 10 57:15	says 21:17 25:2 36:17,19 38:21 45:5 46:19,20 47:3,6 48:14 52:22 53:16	sending 35:22	seven 23:14 24:20	showed 33:18 44:24 45:15
Sammy 10:16	scheme 49:2	sense 11:19 33:22 43:6	several 28:11 39:12	shows 40:21 43:16 50:18
Sammy's 8:21,22	scope 55:18	sent 40:1,5, 11,21,23 45:12 54:18 55:13	several-page 39:4	shred 34:11
sat 12:10	scratch 56:14	sentence 45:4,8,10	Shanks 11:20,21 13:15 16:6 17:2 20:21 24:9	side 25:5 32:22 44:3 57:2
saw 8:10 16:7 32:19 33:1,3, 10 34:17 38:9,15,17	second 1:6 7:8 41:18,21 42:7,18,24 43:7,9 47:12 51:24 55:21	sequence 9:3	share 29:16 32:14 46:4	sign 43:7,8 49:9 51:18 56:10
	seek 11:11	sequencing 4:13	shares 52:10, 11	signature 33:2,16 34:2, 7,21,24 35:1, 2,5 41:1,19 42:13,20,23 43:2,4,17 44:1,6,11,16 46:22 48:11, 17 50:10,15, 23,24 51:18, 19,21,23,24 52:2,6,15 53:10 56:15
	seems 15:15	sequentially 22:23	SHARP 2:5	
		Services 1:22	shoes 8:11	
		set 22:6 32:16	should 5:24 9:7 12:20 13:10,22 14:23 18:18 21:8 23:4,23	
		settle 3:10		

57:6,7,15	slide 43:13 48:2 54:7 55:24	39:21	31:17 36:7 37:15,16 42:12 51:16 53:7 54:11	31:8
signatures 33:19 56:19	slow 7:23	sort 11:1 13:5 17:4 29:22,23	Stan's 36:6	stipulated 3:22 26:9,16, 20
signed 41:9 42:17,19 46:6,17 47:15 48:3,4,6,12, 16 49:11 50:11,16 54:4 56:22	small 4:2	Sounds 22:15	stand 28:22 29:4 53:16 54:24	stipulation 3:24
significant 9:18	sold 46:13	speaking 10:19 28:18	standpoint 31:6	stock 46:19 47:4,8
signing 35:8 49:7,12,13	solely 8:3	specific 45:22	Stanley 14:3	stopping 57:18,19
simply 4:4 6:5,14 11:14 21:2,19 37:8	solves 46:11 47:13	speculation 6:11	staple 43:15, 16	strategy 23:6
since 21:9	somebody 23:12,23 34:1 36:17	spellspell 57:12	started 40:16	Street 2:6,9, 14
single 34:11	someone 19:3 38:3	Spencer 2:13 13:1 18:6 22:15 23:1,10 24:2 25:4 29:5,6	starting 42:6	struggled 11:2
sit 56:12	something 5:14 13:19 18:18 22:7 41:3 46:4	spent 21:24 37:12	starts 34:18, 20	struggling 6:18
situation 37:6 38:6	sometime 45:18 47:24	SSJ'S 1:12	state 1:7 57:13 58:1	stuff 55:24
six 23:13 24:19,21 43:20	sometimes 10:21	staff 9:1	stated 37:16	styled 7:5
slap 51:19	somewhere 13:18	stamps 50:20	status 4:8 7:14,20	subject 10:17 26:8
	sorry 10:21	Stan 2:8 7:5 13:8 14:8	Ste 2:14	submit 21:16, 18 22:6 27:11
			still 4:11 29:7	submitted

4:15 18:1 21:2	support 16:14	32:1	31:18 42:12	21 29:9 33:19 41:18 42:22 45:14 51:3 56:13
substantial 17:16 54:10, 22	supports 13:7	taken 6:3 8:15 20:2 25:9,20	testifies 42:10	
subsumed 15:20 16:3	supposed 29:21 30:20, 21 33:21 36:2 49:8 55:2 57:13	takes 45:19, 20	testify 54:23	things 4:12 18:7 19:22 36:15 53:15, 20 57:2
subtracting 34:23	supposedly 42:17 46:6 50:17	taking 30:18	testimony 34:10	third 7:15,16 9:23 40:21
such 28:7		talk 23:22 42:8	than 11:6 15:17 16:24 18:17 36:8 41:11,15 43:22 44:12 47:3	Thirty-seven 3:22
Suddenly 51:15	Surcharge 3:6	talked 31:18		thought 9:14
sued 6:5 12:2,4	switch 53:11, 17 56:14	tax 37:6 39:6, 10	their 16:18 19:6,7 23:24 27:21 28:4 29:16 30:7 42:16 44:13 49:7,10	three 23:14 32:20 33:6 45:6
suggestions 9:2	switched 53:2 56:5	taxes 53:1		through 5:10 7:1 8:24 14:17 17:23 30:4 43:19 44:5 52:1
Suite 2:18	<hr/> T <hr/>	team 29:13, 17 36:21 52:14	Thelma 49:2	
SULLIVAN 2:5	Taggert 23:6, 17 24:19,22, 23	telling 39:13 54:19	Thelma's 48:22	Throughout 7:24
summarize 39:4	Tahoe 41:5, 17 55:10	tells 32:4	theme 29:23 32:10	throw 18:20
Super 8:21,22		terms 40:8, 17,22 42:4	themselves 15:17	thrust 11:9
Supercub 10:16,24	take 24:12,17, 18,21,23 26:3 29:18 30:21	testamentary 37:21	therein 16:4	Ticor 40:1,11, 22 52:7
		testified 24:3	thing 25:10,	

till 41:7	21:17 32:22 36:13 37:13, 17 40:5,24 43:12 50:9 51:2,6 54:5 55:16	53:21	6 47:13,18,21 50:5,9 51:2,6, 14 55:19	types 15:5
time 6:4 9:18 10:5 17:14 20:11,23,24 21:11 27:5 29:1,9 39:19 41:23 42:18 50:12 52:19 53:12	together 14:11 17:11 29:17	transferring 50:9 52:10	trustee 7:13, 20 8:6 10:6,9 16:18 30:6 31:14 35:8	typewriter 56:12
times 35:3	told 57:11	treat 31:4,9	trustees 3:6 6:19 7:6,10 30:7	typographical 28:2
Title 40:22	took 5:19 33:16 34:8,14	tremendous 4:9	try 36:2	<hr/> U <hr/>
TJ 45:13	top 20:9 33:1 44:18,19 45:23 47:3 50:15,17	trial 1:18 6:2, 7-12:6,11 16:14 23:5,8 29:11 33:18 44:24	trying 13:2 27:1 37:1	umbrella 29:23 32:7
today 19:24 29:8	total 47:4	tried 14:10	tshanks@ rssblaw.com 2:7	uncertain 8:13
Todd 2:2,5 7:5 8:5,14 9:16 13:8 16:15,22,24 19:17 21:17 22:17 30:9, 11,15,23 31:20,22 32:9 36:8,12,21,24 38:1,6 41:4, 11,12 45:11 48:4,5,7,11, 13 50:5 51:6, 10,13,15 52:22 53:7,22 54:11 55:1,8, 11,14,22	transaction 51:21 54:24	trigger 38:13, 16	TSS 11:22 41:13 52:22	under 13:4,21 16:18,24
Todd's 9:2	transactions 57:12	troubling 47:7	turn 9:4 14:15	underlined 38:16
	TRANSCRIPT 1:17	true 18:12	two 6:6 24:22 25:4 26:1,2 37:15	underlying 6:22 32:10
	transfer 11:4	trust 1:11,12 29:20 30:8, 14,24 32:3 35:7,8 36:2 38:20 42:1, 11,14 45:1,2,	two-thirds 37:17	understand 34:15
	transferred 12:20 18:13 49:19 51:12		TX 2:15	understandin g 7:15 8:24
			typed 35:5	Understood 9:20
				undoubtedly 28:21

unique 6:13	various 11:12 15:5 23:19 30:4 53:8	W	24:1,21 48:2, 24 49:1,18 50:2,7,8 51:1, 11 52:11	9:11
unless 33:24		Wait 36:19		whereupon 57:21
unsecured 41:6	Vegas 2:19	waited 42:24	wave 48:18	whether 5:6 7:18,19 16:1 27:10 48:7
until 17:20 40:15 42:11 45:18,21 46:8,12 47:18	verdict 4:9 5:19 6:10,23 7:5 8:23 9:2,7 10:16 12:13, 16 14:7,13 17:17 19:15, 20 20:7 27:9	want 6:23 7:1 8:10,12 9:12, 21 18:20 20:23 21:12 22:4,5 23:20 26:24 27:10 28:18 29:9,16 31:23 32:5, 10,14 34:15 48:4 49:22 56:6	way 15:12,14 19:4 37:16 41:19 47:22	while 32:7 39:12
unwieldily 6:24	verdicts 5:23 6:21	wanted 21:22 32:12 51:9 54:1 56:13 57:5	ways 10:3	whole 33:22 45:4 46:3
updated 3:20	version 25:24 32:22 33:5 34:8,9 35:4, 19 40:1,3 42:18,21 43:10 54:5	wants 22:17 37:11	Wendy 2:13, 17 7:3 8:20 9:1 12:5,7,19 16:11 17:5 23:20 24:1 29:13 30:11 31:1,2,6,12, 23 32:5,11 37:15,16 40:16 42:12 51:16	will 4:17,23 5:1,14,19 6:5 10:24 12:12 14:14 17:23 18:2 19:20 20:5,8,20 21:1 23:4 24:20 25:7,16 27:19 28:10, 11,13,21,23, 24 54:9 57:10
urgency 3:8, 10 4:19 17:16	versions 32:19 33:4,6, 12 34:19 35:14,15 41:20 52:7	warned 38:12	Wendy's 14:5 20:6,21 22:23 31:15 32:13, 14	wish 21:4 23:16
use 19:5,6 23:20 28:13 34:5 35:3	violate 42:4	Washington 2:6	went 4:7 5:10 32:19 39:16 50:8	withdraw 11:1 26:15,16
used 33:17 36:21 37:19 44:12	visit 19:21	Washoe 1:7 49:15 50:20	whatever	within 7:13 8:19 15:11,20 49:1
using 24:14	volume 4:14	water 11:4 12:8,10 18:14 23:9,18,23		without 13:23
V				
validity 56:23				
valuation 6:11				

17:9 26:21 33:23 36:24 46:10 56:16 57:5,6	written 19:17 24:10 25:18 28:11 44:18 54:8	
witness 23:11 53:16 54:23	wrong 35:7 48:8	
witnesses 23:3	wrote 34:1 38:11 54:2	
Word 25:24 27:24	Y	
words 4:4 26:1	year 41:11, 14,15	
work 5:12 16:11 17:10 29:10 39:2	years 39:12 40:3,4,8,10, 12,14,17 41:2	
worked 20:14 27:22	yesterday 3:20 4:3,7 5:3,15 20:12, 15 25:12	
working 4:6 20:11 57:4	yet 42:24	
works 28:10 36:16	Z	
write 6:4 28:15 34:13	ZACHARY 2:14	
writes 55:9		
writing 21:2 22:6		

In the Matter Of:

Department 15

TRANSCRIPT OF PROCEEDINGS

March 04, 2019

Job Number: 532584

4185
SUNSHINE LITIGATION
151 Country Estates Circle
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

-o0o-

WENDY JAKSICK,	:	
Petitioner,	:	
vs	:	Case No. PR17-00445
	:	Dept. No. 15
TODD B. JAKSICK,	:	
individually, as	:	
Co-Trustee of the Samuel	:	Case No. PR17-00446
S. Jaksick Jr. Family	:	Dept. No. 15
Trust, and as Trustee of	:	
the SSJ's Issue Trust;	:	
et al.,	:	
Respondents.	:	

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TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - AFTERNOON SESSION

MONDAY, MARCH 4TH, 2019

Reno, Nevada

Reported By:
Job Number.: 532584

ERIN T. FERRETTO, RPR, CCR #281

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I N D E X

CLOSING ARGUMENTS BY	PAGE
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Mr. Spencer (Resumed)	4, 107
Mr. Robison	37
Mr. Hosmer-Henner	77
Mr. Lattin	92

EXHIBIT	DESCRIPTION	PAGE
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1 -o0o-

2 RENO, NEVADA, MONDAY, MARCH 4TH, 2019, 1:20 P.M.

3 -o0o-

4

5

6 THE COURT: Please be seated.

7 Counsel, you may continue.

8 MR. SPENCER: I hope everyone enjoyed their lunch.

9 Let's start with the Lake Tahoe slide, which is
10 33.

11 Now, this was a transaction that involved -- we
12 saw the Option Agreement, I told you I would come back to
13 this in a moment -- and here I want to outline how this
14 transpired.

15 The house, which was bought back in the 70s by
16 Sam, ended up in the family trust and essentially to be
17 divided into thirds for the three children. And then
18 title was transferred into the family trust. A mortgage
19 was outstanding on it with Bank of America that ended up
20 sort of following the title into the SSJ LLC, but the
21 family trust had granted an option back in 2010. We saw
22 that. We all now know the problems and issues with that,
23 but that was granted to Incline TSS, which was
24 essentially Todd. That's what the TJ stands for. ITSS,

1 that's Incline TSS.

2 Then the title was transferred to the family
3 trust, then it goes go into the SSJ Issue Trust with the
4 Option Agreement attached to it. Incline then exercises
5 its option and entitle got transferred into Incline TSS.

6 Then later -- well, we've seen the Exhibit 14
7 ACPA, \$6 million -- after Sam died, \$6 million was
8 received by the Issue Trust. The ACPA said, we'll give
9 you some or all of that to invest into Incline TSS, it
10 wasn't clear but ultimately almost \$5 million, a little
11 shy of that by three -- \$3,500 shy, it was \$5 million was
12 put into Incline TSS in the form of either payments or
13 infused by the life insurance, and then another mortgage
14 was taken out for 2.4 million which was then used to pay
15 off the \$7.25 million option, 6.3 million of it going
16 back to Bank of America, about \$950,000 going to SSJ LLC.

17 Now, the story is that, well, SSJ LLC got fully
18 paid and it received everything it was entitled to under
19 that Option Agreement. We know the Option Agreement is
20 bogus, but to the extent that it was exercised and the
21 \$7.25 million was owed, all it got out of that was debt
22 discharge and the cash, a little bit less than a million
23 dollars in cash, all in exchange for this property that
24 you heard Todd testify was a priority property, sort of

1 the one that takes precedence over everything else, it
2 ended up in Incline TSS which we all know is owned
3 100 percent, prior to the buy-in, by Todd's trusts.

4 Then the buy-in happens with the SSJ Issue Trust
5 and it gets 54 percent of Incline TSS, an entity that is
6 wholly managed by Todd, and it -- we saw that, oh, well,
7 it can decide whether to sell the property. Well, that's
8 still Todd because he's the trustee of the issue trust,
9 and then full discretion -- Todd has full discretion to
10 allow anyone to use the property.

11 So when you get to the end of this, we started at
12 a situation where it would essentially be one third, one
13 third, one third, we had the reduction under Wendy's
14 share of a million five that was later removed in that
15 Second Amendment, but it essentially passes one third,
16 one third, one third, and the important thing there is if
17 it remained there and the property had been sold, the
18 money would have available for distribution. Each of the
19 three branches of the family would have had their one
20 third of the value of Lake Tahoe -- the Lake Tahoe house,
21 and it could be used for health, education, maintenance
22 and support-type distributions.

23 By the end of this, this golden goose priority
24 property here is now in an entity that doesn't have the

1 restrictions that the issue trust has and -- that's
2 controlled by the Todd and that cannot be -- the interest
3 that was invested in Incline TSS, the 54 percent, if
4 it -- if the house could be sold and Todd decided to make
5 distributions, which he's not necessarily required to do,
6 but if it did, it would go into the issue trust and would
7 not be available for distribution. So this converted to
8 a one third, one third, one third, we can use this for
9 the rest of our lifetime to live on for us and our issue,
10 each of the three kids, to it's all in a Todd entity and
11 it's all in a trust that is owned by Todd that can't make
12 any distributions.

13 And you heard Mr. Wallace say, horrible investment
14 as it relates to the Prudent Investor Rule and the issue
15 trust interests.

16 Remember, this was designed to be -- this being
17 the issue trust -- was designed to be the trust that was
18 going to go on forever have these ranches in it, and it
19 had this life insurance policy that would be there, and
20 the trustee has the discretion to build a house for the
21 all three of the children if he so chooses, and this
22 money is to allow that trust to continue for years and
23 years.

24 Instead, that money was used to put into this

1 entity to pay off the mortgage that Bank of America had
2 on the house that Todd wanted, that's what happened. And
3 so the money was used, put in Incline TSS for that
4 person. Now, remember, who is on both sides of that
5 transaction? Todd, as the manager of the -- puts on his
6 hat as manager of Incline TSS, sells 54 percent to Todd
7 with his hat -- his issue trustee hat to the SSJ Issue
8 Trust, he's dealing with it with himself.

9 Now, he tries to clean that up by creating this
10 ACPA, Exhibit 14, but what's the problem with that
11 exhibit, with that ACPA? He doesn't disclose -- he
12 doesn't disclose who owns Incline TSS; he doesn't
13 disclose how much of the money is going to be spent,
14 \$6 million; he doesn't disclose when it's going to be
15 spent. The money ended being spent in March of 2014,
16 that was signed in June of 2013, so all this time he's
17 using that money for whatever he wanted to use it for.

18 Some of it, I think, was paid into that number
19 there to acquire the interest, but the point is that he
20 never tells, in that ACPA, what is the money -- how much
21 money is going to be spent, where it's going to be spent
22 and when.

23 And if he's going to wait until a year to spend
24 the money, he's got to update the ACPA, he's got to give

1 the disclosures that he's required to give, fully
2 disclose all information that materially affects the
3 beneficiaries' interest. Not, Oh, we'll use this money
4 how I see fit, some or all of it, someday, and that's all
5 they got. And you'll see that's the problem with all the
6 ACPAs.

7 So the next slide, Keith, 35, who paid for Lake
8 Tahoe, that \$7.25 million option? Between November 1st
9 of 2010, the date of the Option Agreement, and
10 December 28, 2012, Todd had paid option payments and
11 closing costs of \$146,744.68, acquired 100 percent
12 ownership in the Lake Tahoe property, the entity did that
13 he owned, for a hundred -- just shy of \$150,000. Who
14 paid the rest? Well, the issue trust, as I mentioned,
15 paid nearly 5 million, and then the bank loan paid the
16 other 2.1 million that's still outstanding.

17 The issue trust paid for the Option Agreement, not
18 Todd. Todd ended -- for all practical purposes, Todd is
19 the owner of the Lake Tahoe house. He's got 46 percent
20 in his trust, he's in control of the issue trust,
21 54 percent, and he's the manager of the Incline TSS. He
22 owns that property. He's the one that gets to dole out
23 the time to use it.

24 Now, he'll dole it out to his lawyer,

1 Mr. Hascheff. We heard he stays there on occasion,
2 that's beneficial to both of them, but he's in charge of
3 that. If it remained in the issue trust, it would have
4 been available, if it had been sold, for everybody to
5 use. He converted it to a situation where no one could
6 use it, and only paid \$150,000 for it. That's a pretty
7 great investment. The house is now worth \$18 million,
8 paid \$150,000 and get 46 percent of 18 million.

9 Within that, the Bright Holland Corporation,
10 that's the entity that owned Fly Geyser. Fly Geyser was
11 sold to the Burning Man Festival in 2016. It netted
12 approximately \$6.3 million -- or sold for 6.3 million.
13 Well, Bright Holland was owned -- 39 percent of it was
14 owned by the three BHC Family Trust, which we heard Kevin
15 Riley is the trustee of the 2012 BHC Family Trust, so
16 each of those own 13 percent. But what did we hear on
17 the other side? Well, Todd had 40 percent.

18 How did you get that?

19 Well, there was some lot that I got from Thelma's
20 estate that I used.

21 How much was it worth?

22 I don't remember. And then there was an option to
23 acquire some more, 11 percent, and that ended up being
24 sold on a note that was later forgiven. We saw that in

1 the second amendment.

2 And then Stan had an option that Todd -- and, I'm
3 sorry -- then the rest of it, the 10 percent that was
4 left, ended up with Todd also. So he's got 13 percent in
5 his BHC Family Trust, somehow he ends with all 61 percent
6 of the other -- rest of the ownership. Didn't say how he
7 really paid for it or if he paid anything for it, but he
8 got it, \$6.3 million sitting in Bright Holland
9 Corporation that he, Todd, controls and Wendy and Stan
10 and his BHC Trust has 13 percent and he has the rest. He
11 orchestrated that, he made it happened, and now he's in
12 control of that much of the family value.

13 Failed to fully disclose -- Kevin Riley, I want to
14 mention him in regard to that -- he's the trustee of
15 Wendy's trust, he failed to fully disclose all the assets
16 of the BHC Trust. Just recently got, in relation to the
17 BHC Trust, he has continued his employment working for
18 them as their accountant -- as its accountant, all while
19 he has an accounting rule that doesn't allow him to
20 disclose information to people that may have an interest.
21 He's the trustee, who is required to find out information
22 from Bright Holland Corporation in relation to BHC, and
23 so he's got this conflict, where as an accountant you
24 can't tell, but as trustee he has to find out and he's in

1 a quandary. And what does he do? He sides with Todd and
2 he doesn't tell the beneficiaries. So he's involved with
3 making sure that the beneficiaries are not fully informed
4 just as Todd is.

5 Speaking of Mr. Riley, we turn to the
6 accountings -- and Slide 36, Keith -- just for reference,
7 the accountings are -- of the family trust are 72, 73,
8 74, those exhibits, and then 126 is the most recent one.

9 The issue trust, the accountings are Exhibits 129,
10 130, 131, 132 and 133.

11 Then I was going to say, we just recently got
12 Wendy's subtrust accountings, Exhibits 95 and 540.

13 But those accountings misrepresent the
14 administration because they don't contain all the
15 information that an accounting should contain or you
16 would expect an accounting to contain, particularly if
17 it's disclosing to the beneficiaries the information
18 they're supposed to have for full disclosure. It doesn't
19 contain any specific reference to water rights, it
20 doesn't contain any specific reference to conservation
21 easements, it doesn't mention all the debt that is
22 outstanding.

23 We've heard there's \$30 million worth of debt.
24 Well, if there's for that much debt outstanding, you

1 would tell your beneficiaries; wouldn't you?

2 They claim this is the way they communicate
3 information. It doesn't even tell them that there's \$30
4 million worth of debt. We haven't seen a single writing
5 that says that. We've heard them say it, that's all we
6 know, nothing in writing, no accounting that says it.

7 The value of the entities, we saw on the list of
8 the entities, half of them had a value, the other half
9 were hyphens, and the reason we heard about that -- or
10 the reason for that was that, well, they weren't -- if
11 you take the assets and the liabilities, they're under
12 water, they have no value so we didn't report it. That's
13 ridiculous for an accounting that is supposed to be
14 provided to a beneficiary and fully inform them what it
15 owns and the value of everything that it has, you would
16 say, hey, this entity owns X, it has this much in debt,
17 it's under water so it's a negative whatever.

18 It didn't have that, just a hyphen. Repeated
19 hyphen, hyphen, hyphen, hyphen, hyphen. That's what they
20 presented to this court for approval saying, oh, this
21 fully represents the current status of the estate, the
22 current status of the trust and its administration. All
23 that information would be included if they were trying to
24 be honest about this and if they were going to fully

1 inform the beneficiaries.

2 We then hear, while I can't swear to the contents
3 of the accountings, all I can swear to is Kevin Riley
4 prepared them. It just boggles the mind how the
5 beneficiary, who is to see and believe that these
6 accountings fully explain all the information that they
7 need to know, and this trustee can't even say, Yes, this
8 is true and correct. These are accurate numbers. This
9 is accurate information. It didn't even appear that he
10 even knew what was in the accountings, frankly, but what
11 did we find out? Mr. Riley put a disclaimer on the front
12 of every one of those accountings.

13 Exhibit 126, Keith -- I'm sorry, Exhibit 73.

14 Just take that one and look at the letter -- we've
15 seen this and we won't belabor the points because you
16 guys have heard it -- he says, this is nothing but a
17 compilation, this is me just putting the numbers down
18 that I've received. We haven't audited it. We haven't
19 verified that the information is correct. We haven't --
20 I'm sorry. It says in the second paragraph:

21 The trustees of the trust are
22 responsible for the preparation and fair
23 presentation of the financial statements.

24 He totally says, hey, look to the trustees for

1 this information if you want it. If you want full
2 information, if you want accurate information, it's on
3 the trustees, it's not on me. All I'm doing is putting
4 this together in an organized fashion.

5 Then it specifically says that the trustees have
6 elected to omit substantially all of the disclosures
7 required by accounting principles generally in the United
8 States of America.

9 If the omitted disclosures were
10 included the financial statements, they
11 might influence the users' conclusions
12 about the trust's financial position,
13 results of the trust activities and the
14 cash flows. The financial statements are
15 not designed for those who are not
16 informed about such matters.

17 That's on the in front of every accounting. This
18 was created for the trustees, not designed for those who
19 are not informed about such matters. That would mean the
20 beneficiaries. This was not designed to be a document
21 containing full disclosure. It was designed to just
22 throw some numbers on a page, compile some numbers on a
23 page, and give it to the beneficiaries and say, Hey, this
24 is all you get. We don't have to tell you about the

1 information behind this. We don't have to give you
2 supporting document that. We don't have to verify
3 whether this information is correct. Here's some
4 numbers, take it and figure it out yourselves. And then
5 come to this meeting and we'll give you this accounting,
6 tell us all your questions.

7 Are they supposed to sit there and read 50 pages
8 and know all the questions they need to ask? They made
9 the burden of disclosures on the beneficiaries, not the
10 other way around. The trustees have the burden of
11 disclosure, the trustees have the burden of proving
12 disclosure, and all we heard was, oh, my gosh, we had
13 discussions and we had meetings, meeting after meeting.

14 Well, do you have calendar entry showing that a
15 meeting occurred?

16 No.

17 Do you have a memo that showed that a meeting
18 occurred or what was discussed at that meeting?

19 No.

20 Do you have anything in writing that indicates
21 that what you say was discussed regarding the ACPAs or
22 anything else was actually discussed?

23 No. But we had discussions and meetings.

24 It's their burden to prove it, not the

1 beneficiaries' burden to prove that they weren't told,
2 it's the trustee's burden to prove that they were.

3 We heard about this binder, it's a perfect
4 example.

5 Oh, we gave Wendy a binder.

6 What was in the binder?

7 Well, the trust documents, I know, and I'm not
8 sure about what else was in there. We kept updating it.

9 What did you update it with?

10 I don't know.

11 If you're the trustee and you produced this binder
12 and it contains all this information for the
13 beneficiaries, wouldn't you think you need to preserve
14 that so you could someday show what it was that you gave
15 the beneficiaries?

16 It's just like the notary books. The notary books
17 don't exist for Ms. Clayton years ago, earlier when all
18 the pertinent signatures were signed, she lost that
19 conveniently. I say conveniently because if she had
20 actually lost it and she had followed the law that
21 requires her to report that to the government, then maybe
22 it would be believable. But, instead, she just lost it.
23 No, I didn't follow the rules.

24 So then we get a notary book of what she did have,

1 one entry for Stan, the rest is for the parents of her
2 baseball team, and then nothing else, and it's starts on
3 page 23 and it goes to page 25 or 6, and there's nothing
4 after it.

5 So even after she lost the notary book, still
6 retired keep it, she's supposed to state -- you heard the
7 instructions, you're supposed to state the amount you got
8 paid, the identification, all this information, she
9 didn't keep them anyway, even after she knew she had lost
10 the notary book. We haven't seen any notary books other
11 than the one I just mentioned. Remember how easy it is
12 to be honest? Just do things right.

13 Do things right. Have Sam sign the notary book,
14 have him sign pages that are identified, then it's all
15 far more believable. Instead, we have all of this stuff
16 that you've seen with the documents, no notary books, no
17 proof of meetings or anything.

18 They didn't -- Mr. Riley didn't even come to
19 testify in support of his own financial statements.
20 Again, it's on the trustees to properly present those and
21 they couldn't even do it. They couldn't swear that the
22 contents were true, but only that Mr. Riley prepared some
23 compilations, and the beneficiaries are supposed to
24 understand everything about the administration based on

1 these accountings. Todd didn't even understand
2 everything that went on with the administration based on
3 the accountings. He had a pretty good memory about
4 certain things, particularly the things that benefitted,
5 him, but as far as some minor detail within an
6 accounting, no idea about it. He would have to refer to
7 the accounting itself but it doesn't fully tell you so he
8 couldn't fully tell you.

9 In short, the accountings are a joke and they
10 don't represent full disclosure. They are direct
11 evidence of breach of fiduciary duty.

12 Mention the debts, those are not in the
13 accountings. Not a single document anywhere showing that
14 there was that much debt in evidence, not a single
15 reference in any of the accountings that there was that
16 much debt, that \$30 million in debt in evidence.

17 Todd testified that the estate was not insolvent
18 and whatever debt there was, the property of the trusts
19 were used to pay it down. It's not extraordinary work to
20 sell an asset and discharge debt when you do, that's
21 pretty standard business practice. They want to say they
22 went over and above, went beyond what's required of them.
23 We don't know how much debt there was because they never
24 told us. But even if there was some debt, more than what

1 is represented, it was covered by all these conservation
2 easements, and we know what happens to the land once
3 those get on them, but we get the benefit of those,
4 apparently, and we don't see that on the accounting
5 either.

6 You heard the testimony, we used the conservation
7 easements to pay down the debt on this entity and
8 therefore it went from being under water debt to actually
9 having some value, and we put it on the list. Where is
10 the entry that says we get \$19 million worth of the
11 conservation easements or entries? It's not there.

12 The ACPAs were all designed to try and exonerate
13 and protect Todd from all of this stuff that he was doing
14 to benefit himself -- transactions between himself, loans
15 between the issue -- him as trustee of the issue trust,
16 with him as trustee of the family trust, you'll see that
17 ACPA in there, it's Exhibit 21 and 22.

18 We heard about the cattle sales. Oh, we're going
19 to go sell some cattle but I'm not going to tell you I'm
20 going to take a hundred of them myself and buy them. Why
21 wasn't that in the ACPA?

22 Exhibit 15 -- pull that up, Keith.

23 Again, this is supposed to be where the
24 disclosures are supposed to happen, right, so the

1 beneficiaries can know enough to be able to sign these
2 documents that are supposed to exonerate. In this
3 particular one, Recital B as -- right there, A, B, C, --
4 Recital B, this says in April 2013 before his death, Sam
5 gifted six percent of the issued and outstanding stock in
6 Pioneer Group, Inc. -- this is just false, blatant
7 misrepresentation. That's information that is designed
8 to deceive the beneficiaries intentionally.

9 We all know the declaration of gift before Sam
10 died only conveyed six percent of his interest, not of
11 the issued and outstanding Pioneer Group stock.

12 And all the ACPAs suffered from this problem,
13 Mr. Wallace mentioned that they all suffer from a lack of
14 disclosure, lack of information that would fully inform
15 beneficiaries so that they could sign those ACPAs
16 knowingly and intentionally and knowing what they're
17 doing. It was done to -- we also heard, I want to
18 mention that three of those ACPAs -- Exhibit 17,
19 Exhibit 18 and Exhibit 20 -- on their face represent that
20 they were prepared by the co-trustees, but we also heard
21 that Exhibit 16, Mr. LeGoy thought Todd prepared it, and
22 it says Maupin, Cox, LeGoy prepared it, and so we don't
23 know who prepared the ones after they got the forms --
24 they being Todd and Jessica -- but there were other ones

1 prepared by the co-trustees and we know at least one they
2 represented that Maupin, Cox, LeGoy prepared when they
3 didn't.

4 So countless breaches of fiduciary duty,
5 self-dealing, making one-and-a-half percent loans to
6 Todd, never resolving the full scope of indemnification
7 agreement, that's a huge issue in this case. No one has
8 ever said fully what it covers. Massive gift, whatever
9 Todd decides he wants to apply it to, it apparently
10 controls since he's the trustee, the beneficiaries don't
11 even know because the trustees don't even know what it
12 covers, no one has testified what it covers and the scope
13 of that has never been resolved even to this very minute.

14 Todd's failure to pay his outstanding loans and
15 gifting them to himself so that they would be washed or
16 forgiven in documents, use of trust funds to pay personal
17 obligations, we saw where the trust paid 100 percent of
18 the loans and these entities that are owned 51/49 in
19 Todd's favor and he just writes an IOU and he'll deal
20 with it later one way or another.

21 Why is the trust, which is two thirds Wendy and
22 Stan, paying 100 percent of the obligation on an entity
23 that he apparently, through work with Hascheff, owns
24 51 percent of? Because that was the design.

1 Failure to deliver accountings timely. The first
2 accounting that Wendy received was October 2015, and
3 you'll see the dates on the other ones, well after the
4 required deadline to deliver 90 days after the first of
5 the year.

6 So we heard from Mr. Kimmel and he testified that,
7 gosh, everything Todd did was great, it was wonderful, he
8 did a great job.

9 Were you aware of any fraud?

10 Absolutely not.

11 Did you look at any of the accountings to verify
12 the information?

13 No.

14 Just a yes man. He's going to say whatever Todd
15 wants him to say.

16 Hascheff, the same thing. He certainly has to try
17 and promote or lift up these documents that he had
18 prepared. He's going to say that they're all right, that
19 it's okay to switch out all these pages and things
20 because that's a bias that he's going to have not only to
21 Todd but also because it's his work product.

22 It looks awful what he did, so of course he's
23 going to say it was all good, of course he's going to say
24 his client Todd performed and did everything correctly,

1 because that's who is -- he's paying his bills and he's
2 providing him benefits that only he can provide as the
3 manager of Incline TSS, which is to stay at the Tahoe
4 house.

5 Then Mr. LeGoy came in and everything they did was
6 wonderful. You heard all those people were part of the
7 team, the team that met every week, the team that met to
8 talk about decisions to be made, the team that met got
9 together and had a meeting of the minds on how they were
10 going to operate and how these trusts were going to be
11 administered. What is Mr. LeGoy going to say? Oh, we
12 did a horrible job, our trust meetings were -- we made
13 bad decisions and that we proceeded incorrectly? He's
14 not going to say that. He's going to say, yeah, it all
15 went great. Every one of them are compensated by Todd
16 and the trusts.

17 We also saw Mr. Riley, I mentioned, actively
18 working to keep things from the beneficiaries. Here's an
19 example of it. August 12 of 2016, Wendy e-mails
20 Mr. Riley requesting a copy of Todd's Indemnification
21 Agreement.

22 Keith, if you want to pull up Exhibit 75.

23 Mr. Riley responds to the e-mail and says, well, I
24 have a copy of the agreement but I need Todd's permission

1 to send it to you.

2 That's at the very bottom, the last sentence of
3 that first e-mail -- no, no, at the bottom of that
4 paragraph, Keith. Back up. The last sentence there.

5 I have a copy of the agreement but I would need
6 Todd's permission to send it to you. We've heard, well,
7 Wendy had full access to Kevin Riley and Mr. LeGoy and
8 the lawyers Mr. Hascheff but full access doesn't mean
9 they have full opportunity to deliver all information she
10 needs. We heard later, I guess he never got that
11 permission because Stan provided it to her. That was
12 well -- that's 2016. Stan didn't even know about them
13 until just prior to that.

14 Kevin Riley wasn't available to the beneficiaries.
15 First of all, it's not up the beneficiaries to be
16 searching out the information, it should be fully
17 disclosed. Here you go, I'm going to do a transaction,
18 here's the info. They want to shift the burden over the
19 beneficiaries to say, well, you could have gone to Mr.
20 Riley to find that out. Not if he didn't have the
21 permission to provide the information. Remember, he's an
22 accountant for all of the entities, still has that
23 accountant rule that says you can't disclose this
24 information without the permission of your client, and he

1 didn't.

2 Now, we heard from Mr. Wallace and he testified --
3 slide 848, Keith -- that the fiduciary duties many of
4 which you heard in the instructions, the duty of loyalty,
5 duty of care, competence, fully disclose all material
6 information, duty of good faith and fair dealing,
7 impartiality, the duty against bias, duty against hostile
8 towards your beneficiaries, duty not to self-deal; yet,
9 in the relation to the exercise of discretion, the
10 trustees have to administer trusts impartially as it
11 relates to multiple beneficiaries. They have to consider
12 the due regard for the diverse beneficial interests
13 created by the trust and the beneficiaries. You have to
14 act solely in the interest of the beneficiaries, prevents
15 them from creating conflicts of interest with their
16 fiduciary duties and their personal interests, and they
17 must communicate all material facts.

18 As part of the Prudent Investor Rule, we learned
19 about the duty of loyalty and how the Prudent Investor
20 Rule applies to the investments that are made, and he
21 testified regarding that how those were breached by the
22 beneficiaries in this case -- I'm sorry -- the trustees
23 in this case.

24 The interesting thing about that is Mr. Wallace

1 really wasn't challenged in relation to his testimony
2 regarding the duties. He was challenged regarding some
3 of the -- whether he understood or remembered some of the
4 information, whether 88 percent of -- whether the
5 88 percent applied to the whole or just the interest that
6 was owned, those kinds of things, but never challenged --
7 never challenged on the duties.

8 Mr. LeGoy didn't address the duties or say
9 anything about Mr. Wallace being wrong about them. And
10 you see the instructions, there are instructions relating
11 to those duties in the jury instructions. Mr. Wallace's
12 testimony is totally unrefuted and unconverted, and those
13 are the duties of the trustees, and you heard Mr. LeGoy
14 testify that he told every one of the trustees -- Mr.
15 Kimmel, Mr. Riley, Stan, Todd, every one of them -- about
16 their fiduciary duties and what their obligations were.
17 They were informed about that and they can't say that
18 they didn't know what their duties were.

19 Stan confirmed Todd's fraudulent behavior. --
20 let's pull up Exhibit 111, Keith -- February 27, 2018,
21 e-mail -- it would be on the next page. So this is a
22 perfect example of how Todd and Jessica would forge
23 fraudulent documents for the benefit of Todd, whether
24 it's me signing them or they were forging my dad's

1 signature, and all along I assumed they came from LeGoy's
2 office. That's the other co-trustee saying that about
3 Todd and Jessica creating fraudulent documents for the
4 benefit of Todd, forging signatures, misrepresenting that
5 ACPAs or other documents were coming from the Maupin,
6 Cox, LeGoy firm when it was coming from them, that's the
7 kind of behavior that went on. That's fraud. Those are
8 misrepresentations and that's fraud.

9 Because Stan felt that way, you heard that he
10 ended up suing Todd and then Todd ended up suing him
11 back, and we heard that that litigation was resolved.
12 One of the things we heard was, well, the benefit to
13 Wendy was that Todd's personal mortgage was removed from
14 the indemnity agreement. Look at all this great benefit
15 he received. It shouldn't have been on the indemnity
16 list in the first place. You just put it up there so you
17 can just turn around and knock it down and say there's a
18 benefit?

19 That created issues of bias with the trustees in
20 this trial, and so -- slide 53, Keith -- where does the
21 buck stop? You heard me ask that question of Todd, and
22 if he had ever taken responsibility for his actions,
23 wouldn't answer the question. We heard all these long
24 diatribes of things he wanted to say but never an answer

1 to the question.

2 You're the trustee, doesn't the buck stop with
3 you? He didn't ever take responsibility.

4 Just like the question about whether he liked
5 Wendy. Oh, I have to tried to treat it like a business
6 situation. He points the finger at everybody else,
7 everyone but himself, does all these things, he gets all
8 these documents, he puts all this stuff in place to
9 benefit himself, and then he takes no responsibility for
10 it and says that was somebody else, that was Mr. Riley,
11 it was Mr. Hascheff, the other co-trustees.

12 The buck stops with him. The buck stops at the
13 co-trustees allowing it to happen. They sat there idly
14 by while he's doing all the transactions, transactions
15 that they later find out are fraudulent or based on
16 misrepresentation or breaches of fiduciary duty, and they
17 just sit there and let it happen and don't say anything
18 about it. They don't send a writing, they don't say,
19 hey, you need to make sure this doesn't happen, I believe
20 it to be a breach.

21 There was a communication back and forth regarding
22 the indemnity agreement but, in general, these things
23 were allowed to happen. They were put in place by
24 Mr. Hascheff, Todd, Jessica and others, but then they

1 were allowed to happen after they were discovered and
2 nobody wants to take the blame for it. Nobody wants to
3 take responsibility for it is the better way to put it.

4 Owing fiduciary duties, having fiduciary
5 obligations, is that important? And all that was done
6 here was to defer, misdirect, point the finger. Not,
7 yeah, I did that, that was a mistake, or I did that and
8 I'll take the consequences, but somebody else caused it.
9 That's why they're all responsible, individually and as
10 trustees.

11 Now, in relation to the damages, it's really hard
12 to put a number on the amount that Wendy has been
13 damaged, but having to go through this process to just
14 get what her dad wanted, so the question becomes, what
15 did Wendy do to Todd that would have made him say -- or
16 feel that he really didn't want her to get anything?
17 What did she do other than to take him into his house to
18 help raise him and treat him like her son, and to go with
19 him to rehab while he was in high school and to love him?
20 What did she do besides that?

21 In reaction to her father's death she said, well,
22 I think Todd might have killed my dad, or I think Jeanine
23 must have killed my dad. People react to death,
24 particularly surprise, accidental deaths, in many

1 different ways. She may have acted out a little bit but
2 not want her to get anything that her dad wanted to give
3 her or to leave her? He doesn't get to make that
4 decision. He doesn't get the luxury as a fiduciary to
5 say, I don't like Wendy, or Wendy did bad things 20 years
6 ago and I'm not going to give her what she has coming, or
7 Wendy insulted me, or I don't like Wendy. He doesn't get
8 that luxury. He's her fiduciary, higher standard, all
9 these duties.

10 If he hates her that bad or if he's hostile or has
11 a bias against her, you know what he should have done?
12 Is not agree to be her trustee. He didn't do that. He
13 didn't do it because he wanted the power, he wanted the
14 ability to misdirect the property and do the things that
15 he, did particularly in relation to the Tahoe house, in
16 dealing with himself. Those are breaches of fiduciary
17 duty on their face, and the people that helped him
18 accomplish that result are guilty of it as well, and of
19 aiding and abetting his process.

20 So what are her damages? That's going to be left
21 up to you in relation to what she's been through, but we
22 can point to certain damages that she did incur. The
23 first one -- slide 55, Keith -- Wendy shared in the lake
24 house. Right now it's worth \$18 million, a third of that

1 would be \$6 million. That's now over here and it's
2 completely out of the trust. It's over in this Incline
3 TSS entity that Todd owns. She didn't get that. That's
4 a damage.

5 In relation to the Bright Holland interest, the
6 Fly Geyser sale, she's got the 13 percent interest,
7 that's undisputed, the three of them get 13 percent. The
8 question is, is she entitled to her third of that also?
9 Todd ended up getting the other 61 percent without paying
10 for it. She's entitled to that, too.

11 The \$819,000, that's her third of the 6.3 million,
12 but a third -- that's her 13 percent of the 6.3 million,
13 but the third would be 2.1 million, and that's a damage
14 that she didn't get.

15 Bronco Billy's, 6.2 million, a third of that would
16 be \$2,066,000.

17 And so 6 million plus the 13 percent, plus the
18 2,066,000, would be 8,885,000, but if you all determine
19 she's entitled to her third of the Fly Geyser as well,
20 then that would be 6 million, plus 2.1 million plus
21 2,066,000, for a total of \$10,166,000. That's specific
22 damage that can pointed to that she's lost because of all
23 this.

24 We then turn to the water rights. Now, we've --

1 we heard about that ECO2 Systems transaction that Todd
2 signed thinking that it might be something that could
3 work out. We all heard and learned that it didn't work
4 out, but if that pro forma investment had worked out,
5 41.4 billion, and it sounds a little like pie in the sky,
6 sounds high, but maybe not. If water rights sell for
7 \$55,000 an acre foot, then that's perfectly reasonable.

8 But the evidence was that, Todd's testified to,
9 the average acre foot, being \$7,000. And so Wendy's
10 testimony of 140,000 water rights in the Jaksick family
11 entities -- Keith, do you want to turn to slide 56 --
12 7,000 per acre foot as an average, that would be
13 \$980 million, Wendy's third would be \$326,666.67.

14 We heard about the Spring Mountain possible
15 investment from Mr. Hascheff. He said that was worth
16 hundreds of millions of dollars in relation to Jaksick
17 family water rights. If you cut the 7,000 per acre foot
18 in half, it's \$3,500 per acre foot, Wendy's third would
19 be \$163,333.33. Even if you cut that nearly in half and
20 make it \$1500 per acre foot, to be as a reasonable as
21 possible even if it's tied to the land, that would mean
22 Wendy's one third share would be \$70 million.

23 And so it would be up to you all to determine how
24 much she's lost or how much she's been damaged by not

1 having her interest in those water rights, but that
2 evidence, 140,000 acre feet Jaksick family water rights
3 at \$7,000 per acre foot, was not converted. There was no
4 evidence against it. They want to say, well, Wendy just
5 didn't know anything about it, but she didn't get any
6 information on it until the end of January. This trial
7 started two or three weeks later. And so, in any event,
8 nobody came forward and said, well, she's just wrong. So
9 that's the evidence, 140,000 acre feet has some value.

10 So when you get into the jury room, you'll be
11 handed a verdict form --

12 And, Keith, do you want to show the clean version
13 of that?

14 Just to show you this, there will be questions
15 there regarding whether Wendy proved her breach of
16 fiduciary duty claim, her conspiracy and aiding and
17 abetting claim, her aiding and abetting breach of
18 fiduciary duty claim, and fraud.

19 Then there's a blank there where you'll be asked
20 to determine Wendy's damages, as his Honor mentioned.

21 Keith, do you want to flip to the other one?

22 We're going to ask you all to answer all of those
23 questions about whether Wendy proved her claim for breach
24 of fiduciary duty, mark Yes as to each respondent. We're

1 going to ask you to mark Yes as to each respondent
2 regarding civil conspiracy and aiding and abetting,
3 whether Wendy proved those claims. Yes as to each of the
4 respondents.

5 We're going to ask you to answer, did Wendy prove
6 her aiding and abetting and breach of fiduciary duty
7 claim, we're going to ask Yes to each of those
8 respondents.

9 Did Wendy prove her fraud claim, and that one
10 you'll see only -- the only respondents there are Todd in
11 his individual capacity, his co-trustee capacity, as the
12 family trust, and the trustee of the issue trust
13 capacity. We would ask for you to return a verdict of
14 Yes.

15 And then in the blank on the next page, this will
16 be left to you all, but we've shown where \$10,166,000 has
17 been lost by this -- all the breaches and the fraud, then
18 at a minimum the 70 million we're going to ask you to
19 find that as well as being reasonable. We think it's
20 more than that and you can find that. We think it's no
21 less than 100 million that Wendy should get, but those
22 numbers combined, at least on the low side -- we think
23 it's higher but you all will determine that and we trust
24 you all will determine that -- \$80,166,000 in damages to

1 Wendy.

2 You'll then be asked if, by clear convincing
3 evidence, any of the respondents acted with fraud,
4 oppression or malice towards Wendy. That's Kevin Riley,
5 Stan Jaksick, Todd Jaksick and Michael Kimmel. Again, we
6 would ask you to find that, Yes, that was proven.

7 So, to close, we believe that fraud happened from
8 the outset, some on Sam, we've seen all the documents
9 that contain the errors, contain the changes. The only
10 explanation we get is, oh, Sam knew about it. Nothing in
11 writing that shows that other than the documents. I
12 asked that specifically of Mr. Hascheff.

13 Do you have anything in writing that Sam knew
14 about this other than the documents that you prepared?

15 No. There may be something out there, but no.

16 All of that is a breach of fiduciary duty as well,
17 the self-dealing, redirecting property, poor investments,
18 investing in something that included a transaction with
19 yourself in different capacities, people helping
20 accomplish those, we believe that the breaches of
21 fiduciary duty in this case are egregious. The fraud and
22 the result of that fraud is egregious, and that those
23 damages are not unrealistic. They're real and we're
24 going to ask you to return a verdict in Wendy's favor and

1 award her damages as a result.

2 Thank you very much.

3 THE COURT: Thank you.

4 Ladies and gentlemen, it's a little early but I
5 didn't want to interrupt the next argument, and in this
6 type of argument causes the reporter to work faster so
7 we're going to take a little break, no more than ten
8 minutes.

9 We'll stand for our jury, please.

10 Please remember the admonition not to begin
11 discussing this case amongst yourselves or weighing any
12 opinion until all arguments have been presented.

13 The jury, please.

14 (Recess.)

15 THE COURT: Please be seated.

16 Mr. Robison, you may proceed.

17 MR. ROBISON: May it please your Honor, counsel,
18 and may it please you, ladies and gentlemen of the jury.

19 A trial lawyer in my position has a very difficult
20 choice to make. It is well known that if you argue too
21 long in the afternoon, you're likely to lose the jury.
22 It's also well known that I don't want to lay awake
23 tonight wishing I would have said something that I should
24 said or could have said. I'm going to try to walk it

1 down the middle and address these points that have been
2 raised without using your life expectancy.

3 Ladies and gentlemen, there's four inescapable
4 truths that have arisen in this case. One. Nobody could
5 have served as a trustee or co-trustee of -- with Wendy
6 as a beneficiary without getting sued, nobody.

7 Two. We thank you for what you've been through.
8 We know it's been inconvenient, we know it's been
9 challenging, and we know that you're a captive audience
10 being talked at, not with. Thank you very much on behalf
11 of Todd and myself for being part of this jury.

12 Two -- I mean, three. I don't think Mr. Spencer
13 and I attended the same trial. We know a lot of
14 accusations have been made and that is the job and that
15 is the assignment of the petitioner's attorney.

16 Four. The tone of a question, whether angry or
17 insulting or intimidating or frustrating, is not
18 evidence. The tone of a question does not create
19 evidence or reasonable inferences; the answers do.

20 \$80 million is a statement of credibility in this
21 case. Credibility. There's never been \$80 million
22 available to the Jaksick family and all their entities
23 put together, and yet Wendy wants it all.

24 I went to a seminar several years ago in Atlantis

1 among trial lawyers, some of the best in the country, and
2 I heard a presentation by an older lawyer out of Outlook,
3 Georgia, Bobby Lee Cook, and he told the young lawyers
4 this: If you don't have anything, attack everything and
5 you might get something.

6 If you sue everybody -- I'm pretty sure my
7 distinguished colleagues were in that audience because
8 what they have done is attacked everything and everybody,
9 and they have sued everybody for everything, and then
10 thrown up a Hail Mary \$80 million figure hoping you will
11 give her something. That's what this case is about. And
12 it started many years ago where there was an expectation
13 to get without earning.

14 There was an exploitation of the mother, the
15 father, the aunt, and it was a philosophy of life to give
16 me something without working for anything. That
17 lifestyle, that give-me-something-for-free mentality has
18 permeated this entire courtroom and this entire
19 proceeding. I get, because I am Wendy. And if I don't,
20 I threaten, and I say pejorative things, and I go after
21 you personally.

22 Todd Jaksick is guilty, beyond a reasonable doubt,
23 based on overwhelming evidence, Todd is guilty of
24 devotion. He is guilty of dedication. He is absolutely

1 guilty of hard work for this estate. He has been proven
2 guilty by overwhelming evidence of knocking down a
3 \$30 million debt so Wendy might get something.

4 Todd Jaksick is guilty of being his father's son,
5 he's guilty of being a lot like his father, and Todd
6 Jaksick is guilty of having received some of the most
7 hideous insults and accusations that a young man could
8 ever be expected to endure.

9 This man, Todd Jaksick, and his brother, Stan,
10 tried to help. For that, they got sued for fraud, for
11 \$80 million, for trying to help their sister.

12 There is an overall timeline that transcends this
13 entire case and it's a little bit telling. Let me just
14 do it really briefly and then I want to get into some
15 detail.

16 2003 trust, as Todd testified to, prepared by a
17 gentleman named Sanford, withdrew from Wendy's share
18 \$2 million plus interest at the time that trust was
19 executed in 2003. Sam wanted to make it right by his
20 sister and his ex-wife for Wendy's theft of money from
21 family members. He wanted to make it right.

22 2006 the deduction was a million five. And then
23 my client, Todd Jaksick, as an individual, gets sued
24 because Sam wanted to protect Stan and Todd in 2007 and

1 2008 with indemnification agreements. They don't like
2 the signature page in the margin, but what they have to
3 accept is that Sam intended to protect his sons.

4 Then in 2007 he creates the issue trust. Who does
5 Sam trust with the ranches -- Sam's dreams, the ranches?
6 He puts them in an issue trust for 365 years and says,
7 Todd, take care of the family.

8 In 2011, the estate planning is getting a little
9 bit dicey because of the recession, and Sam says, I've
10 got to get that house out of the estate so, (a), it
11 doesn't get taxed, (b), so Stan and Todd can enjoy it,
12 and he changes, he transfers that house to the SSJ LLC,
13 which later transfers it to Incline TSS.

14 Then in December, the Second Amendment, the power
15 of attorney, and the exercise of the option.
16 Unfortunately, a couple months later, Sam dies.
17 Everything that occurred before April 21st, 2013, was
18 created, thought through, engineered by Sam Jaksick, and
19 Wendy doesn't like what Sam did. Wendy doesn't like what
20 Sam intended, instead she wants \$80 million.

21 Credibility.

22 Let's take a look at an overlay that we put in,
23 which is the first exhibit marked, 7. These are the 12
24 different individuals and parties that Wendy has elected

1 to sue in this case, and there are some up there that you
2 may not even have heard of in this case, but it doesn't
3 matter because the strategy is to get money from these
4 various parties that Wendy has sued. And they're in
5 different capacities and it has to be explained because
6 Wendy's side of the courtroom has not presented who did
7 what individually, who did what as a trustee, and what
8 wrongs these individuals and companies committed.

9 So we first have Todd as an individual. Ladies
10 and gentlemen, can you state with any degree of certainty
11 what Todd did as an individual, as opposed to Todd as a
12 co-trustee of the issue trust, as opposed to Todd as an
13 co-trustee of the family trust? And I meant trustee of
14 the issue trust. What did he do individually? We kind
15 of exposed that in examination, and Wendy's side of the
16 courtroom went after Todd and said, here's what you did
17 individually. You signed the ACPA as a beneficiary, like
18 Stan, like Wendy, and they're claiming that Todd did
19 something wrong that causes 80 million in damages by
20 signing the ACPA or the ACPAs as a beneficiary?

21 The beneficiaries had to sign those. The
22 beneficiaries were given notice and knowledge about the
23 transaction that is the subject of each and every ACPA,
24 which I'll address in a moment, but the burden in this

1 case, ladies and gentlemen, the burden is you don't sue
2 somebody without having a burden to prove your
3 accusations. The burden is always on that side of the
4 table, and they have got to present believable, credible
5 evidence to substantiate their accusations. It has to be
6 believable evidence, it a to be credible evidence, and
7 they have a burden of proof by a preponderance of the
8 evidence, unless we're talking about fraud. And in that
9 case, ladies and gentlemen, the burden of proof is much
10 higher, it's proof by clear and convincing evidence.

11 So what have they presented with regard to Todd as
12 an individual? What did he do as an individual after
13 Sam's death? Well, he hired one of best lawyers in the
14 United States, Bob LeGoy. He had Bob LeGoy help him
15 administer this very complicated estate, together with
16 Brian McQuaid and a law firm that has done thousands of
17 trust instruments for the members of this community, and
18 he had Bob LeGoy right there to assist him with these
19 very important decisions. And with the ACPAs. That's
20 what Todd did. That's how he allegedly committed a
21 fraud, he hired the best lawyer in town to help him.

22 And then, in addition to that, he had Kevin Riley,
23 the family accountant, who knew everything about the
24 entities, the companies, Sam, and all of the financial

1 matters, he hired Kevin Riley to help him. In fact, he
2 appointed Kevin Riley as a trustee to help him.

3 You should pay \$80 million for that.

4 So look at the colors. The color bright yellow
5 are the parties that I represent in this case. Those in
6 kind of a milky yellow or brown are the ones that Mr.
7 Lattin represents, and Hosmer-Henner has Stan as
8 co-trustee.

9 But the net is thrown out, a fishing net is thrown
10 out in a dry lake, and it pulls it back in to see if
11 there's any fish in it. They threw the net out in a dry
12 lake and they deserve nothing because they've sued
13 legitimate, good people for no reason.

14 I represent Duck Lake. What do you know about
15 Duck Lake based upon the evidence that has been presented
16 in this case? Well, there's a mention that Duck Lake may
17 have gotten water rights, but they don't want you to know
18 anything about that transaction and instead say, you
19 stole water rights and you should pay Wendy Jaksick for
20 whatever Duck Lake was involved in.

21 And then they say, well, Duck Lake got some cows.
22 You'll see the exhibit, and I'll talk about in a moment,
23 Wendy signed the ACPA in which she was informed of that
24 transaction. And Todd Jaksick did nothing but reduce a

1 promissory note by the value of the cattle that were put
2 on Duck Lake, that reduces debt.

3 For that, you owe \$80 million.

4 Everything Todd did was wrong. Everything Stan
5 did was wrong. Yet, Wendy gets up and admits Stan has
6 done a lot for her, over and above, over and above what
7 Todd did. In exchange for that, Stan gets sued for
8 aiding and abetting and conspiracy and breaching
9 fiduciary duties to Wendy.

10 I also represent Incline TSS. That was an entity
11 created by Sam in 2010. The ownership of Incline TSS,
12 Todd's children in Todd's family trust, was created by
13 Sam Jaksick. Wendy wasn't supposed to be part of it, but
14 Stan was. Stan was to own 50 percent because TSS stands
15 for Todd, Sam and Stan. There's no W in Incline TSS.
16 And the undisputed testimony in this case, from Stan,
17 from Pierre Hascheff and from Todd, undisputed, Wendy was
18 never supposed to have an ownership interest in that Lake
19 Tahoe house because she had creditors and she would
20 subject that house to creditors' claims, and that's the
21 last thing Sam Jaksick ever wanted to happen.

22 That's why she's not part of the ranches because
23 Sam's dreams would go up in flames because of Wendy, how
24 she deals with money, and she gets herself sued and how

1 she has creditors and how she has creditors like Scott
2 Freeman coming after her for judgments. And you've heard
3 the exposure that she brings to that family. But, yet,
4 Sam wanted to provide for her. So Incline TSS is the
5 entity created by Sam Jaksick for which Todd Jaksick is
6 getting sued.

7 And then there's another yellow square up there,
8 I'm willing to take bets that the people in this
9 courtroom have no idea what that is that Wendy decided to
10 sue which, incidentally, is no longer in the case as of
11 today. Just sue people. Even if you don't have a claim,
12 just sue them. And then after you get through and you're
13 going to submit it to the jury, well, we don't go after
14 Sammy -- what is it? -- Sammy Supercub, Series A, we'll
15 just forget that we did that because we didn't have any
16 evidence, but yet we brought the claim.

17 So then you have these other claims with respect
18 to Kevin Riley, you have the same problem with Kevin
19 Riley and Mike Kimmel. We're going to sue them as
20 individuals, separate and apart from their role as
21 co-trustees, and we're just going to not tell the jury
22 what we're suing them for individually that we're not
23 suing them for as co-trustees. We'll let the jury just
24 try to figure out a way to get Wendy more money. It

1 shouldn't work that way, ladies and gentlemen.

2 When you don't have anything, attack everything so
3 you can get something, and you do it by suing everybody
4 for everything. Classic trial lawyer tactic when you
5 don't have evidence.

6 Now, if we go to the next slide, which is
7 Exhibit 564, where are the damages? How is \$80 million
8 caused by Todd individually? By Duck Lake? By Incline
9 TSS? Stop at Incline TSS.

10 They say they get \$6 million for the Lake Tahoe
11 transaction. That is a third of \$18 million. Let me
12 tell you how foolish that is. No consideration for
13 capital gains. No consideration for paying off the Bank
14 of America debt that Todd Jaksick guaranteed that no one
15 else did. So let's do some bad math and just take a
16 third of \$18 million without even telling the jury what
17 the true net value of the Lake Tahoe house is.

18 We'll just take the \$6 million from the jury
19 because we've said enough bad things about Todd and the
20 co-trustees to maybe make that happen but that's not what
21 Sam wanted. That's not what Sam wanted.

22 You know who advocated this? Bob LeGoy advocated
23 that the insurance proceeds be used for the issue trust
24 to buy-in, and he did so looking you right in the eye and

1 saying, "We saved millions of dollars in taxes,"
2 something that Bruce Wallace didn't even think about.
3 Saved the estate of Sam Jaksick millions of dollars by
4 putting that in that issue trust that goes on in
5 perpetuity.

6 So Duck Lake, she wants money from Duck Lake.
7 This must have something to do with cows or water, so
8 what they do is they use Wendy Jaksick to go down to
9 Carson City and get out the State Engineer abstracts and,
10 ladies and gentlemen, they're in evidence and you're
11 going to see the same water right in the same abstract
12 maybe three or four times, and then they add up all of
13 these where there's duplicity and duplication on those
14 water rights and they say, "We have 140,000 acre feet."
15 Ladies and gentlemen, that is preposterous.

16 And then I'm going to call up TMWA, what are you
17 selling water for these days in Reno, in Washoe County?
18 Seven thousand an acre feet. Well, then I get 7,000
19 times 140,000 of non-existent acre feet of water, divided
20 by one third, and the jury is going to give that to me.

21 Credibility.

22 The credibility of that request alone, ladies and
23 gentlemen, is enough to return a verdict in favor of all
24 respondents.

1 This is an interesting part of the case. Do you
2 like Wendy? -- 571, please. I guess the strategy is to
3 get Todd to say, "No, I don't like her," because that way
4 it adds more credibility to the fact that he may have
5 mistreated her as trustee. Well, this is not a case
6 about whether Wendy or Todd is likeable. Todd answered
7 the question, "It's business," and it is business.

8 He's trying to work down \$30 million so that Wendy
9 can get something in light of these comments.

10 My mother is a drunk and she sued me
11 for money I stole from her.

12 I don't know if that's likeable or not.

13 I'm going to sue Sam because he's not
14 generous enough for me, while Sam is
15 alive.

16 Took \$100,000 from Sam's sister. Todd knew about
17 that, got sued by the mother. This is not even
18 respectable in any degree.

19 Exhibit 3 accuses Stan of being on drugs. The guy
20 that tried to help her so much, she's sending these
21 hateful e-mails about.

22 Todd forges and steals money.

23 We're going to get to forgery, because that's what
24 got us here in the first place. That's what the petition

1 said, and we'll get to that in a moment about who
2 presented what proof about the credibility of that
3 accusation.

4 Todd killed his father.

5 Todd is not the biological son of his
6 own father.

7 And she's going to take Stan down. This is the
8 person that they ask my client about, "Do you like
9 Wendy?" It's business. And he has fiduciary duties to
10 provide for Wendy in terms of what she's entitled to and
11 what she should get. So let's take a look at that.

12 In the beginning of this case, ladies and
13 gentlemen, my only statement, I asked you to look for
14 three road signs to help you get through this. The first
15 road sign, I asked you to determine when this evidence
16 came before you and the testimony came before you, your
17 primary obligation, with all due respect, is to find out:
18 What did Sam intend in his estate plan?

19 Well, Kevin Spencer, counsel for Wendy Jaksick,
20 said Sam intended for Wendy to get another \$80 million.
21 \$80 million. There's not a document that suggests that
22 there's \$80 million that exists anywhere. It's not in
23 the financial reports, it's not in Sam's financial
24 statement, it's nowhere. So what is Sam's intent?

1 Well, we know it was to protect Stan with an
2 Indemnification Agreement. We know it was to protect
3 Todd with an Indemnification Agreement. Todd guaranteed
4 debt. Stan guaranteed debt, although he didn't remember
5 guaranteeing it. It's to protect the estate from
6 creditors, and Sam had some serious, aggressive
7 creditors. That was Sam's intent. Get that house out of
8 the estate so my creditors won't attach the house.

9 It was to entrust Todd to operate and manage the
10 trust for the family, to manage and operate those assets
11 so that Todd could maneuver and get something in a
12 position where they could distribute money. Sam's intent
13 was to get the debt paid.

14 Now, if there's anything that is problematic about
15 this case is Sam Jaksick, unfortunately, given the timing
16 of his passing, left a mess. If he was good at
17 anything -- and I'm looking at this objectively standing
18 back, if he was good at anything, he was good at
19 borrowing money and putting family assets up as
20 collateral for that. And what he did is he did so well
21 that he took all that debt and he got it off the ranches
22 and put onto the other entities.

23 And they say, well, Todd has 51 percent of those
24 entities. Yes, he does. He's guaranteed the debt as

1 well. He's the only one that's guaranteed the debt on
2 the Lake Tahoe house.

3 So what was Sam's intent, ladies and gentlemen?

4 And if you came back and say, Sam's intent was to get
5 Wendy more than what comes out of that family trust, then
6 you've gone beyond the evidence that's been presented in
7 this case.

8 The next question that I asked you in my opening
9 statement was: Did Todd honor Sam's intent? That's
10 really what this is about. They say Todd stole things
11 and he diverted things. Well, ladies and gentlemen, what
12 he did to honor Sam's intent was expressed eloquently by
13 Bob LeGoy on this stand, the person who knows, the person
14 who is not a bank lawyer in Houston, Texas, the person
15 who works right here with Sam Jaksick and Stan Jaksick,
16 and Bob LeGoy said Todd, as a trustee, has done an
17 incredible, awesome job in managing the assets and debt
18 of the estate that he is the trustee of.

19 Finally, the last road sign is to try to figure
20 out from the evidence, ladies and gentlemen, what did Sam
21 really intend for Wendy to receive? Her fair share. No
22 question. He gave and gave and gave. He gave so much
23 that he wanted to deduct it from her. But, actually, in
24 the Second Amendment, he did quite well. He, Sam, did

1 quite a while well by Wendy. He took that million five
2 deduction out, but he did something else instead. He
3 gave 20 percent of Wendy's share to Luke, who Sam cared
4 great deal about and for.

5 So this is not a third and a third and a third
6 under any theory of this case, because Sam wanted Wendy
7 to get 80 percent of a third. Eighty percent of a third
8 of what? Of what's left after we paid taxes and debt.
9 So let's take a look at what Sam intended Wendy to
10 receive.

11 Please show slide 561, please.

12 Undisputed testimony in this case came from Todd,
13 who said, if you look at the entire estate plan that Sam
14 put together, Wendy, at the end of the day, is likely to
15 get \$4 million. That's what Sam intended. Pay debt, pay
16 taxes, distribute it, and it's right there. It's the
17 family trust, which Todd estimated to be about 3 million;
18 it's the Bright Holland interest that was set up for
19 Wendy to get part of; it's Jackrabbit Properties that
20 Wendy has a part of; it's the cash to date; and it's the
21 Jaksick Family, LLC. Remember, that company is going to
22 get the benefit of the selling of the memberships of the
23 Montreux Golf Course that Stan engineered? That is a
24 lot.

1 And turn the hands of the clock back to
2 April 21st, 2013. They could have just thrown their
3 hands up, liquidated the assets, and Wendy would have
4 gotten nothing. But, instead, there's five years of
5 concentrated effort by Stan and Todd to get this thing
6 turned around and make it so that Wendy can get
7 \$4 million. And for that they get sued for \$80 million
8 and fraud, turning that bankrupt estate into one where
9 Wendy is going to actually receive a lot of money.

10 But I keep misspeaking, as everybody does in this
11 case because, ladies and gentlemen, Wendy doesn't get
12 anything. Listen to me. Sam did not want Wendy to get
13 anything. Sam wanted a subtrust for her as a beneficiary
14 to receive so that the trustees of her subtrust could
15 carefully manage the money that she, her subtrust gets,
16 and she wouldn't spend it like she has in the past. She
17 gets nothing. That's not the way Sam set this up.

18 So who benefitted by Todd's orchestration and
19 manipulation of the Second Amendment? Who benefitted?

20 Let's show the jury slide 577, please.

21 Now, they say that Todd manipulated documents in
22 order to orchestrate the Second Amendment so that he got
23 a lot and Wendy got nothing. Well, here's really how it
24 breaks out.

1 Wendy got the benefit of the \$1.5 million being
2 put back in for her share. That's a \$1.5 million benefit
3 that she gets as a result of the Second Amendment.

4 And then her daughter, Lexi, she's the only
5 grandchild in this case, ladies and gentlemen, whose
6 subtrust has been funded because Stan and Todd wanted
7 that to happen. So her daughter's subtrust was funded,
8 but the subtrust for Stan's kids, they haven't been fully
9 funded. And the subtrust for Todd's children, they have
10 not been fully funded. But he gets sued for \$80 million
11 if you fund Wendy's daughter's subtrust.

12 And then Luke, Luke gets 20 percent of Wendy's
13 share, about \$3 million according to Todd's calculation.
14 Luke gets 20 percent of that. Todd must have done a heck
15 of job manipulating that Second Amendment by getting Luke
16 that kind of benefit and Wendy that kind of benefit.

17 And then there's the six percent of Bronco
18 Billy's. That was a gift from Sam to Todd and a gift
19 from Sam to Stan. And that resulted in some benefit and
20 they made about a million three on that, it went into
21 their share. But the 25 percent was not gifted to Stan
22 or Todd. Ladies and gentlemen, that does not go to
23 Wendy. There are no damages for Bronco Billy's. That
24 money is paid for Sam's interest that was not gifted to

1 Todd and Stan. That 25 percent and the proceeds from the
2 sale of that 25 percent go into the family trust.

3 Even Mr. Wallace conceded that money had to be
4 used to pay debt. It's not Wendy's. It's owned by the
5 family trust and it must be administered by the
6 co-trustees to pay taxes, to pay debt, and then
7 distribute to the three beneficiaries. You would think
8 in this trial there's only one beneficiary of the family
9 trust. There isn't. There's the grandchildren, and
10 there's Todd and Stan and Wendy, and those are the
11 beneficiaries that Todd and Stan have to look to when
12 they honor their fiduciary duties to get this thing
13 manageable and distribute that kind of money so that
14 Wendy can be benefitted.

15 As I said, there is bright line in this case that
16 I hope you keep in mind throughout your deliberations,
17 and that's depicted in slide 568. That black line down
18 the middle, ladies and gentlemen, is a demarcation
19 between fiduciary duty and Sam. Everything that happened
20 on the right side -- everything that happened on the
21 right side was the dealing of Sam Jaksick. In April, the
22 option that gave Incline TSS the right to buy what is
23 created by Sam, the exercise of that option was created
24 by Sam. The only -- the only hitch in the whole deal was

1 getting the Bank of America's approval because they had a
2 \$6.3 million loan on the house. And, to his credit,
3 Pierre Hascheff convinced the Bank of America not to
4 activate the due-on-sale clause, not to consider a breach
5 of the deed of trust, and though Wendy now chastises
6 Pierre Hascheff for saying in truth and honesty,
7 gentleman, be careful this might activate the due-on-sale
8 clause, which means if the house is transferred that
9 might accelerate the debt, he negotiated that away. He
10 also negotiated the breach of the deed of trust so the
11 Bank of America, they were okay. They agreed that
12 Incline TSS could own that house with Todd owning his two
13 trusts 100 percent.

14 But that was on paper because the intent was
15 always to put Stan in as an owner, and we saw that
16 through the ACPA that evidenced Stan's willingness to
17 buy-in, to buy that 17.02 percent for a million five,
18 Wendy agreed with that. Wendy was okay with that. Not
19 now, now she wants \$6 million.

20 How does she get \$6 million from the Lake Tahoe
21 transaction? Now, think about what would happen if you
22 did that, ladies and gentlemen. Here, she would own --
23 she would be a part of a beneficiary -- beneficiary of
24 the issue trust, and her interest with her kids is

1 22.5 percent, Stan's is 18, Todd's is 13 because of the
2 number of children they have. So she gets \$6 million and
3 she gets to stay in the issue trust as a beneficiary with
4 her kids and have the benefit and the use of that house
5 forever, and then you've just tipped her, you've just
6 given her a tip of \$6 million. Boy, I want to find a job
7 like that.

8 But that gets back to my point. Truth number one
9 is, if you want to be a trustee of a trust to which Wendy
10 has any claim as a beneficiary or even a claim as a
11 beneficiary of her subtrust, you're going to get sued for
12 \$6 million, plus she gets to keep her interest in the
13 issue trust that owns 54 percent of the Incline house.

14 Now, what happens on the left side of the chart is
15 the creation of fiduciary duties but the virtue -- by
16 virtue of Sam's passing, Todd, Kevin and Stan are the
17 initial trustees. Yes, they have a duty to account.
18 Yes, they have a duty of impartiality. Yes, they have a
19 duty of prudent investment. And, yes, they have a duty
20 to pay taxes and pay down debt. That's what their duties
21 are. And, for that, they get sued for fraud. For that,
22 they got sued for getting into a conspiracy to hurt
23 Wendy, because she's only going to get \$4 million.

24 That's the conspiracy. The conspiracy is to turn

1 this around from a nearly insolvent estate to one in
2 which Wendy will receive money. Regardless of what your
3 verdict is, Stan and Todd and Mike Kimmel are still
4 obligated to work down these debts so these monies and
5 these amenities can be distributed for the beneficiaries'
6 benefit. So, for that, she gets an \$80 million tip.

7 There's also accusations of self-dealing. And the
8 self-dealing evidently pertains to cows, water, and the
9 Indemnification Agreement, and Todd has self-dealt.
10 There is not one of those transactions that's not
11 addressed by an ACPA. And, ladies and gentlemen, those
12 are Exhibits 14 through 24, ten ACPAs and each one of
13 them Wendy's signature appears. On each and every one of
14 them she signs the ACPA. And, ladies and gentlemen, I
15 ask you to read the second paragraph of the second page
16 of each one of those where she says, I release Todd from
17 any liability related to this transaction. But now she
18 says, Whoops, I was duped.

19 The series of exhibits to Exhibit 23 and 13 shows
20 that she has had counsel. She has gone to attorneys
21 since January of 2014. She's had attorneys helping her.
22 In 2016, she had the Las Vegas firm with whom Dana
23 Dwiggins is employed, asking, seeking information,
24 dealing with the trustees, dealing with the trustees'

1 attorneys. She has been on it all along. And if you
2 look at those e-mails, ladies and gentlemen, she shows
3 that she got the binder.

4 We should have a whole new trial on the infamous
5 binder that she was given on June 5th, 2013, with the
6 trust documents, but she lost it. Todd, you owe
7 \$80 million because she lost her binder. Pony up.
8 Ladies and gentlemen, that is preposterous to accuse Todd
9 of not fulfilling his fiduciary duties because she lost
10 her binder, and then we're blamed because we didn't put
11 it in three rings when we produced it in this case.

12 She got everything, ladies and gentlemen. And
13 don't take my word for it, look at Exhibit 13A through F
14 and the exhibits attached to Exhibit 13, they tell the
15 story and they tell kind of a story of how it evolves
16 from great satisfaction where Wendy is very happy about
17 getting the Bronco Billy's money so she can use that to
18 buy into the Lake Tahoe house. She wasn't complaining
19 about the Lake Tahoe house. She has known since 2014
20 about the Lake Tahoe house, the Indemnification
21 Agreement, and all the things that she has sued Todd for.

22 So I ask you to look at the jury instruction that
23 states what can and cannot be brought when. It's called
24 statute of limitation, and it's a jury question. She

1 played the game that she was going to be very prosperous
2 beneficiary and use her Bronco Billy's money to buy into
3 Lake Tahoe knowing that all of her claims then existed
4 and then wait until the spring of 2018 to sue Todd for
5 fraud and conspiracy and aiding and abetting, after
6 attending all those meetings -- okay, there's no minutes
7 of those meetings, but the lawyers and accountants were
8 involved and they were disclosing information to her as
9 well.

10 So on the left side, ladies and gentlemen, are the
11 claims that have nothing to do with Lake Tahoe except for
12 the use of insurance proceeds, and that borders -- that
13 borders on humor. Because we had a gentleman come to our
14 courtroom from Houston, Texas, who has never been in the
15 Lake Tahoe market, who knows nothing really about Nevada
16 law, and has never drafted a Nevada trust, has never done
17 a Nevada estate plan, and he takes the stand as Wendy's
18 expert. Let's talk about Mr. Wallace.

19 Mr. Wallace thinks it was a bad investment to pay
20 \$4.9 million for 54 percent of an asset that was valued
21 at \$6.5 million. And he says it's bad because now that
22 54 percent is worth 9 million bucks. I don't know what
23 kind of return Mr. Wallace gets on his investments but to
24 see the \$4.5 million used to buy that 54 percent interest

1 for the issue trust grow to \$9 million, double in value
2 since 2014, that's as good as it gets. But he said it's
3 a bad investment because it's tied up.

4 Here's where Mr. Wallace has made a really bad
5 mistake. The insurance proceeds, the issue trust was a
6 beneficiary. The \$6 million would have been paid to the
7 issue trust, but could not be disbursed, could not be
8 shared with Wendy, could not be distributed to Wendy,
9 could not be allocated to Wendy, it had to stay in the
10 trust. Mr. Wallace says, well, you used that money to
11 maintain the ranches instead of put in an investment that
12 doubled in value. The \$6 million couldn't be
13 distributed.

14 And then he says it's a bad investment because
15 Todd controls everything. Well, evidently he wasn't
16 aware of the Second Amendment to the Operating Agreement.
17 The issue trust determines when or if it's sold. Yes,
18 Todd is the trustee of that. And, yes, Todd has the
19 power. But remember how Mr. LeGoy drafted that issue
20 trust, 28 paragraphs of powers that Sam gave to no one
21 other than Todd to manage that asset. And is there
22 anybody in the courtroom that can say that he did not
23 manage the Lake Tahoe house properly? They'll say it's
24 because he owns 46 percent.

1 But, ladies and gentlemen, the issue trust gets
2 paid first, it makes the decision of whether or not it's
3 ever sold. And if it's sold, let's say \$18 million, you
4 pay the capital gains tax, you pay off the debt, you pay
5 off the commission, you pay off the closing costs, so
6 then what happens to the money? It stays in the issue
7 trust.

8 But even then Todd has 28 different paragraphs
9 giving him the power to reinvest, to borrow, to sell.
10 So, ladies and gentlemen, Todd has done the exact best
11 thing for that family that anybody could have expected
12 anybody to do. The Lake Tahoe house can be enjoyed by
13 this family. It can be enjoyed by this family for
14 300 years the way it is set up right now.

15 If Sam were on that stand right now, you get to
16 think, what would Sam say about all this? What would Sam
17 say about Wendy asking for \$80 million from his sons?
18 What would Sam say about that? What would Sam say about
19 the fact that they knocked this debt down to \$3 million?
20 What would Sam say about these two sons sending over
21 \$600,000, plus a car, to Wendy to keep her afloat? What
22 would Sam say about that? He would applaud their efforts
23 to do that.

24 But when Dana Dwiggins wrote a letter and said

1 that will be not an offset against Wendy's entitlement
2 Sam would not be pleased. Because that's why we reduced
3 her share in the first place.

4 If i could show the jury 560, we can see the
5 structure of family house trust and how it's really set
6 up to make Wendy not even have standing to ask for money
7 in this case. On the top, the co-trustees have
8 briefly those powers enumerated in the top box. Stan has
9 three kids and their subtrusts, so their generation
10 skipping trust should be funded, no question about that,
11 but the only one funded so far is Lexi. And then the
12 same with Todd's kids.

13 But Wendy, as you'll see in this chart, really her
14 subtrust is the 80 percent of one third. When that money
15 is paid, that \$4 million is paid into that subtrust,
16 right now the trustees are Todd and Stan but they don't
17 want to get sued again, you can bet there's going to be a
18 substitution of trustees when whoever that trustee is
19 that takes Todd and Stan's place is going to administer
20 whatever she gets for her life, they're not owning
21 anything.

22 Now, they want \$80 million going into that little
23 green oval on the bottom and the question is whether Sam
24 ever wanted anything like that to happen. If you could

1 show 572, please. This is how the structure of the issue
2 trust breaks out. It owns 54 percent of the Incline TSS,
3 which owns the Lake Tahoe house. Because of the number
4 of kids with each one of these primary beneficiaries,
5 that's how the value breaks out right now. Wendy and her
6 family, her children's values is at 4 million; 18 percent
7 is Stan's allocation with his three kids, 3.2 -- I said
8 Wendy had three, but there's two grandchildren, I
9 apologize -- and Todd has two children, that's 2.4, but
10 that is how value would break out if, in fact, that money
11 can be distributed. But it can't, and that's not exactly
12 the way it should be either.

13 I want to talk for a moment about their favorite
14 witness, Pierre Hascheff. Pierre Hascheff did what Sam
15 wanted and their whole case, ladies and gentlemen, is
16 document irregularities. That's their whole case.
17 That's their whole case by saying that signature pages
18 were sent over to Pierre's office by e-mail; therefore,
19 irregularity; therefore, Wendy gets money.

20 They're saying the wrong Option Agreement -- or
21 memorandum was sent to Ticor Title; therefore, Wendy gets
22 money. And they're saying the Indemnification Agreement
23 had different drafts and two paragraphs were taken out,
24 one saying in recitals the kids don't have cash and the

1 other one saying jurisdiction is in Nevada. But, ladies
2 and gentlemen, the scope, bindingness, validity and
3 effectiveness of that document is before Judge Hardy to
4 be determined, yet they want to keep coming back to the
5 Indemnification Agreement like the jury has something to
6 do with it. I'm sorry, but you don't.

7 Here's what happened on the Indemnification
8 Agreement. We had a creditor -- I feel I'm one of the
9 family, sorry -- they had a creditor, and the creditor
10 was Ag Credit and MetLife, and Todd was a guarantor of
11 those debts. So with Exhibit 16 they created an ACPA and
12 it says in the second recital, pursuant to the
13 Indemnification Agreement we're going to have to allow
14 the trust to pay Todd's share and the family trust share
15 and it was. There's a schedule in evidence that says,
16 pursuant to the agreement of Stan and pursuant to the
17 agreement of Wendy, three payments of \$105,000 were made
18 on behalf of Todd, pursuant to the Indemnification
19 Agreement, pursuant to the consent and authorization of
20 Exhibit 16.

21 Stan didn't like it. He didn't like the fact that
22 that house was on the Indemnification Agreement, and
23 there was a timeout called. Let's not do it anymore.
24 Let's put it over here and let the court decide but, in

1 the meantime, Todd, we're going to reflect on the books
2 and records of the trust that in the event that
3 Indemnification Agreement isn't what we think it is, then
4 we're going to put on the books and records that you have
5 to pay that trust back the 105, the 105, and the 105 that
6 was paid for your house -- for your benefit, not your
7 house -- that's how that all came down.

8 There's not one dime paid for Todd's personal
9 debt. They want to make it sound like, oh, that
10 Indemnification Agreement was going to pay for his car
11 and his shaving kit and all those personal matters. It's
12 not. It's the Ag Credit MetLife loan that is the topic
13 of that ACPA, and that's all it's been used for. And
14 that is a matter to be determined.

15 And you know what Pierre did, and maybe he didn't
16 do it perfectly, he did what Sam wanted. He wanted to
17 protect Stan and Todd from personal exposure because the
18 sons personally exposed themselves. Now, that
19 Indemnification Agreement, that's how it's been used and
20 it's perfectly booked that if that Indemnification
21 Agreement doesn't provide protection for Todd, then he's
22 going to have to pay down the promissory notes that are
23 reflected in the financial records.

24 That's fine. We'll litigate that. We'll try to

1 tell the court at a future date why it's a valid document
2 and why it should be used exactly the way Pierre says it
3 should be used, but they want to say irregular documents
4 equals \$80 million dollars.

5 Would you please show 569?

6 Wendy has the burden of proof in this case. On
7 fraud, it's clear and convincing. Well, you remember
8 that dialog we had about the missing expert, the Nevada
9 certified public accountant, a gentleman by the name of
10 Frank Campagna? There's only one line of testimony about
11 that gentleman and I wonder why he's not here? I wonder
12 why you didn't get a chance to see myself and Mr. Lattin
13 and Mr. Hosmer-Henner cross-examine him about the
14 adequacy of those disclosures? I wonder why he's not
15 here? Well, the answer is pretty easy.

16 In Todd Jaksick's presence, during our examination
17 of him, according to Todd's testimony, he admitted that
18 the financial disclosures comply with Nevada law as
19 compilation reports, and that's all the statute requires.
20 Well, it's smart not to call Frank to the stand, it's a
21 smart decision, because then they would have been in a
22 position where their own expert agreed with Kevin Riley.
23 That would have been devastating for their case. So
24 they're going to leave him in Las Vegas and not call him,

1 even though they have the burden of proof to prove that
2 those financial records are inadequate.

3 They sue Kevin Riley over these disclosures.
4 Kevin sat in the courtroom, they don't want to call him
5 as a witness, they'd be bloodied by their own witness if
6 they did. Instead, they want to argue what a bad guy he
7 is without calling even the witness they sued. Everybody
8 they sued -- Stan, Mike Kimmel, Todd Jaksick -- they
9 called to the stand. The one guy that knows the most
10 about Sam's Jaksick's estate and the financial affairs is
11 the one they least not wanted to call. They didn't want
12 to call Kevin because he would have taken care of
13 business. And those financial records that are in
14 evidence right now would have explained and showing
15 everybody why they comply with Nevada law.

16 And another expert, a fellow out of Texas we asked
17 about, Gary Stolbach, I can't go too much into that
18 because they withdrew him and didn't call him either, and
19 we know why because we deposed him. And the inference is
20 clearly this, he didn't do that good at his deposition.
21 That's the inference you can draw from the fact that they
22 would not call Wendy's expert Gary Stolbach.

23 Okay. Who is their water law expert? Wendy.
24 Wendy overnight became a water law expert by going down

1 to the State Engineer and getting an abstract and by
2 talking to TMWA. Why didn't they call a water law
3 expert, an engineer in water law, and explain to you
4 exactly what's going on with these abstracts and why that
5 results in any money to Wendy?

6 If that money existed, it would be in the family
7 trust. It's not been pilfered by Todd. You can see
8 water deeds -- Exhibit 119, 120, 121 -- signed by Todd
9 pursuant to the power of attorney, and he signs Sam's
10 name, those were corrected in April, and the corrections
11 is not between Todd's family trust, it's between White
12 Pine and Duck Lake. But, yet, he's accused of stealing
13 water that Wendy gets. Not the beneficiaries, that Wendy
14 gets the benefit of.

15 And now \$80 million and it's all attorney talk.
16 There's not an accountant, there's not an economist,
17 there's not a water law expert. They do not present for
18 your scrutiny a damage expert, a forensic accountant,
19 that says based on this conduct, these damages were
20 sustained by Wendy. But more important is the concept of
21 causation. What caused -- what caused the damage that
22 Wendy says happened?

23 Well, they say -- they should have done something
24 that constitutes, what was it, \$1.2 billion? They want

1 you, a Washoe County jury, to believe that that ECO2
2 project was going to bring Wendy one third of \$1.2
3 billion? Deal fell through, according to Pierre
4 Hascheff, they got investigated by the SEC and they went
5 away like the flakes that they were. But that's enough
6 to try to prejudice a Washoe County jury into believing
7 that, hey, Todd deprived her of one third of \$1.2
8 billion.

9 Credibility. Is that credible, or is that
10 somebody who wishes to get something for nothing? Sues
11 to get money and absolutely contributed nothing to this
12 estate, nothing whatsoever, didn't help a bit.

13 All right. We're here because Wendy alleged
14 forgery. We're here because she contested the Second
15 Amendment. She's saying Sam forged the Second Amendment,
16 the Option Agreement and various other documents.

17 She's here saying that her signature on various
18 documents, including the ACPAs, was forged. That's why
19 we're here. And that's why the no contest clause is so
20 important in this case. Sam knew what was going to
21 happen maybe, and he put in the issue trust and he put in
22 the family trust a provision that says, if you ever
23 contest these trusts, you're out. The only exception
24 legally is if there's probable cause to contest the

1 trusts. She said they were forged.

2 We ran out and we hired Jim Green. And you'll see
3 his credentials in Exhibit 220 and you'll see his file in
4 Exhibit 221, and you'll see a remarkably qualified
5 handwriting expert that says Wendy made it up. None of
6 the documents that she says Sam forged are forged.
7 They're his signature. She had no probable cause to
8 bring this claim. She didn't even go out and hire a
9 handwriting expert. Oh, wait. Maybe she did. Maybe she
10 did. And maybe her own handwriting expert refuted her
11 allegations.

12 So they instead rely on our expert who says her
13 signatures are not forged, Sam Jaksick's signatures are
14 not forged on these operative documents, but there's six
15 staple holes on the signature page when there's only two
16 staple holes on the body of the document and they want to
17 accuse of us concealing information.

18 We're the ones that brought that forward, nobody
19 can explain it from an expert standpoint other than the
20 fact the document has been undone a couple of times, but
21 Jim Green, Exhibit 220, establishes beyond any question,
22 ladies and gentlemen, that Wendy Jaksick had no cause
23 whatsoever to sue my client for forging documents, no
24 grounds whatsoever, just intimidation and threats and the

1 kind of abuse that we see her going throughout this
2 entire case of making nasty accusations, using pejorative
3 and vulgar language, and trying to intimidate her
4 brothers to giving her something to which she's not
5 entitled. That's what this chase is about.

6 THE COURT: Ladies and gentlemen, during this
7 quick recess, please do not discuss this case among
8 yourselves. Please do not form or express any opinion
9 about this matter until it is submitted to you.

10 This will be a 10-minute recess.

11 (Recess.)

12 THE COURT: Deputy, the jury, please.

13 Please be seated.

14 Counsel.

15 MR. ROBISON: Ladies and gentlemen, I wanted to
16 talk a moment about the professionals that have been
17 mentioned and involved in this case.

18 Mr. Wallace is indeed a professional, articulate,
19 smart guy, no question about it. But I ask you to look
20 at the kind of credibility that he brought to this case.
21 When I asked him whether or not he looked how well Todd
22 did with respect to the ranches and he didn't want to say
23 that Todd had done a good job so he didn't even look at
24 that.

1 And then he said Todd breached fiduciary duties
2 with regard to the SSJ Trust and some other trust, did
3 not know who the trustees were of those trusts, did not
4 know who the beneficiaries were, it's just something he
5 wanted to say bad about Todd Jaksick.

6 And, finally, his last comment was that selling
7 the conservation easements to raise the \$19 million,
8 which includes improvements, devalued those ranches. And
9 I hope you recall that when I cross-examined him, I said,
10 "Do you even know where the ranches are? Do you know
11 where the easements are? Do you know what you're talking
12 about?"

13 And he had to admit, as a bank lawyer from
14 Houston, Texas, that he didn't know what he was talking
15 about and then rescinded his testimony and said, "I don't
16 know what the value of those are."

17 Now, I'm going to show you a copy of the
18 professionals Todd and his co-trustees relied on. You've
19 seen this, I covered that with Todd, and there's a reason
20 why this diagram has been presented to you for
21 consideration. A very, very, very important reason.
22 That's Instruction 11.

23 Just show the Jury Instruction 11, Mark, please.
24 Blow it up so they can read it.

1 This is Nevada law that the judge has instructed
2 you to follow, and this not only pertains to Todd, it
3 pertains to my colleagues' clients.

4 A trustee is allowed to delegate
5 functions of investment and management of
6 trust assets to professionals, and the
7 trustee cannot be held liable to the
8 beneficiaries or the trust for those
9 professionals' decisions or actions,
10 provided that the trustee exercised
11 reasonable care in selecting the
12 professional, establishing the scope of
13 the professionals' duties and
14 periodically reviewing the professionals'
15 work.

16 It is that chart, 563, that we prepared knowing
17 that that is Nevada law, and that's why I covered each of
18 one of those professionals with Todd Jaksick, so that I
19 could stand before you before I sat down in my final
20 remarks and say, ladies and gentlemen, that
21 finger-pointing chart that was put up by counsel segues
22 into this perfectly because Todd Jaksick had the legal
23 right and duty to rely on professionals.

24 Can you imagine managing \$33 million of debt

1 without professionals? Can you imagine administering an
2 estate like this, that Bob LeGoy said is one of the most
3 complicated he's ever dealt with, without hiring and
4 relying on professionals? And those are the
5 professionals undisputed that Todd and my colleagues'
6 clients relied on for professional guidance, supervision,
7 management decisions. And if they did so and if they did
8 so reasonably, please follow Instruction 11 and find that
9 Todd cannot be held liable for relying on the competent
10 advice of those professionals. And there were many of
11 them, and he had professionals watching his steps and
12 movements the entire time.

13 And if you follow Instruction No. 11, I'll show
14 you what the verdict should look like. And, again, I
15 only represent Todd as an individual, but on the second
16 page you'll see that Todd is not referred to in the first
17 claim for breaching fiduciary duties as an individual,
18 that's on my colleagues' watch, but he is named with
19 regard to conspiracy and aiding and abetting and fraud.
20 And, ladies and gentlemen, Instruction No. 11 says that
21 you if find that he reasonably relied on these
22 professionals with respect to disclosures,
23 communications, content, scope, and the dealings with
24 Wendy, I ask that you return these verdicts with a circle

1 No on each one that pertain to Todd Jaksick.

2 He did nothing wrong as an individual, for that
3 matter as a co-trustee or trustee, and he's been
4 subjected to nothing but torment for the last six years
5 and he's entitled to a defense verdict.

6 Thank you very much. We appreciate your time,
7 patience and courtesy. Now I defer the my colleague.

8 Thank you again.

9 THE COURT: Counsel?

10 MR. HOSMER-HENNER: May it please the court and
11 members of the jury. Again, my name is Adam
12 Hosmer-Henner, and I'm the attorney for Stanley Jaksick
13 in his capacity of co-trustee of the family trust.

14 Thank you so much for your service and attention
15 throughout this trial.

16 You haven't heard that much about my client in
17 this trial. The good news to everyone is that you're not
18 going to hear that much from me.

19 This is the first time I'm speaking to you without
20 my laptop in front of me, and there's a reason for that.
21 And that's because throughout this trial we have had to
22 keep track of I think are now about 572 marked exhibits,
23 most of which have been admitted into evidence, almost a
24 decade worth of documents and materials, financial

1 statements, taxes, estate documents, amendments to those
2 estate documents, accountings, many, many more documents
3 than you've been presented in this case, and many
4 documents that could have been presented and almost any
5 length of time.

6 And now, after all that, we're here, and not to be
7 too philosophical, but Stan still doesn't know why he's
8 here. He still doesn't know what he's sued for. You
9 heard the closing statement by Wendy's counsel, it talked
10 some about Stan but it didn't talk about the claims that
11 they brought against Stan. They didn't talk -- they've
12 sued Stan and for three claims -- really four, for breach
13 fiduciary duty, for aiding and abetting, and for civil
14 conspiracy -- and, I apologize, one is out so now it's
15 just three.

16 And of those three claims, there's no evidence
17 that Stan breached any fiduciary duty, no evidence that
18 he conspired with Todd or Kevin Riley or anyone else, no
19 evidence that he agreed with anyone else, no evidence
20 that he aided and abetted and helped anyone else, and so
21 with all of that, it's important for me to explain why
22 we're asking for a verdict for Stan separate and
23 independent from the rest of the case.

24 This is not a pleasant situation for Stan to be in

1 the middle of litigation between Wendy and Todd, to be in
2 the middle of litigation between Wendy -- between his
3 sister and his brother. And there are two reasons that
4 we're going to ask for a separate verdict for Stan.

5 The first is that under Nevada law a co-trustee
6 that does not join with the other co-trustees is immune
7 from liability to the beneficiaries. Or, if they do join
8 with the other co-trustees so that the trust
9 administration can continue, if they object in writing
10 prior to the time of the decision, they're not liable to
11 the beneficiaries.

12 And the second reason is that Wendy has not met
13 her burden of proof to show that any of the co-trustees
14 of the family trust owe her anything, that she's entitled
15 to anything now rather than at a future point in time
16 when the trust is distributed or distributed in actuality
17 to her life estate to her separate subtrust.

18 With respect to the first issue, you've received a
19 specific jury instruction, Instruction No. 16, which
20 states that a co-trustee who does not join in exercising
21 a power is not liable to the beneficiaries for the
22 consequences of the exercise of that power. Further, a
23 co-trustee is not liable for the consequences after an
24 act in which that co-trustee joined but objected to in

1 writing.

2 What does that mean? Well, it means that a
3 co-trustee can do the things to avoid liability. They
4 can either not agree with the other co-trustees or they
5 can say, I disagree, I object for these reasons, but
6 we're going to go along with this action so that trust
7 administration can continue, so that everything doesn't
8 grind to a halt, and the trust is paralyzed with inaction
9 and can't move forward.

10 And this is important because Stan has gone out of
11 his way, at his own expense, at his own risk, to support
12 and help Wendy. It makes no sense here in this
13 litigation and this is part of the fishing net that prior
14 counsel was talking about, for Stan to be lumped in with
15 the other co-trustees for liability, which may or may not
16 exist, for actions that he specifically disagreed with
17 and tried to stop from happening.

18 Stan wasn't part of this team that you keep
19 hearing about with respect to many of the decisions in
20 this case. And, again, there was a good reason for that.
21 He was going through a divorce in 2012. His dad put him
22 to the side a little bit and said, when your divorce
23 concludes, we're going to bring you back into the fold
24 and start engaging with you and working on all these

1 various entities and trust matters once your divorce is
2 finalized and that's all settled. Unfortunately, his dad
3 passed away in April 2013 before -- which was after his
4 divorce, but before many of the matters started to get
5 resolved.

6 And it makes sense -- this immunity from liability
7 for someone who objects, it makes sense because a
8 co-trustees who objects in writing or doesn't join the
9 other co-trustees shouldn't be held responsible for the
10 consequences of that action, especially when there are
11 three co-trustees and you can be outvoted. And if Stan
12 says no and Michael Kimmel and Todd say yes, that doesn't
13 mean that Stan has any liability to the beneficiaries for
14 his vote.

15 There's no dispute here that Stan objected to many
16 of the issues in this case. He didn't agree with that
17 letter that was sent to Wendy stopping her distributions.
18 He didn't agree with the filing of the litigation in
19 general. He objected to the use -- the use, not
20 necessarily the existence, of Todd's Indemnification
21 Agreement, he objected to the sale of cattle between
22 certain entities, and he objected to the accountant --
23 the accountings that were prepared and filed in this
24 case.

1 Those objections have been noted, they haven't
2 been disputed, and you've heard Stan on -- Stan, when he
3 was on the stand, testify that he disagreed with several
4 things. And that's why it was somewhat of surprise to
5 hear Wendy's counsel to say that Stan was biased because
6 of the settlement agreement that he reached with Todd.

7 Now, they resolved their differences as a result
8 of a court order instructing the parties to go to a
9 mediation and try to resolve as much they could so that
10 this two- or three-week process might be a little
11 shorter. They did that, but -- there's nothing --
12 absolutely nothing wrong with that. In fact, the
13 testimony from both Stan and Todd is that that resolution
14 of differences benefitted Wendy with respect to that
15 \$2.4 million obligation on the house.

16 Stan didn't stop fighting for Wendy at the
17 fighting, he continued to try to help all the
18 beneficiaries by lifting that \$2.4 million debt off the
19 family estate, but what they said was that Stan's
20 testimony showed bias as a result of that resolution of
21 differences with Todd.

22 Stan hasn't switched sides, he hasn't changed his
23 story, he hasn't deviated from his position, he's simply
24 saying it how he sees it, which are some things I agree

1 with and some things I disagree with, but what he cares
2 about is making sure that everyone is treated fairly and
3 that his dad's intent is furthered. That's what he's
4 tried to do consistently throughout the case.

5 In fact, both sides, Todd and Wendy, have tried to
6 use Stan's testimony to support and buttress their own
7 claims. You heard that from Wendy's counsel as much as
8 you heard that from Todd's counsel. It's critical,
9 though, that you understand that Stan's objections don't
10 mean that the other co-trustee did anything wrong. Stan
11 was simply going above and beyond even what the trust
12 required in order to protect Wendy.

13 Stan has a soft spot for Wendy and it doesn't
14 matter what she does, it doesn't matter how much money
15 she spends or wastes. What matters is he cares about her
16 as a sister. He cares about Luke, her son, and he was
17 seriously concerned that the way the trust was being
18 managed would have meant Luke would get nothing. Now,
19 that may be what the trust requires, that may be not what
20 the trust requires, but Stan was concerned about that and
21 went above and beyond to try to make sure that Wendy had
22 enough, and that especially Luke, her son, was taken care
23 of.

24 I want to specifically talk about Stan's objection

1 to one part of the Indemnification Agreement related to
2 the Jackrabbit capital calls. In Exhibit 38, Stan
3 objected to paying for everyone -- using family trust
4 funds to pay to everybody's capital calls. Those capital
5 calls are like the carrying costs of the entity, so that
6 ranch had taxes and expenses and debt, and Stan objected
7 to the use of those funds to pay for everyone's. In
8 fact, he said, I'll pay my own, Todd pays his own, let's
9 pay for Wendy's, though.

10 The reason he wanted to do that was because if you
11 don't pay those capital calls, you can lose that interest
12 in the company, and that interest could have been taken
13 away from Wendy, and he felt that she didn't have the
14 assets to continue paying for that ranch land.

15 Now, that shows partiality by Stan, it does, but
16 it show partiality for Wendy, not against. It doesn't
17 mean that the other co-trustees are wrong by trying to
18 argue that the family trust should use money to pay for
19 everyone, it just means that's where Stan is coming from.

20 So while he's not liable to Wendy as a result of
21 these objections as a matter of law, that certainly
22 doesn't mean the other co-trustees have any liability
23 toward her either.

24 With respect to the second issue about the family

1 trust not having any liability to her at all, you have to
2 remember that Stan was sued only in his capacity as
3 co-trustee of the family trust. This is a hat issue.
4 Stan is not here in his individual capacity, as a manager
5 of an entity, as the parent of his kids, he's only here
6 in one very narrow, specific legal capacity, and that's
7 co-trustee of the family trust.

8 So with respect to Stan, your deliberations have
9 to exclude anything with respect to the Tahoe house, the
10 issue trust, Incline TSS, SSJ LLC -- I could make up a
11 few more acronyms to see if you've been paying
12 attention -- BHC, which stands for Bright Holland, and
13 any other entities over which Stan had no control over or
14 involvement with. With respect to him, his claims, his
15 breaches of fiduciary duty, non-existent as they are
16 limited to what he's done as co-trustee of the family
17 trust.

18 Even with that limitation, the family trust is
19 still extraordinarily complicated. This is a large
20 amount of assets, a large amount of money and large
21 amount of property. We talked about the 572 exhibits,
22 the decade worth of financial statements, the
23 accountings, and we're still here, still trying to figure
24 out exactly what Wendy's counsel believes Stan did wrong,

1 or believes Stan agreed with anyone else to do wrong.

2 And I took notes during that opening on my
3 computer, but I wrote them down, too, and there are about
4 six issues that I tried to categorize. The first was the
5 Lake Tahoe house. And these are issues that were general
6 categories of wrongdoing.

7 First, is the Lake Tahoe house. Stan has no
8 involvement with that. He was taken out because of his
9 divorce, he's not a manager of Incline TSS, involved in
10 the issue trust, so that doesn't apply to Stan.

11 Second issue is Stan's Indemnification Agreement.
12 Stan had an Indemnification Agreement, didn't know about
13 it, didn't use it, not involved in this case.

14 With respect to Todd's Indemnification Agreement,
15 when Stan learned how it was being used, Stan objected
16 and said that's a debt that may not need to be paid right
17 now or I have some other objection to it and, as counsel
18 said, it was put on hold. Stan can't be liable to Wendy
19 for objecting to Todd's Indemnification Agreement.

20 The third issue is Bright Holland, and that was
21 one of the other sources of damages that Wendy's counsel
22 talked about. Bright Holland Corporation sold Fly
23 Geyser. Stan has the same interest in that as Wendy,
24 he's a beneficiary or has a beneficial interest in it,

1 doesn't make a decision, he's not the manager, not
2 involved.

3 Fourth is water rights. A little vague, but that
4 is what they presented. Stan has no involvement.
5 There's no involvement that any of these water rights
6 were transferred to Stan or to any of his entities, not
7 relevant with respect to Stan. Again, there's no
8 evidence that Stan knew about these transfers of water
9 rights, that he consented to them, that he helped Todd do
10 anything like that.

11 The fifth issue is these accountings. I have two
12 problems with the accountings. The first is that Stan
13 has objected to the accountings and the information
14 contained therein. He's objected to the extent that they
15 contain information about and positions that he objected
16 to with respect to the administration of the accountings.

17 But the second problem I have with the accountings
18 is we are past the stage where you can just put a
19 document on the screen and say that's not enough
20 information and a beneficiary should be given more than
21 that and so they've been damaged. The question is: How?
22 That accounting is up on the screen, it's 50 pages, there
23 might be more information to be included in there, but
24 what information would have been included in there that

1 made Wendy's position any different? And that's the
2 logical chain link that we're really missing.

3 The sixth issue, and this is probably what you
4 heard the most from me on this case, is about Bronco
5 Billy's. Wendy had some questions about the Bronco
6 Billy's transaction and she even had an expert testify
7 for her, Mr. Wallace, who knew spectacularly little about
8 that transaction, he was wrong on nearly every single
9 aspect of that transaction.

10 First, he said Sam Jaksick owned 100 percent of
11 it; that was wrong. He said Todd and Stan sold it; he
12 was wrong. Then he tried to argue that just because he
13 said in his report that Todd and Stan sold Pioneer Group,
14 that didn't really matter because it was sold and then
15 the money came back to them. That guy was an English
16 major and he really had a hard time understanding the
17 subject and object and predicate in his sentences.

18 The next thing he said was that that 25 percent
19 interest that was remaining, well, that -- that should
20 have gone to Wendy; it's just not true. The Bronco
21 Billy's transaction -- and I don't know if this is --
22 well, it is basically the fairest transaction that you've
23 heard in this entire case, because Wendy is the only one
24 who got money out of it. And what they put up on the

1 screen was the family trust got \$6.2 million so Wendy
2 should get her third.

3 We need to walk through this transaction one more
4 time. There were two gifts of six percent to Todd and
5 Stan. Wendy is not disputing those gifts. Those
6 happened during Sam's lifetime and that as part of the
7 Second Amendment to the trust, and the fact that they
8 were necessary and substantiated in the Second Amendment
9 of the trust in order to get that gaming license.

10 The remaining 25 percent was a trust asset, that
11 was a trust asset of the family trust. That 25 percent
12 was held in terms of shares of Pioneer Group, which was a
13 licensed Colorado gaming company. Todd and Stan were
14 advised by their attorneys and accountants that in order
15 to hold that interest, you have to have a Colorado gaming
16 license.

17 Now, Wendy had the opportunity to get a Colorado
18 gaming license, the chances of that are really
19 irrelevant, but because she hadn't had a Colorado gaming
20 license at that time and hadn't started the process, she
21 took the 25 percent of Pioneer Group and split it into
22 two subtrusts for Todd and Stan. And what they said was
23 not because you can't get a Colorado gaming license we're
24 going to keep this all for ourselves. They said, if you

1 get a Colorado gaming license, we take this 25 percent
2 and divide it three ways. If you don't get a Colorado
3 gaming license, we keep it split two ways and then give
4 you other assets from the family trust to make up for
5 every dollar that's assigned to us as a result of our
6 distribution from Bronco Billy's. That was fair any way
7 it happened.

8 Then, on top of that, the company sold, not by
9 Todd and Stan but by the company itself, by the board of
10 directors, and instead of those shares, which required
11 the Colorado gaming license, they had assets. Those
12 assets went into the two subtrusts and every dollar of
13 that transaction, and it wasn't -- well, it's interesting
14 that they said it was \$6.2 million, because that leaves
15 out the \$1.6 million in taxes that were paid, the
16 \$960,000 of assets that were withheld to pay future
17 taxes, and the \$400,000 that Stan set aside for Wendy.
18 So of that transaction -- and you can't ignore the taxes,
19 you can't ignore all the other proceeds, you have to net
20 it out -- of that transaction, every single dollar has
21 either been put back into the family trust, used to pay
22 family trust debt, or kept in Stan's subtrust in order to
23 make sure Wendy had something. That subtrust money, the
24 \$400,000, Stan did just as a precaution to make sure

1 Wendy had something and, more importantly, to make sure
2 Luke had something, because there were a lot of
3 outstanding issues and debt with respect to the family
4 trust, \$75,000 has been transferred to Wendy already, and
5 the other \$325,000 remains in the family trust.

6 So of that \$6.2 million, the only people who have
7 gotten anything are the Colorado government and Wendy.
8 And, yet, that's part of their claims in this case
9 against Todd and Stan. That really goes to their entire
10 claims with respect to the family trust. The only person
11 whose gotten anything is Wendy, and she's gotten/received
12 about \$600,000 from the family trust, and that's
13 significantly more than any other beneficiary. She wants
14 more, she wants \$80 million, but she's received more than
15 any other beneficiary.

16 And in this case, what we're going to ask you to
17 do is to find there is no legal basis to hold Stan liable
18 for any of Wendy's claims as a result of his objections
19 which under Nevada law do not make him his brother's
20 keeper.

21 The second thing is we're going to ask you to find
22 that none of the co-trustees are liable to Wendy who has
23 received more than her fair of the family trust and will
24 receive exactly what Sam intended her to get under the

1 family trust. For those reasons, we'll ask that you
2 circle No with respect to those questions on your verdict
3 forms.

4 Thank you very much.

5 THE COURT: Thank you. Ladies and gentlemen,
6 let's stand for just a moment.

7 All right. Be seated.

8 Mr. Lattin?

9 MR. LATTIN: May it please the court, ladies and
10 gentlemen of the jury, I'm well aware of my time slot,
11 how they put me in the middle on the bus, and then they
12 give me the last time slot. I'm going to try to be
13 brief. I've been sitting here all day wondering how I
14 can cut this down, but we're on an airplane, we're about
15 15 minutes from the airport, we're almost ready to land,
16 please hang with me. I'm going to come at it from a
17 different perspective.

18 Todd, Stan, Mike Kimmel and Kevin Riley have
19 fulfilled every responsibility they had to Wendy. They
20 paid down \$30 million worth of debt, they preserved the
21 assets, they paid her \$105,000 a year, and if you do
22 nothing but walk out of here today, she'll get a
23 beneficial interest in \$4 million.

24 Let me talk about the debt for a minute. Counsel

1 was talking about the accountings and saying that the
2 accountings were deficient. They weren't and here's how
3 we know. If you remember Mr. Wallace, the banking lawyer
4 from Dallas, he knew about the debt. I asked him, what
5 was the debt; he said \$30 million. You know how he knew
6 that? From the accountings. From the very documents
7 that counsel said the \$30 million figure wasn't in there.
8 How else would he have known that? He reviewed the
9 accountings.

10 The accountings, and there's several in evidence,
11 are 35-, 40-page documents that are very thorough. They
12 want to make it sound like there's nothing there. You
13 will see a list every year of what the assets are, what
14 the liabilities are, what the bank account has. You will
15 see distributions to Wendy from the family trust that
16 make up this \$105,000 payment every year. You will see
17 all that if you look at the financials. So why are we
18 here?

19 If you would, Mark, bring up my first exhibit,
20 text messages. That's the issue trust. It would be
21 the -- okay. If you would enlarge that, please.

22 These answer the questions as to why we're here.
23 And if you look at a May 31st, 2014, text messages from
24 Wendy to Stan -- and I have enlarged the section that I

1 want you to focus on -- this is Wendy talking to Stan:

2 Everyone thinks our family is hurting

3 with finances now. I guess we are so I

4 disagreed. You spend one more dime at

5 Montreux and I will bring your ass down.

6 Okay, that's number one. Let's go to the e-mail.

7 The e-mail is a December 1st, 2017, e-mail from

8 Wendy to Stan and Todd. This tells it all. This tells

9 it all.

10 First and foremost, if you were smart

11 you would have kept me happy, but you

12 didn't.

13 That's why we're here. This is about control.

14 Wendy wants to control the trusts. She does not agree

15 with her dad's decision to put the brothers in control.

16 That's why we're here, over control.

17 And these two exhibits that I've just shown you,

18 23.41 and 23.45, are why we're here today because Wendy

19 does not like the fact that her dad, Sam, put her brother

20 in control of the finances.

21 Let's look at the people that are involved here.

22 We have Todd, we have Stan, we have Mike Kimmel, and we

23 have Kevin Riley. All honorable business people, with

24 good character. You know how we know that? You've seen

1 a variety of e-mails that have come up that have vulgar
2 language, they have pejorative language, they have bad
3 things that Wendy says about her brothers -- Mr. Robison
4 went over those, I'm not going to go over them in
5 detail -- but you know how we know they have good
6 character? We see no bad responses. Todd didn't
7 respond, Stan didn't respond, Mike Kimmel didn't respond,
8 and Kevin Riley didn't respond. That's how we know these
9 people are of good character because they heard these
10 things and you know what they did? They removed
11 themselves from that kind of conduct and they said, we're
12 going to treat this as a business. They did say that.
13 They had to. They had to emotionally remove themselves
14 from her language, her allegations, her telling her
15 brother that he must have killed their dad. How bad is
16 that? How bad is that? They had to remove themselves
17 from that and they had to say, we're going to run this as
18 a business. How else would you pay down \$30 million of
19 debt if you don't run this like a business? You've got
20 to run it like a business.

21 Mr. Kimmel and Mr. Riley, we have heard nothing in
22 the evidence about anything that they have done wrong,
23 and I want to talk to you about them. They are
24 professionals. Mr. Kimmel is an attorney licensed by the

1 State of Nevada. What incentive would he have to do
2 something that would hurt Wendy? If he has a fraud
3 conviction or any sort of conviction or any judgment
4 against him, he is subject to the rules of the State of
5 Nevada Bar Association. He has no incentive to do
6 anything to hurt Wendy.

7 Mr. Riley, he is a CPA in the state of Nevada and
8 the state of California, he's subject to two agencies.
9 CPA, a man who is in charge of finances. This is just
10 one of many clients for him. He is not going to do
11 something to the detriment of one client to benefit her.

12 They say people, Mr. Kimmel, Mr. Riley, they have
13 no incentive to do anything other than treat this as a
14 business. And for that, they both get named not only as
15 trustees, they get named individually. Wendy is trying
16 to put their personal assets in jeopardy. They did
17 nothing. You heard no evidence about anything that they
18 did to conspire, to aid and abet or to breach any
19 fiduciary duties. Those gentlemen need to be let out of
20 this case. On everything that comes up with them, you
21 need to say No, No, because they did nothing wrong. They
22 have no incentive to do anything wrong.

23 We talked at the very first about the rule book,
24 the trust agreements, the powers that are designated.

1 I'm surprised that plaintiff's counsel didn't reference
2 the rule book, but you know why? The rule book has the
3 answers. The rule book has things that Sam put in there
4 that allowed these things to occur.

5 If you could bring up the family trust, please.

6 I'm going to go through quickly because I know
7 you've looked at all these.

8 The family trust, please, that's the issue trust.

9 You know what, we'll cover it while we're there.
10 We need to move on. Let's go with this. The issue trust
11 and that first provision, Mark, if you would highlight
12 the first provision.

13 Okay, 23, I went over this. This is the provision
14 that gave Todd, as the trustee of the issue trust, the
15 authority to use the life insurance -- you see it says:

16 -- other property acceptable to the
17 trustee may be added to the trust estate
18 by any person, by the will or codicil of
19 the grantor, Samuel S. Jaksick Jr. Family
20 Trust by the proceeds of any life
21 insurance policy.

22 Sam authorized Todd to use those life insurance
23 policies. That was an authorization that his dad gave to
24 him, and he's being sued because his dad gave him the

1 authorization.

2 Let's look at where that life insurance money
3 went. It went to save the Tahoe house. You can talk a
4 lot about the Tahoe house transaction. The family all
5 get to use the Tahoe house, it is available for them to
6 use, and what did you hear Todd say? Wendy has used
7 200 days, she's used it the most out of the family,
8 paying no money, contributing nothing to the function of
9 the house or paying any of the debt. But that's what Sam
10 intended, that's why he did the life insurance, and you
11 heard my partner, Mr. LeGoy, say that was a home run,
12 because it preserved an asset and it didn't go to the
13 government, everybody gets to use it, which was Sam's
14 intent.

15 Now, let's go to the family trust, please.
16 Samuel S. Jaksick Jr. Family Trust Agreement as restated.
17 Let's enlarge the first one.

18 Sam was thinking -- again, this is Sam's intent --
19 Sam was thinking if there's some successor trustees like
20 Mr. Kimmel, I want to protect them, I want to provide
21 protection for them so he put this provision in.

22 No successor trustee is to be liable --

23 Wendy is ignoring that. She's trying to make
24 Mr. Kimmel liable when Sam says, they won't be liable for

1 any act, omission or default of a predecessor trustee.

2 Then it goes on to say:

3 No successor trustee is to have any
4 duty to investigate or review any action
5 of a predecessor trustee and may accept
6 the accounting record of the predecessor
7 trustee.

8 They're trying to say that Mr. Kimmel should be
9 liable for not looking at -- despite what Sam said, and
10 we have to look at what Sam said. Sam says successor
11 trustees are not to be liable. It's in black and white.

12 Let's go to the next part of the family trust.
13 Enlarge that, please.

14 This is a very important provision, I'm not going
15 to read the whole thing to you, but it pertains to
16 Mr. Wallace. And it says the trustee is to invest and
17 manage the trust estate. Sam says, sons, I want you to
18 manage and I want you to look over the investments for
19 me. I'm giving you that power.

20 Now let's go down where it says -- about the third
21 line down, Mark -- the trustee's investment.

22 The trustee's investment and management
23 decisions respecting individual assets
24 and courses of action are not to be

1 evaluated in isolation but in the context
2 of the trust portfolio as a whole and as
3 a part of the overall investment
4 strategy.

5 What did Mr. Wallace do? I asked him
6 specifically, do you know about the trust portfolio?

7 No, I don't. I didn't evaluate that.

8 Do you know what the investment strategy is?

9 No. I never talked to the trustees. I don't know
10 about that.

11 So Mr. Wallace does what Sam said shouldn't be
12 done. You don't come in in isolation without knowing
13 what the portfolio is or knowing what the investment
14 strategy is and say these transactions are bad. So, once
15 again, in these trustee agreements there are rules and
16 you're going to be asked to determine whether or not
17 these rules were complied with.

18 Okay. Let's go to the next provision of the
19 family trust. Another very important rule, and it
20 pertains to Mr. Wallace again. It pertains to everything
21 that plaintiff's counsel has suggested to you, that Todd
22 as trustee, Stan as trustee, should not be doing inner
23 deals with these other entities, that's wrong, that's
24 self-dealing. Sam Jaksick knew at the time that he put

1 Todd and Stan in as trustees that they would have to deal
2 with entities as managers. All the entities were set up,
3 he knew who the managers were, and he knew that when he
4 made them trustees.

5 So if you look at the last line:

6 This power, the power to organize,
7 participate in, invest and contribute
8 trust assets to all forms --
9 That's what it's referencing.

10 -- this power specifically includes but
11 it is not limited to the power to invest
12 in and contribute property to the limited
13 partnerships, limited liability
14 companies, and other forms of legal
15 entities --

16 Here's the key language.

17 -- administered or managed by a trustee
18 or an affiliate of the trustee.

19 Sam gave Todd and Stan the power to do what
20 they're complaining of. They're saying they shouldn't
21 have done that. Sam knew it was going to happen, he
22 wanted it to happen, and he included it as a specific
23 power given to the trustees.

24 There's many others, but you've seen them and I'm

1 not going to go over them again in detail. Suffice it to
2 say, when you're -- when you're looking at this case,
3 you're looking at Sam's intent, and you're looking at
4 what the trustees did.

5 The first decision you have to make is: Did they
6 comply with the trust? Did Sam give them that power
7 under the trust? And he did.

8 And, by the way, when the trustees are dealing
9 with themselves as managers, they're taking out loans
10 that go to pay Wendy. You heard Stan testify that
11 Lakeridge loaned the family trust money, that money went
12 to benefit Wendy. That's part of how she got her
13 \$105,000 a year. So when she benefits, it's okay; when
14 she doesn't like something, she complains about it.
15 Again, it's back to control. But Sam gave them the power
16 to do this.

17 Okay. Let's talk about unity of business
18 interests. Something new, something you haven't heard,
19 something that's not been on a chart yet. Sam was
20 actually kind of genius in the way he did it. It doesn't
21 look like when we're all sitting up here for three weeks
22 fighting over this stuff, but all the businesses that he
23 set up and made Todd and Stan managers of, the family
24 trust has an interest in those businesses. Unity of

1 business interest means if the business is successful and
2 makes money, they all make money, the family trust makes
3 money, that's all good for the beneficiaries. They get
4 more money. Todd doesn't have a business or Stan doesn't
5 have a business that part of it is successful and part of
6 it is not. The family trust part is successful if the
7 rest of it is and vice versa. It's a unity of business
8 interest.

9 Why would Todd or Stan want a business to fail?
10 That's why they look at this as a business. That's why
11 when they paid off debt. When debt got paid off, they
12 released the assets, made it debt free.

13 By the way, Mr. Wallace talked about good debt and
14 bad debt. I want to find some of that good debt. All my
15 debt is bad debt, it needs to be paid off.

16 So when they're making decisions about paying off
17 debt, that benefits all the businesses, it benefits
18 Stan's interests in his business, Todd's interests and,
19 more importantly, for Wendy it protects the family
20 trust's interest, so there's a unity of business
21 interests.

22 Again, there is no incentive for Todd or Stan or
23 any trustee to do something that hurts Wendy. If a
24 business is successful, they all are. The interests are

1 aligned.

2 Let's talk about the duties. Duty of loyalty.

3 The trust builds in loyalty, just about what I just
4 talked about, the unity of the business interest that
5 forces loyalty, that forces loyalty to everybody. So
6 there was no breach of loyalty because all of the
7 businesses need to be successful, all of the trustees
8 want the businesses to be successful.

9 Duty of disclosure. This one has kind of been a
10 mystery me. By the very structure of the trusts, Sam
11 gives the trustees the power to make the decisions.
12 Wendy does not have any decision-making ability. It's
13 the way -- it's a fact, it's not -- we know why, we've
14 heard why, and I'm not going to go there again because
15 you've all heard it. But what -- if you would have put
16 her in a room every day, let her look at every receipt,
17 every contract, every check that is written, what would
18 have changed? What would have changed? It would have
19 been the same. All the decisions would have been the
20 same because the trustees make the decisions.

21 Now, disclosure. If you're concerned about
22 disclosure, take a look at one of the financials. Take a
23 look at the 45-page document and the information that it
24 contains. Counsel wants to focus on a couple of values

1 that have a hyphen, that was explained, it's negative.
2 It's negative. You can't put a value in when it's
3 negative. You can't put minus \$4 million, minus \$2
4 million, so there has been no violation of the duty to
5 disclose. And even if there was, no damage, no damage.

6 Mr. Robison has talked about the burden of proof,
7 and the damages issues, I'm not going to go into that
8 extensively but, again, they have the burden to show that
9 somebody conspired, somebody committed fraud, somebody
10 did something wrong. Nothing has been mentioned about
11 Mr. Kimmel, Mr. Riley. With regard to the burden, they
12 have not met their burden of proof.

13 Final thoughts. I view this as though Sam is on
14 an airplane. Sam is the pilot. He's got two co-pilots
15 behind him, Todd and Stan. He's got Kevin Riley looking
16 at the fuel gauge, making sure we have enough fuel to get
17 to the end.

18 He's flying and he's got all his grandkids in the
19 back, he's got all his beneficiaries in the back. He's
20 flying over the properties that he liked; he flies over
21 Eagleville, he flies over 49er Ranch, he flies over Lake
22 Tahoe, and it's beautiful. There's a piece of property
23 down there, that's ours. I want you all to enjoy it. I
24 want you to all benefit from my hard labor for my life.

1 And, in midflight, unfortunately, he dies. Todd
2 and Stan have to step into the pilot's seat, they have to
3 look at this rule book. Meanwhile, the plane is
4 gathering ice and going down. They have to figure out
5 how to get that plane on the ground. And you are the
6 people who get to make the decisions as to how the plane
7 gets landed.

8 Do you keep the keys with Todd and Stan to get it
9 landed, or do you trust the keys to be given to Wendy to
10 land that plane? Given what you know, would you trust
11 her with those keys to land that airplane? Sam wants
12 that airplane to land so that when the beneficiaries, his
13 grandkids, get off of that plane, they can enjoy these
14 properties, they can enjoy going to those properties like
15 Sam did. You get to make that decision.

16 When you go in that jury room, I told you I was
17 going to ask you this when I first met you in the opening
18 statements, I want you to rule in favor of the trustees.
19 In every box that pertains to Mike Kimmel, I want you to
20 put a No. He didn't breach any duty. With regard to
21 Kevin Riley, I want you to put a No. I've got one of
22 those fancy things that circle, too, but I'm not going to
23 bore you with it. With regard to Todd and Stan and their
24 fiduciary duties, I want you to put No, realizing --

1 realizing that Wendy has a beneficial interest right now
2 in \$4 million. Sam wanted her to be taken care of for
3 her life, and she will be.

4 She may not be happy with the amount of money that
5 she's getting but she will be taken care of. She will
6 get to use and enjoy the ranches. She will get to use
7 and enjoy the Tahoe house, all of which Sam intended.

8 So what I'm asking you to do is keep the keys with
9 the pilots that got us here so we can get the plane
10 landed. Rule in favor of the trustees. Thank you.

11 THE COURT: Thank you. Ladies and gentlemen,
12 during this last recess, please do not discuss this case
13 among yourselves. Please do not form or express any
14 opinion about this matter until it is submitted to you.

15 We will be in recess for 15 minutes. Please stand
16 for our jurors.

17 (Recess.)

18 THE COURT: Please be seated.

19 Counsel, you may provide any rebuttal arguments.

20 MR. SPENCER: Thank you, your Honor.

21 One thing I can tell you for sure is I didn't go
22 to the seminar that Mr. Robison referred to. We don't
23 file lawsuits and just throw thing up to see what sticks.
24 What I just saw in these closing arguments is the

1 defense, who knows they don't have a case, they don't
2 have a defense to any of this, dropping a smoke bomb in
3 the courtroom to put a smoke screen up in front of the
4 evidence and stand in front of it and say, well, you know
5 what? There's just no evidence here.

6 There's plenty of evidence, plenty of evidence,
7 and you'll see the stacks and stacks of evidence when you
8 get in the jury room, but let's look at a few things.

9 First of all, it's been six years nearly since Sam
10 died, April 21st it will be six years, and they still
11 haven't figured out how the indemnity applies. We can't
12 make distributions to the beneficiaries because we don't
13 know what the debt is yet. Really? You're handling this
14 like a business matter, you're trying to make business
15 decisions, you have this important document that
16 radically changes the dispositive provisions of Sam's
17 estate plan and causes all this estate tax problem, and
18 you don't even know what it applies to yet? Don't
19 forget, they filed to have their accounting approved and,
20 without a response, Wendy would have been agreeing to
21 everything.

22 And so we didn't get to the point where the
23 trustees are suing themselves, one of them suing for
24 breach of fiduciary duty, suing the other for breach of

1 fiduciary duty. He would have been sitting on this side
2 of the courtroom except for the settlement that was
3 reached right before we got here, then he switched sides
4 and then wants to say, gosh, I didn't do anything wrong
5 here. Well, the only reason he's saying that is because
6 now he's on the side of Todd. Not biased? It's
7 contingent upon the outcome of this trial. What could
8 cause more bias by either of them?

9 But then we get to the -- we want to go to the
10 disclosure and we'll just provide all the information, we
11 do it on time and we do it regularly and they should know
12 everything.

13 Pull up Exhibit 540, Keith.

14 This is the accounting for the Wendy Jaksick
15 Subtrust, January 1st, 2017, through December 31st, 2017,
16 due April of 2018 -- April 1st of 2018, when do you think
17 we got this document? Well, it would have been sometime
18 after -- go to the letter that accompanies it, there we
19 go -- look at the date of that at the bottom.
20 February 11 of 2019. The trial started on the 15th.
21 That's the kind of disclosure that Wendy gets. The
22 accounting from a year -- two years ago coming in two
23 years late, a week before -- the week that the trial
24 starts.

1 You know why Mr. Wallace didn't know who the
2 trustees of Todd's were because we didn't get the
3 documents until after his deposition, that is why. They
4 want to say he didn't know what he was talking about, he
5 didn't know because the beneficiary didn't know.

6 And then I learned something in this trial --
7 Exhibit 126, Keith -- this is the accounting from
8 April 1st, 2016, through December 31st of 2017 of the
9 family trust. Flip to page 42. Remember we had rested
10 our case and the case had switched over to the
11 respondent's, and this was their case in chief, and they
12 pulled this document up and the bottom part of that
13 provision -- or page, then they tell us, oh, gosh, this
14 is the accounting of the Bronco Billy's proceeds that was
15 put into the two subtrusts and then put back into the
16 family trust.

17 First of all, it doesn't say that. How is the
18 beneficiary supposed to know that? We're the attorneys
19 for the beneficiary and we didn't know that. We saw this
20 for the first time when you all did, and we were told
21 that's the accounting for the Bronco Billy's money at the
22 same time they you all heard it. That's the kind of
23 disclosure that we've been given. We being the
24 beneficiaries.

1 Then they turn around and do it to you in this
2 trial. You saw the chart, this chart here. Wendy is
3 going to get \$4 million. Notice how this says,
4 "Estimated \$4 million," not a single one of these has a
5 dollar amount next to it so we're all just supposed to
6 guess, including you all. She's going to get this
7 someday, we don't know when, but it will be coming soon.
8 We're not sure when.

9 Well, one is the family trust, one is the Wendy
10 BHC Trust, that trust should already have its interest.
11 Jackrabbit, Wendy's subtrust, should already be there.
12 Jaksick Family LLC, that's the inheritance from Thelma's
13 estate, already owns it.

14 Then the issue trust. They act like, oh, that is
15 going to be distributed to Wendy. We all know it's not
16 going to be distributed. It's just complete deception.
17 Not only are they deceiving the beneficiaries, they're
18 deceiving you.

19 And then they add all the cash to date. She got
20 600,000 cash to date. Pat yourself on the back, we paid
21 off all this debt except we're taking credit for that
22 when we were actually paying Wendy, 231,000 plus
23 interest, which amounted to about \$300,000, was money she
24 was entitled to by virtue of the debt that they're

1 bragging about paying off, but they don't want to give
2 her credit for that. That's money that she got that the
3 others didn't get. They just recharacterized that.

4 So if you take that \$105,000 they say that she got
5 over the six years per year and you cut it in half,
6 because 300 of it she's supposed to get anyway, is only
7 55,000, which is great and she's fine and she hasn't
8 complained about it. That's not why this lawsuit has
9 been brought.

10 The lawsuit was brought because -- I was very
11 careful in my earlier statements not the use the word
12 steal. Mr. Robison used that word, and he attributed it
13 to us. And I didn't want to say it and use the word
14 steal because it is just a strong word, but that's what
15 it was. They stole the Lake Tahoe property and they're
16 saying, oh, gosh, this was such a great investment, look
17 at how much it's gone up in value.

18 They don't talk about the carrying costs, they
19 don't talk about the taxes and the insurance, and
20 everything else that's been paid. If you deduct that off
21 the value it's not that great of an investment because
22 that six percent return would have returned the same
23 amount. All right.

24 And so they then talk about, well, you got to take

1 \$18 million, Wendy is asking for six, you got to deduct
2 the taxes, you got to deduct all the real estate
3 commissions and all that, they still own the property.
4 They being Todd and his entity. The SSJ Issue Trust
5 bought in because Todd was negotiating with himself, but
6 Todd is the entity, it's Todd's house at this point.
7 That's a horrible investment by any standard.

8 It starts at a trust that's owned basically a
9 third, a third, a third, ends up in an entity where
10 distributions are made at Todd's behest. And then they
11 said, oh, well, if it's sold, the money would go to the
12 issue trust. No, it doesn't. It goes to the Incline
13 TSS. Todd decides whether there's a distribution. It's
14 just total deception. The evidence speaks, not the
15 argument. And they don't you to look at the evidence
16 because they don't like it.

17 Wendy loved her dad, her dad loved Wendy. Sam is
18 a nice guy, he loved his children, and when asked, loved
19 them unconditionally, yep. Multiple witnesses said that.
20 Loved his kids unconditionally. Do you think that for a
21 minute he would have disinherited Wendy? But, even
22 worse, do you think for a minute he would let Todd decide
23 to disinherit Wendy?

24 Everyone said that he loved them equally, and his

1 estate plan reflects that he wanted to treat them all
2 equally. They're blaming Wendy for coming forward and
3 saying, hey, six years in I haven't -- I kind want to
4 know what is going on. I would like to see a
5 distribution, when, in actuality, Todd is the one getting
6 more than anybody else.

7 The prime property is now in Todd's name. Oh,
8 well, Wendy wasn't to be included in that. Where does it
9 say that anywhere? Not a note. Not a memo. Nothing.
10 Except, oh, well, you know, he didn't want Wendy to be
11 involved. Oh, really? Why are we supposed to believe
12 that? You'd write that down if that was the case. If
13 you were really representing Sam, and he really wanted to
14 disinherit his daughter, you'd write that down. If you
15 had a process that documented what your client wanted so
16 that if this happened you could come forward and say,
17 look, wrote it right here, that's what he said. Not a
18 shred of evidence that that happened.

19 But then carry it forward. What did Luke do? He
20 was a minor until last September. He was 12 years old
21 when Sam died. What did he do to allow for all this
22 happen? It's just unbelievable that they would blame
23 Wendy for coming in here and enforcing her rights. It
24 should be the other way around, the fiduciary should be

1 protecting her rights. They have failed at every turn.

2 Now, we saw the rule book and the exoneration
3 provisions and look here, you know, we're entitled to
4 breach our fiduciary duties because that's what Sam
5 planned. What? No. You're in a position of trust. I
6 trust you to do the right thing. I trust you to protect
7 this property. I trust you to get it to where I want it
8 to go. Not, you can do anything you want, breach your
9 fiduciary duty and there's no consequence for it.

10 Then we saw Mr. Kimmel, he's a successor trustee
11 and he can't can held liable for the actions of his
12 predecessor. Well, his predecessor was Kevin Riley, and
13 Kevin Riley resigned in July of 2013. Kimmel came on the
14 scene in January of 2017, so presumably I'm going to
15 vouch for everything that's happened on my watch from
16 January 17 forward, but he didn't do that. He looks --
17 he turns to the accountings and says, I agree with all
18 this, it's all -- Kevin Riley prepared it. Doesn't say
19 it's all true and correct, he won't do that, because Todd
20 won't either, but he goes back to 2013 and says all that
21 is correct and we want this court to approve it,
22 including all the ACPAs.

23 So there was a way for him to come in here and
24 say, "I was appointed in January of '17, and I'm only

1 liable going forward," but he didn't do that. He came
2 all in and went all the way back to '13 by vouching by
3 for everything. That's not protected by the rule book.

4 Going back to that Exhibit 126, Keith, for a
5 second.

6 A thing I forgot to show, \$4 million is going to
7 be distributed soon, that's what we heard --

8 Page 41 of Exhibit 126 -- Exhibit 126 -- we'll
9 come back to it.

10 We heard the argument that Mr. Wallace knew about
11 the \$30 million debt from the accountings. How else
12 could he have known? Well, it's not in the accountings.
13 You can look at them, \$30 million in debt outstanding is
14 not in the accountings. How else would he have known?
15 He read the depositions of Todd. They're the ones saying
16 \$30 million worth of debt has been paid. There's not a
17 single document that shows that that much debt was
18 outstanding. It's almost like they made up a number out
19 of thin air and said, "We paid all this debt down." Why
20 can't you show us? Why can't you show the beneficiaries?
21 More importantly, why can't they show you? They haven't
22 because they can't.

23 It doesn't matter what the Second Amendment gives
24 Wendy if there's nothing left after paying all of Todd's

1 debt. It's Todd indemnity that's the holdup, apparently,
2 and they're saying, oh, we've submitted that to the court
3 for a determination. Why hasn't the trustee already
4 determined that? All these professionals and Kevin is
5 great and Mr. LeGoy is the best lawyer in America, they
6 can't figure out what the indemnity applies to?
7 Mr. Hascheff prepared it and he can't even figure it out.
8 But that's what Sam wanted. Well, I don't see any
9 document anywhere that says that's what Sam said other
10 than the documents that Mr. Hascheff prepared.

11 Oh. Then further, Exhibit 215 -- did you fix it
12 yet?

13 Well, we had -- we had -- Todd was put back up on
14 the witness stand during their case in chief to basically
15 badmouth Wendy, is what he did. They had the opportunity
16 at that point in time, Mr. Trustee who knows everything
17 about everything, except for the accountings, they had
18 the opportunity to ask him whether -- what Wendy said
19 about the water rights was correct. They didn't ask the
20 question.

21 Wendy testified there was 140,000 acre feet of
22 water, and Todd testified it was worth on an average
23 \$7,000 per acre foot. That came from Todd, not from
24 TMWA. TMWA said, well, there's a range, it could be

1 anywhere from 1500 to 2,000, all the way up to 50,000
2 depending on where it is. That's what she got from TMWA.
3 Todd said 7,000 per acre foot, and not a single word that
4 that was wrong, that Wendy's computation, 140,000 acre
5 feet, that's \$7,000 per acre foot that Todd testified to
6 was wrong. They didn't call an expert, a water rights
7 expert, they didn't even ask Todd that question. It came
8 right out of his mouth and they didn't ask him whether
9 that was true or not, because it is true. If they asked
10 him he'd have to say yes, because in his deposition
11 that's what he said.

12 THE COURT: Counsel.

13 MR. SPENCER: Loud or fast?

14 THE COURT: Fast.

15 MR. SPENCER: I'm sorry. I'll slow down.

16 Exhibit 215. But the point there is that no one
17 refuted it. They blame us for not bringing the water
18 right expert, the trustee should be the one telling us
19 what water rights are there, how many there are, what
20 status they're in, what the value is. The beneficiary is
21 having to go out and do it herself.

22 Then we get this printout, Exhibit 215, and we
23 showed you this during the trial. Water rights -- just
24 that top part, Keith -- all the way across, January 28,

1 2009. This was a document that the trustee gave to the
2 beneficiary, two weeks before the trial started, didn't
3 comment on it, didn't refute what Wendy said, which lends
4 credibility to what Wendy said. And that is the evidence
5 in the case of what the value of the water rights are.

6 Going back to Exhibit 126 real quick, Keith.

7 Looking at page 41, this is the accounting ending
8 December 31st, 2017, which is the most current accounting
9 that we have --

10 Looking at the very bottom of the page, Keith.

11 Assets on hand December 31 of '17, \$959,074.69.

12 Based upon the testimony that, oh, well, Wendy is going
13 to get \$4 million, the trust would have to have 412
14 million in it for her to get that. It's got less than a
15 million as of the last accounting that the beneficiaries
16 have, so that's just pure, 100 percent misrepresentation
17 and deception.

18 Why didn't we call Campagna? Why didn't we call
19 Stolbach? You heard that. They want to imply, well, we
20 wouldn't have liked what they had to say. It has nothing
21 to do with anything. We didn't call them because we
22 didn't need them. Do you know why we didn't need them?
23 Because they didn't bother to call their own client,
24 which is Kevin Riley.

1 We didn't need to call Kevin Riley for anything.
2 We've got the accountings, we've got his statement that
3 they're just compilations, we didn't needed to call him.
4 They blame that on us. Maybe we'd call the accounting
5 expert or the estate tax expert if Mr. Riley had come in
6 and testified. But it was just an issue of time, money,
7 and no need because they didn't bring that evidence
8 forward.

9 Why didn't they call Mr. Green to testify? Well,
10 they cited to his report for the proposition that there
11 wasn't a forgery, but the thing to remember is if you get
12 someone's signature, you can forge by signing their name
13 to a document without them knowing, or taking their
14 signature and putting it on something else.

15 Mr. Green was not called because of the evidence
16 that I showed you earlier, where he opined regarding the
17 documents and how they looked and how irregular they
18 were, margins being off and staple holes being wrong or
19 different, page numbers being off, orphan pages. That's
20 why he wasn't called, because they didn't want that
21 evidence to be up here because we would have shown more.
22 It's in evidence, you can look at it. The originals are
23 there. They didn't call him because the signature
24 testimony wouldn't have helped, and the documentary

1 evidence you've seen clearly is against their position.

2 And they instructed Green not to put that in his report.

3 The ACPAs, Stan testified that -- regarding Todd's
4 misrepresentation and fraud regarding those. Stan said
5 these documents were fraudulent and he said, "I didn't
6 sign that Exhibit 14. That's my signature on the orphan
7 signature page but I didn't see that document." So all
8 of the ACPAs, the evidence that you've heard, are all
9 suspect, they're all inadequate to fully disclose but
10 they're also fraud. Fraud is a misrepresentation.

11 Todd individually took an interest in the Lake
12 Tahoe property in relation to his trusts, took advantage
13 of the Indemnification Agreement, took advantage -- or
14 used the Option Agreement to acquire the benefit for
15 himself, so on both sides of the transaction he was
16 involved individually and benefitted individually.

17 Where did the information that Todd may have
18 killed his dad come from? It came from Mr. Dave Jameson,
19 who was Sam's best friend, not from Wendy. Wendy said
20 she had no evidence of that, so -- and Todd also, in his
21 individual capacity, aided and abetted himself as
22 trustee. He's the one that organized these matters and
23 benefitted from them.

24 The Duck Lake issue, I've told you the exhibits,

1 they're 123, 124, 125, you can look at those yourself.

2 They said, well -- Duck Lake and White Pine, look at them
3 yourself. It's Todd Jaksick's trust. Duck Lake is Todd
4 anyway. Either way, the water rights went to Todd.

5 Sam's -- we heard Sam's desires went up in flames
6 if Wendy had gotten involved with Tahoe because of all
7 these creditor issues. Well, the creditor issue has been
8 taken care of. We also heard that when the property
9 landed in SSJ LLC, the creditor issues were taken care
10 of. And it was moved into Incline TSS we heard because
11 of creditor protection. It already had creditor
12 protection, Wendy being involved wouldn't have made a big
13 difference whatsoever.

14 Looking at the instructions, there are a few other
15 instructions to focus on. Without reading them, I just
16 want to point out there's one that involves the fiduciary
17 relationship of a beneficiary and a trustee, that's
18 just -- that's a fiduciary relationship. Fiduciary
19 obligations apply.

20 The one that you saw regarding a trustee is
21 allowed to delegate function of investment and management
22 of assets, investment and management of trust assets,
23 that's the key point there. They can't delegate all
24 their duty. They can't delegate their fiduciary

1 responsibilities. And if they do delegate them, they're
2 responsible for what the person that they delegated it to
3 did.

4 That instruction is specific, delegate functions
5 of investment and management of trustee assets. It's not
6 here, you can be the fiduciary for a few days, I'm out.
7 It doesn't work like that. You can't delegate the duties
8 like that.

9 Joint and several liability. If anybody helped
10 them -- helped breach fiduciary duties, helped the
11 co-trustee breach their fiduciary duty, they're
12 responsible for it just as if they had, just as if they
13 had the duties.

14 The other thing you didn't hear when the
15 instruction regarding dissenting trustees was read is the
16 last sentence said:

17 However, this does not excuse a
18 co-trustee from liability for inactivity
19 in the administration of the trust, nor
20 for failure to attempt to prevent a
21 breach of trust.

22 So you heard earlier when I was saying, well, they
23 sat around -- they sat idly by and let these things
24 happen without stopping them, that isn't an excuse. It

1 doesn't exonerate them.

2 Respondents cannot rely upon the ACPA if Wendy
3 proves by clear and convincing evidence that her ascent
4 to them was fraudulently induced, the record has all
5 kinds of evidence that shows that that's the case and
6 certainly a firm belief -- get you to a firm belief.

7 You heard about the statute of limitations issue.
8 Really it becomes a non-issue because, again, we're in a
9 fiduciary context. That umbrella that hangs over this
10 entire matter, which is the fiduciary relationship,
11 fiduciary duties umbrella, it addresses this. And
12 remember the evidence, you have to tell on yourself -- as
13 a fiduciary you have to tell on yourself. Until they go
14 to the beneficiaries and say, hey, this happened, I made
15 this mistake or I did this transaction, I self-dealt,
16 nothing is sticking against the fiduciary.

17 And then I want to close by saying a few things.
18 One, just about everything that Mr. Hascheff did -- and
19 he was hired to get -- to make sure that Todd
20 accomplished his goals -- just about everything he did
21 was flawed, was incorrect, messed up, unethical, whatever
22 word you want to use. That is not how it's supposed to
23 happen. Documents are supposed to be prepared in a
24 manner where the process is good, strong and valid, and

1 they client's wishes are put down, and if there's a
2 change, then it's changed. I found him, what he did in
3 this case, in his testimony to be --

4 MR. ROBISON: Objection; personal belief, your
5 Honor.

6 THE COURT: Sustained.

7 MR. SPENCER: He acknowledged that he owed Sam
8 fiduciary duties and didn't abide by those. He's one of
9 the main causes of this because he's the weapon or the
10 thing that Todd used in order to accomplish his goals.
11 Wendy can get paid the damages because they forfeited
12 their right to be trustees by breaching their fiduciary
13 duties.

14 The value that she would have gotten, her trust
15 would have gotten is now in Incline TSS, or one of Todd's
16 trusts or one of the entities that Todd controls. The
17 concept of her getting anything from these is just not
18 believable. So they abused their position of power.

19 Unless -- the only way Wendy is ever going to get
20 anything from her inheritance after all this dust settles
21 is from you all, from the verdict that's going to be
22 offered to you, from the damages that you're going to
23 award, because we've seen what has happened in the past
24 six years and we're not even there yet. Even when they

1 say, well, we're about to distribute, they can't tell you
2 how. As long as there is that indemnity is out there, it
3 will be used against Wendy as a sword and to
4 affirmatively prevent her from getting what she has
5 coming.

6 Again, we would ask in looking at the verdict form
7 that you answer Yes to all of the questions as to every
8 respondent in every capacity. They were involved in the
9 teams, they were involved in the team meetings, they were
10 involved in the decision making, they're all responsible
11 one way or the other.

12 We showed you how we get to our damage number. We
13 chose the lower number of the water rights. That's how
14 we get to \$80 million -- 10 million one sixty-six from
15 the Lake Tahoe property, the value which has now gone,
16 out of Wendy's reach; the 6.2 million Fly Geyser; and the
17 Bronco Billy's, her third of that. Then damages on top
18 of that, if you all believe that she deserves more than
19 that based upon having to go through this; 70 million
20 would be the minimum on the water rights. We see 1500
21 per acre foot but Todd testified 7,000 per acre foot, you
22 all can decide whether that is accurate or whether it
23 should be more or less, 140,000 acre feet, she would get
24 a third of whatever that amounts to.

1 Those are realistic numbers. Deals were done
2 based upon numbers that were similar to that, whether
3 they worked out or not is not relevant, they believed
4 that they were accurate. And evidence regarding the
5 water rights is unrefuted. We ask you to rule in Wendy's
6 favor, rule Yes as to all the defendants, award her the
7 damages that we've put -- set out in our presentation.

8 Thank you for your attention.

9 Thank you, your Honor.

10 THE COURT: Thank you, counsel.

11 Jurors 9 and 10, you are our alternate jurors,
12 which means you will not participate in deliberations.
13 Thank you for responding to the call of duty.

14 At this time, Deputy Coss, if you will stand and
15 be sworn, please.

16 (Deputy sworn.)

17 THE COURT: Jurors 9 and 10, the role of alternate
18 jurors are critical, though, you are not part of the
19 deliberating jury, you will available to be so at any
20 time. And often throughout other trials, there can be
21 unforeseen circumstances in which an alternate quickly
22 becomes part of the deliberating jury. Your service is
23 no less valuable to this court and to the trial
24 participants as the other jurors, it's just you have

1 arrived at the end sooner than the others. You are not
2 discharged from service, you will be available upon call
3 to return. I have not seen that happen in my 14 years,
4 but it's possible. Thank you so much.

5 Ladies and gentlemen, you may take with you to the
6 jury room all papers and other items that have been
7 received into evidence, including the court's written
8 instructions. We should have -- we will have one
9 immediate packet and hopefully we will have two or three
10 other packets of instructions prepared. If not, they'll
11 be delivered by Deputy Coss shortly.

12 You may take with you all notes that you have
13 privately prepared throughout this trial. You may share
14 them as you deliberate these causes with your colleagues.

15 Please request any further information and
16 instructions through Deputy Coss in writing after you
17 have begun your deliberations.

18 You may be permitted to separate for breaks, you
19 may be allowed to leave for the evening, but during times
20 of separation you are not to discuss with anyone any
21 subject connected with this trial. You will not
22 deliberate unless all eight of you are together in the
23 same room.

24 We are happy to provide food for you at your

1 request. It takes about an hour to deliver food so one
2 of the first things you should decide is what your
3 evening looks like regarding food. Deputy Coss will have
4 ordering instructions for you upon your request.

5 We are happy to stay in the courtroom late into
6 the evening and keep the court open. Counsel and trial
7 participants will be available at your request. Should
8 you continue to deliberate, we're also happy to host you
9 tomorrow should you choose to continue deliberations.
10 There are no other restrictions imposed upon you.

11 You are now the deliberating jury and what occurs
12 within room is subject to your control and your
13 processes.

14 Ladies and gentlemen, we will stand in recess for
15 the jury, subject to their call.

16 (At 5:32 p.m., the jury retired to deliberate.)

17 THE COURT: I have a note about Exhibit 30,
18 Exhibit 55, does anyone know what this note --

19 MR. JOHNSON: Yes, your Honor. Earlier
20 Mr. Robison read off a list of stipulated exhibits, and
21 30 and 55 were not stipulated to. I think he's now
22 stipulated to withdraw those two exhibits.

23 THE COURT: 30 and 55 will not be admitted.

24 MR. JOHNSON: Thank you, your Honor.

1 THE COURT: Let's go off the record.

2 (At 5:33 p.m., court adjourned subject to
3 the call of the jury.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, ERIN T. FERRETTO, an Official Reporter
6 of the Second Judicial District Court of the State of
7 Nevada, in and for the County of Washoe, DO HEREBY
8 CERTIFY:

9 That I was present in Department No. 15 of
10 the above-entitled Court on MONDAY, MARCH 4TH, 2019, and
11 took verbatim stenotype notes of the proceedings had upon
12 the matter captioned within, and thereafter transcribed
13 them into typewriting as herein appears;

14 That the foregoing transcript is a full,
15 true and correct transcription of my stenotype notes of
16 said proceedings.

17 DATED: This 8th day of May, 2019.
18

19 /s/ Erin T. Ferretto
20 ERIN T. FERRETTO, CCR #281
21
22
23
24

\$	74:7	116:6 119:13	\$70 33:22	(b) 41:11
				1
\$1.2 70:24 71:2,7	\$2 40:18 105:3	\$4.5 61:24	\$75,000 91:4	
\$1.5 55:1,2	\$2,066,000 32:16	\$4.9 61:20	\$80 38:20,21 39:10 40:11 41:20 44:3 45:3 47:7 50:20,21,22 54:7 55:10 59:6 60:7 63:17 64:22 68:4 70:15 91:14 126:14	10 11:3 126:14 127:11,17
\$1.6 90:15	\$2.4 82:15,18	\$5 5:10,11		10-minute 73:10
\$10,166,000 32:21 35:16	\$3 55:13 63:19	\$55,000 33:7		100 6:3 9:11 22:17,22 35:21 57:13 88:10 119:16
\$100,000 49:16	\$3,500 5:11 33:18	\$6 5:7 8:14 32:1 47:10,18 57:19,20 58:2,6,12 62:6,12	\$80,166,000 35:24	
\$105,000 66:17 92:21 93:16 102:13 112:4	\$30 12:23 13:3 19:16 40:3 49:8 92:20 93:5,7 95:18 116:11, 13,16	\$6.2 89:1 90:14 91:6	\$819,000 32:11	105 67:5
\$146,744.68 9:11	\$300,000 111:23	\$6.3 10:12 11:8 57:2	\$9 62:1	11 10:23 74:22,23 76:8,13,20 109:20
\$150,000 9:13 10:6,8	\$325,000 91:5	\$6.5 61:21	\$950,000 5:16	111 27:20
\$1500 33:20	\$326,666.67 33:13	\$600,000 63:21 91:12	\$959,074.69 119:11	119 70:8
\$163,333.33 33:19	\$33 75:24	\$7,000 33:9 34:3 117:23 118:5	\$960,000 90:16	12 24:19 41:23 114:20
\$18 10:7 31:24 47:11, 16 63:3 113:1	\$4 53:15 54:7 58:23 64:15 92:23 105:3 107:2 111:3,4	\$7.25 5:15,21 9:8	\$980 33:13	120 70:8
\$19 20:10			(121 70:8
			(a) 41:10	123 122:1

124 122:1	1500 118:1 126:20	20 21:19 31:5 53:3 55:12,14	24:19 25:12 59:22 110:8	231,000 111:22
125 122:1	15th 109:20	200 98:7	2017 94:7 109:15 110:8 115:14 119:8	24 59:12
126 12:8 14:13 110:7 116:4,8 119:6	16 21:21 66:11,20 79:19	2003 40:16,19	2018 27:20 61:4 109:16	25 18:3 55:21 56:1,2 88:18 89:10,11,21 90:1
129 12:9	17 21:18 115:16,24 119:11	2007 40:24 41:4	2019 4:2 109:20	27 27:20
13 10:16 11:4, 10 32:6,7,12, 17 58:1 59:19 60:14 116:2	17.02 57:17	2008 41:1	21 20:17	28 9:10 62:20 63:8 118:24
130 12:10	18 10:8 21:19 58:1 65:6	2009 119:1	215 117:11 118:16,22	3
131 12:10	1:20 4:2	2010 4:21 9:9 45:11	21st 41:17 54:2 108:10	3 49:19 53:17
132 12:10	1st 9:8 94:7 109:15,16 110:8	2011 41:8	22 20:17	3.2 65:7
133 12:10		2012 9:10 10:15 80:21	22.5 58:1	30 129:17,21, 23
13A 60:13	2	2013 8:16 21:4 41:17 54:2 60:5 81:3 115:13, 20	220 72:3,21	300 63:14 112:6
14 5:6 8:10 59:12 121:6 128:3	2,000 118:1	2014 8:15 59:21 60:19 62:2 93:23	221 72:4	31 119:11
140,000 33:10 34:2,9 48:14, 19 117:21 118:4 126:23	2,066,000 32:18,21	2015 23:2	23 18:3 59:19 97:13	31st 93:23 109:15 110:8 119:8
15 20:22 92:15 107:15	2.1 9:16 32:13,20	2016 10:11	23.41 94:18	33 4:10
	2.4 5:14 65:9		23.45 94:18	35 9:7

35- 93:11	4TH 4:2	561 53:11	111:20	88 27:4,5
36 12:6	5	563 75:16	61 11:5 32:9	9
365 41:6	5 9:15	564 47:7	7	9 61:22 127:11,17
38 84:2	50 16:7 45:14 87:22	568 56:17	7 41:23	90 23:4
39 10:13	50,000 118:1	569 68:5	7,000 33:12, 17 48:18 118:3 126:21	95 12:12
4	51 22:24 51:23	571 49:2	70 35:18 126:19	A
4 65:6	51/49 22:18	572 65:1 77:22 85:21	70s 4:15	abet 96:18
40 10:17	53 28:20	577 54:20	72 12:7	abetted 78:20 121:21
40-page 93:11	54 6:5 7:3 8:6 9:21 58:13 61:20,22,24 65:2	5:32 129:16	73 12:7 14:13	abetting 31:19 34:17 35:2,6 45:8 61:5 76:19 78:13
41 116:8 119:7	540 12:12 109:13	5:33 130:2	74 12:8	abide 125:8
41.4 33:5	55 31:23 129:18,21,23	5th 60:5	75 24:22	ability 31:14 104:12
412 119:13	55,000 112:7	6	8,885,000 32:18	able 21:1
42 110:9	56 33:11	6.2 32:15 126:16	80 42:19 53:7 64:14	above 19:22 45:6 83:11,21
45-page 104:23	560 64:4	6.3 5:15 10:12 32:11,12	848 26:3	absolutely
46 9:19 10:8 62:24		600,000		
49er 105:21				

23:10 39:24 71:11 82:12	124:20	93:1,2,6,9,10 115:17 116:11,12,14 117:17 120:2	16:21 20:12 21:12,15,18 28:5 42:20 43:19 59:12 71:18 115:22 121:3,8	115:11
abstract 48:11 70:1	according 55:13 68:17 71:3	accurate 14:8,9 15:2 126:22 127:4	acquire 8:19 10:23 121:14	activate 57:4, 7
abstracts 48:9 70:4	account 58:17 93:14	accusation 50:3	acquired 9:11	actively 24:17
abuse 73:1	accountant 11:18,23 25:22,23 43:23 68:9 70:16,18 81:22	accusations 38:14 40:7 43:3,5 59:7 73:2	acre 33:7,9, 12,17,18,20 34:2,3,9 48:14,18,19 117:21,23 118:3,4,5 126:21,23	activities 15:13
accelerate 57:9	accountants 61:7 89:14	accuse 60:8 72:17	actually 79:16 114:5	actually 16:22 17:20 20:8 52:23 54:9 102:20 111:22
accept 41:3 99:5	accounting 11:19 12:15, 16 13:6,13 15:7,17 16:5 19:6,7 20:4 23:2 87:22 99:6 108:19 109:14,22 110:7,14,21 119:7,8,15 120:4	accused 70:12	acronyms 85:11	Adam 77:11
acceptable 97:16		accuses 49:19	across 118:24	add 48:12 111:19
access 25:7,8		acknowledge d 125:7	act 26:14 79:24 99:1 111:14	added 97:17
accidental 30:24		ACPA 5:7,8 8:10,11,20,24 20:17,21 42:17,20,23 44:23 57:16 59:11,14 66:11 67:13 124:2	acted 31:1 36:3	addition 43:22
accompanies 109:18	accountings 12:6,7,9,12, 13 14:3,6,10, 12 19:1,3,9, 13,15 23:1,11 78:2 81:23 85:23 87:11, 12,13,16,17	ACPAS 9:6	action 80:6 81:10 99:4,24	address 27:8 38:1 42:24
accomplish 31:18 36:20 125:10			actions 28:22 75:9 80:16	addressed 59:11
accomplished				addresses

124:11	advantage 121:12,13	37:21	18 68:22 78:19 86:1	airplane 92:14 105:14 106:11,12
adds 49:4	advice 76:10	Ag 66:10 67:12	agreeing 108:20	airport 92:15
adequacy 68:14	advised 89:14	again 18:20 20:23 36:5 64:17 76:14 77:8,11 80:20 87:7 98:18 100:15,20 102:1,15 103:22 104:14 105:8 124:8 126:6	agreement 4:12 5:4,19 9:9,17 22:7 24:21,24 25:5 28:14 29:22 51:2,3 59:9 60:21 62:16 65:20,22 66:5,8,13,16, 17,19,22 67:3,10,19,21 71:16 81:21 82:6 84:1 86:11,12,14, 19 98:16 121:13,14	aligned 104:1
adjourned 130:2	advocated 47:22			alive 49:15
administer 26:10 43:15 64:19	affairs 69:10			all 4:22 5:9, 21,23 6:2 7:10,11,21 8:16 9:2,4,5, 18 11:5,15,18 12:14,21 13:5,22 14:3, 6 15:3,6,24 16:6,8,12 17:12,17 18:8,14,15 20:1,12,13 21:9,12,13 23:18,19,23 24:6,14 25:9, 15,22 26:5,17 28:1,14,23 29:7,8,14 30:5,9 31:8 32:18,22 33:3,23 34:22 35:16,17,23, 24 36:8,16 37:12 38:22, 23 43:24 48:12,23 50:17 51:21 60:1,21 61:3, 6 63:16 67:7, 11,13 68:19
administered 24:11 56:5 101:17	affects 9:2	against 26:7 31:11 34:4 64:1 78:11 84:16 91:9 96:4 121:1 124:16 126:3		
administering 76:1	affiliate 101:18		agreements 41:1 96:24 100:15	
administration 12:14 13:22 18:24 19:2 79:9 80:7 87:16 123:19	affirmatively 126:4	agencies 96:8	aid 96:18	
admit 74:13	afloat 63:21	aggressive 51:6	aided 78:20 121:21	
admits 45:5	after 5:7 16:13 18:4,5, 9 21:23 23:3, 4 30:1 39:20 42:16 43:12 46:2,12,13 53:8 61:5 78:6 79:23 81:3 109:18 110:3 116:24 125:20 128:16	ago 17:17 31:6 38:24 39:12 109:22	aiding 31:19 34:16,17 35:2,6 45:8 61:5 76:19 78:13	
admitted 68:17 77:23 129:23		agree 31:12 80:4 81:16,18 82:24 94:14 115:17	air 116:19	
admonition 37:10	afternoon	agreed 57:11,		

70:15 71:13 78:6,21 80:24 81:2 82:17 85:1 89:24 90:19 92:7,13 93:17 94:8,9, 23 97:7 98:4 101:2,8 102:21,22 103:2,3,14, 17,24 104:6, 7,15,19 105:18,19,23, 24 107:7 108:9,17 109:10 110:17,20,22 111:5,6,15, 19,21 112:23 113:2,3 114:1,21 115:17,18,19, 20,22 116:2, 19,24 117:4 118:1,24 121:7,8,9 122:6,23 124:4 125:20, 21 126:7,10, 18,22 127:6 128:6,12,22	62:9 allocation 65:7 allow 6:10 7:22 11:19 66:13 114:21 allowed 29:23 30:1 75:4 97:4 122:21 128:19 allowing 29:13 almost 5:10 77:23 78:4 92:15 116:18 alone 48:22 along 28:1 60:1 80:6 already 91:4 111:10,11,13 117:3 122:11 also 11:4 21:17,20 23:21 24:17 32:8 37:22 45:10 57:10 59:7 121:10, 20 122:8 129:8	alternate 127:11,17,21 although 51:4 always 43:3 57:15 amendment 6:15 11:1 41:14 52:24 54:19,22 55:3,15 62:16 71:15 89:7,8 116:23 amendments 78:1 amenities 59:5 America 4:19 5:16 8:1 15:8 47:14 57:3,11 117:5 America's 57:1 among 39:1 73:7 107:13 amongst 37:11 amount 18:7	30:12 85:20, 21 107:4 111:5 112:23 amounted 111:23 amounts 126:24 angry 38:16 another 5:13 22:20 46:7 50:20 69:16 100:19 answers 38:19 97:3 anybody 62:22 63:11, 12 114:6 123:9 anymore 66:23 anyone 6:10 78:18,19,20 86:1 128:20 129:18 anything 11:7 16:20,22 18:17 27:9 29:17 30:16 31:2 34:5	36:13 39:4,16 44:18 47:2 51:14,17,18 54:12,13 64:21,24 79:14,15 83:10 85:9 87:10 91:7,11 95:22 96:6, 13,17,22 109:4 115:8 119:21 120:1 125:17,20 anyway 18:9 112:6 122:4 anywhere 19:13 50:22 114:9 117:9 118:1 apart 46:20 apologize 65:9 78:14 apparently 20:4 22:9,23 117:1 appear 14:9 appears 59:13 applaud 63:22
---	--	--	---	---

applied 27:5	37:5,6 113:15 116:10	85:20 90:4, 11,12,16 92:21 93:13 96:16 99:23 101:8 103:12 119:11 122:22 123:5	attended 38:13	authorized 97:22
applies 26:20 108:11,18 117:6	arguments 37:12 107:19, 24		attending 61:6	available 6:18 7:7 10:4 25:14 38:22 98:5 127:19 128:2 129:7
apply 22:9 86:10 122:19	arisen 38:4	assigned 90:5	attention 77:14 85:12 127:8	average 33:9, 12 117:22
appointed 44:2 115:24	around 16:10 28:17 54:6 59:1 111:1 114:24 123:23	assignment 38:15	attorney 38:15 41:15 70:9,15 77:12 95:24	avoid 80:3
appreciate 77:6		assist 43:18		awake 37:22
approval 13:20 57:1	arrived 128:1	Association 96:5	attorneys 59:20,21 60:1 89:14 110:18	award 37:1 125:23 127:6
approve 115:21	articulate 73:18	assumed 28:1	attributed 112:12	aware 23:9 62:16 92:10
approved 108:19	ascent 124:3	Atlantis 38:24	audience 38:9 39:7	away 57:9 71:5 81:3 84:13
approximatel y 10:12	aspect 88:9	attach 51:8	audited 14:18	awesome 52:17
April 21:4 41:17 54:2 56:21 70:10 81:3 108:10 109:16 110:8	ass 94:5	attached 5:4 60:14	August 24:19	awful 23:22
	asset 19:20 61:20 62:21 89:10,11 98:12	attack 39:4 47:2	aunt 39:15	
argue 37:20 69:6 84:18 88:12	assets 11:15 13:11 51:10, 19 52:17 54:3 75:6 84:14	attacked 39:8	authority 97:15	B
argument		attempt 123:20	authorization 66:19 97:23 98:1	back 4:12,15, 21 5:16 25:4 28:11 29:21

44:10 51:18 52:4 54:1 55:2 58:8 66:4 67:5 80:23 88:15 90:21 102:15 105:19 110:15 111:20 115:20 116:2, 4,9 117:13 119:6	baseball 18:2 based 18:24 19:2 29:15 39:23 44:15 70:19 119:12 126:19 127:2 basically 88:22 113:8 117:14 basis 91:17 beautiful 105:22 became 69:24 becomes 30:14 124:8 127:22 before 21:4,9 41:17 50:16 66:3 75:19 81:3,4 109:3, 23 119:2 begin 37:10 beginning 50:12 begun 128:17 behalf 38:10	66:18 behavior 27:19 28:7 behest 113:10 behind 16:1 105:15 being 7:16 8:15 10:23 20:8 21:24 27:9 33:9 35:19 38:10, 11 40:4,5 49:19 55:1 83:17 86:15 97:24 110:23 113:4 120:18, 19 122:12 belabor 14:15 belief 124:6 125:4 believable 17:22 18:15 43:4,6 125:18 believe 14:5 29:19 36:7,20 71:1 114:11 126:18 believed	127:3 believes 85:24 86:1 believing 71:6 beneficial 10:2 26:12 86:24 92:23 107:1 beneficiaries 12:2,3,17 13:1 14:1 15:20,23 16:9 17:13,15 18:23 21:1,8, 15 22:10 24:18 25:14, 15,19 26:8, 11,13,14,22 42:21,22 56:7,11 65:4 70:13 74:4 75:8 79:7,11, 21 81:13 82:18 103:3 105:19 106:12 108:12 110:24 111:17 116:20 119:15 124:14 beneficiaries' 9:3 17:1 59:5	beneficiary 13:14 14:5 38:6 42:17,20 54:13 56:8 57:23 58:3, 10,11 61:2 62:6 86:24 87:20 91:13, 15 110:5,18, 19 118:20 119:2 122:17 benefit 20:3, 14 27:23 28:4,12,14,18 29:9 53:22 55:1,2,16,19 58:4 59:6 67:6 70:14 96:11 102:12 105:24 121:14 benefits 24:2 102:13 103:17 benefitted 19:4 54:18,19 56:14 82:14 121:16,23 besides 30:20 best 39:1 43:13,21 63:10 117:5 121:19
---	--	--	---	---

bet 64:17	Billy's 32:15 55:18,23	bloodied 69:5	borrow 63:9	8 123:10,11, 21
bets 46:8	60:17 61:2 88:5,6,21	Blow 74:24	borrowing 51:19	breached 26:21 74:1 78:17
better 30:3	90:6 110:14, 21 126:17	board 90:9	both 8:4 10:2 82:13 83:5 96:14 121:15	breaches 22:4 29:16 31:16 35:17 36:20 85:15
between 9:8 20:14,15 56:19 70:11 79:1,2 81:21	binder 17:3,5, 6,11 60:3,5,7, 10	Bob 43:14,18 47:22 52:13, 16 76:2	bother 119:23	
beyond 19:22 39:22 52:6 72:21 83:11, 21	bindingness 66:2	Bobby 39:3	bottom 25:2,3 64:23 109:19 110:12 119:10	breaching 45:8 76:17 125:12
BHC 10:14,15 11:5,10,16, 17,22 85:12 111:10	biological 50:5	body 72:16	bought 4:15 113:5	break 37:7 65:10
bias 23:20 26:7 28:19 31:11 82:20 109:8	bit 5:22 31:1 40:13 41:9 71:12 80:22	bogus 5:20	box 64:8 106:19	breaks 54:24 65:2,5 128:18
biased 82:5	black 56:17 99:11	bomb 108:2	Boy 58:6	Brian 43:16
biassed 109:6	blame 30:2 114:22 118:17 120:4	book 17:24 18:5,10,13 96:23 97:2,3 106:3 115:2 116:3	bragging 112:1	brief 92:13
big 122:12	blamed 60:10	booked 67:20	branches 6:19	briefly 40:14 64:8
billion 33:5 70:24 71:3,8	blaming 114:2	books 17:16 18:10,16 67:1,4	breach 19:11 29:20 34:15, 17,23 35:6 36:16 57:4,10 78:12 96:18 104:6 106:20 108:24 115:4,	bright 10:9,13 11:8,22 32:5 44:4 53:18 56:15 85:12 86:20,22
bills 24:1	blank 34:19 35:15	borders 61:12,13		bring 71:2 72:8 80:23
	blatant 21:6	bore 106:23		

93:19 94:5 97:5 120:7	bucks 61:22	56:22 57:17 60:18 61:2,24	28:1 34:8 50:16 52:4 53:12 67:7 88:15 115:13 116:1 117:23 118:7 121:18	11
bringing 118:17	build 7:20	buy-in 6:3,4 47:24 57:17		captive 38:9
brings 46:3	builds 104:3			car 63:21 67:10
Bronco 32:15 55:17,23 60:17 61:2 88:4,5,20 90:6 110:14, 21 126:17	burden 16:9, 10,11,24 17:1,2 25:18 42:24 43:1,2, 3,7,9 68:6 69:1 79:13 105:6,8,11,12	C	Campagna 68:10 119:18	care 26:5 41:7 69:12 75:11 83:22 107:2,5 122:8,9
brother 40:9 79:3 94:19 95:15	Burning 10:11	calculation 55:13	can't 7:11 11:24 14:2,7 25:23 27:17 65:11 69:17 80:9 86:18 89:23 90:18, 19 105:2,3 108:11 115:11 116:20,21,22 117:6,7 122:23,24 123:7 126:1	cared 53:3
brother's 91:19	bus 92:11	calendar 16:14		careful 57:7 112:11
brothers 73:4 94:15 95:3	business 19:21 29:5 49:7 50:9 69:13 94:23 95:12,18,19, 20 96:14 102:17 103:1, 4,5,7,9,10,18, 20,24 104:4 108:14	California 96:8	cannot 7:2 60:23 75:7 76:9 124:2	cares 83:1, 15,16
brought 46:16 60:23 72:18 73:20 78:11 112:9, 10	businesses 102:22,24 103:17 104:7, 8	call 48:16 68:20,24 69:4,11,12, 18,22 70:2 118:6 119:18, 21,23 120:1, 3,4,9,23 127:13 128:2 129:15 130:3	capacities 36:19 42:5	carry 114:19
brown 44:6		called 60:23 66:23 69:9 120:15,20	capacity 35:11,13 77:13 85:2,4, 6 121:21 126:8	carrying 84:5 112:18
Bruce 48:2	butress 83:6	calling 69:7	capital 47:13 63:4 84:2,4,	Carson 48:9
buck 28:21 29:2,12	buy 20:20	calls 84:2,4,5, 11		case 22:7 26:22,23 36:21 37:11 38:4,21 39:11 40:13 42:1,2 43:1,9 44:5,
		came 24:5		

16 45:16 46:10 49:1,5 50:12 51:15 52:7 53:6,12 54:11 55:5 56:15 60:11 64:7 65:15, 16,17 68:6,23 71:20 73:2,7, 17,20 78:3,23 80:20 81:16, 24 83:4 86:13 88:4,23 91:8, 16 96:20 102:2 107:12 108:1 110:10, 11 114:12 117:14 119:5 124:5 125:3	caused 30:8 47:8 70:21 causes 37:6 42:19 108:17 125:9 128:14 certain 19:4 31:22 81:22 certainly 23:16 84:21 124:6 certainty 42:10 certified 68:9 chain 88:2 challenged 27:1,2,6,7 challenging 38:9 chance 68:12 chances 89:18 change 125:2 changed 82:22 104:18	125:2 changes 36:9 41:12 108:16 character 94:24 95:6,9 charge 10:2 96:9 chart 58:14 64:13 75:16, 21 102:19 111:2 chase 73:5 chastises 57:5 check 104:17 chief 110:11 117:14 children 4:17 7:21 45:12 55:9 58:2 65:9 113:18 children's 65:6 choice 37:20 choose 129:9	chooses 7:21 chose 126:13 circle 76:24 92:2 106:22 circumstances 127:21 cited 120:10 City 48:9 civil 35:2 78:13 claim 13:2 34:16,17,18, 23 35:7,9 46:11,16 58:10 72:8 76:17 claiming 42:18 claims 35:3 45:20 46:17 61:3,11 78:10,12,16 83:7 85:14 91:8,10,18 Classic 47:4 clause 57:4,8	71:19 Clayton 17:17 clean 8:9 34:12 clear 5:10 36:2 43:10 68:7 124:3 clearly 69:20 121:1 client 23:24 25:24 40:23 50:8 72:23 77:16 96:11 114:15 119:23 client's 125:1 clients 75:3 76:6 96:10 clock 54:1 close 36:7 124:17 closing 9:11 63:5 78:9 107:24 co-pilots 105:14
---	---	--	---	---

co-trustee 28:2 35:11 38:5 42:12,13 44:8 77:3,13 79:5,20,23,24 80:3 83:10 85:3,7,16 123:11,18	19,23 90:1,2, 11 91:7 colors 44:4 combined 35:22	committed 42:8 43:20 105:9 communicate 13:2 26:17 communicati on 29:21 communicati ons 76:23 community 43:17	18:23 120:3 compile 15:22 complained 112:8 complaining 60:18 101:20 complains 102:14 complete 111:16 completely 32:2 complicated 43:15 76:3 85:19 complied 100:17 comply 68:18 69:15 102:6 computation 118:4 computer 86:3 concealing	72:17 conceded 56:3 concentrated 54:5 concept 70:20 125:17 concerned 83:17,20 104:21 concludes 80:23 conclusions 15:11 conduct 70:19 95:11 confirmed 27:19 conflict 11:23 conflicts 26:15 connected 128:21 consent
co-trustees 21:20 22:1 29:11,13 46:21,23 47:20 56:6 64:7 74:18 79:6,8,13 80:4,15 81:8, 9,11 84:17,22 91:22	come 4:12 16:5 18:18 61:13 92:16 95:1 100:12 114:16 115:23 116:9 120:5 121:18 comes 52:5 96:20	companies 42:8 43:24 101:14 company 53:21 84:12 89:13 90:8,9 compensated 24:15 competence 26:5 competent 76:9 compilation 14:17 68:19 compilations		
codicil 97:18	coming 28:5, 6 31:6 46:2 66:4 84:19 109:22 111:7 114:2,23 126:5			
collateral 51:20				
colleague 77:7	comment 74:6 119:3			
colleagues 39:7 128:14	comments 49:9			
colleagues' 75:3 76:5,18	commission 63:5			
color 44:4	commissions 113:3			
Colorado 89:13,15,17,				

66:19	constitutes 70:24	129:8,9	21:10	129:3
consented 87:9	contain 12:14,15,16, 19,20 36:9 87:15	continued 11:17 82:17	conviction 96:3	costs 9:11 63:5 84:5 112:18
consequence 115:9	contained 87:14	contract 104:17	convinced 57:3	counsel 4:7 37:17 50:19 59:20 73:14 75:21 77:9 78:9 80:14 82:5 83:7,8 85:24 86:17, 21 92:24 93:7 97:1 100:21 104:24 107:19 118:12 127:10 129:6
consequences 30:8 79:22, 23 81:10	containing 15:21	contribute 101:7,12	convincing 36:2 43:10 68:7 124:3	
conservation 12:20 20:1,6, 11 74:7	contains 17:12 104:24	contributed 71:11	Cook 39:3	
consider 26:11 57:4	content 76:23	contributing 98:8	copy 24:20, 24 25:5 74:17	
consideration 47:12,13 74:21	contents 14:2 18:22	control 9:20 11:12 85:13 94:13,14,15, 16,20 102:15 129:12	Corporation 10:9 11:9,22 86:22	countless 22:4
consistently 83:4	contest 71:19,23,24	controlled 7:2	correct 14:8, 19 16:3 115:19,21 117:19	country 39:1
conspiracy 34:16 35:2 45:8 58:22,24 61:5 76:19 78:14	contested 71:14	controls 11:9 22:10 62:15 125:16	corrected 70:10	County 48:17 71:1,6
conspire 96:18	context 100:1 124:9	conveniently 17:19	corrections 70:10	couple 41:16 72:20 104:24
conspired 78:18 105:9	contingent 109:7	converted 7:7 10:5 34:3	correctly 23:24	course 23:22, 23 53:23
	continue 4:7 7:22 79:9 80:7 84:14	conveyed	Coss 127:14 128:11,16	courses 99:24
			court 4:6	

13:20 37:3,15 66:24 68:1 73:6,12 77:9, 10 82:8 92:5, 9 107:11,18 115:21 117:2 118:12,14 125:6 127:10, 17,23 129:6, 17,23 130:1,2	create 38:18 created 15:18 26:13 28:19 41:18 45:11, 12 46:5 56:23 66:11 creates 41:4	45:19 46:1 51:6,7,8 creditors' 45:20 critical 83:8 127:18	damage 32:4, 13,22 70:18, 21 105:5 126:12 damaged 30:13 33:24 87:21	92:13 104:16 days 23:4 48:17 98:7 123:6
court's 128:7	creating 8:9 26:15 28:3	cross-examine 68:13	damages 30:11 31:20, 22 34:20 35:24 36:23 37:1 42:19 47:7 55:23 70:19 86:21 105:7 125:11, 22 126:17 127:7	deal 22:19 53:4 56:24 71:3 101:1
courtesy 77:7	creation 58:15	cross-examined 74:9		dealing 8:8 26:6 31:16 56:21 59:24 102:8
courtroom 39:18 42:6,16 46:9 61:14 62:22 69:4 108:3 109:2 129:5	credentials 72:3	current 13:21,22 119:8	Dana 59:22 63:24	dealings 76:23
cover 97:9	credibility 38:20,21 41:21 48:21, 22 49:4 50:2 71:9 73:20 119:4	cut 33:17,19 92:14 112:5	date 9:9 53:20 68:1 109:19 111:19,20	deals 45:24 100:23 127:1
covered 20:1 74:19 75:17		D		dealt 76:3
covers 22:8, 12	credible 43:4, 6 71:9	dad 30:14,22, 23 31:2 80:21 81:2 94:19 95:15 97:23, 24 113:17 121:18	dates 23:3	death 21:4 30:21,23 43:13
cows 44:21 48:7 59:8	credit 57:2 66:10 67:12 111:21 112:2		daughter 55:4 114:14	deaths 30:24
Cox 21:22 22:2 28:6	creditor 66:8, 9 122:7,9,11	dad's 27:24 83:3 94:15	daughter's 55:7,11	debt 5:21 12:21,23,24 13:4,16 19:14,16,18, 20,23,24 20:7,8 40:3
CPA 96:7,9	creditors	Dallas 93:4	Dave 121:18 day 53:14	

45:2 47:14 51:4,13,21,24 52:1,17 53:8, 15 56:4,6 57:9 58:20 63:4,19 67:9 75:24 82:18 84:6 86:16 90:22 91:3 92:20,24 93:4,5 95:19 98:9 103:11, 12,13,14,15, 17 108:13 111:21,24 116:11,13,16, 17,19 117:1	decide 6:7 66:24 113:22 126:22 129:2 decided 7:4 46:9 decides 22:9 113:13 decision 31:4 63:2 68:21 79:10 87:1 94:15 102:5 106:15 126:10 decision- making 104:12 decisions 24:8,13 43:19 75:9 76:7 80:19 99:23 103:16 104:11,19,20 106:6 108:15 declaration 21:9 dedication 39:24 deduct 52:23 112:20 113:1, 2	deduction 40:22 53:2 deed 57:5,10 deeds 70:8 default 99:1 defendants 127:6 defense 77:5 108:1,2 defer 30:6 77:7 deficient 93:2 degree 42:10 49:18 delegate 75:4 122:21,23,24 123:1,4,7 delegated 123:2 deliberate 128:14,22 129:8,16 deliberating 127:19,22	129:11 deliberations 56:16 85:8 127:12 128:17 129:9 deliver 23:1,4 25:9 129:1 delivered 128:11 demarcation 56:18 depending 118:2 depicted 56:17 deposed 69:19 deposition 69:20 110:3 118:10 depositions 116:15 deprived 71:7 deputy 73:12 127:14,16 128:11,16	129:3 deserve 44:12 deserves 126:18 design 22:24 designated 96:24 designed 7:16,17 15:15,18,20, 21 20:12 21:7 desires 122:5 despite 99:9 detail 19:5 40:15 95:5 102:1 determination 117:3 determine 32:18 33:23 34:20 35:23, 24 50:15 100:16 determined 66:4 67:14
debts 19:12 59:4 66:11 decade 77:24 85:22 deceive 21:8 deceiving 111:17,18 December 9:10 41:14 94:7 109:15 110:8 119:8, 11 deception 111:16 113:14 119:17				

117:4	difference 122:13	disclaimer 14:11	discussed 16:18,21,22	59:5 62:8,13 65:11 79:16 111:15,16 116:7
determines 62:17	differences 82:7,14,21	disclose 8:11,12,13,14 9:2 11:13,15, 20 25:23 26:5 105:5 121:9	discussing 37:11	distribution 6:18 7:7 90:6 113:13 114:5
detriment 96:11	different 31:1 36:19 41:24 42:5 63:8 65:23 88:1 92:17 120:19	disclosed 25:17	discussions 16:13,23	distributions 6:22 7:5,12 81:17 93:15 108:12 113:10
devalued 74:8		disclosing 12:17 61:8	disinherit 113:23 114:14	diverse 26:12
devastating 68:23	difficult 37:19	disclosure 12:18 15:21 16:11,12 19:10 21:14 104:9,21,22 109:10,21 110:23	disinherited 113:21	diverted 52:11
deviated 82:23	dime 67:8 94:4	disclosures 9:1 15:6,9 16:9 20:24 68:14,18 69:3 76:22	dispositive 108:16	divide 90:2
devotion 39:24	direct 19:10	discovered 30:1	dispute 81:15	divided 4:17 48:19
diagram 74:20	directors 90:10	discrepancy 6:9 7:20 26:9	disputed 82:2	divorce 80:21,22 81:1,4 86:9
dialog 68:8	disagree 80:5 83:1	discuss 73:7 107:12 128:20	disputing 89:5	document 15:20 16:2 19:13 50:21 65:16 66:3 68:1 72:16,20 87:19 104:23 108:15 109:17 110:12
diatribes 28:24	disagreed 80:16 82:3 94:4		dissenting 123:15	
dicey 41:9	disbursed 62:7		distinguished 39:7	
died 5:7 21:10 108:10 114:21	discharge 5:22 19:20		distribute 51:12 53:16 56:7,13 126:1	
dies 41:16 106:1	discharged 128:2		distributed	

116:17 117:9 119:1 120:13 121:7	63:10 70:23 73:23 85:16 95:22 100:12 101:21 127:1	108:2	duties 26:3, 16 27:2,7,8, 11,13,16,18 30:4 31:9 45:9 50:9 56:12 58:15, 20 60:9 74:1 75:13 76:17 96:19 104:2 106:24 115:4 123:7,10,13 124:11 125:8, 13	e-mails 24:19 49:21 60:2 95:1
documentary 120:24	double 62:1	drugs 49:19	drunk 49:10	each 6:18 7:10 10:16 34:24 35:1,3, 7 42:23 59:12,13,16 65:4 75:17 77:1
documented 114:15	doubled 62:12	dry 44:10,11	Duck 44:14, 15,16,20,21 45:2 47:8 48:6 70:12 121:24 122:2, 3	Eagleville 105:21
documents 17:7 18:16 21:2 22:16 23:17 27:23 28:3,5 29:8 36:8,11,14 54:21 60:6 68:3 71:16,18 72:6,14,23 77:24 78:1,2, 4 93:6,11 110:3 117:10 120:17 121:5 124:23	doubt 39:22	due 26:12 50:17 109:16	duty 19:11 22:4 26:4,5,6, 7,8,19 29:16 31:17 34:16, 18,24 35:6 36:16,21 56:19 58:17, 18,19 75:23 78:13,17 85:15 99:4 104:2,9 105:4 106:20 108:24 109:1 115:9 122:24 123:11 127:13	earlier 17:17 112:11 120:16 123:22 129:19
dole 9:22,24	down 14:17 19:19 20:7 28:17 38:1 40:2 48:8 49:8 50:7 56:17 58:20 59:4 63:19 67:7,22 69:24 75:19 86:3 92:14,20 94:5 95:18 99:20, 21 105:23 106:4 114:12, 14 116:19 118:15 125:1	due-on-sale 57:4,7	duped 59:18	early 37:4
dollar 90:5, 12,20 111:5	drafted 61:16 62:19	duplication 48:13	duped 59:18	earning 39:13
dollars 5:23 33:16 48:1,3 68:4	drafts 65:23	duplicit 48:13	Dwiggins 59:23 63:24	easements 12:21 20:2,7, 11 74:7,11
done 21:17 30:5 31:11 39:8 43:16 45:6 52:16 55:14 61:16	draw 69:21	during 68:16 73:6 86:2 89:6 107:12 117:14 118:23 128:19	E	easy 18:11 68:15
	dreams 41:5 45:23	dust 125:20	e-mail 24:23 25:3 27:21 65:18 94:6,7	ECO2 33:1 71:1
	dropping			economist 70:16

education 6:21	11:17	enjoyed 4:8 63:12,13	64:1	establishing 75:12
effectiveness 66:3	end 6:11,23 34:6 53:14 105:17 128:1	enlarge 93:21 98:17 99:13	entity 6:5,24 7:10 8:1 9:12 10:10 13:16 20:7 22:22 32:3 45:10 46:5 84:5 85:5 113:4,6, 9	estate 10:20 13:21 19:17 40:1 41:8,10 43:15 48:3 50:18 51:5,8 52:18 53:13 54:8 59:1 61:17 69:10 71:12 76:2 78:1,2 79:17 82:19 97:17 99:17 108:17 111:13 113:2 114:1 120:5
effort 54:5	ended 4:16, 19 6:2 8:15 9:18 10:23 11:4 28:10 32:9	enlarged 93:24		
efforts 63:22		enough 21:1 47:19 48:23 49:14 71:5 83:22 87:19 105:16	entries 20:11	
egregious 36:21,22	ending 119:7		entrust 51:9	
eight 128:22	ends 11:5 113:9	entire 39:18 40:13 53:13 73:2 76:12 88:23 91:9 124:10	entry 16:14 18:1 20:10	
Eighty 53:7	endure 40:8		enumerated 64:8	estimated 53:17 111:4
either 5:12 20:5 65:12 69:18 80:4 84:23 90:21 109:8 115:20 122:4	enforcing 114:23	entities 13:7, 8 22:18 25:22 33:11 38:22 43:24 51:22, 24 81:1,22 85:13 87:6 100:23 101:2, 15 125:16	equally 113:24 114:2	evaluate 100:7
elected 15:6 41:24	engaging 80:24		equals 68:4	evaluated 100:1
eloquently 52:12	engineer 48:9 70:1,3		errors 36:9	even 13:3 14:7,9,10 18:5,9,18,21 19:1,24 22:11,13 25:12 33:19, 21 42:2 46:11 47:16 48:2 49:17 56:3 58:10 63:8 64:6 69:1,7 72:8 73:23 74:10 83:11
emotionally 95:13	engineered 41:18 53:23	entitle 5:5	especially 81:10 83:22	
employed 59:23	English 88:15	entitled 5:18 32:8,10,19 50:10 73:5 77:5 79:14 111:24 115:3	essentially 4:16,24 6:12, 15	
employment	enjoy 41:11 105:23 106:13,14 107:6,7	entitlement	establishes 72:21	

85:18 88:6 105:5 108:18 113:21 117:7 118:7 125:24 evening 128:19 129:3, 6 event 34:7 67:2 every 14:12 15:17 24:7,15 27:14,15 42:23 59:13 88:8 90:5,12, 20 92:19 93:13,16 104:16,17 106:19 115:1 126:7,8 everybody 10:4 29:6 39:6,8,9 47:3 54:10 69:7,15 98:13 104:5 everybody's 84:4 everyone 4:8 29:7 77:17 83:2 84:3,19 94:2 113:24 everyone's 84:7	everything 5:18 6:1 13:15 18:24 19:2 23:7,24 24:5 39:4,8,9 41:17 43:23 45:4 47:2,4 56:19,20 60:12 62:15 80:7 96:20 100:20 108:21 109:12 112:20 115:15 116:3 117:16,17 124:18,20 evidence 19:11,14,16 33:8 34:2,4,9 36:3 38:18,19 39:23 40:2 43:5,6,8,10 44:15 46:16 47:5 48:10 50:15 52:6,20 66:15 69:14 77:23 78:16, 17,19 87:8 93:10 95:22 96:17 108:4, 5,6,7 113:14, 15 114:18 119:4 120:7, 15,21,22 121:1,8,20 124:3,5,12 127:4 128:7 evidenced	57:16 evidently 59:8 62:15 evolves 60:15 ex-wife 40:20 exact 63:10 exactly 65:11 68:2 70:4 85:24 91:24 examination 42:15 68:16 example 17:4 24:19 27:22 except 61:11 109:2 111:21 114:10 117:17 exception 71:23 exchange 5:23 45:7 exclude 85:9 excuse 123:17,24	executed 40:19 exercise 26:9 41:15 56:23 79:22 exercised 5:20 75:10 exercises 5:4 exercising 79:20 exhibit 5:6 8:10,11 14:13 20:17,22 21:18,19,21 24:22 27:20 41:23 44:22 47:7 49:19 59:19 60:13, 14 66:11,20 70:8 72:3,4, 21 84:2 93:19 109:13 110:7 116:4,8 117:11 118:16,22 119:6 121:6 129:17,18 exhibits 12:8, 9,12 59:12,19 60:14 77:22 85:21 94:17 121:24 129:20,22	exist 17:17 80:16 existed 61:3 70:6 existence 81:20 exists 50:22 exonerate 20:12 21:2 124:1 exoneration 115:2 expect 12:16 expectancy 38:2 expectation 39:12 expected 40:8 63:11 expense 80:11 expenses 84:6 expert 61:18
---	--	---	---	---

68:8,22 69:16,22,23, 24 70:3,17,18 72:5,9,10,12, 19 88:6 118:6,7,18 120:5	87:14	fairest 88:22	far 18:15 19:5 64:11	felt 28:9 84:13
explain 14:6 70:3 72:19 78:21	extraordinarily 85:19	fairly 83:2	fashion 15:4	Festival 10:11
	extraordinary 19:19	faith 26:6	fast 118:13, 14	few 85:11 108:8 122:14 123:6 124:17
	eye 47:24	false 21:6	faster 37:6	
	<hr/> F <hr/>	family 4:16, 18,21 5:2 6:19 10:14,15 11:5,12 12:7 20:16 33:10, 17 34:2 35:12 38:22 40:21 41:7 42:13 43:23 45:12 46:3 51:10,19 52:5 53:17,21 56:2,5,8 63:11,13 64:5 65:6 66:9,14 70:6,11 71:22 77:13 79:14 82:19 84:3, 18,24 85:3,7, 16,18 89:1,11 90:4,21,22 91:3,5,10,12, 23 92:1 93:15 94:2 97:5,8, 19 98:4,7,15, 16 99:12 100:19 102:11,23 103:2,6,19 110:9,16 111:9,12	father 39:15 40:5 50:4,6	fiduciary 19:11 22:4 26:3,16 27:16 29:16 30:4 31:4,8,16 34:16,18,24 35:6 36:16,21 45:9 50:9 56:12,19 58:15 60:9 74:1 76:17 78:13,17 85:15 96:19 106:24 108:24 109:1 114:24 115:4, 9 122:16,18, 24 123:6,10, 11 124:9,10, 11,13,16 125:8,12
explained 42:5 69:14 105:1	face 21:19 31:17		father's 30:21 40:4	
explanation 36:10	fact 44:1 49:4 63:19 65:10 66:21 69:21 72:20 82:12 83:5 84:8 89:7 94:19 104:13		favor 22:19 36:24 48:23 106:18 107:10 127:6	
exploitation 39:14			favorite 65:13	
exposed 42:15 67:18	facts 26:17		February 27:20 109:20	
exposure 46:3 67:17	fail 103:9		feel 30:16 66:8	
express 73:8 107:13	failed 11:13, 15 115:1		feet 34:2,9 48:14,18,19 117:21 118:5 126:23	fifth 87:11
expressed 52:12	failure 22:14 23:1 123:20		fell 71:3	fighting 82:16,17 102:22
extensively 105:8	fair 14:22 26:6 52:21 90:6 91:23	fancy 106:22	fellow 69:16	figure 16:4
extent 5:20				

39:10 46:24 52:19 85:23 93:7 106:4 117:6,7 figured 108:11 file 72:3 107:23 filed 81:23 108:19 filing 81:18 final 75:19 105:13 finalized 81:2 finally 52:19 74:6 finances 94:3,20 96:9 financial 14:23 15:10, 12,14 18:19 43:24 50:23 67:23 68:18 69:2,10,13 77:24 85:22 financials 93:17 104:22	find 11:21,24 14:11 25:20 29:15 35:19, 20 36:6 50:17 58:6 76:8,21 91:17,21 103:14 fine 67:24 112:7 finger 29:6 30:6 finger- pointing 75:21 firm 28:6 43:16 59:22 124:6 first 23:1,4 25:3,15 28:16 31:23 41:23 42:9 49:24 50:14 63:2 64:3 76:16 77:19 79:5,18 86:4,7 87:12 88:10 93:19 94:10 96:23 97:11,12 98:17 102:5 106:17 108:9 110:17,20 129:2 fish 44:11	fishing 44:9 80:13 fit 9:4 five 6:14 40:22 53:1 54:4 57:17 fix 117:11 flakes 71:5 flames 45:23 122:5 flawed 124:21 flies 105:20, 21 flip 34:21 110:9 flows 15:14 Fly 10:10 32:6,19 86:22 126:16 flying 105:18, 20 focus 94:1 104:24 122:15	fold 80:23 follow 17:23 75:2 76:8,13 followed 17:20 following 4:20 food 128:24 129:1,3 foolish 47:12 foot 33:7,9, 12,17,18,20 34:3 117:23 118:3,5 126:21 forces 104:5 foremost 94:10 forensic 70:18 forever 7:18 58:5 forfeited 125:11 forge 27:22	120:12 forged 71:15, 18 72:1,6,13, 14 forgery 49:23 71:14 120:11 forges 49:22 forget 46:15 108:19 forging 27:24 28:4 72:23 forgiven 10:24 22:16 forgot 116:6 form 5:12 34:11 73:8 107:13 126:6 forma 33:4 forms 21:23 92:3 101:8,14 forward 34:8 72:18 80:9 114:2,16,19 115:16 116:1 120:8
---	--	--	---	---

found 125:2	108:3,4	further 79:22 117:11 128:15	81:19 86:5	38:6 41:8 46:6 55:15 57:1 58:22 60:17 70:1 107:5 114:5 125:17 126:4
four 38:3,16 48:12 78:12	frustrating 38:17	furthered 83:3	generally 15:7	Geyser 10:10 32:6,19 86:23 126:16
Fourth 87:3	fuel 105:16	future 68:1 79:15 90:16	generation 64:9	gift 21:9 22:8 55:18
Frank 68:10, 20	fulfilled 92:19	<hr/> G <hr/>	generous 49:14	gifted 21:5 55:21,24
frankly 14:10	fulfilling 60:9		genius 102:20	gifting 22:15
fraud 23:9 28:7,8 34:18 35:9,17 36:3, 7,21,22 40:10 43:8,21 54:8 58:21 61:5 68:7 76:19 96:2 105:9 121:4,10	full 6:9 12:18 15:1,21 19:10 22:6 25:7,8,9	gains 47:13 63:4	gentleman 40:17 57:7 61:13 68:9,11	gifts 89:4,5
fraudulent 27:19,23 28:3 29:15 121:5	fully 5:17 9:1 11:13,15 12:3 13:14,21,24 14:6 19:7,8 21:14 22:8 25:16 26:5 55:8,10 121:9	game 61:1	gentlemen 37:4,18 38:3 42:10 43:1,9 47:1 48:10, 15,23 50:13 52:3,11,20 54:11 55:5,22 56:18 57:22 59:11,14 60:2,8,12 61:10 63:1,10 65:15 66:2 72:22 73:6,15 75:20 76:20 92:5,10 96:19 107:11 128:5 129:14	give 5:8 8:24 9:1 15:23 16:1,5 31:2,6 39:11,15 48:20 90:3 92:12 102:6 112:1
fraudulently 124:4	function 98:8 122:21	Gary 69:17,22	gathering 106:4	give-me- something- for-free 39:17
free 103:12	functions 75:5 123:4	gauge 105:16	Georgia 39:3	given 42:22 51:15 58:6 60:5 87:20 101:23 106:9, 10 110:23
Freeman 46:2	fund 55:11	gave 17:5,14 52:22 53:3 56:22 62:20 97:14,23,24 101:19 102:15 119:1	getting 32:9	
friend 121:19	funded 55:6, 7,9,10 64:10, 11	general 29:22		
front 14:11 15:17 77:20	funds 22:16 84:4,7			

gives 104:11 116:23	112:16	72:2,21 120:9,15 121:2	guy 49:19 69:6,9 73:19 88:15 113:18	47:20 55:7 57:21 64:24 71:21 101:21, 22 114:22 123:24 124:23 128:3
giving 63:9 73:4 99:19	gotten 44:17 54:4 91:7,11 122:6 125:14, 15	grind 80:8	guys 14:16	
goals 124:20 125:10	gotten/ received 91:11	ground 106:5	H	happened 8:2 11:11 36:7 56:19,20 66:7 70:22 89:6 90:7 114:16, 18 115:15 124:14 125:23
goes 5:3 18:3 48:4 91:9 99:2 113:12 115:20	government 17:21 91:7 98:13	grounds 72:24	Hail 39:10	
golden 6:23	grandchild 55:5	Group 21:6, 11 88:13 89:12,21	half 13:8 33:18,19 112:5	
Golf 53:23	grandchildren 56:9 65:8	grow 62:1	halt 80:8	happening 80:17
gone 25:19 52:6 59:20 80:10 88:20 112:17 126:15	grandkids 105:18 106:13	guaranteed 47:14 51:3,4, 24 52:1	hand 119:11	happens 6:4 20:2 58:14 63:6
good 19:3 23:23 26:6 44:13 51:16, 18 62:2 69:20 73:23 77:17 80:20 94:24 95:5,9 103:3, 13,14 124:24	granted 4:21, 23	guaranteeing 51:5	handed 34:11	
goose 6:23	grantor 97:19	guarantor 66:10	handling 108:13	happy 60:16 94:11 107:4 128:24 129:5, 8
gosh 16:12 23:7 109:4 110:13	great 10:7 23:7,8 24:15 28:14 53:4 60:16 112:7, 16,21 117:5	guess 25:10 49:2 94:3 111:6	hands 54:1,3	hard 30:11 40:1 88:16 105:24
	green 64:23	guidance 76:6	handwriting 72:5,9,10	Hardy 66:3
		guilty 31:18 39:22,23,24 40:1,2,4,5,6	hang 92:16	Hascheff 10:1 22:23 23:16 25:8 29:11,24 33:15 36:12 45:17 57:3,6
			hangs 124:9	
			happen 20:24 29:13,17,19, 23 30:1 45:21	

65:14 71:4 117:7,10 124:18 hat 8:6,7 85:3 hateful 49:21 hates 31:10 having 20:9 30:4,13 34:1 40:6 43:2 85:1 118:21 126:19 he'll 9:24 22:19 health 6:21 hear 10:16 14:2 77:18 82:5 98:6 123:14 heard 5:24 7:13 10:1,14 12:23 13:5,9 14:16 16:12 17:3 18:6 20:6,18 21:17,20 23:6 24:6 25:6,10 26:2,4 27:13 28:9,11,12, 21,23 33:1,3, 14 39:2 42:2	46:2 77:16 78:9 82:2 83:7,8 88:4, 23 95:9,21 96:17 98:11 102:10,18 104:14,15 110:22 116:7, 10 119:19 121:8 122:5, 8,10 123:22 124:7 hearing 80:19 heck 55:14 held 75:7 76:9 81:9 89:12 115:11 help 30:18 40:10,11 43:14,21 44:1,2 49:20 50:14 71:12 80:12 82:17 helped 31:17 78:20 87:9 120:24 123:9, 10 helping 36:19 59:21 here 4:13 6:24 25:17 30:6 32:1	49:24 52:15 57:22 66:24 68:11,15 71:13,14,17, 19 78:6,8 80:12 81:15 85:4,5,23 92:13,22 93:18,22 94:13,16,18, 21 102:21 107:9 108:5 109:3,5 111:2 114:17,23 115:3,23 120:21 123:6 here's 16:3 24:18 25:18 42:16 54:23 62:4 66:7 93:2 101:16 herself 45:24 118:21 hey 13:16 14:24 15:23 29:19 71:7 114:3 124:14 hideous 40:7 high 30:19 33:6 higher 31:8 35:23 43:10	highlight 97:11 himself 8:8 20:14 22:15 29:7,9 31:16 113:5 121:15, 21 hire 72:8 hired 43:13, 21 44:1 72:2 124:19 hiring 76:3 hitch 56:24 hold 86:18 89:15 91:17 holdup 117:1 holes 72:15, 16 120:18 Holland 10:9, 13 11:8,22 32:5 53:18 85:12 86:20, 22 home 98:11 honest 13:24 18:12	honesty 57:6 honor 34:20 37:17 52:9,12 56:12 107:20 125:5 127:9 129:19,24 honorable 94:23 hope 4:8 56:16 74:9 hopefully 128:9 hoping 39:10 horrible 7:13 24:12 113:7 Hosmer- henner 44:7 68:13 77:10, 12 host 129:8 hostile 26:7 31:10 hour 129:1 house 4:15 6:20 7:4,20 8:2 9:19 10:7
--	---	---	--	--

24:4 30:17 31:15,24 41:10,12 45:19,20 47:17 51:7,8 52:2 57:2,8, 12 58:4,13 60:18,19,20 62:23 63:12 64:5 65:3 66:22 67:6,7 82:15 85:9 86:5,7 98:3,4, 5,9 107:7 113:6	hyphen 13:18,19 105:1 hyphens 13:9 <hr/> I <hr/> ice 106:4 idea 19:6 46:9 identification 18:8 identified 18:14 idly 29:13 123:23 ignore 90:18, 19 ignoring 98:23 imagine 75:24 76:1 immediate 128:9 immune 79:6 immunity	81:6 impartiality 26:7 58:18 impartially 26:10 imply 119:19 important 6:16 30:5 43:19 70:20 71:20 74:21 78:21 80:10 99:14 100:19 108:15 importantly 91:1 103:19 116:21 imposed 129:10 improvement s 74:8 inaction 80:8 inactivity 123:18 inadequate 69:2 121:9 incentive	96:1,5,13,22 103:22 incidentally 46:10 Incline 4:23 5:1,4,5,9,12 6:2,5 7:3 8:3, 6,12 9:21 24:3 32:2 41:13 45:10, 11,15 46:4 47:8,9 56:22 57:12 58:13 65:2 85:10 86:9 113:12 122:10 125:15 included 13:23 15:10 36:18 87:23, 24 101:22 114:8 includes 74:8 101:10 including 71:18 111:6 115:22 128:7 inconvenient 38:8 incorrect 124:21	incorrectly 24:13 incredible 52:17 incur 31:22 indemnificati on 22:6 24:20 41:1 51:2,3 59:9 60:20 65:22 66:5,7, 13,18,22 67:3,10,19,20 81:20 84:1 86:11,12,14, 19 121:13 indemnity 28:14,15 29:22 108:11 117:1,6 126:2 independent 78:23 indicates 16:20 individual 35:11 40:23 42:9,11 43:12 76:15,17 77:2 85:4 99:23 121:21 individually
Houston 52:14 61:14 74:14				
However 123:17				
huge 22:7				
humor 61:13				
hundred 9:13 20:20				
hundreds 33:16				
hurt 58:22 96:2,6				
hurting 94:2				
hurts 103:23				

30:9 42:7,14, 17 46:22 47:8 96:15 121:11, 16	16:1,3 17:12 18:8 21:7,14 23:12 25:9, 16,21,24 26:6 27:4 34:6 59:23 61:8 72:17 87:13, 15,20,23,24 104:23 109:10 121:17 128:15	75:1 121:2	intended 41:3,20 50:20 53:9,15 91:24 98:10 107:7	interrupt 37:5
individuals 41:24 42:8 46:20		instructing 82:8	intent 50:24 51:7,12 52:3, 4,9,12 57:14 83:3 98:14,18 102:3	intimidate 73:3
induced 124:4		instruction 60:22 74:22, 23 76:8,13,20 79:19 123:4, 15		intimidating 38:17
inescapable 38:3	informed 12:3 15:16,19 27:17 44:23	instructions 18:7 26:4 27:10,11 122:14,15 128:8,10,16 129:4	intentionally 21:8,16	intimidation 72:24
infamous 60:4	infused 5:13		interest 7:2 8:19 9:3 11:20 21:10 26:14,15 27:5 32:5,6 34:1 40:18 45:18 53:18 55:24 57:24 58:12 61:24 84:11, 12 86:23,24 88:19 89:15 92:23 102:24 103:1,8,20 104:4 107:1 111:10,23 121:11	into 4:17,18, 20 5:3,5,9,12 7:6,24 8:18 30:17 34:10 40:14 54:8 55:20 56:2 58:22 60:18 61:2 64:15,22 69:17 71:6 75:22 77:23 80:23 89:21 90:12,21 105:7 106:2 110:15 122:10 128:7 129:5
inference 69:19,21	inheritance 111:12 125:20	instruments 43:17		
inferences 38:19	initial 58:17	insulted 31:7		
influence 15:11	inner 100:22	insulting 38:17		
info 25:18	insolvent 19:17 59:1	insults 40:7		invest 5:9 99:16 101:7, 11
inform 13:14 14:1 21:14	instead 7:24 17:22 18:15 41:20 44:18 53:2 54:4 62:11 69:6 72:12 90:10	insurance 5:13 7:19 47:23 61:12 62:5 97:15, 21,22 98:2,10 112:19	interesting 26:24 49:1 90:13	invested 7:3
information 9:2 11:20,21 12:15,17 13:3,23 14:6, 9,19 15:1,2		intend 50:18 52:21	interests 7:15 26:12,16 102:18 103:18,21,24	investigate 99:4
	instructed			investigated

71:4	irregular 68:3 120:17	11	72:13 122:3	joke 19:9
investing 36:18	irregularities 65:16	issues 4:22 28:19 81:16 86:4,5 91:3 105:7 122:7,9	Jameson 121:18	Jr 97:19 98:16
investment 7:13 10:7 33:4,15 58:19 61:19 62:3, 11,14 75:5 99:21,22 100:3,8,13 112:16,21 113:7 122:21, 22 123:5	irregularity 65:19	items 128:6	January 34:6 59:21 109:15 115:14,16,24 118:24	judge 66:3 75:1
	irrelevant 89:19	ITSS 4:24	Jeanine 30:22	judgment 96:3
	isolation 100:1,12	<hr/> J <hr/>	jeopardy 96:16	judgments 46:2
investments 26:20 36:17 61:23 99:18	issue 5:3,8 6:4,8 7:1,6,9, 14,17 8:7 9:14,17,20 10:3 12:9 20:15 22:7 35:12 41:4,6 42:12,14 47:23 48:4 57:24 58:3,13 62:1,5,7,17, 19 63:1,6 65:1 71:21 79:18 84:24 85:3,10 86:10,11,20 87:11 88:3 93:20 97:8, 10,14 111:14 113:4,12 120:6 121:24 122:7 124:7	Jackrabbit 53:19 84:2 111:11	Jessica 21:24 27:22 28:3 29:24	July 115:13
Investor 7:14 26:18,19		Jaksick 33:10,16 34:2 36:5 38:22 39:22 40:4,6, 9,23 41:18 44:19,24 45:13,21 46:5 47:14 48:3,8 50:19 51:15 52:15 53:21 56:21 69:8 72:22 74:5 75:18,22 77:1,12 88:10 97:19 98:16 100:24 109:14 111:12	Jim 72:2,21	June 8:16 60:5
involved 4:11 12:2 44:20 61:8 73:17 86:9,13 87:2 94:21 114:11 121:16 122:6, 12 126:8,9,10			job 23:8 24:12 38:14 52:17 55:15 58:6 73:23	jurors 107:16 127:11,17,18, 24
involvement 85:14 86:8 87:4,5			JOHNSON 129:19,24	jury 27:11 34:10 37:9, 13,18,21 38:11 46:13, 21,23 47:16, 18 48:20 54:20 60:22, 24 64:4 66:5 71:1,6 73:12 74:23 77:11 79:19 92:10 106:16 108:8
involves 122:16			join 79:6,7,20 81:8	
IOU 22:19	issued 21:5,	Jaksick's 68:16 69:10	joined 79:24	
			Joint 123:9	

127:19,22 128:6 129:11, 15,16 130:3	78:18 92:18 94:23 95:8 105:15 106:21 115:12,13,18 117:4 119:24 120:1	60:15 61:23 73:1,20 95:11 102:20 104:9 109:21 110:22 114:3	known 37:20, 22 60:19 93:8 116:12,14	19,20 61:3, 11,15 62:23 63:12 65:3 70:12 86:5,7 105:21 112:15 121:11,24 122:2,3 126:15
K		kinds 27:6 124:5	knows 52:13 61:15 69:9 108:1 117:16	
keep 18:6,9 24:18 54:10 56:16 58:12 63:21 66:4 77:22 80:18 89:24 90:3 106:8 107:8 129:6	key 101:16 122:23	kit 67:11	L	Lakeridge 102:11
keeper 91:20	keys 106:8,9, 11 107:8	knew 14:10 18:9 36:10,13 43:23 49:16 71:20 87:8 88:7 93:4,5 100:24 101:3, 21 116:10	labor 105:24	land 20:2 33:21 84:14 92:15 106:10, 11,12
Keith 9:7 12:6 14:13 20:22 24:22 25:4 26:3 27:20 28:20 31:23 33:11 34:12, 21 109:13 110:7 116:4 118:24 119:6, 10	kids 7:10 55:8 57:24 58:4 64:9,12 65:4, 7,24 85:5 113:20	knock 28:17	lack 21:13,14	landed 106:7, 9 107:10 122:9
kept 17:8 90:22 94:11	killed 30:22, 23 50:4 95:15 121:18	knocked 63:19	ladies 37:4,18 38:3 42:9 43:1,9 47:1 48:10,15,22 50:12 52:3, 11,20 54:11 55:5,22 56:18 57:22 59:11, 14 60:2,8,12 61:10 63:1,10 65:15 66:1 72:22 73:6,15 75:20 76:20 92:5,9 107:11 128:5 129:14	language 73:3 95:2,14 101:16
Kevin 10:14 11:13 14:3 25:7,14 36:4 43:22 44:1,2 46:18 50:19 58:16 68:22 69:3,4,12	Kimmel 23:6 27:15 36:5 46:19 59:3 69:8 81:12 92:18 94:22 95:7,21,24 96:12 98:20, 24 99:8 105:11 106:19 115:10,13	knocking 40:2	lake 4:9 6:20 9:7,12,19 31:23 44:10, 12,14,15,16, 20,21 45:2,18 47:8,10,17 48:6 52:2 57:20 60:18,	laptop 77:20
	kind 28:7 42:14 44:6 55:16 56:13	knowing 21:16 61:3 75:16 100:12, 13 120:13		large 85:19, 20
		knowingly 21:16		Las 59:22 68:24
		knowledge 42:22		last 25:2,4 45:21 52:19 74:6 77:4 92:12 101:5

107:12 114:20 119:15 123:16	61:7 lay 37:22 learned 26:18 33:3 86:15 110:6 least 22:1 35:22 69:11 leave 31:3 68:24 128:19 leaves 90:14 Lee 39:3 left 11:4 31:20 35:16 51:16 53:8 58:14 61:10 116:24 legal 75:22 85:6 91:17 101:14 legally 71:24 legitimate 44:13 Legoy 21:21, 22 22:2 24:5, 11 25:7 27:8, 13 28:6	43:14,18 47:22 52:13, 16 62:19 76:2 98:11 117:5 Legoy's 28:1 lends 119:3 length 78:5 less 5:22 35:21 119:14 126:23 127:23 let 29:17 40:13 46:23 47:11 66:24 92:24 96:19 104:16 113:22 123:23 letter 14:14 63:24 81:17 109:18 Lexi 55:4 64:11 liabilities 13:11 93:14 liability 59:17 79:7 80:3,15 81:6,13 84:22 85:1 101:13	123:9,18 liable 75:7 76:9 79:10, 21,23 84:20 86:18 91:17, 22 98:22,24 99:9,11 115:11 116:1 license 89:9, 16,18,20,23 90:1,3,11 licensed 89:13 95:24 life 5:13 7:19 38:2 39:15 64:20 79:17 97:15,20,22 98:2,10 105:24 107:3 lifestyle 39:17 lifetime 7:9 89:6 lift 23:17 lifting 82:18 light 49:9 like 17:16	29:4,5 30:18 31:5,7 33:5 40:5 41:1,19 42:17,18 46:1 49:2,3 50:8 54:16 58:7 64:24 66:5,21 67:9 71:5 76:2,14 84:5 87:10 93:12 94:19 95:19, 20 98:19 102:14,21 106:14 108:14 111:14 113:16 114:4 116:18 123:7, 8 129:3 likeable 49:6, 12 liked 29:4 105:20 119:20 likely 37:21 53:14 limitation 60:24 85:18 limitations 124:7 limited 85:16 101:11,12,13
--------------------------------------	--	--	---	--

line 56:15,17 68:10 99:21 101:5	loaned 102:11	38:13 40:5 45:6 53:24 54:9,23 91:2 98:4	38:14 55:20 62:4 66:17 72:5 88:1 101:4 102:23 103:12 113:10 116:18 122:12 124:14	making 12:3 22:5 73:2 83:2 103:16 105:16 126:10
link 88:2	loans 20:14 22:5,14,18 102:9	Loud 118:13		
liquidated 54:3	logical 88:2	love 30:19	main 125:9	malice 36:4
list 13:7 20:9 28:16 93:13 129:20	long 28:23 37:21 126:2	loved 113:17, 18,20,24	maintain 62:11	man 10:11 23:14 40:7,9 96:9
Listen 54:12	longer 46:10	low 35:22	maintenance 6:21	manage 51:9, 10 54:15 62:21,23 99:17,18
litigate 67:24	looked 73:21 97:7 120:17	lower 126:13	major 88:16	manageable 56:13
litigation 28:11 79:1,2 80:13 81:18	looking 47:24 51:17 99:9 102:2,3 105:15 119:7, 10 122:14 126:6	loyalty 26:4, 19 104:2,3,5, 6	make 7:4,11 29:19 31:3 33:20 37:20 40:19,21 47:20 54:6 64:6 67:9 83:21 85:10 87:1 90:4,23, 24 91:1,19 93:12,16 98:23 102:5 103:2 104:11, 20 106:6,15 108:12,14 124:19	managed 6:6 83:18 101:17
little 5:10,22 31:1 33:5 37:4,7 40:13 41:8 64:22 80:22 82:10 87:3 88:7	looks 23:22 115:16 129:3	Luke 53:3 55:12,14,15 83:16,18,22 91:2 114:19		management 75:5 76:7 99:22 122:21, 22 123:5
live 7:9	lose 37:21 84:11	lumped 80:14		manager 8:5, 6 9:21 24:3 85:4 86:9 87:1
LLC 4:20 5:16,17 41:12 53:21 85:10 111:12 122:9	lost 17:18,20, 22 18:5,9 32:22 33:24 35:17 60:6,7, 9	lunch 4:8		
loan 9:15 57:2 67:12	lot 10:19	luxury 31:4,8		managers 101:2,3 102:9,23
		M	makes 63:2 80:12 81:6,7 103:2	managing

52:17 75:24	77:22	37:16,17,18 42:2 44:16 49:4 77:10 80:15 83:19 86:16 92:9 93:23 97:17 99:5 107:4,19 121:17 128:5, 12,13,18,19	82:9	34:20 73:17 105:10
maneuver 51:11	market 61:15		meeting 16:5, 13,15,17,18 24:9	mess 51:16
manipulated 54:21	Mary 39:10		meetings 16:13,23 18:17 24:12 61:6,7 126:9	messages 93:20,23
manipulating 55:15	Massive 22:8			messed 124:21
manipulation 54:19	material 26:5, 17	maybe 17:21 33:6 47:20 48:12 67:15 71:21 72:9,10 120:4	members 40:21 43:17 77:11	met 24:7,8 79:12 105:12 106:17
manner 124:24	materially 9:2		memberships 53:22	Metlife 66:10 67:12
	materials 77:24	Mcquaid 43:16		
many 26:3 30:24 39:12 76:10 78:2,3 80:19 81:4,15 96:10 101:24 118:19	math 47:15	mean 15:19 25:8 33:21 38:12 80:2 81:13 83:10 84:17,22	memo 16:17 114:9	Michael 36:5 81:12
March 4:2 8:15	matter 42:3 67:14 73:9 77:3 83:14 84:21 88:14 107:14 108:14 116:23 124:10	means 57:8 80:2 84:19 103:1 127:12	memorandum 65:21	middle 38:1 56:18 79:1,2 92:11
margin 41:2		meant 42:13 83:18	memory 19:3	midflight 106:1
margins 120:18	matters 15:16,19 44:1 67:11 81:1,4 83:15 121:22	meantime 67:1	mentality 39:17	might 15:11 30:22 33:2 39:5 40:3 57:7,9 82:10 87:23
mark 34:24 35:1 74:23 93:19 97:11 99:21	Maupin 21:22 22:2 28:5	Meanwhile 106:3	mention 11:14 12:21 19:12 21:18 44:16	Mike 46:19 59:3 69:8 92:18 94:22
marked 41:23	may 4:7 11:20 31:1 36:15	mediation	mentioned 9:14 18:11 21:13 24:17	